

CL24.218 Berry Planning and Heritage Considerations: Proposed Amendments to Shoalhaven Local Environmental Plan 2014 and Shoalhaven Development Control Plan 2014

HPERM Ref: D24/171688

Department: Strategic Planning

Approver: Coralie McCarthy, Acting Director - City Futures

Attachments:

1. Princess Street HCA Assessment Report (under separate cover)
2. List of Properties Proposed for Heritage Listing and/or Inclusion in HCA (under separate cover)
3. Heritage Inventory Sheets - Items within the Proposed Princess Street HCA (under separate cover)
4. Heritage Inventory Sheets - Proposed Items Outside the Proposed Princess Street HCA (under separate cover)
5. Berry DCP Engagement Outcomes Report (under separate cover)

Reason for Report

The purpose of this report is to:

- Advise on the outcomes of the independent review of the proposed additional Heritage Conservation Area (HCA) at Princess Street, Berry
- Advise on the outcomes of the initial community engagement activities relating to the proposed new chapter in the Shoalhaven Development Control Plan (DCP) 2014 for the area of Berry east of the Princes Highway/ bypass (often referred to as old Berry).
- Obtain direction regarding the progression of following: Planning Proposal (PP) to facilitate additional heritage listings in Berry. New DCP Chapter for Berry.

Recommendation

That Council:

1. Endorse the preparation of a Planning Proposal to amend Schedule 5 of Shoalhaven Local Environmental Plan (LEP) 2014 to introduce the following, as specified in this report and attachments:
 - a. A new Heritage Conservation Area (HCA) in the area of Princess Street, Berry
 - b. Nine new heritage items located within the proposed Princess Street HCA boundary at Berry, including;
 - i. 19 Prince Alfred Street (Victorian cottage),
 - ii. 29 Prince Alfred Street (Inter-war bungalow),
 - iii. 30 Prince Alfred Street (Late Victorian Cottage),
 - iv. 40 Prince Alfred Street (Federation weatherboard House),
 - v. 44 Princess Street (Weatherboard and fibro bungalow),
 - vi. 62 Princess Street and 85 Victoria Street (known as Alexandra Park),
 - vii. Part of 66 Princess Street and the adjoining Princess Street road reserve (*Araucaria heterophylla*, Norfolk Island Pine),
 - viii. 97 Victoria Street (Inter-war Cottage), and

- ix. Sandstone Kerbing on the western side of Prince Alfred Street, between Queen and Victoria Streets.
 - c. Nine new heritage items located outside of the proposed Princess Street HCA boundary, but within the area of Berry east of the Princes Highway/bypass, including:
 - i. 45 Prince Alfred Street (Inter-war weatherboard bungalow),
 - ii. 73 Victoria Street (Federation Weatherboard Cottage),
 - iii. 17 Albany Street (Victorian Brick Residence),
 - iv. 30 Alexandra Street (Inter-war House),
 - v. 40 Alexandra Street (Federation bungalow),
 - vi. 53 Queen Street (Inter-war Weatherboard Cottage),
 - vii. 59 Queen Street (Federation Weatherboard Cottage),
 - viii. 68 Queen Street (Federation Weatherboard Cottage), and
 - ix. 70 Queen Street (Inter-war Weatherboard Bungalow).
2. Submit the Planning Proposal to the NSW Department of Planning, Housing and Infrastructure for a Gateway determination and if favourable:
 - a. Proceed to formal public exhibition in accordance with the terms of the determination and legislative requirements; and
 - b. Receive a further report following the conclusion of the exhibition period.
3. Endorse the preparation of a draft new chapter for inclusion in the Shoalhaven Development Control Plan (DCP) 2014 for the area of Berry east of the Princess Highway/bypass, with the work to be undertaken in-house by Council staff and receive a further report on the draft chapter prior to public exhibition.
4. Subject to the outcome of Part 3, run the public exhibition of the Planning Proposal and draft new DCP chapter concurrently.
5. Advise key stakeholders, including (not exclusively) the Berry Forum, Berry Chamber of Commerce, Berry & District Historical Society and relevant landowners, of this resolution and the public exhibition arrangements for future related exhibitions.

Options

1. As recommended.

Implications: This is the preferred option as it will enable Council staff to proceed with the heritage and planning work required to respond to community concerns on a range of issues relating to unsympathetic development within the Berry township.

The overall project will require significant resourcing which could impact on the delivery of the New Land Use Planning Scheme for Shoalhaven, including the preparation of a new growth management strategy, contributions plan, local environmental plan (LEP) and DCP. Preparation of the new DCP chapter and PP will also be subject to the general workload and capacity of the Strategic Planning Department. Preparing the draft DCP in house will be resource intensive, however additional budget allocation from general fund will not be required and this option has the benefit of related efficiencies in relation to the broader review of the citywide DCP.

2. Delay the progression of PP and new DCP chapter for Berry until Stage 2 of the New Land Use Planning Scheme and incorporate key findings for Berry into future work.

Implications:

This option would enable a renewed focus on the New Land Use Planning Scheme for Shoalhaven, including the new growth management strategy, contributions plan, LEP and DCP. This would ensure that Berry's concerns are considered concurrently with other impacted towns and villages across the City. This option is considered a more efficient use of resources to delivery LGA wide benefits. This has not been recommended as it is not line with the expectations of the Berry community.

3. As recommended but engage an external consultant to prepare the draft DCP chapter.

Implications: This option will see the heritage and planning work progressed (subject to funding allocation), however the preparation of the draft DCP chapter would be outsourced to external consultants. This option is not preferred as it:

- Is subject to the availability of appropriate consultant expertise which is an unknown.
- Will come at a cost to Councils general fund that has not been budgeted for (estimated to be at least \$30,000 - \$50,000).
- Does not guarantee time efficiencies and will still require staff resourcing in terms of procurement and project management of the consultant, which is time intensive.

The preparation of the PP would still be undertaken inhouse.

The overall project will still require significant resourcing under this option, which will impact the timeline for delivery of the New Land Use Planning Scheme for Shoalhaven, including the preparation of a new DCP and LEP. Preparation of the PP and consultant procurement/ management will also be subject to general workload and capacity of the Strategic Planning Department.

4. Adopt an alternative recommendation.

Implications: This would depend on the recommendation but could include adjusting the scope of the PP and/or draft DCP chapter, or not progressing one or both at all. Not implementing appropriate heritage protections and development controls could be a missed opportunity to further recognise the unique heritage and character of Berry and help address the potential adverse impacts of unsympathetic development which is of concern to the Berry community.

Background

Princess Street Heritage Conservation Area

In 2022, the Berry Forum requested that Council investigate the Berry & District Historical Society's (BDHS) proposal for an additional HCA and six additional heritage items within Berry for inclusion in Schedule 5 of Shoalhaven LEP 2014. The proposal was accompanied by a [Proposed Princess Street HCA Heritage Assessment](#) prepared by the BDHS.

On 11 September 2023, Council resolved (MIN23.496) to give priority to the finalisation of a new HCA.

Subsequently, Louise Thom Heritage was engaged to undertake an independent review of the HCA proposal and potential heritage items located within the proposed HCA boundary. A copy of this peer review is provided as **Attachment 1**.

The review recommends that Council:

- Support the inclusion of a proposed Princess Street HCA in Schedule 5 of Shoalhaven LEP 2014, with a slightly modified curtilage to the BDHS proposal.
- Support the inclusion of nine heritage items located within the boundary of the proposed Princess Street HCA, which meet the threshold for inclusion in Shoalhaven LEP 2014. *Note: Four (4) of these items were included in the BDHS assessment.*
- Implement appropriate development controls that will retain the 10 identified contributory items. *Note: A contributory item is a property that has some heritage value but not enough to warrant individual listing as a heritage item. It is contributory because it makes a positive contribution to the heritage values of the HCA. The two BDHS items that were not supported as potential heritage items have been identified as contributory items.*

A list summarising the properties proposed for inclusion in the HCA and the nine additional proposed items can be found at **Attachment 2**. Draft heritage inventory sheets for each proposed item and the proposed HCA can be found at **Attachment 3**.

Figure 1 below shows the:

- Current heritage items and HCAs in Berry that are currently listed in the LEP.
- Proposed Princess Street HCA resulting from the review.
- Proposed nine additional heritage items within the proposed Princess Street HCA boundary.
- 10 contributory items.

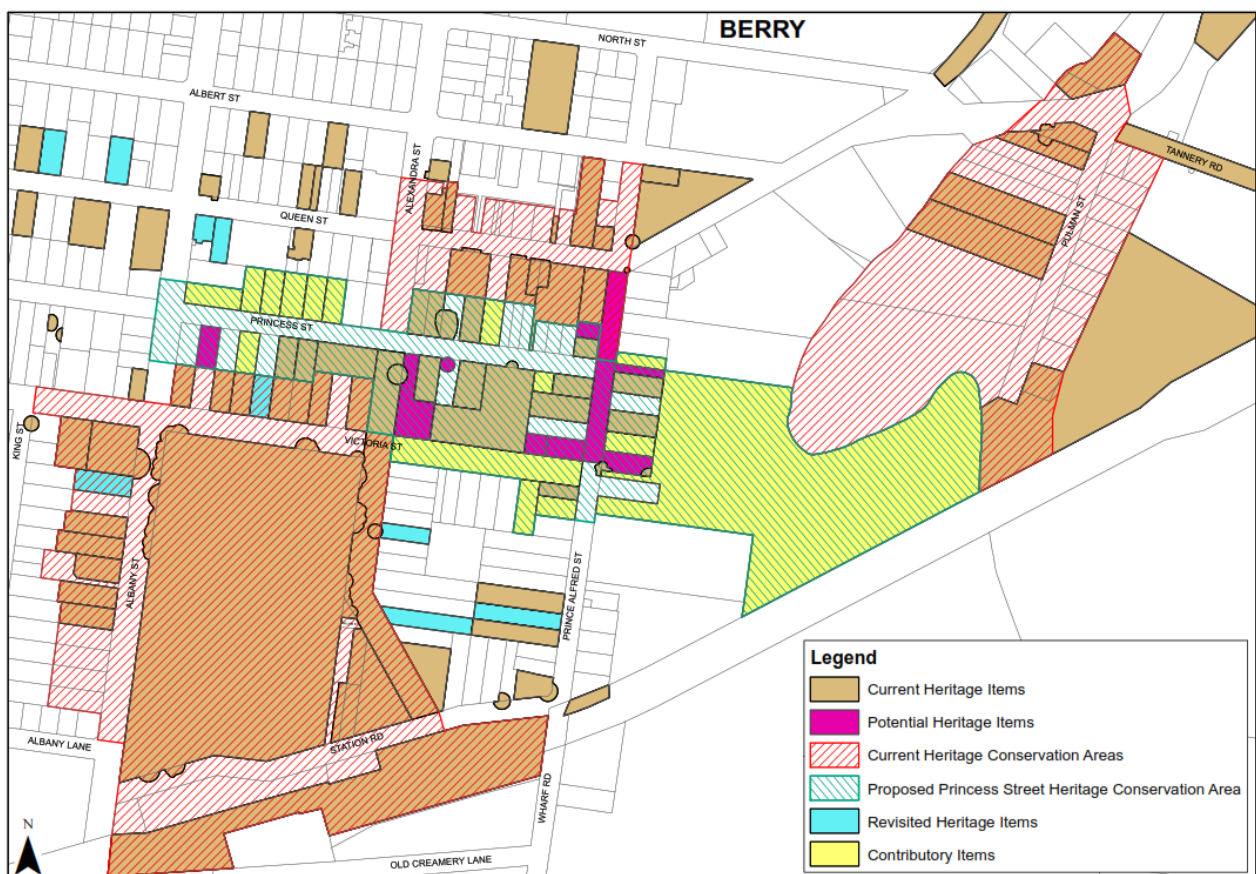


Figure 1: Current and Proposed Heritage Items, Heritage Conservation Areas and Contributory Items

Figure 2 below compares the now proposed Princess Street HCA boundary and the boundary originally suggested by the BDHS.



Figure 2: Comparison of the Louise Thom and BDHS HCA Boundary

Revisited heritage items (identified in 2019)

In 2021, Council finalised an amendment to the LEP which listed a number of heritage items and two HCAs in Berry (Amendment No. 43). As part of the preliminary consultation process, landowners of individual items identified as possessing heritage significance were asked whether they supported the heritage listing of their property. This process resulted in 11 landowners (at the time) 'opting out' of the amendment and their properties were not ultimately listed as heritage items.

Due to ongoing community concerns regarding the impacts of potentially unsympathetic development and the loss of heritage significance raised during this project to date, it is also proposed that nine of these potential heritage items be revised for inclusion in Schedule 5 of the LEP. The remaining items have undergone modifications that may impact the ability for the building to retain sufficient integrity to warrant listing as a heritage item. These properties would require further investigation when additional financial resources become available in the future.

Figure 1 above shows the nine revisited heritage items proposed for inclusion in the LEP. Refer to **Attachment 2** for a list of the properties and **Attachment 4** for the draft Heritage Inventory sheets for each.

The practice of 'opting out' of a heritage listing was discussed with Councillors at the 9 May 2024 Strategic Planning Working Party meeting, with the Councillors present generally in support of revisiting these items without running an 'opt-out' program. The owners of the nine properties in question will be notified/engaged should the recommended approach proceed further.

New DCP Chapter for Berry

During 2022, the Berry Forum requested that Council support the further preservation of Berry's character through the prioritisation of Council resources to prepare a new DCP Chapter for Berry, similar to the DCP chapter for the [Town of Milton](#). This proposal was accompanied by a potential [Draft DCP Chapter for Berry \(east of the Princess Highway\)](#) provided by the Forum.

The proposed new DCP chapter was not included on the Strategic Planning Works Program for consideration until Council resolved (MIN 23.496) on 11 September 2023 to give priority to the completion of a draft DCP Chapter for this part of Berry in conjunction with the finalisation of the Princess Street HCA.

From late 2023 to June 2024, Locale Consulting was engaged to undertake initial community consultation and gather feedback and ideas to inform the preparation of a new DCP chapter for Berry. This involved two online surveys, targeted face-to-face consultation and a community drop-in session. An overview of the community engagement activities and a findings summary are provided in the Engagement Outcomes Report (**Attachment 5**) provided by Locale Consulting.

To inform and progress the proposed DCP chapter, the Engagement Outcomes Report makes seven recommendations (see **Figure 3** below) to help guide the preparation of the draft DCP chapter.

- 1 Planning guidelines implement the desired future character of Berry, with controls that underpin the importance of heritage, rural/ agricultural surrounds, scale of development within the township, site coverage, tree retention and vegetation.
- 2 Planning guidelines do not preclude change but rather respond to different site and area based constraints and opportunities. This can be achieved (in part) with controls based on the planning matters explored in the second survey.
- 3 Planning guidelines that relate to heritage, aim to ensure that the significant heritage elements of the past and heritage precincts are recognised and appropriately responded to by new development, but this does not extend beyond those elements and precincts.
- 4 Planning guidelines recognise the importance of and respond to the specific need for certain infrastructure provision to support new development, including drainage, parking and pedestrian access.
- 5 Planning guidelines are clear, concise and applicable (in the context of the NSW planning system) where they can have the most impact on the desired future character of Berry.
- 6 The Berry community and the development industry continue to be engaged and educated as any new planning guidelines are developed and implemented.
- 7 Planning guidelines are implemented consistently and in a timely fashion, appreciating process and available resources.

Figure 3: Recommendations - Locale Consulting, Engagement Outcomes Report (June 2024)

To ensure the eventual new DCP Chapter is well balanced and consistent with the broader public interest, its preparation will consider the community submitted draft DCP chapter, the relevant outcomes from the initial community engagement (**Attachment 5** and **Figure 3**) and the HCA Peer Review (**Attachment 1**). It is noted that some matters raised during the initial round of consultation (the Locale Consulting report) may not be able to be specifically addressed through the DCP framework; however, where appropriate, these items could be considered/progressed through other strategic plans and policies or by other areas within Council.

The timing of the work on this new DCP chapter will depend on overall strategic planning priorities and commitments and the ability of Council staff to be able to focus on this work. Ideally, the draft DCP Chapter could be reported back to Council for consideration, prior to exhibition, toward the end of 2024 or early in 2025.

It is recommended that staff prepare the new DCP chapter as this option has the benefit of efficiencies in relation to the broader review of the citywide DCP. Alternative options for consideration include deferring the new DCP chapter or outsourcing this work (subject to sourcing suitable, available expertise and funding). It should be noted that Locale Consulting, who facilitated the community engagement, have advised that they would not be available to undertake the preparation of the new DCP, so the option to source expertise externally would require additional procurement processes.

Internal Consultations

Consultation has been undertaken with the asset strategic planners and asset custodians of the potential heritage items or properties owned or managed by Council within the proposed HCA (Works and Services Department and the Open Space and Recreation Planning Department). No immediate issues were raised.

Community Consultations

Following a favourable Gateway determination, the required PP would need to be exhibited in accordance with any conditions in the Gateway determination and legislative requirements.

Pending a further resolution by Council after consideration of the detail, the draft DCP Chapter will also need to be publicly exhibited for at least 28 days in accordance with legislative requirements. Ideally, the PP and draft DCP Chapter would be exhibited concurrently as both are heavily interrelated.

Public exhibition will provide an opportunity for further community engagement in relation to the detail of these matters. Any directly affected landowners will be advised of the exhibition arrangements in writing, as will the Berry Forum, Berry Chamber of Commerce and BDHS.

Policy Implications

The listing of the new Princess Street HCA and individual heritage items will require an amendment to Schedule 5 of the LEP. The new DCP chapter for Berry would be added as a new standalone chapter to the Shoalhaven DCP 2014. The land to which the new DCP chapter will apply will be refined through the DCP preparation process.

Financial Implications

There are no immediate financial implications for Council relating to the PP.

The preparation of the new draft DCP chapter, should it be undertaken in house, would need to be resourced from the Strategic Planning operational budget which could result in reduced funding being available to assist with other priority projects.

Should Council resolve to outsource preparation of the new draft DCP chapter, an allocation from Council's general fund would be required prior to proceeding. It is estimated costs would be in the vicinity of \$30,000 - \$50,000, depending on the scope.

Risk Implications

Not progressing with the heritage and planning controls discussed in this report may limit Council's ability to manage unsympathetic development through the assessment process, which could impact on the existing heritage significance and character of Berry.

Progressing with the proposed PP and new DCP chapter will impact on the timing and delivery of the New Land Use Planning Scheme for Shoalhaven. Projects that will be impacted includes the preparation of a new growth management strategy, contributions plan, LEP and DCP.

FOR ACTION

ORDINARY MEETING

29/07/2024

TO: Strategic Planner (Lynch, Kate)

Subject:	Planning Proposal Preparation - Berry - Princess St Heritage Conservation Area & other properties - Amendments - LEP 2014 & DCP 2014
Target Date:	28/08/2024
Notes:	
HPERM Reference	76082E/3
Related Report	D24/171688
Item Number	CL24.218

RESOLVED (Clr Copley / Clr Gray)

MIN24.396

That Council:

1. Endorse the preparation of a Planning Proposal to amend Schedule 5 of Shoalhaven Local Environmental Plan (LEP) 2014 to introduce the following, as specified in this report and attachments:
 - a. A new Heritage Conservation Area (HCA) in the area of Princess Street, Berry
 - b. Nine new heritage items located within the proposed Princess Street HCA boundary at Berry, including;
 - i. 19 Prince Alfred Street (Victorian cottage),
 - ii. 29 Prince Alfred Street (Inter-war bungalow),
 - iii. 30 Prince Alfred Street (Late Victorian Cottage),
 - iv. 40 Prince Alfred Street (Federation weatherboard House),
 - v. 44 Princess Street (Weatherboard and fibro bungalow),
 - vi. 62 Princess Street and 85 Victoria Street (known as Alexandra Park),
 - vii. Part of 66 Princess Street and the adjoining Princess Street road reserve (*Araucaria heterophylla*, Norfolk Island Pine),
 - viii. 97 Victoria Street (Inter-war Cottage), and
 - ix. Sandstone Kerbing on the western side of Prince Alfred Street, between Queen and Victoria Streets.
 - c. Nine new heritage items located outside of the proposed Princess Street HCA boundary, but within the area of Berry east of the Princes Highway/bypass, including:
 - i. 45 Prince Alfred Street (Inter-war weatherboard bungalow),
 - ii. 73 Victoria Street (Federation Weatherboard Cottage),
 - iii. 17 Albany Street (Victorian Brick Residence),
 - iv. 30 Alexandra Street (Inter-war House),
 - v. 40 Alexandra Street (Federation bungalow),
 - vi. 53 Queen Street (Inter-war Weatherboard Cottage),

- vii. 59 Queen Street (Federation Weatherboard Cottage),
 - viii. 68 Queen Street (Federation Weatherboard Cottage), and
 - ix. 70 Queen Street (Inter-war Weatherboard Bungalow).
2. Submit the Planning Proposal to the NSW Department of Planning, Housing and Infrastructure for a Gateway determination and if favourable:
 - a. Proceed to formal public exhibition in accordance with the terms of the determination and legislative requirements; and
 - b. Receive a further report following the conclusion of the exhibition period.
 3. Endorse the preparation of a draft new chapter for inclusion in the Shoalhaven Development Control Plan (DCP) 2014 for the area of Berry east of the Princess Highway/bypass, with the work to be undertaken in-house by Council staff and receive a further report on the draft chapter prior to public exhibition.
 4. Subject to the outcome of Part 3, run the public exhibition of the Planning Proposal and draft new DCP chapter concurrently.
 5. Advise key stakeholders, including (not exclusively) the Berry Forum, Berry Chamber of Commerce, Berry & District Historical Society and relevant landowners, of this resolution and the public exhibition arrangements for future related exhibitions.

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

AGAINST: Clr Kitchener

CARRIED