

CL23.396 New Proponent Initiated Planning Proposal - 88 North Bendalong Rd Bendalong

HPERM Ref: D23/348382

Department: Strategic Planning

Approver: Coralie Bell, Acting Director - City Futures

Attachments: 1. Preliminary PP assessment - 88 North Bendalong Road

Reason for Report

The purpose for this report is to introduce and seek direction on a new Planning Proposal (PP) request, initiated by the proponent. This request aims to amend Shoalhaven Local Environmental Plan 2014 (SLEP 2014) by creating a dwelling entitlement at 88 North Bendalong Road, Bendalong. The PP was submitted by MMJ Town Planning & Advisory on behalf of the owners, Bendalong Essential Services Pty Ltd.

Recommendation

That Council:

1. Support the Planning Proposal (PP) request to create a dwelling entitlement for Lot 32 DP 1191742 (88 North Bendalong Road, Bendalong) on the basis that the owners intend to surrender their development consent for '10 Holiday Cabins, 2 Accessible Accommodations, Common Facilities, and an Office' (DA14/2397) prior to conclusion of the PP process.
2. Prepare and submit the PP documentation to the NSW Department of Planning and Environment (DPE) for a Gateway determination.
3. Request that DPE include a condition in the Gateway determination that DA14/237 be surrendered prior to notification of the LEP amendment.
4. Depending on the outcome of the above, receive a report back after public exhibition.

Options

1. Proceed with the PP as recommended.

Implications: This choice allows for a less intensive use of the property, as it proposes a single dwelling house, subject to approval through a development application. This contrasts with the current approval for '10 Holiday Cabins, 2 Accessible Accommodations, Common Facilities, and an Office' (DA14/2397). It's important to note that the project developers plan to surrender the existing approval if the new proposal moves forward.

Given the property's development history and its location, the new proposal is seen as having both strategic merit and site-specific advantages. Therefore, this option is recommended.

2. Not proceed with the PP.

Implications: The current minimum lot size in SLEP 2014 does not allow a dwelling house to be approved. The owners may decide to proceed with the approved tourist development. There is a risk that the site may be utilised for more intense forms of

development, which is not supported by the community and not considered appropriate given the environmental sensitivities of the site and exposure to bushfire risk.

Background

The subject land, 88 North Bendalong Road, Bendalong (Lot 32 DP 1191742) is an irregular shaped allotment with an area of approximately 6,349m².

The land is predominately cleared with patches of established vegetation. Adjoining bushland extends to the north, east and south over the adjoining Crown Reserve (Lot 1 DP 1187143).

The site slopes gently from the northwest to the southeast. Bangalay Sand Forest, an Endangered Ecological Community (EEC), is located on the adjacent Crown Reserve and overlaps with the south-eastern fringe and eastern tip of the subject land.

An aerial photograph of the subject land is shown in **Figure 1**. Surrounding land uses include:

- Low Density Residential properties ranging from 502m² to 1362m² to the west and northwest.
- A vegetated public reserve to the north, east and south which separates the subject land from Flat Rock Beach to the north and Dee Beach to the south.
- An established public beach access is located within the vegetated public reserve to the north to provide direct access to Flat Rock Beach.



Figure 1. Aerial view of the subject land (2023).

Subdivision and Development History

- 1950s to 2014 - the land was formerly used as a tourist facility called 'Allawah Beachside Cabins'. The site used to have various buildings, including cabins, a

manager's residence, and additional structures like an amenities block and storage sheds (**Figure 2**, on the left).

- 2013 - The lot was created as part of a larger subdivision, SF10125 (as modified). This created 18 residential lots, including the subject land. The residential subdivision was registered on 21 November 2013.



Figure 2. Aerial view of the site in 2009 (left) showing the Allawah Beachside Cabins development and latest Nearthmap (right) showing the site cleared

- 2014 - a Development Application (DA14/2397) was submitted for the site to replace existing structures with 10 Holiday Cabins, 2 Accessible Accommodations, Common Facilities, and an Office (**Figure 3**), approved on June 10, 2015.
- 2015 - A Construction Certificate (CC15/1959) was issued on August 7, 2015. Although the existing structures were demolished as approved, the new development has not been constructed. The site remains empty with a gravel driveway constructed during DA14/2397 (**Figure 2**, right).

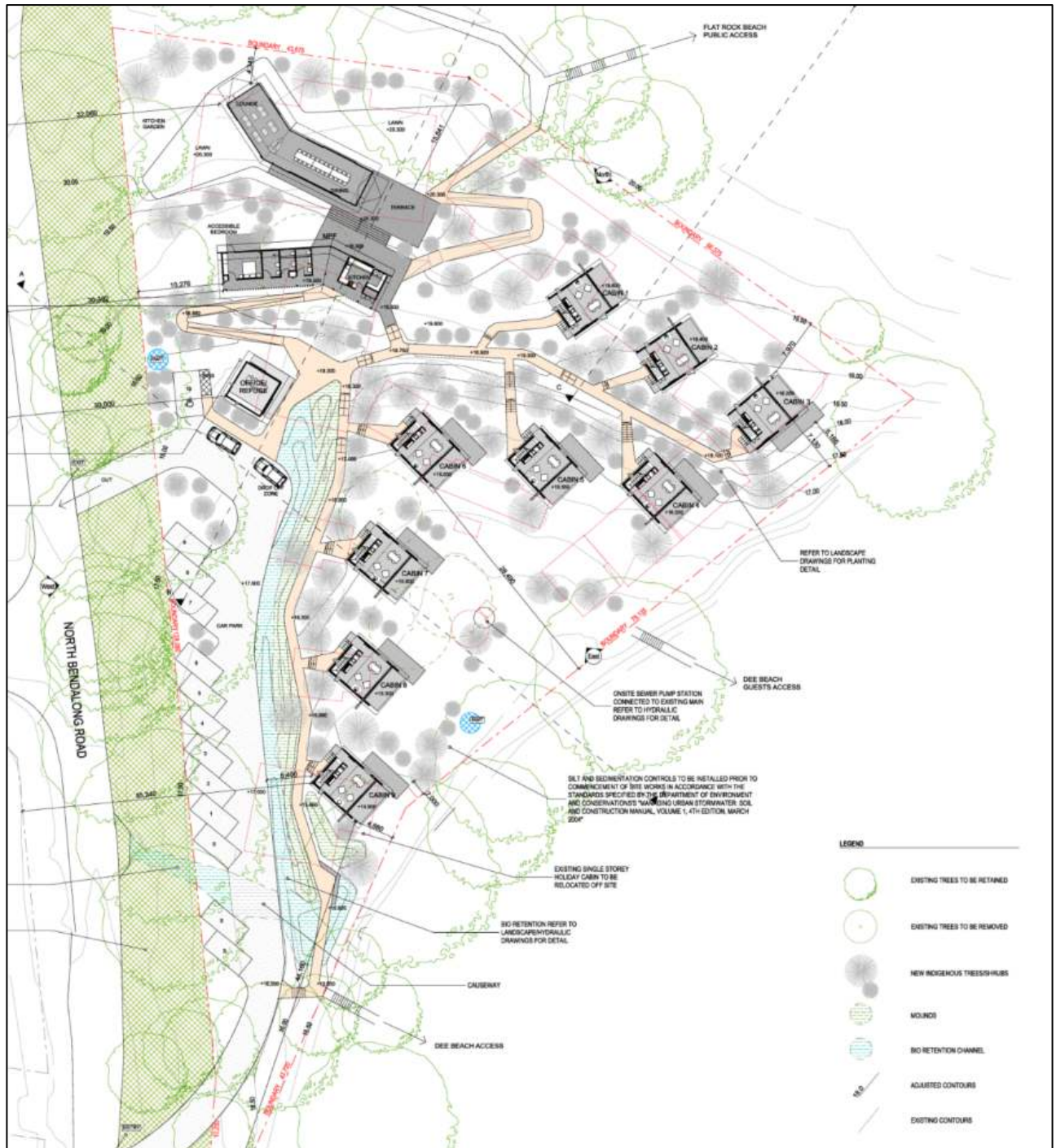


Figure 3. Site Masterplan approved by DA14/2397.

Shoalhaven Local Environmental Plan 2014 (SLEP 2014)

Under SLEP 2014, the subject land is zoned C3 Environmental Management. The site was previously zoned 6(C) Recreation (Proposed) under the SLEP 1985. The current land use zoning of the subject land and surrounds is shown in **Figure 4**.

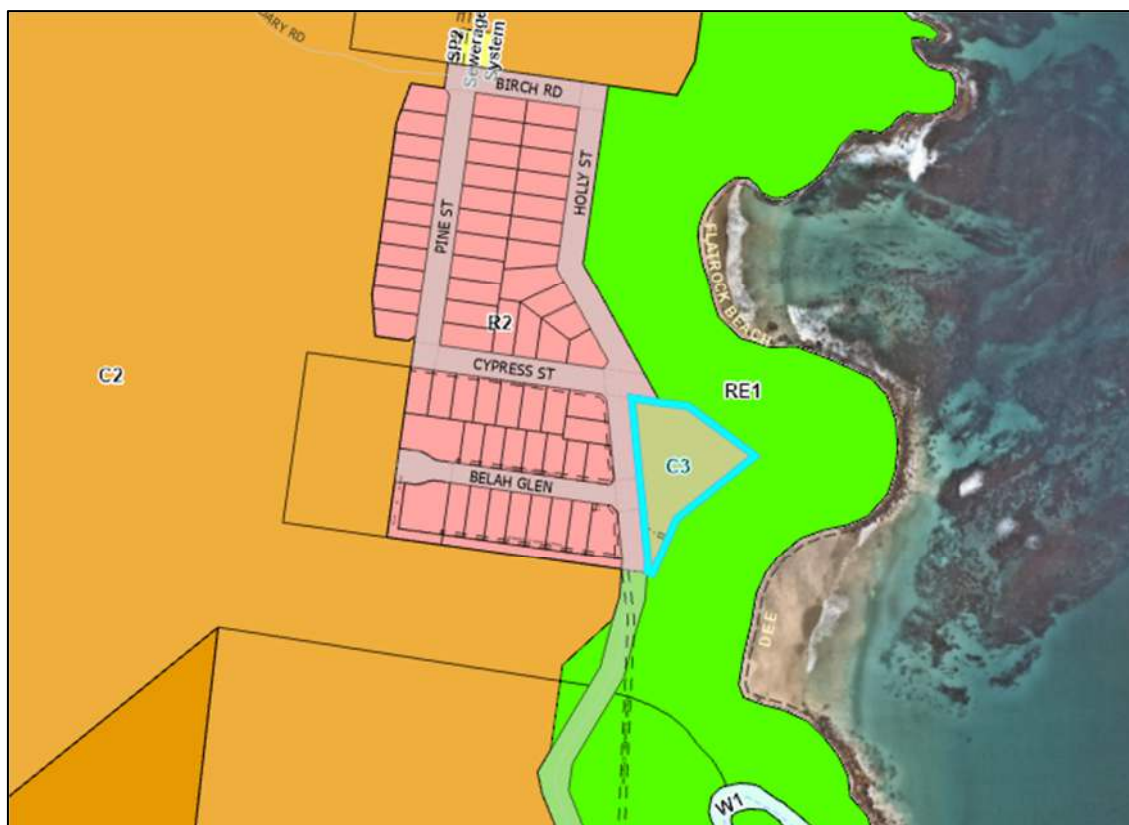


Figure 4. Land use zoning of the subject land (blue outline) and surrounds under the SLEP 2014

Forms of development which are permissible in the C3 zone include, but not limited to the following: Camping grounds; Dual occupancies (attached); Dwelling houses; Eco-tourist facilities; Group homes; Home-based child care; Home businesses; Home industries; Information and educational facilities; Kiosks; Tourist and visitor accommodation.

The mapped minimum lot size is 40ha. While dwelling houses are permissible in the C3 zone, the subject land is 6,349m² and therefore does not comply with the minimum lot size 'development standard' for a dwelling.

Planning Proposal (PP) Request

In accordance with the NSW Department of Planning and Environment's (DPE) [Local Environmental Plan Making Guideline](#), the following pre-lodgement consultation process was followed:

- The proponent submitted a scoping proposal report to Council.
- The scoping proposal was referred to the relevant Council staff and external agencies for comment.
- Feedback received was collated and a pre-lodgement meeting held with the proponent and landowner representatives.
- A 'pre-lodgement letter' was issued to the proponent dated 12 May 2023. Council's letter is included in the proponent's documentation - see below.

A PP request was submitted to Council on 19 July 2023 and can be accessed on [Council's website](#) and includes the following documents:

- [Planning Proposal Report](#)
- [NSW Rural Fire Service \(RFS\) Scoping Proposal Response](#)
- [NSW DPE Biodiversity Conservation Division \(BCD\) Scoping Proposal Response](#)
- [Council Scoping Proposal Feedback](#)
- [Stormwater Management Plan](#)

- [Flora and Fauna Report](#)

The PP request seeks to enable a dwelling house to be constructed on the lot, subject to a future development application. The proponents' PP report states that:

"The eco tourist development DA14/2397 will be surrendered as part of the finalisation of the PP to permit a dwelling house."

Should the PP be progressed to finalisation, DA14/2397 would need to be surrendered prior to amending SLEP 2014. Should Council choose to support the PP, it is recommended that Council seek to have a condition included in the Gateway determination that DA14/237 be surrendered prior to notification of the LEP amendment.

The intended outcome would be achieved by reducing the mapped minimum lot size from 40 ha to 6,000 m². The proposed amendment to the mapped minimum lot size would not allow the land to be subdivided.

The PP would seek to amend the SLEP 2014 map overlay to potentially enable a development application for a dwelling to be approved. If SLEP 2014 is ultimately amended as requested, it is understood that the landowners intend to lodge a future development application for a single dwelling on the subject site. Any future development application for a dwelling house would be assessed on its merits at that time.

Preliminary Assessment

A preliminary assessment of strategic and site merit criteria within the framework set out in the NSW Government's [Local Environmental Plan Making Guideline](#) (last updated September 2023) is provided in **Attachment 1**. This framework requires the planning authority (Council) to consider several questions when determining the strategic merit and site merit of a PP.

Key findings are summarised below:

- The PP is generally consistent with the [Illawarra Shoalhaven Regional Plan 2041](#), particularly Objective 12: Build Resilient Places and Communities. The PP will facilitate a single dwelling instead of the approved tourist facility which is considered more appropriate given the site's proximity to an EEC and bushfire exposure.
- The PP is consistent with the [Shoalhaven 2032 Community Strategic Plan](#), particularly with the key themes of resilient, safe, accessible communities and sustainable, liveable environments.
- No significant inconsistencies with any [Ministerial Directions](#) have been identified including Direction 3.1 (Conservation), Direction 4.2 (Coastal Management), and Direction 4.3 (Planning for Bushfire Protection). The PP does not meet the acceptable solutions of Planning for Bush Fire Protection (PBP) 2019, and therefore is inconsistent with Direction 4.3. However, this inconsistency is considered minor and justifiable provided the existing consent is surrendered as part of the PP process.

In conclusion, the PP request is considered to have the required strategic merit and site merit to warrant Council's support and progression to the Gateway step. It is broadly consistent with applicable strategies and actions in the strategic planning framework, and no significant site merit issues or concerns have been identified to date.

Internal Consultation

The following internal stakeholders were invited to comment on the PP (including as part of the scoping proposal process):

- City Development – Environmental Assessment and Coastal Management, and

- City Services – Southern Maintenance, Works and Services and Technical Services.

Feedback from these stakeholders was provided in the scoping proposal meeting notes to the proponent. This feedback has informed the current PP.

Community Consultation

Adjoining landowners, the Red Head Villages Association, and Manyana Matters were notified on 7 August 2023 that the PP had been received. Additional consultations were conducted by the landowner prior to the formal commencement of the PP process with the Red Head Villages Association.

Council's letter requested any comments be provided within 21 days, i.e., by 28 August 2023. Four submissions were received, all in support of the PP. A copy of the submissions can be provided upon request.

Previous submitters and the Red Head Villages Association will be advised of the outcome of this report. Should the PP receive a favourable Gateway determination, the community will be formally consulted at the public exhibition stage.

External Consultation

As noted, the NSW Rural Fire Service (RFS) and NSW DPE - Biodiversity Conservation Division (BCD) were consulted during the scoping proposal process. DPE - Planning was notified on 4 August 2023 that a PP had been received by Council.

Should the PP progress and a favourable Gateway determination be received from the NSW Government, public exhibition would be undertaken in accordance with legislative and Gateway requirements.

Financial Implications

The PP would be managed as a 'standard PP', fully funded by the proponent in accordance with the applicable Council fees and charges.

Preliminary Planning Proposal (PP) Assessment - 88 North Bendalong Road, Bendalong

Section A – need for the planning proposal

Q1. Is the planning proposal a result of an endorsed LSPS, strategic study or report?

The PP is not the result of an endorsed LSPS, strategic study or report. The subject land is already zoned appropriately as determined by the 2014 citywide LEP process and the proposed reduction in the mapped minimum lot size is not something that would normally be identified by a broad strategic planning process.

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

There are no alternative approaches to achieve the objectives or intended dwelling house outcome as described in the submitted PP request. The subject land has a total land area that is less than the mapped minimum lot size and therefore does not currently have a 'dwelling entitlement'. Further, there is no State Environmental Planning Policy that provides a suitable mechanism to permit the dwelling house. An opportunity to vary development standards per Clause 4.6 of Shoalhaven LEP is not applicable to the intended outcome as the extent of the variation required exceeds "an appropriate degree of flexibility", as the total variation required would represent an 84 percent (approximately) departure to the development standard described by Clause 4.2D(a). Therefore, a PP is the best and only way to achieve the intended outcome.

Section B – relationship to the strategic planning framework (strategic merit)

Q3. Will the planning proposal give effect to the objectives and actions of the applicable regional or district plan or strategy (including any exhibited draft plans or strategies)?

The PP is generally consistent with the Regional Plan, particularly Objective 12: Build Resilient Places and Communities. The amendment sought will facilitate a single dwelling instead of the approved tourist facility which is a more intensive form of development. This outcome is considered more appropriate given the natural hazards, particularly bushfire risk.

Q4. Is the planning proposal consistent with a council Local Strategic Planning Statement (LSPS) that has been endorsed by the Planning Secretary or GCC, or another endorsed local strategy or strategic plan?

The PP is generally consistent with the LSPS. The PP seeks to facilitate a less intensive form of development that is more responsive to natural hazards, consistent with Planning Priority 10 (Protecting the environment) and Planning Priority 11 (Adapting to natural hazards through building resilience). Further, the PP is supported by relevant studies including a Strategic Bushfire Study which concludes that a future dwelling on the site will "will reduce the number of occupants from 24 persons and reduce the occupant risk profile from Special Fire Protection Purpose to Residential" which was echoed in feedback from the NSW Rural Fire Service received during the scoping proposal stage.

Further, the PP is consistent with the Shoalhaven 2032 Community Strategic Plan, particularly with the key themes of resilient, safe, accessible communities and sustainable, liveable environments. The PP is also broadly consistent with the Shoalhaven Growth Management Strategy (GMS) 2014. Bendalong is identified as having very limited growth potential in the GMS. However, the subject site is largely cleared and is adjacent to an identified residential area and has an existing approval for a more intensive form of development. The mapping in Section 7.13 identified the site as "physically constrained

land”, however, the submitted technical studies indicate that the proposed dwelling house will be able to appropriately respond to these constraints.

Q5. Is the planning proposal consistent with any other applicable State and regional studies or strategies?

The PP is generally consistent with the Housing 2041 NSW Housing Strategy.

Q6. Is the planning proposal consistent with applicable SEPPs?

The PP is considered to be consistent with the State Environmental Planning Policy (Resilience and Hazards) 2021 and State Environmental Planning Policy (Biodiversity and Conservation) 2021, noting that the site is largely cleared, and the intended outcome (a single dwelling house) is significantly less intensive than the approved tourist cabins.

Q7. Is the planning proposal consistent with applicable Ministerial Directions (section 9.1 Directions) or key government priority?

No significant inconsistencies with any Ministerial Directions have been identified. Directions 3.1, 4.2 and 4.3 are pertinent and are discussed below.

Direction 3.1 (Conservation) seeks to protect and conserve environmentally sensitive areas. The PP has demonstrated that the proposed future development outcomes will facilitate the protection and conservation of identified biodiversity values on the site, subject to more detailed consideration at the Development Application stage. Any future asset protection zone required to achieve bushfire safety will need to be contained within the property boundary.

Direction 4.2 (Coastal Management) is applicable to the site as it is identified as an area of Coastal Environment and Coastal Use Area per the State Environmental Planning Policy (Resilience and Hazards) 2021. While the PP does not seek to rezone the site, the purpose of the PP is to reduce the intensity of land use on the site and is supported by the required supporting technical studies that demonstrates consideration of the relevant objectives of this direction.

Direction 4.3 (Planning for Bushfire Protection) applies to this PP as the site is identified as being bushfire prone land. NSW RFS commented on the proposal on 17 February 2023 during the pre-lodgement (scoping proposal) process. The [RFS correspondence](#) is included in the proponent’s supporting documentation, and includes the following:

The site is subject to a significant level of risk, however the justifications put forth as part of the scoping report include recognising that this proposal seeks to replace an existing lawful development consent (that is unconstructed) for a special fire protection purpose (SFPP) with a proposed residential use.

The proposed residential development footprint shown is subject to likely direct flame contact in the event of a fire, and as such does not meet the acceptable solutions of Planning for Bush Fire Protection (PBP) 2019. Notwithstanding, given the proposed reduction in the risk profile of future occupants (going from a SFPP to residential), the NSW RFS supports the proposal subject to the following:

- The existing development consent for SFPP development be surrendered as part of any approved planning proposal that would allow a residential land use. In this regard the proponents should be aware that if development consent was surrendered, future development applications for a SFPP development on the site would be assessed against current legislative bush fire requirements (and not take into account previous existing use rights nor a surrendered development consent as precedence). Therefore future applications for SFPP*

development would be unlikely to be supported by the NSW RFS due to the level of risk at the site and its inability to comply with the current requirement for new SFPP development to have a 10KW asset protection zone.

- The NSW RFS notes that the scoping report has not been supported with a Strategic Bush Fire Study in accordance with Chapter 5 of PBP 2019. Whilst this is not generally accepted, in this instance the NSW RFS is prepared to accept the proposed Bush Fire Assessment prepared by Building Code & Bushfire Hazard Solutions Pty Ltd, Reference 230204, dated 28th October 2022, as being appropriate to support any future planning proposal given the unique premise of the proposal.*

In summary, the proposal does not meet the acceptable solutions of Planning for Bush Fire Protection (PBP) 2019, and therefore is inconsistent with Direction 4.3. However, this inconsistency is considered minor and justifiable provided the existing consent is surrendered as part of the PP process.

Section C – environmental, social and economic impact (site merit)

Q8. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected because of the proposal?

The subject land is predominately cleared, including where a dwelling is likely to be located. There are scattered trees and native vegetation within the area that would need to be maintained as a bushfire asset protection zone (APZ). The proponent's PP report indicates that no tree removal is required to accommodate the conceptual building envelope, and that some trees are proposed to be retained within the bushfire APZ.

A mapped Endangered Ecological Community (EEC), being the Bangalay Sand Forest, occurs on the adjoining Crown Reserve and overlaps with the eastern and southern edges of the subject land. The southern part of this mapped EEC is dissected by the existing driveway. The proponent's PP report suggests that the driveway will be retained in its current location but notes that some pruning and maintenance will be required.

Any future development application (DA) would be considered on merit having regard to the objectives of the C3 Environmental Management zone. Alternative alignments for the driveway should be considered at the DA stage.

Q9. Are there any other likely environmental effects of the planning proposal and how are they proposed to be managed?

No other adverse environmental effects of the PP are anticipated. The proponent's concept plans suggest no tree removal is required to facilitate construction. Surrounding properties will not be impacted by overshadowing or reduced solar access (noting the mapped maximum height of buildings is 6.0 m). Further, the site is not identified as being flood affected. The PP will facilitate a more appropriate development in context of bushfire risks.

Q10. Has the planning proposal adequately addressed any social and economic effects?

The PP will facilitate provision of an additional residential dwelling in the area instead of the approved tourist cabins. The reduced development intensity for the site will reduce bushfire safety risks. The PP is likely to generate a minor economic benefit during the construction phase. The PP is not anticipated to impact on any existing retail centres or social infrastructure.

Construction of the approved tourist cabins would have created economic stimulus during construction and provided additional tourism in the locality, however the proponent's PP report states that the approved development was not commercially viable.

Given the circumstances, the PP is not expected to have any significant social and economic effects.

Q11. Is there adequate public infrastructure for the planning proposal?

The PP will not generate additional infrastructure needs. Existing public infrastructure is sufficient.

Q12. What are the views of state and federal public authorities and government agencies consulted in order to inform the Gateway determination?

The NSW Rural Fire Service (RFS) and NSW Department of Planning and Environment – Biodiversity Conservation Division (NSW BCD) were consulted as part of the pre-lodgement (scoping proposal) process.

As noted earlier, the RFS expressed in principle support for the PP on the basis that the existing consent will be surrendered, as it will result in a reduced occupant risk profile from Special Fire Protection Purpose to Residential.

NSW BCD recommended that a flora and fauna assessment be completed to allow potential impacts on biodiversity to be assessed. A flora and fauna assessment is included in the proponents' documentation.

Consistency with Council's Guideline for Proponent-Initiated Planning Proposals

In addition to the criteria set out in DPE's Local Environmental Plan Making Guideline, Section 1.7 of Council's [Guideline for Proponent-Initiated Planning Proposals \(PPs\)](#) states that a PP is more likely to be supported by Council if one or more of the following criteria are met:

1. There is a clear error or anomaly in the LEP. **Comment:** Not applicable
2. Council is satisfied that the proposed amendment is minor and has sound justification. **Comment:** The PP is considered minor given that it would facilitate a single dwelling house in place of the existing tourist facility development approval.
3. The proposal presents a small, albeit acceptable risk of setting an undesirable precedent. **Comment:** There is a risk that the PP may result in a precedent for other rural or environmental lands in similar circumstances, e.g., properties with existing tourist cabins that don't currently have a dwelling entitlement. This risk is considered acceptable given that:
 - The development history and circumstances are likely to be unique: an operational consent has been secured for the development of a more intensive development, is adjacent to an established residential area and is a predominately cleared site.
 - The PP will facilitate a reduced development intensity that better respond to the site constraints and opportunities, and generally has the required site merit.
 - The PP is generally consistent with overarching strategic planning themes, objectives and controls.
4. The proposal would provide environmental, social and economic benefits to the community/public and is consistent with the objects of the Environmental Planning and Assessment Act, 1979. **Comment:** The PP will permit the delivery of an additional residential housing opportunity which is a lesser environmental and social

impact than the existing tourist facility development approval. Further, the proposal is likely to generate economic benefits throughout the construction phase.

Conclusion

The PP request is considered to have the required strategic merit and site merit to warrant Council's support and progression to the Gateway step. It is broadly consistent with applicable strategies and actions in the strategic planning framework, and no significant site merit issues or concerns have been identified to date.

**CL23.396 New Proponent Initiated Planning Proposal - 88 North
Bendalong Rd Bendalong**

**HPERM Ref:
D23/348382**

RESOLVED* (Clr Findley / Clr Boyd)
MIN23.639

That Council:

1. Support the Planning Proposal (PP) request to create a dwelling entitlement for Lot 32 DP 1191742 (88 North Bendalong Road, Bendalong) on the basis that the owners intend to surrender their development consent for '10 Holiday Cabins, 2 Accessible Accommodations, Common Facilities, and an Office' (DA14/2397) prior to conclusion of the PP process.
2. Prepare and submit the PP documentation to the NSW Department of Planning and Environment (DPE) for a Gateway determination.
3. Request that DPE include a condition in the Gateway determination that DA14/237 be surrendered prior to notification of the LEP amendment.
4. Depending on the outcome of the above, receive a report back after public exhibition.

FOR: Clr Findley, Clr D'Ath, Clr Boyd, Clr Norris, Clr Kotlash, Clr Copley, Clr Ell, Clr Christen, Clr White, Clr Wells, Clr Watson, Clr Kitchener and Clr Gray

AGAINST: Nil

CARRIED