

PLANNING PROPOSAL – PP052

Shoalhaven Local Environmental Plan 2014

No. 10 Victoria Street, Berry (The Arbour Retirement Village)

Prepared by
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1 Introduction

Lot 6 DP 1204186 (No. 10 Victoria Street) is a 15.35 ha rural-zoned property on the southern edge of the Berry township on the eastern side of the Princes Highway – see **Figure 1** (Site location map).

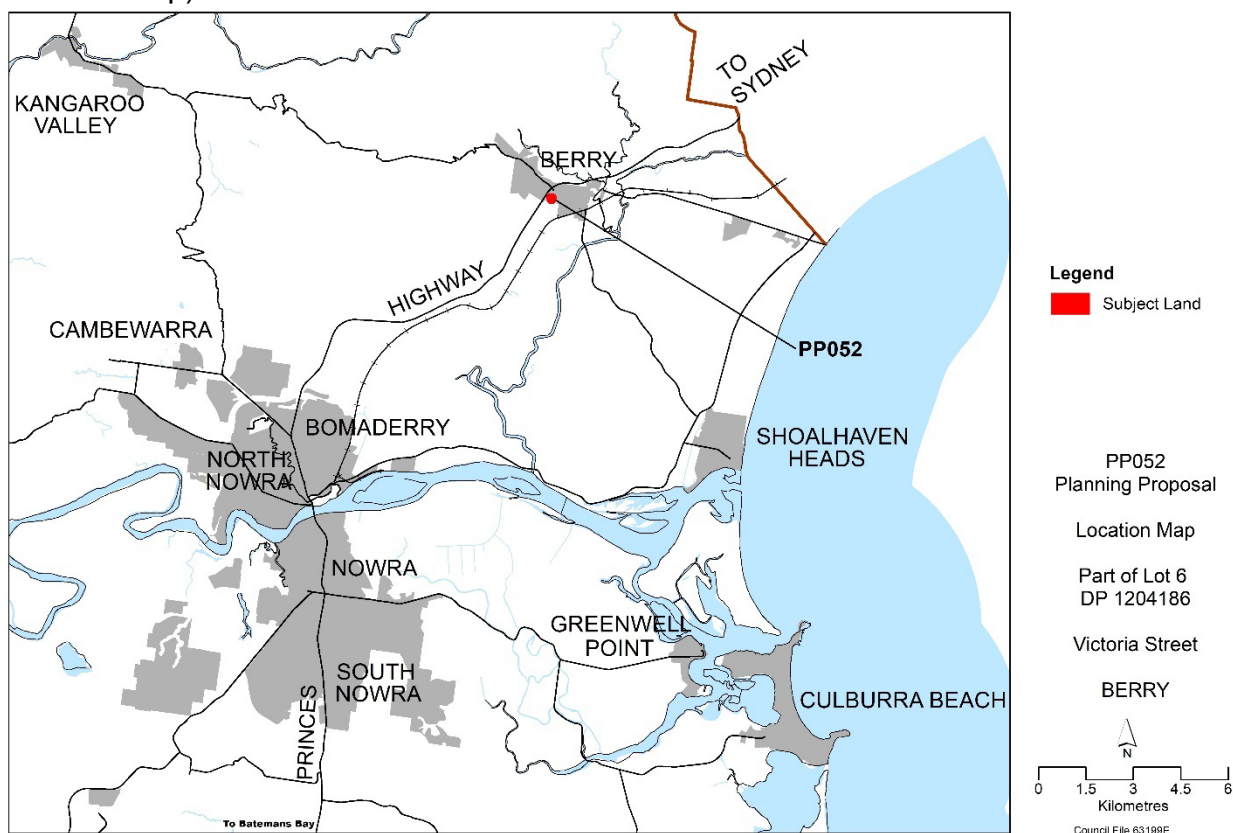


Figure 1 – Site location map

The land is currently zoned RU1 - Primary Production under the Shoalhaven Local Environmental Plan (LEP) 2014 and is located within the grounds of 'The Arbour Retirement Village' in the central part of the property.

This Planning Proposal (PP) seeks to rezone an area of approximately 7,665 m² to R2 – Low Density Residential to allow low-density residential land use for the delivery of seniors housing.

1.1 Subject Land

The 'subject land' is located in the north-eastern corner of Lot 6 DP 1204186 (No. 10 Victoria Street) Berry. It is separated from the main retirement village by a low-lying landscaped area and intermittent watercourse which flows south east to Broughton Creek. See **Figure 2**.



Figure 2 – Subject land is in the north-eastern corner of Lot 6 DP 1204186

The land is bound to the north by Victoria Street and to the east by a residential dwelling and The Grange Retirement Village. Residential development is located north of Victoria Street. Mark Radium Park is located to the north west.

The proponent's documentation includes a [detailed site analysis plan](#).

1.2 Background

Approval history of The Arbour Retirement Village

Council originally gave 'non-operational' approval for The Arbour Retirement Village in 2004 (DA03/3470) under the *State Environmental Planning Policy No. 5 - Housing for Older People or People with a Disability* (SEPP 5). (SEPP 5 was repealed by the *State Environmental Planning Policy (Seniors Living) 2004* on 31/3/2004 – the application was assessed under transitional arrangements.)

A subsequent application for operational development consent (DA06/2053) was approved in 2006, also under the SEPP 5 transitional provisions. Several amendments ('section 96' modifications) were approved in the following years.

In 2019, Mbark applied for a **Site Compatibility Certificate** (SCC) under the State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (Seniors Housing SEPP) to allow an additional eleven (11) freestanding seniors housing

dwelling in the north-eastern corner of the property (the subject land). Note: If the subject land had been included in the original development application/approval, an SCC would not have been required.

The SCC process is managed by the NSW Department of Planning Industry and Environment (DPIE) and is determined by the Regional Planning Panel. A flow chart showing the SCC process is available at [this link](#). DPIE referred Mbark's SCC application to Council for comment in mid May 2019. The following feedback was provided on behalf of Council on 30 May 2019:

1. *Council has reviewed the documentation associated with the Site Compatibility Certificate application (SCC) for seniors housing and 10 Victoria St, Berry.*
2. *Council's Natural Resources Unit has reviewed the application and advised that based on the architectural design / site planning, it is identified that a minor portion of the development will be within the low hazard flood prone area. Flood evacuation does not appear to be a significant issue. In general, the proposal appears to comply with the provisions of Chapter G9 of SDCP 2014.*
3. *A pre-lodgement meeting was held with Council on 6 February 2019 to discuss the proposed SCC application and subsequent development application should the SCC be supported. In the meeting Council provided on comment on the proposed SCC, flood management and site servicing.*
4. *Following a review of the documents submitted with the SCC, Council does not object to the proposed extension to the seniors housing on the property.*
5. *It is noted however that Council has not undertaken a detailed assessment of the proposal which will be subject to a future development application. Whilst we do not object to the concept, we are concerned about the presentation of the development to Victoria Street with the proposed 1.8 m high boundary fence. Further consideration needs to be given to the design in this location, so that the development is seen to integrate / address the street.*

The Southern Regional Planning Panel (SRPP) however refused the SCC application on 8 October 2019, concluding that it did not satisfy the criteria of the Seniors Housing SEPP. The reasons for the SRPP's decision are summarised below:

- It was not adequately demonstrated that proposal was actually for serviced self-care housing
- The proposal did not properly analyse the streetscape and character of the surrounding areas and demonstrate how it responds to essential elements, e.g. landscape context and buildings addressing the street
- The proposed siting, built form and orientation did not respond to character of surrounding area
- The loss of significant vegetation on the street frontage adversely impacts on the streetscape

- It was not demonstrated that the degree of land modification and the likely impacts on the use of land adjoining the proposed development is acceptable

Planning Proposal Application

The proponent (Mbark) submitted a PP application to Council on 20 December 2019. The documents submitted by the proponent are listed in Table 1 and can be viewed via the hyperlinks (press 'control'+click to follow the link and then click OK to open the document).

Table 1 – Documents received in the Planning Proposal application

Item #	Title (note: appendices not listed separately are included in the proponent's main PP document)
1.	Planning Proposal Consent Letter
2.	Planning Proposal Lodgement Form
3.	Planning Proposal Report
4.	Appendix A - Detailed Site Analysis Plan
5.	Appendix C - Pre-lodgement Meeting
6.	Appendix F - Site Servicing Strategy
7.	Appendix G - Traffic Impact Statement
8.	Appendix H - Conceptual Residential Subdivision Plan
9.	Appendix I - PCA - Extract 1
10.	Appendix I - PCA - Extract 2
11.	Appendix J - Berry Forum Minutes

The PP application was reported to Council's Development and Environment Committee for consideration on 3 March 2020. The report can be viewed [here](#). In response, Council resolved as follows:

RESOLVED (Clr Wells / Clr White)

MIN20.161

That:

1. Council support 'in principle' the proposed rezoning of the north eastern area of Lot 6 DP 1204186 (No. 10 Victoria Street) from RU1 – Primary Production to R2 – Low Density Residential.
2. Prepare and submit a Planning Proposal to the NSW Department of Planning, Industry and Environment (DPIE) for Gateway determination.

3. *If Gateway is granted, prior to formal public exhibition of the Planning Proposal, complete an Aboriginal Cultural Heritage Assessment (ACHA) in accordance with advice from DPIE.*
4. *Advise the proponent and the Berry Forum of this decision.*

For: Clr Gash, Clr Wells, Clr White, Clr Digiglio, Clr Aldrick, Clr Levett, Clr Watson, Clr Kitchener, Clr Proudfoot and Stephen Dunshea

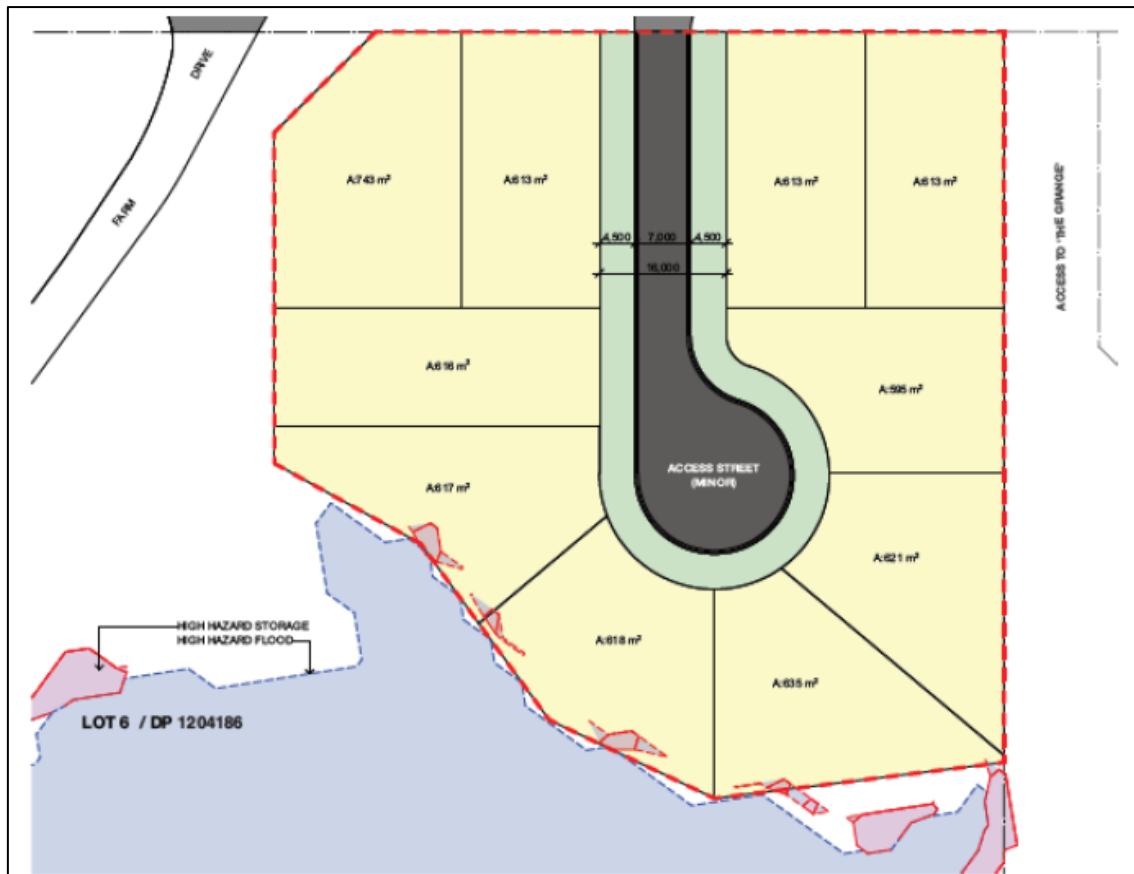
Against: Nil

CARRIED

2 Part 1 -Intended Outcome

The intended outcome of the Planning Proposal is to: *'allow low-density residential land use on the Subject Land for the delivery of seniors housing'*.

The proponent's conceptual subdivision plan, showing a 10-lot subdivision, is provided in Figure 3 below.



3 Part 2 – Explanation of Provisions

The following amendments to the Shoalhaven LEP 2014 are proposed by the proponent:

1. Rezone the subject land from RU1 – Primary Production to R2 - Low Density Residential
2. Amend the minimum lot size map to reduce the minimum lot size from 40 ha to 500m²
3. Reduce the height of buildings from 11 m to 8.5 m. Note: The existing 11 m maximum height of buildings control is set out in Clause 4.3(2A) of the LEP as the Height of Buildings Map does not show a maximum height over the subject land.

The objectives of the R2 zone are to:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To provide an environment primarily for detached housing and to ensure that other development is compatible with that environment.*

The following forms of development are permitted without consent in the R2 zone:

Home occupations

The following forms of development are permitted with consent in the R2 zone:

Bed and breakfast accommodation; Boarding houses; Boat launching ramps; Boat sheds; Building identification signs; Business identification signs; Centre-based child care facilities; Community facilities; Dual occupancies; Dwelling houses; Environmental protection works; Exhibition homes; Flood mitigation works; Group homes; Health consulting rooms; Home-based child care; Home businesses; Home industries; Jetties; Neighbourhood shops; Oyster aquaculture; Places of public worship; Pond-based aquaculture; Recreation areas; Respite day care centres; Roads; Semi-detached dwellings; Sewerage systems; Tank-based aquaculture; Water supply systems

The forms of development not specified above are prohibited in the R2 zone.

4 Part 3 – Justification

4.1 Need for the Planning Proposal (Section A)

4.1.1 Is the Planning Proposal a result of any strategic study or report?

The PP is the result of a proponent-initiated PP application that was considered by Council on 3 March 2020. The PP is supported by a range of specialist studies and other documentation provided by the proponent. These are listed (and accessible via hyperlinks) in Table 1.

Shoalhaven Growth Management Strategy

The Shoalhaven Growth Management Strategy (GMS) 2012 was endorsed by the State Government in 2014. The GMS identifies two Long Term Investigation Areas (LTIA) on the southern edge of Berry. One LTIA is on the western side of the Princes Highway and is the subject of the Hitchcocks Lane Planning Proposal (PP029). The other is on the eastern side of the Highway and includes the subject land - see **Figure 4**.

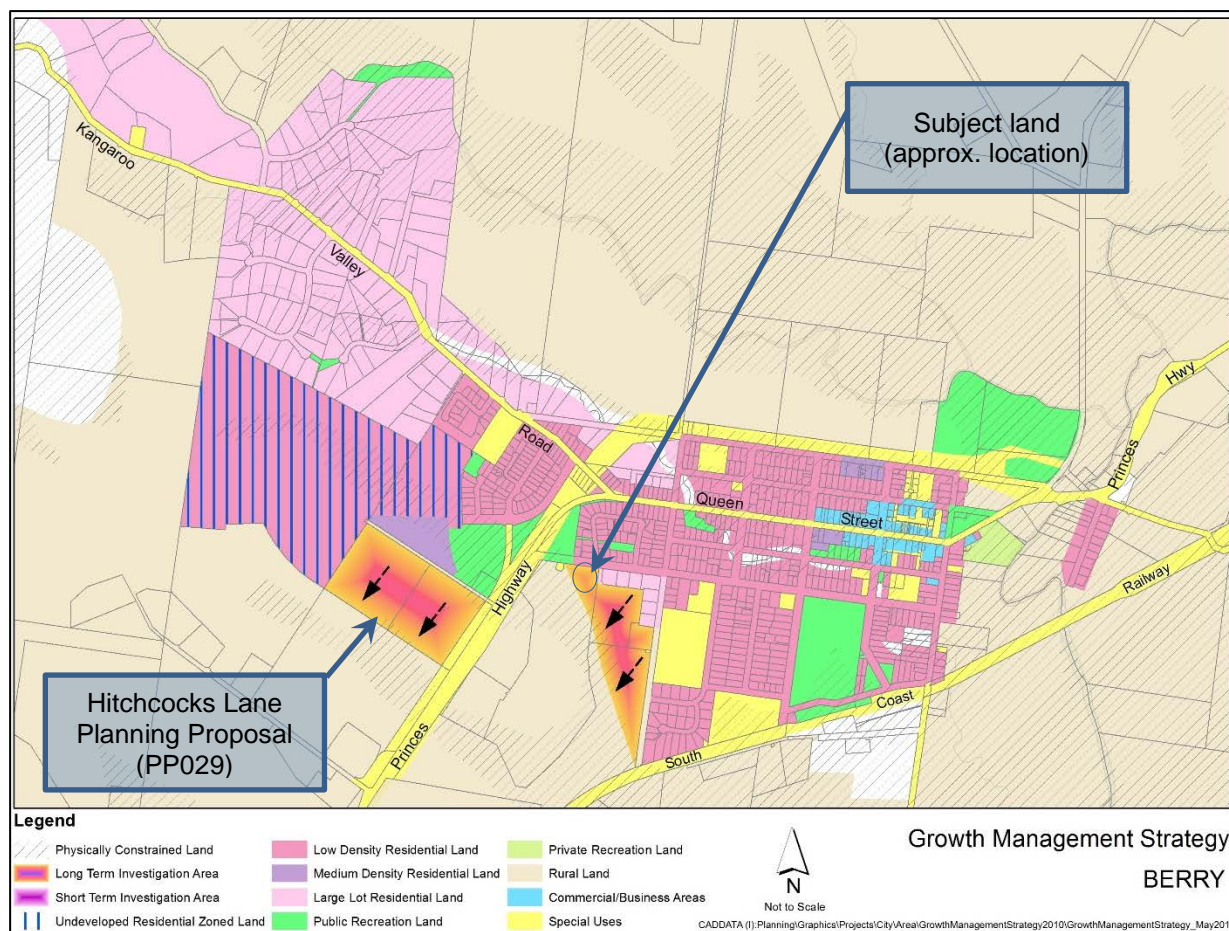


Figure 4 – Location of the subject land in relation to the LTIA identified in the GMS 2012 (V1)

The GMS states that the intended timeframe for LTIA's is 15 years (i.e. approximately equal to (≈) 2027). However, there is good justification to bring forward this timeframe because:

- Council brought forward and is proceeding with the Hitchcocks Lane PP (MIN17.953).
- The subject land (and lot yield) is relatively small and is surrounded by residential development/retirement villages on three sides.
- The subject land is relatively unconstrained and can support the proposed residential development.

Council's requirements for bringing forward LTIA's are addressed in detail in pages 16-21 of the [proponent's PP report](#).

Given the above, the PP is consistent with the GMS. As noted above, the GMS was endorsed by the State Government in 2014.

4.1.2 Is the Planning Proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

The [proponent's PP report](#) provides the following detailed information on options for achieving the intended outcome:

In order to facilitate the release of land for low-density residential land use, a Local Environmental Plan (LEP) amendment or State Environmental Planning Policy (SEPP) are the only statutory mechanisms available.

This site-specific planning proposal is the best means of achieving the intended outcome because:

- *Masterplanning of the broader LTIA precinct is unlikely as the neighbouring property containing the central portion of the LTIA precinct is already developed and the ownership of LTIA land is spread across various owners. The subject land is also unique in its ability to be developed in isolation.*
- *Further studies may be required to progress the LTIA as part of the GMS. The PP provides a suitable setting for these studies to be undertaken, if required.*
- *Community consultation has already commenced and can be expanded upon during the rezoning process.*

It may also be possible to achieve the intended outcome of seniors housing on the Subject Land through the issuance of a SCC. However, based on the recent SCC application and determination (refer to section within the introduction of PP) there is additional merit in the planning proposal pathway – including the direct addressing of concerns from Council and DPE.

Should Council not be supportive of a seniors housing proposal on the Subject Land following the proposed rezoning, the PP will in any case facilitate low-density residential development in accordance with the strategic justification of the PP.

As noted in the [Council report of 3 March 2020](#), two options were available to the proponents should they wish to pursue the proposed development further:

1. Submit a revised SCC application to DPIE under the Seniors Housing SEPP, or
2. Submit a proponent-initiated PP to Council, seeking to rezone the land from the current RU1 – Primary Production zone to an appropriate residential zone, e.g. 'R2 – Low Density Residential'.

Both options would require a subsequent development application to be submitted and approved before development could proceed. The second option would also potentially enable other residential uses to be approved. For example, if the land is rezoned to R2, the land could also potentially be subdivided and developed for residential purposes.

The proponents have elected to pursue option 2, hence this PP.

4.2 Relationship to strategic planning framework (Section B)

4.2.1 Is the Planning Proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies)?

Direction 2.2 of the Illawarra-Shoalhaven Regional Plan (ISRP) is to: "Support housing opportunities close to existing services, jobs and infrastructure in the region's centres". It states that making more housing available in existing urban areas is a sustainable option because it takes advantage of existing job markets, infrastructure, commercial and retail opportunities, public transport, and facilities for pedestrians and cyclists. Berry is identified as a local centre that is suitable for infill residential development. Given that the subject land is adjoining and adjacent to existing residential development, the PP is effectively for infill development and consistent with the ISRP.

Furthermore, as discussed elsewhere, the subject land is part of a Long Term Investigation Area (LTIA) identified in the Shoalhaven Growth Management Strategy (GMS) which was endorsed by the State Government in 2014.

The PP is also consistent with Direction 5.1 to "Protect the region's environmental values by focusing development in locations with the capacity to absorb development".

4.2.2 Is the Planning Proposal consistent with the local council's Community Strategic Plan, or other local strategic plan?

[Shoalhaven City Council's Community Strategic Plan](#)

The PP is broadly consistent with Council's Community Strategic Plan, specifically *Theme 2 - Sustainable, liveable environments*, and *Action 2.2 - Plan and manage appropriate and sustainable development*.

[Shoalhaven 2040 – Strategic Land-use Planning Statement](#)

The Strategic Land-use Planning Statement (SLPS) was adopted by Council on 29 September 2020 post Council's acceptance of the PP.

The PP is consistent with Planning Priority 1 – Providing homes to meet needs and lifestyles as it will either increase the availability of seniors housing or alternatively, add to the supply of homes by providing infill development. It is also generally consistent with Planning Priority 6 – Providing jobs close to home. The PP will release land for residential development thereby providing work to sustain local jobs in construction as well as supporting local businesses engaged in the supply of building materials.

4.2.3 Is the Planning Proposal consistent with applicable state environmental planning policies?

A checklist of the State Environmental Planning Policies (SEPPs) is attached to this PP. The most relevant SEPPs are briefly discussed below.

SEPP 55 - Remediation of Land

The subject land has been historically used for agricultural production. Clause 6 of the SEPP requires a preliminary contamination assessment to be prepared.

A [Preliminary Contamination Assessment](#) prepared by Geotechnique P/L in 2019 was included in the proponent's documentation. The Assessment concluded:

- Soil sampling and testing are required to determine the need or otherwise for remediation
- It is reasonable for sampling and testing to be undertaken at subdivision stage
- Any imported soil (fill) must be assessed by a qualified environmental consultant, prior to importation, to ensure suitability for the proposed use. In addition, the imported fill must not contain asbestos and ash, be free of unusual odour, not be discoloured and not acid sulphate soil or potential acid sulphate soil. The imported fill should either be virgin excavated natural material (VENM) or excavated natural material (ENM).

Council's Environmental Services Unit has reviewed the Geotechnique report and advised that it *"...would be satisfied with a preliminary site investigation with soil sampling to be undertaken at subdivision stage."*

The PP is not inconsistent with SEPP 55.

SEPP Primary Production and Rural Development 2019

The relevant aims of this SEPP are:

- (a) to facilitate the orderly economic use and development of lands for primary production,*
- (b) to reduce land use conflict and sterilisation of rural land by balancing primary production, residential development and the protection of native vegetation, biodiversity and water resources,*
- (c) to identify State significant agricultural land for the purpose of ensuring the ongoing viability of agriculture on that land, having regard to social, economic and environmental considerations,*
- (e) to encourage sustainable agriculture, including sustainable aquaculture,*

The subject land is part of an existing retirement village and has not been used for primary production purposes since 2007. The subject land does not directly adjoin any agricultural production and as such, the PP will not create any land use conflict. The subject land is not identified as 'State Significant Agricultural Land'.

It is concluded that the PP is not inconsistent with this SEPP.

4.2.4 Is the Planning Proposal consistent with applicable Ministerial Directions (s.9.1 Directions)?

A checklist of the s.9.1 Ministerial Directions is attached to this PP. The most relevant Ministerial Directions are discussed below.

Direction 1.2 Rural Zones

This Direction states 'a planning proposal must not rezone land from a rural zone to a residential, business, industrial, village or tourist zone.' The subject land is currently zoned RU1 - Primary Production.

Any inconsistency with this Direction is justified because the subject land is part of a Long Term Investigation Area (i.e. potential future residential area) in the GMS which is an NSW Government endorsed strategy.

The subject land is a relatively small area of land positioned between residential development on three sides and the Princes Highway to the west, and any inconsistency with this Direction is therefore considered to be of minor significance.

Direction 1.5 Rural Lands

This Direction relates to the protection of agricultural land and it applies when a PP will affect an existing or proposed rural or environment protection zone; or when the minimum lot size is proposed to be changed within a rural or environmental protection zone.

The subject land is currently zoned RU1 and the minimum lot size is also proposed to be reduced from 40 ha to 500 m² and this Direction 1.5 applies. The land is also mapped as 'Class 3' agricultural land and thus is 'prime crop and pastureland'.

The land has however not been used for agricultural production for several years, as it forms part of the landscaped area within the grounds of The Arbour Retirement Village. The subject land is a relatively small area (approximately 7,665 m²) positioned on the southern edge of the Berry township and is surrounded by residential development on three sides and the Princes Highway to the west.

Given these circumstances, the PP will not fragment rural land and it will not impact on the operation and viability of existing and future rural land uses and related enterprises.

It is concluded that the PP is consistent with this Direction.

Direction 2.3 Heritage Conservation

The subject land is not listed as a 'heritage item' in the LEP or on the NSW State Heritage Register, and it has no significant heritage values.

Mark Radium Park located on the north western side of Victoria Street is a 'heritage item' in the LEP. The Statement of Significance for Mark Radium Park identifies the trees as having heritage value. The PP will not impact on those values.

Preliminary advice received from the relevant section of DPIE was that, due to the proximity of the subject land to an intermittent watercourse, an Aboriginal Cultural Heritage Assessment (ACHA) should be prepared. Council resolved to prepare an ACHA prior to public exhibition (subject to receiving a favourable Gateway determination from DPIE).

Gateway determination was issued by DPIE on 30 April 2020. The Gateway determination included the following condition:

1. *An Aboriginal cultural Heritage Assessment shall be prepared in accordance with relevant NSW government guidelines for the subject site prior to public consultation.*

Apex Archaeology was engaged by Council on behalf of Mbark Pty Ltd to undertake an ACHA in accordance with the relevant NSW government guidelines, to inform the PP and comply with the Gateway determination. The final ACHA was received by Council on 18 September 2020. The ACHA did not identify any Aboriginal archaeological potential for the site and no further archaeological investigation is required.

The ACHA recommends that proposed development works must be contained within the assessed boundaries. Any alteration to those boundaries to include additional land will necessitate further investigation. Other recommendations relate to the treatment of any unanticipated finds during site works including any Aboriginal archaeological material or human remains.

A copy of the final ACHA was provided to the Registered Aboriginal Parties (RAPs) for the project. A copy was also sent to Heritage NSW for inclusion on the Aboriginal Heritage Information Management System (AHIMS). Heritage NSW responded on 14 October 2020. A summary of the response from Heritage NSW is provided at Section 4.4.2 – What are the views of state and Commonwealth public authorities consulted in accordance with the Gateway determination?

Click [here](#) to view a copy of the [ACHA](#). (Note: some information has been redacted to be consistent with statutory requirements.)

The PP will not impact on Aboriginal Cultural Heritage values is consistent with this Direction.

Direction 2.6 Remediation of Contaminated Land

The subject land has been historically used for agricultural production. This Direction requires a preliminary contamination assessment to be prepared if development for a purpose referred to in Table 1 of the contaminated land planning guidelines has been carried out on the land.

A [Preliminary Contamination Assessment](#) prepared by Geotechnique P/L in 2019 was included in the proponent's documentation. The Assessment concluded:

- Soil sampling and testing are required to determine the need or otherwise for remediation
- It is reasonable for sampling and testing to be undertaken at subdivision stage
- Any imported soil (fill) must be assessed by a qualified environmental consultant, prior to importation, to ensure suitability for the proposed use. In addition, the imported fill must not contain asbestos and ash, be free of unusual odour, not be discoloured and not acid sulphate soil or potential acid sulphate soil. The imported fill should either be virgin excavated natural material (VENM) or excavated natural material (ENM).

Council's Environmental Services Unit has reviewed the Geotechnique report and advised that it "...*would be satisfied with a preliminary site investigation with soil sampling to be undertaken at subdivision stage.*"

The PP is consistent with this Direction.

Direction 3.1. Residential Zones

This Direction applies because the PP seeks to rezone the subject land to a residential zone. The PP is consistent with this Direction because:

- It will increase the choice of housing by rezoning the land from a rural zone to R2 and thus enabling a range of residential uses including seniors housing.
- The proponent's [Site Servicing Strategy](#) indicates that the existing infrastructure and services have capacity to support the proposed development.

Direction 3.4 Integrated Land Use and Transport

This Direction requires PP's to give effect to and be consistent with the aims, objectives and principles of:

- *Improving Transport Choice – Guidelines for planning and development* (DUAP 2001), and
- *The Right Place for Business and Services – Planning Policy* (DUAP 2001).

The subject land is close to existing public transport services including: a bus service between Nowra and Gerringong which stops on Victoria Street; and Berry Railway Station. The footpath network provides pedestrian access to the Berry town centre.

The PP is consistent with this Direction.

Direction 4.1 Acid Sulfate Soils

Part (6) of this Direction states that:

A relevant planning authority must not prepare a planning proposal that proposes an intensification of land uses on land identified as having a probability of containing acid sulfate soils on the Acid Sulfate Soils Planning Maps unless the relevant planning authority has considered an acid sulfate soils study assessing the appropriateness of the change of land use given the presence of acid sulfate soils.

The subject land is not mapped on the State Government's Acid Sulfate Soils Planning Maps (refer to Figure 7 of the [proponent's PP report](#)). As such the PP is consistent with this Direction.

Note: The subject land is mapped as Class 5 - Acid Sulfate Soils in the Shoalhaven LEP 2014, to which clause 7.1 of the LEP applies. This would be considered in any future development application.

Direction 4.3 Flood Prone Land

This Direction includes the following provisions which are relevant to this PP:

- (5) *A planning proposal must not rezone land within the flood planning areas from Special Use, Special Purpose, Recreation, Rural or Environmental Protection Zones to a Residential, Business, Industrial, Special Use or Special Purpose Zone.*
- (6) *A planning proposal must not contain provisions that apply to the flood planning areas which:*
 - (a) *permit development in floodway areas,*
 - (b) *permit development that will result in significant flood impacts to other properties,*
 - (c) *permit a significant increase in the development of that land,*
 - (d) *are likely to result in a substantially increased requirement for government spending on flood mitigation measures, infrastructure or services, or*
 - (e) *permit development to be carried out without development consent except for the purposes of agriculture (not including dams, drainage canals, levees, buildings or structures in floodway's or high hazard areas), roads or exempt development.*

The southern edge of the subject land is marginally affected by flooding as shown in Figure 5 below.

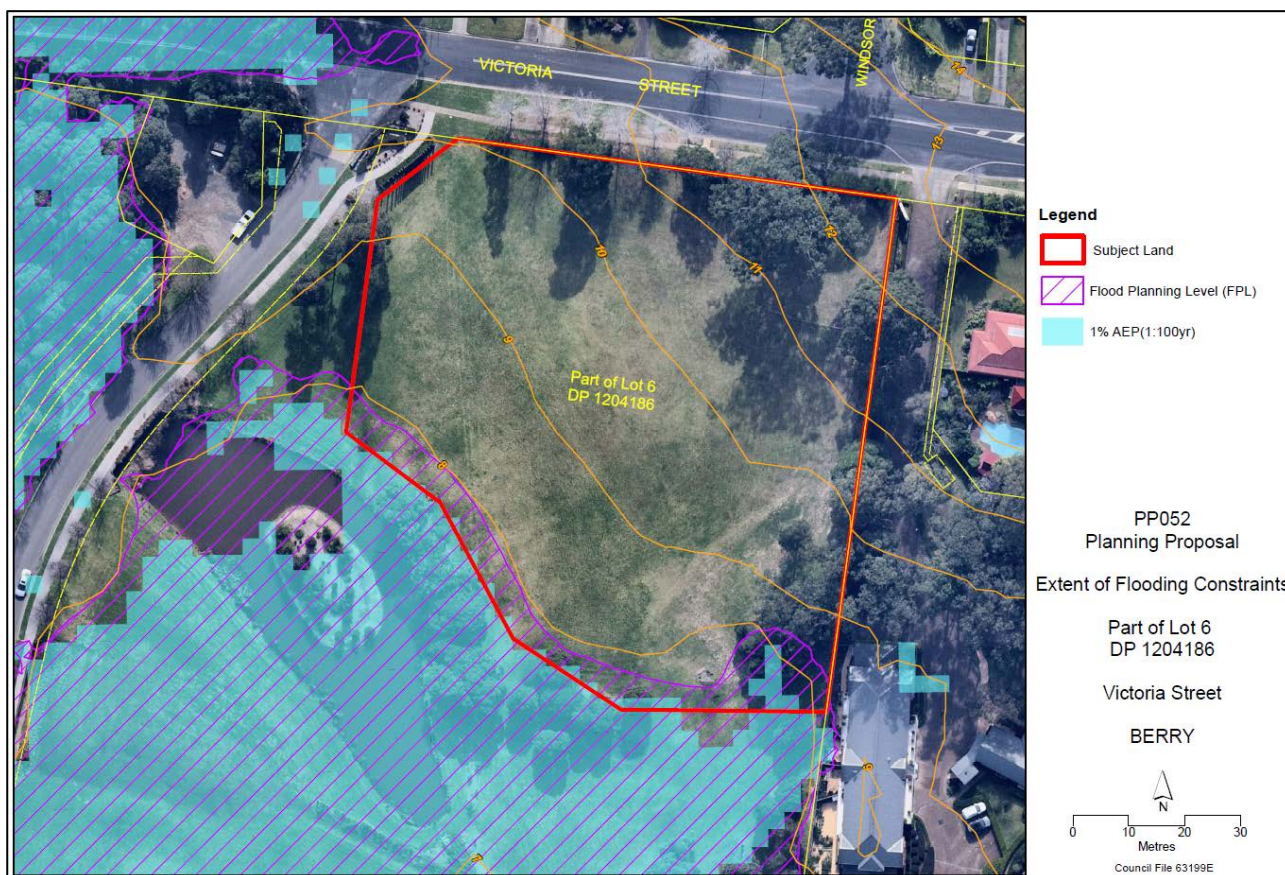


Figure 5 – Extent of 1% AEP (1 in 100 year flood) and Flood Planning Level (FPL) (FPL = 1% AEP + 0.5 m freeboard)

Any inconsistency with this Direction is considered minor as the dwellings and associated buildings would be located well above the Flood Planning Level. Advice from Council's Floodplain Engineers is that any fencing within the flood-affected area should be open, rural fencing to avoid changes to flood behaviour on adjoining land.

Direction 5.10 Implementation of Regional Plans

As discussed earlier, the PP is consistent with the Illawarra Shoalhaven Regional Plan (ISRP) as the subject land is part of a Long Term Investigation Area (LTIA) in the GMS.

4.3 Environmental, Social and Economic Impact (Section C)

4.3.1 Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

The subject land has been extensively cleared and is largely open grassland as part of a developed retirement village. Prior to this, the land had been cleared and used for agricultural purposes.

4.3.2 Are there any other likely environmental effects as a result of the Planning Proposal and how are they proposed to be managed?

The [proponent's Planning Proposal report](#) includes the following information:

- *No known significant environmental features are identified within the Subject Land. The Subject Land has been cleared and landscaped as open grassland as part of The Arbour Retirement Village (prior to this, clearing was undertaken for agricultural purposes as discussed in the history of the Subject Land).*
- *The PP is supported by the GMS which has identified the Subject Land for rezoning to residential land use. The GMS has employed 'Ecological Sustainable Development' principles in order to develop the GMS, such as the precautionary principle and conservation of biological diversity and ecological integrity.*
- *The potential yield of 10 in-fill homes (as per the concept layout plan) is expected to have insignificant / minor environmental impacts to an established urban environment.*
- *Stormwater management concept plans have been developed as part of the PP and confirm the ability to deliver infrastructure in accordance with Council's DCP. Any discharge will be treated appropriately in keeping with Council DCP guidelines to ensure no negative environmental impacts occur as a result of development.*
- *The proposed development intends to retain the existing streetscape vegetation where possible. Minor impacts are anticipated as a result of the proposed access road in the conceptual residential subdivision plan. However, a seniors housing scheme is possible that retains existing streetscape vegetation.*
- *View impacts are anticipated to be minor, as per the intended retention of existing streetscape vegetation. Location shots are provided in Appendix A – Detailed Site Analysis Plan.*

Some impact on local views and local amenity is inevitable but will be limited by:

- Retaining as much of the trees and vegetation along the Victoria Street frontage as possible.
- Limiting the height of any development, noting that the maximum height of buildings is proposed to be reduced from 11 m to 8.5 m.

- Ensuring that the proposed development will have an address to Victoria Street (as is proposed to be the case). The [proponent's Planning Proposal report](#) states that:

"This street interface has been reviewed and progressed to include the planting of natural vegetation screening, permeable fencing treatment that is in keeping with the streetscape, and a reduction to the fence height."

"A concept has been prepared that orientates homes to be north-facing toward Victoria St. In addition, an increased side setback between homes has been adopted that responds to the character of the surrounding area."

"...a concept has been prepared that does not remove any vegetation from Victoria St and retains both the camphor laurels and blackbutt. Additional planting is proposed that is intended to enhance the streetscape."

Given that the subject land is gently sloping and downslope of development on adjoining land, the risk of impacts resulting from earthwork/construction is minimal. This is supported by the following information provided in the proponent's PP report:

"A site grading and bulk earthworks plan has since been undertaken on the design. The plan confirms the ability for the development to maintain existing levels for the land adjoining the proposed development."

"A conceptual stormwater management plan is provided which will be able to service the proposed Subject Land at no cost to Council or government."

Based on the above information it is concluded that any potential environmental impacts can be mitigated/addressed at development application stage if/when the land is rezoned.

4.3.3 How has the Planning Proposal adequately addressed any social and economic effects?

As noted in the proponent's PP report, the delivery of some additional housing supply in Berry has the potential to result in the following positive social and economic effects:

- Increased affordability and housing choice in Berry;
- Increased employment related to the construction and supply of material for businesses within the local area;
- Improved viability of retail/commercial sectors because of economic activity generated by future residents.

Conversely, the provision of additional housing will add to demand more broadly on existing social infrastructure and services (such as schools and hospitals). However, this will be negligible.

As noted earlier, an Aboriginal Cultural Heritage Assessment has been completed as a condition of the Gateway Determination. The public exhibition process will provide an opportunity for any social or economic effects to be considered before the PP is finalised.

4.4 State and Commonwealth Interests (Section D)

4.4.1 Is there adequate public infrastructure for the Planning Proposal?

The [proponent's PP report](#) and supporting information indicates that there is adequate public infrastructure to service the proposed development. The PP report states that:

The subject land can be serviced from existing public infrastructure as demonstrated by the site servicing strategy (*Appendix F - Site Servicing Strategy*) and traffic impact statement attached in (*Appendix G - Traffic Impact Statement*).

The traffic impact statement for the PP confirms minimal traffic generation arising from the conceptual residential subdivision.

4.4.2 What are the views of state and Commonwealth public authorities consulted in accordance with the Gateway determination?

A letter from Transport for NSW (TfNSW) dated 28 January 2020 stated that:

- *The submitted conceptual layout, based on the proposed zoning change, shows 10 low density residential allotments resulting in a minor increase in trip generation/traffic directly onto the local road network; and*
- *The Foxground to Berry bypass/upgrade to the Princes Highway has been completed. This providing new and improved access arrangements for both northbound and southbound vehicles into and out of Berry and subsequently to the subject site.*

Having regard for the above, TfNSW has no objections to the planning proposal in principle.

The Gateway determination (30 April 2020) required consultation with the following public authorities/organisations under section 3.34(2)(d) of the Act and/or to comply with the requirements of relevant section 9.1 Directions:

- NSW Department of Planning, Industry and Environment (Biodiversity and Conservation)
- Shoalhaven Water
- Endeavour Energy

Heritage NSW was provided with a copy of the final ACHA on 23 September 2020. On 14 October 2020 Heritage NSW responded, in summary:

1. The Gateway Determination required an Aboriginal Cultural Heritage Assessment

We advise Council that the Apex Archaeology ACHAR (September 2020) addresses Heritage NSW requirements for preparing an ACHAR.

2. Apex Archaeology recommend no further Aboriginal Cultural Heritage Assessment

No Aboriginal objects or areas of potential archaeological deposits were identified. Apex Archaeology (2020, p.52) conclude that most of the Planning Proposal area has been substantially disturbed. Apex Archaeology (2020, p.59) does not recommend any further Aboriginal heritage investigations.

3. Aboriginal community consultation has been conducted

Apex Archaeology has conducted Aboriginal community consultation that appears to comply with clause 60 of the National Parks and Wildlife Regulation 2019 and the relevant Heritage NSW guidelines. Nowra Local Aboriginal Land Council (NLALC) site officers assisted with the heritage survey (Apex Archaeology 2020, p.46). The NLALC provided comment on a draft ACHAR [-] but otherwise supported the draft report. [-] commented that the ACHAR did not identify Aboriginal cultural heritage significance within the Planning Proposal area and that the assessment was limited because it was an archaeological assessment. Apex Archaeology responded that specific cultural knowledge had not yet been provided by any of the RAPs, but that it would be included in the ACHAR if provided. No further response was received. [Please note that the names of individuals and comments quoted have been removed for privacy reasons]

4. Heritage NSW must be contacted if Aboriginal objects are found during future works

Should this Planning Proposal be approved, and the subsequent proposed development occur, the proponent must be aware of the requirement to stop works if Aboriginal objects or suspected Aboriginal objects (including human skeletal remains) are identified during works. If suspected Aboriginal objects are found the find must be reported immediately. Work may not continue in the area until advised in writing by Heritage NSW.

Shoalhaven Water

The proponent's [Site Servicing Strategy](#) states that "Potable Water Services Infrastructure within Victoria Street appears to be sufficient. Final confirmation will be subject to Shoalhaven Water Notice conditions. Sewer Drainage Services Infrastructure around the site appears to be sufficient, however a sewer pump is required to fully service the site. Final confirmation will be subject to Shoalhaven Water Notice conditions."

Shoalhaven Water has been consulted and has provided the following comments:

Water Supply:

- *Town water is available for connection.*
- *Levels of service can be provided to the proposed lots.*
- *The water reticulation system needs to be extended by the proponent via an approved subdivision consent and the issue of a Water Development Notice.*
- *Section 64 (Water Supply) Contribution is applicable.*

- *A contribution towards new metered services to each lot is required as part of the release of a future subdivision plan.*
- *Adjustment to existing water supply infrastructure may be required to allow the development to progress.*

Sewerage Services:

- *Town sewer services are available.*
- *The development will need to construct an appropriate sewerage reticulation system (gravity and/or pressure sewer system) and provide a connection point to support each lot created via an approved subdivision consent and the issue of a Water Development Notice.*
- *If a pressure sewer system is implemented then the proponent will need to pay for each pressure sewer unit (PSU). Each PSU is costed individually.*
- *Section 64 (Sewerage Services) Contribution is applicable.*
- *Adjustment to existing sewerage infrastructure may be required to allow the development to progress.*

As part of an application for subdivision for the development the applicant will need to make application for a Certificate of Compliance under Section 305 of the Water Management Act 2000. Council's standard development application form also has provision within it to be an application for a Certificate of Compliance. Alternatively, the proponent may make application for a Certificate of Compliance via Shoalhaven Water's website www.shoalwater.nsw.gov.au

Comments received from Shoalhaven Water confirm that reticulated water and sewer services can be provided to the subject land if the planning proposal is supported by Council and the land is rezoned.

Endeavour Energy

The proponent's [Site Servicing Strategy](#) states that "An application for connection to Endeavour Energy will be submitted to confirm current infrastructure capacity and seek new connection approval. Substation will be required to supply power to this development if Endeavour Energy determines the current power infrastructure in Victoria and within adjacent Lot 1008 DP1107175 to be under capacity."

Endeavour Energy was consulted prior to exhibition of the Planning Proposal. A response has not yet been received. However, if the PP is supported, the views of Endeavour Energy will be required before the plan is made as required by the Gateway Determination.

5 Part 4 – Mapping

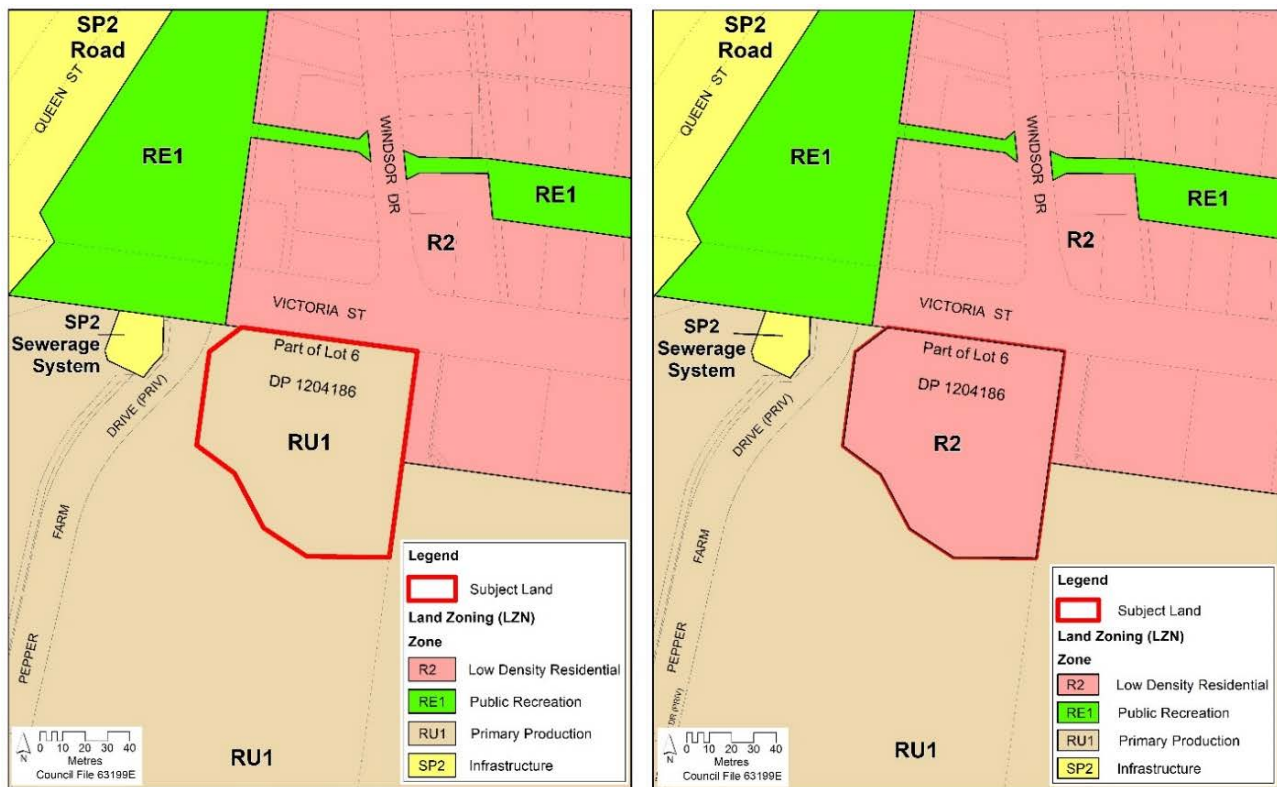


Figure 6 - Existing (left) and proposed zoning (right)

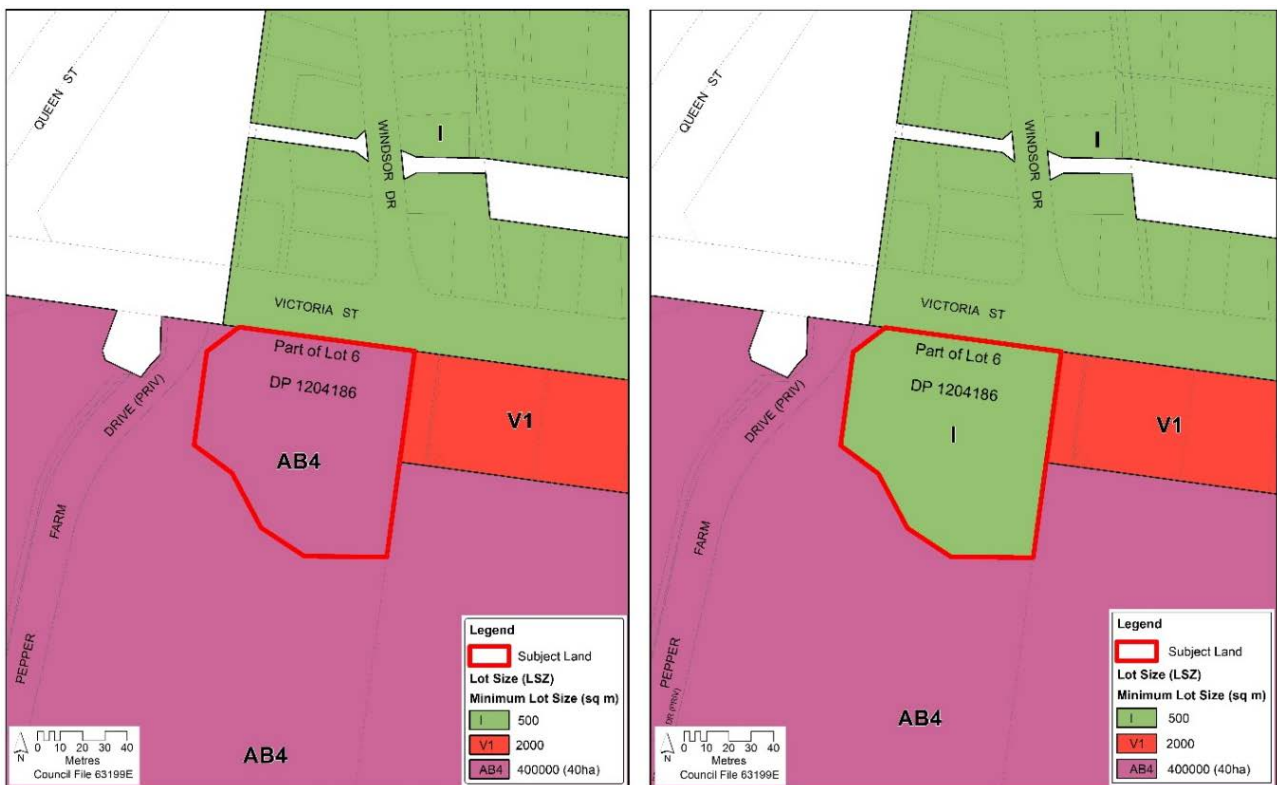


Figure 7 - Existing (left) and proposed minimum lot size (right)



Figure 8 - Existing (left) and proposed (right) maximum height of buildings

6 Part 5 - Community Consultation

The PP will be exhibited in accordance with the requirements of the Gateway determination.

The PP is on public exhibition from **Wednesday, 4 November 2020** until **Friday, 4 December 2020 (inclusive)**. The PP is available for viewing online via the [Documents on Exhibition](#) page on Council's website: www.shoalhaven.nsw.gov.au

The exhibition package includes:

1. Planning Proposal (PP052) – 10 Victoria Street, Berry (The Arbour Retirement Village) and associated studies/investigations
2. Gateway Determination dated 30 April 2020
3. Explanatory Statement
4. Public Exhibition Notification
5. Aboriginal Cultural Heritage Assessment

The PP will also be available for viewing **electronically** at the City Administration Centre, Bridge Road, Nowra. (Please seek assistance from Front Counter Staff).

7 Part 6 – Project Timeline

The anticipated timeline for the PP is outlined in Table 2 below.

Table 2 - Indicative timeframe for completing tasks

Task	Anticipated Timeframe
Commencement date (date of Gateway determination)	30 April 2020
Completion of Gateway determination requirements (including Aboriginal Cultural Heritage Assessment)	Completed September 2020
Report outcomes of studies to Council to confirm details of the PP	Councillors advised by email prior to exhibition
Public exhibition	November 2020
Consideration of submissions	December 2020
Report PP and outcomes of public exhibition to Council	January / February 2021
Finalisation and notification of Plan	February / March 2021

Attachments

1. Proponent's PP document and any studies.

Item #	Title (note: appendices not listed separately are included in the proponent's main PP document)
1.	Planning Proposal Consent Letter
2.	Planning Proposal Lodgement Form
3.	Planning Proposal Report
4.	Appendix A - Detailed Site Analysis Plan
5.	Appendix C - Pre-lodgement Meeting
6.	Appendix F - Site Servicing Strategy
7.	Appendix G - Traffic Impact Statement
8.	Appendix H - Conceptual Residential Subdivision Plan
9.	Appendix I - PCA - Extract 1
10.	Appendix I - PCA - Extract 2
11.	Appendix J - Berry Forum Minutes
12.	Aboriginal Cultural Heritage Assessment

2. Council report and minute supporting the PP.

[LINK TO REPORT](#)

Minute:

RESOLVED (Clr Wells / Clr White)

MIN20.161

That:

1. Council support 'in principle' the proposed rezoning of the north eastern area of Lot 6 DP 1204186 (No. 10 Victoria Street) from *RU1 – Primary Production* to *R2 – Low Density Residential*.
2. Prepare and submit a Planning Proposal to the NSW Department of Planning, Industry and Environment (DPIE) for Gateway determination.
3. If Gateway is granted, prior to formal public exhibition of the Planning Proposal, complete an Aboriginal Cultural Heritage Assessment (ACHA) in accordance with advice from DPIE.
4. Advise the proponent and the Berry Forum of this decision.

FOR: Clr Gash, Clr Wells, Clr White, Clr Digiglio, Clr Aldrick, Clr Levett, Clr Watson, Clr Kitchener, Clr Proudfoot and Stephen Dunshea

AGAINST: Nil

CARRIED

3. SEPP Checklist.

SEPP	Date	Name	Applicable	Not inconsistent
19	10.12.08	Bushland in Urban Areas	✗	NA
21	24.04.92	Caravan parks	✓	NA
33	13.03.92	Hazardous and Offensive development	✗	NA
36	16.07.93	Manufactured home estates	✗	NA
44	06.01.95	Koala habitat protection	✓	✓
47	17.11.95	Moore Park Showground	✗	NA
50	10.11.97	Canal estate development	✗	NA
55	28.08.98	Remediation of land	✓	✓
64	16.03.01	Advertising and signage	✗	NA
65	26.07.02	Design quality of residential flat development	✗	NA
70	31.05.02	Affordable Housing (Revised Schemes)	✓	✓
--	6.02.19	State Environmental Planning Policy (Aboriginal Land) 2019	✗	NA
--	31.07.09	Affordable Rental Housing 2009	✓	✓
--	25.06.04	Building Sustainability Index: BASIX 2004	✓	✓
--	03.04.18	Coastal Management 2018	✗	NA
	28.02.19	Concurrences and Consents 2018	✓	✓
--	01.09.17	Educational Establishments and Child Care Facilities 2017	✓	✓
--	27.02.09	Exempt and Complying Development Codes 2008	✓	✓
--	31.03.04	Housing for Seniors or People with a Disability 2004	✓	✓
--	01.01.08	Infrastructure 2007	✓	✓
--	12.12.07	Kosciuszko National Park – Alpine Resorts 2007	✗	NA
--	30.06.89	Kurnell Peninsula 1989	✗	NA
--	16.02.07	Mining, Petroleum Production and Extractive Industries 2007	✓	✓
--	21.11.86	Penrith Lakes Scheme 1989	✗	NA
	28.02.19	Primary Production and Rural Development	✓	✓
--	01.10.11	State and Regional Development 2011	✓	✓
--	25.05.05	State Significant Precincts 2005	✓	✓
--	01.03.11	Sydney Drinking Water Catchment 2011	✗	NA
--	28.07.06	Sydney Region Growth Centres 2006	✗	NA
--	31.05.13	Three Ports 2013	✗	NA
--	15.12.10	Urban Renewal 2010	✗	NA
--	25.08.17	Vegetation in Non-Rural Areas	✓	✓
--	21.08.09	Western Sydney Employment Area 2009	✗	NA
--	06.03.09	Western Sydney Parklands 2009	✗	NA

4. S9.1 Ministerial Direction Checklist.

Direction		Applicable	Relevant	Consistent
1 Employment and Resources				
1.1	Business and Industrial Zones	✗	✗	NA
1.2	Rural Zones	✓	✓	Any inconsistency is justified because the subject land is part of a Long Term Investigation Area in the GMS
1.3	Mining, Petroleum Production and Extractive Industries	✓	✓	Given that development of the subject land would effectively be infill development, the PP is not inconsistent
1.4	Oyster Aquaculture	✓	✓	The PP will not have a measurable impact on Priority Oyster Growing Areas located in the lower Shoalhaven River.
1.5	Rural lands	✓	✓	The land has not been used for agricultural production for several years and it forms part of the landscaped area within a retirement village. The land is surrounded by residential development on three sides and the Princes Hwy to the west
2 Environment and Heritage				
2.1	Environmental Protection Zones	✓	✗	Subject land does not include any environmentally sensitive land.
2.2	Coastal Management	✗	✗	NA
2.3	Heritage Conservation	✓	✓	The subject land is not listed as a 'heritage item' in the LEP or the NSW State Heritage Register and has no significant heritage values. An Aboriginal Cultural Heritage Assessment (ACHA) was completed on 18 September 2020. The ACHA concludes that the subject land has no Aboriginal archaeological potential and that no further Aboriginal archaeological assessment is required. HNSW responded on 14 October 2020 and no concerns were raised. The PP will not have any impact on Heritage Conservation.

2.4	Recreation Vehicle Area	✓	✗	NA
2.5	Application of E2 and E3 Zones in Environmental Overlays in Far North Coast LEPs	✗	✗	NA
2.6	Remediation of Contaminated Land	✓	✓	A Preliminary Contamination Assessment prepared in 2019. Council's Environmental Services Unit advised that it "...would be satisfied with a preliminary site investigation with soil sampling to be undertaken at subdivision stage."
3 Housing, Infrastructure and Urban Development				
3.1	Residential Zones	✓	✓	The PP will increase the choice of housing by enabling a range of residential uses including seniors housing. Existing infrastructure and services have capacity to service the proposed development.
3.2	Caravan Parks and Manufactured Home Estates	✓	✗	NA
3.3	Home Occupations	✓	✗	NA
3.4	Integrating Land Use and Transport	✓	✓	✓
3.5	Development Near Regulated Airports and Defence Airfields	✗	✗	NA
3.6	Shooting Ranges	✗	✗	NA
3.7	Reduction in non-hosted short term rental accommodation period	✗	✗	NA
4 Hazard and Risk				
4.1	Acid Sulphate Soils	✗	✗	NA
4.2	Mine Subsidence and Unstable Land	✗	✗	NA
4.3	Flood Prone Land	✗	✗	NA
4.4	Planning for Bushfire Protection	✓	✓	✓
5 Regional Planning				
5.1	Implementation of Regional Strategies	✗	✗	NA
5.2	Sydney Drinking Water Catchments	✗	✗	NA
5.3	Farmland of State and Regional Significance on the NSW Far North Coast	✗	✗	NA
5.4	Commercial and Retail Development along the Pacific Highway, North Coast	✗	✗	NA
5.9	North West Rail Link Corridor Strategy	✗	✗	NA
5.10	Implementation of Regional Plans	✓	✓	PP is broadly consistent with the ISRP

5.11	Development of Aboriginal Land Council land	x	x	The subject land is not shown on the Land Application Map of State Environmental Planning Policy (Aboriginal Land) 2019
6 Local Plan Making				
6.1	Approval and Referral Requirements	✓	✓	✓
6.2	Reserving Land for Public Purposes	✓	x	NA
6.3	Site Specific Provisions	✓	✓	✓
7 Metropolitan Planning				
7.1	Implementation of A Plan for Growing Sydney	x	x	NA
7.2	Implementation of Greater Macarthur Land Release Investigation	x	x	NA
7.3	Parramatta Road Corridor Urban Transformation Strategy	x	x	NA
7.4	Implementation of North West Priority Growth Area Land Use and Infrastructure Implementation Plan	x	x	NA
7.5	Implementation of Greater Parramatta Priority Growth Area Interim Land Use and Infrastructure Implementation Plan	x	x	NA
7.6	Implementation of Wilton Priority Growth Area Interim Land Use and Infrastructure Implementation Plan	x	x	NA
7.7	Implementation of Glenfield to Macarthur Urban Renewal Corridor	x	x	NA
7.8	Implementation of Western Sydney Aerotropolis Interim Land Use and Infrastructure Implementation Plan	x	x	NA
7.9	Implementation of Bayside West Precincts 2036 Plan	x	x	NA
7.10	Implementation of Planning Principles for the Cooks Cove Precinct	x	x	NA

5. Evaluation Criteria for the Delegation of Plan Making Functions

Checklist for the review of a request for delegation of plan making functions to Councils

Local Government Area:

Shoalhaven City Council

Name of draft LEP:

Shoalhaven Local Environmental Plan 2014
PP052

Address of Land (if applicable):

The subject land is known as No. 10 Victoria Street, Berry and is legally described as Part Lot 6 DP 1204186.

Intent of draft LEP:

The Planning Proposal seeks to amend Shoalhaven LEP 2014 as follows:

1. Rezone the subject land from RU1 – Primary Production to R2 - Low Density Residential
2. Amend the minimum lot size map to reduce the minimum lot size from 40 ha to 500m²
3. Reduce the maximum height of buildings from 11 m to 8.5 m.

Note: The existing 11 m maximum height of buildings control is set out in Clause 4.3(2A) of the LEP as the Height of Buildings Map does not show a maximum height over the subject land.

Evaluation criteria for the issuing of an Authorisation	Council Response		Department Assessment	
	Y/N	Not relevant	Agree	Not agree
(Note: where the matter is identified as relevant and the requirement has not been met, council is to attach information to explain why the matter has not been addressed)				
Is the Planning Proposal consistent with the Standard Instrument Order, 2006?	Y			
Does the Planning Proposal contain an adequate explanation of the intent, objectives, and intended outcome of the proposed amendment?	Y			
Are appropriate maps included to identify the location of the site and the intent of the amendment?	Y			
Does the Planning Proposal contain details related to proposed consultation?	Y			
Is the Planning Proposal compatible with an endorsed regional or sub-regional strategy or local strategy endorsed by the Director-General?	Y			
Does the Planning Proposal adequately address any consistency with all relevant S9.1 Planning Directions?	Y			
Is the Planning Proposal consistent with all relevant State Environmental Planning Policies (SEPPs)?	Y			
Minor Mapping Error Amendments				
Does the Planning Proposal seek to address a minor mapping error and contain all appropriate maps that clearly identify the error and the manner in which the error will be addressed?		NA		
Heritage LEPs				
Does the Planning Proposal seek to add or remove a local heritage item and is it supported by a strategy / study endorsed by the Heritage Officer?		NA		
Does the Planning Proposal include another form of endorsement or support from the Heritage Office if there is no supporting strategy/study?		NA		

Does the Planning Proposal potentially impact on item of State Heritage Significance and if so, have the views of the Heritage Office been obtained?	N			
Reclassifications				
Is there an associated spot rezoning with the reclassification?		NA		
If yes to the above, is the rezoning consistent with an endorsed Plan of Management (POM) or strategy?		NA		
Is the Planning Proposal proposed to rectify an anomaly in a classification?		NA		
Will the Planning Proposal be consistent with an adopted POM or other strategy related to the site?		NA		
Will the draft LEP discharge any interests in public land under Section 30 of the Local Government Act, 1993?		NA		
If so, has council identified all interests; whether any rights or interests will be extinguished; any trusts and covenants relevant to the site; and included a copy of the title with the Planning Proposal?		NA		
Has the council identified that it will exhibit the Planning Proposal in accordance with the Department's Practice Note (PN09-003) Classification and reclassification of public land through a local environmental plan and Best Practice Guidelines for LEPs and Council Land?		NA		
Has council acknowledged in its Planning Proposal that a Public Hearing will be required and agree to hold one as part of its documentation?		NA		
Spot Rezoning				
Will the proposal result in a loss of development potential for the site (i.e. reduced FSR or building height) that is not supported by an endorsed strategy?	N			
Is the rezoning intended to address an anomaly that has been identified following the conversion of a principal LEP into a Standard Instrument LEP format?	N			
Will the Planning Proposal deal with a previously deferred matter in an existing LEP and if so, does it provide enough information to explain how the issue that lead to the deferral has been addressed?	N			
If yes, does the Planning Proposal contain sufficient documented justification to enable the matter to proceed?		NA		

Does the Planning Proposal create an exception to a mapped development standard?	N			
Section 3.22 matters				
Does the proposed instrument:				
a. Correct an obvious error in the principal instrument consisting of a misdescription, the inconsistent numbering of provisions, a wrong cross-reference, a spelling error, a grammatical mistake, the insertion of obviously missing words, the removal of obviously unnecessary words or a formatting error?;	N			
b. Address matters in the principal instrument that are of a consequential, transitional, machinery or other minor nature?;	N			
c. Deal with matters that do not warrant compliance with the conditions precedent for the making of the instrument because they will not have any significant adverse impact on the environment or adjoining land?	N			