

5C Creston Grove Bomaderry - Additional Permitted Use Amendment

Proposal Title : **5C Creston Grove Bomaderry - Additional Permitted Use Amendment**

Proposal Summary : **The planning proposal seeks to add an Additional Permitted Use to allow for vehicle sales or hire premises on Lot 393 DP1144727, 5C Creston Grove, Bomaderry.**

PP Number : **PP_2016_SHOAL_004_00** Dop File No : **16/11914**

Proposal Details

Date Planning Proposal Received : **14-Oct-2016** LGA covered : **Shoalhaven**

Region : **Southern** RPA : **Shoalhaven City Council**

State Electorate : **KIAMA** Section of the Act : **55 - Planning Proposal**

LEP Type : **Spot Rezoning**

Location Details

Street : **5C Creston Grove**

Suburb : **Bomaderry** City : **Nowra** Postcode : **2541**

Land Parcel : **Lot 393 DP1144727**

DoP Planning Officer Contact Details

Contact Name : **Lisa Kennedy**

Contact Number : **0242243945**

Contact Email : **lisa.kennedy@planning.nsw.gov.au**

RPA Contact Details

Contact Name : **Jessica Volkanovski**

Contact Number : **0244293477**

Contact Email : **jessica.volkanovski@shoalhaven.nsw.gov.au**

DoP Project Manager Contact Details

Contact Name : **Graham Towers**

Contact Number : **0242249467**

Contact Email : **graham.towers@planning.nsw.gov.au**

Land Release Data

Growth Centre : **N/A** Release Area Name : **N/A**

Regional / Sub Regional Strategy : **South Coast Regional Strategy** Consistent with Strategy : **Yes**

5C Creston Grove Bomaderry - Additional Permitted Use Amendment

MDP Number :

Date of Release :

Area of Release (Ha) **0.33**

Type of Release (eg **Both**
Residential /
Employment land) :

No. of Lots : **0**

No. of Dwellings **1**
(where relevant) :

Gross Floor Area : **0**

No of Jobs Created : **0**

The NSW Government **Yes**

Lobbyists Code of
Conduct has been
complied with :

If No, comment :

Have there been **No**
meetings or
communications with
registered lobbyists? :

If Yes, comment :

Supporting notes

Internal Supporting
Notes :

External Supporting
Notes :

Lot 393 DP1144727, is located on the eastern side of the Princes Highway north of Bomaderry. The lot is a regular shape with an area of 0.334ha and 41.75m frontage to the Princes Highway. It is flat and vacant with native vegetation on its northern side. Access is from Creston Grove. The site is zoned R2 Low density Residential.

To the north and east of the Lot are single residential dwellings (zoned R2 Low density Residential). To the south is an existing service station, currently zoned B5 Business. West of the Princess Highway is a strip of vacant council land (zoned RE1 Public Recreation).

Adequacy Assessment

Statement of the objectives - s55(2)(a)

Is a statement of the objectives provided? **Yes**

Comment : **The objective of the planning proposal is to permit 'vehicle sales or hire premises' on the Lot to enable the development of a boat and merchandise showroom with associated offices.**

Explanation of provisions provided - s55(2)(b)

Is an explanation of provisions provided? **Yes**

Comment : **The planning proposal proposes to retain the R2 Low Density Residential zone and apply a Schedule 1 Additional Permitted Use to the Lot to permit with consent 'vehicle sales or hire premises'.**

It is also proposed to exclude ancillary industrial activities such as servicing or repair to ensure that impacts on the amenity of surrounding residential uses are minimized.

It is intended to include a 'sunset provision' requiring development of the site for the proposed land use to be acted on within 12 months of the LEP amendment coming into effect. This is to ensure that the provision is taken up in a timely manner and the site is not left undeveloped and subject to further change.

5C Creston Grove Bomaderry - Additional Permitted Use Amendment

The Clauses Map CLS_013D is to be amended to reflect the proposal.

A savings provision with a specific exception to clause 1.8A Savings provision relating to development applications of the Shoalhaven LEP 2014, is also proposed to enable a development application to be lodged concurrently with the planning proposal and determined in accordance with the provisions of the LEP amendment.

Justification - s55 (2)(c)

a) Has Council's strategy been agreed to by the Director General? **No**

b) S.117 directions identified by RPA :

3.1 Residential Zones

3.4 Integrating Land Use and Transport

4.1 Acid Sulfate Soils

4.4 Planning for Bushfire Protection

5.1 Implementation of Regional Strategies

6.3 Site Specific Provisions

* May need the Director General's agreement

Is the Director General's agreement required? **Yes**

c) Consistent with Standard Instrument (LEPs) Order 2006 : **Yes**

d) Which SEPPs have the RPA identified?

SEPP No 55—Remediation of Land

SEPP (Infrastructure) 2007

e) List any other matters that need to be considered :

Have inconsistencies with items a), b) and d) being adequately justified? **No**

If No, explain :

S117s

Council considers that while the Illawarra Shoalhaven Regional Plan applies to the Shoalhaven it does not contain any specific provisions related to the subject land. As such the planning proposal is not inconsistent with the broad goals of the Plan. This position is acceptable.

Recommendation: The Secretary's delegate can be satisfied that the planning proposal is consistent with the s117 Direction 5.10 Implementation of Regional Plans.

The planning proposal identifies that the proposal is inconsistent with the s117 Directions 4.1 Acid Sulfate Soils and 4.4 Planning for Bushfire Protection. As the Lot is not within 500 metres of land mapped as containing acid sulfate soils s117 4.1 Acid Sulfate Soils does not apply. Although the land is within proximity to land mapped as bushfire prone land, the Rural Fire Service's has advised that Planning for Bushfire does not apply to commercial uses.

The planning proposal is inconsistent with the S117 Direction 3.1 Residential Zones, and 6.3 Site Specific Provisions. The land use of the residential lot is being intensified and changed via the additional permitted use to allow a commercial use. Whilst the Lot is still zoned for residential use it is intended to develop the site for a commercial use. Council considers this to be inconsistent with the Nowra Bomaderry Structure Plan.

Council considers the planning proposal to be consistent with s117 Directions 6.3 Site Specific Provisions as the proposal does not contain or refer to the proposal development proposal. The proposal is inconsistent with the direction as it is not rezoning the land to allow a commercial use but is instead imposing site specific land use controls through the additional permitted use.

Recommendation: The Secretary's delegate can be satisfied that the proposal's inconsistencies with the S117 Directions 3.1 Residential Zones and 6.3 Site Specific Provisions are of minor significance.

5C Creston Grove Bomaderry - Additional Permitted Use Amendment

The planning proposal has not addressed the s117 Direction 3.4 Integrating Land Use and Transport. The Roads and Maritime Services has raised the issue of precedent for subsequent ribbon development along the Princes Highway that has the potential to create a new business/service corridor.

Recommendation: The planning proposal is potentially inconsistent with s117 Direction 3.4 Integrating Land Use and Transport. The inconsistency will need to be justified by Council following further consultation with Roads and Maritime Services.

SEPPs

The planning proposal has identified that the Lot was remediated in 2006 involving the removal of contaminated soil. In 2011 additional work took place involving the removal of tanks on the lot to the south and some excavation of soil on the Lot. A Site Audit Statement was issued in 2014 that determined that the Lot was remediated to a level that was suitable for residential purposes with limitations on the use of the land for growing plants for consumption. The proposal is thus consistent with SEPP55 Remediation of Land.

Recommendation: The Secretary's delegate can be satisfied that the planning proposal is consistent with SEPP55 Remediation of Land.

The Lot adjoins the Princes Highway (a classified State road) and future development of the site for a commercial purpose will likely require access from the Highway. Thus the proposed development is affected by the Infrastructure SEPP 2007. RMS has identified that the proposed development is inconsistent with clause 101(2)(a) Development with frontage to classified road of the Infrastructure SEPP.

The proposed development will need to consider the Infrastructure SEPP. The SEPP does not affect planning proposals. However, in this case it is considered appropriate to consider the intent of the SEPP at the planning proposal stage, as the planning proposal is allowing a site specific use which will need to address the considerations in the Infrastructure SEPP.

Recommendation: Further consultation to be undertaken with the Roads and Maritime Services to resolve outstanding concerns with meeting issues within the Infrastructure SEPP 2007.

Mapping Provided - s55(2)(d)

Is mapping provided? **Yes**

Comment : The Clauses Map CLS_013D is to be amended from no applicable local clause to apply the proposed additional use. A proposed Clauses Map is included in the planning proposal however it is not the entire Map Sheet CLS_013D. The map sheet will need to be prepared in accordance with the Department's 'Standard technical requirements for LEP maps' and incorporated into the planning proposal for public exhibition.

Recommendation: The draft Clauses Map is to be prepared in accordance with the Department's 'Standard technical requirements for LEP maps' and included in the planning proposal prior to its exhibition.

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment : Council requests that the planning proposal be publicly exhibited for a minimum of 28 days. No further details are provided however Council's public exhibition usually includes local newspaper notifications, letters to affected landowners, notice on Council's website, and hard copies will be available at Council's administration buildings.

Council has undertaken preliminary community consultation. Notification of the

5C Creston Grove Bomaderry - Additional Permitted Use Amendment

proponent's planning proposal (seeking rezoning to B5) was sent to surrounding landowners with a copy of the submitted documentation made available on Council's website. After the proponent's planning proposal was reported to Council in May 2016, Council staff and the proponent met with landowners to discuss the proposal.

Issues raised included proposed B5 zoning, possible Schedule 1 and lodgement of concurrent development application. These issues were considered and have been addressed in this planning proposal.

Additional Director General's requirements

Are there any additional Director General's requirements? **No**

If Yes, reasons :

Overall adequacy of the proposal

Does the proposal meet the adequacy criteria? **Yes**

If No, comment :

The planning proposal addresses the Department's "A guide to preparing planning proposals" and is considered adequate for a Gateway Determination with conditions.

Council has a project timeframe of six months to complete the rezoning process. A timeframe of twelve months is considered appropriate in order to prepare the additional traffic report and negotiate an appropriate outcome with the Roads and Maritime Services.

Council is seeking Council Officer Delegation to prepare the draft LEP under Section 59 of the EP&A Act.

It is considered appropriate that the delegation of plan making functions be given to Council due to the matter being of local significance. It is noted that whilst the proposal may impact upon the functioning of the Princes Highway (a classified road), and Road and Maritime Services has identified in its correspondence to Council that it has concerns in relation to the planning proposal, Council is liaising with RMS to address issues of concern. The planning proposal raises no significant regional or State planning issues.

Recommendation: The timeframe for completing the LEP is to be twelve months following the date of the Gateway determination.

Recommendation: Delegation to be provided to Council.

Proposal Assessment

Principal LEP:

Due Date :

Comments in relation to Principal LEP :

The planning proposal is an amendment to Shoalhaven LEP 2014 and has been prepared in accordance with the guidelines for preparing Standard Instruments.

Assessment Criteria

Need for planning proposal :

Council considered two options to achieve the desired outcome:

- Rezoning the land from R2 Low Density Residential to B5 Business Development. This option was not considered appropriate as it opens up the site to various types of commercial and industrial development which have the potential to cause amenity and other impacts on the adjoining residential uses.

Rezoning the site also has the potential to encourage further rezoning and subsequent ribbon development along the Princes Highway.

- Amend the Schedule 1 additional permitted uses to permit 'vehicle sales and hire premises, being a boat and merchandise showroom and associated offices'. This option is preferred by Council.

The additional use is supported in this instance as it would not be appropriate to allow the wider range of uses allowed in the B5 zone.

Consistency with strategic planning framework :

As addressed earlier, the planning proposal identifies that it is not the result of a strategic study or report. Council considers that while the Illawarra Shoalhaven Regional Plan applies to the Shoalhaven it does not contain any specific provisions related to the subject land. As such the planning proposal is not inconsistent with the broad goals of the Plan.

The planning proposal addresses the proposal's consistency with the Nowra Bomaderry Structure Plan. It states that 'the Structure identifies the Lot and surrounding area as an existing living area. The maintenance of the current residential zone is consistent with this Plan, however the future use permitted by the additional permitted use could be considered to be inconsistent with this intent.

The Nowra Bomaderry Structure Plan also outlines a preferred commercial hierarchy that aims to support existing and proposed centres in Nowra and Bomaderry. The Lot is not identified as an existing or proposed commercial area. As such the planning proposal is inconsistent with this aim.'

The planning proposal concludes that 'it is considered to be somewhat inconsistent with the broad intent of the Nowra Bomaderry Structure Plan'.

The planning proposal also states that 'the proponent's planning proposal states that the proposal will contribute directly towards two areas by promoting a rich natural diversity and distinctive place that is Shoalhaven and promoting prosperity through further establishing a successful business that is expanding internationally and will attract national and international visitors to the region'.

The NSW Government has recently released the Princes Highway Corridor Strategy. This Strategy sets out the Government's 20 year Long Term Transport Master Plan to manage and guide the development of the Princes Highway road corridor to improve safety, traffic efficiency and sustainability. The RMS have initiated preliminary design works as part of the Berry to Bomaderry Princes Highway Upgrade which include the length of Highway along the frontage of the Lot.

Environmental social economic impacts :

The planning proposal identifies that it is unlikely that the proposal will result in any effects to biodiversity on the Lot. The earlier subdivision application identified nine hollow-bearing trees on the Lot. Any likely impacts on this vegetation will need to be considered as part of the development application process.

The planning proposal states that allowing the proposed development has the potential to cause amenity issues on the adjoining residential uses. The proposed additional permitted use could generate other impacts on existing residential uses which should be assessed as part of a future development application.

The planning proposal considers that supporting a planning proposal in this location on the Princes Highway may trigger further requests of a similar nature in the future, particularly when known Highway upgrades are considered. The use of an additional permitted uses is expected to minimise this precedent issue in comparison to rezoning the site to B5.

It is considered that the planning proposal will not cause any adverse effects on existing social infrastructure.

Having an additional permitted use will limit any potential economic competition within existing or proposed commercial centres in Nowra-Bomaderry. Any potential impact on the nearby Lyndhurst neighbourhood centre or Bomaderry local centre is likely to be

5C Creston Grove Bomaderry - Additional Permitted Use Amendment

negligent and should be considered in details as part of any future development application.

Assessment Process

Proposal type : **Minor** Community Consultation Period : **28 Days**

Timeframe to make LEP : **12 months** Delegation : **RPA**

Public Authority Consultation - 56(2)(d) : **Transport for NSW - Roads and Maritime Services**

Is Public Hearing by the PAC required? **No**

(2)(a) Should the matter proceed ? **Yes**

If no, provide reasons : **Council has held initial consultations with the Roads and Maritime Services (RMS), including providing the proponent's planning proposals for review, as the Princes Highway is a classified road and the future intended use would require vehicular access off the Highway.**

RMS advised on 12 April 2016 that they object to the planning proposal as proposed and/or the inclusion of an allowance clause to allow the intended future use. RMS's issues included access management principles, precedent and potential to encourage ribbon development along the Highway.

Following amendments to the proponent's planning proposal the RMS advised on 25 May 2016 that it still did not support an additional permitted use as its initial concerns would not be addressed. They concluded that if Council did determine it appropriate to amend the LEP to allow the proposed use via Schedule 1 then there are a range of matters that need to be considered. RMS would support a tailored Schedule 1 inclusion which tightened the controls, including limiting the permitted uses as much as practical and restricting what can be developed beyond the life of a boat showroom.

Council is proposing to consult with Roads and Maritime Services and the NSW Rural Fire Services (RFS) as part of the agency consultation process. RFS has advised that they do not need to consider the planning proposal.

Recommendation: Council is to consult with Roads and Maritime Services to resolve RMS's outstanding issues.

Resubmission - s56(2)(b) : **No**

If Yes, reasons :

Identify any additional studies, if required. :

Other - provide details below

If Other, provide reasons :

The planning proposal includes Council's Development Committee Reports and Minutes; and the proponent's planning proposal. The proponent's planning proposal includes a Traffic Impact Statement by Allen, Price & Associates April 2015; and an EPA Site Audit Statement September 2013.

Roads and Maritime Services has identified a number of concerns with the Traffic Impact Statement, including the Statement has not adequately addressed clause 102(2)(a) of the SEPP Infrastructure and the traffic analysis used is not supported by RMS. The planning proposal recommends that an addendum be completed to the Traffic Impact Statement to address the various matters raised by the RMS and demonstrate consistency with the s117 Direction 3.4 Integrating Land use and Transport.

5C Creston Grove Bomaderry - Additional Permitted Use Amendment

Recommendation: The Traffic Statement is to be updated to address the issues raised by the RMS.

Identify any internal consultations, if required :

No internal consultation required

Is the provision and funding of state infrastructure relevant to this plan? **No**

If Yes, reasons : **The planning proposal states that the proposal does not create further requirements for public infrastructure. There is adequate road, sewer, water and utility access.**

Documents

Document File Name	DocumentType Name	Is Public
160831 5C Creston Grove Bomaderry Planning Proposal letter SCC to DoPE request for gateway determination.pdf	Proposal Covering Letter	Yes
160831 5C Creston Grove Bomaderry Planning Proposal planning proposal.pdf	Proposal	Yes
160831 5C Creston Grove Bomaderry Planning Proposal planning proposal Attachment A proponents planning proposal.pdf	Proposal	Yes
160831 5C Creston Grove Bomaderry Planning Proposal planning proposal Attachment B SCC meeting minutes report 160503.pdf	Proposal	Yes
160831 5C Creston Grove Bomaderry Planning Proposal planning proposal Attachment C letter proponent to SCC definition.pdf	Proposal	Yes
160831 5C Creston Grove Bomaderry Planning Proposal planning proposal Attachment D SCC meeting minutes report 160628.pdf	Proposal	Yes
160831 5C Creston Grove Bomaderry Planning Proposal Traffic Statement Allen, Price & Associates April 2015.pdf	Study	Yes
160831 5C Creston Grove Bomaderry Planning Proposal Site Audit Statement EPA Sept 2013.pdf	Study	Yes
160831 5C Creston Grove Bomaderry Planning Proposal Roads Maritime Services letters.pdf	Study	Yes

Planning Team Recommendation

Preparation of the planning proposal supported at this stage : **Recommended with Conditions**

S.117 directions:

- 3.1 Residential Zones
- 3.4 Integrating Land Use and Transport
- 4.1 Acid Sulfate Soils
- 4.4 Planning for Bushfire Protection
- 5.1 Implementation of Regional Strategies
- 6.3 Site Specific Provisions

Additional Information : **The Acting General Manager, Southern Region, as delegate of the Minister for Planning, determines under section 56(2) of the EP&A Act that an amendment to the Shoalhaven Local Environmental Plan 2014 to:**

- add a Schedule 1 Additional Permitted Use to allow for vehicle sales or hire premises excluding ancillary industrial activities;
- include a sunset provision requiring development on the site to be acted upon with 12 months;
- amend the Clauses map CLS_013D; and
- insert an exception to clause 1.8A savings provision for the development for Lot 393 DP1144727, 5C Creston Grove, Bomaderry should proceed subject to the following conditions:

1. The Traffic Impact Statement is to be updated to address issues raised by the Roads

5C Creston Grove Bomaderry - Additional Permitted Use Amendment

and Maritime Services prior to exhibition.

2. The draft Clauses Map is to be prepared in accordance with the Department's 'Standard technical requirements for LEP maps' and included in the planning proposal prior to its exhibition.

3. Community consultation is required under sections 56(2)(c) and 57 of the Environmental Planning and Assessment Act 1979 ("EP&A Act") as follows:

(a) the planning proposal is to be made publicly available for a minimum 28 days; and
(b) the relevant planning authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 5.5.2 of A Guide to Preparing local environmental plans (Department of Planning and Infrastructure 2016).

4. Consultation is required with Roads and Maritime Services. Roads and Maritime Services are to be provided with a copy of the planning proposal and any relevant supporting material and given at least 21 days to comment on the proposal.

5. No public hearing is required to be held into the matter under section 56(2)(e) of the EP&A Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example in response to a submission or if reclassifying land).

6. The timeframe for completing the LEP is to be 12 months following the date of the Gateway determination.

7. Council be authorised to use its delegation of the Minister's plan making functions under sections 59(2),(3)&(4) of the Environmental Planning and Assessment Act 1979.

8. The Secretary's delegate can be satisfied that the planning proposal is consistent with the s117 Direction 5.10 Implementation of Regional Plans.

9. The Secretary's delegate can be satisfied that the proposal's inconsistencies with the S117 Directions 3.1 Residential Zones and 6.3 Site Specific Provisions are of minor significance.

10. The Secretary's delegate can be satisfied that the planning proposal is consistent with SEPP55 Remediation of Land.

Supporting Reasons :

The proposal will provide a business opportunity and Council has placed restrictions on the proposal aimed at limiting impacts on residential amenity.
The conditions are necessary to ensure that any impacts on the Princes Highway are addressed.

Signature:



Printed Name:

Graham Towers

Date:

27/10/16.

