

To	HCCRPP
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From	Lisa Proctor, Consultant Development Planner
Date	16 July 2021
Subject	Additional information for determination meeting 15 July 2021 PPSHCC-74

At the determination meeting on 15 July 2021, for the above application, the Panel requested additional information relating to:

1. The provisions of any proposed instrument.
2. Allocation of landuses and GFA for spaces noted as “unapproved” (former nightclub, cinema and childcare centre), with an analysis of any additional parking requirements.
3. Details of the planning proposal applying to the adjoining property.
4. Consideration of the Coastal SEPP.
5. Details of the reasons for modification of conditions.

These issues are addressed in detail below.

## **1. The provisions of any proposed instrument.**

In determining an application for modification of a consent under sS.4.55 of the Act, the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application:

*(1)(a)(ii) the provisions of any proposed instrument*

The following draft instruments apply to the site. Each draft instrument has been addressed against its exhibited Explanation of Intended Effect (EIE):

- Design and Place SEPP
- Housing Diversity SEPP
- SEPP (Environment)
- Proposed Employment Zones Framework
- Remediation of Land SEPP

### **Design and Place SEPP**

The Design and Place SEPP will apply to the site. It aims to:

#### **1. Give effect to the objects in s.1.3 of the EP&A Act by responding as follows:**

- through an assessment of sustainability and resilience and contributing to NSW targets for resource use and emissions;
- contributing to productive local economies and social cohesion through adequate provision of public space;

- through identification, integration and enhancement of green infrastructure;
- through an awareness and response to heritage, character, culture and Country;
- through a method for design processes, design evaluation, and design review that is proportionate to the impacts and outcomes that contribute to a well-designed (healthy, responsive, integrated, resilient and equitable) built environment which includes inviting public spaces; and
- through consideration of whole-of-life costs of development, and integration of building systems.

**Assessment:** The development incorporates civic spaces and the areas of public domain created by the development are integrated into a range of community and commercial spaces and would represent a positive, open and functional space that integrates well with Lake Street, providing options for public transport and public linkages to nearby public facilities. The scheme provides for various opportunities for the public to utilise this ground level space and provides access to a range of outdoor areas to provide shelter from, or exposure to, all types of weather.

The site is intended to utilise modern urban water sustainability techniques. The development proposes to utilise all stormwater collected from the site for reuse in various ways, including irrigation for ground and elevated landscape areas, bioretention opportunities and reuse through all units and commercial facilities. The development would promote less demand for private transport having located residents within a mixed-use development.

## **2. Start with Country as a foundation for place-based design and planning as set out in the draft Connecting with Country Framework.**

**Assessment:** The development was approved in 2017 prior to the introduction of the draft Connecting with Country Framework.

## **3. Respond to the relevant Government priorities.**

***Better Placed – An integrated design policy for the built environment of NSW*** (GANSW 2017) which sets out key considerations for design of the built environment and defines characteristics of a well-designed built environment.

**Assessment:** The built form is appropriate for this location and whilst unable to replicate the low scale tourist accommodation of the adjacent properties, it would adequately respond to the surrounding development character of the area.

## **4. Deliver healthy and prosperous places that support the wellbeing of people, community and Country through integrating good design process into planning and development to achieve the 5 design and place principles.**

**Assessment:** The proposal is a mixed use, located within a commercial precinct, which will support the achievement of the 5 design and place principles. The development incorporates significant community uses, ground level activation and commercial / retail uses of the site which are commensurate with the site's location and zoning.

## **5. Enable the delivery of quality design, integrated outcomes and innovation for people and places in NSW.**

**Assessment:** The development has been architecturally designed to take into consideration the opportunities and constraints on the site, to provide for a development that offers good design amenity for future occupiers, and to create a range of spaces and uses to facilitate the creation of a destination for a range of demographics within the local community.

**Conclusion:** Council is satisfied that the proposed modifications are consistent with the provisions of the draft Design and Place SEPP as outlined in the Explanation of Intended Effect (EIE) dated February 2021.

## Housing Diversity SEPP

The proposed new SEPP will apply to the site. It aims to deliver a planning framework that:

- will assist the State's economic recovery following COVID-19;
- consolidates existing State level housing-related planning provisions into a single instrument;
- is in a format capable of being expanded and amended as future needs may require; and
- facilitates the delivery of housing that meets the needs of the State's growing population.

**Assessment and Conclusion:** The proposed development, as modified, will significantly assist local economic recovery through employment in construction and ongoing maintenance and operation. The development offers a diverse range of housing that meets the needs of the local demographic by offering both residential apartments and seniors living units. Council is satisfied that the proposed modifications are consistent with the provisions of the draft Housing Diversity SEPP as outlined in the Explanation of Intended Effect (EIE) dated July 2020.

## SEPP (Environment)

The proposed new SEPP (Environment) will apply to the site. It aims to deliver a planning framework that:

- consolidates existing state level planning provisions into a single instrument
- is in a format capable of being expanded and amended as future needs dictate
- reflects and is consistent with other legislation and environmental planning instruments
- maintains and improves environmental protections in existing State Environmental Planning Policies.

The proposed new SEPP will set out provisions under four parts being:

- catchments
- waterways
- bushland
- protected areas

**Assessment and Conclusion:** Council is satisfied that the development, as modified, satisfactorily addresses the relevant aims and provisions of this SEPP. The design of the development and the conditions of consent comply with the heads of consideration in this SEPP to protect and maintain water quality and flows within watercourses, habitats and ecosystems and recreational, scenic and environmental amenity.

## Proposed Employment Zones Framework

The Department is reforming the employment focused zones under Standard Instrument Principal Local Environmental Plan (2006) (SI LEP). The SI LEP currently includes eight business (B) zones and four industrial (IN) zones. Five new employment zones are proposed:

E1 Local Centre  
E2 Commercial Centre  
E3 Productivity Support  
E4 General Industrial  
E5 Heavy Industrial  
MU Mixed Use  
W4 Working Foreshore

**Assessment and Conclusion:** The site is zoned B4 Mixed Use and would likely transition to the MU Mixed Use zone. The MU Mixed Use zone is generally used where a range of land uses are to be encouraged. Council is satisfied that the diverse uses within the development are consistent with the intent of the new zone that would be applied to the site.

## Remediation of Land SEPP

The proposed new SEPP will apply to the site. It will replace SEPP 55 to ensure that potentially contaminated land is appropriately investigated before development applications for new land uses are determined.

**Assessment and Conclusion:** The proposed modifications do not involve any additional excavation. The site was not identified to be contaminated during the geotechnical investigations for the original application.

## 2. Allocation of landuses and GFA for spaces noted as “unapproved” (former nightclub, cinema and childcare centre).

On 20 September 2017 the HCCJRPP determined to approve the application for the Mixed Use Development at 34-36 West Street Forster (DA-521/2017) subject to removal of the childcare centre, nightclub and cinema components. The removal of those components has resulted in a series of ‘spaces’ within the development for which no use has been allocated. The applicant has provided an indication of the likely use of those spaces, subject to future development applications:

Original Proposal (unapproved)	Likely Future Use	Gross Floor Area (m2)
cinemas	commercial office / business premises	1809
childcare centre	retail	289
nightclub	hotel storage and back-of-house	817

**Table 1**

The approved basement parking area provides 294 parking spaces and was designed to accommodate parking for all commercial / retail uses in the development including the cinemas, nightclub and childcare centre which were not approved in the original application. The modified basement design provides 295 parking spaces. Six of those spaces are required for residential uses during stage 1, therefore 289 spaces remain available for the commercial and retail uses. The following table shows the total parking demand for the basement parking areas, comparing the approved and modified developments:

Use	Approved Parking Requirements	Modified Parking Requirements
Library	45 spaces	45 spaces
Community Centre	20 spaces	20 spaces
Customer Service Centre	4 spaces	4 spaces
Visitor/Tourist Centre	9 spaces	9 spaces
Restaurant	43 spaces	38 spaces
Retail/Supermarket	47 spaces	47 spaces
Cinema	80 spaces	-
Nightclub	82 spaces	-
Gym	13 spaces	13 spaces
Business Centre	3 spaces	3 spaces
Hotel/Serviced Apartments	61 spaces	61 spaces
Commercial Floor Area (Proposed)	-	14 spaces
Stage 1 Residential Spaces	-	6 spaces
<b>Total</b>	<b>407 spaces</b>	<b>260 spaces</b>
<b>Provided</b>	<b>294 spaces</b>	<b>295 spaces</b>

**Table 2**

The parking provision in the original consent allowed for the different temporal demand for the commercial uses, notably the nightclub and cinemas. The parking assessment determined that the 294 parking spaces was sufficient based on the temporal peak demand for uses. Those uses are not approved in the development and temporal peak demand for the proposed uses is no longer relevant.

The likely future uses of the unapproved development space (as identified by the applicant) will require the following parking allocations (Great Lakes DCP 2014):

Likely Future Use	Control	Total Spaces Required
commercial office / business premises	1 space / 40m <sup>2</sup> of GLFA	45
retail	1 space / 24m <sup>2</sup> of GLFA	12
hotel storage and back-of-house	nil	n/a
<b>Total</b>		<b>57</b>

**Table 3**

The modified parking requirements (refer to Table 2) provided a surplus of 35 parking spaces, however this does not include parking for the unapproved development space (refer to table 3).

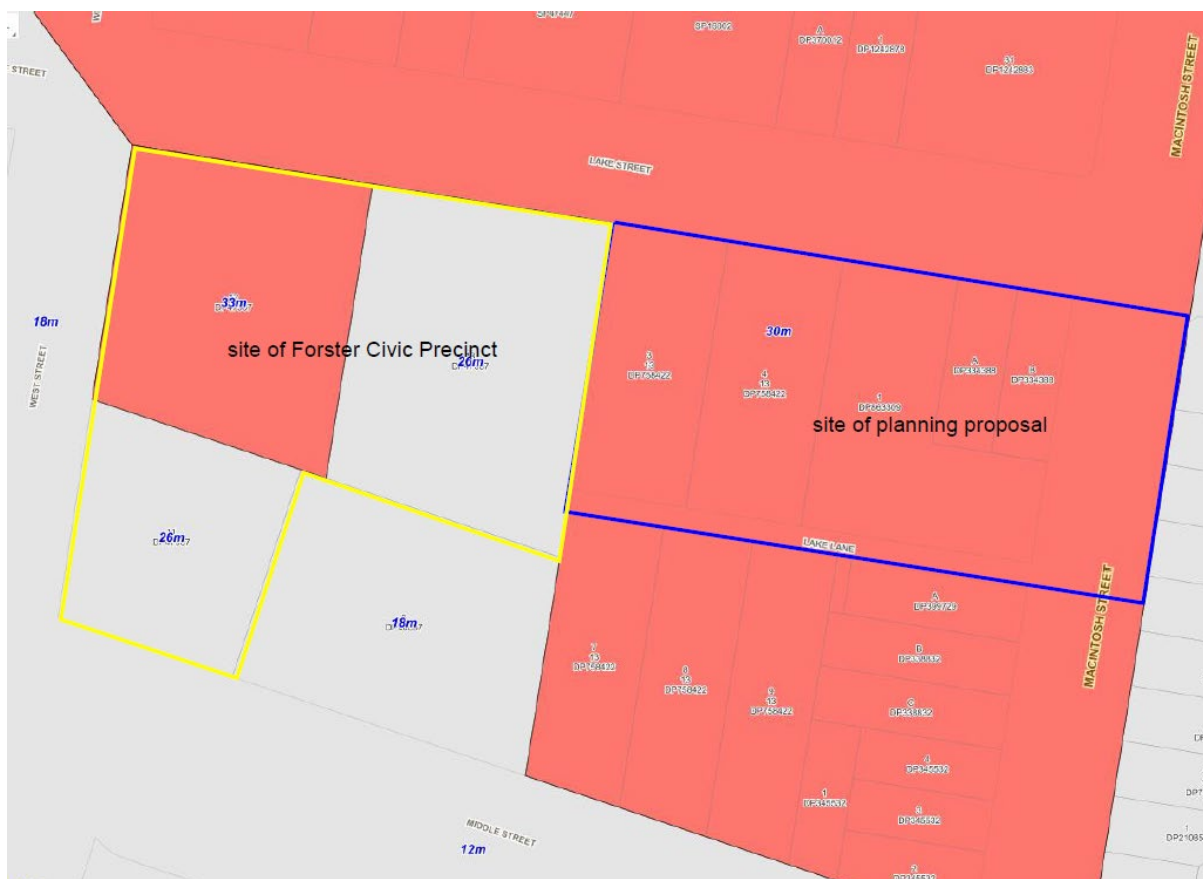
The potential new uses require a total of 57 parking spaces, resulting in a shortfall of 22 parking spaces which will be catered for via Council's car parking contributions in the *Forster District Development Contributions Plan 28 October 2014*. This has been included in condition 8 in the Notice of Determination for the modification.

### 3. Details of the planning proposal applying to the adjoining property.

The site of the planning proposal (the subject site) includes six parcels of land in Lake Street, Forster:

- Lot A DP 334388 (16 Lake Street Forster), being 650m<sup>2</sup> and owned by Ampol Pty Ltd (Caltex Service Station);
- Lot B DP 334388 (18 Lake Street Forster), being 650m<sup>2</sup> and owned by Ampol Pty Ltd (Caltex Service Station);
- Lot 3, Section 13, DP 758422 (6-8 Lake Street Forster) being 2,060m<sup>2</sup> and owned by Merrylands RSL Club;
- Lot 4, Section 13, DP 758422 (10-12 Lake Street Forster) being 2,060m<sup>2</sup> and owned by Merrylands RSL Club;
- Lot 1 DP 863309 (14 Lake Street Forster), being 2,800m<sup>2</sup> and owned by Ingleburn RSL; and
- Lake Lane, being 795m<sup>2</sup> and owned by MidCoast Council.

The total combined site area is approximately 9,015m<sup>2</sup>. These adjoin the site of the Civic Precinct as shown in the plan below:



The lots are currently zoned R3 Medium Density Residential under Great Lakes Local Environmental Plan (GL LEP) 2014 with the following principal development standards:

Minimum lot size: 1000m<sup>2</sup>

Maximum building height: 12m

Maximum floor space ratio: 1:1



On 30 June 2021 Council resolved to formally request the NSW Department of Planning, Industry and Environment to make the amendments to give effect to the Draft Lake Street Planning Proposal. It is proposed to change the zone to R4 High Density Residential. The following principal development standards will apply to the site:

Minimum lot size: 1000m<sup>2</sup>

Maximum building height: 30m

No floor space ratio is proposed for the site.

The Urban Design Analysis for the planning proposal (Peter Andrews and Associates, May 2019) addresses the positive relationship between the Civic Precinct and the subject site, noting that together the two provide an opportunity to complement each other to invigorate the area with more intensive development immediately south of the Forster commercial core. The height and FSR on the subject site have been increased to support more intensive land uses consistent with surrounding development and the Civic Precinct. The proposed building heights and floor space controls on the subject site are generally similar to controls for land opposite to the north and will integrate with the planned future urban form for the area.

#### **4. Consideration of the Coastal SEPP.**

The SEPP is supported by interactive mapping for the coastal area. The maps identify that the site is located within the Coastal Zone within the Coastal Environment Area and Coastal Use Area.

Clause 13 of the SEPP applies to land in the coastal environment area and provides:

##### **13 Development on land within the coastal environment area**

*(1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:*

- (a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
- (b) coastal environmental values and natural coastal processes,*
- (c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*
- (d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
- (e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
- (f) Aboriginal cultural heritage, practices and places,*
- (g) the use of the surf zone.*

*(2) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:*

- (a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or*
- (b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
- (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.*

##### **Assessment:**

- The proposed modification does not create any additional impacts on ecological or hydrological values in the area.

- The proposed modification will not impact on water quality in any marine estate.
- The modification does not have adverse impacts on native vegetation, fauna or their habitats, headlands or rock platforms.
- The modification makes no change to development footprint or land disturbance and creates no greater potential impact to cultural heritage values.
- The modification maintains connection of sewer to the MidCoast Water reticulated system.
- Stormwater from the site does not change as a result of the proposed modification.
- The proposal does not impact on the surf zone.

Clause 14 of the SEPP provides controls in relation to land in the coastal use area as follows:

#### **14 Development on land within the coastal use area**

*(1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:*

*(a) has considered whether the proposed development is likely to cause an adverse impact on the following:*

- (i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
- (ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,*
- (iii) the visual amenity and scenic qualities of the coast, including coastal headlands,*
- (iv) Aboriginal cultural heritage, practices and places,*
- (v) cultural and built environment heritage, and*

*(b) is satisfied that:*

- (i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or*
- (ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
- (iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and*

*(c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.*

#### **Assessment:**

- The modification does not impact on public access to coastal foreshores.
- The modification does not alter impact to views, overshadowing or wind funnelling along the foreshore.
- The modification does not alter scenic amenity of the coast, including coastal headlands.
- The modification makes no change to development footprint or land disturbance and creates no greater potential impact to cultural heritage values.
- The proposal does not affect any heritage items or areas.

#### **15 Development in coastal zone generally—development not to increase risk of coastal hazards**

*Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.*

**Assessment:** The site is not subject to coastal hazards. The development as modified will not increase the risk of coastal hazards on that land or other land.



## **16 Development in coastal zone generally—coastal management programs to be considered**

*Development consent must not be granted to development on land within the coastal zone unless the consent authority has taken into consideration the relevant provisions of any certified coastal management program that applies to the land.*

**Assessment:** There is no coastal management program that applies to the land.

**Conclusion:** Council is satisfied that the development, as modified, has been designed, sited and managed to minimise any potential impacts on the coastal zone.

## **5. Details of the reasons for modification of conditions**

<b>Amended Condition</b>	<b>Reason</b>
Condition 1	This condition has been amended to replace the relevant plans.
Condition 2	This condition has been amended to reflect the amended staging as described in the Assessment Report and as reflected on the staging plans.
Condition 3	This condition has been deleted as it is an administrative error. This condition referred to the staging which is already referred to in condition 2.
Condition 8	This condition has been amended to reflect the altered development contributions as a result of: <ul style="list-style-type: none"><li>• change of use from seniors units to regular residential units</li><li>• increase in commercial floor space</li><li>• change in staging</li><li>• parking shortfall associated with likely future uses</li></ul>
Condition 16	This condition has been amended to reflect the change in staging.
Condition 44	This condition has been amended to reflect the change in staging.
Condition 90	This condition has been amended to remove the restriction on the occupation of the residential units by seniors.
Condition 94	This condition has been amended to remove the restriction on the occupation of the residential units by seniors.
Condition 103	This condition has been amended as it contained an administrative error. The restaurant / café (4) was removed in a previous modification but was still referred to in this condition.