

Analysis of Rustrum Key Site Concept Against LEP 2013 Controls

Table 1: Rustrum Key Site SP3 Tourism / B4 Mixed Use Zone Comparison

Proposed Use	Permissibility		Comments
	SP3 Tourism zone	B4 Mixed Use Zone	
Residential units (above street level).	Prohibited as residential flat building. Permissible as shop top housing.	Permitted with consent as residential flat building.	Some doubt as to whether proposed number of residential units is consistent with SP3 zone objectives. Council resolved at 25 June 2014 meeting to make residential flat building permissible on site.
Serviced apartments (above street level)	Permitted with consent as tourist and visitor accommodation	Permitted with consent as tourist and visitor accommodation	No issues
Terrace residential units (Below street adjacent to foreshore).	Prohibited as not covered by definition of shop top housing	Permitted with consent as part of residential flat building	Permissibility of terrace units addressed by 25 June 2014 Council meeting.
Commercial tenancies (at street level).	Shop permitted with consent by default under definition of shop top housing also permitted with consent Food and drink premises; Function centres.	Permitted with consent as commercial premises.	SP3 zone more limited than B4.
Jetty	Permitted with consent as jetty	Permitted with consent as "any other development" as not prohibited	Jetty also permitted in W2 zone covering the adjoining lake and foreshore land

On the basis of the above analysis B4 is the preferred zone for the site.

Of the two options presented to Council on 25 June, being an additional permitted use for the SP3 zone or a mixed use B4 zone for the site, the B4 zone is the preferred outcome for both planning and practice and suitability outcomes for the site. It is good planning practice to avoid additional permitted use amendments to environmental planning instruments.

Table 2: Rustrum Key Site Concept - Summary LEP of 2013 Relevant Clause Compliance

LEP 2013 clause	Consideration	Compliance
1.9	All SEPPs other than SEPP 1 potentially apply.	Yes
Land use table	SP3 zone residential flat building proposed.	No – part prohibited.
Zone objectives	SP3 - may not comply with limited permanent residential accommodation requirement.	Possibly not.
4.3	Height, no but see clause 7.11 for key sites.	NA
4.4	Floor space ratio (mapping).	No
4.5	Calculation of floor space ratio.	Yes
4.6	Variation of development standards - operation of clause excluded by clause 7.11.	NA
5.5	Coastal zone development.	Yes
5.9	Tree preservation.	Yes, by applying for consent.
7.1	Acid sulphate soils (management plan prepared).	Yes
7.2	Flood planning.	Yes
7.3	Flood plain risk management.	Yes
7.5	Foreshore development (mapping).	No
7.6	Fore shore access.	Yes
7.9	Essential infrastructure.	Yes
7.11	Objectives.	Yes
	Key sites DCP in preparation.	Yes
	Key sites height (mapping).	No

The non-compliance in **Table 2** are analysed in **Table 3** below.

The requirements for approval of additional height are addressed in **Table 4**.

Table 3: Concept Non Compliances Analysis

Issue	Control	Comments/Justification
Height 36 metres required	Currently 25 metres as prescribed by key site mapping under clause 7.11. Council does not have the power to vary the height above 25m under the LEP as variation in standards for key sites is not allowed under clause 4.6 of the LEP. To accommodate an increase in height the key site mapping would need to be amended to show a 36 metre height limit.	In seeking to minimise the footprint of the tower and thereby maximise views from the adjoining park additional height is required. A 9 storey building to Main Road and Toukley Gardens Park has been proposed and accepted by Council as the basis for ongoing concept development. The height of the 9 storey building to Main Road is approximately 30 metres. The additional 6 metres is to accommodate plant on the building roof and the fall of the site towards the lake. Although the height increase appears significant it represents a modest 10% increase in the FSR for the site. The benefit of the increased height is improved building form for the site.
Floor space ratio 2:1 required	1.8:1 as allowed by clause 4.4 and FSR map. Council does not have the power to vary the FSR above 1.5:1 plus bonuses under the LEP as there can be no variation in standards for key sites. Council mapping of FSR has standard ratios of 1.5:1 and 2:1. Council staff have expressed concern that 2:1 plus bonuses could lead to "gaming" of any approval should the site be on sold. As a minimum, a 2:1 ratio is required. A VPA can be used to limit floor space if required.	In seeking to design an iconic and economically viable building for Toukley an FSR of 2:1 with an apartment yield of 124 (48 tourism plus 78 residential) was calculated as the best balance of costs versus likely market price plus risk, and the meeting of key site design objectives. There are a number of significant risk elements to accommodate in the tourism component of the proposal and in creating a new residential product for the Toukley real estate market. The concept as currently designed has an FSR of approximately 2 to 1 which is an 11% increase over the allowable 1.8:1
Foreshore area encroachment of proposal MHWM incorrectly mapped in LEP	At present an up to 26 metre foreshore area applies under Clause 7.5 to the site due to incorrect FBL and foreshore area mapping. A 20 metre setback to the building wall from the MHWM is proposed, with court yard walls and balconies projecting into the foreshore area. If Council is prepared to approve a variation under clause 7.5 then the encroachment is not an issue.	The LEP defines the fore shore area as: foreshore area means the land between the foreshore building line and the mean high water mark of the nearest bay or river. A survey has determined that the MHWM for the site is incorrectly mapped in the LEP. The MHWM is some 6 metres further north than is mapped. Although a nominal 20 metre FBL applies to the site and land to the east, there are no complying dwellings. The adjoining site, the Beachcomber Hotel, has no mapped FBL or

	If there is any doubt over approval of an encroachment then the LEP needs to be amended. Options are: • Amendment of the relevant map to remove the FBL and foreshore area mapping for the site. • Revise the mapping to suit the proposal. • Rely on the project a VPA to achieve adequate setbacks.	foreshore area under the LEP. Clause 7.5 of the LEP allows Council to approve buildings in the foreshore area provided site criteria under the clause are met. Approval is at Councils discretion. The need for an encroachment arises from the need to maximise the basement parking, which in turn pushes forward the terrace apartments.
Public access to foreshore provided	Clause 7.6 requires development to provide public access to the foreshore. Council has considered the matter and has agreed that public access should not be provided due to site circumstances.	This matter has been considered by Council a number of times and most recently on 25 June 2014. There is no public foreshore land east or west of the site that provides access. Providing access through the site is contrary to CPTED principles because of the potential to provide unmanaged access to the adjoining hotel premises. Foreshore access will be promoted by the proposal through agreed public benefits work to the nearby Osborne Park.
Zone objectives inconsistency SP3 tourist zone	Council has expressed a concern over what is meant by "limited residential "as included in the SP3 Tourist zone objectives. Change zoning to B4 as presented to Council meeting of 25 June.	The Council considerations on 25 June 2014 will result in a B4 zoning over the site which resolves the problem.
Non permissibility of residential flat building in SP3 zone	The zone land use table prohibits residential flat buildings, the definition of shop top housing precludes the terrace apartments on the site.	The matter was considered by Council on 25 June 2014, the B4 Mixed Use zone offered in lieu of amendment of the SP3 Zone addresses this issue.

Table 4: LEP Clause 7.11 Requirements approval of additional height

LEP requirements for iconic design Clause 7.11 Wyong LEP 2013 and approval of additional height	How, and how will be, addressed in concept design
(a) the application of the principles of ecologically sustainable development	Solar orientation and access – achieved Shading - achieved Site water management Star rated clothes dryers Ventilation Foreshore restoration
(b) green building solutions	In progress
(c) design excellence including a high standard of expertise in urban and landscape design, interior design construction and historic preservation	In progress
(d) a high standard of architectural design unique facade treatment and detailing appropriate to the type and location of the development	In progress - see concept drawings.
(e) encouraging sustainable transport, including increased use of public transport, walking and cycling,	Site is on a bus route. Site is within 400 metres of town centre. Public benefit works and land swap will provide new walking and cycling connections and facilities. See Traffic Management Plan.
(f) road access, including the circulation network and the provision of car parking,	Access issues for site solved via previous proposal for site, car parking is under consideration. See Traffic Management Plan.
(g) the impact on, and improvements to, the public domain,	See (e) - the land swap, works to Toukley Gardens Park and improved lake views from the park will provide substantial public domain improvements.
(h) environmental constraints, including acid sulfate soils, flooding, contamination and remediation,	An ASS management plan has been prepared A minimum floor level including an allowance for climate change has been agreed with Council. A Preliminary Contamination Assessment has been prepared.
(i) the relationship between the development and neighbouring sites, including urban and natural environments,	The adjoining sites are zoned for tourism, recreation, low density residential and on the south side of Main Road medium density residential. These have all been taken into account in concept design.
(j) the relationship between the development and any other development that is, or may be, located on or near the site in relation to overshadowing, privacy, setbacks and visual amenity.	The proposal is set well back from the lake foreshore and will present as 2 stories to the adjoining low density urban. The proposal is being designed to integrate with the adjoining park and public domain. The tourism component is located next to and will complement the adjoining hotel. The shadowing effects have been assessed and there are no significant issues.