



IRF23/1929

Gateway determination report – PP-2022-3996

Change to Height of Building standard from 16m to
26m at 119 Main Street Merimbula

August 23



Published by NSW Department of Planning and Environment

dpie.nsw.gov.au

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Acknowledgment of Country

The Department of Planning and Environment acknowledges the Traditional Owners and Custodians of the land on which we live and work and pays respect to Elders past, present and future.

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Table 1 Reports and plans supporting the proposal

Relevant reports and plans
Planning Proposal
Socio-Economic report by Garret Barry Planning November 2020
Traffic Engineering Report – ttm consultants November 2022

Statement of Environmental Effects – Garret Barry Planning November 2022

Visual Analysis – Garret Barry Planning and quattro architects – October 2022

Merimbula Club Sapphire – Alterations and Additions – Architecture Plan – QUATTRO ARCHITECTS

1 Planning proposal

1.1 Overview

Table 2 Planning proposal details

LGA	LGA name
PPA	Bega Valley Council
NAME	Amend Heights of Buildings to 26m at part 119 Main Street Merimbula
NUMBER	PP-2022-3996
LEP TO BE AMENDED	Bega Valley LEP 2013
ADDRESS	119 Main Street Merimbula
DESCRIPTION	Part Lot 121 DP 1250503
RECEIVED	3/07/2023
FILE NO.	IRF23/21231
POLITICAL DONATIONS	There are no donations or gifts to disclose, and a political donation disclosure is not required
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal

1.2 Objectives of planning proposal

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

The objective of the planning proposal is:

To amend the Bega Valley Local Environmental Plan 2013 to enable the development of a seven (7) storey hotel on land at 119 Main Street, Merimbula (Lot 121 DP1250503).

The objectives of this planning proposal are clear and adequate and are intended to be implemented by changing the permitted building height from 16 metres to 26 metres.

1.3 Explanation of provisions

The planning proposal seeks to amend the Bega Valley LEP 2103 per the changes below:

Table 3 Current and proposed controls

Control	Current	Proposed
Zone	MU1 Mixed Use Zone	MU1 Mixed Use Zone
Maximum height of the building	16m	26m
Number of jobs	N/A	185 people (construction phase) 30-35 people (full time staff for hotel)

The planning proposal contains an explanation of provisions that adequately explains how the objectives of the proposal will be achieved.

1.4 Site description and surrounding area

Approximately 3,400 sqm of the 2.08 ha is affected by the planning proposal (Figure 1 and 2) to change the HOB from 16m to 26m, an increase of 62 percent. The remainder of the site will retain a 16m Height of Building development standard.

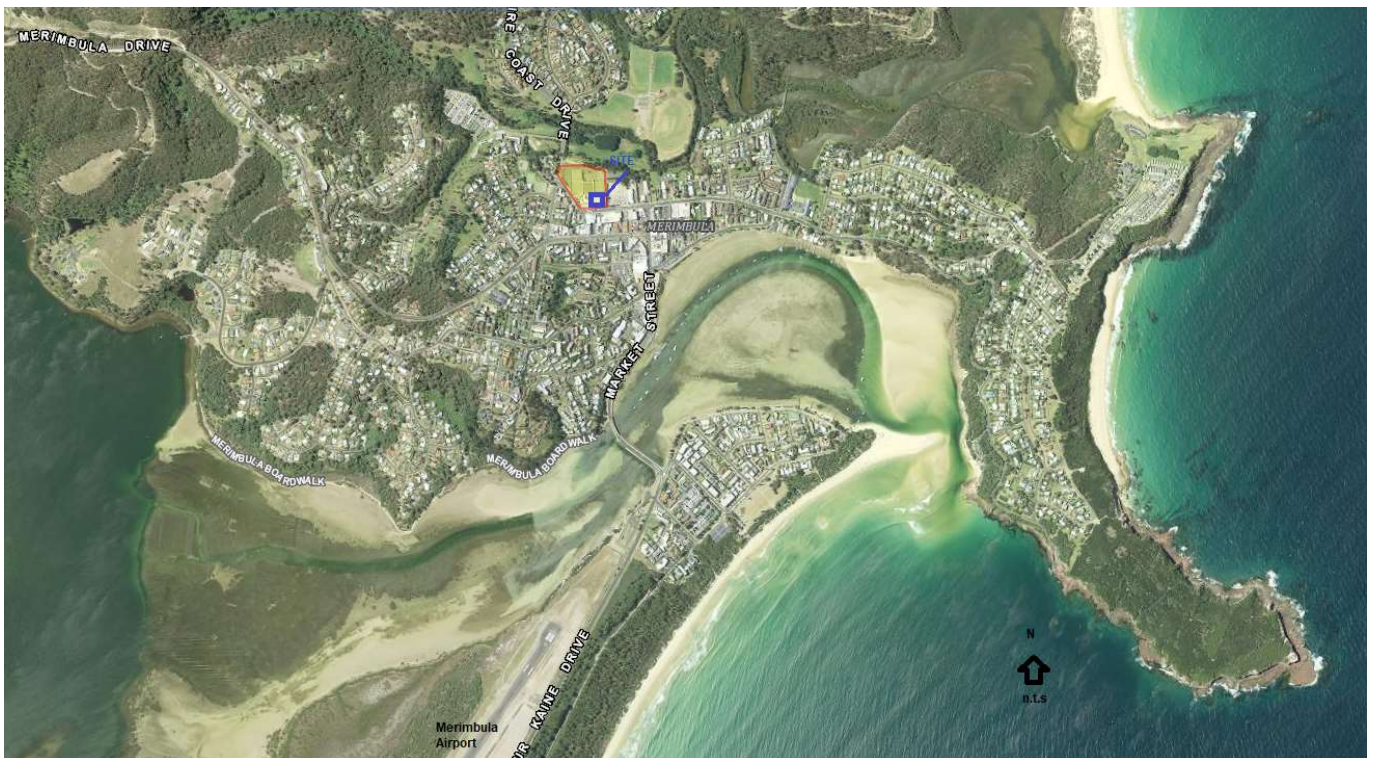


Figure 1 Subject site – blue outline - part Lot 121 DP 1250503 (source: nsw SixMap and planning proposal)



Figure 2 Site context – Part Lot 121 DP 1250503 (source: NSW SixMap and planning proposal)

The site is located on the northern edge of the Merimbula commercial district at 119 Main Street on a site that is occupied by the Merimbula Imlay Bowling Club. The club building is currently 2-3 storeys in height and contains bowling greens, car parking areas, landscaping, and a club building. (Figure 2).

The site has frontage to Main Street to the south. On the other side of Main Street are a range of commercial buildings including a picture theatre and tourist accommodation.

The site adjoins a Woolworths carpark to the east and two vacant lots owned by the club adjoin the site to the north.

Lot 121 is not located on the waterfront of Merimbula. The site is located approximately 320m from Merimbula Lake and approximately 20m above sea level.

1.5 Mapping

The planning proposal includes mapping showing the proposed change to the Height of Building map, which is suitable for community consultation.

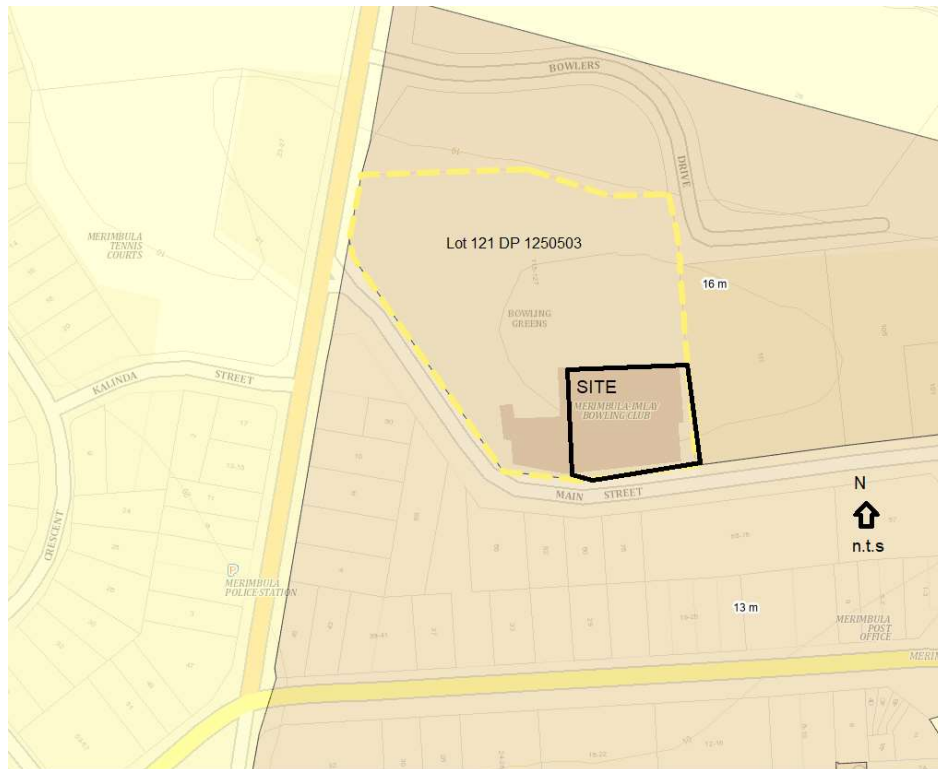


Figure 4 Current height of building map – 16 metres (site is shown as red outline – source NSW Spatial Viewer)

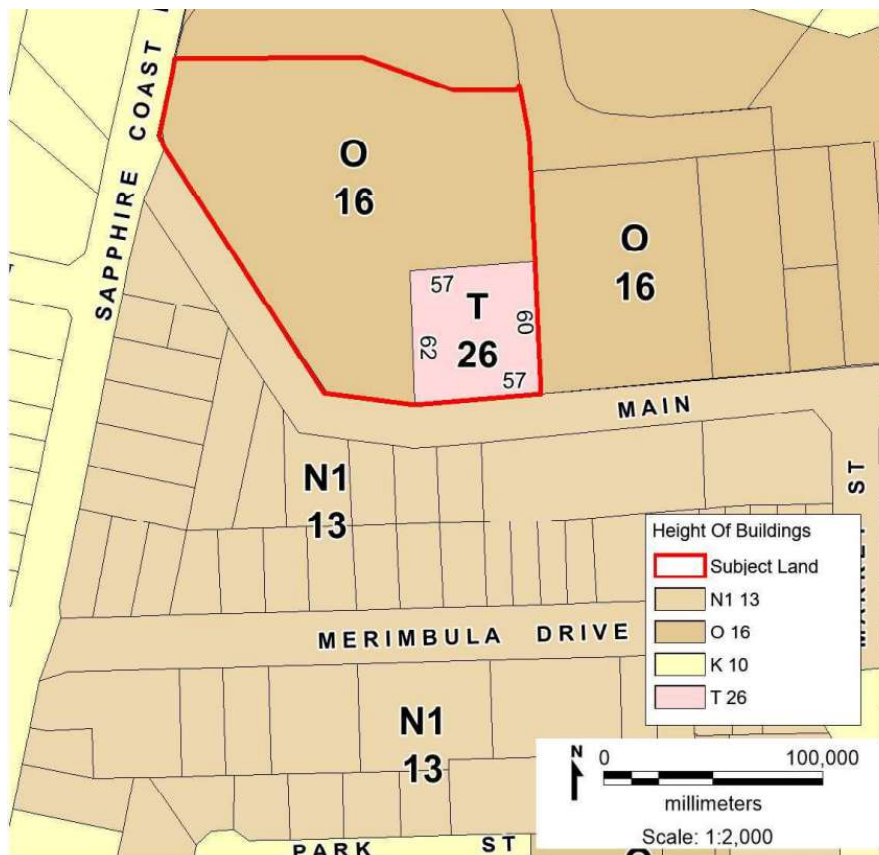


Figure 5 Proposed height of building map – 26 metres (Source: planning proposal)

2 Need for the planning proposal

Q1. Is the planning proposal a result of an assured local strategic planning statement, or Department approved local housing strategy, employment strategy or strategic study or report?

The planning proposal seeks approval to change the HOB Map to accommodate a 7 storey 100 room hotel development on the south east corner of the land. The proposed 26m HOB development standard will cover approximately 15 percent of the 2.08 ha site.

The planning proposal correctly states that the Bega Valley Commercial Strategy encourages site specific planning proposals and development applications on larger lots (2,000 sqm or greater) within Bega and Merimbula town centres to increase maximum buildings heights.

Consistent with the Strategy the planning proposal is also accompanied by a development application prepared for the Merimbula Imlay Bowling Club Ltd to provide for the re-development of the Club Sapphire site for a 2-7 storey building comprising a new club, hotel foyer, reception area, new vehicle entry point from Main Street and hotel with function and conference facilities and five levels of hotel accommodation.

Action 12.1 of the South East and Tablelands Regional Plan that seeks to encourage “mixed use developments that cater for commercial, retail, residential and tourism uses through local planning controls.

The planning proposal states that the proposed 7 storey building height on a section of the site will provide better views to provide for a viable 4 plus star accommodation.

The proposal also states that an alternative proposal that would require extensive demolition and replacement of the club for a larger 16m building footprint over the entire site “*is likely to render such an option uneconomic*”.

The planning proposal is accompanied by a socio-economic report (Garret Barry Planning Services Pty Ltd - November 2020) that outlines the social and economic benefits associated with the construction of the proposed 7 storey 4 plus star hotel in Merimbula.

Comment: The planning proposal is consistent with the intent of Council’s commercial strategy to enable Council to consider a combined planning proposal/development application for large sites within the commercial centre of Merimbula that exceed the current development standard for building height.

Q2. Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

The planning proposal acknowledges that a development application for a 7 storey development proposal on part of the site could be submitted with Council (i.e. clause 4.6 of Bega Valley LEP 2013) without the need for a planning proposal to vary the Heights of Building Map. The application could use clause 4.6 of the Bega Valley LEP 2013 to justify a variation of the 16m development standard.

However, the planning proposal states that this approach is not considered appropriate in the circumstances because the proposed change in building height is “*not described as relatively minor*”. The planning proposal therefore seeks to amend the maximum building height for a section of the site from 16m to 26m to accommodate construction of a 7 storey building for hotel accommodation that is part of the development application for alterations and additions to the existing club.

Comment: The proposed increase in building height from 16m to 26m is a significant change warranting a planning proposal and consultation to justify the amendment.

3 Strategic assessment

3.1 Regional Plan

The following table provides an assessment of the planning proposal against relevant aspects of the South East and Tablelands Regional Plan.

Table 4 Regional Plan assessment

Regional Plan Objectives	Justification
Direction 1 Leverage access to the global gateway of Canberra Airport	The proposal is compatible with Action 1.3 – Plan for compatible and complementary economic development opportunities around the region’s airports, including in Moruya and Merimbula.
Direction 9: Grow tourism in the Region	The proposal is compatible with Action 9.3: Align local strategies with the relevant Destination Management Plan. Note the relevant Destination Plan is Destination Southern NSW Destination Management
Direction 12: Promote business activities in urban centres	<p>The proposal is consistent with:</p> <p>Action 12.1: Encourage mixed use developments that cater for commercial, retail, residential and tourism uses through local planning controls.</p> <p>Action 12.2: Encourage mixed use development that cater for commercial retail, residential and tourism uses through local planning controls</p> <p>Action 12.3: Reinforce the role and function of centres as the primary place for commercial, retail, social and regional services through local strategies and local environmental plans. (Note Merimbula is identified as a Local Centre in the Regional Plan)</p>
Direction 16: Protect the coast and increase resilience to natural hazards	The proposal is consistent with Action 16.1: Locate development, including new release areas, away from areas of known high bushfire hazard, flooding hazards or high coastal erosion/inundation and land designated waterways to reduce the community’s exposure to natural hazards.

3.2 Local

The planning proposal states that the proposed change in the Height of Building Map from 16m to 26m is generally consistent with Council’s adopted Bega Valley Shire Commercial Land Strategy 2040 that states:

“To encourage new development in Bega and Merimbula town centres, Council will consider site specific proposals, with land greater than 2,000m², to increase the maximum height of buildings in Merimbula by way of a combined Planning Proposal and Development Application that allows the community to evaluate the details of each proposal.”

The planning proposal does not identify any inconsistencies with the Bega Valley Local Strategic Planning Statement (LSPS).

Comment

The planning proposal is consistent with Council's Commercial Land Strategy because lot 121 is a large site well in excess of 2,000 sqm. The change of building height from 16m to 26m will apply to approximately 3,000 sqm of the 2.08ha of Lot 121 (approximately 15 percent) and a development application has been submitted simultaneously with the planning proposal to accommodate the development for hotel accommodation within the town centre.

The major relevant 'Desired Future Character' outcomes for Merimbula in the LSPS are:

"Attractive buildings distinguish new development.

Buildings are higher in some places than those that currently exist in the town. Taller buildings are appropriately located and set within attractive streetscapes so that their visual appearance fits in with the coastal town character and lake front setting.

Larger development is well articulated and proportioned with the overall height, bulk and scale in keeping with a medium-rise coastal setting.

The town centre is a prominent mixed-use area containing offices, shop-top housing, tourist accommodation and leisure/ entertainment uses.

Development on all approaches to the town contributes to the sense of arrival.

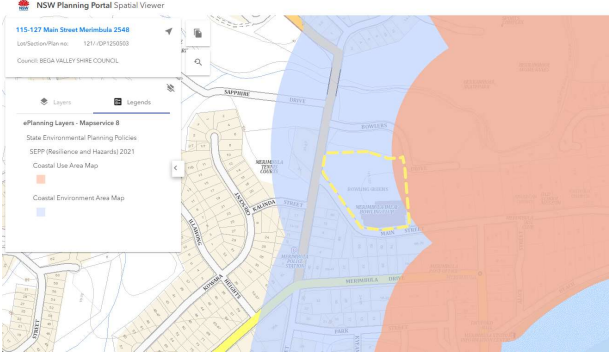
The change in HOB to 26m is not inconsistent with the LSPS and it is a matter for Council to ensure the development application for the redevelopment of the Club Sapphire site meets expectations of the 'Desired Future Character' outlined in LSPS.

3.3 Section 9.1 Ministerial Directions

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

Table 5 9.1 Relevant Ministerial Direction assessment

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
1.1 Implementation of Regional Plans	Yes	The proposal is generally consistent with the South East and Tablelands Regional Plan.
4.1 Flooding	Yes	The planning proposal states that the site is not identified as flood prone land under the Merimbula and Back Lake Flood Study.

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
4.2 Coastal Management	Yes	<p>The site is mapped as within the coastal zone and coastal environment area (see Figure 1 below).</p>  <p>Figure 1 Coastal Zone and Coastal environment area(Source: NSW Spatial Viewer)</p>

4.2 Coastal Management cont'd

The planning proposal is not inconsistent with the Direction as it does not seek to change existing LEP provisions relating to coastal management and the site is already occupied by commercial buildings used a club.

Coastal Design Guidelines 2003 and draft Coastal Design Guidelines

Although the current and draft guidelines recommend a maximum of four storeys for buildings in the town centre of a coastal town the current guidelines also state that the height of buildings are also subject to place-specific urban design studies. Furthermore the current guidelines state that the design of new development is to be appropriate to the predominant form and scale of surrounding development (either present or future), surrounding landform and visual setting of the settlement.

A mandatory requirement of the draft guidelines is to ensure development is integrated *within the natural topography of the site and ensure building type, scale and height responds sympathetically to coastal landforms*. The draft guidelines have adopted a place based approach to urban design.

Comment

This design approach for development has generally been adopted by the Council Commercial Strategy that seeks to encourage commercial development in Merimbula by indicating Council is willing to consider an increase the maximum height of buildings on larger sites by way of a combined Planning Proposal and Development Application that enables the community to evaluate the design details and merits of each proposal.

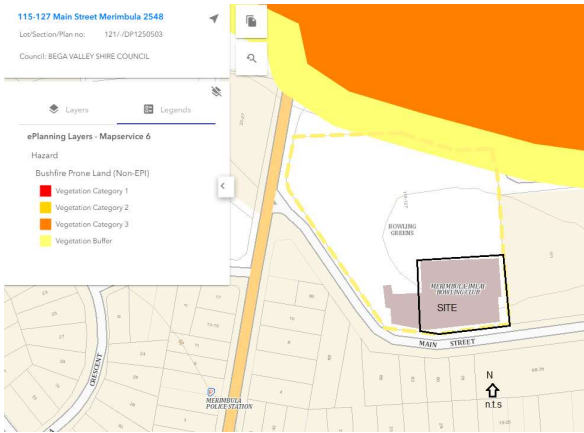
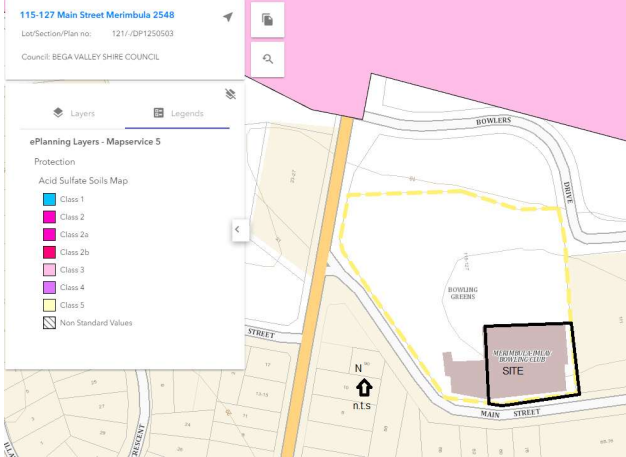
The planning proposal (26m HOB) and development application for a 7 storey building on part of the 2.08 ha site is accompanied by detailed designs for the redevelopment of the Club Sapphire site. The development application includes information on visual impacts and shadow diagrams.

The shadow diagrams submitted with the development application indicate that the proposed 7 storey building on part of the site will not cause significant overshadowing of public open spaces, including any foreshores and beaches.

The visual analysis concluded that any adverse impacts from the additional 2-3 storeys above the existing controls (i.e. 16m HOB to 26m HOB) is minimal from almost all viewing aspects with a low to moderate impact for a small cluster of dwellings located in lower Berrambool.

Comment

It is unlikely that the proposed change of building height from 16m to 26m on part of a large site to accommodate a 7 storey hotel on land that is already used as club located on edge of the Merimbula commercial area, and not located in close

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
		proximity to the coastal area/waterfront will have any significant adverse environmental impacts or affected by coastal hazards.
4.3 Planning for Bushfire Protection	Yes	<p>The planning proposal states that the land (Lot 121) is mapped as bushfire prone area. The part of Lot 121 proposed for a change in height however is not mapped as bushfire prone land (see Figure 2). Therefore consultation with the NSW Rural Fire Service is not required.</p>  <p>Figure 2 Bush Fire Pone Land (Source: NSW Spatial Viewer)</p>
4.4 Remediation of Contaminated Land	Yes	<p>The planning proposal states that the subject land is not within an investigation area within the meaning of the Contaminated Land Management Act 1997 and there is no evidence of any use of land referred to in Table 1 of the Department's Contaminated Land Planning Guidelines.</p>
4.5 Acid Sulfate Soils	Yes	<p>The site is not within an area mapped as Acid Sulphate Soils on the Acid Sulfate Soils Map (See Figure 3).</p>  <p>Figure 3 Acid Sulfate Soils (Source: NSW Spatial Viewer)</p>

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
5.1 Integrating Land Use and Transport	Yes	The site is located within the Merimbula commercial area on a site already used for a club. The redevelopment of the site will make use of existing infrastructure and services. The redevelopment of the site in the Merimbula CBD for tourist related development is likely to encourage walking and cycling by overnight visitors to Merimbula.
5.3 Development near Regulated Airports and Defence Airfields	Yes	<p>The planning proposal acknowledges that the site is located near Merimbula Airport and that the proposed change in height does not exceed the relevant height restriction. It is recommended that Council be required to consult with the following relevant agencies in accordance with the Direction,</p> <p>Airport Protection and Airport Safety Branch, Commonwealth Department of Infrastructure Transport, Regional Development and Communication</p> <ul style="list-style-type: none"> • Civil Aviation Safety Authority • Lessee/Operator of Merimbula Airport.
7.1 Employment Zones	Yes	<p>The planning proposal incorrectly identifies the site as B4 Mixed Use Zone. The employment zone reforms undertaken after the proposal was lodged with Council changed the B4 Mixed Use Zone to a MU1 Mixed Use Zone.</p> <p>The planning proposal does not trigger any inconsistency with the section (1) of the Direction and is consistent with the objective of the Direction.</p>
9.3 Oyster Aquaculture	Yes	The planning proposal acknowledges that Merimbula Lake contains priority oyster aquaculture areas, but the site does not drain towards the Lake.

3.4 State environmental planning policies (SEPPs)

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

Table 8 Assessment of planning proposal against relevant SEPPs

SEPPs	Requirement	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
SEPP (Resilience and Hazards) 2021	The requirements of Direction 4.2 Coastal Management are triggered by areas mapped under the SEPP as land within a coastal Zone. The site is mapped as within the coastal zone and coastal environmental area.	Yes	See response to Direction 4.1 Coastal Management and 4.4 Remediation of Land in Table 5.
SEPP (Biodiversity and Conservation) 2021	Under the SEPP Council is the responsible agency for assessing the clearing of vegetation in urban areas.	Yes	The site is currently used for club (Club Sapphire) and there are unlikely to be any impacts on biodiversity.

4 Site-specific assessment

4.1 Environmental

The following table provides an assessment of the potential environmental impacts associated with the proposal.

Table 9 Environmental impact assessment

Environmental Impact	Assessment
Visual Impact	<p>The planning proposal and development application are accompanied with a visual analysis. The visual analysis concluded that any adverse impacts from the additional 2-3 storeys above the existing controls (i.e. 16m HOB to 26m HOB) is minimal from almost all viewing aspects with a low to moderate impact for a small cluster of dwellings located in lower Berrambool.</p> <p>Comment</p> <p>The visual analysis includes a photo montage showing the visual impact of the proposed 7 storey building as viewed from various locations, including from Berrambool. The visual analysis appears comprehensive and suitable for community consultation.</p>
Overshadowing	<p>The planning proposal and development application are accompanied by architectural diagrams that include diagrams showing the impact of overshadowing from the proposed 7 storey building on the subject site. The shadow diagrams indicate that the increase from 16m to 26m building to accommodate a proposed 7 storey building will not cause significant overshadowing of public open spaces, including any foreshores and beaches.</p> <p>Comment</p> <p>Overshadowing has impacts on Main Street and on commercial buildings located to the south, particularly during winter. The site is located approximately 320m from any coastal foreshores or beaches and does not affect any areas of public open space. The information on overshadowing is adequate for community consultation.</p>

4.2 Social and economic

The following table provides an assessment of the potential social and economic impacts associated with the proposal.

Table 10 Social and economic impact assessment

Social and Economic Impact	Assessment
Social-economic	<p>The planning proposal and development application are accompanied by a socio-economic report. The report does not identify any adverse social or economic impacts associated with the change in building height of the proposed 7 storey hotel. It highlights the employment benefits and expanded business activity of the re-development of the Club Sapphire site in Merimbula. For example the report states that the project would inject \$20 million into the local economy in the construction phase and employ an average of 30-35 full time equivalent staff and flow on economic benefits to other business in Merimbula.</p> <p>The proposed scale of the proposal, including the 7 storey hotel to provide hotel accommodation and conferencing facilities, is justified on the basis that this scale and height is required to support the viability of a 4 plus star hotel.</p> <p>Comment</p> <p>It is likely that the project, if commercially viable, will generate socio-economic benefits for Merimbula by increasing employment opportunities and increased visitor expenditure within the local economy. The socio-economic report is adequate for community consultation.</p>

4.3 Infrastructure

The following table provides an assessment of the adequacy of infrastructure to service the site and the development resulting from the planning proposal and what infrastructure is proposed in support of the proposal.

Table 11 Infrastructure assessment

Infrastructure	Assessment
Traffic Impacts	<p>The planning proposal and development application are accompanied by a traffic engineering report that conclude that the traffic impacts of the proposal will be minimal in the context of the surrounding street network.</p> <p>Comment</p> <p>Main Street Merimbula is a local road, and it will be a matter for Council to assess the proposal's impacts on local traffic and road networks. The traffic analysis is adequate for community consultation on the planning proposal.</p>
Other	<p>The site is located within the Merimbula commercial district that has access to town water supply and sewerage and that is already used as a club. It is a matter for Council as the local water and sewerage authority to determine the necessary water and sewerage upgrades to accommodate the re-development of the site.</p>

5 Consultation

5.1 Community

Council proposes a community consultation period of 20 working days.

The exhibition period proposed is considered appropriate, and forms to the conditions of the Gateway determination.

5.2 Agencies

Consultation should be required with the Civil Aviation Safety Authority in response to the proximity of the site to Merimbula Airport.

The site is already zoned for Mixed Use commercial/residential development and a 16m building height. The site's proximity to Merimbula Airport and the proposed increase in building height to 26m triggers consultation with the relevant Commonwealth Department responsible for airports and the lessee/operator of that airport.

It is recommended the following agencies be consulted on the planning proposal and given 20 days to comment:

- Airport Protection and Airport Safety Branch, Commonwealth Department of Infrastructure Transport, Regional Development and Communication
- Civil Aviation Safety Authority
- Lessee/Operator of Merimbula Airport

6 Timeframe

Council proposes a 9 month time frame to complete the LEP.

The Department supports this time frame of 9 months which should be sufficient to provide time for community consultation and to enable Council to complete as the local plan making authority, including map preparation.

A condition to the above effect is recommended in the Gateway determination.

7 Local plan-making authority

Council does not request delegation to be the Local Plan-Making authority.

As the planning proposal does not raise any significant state or regional issues and is consistent with Council's local strategic policies, including the Council adopted Commercial Strategy, the Department recommends that Council be authorised to be the local plan-making authority for this proposal which is essentially a local matter.

8 Assessment summary

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

- The planning proposal does not raise any significant state or regional planning issues and is consistent with Council's local planning policies, including Council's adopted Commercial Strategy.

9 Recommendation

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

1. Consultation is required with the following public authorities:
 - Airport Protection and Airport Safety Branch, Commonwealth Department of Infrastructure Transport, Regional Development and Communication
 - Civil Aviation Safety Authority
 - Lessee/Operator of Merimbula Airport
2. The planning proposal should be made available for community consultation for a minimum of 28 days.
3. The timeframe for completing the LEP is to be 9 months from the date of the Gateway determination.
4. Given the nature of the proposal, Council should be authorised to be the local plan-making authority.



18/8/23

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