

Preliminary Assessment - Planning Proposal Application

17 Prince Alfred Street, Berry (PP-2024-1869)

Shoalhaven Local Environmental Plan 2014 (SLEP 2014) – Applicable Provisions

Mapping:

- **Land use zoning:** 17 Prince Alfred Street is currently zoned partly *E1 Local Centre* and partly *R2 Low Density Residential* – see Figure 2.
Comment: the existing R2/E1 zone boundary essentially aligns with an earlier subdivision pattern (i.e. before the current strata lot was created). See further comments below on LEP Clause 5.3 (Development near zone boundaries).
- **Minimum lot size:** The R2 zoned land has a mapped minimum lot size (LSZ) of 500 sq metres. There is no mapped LSZ on the E1 land.
- **Height of buildings:** The mapped maximum height of buildings (HOB) is 8.5 metres.
- **Heritage status:** Strata Plan SP 93194 is currently heritage listed in the LEP (Item 88 - associated with the former CBC bank building). This is discussed further later in this report.

The land is also within the Queen Street Heritage Conservation Area (C6) identified in the LEP. Several other locally LEP listed heritage items are nearby. As a result LEP Clause 5.10 (Heritage Conservation) applies – see further comments below and **Attachment 1 - Heritage item 88 – former CBC Bank building**.

- On 29 July 2024, Council also resolved to advance a PP to create a new Heritage Conservation Area (HCA) in the area of Princess Street and extend to the southern boundary of the subject land, and list 18 additional individual heritage items including 19 Prince Alfred Street. A copy of the resolution (MIN24.396) is provided in **Attachment 2**.

Clauses:

- **Clause 5.3 - Development near zone boundaries:** provides flexibility to consider approving uses on land within 20 metres of a zone boundary. In context of the subject land, it would potentially already enable uses permissible in the E1 zone to be approved on the R2 land, provided *the development is not inconsistent with the objectives of both zones, and the development is desirable due to compatible land use planning, infrastructure capacity and other planning principles relating to the efficient and timely development of land*.
- **Clause 5.10 – Heritage conservation:** Provides more detailed objectives and provisions to conserve the significance of heritage items and heritage conservation areas, including associated fabric, settings and views.

In addition to the heritage provisions in the LEP, the Shoalhaven Development Control Plan 2014 (SDCP) also contains heritage objectives and controls for the development of heritage items and development in heritage conservation areas.

NSW Local Environmental Plan Making Guideline

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.

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

The PP is currently the best way of reviewing/simplifying the planning provisions that apply to the land. It should be noted that a range of uses that are prohibited in the R2 zone, could potentially be approved under either clause 5.3 (development near zone boundaries) or clause 5.10(10) (heritage conservation incentives) in the Local Environmental Plan (LEP). However Clause 5.10(10) may be unavailable after the Torrens Title subdivision is completed because the listed heritage features would be on separately owned land (unless it is also part of any application).

Section B – relationship to the strategic planning framework

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)?

Illawarra-Shoalhaven Regional Plan (ISRP) 2041

The ISRP 2041 was endorsed by the then NSW Department of Planning, Infrastructure and Environment (now Department of Planning, Housing and Infrastructure) in May 2021.

Prepared in accordance with section 3.3 of the *Environmental Planning and Assessment Act 1979*, the Plan generally informs Council's land use planning work.

The relevant objectives and strategies are discussed below:

Proponent's PP	Staff assessment
<p>Objective 5: Create a diverse visitor economy</p> <p>Strategy 5.1 Create an environment for a diverse visitor economy:</p> <ul style="list-style-type: none"> enhance the amenity, vibrancy and safety of centres and township precincts. support appropriate growth of the night-time economy 	
<p>The current commercial uses will be able to adapt to changing needs and market conditions without being unnecessarily burdened by a historic land use zoning on part of the site.</p>	<p>A range of uses that are otherwise prohibited in the R2 zone could potentially be approved under either clause 5.3 (development near zone boundaries) or 5.10(10) (heritage conservation objectives) of the LEP.</p> <p>Removing the current split zone by applying the E1 zone to the whole site will simplify the land's planning controls, which is consistent with this objective and strategy.</p> <p>Any proposal to modify the existing development or redevelop the site would need to address the relevant planning controls and be assessed on its merit in the future.</p>
Objective 7: Respond to the changing nature of retail	

<p>Strategy 7.1 Respond to the changing nature of retail. Strategic planning and local planning should consider opportunities to:</p> <ul style="list-style-type: none"> • provide flexibility and facilitate a broad range of commercial, business and retail uses within centres 	
<p>Not specifically addressed.</p>	<p>The proponent's PP application indicates that 'existing use' right provisions limit the extent of any proposed modification of change in use. However, a range of uses that are otherwise prohibited in the R2 zone could potentially be approved under either clause 5.3 (development near zone boundaries) or 5.10(10) (heritage conservation objectives) of the LEP.</p> <p>Rezoning the R2 land to E1 will simplify the land's planning controls, potentially allowing the existing use to be expanded or modified, and a broader range of uses to be considered.</p> <p>The proponent's PP states that exempt and complying provisions currently precluded by the R2 zoning, will be available, enabling "...the progressive extension of the tourist and visitor accommodation use on the site, and ancillary local town centre economic uses."</p> <p>Continuation of the tourist and visitor accommodation use will also help support local businesses. As such, the PP application is broadly consistent with this objective/strategy.</p>
<p>Objective 21: Respond to the changing needs of local neighbourhoods</p> <p>Strategy 21.1 Consider the changing needs of local neighbourhood centres</p> <ul style="list-style-type: none"> • explore flexibility and supporting a mix of land uses so that local streets and spaces can be adapted to new uses and user needs over time 	
<p>The PP will support the long term economic viability of The Berry Inn</p> <p>Having one consistent zone across the site will also further enable use of the premises to adapt over time, consistent with the economic needs and character of the Berry Town Centre.</p>	<p>The current split zoning limits the ability of the current use to be expanded or altered to meet changing needs. The PP application will allow a range of uses to be considered on the land, and is broadly consistent with this objective/strategy.</p>
<p>Objective 22: Embrace and respect the region's local character</p> <p>Strategy 22.1 Support the development of local character statements in accordance with the NSW Government's Local Character and Place Guideline.</p>	
<p>Local character statements for Shoalhaven have not yet been fully implemented, however the ongoing economic viability of the current tourist and visitor accommodation site is a key objective of the Shoalhaven DCP Chapter N2 – Berry Town Centre. Illawarra Shoalhaven Regional Plan 2041 outlines that the township of Berry is highly valued as a place for communities to spend leisure time. This PP application will ensure the role that The Berry Inn has in the tourism sector of the township can continue and with the ability to adapt into the future in line with the overall economic strategic vision for Berry.</p>	<p>The PP application is broadly consistent with this objective/strategy.</p> <p>In April 2024, Council resolved (MIN24.176) in part to: <i>Adopt the "Existing Character Statements" and "Future Desired Local Character Statements" identified in the Shoalhaven Character Assessment Report (February 2020) as 'interim' character statements to support the proposed planning controls for managing local character.</i></p> <p>The Roberts Day report recognises the need for Berry to have a "... retail presence which continues to cater</p>

	<p><i>for the existing and future community, while balancing tourism and increased resident populations.”</i></p> <p>Council recently exhibited a PP that seeks to introduce an additional clause into the Shoalhaven LEP 2014 to help protect local character and to insert a character objective into six residential land use zones (Council ref. PP073, DPHI ref. PP-2024-1103).</p> <p>Council is also progressing an updated Berry Town Centre DCP, which covers the subject land and will help ensure that any new development embraces Berry's local character.</p>
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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?

Shoalhaven 2040: Our Strategic Land-Use Planning Statement (September 2020)

The following actions and planning priorities of the adopted LSPS are considered relevant to the assessment of this proposal:

Proponent's PP	Staff assessment
Planning Priority: 6 – Strengthening commercial centres	
<p>The PP application will enable the long term viability of The existing Berry Inn. The zoning and controls will reflect the current lawful use and will ensure its ability to respond and adapt into the future.</p> <p>The supply of tourist accommodation within the Berry Town Centre will help to ensure the activity, economic growth and vibrancy of Berry, which relies heavily on tourism.</p>	<p>Simplifying the planning controls that apply to the land will help to support and strengthen the CBD in general.</p>
Planning Priority: 7 - Promoting a responsible visitor economy	
<p>Reviewing the planning controls applying to the subject site is critical in ensuring The Berry Inn can have financial certainty for future development and use of the site, while recognising the strong contribution that accommodation within the Berry Town Centre brings to the economy.</p>	<p>The PP application is generally consistent with this priority and Action 7.1. The Berry Inn is within walking distance of shops and other services in Berry, helping to support local businesses while minimising guests' reliance on cars.</p> <p>The proponent's PP application states that the rezoning is necessary to ensure the long-term viability of The Berry Inn.</p> <p>Applying the E1 zone to the whole site would potentially allow uses permissible in the E1 zone (subject to any required approvals). Any future development application would be assessed on merit.</p>

The CSP was adopted by Council in 2022. It outlines priorities for the City, which include specific actions associated with communities, development and the economy. The following priorities are considered relevant to the proposal:

Proponent's PP	Staff assessment
Priority 3.1: Strengthen and diversify the economy	
Not specifically addressed.	The PP application is broadly consistent with this priority
Priority 3.2: Deliver safe, vibrant & attractive public spaces	
Not specifically addressed.	The PP application is broadly consistent with this priority as it will help to support local businesses and strengthen the Berry CBD.

Shoalhaven Growth Management Strategy (GMS) 2014

The Shoalhaven GMS seeks to manage the social and economic implications of future growth in Shoalhaven whilst protecting and preserving the environmental values of the City. The GMS effectively embeds various structure plans and settlement strategies.

The proponent's PP application does not specifically address the GMS, but it is not inconsistent with the general intent of the GMS given its minor nature.

Shoalhaven Destination Management Plan (2018-2023)

The Shoalhaven Destination Management Plan (DMP) is a strategic document that prioritises key focus areas and actions across the six focus areas of Destination management, Destination marketing, Events, Local industry and advocacy, Infrastructure and investment and Visitor services. While not a recognised land use or planning document, the plan is of relevance to the PP application.

The DMP recognises an opportunity to review of tourism land use permissibility in the LEP and align strategic planning policies to encourage investment. In this regard, the proponent's PP application states:

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 provisions under the EP&A Act.

Improving the long-term viability of a small hotel/motel in the Berry CBD should help to minimise demand for tourist accommodation in other locations where there may be a greater risk of landuse conflict.

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

NA

Q6. Is the Planning Proposal consistent with applicable SEPPs?

The proponent's PP application includes a SEPP checklist. The PP application is not inconsistent with the applicable SEPPs.

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

Direction 1.1 Implementation of Regional Plans

The PP application is generally consistent with the overall intent of the Illawarra Shoalhaven Regional Plan 2041, and as such, is consistent with this Direction.

Direction 3.2 Heritage Conservation

This Direction applies because Lot SP 93194 is currently heritage listed in the LEP (Item 88 - associated with the former CBC bank building including fence and trees) and is part of the Queen Street Heritage Conservation Area (C6).

Clause 5.10 (Heritage Conservation) of the LEP applies. Subclause (10) 'Conservation Incentives' allows consent to be granted for any purpose provided the heritage requirements set out in parts (a) to (e) are satisfied. However, Clause 5.10(10) may be unavailable after the Torrens Title subdivision is completed because the listed heritage features would be on separately owned land (unless it is also part of the application).

While the submitted PP application does not seek to alter the heritage status of the land, the land on which The Berry Inn is located should be removed from the mapped extent of Item 88 as part of any PP because it does not contain the heritage features (former CBC bank building including fence and trees) and will be separately owned freehold land. This should occur after the approved Torrens Title subdivision has been completed.

The PP is not inconsistent with this Direction. Heritage NSW will be consulted if DPHI allows the PP to proceed past the Gateway step.

4.2 Coastal Management

This Direction applies because the land is located within the Coastal Use Area under the State Environmental Planning Policy (Resilience and Hazards) 2021. The land is however already developed and is located within an established urban centre. The PP is not inconsistent with this Direction.

5.1 Integrating Land Use and Transport

This Direction applies because the PP seeks to rezone urban land.

Rezoning the existing R2 zoned land to E1 is effectively a minor administrative change that reflects the existing approved use. The land is accessible via a range of transport modes and is located within walking distance of a range of services within the Berry CBD. Hence, the inconsistency with this Direction is of minor significance.

Direction 6.1 Residential Zones

This Direction applies because the PP seeks to rezone the existing R2 zoned land to E1. Residential accommodation is prohibited in the E1 zone. By definition, any PP will not encourage housing, which is inconsistent with this direction.

However, the inconsistency is considered minor and is justifiable because the land is already partly zoned E1 and the existing approved use is inconsistent with the objectives of the R2 zone.

Furthermore, other uses can be already potentially approved on the R2-zoned land under either clause 5.3 (development near zone boundaries) or 5.10(10) (conservation incentives).

Direction 7.1 Employment Zones

This Direction applies because the PP application seeks to alter the boundary of an existing employment zone (E1 Local Centre).

The PP application is consistent with the objectives of this Direction. The land is already partly zoned E1, and the existing approved use is consistent with the E1 zone objectives.

While other uses can be already potentially approved on the R2-zoned land under either clause 5.3 (development near zone boundaries) or 5.10(10) (conservation incentives) of the LEP, the proposed rezoning will simplify the land's planning controls.

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 land is located within an existing urban centre and is already developed and has no known threatened biodiversity values.

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

A range of uses that are otherwise prohibited in the R2 zone could potentially be approved under either clause 5.3 (development near zone boundaries) or 5.10(10) (heritage conservation objectives) of the LEP. The proposed rezoning is considered minor and administrative in nature.

Q10. Has the Planning Proposal adequately addressed any social and economic effects?

The proponent's PP states that the proposal will ensure "...the progressive extension of the tourist and visitor accommodation use on the site, and ancillary local town centre economic uses" and that in turn this will help facilitate "...the ongoing economic viability of the township, including the tourism economy and visitor services"... and provide "...the owner and operator of the existing business with certainty moving forward about the site."

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

The land is located within the Berry CBD, is developed, and has access to adequate public infrastructure.

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

Heritage NSW will be consulted before the PP is finalised.

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 application 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: The existing zone boundary reflects the previous cadastre boundary (before the current strata plan was created).

2. *Council is satisfied that the proposed amendment is minor and has sound justification.*

Comment: The land is already partly zoned E1, and the existing approved use is consistent with the E1 zone objectives. Furthermore, other uses can be already potentially approved on the R2-zoned land under either clause 5.3 (development near zone boundaries) or 5.10(10) (conservation incentives) of the LEP. The proposed rezoning is considered minor and has sound justification.

3. *The proposal would not create an undesirable precedent.*

Comment: Given the circumstances, the PP application is unlikely to create a direct precedent.

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: Overall, the PP application is expected to have positive social and economic benefits for the local economy.