

MINUTES OF THE ORDINARY MEETING

Meeting Date: Tuesday, 12 November 2024

Location: Council Chambers, City Administrative Building, Bridge Road, Nowra

Time: 5.30pm

The following members were present:

Clr Patricia White - Chairperson
Clr Luciano Casmiri
Clr Karlee Dunn
Clr Jason Cox
Clr Peter Wilkins
Clr Bob Proudfoot
Clr Jemma Tribe
Clr Matthew Norris
Clr Gillian Boyd
Clr Natalee Johnston (Remotely)
Clr Ben Krikstolaitis
Clr Selena Clancy

The Chairperson read a statement advising those present that the proceedings of this meeting (including presentations, deputations and debate) will be webcast and may be recorded and broadcast under the provisions of the Code of Meeting Practice.

The meeting was opened by an Acknowledgement of Country by the Chairperson, followed with a Moment of Silence & Reflection and the playing of the Australian National Anthem.

Apologies / Leave of Absence

Nil

Confirmation of the Minutes

RESOLVED (Clr Wilkins / Clr Cox)

MIN24.592

That the Minutes of the Ordinary Meeting held on Monday 28 October 2024 and the Extra Ordinary Meeting held on Tuesday 05 November 2024 be confirmed.

FOR: Clr White, Clr Casmiri, Clr Dunn, Clr Cox, Clr Wilkins, Clr Proudfoot, Clr Tribe, Clr Norris, Clr Boyd, Clr Johnston, Clr Krikstolaitis and Clr Clancy

AGAINST: Nil

CARRIED

Declaration of Interests

Nil

Minutes Confirmed Monday 26 November 2024 – Chairperson.....

CL24.352 Initial Consideration - Proponent Planning Proposal (PP) Application - 17 Prince Alfred Street, Berry	HPERM Ref: D24/378218
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RESOLVED* (Clr Dunn / Clr Clancy)

MIN24.610

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.

FOR: Clr White, Clr Casmiri, Clr Dunn, Clr Cox, Clr Wilkins, Clr Proudfoot, Clr Tribe, Clr Norris, Clr Boyd, Clr Johnston, Clr Krikstolaitis and Clr Clancy

AGAINST: Nil

CARRIED

CL24.353 Proposed Road Closure & Sale - Unnamed Road Reserve Adjoining Lot 106 DP 1048731 Milton	HPERM Ref: D24/403450
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RESOLVED* (Clr Cox / Clr Boyd)

MIN24.611

That Council

1. Approve the road closure under section 38D of the *Roads Act 1993* for the surplus road reserve adjoining Lot 106 DP 1048731, 13C Bishop Drive, Milton, being approximately 635m² in area (subject to final survey) by notice in the Government Gazette.
2. Classifies the closed section of road as operational land subject to public notice of the proposed classification under Section 31 and 34 of the *Local Government Act 1993*.
3. Authorise the sale of the closed road to the registered proprietor of the adjoining property being Lot 106 DP 1048731 for \$12,700 excluding GST (if applicable) including adjustment to the sale price after final survey.

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:

Lot Number	Lot SP 93194
Property Address	'The Berry Inn', 17 Prince Alfred Street, Berry.
Property Details	<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"> • Heritage-listed building (former CBC building) at 122 Queen Street; and • The Berry Inn at 17 Prince Alfred Street. <u>Focus of this PP application.</u>
Applicant	Allen Price & Scarratts (APS)
Owner	Cooltown Trading Pty Ltd
Current zoning	Partly zoned E1 <i>Local Centre</i> and partly zoned R2 <i>Low Density Residential</i> under the LEP. See Figure 2 below.
Proposed Amendment	<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)

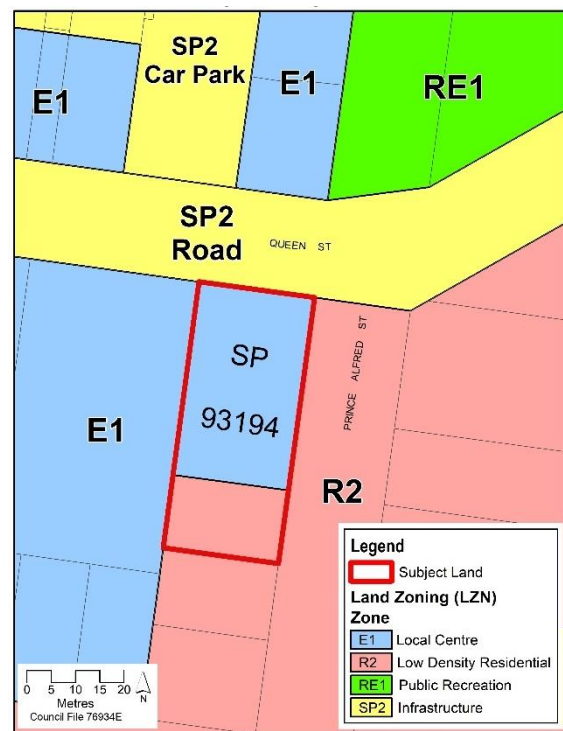


Figure 2 – current land zoning

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.

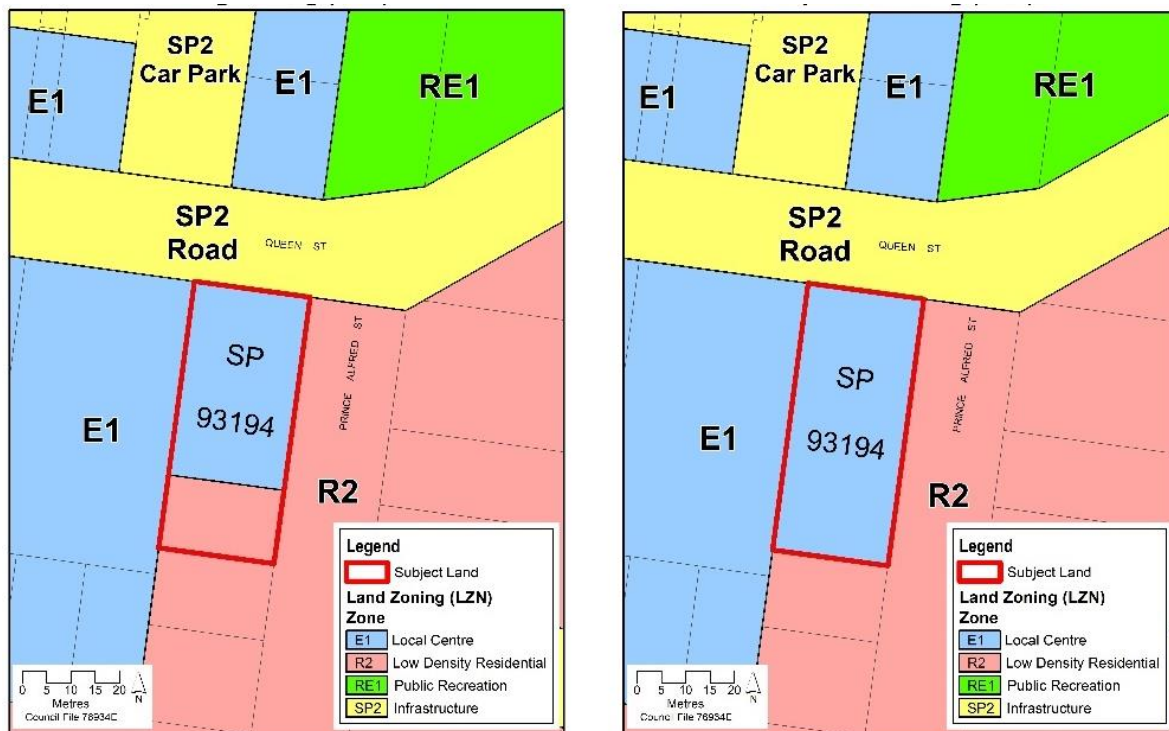


Figure 3 – current (left) and proposed (right) land zoning under the SLEP 2014

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.

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.

LEP Heritage item No. 88 (former CBC Bank building)

Background

The former Commercial Banking Company (CBC) building at No. 122 Queen Street, Berry is an example of a two-storey, late Victorian bank. It was completed in 1890 for the Commercial Banking Company of Sydney and designed by Mansfield Brothers, architects.

The item is described on the [State Heritage Inventory](#) (SHI) as **Victorian Free Classical Style former CBC Bank including fence and trees** that is:

A fine Late Victorian Free Classical style bank building, of special interest as one of the best examples of its style in the region. Major contributor to the streetscape and prominently located on the entry to the town's main street. Local significance (Shoalhaven).



Plate 1 - Former CBC building at 122 Queen Street, viewed from cnr of Queen and Prince Alfred Streets. Cast iron palisade fence in foreground.



Plate 2 - The Berry Inn at 17 Prince Alfred Street, viewed from the eastern side of the car park.



Plate 3 - cast iron palisade fence (RHS) referred to in the State Heritage Inventory extends along Queen St and the northern end of the Prince Alfred St boundary.



Plate 4 - Looking toward the former CBC building from The Berry Inn car park. CBC building is obscured by Cypress trees on the northern side of the driveway.

The mapped extent of Heritage Item 88 was previously expanded in 2017 via a housekeeping amendment Number 18 (Council ref: [PP022](#)) to the Shoalhaven Local Environmental Plan 2014 (LEP) based on the following: *Lots have been consolidated. Amend Heritage layer to extend to the map full property and amend Heritage schedule with updated property description.*

See **Figure 1** - Heritage map overlay in SLEP 2014. Top: prior to Amendment 18 on 16/2/18. Middle: since 16/2/18. Bottom: Proposed removal of 17 Prince Alfred Street from item 88. (Note: additional items and conservation area are proposed on adjacent land via a separate PP).

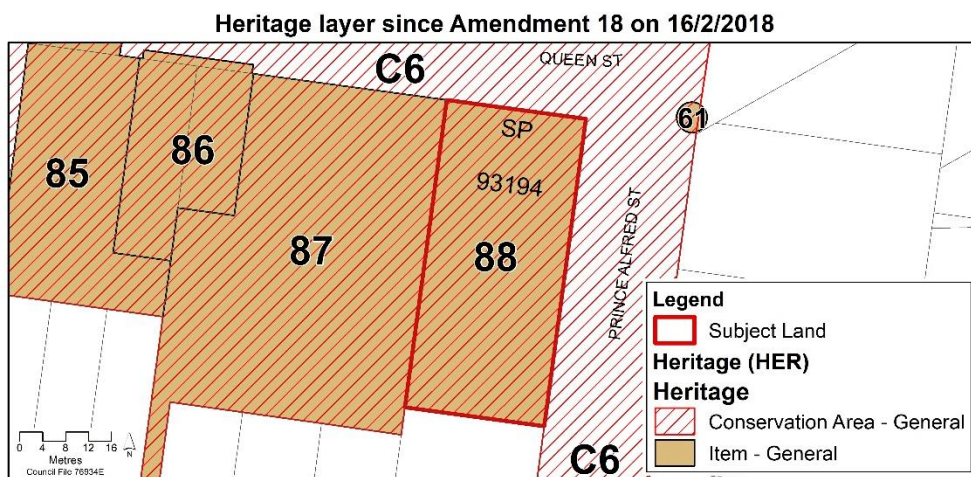
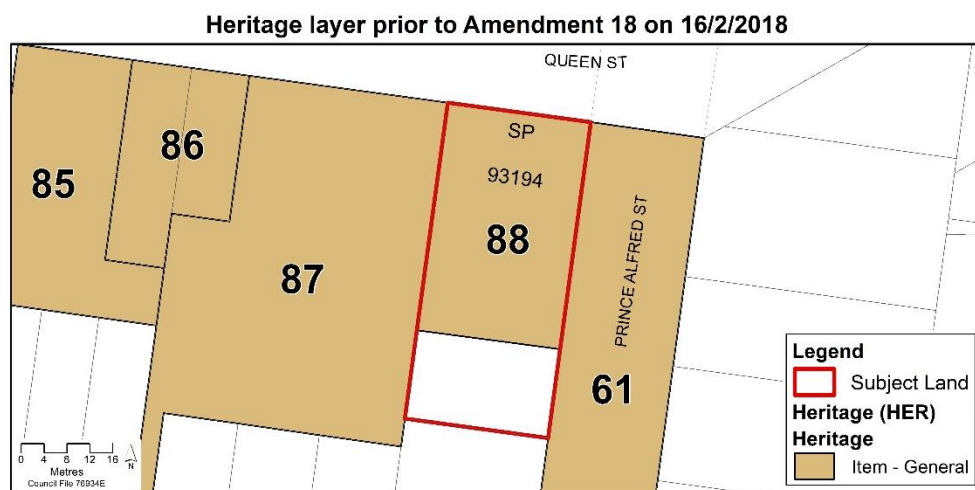
The proponent's PP application does not seek to amend the heritage map overlay in the LEP. However a development application to create a two-lot Torrens Title subdivision was recently approved. When completed, The Berry Inn will be on land that is separately owned from the former CBC building where the heritage features are located. As such there is also merit in considering an adjustment to the heritage map overlay as part of any PP.

Councils City Development Directorate advised that:

- There have been ongoing separate uses of the subject land; the parking bays and motel elements associated with The Berry Inn do not directly contribute to the significance of the historic CBC building.
- The reference in the SHI entry to *trees and fence* is believed to be related to the mature trees and older fence surrounding the CBC building, not the proposed Lot 2 area where The Berry Inn is located.

- No objections are raised to removing the proposed Lot 2 from the current local listing because the main curtilage containing the significant elements of the CBC building will not be affected.
- Proposed Lot 2 should remain within the Conservation Area boundary to assist in retaining the character and appearance of the area.

Given that any future development application over the land would still need to address LEP clause 5.10 in relation to the heritage conservation area and surrounding heritage items, it is considered appropriate to reduce the mapped extent of Item 88 at the appropriate point.



Indicative proposed change to heritage item 88 when Torrens Title subdivision is completed (Note: subdivision boundary to be surveyed after subdivision works have been completed.)

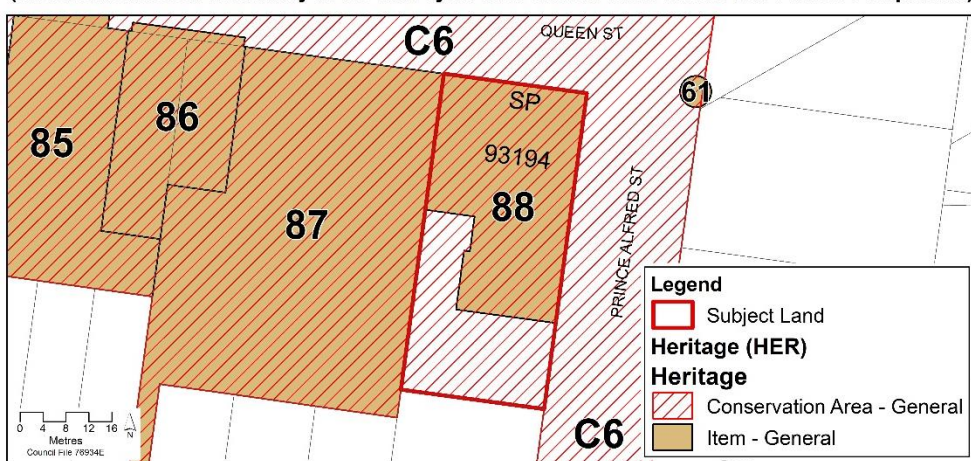


Figure 1 - Heritage map overlay in SLEP 2014. Top: prior to Amendment 18 on 16/2/18. Middle: since 16/2/18. Bottom: Proposed removal of 17 Prince Alfred Street from item 88. (Note: additional items and conservation area are proposed on adjacent land via a separate PP).