

Ordinary Meeting

Meeting Date: Monday, 22 April, 2024
Location: Council Chambers, City Administrative Building, Bridge Road, Nowra
Time: 5.30pm

Membership (Quorum - 7)
All Councillors

Addendum Agenda

Reports

City Performance

CL24.115 ALGA Annual Conference 2024 - National General Assembly -
Motions 1

City Development

CL24.93 Development Application – DA23/1856 - 408 Bunkers Hill Road
BARRENGARRY– Lot 144 DP 751262 4

CL24.115 ALGA Annual Conference 2024 - National General Assembly - Motions

HPERM Ref: D24/147443

Department: Business Assurance & Risk

Approver: Kerrie Hamilton, Director City Performance

Reason for Report

This report outlines motions proposed to be submitted for the ALGA Annual Conference 2024 for endorsement by Council.

Recommendation

That regarding the Australian Local Government Association (ALGA) 2024 National General Assembly, Council:

1. Adopt the proposed Motions in the report for submission prior to the deadline being Tuesday 30 April 2024.
2. Determine any additional motions for submission at this meeting.
3. Nominate **a Councillor** as the Council's Voting Delegate for the conference.
4. Nominate **a Councillor** as the Council's Alternate Voting Delegate for the conference.
5. Approve attendance and associated costs for the nominated Councillors at the Australian Local Government Association – 2024 National Assembly to be held at the National Convention Centre Canberra from 2 to 4 July 2024, and such attendance be deemed to be Council business.

Options

1. As recommended.

Implications: The Council's submitted motions will be submitted for inclusion in the Business Paper of the 2024 ALGA Annual Conference and attendance at the NGA will be considered approved for the nominated Councillors attendance. Council will nominate both a voting delegate and alternate voting delegate.

2. That Council does not accept one or more of the motions as outlined in the report and proposes alternatives.

Implications: Motions will need to be worded and endorsed by the Council

Background

It is recommended that Council authorises the nominated Councillors to attend the conference as Council business.

Each Council is provided the opportunity for one voting delegate. It is recommended that the Council determine its nominated voting delegate for the conference by resolution and an alternate is also to be nominated to fill in for the delegate if required.

CL24.115

Motions

ALGA has called for the submission of motions. Councils are encouraged to formulate motions submitted in terms of the current policy statements.

Councils are also encouraged to submit motions online as early as possible and before the deadline of 11.59pm on Tuesday 30 April 2024.

An email was sent to Councillors Friday 15 April 2024 seeking their suggested motions, following this email the motions below have been proposed:

MOTION 1: CLIMATE CHANGE AND RENEWABLE ENERGY

This National General Assembly calls on the Australian Government to implement fuel efficiency standards that will secure a pipeline of affordable lower and zero emissions vehicles for Australian communities, councils, and business fleets.

These standards must:

- **Be mandatory and deliver at least equivalent settings to those in other major markets – to ensure Australia doesn't stay at the back of the queue for cleaner vehicles.**
- **Give Australian drivers more choice and affordability than they have today, by bringing a wider range of vehicle types to our shores.**
- **Support 100% of new vehicles sold in Australia to become zero emissions as soon as possible - sending a strong market signal that Australian communities, businesses, and government agencies are ready for zero-emission vehicles.**
- **Be reviewed and updated approximately every five years. Technology changes fast and it's imperative we have a continued supply of quality vehicles equivalent to our global peers.**

Background

Transport is a significant source of emissions at all levels of government - and is the third highest source of emissions nationally behind only electricity and stationary energy. Local governments are doing what we can to switch to electric vehicles (EVs), but our hands are tied. A lack of supply to Australia, and the strong federal policy to drive it, makes it difficult to transition our fleet, therefore limiting the availability of second-hand vehicles to communities.

We urge the Federal Government to support our access to electric vehicles by legislating strong fuel efficiency standards.

World-class fuel efficiency standards would bring more low and zero emissions vehicles to Australian shores. This will accelerate the transition for councils - and with fleet vehicles entering the second-hand market after three to five years, this ensures communities have access to the best technology at a fair price.

This motion was submitted in 2023, but subsequently was LOST.

MOTION 2: ACCESS AND EQUITY

This National General Assembly calls on the Australian Federal Government to provide adequate funding in collaboration with the State Government relating to Access and Equity to provide assurance and appropriate accessible transport particularly for people in regional and rural areas.

Background

Access to public transport enables Australians to work or study, visit family and friends, and access critical services such as healthcare. However, one in six people aged 15 years and

over with disability have difficulty using public transport. Without equitable access to public transport, discrimination can arise.

Ongoing difficulties associated with access to transport are commonly referred to as "transport disadvantage". Transport disadvantage is experienced by specific sub-groups in the population, for example, families with young children, people with a disability and Indigenous Australians. Transport disadvantage is also common in specific geographical locations such as outer-urban areas, rural and remote Australia including the Shoalhaven LGA. The Shoalhaven is an area which experiences considerable transport disadvantage, with transport from many outlying towns and villages limited. These low levels of public transport create ongoing challenges for these vulnerable groups. A proportion of the community feel they often cannot get to the places they need to visit because of the lack of accessible public transport such as wheelchair accessible taxis. Shoalhaven City Council supports Local Government NSW's call for provision and funding for improved access to transport in regional areas. A review of support to encourage investment in wheelchair accessible vehicles and to prioritise use of the vehicles for customers with disability would be welcomed.

MOTION 3: FINANCIAL ASSISTANCE VIA SERVICES AUSTRALIA

That this General Assembly calls on the Federal Government to provide adequate financial assistance, via Services Australia, to eligible ratepayers (Pension and Low-Income earner's) to assist with payments of council and water rates.

Financial assistance should be provided at an amount, or percentage, that reflects current level of rates, and should be delivered via a more efficient and cost-effective mechanism, than is currently used.

Background

Currently, a rebate for council and water rates is available to eligible pensioners. Pensioners who hold a pensioner concession card, DVA Gold Card (TPI and EDA), and widow/widowers who are entitled to income support, may apply for this rebate. The rebate does not extend to low-income earners.

This rebate has not increased in the last 13 years. The current cost of living crisis and an increase in rates over this period has seen the benefit of this rebate erode.

There is a need to provide additional financial support to seniors, pensioners, and low-income earners across our communities, particularly during the cost-of-living challenge currently facing our country.

CL24.115

CL24.93 Development Application – DA23/1856 - 408 Bunkers Hill Road BARRENGARRY– Lot 144 DP 751262

DA. No: DA23/1856/4

HPERM Ref: D24/86217

Department: Development Services

Approver: James Ruprai, Director - City Development

Attachments:

1. DRAFT Determination - DA23/1856 - 408 Bunkers Hill Rd BARRENGARRY - Lot 144 DP 751262 (under separate cover)
2. s4.15 Assessment Report - 408 Bunkers Hill Rd BARRENGARRY - Lot 144 DP 751262 (under separate cover)
3. Revised Plans (2) - Notification Plans - 408 Bunkers Hill Rd BARRENGARRY - Lot 144 DP 751262 (under separate cover)

This item was deferred from the Ordinary Meeting 8 April 2024.

Description of Development: Consolidation of lots, alterations and additions to existing building and use as a dwelling house.

Owner: G Scarf

Notification Dates: 17 November 2023 to 4 December 2023

No. of Submissions: 5 submissions

Purpose / Reason for consideration by Council

The Development Application was called in for determination on public interest grounds (MIN23.749).

Recommendation

That Council approve the Development Application DA23/1856 for consolidation of lots, alterations and additions to existing building and use as a dwelling house at 408 Bunkers Hill Road BARRENGARRY – Lot 144 DP 751262, Lot 145 DP 751262 & Lot 1 DP1263250 as detailed in the draft conditions of consent (Attachment 1) to this report.

Options

1. That Council approve the recommendation as printed.

Implications: This would enable the development to proceed according to the recommended conditions of consent.

2. Refuse the Development Application (DA).

Implications: The development is unable to proceed as applied for. 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 (LEC) against Council's decision.

CL24.93

3. Adopt an alternative recommendation.

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

Location Map



Figure 1: Location Map

CL24.93



Figure 2: Aerial imagery of development site. Building proposed to be used as dwelling house circled in red.

CL24.93

Background

The subject site contains several existing buildings and the site benefits from a development consent for *tourist and visitor accommodation* (DA14/1117 (as modified)), an *animal boarding and training facility* (equine education centre) and *temporary function centre* (DA17/1157 (as modified)). Further commentary about these approved land uses and how they relate to the current application is included in the History section of this report.

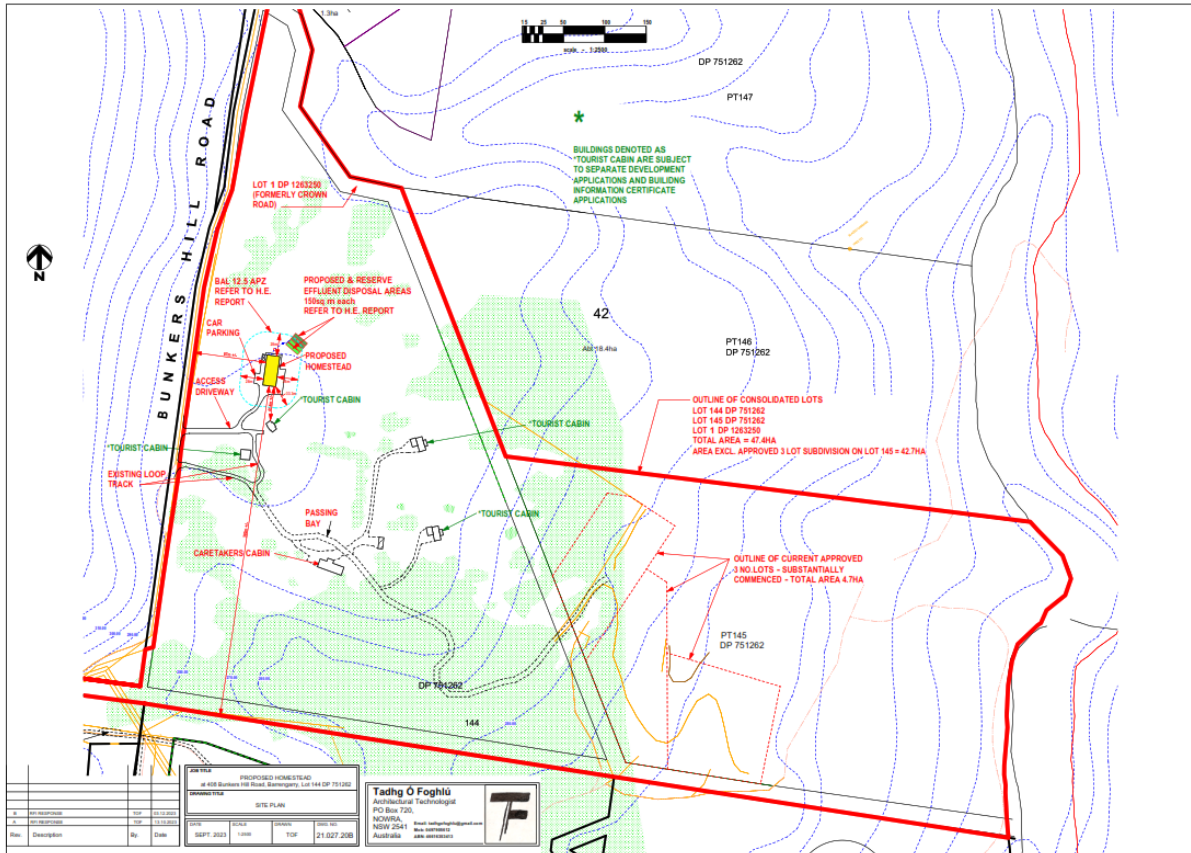
Proposed Development

DA23/1856 proposes consolidation of lots, alterations and additions to existing building and use as a *dwelling house*. The scope of this development is limited to the use of the “equestrian centre building” as a dwelling house. This assessment cannot consider other uses of the site i.e. tourist accommodation as this is not what has been applied for.

The proposed dwelling house use is not compatible with the uses approved by DA17/1157 (as modified) as it proposes to change the use of the building previously approved as the “equine centre hall” which was also approved for use as a temporary function centre as per condition 4 of DA17/1157 (as modified). As such, conditions of consent will require the surrender of DA17/1157 (as modified) prior to the issue of a Construction Certificate. This will effectively surrender the use of the property as an equine education centre and temporary function centre.

The constructed “equine centre” building is not consistent with that approved vide DA17/1157 (as modified). As such the existing building that is proposed to be used for a dwelling under this application (DA23/1856) is subject to a Building Information Certificate (BIC). Conditions

of consent are proposed to require a BIC be obtained prior to the issue of an Occupation Certificate for the dwelling.



CL24.93

Subject Land

The development site comprises Lot 144 DP 751262, Lot 145 DP 751262 & Lot 1 DP1263250 – 408 Bunkers Hill Rd BARRENGARRY.

The site is irregular in shape and has a total area of 45.909ha. SF8305 (as modified) approved Lots 31,32 and 33 as concessional allotments from Lot 145 DP 751262. According to the approved subdivision plans in DS14/1275, The approved lot sizes are as follows:

- Lot 31 = 1.45ha
 - Lot 32 = 1.59ha
 - Lot 33 = 1.63ha
- TOTAL = 4.67ha**



Figure 3: Approved subdivision plan from DS14/1275 with approved lots 31, 32 & 33 outlined in red.

Therefore, considering the proposed lot consolidation of Lot 144 DP 751262, Lot 145 DP 751262 & Lot 1 DP1263250, and the approved lots under SF8305 (if the subdivision is realised), the land will have a total area of 41.239ha.

Site & Context

The subject site is zoned RU1 Primary Production and is adjoined by other rural and environmental zones.

CL24.93

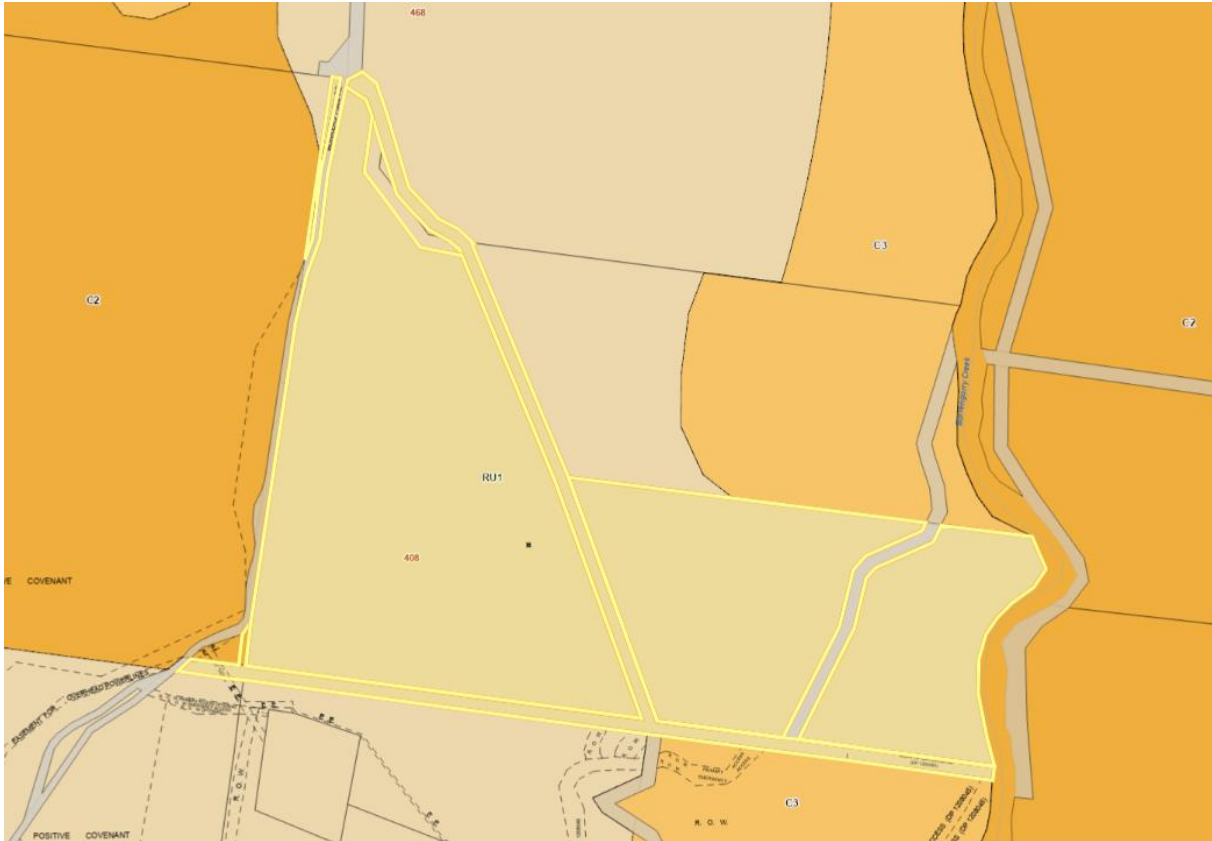


Figure 4: Zone Mapping – SLEP 2014

History

DA14/1117 – Tourist Accommodation

DA14/1117 (as modified) approved “regularisation / continued use of 3 existing buildings as tourist cabins and manager’s residence and approval for two new tourist cabins”. The approved uses as per DA14/1117 (as modified) are as follows:

- WB Cottage Metal Roof “Banksia” = Tourist Cabin
- WB Cottage Metal Roof “Jacaranda” = Tourist Cabin
- WB Cottage Metal Roof “Willow” = Tourist Cabin
- WB Cottage Metal Roof “Ferndale” = Tourist Cabin
- Metal Building Metal Roof “Caretaker’s Cottage” = Caretakers Cottage

CL24.93

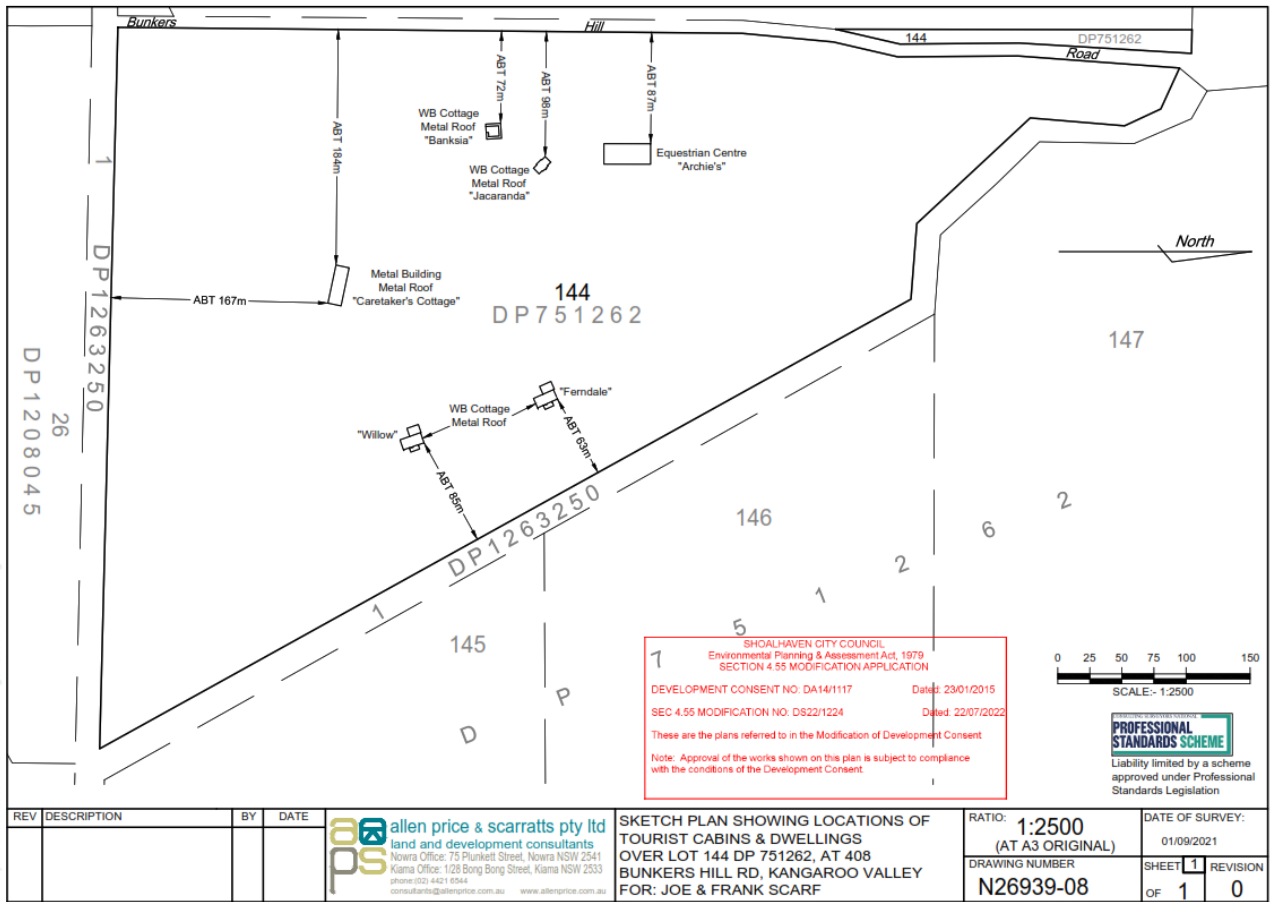


Figure 5: Approved site plan from DA14/1117 (As modified by DS22/1224).

The tourist cabin buildings across the site have not been constructed fully in accordance with DA14/1117(as modified) and are subject to various Building Information Certificates.

DA17/1157 – Animal Boarding and Training Establishment and Temporary Function Centre

DA17/1157 (as modified) approved “Animal Boarding and Training Establishment (equine education centre) and the temporary use of the building as a Function Centre”.

The Equestrian Centre “Archie’s” is noted on the approved site plan from DS22/1224 and has approval for use as an animal boarding and training establishment (equine education centre) and the temporary use of the building as a function centre under DA17/1157 (as modified). This building is the subject of the current DA23/1856 in which it is proposed to be used as a dwelling house.

Limited Consent

4. The temporary use of the building as a Function Centre is limited for a period of three years as measured from the issue of an Occupation Certificate. *(modified by DS19/1196)*
5. Should the use of the building for the purpose of an Animal Boarding and Training Establishment cease to operate, then the temporary use of the building as a Function Centre must also cease.

Notes

- a) Application may be made to extend the consent under Section 96(1A) of the Environmental Planning & Assessment Act, 1979.
- b) If the applicant under S96 is not the original applicant, the written consent of the owner of the land must first be obtained.
- c) An application to extend the consent should be made at least 28 days **before** the consent will cease to operate.
- d) In deciding whether to extend the consent, Council will take into account any relevant policy amendments made since the consent was issued.

Conditions 4 & 5 from Consolidated Consent DA17/1157 (incorporating DS19/1196) (D19/281880)

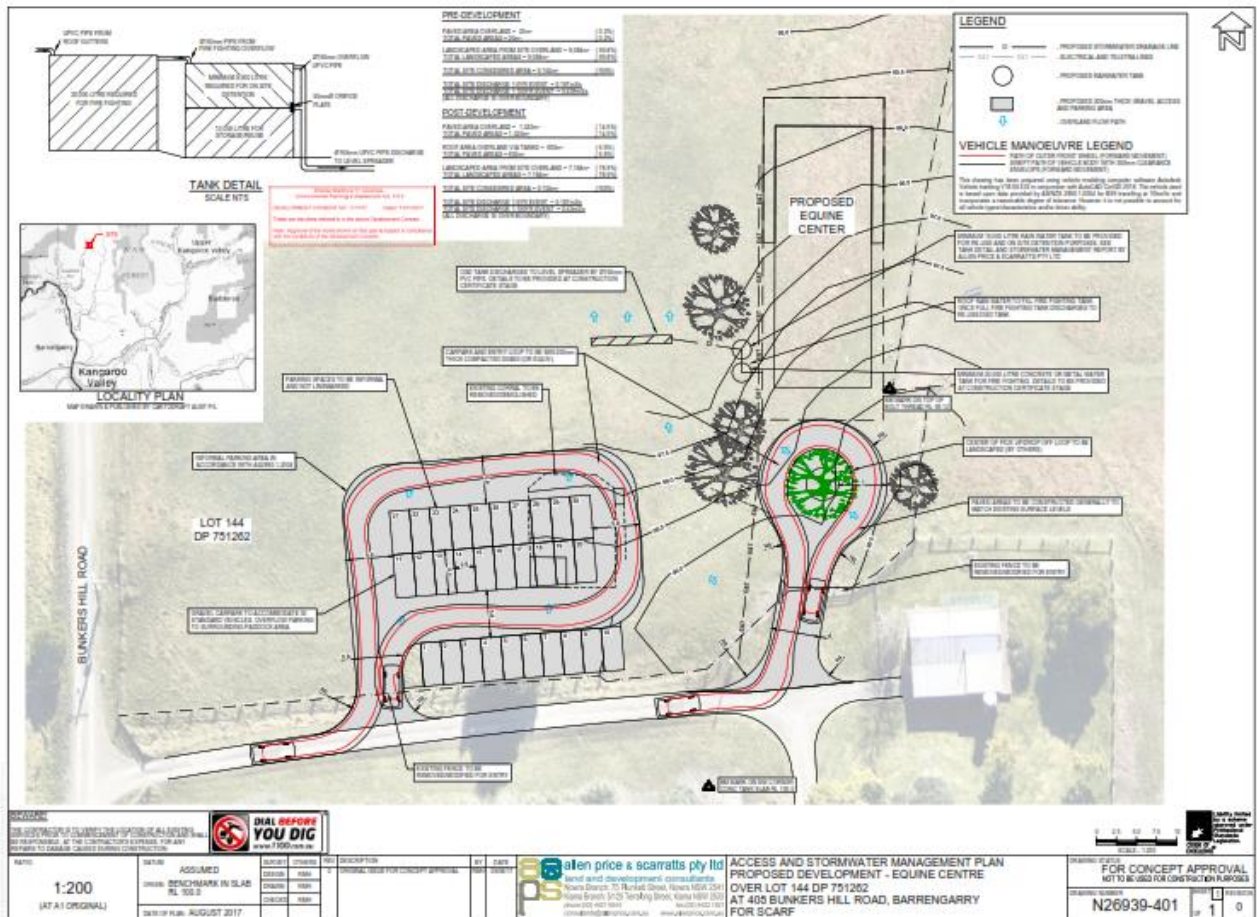


Figure 6: Approved Site Plan of Equine Centre from DA17/1157

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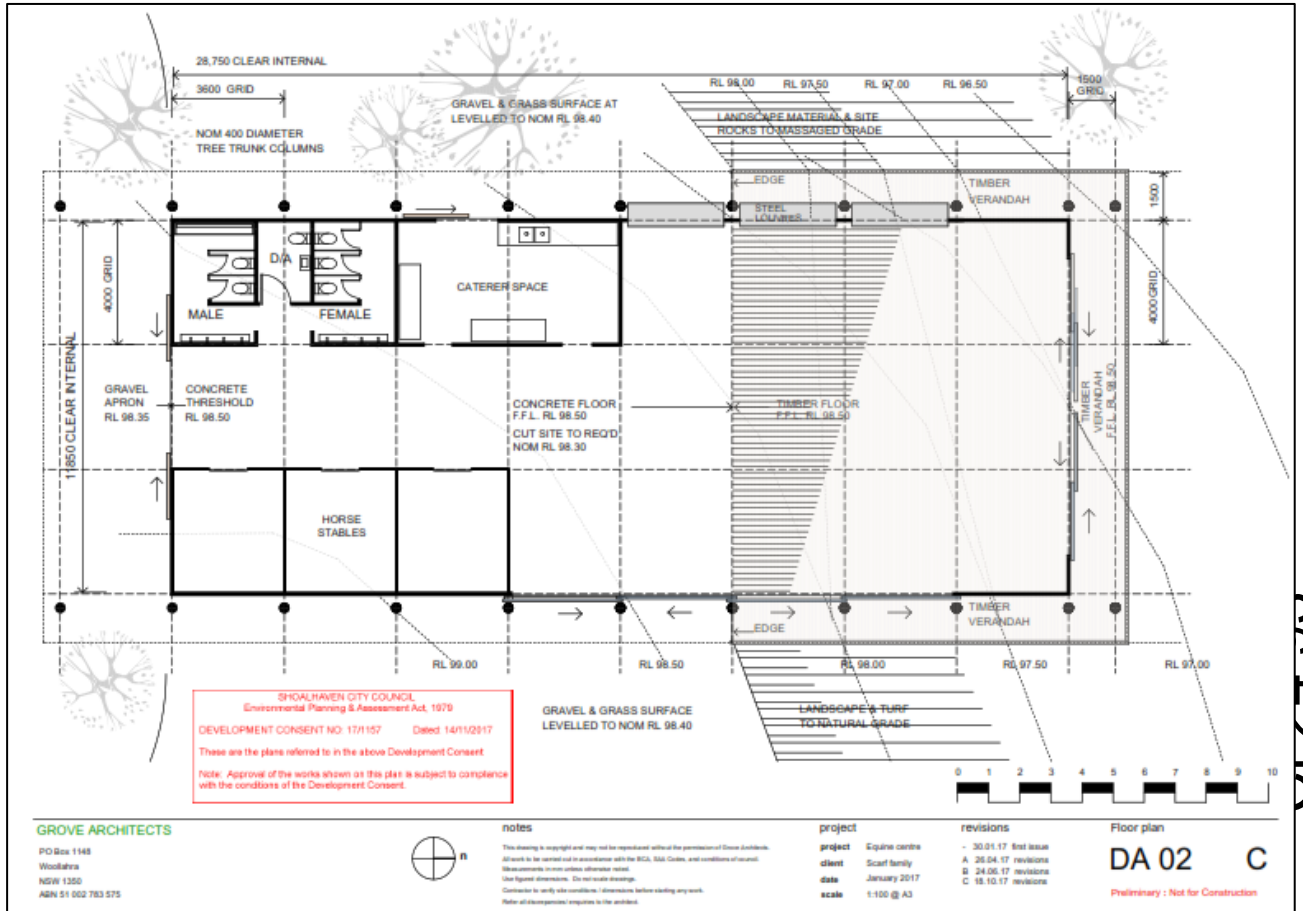


Figure 7: Approved floor plan of Equine Centre from DA17/1157

Issues

The Development Application DA23/1856 was called in for determination on public interest grounds (MIN23.749). Submissions have been received regarding this DA and these are discussed further in this report. There are not variations proposed to development controls set out in either Shoalhaven LEP or Shoalhaven DCP.

The attached assessment report identifies the proposal complies with the requirements of Shoalhaven LEP and Shoalhaven DCP.

Planning Assessment

The DA has been assessed under s4.15 of the *Environmental Planning and Assessment Act 1979*.

Community Consultation

Five (5) public submissions were received in relation to Council’s notification of the development. All submissions received are objections to the development.

The notification was made in accordance with Council’s Community Consultation Policy with letters being sent to neighbours within 100m of the site. The notification period was between 17 November 2023 and 4 December 2023.

Key issues raised in submissions are provided below.

1. Submission - Characterisation of use and misrepresentation of the intended purpose of the development.

Submissions to DA23/1856 suggest that the proposal for use of an existing building as a dwelling house is a mischaracterisation/misrepresentation of the intended purpose of the development, contending that the proposal is intended to be used as tourist and visitor accommodation or a function centre.

Comment

The current DA before the Council (DA23/1856) is for the use of an existing building as a dwelling house and prospective alterations and additions, as well as the consolidation of lots. A dwelling house is a permissible land use within the RU1 primary production zone and Council is satisfied that the proposal can be characterised as such.

DA17/1157 already approves the use as an animal boarding and training establishment (equine education centre) and the temporary use of the building as a function centre. If DA23/1856 for use of the building as a dwelling is approved, it is recommended that conditions of consent will require the surrender of the animal boarding and training establishment use and temporary function centre.

The applicant has provided a statement (Attachment 4) which responds to objector concerns in this regard:

<p>Re: Development Application (DA23/1856) – Landowner statement to objection</p> <p>We recently lodged a development application (DA23/1856) which seeks to convert a building on our property to a 'dwelling house', with the intention to use the building as a 'dwelling house'.</p> <p>The building has been designed for the use and enjoyment of our immediate and extended families to holiday on our property. When our family is not occupying it, we intend to rent it under the regulations for short term rental accommodation (STRA) and abide by the code of conduct by Fair Trading.</p> <p>Following the notification of our DA, we have received 4 objections containing false claims of our intentions to build a hotel which will also be used for functions.</p> <p>We understand how some neighbours may be concerned, given the history of the property. However, we were somewhat thankful to our neighbours and local community for their objection to our previous DA, as we now share the concern that 120 guest functions would not be ideal for our community.</p> <p>We want you to know that we unreservedly have no intentions whatsoever to use the property for anything other than a dwelling house, and if approved we would be happy to surrender our existing DA that currently allows for functions.</p> <p>Therefore, in converting the building to a dwelling house, we plan to remove all the impacts on not only our neighbours, but also the increased traffic on Bunkers Hill Road.</p> <p>We are currently one of the only families on the entire road who does not have a dwelling house on our property, and we wish to enjoy the property just as our neighbours do.</p>
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Extract from landowners response to objector submissions

2. Submission – Property Access

Submissions suggest that access to the property is inappropriate for increased traffic.

Comment

Access to the property for the purpose of a dwelling is considered acceptable.

3. Submission – Mischaracterisation of land use because of “breezeway and “two kitchens”

The proposal should not be characterised as a dwelling because of the internal layout of the building and the presence of “two kitchens”.

CL24.93

Comment

This assessment is satisfied that the dwelling will operate as a single domicile. The different compartments within the dwelling are isolated, however they rely on components within other parts of the building to function as a dwelling, for example the southern ground floor wing includes a kitchen, but no laundry. The northern ground floor wing includes a laundry, but no kitchen. The ground floor alfresco breezeway includes an alfresco BBQ kitchen; however, the layout of the building does not lend itself to a separate dwelling house occupancy, with entry to the southern ground floor wing either via bedrooms or through the alfresco area. Similarly, the upstairs wings do not include any kitchen or laundry facilities and require access through the alfresco area.

Council can be satisfied that the proposed dwelling house will operate as a single domicile.

4. Submission – Non-compliance LEP and DCP controls

Submissions suggest that the proposal does not comply with the relevant LEP and DCP controls.

Comment

Assessment staff have assessed the application against the relevant controls and the proposal is considered acceptable with regard to the LEP and DCP controls.

5. Submission – Misleading, erroneous and missing documentation

Submissions to DA23/1856 suggest that the proposal includes misleading or erroneous documentation. Specifically, errors in the BASIX certificate, bushfire assessment report and requirement for a Building Information Certificate.

Comment

Assessment staff have reviewed all supporting information to the DA, and this is considered acceptable. Revised plans and BASIX certificates have been provided to address minor inconsistencies. Regarding the Building Information Certificate, DA23/1856 is for prospective works and use. If approved, conditions of consent will require a BIC be obtained for any retrospective works relating to the dwelling house.

6. Submission – Development history of site and permissibility of current application

Submissions suggest that the proposal cannot be supported because of the development history of the site and that the current proposal for a dwelling house is not permissible.

Comment

DA23/1856 is for the use of an existing building as a dwelling house and prospective alterations and additions, as well as the consolidation of lots. A dwelling house is a permissible land use within the RU1 primary production zone and development assessment staff are satisfied that the proposal can be characterised as such.

Development assessment staff are satisfied that the proposal will not result in more than one dwelling house on site as the approved land uses have changed the use of any existing dwelling to tourist accommodation, or the use of any building has been abandoned under the provisions of 4.66 (4) of the Environmental Planning and Assessment Act 1979.

It is advised that the subject site currently does not support an existing dwelling house. It is advised that the cottage currently identified as “Banksia” and previously identified as “Misty Glen” was approved for use as a tourist cabin via DA 14/1117 and has been used for that purpose since 1996. The structure has been used for tourist accommodation since that time.

Extract from Applicant’s Statement of Environmental Effects confirming no other dwelling houses currently exist on site

To confirm the permissibility of the current proposal a condition of consent will be included to specify that “no other existing buildings on site may be used as a dwelling house except where approved by Council in a subsequent development application”.

7. Submission – Previous approvals SF8305 and SF1032

Submissions to DA23/1856 suggest issues with previous subdivision approvals under SF8305 and SF1032.

Comment

The current DA23/1856 is for a use of an existing building as a dwelling house. The proposal is not incompatible with previous subdivision approvals for the property.

The status of previous subdivision approvals and associated certificates is not pertinent to the current application.

8. Submission – Environmental Impact

The proposal will have an adverse environmental impact.

Comment

Assessment staff have considered the proposals impact on visual amenity, scenic values, native fauna, water quality, traffic and safety and is satisfied that the proposal will not have a significant adverse environmental impact.

9. Submission – Zoning

The proposal is incompatible with the RU1 Primary Production zoning.

Comment

The application is for use of an existing building as a dwelling house which is permissible in the RU1 zone under Shoalhaven LEP 2014.

10. Submission – Bushfire

The proposal does not adequately address bushfire hazards.

Comment

The application has been supported by a Bushfire Hazard Assessment Report prepared by an appropriately qualified BPAD consultant which demonstrates the proposal complies with the requirements of Planning for Bushfire Protection.

11. Submission – Contaminated land

The proposal does not adequately address potentially contaminated land.

Comment

Potentially contaminated land has been considered and assessment staff are satisfied that the land is fit for residential use.

12. Submission – Lot consolidation and access arrangements

The proposal does not adequately address lot consolidation and results in landlocked properties.

Comment

This application relates to the consolidation of Lots 144 and 145 DP 751262, Lot 1 DP1263250 and the use of an existing building as a dwelling house. The proposal benefits from coincidental legal and practical access and is appropriate.

The proposal for consolidation of land and use of an existing building as a dwelling house is not contrary to any identified easements or restrictions on the title of the land.

The consolidation of Lots 144 and 145 DP 751262, Lot 1 DP1263250 is not inappropriate, and this application does not create landlocked parcels of land, rather, landlocked parcels of land are preexisting. Access arrangements to other parcels of land is not pertinent to this development application. Access arrangements identified in the submission are civil matters between individual land holders.

It is also noted that the consolidation of lots can be undertaken without development consent.

13. Submission – Request for a working group with local residents

Submissions to DA23/1856 have requested the establishment of a working group with local residents to consider the outcome of this DA.

Comment

DA23/1856 for use of an existing building as a dwelling house, which is a permitted use within the zone, is not a type of development warranting a local resident working group. Instead, the application has been called in to Council for determination for reasons of public interest.

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

Pursuant to section 8.2 of the *Environmental Planning and Assessment Act 1979* (EP&A Act), 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.

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 to section 4.15 (Evaluation) under the *Environmental Planning and Assessment Act 1979*. Based upon the recommendations of the s4.15 Assessment Report (Attachment 1), Development Application No. DA23/1856 is recommended for approval subject to conditions of consent for the following reasons:

- 1) The proposed development is consistent with the objects of the Environmental Planning and Assessment Act 1979.
- 2) The proposed development complies with the development standards and is consistent with the aims, objectives, and provisions of the applicable environmental planning instruments.
- 3) The proposed development complies with the performance criteria and is consistent with the aims, objectives, and provisions of Shoalhaven Development Control Plan 2014.
- 4) The proposed development is consistent with the aims, objectives, and provisions of relevant Council policies.

- 5) The likely impacts of the proposed development are considered acceptable.
- 6) The site is suitable for the proposed development.
- 7) Any submissions received during the public notification period have been considered and issues and concerns raised by the community in submissions have been addressed in the assessment.
- 8) The proposed development does not conflict with the public interest.