

Development & Environment Committee

Meeting Date: Tuesday, 11 May, 2021
Location: Council Chambers, City Administrative Building, Bridge Road, Nowra
Time: 5.00pm

Membership (Quorum - 5)
Clr Mitchell Pakes - Chairperson
Clr Bob Proudfoot
All Councillors
Chief Executive Officer or nominee

Please note: The proceedings of this meeting (including presentations, deputations and debate) will be webcast and may be recorded and broadcast under the provisions of the Code of Meeting Practice. Your attendance at this meeting is taken as consent to the possibility that your image and/or voice may be recorded and broadcast to the public.

Agenda

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4. **Mayoral Minute**
5. **Deputations and Presentations**
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8. Confidential Reports

Nil

Development & Environment Committee

Delegation:

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

- i. The Committee cannot make a decision to make a local environmental plan to classify or reclassify public land under Division 1 of Part 2 of Chapter 6 of the LG Act;
- ii. The Committee cannot review a section 8.11 or section 8.9 EPA Act determination made by the Council or by the Committee itself;
- iii. The Committee cannot exercise any function delegated to the Council which by the terms of that delegation cannot be sub-delegated;
- iv. The Committee cannot exercise any function which s377(1) of the LG Act provides cannot be delegated by Council; and
- v. The Committee cannot exercise a function which is expressly required by the LG Act or any other Act to be exercised by resolution of the Council.

SCHEDULE

- a. All functions relating to the preparation, making, and review of local environmental plans (LEPs) and development control plans (DCPs) under Part 3 of the EPA Act.
- b. All functions relating to the preparation, making, and review of contributions plans and the preparation, entry into, and review of voluntary planning agreements under Part 7 of the EPA Act, as well as the preparation, entry into, and review of works in kind agreements that provide a material public benefit in part or full satisfaction of a condition imposed under Part 7 of the EPA Act.
- c. The preparation, adoption, and review of policies and strategies of the Council in respect of town planning and environmental matters and the variation of such policies.
- d. Determination of variations to development standards related to development applications under the EPA Act where the development application involves a development which seeks to vary a development standard by more than 10% and the application is accompanied by a request to vary the development standard under clause 4.6 of Shoalhaven Local Environmental Plan 2014 or an objection to the application of the development standard under State Environmental Planning Policy No. 1 – Development Standards.
- e. Determination of variations from the acceptable solutions and/or other numerical standards contained within the DCP or a Council Policy that the Chief Executive Officer requires to be determined by the Committee
- f. Determination of development applications that Council requires to be determined by the Committee on a case by case basis.
- g. Review of determinations of development applications under sections 8.11 and 8.9 of the EP&A Act that the Chief Executive Officer requires to be determined by the Committee.
- h. Preparation, review, and adoption of policies and guidelines in respect of the determination of development applications by other delegates of the Council.
- i. The preparation, adoption and review of policies and strategies of the Council in respect to sustainability matters related to climate change, biodiversity, waste, water, energy, transport, and sustainable purchasing.

- j. The preparation, adoption and review of policies and strategies of the Council in respect to management of natural resources / assets, floodplain, estuary and coastal management.

MINUTES OF THE DEVELOPMENT & ENVIRONMENT COMMITTEE

Meeting Date: Tuesday, 6 April 2021
Location: Council Chambers, City Administrative Building, Bridge Road, Nowra
Time: 5.00pm

The following members were present:

Clr Mitchell Pakes - Chairperson
Clr Amanda Findley
Clr Joanna Gash
Clr John Wells – left 8.37pm
Clr Patricia White
Clr Kaye Gartner
Clr Nina Digiglio
Clr Annette Alldrick – joined 5.17pm
Clr John Levett
Clr Andrew Guile – joined 6.02pm (remotely) – left 8.37pm
Clr Greg Watson
Clr Mark Kitchener
Clr Bob Proudfoot
Mr Stephen Dunshea - Chief Executive Officer

Apologies / Leave of Absence

Nil

Confirmation of the Minutes

RESOLVED (Clr White / Clr Findley) MIN21.169

That the Minutes of the Development & Environment Committee held on Tuesday 2 March 2021 be confirmed.

CARRIED

Declarations of Interest

Nil

MAYORAL MINUTES

Nil

DEPUTATIONS AND PRESENTATIONS

DE21.31 - Modification Application - DS20/1619 - 2 Lawrence Ave & 61 Kinghorne St Nowra - Lot 2 DP 1264717 (formerly known as Lot 2 DP 1243710) & Lot 1 DP 1243710

Mr Adrian Turnbull addressed the meeting and spoke in favour of the recommendation.

DE21.33 - Development Application - DA20/1494 – 25 Sunnymede Lane, Berry – Lot 3 DP 713138

Ms Melissa Scarr addressed the meeting and spoke in favour of the recommendation.

Note: Cllr Alldrick joined the meeting at 5.17pm

Procedural Motion - Bring Item Forward

RESOLVED (Cllr Wells / Cllr Gartner)

MIN21.170

That the matters of the following items be brought forward for consideration.

- DE21.31 – Modification Application - DS20/1619 - 2 Lawrence Ave & 61 Kinghorne St Nowra - Lot 2 DP 1264717 (formerly known as Lot 2 DP 1243710) & Lot 1 DP 1243710
- DE21.33 – Development Application - DA20/1494 – 25 Sunnymede Lane, Berry – Lot 3 DP 713138

CARRIED

DE21.31 Modification Application - DS20/1619 - 2 Lawrence Ave & 61 Kinghorne St Nowra - Lot 2 DP 1264717 (formerly known as Lot 2 DP 1243710) & Lot 1 DP 1243710

**HPERM Ref:
D21/70921**

Recommendation (Item to be determined under delegated authority)

That Modified Development Application No. DS20/1619 seeking minor alterations and modification to conditions of Development Consent No. DA18/2326 be determined by way of part approval as set out in the Draft Notice of Determination (Attachment 1) and part refusal for the reasons outlined in this Report.

RESOLVED (Cllr Findley / Cllr Digiglio)

MIN21.171

That Council:

1. Determine by way of approval the proposed modifications to conditions of consent other than Conditions 17 and 33.
2. That in respect of Condition 17 a further report be submitted to Council in respect of contributions and any discount conditions applicable or other legal issues arising from State legislation or case law in respect of varying the car parking.
3. That in respect of Condition 33, access design standards for Lawrence Avenue, a further report be submitted to the next meeting of the Development & Environment Committee proposing an interim solution to pedestrian access issues (including disability access).

FOR: Clr Pakes, Clr Findley, Clr Gash, Clr Wells, Clr White, Clr Gartner, Clr Digiglio, Clr Alldrick, Clr Levett, Clr Watson, Clr Kitchener, Clr Proudfoot and Stephen Dunshea

AGAINST: Nil

CARRIED

Note: Clr Guile joined the meeting at 6.02pm

DE21.33 Development Application - DA20/1494 – 25 Sunnymede Lane, Berry – Lot 3 DP 713138	HPERM Ref: D21/79136
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Recommendation (Item to be determined under delegated authority)

That Council determine Development Application DA20/1495 by way of approval subject to the conditions at attachment 10.

RESOLVED (Clr Gash / Clr Pakes) MIN21.172

That Council determine Development Application DA20/1495 by way of approval subject to the conditions at attachment 10.

FOR: Clr Pakes, Clr Findley, Clr Gash, Clr Gartner, , Clr Watson, Clr Kitchener, Clr Proudfoot and Stephen Dunshea

AGAINST: Clr Wells, Clr White, Clr Digiglio, Clr Alldrick, Clr Guile and Clr Levett

CARRIED

Note: A Rescission Motion was received on this item.

NOTICES OF MOTION / QUESTIONS ON NOTICE

DE21.22 Notice of Motion - DA20/2284 - Island Point Rd St Georges Basin - Lot 11 DP 1143842 - Extension of Time	HPERM Ref: D21/117811
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Recommendation (Item to be determined under delegated authority)

That the time for submission of additional changes to Development Application DA20/2284 - Island Point Rd St Georges Basin - Lot 11 DP 1143842 by the applicant be extended by 5 weeks from today's date, and Council provide advice as to whether, subject to the requested changes being made, it could support an approval potentially against RFS advice.

RESOLVED (Clr Watson / Clr Pakes) MIN21.173

That the time for submission of additional changes to Development Application DA20/2284 - Island Point Rd St Georges Basin - Lot 11 DP 1143842 by the applicant be extended by 5 weeks from today's date.

FOR: Clr Pakes, Clr Findley, Clr Gash, Clr Wells, Clr White, Clr Gartner, Clr Alldrick, Clr Guile, Clr Watson, Clr Kitchener, Clr Proudfoot and Stephen Dunshea

AGAINST: Clr Digiglio and Clr Levett

CARRIED

**DE21.23 Notice of Motion - Biodiversity Conservation Act
Exemption for Employment Lands**

**HPERM Ref:
D21/122033**

Recommendation (Item to be determined under delegated authority)

That:

1. The CEO and other appropriate staff take part in a joint Deputation with the property owners of 13 Central Avenue South Nowra (Lot 36 DP 19407) to the Minister for the Environment The Hon. Matt Kean MP with a view to having the NSW Government introduce a general exemption from the biodiversity offset scheme for zoned employment lands in NSW.
2. The deputation be organised through the Member for South Coast the Hon. Shelley Hancock MP.

RESOLVED (Clr Watson / Clr Wells)

MIN21.174

That:

1. The CEO and other appropriate staff take part in a joint Deputation with representatives of affected owners in the South Nowra Industrial Lands to the Minister for the Environment The Hon. Matt Kean MP with a view to having the NSW Government introduce a general exemption from the biodiversity offset scheme for zoned employment lands.
2. The deputation be organised through the Member for South Coast the Hon. Shelley Hancock MP.

FOR: Clr Pakes, Clr Gash, Clr Wells, Clr White, Clr Guile, Clr Watson, Clr Kitchener, Clr Proudfoot and Stephen Dunshea

AGAINST: Clr Findley, Clr Gartner, Clr Digiglio, Clr Alldrick and Clr Levett

CARRIED

Note: A Rescission Motion was received on this item.

Clr Watson raised a Point of Order against Clr Levett for making assertions about Clr Watson's relationship with the property owners and potential non-pecuniary conflicts of interest, and asked Clr Levett to withdraw the comment and apologise unreservedly. The Chairperson cautioned Clr Levett asked Clr Levett to withdraw his comments and apologise, and issued a reminder that all Councillors are individually responsible for disclosure of any conflicts of interest. Clr Levett withdrew the comments.

Clr Watson requested that Clr Levett also make an apology.

Clr Watson raised a Point of Order against Clr Levett for being disorderly. The Chairperson clarified that under Paragraph 15.11(d) of the Code of Meeting Practice, he had upheld the earlier Point of Order and required Clr Levett to withdraw the comments and apologise unreservedly. Clr Levett apologised unreservedly for the comments.

Procedural Motion - Bring Item Forward

RESOLVED (Clr Wells / Clr Proudfoot)

MIN21.175

That the matter of item DE21.30 - Draft Collingwood Beach Dunecare Action Plan be brought forward for consideration.

CARRIED

DE21.30 Draft Collingwood Beach Dunecare Action Plan**HPERM Ref:
D21/93736****Recommendation (Item to be determined under delegated authority)**

That Council:

1. Adopt the Collingwood Beach Dunecare Action Plan (see attachment 1).
2. Endorse the Collingwood Beach maintenance standard for cycleways and beach accessways (see attachment 2).
3. Note that \$37,700 has been allocated in the 2021/22 budget as Council's contribution for the 2020 Collingwood Beach Coastal and Estuary Grant.
4. Note that \$15,000 has been allocated in the 2021/22 Operational Budget and onwards to implement Council's Vegetation Prevention Vandalism Policy across the Shoalhaven.
5. Note that replacement trees planted will be on the approved re-vegetation species listed in the Collingwood Beach Dunecare Action Plan (attachment 1).
6. Note that Council is awaiting advice from the Department of Planning Industry and Environment on the outcome of its grant application in relation to preparation of the Jervis Bay CMP.

RESOLVED (Clr White / Clr Proudfoot)

MIN21.176

That Council:

1. Adopt the Collingwood Beach Dunecare Action Plan (see attachment 1).
2. Endorse the Collingwood Beach maintenance standard for cycleways and beach accessways (see attachment 2).
3. Note that \$37,700 has been allocated in the 2021/22 budget as Council's contribution for the 2020 Collingwood Beach Coastal and Estuary Grant.
4. Note that \$15,000 has been allocated in the 2021/22 Operational Budget and onwards to implement Council's Vegetation Prevention Vandalism Policy across the Shoalhaven.
5. Note that replacement trees planted will be on the approved re-vegetation species listed in the Collingwood Beach Dunecare Action Plan (attachment 1).
6. Note that Council is awaiting advice from the Department of Planning Industry and Environment on the outcome of its grant application in relation to preparation of the Jervis Bay Coastal Management Plan.

FOR: Clr Pakes, Clr Gash, Clr Wells, Clr White, Clr Alldrick, Clr Guile, Clr Watson, Clr Kitchener, Clr Proudfoot and Stephen Dunshea

AGAINST: Clr Findley, Clr Gartner, Clr Digiglio and Clr Levett

CARRIED

DE21.24 Notice of Motion - Call In - DA21/1145 - DA20/2061**HPERM Ref:
D21/127571****Recommendation (Item to be determined under delegated authority)**

That Council call in the following Development Applications for determination by the Development & Environment Committee:

1. DA21/1145 - 59 Journal St, Nowra – Lot 21 DP 2607 due to public interest.

2. DA20/2061 – 60 Macleay Street Narrawallee – Lot 145 DP 718994 due to public interest – Garrads Reserve & E2 land.

RESOLVED (Clr White / Clr Wells)

MIN21.177

That Council call in the following Development Applications for determination by the Development & Environment Committee:

1. DA21/1145 - 59 Journal St, Nowra – Lot 21 DP 2607 due to public interest.
2. DA20/2061 – 60 Macleay Street Narrawallee – Lot 145 DP 718994 due to public interest – Garrads Reserve & E2 land.

FOR: Clr Pakes, Clr Findley, Clr Gash, Clr Wells, Clr White, Clr Gartner, Clr Digiglio, Clr Alldrick, Clr Guile, Clr Levett, Clr Watson, Clr Kitchener, Clr Proudfoot and Stephen Dunshea

AGAINST: Nil

CARRIED

Procedural Motion - Adjournment of Meeting

MOTION (Clr Pakes / Clr Gash)

That the meeting be adjourned until 8.37pm.

Note: The meeting adjourned, the time being 8.07pm

Note: The meeting reconvened, the time being 8.37pm

When the following members were present:

Clr Mitchell Pakes - Chairperson
Clr Amanda Findley
Clr Joanna Gash
Clr Patricia White
Clr Kaye Gartner
Clr Nina Digiglio
Clr Annette Alldrick
Clr John Levett
Clr Greg Watson
Clr Mark Kitchener
Clr Bob Proudfoot
Mr Stephen Dunshea - Chief Executive Officer

REPORTS

**DE21.25 Public Exhibition Outcomes and Finalisation - Planning
Proposal: Jervis Bay Road, Falls Creek (PP035)**

**HPERM Ref:
D21/83338**

Recommendation (Item to be determined under delegated authority)

That Council:

1. Adopt Planning Proposal (PP035) as exhibited.
2. Liaise with the Office of the NSW Parliamentary Counsel's Office (PCO) to amend the Shoalhaven LEP 2014.

3. Ensure that Aboriginal cultural heritage values are considered and addressed as part of the development application to undertake the community title subdivision that will be permitted by the proposed LEP amendment.
4. Advise key stakeholders of this decision when the LEP has been amended.

RESOLVED (Clr Gash / Clr Digiglio)

MIN21.178

That Council:

1. Adopt Planning Proposal (PP035) as exhibited.
2. Liaise with the Office of the NSW Parliamentary Counsel's Office (PCO) to amend the Shoalhaven LEP 2014.
3. Ensure that Aboriginal cultural heritage values are considered and addressed as part of the development application to undertake the community title subdivision that will be permitted by the proposed LEP amendment.
4. Advise key stakeholders of this decision when the LEP has been amended.

FOR: Clr Pakes, Clr Findley, Clr Gash, Clr White, Clr Gartner, Clr Digiglio, Clr Alldrick, Clr Levett, Clr Watson, Clr Kitchener, Clr Proudfoot and Stephen Dunshea

AGAINST: Nil

CARRIED

DE21.26 Proposed Housekeeping Amendment - Encourage Renewable Investment and Protect Rooftop Solar Systems – Shoalhaven DCP 2014 Amendment (DCP 2014.48)

**HPERM Ref:
D21/95097**

Recommendation (Item to be determined under delegated authority)

That Council:

1. Endorse and proceed to exhibit the initial draft Housekeeping Amendments (the draft Amendment) to the following chapters of Shoalhaven Development Control Plan 2014 as outlined in Attachment 1 for a period of at least 28 days as per legislative requirements.
 - a. Chapter G13: Medium Density and Other Residential Development.
 - b. Chapter G17: Business, Commercial and Retail Activities.
 - c. Chapter G20: Industrial Development.
 - d. The Dictionary.
2. Receive a further report on the draft Amendments following the conclusion of the public exhibition period to consider feedback received and enable finalisation of the Amendments.
3. Notify key stakeholders (including CCBs and Development Industry Representatives) of the exhibition arrangements in due course.

RESOLVED (Clr Findley / Clr Levett)

MIN21.179

That Council:

1. Endorse and proceed to exhibit the initial draft Housekeeping Amendments (the draft Amendment) to the following chapters of Shoalhaven Development Control Plan 2014 as outlined in Attachment 1 for a period of at least 28 days as per legislative requirements.

- a. Chapter G13: Medium Density and Other Residential Development.
 - b. Chapter G17: Business, Commercial and Retail Activities.
 - c. Chapter G20: Industrial Development.
 - d. The Dictionary.
2. Receive a further report on the draft Amendments following the conclusion of the public exhibition period to consider feedback received and enable finalisation of the Amendments.
 3. Notify key stakeholders (including CCBs and Development Industry Representatives) of the exhibition arrangements in due course.

FOR: Clr Pakes, Clr Findley, Clr Gash, Clr White, Clr Gartner, Clr Digiglio, Clr Alldrick, Clr Levett, Clr Watson, Clr Kitchener, Clr Proudfoot and Stephen Dunshea

AGAINST: Nil

CARRIED

**DE21.27 Proposed Housekeeping Amendment No. 8 -
Shoalhaven Contributions Plan 2019 (CP2019.8)**

**HPERM Ref:
D21/95878**

Recommendation (Item to be determined under delegated authority)

That Council:

1. Endorse the draft Housekeeping Amendment (draft Amendment) to Schedule 2 (Old Subdivision Properties) in the Shoalhaven Contributions Plan 2019 at Attachment 1 and proceed to exhibit the draft Amendment for a period of at least 28 days as per legislative requirements.
2. Receive a further report on the draft Amendment following the conclusion of the public exhibition period to consider any feedback received, as well as any necessary adjustments and the finalisation of the amendment. If no submissions are received, resolve to adopt Amendment No. 8 as exhibited and proceed to finalise the draft Amendment.
3. Notify key stakeholders (including Development Industry Representatives) of the exhibition arrangements in due course.

RESOLVED (Clr Gash / Clr White)

MIN21.180

That Council:

1. Endorse the draft Housekeeping Amendment (draft Amendment) to Schedule 2 (Old Subdivision Properties) in the Shoalhaven Contributions Plan 2019 at Attachment 1 and proceed to exhibit the draft Amendment for a period of at least 28 days as per legislative requirements.
2. Receive a further report on the draft Amendment following the conclusion of the public exhibition period to consider any feedback received, as well as any necessary adjustments and the finalisation of the amendment. If no submissions are received, resolve to adopt Amendment No. 8 as exhibited and proceed to finalise the draft Amendment.
3. Notify key stakeholders (including Development Industry Representatives) of the exhibition arrangements in due course.

FOR: Clr Pakes, Clr Findley, Clr Gash, Clr White, Clr Gartner, Clr Digiglio, Clr Alldrick, Clr Levett, Clr Watson, Clr Kitchener, Clr Proudfoot and Stephen Dunshea

AGAINST: Nil

CARRIED

**DE21.28 Proposed Submission - Design and Place SEPP -
Explanation of Intended Effects**

**HPERM Ref:
D21/107753**

Recommendation (Item to be determined under delegated authority)

That Council make a submission (Attachment 1 of this report) to the NSW Department of Planning, Industry and Environment in relation to the proposed Design and Place State Environmental Planning Policy (SEPP).

RESOLVED (Clr Gartner / Clr Digiglio)

MIN21.181

That Council make a submission (Attachment 1 of this report) to the NSW Department of Planning, Industry and Environment in relation to the proposed Design and Place State Environmental Planning Policy (SEPP).

FOR: Clr Pakes, Clr Findley, Clr Gash, Clr White, Clr Gartner, Clr Digiglio, Clr Alldrick, Clr Levett, Clr Watson, Clr Kitchener, Clr Proudfoot and Stephen Dunshea

AGAINST: Nil

CARRIED

DE21.29 Wetland Walking Tracks CL20.308

**HPERM Ref:
D21/69683**

Recommendation (Item to be determined under delegated authority)

That Council:

1. Note the report and await the outcome of the reclassification of the Bherewerre Wetlands site.
2. Await representations from community groups and/or from Council staff on areas that may be enhanced by the construction of wetland boardwalks.

RESOLVED (Clr Proudfoot / Clr White)

MIN21.182

That Council:

1. Note the report and await the outcome of the reclassification of the Bherewerre Wetlands site.
2. Encourage representations from community groups and/or from Council staff on areas that may be enhanced by the construction of wetland boardwalks.
3. Should the owner (Vincentia Nominees Pty Ltd) be desirous of creating a wetland walking track, assist by providing preliminary advice for the project.

FOR: Clr Pakes, Clr Findley, Clr Gash, Clr White, Clr Gartner, Clr Digiglio, Clr Alldrick, Clr Levett, Clr Watson, Clr Kitchener, Clr Proudfoot and Stephen Dunshea

AGAINST: Nil

CARRIED

DE21.30 Draft Collingwood Beach Dunecare Action Plan

**HPERM REF:
D21/93736**

Item dealt with earlier in the meeting see MIN21.176

DE21.31	Modification Application - DS20/1619 - 2 Lawrence Ave & 61 Kinghorne St Nowra - Lot 2 DP 1264717 (Formerly Known as LOT 2 DP 1243710) & Lot 1 DP 1243710	HPERM REF: D21/70921
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Item dealt with earlier in the meeting see MIN21.171

DE21.32	Development Application - DA20/2152 - 1282 Naval College Rd Worroving Heights - Lot 1749 DP 28785	HPERM Ref: D21/70916
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Recommendation (Item to be determined under delegated authority)

That Development Application No. DA20/2152 for use of the land as Rural Industry (Sawmill and Log Processing Works) and Depot pursuant to the Shoalhaven Local Environmental Plan (SLEP) 2014 at Lot 1749 DP 28785, 128 Naval College Rd, Worroving Heights be determined by way of refusal for the reasons contained in Attachment 1 of this report.

RESOLVED (Clr Gartner / Clr Digiglio)

MIN21.183

That Development Application No. DA20/2152 for use of the land as Rural Industry (Sawmill and Log Processing Works) and Depot pursuant to the Shoalhaven Local Environmental Plan (SLEP) 2014 at Lot 1749 DP 28785, 128 Naval College Rd, Worroving Heights be determined by way of refusal for the reasons contained in Attachment 1 of this report.

FOR: Clr Pakes, Clr Findley, Clr Gash, Clr White, Clr Gartner, Clr Digiglio, Clr Alldrick, Clr Levett, Clr Kitchener, Clr Proudfoot and Stephen Dunshea

AGAINST: Clr Watson

CARRIED

DE21.33	Development Application - DA20/1494 – 25 Sunnymede Lane, Berry – Lot 3 DP 713138	HPERM REF: D21/79136
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Item dealt with earlier in the meeting see MIN21.172

DE21.34	Development Application - DA20/2280 - 95 Greenbank Gr Culburra Beach - Lot 214 DP 11892	HPERM Ref: D21/95023
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Recommendation (Item to be determined under delegated authority)

That Development Application DA20/2280 to construct one (1) single dwelling house to create a dual occupancy (detached) and a single carport for the existing dwelling house and subdivide the land into two (2) Torrens Title lots at Lot 214 DP 11892, 95 Greenbank Grove, Culburra Beach be approved subject to the recommended conditions of consent contained in Attachment 2 of this report.

RESOLVED (Clr Pakes / Clr Gartner)

MIN21.184

That Development Application DA20/2280 to construct one (1) single dwelling house to create a dual occupancy (detached) and a single carport for the existing dwelling house and subdivide the land into two (2) Torrens Title lots at Lot 214 DP 11892, 95 Greenbank Grove, Culburra Beach be approved subject to the recommended conditions of consent contained in Attachment 2 of this report.

FOR: Clr Pakes, Clr Findley, Clr Gash, Clr White, Clr Gartner, Clr Digiglio, Clr Alldrick, Clr Levett, Clr Watson, Clr Kitchener, Clr Proudfoot and Stephen Dunshea

Against: Nil

CARRIED

**DE21.35 CL21.30 - Response to Question on Notice - West
Culburra Development**

**HPERM Ref:
D21/81267**

Recommendation (Item to be determined under delegated authority)

That the Response to Question on Notice – West Culburra Development report be received for information.

RESOLVED (Clr Findley / Clr Levett)

MIN21.185

That the Response to Question on Notice – West Culburra Development report be received for information.

CARRIED

Note: A Rescission Motion was received in relation to DE21.23 – Notice of Motion - Biodiversity Conservation Act Exemption for Employment Lands signed by Clr Findley, Clr Gartner, and Clr Levett.

Note: A Rescission Motion was received in relation to DE21.33 – Development Application – DA20/1494 – 25 Sunnymede Lane, Berry – Lot 3 DP 713138 signed by Clr Guile, Clr Wells, and Clr White.

They will be considered at the Ordinary Meeting on Tuesday 27 April 2021 at 5.00pm in the Council Chambers.

There being no further business, the meeting concluded, the time being 9.15pm.

Clr Pakes
CHAIRPERSON

DE21.36 Notice of Motion - Call in DA20/1762 - 127 Princes Highway, Ulladulla

HPERM Ref: D21/148291

Submitted by: Cllr Patricia White

Purpose / Summary

The following Notice of Motion, of which due notice has been given, is submitted for Council's consideration.

Recommendation (Item to be determined under delegated authority)

That Council call in for determination by the full Council DA20/1762 127 Princes Highway, Ulladulla, due to public interest.

DE21.36

DE21.37 Proposed 2020/2021 Housekeeping Amendment to Shoalhaven Local Environmental Plan 2014 (PP044)

HPERM Ref: D20/537903

Department: Strategic Planning

Approver: Robert Domm, Director - City Futures

Attachments: 1. Proposed Planning Proposal PP044 - Housekeeping Amendment 2020-2021 (under separate cover) [⇒](#)

Reason for Report

Obtain the required resolution to progress the 2020-2021 Housekeeping Amendment Planning Proposal (PP044) which covers a range of instrument and mapping amendments of a housekeeping nature to Shoalhaven Local Environmental Plan (LEP) 2014.

Recommendation (Item to be determined under delegated authority)

That Council:

1. Submit Planning Proposal PP044 to the NSW Department of Planning, Industry and Environment for an initial Gateway determination, and if favourable:
 - a. Proceed to formal exhibition in accordance with the terms of the determination/legislative requirements; and
 - b. Receive a further report following the conclusion of the public exhibition to enable its finalisation.
2. Advise key stakeholders, including relevant Community Consultative Bodies and any directly affected landowners, of the public exhibition agreements.

Options

1. As recommended.

Implications: This is the preferred option. Since the commencement of Shoalhaven LEP 2014, anomalies and minor issues continue to be identified that need to be resolved. The matters in PP044 relate to LEP instrument and mapping issues that were generally identified in the 2020 calendar year. This PP will enable the matters to be resolved to ensure the LEP remains accurate.

2. Adopt an alternative recommendation.

Implications: Depending on its nature, an alternative recommendation could delay the resolution of the identified housekeeping matters.

3. Not proceed with the PP.

Implications: This is not the preferred option as the identified housekeeping matters will not be resolved.

Background

Shoalhaven LEP 2014 first commenced on 22 April 2014. As part of the completion of the Citywide LEP process, and since the LEP has been in force, housekeeping amendments have been undertaken annually and as needed to continue to improve the operation and accuracy of the Plan. These regular amendments and associated reviews help maintain the currency of the Plan.

2020-2021 Housekeeping Amendment

The intended outcome of the PP is to amend a number of clauses in the LEP instrument and associated maps in order to correct identified anomalies or inconsistencies within the LEP and improve the Plan's operation, specifically:

- Ten (10) items have been identified that require administrative amendments to the written instrument of Shoalhaven LEP 2014. These amendments include updates to clauses, land use zones and Schedule 5 Environmental Heritage.
- Twenty-nine (29) items have been identified that require amendments to the Shoalhaven LEP 2014 maps, covering a variety of minor mapping issues relating to land zoning, lot size, height of building, buffer and heritage.
- Two (2) items have been identified for amendment that relate to both the instrument (Schedule 5 of Shoalhaven LEP 2014) and the associated heritage mapping.

The proposed amendments will help to improve the overall operation of the Plan. The proposed PP is included at **Attachment 1** and contains the detail of the proposed LEP amendments, with the key matters/issues summarised in **Table 1** below for convenience.

Table 1: Summary of the 2020-2021 Housekeeping PP key issues.

Proposed Instrument Amendments	
Instrument Item 1: Insert 'secondary dwellings' as a land use permitted with consent in the R1 General Residential, R2 Low Density Residential, R3 Medium Density Residential and R5 Large Lot Residential zones.	Under the <i>State and Environmental Planning Policy (Affordable Rental Housing) 2009</i> (AHSEPP), 'Secondary Dwellings' are permissible with consent within the R1 General Residential, R2 Low Density Residential, R3 Medium Density Residential and R5 Large Lot Residential zones. It is considered appropriate to amend Shoalhaven LEP 2014 to be consistent with the AHSEPP and increase alternative housing opportunities within the Shoalhaven.
Instrument Item 2: Insert 'artisan food and drink industry' as a land use permitted with consent in the B2 Local Centre, B3 Commercial Core and B4 Mixed Use zones.	<p>'Artisan food and drink industry' is currently not permissible in the B2 Local Centre, B3 Commercial Core and B4 Mixed Use zones. It is however considered appropriate for the term to be permissible with consent in these zones to support the growing artisan/craft food and drink industry in Shoalhaven. This approach has been taken by other regional Councils, for example Orange.</p> <p>The proposed amendment is supported by Council's Nowra CBD Revitalisation Strategy Committee, which resolved (CBD21.3) on 3 February 2021 to:</p> <ol style="list-style-type: none"> 1. <i>Support the preparation and progression of a Planning Proposal to add 'Artisan Food & Drink Industry' as a permissible use in the B2 Local Centre, B3 Commercial Core and B4 Mixed Use zones in the Shoalhaven Local Environmental Plan 2014.</i>

	2. <i>Receive future updates on the progress of the Planning Proposal.</i>
Instrument Item 5: Amend Clause 4.2D to include the term <i>waterbody</i> .	The proposed inclusion of 'waterbody' within the existing definition of a 'holding' relating to dwelling entitlements reflects Council's longstanding practice that a holding separated by water is still considered to be a holding.
Instrument Item 10: Insert a local clause that enables the creation of two residue lots containing all of the rural or environmental land within the parent lot.	There are four identified lots within Nowra Hill and Sussex Inlet that cannot be practically subdivided under existing Clause 4.1E (split zone subdivision) provisions as the environmental or rural portion of land cannot be held within the one residue lot, as a result of environmental or other constraints. This is not Council's intent and can be rectified through the implementation of a proposed new local clause, aimed at enabling the creation of two residue lots that would contain the entirety of the rural or environmental zoned portion within the parent lot.
Proposed Mapping Amendments	
Mapping Item 1: Lot 7 DP 731147 & Road UPN 103401, The Springs Road, Sussex Inlet	The lot is currently zoned part RE1 Public Recreation, which is considered an inappropriate zoning for privately owned land. Historically, the portion of land has been set zoned as a buffer for visual amenity purposes. Rezoning the RE1 Public Recreation portion of both Lot 7 and the Road Casement to E3 Environmental Management will protect this function into the future.
Mapping Item 4: Part of Lot 700 DP 1265509 & Lot 542 DP 1250028, Macquarie Drive, Burrill Lake	The subject lots are zoned part E2 Environmental Conservation and part R1 General Residential and area within the Burrill Lake residential subdivision area. Rezoning part of the E2 zone that currently protrudes into the residential subdivision proposed for Lot 700 DP 1265509 will enable development approved to be undertaken in an efficient manner. Additionally, rezoning Lot 542 to RE1 Public Recreation reflects the land dedication as part of the approved subdivision.
Mapping Item 7: Lot 17 DP 857006, Huskisson Road, Huskisson	The RE1 Public Recreation portion of the subject lot is considered an inappropriate zoning for privately owned land. Rezoning the RE1 portion to E2 Environmental Conservation will maintain and secure the naturally vegetated corridor that links the Jervis Bay National Park with Council's Huskisson BioBank site.
Mapping Item 10: Lots 116-120 DP 1248050 & Part of Road UPN 121947, Dune Crescent, Manyana	The subject lots are currently zoned E3 Environmental Management and R2 Low Density Residential, and form part of a recent residential subdivision. Rezoning the subject land to R2 will ensure that housing can be developed consistently with the intent of the subdivision, in an efficient manner.
Mapping Item 13: Lot 3 DP 1069042, Wallace Street, Nowra	The subject lot is zoned RE1 Public Recreation and R1 General Residential. Council has no intention to acquire the RE1 portion of the lot. Rezoning the RE1 portion of land to R1 is consistent with the land use and will assist in facilitating development.

Mapping Item 15: Lots 100 and 101 DP 1247844, Golf Course Way, Sussex Inlet	Lot 100 DP 1247844 is currently zoned R1 General Residential and RE2 Private Recreation. The lot is the subject of a residential subdivision. Rezoning Lot 100 to R1 is consistent with the intended future residential land use of the lot.
Mapping Item 22: Lots 1-5 DP 700116, Pitt Street, North Nowra	The subject land (part of the Pitt Street industrial precinct) is currently zoned R2 Low Density Residential and IN2 Light Industrial. Realigning the R2 zoning to the actual built industrial interface will facilitate future industrial development, accurately reflect the intention of the land and existing development character.
Mapping Item 26: Westhaven Avenue & Shoalhaven Street, Nowra	The subject land currently has no height of building applying. Council intended to apply a I2 (8.5m) height of building to the subject area as part of the Nowra CBD Fringe Planning Proposal (PP038), however the exhibited maps presented the subject land without a height of building. Applying the I2 (8.5m) height of building to the land will be consistent with Council's intentions.
Mapping Item 28: Lots 145-146 DP 1190108 & Lot 102 DP 1093762, Peacehaven Way & Sussex Inlet Road, Sussex Inlet	<p>The subject lots are currently zoned R1 General Residential.</p> <p>Lots 145 and 146 DP 1190108 were dedicated as open space for the purpose of community land, in accordance with SF9055. Rezoning Lots 145 and 146 to RE1 Public Recreation is considered to be more consistent with the public reserve land use.</p> <p>Additionally, Lot 102 DP 1093762 was acquired by Shoalhaven Water and subsequently classified as operational land for the purpose of a sewerage pumping station. Rezoning the lot to SP2 Infrastructure (Sewerage System) and applying a Sewerage Treatment Plant buffer (with a 400m radius) is consistent with the land use.</p>
Mapping Item 29: Lot 1 DP 1264873, Bells Lane, Meroo Meadow	The subject land is partially located within the Moss Vale North Urban Release Area (URA). Subsequent to a recent boundary adjustment, the zoning, minimum lot size, clauses (Schedule 1.5) and URA layer should be amended to reflect the consistent line and intent of the Moss Vale Road North URA.
Mapping Items 6, 14, 17, 18:	Four mapping items propose the rezoning of a number of lots around various classified roads, following works undertaken by Transport for New South Wales. The subject land is proposed to be rezoned to be consistent with the land use and surrounding land zonings.
Proposed Instrument and Mapping Amendments	
Heritage Item No. 355: Mafeking Boer War Memorial	Update Heritage Map Sheet (Sheet HER_013E) to remove the heritage overlay from Lot 2 DP 363266 and the adjoining road reserve (retaining on Lot 3 DP 363266), to assist the better identification the heritage item. This is consistent with the heritage data sheet.
Heritage Item No. 407: Former Nowra Sailing Club site and Timber Wharf	Update Heritage Map Sheet (Sheet HER_013E) to include additional lots (Lot 263 DP 755952 and Lot 383 DP 755952 – the current <i>Ponte Bar and Dining</i>) and update the item name to reflect the history of the site and its components, to read: 'Site of

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	former Illawarra Steam Navigation Co. store and wharf, Nowra Wharf, Sandstone ramp and sea walls, former Boatshed Restaurant and site of former boatshed, slipway and jetty’.
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Following initial endorsement from Council, the PP would be submitted to the NSW Department of Planning, Industry and Environment for a Gateway determination.

As detailed in the Project Timeline in the PP (**Attachment 1**), it is anticipated that the LEP amendment would be finalised by early 2022.

Community Engagement

Should the PP receive a favourable Gateway determination, it will be exhibited in accordance with the relevant legislative and Gateway requirements. The Gateway determination will specify the minimum exhibition period and any government agencies who should be consulted.

Any directly affected landowners will be advised of the exhibition arrangements in writing, as will all Community Consultative Bodies and other relevant stakeholders.

Financial Implications

There are no immediate financial implications for Council. The amendment to Shoalhaven LEP 2014 will be resourced from the existing Strategic Planning budget.

DE21.38 Proposed Review - Planning Controls - Nowra CBD

HPERM Ref: D21/155943

Department: Strategic Planning

Approver: Robert Domm, Director - City Futures

Reason for Report

Obtain Council's endorsement to commence a review of the planning controls in the Nowra CBD, including undertaking the relevant supporting technical studies and community consultation.

The review and subsequent response will help ensure that the controls remain current and are able to continue to assist with the ongoing and future revitalisation of Shoalhaven's key regional centre. This will include considering opportunities for further residential development in the CBD, such as identifying key locations where increased height could be considered/pursued, to inform a possible future Planning Proposal to amend Shoalhaven Local Environmental Plan (LEP) 2014.

Recommendation (Item to be determined under delegated authority)

That Council:

1. Commence a review of relevant planning controls in the Nowra CBD / commercial core area, including the relevant technical studies (urban design / visual impact assessment, economic feasibility analysis and infrastructure/servicing assessment) and community consultation to identify potential key locations where controls should be revised to encourage positive opportunities that contribute to the revitalisation of the centre.
2. Receive a further report on the outcomes of the review, to consider the detail, prior to proceeding with any Planning Proposal to amend relevant controls in Shoalhaven Local Environmental Plan 2014.

Options

1. Adopt the Recommendation.

Implications: This is the preferred option. It provides an opportunity to review relevant planning controls (for example building height) in Nowra CBD in a managed way in response to broader socio-economic changes such as COVID-19, nearby infrastructure projects, increasing migration to Shoalhaven from Sydney and the draft Illawarra-Shoalhaven Regional Plan.

The relevant technical studies and community consultation will be undertaken with the assistance of consultants if necessary. This work may identify that changes to building height controls are appropriate or needed in certain key locations (e.g. Egan's Lane and Stewart Place car parks and adjoining land) to continue to encourage appropriate redevelopment, including further residential development, and assist in the revitalisation of Nowra CBD. There is also understood to be landowner interest in this regard.

2. Adopt an alternative resolution.

Implications: this will depend on the nature of the alternative resolution. Recent redevelopment interest and broader socio-economic changes indicate that there may be

a need to review and reconsider planning controls in the Nowra CBD. It is important that any proposed changes, for example to building heights, have sound justification in terms of urban design/built form, servicing and economic/practical feasibility and consider the views of the community, rather than possibly being considered in an ad-hoc manner via one off changes.

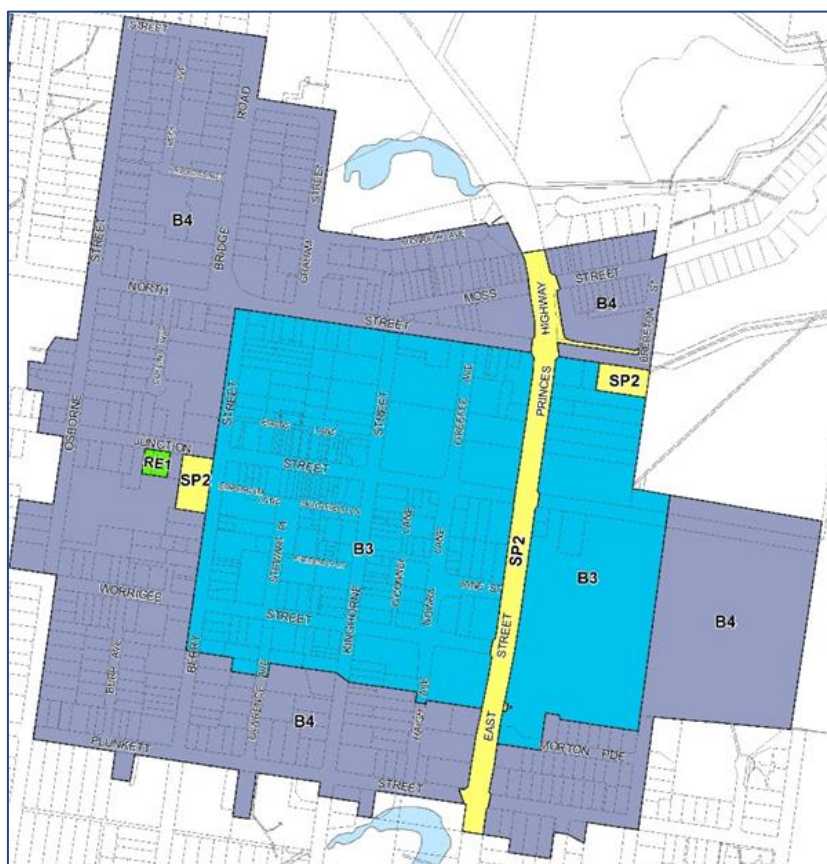
3. Not adopt the Recommendation.

Implications: This is not the preferred option. The planning controls in Nowra CBD will not be reviewed and will remain unchanged. This may be a lost opportunity to identify changes to planning controls that would encourage redevelopments and assist in the revitalisation of Nowra CBD.

Background

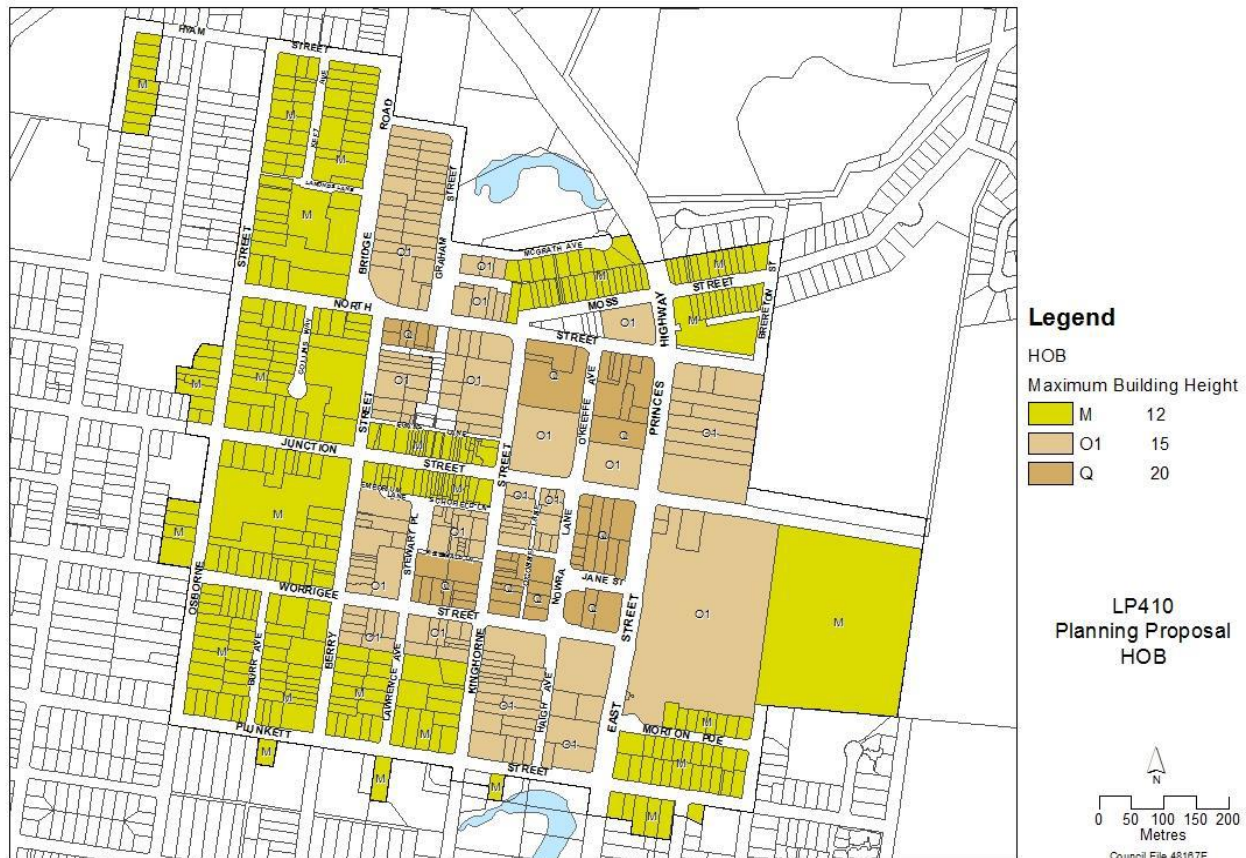
The current high level LEP mapped building height controls in the Nowra CBD / commercial core were introduced in 2017 amendment that resulted from the requirement of the NSW Government's Standard LEP Instrument. The process to add these controls to the LEP commenced in early 2014 and was informed by detailed urban design work undertaken for Council by Studio GL Pty Ltd.

The current Nowra CBD is shown on the map below and it is predominantly zoned B3 Commercial Core and B4 Mixed Use under the LEP.



Nowra CBD Zones

The buildings heights that were introduced through the 2017 amendment are 12 metres (M), 15 metres (Q1) and 20 metres (Q) and these are shown on the following map:



2017 LEP Amendment – Building Heights

The current heights generally equate to the following in terms of storeys:

- 12m = 3 storeys
- 15 m = 4 storeys
- 20 m = 5/6 storeys

The LEP height controls are supported by a detailed chapter in the Shoalhaven Development Control Plan (DCP) 2014 – Chapter N8: Nowra CBD Urban Design Development Controls that can be accessed via the following link:

<https://dcp2014.shoalhaven.nsw.gov.au/content/nowra-cbd-urban-design-development-controls>

The DCP Chapter has been in place since 2017 and followed a detailed engagement process. It contains a range of detail development controls including set back, site coverage, bulk and scale, facades, frontages and design.

Since 2017 some resulting development has eventuated, such as the apartment complex in Graham Street, Nowra. Interest is however now being received from landowners/developers for possible redevelopment proposals that, in some cases, would exceed the current planning controls, such as building height. Such proposals seek to leverage recent changes in the property market locally and provide additional in centre residential use. This could potentially result in Council receiving proponent-initiated Planning Proposal (PP) requests to amend the planning controls on a 'site-by-site' basis.

Broader socio-economic changes since the commencement of Shoalhaven LEP 2014 (for example COVID-19, significant infrastructure projects and increasing migration from Sydney to Shoalhaven) are also now influencing development opportunities in the Nowra CBD.

As a result, it is considered timely to commence a holistic review of the planning controls applicable to the Nowra CBD, including building height, with a particular focus on the

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commercial core area (B3 zoned), to identify potential key locations where new controls could be considered/pursued (e.g. Egan's Lane and Stewart Place car parks and adjoining land) to encourage appropriate redevelopment, including residential uses. This will help ensure that the controls are forward thinking.

This is preferable to considering one off ad-hoc PP requests that could result if nothing is done and would identify whether further LEP changes (for example height) are needed to support redevelopment, for example in identified areas, and to assist in the revitalisation of Nowra CBD.

It would also provide the necessary evidence base to ensure that any changes to building heights are appropriate in terms of urban design / built form, visual impact, economic viability and servicing. This work would be necessary to support any subsequent PP to amend and increase building heights in parts of the CBD in the LEP or revise the provisions of the DCP.

Draft Illawarra Shoalhaven Regional Plan 2041 (ISRP)

Policies and objectives in the recently released draft Regional Plan also provide a basis for reviewing and reconsidering the planning controls in Nowra CBD:

- It identifies Nowra CBD as a 'Regional City' and states that it should "*provide an urban lifestyle where people can easily walk to shops, services, schools or work*".
- It recognises a need to establish a "*vision and strategic roadmap to activate Nowra CBD*".
- Its Objective No. 2 is to '*Grow the region's regional cities*'.
- It recognises the increasing demand for apartment living in Nowra CBD and the associated benefits such as increased "*vibrancy*", "*activity*" and "*much-needed housing choice that is often more affordable*".
- Importantly its Strategy 2.1 aims to *Activate Nowra City Centre in local strategic planning and local plans by identifying clear planning and approval pathways and removing planning barriers to increase residential development*".

Undertaking a review would thus assist Council to deliver on these objectives by identifying whether the current controls are a barrier to increased residential development and if so, the changes that are needed in identified key/appropriate locations to help strengthen, activate and support redevelopment in Nowra CBD.

Shoalhaven Local Strategic Planning Statement (LSPS)

Council's LSPS recognises that the sustainable supply of a complex housing product in Shoalhaven should include "*Areas of compact homes like medium density, apartments and townhouses in and around Nowra City Centre*".

It also acknowledges the current work of Council of "*amending planning and development controls to encourage increased residential density (town houses and apartments) in and around Nowra City Centre...*". And recognises that "*with significant changes in local economies and the way we use and want to use cities, we need to revisit and review some strategies in collaboration with business and our communities*".

The proposed review will help deliver on these policy directions and commitments and will also inform future efforts by Council to deliver upon Collaboration Activity 4.4 "*Work with landowners and businesses to identify opportunities to use vacant properties and activate street frontages*".

Conclusion

It is considered timely to again review and if needed be reconsidering the current planning controls in Nowra CBD to ensure that they are appropriate and providing opportunities for the

additional residential development in key locations to assist with the ongoing viability of the centre.

Policy Implications

The proposed review may recommend changes to current building height controls in parts of the Nowra CBD that would form the basis of a future PP to amend Shoalhaven LEP 2014 and revisions/adjustments to Chapter N8 – Nowra CBD Urban Design Development Controls of Shoalhaven Development Control Plan 2014.

Financial Implications

The proposed review would be funded from the Strategic Planning recurrent budget.

Risk Implications

There is a risk that the current building height controls in Nowra CBD are specifically not facilitating development and revitalisation of the CBD, for example mixed use residential. The proposed review would identify whether changes to controls are needed, in possible key locations, that would help strengthen, activate and support redevelopment in Nowra CBD. It is important that any proposed changes have sound technical justification and community input to ensure that resulting development outcomes are appropriate and realistic in terms of urban design/built form, servicing and economic feasibility.

If Council resolves not to proceed with the proposed holistic review across the Nowra CBD there is the potential that proponents will submit PP requests on a site-by-site basis to increase building heights. This may lead to ad-hoc development patterns and compromise the coordinated development and revitalisation of Nowra CBD.

DE21.39 Shoalhaven Population Forecasts

HPERM Ref: D21/155520

Department: Strategic Planning

Approver: Robert Domm, Director - City Futures

Attachments: 1. Presentation Slides - Forecast .iD - Shoalhaven Population Forecasts Update (under separate cover) [⇒](#)

Reason for Report

Advise Council of the latest updated population projections/forecasts for Shoalhaven following their presentation and discussion at Council's Strategic Planning Working Party on 15 April 2021.

Recommendation (Item to be determined under delegated authority)

That Council:

1. Use the updated population forecasts to inform service planning and delivery across Council.
2. Promote the updated population projections/forecasts to external stakeholders as a resource for their planning and investment decisions, including industry representatives from the Property Council and Urban Development Institute of Australia and local developers.
3. Consider the impact of the updated population projections/forecasts when reviewing the Strategic Planning Work Program, noting that the Program is due to next be considered and confirmed by Council in June 2021.

Options

1. As recommended

Implications: This is the preferred option as it will provide the best-informed foundation for service planning and delivery by Council.

Contemporary population data provides a robust evidence base to inform long-term land-use planning activities, advocacy efforts, and the planning and delivery of Council's services. Its promotion to external stakeholders facilitates collaboration with industry partners to help plan and deliver the City's future.

2. Not endorse the Recommendation

Implications: This is not favoured as it would mean that Council (and industry) service planning and delivery would not be based on the most up to date information and would need to be considered on a project-by-project basis.

Background

Council's demographic consultant .iD (Informed Decisions) has recently updated the City-wide population projections/forecasts. These are used to provide a contemporary evidence base to inform Council's strategic planning work, including strategic land use planning and more broadly the foundation for service planning and delivery.

.id support several hundred councils across Australia and New Zealand through their demographic advice. Their methodology uses detailed data from Council on development approvals, construction activity and planning initiatives (such as Urban Release Area planning) which will have a critical impact on the location, extent and timing of population growth. As such, the forecasts are considered to provide a sound local foundation for service delivery and planning, both for Council and other entities serving the Shoalhaven into the future.

Council has used the expertise of .id since 2011 and this update is the fourth since that time. For the first time the forecasts span the period out to 2051 and incorporate assumptions about the impact of the COVID-19 pandemic on future population change in Shoalhaven.

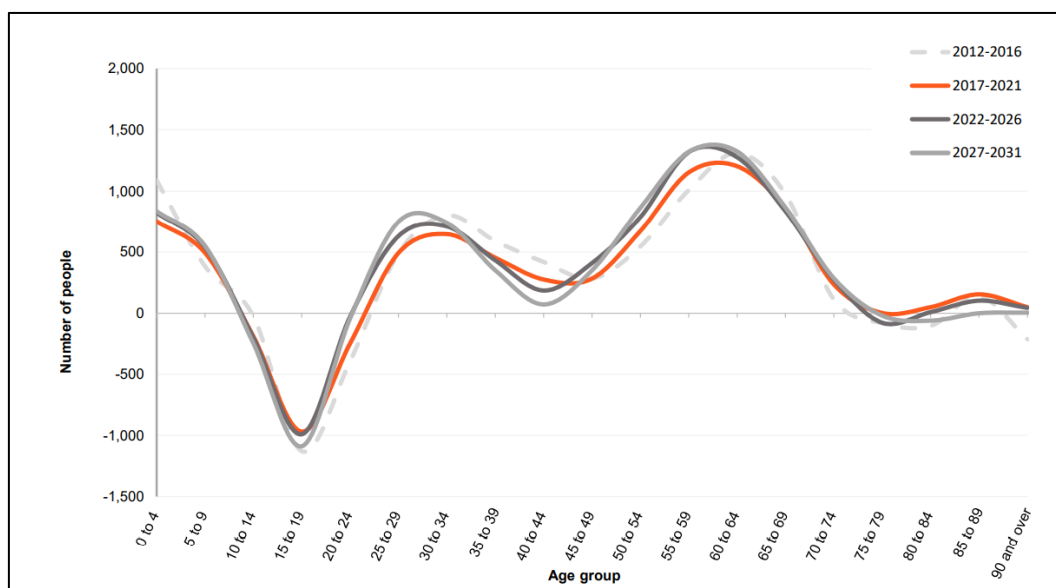
The projections/forecasts were published by .id on 1 April 2021 and can be viewed online: <https://forecast.id.com.au/shoalhaven>

Attachment 1 provides a summary of the population forecasts.

Key Conclusions

The key findings of the updated forecasts are summarised below (figures rounded) with more detail provided in **Attachment 1**.

- Population to increase from 107,000 in 2021 to 138,000 in 2051 (29% increase)
- Number of households to increase from 45,500 to 60,000 (32% increase)
- Average household size to fall from 2.32 to 2.23
- Number of dwellings to rise from 55,250 to 72,050 (30% increase)
- Occupancy rate to increase by 5% overall, noting that this is quite variable across the City
- Approximately 500 extra dwellings needed each year, with growth concentrated around Nowra-Bomaderry
- 'Ageing in place' (staying in your own home as you get older) will increase with implications for the types of housing and services required
- The most common household types will increasingly be 'couples without dependents' and 'lone person households' *with a third peak in the couples with dependents category.*
- Net migration into Shoalhaven shows the following pattern over time with a loss of population in the teenage years, a return in the 25-35 age group, a dip in the 35-50 age group and a strong peak in the retired age group. This has implications for a range of planning and servicing issues, including types of housing required and *advocacy activities for service and infrastructure delivery.*



Shoalhaven – Predicated Net Migration 2012 to 2031

Conclusion

The forecasts are considered to provide the best available information base to inform long-term land-use planning program, advocacy activities, and the planning and delivery of Council's services.

The updated forecasts would also be beneficial for other community organisations, infrastructure and service delivery agencies, and the development industry to ensure that their respective activities respond to the needs of Shoalhaven's future population.

Community Engagement

The potential importance of *contemporary population data for a wide range of organisations operating in Shoalhaven, suggests the updated forecasts should be publicised* on Council's website and, where relevant, promoted to specific industry and community groups (including local developers, the Property Council, and Urban Development Institute of Australia) to inform their planning and *investment* decisions.

Policy Implications

The forecasts have no immediate policy implications but should be used to inform Council's policy development.

In the shorter term, it would be appropriate in the next review of Council's Strategic Planning Work Program to take the updated forecasts into account when setting planning work priorities.

Financial Implications

The forecasts have no immediate implications for Council's financial position. However, *use of the forecasts to inform planning and service delivery will ensure resources are best directed to meeting the communities' needs.*

Risk Implications

The forecasts present no immediate risk to Council. However, use of the forecasts to inform planning and service delivery will help target activity to address the most appropriate outcomes with a consequent reduction in risk exposure.

DE21.40 Report Back - Rezoning Options - Tomerong Quarry, Lot 4 DP775296, Parnell Road, Tomerong

HPERM Ref: D21/101234

Department: Strategic Planning

Approver: Robert Domm, Director - City Futures

Attachments: 1. Previous Council Report - Tomerong Quarry Rezoning Options [↓](#)

The CEO has submitted a Significant Non Pecuniary Interest declaration in relation to this item as he is a property owner and resident of Tomerong. This report has been approved by the Director – City Development.

Reason for Report

Council resolved In March 2020 (MIN20.163) to seek formal feedback from the NSW Department of Planning, Infrastructure & Environment (DPIE) regarding the extractive resource in this location, its possible rezoning to E3, and to then receive a subsequent report in this regard.

Recommendation (Item to be determined under delegated authority)

That Council receive the report back on the rezoning options for Tomerong Quarry, Lot 4 DP775296, Parnell Road, Tomerong for information.

Options

1. Pursue a rezoning of the subject land to E3 Environmental Management under the Shoalhaven LEP 2014 as part of the next appropriate housekeeping Planning Proposal (PP).

Implications: This alone may not prohibit 'extractive industries' on the subject land as State level planning provisions would still enable the use to be considered.

2. Receive the report for information – this would mean that nothing further is done at this point, the current zoning in place is retained and any future proposals/applications are considered on their merits.

Implications: This option may not be favoured as it does not address the intent of the original resolution. However, there is no clear or logical zoning pathway that would prohibit extractive industries on this site. The zoning could be reconsidered in future comprehensive reviews of the LEP should legislative provisions change or the nature or use of the quarry changes.

Background

Following consideration of a report on potential rezoning options in this regard (see **Attachment 1**) It was resolved on 3 March 2020:

That Council

1. Seek formal feedback (planning and mineral resources) from the NSW Department of Planning, Infrastructure & Environment on the current significance of the mineral resource at Lot 4 DP775296, Parnell Road, Tomerong and their views on a possible rezoning of the subject land to E3 Environmental Management under Shoalhaven Local Environmental Plan 2014.
2. Receive a subsequent report in this regard once the feedback has been received to enable a decision to be made on whether to pursue a rezoning.

The previous report provides a range of background information in regard to this matter and this report presents the specific outcomes of the above resolution.

Feedback Received – DPIE

Formal feedback was sought from DPIR (Planning and Mineral Resources teams) in April 2020, specifically:

- The current planning significance of the mineral resource at Lot 4 DP775286, Parnell Road, Tomerong (known previously as Bellfield's Quarry and now as Tomerong Quarry); and
- Depending on comment on point 1, the Department's views on a possible rezoning of the subject land to E3 Environmental Management under Shoalhaven LEP2014.

Additional information was subsequently provided to DPIE, at their request, on existing consents and the current operation of the quarry. The following response was received from DPIE in May 2020:

The Mining, Exploration and Geosciences team from the newly created Department of Regional NSW have advised that the Tomerong Quarry resource is not considered to be of state significance. The Geosciences Team, however, ideally requires formal notification and some evidence from the owner/operator of the quarry that the resource is either exhausted or that it is no longer economically viable to extract. The Geosciences Team can then remove the quarry from the mapping that supports the s9.1 Direction 1.3 Mining, Petroleum Production and Extractive Industries mapping.

Subject to the removal of the quarry from the s.9.1 Direction mapping, DPIE or Department of Regional NSW are unlikely to object to the rezoning of the site from RU2 Rural Landscape to an alternative zone such as an E3 Environmental Management Zone. An E3 Zone is considered suitable as it would facilitate the rehabilitation of the site.

It is, however, noted that mining may still be permissible on land zoned E3 under clause 7 of the SEPP (Mining, Petroleum Production and Extractive Industries) where development for the purposes of agriculture or industry may be carried with or without development consent. It is noted that extensive agriculture is a permissible use in the E3 Zone under the Shoalhaven LEP 2014.

Feedback Received – Quarry Owners and Operators

As a result of the DPIE advice, feedback was subsequently sought also from the quarry owners and operators regarding the question about the resource either being exhausted (or close to being) or being no longer economically viable to extract. The following is a summary of the responses:

Landowner - *Considers that there are still sufficient resources left to be mined (one estimate indicated that there were at least 20 years of resource available on the property). Considers that it is economically and financially viable to remove the resources.*

Also considers that the quarry should remain listed as a "State significant asset" because of future projects within Shoalhaven that will require its resources.

Bemused that the State government would “de-list” the quarry when it is proposing significant development within Shoalhaven where there are no other facilities to meet these needs.

Operator – Appreciate the opportunity to provide the operators perspective and surprised by the NSW Government response given the number of announced road infrastructure projects in the region and the lack of operating quarries on the NSW South Coast that provide materials to the required specification for these projects.

The quarry has significant quantity rock in reserve that is highly appreciated by local construction industry. Based on experience operating the quarry in recent years, it would appear that the Quarry could continue to operate in the order of 30 years without having to construct a new pit.

Based on the results of recent testing, the quarry product is improving in quality as the pit moves west. This would be the natural direction to take an extended pit. The testing indicates processed road construction material has the potential to meet RMS3051 highway specification.

The quarry is the closest rock resource for multi-billion dollar road projects commencing within next 5 years such as the Jervis Bay Road interchange, Milton/Ulladulla bypass and Princes Highway duplication.

Believe the Quarry has a lot to offer NSW, the South Coast and Shoalhaven in the short, medium and long term if afforded the correct operating conditions.

Draft Regional Plan

The draft Illawarra Shoalhaven Regional Plan 2041 was exhibited for comment during November/December 2020.

The ‘resource map’ in the draft plan shows part of the subject land as a mapped ‘mineral resource’. The text within the draft plan notes that the region has valuable hard rock resource land including scattered quarries in Shoalhaven.

Strategy 10.1 in the draft Plan identifies the need to consider the ongoing operation of existing mining and resource extraction and future development of known resources in local strategic planning and local plans.

As such at present the resource in this location is still identified as significant.

Discussion - Next Steps

Given the feedback received from relevant NSW Government Agencies and also the quarry owners and operators, Council now needs to decide whether or not to pursue a possible change in zoning.

DPIE indicated that, whilst the resource is no longer considered to be state significant, formal notification and some evidence from the owner/operator of the quarry that the resource is either exhausted or that it is no longer economically viable to extract would be required before they would take the necessary steps to amend the relevant policy. However, the owner and current operator have advised that they consider that the quarry is still viable and that it can play a future role in supplying material.

The previous report flagged that an E3 zoning may be the only zone that could prohibit ‘extractive industries’ on the subject land. However there is still an approval pathway under the State Environmental Planning Policy (SEPP)(Mining, Petroleum Production and Extractive Industries) and ‘existing use rights’ may also play a role. The SEPP pathway was confirmed in the advice received from DPIE.

Based on the feedback received from DPIE and also from the owners and current operators, it may be prudent to leave the current zoning in place and consider any future

proposals/applications on their merits. The zoning of the subject land could be reconsidered in future LEP reviews if appropriate.

Community Engagement

No community engagement has been undertaken in this regard. Feedback was however sought from the current landowner and operator given advice received from the NSW Government.

Should Council resolve to pursue a change in zoning there would be broader community engagement as part of this process.

Policy Implications

Pursuing a zoning change to E3 may not achieve the desired outcome given the permissibility that exist under the SEPP.

DE20.18 Rezoning Options - Tomerong Quarry - Lot 4 DP775296, Parnell Road, Tomerong

HPERM Ref: D20/35125

Section: Strategic Planning

Approver: Phil Costello, Director Planning Environment & Development Group

Reason for Report

Report back on a resolution that requested Council staff to investigate the possible rezoning of the subject land to ensure that 'extractive industries' are no longer permissible.

Recommendation (Item to be determined under delegated authority)

That Council

1. Seek formal feedback (planning and mineral resources) from the NSW Department of Planning, Infrastructure & Environment on the current significance of the mineral resource at Lot 4 DP775296, Parnell Road, Tomerong and their views on a possible rezoning of the subject land to E3 Environmental Management under Shoalhaven Local Environmental Plan 2014.
2. Receive a subsequent report in this regard once the feedback has been received to enable a decision to be made on whether to pursue a rezoning.

Options

1. Seek formal feedback from the NSW Department of Planning, infrastructure & Environment (DPIE) on the current significance of the mineral resource in this location, whether it still needs to be recognised and what their attitude would be to a proposed rezoning of the subject land to a zone that does not allow 'extractive industries'. In this regard it is noted at the E3 Environmental Management zone is perhaps the only zone that could possibly be practically considered.

Implications: Given the status of the resource in this location, this is considered to be the most appropriate option at this point. If the NSW Government still believes the resource is significant then a rezoning will be difficult to justify or pursue. Thus, it would be useful to know where they stand before a definitive decision is made to pursue a Planning Proposal (PP).

2. Pursue a rezoning of the subject land to E3 Environmental Management under the Shoalhaven LEP 2014 and that this be undertaken as part of the next appropriate housekeeping PP.

Implications: This may not be a practical option at this point as the attitude of the NSW Government is unknown. It is also noted that changing the zoning in the Shoalhaven Local Environmental Plan (LEP) 2014 to ensure that 'extractive industries' are no longer permissible on the subject land may also not achieve the desired outcome as State level planning provisions may still enable the use on the site.

3. Do nothing, leave the current zoning in place and consider any future proposals/applications on their merits.

Implications: This option may not be favoured by the Council as it does not address the intent of the original resolution.

Background

Following a Notice of Motion, the Development & Environment Committee resolved in part, under delegation, on 3 September 2019 that:

3. *Staff investigate the possibility of introducing a planning proposal to rezone so that “extractive industries” are no longer permissible at the site.*

This report provides a more detailed overview of the considerations and potential options in this regard to enable Council to clarify a way forward.

Commentary - Strategic Planning Background

The subject land (quarry) is part of a large (296 ha) privately owned holding that is zoned RU2 Rural Landscape under Shoalhaven Local Environmental Plan (LEP) 2014. Under this zoning ‘extractive industries’ are permissible with development consent.

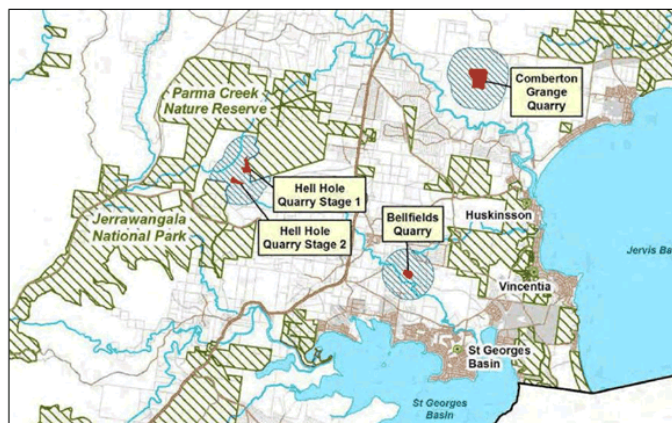
The subject land is also partially identified on the ‘terrestrial biodiversity’ LEP overlay (habitat corridor/significant vegetation/disturbed habit and vegetation). It also contains a mapped LEP ‘buffer’ associated with the known extractive resource. This ‘buffer’ calls up Clause 7.15 Development in the vicinity of extractive industries and sewerage treatment plants, that aims to acknowledge and protect the resource in relevant planning decisions.

Prior to 2014 the subject land was zoned Rural 1(d)(general) under Shoalhaven LEP1985 and a 600m extractive industry LEP buffer existed.

The LEP extractive industry buffers recognise the extractive resource in this location. This resource, known then as ‘Bellfield’s Quarry’ was mapped by the NSW Government through its Mineral Resource Audit (2014) as an ‘identified resource area’ (Commodity: coarse aggregate. Rock type: shale) .

The areas identified through this audit and their buffers are resources or extractive operations that the NSW Government considers as significant and that need recognition/protection.

The following map is an extract from the Audit showing the resource (Bellfield’s Quarry) and its buffer:

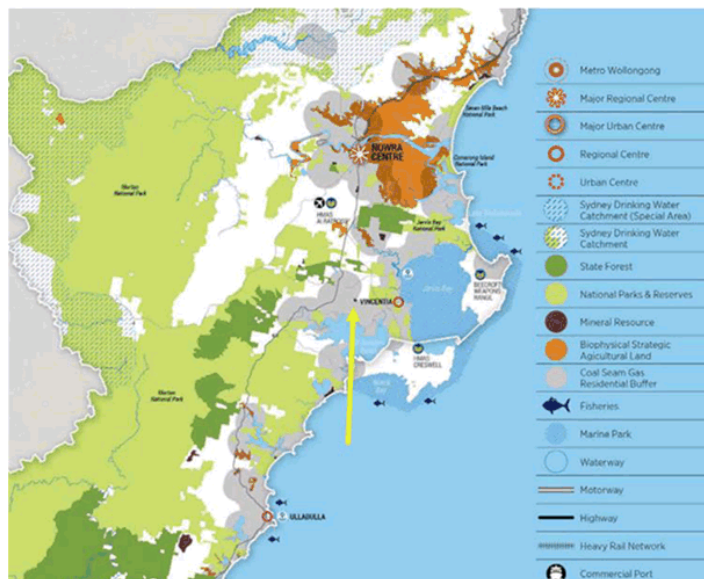


Extract: NSW Mineral Resources Audit (2014)

Ministerial Planning Direction 1.3 – Mining, Petroleum and Extractive Industries applies to ‘identified resource areas’ and is relevant when a relevant planning authority (in this case

Council) prepares or considers a PP (rezoning) that would prohibit or restrict the winning of extractive materials.

The previous South Coast Regional Strategy and the current Illawarra-Shoalhaven Regional Plan (Figure 11 – Mineral Resources) also both identify regionally significant 'mineral resources'. This includes the resource in question. The current Regional Plan contains Action 4.2 that seeks to secure the productive capacity of resource lands and notes that the NSW Government will 'consider the need to protect the ongoing operation of existing collieries and future development of know resources in assessing rezoning proposals'.



*Regional Plan - Figure 11 Extract
(Yellow arrow - 'mineral resource' in question)*

There is also a further Ministerial Planning Direction 5.10 that covers the implementation of Regional Plans. It notes that PP's must be consistent with released Regional Plans. They can only be inconsistent if they are of a minor significance or the overall intent of the Regional Plan is achieved and does not undermine its contents/requirements.

As such given the existing NSW Government policy direction related to this site, any proposal to change the zoning of the subject land or attempt, through the LEP, to prohibit 'extractive industries' would need to be able to demonstrate consistency (or otherwise) with the relevant Ministerial Planning Directions. It is likely that there will need to be detailed dialogue in this regard with relevant parts (planning and extractive resources functions) of the NSW Department of Planning, Industry & Environment.

It is unlikely that without detailed dialogue and possibly further supporting work that any PP in this regard would receive a favourable Gateway determination.

Commentary - Possible Zone Change Options

As noted in the Council resolution, any proposal to change the zoning of the subject land will need to be pursued via a PP.

The following is an overview of the potential PP options:

General RU2 Zone Change

Change the overall citywide RU2 zone table to prohibit 'extractive industries' in that zone.

There would need to be a clear rationale behind a general change of this nature as it would affect all RU2 zoned land in the City. Given the above strategic planning commentary, the NSW Government may not support broad general change of this nature.

Additionally, affected landowners would potentially not be supportive of such a change as it would alter the current development potential of their land.

Property Specific Prohibition Provision

Previously this could have occurred via an additional provision in the LEP relating to a specific property. However, under the current NSW Government's Standard LEP Instrument approach this is not possible. If an overall zone allows a use, it is not possible to make the use prohibited on a specific property or in a defined area. This is called a 'sub zoning' and is not allowed under the Standard Instrument approach.

Given the set approach in this regard the NSW Government would support an option of this nature.

Property Specific Zone Change

There are existing zones within the LEP where 'extractive industries' are not permissible. Given the nature of these zones some or all may not be appropriate in this circumstance given the location, nature etc of the subject land. As such identifying a suitable zone may be difficult without creating unintended consequences or outcomes.

Both Shoalhaven's existing two general rural zones (RU1 Primary Production and RU2 Rural Landscape) **permit** the use with consent.

The following zones all **prohibit** the use, but given their nature and intent may not be appropriate in this circumstance

- RU4 Primary Production Small Lots and RU5 Village.
- R1 General Residential, R2 Low Density Residential, R3 Medium Density Residential and R5 Large Lot Residential.
- B1 Neighbourhood Centre, B2 Local Centre, B3 Commercial Core, B4 Mixed Use, B5 Business Development and B7 Business Park.
- IN1 General Industrial, IN2 Light Industrial and IN4 Working Waterfront.
- SP1 Special Activities, SP2 Infrastructure and SP3 Tourist.
- RE1 Public Recreation and RE2 Private Recreation.
- E1 National Parks and Nature Reserves, E2 Environmental Conservation, E3 Environmental Management and E4 Environmental Living.

Perhaps the only zone that could be considered is possibly E3 Environmental Management given that a large part of the subject land is already identified in the LEP as having environmental values this zone may be appropriate. The E3 zone also still allows a broad range of land uses as 'permitted with consent', including:

Animal boarding or training establishments; Boat building and repair facilities; Boat sheds; Building identification signs; Business identification signs; Camping grounds; Cellar door premises; Charter and tourism boating facilities; Dual occupancies (attached); Dwelling houses; Eco-tourist facilities; Environmental facilities; Environmental protection works; Extensive agriculture; Forestry; Group homes; Helipads; Home-based child care; Home businesses; Home industries; Information and educational facilities; Kiosks; Oyster aquaculture; Pond-based aquaculture; Recreation areas; Research stations; Roads;

Roadside stalls; Sewerage systems; Tank-based aquaculture; Tourist and visitor accommodation; Water recreation structures; Water supply systems

Note: whilst a range of uses are permissible in the E3 zone, they may not all be appropriate or possible on the subject land.

The range of permissible uses in the E3 is also not as broad as the existing RU2 zone. For example, in addition to 'extractive industries', the E3 zone in comparison does not also permit 'extensive agriculture' or 'forestry' without consent and uses such as 'agriculture', 'artisan food and drink premises', 'food and drink premises', 'plant nurseries' and 'recreation facilities' with consent. Thus, rezoning the site to E3 would generally reduce/narrow the overall range of permissible uses.

Other Considerations

It should be noted that if a zone change is pursued or able to be pursued, it may not actually achieve the desired intent for the following reasons:

- *State Environmental Planning Policy (SEPP)(Mining, Petroleum Production and Extractive Industries)*

Under Clause 7 of this SEPP 'mining' is permissible with consent within NSW where "development for the purposes of agriculture or industry may be carried out (with or without development consent)".

'Agriculture' is considered in the broadest sense - 'extensive agriculture' is currently permissible with consent in the E3 zone.

Under the SEPP 'mining' is defined as:

Means the winning or removal of materials by methods such as excavating, dredging, or tunnelling for the purpose of obtaining minerals, and includes -

- construction, operation and decommissioning of associated works, and*
- stockpiling, processing, treatment and transportation of materials extracted, and*
- rehabilitation of land affected by mining.*

As such, irrespective of the LEP, 'mining' may still be permissible on the subject land via the SEPP.

- *Existing Use Rights*

Assuming a change of zoning occurred that no longer permitted 'extractive industries' and depending on the nature of any previous or existing consents, it may still be possible that the subject land benefits from 'existing use rights'. This could still create an opportunity, irrespective of the zoning and subject to justification, to pursue an 'extractive industry' on the site.

Conclusions

There is no clear or straightforward way to achieve the intent of the 3 September 2019 Council resolution.

As outlined above perhaps the only way to not permit 'extractive industries' on the subject land in the LEP is to change the zoning of the subject land to possibly E3 Environmental Management. This would require appropriate justification and as well as removing the potential for 'extractive industries', it would also remove a range of other land uses that are currently permissible. This may not be welcomed by the landowners.

The NSW Government may not support any attempt to not permit 'extractive industries' on the subject land and it is recommended that an initial dialogue take place with the relevant parts (planning and mineral resources) of the NSW Department of Planning, Industry and

Environment. Even if a rezoning is possible, it is still likely that the landowners may not support a change of this nature.

Community Engagement

No community engagement has been carried out at this point. If the matter proceeds to a formal PP then there will be the opportunity for public comment as part of this process.

Policy Implications

There are a range of policy implications depending on the option that is pursued - these are discussed in the report.

The priority of any PP would need to be considered by the Council in the context of the overall Strategic Planning Works Program – specifically whether it is pursued as a standalone PP or as part of the ongoing LEP housekeeping process.

DE21.41 Proposed Submission - NSW Planning Reforms - Agritourism and Small-scale Agriculture Development

HPERM Ref: D21/128569

Department: Strategic Planning

Approver: Robert Domm, Director - City Futures

Attachments: 1. Draft Council Submission - Proposed Planning Reforms: Agritourism and small-scale agriculture development (under separate cover) [↗](#)

Reason for Report

Advise of the public exhibition by the NSW Department of Planning, Industry & Environment (DPIE) of an Explanation of Intended Effect (EIE) for proposed amendments to the NSW planning system relating to agritourism and small-scale agriculture development and obtain Council endorsement to make the submission at **Attachment 1**.

Recommendation (Item to be determined under delegated authority)

That Council:

1. Endorse the draft submission on the proposed planning reforms related to agritourism and small-scale agriculture development (**Attachment 1**) so it can be finalised and sent to the NSW Department of Planning, Industry & Environment for consideration.
2. Request further consultation and dialogue on the proposed reforms before they are finalised.
3. Receive future reports, if required, to enable further comment on the detail of the proposed planning reforms.

Options

1. As recommended.

Implications: This is the preferred option and will enable Council to provide a submission highlighting matters that should be considered by DPIE in relation to the proposed planning reforms.

The proposed submission attempts to balance a range of views and interests within Council and raises/addresses matters that could have implications for Shoalhaven.

2. Make changes to the draft submission (**Attachment 1**) and submit.

Implications: This will still enable Council to provide a submission; however, the implications of any possible changes are unknown and may require closer consideration and refinement.

3. Not make a submission

Implications: This is not favoured as it will mean Council does not provide input on the proposed planning reforms which could have a range of implications.

DE21.41

Background

The NSW Government is currently proposing amendments to the NSW planning system to streamline the approval of agritourism development and small-scale agricultural development.

The reforms are part of the Government's response to the recent economic impacts of natural disasters, such as droughts, bushfires and floods, as well as the impact of COVID-19 on the farming community and the economy more broadly.

A copy of the proposed amendment package can be viewed at the following link:
<https://www.planningportal.nsw.gov.au/draftplans/exhibition/agriculture-changes>

The Explanation of Intended Effect (EIE) which is the key component of the exhibition package outlines proposed amendments to:

- The *Standard Instrument (Local Environmental Plans) Order 2006* (Standard Instrument LEP Order),
- The *State Environmental Planning Policy (Primary Production and Rural Development) 2019* (PPRD SEPP), and
- The *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (Codes SEPP).

The proposed changes outlined in the package include:

- Amending the existing definition for 'farm stay accommodation' in the Standard Instrument (Local Environmental Plans) Order 2006 (Standard Instrument) to support more farm stays.
- Introducing two new land use terms in the Standard Instrument LEP for 'farm gate activities' and 'farm events' to enable these types of development to be established/considered.
- Providing fast track exempt and complying development approval pathways for agritourism activities where certain development standards are met.
- Allowing the reconstruction of farm buildings and other structures as exempt development following natural disaster, where constructed to the same size, location, and contemporary building standards.
- Allowing the establishment of small-scale processing plants as complying development for meat, dairy and honey and other agricultural produce where certain development standards are met.
- Updating development standards for poultry farms and pig farms to align separation distances with recommended biosecurity standards.
- Clarifying terminology and approval pathways used for farm dams.
- Updating controls that allow dwellings on rural lots as complying development to ensure enough separation from adjacent primary production enterprises.
- Updating and rationalising existing controls for stock containment lots to reflect current practice and ensure stock containment areas used temporarily, such as during drought, do not impact negatively on surrounding uses.
- Providing an exempt development pathway for recreational beekeeping to improve certainty.
- Introducing new optional clauses for farm stay accommodation and farm gate activities that councils can choose to adopt in their local plans for development applications.

Council reviews and related

During 2019/2020, Council completed local planning reviews related to both 'tourist and visitor accommodation' and 'temporary events' (using Clause 2.8 of the existing LEP). No substantial changes resulted.

The Shoalhaven Local Strategic Planning Statement (LSPS) that was adopted by Council in October 2020 includes the following action:

*A7.1 Review planning and development controls for tourist and visitor accommodation and temporary uses to balance the support of tourism activity and manage impacts on communities and sensitive locations. **Short-term** (Note: this means between 2022-2024)*

Destination Sydney Surrounds South (DSSS) have also continued to advocate for a more certain planning framework for rural and agricultural tourism/visitor opportunities.

Council has continued to receive representations from Community Consultative Bodies (CCBs) and community members about the need for rural and agricultural tourism/visitor uses to be restricted or regulated. Copies of community submissions on the current NSW Government reforms has also been provided to Council.

Council staff comments

The current proposed NSW reforms have been reviewed by relevant sections of Council and the following comments reflect the feedback received.

The proposed reforms seek to introduce a number of changes that are generally supported, including:

- Provisions for recreational beekeeping.
- Increased setbacks for new rural dwellings where they share a boundary with an intensive agricultural use to avoid land use conflicts.
- Clarifying terminology and approval pathways used for farm dams.
- Implementing planning controls to make it easier for farming communities impacted by bushfires to recover and rebuild.

Whilst parts of the proposed reforms will have a positive impact and clarify things, and it is good that the planning pathway for 'farm events' is being considered, a number of concerns have been identified in relation the proposed changes and potential impact on both Council and the broader community, including:

- Consideration of 'destination weddings' (proposed new land use) via a development application in certain zones. The RU1, RU2 and E3 zones may be appropriate for this purpose but it is requested that specific consultation occur with Councils in regard to zone suitability - the SI LEP must remain flexible enough for each Council to decide to opt in or out regarding permissibility (i.e. the ultimate inclusion of the 'destination weddings' land use should not be a mandated).
- There could be a range of compliance questions that will fall to Council to consider and resolve.
- Increases in exempt and complying development and development without consent which will mean that the community will have fewer opportunities to have a say.
- The proposed development standards for exempt and complying development appear to lack integration with the wider planning system and other legislation. This includes a number of land-based exclusions which would normally prevent exempt and complying development from occurring.

- Development standards appear to fail to consider important requirements, such as food safety standards and effluent disposal.
- It is proposed that 'Farm events' can operate as exempt development for 52 event days per year with up to 30 guests per event or 10 events per year with up to 50 guests per event.
- Events of this nature have the potential to have significant adverse impacts on neighbouring properties, however landowners/residents will not be able to consider a proposal and make comment on it. Whereas LEP Clause 2.8 currently enables any 'adverse' impacts to be considered – i.e. noise, traffic etc.
- Developments approved under Clause 2.8 already generate significant compliance work for Council. The ability for this form of development to proceed via an exempt development pathway could see a further increase in these types of events and also the associated complaints.

The proposed submission at **Attachment 1** provides more detail on these concerns and other matters of interest to Shoalhaven.

Conclusion

Tourism and its economic impacts are important to Shoalhaven, particularly post Covid-19. As such it is important that there are clear development pathways for existing and emerging forms of tourism development. There is however a need to make sure that any planning reforms in this regard consider and balance the potential adverse community etc impacts that could result.

Given the relevance of this matter to Shoalhaven it is important that Council makes a submission at this point balancing tourism benefits with community impact. Additional consultation and engagement with Council is essential to get the changes right and will be requested as DPIE move to further consider and resolve the proposed reforms.

Community Engagement

The EIE was on public exhibition between 9 March and 19 April 2021 to provide an opportunity for Council, the community and industry stakeholders to provide comments and feedback.

Council has received copies of some submissions to DPIE on this matter from the Berry Forum and some community members in the Berry and Kangaroo Valley areas.

Due to reporting dates, a draft staff submission based on **Attachment 1** was provided to DPIE on 19 April 2021 as a 'placeholder'. The Council endorsed submission will be provided following this meeting.

Policy Implications

The EIE proposes amendments to the NSW planning system, including the *Standard Instrument (Local Environmental Plans) Order 2006*.

As a result, the proposed planning reforms will have an immediate impact on existing LEPs upon finalisation.

Financial Implications

There are no immediate financial implications for Council; however, the reforms may result in potential issues with regard to resourcing of future compliance action.

Risk Implications

There are no immediate risks for Council; however, there are concerns that the increasing nature of exempt and complying development and development without consent, along with the expanding Codes SEPP means that the community is slowly having fewer opportunities to have a say as it reduces the community's ability to consider development applications on their merit. Understanding the planning system and what is permissible where is a growing broader concern.

DE21.42 Exhibition Outcomes and Finalisation - Planning Proposal - Hitchcocks Lane, Berry (PP029)

HPERM Ref: D21/135895

Department: Strategic Planning

Approver: Robert Domm, Director - City Futures

Attachments:

1. Summary of Submissions (under separate cover) [⇒](#)
2. Final Planning Proposal (under separate cover) [⇒](#)
3. Post Exhibition Changes to DCP Chapter N3: Berry - West of the Princes Highway (under separate cover) [⇒](#)
4. Draft Planning Agreement Terms dated 8 April 2021 (under separate cover) [⇒](#)
5. Proponent's updated Noise Impact Assessment (under separate cover) [⇒](#)

Reason for Report

- Present the outcomes of the public exhibition of Planning Proposal (PP029) and draft Development Control Plan (DCP) Chapter N3 Berry Residential Subdivision (renamed Chapter N3: Berry – West of the Princes Highway).
- Address the issues raised within submissions and propose refinements to planning controls in response.
- Provide updates regarding:
 - the Planning Agreement for a Landscape Screen (to mitigate visual impacts of development); and
 - the review of the Shoalhaven Contributions Plan 2019 (to provide for embellishment of the park area between Hitchcocks Lane and Huntingdale Park Road).
- Seek Council endorsement to adopt Planning Proposal (PP029) and the supporting draft Development Control Plan (DCP) Chapter N3: Berry – West of the Princes Highway, which will rezone land for residential development and provide planning controls for subdivision and housing on land south of Hitchcocks Lane at Berry.
- Obtain Council endorsement to prepare and publicly exhibit a draft Planning Agreement for the required Landscape Screen and finalise the LEP amendment (resulting from PP029) once the Planning Agreement is signed and registered.

Recommendation (Item to be determined under delegated authority)

That Council:

1. Adopt Planning Proposal (PP029) as exhibited with the minor changes outlined in this report.
2. Prepare and exhibit a draft Planning Agreement for a Landscape Screen (to mitigate visual impacts of development) based on the draft Planning Agreement Terms (negotiated terms of agreement between Council and the proponents) for a minimum of 28 days.
3. Liaise with the NSW Parliamentary Counsel's Office (PCO) to amend the Shoalhaven Local Environmental Plan (LEP) 2014 under Council's delegation, with finalisation of the

LEP amendment to occur only when the Planning Agreement for the Landscape Screen is signed and registered.

4. Adopt and finalise Chapter N3 of Shoalhaven Development Control Plan (DCP) 2014 as exhibited, except for the changes outlined in this Report.
5. Prepare and progress an amendment to the Shoalhaven Contributions Plan (CP) 2019 Project 01OREC0009 (Land acquisition for passive open space – Princes Highway, Berry) to provide embellishments to the passive open space area between Hitchcocks Lane and Huntingdale Park Road, in response to increased demand due to population growth.
6. Advise key stakeholders of this decision and when the LEP and DCP amendments are finalised.

Options

Notes: Council's recently updated Planning Agreements Policy (updated January 2021) states that: *Council will seek to have the planning agreement executed prior to finalisation of any instrument change referred to in the planning proposal, or before Council makes that instrument change under delegation.*

The administrative tasks involved in amending the LEP typically take several weeks, during which time the draft Planning Agreement could potentially be exhibited. In other words, if the Planning Agreement progresses as hoped, it may be ready to sign at, or close to, the notification date for the LEP amendments.

1. Adopt the PP but not proceed to amend the LEP until a Planning Agreement for the Landscape Screen has been signed and registered on title.

Implications: This option is preferred as it will guarantee that the legal mechanism to deliver the Landscape Screen is in place before the LEP is amended.

Rezoning the subject land to allow for housing development in Berry is consistent with the Shoalhaven Growth Management Plan.

The Landscape Screen is a critical component of the future development as it will (at maturity) help mitigate visual impacts and have a positive effect on local amenity (for residents of the future subdivision). The Planning Agreement is the legal mechanism to ensure the screen is established in a timely and coordinated manner.

This approach would be consistent with advice from Council's lawyers, as well as the approach used for the Planning Proposal at 510 Beach Road (PP043). This option could however potentially delay the LEP amendment, although there would be a strong incentive for the parties to finalise the Planning Agreement as soon as possible.

2. Adopt the PP and undertake the administrative tasks associated with finalising the amendment, but not finally amend the LEP unless the Planning Agreement has been placed on public exhibition.

Implications: This option may be workable for all parties but does not give the security of Option 1. The proponents have indicated they are committed to establishing the screen and their preference is to amend the LEP as soon as the draft Planning Agreement has been placed on public exhibition.

It is acknowledged that this would be an important milestone and the details for the Planning Agreement have been developed in collaboration with the proponents. However, Council's lawyers have recommended against amending the LEP before the Planning Agreement has been finalised as a general principle. Furthermore, the land is

in two separate ownerships and either property could potentially be sold prior to the Agreement being signed.

3. Adopt the PP and DCP as exhibited, or with only some of the changes recommended in this report.

Implications: The PP is part of a package of planning amendments and projects. The PP is accompanied by a site-specific DCP Chapter and an intention to prepare and exhibit a draft Planning Agreement and amendment to a Contributions Plan project for a park in the area. Proceeding with the rezoning of the land and abandoning one or more of the related projects could compromise the intended beneficial outcomes for the community, which cannot be secured through amendments to the LEP only. Any late-stage amendments to the proposal could compromise the planning outcomes and potentially require re-exhibition. Not recommended.

4. Not proceed with rezoning of the land.

Implications: This would result in no rezoning of the subject land and no additional greenfield housing supply in Berry. This option is not recommended because additional housing is required in Berry; the proposal complies with adopted strategic growth plans; and the proposal aims to address potential impacts via a DCP amendment, Planning Agreement and provision of park embellishments in the area. Not recommended.

Background

Location

Planning Proposal (PP029) seeks to rezone 11.02 hectares of land south of Hitchcocks Lane, Berry from RU1 Primary Production to R2 Low Density Residential to facilitate new housing development. The current endorsed *Shoalhaven Growth Management Strategy (Version 1) 2014* (GMS) identifies the subject land as an investigation area for growth.

The subject land (part of Lots 762 and 763 DP 1224932, and part of the Hitchcocks Lane Road Reserve) is shown in **Figure 1** below.

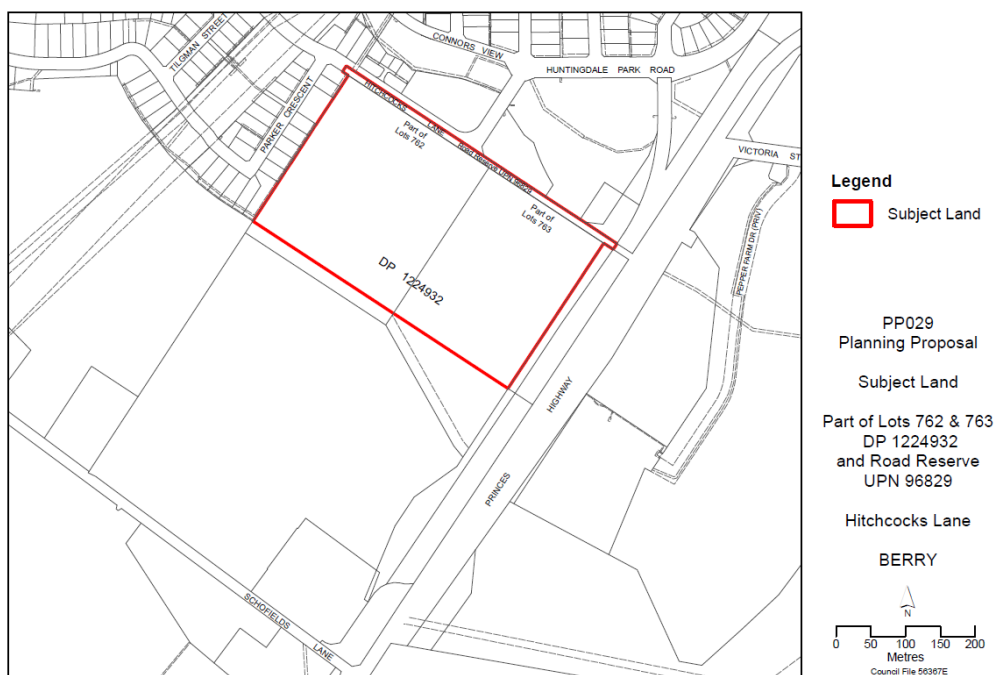


Figure: Subject Land PP029

DE21.42

PP Preparation and Gateway determination

In September 2017, a request was received on behalf of private landowners to rezone land between Hitchcocks Lane and Schofields Lane (Lots 762, 763 and 764 DP 1224932) from rural to residential.

Council resolved on 14 November 2017 (MIN17.953) to prepare and advance the current PP applying only to the land identified for growth in the GMS (see **Figure 1**), as additional urban expansion southwards towards Schofields Lane is not supported by strategic growth plans.

The NSW Department of Planning, Industry and Environment (DPIE) issued a Gateway determination for the PP on 3 April 2018 enabling the PP to proceed further. The Gateway determination included a completion date in October 2019. However, to allow for completion of technical studies and public exhibition, an extension of 12 months was granted, requiring finalisation by 3 October 2020. This deadline has now passed and a request for a further extension was declined on 2 October 2020, with DPIE advising that the PP should be completed as soon as practicable. Correspondence from DPIE, dated 19 March 2021 reiterated the urgency to complete PPs that over 2 years old, including PP029.

Planning Proposal Overview

The PP proposes the following amendments to Shoalhaven LEP 2014:

- Rezone the subject land from RU1 Primary Production to R2 Low Density Residential (See Map 1 in **Attachment 2**).
- Introduce a building height limit of 8.5 m (See Map 2 in **Attachment 2**).
- Amend the minimum lot size for subdivision to enable a future mix of urban lot sizes, with the majority proposed to have a minimum allowable lot size of 500 m² and along the southern boundary 700 m² will apply, and 25% of the site area will be able to have a minimum lot size of 350 m². The proposed drainage reserve will have a minimum lot size for subdivision of 1 ha, to enable it to be retained as one land parcel (See Map 3 in **Attachment 2**).

Proposed Development Control Plan (DCP) Chapter N3

The intended LEP amendments are proposed to be supported by changes to DCP Chapter N3: Berry Residential Subdivision which will be renamed 'Berry – West of the Princes Highway' (The revised name more clearly identifies where the Chapter applies, following the convention of other area-specific chapters).

DCP Chapter N3 will include site-specific planning objectives and controls to guide future development outcomes in the Hitchcocks Lane subdivision area (see **Attachment 3**). It focuses on coordinated and efficient infrastructure delivery and promotion of high quality subdivision and housing design, to reinforce key character qualities of Berry. The majority of proposed planning objectives and controls apply to the subdivision of land south of Hitchcocks Lane. The section applying to building of homes in this area is kept intentionally simple, containing 10 Performance Criteria, to provide beneficial design guidance and to streamline approvals for building of homes.

Public Exhibition

Council resolved on 1 September 2020 to exhibit the PP and draft DCP chapter to enable stakeholder and community feedback (MIN20.619). As a result, they were placed on public exhibition seeking community feedback for an extended period between **28 October 2020 – and 8 January 2021**.

The Gateway determination required a public exhibition period of a minimum 60 days. In recognition of restrictions imposed by Covid-19 and the holiday period, the public exhibition ran for over 10 weeks (a total of 73 days) to provide additional time to view the plans and comment.

A project website was set up on Council's 'Get Involved' page and the exhibition material was also available on Council's website, and included:

- [PP029 Planning Proposal](#) (October 2020) – proposed changes to the LEP.
- [Draft Development Control Plan \(DCP\) Chapter N3 Berry Residential Subdivision](#) – site-specific planning controls and design guidance for future development.
- [Explanatory Statement](#) – short summary of proposal
- [FAQs](#)
- Public Notice
- 9 Technical Supporting Studies (including Traffic Impact Assessment, Bushfire Hazard Assessment and Aboriginal Cultural Heritage Assessment)
- Gateway determinations dated 3 April 2018 and 22 October 2019, and related correspondence.
- Related Council Reports and Resolutions

The 'Get Involved' page was visited 554 times during the public exhibition, with 141 downloads of documents. No statistics are available for visitors to the Council website.

Due to Covid-19 restrictions at the time, a hard copy exhibition was not provided at the Administration Building; however the community notification letters noted the ability to request hard copy documents for those with limited internet access.

322 households were sent notification letters - all landowners in Huntingdale Park Estate and residents of Ford Street, The Gables and Host Place. Relevant stakeholder groups were also directly advised including:

- | | |
|---|---------------------------------------|
| • Berry Forum Community Consultative Body (CCB) | • Nowra Local Aboriginal Land Council |
| • Berry Chamber of Commerce and Tourism | • Rotary Club of Berry |
| • National Trust Illawarra Shoalhaven Branch | • Berry & District Historical Society |
| • Berry & District Garden Club | • Berry Alliance/Sustainable Berry |
| • Berry Landcare | • Berry Bus Service |
| • Berry Medical Centre | • Berry Public School |
| • Berry Community Pre-school | • Natural Play Children's Centre |
| • Jumping Jellybeans Early Childhood Centre | • The Learning Tree OSHC |
| • Berry Police Station | |

Notification of the exhibition was published on Council's main webpage. The matter received good media coverage, including the following mentions:

- ABC Illawarra – Facebook Post – 27 October 2020
- Berry Town Crier – Facebook Post – 27 October 2020
- Radio 2ST– 28 October 2020 and 11 November 2020 (stories on website)

- South Coast Register – 12 November 2020
- Illawarra Mercury – 13 November 2020
- Berry Alliance Town Crier – December and February editions
- Daily Telegraph – 9 December 2020
- Shoalhaven City Council – Facebook Post – 3 January 2021

Council's 'In Your Neighbourhood' Newsletter of 12 November 2020 covered the exhibition. In addition, the Town Crier, Huntingdale Park Residents Action Group and the Berry Forum CCB distributed information to their networks. Council staff were available via phone or email to answer enquiries. An error in the published direct line phone number of the Strategic Planner was corrected when it was brought to Council's attention. The ability to call via the general Council phone number was always available. A small number of enquiries (~10) were received over the phone or via email.

Whilst 'face to face' methods of community engagement were constrained by Covid-19 restrictions at the time, the proposal was broadly advertised across the local area, and residents were provided with an extended exhibition period during which to obtain additional information and provide comments.

Public Exhibition Results

Forty-five (45) submissions were received from members of the community and two groups (the Huntingdale Park Residents Action Group and the Berry Forum) during the public exhibition period. The majority of submissions (38) received were from people living in Berry. The others were received from other areas or had no address listed.

A submission was received from the Huntingdale Park Residents Action Group (HPRAG), signed by forty-two (42) residents of Huntingdale Park Estate (representing twenty-seven (27) households). Twenty (20) HPRAG members also provided individual submissions (included in the total count of 45 submissions).

The Berry Forum - Community Consultative Body (CCB) has provided a submission. The Nowra Local Aboriginal Land Council stated that a representative was involved during the preparation of the Aboriginal Cultural Heritage Assessment for the proposal and that they would not be providing a submission at this stage.

Thirty-seven (37) of the submissions objected to the rezoning proposal; five (5) supported aspects of the proposal, but opposed others; and three (3) did not express support nor opposition to the proposal overall. Each submission is summarised and addressed individually in **Attachment 1 Summary of Submissions**. The main themes raised are discussed below.

Public Exhibition Feedback – Summary of Main Themes

The main submission themes related to:

- Infrastructure capacity concerns (particularly road capacity and traffic impacts).
- Impacts of development on local character.
- Concerns about overdevelopment and poor design.

Comments relating to these themes are summarised in the graphs below (**Figures 2 to 4**). These main themes are discussed further in **Table 2**.

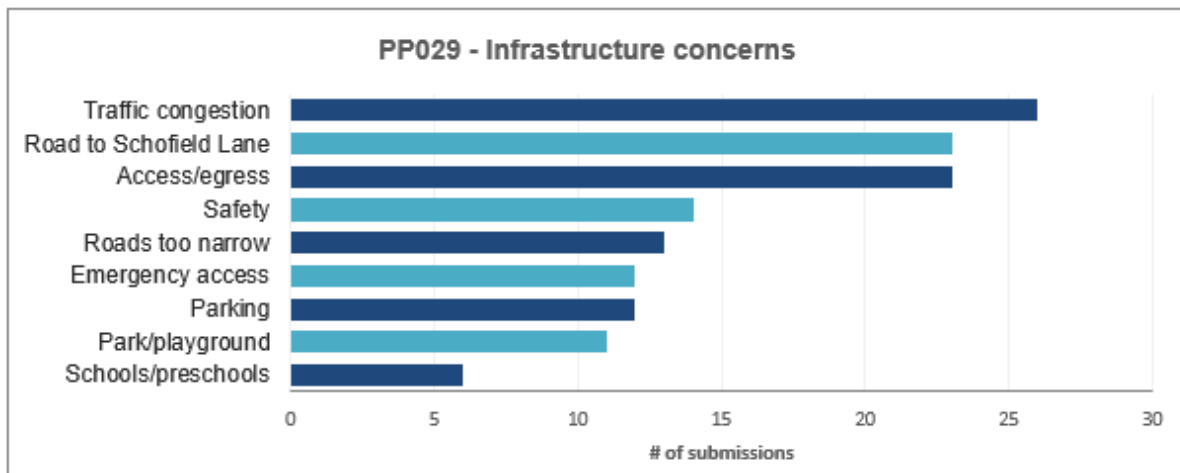


Figure 1: Summary of themes relating to infrastructure capacity.

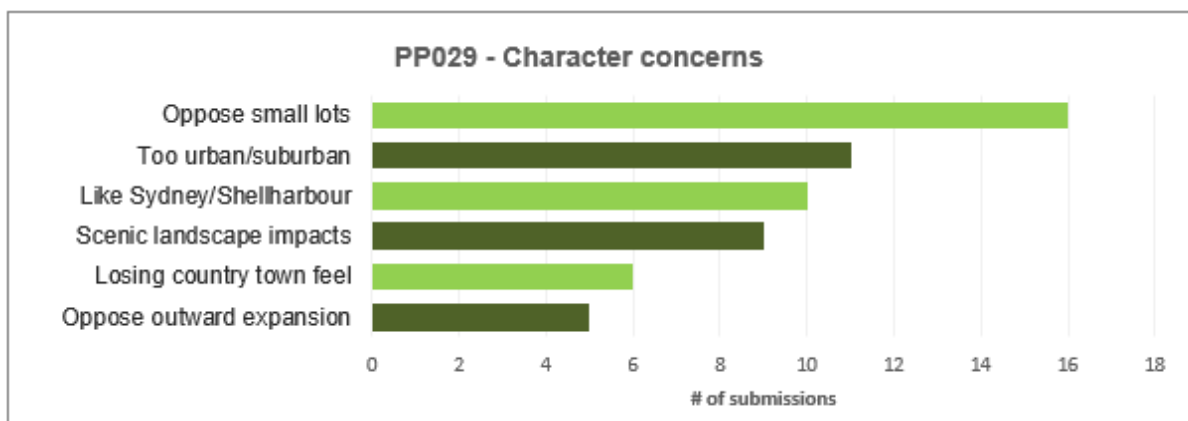


Figure 2: Summary of themes relating to character impacts.

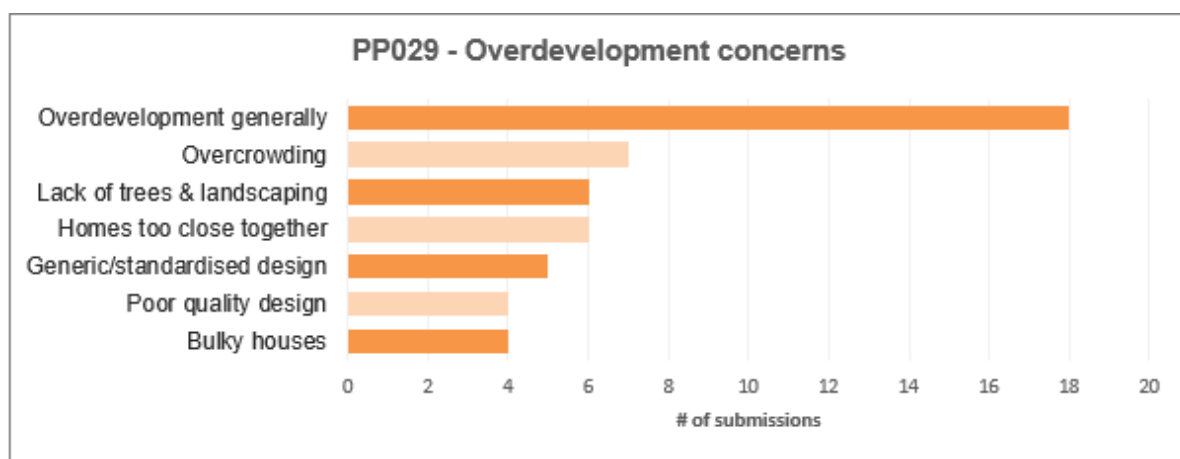


Figure 3: Summary of themes relating to overdevelopment and design issues.

The community group submissions are summarised in Table 1 below and considered further in **Attachment 1**.

Table 1: Summary of Community Group Submissions

Name of group	#	Summary
Huntingdale Park	34	Lamentable that engagement compromised.

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Residents Action Group (HPRAG)		<p>Accept Council need to provide further housing but traffic past existing residents should be stopped or at least greatly reduced.</p> <p>DCP generally well-meaning and supported but limited in power. Want to limit lots to maximum of 110 with maximum of 132 dwellings.</p> <p>Want connection from development back to Schofields Lane to limit traffic impacts on existing residents. This link will reduce traffic, noise, reduce conflicts and improve safety.</p> <p>Want access denied to Hitchcocks Lane – do not want more cars on this road. The Unnamed Link Road should be constructed to higher flood standard.</p> <p>Should have clearly identified proportion of contributions funds directed to development of passive open space to enhance community use. Engagement with community should determine required embellishments.</p> <p>Existing local road network already busy and traffic impact assessment questioned. Believe traffic impacts on existing residents from proposed development will be unreasonable. Need to protect existing resident's current levels of amenity as top priority.</p>
Berry Forum CCB	28	<p>Prefer proposed R2 Low Density zone over R1 General Residential zone applied elsewhere in Huntingdale Park to prevent issues related to higher density. DCP controls should result in high quality subdivision sensitive to character of Berry, however, must be strictly enforced.</p> <p>Still concerned about excessive bulk and visual impacts and multiple dual occupancy development on larger lots (700 m²).</p> <p>Encourage provision of passive open space.</p> <p>Need further traffic studies – existing hazards at Kangaroo Valley Road roundabout. Need to resolve foot traffic issues and opportunities at this stage.</p> <p>Noise issues to be resolved at early stage with good initial mitigation, negating need for retrospective measures. Should embrace natural materials (earth berms) rather than unsightly concrete walls.</p>

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Table 2: Community feedback - main themes - responses

Submission Theme & Summary	Comment	Proposed planning control changes
<p><u>Traffic congestion impacts</u></p> <p>Many submissions expressed significant concerns about additional traffic volumes:</p> <ul style="list-style-type: none"> Concerned roads will become unreasonably congested and that traffic noise and construction traffic impacts will unfairly 	<p><i>Traffic volumes will increase in line with expectations for growth areas. The projected traffic increase is assessed to fall within acceptable limits. Proposed site-specific planning controls within DCP Chapter N3 seek to reduce potential amenity impacts to residents and encourage increased walking and cycling for local trips.</i></p> <p><i>A Traffic Impact Assessment (TIA) (Bitzios, May 2019) accompanies the PP and describes expected future traffic and its impact on the</i></p>	<p>The DCP Chapter N3 has been updated in response to submissions concerned about traffic congestion. The DCP Chapter provides a framework to guide efficient, safe and attractive road and lot design.</p> <p>The Chapter has been updated in the following manner:</p> <ul style="list-style-type: none"> The Indicative Layout Plan (ILP) updated to reflect the planning objectives and controls

<p>impact on amenity and lifestyle.</p> <ul style="list-style-type: none"> Roads of particular concern include Hitchcocks Lane, Huntingdale Park Road and the roundabout at Kangaroo Valley Road. Residents concerned that new development traffic would overwhelm these roads. Some residents expressed concerns about these roads being too narrow and already busier than expected. 	<p><i>surrounding road network capacity. Council's Traffic Section have reviewed the TIA and provided input into the access and transport requirements of DCP Chapter N3.</i></p> <p><i>Total eventual traffic is expected to consist of approximately one-third traffic from proposed development (south of Hitchcocks Lane) and two-thirds of traffic from Huntingdale Park Estate.</i></p> <p><i>TIA illustrates that Huntingdale Park Road and Kangaroo Valley Road intersection will operate within capacity during peak times. Huntingdale Park Road (east of Brangus Close) is a Local Distributor Road with design capacity for 6000 vehicles per day (vpd). Post development traffic volumes in 2030 expected at 3700 - 4100 vpd (for 110-150 lots), and 300 - 350 vehicles in peak - within acceptable capacity limits.</i></p> <p><i>Intersections in this area expected to provide performance levels of A and B (intersection levels of service (LOS) are rated from A – F). This means turning delays/wait times, queuing and congestion saturation measures all fall within acceptable levels. TIA models expected <u>average in peak times</u>: delays of between 8 – 11 seconds for turning (including U-turns), average of two cars queuing and saturation measure of 0.3 (with congestion saturation occurring at >0.85).</i></p> <p><i>Future traffic analysis as part of subsequent development applications will require specific consideration of impacts from development on Connors View, Brangus Close and Huntingdale Park Road intersection. The required upgrade of the Unnamed Link Road will take traffic pressure off Huntingdale Park Road (west of the Lincoln Close - Unnamed Link Road intersection) and Hitchcocks Lane.</i></p>	<p>within the DCP Chapter and to highlight that proposed road connections are conceptual. Actual road layouts will be designed and assessed at subdivision stage of development.</p> <ul style="list-style-type: none"> The Unnamed Link Road highlighted as a major new road connection required to be built (along with the Entry Road), recognising its importance in carrying traffic from the completed development (see revised Indicative Layout Plan). Clarified triggers for the complete construction of the Unnamed Link Road and Entry Road, should the development be staged to ensure timely and coordinated delivery of roads (see Section 6.5). Updated controls relating to encouraging walking and cycling, including introducing new 'Walking and Cycling links' map showing required path network (see Figure 14 in DCP Chapter N3). This includes provision of shared path along the Unnamed Link Road to provide a direct link to Berry Town Centre and a new requirement to plant shade trees along pathways for comfort.
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	<p><i>The DCP has been updated post-exhibition to describe the trigger points for the upgrade of the Unnamed Link Road to prompt timely provision of this upgrade and minimise potential traffic impacts to residents in this area.</i></p> <p><i>Sufficient information exists to support the rezoning of the land showing that potential traffic impacts can be managed within acceptable thresholds. However more detail on roads and upgrades will be required and assessed at subdivision stage. Additional community comment opportunities will also occur at this stage.</i></p>	
Submission Theme & Summary	Comment	Proposed planning control changes
<p><u>Schofields Lane road link</u></p> <p>Many submissions requested Council require an additional road to be built to connect the new development area to Schofields Lane to the south (illustrated in Figure 5 below).</p> <p>This request resulted from concerns about increased traffic volumes in Huntingdale Park Estate and stated the suggested road link would alleviate traffic congestion for existing residents.</p> <p>Construction of a road link to Schofields Lane is not currently proposed (nor recommended) within the PP or DCP.</p>	<p><i>Requiring an additional road linking the new development area to Schofields Lane is not supported at this stage.</i></p> <p><i>The Traffic Impact Assessment (Bitzios, Jan 2019) indicates the road network to the north (comprising Huntingdale Park Road, the to-be-upgraded Unnamed Link Road and Hitchcocks Lane) are able to accommodate the proposed development safely and efficiently.</i></p> <p><i>As detailed below, the costs and potential adverse impacts of a Schofields Lane road link outweigh the (possible) benefits to a small number of residents affected by an increase in traffic volumes. The area covered by the PP has been earmarked for residential development in Council's GMS. The additional traffic is not expected to result in unacceptable impacts to existing residents and forms an inevitable part of planned growth. Planning controls within the site-specific DCP Chapter N3 seek to minimise traffic and amenity impacts resulting from development where possible.</i></p> <p><i>Transport for NSW has reviewed</i></p>	<p>It is not proposed to change the DCP Chapter as exhibited to require or reference any road link to Schofields Lane.</p> <p>Any requirement to mandate the road link in a DCP (prior to detailed design of future subdivision and accompanying traffic impact assessment) in light of the above information could be considered unreasonable and difficult to require or negotiate.</p> <p>All road links provide benefits and involve trade-offs and the cost-benefit analysis of the Schofields Lane link could change over time. However, at this stage, considering available information, mandating provision of a link to Schofields Lane is not considered necessary nor desirable.</p> <p>The existing planning controls do not preclude further consideration as part of future development applications, if warranted, of a connection to Schofields</p>

	<p><i>the request relating to the Schofields Lane link and indicated at this stage they would be unlikely to support this proposed road link (refer to submission # 47 in Attachment 1).</i></p> <p><i>It is noted that 'roads' are permissible with consent in most zones in the LEP. As such should circumstances change as part of the detailed subdivision design stage of development, the current planning controls do not prevent further consideration of a road link to Schofields Lane as part of any future development.</i></p> <p><i>Any such proposed road link would need to be supported by traffic impact assessment and rigorous planning justification which would be assessed at the subdivision application stage of development. At this rezoning stage, sufficient information has been provided to show that traffic impacts can be managed appropriately without the need to mandate construction of a link road to Schofields Lane.</i></p> <p><u><i>Benefits/Advantages of link to Schofields Lane</i></u></p> <ul style="list-style-type: none"> <i>• Could reduce traffic volumes on existing local road links and reduce amenity impacts for some residents associated with increased traffic.</i> <i>• Provides additional south-bound connection to Princes Highway (benefit would depend on whether safe entry onto Highway could be assured).</i> <i>• Additional access for construction vehicles and reduction in construction vehicle traffic impacts to existing residents (depending on timing of road construction).</i> <i>• Additional possible access route for emergency evacuation.</i> <i>• Additional access point to</i> 	<p>Lane.</p>
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	<p><i>Church and future (proposed) equestrian centre.</i></p> <p><u><i>Costs/Risks/Disadvantages of link to Schofields Lane</i></u></p> <ul style="list-style-type: none"> <i>• Presence of new road link could be used as justification for future rezoning proposals and result in development pressure to subdivide the surrounding rural land area. Additional rezoning (urban expansion) of Berry to the south is not supported by strategic growth plans.</i> <i>• Road would have visual impacts and further compromise the scenic rural landscape on southern approach into Berry. Any future development along road link would have visual impacts.</i> <i>• Would need to traverse watercourse and flood-prone area, raising costs & potentially increasing visual impacts (e.g., bridges and flood mitigation structures).</i> <i>• Would result in fragmentation of rural land, reducing suitability of land to potentially be used for agriculture.</i> <i>• Unlikely to be cost-effective or efficient way to provide infrastructure as existing road network (with proposed Unnamed Link Road upgrade) can accommodate projected growth. Expense of providing road link could impact Hitchcocks Lane development viability (without additional development of surrounding rural land). Would result in increased ongoing road maintenance</i> 	
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	<p>costs.</p> <ul style="list-style-type: none"> • <i>Could have safety and congestion implications at Schofields Lane intersection with Princes Highway (which has been designed only for relatively low volumes of traffic associated with rural uses).</i> • <i>TfNSW indicate unlikely to support at this stage due to possible impacts on state road network and increased possibility of use of Highway for local trips.</i> • <i>Increased traffic impacts on residents of rural land along Schofields Lane.</i> • <i>Not necessarily of benefit as an emergency evacuation route, would depend on design and specification as land is flood-prone and land to south and west is direction of most likely bushfire hazard.</i> • <i>May not be a preferred link as other roads will provide quicker, safer, and more convenient access to key destinations. For example, will not provide improved access and support to Berry Town Centre.</i> • <i>May not support/encourage active forms of transport such as walking and cycling.</i> 	
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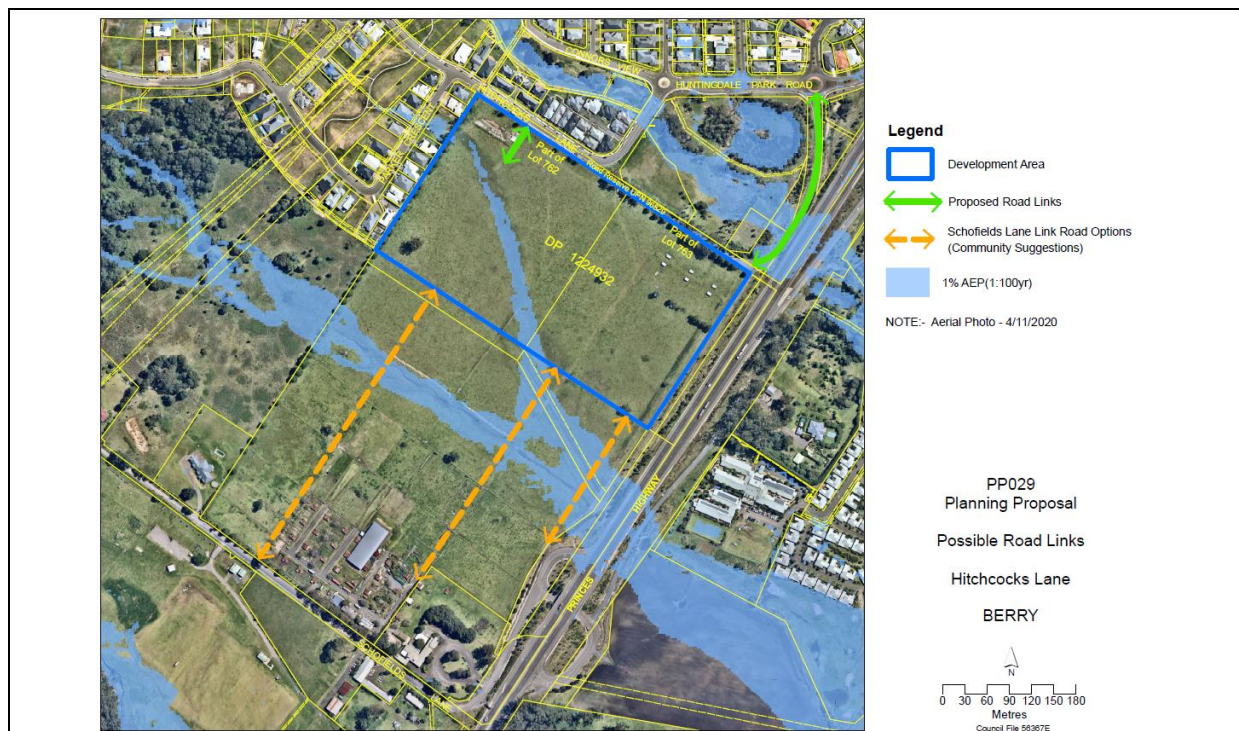


Figure 4: Possible future road links to Schofields Lane as requested in community submissions

Submission Theme & Summary	Comment	Related planning control changes
<p><u>Access into and out of the Estate and emergency access</u></p> <p>Concerns about having one way in and out of Huntingdale Park Estate (via Huntingdale Park Road and Kangaroo Valley Road) were relatively common, with access and evacuation during emergencies (fire/flood/accident) a concern for residents.</p> <p>The capacity of Huntingdale Park Road to cater for additional traffic was questioned, with submissions stating it has not been designed to accommodate growth and could become clogged in an emergency.</p>	<p><i>Some residents are concerned about emergency access given recent bushfire, flood, and health emergencies. Whilst the subject land is well-located in terms of access to services and built up areas (it is not an isolated location and is within walking distance to Berry Town Centre), it is still prudent to consider planning for emergencies.</i></p> <p><i>All homes within the proposed development will be located above the flood planning level and existing planning controls require at least one road link into and out of the subdivision to be raised above the 1% AEP flood extent (a rare but severe flood with a 1% chance of occurring in any one year, sometimes also expressed as a 1:100 flood event). Hitchcocks Lane and Huntingdale Park Road are constructed above the 1% AEP flood extent. This route will be available for emergency services access. The DCP requires all areas of the proposed subdivision to be accessible during a 1% AEP flood;</i></p>	<p>The exhibited planning requirements are not proposed to be altered; however, parts of Section 6.5.2 of the DCP relating to road construction standards have been rewritten to more clearly explain road construction requirements to minimise flooding and bushfire risks.</p>

	<p>for example, by requiring the road crossing the drainage reserve to be constructed above the 1% AEP flood level.</p> <p><i>It is important to note that the Broughton Creek Floodplain Management Study (2012) states that given the type and short duration of the flooding experienced in most of the catchment and roads surrounding Berry township, evacuation is generally not recommended (refer to Section 8 of that Study for more information).</i></p> <p><i>Bushfire hazard is greatest from the west and south, with the development land located in the south-eastern part of Huntingdale Park with good connections to Berry Town Centre and the Highway. The DCP requires a perimeter road to be constructed along the southern boundary of the development land. Perimeter roads separate development from bushfire hazards and provide space to conduct active firefighting operations.</i></p> <p><i>Specific emergency access arrangements will be detailed within future subdivision application stages.</i></p>	
Submission Theme & Summary	Comment	Related planning control changes
<p><u>Parking, road safety and design</u></p> <p>Traffic and pedestrian safety, parking and narrow roads were also of concern, with suggestions that existing issues would be exacerbated. These issues included speeding vehicles, unsafe conditions for children, difficulty in passing garbage trucks, construction vehicles and caravans on narrow roads, on-street parking</p>	<p><i>The DCP Chapter N3 emphasises designing slow speed residential environments to maximise safety for pedestrians, cyclists, and drivers. Road geometry, including road widths and on-street parking, plays an important role in slowing vehicle traffic. Road layouts and traffic calming measures will be detailed and assessed at the subdivision stage of development.</i></p> <p><i>Some of the concerns raised relate to management/compliance measures (e.g. enforcing speed limits; construction-stage impacts; pothole repair; scheduling of waste service collection; use of dedicated parking facilities for large/long</i></p>	<ul style="list-style-type: none"> • Simplified presentation of the road cross sections and road design specifications in Section 6.5 of the DCP Chapter N3. • No further changes proposed.

difficulties in the Estate and in Berry Town Centre.	<p>vehicles etc).</p> <p><i>Also, the site-specific DCP Chapter N3 seeks to support sustainable design; encourage walking and cycling as far as practicable for recreation and for local trips; and balance provision of parking and vehicle circulation space with landscaped areas and wide verges. The DCP includes provisions for the Estate's roads to be designed for slow traffic, to create a pleasant, safe and quiet residential environment, safe for people to walk, cycle and cross safely. Chapter G21 Car Parking and Traffic of Shoalhaven DCP 2014 contains off-street parking requirements for residential development.</i></p>	
Submission Theme & Summary	Comment	Related planning control changes
<p><u>Need for local park and playground</u></p> <p>Other infrastructure capacity concerns raised included the lack of recreational facilities within walking distance, including the need for a playground and useable open space.</p> <p>A general dissatisfaction with existing open space was expressed (i.e. the unembellished/unimproved open space under the electricity easement), with the facilities within and planned for Berry Town Centre (including Boongaree) being viewed as appreciated but not accessible to meet the day to day needs of the growing population west of the Princes Highway.</p>	<p><i>A local park is proposed to be provided between Huntingdale Park Road, Hitchcocks Lane and the Unnamed Link Road, and embellishments will be funded via collected contributions funding. The planning and delivery of this park project will progress following the completion of the PP and will involve additional community consultation.</i></p>	<ul style="list-style-type: none"> • No changes to PP or DCP as exhibited are proposed.

<p><u>School/preschool capacity</u> Some concerns raised that local schools and preschools cannot cater for the proposed increase in population.</p>	<p><i>Berry has one public primary school and the nearest public high school is Bomaderry, approximately 15 km to the south. Information on these and nearby schools can be found on the NSW Government's My Schools website (data from 2015 onwards) - Berry Public School had 314 enrolments in 2020, down from a peak of 339 in 2017.</i></p> <p><i>School capacity is a common concern in many growth areas across NSW. School funding and school infrastructure investment is a State Government responsibility. The NSW Department of Education and Training (Schools Infrastructure NSW) were notified of the PP and no response was received. Growth planning including for state government infrastructure such as schools occurs between the NSW government and local government in a number of ways including through the Regional Planning process. The proposed development has been included in the Shoalhaven Growth Management Strategy 2014 and future growth planning for Berry and Shoalhaven will consider wider demographic trends, population forecasts and infrastructure needs.</i></p> <p><i>There are several pre-schools and child-care facilities in Berry and surrounds and planning controls allow for new and expanded facilities to respond to growing demand for these services.</i></p>	<ul style="list-style-type: none"> • No changes to PP or DCP as exhibited are proposed.
Submission Theme & Summary	Comment	Related planning control changes
<p><u>Opposition to small lots</u> A common concern expressed in submissions was the small lot areas proposed as part of the development. 25% of the site area is proposed to be able to</p>	<p><i>Providing a diverse range of housing and improving choice and access to housing is a crucial goal for the area, especially given changing demographics, very high housing prices, limited rental availability and high demand. To illustrate some of the magnitude of change in the Berry housing market, the median house price in</i></p>	<ul style="list-style-type: none"> • A requirement to limit small lot development to 25% of the total site area (former section 6.4 of the draft DCP Chapter N3) has been deleted, as this restriction is enforced via the minimum lot size mapping in the LEP, rendering this

<p>have a minimum lot size of 350 m² (spread out over three areas – refer to Figure 3 Lot Size Map). The remaining land will have a minimum lot size of between 700 m² and 500 m².</p> <p>Reasons for opposition to the small lot areas included:</p> <ul style="list-style-type: none"> • Out of character with Berry and Huntingdale Park Estate. • Too urban or suburban in appearance. • Privacy and noise impacts. • Traffic and parking impacts. • Homes will be too close together with the area becoming overcrowded. • Small lot housing will be unattractive and will not be compatible with the Estate's look and feel. • Prefer land to be developed as large, semi-rural lots. 	<p><i>Berry suburb based on 35 house sales in 2010 was \$435,000 with a median rental price of \$330/week (p.100, State of the State NSW Property Report, St George Bank, RPdata 2010). In 2020, the median house price had risen to \$1.15 million (based on 63 house sales) and median rental of \$650/week (2021, REA Group Ltd):</i> https://www.realestate.com.au/neighbourhoods/berry-2535-nsw.</p> <p><i>The subject land is proposed to have an R2 zone, precluding housing types such as townhouses, terraces (multi-dwelling housing) and apartments. These housing types will not be able to be approved as complying development under the state-wide Low-Rise Housing Diversity Code.</i></p> <p><i>However, managed small lots will provide opportunities for smaller detached or semi-detached homes, providing more housing choices for a wider range of households and household types. Smaller homes (2 bedroom and smaller 3 bedroom homes) are a recognised gap in the local housing market and are not likely to be built on larger lots. Recently updated population forecasts indicate that the largest forecast increase in household types in Berry and surrounds to 2031 will be in single person households (2021, .id community: https://forecast.id.com.au/shoalhaven). The report to Council on PP029 dated 1 September 2020, provides additional housing supply and demographic statistics illustrating the need for a variety of homes to be delivered in the region, including addressing a gap in providing smaller, entry-level homes.</i></p> <p><i>It is important to recognise that lot size controls represent the minimum allowable, and lots may still be developed above the minimum required, based on design constraints/DCP controls or because of developer choices</i></p>	<p>DCP control redundant.</p> <ul style="list-style-type: none"> • No other changes to the PP or DCP are proposed in relation to small lot housing development, although several notes have been added to clarify the intent of existing proposed design controls to deliver improved housing choice and address gaps in supply. <p>DCP planning controls require floor sizes to be proportional to lot size and for landscaped area to represent a fixed 35% of lot area regardless of lot size. These planning controls combined with setback requirements and other design guidance seek to minimise any potential amenity impacts associated with the development of housing on small lots.</p>
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	<p>(much of Huntingdale Park Estate was developed above the minimum lot size). In any case, small lots will represent a minority of lot types in the housing estate, and the majority of lots will be sized at 500 m² or larger.</p> <p>It is estimated that the proposal can accommodate between 110 - 150 new housing lots plus roads and a drainage reserve in an area of 11 hectares south of Huntingdale Park (and within approx. 2 km from Berry Town Centre). Accommodating that same number of semi-rural blocks (at 4,000 m² each) would require > 45 – 60 hectares of land (plus space for roads, flood-affected areas) to be rezoned for housing on the outskirts of Berry, which would have additional character and infrastructure implications.</p>	
Submission Theme & Summary	Comment	Related planning control changes
<p><u>Growth and local character impacts</u></p> <p>Most character-related concerns related to three main issues:</p> <ul style="list-style-type: none"> • Oppose suburban development extending outwards into rural areas as is occurring elsewhere, which undermines uniqueness and character. • This type of development is causing Berry to change from a small country town/semi-rural area to an area that is too busy and urbanised. • Concerns about the scenic view impacts on approach into 	<p>Change is occurring in Berry, as it is a highly desirable lifestyle destination for tourists and is attracting new residents. Change is being managed in accordance with strategic planning policies such as the Shoalhaven Growth Management Plan (GMS) 2014. As identified within the GMS, the PP area will define the edge of planned residential expansion in the south-west of Berry.</p> <p>Residential subdivision will be contained to an area in line with properties on the southern edge of Huntingdale Park Estate (21 - 41 Parker Crescent) with land further south to remain rural in land use and appearance.</p> <p>The proposal seeks to limit outward expansion of Berry while providing homes within the growth boundary defined by the GMS. Site-specific controls are proposed to guide building of homes that are compatible in bulk, scale and open space with neighbouring development.</p>	<ul style="list-style-type: none"> • No changes to proposed PP or DCP controls – however it is recommended that the Planning Agreement to establish a Landscape Screen be signed/registered, or at least publicly exhibited, prior to amending the LEP.

Berry.	<i>The development boundary will be reinforced by a proposed landscape screen to minimise visual impacts of development. Significant work has occurred in the last year to negotiate a Planning Agreement to provide this landscape screen. A draft Planning Agreement is expected to be ready shortly, to be placed on public exhibition and then finalised.</i>	
<p><u>Overdevelopment and design concerns</u></p> <p>Overdevelopment concerns are discussed and addressed above and in detail within Attachment 1: Summary of submissions</p>	<p>The site-specific DCP Chapter N3 seeks to promote high quality subdivision and dwelling design to manage overdevelopment concerns.</p> <p>The DCP Chapter focuses on objectives and controls applying to the subdivision stage of development, recognising that site-sensitive subdivision design will provide greater opportunity for cost-effective housing design and streamlined assessment of housing applications. A well-considered subdivision layout that priorities positive urban design measures will provide increased opportunities for building in a way that respects, and adds to, local character.</p> <p>Subdivision controls focus on reinterpreting the key character qualities of Berry within a modern housing estate setting, for example by providing walkable, connected streets, generous tree planting (on public streets, wide verges and on private land) and room for gardens and neighbourhood social interactions.</p> <p>The DCP Chapter N3 is mostly focused on providing adequate landscaped area and sensitively proportioned building envelopes. The DCP allows for flexibility to design homes according to beneficial design principles, but allows for homes that vary in size, style and appearance.</p>	<ul style="list-style-type: none"> • No changes are proposed to the PP or DCP. • The DCP Chapter contains many controls which seek to shape positive development outcomes and promote best practice neighbourhood design.

State Government Agency Feedback

The Gateway determination required consultation with the following State Government Agencies:

- Roads and Maritime Services (now Transport for NSW)
- Shoalhaven Water
- Endeavour Energy
- NSW Department of Primary Industries Agriculture
- NSW Department of Primary Industries Fisheries

These additional State Government Agencies were also notified of the proposal:

- NSW Rural Fire Service
- Heritage NSW
- Illawarra-Shoalhaven Local Health District
- NSW Department of Education - Schools Infrastructure NSW

No submissions were received from NSW Department of Primary Industries – Fisheries; Heritage NSW, Illawarra-Shoalhaven Local Health District nor Schools Infrastructure NSW.

The submissions received on behalf of State Government Agencies are addressed in **Attachment 1** and briefly summarised below.

Table 3: Agency submission summary

Agency	Summary of submission
Transport for NSW (1 st submission)	<p>No objection to proposed rezoning of land in principle as unlikely to impact on state road network.</p> <p>Intention to dedicate Unnamed Link Road to Council as public road – understand this could be upgraded to service development. Any required improvements must not impact on Princes Highway.</p> <p>Concerned about noise impacts, higher order treatment such as noise barrier may be required. Support noise mitigation being investigated and installed where necessary at subdivision stage as opposed to reliance on individual house design and construction requirements. Concerns with proponent's Noise Assessment. Noise Barrier Assessment is required in accordance with EPA's NSW Road Noise Policy. Any future noise barriers must be located on private land and TfNSW will not accept any maintenance responsibility. Concerned that DCP infers that landscaping can be used as noise attenuation, when landscaping is not an effective noise attenuation measure.</p> <p>Strongly supports development that provides for walking, cycling and public transport and reduces car dependency, proposal should ensure support for these measures to the greatest extent possible.</p> <p>Notes Traffic Impact Assessment considers impact of 110 new lots, whilst PP states capacity for up to 150 new lots. No additional vehicular or pedestrian access to/from Princes Highway will be permitted.</p>
Transport for NSW (2 nd submission: responding to Council's request for additional comments relating to provision of access to PP land)	<p>TfNSW has no current plans or funding to investigate, develop, and deliver road infrastructure upgrades along the Princes Highway at its existing connections with Schofields Lane.</p> <p>Concerned additional link would increase trips into Berry using Highway rather than local roads. Current policy is to limit access points to the state road network (Princes Highway) for local trips.</p> <p>Based on limited information currently available, have some</p>

via Schofields Lane – in response to community submissions)	<p>concerns and unlikely to be supportive of additional access to the PP site via Schofields Lane.</p> <p>Unsure whether a road link from PP site to Schofields Lane would allow for additional future development south of PP subject land, if this were to occur, this would further increase vehicle movements via Schofields Lane/Princes Highway for local trips.</p> <p>Noting comments above (i.e. generally unlikely to be supportive of proposed link to Schofields Lane), further information would be required to allow for an informed decision including an updated Traffic Impact Study (TIS) that considers the increased traffic volumes from both the PP and possible future land rezoning to the south; mitigation measures required to address safety/traffic concerns (e.g. acceleration lanes); mechanisms for funding any identified works and upgrades; and impacts of local trips on the state road network.</p> <p>Noise issues raised in the TfNSW submissions are discussed further below.</p>
Shoalhaven Water	<p>Water supply capacity will exist for the PP. The Berry water supply system with the proposed lead in water infrastructure (a DN 200 Main to maintain/improve water pressure to the upper reaches of Huntingdale Park Estate) will be able to support the existing development and proposed development.</p> <p>Sewer system in the area can accommodate the proposal as there are a number of options available to extend sewer services to the development (which can be detailed further at subdivision stage). Will be at the developers cost.</p>
Endeavour Energy	<p>No objection. PP is supported by Infrastructure Assessment with input from certified consultant. All existing electricity assets protected by law, and any works need approval from Endeavour Energy. Existing distribution substations in the vicinity have some spare capacity, but not enough to cater for development – therefore network required to be augmented/extended, with extent of works to be assessed at subdivision application stage (after final load assessment completed).</p>
DPI Agriculture	<p>Part of site mapped as Biophysical Strategic Agricultural Land, but acknowledge land is identified as an urban investigation area in state-endorsed Strategy. Regrettably, Gateway determination did not require preparation of land capability assessment to determine agricultural value of land and address land use conflict issues.</p> <p>Support perimeter road and provision of landscape screen as these also provide buffer to rural land to the south which can limit land use conflict impacts.</p>
NSW Rural Fire Service	<p>Land not currently mapped as bush fire prone land, however intention to map land near southern boundary as a Category 3 Grassland hazard in future. No objections to proposal subject to compliance with Planning for Bushfire Protection 2019 (provision of Asset Protection Zones, perimeter roads and provision of adequate water, electricity and gas services).</p>

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Planning Proposal - Post Exhibition Changes

Two minor changes are proposed to the exhibited PP, as described below.

- The minimum lot size applying to the drainage reserve has been changed from 40 ha to 1 ha (see **Figure 7**). This is necessary to allow subdivision of the drainage reserve as one land parcel, allowing for coordinated management and future land dedication consistent with its intended purpose to convey stormwater and floodwaters.
- The drainage reserve boundaries have been changed slightly to better align with the Flood Planning Area (FPA). This change is illustrated in **Figure 8** below. This ensures that all the FPA will sit within the drainage reserve and confirms that no development will be allowed below the FPA.

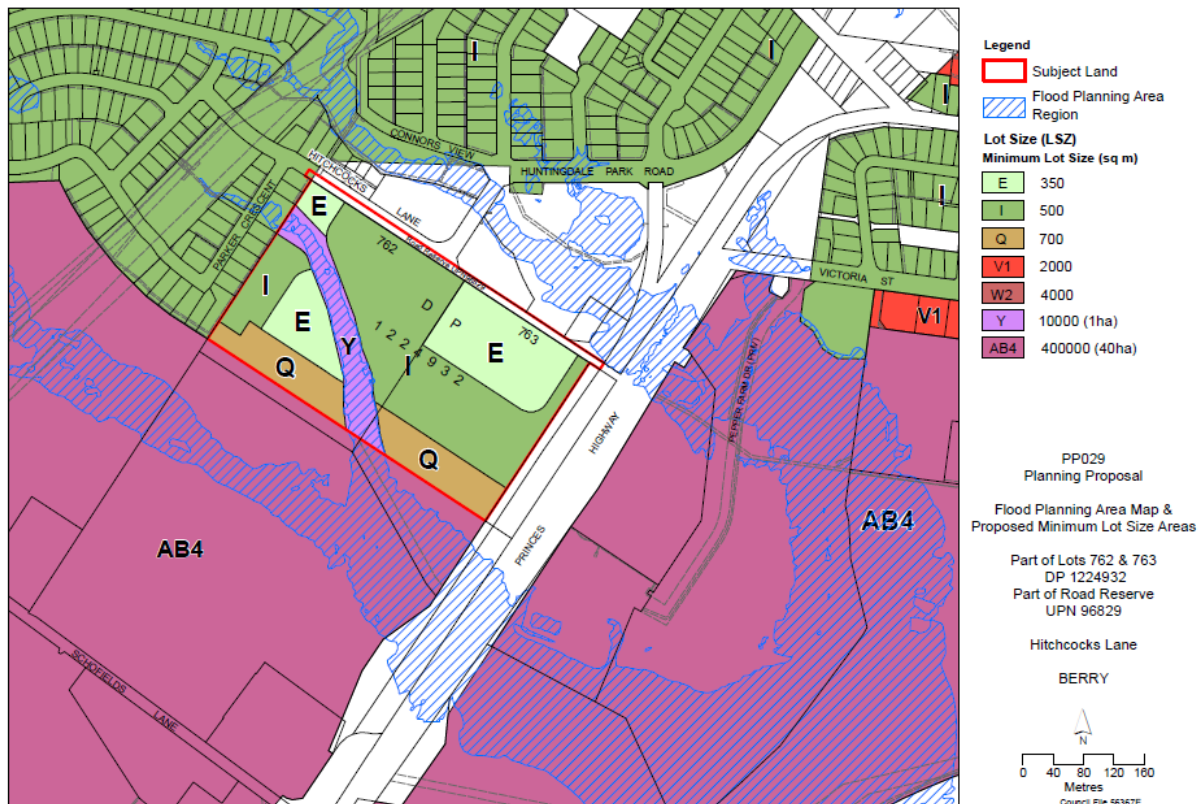


Figure 5: Flood Planning Area superimposed over amended Minimum Lot Size Map.

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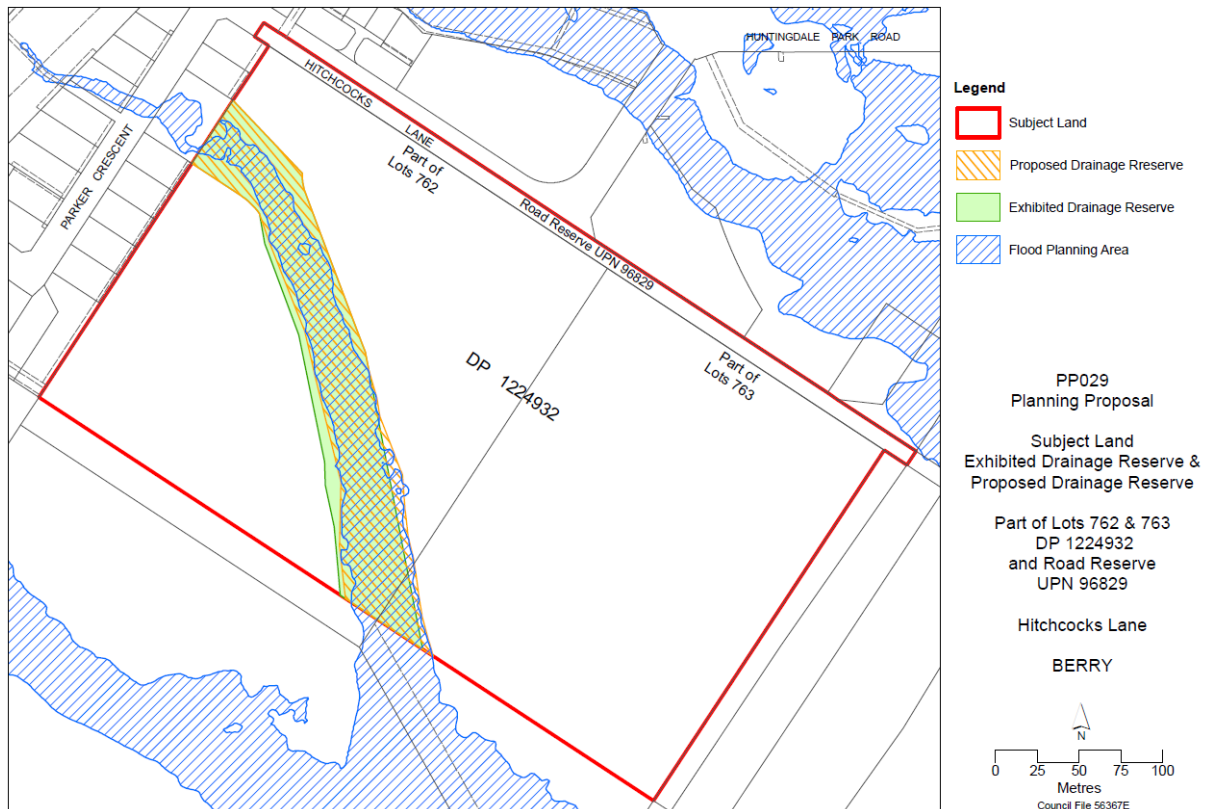


Figure 8: Flood Planning Area superimposed over exhibited and proposed drainage reserve boundaries.

DCP - Post Exhibition Changes

A number of post-exhibition refinements are proposed to the DCP Chapter in response to community feedback summarised earlier. Changes proposed to the exhibited version of the DCP are highlighted in **Attachment 3**.

The DCP sets parameters and expectations for development. However, not all suggestions put forward in community submissions have been incorporated into the DCP. This is because according to NSW planning legislation, the DCP must *enable* development permitted by the LEP and include reasonable planning requirements that do not contradict the LEP or State Environmental Planning Policies (SEPPs).

The Shoalhaven LEP 2014 (and some SEPPs) detail what development is allowed and provide key planning controls relating to permissible development, allowable density, height limits etc. The DCP supports these statutory planning instruments by detailing how development should be carried out. Therefore, the DCP provides a framework to shape a variety of subdivision layout and housing design options. Any future development applications will involve additional community consultation and assessment against the provisions of the LEP and DCP.

DCP changes - response to TfNSW concerns and updated Noise Impact Assessment

In response to concerns and TfNSW's comments regarding potential adverse noise impacts, the proponents completed an additional Noise Impact Assessment (Harwood Acoustics, dated 24 February 2021) to illustrate that the PP can comply with the *EPA's Road Noise Policy*. The proponent's update Noise Impact Assessment is provided as **Attachment 5**.

The *EPA's Road Noise Policy* provides noise criteria for external (outdoors) noise levels during the day and at night, measured 1 m from the dwelling facade. Consideration of

external noise levels ensures that residents can open windows for ventilation without increased exposure to adverse noise levels and can assist in increasing outdoor comfort.

The DCP Chapter has been updated to reflect TfNSW's comments and the findings of the updated Noise Impact Assessment (NIA). The updated assessment illustrates the proposal can comply with the *EPA Road Noise Policy*. According to the updated NIA, a noise barrier extending along the eastern boundary of the PP land will likely be required including a return along the south-eastern corner, extending approximately 88 m to the west. This could take the form of a noise wall or earth mound or a combination of the two. The DCP requires that any such barrier/mound have a natural appearance.

Additional noise assessment will be required for subdivision of Lot 763 (the eastern-most property), that considers the finished ground levels and expected floor levels of development. The installation of noise barriers will be required at the subdivision stage of development, with the type and final extent of the barriers to be investigated further as part of the development application. Addressing noise impacts at the subdivision stage is best practice and is essential as it avoids the need to expensively retrofit any required noise mitigation measures in the future or rely on expensive construction methods or house design constraints and compromises.



Figure 6: Extract from updated Noise Impact Assessment (February 2021) showing modelled impact of noise barrier along eastern boundary and south-east corner (5 m high). Note the height and extent of noise barriers will be subject to further detailed design at subdivision stage.

Supporting Documents - Progression

Council resolved on 7 April 2020, (MIN20.257) to progress the following related projects related to the proposed LEP and DCP changes:

- secure the proponent's commitment to provide a landscape screen adjacent to the southern boundary of the land to obscure views of development (i.e. a Planning Agreement); and

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- commence a review of the Shoalhaven Contributions Plan 2019 project 01OREC0009 to recognise the demand additional housing places on the passive open space network in the area.

These projects will improve the ultimate development outcomes and assist in addressing community concerns about the rezoning. Updates on the Planning Agreement and Contributions Plan amendment are provided below.

Planning Agreement - Landscape Screen

The planting of a dense Landscape Screen adjacent to the southern boundary of the development land will help mitigate visual impacts of the proposed development (refer to **Figure 2** and **Attachment 4**). The landscape screen will also reinforce the intended urban edge of Berry (as identified in the GMS – see **Figure 1**). The Landscape Screen was the key recommendation from the Visual Impact Assessment (PAA Design, May 2019).

It is intended that the Landscape Screen will be established before any housing is constructed on the land and will be established before the release of the Subdivision Certificate (SC) for the first stage of the subdivision of the land.

A Planning Agreement is the legal mechanism to deliver the Landscape Screen and provide for future maintenance. The landowners/developers will be responsible for its establishment, and short-term maintenance (for 3 years following release of the first SC), with Council taking on the long-term maintenance of the asset. The Landscape Screen will be designed to be low maintenance in the long-term. The Planning Agreement will include a lump sum payment to Council from the development to fund future ongoing maintenance.

At the time of writing this report, Council staff and the proponents had agreed to the general terms of the Planning Agreement and Lindsay Taylor Lawyers had been engaged by Council to prepare the draft Agreement that is expected to be received prior to the May Development and Environment Committee meeting and if so, will be made available to Councillors.

The remaining issue to be resolved in relation to the landscape screening is the future ownership of the land that the screen sits on. The proponents have indicated a preference for the screen to remain in private ownership with long-term maintenance to be carried out by Council under an easement and public positive covenant arrangement. This option has benefits for Council as the landscape screen can be incorporated into the neighbouring rural land parcel and be managed as a vegetated buffer between residential and rural land uses without Council holding the land. The other option for consideration is the possible dedication of this land to Council to own and manage. This issue will need to be resolved before a Planning Agreement is signed and a further report to Council will be prepared post-exhibition of the draft Planning Agreement.

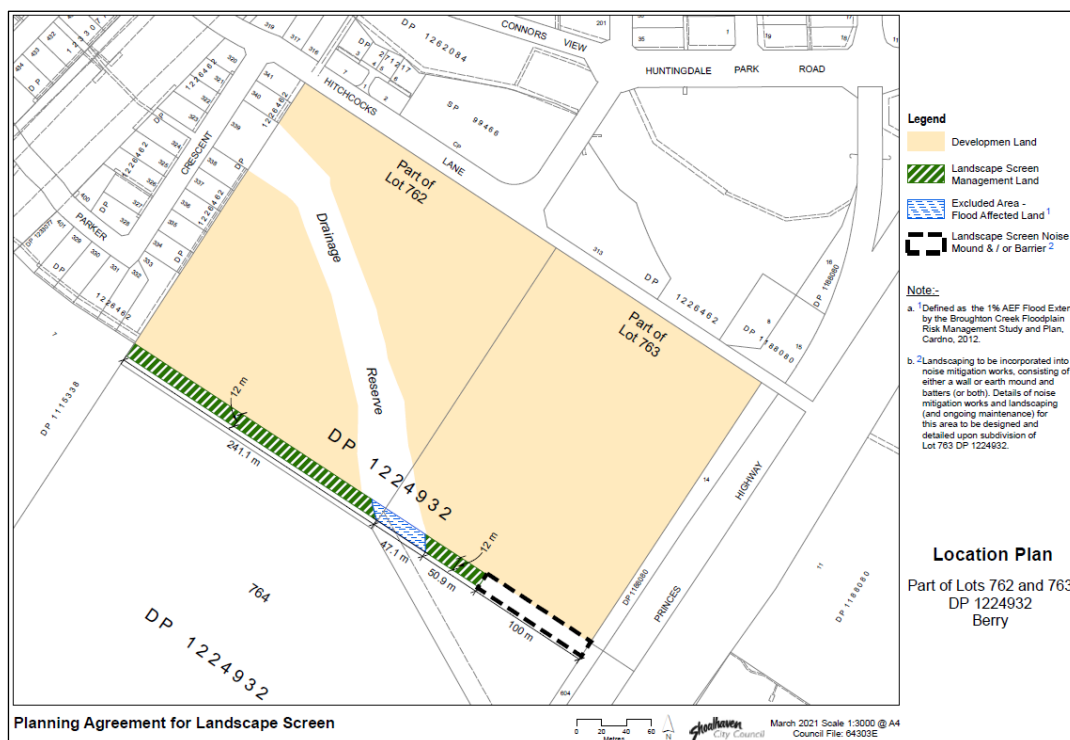


Figure 9: Draft Planning Agreement for Landscape Screen - Location Map

Contributions Plan Amendment – Park Improvements

An area between Huntingdale Park Road and Hitchcocks Lane has been set aside as passive open space. Embellishment of this area is proposed to be funded through an amendment to the existing project 01OREC0009 in the Shoalhaven Contributions Plan 2019, which will be advanced once the PP is finalised.

It is recognised that development of the Huntingdale Park Estate and land south of Hitchcocks Lane creates additional demand for park and playground facilities in the area.

An area (approx. 3 ha) between Huntingdale Park Road and Hitchcocks Lane is zoned RE1 Public Recreation and is set aside as passive open space (see **Figure 3** below). Embellishment of this area (with play equipment, paths, seating etc) is proposed to be funded through an amendment to the existing project 01OREC0009 in the Shoalhaven Contributions Plan (CP) 2019.

This will provide the area with a Local Recreation Park as classified within the Shoalhaven Community Infrastructure Strategic Plan (CISP) (Ross Planning 2018). Embellishment of the park will ensure that the Hitchcocks Lane subdivision area will be within 400 m of a user-friendly public open space, enhancing the liveability and residential amenity of the area.

The next stage in planning for park improvements is the drafting and costing of a Concept Plan (informed by community feedback). The Concept Plan and proposed CP amendment will then be reported to Council for public exhibition. After refinement in response to additional community feedback and making of the amendment, the project can progress to detailed design and delivery of the improvements.



Figure 10: Location Map - Passive Open Space Area - Contributions Plan Project

Conclusion

The PP complies with all relevant planning policies and aligns with the Shoalhaven Growth Management Strategy.

All requirements of the Gateway determination have been satisfied and a significant amount of work completed to positively shape future development outcomes, including preparation and refinement of a site-specific DCP Chapter; Planning Agreement negotiations for a landscape screen; and the initial research, planning and design investigations for a local park embellishment project.

It is recommended that the PP be finalised and the LEP amended accordingly. Future development in the area will be guided by the provisions of DCP Chapter N3 that has been refined in accordance with feedback received during the public exhibition period and is recommended for adoption.

The provision of a Landscape Screen is critical to mitigating the visual impacts of future development, with a Planning Agreement being advanced as the appropriate mechanism to secure this commitment.

An amendment to Shoalhaven Contributions Plan 2019 is also recommended, to fund embellishments to the passive open space area between Hitchcocks Lane and Huntingdale Park Road. Improvements to this area will provide current and future residents with a local recreation park within convenient walking distance.

Policy Implications

The PP is consistent with the endorsed Shoalhaven Growth Management Strategy 2014.

Financial Implications

Costs associated with the PP are being met by the proponents in accordance with Council's Planning Proposal Guidelines and adopted fees and charges.

Risk Implications

The key risk concern is the timing of notifying the LEP amendment in relation to the Planning Agreement for the Landscape Screen.

The proponents have indicated that they are committed to establishing the screen and the detailed terms have been developed collaboratively with them. If the draft Planning Agreement is at least placed on public exhibition before the LEP is amended, Council would have a level of comfort that the Agreement will proceed based on the currently agreed terms, although this could not be guaranteed. Any post exhibition changes to the Planning Agreement would need to be publicly reported (unless it is confidential).

However, Council's lawyers engaged to draft the Agreement, have advised as a matter of principle, against finalising the amendment to the LEP until the Planning Agreement has been signed and registered. This position is consistent with Council's recently updated Planning Agreements Policy. Furthermore, there are two properties/landowners (increasing the chances that negotiations could stall) and it is possible that one or both could sell their land once it is rezoned. Linking the LEP amendment to signing the Planning Agreement would provide a clear motivation for the owners to bring the Agreement to a conclusion in a timely manner.

Provided negotiations do not stall, the LEP amendment is unlikely to be delayed by more than a few weeks.

DE21.43 Update - Planning Proposal PP050 - Former Anglican Church, Huskisson - Ground Penetrating Radar Survey

HPERM Ref: D21/171031

Department: Strategic Planning

Approver: Robert Domm, Director - City Futures

Reason for Report

- Provide an update on the Ground Penetrating Radar (GPR) survey that has been undertaken to support the Planning Proposal (PP) for the former Anglican Church site at Huskisson.
- Advise that low impact excavation (i.e. shallow surface scrapes) has been recommended by Council's heritage consultant to verify the GPR survey results and seek support to undertake this work.
- Obtain endorsement to fund the verification work on Lot 9, which is owned by the Jerrinja Local Aboriginal Land Council (LALC), if the LALC is agreeable to the additional work being done but is not able to fund it. Lot 9 does not form part of the subject land for PP but was part of the GPR survey to enable an holistic review.

Recommendation

That Council:

1. Receive the Planning Proposal PP050 - Former Anglican Church, Huskisson - Ground Penetrating Radar Survey update for information.
2. Proceed with the verification work (shallow scrapes to identify grave cuts) as recommended by Navin Officer Heritage Consultants on Lots 7 and 8 to verify the GPR survey results, to be funded by the proponent.
3. Consistent with Council's previous decision to fund the GPR work on the adjoining Lot 9, allocate \$6,220 (excl GST) to fund the verification work on Jerrinja LALCs land (Lot 9) subject to their agreement.
4. Continue to liaise with key stakeholders including the Jerrinja LALC, Council's Aboriginal Advisory Committee, and the Huskisson Heritage Association (HHA).

Options

1. Proceed with the recommended surface scrapings to verify the GPR results. This is the recommended approach.

Implications: This option has been recommended by Council's consultant on this matter, Navin Officer Heritage Consultants (NOHC). Advice from NOHC is that the most efficient way to clarify which of the anomalies are actually graves is to undertake low impact ground excavation (surface scraping) aimed at exposing the grave cuts.

2. Not proceed with the surface scrapings to verify the GPR results.

Implications: Unless the presence or absence of graves is demonstrated more conclusively, then it is likely that using the precautionary principle that all anomalies will

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need to be treated as if they are real. This would make it extremely difficult to progress the PP.

Background

Council resolved on 20 January 2020 to progress a proponent-initiated Planning Proposal (PP) over the former Anglican church site at Huskisson.

Council resolved to provide in-principle support for the PP subject to undertaking several studies, including “a new independent Ground Penetrating Radar (GPR) survey over the entire site by a grave detection specialist using best practice methodology.”

A patchwork of GPR surveys had previously been done over parts of the PP subject land (Lots 7 and 8) and the adjoining Lot 9 which is owned by the Jerrinja Local Aboriginal Land Council (LALC).



Figure 1 – Subject land for PP050 (bound by red) and the adjoining Lot 9 (Jerrinja LALC)

The results of the previous GPR surveys suggested the presence of between 6 and 8 grave sites on the southern side of Lot 7 (No. 17 Hawke Street) including one which straddles the boundary with the adjacent Lot 9 (No. 26 Currambene Street) on which another two potential graves had been detected. Links to the previous GPR survey reports are provided in the Planning Proposal that was submitted to DPIE for Gateway Determination, which can be access via the [NSW Planning Portal](#).

One of the graves on either Lot 7 or Lot 9 is possibly that of an Aboriginal leader named Jimmy Golding/King Bud Billy who died in 1905. A [Heritage Assessment](#) prepared for the proponent by GBA Heritage in December 2018 suggests that “...an unofficial graveyard almost certainly already existed...” on the land prior to it being granted to the church.

Planning Proposal (PP050)

The PP (PP050) and supporting documentation can be accessed via the NSW Planning Portal at:

<https://www.planningportal.nsw.gov.au/ppr/pre-exhibition/planning-proposal-lots-7-8-section-3-dp758530-huskisson-former-anglican-church>

In summary, the PP seeks to resolve and revise the planning controls that apply to the former Church site as it is no longer used as a ‘place of public worship’ and the current SP2 zoning effectively prevents other forms of development. The intended outcome is ultimately to potentially enable:

- Mixed-use development comprising a residential apartment building, tourist and visitor accommodation (hotel and serviced apartments), and retail premises (including food and beverage) on Lots 7 and 8, Section 3, DP 758530 (No. 17 Hawke Street and No. 22 Currumbene Street) Huskisson.
- Lot 7 Section 3, DP 758530 (No. 17 Hawke Street) to potentially be developed up to 16 m above the natural ground level.

Relevant Gateway conditions

The Gateway determination issued by the NSW Department of Planning, Industry and Environment (DPIE) on 30 April 2020 includes the following conditions:

2. *Council shall prepare the following assessments prior to public exhibition:*
 - a. *A new independent Ground Penetrating Radar (GPR) survey over the entire site to which the Planning Proposal applies by a grave detection specialist using best practice methodology.*
 - b. *An independent assessment by an appropriately qualified historical archaeologist of the entire area to which the Planning Proposal applies that must determine the status of the graves and if they are “relics” under the NSW Heritage Act 1977 in compliance with Heritage Council of NSW Guidelines including “Assessing Significance for Historical Archaeological Sites and Relics, 2009”.*
 - c. *A full Aboriginal Cultural Heritage Assessment Report of the entire area to which the Planning Proposal applies prepared in accordance with the “Guide to investigating, assessing and reporting on Aboriginal Cultural Heritage in NSW” (Office of Environment and Heritage, April 2011) that includes Aboriginal community consultation and archaeological survey and reporting in accordance with the “Aboriginal Cultural Heritage Consultation Requirements for Proponents 2010” (DECCW, April 2010) and the “Code of Practice for Archaeological Investigation of Aboriginal Objects in NSW” (DECCW September 2010).*

Navin Officer Heritage Consultants (NOHC) were engaged by Council to complete the above assessments. This work is being funded by the proponent in accordance with Council’s Planning Proposal Guidelines. In accordance with Council’s resolution on 9 September 2020 (MIN20.612) Council also provided additional funding to enable the GPR survey to also cover Lot 9 as requested by its owner the Jerrinja LALC.

The GPR survey component of this heritage assessment was subcontracted to Hunter Geophysics, a Victorian-based GPR specialist with specific experience in grave detection. The GPR field survey was undertaken by Hunter Geophysics in December 2020. This fieldwork had been delayed by the earlier closure of the Victorian-NSW border due to COVID-19.

NOHC received the report from Hunter Geophysics in early April 2021 and advised that a number of ground anomalies had been identified which may or may not be graves, and that advice would be provided on next steps.

On 26 April, NOHC provided a written summary of the results and a fee proposal to enable the GPR results to be further 'ground truthed' using 'low impact excavation'. i.e. shallow surface scrapes. While the fee proposal is 'commercial in confidence', NOHC have agreed to including the following information for the purpose of this Report:

*The GPR survey has been completed and the results as analysed by [Hunter Geophysics] identify over 50 individual graves that he records as 'high confidence'. While this is possibly correct, and [Hunter Geophysics's] criteria used to identify the anomalies as graves seem reasonable, this nevertheless seems to be **an unlikely high number of graves given the historical window within which the graves would have been laid down. In addition, the distribution across the entire property seems unusual.** [emphasis added]*

The GPR report includes a statement of indemnity which describes the limitations of GPR in some detail and states:

The results and interpretation of the geophysical surveys described herein should not be considered an absolute representation of the underlying soil or archaeological features, but instead as a hypothesis yet to be verified. Confirmation of geophysical interpretations is only possible through careful (preferably archaeological) excavation. Hunter Geophysics does not guarantee that the interpretations of geophysical data provided herein are accurate.

...

Of particular importance is the similar appearance of tree roots and rabbit burrowing with unmarked graves.

NOHC attributes some of the anomalies to foundations from past structures (signs, buildings etc). According to NOHC, of the remaining anomalies, 21 are within the subject land of the PP, 3 straddle the boundary with Jerrinja's land (Lot 9) and another 27 are located wholly within Lot 9. NOHC conclude that:

*Unless the presence or absence of graves is demonstrated then it is likely that using the precautionary principle that all anomalies will need to be treated as if they are real. **The most efficient way to clarify which of the anomalies are actually graves is to undertake low impact ground excavation aimed at exposing the grave cuts.** [emphasis added]*

Next steps (Tasks recommended by NOHC)

Tasks	Comment
1. Apply for a Section 139 exception under the NSW Heritage Act.	Initiated
2. Use a skilled machine operator with a flat bladed bucket to scrape the surface across each of the 4 most likely clusters of possible graves. These scrapes will be carefully inspected to identify any exposed grave cuts. If grave cuts are found an additional scrape at an angle to the first may be required to identify at least one of the corners of the grave so that it can be accurately plotted.	Cannot be undertaken until the s139 exception has been approved
3. Plot and peg identified graves	
4. Once the four most likely areas are investigated the others will be checked in a similar manner to confirm or eliminate them. This will involve at least two similar scrapes on the land subject to the PP.	

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5. Optional - Should the Jerrinja LALC land be included we would propose at least 2 long scrapes at right angles to each other to pick up most of the anomalies with several smaller scrapes if necessary.	To be discussed / confirmed with the Jerrinja LALC
6. Preparation of a short letter report on the findings and an adjusted map showing any graves verified (this report would be referred to in the Aboriginal Cultural Heritage Assessment (ACHA) Report already under preparation.	See discussion below on legal status of the graves

Legal status - graves/potential graves

NOHC's project brief includes undertaking further historical research on the land's history as a cemetery and to confirm the legal status of any graves. NOHC will provide their full report to Council after the GPR results have been verified and the ACHA process has been completed. However, NOHC's interim advice is that 'King Bud Billy' AKA 'Jimmy Golding' and his daughter, 'Rebecca Goulding' are likely to have been buried on the property (including possibly Lot 9).

In terms of the legal status of the graves/potential graves, NOHC's interim advice is that:

All of the graves associated with the Huskisson Church would be covered under the Heritage Act 1977, NSW. The National Parks and Wildlife Act, 1974, NSW does not cover post-contact graves buried in official graveyards. Archaeological deposits in NSW are protected whether or not they are list on any heritage schedules. We suggest a minimal surface disturbance to reveal the absence or presence of grave cuts. This would require applying for an exception, under s139 of the Heritage Act NSW to the requirement for an excavation permit.

Conclusion

The aim of the new GPR work was to attempt to holistically and independently resolve the existence or otherwise of graves as part of the overall heritage work associated with the PP. This report provides an overview of the outcomes from the new GPR work and additional work that is now needed to provide a more conclusive outcome.

The approach recommended by NOHC will help confirm the presence/absence of grave cuts, and allow more informed interpretation of the GPR survey results. This work must be undertaken to allow the PP for the former Anglican Church site (Lots 7 and 8) to be advanced and resolved.

If the Jerrinja LALC supports the recommended verification work also being done on their land (Lot 9) this should be facilitated to ensure that uncertainties arising from the GPR results are minimised or resolved and improve the understanding of the history of the overall site.

Community Engagement

Given the high level of community interest in this site/proposal, a [Get Involved page](#) was established for this project. Persons who subscribe to this page receive an email update each time a 'newsfeed' is added. A newsfeed was added to notify interested stakeholders that this Report is being considered by Council.

Council staff intend to meet separately with the proponent, Jerrinja LALC and the Huskisson Heritage Association in the lead up to this report being considered by Council on 11 May 2021. Council's Aboriginal Advisory Committee will be advised/updated.

The PP and supporting documentation will be publicly exhibited at the appropriate point, subject to a further report to Council, once all the requirements of the Gateway determination have been satisfied.

Financial Implications

The cost of the studies required by the Gateway determination is being met by the proponent, consistent with Council's Planning Proposal Guidelines.

Council funded the GPR work on Lot 9, as resolved on 1 September 2020 (MIN20.612). Consistent with this approach, the cost of the proposed 'surface scraping' on Lot 9 (\$6,220 excl GST) will need to be funded by Council should the Jerrinja LALC agree to this work being undertaken, but not have the required funding.

Risk Implications

The proposed approach is to undertake 'low impact excavation', i.e. minimal surface disturbance to reveal the absence or presence of grave cuts. This work would be subject to the condition of the s139 exception under the NSW Heritage Act. S139 (1B) allows:

S139 (1B) Excavation or disturbance of land that will have a minor impact on archaeological relics. This can include the testing of land to verify the existence of relics without destroying or removing them. Explanation: This exception could also be applied where the nature of the proposed excavation will not affect significant areas/deposits of a known archaeological site. For example, the excavation would only affect peripheral areas of a significant archaeological site or would occur in areas known to have been previously disturbed.

NOHC's advice is that the proposed approach fits the above description of minor works.

DE21.44 Parkcare Action Plans - Bishop Reserve / Callala Beach / Clifton Park / Mount Vista Close / Nulla Place Reserve

HPERM Ref: D21/33071

Department: Works & Services

Approver: Paul Keech, Director - City Services

Attachments:

1. Draft - Bishop Reserve - Mollymook - Parkcare Action Plan [↓](#)
2. Draft - Callala Beach Entries - Parkcare Action Plan [↓](#)
3. Draft - Clifton Park - Sanctuary Point - Parkcare Action Plan [↓](#)
4. Draft - Mount Vista Close - Berry - Parkcare Action Plan [↓](#)
5. Draft - Nulla Place Reserve - St Georges Basin - Parkcare Action Plan [↓](#)

Reason for Report

To allow Council to consider two updated and three new Parkcare Action Plans that have been prepared by Parkcare Groups and Council staff. The plans are:

1.	Bishop Reserve – Mollymook – Parkcare Action Plan	Mollymook	Updated
2.	Callala Beach Entries – Parkcare Action Plan	Callala Beach	New
3.	Clifton Park – Sanctuary Point – Parkcare Action Plan	Sanctuary Point	Updated
4.	Mount Vista Close – Berry – Parkcare Action Plan	Berry	New
5.	Nulla Place Reserve – St Georges Basin – Parkcare Action Plan	Sanctuary Point	New

Recommendation (Item to be determined under delegated authority)

That Council

1. Endorse the updated and new Parkcare Plans for
 - a. Bishop Reserve – Mollymook (UPDATED)
 - b. Callala Beach Entries – Callala Beach (NEW)
 - c. Clifton Park – Sanctuary Point (UPDATED)
 - d. Mount Vista Close – Berry (NEW)
 - e. Nulla Place Reserve – St Georges Basin (NEW)
2. Continue to allocate ongoing annual operating funding of \$400 (GST exclusive and CPI adjusted) for each Parkcare Group, totalling \$2,000, to cover safety PPE, miscellaneous materials, waste disposal and purchase minor tools. This has been provided for in the Draft 2021/2022 Operating Budget.

Options

1. Approve continued endorsement of Bishop Reserve – Mollymook Parkcare Group, Clifton Park – Sanctuary Point Parkcare Group and approve new endorsement of Callala Beach Entries Parkcare Group, Mount Vista Close - Berry Parkcare Group, Nulla Place Reserve – St Georges Basin Parkcare Group and adopt the draft Action Plans.

DE21.44

Implications: Two groups are currently allocated a total of \$800 for continuing support and if this option is adopted three new groups would be allocated a total of \$1,200, both for ongoing support of Parkcare objectives which would be offset by the free resource offered to Council. The total cost of supporting the five Parkcare Groups would be an annual cost of \$2,000 which would be provided from the Parks Operational budget.

2. Not approve the ongoing support of Bishop Reserve – Mollymook Parkcare Group, Clifton Park – Sanctuary Point Parkcare Group, and refuse any new endorsement of Callala Beach Entries Parkcare Group, Mount Vista Close - Berry Parkcare Group, Nulla Place Reserve – St Georges Basin Parkcare Group pending changes to the Action Plan.

Implications: There would be a lost opportunity for Council. It is estimated, from actual volunteer hours of existing Parkcare groups, that these additional three Action Plans and the volunteer effort that supports them allows the groups to supplement Council's maintenance schedule at a higher level of service thus adding approximately \$24,750 of extra value per annum (3 parks x average of 275 volunteer hours x \$30 per hour for labour) to present high quality parks and reserves to the various communities.

Background

Council engages volunteers such as Parkcare Groups to achieve higher levels of maintenance at minimal cost to Council. Council currently has 53 Parkcare Groups with 448 volunteer members under its Parkcare Programme.

The following two draft Parkcare Action Plans are up for readoption with no changes:

1. Bishop Reserve - Mollymook - Parkcare Action Plan
2. Clifton Park – Sanctuary Point - Parkcare Action Plan

The following three Parkcare Action Plans have been requested from residents who are willing to supplement Council's maintenance schedules to enhance their local area.

1. Callala Beach Entries – Parkcare Action Plan
2. Mount Vista Close – Berry - Parkcare Action Plan
3. Nulla Place Reserve – St Georges Basin - Parkcare Action Plan

Community Engagement

Participation and involvement in the Parkcare Groups is open to all community members. All the attached Action Plans require minor consultation, as per the Bushcare/Parkcare Procedures (PRD20/28), 7.2 Community Consultation.

Financial Implications

Two of the groups have been established in the Shoalhaven for a number of years and have been allocated the \$400 each, totalling \$800 in future budgets.

Three groups to be allocated \$400 each, totalling \$1,200 which is offset by the free resource offered to Council and to continue the \$400 for each group in future budgets.

The total yearly contribution of \$2,000 has been provided for in the draft 2021-2022 Operating budget for Parks and Open Spaces.



BISHOP RESERVE – MOLLYMOOK - PARKCARE ACTION PLAN

Document Number: D20/468659 • **Adopted:** Date • **Minute Number:** Minute number • **File:** 31954e • **Produced By:** City Services • **Review Date:** Review Date

CONTACT INFORMATION

Group Name:	Bishop Reserve Parkcare Group
Contact:	Allen Pennell
Address:	16 Springfield Drive, Mollymook
Tel:	4454 4571
Email:	aspen47@bigpond.com
Reserve Name:	Bishop Reserve
Location:	Cnr Princes Hwy and Bishop Drive
Reserve No:	SMM605
Land Tenure	Freehold
Comm Land Type	Park

1. PARKCARE GROUP GOALS

Mowing and general maintenance of reserve to the rear of adjoining houses of Springfield Drive and The Green.

2. SHOALHAVEN PARKCARE GROUP ACTIVITIES TABLE

GROUP ACTION (these should relate to your project description)	PRIORITY	METHOD	TIMING
Mowing to the rear of adjoining houses	H	By hand	Ongoing
General maintenance including branch pick up and weeding	H	By hand	Ongoing

3. PARKCARE GROUP ACTION PLAN MAP



4. PARKCARE GROUP WHS DOCUMENTS

Type of Activity	WHS Document Name	Document No.
Mowing	Mower – Walk Behind	SWI51 (v2)
Mowing	Operate & Maintain Ride on Mower/Tractor	SWI50 (v2)
Weeding	Weed Control Activities	SWMS1408
Manual handling, bending, lifting	Hazardous Manual Tasks	PRD18/117
Litter pick up	Roadside Waste, Biological Waste & Park Litter Collection	SWMS10417

5. COUNCIL SUPPORT

Supply tools and advice

6. HAS A SITE HAZARD AND RISK ASSESSMENT BEEN COMPLETED FOR THE PARKCARE SITE?

Risk assessments are completed daily as part of the Site Recording Group Sheet & Site Specific Risk Assessment Form.

7. LIST THE MINIMUM PERSONAL PROTECTION EQUIPMENT REQUIRED FOR VOLUNTEERS WHILST WORKING ON THE SITE

PPE Equipment Required	Date issued
First Aid Kit	As Required
Gloves	As Required
Sunscreen	As Required
Insect repellent	As Required

8. POSSIBLE FUTURE FUNDING

Project	Funding source
Nil	

9. PLAN WILL BE REVIEWED EVERY SIX YEARS

10. LOCAL OR REGIONAL MANAGEMENT PLANS OR STRATEGIES THAT THIS PLAN RELATES TO

Name of document	Year it was produced	Produced by
Plan of Management – Generic - Parks	2001	Shoalhaven City Council
Plans of Management – Generic – General	2001	Shoalhaven City Council

Community Use		
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11. RECOMMENDED PLANTING SPECIES LIST
(NO VIEWS TO BE IMPACTED)

Name or type of plant	Maximum Height	Structural Role in the park vegetation	Number
Nil			

12. SITE WEED LIST

Common Name	Extent	Control method used by group
Lantana	M	By hand

All works undertaken pursuant to this action plan are to be to the satisfaction of the Open Space Assets Coordinator

Parkcare Group Name Bishop Reserve Parkcare Group

Coordinator Name Allen Pennell

Signature

Date



CALLALA BEACH ENTRIES PARKCARE ACTION PLAN

Document Number: D20/414363 • Adopted: **Date** • Minute Number:
Minute number • File: 35254E • Produced By: City Services • Review Date:
Review Date

CONTACT INFORMATION

Group Name:	Callala Beach Entries Parkcare Group
Contact:	Anne Vertitano
Tel:	0417 165 717
Email:	callalasecretary@gmail.com
Reserve Name:	Princess St, Sir Henry Cres, Centre St, Parks Cres, Callala Beach Rd
Location:	Callala Beach
Reserve No:	Nil
Land Tenure	Council Road Reserve

1. PARKCARE GROUP GOALS

To pick up litter at the beach entries and keep them litter free for the benefit of local residents and visitors

2. SHOALHAVEN PARKCARE GROUP ACTIVITIES TABLE

GROUP ACTION	PRIORITY	METHOD	TIMING
Litter pick up	H	By hand and / or reaching tool	Ongoing

3. PARKCARE GROUP ACTION PLAN MAP



4. PARKCARE GROUP WHS DOCUMENTS

Type of Activity	WHS Document Name	Document No.
Litter pick up	Roadside Waste, Biological Waste & Park Litter Collection	SWMS1417

5. COUNCIL SUPPORT

Supply tools and advice

6. HAS A SITE HAZARD AND RISK ASSESSMENT BEEN COMPLETED FOR THE PARKCARE SITE?

Risk assessments are completed daily as part of the Site Recording Group Sheet & Site Specific Risk Assessment Form.

7. LIST THE MINIMUM PERSONAL PROTECTION EQUIPMENT REQUIRED FOR VOLUNTEERS WHILST WORKING ON THE SITE

PPE Equipment Required	Date issued
First Aid Kit	As Required
Gloves	As Required
Sunscreen	As Required
Insect repellent	As Required
Plastic bags	As Required
Nifty nabbers	As Required

8. POSSIBLE FUTURE FUNDING

Project	Funding source
Nil	

9. PLAN WILL BE REVIEWED EVERY SIX YEARS

10. LOCAL OR REGIONAL MANAGEMENT PLANS OR STRATEGIES THAT THIS PLAN RELATES TO

Name of document	Year it was produced	Produced by
Nil		

All works undertaken pursuant to this action plan are to be to the satisfaction of the Open Spaces Asset Coordinator

Parkcare Group Name Callala Beach Entries Parkcare Group

Coordinator Name Anne Vertitano

Signature

Date .../...



CLIFTON PARK – SANCTUARY POINT - PARKCARE ACTION PLAN

Document Number: D20/542920 • **Adopted:** Date • **Minute Number:** Minute number •
File: 35254E • **Produced By:** City Services • **Review Date:** Review Date

CONTACT INFORMATION

Group Name:	Clifton Park Parkcare Group
Contact:	John Kelly
Address:	36 Turvey Cres - St Georges Basin
Tel:	4443 8623
Email:	jkelly36@bigpond.com
Reserve Name:	Clifton Park
Location:	Sanctuary Point
Reserve No:	BSP567
Land Tenure	Freehold
Comm Land Type	General Community Use / Park

1. PARKCARE GROUP GOALS

Supplement Council park maintenance by maintaining Clifton Park between the road way to the rear boundary of the Men's Shed, the community food garden extension and the lower end of the Learn to Ride track
Keep the park in a clean and tidy condition
Work with the other user groups (Men's Shed, community garden and schools) to promote greater use of the park

2. SHOALHAVEN PARKCARE GROUP ACTIVITIES TABLE

GROUP ACTION	PRIORITY	METHOD	TIMING
Complete top dressing, turfing and other minor improvements around the Learn to Ride track and community garden	High	Manual labour by volunteers	As required
Mow grass and brush cut edges	High	Mowing and brush cutting	Ongoing
Collect and dispose of rubbish, sticks and tree branches	High	Hand removal	Ongoing
Undertake minor improvements and upgrades to various sections of the park as identified in No.8 Future Possible Funding	Moderate	Various, according to the issue	Ongoing
Repairs/repainting to any Learn to Ride signs that have been vandalised. To be repaired by the Men's Shed members	As required	Manual labour by volunteers	As required

3. PARKCARE GROUP ACTION PLAN MAP



4. PARKCARE GROUP WHS DOCUMENTS

Type of Activity	WHS Document Name	Document No.
Mowing	Operate & Maintain Ride On Mower / Tractor	SWI50(V2)
Landscape Construction and Maintenance	Operational Risk Assessment	FM18/139
Brush cutting	Line Trimmer	SWI41(V2)
Litter pick up	Roadside Waste, Biological Waste & Park Litter Collection	SWMS1417
Painting & maintaining park furniture	Park Furnishing and Play Equipment Maintenance	SWMS1201
Weed spraying	Herbicide spraying	SWI29(v2)
Weeding	Weed Control Activities	SWMS1408

5. COUNCIL SUPPORT

Council will continue to mow the larger grassed areas, and the grassed areas below the Parkcare site. And to continue to maintain the parks furniture on the site

Supply advice, materials and small equipment

6. HAS A SITE HAZARD AND RISK ASSESSMENT BEEN COMPLETED FOR THE PARKCARE SITE?

Risk assessments are completed daily as part of the Site Recording Group Sheet & Site Specific Risk Assessment Form.

7. LIST THE MINIMUM PERSONAL PROTECTION EQUIPMENT REQUIRED FOR VOLUNTEERS WHILST WORKING ON THE SITE

PPE Equipment Required	Date issued
First Aid Kit	As Required
Gloves	As Required
Sunscreen	As Required
Insect repellent	As Required

8. POSSIBLE FUTURE FUNDING

Project	Funding source
Extension of walking path from roadway through to Learn to Ride track, to the community garden and Men's Shed	To be determined
Installation of water bubbler	To be determined
Replacement of incandescent globes (with LED globes) and timer for traffic lights at the Learn to Ride track	Parkcare budget
Landscaping with grasses, groundcovers and small shrubs	To be determined

9. PLAN WILL BE REVIEWED EVERY SIX YEARS

10. LOCAL OR REGIONAL MANAGEMENT PLANS OR STRATEGIES THAT THIS PLAN RELATES TO

Name of document	Year it was produced	Produced by
Plan of Management – Generic – Parks	2001	Shoalhaven City Council

11. RECOMMENDED PLANTING SPECIES LIST (NO VIEWS TO BE IMPACTED)

Name or type of plant	Maximum Height	Structural Role in the park vegetation	Number
Various grasses groundcovers and small shrubs	1m	Amenity value only, to complement the entrances, the existing tree clumps and the Learn to Ride track	To be determined

12. SITE WEED LIST

Common Name	Extent	Control method used by group
Parramatta Grass	Common throughout grassed area	Hand pull or spot spraying with Glyphosate may also be used

All works undertaken pursuant to this action plan are to be to the satisfaction of the Open Space Assets Coordinator

Parkcare Group Name Clifton Park Parkcare Group

Coordinator Name John Kelly

Signature

Date .../.../...

DE21.44 - Attachment 3



MOUNT VISTA CLOSE – BERRY - PARKCARE ACTION PLAN

Document Number: D20/552341 • Adopted: **Date** • Minute Number:
Minute number • File: 31955E • Produced By: City Services • Review Date:
Review Date

CONTACT INFORMATION

Group Name:	Mount Vista Close Parkcare Group
Contact:	Louise Maloney
Address:	11 Mount Vista Close, Berry
Tel:	0401 221 472
Email:	Louise.maloney.email@gmail.com
Reserve Name:	Mount Vista Close Reserve
Location:	Berry
Reserve No:	NBE005
Land Tenure	Park
Comm Land Type	Freehold

1. PARKCARE GROUP GOALS

To ensure stabilisation of the creek bank, keep the integrity of the large Fig tree which has been listed on the National Tree Register of Big Trees and supplement Councils mowing schedule

2. SHOALHAVEN PARKCARE GROUP ACTIVITIES TABLE

GROUP ACTION	PRIORITY	METHOD	TIMING
Weeding and planting of native plants along the banks of the Bundewallah Creek in a sustainable manner to avoid disturbance to the creek bank	H	By hand	Ongoing
Supplement council mowing	M	Ride on mower	Ongoing
Litter pick up	H	By hand	Ongoing

3. PARKCARE GROUP ACTION PLAN MAP



4. PARKCARE GROUP WHS DOCUMENTS

Type of Activity	WHS Document Name	Document No.
Litter pick up	Roadside Waste, Biological Waste & Park Litter Collection	SWMS1417
Using a ride on mower	Operate & Maintain Ride On Mower / Tractor	SWI50(V2)
Weed spraying	Herbicide Spraying	SWI129(V2)
Weeding	Weed Control Activities	SWMS1408
Manual handling, bending, planting, lifting	Hazardous Manual Tasks	PRD18/117

5. COUNCIL SUPPORT

Supply plants, materials and advice

6. HAS A SITE HAZARD AND RISK ASSESSMENT BEEN COMPLETED FOR THE PARKCARE SITE?

Risk assessments are completed daily as part of the Site Recording Group Sheet & Site Specific Risk Assessment Form.

7. LIST THE MINIMUM PERSONAL PROTECTION EQUIPMENT REQUIRED FOR VOLUNTEERS WHILST WORKING ON THE SITE

PPE Equipment Required	Date issued
First Aid Kit	As Required
Gloves	As Required
Sunscreen	As Required
Insect repellent	As Required

8. POSSIBLE FUTURE FUNDING

Project	Funding source
Planting	Landcare

9. PLAN WILL BE REVIEWED EVERY SIX YEARS

10. LOCAL OR REGIONAL MANAGEMENT PLANS OR STRATEGIES THAT THIS PLAN RELATES TO

Name of document	Year it was produced	Produced by
Plan of Management Generic - Parks	2001	Shoalhaven City Council

11. RECOMMENDED PLANTING SPECIES LIST
(NO VIEWS TO BE IMPACTED)

Name or type of plant	Maximum Height	Structural Role in the park vegetation	Number
Callistemon	1.5 to 3m	Placed around parts of the reserve so no views will be impacted. Attract native birds and to maintain the natural look of surrounding area	As required and approved
Lomandra	1m	Attract native birds and to maintain the natural look of surrounding area and stabilise the creek bank	As required and approved
Associated low growing plants	Up to 2m	Attract native birds and to maintain the natural look of surrounding area	As required and approved
Associated endemic plants suitable for creek banks	Low	Stabilise the creek bank	As required and approved
Associated plants around the Fig	Up to 2m	To protect the base, roots, graffiti vandalism and climbing attempts etc	As required and approved

12. SITE WEED LIST

Common Name	Extent	Control method used by group
Tobacco plant	M	Cut & paint
Lantana	H	Cut & paint
Blackeyed susan	L	Cut & paint
Stinging nettle	M	Cut & paint but only in areas to enable safe access. Not all to be removed.
Tradescantia	H	Cut & paint
Thistle	L	Cut & paint

All works pursuant to this action plan are to be to the satisfaction of the Parks & Open Spaces Asset Coordinator

Parkcare Group Name Mount Vista Close Parkcare Group

Coordinator Name Louise Maloney

Signature

Date



NULLA PLACE RESERVE - ST GEORGES BASIN - PARKCARE ACTION PLAN

Document Number: D20/541992 • Adopted: **Date** • Minute Number:
Minute number • File: 35254E • Produced By: City Services • Review Date:
Review Date

CONTACT INFORMATION

Group Name:	Nulla Place Reserve Parkcare Group
Contact:	Peita Charman
Address:	135 Loralyn Ave, St Georges Basin
Tel:	0419 180 665
Email:	peitac@outlook.com
Reserve Name:	Nulla Place Reserve
Location:	St Georges Basin
Reserve No:	BSG549 / BSG406
Land Tenure	Freehold
Comm Land Type	Park

1. PARKCARE GROUP GOALS

Mow grass and maintain foliage alongside 129 & 135 Loralyn Avenue, St Georges Basin

2. SHOALHAVEN PARKCARE GROUP ACTIVITIES TABLE

GROUP ACTION	PRIORITY	METHOD	TIMING
Mowing	H	By hand	Ongoing
General maintenance of foliage along waterway	H	By hand	Ongoing
Weeding along waterway	H	By hand & herbicide	Ongoing
Litter pick up	H	By hand	Ongoing

3. PARKCARE GROUP ACTION PLAN MAP



4. PARKCARE GROUP WHS DOCUMENTS

Type of Activity	WHS Document Name	Document No.
Litter pick up	Roadside Waste, Biological Waste & Park Litter Collection	SWMS1417
Mowing	Mower – Walk Behind	SWI(v2)
Weeding	Weed Control Activities	SWMS1408
Weed spraying	Herbicide Spraying	SWI29(v2)
Manual handling, bending, lifting	Hazardous Manual Tasks	PRD18/117

5. COUNCIL SUPPORT

Supply tools & advice

6. HAS A SITE HAZARD AND RISK ASSESSMENT BEEN COMPLETED FOR THE PARKCARE SITE?

Risk assessments are completed daily as part of the Site Recording Group Sheet & Site Specific Risk Assessment Form.

7. LIST THE MINIMUM PERSONAL PROTECTION EQUIPMENT REQUIRED FOR VOLUNTEERS WHILST WORKING ON THE SITE

PPE Equipment Required	Date issued
First Aid Kit	As Required
Gloves	As Required
Sunscreen	As Required
Insect repellent	As Required

8. POSSIBLE FUTURE FUNDING

Project	Funding source
Nil	

9. PLAN WILL BE REVIEWED EVERY SIX YEARS

10. LOCAL OR REGIONAL MANAGEMENT PLANS OR STRATEGIES THAT THIS PLAN RELATES TO

Name of document	Year it was produced	Produced by
Plan of Management – Generic – Parks	2001	Shoalhaven City Council

11. RECOMMENDED PLANTING SPECIES LIST
(NO VIEWS TO BE IMPACTED)

Name or type of plant	Maximum Height	Structural Role in the park vegetation	Number
Nil			

12. SITE WEED LIST

Common Name	Extent	Control method used by group
Arum lily	M	By hand
Asparagus fern	M	By hand
Stinging nettle	L	By hand
Agapanthus	M	By hand

All works undertaken pursuant to this action plan are to be to the satisfaction of the Open Spaces Asset Coordinator

Parkcare Group Name Nulla Place Parkcare Group

Coordinator Name Peita Charman

Signature

Date

DE21.45 Development Application – 39 The Lake Circuit, Culburra Beach – Lot 1553 DP 12278

DA. No: DA20/2120/4

HPERM Ref: D21/102976

Department: Certification & Compliance

Approver: Phil Costello, Director - City Development

Attachments:

1. s4.15 Assessment Report - 39 The Lake Cct Culburra Beach - Lot 1553 DP 12278 (under separate cover) [⇒](#)
2. Draft Determination - 39 The Lake Cct, Culburra Beach - Lot 1553 DP 12278 - Detached Garage (under separate cover) [⇒](#)
3. Plans - 39 The Lake Cct, Culburra Beach - Lot 1553 - DP 12278 [↓](#)

Description of Development: Construction of a detached garage ancillary to an existing dwelling house

Owner: P & S McGuire

Applicant: Nest Residential Design

Notification Dates: 12/11/2020 – 28/11/2020 and 11/1/2021 – 27/1/2021

No. of Submissions: 5 (from different households) in objection

Purpose / Reason for consideration by Council

On 9 February 2021, Councillors called in DA20/2120 due to the significant public interest (MIN21.75).

Recommendation (Item to be determined under delegated authority)

That Development Application DA20/2120 for construction of a detached garage ancillary to an existing dwelling house at Lot 1553 DP 12278, 39 The Lake Circuit, Culburra Beach be approved subject to the recommended conditions of consent contained in Attachment 2 of this report.

Options

1. Approve the Development Application (DA) in accordance with the recommendation of this report.

Implications: This would allow the applicant to pursue construction of the development.

2. Refuse the application.

Implications: Council would need to determine the grounds on which the application is refused, having regard to section 4.15(1) considerations.

3. Alternative recommendation.

Implications: Council will need to specify an alternative recommendation and advise staff accordingly.

DE21.45

Location Map

Figure 1: Location Map



Background

Subject Land

The site is identified as Lot 1553, DP12278, 39 The Lake Circuit, Culburra Beach.

Site & Context

The site is zoned R2 Low Density Residential under the *Shoalhaven Local Environmental Plan 2014 (SLEP 2014)*.

The site is accessed from The Lake Circuit and it contains an existing dwelling house and a concrete driveway/hardstand area which extends into the rear yard.

The surrounding area is residential in character and the site is adjoined by low density residential development to the north, south, east, and west.

Proposed Development

The proposal relates to the construction of a detached garage (11m x 11.88m) ancillary to an existing dwelling house. The garage comprises a vehicle/boat storage area and an attached workshop area. The garage has a floor area of 119.82m² and has a peak height of 4.2m above natural ground level.

Figure 2: Site Plan

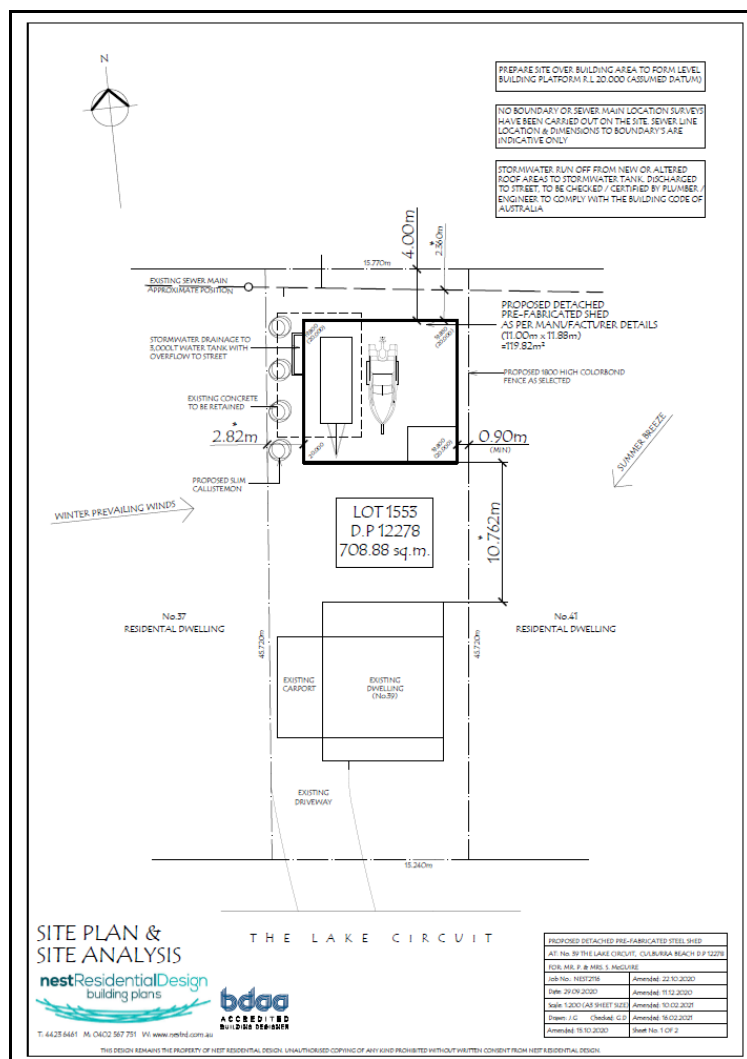
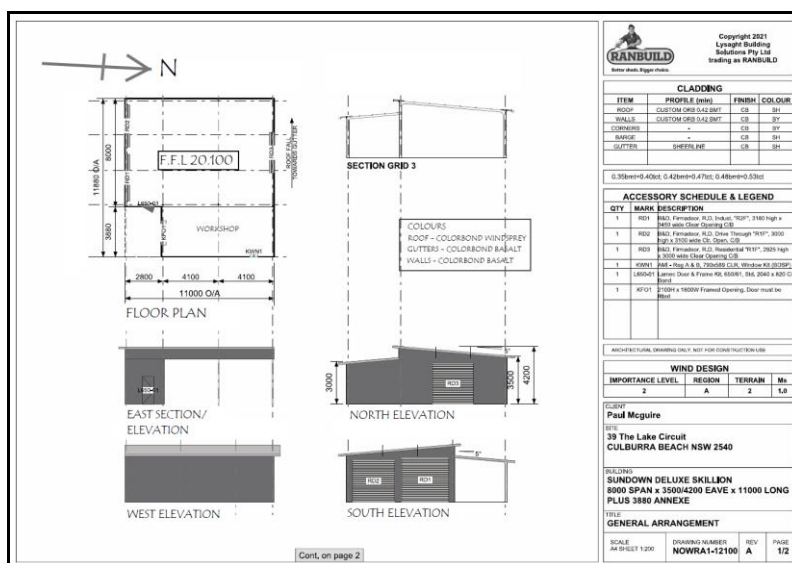
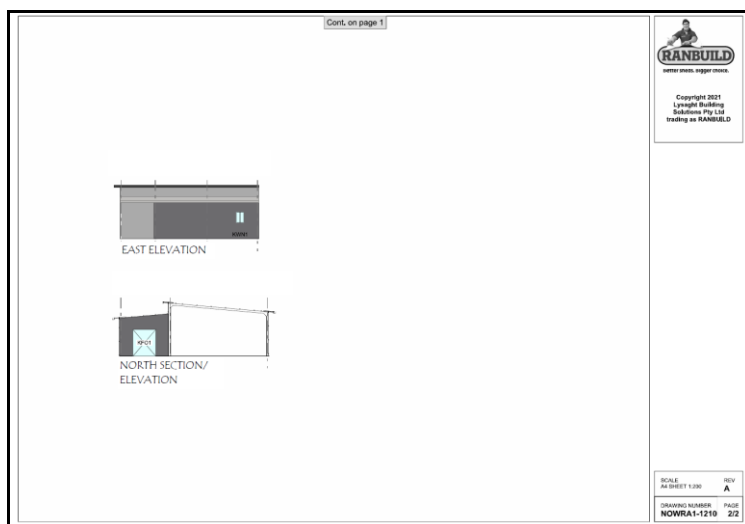


Figure 3: Floor Plan, Elevations and Sections



DE21.45



History

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

The application was lodged on 23 October 2020 and it was notified to adjoining properties. In response to submissions received during the community consultation / notification process and following discussions with Council's Assessing Officer, amended plans and information were provided on 14 December 2020 and further amended plans were provided on 16 February 2021.

Issues

Council's Development Control Plan (DCP) Controls:

The application proposes some performance-based solutions with regard to the *Shoalhaven Development Control Plan 2014* (SDCP 2014).

The application proposes performance-based solutions for both the maximum floor area and wall height set out in Chapter G12 (A33.2 – Table 4).

Acceptable solution A33.2 -Table 4 specifies that garages and other similar structures within the R2 Low Density Residential zone and on lots with a land area <2000m² are to have a maximum gross floor area of 110m² and a maximum wall height from ground level (existing) to eave of 3.0m.

The proposal includes the construction of a detached garage with a gross floor area of 119.82m² and wall height of 3.5 m. This represents a 9.82m² (8.92%) departure to the gross floor area control and a 0.5 m (17% departure to the wall height control set by A33.2 – Table 4.

Applicant's Submission

The Applicant has provided the following justification for the proposed performance-based solutions:

Note: The application only seeks a departure to A33.2- Table 4. Performance Criteria P33.1, P33.2 and P33.3 are applicable; P34.1 – P35.6 are not relevant when considering a departure to A33.2 – Table 4. Nevertheless, the Applicant has also provided commentary addressing P34.1 – P35.6.

Applicant's Justification for performance-based solutions

As part of the Development Application, we hereby request council consideration and support for a minor variation to Shoalhaven City Council's Development Control Plan 2014

DE21.45

(SDCP2014) for the proposed Wall Height & Gross Floor Area of the structure.

Part 8.1 of Chapter G12 of SDCP2014 states that the 'acceptable solution' for Ancillary Structures wall heights do not exceed 3.00m & Gross Floor Area does not exceed 110.0m².

The proposed pre-fabricated steel shed wall is at a maximum height of 4.20m at the highest point with a 3.00m wall height on the lowest.

When evaluated in comparison to the DCP constraints for a wall than the variation to the 3.00m wall height 'acceptable solution' at the worst point is calculated to be approximately 40%.

The proposed pre-fabricated steel shed has an overall gross floor area of 119.82m². The variation to the 110.0m² gross floor area 'acceptable solution' for the whole site calculated to be approximately 8.9272%

Whilst the proposed development does not match the 'acceptable solutions' for the wall height or floor area, we believe that the 'performance criteria' is satisfied:

P33.1 – The bulk and scale of new development, particularly on the perimeter of the development site, or where that locality or development site has heritage significance and/or distinctive character, is:

- **Compatible, consistent, and sympathetic to the bulk and scale of existing development in the locality.**
- **Sympathetic with the streetscape and complements the existing and desired future character of the area.**

Comment: The proposed pre-fabricated steel shed will be complimentary to the existing dwelling and will be well screened by existing established trees / vegetation as well as additional natives to create a screen from the street. We believe that the adjoining properties will not have any adverse effect in regard to solar access caused by the proposed development.

The proposed shed will not be out of character for the area as a number of properties also have large storage sheds/garages. These include No's 19, 27, 35, 37, 51, 53, 57 & 67 The Circuit, Culburra Beach.

P33.2 – The size of a garage, or other similar structure, used in conjunction with a dwelling is appropriate for the garaging of resident's vehicles.

Comment: The size of the proposed pre-fabricated steel shed is 11.00m x 11.88m (119.82m² (excluding open hardstand area)) is larger than the 110m² 'acceptable solution' under Part 8.1 of Chapter G12 of SDCP2014. (Table 4).

The proposed pre-fabricated steel shed will provide weather-proof and secure storage of the owner's personal larger vehicles not practical to store anywhere else on the premises.

The proposed will be utilized as an onsite storage area and workshop.

P33.3 The size of the non-habitable structure is appropriate for its purpose.

Comment: As noted above we feel the size of the structure meets the intended purpose of a safe & secure area for the Owners vehicles.

P34.1 The height of development:

- **Is compatible with the existing or desired future character of the area.**
- **Minimises adverse amenity impacts associated with overlooking and overshadowing of adjoining properties.**
- **Relates to the land.**

Comment: We feel this proposal meets these points.

P34.2 In rural zones, environmental and coastal locations, the height, and bulk of dwellings is compatible with the rural, environmental, or coastal context in which they are located.

Comment: We feel this proposal meets these points

P35.1 The front setback is generally consistent with adjoining development and does not undermine the integrity of prevailing building lines.

Comment: The proposed pre-fabricated shed will not undermine the integrity of prevailing building lines, assessing the building line for The Lake Circuit.

P35.2 The location and siting of the building complements the existing setbacks in proximity to the site, foreshore (if applicable) and the streetscape.

Comment: We feel the position of the proposed pre-fabricated shed will complement the existing streetscape.

P35.3 The proposed development is setback and of a scale that is relative to the street reserve width, in such a way to ensure pedestrians do not feel buildings are overbearing.

Comment: The proposed pre-fabricated shed is set back far enough to not be over bearing & the scale of the proposed development will not impact the existing scale of the buildings that already exist on the street.

P35.4 Setbacks avoid loss of view, undue overshadowing, and provide / maintain privacy (visual and acoustic), traffic safety and maintain adequate daylight and sunlight access.

Comment: We believe the structure will provide minimal loss of amenity to the adjoining development through loss of privacy, views, overshadowing solar access of the like.

P35.6 Adequate levels of light and ventilation to adjoining buildings, landscaping, services, and infrastructure are protected.

Comment: We feel these points are protected with the proposed pre-fabricated shed.

P35.7 The proposal maintains adequate provision for on-site car parking.

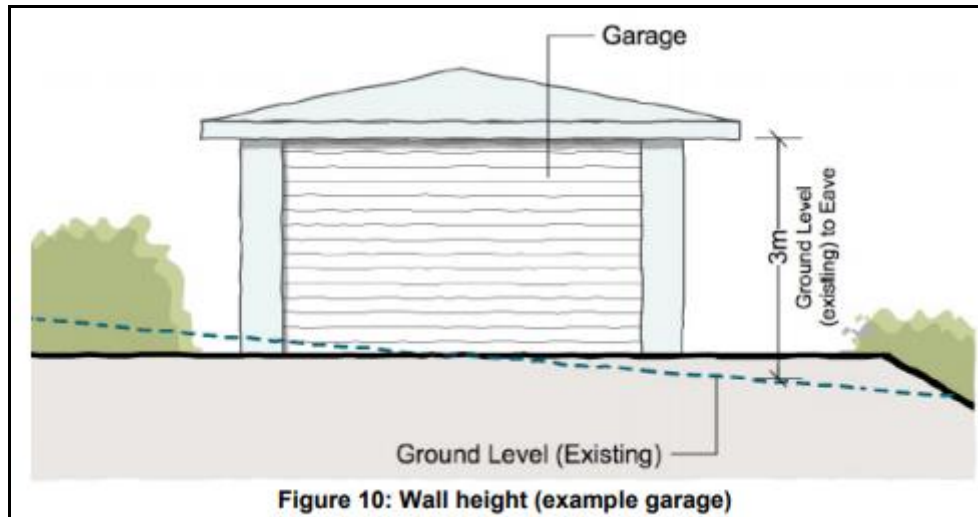
Comment: The proposed pre-fabricated shed will allow for adequate on-site car parking that is undercover.

Discussion

The proposed development will result in a 9.82m² (8.92%) departure to the maximum gross floor area control for garages and a 0.5m (17%) departure to the wall height control set by A33.2 – Table 4.

Table 4: Gross floor area and wall height

	Gross Floor Area	Wall Height <i>From ground level (existing) to eave</i>
R1, R2 and SP3 (> 2000m ²), R3 and RU5 Zones	110m ²	3.0m Refer to Figure 10



The relevant performance criteria are:

P33.1 – *The bulk and scale of new development, particularly on the perimeter of the development site, or where that locality or development site has heritage significance and/or distinctive character, is:*

- *Compatible, consistent, and sympathetic to the bulk and scale of existing development in the locality.*
- *Sympathetic with the streetscape and complements the existing and desired future character of the area.*

P33.2 - *The size of a garage, or other similar structure, used in conjunction with a dwelling is appropriate for the garaging of resident's vehicles.*

P33.3 – *The size of the non-habitable structure is appropriate for its purpose.*

The proposed garage is set back 4m from the north (rear) boundary, 0.9m from the eastern (side) boundary and 2.82m from the western (side) boundary. These setback distances are consistent with the setback distances set out in the Shoalhaven DCP 2014 and are consistent with other garages, sheds and other residential development observed in the immediate locality. The garage is set back 10.76m from the existing dwelling on site. These setback distances provide adequate separation between boundaries and ensure solar access, ventilation and privacy is maintained to adjoining properties. The setback distances also allow for landscaping along the western boundary to soften the development.

The proposed departures to the acceptable solutions are relatively minor and would not have a significant impact on the amenity of the area or adjoining properties.

The proposed garage has been designed and sited to mitigate the impact of the proposed variations to adjoining development and the public domain. The detached garage is compatible with adjoining development and does not detract from the existing streetscape amenity. The proposed garage is of comparable size to other sheds/garages observed on adjoining properties and in the near vicinity of the development site.

Figure 4: Aerial imagery of subject site (highlighted) showing comparable sized sheds/garages on adjoining properties and within the vicinity of the subject site.



The Applicant has indicated that the purpose of the shed is to provide storage for vehicles and also provide a workshop space. The Applicant has provided details of the vehicles (boat and caravan) intended to be stored within the garage and it is noted that these vehicles each have an overall length of approximately 8-9m and a width of approximately 2-3m. The garage dimensions allow for these vehicles to be stored and also for some manoeuvring and circulation space around the vehicles.

DE21.45

Figure 5: Specifications of vehicles intended to be stored within the garage.

SPECS & FEATURES		BAR CRUSHER.	
BASE STATION OUTBACK FLOOR PLAN: 23.73-6.OB.BS-MY20		SPECIFICATIONS	
Specifications		Length overall (mm)	7300
Body length (mm)	7370	Beam (mm)	2450
Interior height (mm)	1975	Internal freeboard (mm)	720
Travel height (mm)	3040	Bottom sides (mm)	5
Travel length (mm)	8715	Top sides (mm)	4
Travel width (mm)	2470	Transom length (in)	25
Tare weight (kg)	2790	Fuel capacity (L)	420
Loading weight (kg)	810	Fuel system	SafeTank™
Tow ball weight (kg)	263	Tow weight (kg) – dry weight	2260
Chassis		Minimum horsepower	200
Electrical		Maximum horsepower	300
Exterior		Overall length on trailer (mm) – hitch to prop	9100
		Overall width on trailer (mm)	2450
		Height on trailer (mm)	3400
		Overall height with roof folded (mm)	n/a
		Maximum persons	7
		Buyer's guide	Build & create
		Overview report	Latest news

DE21.45

The proposed detached garage is considered to be of an appropriate size for its intended use and provides secure and all-weather storage for personal vehicles, tools and gym equipment and also provides a workshop area.

Figure 6: Extract from Site Plan showing intended usage of shed.

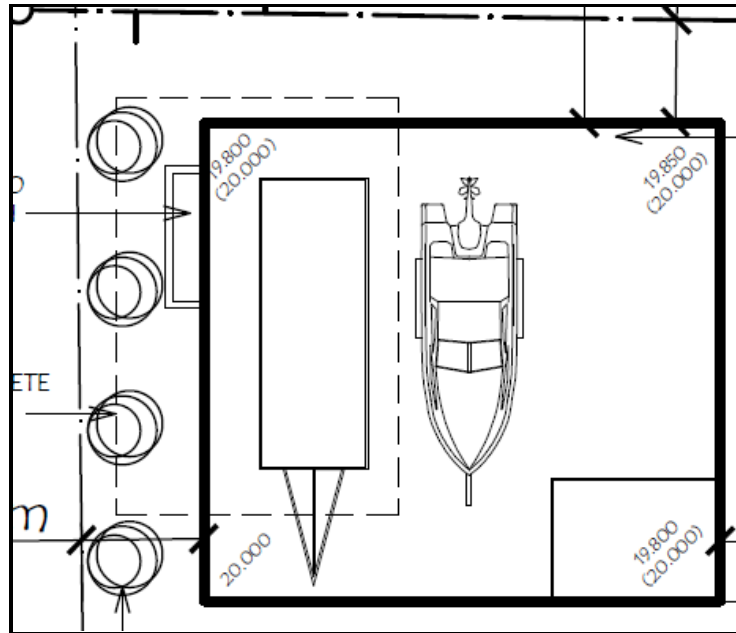
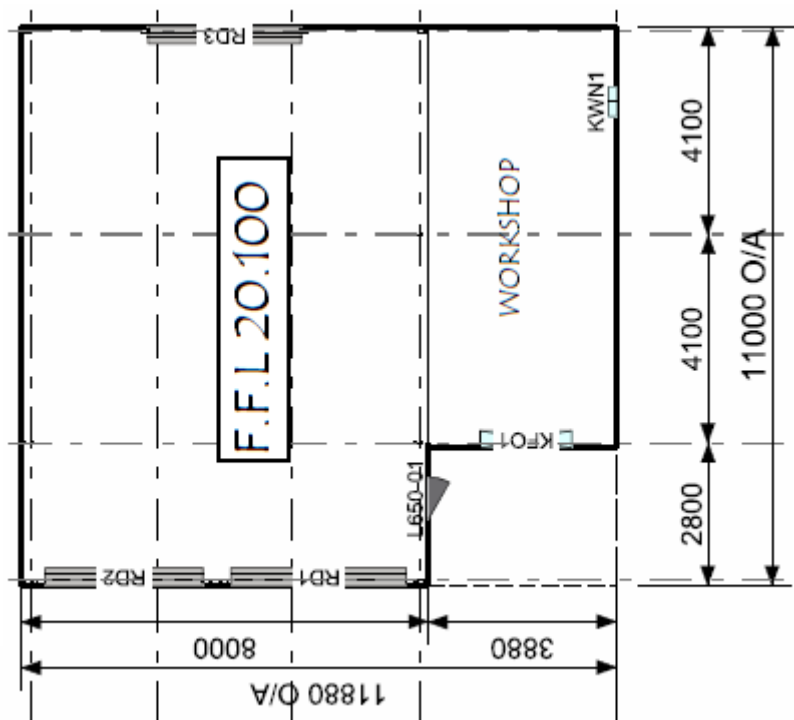


Figure 7: Extract from Floor Plan showing area to be used as a workshop.



It is recommended the performance-based solution be supported for the following reasons:

- The proposed detached garage is suitably designed and located and is compatible with adjoining development.
- The proposed detached garage is located behind the existing dwelling and will not have an adverse impact on the existing streetscape or amenity of the surrounding area.
- The proposed detached garage is a non-habitable building and the privacy between adjoining residences is maintained.

- Comparable sized sheds/garages are observed on adjoining properties and in the vicinity of the proposed development site.
- The proposal is consistent with Performance Criteria P33.1, P33.2 and P33.3 of Chapter G12 *Shoalhaven DCP 2014*.

Planning Assessment

The DA has been assessed under s4.15(1) of the *Environmental Planning and Assessment Act 1979*. Please refer to Attachment 1.

Consultation and Community Engagement:

The development application was notified to adjoining properties on two occasions because of amendments to the proposed design.

Notification was undertaken in accordance with Council's Community Consultation Policy with letters being sent within a 25m buffer of the site, during the period 12 November 2020 – 28 November 2020 and 11 January 2021 – 27 January 2021.

A total of five (5) objections (from different households) were received in relation to the development. Key issues raised as a result of the notification are provided below.

Objection Raised	Assessing Officer Comments
Stormwater	<p>The existing stormwater is sent to an old absorption trench within the rear yard. The applicant proposes to install a charged line to the street.</p> <p>The proposed development will improve how stormwater is managed onsite.</p>
Impact on birdlife	<p>The proposed development maintains an appropriate setback from the existing mature trees on adjoining properties.</p> <p>The application proposes planting to encourage birdlife and soften the proposed development.</p>
Bulk, scale, and design aesthetic	<p>The floor space ratio FSR including the proposed development equates to 0.40: 1.</p> <p>The development is compatible with existing development within the vicinity and does not detract from existing streetscape amenity.</p> <p>Similar sized sheds are observed on adjoining properties and in the immediate locality and the overall bulk of the proposed garage is not excessive.</p>
Overshadowing	<p>The proposed garage has a peak height of 4.2m and is suitably set back from property boundaries and will not unreasonably overshadow adjoining dwellings.</p> <p>The proposed development complies with the NSW Land and Environment Court – Planning Principle: Sunlight – Access to Sunlight.</p>

DE21.45

Privacy

The proposed garage is a non-habitable building, and the development maintains adequate privacy to adjoining residences.

The following photographs show the view from rear yards of adjoining properties looking towards the proposed shed location.


View from 11 The Triangle (adjoining property to the north) looking towards the proposed shed location. The proposed shed will be screened from view by existing vegetation and structures.



View from 37 The Lake Circuit (adjoining property to the west) looking towards proposed shed location. The proposed shed location will be obscured from view by existing and proposed vegetation.



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	<p>View from 41 The Lake Circuit (adjoining property to the east) looking towards the proposed shed location. The Proposed shed will be screened/obscured from view by existing structures.</p> 
<p>Boundary fence issues with adjoining property to the east.</p>	<p>Council is not involved in boundary fence disputes. Property owners may wish to discuss boundary fence issues separately.</p>

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Financial Implications:

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

Legal Implications

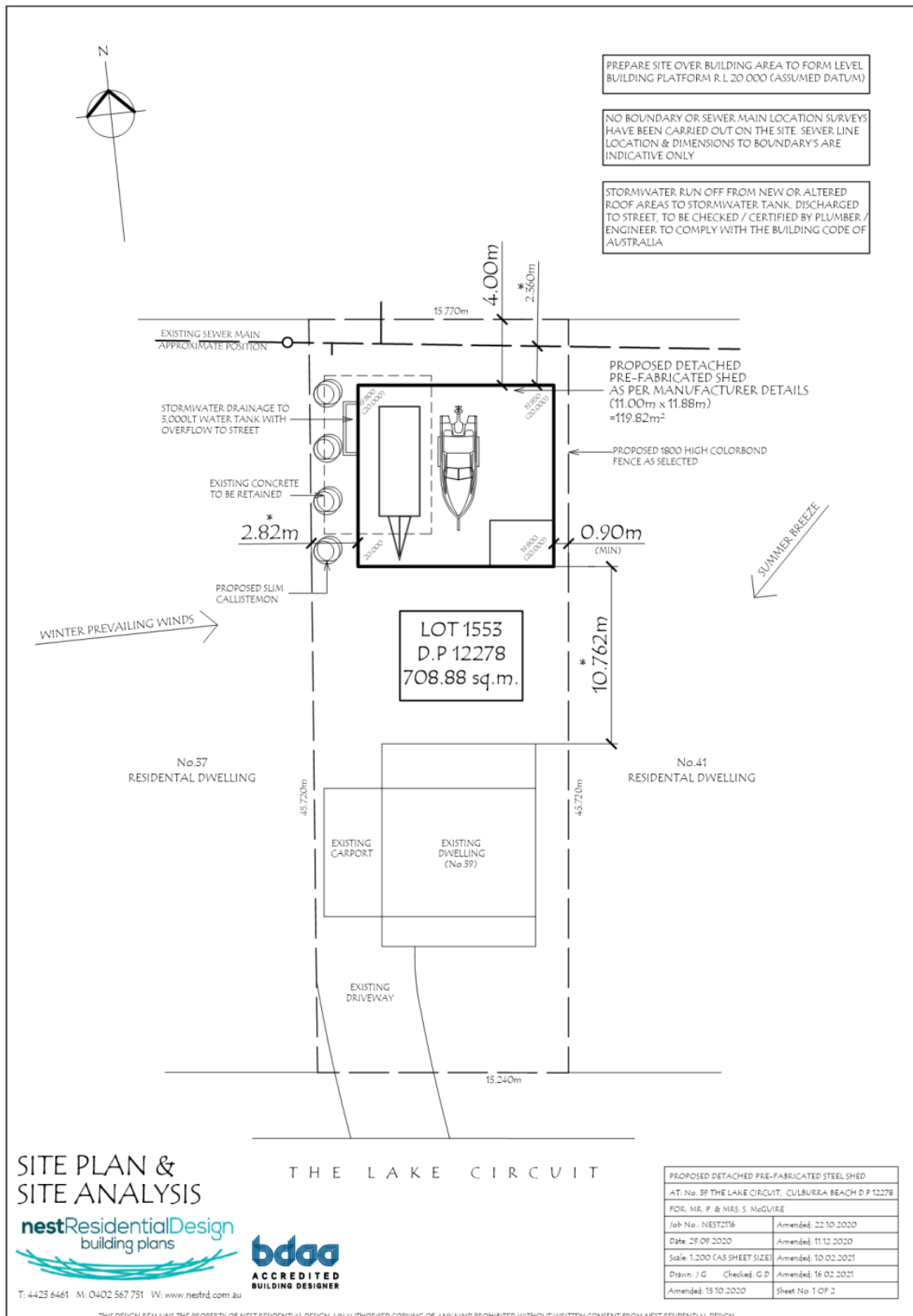
A section 8.2 review and / or an appeal with the Land and Environment Court are possible if the application is refused.

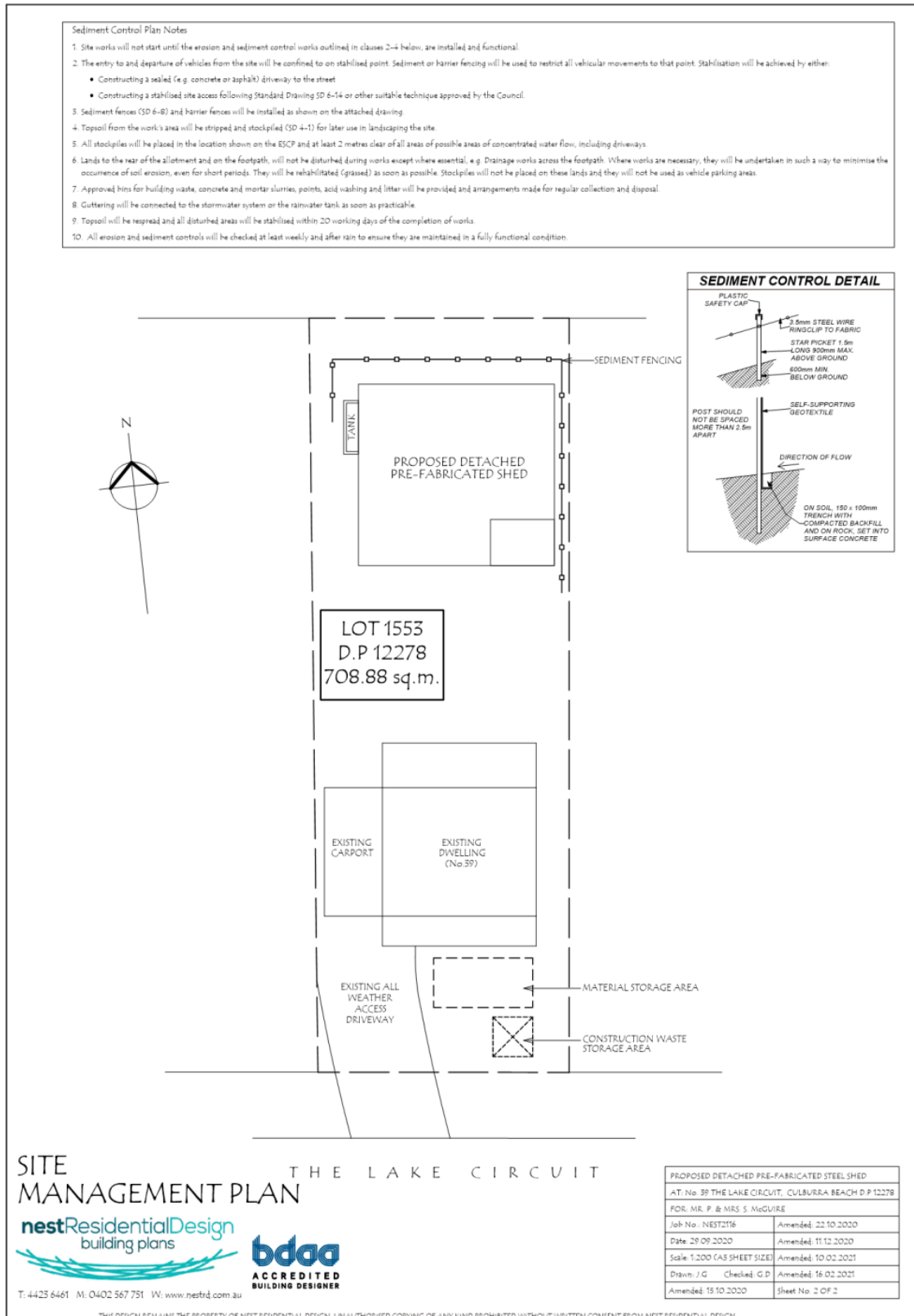
Summary and Conclusion

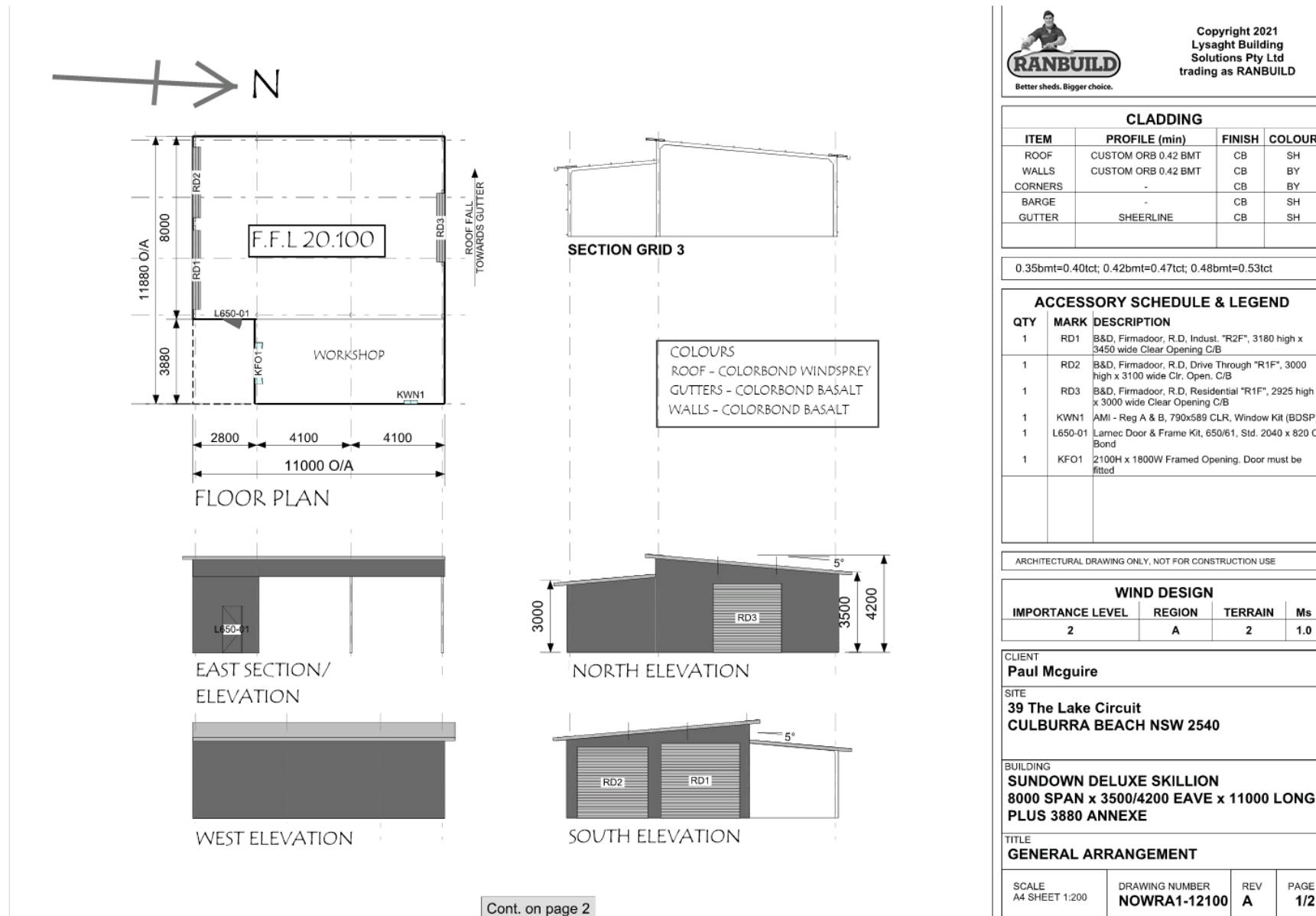
The proposed development is compliant with the provisions of *SLEP 2014*, and it is considered that the proposed performance-based solutions to *SDCP 2014* are supportable and that the proposed development is consistent with the performance criteria specified in *SDCP 2014*.

This application has been assessed having regard for Section 4.15 (Matters for consideration) under the *EP&A Act 1979* and has been subjected to detailed analysis of the main issues identified in this report, being departures from *SDCP 2014* acceptable solutions. These issues have also been investigated and addressed by the applicant.

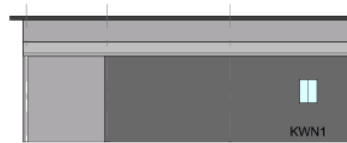
Having regard to the assessment, the proposal is considered capable of support as there are no substantive planning reasons to warrant refusal. It is recommended the application be approved subject to the recommended conditions of consent as per Attachment 2.



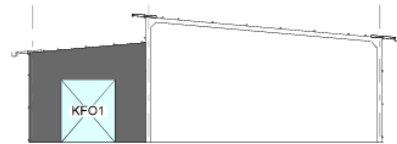




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EAST ELEVATION



NORTH SECTION/
ELEVATION



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DE21.46 DA20/1970 – 1178 Comerong Island Road, Numbaa – Lot 2 DP 1077521

DA. No: DA20/1970/4

HPERM Ref: D21/100273

Department: Development Services

Approver: Phil Costello, Director - City Development

Attachments:

1. Clause 4.6 Written Request - Lot 2 DP 1077521 - 1178 Comerong Island Rd Numbaa [↓](#)
2. Planning Report - 1178 Comerong Island Rd Numbaa - Lot 2 DP 1077521 (under separate cover) [⇒](#)
3. Draft Determination - 1178 Comerong Island Rd Numbaa - Lot 2 DP 1077521 (under separate cover) [⇒](#)

Description of Development: Construction of an industrial building for use as a boat building and repair facility.

Owner: Shoalhaven City Marina Pty Ltd

Applicant: JN (Qld)

Notification Dates: 2-18 December 2020

No. of Submissions: One (1) submission

Purpose / Reason for consideration by Council

The proposed building exceeds the height of building limitation under clause 4.3, Shoalhaven Local Environmental Plan 2014, by a maximum extent of 4m (being 36.36%). The proposed building is 15m high.

Council can in this instance assume the concurrence of the Secretary; however, the extent of the contravention requires referral to the elected Council for consideration.

Recommendation (Item to be determined under delegated authority)

That Development Application DA20/1970 for construction of an industrial building for use as a boat building and repair facility at Lot 2 DP 1077521, 1178 Comerong Island Road, Numbaa be approved subject to the recommended conditions of consent contained in Attachment 3 of this report.

Options

1. Approve the development application (DA) in accordance with the recommendation of this report.

Implications: This would allow the applicant to pursue construction of the development.

2. Refuse the application.

Implications: Council would need to determine the grounds on which the application is refused, having regard to section 4.15(1) considerations.

3. Alternative recommendation.

Implications: Council will need to specify an alternative recommendation and advise staff accordingly.



Figure 1 – Location Map (Whole)



Figure 2 – Location Map (Part)

Background

Proposed Development

The DA seeks approval for the construction of an industrial building for use as a boat building and repair facility.

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Length	120m
Width	66m
Height (Max)	15m
Gross Floor Area	7,995sqm

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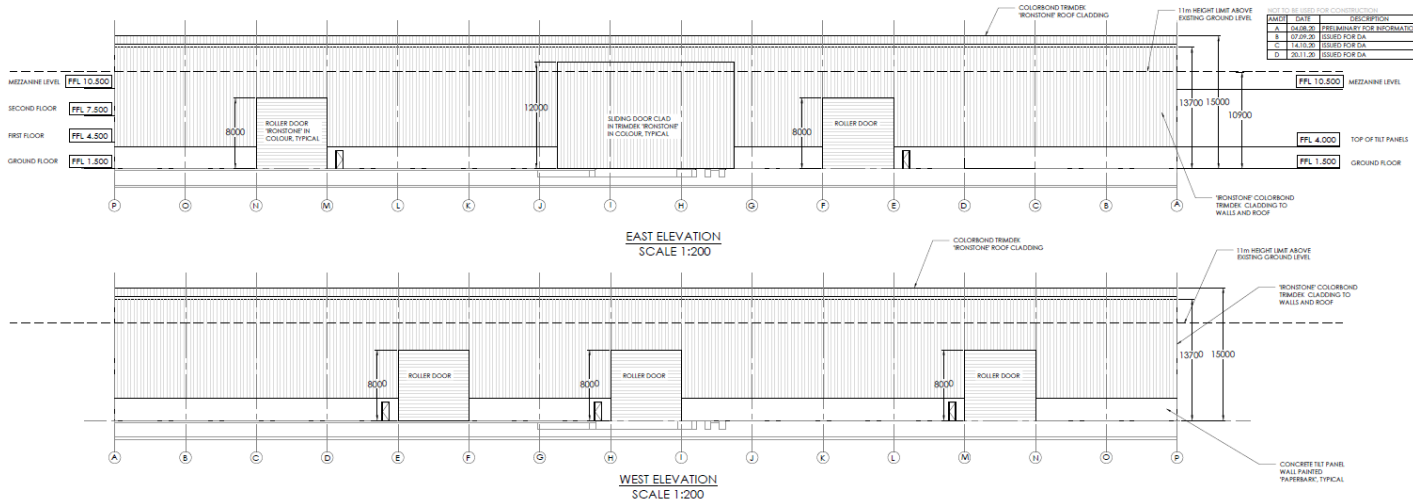


Figure 4 – East and West Elevations

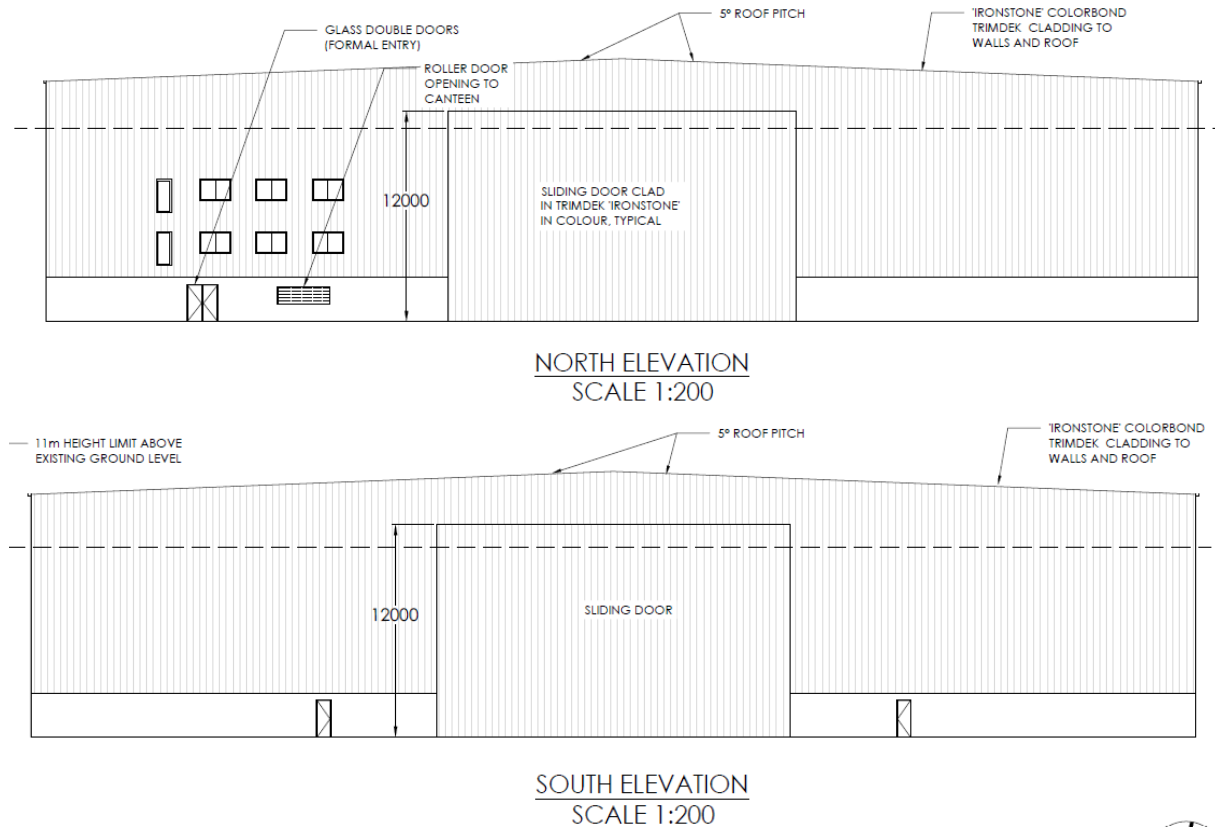


Figure 5 – North and South Elevations

It is noted there is an existing development consent on the subject site (DA84/2166, as modified) for “Boat Building and Repairs, Excavation of Boat Mooring Facilities and Ancillary Buildings”. This is for a separate building to the one proposed under this application, in the southern portion of the site (refer Figure 3). The building height for the building under DA28/2166, as modified, is approximately 10.5m high, and 52.2m x 69m in width and length, and is constructed of Colorbond and concrete materials. Approval was granted in May 2020 to modify this existing consent to increase the size of the existing boat basin to accommodate the servicing of larger marine craft, reflecting the current recreational boat market (DS18/1469).

DE21.46

Subject Land

The development site comprises Lot 2 DP 1077521 (1178 Comerong Island Road, Numbaa). Refer to Figure 1.

Site & Context

The development site:

- Contains an existing storage shed in the north-eastern corner (refer Figure 3 and 5a) along with other temporary structures associated with the approved boat building and repair facility (Figure 5b). The existing boat basin is in the southern portion of the site.
- Is zoned RU1 Primary Production (refer Figure 6). The site is 14.08ha in area.
- Is identified as being wholly flood prone land.
- Has existing access to Comerong Island Road.
- Adjoins land comprising of dairy farms with the exception of the caretaker's residence on Comerong Island Road for the Comerong Island Ferry.
- Directly adjoins land zoned SP2 Infrastructure (Port/Wharf/Boating Facilities, to the north), RU1 Primary Production (to the north and west), and E2 Environmental Conservation (to the south). The site is adjacent to Berry's Canal in the lower section of the Shoalhaven River.



Figure 5a and 5b – Photographs of the existing buildings onsite

The zone objectives are provided below as they are a consideration in assessing and considering a variation request with regard to clause 4.6, which is discussed later in this report.

The RU1 Primary Production zone objectives are:

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

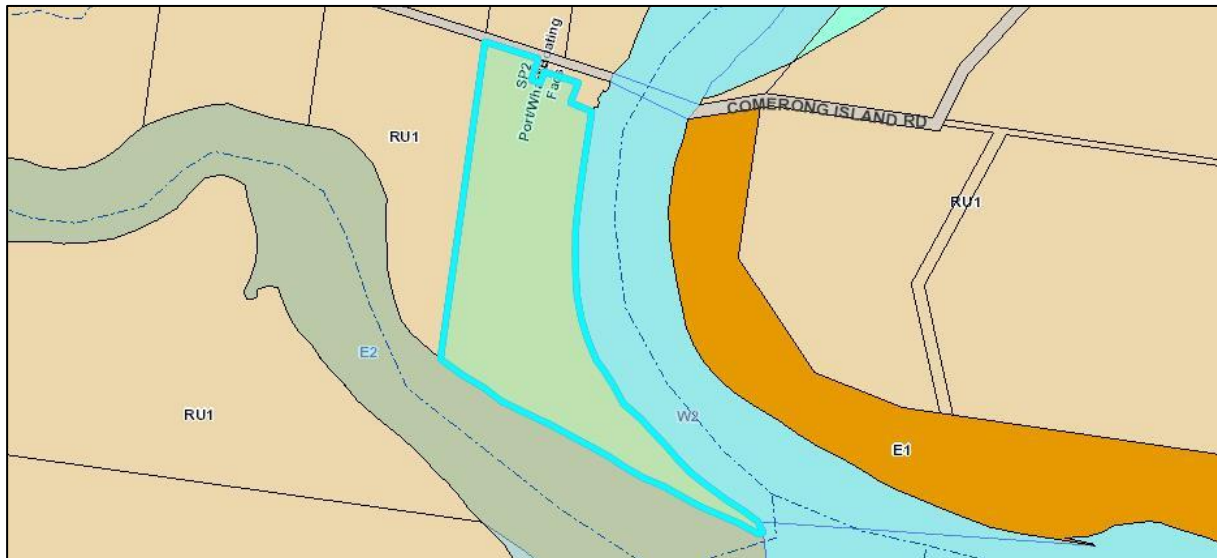


Figure 6 – Zoning Extract

Approvals History

- DA84/2166 – Boat Building and Repairs, The Excavation of Boat Mooring Facilities and the Erection of Buildings Ancillary thereto.) – Approved: 13/09/1989
- In accordance with the provisions of Section 102 of the Environmental Planning and Assessment Act 1979 (EP&A Act) – Modification to DA84/2166 – Modifying Condition 3(a) – Approved: 10/11/1989

This was in relation to the required floor height of the caretakers flat.

- DS99/1229 – Modification to DA84/2166 – Modifying Conditions 1, 7 and 18 – Approved: 12/01/2000

This modified the description of the development to 'Boat Building & Repairs & Excavation of Boat Mooring Facilities & Ancillary Buildings' and introduced staging of the development in three (3) stages being:

Stage 1: Assembly Factory Building, Administration Building and associated paving, landscaping, staff & visitor parking (10 spaces) and security fencing.

Stage 2: Moulding Factory Building, Building and associated paving, landscaping, staff & visitor parking (12 spaces) and security fencing.

Stage 3: Extension of Assembly Factory Building, Residence & opening of Boat Basin to Berry's Canal.

This also modified the car parking requirements and replaced the condition in relation to water supply and roadworks contributions with construction materials and colours requirements along with a requirement to ensure buildings are located and designed so as to have minimal visual impact on the existing landscape.

- DS12/1325 – Modification to DA84/2166 – Inserting Conditions 26 and 27 – Approved: 18/10/2012

This allowed the removal of excess stockpiled material from the site (i.e. material that is currently onsite that is in addition to what is required to allow the construction of the building platform as required by the issued development consent). The maximum amount of stockpiled material to be removed must not exceed 6,800m³. Screening and washing of the excess material on the site prior to its removal via road was permitted only for a period of six (6) months from the date of commencement, after which this was to cease and the area of works stabilised/revegetated. There were also other requirements

included in relation to these works prior to the commencement of and during works. The submission of a dilapidation report for the section of road 0.5km east of Jindy Andy Lane to the subject site entrance; and survey of the area of the site where the remaining material is stockpiled were also required.

- DS14/1168 – Modification to DA84/2166 – Modifying Conditions 26(b), 26(d) and 26(e)I. – Approved: 02/07/2014

This extended the ability to process sand and remove from the subject site for a period of six (6) months from recommencement of haulage and notice being given to Council. It also permitted deferral of the preparation of a dilapidation report for a period of three (3) months from the recommencement of haulage to allow finalisation of the Voluntary Planning Agreement (VPA) which is proposed as part of modification application DS14/1014 to pay a road maintenance levy of between 75 cents and \$1.40 per tonne of material hauled along Comerong Island Road from the site. In the event that the VPA is finalised, the dilapidation reporting requirement of DS12/1325 was to be deleted from the consent.

This also required prior to the commencement of haulage, either an irrevocable bank guarantee or alternatively a cash deposit, to cover the cost of works that may be required if the road as identified above is damaged from the associate works; and also permitted extended hours and days of operation and haulage during the initial three (3) month period.

- DS14/1331 – Modification to DA84/2166 – Modifying 26(b), 26(d), 26(e)I, 26(f) and 26(g) – Approved: 06/01/2015

This extended the consent for screening, washing and removal of excess stockpiled material on the subject site for a period of two (2) months until 06/03/2015.

It also permitted deferral of the preparation of a dilapidation report for a period of one (1) month from approval of this application; permitted extended hours and days of operation and haulage until 06/03/2015; permitted deferral of stabilisation and revegetation of the area where works approved under DS12/1325 and other associated amendments proposed as part of this application have been undertaken within one (1) month of completion or within 30 months of informing Council of commencement of works, whichever comes first; and permitted deferral of the preparation of a new dilapidation report and survey of the area of the site where the remaining material is stockpiled, to within 30 months of informing Council of commencement of works.

- DS14/1014 – Modification to DA84/2166 – Modifying Conditions 1, 3(a), 3(b), 3(c), 26 (introductory paragraph before 26(a)), 26(a), 26(b), 26(d), 26(e)I., 26(f) and 26(g) and Inserting Conditions 28-35 – Approved: 22/04/2015

This modified the location and floor levels of the boat building factory and methods of construction. The building height was approved at approximately 10.5m.

It also approved concurrent commencement of remaining stages and consideration of the VPA as referred to above (see DS14/1168). All works/requirements as detailed in this Agreement were to be complied with and completed prior to issue of the Occupation Certificate for the development.

- DS16/1568 – Modification to DA84/2166 – Modifying Conditions 1, 26 (introductory paragraph before 26(a)), 26(b), 26(e), 26(e)I., 33 and Inserting Condition 26(d)III. – Approved: 21/04/2017

This increased the size of the boat basin by 4,700sqm.

- DS18/1469 – Modification to DA84/2166 – Modifying Conditions 1, 3(b) and 33 and Inserting Conditions 26(h), 32A and 36 – Approved: 04/05/2020

This reconfigured the location of the existing boat building factory pad and building structure and amended the geometry of the basin to allow for waterway access from the boat basin into the factory.

It is noted that the VPA as referred to above was signed on 22 May 2015 and it is understood the works/requirements as detailed in this Agreement are yet to be completed. No Occupation Certificate has been issued for this development.

Subject Application History

- This current application was lodged on 18 September 2020.
- As a result of detailed assessment of the application, additional information was requested from the applicant on five (5) occasions – 30 September 2020, 18 December 2020, 22 December 2020, 23 February 2021 and 9 March 2021. These requests were generally in relation to the non-compliance with the building height limit, stormwater and wastewater management, landscaping, traffic impact, civil works and after further detail as to what was proposed as part of the application.
- On 24 November 2020, 23 December 2020, 18 January 2021, 1 March 2021 and 11 March 2021, the applicant submitted additional information, which was subsequently referred to the relevant sections of Council for comment.
- Draft conditions of consent were forwarded to the applicant for comment on 26 March 2021.
- No comments were provided.

Issues

Clause 4.3 (Height of buildings) of SLEP 2014

Clause 4.3 of SLEP 2014 contains controls for the maximum height of buildings and specifically outlines that the maximum height of a building must not exceed the height shown on the 'Height of Buildings Map' that supports SLEP 2014 or if land is not mapped a building must not exceed 11m.

In this instance, the 'Height of Buildings Map' has no specific maximum building height provisions for the development site. As such, the maximum height of any building, under this clause, must not exceed 11m as required by subclause (2A). The development does not comply with this development standard as it will have a maximum height of 15m, see Figure 7 height plane analysis. This represents a variation to the numerical standard of 36.36%.

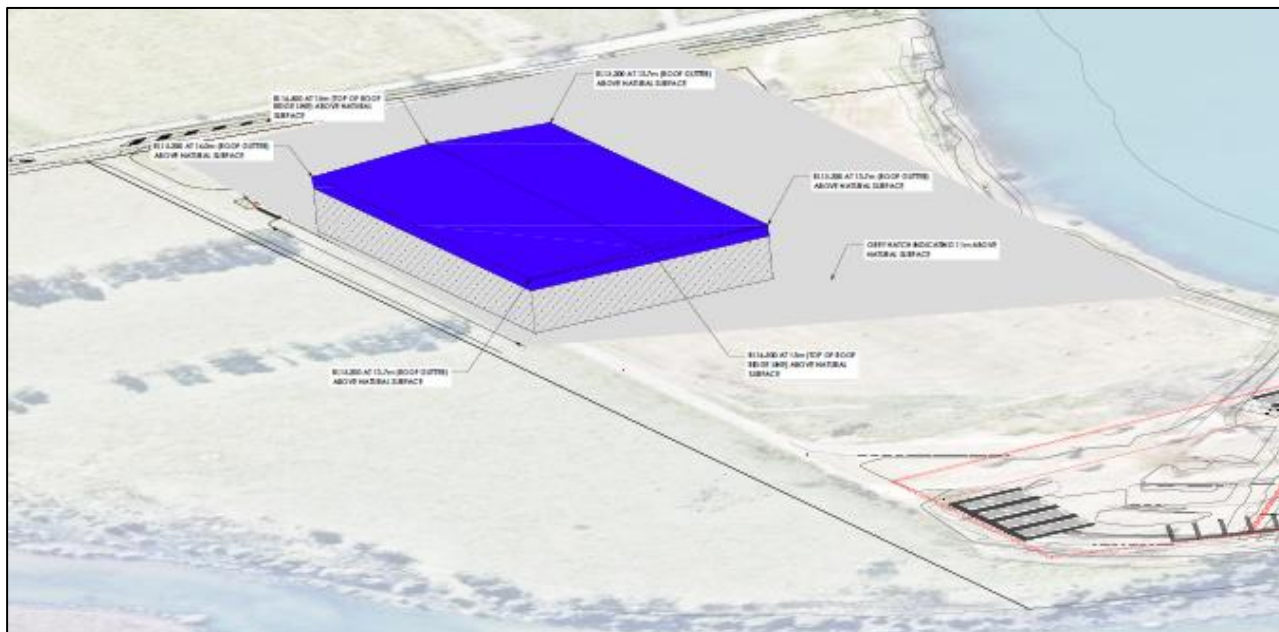


Figure 7 – Height plane analysis (The blue area depicts the portion of the proposed building above the maximum height control)

Clause 4.6 (Exceptions to development standards) of SLEP 2014

Development consent may, subject to clause 4.6, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument.

The applicant has submitted a written request to justify the contravention of the height of buildings development standard pursuant to the requirements of clause 4.6 of SLEP 2014. Refer to **Attachment 1** for the detailed request made by the applicant and Council's assessment. The following provides Council's review (summary) of the request for a height variation in relation to the requirements of clause 4.6. Refer to the attached assessment report (**Attachment 2**) for additional detail.

Council is required to consider subclauses (3), (4) and (5) of Clause 4.6. Clause 4.6(3)-(5) are extracted from SLEP 2014 below:

- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating—*
 - (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*
- (4) *Development consent must not be granted for development that contravenes a development standard unless—*
 - (a) *the consent authority is satisfied that—*
 - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
 - (b) *the concurrence of the Planning Secretary has been obtained.*

- (5) *In deciding whether to grant concurrence, the Planning Secretary must consider—*
- (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
 - (b) *the public benefit of maintaining the development standard, and*
 - (c) *any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.*

Clause 4.6(3)(a) – Compliance with the Development Standard is Unreasonable or Unnecessary in the Circumstances of the Case

It is considered that the applicant has satisfactorily demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case for the following reasons:

1. The applicant's justification is supported as the objectives of the development standard are achieved notwithstanding non-compliance with the standard.
2. The proposed height of the building is directly correlated with the use of the building given the size of the vessels to be built and repaired within the building and specific circumstances of their boat fit-out activities. The increase in building height is necessary to accommodate a gantry crane which assists in the general construction operation for a new boat build and lowers the operational risks associated with workplace health and safety.
3. Council has previously approved the subject site for boat building and repairs and the proposed building is considered to be compatible with the height, bulk and scale of the character of this locality and the RU1 zone, given the design presented to Council inclusive of landscaping. While the proposed building is larger than existing and approved structures on the site, the new building is appropriate for the approved use on the site and does not detract from the rural character of the area having regard to the setting in which the proposed shed will be situated and its isolation from adjoining properties.
4. Approval has been recently granted to increase the size of the existing boat basin to accommodate the servicing of larger marine craft reflecting the current recreational boat market. The height of this building will support this demand.
5. Any potential physical impacts on surrounding development are capable of being acceptable (subject to the regulatory controls and conditions associated with the ongoing management of the site operations).

Clause 4.6(3)(b) – Are there Sufficient Environmental Planning Grounds to Justify Contravening the Development Standard?

The consent authority must form the positive opinion that the applicant's written request has adequately addressed those matters required to be demonstrated by clause 4.6(3)(b).

In this regard, the proposed portion of the development that contravenes the development standard is justified on environmental planning grounds because it is necessary to promote the orderly and economic use and development of land.

In this regard, the applicant has stated:

"It is appropriate to address the age of the existing consent for boat mooring, boat building and ancillary services. The original DA was granted in 1989 following the gazettal of the attachment of an enabling clause in the 80's that allowed for the development to be approved two years later. In the ensuing 31 years since the approval was granted, the Australian boat building industry has evolved to the point today where the median size of a leisure sailing or motorized vessel now exceeds 46 foot and is about to evolve further into the adoption of multihulls and the current

median leisure boat class of 52 foot length overall. This development has been thwarted by a range of impediments and delays that have finally been able to be addressed.

The proposed development will provide the required opportunity for boat building that is the optimal use for this land that is adjacent to Council's current ferry infrastructure. As such, the proposed development will deliver the orderly and economic use of land that ensures that inappropriate uses are not placed in direct vicinity of each other."

Secondly, the orderly and economic use and development of land demonstrates that compliance would be unreasonable and unnecessary under clause 4.6(3)(a) because if the proposed building height was not to be supported, the building would not be able to be used for its specific purpose, that is, to build boats of up to 72 "feet" (21.9456 metres) and in so doing, would remove the viability of the development and existing approved operations onsite, and as stated by the applicant *"make it impossible to keep abreast of current and future boat building market expectations"*.

Further to this, the proposal will aid the continuity and modernisation of the existing land uses, encourage additional employment opportunities, facilitates the continued utilisation of the boat building facility and has the potential to provide for a use that does not significantly conflict with the operation of existing or proposed development both on the site or surrounding properties.

Additional environmental planning grounds which distinguish it from other potential requests to vary the height of building development standard are summarised below:

1. Consideration should be given to the height of building development standard being a default height limitation. The default height is not the result of a detailed strategic review or visual impact assessment of the area.
2. The proposed development is of an overall height, scale, bulk, design and external appearance that is appropriate for the use of the building, and compatible with the existing and proposed continuation of the use of the site as a boat building facility. It is also considered that there would be no adverse visual impact due to the setting in which the building is situated.
3. The isolated and unique features of the site mean the additional height above the 11m maximum building height will not result in unreasonable overshadowing, overlooking or amenity impacts on neighbouring sites.

Clause 4.6(4)(a)(ii) – Will the Proposed Development be in the Public Interest Because it is Consistent with the Objectives of the Particular Standard and Objectives for Development within the Zone in Which the Development is Proposed to be Carried Out?

Clause 4.6(4)(a)(ii) states that development consent must not be granted for development that contravenes a development standard unless the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

An assessment of the objectives of the zone and development standard is provided below. As detailed further below, the proposed departure from the development standard is considered to be in the public interest as the proposal is consistent with these objectives.

Zone Objectives

Pursuant to the provisions of the SLEP 2014, the land is zoned RU1 Primary Production.

The objectives of this zone are as follows:

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

The proposal is not inconsistent with the zone objectives as:

- It will enhance the natural resource of land adjacent to Berry's Canal by utilising this land for a purpose that is uniquely complementary to the existing uses of the canal (i.e. for boating and related marine leisure activities).
- It will provide boat building services that complement the existing industrial marine facility and services currently provided by Council through the Comerong Island Ferry; but will also diversify the land use/industry in the locality (i.e. which is predominantly dairy farming and cropping).
- The location of the development in relation to the Council-owned and operated Comerong Island Ferry and the approved boat basin on the subject site will ensure the integration of these complementing activities is not lost.
- The proposed development will not impact the primary industry enterprises on neighbouring agricultural lands or impact productive prime crop and pasture land.

Development Standard Objectives

Pursuant to the provisions of the SLEP 2014, the development standard proposed to be varied is clause 4.3 Height of buildings.

The objectives of this standard are as follows:

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

The proposal complies with the standard objectives as:

- The height, bulk and scale of the building is consistent with the desired future marine industrial character, (noting there is an approval for a building and the activities being conducted in the locality – refer to Figure 3 and text below the heading “Site & Context” in this report) of the Numbaa locality, given the approved boat building facility. Further to this, as indicated by the applicant, the proposed height is less than the height of grain silos and milking sheds located on neighbouring properties.
- The development is sufficiently sited and designed to minimise visual impact, and any loss of privacy and solar access to existing development on adjoining land. It is noted that there are very few sensitive receivers present and no concerns have been raised during the assessment of this application.

- There are no heritage items or heritage conservation areas proximate to the subject site.

Clause 4.6 (4)(b) – Concurrence of the Secretary has been obtained

Council may assume concurrence. In this instance, the extent of the contravention needs to be referred to the elected Council for consideration.

Clause 4.6(5)(a) – Would Non-Compliance Raise any Matter of Significance for State or Regional Planning?

The contravention does not raise any matters of significance having regard to State or regional environmental planning. It does not have implications for any State Environmental Planning Policies in the locality or impacts which are considered of a State or regional scale.

Clause 4.6(5)(b) – Is There a Public Benefit of Maintaining the Planning Control Standard?

In the judgement of *Ex Gratia P/L v Dungog Council* [2015] (NSWLEC 148), Commissioner Brown of the NSW LEC outlined that the question that needs to be answered in relation to the application of clause 4.6(5)(b) is “*whether the public advantages of the proposed development outweigh the public disadvantages of the proposed development*”.

The applicant is to demonstrate that there will be better planning outcomes achieved through variation to the development standard as opposed to strict compliance with the development standard or amending the application to reduce the extent of the variation.

In this regard, it is considered that strict compliance with the development standard and a reduction of the building height to achieve compliance would not result in a better outcome. The extent of the departure from the height control, whilst numerically large is essential for the efficient operation of the boat building and repair facility. It is further noted that due to the unique circumstances of the site, and existing and proposed use, the contravention would not set a precedent for a departure of this development standard in this location having regard to the particular use of the proposed building.

Summary and conclusion with regard to clause 4.6

The written submission provided by the applicant is considered to satisfy the requirements of clause 4.6(3), (4) and (5) and in this regard the proposed height variation is considered to warrant approval.

Planning Assessment

The DA has been assessed under s4.15(1) of the Environmental Planning and Assessment Act 1979. Please refer to Attachment 2.

No further issues are raised under that assessment with the application otherwise compliant with the relevant and applicable planning controls for the site and the proposed use. Conditions of consent are recommended to address potential impacts of the proposed use such as noise emissions from the building, requirements to avoid spills of oils, petroleum products and the like, and hours of operation which will assist in mitigating potential noise impacts from trucks at night-time.

Council’s internal referrals have assessed the application as being satisfactory with conditions of consent recommended to address matters such as widening of Comerong Island Road in parts, stormwater drainage and flooding.

Consultation and Community Engagement:

One (1) public submission was received from DPIE Biodiversity & Conservation Division and National Parks & Wildlife Service in relation to Council's notification of the development. The notification was made in accordance with Council's Community Consultation Policy with letters being sent within a 200m buffer of the site, during the period 2 to 18 December 2020.

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

- Consideration of DPIE guidelines;
- How current proposal aligns with the approved DA;
- Water quality; and
- Threatened shorebirds.

The assessment of the application by both Council's assessing officer and Environmental Health Officer considered the matters raised in the submission and concluded that the application should be (conditionally) supported.

A detailed analysis can be found in the attached section 4.15 assessment report at Attachment 2.

Financial Implications:

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

Legal Implications

A section 8.2 review or an appeal with the Land and Environment Court are possible if the application is refused.

Summary and Conclusion

The applicant's submission has provided sufficient justification to demonstrate that given the specific circumstances of this case that the 11m height limit is unreasonable, there is sufficient environmental planning grounds to justify contravention of the height requirement and that the proposal is in the public interest and should be supported.

Further, there are no matters of concern or non-compliances that would warrant the refusal of the application. Accordingly, it is recommended that DA20/1970 is approved subject to the recommended conditions of consent as per Attachment 3.



Clause 4.6 Written Request

Relevant Planning Instruments and Controls

The following written request is pursuant to SLEP 2014 clause 4.6 which reads as follows:

"4.6 Exceptions to development standards

(1) The objectives of this clause are as follows—

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

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

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

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

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

(4) Development consent must not be granted for development that contravenes a development standard unless—

(a) the consent authority is satisfied that—

(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and

(b) the concurrence of the Planning Secretary has been obtained.

(5) In deciding whether to grant concurrence, the Planning Secretary must consider—

(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and

(b) the public benefit of maintaining the development standard, and

(c) any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.



Clause 4.6 of SLEP 2014 identifies the requirements for a written request to contravene the development standard. Specifically, our written request is to contravene the development standard relating to the height of buildings, as contained in SLEP 2014 clause 4.3:

"4.3 Height of buildings

(1) The objectives of this clause are as follows—

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

(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

(2A) If the Height of Buildings Map does not show a maximum height for any land, the height of a building on the land is not to exceed 11 metres."

The development standard in clause 4.3 Height of Buildings stipulates that "If the Height of Buildings Map does not show a maximum height for any land, the height of a building on the land is not to exceed 11 metres.". However, we submit this written request under clause 4.6(3) to contravene this development standard by 26.7% to allow for a building height of 15 metres.

Recent and applicable Land and Environment Court Judgements

We have rigorously assessed and given consideration to the following recent Land and Environment Court Judgements where clause 6 of SEPP 1 and clause 4.6 has been interpreted and illustrated.

Wehbe v Pittwater Council [2007] NSWLEC 827

In paragraphs [42] and [44] the court states that objections under clause 6 of SEPP 1 are commonly invoked by establishing that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

"Ways of establishing that compliance is unreasonable or unnecessary

42 An objection under SEPP 1 may be well founded and be consistent with the aims set out in clause 3 of the Policy in a variety of ways. The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard

44 However, although this way is commonly invoked, it is not the only way to establish that compliance with a development standard is unreasonable or unnecessary: *North Sydney Municipal Council v Parlbay*, unreported, LEC No 10613 of 1985, 13 November 1986, Stein J at p 5; *Legal and General Life of Australia Ltd v North Sydney Municipal Council* (1989) 68 LGRA 192 at 202; *Fast Buck\$ v Byron Shire Council* (1999) 103 LGERA 94 at 97; *City West Housing Pty Ltd v Sydney City Council* (1999) 110 LGERA 262 at 282-283. Other ways are explained in the authorities."



In paragraphs [45] to [48] the court sets out 4 additional ways of establishing that compliance is unreasonable (no purpose would be served) and unnecessary (it is achieved anyway) and summarises these additional ways in paragraph [81]:

"For completeness, I should note that the applicant has not sought to establish that compliance is unreasonable or unnecessary in the other ways that can, in appropriate circumstances, be available. It is not put that the underlying objective or purpose of the development standard in clause 11(2) is not relevant to the proposed subdivision; that the underlying objective or purpose would be defeated or thwarted if compliance was required; that the development standard has been abandoned or destroyed by the Council's actions in granting consents departing from the standard; or that the zoning of the land as Residential 2(a) was unreasonable or inappropriate so as to make the development standard appropriate to that zone unreasonable or unnecessary as it applied to the land."

Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009

In paragraph [62] the court states that the case law and analysis developed in application of objections under cl 6 of SEPP 1 is equally applicable to variations under clause 4.6.

"I agree with the submission of Four2Five that the wording of cl 4.6, being different to that in SEPP 1, requires the decision-maker to be faithful to the language of the clause rather than any stated principles developed in the application of SEPP 1, and that, subject to that caution, the case law developed in relation to the application of SEPP1 may be of assistance in applying cl 4.6. While Wehbe concerned an objection under SEPP 1, in my view the analysis is equally applicable to a variation under cl 4.6 where cl 4.6(3)(a) uses the same language as cl 6 of SEPP1."

In the second part of paragraph [62] the court states that separate attention must be given to the question of whether compliance is unreasonable or unnecessary as per cl 4.6(3)(a) from that given to the question as per cl 4.6(4)(a)(ii) where non-compliance cannot be granted unless consistency with the objectives of development standards and zone objectives has been demonstrated; and that an applicant must identify additional ways of establishing that compliance is unnecessary or unreasonable.

"Consistency with the objectives of the development standard and the zone objectives is now addressed specifically in cl 4.6(4)(a)(ii), with separate attention required to the question of whether compliance is unreasonable or unnecessary, using the same expression as that in cl 6 of SEPP 1, in cl 4.6(3)(a) and 4.6(4)(a)(i) of the LEP. The written request does not identify any of the additional ways of establishing that compliance is unreasonable or unnecessary in the circumstances of the case."

Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 Appeal

In para [21] the court further clarifies the applicant's need to demonstrate the unreasonable or unnecessary issue in subcl (3)(a) in a different way from the way in which the applicant demonstrates the unreasonable or unnecessary issue in subcl (4)(a)(ii).

"21 Applying the Appellant's construction of cl 4.6, if an applicant addresses the unreasonable or unnecessary issue in subclause (3)(a) by demonstrating consistency with the objective of the development standard, then the



consent authority would have to be satisfied about this under subclause (4)(a)(i) when consideration is given to whether the applicant's variation does adequately address this issue. If this is the case, when the consent authority moves to consider subclause (4)(a)(ii), there is no work for a substantial part of this clause to do because the consent authority has already considered the objective of the standard under subclause (4)(a)(i)."

In para [22] the court states that the unreasonable or unnecessary issue in subcl 4(a)(ii) must be addressed by demonstrating consistency with the objectives of the development standard and the zone objectives in spite of the non-compliance with the development standard; and that the issue as per subcl 3(a) is demonstrated by proving that strict compliance with the standard would render the objective of the proposed development unattainable or impracticable.

"22 Consequently, the Commissioner correctly identified that consistency with the objectives of the development standard is now addressed specifically in cl 4.6(4)(a)(ii). It follows, as the Commissioner found, that "separate attention" (or additional ways) to consider consistency with the objective of the standard is now required for considering the question of whether compliance with the development standard is unreasonable or unnecessary in the circumstances of the case under subclause (3)(b)."

RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130

The need to demonstrate with factual examples as opposed to a generalized justification for the non-compliance of the development standard is discussed by the court at para [4]:

"Properly construed, a consent authority has to be satisfied that an applicant's written request has in fact demonstrated the matters required to be demonstrated by cl 4.6(3). Clause 4.6(3) requires the consent authority to have "considered" the written request and identifies the necessary evaluative elements to be satisfied. To comply with subcl (3), the request must demonstrate that compliance with the development standard is "unreasonable or unnecessary" and that "there are sufficient environmental planning grounds to justify" the contravention. It would give no work to subcl 4.6(4) simply to require the consent authority to be satisfied that an argument addressing the matters required to be addressed under subcl (3) has been advanced."

The court has demonstrated that an applicant must provide concrete facts as opposed to merely advancing the reasons why a development standard cannot be complied with.

Stockland Development Pty Ltd v Manly Council [2004] NSWLEC 472

In para [59] the court defines the planning principle of considering whether non-compliance with a standard will significantly alter the character of the area.

"Her concerns were that this would significantly alter the character of the area, which would lose its present scale of architecture and urban form."

Veloshin v Randwick Council [2007] NSWLEC 428

In para [32] the court further clarifies the planning principle around non-compliance with development standards significantly altering the character of an area, by stating guidelines for how this assessment can be done.

"Because of the frequency with which height, bulk and character are matters in contention, it is useful to establish



planning principles to guide how they may be assessed.

Planning principle: assessment of height and bulk

· The appropriateness of a proposal's height and bulk is most usefully assessed against planning controls related to these attributes, such as maximum height, floor space ratio, site coverage and setbacks. The questions to be asked are:

Are the impacts consistent with impacts that may be reasonably expected under the controls? (For complying proposals this question relates to whether the massing has been distributed so as to reduce impacts, rather than to increase them. For non-complying proposals the question cannot be answered unless the difference between the impacts of a complying and a non-complying development is quantified.)

How does the proposal's height and bulk relate to the height and bulk desired under the relevant controls?

· Where the planning controls are aimed at preserving the existing character of an area, additional questions to be asked are:

Does the area have a predominant existing character and are the planning controls likely to maintain it?

Does the proposal fit into the existing character of the area?

· Where the planning controls are aimed at creating a new character, the existing character is of less relevance. The controls then indicate the nature of the new character desired. The question to be asked is:

Is the proposal consistent with the bulk and character intended by the planning controls?

· Where there is an absence of planning controls related to bulk and character, the assessment of a proposal should be based on whether the planning intent for the area appears to be the preservation of the existing character or the creation of a new one. In cases where even this question cannot be answered, reliance on subjective opinion cannot be avoided. The question then is:

Does the proposal look appropriate in its context?

Note: the above questions are not exhaustive; other questions may also be asked."



Summary of key findings from the relevant cases

The following table summarises the above findings of the court w.r.t. cl 4.6:

Case	Clause	Finding
<i>Wehbe v Pittwater Council</i> [2007] NSWLEC 827	42, 44, 45-48, 81	Additional ways of establishing that compliance is unreasonable or unnecessary
<i>Four2Five Pty Ltd v Ashfield Council</i> [2015] NSWLEC 1009	62	Applicability of analysis to objections under cl 6 of SEPP 1 to variations under cl 4.6
<i>Four2Five Pty Ltd v Ashfield Council</i> [2015] NSWLEC 90 Appeal	21	Applicant needs to address 4.6(3)(a) differently from 4.6.4(a)(ii)
<i>RebelMH Neutral Bay Pty Limited v North Sydney Council</i> [2019] NSWCA 130	4	Factual justification of non-compliance rather than reasons and generalisations
<i>Stockland Development Pty Ltd v Manly Council</i> [2004] NSWLEC 472	59	Planning Principle: likelihood of significantly altering the character of an area
<i>Veloshin v Randwick Council</i> [2007] NSWLEC 428	32	Planning Principle: guidelines for assessing non-compliance within the context of existing and future character

Revised submission of written request for a Clause 4.6 Variation:

REGARDING CL 4.6(3)(a)

Having taken guidance from the court findings and having given consideration to the Judgements above, we submit the following facts under 4.6(3)(a) as to why it is unreasonable and unnecessary for our proposed development to comply with clause 4.3 of SLEP 2014 "Height of Buildings":

- The length overall of the vessels to be built and fitted out in the proposed development is 72 foot (21 metres). The Navigation and telecommunications towers required to be fitted to these motorized yachts are unavoidable components of vessels of this size and will typically extend between 6 and 8 metres above the top deck on which they will be mounted. The total height of these vessels from the bottom of the hull to the top of the towers will be between 11 and 13 metres.
- The safe handling of the hulls and the major components required to complete the fit-out of these vessels inside the proposed building requires overhead gantries capable of lifting up to 20 tonne. These overhead gantry cranes will also be used to off load the sectioned hulls from the semi-trailers that will transport the sectioned hulls to the site and to transfer the completed vessel to a straddle carrier for transportation to the boat basin.
- The mechanized, hydraulic workings of the overhead gantry crane (motors, hydraulic power-packs, chains and sliding winches require two metres of working space, above the top beams that will transverse the width of the proposed building.
- Thirty one years ago when the development was originally approved, the median boat size was 24 feet in length. Today the median length of the most sold boat at the 2019 Sydney International Boat Show and Sanctuary Cove Boat shows was 52 foot in length overall. It is a known characteristic of the Australian boat owner to constantly tend towards larger and larger boats. The proposed 72' overall length of the boats to be built on the site has been especially agreed



to ensure the participation of the boat builder in the current market but to also ensure the future -proofing of the boat fit-out activities to be conducted in the proposed development.

Given these specific circumstances relating to our proposed development, strict compliance with the 11m height standard will render our intended purpose for the development, unachievable. We therefore submit that under cl 4.6(3)(a) strict compliance to clause 4.3 is unreasonable and unnecessary for our proposed development given the specific circumstances of our boat fit-out activities.

REGARDING CL 4.6(3)(b)

We further submit the following facts under cl 4.6(3)(b) as to the sufficiency of the environmental planning grounds pertaining to our proposed development that justify the contravention of SLEP 2014 clause 4.3 "Height of Buildings":

- The proposed development will generate ongoing direct and indirect jobs as well as regenerate a former anchor industry that has deteriorated to a threatened level of activity due to the absence of a suitable location adjacent to a water body with direct access to the ocean. The location of the proposed development adjacent to Berry's Canal will provide the necessary access to the ocean that is a requirement of boat building precincts. The scale of the proposed development will enable the fit-out of large vessels up to 72 foot that will ensure participation in the current demand for boats of 52 foot in overall length up to 60 foot in overall length as well as future proof the proposed development by ensuring it is able to continue to respond to the ever increasing boat length that characterizes boat ownership in Australia. The community outcomes related to the proposed development extend beyond the generation of ongoing jobs to the opportunity for direct engagement with the process of acquiring a locally assembled, large vessel that would otherwise only be available in Melbourne or Queensland.
- Navigable water bodies with direct access to the ocean and the appropriately zoned land adjoining a waterbody such as Berry's Canal form part of the State's natural and other resources: by locating the proposed development on land adjoining Berry's Canal as opposed to land that does not front a waterbody with direct access to the ocean, ensures optimal management of these natural and other resources.
- The proposed location of the development with a significant setback from Berry's Canal is the result of commitment to ecologically sustainable development that ensures the protection of the bank of Berry's Canal and the need to maintain and protect the existing revetment and riparian corridor.
- Orderly and economic use of land speaks to the alignment of infrastructure decision making and land use planning. The proposed development will provide the required opportunity for boat building that is the optimal use for this land that is adjacent to Council's current ferry infrastructure. As such, the proposed development will deliver the orderly and economic use of land that ensures that inappropriate uses are not placed in direct vicinity of each other.
- The environmental planning ground relating to delivery and maintenance of affordable housing is not relevant to the proposed development as it is not congruent with the existing land uses and provision of services to the vicinity.
- The proposed location of the development has taken into account the need to protect and conserve the mangroves and wetlands along the site's southern boundary. These commitments to the protection of the environment, including flora and fauna, their communities and habitats are integral to the proposed development and continue through the proposed landscape planning that is committed to using native plants to increase the quality and extent of the salt marsh species that form an important ecological transition zone away from the wetlands and into the riparian corridors.
- The proposed development will regenerate the Shoalhaven's oldest and first industry. Alexander Berry commenced boat building in the Shoalhaven in the 1870's and this cultural heritage will be recognised and preserved by the return of the activities of boat building and boat fitout to the actual location where it originated. Similarly the built heritage of Berry's Canal will be acknowledged and utilized in the exact way it was intended to be used when it was built in 1860 to afford safe passage to vessels through Orient Point.
- Sustainable design guidelines in the construction of the proposed development are evident in the modern industrial materials to be used in the construction of the building, the selection of colours sensitive to the surrounding area and the use of native plants in the proposed landscaping. The amenity of the proposed development is delivered through



the site and activity specific design of the building that will enable the required activities to be conducted entirely within the confines of the building and in accordance with best practice management plans and OH&S requirements.

- Low maintenance materials will be used for the construction of the building and have been selected with a fifty year economic lifespan expectation,
- By engaging in this lengthy written request, factually motivated by the specific conditions of the proposed development, we are sharing the responsibility with Council for sound environmental planning pertaining to the proposed development.
- In addition to the formal process of community consultation that is part of the assessment process, we actively and continuously engage directly and indirectly with our adjoining landowners through the sharing of resources (pasture, power supply for neighbours' electrical fences, spontaneous maintenance of neighbours' fencing and sharing of all resources in times of strife eg. During the fires in December 2019 and January 2020 and the floods in February 2020 and is evidence of our commitment to the local communities whose participation we welcome and value.

Given the above specific facts and circumstances of our proposed development, we therefore submit that there are sufficient environmental planning grounds to justify the contravention of the development standard in SLEP cl 4.3 "Height of Buildings".

REGARDING CL 4.6(4)(a)(iii)

Given the following specific circumstances of our proposed development, we hereby demonstrate that notwithstanding the non-compliance of the proposed development, consistency with the following objectives of the development standard in SLEP 2014 cl 4.3 is achieved:

Objective (1a):

The proposed height bulk and scale of our proposed building is less than the height of the grain silos on our many neighbouring properties: i.e grain silos located at 835 Comerong Island Road, 925 Comerong Island Road, 1075 Comerong Island Road, 1125 Comerong Island Road, 1189 Comerong Island Road and 1191 Comerong Island Roads; and is less than the bulk and scale of the milking sheds located on our neighbouring properties at 835 Comerong Island Road, 925 Comerong Island Road, 1075 Comerong Island Road, 1125 Comerong Island Road.

We further submit that the existing agricultural character of the Numbaa locality is of lesser planning importance than the desired future marine infrastructure character of the Numbaa locality. This is demonstrated in the continued existence and maintenance of Council's own marine industrial infrastructure and services in the form of a public ferry that is located at Lot 2 of DP 10722, adjacent to and on land forcefully appropriated from the applicant in 2005 for the maintenance and continued safe operation of the Council owned and operated Comerong Island ferry. We also submit that the importance of the desired future character of the locality is further evidenced in the rezoning of Dp 1077521 in 1989 to allow boat building and repairs, boat mooring and ancillary services; and in the subsequent adoption of this permitted use into SLEP 2014. Furthermore, we submit that the stated significant infrastructure spend to be undertaken by the NSW government in the focus area of improved logistics and connectivity, serves as further evidence of the greater planning importance required to be attached to the desired future marine industrial character of the Numbaa locality in the vicinity of Lots 1 and 2 of DP 1075521 at 1178 and 1188 Comerong Island Road.

We also maintain that the non-compliance with the standard, does not significantly affect the character of the existing development nor will it significantly affect the desired future character of the development.

Objective (1b):

We further submit that the location of our proposed development with a setback of 50 m away from the only affected building (1188 Comerong Island Road) within a 400 metre radius of our proposed development, ensures



minimal loss of privacy. Furthermore, the location of our proposed development to the south of this existing development, ensures zero loss of solar access to this existing development at 1188 Comerong Island Road. The 70 metre setback of our proposed development from the nearest and only road (Comerong Island Road) also ensures minimal visual impact from Comerong Island Road and from the only existing development at 1188 Comerong Island Road within a 400 metre radius of our proposed development.

Objective (1c):

There are no heritage items or heritage conservation areas close to the proposed development. The closest heritage item is at Pyree, more than 8 kilometres away.

Objective (2):

The height of 15m for the proposed development does not exceed the maximum allowed building height for the Land in the Shoalhaven LEP.

Given the following specific circumstances of our proposed development, we also hereby demonstrate consistency with the following objectives of the zone applicable to our development site (RU1 – Primary Production):

Objective 1:

By locating the proposed development on land adjoining the navigable water body that is Berry's Canal, which has direct access to the ocean, the proposed development will enhance the natural resource of land adjacent to Berry's canal by utilizing this land for a purpose that is uniquely complementary to the existing uses of Berry canal, i.e. for boating and related marine leisure activities.

Objective 2:

The proposed development that will provide boat building services, will complement the existing industrial marine facility and services currently provided by Council through the Comerong Island ferry; but will also diversify the current primary industry enterprises (dairy farming and cropping) that dominate the area.

Objective 3:

The location of the proposed development in relation to the Council owned and operated Comerong Island Ferry and the approved boat basin on the same site, ensures the integration of the complementing activities is not lost through fragmentation of the site and the adjoining land through the alienation of parts of the development site that would render these parts unable to be developed in a way that supports and complements the existing land uses.

Objective 4:

The use of the proposed development has been carefully selected (i.e. building of large vessels) to ensure the closest ancillary fit with the existing land uses (provision and maintenance of the Comerong Island Ferry) on the adjoining parcels of land and also within the zone.

Objective 5:

The unused part of the 14 hectare site is still being used for cropping and cultivation of pasture that is made available to the neighbouring land owners (farmers).

Objective 6:

This objective relates to observing and maintaining the economic potential of the land within this zone for extractive industries. Given that the proposed development has no association within extractive industries, this point is deemed irrelevant to the proposed development.



All of the above specific facts relating to the proposed development serve to prove that the proposed building is in the public interest because it is consistent with the objectives of the development standard ("Height of Buildings") and the zone objectives.

REGARDING CL 4.6(5)(a)

The contravention of the development standard: "Height of buildings" does not raise any matter of significance for State Government because of the once-off nature of the proposed development within the area and the absence of opportunity for further developments of this nature to take place within the area due to the absence of suitable sites within the vicinity. Furthermore, the relatively isolated location of the proposed development and its distance from all other industrial precincts e.g. Flinders Estate and Woollamia Industrial area give this type of development a particularly high entry barrier in terms of upgrading the provision of essential services such as electricity and sewer. The absence of any other suitable sites make this development particularly hard to replicate.

REGARDING CL 4.6(5)(b)

If the proposed development is refused it will remove the benefit to the public of the opportunity to create ongoing jobs within an industry that was formerly a key employment provider within the Shoalhaven community. Boat building was also arguable the first industry in the Shoalhaven and the first manufacturing industry of its type on the east coast. Alexander Berry commenced ship building in the Shoalhaven in the 1890's and due to the lack of an industrial marine precinct with direct access to the ocean, in spite of this industry growing to become a benchmark industry in the late 1980's, whilst operating from a small industrial precinct within South Nowra from the 60's to the 80's, this former leading industry has systematically deteriorated to its current level of highly thinned out activity in the Shoalhaven.

REGARDING CL 4.6(5)(c)

It is appropriate to address the age of the existing consent for boat mooring, boat building and ancillary services. The original DA was granted in 1989 following the gazettal of the attachment of an enabling clause in the 80's that allowed for the development to be approved two years later. In the ensuing 31 years since the approval was granted, the Australian boat building industry has evolved to the point today where the median size of a leisure sailing or motorized vessel now exceeds 46 foot and is about to evolve further into the adoption of multihulls and the current median leisure boat class of 52 foot length overall. This development has been thwarted by a range of impediments and delays that have finally been able to be addressed. If the proposed building height is refused, the building will not be able to be used to build boats of up to 72 foot and in so doing, remove the viability of the proposed building by making it impossible to keep abreast of current and future boat building market expectations.

Yours sincerely,

Stephen Falkner

Chartered Professional Engineer (Civil/Structural)

DE21.47 SF10804 – 104 Taylors Lane, Cambewarra – Lot 3 DP 851823

DA. No: SF10804/4

HPERM Ref: D21/148654

Department: Development Services

Approver: Phil Costello, Director - City Development

Attachments:

1. Planning Report - Taylors Lane Cambewarra - Lot 3 DP 851823 (under separate cover) [📄](#)
2. Determination - Taylors Lane Cambewarra - Lot 3 DP 851823 (under separate cover) [📄](#)

Description of Development: Staged residential subdivision to create 217 Torrens Title allotments, including 213 residential allotments, three (3) open space allotments, one (1) residue lot, and demolition of existing structures, earthworks, and provision of roads, drainage and utility infrastructure along with associated landscaping works

Owner: KI & JG Thompson

Applicant: Watersplash Lane Pty Ltd

Notification Dates: 25 November 2020 to 9 December 2020

No. of Submissions: One (1)

Purpose / Reason for consideration by Council

On 1 December 2020, it was resolved by the Development and Environment Committee:

“That in relation to SF10804 – 104 Taylors Lane, Cambewarra – Lot 3 DP 851823:

1. *The report be received for information; and*
2. *SF10804 be called in for determination by the elected Council on the basis of public interest in the Development” (MIN20.892).*

Whilst this report recommends approval, in accordance with the provisions of clause 6.1, Shoalhaven Local Environmental Plan 2014, Council cannot grant development consent for the subject subdivision until the Secretary of NSW Department of Planning Industry & Environment (DPIE) has provided written certification that satisfactory arrangements have been made to contribute to the provision of designated State public infrastructure for the development, as the land is within an urban release area.

The Department has advised Council that satisfactory arrangements are not currently in place. Details are provided later in this report.

Recommendation (Item to be determined under delegated authority)

That:

1. Development Application SF10804 for staged residential subdivision to create 217

DE21.47

Torrens Title allotments, including 213 residential allotments, three (3) open space allotments, one (1) residue lot, and demolition of existing structures, earthworks, and provision of roads, drainage and utility infrastructure along with associated landscaping works at Lot 3 DP 851823, 104 Taylors Lane, Cambewarra be approved subject to the recommended conditions of consent contained in Attachment 2 of this report, and receipt of written certification that satisfactory arrangements have been made to contribute to the provision of designated State public infrastructure.

2. No access is to be permitted to Taylors Lane at this time and that a suitable turning head is to be submitted to and approved by Council prior to the issue of a Subdivision Works Certificate for all road termination points.

Options

1. Approve the development application (DA) in accordance with the recommendation of this report. No access is to be permitted to Taylors Lane at this time and a suitable turning head is to be submitted to and approved by Council.

Implications: This would allow the applicant to pursue construction of the development via a Subdivision Works Certificate. However, this can only occur, when the consent is issued which is contingent on satisfactory arrangements being provided by the NSW Department of Planning, Industry & Environment (DPIE).

Further, it is noted that the temporary removal of access to Taylors Lane and the requirement for temporary vehicle turning area at the end of each terminating road and/or stage may temporarily impact lot yield until through access is provided in the future, however it allows consideration of the tree retention issue outlined in this report.

2. Approve the application as per 1. Above and include the deferral of approval of the proposed large lots within Stage 4B.

Implications: This would allow the applicant to pursue construction of the development in part and resolve the design of the currently proposed large lots to potentially include additional small lot production if Council saw merit in this.

3. Defer any approval of the application until a decision has been made by Council on the upgrade of Taylors Lane and associated treatment of existing trees.

Implications: This would enable the subdivision to be reconsidered in light of the investigations.

4. Refuse the application.

Implications: Council would need to determine the grounds on which the application is refused, having regard to section 4.15(1) considerations.

5. Alternative recommendation.

Implications: Council will need to specify an alternative recommendation and advise staff accordingly.



Figure 1 – Location Map

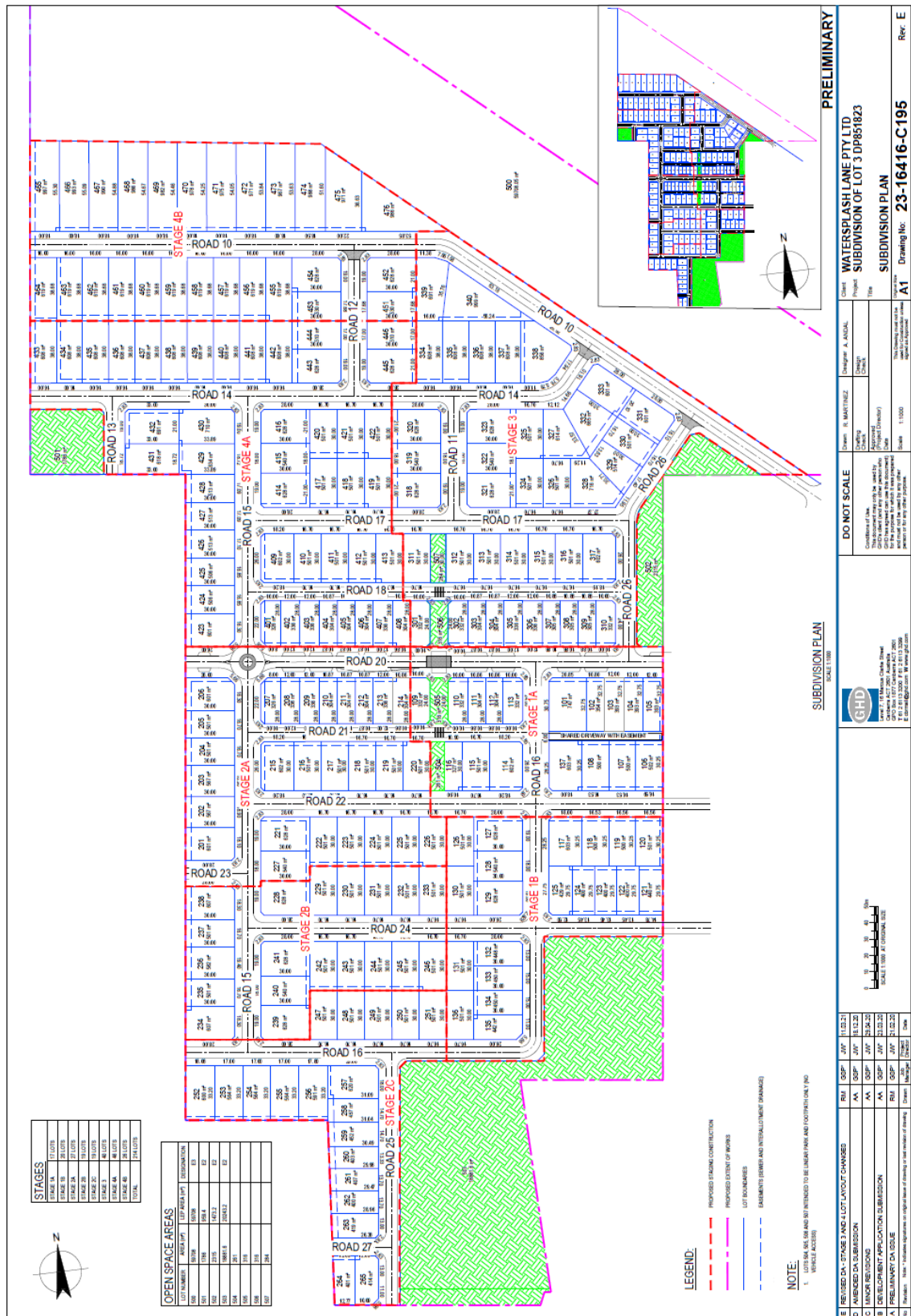
Background

Proposed Development

The DA seeks approval for staged residential subdivision to create 217 Torrens Title allotments, including 213 residential allotments, three (3) open space allotments, one (1) residue lot, and demolition of existing structures, earthworks, and provision of roads, drainage and utility infrastructure along with associated landscaping works.

The subdivision is proposed to be delivered in eight (8) stages as depicted at Figure 2.

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DE21.47

Subject Land

The development site comprises Lot 3 DP 851823 (104 Taylors Lane, Cambewarra). Refer to Figure 1.

Site & Context

The development site:

- Is within the Moss Vale Road South Urban Release Area (URA) and contains an existing dwelling, with swimming pool, tennis court, and a number of associated outbuildings in the southern portion of the site.
- Contains dense pockets of mature stands of vegetation in the southern portions. Scatterings of individual mature pasture trees are also present across the site. Six (6) dams are located across the site.
- Has historically been used for rural residential and agricultural purposes, predominantly grazing.
- Has a central north/south ridgeline traversing the site, with the land generally sloping towards the Bomaderry Creek catchment.
- Is zoned R1 General Residential, E2 Environmental Conservation, E3 Environmental Management and SP2 Infrastructure. Only the R1 zoned portion of the site is within the Urban Release Area.
- Is 25.25ha in area.
- Is identified as part flood prone land and being of aboriginal cultural heritage significance.
- Is identified as “Scenic Protection” in the northern section, adjacent to Moss Vale Road.
- Has frontage to Moss Vale Road and Taylors Lane.
- Adjoins land zoned R1 General Residential, E2 Environmental Conservation, E3 Environmental Management, SP2 Infrastructure and RU1 Primary Production.

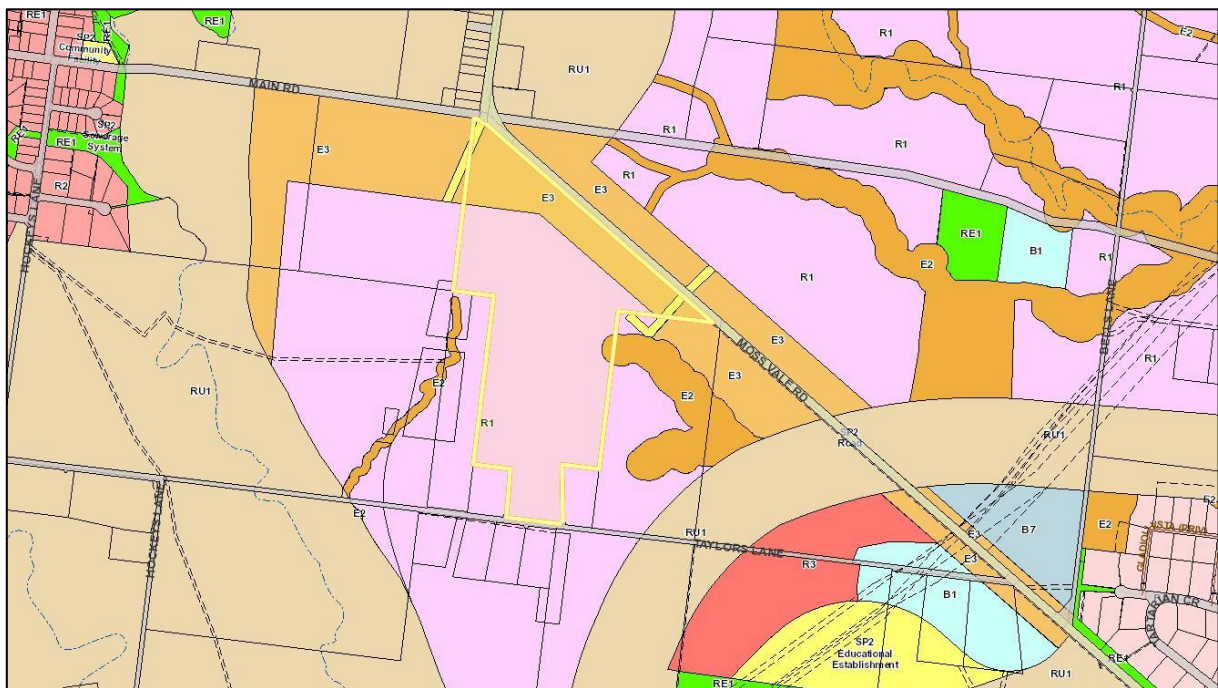


Figure 4 – Zoning Extract

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History

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

- The proposed development was discussed with the applicant at a pre-lodgement meeting on 30 January 2019. Council responded to a number of questions and issues for discussion in relation to open space distribution, ongoing ownership and maintenance of E3 zoned land, utilities infrastructure delivery timeframe, and a number of engineering items.

- The DA was lodged on 9 June 2020. The description of the application was as follows:

“Staged residential subdivision to create 232 Torrens Title allotments, including 228 residential and four (4) open space allotments, and demolition of existing structures, earthworks, and provision of roads, drainage and utility infrastructure along with associated landscaping works”.

- On 23 June 2020 Council resolved to defer a decision on the upgrade of Taylors Lane as part of the Far North Collector Road project and undertake a review of the zoning and planning controls applicable to land around Taylors Lane (MIN20.419) as follows:

MIN20.419

That Council:

1. *Undertake the following reviews, with the assistance of consultants if required given current Council staff commitments, considering both the required road project and desire for retention of the trees:*
 - a. *Review Shoalhaven Development Control Plan 2014 Chapter NB3: Moss Vale Road South Urban Release Area*
 - b. *Review the existing zoning and potential planning controls for the area between Moss Vale Road and the edge of the Urban Release Area*
2. *As part of the reviews consider all relevant options to retain the existing trees that are currently a feature of Taylors Lane and how they could be successfully retained and integrated into the future urban development enabled by the existing zones;*
3. *Reconsider the current appropriateness of the existing R3 Medium Density, B1 Neighbourhood Centre and SP2 Infrastructure (educational establishment) zones at the eastern end of Taylors Lane as part of the review process.*
4. *Receive a briefing, if appropriate/needed, and a subsequent report on the reviews and to enable decisions to be made regarding the interrelated Taylors Lane issues.*
5. *Defer the decision on the proposed upgrading of Taylors Lane, Cambewarra in association with the Far North Collector Road pending the reviews and further community consultation as part of them.*

The review that is currently underway will consider options for how the existing trees along Taylors Lane could be retained and integrated into future urban development. At this stage the outcomes of the review are unknown. The consultant recently submitted its draft review report to Council following several workshops in March where input was sought from local stakeholders (landowners and developers) in the review area. It is acknowledged that the proposed layout plan has been prepared generally on the basis of the indicative layout plan for Moss Vale Road South URA as adopted in the relevant DCP Chapter and may or may not be consistent with the outcomes of the review.

- As a result of detailed assessment of the DA, additional information was requested from the applicant on three (3) occasions – 11 June 2020, 10 July 2020 and 2 September 2020. The information requested was particular in that it sought to ensure the proposed road layout reflected the Stage 1 approval within the URA (Development Consent SF10632) and to ensure the subdivision aligned with the Indicative Layout Plan (ILP), in accordance with the provisions of Chapter NB3 of Shoalhaven Development Control Plan 2014 (SDCP 2014).

On 12 March 2021 the applicant submitted the amended DA requested by Council.

- Council amended the description of this application on 19 March 2021 to the following description as a result of amended DA documentation being submitted:
“Staged residential subdivision to create 222 Torrens Title allotments, including 214 residential allotments, seven (7) open space allotments, one (1) residue lot, and demolition of existing structures, earthworks, and provision of roads, drainage and utility infrastructure along with associated landscaping works”
- Council further amended the description of this application on 19 April 2021 to the current description (with the agreement of the applicant), following detailed assessment and Council’s Subdivision Engineer recommendation.

Issues

Acceptable Solution A1.1 of Control 7.1 Indicative Layout Plan of Chapter NB3, SDCP 2014

There is a non-compliance with A1.1 of Control 7.1 *Indicative Layout Plan* in relation to the ILP. The ILP requires a number of roads to connect through to the adjoining properties to the west, Lot 6 DP 1256748 (known as 126 Taylors Lane, Cambewarra) and Lot 2 DP 851823 (known as 118 Taylors Lane, Cambewarra).

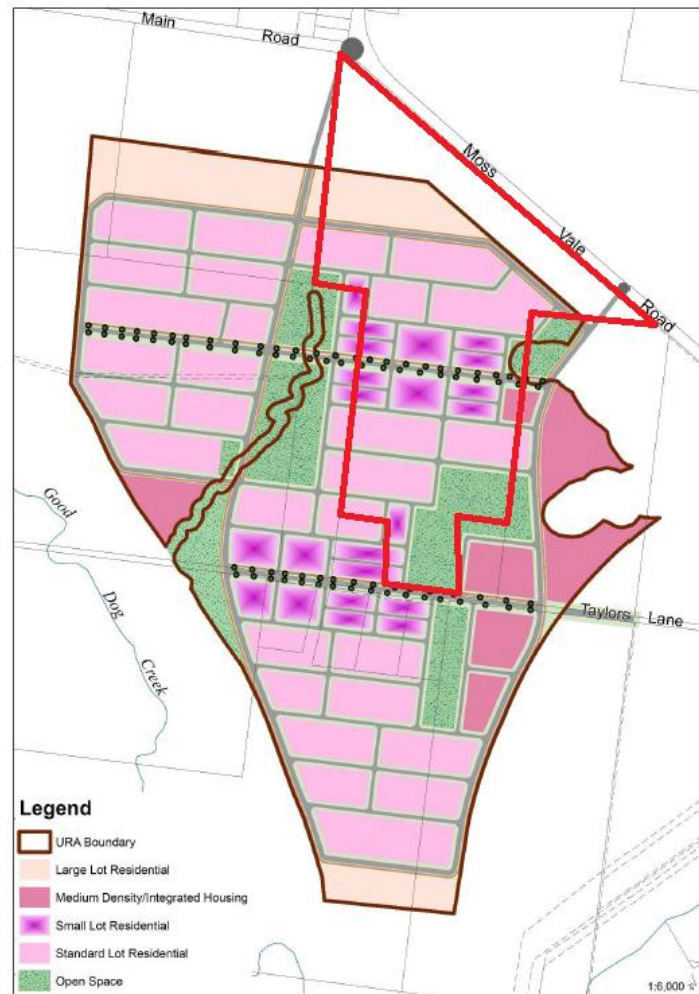


Figure 5 – Indicative Layout Plan indicating the subject site in red

Applicant's Submission

The applicant has not proposed all of these road connections, with only Roads 13, 16, 20, 23 and 27 providing connection. The applicant has contended that this design conforms. Refer to Figure 2.

Figure 6 below, which has been prepared by Council, combines the proposed subdivision design and the ILP to confirm the differences. However, it is important to note that this is conceptual only in order to identify general differences. It is not survey accurate and is intended to provide a pictorial illustration of the road connections.

DE21.47

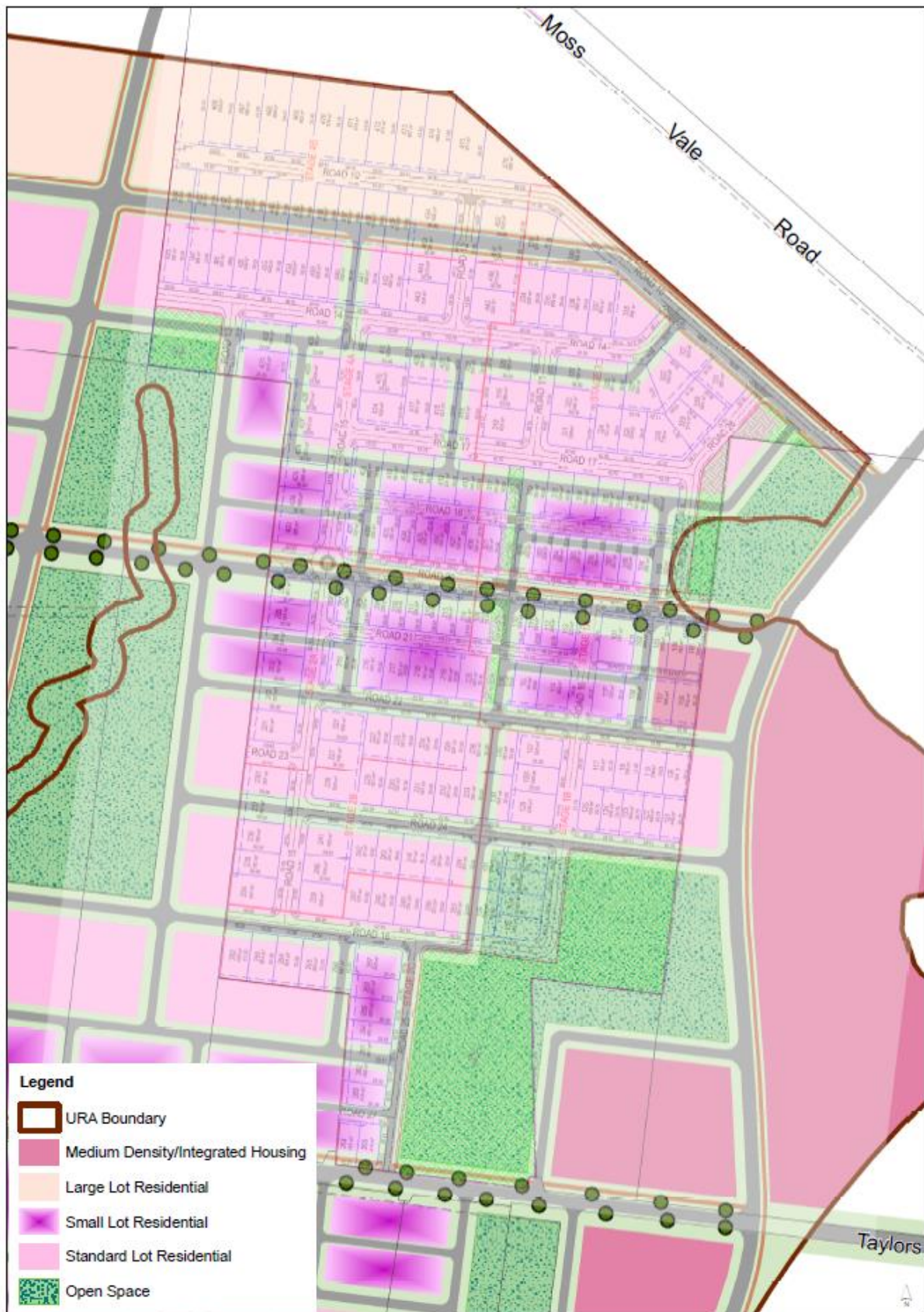


Figure 6 – Subdivision Plan overlaid onto Indicative Layout Plan

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Discussion

It is considered that the proposed layout remains consistent with the objectives of this chapter and the relevant performance criteria. It does not undermine the integrity of the DCP in that suitable connections between the subdivisions will be provided. The design will provide a well-connected and legible movement network.

Although the Council's Subdivision Engineer is supportive of the current design, the Engineer has recommended prior to the issue of a Subdivision Works Certificate, an amended subdivision plan be submitted to Council for approval. The amended plan is to include a stub for a local road on the western side of Road 25 between Road 16 and Road 27 generally in the location of proposed Lot 261 as outlined in Figures 2 and 9 of this chapter, or an alternative location as agreed to by Council.

It is noted that pre-lodgement discussions have been held with the developer of the adjoining land (being 126 Taylors Lane, Cambewarra) and their proposed road design appears to be consistent with this subject design and recommended amendment. The additional road will allow future allotments on this adjoining land to have road frontage.

Council's resolution in June 2020 is also noted (as referenced earlier in this report), however, it has not been acted upon. Accordingly, the review that is considering options for how the existing trees along Taylors Lane could be retained and integrated into future urban development, is incomplete.

The below excerpts from the submitted subdivision and demolition plans confirm the extent of the subject site that has frontage to Taylors Lane.

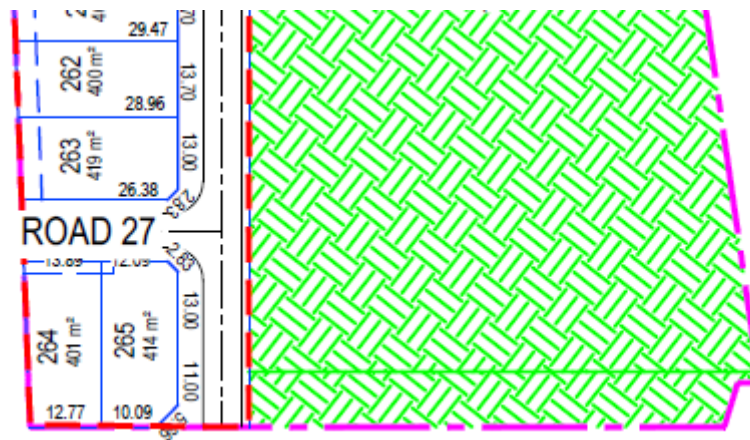


Figure 7 – Excerpts from Subdivision Plan and Demolition Plan

From figure 7 above it is noted that approx. 20 trees are nominated for removal adjoining proposed road 25 to the east and a similar number in the proposed road reserve. Removal of trees associated with possible road connection to Taylors Lane from road 25 have not been shown. Given the status of the Council resolution, it is considered that no access should be permitted to Taylors Lane at this time and that a suitable turning head be submitted to and approved by Council.

It is acknowledged that this along with the requirement for temporary vehicle turning area at the end of each terminating road and/or stage may temporarily impact lot yield until through access is provided in the future.

Regardless, it is considered that this variation can be supported by Council.

Mandatory Control (4) of Control 7.3 Subdivision Design of Chapter NB3, SDCP 2014

There is a non-compliance with Mandatory Control (4) of Control 7.3 *Subdivision Design* and the design of the street blocks. The blocks are to be rectangular in shape with the length and width (excluding road verges) to be a maximum of 100m x 70m in areas where small lots are proposed and rear lane access or shared driveways are located; and 200m x 70m in all other areas.

Three (3) blocks of small lots exceed 100m in length by approximately 5% and one (1) block of standard lots which is split by a 'linear park' and otherwise exceed the 200m length. Refer to Figure 7.

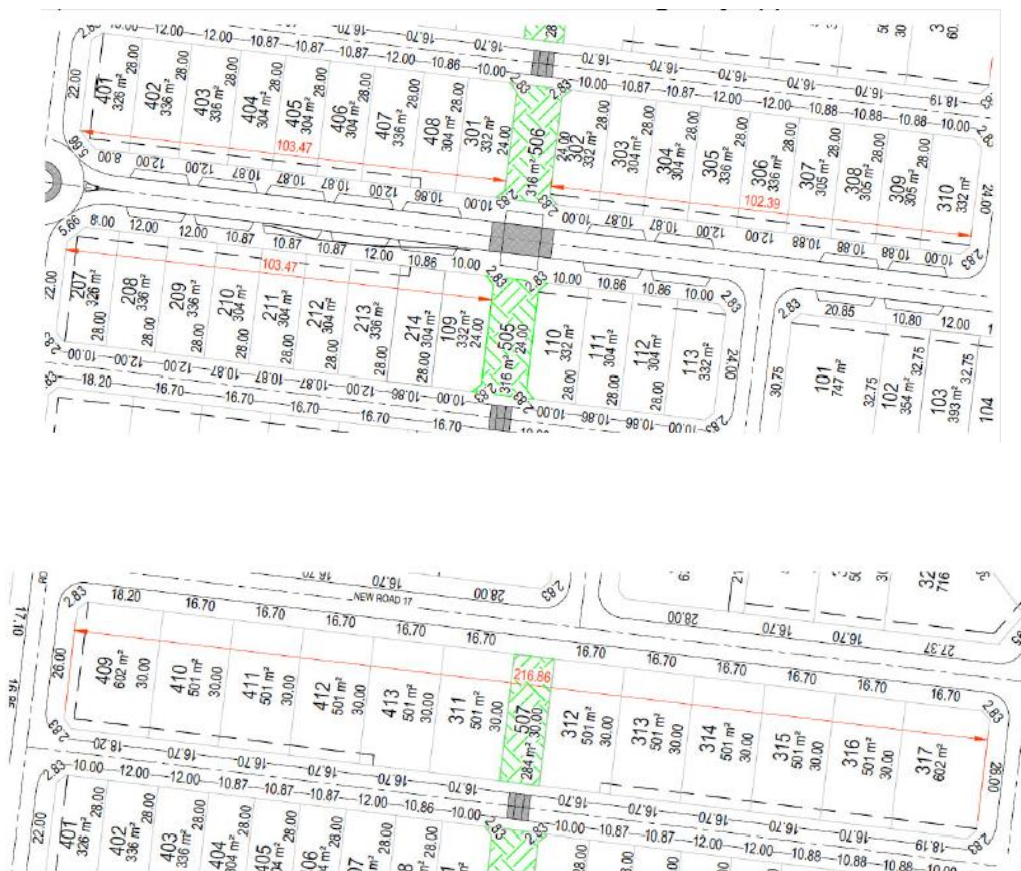


Figure 8 – Excerpts from Subdivision Plan (Street Blocks)

DE21.47

Applicant's Submission

The applicant has provided the following justification in the submitted Design Verification Statement (dated 11/03/2021) for the proposed variation:

"The option to split this block with a road would create an undesirable connection to a laneway which would encourage use by traffic that was not accessing lots immediately fronting the laneway. The long block is visually split by the linear park and we believe this meets the intent of the standard."

Discussion

It is considered that the variation proposed to the design of the street blocks is still consistent with the objectives of this chapter and the relevant performance criteria. The integrity of the outcome envisaged is maintained. Council's Subdivision Engineer has raised no concerns in relation to this matter.

Accordingly, this variation can be supported by Council.

Acceptable Solution A10.1 of Control 7.8 Open Space System of Chapter NB3, SDCP 2014

There is a non-compliance with A10.1 of Control 7.8 *Open Space System* in relation to the proposed Lots 504-507 (referenced as 'linear parks') (refer to Figure 8). This is inconsistent with the Indicative Layout Plan (ILP) as shown in Figures 5 and 6.

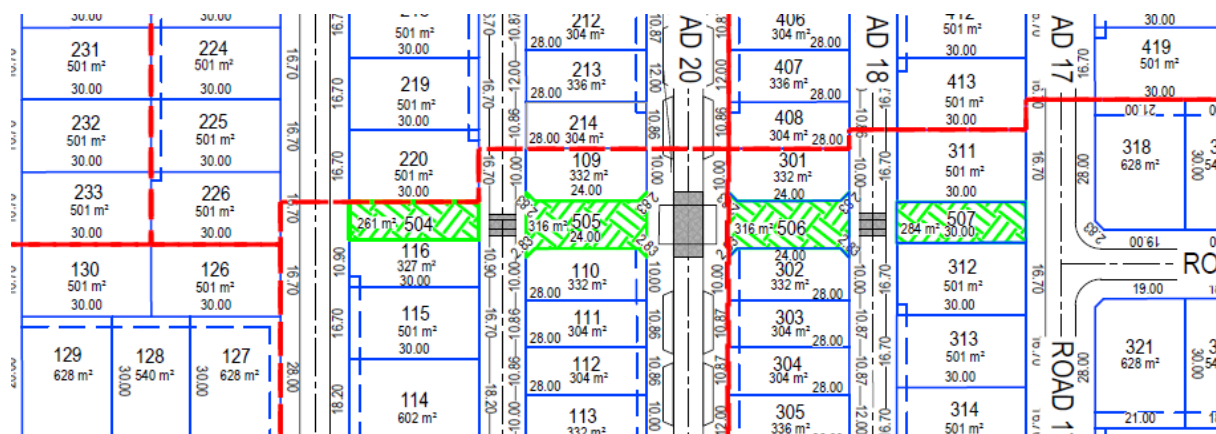


Figure 9 – Excerpts from Subdivision Plan ('Linear Parks')

Applicant's Submission

The applicant has proposed these 'linear parks' to be landscaped with trees, shrubs and ground covers, and to contain pedestrian footpaths in order to provide links between the Boulevards and residential areas. The 'linear parks' are to also incorporate pedestrian seating for future residential amenity. The applicant believes these parks will provide considerable pedestrian connectivity and amenity. The parks are proposed to be handed back to Council post completion of construction as open space area, to form public realm areas for the estate.

Discussion

Detailed assessment has confirmed that these four (4) lots are to be considered as 'road reserve' and are not 'open space'. Council's Roads Assets Manager, as the future asset

custodian of these proposed 'linear parks'/pathway reserves has however endorsed retaining these lots under public road dedication rather than public reserves. These will still provide the intended pedestrian permeability within the subdivision.

Subject to a condition of consent as recommended by Council's Subdivision Engineer (should this application be determined by approval) the 'linear parks' are to contain a meandering 2m wide concrete shared path for the full extent of the parks, to be embellished with turf and to be provided with public lighting for the entirety of the alignment of the shared path. The path and landscaping need to be designed to ensure that there is no maintenance burden or potential safety issue in the future.

It is considered that the removal of the roads in this location that were envisioned under the DCP has not resulted in a connectivity issue. Pedestrian connectivity is however being maintained via these 'linear parks'.

Applicant's Comments / Issues

Northern Perimeter Road

During the assessment of the application, Council raised concerns with the layout and inconsistency with the Indicative Layout Plan (ILP), in accordance with A1.1, Control 7.1 Indicative Layout Plan, Chapter NB3, Shoalhaven Development Control Plan 2014 (SDCP 2014), particularly in relation to the location of the northern perimeter road and through road connections/alignments and how it related to that approved as part of Development Consent SF10632 as modified, being the adjoining subdivision development to the east.

One of the key issues was the location of the perimeter road (Road 10) which was eventually adjusted by the applicant in amended DA documentation.

However, the applicant held the view that the originally proposed location of the road was a superior design as it better addressed the interface between Moss Vale Road and the URA by ensuring a landscaped street and the articulated fronts of homes being visible from Moss Vale Road and not linear back fences of properties. It also avoided the privacy conflict which occurs in the DCP by having back yards face Moss Vale Road.

Council had concern with the siting of the road within the E3 zone, as the intended function of this zone as per Control 7.9 Landscape Strategy, Chapter NB3, SDCP 2014 is environmental corridor/scenic protection area to be rehabilitated and revegetated.

Further, the ILP does not include any perimeter road along the northern edge of the Large Lot Residential area. The large lots are intended to be serviced only by the local street to the south. Council acknowledged that this may result in larger/deeper lots >1000sqm which fall short of the DCP density requirement (10-14 lots/ha), however, what is considered more important is that this area achieves its desired character as a rural transition zone.

In keeping with the desired rural-transition character of the large lot residential area, fencing along the URA edge is intended to be semi-rural post-and-wire or post-and-rail. This is the foreseen D outcome in the DCP and is consistent with the land's 'rural edge' context. It should be noted that the large lots are separated from Moss Vale Road by a section of E3 zoned land with a minimum width of 75m. This is a substantial buffer which should ameliorate visual impacts from Moss Vale Road

However, there is also a theoretical ability for the larger lots to be further developed/subdivided. In this regard, if Council is supportive of the proposal and thus the DCP, it must be aware that there cannot be a guarantee that future more dense development will not be applied for. The land is zoned R1 and permits a range of uses. To this end, Council may have to turn its mind to exploring the possibility of an alternative zone to tighten controls in this area to maintain the larger lots as a rural/urban interface or reconsider the large lot requirement in the DCP in favour of smaller lots in conjunction with a landscape treatment plan for the E4 area.

The developer suggested an alternative location of the perimeter road, which effectively deleted these larger lots. The solution was not supported as the location of the road and intended character of the area as specified in the DCP, was considered important to retain.

Splitting the DA

The applicant also sought to “split the DA” as a way forward to enable a part approval to be issued (refer to an indicative plan below in Figure 9). This was in order to exclude the developable land north of the tree-lined boulevard and include lots on both sides of the boulevard to ensure the built form along this road is complete but allow them to resolve matters including the optimal location of Road 10, the inclusion of additional small lot product, and the area and shape of open space Lot 502.

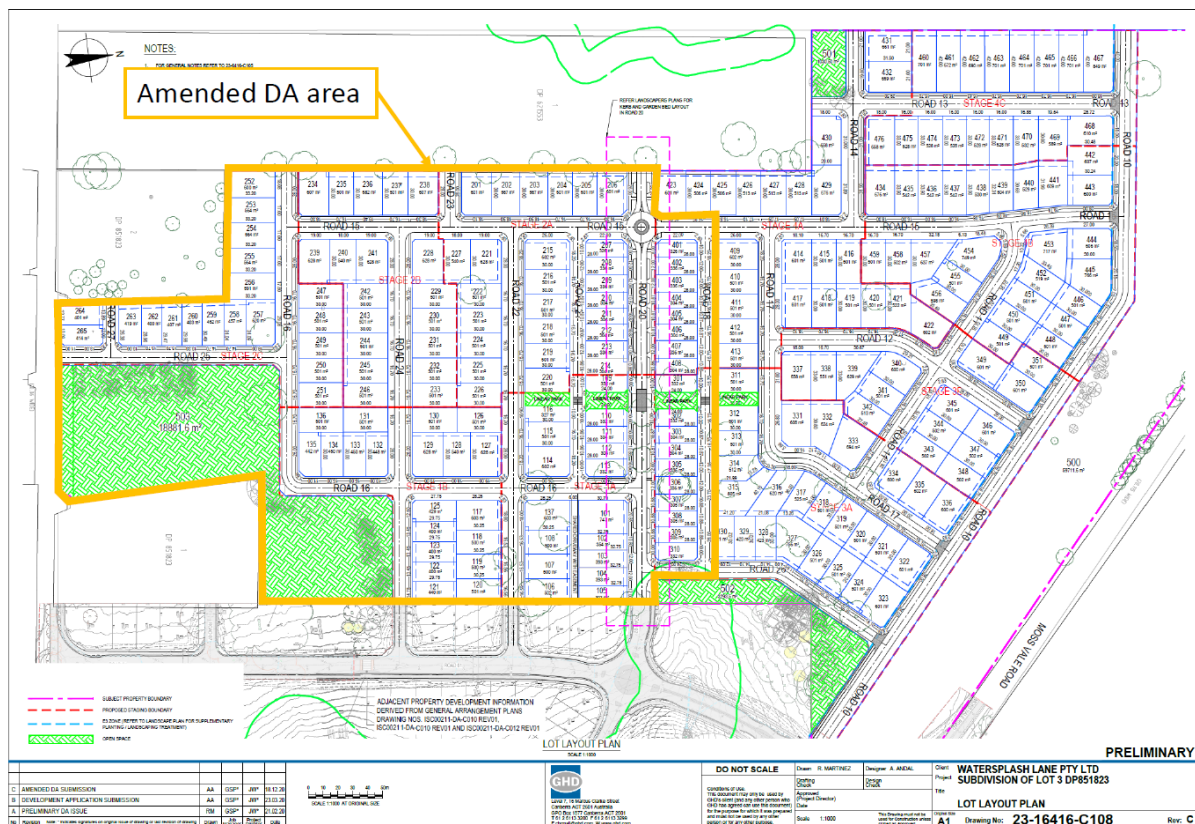


Figure 10 – Deferring an area of the subdivision until later

Although the applicant's consideration to satisfying Council's DCP requirements was appreciated as well as what they were trying to achieve in principle, this amended approach as presented was not supported as the matter of Road 10 was fundamental to the development design.

Staging

The applicant has also sought to have flexibility in staging the works.

There is no issue with this in principle, however, the applicant has specified stages on plan. The consent reflects this staging. In the event that the developer wishes to build stages to 'suit', more detail is required. There would be no issue with staging release, if all (or relevant) roads are constructed. The importance of staging is to ensure that not only the subdivision is constructed in a logical and orderly manner, but that the lots are released, and houses built in an orderly manner as far as practicable, having regard to provision infrastructure etc.

DE21.47

Planning Assessment

The DA has been assessed under s4.15(1) of the Environmental Planning and Assessment Act 1979. Please refer to Attachment 1.

Consultation and Community Engagement

One (1) public submission was received in relation to Council's notification of the development. The notification was made in accordance with Council's Community Consultation Policy with letters being sent within a 500m buffer of the site, during the period 25 November 2020 to 9 December 2020.

The key issue raised as a result of the notification was in relation to the submitted traffic assessment and concern as to the effect of the subdivision on the proposed use of Taylors Lane.

The assessment of the application considered the matters raised in the submission and concluded that the application should be (conditionally) supported.

Financial Implications

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

Legal Implications

A section 8.2 review or an appeal with the Land and Environment Court are possible if the application is refused.

Summary and Conclusion

The proposed development is compliant with the provisions of SLEP 2014 and is broadly consistent with the SDCP 2014 (albeit for the alternative solutions proposed under Chapter NB3).

This application has been subjected to detailed analysis and is considered capable of support as there are no substantive planning reasons to warrant refusal. As mentioned in the report, the application is unable to be determined until such time the satisfactory arrangements have been made to contribute to the provision of designated State public infrastructure for the development, as the land is within an urban release area.

Accordingly, it is recommended it is approved subject to the recommended conditions of consent as per Attachment 2 once satisfactory arrangements have been made.

DE21.48 Modification Application No. DS20/1619 – 2 Lawrence Ave & 61 Kinghorne St Nowra – Lot 2 DP 1264717 (formally known as Lot 2 DP 1243710) & Lot 1 DP 1243710

DA. No: DS20/1619/4

HPERM Ref: D21/142797

Department: Development Services

Approver: Phil Costello, Director - City Development

Attachments:

1. Determination - Modified Consolidated Approval - 2 Lawrence Ave & 61 Kinghorne St Nowra - Lot 2 DP 12464717 (formerly known as Lot 2 DP 1243710) & Lot 1 DP 1243710 (under separate cover) [⇒](#)
2. Assessment Report - S4.55 - 2 Lawrence Ave & 61 Kinghorne St Nowra - Lot 2 DP 1243710 (formerly known as Lot 2 DP 1243710) & Lot 1 DP 1243710 (under separate cover) [⇒](#)

Description of Development: Four (4) storey mixed commercial and residential development consisting of three (3) levels of commercial premises and one (1) level of residential units comprising 3 x 3-bedroom apartments – S4.55(1A) Modification Application seeking minor alterations and modification to conditions of consent.

Owner: Kingla Property Pty Ltd & Janack Nominees Pty Ltd

Applicant: Foxrun Commercial Building Pty Ltd

Notification Dates: 12 January 2021 to 28 January 2021

No. of Submissions: Nil

Purpose / Reason for consideration by Council

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

“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.”

On 6 April 2021, City Development recommended part approval, part refusal of the above s4.55(1A) Modification Application to the Development & Environment Committee Meeting. At this meeting Council resolved (MIN21.171) in addition to seeking a further report:

That Council:

1. *Determine by way of approval the proposed modifications to conditions of consent other than Conditions 17 and 33.*
2. *That in respect of Condition 17 a further report be submitted to Council in respect of contributions and any discount conditions applicable or other legal issues arising from State legislation or case law in respect of varying the car parking.*

DE21.48

3. *That in respect of Condition 33, access design standards for Lawrence Avenue, a further report be submitted to the next meeting of the Development & Environment Committee proposing an interim solution to pedestrian access issues (including disability access).*

Recommendation (Item to be determined under delegated authority)

That:

1. The proposed modifications to Condition 33(a) and 33(c) be determined by means of approval according to the draft determination at Attachment 1.
2. The proposed modifications to Conditions 17 and 33(b) of Development Consent No. DA18/2326 lodged as part of Modification Application No. DS20/1619 be determined by way of refusal.
3. Council issue a part approval which incorporates modifications to the conditions of consent which were approved at the Development & Environment Committee Meeting (MIN21.171) on 6 April 2021.

Options

1. Part approval of the application in accordance with the draft determination at Attachment 1. (The request to modify Conditions 17 and 33(b) are refused for the reasons contained in this report)

Implications: The development would proceed in accordance with the conditions of the draft modified development consent. The applicant can however apply for a section 8.2 review of Council's decision and/or lodge an appeal with the NSW Land and Environment Court against Council's decision

2. Approval of the application in full.

Implications: Council would have to provide the environmental planning reasons / why the section 4.55 application could be approved, that is, provide planning reasons to support the development, having regard to section 4.15 considerations.

3. Alternative recommendation.

Implications: Council will need to specify an alternative recommendation and advise staff accordingly.

Location Map

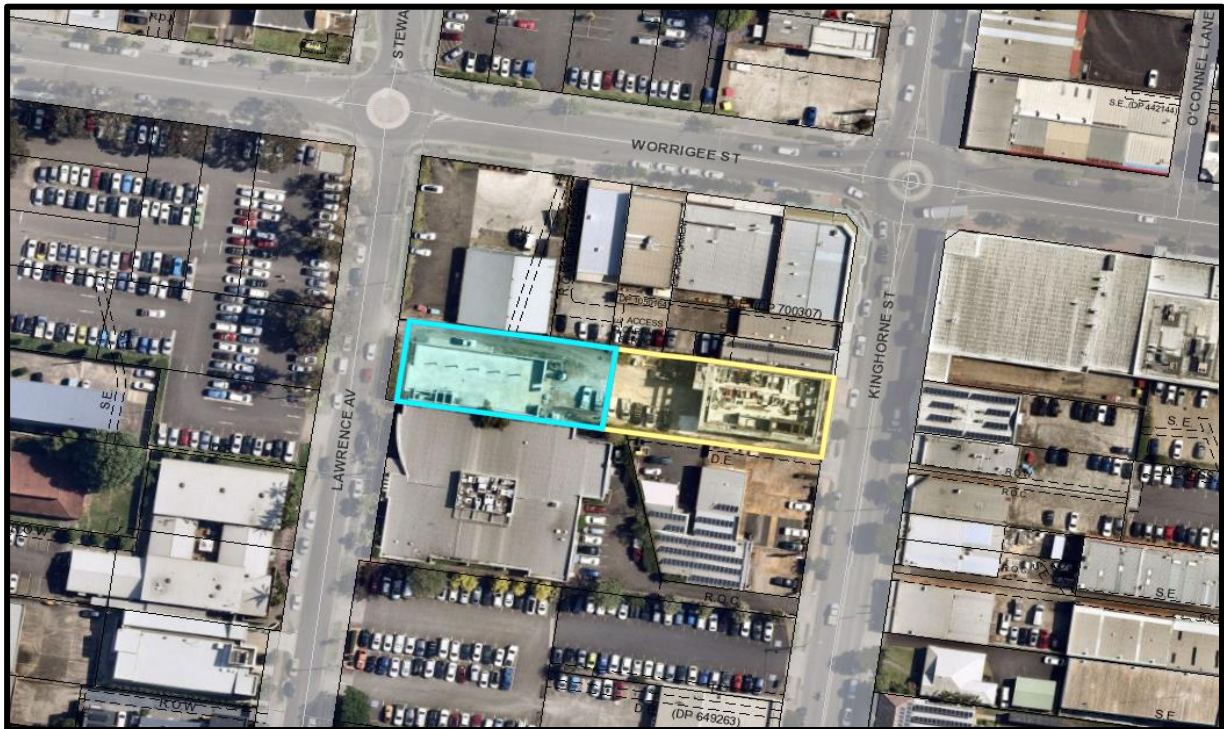


Figure 1 – Location Map (2 Lawrence Ave shown in blue and 61 Kinghorne Street in yellow)

DE21.48

Background

The applicant (Foxrun Commercial Building Pty Ltd) lodged a Modification Application under section 4.55(1A) of the Environmental Planning and Assessment (hereafter EP&A Act) 1979 to modify Development Application No. DA18/2326 relating to a four-storey mixed-use commercial and residential development at 2 Lawrence Avenue Nowra. The purpose for the application is to seek minor alterations and additions to the layout of the approved development as well as modification to certain conditions of consent.

The following summarises the applicant's proposed modification to the conditions of the consent:

Conditions being considered as part of current Report:

- **Condition 17 – 'Contributions for Additional Services and/or Facilities':**
The applicant proposes a reduction in car parking contributions calculation having regard for the following (Council's discussion in report below):
 - Reworking of car parking layout providing a net increase of one (1) space.
 - Additional lift bay and associated shaft resulting in a minor decrease of 9.9m² of commercial GFA compared with the approved development (i.e., 3.3m² of GFA across the ground, first and second levels).
 - Request for consideration for the parking rate applying to the ground floor commercial area to be assessed under the rate of 1 space per 40m² (applicable to office development under SDCP Chapter G21) as opposed to 1 space per 24m² (applicable to retail development under SDCP Chapter G21).
- **Condition 33 – 'Access Design Standards':**
Modify to refer to 'Prior to Commencement of Work' as opposed to 'Prior to Construction Certificate. Also seek to modify Parts A, B, and C having regard for the following:
 - Part A – Removal of mandatory requirement for compliance with a 3% crossfall to a design as approved by Council.

- Part B – Proposed removal of this requirement until Council's design for the amended road reserve has been determined.
- Part C – Replacement of 'Kingham St' with 'Lawrence Ave' given incorrect street address was nominated.

Conditions determined by the Development & Environment Committee by means of approval in accordance with MIN21.171:

- *Condition 1 – 'General':*
Proposed modification to the approved plans as follows:
 - Amended stormwater layout with discharge via Kinghorne St.
 - Revision of finished floor levels (FFL) within the proposed building.
 - Construction of a fire rated access door and jamb within the lift shaft on each level.
 - Minor alterations related to windows, balustrades, and balconies.
 - Deletion of garden bed upon entry to the basement carpark to permit installation of an electrical substation.
 - Designation of a second future lift and shaft between ground floor level and second floor level as part of the modified proposal and new 'service room' and shaft on the third level. The incorporation of the future lift and shaft results in a reduction in the size of the presently approved lift and results in the removal of the 'store' on each level presently marked on the approved plans. These works result in a reduction in floor area of 3.3m² across each level.
- *Condition 29 – 'Design Standards':*
Modify to refer to 'Prior to Commencement of Works' as opposed to 'Prior to Construction Certificate'.
- *Condition 34 – 'Stormwater Drainage Design and On-Site Detention':*
Insertion of the line 'Prior to the commencement of works within the road reserve' at the beginning of the condition.
- *Condition 35 – 'Stormwater Drainage Design and On-Site Detention':*
Proposed modification to this condition to accord with the amended stormwater design proposed for disposal within Kinghorne St.
- *Condition 37 – relating to onsite detention storage:*
Modify to refer to 'Prior to works commencing' as opposed to 'Prior to Construction Certificate'.
- *Condition 47 – 'Nature Strip Reinstatement Works':*
Proposed rewording of Condition 47 to align with the modified Condition 35 and the amended stormwater design proposed for disposal within Kinghorne St.
- *Condition 72 – 'Covenant & restriction as to User for Stormwater Controlled Systems':*
Proposed rewording of condition having regard for the following:
 - There is no mechanical pump out systems nor any charged lines being proposed.

Subject Land

The site principally comprises Lot 2 DP 1264717 (formerly known as Lot 2 DP 1243710 prior to the acquisition of the part of the land for the purpose of road widening) at No. 2 Lawrence Ave Nowra. Refer to Figure 1.

The neighbouring property, Lot 1 DP 1243710 at No. 61 Kinghorne St Nowra, also forms part of the subject site for this development application (refer Figure 1). No. 61 Kinghorne Street Nowra has a recent approval for a similar four-storey mixed use commercial and residential development by the same developer (DA18/2325). The services, including the driveway access and stormwater disposal under the subject application (DA18/2326) and the

development consent for No. 61 Kinghorne Street (DA18/2325) are interrelated and thus both properties are affected by the proposed development.

The development consent for No. 61 Kinghorne Street Nowra (DA18/2325) remains unaffected by the proposed modifications under this subject application.

Site & Context

The development site:

- Lot 2 is partially constructed with an approved four (4) storey mixed use commercial and residential building following the issue of Partial Construction Certificate No. CC20/1109.
- Lot 1 is partially constructed with a separate approved four (4) storey mixed use commercial and residential building following the issue of Partial Construction Certificate No. CC19/2075 & CC20/1108.
- Has an area of 1,965.5m².
- Is zoned B3 Commercial Core (refer Figure 2 below).
- Is not identified as being either bushfire prone or flood prone.
- Has a minor slope downwards from a high point of approximately 13m AHD in the south-western corner at Lawrence Ave towards a low point of approximately 9m AHD in the northern eastern part adjacent to Kinghorne St.
- Is cleared of large-scale vegetation given its location within the Nowra CBD area.
- Is located within the southern part of the Nowra CBD area and is surrounded by mixed commercial development.



Figure 2 – Location and Zoning Map highlighting No. 2 Lawrence Ave Nowra

History

The following provides a summary of the approval history for the subject development and a timeline of events following the lodgement of DS20/1619 with Council:

Event	Date
Development Approval (DA18/2326) issued for a four (4) storey mixed use commercial and residential building.	04.10.2019
Modification Application (DS20/1001) – seeking a reduction in the car parking contributions payable under Condition 17 was formally refused by Council.	07.04.2020
Partial Construction Certificate No. CC20/1109 issued for the construction of the basement car parking area and up to the ground floor level of the building. A Construction Certificate has yet to be issued for the remainder of the proposed works (including but not limited to, the first to third floors).	24.02.2020
Modification Application No. DS20/1619, the subject of this report, lodged with Council seeking minor alterations and modifications to conditions of consent.	22.12.2020
Internal referral made to Shoalhaven Water, Development Engineer, and City Services.	12.01.2021
Responses to internal referrals were received by Development Services. Recommendations provided (refer Report at Attachment 2) include partial approval and partial refusal of the proposed modification to the conditions.	05.03.2021
A meeting was held with Development Services, Development Engineering, Building & Compliance to identify key conditions required to be modified.	10.03.2021
Email received from the applicant seeking to include additional conditions for modification.	15.03.2021
A further meeting was held between Development Services, Development Engineering, and the applicant was held to accurately confirm the conditions of consent to be modified.	17.03.2021
Email correspondence between applicant and Council confirming the conditions to be amended. In this email exchange, the applicant concurred with Council's following statement: <i>"Please be aware that where the requirement has been removed from prior to CC to now prior to the commencement of works, that this is at some (your) risk. In the event that there is an unexpected finding Council is unable to foreshadow how that situation may be dealt with or resolved. Prior to CC affords due process and opportunity for peer review and checking".</i>	17.03.2021
Development & Environment Committee Resolution No. MIN21.171 given supporting the City Development recommendation of approval for Conditions 1, 29, 34, 35, 37, 47, and 72, however requesting further details and clarity regarding the proposed modifications to Condition 17 and 33.	06.04.2021

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Issues

1. Condition 17: Proposed Modification to Car Parking Contributions

Resolution:

That in respect of Condition 17 a further report be submitted to Council in respect of contributions and any discount conditions applicable or other legal issues arising from State legislation or case law in respect of varying the car parking.

Proposed modification

The original application (DA18/2326) was approved under Chapter G21 – Car Parking & Traffic of the Shoalhaven Development Control Plan (SDCP) 2014 (Version 3), which was amended by Version 4 on 23 October 2020.

Section 5.1 – Car Parking Schedule of Version 3 states the following parking requirements:

- *Shop Top Housing* – 1.5 spaces per dwelling of 56m² - 85m² and 2 spaces per dwelling of 86m² or greater with a 25% discount applicable as the site is within 200m radius of the Nowra CBD.
- *Commercial Premises* – 1 space per 24m² at ground level and 1 space per 40m² of floor space above ground level.

Table 1 below provides a breakdown of the total car parking required and the total car parking provided for the development as proposed to be modified:

Table 1 – Development Data					
<i>DS20/1619 – 2 Lawrence Avenue, Nowra</i>					
Level	Land Use	Area	Parking Rate	Required parking	Total Car parking required
Ground	Commercial	319.7m ²	1 / 24m ²	319.7/24 = 13.32	39.2 spaces
First	Commercial	453.7m ²	1 / 40m ²	453.7/40 = 11.34	
Second	Commercial	401.7m ²	1 / 40m ²	401.7/40 = 10.04	
Third	Residential	Unit 1 106m ² Unit 2 125m ² Unit 3 106m ²	2 spaces 2 spaces 2 spaces	6 x .75 = 4.5 or 5 spaces	
Total Car Parking provided					21 spaces
Parking Shortfall					18.2 spaces
<p>The modified proposed development includes 21 spaces (5 – residential & 16 – commercial) and results in a <u>net increase of 1 space</u> in comparison to the approved development. This is given Spaces 21 and 22 are proposed whilst Space 20 is proposed to be turned into an electrical substation.</p> <p>The above calculations also account for designation of a second future lift and shaft between the Ground Floor and Second Floor Level as part of the modified proposal. The inclusion of the future lift and shaft results in a reduction in the size of the presently approved lift and removal of the 'store'. These works result in a reduction of 9.9m² in commercial gross floor area across the entire development (3.3m² across the ground, first, and second floor levels) compared with the development as originally approved.</p> <p>It is highlighted that the reduction of floor area on the Third Floor is inconsequential with regard to parking as the residential parking is calculated per bedroom/unit.</p> <p>The 18.20 space shortfall is proposed to be paid through s7.11 car parking contributions. The reduced car parking contribution rate is listed within the Report below (refer Shoalhaven Development Plan 2019).</p>					

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Applicant's Submission

The applicant has sought a reduction in the shortfall of car parking spaces from 19.7 spaces (under the original approval – DA18/2326) to **14.11** spaces based on the applicable parking rate for the proposed ground floor 'commercial' uses and the relevant definition for potential uses of this space. The following representations have been made by the applicant to support their position:

Representations made by applicant as part of their correspondence dated 15 March 2021:

- *“The attached plans indicate a reworking of the carparking layout, where an additional 2 x spaces are provided - (Nos 21 & 22 - located adjacent “Centrelink” Boundary).*
- *With the addition of a second lift shaft, and minor re-configuration of the connecting floors there is a reduction in floor space which impacts on car parking area calculations.*
- *Discussions, which have been on foot for the duration of this application, the proponents and all others involved (including Council officers, and various Councillors) recognise that while being technically within the CBD, Lawrence Avenue is unquestionably NOT a retail precinct.*
- *However, it is unfortunately within a zoning that technically identifies the Lot for retail on the ground floor level, which in turn attracts a carparking space / m² ratio of 1 per 24 m², vs 1 per 40m² for commercial office space.*
- *It is our position that the ground floor space will only be used for commercial office space. We have deliberately NOT made any provision in the design for café type development as neither that type of operation, nor any other retail activity will ever be suitable for the building that is being built, and the location as noted is not attractive in any way to retail activity.”*

Additionally:

- *“The ground floor is being technically built to meet the requirements of the NCC for a class 6 building to satisfy the zoning only.*
- *To further support this position, a report prepared by Bitzios Consulting (previously provided to Council Officers), having undertaken a review of ‘office’ parking rates from nearby Councils is summarised as follows:*
 - *Goulburn Mulwaree Council, specifies the parking rate of 1 space per 40m² GFA for an office premises.*
 - *Moss Vale (Wingecarribee Shire Council) specifies a parking rate for a commercial development of more than one storey to follow the RMS Guide for Traffic Generating Developments (i.e., 1 space per 40m² GFA).*
 - *Shellharbour DCP specifies a parking rate of 1 per 40m²*
 - *Wollongong DCP specifies a parking rate of 1 per 60m² in the city centre and 1 per 40m² city- wide.”*

Representations made by applicant as part of their correspondence dated 5 April 2021 in response to the Council Development & Environment Committee report:

“The property falls within the B3 Commercial Core zoning, and therefore CAN be used as a retail space per:

“There is nothing preventing the area becoming a retail precinct in the future in accordance with its zoning potential”.

- *Ironically, Council themselves accept that Lawrence Ave is in reality far from a retail precinct.*

“Council notes that retail development already exists in this area of the CBD”

- *Is factually incorrect. Lawrence Ave has no such development. Commercial business, not retail, extend for the full length of Lawrence Avenue.*

"Food and drink premises, restaurants and shops are well established on Kinghorne street right up to the intersection with Plunkett street, while around the corner in Worrigee street a range of retail premises operate down to the corner of Kinghorne street”.

- *The above statement is agreed, however does not relate to Lawrence Ave, nor is there any visual or effective connection between Lawrence Ave and Kinghorne St. Lawrence Ave is a “back alley” while Kinghorne and Worrigee St are major thoroughfares. Any retail venture proposed for Lawrence Ave would be doomed to fail.*

Exempt and Complying Development considerations.

The Proponent has previously sought legal opinion on how Council might condition the development so that should there be a change of usage from commercial space to retail space.

An opinion and suggested clauses have been included in our submission from PDC Lawyers that suggests Council could condition the development, such that if retail was to be taken up, then further car parking contributions would be made.

Council’s opinion that a “restrictive s88B covenant would be highly likely to be varied or set aside if development is otherwise considered appropriate for approval ...” is considered moot. The issue is not whether retail development is considered allowable within the zone, but that should that occur appropriate carparking contributions would be payable.

We again request that Council agree to the calculation for car spaces to the ground floor level of the Lawrence Ave development be based on a more appropriate rate of 1 space per 40m² which is consistent with the use of the building”.

Discussion

The following discussion is provided which addresses:

- Comments and questions raised during the Development and Environment Committee Meeting held on 6 April 2021.
- Comments and representations made by the applicant above.
- Reasons why the proposed modification to Condition 17 should be refused.

i. *Comments and questions raised during the Development and Environment Committee Meeting held on 6 April 2021.*

- *Other Applicable Contributions Discounts*

Council’s Policy No. POL20/23 ‘COVID-19 Contributions Discount Subsidy Policy’, would apply to any development contributions (including car parking contributions) levied with respect to the development.

Under Section 2.2, the Policy provides the following:

*“The Policy requires full payment of the development contributions required to be paid under a development consent for the Eligible Development. Council will then pay an amount of **50%** of the development contributions paid (subject to the exclusions in section 2.3 below) as a **discount subsidy** once the Council’s Chief Executive Officer, or his delegate, determines that the Eligible Development has reached the following stage, and after a request for the discount subsidy has been received from the owner of the land (or other party as agreed to by the Chief Executive Officer, or his delegate) on which the Eligible Development is to be carried out:*

- *Buildings: Approximately 25% completion - Being completion of the slab for the entire development or stage of development. The development cannot have received an Occupation Certificate”.*

As described above, Council has resolved to pay an amount of **50%** of the development contributions as a subsidy back to the applicant if the requirements of the Policy are met.

The car parking contribution amount under Condition 17 is proposed by Council to be reduced to the following (accounting for the additional parking space proposed by the applicant and 3.3m² reduction in gross floor area across the ground, first, and second floor levels):

Proposed Charge

01 CARP 3001	Car parking provision at Egans Lane, 8 Lawrence Ave, Collins Way, Bridge Road, Lamonds Lane, 9 Haigh Avenue & 67 Kinghorne Street	\$27,722.47	18.2	\$504,548.95	\$0.00	\$504,548.95
Actual charge following the issue of Council's subsidy according to POL20/23:						\$252,274.48

Therefore, the actual development contribution charge which applies following the application of the subsidy would be only **\$252,274.48 – which would be 50%** of that listed in the above charge of \$504,548.95.

Any further reduction in the car parking contributions offered to the applicant would be *in addition* to the existing discount / subsidy already given above.

- *Clarification on definitions and potential land uses*

At the Development and Environment Committee on 6 April 2021 it was requested that an outline of permissible uses that may occupy the ground floor tenancy be provided, and an example of the types of use that could ultimately use the space.

The B3 Commercial Core zone permits *commercial premises* with consent under the SLEP 2014. *Commercial premises* is a group term which includes business premises, office premises and retail premises. The B3 zone also permits any land use which is not listed as prohibited in the Land Use Table. There are no notable uses that are prohibited in the Land Use Table that fall within the group term of commercial premises. Accordingly, any uses within the following definitions would be permissible with consent under the group term of *commercial premises*:

retail premises means a building or place used for the purpose of selling items by retail, or hiring or displaying items for the purpose of selling them or hiring them out, whether the items are goods or materials (or whether also sold by wholesale), and includes any of the following—

- (a) (Repealed)
- (b) cellar door premises,
- (c) food and drink premises,
- (d) garden centres,
- (e) hardware and building supplies,
- (f) kiosks,
- (g) landscaping material supplies,
- (h) markets,
- (i) plant nurseries,
- (j) roadside stalls,
- (k) rural supplies,
- (l) shops,
- (la) specialised retail premises,
- (m) timber yards,
- (n) vehicle sales or hire premises,

but does not include highway service centres, service stations, industrial retail outlets or restricted premises.

business premises means a building or place at or on which—

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(a) an occupation, profession, or trade (other than an industry) is carried on for the provision of services directly to members of the public on a regular basis, or

(b) a service is provided directly to members of the public on a regular basis,

and includes a funeral home and, without limitation, premises such as banks, post offices, hairdressers, dry cleaners, travel agencies, internet access facilities, betting agencies and the like, but does not include an entertainment facility, home business, home occupation, home occupation (sex services), medical centre, restricted premises, sex services premises or veterinary hospital.

office premises means a building or place used for the purpose of administrative, clerical, technical, professional or similar activities that do not include dealing with members of the public at the building or place on a direct and regular basis, except where such dealing is a minor activity (by appointment) that is ancillary to the main purpose for which the building or place is used.

It is also noted that *medical centres and educational establishments* are also permissible with development consent in the zone which could be potential occupants of the ground floor tenancy.

- *Placement of a Restriction within the Section 88B Instrument prohibiting use of the Ground Floor Level for Retail purposes*

The applicant proposed as part of a previous application (Modification Application No. DS20/1001), already considered by Council, the following:

“Restriction on the title of the property. A s88B instrument could be executed to restrict the use of the ground floor of the building. The wording of the restriction if imposed, would mean that: the ground floor of the property must not be used for any purpose other than office accommodation without complying with condition 17 of development consent DA18/2326 dated 4 October 2019 as modified”.

Council determined DS20/1001 under delegated authority by means of refusal on 7 April 2020. The following comments are made which details why DS20/1001 was not supported and why a Section 88B Restriction is not capable of support:

- A restrictive Section 88B covenant is highly likely to be set aside by the Land and Environment Court (LEC) should a future Development Application for a retail use be received and be otherwise capable of support.
- A precedent has already been made by the LEC where a restrictive Section 88B Restriction was set aside which has implications for any such restriction imposed in relation to the subject proposal. This precedent was set as part of the decision, *D’Alterio v Newcastle City Council* [2017] NSWLEC 1058.
- In expert planning evidence provided by Garry Fielding (for the applicant) as part of the case, it was argued that:

65 *In contrast Mr Fielding argues that the restriction should not be rigidly applied, but should attract the same flexibility as other controls on the basis of an appropriate merit assessment of the development.*

In the Decision Dickson C provides the following findings:

73 *Following careful consideration of the evidence and reading the title contained in Exhibit 4 I accept the applicant’s submission of the reading of the restriction. I am satisfied that, subject to the merit assessment of the remaining issues in the case, there are no substantive issues in relation to the restriction that would warrant the refusal to vary the height restriction contained in the 88B instrument in this case.*

Based upon the above LEC Decision, Council (and the LEC on Appeal) needs to apply flexibility in its approach to Section 88B Restrictions and determine applications upon their merit and in accordance with the applicable planning controls. As such, should a Development Application for a retail use of the ground floor of the development be received which is capable of support based upon compliance with relevant Acts, plans, and policies, Council would not have grounds upon which to refuse the application despite any section 88B Restriction applying.

In summary, it is not appropriate to use restrictions under Conveyancing legislation to prevent planning outcomes that are permissible in legal environmental planning instruments.

It is also noted that to change the use from office to retail under exempt or complying provisions under *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (further discussed below) does not require consideration of section 88B Restrictions, and in effect carry no weight in preventing the change of use occurring.

- *Deferment of 50% of the Contributions Charge until a future Change of Use Development Application (DA) is received*

The applicant proposed as part of a previously refused application (Modification Application No. DS20/1001), the following which is similar in nature to the discussion at the Development and Environment Committee meeting held on 6 April 2021 suggesting a deferment of 50% of the contributions charge until a future change of use DA is received:

“Condition of consent – Requirement for additional payment of 5.4ETs should the use change and additional car parking be required”.

Council determined DS20/1001 under delegation by means of refusal on 7 April 2020. The following comments are made which details why DS20/1001 was not supported and why deferment of 50% of the contribution charge until a future Change of Use DA is received is not capable of support:

- In accordance with Section 2.20A of the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*, a change of use from one type of commercial premises to another type of commercial premises (i.e., such as a Business Premises, Office Premises, or Shop) is able to be carried out as exempt development without the need for any form of approval in some circumstances (See Figure 3). The repercussions of this Policy are that Council may never have the opportunity to recoup the remaining 50% of the car parking contribution which is being held in abeyance.

○ Notes:

- Circumstances upon which a commercial change of use cannot be carried out as exempt development are listed under Section 2.20B of the Policy.
- Definitions for the Business Premises, Office Premises, and Shop are contained within the *Standard Instrument – Principle Local Environmental Plan*. The definitions of Business Premises and Office Premises is provided earlier in this report.

shop means premises that sell merchandise such as groceries, personal care products, clothing, music, homewares, stationery, electrical goods or the like or that hire any such merchandise, and includes a neighbourhood shop and neighbourhood supermarket, but does not include food and drink premises or restricted premises.

Subdivision 10A Change of use of premises

2.20A Specified development

A change of use from a current use specified in a category in Column 1 of the Table to this clause to a use specified in the corresponding category in Column 2 of the Table to this clause is development specified for this code.

Table

Column 1 Current use	Column 2 New use
Category 1	Category 1
business premises	business premises
office premises	office premises
shop	shop
	kiosk
public administration building	public administration building

Figure 4 – Excerpt from Subdivision 10A of Part 2 of SEPP (Exempt and Complying Development Codes) 2008

- In accordance with Part 5 – Commercial and Industrial Alterations Code of the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*, a change of use from one type of commercial premises to another type of commercial premises which does not fall into the category of exempt, can be carried out as complying development (refer Figure 5). Complying Development Certificates are issued by private certifiers as common practice, who are not bound to review previous development consents issued by Council. Again, the repercussions are that Council may never have the opportunity to recoup the remaining 50% of the car parking contribution which is being held in abeyance. It is noted that these provisions allow for change of use to a *food and drink premises* and *medical centre* (unlike the exempt provisions).

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Subdivision 2 Change of use of premises

5.3 Specified development

(1) A change of use from a current use specified in a category in Column 1 of the Table to this clause to a use specified in the corresponding category in Column 2 of that Table is development specified for this code.

Table

Column 1 Current use	Column 2 New use
Category 2	Category 2
business premises	medical centre
office premises	shop
shop	food and drink premises
food and drink premises	kiosk
kiosk	business premises
medical centre	office premises
veterinary hospital	
tertiary institution	tertiary institution

Figure 5 – Excerpt from Subdivision 2 of Part 5 of SEPP (Exempt and Complying Development Codes) 2008

- In the event a DA is received for a future change of use application, there would be a distinct lack of clarity on who would be required to pay the remaining 50% of the contributions which are being held in abeyance. An Occupation Certificate would already have been issued to the developer which confirms that they have complied with all conditions and requirements. It is therefore likely that the charges would then be required to be paid by the applicant for the change of use DA – which is likely to be a small business owner. The outstanding charges are substantial and not readily apparent to an applicant under normal due diligence enquiry.

- In the event a DA is received for a future change of use application, there would be a distinct lack of clarity on whether the remaining 50% of the car parking contribution which is being held in abeyance can actually be charged. This is because Section 5.2.2 – Car Parking Waiver – Change of Use in Traditional Retail Centres of the Shoalhaven Development Control Plan 2014 waives the requirement for any further car parking to be provided for a change use DA lodged within the Nowra CBD area.

ii. Applicant representations made in their correspondence to Council dated 5 April 2021 in regard to Council report statements.

Applicant comment – *“There is nothing preventing the area becoming a retail precinct in the future in accordance with its zoning potential”* – Ironically, Council themselves accept that Lawrence Ave in reality is far from a retail precinct.

- Council Response: Council is referring to the fact a change of use from one type of commercial premises to a retail premises (i.e., such as a shop) can be undertaken either as exempt development or as complying development (as discussed earlier in the Report). There are therefore no legislative provisions which prevent retail development from being established on Lawrence Avenue.

Applicant comment – *“Council notes that retail development already exists in this area of the CBD...”* – Is factually incorrect. Lawrence Ave has no such development. Commercial business, not retail, extend for the full length of Lawrence Avenue.

- Council Response: The above quote referenced by the applicant is only part of a sentence within a paragraph which describes where retail development has been established with respect to the development site. For clarity, Council's full paragraph from the Report to the Development and Environment Committee Meeting held on 6 April 2021 reads as follows:

Council notes that retail development already exists in this area of the CBD, highlighting its viability and potential for the proposed ground floor commercial spaces to be used as a retail premises. Food and drink premises, restaurants and shops are well established on Kinghorne Street, right up to the intersection with Plunkett Street; while around the corner along Worrigee Street, a range of retail premises operate down to the corner of Kinghorne Street. This site has connectivity from Kinghorne Street.

Applicant comment – *“Food and drink premises, restaurants and shops are well established on Kinghorne street right up to the intersection with Plunkett street, while around the corner in Worrigee street a range of retail premises operate down to the corner of Kinghorne street”* – The above statement is agreed, however does not relate to Lawrence Ave, nor is there any visual or effective connection between Lawrence Ave and Kinghorne St. Lawrence Ave is a “back alley” while Kinghorne and Worrigee St are major thoroughfares. The applicant also states that *“Any retail venture proposed for Lawrence Ave would be doomed to fail”*.

- Council Response: Council's zoning of the site as B3 – Commercial Core in accordance with the Shoalhaven Local Environmental Plan (SLEP) 2014 reflects Council's ongoing and future intentions for the property. Objective No. 1 for Zone B3 states the following:

To provide a wide range of retail, business, office, entertainment, community, and other suitable land uses that serve the needs of the local and wider community.

Council recognises that Lawrence Ave is presently occupied predominantly by commercial office developments. However, Council's zoning reflects the future and ongoing intentions for the property which is inclusive of retail developments. For clarity, a ‘Retail Premises’ is defined under the SLEP 2014 as any of the following:

- cellar door premises,
- food and drink premises,
- garden centres,
- hardware and building supplies,

- kiosks,
- landscaping material supplies,
- markets,
- plant nurseries,
- roadside stalls,
- rural supplies,
- shops,
- specialised retail premises,
- timber yards,
- vehicle sales or hire premises,

Applicant comment – *“The Proponent has previously sought legal opinion on how Council might condition the development so that should there be a (highly unlikely) change of usage from commercial space to retail space.*

An opinion and suggested clauses have been included in our submission from PDC Lawyers that suggests Council could condition the development, such that if retail was to be taken up, then further car parking contributions would be made.

Council’s opinion that a “restrictive s88B covenant would be highly likely to be varied or set aside if development is otherwise considered appropriate for approval” is considered moot. The issue is not whether retail development is considered allowable within the zone, but that should that occur appropriate carparking contributions would be payable.

We again request that Council agree to the calculation for car spaces to the ground floor level of the Lawrence Ave development be based on a more appropriate rate of 1 space per 40m² which is consistent with the use of the building.

- Council Response: Having regard to existing legal precedents which have been set as discussed in the Report above, Council cannot impose a restrictive covenant that prevents a particular type of development from being established. Conversely, Council cannot impose a condition of consent restricting the use of the ground floor to a specific type of commercial premises contrary to zoning provisions. A development consent cannot potentially seek to prevent a lawful use, as permitted by a planning instrument. This would result in a condition of consent contrary to the prevailing legislation.

iii. Further reasons why the proposed modification to Condition 17 should be refused.

- Support for a reduction in the car parking contributions for the development equates to a departure to the car parking requirements for the development in accordance Section 5.1 – Car Parking Schedule of Council’s DCP Chapter G21 – Car Parking and Traffic. It will create a precedent which can be used by future developers seeking a relaxation of Council’s car parking requirements.
- Car parking contributions go towards Council’s Project No. 01 CARP 3001. This is an important fund which enables Council to undertake works to provide and maintain public car parks within CBD area. The nature of the project is further described within the Shoalhaven Contributions Plan accessible to community members on the Council website (see <https://cp.shoalhaven.nsw.gov.au/projects/01carp3001>). In particular the following comments are made regarding the project:
 - The aim is to provide car parking to meet future retail and commercial demand.
 - The project is critical for the coordinated approach to the supply of 900 car parking spaces in the central business district.
 - Funds collected will be applied to the provision of public parking.

In order for the above listed works to continue to be able to be undertaken to the satisfaction of the local community, it relies upon funds generated as part of 01 CARP 3001. A reduction in the funds received resulting from a relaxation in the car parking

contributions has the potential to reduce the functionality and capability of this ongoing project.

- The site is mapped within the B3 Commercial Core Zone in accordance with the SLEP 2014 and is therefore formally part of the CBD area. There is nothing preventing the area becoming a retail precinct in the future in accordance with its zoning potential.
- *Section 5.1 – Car Parking Schedule of Council's DCP Chapter G21 – Car Parking and Traffic* (originally adopted on 22 October 2014) was only recently reviewed by Council.

The review included a revisiting of the required car parking rate for 'Commercial Premises' within Zone B3 – Commercial Core. Following the review, Council reaffirmed that the parking rate of one (1) space per 24m² within Zone B3 represents a modern and up-to-date representation of the parking requirements for a new commercial development within the Nowra CBD area. Version 4 of SDCP 2014 Chapter G21 was subsequently adopted at Council's Development and Environment Committee Meeting held on 6 October 2020.

- While the development is mapped as requiring a 1 space per 24m² for ground floor B3 Commercial Core Commercial Premises, it receives a concession in that it benefits from the 25% discount for this location in regard to the residential component.

The calculations given in Table 1 identifying a shortfall of 18.20 spaces is therefore considered to be reasonable, soundly based on Council's adopted DCP noting also there is a concession in place (25%) and therefore appropriate.

To account for the additional parking space proposed by the applicant and the 3.3m² reduction in gross floor area across the ground, first, and second floor levels – the car parking contribution amount under Condition 17 would be reduced as follows:

Approved Charge

01 CARP 3001	Car parking provision at Egans Lane, 8 Lawrence Ave, Collins Way, Bridge Road, Lamonds Lane, 9 Haigh Avenue & 67 Kinghorne Street	\$27,178.89	19.51	\$530,260.14	\$0.00	\$530,260.14
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Proposed Charge

01 CARP 3001	Car parking provision at Egans Lane, 8 Lawrence Ave, Collins Way, Bridge Road, Lamonds Lane, 9 Haigh Avenue & 67 Kinghorne Street	\$27,722.47	18.2	\$504,548.95	\$0.00	\$504,548.95
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2. Issues – Condition 33(b) – Proposed Removal of Requirement for a Type 4 Footpath – Condition 33(b)

Resolution:

That in respect of Condition 33, access design standards for Lawrence Avenue, a further report be submitted to the next meeting of the Development & Environment Committee proposing an interim solution to pedestrian access issues (including disability access).

Proposed Modification

Condition 33 requires detailed engineering design plans for footpath works in the Lawrence Ave road reserve to be submitted to Council. The purpose of the modification to Condition 33 is to:

DE21.48

- Amend the timing of the requirement for the submission of engineering plans from being required 'prior to Construction Certificate' to 'prior to the commencement of works within the road reserve'. Council is supportive of this request.
- Amend Condition 33(a) to outline that the footpath must achieve a crossfall of at least 3% or a design as approved by Council. Council is supportive of this request.
- Amend Condition 33(b) to delete this part of the condition in its entirety. Council is not supportive of this request and further discussion is provided below.
- Amend Condition 33(c) to refer to Lawrence Ave instead of Kinghorne St. Council is supportive of this request.

Condition 33(b) outlines:

"... Details are to be shown on the engineering design plans and must incorporate the following:

(b) Provision of a Type 4 part-width concrete pathway in accordance with the Streetscape Technical Manual"

Council's Streetscape Technical Manual provides design and construction detail for the nominated Town and Village Centres in Chapter G18 – Streetscape Design for Town and Village Centres of the SDCP 2014. This Chapter applies as the development includes a proposal for a commercial, mixed use, and shop top housing development in the Nowra CBD.

The purpose of the Streetscape Technical Manual is to establish a uniform design and material palette for Shoalhaven City Council (SCC), while also providing guidelines for each Town and Village to ensure their character is represented in the streetscapes. The manual states that the document is *"used to condition Development Consents as a basis for the design of the streetscapes by SCC and by individuals as part of developments"* (emphasis added).

A 'Type 4 Footpath' (refer description at Figure 4) is listed as a requirement under Council's Streetscape Technical Manual for this area of the Nowra CBD and was duly conditioned as a requirement by Council's Development Engineering Group under the original consent.



Figure 4 – Type 4 Footpath Streetscape Technical Manual

Chapter G18 – Streetscape Design for Town and Village Centres of the SDCP 2014 - Acceptable Solution A6.3 specifies the following requirement:

“Where the footpath/pathway design in the Streetscape Technical Manual differs to the existing footpath design, the new footpath is to be provided as per the Streetscape Technical Manual”.

The existing footpath design differs from the design listed under the Streetscape Technical Manual and therefore, the new footpath requires a design which accords with the Manual. The applicant’s proposed deletion of this condition would result in a non-compliance and departure from Acceptable Solution A6.3.

The Lawrence Avenue frontage of the site is mapped on the Land Reservation Acquisition Map and was formally acquired by Council for the purpose of road widening in December 2020. Notwithstanding, Council’s City Services section was consulted as part of the modified development application referral process. In their response, City Services clarified that no redesign plan has presently been undertaken for the acquisition area or for the remainder of Lawrence Ave. City Services further indicated that the required redesign is not planned in the near future and in fact, may not occur for a number of years.

Applicant’s Submission

Representations made by applicant as part of their correspondence dated 15 March 2021:

“The procurement process of the land is complete, and Council has carried out on site survey works identifying the location of the adjusted road reserve and western boundary [Council note: The land has since been procured for road widening]. The streetscape of the neighbouring property to the South of Lot B (frontage to the ‘Centrelink’ Building) comprises extensive brick paving.

There are complications present with the interface of Lot B frontage and the ‘Centrelink’ pavers to the south with regard to Council’s requirements for cross fall. The current paving has cross falls from the current boundary of Lot B ranging between 5.1% – 9%, with the alignment of the existing footpath having a grade of 8.3%.

The land acquisition will impact adversely at both the south and north ends of Lot B frontage. Compounding the issue is a dual driveway apron extending beyond the north boundary line of Lot B across the adjoining property ‘Inspirations Paint’.

While it is incumbent on the Proponents to provide access from the site it would not be expected that their responsibility would extend beyond the boundaries. Given the above it is proposed to not make any changes to the existing footpath or streetscape of Lawrence avenue frontage.

Levels for the proposed road acquisition are unknown, and Council is unlikely to be in a position to provided proper design levels for the Proponent to work with. It is proposed to provide a wide access pathway from the existing footpath to the main entrance of the building. The pathway will be located at suitable grades to provide access for people with a disability in accordance with NCC.”

Representations made by applicant as part of their 5 April 2021 correspondence relating to the 6 April 2021 Development & Environment Committee Meeting:

“It is proposed that a ‘Type 4’ part width concrete footpath in accordance with Council’s ‘Streetscape Technical Manual’ be constructed, necessitating the removal of the existing plain concrete footpath.

We have presented our arguments in support of our application. However, we have not been made aware of Council’s reasoning for rejecting our application until this report.

Briefly from the report it appears that Council argues that a departure from the Streetscape Technical Manual is not warranted, quoting “Performance Criteria P6”

which states: 'Allow for convenient and equitable pedestrian travel through the provision of footpaths/pathways in centres. Footpath design is consistent to encourage visual continuity and legible centres.'

Council further argues:

- *That to not provide a Type 4 path would not provide "visual continuity".*
- *Would be for an indefinite time, as a full acquisition of Lawrence Ave is unknown*
- *Would set a precedent for any future development along Lawrence Ave.*

RESPONSE: It is difficult to understand the argument of "continuity" and "precedent being set" for any future development of Lawrence Ave when considering the current paths on both the western and eastern side of the road.

According to the Streetscape Technical Manual map / plan for the Nowra town centre, Type 4 is indicated for both sides of Lawrence Ave, commencing at Worrigee St, and extending through to Plunkett St.

However not one development, including the more recent along the western side, has been provided with a Type 4 path. All is in brick paving, except that of the public carpark, which has no footpath.

To the eastern side, all paths are plain concrete, except for the extensive brick paving that fronts the 'Centrelink' building. The south side is Worrigee St fronting 'Inspirations Paint' and is designated to be Type 3 (full width honed concrete) but is a part width plain concrete path.

The north side of Worrigee St is designated to be Type 1 (full width variant) but also is part width concrete.

In terms of "continuity" and for an "indefinite time" plain concrete would be more appropriate.

Notwithstanding the above that is only addressing appearance and finishes, the matter of existing levels vs future levels of the road reserve should be taken into account, as presented in our original submission.

Discussion

The following discussion is provided which addresses:

- Comments and questions raised during the Development and Environment Committee Meeting held on 6 April 2021.
- Comments and representations made by the applicant above.
- Reasons why the proposed modification to Condition 33(b) should be refused.

i. Footpath Crossfall and Disabled Accessibility

In conjunction with the applicant, a site inspection was held with Council officers on 2 December 2020 where it was recognised that a crossfall of 3%, which was originally consented to, would not be able to be achieved. Condition 33(a) is hence proposed to be modified to include the wording: *'footpath levels must comply with a 3% cross fall from the boundary to top of kerb, or a design as approved by Council'*. City Development is supportive of the proposed modifications to Condition 33(a) of the consent, and recognising the unique circumstances of the site, would be pleased to review a design presented by the applicant prior to any works commencing, which still proposes appropriate crossfall grades that permits accessibility across the frontage.

City Development's proposal not to support the proposed deletion of Condition 33(b) instead relates to the design and character of the footpath (i.e., footpath types, planting details, colour palette, street furniture) and is independent of disabled accessibility.

ii. Interim Solution for Footpath until a Final Design is Formulated

In accordance with MIN21.171 of Council's Development and Environment Committee Meeting held on 6 April 2021, it was proposed that an interim solution for access design standards and pedestrian access adjacent to Lawrence Ave be proposed.

City Services is not supportive of an interim design for the footpath and instead recommends full compliance with the Streetscape Technical Manual for the following reasons:

- The Streetscape Technical Manual is a document which was adopted by Council at the Development & Environment Committee Meeting held on 8 May 2018 with the aim being to reflect the desired and future pattern for the Nowra Town Centre streetscape. It is therefore recommended that Council enforce compliance with the provisions of the document.
- Given its adoption in May 2018, the Technical Manual recognises that existing footpath arrangements within the Nowra Town Centre may not comply with the provisions which are set out and hence any upgrades would need to take place in a 'piecemeal' fashion.

For example, the Technical Manual provides for the following allowance were considered to be relevant:

"All existing 'pebblecrete' and 'claypave' (Regal Dark Tan) paver footpaths and pathways shall be retained if deemed by Council to be in good condition".

- An interim design has the potential to represent a variance from the Streetscape Technical Manual and may set a precedent for future developers who do not wish to undertake works which comply with the Manual. Setting precedents has the potential to result in the abandonment of the standards, resulting in future compliance being unnecessary and unreasonable.
- Whilst City Services has indicated a design may not be formulated for many years for the full extent of the Lawrence Ave streetscape, it is likely that the design would take place according to the provisions shown in the Technical Manual. Council's Condition 33(b) requiring the developer undertake a design which complies with the Manual is therefore considered to be the most appropriate 'interim' solution until the final design is formulated.
- Any 'interim' solution which deviates from the Technical Manual (i.e. such as maintaining the current status quo) would then place a burden on Council to undertake the works required to upgrade the footpath from the interim solution to match the final design. Such a cost is likely to be borne to Council/community to fund the upgrade instead of the developer.
- As an example, a similar upgrade to the footpath was recently completed along Berry St adjacent to the Roxy Theatre – the cost for these works for this project was estimated at over \$200,000 in value. This is representative of the cost which is likely to be borne the community to fund any future upgrade.

iii. Applicant representations made in their correspondence to Council dated 5 April 2021.

Applicant comment:

"Briefly from the report it appears that Council argues that a departure from the Streetscape Technical Manual is not warranted, quoting "Performance Criteria P6" which states: 'Allow for convenient and equitable pedestrian travel through the provision of

footpaths/pathways in centres. Footpath design is consistent to encourage visual continuity and legible centres.

Council further argues:

- That to not provide a Type 4 path would not provide “visual continuity”.
- Would be for an indefinite time, as a full acquisition of Lawrence Ave is unknown
- Would set a precedent for any future development along Lawrence Ave.

It is difficult to understand the argument of “continuity” and “precedent being set” for any future development of Lawrence Ave when considering the current paths on both the western and eastern side of the road.

- **Council Response:** As discussed in the Report above, the Streetscape Technical Manual is a **new** document adopted by Council at its Development & Environment Committee Meeting in May 2018. It recognises that the upgrade of footpaths to match the desired layout is likely to be undertaken in a piecemeal fashion having regard for various different existing footpaths, levels, and arrangements.

The precedent referred to is non-compliance with A6.3 of Chapter G18 – Streetscape Design for Town and Village Centres of Council’s Development Control Plan 2014. The precedent referred to is a relaxation of the standards for future developers who do not wish to undertake works which comply with the Manual. Setting precedents has the potential to result in the abandonment of the standards, resulting in future compliance being unnecessary and unreasonable.

Applicant comment:

“According to the Streetscape Technical Manual map / plan for the Nowra town centre, Type 4 is indicated for both sides of Lawrence Ave, commencing at Worrigee St and extending through to Plunkett St.

However not one development, including the more recent along the western side, has been provided with a Type 4 path. All is in brick paving, except that of the public carpark, which has no footpath.

To the eastern side, all paths are plain concrete, except for the extensive brick paving that fronts the ‘Centrelink’ building. The south side is Worrigee St fronting ‘Inspirations Paint’ and is designated to be Type 3 (full width honed concrete) but is a part width plain concrete path.

The north side of Worrigee St is designated to be Type 1 (full width variant) but also is part width concrete.

In terms of “continuity” and for an “indefinite time” plain concrete would be more appropriate.

Notwithstanding the above that is only addressing appearance and finishes, the matter of existing levels vs future levels of the road reserve should be taken into account, as presented in our original submission.

- **Council Response:** The applicant’s comments above reflect the lack of continuity in the current layout footpaths within Lawrence Ave and within the surrounding block. The present layout and integration with neighbouring properties also demonstrates changing and non-compliant crossfalls which can present dangers for pedestrians and a lack of disabled accessibility.

Council has provided within Condition 33 appropriate requirements to not only ensure appropriate and compliant crossfalls across the site but also a design which reflects Council’s adopted streetscape standards for the future.

Planning Assessment

The DA has been (or will be) assessed under s4.15 of the Environmental Planning and Assessment Act 1979. Please refer to Attachment 2.

Consultation and Community Engagement:

Notification was undertaken in accordance with Council's Community Consultation Policy with letters being sent within a 100m buffer of the site, during the period 12 January 2021 to 28 January 2021.

Nil public objections were received in relation to Council's notification of the development.

Financial Implications:

There are potential cost implications for Council in the event of an outright refusal of the application.

Legal Implications

Pursuant to section 8.2 of the Environmental Planning and Assessment Act 1979, a decision of the Council may be subject of a review by the applicant in the event of an approval or refusal. If such a review is ultimately pursued the matter would be put to Council for consideration.

Summary and Conclusion

This application has been assessed having regard for section 4.15 (Matters for consideration) of the *Environmental Planning and Assessment Act 1979*.

For the reasons described in the Report above, it is considered that the application warrants a partial approval and partial refusal.

City Development advises that the proposed modifications to the following conditions of consent are supported as recommended in the draft consent at Attachment 1:

- Condition 33 – Access Design Standards (Parts (a) and (c) only).
- Condition 17 - Contributions for Additional Services and/or Facilities as proposed by Council staff.

City Development advises that the proposed modifications to the following conditions of consent are not supported for the reasons described in the Report above:

- Condition 17 – Contributions for Additional Services and/or Facilities as requested by the applicant; and
- Condition 33 – Access Design Standards (Part (b) only).

DE21.49 DA20/1966 - 29 Strongs Road, Jaspers Brush - Lot 215 DP 1210788 - Single A-Frame Advert Sign

DA. No: DA20/1966/4

HPERM Ref: D21/142175

Department: Development Services

Approver: Phil Costello, Director - City Development

Attachments:

1. Section 4.15 Assessment Report (under separate cover) [⇒](#)
2. Determination Document - Refusal [↓](#)
3. Development & Environment Committee Report - 2 March 2021 (under separate cover) [⇒](#)
4. Confidential Legal Advice (Confidential - under separate cover)

Description of Development: Temporary use of land for the placement of an A-frame advertising sign on a trailer

Owner: Robert Bruce Drewitt Smith

Applicant: Foundation Law Group

Notification Dates: 29 September 2020 – 15 October 2020

No. of Submissions: Nil (0)

Purpose / Reason for consideration by Council

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

This 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.

On 2 March 2021, the Development Application was reported to the Development & Environment Committee for determination in accordance with the recommendations of the Council Report (D21/5069).

The Development & Environment Committee resolved (MIN21.107) that:

"[T]he matter be deferred pending legal advice as to whether the construction works being carried out on the site by Hotondo Homes and their control of the site as the builder would facilitate a method of approving an advertising sign for the period of construction works."

DE21.49

Council has now received legal advice on the permissibility of development for the purposes of the proposed signage. The ‘confidential’ advice is provided as **Attachment 4** to this Report.

Recommendation (Item to be determined under delegated authority)

That DA20/1966, for the temporary use of land for the placement of an A-frame advertising sign on a trailer, be determined by way of refusal for the reasons set out in the Notice of Determination, **Attachment 2** to this report.

Options

1. Refuse the Development Application in accordance with the recommendation.

Implications: The proposal would not proceed. The applicant can however apply for a section 8.2 review of Council’s decision and/or could lodge an appeal with the NSW Land and Environment Court against Council’s decision.

2. Approve the Development Application.

Implications: Council’s legal advice (**Attachment 4**) does not specify a planning pathway for approval of the Development Application.

3. Alternative recommendation.

Implications: Council will need to specify an alternative recommendation and advise staff accordingly.

Summary and Conclusion

The Council Report (D21/5069 (**Attachment 3**) and s. 4.15 Assessment Report (**Attachment 1**) provides an assessment of a proposal to erect a single, temporary and mobile A-frame advertising sign with a combined signage area of 24m² (12m² front and back) for no more than 52 days in a 12-month in accordance with cl. 2.8 of *Shoalhaven Local Environmental Plan 2014* (SLEP 2014), on the land identified as No. 29 Strongs Road, Jaspers Brush and is legally described as Lot 215 DP1210788.

The signage has been assessed against all relevant environmental planning instruments and Shoalhaven Development Control (DCP) 2014.

The signage does not demonstrate compliance with State Environmental Planning Policy (SEPP) 64 – Advertising and Signage, clause (cl.) 2.8(3)(c) of SLEP 2014 and the relevant provisions of the Chapter G22 of SDCP 2014.

On 2 March 2021, the Development & Environment Committee resolved (MIN21.107) to defer the determination of the development application, pending the receipt of legal advice on the permissibility of the proposed signage.

Council has now received legal advice on the permissibility of development for the purposes of the proposed signage. The ‘confidential’ advice is provided as **Attachment 4** to this Report.

The legal advice concludes at paragraph [5.23] and [5.24] that:

“[I]t is open to the Council to conclude that the proposed advertising is prohibited on the land as it does not satisfy the requirements of cl 2.8(3) of the LEP.”

Even if the advertisement was permissible with consent under cl 2.8, the Council would nevertheless be precluded from granting consent because the jurisdictional prerequisites in cl 15 of the Advertising SEPP are not satisfied.”

The application is recommended for refusal in accordance with the attached determination document (**Attachment 2**).

DE21.49



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.

DE21.49 - 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 not 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 published on Council's website as required by the Government Information (Public Access) Act 2009 (GIPAA).

SIGNED on behalf of Shoalhaven City Council:

Elliott Weston
Senior Development Planner
City Development

DE21.50 DA16/1465 - 173 Kinghorne St and 2 & 4 Albatross Rd Nowra - Lot 1, 29 and 30 DP 25114

DA. No: DA16/1465/4

HPERM Ref: D21/144532

Department: Development Services

Approver: Phil Costello, Director - City Development

Attachments: 1. s4.15 Assessment Planning Report (under separate cover) [↗](#)
2. Determination Document - Refusal [↓](#)

Description of Development: Demolition of existing structures and construction of a mixed-use development consisting of 55 apartments including 16 x 3-bedroom, 31 x 2 bedroom and 8 x 1-bedroom apartments, a basement car parking area and 3 commercial tenancies at ground floor with frontage to both Kinghorne Street and Albatross Road

Owner: Bill Zervos and Jasmine Anne Simpson & John Irwin Gould

Applicant: Lee Carmichael Town Planning (now trading as) PDC Planners

Notification Dates: 14 June – 14 July 2017

No. of Submissions: Six (6) submissions in objection and Nil (0) in support.

Purpose / Reason for consideration by Council

On 1 October 2019, it was resolved by the Development and Environment Committee that Development Application (DA) 'DA16/1465 – Residential Units and Commercial Space – 173 Kinghorne Street, Nowra be called in to Council for determination due to significant public interest.' (DE19.107)

On 6 October 2020, the Development & Environment Committee resolved (MIN20.728):

"That consideration of Development Application DA16/1465 – Mixed Use development consisting of 55 residential units and commercial space on the land known as 173 Kinghorne Street and 2 & 4 Albatross Road, Nowra (Lot 1, 29 and 30 DP 25114) be deferred to the January 2021 Development and Environment Committee Meeting to allow Council to undertake further traffic investigations in consultation with the developer."

Council has taken the following actions, following the Council resolution:

1. On **18 November 2020**, relevant Council staff met to discuss critical aspects of the Development Application in particular the *Traffic Management Report* prepared by Jones Nicholson Consulting Engineers dated 27 February 2021 (Reference: CRPT-16020003.01B). The outcomes of the meeting were provided to the applicant on 26 November 2021 (D20/526133).
2. On **21 December 2020**, Council provided additional information to the applicant in the form of: 'Outputs' from Council's traffic modelling and Council's requirements for a future 4 lane cross section of Albatross Road (D20/563561). Council also offered as

DE21.50

part of the forwarding of this additional information the opportunity to meet further to ensure that all matters have been addressed relating to traffic and planning issues.

3. On **15 January 2021**, Council notified the applicant via email (D21/16222) that the information requested in Council's 21 December 2020 was required to be submitted to Council in 7 days.
4. On **4 February 2021**, Council emailed the applicant (D21/43579) offering to meet to discuss the additional information.
5. On **10 February 2021**, Council notified the applicant via email (D21/52704) that the information requested in Council's 21 December 2020 was required to be submitted to Council in 7 days as the applicant had not responded to Council in relation to the offer of a meeting and the information had not been submitted.
6. On **23 February 2021**, the applicant's traffic consultant (Stephen Falkner) emailed Council, to request the following:
 - traffic data on the existing road network from their records; and
 - projected traffic data for 10-year projections (2031).
7. On **12 March 2021**, Council emailed the applicant's traffic consultant (Stephen Falkner) (D21/99332) with the following:
 - Council's most recent tube traffic count for the area; and
 - projected traffic data for 10-year projections (2031).
8. On **24 March 2021**, Council emailed the applicant (D21/117366) to inform them that the application would be required to be reported to Council in the absence of a formal response to Council's email dated 21 December 2020.
9. On **31 March 2021**, the applicant was emailed (D21/127622) to inform them that the additional information was required to be submitted to Council within 7 days.

The assessing officer has also called and left messages with the applicant to discuss the application in the intervening period. The applicant has not responded to Council's emails and requests for updates.

Recommendation (Item to be determined under delegated authority)

That Development Application DA16/1465 – Mixed Use development consisting of 55 residential units and commercial space on the land known as 173 Kinghorne Street and 2 & 4 Albatross Road, Nowra (Lot 1, 29 and 30 DP 25114) be determined by way of refusal for the reasons set out in the section 4.15 Assessment Report (**Attachment 1**) and in the Notice of Determination (**Attachment 2**) to this report.

Options

1. Refuse the Development Application (DA) in accordance with the recommendation.

Implications: The proposal would not proceed in its current form. The applicant can, however, apply for a section 8.2 review of Council's decision and/or could lodge an appeal with the NSW Land and Environment Court against Council's decision.

2. Approve the DA.

Implications: Council would have to provide reasons to support the development, having regard to section 4.15 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) considerations. Should Council resolve to approve the DA a suite of conditions would be required to be drafted for reconsideration by the Development & Environment

Committee. Under some circumstances, third parties (i.e., objectors) can seek a judicial review of Council's decision in the NSW Land and Environment Court.

3. Alternative recommendation.

Implications: Council will need to specify an alternative recommendation and advise staff accordingly.

Location Map



Figure 1 - Extract of the subject site in the local context.

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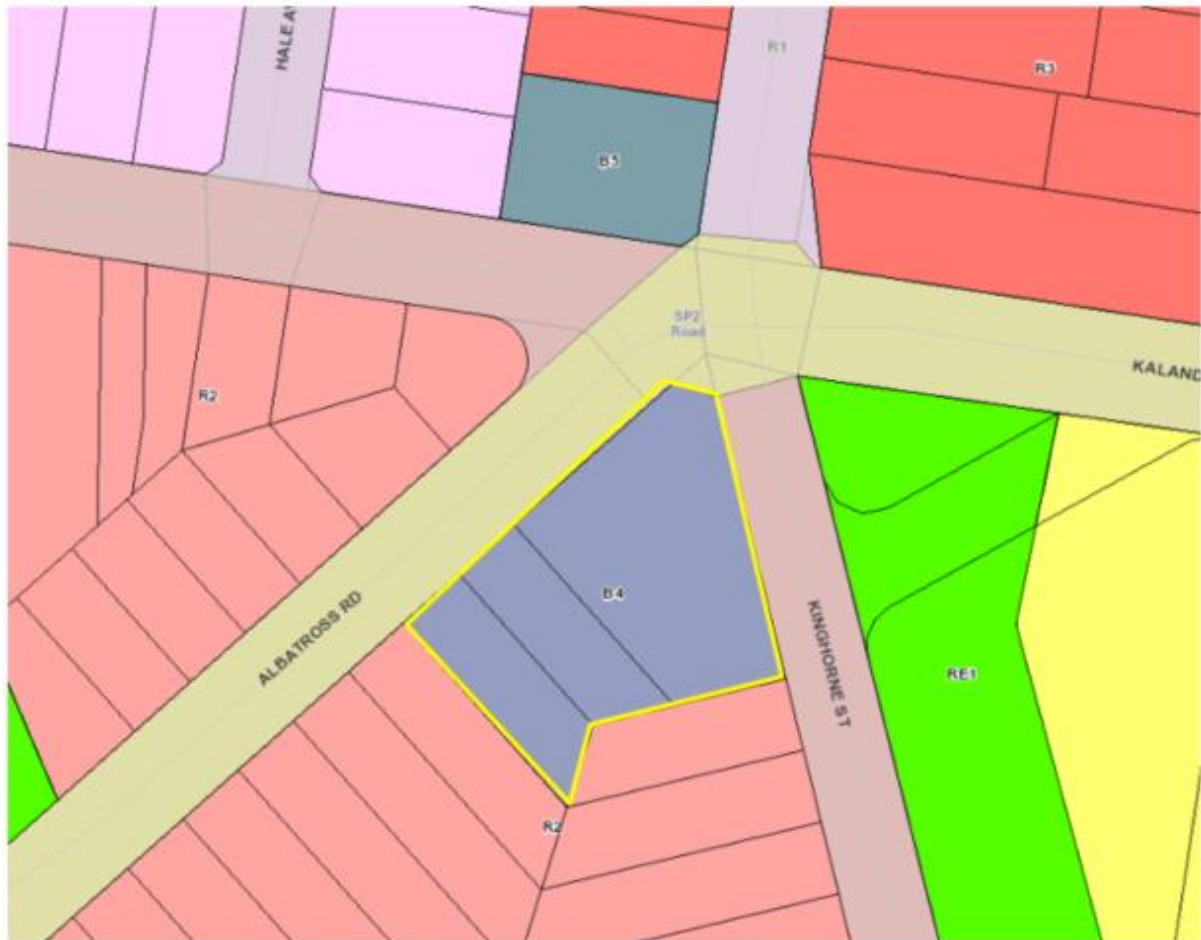


Figure 2 - Extract of the Shoalhaven Local Environmental Plan 2014
Land Use Zoning Map with the subject site with a yellow border

Background

Post-Lodgement

Key dates are as follows:

- **8 April 2016**, the DA was lodged with Council.
- **9 August 2016**, Council requested additional information from the applicant in relation to the design and access arrangements from Albatross Road.
- **16 December 2016**, revised plans and additional information was submitted by the applicant in response to Council's letter dated 9 August 2016. The amended plans included modifications to the southern portions of each wing of the building and deletion of two apartments (reducing the unit yield from 57 to 55 apartments). The reduction in units on the southern portion of the development was proposed to achieve a more appropriate transition to the adjoining low-density development.
- **27 February 2017**, Council requested additional information from the applicant, with continued concerns raised in relation to design elements and major concerns raised in relation to the proposed access/egress onto Albatross Road.
- **7 March 2017**, Council met with the applicant to discuss the Planning Proposal over the site (described below) and continued concerns with the design and location of access/egress onto Albatross Road.

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- **22 March 2017**, a further additional information letter was sent to the applicant to detail the outcomes of the 7 March 2017 meeting and to express continued concerns regarding the proposed access/egress onto Albatross Road.
- **10 July 2018**, Council met again with the applicant to discuss design and traffic issues.
- **12 September 2018**, the applicant lodged concept plans for access/egress to the development from Kinghorne Street for Council's consideration (refer to **Figure 15**).
- **12 October 2018**, Council provided feedback to the applicant on the concept plan, noting that the concept plan addressed the main concern that had been raised by Council being the relocation of the access from Albatross Road to Kinghorne Street frontage.
- **18 April 2019**, the applicant confirmed that they would not be pursuing any change to the design of the development which would relocate the access from Albatross Road to Kinghorne Street frontage.
- **12 August 2019**, the applicant submitted a further amended *Traffic Report* prepared by Jones Nicholson (D19/280251) to justify the retention of access on the Albatross Road frontage and to address concerns raised in relation to the designs apparent inconsistency with *State Environmental Planning Policy (Infrastructure) 2007*.
- **1 October 2019**, the Development and Environment Committee that Development Application (DA) 'DA16/1465 – Residential Units and Commercial Space – 173 Kinghorne Street, Nowra be called in to Council for determination due to significant public interest.' (DE19.107).
- **26 November 2019**, the applicant submitted amended plans, acoustic report, and clause 4.6 variation statement.
- **6 October 2020**, the Development & Environment Committee resolved (MIN20.728):

"That consideration of Development Application DA16/1465 – Mixed Use development consisting of 55 residential units and commercial space on the land known as 173 Kinghorne Street and 2 & 4 Albatross Road, Nowra (Lot 1, 29 and 30 DP 25114) be deferred to the January 2021 Development and Environment Committee Meeting to allow Council to undertake further traffic investigations in consultation with the developer."

Council has taken the following action in relation to the above matter, following the 6 October 2020 Council resolution:

1. On 18 November 2020, relevant Council staff met to discuss critical aspects of the Development Application in particular the *Traffic Management Report* prepared by Jones Nicholson Consulting Engineers dated 27 February 2021 (Reference: CRPT-16020003.01B). The outcomes of the meeting were provided to the applicant on 26 November 2021 (D20/526133).
2. On 21 December 2020, Council provided additional information to the applicant in the form of: Outputs from Council's traffic modelling and Council's requirements for a future 4 lane cross section of Albatross Road (D20/563561). Council also offered as part of the forwarding of this additional information the opportunity to meet further to ensure that all matters have been addressed relating to traffic and planning issues.
3. On 15 January 2021, Council notified the applicant via email (D21/16222) that the information requested in Council's 21 December 2020 was required to be submitted to Council in 7 days.

4. On 4 February 2021, Council emailed the applicant (D21/43579) offering to meet to discuss the additional information.
5. On 10 February 2021, Council notified the applicant via email (D21/52704) that the information requested in Council's 21 December 2020 was required to be submitted to Council in 7 days as the applicant had not responded to Council in relation to the offer of a meeting and the information had not been submitted.
6. On 23 February 2021, the applicant's traffic consultant (Stephen Falkner) emailed Council, to request the following:
 - traffic data on the existing road network from their records; and
 - projected traffic data for 10-year projections (2031).
7. On 12 March 2021, Council emailed the applicant's traffic consultant (Stephen Falkner) (D21/99332) with the following:
 - Council's most recent tube traffic count for the area; and
 - projected traffic data for 10-year projections (2031).
8. On 24 March 2021, Council emailed the applicant (D21/117366) to inform them that the application would be required to be reported to Council in the absence of a formal response to Council's email dated 21 December 2020.
9. On 31 March 2021, the applicant was emailed (D21/127622) to inform them that the additional information was required to be submitted to Council within 7 days.

Site History and Previous Approvals

In April 2016, a Planning Proposal (PP) was lodged concurrently with this DA to rezone the subject site to enable development of the land as currently proposed.

The previous land zoning (B5 Business Development) only permitted residential development for the purpose of 'shop top housing' which would require the entire ground floor to be developed for commercial use.

The PP sought to amend the following Land Zoning and Height of Buildings maps in *Shoalhaven Local Environmental Plan 2014* (SLEP 2014):

- Land Zoning – Sheet LZN_013E - amend zoning of subject land from B5 Business Development to B4 Mixed Use.
- Height of Buildings – Sheet HOB_013E - amend maximum height of building from 11m default height (no mapped) maximum building height as per clause 4.3(2A) of Shoalhaven Local Environmental Plan (LEP) 2014, to a height determined by the outcome of the character assessment (maximum of 15m).

On 12 September 2017, the Development Committee resolved (MIN 17.776) to adopt the PP as exhibited with the following addition:

“to avoid uncertainty, the width of the part of the site with an 8.5m maximum building height is 9m, as measured from the southern boundaries of Lot 1 and Lot 30 DP 25114, and south-eastern and south-western boundaries of Lot 29 DP 25114.”

Under Council's delegation, the PP was forwarded to NSW Parliamentary Counsel to draft the amendment to SLEP 2014 under Section 59(1) of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

On 6 October 2017, Amendment No. 16 to SLEP 2014 was published on the NSW Legislation website and commenced, bring into effect the zoning and building height changes outlined above.

The following is a list of relevant approvals for the subject site:

- BA73/1794: Showroom additions
- BA74/0275: Storage Shed
- BA76/0601: Car yard additions
- DA01/2756: Car service centre – alterations and additions – approved – 9 October 2001.
- DA02/2244: Commercial Workshop/Shed – approved – 30 August 2002.

The subject site has operated in the capacity of vehicle servicing, repairs, and sales for a significant period.

Proposed Development

The Development Application (DA) is seeking development consent for the demolition of existing structures and construction of a mixed-use development consisting of 55 apartments, including:

- 8 x 1-bedroom apartments
- 31 x 2 bedroom
- 16 x 3 bedroom
- 3 commercial tenancies (total commercial floor area 259m² (267m² including bathroom i.e., GFA) at ground floor with frontage to both Kinghorne Street and Albatross Road.
- A basement car parking area accessed via Albatross Road with 93 car parking spaces.
- Construction of a left turn slip lane (removal of on-street parking) for access into the basement car park off Albatross Road.
- Construction of a central median and signage on Albatross Road to control the movement of traffic in and out of the proposed development (left in and left out movements only).

A site plan, ground floor, elevations, landscape plan and photomontages are provided in **Figures 3 – 14**.

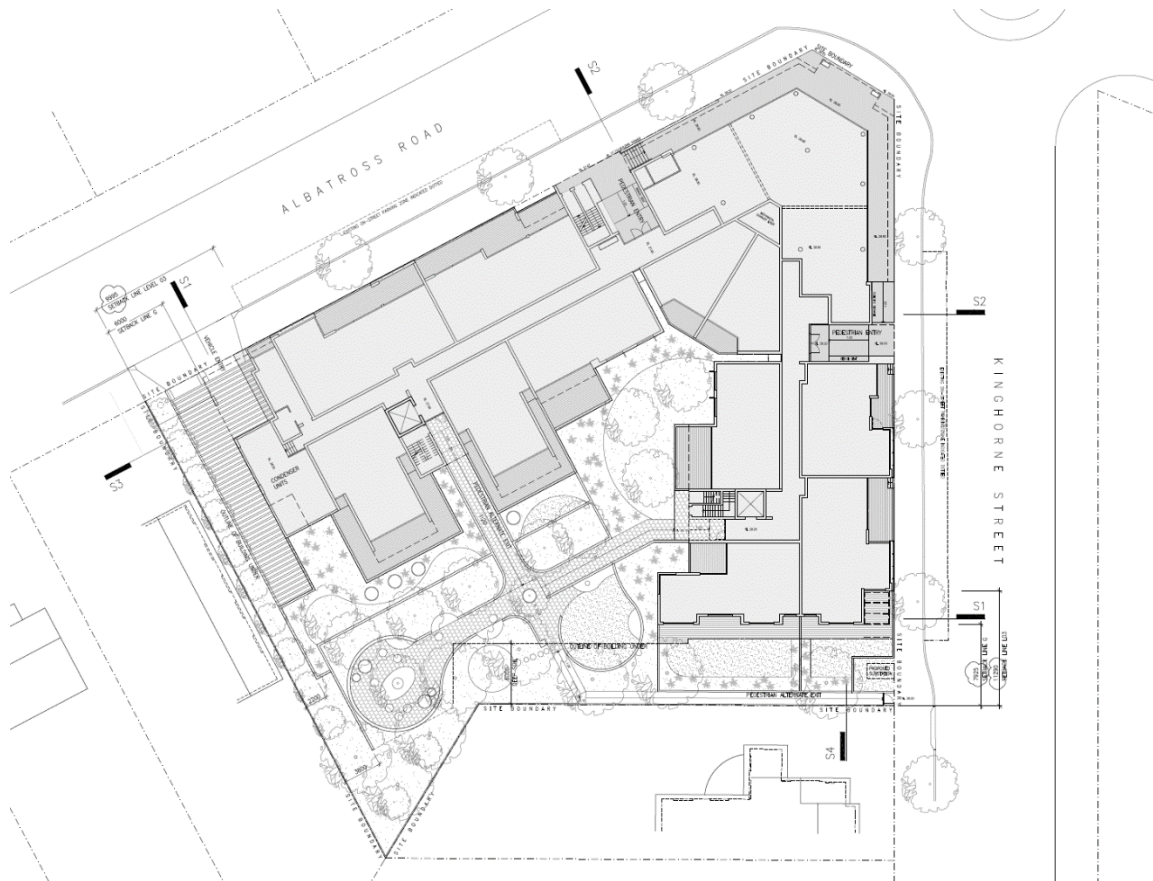


Figure 3 - Site Plan of the proposed development.

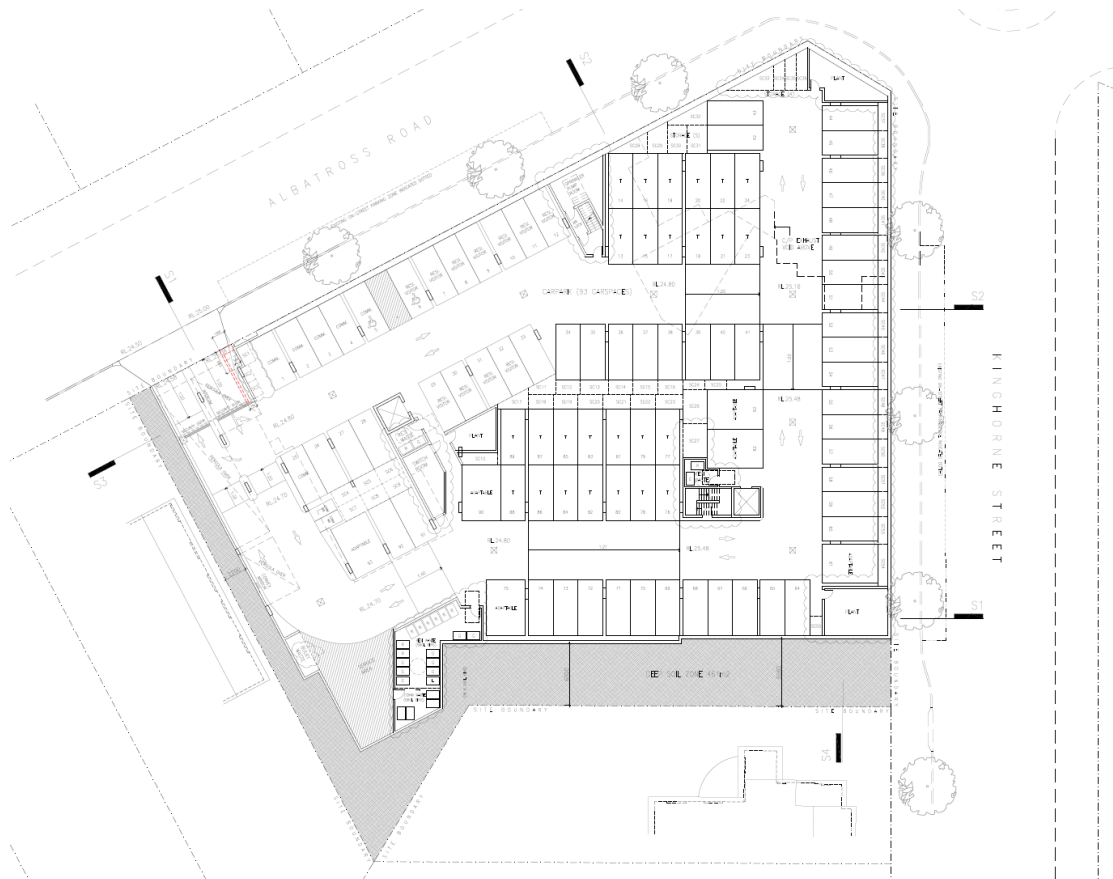


Figure 4 - Basement floor plan of the proposed development.

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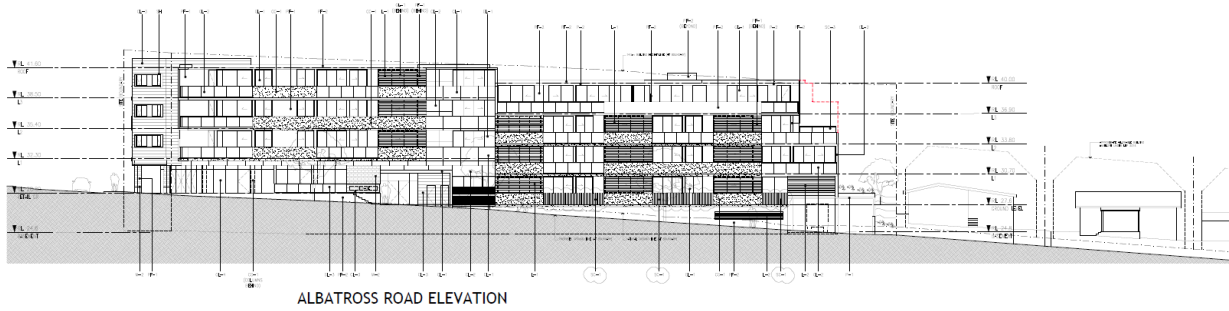


Figure 5 – Elevation of the proposed development (western elevation – Albatross Road)



Figure 6 - Elevations of the proposed development (eastern elevation – Kinghorne Street).

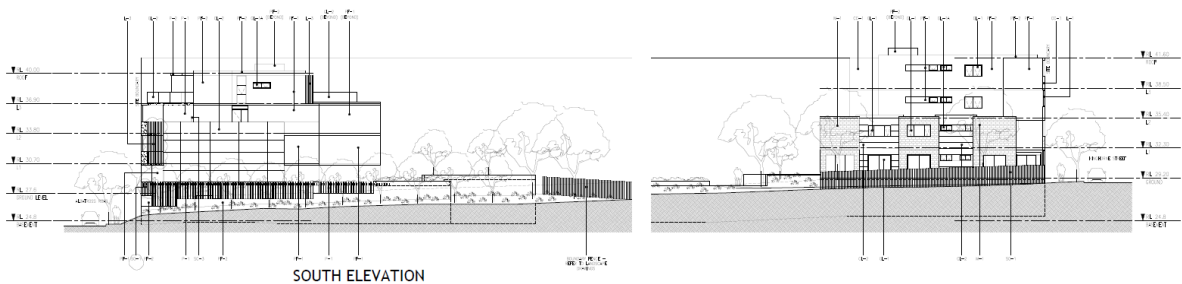


Figure 7 - Elevation of the proposed development (southern elevation).

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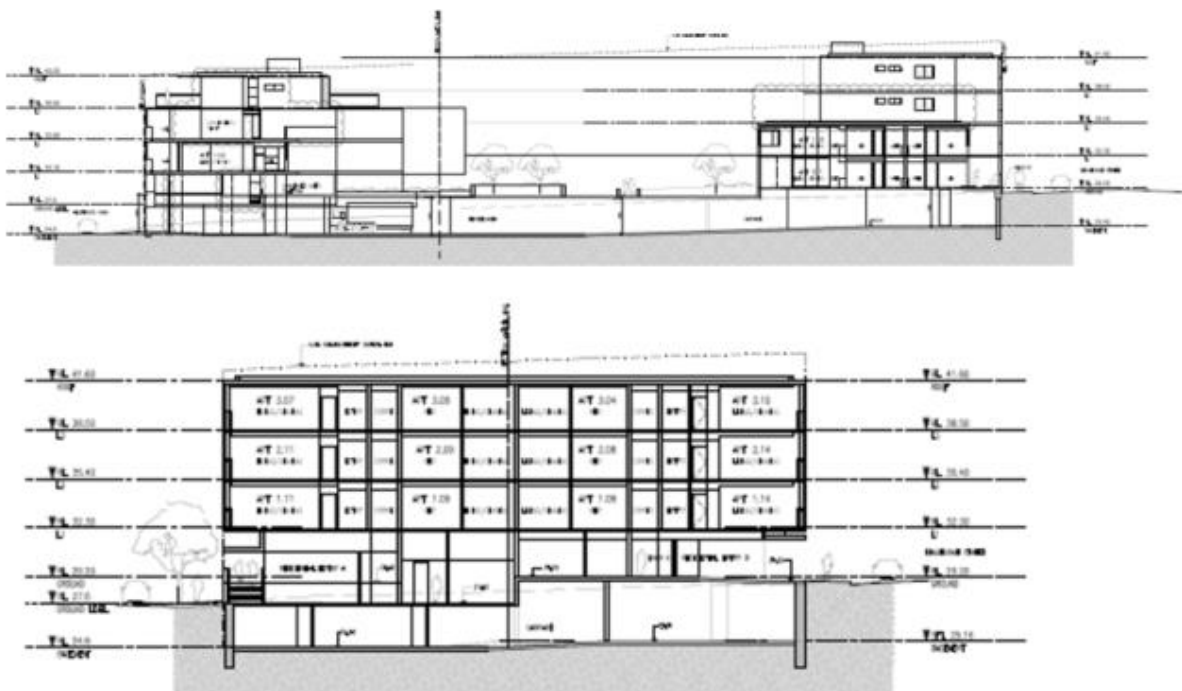


Figure 8 - Section plans of the proposed development.



Figure 9 - Section plans of the proposed development.

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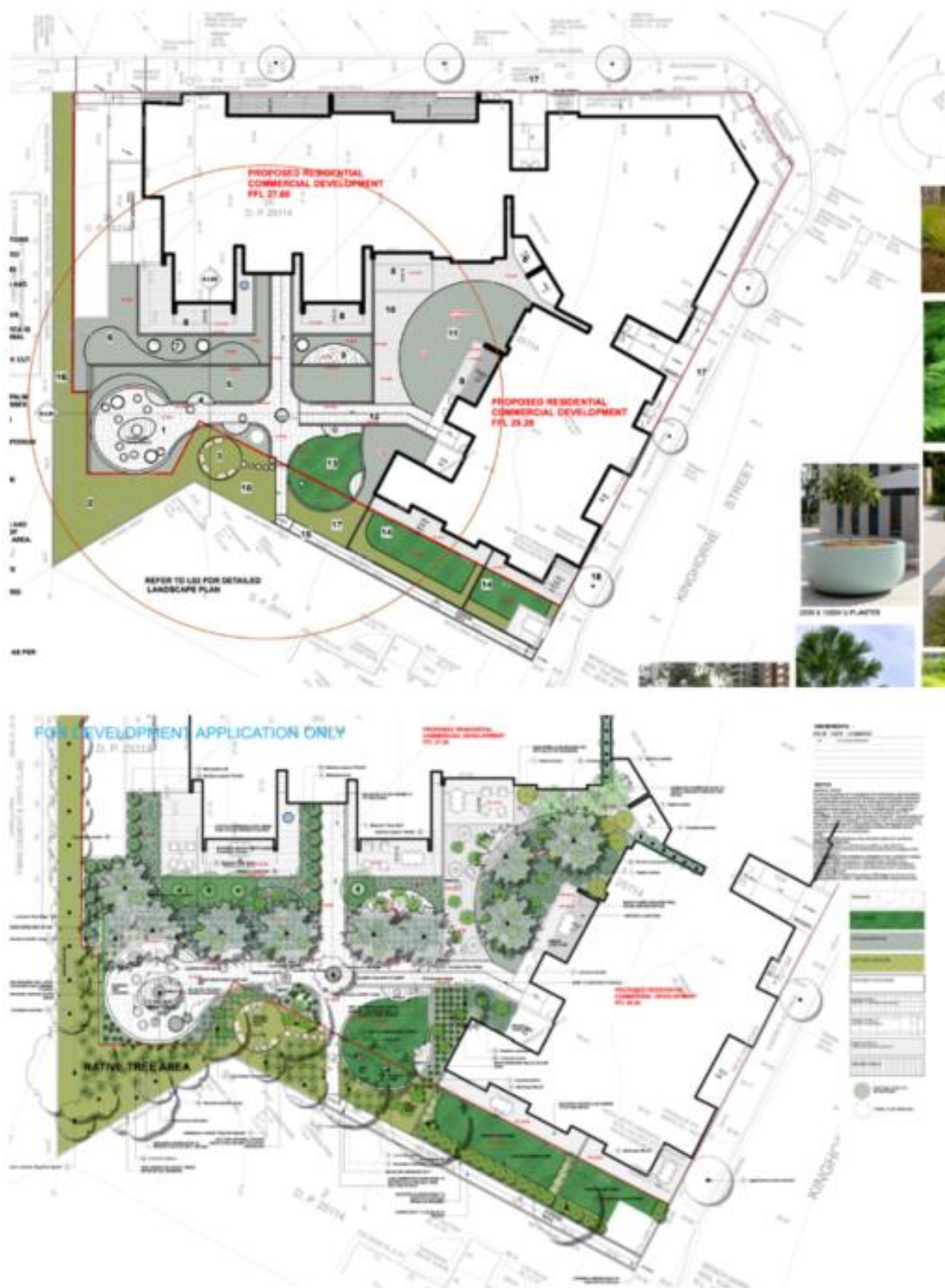


Figure 10 - Landscape plans of the proposed development.



Figure 11 - Photomontage view from the south-eastern (Kinghorne Street).



Figure 12 - Photomontage view from the north-eastern corner of Kinghorne and Kalandar Street.

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Figure 13 -Photomontage of the south-western elevation of the development as viewed from Albatross Road.

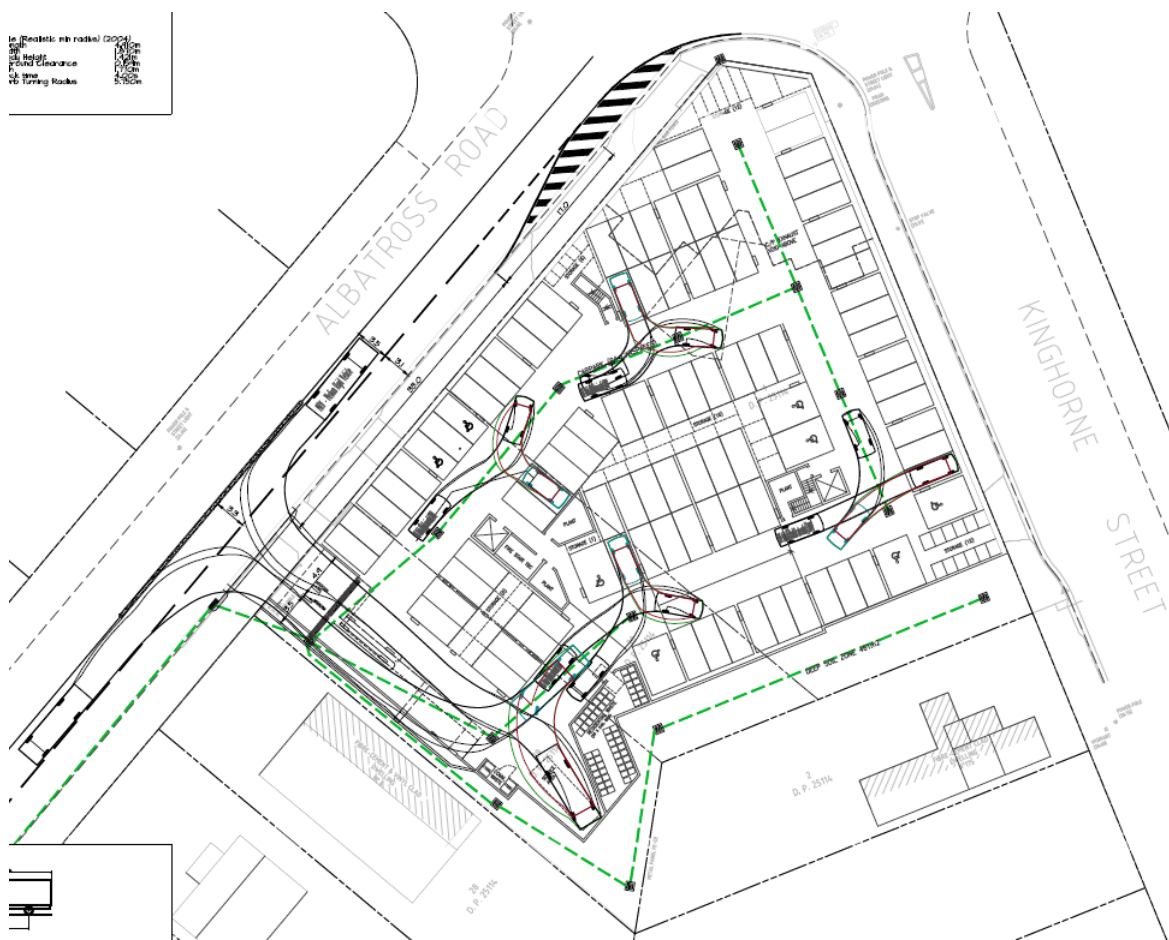


Figure 14 - Extract of engineering design plan indicating the slip-lane and entry design to the development. The design includes a central median on Albatross road to limit vehicle movements to a left in and left out movement.

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Subject Land

The subject site comprises 3 lots (subject site) located on the south-western corner of the intersection of Kinghorne Street, Albatross Road and Kalandar Street. The subject site is described and legally identified as follows:

- Lot 29 DP 25114 – 4 Albatross Road, Nowra
- Lot 30 DP 25114 – 2 Albatross Road, Nowra
- Lot 1 DP 25114 – 173 Kinghorne Street, Nowra

The site is an irregular shaped lot with a frontage of 74m to Albatross Road and 60m to Kinghorne Street with a 9.5m corner splay. The site falls gradually to the south-western corner of the site at Albatross Road.

The combined land area of the lots is approximately 3,497m².

Site & Context

An electrical wholesale supply business (L&H Electrical) occupies the site. The site had previously operated as a car servicing workshop that serviced and repaired motor vehicles. The site adjoins established residential uses to the south and west, a tyre service and residential uses to the north and public open space to the east.

The surrounding development can be broadly characterised as low-density residential consisting of single and two storey dwelling houses. Development immediately to the south consists of free-standing single storey dwellings and associated outbuildings.

Beyond these dwellings and on land bound by Albatross Road, Kinghorne Street and Albert Street is low density residential development – mainly of single storey construction and typically older housing stock.

To the west on the opposite side of Albatross Road is a continuation of predominately freestanding low-density dwellings with some multi dwelling housing developments.

To the east on the opposite side of Kinghorne Street, is a Council park and cemetery.

On the northern side of the intersection of Albatross Road and Kinghorne Street is an existing tyre shop. On the eastern side of Kinghorne Street at the intersection with Kalandar Street Council has recently approved 2 x 4 storey residential flat buildings, consisting of 91 apartments and basement car park (DA19/1846).

As mentioned earlier, the land was the subject of a planning proposal to zoning of subject land from B5 Business Development to B4 Mixed Use and amend maximum height of building to part 14m and 8.5m (transition to low density development to the south. The Planning Proposal was supported by a Character Assessment prepared by Urbanac dated May 2017 (D17/257485) which informed the building heights for the site.

The character assessment discussed the significance of providing transition in development scale and that a suitable building height will:

“ensure a smooth transition between new development and existing housing stock and maintain good amenity for the dwellings immediately adjoining the site.” (P10, of the Character Assessment by Urbanac.)

Issues

Traffic, Vehicular access and impacts on the local road network.

The following roads are proximate to the subject site and will be impacted by the proposed development:

- Princes Highway – State highway.

- Albatross Road/Kalandar Street – Regional classified road
- Kinghorne Street – local road
- Berry Street – local road

The applicant proposes the following access and upgrades along the Albatross Road frontage:

- Construct an 8.15m entry/exit driveway which can accommodate the manoeuvring of a medium rigid vehicle (MRV) in and out of the proposed development.
- Construct a basement car parking area accessed via Albatross Road with 93 car parking spaces. Thirteen stacked car parking spaces have been provided in the basement car park area. The stacked parking spaces will be allocated to the 3-bedroom apartments, whereby the management of the car spaces is managed by the apartment residents themselves.
- Access to the basement car park is to be managed via security pass and intercom arrangement.
- Construction of a left turn slip lane for access into the basement car park off Albatross Road and removal of the existing car parking on Albatross Road (six (6) spaces) adjacent to the north western boundary.
- The construction of a central median and signage be constructed along Albatross Road to control the movement of traffic in and out of the proposed development. the central median will force vehicles exiting from the proposed development into a left turn only movement. Similarly, the construction of a central median will force vehicles wishing to enter the proposed development into a left turn in movement only. Vehicles travelling east along Albatross Road will need to utilise the Kinghorne Street/Albatross Road roundabout to make a U-turn.

The site is capable of being serviced by an MRV. Swept path plans that have been provided to demonstrate the ability of a garbage truck to manoeuvre in the basement car park area for garbage collection.

With regard to the servicing of the commercial units, the applicant proposes to utilise the existing on-street parking on the eastern and western sides of Kinghorne Street. A loading zone can be provided on the western side of Kinghorne Street to provide direct servicing access to the commercial units. This would require the approval of the local traffic committee.

State Environmental Planning Policy (Infrastructure) 2007 (ISEPP)

The subject site has frontage to Albatross Road (MR92), being a classified regional road. Accordingly, clause 101 of ISEPP applies and reads as follows:

101 Development with frontage to classified road

(1) *The objectives of this clause are—*

- (a) *to ensure that new development does not compromise the effective and ongoing operation and function of classified roads, and*
- (b) *to prevent or reduce the potential impact of traffic noise and vehicle emission on development adjacent to classified roads.*

(2) *The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that—*

- (a) *where practicable and safe, vehicular access to the land is provided by a road other than the classified road, and*
- (b) *the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of—*
 - (i) *the design of the vehicular access to the land, or*

- (ii) *the emission of smoke or dust from the development, or*
- (iii) *the nature, volume or frequency of vehicles using the classified road to gain access to the land, and*
- (c) *the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.*

Under subclause 101(2) the consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that the subsequent considerations have been met by the proposal.

The 3 preconditions in subclause 101(2) are collective. Therefore, any one of the preconditions in subclause 101(2) about which Council is not satisfied could prevent the issue of consent:

- Subclause 101(2)(a) (*‘where practicable and safe, vehicular access to the land is provided by a road other than the classified road’*), is relevant because the site has frontage to Kinghorne Street (unclassified at this location) and Albatross Road (regional classified road at this location).

The applicant has submitted concept plans (D18/355817) (refer to **Figure 15**) to demonstrate that practicable and safe, vehicular access to the land can be provided by a road (Kinghorne Street) other than the classified road.

In order to determine whether the access to the development is “*practicable*”, the Court has established the test in the case of *Modern Motels Pty Ltd v Fairfield City Council* [2013] NSWLEC 138, Preston CJ at paragraph [42]:

*The phrase “where practicable” regulates the desired outcome (“vehicular access to the land is provided by a road other than a classified road”). **The consent authority is precluded from granting consent to a development on land that has frontage to a classified road unless it is satisfied that the desired outcome will be achieved**, where that desired outcome is practicable. That is to say, the practicability is as to the outcome of providing vehicular access to the land by a road other than the classified road. [emphasis added]*

The desired outcome is for access to the land to be via the unclassified local road – Kinghorne Street, which will ensure that the development does not compromise the effective and ongoing operation and function of the classified road (Albatross Road).

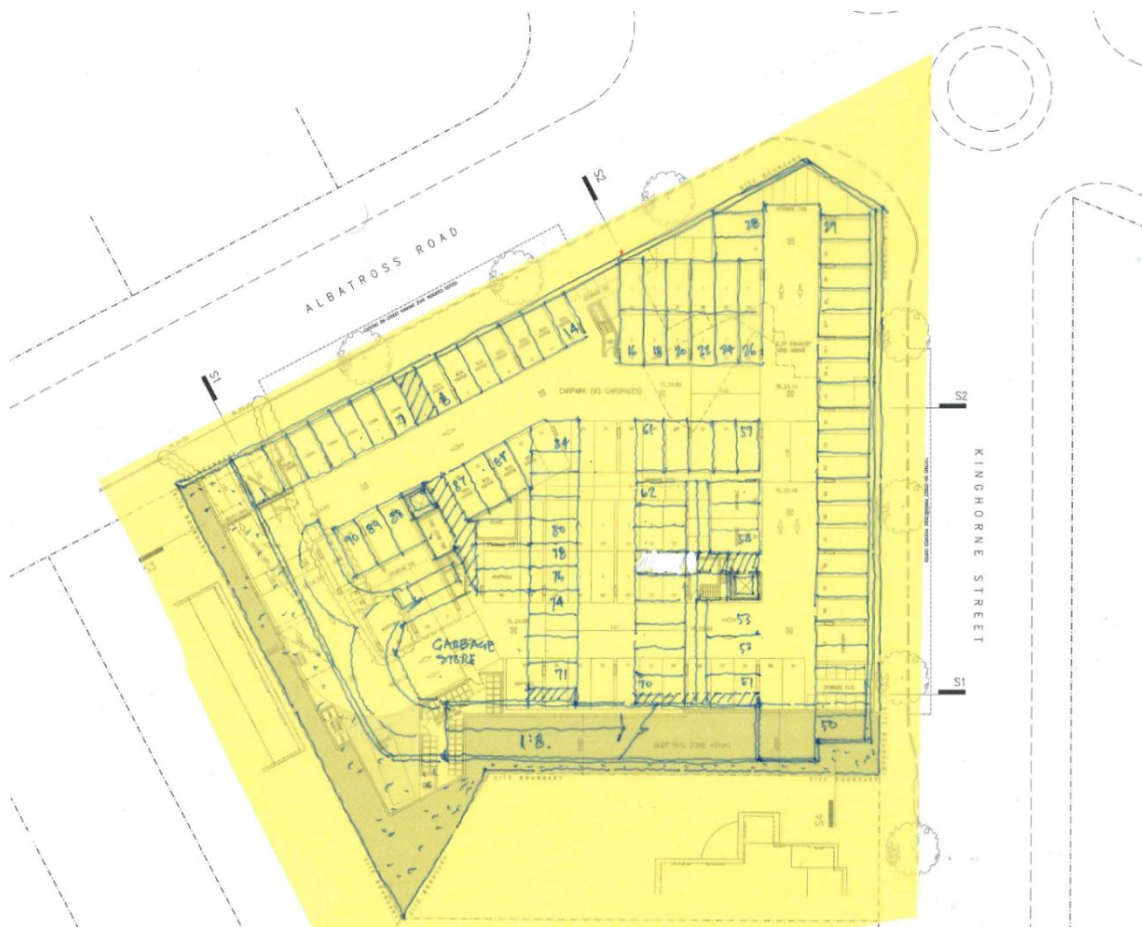


Figure 15 - applicant's submitted concept plan, demonstrating that access via Kinghorne Street is capable of being achieved.

- Subclause 101(2)(b) ("to prevent or reduce the potential impact of traffic noise and vehicle emission on development adjacent to classified roads") is relevant in that the applicant's submitted traffic reports do not (in the view of Council's Traffic and Transport Unit) establish that the safety, efficiency and ongoing operation of the classified road would not be adversely affected by the development as a result of the design of the vehicular access to the land, and the nature, volume or frequency of vehicles using the classified road to gain access to the land.

It is noted that on Page 15 of the *Traffic Management Report* prepared by Jones Nicholson, dated 27 February 2018 (D18/89444) concerning the Albatross Road access:

"The proposed Albatross Road access is considered satisfactory in that it will not impact upon the safety, efficiency and ongoing operation of Albatross Road. Furthermore, practicable access for all traffic movements is not achievable from Kinghorne Street to the proposed development. Therefore, the proposed access from Albatross Road can be approved in meeting the requirements of SEPP Infrastructure clause 101."

Council's Traffic and Transport Unit has considered all the applicant's detailed traffic reports and is not satisfied that the access onto Albatross Road demonstrates compliance with subclauses 101(2)(b)(i) and (iii) of the Infrastructure SEPP. It follows therefore that the development has not been able to meet preconditions 101(2)(a) and (b) and that Council therefore has questionable ability under the ISEPP to approve the development application in its current form.

- Subclause 101(2)(c) (“the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road”) is relevant, the noise criteria have been addressed in the submitted *Acoustic Report* prepared by KA Acoustics dated 6 November 2019 (D19/423688).

The recommendations of the report will ensure internal noise levels comply with those specified in Subclause 101(2)(c) are capable of being addressed by appropriate development consent conditions, if approved.

Car Parking

In relation to the numerical requirements for car parking for residents and visitors associated with the residential component of the development, this is set by Part 3J (Objective 3J-1) of the Apartment Design Guide. Design Criteria 1 of Objective 3J-1 requires that; *the minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less*. Granted that the car parking rates under car parking schedule in Chapter G21: Car Parking and Traffic in Shoalhaven Development Control Plan 2014 (SDCP 2014) are higher than the rate set by the Guide to Traffic Generating Developments, the Guide to Traffic Generating Developments applies.

Parking rate (Residential):

- 0.6 spaces per 1 bedroom unit.
- 0.9 spaces per 2-bedroom unit.
- 1.40 spaces per 3-bedroom unit.
- 1 space per 5 units (visitor parking).

Residential parking rate according to unit mix (55 units)

- 8 x 1-bedroom apartments (0.6 x 8) 4.8 spaces
- 31 x 2 bedroom (0.9 x 13) 41.65 spaces
- 16 x 3 bedroom (1.4 x 16) 22.4 spaces
- 55 Units (55 / 5) 11 visitor car spaces

Total number of car parking spaces required for residential units = 79.85 spaces required.

Parking Rate (Commercial):

The car parking rate applying to the commercial component of the development is to be calculated according to Chapter G21: Car Parking and Traffic in SDCP 2014

Commercial development within land zoned B3 Commercial Core at ground level or where access to the development is from ground level above an underground level of car parking is 1 space per 24m² gross floor area.

The commercial floor of 267m² is located at ground level with frontage to both Kinghorne Street and Albatross Road and is located above an underground level of car parking. Therefore, 267m² divided by 24m² = 11.13 spaces.

Total of Car Spaces Required: 79.85 (residential) + 11.13 (commercial) = 90.98 spaces or 91 spaces

Total of Car Spaces Proposed: 93 spaces

Note: In accordance with section 5.14 Loss of On-Street Car Parking – [Major Developments/Redevelopments](#) of Chapter G21 of SDCP2014, it is noted that, where

“major development/ redevelopment is proposed that has frontage to two or more streets, Council will take into account the loss of on-street car parking spaces arising from the construction of access, bus embayment’s and car parking restrictions, where these are directly related to the development proposal and will require these to be replaced on site.”

The design of the development including slip lane to provide left turn access to the development from Albatross road will result in the removal of all on-street car parking spaces along the Albatross Road development frontage to facilitate access. This will result in the removal of approximately six (6) on-street car parking spaces.

Taking into account the loss of car parking along the Albatross Road frontage (six (6) on-street spaces) the development is required to provide a total of **97 car spaces**. The development is arguably deficient **four (4) spaces**.

The deficiency in car parking is not supported for the following reasons:

- There are no valid reasons for reducing the number of the car parking spaces required to service the development.
- The proposal to provide access to the basement car park via an intercom to provide security to the basement car park area is unlikely to provide suitable public access to car parking for those members of the public wishing to visit the commercial uses and therefore there is likely to be a reliance on on-street car parking either to the south of the site or along Kinghorne Street. Furthermore, the location of the security gates and intercom to provide access to the basement car park is likely to result in unsafe manoeuvring of vehicles should they fail to gain access to the car park or result in queuing on Albatross Road should there be technical issues with the security gate (refer to **Figure 16**)
- The subject site is located 950m from the Nowra CBD and there is a likelihood that any customers visiting the site will drive to visit any of the proposed commercial tenancies or visit a resident of the building. The likely reliance on vehicles to access the development mean that providing sufficient car parking is a critical element of the development.
- There are no public parking facilities in the vicinity of the proposed development that may reduce the need for sufficient car parking to be provided in accordance with the car parking schedule.
- The availability of kerb-side parking opportunities in the vicinity of the proposed development will be reduced as a result of the proposed access arrangements on Albatross Road that will remove approximately six (6) on street car parking spaces.
- The existing and likely future traffic volumes on the surrounding road network, traffic circulation and safety are not likely to be improved through a reduction in on-site car parking.
- The anticipated impacts of not providing for adequate on-site car parking are likely to be significant and will impact on the broader locality.
- Strict compliance with the numerical standard is considered appropriate in the circumstances where the design and density of the development should respond to the constraints of the site. Were the residential component of the development to be considered wholly against the provisions of Chapter G21, the development would be deficient (including six (6) Albatross Road parking spaces) a total of eleven (11) spaces.
- The car parking supply proposed to service the site points to an overdevelopment of the site, potentially an issue with density of apartments and commercial floor area that is not consistent with the characteristics of the site.

- The proposal is likely to set an undesirable precedent granted the nature of the variation.
- The site is outside of the contribution area for parking and therefore developer contributions cannot be levied for the shortfall in on-site spaces.
- The development is located in a regional area. Residents are heavily reliant on private motor vehicles for transport as opposed to good, accessible, and frequent public transport. Therefore, adequate parking should be provided.

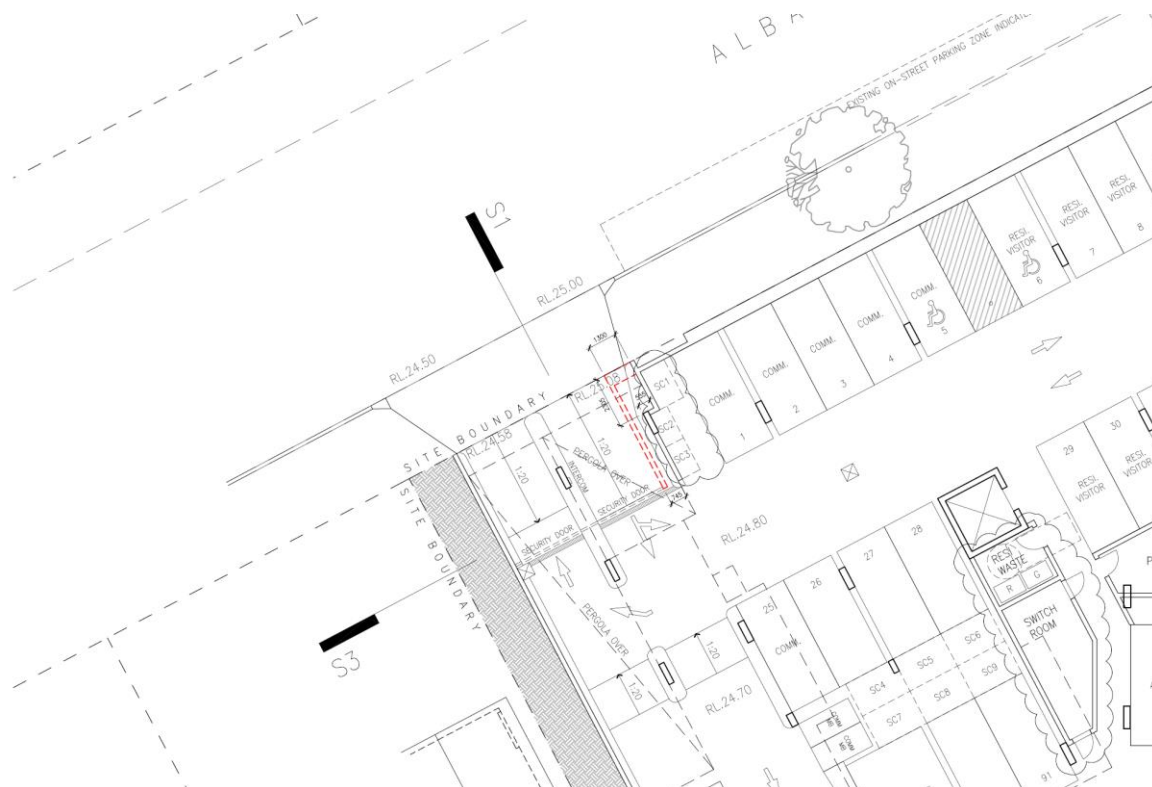


Figure 16 – Extract of the proposed basement plan indicating the location security door and intercom to gain access to the basement car park.

Variation to Clause 4.3 Height of Buildings

Development consent may, subject to clause 4.6, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument.



Figure 17 – Height controls applying to the site under the Shoalhaven Local Environmental Plan 2014

The application seeks a variation to clause 4.3 in accordance with Clause 4.6 of SLEP 2014.

Clause 4.3 of SLEP 2014 stipulates the objective and development standard for the height of buildings in Shoalhaven. Relevantly Clause 4.3(2) & (2A) state as follows:

(2) *The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*

The SLEP 2014, through Clause 4.3 sets an 8.5m (I2) height limit for part of the site and a 14m (N2) height limit for rest of the site.

The 8.5m height limit applies to a 9m portion of the south eastern portion of the site extending across all lots subject of the development application where the lot adjoins the lower density R1 General Residential land to the south.

Parts of the proposed building exceed the 8.5m (I2) and 14m (N2) height are limited to a portion of the development.

The development proposed exceeds the maximum building height as follows:

- 14m height limit by 480mm or 3.4%;
- 8.5m height limit 1.465m or 17.2%; and
- The percentage exceedance of the maximum building height ranges from 1.4% to 17.2% with the average height limit exceedance being 4.83%.

The submitted height plane diagrams prepared by Kannfinch Architects illustrate that the height limit breach and indicate the percentage breach at each point (Refer to **Figure 18 and 19**).

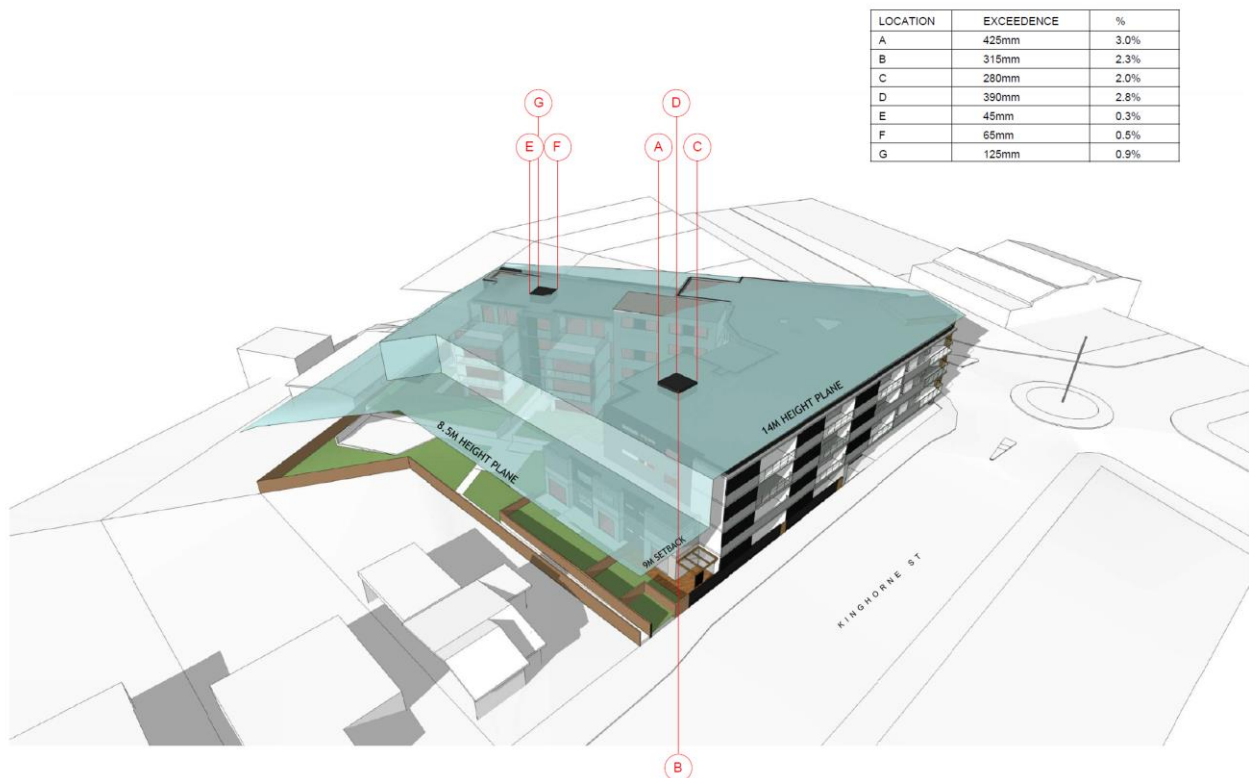


Figure 18 - Height plane instructions relating to the 14.0m (N2) maximum building height – south-eastern view from Kinghorne Street.

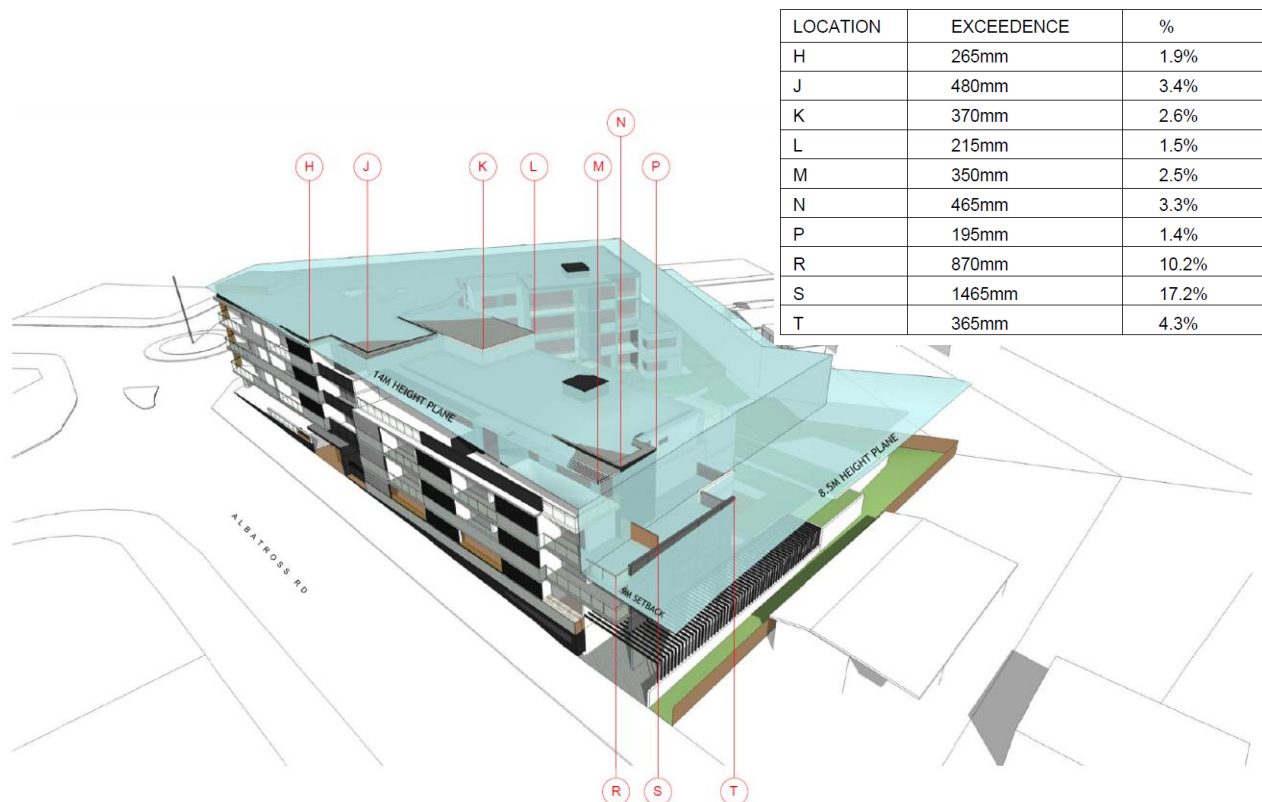


Figure 19 - Height Plane instructions relating to the 14.0m (N2) and 8.5m (I2) maximum building height - southwestern view from Albatross Street.

For the reasons detailed in the attached s4.15 Assessment Report (**Attachment 1**), it is not considered that the clause 4.6 variation request has satisfied:

1. That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (cl 4.6(3)(a)); and
2. That there are sufficient environmental planning grounds to justify contravening the development standard (cl 4.6(3)(b)). The written request needs to demonstrate both matters.

In conclusion it is considered that the applicant's request to vary the development standard as it relates to the maximum building height should not be supported for the following reasons:

- The variation request does not demonstrate that compliance with the development standard would be unreasonable and unnecessary in the circumstances of this development.
- The variation request does not demonstrate there are sufficient environmental planning grounds to justify the contravention, which results in a better planning outcome than a strictly compliant development in the circumstances of this particular case.
- Does not demonstrate the development meets the objectives of the development standard.
- The proposed development is for the preceding reasons, not considered to be in the public interest; and
- The applicant has failed to demonstrate that there will be better planning outcomes achieved through variation to the height standard as it relates to the 8.5m height of building standard associated with a 9m setback to the southern boundary, as opposed to strict compliance with the development standard or amending the application to reduce the extent of the variation.

It is noted that the principal reason for not supporting the variation request relates to the exceedance of the height plane for the portion of the building fronting Albatross Road.

The exceedance of the maximum building height as it relates to the 8.5m maximum building height is likely to result in a loss of privacy and has been demonstrated to result in a loss of solar access to the existing development (refer to the shadow diagrams prepared by Kannfinch Architects). The overshadowing of the adjoining residences (No. 6 Albatross Road and No. 175 Kinghorne Street) is exacerbated by the adoption of a 6m setback (opposed to the required 9m setback) for the portion of the building along the Albatross road frontage.

The adjoining lots can only be developed as single dwellings or dual occupancies under the existing R2 Low Density Residential zoning. The exceedance of the 8.5m maximum building height along the Albatross Road frontage will exacerbate the blank wall along the southern elevation and does not serve to create an appropriate transition as anticipated in the PP associated with the site.

The PP and review of planning controls were undertaken resulting in a specific conclusion i.e., height. The DA and design submitted concurrently to the process has however not been adjusted to achieve the height control. This is of concern as the change to the zone and strategic context has only been relatively recently 'made' and it is already being varied.

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

State Environmental Planning Policy No 65 - Design Quality of Residential Flat Development (SEPP 65) applies to the proposed development which consists of a new building, of at least 3 storeys and containing at least 4 or more dwellings.

Council does not have a Design Review Panel constituted by the Minister of Planning.

In accordance with Clause 28(2) of the SEPP 65, *In determining a development application for consent to carry out development to which this Policy applies, a consent authority is to*

take into consideration (in addition to any other matters that are required to be, or may be, taken into consideration):

- (a) the advice (if any) obtained from the design review panel, and
- (b) the design quality of the development when evaluated in accordance with the design quality principles, and
- (c) the Apartment Design Guide.

A SEPP 65 Design Statement has been prepared by a Registered Architect (D20/6044) addressing the requirements of SEPP 65 and was submitted with the application accordance with Clauses 50(1A) & 50(1AB) of the EP&A Regulation. The SEPP 65 Design Statement has address Schedule 1 of SEPP 65.

It is considered that the design quality of the development, when evaluated against the nine design quality principles does not satisfactorily exhibit exceptional design excellence when assessed against the following principles:

- Principle 2: Built form and scale
- Principle 3: Density
- Principle 4: Sustainability
- Principle 5: Landscape
- Principle 6: Amenity

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Schedule 1 Design quality principles	
Design quality principle	Comment
<p>Principle 1: Context and neighbourhood character</p> <p><i>Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship, and the character they create when combined. It also includes social, economic, health and environmental conditions.</i></p> <p><i>Responding to context involves identifying the desirable elements of an area's existing or future character. Well designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape, and neighbourhood.</i></p> <p><i>Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified</i></p>	<p>The surrounding development may be broadly characterised as low-density residential housing, consisting of single and two-storey dwelling houses. The development immediately to the south on Albatross Road and Kinghorne Street consists of free-standing single storey dwellings and associated outbuildings.</p> <p>Beyond these dwellings and on land bound by Albatross Road, Kinghorne Street and Albert Street is low-density residential development – mainly of single-storey construction.</p> <p>To the west and on the opposite side of Albatross Road is a continuation of predominately freestanding low-density dwellings with examples of established multi-dwelling housing developments.</p> <p>To the east, on the opposite side of Kinghorne Street, is a Council park and cemetery.</p> <p>On the northern side of the intersection of Albatross Road and Kinghorne Street on the western side of Kinghorne Street is an existing tyre shop. On the eastern side of Kinghorne Street at the intersection with Kalandar Street, Council has recently approved two - four storey residential flat buildings, consisting of 91 apartments and basement car park (DA19/1846).</p> <p>It is noted that the subject site was the subject of a</p>

<p>for change.</p>	<p>planning proposal to zoning of subject land from B5 Business Development to B4 Mixed Use and amend maximum height of building to part 14m and 8.5m (transition to low density development to the south. The Planning Proposal was supported by a Character Assessment prepared by Urbanac Dated May 2017 (D17/257485) which informed the building heights for the site.</p> <p>While it is acknowledged that the desired future character of the locality will include higher density residential development over a small foot print commercial space at ground floor it is not considered that the current design which includes an exceedance into the 8.5m maximum building height provides an appropriate representation of that future character along the southern elevation of the Albatross Road frontage.</p> <p>Despite Council's concerns with the transition of the development to the low scale development to the south, the development is considered to satisfy this design principle.</p>
<p>Principle 2: Built form and scale</p> <p><i>Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.</i></p> <p><i>Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation, and the manipulation of building elements.</i></p> <p><i>Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.</i></p>	<p>The scale and bulk of the building is generally appropriate for the locality when considering the development in the strategic context of the site and the desire for a higher density of development to occur from the site.</p> <p>However, the proposed setback of the building to the adjoining lower density R2 Low Density Residential zone does not provide an appropriate transition in built form or resolve the associated amenity impacts that are associated with the reduced setback.</p> <p>The southern portion of the building does not provide an appropriate transition to the low-density development to the south. While the applicant has made an attempt to reduce the bulk and scale of the development through the removal of two (2) apartments on the southern elevation, this has not overcome the need for a more suitable transition to the adjoining low-density environment.</p> <p>The aesthetics of the building are acceptable with appropriate colours and finishes.</p> <p>The development is not considered to satisfy this design principle.</p>
<p>Principle 3: Density</p> <p><i>Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context.</i></p> <p><i>Appropriate densities are consistent with the area's existing or projected population. Appropriate densities can be</i></p>	<p>55 units on a site area of 3,509m², has a dwelling density of approximately 1 dwelling per 64m².</p> <p>SLEP 2014 does not provide a floor space ratio under Clause 4.4 of the plan.</p> <p>While the density of development is consistent with that previously approved by Council in relation to the site on the north-eastern corner of Kinghorne and Kalandar Street (DA19/1846), it is not considered that the development <i>achieves a high level of amenity for residents and each apartment.</i> The lack of solar access</p>

<p><i>sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.</i></p>	<p>and ventilation to the single bedroom apartments is of concern and will result in reduced amenity for occupants of these units which is not consistent with this principle.</p> <p>Furthermore, the design of the development does not demonstrate comprehensive compliance with the ADG as it relates to standards for:</p> <ul style="list-style-type: none"> • <u>Solar access</u> - 13 of 55 apartments (24%) of apartments receive no sunlight between 9am and 3pm in mid-winter), • <u>Apartment size and layout</u> – the single bedroom apartment does not comply with the minimum widths (3.5m provided and 3.6m required) • <u>Private open space</u> – Several ground floor units do not provide at least 15sqm (G.04, G.08 and G.09) while other apartments do not provide a minimum depth of 3m (G0.2, G.03,G.04, G.08, G.10). • <u>Landscaped deep soil zone for larger blocks</u> - The total area of deep soil landscaping is 461m² (13% of the site area). The ADG recommends 15% deep soil zone for sites exceeding 1,500m². • <u>Setbacks to the adjoining low-density development</u> – the setback of the Albatross portion of the development adjoining the south western boundary does not appear to comply with the required 9m setback. 6m is proposed to the 3rd level, however as this is measured to a balcony it is considered that the setback must be a minimum of 9m. • <u>Common circulation and spaces</u> – the maximum number of apartments off a circulation core on a single level is eight. Lobby B services 11 apartments on levels 01, 02, and 10 apartments on Level 03. It is noted that the ADG accepts that where this design criteria cannot be achieved the total units accessed off a circulation core must not exceed 12. • <u>Apartment mix</u> - The mix of one-bedroom units is not considered to provide an appropriate distribution to suitable locations within the building, with all single bedroom units provided within the compromised southern side of the V-shaped design – limiting solar access, ventilation and unit design. • <u>Car parking</u> - Taking into account the loss of car parking along the Albatross Road frontage (six (6) on-street spaces) the development is required to provide a total of 97 car scapes. The development is arguably deficient four (4) spaces. <p>These non-compliances imply an overdevelopment of the site.</p> <p>It is likely however that the proposed density can be sustained having regard to existing or proposed infrastructure, public transport, access to jobs, community</p>
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	<p>facilities and the environment.</p> <p>The development is not considered to satisfy this design principle</p>
<p>Principle 4: Sustainability</p> <p><i>Good design combines positive environmental, social and economic outcomes.</i></p> <p><i>Good sustainable design includes use of natural cross ventilation and sunlight for the amenity and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and reuse of materials and waste, use of sustainable materials and deep soil zones for groundwater recharge and vegetation.</i></p>	<p>37 of 55 apartments (67%) receive at least 3 hours direct sunlight between 9.00am and 3.00pm in mid-winter</p> <p>13 of 55 apartments (24%) of apartments receive no sunlight between 9am and 3pm in mid-winter. The ADG design criteria specified that a maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter. The development does not comply with the maximum number of units receiving no solar access.</p> <p>The majority of the proposed apartments have been designed to achieve satisfactory natural cross ventilation. for the amenity and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. However, the design of the single bedroom apartments results in poor solar access and natural ventilation. There is likely to be a reliance on mechanical heating and cooling for these apartments.</p> <p>The central courtyard and the principal area of communal open space will not receive adequate solar access during winter. Due to the design of the development and location of the communal open space areas on the southern side of the building, the communal open space areas will have compromised sunlight access, and this does not appear to be capable of resolution without a significant redesign of the buildings and location of communal open space.</p> <p>The proposed development is supported by a BASIX Certificate as required under the EP&A Regulation; however, this is not reflective of current layout.</p> <p>Stormwater is proposed to be reused for gardens in the communal area.</p> <p>The development is not considered to satisfy this design principle as it relates to the design of single bedroom units.</p> <p>The development is not considered to satisfy this design principle</p>
<p>Principle 5: Landscape</p> <p><i>Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and contextual fit of well-designed developments is achieved by contributing to the landscape</i></p>	<p>The proposed landscaping meets the minimum deep soil requirements under the ADG. The total area of deep soil area is 461m² (13% of the site area). 328m² (9% of the site area) has a minimum dimension of 6m or larger. These areas have been designed to accommodate larger trees.</p> <p>The site exceeds 1500m² and as such it is appropriate to require 15% of the site as deep soil landscaped area. Additional deep soil planting could be provided through the reduction of units / building footprint and providing</p>

<p><i>character of the streetscape and neighbourhood.</i></p> <p><i>Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, co-ordinating water and soil management, solar access, micro-climate, tree canopy, habitat values and preserving green networks.</i></p> <p><i>Good landscape design optimises useability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity and provides for practical establishment and long-term management.</i></p>	<p>landscaping along the Kinghorne and Albatross Road frontages.</p> <p>Landscape plans have been reviewed by Council's landscape architect and are generally satisfactory when considering the plantings and maintenance arrangements (subject to recommended conditions if approved).</p> <p>There are no existing landscape features of note that would warrant retention.</p> <p>The development is not considered to satisfy this design principle.</p>
<p>Principle 6: Amenity</p> <p><i>Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident wellbeing.</i></p> <p><i>Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas and ease of access for all age groups and degrees of mobility.</i></p>	<p>The proposed development does not achieve compliance with the ADG as it relates to the minimum standard for solar access, apartment size and layout, deep soil landscaping for larger sites, private open space, common circulation and spaces, apartment mix, car parking as detailed in the ADG compliance table in the s4.15 Assessment Report – Appendix 1.</p> <p>The development is not considered to satisfy this design principle</p>
<p>Principle 7: Safety</p> <p><i>Good design optimises safety and security within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose. Opportunities to maximise passive surveillance of public and communal areas promote safety.</i></p> <p><i>A positive relationship between public and private spaces is achieved through clearly defined</i></p>	<p>The design is considered to appropriately address Crime Prevention through Environmental Design (CPTED) matters and reduces areas of potential concealment/entrapment. Passive surveillance opportunities are available in the development.</p> <p>There are defined secure access points and well-lit and visible areas that are easily maintained and appropriate to the location and purpose. Entry points are located adjacent to the activated retail zone and designed to minimise opportunity for loitering.</p> <p>The residential lobbies and car park are proposed to operate on secured access. The car park access doors will operate individually via remote control (or similar) for</p>

<p><i>secure access points and well-lit and visible areas that are easily maintained and appropriate to the location and purpose.</i></p>	<p>residents and retail tenants, with an intercom system for visitors.</p> <p>The development is considered to satisfy this design principle.</p>
<p>Principle 8: Housing diversity and social interaction</p> <p><i>Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.</i></p> <p><i>Well designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix.</i></p> <p><i>Good design involves practical and flexible features, including different types of communal spaces for a broad range of people and providing opportunities for social interaction among residents.</i></p>	<p>The proposed development provides additional dwellings, with a range of sizes, in an area where additional housing is needed and is near a variety of services.</p> <p>The development provides both communal open space and a communal room. It is noted that the resident's room located on the south-west wing of the development has a compromised and diminutive floor area (20m²) that is not likely to be used by a broad range of people and is unlikely to provide opportunities for social interaction among residents.</p> <p>The development is considered to satisfy this design principle.</p>
<p>Principle 9: Aesthetics</p> <p><i>Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours, and textures.</i></p> <p><i>The visual appearance of a well-designed apartment development responds to the existing or future local context, particularly desirable elements, and repetitions of the streetscape</i></p>	<p>The architectural treatment is satisfactory.</p> <p>The development is considered to satisfy this design principle.</p>

The development is considered to satisfactorily address the remaining design quality principles.

Clause 30(2) of SEPP 65 requires residential apartment development to be designed in accordance with the ADG.

The development has been assessed against the ADG and a full assessment is provided within the s.4.15 Assessment Report (Appendix 1 of this Report).

Parts 3 and 4 of the ADG provide objectives, design criteria and design guidance for the siting, design, and amenity of apartment developments. In accordance with ADGs, development needs to demonstrate how it meets the objective and design criteria. The design criteria set a clear measurable benchmark for how the objective can be practically

achieved. If it is not possible to satisfy the design criteria, applications must demonstrate what other design responses are used to achieve the objective and the design guidance can be used to assist in this.

The development is non-complaint with the following Objectives and Design Criteria in Part 3 and 4 of the ADG, as outlined in the table below. Appendix A to the Section 4.15 Assessment Report (**Attachment 1**) provides a full assessment of the proposed development against each of the objectives of the ADG.

Objective	Assessment
<p>3E-1 Deep Soil Zones</p> <p>Deep soil zones provide areas on the site that allow for and support healthy plant and tree growth. They improve residential amenity and promote management of water and air quality.</p> <p>On some sites it may be possible to provide larger deep soil zones, depending on the site area and context:</p> <ul style="list-style-type: none"> • 10% of the site as deep soil on sites with an area of 650m² - 1,500m² • 15% of the site as deep soil on sites greater than 1,500m² 	<p>The total area of deep soil landscaping is 461m² (13% of the site area). 328m² (9% of the site area) has a minimum dimension of 6m or larger. These areas have been designed to accommodate larger trees.</p> <p>The site exceeds 1500m² and therefore it is appropriate to require 15% of the site as deep soil landscaped area. Landscape plans have been reviewed by Council's landscape architect and are satisfactory, subject to consideration of the requested changes.</p>
<p>3F-1 Visual Privacy</p> <p>Adequate building separation distances are shared equitably between neighbouring sites, to achieve reasonable levels of external and internal visual privacy.</p> <p>Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum required separation distances from buildings to the side and rear boundaries are as follows (for building heights up to 12m):</p> <p>Habitable rooms and balconies: 6m Non-habitable rooms: 3m</p> <p>Note: Apartment buildings should have an increased separation distance of 3m (in addition to the requirements set out in design criteria 1) when adjacent to a different zone that permits lower density residential development to provide for a transition in scale and increased landscaping (figure 3F.5)</p>	<p>The adjacent sites to the south of the development site are zoned R2 Low Density Residential and currently contain single dwelling houses per lot.</p> <p>The setback of the Kinghorne portion of the development to the adjoining southern property boundary requires a minimum setback of 9m. The setback of this portion of the building varies for the ground and first floor of between 8m and 9m to windows and balconies and therefore does not strictly comply with the required 9m setback.</p> <p>The setback of the Albatross portion of the development adjoining the south western boundary does not appear to comply with this requirement. 6m is proposed to the 3rd level, however as this is measured to a balcony it is considered that the setback must be a minimum of 9m.</p>

<p>3H-1 Vehicle Access</p> <p>Vehicle access points are designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes.</p>	<p>Vehicle access is provided at the southern end of the development along Albatross Road. The vehicular access is generally incorporated into the building's façade. Security gates have been setback from the frontage. While Council does not raise any concern with the design or integration of the access into the building from a strictly aesthetic standpoint it is noted that the car park entry and access should be located on secondary streets or lanes where available.</p> <p>The basement car park and manoeuvring are to be designed to comply with the Australian Standards and Chapter G21: Car Parking and Traffic.</p> <p>The proposal to access the development from the Regionally Classified Road (Albatross Road) is not supported and the applicant has been encouraged to provide access via the unclassified local road (Kingham Street).</p> <p>Under the ISEPP, a consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that, among other things, 'where practicable, vehicular access to the land is provided by a road other than the classified road'.</p> <p>It is considered that consent must not be granted for access off Albatross Road if practicable vehicular access is available to the site from a road other than the Albatross Road (that being Kinghorn Street). The applicant has submitted concept plans (D18/355817) indicating that there was practicable vehicular access from Kinghorn Street. This approach is reflected in the Land and Environment Court judgements.</p>
<p>3J-1 Bicycle and Car Parking</p> <p>Car parking is provided based on proximity to public transport in metropolitan Sydney and centres in regional areas.</p>	<p>Total number of car parking spaces required for residential units = 79.85 spaces required.</p> <p>The car parking rate applying to the commercial component of the development is to be calculated according to Chapter G21: Car Parking and Traffic in SDGP 2014</p> <p>Commercial development within land zoned B3 Commercial Core at ground level or where access to the development is from ground level above an underground level of car parking is 1 space per 24m² gross floor area.</p> <p>The commercial floor of 267m² is located at ground level with frontage to both Kinghorn Street and Albatross Road and is located above</p>

	<p>an underground level of car parking. Therefore, 267m² divided by 24m² = 11.13 spaces.</p> <p>Total of Car Spaces Required: 79.85 (residential) + 11.13 (commercial) = 90.98 spaces or 91 spaces</p> <p>Total of Car Spaces Proposed: 93 spaces</p> <p>Note: In accordance with section 5.14 Loss of On-Street Car Parking – Major Developments/ Redevelopments of Chapter G21 of SDCP2014, it is noted that:</p> <p>“major development/ redevelopment is proposed that has frontage to two or more streets, Council will take into account the loss of on-street car parking spaces arising from the construction of access, bus embayment's and car parking restrictions, where these are directly related to the development proposal and will require these to be replaced on site.”</p> <p>The design of the development including slip lane to provide left turn access to the development from Albatross road will result in the removal of all on-street car parking spaces along the Albatross Road development frontage to facilitate access. This will result in the removal of approx. six (6) on-street car parking spaces.</p> <p>Taking into account the on-street car parking loss along the Albatross Road frontage (six (6) on-street spaces) the development is required to provide a total of 97 car spaces.</p> <p>The development is deficient four (4) spaces.</p> <p>Excavation of the site has been minimised in the placement of the car park access at the lowest point in the site.</p> <p>The car parking area has been designed to suit the site which is triangular. However, a logical layout is generally achieved.</p> <p>The car park protrudes above ground level greater than 1m however this is solely along the Albatross Road frontage and extends for less than 50% of the frontage. To minimise the visual impact appropriate colours are to be utilised and varied materials for balustrades located above the car parking area.</p> <p>Mixture of natural ventilation and a mechanical exhaust are to be utilised.</p>
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3J-2 Bicycle and Car Parking Parking and facilities are provided for other modes of transport.	Each resident has access to a secure storage cage which is large enough to accommodate a bicycle. Residential visitor and customer bicycle spaces are proposed in the form of post mounted bike rails within the road reserve, should Council require them.
4A-1 Solar and Daylight Access To optimise the number of apartments receiving sunlight to habitable rooms, primary windows, and private open space.	37 of 55 apartments (67%) receive at least 3 hours direct sunlight between 9.00am and 3.00pm in mid-winter 13 of 55 apartments (24%) of apartments receive no sunlight between 9am and 3pm in mid-winter.
1. Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid-winter in the Sydney Metropolitan Area and in the Newcastle and Wollongong local government areas.	While the applicant has argued that the non-compliance with the Design Criteria is “ <i>due to limitations imposed by the site configuration, southern slope and orientation</i> ” it is noted that there are limited site constraints and there is opportunity to reduce the number of internal facing apartments and the design of dual aspect apartments overlooking the internal communal open space area and either Albatross or Kinghorne Street. Of concern is that there are only two single bedroom apartments located on the third level that achieve the minimum daylight access with no lower-level single bedroom apartments receiving any solar access. The minor non-compliance with the requirement that no less than 70% of apartments in a building receive a minimum of 3 hours direct sunlight could be readily accepted were the design to exceed the 15% of apartments in a building receiving no direct sunlight between 9 am and 3 pm at mid-winter. The substantial non-compliance with the maximum number of apartments receiving no direct sunlight between 9 am and 3 pm at mid-winter is a significant concern and will significantly increase the reliance on artificial lighting and heating, reduce energy efficiency and residential amenity. The design attempts to maximise the number of north facing apartments and limit the number of single aspects south facing apartments, however,
2. In all other areas, living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 3 hours direct sunlight	
3. between 9 am and 3 pm at mid-winter. A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter.	
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	<p>it is noted that the internal facing single aspect apartments provided limited or no solar access. It is considered further consideration of the design to further limit single aspect southerly facing apartments would provide increased solar access and amenity to future residents.</p> <p>It is noted that, where possible, the building design maximises the number of living areas with a northerly aspect ensuring a high level of amenity is achieved. Services areas are generally provided to the rear or in central locations minimising their impact on the most desirable areas of the apartments.</p>
<p>4D-3 Apartment Size and Layout</p> <p>Apartment layouts are designed to accommodate a variety of household activities and needs.</p>	<p>The open plan designs allow for a range of activities to happen in the kitchen and living spaces.</p> <p>1-bedroom apartment widths are 3.5m - this is marginally under 3.6m. The non-compliance is marginal and does not impede the usable area of the living rooms and would not likely have a significant detrimental impact on the amenity of the dwelling or resident use of the units impacted. However, it is noted that the design of the single bedroom units is once again impacted by the proposed design.</p>
<p>1. Master bedrooms have a minimum area of 10m² and other bedrooms 9m (excluding wardrobe space)</p>	
<p>1. Bedrooms have a minimum dimension of 3m (excluding wardrobe space)/.</p>	
<p>2. Living rooms or combined living/dining rooms have a minimum width of:</p> <ul style="list-style-type: none"> • 3.6m for studio and 1-bedroom apartments • 4m for 2- and 3-bedroom apartments 	
<p>3. The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts</p>	
<p>4E-1 Private Open Space and Balconies</p> <p>Apartments provide appropriately sized private open space and balconies to enhance residential amenity.</p> <p>1. All apartments are required to have primary balconies as follows: Studio: 4m² 1 Bedroom: 8m², 2m minimum depth 2 Bedroom: 10m², 2m minimum depth 3 Bedroom: 12m², 2.4m minimum</p>	<p>All balconies exceed the minimum area for the respective unit types. All balconies have a minimum depth of 2m.</p> <p>A number of the ground floor units do <u>not</u> provide at least 15sqm (G.04, G.08 and G.09) while other apartments do <u>not</u> provide a minimum depth of 3m (G0.2, G.03,G.04, G.08, G.10).</p>

<p>depth The minimum balcony depth to be counted as contributing to the balcony area is 1m.</p> <p>2. For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area. of 15m² and a minimum depth of 3m.</p>	
<p>4F-1 Common Circulation and Spaces</p> <p>Common circulation spaces achieve good amenity and properly service the number of apartments.</p> <p>1. The maximum number of apartments off a circulation core on a single level is eight.</p> <p>2. For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40</p>	<p>Common spaces are provided with solar access, natural ventilation and allow for universal access.</p> <p>Lobby B services 11 apartments on levels 01, 02, and 10 apartments on Level 03. The corridors have been designed with light slots to capture natural light and ventilation to maintain amenity. * Note: Where design criteria 1 is not achieved, no more than 12 apartments should be provided off a circulation core on a single level</p>
<p>4K-2 Apartment Mix</p> <p>The apartment mix is distributed to suitable locations within the building.</p>	<p>The mix of one-bedroom units is not considered to provide an appropriate distribution to suitable locations within the building.</p> <p>The single bedroom units are limited to the southern elevation of the V-shaped building design which has resulted in units with severely compromised solar access, ventilation and private open space that will likely result in units with diminished amenity. The irregular floor plans will also result in odd-shaped rooms and the potential loss of the use of usable space within these units.</p> <p>It is considered that the single bedroom units should be spread more evenly throughout the development to enable these units a greater likelihood for increased amenity</p>

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State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 (SEPP (BASIX))

The provisions of SEPP (BASIX) apply to the site. In accordance with the requirements of SEPP BASIX, Certification for each dwelling has been submitted with the development application.

Clause 55A of the *Environmental Planning and Assessment Regulation 2000* (EP&A Regulation) allows for a development application to be amended provided a new BASIX

certificate is submitted to account for those amendments. An amended BASIX Certificate, to reflect amended plans was not submitted with the amended application.

Council cannot issue development consent without the provision of a new BASIX Certificate that reflects the amended application i.e., 55 residential units.

Planning Assessment

The DA has been (or will be) assessed under s4.15 of the Environmental Planning and Assessment Act 1979. Please refer to **Attachment 1**.

Policy Implications

A key policy consideration is height.

Currently, there is an 8.5m and 14m height limit which applies to the site under SLEP 2014.

The development proposed exceeds the maximum building height as follows:

- 14m height limit by 480mm or 3.4%;
- 8.5m height limit 1.465m or 17.2%; and
- The percentage exceedance of the maximum building height ranges from 1.4% to 17.2% with the average height limit exceedance being 4.83%.

The variation has been addressed by the applicant via a formal clause 4.6 variation statement. The matter is discussed in the attached section 4.15 report in further detail (**Attachment 1**) and has been considered previously in this Report.

Consultation and Community Engagement:

Six (6) public submissions were received in relation to Council's notification of the development. Six (6) were objections to the development. Nil (0) were in support of the development. The notification was made in accordance with Council's Community Consultation Policy with letters being sent within a m buffer of the site. The application was notified for a period of 30 days and advertised in the local papers in accordance with Council's Community Consultation Policy

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

- Traffic impacts on local road network
- Impact of additional cars parking on the on-street car parking
- Amenity impacts associated with overlooking and overshadowing
- Insufficient justification and planning purpose to support the PP.
- The bulk and scale of the development is not consistent with the low scale development to the south of the site and the site would be better developed for multi-dwelling housing.
- The proposed setbacks of the development to the southern boundary are not appropriate
- The pedestrian access point to the development on the Kinghorne Street frontage will result in safety and security issues

The planning concerns raised by the submitters are addressed in the attached section 4.15 report in further detail (**Attachment 1**).

Financial Implications:

There are potential cost implications for Council in the event of a refusal of the application. Such costs would be associated with defending any appeal in the Land and Environment Court, should the applicant utilise appeal rights afforded under the *Environmental Planning and Assessment Act 1979* (EP&A Act).

Legal Implications

Pursuant to section 8.2 of the EP&A Act, a decision of the Council may be subject of a review by the applicant in the event of approval or refusal. If such a review is ultimately pursued (if the recommendation is not adopted), the matter would be put to Council for consideration.

Alternatively, an applicant may also appeal to the Court against the determination pursuant to section 8.7 of the EP&A Act.

Summary and Conclusion

This application has been assessed having regard for section 4.15 (Evaluation) under the EP&A Act. Based upon the s4.15 Assessment Report (**Attachment 1**) it is recommended that Development Application No. DA16/1465 be refused for the following reasons.

1. Non-compliance with SEPP 65 in relation to the Apartment Design Guide (s4.15(1)(a)(i) of the EPA Act);

The development fails to satisfy clause 30(2)(a) and (b) of SEPP 65, in that the development does not demonstrate that adequate regard has been given to:

- (a) the design quality principles (Principle 2: Built form and scale; Principle 3: Density; Principle 4: Sustainability; Principle 5: Landscape; Principle 6: Amenity), and
 - (b) the objectives specified in the Apartment Design Guide for the relevant design criteria (3E-1 Deep Soil Zones, 3F-1 Visual Privacy, 3H-1 Vehicle Access, 3J-1 Bicycle and Car Parking, 3J-2 Bicycle and Car Parking, 4A-1 Solar and Daylight Access, 4D-3 Apartment Size and Layout, 4E-1 Private Open Space and Balconies, 4F-1 Common Circulation and Spaces, 4K-2 Apartment Mix).
2. The proposal exceeds the maximum building height development standard under clause 4.3 of SLEP 2014. The applicant's written request to vary the maximum building height development standard has not adequately addressed matters required to be demonstrated by clause 4.6(3)(a) and (b) of SLEP 2014. The clause 4.6 Variation Request does not provide sufficient environmental planning grounds to support the variation, nor that compliance is unnecessary or unreasonable. (s4.15(1)(a)(i) of the EPA Act).
 3. The development has failed to satisfy Council of preconditions clause 101(2)(a) and (b) of the ISEPP (s4.15(1)(a)(i) of the EPA Act).

In accordance with clause 101(2)(a) and (b) of the ISEPP, Council must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that:

- (a) where practicable and safe, vehicular access to the land is provided by a road other than the classified road, and
- (b) the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of:
 - (i) the design of the vehicular access to the land, or
 - (ii) the emission of smoke or dust from the development, or

- (iii) the nature, volume or frequency of vehicles using the classified road to gain access to the land
4. Clause 55A of the *Environmental Planning and Assessment Regulation 2000* allows for a development application to be amended provided a new BASIX certificate is submitted to account for those amendments. An amended BASIX Certificate, to reflect amended plans was not submitted with the amended application.
 5. The proposed development is inconsistent with the Objectives, Performance Criteria and Acceptable Solutions as they relate to the following provisions of Chapter G21: Car Parking and Traffic Shoalhaven Development Control Plan 2014 (SDCP 2014) (s4.15(1)(a)(iii) of the EPA Act):
 - (a) 5.2 Traffic.
 - (b) 5.4 Access.
 - (c) 5.14 Loss of On-Street Car Parking – Major Developments/ Redevelopments.
 6. The development is likely to have adverse impacts on the built environment (s4.15(1)(b) of the EPA Act).
 7. The site is not suitable for the development as proposed (s4.15(1)(c) of the EPA Act).
 8. The development is not in the public interest (s4.15(1)(e) of the EPA Act).



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
DA16/1465

TO:

Lee Carmichael Town Planning
76 Berry Street
NOWRA NSW 2541

being the applicant(s) for **DA16/1465** relating to:

173 Kinghorne Street and 2 & 4 Albatross Road, NOWRA - Lot 1, 29 and 30 DP 25114

REFUSED USE AND/OR DEVELOPMENT:

Demolition of existing structures and construction of a mixed use development consisting of 55 apartments including 15 x three bedroom, 34 x two bedroom and 8 x 1 bedroom apartments, a basement car parking area and 3 commercial tenancies at ground floor with frontage to both Kinghorne St and Albatross Road

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:

DE21.50 - Attachment 2

Determination Notice by way of Refusal - Page 2 of 3 - DA16/1465

REASONS FOR REFUSAL

1. Non-compliance with SEPP 65 in relation to the Apartment Design Guide (s4.15(1)(a)(i) of the EPA Act);
The development fails to satisfy clause 30(2)(a) and (b) of SEPP 65, in that the development does not demonstrate that adequate regard has been given to:
 - (a) the design quality principles (Principle 2: Built form and scale; Principle 3: Density; Principle 4: Sustainability; Principle 5: Landscape; Principle 6: Amenity), and
 - (b) the objectives specified in the Apartment Design Guide for the relevant design criteria (3E-1 Deep Soil Zones, 3F-1 Visual Privacy, 3H-1 Vehicle Access, 3J-1 Bicycle and Car Parking, 3J-2 Bicycle and Car Parking, 4A-1 Solar and Daylight Access, 4D-3 Apartment Size and Layout, 4E-1 Private Open Space and Balconies, 4F-1 Common Circulation and Spaces, 4K-2 Apartment Mix).
2. The proposal exceeds the maximum building height development standard under clause 4.3 of SLEP 2014. The applicant's written request to vary the maximum building height development standard has not adequately addressed matters required to be demonstrated by clause 4.6(3)(a) and (b) of SLEP 2014. The Clause 4.6 Variation Request does not provide sufficient environmental planning grounds to support the variation, nor that compliance is unnecessary or unreasonable. (s4.15(1)(a)(i) of the EPA Act).
3. The development has failed to satisfy Council of preconditions 101(2)(a) and (b) of the ISEPP (s4.15(1)(a)(i) of the EPA Act).
In accordance with Clause 101(2)(a) and (b) of the ISEPP, Council must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that:
 - (a) where practicable and safe, vehicular access to the land is provided by a road other than the classified road, and
 - (b) the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of:
 - (i) the design of the vehicular access to the land, or
 - (ii) the emission of smoke or dust from the development, or
 - (iii) the nature, volume or frequency of vehicles using the classified road to gain access to the land.
4. The proposed development is inconsistent with the Objectives, Performance Criteria and Acceptable Solutions as they relate to the following provisions of Chapter G21: Car Parking and Traffic Shoalhaven Development Control Plan 2014 (SDCP 2014) (s4.15(1)(a)(iii) of the EPA Act):
 - (a) 5.1 Car Parking Schedule.
 - (b) 5.2 Traffic.
 - (c) 5.4 Access.
 - (d) 5.14 Loss of On-Street Car Parking – Major Developments/ Redevelopments.
5. The development is likely to have adverse impacts on the built environment (s4.15(1)(b) of the EPA Act).

Determination Notice by way of Refusal - Page 3 of 3 - DA16/1465

6. The site is not suitable for the development as proposed (s4.15(1)(c) of the EPA Act).
7. The development is not in the public interest (s4.15(1)(e) of the EPA Act).

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.

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:

Choose an item.

Choose an item.

Planning, Environment & Development Group

DE21.51 Northern Coastal Management Program Advisory Committee - Amendment to Terms of Reference

HPERM Ref: D21/149763

Department: Environmental Services

Approver: Phil Costello, Director - City Development

Attachments: 1. Draft Terms of Reference (under separate cover)

Reason for Report

Update the Terms of Reference as per the request of the North Coastal Management Program Advisory Committee through item NC21.3 on the 17 March 2021.

Recommendation (Item to be determined under delegated authority)

That the amended Terms of Reference – North / Central / Southern Coastal Management Program Advisory Committees be adopted by Council.

Options

1. Council adopts the amended Terms of Reference – North / Central / Southern Coastal Management Program Advisory Committees.

Implications: The Terms of Reference for the North / Central / Southern Coastal Management Program Advisory Committees are amended to specify geographic boundaries and include all Council managed beaches.

2. Council rejects the amendments.

Implications: Terms of Reference remain unchanged, against the request from the North Committee.

Background

The Terms of Reference were adopted by Council on 6 October 2020 with MIN20.736, the amendment is to further include the words “all Council managed beaches” and the specific geographic boundaries each North / Central / Southern - Coastal Management Program Advisory Committee is responsible for.

This amendment will provide clearer Terms of Reference for the Committees to be guided by and was requested by the North Committee through item NC21.3 on 17 March 2021.

DE21.52 Quarterly Review for Compliance Matters

HPERM Ref: D21/154126

Department: Certification & Compliance

Approver: Phil Costello, Director - City Development

Attachments: 1. Penalty Notices & Warnings Issued - Quarterly Review - City Development - January to March 2021 [↓](#)

Reason for Report

At Council's Ordinary meeting held on 13 November 2018 it was resolved to receive a detailed quarterly report on compliance activities (MIN18.907).

This report provides information on the period from 1 January 2021 to 31 March 2021 (third quarter 2020/2021).

Recommendation (Item to be determined under delegated authority)

That Council receive the quarterly report on compliance matters for information.

Options

1. Council receives the report for information.

Implications: Nil

2. Council receives the report and provides additional direction for future reports.

Implications: Any changes or additional matters can be added to future reports.

Report

Compliance activities are completed by the following Teams within City Development:

- (a) Compliance Team: Development compliance matters including unauthorised development, development not in accordance with development consent, minor land, and water pollution incidents (including building sites), land use management issues, fire safety and swimming pool safety issues.
- (b) Environmental Health: Pollution incidents (noise and water), environmental incidents, food shops and the operation of on-site sewage waste management facilities.
- (c) Parking: All parking offences.
- (d) Rangers: Animal control, littering, unauthorised camping, rubbish dumping and other environmental offences.

This report provides Councillors with an update on the penalties issued (number, type, and ticket value), penalty reviews dealt with by the Review Panel and any Local or Land and Environment Court matters determined or progressing.

This report relates to January - March 2021 (third quarter).

Penalties Issued During the Period

A combined total of 1,845 penalty notices were issued by the Teams during the period. These penalties have a face value of \$398,699. Historically Council stands to receive approximately 70% of this ticketed figure.

A total of 239 warnings were issued during the period.

Attachment 1 to this report provides a breakdown of the penalties and cautions issued.

The following is a summary of the penalties issued for each team:

Team	Number Issued	Total Amount	% of total amount	Warnings issued
Compliance	18	\$29,380	7.5%	55
Compliance – Fire Safety	0	0	0	0
Compliance – Pools	5	\$1,980	.50%	23
Environmental Health	3	\$1,320	.35%	0
Rangers – Animal issues	149	\$62,145	15.5%	22
Rangers – Environmental issues	108	\$17,350	4.35%	75
Parking	1557	\$285,974	71.8%	63
Sewer Management Facility	0	0	0	1
Total	1,845	\$398,149	100%	239

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Penalties Related to Compliance issues

The following details are provided in relation to compliance penalty notices issued this period:

- a) Narrawallee (\$3,330): Two penalty notice issued to the owner of the premises. The penalty notices relate to earthworks within an E2 Environmental Conservation zone - Development without consent – any other case – Individual - \$3000 and operation of onsite sewage management system - Section 626(3) of the Local Government Act 1993 - \$330. A further two (2) warning notices were issued, these would have amounted to \$3,330.

The concern relates to the installation of a moveable dwelling with connection to services and removal of vegetation in the E2 zone.

- b) Beaumont (\$4,500): Two penalty notices issued to the owner of the premises. The penalty notices relate to earthworks – development without development consent – any other case – Individual - \$3000 and development without development consent – class 1a or 10 building – Individual.

A further six (6) warning notices were issued, these would have amounted to \$10,500.

The concerns relate to the unauthorised construction of 2 x retaining walls, access ramp and the placement of 4 x shipping containers without consent.

- c) Ulladulla (\$3,000): One penalty notice issued to the contractor - development without consent - class 1a or 10 - building – Corporation (\$3000).

The matter related to the unauthorised demolition of garage and partial demolition of dwelling containing asbestos.

- d) Burrill Lake (\$3,000): Two penalty notices issued to the owner of the premises – 2 x development without consent - class 1a or 10 - building – Individual (\$1500). A further four (4) warning notices were issued, these would have amounted to \$6,000.

The concerns raised pertain to the unauthorised construction of a shed and a timber retaining wall in the rear of the yard.

- e) Morton (\$3,000): Two penalty notices issued to the previous owner's - development without development consent - class 1a or 10 building – Individual (\$1500). A further two (2) warning notices were issued to both owners, these would have amounted to \$660.

- f) Morton (\$550): One penalty notice issued to the contractor – not provide notice of work to plumbing regulator (\$550). A further three (3) warning notices were issued to the contractor, these would have amounted to \$3,700.

The concern relates to the conversion of an existing approved class 10a building to a detached habitable room including kitchen, solid fuel heater and bathroom with on-site sewage management facility on bushfire prone land.

- g) Sanctuary Point (\$3,000): Two penalty notices issued to the owners of the premises - development without development consent – class 1a or 10 building – Individual (\$1500). A further two (2) warning notices were issued to the owners, these would have amounted to \$3,000.

The matter related to the construction of timber retaining walls on the northern and southern boundary not considered Exempt Development. Assessment revealed the retaining walls to have been constructed over Council's sewer asset in the sewer easement on the boundary.

- h) Nowra Hill (\$1,500): One penalty notice issued to the owners - development without development consent – class 1a or 10 building – Individual (\$1,500). A further nine (9) warning notices were issued to the owners, these would have amounted to \$13,500.

The issue relates to the unauthorised construction of a water supply facility (dam). The owners are currently in the process of regularising the structure.

- i) Falls Creek (\$4,500): Three penalty notices issued to the owners – development without development consent – class 1a or 10 building – Individual (\$1,500). A further five (5) warning notices were issued, these would have amounted to \$7,500.

The penalty notices were issued for the unauthorised construction of deck additions to the rear of the dwelling, construction of a shed and the construction of a farm shed at the premises.

- j) Tomerong (\$1,500): One penalty notice issued to the owner - development without development consent - class 1a or 10 building – Individual (\$1,500). A further two (2) warning notices were issued relating to the unauthorised

construction of a deck and swimming pool. These would have amounted to \$3,000.

- k) Comerong Island (\$1,500): One penalty notice issued to the owner - development without development consent - class 1a or 10 building – Individual (\$1,500).

The penalty notice relates to the unauthorised construction of a revetment wall located adjacent to the Shoalhaven River.

Warnings Related to Compliance issues

A total of 55 warning notices were issued for compliance matters in the period and these equate to \$85,990 in ticket face value. Potentially the Compliance Team could have issued \$115,370 in penalties for the period. The caution rate is approximately 75%.

Penalty Infringement Panel Reviews

During the period, the review panel met on 11 March 2021 and considered one (1) penalty infringement notice.

- (a) Development without development consent – class 1a or 10 building with a penalty amount of \$1,500

The penalty notices subject to the review relate to an approved detached garage and detached shed that were both modified to create a secondary dwelling without consent.

Other issues forming part of the investigation were the placement of a shipping container on the lot and the alleged permanent occupation of a caravan which was not associated with the main dwelling nor the unauthorised secondary dwelling.

Council received a complaint that the garage was being rented out separately to the main dwelling and a shipping container had been placed on the lot.

The unauthorised works were not NCC compliant and as such have placed the tenants at risk as the buildings are not 'fit for purpose or safe for occupation'.

The owner has financially gained from the additional tenancy created by the unauthorised works.

The owner advised Council of their intention to regularise the works, however neither a Building Information Certification nor a Development Application for the change of use from a garage to a secondary dwelling have not been lodged, despite a Formal Restore Works Order being issued.

On review of a submission from the offender it was determined the penalty should stand.

Local Court Matters

Nil

Land and Environment Court matters

A Section 34(1) conference was held via Microsoft Teams on 29 March 2021 concerning the Class 1 Land & Environment Court appeal of Council's Cease Use Order of the unauthorised dwelling at Lot 87 Abernethys Rd Budgong.

The Acting Commissioner terminated the conference, and the matter is listed for hearing on 27, 28 and 29 July 2021. The Cease Use Order was suspended by the Commissioner until the date of the hearing.

Compliance Merits Received This Quarter

During the period, the Compliance Team received a total of 171 Merits, and these are detailed in the following table.

Type of Merits Received	Number Received	Percentage of total
Asbestos issues	5	
Building Works - Not in Accordance Consent	30	
Building Works - Without Consent	57	
Defective Building Works	3	
Earthworks - Without Consent	10	
Erosion Control - Building Sites	3	
Erosion Control - Subdivision sites	2	
Land Use - Without Consent	27	
Sewerage Management Facility	0	
Special event – without consent	2	
Stormwater Runoff - Building Site	18	
Swimming Pool Fencing Inspection	10	
Vegetation Clearing - Without Consent	4	
TOTALS	171	

Development without consent remains the highest percentage of all complaints received (33%).

Development not in accordance with consent (17%) is also high and this reflects the expectation of the community to keep developments true to the approval.

Land use without consent (15%) is higher than normal for this period. This increase is most likely attributed to relaxed restrictions of Covid-19. Council has received a larger number of concerns relating to premises being used as wedding/function/event and B&B premises.

Ranger Activities

- (a) Dog Attacks: Rangers received and attended 71 reports of dogs attacking during the period. Of these reports, 39 investigations have been completed with 14 penalty notices issued (i.e., 14 x \$1,320 = \$18,480). A further 32 matters remain under investigation.
- (b) Beach Patrols: Rangers completed 1,506 beach patrols during this quarter. A total of 77 dog owners have been spoken to with 273 dogs sighted. A total of 38 penalty notices have been issued with 4 official warnings and 29 verbal cautions given.
- (c) Illegal Dumping: Rangers have documented 151 new illegal dumping incidents within the Shoalhaven. Council's Assets & Maintenance Division and Parks & Operations Division have collectively removed 57.93 tonnes of illegally dumped waste to the value of \$15,646.

Statistics show Rangers are proactive in the fight against illegal dumping with additional patrols being conducted of known 'Hot Spots'. It is important the community continue to be our eyes and ears and report incidents to Rangers. A description of the vehicle together with its registration is vital evidence and can lead to identifying the perpetrator.

- (d) EPA - Illegal Dumping Grant: Rangers have received grant funding through DPI/EPA for establishing baseline data under the 'Clean up and prevention program grants'. This project will aim to increase public reporting of illegal dumping within the Shoalhaven region and identify key 'Hot Spot Areas' requiring additional prevention measures such as gates, mounds, bollards and signage. This is particularly an issue in the central coastal area.
- (e) Pop Up Ranger Stall: Rangers have commenced a new initiative to raise public awareness by conducting a number of 'Pop Up Stalls – Information Sessions' within the LGA.

These information sessions provide the public with an opportunity to speak directly with Rangers, check animal registrations and obtain education material surrounding all things Rangers such as, responsible pet ownership, foreshore vandalism, littering, illegal dumping, and parking safety.

This service is provided to both permanent residents and visitors alike. The information sharing is valuable in obtaining quality base line on our service and the feedback from the public is positive.



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- (f) Animal Shelter: The Shoalhaven Animal Shelter recorded 214 adoptions for the quarter and the Animal Shelter Facebook page now has more than 15,400 followers.

The Facebook page has a weekly “Did You Know” post which shares information about responsible pet ownership in the Shoalhaven with 7 posts during the period. This has included pet registration requirements, desexing assistance, researching breeds before buying and education about health and welfare.

During March Shoalhaven Animal Shelter collaborated with the Animal Welfare League in conducting a cheap desexing for dogs program where desexing costs were heavily reduced.

List of penalties issued from 1 January 2021 to 31 March 2021 via offence Code

Team	Offence Code	Number issued	Offence penalty	Total amount
Compliance	Development without development consent - any other case - Individual	2	3000	6000
Compliance	Development without development consent - class 1a or 10 building - Corporation	1	3000	3000
Compliance	Development without development consent - class 1a or 10 building - Individual	13	1500	19500
Compliance	Not provide notice of work to plumbing regulator	1	550	550
Compliance	Operate sewage management system without approval	1	330	330
Compliance Pools	Fail to maintain child-resistant barrier effective and safe	1	550	550
Compliance Pools	Residential pool not have complying barrier - Owner	2	550	1100
Compliance Pools	Fail to erect prescribed warning notice - Occupier	1	110	110
Compliance Pools	Fail to ensure registration information entered on Register	1	220	220
Enviro Health	Fail to comply with Food Standards Code - Individual	3	440	1320
Parking	Disobey motor bike parking sign	11	116	1276
Parking	Disobey no parking sign	31	116	3596
Parking	Disobey no stopping sign	62	272	16864
Parking	Disobey no stopping sign (in school zone)	1	349	349
Parking	Double park	1	272	272
Parking	Fail to comply with terms of notice erected by council (driving/parking/use of vehicle)	3	110	330
Parking	Not angle park as on parking control sign or road marking	3	83	249
Parking	Not parallel park in direction of travel	6	272	1632
Parking	Not park wholly within parking bay	37	83	3071
Parking	Not position front/rear of vehicle correctly - 90 degree angle parking	2	83	166
Parking	Not position rear of vehicle correctly - 45 degree angle parking	53	83	4399

Parking	Not stand vehicle in marked parking space	13	83	1079
Parking	Park continuously for longer than indicated	12	83	996
Parking	Park vehicle for longer than maximum period allowed	210	83	17430
Parking	Stop at side of road with continuous yellow edge line	50	272	13600
Parking	Stop in bus zone (in school zone)	11	349	3839
Parking	Stop in bus zone (not clearway or transit/bus lane)	6	272	1632
Parking	Stop in disabled parking area without current permit displayed	17	581	9877
Parking	Stop in loading zone	4	194	776
Parking	Stop in taxi zone	9	194	1746
Parking	Stop on path/strip in built-up area	10	272	2720
Parking	Stop on/across driveway/other access to/from land	10	272	2720
Parking	Stop within 10 metres of an intersection (no traffic lights)	5	349	1745
Parking	Not parallel park in direction of travel in school zone	1	349	349
Parking	Disobey no parking sign (in school zone)	1	194	194
Parking	Stop on path/strip in built-up area (in school zone)	2	349	698
Ranger Animal	Companion animal (other) not registered as prescribed - first offence	19	330	6270
Ranger Animal	Fail to prevent dog from escaping - not dangerous/menacing/restricted dog	35	220	7700
Ranger Animal	In charge of dog in prohibited public place	2	330	660
Ranger Animal	In charge of dog not under control in public place	11	330	3630
Ranger Animal	In charge of dog which rushes at/attacks/bites/harasses/chases any person/animal	4	1320	5280
Ranger Animal	Not comply notice re registration (other) - first offence	4	305	1220
Ranger Animal	Not identify companion animal as prescribed - not dangerous/menacing/restricted dog	4	180	720
Ranger Animal	Owner of dog in prohibited public place	5	330	1650
Ranger Animal	Owner of dog not under control in public place	36	330	11880

Ranger Animal	Owner of dog which rushes at/attacks/bites/harasses/chases any person/animal	10	1320	13200
Ranger Animal	Fail to comply with menacing dog control requirements	2	1760	3520
Ranger Animal	Companion animal (other) not registered if required by regulations - first offence	4	305	1220
Ranger Animal	Not notify change in registration/identification information - not dangerous/menacing/restricted dog	5	180	900
Ranger Animal	Not immediately remove dog faeces from public place	1	275	275
Ranger Animal	Dog not wear collar and name tag - not dangerous/menacing/restricted dog	4	180	720
Ranger Animal	Fail to prevent dog from escaping - menacing dog	1	220	220
Ranger Animal	Not notify change in registration or identification information - restricted dog	1	1320	1320
Ranger Animal	Sell or advertise sale of menacing dog or proposed menacing dog	1	1760	1760
Ranger Environment	Abandon a motor vehicle in a public place	3	550	1650
Ranger Environment	Aggravated deposit litter excluding cigarette and from vehicle - Individual	2	450	900
Ranger Environment	Deposit litter (extinguished cigarette) excluding from vehicle	1	80	80
Ranger Environment	Deposit litter excluding cigarette and from vehicle - Individual	22	250	5500
Ranger Environment	Deposit litter from vehicle no exclusions - Individual	3	250	750
Ranger Environment	Fail to comply with terms of notice erected by council	76	110	8360
Ranger Environment	Fail to comply with terms of notice erected at public place	1	110	110
Ranger Parking	Disobey motor bike parking sign	11	116	1276
Ranger Parking	Disobey no parking sign	27	116	3132
Ranger Parking	Disobey no stopping sign	92	272	25024
Ranger Parking	Disobey no stopping sign (in school zone)	19	349	6631
Ranger Parking	Double park	1	272	272
Ranger Parking	Fail to comply with terms of notice erected by council (driving/parking/use of vehicle)	26	110	2860
Ranger Parking	Not angle park as on parking control sign or road marking	53	83	4399
Ranger Parking	Not parallel park in direction of travel	39	272	10608

Ranger Parking	Not parallel park near road side	1	116	116
Ranger Parking	Not park at 45 degree angle	1	83	83
Ranger Parking	Not park wholly within parking bay	19	83	1577
Ranger Parking	Not position front/rear of vehicle correctly - 90 degree angle parking	51	83	4233
Ranger Parking	Not position rear of vehicle correctly - 45 degree angle parking	116	83	9628
Ranger Parking	Not stand vehicle in marked parking space	39	83	3237
Ranger Parking	Obstruct access to ramp/path/passageway	3	272	816
Ranger Parking	Parallel park close to dividing line/strip	6	272	1632
Ranger Parking	Park continuously for longer than indicated	39	83	3237
Ranger Parking	Park vehicle for longer than maximum period allowed	77	83	6391
Ranger Parking	Park vehicle not wholly in marked parking space	1	83	83
Ranger Parking	Stop at side of road with continuous yellow edge line	189	272	51408
Ranger Parking	Stop in bus zone (clearway or transit/bus lane)	2	272	544
Ranger Parking	Stop in bus zone (in school zone)	15	349	5235
Ranger Parking	Stop in bus zone (not clearway or transit/bus lane)	2	272	544
Ranger Parking	Stop in disabled parking area without current permit displayed	26	581	15106
Ranger Parking	Stop in loading zone	2	194	388
Ranger Parking	Stop in taxi zone	17	194	3298
Ranger Parking	Stop on path/strip in built-up area	49	272	13328
Ranger Parking	Stop on/across driveway/other access to/from land	13	272	3536
Ranger Parking	Stop within 10 metres of an intersection (no traffic lights)	22	349	7678
Ranger Parking	Stop on/across driveway etc to/from land (in school zone)	1	349	349
Ranger Parking	Stop in loading zone longer than 30 minutes	2	194	388
Ranger Parking	Not park at 90 degree angle	1	83	83

Ranger Parking	Not parallel park in direction of travel (road related area)	1	116	116
Ranger Parking	Disobey no parking sign (in school zone)	2	194	388
Ranger Parking	Stop on path/strip in built-up area (in school zone)	4	349	1396
Ranger Parking	Not parallel park with 3 metres clear road alongside (no dividing line/strip)	3	116	348
Ranger Parking	Double park in school zone	1	349	349
Ranger Parking	Stop on/near childrens crossing (in school zone)	1	464	464
Ranger Parking	Stop on/near childrens crossing	3	349	1047
Ranger Parking	Stop at/near bus stop (in school zone)	9	349	3141
	Grand Total	1845		398699

Warnings issued from 1 January 2021 to 31 March 2021 via offence Code

Compliance	55
Carry out development forbidden on land - any other case - Corporation	1
Carry out development forbidden on land - any other case - Individual	1
Commence building without construction certificate - class 1a/10 building - Individual	7
Development not accord consent - class 1a or 10 building - Individual	4
Development without development consent - any other case - Individual	3
Development without development consent - class 1a or 10 building - Individual	28
Fail to provide certificate of compliance within required period	1
Fail to provide sanitary drainage system plan to plumbing regulator - Individual	2
No prior approval waste management activity-item 6 Part C	1
Not notify plumbing regulator when work ready for inspection	2

Not provide notice of work to plumbing regulator	1
Occupy or use building without occupation certificate - class 1a/10 building - Individual	2
Operate sewage management system without approval	2
Compliance Pools	23
Fail to ensure registration information entered on Register	5
Fail to erect prescribed warning notice - Occupier	7
Fail to maintain child-resistant barrier effective and safe	8
Residential pool not have complying barrier - Owner	1
Swimming pool construction no sign as prescribed	2
Parking	12
Not position rear of vehicle correctly - 45 degree angle parking	1
Stop at side of road with continuous yellow edge line	2
Stop in bus zone (clearway or transit/bus lane)	1
Stop in disabled parking area without current permit displayed	4
Stop on path/strip in built-up area	1
Stop on/across driveway/other access to/from land	2
Stop within 10 metres of an intersection (no traffic lights)	1
Ranger Animal	21
Fail to prevent dog from escaping - not dangerous/menacing/restricted dog	8
In charge of dog not under control in public place	1
In charge of dog which rushes at/attacks/bites/harasses/chases any person/animal	1
Not comply notice re registration (other) - first offence	2
Owner of dog in prohibited public place	2
Owner of dog not under control in public place	8

Ranger Environment	75
Abandon an article (not motor vehicle or shared device) in a public place	1
Fail to comply with terms of notice erected by council	79
Ranger Parking	51
Disobey motor bike parking sign	1
Disobey no parking sign	1
Disobey no stopping sign	4
Fail to comply with terms of notice erected by council (driving/parking/use of vehicle)	8
Not parallel park in direction of travel	9
Stop at side of road with continuous yellow edge line	5
Stop in disabled parking area without current permit displayed	5
Stop near fire hydrant/indicator/plug indicator	1
Stop on path/strip in built-up area	11
Stop on/across driveway/other access to/from land	4
Stop within 10 metres of an intersection (no traffic lights)	2
SMF	1
Pollute waters - class 1 officer - Corporation	1
Grand Total	239

LOCAL GOVERNMENT AMENDMENT (GOVERNANCE & PLANNING) ACT 2016

Chapter 3, Section 8A Guiding principles for councils

(1) Exercise of functions generally

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

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

(2) Decision-making

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

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

(3) Community participation

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

Chapter 3, Section 8B Principles of sound financial management

The following principles of sound financial management apply to councils:

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

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

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

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