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Gateway determination report – PP-2021-2353

Berry Heritage Planning Proposal

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Table 1 Reports and plans supporting the proposal

Relevant reports and plans
Heritage Data forms Shoalhaven Heritage Review – Certain Items in Berry 2018 (Attachment E in Planning Proposal)
Shoalhaven City Council Development and Environment Committee Report – Berry Heritage Investigations – Shoalhaven LEP Amendment – Planning proposal Preparation/Submission – Gateway determination 1/9/2020 (Attachment B in Planning Proposal)

1 Planning proposal

1.1 Overview

Table 2 Planning proposal details

LGA	Shoalhaven
PPA	Shoalhaven City Council
NAME	Berry Heritage Planning Proposal (0 homes, 0 jobs)
NUMBER	PP-2021-2353
LEP TO BE AMENDED	Shoalhaven LEP 2014
ADDRESS	Various addresses in Berry urban area
DESCRIPTION	Various lots and DPs in Berry urban area
RECEIVED	22/02/2021
FILE NO.	IRF21/2820
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal

1.2 Objectives of planning proposal

The planning proposal contains objectives and intended outcomes that adequately explain the intent of the proposal.

The objectives of the planning proposal are to amend Schedule 5 “Environmental Heritage” of Shoalhaven LEP 2014 to list twelve dwellings as heritage items and two heritage conservation areas (HCAs) at Berry Showground and Queen Street, Berry to assist in managing the character impacts on Berry by ensuring future development is sympathetic and recognises the heritage character and values of the area.

The objectives of this planning proposal are clear and adequate.

1.3 Explanation of provisions

The planning proposal seeks to amend Schedule 5 “Environmental Heritage” of the Shoalhaven LEP 2014 by inserting twelve new items of local heritage significance and two HCAs and amending the relevant heritage map sheet for Berry locality (HER_019E). The proposed changes to Schedule 5 and heritage map are clearly explained in the planning proposal.

1.4 Site description and surrounding area

The properties and their locations are clearly identified in the planning proposal. The twelve properties proposed to be individually heritage listed are located at:

27 Albany Street, Berry

29 Albany Street, Berry

46 Albert Street, Berry

36 Prince Alfred Street, Berry

64 Princess Street, Berry

71 Princess Street, Berry

51 Queen Street, Berry

54 Queen Street, Berry

44 Victoria Street, Berry

63 Victoria Street, Berry

69 Victoria Street, Berry

75-77 Victoria Street, Berry

The proposed heritage conservation areas at Queen Street and Berry Showground are clearly identified in the planning proposal.

1.5 Mapping

The planning proposal includes mapping showing the proposed changes to the heritage map for the Berry locality which is suitable for community consultation.

2 Need for the planning proposal

The proposal states that it is the outcome of Council's Berry Heritage Review which was prepared by Council's heritage consultant in 2018 in response to community concern that unsympathetic development was eroding the unique heritage character of Berry. The Heritage Review identifies the subject properties and precincts as having local heritage significance. Council considers the planning proposal is the most appropriate means to include new heritage listings and HCAs in Schedule 5 of the Shoalhaven LEP 2014.

It is considered the planning proposal is needed to protect identified cultural heritage properties and precincts in Berry which is consistent with the requirements of the Illawarra Shoalhaven Regional Plan and Council's Local Strategic Planning Statement. Council's view that the planning proposal is the appropriate means to facilitate the amendment of the Shoalhaven LEP 2014 to list the properties and areas on Schedule 5 "Environmental Heritage" is supported.

3 Strategic assessment

3.1 Regional Plan

The following table provides an assessment of the planning proposal against relevant aspects of the Illawarra Shoalhaven Regional Plan.

Table 3 Illawarra Shoalhaven Regional Plan assessment

Regional Plan Objectives	Justification
<p>Direction 3.4 Protect the region's cultural heritage</p> <p>Action 4.3.1: Conserve heritage sites when preparing local planning controls</p>	<p>The planning proposal states that it is consistent with Direction 3.4 and Action 4.3.1 of the Illawarra Shoalhaven Regional Plan as it proposes to list additional items and HCAs within the Shoalhaven LEP 2014 that have been identified as possessing local cultural heritage significance, ensuring the conservation and protection of heritage sites within Berry. Council's view that the planning proposal is consistent with the Direction and Action of the Illawarra Shoalhaven Regional Plan is supported for the reasons provided in the planning proposal.</p>
<p>Direction 2.2 Support housing opportunities close to existing services, jobs and infrastructure in the region's centres</p> <p>Action 2.2.1 Investigate the policies, plans and investments that would support greater housing diversity in centres.</p>	<p>Direction 2.2 identifies the existing Berry urban area for increased housing activity, particularly dual occupancy development. The planning proposal is potentially inconsistent with this Direction because a local heritage/HCA listing of properties and precincts could make it more difficult to develop 72 affected properties for more intensive housing including dual occupancy. It is however, considered that given the relatively small number of affected properties compared to the total housing stock in Berry, any inconsistency with Direction 2.2 is of minor significance. It is also considered the proposal is consistent with Action 2.2.1 of the Regional Plan because it will protect properties and precincts with identified heritage values and character which will contribute to housing choice.</p> <p>It is also considered that the planning proposal is consistent with the draft Illawarra Shoalhaven Regional Plan five yearly review, which was exhibited at the end of 2020, which seeks to protect cultural heritage in the Region.</p>
Draft Illawarra Shoalhaven Regional Plan 2041	<p>The Draft Illawarra Shoalhaven Regional Plan 2041 was exhibited in late 2020. The proposal is considered to be generally consistent with the draft plan and is entirely consistent with Objective 23: Celebrate, conserve and reuse cultural heritage.</p> <p>It is consistent with Strategy 23.1 by identifying cultural heritage values in a local plan and implementing the Berry Heritage Study.</p>

3.2 Local

The proposal states that it is consistent with the following local plans and endorsed strategies. It is also consistent with the strategic direction and objectives, as stated in the table below:

Table 4 Local strategic planning assessment

Local Strategies	Justification
Shoalhaven Local Strategic Planning Statement	<p>The planning proposal states that it is consistent with Council's LSPS and specifically Priority 14: "Heritage items and places" and Current Work 14.3: "Progressing a Planning Proposal to list additional heritage items and places in Berry in Schedule 5 Environmental Heritage of Shoalhaven LEP 2014". Council's view that the planning proposal is consistent with its LSPS is supported for the reasons provided in the proposal.</p>

Shoalhaven Community Strategic Plan	<p>The planning proposal states that it is consistent with the Shoalhaven CSP particularly:</p> <p>Theme 1 – Resilient, safe and inclusive communities, Priority 1.2 Activate communities through art, culture and events</p> <p>Theme 2 – Sustainable, liveable environments, Priority 2.2 Plan and manage appropriate sustainable development.</p> <p>Theme 3 – Prosperous communities, Priority 3.1 Maintain and grow a robust economy with vibrant towns and villages.</p> <p>Theme 4 Responsible governance, Priority 4.3 Inform and engage with the community about the decisions that affect their lives.</p> <p>Council's view that the proposal is consistent with its CSP is supported for the reasons provided in the planning proposal.</p>
Shoalhaven Growth Management Strategy (GMS)	<p>The planning proposal states that it is not inconsistent with the Shoalhaven GMS which seeks to manage the social and economic implications of future growth in the Shoalhaven whilst protecting and preserving the environmental values of the City.</p> <p>Council's view that the planning proposal is not inconsistent with the Shoalhaven GMS is supported for the reasons provided in the proposal.</p>

3.3 Section 9.1 Ministerial Directions

The planning proposal's consistency with relevant section 9.1 Directions is discussed below:

Table 5 Section 9.1 Ministerial Direction assessment

Directions	Consistent	Reasons for Consistency or Inconsistency
Direction 1.1 Business and Industrial Zones	Yes	The Direction requires planning proposals to encourage employment growth in suitable locations, protect employment zoned land and support the viability of identified centres. The planning proposal does not propose to alter the locations or floor space area of existing business zones and will not impact on the Berry town centre.
Direction 2.2 Coastal Management	Yes	The Direction aims to protect and manage coastal areas of NSW which includes Berry due to its proximity to Broughton Creek. The planning proposal states that it is not inconsistent with the Direction as it does not propose to rezone any land within the Coastal Environment Area to enable increased development or more intensive land-use on the land. The proposal is also consistent with NSW Coastal Management Act 2016, coastal policies and guidelines identified in clause 2.2.4 of the Direction. Council's view that the planning proposal is consistent with the Direction is supported for the reasons provided in the proposal.
Direction 2.3 Heritage Conservation	Yes	The objective of the Direction is to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance. The planning proposal states that it is consistent with the Direction because it contains provisions that facilitate the conservation of 12 items and 2 precincts that possess environmental heritage within the township of Berry. Council's view that the proposal is consistent with the Direction is supported for the reasons provided in the proposal.

Direction 3.1 Residential Zones	Yes	The objectives of the Direction are to encourage a variety and choice of housing types to provide for existing and future housing needs; to make efficient use of existing infrastructure and services; and to minimise impact on environmental and resource lands. The planning proposal states it is not inconsistent with the Direction because it does not affect the choice and type of housing currently permissible with consent in the residential zones and does not affect the residential density of the land or the efficient use of infrastructure. Council's view that the planning proposal is consistent with the Direction is supported for the reasons provided in the proposal. The proposal will support heritage housing choice and local character.
Direction 4.1 Acid Sulfate Soils-	Yes	The Direction requires planning proposals to avoid significant environmental impact from the use of land that has a probability of containing acid sulfate soil. The planning proposal states that it is consistent with the Direction because it does not propose to introduce provisions to regulate works in acid sulfate soils and does not propose to intensify land uses on land identified as having a probability of containing acid sulfate soils. Council's view that the proposal is consistent with the Direction is supported for the reasons provided in the proposal.
Direction 4.3 Flood Prone Land	Yes	The Direction requires planning proposals to be consistent with the NSW Flood Prone Land Policy and Floodplain Development Manual 2005. The planning proposal states that it is consistent with the Direction as it does not intend to increase development potential within flood prone land. Council's view that the proposal is consistent with the Direction is supported for the reasons provided in the planning proposal.
Direction 5.10 Implementation of Regional Plans	Yes	As discussed in section 3.1 of this report, the planning proposal is considered consistent with the Illawarra Shoalhaven Regional Plan and therefore also with the Direction. It is also considered to be consistent with the Draft Illawarra Shoalhaven Regional Plan 2041.

3.4 State environmental planning policies (SEPPs)

The planning proposal is consistent with all relevant SEPPs as discussed in the table below.

Table 6 Assessment of planning proposal against relevant SEPPs

SEPPs	Requirement	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
SEPP (Coastal Management) 2018	The SEPP provides matters for consideration relevant to coastal management to be addressed during the assessment of future development applications that apply to parts of the proposed Queen Street HCA and 36 Prince Alfred St.	Consistent	The planning proposal is consistent with the SEPP because it does not contain any provisions directly relevant to the proposal but will need to be taken into consideration by Council during the assessment of future development applications. It is not considered that the planning proposal will have any impact on the coastal zone.
SEPP (Exempt and Complying Development) 2008	The SEPP sets out a number of Codes which enables certain development to be undertaken without Council approval via the exempt or complying development streams. The SEPP is relevant to the planning proposal because the proposed heritage listings/HCAs will exclude most forms of complying development under the SEPP. This means that development that is not exempt will require DA assessment by Council.	Consistent	The planning proposal is not considered to be inconsistent with the SEPP. It is considered appropriate for the proposed heritage listed properties and HCAs to be excluded from the SEPP to provide for heritage assessment of future development via the DA assessment pathway. The removal of these properties from the application of the Housing Code is not considered to be significant when compared to the total housing stock in Berry and rezonings under consideration.

4 Site-specific assessment

4.1 Environmental

The planning proposal states it is not anticipated that the proposal will adversely impact critical habitat or threatened species, populations or ecological communities or their habitats or have any other environmental impact. Council's view that the planning proposal will have minimal environmental impact is supported for the reasons provided in the proposal.

4.2 Social and economic

The planning proposal states:

- The proposal won't have significant social or economic effects and any potential effects would be positive.
- Numerous studies conclude that the effect of heritage listings or inclusions within a HCA on the value of houses is negligible.
- The proposal has the potential for beneficial social and economic effects relating to heritage tourism in Shoalhaven and in recognising and protecting local sites and areas that have heritage significance in Berry.

Council's view that the planning proposal will have largely positive social and economic effects is supported for the reasons provided in the proposal.

5 Consultation

5.1 Community

Council proposes a community consultation period of 28 days.

The exhibition period proposed is considered appropriate, and forms a condition of the Gateway determination.

5.2 Agencies

Council has indicated that it will consult with relevant State and Commonwealth authorities (e.g. Heritage NSW) in accordance with the conditions of the Gateway determination.

It is recommended Council consult with Heritage NSW on the planning proposal and Heritage NSW is given 28 days to comment.

6 Timeframe

Council proposes a seven month time frame to complete the LEP.

The Department recommends a time frame of 12 months is appropriate to complete the LEP to allow for any delays.

7 Local plan-making authority

Council has advised that it would like to exercise its functions as a Local Plan-Making authority.

As the planning proposal addresses matters of local significance only the Department recommends that Council be authorised to be the local plan-making authority for this proposal.

8 Assessment summary

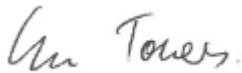
The planning proposal is supported to proceed with conditions for the following reasons:

- It will facilitate protection of items and precincts having been identified as having cultural heritage value in Berry through a heritage study.
- It is consistent with the requirements of the Illawarra Shoalhaven Regional Plan and Council's Local Strategic Planning Statement to protect the region's cultural heritage.

9 Recommendation

It is recommended the delegate of the Minister determine that the planning proposal should proceed subject to the following conditions:

1. Consultation is required with Heritage NSW.
2. The planning proposal should be made available for community consultation for a minimum of 28 days.
3. The timeframe for completing the LEP is to be 12 months from the date of the Gateway determination.
4. Given the nature of the proposal, Council should be authorised to be the local plan-making authority.



19/03/2021

Graham Towers

Manager, Southern Region



22/03/2021

Sarah Lees

Director, Southern Region

Assessment officer

George Curtis

Senior Planner, Southern Region

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