

Planning Proposal - Rezone Lots 1, 29 and 30 DP 25114 Albatross Road and Kinghorne Street Nowra

Proposal Title : **Planning Proposal - Rezone Lots 1, 29 and 30 DP 25114 Albatross Road and Kinghorne Street Nowra**

Proposal Summary : **The Planning Proposal seeks to rezone land at the intersection of Albatross Road and Kinghorne Street, Nowra (Lots 1, 29 and 30 DP 25114) from B5 Business Development Zone to B4 Mixed Use Zone under the Shoalhaven LEP 2014 and to increase the allowable height of building control from 11 metres to a maximum of 15 metres.**

PP Number : **PP_2016_SHOAL_005_00** Dop File No : **16/13706**

Proposal Details

Date Planning Proposal Received : **24-Oct-2016** LGA covered : **Shoalhaven**

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

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

LEP Type : **Spot Rezoning**

Location Details

Street : **Albatross Road and Kinghorne Street**

Suburb : **Nowra** City : **Shoalhaven** Postcode : **2541**

Land Parcel : **Lots 1, 29 and 30 DP 25114**

DoP Planning Officer Contact Details

Contact Name : **George Curtis**

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RPA Contact Details

Contact Name : **Anne McDonald**

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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 : Release Area Name :

Regional / Sub Consistent with Strategy :

Regional Strategy :

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MDP Number :

Date of Release :

Area of Release (Ha)

Type of Release (eg
Residential /
Employment land) :

No. of Lots : 0

No. of Dwellings (where relevant) : 0

Gross Floor Area : 0

No of Jobs Created : 0

The NSW Government Lobbyists Code of Conduct has been complied with : **Yes**

If No, comment :

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

If Yes, comment :

Supporting notes

Internal Supporting Notes :

On 18 April 2016 Shoalhaven City Council received a planning proposal from Lee Carmichael Town Planning on behalf of the landowner Mr B Zervos to rezone the subject site. The planning proposal was lodged concurrently with a development application for a four storey residential flat building with an element of ground floor commercial space and basement car parking. The planning proposal was supported by Council's Development Committee on 18 July 2016, subject to requesting that a character assessment of the site and surrounds be required as a condition of the Gateway determination, including consideration of the possibility of stepping the building heights down towards the adjoining properties.

External Supporting Notes :

It is proposed to rezone the site to facilitate a four storey residential flat building with an element of ground floor commercial space and basement car parking.

Adequacy Assessment

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

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

Comment :

The intended outcome of the PP is to rezone the site from B5 Business Development to B4 Mixed Use to enable the development of a residential flat building with an element of commercial floor space at ground level. It is considered that the statement of objectives is adequate and meets the requirements of the Department's guide to preparation of planning proposals.

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

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

Comment :

The proposed outcome of the PP will be achieved by amending the Land Zoning and the Height of Building Maps as follows:

1.Land Zoning – Sheet LZN_013E – amend zoning of subject land from B5 Business Development to B4 Mixed Use.

2.Height of Buildings – Sheet HOB_013E – amend maximum height of building from no maximum building height to a height determined by the outcome of the character

assessment (maximum of 15m).

The PP also states that the PP is being considered concurrently with a development application for the site, a savings provision with a specific exception to clause 1.8A of the Shoalhaven LEP 2014 will need to be included to enable the development application to be determined in accordance with the provisions of the SLEP 2014 amendment.

Council has further advised that this is based on previous advice from the Department following the judgement from *De Angelis v Wingecarribee Shire Council* [2016] NSWLEC 1, notably that:

“Until the Courts settle the effect of model clause 1.8A, the Department recommends that all councils that are progressing combined rezoning/DAs ensure that there is a specific savings provision included in the amending LEP so that the particular DA can be determined on the new provisions in the LEP after the rezoning is made. This savings provision will be a specific exception to model clause 1.8A. It is important that councils identify to Parliamentary Counsel or the Department those LEP amendments which are part of a combined rezoning/DA process, so that the appropriate clause can be included in the amending LEP before it is made.”

It is considered that the explanation of provisions provided in the PP is adequate and meets the requirements of the Department's guide to preparing planning proposals.

Justification - s55 (2)(c)

a) Has Council's strategy been agreed to by the Director General? **Yes**

b) S.117 directions identified by RPA :

1.1 Business and Industrial Zones

* May need the Director General's agreement

3.1 Residential Zones

3.4 Integrating Land Use and Transport

4.1 Acid Sulfate Soils

4.4 Planning for Bushfire Protection

6.1 Approval and Referral Requirements

6.3 Site Specific Provisions

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 No 65—Design Quality of Residential Flat Development

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

Council has also identified that S117 Direction 5.10 Implementation of Regional Plans applies and that the PP is consistent with the Direction.

Council has requested the use of the Minister's delegations to make the LEP. Given the minor local nature of the proposal, it is considered appropriate to agree to Council's request.

Recommendation: That Council be issued delegations for the planning proposal.

Have inconsistencies with items a), b) and d) being adequately justified? **Yes**

If No, explain :

The PP does not identify any inconsistency with the Nowra-Bomaderry Structure Plan, relevant Section 117 Directions or SEPPs. Council's view is supported with the following exceptions:

S117 Direction 1.1 Business and Industrial Zones:

Council's view is that the PP is consistent with S117 Direction 1.1 Business and Industrial Zones because it does not reduce the "potential" floor space area for employment uses and related public services in business zones.

While this is technically correct, it is noted that the development application that was

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submitted jointly with the PP only seeks to provide 250 sq.m of commercial floor space. This would represent a 92% reduction in actual employment related floor space from the current 3,497sq.m floor space available for the car servicing workshop at the site. It is, however, considered that any inconsistency with the Direction is likely to be of minor significance because under a proposed B4 zoning of the site the employment related floor space could potentially be expanded via a different development proposal.

It is also considered that a B4 zoning may be more compatible with the surrounding residential land uses because industries are not a permissible use in the zone under the SLEP 2014.

In relation to the potential loss of land for industrial uses at the subject site, an Illawarra Industrial Lands Study prepared for the Department by Cardno in June 2014 identifies that vacant industrial land is available nearby at South Nowra and Flinders Estate which is sufficient to provide industrial employment land in future.

Recommendation: That the Secretary can be satisfied that any inconsistency between the PP and the Direction is likely to be of minor significance.

S.117 Direction 4.4 "Planning for Bushfire Protection":

The PP indicates that Section 117 Direction 4.4 "Planning for Bushfire Protection" applies because the subject land is located in proximity to a bushfire buffer zone which is located approximately 50m to the west. It is unknown whether the PP is consistent or inconsistent with the Direction until Council has consulted with the Rural Fire Service prior to public exhibition in accordance with the requirements of the Direction.

Recommendation: That the Secretary can be satisfied that the PP is consistent with S 117 Direction 4.4 when Council has consulted with the RFS prior to public exhibition in accordance with the requirements of the Direction.

Mapping Provided - s55(2)(d)

Is mapping provided? **Yes**

Comment :

The PP includes a site map and zoning maps which are considered suitable for the purposes of public exhibition. The PP does not include a height of building map because the preferred building height for the site is proposed to be determined through a character assessment study, up to a maximum of 15 metres. This approach to determining a suitable height is considered appropriate. LEP maps, including a Height of Building Map will need to be prepared to meet the Department's 2015 "Standard Technical Requirements for Spatial Datasets and Maps" prior to the finalisation of the PP.

Recommendation: That LEP maps, including a Height of Building Map will need to be prepared to meet the Department's 2015 "Standard Technical Requirements for Spatial Datasets and Maps" prior to the finalisation of the PP.

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment :

The PP states that, due to the high profile nature of the site being located on the corner of Kinghorne Street and Albatross Road, preliminary consultation has been undertaken with the most affected property owners adjacent to the site. It also states that Council intends to exhibit the PP for a 28 day period and that it will be notified in local newspapers as well as a notice on Council's website and hard copies made available at Council's Nowra and Ulladulla offices. The proposed community consultation proposed for the PP is considered to be appropriate.

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Additional Director General's requirements

Are there any additional Director General's requirements? **Yes**

If Yes, reasons : Council has requested that a character assessment of the site and surrounds be required to be prepared as a condition of the Gateway determination. Council has also requested that the possibility of stepping the building heights down towards the adjoining low density residential properties (who are limited to an 11m building height under the SLEP 2014) would also be considered as part of the assessment.

Recommendation: That the Gateway determination include a condition that Council undertake a character assessment of the site and surrounds which includes assessment of the option of stepping the building heights down towards the adjoining properties.

Overall adequacy of the proposal

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

If No, comment : It is considered that the PP meets the requirements of the Department's guide to preparing planning proposals. The timeline provided in the PP, however, should be updated to reflect the Gateway determination date.

Recommendation: That Council update the timeline provided in the PP to reflect the Gateway determination date prior to community consultation.

Proposal Assessment

Principal LEP:

Due Date :

Comments in relation to Principal LEP : The Shoalhaven LEP was notified in April 2014.

Assessment Criteria

Need for planning proposal : The PP is needed to facilitate the amendment of the SLEP 2014 to enable Council to consider a proposed mixed use residential flat building development at the subject site.

Consistency with strategic planning framework : The PP states that it is consistent with the Illawarra-Shoalhaven Regional Plan, notably with Direction 2.2 "Support housing opportunities close to existing services, jobs and infrastructure in region's centres" as it will facilitate a medium density residential development in an appropriate location near the Nowra CBD.

The PP states that it is not inconsistent with the Nowra Bomaderry Structure Plan. Notably, the NBSP identifies Nowra as the primary commercial and administrative centre for the LGA and supports an increase in people living in higher densities in existing areas, in a range of dwelling types, in close proximity to the Nowra CBD. Council's position that the PP is not inconsistent with the NBSP is supported for the reasons provided in the PP. The PP also states that it is not inconsistent with Council's Community Strategic Plan, relevant S117 Directions and SEPP 55 – Remediation of Land and SEPP 65 – Design Quality of Apartment Development.

Environmental social economic impacts : **Environmental impacts:**

The PP states that the site is brownfield and is located in an urbanised area and as such there is no anticipated impact on critical habitat or threatened species, populations or ecological communities, or their habitats.

Due to the current light industrial (car repair workshop) use of the site, the PP includes a

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Phase 2 site assessment report which has assessed whether the site is contaminated. The report concludes that the site is acceptable for redevelopment for residential use with respect of potential site contamination issues.

As previously discussed the site is not mapped as bushfire prone but adjoins land mapped as bushfire prone (approximately 50m to the west). Council will be required to consult with the Rural Fire Service on the need for any management requirements prior to the exhibition of the PP in accordance with the S117 Direction.

The PP does not identify any other environmental impacts.

Social and economic impacts:

The PP states that it would facilitate greater diversity of housing choice in the Nowra area which will be of social benefit to the community. It is considered that the PP will facilitate the provision of high quality modern medium density housing close to Nowra CBD and assist the revitalisation of the area. The PP also states that the limited commercial ground floor commercial space will not negatively impact on the commercial viability of the Nowra CBD.

Although not identified by the PP, the proposed residential flat building development will remove an existing car repair workshop and associated jobs. However, the proposed development, ground floor commercial space, and new residents which will generate demand for goods and services, can be expected to provide jobs in the local area. As previously discussed, significant land zoned B5 Business Development and IN1 General Industrial is available to offset the loss of the B5 zone on the subject site.

The PP states that the proponent has provided information with the DA which demonstrate that the impact of the proposed increase in building height to 15m is acceptable in relation to boundary setbacks and overshadowing. As previously mentioned, Council has requested a character assessment of the site and surrounds be undertaken as a condition of the Gateway determination to include the possibility of stepping the building heights down towards the adjoining properties (who are limited to an 11m building height under the SLEP 2014).

Assessment Process

Proposal type :	Consistent	Community Consultation Period :	28 Days
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Timeframe to make LEP :	12 months	Delegation :	RPA
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Public Authority Consultation - 56(2)(d)	NSW Rural Fire Service
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Is Public Hearing by the PAC required?	No
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(2)(a) Should the matter proceed ?	Yes
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If no, provide reasons :	The proposal will facilitate a modern medium density development including ground floor commercial close to the Nowra CBD which is consistent with the adopted strategic planning for the area.
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Resubmission - s56(2)(b) :	No
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If Yes, reasons :	
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Identify any additional studies, if required. :

Other - provide details below

If Other, provide reasons :

A character assessment of the site and surrounds is recommended to be undertaken as a condition of the Gateway determination to include the possibility of stepping the building heights down towards the adjoining properties (who are limited to an 11m building height under the SLEP 2014).

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 :

Documents

Document File Name

DocumentType Name

Is Public

Planning Team Recommendation

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

S.117 directions:

- 1.1 Business and Industrial Zones**
- 3.1 Residential Zones**
- 3.4 Integrating Land Use and Transport**
- 4.1 Acid Sulfate Soils**
- 4.4 Planning for Bushfire Protection**
- 6.1 Approval and Referral Requirements**
- 6.3 Site Specific Provisions**

Additional Information : **It is RECOMMENDED that the Acting Director, Regions, Planning Services, as delegate of the Minister for Planning, determine under section 56(2) of the Environmental Planning and Assessment Act 1979 ("EP&A Act") that an amendment to the Shoalhaven Local Environmental Plan 2014 to rezone land at the intersection of Albatross Road and Kinghorne Street, Nowra (Lots 1, 29 and 30 DP 25114) from B5 Business Development Zone to B4 Mixed Use Zone and to increase the allowable height of building control from 11 metres to a maximum of 15 metres, should proceed subject to the following conditions:**

1. Council is to provide an updated Part 6 - Project Timeline in the planning proposal to reflect the Gateway determination date.

2. A character assessment of the site and surrounds is to be prepared which considers stepping the building heights down towards the adjoining properties. The character assessment is to be included in the exhibition materials.

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

**(a) the planning proposal must be made publicly available for 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 (Planning and Infrastructure, 2016)'.**

4. Consultation is required with the following public authorities under section 56(2)(d) of the EP&A Act:

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*** NSW Rural Fire Service (s117 Direction 4.4)**

Each public authority is to be provided with a copy of the planning proposal and any relevant supporting material. Each public authority is to be given at least 21 days to comment on the proposal, or to indicate that they will require additional time to comment on the proposal. Public authorities may request additional information or additional matters to be addressed in the planning 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 LEP maps shall be prepared in accordance with the Standard Technical Requirements for Spatial Datasets and Maps (Department of Planning and Environment 2015).

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

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

9. SECTION 117 DIRECTIONS - It is recommended that:

(a) The Secretary's delegate can be satisfied that the planning proposal is consistent with s117 Directions:

- o 3.1 Residential Zones
- o 3.4 Integrating Land Use and Transport
- o 4.1 Acid sulphate soils
- o 5.10 Implementation of Regional Plans
- o 6.1 Approval and Referral Requirements
- o 6.3 Site Specific Provisions

(b) The Secretary's delegate can be satisfied that any inconsistency between the planning proposal and S117 Direction 1.1 Business and Industrial Zones is of minor significance.

(c) The Secretary's delegate can be satisfied that the planning proposal will be consistent with s117 Direction 4.4 Planning for Bushfire Protection, when Council has consulted with the Rural Fire Service prior to undertaking community consultation;

(d) The Secretary's delegate can be satisfied that the planning proposal is consistent with all other relevant s117 Directions or that any inconsistencies are of minor significance; and

(e) No further consultation or referral is required in relation to s117 Directions while the planning proposal remains in its current form.

10. The planning proposal is considered to be consistent with all relevant SEPPs.

Supporting Reasons :

The proposal will provide new housing opportunities.
The conditions ensure that an updated project timeline is provided and that the character assessment study is undertaken.

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Signature:



Printed Name:

Graham Towers

Date:

7/11/16.

