

Joint Regional Planning Panel (Southern Region) – 1 December 2011

JRPP No	2011STH019
DA Number	RA11/1003
Local Government Area	Shoalhaven City Council
Proposed Development:	Four storey residential flat building containing 30 x 3 bedroom and 16 x 2 bedroom apartment units with basement car parking for ninety cars
Street Address	Lot 8 DP 758530, Lot A DP 390332 & Lot B DP 390332, Nos. 11, 15 & 17 Fegen Street, Huskisson
Applicant / Owner	Boomerang Brikich for Tim Brikich, Donna Brikich & Boomerang P/L
Number of Submissions	Forty-Six (46) Objectors; And Twenty-Five (25) Supporters
Recommendation	Recommended that the application be refused.
Report By	James Bonner, Acting Senior Development Planner

ASSESSMENT REPORT AND RECOMMENDATION

EXECUTIVE SUMMARY

Reason for Consideration by Joint Regional Planning Panel

The submitted development application (DA) has been referred to the Joint Regional Planning Panel (JRPP) pursuant to State Environmental Planning Policy (Major Development) 2005 as the development will have a capital investment value over \$10 million. In accordance with Section 15(3) of Schedule 6A of the Environmental Planning and Assessment Act 1979, a regional panel continues to exercise the consent authority functions of a council for development that has a capital investment value of more than \$10 million if the development application was made, but not determined by the panel, before the commencement of Schedule 4A.

Proposal

The DA seeks approval to:

- Demolish two single storey dwellings.

- Construct a four storey residential flat building containing 46 residential units (30 x 3 bedroom units and 16 x 2 bedroom units).
- Provide basement car parking for 90 cars with access to the car park off Fegen Street with egress onto Kent Lane at the rear of the property.
- Consolidate the three lots into one lot.

Permissibility

The site is zoned 3(g) (Business “G” (Development Area) Zone) under Shoalhaven Local Environmental Plan 1985 (SLEP 1985). The proposal (residential flat building) is not listed as being a prohibited use and is permissible with development consent.

Main Issues

The proposed development is not suitable to the site and is out of context with the desired future character of the locality as described in the urban design strategy for the locality by Ruker Urban Design and subsequent Purdon Review that have shaped Draft DCP99.

The applicant has not provided a heritage impact statement for the heritage item located on the adjoining property.

RECOMMENDATION

That, in respect of Regional Development Application RA11/1003 (2011STH019) for a four storey residential flat building containing 30 x 3 bedroom and 16 x 2 bedroom apartment units with basement car parking for ninety cars at Lot 8 DP 758530, Lot A DP 390332 & Lot B DP 390332, No. ‘s 11, 15 & 17 Fegen Street, Huskisson, the application be refused for the following reasons:

- a) The proposed development does not meet the objectives of Development Control Plan 99 in regards to building design, height restrictions and Floor Space Ratio (FSR).**
- b) The proposed development is not suitable to the site in regards to the bulk and scale of the building in relation to the existing and desired future character of the locality as described in the urban design strategy for the locality by Ruker Urban Design and subsequent Purdon Review in regards to building design, height restrictions, Floor Space Ratio (FSR) and landscaping provisions.**
- c) The use of Kent Lane as a frontage for units with minimal setbacks to the lane is unsuitable from an amenity perspective having inadequate separation distances from the laneway and neighbouring properties.**
- d) The proposed development is an overdevelopment of the site and is not in the public interest.**
- e) A heritage impact statement prepared in accordance with the provisions of SLEP1985 has not been submitted addressing the impact upon the heritage item of local significance located at 7 Fegen Street that is in the vicinity of the proposed development. In this regard, Council is not satisfied that the heritage impact of the proposal has been adequately addressed.**

ASSESSMENT REPORT

1. Background

The following provides details on pre-lodgement discussions, post lodgement actions and general site history:

Pre-lodgement: A pre-lodgement meeting (i.e. Development Advisory Unit [DAU] meeting) was held with Council staff on 4 August 2010 for a 40 unit residential flat building. As Council was reviewing the Development Control Plan (DCP) for the area it was recommended that a further DAU meeting be held after the DCP had been reviewed and adopted. No further meeting was held prior to the lodgement of the application.

Post Lodgement: The application was lodged with Council on 6th July 2011 and included architectural drawings, landscape plan, storm water concept plan, statement of environmental effects, bushfire assessment report, waste minimisation and management plan, BASIX Certificate, SEPP 65 schedule, electrical substation report and a traffic assessment.

Site history: A review of Council's computer records and files indicates the following applications have been lodged on the lots.

Lot 8

- BA61/850 – dwelling - approved
- BA81/0960 – dwelling additions – approved

Lot A

- DA01/2176 – dwelling additions – refused 11/12/2002

Lot B

- DA04/2637 – two storey tourist development comprising five units – refused by NSW Planning 21/10/05.

Urban Design Considerations

In 2008, Council engaged Ruker Urban Design to develop an urban design strategy and development controls for the four 3(g) precincts in Huskisson in response to calls for variation to the development controls for these 3(g) zoned sites. In June 2009 Council resolved to incorporate the Ruker Urban Design Strategy into Development Control Plan 99 (DCP99) - Huskisson Foreshore Business Development Zone 3(g) Duncan, Bowen, Fegen and Nowra Streets (DCP99). Council publicly exhibited Draft Development Control Plan No.99 (DDCP 99)(Draft Am 1) – Huskisson Business 3(g) Zone Development Precincts (DDCP99) between 25/11/09 and 15/1/10.

In May 2010, Council resolved that a peer review be undertaken by a consultant in the area of architecture and urban design. Purdon Associates undertook the review and their findings were presented to Council which resolved on 1/2/11 to adopt the recommended FSR and height limit for the four precincts and to further amend DDCP99 to reflect the findings of the Purdon Report. The amended DDCP99 was re-exhibited, excluding the already adopted height and FSR controls, from 29/6/11 to 29/7/11. This was then extended until 9/9/11. The results of the public exhibition are likely to be reported to the elected Council in the near future.

While draft DCP99 has not been formally adopted by Council, it does articulate the essential elements of the Ruker Urban Design Strategy, the Purdon peer review and adopted Council policy for height and floor space ratio in the subject locality.

2. Subject Site and Surrounds

The proposed consolidated site is rectangular in shape and has an area of 4046m². It has a primary street frontage of 80.5 metres to Fegen Street to the east with a secondary frontage to Kent Lane to the west of the same length. The northern and southern boundaries are 50.2 metres. The site is reasonably flat with a fall of approximately 2 metres from north to south.

The adjoining property to the north contains a single storey weatherboard clad dwelling that is listed in the SLEP1985 as being a heritage item of local significance. The property to the south contains a three storey residential flat building containing four units that is currently under construction.

The properties to the west are single storey dwellings either on individual lots or within medium density developments and are separated from the development site by Kent Lane. The development to the east on the opposite side of Fegen Street is on a crown reserve and contains a caravan park for tourists.

Lot 8 is vacant land and has been predominantly cleared of vegetation with a small stand of native trees in the north western corner that are proposed to be removed.

Lot A is generally cleared of vegetation and has a single storey brick dwelling that is proposed to be demolished.

Lot B is generally cleared of vegetation and has a single storey brick dwelling that is proposed to be demolished.

3. Proposal

The application seeks approval to:

- Demolish two single storey dwellings.
- Construct a four storey residential flat building containing 46 residential units (30 x 3 bedroom units and 16 x 2 bedroom units).

- Provide basement car parking for 90 cars with access to the car park off Fegen Street with egress onto Kent Lane at the rear of the property.
- Consolidate the three lots into one lot.

4. Community Consultation

In accordance with Council's Community Consultation Policy, the application was notified as follows:

- Individual property owners within a 300m radius of the site were notified of the proposal. The notification period was from 20 July 2011 to 19 August 2011 (30 days);
- The proposal was advertised in the local press on two occasions (South Coast Register on 20 July 2011 and 3 August 2011); and
- The application and supporting documentation were put on display at Council's City Administrative Centre, Nowra as well as on Council's website.

A total of seventy-one (71) submissions were received during the exhibition period with 46 objecting to the application and 25 supporting it. Of these submissions, 38 of the objectors and 7 of the supporters live or own property within the Huskisson/Vincentia locality. A summary of these submissions is as follows:-

Objection

Traffic

- Increased traffic in Kent Lane
- Upgrading of Kent Lane required
- Increased traffic generally in locality

Building Design

- Size and scale is too big for immediate surrounds
- Height and density is excessive
- Inconsistent with planning documents
- Excessive glass and dark masonry to façade
- Façade appears as one long form
- Building appears bulky
- Does not comply with DCP99
- Does not comply with SEPP65
- Insufficient car parking

Amenity

- Setback to Fegen Street insufficient
- Out of character/not sympathetic with area
- Reduced privacy for neighbours
- Impacts on adjoining heritage item
- Increased stormwater runoff

- Increased noise to properties backing onto Kent Lane from vehicles coming out of basement carpark
- Landscaping does not meet permeability requirements

Support

- Increases the number of quality tourism units
- Increased employment
- Good urban design with use of natural timber
- Traffic flow in Kent Lane is one way to the south and therefore no increase for properties to the north of development site
- Large landscaped area
- Generous setbacks to boundaries
- Extensive underground car parking
- Design acknowledges adjoining heritage item
- Additions to heritage item have destroyed its significance
- Good location within walking distance to shops
- Good use of urban land – close to shopping precinct, additional accommodation
- Stimulates economy
- Modern design with access to sunlight, views and breezes

5. Statutory Considerations

The following Environmental Planning Instruments (LEPs), State Environment Planning Policies (SEPPs), Development Control Plans (DCPs), Codes or Policies are relevant to this application:

- State Environmental Planning Policy (SEPP) 65 - Design Quality of Residential Flat Development
- State Environmental Planning Policy (SEPP) 71 - Coastal Protection
- State Environmental Planning Policy (SEPP) - BASIX (2004)
- Deemed State Environmental Planning Policy - Jervis Bay Regional Environmental Plan
- Shoalhaven Local Environmental Plan 1985 (SLEP1985)
- Draft Shoalhaven Local Environmental Plan 2009 (DSLEP2009)
- Section 94 Contribution Plan 2010 (as amended)
- Development Control Plan 18 – Car Parking Code
- Development Control Plan 93 - Waste Minimisation & Management
- Development Control Plan 99 (DCP99) - Huskisson Foreshore Business Development Zone 3(g) Duncan, Bowen, Fegen and Nowra Streets

Additional information on the proposal's compliance with the above documents is detailed in the following section of this report.

6. Statement of Compliance / Assessment

The following provides an assessment of the submitted application against the matters for consideration under 79C of the EP&A Act.

(a) Any planning instrument, draft instrument, DCP's and regulations that apply to the Land

State Environmental Planning Policy (SEPP) 65 - Design Quality of Residential Flat Development

The SEPP applies to residential flat buildings comprising 3 or more storeys and having 4 or more self contained dwellings. The SEPP states that the application must include verification from a qualified designer that the proposal achieves the design quality principles set out in Part 2 of the SEPP. The application included a statement of verification from Architects Edmiston Jones that the proposal meets the design quality principles. SEPP65 also requires the consent authority to take into consideration the Residential Flat Design Code (RFDC) when assessing an application.

A review of the SEPP 65 Principles, in respect to this proposal, is provided as follows:

(1) Context: The site is zoned 3(g) in SLEP1985 and is located within the area identified as "Precinct 1" in DDCP99. Both documents identify higher density residential development as being an applicable use of this land and Council has recognised the need to provide a diverse supply of residential accommodation in this area. However, the proposal is out of context and incompatible, in terms of height, bulk, scale, with the existing domestic scale of architecture which is generally single and two storey including the adjoining medium density zoned area. The development is also out of context with the desired future character of the area as identified in the Ruker Urban Design Strategy and Purdon Review. The development proposes a 13m height, FSR of 1.4:1 with a continuous building form of 66m in length. The Ruker UDS and Purdon Review both envisaged a lower density, smaller separated building form to complement the domestic scale of architecture within the locality.

(2) Scale: SEPP65 states that *"Good design provides an appropriate scale in terms of the bulk and height that suits the scale of the street and the surrounding buildings. Establishing an appropriate scale requires a considered response to the scale of existing development. In precincts undergoing a transition, proposed bulk and height needs to achieve the scale identified for the desired future character of the area."*

The subject precinct is undergoing a transition from generally single storey detached dwellings to higher density development as stated in the objectives of the 3(g) zone and as detailed in the urban design analysis undertaken by Ruker, peer reviewed by Purdon and consequentially articulated through DDCP99. The building height, density and bulk detailed in DDCP99 reflect the desired future character of the locality. The proposed development exceeds the adopted height, exceeds the adopted maximum density and

exceeds a crucial requirement for appropriate building bulk by having a continuous building form that is 66m long. The development and scale is not in keeping with the desired future character of the area.

(3) Built Form: The SEPP states that good design achieves an appropriate built form in terms of building alignments, proportions, building type and the manipulation of building elements. The proposed built form is out of proportion with the existing and desired streetscape as derived from the Ruker UDS and Purdon Review and is likely to dominate the streetscape in relation to the scale of the development when compared to the existing and desired future building. The building is out of proportion with the desired built form in that it presents as a continuous four storey building of excessive length and scale along Fegen Street.

The verification statement says that the building has a separation of 12m between habitable rooms/balconies in accordance with the requirements of the RFDC. However, the plans show that the separation between habitable rooms and balconies on the second and third floor are only 9-10m. No justification has been provided for the departure from the RFDC.

(4) Density: The verification statement says that the floor space ratio (FSR) has been calculated using the FSR design controls under the RFDC. However, the RFDC states *“FSR should not be the sole determinant of future built form; it should be linked with all other building envelope controls to support the desired outcome”* and the maximum FSR may not be achievable on all sites due to urban design considerations. In this regard, Council engaged Ruker Urban Design to undertake a location specific urban design analysis to define appropriate development controls. Following the Purdon peer review, Council adopted a maximum density which the proposal exceeds. The urban design strategy approach by Council was rigorous, consultative and facilitated by expert, independent advice. The peer review addressed issues raised by landowners and reinforced the appropriateness of the Ruker urban design controls.

The applicant states that FSR has been determined by calculating the achievable floor areas allowed by DDCP99 through the height and setback controls giving a ground floor achievable floor area of 3120m². This equates to 77% of the site area of 4046m² leaving a maximum of 23% for landscaping. However, DDCP99 requires a minimum of 35% of the site to be left permeable for landscaping, storm water infiltration and drainage purposes. The calculation appears to have not included the landscaping requirements in the assessment of design controls.

SEPP65 states that appropriate densities are those that are consistent with the existing density in an area or are consistent with the stated desired future density. Council's adopted policy position that has been detailed through DDCP 99 restricts the FSR to a maximum of 1:1 within 'Precinct 1'. The FSR for the proposal is 1.4:1. The proposed density is not appropriate for the site or locality and is not in keeping with the desired future character of the area as identified by Ruker, supported by Purdon and articulated in DDCP99.

(5) Resource, energy and water efficiency: Opportunities for natural ventilation and access to natural daylight have been addressed in the design of the proposal, as highlighted in the associated BASIX Certificate. The verification statement states that the roof water will be re-used in toilets, laundries and irrigation of landscaped areas. However, the BASIX Certificate only allows for the re-use of stormwater in common landscaped areas. The development proposes a 10,000L rain water tank to collect water for re-use, which would be insufficient to supply water for toilet flushing and laundries. Due to the size of the building footprint, landscaping is proposed only around the extremities of the building with minimal deep soil zones provided.

While a BASIX certificate has been obtained, the development makes little attempt to reuse water collected on site. The development should incorporate a much larger rainwater collection tank or multiple tanks so this water can be reused in toilets and laundries in all the units.

(6) Landscape: A landscape concept plan was submitted with the application. This plan showing that the small amount of land not covered by the building has been landscaped using native species. The plants located in the courtyard against the eastern face of units 9-13 and the western face of units 2-6 are overhung by the units on the first floor and will have reduced exposure to direct sunlight and rainfall.

(7) Amenity: A review of the RFDC indicates that the building addresses amenity through access, apartment layout, provision of balconies (terraces), suitable room dimensions and access to natural ventilation and daylight. All units have a dual aspect with most having a western and eastern aspect.

With respect to public road access, Ruker and Purdon considered Kent Lane would remain as a service lane basically restricted to providing vehicle access to the development and for servicing of garbage/recycling bins. The development proposes to use Kent Lane as a second frontage with 14 units of the ground and first floor overlooking Kent Lane with only a 5m building setback to the lane. Kent Lane is only 6m wide with no footpath reserve between the roadway and property boundaries. Due to the inadequate lane reserve width and the minimal separation distance between the lane and units (5m to habitable rooms, 1.5m to terraces) there are significant potential amenity impacts for future residents of the development.

The development proposes using Kent Lane to service the garbage and recycling bins with two units to share a 240L garbage bin and 240L recycling bin giving a total of 46 bins. There likely to be amenity impacts on the units fronting the lane, with potential noise and odour impacts for residents of the development with 23 garbage bins being picked up on a weekly basis and 46 garbage and recycling bins on a fortnightly basis.

The RFDC states that units should be provided with storage space for ancillary items at the rate of 8m³ for two bedroom units and 10m³ for three bedroom units. The statement of verification states that storage facilities have been provided to the units and

basement in accordance with SEPP65. No storage areas have been identified on the floor plans or basement plan.

(8) Safety and Security: Appropriate surveillance opportunities have been integrated into the design of the building through the use of balconies overlooking public and communal spaces.

(9) Social Dimensions: Residential development is appropriate in the locality identified as 'Precinct 1' of DDCP 99.

(10) Aesthetics: While the building utilises a variety of materials to reflect the coastal and bush environment, the presentation of essentially one long continuous four storey building to the Fegen Street and Kent Lane frontages does not respond well to the existing and desired character of the area. Minimal landscaping is proposed along the frontages due to the bulk of the building and the terraces being located within the required setbacks.

State Environmental Planning Policy (SEPP) 71 - Coastal Protection

This Policy requires Council to take certain matters into account when determining a development application that is located in the coastal zone.

The matters for consideration are the following:

(a) the aims of this Policy set out in clause 2,

The application is consistent with the aims of the SEPP, except for clause 2(1)(k) as the scale and size of the development is not suitable for the location. The proposed development does not meet the adopted height or FSR controls contained within DDCP99 and is out of scale with existing developments in the locality.

(b) existing public access to and along the coastal foreshore for pedestrians or persons with a disability should be retained and, where possible, public access to and along the coastal foreshore for pedestrians or persons with a disability should be improved,

The proposal does not affect public access to the foreshore.

(c) opportunities to provide new public access to and along the coastal foreshore for pedestrians or persons with a disability,

There are no opportunities to provide new public access to the foreshore.

(d) the suitability of development given its type, location and design and its relationship with the surrounding area,

The design of the development is not suitable to the location in regards to the built form, height and scale. The proposal is for four storeys with a height of 13m in an area where councils desired future character is a height limit of 10m with a maximum of three

storeys. The landscaping proposed is inadequate for the locality and is mostly restricted to the outer edges of the site.

(e) any detrimental impact that development may have on the amenity of the coastal foreshore, including any significant overshadowing of the coastal foreshore and any significant loss of views from a public place to the coastal foreshore,

The development is set back from the foreshore and is unlikely to affect the amenity of the foreshore.

(f) the scenic qualities of the New South Wales coast, and means to protect and improve these qualities,

The development is unlikely to be visible from the foreshore due to the topography of the area.

(g) measures to conserve animals (within the meaning of the Threatened Species Conservation Act 1995) and plants (within the meaning of that Act), and their habitats,

There are no known threatened species or habitats on the site.

(h) measures to conserve fish (within the meaning of Part 7A of the Fisheries Management Act 1994) and marine vegetation (within the meaning of that Part), and their habitats

The site does not adjoin a water body and is unlikely to affect marine habitats.

(i) existing wildlife corridors and the impact of development on these corridors,
There are no wildlife corridors in the vicinity.

(j) the likely impact of coastal processes and coastal hazards on development and any likely impacts of development on coastal processes and coastal hazards,

The development is unlikely to impact on coastal processes or hazards.

(k) measures to reduce the potential for conflict between land-based and water-based coastal activities,

The development will not conflict with land-based or water-based activities.

(l) measures to protect the cultural places, values, customs, beliefs and traditional knowledge of Aboriginals,

There are no identified areas of Aboriginal cultural heritage or places located on site

(m) likely impacts of development on the water quality of coastal waterbodies,

The development will be connected to the reticulated sewer and stormwater system and should not impact on water quality.

(n) the conservation and preservation of items of heritage, archaeological or historic significance,

There are no items of heritage on the site. See below for assessment of consideration of the nearby heritage item.

Clauses 14-16 of the SEPP require consideration of the following additional matters when determining development applications:-

Cl. 14 - Public access

The site does not have frontage to the coastal foreshore and the nature of this development will not impede or diminish accessibility.

Cl.15 - Effluent disposal

The site is serviced by a reticulated system and therefore this clause has no further implications on the proposal.

Cl.16 - Stormwater

All roof water is to be captured and stored in a 10,000L rainwater tank for reuse on common landscaped areas and excess water will be disposed into the Council stormwater system. The development will greatly increase the volume of stormwater being discharged from the site due to the large impervious areas and the small volume being captured for reuse.

State Environmental Planning Policy (SEPP) - BASIX (2004)

In accordance with the requirements of this SEPP, BASIX Certification (Certificate No.337239M by Greenview Consulting) has been provided with the development application. In addition, all applicable requirements have been shown on the DA plans. The proposed development does not conflict with the aims and applicable provisions of SEPP (BASIX) though minimal reuse of water is proposed.

Deemed State Environmental Planning Policy - Jervis Bay Regional Environmental Plan

The site is located within the area governed by the Jervis Bay Regional Environmental Plan (JBREP). The JBREP is supported by a series of maps that identify areas for future urban development, location of habitat corridors and disturbed lands that could function as habitat corridors should active management be undertaken including the uses of any nearby waterways. The subject site is NOT identified in any of the maps that support this Plan. The following clauses of the JBREP are relevant to the application.

Clause 11 – Catchment Protection

The development proposes to protect the catchment by collecting roof water and surface water and directing it into holding tanks and then into the Council storm water

system. During construction works sedimentation control measures will be installed to reduce the potential for erosion and sediment runoff.

Clause 12- Landscape Quality

While the development will require the removal of all the trees on the site it proposes some landscaping within the property and the planting of street trees on Fegen Street.

Shoalhaven Local Environmental Plan 1985

The sites are zoned 3(g) Business “G” (Development Area) under SLEP 1985. The proposed development is permissible with development consent from Council. The objectives of this zone are:-

“...to provide a strategic development area providing both for a variety of uses and for varying combinations of such uses including higher density residential, commercial and tourist combinations but not including ordinary retail uses that would compete with the local retail centre. The development is subject to a development control plan (DCP) which will give guidelines for the type and scale of development”.

In this regard, the proposed residential flat building is an appropriate land use within this 3(g) zoned precinct.

The following clauses are applicable to the application:

Clause 2 – Aims and objectives

The development is generally consistent with the listed aims and objectives, except for sub-clause (f) *“to protect heritage items”* The applicant has not demonstrated how the proposal will protect the adjacent heritage item.

Clause 20E – Protection of heritage items

Subclause 4 states that the *“consent authority must not grant consent to development on land ... within the vicinity of a heritage item unless it has assessed the impact of the proposed development on the heritage significance of the relevant heritage item”*.

Subclause 5 states that the *“assessment must include consideration of a heritage impact statement”*. The application did not include a heritage impact statement assessing the impact of the development on the heritage item.

Clause 20G – Development in the vicinity of a heritage item

The clause requires Council to consider the impact of the proposed development on the heritage significance of a heritage item within the vicinity of the development. A heritage item of local significance is located to the north on 7 Fegen Street. The item being a single storey weatherboard clad cottage built in the interwar period as a weekend or holiday home. The Statement of Environmental Effects does not identify or make any mention of the heritage item next door. Council wrote to the applicant on 13/7/11 requesting a Heritage Impact Statement (HIS) be submitted to Council addressing the

potential impact the proposal may have on the adjoining heritage item. A HIS was not submitted to support the application.

The application was referred to Council's Heritage Advisor who provided the following comments:

"Impact on the adjoining heritage item

The heritage item is a single storey weatherboard house and is one of only four of this type in Huskisson. It is a good example of an early, weatherboard holiday house. Its setting is largely coastal with small scale development with large gardens, un-kerbed roads and low key, tourist facilities. This is reflective of the original setting of the house.

The proposal will have a severe impact on the heritage item:

- The development introduces a large, four storey building into the street that will considerably alter the character of the street and the visual setting of the item and views to it.*
- The development places a four storey section close to the front of the item. Though there is a separating landscaped walkway, the proposal is out of scale with the item*
- There are large balconies to the front, four storey section of the development that directly overlook the heritage item impacting negatively on its amenity.*
- There is a long, two storey element adjoining the rear garden of the property that has balconies to habitable rooms that face directly into the rear garden of the heritage property.*
- There is a community garden on top of the rear section that overlooks the rear garden of the heritage item.*

The impact on the amenity of the item is important as the proposal will diminish the value of the heritage item and threaten its long term viability. The owners of the heritage item do not have the same development opportunities as other properties in the zone and the "in the vicinity" clauses are there in part to protect the setting of the items from inappropriate development.

Landscaping along the boundary cannot be considered an adequate method of mitigating the impact of the development as the effectiveness is dependent on planting thriving and being adequately maintained.

We would recommend that the proposals be reconsidered to:

- Comply with DDCP 99*
- Reduce the front section of the development adjoining the heritage item to two storeys*
- Break up the massing of the façade to the two storey section to the rear into two sections*
- Delete the balconies to the rear section"*

Under subclause 5 of clause 20G the consent authority may refuse to grant consent unless it has considered a heritage impact statement that will help it assess the impact of the development on the heritage item. In this respect, the applicant has not submitted a heritage impact statement and Council's advisor does not support the current proposal.

Clause 28 – Bushfire prone land

The site is identified as being bushfire prone. The development is unlikely to have a significant effect on any of the items listed in clause 28(1). The application was referred to the Rural Fire Service for specialist advice who recommended that the building be constructed to comply with Section 5 (BAL12.5) Australian Standard AS3959-2009 'Construction of buildings in bush fire prone areas' and section A3.7 Addendum Appendix3 of 'Planning for Bush Fire Protection'.

Draft Shoalhaven Local Environmental Plan 2009

The draft SLEP2009 is required to be considered as part of the assessment. The following clauses are relevant to the application.

Land Use Table: The property is proposed to be zoned B4 Mixed Use. Residential flat buildings are not listed as being a prohibited use and therefore permissible with consent.

Clause 2.6C Earthworks – earthworks not to have a detrimental impact.

Clause 4.3 Height of buildings – the height of any building is not to exceed 11m (unless specified in a DCP).

Clause 4.4 Floor Space Ratio – The maximum FSR for a building is not to exceed the FSR shown for the land on the FSR map. *The map for the site currently shows the FSR to be 0.6:1. When the DDGP99 is adopted the adopted FSR will be included in SLEP2009.*

Clause 5.5 Development in the coastal zone – implement principles in NSW Coastal Policy.

Clause 5.10 Heritage conservation – similar provisions to SLEP1985

Clause 7.15 Development within the Jervis Bay region – similar provisions to JBREP.

The subject application is contrary to the height and FSR controls within the DSLEP2009.

Section 94 Contribution Plan 2010 (as amended)

This development will generate a need for additional services and/or facilities as described in Council's Contributions Plan 1993, as itemised in the following table.

Project	Description	Rate	Qty	Total	GST	GST Inc
03AREC2004	Planning Area 3 active recreation facility upgrades	\$672.29	30.6	\$20,572.07	\$0.00	\$20,572.07
03AREC3003	Bay and Basin Leisure Centre	\$351.55	30.6	\$10,757.43	\$0.00	\$10,757.43
03CFAC3001	Bay and Basin District Community Centre and Branch Library (Bay & Basin urban precinct)	\$1,044.39	30.6	\$31,958.33	\$0.00	\$31,958.33
03ROAD0115	Sydney / Bowen Streets, Huskisson	\$353.17	30.6	\$10,807.00	\$0.00	\$10,807.00
CWAREC2004	Synthetic Hockey Field Facility	\$70.89	30.6	\$2,169.23	\$0.00	\$2,169.23
CWCFAC0003	Shoalhaven City Arts Centre	\$31.90	30.6	\$976.14	\$0.00	\$976.14
CWCFAC0004	Shoalhaven Mobile Childrens Services	\$10.57	30.6	\$323.44	\$0.00	\$323.44
CWCFAC0005	Shoalhaven Multimedia & Music Centre	\$10.49	30.6	\$320.99	\$0.00	\$320.99
CWCFAC0006	Shoalhaven City Library Extensions	\$278.09	30.6	\$8,509.55	\$0.00	\$8,509.55
CWCFAC2002	Shoalhaven Multi Purpose Cultural & Convention Centre	\$842.30	30.6	\$25,774.38	\$0.00	\$25,774.38
CWFIRE2001	Citywide Fire & Emergency services	\$115.61	30.6	\$3,537.67	\$0.00	\$3,537.67
CWFIRE2002	Shoalhaven Fire Control Centre	\$169.15	30.6	\$5,175.99	\$0.00	\$5,175.99
CWMGMT3001	Contributions Management & Administration	\$480.79	30.6	\$12,861.15	\$0.00	\$12,861.15
CWOREC2001	Embellishment of Icon and District Parks and Walking Tracks	\$206.62	30.6	\$6,322.57	\$0.00	\$6,322.57
MACFAC2002	Northern Shoalhaven Community Transport and Family Support Services	\$6.51	30.6	\$199.21	\$0.00	\$199.21
MACFAC4001	Northern Shoalhaven Integrated Children's Services	\$39.46	30.6	\$1,207.48	\$0.00	\$1,207.48

Sub Total: \$141,472.64

Development Control Plan 18 – Car Parking Code

Car parking requirements: The DCP states that car parking for residential flat buildings is to be provided as per Council's Medium Density Code – DCP71. The Residential Flat Design Guide does not provide specific numbers on car parking requirements rather it refers to local conditions and while Council's Medium Density Code – DCP71 does not specifically relate to residential flat buildings over two storeys it has been used as a guide. The applicant proposes 90 spaces in the basement car park for residents and visitors. In accordance with the car parking requirements of DCP71, 42 of the units are large/extra large and require two spaces per unit and four units are medium and require 1.5 spaces per unit requiring a total of 90 spaces.

No spaces have been provided for visitors apart from the spaces in the basement car park. However, security roller doors are proposed for the basement car park which will restrict access by visitors and service vehicles.

Parking layout and dimensions: In terms of car space dimensions and manoeuvring, the submitted proposal has been designed to provide car space dimensions, aisle widths and internal manoeuvring areas which comply with the requirements of DCP 18 and/or the Australian Standard.

Development Control Plan 93 - Waste Minimisation & Management

A waste minimisation and management plan for the demolition and construction phase of the development was submitted with the application. Waste is to be separated into recyclable and non-recyclable material with the majority being sent to Council's West Nowra waste and recycling depot.

The application proposes two units will share a 240L waste bin and 240L recycling bin giving a total of 23 waste bins and 23 recycling bins to be stored in the basement. The applicant has proposed that bins will be picked up from Kent Lane in accordance with DDCP99. Council's Waste Services Section advise that, a side lift garbage truck requires a minimum 5.5m wide area to accommodate the truck and lifting mechanism and as Kent Lane is only 6m wide it cannot accommodate a side lift garbage truck picking up bins located within the laneway. The development needs to be amended to provide an embayment off Kent Lane to locate bins for pickup.

Development Control Plan 99 (DCP99) - Huskisson Foreshore Business Development Zone 3(g) Duncan, Bowen, Fegen and Nowra Streets

The SEE states "*at this point in time a policy void exists for this precinct and form of development ...*" This is not correct as this DCP was adopted by Council in 2001 and is the current DCP for the area until the reviewed DDCP is finally resolved. The proposal does not meet the objectives or performance criteria of the current DCP. The DCP does not support medium density residential development instead encouraging low key tourist development, with a maximum height of 8.5m (proposed 13m) and site density of 0.6:1 (proposed 1.4:1).

(b) Likely impact of that development on the natural and built environment and social and economic impacts in the locality

As discussed earlier, Council engaged Ruker Urban Design to undertake a location specific urban design analysis of the four 3(g) precincts in Huskisson to define appropriate development controls for each precinct. This design analysis was rigorously undertaken through a consultative process. The strategy was then peer reviewed by Purdon Associates and articulated in DDCP99. While DDCP99 has been exhibited it has not been finally adopted and Council recognises that it is not a development control plan that can be considered under section 79C (1)(a). However, the urban design analysis, peer review and subsequent DDCP99 controls, represent Council and the general public's desired future character of the locality and in this respect are legitimate considerations that need to be addressed under further sections of 79C.

Draft Development Control Plan No.99 (DDCP 99)(Draft Am 1) – Huskisson Business 3(g) Zone Development Precincts

A review of the development against DDCP99 has identified the following areas where planning controls have not been met for Precinct 1 which encompasses the development site.

Precinct 1 – Development Controls

3.1.1 Land use

A performance criteria for the DDCP is that “*Urban design principles of the precinct are achieved*”. One of the urban design principles is the “*creation of building forms that complement the lower density surrounds along Duncan, Bowen, Fegen and Nowra Streets*”. The development is proposed to be four storeys with a height of 13m which does not complement the existing low density architecture or desired future density of Fegen Street which restricts the number of storeys to three with a height a maximum height of 10m.

The development does not meet acceptable solution A3 which states that the development is to comply with the density (FSR1:1), height (10m) and number of storeys (three storeys).

Applicant's position: *The proposal is consistent with Option E of the Purdon Report which recommends an FSR of 1.4:1 and four storey height limit. Other developments of 13m with four storeys have been approved within the 3(g) zoning in Huskisson.*

Comment: Council has already determined not to proceed with Purdon's Option E and instead resolved to adopt Option C with a height limit of 10m and FSR of 1:1 on 1 February 2011. The DDCP proposes 13m height limits in the remaining precincts and therefore, Council's previous development application determinations are consistent with the DDCP.

3.1.2 Lot Amalgamation

The development does not meet the performance criteria or acceptable solutions listed. Performance criteria 1 - The scale of the building is out of context with the existing and desired scale of development due to the proposed height and FSR.

Performance criteria 2 - The building massing does not reflect the original lots configuration. The massing alters the lot configuration from a long north/south axis typical of the precinct to a long east/west axis. The building form emphasizes this change in lot configuration through its continuous form of 66m along Fegen Street across the three original lots.

Performance criteria 3 - The building length presents as one long façade to Fegen Street and Kent Lane instead of the maximum length of 20m with a 3m landscaped section between buildings listed as an acceptable solution.

Performance criteria 4 – The development does not demonstrate consistency with design guide in Part 4 of the DDCP in which examples of appropriate building length and form are contained. The SEE only refers to the verification statement of the SEPP65 principles which do not directly relate to the DDCP design guide.

3.1.3 Density

The development does not meet the performance criteria or acceptable solutions as it exceeds the adopted maximum FSR of 1:1 and does not address the design guide as discussed above. The application does not demonstrate how it meets the objectives of the criteria since it is not meeting the performance criteria.

3.1.4 Building Height

The development exceeds the adopted maximum building height of 10m and does not adequately demonstrate how the objectives of the criteria are met since the performance criteria is not being met.

The development does not address the heritage item located on the adjoining property to the north. The Statement of Environmental Effects states that there are no heritage issues within the vicinity of the development.

3.1.5 Setbacks and Alignments

Building setbacks are to reflect the existing alignment and desired setback from the street. The acceptable solution states that the front setback is 5m from Kent Lane and Fegen Street.

Applicant's position: *Ground floor to Kent and Fegen Street is setback 5m with first floor setback 9m to Fegen Street and 5m to Kent Lane.*

Comment: The terraces are roofed and partly enclosed and located within the setback areas fronting Fegen Street and Kent Lane and do not meet the acceptable solutions. The terraces account for approximately 50% of the elevation of the first and second storey and therefore account for a considerable portion of the building frontage.

3.1.6 Streetscape

The development does not meet performance criteria 5 which requires the development to demonstrate consistency with the design guide. The design guide states that the form of the building is to be in three dimensions recognising that a building has width, depth and height. The effect is to break up a long building to appear as a series of linked buildings. The design guide further states that the building is to have a maximum length of 20m before a change in form must occur.

The application does not demonstrate how it meets the requirements of the design guide considering the building is 66m long and presents as one continuous form.

3.1.9 Carparking, vehicular access and vehicular movement

The development proposes pedestrian access from Fegen Street and Kent Lane. Kent Lane is only 6m wide and is not wide enough to accommodate high level pedestrian use safely. Garbage is proposed to be collected from Kent Lane. The design requires garbage bins to be located on the laneway, however the lane, at 6m wide, is not wide enough for a side lift garbage truck to pickup bins from the lane as it requires a minimum width of 5.5m not including manoeuvring space required for the truck. Under the current design, without an embayment off Kent Lane, bins would be required to be picked up from Fegen Street or the development redesigned so bins are able to be located on the property and picked up from Kent Lane as outlined in DDCP99.

Kent Lane is not currently a through road and substantial upgrade works are required to make it a one way through lane. No details of required or proposed road works have been submitted with the application.

Council's Traffic unit has provided the following comments:

"Traffic Unit do not support the proposal in its current form.

"6m lane widths are considered inadequate in the context of this proposal. A development of the proposed scale would require a 5m resumption (for road reserve) to be exercised on both sides of Kent Lane (full length). This would provide for a 16m road reserve (sufficient for one way only), safe pedestrian and traffic access (through the lane way and to/from developments), and necessary indentation for on street parking and garbage collection areas. However, it is noted this is not feasible in this case."

Comment: Ruker, Purdon and DDCP99 consider that Kent Lane would remain as a service lane only providing vehicle access and servicing of garbage bins. The proposed development proposes using Kent Lane as a second frontage with units addressing the lane, a pedestrian entry point to the building from the lane and pedestrian access along the lane. The Traffic Unit has highlighted the difficulties of using Kent Lane in its current state and the upgrades that would be required to achieve safe pedestrian and traffic access to and from the proposed development.

“The following additional comments are also made:

a) In association with any proposal to utilise Kent Lane for vehicle egress it is noted that the lane way is presently an unformed grassed lane. As such all sealing, kerbing & gutter works and intersection work that need to be constructed in association with the aforementioned comments need to be constructed in accordance with Australian Standards and at the applicant's cost.

b) To maintain unimpeded traffic flow through the one way lane parking restrictions will be required to be installed;

a. on both sides of the laneway – in all locations where no indentation is provided

b. where indentation is provided (along the developments frontage, development side of the lane) – parking restrictions on west side only

The applicant is to design and meet all associated costs.

c) The applicant is to demonstrate that all parking spaces are in accordance with AS2890.

d) With respect of trip generation and although it is conceded that the RTA's Guide to Traffic Generating Developments (2002) identifies the trip generation rates at approximately 275 daily trips it should be acknowledged that the development will attract a significant number of holiday rentals and therefore it should be anticipated that peak period holiday rentals will generate additional trips – no mention of this has been provided in the commentary.

e) Although the proposal meets DCP parking requirements, it is in Traffic Units view that the proposal is likely to generate additional parking demands in excess of the DCP minimum parking requirements (likely holiday rentals where there may be as many as three (3) vehicles per three (3) bedroom unit.) Because there will be inadequate parking in the lane way, it is strongly recommended that additional parking be provided on site.

f) No allowance has been made for service vehicles accessing the machinery and plant rooms located in the basement car park.

g) No detail has been provided with respect of the head clearance of the basement car park. This should be clearly signed and should be sufficient to allow large 4wd / vans to access the car park as these are becoming more common as family vehicles, particularly in non-metropolitan areas.

h) With respect of garbage collection it is noted that it is proposed to service the apartment complex with forty-six garbage bins (25 normal / 21 recycle). This is considered unacceptable from a safety and amenity perspective/

i) No detail has been provided with respect of the affect or impact of headlights of vehicles exiting the basement car park on the property located immediately opposite to the exit driveway.

- j) *Footpath (minimum 1.2m) and kerb & gutter is to be provided for the full length of the property boundary in Fegen Street. In recognition of the higher seasonal demands in this area the applicant is requested to consider providing wider pathways than the general 1.2m minimum (1.5m is preferred).*
- k) *Appropriate street lighting is to be provided in Kent Lane.*
- l) *Huskisson enjoys an extensive and expanding network of cycleways and as such it is considered that there is the potential for a significant number of cyclists in the apartment complex. Therefore some bicycle parking should be provided.*
- m) *All signage including entry / exit signage and pavement arrows are to be in accordance with standard convention (ie Australian Standards)."*

Council was notified on 15 November that the applicant is seeking to commence the process of formalising a Voluntary Planning Agreement with Council relating to the construction of Kent Lane and associated infrastructure.

3.1.10 Landscaping – Deep soil area and permeable site area

The development does not meet the performance criteria in regards to the provision of deep soil areas or meet the acceptable solution of permeable site areas to be a minimum of 35% of site area. The site area is 4046.89m² requiring a permeable area of 1416.41m².

Applicant's position: *The SEE states there is 1142m² of pervious surface including deep soil areas and planters over 1m deep with 305m² of external decks and terraces over deep soil zones giving a total permeable area of 32%. The SEE states that deep soil areas have been provided as stated in SEPP65 verification statement and BASIX Certificate.*

Comment: The basement, driveways, electrical substation and ground floor units facing Fegen Street cover an area of approximately 2902.56m² leaving 1144m² being 28% of the site area. 336m² of this area is covered by terraces, some or all of which will have an impervious surface due to roofs or paving type, leaving only 808m² for landscaping. The deep soil areas are restricted to strips running around the extremities of the site.

Purdon Review of application

In view of statements made by the applicant/landowner with respect to the credibility of the peer review process Council engaged Purdon Associates to undertake a further review of the proposal in regard to the initial Purdon Report and resultant provisions of DDCP99. The conclusions of that review are as follows:

"The assessment ... has highlighted that several aspects of the proposed development are significantly inconsistent with the provisions of the draft DCP and adopted development controls, including:

- *The proposed Floor Space Ratio of 1.4:1 is considered excessive and does not achieve an acceptable urban design outcome consistent with the desired future character of Huskisson.*
- *The proposed development of 4 storeys also does not achieve the desired urban design outcome.*
- *The proposed 1.4:1 FSR, combined with 4 storey height results in an excessive bulk and scale and is contrary to one the Strategy's key principles of buildings being a small scale consistent with the intended character of the area.*
- *The increased density of the development will have a detrimental impact on the character of the area as the extent of building fronting the street is excessive and the design does not include separate buildings, resulting in a bulk and scale of building that is not compatible with the desired character of the precinct.*
- *The proposal would result in a substantial structure with a dominant horizontal form along Fegan Street, which is inconsistent with the desired future character of the area which aims to achieve extensive modelling by designing buildings as a series of three dimensional interconnected and interlocking forms to break up the scale of the building*
- *The existence of overhead power lines, limited deep soil planting area and removal of all existing trees will result in the built form dominating the landscape setting.*
- *The design has not incorporated the key aspects of the "Design Guide" and therefore does not achieve the objectives and principles of the DCP.*

It is therefore the opinion of Purdon Associates that the proposed development should not be approved in its current form and that the applicant should be requested to re-design the building in accordance with the provisions of the DCP, as amended by Council's resolution of 1 February 2011 and subsequent amendments forming part of the re-advertised DCP."

Noise, odour and dust: Noise is expected to be created during construction period. In terms of odour and dust, no concerns are raised. The balconies/terraces located on the northern and southern elevations are likely to be used at night and may create some noise nuisance to adjoining properties, though the areas are quite small and would not be able to accommodate many people at any one time. Balconies/terraces overlooking Kent Lane are much larger and are more likely to be used as entertainment areas which may create a noise nuisance to properties backing onto Kent Lane. As all vehicles are proposed to exit onto Kent Lane and head south onto Nowra Street vehicle noise will be greatly increased for those properties located along the southern portion of the Lane.

Context and setting: The proposed development is out of context with the existing and desired future built environment for the locality. The building encroaches on the desired setbacks with the semi enclosed and roofed terraces that front Fegan Street and Kent Lane located within the setbacks. The building bulk and height is excessive and dominates the streetscape with the building footprint covering approximately 73% of the site.

Economic impacts: The proposed development will have a positive economic impact during the construction and operational phases.

Sediment and erosion control: Due to the substantial amount of earthworks required to be undertaken and its sensitive location close to Jervis Bay, sediment and erosion control from the site is required to be addressed. No erosion or sediment control plan (ESCP) has been submitted with the development application. As such, any development consent issued would be conditioned to require an ESCP to be prepared by a suitably qualified/experienced person in accordance with the Landcom manual “Soils and Construction, Managing Urban Stormwater, Vol 1 4th Edition, March 2004” and be approved prior to the issue of a Construction Certificate

Safety and Security: Safety and Security: The proposed design provides opportunities for natural surveillance from both within and external to the building. The proposed works have been designed having regard for crime prevention through environmental design (CPTED) principles and strategies.

Climate Change: No cumulative impacts are expected in regard to the proposed development that could further contribute to climate change.

(c) The suitability of the site for the development

While the subject land is generally suitable for a residential flat building, the proposed development does not meet the requirements of the draft DCP99 or the existing DCP99 and is therefore not suitable to the site. Comments outlined in section 79C(b) above are relevant to this section.

(d) Any submissions made in accordance with the Act or the regulations

See the community consultation section above.

(e) The public interest

The proposed development is an over development of the site and does not comply with the existing or proposed development control plan for the locality and is not in the public interest.

7. Referrals

Internal:

- **Building surveyor:** Council not nominated as PCA or issuing construction certificate. S68 drainage application required to be submitted with full hydraulic details. Building work to comply with Building Code of Australia.
- **Development Engineer:** Basement driveway access off Fegen Street needs to be re-designed so it falls to the street. Kent Lane is required to be upgraded for the full length to a bitumen seal including kerbing and drainage.

- **Waste Management:** Kent Lane is currently not wide enough to pick up bins from the street. Bins are to be picked up from Fegen Street or bins to be set back on the property to allow pick up from Kent Lane.
- **Shoalhaven Water:** Sewer main runs down Kent Lane and further information is required as to the impact that the Kent Lane upgrade may have on the sewer main.
- **Traffic Unit:** The Traffic unit does not support the application in its current design due to impacts on the road network provision of car parking and the use of Kent Lane.
- **Heritage Advisor:** Proposal not supported. See comments above in SLEP1985 section.

External:

- **Rural Fire Service:** No objection subject to recommended conditions.

8. Options

The JRPP may:

- a) Resolve to refuse the application; or
- b) Resolve to approve the application; or
- c) Write to the applicant requesting them to amend/modify the proposal and subject to the matters being satisfactorily resolved a further report be submitted to the Joint Regional Planning Panel (Southern Region) for its consideration.

9. Conclusion

This application has been assessed having regard to the Matters for Consideration under Section 79C of the Environmental Planning and Assessment Act 1979. Following a detailed assessment, it is considered that Development Application No. RA11/1003 should be refused for the reasons outlined in the executive summary.

10. Recommendation

That, in respect of Regional Development Application RA11/1003 (2011STH019) for a four storey residential flat building containing 30 x 3 bedroom and 16 x 2 bedroom apartment units with basement car parking for ninety cars at Lot 8 DP 758530, Lot A DP 390332 & Lot B DP 390332, No. 's 11, 15 & 17 Fegen Street, Huskisson, the application be refused for the following reasons:

- a) **The proposed development does not meet the objectives of Development Control Plan 99 in regards to building design, height restrictions and Floor Space Ratio (FSR).**
- b) **The proposed development is not suitable to the site in regards to the bulk and scale of the building in relation to the existing and desired future character of the locality as described in the urban design strategy for the locality by Ruker Urban Design and subsequent Purdon Review in regards to**

building design, height restrictions, Floor Space Ratio (FSR) and landscaping provisions.

- c) The use of Kent Lane as a frontage for units with minimal setbacks to the lane is unsuitable from an amenity perspective having inadequate separation distances from the laneway and neighbouring properties.
- d) The proposed development is an overdevelopment of the site and is not in the public interest.
- e) A heritage impact statement prepared in accordance with the provisions of SLEP1985 has not been submitted addressing the impact upon the heritage item of local significance located at 7 Fegen Street that is in the vicinity of the proposed development. In this regard, Council is not satisfied that the heritage impact of the proposal has been adequately addressed.

Signed: **James Bonner**
Acting Senior Development Planner

Date: **16 November 2011**