

Ordinary Meeting

Meeting Date: Tuesday, 27 July, 2021

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

Time: 5.00pm

Membership (Quorum - 7)

All Councillors

Addendum Agenda

Reports

City Development

CL21.158 DA20/2172 – 8 Homestead Lane Berry– Lot 101 DP 1058971

CL21.158 DA20/2172 – 8 Homestead Lane Berry– Lot 101 DP 105897

DA. No: DA20/2172

HPERM Ref: D21/300056

Department: Development Services

Approver: Phil Costello, Director - City Development

Attachments:

1. Conditions of Consent - Councillor Motion - "Mananga" [↓](#)
2. Conditions of Consent - SCC template & standard conditions - "Mananga" [↓](#)
3. Report to Council dated 13 July 2021 - "Mananga" (under separate cover)
4. Section 4.15 Planning Assessment Report - "Mananga" [↓](#)
5. Draft Determination Notice - Refusal - "Mananga" [↓](#)
6. Heritage Review - Dr P Kabaila - "Mananga" [↓](#)
7. Email Stephen Gauld - Day Design - Acoustic Advice - "Mananga" [↓](#)
8. Legal Advice (Confidential - under separate cover)

Description of Development: Alterations and additions to an existing building and use as a function centre

Owner: Matthew and Julie Quinn

Applicant: Cowman Stoddart Pty Ltd

Purpose / Reason for consideration by Council

On 8 December 2020, the Strategy & Assets Committee resolved in relation to item SA20.257:

“That DA20/2172 – 8 Homestead Lane Berry - Lot 101 DP 1057897 - Commercial Additions - Alterations & Additions & Use of Existing 'Mananga Homestead' for Functions & Events be called to Council for determination due to significant public interest.” (MIN20.918)”.

In response to the call in of DA20/2172, a report was submitted to the 13 July 2021 Development and Environment Committee meeting, where it was resolved that:

“That consideration of the report presented in Item DE21.77 be deferred to the Ordinary Meeting on 27 July 2021 to enable Councillors and staff to consider in detail the substance of the above defeated Motion moved by Councillor Guile”.

This report is prepared in response to this resolution.

Recommendation

The Development Application DA20/2172, for alterations and additions to an existing building and use as a function centre at 8 Homestead Lane Berry - Lot 101 DP 1057897, be determined by way of refusal for the reasons set out in the Notice of Determination, **Attachment 5** to this report.

CL21.158

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 (LEC) against Council's decision.

2. Approve the Conservation Management Plan prepared by Navin Officer (Project No. 211049, dated 23/04/2021), Statement of Heritage Impact prepared by Navin Officer (Project No. 211048, dated 22/04/2021) and Capital Works & Maintenance Cost Report prepared by Mitchell Brandtman dated 25 January 2021 (Project Ref No. 28644),

And, subsequently approve the Development Application for the reasons below and subject to the conditions contained in **Attachment 2** to this report;

Reasons:

Council, as the consent authority, is satisfied that:

- a) the conservation of Mananga Homestead is facilitated by the granting of consent, and
- b) the proposed development is in accordance with the heritage management documents previously referenced and approved in this resolution, and
- c) the consent to the proposed development will require that all necessary conservation work identified in the heritage management documents is carried out, and
- d) the proposed development will not adversely affect the heritage significance of Mananga Homestead including its setting, and
- e) the proposed development will not have any significant adverse effect on the amenity of the surrounding area.

Implications: Council staff have prepared a suite of conditions that are based on Council's standard suite of conditions that are applied to developments in the Shoalhaven. The suite of conditions is however modelled on those presented in the (defeated) motion presented by Councillor Guile (**Attachment 1**).

Under some circumstances, third parties (i.e., objectors) can seek a judicial review of Council's decision in the NSW LEC

3. Alternative recommendation.

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

Location Map



Figure 1 - Aerial image of the subject site in the local context.



Figure 2 - Aerial image of the subject site with the building nominated for use as a function centre and tourist cabins approved by Council pursuant to Development Consent No. DA19/2134

CL21.158

Background

This report is a supplementary report in response to MIN21.436 of the 13 July 2021 Development and Environment Committee meeting. Its intent is to allow Council to consider “the substance of the above defeated Motion moved by Councillor Guile”, being a suite of conditions of consent should Council resolve to approve the subject Development Application.

Attachment 1 includes conditions recommended in the defeated motion plus short commentary as to how/where the condition is reflected in the draft conditions prepared by staff and the nature of any amendments.

Council staff have considered the conditions of Consent as presented by Councillor Guile and have drafted a set of conditions that reflect the intent of these conditions with amendments to align with Council’s standard template and include conditions that would ordinarily apply to development applications such as this, drawing on recently approved examples. A copy of these conditions are included at **Attachment 2** for Council’s consideration.

Issues

Approval of the Conservation Management Plan

Should Council resolve to determine the proposed Development Application by way of approval, the proposal needs to be considered satisfactory against the provisions of clause 5.10(10) of Shoalhaven Local Environmental Plan 2014 (SLEP 2014) in order to be permissible.

Clause 5.10(10) of SLEP 2014 states the following:

*(10) **Conservation incentives** The consent authority may grant consent to development for any purpose of a building that is a heritage item or of the land on which such a building is erected, or for any purpose on an Aboriginal place of heritage significance, even though development for that purpose would otherwise not be allowed by this Plan, if the consent authority is satisfied that—*

- a) the conservation of the heritage item or Aboriginal place of heritage significance is facilitated by the granting of consent, and*
- b) the proposed development is in accordance with a heritage management document that has been approved by the consent authority, and*
- c) the consent to the proposed development would require that all necessary conservation work identified in the heritage management document is carried out, and*
- d) the proposed development would not adversely affect the heritage significance of the heritage item, including its setting, or the heritage significance of the Aboriginal place of heritage significance, and*
- e) the proposed development would not have any significant adverse effect on the amenity of the surrounding area.*

Any approval of the Development Application by Council needs to ensure all of these requirements have been considered satisfactory in order for the proposal to be a permissible development.

Accordingly, Council will need to be satisfied that:

- a) the conservation of ‘Mananga Homestead’ is facilitated by the granting of consent, and

- b) Conservation Management Plan prepared by Navin Officer (Project No. 211049, dated 23/04/2021), Statement of Heritage Impact prepared by Navin Officer (Project No. 211048, dated 22/04/2021) and Capital Works & Maintenance Cost Report prepared by Mitchell Brandtman dated 25 January 2021 (Project Ref No. 28644) are approved, and the proposed development is in accordance with these documents; and
- c) the consent (Attachment 2) requires that all necessary conservation work identified in the heritage management document to be carried out, and
- d) the proposed development will not adversely affect the heritage significance of Manage Homestead, including its setting, and
- e) the proposed development will not have any significant adverse effect on the amenity of the surrounding area.

The above issues were addressed in the previous report to Development and Environment Committee meeting 13 July 2021 (attachment 3). Of particular note is cl10(10)(b) which requires the development to be in accordance with heritage documentation adopted by Council.

Planning Assessment

The Development Application has been assessed under s4.15 of the *Environmental Planning and Assessment Act 1979* as presented in the report to the Development and Environment Committee meeting on 13 July 2021 [Item DE21.77].

Policy Implications

There are no policy implications as a result of the development as proposed.

Financial Implications:

There are potential cost implications for Council in the event of a refusal or approval 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). Further under some circumstances, third parties (i.e., objectors) can seek a judicial review of Council's decision in the NSW Land and Environment Court.

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 requested 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

Council has been presented with a report prepared by Council staff at the Development and Environment Committee meeting 13 July 2021.

At this meeting it was resolved:

"That consideration of the report presented in Item DE21.77 be deferred to the Ordinary Meeting on 27 July 2021 to enable Councillors and staff to consider in detail the substance of the above defeated Motion moved by Councillor Guile".

Council staff have reviewed the conditions presented by Councillor Guile and drafted a set of Conditions of Consent that reflect the intent of these conditions whilst reflecting Council's standard template, also including conditions that would ordinarily apply to development applications such as this, drawing on recently approved examples. Should Council resolve to determine the subject development application by way of approval, it is recommended that the conditions at **Attachment 2** be imposed.

Further, to meet the requirements of clause 5.10(10) of SLEP 2014 any resolution by Council to approve the subject development application, should pre-emptively approve the Conservation Management Plan prepared by Navin Officer (Project No. 211049, dated 23/04/2021), Statement of Heritage Impact prepared by Navin Officer (Project No. 211048, dated 22/04/2021) and Capital Works & Maintenance Cost Report prepared by Mitchell Brandtman dated 25 January 2021 (Project Ref No. 28644). Clause 5.10(10)(b) requires the development to be in accordance with the heritage management document(s) that **has** been approved (**emphasis added**).

Conditions of Consent – as put forward in Councillor Motion

That Council approves DA20/2172 for alterations and additions to an existing building and its use as a function centre subject to the following conditions:

1. General

This consent relates to the **alterations and additions to an existing building and its use as a function centre** as documented in the following stamped plans and documents, as altered by the conditions below. If there is inconsistency between the stamped plans and documents and the conditions of consent, the conditions prevail to the extent of that inconsistency.

Plan/Document	Reference	Prepared By	Dated
Site Plan	531	Molnar Freeman	September 2020
Plans and Elevations	1956	Precision Plans	2 February 2021
BCA Report	277/20	AIS Certifiers	October 2020
Conservation Management Plan	210049	Navin Officer	April 2021
Environmental Noise Impact Assessment	2008005E	Harwood Acoustics	1 February 2021

Comment: This condition is similar to Council condition No. 1 excepting that the Council version lists all documents for approval. In addition to the above, the Statement of Heritage Impact, Landscape Masterplan and Management Plan, Civil Works Plan, Waste Management, traffic and Parking Plan, Traffic and Parking Assessment and the Mitchell Brandtman report (which is tied to the conservation works) are listed.

2. Car Parking Design Standards

Prior to the issue of a Construction Certificate, design plans and specifications must be prepared and approved by the Certifier in respect of car bays 1 to 3 and car bays 12 to 21 on the Site Plan to an all-weather gravel standard.

Comment: Equivalent Condition # 21 in SCC version. Additionally, Condition #7 references the 9 car parking spaces, the applicant has advised that can be provided. (Provided via an annexure to the traffic response.)

3. Car Parking

A minimum of 24 car spaces are to be provided for the exclusive use by patrons, clients and employees during operating hours comprising:

- The 8 all-weather car bays in the existing car park shown on the Site Plan, including 2 accessible bays.
- An additional 12 all-weather car bays (bays 1 to 3 and bays 12 to 21 on the Site Plan).
- A minimum of 4 informal car bays as shown on the Site Plan.

Comment: Equivalent Condition # 21 in SCC version. Condition # 41 specifies the number of spaces.

4. Operating Rules

The operation of the function centre must comply with the following rules:

- a. A maximum of 40 commercial functions per year.
- b. A maximum of 10 charitable functions per year.
- c. A maximum of 120 guests per function.

Comment: Equivalent Condition # 47 in SCC version. The condition also deals with guest departure, noise, traffic management and the plan of management. This condition is typically applied to function centre developments.

5. Traffic Plan of Management

Prior to the issue of an Occupation Certificate, a traffic plan of management shall be prepared for approval by the Certifier to ensure the safe and efficient transportation of patrons to and from the function centre, including the use of a minimum of two 11-seater minibuses.

Comment: A plan of management was submitted as Annexure B of letter of response to Council comments from McLaren. Referenced in Condition # 1 of the SCC version and condition # 47.

6. Toilets

A minimum of 7 unisex toilets are to be provided, including one accessible toilet.

Comment: No equivalent condition proposed as the plans illustrate what is to be constructed. The plans are listed in Condition 1 as approved.

7. Noise

The noise mitigation measures as detailed in the Environmental Noise Impact Assessment, Reference: 2008005E, prepared by Harwood Acoustics, dated 1 February 2021 must be maintained for the life of the development, and the following rules must apply:

- a. Amplified music must cease by 10.30pm
- b. All functions must finish by 11pm.

Comment: Equivalent Condition # 46 in SCC version.

8. Conservation Management Plan

The approved use is to be in accordance with the Conservation Management Plan prepared by Navin Officer, Reference No. 210049 dated April 2021. All conservation works identified in the Conservation Management Plan are to be carried out as required for the life of the development.

Comment: Equivalent Condition # 4 however the conditions also reference the other Heritage Management Conditions. There are 3 in total and this are also referenced in Condition # 1. The heritage management is fundamental to the approval of the function centre.

9. All Other Conditions in Annexure A

Annexure A - Other Conditions

1. Prescribed Conditions

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

Comment: Equivalent Condition # 2 in SCC version.

2. Occupation / Use

The development must not be occupied or used before an Occupation Certificate has been issued by the Principal Certifier.

Comment: Equivalent Condition # 3 in SCC version.

PRIOR TO THE COMMENCEMENT OF WORKS

3. Appointment of Principal Certifier

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

Comment: Equivalent Condition # 8 in SCC version.

4. Construction Certificate

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

Comment: Equivalent Condition # 9 in SCC version.

5. Notice of Commencement

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

Comment: Equivalent Condition # 10 in SCC version.

6. Toilet Facilities - Temporary

Toilet facilities must be available or provided at the work site before works begin and must be maintained until the works are completed at a ratio of one toilet plus one additional toilet for every 20 persons employed at the site. Each toilet must be a standard flushing toilet connected to a public sewer or have an on-site effluent disposal system approved under the *Local Government Act 1993* or be a temporary chemical closet approved under the *Local Government Act 1993*.

Comment: Equivalent Condition # 11 in SCC version.

7. Runoff and Erosion Controls

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

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

Comment: Equivalent Condition # 12 in SCC version.

8. Shoalhaven Water – Prior to the Commencement of the Approved Use

Prior to the commencement of the approved use, all conditions listed on the Shoalhaven Water Notice of Requirements under the heading “Prior to the Commencement of the Approved Use” must be complied with and accepted by Shoalhaven Water. Written notification must be issued by Shoalhaven Water and provided to the Certifier.

Comment: Equivalent Condition # 18 in SCC version.

PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

9. Local Infrastructure Contributions

This development will generate a need for the additional services and/or facilities described in Shoalhaven Contributions Plan 2019 and the total contribution in relation to this development must be paid to Council prior to the issue of a Construction Certificate. Evidence of payment must be provided to the Certifying Authority.

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

Comment: Equivalent Condition # 17 in SCC version.

10. Evidence

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

Comment: Equivalent Condition # 15 in SCC version.

11. Long Service Levy

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

Comment: Equivalent Condition # 16 in SCC version.

12. Local Government Act 1993 – Section 68 Approval

Approval for water, sewer and *drainage* works is required to be obtained under Section 68 of the Local Government Act prior to the issue of a Construction Certificate.

Comment: Equivalent Condition # 24 in SCC version. (Same wording.)

13. Car Parking Design Standards

Prior to the issue of a Construction Certificate, design plans and specifications must be prepared and approved by the Certifier. The car parking and access design must comply with the following:

- i) the provisions of A.S. 2890 - Parking facilities,
- ii) for light vehicular loading,
- iii) to an all-weather gravel standard.

Comment: Equivalent Condition # 21 in SCC version.

DURING WORKS

14. Hours for Construction

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

Comment: Equivalent Condition # 25 in SCC version.

15. Aboriginal Objects Discovered During Excavation

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

- a. All excavation or disturbance of the area must stop immediately
- b. The Office of Environment, Energy and Science must be advised of the discovery in accordance with section 89A of the *National Parks and Wildlife Act 1974*.

Comment: Equivalent Condition # 26 in SCC version.

16. Archaeology Discovered During Excavation

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

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

Comment: Equivalent Condition # 27 in SCC version.

17. Waste Management Plan

All waste must be contained within the site during construction and then be recycled or removed to an authorised waste disposal facility. Waste must not be placed in any location or in any manner that would allow it to fall, descend, blow, wash, percolate or otherwise escape from the site. Compliance must be demonstrated by the submission of tip receipts to the Certifier.

Comment: Equivalent Condition # 28 in SCC version.

18. Maintenance of Site and Surrounds

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

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

Comment: Equivalent Condition # 29 in SCC version.

PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE

19. Compliance

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

Comment: Equivalent Condition # 30 in SCC version. Condition #30 also requires a schedule of compliance to be provided with the OC.

20. Fire Safety

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

Comment: Equivalent Condition # 32 in SCC version.

21. Certificate of Compliance – Shoalhaven Water

A Certificate of Compliance (CC) under Section 307 of Division 5 of Part 2 of Chapter 6 of the Water Management Act 2000 must be obtained to verify that all necessary requirements for matters relating to water supply and sewerage (where applicable) for the development have been made with Shoalhaven Water. A Certificate of Compliance must be obtained from Shoalhaven Water after satisfactory compliance with all conditions as listed on the Development Application Notice and prior to the issue of an Occupation Certificate.

Comment: Equivalent Conditions # 5 & 18 in SCC version. This reflects the requirements of the Notice in that there are matters to be attended to prior to CC and OC.

ONGOING USE OF THE DEVELOPMENT

22. Fire Safety – Annual Statement

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

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

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

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

Comment: Equivalent Condition # 38 in SCC version.

23. Food Business Regulations

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

- a. Shoalhaven City Council's Food Premises Policy
- b. Chapter 3 of the Australia/New Zealand Food Standards Code
- c. Food Act 2003 (NSW)
- d. Food Regulation 2015
- e. AS 4674 Construction and fit out of food premises
- f. AS 1668.2 The use of ventilation and air conditioning in buildings-Mechanical ventilation in buildings.

Comment: Equivalent Condition # 6 in SCC version. There is also a condition (# 34) which requires notification to Council to enable inspections.

24. Loading/Unloading Operations

All loading/unloading operations are to take place wholly within the confines of the site.

Comment: Equivalent Condition # 51 in SCC version.

There are additional conditions in the SCC version.

Conditions 13 and 14 in the SCC version deal with demolition. It may be that only minor demolition is required and this is simply to address that matter. These are standard conditions applied to this type of development for alterations and additions.

Condition 19 is a National Construction Code (NCC) upgrade imposed as a result of a referral. This is to be to the satisfaction of the certifier – either private or Council.

Condition 20 – requires an erosion and sediment control plan as recommended by the Council engineers to address site disturbance for the car park,

Condition 22 – requirement by the Council engineer which outlines requirements for connection to stormwater.

Condition 23 – this condition requires a minibus operation plan. This condition is typically imposed where a minibus operation is put forward as part of a development. The condition has been recommended by Council's engineer in consultation with engineers in City Services to ensure smooth on-going operations of the minibus. The development is reliant on the minibus operations.

Condition 31 – This requires heritage interpretation works. These include signage, plaques, storyboards and the like to interpret the historical features of Mananga. This was identified in the applicant's heritage management document by Navin Officer.

Condition 33 – section 68 approval is referenced, in that it must be complied prior to OC.

Condition 35 – this condition requires the car parking works and associated driveway areas to be completed prior to OC.

Condition 36 – landscaping is proposed, so this condition requires the completion of the landscaping.

Condition 37 – (damage to public assets) standard condition to ensure public assets are protected and repaired if damaged.

Condition 39 – this condition requires on-going compliance with the traffic management plan inclusive of the use of the minibus.

Condition 40 – this condition ties the accommodation component to the function component by ensuring that they do not operate independently to ensure that there is adequate parking.

Conditions 42 – 45 – these conditions require completion of the heritage conservation works in a time line. The proposal has been put to Council on the basis of heritage conservation and works and in this regard, it is important to ensure that the works are undertaken within a

reasonable timeframe and in accordance with the approval and relevant documents and that details are provided to Council.

Condition 47 – this condition relates to function events. Specifically f, g,h and i which relate to the management of the function centre and include cessation of the functions, location of functions (which is a noise consideration), compliance with plan of management and neighbour notification. The notification includes advising of a name and telephone number of a person for each event that can be contacted to report noise and behavioural problems, should there be any concerns. This condition has been applied to a similar proposal.

Condition 48 – this is a management audit to demonstrate compliance in the event of a compliant. This has been applied to a similar proposal. Note: the use would be otherwise prohibited in the zone, hence demonstrating compliance with the consent and satisfying the amenity provision in the conservation clause are important.

Condition 49 – site maintenance is a standard condition that goes to upkeep of the development – also important given that the proposal relies on “maintenance”.

Condition 50 – landscaping – this is to ensure that there is no inadvertent planting of plants which may include weeds.



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Address all correspondence to

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shoalhaven.nsw.gov.au     

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

Environmental Planning and Assessment Act, 1979
DA20/2172

TO:

Cowman Stoddart Pty Ltd
PO Box 738
NOWRA NSW 2541

being the applicant(s) for DA20/2172 relating to:

8 Homestead Lane, BERRY - Lot 101 - DP 1057897

APPROVED USE AND OR DEVELOPMENT:

Alterations & additions & use of existing 'Mananga Homestead' for use as a Function Centre for the conducting of weddings and events, including heritage conservation works and car parking upgrades.

DETERMINATION DATE:

Date

Pursuant to the Section 4.18 of the Act, notice is hereby given that the above application has been determined by granting consent, subject to the conditions listed below.

CONSENT TO OPERATE FROM:

Date

CONSENT TO LAPSE ON:

Date

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

In accordance with Section 4.53 of the Act, development consent for the use of the land or the erection of a building does not lapse if building, engineering or construction work relating to the building or work or the use is physically commenced on the land to which the consent applies before the lapse date.

DETAILS OF CONDITIONS:

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

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PART A: GENERAL CONDITIONS

1. General

The consent relates to alterations and additions to an existing building and its use as a function centre as documented on the stamped plans/documentation, or as modified by the conditions of this consent. The development must be carried out in accordance with this consent. If there is inconsistency between the stamped plans/documentation and the conditions of consent, the conditions prevail to the extent of that inconsistency.

Stamped plans/documents	Ref/sheet no.	Prepared by	Dated
Site Plan	531	Molnar Freeman	September 2020
Plans and Elevations	1956	Precision Plans	2 February 2021
BCA Report	277/20	AIS Certifiers	October 2020
Conservation Management Plan	210049	Navin Officer	23 April 2021
Statement of Heritage Impact	210048	Navin Officer	22 April 2021
Environmental Noise Impact Assessment	2008005E-R Rev B	Harwood Acoustics	7 April 2021
Landscape Masterplan	MJQ220421-2	Saville & Will	22 April 2021
Heritage Landscape Management Plan for 'Mananga Homestead' Berry NSW Australia.		Saville & Will	Undated
Civil Works Plans (Sheets 1 to 7)	N28019-101 Rev 1 N28019-102 Rev 1 N28019-103 Rev 1 N28019-105 Rev 1 N28019-106 Rev 1 N28019-107 Rev 1	Allen Price & Scarratts Pty Ltd	7/10/2021
Waste Management Plan	Standard Form 5 pages	Matthew Quinn	06.10.2020
Traffic And Parking Plan Of Management (Annexure B of Letter of Response to Council Comments)	Sheets 1 to 5 of 5 Ref: 210019.02FE	McLaren Traffic Engineering & Road Safety Consultants	30 March 2020
Traffic and Parking Impact Assessment	210019.01FA	McLaren Traffic Engineering & Road Safety Consultants	28 January 2021
Capital Works & Maintenance Cost Report	Project Ref No. 28644	Mitchell Brandtman	25 January 2021

Note: Any alteration to the plans and/or documentation must be submitted for the approval of Council. Such alterations may require the lodgement of an application to amend the consent under section 4.55 of the Environmental Planning and Assessment Act, or a new development application.

2. Prescribed Conditions

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

3. Occupation / Use

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

4. Heritage Management

The function centre has been approved under clause 5.10 of the *Shoalhaven Local Environment Plan 2014*. In accordance with the Conservation Management Plan prepared by Navin Officer (Project No. 211049, dated 23/04/2021), Statement of Heritage Impact prepared by Navin Officer (Project No. 211048, dated 22/04/2021) and Capital Works & Maintenance Cost Report prepared by Mitchell Brandtman dated 25 January 2021 (Project Ref No. 28644), all necessary conservation work identified in the heritage management document is to be carried out as required for the life of the development.

5. Shoalhaven Water - Certificate of Compliance

A Certificate of Compliance must be obtained to verify that all necessary requirements for matters relating to water supply (where applicable) for the development have been made with Shoalhaven Water. A Certificate of Compliance must be obtained from Shoalhaven Water after satisfactory compliance with all conditions as listed on the Notice of Requirements and prior to the issue of an Occupation Certificate, Subdivision Certificate or Caravan Park Approval, as the case may be.

6. Food Business Regulations

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

- a) [Shoalhaven City Council's Food Premises Policy](#)
- b) [Chapter 3 of the Australia/New Zealand Food Standards Code](#)
- c) [Food Act 2003 \(NSW\)](#)
- d) [Food Regulation 2015](#)
- e) AS 4674 Construction and fit out of food premises
- f) AS 1668.2 The use of ventilation and airconditioning in buildings-Mechanical ventilation in buildings.

7. Design Amendments

Before the issue of a construction certificate, the certifier must ensure the approved construction certificate plans (and specifications) detail nine (9) car spaces in the area to the north-west of the cabins as shown in the *McLaren Traffic Response* Annexure A: Sheets 3 and 4 of 4 (ref: 210019.02FE, dated 30 March 2020).

PART B: INTEGRATED DEVELOPMENT AND CONCURRENCE CONDITIONS

NIL

PART C: PRIOR TO THE COMMENCEMENT OF WORKS

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8. Appointment of Principal Certifier

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

9. Construction Certificate

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

10. Notice of Commencement

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

11. Toilet Facilities - Temporary

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

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

12. Runoff and Erosion Controls

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

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

13. Demolition

Demolition work must be carried out in accordance with AS2601-2 [SafeWork NSW – Code of Practice, Demolition Work \[ISBN 978-0-642-78415-5\]](#) and [SafeWork NSW – Code of Practice, How to Safely Remove Asbestos \[ISBN 978-0-642-33317-9\]](#) as applicable.

14. Demolition - Completion of Works

Demolition work, once commenced, must be completed within three (3) months.

PART D: PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

15. Evidence

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

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16. Long Service Levy

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

17. Local Infrastructure Contributions

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

Project	Description	Calculation	Amount
CWFIRE2001	Citywide Fire & Emergency services	\$138.13	1.26
CWFIRE2002	Shoalhaven Fire Control Centre	\$202.07	1.26
CWMGMT3001	Contributions Management & Administration	\$574.39	1.26
			\$471.52

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

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

18. Shoalhaven Water – Prior to the Issue of a Construction Certificate

Prior to the issue of a Construction Certificate, all conditions listed on the Shoalhaven Water Notice of Requirements under the heading "Prior to the Issue of a Construction Certificate" must be complied with and accepted by Shoalhaven Water. Written notification must be issued by Shoalhaven Water and provided to the Certifier.

19. National Construction Code Upgrade

Council considers that pursuant to clause 94 of the *Environmental Planning and Assessment Regulation 2000* it is appropriate to require the existing building (to be utilised for the purpose of functions) to be upgraded to partial conformity with the Performance Requirements of the National Construction Code (NCC). In this regard, the building is required to meet compliance with the performance requirements Sections D & E of the NCC

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

20. Erosion and Sediment Control Plan (ESCP)

Prior to the issue of a Construction Certificate, an Erosion and Sediment Control Plan (ESCP) must be prepared (as defined in the National Construction Code) in accordance with relevant provisions of the Landcom Manual – Soils and Construction, Managing Urban Stormwater, Vol 1, 4th Edition March 2004 to the satisfaction of the Certifier.

All implemented measures must:

- not cause water pollution as defined by the [Protection of the Environment Operations Act \(POEO\)](#).

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- b) Be maintained at all times.
- c) Not be decommissioned until at least 70% revegetation cover has been established.

21. Car Parking Design Standards

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

The car parking design must comply with the following:

- a) 24 car parking spaces to be provided;
- b) Constructed in accordance with the following:
 - i) the relevant provisions of AS2890 – Parking facilities,
 - ii) for light vehicular loading, and
 - iii) to an all-weather gravel standard, with a minimum compacted pavement thickness of 200mm.

The internal driveway and car parking spaces must be delineated by raised pavement markers or similar.

22. Stormwater - Alteration to an Existing System

Prior to the issue of a Construction Certificate stormwater plans must be prepared by a Licensed Plumber or a professional engineer, (as defined in the National Construction Code), and submitted to the Certifier for approval.

- a) Drainage must be designed and constructed in accordance with:
 - i) the National Construction Code
 - ii) Council's [Engineering Design Specifications](#)
 - iii) [Development Control Plan G2](#)

Stormwater from proposed new or altered roof areas may be discharged to the existing site drainage system. Disposal of stormwater from minor roof or paved areas that cannot reasonably be drained by gravity to a public road or registered drainage easement may occur on on-site, subject to ensuring no concentration of flows or nuisance to other properties.

23. Minibus Operations – Management Plan

Prior to the issue of a Construction Certificate, the proponent must provide to Council for approval a management plan detailing the proposed minibus operations. The management plan must include (but is not limited to):

- a) Identification of pick-up location for passengers not staying at local accommodation, e.g. those who have travelled by private vehicle.
- b) Management procedures for pick up of passengers to minimise disruption to the local road network.
- c) Requirements for induction of minibus drivers with the management plan.
- d) Contact details for the person responsible for managing the minibus use.

24. Section 68 Local Government Approval

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Approval for water, sewer and drainage works is required to be obtained under Section 68 of the *Local Government Act 1993* prior to the issue of a Construction Certificate.

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

NIL

PART F: DURING WORKS

25. Hours for Construction

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

26. Aboriginal Objects Discovered During Excavation

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

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

27. Archaeology Discovered During Excavation

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

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

28. Waste Management Plan

All waste must be contained within the site during construction and then be recycled in accordance with the approved Waste Management Plan (WMP) or removed to an authorised waste disposal facility. Waste must not be placed in any location or in any manner that would allow it to fall, descend, blow, wash, percolate or otherwise escape from the site. Compliance with the WMP must be demonstrated by the submission of tip receipts to the Certifier.

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

29. Maintenance of Site and Surrounds

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

- a) All materials and equipment must be stored wholly within the work site unless an approval to store them elsewhere is held.
- b) Waste materials (including excavation, demolition and construction waste materials) must be managed on the site and then disposed of at a waste management facility.
- c) Where tree or vegetation protection measures are in place, the protected area must be kept clear of materials and / or machinery.

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- d) The developer must maintain the approved soil water management /erosion and sediment control measures to the satisfaction of the Certifier for the life of the construction period and until runoff catchments are stabilised.
- e) During construction:
 - i) all vehicles entering or leaving the site must have their loads covered, and
 - ii) all vehicles, before leaving the site, must be cleaned of dirt, sand and other materials, to avoid tracking these materials onto public roads.
- f) At the completion of the works, the work site must be left clear of waste and debris.

PART G: PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE

30. Schedule of Compliance

The Occupation Certificate must not be issued until all relevant conditions of development consent have been met or other satisfactory arrangements have been made with council (i.e., a security). A schedule of compliance in table format must be submitted with the application for an Occupation Certificate. The schedule must provide evidence of how all relevant conditions of development consent have been fulfilled.

31. Heritage Interpretation Works

Prior to the issue of an Occupation Certificate, design plans and specifications for heritage interpretation works must be prepared by a suitably qualified person and approved by Council.

Heritage interpretation works in the form of signs, storyboards in the buildings, historical plaques in the gardens, sculptures, self-guided tour and/or the like, as required to be implemented within two (2) years of the date of issue of the development consent.

32. Fire Safety

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

33. Section 68 Approval

Prior to the issue of an Occupation Certificate, all the conditions under Section 68 of the LG Act will be required to be complied with

34. Food Business Notification

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

35. Evidence of Completion

Prior to the issue of an Occupation Certificate, all driveway and carpark works internal to the site as shown on the approved plans must be completed.

36. Landscaping Compliance

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

37. Damage to Public Assets

Prior to the issue of an Occupation Certificate, any infrastructure within the road reserve, along the frontage of the subject site, or in proximity, which has been damaged as a result of construction works, must be repaired by the developer to the satisfaction of Council.

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

NIL

PART I: ONGOING USE OF THE DEVELOPMENT

38. Fire Safety – Annual Statement

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

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

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

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

39. Traffic and Parking Impact Assessment Compliance - Minibus Use

No function or event may be held on the site unless two (2) minibuses (as detailed in the McLaren Traffic Engineering letter of response to Council dated 30 March 2021 and the McLaren Traffic Engineering report titled Traffic and Parking Impact Assessment of the Proposed Events and Wedding Function Facility at 8 Homestead Lane Berry (January 2021)) are available for the exclusive use of the function centre and its guests at any time when the function centre is operating. The minibuses are to be owned and operated in conjunction with the function centre, and evidence of ownership of such vehicles must be furnished to Council officers upon request.

The minibuses must be a maximum size of 6m (similar to a Mercedes-Benz Sprinter Transfer) as per the Traffic and Parking Assessment. The use of larger vehicles must be supported by justification such as swept path drawings and be approved by Council.

All parking associated with the development must be contained within the development site and not impact on the public road carriageway.

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The minibus operations must be undertaken in accordance with the approved management plan at all times.

All traffic and parking on the site must be managed in accordance with the approved Traffic and Parking Impact Assessment at all times.

40. Traffic and Parking Impact Assessment Compliance – Onsite Accommodation

No function or event must be held on the site unless the onsite accommodation units are unoccupied or are occupied by guests of the function being held onsite, as detailed in the McLaren Traffic Engineering Traffic and Parking Impact Assessment of the Proposed Events and Wedding Function Facility at 8 Homestead Lane, Berry (January 2021) (page 9).

41. Car Parking

A minimum of 24 car spaces are to be provided for the exclusive use by patrons, clients and employees during operating hours comprising:

- a) The 9 all-weather car bays in the existing car park shown on the Site Plan, including 2 accessible bays.
- b) An additional 12 all-weather car bays (bays 1 to 3 and bays 12 to 21 on the Site Plan).
- c) A minimum of 4 informal car bays as shown on the Site Plan

42. Heritage Interpretation Works

The approved (prior to Occupation Certificate) heritage interpretation works are to be installed/completed within two (2) years of the date of issue of the development consent. Evidence of completion is to be provided to Council and installations must be maintained in perpetuity.

43. Heritage Conservation Works – Immediate Priority

Within three (3) years of the date of issue of the development consent, evidence is to be provided to Council of completion of all 'Capital Works to be carried out in the short term' identified in the *Capital Works & Maintenance Cost Report* by Mitchell Brandtman (Project Ref: 28644 , dated 25 January 2021).

44. Heritage Conservation Works – Medium to Long Term Priority

Within five (5) years of the date of issue of the development consent, evidence is to be provided to Council of completion of all 'Capital Works to be carried out in the medium term' identified in the *Capital Works & Maintenance Cost Report* by Mitchell Brandtman (Project Ref: 28644 , dated 25 January 2021).

45. Heritage Conservation Works – Recurring annual and biennial Maintenance Works

'Recurring annual and biennial Maintenance Works' identified in the *Capital Works & Maintenance Cost Report* by Mitchell Brandtman (Project Ref: 28644 , dated 25 January 2021) are to be undertaken on an annual or biennial basis for the life of the development.

46. Noise

The noise mitigation measures as detailed in the *Environmental Noise Impact Assessment*, Reference: 2008005E, prepared by Harwood Acoustics, dated 1 February 2021 must be maintained for the life of the development, and the following rules must apply:

- a) Amplified music must cease by 10:30pm.

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- b) All functions must finish by 11pm.

47. Events – Function Centre

The use of the site as a function venue is approved for use limited to the following operational controls:

- a) A maximum of 50 functions per year including:
 - i) A maximum of 40 commercial functions per year.
 - ii) A maximum of 10 charitable functions per year.
- b) A maximum of 120 guests per function.
- c) Only one function is permitted to be held on-site at any one time.
- d) All functions are restricted to between the hours of 9:00am and 11:00pm.
- e) Amplified music must cease by 10.30pm.
- f) All guests not staying on site must have left the premises by 11pm, with all activities associated with the function to have ceased at this time.
- g) Functions must only occur within the designated area, and as per the approved plans.
- h) The owner or operator must at all times be responsible for ongoing site management and maintenance in accordance with the approved *Plan of Management*.
Any change to the approved *Plan of Management* must be agreed to by Council in writing and the updated plan is to be provided to all neighbouring residents before the commencement of the next event.
- i) The neighbouring residents must be provided with the name and mobile telephone number of a person at each event that can be contacted to report any noisy or antisocial behaviour.

48. Management Audit

The consent holder/operator is required to prepare and submit a Management Audit (MA) relating to the operation of the approved development for the previous 12 months period for a total of five (5) years from the date of Consent.

The first MA shall be submitted within 30 days of the twelve-month anniversary of the determination date and subsequently every twelve months for five (5) years from the date of determination. The MA shall address, but not be limited to, the following:

- a) Record/log of all complaints made for the period of the MA providing details of the complaint and the response taken.
- b) A record of the functions held during the previous 12 months (type of function (commercial/charitable), date of function, number of attendees, use of guest transport service, times commenced and finished, etc.)
- c) Details on additional measures to be implemented (including a timeframe for implementation) to address all identified issues and/or concerns.
- d) Satisfaction of the required conservation works required under the approved heritage conservation works.

Note: Any management issues identified in the Management Audit may be required to be addressed in an amended Function Centre Management Plan or via a Section 4.55 Modification Application.

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49. Site Maintenance – General

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

- a) maintenance of vehicular movement areas including driveways, carparking, manoeuvring areas, line marking, pedestrian facilities, lighting, to the standard specified by this consent;
- b) no parking of any vehicle is permitted, at any time, on the road verge. Signage must be installed and maintained for the life of the development;
- c) ongoing waste and recycling must be managed in accordance with the approved Waste Management Plan. Waste bins are not to be stored within the loading area/space that is visible from a public place;
- d) maintenance of stormwater drainage pipes and systems to ensure efficient discharge of stormwater in accordance with the approved stormwater drainage plan;
- e) maintenance of buildings, fencing, signage/markings to the standards specified in this consent;
- f) all activities must occur, inside the designated building(s) and not in the carpark or driveway areas; and
- g) maintenance and replacement (if necessary) of all landscaping in accordance with the approved landscape plan.

50. Landscaping – Noxious and Environmental Weeds

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

51. Loading/Unloading Operations

All loading/unloading operations are to take place wholly within the confines of the site.

PART J: OTHER COUNCIL APPROVALS AND CONSENTS

NIL

PART K: REASONS FOR CONDITIONS

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

Statutory requirements

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

- a) the objects of the Environmental Planning and Assessment Act, 1979.
- b) the aims, objectives and provisions of the applicable environmental planning instruments,

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- c) the aims, objectives and provisions of Shoalhaven Development Control Plan 2014 (SDCP 2014).
- d) the aims, objectives and provisions of relevant Council policies.

Public notification

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

Submissions

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

Community views

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

Suitability of the Site

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

The relevant public authorities and the water supply authority have been consulted and their requirements met, or arrangements made for the provision of services to the satisfaction of those authorities.

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

Impacts of the Development

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

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

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

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

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Division 8.3 of the EP&A Act, 1979 confers on an applicant who is dissatisfied with the determination of a consent authority a right of appeal to the Land and Environment Court which can be exercised within the prescribed period.

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

Approvals under Local Government Act, 1993

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

Section 176 of the Local Government Act, 1993 provides that an applicant who is dissatisfied with the determination of the Council may appeal to the Land and Environment Court. The appeal must be made within the prescribed period.

PART M: GENERAL ADVICE

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

Disability Discrimination Act 1992

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

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

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

Disclaimer –Conveyancing Act 1919 – Division 4 – Restrictions on the Use of Land

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

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

DBYD Enquiry - 'Dial Before You Dig'

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


SIGNED on behalf of Shoalhaven City Council:

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DRAFT

CL21.158 - Attachment 2

Planning Report – S4.15 Assessment - 8 Homestead Lane, BERRY - Lot 101 DP 1057897

	Planning Report S4.15 Environmental Planning & Assessment Act 1979
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DA Number	DA20/2172
Property	8 Homestead Lane, BERRY - Lot 101 DP 1057897
Applicant(s)	Cowman Stoddart Pty Ltd
Owner(s)	Matthew and Julie Quinn

Conflict of interest declaration

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

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

1. Detailed Proposal

The Statement of Environmental Effects prepared by Cowman & Stoddart dated October 2020 (D20/184961), describes the proposed development as follows:

The proposal involves the use of the subject land for functions or events for up to 120 guests and comprises:

- *Alterations and additions to the former cowshed building as follows:-*
 - *Addition to the western end of the cowshed measuring approximately 9.5 m x 3 m to provide suitable amenities.*
 - *Installation of commercial kitchen.*
 - *Provision of exit doors to the eastern and northern elevations of the cowshed.*
- *The use of an existing building that will be able to accommodate functions or events for up to 120 guests.*
- *Construction of a timber pergola over part of an existing paved area.*
- *The use of the property is restricted to the cowshed building itself, plus the brick paved area to the north of this building*
- *On-site parking for 10 staff adjacent an existing internal accessway, plus capacity for 10 guests as emergency overflow.*
- *Conservation works as outlined in the Conservation Management Plan prepared by Navin Officer including:*
 - *Replacement of plastic roof sheeting for Mananga Homestead dwelling with high quality translucent panels;*
 - *Repoint brickwork in chimney stacks;*
 - *Repairs to existing decking on Mananga Homestead dwelling involving punching exposed fittings, sanding back and staining timber decking to match existing;*
 - *Damp-proofing of Mananga Homestead dwelling;*
 - *Draught proof existing external timber doors to Mananga Homestead dwelling using sympathetic materials;*

Planning Report – S4.15 Assessment - 8 Homestead Lane, BERRY - Lot 101 DP 1057897

- *Provision of interpretative signage to outline the history and function of the subject site;*
- *Provision of a sculpture/artwork which reflects the history of the site;*
- *Contouring of existing earth embankment adjacent the eastern boundary of the site;*
- *Establishment of an Heirloom garden, including pathways;*
- *Retaining wall and contouring of embankment to the eastern boundary of the site*
- *Planting of an avenue of trees adjacent the eastern boundary of the site.*
- *Site Landscaping and its management, as outlined in the Landscaping Plan and Management Schedule prepared by Savile & Will (Annexure 1), and which includes the retention of all significant vegetation and that having heritage significance, including a Norfolk Island Pine and grove of Eucalypt trees; and*
- *Ongoing maintenance works as outlined in the schedule prepared by Mitchell Brandtman.*

The functions are to be undertaken between the hours of 10:00 am and 11:00 pm, and only one function is to occur on any day. Functions are typically likely to involve the use of the site for approximately 5 to 6 hours, and the hours proposed provide opportunity for both daytime or evening functions. For those functions undertaken on an evening, all music is to cease by 10:30 pm in order that all guests vacate the site by 11:00 pm.

The proposal is for up to 40 commercial functions in any one year, and a maximum of 1 in any week. In addition to the commercial component, it is proposed that the building be available to local charity groups for fund raising purposes, at no cost, on up to 10 occasions in any year.

Parking is proposed for 10 vehicles for staff associated with the functions. Formal parking is not proposed for guests, apart from those temporarily residing in the on-site accommodation units. Other guests will be transported to and from the site in mini-buses. As outlined above however, 10 spaces will be available as emergency overflow if required and these are located immediately adjacent an existing internal accessway and are not proposed to be formalised given their very infrequent use.

Functions will cater for a maximum of 120 guests with amplified music. Receptions will be held within the shed building and music will be played within the shed building, however, guests may access the paved courtyard and lawn area to the north and east of the building during functions.

Minibuses will be used to transport guests to and from the site and there is on-site accommodation (five (5) tourist cabins – approved according to Development Consent No. DA19/2134), that will be used by function centre attendees.

An overall site plan and floor plan of the shed for use as a function centre are provided in **Figure 1 and 2** below.

[illegible]

Q/A SITE PLAN
1:750
Figure 1 – Extract of the overall site plan (D21/1849737).

Planning Report – S4.15 Assessment - 8 Homestead Lane, BERRY - Lot 101 DP 1057897

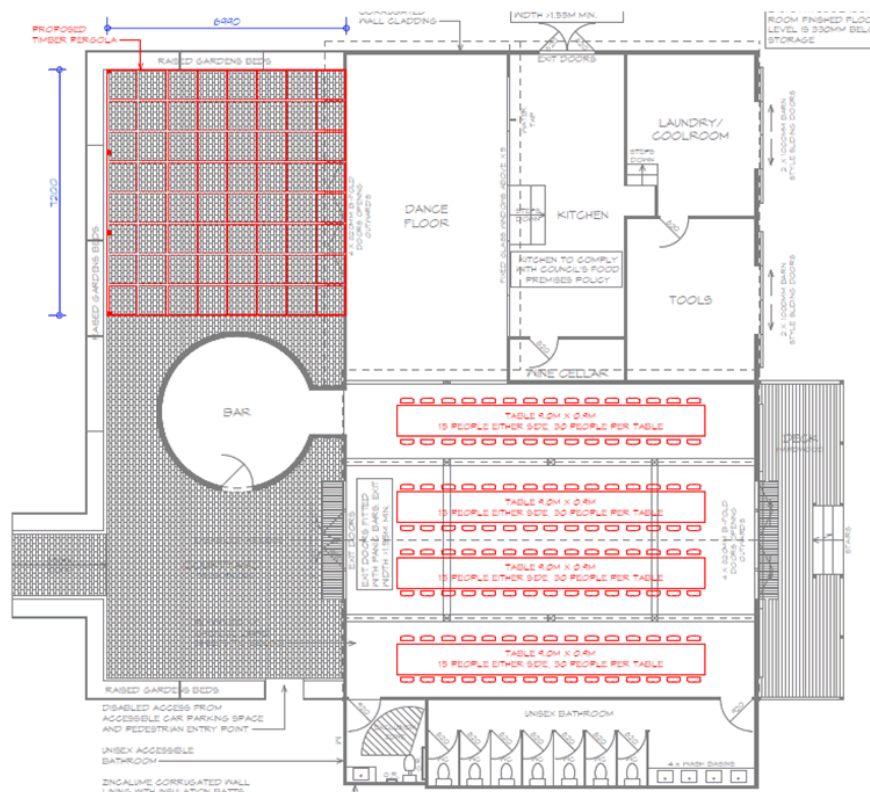


Figure 2 - Extract of the proposed floor plan associated with the function centre, including works for additional bathrooms and timber pergola to the northern elevation (D21/45180).

2. Subject Site and Surrounds

The subject site is located on the eastern side of Homestead Lane and Queen Street, 600m north-east of the township of Berry. The property is an irregular-shaped allotment of approximately 1.98ha. The site is legally identified as Lot 101 DP 1057897 and is described as 8 Homestead Place, Berry. The site is also referred to as Mananga Homestead.

The land slopes gradually from the northwest to the southeast corner of the site. A recently approved dam is located in the south-eastern corner of the site and receives a portion of the runoff from the site. There are presently four (4) formalised access points to the site.

There is limited native vegetation across the site, with significant ornate European landscaped gardens around the curtilage of the dwelling and detached garage. The ornate landscaping forms a significant component of the heritage significance of the site. The property is locally listed under Schedule 5 of the *Shoalhaven Local Environmental Plan 2014* (SLEP 2014) as an Item of environmental heritage (Item I63 - *Mananga* - Berry Estate Managers Farm Complex).

The existing development on the site consists of a Federation Queen Anne style homestead, associated outbuildings, earth dam and jetty, recently renovated associated shed for use as a home business (home industry and arts) and inground swimming pool. The site is listed, as mentioned above, and is identified as locally significant in the SLEP 2014 (Item No. I63).

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Council has previously approved the renovation and use of the shed located to the south of the dwelling for use as a home industry/business (DA19/2060). The detached habitable rooms and a portion of the breezeway connecting the structure to the dwelling house, located to the north of the dwelling-house were destroyed by fire and are currently in the process of being rebuilt in accordance with Development Consent No. DA20/1266.

On 2 June 2020, Council granted Development Consent No. DA19/2134 for development described as

*"Tourist and visitor accommodation and associated works, consisting of a total of five (5) individual tourist and visitor accommodation **rooms**, as follows:*

- *Demolition and rebuild of existing structure 'Old Bails' building for use as tourist and visitor accommodation (tourist cabin); and*
- *construction of two (2) detached single storey buildings each with two (2) rooms for use as tourist and visitor accommodation (tourist cabins)"*

A Construction Certificate (CC20/1814) has been issued in relation to DA19/2134 and the tourist cabins are substantially commenced (refer to the aerial image of the subject site at Figure 2).

Site & Context

The site immediately adjoins the Bangalee Motel located to the south at 180 Queen Street. The Bangalee Motel features a single storey masonry motel building comprising 10 motel units, attached reception and manager's residence, swimming pool and parking. Council has recently granted development consent to substantial additions to the available motel accommodation on this site through the construction of two x 2-storey buildings that will contain an additional 16 accommodation units, bringing the total to 26 (Development Consent DA 17/1357). Development on the western side of Queen Street consists of detached dwelling houses and their associated uses. Development to the north and east largely consists of rural and residential land uses. Located further to the south of the site is the Pulman Heritage Conservation Area Scheduled under the SLEP 2014.

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Figure 3 - Aerial image of the subject site.

Deposited Plan and 88B Instrument

There are no easements or restrictions relating to the lot that would prevent the development of the site as proposed.

3. Background

The property is locally listed under Schedule 5 of SLEP 2014, as an Item of environmental heritage (Item 163 - *Mananga - Berry Estate Managers Farm Complex*). The site was identified in the Shoalhaven Council Heritage Study 2003 and identified as reference number B087 "Mananga Federation, Queen Anne Style Farmhouse". The building is described as having regional significance.

The statement of significance provided by Heritage NSW indicates that "*Mananga*"—*Berry Estate manager's farm complex* is "[a]n excellent Federation Queen Anne style farmhouse in weatherboard designed by noted Sydney architect Howard Joseland. Historical interest as a leasehold property, originally, on the Berry Estate. Closely associated with the early private town of Broughton Creek."

The physical description of the "*Mananga*" provided on the Heritage NSW State Heritage Inventory is provided as follows:

"The homestead and attached land is situated on the crest and eastern fall of a low but locally prominent spurline shoulder which forms the watershed between the Broughton Creek to the east, and Broughton Mill Creek to the west. The homestead is situated 80 metres to the east of Broughton Mill Creek and is elevated approximately eight metres above the surrounding valley floor.

A Federation Queen Anne style weatherboard homestead featuring a complex corrugated iron roof with decorative timberwork to gables (with Art Nouveau character), hipped skillion verandah returning to sides, timber posts and brackets. Verandas appear to have originally surrounded

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an original core building. An additional wing has been added to the north eastern corner of the building, sometime prior to 1949. A conservatory has been relatively recently added to the eastern side of the building. The building is surrounded by a mature garden. The homestead building is thought to be designed by noted Sydney architect Howard Joseland (1860-1930) (Peter Freeman Pty Ltd 1998).

The current property holding includes five outbuildings to the south of the current homestead, including a concrete silo, associated large iron sheds and disused milking bails. Eight outbuilding structures are visible on the 1958 aerial photo (Figures 6.91). Images appear to show interior rendered walls (and/or ceilings) within an outbuilding (buttery) constructed using sawn timber studs filled in using multiple timber slats with applied plaster or render.

At the southern end of the property there are landform traces of the excavated trench through the spurline (now filled in for the Princes Highway platform) which formed part of the infrastructure for the water race for the Berry Estate saw mill which dates from the 1830s.

Immediately north of the race alignment is the location of the original Mananga homestead or cottage. This site is associated with some exotic plantings and mature trees. This site, together with the infilled mill race should be considered and managed as archaeological deposits.

Original building had approximate dimensions 24 x 18 metres. The additional wing on NE corner has approximate dimensions: 15 x 11metre.

The current property attached with the homestead is approximately 250 x 118 metres in cross dimensions."

Post-Lodgement

On 16 November 2020, the development application was considered at the Development Review Panel Meeting (internal). Several items were identified as being deficient with the application.

On 24 November 2020, the Development Application was notified for a period of 14 days. Over 160 submissions were received objecting to the application. A single submission in support was received.

On 8 December 2020, the Council resolved at the Strategy & Assets Committee (SA20.257) *That DA20/2172 – 8 Homestead Lane Berry - Lot 101 DP 1057897 - Commercial Additions - Alterations & Additions & Use of Existing 'Mananga Homestead' for Functions & Events be called to Council for determination due to significant public interest.* (MIN20.918).

On 18 December 2020, a Site inspection was completed at the subject site in the presence of the owner Matthew Quinn and his planning consultant (Stuart Dixon). A site inspection report and photos were prepared by the assessing officer (D21/4991).

On 11 January 2021, Council requested additional information from the applicant. The additional information raised issues relating to:

- Traffic, transport and site management;
- Noise Impacts;
- Use of Clause 5.10(10) and the veracity of the claim for use of the clause to enable the prohibited use; and
- Public submissions.

On 15 January 2021, the assessing officer met with a number of residents of the Pulman Heritage Conservation Area.

On 4 February 2021, the applicant lodged additional information and amended plans following Council's request for additional information dated 11 January 2021.

On 5 February 2021, the applicant's legal representative lodged an additional letter of support to the development application (D21/49524).

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On 9 February 2021, the amended plans and supporting information were notified to all previous submitters for 14 days per the Council's Community Consultation Policy.

The amended plans and supporting information were referred to the Environmental Health Officer, City Services and the Development Engineers for consideration.

On 31 March 2021, the applicant submitted additional information. The information was not submitted following a request for information.

5 & 6 May 2021, the applicant submitted final plans, reports and legal opinions in support of the development application.

On 12 May 2021, the amended plans and supporting information were notified to all previous submitters for 14 days per the Council's Community Consultation Policy.

Site History and Previous Approvals

On 27 April 1994, Council granted Development Consent No. DA93/3283, for development described as *"Alteration & Additions to Existing Dwelling & Change of Use to Bed & Breakfast Accommodation"* relating to the subject site. Note: on 2 June 2020 this approval was surrendered by the owner.

On 20 October 2004, Council refused a Development Application (DA03/2381) for a brick fence on the subject site.

On 9 September 2019, Council granted Development Consent No. DA19/1519 for the continued use of an earth dam sited to the south of the building the subject of this current application.

On 9 December, Council granted Development Consent No. DA19/2101 for a jetty to be constructed on the western bank of the approved earth dam.

On 30 January 2020, Council granted Development consent No. DA19/2060 (as modified by DS20/1307) for *"[a]lterations and additions to an existing shed and silo and part use for the purpose of a home business, including the following activities: repair and restoration of furniture, flower arranging, holding of classes for furniture restoration, flower arranging, painting and other craft related activities, and knitting, sewing and craft."* The alterations and additions related to the building the subject of the current application.

On 21 March 2020, Council granted Development Consent No. DA20/1266 for the *"[p]artial demolition of structures (detached habitable rooms, carport and connecting breezeway)"*. The structures were destroyed by a building fire.

On 26 March 2020, Council granted Development Consent No. DA20/1231 for development described as *"[a]dditions to existing dwelling house consisting of detached habitable rooms, carport and breezeway"*. The approval enabled the elements destroyed by the building fire which were demolished via DA20/1266 to be rebuilt.

On 2 June 2020, Council granted Development Consent No. DA19/2134 for development described as *tourist and visitor accommodation and associated works, consisting of a total of five (5) individual tourist and visitor accommodation rooms, as follows:*

- *Demolition and rebuild of existing structure 'Old Bails' building for use as tourist and visitor accommodation (tourist cabin); and*
- *construction of two (2) detached single storey buildings each with two (2) rooms for use as tourist and visitor accommodation (tourist cabins)*

A Construction Certificate (CC20/1814) has been issued in relation to DA19/2134 and the tourist cabins are substantially commenced (refer to the aerial image of the subject site).

On 1 February 2021, Council granted Development consent No. DA20/2353 for an inground swimming pool to be located to the east of the residence.

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On 17 February 2021, Council granted Development Consent No. DA21/1044 for business identification signage relating to the approved tourist cabins.

A Construction Certificate (CC21/1173) was issued for the swimming pool and deck on 3 March 2021.

4. Consultation and Referrals

Internal Referrals		
Referral	Recommendation	Comment
Development Engineer	<p>The application was referred to the Council's Development Engineers on three (3) separate occasions to consider the applicant's plans and supporting reports. On each occasion, concerns were raised in relation to the design and provision of car parking for the site in accordance with Chapter G21.</p> <p>In accordance with the final referral comments from the Development Engineer (D21/133913), the following comments are made in relation to the application:</p> <p><i>The applicant has provided a letter of response to the City Services referral comments.</i></p> <p><i>The document remains unclear on the potential for patrons who travel to Berry by private car and are not staying locally.</i></p> <p><i>A further 10 overflow spaces have been identified on the site plan. These partially address the parking shortfall, however, the spaces should be all weather and not just grassed area.</i></p> <p><u><i>The conditions suggested in the 2nd referral (D21/48747) remain relevant with respect to the new information.</i></u></p> <p><i>If the DAO considers it necessary to preserve the grassed appearance of the overflow spaces, an additional condition under 'Car Parking Design' could be included to permit the 'overflow' spaces to be constructed with a reinforced turf pavement, to retain the appearance of grass. However, it is suggested that at least the number of spaces required by the DCP for the development should be provided to a minimum all-weather gravel</i></p>	<p>The development does not provide the required number of car parking spaces under Chapter G21. The car parking overflow located to the south of the Mananga Homestead does not meet the requirements of Chapter G21 or AS 2890.1-1993 Parking facilities - Off-street car parking.</p>

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	<i>standard, given the likelihood of regular use.</i>	
Traffic & Transport Unit	<p>The application was referred to the Council's City Services on three (3) separate occasions to consider the applicant's plans and supporting reports (in particular the works within the road reserve (footpath) and traffic and air parking impacts outlines in the applicant's Traffic impact Assessment. On each occasion, concerns were raised in relation to the design and provision of car parking and proposed patron bus service and the practicalities of its operation for the site.</p> <p>In accordance with the final referral comments from City Services (D21/133916), the following comments are made concerning the application:</p> <p><i>Ensure fall in any direction of accessible car park is compliant with AS2890.6</i></p> <p><i>Ensure 2.4m length behind accessible parking as share zone as per AS2890.6</i></p> <p><i>Ensure footpath is minimum 1.2m width to allow for wheelchair accessibility as per Austroads Guide to Road Design Part 6a.</i></p> <p><i>We agree with the Referral (3) – Development Engineer for overflow car space design.</i></p> <p><i>Council is satisfied with the proposed pick up drop off arrangement pending nomination of a feasible 'U-turn' route for the buses.</i></p>	<p>City Services has indicated that the design of the overflow car parking as it relates to their design and number remains a concern and that the information provided is not sufficient to enable support of the application.</p> <p>While the application could not be recommended for approval, it is considered that the following matters could be conditioned if the application were recommended for approval:</p> <ul style="list-style-type: none"> <i>fall in any direction of the accessible car park is compliant with AS2890.6</i> <i>2.4m length behind accessible parking as share zone as per AS2890.6</i> <i>footpath to be designed to a minimum 1.2m width to allow for wheelchair accessibility as per Austroads Guide to Road Design Part 6a.</i> <i>the proposed pick up drop off arrangement pending nomination of a feasible 'U-turn' route for the buses to be in accordance with a Plan of management.</i>
Building Surveyor	Standard conditions recommended. Conditions recommended for building upgrades in accordance with clause 93 of the EP&A Regulations.	Conditions to be included in the development consent if approved.
Shoalhaven Water	<p>A Shoalhaven Water Notice has issued for the development.</p> <p>The application includes a request to connect to the reticulated sewer.</p> <p>The request to connect has been supported by Council at the Ordinary Meeting of Council on 26 May 2020.</p>	The Shoalhaven Water Notice is to be issued with the development consent if approved.
Environmental Health Officer	Council's Environmental Health Officer's have reviewed the applicant's ENIA and	The submitted information is not considered to be sufficient for

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	<p>supporting information and have concluded in their referral (D21/48725) in relation to the assessment, recommendations and conclusions of the ENIA that:</p> <p><i>“[T]he additional acoustic assessment prepared by Harwood Acoustics has addressed the further information requested to some extent, however, it has not given any consideration to the tNSW property directly across the road at 191-195 Queen Street which according to Councils GIS is approximately 80m. (Refer map below). This distance is less than half that which has been considered for the other nearby receivers (150-180m) and would therefore require a considerable acoustic re-assessment of the proposed function venue to assess the potential noise impact upon this rural/residential property.”</i></p> <p>Council cannot determine the application until such time as the following additional information is provided:</p> <ol style="list-style-type: none"> <i>1. Additional information (acoustic assessment) should be submitted addressing the potential noise impact upon the Bangalee Hotel at 180 Queen Street and the existing residence at 191-195 Queen Street. These two residential locations were not considered as part of the ENIA.</i> <p><i>Consideration could also be given to some of the residents in Pulman Street, especially those located to the North.</i></p> <ol style="list-style-type: none"> <i>2. Further information on how the in-house sound system can cater for two pre-set maximum allowable amplified noise levels (86dBA and 91dBA) and remain secure from being accessible to others is requested. Achieving this provision is critical if this proposal is to operate in a manner that would not have a significant adverse impact upon other residential receivers.</i> <p>Subsequent to the comments and recommendations being received by Council's Environmental Health Officers, Council engaged an external specialist noise consultant – Stephen Gauld of Day</p>	<p>Council to conclude that the application will not have an unreasonable impact on the amenity of adjoining residents by virtue of associated noise impacts.</p> <p>The development is recommended for refusal in relation to a lack of information relating to potential noise impacts when assessed against the more stringent <i>Liquor and Gaming Noise Criteria</i>.</p>
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	<p>Design Pty Ltd to review the applicant's ENIA and the noise conclusions drawn in the Memorandum of Advice provided by T Robertson SC.</p> <p>The Acoustic Review relevantly suggested that:</p> <ul style="list-style-type: none"> • The ENIA relies on standard assessment criteria, based on EPA's <i>Noise Guide for Local Government 2013</i>. Granted that the facility will operate in the same way as a licensed facility (albeit that '[g]uests will be responsible for providing alcohol, food and entertainment and as such the owners will not require a liquor licence), the more stringent <i>Liquor and Gaming Noise Criteria</i> should apply as the facility will operate more inline with a licensed facility with the service of alcohol the responsibility of the catering staff and not the function venue. • noise impacts are not relevant to the Transport for NSW property, as the dwelling there is derelict and there is no imminent residential use of the land. Accordingly, it is not an affected receptor. • Separate noise predictions have been made for different aspects of the proposal (eg patrons & music, mechanical plant, traffic), which is not correct unless a cumulative noise level is also calculated, which has not been shown. Nevertheless, the dominant noise will be from the music inside the building and from guests outdoors, with other aspects of the proposal adding little to the cumulative noise level. • Concerns have also been raised in relation to data presented in Table 10 of the ENIA. For a sound power level (SWL) of 95 dBA (Section 4.1.2) for guests outdoors, and a distance of 150m to 12 Homestead Lane, the calculated noise level at 12 Homestead Lane should be 43 dBA, not 38 dBA. This higher level is acceptable until 10 pm, but not after 10 pm (see Table 10). Note that no assessment has been provided for guests outside after 10 pm. 	
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	<ul style="list-style-type: none"> There is also no assessment of the noise emission for the end of the function as guests farewell the wedding couple and perhaps mingle outside. I note the main outdoor area directly faces the residence at 12 Homestead Lane. 	
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External Referrals

Agency	Recommendation	Comment
Transport for NSW	As part of the notification process, the development application was notified to adjoining residents. Transport for NSW has lodged as submission in relation to the development application and raised concerns with the potential impacts of the use on their properties at 191 and 195 Queen Street, Berry.	<p>Council has considered the potential impacts of the development (including noise impacts) on the TfNSW land.</p> <p>The noise impacts are not relevant to the TfNSW property, as the dwelling there is derelict and there is no imminent residential use of the land. Accordingly, it is not an affected receptor. This approach is taken by the applicant's acoustic assessment and supported by the Memorandum. It is contrary to the position taken by Transport for NSW.</p> <p>The existing structures (derelict dwellings) have been approved for demolition (DA20/1089 – 191 and 195 Queen Street, Berry).</p> <p>This position has been confirmed following review by:</p> <ol style="list-style-type: none"> 1. Stephen Gauld of Day Design Pty Ltd, who has reviewed the applicant's ENIA and the noise conclusions drawn in the Memorandum of Advice provided by T Robertson SC; and 2. Separate legal advice.

5. Other Approvals

N/A.

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6. Statutory Considerations

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

Instrument
Shoalhaven LEP 2014
State Environmental Planning Policy – (Coastal Management) 2018
State Environmental Planning Policy No 55 - Remediation of Land

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

7. Statement of Compliance/Assessment

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

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

Environmental Planning and Assessment Act 1979

i) Environmental planning instrument

SEPP (Coastal Management) 2018

The subject site is mapped as being within the Coastal Environment Area under Clause 13 of Coastal Management SEPP. The proposed development is consistent with subclauses (1) and (2) of clause 13.

SEPP 55 Remediation of Land

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

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Question	Yes	No
lands. Is there any evidence that the land has been used for a listed purpose?		
5. Is the proposed land use likely to have any exposure path to contaminants that might be present in soil or groundwater?	Request contaminated site assessment	The proposal is satisfactory under SEPP 55 and DCP.

Shoalhaven LEP 2014

Land Zoning

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

Characterisation and Permissibility

The proposal is best characterised as *Function Centre* under the SLEP 2014. The proposal is prohibited within the zone.

Mananga - Berry Estate Manager's Farm Complex is identified as a heritage item under Schedule 5 of the Shoalhaven Local Environment Plan 2014 (Item 63) as having 'local significance' (Shoalhaven).

The development application has been made according to Clause 5.10(10) of the Shoalhaven LEP 2014.

RU1 Primary Production - Zone objectives

Considering the question of consistency, the adopted approach of the former Chief Judge, Justice Pearlman in *Schaffer Corporation v Hawkesbury City Council* (1992) LGRA 21, is as follows at [27]:

"The guiding principle, then, is that a development will be generally consistent with the objectives, if it is not antipathetic to them. It is not necessary to show that the development promotes or is ancillary to those objectives, nor even that it is compatible."

Objective	Comment
<ul style="list-style-type: none"> To encourage sustainable primary industry production by maintaining and enhancing the natural resource base. To encourage diversity in primary industry enterprises and systems appropriate for the area. To minimise the fragmentation and alienation of resource lands. 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. 	<p>It is appropriate, in this context, to treat the zone objectives as six sequential requirements. If all six of the requirements are passed satisfactorily, the proposed development is consistent with the objectives of the zone and can then be assessed against the other relevant matters in SLEP 2014.</p> <p>The proposed development is conserved to be consistent with the first three objectives and the final two objectives.</p> <p>The proposed development is not however consistent with the fourth objective of the zone:</p> <ul style="list-style-type: none"> <i>To minimise conflict between land uses within this zone and land uses within adjoining zones.</i>

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	<p>The development if approved would likely result in conflict between land uses within this zone and land uses within adjoining zones.</p> <p>Council has formed this view following consideration of all supporting information and submissions. It is not considered that the proposal has provided sufficient information to demonstrate noise impacts associated with the development application would have a reasonable or acceptable impact on land uses within this zone and land uses within adjoining zones.</p> <p>In the absence of sufficient information to demonstrate otherwise, Council is of the view that the development is not generally consistent with the objectives of the zone.</p>
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SLEP 2014 Clauses

Clause	Comments	Complies/ Consistent
Part 2 Permitted or prohibited development		
2.3	<p>In accordance with clause 2.3(2), The consent authority must have regard to the objectives for development in a zone when determining a development application in respect of land within the zone.</p> <p>As previously stated, Council has considered the objectives of the RU1 Primary Production zone and does not consider that all six of the objectives are satisfied and that the development will not minimise conflict between land uses within this zone and land uses within adjoining zones.</p>	Noted.
2.8	Partial demolition works proposed. Demolition works are considered to be alterations and development consent has been proposed for these works.	Yes.
Part 5 Miscellaneous provisions		
5.10	Refer to the detailed assessment below.	No.
Part 7 Additional local provision		
7.1	The site is mapped as containing Class 5 Acid Sulfate soils. The proposed development is unlikely to result in Works within 500 metres of adjacent Class 1, 2, 3 or 4 land that is below 5 metres Australian Height Datum and by which the watertable is likely to be lowered below 1 metre Australian Height Datum on adjacent Class 1, 2, 3 or 4 land.	Yes.
7.2	Minor site preparation works, landscaping and drainage proposed. No separate approval required.	Yes.
7.3	The site is mapped as being partially below the flood planning level and PMF. The mapped areas do not extend to the development area or access to or from the site which enjoy flood free access.	Yes.
7.11	Essential services are available to the site. The applicant's request to connect to the reticulated sewer has been supported.	Yes.

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Heritage

The site is zoned RU1 Primary Production under the provisions of SLEP 2014. The development for a 'function centre' is prohibited in the RU1 zone in accordance with the Land Use Table for the zone.

The development application (DA) has been made with regard to cl. 5.10(10) of the SLEP 2014.

Clause 5.10(10) of SLEP 2014 is extracted below as follows:

"(10) Conservation incentives

The consent authority may grant consent to development for any purpose of a building that is a heritage item or of the land on which such a building is erected, or for any purpose on an Aboriginal place of heritage significance, even though development for that purpose would otherwise not be allowed by this Plan, if the consent authority is satisfied that—

- (a) the conservation of the heritage item or Aboriginal place of heritage significance is facilitated by the granting of consent, and*
- (b) the proposed development is in accordance with a heritage management document that has been approved by the consent authority, and*
- (c) the consent to the proposed development would require that all necessary conservation work identified in the heritage management document is carried out, and*
- (d) the proposed development would not adversely affect the heritage significance of the heritage item, including its setting, or the heritage significance of the Aboriginal place of heritage significance, and*
- (e) the proposed development would not have any significant adverse effect on the amenity of the surrounding area."*

The application is supported by the following heritage and planning documents that have been prepared in support of the Development Application:

- *Mananga Homestead-Function Centre (Former Cowsheds and Silo) Statement of Heritage Impact (SoHI) prepared by Navin Officer dated April 2021, Project No. 210048 (D21/184997);*
- *Capital Works & Maintenance Cost Report prepared by Mitchell Brandtman dated 25 January 2021 (Project Ref No. 28644) (D21/184959);*
- *Mananga, Berry Estate Manager's Farm Complex (Mananga Homestead) Conservation Management Plan (CMP) prepared by Navin Officer dated April 2021 (Project no. 210049) (D21/185437)*
- *Letter prepared by Beatty Legal dated 4 February 2021 (D21/45147);*
- *Memorandum of Advice – Mananga Homestead DA for Function Centre and Heritage Conservation Works (Memorandum of Advice) prepared by Tim Robertson SC dated 5 May 2021 (D21/185981);*
- *Statement of Environmental Effects prepared by Cowman Stoddart Pty Ltd dated 4 May 2021 (Ref No. 18/19) (D21/184961);*

The heritage impacts of the development and use of clause 5.10(10) of SLEP 2014, has been reviewed by an external consultant - Dr Peter Kabaila of Black Mountain Designs as part of the assessment of the application (Refer to Heritage Review (D21/222540) - Attachment 3).

Applicant's Submission

Effect of the proposed development on heritage significance – clause 5.10(4)

Based on the assessment of Navin Officer provided in the SoHI, the proposal does not adversely impact the heritage significance of the "Mananga"—Berry Estate manager's farm complex (Item 63 – Schedule 5 – SLEP 2014).

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Furthermore, it is not considered that the proposed works and use will have a significant impact on any listed heritage items and conservation areas in the vicinity of the subject site, which have local heritage significance, including:

- Pulman Street Conservation Area – Shown by red hatching and labelled “C1” – Schedule 5 – SLEP 2014
- “Constables Cottage”—Victorian Georgian style weatherboard cottage and garden - 185 Queen Street, Berry - Lot 1, DP 558065; Lot 5, DP 600374 – Item – 62 - Schedule 5 – SLEP 2014

It is considered by the applicant that the proposal provides an opportunity to formalise heritage management measures through the implementation of the CMP to ensure the ongoing conservation of the property to maintain its significance.

Conservation Incentives – Clause 5.10(10)

The SEE prepared by Cowman Stoddart summarises the applicant’s response to the five requirements of the clause in Table 4 of the SEE and is extracted in Table 1 below. Furthermore, the Memorandum of Advice prepared by T Robertson SC has reviewed the relevant application of clause 5.10(10) in light of current case law from paragraph [17]-[31] of the advice and concludes at [31] that:

“it is open to Council to be satisfied (now) that the application complies with the preconditions to the conservation incentives clause and therefore that the development of a function centre is permissible with consent.”

Table 1 - Applicant's assessment of clause 5.10(10) as extracted from the submitted SEE (D21/184961) pg 49-50

Clause 5.10(10) – Conservation Incentives	Applicant's Response
(a) the conservation of the heritage item or Aboriginal place of heritage significance is facilitated by the granting of consent, and	<p>Accompanying this SEE are the following separate assessments and documents:</p> <ul style="list-style-type: none"> • A Statement of Heritage Impact and Conservation Management Plan prepared by Navin Officer; • Capital Works and Maintenance Costs Report prepared by Mitchell Brandtman Quantity Surveyors (MBQS). MBQS have expertise in quantifying costs associated with the ongoing maintenance and conservation of heritage buildings. <p>The use of the property as a function centre will facilitate the conservation of the heritage significance of Mananga Homestead in a number of ways.</p> <p>Firstly, the proposal will ensure the ongoing retention and conservation of the cowshed building and silo, both features identified by Navin Officer as contributing to the heritage significance of the place, and which contribute to the landscape qualities of the Berry District Landscape Conservation Area. This is in addition to the conservation of other elements of the site including the Mananga Homestead, significant heritage trees, surrounding gardens and water race.</p> <p>Secondly, the proposal will involve interpretative signage concerning the old Broughton Post Office and remnant water race (implemented through the CMP) which will assist visitors to the site understand the history of the old Broughton</p>

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	<p>Creek settlement, relevant to both the Pulman Street Conservation Area and Constables Cottage.</p> <p>Thirdly, whilst the property is currently in good condition, funds generated through the commercial use will contribute to the maintenance of the property to ensure its ongoing conservation. The Capital Works and Maintenance Costs Report prepared by MBQS provides a very detailed assessment of the costs associated with this development proposal, and which separately identifies costs associated with its maintenance, identifying costs in the short term (1 year), medium term (2 to 4 years) and recurrent costs both on an annual and biennial basis. The works identified in the MBQS align with conservation measures outlined in the Conservation Management Plan.</p> <p>The MBQS identifies the following costs for maintenance associated with the property:</p> <ul style="list-style-type: none"> · Short term - \$154, 800; · Medium term - \$62,000; · Recurring annual - \$161, 900; · Recurring biennial - \$24,700. <p>Navin Officer consider that the costings outlined by MBQS are a realistic assessment of the maintenance costs associated with properties such as Mananga Homestead.</p> <p>Finally, the proposal enhances the heritage significance of the site by enabling the property to be seen by the public (being visitors and guests of functions) who would otherwise be excluded from this private property.</p> <p>The Statement of Heritage Impact prepared by Navin Officer has considered the assessment of MBQS and advises that these works contribute to the conservation of the heritage significance of the subject site.</p> <p>The use of the property as a function centre will clearly facilitate the conservation of the heritage significance of Mananga Homestead in many ways, thereby satisfying the provisions of subclause (a).</p>
<p><i>(b) the proposed development is in accordance with a heritage management document that has been approved by the consent authority, and</i></p>	<p>For the purposes of the Shoalhaven LEP 2014, a heritage management document is defined as:</p> <ul style="list-style-type: none"> (a) a heritage conservation management plan, or (b) a heritage impact statement, or (c) any other document that provides guidelines for the ongoing management and conservation of a heritage item, Aboriginal object, Aboriginal place of heritage significance or heritage conservation area. <p>The proposal is accompanied by a SHI prepared by Navin Officer and a CMP to further establish the relative significance of the various elements of the property and outline agreed heritage conservation policies to guide its future management.</p>

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(c) the consent to the proposed development would require that all necessary conservation work identified in the heritage management document is carried out, and	The recommendations of the SHI and CMP can be included as conditions of consent.
(d) the proposed development would not adversely affect the heritage significance of the heritage item, including its setting, or the heritage significance of the Aboriginal place of heritage significance, and	This has been assessed by Navin Officer and which concludes that the proposal does not adversely affect the heritage significance of the subject site. Furthermore, the assessment of Navin Officer has concluded that the proposal will not significantly adversely affect the heritage significance of other identified heritage times, including the Berry District Landscape Conservation Area, Pulman Street Conservation Area, or Constable's Cottage.
(e) the proposed development would not have any significant adverse effect on the amenity of the surrounding area.	<p>The proposal has been subject of a number of separate expert assessment including:</p> <ul style="list-style-type: none"> · Environmental Noise Impact Assessment prepared by Harwood Acoustics; · Traffic and Parking Impact Assessment prepared by McLaren Traffic Engineering; and · Statement of Heritage Impact prepared by Navin Officer. <p>All of these assessments concludes that the proposal does not result in significant adverse impacts.</p> <p>In addition, the proposal has been assessed in the Statement of Environmental Effects prepared by our firm which also concludes that the proposal does not adversely affect the amenity of the locality.</p>

Based upon the analysis, assessment, and conclusions of the SOHI, the SOHI makes the following recommendations in relation to the works and use of the site (Refer to page 43 of the SOHI – D21/184997):

1. **The proposed further works:** *The proposed works as detailed in this report are considered to have minimal heritage impacts on Mananga and no negative heritage impacts on neighbouring heritage items and are therefore recommended for approval as they will complete and compliment the works already approved as part of the adaptive reuse of these structures.*
2. **The change of use to include use as a function centre:** *The proposed variation of use to include wedding receptions, and similar, is not considered to be detrimental to the heritage values. The property has been periodically exposed to large numbers of visitors through the annual open garden program. While use of the cowsheds and silo as a function centre will involve more wear and tear on the structures, this can be managed through regular maintenance in line with the policies in the CMP. The change of use has the benefit of providing a more resilient income stream to ensure the long-term management of the property.*
3. **Long term management of the heritage values of Mananga:** *It is recommended that the CMP which has recently been prepared for the property is formerly adopted to guide the future management of the property. It establishes the relative significance of the*

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various elements of the property and sets out agreed heritage conservation policies and strategies to guide its future management. The Capital Works and Maintenance Cost Report (Mitchell Brandtman 2021) provided information that has been integrated into the cyclical maintenance schedule of the CMP.

4. **Heritage Interpretation:** *The CMP provides policies to guide the interpretation for the property. The owner already has ideas for interpretation of the remnant water race and the former Berry post office.*
5. **Unanticipated archaeological finds:** *Although the archaeological potential around the cowsheds and silo has been assessed as low, it is always possible that unexpected archaeological material may be encountered on historic properties during ground disturbance works. It is important to note that archaeological deposits of either Aboriginal or historical settler origin are protected by legislation in NSW. Therefore, it is recommended that the unanticipated finds protocols included as Appendix 3 in this report are adopted and are included in contractor's contracts.*

Provided these recommendations are followed, then landscape values associated with the Mananga - Berry Estate Manager's Farm Complex, and the properties inherent value to the broader local area, are not considered to be at risk. In particular, the rural/agricultural setting of the structures are maintained and are readily interpretable within the landscape. Indeed, the retention of the structures and their re-purposing is desirable and will ensure their future maintenance and active interpretation".

Council's Assessment

Clause 5.10 - Heritage Conservation

As the site contains a heritage item, cl. 5.10 Heritage conservation applies to the development. The objectives of cl 5.10 of SLEP 2014, 'Heritage Conservation' at sub-cl (1)(a)-(d), are:

- (a) *to conserve the environmental heritage of Shoalhaven,*
- (b) *to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,*
- (c) *to conserve archaeological sites,*
- (d) *to conserve Aboriginal objects and Aboriginal places of heritage significance.*

Council as the consent authority must, before granting consent in respect of a heritage items and heritage conservation areas, consider the effect of the proposed development on the heritage significance of the item and the area.

Clause 5.10(4) - Effect of the proposed development on heritage significance

Clause 5.10(4) sets out the matters that the consent authority must consider - specifically *"the effect of the proposed development on the heritage significance of the item or area concerned"*. Council must form the opinion that the impact of the proposed development on the heritage significance of the item is acceptable.

The heritage impacts of the development on the item and the surrounding items of heritage significance, including the Constables Cottage and Pulman Conservation Area, has been reviewed by an external consultant - Dr Peter Kabaila of Black Mountain Designs as part of the assessment of the application (the Heritage Review is provided as Attachment 3).

The outcomes of the Heritage Review, indicate that the only specific suggestion of adverse effect is the position of proposed car park spaces 4-11. The Heritage Review does not otherwise suggest that this particular development will adversely affect the significance of the heritage item, however, it does observe that previous developments have cumulatively affected that significance.

It is not considered that the proposed works and use will be sufficiently detrimental to any adjoining heritage item or conservation area to warrant refusal of the application pursuant to s4.15(1)(b) of the EP&A Act.

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Clause 5.10(5) - Heritage assessment

Clause 5.10(5) may require the preparation of a heritage management document that assesses the extent to which the carrying out of development that would affect the heritage significance of the heritage item or heritage conservation area concerned, in relation to development:

- (a) on land on which a heritage item is located, or
- (b) on land that is within a heritage conservation area, or
- (c) on land that is within the vicinity of land referred to in paragraph (a) or (b),

The development application is supported by *Mananga Homestead-Function Centre (Former Cowsheds and Silo) Statement of Heritage Impact (SoHI)* prepared by Navin Officer dated April 2021, Project No. 210048 (D21/184997) and the other heritage and legal documents listed previously. These documents satisfactorily address clause 5.10(5) and have been reviewed by an external Heritage Consultant engaged by Council - Heritage Review (D21/222540).

Clause 5.10(10) - Conservation incentives

In accordance with sub-clause (10) of cl. 5.10, the consent authority has a discretionary power to grant consent to development for any purpose of a building that is a heritage item or of the land on which such a building is erected, or for any purpose on an Aboriginal place of heritage significance, even though development for that purpose would otherwise not be allowed by this Plan if the consent authority is satisfied that the application meets sub-cl. (a) – (e).

The five requirements are conjunctive and jurisdictional and so the proposed development, for a use otherwise prohibited under SLEP 2014, **must** meet each of the five requirements to be capable of being granted consent under the clause.

- “(a) the conservation of the heritage item or Aboriginal place of heritage significance is facilitated by the granting of consent, and*
- (b) the proposed development is in accordance with a heritage management document that has been approved by the consent authority, and*
- (c) the consent to the proposed development would require that all necessary conservation work identified in the heritage management document is carried out, and*
- (d) the proposed development would not adversely affect the heritage significance of the heritage item, including its setting, or the heritage significance of the Aboriginal place of heritage significance, and*
- (e) the proposed development would not have any significant adverse effect on the amenity of the surrounding area.”*

Furthermore, the development alone must satisfy the jurisdictional requirements alone to satisfy Council of the requirements under sub-cl. (a) – (e), **Council cannot look to impose a condition that would otherwise, in the view of Council, enable the requirement to be satisfied.** In this regard, it is important to note that conditions cannot be used to satisfy a requirement under clause 5.10(10).

In Council's consideration of the application of clause 5.10(10) Council has considered the supporting information submitted by the applicant, the heritage consultant engaged by Council and independent legal advice.

The focus of the heritage incentive clause is on expanding the uses to which a building (or an Aboriginal place) identified as a heritage item, or the land on which the building is erected, can be put to, to facilitate the conservation of the building (or the Aboriginal place) - *Howe Architects Pty Ltd v Ku-ring-gai Council* [2021] NSWLEC 1233 at [37].

- a) the conservation of the heritage item or Aboriginal place of heritage significance is facilitated by the granting of consent, and**

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The first step in consideration of cl. 5.10(10) is to first identify what is the heritage item and what is its significance. It is considered that the identification of the heritage item and its significance has been appropriately detailed through the applicant's supporting information.

The term 'conservation' is not defined in the Dictionary to SLEP 2014 and therefore it is appropriate to consider the definition of 'conservation' as defined by the Burra Charter, 2013. Article 8 of the Burra Charter (2013) provides as follows:

"Conservation requires the retention of an appropriate setting, This includes retention of the visual and sensory setting, as well as the retention of spiritual and other cultural relationships that contribute to the cultural significance of the place.

New construction, demolition, intrusions or other changes which would adversely affect the setting or relationships are not appropriate."

Likewise, the term 'facilitated' is not defined in the Dictionary to SLEP 2014. Reasonably construed, it is not the purpose of the clause to enable reliance upon works of a *de minimis* nature (*Parramatta City Council v Hale* (1982) 47 LGRA 319 at p. 335 per Street CJ).

In relation to the interpretation of the meaning of 'facilitate conservation', the Court found in *David Fox v North Sydney Council* [2016] NSWLEC 1366 at [47]:

"Facilitating conservation requires a higher threshold than just ensuring the proposal does not adversely impact on the identified heritage significance of an item. In order to facilitate the conservation of the heritage item, the proposal must assist in retaining its cultural significance, such as by revealing and interpreting the heritage significance of the item."

From the case law, it is generally held that the need to carry out minor maintenance works which is an ordinary incident of property ownership is not within the scope and purpose of conservation work within the meaning of cl 5.10(10) and would not 'facilitate' the conservation of the heritage item.

The Heritage Review (D21/224818) suggests that the Development Application entails very little conservation of the heritage item. In particular, it identifies that seven (7) of the items in the *Capital Works & Maintenance Cost Report* could be seen as conservation works, with the remaining thirty (30) items being works for "maintaining the property at its current, highly renovated, standard". There is a suggestion that interpretive works could be key to "heritage conservation", given the highly renovated status of the item and that any detail of heritage interpretation is missing from the heritage documentation.

Based upon Council review of the application and the outcomes of the Heritage Review it is questionable whether the proposed development facilitates conservation of the heritage item.

Council is therefore not satisfied that the DA meets the criterion in sub-cl. 5.10(10)(a) of the SLEP 2014 notwithstanding the cost to carry out the proposed works.

b) the proposed development is in accordance with a heritage management document that has been approved by the consent authority, and

The applicant has provided the following heritage documentation in satisfaction of this sub-clause:

- *Mananga Homestead-Function Centre (Former Cowsheds and Silo) Statement of Heritage Impact* (SoHI) prepared by Navin Officer dated April 2021, Project No. 210048 (D21/184997);
- *Capital Works & Maintenance Cost Report* prepared by Mitchell Brandtman dated 25 January 2021 (Project Ref No. 28644) (D21/184959);
- *Mananga, Berry Estate Manager's Farm Complex (Mananga Homestead) Conservation Management Plan* (CMP) prepared by Navin Officer dated April 2021 (Project no. 210049) (D21/185437)

Clause 5.10 refers separately to a heritage management document "that assesses the extent to which the carrying out of the proposed development would affect the heritage significance of the heritage item" and a heritage conservation management plan. In requiring that the development is in accordance with a "heritage management document that has been approved", the clause has no clear pathway for "approval" of either of those documents.

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The wording of this clause would require that a heritage management document be firstly approved by Council prior to the grant of consent under this sub-cl. Council has not approved a heritage management document relating to the development. Furthermore, the above three documents (if considered as a single document forming a *heritage management document*) are not in a form and containing relevant conservation works to satisfy sub-clause. 5.10(10)(a) of the SLEP 2014. Council could not approve these documents in their current form and conditions could not be imposed to rectify any deficiency or inadequacy in these documents.

It follows that Council is not satisfied that the DA meets the criterion in sub-cl. 5.10(10)(b) in that the Heritage Management Document could not be approved in its current form.

c) the consent to the proposed development would require that all necessary conservation work identified in the heritage management document is carried out, and

A *Capital Works & Maintenance Cost Report* and *Conservation Management Plan* have been submitted as part of the application.

Council must be satisfied that development consent will, by reference to these documents, satisfy Council that all necessary conservation work will be carried out, in that the policies are adequately tied to actions, priorities and timing.

The Heritage Review indicates that the Development Application does not include all necessary conservation works to an extent that would allow Council to be satisfied with this criterion. The Heritage Review maintains that:

- the *Capital Works & Maintenance Cost Report* is not a schedule of necessary conservation work;
- the heritage landscape plan does not describe works that go towards the heritage item and its conservation;
- there is a need for details of the interpretive works and a timeframe for those works;
- redesign and rebuilding of the carport and its link is necessary; and
- there is a need for a low hedge or stone wall at the northern edge of the house driveway if the additional car parking spaces are to be provided to service the development.

Council is not satisfied that the Development Application meets the criterion in sub-clause. 5.10(10)(c) of the SLEP 2014.

d) the proposed development would not adversely affect the heritage significance of the heritage item, including its setting, or the heritage significance of the Aboriginal place of heritage significance, and

The applicant's *Statement of Heritage Impact* (D21/184997) and *Conservation Management Plan* (D21/185437) both indicate that the Development Application will not adversely affect the significance of the heritage item.

The only specific suggestion of adverse effect in the Heritage Review is the position of proposed car park spaces 4-11 (refer to **Figure 4**). Were car parking spaces 4 -11 to be required to be formalised there would likely be an impact on the heritage item and Council could not be satisfied that the Development Application meets the criterion in subclause 5.10(10)(d) of the SLEP 2014. However, the applicant has not proposed to formalise these car parking spaces and does not seek to utilise these as part of the application.

The Heritage Review does not otherwise suggest that this particular development will adversely affect the significance of the heritage item, however, it does observe that previous developments have cumulatively affected that significance.

It is important to note that a condition **could not be imposed** to delete car parking spaces 4-11 from the plans in order to satisfy this sub-clause. Granted that a condition cannot be imposed to delete these car parking spaces the inclusion of these spaces, on the account of the Heritage Review, will result in an adverse impact. Were the parking spaces to be removed by the applicant prior to determination it is considered that the development would not have an adverse effect on the heritage

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significance of the heritage item, including its setting. However, the removal of the spaces raises another issue which is discussed later in this report, and that is car parking.

Council is not satisfied that the Development Application meets the criterion in sub-cl. 5.10(10)(d) of the SLEP 2014. The proposed development as currently proposed includes car parking spaces 4-11 which are considered to have an adverse impact on the heritage significance of the heritage item, including its setting.

e) the proposed development would not have any significant adverse effect on the amenity of the surrounding area.

As stated by the Court in *Fox v North Sydney Council* [2020] NSWLEC 1056 at [43]:

“Under cl 5.10(10)(e), a consent authority needs to, in a sense, turn away from heritage factors and be satisfied of a further factor before the incentivising provisions of the clause are triggered. This is that “the proposed development would not have any significant adverse effect on the amenity of the surrounding area”

The term ‘amenity’ is not defined in the Dictionary to SLEP 2014, however, the concept was considered by the Court in the case of *New Century Developments Pty Limited v Baulkham Hills Shire Council* [2003] NSWLEC 154 at [53]

“The amenity of the locality is encompassed by the consideration of environmental impacts on both the natural and built environments, and social and economic impacts in the locality required by s 79C(1)(b) of the EP&A Act. The concept of “amenity” is wide and flexible (Broad v Brisbane City Council & Anor (1986) 59 LGRA 296), transcending the merely physical content (Perry Properties Pty Ltd v Ashfield Council (No. 2) (2001) 113 LGERA 301 at 317 per Bignold J).”

The physical works to the site are minor and will not impact the significance of the heritage item or the surrounding items of heritage significance (except for the car parking as mentioned above). Furthermore, it is not likely that there will be any significant visual impacts associated with the development. The visual issues raised as part of the Heritage Review point to previous developments (such as the carport/garage) rather than the “proposed development”. In this regard, it is not anticipated that the proposal will have any significant adverse impact on the built environment.

It is not anticipated that the proposal will have any significant adverse social or economic impact on the locality.

In relation to the potential noise impacts or impacts on the natural environment associated with the development, however, it is noted later in this report that the development does not provide sufficient assessment of the noise impacts to justify that the impacts will be reasonable and not result in a significant adverse impact. The Acoustic Review completed by Day Design suggests that:

- a. the liquor and gaming noise criteria should apply which are more stringent. However, it is not suggested that this would then result in a significant amenity impact.
- b. Noise impacts are not relevant to the Transport for NSW property, as the dwelling there is derelict and there is no imminent residential use of the land. Accordingly, it is not an affected receptor. This approach is taken by the applicant’s acoustic assessment and supported by the Memorandum. It is however contrary to the position taken by Transport for NSW.
- c. Contrary to the amended noise impact assessment, the calculated noise level at receptor 1 should be 43 dBA. However, this only affects amenity from 10 pm with regard to outside guests. A restriction on the use of the outdoor space after 10 pm is proposed.

Given that the DA does not provide sufficient information to satisfy Council of the potential noise impacts it would not be open to Council to conclude that the development has satisfied this requirement. Furthermore, Council cannot impose a condition to require satisfaction of this clause where it is unclear as to the development’s satisfaction of the sub-clause.

Council is not satisfied that the Development Application meets the criterion in sub-clause. 5.10(10)(e) of the SLEP 2014.

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Conclusion

As previously stated, the relevant assessment under sub-clauses. 5.10(10) requires Council to be satisfied with each of the five (5) requirements (i.e. they are conjunctive) and so the proposed development, must meet each of the five (5) requirements to be capable of being granted consent under the clause.

The proposed development has been assessed and established not to satisfy sub-clauses. (a)-(c) and (e). Council therefore cannot approve the DA in accordance with clause 5.10 of SLEP 2014.

ii) Draft Environmental Planning Instrument

The following Draft EPIs are relevant to the subject site:

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

No additional assessment is required in relation to these EPIs

iii) Any Development Control Plan

Shoalhaven DCP 2014

Generic Chapters
Chapter 2: General and Environmental Considerations
<p>3 European heritage</p> <p>3.3.1 Assessment considerations</p> <p>Council must give consideration to a range of matters when assessing an application in relation to any heritage items or within any heritage conservation area including natural and pastoral landscapes. Council will make an assessment of:</p> <ul style="list-style-type: none"> • the heritage significance of the item as a heritage item or as a component of a heritage conservation area of the City of Shoalhaven (urban, pastoral or natural); and • the impact the proposed development will have on the historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the heritage item and its site or the heritage conservation area (urban, pastoral or natural); and • the impact the proposed development will have on any stylistic, horticultural or archaeological features of the heritage item or its site or the heritage conservation area (urban, pastoral or natural); and • the measures proposed to conserve the heritage significance of the item and its setting or the conservation area; and • The extent to which the carrying out of the proposed development would affect the form of a historic subdivision. <p><u>Comment:</u> The application is supported by the following heritage and planning documents that have been prepared in support of development and use:</p> <ul style="list-style-type: none"> • <i>Mananga Homestead-Function Centre (Former Cowsheds and Silo) Statement of Heritage Impact (SoHI)</i> prepared by Navin Officer dated April 2021, Project No. 210048 (D21/184997);

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- *Capital Works & Maintenance Cost Report* prepared by Mitchell Brandtman dated 25 January 2021 (Project Ref No. 28644) (D21/184959);
- *Mananga, Berry Estate Manager's Farm Complex (Mananga Homestead) Conservation Management Plan (CMP)* prepared by Navin Officer dated April 2021 (Project no. 210049) (D21/185437)
- Letter prepared by Beatty Legal dated 4 February 2021 (D21/45147);
- *Memorandum of Advice – Mananga Homestead DA for Function Centre and Heritage Conservation Works* (Memorandum of Advice) prepared by Tim Robertson SC dated 5 May 2021 (D21/185981);
- *Statement of Environmental Effects* prepared by Cowman Stoddart Pty Ltd dated 4 May 2021 (Ref No. 18/19) (D21/184961);

The heritage impacts of the development and use of clause 5.10(10) of SLEP 2014, has been reviewed by an external consultant, Dr Peter Kabaila of Black Mountain Designs as part of the assessment of the application (Refer to Heritage Review (D21/222540)

3.3.5 Heritage Impact Statements

The Heritage Impact Statement should be prepared per NSW Heritage Manual "Statements of Heritage Impact" and "Assessing Heritage Significance Guidelines" and the principles of The Burra Charter. It should include a Statement of Significance which is a concise summary of the cultural significance of a place and includes an assessment of aesthetic, historic, scenic and cultural values and comparative criteria.

Comment: The document titled *Mananga Homestead-Function Centre (Former Cowsheds and Silo) Statement of Heritage Impact (SoHI)* prepared by Navin Officer dated April 2021, Project No. 210048 (D21/184997), has been prepared per NSW Heritage Manual "Statements of Heritage Impact" and "Assessing Heritage Significance Guidelines" and the principles of The Burra Charter. It should include a Statement of Significance which is a concise summary of the cultural significance of a place and includes an assessment of aesthetic, historic, scenic and cultural values and comparative criteria.

G1: Site Analysis, Sustainable Design and Building Materials in Rural and Coastal Areas

An appropriate plan for consideration of the site and surrounding area. In this regard, only a very basic site analysis plan has been provided but an overall assessment of the site and its characteristics was ascertained through a site inspection.

G2: Sustainable Stormwater Management and Erosion/Sediment Control

The provisions of Chapter G2 apply to the proposed development. In this regard, only very minor works would be proposed in relation to the additional toilets to the western elevation of the existing shed to be used for functions.

Given the rural character of the site, it is believed that the discharge of water to the previously approved dam would be sufficient to ensure appropriate disposal of water on the site and will ensure that water is not concentrated on adjoining lots.

Sediment and erosion control work will be undertaken in accordance with Landcom publication *Managing Urban Stormwater: Soils and Construction Volume 1, 4th Edition* (the "Blue Book"). A sediment and erosion control plan will form part of the Construction Certificate application.

G4: Tree & Vegetation Management

No tree removal proposed as part of this application.

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G7: Waste Minimisation and Management Controls

The provisions of Chapter G7 apply to the proposed development. In this regard, a basic Waste Minimisation and Management Plan (WMMP) in relation to both the construction stage was provided (D21/184975).

All generated waste will be removed by commercial waste contractors. All waste will be taken and treated off-site, and all proposed structures are either temporary or removable.

As such, standard conditions should be imposed in any consent issued which stipulates compliance with this WMMP as well as regarding ongoing operation.

G8: Onsite Sewage Management

The site is a rural lot and is currently not connected to the reticulated system. As part of the assessment of DA19/2134 (tourist cabins), the applicant applied to connect to the reticulated system to service the five (5) units and the shed.

On 26 May 2020, Council considered a report (CL20.126) in relation to the connection to town sewerage system - Lot 101 DP 1057897 Homestead Lane Berry. Council resolved on the recommendation to: *approve the connection of DA19/2134 and DA19/2060 to the Berry Sewerage Scheme by a pressure sewer system subject to the applicant complying with all conditions specified in the Shoalhaven Water Development Application Notices for each development.*

Should the application be approved, the development would be required to obtain a s. 68 Approval for connection to the existing system and connect to the reticulated system prior to the issue of an Occupation Certificate for the additional W/C toilets proposed to the western elevation of the shed.

G21: Car Parking and Traffic

The car parking requirements and traffic impacts of the development have been considered as part of the assessment of the development application. In support of the applicant's proposal the applicant has submitted the following reports:

- *Traffic and Parking Impact Assessment* (TPI) prepared by McLaren Traffic Engineering dated 30 March 2021 (D21/184960);
- *Letter Of Response To Council Comments For The Events & Wedding Functions Facility At 8 Homestead Lane, Berry* prepared by McLaren Traffic Engineering (Reference: 210019.02FE) dated 30 March 2021 (D21/184966); and
- *Statement of Environmental Effects* prepared by Cowman Stoddart Pty Ltd dated 4 May 2021 (Ref No. 18/19) (D21/184961).

Access

Four (4) separate access points are provided to the site along the Homestead Lane and Queen Street frontage. The Mananga Homestead may be accessed via two access points located toward the northern extent of the site off Homestead Lane. The tourist accommodation is serviced by, separate ingress and egress driveways. The ingress point being on Homestead Lane near the Queen Street Intersection and the egress point located to the south of the intersection on Queen Street.

No change to the access points is proposed as part of the application.

Car Parking

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In accordance with Chapter G21: Car Parking and Traffic of Shoalhaven Development Control Plan 2014 (SDCP 2014), car parking for a function centre is required to be provided at a rate of 1 space per 6.5m² of public dining area.

Car parking details are provided as follows:

- The floor area of the function centre is 155m² (110m² dining room and 45m² dance floor)
- A total of 23.8 (24) off-street car parking spaces are required.
- Guests (other than those accommodated on-site) will be transported via two (2) x 12-seat minibuses from their local off-site accommodation to the function centre.
- A total of ten (10) staff will be required during functions.
- A total of twelve (12) car parking spaces are proposed to the south of the Mananga Homestead. Ten (10) of the nominated car parking spaces are proposed for the use by staff. A total of two (2) car parking spaces are available for the use of function guests.
- An additional seven (7) car parking spaces (including one (1) accessible space) are approved and support the existing tourist accommodation (DA19/2134). Five (5) of the car parking spaces proposed (including one (1) accessible spaces) are required to service the existing development.

An extract of the applicant's site plan with details of the car parking arrangements is provided in **Figure 4** below:

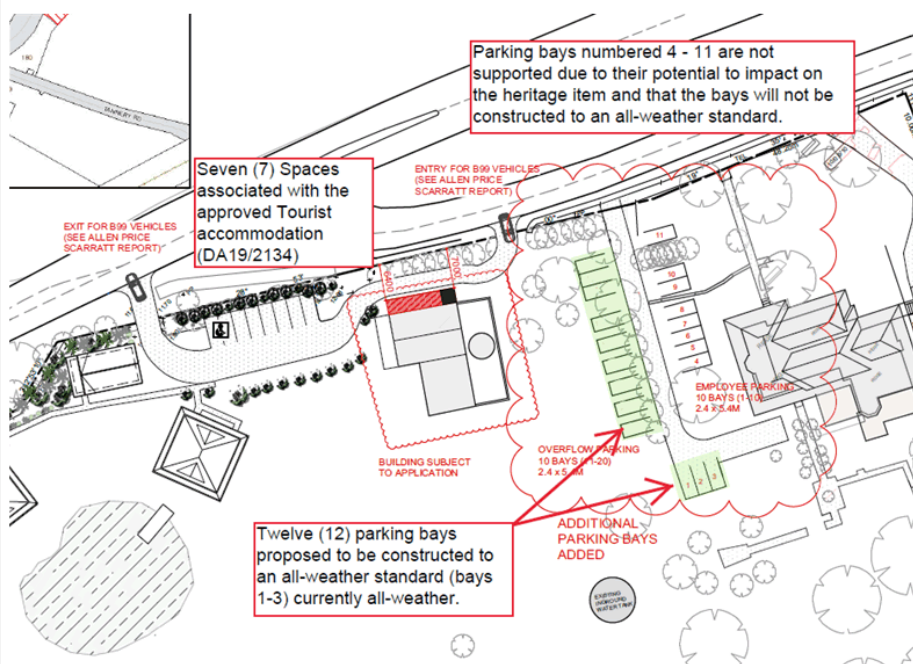


Figure 4 - Extract of Site Plan with further details of proposed parking arrangements.

Applicant's Submission

The applicant's TPI (D21/184960) provides an assessment of the following traffic and car parking issues associated with the development application:

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- the existing traffic and parking conditions, including:
 - Road Hierarchy.
 - Existing Traffic Management
 - Existing Traffic and Parking Environment
 - Future Road and Infrastructure Upgrades
- Parking Assessment, including:
 - Parking justification for use by minibus
 - Disabled parking
 - Bicycle and motorcycle parking
 - Servicing and loading
 - Car parking design and compliance

The TPI makes the following conclusions on page 18 of the Report as follows:

In view of the foregoing, the subject proposal at 8 Homestead Lane, Berry for a function facility is fully supportable in terms of its traffic and parking impacts with due regard to traffic flow efficiency and road safety considerations. The following outcomes of this report are relevant to note:

- *The proposed development requires 24 car parking spaces based upon Council's DCP. The proposed plans detail a combined total of 19 car parking spaces, resulting in a parking shortfall of five (5) spaces from Council's DCP requirement when considering the tourist accommodation being occupied by guests attending the function.*
- *Sufficient room is provided for 10 informal spaces dedicated primarily to staff, adjacent to the Mananga Homestead, meeting the function centres staff parking demand. Carpooling between staff will be promoted to reduce the staff car parking demand with any available parking spaces used by guests who do not comply with the Plan of Management and advertised requirements.*
- *All visitors not staying on-site will be transported to and from their accommodation within Berry using two (2) private 12-seater Minibuses (Toyota HiAce Commuter, Mercedes-Benz Sprinter Transfer Minibus or similar), which can carry 11 passengers before and after each event. A plan of management shall be developed to communicate to guests that no-parking is available on-site for guests and that they shall use the minibus transport service to get to and from the function facility.*
- *It is expected that the proposed development will operate with no change to waste collection compared to the existing operation of the site. Waste generated from functions will be removed from the site by staff after the conclusion of the function.*
- *The site is expected to generate a worst-case peak of 39 (29 IN, 10 OUT) vehicle trips in the one-hour period before a function on either a Saturday or Sunday. The impacts of the traffic generation have been modelled using SIDRA INTERSECTION 8.0, indicating that there will be no detrimental impact to the performance of the intersections as a result of the generated traffic.*
- *The existing car park layout (associated with the tourist accommodation) meets the dimension requirements of both AS2890.1:2004, AS4299:1995 and AS2890.6:2009. Informal staff parking, during functions will be provided on the gravel/grass area, adjacent to the Mananga Homestead.*
- *The exit driveway exceeds the sight line requirements for an 80km/h road design and is located within a superior location compared to Homestead Lane.*
- *In accordance with Clause 5.10(10)(e) of the Shoalhaven LEP 2014, from a traffic and parking perspective, the proposed development will not have any significant adverse effect on the amenity of the surrounding area.*

Comment:

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The car parking requirements and traffic impacts of the development have been reviewed by Council Development Engineer and City Services.

The car parking does not comply with Chapter G21: Car Parking and Traffic of SDCP 2014. The shortfall in car parking and the design of the additional proposed car parking to the south of Mananga Homestead are not supported for the following reasons:

- The development is required to provide a total of 24 spaces for the use of staff and guests associated with the function centre. The applicant has nominated 20 spaces to the south of the Mananga Homestead (refer to **Figure 4** above). Twelve of the car parking spaces highlighted green are proposed to be constructed to an all-weather standard.

Car parking numbered 4 – 11 are to be retained as grass and are not supported by Council's development engineers as any car parking supporting the function venue are required to be constructed to an all-weather standard. In accordance with the applicant's TPI (D21/184966) (refer to page 2):

*"It has been advised by the client that an additional ten (10) informal overflow parking spaces are available within the employee parking area as identified on the updated plans provided in **Annexure C**. These parking spaces will cater for any patrons who do not follow the clear directions of the Plan of Management, and instead drive to the site. Their existence will not be advertised, and their use will be at the discretion of the operator."*

Ten (10) of the 12 car parking spaces are not designed to be open and accessible to the public and will be *informal overflow parking spaces* are available within the employee parking area. This is a shortfall of 12 spaces or 50% of the required car parking.

- Notwithstanding the above numerical shortfall, Section 5.2.3 of Chapter G21 allows Council to take into consideration the shared or co-use of on-site car parking facilities following the completion and submission of a parking impact and needs study by an independent suitably qualified professional. Any discounting that may be allowable for multi-purpose trips within a mixed-use development will have a maximum discount of 25%.

As noted previously, an additional seven (7) car parking spaces (including one (1) accessible space) are approved and support the existing tourist accommodation (DA19/2134). Five (5) of the car parking spaces proposed (including one (1) accessible space) are required to service the existing development.

Taking into account the existing use (tourist cabins) and function centre a total of 29 car parking spaces are required to service these two uses.

Granted the tourist use and function centre are to be used concurrently and will not be independently utilised the development should, at a minimum, be required to provide the total number of car parking spaces required for the function centre (24 car parking spaces). The development provides a total of 19 car parking spaces for use by the two uses. This amounts to a 5 car parking space shortfall (17%) in the total number of car parking spaces required.

The application of a full 25% reduction in the required car parking under Section 5.2.3, does not reflect the likely demand for car parking on the site with all tourist car parking likely to be utilised by the bride and groom and the bridal party and no less than ten of the car parking spaces to the south of the Mananga Homestead required for use by staff. This results in only three car parking spaces available for guests or associated function guests (i.e. photographers, band/DJ, wedding MC and planners etc).

- Section 5.2.6 Conservation Incentives of Chapter G21 provides a discretionary provision to allow Council to consider a reduction in the total number of car parking spaces required if a development proposal involves the retention and enhancement of an item of

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environmental heritage, as identified in SLEP 2014, if it is felt that this parking would reduce the significance of the item.

As detailed earlier in the assessment of the application against cl. 5.10(10), Council is not satisfied that the DA meets the criterion in subclause 5.10(10)(a) of the SLEP 2014 notwithstanding the cost to carry out the proposed works. It follows that a reduction in the total car parking required is not warranted or recommended.

- The applicant's justification for a reduction in the car parking rate relies upon the continued use of bus pick-up and drop-off associated with events. Granted that the management of the site may change in the future and patron transport to the venue will likely also change, the reduction in the required car parking relies heavily upon the ongoing proper management of the site and likely monitoring of the car parking by surrounding residents. A reduction in the required car parking on-site is not a desirable planning outcome and should not be supported. Given the placement of buildings, access points, heritage impacts and topography, the site has constraints concerning the placement of car parking.
- The construction or use of Car parking spaces 4-11 is not supported.

The location and any formalisation of these car parking spaces will have an impact on the heritage significance of the item and would be contrary to clause 5.10(10)(d) which requires that: *"the proposed development would not adversely affect the heritage significance of the heritage item, including its setting."* This position is supported by the outcomes of the Heritage Review completed by Dr Peter Kabaila of Black Mountain Designs (Refer to Attachment 3).

- The twelve (12) car parking spaces to the south of Mananga Homestead and access to these spaces are not currently designed in compliance with AS2890.1:2004. The aisle dimensions, offsets from trees and the width of the driveway access to these spaces do not currently comply with AS2890.1:2004.

Furthermore, No swept path details have been provided to demonstrate that the overflow parking provided to the south of Mananga Homestead will be compliant with an AS 99th percentile vehicle.

- The development does not provide a dedicated accessible car parking space and an associated compliant path of travel for that space to the function centre. It is noted that an accessible parking space is provided to service the tourist cabin.

In accordance with G21, Acceptable Solution A2.2, *Where access for people with a disability is expected, a minimum of 1 accessible space is required and thereafter one additional space per 100 spaces or part thereof.*

The function centre is classified as a Class 9b Public Assembly building and is required to provide 1 accessible car parking space (Section D3.5 The proposal is to consist of 1 car parking space complying with AS1428).

The applicant's TPI (D21/184960) (Section 3.3) indicates that:

"The proposed development requires the provision of one (1) disabled car parking spaces. One (1) disabled space is associated with the existing tourist accommodation that is provided on-site which will also cater for the disabled parking requirements of the function centre. This disabled parking space has been provided in accordance with AS2890.6:2009."

An accessible car parking space is required to be provided for each use (tourist cabins and function centre) the sharing of the space does not take into account the fact that a person with a disability may be staying in the cabins and therefore there would be no accessible space provided for use by a guest not staying on-site or a worker associated with the function venue.

- In accordance with Section 4.15(3A) of the EP&A Act, Council—is to be flexible in applying those provisions and allow reasonable alternative solutions that achieve the objects of

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those standards for dealing with that aspect of the development. The applicant's proposal is not considered to be a reasonable solution that would achieve the objects of the standard.

It is not considered that the proposed alternate solution meets objectives (i) and (iii) under Section 4 of Chapter G21, Objectives (i) and (iii) state as follows:

- i. *"Ensure that adequate off street parking is provided in conjunction with development throughout the City, including any overflow parking."*
- iii. *"Ensure that car parking areas are visually attractive, functional, operate efficiently, are safe and meet the needs of users."*
- The shortfall in car parking is likely to result in on-street car parking within the Homestead Lane and Queen Street Road reserve. The reliance on on-street car parking to service the development is not recommended and does not reflect the desire for each development to cater sufficiently for its own car parking on the development site.
- Support for the variation is likely to result in an undesirable precedent. The requirement for the provision of car parking to be provided at a rate of one space per 6.5m², has been consistently applied to other permanent functioning venues in rural and urban localities.

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

iv) Environmental Planning and Assessment Regulation 2000

Clause 92 Additional matters that consent authority must consider	The assessing officer has considered the applicable matters for consideration under clause 92(1)(a)-(d)
Clause 93 Fire safety and other considerations	Considered and conditions are recommended should the development application be approved.
Clause 94 Consent authority may require buildings to be upgraded	In determining a development application to which this clause applies, Council has taken into consideration whether it would be appropriate to require the existing buildings to be brought into total or partial conformity with the Building Code of Australia.
Clause 96 Imposition of conditions—ancillary aspects of development	Ancillary conditions are proposed as recommended in the development consent.
Division 8A Prescribed conditions of development consent	Prescribed conditions are to be imposed as required under this Division.

v) Repealed.

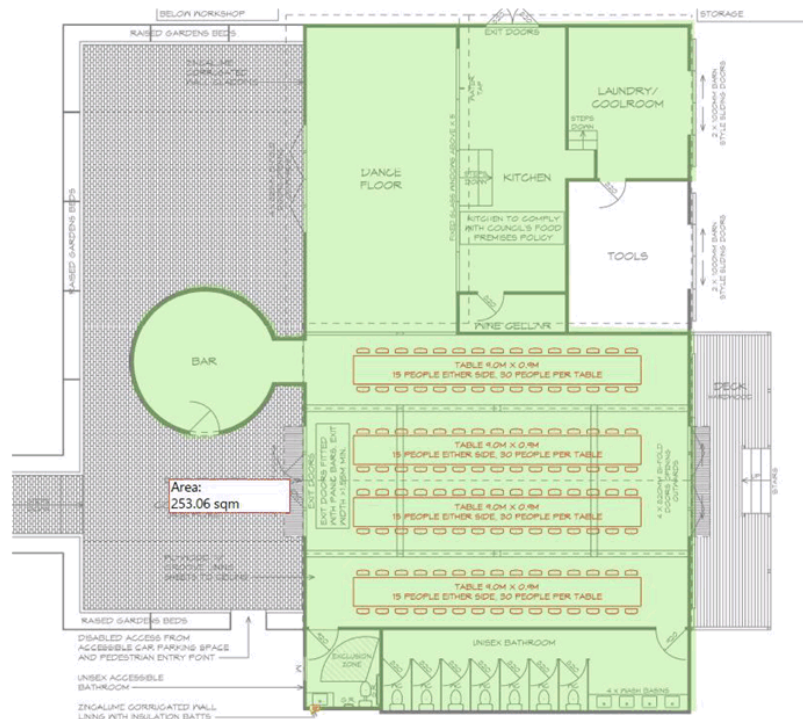
Shoalhaven Contribution Plan 2019

The proposed development is considered to increase the demand for community facilities in accordance with the Shoalhaven Contributions Plan 2019 (the Plan). The development is most aptly characterised as an Hotel/Restaurant development to calculate contributions under the Plan.

The function centres gross floor area = 253m² (including bar, kitchen, coolroom, dance floor and seating area)

Note: no contributions have previously been levied against the structure or use.

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

	Existing	Proposed
Retail (Gross Floor Area m2)	0	0
Commercial Office (Gross Floor Area m2)	0	0
Hotel / Restaurant (Gross Floor Area m2)	0	253
Bulky Goods (Gross Floor Area m2)	0	0
Industrial (Gross m2, include parking/landscape)	0	0
Total ET		16.87
Management Project ETs		1.26

Project	Description	Rate	Qty	Total	GST	GST Incl
CWFIRE2001	Citywide Fire & Emergency services	\$138.13	1.26	\$174.04	\$0.00	\$174.04
CWFIRE2002	Shoalhaven Fire Control Centre	\$202.07	1.26	\$254.61	\$0.00	\$254.61
CWMGMT3001	Contributions Management & Administration	\$574.39	1.26	\$428.72	\$0.00	\$428.72
				Sub Total:		\$471.52
				GST Total:		\$0.00
				Estimate Total:		\$471.52

Nowra Bomaderry Structure Plan 2008

The proposed development is unlikely to impact upon the objectives of the Structure Plan.

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

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Head of Consideration	Comment
Natural Environment	<p>The proposed works are not likely to impact any native flora and fauna in the locality and no expressed conditions are required to limit such impacts.</p> <p>There is however a potential for the development to impact on the amenity of the locality by virtue of the production of unreasonable levels of noise. The submitted ENIA does not provide sufficient information to demonstrate to Council that the development will not result in a significant or unreasonable impact in relation to the production of noise.</p>
Built Environment	<p>The extent of works associated with the development include:</p> <ul style="list-style-type: none"> Alterations and additions to the former cowshed building as follows:- <ul style="list-style-type: none"> Addition to the western end of the cowshed measuring approximately 9.5 m x 3 m to provide suitable amenities. Installation of a commercial kitchen. Provision of exit doors to the eastern and northern elevations of the cowshed. Construction of a timber pergola over part of an existing paved area. On-site parking for 10 staff adjacent to an existing internal accessway, plus capacity for 10 guests as an emergency overflow. Conservation management works as detailed in the Conservation Management Plan prepared by Navin Officer <p>The extent of the proposed works is unlikely to have a negative impact on the built environment as it relates to the streetscape and local character and will not result in unreasonable visual impacts when viewed from the public domain.</p> <p>The heritage impacts of the development and use of clause 5.10(10) of SLEP 2014, has been reviewed by an external consultant, Dr Peter Kabaila of Black Mountain Designs as part of the assessment of the application (Refer to Heritage Review (D21/222540).</p> <p>The only specific suggestion of adverse effect in the Heritage Review is the position of proposed car park spaces 4-11 (refer to Figure 5). Were car parking spaces 4-11 to be used and/or required to be formalised there would likely be an impact on the heritage item and Council could not be satisfied that the Development Application meets the criterion in subclause 5.10(10)(d) of the SLEP 2014.</p> <p>Granted that the current plans before Council identify these car parking spaces as forming part of the application. These car parking spaces are likely to result in an adverse impact on <i>the heritage significance of the heritage item, including its setting</i>.</p>
Social Impacts	<p>The development is unlikely to result in negative social impacts in the locality if appropriate management conditions were to be</p>

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Head of Consideration	Comment
	imposed and an appropriate plan of management of the site implemented and adhered to.
Economic Impacts	The proposed development is likely to have a satisfactory economic impact in the locality is approved.

(c) Suitability of the site for the development

The site is zoned RU1 Primary Production under the provisions of SLEP 2014. Development for a 'function centre' is prohibited in the RU1 zone in accordance with the Land Use Table for the zone. The development application has been made according to cl. 5.10(10) of the SLEP 2014.

In accordance with the jurisdictional requirements of sub-cl. 5.10(10), the development must satisfy all five requirements (a) – (e), for use otherwise prohibited under SLEP 2014, to be capable of being granted consent.

The development does not satisfy all requirements under sub-cl. 5.10(10) and Council cannot approve the application which is otherwise prohibited in the RU1 zone.

Notwithstanding that the development is prohibited and Council the jurisdictional requirements under the sub-cl. to approve the application, the development is not considered to be suitable for the site for the following reasons:

1. The development is not generally consistent with each of the six objectives of the RU1 zone. Chiefly, Council is not satisfied that the development minimise conflict between land uses within this zone and land uses within adjoining zones;
2. The development does not provide sufficient information in relation to noise impacts. It follows that Council cannot be satisfied that the development will have a reasonable impact on the amenity of the area and adjoining sensitive receptor by virtue of noise impacts;
3. The development is likely to have an adverse impact on the heritage significance of Mananga - Berry Estate Managers Farm Complex - Item I63 – Schedule 5 of SLEP 2014, through the retention of car parking to the south of Mananga Homestead – principally car parking spaces 4 – 11;
4. The development fails to provide sufficient car parking in accordance with SDCP 2014 Chapter G21: Car Parking and Traffic and AS/NZS 2890.1:2004 Parking facilities - Off-street car parking.

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

The Development Application was notified on three (3) occasions throughout the assessment period, the relevant notification periods were:

- 24 November – 10 December 2020;
- 9– 25 February 2021; and
- 12 – 26 May 2021.

552 public submissions were received in relation to Council's notification of the development. the majority of the submissions were in objection to the development.

- First notification – 142 submissions;

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- Second notification – 152 submissions; and
- Third notification – 258 submissions.

The notification was for a period of 14 days on each occasion

The notification of the application resulted in significant public interest and the receipt of over submissions.

There have been a number of submissions made by members of the community with expertise in heritage, architecture and acoustic impacts which raise salient points of concern. The concerns raised are summarised in the table below and response to each matter identified.

Submission	Response
Impact on the heritage significance of the Mananga farm complex and the broader heritage context, including the Pulman Street Heritage Conservation Area will be significant and the application should be refused.	<p>The development in its current form (which excludes the formalisation of car parking spaces 4-11) would not adversely affect the heritage significance of the heritage item, including its setting.</p> <p>The Heritage Review prepared Dr Peter Kabaila does not otherwise suggest that this particular development will adversely affect the significance of the heritage item, however, it does observe that previous developments have cumulatively affected that significance.</p>
Clause 5.10(10) has not been satisfied, there is no necessity for the proposed use to facilitate the ongoing management of the heritage item	Council does not have the jurisdiction to grant consent pursuant to clause 5.10(10) given that Council is not satisfied with respect to all of the relevant tests in sub-cl. (a) to (e). As a result, the proposed development is prohibited and the development application must be refused.
The conservation works proposed do not facilitate the conservation of the item and are largely associated with the upgrading of the site for the function use and	<p>It is noted that <i>de minimis</i> conservation works and ordinary maintenance works will not be sufficient to show that the conservation of the heritage item will be "facilitated by" the granting of development consent.</p> <p>The Heritage Review suggests that the Development Application entails very little conservation of the heritage item. In particular, it identifies that seven (7) of the items in the Capital Works & Maintenance Cost Report could be seen as conservation works, with the remaining thirty (30) items being simply works for "maintaining the property at its current, highly renovated, standard". There is a suggestion that interpretive works could be key to "heritage conservation", given the highly renovated status of the item and that any detail of heritage interpretation is missing from the heritage documentation.</p>
The heritage management and conservation documents lodged with the application fail to provide the required assessment and conservation incentive works to satisfy cl. 5.10(4) and (10).	The Heritage Review indicates that the Development Application does not include all necessary conservation works to an extent that would allow Council to be satisfied with this criterion. The Heritage Review argues that:

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	<p>a. the Capital Works & Maintenance Cost Report is not a schedule of necessary conservation work;</p> <p>b. the heritage landscape plan does not describe works that go towards the heritage item and its conservation;</p> <p>c. there is a need for details of the interpretive works and a timeframe for those works;</p> <p>d. redesign and rebuilding of the carport and its link is necessary; and</p> <p>e. there is a need for a low hedge or stone wall at the northern edge of the house driveway associated with the overflow car parking highlighted in green in Figure 4.</p>
The existing approved use of the site, in particular the five tourist units, are sufficient to enable management of the heritage significance of the site.	<p>Council cannot limit the lodgement of development applications and must assess every application on its merits.</p> <p>Clause 5.10(10) does not require an assessment of the current uses on the site or the ability for these uses to contribute to ongoing maintenance of the heritage item and any conservation management works.</p>
<p>The noise impacts will result in a significant adverse impact on adjoining property owners (including those identified by Transport for NSW in their submissions).</p> <p>The noise impacts associated with the proposed use have not been appropriately measured and considered by the submitted <i>Environmental Noise Impact Assessment</i> prepared by Harwood Acoustic and additional testing and consideration of additional management arrangements are required.</p>	<p>Council engaged an external specialist noise consultant – Stephen Gauld of Day Design Pty Ltd to review the applicant's ENIA and the noise conclusions drawn in the Memorandum of Advice provided by T Robertson SC.</p> <p>It is considered that additional information is required to be provided to justify the impacts of the development on the adjoining receptors and an assessment against the more stringent <i>Liquor and Gaming Noise Criteria</i> should apply as the facility will operate more in line with a licensed facility with the service of alcohol the responsibility of the catering staff and not the function venue.</p>
Amenity impacts associated with the operation of the function venue, including patron behaviour and any light spill from the site to neighbouring properties, has not been considered and as the potential to result in significant adverse impact.	Potential impacts associated with patron behaviour and light spill is not considered to be significant. Furthermore, the behaviour of patrons can likely be managed through a plan of management for the overall use of the site.
Insufficient on-site car parking to service the development and the potential for the overflow parking on the local roads surrounding the site.	An assessment of the car parking in accordance with Chapter G21 of SDCP 2014 details that the development does not provide sufficient car parking and that the request to vary the requirement for car parking through the use of patron bus service is not supported. The use of a mini-bus is considered a reasonable suggestion however it needs to be in conjunction with appropriate and adequate car parking. For reasons detailed earlier in this report, the car parking is deficient.

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Additional car parking on the site to accommodate patron parking is likely to have an adverse impact on the heritage significance of the heritage item.	The Heritage Review completed by Dr Peter Kabaila provides support to the removal of spaces 4-11 (refer to Figure 4). The additional spaces highlighted green in Figure 4 are not considered to have an impact on the heritage significance of the item if formalised to an all-weather standard and provided with low height hedge.
Traffic impacts on the local road network from unregulated car parking in the surrounding road reserve and traffic on the local road network.	Overflow car parking may occur within Homestead Lane. Although a condition could be imposed to require all car parking on the development site, the enforcement and management of this requirement without signposting (i.e. No Stopping") would be difficult to manage.
The cumulative impact of this development and the proposed inground swimming pool (DA20/2353) should be considered when assessing the potential impacts on the heritage significance of the heritage item.	The only specific suggestion of adverse effect in the Heritage Review is the position of proposed car park spaces 4-11. The Heritage Review does not otherwise suggest that this particular development will adversely affect the significance of the heritage item, however it does observe that previous developments have cumulatively affected that significance.
The prior use of the site for functions should not set a precedent to justify the current use of the site.	There was a claim by the owner that the site had been historically used as a function venue for a significant number of years prior to the current owners taking management of the site. It is noted that no prior consent for the use of the site as a function centre was ever granted and therefore Council does not consider that any alleged prior use of the site would justify the current proposed use and has not been taken into account in the assessment of the application.
The comparison of the subject site with Terrara House should be rejected	Council's assessment of the development application has been carried out on the merits of the application before Council. The assessment has not sort to compare this application with other approved function centres in the LGA.
The applicant has failed to address any of the issues that a function centre at Mananga would cause in terms of the Significant Adverse Effect on the amenity of the surrounding area. In particular, its impact on the "quality of life" of the neighbouring local residents due to the unavoidable noise, traffic and associated parking issues associated with operating a Function Centre in close proximity to the Pulman Street Heritage Conservation Area.	Council's assessment of the impacts of the development taking into account amenity impacts (as required under clause 5.10(10(e)) does not indicate that there will be a "significant" level of impact on the amenity of the surrounding area.
A "confidential" Councillor briefing document was prepared by Mr & Mrs Quinn and provided to Councillors in January 2021. While this document has to date been protected from public scrutiny, we note that Council has ruled that it be released on the	Council's assessment has not included an assessment of or reliance upon any statement in the document referred to as the "confidential Councillor briefing" document.

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<p>basis "...that the information was not received in a confidential context include: The information was provided voluntarily."</p>	
<p>Potential adverse impacts on Aboriginal cultural heritage have not been addressed through the development application.</p> <p>The Jerrinja LALC has raised concern in relation to the consultation with the local Aboriginal Community, potential impacts of the development on a significant site, misrepresentations made by the Navin Officer Statement of Heritage Impact and potential for the development to impact on cultural artefacts.</p>	<p>The development application involves minor works to the associated outbuilding ("cowshed") and potential works to formalise the car parking identified to the south of the Mananga Homestead (highlighted green in Figure 4). The works proposed were not identified within the Navin Officer Heritage Report as potentially impacting on any Aboriginal place of heritage significance.</p> <p>It is important to note that the site is not currently identified under Schedule 5 of SLEP 2014 as an Aboriginal place of heritage significance.</p> <p>Furthermore, an appropriate condition could be recommended that: if an Aboriginal object (including evidence of habitation or remains) is discovered during the course of the work:</p> <p>All excavation or disturbance of the area must stop immediately</p> <p>The Office of Environment, Energy and Science must be advised of the discovery in accordance with section 89A of the <i>National Parks and Wildlife Act 1974</i>.</p>

A number of submissions (53) were also lodged by members of the community in support of the application. The submissions noted that the development application should be supported for the following reasons:

- The site is located in close proximity to the Berry Township and can be accessed by patrons and guests of the existing tourist cabins.
- The application will support other business in Berry.
- The development is reflective of the existing development on the site and its rural and heritage context.
- The location is unlikely to result in amenity impacts on the surrounding land uses.

There were also a significant number of submissions lodged which went to the character of the owner's and did not relate to substantive planning matters.

Council has considered the reasons for support of the development application and given equal weight to the valid planning reasons to support the application.

The notification of the application resulted in significant public interest. It is noted that submissions that did not go towards the application (character references for example) or raise substantive planning matters relating to the development application were not considered in the assessment but were counted in the figures of submissions provided above.

The key issues raised as a result of the notification have been identified earlier in this report and Council's consideration of the issues raised identified.

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(e) The Public Interest

While the required assessment in relation to assessing the public interest is not well defined by the legislation.

The Courts have provided some guidance. In the case of *Minister for Planning v Walker* (2008) 161 LGERA 423, Justice Hodgson of the NSW Court of Appeal overturned the decision of the Land and Environment Court of NSW in relation to Ministerial approval of a concept planning approval which the primary Court held was invalid as the Minister failed to have regard to the principles of ecologically sustainable development by failing to consider whether the impacts of climate change would lead to increased flood risk on this flood-constrained coastal plain project.

As part of the appeal, the Court considered aspects of the public interest considerations as required under the Section 79C(1)(e) of the Act (now Section 4.15(1)(e) of the EP&A Act) at [42]-[45] of the judgement. Justice Hodgson's judgement highlighting that the considerations that can form part of the public interest in any specific case may include:

1. importance of safeguarding private property rights,
2. the provision of community services and infrastructure, and
3. the ecological imperative of conserving natural ecosystems and species or ecologically sustainable development.

In considering whether the development application is in the public interest, the assessment has considered: the matters outlined by Justice Hodgson in the *Walker* case, whether the objectives and outcomes of the decision-making process are in the public interest and that the process adopted, and procedures followed in exercising discretionary powers are in the public interest.

The public interest of the Shoalhaven local government area and the broader population that may be impacted by the development has been considered along with the different sectors of the community that have made a submission and have expressed particular views relating to their objection to the application.

The assessment has considered:

- the portion of the public whose interests required to be considered in the decision-making process,
- the relevant 'public interest'; and
- the weighing up of each applicable 'public interest', including the balancing of differing or opposing 'public interests'.

The assessment of the public interest has considered the competing and conflicting public interests associated with the development and granted equal weight to the consideration of relevant interests associated with the development.

Furthermore, the consideration has considered the need to balance the public interest against private interests in the scope of the development.

The recommendations made in this assessment are considered to have been made on reasonable grounds, based on the information provided and the merits of the application.

Ultimately the development is unlikely to represent the interests of all sectors of the public who have an interest in the development. The proposed development is not considered to be in the public interest when the interests of all sectors of the public and those submissions received and considered in accordance with s. 4.15(1)(d) of the EP&A Act.

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Delegations

Guidelines for use of Delegated Authority

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

On 8 December 2020, the Council resolved at the Strategy & Assets Committee (SA20.257) *That DA20/2172 – 8 Homestead Lane Berry - Lot 101 DP 1057897 - Commercial Additions - Alterations & Additions & Use of Existing 'Mananga Homestead' for Functions & Events be called to Council for determination due to significant public interest. (MIN20.918).*

Granted that the application has been called in for determination, the application must be determined by the Council.

Recommendation

This application has been assessed having regard for Section 4.15 (Matters for consideration) under the Environmental Planning and Assessment Act 1979. As such, it is recommended that Development Application No. DA20/2172 be refused.



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
DA20/2172

TO:

Foundation Law Group
PO Box 3094
AUSTINMER NSW 2000

being the applicant(s) for DA20/2172 relating to:

8 Homestead Lane BERRY - Lot 101 DP 1057897

REFUSED USE AND/OR DEVELOPMENT:

Alterations and additions to an existing building and use as a function centre

DETERMINATION DATE:

TBC

Application refused in accordance with the resolution of the Development and Environment Committee on 11 May 2021 (MIN21.255)

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:

CL21.158 - Attachment 5

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

PART A: 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 minimise conflict between land uses within this zone and land uses within adjoining zones.. (Section 4.15(1)(a)(i) of *Environmental Planning and Assessment Act, 1979*).
2. The proposed development is prohibited in the RU1 Primary Production zone and is inconsistent with the RU1 Primary Production objectives under *Shoalhaven Local Environment Plan 2014*, as the proposal is incompatible with the surrounding residential uses.
3. Council is not satisfied with each of the five conjunctive requirements under cl. 5.10 of SLEP 2014. The proposed development does not satisfy sub-cl. (a)- (e) of cl. 5.10(10). Council cannot approve the Development Application in accordance with cl. 5.10 of SLEP 2014. (Section 4.15(1)(a)(i) of *Environmental Planning and Assessment Act, 1979*).
4. The information submitted with the development application does not satisfactorily demonstrate the likely impacts due to noise are reasonable. Inadequate information has been provided to demonstrate that the adverse noise and vibration impacts caused by the use of the premises can be satisfactorily mitigated. (Section 4.15(1)(b) of *Environmental Planning and Assessment Act, 1979*).
5. The proposed development includes car parking for use by guests and staff. Car parking indicated on the site plan lodged with the application includes car parking to the south of the Mananga Homestead. Car parking spaces 4 – 11, if utilised or formalised are considered to have unreasonable impact on the built environment and will have an unreasonable impact on the heritage significance of Mananga Homestead (Item 63 – Schedule 5 – SLEP 2014). (Section 4.15(1)(b) of *Environmental Planning and Assessment Act, 1979*).
6. The development is inconsistent with Chapter G21 of Shoalhaven Development Control Plan 2014 as it relates to the provision, design, access and manoeuvring associated with the proposed car parking arrangements. (Section 4.15(1)(a)(iii) of *Environmental Planning and Assessment Act, 1979*).
7. The information submitted with the development application is insufficient to enable Council to determine if the development will have an unreasonable impact on the natural environment by virtue of noise impacts (Section 4.15(1)(b) of *Environmental Planning and Assessment Act, 1979*).
8. The information submitted with the development application does not satisfactorily demonstrate that the site is suitable for the proposed use. (Section 4.15(1)(c) of *Environmental Planning and Assessment Act, 1979*).
9. Having regard to the above matters, and the submissions received the granting of development consent is not considered to be in the public interest. (Section 4.15(1)(d) and (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.

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

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:

Black Mountain Projects Heritage-Architecture-Archaeology

Black Mountain Projects Pty Ltd
5 Wangara St Aranda ACT 2614
ABN 80 002 762 629
www.blackmountainprojects.com

Dr Peter Kabaila
Heritage Consultant
B Arch (UNSW), DipEd, PhD (ANU)
+61 0403 727 805 peterkabaila1@gmail.com

31.05.2021

Atten: Elliot Weston
Senior Development Planner, City Development
Elliot.Weston@shoalhaven.nsw.gov.au

DA20/2172 - 8 HOMESTEAD LANE BERRY - COMMERCIAL ADDITIONS - ALTERATIONS & ADDITIONS & USE OF EXISTING 'MANANGA HOMESTEAD' FOR FUNCTIONS. HERITAGE REVIEW

I was engaged by Shoalhaven Council to provide a heritage review regarding the above DA and have:

- Reviewed documents supplied by Council.
- Discussed the proposal with Council's DA assessor Elliot Weston.
- Inspected the site with the owner.

GENERALLY

This is a beautiful property, totally renovated and developed, with little interest in historical authenticity or heritage conservation. I consider use of the site for functions to be a good use of the site. It would bring more people onto the site to appreciate the renovated, heritage listed structures and view the garden. Council's main difficulty in considering this application is likely to be that the conservation incentives clause has been overused by extensive renovations and alterations by the owner, some of them already impacting adversely on the heritage significance of the property.

USE OF CLAUSE 5.10 (10) OF SLEP 2014 ("Conservation incentives")

At the time this clause was drafted, it gained support for opening up the possibility for councils to save dilapidated heritage places by revitalising them through conservation and commercial development (Dennis McManus, personal communication May 2021).

The clause remains in use where redevelopment will help to conserve heritage places that are in need of repair and conservation. It is not valid to claim general long term property maintenance (e.g. mowing the grass for the next 20 years) as heritage conservation.

Homestead

Site inspection began with the formal hedged gardens of the homestead. These gardens define a clear landscaped curtilage around the homestead. I consider any gardening outside this homestead curtilage to be general maintenance of the property, not conservation.

Externally the homestead appears to have been extensively renovated. It had been extended to the limits of appropriate bulk and scale. A clumsily designed link and renovated carport/garage are visually detracting and preferably should be addressed by redesign and rebuilding.

Cow shed and silo

The site inspection then moved to the cow shed and silo. These also have been extensively renovated and any further need for conservation works has been exhausted by renovations and alterations.

COMPLETENESS OF SUBMITTED HERITAGE DOCUMENTS

Overall the submitted documents have been cobbled together and each tells a different story.

Heritage Landscape Management Plan & Master Landscape Plan prepared by Saville & Will

The landscape master plan is a rough sketch, not a detailed master plan. From what I saw on site, however, the owner and contractors are energetically planting out the grounds. I have no doubt that the owner will put his own interpretation on the landscape master plan and put it into action. In other words, landscaping will be done.

The landscape documents do not in general describe works which go toward the heritage item and its conservation. In general, they simply describe work for the property.

Conservation Management Plan by Navin Officer

This plan makes much of the archaeology but seems to struggle dealing with what is appropriate for a development that includes the heritage listed buildings. The plan gives the impression that the owners made great efforts to renovate, but had little interest in heritage conservation. The plan does not present a convincing case for the property needing further heritage conservation.

Overall, the bulk and scale of the house additions, design of the linked carport and garage and removal of heritage fabric have had irreversible cumulative heritage impact on the site.

But even with its heritage significance compromised, this could still be a pleasant tourist destination.

Capital Works & Maintenance Cost Report prepared by Mitchell Brandtman

This is not a schedule of essential conservation work. It is a cost estimator's forecast of optional maintenance work that could be carried out to the property in the future. Most of it is not heritage conservation work. **Attachment A** to this report is a mark-up identifying the 7 items that might be regarded as heritage conservation. In general the cost report is a structured plan for owner maintenance and further development of the property.

Need for heritage interpretation

Given the level of new renovation and new development on this heritage listed property, what is missing from the heritage documentation is details of heritage interpretation. The property has many features (for example the relic earthwork of the mill race) which would not be understood by visitors, unless interpreted through for example: storyboards in the buildings, historical plaques in the gardens, sculptures and a self-guided tour.

Summary

In short, I consider the extent of the works proposed to be carried out and identified in the Conservation Management Plan, Capital Works & Maintenance Cost Report prepared by Mitchell Brandtman and landscape master plan do not present a strong case for invoking the conservation incentives clause. They include very few heritage conservation items. They are useful documents for maintaining the property at its current, highly renovated, standard.

CAR PARKING

The applicant proposes 20 additional car parking spaces to the south of the homestead.

Car parks 1, 2 and 3 are on existing gravel driveway and do not impact on heritage significance.

Car parks 4 to 11 on the grassed yard of the homestead are recommended to be deleted. They would be an unacceptable impact on the heritage significance of the homestead gardens.

Car parks 12 to 20 are located between established trees and would not impact on the homestead's heritage significance provided they are carefully detailed and landscaped.

A low hedge (e.g. buxus) and/or low (600mm) stone wall should be provided along the northern edge of the house driveway to clearly mark the curtilage of the house gardens. It should provide some visual separation between the house and the row of new car parks.

CONCLUSION & RECOMMENDATION

This application does not present solid justification for use of the conservation incentives clause. It could be rejected by the council on that basis.

If council decides to support the application, for example to support local tourism and increased public appreciation of the historic site, then the following heritage conditions of consent are recommended:

- Provide detailed designs for heritage interpretation prior to issue of the occupation certificate. Include detailed designs of any storyboards in the buildings, historical plaques in the gardens, sculptures, self-guided tour and the like. Provide proof of completion of heritage interpretation works within 2 years of the date of issue of the development consent.
- Provide proof of completion of short term works identified in the *Conservation Management Plan, Capital Works & Maintenance Cost Report* by Mitchell Brandtman) prior to issue of the occupation certificate.
- Provide proof of completion of other works (other than short term works) identified in the *Conservation Management Plan, Capital Works & Maintenance Cost Report* by Mitchell Brandtman) within 5 years of the date of issue of the development consent.
- Car parks 4 to 11 to be deleted.

- Car parks 12 to 20 (between established trees) to be constructed as follows:
Levelling.
All-weather gravel (to match the driveway).
Wheel stops.
Engineered retaining wall (e.g. reinforced concrete), faced with stone.
1.5m high hedge planting along the wall base.
Low hedge (e.g. buxus) along the northern edge of the house driveway
- All future use of the Clause 5.10 (10) of SLEP 2014 (conservation incentives clause) is to be extinguished with this development consent. This condition is to be applied by a covenant (88B Instrument) on the land, to run in perpetuity.



Dr Peter Kabaila
Heritage Consultant

SITE INSPECTION PHOTOS



Geometric hedge gardens around the house define a curtilage around the house.



The house gardens will flow into the car parks at the opposite side of the driveway, unless the garden curtilage is marked at the driveway by a hedge and/or low stone wall. This will not block a view of the cars. But it will define a perimeter to the house gardens and allocate the car parks into a land area outside the curtilage of the house.



The cow shed has been renovated with much of its heritage fabric removed. Its curtilage has been cut off by a driveway. But the owner has made great efforts to preserve the outside form of the cow shed and create a showcase interior.



Works and maintenance of the new development outside the perimeter of the silo and cow shed should become attractive when the plantings become established. But it is not heritage conservation work.



Re-purposed stonework from a demolished historic building on the site should have heritage interpretation (e.g. cast bronze info plaque set into the paving) for visitors.



The silo has been adapted into a bar.



The link and studio/garage/carport is unconvincing faux heritage. It detracts from heritage significance of the house.



Mitchell Brandtman
SD Quantity Surveyors & Construction Expert Opinion

Attachment A

Capital Works & Maintenance Cost Report



✓ = HERITAGE CONSERVATION
X = NORMAL OWNER MAINTENANCE & RENOVATIONS, DEVELOPMENTS

CAPITAL WORKS & MAINTENANCE COST REPORT - MANANGA HOMESTEAD & FUNCTION CENTRE & HOMESTEAD LAKE BERRY									
Item No	Element Description of Work	Condition/Observations	Recommendations/Action Required	Work Category	Short Term 1 Year	Medium Term 2-4 Years	Recurring Annual	Recurring Biennial	Comments/Benefit
MANANGA HOMESTEAD									
1.00	Roof								
1.01	Translucent glass roof panels to be replaced	Is not sympathetic with the original metal roof sheeting	Replace with higher quality translucent panels	CAPEX	\$2,300.00				Will be sympathetic to the historic nature of the homestead & also reduce ongoing maintenance
1.02	Exposed corrugated face brickwork & flashing to top of chimney stacks (4x)	There are exposed/cracked joints to the brickwork	Carefully erect scaffold and repoint brickwork and make repairs as necessary to the flashing	CAPEX		\$21,000.00			Reinstates the pointing to match existing
1.03	Roof and veranda eaves, gutters downpipes and flashings	Current roof is in good condition	Ensure roof and gutters etc. are regularly maintained	MAINTENANCE			\$1,200.00		Maintains the condition of the roof and gutters and reduces any fire risk to the property caused by the build-up of flammable debris from surrounding trees
Sub Total Roof					\$2,300.00	\$21,000.00	\$1,200.00	\$0.00	
2.00	Internal Timber Floors & Decking to Verandas								
2.01	Existing decking to verandas	The floor finish to the decking is in poor condition	Punch in exposed fixings, sand back and stain existing decking to match existing	CAPEX		\$8,500.00			Will be sympathetic to the historic nature of the homestead & also reduce ongoing maintenance
2.02	Sub-floor ventilation	An adequate sub-floor ventilation system is required	Provide an approved sub-floor ventilation system such as concealed extraction fans etc.	CAPEX	\$7,500.00				Reduces the risk of damage to the original flooring and sub-floor timbers
2.03	Damp-proofing	Was not able to ascertain condition of subfloor damp proofing	Allowance for inspecting sub-floor dampproofing and remediation as required	CAPEX		\$10,000.00			Reduces the risk of damage to the property
2.04	Termite/borer damage	We understand the property previously had a termite infestation which was treated	Undertake annual pest inspections and preventative treatments	MAINTENANCE			\$2,000.00		Reduces the risk of termite damage to the property
2.05	Internal timber floors & decking to verandas	Current timber floors are in good condition	Sand and re-stain every 2 years or as required	MAINTENANCE				\$15,000.00	Maintains the condition and original appearance of the timber floors & decking
Sub Total Internal Timber Floors & Decking to Verandas					\$7,500.00	\$18,500.00	\$2,000.00	\$15,000.00	
3.00	External Doors & Windows								
3.01	External Timber Doors	The external timber doors are not drought proof and have gaps between the bottom of the door and the timber thresholds	Drought proof doors as required using sympathetic materials	CAPEX		\$2,300.00			Ensures the property is drought proof for the benefit of the occupants and prevents the ingress of water and windborne debris which may cause internal deterioration to the property
3.02	Sash Windows	The timber sash windows are generally in good condition but will require regular maintenance	Allow to overhaul the sash windows as required including replacing sash cord and weights as required	MAINTENANCE				\$1,200.00	Maintains the condition and original appearance of the sash windows
3.03	Leadlights	The existing leadlights are generally in good condition but will require regular maintenance	Allow to maintain and repair as required	MAINTENANCE				\$1,500.00	Maintains the condition and original appearance of the leadlights
Sub Total External Doors & Windows					\$0.00	\$2,300.00	\$0.00	\$2,700.00	
4.00	External & Internal Painting								
4.01	Externally	The property has recently been painted	Allowance to repaint on a progressive basis as required	MAINTENANCE			\$20,000.00		Maintains the condition and original appearance of the property
4.02	Internal plaster & stone walls	The substrate is reactive clay and the resulting movement causes cracking to the original plaster finish	Allow to repair as required	MAINTENANCE			\$1,000.00		Maintains the condition and original appearance of the property
Sub Total External & Internal Painting					\$0.00	\$0.00	\$21,000.00	\$0.00	
Sub Total Mananga Homestead					\$0,800.00	\$42,000.00	\$24,400.00	\$17,700.00	



CAPITAL WORKS & MAINTENANCE COST REPORT - MANANGA HOMESTEAD & FUNCTION CENTRE @ HOMESTEAD LANE BERRY									
Item No.	Element Description of No. Works	Condition/Observations	Recommendations/Action Required	Work Category	Short Term 1 Year	Medium Term 2-4 Years	Recurring Annual	Recurring Biennial	Comments/Benefit
FUNCTION CENTRE									
5.00	Roof								
✓ 5.01	Metal roof sheeting to the western elevation	Roof sheeting is in poor condition and requires to be replaced	Replace roof sheeting with similar profiled sheeting to match that on the eastern elevation including repairs to existing timber roof structures as	CAPEX	\$6,000.00				Will be sympathetic to the historic nature of the homestead & also reduce ongoing maintenance
5.02	Roof and veranda roofs, gutters, downpipes and sealings	Current roof is in good condition	Ensure roof and gutters etc. are regularly maintained	MAINTENANCE			\$800.00		Maintains the condition of the roof and gutters and reduces any fire risk to the property caused by the build-up of flammable debris from surrounding trees
	Sub Total Roof				\$6,000.00	\$0.00	\$800.00	\$0.00	
6.00	New Amenities								
6.01	Unisex amenities to the western elevation	Additional amenities are required for the function centre to comply with Council and BCA requirements	Construct an attached unisex amenities block to the western elevation of the existing building primarily consisting of 7 unisex toilets & a 4 basin vanity bench	CAPEX	\$75,000.00				Ensures the use of the property as a function centre complies with Council requirements conformably with the approved use of the heritage property.
	Sub Total New Amenities				\$75,000.00	\$0.00	\$0.00	\$0.00	
7.00	Commercial Kitchen								
7.01	Commercial kitchen	A commercial kitchen is required to be installed within the existing building to comply with Councils Food Premises Policy	Fitout commercial kitchen including equipment, grease trap and building services & cookroom	CAPEX	\$175,000.00				Ensures the use of the property as a function centre complies with Council requirements conformably with the approved use of the heritage property.
	Sub Total Commercial Kitchen				\$175,000.00	\$0.00	\$0.00	\$0.00	
8.00	Wedding Party Preparation Room								
8.01	A wedding preparation room	A wedding preparation room is required to conform with current market expectations for a wedding venue	Internal fitout of the wedding preparation room	CAPEX	\$15,000.00				Ensures the use of the property as a function centre complies with Council requirements conformably with the approved use of the heritage property.
	Sub Total Wedding Party Preparation Room				\$15,000.00	\$0.00	\$0.00	\$0.00	
9.00	Concrete Silo								
✓ 9.01	Walls to the concrete silo	The walls to the silo suffer from concrete cancer and regular maintenance is required	Allowance for concrete cancer maintenance including access scaffold	CAPEX			\$20,000.00		Ensures the historical structure of the silo is retained in its original condition
	Sub Total Wedding Party Preparation Room				\$0.00	\$0.00	\$20,000.00	\$0.00	
10.00	BCA Upgrade								
10.01	BCA upgrade	The building is not BCA compliant as a function centre	Full BCA upgrade works not completed including fire exits (refer to BCA report)	CAPEX	\$6,000.00				A BCA requirement
10.02	Disabled Access	There is currently no disabled access to the property as required by AS 1428.1	The provision of a ramp to and all necessary handrails etc. to the south western corner of the property. The ramp will be paved with bricks which are sympathetic to the heritage of the property	CAPEX	\$12,000.00				Is a BCA requirement and will provide access to disabled users of the property
	Sub Total BCA Upgrade				\$18,000.00	\$0.00	\$0.00	\$0.00	



CAPITAL WORKS & MAINTENANCE COST REPORT - MANANGIA HOMESTEAD & FUNCTION CENTRE 8 HOMESTEAD LANE BERRY									
Item No	Element/Description of Works	Condition/Observations	Recommendations/Action Required	Work Category	Short Term 1 Year	Medium Term 2-4 Years	Recurring Annual	Recurring Biennial	Comments/Benefit
FUNCTION CENTRE (cont)									
11.00	External & Internal Painting								
11.01	Generally	The property has recently being painted	Allowance to repaint on a progressive basis as required	MAINTENANCE			\$2,000.00		Maintains the condition and original appearance of the property
Sub Total: External & Internal Painting					\$0.00	\$0.00	\$2,000.00	\$0.00	
12.00	External Works								
12.01	Brick paved patio to the adjacent to the southern timber deck	There is currently no separation between the timber stairs and the crushed rock surface of the carpark	The provision of a brick paved area to providing access to the deck stairs.	CAPEX	\$4,000.00				Improves the access to the timber deck
12.02	Timber pergola to the courtyard	There is no provision for a shaded area to the courtyard	Construct a timber pergola to the courtyard adjacent to the dance floor. The pergola will be constructed from timber which is sympathetic to the heritage nature of the property and will support climbing plants such as vines.	CAPEX	\$14,000.00				Provides shade to visitors and enhances the appearance of the property
12.03	Car bays	There is a requirement for 2 additional car bays	Construct 2 additional car bays to match existing (refer to traffic engineers report)	CAPEX	\$3,000.00				Provides additional parking for visitors
Sub Total External Works					\$21,000.00	\$0.00	\$0.00	\$0.00	
Sub Total Function Centre					\$21,000.00	\$0.00	\$22,000.00	\$0.00	



CAPITAL WORKS & MAINTENANCE COST REPORT - MANANGA HOMESTEAD & FUNCTION CENTRE 8 HOMESTEAD LANE BERRY									
Item No	Element /Description of Works	Condition/Observations	Recommendations/Action Required	Work Category	Short Term 1 Year	Medium Term 2-4 Years	Recurring Annual	Recurring Biennial	Comments/Benefit
COMMON GARDENS & GROUNDS									
13.00	Signage								
13.01	Interpretive Signage	Requirement for signage to outline the history and function of the property	Allowance to commission local historian to prepare the narrative and artwork. Consult and install sign.	CAPEX	\$12,000.00				Informs visitors of the historic significance and original function of the property
13.02	Feature sculpture/artwork	It is intended to provide a sculpture/artwork which reflects the historical significance of the property	Allowance to commission a local artist to provide the sculpture/artwork	CAPEX		\$20,000.00			Provides a visual link to visitors of the historic significance and original function of the property
	Sub Total Signage				\$12,000.00	\$20,000.00	\$0.00	\$0.00	
14.00	Pathways & Access Roads								
14.01	Pathway to Heirloom garden	There is currently no hard access to the proposed Heirloom garden	Provision of crushed rock access road to the Heirloom garden on the north western corner of the site	CAPEX	\$17,000.00				Provides safe access for visitors to the Heirloom garden
14.02	Original concrete pathway to the Heirloom entrance	The path has severe cracking which is a potential trip hazard to visitors	The provision of a brick paved area to providing access to the deck stairs.	CAPEX	\$3,000.00				Ensures the path is maintained in its original condition and provides safe access for visitors & residents to the homestead
14.03	Sandstone paths	In good condition but will require regular maintenance	Provide regular maintenance to pathways including repointing etc.	MAINTENANCE			\$2,500.00		Maintains the condition and original appearance of the pathways
	Sub Total Pathways & Access Roads				\$20,000.00	\$0.00	\$2,500.00	\$0.00	
15.00	Embankments & Retaining Walls								
15.01	Retaining wall and stone garden bed	To provide a visual and tangible separation between the homestead and function grounds	Construct a timber wall from existing timber on site, backfill with soil and river stone inlays	CAPEX	\$18,500.00				Removes area where grass won't grow and provides separation to homestead
15.02	Embankment to the western boundary of the site	The embankment has a steep gradient is difficult to maintain and is a potential safety hazard	Contour embankment as required and reseed with grass to match existing.	MAINTENANCE	\$14,500.00				Ensures the safety of visitors and staff
	Sub Total Embankments & Retaining Walls				\$33,000.00	\$0.00	\$0.00	\$0.00	
16.00	Gardens Hedges & Fences								
16.01	Heirloom garden	To enable visitors and staff to cultivate / pick heirloom plants	Allowance to establish an Heirloom garden	CAPEX	\$15,000.00				Enables a continual supply of Heirloom plants and educates visitors
16.02	Avenue of trees to the eastern boundary of the site		Allowance to provide an avenue of mature approved trees	CAPEX	\$60,000.00				Enhances the amenity of the property for visitors with historically sympathetic trees
16.03	Arboreal hedges and trees	In good condition but will require regular maintenance	Provide regular maintenance in respect of the mature trees	MAINTENANCE			\$5,000.00		Ensures the safety of visitors from falling branches and increases the longevity of the existing trees
16.04	Western boundary timber fence	Is in good condition but will require painting on a regular basis	Repaint every 2 years	MAINTENANCE				\$7,000.00	Maintains the condition and original appearance of the fence
16.05	General maintenance to grounds and sheds etc.	The grounds will require regular maintenance and replacement of dead plants etc.	Maintenance to be carried out by locally engaged employees assisted by other local contractors as required	MAINTENANCE			\$130,000.00		Maintains the condition and original appearance of the grounds for the benefit of visitors
	Sub Total Gardens Hedges & Fences				\$75,000.00	\$0.00	\$135,000.00	\$7,000.00	
	Sub Total Common Gardens & Grounds				\$140,000.00	\$20,000.00	\$137,500.00	\$7,000.00	
	Total				\$460,800.00	\$82,000.00	\$184,700.00	\$24,700.00	

**ATTACHMENT B:
COUNCIL PRELIMINARY BRIEFING REGARDING THE PROPOSAL**

Proposal

The Statement of Environmental Effects prepared by Cowman & Stoddart dated October 2020 (D20/488714), describes the proposed development as follows:

"Alterations and additions and the use of an existing building at the "Mananga Homestead" property located at No. 8 Homestead Lane, Berry for functions and events. The proposal seeks approval for the following:

- A maximum of 40 commercial functions or events per year.
- A maximum of 10 functions per year for use free of charge by Shoalhaven charitable groups focused on the homeless, disadvantaged young people and victims of domestic violence, inclusive of the onsite tourist accommodation.
- Use of an existing building and garden area of Mananga Homestead to accommodate functions and/or events for up to 120 guests.
- Alterations and additions to the building to provide amenities for the proposed functions.

The activity is to be undertaken between the hours of 10.00 am and 11.00 pm, and only one function is to occur on any day. Functions are typically likely to involve the use of the site for approximately 5 to 6 hours, and the hours proposed provide opportunity for both daytime or evening functions. For those functions undertaken of an evening, all music is to cease by 10.30 pm in order that all guests vacate the site by 11.00 pm."

An overall site plan and floor plan of the shed for use as a function centre are provided in the shared filed provided under a separate cover an extracted aerial indicating the location of the building to be used for function is provided in Figure 1 below.



Figure 1 - Aerial image with development nominated.

Subject Site

The subject site is located on the eastern side of Homestead Lane and Queen Street, 600m north-east of the township of Berry. The site is an irregular-shaped allotment of approximately 1.98ha. The site is legally identified as Lot 101 DP 1057897 and is described as 8 Homestead Place, Berry.

The land slopes gradually from the north-west to the south-east corner of the site. A

recently approved dam is located in the south-eastern corner of the site and receives a portion of the runoff from the site. There are presently three formalised access points to the site with the two primary accesses located toward the northern boundary.

There is limited native vegetation across the site, with significant ornate European landscaped gardens around the curtilage of the dwelling and detached garage. The ornate landscaping forms a significant component of the heritage significance of the site. (The property is locally listed under Schedule 5 of the Shoalhaven Local Environmental Plan 2014 as an Item of environmental heritage (Item I63 - Mananga - Berry Estate Managers Farm Complex).

The existing development on the site consists of a Federation Queen Anne style homestead, associated outbuildings, earth dam and jetty, recently renovated associated shed for use as a home business (home industry and arts). The site is listed, as mentioned above, and is identified as locally significant in the Shoalhaven LEP (2014) (Item No. I63).

Council has previously approved the renovation and use of the shed located to the south of the dwelling for use as a home industry/business (DA19/2060). The detached habitable rooms and a portion of the breezeway connecting the structure to the dwelling house, located to the north of the dwelling-house were destroyed by fire and are currently in the process of being rebuilt in accordance with Development Consent No. DA20/1266.

On 2 June 2020, Council granted Development Consent No. DA19/2134 for development described as tourist and visitor accommodation and associated works, consisting of a total of five (5) individual tourist and visitor accommodation rooms, as follows:

- Demolition and rebuild of existing structure 'Old Bails' building for use as tourist and visitor accommodation (tourist cabin); and
- Construction of two (2) detached single storey buildings each with two (2) rooms for use as tourist and visitor accommodation (tourist cabins)

A Construction Certificate (CC20/1814) has been issued in relation to DA19/2134 and the tourist cabins are substantially commenced (refer to aerial image).



ZONE 1 - TOURIST ACCOMMODATION - DA 19/2134
ZONE 2 - RENOVATED FARM SHED & SILO - DA 20/2172
ZONE 3 - EXISTING MANANGA HOMESTEAD RESIDENCE & GARDENS
ZONE 4 - EMBANKMENT & PROUCTIVE GARDEN AREA - DA 20/2172

Landscape master plan

From: Stephen Gauld <stephen@daydesign.com.au>
Sent: Thursday, 27 May 2021 9:54 AM
To: Elliott Weston <Elliott.Weston@shoalhaven.nsw.gov.au>
Subject: HPECM: RE: RDA20/2172 - 8 Homestead Lane BERRY - Lot 101 DP 1057897 - Parish COOLANGATTA - Commercial Additions - Alterations & Additions & Use of Existing 'Mananga Homestead' for Functions (ref: 7257)

Hi Elliott,

I have reviewed the material and have the following comments:

1. **Background Noise Level** – has been measured on the site and data is presented in Table 2 of the Harwood Report. Data is reasonable given its close proximity to the Princes Highway.
2. **Noise Criteria** – The Harwood report relies on standard assessment criteria, based on EPA guidelines. A more stringent assessment would apply the Liquor and Gaming noise criteria, which would be reasonable, but not essential, given the nature of the noise emission would be similar to that if the premises were licensed. Certainly, if the premises is proposed to be licensed to sell alcohol, the more stringent Liquor and Gaming noise criteria should apply.
The heritage conservation incentive provisions of clause 5.10(10) of the SLEP 2014 require (e) *the proposed development would not have any significant adverse effect on the amenity of the surrounding area. In my view this is equal to a standard merit assessment with regards to noise impact.*
Tim Robertson SC forms the same view in Paragraph 23 of his opinion dated 5 May 2021, given that the test is “any significant adverse effect” rather than “no significant adverse effect” as in Clause 2.8 of the LEP. Therefore suggests that the relevant noise policies and practices should apply.
3. **Assessment Location** – With regards to the TfNSW owned derelict dwellings, I take the approach that a receptor building is relevant only if it currently exists or is imminent. “Imminent” means it has DA approval but may not yet be built. It is not enough for there being a possibility that the receptor building might be built or is capable of being built at some future time (for example because it is a use that is capable of being approved in an LEP with development consent). Also, “imminent” does not include a DA lodged but not yet approved because there is no likelihood the development will be approved by Council. My reason is that Section 4.15 of the EP&A Act requires the following matter for consideration when assessing the likely impacts of a development:
(b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,
Relevantly, the clause refers to the “built environment” which by its ordinary meaning means something that currently exists. However, as a precaution, I would include a development that is imminent because it is likely to be built.
4. **Noise Level Assumptions** – Section 4 of the Harwood report contains assumptions regarding the likely noise emission from the premises. Generally the assumptions made are reasonable, and rely on management for enforcement.
5. **Predicted Noise Levels** – Tables 9-14 show the predicted noise levels from operation of the proposal. Separate noise predictions have been made for different aspects of the proposal (eg patrons & music, mechanical plant, traffic), which is not correct, unless a cumulative noise level is also calculated, which has not been shown. Nevertheless, the dominant noise will be from music inside the building and from guests outdoors, with other aspects of the proposal adding little to the cumulative noise level.

My only concern is Table 10. For a sound power level (SWL) of 95 dBA (Section 4.1.2) for guests outdoors, and a distance of 150 m to R1, the calculated noise level at R1 should be 43 dBA, not 38 dBA. This higher level is acceptable until 10 pm, but not after 10pm (see Table 10). Note that no assessment has been provided for guests outside after 10pm. Therefore, if approved, there should be a restriction on the use of the outdoor space after 10pm. There is also no assessment of the noise emission for the end of the function as guests farewell the wedding couple and perhaps mingle outside. I note the main outdoor area directly faces the residence at R1.

6. **Appendix C and D** – are not included in my copy of the Harwood report, therefore cannot comment on the SoundPlan model for guests outdoors.
7. **Recommendations** –
 - a. To achieve the recommendation of “No function activity on the site after midnight”, all functions should end no later than 11pm, to allow guests to leave before midnight.
 - b. A noise limiter is recommended. This should be included in the DA Consent, if approved.
 - c. A restriction on number of guests outdoors after 10pm should be included, if approved.

I am happy to discuss any of the above.

Kind regards

Stephen Gauld
Managing Director

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