

## CL24.352 Initial Consideration - Proponent Planning Proposal (PP) Application - 17 Prince Alfred Street, Berry

**HPERM Ref:** D24/378218

**Department:** Strategic Planning  
**Approver:** Coralie McCarthy, Acting Director - City Futures

**Attachments:**

1. Supplementary Information - LEP Heritage Item 88 - 17 Prince Alfred Street (under separate cover)
2. Minute MIN24.396 Preparation of Berry Heritage PP (under separate cover)
3. Preliminary Assessment, PP Application - 17 Prince Alfred Street, Berry (under separate cover)

### Purpose:

A Planning Proposal (PP) is a document (and supporting information) that can be initiated by a Council or a proponent that explains the intended effect and justification of a proposed amendment to a Local Environmental Plan (LEP).

The report seeks direction on a PP application which seeks to alter the Shoalhaven LEP 2014 as summarised in the following table:

<b>Lot Number</b>	Lot SP 93194
<b>Property Address</b>	'The Berry Inn', 17 Prince Alfred Street, Berry.
<b>Property Details</b>	<p>The Berry Inn comprises six hotel/motel accommodation units and car parking spaces.</p> <p>The lot has frontage to both Queen Street and Prince Alfred Street, Berry and contains two separate buildings and uses:</p> <ul style="list-style-type: none"> <li>• Heritage-listed building (former CBC building) at 122 Queen Street; and</li> <li>• The Berry Inn at 17 Prince Alfred Street. <u>Focus of this PP application.</u></li> </ul>
<b>Applicant</b>	Allen Price & Scarratts (APS)
<b>Owner</b>	Cooltown Trading Pty Ltd
<b>Current zoning</b>	Partly zoned E1 <i>Local Centre</i> and partly zoned R2 <i>Low Density Residential</i> under the LEP. See <b>Figure 2</b> below.
<b>Proposed Amendment</b>	<p>Rezone the R2 zoned portion of the land to E1, meaning the <u>whole</u> site would be zoned E1.</p> <p>Remove the current 500 sq metre mapped minimum lot size to be consistent with the E1 zone (does not prescribe a mapped minimum lot size). This mapping in the LEP relates to what the minimum lot size is for residential development/subdivision and as such covers most residential zones.</p>

### Key Consideration Points:

- The proposed rezoning is considered minor, administrative in nature and is supported.
- The proponent's intended outcomes/justification are as follows:
  - Apply consistent zoning and minimum lot size provisions to the existing building and land.
  - Avoid a reliance on restrictive, what are known as 'existing use' provisions and provide greater flexibility for the established business to respond to changes in the tourism accommodation market.
- When a recently approved subdivision application (DA23/3181) is completed, the current strata plan will be dissolved, and the land will be two Torrens Title lots. The buildings and uses will then be on separately owned freehold lots.
- The existing approved use (The Berry Inn) is potentially prohibited in the R2 zone and incompatible with the objectives of this zone. The correction will ensure the zoning and existing uses are consistent/compatible.
- There are heritage considerations on the site, and it sits within the Queen Street Conservation Area. The PP application does not seek to alter the heritage overlay and the listed heritage features do directly relate to The Berry Inn. Considering this, the report includes a recommendation to also adjust the extent of the heritage item so that it remains over the relevant part of the site and not The Berry Inn building. This may need to be completed via a separate expedited PP if the new plan of subdivision is not registered in time to do this as part of this PP.

### Recommendation

That Council

1. Acknowledge that the land on which The Berry Inn is located:
  - a. is currently part of an overall strata lot that is listed as heritage Item 88 (former CBC building, fence and trees) in Schedule 5 of the Shoalhaven Local Environmental Plan (LEP) 2014 at 122 Queen Street, Berry;
  - b. will be on a separate title to the former CBC building, fence and trees, when the two-lot Torrens Title subdivision approved on 6 May 2024 (DA23/3181) is registered;
  - c. does not contain the heritage features referred to in the State Heritage Inventory (Victorian Free Classical Style former CBC Bank including fence and trees) related to Item 88; and
  - d. is within a Heritage Conservation Area (C6) and adjacent to other heritage items identified in the LEP.
2. As a result, support the Planning Proposal (PP-2024-1869) to rezone the land currently zoned R2 Low Density Residential land at 17 Prince Alfred Street, Berry, to E1 Local Centre, and remove the 500 sq metre mapped minimum lot size that currently applies to the R2 land.
3. Support the removal of the land on which The Berry Inn is located from the mapped extent of heritage Item 88 when the approved Torrens Title subdivision has been completed, noting that LEP clause 5.10 (heritage conservation) still applies, as the site is adjacent to other heritage items and do this either as part of this PP or by seeking support from the NSW Department of Planning, Housing and Infrastructure (DPHI) to use section 3.22 (expedited amendments) of the *Environmental Planning and Assessment Act (EP&A Act)* to resolve the matter efficiently after the amendment has been completed.
4. Submit the PP to the DPHI for initial Gateway determination.
5. Subject to receiving a favourable Gateway determination, exhibit the PP and should there be no significant feedback, finalise the PP without reporting the matter back to Council.

## Options

1. Submit the PP for initial Gateway determination as recommended.

**Implications:** Progressing the PP will simplify the zoning and associated LEP provisions, better aligning the zoning with the existing approved use/built form and removing any ambiguity created by the current split zoning.

Heritage protection provisions under [Clause 5.10 \(Heritage conservation\)](#) of the LEP will also not be diminished if the land occupied by The Berry Inn is removed from the mapped extent of heritage Item 88 because the land is also in an existing Heritage Conservation Area (HCA) and is near other heritage-listed properties.

2. Not progress the PP.

**Implications:** Part of the land will remain zoned R2 Low Density Residential, which does not reflect the current ongoing use. If the mapped extent of heritage Item 88 is not adjusted, it will continue to affect separately owned land that does not have the specific heritage features related to the listing. This may ultimately still then need to be considered as part of a future housekeeping PP. Not recommended.

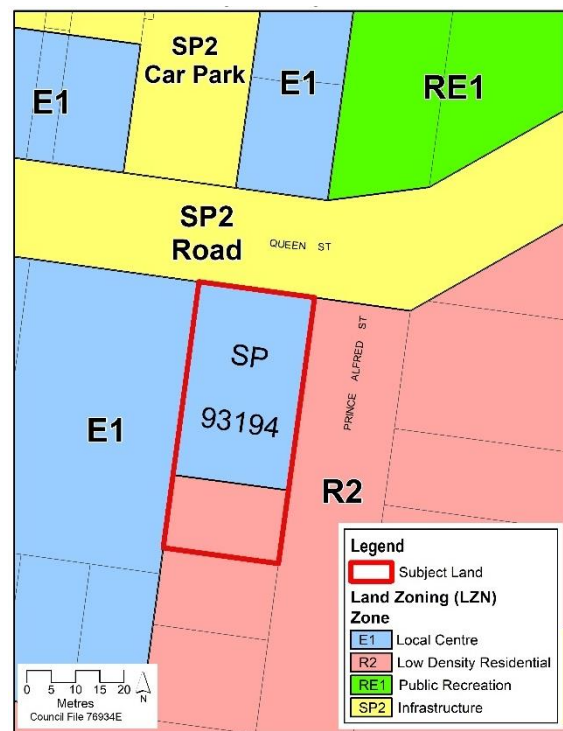
## Background and Supplementary information

### Subject land

The subject land is part of an existing strata lot (Lot SP 93194) with frontage to Queen Street and Prince Alfred Street, Berry – see **Figure 1** below.



**Figure 1** – subject land (Lot SP 93194)



**Figure 2** – current land zoning

The land contains two separate buildings/uses:

- The heritage-listed former Commercial Banking Company (CBC) building at 122 Queen Street, currently occupied by Belle Property; and
- The Berry Inn 'boutique motel hotel accommodation' at 17 Prince Alfred Street.

The PP application focuses on 17 Prince Alfred Street (the subject land), where The Berry Inn is located. The northern part of the site (122 Queen Street) containing the heritage-listed former bank building, is essentially not affected by the proposed changes to the LEP.

Separate to the PP the existing strata plan will eventually be dissolved and replaced when a two-lot Torrens Title subdivision is completed. The two existing buildings will then be on separately owned freehold lots.

### **Site history**

The CBC building with attached manager's residence and stables was used as a bank until 1986. In 1986 the CBC building and residence were converted to a guest house and car parking (DA86/2591). Alterations to the former stables and two-storey building to the rear of the CBC building and change of use to a managers' residence and staff accommodation was approved in 1989 (DA88/3042). The conversion of part of the managers' residence to provide four accommodation units was approved in 1996 (DA96/3534). The CBC building was converted to commercial premises in 2012 (DA12/2136). An application to refurbish The Berry Inn and create two additional accommodation units was approved in 2020 (DA19/2104).

A two-lot strata subdivision over two lots was approved in 2015 (SF10446) and an application to dissolve the strata plan and subdivide the land into two Torrens Title lots was approved in May 2024 (DA23/3181).

The Regional Development Application for the adjacent Berry Hotel (RA23/1002) affects multiple lots, including the subject land. The application was refused by the Southern Regional Planning Panel on 27 June 2024, and is now before the NSW Land and Environment Court. Under this application, no works are proposed to the former CBC building or The Berry Inn.

### **Shoalhaven Local Environmental Plan 2014 (SLEP 2014)**

A detailed assessment against the provisions in the LEP is provided in Attachment 1.

### **Planning Proposal (PP) application**

The PP application seeks the Council's support to rezone the R2 land to E1 so that the whole site is zoned E1 (see **Figure 3** below) and remove the 500 sq metre mapped minimum lot size currently applying to the R2-zoned area.

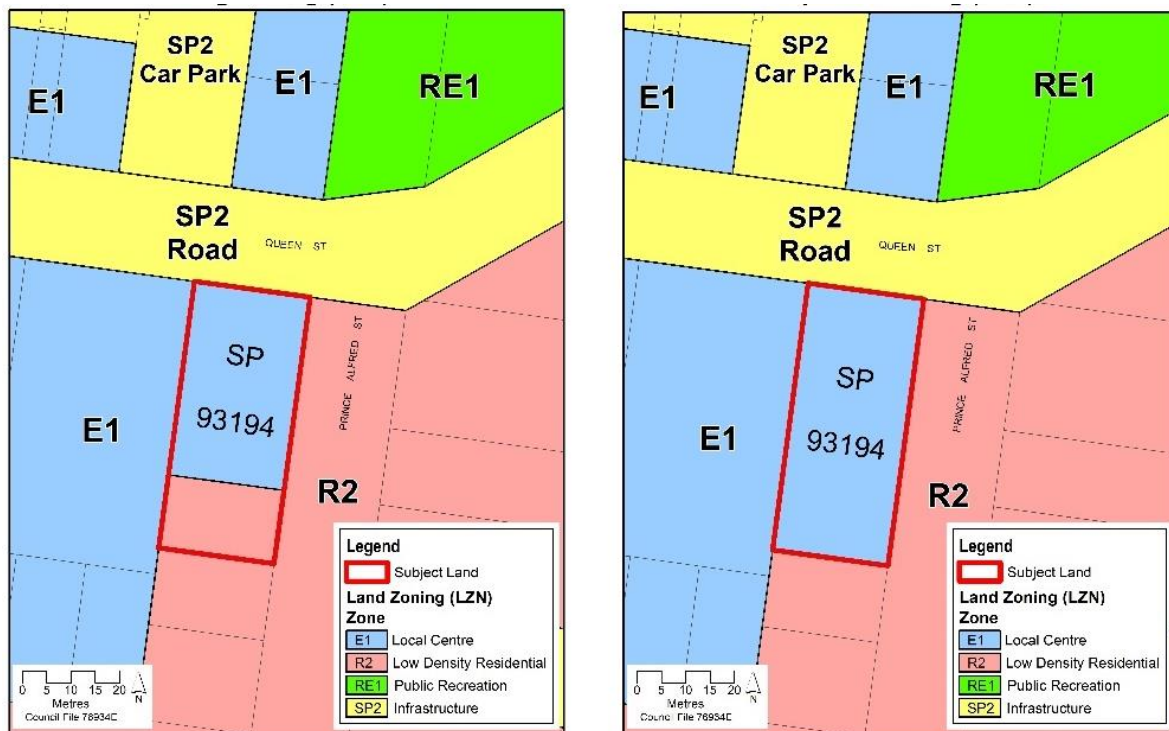


Figure 3 – current (left) and proposed (right) land zoning under the SLEP 2014

The proponent's PP application describes the following intended outcomes:

- The PP ensures the ongoing viability of an established business and allows it the flexibility in the future to grow and respond to the changing needs of the tourism accommodation market with a land use zoning commensurate to the existing use, rather than relying on restrictive existing use*
- It will ensure the whole of the existing building on the site within Lot 2 SP 93194, and the future approved lot 2 under DA23/3181, will have a consistent zoning and minimum lot size applying to it, rather than the existing building having a split zoning.*
- It will enable future development on the site as it relates to the existing approved use, to utilise relevant provisions exempt and complying development controls under State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 under which it is currently excluded from being an "existing use".*

**Comments: State Environmental Planning Policy (Exempt and Complying Development Codes) 2008**

The reference to exempt and complying provisions in Point (c) above has been clarified with the proponent. In summary:

- Complying development cannot be undertaken on the land because it is part of a listed heritage item.
- Some forms of exempt development such as *Temporary event signage*, and *Entertainment associated with existing premises* are however allowable in the E1 zone but not in the R2 zone.
- If the site was not heritage listed, internal alterations and additions could be undertaken (under Part 5A of the Codes SEPP) within the E1 zoned land, but not within the R2 zoned land.

As such, the current E1/R2 split zoning does unduly limit the ability for the Codes SEPP used, but wider use of the Codes SEPP is precluded because the land is an identified heritage item (No.88) in the LEP.

The proponent's PP does not seek to amend the heritage map overlay in the LEP. However, a development application to create a two-lot Torrens Title subdivision was recently

approved and the intended boundary between the two lots would be a logical delineation of heritage Item 88 - as shown and further explained in **Attachment 1**. When the subdivision is completed and the new lots registered, The Berry Inn will be on a separately owned lot to the former CBC building where the heritage features associated with Item 88 are located.

Any development application over the land would still need to address LEP clause 5.10 (heritage conservation) because the land is within a heritage conservation area and adjacent to other heritage items. As such the change would not diminish heritage considerations under clause 5.10 of the LEP.

The land description in Schedule 5 of the LEP can however only be updated once the new plan of subdivision is registered. This may not be completed before this PP is finalised, thus the details of Item 88 may need to be adjusted in the future through a separate PP. The most timely and efficient way to achieve this would be via an expedited PP under section 3.22 of the Environmental Planning & Assessment Act, if it is agreed it meets the legal criteria for this type of amendment. Alternatively, it could be done as part of a future broader housekeeping PP or via a new proponent-initiated PP. Ideally the subdivision will be registered before this PP is completed.

### **Preliminary Assessment/Conclusion**

A more detailed preliminary assessment of the PP is provided in **Attachment 3**. In summary, the PP is supported for the following reasons:

- Is broadly consistent with the Illawarra-Shoalhaven Regional Plan and Council's adopted strategic planning documents, including planning priorities 6 (Strengthening commercial centres) and 7 (Promoting a responsible visitor economy) in Council's Local Strategic Planning Statement (LSPS).
- Is already partly zoned E1, and this zone is more consistent with the existing approved use than the current R2 zone
- Removing the split zoning will make the land's planning controls consistent and simpler.
- The proposed changes are minor and administrative in nature.
- Although the proponents' submitted PP does not seek any change to the mapped extent of heritage Item 88 in the LEP, the land on which The Berry Inn is located should also be removed because it will be separately owned and unaffected by the heritage features.

### **Internal Consultations**

#### **Development Services**

Comments received from are summarised below:

- Alternative uses can potentially be approved on the R2 land under either Clause 5.3 or Clause 5.10(10) of the LEP
- Rezoning the R2 land to E1 is unlikely to have a significant impact on the planning outcomes for the site. The rezoning is considered to be administrative.
- The heritage features referred to in the State Heritage Inventory for heritage item 88 do not affect the land on which The Berry Inn is located. Do not object to the removal of this land from the mapped extent of Item 88 at the appropriate point, provided the land remains within the Conservation Area in the LEP to assist in retaining the character and appearance of the area.

### **External Consultations**

No external agencies have been consulted at this point due to the administrative nature of the PP. Heritage NSW will however be consulted if the PP proceeds.

**Community Consultations**

Adjoining landowners and The Berry Forum community consultative body (CCB) were notified of the receipt of the PP application in accordance with the Council's Guideline for Proponent Initiated Planning Proposals. No submissions were received as a result.

Depending on the nature of any Gateway determination received, the formal public exhibition of the PP will also occur later in the process.

**Financial Implications**

The applicable PP fees will be applied to cover Council's costs for progressing the PP, which is categorised as 'standard' for this purpose.