

Planning and Assessment

IRF20/1803

Gateway determination report

LGA	Shoalhaven
PPA	Shoalhaven City Council
NAME	Planning Proposal - 10 Victoria Street, Berry (10 homes)
NUMBER	PP_2020_SHOAL_004_00
LEP TO BE AMENDED	Shoalhaven LEP 2014
ADDRESS	10 Victoria Street, Berry
DESCRIPTION	Lot 6 DP 1204186
RECEIVED	7 April 2020
FILE NO.	EF20/20543
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. INTRODUCTION

1.1 Description of planning proposal

The proposal seeks to rezone approximately 7,665m² of the site from RU1 Primary Production to R2 Low Density Residential Zone under the Shoalhaven LEP 2014 to provide for seniors housing. The proposal also seeks to establish an 8.5m building height control for the site.

1.2 Site description

The site is located at 10 Victoria Street, on the southern edge of Berry township and eastern side of the Princes Highway approximately 18.5km north east of Nowra (refer to Figure 1 Site Location Map provided on page 5 of the planning proposal document). The site is located within the grounds of "The Arbour Retirement Village".

1.3 Existing planning controls

As mentioned in section 1.1 of this report, the site is zoned RU1 Primary Production under the Shoalhaven LEP 2014. An 11m height of building control currently applies to the site under the LEP.

1.4 Surrounding area

The site is bound to the north by Victoria Street and residential development and to the east by a residential dwelling and The Grange Retirement Village and Mark Radium Park to the north west (refer to Figure 2 map provided in the planning proposal document).

1.5 Summary of recommendation

It is recommended that the planning proposal proceed as per submitted for the following reasons:

- The proposal will support the provision of seniors housing in Berry.
- The proposal adjoins the Berry township and has access to infrastructure and services.
- The site is surrounded by urban development and presents as an infill opportunity.
- The proposal is consistent with the Illawarra Shoalhaven Regional Plan and Council's Shoalhaven Growth Management Strategy.

2. PROPOSAL

2.1 Objectives or intended outcomes

The intended outcome of the proposal is to allow low-density residential land-use on the subject land for the delivery of seniors housing. An indicative residential subdivision plan for ten lots is provided in Figure 3 of the proposal.

Comment: It is considered that the intended outcomes provided in the proposal is clear and does not require amendment prior to community consultation.

2.2 Explanation of provisions

The following amendments to the Shoalhaven LEP 2014 are proposed:

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

Comment: It is considered that the explanation of provisions provided is clear and doesn't require amendment prior to community consultation. The proposed zoning, minimum lot size and height controls are consistent with the adjoining urban area to the north.

2.3 Mapping

The proposal includes amendments to LEP zoning, lot size and height of building maps. Maps are included in Part 4 – "Mapping" in the proposal document that show the current and proposed controls. The maps are considered adequate for the purposes of community consultation.

3. NEED FOR THE PLANNING PROPOSAL

The proposal states that it is the result of a proponent-initiated application to rezone the land to provide seniors housing that was considered by Council on 3 March 2020. The proposal was supported by a range of specialist studies and other documentation provided by the proponent. The proposal also states that the site is identified in the Shoalhaven Growth Management Strategy as a long-term investigation area which was endorsed by the Department in 2014.

The proposal states that the proponent unsuccessfully applied in 2019 for a site compatibility certificate under the *SEPP (Housing for Seniors or People with a*

Disability) 2004 to allow seniors housing dwellings on the site. The application was, however, refused by the Southern Region Planning Panel in October 2019, who concluded that the application did not satisfy the criteria of the Seniors Housing SEPP, including that it did not adequately demonstrate that proposal was actually for serviced self-care housing and did not properly analyse the streetscape and character of the surrounding areas.

The proponent considered the option of lodging a revised application for a site compatibility certificate that addresses the concerns raised by the Panel. Council and the proponent, however, prefer the planning proposal process as the best means of achieving the intended outcome because it will also potentially allow other residential options to be explored in addition to seniors housing.

Comment: Council's view that the planning proposal is needed to rezone the site to enable low density residential development to occur consistent with the strategic planning for the area is supported. It is considered that the planning proposal is the most appropriate mechanism to facilitate the rezoning of the site.

4. STRATEGIC ASSESSMENT

4.1 Regional

The proposal states that it is consistent with Direction 2.2 of the Illawarra Shoalhaven Regional Plan "Support housing opportunities close to existing services, jobs and infrastructure in the region's centres". The Regional Plan identifies Berry as a local centre that is suitable for infill residential development.

The proposal also states that it is consistent with Direction 5.1 of the Regional Plan to "Protect the region's environmental values by focusing development in locations with the capacity to absorb development".

Comment: It is considered that the proposal is consistent with Directions 2.2 and 5.1 of the Regional Plan because it will facilitate new housing opportunities, including housing for seniors, in a location that adjoins the Berry urban area, and which is free of environmental constraints.

4.2 Local

The proposal states that it is broadly consistent with the following local strategic plans:

Shoalhaven Community Strategic Plan:

The proposal states that it is consistent with theme 2 "Sustainable liveable environments and Action 2.2 "Plan and manage appropriate and sustainable development" of the Shoalhaven CSP.

Comment: Council's view that the proposal is broadly consistent with its CSP is supported because it will facilitate new housing opportunities adjoining the Berry township in a suitable location that has access to infrastructure and services.

Shoalhaven Growth Management Strategy

The proposal states that it is consistent with the Growth Management Strategy (GMS) which identifies the subject land as a long term (15 year) investigation area in Berry (refer to map in figure 4 of the planning proposal). Council considers that there is good justification bringing the timeframe identified in the GMS forward because:

- Council has brought forward a planning proposal for another long-term investigation area for Berry located at Hitchcocks Lane (PP_2018_SHOAL_004_01).
- Council considers the Victoria Street site is relatively small infill site surrounded by residential development/retirement villages on three sides; and
- the subject land is relatively unconstrained and can support the proposed residential development.

Comment: Council's view that the proposal is consistent with the GMS is supported for the reasons provided in the proposal.

4.3 Section 9.1 Ministerial Directions

The planning proposal states that it is consistent with the following Directions:

- Direction 1.5 Rural Lands
- Direction 2.3 Heritage Conservation – The planning proposal states that the site does not contain any State or local heritage items. Council, however, on the advice of the Department's Biodiversity and Conservation Team, intends to undertake an Aboriginal Cultural Heritage Assessment of the site because of its proximity to an intermittent watercourse. It is considered that Council should provide further information to demonstrate that the proposal meets the requirements of the Direction to protect any cultural heritage located on the site prior to finalisation of the proposal.
- Direction 3.1 Residential Zones
- Direction 3.4 Integrating Land Use and Transport
- Direction 4.1 Acid Sulfate Soils
- Direction 5.10 Implementation of Regional Plans

The planning proposal identifies that it is inconsistent with the following Directions:

Direction 1.2 Rural Zones

The planning proposal states that it is inconsistent with the Direction because it proposes to rezone land from an RU1 Primary Production Zone to an R2 Low Density Residential Zone. The proposal states that any inconsistency with the Direction is justified because the subject land is part of a long-term investigation area which is identified in the NSW government endorsed Shoalhaven Growth Management Strategy.

Council's view the inconsistency with the Direction is justified by the Shoalhaven GMS is supported.

Direction 4.3 Flood Prone Land

The planning proposal states that the southern edge of the subject land is marginally affected by flooding as shown on Figure 5 of the planning proposal. The proposal states, however, that any inconsistency with the Direction is considered of minor significance as the dwellings and associated buildings would be located well above the flood prone area.

Council's view that the inconsistency with the Direction is of minor significance is supported due to the minor area of the site that is affected by flooding.

Recommendation: That:

1. the Secretary's delegate can be satisfied that the proposal's inconsistency with Directions 1.2 Rural Zones and 4.3 Flood Prone Land are justified by the terms of the Directions.
2. Council prepare an Aboriginal Cultural Heritage Assessment for the site prior to public exhibition.
3. Council provide further information to demonstrate the proposal's compliance with the requirements of Direction 2.3 Heritage Conservation prior to public exhibition.

4.5 State environmental planning policies (SEPPs)

The planning proposal states that it is not inconsistent with the following applicable SEPPs:

SEPP 55 – Remediation of Land

The proposal states that a preliminary contamination assessment was prepared by the proponent to support the proposal. The assessment report recommends that soil sampling and testing are required to determine the need or otherwise for remediation. Council considers that it would be satisfactory to undertake soil sampling at subdivision stage to determine the need for remediation.

It is considered that the planning proposal is consistent with the SEPP because Council has considered whether the site is contaminated and its potential to be remediated as part of its consideration of the planning proposal.

SEPP Primary Production and Rural Development 2019

The planning proposal states that it is not inconsistent with the SEPP because the subject land:

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

Council's view that the proposal is not inconsistent with the SEPP is supported for the reasons provided by Council. The subject land is also identified as an urban investigation area in the Shoalhaven Growth Management Strategy which was endorsed by the Department in 2014.

5. SITE-SPECIFIC ASSESSMENT

5.1 Social

The proposal states that it may have the following adverse social impacts:

- the provision of additional housing will add to demand more broadly on existing social infrastructure and services, however, this will be negligible.
- some impact on local views and amenity but this will be limited by retaining as much of the trees and vegetation along Victoria Street as possible and by limiting building heights to 8.5 metres.
- there is the potential for items of Aboriginal cultural heritage to occur on site given its proximity to an intermittent water course. Council intends to undertake an appropriate assessment in consultation with Traditional Owners prior to public exhibition of the planning proposal.

The proposal states that it will have the following positive social impacts:

- delivering some additional housing supply in Berry which may help increase affordability and housing choice in Berry; and
- increased local employment related to the construction and supply of materials.

Comment: Council's view that the proposal will have overall positive social impacts is supported as it will add to the supply of housing in Berry consistent with endorsed strategic planning for the area. The proposed Aboriginal Cultural Heritage Assessment of the site will provide an opportunity for any items of Aboriginal cultural heritage to be identified and managed in consultation with Traditional Owners.

5.2 Environmental

The proposal states that 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. It is therefore unlikely that critical habitat or threatened species, populations or ecological communities, or their habitats will be adversely affected by the proposal. Council considers that any potential environmental impacts can be mitigated/addressed at subdivision application stage after the land is rezoned.

Council's view that any potential environmental impacts can be mitigated/addressed at the subdivision stage is supported. The site adjoins the Berry urban area and is largely free of environmental constraints.

5.3 Economic

The proposal states that any impact on existing infrastructure and services will be negligible. The proposal will primarily have positive economic impacts by increasing employment related to the construction and supply of materials for businesses within the local area.

Council's view that the proposal will have positive economic impacts is supported because the proposed new housing will support the local economy and jobs.

6. CONSULTATION

6.1 Community

Council intends to exhibit the planning proposal for at least a 28-day period and to notify the public of the exhibition through the local media, via notice on Council's website. Hard copies of the proposal will be made available at Council's administration building in Nowra.

It is considered that Council's proposed community consultation is appropriate.

Recommendation: That Council exhibit the planning proposal for a 28-day period.

6.2 Agencies

Council has already undertaken preliminary consultation with Transport for NSW who has advised that they do not object to the proposal. Council intends to consult with the following agencies during public exhibition of the proposal:

- Shoalhaven Water
- Endeavour Energy

Council's proposed agency consultation is considered appropriate. It is, however, considered that Council should also consult with the NSW Department of Planning, Industry and Environment (Biodiversity and Conservation) in relation to the proposed Aboriginal cultural heritage assessment of the site.

Recommendation: That Council consult with the agencies listed above.

7. TIME FRAME

Council proposes to finalise the planning proposal by March 2021. It is considered that a 12-month timeframe is appropriate.

Recommendation: That Council is required to complete the planning proposal and LEP within 12-months from the Gateway determination date.

8. LOCAL PLAN-MAKING AUTHORITY

Council has requested to be the local plan-making authority for the planning proposal. It is considered that Council should be authorised to be the local plan-making authority because the proposal is of local significance and is consistent with the endorsed strategic planning.

Recommendation:

It is recommended that Council is authorised to be the local plan-making authority for the planning proposal.

9. RECOMMENDATION


It is recommended that the delegate of the Secretary:

1. Agree that the proposal's inconsistency with Directions 1.2 Rural Zones and 4.3 Flood Prone Land are justified by the terms of the Directions.
2. Note that the proposal's consistency with Direction 2.3 Heritage Conservation is unresolved and will require justification.

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

1. An Aboriginal Cultural Heritage Assessment shall be prepared in accordance with relevant NSW government guidelines for the site to which the Planning Proposal applies.

2. The planning proposal should be made available for community consultation for a minimum of 28 days.
3. Consultation is required with the following public authorities:
 - Shoalhaven Water
 - Endeavour Energy
 - NSW Department of Planning, Industry and Environment (Biodiversity and Conservation)
4. The time frame for completing the LEP is to be 12 months from the date of the Gateway determination.
5. Given the nature of the planning proposal, Council should be the local plan-making authority.



27/4/20

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