

Development & Environment Committee

Meeting Date: Tuesday, 02 March, 2021

Location: Council Chambers, City Administrative Building, Bridge Road, Nowra


Attachments (Under Separate Cover)

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Planning Report – S4.15 Assessment - 29 Strongs Rd, JASPERS BRUSH - Lot 215 DP 1210788

	Planning Report S4.15 Environmental Planning & Assessment Act 1979
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DA Number	DA20/1966
Property	29 Strongs Rd, JASPERS BRUSH - Lot 215 DP 1210788
Applicant(s)	Foundation Law Group
Owner(s)	Robert Bruce Drewitt Smith

Conflict of interest declaration

I have considered the potential for a conflict of interest under the [Code of Conduct](#) and to the best of my knowledge no pecuniary and/or significant non-pecuniary conflict of interest exists.

NOTE: If you determine that a non-pecuniary conflict of interest is less than significant and does not require further action, you must provide a written explanation of why you consider that the conflict does not require further action in the circumstances. This statement should then be countersigned by the section manager.

Name

Elliott Weston

20/01/2021

1. Detailed Proposal

The applicant seeks development consent to erect a single, temporary, and mobile A-frame advertising sign with a combined signage area of 24m² (12m² front and back) and image of the relevant signage is provided in Figure 2 and 3 below. The signage is in relation to a business identified as "Hotondo Homes".

The signage is proposed to be placed on the south-western corner of the land adjoining the Princes Highway (refer to Figure 1).

The signage is proposed to be placed on the land for no more than 52 days in a year in accordance with cl. 2.8 of *Shoalhaven Local Environmental Plan 2014*.

The applicant originally proposed that the sign be placed on the location identified on the Site Plan for the period specified below, which was designed to reflect school holiday season, during which vehicle traffic along the Princes Highway would be likely to be at its peak:

- Saturday 26 September – Sunday 11 October (18 days)
- Saturday 19 December – Saturday 22 Jan 2021 (34 days)

Following discussion with the applicant and delays in the provision of additional information, the applicant has proposed that the signage be limited to 52 days in a 12-month period and not limited to specific dates.

The applicant has been advised from the outset that Council staff would not be likely to support the proposal, with this advice being reiterated in telephone discussions and multiple emails between 1 December 2020 and 17 December 2020.

Through this correspondence, the applicant also suggested that as an alternative, the proposal relates to a business being conducted on the land (i.e. construction of a Hotondo development) and could thus be defined as 'business identification signage', having regard to the provisions of the State Environmental Planning Policy No 64—Advertising and Signage. As detailed in this report, Council staff advised that this interpretation was flawed and would not be supported by Council.

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Figure 1 - Extract of the proposed site plan with area for the erection of the proposed temporary signage nominated.



Figure 2 - Elevation of the proposed signage and relevant dimensions.

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Figure 3 - elevations of the proposed signage.

2. Subject Site and Surrounds

The land is identified as No. 29 Strongs Road, Jaspers Brush and is legally described as Lot 215 DP1210788 (the Site). The land is an irregular-shaped allotment with dual frontages to Strongs Road in the north and the Princes Highway in the east. The land has a total area of 24.89ha.

The land is largely cleared of vegetation with stands of tree located along several drainage depressions and proximate to the dams located on the site. The site is not mapped as containing any endangered ecological communities (EEC) or critically endangered communities (CEEC). The land drains to the existing dams and drainage depressions located on the site.

The site has been developed for rural/residential land use with a dwelling, inground pool, detached garage and associated shed located toward the Strongs Road frontage. Council has approved (Development Consent No. DA16/1393) five (5) tourist cabins on the subject site.

The site is largely free of easements and restrictions that would otherwise impede the development of the site as proposed. It is however noted that an easement for transmission lines 30.48m wide is located along the length of the south-eastern boundary of the site. The signage is proposed within this easement.

The surrounding land is a mix of rural (extensive agriculture) and residential land uses. It is noted that the land to the south-west of the site (No. B510 Princes Highway) has been developed along its south-eastern boundary for an RMS site office and car park for workers associated with the construction of the Berry-Bomaderry By-Pass.

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Figure 4 - Aerial image of the subject site in the local context.

Deposited Plan and 88B Instrument

The site is burdened by an easement for electricity (overhead power infrastructure). The temporary signage is proposed to be placed within the easement. The applicant was requested to relocate the signage as it was likely that Endeavour Energy would not support the location of such a structure (albeit temporary) within the easement for safety and operational reasons.

The applicant has elected to retain the signage in the location in **Figure 1**.

3. Background

Post-Lodgement

On 29 September 2020, Council requested additional information from the applicant, which included a request to relocate the advertising signage outside of the easement for electricity (overhead power infrastructure).

On 29 September 2020, the application was notified for a period of 14 days in accordance with the Council's Community Consultation Policy.

On 19 November 2020, the applicant responded to Council and elected to retain the signage in its current location.

On 1 December 2020, Council wrote to the applicant to notify them that the application was inconsistent with the following s. 4.15 assessment matters:

1. *State Environmental Planning Policy No 64—Advertising and Signage*;
2. *Shoalhaven Local Environmental Plan 2014* – cl. 2.8; and
3. *Shoalhaven Development Control plan 2014* – Chapter G22: Advertising Signage.

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On 2 December 2020, the applicant notified Council that they did not agree with Council's interpretation and were of the view that the signage could be supported and was not contrary with the relevant environmental planning instruments and Council policy.

Site History and Previous Approvals

The site has been developed for rural/residential land use with a dwelling, inground pool, detached garage and associated shed located toward the Strongs Road frontage. Council has approved (Development Consent No. DA16/1393) five (5) tourist cabins on the subject site.

4. Consultation and Referrals

External Referrals			
Agency	Required	Recommendation	Comment
Endeavour Energy	<input checked="" type="checkbox"/>	<p>On 1 February 2021, Endeavour Energy provided their written response (D21/49875) to the application and recommended the following:</p> <p><i>"Endeavour Energy's recommendation is that the proposed advertising sign be positioned as far as possible to the front boundary to be located outside of the easement as much as possible and so that it is not directly under any of the overhead power lines / conductors. The Statement of Environmental Effects indicates in the section on the Shoalhaven Development Control Plan 2014, Chapter G22 – Advertising Signs and Structures, A5.6 Minimum front boundary setback is 1m.</i></p> <p><i>Accordingly the applicant must contact Endeavour Energy's Easements Officer and satisfactorily address the foregoing requirements in order to seek the required approval for the proposed controlled activity"</i></p>	<p>Were the application recommended for approval a condition could be imposed for the relocation of the signage outside (as far as possible) of the easement (taking into account the setback requirements for signage under SDCP 2014).</p>

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5. Other Approvals

N/A.

6. Statutory Considerations

This report assesses the proposed development/use against relevant State, Regional and Local Environmental Planning Instruments and policies in accordance with Section 4.15 (1) of the Environmental Planning and Assessment Act 1979 (EP&A Act). The following planning instruments and controls apply to the proposed development:

Instrument	Relevant	Instrument	Relevant
Shoalhaven LEP 2014	<input checked="" type="checkbox"/>	State Environmental Planning Policy No 55 - Remediation of Land	<input checked="" type="checkbox"/>
State Environmental Planning Policy No 64 - Advertising and Signage	<input checked="" type="checkbox"/>	State Environmental Planning Policy (Infrastructure) 2007	<input checked="" type="checkbox"/>

Additional information on the proposal's compliance with the above planning instruments is detailed below in Section 7 (Statement of Compliance/Assessment) of this report.

7. Statement of Compliance/Assessment

The following provides an assessment of the submitted application against the matters for consideration under Section 4.15 of the EP&A Act.

(a) Any planning instrument, draft instrument, DCP and regulations that apply to the land

Environmental Planning and Assessment Act 1979

i) Environmental planning instrument

SEPP (Infrastructure) 2007

The SEPP ensures that Endeavour Energy is given the opportunity to comment on development close to its transmission easement. Council referred the application to Endeavour Energy.

On 1 February 2021, Endeavour Energy provided their written response (D21/49875) to the application and recommended the following:

"Endeavour Energy's recommendation is that the proposed advertising sign be positioned as far as possible to the front boundary to be located outside of the easement as much as possible and so that it is not directly under any of the overhead power lines / conductors. The Statement of Environmental Effects indicates in the section on the Shoalhaven Development Control Plan 2014, Chapter G22 – Advertising Signs and Structures, A5.6 Minimum front boundary setback is 1m.

Accordingly the applicant must contact Endeavour Energy's Easements Officer and satisfactorily address the foregoing requirements in order to seek the required approval for the proposed controlled activity"

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SEPP 55 Remediation of Land

Question	Yes	No
1. Is the proposal for residential subdivision or a listed purpose (the list provided in Table 1 of the contaminated land assessment guidelines)?	Proceed to Question 3	X Proceed to Question 2
2. Does the proposal result in a change of use (that is the establishment of a new use)?	X Proceed to Question 3	Assessment under SEPP 55 and DCP not required.
3. Does the application proposed a new: <ul style="list-style-type: none"> ▪ Childcare facility ▪ Educational use ▪ Recreational use ▪ Health care use ▪ Place of public worship ▪ Residential use in a commercial or industrial zone 	Proceed to Question 5	X Proceed to Question 4
4. Review the property file and conduct a site inspection of the site and surrounding lands. Is there any evidence that the land has been used for a listed purpose?	Proceed to Question 5	X Proposal satisfactory under SEPP 55 and DCP.
5. Is the proposed land use likely to have any exposure path to contaminants that might be present in soil or groundwater?	Request contaminated site assessment	Proposal satisfactory under SEPP 55 and DCP.

SEPP 64 – Advertising and Signage

SEPP 64 applies to the land and the Development and in accordance with cl. 7, *In the event of an inconsistency between this Policy and another environmental planning instrument, whether made before or after this Policy, this Policy prevails to the extent of the inconsistency.*

Consideration of the Development against the provisions of cl. 13 of SEPP 64 is required.

Clause 13(1) states as follows:

“13 Matters for consideration

(1) *A consent authority (other than in a case to which subclause (2) applies) must not grant consent to an application to display an advertisement to which this Policy applies unless the advertisement or the advertising structure, as the case requires:*

(a) *is consistent with the objectives of this Policy as set out in clause 3 (1) (a), and*

(b) *has been assessed by the consent authority in accordance with the assessment criteria in Schedule 1 and the consent authority is satisfied that the proposal is acceptable in terms of its impacts, and*

(c) *satisfies any other relevant requirements of this Policy.”*

The proposed development is not considered to satisfy subclauses 13(1)(a) & (b) for the following reasons:

3 Aims, objectives etc

(1) *This Policy aims:*

(a) *to ensure that signage (including advertising):*

(i) *is compatible with the desired amenity and visual character of an area, and*

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(ii) provides effective communication in suitable locations, and

(iii) is of high quality design and finish, and

The application is not compatible with the desired amenity and visual character of an area (cl. 3(1)(a)(i)).

The proposed advertising is not a suitable location for the proposed advertising signage in the rural setting (cl. 3(1)(a)(ii)).

In accordance with cl. 3(1)(b) the development has been assessed by Council in accordance with the assessment criteria in Schedule 1 (refer to the table below) and the consent authority is not satisfied that the proposal is acceptable in terms of its impacts.

SEPP 64 – Schedule 1	Comment
1 Character of the Area	
Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located?	No. The area is likely to remain predominately rural/residential and is unlikely (in the near term) to have any significant changes to land use patterns.
Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?	No. Advertisements in the locality are generally prohibited and discouraged. The small number of signs that have been erected include tourist signage and a limited number of unregulated signage that Council is aware of and is (through Council's Compliance Section) looking to investigate and where appropriate, seek their removal or regularisation where signage is permissible with consent. Strategically, advertising signage is most appropriate in the business, industrial, private recreation and working waterway zones which is reflected in the SLEP 2014.
2 Special areas	
Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas?	Yes. The signage is considered to detract from the amenity or visual quality of the rural landscape. Jaspers Brush is characterised by its rural landscape and extensive agricultural uses. The erection of signage is likely to detract from the visual quality of the rural landscape.
3 Views and vistas	
Does the proposal obscure or compromise important views?	No.
Does the proposal dominate the skyline and reduce the quality of vistas?	No.
Does the proposal respect the viewing rights of other advertisers?	No.
4 Streetscape, setting or landscape	
Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape?	No. As stated previously the signage is not considered to be appropriate for the rural landscape setting and generally detracts from the agricultural setting and is of a scale and

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SEPP 64 – Schedule 1	Comment
	form that is inconsistent with Council's development control plan for advertising.
Does the proposal contribute to the visual interest of the streetscape, setting or landscape?	No. The signage is likely to diminish the visual interest of the streetscape and rural landscape setting.
Does the proposal reduce clutter by rationalising and simplifying existing advertising?	No. There is no existing (legal) advertising signage on this stretch of the Princes Highway that the advertising would be seeking to simplify and consolidate on a single sign.
Does the proposal screen unsightliness?	No.
Does the proposal protrude above buildings, structures or tree canopies in the area or locality?	No.
Does the proposal require ongoing vegetation management?	No. Ongoing site maintenance through grass cutting may occur but would not be necessary.
5 Site and building	
Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located?	No. The 12m ² or 24m ² (total sign face area) is a large advertising structure that is not consistent with the low-scale rural/residential area where there is not existing (approved) signage in the locality.
Does the proposal respect important features of the site or building, or both?	No special features of the site are identified.
Does the proposal show innovation and imagination in its relationship to the site or building, or both?	No. The sign is a simple A-frame on a trailer and does not show innovation and imagination in its relationship to the site. Furthermore, the advertising signage does not relate to the site which is being advertised.
6 Associated devices and logos with advertisements and advertising structures	
Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed?	None proposed.
7 Illumination	
Would illumination result in unacceptable glare?	No illumination proposed.
Would illumination affect safety for pedestrians, vehicles or aircraft?	No illumination proposed.
Would illumination detract from the amenity of any residence or other form of accommodation?	No illumination proposed.
Can the intensity of the illumination be adjusted, if necessary?	No illumination proposed.
Is the illumination subject to a curfew?	No illumination proposed.
8 Safety	
Would the proposal reduce the safety for any public road?	No.
Would the proposal reduce the safety for pedestrians or bicyclists?	No.
Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?	No.

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In accordance with cl. 13(1)(c) Council must assess whether the advertising signage satisfies any other relevant requirements of this Policy.

Clause 15 applies to land that is within a rural or non-urban zone and on which an advertisement is permissible. The sign is prohibited in the RU1 zone but permissible only under cl. 2.8 of SLEP 2014.

Sub-clause (2) of cl. 15 states that Council as the consent authority must not grant consent to display an advertisement on land to which this clause applies:

"(a) unless a development control plan is in force that has been prepared on the basis of an advertising design analysis for the relevant area or precinct in consultation with:

(i) the advertising industry and any body that is representative of local businesses, such as a chamber of commerce, and

(ii) if the land to which the development control plan relates is within 250 metres of a classified road, the Roads and Traffic Authority,

and the display of the advertisement is consistent with the development control plan, or

(b) if no such development control plan is in force, unless:

(i) the advertisement relates to the land on which the advertisement is to be displayed, or to premises situated on that land or adjacent land, and

(ii) specifies one or more of the following particulars:

(A) the purpose for which the land or premises is or are used,

(B) the identification of a person residing or carrying on an occupation or business on the land or premises,

(C) a description of an occupation or business referred to in sub-subparagraph (B),

(D) particulars of the goods or services dealt with or provided on the land or premises, or

(E) (Repealed)

(c) if no such development control plan is in force, unless the advertisement is a notice directing the travelling public to tourist facilities or activities or to places of scientific, historical or scenic interest."

Chapter G22: Advertising Signs and Structures of SDCP 2014 provides controls and guidelines relating to advertising signs and structures. Chapter G22 has been made in accordance with Section 3.43 of the *Environmental Planning Assessment Act 1979* (EP&A Act), with appropriate consultation before adoption and coming into effect on 22 October 2014.

Chapter 22 is **not** a development control plan that has been prepared on the basis of an advertising design analysis for the relevant area or precinct. Chapter G22 provides controls with broad application across the whole of the Shoalhaven and does not provide area or precinct development controls (except for Signage at Ulladulla Harbour in the W3 Working Waterways zone).

There is no such development control plan in place and therefore Council must consider subclause (2)(b) of clause 15 and therefore consider whether: *the advertisement relates to the land on which the advertisement is to be displayed, or to premises situated on that land or adjacent land.*

The advertisement does not satisfy sub-clause (2)(b)(i) as it does not relate to the subject land or to premises situated on that land or adjacent land. Notwithstanding that the advertisement does not relate to the subject land or adjacent land, and the proposed advertising signage does not satisfy sub-clause (2)(b)(ii), in that the proposed advertising signage does not specify one or more of the following particulars:

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- (A) the purpose for which the land or premises is or are used,
- (B) the identification of a person residing or carrying on an occupation or business on the land or premises,
- (C) a description of an occupation or business referred to in sub-subparagraph (B),
- (D) particulars of the goods or services dealt with or provided on the land or premises.

The land is used for rural/residential purposes presently. Council has approved (Development Consent No. DA16/1393) for five (5) tourist cabins, with a construction certificate (CC16/2003) issued by a private certifier.

The land is not approved for use as a Hotondo Homes sales office or business premises and therefore the purposes for which the land or premises on the land are used is not for Hotondo Homes.

Hotondo Homes is not a person residing or carrying on an occupation or business on the land or premises. The owner of the land is Robert Bruce Drewitt Smith and is not Hotondo Homes. Furthermore, it could not and should not be construed that the act of building a structure or building on the land i.e. the construction of the approved tourist cabins, amounts to the carrying on of an occupation or business on the land or premises. Such an interpretation is erroneous and would result in an interpretation that would have broader implications for the interpretation of the definition of a "business premises", "occupation" and "business identification sign" under SLEP 2014. Such an interpretation would allow for the placement of a sign on any land where a service had been or is being provided by a business, not at the premises or place at which the sign is displayed. Thus, allowing business identification signage contrary to the definition of "business identification signage".

Furthermore, the signage does not describe an occupation or business carrying on an occupation or business on the land or premises, or any particulars of the goods or services dealt with or provided on the land or premises.

Notwithstanding the foregoing, subclause 15(2)(c) enables Council to approve advertising signage in a rural or non-urban area despite not having such a development control in place, where the advertisement is a notice directing the travelling public to tourist facilities or activities or to places of scientific, historical or scenic interest. Council does not consider the proposed advertisement to be any of these specific places or things and does not satisfy subclause 15(2)(c).

Finally, the land does not meet the definition of "transport corridor land" under clause 4 of SEPP 64 and therefore it also appears that subclause (3) of Clause 15 does not apply.

The signage is not supportable and would be contrary to SEPP 64. Council does not have any authority to approve the advertisement on the land by virtue of Clause 15. Clause 2.8 of SLEP 2014 does not grant Council the power to approve the advertisement where there is an inconsistency with SEPP 64, which prevails over SLEP 2014.

Shoalhaven LEP 2014

Land Zoning

The land is zoned RU1 Primary Production under the SLEP 2014.

Characterisation and Permissibility

The proposal is best characterised as "advertising signage" under the SLEP 2014. The proposal is prohibited within the zone.

"Advertising signage" is defined in the Dictionary to SLEP 2014 as follows:

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“advertising structure has the same meaning as in the Act.

Note—

The term is defined as a structure used or to be used principally for the display of an advertisement.

*Advertising structures are a type of **signage**—see the definition of that term in this Dictionary.”*

“Advertisement” is further defined in the Dictionary to SLEP 2014 as follows:

“advertisement has the same meaning as in the Act.

Note—

The term is defined as a sign, notice, device or representation in the nature of an advertisement visible from any public place or public reserve or from any navigable water.”

Due to the nature of the signage and the information provide on the sign, the signage is not capable of being defined as a form of “business identification sign”. A “business identification sign” is defined in the Dictionary to SLEP 2014 as follows:

business identification sign means a sign—

(a) that indicates—

(i) the name of the person or business, and

(ii) the nature of the business carried on by the person at the premises or place at which the sign is displayed, and

(b) that may include the address of the premises or place and a logo or other symbol that identifies the business,

but that does not contain any advertising relating to a person who does not carry on business at the premises or place.

Note—

Business identification signs are a type of **signage**—see the definition of that term in this Dictionary.

Hotondo Homes does not carry on a business at the premises or place at which the sign is displayed.

The relevant location for the carrying on of the business of selling homes the public is at Unit 5/176 Princes Highway, South Nowra and Unit 1/6 Shaban Street, Albion Park Rail. 29 Strongs Road, Jaspers Brush is not a sales office of Hotondo Homes and therefore it should naturally follow that they are not carrying on their business from this premises.

Zone objectives

Objective	Comment
<ul style="list-style-type: none"> To encourage sustainable primary industry production by maintaining and enhancing the natural resource base. To encourage diversity in primary industry enterprises and systems appropriate for the area. To minimise the fragmentation and alienation of resource lands. 	<p>The proposed signage would not be inconsistent with the zone objectives and would not limit (significantly) the use of the land for rural/residential land use and is unlikely to result in land use conflicts within the zone or adjoining zones.</p>

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<ul style="list-style-type: none"> • To minimise conflict between land uses within this zone and land uses within adjoining zones. • To conserve and maintain productive prime crop and pasture land. • To conserve and maintain the economic potential of the land within this zone for extractive industries. 	
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SLEP 2014 Clauses

Clause	Comments	Complies/Consistent
Part 2 Permitted or prohibited development		
2.8	<p>The applicant proposes to erect the advertising signage on the subject land for no more than 52 in a 12-month period in accordance with cl. 2.8 of SLEP 2014.</p> <p>The stated objective of cl. 2.8 is to provide for the temporary use of land if the use does not <i>"compromise future development of the land, or have detrimental economic, social, amenity or environmental effects on the land"</i>.</p> <p>Clause 2.8(3) requires Council to be satisfied of each matter listed in cl. 2.8(3), i.e.:</p> <ul style="list-style-type: none"> a) that the temporary use will not prejudice the future use of the land in accordance with SLEP 2014 or any other environmental planning instrument; b) that the temporary use will not adversely impact on any adjoining land or the amenity of the neighbourhood; c) that the temporary use and location of any structures related to the use will not adversely impact on environmental attributes or features of the land, or increase the risk of natural hazards that may affect the land; and d) at the end of the temporary use period the land will, as far as is practicable, be restored to the condition in which it was before the commencement of the use. <p><u>Comment:</u></p> <p>The advertising signage is consistent with sub-clause 2.8(3)(a)-(b) and (d).</p> <p>The proposed temporary use does not satisfy sub-clause 2.8(3)(c). The location of the signage is planned in a prominent location adjoining the Princess Highway in a rural setting at the entry to the Shoalhaven and Nowra and will have a visual impact on the locality. The test imposed by Clause 2.8(3)(c) is in absolute terms and is different from the test that is conventionally applied to the assessment of an ordinary development application. The higher threshold reflects the fact that the development for which consent is sought is otherwise prohibited.</p> <p>Relevantly, there must be no adverse impact on environmental attributes or features of the land by virtue of the visual impacts on the</p>	No.

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<p>rural setting views to the sweeping grazing lands and Cambewarra Mountains.</p> <p>Where there is any impact on <i>environmental attributes or features of the land</i> Council must <u>not</u> grant consent to the application.</p> <p>Council is guided in their interpretation of cl. 2.8 by the leading judgements of:</p> <ul style="list-style-type: none"> • <i>Marshall Rural Pty Limited v Hawkesbury City Council</i> [2015] NSWLEC 197; and • <i>EMRR Pty Limited v Murray Shire Council</i> [2016] NSWLEC 144. <p>This is the first application that Council has assessed where an applicant has sought to rely on cl. 2.8 to enable prohibited “advertising signage”. Were Council to support the use of the cl. 2.8 in the manner proposed this would likely result in further signage applications throughout the LGA and along the Princes Highway.</p>	
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ii) Draft Environmental Planning Instrument

The following draft environmental planning instruments (EPI) apply to the site:

- State Environmental Planning Policy No. 44 - Koala Habitat Protection - Review
- Draft State Environmental Planning Policy (Environment) 2017
- Draft State Environmental Planning Policy (Remediation of Land)
- Draft State Environmental Planning Policy (Short-term Rental Accommodation)

No additional assessment required under these draft EPIs

iii) Any Development Control Plan

Shoalhaven DCP 2014

Generic Chapters	Relevant
G1: Site Analysis, Sustainable Design and Building Materials in Rural and Coastal Areas	<input checked="" type="checkbox"/>
An appropriate site plan/site analysis plan has been submitted to Council in support of the Development Application.	
G22: Advertising Signs and Structures	<input checked="" type="checkbox"/>
<p>The purpose of this Chapter is to outline controls and guidelines relating to advertising signs and structures.</p> <p>The applicant proposes to erect a single, temporary and mobile A-frame advertising sign with a combined signage area of 24m² (12m² front and back)</p> <p>In accordance with Section 3.1 of this Chapter, strategically, advertising signage is most appropriate in the business, industrial, private recreation and working waterway zones which is reflected in the Shoalhaven LEP 2014.</p> <p>The proposed advertising signage is inconsistent with this chapter regarding the following sections:</p> <p>Notwithstanding that the application is non-compliant with SEPP 64 and cl. 2.8 of SLEP 2014 and the application cannot be approved, it is prudent to consider the proposed signage against the provisions of Chapter G22 of SDCP 2014. A consideration of the proposed signage against the</p>	

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relevant provisions Chapter G22 reveals that the signage is not consistent with a number of provisions for the following reasons:

1. The signage is inconsistent with the objectives set out under Section 4 of Chapter G22 in that the signage is not considered to:
 - a. Provide opportunities for business to advertise effectively in a manner that does not detract from the character of the area; and
 - b. Minimise visual clutter caused by the proliferation of signs and encourage the rationalisation of existing and proposed signage; and
 - c. Be well designed and consistent with this Chapter; and
 - d. Be consistent with the architectural character and heritage significance of heritage items or buildings, heritage conservation areas or pastoral landscapes.
2. The proposed signage is not consistent with the design guidelines under Section 5.1.1, for the following reasons:
 - a. The signage does not reinforce the architectural design of the building or its streetscape; or
 - b. The signage does not contribute to a new image for the building and its streetscape.
3. The form of signage that is proposed is discouraged by Council under section 5.3, being a motor vehicle sign (including signage on a trailer) that is not exempt, which is stopped on private property for the primary purpose of displaying such sign. While it is noted that Section 5.3 does stipulate that: *[a]pplications for some signs, however, may be considered on their merits provided Council is satisfied that the proposed sign is appropriate in the circumstances*, the signage proposed does not present any unique or persuasive arguments that would persuade Council in the consideration of the discouraged signage. While the COVID crisis resulted in temporary downward pressure on overall property prices, regional NSW's property prices rose amid the uptake of remote working conditions. Council also experienced a significant increase in s10.7 certificates (required for property exchanges). Development applications have continued to be lodged with significant applications in the mix. The Property Council has also released high level data stating that private sector house approvals rose for the "sixth consecutive month in December" 2020 and reached "a record high". Accordingly, there appears to be confidence in the property market and development industry.
4. When considered against the Section 5.5 General, Performance Criteria P7 is relevant to the proposed development, being a form of other free-standing sign the signage is not consistent with the performance criteria as the signage has not been designed to:
 - a. be associated with a lawful use of the adjoining or adjacent land;
 - b. specify the purpose(s) for which the adjoining or adjacent land or premises is or are used;
 - c. are consistent with the design guidelines outlined in this Chapter;
 - d. be in scale with the development on the adjoining or adjacent land; or
 - e. not adversely affect the amenity or character of the area.

Furthermore, the type of signage and the use of clause 2.8 of SLEP 2014 is likely to result in the creation of an undesirable precedent and may result in the proliferation of undesirable and unsightly advertising signage along public road.

- iiia) Any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4

Planning Report – S4.15 Assessment - 29 Strongs Rd, JASPERS BRUSH - Lot 215 DP 1210788

No planning agreement relates to the proposed development or site.
iv) **Environmental Planning and Assessment Regulation 2000**

No additional matters for consideration.

v) **Repealed**

Council Policies

Shoalhaven Contribution Plan 2019

The proposed development is not considered to increase the demand for community facilities in accordance with the Shoalhaven Contributions Plan 2019 (the Plan).

Nowra Bomaderry Structure Plan 2008

The proposed development is not inconsistent with the Structure Plan.

(b) The Likely impacts of that development, including environmental impacts on the natural and built environments, and social and economic impacts in the locality

Head of Consideration	Comment
Natural Environment	The development is unlikely to have an impact on the natural environment.
Built Environment	<p>The signage is likely to have a negative impact on the built environment with the signage, detracting from the rural character of the area. Jaspers Brush is characterised by its rural landscape and extensive agricultural uses. The erection of signage is likely to detract from the visual quality of the rural landscape.</p> <p>The signage is of a scale, proportion and form which is inconsistent with the streetscape, setting and landscape characteristics of the locality. There is no existing (legal) advertising signage on this stretch of the Princes Highway that the advertising would be seeking to simplify and consolidate on a single sign.</p>
Social Impacts	No detrimental social impacts are likely to result from the proposed signage.
Economic Impacts	No detrimental economic impacts are likely to result from the proposed signage.

(c) Suitability of the site for the development

The advertising signage is located on a rural/residential lot proximate to the Princes Highway in the predominately agricultural land of Jaspers Brush.

Development for the purpose of "advertising signage" is prohibited in all RU1 Primary Production zones under SLEP 2014. Strategically, advertising signage is most appropriate in the business, industrial, private recreation and working waterway zones which is reflected in the Shoalhaven LEP 2014.

Planning Report – S4.15 Assessment - 29 Strongs Rd, JASPERS BRUSH - Lot 215 DP 1210788

The signage is not supportable and would be contrary to SEPP 64, cl. 2.8(3) of SLEP 2014 and Chapter G22 of SDCP 2014.

Advertising signage of this scale and form is most appropriate in the aforementioned zones. Council has adopted a system of supplementary signage to ensure the positive promotion of tourism and ensure tourist, community and other information is available to the travelling public, such signage is reflected in other tourist and destination signage along the Princes Highway and may be located outside of business, industrial and private recreation zones. The proposed signage is purely related to the promotion of a business in a rural area significantly isolated from the business it is advertising. This form of signage is specifically discouraged by Council's Development Control Plan for advertising signage.

(d) Submissions made in accordance with the Act or the regulations

The DA was notified In accordance with Council's Community Consultation Policy for Development Applications. No submissions were received by Council during the notification period.

(e) The Public Interest

It is considered that granting approval to the proposed development will have significant adverse impact on the public interest.

The public interest is best served through the proper application of the planning legislation and Council's Policies relating to the form of development proposed. The assessment report outlines how the proposed signage would be contrary to SEPP 64, cl. 2.8(3)(c) of SLEP 2014 and Chapter G22 of SDCP 2014.

The public interest is not served through development which is consistent with the relevant planning legislation and Council Policies and is capable of being approved under such planning legislation. The current proposal cannot be approved by Council and therefore the public interest is not served by such an application.

Delegations

Guidelines for use of Delegated Authority

The Guidelines for use of Delegated Authority have been reviewed and the assessing officer does not have the Delegated Authority to determine the Development Application.

Council Resolved on 7 April 2020 (MIN20.240) with respect to COVID- 19 Response, that:

7. To maintain, continue and encourage as much economic activity as possible Council adopt the following policies, to be followed by an implementation report from the CEO:

...

k. The delegation to the CEO be rescinded to determine a development application by refusal until the end of COVID 19 crisis

The refusal of a development application must only be by Council/Committee resolution

Planning Report – S4.15 Assessment - 29 Strongs Rd, JASPERS BRUSH - Lot 215 DP 1210788

This s. 4.15 assessment report recommends refusal of the above application and is therefore prepared for consideration by the Development & Environment Committee in accordance with the 7 April 2020 Resolution of Council.

Recommendation

This application has been assessed having regard for Section 4.15 (Matters for consideration) under the Environmental Planning and Assessment Act 1979. As such, it is recommended that Development Application No. DA20/1966 be refused for the following reasons:

1. The proposed development is inconsistent with the aims of the *Shoalhaven Local Environment Plan 2014*, specifically cl. 1.2(2)(c). The development does not ensure that suitable land for beneficial and appropriate uses is made available as required. (Section 4.15(1)(a)(i) of *Environmental Planning and Assessment Act, 1979*).
2. The proposed development is inconsistent with the objects of the *Environmental Planning and Assessment Act, 1979*, specifically Section 1.3(c) and (g). the development does not promote the orderly and economic use and development of land or promote good design and amenity of the built environment.
3. The development does not comply with all of the assessment criteria of clause 3(1)(a)(i)(i) contained in *State Environmental Planning Policy 64 – Advertising and Signage* (SEPP 64) (section 4.15(1)(a)(i) of *Environmental Planning and Assessment Act, 1979*). The application is not *compatible with the desired amenity and visual character of an area* (cl. 3(1)(a)(i)). The proposed advertising is not a suitable location for the proposed advertising signage in the rural setting (cl. 3(1)(a)(ii)). (section 4.15(1)(a)(i) of *Environmental Planning and Assessment Act, 1979*).
4. The development does not comply with cl. 13(1)(a)-(c) of SEPP 64, which requires that Council must not grant consent to an application for advertisement to which SEPP 64 applies unless the advertisement or the advertising structure:
 - is consistent with the objectives of this Policy as set out in cl. 3(1)(a), and
 - has been assessed by the consent authority in accordance with the assessment criteria in Schedule 1 and the consent authority is satisfied that the proposal is acceptable in terms of its impacts, and
 - satisfies any other relevant requirements of this Policy.

(section 4.15(1)(a)(i) of *Environmental Planning and Assessment Act, 1979*).
5. The proposal does not comply with cl. 15(2)(b) of SEPP 64. (section 4.15(1)(a)(i) of *Environmental Planning and Assessment Act, 1979*).
6. The development does not satisfy cl. 2.8(3), which Council must be satisfied of when granting development consent to an application for the temporary use of land under *Shoalhaven Local Environment Plan 2014*, (section 4.15(1)(a)(i) of *Environmental Planning and Assessment Act, 1979*).
7. The development is inconsistent with the following sections of Chapter G22: Advertising Signs and Structures of Shoalhaven Development Control Plan 2014:
 - Section 4 Objectives;
 - Section 5.1.1 Matters for consideration;
 - Section 5.3 Discouraged signs; and

Planning Report – S4.15 Assessment - 29 Strongs Rd, JASPERS BRUSH - Lot 215 DP 1210788

- Section 5.5 General.

(section 4.15(1)(a)(i) of *Environmental Planning and Assessment Act, 1979*)

8. The development is likely to have a negative impact on the built environment (section 4.15(1)(b) of *Environmental Planning and Assessment Act, 1979*).
9. The site is suitable for the proposed development. (Section 4.15(1)(c) of *Environmental Planning and Assessment Act, 1979*).
10. The granting of development consent is not considered to be in the public interest. (Section 4.15(1)(e) of *Environmental Planning and Assessment Act, 1979*).



Bridge Rd, Nowra NSW 2541 | 02 4429 3111
Deering St, Ulladulla NSW 2539 | 02 4429 8999

Address all correspondence to

The Chief Executive Officer, PO Box 42, Nowra NSW 2541 Australia
council@shoalhaven.nsw.gov.au | DX5323 Nowra | Fax 02 4422 1816

shoalhaven.nsw.gov.au     

**NOTICE TO APPLICANT OF DETERMINATION OF DEVELOPMENT APPLICATION
BY WAY OF REFUSAL**

Environmental Planning and Assessment Act, 1979
DA20/1966

TO:

Foundation Law Group
PO Box 3094
AUSTINMER NSW 2000

being the applicant(s) for DA20/1966 relating to:

29 Strongs Road, JASPERS BRUSH - Lot 215 - DP 1210788

REFUSED USE AND/OR DEVELOPMENT:

Temporary use of land for the erection of a single trailer sign (advertisement) to be located on the land on a temporary basis in accordance with Clause 2.8 of *Shoalhaven Local Environmental Plan 2014* for a period not exceeding 52 days in a 12-month period.

DETERMINATION DATE: TBC

REFUSAL DATE: TBC

Pursuant to Section 4.18 of the Act, notice is hereby given that the above application has been determined by **REFUSAL** for the reasons as outlined in Part A:

Ordinary Meeting Minutes CL20.300 of 24 November 2020.

DE21.12 - Attachment 2

Determination Notice by way of Refusal - Page 2 of 3 - DA20/1966

REASONS FOR REFUSAL

1. The proposed development is inconsistent with the aims of the *Shoalhaven Local Environment Plan 2014*, specifically cl. 1.2(2)(c). The development does not ensure that suitable land for beneficial and appropriate uses is made available as required. (Section 4.15(1)(a)(i) of *Environmental Planning and Assessment Act, 1979*).
2. The proposed development is inconsistent with the objects of the *Environmental Planning and Assessment Act, 1979*, specifically Section 1.3(c) and (g). the development does not promote the orderly and economic use and development of land or promote good design and amenity of the built environment.
3. The development does not comply with all of the assessment criteria of clause 3(1)(a)(i)(i) contained in *State Environmental Planning Policy 64 – Advertising and Signage* (SEPP 64) (section 4.15(1)(a)(i) of *Environmental Planning and Assessment Act, 1979*). The application is not *compatible with the desired amenity and visual character of an area* (cl. 3(1)(a)(i)). The proposed advertising is not a suitable location for the proposed advertising signage in the rural setting (cl. 3(1)(a)(ii)). (section 4.15(1)(a)(i) of *Environmental Planning and Assessment Act, 1979*).
4. The development does not comply with cl. 13(1)(a)-(c) of SEPP 64, which requires that Council must not grant consent to an application for an advertisement to which SEPP 64 applies unless the advertisement or the advertising structure:
 - a) is consistent with the objectives of this Policy as set out in cl. 3(1)(a), and
 - b) has been assessed by the consent authority in accordance with the assessment criteria in Schedule 1 and the consent authority is satisfied that the proposal is acceptable in terms of its impacts, and
 - c) satisfies any other relevant requirements of this Policy.

(Section 4.15(1)(a)(i) of *Environmental Planning and Assessment Act, 1979*).
5. The proposal does not comply with cl. 15(2)(b) of SEPP 64. (section 4.15(1)(a)(i) of *Environmental Planning and Assessment Act, 1979*).
6. The development does not satisfy cl. 2.8(3), which Council must be satisfied of when granting development consent to an application for the temporary use of land under *Shoalhaven Local Environment Plan 2014*, (section 4.15(1)(a)(i) of *Environmental Planning and Assessment Act, 1979*).
7. The development is inconsistent with the following sections of Chapter G22: Advertising Signs and Structures of Shoalhaven Development Control Plan 2014:
 - a) Section 4 Objectives;
 - b) Section 5.1.1 Matters for consideration;
 - c) Section 5.3 Discouraged signs; and
 - d) Section 5.5 General.

(Section 4.15(1)(a)(i) of *Environmental Planning and Assessment Act, 1979*)
8. The development is likely to have a negative impact on the built environment (section 4.15(1)(b) of *Environmental Planning and Assessment Act, 1979*).

Determination Notice by way of Refusal - Page 3 of 3 - DA20/1966

9. The site is suitable for the proposed development. (Section 4.15(1)(c) of *Environmental Planning and Assessment Act, 1979*).
10. The granting of development consent is not considered to be in the public interest. (Section 4.15(1)(e) of *Environmental Planning and Assessment Act, 1979*).

RIGHTS OF REVIEW AND APPEAL

Determination under Environmental Planning and Assessment Act, 1979

Division 8.2 of the EP&A Act, 1979 confers on an applicant who is dissatisfied with the determination a right to request the council to review its determination. The request and determination of the review must be undertaken within the prescribed period.

Division 8.3 of the EP&A 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 the prescribed period.

An appeal under Division 8.3 of the EP&A Act, 1979 by an objector may be made only within the prescribed period.

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 the prescribed period.

GENERAL ADVICE


Privacy Notification

Personal information contained on this Development Consent and any associated documents will be (GIPAA).

SIGNED on behalf of Shoalhaven City Council:

Elliott Weston
Senior Development Planner
City Development

Planning Report – S4.15 Assessment - 466 Kangaroo Valley Rd, BERRY MOUNTAIN - Lot 8 DP 1037100

	Planning Report S4.15 Environmental Planning & Assessment Act 1979
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DA Number	DA20/1222
Property	466 Kangaroo Valley Rd, BERRY MOUNTAIN - Lot 8 DP 1037100
Applicant(s)	Chinamansbeach Pty Ltd
Owner(s)	Chinamansbeach Pty Ltd

Conflict of interest declaration

I have considered the potential for a conflict of interest under the [Code of Conduct](#) and to the best of my knowledge no pecuniary and/or significant non-pecuniary conflict of interest exists.

NOTE: If you determine that a non-pecuniary conflict of interest is less than significant and does not require further action, you must provide a written explanation of why you consider that the conflict does not require further action in the circumstances. This statement should then be countersigned by the section manager.

Name

Senior Development Planner

1/07/2020

1. Detailed Proposal

An application has been received for alterations and additions to existing shed (aeroplane hangar) and use as an artisan food and drink industry (brewery) at 466 Kangaroo Valley Road, Berry Mountain. The purpose of this report is to detail the Section 4.15 assessment undertaken for DA20/1222.

The proposal includes:

- Alterations and additions to existing aeroplane hangar and use as artisan food and drink industry (brewery).
 - The artisan food and drink industry will comprise of the following elements:
 - Brewery (industry area) = 132m²
 - Bar/tasting area = 62.3m²
 - Restaurant/café (dining area) = 59.5m²
 - Retail sales area = 4.94m²
 - The remainder of the building will comprise of food preparation areas, kitchen, bathroom facilities, storage and cool room areas and an office.
 - The brewery and associated bar/tasting area and restaurant/café will cater for up to 220 patrons (140 bar patrons and 80 restaurant patrons).
 - Hours of operation as follows:
 - Brewery (industry component)
 - 8am – 6pm (Monday – Friday)
 - Bar and restaurant/café component:
 - 11am – 7pm (Friday – Sunday) outside of school holiday period

Planning Report – S4.15 Assessment - 466 Kangaroo Valley Rd, BERRY MOUNTAIN - Lot 8 DP 1037100

- 11am – 7pm (Monday – Sunday) during school and public holidays

- The brewery output will be 3,000L per week
- Construction of car park (39 car parking spaces, 1 accessible parking space and 1 coach parking space) and vehicle manoeuvring areas
- Installation of solar panel array
- Installation of rainwater tanks
- Installation and operation of on-site effluent management system
- Installation of playground equipment
- Landscaping

Information Referred

Stamped plans/documents	Ref/sheet no.	Prepared by	Dated
Cover Sheet + Images	A100	Victoria Hampshire Design	4/3/2020
Site Survey – Existent	A101	Victoria Hampshire Design	4/3/2020
Site Plan Proposed	A102	Victoria Hampshire Design	4/3/2020
Floor Plan Hangar. Grass Picnic Area	A103 - Update	Victoria Hampshire Design	26/8/2020
Elevations	A104	Victoria Hampshire Design	24/3/2020
Internal Details Elevation + Section	A105	Victoria Hampshire Design	20/2/2020
Landscape Plan	A106	Victoria Hampshire Design	4/3/2020
Assembly Diagram	-	NDL Craft	30/10/2019
Proposed Off-Grid Ground Mount Solar System	Version 1	Arkana Energy Group	19/11/2019
Proposed Off-Grid Ground Mount Foundation Schedule	Version 1	Arkana Energy Group	14/2/2020
Proposed Off-Grid Ground Mount Cross Section	Version 1	Arkana Energy Group	14/2/2020
Layout Plan	DN190021/C101, Revision A	MI Engineers	21/11/2019
Details & Sections	DN190021/C102, Revision A	MI Engineers	21/11/2019
Stormwater Drainage Plan	DN190021/C103, Revision A	MI Engineers	21/11/2019

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Soil/Water Management Plan	DN190021/C101, Revision A	MI Engineers	21/11/2019
Wastewater Management Plan Details	3293WW, Dwg. No. 1, Issue A	Harris Environmental Consulting	19/11/2019
Statement of Environmental Effects	201843	Planscapes	-
Soil and Site Assessment for Onsite Wastewater Disposal	3335WW, Version 1	Harris Environmental Consulting	11/2/2020
Environmental Noise Impact Assessment	1911003E-R	Harwood Acoustics	6/3/2020
Heritage Impact Assessment	-	David Cox	February 2020
Traffic Statement	N27777, Rev 2	Allen Price & Scarratts Pty Ltd	September 2020
Waste Management Plan	-	Harvest Brewing Co.	
Waste Management Plan	-	Neil Livesey	-
Mechanical Services – Ground Floor Ventilation	21955 – 001, Dwg. No. 100, Issue 1	EWFW Consulting Engineers	March 2020
Consultant Advice Notice (mechanical requirements)	21955-001	EWFW Consulting Engineers	10/3/2020

2. Subject Site and Surrounds

The subject site is located on the northern side of Kangaroo Valley Road, Berry Mountain. The allotment is irregular in shape and has an area of 40.03ha. The land is undulating with the property being located at the top of Berry Mountain. The eastern part of the site slopes north-east.

The site contains an existing heritage listed dwelling and associated buildings (heritage item no. 114 – “Glenworth” two storey residence and grounds), a separate detached rural workers dwelling and various farm buildings and other structures (e.g. aeroplane hangar, farm buildings and sheds).

The western part of the site is cleared and is used for grazing and other farm purposes. The eastern part of the site heavily vegetated and contains a category 2 watercourse (Chisolms Creek).

The surrounding area is rural-residential in character and the site is adjoined by rural-residential development to the south and west, and bushland areas to the north and east. The property is situated at the top of Berry Mountain with the eastern part falling away into Chisolms Creek.

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Figure 1: Aerial imagery of subject site



Figure 2: Aerial imagery of subject site showing location of existing structures and proposed brewery location

Deposited Plan and 88B Instrument

The following easements and restrictions are identified:

Planning Report – S4.15 Assessment - 466 Kangaroo Valley Rd, BERRY MOUNTAIN - Lot 8 DP 1037100

Restriction	Comment
Easement for electrical purposes 9 wide (DP1037100).	The easement for electrical purposes affects the south-west corner of the land. The application has been referred to Endeavour Energy who have identified that some works including stormwater drainage, bollard lights and new tree plantings within the electricity easement and requested that further details be provided to Council. Additional information has been received from the applicant confirming that no works with the exception of concrete driveway access and associated kerb and gutter are proposed within the easement (see D21/2710 and D21/2715). As per Endeavour Energy's advice, if the above issues were resolved no objection to the development was raised. This is considered appropriate.
Restriction secondly referred to in DP1037100: <i>The owner or any other occupier of the lot burdened shall not have any vehicular access to or from the Lot burdened except from Kangaroo Valley Road.</i>	The proposal provides vehicular access from Kangaroo Valley Road.
Restriction thirdly referred to in DP1037100: <i>The owner or any other occupier of the Lots burdened shall ensure that:</i> a) <i>No building shall be erected unless of darker external colour/materials to blend with the landscape. Any metal cladding roofing or water tank shall be precoloured at manufacturing stage.</i> b) <i>No buildings may be erected within 30 metres of an adjoining property boundary.</i> c) <i>Any application for a building shall be accompanied by a landscape plan detailing landscaping to reduce visual impact of the building.</i> d) <i>No buildings erected on Lots 4, 5, 6 and 7 shall exceed 6.0 meters in height above existing natural ground level at any point. Chimneys, vents and aerials shall be excluded from this restriction providing they are erected in materials referred to in (a) of this paragraph</i>	Colours and materials used in the alterations and additions to the existing aeroplane hangar building are appropriate. The proposal does not involve the construction of any buildings within 30m of a property boundary. The application has been supported by an appropriate landscape plan. N/A – restriction (d) does not apply to Lot 8.

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e) <i>No effluent disposal system or trench shall be located within 100 metres of any perennial water course or within 40 metres of an intermittent water course</i>	Proposed effluent management systems are appropriately located away from perennial and intermittent watercourses.
f) <i>Graven driveway(s) across table drain and footpath being 4.3 metres wide at the concrete gutter crossing or R.C. pipe (minimum 375 0) and headwall if necessary shall be constructed to each lot at the time of construction of a dwelling house to the requirements of the Engineering Works Manager of Shoalhaven City Council.</i>	Access to the property from Kangaroo Valley Road is suitable. If approved recommended conditions of consent will ensure vehicle access is appropriately constructed where necessary.
Restriction fourthly referred to in DP1037100: <i>No clearing of vegetation or removal of trees shall be undertaken on any lot containing rainforest vegetation as identified by the Illawarra Regional Environmental Plan No. 1 without obtaining the development consent of the Shoalhaven City Council.</i>	The proposal does not involve the removal of any trees or vegetation.

There are no identified restrictions on the use of the land that would limit or prohibit the proposed development.

3. Background

Post-Lodgement

11/3/2020	Application lodged with Council
17/3/2020	Additional information requested (letter 1)
23/3/2020	Additional information received (partial)
28/3/2020	Additional information received
26/5/2020	Additional information requested (letter 2)
8/7/2020	Meeting with Assessing Officer, Traffic Unit and Applicant to discuss development and potential ways forward.
8/7/2020 – 16/10/2020	Ongoing discussions with applicant
16/10/2020	Additional information received (partial)
5/1/2020	Additional information received
11/1/2020	Additional information received

Planning Report – S4.15 Assessment - 466 Kangaroo Valley Rd, BERRY MOUNTAIN - Lot 8 DP 1037100

Site History and Previous Approvals

Darts - since 1st July 2005

Application	Appl. Date	Application Type	Proposal	Status	Completed
DA20/1222	11/03/2020	Development Application	Micro-brewery	Incomplete	
RW19/1483	18/09/2019	S138 Approval	Single Storey Dwelling (Workers Cottage)	Approved	25/09/2019
CC19/1566	22/07/2019	Construction Certificate	Single Storey Dwelling (Workers Cottage)	Approved	17/07/2019
DR19/1306	30/04/2019	SMF Application	New Rural Dwelling - Workers Cottage	Approved	12/06/2019
DA19/1020	09/01/2019	Development Application	Single Storey Dwelling (Workers Cottage)	Approved	18/04/2019

Plain Sailing - since 2nd September 1996

Application	Appl. Date	Proposal	Status	Status Date
DR01-2442	10/08/2005	Septic Tank Application	Approved (P)	10/08/2005
DR01-2442	26/10/2001	Septic Tank Application	Approved (P)	26/10/2001

BA data prior to the 2nd Sept 1996

Application	Appl. Date	Proposal	Status	Status Date
ST89/2582	21/08/1989		Approved	01/09/1989

4. Consultation and Referrals

Internal Referrals			
Referral	Required	Recommendation	Comment
Development Engineer	<input checked="" type="checkbox"/>	No objection, subject to recommended conditions of consent as per referral comments dated 23/4/2020.	Conditions to be imposed.
Traffic & Transport Unit	<input checked="" type="checkbox"/>	No objection, subject to recommended conditions of consent as per referral comments completed 17/12/2020.	Conditions to be imposed.
Building Surveyor	<input checked="" type="checkbox"/>	No objection, subject to recommended conditions of consent as per referral comments dated 30/4/2020.	Conditions to be imposed.
Environmental Health Officer	<input checked="" type="checkbox"/>	No objection, subject to advice and recommendations as per referral comments dated 9/6/2020.	Conditions to be imposed accordingly.
Shoalhaven Water – Trade Waste	<input checked="" type="checkbox"/>	No formal response received due to backlog of referrals, however application has been discussed with Shoalhaven Water who have	Conditions of consent to be imposed requiring that a s68 be obtained for the installation/operation of the on-site sewage management

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		advised grease arrestor details would need to be provided.	system. This recommended condition of consent will specify that grease arrestor and liquid trade waste details must be provided to Council as part of the s68 application and must be approved by Shoalhaven Water's Liquid Trade Waste Unit prior to the issue of the s68 approval.
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External Referrals			
Agency	Required	Recommendation	Comment
Endeavour Energy	<input checked="" type="checkbox"/>	Endeavour Energy have identified that some works including stormwater drainage, bollard lights and new tree plantings may be located within the electricity easement and requested that further details be provided to Council. As per Endeavour Energy's advice dated 21/4/2020, if the above issues were resolved no objection to the development was raised. This is considered appropriate.	Noted. Additional information has been received from the applicant confirming that no works with the exception of concrete driveway access and associated kerb and gutter are proposed within the easement (see D21/2710 and D21/2715). Endeavour Energy advice to be made available to the Applicant.
NSW Police	<input checked="" type="checkbox"/>	Objection was raised by NSW Police. The following is an extract from the NSW Police Comments (see D20/163653 and D20/471962): <i>Police have the same concerns in relation to this DA as they did with a similar application in the same area in 2014/15.</i> <i>The increase of vehicular traffic within the area with the current road conditions on the section of kangaroo Valley road will lead to an increase in traffic related incidents. Considering the terrain, limited roadside barriers, the road edge proximity to extreme road side drops, wildlife, the road width, an increase in</i>	Objection noted. Although an increase in vehicular traffic may lead to an increase in traffic related incidents (as does any increase in traffic), It is Council's opinion the proposed development is not considered to pose a significant risk. The application has been supported by commentary and a traffic impact assessment which concludes that the proposed development would result in a low traffic impact increasing traffic along Kangaroo Valley Road from approximately 1 vehicle per 42 seconds to 1

Planning Report – S4.15 Assessment - 466 Kangaroo Valley Rd, BERRY MOUNTAIN - Lot 8 DP 1037100

	<p><i>inexperienced drivers driving on this type of roadway, weight and vehicle restrictions and weather conditions, it is very likely with the increase in traffic that there will be an increase in serious motor vehicle collisions and road trauma. With this a further increase in the demand for emergency services. Consideration must also to be given to the impact on the community during road closures and diversions that will occur during a traffic incident and possible investigation.</i></p> <p><i>The area is within a designated bushfire prone area (Information supplied by RFS Website). The movement and management of a large number of people and vehicles in this area will have to be the subject of a considerable fire management plan to move or protect the considerable numbers of people and vehicles during a fire emergency.</i></p> <p><i>The road conditions will play a significant role in the incident free movement of these people from the area. In order to protect other road users and those attending the complex, significant road works along kangaroo Valley road in both directions including Tourist Rd and including the entrance to the development will be required to cater for the significant increase in traffic.</i></p> <p>If the application is to be supported, NSW Police have provided recommendations and advice in D20/471962 to minimise risks.</p>	<p>vehicle per 36 seconds during peak time. The traffic assessment also suggests that the development would not have a significant increase on the potential risks of 'serious' crashes and that the proposed development would not generate a level of traffic that would adversely impact the local road network.</p> <p>Access to the development site is appropriate and as noted in the application the following measures to minimise risks have been incorporated into the proposed business operation:</p> <ul style="list-style-type: none"> • Use of mini-bus services to deliver/return patrons • Promotional material for the development will recommend Tourist Road as the best access for the development <p>The traffic assessment and proposed development has been reviewed by Council's Traffic & Transport Unit and no objection was raised, subject to recommended conditions of consent.</p> <p>Further, the site of the proposed brewery is not mapped as bush fire prone land. Although access along Kangaroo Valley Road is mapped as bush fire prone, access to the development site is not considered unsuitable.</p> <p>Recommended conditions of consent incorporating NSW Police's recommendations and advice will be imposed</p>
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Planning Report – S4.15 Assessment - 466 Kangaroo Valley Rd, BERRY MOUNTAIN - Lot 8 DP 1037100

			where appropriate. Consideration of NSW Police advice and recommendations is further discussed below.
Recommendations from NSW Police			Comment from Assessing Officer
a) The proprietors adhere strictly to the NSW Liquor act 2007 and associated acts and regulations that pertain to the supply and sale of alcoholic beverages within New South Wales			Appropriate. Recommendation to be incorporated into condition of consent.
b) Liquor trading to be limited to ; i) Friday, Saturday and Sundays only - 11am to 8pm ii) During school holidays 11am to 8pm 7 days a week			Appropriate, however hours of operation were amended during the assessment (see D20/455542) to 11am – 7pm. Recommendation to be incorporated into condition of consent with hours of operation limited to 11am – 7pm.
c) All alcoholic beverages supplied to the public to be produced at the location.			Appropriate, this will ensure the business will function primarily as an artisan food and drink industry. Recommendation to be incorporated into condition of consent.
d) CCTV: The applicant must maintain a closed-circuit television (CCTV) system on the premises in accordance with the following requirements: i) the system must record continuously at all times, ii) recordings must be in digital format and at a minimum of six (6) frames per second, iii) any recorded image must specify the time and date of the recorded image, iv) the system's cameras must cover the following areas: a. all entry and exit points on the premises. b. all publicly accessible areas (other than toilets) within the premises. c. Carpark			Appropriate. Recommendation to be incorporated into condition of consent.
e) The proprietor must: i) keep all recordings made by the CCTV system for at least 30 days, ii) provide any recordings made by the system to a police officer within 24			Appropriate. Recommendation to be incorporated into condition of consent.

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hours of any request by a Police Officer to provide such recordings.	
f) CCTV to be checked, cleaned and maintained periodically to ensure ongoing use.	Appropriate. Recommendation to be incorporated into condition of consent.
g) Lighting to be to Australian Standards and shall not, when activated, reduce the quality of the CCTV recording e.g., Light shining into camera	Appropriate. Recommendation to be incorporated into condition of consent.
h) Lighting in carpark to be to Australian Standard. Lighting to be able to cover the whole of the carpark without dark areas.	Appropriate. Recommendation to be incorporated into condition of consent.
i) Clear sightlines to be maintained in Carpark area with any shrubbery to be maintained and kept low. Any trees to be up pruned and no foliage to block CCTV surveillance Cameras.	Appropriate. Recommendation to be incorporated into condition of consent.
j) No live bands or loud music to be permitted.	It is not considered that live music would be inappropriate so long as recommendations of the submitted Environmental Noise Impact Assessment report are adhered to. This NSW Police recommendation will not be incorporated into consent. Recommended conditions of consent will require the operation of the premises be in accordance with the recommendations of the Environmental Noise Impact Assessment report.
k) Lighting in carpark to be to Australian Standard. Lighting to be able to cover the whole of the carpark without dark areas.	Appropriate. Recommendation to be incorporated into condition of consent.
l) Line markings in carpark to indicate safe walking locations for patrons entering and leaving the location. Consideration should be given into creating safe zones between vehicles and public.	Appropriate. Recommendation to be incorporated into condition of consent.
m) CCTV cameras to be installed in all public areas and to be of such quality that it is suitable for providing in court matters. CCTV to be easily downloadable to thumb drive or DVD.	Appropriate. Recommendation to be incorporated into condition of consent.
n) If approved Licensing Police will monitor the premises to ensure it is functioning within the approved guidelines.	This is advice to the applicant only to ensure this advice is communicated, this will be incorporated into the consent.
o) Non-Public areas to be regulated with some form of access control.	Appropriate. Recommendation to be incorporated into condition of consent.
p) Card or coded access locks to be considered in all non-public areas.	Appropriate. Recommendation to be incorporated into condition of consent.

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q) A limit of 120 customers to be onsite at any one time.	The brewery and associated bar/tasting area and restaurant/café will cater for up to which is a maximum) 220 patrons (140 bar patrons and 80 restaurant patrons). It is considered that the site has capacity for up to 220 patrons and this would not have an unacceptable impact on neighbourhood amenity.
r) Substantial food to be available at all times during the operation of the bar/restaurant/café	Appropriate. Recommendation to be incorporated into condition of consent.
s) Traffic management <ul style="list-style-type: none"> i) Speed limit signage on the property ii) Signage or directional arrows re direction of traffic flow iii) Barriers or environmental construction to assist with protection of pedestrians iv) Exit and entry points onto the road wide enough to allow vehicles to enter roadway without having to move across onto the opposing direction of traffic. 	Appropriate. Recommendation to be incorporated into condition of consent.
t) In terms of the environment surrounding the development <ul style="list-style-type: none"> i) Cutting / removing trees near entry and exit points for greater vision of the road ii) Signage re 'vehicles entering/exiting roadway' iii) Additional 60 speed limit signage iv) Increased use of 'cats eyes' and edge line markers 	Items i) and ii) are considered appropriate and will be incorporated into condition of consent. Items iii) and iv) would need to be considered by the Shoalhaven Traffic Committee (see recommended condition from Traffic Unit). Items iii) and iv) are not incorporated into consent.

5. Other Approvals

Integrated Approvals and Concurrences - Nil

6. Statutory Considerations

This report assesses the proposed development/use against relevant State, Regional and Local Environmental Planning Instruments and policies in accordance with Section 4.15 (1) of the Environmental Planning and Assessment Act 1979 (EP&A Act). The following planning instruments and controls apply to the proposed development:

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Instrument	Relevant	Instrument	Relevant
Shoalhaven LEP 2014	<input checked="" type="checkbox"/>	State Environmental Planning Policy No 55 - Remediation of Land	<input checked="" type="checkbox"/>
State Environmental Planning Policy (Infrastructure) 2007	<input checked="" type="checkbox"/>	State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011	<input checked="" type="checkbox"/>
State Environmental Planning Policy (Koala Habitat Protection) 2020	<input checked="" type="checkbox"/>		

Additional information on the proposal's compliance with the above planning instruments is detailed below in Section 7 (Statement of Compliance/Assessment) of this report.

7. Statement of Compliance/Assessment

The following provides an assessment of the submitted application against the matters for consideration under Section 4.15 of the EP&A Act.

(a) Any planning instrument, draft instrument, DCP and regulations that apply to the land

Environmental Planning and Assessment Act 1979

Section 4.14 – Consultation and development consent – certain bush fire prone land

Parts of the subject site are mapped as bush fire prone land, however the proposed brewery and access to Kangaroo Valley Road are not mapped as bush fire prone land.

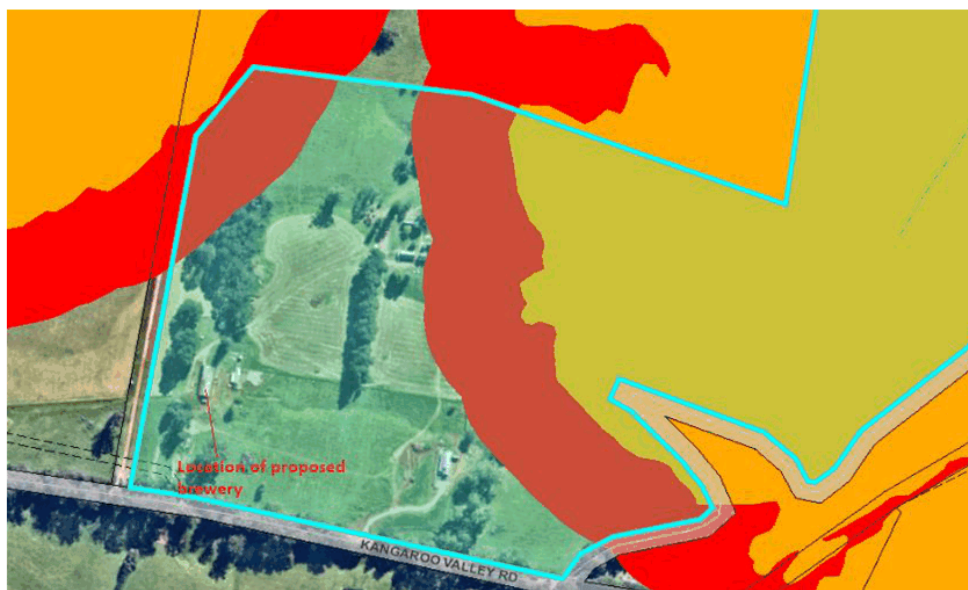


Figure 3: GIS image of subject property showing bush fire prone land overlay (orange and red)

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The proposed brewery and associated infrastructure is located away from bush fire hazards and the area surrounding the brewery is consistently grazed/mown and would not likely be able to regenerate as a grassland bush fire hazard. The application is considered satisfactory with regard to bush fire.

Section 4.46 – Integrated Development – N/A

i) Environmental planning instrument

State Environmental Planning Policy No 55 - Remediation of Land

Question	Yes	No
1. Is the proposal for residential subdivision or a listed purpose (the list provided in Table 1 of the contaminated land assessment guidelines)?	Proceed to Question 3	X Proceed to Question 2
2. Does the proposal result in a change of use (that is the establishment of a new use)?	X Proceed to Question 3	Assessment under SEPP 55 and DCP not required.
3. Does the application proposed a new: <ul style="list-style-type: none"> Child care facility Educational use Recreational use Health care use Place of public worship Residential use in a commercial or industrial zone 	Proceed to Question 5	X Proceed to Question 4
4. Review the property file and conduct a site inspection of the site and surrounding lands. Is there any evidence that the land has been used for a listed purpose?	Proceed to Question 5	X Proposal satisfactory under SEPP 55 and DCP.
5. Is the proposed land use likely to have any exposure path to contaminants that might be present in soil or groundwater?	Request contaminated site assessment	Proposal satisfactory under SEPP 55 and DCP.

State Environmental Planning Policy (Infrastructure) 2007

The proposal involves work within proximity to an overhead electricity power line. The application was referred to Endeavour Energy for comment with no objection being raised subject to advice. Referral comments have been taken into consideration.

State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011

N/A – The subject property is located outside of the Sydney drinking water catchment.

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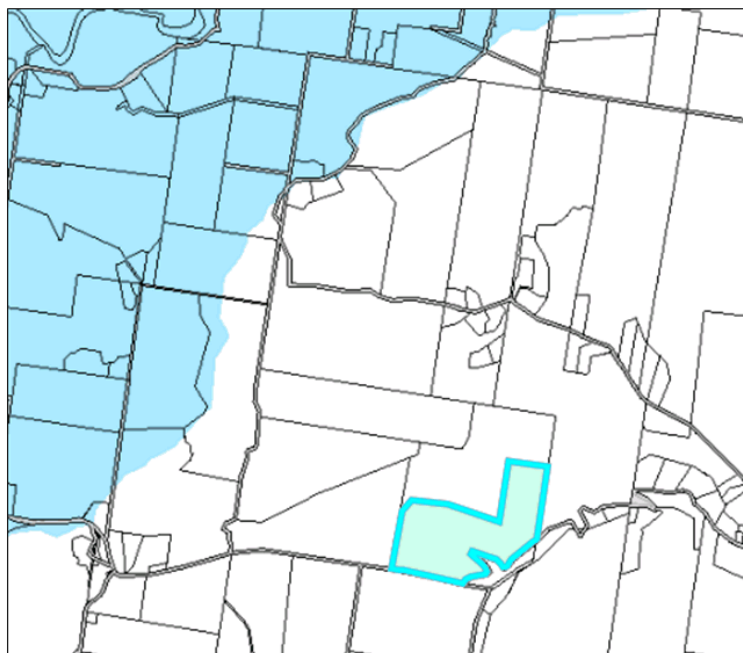


Figure 4: GIS image showing subject property (highlighted in blue) in relation to Sydney drinking water catchment (blue overlay)

State Environmental Planning Policy (Koala Habitat Protection) 2020

Question	Yes	No
1. Does the subject site have a site area >1ha or does the site form part of a landholding >1ha in area?	<input checked="" type="checkbox"/> Proceed to Question 2	<input type="checkbox"/> Assessment under SEPP not required.
2. Is the land 'potential koala habitat'? <i>Note: 'potential koala habitat' are areas of native vegetation where trees of the types listed in Schedule 2 of the SEPP (feed tree species) constitute at least 15% of the total number of trees in the upper or lower strata of the tree component.</i>	<input checked="" type="checkbox"/> Proceed to Question 3	<input type="checkbox"/> Proposal satisfactory under SEPP.
3. Is the land 'core koala habitat'? <i>Note: 'core koala habitat' is an area of land with a resident population of koalas, evidenced by attributes such as breeding females, being females with young, and recent sightings of and historical records of a population.</i>	<input type="checkbox"/> Proceed to Question 4	<input checked="" type="checkbox"/> Proposal satisfactory under SEPP.
4. Has the application been supported by a plan of management prepared in accordance with Part 3 of the SEPP?	<input type="checkbox"/> Plan of management must be referred to	<input type="checkbox"/> Application cannot be supported

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Question	Yes		No	
		Environment al Assessment Officera (EAOs_ and Planning Secretary for approval.		

Shoalhaven LEP 2014

Land Zoning

The land is zoned RU1 Primary Production and E2 Environmental Conservation under the SLEP 2014.

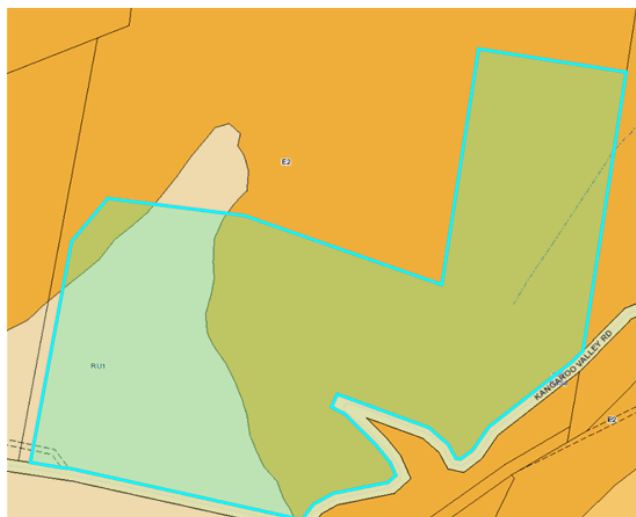


Figure 5: GIS image of land zoning

The artisan food and drink industry and associated infrastructure is all located on the RU1 zoned land.

Characterisation and Permissibility

The proposal is best characterised as 'artisan food and drink industry' under the SLEP 2014. The proposal is permitted within the zone with the consent of Council.

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RU1 Zone objectives

Objective	Comment
To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.	The proposal is not inconsistent with the objectives of the RU1 zoned land.
To encourage diversity in primary industry enterprises and systems appropriate for the area.	
To minimise the fragmentation and alienation of resource lands.	
To minimise conflict between land uses within this zone and land uses within adjoining zones.	
To conserve and maintain productive prime crop and pasture land.	
To conserve and maintain the economic potential of the land within this zone for extractive industries.	

SLEP 2014 Clauses

Clause	Relevant	Comments	Complies/Consistent
Part 4 Principal development standards			
4.3	<input checked="" type="checkbox"/>	<p>There is no height limit set by the Height of Buildings Map and therefore the height of any building on the land must not exceed a maximum height of 11 metres as per sub-clause (2A).</p> <p>The proposed development has a peak height of 6.23m and therefore complies.</p>	Complies
Part 5 Miscellaneous provisions			
5.4	<input checked="" type="checkbox"/>	<p>Clause 5.4 (10) of <i>Shoalhaven LEP 2014</i> provides development controls for artisan food and drink industry and specifies that:</p> <p>10) Artisan food and drink industry exclusion <i>If development for the purposes of an artisan food and drink industry is permitted under this Plan in an industrial or rural zone, the floor area used for retail sales (not including any cafe or restaurant area) must not exceed—</i></p> <p style="margin-left: 40px;">a) 20% of the gross floor area of the industry, or</p> <p style="margin-left: 40px;">b) 400 square metres,</p> <p><i>whichever is the lesser.</i></p> <p>The industrial use (brewery) has a gross floor area of 208.75m² and the area used for retail sales has a gross floor area of 37.34m² (Retail Bar Area = 4.94m², Tasting Bar Area = 32.4m²) which represents 17.88% of the gross floor area of the industry. The remainder of the building is</p>	Complies

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		<p>comprised of kitchens, restaurant dining areas and amenity facilities which are excluded from the floor area being used for retail sales.</p> <p>The proposed development complies with the development standards specified by clause 5.4 (10).</p>	
5.10	<input checked="" type="checkbox"/>	<p>The subject property contains a heritage item listed in Schedule 5 of Shoalhaven LEP 2014 (Item No. 114 <i>"Glenworth"—two storey residence and grounds</i>).</p> <p>The application has been supported by a Heritage Impact Assessment which identifies that the heritage listing relates to the Glenworth Residence and other ancillary outbuildings. As noted in the Heritage Impact Assessment, the development site is located approximately 200m from Glenworth Residence, Workshop and Store, Stables and Garage and screened from view by a mature conifer windbreak, and the proposed development would not compromise the heritage significance of these items.</p> <p>The development site is considered to be within the curtilage of the C1950's Dairy which forms part of the heritage listing. The proposed development and proposed works are considered to have negligible impact on the heritage significance of the dairy building.</p> <p>The proposed development would not compromise the heritage significance of the heritage items present on site.</p>	Complies
Part 7 Additional local provision			
7.1	<input checked="" type="checkbox"/>	<p>The subject land is mapped as acid sulfate soils Class 5.</p> <p>The proposal does not involve work within 400m of adjacent Class 1, 2, 3 or 4 land that is below 5m AHD and by which the water table is likely to be lowered below 1m AHD on adjacent Class 1, 2, 3 or 4 land.</p>	Complies
7.5	<input checked="" type="checkbox"/>	<p>The eastern part of the property is mapped as "biodiversity – habitat corridor" and "biodiversity – significant vegetation". The proposed development is located away from these mapped areas and does not involve the removal of any significant vegetation and is not considered to have a negative impact on terrestrial biodiversity.</p>	Complies
7.6	<input checked="" type="checkbox"/>	<p>The proposed development is located nearby category 2 watercourses. Consideration has been given to the matters outlined in clause 7.6 and the proposed development is considered satisfactory in this regard.</p>	Complies
7.11	<input checked="" type="checkbox"/>	<p>Reticulated electricity is available to the site.</p>	Complies

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		<p>Potable water will be provided to the development via rainwater tanks and through bore water. The application has been supported by information and a copy of the notice of determination of a Water Access Licence issued by WaterNSW for use of bore/aquifer water. Recommended conditions of consent will be imposed accordingly.</p> <p>Effluent will be managed on site. The application was supported by a soil and site assessment for onsite wastewater disposal which has been reviewed by Council's Environmental Health Officer who raised no objections subject to recommended conditions of consent. It is considered that there is suitable area on site for the required effluent management areas.</p>	
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ii) Draft Environmental Planning Instrument

Draft Illawarra Shoalhaven Regional Plan 2041

The proposed development is consistent with and supports the objectives of the Draft Illawarra Shoalhaven Regional Plan 2041.

iii) Any Development Control Plan

Shoalhaven DCP 2014

Generic Chapters	Relevant
G1: Site Analysis, Sustainable Design and Building Materials in Rural and Coastal Areas	<input checked="" type="checkbox"/>
The proposal has considered the constraints and opportunities of the site.	
G2: Sustainable Stormwater Management and Erosion/Sediment Control	<input checked="" type="checkbox"/>
Stormwater from buildings will be appropriately dispersed on site and will not be concentrated onto adjoining properties. The application has been reviewed by Council's Development Engineer and no objection was raised, subject to recommendations.	
G3: Landscaping Design Guidelines	<input checked="" type="checkbox"/>
<p>The application has been supported by an appropriate landscaping plan.</p> <p>Proposed landscaping is suitable.</p>	
G7: Waste Minimisation and Management Controls	<input checked="" type="checkbox"/>
The application has been supported by an appropriate waste minimisation and management plan.	
G8: Onsite Sewage Management	<input checked="" type="checkbox"/>

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<p>The application was supported by a soil and site assessment for onsite wastewater disposal which has been reviewed by Council's Environmental Health Officer who raised no objections subject to recommended conditions of consent. It is considered that there is suitable area on site for the required effluent management areas.</p>																	
<p>G17: Business, Commercial and Retail Activities</p>		<input checked="" type="checkbox"/>															
<p>Proposal complies with all relevant acceptable solutions. See Appendix A for detailed assessment.</p>																	
<p>G20: Industrial Development</p>		<input checked="" type="checkbox"/>															
<p>Proposal complies with all relevant acceptable solutions. See Appendix B for detailed assessment.</p>																	
<p>G21: Car Parking and Traffic</p>		<input checked="" type="checkbox"/>															
<p>Section 5.1 of Chapter G21 requires 1 space per 100m² of gross floor area of industrial area. Section 5.1 also specifies that 1 space should be required per 6.5² of public dining area for small bars (not exceeding 150m²) outside of the CBD and it is considered that this parking ratio is most akin to the retail sales component of the development. Required parking is calculated as follows:</p>																	
<table border="1"> <thead> <tr> <th>Component of Development</th> <th>Parking Ratio</th> <th>Required Parking</th> </tr> </thead> <tbody> <tr> <td>Industry (132m²)</td> <td>1 space per 100m²</td> <td>1.3</td> </tr> <tr> <td>Retail component (126.74m²)</td> <td>1 space per 6.5²</td> <td>19.5</td> </tr> <tr> <td>Outdoor seating area</td> <td>Additional parking is not required where the use is associated with the approved adjacent business use.</td> <td>-</td> </tr> <tr> <td>Total</td> <td></td> <td>20.8 (rounded up - 21 spaces)</td> </tr> </tbody> </table>	Component of Development	Parking Ratio	Required Parking	Industry (132m ²)	1 space per 100m ²	1.3	Retail component (126.74m ²)	1 space per 6.5 ²	19.5	Outdoor seating area	Additional parking is not required where the use is associated with the approved adjacent business use.	-	Total		20.8 (rounded up - 21 spaces)		
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Outdoor seating area	Additional parking is not required where the use is associated with the approved adjacent business use.	-															
Total		20.8 (rounded up - 21 spaces)															
<p>Despite the above parking ratios, due to the location and nature of the proposed development (development would cater for up to 220 patrons and is located in a rural area with limited public transport). It is considered that 21 car parking spaces specified by the parking ratios in Section 5.1 of Chapter G21 of Shoalhaven DCP may not be sufficient to cater for the proposed development.</p>																	
<p>The proposal includes the construction of an onsite car park with 42 parking spaces, including 2 accessible spaces, and also bus parking area. The plans also note an additional overflow car park area with 12 parking spaces. As noted in the application, measures such as a mini-bus service would contribute to minimising the number individual private vehicle access to the site. It is considered that parking provided on site is sufficient to cater for the proposed development.</p>																	
<p>The application has been supported by commentary and a traffic impact assessment which concludes that the proposed development would result in a low traffic impact increasing traffic along Kangaroo Valley Road from approximately 1 vehicle per 42 seconds to 1 vehicle per 36 seconds during peak time. The traffic assessment also suggests that the development would not</p>																	

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have a significant increase on the potential risks of 'serious' crashes and that the proposed development would not generate a level of traffic that would adversely impact the local road network.

Access to the development site is appropriate and as noted in the application the following measures to minimise risks have been incorporated into the proposed business operation:

- Use of mini-bus services to deliver/return patrons; and
- Promotional material for the development will recommend Tourist Road as the best access for the development.

The traffic assessment and proposed development has been reviewed by Council's Traffic & Transport Unit and no objection was raised, subject to recommended conditions of consent.

G26: Acid Sulphate Soils and Geotechnical (Site Stability) Guidelines



The subject land is mapped as acid sulfate soils Class 5.

The proposal does not involve work within 400m of adjacent Class 1, 2, 3 or 4 land that is below 5m AHD and by which the water table is likely to be lowered below 1m AHD on adjacent Class 1, 2, 3 or 4 land.

iiia) **Any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4**

There are no planning agreements applying to this application.

iv) **Environmental Planning and Assessment Regulation 2000**

The proposal ensures compliance with the applicable requirements within the Regulations subject to recommended conditions of consent.

Any coastal zone management plan

The proposed development is not impacted by any coastal zone management plan

Council Policies

Shoalhaven Contribution Plan 2019

The proposed development is considered to increase the demand for community facilities in accordance with the Shoalhaven Contributions Plan 2019.

The development is most aptly characterised as Industrial including a retail component development for the purpose of calculating contributions under the Plan. Note that this description is not the planning characterisation which is used to ascertain permissibility, it is a description and categorisation for the purposes of calculating contributions only.

As specified in Section 3.7 of the Shoalhaven Contributions Plan 2019, development contributions for industrial development are calculated at a rate of 1ET per 200m² of land to be developed (including car park and landscaping areas), whereas retail development is calculated at a rate of 1ET per 10m² GFA and restaurants at 1ET per 15m² GFA. In accordance with The Shoalhaven

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Contributions Plan 2019, retail and restaurant developments do not include car parking or landscaped areas in GFA and therefore do not raise development contributions on these components.

In the instance of DA20/1222, because of the mix of industrial, retail and restaurant land uses, only landscaping and car parking/vehicle manoeuvring areas that are directly related or would be regularly be utilised by the industrial component of the development will be included in the industrial footprint of the development; landscaping and car parking areas utilised by the retail and commercial components of the development will not be included for the purposes of calculating s7.11 development contributions. A breakdown of the areas included for the s7.11 development contributions is below:

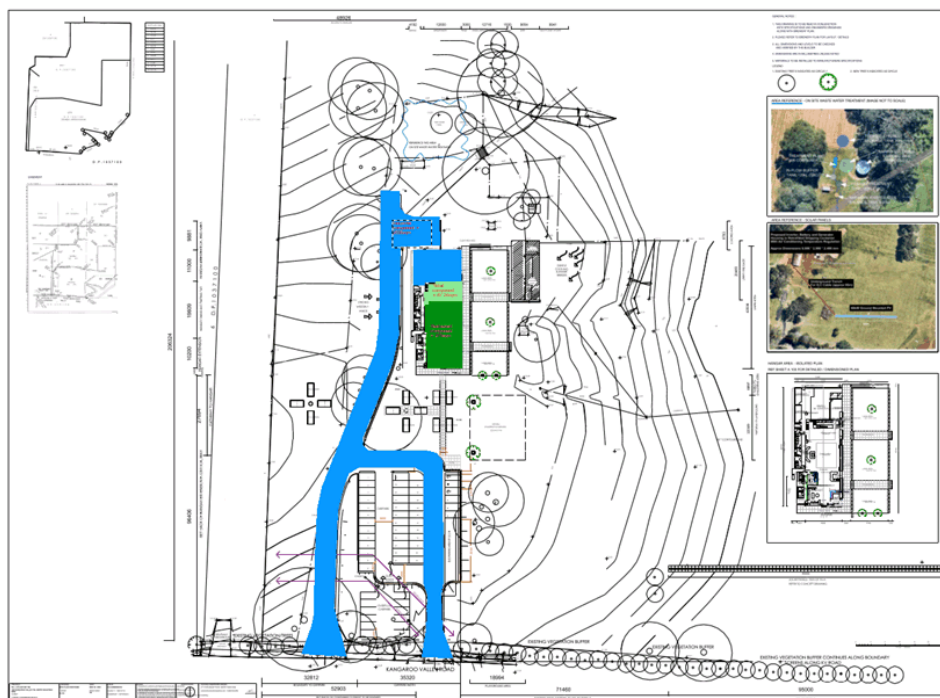


Figure 6: Image showing breakdown of components of development for purposes of calculating s7.11 development contributions

Component	Area	Development Type (as defined in Shoalhaven CP 2019)
Industrial component (blue) <ul style="list-style-type: none"> • Brewery area • Car parking and vehicle manoeuvring areas 	1906m ²	Industrial

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related to the industrial aspect of the development		
Retail component (light green) <ul style="list-style-type: none"> • Retail sales area • Bar/tasting area 	67.24m ²	Retail
Restaurant component (dark green) <ul style="list-style-type: none"> • Dining area • Kitchens and other food storage/preparation areas 	275m ²	Restaurant

Note: all other areas of the site, including internal bathrooms and amenities, outdoor seating areas, outdoor play areas, car parking and vehicle manoeuvring areas associated with the commercial or retail components of the development are not considered in calculating the development area to which s7.11 development contributions would apply.

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Section 94 ET Calculations - DA20/1222 (UPN: 91370)

Close Reset Print Return Calc

☐ Residential ☒ Non-Residential

Non Residential
Note: enter area in m2 and calculator will convert area to ETs.

Retail:	67.24	Proposed - Gross Area m2
Commercial Office:	0	Proposed - Gross Area m2
Hotel/Restaurant:	275	Proposed - Gross Area m2
BulkyGoods:	0	Proposed - Gross Area m2
Industrial:	1906	Proposed - Gross m2, include parking/landscape
Retail:	0	Existing - Gross Area m2
Commercial Office:	0	Existing - Gross Area m2
Hotel/Restaurant:	0	Existing - Gross Area m2
BulkyGoods:	0	Existing - Gross Area m2
Industrial:	0	Existing - Gross m2, include parking/landscape
Total ETs:	34.58	Management Project ETs: 11.25

NOTE:
Prior to the issue of development consent which requires contributions in accordance with this Plan, credit of the respective ETs or m2 is given to recognise the original approved land use of the development site (i.e. dwelling / building /

darts says

This is a Commercial Development.
Only the following Project Types are used for Commercial calculations:
CARP
FIRE
ROAD
MGMT
DRAI

Project	Description	Rate	Qty	Total
CW FIRE 2001	Citywide Fire & Emergency services	\$138.13	11.25	\$1,553.96
CW FIRE 2002	Shoalhaven Fire Control Centre	\$202.07	11.25	\$2,273.29
CW MGMT 3001	Contributions Management & Administration	\$574.39	11.25	\$382.73
Estimate Total				\$4,209.98

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(b) The Likely impacts of that development, including environmental impacts on the natural and built environments, and social and economic impacts in the locality

Head of Consideration	Comment
Natural Environment	<p><u>Waste Management</u></p> <p>Waste and waste by-products from the industrial activity (brewery) will be appropriately managed in accordance with the provided waste management plans.</p> <p>Waste by-products generated from the brewing process can be reused and recycled on site and fed to livestock etc where appropriate.</p> <p><u>Water usage and water quality</u></p> <p>The subject site is not connected to reticulated sewer or reticulated water. Water will be collected on site in the existing and proposed water tanks for use with additional bore/aquifer water usage. The applicant has supplied water usage information and a copy of the Notice of Determination of Water Access Licence (Ref No. 10AL123944) for access to and use of aquifer water within the Sydney Basin South Groundwater Source issued by WaterNSW on 23 June 2020. Bore water usage must be in accordance with the Water Access Licence. It is considered that there is adequate supply of water to be used in the brewing process available on site and any groundwater usage will be regulated through WaterNSW under a Water Access Licence.</p> <p>Effluent and wastewater will be treated and disposed on site. The application has been supported by details of on site effluent/wastewater management and a Soil and Site Assessment For Onsite Wastewater disposal. The proposed development and wastewater details have been reviewed by Council's Environmental Health Officer and no objection was raised subject to recommended conditions of consent.</p> <p>It is considered that the proposed development would be able to adequately collect water on site and brewing processes and the operation of the business would not have an unreasonable impact on water quality.</p>
Built Environment	<p>The proposed development will not have a significant adverse impact on the built environment.</p>
Social Impacts	<p><u>Traffic and vehicle access</u></p> <p>The application has been supported by commentary and a traffic impact assessment. The traffic assessment concludes that the development would not have a significant increase on the</p>

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Head of Consideration	Comment
	<p>potential risks of 'serious' crashes and that the proposed development would not generate a level of traffic that would adversely impact the local road network.</p> <p>Access to the development site is appropriate and as noted in the application the following measures to minimise risks have been incorporated into the proposed business operation:</p> <ul style="list-style-type: none"> • Use of mini-bus services to deliver/return patrons; and • Promotional material for the development will recommend Tourist Road as the best access for the development. <p>The traffic assessment and proposed development has been reviewed by Council's Traffic & Transport Unit and no objection was raised, subject to recommended conditions of consent.</p> <p>Access to the site and vehicle manoeuvring on site is adequate.</p> <p>It is considered that the proposed development would not have a significant adverse impact on the local road network. The proposal is considered suitable with regard to traffic and vehicle access.</p>
Economic Impacts	The proposed development would have a positive economic impact for the area through providing jobs and encouraging local tourism.

(c) Suitability of the site for the development

- The site is zoned RU1 - Primary Production and the proposal is permissible with Council consent within the zone.
- The proposal supports the local zoning objectives.
- The proposal is consistent with the objectives and requirements of the *Shoalhaven Local Environmental Plan 2014*.
- The proposal is consistent with the objectives and requirements of the *Shoalhaven Development Control Plan 2014*.
- The intended use is compatible with surrounding/adjoining land uses.

(d) Submissions made in accordance with the Act or the regulations

The DA was notified in accordance with Council's Community Consultation Policy for Development Applications. 38 submissions were received by Council objecting to the proposal. The concerns raised are outlined below:

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Summary of Public Submissions	
Objection Raised	Comment
Traffic, traffic risks and road safety	<p>The application has been supported by commentary and a traffic impact assessment. The traffic assessment concludes that the development would not have a significant increase on the potential risks of 'serious' crashes and that the proposed development would not generate a level of traffic that would adversely impact the local road network.</p> <p>The traffic assessment and proposed development has been reviewed by Council's Traffic & Transport Unit and no objection was raised, subject to recommended conditions of consent.</p> <p>Furthermore, the tasting bar and restaurant component of the development propose opening hours between 11am - 7pm Friday to Sunday outside of school holiday period and 11am – 7pm Monday to Sunday during school holiday period and public holidays. These opening hours avoid late night driving.</p> <p>It is considered that the proposed development would not have a significant adverse impact on the local road network. The proposal is considered suitable with regard to traffic and vehicle access.</p>
Noise	<p>The development site will be located approximately 250m from the nearest dwelling on an adjoining property.</p> <p>The application has been supported by an Environmental Noise Impact Assessment which identifies that the operation of the proposed development can meet the Liquor and Gaming NSW and NSW Environmental Protection Agency (EPA) guidelines and design noise goals subject to compliance with the recommendations of the report.</p> <p>As noted in the report to minimise noise impacts, amplified music should only be played in the brewery building and should not exceed an energy-average sound pressure level (Leq, 15 minute) of 79 dBA when measured over a 15-minute period at 3 metres from the speakers within the building. Further, there</p>

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	<p>should be no activity at the site after 10pm on any day.</p> <p>The proposed development and the Environmental Noise Impact Assessment has been reviewed by Council's Environmental Health Officer and no objection was raised subject to recommended conditions of consent. Recommended conditions of consent will be applied accordingly to ensure noise generate from the development complies with Liquor and Gaming NSW and NSW Environmental Protection Agency (EPA) guidelines and the submitted Environmental Noise Impact Assessment report.</p>
Water usage	<p>Water will be collected on site in the existing and proposed water tanks for use with additional bore/aquifer water usage. The applicant has supplied water usage information and a copy of the Notice of Determination of Water Access Licence (Ref No. 10AL123944) for access to and use of aquifer water within the Sydney Basin South Groundwater Source issued by WaterNSW on 23 June 2020. Bore water usage must be in accordance with the Water Access Licence. It is considered that there is adequate supply of water to be used in the brewing process available on site and any groundwater usage will be regulated through WaterNSW under a Water Access Licence.</p>
Wastewater and effluent disposal	<p>Effluent and wastewater will be treated and disposed on site. The application has been supported by details of on site effluent/wastewater management and a Soil and Site Assessment For Onsite Wastewater disposal. The proposed development and wastewater details have been reviewed by Council's Environmental Health Officer and no objection was raised subject to recommended conditions of consent. It is considered that wastewater and effluent can be appropriately managed on site and will not deteriorate water quality.</p>
Loss of amenity	<p>The brewery building is setback approximately 100m from Kangaroo Valley Road. Although parts of the development (e.g. car park and solar array) may be visible from the road they</p>

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	<p>would be screened by existing vegetation and by the existing road bank, and would not detract from the amenity or rural character of the area.</p> <p>The brewery is located >250m from the nearest residential receptor on adjoining property. The application has been supported by an Environmental Noise Impact Assessment which concludes that the proposed development can comply with with Liquour and Gaming NSW and NSW Environmental Protection Agency (EPA) guidelines subject to recommendations. Recommended conditions of consent for example requiring that no amplified music to be played external to the building and hours of operation to be imposed accordingly.</p>
Visual impact of development (existing building and solar panel array)	<p>Although the proposed solar array may be partially visible from the road, it will be screened by existing vegetation and the road bank, and will not detract from the rural character of the area. The proposed development will not be visible from any adjoining dwelling. The proposed development will not have a significant negative impact on visual amenity.</p>
Impacts on native wildlife	<p>It is not considered that the proposed development would have a significant adverse impact on native wildlife.</p> <p>Limited opening hours avoid late night and night time driving which will reduce the potential road risks with native wildlife.</p>
Heritage	<p>The application has been supported by a Heritage Impact Assessment which identifies that the heritage listing relates to the Glenworth Residence and other ancillary outbuildings. As noted in the Heritage Impact Assessment, the development site is located approximately 200m from Glenworth Residence, Workshop and Store, Stables and Garage and screened from view by a mature conifer windbreak, and the proposed development would not compromise the heritage significance of these items.</p>

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	<p>The development site is considered to be within the curtilage of the C1950's Dairy which forms part of the heritage listing. The proposed development and proposed works are considered to have negligible impact on the heritage significance of the dairy building.</p> <p>The proposed development would not compromise the heritage significance of the heritage items present on site.</p>
Parking	<p>The proposal includes the construction of an onsite car park with 42 parking spaces, including 2 accessible spaces, and also bus parking area. The plans also note an additional overflow car park area with 12 parking spaces. As noted in the application, measures such as a mini-bus service would contribute to minimising the number individual private vehicle access to the site. It is considered that parking provided on site is sufficient to cater for the proposed development.</p> <p>The parking area would be partly screened from view by existing and proposed landscaping and also the bank of the road reserve. The location of proposed parking area is appropriate and would not have an unreasonable impact on the rural amenity.</p>
Vegetation clearing and impact on natural environment	<p>The proposal does not involve clearing of any significant areas of native vegetation and the of the proposed car park and vehicle manoeuvring areas are within heavily modified paddocks.</p> <p>It is considered that the proposed development would not have a significant adverse impact on native vegetation and the natural environment.</p>
Odour	<p>The brewery is located >250m from the nearest residential receptor on adjoining property. It is not considered that the proposed development would significantly impact on the amenity of neighbouring residences and would not have significant adverse odour impacts.</p>
Privacy	<p>The brewery is located >250m from the nearest residential receptor on adjoining</p>

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	property and the development site would not be visible from any adjoining dwelling. It is considered that the proposed development would not have an unreasonable impact on the privacy of nearby and adjoining residences.
Development not compatible with surrounding area	<p>The proposal is for an artisan food and drink industry which is a permissible use within the RU1 – Primary Production zone. The proposed development is consistent with the objectives of the zone.</p> <p>The proposed brewery is located >250m from the nearest dwelling on an adjoining property and would not have a significant adverse impact on the amenity of the area. The proposed development involves the adaptive reuse of an old rural building and it is considered that the use of the land for an artisan food and drink industry is appropriate and compatible with adjoining land uses and the surrounding area.</p>
Large vehicle access	<p>As noted in the application, the development will likely see use by B85 vehicles and minibus vehicles, however delivery vehicle movements would be expected as the largest vehicles to access the site.</p> <p>The proposed development was reviewed by Council's Traffic & Transport Unit and Council's Development Engineers and it is considered the driveway access is sufficient to cater for larger vehicle movements and access to the site is adequate for the largest vehicles anticipated to access the site.</p>
Bush fire	The proposed location of the brewery is not mapped as bush fire prone land. Although Kangaroo Valley Road is mapped as bush fire prone land, this is a public road and access to the site is considered appropriate. The development is considered suitable with regard to <i>Planning for Bush Fire Protection 2019</i> .
Financial impact on other businesses	Financial impacts on other businesses are not a matter for consideration under s4.15 of the <i>Environmental Planning and Assessment Act</i>

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	<p>1979 having regard to competing with other businesses. A business proprietor makes decisions based on various considerations – with Council having little input into those private commercial decisions. With regard to the impact on Berry township, this proposal is likely to adversely impact the town. The proposal will potentially provide an additional tourist attraction and dimension to the artisan and food cultural experience.</p>
Behaviour of patrons (e.g. drink driving)	<p>As noted in the application responsible service of alcohol will be practiced and also a mini-bus service will be available to patrons.</p> <p>Additionally as noted in the application, low and no alcohol drink options, and food will be made available to patrons and signage relating to alcohol consumption limits and standard drink sizes will be installed within the bar/restaurant area.</p> <p>Similar concerns arise with wineries, restaurants and other establishments, however there provide a diverse tourist experience and important element for the local economy. The success of an establishment is also contingent on the management of a premises.</p>
Use of site for weddings and functions	<p>The application is seeking approval for an artisan food and drink industry (brewery), which by nature must include either an area for retail sale of products, a restaurant or café, or facilities for holding tastings, tours or workshops. As noted in the application, venue will have a maximum capacity of 220 patrons and this is considered appropriate.</p> <p>The application does not seek approval for establishment of a “function centre” which is defined as a building or a place used for the holding of events, functions, conferences and the like.</p> <p>Council can only assess an application as put to it. It cannot foreshadow what might happen. In the event that there is a breach or unlawful activity, there are separate compliance provisions available in the legislation to deal with these matters.</p>

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Some objections also made reference to the Rockfield Park development (RA14/1004) at 801 Kangaroo Valley Road as a precedent for refusal of the application. RA14/1004 proposed “Construction of an Eco Tourist Resort comprising: 42 accommodation units, 88 car spaces, function centre, restaurant, onsite sewage treatment plant, pool/gym facilities building, wildlife centre, day spa, bushfire refuge building, managers residence, associated infrastructure (landscaping, creek crossings, etc) and a new dwelling house” and was determined by way of refusal by Shoalhaven City Council and the Southern Joint Regional Planning Panel (JRPP Ref No: 2014STH025) on 26 November 2015 for the following reasons:

1. Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act, 1979 the development proposes a use that is prohibited on the land in accordance with the requirements of Clause 2.3 (Zone objectives and Land Use Table) of the Shoalhaven Local Environmental Plan 2014;
2. Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act, 1979 the development is inconsistent with the objectives of the RU1 zone as contained in Clause 2.3 (Zone objectives and Land Use Table) of the Shoalhaven Local Environmental Plan 2014;
3. Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act, 1979 the development has not satisfied Council that the requirements of Clause 5.13 (Eco-tourist facilities) of the Shoalhaven Local Environmental Plan 2014 have been met;
4. Pursuant to Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act, 1979 the proposed development does not satisfy the provisions of Part 2.2 (Density standards) and Part 2.9 (Amenity of Area) of the Shoalhaven Development Control Plan No.63 – Tourist Development in Rural Areas;
5. Pursuant to Section 79C(1)(b) Environmental Planning and Assessment Act, 1979 the proposed development will have an unacceptable impact in terms of the noise generated which will have an adverse impact on the amenity enjoyed by residence in proximity to the site;
6. Pursuant to Section 79C(1)(c) Environmental Planning and Assessment Act, 1979 the site is unsuitable for the proposed development; and
7. Pursuant to Section 79C(1)(e) Environmental Planning and Assessment Act, 1979 the proposed development is not in the public interest.

The case was appealed in Land and Environment Court and the appeal was dismissed and the application determined by way of refusal on 18 October 2017 with Senior Commissioner Martin making the following findings:

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Concluding Findings

- 138 *I am not satisfied that the proposed development meets each of the requirements of cl 5.13 SLEP, all of which must be met, and as a consequence, development consent must not be granted.*
- 139 *Even if I am wrong in that finding, I find that the proposed development should not be granted development consent, as it is contrary to the public interest, specifically with respect to concerns regarding traffic and road safety. In my view the traffic and road safety risks which the development would pose are unacceptable. These concerns alone are such as to warrant refusal of the application.*

Although both sites are located on Kangaroo Valley Road (approximately 2km apart). It must be recognised that the proposed development the subject of this development application (DA20/1222) is a different development to that proposed by RA14/1004.

The proposed artisan food and drink premises would result in substantially less traffic than that proposed by the Rockfield Park Development (RA14/1004) (Note: traffic impacts were not listed as a reason for refusal in the determination of RA14/1004 by Shoalhaven City Council and the Southern Joint Regional Planning Panel, however these impacts were noted in the dismissal of the appeal by Senior Commissioner Martin.).

The reasons for refusal listed in RA14/1004 could not be grounds for refusal for the current application and the previous decision of RA14/1004 does not set a precedent for refusal of the current application for an artisan food and drink premises at 466 Kangaroo Valley Road. The Rockfield Park matter was a different development including both accommodation and other uses such as a restaurant. The application as put had difficulty satisfying the clauses in the Shoalhaven Local Environmental Plan pertaining to eco-tourism for a number of reasons.

(e) The Public Interest

The site is suitable for the proposed development.

- The development site is zoned RU1 - Primary Production and the development is permissible with Council consent within the zone. There is no issue in the characterisation of the development.
- Having regard to the zone objectives and surrounding land uses, there is no overwhelming reason to warrant refusal. The land use is not considered incompatible with the landscape, character and surrounding area.
- The proposal is consistent with the objectives and requirements of the *Shoalhaven Local Environmental Plan 2014*.
- The proposal is consistent with the relevant objectives and requirements of the *Shoalhaven Development Control Plan 2014*.

Delegations

Guidelines for use of Delegated Authority

Council minute MIN20.313 has called in the application for determination by the elected Council due to the significant public interest.

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Recommendation

This application has been assessed having regard for Section 4.15 (Matters for consideration) under the Environmental Planning and Assessment Act 1979. As such, it is recommended that Development Application No. DA20/1222 be approved subject to appropriate conditions of consent.

Senior Planner
City Development
2/02/2021

Section 7.11 contributions have been reviewed and are agreed to

Endorsed

Unit Manager
Planning, Environment & Development Group
3/02/2021

DE21.13 - Attachment 1

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Appendix A – Assessment Checklist: Chapter G 17 – Business, Commercial and Retail Activities

Artisan food and drink industries are characterised as an ‘industry’, however, as the development comprises of some commercial and retail uses the provisions of Chapter G17 should be considered.

5.1 Business, Commercial and Retail Development			
Performance Criteria	Acceptable Solutions	Proposal	Compliance
P1 - To ensure the development and/or use does not generate emissions that could adversely affect the amenity of neighbouring premises.	A1.1 – The proposal is not to cause unacceptable levels of perceptible odours (including cooking odours), fumes, smoke, gas, vapours, steam, soot, ash, dust or grit.	Recommended conditions of consent will ensure that unacceptable levels of odours, fumes, smoke, gas etc. generated from the commercial/industrial activity are avoided and minimised where possible. It is considered that the proposed development will not have an unreasonable impact on the amenity of the area or adjoining properties.	Complies
P2 - To ensure the development and/or use does not discharge any unregulated waste that may damage the environment or adversely affect the amenity of the area.	A2.1 - The proposal should not generate any contaminated waste.	The proposed development will not generate any contaminated waste. Waste and waste products generated by the commercial/industrial activities will be appropriately managed and disposed of.	Complies
	A2.2 - The activity should not cause soil or ground water contamination by the release or deposition of any liquid or solid wastes (including oil products and chemicals or their compounds) on to the soil.	The proposed development will not lead to soil or ground water contamination.	Complies
	A2.3 - If the proposal has the potential to discharge liquid trade waste to Council's sewer you must obtain a liquid trade waste	N/A – the subject site is not connected to reticulated sewer.	N/A

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	discharge approval from Shoalhaven Water. Additional contaminant prevention devices may be required by Council.		
P3 - To provide adequate provision for on site collection, storage and disposal of waste products in a way that does not adversely affect neighbouring premises or the environment.	A3.1 - Collection and disposal of waste should be through Council's regular collection service and/or a private waste contractor.	Waste will be appropriately managed in accordance with the waste management plan.	Complies
	A3.2 - If waste is to be collected by a private waste contractor, the site design must be able to accommodate the vehicle manoeuvring requirements of that vehicle for onsite collection.	There is adequate area on site to allow for vehicle access and waste management.	Complies
	A3.3 - Waste and recycling storage areas should be of a size to meet the current and future needs of tenants. This includes potential waste and recycling requirements of a future change of use.	Waste and recycling storage can adequately be provided on site.	Complies
	A3.4 - Waste and recycling storage areas should be sited to minimise negative amenity impacts (noise, visual and odour).	Waste and recycling storage areas can be appropriately located on site.	Complies
	A3.5 – Development applications should be accompanied by a waste minimisation and management plan.	The application has been supported by an appropriate waste minimisation and management plan.	Complies

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P4 - To ensure the hours of operation do not have an unreasonable adverse impact on any neighbouring premises.	A4.1 - Hours of operation are limited to normal business hours.	<p>The different components of the business will have the following hours of operation:</p> <table><tr><td>Brewery</td><td>8am – 6pm : Mon- Fri (3 days per week)</td></tr><tr><td>Bar and restaurant</td><td>11am – 7pm Fri – Sat (during school term) 11am – 7pm Mon – Sun (during school holidays and public holidays)</td></tr></table>	Brewery	8am – 6pm : Mon- Fri (3 days per week)	Bar and restaurant	11am – 7pm Fri – Sat (during school term) 11am – 7pm Mon – Sun (during school holidays and public holidays)	Complies with A4.2
Brewery	8am – 6pm : Mon- Fri (3 days per week)						
Bar and restaurant	11am – 7pm Fri – Sat (during school term) 11am – 7pm Mon – Sun (during school holidays and public holidays)						
	A4.2 - Council will consider variations to normal business hours if it can be demonstrated that the proposed hours are crucial to the operation of your business and that no negative amenity impacts will result.	<p>The different components of the business will have the following hours of operation:</p> <table><tr><td>Brewery</td><td>8am – 6pm : Mon- Fri (3 days per week)</td></tr><tr><td>Bar and restaurant</td><td>11am – 7pm Fri – Sat (during school term) 11am – 7pm Mon – Sun (during school holidays and public holidays)</td></tr></table> <p>Due to the commercial nature of part of the business, these hours of operation are considered appropriate.</p>	Brewery	8am – 6pm : Mon- Fri (3 days per week)	Bar and restaurant	11am – 7pm Fri – Sat (during school term) 11am – 7pm Mon – Sun (during school holidays and public holidays)	Complies
Brewery	8am – 6pm : Mon- Fri (3 days per week)						
Bar and restaurant	11am – 7pm Fri – Sat (during school term) 11am – 7pm Mon – Sun (during school holidays and public holidays)						
P5 - To ensure any change of use meets relevant fire	A5.1 - All existing fire safety measures and those that are proposed to satisfy the fire safety	Recommended conditions of consent will ensure adequate fire safety measures.	Complies				

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safety requirements.	requirements of the new use are to be described as part of the development application.		
	A5.2 – Where necessary, the building must be upgraded to satisfy fire safety requirements if required by Council.	Recommended conditions of consent will ensure adequate fire safety measures.	Complies
5.1.1 – Shopping Trolleys			
N/A			
5.1.2 - Security Grills and Gates in the Nowra CBD			
N/A			
5.1.3 – Local Shops in Coastal Villages			
N/A			
5.2 Markets			
N/A			
5.3 Commercial Use of Footpaths			
N/A			
5.4 Parking of Caravans for Commercial or Community Activities			
N/A			

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Appendix B – Assessment Checklist: Chapter G20 - Industrial Development

5.1 Site Suitability			
Performance Criteria	Acceptable Solutions	Proposal	Compliance
<i>P1</i> - The development is compatible with the character of the site.	<i>A1.1</i> - Cut and fill on the site does not exceed 1.0m.	The proposal does not involve cut and fill exceeding 1m.	Complies
	<i>A1.2</i> - A site plan and site analysis plan is submitted with the development application.	The application was supported by an adequate site plan.	Complies
<i>P2</i> - The site has sufficient area and dimensions to accommodate all areas necessary for the proposed industrial development.	<i>A2.1</i> - A site plan showing location and dimensions of buildings, parking area, service vehicle areas, storage and landscaping is submitted with the development application.	The application was supported by an adequate site plan.	Complies
<i>P3</i> - Adjoining sites are not be negatively impacted by the proposed development and drainage works	<i>A3.1</i> - Adequate drainage is designed and provided to ensure stormwater is discharged to an approved discharge point, easement or road drainage system.	Stormwater can be adequately dispersed on site.	Complies

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	A3.2 - A drainage plan is submitted with the development application.	Stormwater can be adequately dispersed on site.	Satisfactory
5.2 Building Setbacks			
Performance Criteria	Acceptable Solutions	Proposal	Compliance
<p><i>P4</i> - The building setbacks are consistent with adjoining development and enable:</p> <ul style="list-style-type: none"> the efficient use of the site; vehicle manoeuvring areas where vehicles can enter and exit the site in a forward direction; visible staff and visitor parking; an attractive streetscape character; the location of utility services, storage and drainage paths; and Unimpeded development of adjacent sites. 	A4.1 - A minimum front setback of 10m is provided.	The existing (brewery) building is adequately setback from property boundaries.	Complies
	A4.2 - A minimum secondary setback of 5m is provided.	The existing (brewery) building is adequately setback from property boundaries.	Complies
	<p>A4.3 - The side and rear setbacks satisfy:</p> <ul style="list-style-type: none"> The fire safety construction requirements of the Building Code of Australia for the proposed building, and Site development requirements for drainage, landscaping, vehicle access and manoeuvring. 	The existing (brewery) building is adequately setback from property boundaries.	Complies
5.3 Building and Site Design			
Performance Criteria	Acceptable Solutions	Proposal	Compliance

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P8 - The building has a height and bulk consistent with the streetscape.	A8.1 - The building complies with the height limits in the Shoalhaven LEP 2014.	The existing (brewery) building has a peak height of 6m and complies with the LEP height limit.	Complies
	A8.2 - If Shoalhaven LEP 2014 does not specify a height limit, the building does not exceed 11m above the natural ground level.	The existing (brewery) building has a peak height of 6m and complies with the LEP height limit.	Complies
P9 - Visual elements are introduced to reduce the bulk, height and scale of the building.	A9.1 - The elevation closest to the road includes additional design relief or a lower scale building form.	The existing (brewery) building is not visible from the street. The proposed development design is appropriate.	Complies
P10 - The front of the building addresses the road frontage.	A10.1 - The main entry to the building is easily identifiable from the street and directly accessible through the front of the building.	Entry to the site and to the proposed brewery building is easily identifiable,	Complies
	A10.2 - Street numbering that is at least 300mm high and easily visible for pedestrians and motorists in identifying the premises is provided.	Adequate signage will be provided at the entrance to the site.	Complies

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	A10.3 - Showroom display areas and other low scale building elements are located at the front of the building and face the road frontage.	N/A – The development does not include a show room.	N/A
P11 - The design incorporates the use of materials appropriate to the emerging character of the locality, with innovation being encouraged.	A11.1 - The building surfaces, texture, colours or material arrangement are sympathetic to the emerging character of the area.	The proposed building materials and colours are sympathetic to the rural character of the area and is compatible with nearby heritage items.	Complies
	A11.2 - Building materials provide interest and variation to complement the streetscape.	Building materials are appropriate.	Complies
	A11.3 - Building design does not include large unbroken expanses of wall or building mass.	The proposal involves the adaptive reuse of an existing aeroplane hangar building and is appropriate.	Complies
P12 The development recognises and implements energy and water conservation principles.	A12.1 The industrial development is designed to reduce reliance on energy consumption and water usage.	The proposal includes the installation of a solar panel array and will collect water on site in rainwater tanks.	Complies
P13 The roof/wall design and materials avoid glare hazard to traffic users in the adjacent road system.	A13.1 Roof and wall materials (especially uncoloured or light-coloured metal cladding) do not cause excessive glare to traffic using the adjacent roads.	The proposal involves the adaptive reuse of an existing aeroplane hangar. Building materials are appropriate.	Complies

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P14 Car parking is located to avoid conflict and promote safety.	A14.1 Visitor and customer car parking is separated from delivery and operational vehicle movements.	Adequate parking areas are appropriately provided on site.	Complies
5.4 Provisions for Fences and Screen Walls			
Performance Criteria	Acceptable Solutions	Proposal	Compliance
<p>P15 - The development provides fences and walls which:</p> <ul style="list-style-type: none"> are attractive and blend with landscaping on the premises; consider location, height, materials and colours to provide compatibility with and compliment or enhance 	A15.1 - Fencing forward of the front building line is of an open form and a maximum of 2.4m in height above the natural ground level.	Existing rural fencing is appropriate.	Complies
	A15.2 - Fence materials do not conceal the area between the road frontage and the building.	Existing rural fencing is appropriate.	Complies
	A15.3 - Fences do not obstruct sight distances for traffic, the entry and exit of vehicles or pedestrian safety.	Existing rural fencing is appropriate.	Complies

Planning Report – S4.15 Assessment - 466 Kangaroo Valley Rd, BERRY MOUNTAIN - Lot 8 DP 1037100

<p>the streetscape</p> <ul style="list-style-type: none"> Do not impede the sight lines of vehicles using the driveway. provide effective screening of external storage areas or incompatible uses on the site, and Assist in highlighting entrances and paths. 	<p>A15.4 - Gates that are on or close to the road frontage do not open in the direction of the footpath and must be fixed open within the site.</p>	<p>Existing rural fencing is appropriate.</p>	<p>Complies</p>
	<p>A15.5 - Where a site has direct frontage to the Princes Highway or other major road, gates are located away from the front boundary to allow the largest vehicle to normally use the premises to park onsite while the gate is opened.</p>	<p>N/A – The site does not adjoining the Princes Highway.</p>	<p>N/A</p>
	<p>A15.6 - Solid fences or screen walls are located along the side and rear site boundary (and around external storage areas) as long as they are behind the front building line.</p>	<p>Existing rural fencing is appropriate.</p>	<p>Complies</p>
	<p>A15.7 - Fence materials do not cause excessive glare to traffic using the adjacent roads.</p>	<p>Existing rural fencing is appropriate.</p>	<p>Complies</p>

Planning Report – S4.15 Assessment - 466 Kangaroo Valley Rd, BERRY MOUNTAIN - Lot 8 DP 1037100

	A15.8 - The location of fencing does not interfere with utilities, services, operational requirements or other sites.	Existing rural fencing is appropriate.	Complies
5.5 Landscaping			
Performance Criteria	Acceptable Solutions	Proposal	Compliance
<i>P16</i> - Landscaping softens the building/site when viewed from public roads and provides a landscaping buffer where an industrial area is adjacent to residential areas.	A16.1 -Landscaping is provided between the front boundary and the building line.	Proposed landscaping is appropriate.	Complies
	A16.2 - Defined landscaping beds are a minimum of 1m in width not including kerbs or borders.	Proposed landscaping is appropriate.	Complies
	A16.3 - Deep soil plantings, low maintenance planting and low water use species are provided where appropriate.	Proposed landscaping is appropriate.	Complies
	A16.4 - Landscaping does not interfere with the sight lines required for pedestrian and vehicles both internal and external to the site.	Proposed landscaping is appropriate.	Complies



Bridge Rd, Nowra NSW 2541 | 02 4429 3111
Deering St, Ulladulla NSW 2539 | 02 4429 8999

Address all correspondence to

The Chief Executive Officer, PO Box 42, Nowra NSW 2541 Australia
council@shoalhaven.nsw.gov.au | DX5323 Nowra | Fax 02 4422 1816

shoalhaven.nsw.gov.au     

**NOTICE TO APPLICANT OF DETERMINATION OF APPLICATION
DEVELOPMENT CONSENT**

Environmental Planning and Assessment Act, 1979
DA20/1222

TO:

Chinamansbeach Pty Ltd
44 Hopetoun Avenue
MOSMAN NSW 2088

being the applicant(s) for DA20/1222 relating to:

466 Kangaroo Valley Rd, BERRY MOUNTAIN - Lot 8 - DP 1037100

APPROVED USE AND OR DEVELOPMENT:

Alterations and additions to an existing aeroplane hangar and use as an artisan food and drink industry (brewery), construction of car park and other ancillary development.

DETERMINATION DATE:

Pursuant to the Section 4.18 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:

CONSENT TO LAPSE ON:

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

In accordance with Section 4.53 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.

DETAILS OF CONDITIONS:

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

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PART A: GENERAL CONDITIONS

1. General

The consent relates to alterations and additions to an existing aeroplane hangar and use as an artisan food and drink industry (brewery), construction of car park and other ancillary development as documented on the stamped plans/documentation, or as modified by the conditions of this consent. The development must be carried out in accordance with this consent. If there is inconsistency between the stamped plans/documentation and the conditions of consent, the conditions prevail to the extent of that inconsistency.

Stamped plans/documents	Ref/sheet no.	Prepared by	Dated
Site Plan Proposed	A102	Victoria Hampshire Design	4/3/2020
Floor Plan Hangar. Grass Picnic Area	A103 - Update	Victoria Hampshire Design	26/8/2020
Elevations	A104	Victoria Hampshire Design	24/3/2020
Landscape Plan	A106	Victoria Hampshire Design	4/3/2020
Assembly Diagram	-	NDL Craft	30/10/2019
Proposed Off-Grid Ground Mount Solar System	Version 1	Arkana Energy Group	19/11/2019
Proposed Off-Grid Ground Mount Cross Section	Version 1	Arkana Energy Group	14/2/2020
Layout Plan	DN190021/C101, Revision A	MI Engineers	21/11/2019
Details & Sections	DN190021/C102, Revision A	MI Engineers	21/11/2019
Stormwater Drainage Plan	DN190021/C103, Revision A	MI Engineers	21/11/2019
Soil/Water Management Plan	DN190021/C101, Revision A	MI Engineers	21/11/2019
Wastewater Management Plan Details	3293WW, Dwg. No. 1, Issue A	Harris Environmental Consulting	19/11/2019
Soil and Site Assessment for Onsite Wastewater Disposal	3335WW, Version 1	Harris Environmental Consulting	11/2/2020
Environmental Noise Impact Assessment	1911003E-R	Harwood Acoustics	6/3/2020
Waste Management Plan	-	Harvest Brewing Co.	
Waste Management Plan	-	Neil Livesey	-

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Mechanical Services – Ground Floor Ventilation	21955 – 001, Dwg. No. 100, Issue 1	EWFW Consulting Engineers	March 2020
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Note: Any alteration to the plans and/or documentation must be submitted for the approval of Council. Such alterations may require the lodgement of an application to amend the consent under section 4.55 of the Environmental Planning and Assessment Act, or a new development application.

2. Prescribed Conditions

The development must comply with the [Prescribed Conditions of Development Consent](#), Division 8A, *Environmental Planning and Assessment Regulation 2000*, as applicable.

3. Occupation / Use

The development must not be occupied or used before an Occupation Certificate has been issued by the Principal Certifier. If an Occupation Certificate is not required, the use must not commence until all conditions of development consent have been met or other satisfactory agreements have been made with Council (i.e. a security).

4. Food Business Notification

Prior to commencing any food handling operations, a ['Food Business Registration Form'](#) available on Councils' website will need to be submitted to Council as part of the NSW Food Partnership and for the purposes of regular food hygiene inspection.

PART B: INTEGRATED DEVELOPMENT AND CONCURRENCE CONDITIONS

NIL

PART C: PRIOR TO THE COMMENCEMENT OF WORKS

5. Construction Certificate

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

6. Appointment of Principal Certifier

Prior to the commencement of building or subdivision work, a Principal Certifier must be appointed.

7. Notice of Commencement

Notice must be given to Council at least two (2) days prior to the commencement of building or subdivision work by completing and returning the form ['Commencement Notice for Building or Subdivision Work and Appointment of Principal Certifying Authority'](#)

8. Toilet Facilities - Temporary

Toilet facilities must be available or provided at the work site before works begin and must be maintained until the works are completed at a ratio of one toilet plus one additional toilet for every 20 persons employed at the site. Each toilet must:

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- a) be a standard flushing toilet connected to a public sewer, or
- b) have an onsite effluent disposal system approved under the *Local Government Act 1993*, or
- c) be a temporary chemical closet approved under the *Local Government Act 1993*.

9. Asbestos Removal

Asbestos removal must be carried out in accordance with AS2601-2 [*SafeWork NSW – Code of Practice, Demolition Work \[ISBN 978-0-642-78415-5\]*](#) and [*SafeWork NSW – Code of Practice, How to Safely Remove Asbestos \[ISBN 978-0-642-33317-9\]*](#) as applicable, by a person holding the relevant licence issued by SafeWork NSW.

A licence is not required to remove less than 10m² of non-friable asbestos, provided that the total amount of non-friable asbestos removed from the lot does not exceed 10m².

Asbestos must be taken for disposal to the licensed Waste Management Facility identified in the approved Waste Management Plan.

Post asbestos removal and prior to further work on the site, the following must be submitted to the Certifier:

- a) A clearance certificate issued by a licensed asbestos assessor or competent person as required by the Work, Health and Safety Regulation 2017 for the specific type of asbestos removal work confirming that the area has been cleaned satisfactorily and is safe to be re-occupied for normal use.
- b) A clearance certificate is required if the removal work involved any quantity of friable asbestos, or if it involved removal of more than a total of 10 square metres of non-friable asbestos from the lot.
- c) Documentary evidence of the legitimate disposal of all asbestos in the form of tip receipts from an approved waste management facility.

10. Asbestos – Notification of Neighbours

Seven (7) days prior to the commencement of any demolition works involving asbestos, all immediate neighbours must be notified in writing of the intention to carry out asbestos demolition works. Copies of these written notifications should be retained and submitted to Council

11. Run-off and Erosion Controls

Prior to the commencement of site works, run-off and erosion controls must be implemented and maintained during construction to prevent soil erosion, water pollution or the discharge of loose sediment on the surrounding land by:

- a) diverting uncontaminated run-off around cleared or disturbed areas.
- b) erecting a silt fence and providing any other necessary sediment control measures that will prevent debris escaping into drainage systems, waterways or adjoining properties.
- c) preventing the tracking of sediment by vehicles onto roads.
- d) stockpiling topsoil, excavated materials, construction and landscaping supplies and debris within the lot.

12. Works within the Road Reserve

Prior to undertaking any works within an existing road reserve, the developer must obtain the consent of Council under *section 138 of the Roads Act, 1993*.

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The following details must be submitted to Council as part of the application:

- a) Any civil works design required by this consent.
- b) Evidence of the contractor's Public Liability Insurance to an amount of \$20 million.
- c) Name and contact information of the person responsible for all relevant works.
- d) A Traffic Control Plan prepared, signed and certified by a person holding the appropriate Transport for NSW (TfNSW) accreditation.
- e) Where the Traffic Control Plan requires a reduction of the speed limit, a 'Application for Speed Zone Authorisation' must be obtained from the relevant road authority.

13. Dilapidation Report

The developer must engage a competent person to prepare a dilapidation report in respect of the neighbouring premises and adjacent public infrastructure, including adjacent kerbs, gutters, footpaths (formed or unformed), driveways (formed or unformed), carriageway, reserves and the like to document evidence of any existing damage.

The dilapidation report must consider the impact of any excavation work that extends below the level of the base of the footings of any structure within 0.9metres of the shared boundary.

Before works commence, a copy of the dilapidation report must be provided to the Certifier and Council. The dilapidation report will be the benchmark for necessary repairs to damage caused during the development works. The repairs must be completed by the developer at the developer's cost.

Not less than seven (7) days before works commence, the developer must notify the owner of any affected property of the intention to carry out approved works. The developer must also furnish the owner with details of the approved work.

PART D: PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

14. Evidence

A Construction Certificate must not be issued until the Certifier has received notification from, or evidence of, any Council approval that is required Prior to the Commencement of Works.

15. Local Infrastructure Contributions

This development will generate a need for the additional services and/or facilities described in Shoalhaven Contributions Plan 2019 and itemised in the following table:

Project	Description	Rate	Qty	Total
CW FIRE 2001	Citywide Fire & Emergency services	\$138.13	11.25	\$1,553.96
CW FIRE 2002	Shoalhaven Fire Control Centre	\$202.07	11.25	\$2,273.29
CW MGMT 3001	Contributions Management & Administration	\$574.39	11.25	\$382.73
Estimate Total				\$4,209.98

The total contribution, identified in the above table or as indexed in future years, must be paid to Council prior to the issue of a Construction Certificate. Evidence of payment must be provided to the Certifying Authority.

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Contributions Plan 2019 can be accessed on Councils website www.shoalhaven.nsw.gov.au or may be inspected on the public access computers at the libraries and the Council Administrative Offices, Bridge Road, Nowra and Deering Street, Ulladulla.

16. Long Service Levy

Prior to the issue of a Construction Certificate any long service levy payable under the [Building and Construction Industry Long Service Payments Act 1986](#) and prescribed by the [Building and Construction Industry Long Service Payments Regulation 2017](#) must be paid or, where such a levy is payable by instalments, the first instalment of the levy must be paid. Council is authorised to accept payment. Proof of payment must be submitted to the Certifying Authority.

17. Design Standards – Traffic Committee Referral

Prior to the issue of a Construction Certificate details of proposed on site traffic management and traffic control devices must be submitted to the satisfaction of Council for referral and endorsement of the Shoalhaven Traffic Committee. All parking areas must be designed in compliance with Australian standards.

Including but not limited to details of:

- a) internal signage
- b) line marking
- c) speed control
- d) traffic control devices
- e) mini-bus management and scheduled trip times
- f) on-site parking delegations (staff, patron, bus etc)
- g) exit only signage on the exit (east)
- h) entry signage on the indented access (west)
- i) directional pavement markings to delineate traffic flow
- j) details of the overflow carpark
- k) LATM treatments located at the internal carpark entrance (off the driveway) and the exit onto Kangaroo Valley Road.

Note: This process can take six to eight weeks and can be drawn out due to submission of non-compliant plans.

18. Access Driveway Design Standards – Rural

Prior to the issue of a Construction Certificate, engineering design plans for works within the road reserve must be prepared by a suitable qualified person and approved by Council. The driveway design must comply with the following:

- a) Council's Engineering Design Standard Drawings.
- b) Driveway crossing constructed using a bitumen sealed/concrete pavement with a compacted pavement thickness designed for 2x10⁴ ESA (200mm minimum) must be constructed typically in accordance with MI Engineers Layout Plan Drawing Number DN190021/C101 Rev A Dated 21-11-19.
- c) Pipe culvert or gutter crossing at the table drain in accordance with Standard Drawing 2637-35.

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- d) Existing table drains are to be realigned as necessary to prevent ponding of water (minimum distance of 2m each side to suit the pipe culvert/gutter crossing).
- e) If a piped culvert is to be constructed then the pipe must be sized to take the 20% AEP flow in the table drain or be a minimum of 375mm internal diameter whichever is greater.
- f) The piped culvert is to be protected at each end by headwalls and at least the downstream side must be protected against scour and erosion (length dependent on grade).
- g) Indented rural access at the approved driveway location in accordance with Council's Engineering Specification Plan D1.21 which must:
 - i) ensure that the largest expected vehicle does not overhang the public road travel lane.
 - ii) be a minimum of 3.5 metres wide at the gate and configured to accommodate a minimum distance of 13 metres between the gate and the table drain or 15 metres to the road shoulder if there is no table drain.
 - iii) have the same standard of construction from the road alignment to the gate as is required for the driveway crossing.
 - iv) be fenced where the remainder of the road property boundary is fenced.
 - v) The sight lines exiting the property onto the road must meet the requirements of A.S. 2890.1 for the posted road speed.
- h) A Basic Left Turn (BAL) treatment must be designed and constructed for an all weather gravel standard on an approved pavement to be determined by an in-situ sub-grade test in accordance with Council's Engineering Design Specifications section D1.27 Intersections.

19. Design Standards – Works Within Road Reserve

Prior to the issue of a Construction Certificate, all works proposed within road reserves must be approved by Council.

20. Car Parking Design Standards

Prior to the issue of a Construction Certificate, certified engineering design plans and specifications must be prepared by a professional engineer, (as defined in the National Construction Code) or surveyor and approved by the Certifier.

The car parking and access design must comply with the following:

- a) Constructed in accordance with the following:
 - i) for light and/or heavy vehicular loading, depending on the usage.
 - ii) with a flexible pavement of minimum 200mm compacted thickness, surfaced with 30mm of AC10 asphaltic concrete or two coat bitumen seal using 14mm and 7mm aggregate.
 - iii) to a concrete standard.
- b) Bordered in accordance with Council's Standard Drawings by:
 - i) concrete kerbing, except where surface runoff is concentrated, in which case concrete integral kerb and gutter must be constructed. The work must comply with Council's Plan No. SC 2637-10 and SC 2637-09.
- c) Access in and out of the development will be required in a forward direction generally in accordance with the turning movements as per A.S. 2890.1 for the 99th % vehicle or in accordance with A.S. 2890.2 for the largest vehicle requiring access to the development.

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21. Stormwater Drainage Design Standards

Prior to the issue of a Construction Certificate, certified engineering design plans, specifications and DRAINS model (or approved alternative) must be prepared by a professional engineer, (as defined in the National Construction Code) or surveyor and approved by the Certifier.

The stormwater drainage design must comply with the following:

- a) Major and minor drainage systems in accordance with Council's Engineering Design Specifications - Section D5 - Stormwater Drainage Design and utilising Australian Rainfall and Runoff (ARR, 2019) Guidelines.
- b) The minor and major systems must be designed for a 18.13% AEP and 1% Annual Exceedance Probability (AEP) rainfall events, respectively.
- c) Generally, in accordance with concept stormwater drainage plan Drawing Number DN190021/C103 Rev A prepared by MI Engineers on 21-11-19.

22. Section 68 Application

Prior to the issue of a Construction Certificate:

- a) an application for installation of an on-site sewage management system must be approved under section 68 of the *Local Government Act 1993*. The application must:
 - i) be consistent with the recommendations of the report entitled Soil and Site Assessment for Onsite Wastewater Disposal, prepared by Harris Environmental Consulting, dated 11/2/2020, reference number 3335WW (version 1); or an alternative report approved by Council in writing.
 - ii) Include:
 - a. All of the required information listed in Shoalhaven DCP 2014 and clause 26 of the *Local Government (General) Regulation 2005*; and
 - b. A site plan, to scale (including the reserve area); and
 - c. Proposed specifications; and
 - d. Site assessment; and
 - e. Statement of potential load; and
 - f. Operation maintenance and maintenance details;
 - g. Effluent disposal field layout; and
 - h. Any liquid trade waste and grease arrestor details as required by Shoalhaven Water's Liquid Trade Waste Unit
- b) liquid trade waste treatment processing a grease arrestor details must be reviewed and approved by Shoalhaven Water's Liquid Trade Waste Unit.
- c) a copy of the approval must be provided to the Certifier.

23. Section 68 Application

Prior to the issue of a Construction Certificate, an application to install a domestic oil or solid fuel heating appliance must be obtained from Council under section 68 of the *Local Government Act 1993*.

24. National Construction Code– cl. 94

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Council considers that pursuant to clause 94 of the *Environmental Planning and Assessment Regulation 2000* it is appropriate to require the existing building to be upgraded to total conformity with the Performance Requirements of the National Construction Code (NCC).

Prior to the issue of a Construction Certificate, plans and specifications must be provided to the satisfaction of the Certifier, detailing how the existing building will be upgraded to total conformity with the NCC in force at the date of issue of the Construction Certificate.

25. Soil and Water Management Plans (SWMP)

Prior to the issue of a Construction Certificate, a Soil and Water Management Plan must be prepared by a Professional Engineer, (as defined in the National Construction Code) to the satisfaction of the Certifier.

All implemented measures must:

- a) not cause water pollution as defined by the Protection of the Environment Operations Act (POEO).
- b) be maintained at all times.
- c) not be decommissioned until at least 70% revegetation cover has been established.

26. Existing Infrastructure

Prior to the issue of a Construction Certificate, all infrastructure, existing and proposed, is to be shown accurately on construction plans with clearances clearly labelled confirming that the proposed works do not affect any existing infrastructure. Any required alterations to infrastructure will be at the developer's expense.

PART E: PRIOR TO THE ISSUE OF A SUBDIVISION WORKS CERTIFICATE

NIL

PART F: DURING WORKS

27. Hours for Construction

Construction may only be carried out between 7.00am and 5.00pm on Monday to Saturday and no construction is to be carried out at any time on a Sunday or a public holiday. Proposed changes to hours of construction must be approved by Council in writing.

28. Noise

The noise from all demolition and construction activities associated with the approved development must comply with the work practices as outlined in the NSW Department of Environment & Climate Change Interim Construction Noise Guideline. The LA10 level measured over a period of not less than 15 minutes during works must not exceed the background (LA90) noise level by more than 10dB(A) when assessed at any sensitive noise receiver.

29. Aboriginal Objects Discovered During Excavation

If an Aboriginal object (including evidence of habitation or remains) is discovered during the course of the work:

- a) All excavation or disturbance of the area must stop immediately

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- b) The Office of Environment, Energy and Science must be advised of the discovery in accordance with section 89A of the [National Parks and Wildlife Act 1974](#).

30. Archaeology Discovered During Excavation

If any object having interest due to its age or association with the past is uncovered during the course of the work:

- a) All work must stop immediately in that area
- b) In accordance with the *Heritage Act 1997*, the Office of Environment, Energy and Science must be advised of the discovery.

31. Maintenance of Site and Surrounds

During works, the following maintenance requirements must be complied with:

- a) All materials and equipment must be stored wholly within the work site unless an approval to store them elsewhere is held.
- b) Waste materials (including excavation, demolition and construction waste materials) must be managed on the site and then disposed of at a waste management facility.
- c) Where tree or vegetation protection measures are in place, the protected area must be kept clear of materials and / or machinery.
- d) The developer must maintain the approved soil water management / erosion and sediment control measures to the satisfaction of the Certifier for the life of the construction period and until runoff catchments are stabilised.
- e) During construction:
 - i) all vehicles entering or leaving the site must have their loads covered, and
 - ii) all vehicles, before leaving the site, must be cleaned of dirt, sand and other materials, to avoid tracking these materials onto public roads.
- f) At the completion of the works, the work site must be left clear of waste and debris.

32. Waste Management Plan

All waste must be contained within the site during construction and then be recycled in accordance with the approved Waste Management Plan (WMP) or removed to an authorised waste disposal facility. Waste must not 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 WMP must be demonstrated by the submission of tip receipts to the Certifier.

Note: "Waste" is defined in the Dictionary to the Protection of the Environment Operations Act 1997 (POEO Act).

33. Earthworks and Excavation

- a) Approved earthworks (including any structural support or other related structure for the purposes of the development):
 - i) must not cause a danger to life or property or damage to any adjoining building or structure on the lot or to any building or structure on any adjoining lot.
 - ii) must not redirect the flow of any surface or ground water or cause sediment to be transported onto an adjoining property.

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- iii) that is fill brought to the site, must contain only virgin excavated natural material (VENM) or excavated natural material (ENM) as defined in Part 3 of schedule 1 to the *Protection of the Environment Operations Act 1997 (POEO Act)*.

Documentation must be provided to the Certifier certifying that imported fill material is not contaminated and does not contain contaminants such as asbestos, chemicals or building waste.

- iv) that is excavated soil to be removed from the site, must be disposed of in accordance with any requirements under the *Protection of the Environment Operations (Waste) Regulation 2005*.
- b) Any excavation must be carried out in accordance with *Excavation Work: Code of Practice (ISBN 978-0-642-78544-2)* published by Safe Work Australia in October 2018

34. Contamination - Unexpected Finds

- a) If unexpected contaminated soil and/or groundwater is encountered during any works:
 - i) all work must cease, and the situation must be promptly evaluated by an appropriately qualified environmental consultant.
 - ii) the contaminated soil and/or groundwater must be managed under the supervision of the environmental consultant, in accordance with relevant NSW Environment Protection Authority (EPA) Guidelines.
- b) If unexpected contaminated soil or groundwater is treated and/or managed on-site; an appropriately qualified environmental consultant must verify that the situation was appropriately managed in accordance with relevant NSW EPA guidelines prior to recommencement of works. The verification documentation must be provided to the satisfaction of the Certifier and Shoalhaven City Council prior to the recommencement of any works.
- c) If contaminated soil or groundwater is to be removed from the site, it must be transported to an appropriately licensed waste facility by an NSW EPA licensed waste contractor in accordance with relevant NSW EPA guidelines including the Waste Classification Guidelines (2014).

Note: An appropriately qualified environmental consultant will have qualifications equivalent to CEnvP "Site Contamination" (SC) Specialist - by Certified Environmental Practitioner or 'Certified Professional Soil Scientist' (CPSS CSAM) by Soil Science Australia (SSA).

PART G: PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE

35. Compliance

The Occupation Certificate must not be issued until all relevant conditions of development consent have been met or other satisfactory arrangements have been made with council (i.e. a security).

36. National Construction Code– cl. 94

Prior to the issue of an Occupation Certificate, the accredited certifier is to confirm that the building has been brought into total conformity with the National Construction Code (NCC) as required by the conditions of this development consent.

37. Fire Safety

Prior to the issue of an Occupation Certificate the Certifier must be provided with a Final Fire Safety Certificate showing compliance with the Fire Safety Schedule.

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38. Colours and Materials

The development must be constructed in accordance with the approved schedule of colours and building materials and finishes, unless otherwise agreed to by Council in writing.

39. Landscaping Compliance

Prior to the issue of an Occupation Certificate, the developer must provide the Certifier with written evidence from a suitably qualified landscape professional that all landscape works have been completed in accordance with the approved landscape plans.

40. Section 68 Approval to Operate

Prior to the Issue of an Occupation Certificate:

- a) approval is required under section 68 of the *Local Government Act 1993* to operate the onsite system of sewage management.
- b) evidence of approval must be provided to the Certifier.

41. Works in the Road Reserve - Evidence of completion

Prior to the issue of an Occupation Certificate, the developer must provide the Certifier with a Construction Inspection Ticket / Completion of Works in Road Reserve Letter provided by council, confirming compliance with the requirements of section 138 of the *Roads Act 1993*.

42. Dilapidation Report – Evidence

Prior to the issue of an Occupation Certificate, the developer must provide the Certifier and Council with evidence that any damage to neighbouring premises or adjacent public infrastructure, not previously identified as existing damage in the Dilapidation Report, has been repaired by the developer to the satisfaction of Council.

43. Noise – Ongoing Use

The ongoing use and operation of the premises must comply with the recommendations set out in the report entitled Environmental Noise Impact Assessment Proposed Micro Brewery and Restaurant, prepared by Harwood Acoustics, dated 6/3/2020, reference number 1911003E-R. These recommendations include:

- a) The external walls and the roof of the shed should be constructed using minimum 0.42 mm thick (BMT) thick corrugated sheet steel (e.g Custom Orb Colorbond).
- b) All glazed windows and doors may be of standard thickness in aluminium or timber frames,
- c) Amplified music should be played in the brewery building only and should not exceed an energy-average sound pressure level (Leq, 15 minute) of 79 dBA when measured over a 15-minute period at 3 metres from the speakers within the building.
- d) All amplified music be controlled through an in-house sound system with levels pre-set to ensure compliance with the relevant criterion where practicable.
- e) In the event that any complaints are received, a noise compliance assessment of noise levels should be undertaken by a suitably qualified acoustical consultant to ensure the recommended noise level is not exceeded. If the noise compliance assessment determines that recommended noise levels are exceeded, then recommendations by the acoustical consultant to bring noise generated from the development into compliance with acceptable noise levels as determined by this consent must be implemented.

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- f) The level of noise emission from any mechanical plant servicing the development should not exceed an 'A' frequency weighted, energy average, sound pressure level (L_{eq}) of 25 dBA, when measured over 15 minutes at any affected receptor. This is to ensure the overall level of noise emission from the Site does not exceed the acceptable noise limit of 35 dBA between 6 pm and 8 pm.

PART H: PRIOR TO THE ISSUE OF A SUBDIVISION / STRATA CERTIFICATE

NIL

PART I: ONGOING USE OF THE DEVELOPMENT

44. Overland Stormwater Flow, Redirecting and/or Concentrating Stormwater

All excavation, backfilling and landscaping works must not result in:

- a) 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.
- b) the redirection and/or concentration of stormwater flows onto neighbouring properties.

45. Landscaping – Noxious and Environmental Weeds

The planting of plant species listed in the South East Regional Strategic Weed Management Plan 2017 – 2022 is prohibited for the life of the development. No exotic perennial grasses listed on the 'Final Determination of the NSW Scientific Committee for the key threatening process Invasion of native plant communities by exotic perennial grasses' must be sown within the outer protection area or the asset protection zone for the life of the development. Native grasses must be sown in these areas, as this is the interface between disturbed areas and the remaining native vegetation for the life of the development.

46. Hours of Operation

The use of the approved development is restricted as follows.

Industrial Manufacturing Component:

- a) 8am – 6pm, Monday to Friday

Bar/Restaurant/Café Component:

- a) 11am – 7pm, Friday to Sunday (outside of school holiday period)
- b) 11am – 7pm, Monday to Sunday (during school and public holidays)

47. Capacity of Bar/Restaurant/Café

The retail bar/restaurant/café component of the development must not serve more than 220 patrons at any one time.

48. Retail Sales of Product

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Retail sales and on-site consumption of retail food and drink is limited to the indoor bar/restaurant/café and dining area and the outdoor lawn and garden areas within the curtilage of the brewery building. No on-site consumption of retail food and drink is permitted within the car parking area or other areas of the property.

49. Site Maintenance - Commercial/Industrial Development

The owner or operator must at all times be responsible for on-going site management and maintenance in accordance with the following:

- c) loading and unloading in relation to the use of the premises must occur in the designated loading areas.
- d) goods or machinery must be stored, and all activities must occur, inside the building(s) and not in the carpark or driveway areas.
- e) maintenance and replacement (if necessary) of all landscaping in accordance with the approved landscape plan.
- f) maintenance of vehicular movement areas including driveways, carparking, manoeuvring areas, line marking, pedestrian facilities, lighting, to the standard specified by this consent.
- g) ongoing waste and recycling must be managed in accordance with the approved Waste Management Plan. Waste bins are not to be stored within the loading area/space that is visible from a public place.
- h) maintenance of stormwater drainage pipes and systems to ensure efficient discharge of stormwater in accordance with the approved stormwater drainage plan.
- i) maintenance of buildings, fencing, signage/markings to the standards specified in this consent.
- j) the removal of all graffiti within a maximum of 14 days of being notified by Council.

50. Fire Safety – Annual Statement

A building owner must ensure that an annual fire safety statement prepared by a competent fire safety practitioner is issued each year and that a copy of the statement is provided to the Shoalhaven City Council and the Commissioner of Fire and Rescue NSW. An [application form](#) is available on Council's website.

Note: An annual fire safety statement is a declaration by, or on behalf of a building owner that a competent fire safety practitioner (CFSP) has:

- a) assessed, inspected and verified the performance of each existing essential fire safety measure that applies to the building
- b) inspected the exit systems serving the building and found that the exit systems within the building do not contravene the provisions of Division 7 of Part 9 of the Environmental Planning and Assessment Regulation 2000

Failure to give Council an annual fire safety statement by the due date constitutes a separate offence for each week beyond that date for which the failure continues. Substantial penalties for non-compliance apply under the Environmental Planning and Assessment Act 1979.

51. Food Business Regulations

Any premises used for the preparation and storage of food for sale to the general public must (where relevant) comply with:

- a) [Shoalhaven City Council's Food Premises Policy](#)
- b) [Chapter 3 of the Australia/New Zealand Food Standards Code](#)

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- c) [Food Act 2003 \(NSW\)](#)
- d) [Food Regulation 2015](#)
- e) AS 4674 Construction and fit out of food premises
- f) AS 1668.2 The use of ventilation and air conditioning in buildings-Mechanical ventilation in buildings.

52. NSW Police and Safety Requirements

- a) The proprietors adhere strictly to the NSW Liquor act 2007 and associated acts and regulations that pertain to the supply and sale of alcoholic beverages within New South Wales
- b) Liquor trading to be limited to ;
 - i) Friday, Saturday and Sundays only - 11am to 7pm
 - ii) During school holidays 11am to 7pm 7 days a week
- c) All alcoholic beverages supplied to the public to be produced at the location.
- d) CCTV: The applicant must maintain a closed-circuit television (CCTV) system on the premises in accordance with the following requirements:
 - i) the system must record continuously at all times,
 - ii) recordings must be in digital format and at a minimum of six (6) frames per second,
 - iii) any recorded image must specify the time and date of the recorded image,
 - iv) the system's cameras must cover the following areas:
 - a. all entry and exit points on the premises.
 - b. all publicly accessible areas (other than toilets) within the premises.
 - c. Carpark
- e) The proprietor must:
 - i) keep all recordings made by the CCTV system for at least 30 days,
 - ii) provide any recordings made by the system to a police officer within 24 hours of any request by a Police Officer to provide such recordings.
- f) CCTV to be checked, cleaned and maintained periodically to ensure ongoing use.
- g) Lighting to be to Australian Standards and shall not, when activated, reduce the quality of the CCTV recording e.g., Light shining into camera
- h) Lighting in carpark to be to Australian Standard. Lighting to be able to cover the whole of the carpark without dark areas.
- i) Clear sightlines to be maintained in Carpark area with any shrubbery to be maintained and kept low. Any trees to be up pruned and no foliage to block CCTV surveillance Cameras.
- j) Line markings in carpark to indicate safe walking locations for patrons entering and leaving the location. Consideration should be given into creating safe zones between vehicles and public.
- k) CCTV cameras to be installed in all public areas and to be of such quality that it is suitable for providing in court matters. CCTV to be easily downloadable to thumb drive or DVD.
- l) Licensing Police will monitor the premises to ensure it is functioning within the approved guidelines.
- m) Non-Public areas to be regulated with some form of access control.
- n) Card or coded access locks to be considered in all non-public areas.

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- o) Substantial food to be available at all times during the operation of the bar/restaurant/café
- p) Traffic management
 - i) Speed limit signage on the property
 - ii) Signage or directional arrows re direction of traffic flow
 - iii) Barriers or environmental construction to assist with protection of pedestrians
 - iv) Exit and entry points onto the road wide enough to allow vehicles to enter roadway without having to move across onto the opposing direction of traffic.
- q) In terms of the environment surrounding the development
 - i) Vegetation near entry and exit points must be kept appropriately trimmed/pruned to allow for greater visibility of and along Kangaroo Valley Road.
 - ii) Signage specifying 'vehicles entering/exiting roadway' must be appropriately installed nearby and at appropriate locations at any entry and exit points.

PART J: OTHER COUNCIL APPROVALS AND CONSENTS

NIL

PART K: REASONS FOR CONDITIONS

The application has been assessed as required by section 4.15 of the *Environmental Planning and Assessment Act 1979* and has been determined by the granting of conditional development consent.

Statutory requirements

The development proposal, subject to the recommended conditions, is consistent with:

- r) the objects of the Environmental Planning and Assessment Act, 1979.
- s) the aims, objectives and provisions of the applicable environmental planning instruments,
- t) the aims, objectives and provisions of Shoalhaven Development Control Plan 2014 (SDCP 2014).
- u) the aims, objectives and provisions of relevant Council policies.

Public notification

The application was publicly notified in accordance with the *Environmental Planning and Assessment Regulation 2000* and Council's Community Consultation Policy for Development Applications (Including Subdivision) and the Formulation of Development Guidelines and Policies (POL 16/230).

Submissions

Any submissions received during the public notification period are available on [DA Tracking](#)

Community views

Issues and concerns raised by the community in submissions have been considered in the assessment of the application and, where appropriate, conditions have been included in the determination to mitigate any impacts.

Suitability of the Site

The application has been approved because the development proposal is considered to be suitable for the site.

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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.

The increased demand for public amenities and services attributable to the development has been addressed by the requirement to pay contributions in accordance with section 7.11 of the *Environmental Planning and Assessment Act 1979* and Council's Contribution Plan 2019. Contributions under Section 307 of the Water Management Act 2000 have been applied as required.

Impacts of the Development

The application was considered to be suitable for approval. Conditions have been imposed to ensure that:

- v) the development will not result in unacceptable adverse impacts on the natural and built environments.
- w) the amenity and character of land adjoining and in the locality of the development is protected.
- x) any potential adverse environmental, social or economic impacts of the development are minimised.
- y) all traffic, car parking and access arrangements for the development will be satisfactory.
- z) the development does not conflict with the public interest.

PART L: RIGHTS OF REVIEW AND APPEAL

Determination under Environmental Planning and Assessment Act, 1979

Division 8.2 of the EP&A Act, 1979 confers on an applicant who is dissatisfied with the determination a right to request the council to review its determination. The request and determination of the review must be undertaken within the prescribed period.

Division 8.3 of the EP&A 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 the prescribed period.

An appeal under Division 8.3 of the EP&A Act, 1979 by an objector may be made only within the prescribed period.

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 the prescribed period.

PART M: GENERAL ADVICE

In this consent the term developer means any person or corporation who carries out the development pursuant to that consent.

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Disability Discrimination Act 1992

This application has been assessed in accordance with the *Environmental Planning & Assessment Act, 1979*. No guarantee is given that the proposal complies with the *Disability Discrimination Act 1992*.

The applicant/owner is responsible to ensure compliance with this and other anti-discrimination legislation.

The *Disability Discrimination Act 1992* covers disabilities not catered for in the minimum standards called up in the Building Code of Australia which references AS1428.1 - "*Design for Access and Mobility*".

Disclaimer – Conveyancing Act 1919 – Division 4 – 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.

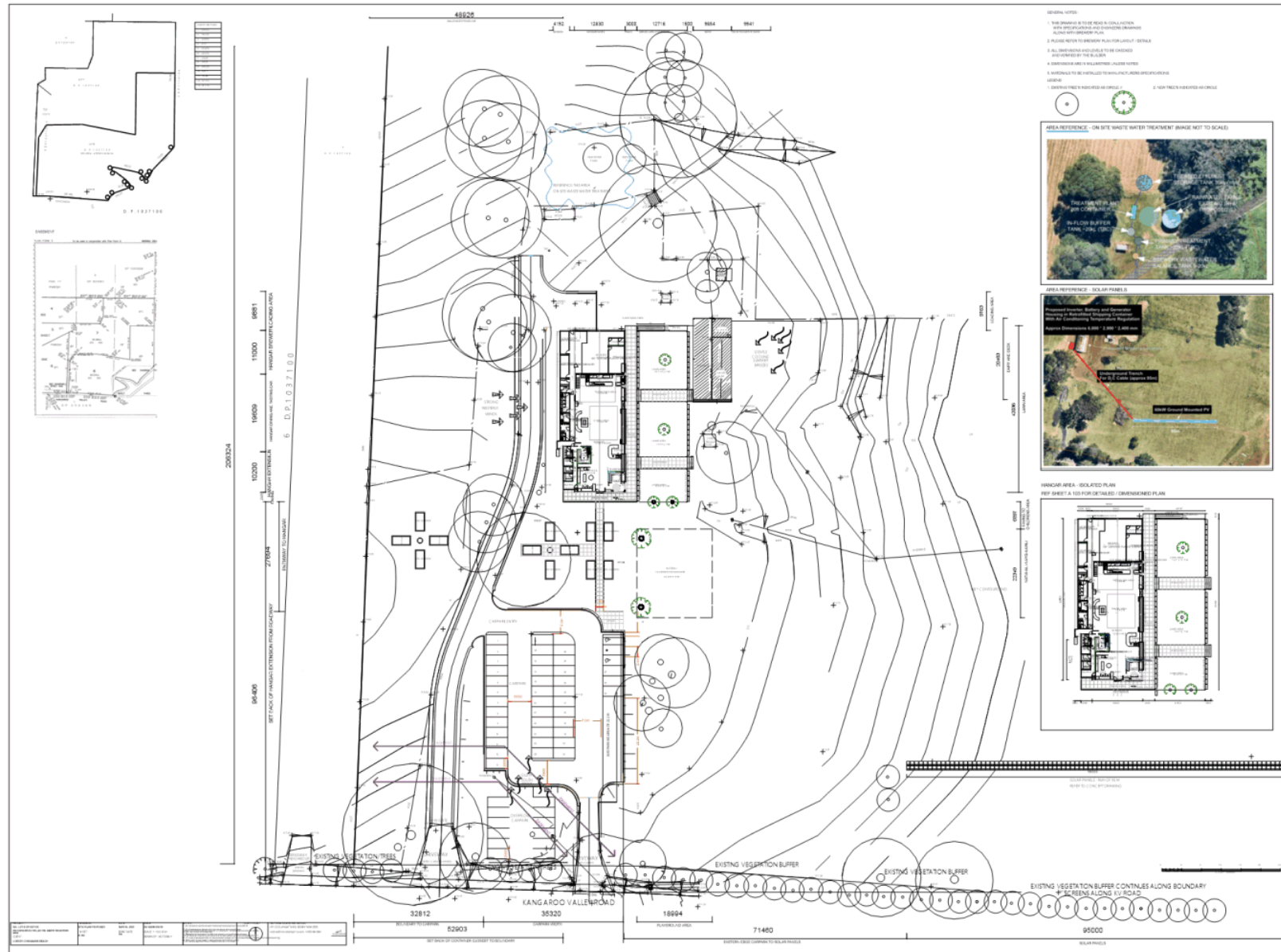
Under Clause 1.9A of *Shoalhaven Local Environmental Plan 2014* agreements, covenants or instruments that restrict the carrying out of the proposed development do not apply to the extent necessary to enable the carrying out of that development, other than where the interests of a public authority is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

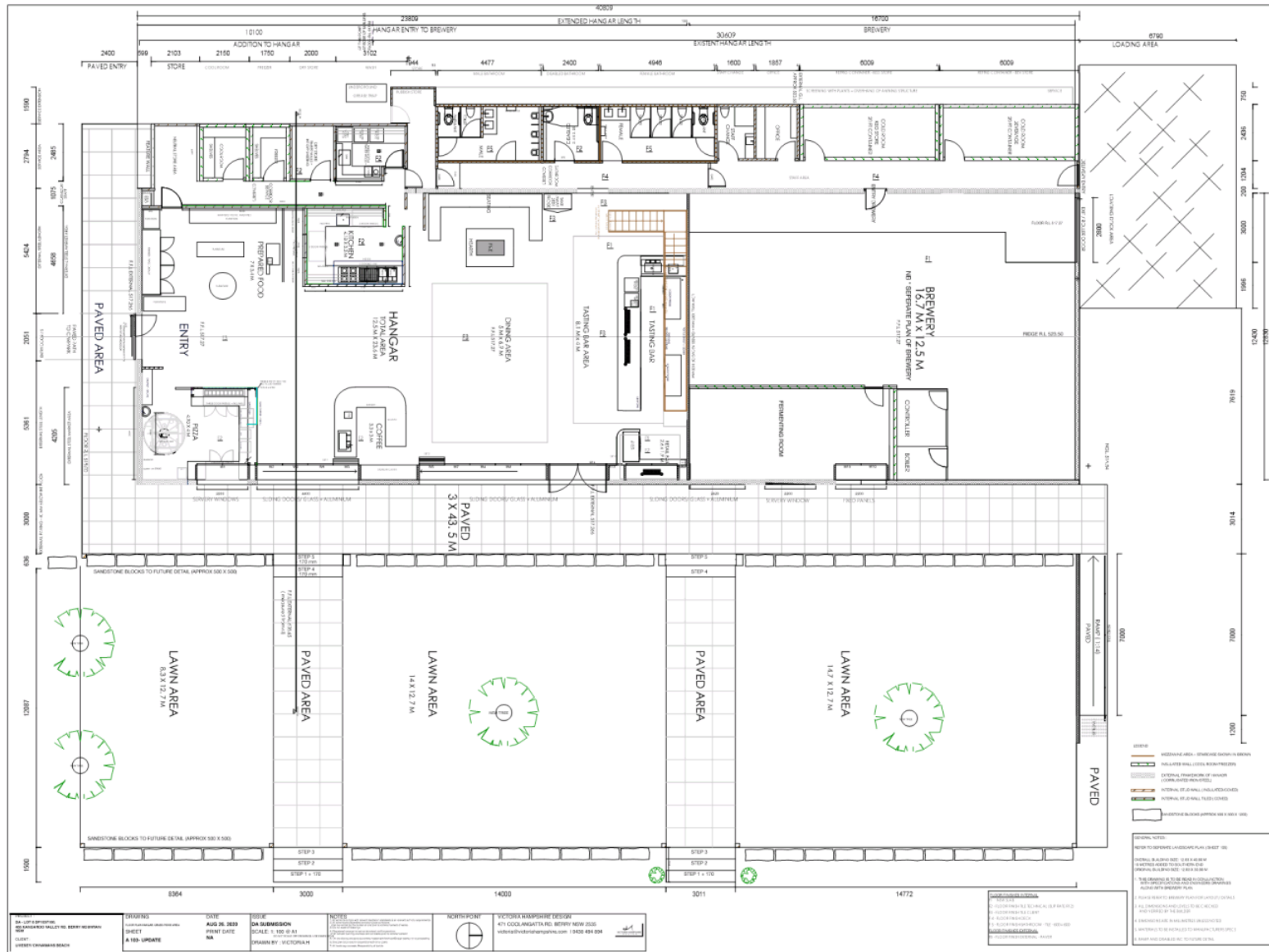
DBYD Enquiry - 'Dial Before You Dig'

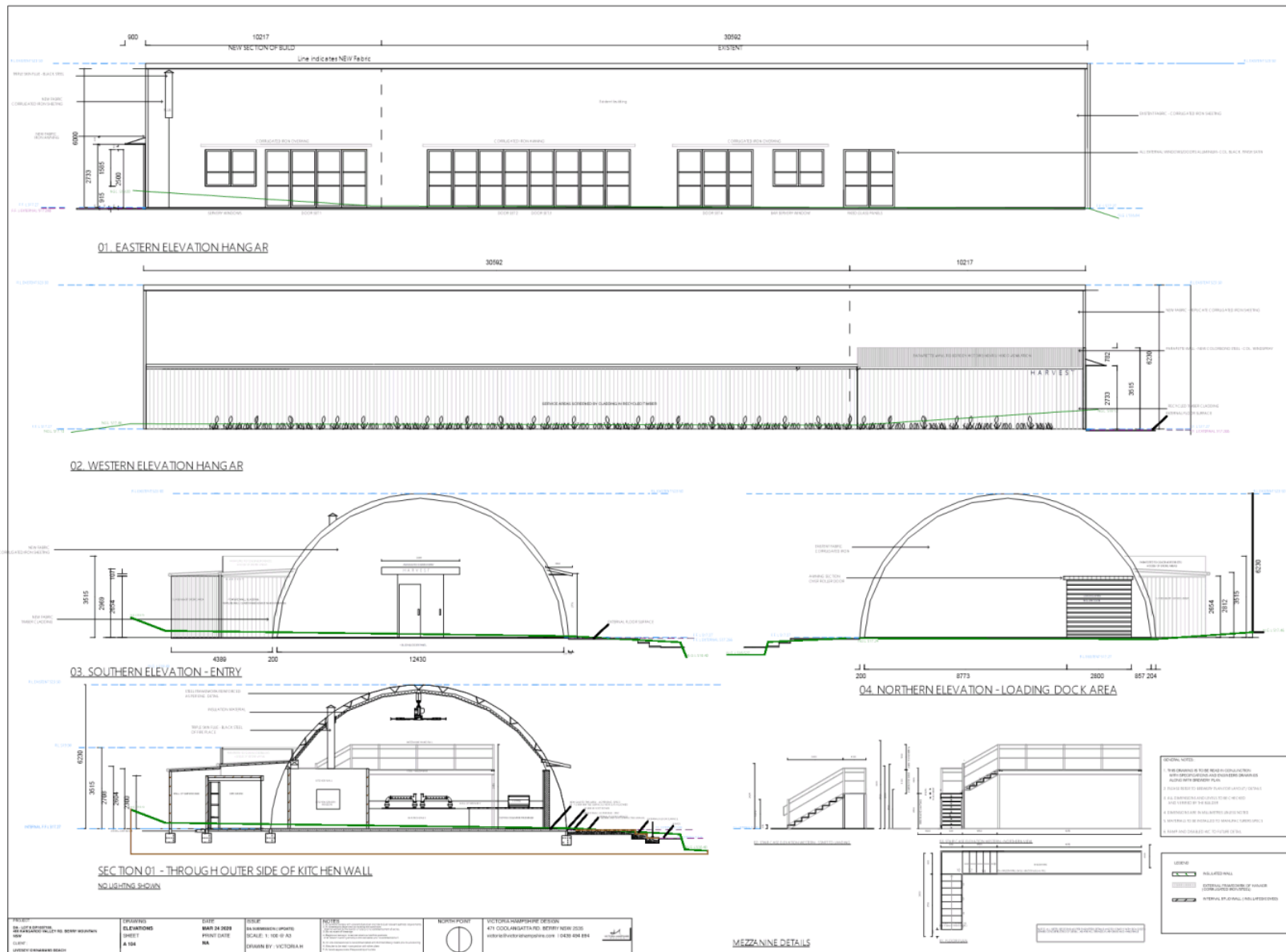
In order to avoid risk to life and property it is advisable that an enquiry be made with "Dial Before You Dig" on 1100 or www.dialbeforeyoudig.com.au prior to any excavation works taking place to ascertain the location of underground services. You must also contact your Local Authority for locations of Water and Sewer Mains.

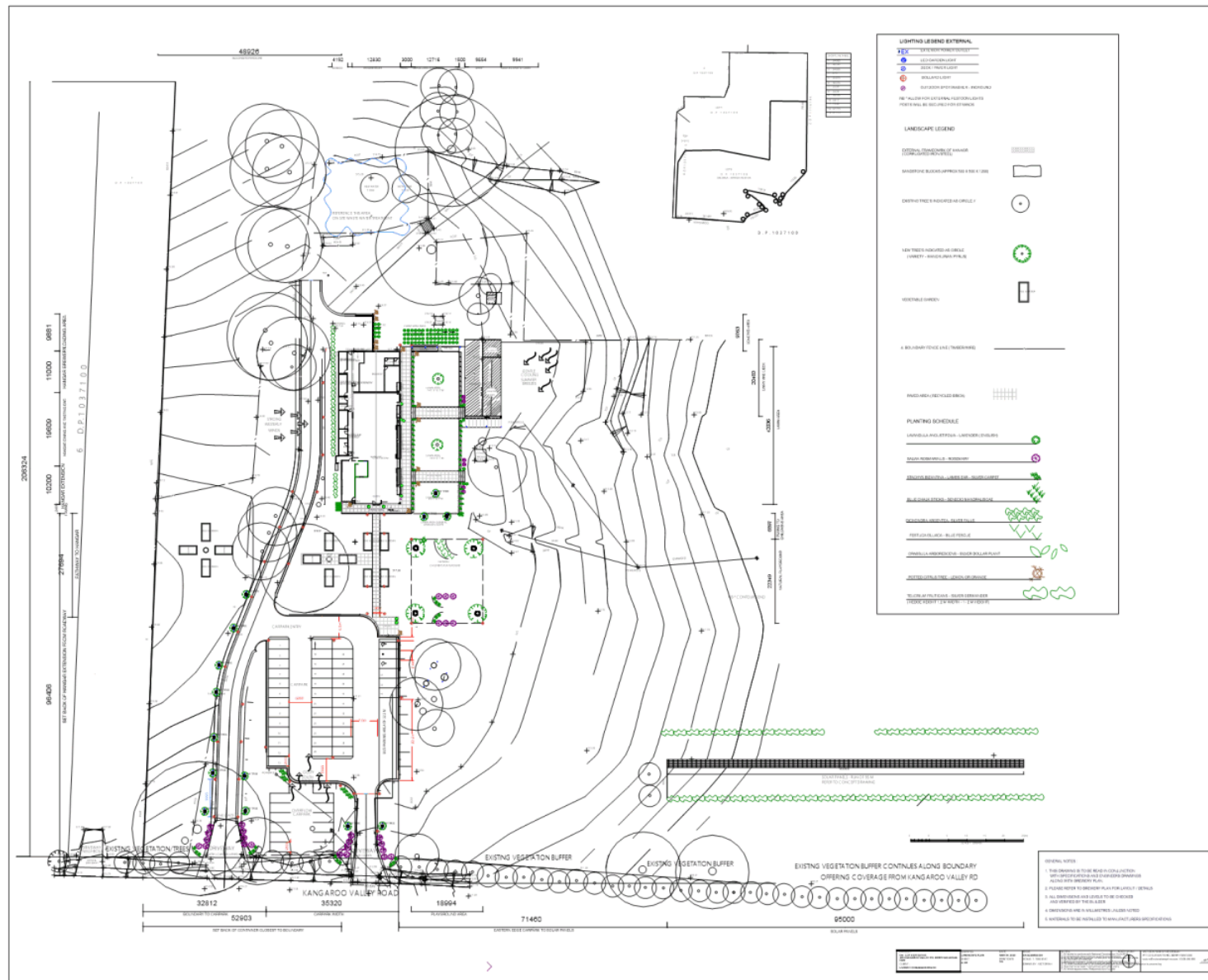
SIGNED on behalf of Shoalhaven City Council:

Peter Woodworth
Senior Development Planner
City Development

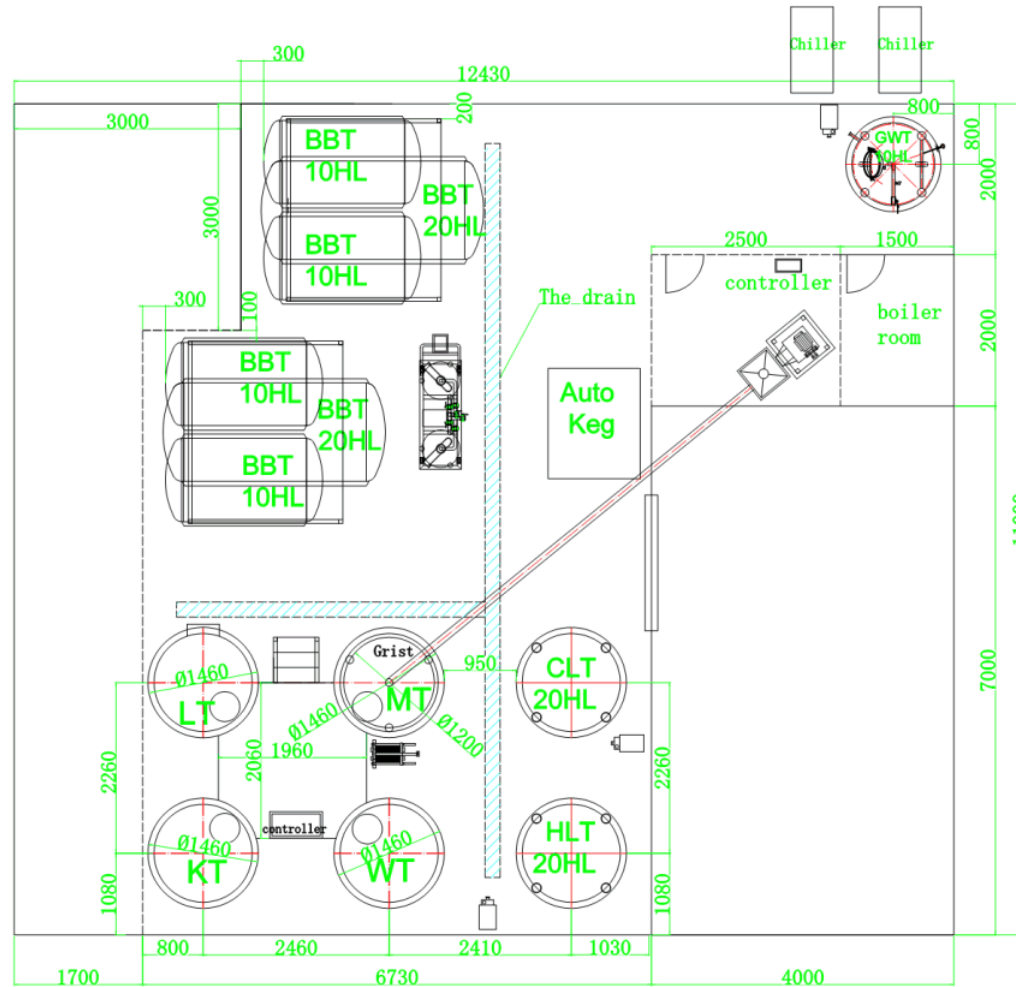








报价图纸 Drawing for quotation	
图纸编号 Drawing number	02BH010HL0240
版本 Version	R3
设计师 Designer	开海洋
技术员 Technician	
审核员 Verifier	



NDL CRAFT		山东申东发酵装备有限公司 Shandong Shendong Fermentation Equipment Co. Ltd.	
		Assembly Diagram	布局图 (Floor plan)
Scale	1:55		
Weight		Date	NO.2019-10-30



Notes:

1. Clenergy ground mount racking system to be selected based upon soil type. Engineering certs for wind loading and uplift to be provided at later date.
2. The underground cable is to be laid at a minimum depth of 600mm below the present or future ground level, whichever is the lower.
3. The retrofitted shipping container (permanent structure) will be installed to the appropriate specs required by Shoalhaven City Council.
4. All diesel generators to be installed outside.
5. Installation to follow relevant Australian Standards including AS / NZS 5033 Installation and safety requirements for photovoltaic (PV) arrays, AS/NZS 3000:2007 Electrical installations, AS / NZS 4509.1 Stand-alone Power Systems Part 1: Safety and Installation, AS 4086.2 Secondary Batteries for Use with Stand-alone Power Systems, Part 2: Installation and Maintenance, AS / NZS 1170.2 Structural Design Actions Part 2: Wind Actions.

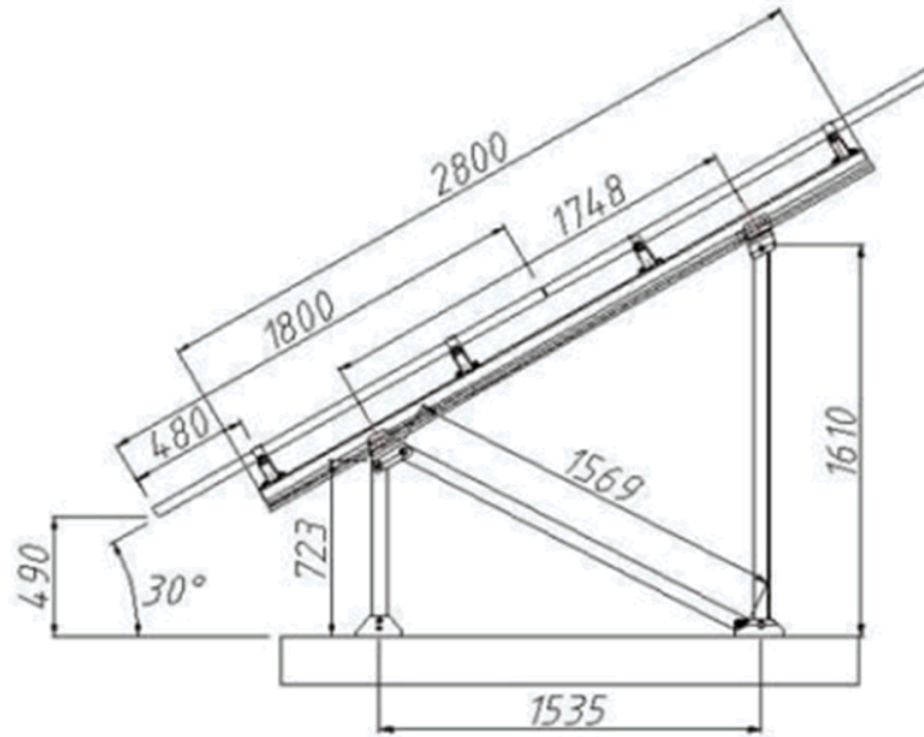
**Proposed Off-Grid Ground Mount Solar System
Concept Plan**

Date: 19/11/2019
Version: 1
Drawn By: CM

Lot 8//DP1037100

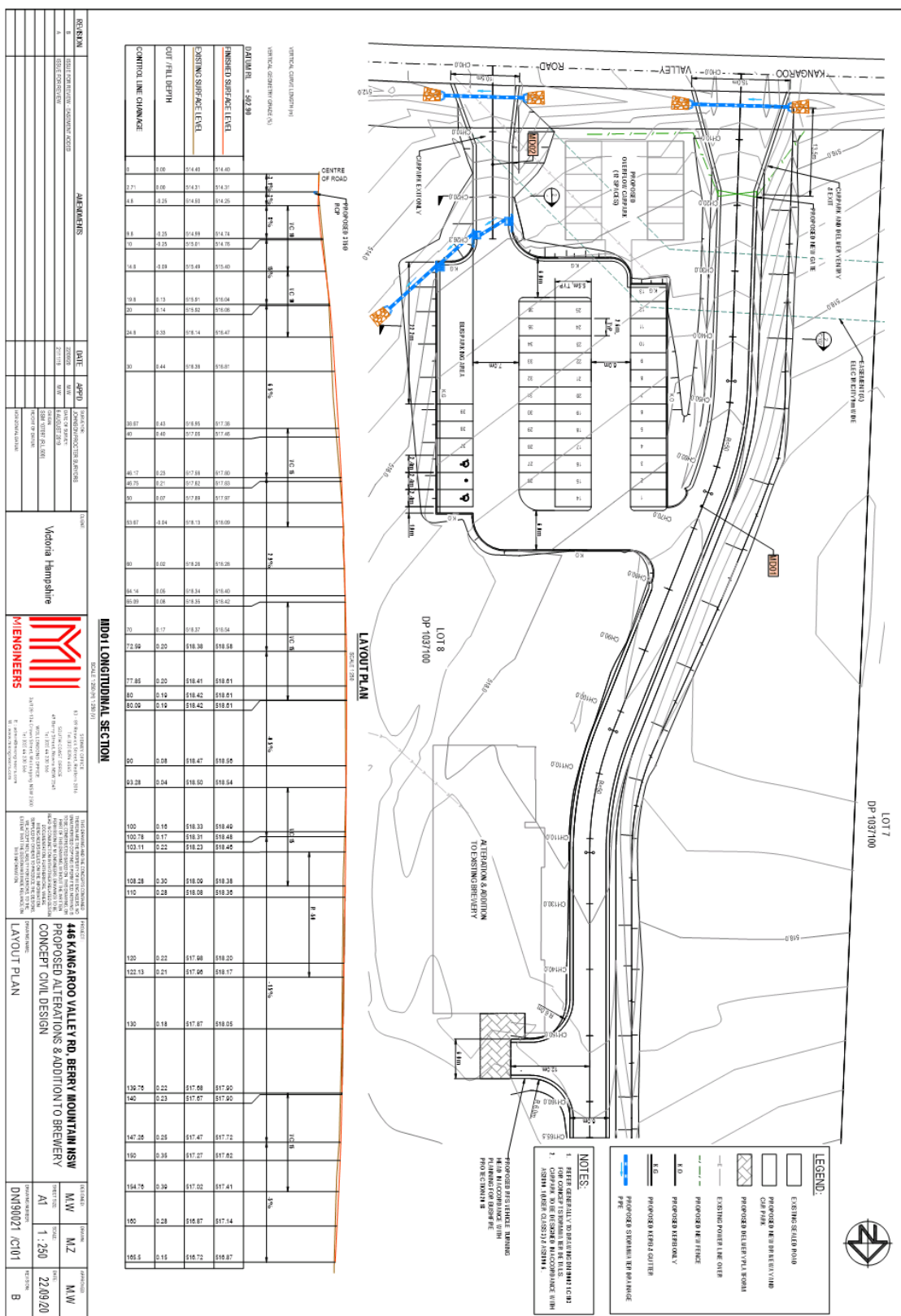
For:
Mr Neil Livesey
Glenworth House Brewery

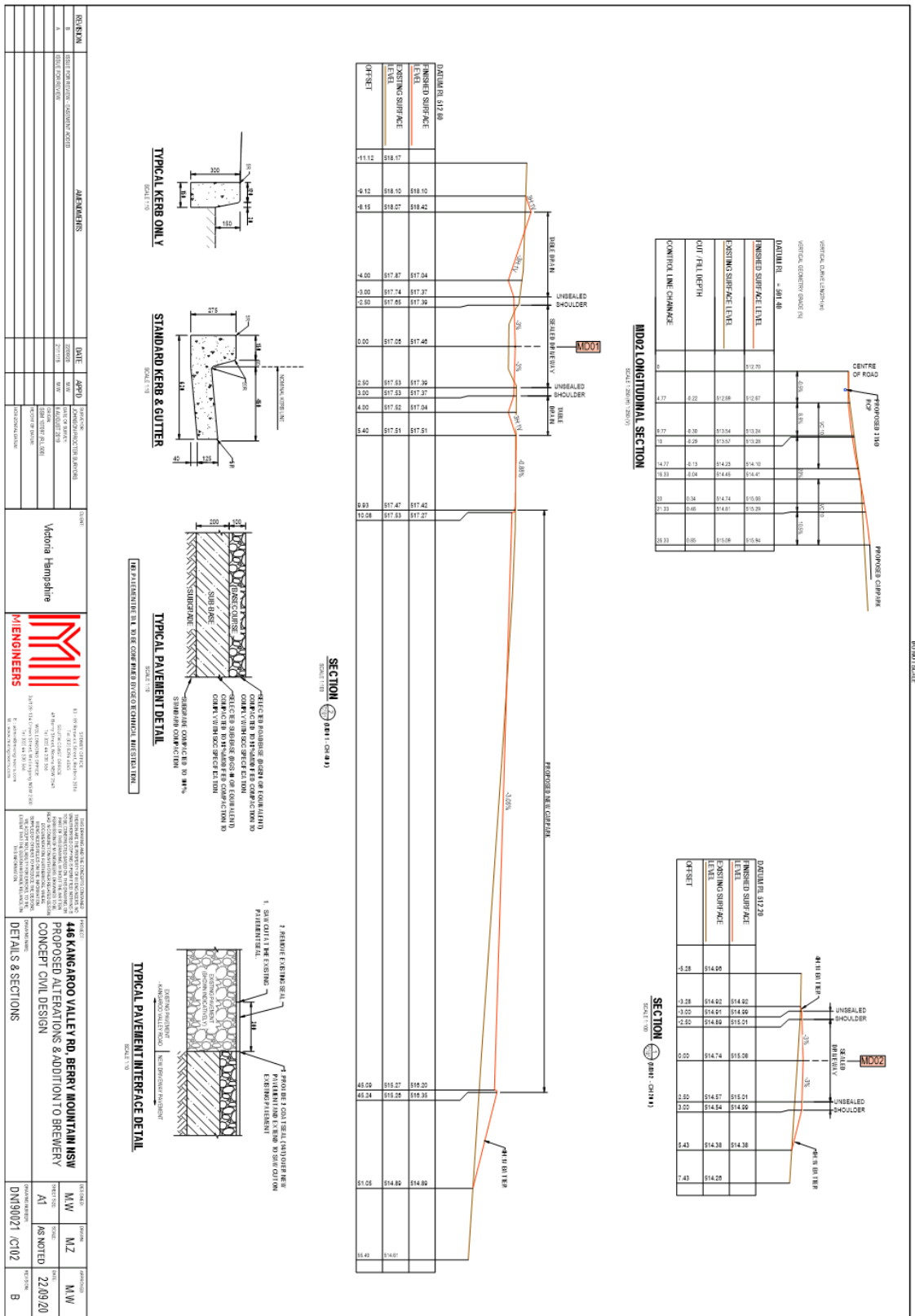




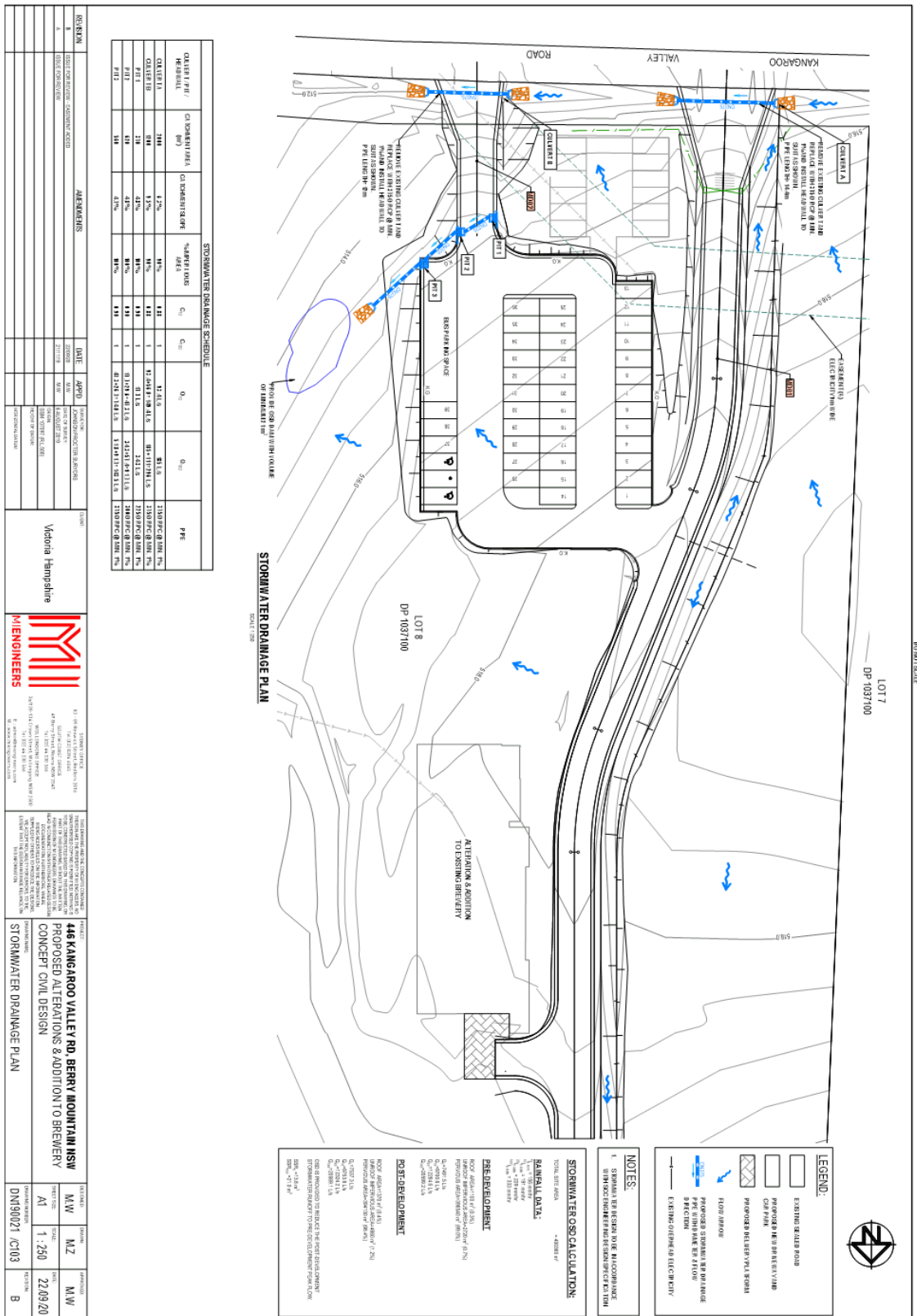
Design for panels 1800mm long

<p>Proposed Off-Grid Ground Mount Cross Section</p> <p>Date: 14/02/2020 Version: 1 Drawn By: CM</p>	<p style="text-align: right;">NTS</p> <p>Lot 8/DP1037100</p> <p>For: Mr Neil Livsey Glenworth House Brewery</p> <div style="text-align: right;">  </div>
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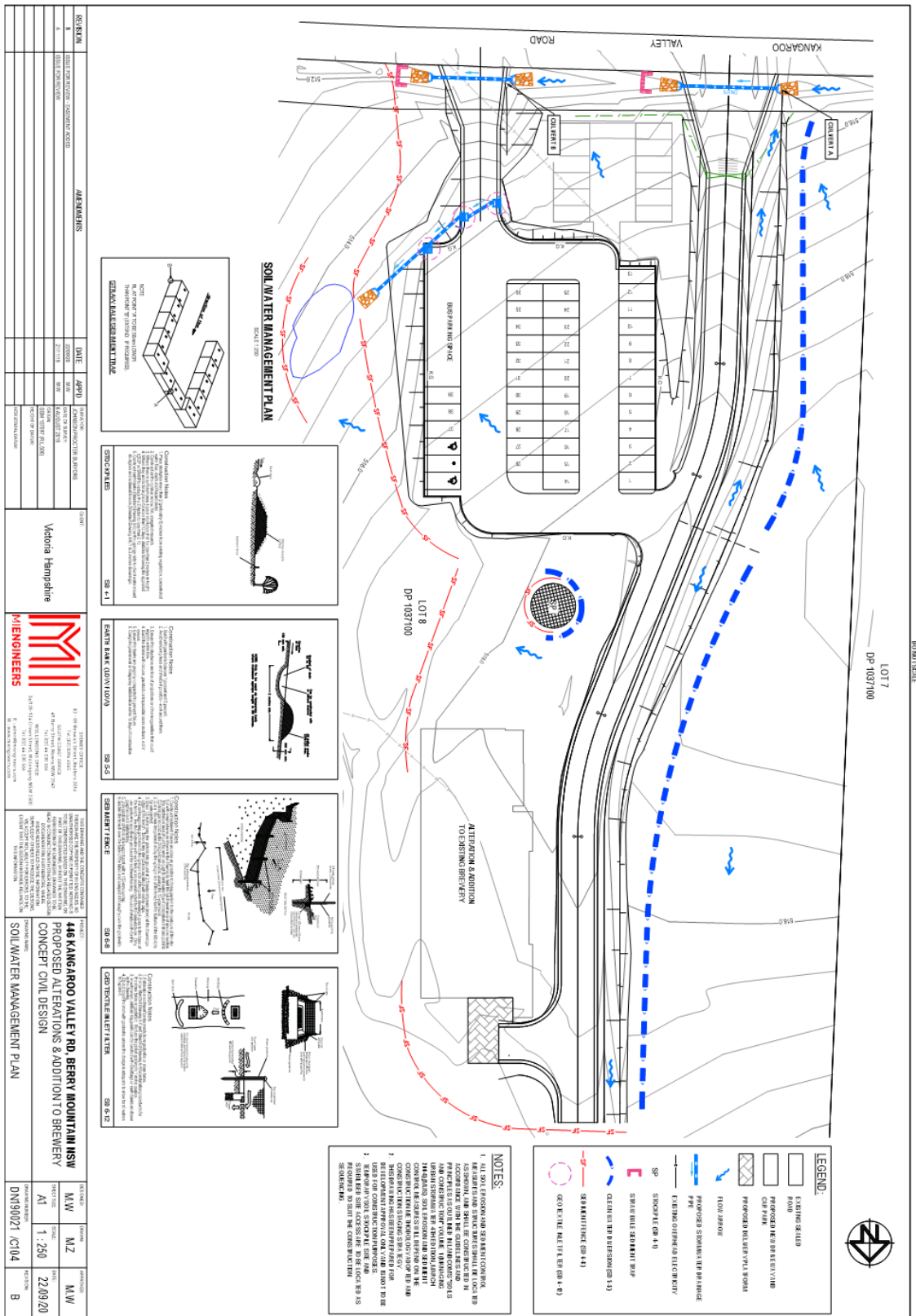





DE21.13 - Attachment 3



DE21.13 - Attachment 3



Planning Report – S4.15 Assessment - 1666 Kangaroo Valley Rd, KANGAROO VALLEY - Lot 2 DP 593972

	Planning Report S4.15 Environmental Planning & Assessment Act 1979
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DA Number	DA20/2110
Property	1666 Kangaroo Valley Rd, KANGAROO VALLEY - Lot 2 DP 593972
Applicant(s)	Allen Price & Scarratts - Tim Foley
Owner(s)	Bruno Henke and Elizabeth Henke

Conflict of interest declaration

I have considered the potential for a conflict of interest under the [Code of Conduct](#) and to the best of my knowledge no pecuniary and/or significant non-pecuniary conflict of interest exists.

NOTE: If you determine that a non-pecuniary conflict of interest is less than significant and does not require further action, you must provide a written explanation of why you consider that the conflict does not require further action in the circumstances. This statement should then be countersigned by the section manager.

Name

Choose an item.

2/11/2020

1. Detailed Proposal

The DA seeks approval for the construction of one (1) tourist cabin. The single-storey cabin is to contain two (2) bedrooms, a bathroom, separate water closet, kitchen, clothes washing facilities and a living and dining area. The cabin is to also include a covered deck area and attached covered carport.

Vehicular access is proposed via the existing access point to Kangaroo Valley Road.

2. Subject Site and Surrounds

- The subject site currently contains a single dwelling (as approved by BA79/0079) and tourist cabins (as approved by DA98-1646) with associated outbuildings and a swimming pool.
- The subject site is zoned RU1 Primary Production and is approximately 9.81ha in area.
- The subject site has existing access from Kangaroo Valley Road and is bounded by Moss Vale Road to the south.
- The subject site adjoins land zoned RU1 Primary Production.
- The subject site is identified as being part bush fire prone land.

Planning Report – S4.15 Assessment - 1666 Kangaroo Valley Rd, KANGAROO VALLEY - Lot 2 DP 593972



3. Background

Site History and Previous Approvals

Plain Sailing - since 2nd September 1996

Application	Appl. Date	Proposal	Status	Status Date
DR99-3748	05/11/2003	Septic Tank Application	Approved (P)	05/11/2003
DA98-1646	03/07/2001	Cabins	Approved (T)	03/07/2001
DS01-1084	30/03/2001	Section 96 Amendment	Approved (O)	07/05/2001
DA01-1282	19/02/2001	Dwelling Additions (Rural)	Approved (T)	22/02/2001
DR99-3748	05/05/2000	Septic Tank Application	Approved (P)	05/05/2000
DA98-1646	15/06/1999	Cabins	Approved (T)	13/07/1999
DR99-3748	21/05/1999	Septic Tank Application	Approved (P)	07/06/1999
DR99-1167	20/01/1999	Septic Tank Application	Approved (P)	12/02/1999
DA98-1646	22/12/1998	Cabins	Approved (T)	12/02/1999
DA98-1646	25/08/1998	Cabins	Approved (T)	12/02/1999

Old Applications prior to 2nd Sept 1996

Application	Proposal	Decision	Owner	Original Lot
BA71/0812	Metal Clad Shed	Approved	Coombs JG	
BA79/0079	Fibro Dwelling	Approved	Bonacina U&H	
ST79/0028		Approved	Bonacina U&H	

BA data prior to the 2nd Sept 1996

Application	Appl. Date	Proposal	Status	Status Date
BA90/0369	12/02/1990	SWIMMING POOLS	Approved	20/02/1990
BA92/2447	16/04/1992	GARAGES AND CARPORTS	Approved	08/05/1992

4. Consultation and Referrals

Internal Referrals			
Referral	Required	Recommendation	Comment
Development Engineer	<input checked="" type="checkbox"/>	Additional information is requested regarding a concept	Further additional information request to be issued.

Planning Report – S4.15 Assessment - 1666 Kangaroo Valley Rd, KANGAROO VALLEY - Lot 2 DP 593972

		stormwater plan, details of how the overflow from the rainwater tank will be treated and how this will achieve a neutral or beneficial effect on water quality using the NorBE assessment tool. Additionally, the development requires a 4.0m wide access carriageway to comply with PFBP 2019, which the current access road does not comply to. Additional information request is to be forwarded to the applicant regarding both points.	
Environmental Health Officer	<input checked="" type="checkbox"/>	Referral comments are reliant on the requested Wastewater report which is currently outstanding.	Awaiting referral comments.

External Referrals			
Agency	Required	Recommendation	Comment
Rural Fire Service	<input checked="" type="checkbox"/>	Spoke to Joanne at RFS 03/02/20. Assessment is continuing, due week beginning 15 January. Assessing officer is Peter Dowse. No concurrence has been provided.	Awaiting referral comments.
Water NSW	<input checked="" type="checkbox"/>	Additional Information requested 11/01/21 and 18/01/21 for a Wastewater Report. Wastewater report is outstanding, therefore concurrence has not been provided.	Awaiting referral comments.

5. Other Approvals

Integrated Approvals and Concurrences			
Agency	Required	Recommendation	Comment
Rural Fire Service	<input checked="" type="checkbox"/>	Joanne at RFS 03/02/20 advised assessment is continuing, due week beginning 15 February as payment was not received until 15 Jan. Assessing officer is Peter Dowse. No concurrence has been provided.	Awaiting referral comments.
Water NSW	<input checked="" type="checkbox"/>	Additional Information requested 11/01/21 and	Awaiting referral comments.

Planning Report – S4.15 Assessment - 1666 Kangaroo Valley Rd, KANGAROO VALLEY - Lot 2 DP 593972

	18/01/21 for a Wastewater Report. Wastewater report is outstanding, therefore concurrence has not been provided.	
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6. Statutory Considerations

This report assesses the proposed development/use against relevant State, Regional and Local Environmental Planning Instruments and policies in accordance with Section 4.15 (1) of the Environmental Planning and Assessment Act 1979 (EP&A Act). The following planning instruments and controls apply to the proposed development:

Instrument	Relevant	Instrument	Relevant
Shoalhaven LEP 2014	<input checked="" type="checkbox"/>	State Environmental Planning Policy No 55 - Remediation of Land	<input checked="" type="checkbox"/>
State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004	<input checked="" type="checkbox"/>	State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011	<input checked="" type="checkbox"/>

Additional information on the proposal's compliance with the above planning instruments is detailed below in Section 7 (Statement of Compliance/Assessment) of this report.

7. Statement of Compliance/Assessment

The following provides an assessment of the submitted application against the matters for consideration under Section 4.15 of the EP&A Act.

(a) Any planning instrument, draft instrument, DCP and regulations that apply to the land

Environmental Planning and Assessment Act 1979

Section 4.46 – Integrated Development			
Act	Provision	Approval	Relevant
Rural Fires Act 1997	100B	authorisation under section 100B in respect of bush fire safety of subdivision of land that could lawfully be used for residential or rural residential purposes or development of land for special fire protection purposes	<input checked="" type="checkbox"/>

i) Environmental planning instrument

SEPP 55 Remediation of Land

Question	Yes	No
1. Is the proposal for residential subdivision or a listed purpose (the list provided in Table 1 of the contaminated land assessment guidelines)?	Proceed to Question 3	⊙ Proceed to Question 2

Planning Report – S4.15 Assessment - 1666 Kangaroo Valley Rd, KANGAROO VALLEY - Lot 2 DP 593972

Question	Yes	No
2. Does the proposal result in a change of use (that is the establishment of a new use)?	⊖ Proceed to Question 3	Assessment under SEPP 55 and DCP not required.
3. Does the application proposed a new: ▪ Child care facility ▪ Educational use ▪ Recreational use ▪ Health care use ▪ Place of public worship ▪ Residential use in a commercial or industrial zone	Proceed to Question 5	⊖ Proceed to Question 4
4. Review the property file and conduct a site inspection of the site and surrounding lands. Is there any evidence that the land has been used for a listed purpose?	Proceed to Question 5	⊖ Proposal satisfactory under SEPP 55 and DCP.
5. Is the proposed land use likely to have any exposure path to contaminants that might be present in soil or groundwater?	Request contaminated site assessment	⊖ Proposal satisfactory under SEPP 55 and DCP.

SEPP BASIX 2004

Question	Answer
Are the street address, postcode and LGA correct on the BASIX certificate?	YES
Are the dwelling type and the number of bedrooms correct?	YES
Is the site area on the certificate correct?	YES
Is the roof area correct?	YES
Are the conditioned and unconditioned floor areas on the certificate correct?	YES
Are the landscaping/lawn areas correct on the certificate?	YES

Certificate No. 1164670S

SEPP (Sydney Drinking Water Catchment) 2011

The provisions of SEPP (Sydney Drinking Water Catchment) 2011 apply to the proposal. Clause 11 of the State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011 states that a consent authority, being Council, must not grant consent to the carrying out of development under Part 4 of the Act on land in the Sydney drinking water catchment except with concurrence of the Regulatory Authority, being Water NSW.

The application was referred to Water NSW for their comment on 08 January 2021. Water NSW requested additional information on 11 January for a *contemporary wastewater report* that;

- Identifies site constraints, buffer distances, relevant soils and climate information
- Provide current effluent load calculations
- Specifies the type of system (including specifications) installed and
- Shows the size and location of the existing and proposed effluent management area.

As a wastewater report has not been provided, the application currently does not have sufficient information for the Regulatory Authority to grant concurrence under Clause 11 and the proposal cannot be approved.

Planning Report – S4.15 Assessment - 1666 Kangaroo Valley Rd, KANGAROO VALLEY - Lot 2 DP 593972

The wastewater report is also required to satisfy the requirements of Chapter G8: Onsite Sewage Management of the Shoalhaven Development Control Plan 2014.

The applicant contends in an email response dated 4 December 2020 that the request for a wastewater report as being unnecessary as other documents such as a letter detailing the capacity of the system dated 12 January 1999 and a Wastewater Report prepared by Allen Price and Associates dated December 1998 were adequate for the assessment of the application. Their response states that:

"In total when the development is completed it will comprise of 6 bedrooms. The installed system is capable of catering for a population of 15 people which is adequate for this level of development".

Despite this response, Council staff and WaterNSW are unable to undertake the necessary assessment of the proposal against the provisions of the SEPP and Council DCP without a development-specific contemporary wastewater report.

No response has been provided to the most recent 18 January 2021 request for this report.

Council is not in a position to support the application in its current format as the application does not demonstrate compliance with the State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011 or Chapter G8: Onsite Sewage Management of the Shoalhaven Development Control Plan 2014.

Council cannot approve the application without the concurrence of WaterNSW, who have advised they cannot undertake their assessment of the proposal without the requested information, which the applicant has continuously resisted to provide.

Furthermore, Council's Development Engineer has noted that the applicant has not provided a concept stormwater plan to address the impacts of the proposed rainwater overflow. A NorBE assessment is required.

Shoalhaven LEP 2014

Land Zoning

The land is zoned RU1 Primary Production under the SLEP 2014.

Characterisation and Permissibility

The proposal is best characterised as Tourist Cabin under the SLEP 2014. The proposal is permitted within the zone with the consent of Council.

Zone objectives

Objective	Comment
To encourage sustainable primary industry production by maintaining and enhancing the natural resource base	Not inconsistent.
To encourage diversity in primary industry enterprises and systems appropriate for the area.	Consistent.
To minimise the fragmentation and alienation of resource lands.	Not inconsistent. There is no subdivision proposed.
To minimise conflict between land uses within this zone and land uses within adjoining zones.	Not inconsistent.
To conserve and maintain productive prime crop and pasture land.	Not inconsistent.

Planning Report – S4.15 Assessment - 1666 Kangaroo Valley Rd, KANGAROO VALLEY - Lot 2 DP 593972

To conserve and maintain the economic potential of the land within this zone for extractive industries.	Consistent.
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SLEP 2014 Clauses

Clause	Relevant	Comments	Complies/Consistent
Part 4 Principal development standards			
4.3	<input checked="" type="checkbox"/>	The property does not have a mapped maximum height. The proposed height of 3.4m does not exceed the maximum height of 11m as specified by part (2A).	Complies.
Part 7 Additional local provision			
7.5	<input checked="" type="checkbox"/>	A small portion of the site is mapped as Terrestrial Biodiversity to the North-East of the property. The proposed development is unlikely to have an adverse impact on ecological value or significance of the flora and fauna on the land, vegetation or habitat for native fauna. The proposed development is sited greater than 40m from the mapped area and is unlikely to adversely impact habitat elements on the land or fragment biodiversity structures.	Complies
7.8	<input checked="" type="checkbox"/>	The site is mapped as being affected by the Scenic Protection Area. The visual impact of the proposed tourist cabin is considered non-detrimental from a public place. Existing landscaping is considered appropriate and the siting of the proposed building in relation to the existing other tourist cabins is considered consistent with the objectives of the clause.	Complies.
7.11	<input checked="" type="checkbox"/>	Essential services are available at the site. Sewerage is managed by an on-site system. The cabins and residence are serviced by rainwater tanks for water.	Complies.

ii) Draft Environmental Planning Instrument

Draft Illawarra Shoalhaven Regional Plan 2041 does not raise any additional matters for consideration in this application.

iii) Any Development Control Plan

Shoalhaven DCP 2014

Generic Chapters	Relevant
G1: Site Analysis, Sustainable Design and Building Materials in Rural and Coastal Areas	<input checked="" type="checkbox"/>
The objectives and performance criteria of this chapter have been adequately addressed. The submitted site plan indicates compliance with the above.	
G2: Sustainable Stormwater Management and Erosion/Sediment Control	<input checked="" type="checkbox"/>
Stormwater will be stored and utilised by the cabin using a proposed 14000L tank. Stormwater overflow will be directed to existing onsite stormwater flows and post development volumes will not exceed the existing flows.	
G7: Waste Minimisation and Management Controls	<input checked="" type="checkbox"/>
An appropriate WMMP accompanies the proposal that satisfies the objectives of the chapter.	
G8: Onsite Sewage Management	<input checked="" type="checkbox"/>

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The requested wastewater report has not been provided and an assessment against the provisions of Chapter G8 is unable to be completed. Insufficient information has been provided for a full assessment of this Chapter to be undertaken. This remains an outstanding issue and forms part of the recommendation for refusal of the application.	
G15: Tourist and Visitor Accommodation	<input checked="" type="checkbox"/>
See detailed assessment in Appendix A.	
G21: Car Parking and Traffic	<input checked="" type="checkbox"/>
5.1 Car Parking Schedule Holiday Cabin – 1 space per holiday cabin bedroom or 2 car spaces per cabin where there are two or more bedrooms Comment: 2 Car spaces are proposed – one under cover, the second in the driveway in front on the cabin. Whilst this is not demonstrated on the plans (the second space), the site has sufficient hardstand area to accommodate the second space.	

Area Specific Chapters

Nil

iiia) Any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4

Nil

iv) Environmental Planning and Assessment Regulation 2000

92 What additional matters must a consent authority take into consideration in determining a development application?	
For the purposes of section 4.15 (1) (a) (iv) of the Act, the following matters are prescribed as matters to be taken into consideration by a consent authority in determining a development application:	
(a) (Repealed)	(a) Noted.
(b) in the case of a development application for the demolition of a building, the provisions of AS 2601,	(b) Not applicable.
(c) in the case of a development application for the carrying out of development on land that is subject to a subdivision order made under Schedule 5 to the Act, the provisions of that order and of any development plan prepared for the land by a relevant authority under that Schedule.	(c) Not applicable.
In this clause: AS 2601 means the document entitled Australian Standard AS 2601—1991: The Demolition of Structures, published by Standards Australia, and as in force at 1 July 1993.	Noted.

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Government Coastal Policy means the publication entitled NSW Coastal Policy 1997: A Sustainable Future for the New South Wales Coast, as published by the Government (and including any maps accompanying that publication and any amendments to those maps that are publicly notified), a copy of which may be inspected during ordinary office hours:	Not applicable.
(a) at any of the offices of the Department, or	
(b) at the offices of any of the councils of the local government areas listed in the Table to this clause	
98A Erection of signs	
For the purposes of section 4.17 (11) of the Act, the requirements of subclauses (2) and (3) are prescribed as conditions of a development consent for development that involves any building work, subdivision work or demolition work.	Noted. Sign is to be displayed during construction.
A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:	To be conditioned.
(a) showing the name, address and telephone number of the principal certifying authority for the work, and	
(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, and	
(c) stating that unauthorised entry to the work site is prohibited.	
Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.	To be conditioned.

Council Policies

Shoalhaven Contribution Plan 2019

The proposed development is considered to increase the demand for community facilities in accordance with the Shoalhaven Contributions Plan 2019 (the Plan). The development is most aptly characterised as an Caravan Park/Tourist Accommodation development for the purpose of calculating contributions under the Plan. Should the application be recommended for approval, a condition requiring payment in accordance with the Plan would be imposed.

Planning Report – S4.15 Assessment - 1666 Kangaroo Valley Rd, KANGAROO VALLEY - Lot 2 DP 593972

Section 94 ET Calculations - DA20/2110 (UPN: 45649)

Close
Reset
Print
Return Calc

☒ Residential ☐ Non-Residential

Calculation Type: Caravan Park/Tourist Accommodation

Caravan Park/Tourist Accommodation

Proposed:

0		1 Bedroom Units
1		2 Bedroom Units
0		3 Bedroom Units
0		4 Bedroom Units

Existing:

0		Lots/Dwellings
0		1 Bedroom Units
0		2 Bedroom Units
0		3 Bedroom Units
0		4 Bedroom Units

Total ETs: 0.6

NOTE:
Prior to the issue of development consent which requires contributions in accordance with this Plan, credit of the respective ETs or m2 is given to recognise the original approved land use of the development site (i.e. dwelling / building / subdivision).

Fee Estimate Date: 04 Feb 2021

Project	Description	Rate	Qty	Total	GST	GST Incl
01AREC0009	Planning Area 1 recreational facilities upgrades various locations	\$745.30	0.6	\$447.18	\$0.00	\$447.18
01AREC2006	Northern Shoalhaven Sports Stadium	\$582.03	0.6	\$349.22	\$0.00	\$349.22
01AREC3007	Nowra Swimming Pool Expansion	\$414.31	0.6	\$248.59	\$0.00	\$248.59
CWAREC0005	Shoalhaven Community and Recreational Precinct SCArP Cambewarra Road Bomaderry	\$2,522.83	0.6	\$1,513.70	\$0.00	\$1,513.70
CWFIRE2001	Citywide Fire & Emergency services	\$138.13	0.6	\$82.88	\$0.00	\$82.88
CWFIRE2002	Shoalhaven Fire Control Centre	\$202.07	0.6	\$121.24	\$0.00	\$121.24
CWMGMT3001	Contributions Management & Administration	\$574.39	0.6	\$276.28	\$0.00	\$276.28
				Sub Total:		\$3,039.08
				GST Total:		\$0.00
				Estimate Total:		\$3,039.08

(b) The Likely impacts of that development, including environmental impacts on the natural and built environments, and social and economic impacts in the locality

Head of Consideration	Comment
Natural Environment	As insufficient information has been provided in relation to onsite wastewater management it is unclear as to the impacts on the natural environment.
Built Environment	It is considered that there will be no adverse impacts upon the built environment.
Social Impacts	It is considered that there will be minimal social impacts.

Planning Report – S4.15 Assessment - 1666 Kangaroo Valley Rd, KANGAROO VALLEY - Lot 2 DP 593972

Head of Consideration	Comment
Economic Impacts	It is considered that there will be no adverse economic impacts.

(c) Suitability of the site for the development

As insufficient information has been provided it is unclear as to whether the site will be suitable for the development.

(d) Submissions made in accordance with the Act or the regulations

The DA was notified in accordance with Council's Community Consultation Policy for Development Applications. No submissions were received by Council during the notification period.

(e) The Public Interest

Insufficient information has been provided to determine that the proposed development is in the public interest.

Delegations

Guidelines for use of Delegated Authority

The Guidelines for use of Delegated Authority have been reviewed and the assessing officer does not have the Delegated Authority to determine the Development Application.

Given the recommendation of this report, the application must be determined by the elected Council having regard to the resolution of Council.

Recommendation

This application has been assessed having regard for section 4.15 (Matters for consideration) under the Environmental Planning and Assessment Act 1979. As such, it is recommended that Development Application No. DA20/2110 be refused.

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Appendix A– Assessment Checklist: Chapter G15 Tourist and Visitor Accommodation

5.1 Generic Provisions		
5.1.1 Building Design and Site Layout Provisions		
Performance Criteria	Acceptable Solution	Compliance
<p>P1.1 Visual impact on scenic, natural landscape and adjoining properties is minimised.</p> <p>P1.2 Visual impact is not excessively impacted by the scale or built form of the development.</p> <p>P1.3 Materials and built form are sympathetic to the character of the area.</p>	<p>A1.1 The floor area of a single tourist cabin does not exceed 120m².</p> <p>A1.2 The building does not exceed one storey in height.</p> <p>A1.3 The proposal is designed by a suitably qualified and experienced building designer or registered architect.</p> <p>A1.4 Large residential or urban-style buildings are avoided and your application includes a schedule of materials and colours that will not cause unacceptable visual impacts.</p>	<p>Complies. The total floor area of the cabin inclusive of decking is 62m².</p> <p>Complies – Cabin is one storey.</p> <p>Complies – plans prepared by an architect.</p> <p>Complies. The Cabin is not residential or urban in character.</p>
<p>P2 Areas with identified environmental attributes and/or scenic protection are conserved and protected.</p>	<p>A2.1 Buildings are designed to complement the rural landscape and the attributes of the property, the site analysis must demonstrate:</p> <ul style="list-style-type: none"> - Buildings are not located on prominent ridgelines or knolls. - Buildings are setback a minimum of 30m from adjoining property boundaries. - Buildings and their asset protection zones are located in existing cleared areas. - Access roads and power lines have minimal impact on environmental and scenic attributes for the area and property. 	<p>The proposed tourist cabin (TC) is not located on a ridgeline or knoll.</p> <p>The proposed TC is located 49.05m from the boundary fronting Moss Vale Road and 170.21m from the Kangaroo Valley Rd frontage. The proposed TC is located further than 30m from all other property boundaries.</p> <p>The site and area surrounding the proposed TC is already cleared.</p> <p>Existing access roads and power lines are already installed at the property. Complies.</p>
<p>P3 Natural habitat and threatened species are conserved and protected</p>	<p>A3.1 The site plan details riparian corridors, existing vegetation and any proposal to remove</p>	<p>No vegetation is proposed for removal, the existing on-site</p>

Planning Report – S4.15 Assessment - 1666 Kangaroo Valley Rd, KANGAROO VALLEY - Lot 2 DP 593972

	vegetation, including areas for access and onsite sewage management.	system will absorb the additional demand. Not inconsistent.
P4 Items or places of heritage significance	A4.1 Your proposal must: <ul style="list-style-type: none"> - comply with Clause 5.10 Shoalhaven LEP 2014 and - Be sympathetic to the heritage characteristics of existing development on site or in the vicinity. 	The property is not heritage listed. No adjoining properties are heritage listed.
P5 The development meets sustainability requirements for the construction and life of the development.	A5.1 A BASIX certificate must be lodged with your development application, dependent on the Building Code of Australia classification of the building. Alternatively energy efficiency may need to be addressed in accordance with Part J of the Building Code of Australia.	BASIX certificate no: 1164670S was provided with the applicant.
P6 The development meets accessibility requirements.	A6.1 Where buildings and car parks are required to be accessible, the development will comply with Part D3 of the Building Code of Australia, AS2890.1 and AS2890.6.	One of the 3 onsite cabins is accessible as per Part D3 requirements which requires 1 per 4 cabins to be accessible. Removes the need for the proposed cabin to be accessible. Complies.
5.1.2 Environmental Considerations		
P7 Water quality in local watercourses and designated water catchment areas are protected and conserved. Effluent disposal is in accordance with best practice and industry standards.	A7.1 A development application is to include details of the proposed onsite effluent disposal system and complies with Chapter G8: Onsite Sewage Management. A7.2 A development application complies with Clause 7.6 Shoalhaven LEP 2014. A7.3 If the property is within the Sydney drinking water catchment, a development application complies with State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011.	Unable to determine the impact of the proposed development as insufficient information has been provided in relation to onsite wastewater management.
P8 Construction impacts on the environment and potential for landslip are minimised.	A8.1 Development is not located on slopes exceeding 20%. A8.2 Development is related to the slope of the land and is split	Complies – the proposed site for the cabin is not on a slope exceeding 20%. The development is related

Planning Report – S4.15 Assessment - 1666 Kangaroo Valley Rd, KANGAROO VALLEY - Lot 2 DP 593972

	design or pole frame construction.	to the land which is reasonably flat.
P9 Erosion, sediment and stability problems are minimised and excessive cut and fill is avoided	A9.1 Vehicular and pedestrian access does not impact environmentally sensitive lands. A9.2 Your design has considered Chapter G2: Sustainable Stormwater Management and Erosion Sediment Control.	Complies – no impact to environmentally sensitive lands. The design has considered G2 – a rainwater tank is proposed for installation (14000L). Stormwater will be directed to existing flow paths. An erosion and sediment control plan has been provided.
P10 Sensitive environments, such as wetlands (whether or not designated), rainforest areas, endangered ecological communities and threatened species habitats are protected and conserved.	A10.1 Development is located in existing cleared areas. A10.2 The removal of native vegetation is minimised. A10.3 Impacts on native flora and fauna are minimised. A10.4 Your application has considered Chapter G5: Threatened Species Impact Assessment, Chapter G4: Removal and Amenity of Trees and associated legislation. A10.5 A 100m buffer is applied from development (including effluent reserve areas and access) and wetlands mapped by State Environmental Planning Policy No. 14 – Coastal Wetlands (SEPP 14 wetlands)	Complies- the development is proposed for an already cleared area of the property. No native vegetation is proposed to be cleared.
P11 Exposure to the atmosphere of acid sulfate soils is avoided.	A11.1 Your application complies with Clause 7.1 of Shoalhaven LEP 2014 and the development does not result in the exposure of acid sulfate soils.	Complies – the site is not mapped as containing acid sulphate soils.
5.1.3 Natural Hazards		
The application has been referred to Rural Fire Service as the site is mapped as being Bushfire Prone Land.		
5.1.4 Protection of Amenity		
P12 To conserve the rural character of a locality and the amenity enjoyed by local residents and neighbouring properties is preserved.	A12.1 The minimum setback for tourist related development including tennis courts and swimming pools are setback 30m from adjoining property boundaries.	Complies – the tourist cabin is setback approximately 49m from the closest boundary.

Planning Report – S4.15 Assessment - 1666 Kangaroo Valley Rd, KANGAROO VALLEY - Lot 2 DP 593972

	<p>A12.2 Development is grouped to minimise environmental and amenity impacts.</p> <p>A12.3 A development application includes a landscape plan demonstrating appropriate screening to visually protect the surrounding dwellings and public roads.</p> <p>A12.4 Any external artificial lighting should be suitably designed, located and orientated to minimise impacts to adjoining properties.</p>	<p>The development is grouped near the existing approved cabins on site.</p> <p>No further landscaping is proposed for the proposed development. Should the application be recommended for approval, a condition would be recommended for the applicant to provide landscaping plan prior to issue of CC.</p>
P13 To minimise noise nuisance and loss of privacy to adjoining residents, as well as for guests of the proposed tourist development.	<p>A13.1 Hours of operation to associated food and drink premises are limited to 10:30pm Sunday to Thursday and 12:00am Friday and Saturday nights.</p> <p>A13.2 Noise level from the premises measured at the property boundary does not exceed background levels by more than 5 dba.</p>	<p>Not relevant as food and drink is not proposed.</p> <p>It is considered that the development would be able to comply with this provision. This would be subject to a condition of consent.</p>
P14 To ensure the orderly and co-ordinating approach to staged development and to ensure minimal impacts on adjoining property.	<p>A14.1 A staging plan is provided with your application and includes details of:</p> <ul style="list-style-type: none"> - Cabins to be constructed during each stage; - Management of the site till completion; and - Approximate timeframe for completion. 	<p>Only one tourist cabin is proposed – no staging proposed.</p>
5.1.5 Access and Car Parking		
P15 Access to the tourist facility is safe, practical and designed in a way that minimises environmental impacts.	<p>A15.1 Access to the development does not compromise or interfere with other lawful uses of the land, such as agriculture.</p> <p>A15.2 Access roads are designed to follow the contours of land with minimal earthworks and site disturbance.</p> <p>A15.3 New access roads do not traverse areas with a gradient in</p>	<p>Complies. An existing driveway enables access to the site.</p> <p>Existing access road complies.</p> <p>No new access proposed.</p>

Planning Report – S4.15 Assessment - 1666 Kangaroo Valley Rd, KANGAROO VALLEY - Lot 2 DP 593972

	<p>excess of 20% for excessive distances.</p> <p>A15.4 Soil erosion and sedimentation control devices are provided for the construction and life of the development.</p> <p>A15.5 The minimum standard of access road from a public road to the tourist development is all-weather gravel and slopes in excess of 12% are sealed (i.e. bitumen or concrete).</p> <p>A15.6 Where bitumen sealed sections are discontinuous, with gravel sections 200 metres or less, the bitumen seal it to be continuous.</p> <p>A15.7 Where pavements 12% and greater commence at a tangent point, or within a curve, this part of the access must be bitumen sealed.</p> <p>A15.8 Where a right of way requires substantial upgrading or will be substantially impacted by the tourist development, a separate Development Application may be required together with the consent of each owner whose property is affected by the development and associated upgrading works.</p>	<p>Suitable sediment and erosion control plan has been provided with the application.</p> <p>Existing access road complies.</p> <p>Not applicable.</p> <p>Not applicable.</p> <p>Not applicable.</p>
<p>P16 Development has safe and practical access from a public road to the tourist development and designated visitor car parking spaces.</p>	<p>A16.1 Vehicle access is safe, convenient and suitable for two-wheel drive conventional vehicles.</p> <p>A16.2 Access to the tourist development and manager's residence is shared from the public road.</p> <p>A16.3 Depending on the scale of development and existing access, Council may require upgrading of the existing public road access to provide safe entry to the property.</p> <p>A16.4 Access roads/driveways are a minimum width of 3.5 metres (including 0.5m shoulders) or wider for development remotely located to allow safe passing of vehicles.</p>	<p>Vehicle access is appropriate for all car types – complies. Development Engineer has noted that the access doesn't comply with the Planning for Bushfire Protection 2019.</p> <p>Complies. No concerns raised in the Development Engineer referral.</p> <p>Complies – the existing driveway exceeds 3.5m wide</p>

Planning Report – S4.15 Assessment - 1666 Kangaroo Valley Rd, KANGAROO VALLEY - Lot 2 DP 593972

	<p>Variations to this requirement may be considered where passing bays and single 'one way' direction is proposed.</p> <p>A16.5 Vehicle access in bushfire prone areas meets the requirements of the NSW Rural Fire Service Planning for Bushfire Protection 2006.</p> <p>A16.6 Vehicle access in flood prone areas meets the requirements of Chapter G9: Development on Flood Prone Land.</p>	<p>and has ample space either side of the driveway.</p> <p>Access arrangements to be confirmed by RFS Referral, however the D. Engineer has raised that the current access does not meet PFBFP 2019. This needs to be addressed by the applicant.</p> <p>Not applicable – not a flood affected property</p>
P17 The property has legal and practical access from a public road to the tourist development and designated visitor car parking spaces.	<p>Public Road Access</p> <p>A17.1 The property has direct access to a public road;</p> <p>A17.2 Upgrading and maintenance works may be required depending on the traffic generated by the development. Refer to Table 4 and 5.</p> <p>Private Road Access</p> <p>A17.3 The property has access via a right of way or right of carriageway.</p> <p>A17.4 Where required, the upgrading of existing access must be provided in accordance Council's Standards and as identified in Table 4 and 5 based on the number of traffic movements per day.</p>	<p>Complies – the property has existing access to Kangaroo Valley Rd.</p> <p>One additional cabin is proposed. Upgrade may be required due to PFBFP 2019 requirements as per Development Engineer comments.</p> <p>N/A has direct public road access</p> <p>Additional vehicle movements can be absorbed by the existing access. No upgrade required.</p>
P18 Satisfactory access is provided for people with disabilities.	<p>A18.1 Car parking for people with disabilities is provided in accordance with Chapter G21: Car Parking and Traffic, Australian Standards and the Building Code of Australia.</p>	<p>An existing cabin onsite is designed to accessibility requirements. N/A to this cabin.</p>
P19 The owners and users of private roads are not disadvantaged by tourist development on land without public road frontage.	<p>A19.1 The manager's residence and associated tourist development share a single point of access.</p> <p>A19.2 Car parking and servicing areas are located away from prominent views and appropriately screened.</p>	<p>The managers residence and tourist development are both accessed from the same access from KV Rd.</p> <p>Car parking is connected to the</p>

Planning Report – S4.15 Assessment - 1666 Kangaroo Valley Rd, KANGAROO VALLEY - Lot 2 DP 593972

	A19.3 The provision of parking and access for the development is unobtrusive and sympathetic to the existing landforms	tourist cabin, not in prominent views. Complies.
5.1.6 Services		
P20 Water and electricity supplies are satisfactory.	A20.1 Adequate grid power is available or there is a viable alternative supply.	Complies.
P21 The increase in reticulated services will not adversely impact the environment	A21.1 A satisfactory supply of potable water is provided.	Potable water is provided by rainwater tanks.
P22 The development is resource efficient	A22.1 The proposal incorporates the use of adequate alternative and renewable energy and water resources.	Complies.
5.3 Tourist Development in Rural Areas		
P24 Sufficient area is available for the development so as to not impact on surrounding land use or amenity of the locality.	A24.1 A minimum area of two (2) hectares is required for all forms of tourist development in rural areas; or A24.2 A minimum area of ten (10) hectares is required for a tourist resort development; and A24.3 The minimum area must be calculated from land where tourist use is permissible, all other areas must be excluded from density calculations.	Complies. Site is 9.81 ha. Resort development not proposed – Not applicable. Noted.
P25 Density of tourist cabins and guesthouses should be of a rural nature and be consistent with the surrounding areas.	A25.1 The number of cabins permitted is outlined within the table. A25.2 The number of guestrooms in guesthouses must not exceed 10 unless the land area exceeds six (6) hectares to a total maximum of 20. A25.3 Where parallel development is proposed that include the use of multiple outbuildings, each building used for tourist and visitor accommodation must be included in the calculation of acceptable density.	Complies. The total cabins on site (including proposed) is 4. The minimum requirement is for 6ha. The site is 9.81ha. Guesthouse not proposed. N/A N/A
P26 Length of stay in tourist accommodation is limited to avoid use as permanent residential accommodation.	A26.1 The maximum length of consecutive stay is 42 days and 150 days in any one year. A26.2 Permanent accommodation of tourist accommodation other than an	Noted. Noted. This would be subject to a condition of consent.

Planning Report – S4.15 Assessment - 1666 Kangaroo Valley Rd, KANGAROO VALLEY - Lot 2 DP 593972

	approved manager's residence is strictly prohibited.	
5.5 Management of Tourist and Visitor Accommodation		
P27 Integrated tourist facilities include a range of support infrastructure	A27.1 The proposal includes provision for a manager's residence and permanent on-site full-time management; or A27.2 The proposal involves not more than five (5) tourist cabins and Council is satisfied that the site will be managed appropriately. A27.3 Proposals include support infrastructure such as golf course, swimming pool, gym, tennis court, BBQ facilities, children's playground or walking/cycling trails.	Complies – managers residence is already on the site. Does not propose over 5 cabins. N/A Not applicable to this application.
P28 The increase in reticulated services will not adversely impact the environment	A28.1 A satisfactory supply of potable water is provided	An additional rainwater tank is proposed to accommodate the provision of water for the additional tourist cabin – complies.
P29 The scale of the manager's residence is appropriate and in proportion to the scale of the tourist facility.	A29.1 The proposal does not require an additional dwelling-house for occupation by an on-site manager (for larger scale proposals this aspect could be reconsidered). A29.2 The manager's residence is integrated into the tourist facility to allow supervision of the facility. A29.3 There is no physical separation, such as watercourses or inaccessible gullies, which would impede internal access between the manager's residence and the tourist facilities. A29.4 Layout of the development facilitates on-site management and easy access to the manager is available at all times. A29.5 Manager's residence does not exceed the ratio of 1:20 tourist cabins or a 20 guestroom maximum. A29.6 Manager's residence is clearly ancillary to the overall	Complies. Complies. Complies. Complies. Complies. Complies.

Planning Report – S4.15 Assessment - 1666 Kangaroo Valley Rd, KANGAROO VALLEY - Lot 2 DP 593972

	tourist facility in terms of the project cost and scale of building.	
P30 Where a dwelling entitlement cannot be demonstrated, a managers residence may only be considered if it is part of a bona fide tourist facility.	<p>A30.1 The property includes at least 10 hectares of land zoned to allow tourist and visitor accommodation or eco-tourist facilities; and</p> <p>A30.2 The proposal includes a minimum of five (5) tourist cabins; and</p> <p>A30.3 If the development is staged, the first stage must include a minimum of three (3) tourist cabins and one tourist cabin can be temporarily occupied as a manager's residence until the development is completed.</p>	N/A – existing dwelling on the property.



Bridge Rd, Nowra NSW 2541 | 02 4429 3111
Deering St, Ulladulla NSW 2539 | 02 4429 8999

Address all correspondence to

The Chief Executive Officer, PO Box 42, Nowra NSW 2541 Australia
council@shoalhaven.nsw.gov.au | DX5323 Nowra | Fax 02 4422 1816

shoalhaven.nsw.gov.au     

**NOTICE TO APPLICANT OF DETERMINATION OF DEVELOPMENT APPLICATION
BY WAY OF REFUSAL**

Environmental Planning and Assessment Act, 1979
DA20/2110

TO:

Allen Price & Scarratts - Tim Foley
PO Box 73
NOWRA NSW 2541

being the applicant(s) for DA20/2110 relating to:

1666 Kangaroo Valley Rd, KANGAROO VALLEY - Lot 2 DP 593972

REFUSED USE AND/OR DEVELOPMENT:

Construction of Tourist Cabin

DETERMINATION DATE:

REFUSAL DATE:

Pursuant to Section 4.18 of the Act, notice is hereby given that the above application has been determined by **REFUSAL** for the reasons as outlined in Part A.

DE21.14 - Attachment 2

Determination Notice by way of Refusal - Page 2 of 3 - DA20/2110

PART A

1. Insufficient information has been provided to complete assessment of the development by the Regulatory Authority (Water NSW) and to determine whether the development would have a neutral or beneficial effect on water quality. The concurrence of the Regulatory Authority has not been granted as required by the provisions of clause 11 of State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011. (Section 4.15(1)(a)(i) of Environmental Planning and Assessment Act, 1979.)
2. Insufficient information has been provided to complete assessment of the development against the provisions of Chapter G8: Onsite Sewage Management of Shoalhaven Development Control Plan 2014. (Section 4.15(1)(a)(iii) of Environmental Planning and Assessment Act, 1979.)
3. The development application has not adequately demonstrated that the proposal will not have adverse environmental impacts on the natural environment. (Section 4.15(1)(b) of Environmental Planning and Assessment Act, 1979.)
4. The information submitted with the development application does not satisfactorily demonstrate that the site is suitable for the proposed use. (Section 4.15(1)(c) of Environmental Planning and Assessment Act, 1979.)
5. Having regard to insufficient information being provided, the granting of development consent is not considered to be in the public interest. (Section 4.15(1)(e) of Environmental Planning and Assessment Act, 1979.)

RIGHTS OF REVIEW AND APPEAL**Determination under Environmental Planning and Assessment Act, 1979**

Division 8.2 of the EP&A Act, 1979 confers on an applicant who is dissatisfied with the determination a right to request the council to review its determination. The request and determination of the review must be undertaken within the prescribed period.

Division 8.3 of the EP&A 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 the prescribed period.

An appeal under Division 8.3 of the EP&A Act, 1979 by an objector may be made only within the prescribed period.

Review of Modification Decision

An application for a review under section 8.3 of the Act is to be made within the prescribed period.

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 the prescribed period.

Determination Notice by way of Refusal - Page 3 of 3 - DA20/2110

GENERAL ADVICE

Privacy Notification

Personal information contained on this Development Consent and any associated documents will be published on Council's website as required by the Government Information (Public Access) Act 2009 (GIPAA).

SIGNED on behalf of Shoalhaven City Council: