



REF: N:/tp/luke/ltr/DAadt.shlhvn.cncil.RA-15-1000.doc

12<sup>th</sup> November 2018

General Manager  
Shoalhaven City Council  
PO Box 42  
NOWRA NSW 2541  
**ATTENTION: NICHOLAS CAVALLO**

Dear Nicholas,

**RE: PROCESS AUDIT FOR DEVELOPMENT APPLICATION NO. RA15/1000  
MULTI-STOREY CAR PARK  
CORNER OF BERRY STREET, WORIGEE STREET & LAWRENCE AVENUE,  
NOWRA**

Martin Morris & Jones Pty Limited (MMJ Wollongong) has been requested by Shoalhaven City Council (Council) to review the Council's processing procedure adopted for the consideration of the above-mentioned Development Application (DA). Namely, we are instructed that Council seek a procedural audit review of the application process undertaken following the decision made by the Joint Regional Planning Panel (JRPP) on 22<sup>nd</sup> November 2016 to defer the determination of the DA.

Attached as *Schedule 1* is a summary of this application and the process undertaken by Council to date. It must be emphasised that this review does not provide any merit consideration of this proposal.

The DA processing procedures are provided by *Division 4.3 of Part 4 of the Environmental Planning & Assessment Act, 1979* (ie. *The Act*), and *Part 6 of the Environmental Planning & Assessment Regulation 2000* (ie. *The Regulations*). Whilst not all legislative procedures within these referenced parts of both *The Act* and *The Regulations* may not apply in this instance, the following comments may be helpful.



- For land use planning purposes, the site is controlled by *Shoalhaven Local Environmental Plan (LEP) 2014* within which it is zoned 'B3 Commercial Core'. There are no specific procedural matters contained within the *LEP* for Council to implement for the proposed development within the prescribed zone. However, *Clause 7.16* requires the consent authority to be satisfied in relation to certain provisions pertaining to the ground floor of a building within the B3 Commercial Core, prior to the determination of any DA.
- The site is also affected by several State planning policies/regulations. For the most part it is understood there are no specific process/procedural matters to be implemented in this matter, however, the following obligations are noted:-
  - *State Environmental Planning Policy (State and Regional Development) 2011*: the proposed development is a council related development in excess of \$5 million and therefore under *Schedule 7* is declared to be regionally significant development for the purposes of the Act. As such, the application is required to be referred to the JRPP for determination, to which documentary evidence within Council's DA files suggests this process to date has been followed. In this regard, consent authority functions of the JRPP are to be exercised on behalf of the panel by the Council in accordance with *Section 4.7(2)* of *The Act*. To this end, a final assessment report should be submitted to the JRPP for determination of the DA once Council's assessment is complete.
  - *State Environmental Planning Policy (Infrastructure) 2007*: the proposed development is deemed to be traffic generating development as described under *Schedule 3* and thus a referral to NSW RMS is required under *Clause 104* for comment. In this regard, it is noted that Council referred the application originally to RMS on 5<sup>th</sup> August 2015, and then subsequently rereferred the amended application back to RMS on 3<sup>rd</sup> October 2018, of which on both occasions responded with their comments. Prior to determining the DA, the consent authority must give due consideration to those specific provisions listed under *Clause 104* accordingly.
- This proposal is not "designated development" as provided by *The Act*, as it is not considered to be included within *Parts 1* and *2* of *Schedule 3* of *The Regulations*.



- This proposal is identified on the application form as “integrated development” as defined within *Section 4.46 of The Act* and, accordingly, the provisions of *Part 6 - Division 3 of The Regulations* would usually apply in this instance. However, it is noted that the Statement of Environmental Effects Report prepared by Cowman Stoddart Pty Ltd and dated May 2015 states that the development is not integrated development for the purposes of *The Act* and, as such, it would appear the application form has been inadvertently/incorrectly marked. **Therefore, it is recommended that the application form be updated to correctly note the proposal as not being integrated development. This matter will need to be addressed prior to the determination of this application.**
- *Clause 49 of The Regulations* requires that a development application may be made “...(a) by the owner of the land to which the development application relates, or (b) by any other person, with the consent in writing of the owner of that land...” The owner's authorisation has been provided by Shoalhaven City Council on the application form.
- *Clause 50(1) of The Regulations* requires that an application must contain specific information and be accompanied by the appropriate fee. In particular, the application must contain the information, and be accompanied by the documents as specified in *Part 1 of Schedule 1*. These matters appear to have been satisfactorily included/addressed.
- *Clause 50(3) of The Regulations* requires the “immediate” giving of notice to the applicant acknowledging the receipt of the application, identifying the registered number of the application and confirming the application lodgement date. Council's correspondence of 12<sup>th</sup> June 2015 meets this requirement.
- *The Act* provides for the public notification of DA's if required by the provisions of a Local Environmental Plan or a Development Control Plan. *Shoalhaven LEP 2014* does not contain any notification provisions, however, *Council's Community Consultation Policy for Development Applications (Including Subdivision) and the Formulation of Development Guidelines and Policies* identifies the procedures and types of notification and advertising categories to allow any person or group to respond in this instance. These requirements appear consistent with *Clause 87 of The Regulations*. It is noted that the proposed development appeared to be publicly notified to nearby property owners/occupiers within a 120 metre radius (Level 3 community consultation as per Council's Policy) by correspondence dated 2<sup>nd</sup> September 2015, seeking



representations regarding the proposal to be submitted for Council's consideration within the 30 day period (as per the requirements for regional DAs). It is also noted that a notification sign was erected at the site displaying the proposal, and various advertisements was understood to be placed in the South Coast register on 2<sup>nd</sup> September 2015 to this effect. It is understood that approximately 24 x public submissions were received, together with 2 x petitions.

- Following the receipt of the amended application, we note that the DA was re-notified that Council's discretion for another 14 days in accordance with *Section 3.8* of Council's Community Consultation Policy above, with individual letters understood to have been sent to all public submitters to date.
- In accordance with *Clause 89* of *The Regulations*, the above-mentioned written and public notifications must contain a description of the subject land and proposed development; the name of the applicant and consent authority; a statement on where/when the application may be inspected; and a statement relating to written submissions made under this application. These matters appear to have been satisfactorily addressed.
- In accordance with *Clause 55* of *The Regulations*, the application was amended on 6<sup>th</sup> September 2018 and accompanied by written particulars and updated documentation provided as referred to in correspondence dated 27<sup>th</sup> September 2018 prepared by Cowman Stoddart Pty Ltd. We note that this amendment was formally accepted by Council through email correspondence dated 27<sup>th</sup> September 2018. It appears that the procedures for amending the subject DA have been undertaken in accordance with *Clause 55* of *The Regulations*. Any future notice of determination should ensure that the development 'descriptor' reflects the amended application.
- The remaining procedures to be adopted by Council for this application (ie. the referral of the application to any external agencies/internal divisions for comment, request for further information, etc.) are matters carried out in accordance with *Section 4.15* of *The Act* and *Clause 54* of *The Regulations*, and are considered appropriate to progress.

**Therefore, it is concluded that the process undertaken to date by Council in the consideration of this application following the deferral decision made by the JRPP on 22<sup>nd</sup> November 2016 is generally in accordance with the statutory procedures set down within *The Act* (as amended) and *The Regulations*. However, for completeness prior to**



**the determination of this application, it is recommended that the application form be updated to correctly note the proposal as not being integrated development.**

To complete this matter thereafter, the application should be referred back to the JRPP and determined in accordance with *Section 4.16* and *4.17* of *The Act*, with the post-determination notification being completed in accordance with *Section 4.18* of *The Act*.

In reading this advice, it should be noted that any perceived procedural understandings identified herein are purely our opinions for consideration. The advice provided is based on our understanding of the facts and circumstances. However, we set out our understanding as above so that it may be checked. If our understanding is incorrect, or materially incomplete, our advice may change. Again, it must be emphasised that this review does not provide any merit based assessment consideration of this DA.

We trust this review satisfactorily addresses those particular matters required for consideration in this instance, and if you wish to discuss this matter further and/or require any additional information, please feel free to contact the undersigned on (02) 4229 5555.

Yours faithfully,  
MARTIN MORRIS & JONES PTY LTD

A handwritten signature in blue ink, appearing to read 'L. Rollinson'.

**LUKE ROLLINSON**      BUrbRegPlan DipArchTech MPIA  
DIRECTOR - TOWN PLANNER



## SCHEDULE 1

### DEVELOPMENT APPLICATION NO. RA15/1000

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<b>Location:</b>	56 Berry Street, Nowra – Lot 1 DP 738675 58 Berry Street, Nowra – Lot 1 DP 738687 60 Berry Street, Nowra – Lot 2 DP 738687 62 Berry Street, Nowra – Lot 5 DP 537780 1 Lawrence Avenue, Nowra – Lot 4 DP 537780 3 Lawrence Avenue, Nowra – Lot 3 DP 530250 76 Worrigea Street, Nowra – Lot 12 DP 738683 78 Worrigea Street, Nowra – Lot 13 DP 738683 80 Worrigea Street, Nowra – Lot 1 DP 738686
<b>Applicant:</b>	Shoalhaven City Council
<b>Owner:</b>	Shoalhaven City Council
<b>Proposal:</b>	Multilevel public car park (5 levels) providing for 646 car and motorcycle parking spaces
<b>Lodgement Date:</b>	12 <sup>th</sup> June 2015
<b>Owner's Authorisation Endorsement:</b>	10 <sup>th</sup> June 2015
<b>Application Fee (DA):</b>	\$579.00
<b>Applicant Notification:</b>	12 <sup>th</sup> June 2015
<b>Public Notification:</b>	2 <sup>nd</sup> September to 5 <sup>th</sup> October 2015

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<b>Record Of Initial Deferral Decision:</b>	22 <sup>nd</sup> November 2016 (JRPP)
<b>Amended Proposal:</b>	Multi-storey car park that will contain a total of five (5) levels, 467 car parking spaces (including 8 accessible spaces) and 18 motorcycle spaces
<b>Amended Resubmission Date:</b>	6 <sup>th</sup> September 2018
<b>Public Notification of Amended Proposal:</b>	3 <sup>rd</sup> October to 18 <sup>th</sup> October 2018