

PLANNING PROPOSAL – PP023

Amendment to Shoalhaven Local Environmental
Plan 2014 Height of Buildings (HOB) Map
Lots 1 & 6 DP 1082382
Island Point Road (Anson Street), St Georges
Basin

Prepared by
Planning, Environment and Development Group
Shoalhaven City Council

File: 54893E

Version: 5 – Final

Date: Adopted by Council 6 August 2019
Min. DE19.69

Shoalhaven City Council
PO Box 42
NOWRA NSW 2541
telephone (02) 4429 3111
facsimile (02) 4422 1816
e-mail planning@shoalhaven.nsw.gov.au
internet www.shoalhaven.nsw.gov.au

Disclaimer

Every effort has been made to provide accurate and complete information.
However, Shoalhaven City Council assumes no responsibility for any direct, indirect, incidental, or consequential damages arising from the use of information in this document.

Copyright Notice

No part of this publication may be reproduced in any form, or stored in a database or retrieval system, or transmitted or distributed in any form by any means, electronic, mechanical photocopying, recording, or otherwise without written permission from Shoalhaven City Council. All rights reserved.

Copyright © 2019, Shoalhaven City Council

Re-Exhibition/Finalisation Explanatory Note

An earlier version of this Planning Proposal was the subject of a Gateway Determination issued by a delegate of the NSW Minister for Planning on 29 November 2017 and was subsequently publicly exhibited by the Council as part of the community consultation process under s.57 of the *Environmental Planning and Assessment Act 1979 (the Act)*. The public exhibition occurred from 20 December 2017 to 2 February 2018.

On 14 December 2018 the Land and Environment Court of New South Wales found in *DeBattista v Minister for Planning and Environment* [2018] NSWLEC 202 that the position adopted by the Council in the Planning Proposal that was publicly exhibited was inconsistent with the terms of the Gateway Determination and, in this regard, was “significantly materially misleading”. Specifically, the Court found that the publicly exhibited Planning Proposal stated that the Planning Proposal was consistent with Direction 3.1 that the Minister had made under (the now repealed) s. 117 of the Act despite the Minister’s Delegate forming the view that the Planning Proposal was inconsistent with this direction. As a consequence, the Court declared that the community consultation process is void and of no effect.

The Court’s decision did not affect the Gateway Determination, only the community consultation process.

The Council has elected to address the defects in the Planning Proposal and recommence the community consultation process under the Act.

The amendments to the Planning Proposal set out in this document compared with the version of the Planning Proposal previously publicly exhibited are:

- amendments to Section 4.2.4 in relation to the consistency of the Planning Proposal with applicable Ministerial Directions;
- an amendment to Section 4.2.2 which reflects the Council’s adoption of a new Community Strategic Plan since the Planning Proposal was previously publicly exhibited;
- an amendment to Part 4.4 noting the referral of the Planning Proposal to the Rural Fire Service;
- the inclusion of references to the new decimal section numbers of the Act which commenced on 1 March 2018; and
- other minor amendments of an administrative nature (for example, a revised anticipated timeline).

This amended Planning Proposal was forwarded to the Minister in accordance with s.3.35 (formerly s.58) of the Act and then publicly exhibited from 27 February until 29 March 2019 (31 days).

Following the public exhibition, a Public Hearing was also held on 1 July 2019 and the Planning Proposal was finally adopted by Council, as exhibited, on 6 August 2019.

Table of Contents

Table of Contents	4
1 Introduction	6
1.1 Subject Land.....	6
1.2 Background	9
Part 1 –Intended Outcome.....	10
Part 2 – Explanation of Provisions	11
4 Part 3 – Justification	12
4.1 Need for the Planning Proposal (Section A)	12
4.1.1 Is the Planning Proposal a result of any strategic study or report?	12
4.1.2 Is the Planning Proposal the best means of achieving the objectives or intended outcomes, or is there a better way?.....	12
4.2 Relationship to strategic planning framework (Section B).....	12
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)?	12
4.2.2 Is the Planning Proposal consistent with the local council’s Community Strategic Plan, or other local strategic plan?	13
4.2.3 Is the Planning Proposal consistent with applicable state environmental planning policies?.....	15
4.2.4 Is the Planning Proposal consistent with applicable Ministerial Directions (s. 9.1, formerly s.117, directions)?	15
4.3 Environmental, Social and Economic Impact (Section C)	18
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?.....	18
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?	18
4.3.3 How has the Planning Proposal adequately addressed any social and economic effects?	18
4.4 State and Commonwealth Interests (Section D)	19
4.4.1 Is there adequate public infrastructure for the Planning Proposal?	19
4.4.2 What are the views of state and Commonwealth public authorities consulted in accordance with the Gateway determination?.....	19
5 Part 4 – Mapping	19
6 Part 5 – Community Consultation	20
7 Part 6 – Project Timeline	20

Figures

Figure 1: Location Map	6
Figure 2: Subject Land	7
Figure 3: Aerial Photo	8
Figure 4: Current Land Use Zones	8
Figure 5: Current Height of Buildings Figure 6: Proposed Height of Buildings	11
Figure 7: Settlement Hierarchy (JBSS)	13
Figure 8: Urban Renewal actions in JBSS (page 73)	14

Attachments

Attachment 1 - Council report and minute supporting PP
Attachment 2 – SEPP Checklist
Attachment 3 – s9.1 (formerly s117) Ministerial Direction Checklist
Attachment 4 - Evaluation Criteria for the Delegation of Plan Making Functions
Attachment 5 - Evaluation criteria for the issuing of an Authorisation
Attachment 6 – Current and proposed Height of Building Maps
Attachment 7 – Feasibility Analysis
Attachment 8 – Character Assessment & Urban Design Review
Attachment 9 - Gateway Determination
Attachment 10 – RFS Referral Response

1 Introduction

This Planning Proposal (PP) seeks to amend the Maximum Building Height control over Lots 1 and 6 in DP1082382, Island Point Road, St Georges Basin mapped in the Height of Building (HOB) Map Sheet HOB_014F in Shoalhaven Local Environmental Plan (LEP) 2014. The PP is the result of a Council resolution dated 6 December 2016, as per MIN 16.943, which resolved to:

Retain the current 8 metre height control over the western part of lot 1 DP 1082382, and prepare a planning proposal to amend the height of buildings map over the remainder of lots 1 and the whole of Lot 6 DP 1082382 Anson Street, St Georges Basin and remove the current 13 metre height and replace with 8.5 metre mapped height.

1.1 Subject Land

The PP applies to B4 Mixed Use and R1 General Residential zoned land located 1 and 6 in DP1082382, Island Point Road, St Georges Basin. **Figure 1** shows the location of the subject land.

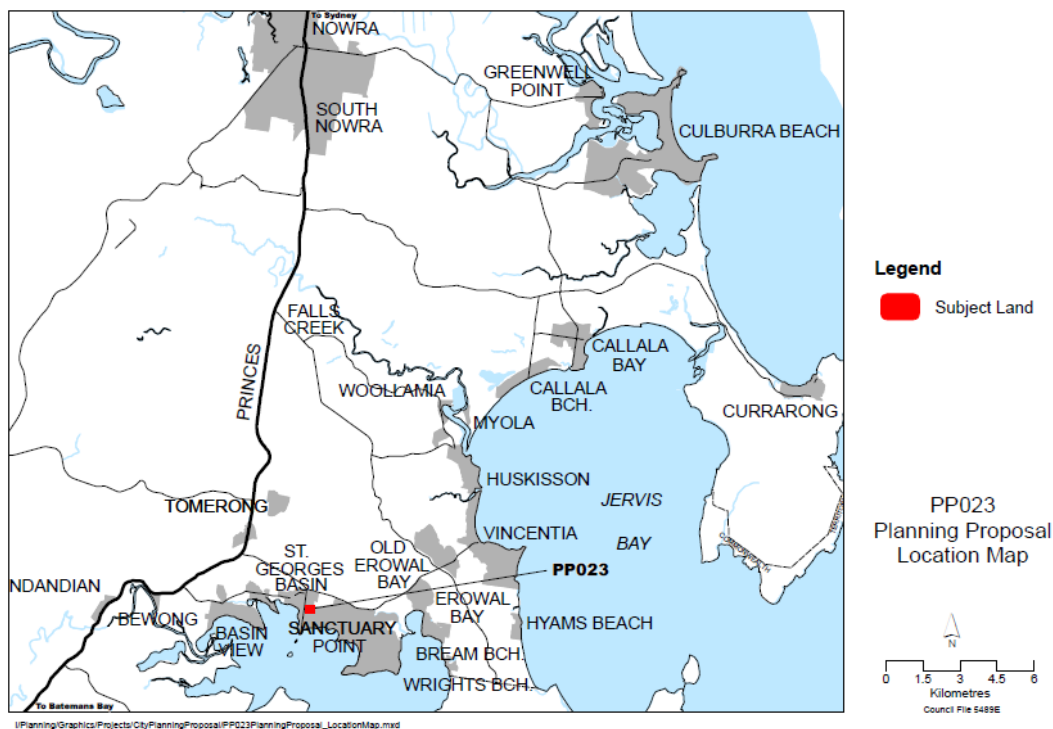


Figure 1: Location Map

The lots subject of the proposal, lots 1 and 6 in DP1082382, are located one block east of Island Point Road, St Georges Basin, within a corridor of B4 Mixed Use and R1 General

Residential zoned land that runs north to south. Land adjoining to the east and west of the subject lots is predominantly zoned R2 Low Density Residential. Anson Street runs east to west, separating the two lots and delineating the B4 Mixed Use and R1 General Residential zones. Lot 1 is zoned B4 Mixed Use, consistent with the adjoining land to the north, whilst lot 6 is zoned R1 General Residential consistent with the area to the south. Lot 1 has an approximate area of 1.62 hectares and Lot 6 has an approximate area of 1.97 hectare, respectively. Please refer to **Figures 2, 3 & 4** below.

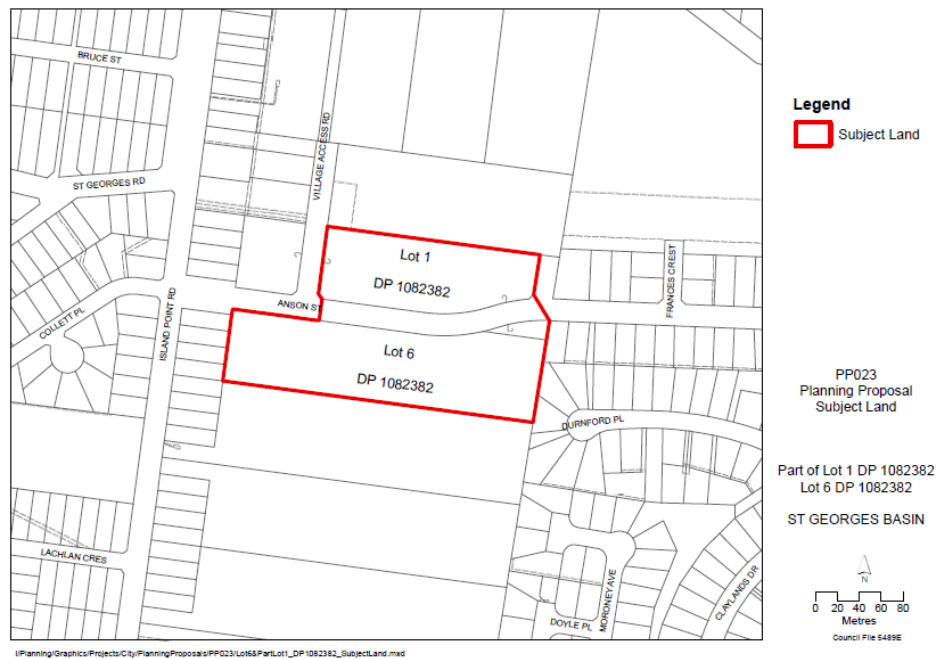


Figure 2: Subject Land

Planning Proposal – Shoalhaven LEP 2014 – Amendment to Height of Buildings Map for Lots 1 & 6 DP 1082382 Island Point Road (Anson Street), St Georges Basin



Figure 3: Aerial Photo

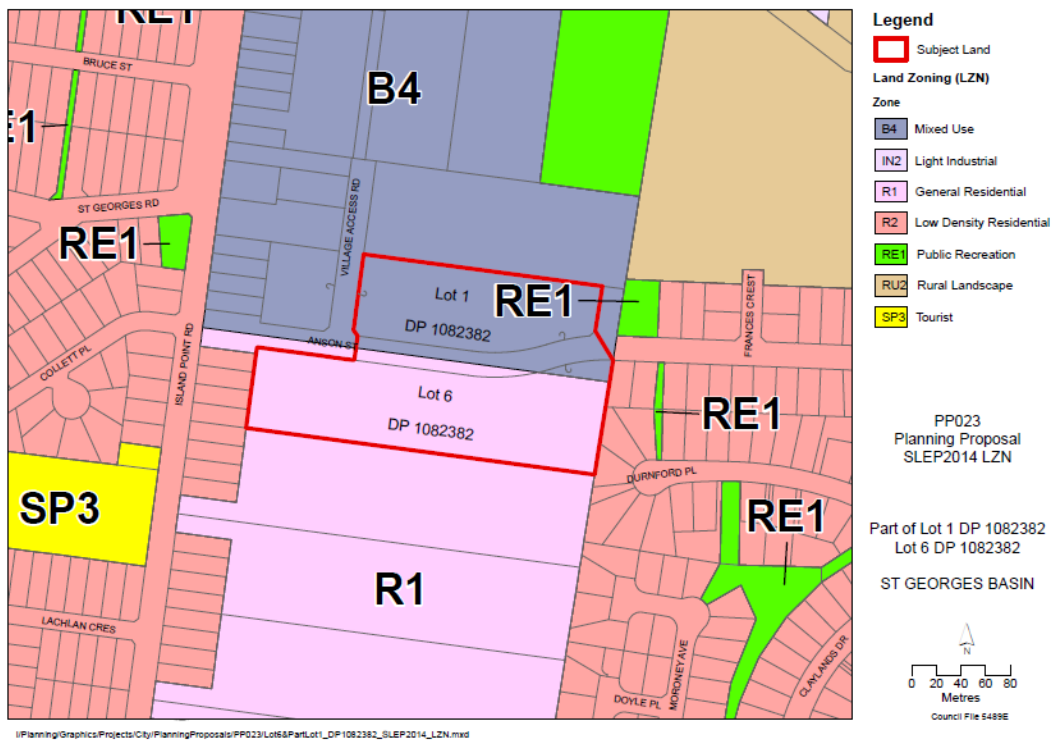


Figure 4: Current Land Use Zones

1.2 Background

Prior to the preparation of the Shoalhaven LEP 2014, building height controls largely sat outside the LEP and were generally controlled via Development Control Plans (DCP's) and a provision in the previous Illawarra Regional Environmental Plan (REP) that enabled Council to consider development up to 11 metres. Any development above 11 metres required the concurrence of the NSW Planning Minister (or a delegate).

With the move to the new Standard LEP Instrument in NSW, Council was required to include 'height of building' controls in its new LEP. This occurred in Shoalhaven LEP 2014 in two ways:

- Zones, areas or sites were mapped at a specific height based on existing controls that may have been in place in existing DCP's.
- Provisions included in Clause 7.3 Height of Buildings in the LEP instrument for those areas that are not mapped, requiring the height of buildings on the land to not exceed 11 metres.

Throughout the LEP preparation and exhibition processes, the 'height of building' control was an issue of general community concern throughout Shoalhaven.

Specific 'height of building' decisions were made during the LEP preparation process and in respect to the land which is the subject of this proposal, these are summarised below.

Draft LEP 2011 Exhibition – two submissions were received that commented on the proposed height controls in the vicinity of the St. Georges Basin Village Centre.

- Submission 1 supported the proposed mapped height limit of 8 metres for the St. Georges Basin Village Centre (note not all the zoned area) that was consistent with the former DCP No.17 that covered this area.
- Submission 2 requested a 13 metre building height for lot 1 and 6 DP1082382 to ensure that a realistic development opportunity for the subject land was economically feasible (Note: an economic feasibility study was included with the submission).

It was noted in the Council report following the exhibition that changing the height of buildings map for lots 1 and 6 DP1082382 to 13 metres would be inconsistent with the DCP and maybe inconsistent with the existing and desired future character for the area.

The report went on to note that the submission argued that higher density residential development, as per the master plan that the landowner had developed for the site, was only economically viable if the height of buildings for the two sites were increased to 13 metres. The submission acknowledged that this was not likely to be popular with the community.

Staff noted that should a future development proposal warrant heights that are inconsistent with the DCP then a future PP could be considered for the site and this would enable specific dialogue with the community on the proposal. As a result, the report recommended that the height of buildings remain unchanged in this location – 8 metres for the village centre as per the DCP and the 11 metres general maximum elsewhere.

Council, however, ultimately resolved on 30 May 2012 to:

- *Change the maximum height of buildings for lots 1 and 6 DP 1082382 St. Georges Basin to 13 metres to facilitate the feasibility of higher density development on the site.*

Draft LEP 2013 Exhibition – during this exhibition five submissions (including one from the Basin Villages Forum) were received on the changes that were made to the height of buildings for lots 1 and 6 DP 1082382, Island Point Road, St. Georges Basin, noting that it was a significant change that was contrary to the LEP ground rules and as such should not be supported.

One submission was also received on behalf of the owners who requested that the height for lot 1 DP 1082382 be increased from 13 metres to 14 metres to enable buildings up to four storeys and to enable a commercial component consistent with the zoning provisions.

The Council report following the exhibition again recommended that the exhibited maximum 8 metre height of building overlay for the western portion of lot 1 DP 1082382 be retained and that the overlay be removed from the remaining eastern portion of lot 1 DP 1082382 and entirely from lot 6 DP 1082382.

Council however ultimately resolved on 17 July 2013 as per minute MIN 16.943 to:

- *Retain the exhibited maximum 8 metre Height of Building overlay for the western portion of lot 1 DP 1082382, and the Height of Building overlay for the remaining eastern portion of Lot 1 DP 1082382 and Lot 6 DP 1082382 be retained at 13 metres.*

As such the Shoalhaven LEP 2014 was finalised and ultimately notified on 8 April 2014 with the following ‘height of building’ controls detailed on the Height of Buildings Map Sheet HOB_014F:

- Western part of Lot 1 DP 1082382 – mapped at 8 metres (based on existing DCP controls)
- Eastern portion of Lot 1 DP 1082382 – mapped at 13 metres
- Lot 6 DP 10823825 – mapped at 13 metres

Part 1 –Intended Outcome

The intended outcome of this PP is to amend the current maximum building heights applying to the subject lots. This will be achieved by amending Shoalhaven LEP 2014 in the following manner to amend the Height of Buildings Map – Sheet HOB_14F to apply a maximum building height of 8.5m over part of Lot 1 and the whole of Lot 6 DP 1082382.

Part 2 of this PP illustrates the proposed map amendments to Shoalhaven LEP 2014.

Part 2 – Explanation of Provisions

The proposal will be achieved by amending the Shoalhaven Local Environmental Plan 2014 Height of Building Map Sheet HOB_14F to apply a maximum building height of 8.5m over part of Lot 1 and the whole of Lot 6 DP 1082382.

Figure 5 and 6 below illustrate the current and proposed height controls for lots 1 and 6 DP 1082382, Island Point Road, St. Georges Basin in the Shoalhaven LEP 2014 HOB_014F map sheet:

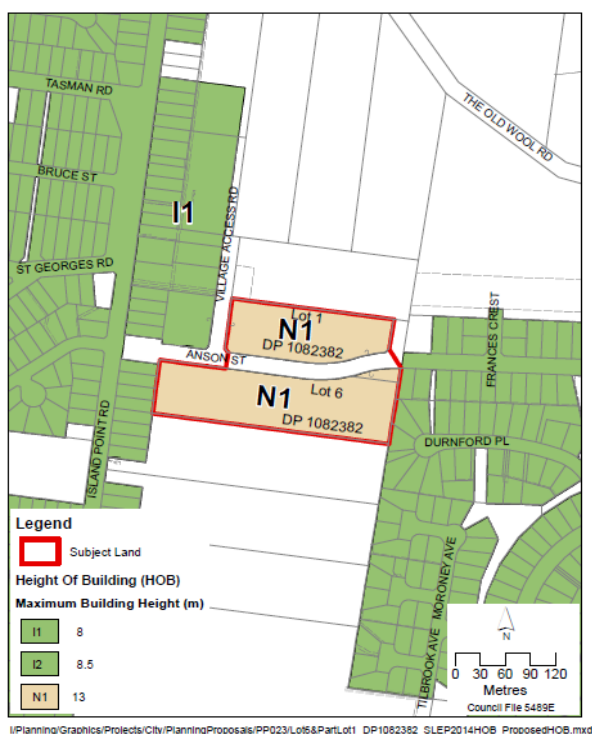


Figure 5: Current Height of Buildings

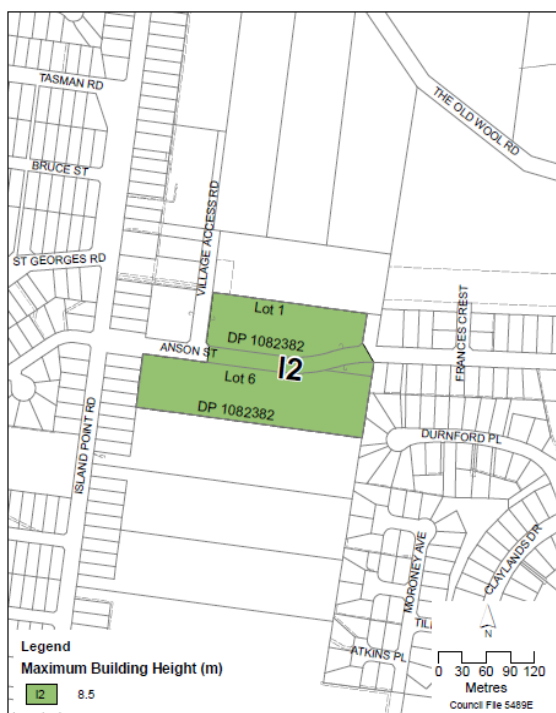


Figure 6: Proposed Height of Buildings

The current and proposed maps above shows the following:

- *Green and notated I1* – mapped ‘height of buildings’ is 8 metres. Note this is consistent with the area identified at this height in the former DCP No.17 – St. Georges Basin Village Centre.
- *Green and notated I2* – mapped ‘height of buildings’ is 8.5 metres
- *Brown and notated N1* – mapped ‘height of buildings’ is 13 metres.
- *Uncoloured* – no specific mapped height, however the provision in Clause 7.3 Height of Buildings in the LEP instrument enables buildings up to 11 metres to be considered. This provision also applies to the remainder of the land zoned B4 Mixed Use to the north of Anson Street and R1 General Residential to the south of Anson Street.

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 not the result of a strategic study or report. The specific ‘height of building’ controls in this location resulted from a submission received during the two (2) public exhibitions of the draft Shoalhaven LEP. There has been no specific result from strategic work that justified specific heights in this location in Shoalhaven LEP 2014, however Shoalhaven DCP 2014 Chapter N23 St Georges Basin, Village Centre (previously known as DCP No. 17 adopted in 2008) provides specific design controls for this location.

DCP No. 17 set a maximum height of buildings in the village centre of 8 metres with a potential 2 metre bonus height for medium density residential development. The current height of buildings map for Lots 1 and 6 DP1082382 is considered to be inconsistent with the intention of DCP No. 17 and the existing and desired future character for the area. Due to the requirements of the Standard Instrument LEP, specific height limits included in Area Specific DCPs were transferred to the Height of Building map.

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

The PP is the only means of establishing a clear set of building height requirements for lots 1 and 6 in DP DP1082382 as resolved by Council to provide certainty for any future development proposals and for the desired future character of the area.

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)?

Illawarra-Shoalhaven Regional Plan (ISRP)

The ISRP is a high level strategic planning document which currently applies to the Shoalhaven. The ISRP addresses the provision of suitable land for employment and housing needs. The ISRP applies to Shoalhaven, and additionally identifies the Vincentia district, a centre of the broader Bay and Basin area as providing future housing and business services.

As such the PP is not inconsistent with the broad goals of the ISRP.

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

Jervis Bay Settlement Strategy (JBSS)

The broad aim of the JBSS is to manage future growth and settlement in the region over the next 15-20 years. It identifies broad areas for potential future development and sets principles to guide the planning outcomes for these areas. Section 10.1 Settlement Hierarchy and Map 9 (Figure 7) of the JBSS classifies St Georges Basin-Sanctuary Point as one of the regional towns in the settlement hierarchy that provides for convenience shopping and a small variety of retail uses.

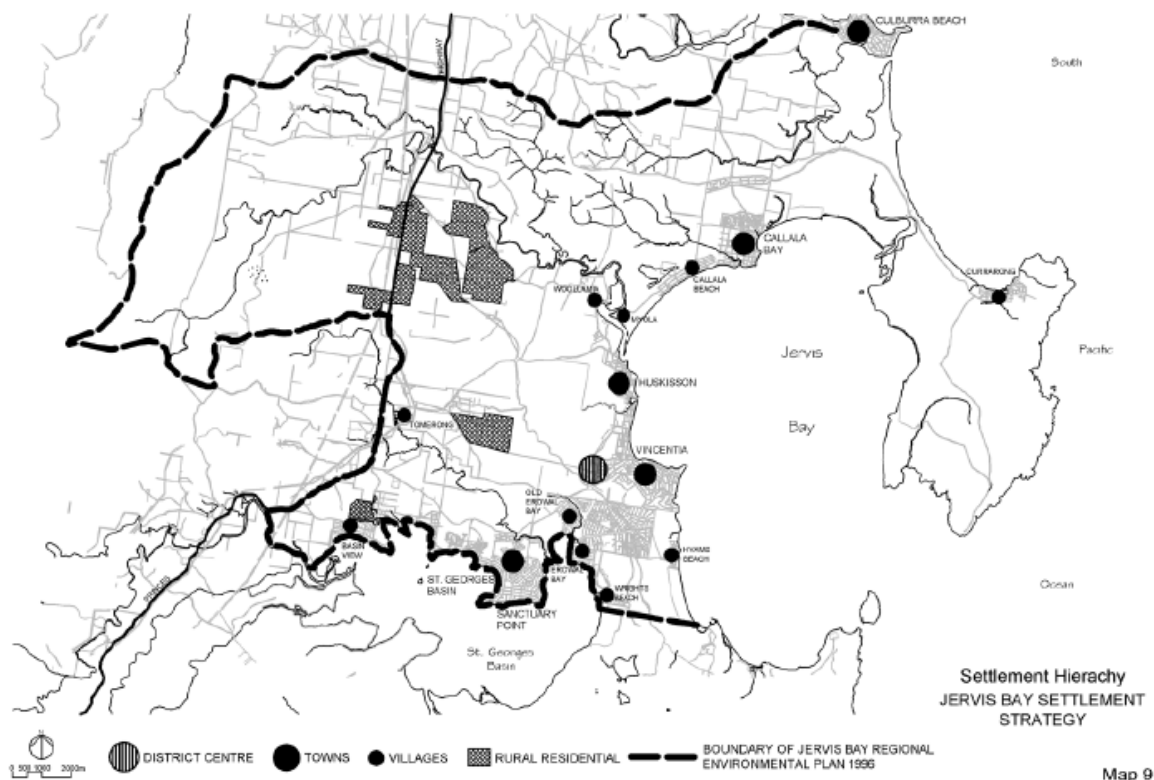


Figure 7: Settlement Hierarchy (JBSS)

Specific actions are included in the JBSS are outlined to meet the broad objective of urban renewal; *to ensure that opportunities for alternative development forms are investigated in order to meet future settlement needs for the region.* Figure 8 below outlines the actions proposed to address urban renewal in the JBSS. The PP will allow for future growth of St Georges Basin as a regional town whilst limiting building heights, maintaining the existing and future desired character of the area.

URBAN RENEWAL

Objective - To ensure that opportunities for urban renewal and alternative development forms are investigated in order to meet future settlement needs for the region.

Actions

- i. Current and future opportunities for, and issues associated with, urban renewal (eg. infill development, dual occupancy, medium density and so on) in existing settlements will be investigated.
- ii. Urban consolidation provisions within the current planning framework for the region will be investigated and reviewed to allow for a range of housing types, and to identify the likely future policy needs.
- iii. Guidelines will be established, where appropriate, to ensure development complements existing urban/village character, and to set performance standards for ensuring residential amenity, privacy, landscaping and so on.
- iv. Mixed use developments in commercial centres, including 'shop-top' housing, will be encouraged.
- v. Huskisson will be promoted as the gateway to the Jervis Bay Region by providing a range of integrated housing opportunities that caters for both tourist accommodation and permanent living.
- vi. Opportunities for a community education and consultation program targeted at positive urban renewal and initiatives will be explored and investigated.

Implementation Responsibility

Council, DIPNR, and relevant State Government Agencies

Timeframes for Action

- i. Short to medium term
- ii. Short to medium term
- iii. Short to medium term
- iv. Ongoing
- v. Ongoing
- vi. Short to medium term

Figure 8: Urban Renewal actions in JBSS (page 73)

Community Strategic Plan - Shoalhaven 2027 (CSP)

The CSP identifies four (4) Themes (objectives) and Key Priorities (strategies) in response to issues raised by the Shoalhaven community. The PP is consistent with the CSP Theme – 'sustainable, liveable environments' and specifically objective 2.2 *plan and manage appropriate and sustainable development*. The CSP recognises Nowra as the major centre of Shoalhaven City, providing administrative, commercial and other high order services for the area. Shoalhaven's other major settlement areas are identified as Nowra-Bomaderry, Milton-Ulladulla and the Bay and Basin area.

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

A full list of applicable State Environment Planning Policy (SEPPs) and whether the PP is consistent with each applicable SEPP is provided at Attachment 2. The most relevant SEPP, being SEPP 71 Coastal Protection is discussed below.

SEPP 71 Coastal Protection

SEPP 71 applies to the subject site as it is located within the coastal zone. The PP is considered consistent with the SEPP in that the proposed building heights and supporting development controls will ensure that the type, bulk, scale and size of development is appropriate for the location and protects and improves the natural scenic quality of the surrounding area.

4.2.4 Is the Planning Proposal consistent with applicable Ministerial Directions (s.9.1, formerly s.117, directions)?

The Ministerial Directions are considered in **Attachment 3** and those that are specifically relevant to the site and the proposal are discussed in greater detail below.

1.1 Business and Industrial zones

The PP is inconsistent with this Direction because, at face value, it will reduce the total potential floor space area for employment uses in the part of the subject land that is within a business zone (B4 Mixed Use).

A planning proposal may be inconsistent with the terms of this Direction if the Council can satisfy the Secretary of the NSW Department of Planning and Environment (or an officer of the Department nominated by the Secretary) that the inconsistency is:

- justified by a study (prepared in support of the planning proposal) which gives consideration to the objective of the direction; or
- of minor significance.

The Council is of the view that the provisions of the PP which are inconsistent with the Direction are of minor significance because:

- the PP relates to a small defined area of land in St. Georges Basin and does not propose to change the zoning of the subject land;
- the part of the subject land which is within a business zone (B4 Mixed Use) comprises a small portion (0.92 %) of the total available business B4 zoned land within the local government area; and
- the proposed height is more consistent with the existing provisions that apply to other parts of the B4 zone within the St. Georges Basin town centre that are currently mapped in the LEP at 8.0 metres.

However, the Council also commissioned a feasibility analysis that considers the objectives of the Direction and the viability of hypothetical development heights at 13m, 11m and 8.5m: see **Attachment 8**. The report concludes that development approval

consistent with the existing height limit of 13m may well have the effect of “sterilising” the land as the viability of development at this scale is questionable due to associated construction costs and end lot selling prices. The report also concludes that the retention of the western section of the commercial zoned land, at the intersection of Anson Street and the service lane parallel with Island Point Road is likely to be sufficient to encourage employment growth and protect employment land with respect to the small commercial precinct. Accordingly, while, at face value, the reduction in maximum height under the PP will reduce potential floor space, the feasibility analysis demonstrates that the development at the maximum height is not feasible in any event.

The Council is of the view that the inconsistency with the Direction is also potentially justified by the feasibility analysis.

Attachment 7 provides further relevant commentary regarding urban design.

2.2 Coastal Protection

The Direction applies as the PP affects land within the coastal zone. The purpose of the PP is to reduce the height limit on certain land and is not inconsistent with this direction.

3.1 Residential zones

This Direction applies to the PP as it affects land within a residential zone (R1) and land that is in a zone (B4) in which residential development is permitted.

The PP is inconsistent with this direction as it will limit the maximum building height of future development which will reduce the permissible residential density of the land.

A planning proposal may be inconsistent with the terms of this Direction if the Council can satisfy the Director-General of the NSW Department of Planning and Environment (or an officer of the Department nominated by the Director-General) that the provisions of the planning proposal that are inconsistent are:

- justified by a study (prepared in support of the planning proposal) which gives consideration to the objective of the direction; or
- of minor significance.

The Council is of the view that the provisions of the PP which are inconsistent with the Direction are of minor significance because:

- the PP relates to a small defined area at St. Georges Basin and does not propose to change the zoning of the subject land;
- the existing zones applicable to the subject land (R1 Residential and B4 Mixed Use) will still provide for a variety of housing types and choices;
- the PP affects only a portion (1.97 hectares) of the R1 zoned land in this location (approximately 19%); and
- the subject land comprises a small portion (0.14%) of the total land zoned R1 within the local government area; and

The Council is also of the view that the provisions of the PP which are inconsistent with the Direction are justified by the feasibility analysis that has been undertaken – see **Attachment 7**. This study concluded that:

- the viability of development is not contingent upon the height limit;
- that development approval consistent with existing height limits may very well have the effect of “sterilising” the land.
- the reduced height limits are more likely to facilitate development that is consistent with the objectives of Direction 3.1.
- Demand for lower scale development is likely to be significantly higher than that for multi storey units within St Georges Basin, therefore, encouraging a variety of housing types (one and two storey villa and/or townhouse).

Accordingly, while, at face value, the reduction in maximum height under the PP will reduce the permissible residential density of the land, the feasibility analysis demonstrates that the development at the maximum height is not feasible in any event.

An urban design consultant Atlas Urban, undertook a character and urban design assessment of the existing area for Council, to assist in determining the appropriate future built form in this area. This report is provided as **Attachment 8**. The report concluded that the maximum height for the subject land should be in line with the surrounding height environment, which the report found was two storeys.

3.4 Integrated Land Use and Transport

The subject site is zoned for both business and residential purposes and the PP aims to reduce building height controls across the subject lots. The PP is consistent in that it will still allow or encourage the consolidation of businesses and services to the area as the underlying zones will be retained unchanged and therefore reduce travel demand by car and encourage walking, cycling and public transport. Despite limiting the height of future development, it will still provide a variety of housing types and choice.

4.4 Planning for Bushfire Protection

The subject land is mapped as bushfire prone land. As such, development in this area will need to consider the NSW Rural Fire Services Planning for Bushfire Protection. The PP is consistent with this direction, subject to consultation with the Commissioner of the NSW Rural Fire Service (RFS) following Gateway determination. Note: this consultation was undertaken with the RFS and they raised no concerns or issues – see **Attachment 10**.

5.10 Implementation of Regional Plans

The Illawarra-Shoalhaven Regional Plan (ISRP) identifies the Vincentia district, as a regional centre servicing the local area and surrounding suburbs, providing a range of business, retail and entertainment uses, including supermarkets, health and other services. St Georges Basin is not identified as a regional centre or urban centre in the ISRP, however is one of the regional towns supporting the Vincentia district and the Bay and Basin community.

Given that the 'height of building' controls were effectively a 'one-off' change that occurred during the introduction of the Standard Instrument LEP, the proposal to change or adjust the height of buildings within this area is not inconsistent with the Regional Plan.

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?

Whilst it is unlikely that the proposed change to 'height of building' controls will result in any effects to critical habitat, threatened species, populations or ecological communities or their habitats, the impacts of future development on the site will likely have a significant impact. The site is known to contain a number of threatened flora and fauna species including a community of *Melaleuca Biconvexa*, a protected species of vulnerably listed paperbark and *Petarus australis* or Yellow-bellied Glider, also a vulnerably listed protected species.

A previously lodged Development Application (DA) for multi-dwelling housing also identified the presence of critically endangered orchids, *Pterostylis Ventricosa*, found in the locality. Whilst it is unlikely that the PP will result in any direct effects, any likely impacts as a result of future development on the site will need to be considered as part of the future DA process.

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 proposed amendment is anticipated to have minimal environmental impacts. As discussed above, the site does contain a number of critical habitat and endangered communities. Whilst the proposed change to 'height of building' controls will be unlikely to have any environmental effects, environmental impacts from any future DA process will need to be considered.

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

Social Impacts

The PP proposes to amend the 'height of building' controls for the subject property. The decision to limit building height controls to between 8 - 8.5 metres will assist in ensuring future development of the site is consistent with existing adjoining residential building heights as well as the desired future character of the area, controlling amenity impacts expressed through submissions during the original LEP public consultation process. Additionally, the PP will not cause any adverse effects on existing social infrastructure and

the issue will be specifically considered and addresses through any future development proposal.

Economic Impacts

The proposal to amend height of building controls over the majority of the site from 13m to 8.5m, will have a minimal impact. Whilst supply will be decreased with the lower density option, when considering economic impacts, consideration must be given to the value associated with maintaining the existing character of the area, as well as impacts of higher density development on existing residences within the location. The proposal to amend the 'height of building' controls will enable future development to take place on the site whilst being sympathetic to the existing built form and natural features of the location.

4.4 State and Commonwealth Interests (Section D)

4.4.1 Is there adequate public infrastructure for the Planning Proposal?

The proposed amendment to building height controls is located within an existing residential area where there is already generally adequate infrastructure and services to support the increased development potential of the area. This issue will also be specifically considered and if necessary addressed through future development proposals.

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

Public Authority	Reason
Rural Fire Services	The Gateway determination conditioned consultation with the RFS for a period of up to 21 days. RFS reviewed the PP documents and raised no concerns or issues in relation to bush fire – See Attachment 10

5 Part 4 – Mapping

The PP is supported by the following maps:

- Location Map
- Cadastral Map
- Aerial Map
- Current Zoning
- Current Height of Building Map
- Proposed Height of Building Map

As addressed in the intended outcomes, this PP will require an amendment to the Height of Buildings Map – Sheet HOB_14F to retain the current maximum building height of 8.0 metres to the western part of Lot 1 DP 1082382 and amend the Height of Buildings Map – Sheet HOB_14F to apply a maximum building height of 8.5m over the remainder of Lot 1

and whole of Lot 6 DP 1082382. The Shoalhaven LEP 2014 Height of Buildings Map will be amended as per the explanation of intended provisions included in Part 2 of the PP. A copy of the current and proposed Height of Buildings Map sheet HOB_14F is included as Attachment 6.

6 Part 5 – Community Consultation

Council proposes to exhibit the planning proposal in accordance with the requirements of former Section 57 and the new Section 3.35 of the Environmental Planning and Assessment Act 1979 (EP&A Act), the Department's *Guide for Preparing Local Environmental Plans* and any other requirements as determined by the Gateway process. It is intended that an exhibition period of 28 days apply.

Public notification of the exhibition would include notification in the local newspapers, and a notice on Council's website. Hard copies of the planning proposal would be made available at Council's Administrative Buildings in Nowra and Ulladulla.

7 Part 6 – Project Timeline

The anticipated timeline for the Planning Proposal is outlined in the table below.

Task	Anticipated Timeframe
Commencement date (date of Gateway determination)	29 November 2017
Completion of Gateway determination requirements	December 2017
Initial Public exhibition	January/February 2018
Re-exhibition	February/March 2019
Consideration of submissions	March/April 2019
Post exhibition consideration of PP	April 2019
Finalisation and notification of Plan	April/May 2019

ATTACHMENTS

Attachment 1 – Council Report & Resolution supporting the Planning Proposal

Council report and Resolution supporting the PP

Possible Change – Height of Buildings – Shoalhaven Local Environmental Plan 2014 Anson Street, St Georges Basin

Purpose / Summary

Detail the options that are available to Council to consider reducing the ‘height of building’ controls in the Shoalhaven Local Environmental Plan (LEP) 2014 that apply to land on Anson Street, St. Georges Basin. Recommendation (Item to be determined under delegated authority)

Recommendation (Item to be determined under delegated authority)

That the Development Committee decide whether it wishes to pursue reducing the ‘height of building’ controls in Shoalhaven Local Environmental Plan 2014 over Lots 1 and 6 DP1082382 Anson Street, St. Georges Basin and if so which of the options outlined in the report to pursue.

Options

1. Retain the current 8 metre height control over the western part of Lot 1 DP1082382 and prepare a Planning Proposal (PP) to amend the ‘height of buildings’ map over the remainder of Lot 1 and the whole of 6 DP1082382 Anson Street, St. Georges Basin to remove the current 13 metre height and replace it with a more suitable mapped height (Note: Council would need to determine what height it wishes to apply should it proceed with this option).

Implications: This option if successful would see the existing 8 metre height retained over the western part of Lot 1 DP1082382 and a new height placed over the remainder of the subject land. That new height would however need to be determined.

In the absence of detailed work in this regard an 8.5 metre height could be applied to Lot 6 DP1082382 which is currently zoned R1 General Residential. An 8.5 metre height would be consistent with other residential zones in the area and in keeping with the scale/character of the existing adjacent residential development. It would however be inconsistent with the majority of other R1 zones city wide, where there is no mapped height (the general 11 metre maximum currently applies) to enable some flexibility given the development nature of the zone.

The remainder of Lot 1 DP1082382 (eastern part) is zoned B4 Mixed Use. There is no consistent height that has been applied to this zone city wide. In most cases the general 11 metre maximum applies, but in other specific locations higher heights have been mapped based on detailed work that has been undertaken.

2. Retain the current 8 metre height over the western part of Lot 1 DP1082382 and prepare a PP to amend the ‘height of buildings’ map over the remainder of Lot 1 (eastern part) and the whole of 6 DP1082382 Anson Street, St. Georges Basin to remove the current 13 metre height.

Implications: This option would be consistent with the recommended approach that was suggested during the preparation of the Shoalhaven LEP 2014, in that it maintained the 'status quo' that previously applied. It would mean that the majority of the land would have no mapped height and the general 11 metre maximum in the LEP would apply. This would enable some flexibility up to 11 metres given the nature of the zone.

Background

It was resolved on the 25th October 2016 that:

The General Manager prepare a report in respect to options that consider reducing the height limits at Lot 1 & 6 DP1082382 Anson Street, St. Georges Basin.

As such, this report provides relevant background and details the options that are available to Council to consider amending the LEP in this regard.

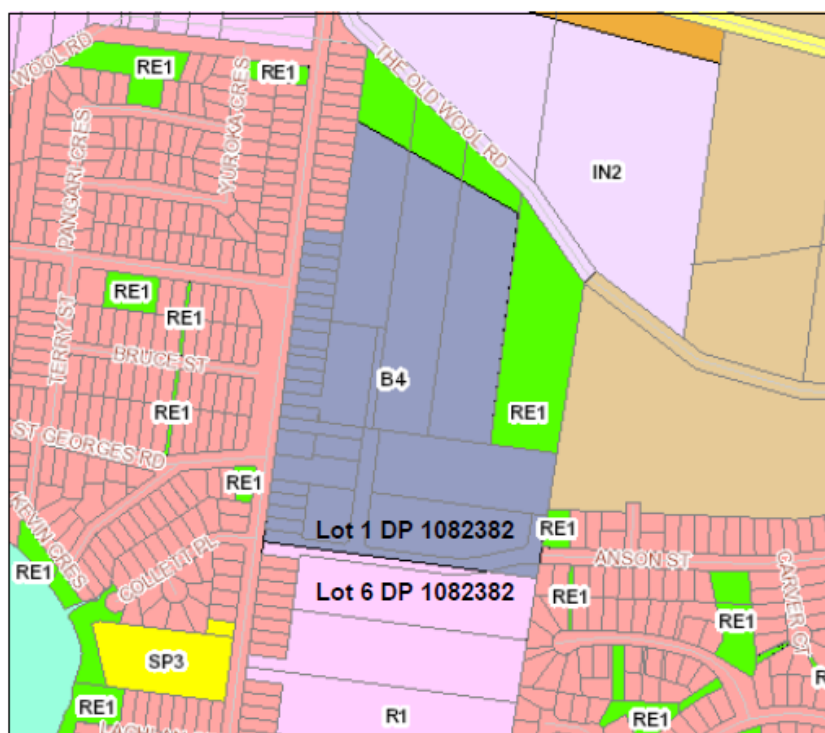
LEP Existing Zones

Under the Shoalhaven LEP 2014 the subject land has the following zoning:

Lot 1 DP 1082382 – B4 Mixed Use (Note: lot is in 3 parts)

Lot 6 DP 1082382 – R1 General Residential.

The existing zones are shown on the following map:



*Extract: Shoalhaven LEP2014 – Zones
St. Georges Basin*

The B4 Mixed Use zone allows a mix of compatible land uses including business, office, residential, retail and other development in accessible locations. The R1 General Residential zone provides for a variety of housing types and densities.

It also allows other land uses that provide facilities or services to meet the needs of residents. As such both zones in this location are relatively flexible and allow a range of land uses.

LEP Background – Height of Buildings

Prior to the preparation of the Shoalhaven LEP 2014, building height controls largely sat outside the LEP and in appropriate areas or zones were controlled via Development Control Plans (DCP's) and a provision in the previous Illawarra Regional Environmental Plan (REP) that enabled Council to consider development up to 11 metres.

With the move to the new Standard LEP Instrument in NSW, Council was required to include 'height of building' controls in its new LEP. This occurred in our LEP in two ways:

- Zones, areas or sites were mapped at a specific height based on existing controls that may have been in place in existing DCP's
- Provision included in Clause 7.3 Height of Buildings in the LEP instrument for those areas that are not mapped, requiring the height of buildings on the land to not exceed 11 metres.

Throughout the LEP preparation and exhibition processes, the 'height of building' control was an issue of general community concern throughout Shoalhaven.

Specific 'height of building' decisions were made during the LEP preparation process and in respect to the land which is the subject of this resolution, these are summarised below.

Draft LEP 2011 Exhibition – two submissions were received that commented on the proposed height controls in the vicinity of the St. Georges Basin Village Centre.

- One supported the proposed mapped height limit of 8 metres for the St. Georges Basin Village Centre (note not all the zoned area) that was consistent with the former DCP No.17 that covered this area.
- One requested a 13 metre building height for Lot 1 and 6 DP1082382 to ensure that a realistic development opportunity for the subject land was economically feasible (Note: economic feasibility study was included with the submission).

It was noted in the Council report following the exhibition that changing the height of buildings map for Lots 1 and 6 DP1082382 to 13 metres would be inconsistent with the DCP and maybe inconsistent with the existing and desired future character for the area. The report went on to note that the submission argued that higher density residential development, as per the master plan that the landowner has developed for the site, was only economically viable if the height of buildings for the two sites is increased to 13 metres. The submission acknowledged that this was not likely to be popular with the community.

Staff noted that should a future development proposal warrant heights that are inconsistent with the DCP then a future PP can be considered for the site and this would enable

specific dialogue with the community on the proposal. As a result the report recommended that the height of buildings remain unchanged in this location – 8 metres for the village centre as per the DCP and the 11 metres general maximum elsewhere.

Council however ultimately resolved on 30 May 2012 to:

Change the maximum height of buildings for Lots 1 and 6 DP 1082382 St. Georges Basin to 13 metres to facilitate the feasibility of higher density development on the site.

Draft LEP 2013 Exhibition – during this exhibition five submissions (including one from the Basin Villages Forum) were received on the change that was made to the height of buildings for Lot 1 and 6 DP 1082382 St. Georges Basin, noting that it was a significant change that was contrary to the LEP ground rules and as such should not be supported.

One submission was also received on behalf of the owners who requested that the height for Lot 1 DP 1082382 be increased from 13 metres to 14 metres to enable buildings up to four storeys and to enable a commercial component consistent with the zoning provisions.

The Council report following the exhibition again recommended that the exhibited maximum 8 metre height of building overlay for the western portion of Lot 1 DP 1082382 be retained and that the overlay be removed from the remaining eastern portion of Lot 1 DP 1082382 and entirely from Lot 6 DP 1082382.

Council however ultimately resolved on 17 July 2013 to:

Retain the exhibited maximum 8 metre Height of Building overlay for the western portion of Lot 1 DP 1082382, and the Height of Building overlay for the remaining eastern portion of Lot 1 DP 1082382 and Lot 6 DP 1082382 be retained at 13 metres.

As such the Shoalhaven LEP 2014 was finalised and ultimately notified on 8 April 2014 with the following 'height of building' controls:

- Western portion of Lot 1 DP 1082382 – mapped at 8 metres.
- Eastern portion of Lot 6 DP 1082382 – mapped at 13 metres.

The following map provides shows the current mapped areas and their heights in this location:



*Extract: Shoalhaven LEP2014 – Height of Buildings Map
St. Georges Basin*

The above map shows the following:

Green and notated I1 – mapped ‘height of buildings’ is 8 metres. Note this is consistent with the area identified at this height in the former DCP No.17 – St. Georges Basin Village Centre.

Brown and notated N1 – mapped ‘height of buildings’ is 13 metres.

Uncoloured – no specific mapped height, however the provision in Clause 7.3 Height of Buildings in the LEP instrument enables buildings up to 11 metres to be considered. This provision also applies to the remainder of the land zoned B4 Mixed Use to the north of Anson Street and R1 General Residential to the south of Anson Street.

Community Engagement

Should Council decide to proceed with a PP to amend the Shoalhaven LEP 2014 to adjust the ‘height of building’ controls in this location and the matter receives a favourable Gateway determination from the NSW Department of Planning & Environment (DP&E), then there will be a formal community consultation opportunity as part of the PP process.

Policy Implications

It is noted that the specific ‘height of building’ controls in this location resulted from a submission during the draft LEP 2014 preparation process. They did not result from any strategic work that justified specific heights in this location.

It is noted that the Council reports in 2012 and 2013 both recommended against placing the requested building height in this location as part of the new LEP process. The reports noted that should a future development proposal warrant heights that are inconsistent with the then DCP or the generic height controls then a future PP could be considered for the site. This would have enabled specific dialogue with the community on the proposed changes.

Given that the 'height of building' controls were effectively a 'one-off' change that occurred during the new LEP process, changing or adjusting them is unlikely to be inconsistent to any great deal with existing Council or NSW Government Policy. As such Council is able to consider making this change and appropriate justification for any change would be included in the PP that is forwarded to the DP&E.

Should the 'height of building' controls in this location ultimately change and depending on the outcome of the development application in this this location it could result in a 13 metre development eventuating on part of Lot 6 and the remainder of the land having a lesser height control. This is a potential outcome given that a development application is currently pending over part of the lot.

Financial Implications

Any future PP would be undertaken using existing resources in Councils Strategic Planning Section and as such would be managed within existing budgets.

Development Committee Meeting 6 December 2016

RESOLVED (Clr Findley / Clr Cheyne)

MIN16.943

That Council retain the current 8m height control over the western part of Lot 1 DP 1082382 and prepare a planning proposal to amend the height of buildings map over the remainder of Lot 1 and the whole of 6 DP1082382 Anson Street, St Georges Basin and remove the current 13m height and replace with 8.5m mapped height.

FOR: Clr Findley, Clr White, Clr Gash, Clr Levett, Clr Cheyne, Clr Alldrick, Clr Gartner, Clr Guile, Clr Pakes, Clr Watson, Clr Kitchener, Clr Proudfoot and Russ Pigg

AGAINST: Nil

CARRIED

Attachment 2. SEPP Checklist

SEPP	Name	Applicable	Not inconsistent
1	Development Standards	✓ / ✗	✓ / n/a
14	Coastal wetlands	✗	n/a
19	Bushland in Urban Areas	✗	n/a
21	Caravan parks	✗	n/a
26	Littoral rainforests	✗	n/a
30	Intensive agriculture	✗	n/a
33	Hazardous and Offensive development	✗	n/a
36	Manufactured home estates	✗	n/a
44	Koala habitat protection	✗	n/a
50	Canal estate development	✗	n/a
52	Farm Dams and Other Works in Land and Water Management Plan Areas	✗	n/a
55	Remediation of land	✗	n/a
62	Sustainable aquaculture	✗	n/a
64	Advertising and signage	✗	n/a
65	Design quality of residential apartment development	✗	n/a
70	Affordable Housing (Revised Schemes)	✗	n/a
71	Coastal protection	✓	✓
--	Housing for Seniors or People with a Disability 2004	✗	n/a
--	BASIX : 2004	✗	n/a
--	Mining, Petroleum Production and Extractive Industries 2007	✗	n/a
--	Miscellaneous Consent Provisions 2007	✗	n/a
--	Infrastructure 2007	✗	n/a
--	Rural Lands 2008	✗	n/a
--	Exempt and Complying Development Codes 2008	✗	n/a
--	Affordable Rental Housing 2009	✗	n/a
--	Urban Renewal 2010	✗	n/a
--	Sydney Drinking Water Catchment 2011	✗	n/a
--	State and Regional Development 2011	✗	n/a

Attachment 3 - S117 (Now S9.1) Ministerial Direction Checklist

Direction		Applicable	Relevant	Not inconsistent
1 Employment and Resources				
1.1	Business and Industrial Zones	✓	✓	Inconsistent Refer to Section 4.2.4
1.2	Rural Zones	✗	✗	N/A
1.3	Mining, Petroleum Production and Extractive Industries	✗	✗	N/A
1.4	Oyster Aquaculture	✗	✗	N/A
1.5	Rural lands	✗	✗	N/A
2 Environment and Heritage				
2.1	Environmental Protection Zones	✗	✗	N/A
2.2	Coastal Protection	✓	✓	Refer to Section 4.2.4
2.3	Heritage Conservation	✗	✗	N/A
2.4	Recreation Vehicle Area	✗	✗	N/A
3 Housing, Infrastructure and Urban Development				
3.1	Residential Zones	✓	✓	Inconsistent Refer to Section 4.2.4
3.2	Caravan Parks and Manufactured Home Estates	✗	✗	N/A
3.3	Home Occupations	✓	✗	N/A
3.4	Integrating Land Use and Transport	✓	✓	Refer to Section 4.2.4
3.5	Development Near Licensed Aerodromes	✗	✗	N/A
3.6	Shooting Ranges	✗	✗	N/A
4 Hazard and Risk				
4.1	Acid Sulphate Soils	✓	✗	N/A
4.2	Mine Subsidence and Unstable Land	✗	✗	N/A
4.3	Flood Prone Land	✗	✗	N/A
4.4	Planning for Bushfire Protection	✓	✓	Refer to Section 4.2.4
5 Regional Planning				
5.2	Sydney Drinking Water Catchments	✗	✗	N/A
5.3	Farmland of State & Regional Significance Far North Coast	✗	✗	N/A
5.4	Commercial & Retail Development	✗	✗	N/A

	Far North Coast			
5.8	2 nd Sydney Airport: Badgerys Creek	✘	✘	N/A
5.9	North West Rail Link Corridor Strategy	✘	✘	N/A
5.10	Implementation of Regional Plans	✓	✓	Refer to Section 4.2.4
6 Local Plan Making				
6.1	Approval and Referral Requirements	✓	✓	✓
6.2	Reserving Land for Public Purposes	✓	✘	N/A
6.3	Site Specific Provisions	✓	✘	N/A

Attachment 4 - 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
PP023

Address of Land (if applicable):

The subject land is known as Anson Street, St Georges Basin and is legally described as Lot 1 and 6, DP 1082382

Intent of draft LEP:

The Planning Proposal seeks to amend the height of building maps applying to lots 1 and 6 in DP1082382. The PP will retain the current 8 metre height control over the western part of lot 1 DP 1082382, and amend the height of buildings map over the remainder of lots 1 and the whole of Lot 6 DP 1082382 Anson Street, St Georges Basin to remove the current 13 metre height and replace with an 8.5 metre mapped height.

Additional Supporting Points/Information:

Attachment 5 - Evaluation criteria for the issuing of an Authorisation

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 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 S117 (now 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?		N/A		
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?		N/A		
Does the Planning Proposal include another form of endorsement or support from the Heritage Office if there is no supporting strategy/study?	N	N/A		

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	N/A		
Reclassifications				
Is there an associated spot rezoning with the reclassification?	N			
If yes to the above, is the rezoning consistent with an endorsed Plan Of Management POM) or strategy?	N			
Is the Planning Proposal proposed to rectify an anomaly in a classification?		N/A		
Will the Planning Proposal be consistent with an adopted POM or other strategy related to the site?		N/A		
Will the draft LEP discharge any interests in public land under Section 30 of the Local Government Act, 1993?		N/A		
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?		N/A		
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?		N/A		
Has council acknowledged in its Planning Proposal that a Public Hearing will be required and agree to hold one as part of its documentation?		N/A		
Spot Rezonings				
Will the proposal result in a loss of development potential for the site (ie reduced FSR or building height) that is not supported by an endorsed strategy?	Y			
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?	Y			
Does the Planning Proposal create an exception to a mapped development standard?	N			
Section 3.22 (formerly 73A) matters				
Does the proposed instrument:				
a. Correct an obvious error in the principal instrument consisting of a mis-description, 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 works 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			
(NOTE – the Minister (or delegate) will need to form an Opinion under section 3.22(1)(c) of the Act in order for a matter in this category to proceed).				

Attachment 6 – Current and proposed Height of Building Maps



Attachment 7 – Feasibility Analysis

Attachment 8 – Character Assessment & Urban Design Review

Attachment 9 – Gateway Determination, 29 November 2017 (and alteration dated 19 November 2018)

Attachment 10 – RFS Referral Response