

SOUTHERN REGIONAL PLANNING PANEL

COUNCIL ASSESSMENT REPORT

Panel Reference	PPSSTH-326
DA Number	RA23/1002
LGA	Shoalhaven City Council
Proposed Development	Alterations and additions to the Berry Hotel at 120 Queen Street Berry, expansion of the Berry Hotel into 122 Queen Street, construction of new hotel accommodation at 79-83 Princess Street, consolidation of 4 lots, associated parking and landscaping, formalisation of access and parking on 77 Princess St, owned by Council. No works to the existing building at 122 Queen Street (former bank) or the Berry Inn at 17 Prince Alfred Street.
Street Address	120, 122 Queen St, 77, 79,81, 83 Princes St, Berry
Lot & DP	Lot 1 DP 578257 Lot 1 SP 93194 Lot 1, 2 and 3 DP 342913 Lot 1 DP209665 (Council owned land)
Applicant	Feros Hotel Group Pty Ltd
Date of Lodgement	25 September 2023
Owner	FAIRSERV PTY LIMITED VIRGINIA GAYE WATSON MATTHEW JAMES WATSON KAREN SUSAN STIEPER STEPHEN JEFFREY FELLOWS PALINAT PTY LTD LILOTTE PTY LTD SHOALHAVEN CITY COUNCIL The Owners – Strata Plan. No 93194
Number of Submissions	The application was publicly exhibited in accordance with the requirements of the Environmental Planning and Assessment Regulations 2021 from 11 October 2023 to 8 November 2023. 378 submissions were received.
Recommendations	Refusal in accordance with the reasons for refusal contained in Section 8 of this Report.
Regional Development Criteria (Schedule 6 of State Environmental Planning Policy (Planning Systems 2021))	Capital Investment Value (CIV) exceeds \$5 million for Council related development (\$11,563,397)

List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> • Environmental Planning and Assessment Act 1979 • Environmental Planning and Assessment Regulation 2021 • State Environmental Planning Policy (Planning Systems) 2021 • State Environmental Planning Policy (Resilience and Hazard) 2021 • State Environmental Planning Policy (Biodiversity and Conservation) 2021 • Shoalhaven Local Environmental Plan 2014 • Shoalhaven Development Control Plan 2014
List all documents submitted with this report for the Panel's consideration	<p>Attachment 1 – Architectural Plans</p> <p>Attachment 2 – Clause 4.6 Variation Report</p> <p>Attachment 3 – Heritage Impact Statement</p> <p>Attachment 4 - Plan of Management</p> <p>Attachment 5 – Traffic Impact Assessment</p> <p>Attachment 6 – Arborist Report</p> <p>Attachment 7 – Stormwater Plans</p> <p>Attachment 8 – Statement of Environmental Effects</p> <p>Attachment 9 – Geotechnical Investigation & Acid Sulfate</p> <p>Attachment 10 – Acoustic Report</p>
Report prepared by	Jeremy Swan – Independent Town Planning Consultant on behalf of Council
Report date	7 June 2024

Summary of s4.15 matters

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?

Yes**Legislative clauses requiring consent authority satisfaction**

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarised, in the Executive Summary of the assessment report?

Yes**Clause 4.6 Exceptions to development standards**

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?

Yes**Special Infrastructure Contributions**

Does the DA require Special Infrastructure Contributions conditions (S7.24)?
Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions

No**Conditions**

Have draft conditions been provided to the applicant for comment?

No - refusal

Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report.

EXECUTIVE SUMMARY

The subject site relates to 6 allotments located to the south of Queen Street, west of Prince Alfred Street and north of Princess Street within the Berry locality. The land is commonly known as No.s 120, 122 Queen St and 77, 79, 81, 83 Princes St, Berry and legally identified as Lot 1 DP 578257; Lot 1 SP 93194; Lot 1, 2 and 3 DP 342913; and Lot 1 DP209665 (Council owned land).

The subject DA was lodged on 25 September 2023. The application is described as alterations and additions to the Berry Hotel at 120 Queen Street Berry, expansion of the Berry Hotel into 122 Queen Street, construction of new hotel accommodation at 79-83 Princess Street, consolidation of 4 lots, associated parking and landscaping, formalisation of access and parking on 77 Princess St, owned by Council. No works to the existing building at 122 Queen Street (former bank) or the Berry Inn at 17 Prince Alfred Street.

The land contains a split zoning being identified as E1 Local Centre, R2 Low Density Residential and SP2 Infrastructure (Car Park) under the Shoalhaven Local Environmental Plan 2014 (SLEP 2014).

As the development has a capital investment value (CIV) of more than \$5 million, and council is the owner of a portion of land in which the development is to be carried out, the application constitutes regionally significant development and the Southern Regional Planning Panel is the determining authority for the application in accordance with Section 2.19 and Schedule 6(3) of the State Environmental Planning Policy (Planning Systems) 2021.

The application was publicly exhibited in accordance with the requirements of the Environmental Planning and Assessment Regulations 2021 from 11 October 2023 to 8 November 2023. 378 submissions were received regarding the following:

- Heritage Impacts
- Noise & Amenity
- Traffic & Parking
- Character
- Compliance with Controls
- Community Impact
- Bulk and scale
- Overdevelopment
- Alcohol & Gambling
- Social Impact
- Insufficient Information
- Impact on Amenity
- Setting
- Cumulative Impact
- Operation concerns

A review of the documentation submitted with the application was undertaken, and a request for additional information was issued on 27 October 2023. The issues raised were in relation to owner's consent noting a portion of the site is common property. In response, the applicant submitted additional information on 2 April 2024 which was accompanied by the following:

- Strata Committee Meeting Resolution;
- Certificates of Title;
- ASIC Current Company Extracts; and
- Owners Consent Forms.

A review of the amended documentation was undertaken, and a further request for additional information was issued on 5 April 2024. The issues raised were in relation to the following:

- Building Height;
- Bulk, Scale and Character;
- Heritage Impacts;
- Parking Provision and Design;
- Traffic and Safety Impacts;
- Impacts on the Streetscape;
- Amenity Impacts;
- Operation and Safety;
- Social Impact;
- Site Suitability;
- Insufficient information regarding works on public land, inconsistencies between documents, 3D Modelling and additional perspectives, signage, access, BCA compliance, operation of kitchen, kids play area, waste management; and
- Formal response to submissions

In May 2024, the applicant advised that they do not intend on formally responding to each of the matters within the RFI given that it essentially raised the same matters subject to a Class 1 Appeal in the Land and Environment Court of NSW. As such, the recommendation of this report is based on the information available.

An assessment of the development has been undertaken against the following Acts and environmental planning instruments:

- *Environmental Planning and Assessment Act 1979*;
- *Environmental Planning and Assessment Regulation 2021*;
- *State Environmental Planning Policy (Planning Systems) 2021*;
- *State Environmental Planning Policy (Resilience and Hazard) 2021*;
- *State Environmental Planning Policy (Biodiversity and Conservation) 2021*;
- *Shoalhaven Local Environmental Plan 2014*; and
- *Shoalhaven Development Control Plan 2014*.

The proposed development has been assessed against the relevant matters for consideration pursuant to Section 4.15 of the Environmental Planning and Assessment Act, 1979, including likely impacts, the suitability of the site for the development, and the public interest.

The proposed application includes a non-compliance with the 8.5m height of buildings development standard in Clause 4.3 of Shoalhaven Local Environmental Plan (SLEP) 2014. Specifically, the proposed building represents a variation of 0.8m or 9.4%.

The written request submitted pursuant to Clause 4.6 in SLEP 2014 is not considered to be well founded as it does not adequately demonstrate that compliance with the development standard is unreasonable or unnecessary, that there are sufficient environmental planning grounds to justify the variation, nor that the Proposed Development will be in the public interest.

The proposed development is considered to be inappropriate as it will result in adverse impacts on the surrounding area, is not suitable for the site and is contrary to the public interest.

The proposal is therefore not supported. This report recommends that the application be refused in accordance with the reasons for refusal outlined under Section 8, of this report.

1. Detailed Application

RA23/1002 was lodged on 25 September 2023. The application is described as alterations and additions to the Berry Hotel at 120 Queen Street Berry, expansion of the Berry Hotel into 122 Queen Street, construction of new hotel accommodation at 79-83 Princess Street, consolidation of 4 lots, associated parking and landscaping, formalisation of access and parking on 77 Princess St, owned by Council. No works to the existing building at 122 Queen Street (former bank) or the Berry Inn at 17 Prince Alfred Street.

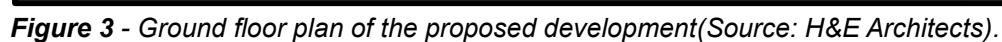
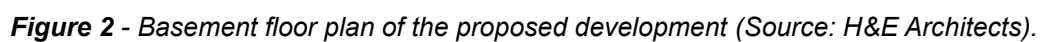
Specifically, the proposed development includes the following works:

- Demolition of the existing dwelling house, associated structures and removal of vegetation at 79-81 Princess Street and Consolidation of Lot 1 DP 578257 (existing Berry Hotel) with Lots 1-3 DP 342913 (79-83 Princess Street) into one site.
- Alterations and additions to Berry Hotel including the following works:
 - Internal and external demolition at the Ground and First Floor of the Berry Hotel building, demolition of the separate garage building, removal of existing vegetation/trees and rear parking area;
 - Internal and external alterations and additions to the Ground Floor of the Berry Hotel including reconfiguration and refurbishment of the existing spaces and conversion of the rear courtyard to internal space to provide upgraded lounge bar, lounge dining (opening onto front verandah), sports bar (opening onto new rear terrace), lounge, private dining and amenities;
 - Minor internal and external alterations to the First Floor of the Berry Hotel including reconfiguration of spaces to provide back-of-house office and staff facilities, including new stair off Queen Street frontage at western end of frontage;
 - New, contemporary single storey addition to the east of the Berry Hotel extending onto the western/south-western part of 122 Queen Street (part Lot 1 SP 93194) comprising bistro, bar, dining pavilion, kids play, kitchen and back-of-house facilities set behind a pergola covered outdoor dining area facing Queen Street;
 - Demolition of existing external works in the western/south-western part of 122 Queen Street, including swimming pool, paving, deck/ramp and removal of existing vegetation/trees (excluding trees to be transplanted) to accommodate the Berry Hotel Extension.
- Construction of a part 2, part 3 level hotel accommodation building comprising 33 accommodation rooms. Specifically, the building will comprise the following:

- Basement – Provision of a basement level car park comprising 23 car parking spaces, storage, plant room, and lift/stair access providing access to upper levels.
- Ground Floor – Provision of 11 accommodation room, reception/lobby, staff laundry, lift/stair access, separate pedestrian access off Queen Street and internal car park.
- First Floor – Provision of 15 accommodation rooms, storage room and lift/stair access.
- Second Floor - Provision of 7 accommodation rooms, rooftop pool, plant storage and lift and stair access.
- Formalisation of the access off Princess Street and addition of 61 at grade car parking spaces in the following configuration:
 - 10 allocated car parking spaces servicing the new hotel accommodation building.
 - 34 car parking spaces servicing the Berry Hotel.
 - Works on Council's land include new hardstand to access driveway and 17 x parking spaces
- Associated site works including new kerb, line marking, drainage works and landscaping.



Figure 1 - Site Plan & Site Analysis of the proposed development (Source: H&E Architects)



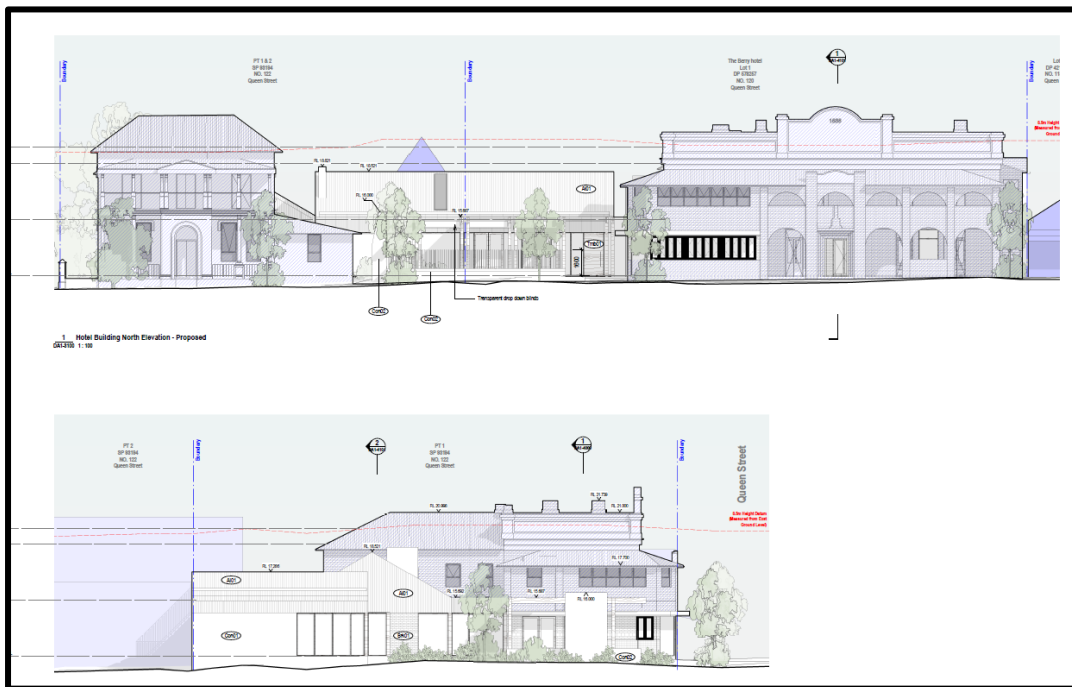


Figure 4 – Hotel Elevations (North and East) (Source: H&E Architects).

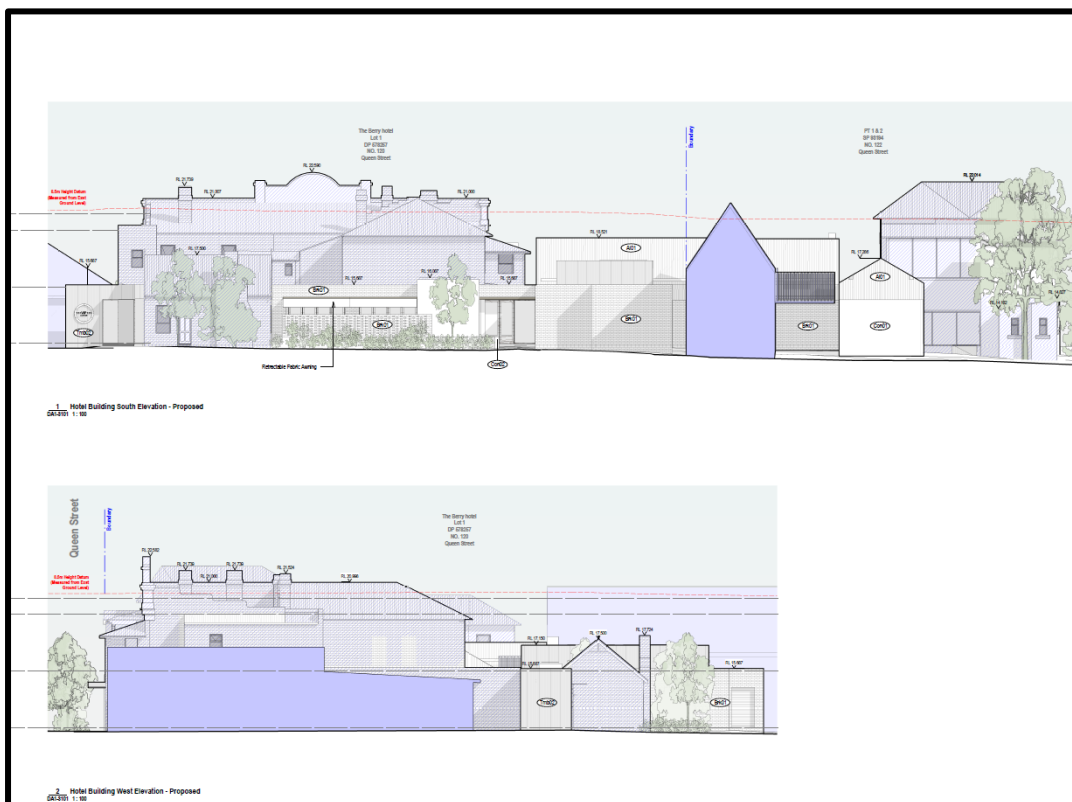


Figure 5 – Hotel Elevations (South and West) (Source: H&E Architects)

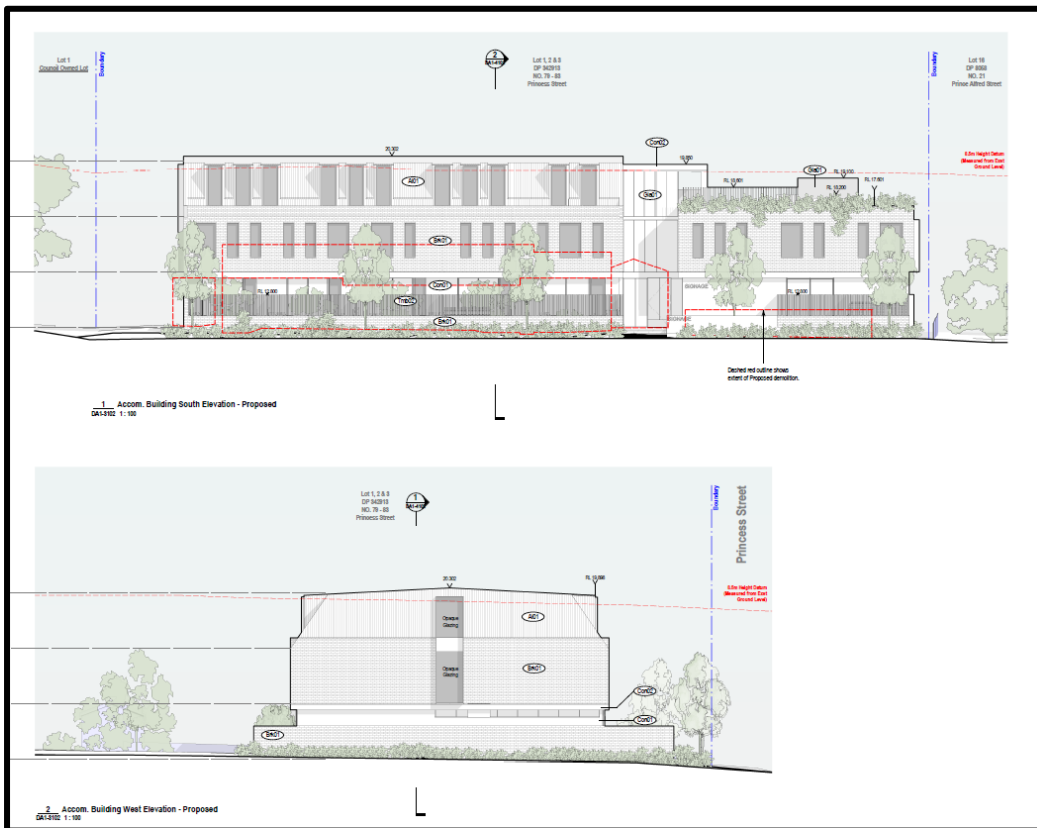


Figure 6 – Motel Accommodation Elevation (South and West) (Source: H&E Architects).



Figure 7 – Motel Accommodation Elevation (North and East) (Source: H&E Architects).

2. Subject Site and Surrounds

Site Description



Figure 8 – Aerial site photo (Source: Near Map)

Street address: 120, 122 Queen St, 77, 79, 81, 83 Princes St, Berry

Title details:

- Lot 1 DP 578257
- Lot 1 SP 93194
- Lot 1, 2 and 3 DP 342913
- Lot 1 DP209665 (Council owned land)

Zoning: The land contains a split zoning being identified as E1 Local Centre, R2 Low Density Residential and SP2 Infrastructure (Car Park) under the Shoalhaven Local Environmental Plan 2014 (SLEP 2014).

Topography Slight slope from the Queen Street forage toward Princess Street of approximately 1m.

Vegetation: Scattered vegetation associated with the existing use.

Existing Building

The subject site contains a range of existing used and structures as identified below:

- **120 Queen Street**
Currently contains Berry Hotel being within a two-storey development and associated structures including at sheds and at-grade carparking.
- **122 Queen Street and 17 Prince Alfred Street**
Strata title lot currently containing a part 1 and 2 two-storey commercial development, a two-storey tourist and visitor accommodation development. The site is also located within the Queen Street Heritage Conservation Area.
- **77 Princess Street**
Council owned land containing informal at-grade car parking.
- **79 Princess Street**
Currently contains a semi-detached dwelling and associated structures including detached sheds.
- **81 Princess Street**
Currently contains a semi-detached dwelling and associated structures including brick garage.
- **83 Princess Street**
Predominantly cleared and comprises a lawn surface.

Heritage

- **120 Queen Street**
The site is identified as containing a Local Heritage item No. I87 being a Two storey Victorian hotel and detached kitchen including *Acmena smithii* (Lilly Pillies-2). The site is also located within the Queen Street Heritage Conservation Area.
- **122 Queen Street and 17 Prince Alfred Street**
The site is identified as containing a Local Heritage item No. I88 being the former CBC Bank including Fences and trees. The site is also located within the Queen Street Heritage Conservation Area.



Figure 9 – Queen Street Frontage of site



Figure 10 – Princess Street Frontage of site

Surrounding Area

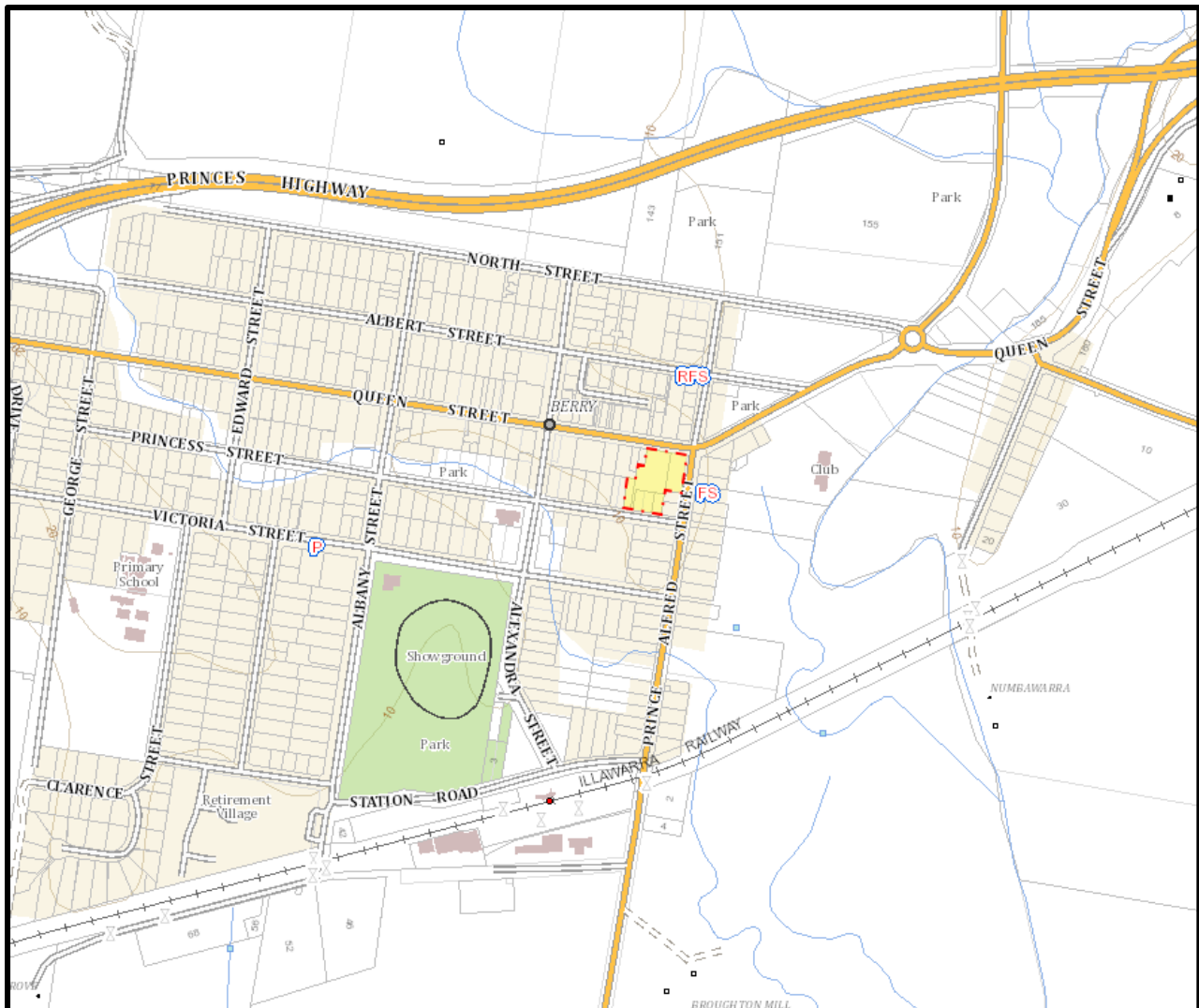


Figure 11 – Surrounding Context (Source: Six Maps)

The site sits within the Berry Town Centre which extends along Queen Street, primarily to the west of the site. Development within the centre comprises a mix of older style and historic 1-2 storey buildings ranging in typology, form and scale. Surrounding land use/development consist of the following:

- **North** – Commercial premises and public recreation (Apex Park).
- **East** – Commercial premises and residential dwellings.
- **South** - residential dwellings.
- **West** - Commercial premises and residential dwellings.

There are a number of heritage items within the town centre and the block between Prince Alfred Street and Alexandra Street is within the Queen Street heritage conservation area.

Beyond the boundaries of the town centre, development is characterised by low-density residential development in the form of single to two storey dwellings. There are also a range community and

public orientated land uses including places of worship, educational establishments and recreational land in the form of showgrounds and public parks.

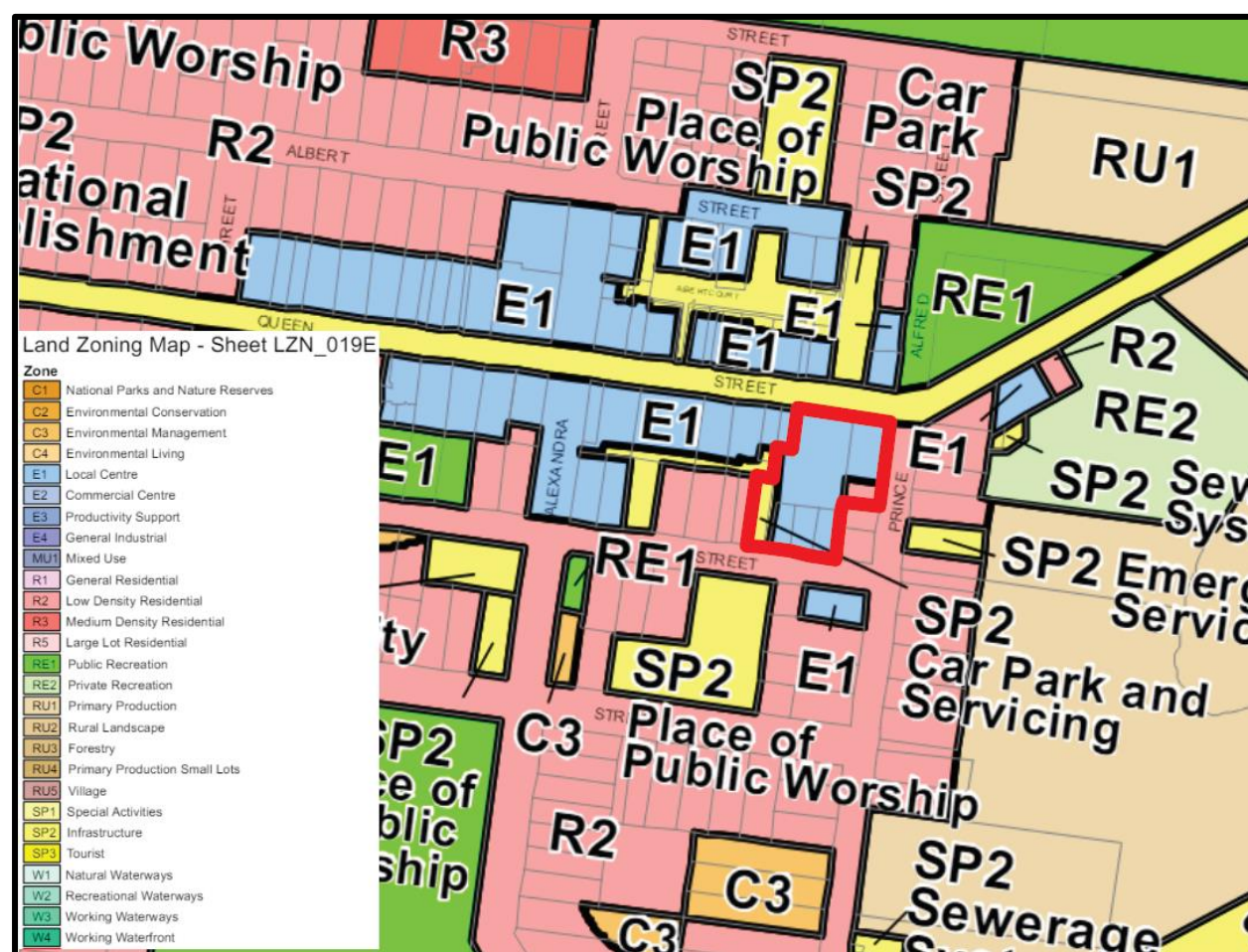


Figure 12 – SLEP 2014 Land Use Zoning Map. Site outlined in red. (Source: Shoalhaven City Council)

3. Background

Date(s)	Action(s)
25 September 2023	The applicant lodged the DA with Council.
3 October 2023	<p>The DA was referred to the following internal and external departments:</p> <p>Council referred the DA to:</p> <ul style="list-style-type: none"> • Building Surveyor; • Development Engineer; • Environmental Health Officer; • Heritage Consultant; • Shoalhaven Water: Development Unit; • Asset and Works;

	<ul style="list-style-type: none"> • Property Services; • City Services & Operations: Works & Services Manager; • Waste Management Manager; • Parks Operations; • Natural Services Manager; • NSW Police; and • Transport for NSW.
11 October 2023	The Development Application was notified and publicly exhibited between 11 October 2023 and 8 November 2023. A total of 378 Submissions were received.
27 October 2023	<p>Council requested additional information from the applicant.</p> <ul style="list-style-type: none"> • Owner's consent.
1 November 2023	A Briefing occurred with the Southern Regional Planning Panel to discuss the proposal. The briefing meeting was attended by the following panel members: Chris Wilson (Chair), Juliet Grant, Stephen Davies.
15 December 2023	The applicant submitted additional information in response to Council's Letter dated 27 October 2023.
22 December 2023	The Applicant commenced proceedings in Class 1 of the Land and Environment Court's jurisdiction appealing against the Respondent's deemed refusal of the Development Application.
9 February 2024	A Public Meeting was undertaken by the Regional Planning Panel to allow submitters an opportunity to make their views known directly.
April 2024	<p>The applicant submitted additional information in response to Council Letter dated 27 October 2023 which included:</p> <ul style="list-style-type: none"> • Strata Committee Meeting Resolution; • Certificates of Title; • ASIC Current Company Extracts; and • Owners Consent Forms.
5 April 2024	<p>Council requested additional information from the applicant.</p> <ul style="list-style-type: none"> • Building Height; • Bulk Scale and Character; • Heritage Impacts; • Parking Provisions and Design; • Traffic and Safety Impacts; • Streetscape; • Amenity Impacts; • Operation and Safety; • Social Impact; • Site Suitability;

	<ul style="list-style-type: none"> • Insufficient Information; and • Public Notification.
May 2023	The applicant informed Council that they do not intend on formally responding to each of the matters raised within the RFI dated 5 April 2023 given it essentially raises the contentions raised within the class 1 proceedings.

4. Consultation and Referrals

Internal Referral	
Heritage Consultant	<p>The proposed development has been independently reviewed as it relates to heritage. Concerns were raised with the application and additional information was requested regarding the existing hotel building, the middle area and the accommodation wing.</p> <p>Additional information was required to address the heritage concerns.</p> <p>The applicant informed Council that they do not intend on formally responding to each of the matters raised within the RFI dated 5 April 2023 given it essentially raises the contentions raised within the class 1 proceedings.</p>
Development Engineer	<p>Concerns were raised with the application and additional information was requested regarding a revised Stormwater Plan, Traffic & Parking Assessment and Architectural Plans to address concerns associated with a DP/88b Instrument Check, Earthworks, Stormwater Drainage and Roads/Access.</p> <p>Additional information was required to address the concerns raised.</p> <p>The applicant informed Council that they do not intend on formally responding to each of the matters raised within the RFI dated 5 April 2023 given it essentially raises the contentions raised within the class 1 proceedings.</p>
Building Surveyor	<p>Advised that additional information was required regarding the proposed use of Level 1 of the existing pub as inconsistencies were identified between the Access Report and Statement of Environmental Effects.</p> <p>Concerns were also raised regarding compliance with Building Code of Australia due to the addition to the existing pub extending over the adjoining boundaries.</p> <p>The above information was not submitted as part of the application and forms part of the recommendation for refusal.</p>
Landscape Architect	<p>Advised that additional information was required regarding details on the landscape plans. Specifically, the provision of 1-Cupaniopsis Tree sited which appeared to be sited on a ramp and marking on the plans not clearly referenced.</p> <p>The above information was not submitted as part of the application and forms part of the recommendation for refusal.</p>

Tree Management Officer	Raised no objection subject to recommended conditions requiring trees within the road reserve to be retained and protected in accordance with AS 4970 Protection of Trees on Development Sites.
Waste Management Manager	<p>Advised that additional information was required regarding detailed waste management. Specifically, the applicant was to advise on the following:</p> <ul style="list-style-type: none"> • <i>Consultation with a local private commercial waste collection contractor and demonstrate their ability to service the site (entering and exiting in forward direction with minimal to no reversing).</i> • <i>The applicant should use the contractor's vehicle dimensions, demonstrating through swept path diagram, the vehicle's travel path and where the vehicle will be parked to service bins (ensuring the parked collection vehicle does not impede on the main access entry or passing traffic).</i> • <i>If it is intended for the collection vehicle to park in the loading dock further information is required showing suitable space for the truck (current width is 1.4m the average truck requires 2.5m) and for the bins to be emptied considering additional space for the vehicles bin lifting arc.</i> • <i>The applicant needs to review the generated waste amounts and allocated bins as it is not practical to have waste collected from the site on a daily basis.</i> • <i>More information is required on the intended waste management and bin storage area access for the hotel. Any bin storage area should be of suitable size to allow all bins to be accessed at any one time (bins cannot be stored behind each other).</i> <p>The above information was not submitted as part of the application and forms part of the recommendation for refusal.</p>
Environmental Health	<p>Advised that additional information was required regarding details waste management. Specifically, the applicant was to advise on the following:</p> <ul style="list-style-type: none"> • <i>The acoustic report and modelling outlines specifies the hotel will not operate past midnight. The SEE specifies the hotel will operate until 2am. Clarification is required.</i> • <i>The acoustic report does not make any mention of live music, where live music would be situated in the new floor plan and its impact on sensitive receivers. A review of the Berry Hotel website also specifies karaoke is occurring this should be included as live music.</i> • <i>The use of the rooftop pool until 10pm has the potential to create noise pollution and light spillage. Utilisation of the pool until dusk is considered more appropriate and consistent with other commercial pools in the region.</i> • <i>The kitchen preparation area appears to be small for the projected patrons and the hotel use. As per Shoalhaven Council's Food Policy - The minimum area of a kitchen, including food preparation area shall</i>

	<i>be 20% of the dining room area or 7.5 sq m, whichever is the greater (page 2)</i> The above information was not submitted as part of the application and forms part of the recommendation for refusal.
Shoalhaven Water	No objections subject to recommended conditions of consent.
External Referral	
Transport for NSW	Raised no objections as the development will not have a significant impact to the state road network.
Endeavour Energy	No objections subject to recommended conditions of consent.

5. Statutory Considerations

An assessment against 4.15 of the Environmental Planning and Assessment Act 1979 is provided below.

Environmental Planning and Assessment Act 1979 – Section 4.15

In determining a DA, the consent authority is to take into consideration the following matters as are of relevance in the assessment of the DA on the subject property.

(a)(i) The Provisions of any Environmental Planning Instrument

- *Environmental Planning and Assessment Act 1979;*
- *Environmental Planning and Assessment Regulation 2021;*
- *State Environmental Planning Policy (Planning Systems) 2021;*
- *State Environmental Planning Policy (Resilience and Hazard) 2021;*
- *State Environmental Planning Policy (Transport and Infrastructure) 2021;*
- *State Environmental Planning Policy (Biodiversity and Conservation) 2021;*
- *Shoalhaven Local Environmental Plan 2014; and*
- *Shoalhaven Development Control Plan 2014.*

An assessment of the proposed DA against the above instruments is detailed below.

Environmental Planning and Assessment Act 1979 (EP&A Act)

For reasons set out in this report, the proposal is considered to be inconsistent with Section 4.15(1)(a)(i) and (iii), (b),(c),(d) and (e) of the Environmental Planning and Assessment Act.

Environmental Planning and Assessment (EP&A) Regulation 2021

The proposal does not contravene the Environmental Planning and Assessment Regulation.

State Environmental Planning Policy (Planning Systems) 2021

In accordance with Schedule 6 Regionally Significant Development of the SEPP, the proposed development constitutes 'Regional Development' as it has a Capital Investment Value (CIV) of

\$11,563,397 which exceeds the \$5 million threshold for Council related development. Therefore, the consent authority is the Southern Regional Planning Panel.

State Environmental Planning Policy (Resilience and Hazard) 2021

Chapter 2 Coastal management

Chapter 2 of the Resilience and Hazard SEPP 2021 aims to manage development in coastal zones, protect the environmental assets of the coast and to establish a framework for land use planning that guide decision making in coastal zones.

In accordance with **Figure 11** below, the site is mapped as being located within the 'Coastal Environment Area' in accordance with the SEPP (Resilience and Hazards) 2021

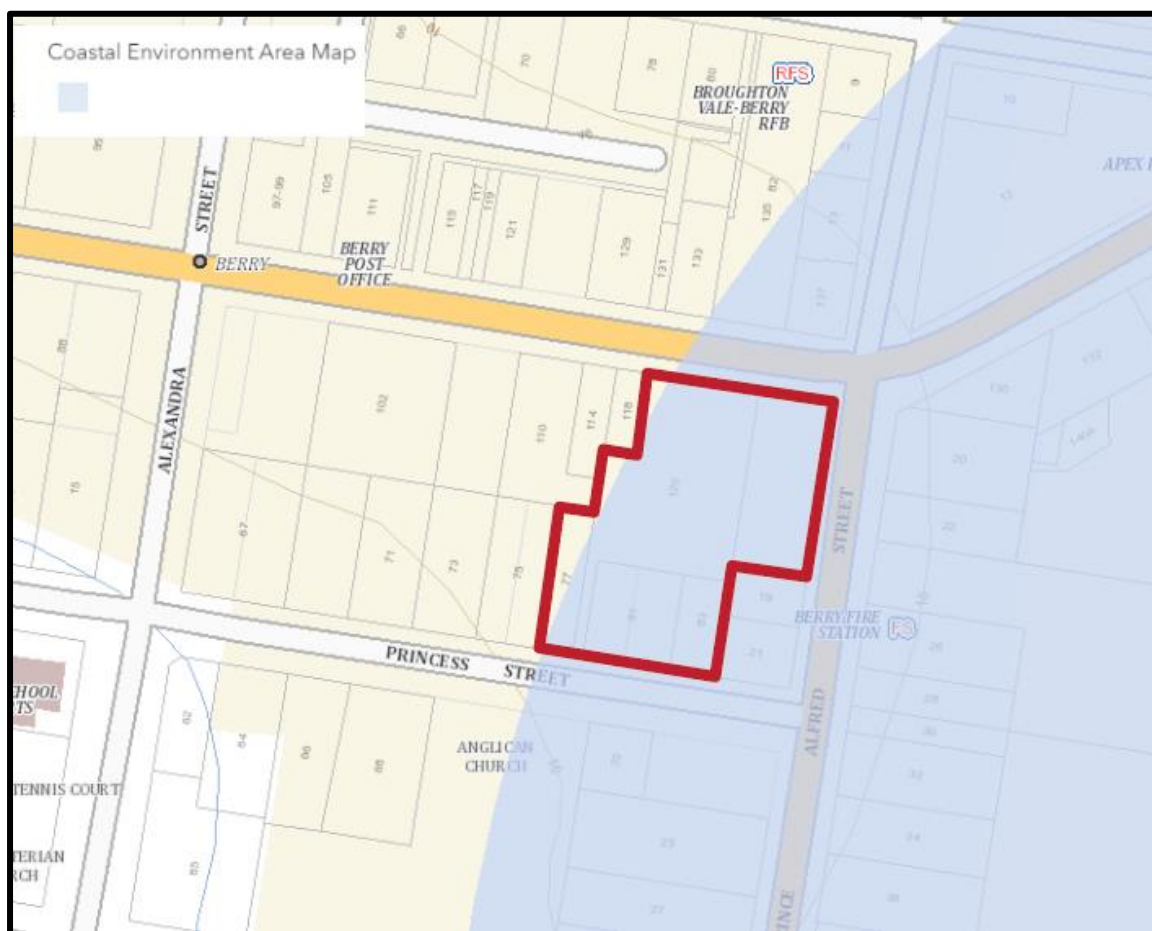


Figure 13 – Coastal Environment Area Map (Source: Spatial Viewer). Site outlined in red.

An assessment of the proposed development against the relevant provisions of the SEPP is provided in the table below.

State Environmental Planning Policy (Resilience and Hazard) 2021 Chapter 2 Compliance Table

SEPP Section	Requirements	Comment
2.10 Development on land within the coastal environment area	<p>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—</p> <p>(a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,</p> <p>(b) coastal environmental values and natural coastal processes,</p> <p>(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,</p>	<p>The application has been referred to Council's Development Engineers who noted that the discharge to the existing kerb in Princess Street is not acceptable based on the amount of discharge flow and the number of pipes required to provide sufficient capacity for the development. In addition, insufficient information has been submitted with regard to Plans for drainage for the basement level. The development as currently proposed does not demonstrate adverse impacts will be avoided on the integrity and resilience of the hydrological environment.</p> <p>The proposal would be unlikely to have an adverse impact upon coastal environmental values or natural coastal processes.</p> <p>The proposed development will not impact on marine estate or coastal lakes.</p> <p>The proposed development is adequately set back from coastal areas and will not impact marine vegetation and</p>

	<p>(d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,</p> <p>(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,</p> <p>(f) Aboriginal cultural heritage, practices and places,</p> <p>(g) the use of the surf zone.</p> <p>Development consent must not be granted to development on land to which this section applies unless the consent authority is satisfied that—</p> <p>(a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subsection (1).</p>	<p>undeveloped headlands and rock platforms.</p> <p>The proposed development is adequately setback from coastal areas and will not impact on 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.</p> <p>The proposed development will not impact on Aboriginal cultural heritage, practices and places.</p> <p>The proposed development will not impact on a surf zone.</p> <p>Based on concerns raised regarding stormwater drainage, Council is not satisfied that the development has been designed in a way which permits the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment to be retained.</p>
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Chapter 4 Remediation of Land

The SEPP requires Council to be satisfied that the site is suitable for its intended use (in terms of contamination) prior to granting consent.

In particular, *Chapter 4 Remediation of Land* contains a number of objectives that aim to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health and the environment:

- a) *By specifying when consent is required, and when it is not required, for a remediation work; and*
- b) *By specifying certain considerations that are relevant in rezoning land and in determining development applications in general and development applications for consent to carry out a remediation work in particular; and*
- c) *By requiring that a remediation work meet certain standards and notification requirements*

Subject to Section 4.6 of the SEPP, a consent authority must not consent to the carrying out of development on land unless it has considered whether the land is contaminated.

The application was accompanied by Preliminary Site Investigation prepared by Ei Australia, dated 23 May 2023. 'The investigation concluded that there was a low risk of widespread contamination existing on land. Any materials required for excavation can be managed by construction environmental management plans prepared as part of the sites earthworks in accordance with State Environmental Planning Policy (Resilience and Hazard) EI considered that the site is suitable form the proposed commercial development.' The following recommendation were also provided:

- A hazardous materials inspection should be undertaken to confirm the presence of any hazardous materials within the existing building structures and include methods to effectively remove the material to ensure no residual impacts remain.
- A clearance inspection of former footprints and waste classification of surplus materials should be undertaken following the demolition process, in order to dispose of the waste based on EPA (2014) Waste Classification Guidelines.
- A Construction Environmental Management Plan (CEMP) is to be prepared by the principal or earthworks contractor. The CEMP should consider the normal environmental issues that may occur during development such as but not limited to dust, noise, odour, vibration, safety and traffic and also include:
 - Waste management of soils (including fill) to ensure that are appropriately classified for disposal in accordance with the NSW EPA Waste Management Guidelines (Part 1 Classifying Waste), and
 - Provide unexpected finds protocols should any unexpected contamination or hazardous materials like Underground Storage Tank (UST), stained or odorous soil, foreign materials, burial pits and arose of fill or soil that are different from the general substrate are identified during site earthworks.

Based on the findings of the Preliminary Site Investigation, the site is considered to be suitable for the intended uses subject to recommended conditions of consent attached to any such approval for this development application.

State Environmental Planning Policy (Transport and Infrastructure) 2021

Chapter 2 – Infrastructure

An assessment of the development against the relevant provisions of Chapter 2 of the Transport and Infrastructure SEPP is provided in the table below.

State Environmental Planning Policy (Transport and Infrastructure) 2021		
Provision	Control	Discussion
2.122 Traffic Generating Development	<p>This section applies to development specified in Column 1 of the Table to Schedule 3 that involves—</p> <ul style="list-style-type: none"> (a) new premises of the relevant size or capacity, or (b) an enlargement or extension of existing premises, being an alteration or addition of the relevant size or capacity. <p>Before determining a development application for development to which this section applies, the consent authority must—</p> <ul style="list-style-type: none"> (a) give written notice of the application to TfNSW within 7 days after the application is made, and (b) take into consideration— <ul style="list-style-type: none"> (i) any submission that TfNSW provides in response to that notice within 21 days after the notice was given (unless, before the 21 days have passed, TfNSW advises that it will not be making a submission), and (ii) the accessibility of the site concerned, including— <ul style="list-style-type: none"> A. the efficiency of movement of people and freight to and from the site and the extent of multi-purpose trips, and B. the potential to minimise the need for travel by car and to maximise movement of freight in containers or bulk freight by rail, and 	<p>The proposed development involves the expansion of an existing hotel (commercial premises) and construction of a new Hotel or Motel Accommodation (Tourist and Visitor Accommodation).</p> <p>The application was referred to Transport for NSW who completed an assessment and raised no objections as the development will not have a significant impact to the state road network.</p>

	(iii) any potential traffic safety, road congestion or parking implications of the development.	
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State Environmental Planning Policy (Biodiversity and Conservation) 2021

Chapter 2 - Vegetation in non-rural areas

Chapter 2 of the Biodiversity and Conservation SEPP 2021 aims to protect the biodiversity values of trees and other vegetation in non-rural areas and to preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation.

Council is satisfied that the proposed development will not have an adverse impact on threatened species, populations and TECs. Therefore, it is found that compliance with SEPP (Biodiversity and Conservation) 2021 has been achieved in addition to other relevant legislation including SDCP 2014, Chapter G5 and the Biodiversity Conservation Act 2016.

Shoalhaven Local Environmental Plan 2014

Land Zoning

The land contains a split zoning being identified as E1 Local Centre, R2 Low Density Residential; and SP2 Infrastructure (Car Park) under the Shoalhaven Local Environmental Plan 2014 (SLEP 2014).

Characterisation and Permissibility

The proposed development is permissible with consent as set out below.

E1 Local Centre Zone

The proposal is best characterised as a “Pub” and “Hotel or Motel Accommodation” under the SLEP 2014. “Pub” and “Hotel or Motel Accommodation” are permissible with consent within the E1 zone.

SP2 Infrastructure (Car Park)

Works on SP2 land include the formalisation of access off Princess Street and associated 17 x parking spaces through the provision of new hardstand. These works are considered to be ordinarily incidental or ancillary which is permissible with consent in the SP2 Infrastructure (Car Park) zone.

R2 Low Density Residential

While part of the site is zoned R2 under the LEP (occupied by part of the Berry Inn and the adjoining parking area), no development is proposed on that part of the site as part of the proposal.

Zone objectives

The objectives of the E1 Local Centre zone are as follows:

Objective	Comment
<ul style="list-style-type: none"> To provide a range of retail, business and community uses that serve the needs of people who live in, work in or visit the area. 	Consistent. The maintains a mix of uses that that serve the needs of people who live in, work in or visit the area.
<ul style="list-style-type: none"> To encourage investment in local commercial development that generates employment opportunities and economic growth. 	Consistent. The proposal encourages investment in local commercial development that generates employment opportunities and economic growth.
<ul style="list-style-type: none"> To enable residential development that contributes to a vibrant and active local centre and is consistent with the Council's strategic planning for residential development in the area. 	Not Applicable. The proposal involves alterations and additions to a Pub and Hotel or Motel Accommodation only. No residential accommodation is proposed.
<ul style="list-style-type: none"> To encourage business, retail, community and other non-residential land uses on the ground floor of buildings. 	Consistent. The proposal generally retains the existing use of the site.
<ul style="list-style-type: none"> To ensure that development is of a scale that is compatible with the character of the surrounding residential environment. 	Inconsistent. The scale and streetscape presentation of the development is not compatible with the character of the surrounding residential environment.

The objectives of the SP2 Infrastructure zone are as follows:

Objective	Comment
<ul style="list-style-type: none"> To provide for infrastructure and related uses 	Inconsistent. Insufficient information has been submitted to demonstrate the proposal can 'provide for infrastructure and related uses' within the SP2 Infrastructure (Car Park) zone. This is given it is proposed to utilise a public car park for a private benefit without approval from Council.
<ul style="list-style-type: none"> To prevent development that is not compatible with or that may detract from the provision of infrastructure. 	Consistent. It is proposed to re-construct the right of way and existing public car park to a contemporary standard. This is fully supported as it is a requirement of Council's DCP and considered appropriate to address the intensification of use due to the development proposed. However, Insufficient information has been submitted to demonstrate the proposal can 'provide for infrastructure and related

	uses' within the SP2 Infrastructure (Car Park) zone. This is given it is proposed to utilise a public car park for a private benefit without approval from Council.
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R2 Low Density Residential

The objectives of the R2 zone are not relevant noting no development is proposed on this part of the site.

SLEP 2014 Clauses

Section	Requirement	Provided
2.6 Subdivision – consent requirements	Land to which this Plan applies may be subdivided, but only with development consent.	Yes. Consent is sought for the consolidation of the site.
2.7 Demolition requires development consent	The demolition of a building or work may be carried out only with development consent.	Yes. Consent is sought for the demolition of existing structures.
4.3 Height of Building	The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map. 8.5m	No. The proposed application includes a non-compliance with the 8.5m height of buildings development. Specifically, the proposed building represents a variation of 0.8m or 9.4%. Refer to Clause 4.6 below.
4.6 Exceptions to development standard	To provide an appropriate degree of flexibility in applying certain development standards to particular development,	No. The written request submitted pursuant to Clause 4.6 in SLEP 2014 is not considered to be well founded as it does not adequately demonstrate that compliance with the development standard is unreasonable or unnecessary, that there are sufficient environmental planning grounds to justify the variation, nor that the Proposed Development will be in the public interest.
5.10 Heritage Conservation	To conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,	The proposed development involves demolishing / altering of heritage items and buildings within a heritage conservation area. The application has been assessed as it relates to heritage where concerns were raised concerns regarding the existing hotel

		<p>building, the middle area and the accommodation wing.</p> <p>There are also further concerns associated with the proposed removal of heritage listed Lilly Pilly trees, which, although heavily pruned, are able to be retained and enhanced to preserve the amenity of the area.</p> <p>Additional information was required to address the heritage concerns and the applicant chose not to formally respond to each of the matters raised within the RFI dated 5 April 2023.</p> <p>As such, Council is not satisfied that the proposed development will appropriately conserve the environmental heritage of Shoalhaven and/or conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views.</p>
7.1 Acid Sulfate Soils	To ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage.	<p>Insufficient information. The site is mapped as containing Class 5 Acid Sulfate Soils and the site is within 500 metres of adjacent Class 4 land. An Acid Sulfate Soil assessment has been prepared in support of the application which details the following:</p> <p>No groundwater was observed in the boreholes during the site drilling, and as no basement levels are proposed there will be no need to undertake any dewatering. As a result, site development will not result in the lowering of the groundwater where nearby ASS may be present and will therefore not expose ASS to oxidation.</p> <p>It is noted that a basement level is proposed to accommodate car parking for the new Hotel accommodation.</p> <p>As such, insufficient information has been submitted to confirm if the water table is likely</p>

		to be lowered and to confirm if an acid sulfate soils management plan is required.
7.2 Earthworks	To ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.	The earthworks involve excavation to create a basement level to accommodate car parking for the new Hotel accommodation. However, as above, insufficient information has been provided to adequately demonstrate that the proposed earthworks will not have a detrimental impact on environmental functions and processes, noting that it is not able to be confirmed if the water table is likely to be lowered and to confirm if an acid sulfate soils management plan is required.
7.11 Essential services	Development consent must not be granted for development unless the consent authority is satisfied that any of the following services that are essential for the development are available or that adequate arrangements have been made to make them available when required— (a) the supply of water, (b) the supply of electricity, (c) the disposal and management of sewage, (d) suitable vehicular access.	The site is capable of being serviced by adequate arrangements of essential services.

Clause 4.6 – Exceptions to Development Standards

Detailed assessment of variation to Clause 4.3 Height of Building

The applicant proposes a contravention to the Maximum Height of Building (HOB) development standard that applies to the site, pursuant to clause 4.3 of the SLEP 2014. Specifically, clause 4.3(2) states 'The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map'.

This clause restricts developments to a maximum HOB of 8.5m. The subject proposal has a building height of 9.3m, contravening the development standard 0.8m or 9.4%.

It is noted that on 1 November 2023, Clause 4.6 of the Standard Instrument LEP had been simplified to provide more certainty about when and how development standards can be varied. Savings and Transitional provision apply noting the development application was formally lodged on 25 September 2023. Therefore, the variation has been assessed against provisions that applied at the time.

In accordance with Clause 4.6(3), the applicant requests that the HOB development standard be contravened in this instance. The applicant's written request (**Attachment 2**) submits that compliance with the development standard is unreasonable or unnecessary and that the discussions provided demonstrates that there are sufficient environmental planning grounds to justify the departure from the control. Specifically, the applicant submits that:

Strict compliance would result in an inflexible application of policy. It does not serve any purpose that should outweigh the positive outcomes of the development. The proposed development, including the height variation, achieves the objectives of clause 4.6(1) of the LEP despite the non-compliance, in circumstances where:

- *the proposed development, including the height variation, is compatible with the desired future character of the area in terms of height, bulk and scale;*
- *the proposed development, including the height variation, minimises the visual impact of the building,*
- *the proposed development, including the height variation, will not adversely affect public and private views,*
- *the proposed development, including the height variation, minimises loss of privacy to existing development,*
- *the proposed development, including the height variation, minimises loss of solar access to existing development,*
- *the proposed development, including the height variation, respects heritage significance, including heritage items and the adjoining heritage conservation area.*

The development, including the height variation, is consistent with the provisions of orderly and economic development and good design and amenity of the built environment.

There are sufficient environmental planning grounds to support the variation to the height of buildings development standard applicable to the site, being:

- *the proposed height variation is minor and confined to the western end of the accommodation building relating to the upper part of the ceiling/roof of the proposed Attic level;*
- *the eastern end of the building complies with the height standard, being well within the permitted maximum;*
- *the height and form of the proposed development, including the height variation, is compatible with and complements existing development in the streetscape of Princess Street and will not result in adverse visual impacts. It is compatible with the height of the recent two storey residential development to the west at 75 Princess Street and effects an appropriate transition to the single storey dwelling house (facing Prince Alfred Street) to the east;*
- *the height of the proposed development is compatible with and subservient to the height of existing development on the site, being below the height of the existing Berry Hotel;*

- *the proposed development, including the height variation, is compatible with the desired future character of the town centre in terms of height, bulk and scale;*
- *the proposed development, including the height variation, is an appropriate response to the heritage significance of the town centre, including the heritage items on the site and in the vicinity and the adjoining heritage conservation area as detailed in the submitted HIS (see Annexure 3 to the SEE);*
- *the height variation will not give rise to significant adverse amenity impacts on surrounding development in terms of overshadowing, loss of privacy or loss of views; and*
- *The proposed development, including the height variation, achieves compliance with the relevant underlying objectives of the standard and the objectives of the zone.*

The above factors confirm that there are sufficient environmental planning grounds to justify the variation and that the Clause 4.6 variation request is well-founded.

Officer's comments:

The design of the development is not in keeping with the existing height bulk or density of development in the area. It results in an excessive visual bulk and scale that will adversely impact on the significance of the site and surrounding area.

The new accommodation building fronting Princess Street is highly uncharacteristic to the site and the immediate and wider vicinity. The proposed three-storey scale is not designed to minimise bulk or provide sufficient relief or articulation to the streetscape and adjoining properties. The proposed form is uncharacteristic of development within the surrounding setting and the proposed exceedance to the maximum height of building development standard further exacerbates the undesirable and conflicting visual contribution this development will have upon the streetscape.

The applicant contends that the proposed development is 'compatible with the height of the recent two storey residential development to the west at 75 Princess Street and effects an appropriate transition to the single storey dwelling house (facing Prince Alfred Street) to the east'. However, it is noted that Princess Street is defined by single-storey development with some two-storey built forms. This development is of a form and scale that is uncharacteristic of development within the surrounding area and the proposed three-storey is considered to be excessive, visually incompatible and does not keep within desired residential character of Princess Street.

In addition, the proposed development is incompatible within heritage character of the area noting the proposed new accommodation building at the Princess Street frontage is highly uncharacteristic to the site and the immediate and wider vicinity and would result in major adverse impacts due to its three-storey scale, raised above basement carpark, form and massing, architectural expression, materials and details. The provision of a roof terrace with pool is highly inappropriate within the setting of a large number of heritage items.

It is considered that the applicant's written request has not adequately addressed the matters required to be demonstrated by Clause 4.6(3) of the SLEP 2014. Additionally, the development is considered to be contrary to the public interest as it does not meet relevant objectives of the E1 Local Centre zone and Clause 4.3 of the SLEP 2014, as outlined below:

Note – The variations are sited wholly within the land zoned E1 Local Centre.

E1 Local Centre Zone

Objective	Comment
<ul style="list-style-type: none"> <i>To ensure that development is of a scale that is compatible with the character of the surrounding residential environment.</i> 	<p>Inconsistent. The proposed variation contributes to a development that is excessive in visual bulk and scale and a streetscape presentation that is not compatible with the character of the surrounding residential environment.</p>

Clause 4.3 – Height of Building

Objective	Comment
<ul style="list-style-type: none"> <i>to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of a locality,</i> 	<p>Inconsistent. The proposed variation contributes to a development that is excessive in height, resulting in a non-compliance with the principal environmental standard. The assessment has further found that the development has an adverse visual impact as it relates to the bulk and scale of the development and its impact upon the streetscape. Noting its location within a heritage character area, the development is not considered to be consistent with the desired future character of the surrounding locality.</p>
<ul style="list-style-type: none"> <i>to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development.</i> 	<p>Inconsistent. The proposed development is excessive in visual bulk and scale and will have an adverse impact on the amenity of the streetscape and on adjoining properties.</p> <p>It is further found that the development is likely to have an adverse impact on privacy for surrounding residents, noting in particular, the provision of habitable room windows and communal facilities on the rooftop, each with the potential to overlook surrounding private open space areas.</p>
<ul style="list-style-type: none"> <i>to ensure that the height of buildings on or in the vicinity of a heritage item or within a heritage conservation area respect heritage significance.</i> 	<p>Inconsistent. The proposed height and resulting scale and streetscape presentation do not respect will detract from the heritage significance of the site and surrounding area.</p>

Pursuant to Clause 4.6(4) of the Shoalhaven LEP, the consent authority cannot be satisfied that:

- The applicant's written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3) of the LEP; and
- The development will be in the public interest because it is not consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

It is noted that the Panel may assume the concurrence of the Secretary pursuant to Planning Circular PS 20-002.

(a)(ii) The Provision of any Draft Environmental Planning Instrument (that is or has been the subject of public consultation under this Act and that has been notified to the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved).

Nil

(a)(iii) The Provisions of any Development Control Plan

Shoalhaven Development Control Plan 2014

Chapter 2: General and Environmental Considerations

Chapter 2: General and Environmental Considerations		Achieved
Potentially Contaminated Land	Based on the findings of the Preliminary Site Investigation, the site is considered to be suitable for the intended uses subject to recommended conditions of consent attached to any such approval for this development application.	Yes
European Heritage	<p>The proposed development involves demolishing / altering of heritage items and works within a heritage conservation area.</p> <p>The application has been independently reviewed as it relates to heritage where concerns were raised regarding the existing hotel building, the middle area and the accommodation wing.</p> <p>Additional information was required to address the heritage concerns and the applicant chose not to formally respond to each of the matters raised within the RFI dated 5 April 2023.</p> <p>As such, Council is not satisfied that the proposed development will achieve the objectives of Section 3.1, Chapter 2 of the Shoalhaven DCP. Specifically, it is not satisfied that the development will ensure the following:</p> <ul style="list-style-type: none"> • Ensure the significance of heritage items is retained; • Ensure the special streetscape, pastoral or natural character of the conservation areas is maintained; • ensure alterations and extensions to existing buildings respect those buildings and do not compromise the significance and character of the individual items or of the conservation areas; • Ensure new development respects its context and is sympathetic in terms of form, scale, bulk, fabric, colours and textures and does not mimic or adversely affect the 	No.

	<p>significance of heritage items and conservation areas and their settings;</p> <ul style="list-style-type: none"> • Encourage a high quality of design that is compatible with the heritage significance of the heritage items and conservation area. 	
Aboriginal Cultural Heritage	<p>The proposed development is unlikely to impact on Aboriginal cultural heritage, practices and places. Suitable conditions could be imposed associated with unexpected finds.</p>	Yes.
Crime Prevention Through Environmental Design	<p>The proposal incorporates basic design principles which contribute to forms of safety and security including first floor windows providing opportunities for public surveillance of car parks and the road reserve.</p> <p>However, the following has not been adequately considered / addressed:</p> <ul style="list-style-type: none"> • Access Control - The use of the accessible entrance at the rear of the Site for exiting patrons at the closure of the premises may result in adverse safety, crime risk and amenity impacts on adjoining residential development. This is not adequately addressed or managed in the Plan of Management or documentation submitted with the development application. • Territorial Re-Enforcement and Space Management – Insufficient information has been submitted on the Kids Play Area. Specifically, the Kids Play Area is located through the Bistro and Dining Pavilion and adjacent to the Adjacent “Berry Inn”. No assessment of the has been undertaken to determine whether meets the principles of CPTED. <p>The Development Application in its current form is inconsistent with the objectives of Section 5.2, Chapter 2 of the Shoalhaven DCP in that insufficient information has been submitted to demonstrate the proposed development enhances and improves community safety, address community safety and crime prevention, and prevents the opportunity for crime and antisocial behaviour.</p>	No.

Generic Chapters

Chapter 2: General and Environmental Considerations

Generic Chapters	Achieved
G1: Site Analysis, Sustainable Design and Building Materials	
A plan labelled 'Site Plan & site analyses' was lodged with the architectural plans. The plan informs the site design and layout.	Yes
G2: Sustainable Stormwater Management and Erosion/Sediment Control	
<p><u>5.1 Stormwater</u></p> <p><u>5.1.1 Minor and Major Systems Design</u></p> <p>This proposal is supported by conceptual stormwater management and soil erosion control plans addressing the requirements of the chapter.</p> <p>Council's Development Engineers reviewed the application and did not raise objections regarding the design's ability to cater for cater for a 10-year ARI event. However, it was noted that the discharge to the existing kerb in Princess Street is not acceptable based on the amount of discharge flow and the number of pipes required to provide sufficient capacity for the development. It was requested that the applicant provides concept plans for the installation of a new public stormwater main to connect the development to via a new road pit.</p> <p>In May 2024, the applicant advised that they do not intend on formally responding to each of the matters within the RFI given that it essentially raised the same matters subject to a Class 1 Appeal in the Land and Environment Court of NSW. As such, the recommendation of this report is based on the information submitted with the application.</p> <p><u>5.1.2 Disposal of Stormwater from Development Sites</u></p> <p>The proposed development does not appropriately convey stormwater to an approved discharge point in accordance with the requirements of Part 3.1.2 of the Building Code of Australia and AS 3500.3. Specifically, insufficient information has been submitted with regard to Plans for drainage for the basement level and discharge to the existing kerb in Princess Street is not acceptable based on the amount of discharge flow and the number of pipes required to provide sufficient capacity for the development.</p> <p><u>5.1.3 Climate Change Controls</u></p> <p>The development in its current form is inconsistent with the Objectives, Performance Solutions and Acceptable established in Section 5.1, Chapter G2 of the SDCP 2014 noting the discharge to the existing kerb in Princess Street is not acceptable based on the amount of discharge flow and the number of pipes required to provide sufficient capacity for the development. Given the proposed method of discharge to Princess Street has been found not to be acceptable, insufficient information has been provided</p>	No.

<p>regarding the provision of a new drainage system to Process Street which addresses Council's concerns.</p> <p><u>5.1.4 Onsite Stormwater Detention</u> The OSD tanks have been reviewed by Council's Development Engineer who raised no objection.</p>	
<p><u>5.2 Stormwater Quality and Waterway Protection</u> <u>5.2.1 Erosion and Sediment Control</u> The proposed sediment and erosion control measures have been reviewed by Council's Development Engineer who raised no objection.</p> <p><u>5.2.5 Design and Maintenance of Stormwater Treatment Measures</u> Stormwater quality treatment is proposed to be addressed through the implementation of the OSD tanks, stormwater pit Oceanguard GPT, Oceansave GPT devices and Jellyfish filters. This is considered appropriate and could be conditioned.</p>	Yes
G3 Landscaping Design Guidelines	
<p><u>5 Controls</u></p> <p>The proposed development is inconsistent with the acceptable solution A1.1 as its fails to incorporate existing trees and landscape elements that make a positive contribution to the character of the area including two heritage-listed Lilly Pilly trees, which, although heavily pruned, are able to be retained and enhanced.</p> <p>The proposed development is inconsistent with the acceptable solution A2.1 in that the landscape plan submitted with the application inconsistent with the Architectural Plans and Stormwater Plans submitted in regard to the location of the above ground OSD tank and layout and design of the outdoor terrace areas of the hotel accommodation rooms.</p> <p>The development in its current form is inconsistent with the Performance Solutions and Acceptable Solutions established in Section 5, Chapter G3 of the SDCP 2014 in that it fails to incorporate existing trees and landscape elements that make a positive contribution to the character of the area. In addition, inconsistencies within the landscape plans fail to demonstrate the development is design to meet user requirements taking into account maintenance, exercise opportunities, shade provision and aesthetic quality.</p>	No.
G4 Tree and Vegetation	
<p><u>5 Controls</u> <u>5.3.4 Heritage Considerations</u></p> <p>The proposed development is inconsistent with the Performance Criteria and Acceptable Solutions established in Section 5.3.4, Chapter G4 of the SDCP 2014 in that it fails to ensure heritage values and the character of the site and surrounding area is maintained and improved by the retention of heritage trees within the curtilage of a heritage item or heritage conservation area.</p>	No.

G5 Biodiversity Impact Assessment	
The provisions of this chapter have been considered and it is satisfied that the proposed development will not have an adverse impact on threatened species, populations and TECs. Therefore, it is found that compliance with Chapter G5 and other relevant legislation including SEPP (Biodiversity and Conservation) 2021 and the Biodiversity Conservation Act 2016 has been achieved.	Yes
G7 Waste Minimisation and Management Controls	
<p><u>5 Controls</u></p> <p>A Waste Management Plan (WMP) has been submitted in support of the application. However as stated in the Report above, the WMP is not considered to satisfactorily address the requirements under Chapter G7 given the following information was required by Council's Waste Officer</p> <ul style="list-style-type: none"> • <i>Consultation with a local private commercial waste collection contractor and demonstrate their ability to service the site (entering and exiting in forward direction with minimal to no reversing).</i> • <i>The applicant should use the contractor's vehicle dimensions, demonstrating through swept path diagram, the vehicle's travel path and where the vehicle will be parked to service bins (ensuring the parked collection vehicle does not impede on the main access entry or passing traffic).</i> • <i>If it is intended for the collection vehicle to park in the loading dock further information is required showing suitable space for the truck (current width is 1.4m the average truck requires 2.5m) and for the bins to be emptied considering additional space for the vehicles bin lifting arc.</i> • <i>The applicant needs to review the generated waste amounts and allocated bins as it is not practical to have waste collected from the site on a daily basis.</i> • <i>More information is required on the intended waste management and bin storage area access for the hotel. Any bin storage area should be of suitable size to allow all bins to be accessed at any one time (bins cannot be stored behind each other).</i> <p>It is noted that the above information has not been submitted by the applicant, and therefore Council is not satisfied that compliance with Chapter G7 has been achieved.</p>	Yes
G15 Tourist and Visitor Accommodation	
Not applicable. The proposed development does not relate to tourist development in rural areas.	N/A
G17 Business, Commercial and Retail Activities	
<p><u>4 Objectives</u></p> <p>The Development Application is inconsistent with objectives established in Section 4, Chapter G17 of the SDCP 2014 in that the design and operation of the development does not adequately safeguard the amenity of adjoining development or moderate the environmental impacts of the development.</p>	No.

<p>5 <u>Controls</u></p> <p>5.1 <u>Business, Commercial and Retail Development</u></p> <p>The Development Application is inconsistent with Performance Criteria and Acceptable Solutions established in Section 5.1, Chapter G17 of the SDCP 2014. Specifically:</p> <ul style="list-style-type: none"> • The proposed development is inconsistent with Section P2, A2.2 and A2.3 in that the design of the fencing to the Princess Street frontage is not of a compatible height or design with the adjoining local streetscape context. Furthermore, the height of the fence will inhibit natural surveillance and encourage graffiti. • The proposed development is inconsistent with Section P7 and A7.2 in that insufficient information has been submitted regarding a local private commercial waste collection contractor and their ability to service the site. In addition, more information is required on the intended waste management and bin storage area access for the hotel noting any bin storage area should be of suitable size to allow all bins to be accessed at any one time (bins cannot be stored behind each other). <p>In addition, insufficient information has been submitted to undertake a detailed assessed of the development ability to safeguard the amenity of adjoining development or moderate the environmental impacts of the development. Specifically,</p> <ul style="list-style-type: none"> • The acoustic report fails to undertake an assessment of the hours of operation of the Berry Hotel as specified in the Statement of Environmental effects which extend until 2am. • The acoustic report does not consider the potential acoustic impacts of live music, where it is to be undertaken and its impact on sensitive receivers. • The Architectural Plans prepared by H & E Architects dated 18 August 2023 (the Architectural Plans) do not include the required acoustic barriers for the hotel accommodation. • The use of the rooftop pool into the evening will result in adverse acoustic and amenity impacts on adjoining properties and insufficient information has been provided to demonstrate how a maximum of 10 people will be enforced. 	
G18 Streetscape Design for Town and Village Centres	
<p>5 <u>Controls</u></p> <p>5.1 <u>Streetscape Character and Function</u></p> <p>The Development Application is inconsistent with the Objectives and Performance Criteria established in Section 5.1, Chapter G18 of the SDCP 2014. The development is contrary to P1.1, P1.2, P3 and A3.1 in that scale, form, massing, architectural expression, materials and details of the Berry Hotel side additions will have an unacceptable level of adverse impact on the quality of the streetscape in Berry Town Centre and fails to maintain a coordinated and consistent palette of streetscape elements to ensure a high level of amenity, legibility, and visual quality.</p>	No.

In accordance with the objectives of Section 5.1 (v), the proposed hotel accommodation building results in excessive bulk and scale that does not appropriately encourage or promote a development that integrates and contributes to the function, vitality, and character of town and village centres.	
G21 Car Parking and Traffic	
<p><u>5 Controls</u></p> <p><u>5.1 Streetscape Character and Function</u></p> <p>The application was not accompanied by detailed plans or a schedule of areas to demonstrate the existing and proposed licensed floor area and office area for the hotel however, the Traffic Impact Assessment report states the proposed increase in licensed floor area as being 349m² and the proposed increase in office area as being 5m². The Development Application was not accompanied by any information in relation to the number of staff that would be required for the proposed hotel accommodation, however, it is expected this would be in the order of 3 staff.</p> <p>Applying the SDCP parking rates to the Proposed Development with an increase in licensed floor area of 349m², increase in office area of 5m² and 33 additional hotel accommodation rooms and 3 hotel accommodation staff, results in a requirement for 106 additional car parking spaces. This includes 70 car spaces for the hotel, 33 car spaces for visitors of the hotel accommodation and 3 car spaces for staff of the hotel accommodation.</p> <p>The development proposes an increase of only 44 car parking spaces and is therefore deficient by 62 car parking spaces and is non-compliant with the requirements of Section 5.1 of SDCP -Chapter G21. The 44 car spaces are proposed as including 11 car spaces for spaces for the hotel (59 spaces less than the SDCP requirement), 33 car spaces for visitors of the hotel accommodation (compliant with the SDCP requirement) and nil (0) car spaces for staff of the hotel accommodation (5 spaces less than the SDCP requirement).</p> <p>The significant deficiency, being 62 car parking spaces or 58% of the SDCP requirement, will result in a significant overspill of parking. Whilst the additional spaces nominated by the applicant do not include the spaces within the Council public car park, it is likely that the shortfall will result in an overspill onto the Council car park and surrounding road network, which includes local residential streets, which is unacceptable and will detrimentally affect parking on-street availability and amenity for the general public and neighbouring residents.</p> <p><u>5.2 Parking Credits, Waivers, Discounts and Incentives</u></p> <p><u>5.2.6 Conservation Incentives</u></p> <p>The applicant does not seek conservation incentives. Nevertheless, the proposed development results in a substantial redevelopment of the site that will result in a significant increase in car parking demand and a shortfall of 62 car parking spaces or</p>	No.

58% will not be supported as it encourages the use of on street parking for new development.

5.3 Parking, Layout and Dimensions

The proposed design, layout and dimensions of spaces has been reviewed by Councils Development Engineer and no objections were raised.

6 Traffic, Access, Manoeuvring and Construction

6.1 Traffic

A Traffic Impact Statement has been prepared in support of the application. The statement was reviewed by Council's Development Engineer who detailed the following:

- *The parking demand analysis undertaken, it is not supported at this stage by Council. There were concerns that the analysis has not provided an accurate representation of likely patronage of the site once developed.*
- *Firstly, the survey which was undertaken was done in August of 2023. Given August is within the much quieter winter season, it is likely to have underestimated the total parking demand of the site, say compared to the 85th percentile value which is typically accepted as best practice'.*
- *For an accurate assessment to be undertaken, the applicant would need to choose to apply a multiplying factor to the survey previously undertaken or have a further survey completed at a more appropriate time of the year.*
- *Given the shortfall currently proposed against the DCP, it is also suggested that further avenues are explored such as the extension of the proposed basement parking level, reduction in the additional licenced floor area or introduction of alternative forms of transport such as shuttle buses (this also has the added benefit of providing a safer method of returning users to their destination).*
- *Comparisons should also be drawn with other similar clubs within the area and other similar LGAs, as required by Council's DCP and RMS's Guide to Traffic Generating Development.*

As such, the application in its current form fails to demonstrate that the new development can be accommodated without adverse impacts on the surrounding road network or in a manner that does not jeopardise the provision of future network requirements as required under Section P9, G21 of the SDCP 2014.

6.2 Vehicle and Pedestrian Access

The Proposed Development does not provide satisfactory pedestrian connections and pathways internal to the site to link the various buildings with the car parking areas and to link the hotel accommodation building fronting Princess Street with the hotel building fronting Queens Street, or to provide satisfactory pedestrian connections and pathways external to the site, contrary to P1.1 and A1.4, P10.2 and A10.9, P11 and A11.1-11.2 of SDCP -Chapter G21.

<p><u>6.3 Maneuverability</u></p> <p>In accordance with P12, A12.1 and 12.2, Chapter G21 of the SDCP 2014, insufficient information has been submitted to demonstrate adequate space is provided for the manoeuvring of vehicles, particularly rigid and articulated heavy vehicles. Specifically, it has not been demonstrated via swept path analysis how vehicles associated with waste collection and general servicing will satisfactorily enter and exit the site in a forward direction and circulate throughout the site.</p> <p><u>6.4 Service Areas</u></p> <p>The Proposed Development does not provide satisfactory loading facilities that are separated from the vehicular and pedestrian circulation within the car park contrary to P13 and A13.1, and P14 and A14.2-14.3 of SDCP - Chapter G21.</p> <p>As a result of the above, the Development Application is considered to be inconsistent with the objectives established in Section 4, Chapter G21 of the SDCP 2014. Specifically:</p> <ul style="list-style-type: none"> • The proposed development provides inadequate off-street parking and encourages the use of on-street parking for new development resulting in adverse impacts on the surrounding area. • Does not ensure that car parking is functional, operates efficiently or is designed in a manner that is safe and meets the needs of users. • Does not adequately demonstrate that all vehicles can enter and leave a site in forward direction; and • Does not minimise any adverse traffic and road safety impacts. 	
G26 Acid Sulfate Soils and Geotechnical (Site Stability) Guidelines	
<p><u>5 Controls</u></p> <p><u>5.1 Acid Sulfate Soils</u></p> <p>As stated in the assessment against Clause 7.1 of the SLEP 2014 above, it is found that insufficient information has been submitted to confirm if the water table is likely to be lowered and to confirm if an acid sulfate soils management plan is required. As such, Council are not satisfied that the provisions of this Chapter have been adequately addressed.</p> <p><u>5.2 Geotechnical</u></p> <p>Erosions and sediment control measures have been proposed as part of this application and reviewed by Council's Development Engineers. All excavated and filled areas are capable of being appropriately managed in accordance with the SDCP 2014.</p>	Yes

Area Specific Chapters - North Shoalhaven Area Specific Chapters

Chapter N2: Berry Town Centre		Achieved
5.1 Development in Berry Town Centre		
The proposed development is inconsistent with Performance Criteria and Acceptable Solutions established under Section 5.1, Chapter N2 of the SDCP 2014. Specifically, the development is contrary to P1 and A1.1 in that the proposed hotel accommodation on the Princess Street frontage, which is commercial in nature, provides excessive bulk, scale and height and does not complement the existing residential character or streetscape.		No
5.2 Built Form and Character		
The proposed hotel accommodation building is inconsistent with the performance criteria and acceptable solution established in P1, P2, P3, A2.1 Section 5.2, Chapter N2 of the SDCP 2014 in that it is not complementary in form to the existing heritage characteristics of the Berry Town Centre. Specifically, the three storey form is contrary to the existing and desired future character of Princess Street and will present an excessive visual bulk and scale.		No.
5.3 Protection of Heritage Significance		
<p>The proposed hotel accommodation building is considered to be inconsistent with the performance criteria and acceptable solution established in P1, A1.1-A1.2, Section 5.3, Chapter N2 of the SDCP 2014 in that it is highly uncharacteristic heritage items within the site and on adjoining properties. Specifically, the three-storey scale, raised above basement carpark, form and massing, architectural expression, materials and details, and roof terrace with pool is highly inappropriate within the setting of a large number of heritage items.</p> <p>The proposed development is considered to be inconsistent with the performance criteria and acceptable solution established in P2, A2.1, Section 5.3, Chapter N2 of the SDCP 2014 in that the Heritage Impact Statement provided with the Development Application fails to adequately research and identify significant fabric of the heritage-listed Berry Hotel building (including original walls, internal layout and original features) to ensure those components are appropriately retained and preserved.</p>		No.
5.4 Car Parking, Pedestrian Routes and Servicing Requirements		
<p>The proposed pedestrian access provision are considered to be inconsistent with the performance criteria and acceptable solution established in P2, A2.1, Section 5.4, Chapter N2 of the SDCP 2014 in that the Proposed Development does not provide satisfactory pedestrian connections and pathways internal to the site to link the various buildings with the car parking areas, street frontages, and pathways external to the site.</p> <p>The proposed loading dock is considered to be inconsistent with the performance criteria and acceptable solution established in P3, A3.1-A3.2, Section 5.3, Chapter N2 of the SDCP 2014 in that an inadequate parking area is provided for collection vehicle noting an average truck requires a width of requires 2.5m where 1.4m is proposed.</p>		No.

5.7 Landscaping and Environmental Management	
<p>The proposed development is capable of receiving adequate natural ventilation and incorporates a passive solar design. The development allows solar access to public spaces between the hours of 10am and 3pm on any day as indicated on the solar diagrams accompanying this application. In addition, the proposed development will not impact on Identified vistas and site and waste facilities will not be visible from the public domain.</p> <p>The proposed development is however contrary to the performance criteria and acceptable solution established in P2, A2.2, Section 5.7, Chapter N2 of the SDCP 2014 in that the proposed development does not minimise disturbance and/or preserves trees which positively contribute to the heritage of the site and surrounding area.</p>	No.
5.9 Precinct 2 Mix Use Commercial/Residential	
<p>The proposed development is inconsistent with Section 5.9.1, Chapter N2 of the SDCP 2014 in that the hotel accommodation fronting Princess Street is commercial in nature, provides excessive bulk, scale and height and does not complement the existing residential character or streetscape.</p>	No
5.10 Precinct 3 – Berry Hotel (Lot 1 DP 578257)	
<p>The proposed development is inconsistent with Section 5.10.1, Chapter N2 of the SDCP 2014 in that the use of the accessible entrance at the rear of the Site for exiting patrons may result in adverse safety, crime risk and amenity impacts on adjoining residential development.</p> <p>In addition, the proposed additions to the Berry Hotel are not considered to be visually appropriate nor do they respect the desired future and local character of the town centre and the heritage significance of the hotel due to the siting and scale, form, massing, architectural expression, materials, details and carparking arrangements of the new accommodation building at Princess Street and the removal of the heritage listed Lilly Pilly trees.</p>	No

(a)(iia) Any planning agreement that has been entered into under Section 7.4, or any draft planning agreement that a developer has offered to enter into under Section 7.4.

Not Applicable

(a)(iv) The Regulations

The Regulations do not prescribe any additional matters that are relevant to the proposed DA.

(b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,

Head of Consideration	Comment
Natural Environment	Council cannot be satisfied that the proposed development would not have an adverse impact upon the natural environment given that concerns relating to stormwater disposal from the proposal have not been satisfactorily addressed.
Built Environment	<p>The proposed development is inconsistent with the existing and desired future character of the site and surrounding area. The development does not appropriately recognise the desirable elements of the location's current character or contribute to the quality and identity of the area by providing a built form, scale and density that is compatible with existing development in the immediate vicinity.</p> <p>The Development Application proposes the construction of two and three-storey hotel and motel accommodation development that is contrary to maximum height of building development standard and the predominate form, bulk, scale, of development within Princess Street and surrounding area. The development does not respect the heritage characteristics of the site or setting and is likely to set an undesirable precedent for redeveloping sites within the wider locality. Other features including 1.8m high fencing and above ground OSD tanks are inconsistent with the residential character of the streetscape and the setback of 1.08m to the east will result in adverse amenity impacts on the adjoining residential properties in terms of visual bulk and scale and acoustic and visual privacy.</p> <p>The proposed development involves the removal of excessive amounts of the original fabric of the heritage-listed Berry Hotel building, including original walls, internal layout, original features, and presents an undesirable rear and side additions that results in unacceptable level of adverse impact on the setting of the item within the streetscape. Specifically, the siting, scale, form, massing, architectural expression, materials, details, carparking arrangements and removal of the heritage listed Lilly Pilly trees will detract from the heritage significance of the site, adjoining items and the special streetscape of the Berry Town Centre Heritage Conservation Area. In addition, the proposed Bistro and outdoor dining additions at the eastern side of the Hotel will be highly visible from Queen Street and would significantly impact on the historic separation and original subdivision pattern visually presented with the adjoining CBC Bank.</p> <p>The Heritage Impact Statement provided with the Development Application fails to adequately research and identify significant fabric to ensure significant features are appropriately retained and protected.</p>

	<p>The development application proposes a substantial shortfall of on-site parking spaces available to service the intended uses. The significant shortfall in available car parking is likely to have an adverse impact on the surrounding area in terms of traffic and will result in significant reliance on existing on-street and Council parking facilities. Council Development Engineers also raised concerns regarding parking demand analysis undertaken in support of the application. Specifically, insufficient information has been submitted with the application to assess the full extent of traffic and parking implications on the site and surrounding road networks noting the timing of the survey undertaken likely underestimated the total parking demand.</p> <p>The proposed development is also likely to have adverse amenity impacts resulting for the design, operation and use., The Acoustic Report prepared by Koikas Acoustics Pty Ltd dated 6 July 2023 (the Acoustic Report) fails to undertake an assessment hour of operation identified within the Statement of Environmental Effects prepared by Design Collaborative dated September 2023 which extend until 2am. In addition, the use of the rooftop pool into the evening will result in adverse acoustic and amenity impacts on adjoining properties.</p>
Social Impacts	Concerns have been raised regarding the potential social impacts arising from community engagement, operational management, alcohol, gambling and crime. A Social Impact Assessment was not submitted with the application which enables an accurate assessment of the potential social impacts arising from the development. Furthermore, The Plan of Management submitted is not considered adequate to mitigate all potential social and public safety impacts.
Economic Impacts	The proposed development generally provides a positive economic impact through the short-term economic benefits through construction expenditure and employment.

(c) Suitability of the site for the development

The site is not considered to be suitable for the proposed development in its current form for the following reasons:

- The proposed development will result in a built form that is inconsistent and incompatible with the existing and desired future character of the area.
- The proposed development is inconsistent with the objective of the E1 Local Centre Zone.
- The bulk, scale and massing of the proposed additions to the Berry Hotel and the new three-storey Hotel or Motel accommodation is not suitable for the site and surrounding precinct.
- The proposed development will detract from the heritage significance of the site, adjoining properties and wider Berry Town Centre HCA.
- The development in its current form is not suitable for the site due to the substantial shortfall in the provision of on-site parking, suitable means of access and parking for service vehicles,

insufficient pedestrian connectivity, and insufficient information has been submitted to assess the full extent of traffic and parking implications on the site and surrounding road networks.

- The proposed development provides a bulk, scale, height and streetscape presentation that is not compatible with surrounding commercial or residential environment.
- The proposed development will have adverse amenity impacts on adjoining properties in terms of visual bulk and scale, acoustic, privacy, safety, traffic and parking.

(d) Submissions made in accordance with the Act or the regulations

The DA was notified in accordance with the Environmental Planning and Assessment Regulation 2021 (EP&A Regs) and Council's Community Consultation Policy from 11 October 2023 to 8 November 2023.

378 submissions were received by Council raising concerns about the proposal. The concerns raised are summarised below:

Summary of Public Submissions	
Objection Raised	Comment
<i>Heritage Impacts</i>	<p>The proposed development is not supported from a Heritage Perspective. With regard to the Berry Hotel, the proposed development involves the removal of excessive amounts of the original fabric of the heritage-listed Berry Hotel building (including original walls, internal layout, original features) and the Heritage Impact Statement provided with the Development Application fails to adequately research and identify significant fabric to ensure these elements are appropriately retained and protected.</p> <p>The siting, scale, form, massing, architectural expression, materials, details, carparking arrangements and removal of the heritage listed Lilly Pilly trees will detract from the heritage significance of the site, adjoining items and the special streetscape of the Berry Town Centre Heritage Conservation Area.</p> <p>The proposed Bistro and outdoor dining additions at the eastern side of the Hotel will be highly visible from the street and interrupt views of the Hotel and Bank and have a negative impact on the character and integrity of the historic streetscape. These additions will also detract from the contributing elements including the separation and original subdivision pattern associated with the adjoining CBC Bank.</p> <p>The proposed new accommodation building at the Princess Street frontage is highly uncharacteristic to the site and the immediate and wider vicinity and would result in adverse impacts due to its three-storey scale, raised above basement carpark, form and massing, architectural expression, materials and details. The provision of a roof terrace with pool is highly inappropriate within the setting of a large number of heritage items.</p>

Noise & Amenity	<p>The proposed development is not supported from an acoustic and amenity perspective. The proposed development is likely to have adverse amenity impacts resulting from the design, operation and use of the site. The Acoustic Report prepared by Koikas Acoustics Pty Ltd dated 6 July 2023 fails to undertake an assessment of the hour of operation identified within the Statement of Environmental Effects prepared by Design Collaborative dated September 2023 (the Statement of Environmental Effects) which extend until 2am.</p> <p>In addition, the use of the rooftop pool into the evening will result in adverse acoustic and amenity impacts on adjoining properties and insufficient information has been submitted to demonstrate how this area will be managed in a manner that avoids adverse impacts on nearby receivers.</p>
Traffic & Parking	<p>The proposed development is not supported from a traffic and parking perspective. The development application proposes a substantial shortfall of on-site parking spaces. The significant shortfall in available car parking is likely to have an adverse impact on the surrounding area in terms of traffic and will result in significant reliance on existing on-street parking and Council owned facilities.</p> <p>Council Development Engineers also raised concerns regarding parking demand analysis undertaken in support of the application. Insufficient information has been submitted with the application to assess the full extent of traffic and parking implications on the site and surrounding road networks noting the timing of the survey undertaken likely underestimated the total parking demand.</p>
Character	<p>The proposed development is inconsistent with the existing and desired future character of the site and surrounding area. The development does not appropriately recognise the desirable elements of the location's current character or contribute to the quality and identity of the area by providing a built form, scale and density that is compatible with existing development in the immediate vicinity.</p>
Compliance with Controls	<p>The proposed development is not supported based on significant inconsistency with objectives, development standards and key controls as outlined in this report.</p>
Community Impact	<p>The proposed development is not considered to be in the public interest for reasons outlined in this report.</p>
Bulk, scale and setting	<p>The proposed development is not supported based on the visual bulk and scale presented by the proposed additions to the Berry Hotel and the new hotel accommodation building fronting Princess Street.</p>

	Specifically, the proposed development will present an excessive visual bulk and scale that will likely have a detrimental impact on the visual quality and setting of both street frontages. Furthermore, the proposed additions are likely to have an adverse impact on the heritage setting of the site and surrounding area.
Overdevelopment	The proposed development is considered to result in overdevelopment. This is reflected in non-compliances and inconsistencies with the key controls and objectives of the SLEP 2014 and SDCP 2014 associated with building height, bulk, scale, character, amenity, traffic and car parking.
Alcohol & Gambling	Insufficient information has been submitted to assess the social impacts of Alcohol and Gambling and how the proposed use will be operated in a manner that protects the safety of patrons and adjoining residents.
Social Impact	Concerns have been raised regarding the potential social impacts arising from community engagement, operational management, alcohol, gambling and crime. A Social Impact Assessment has not been submitted with the application that enables an accurate assessment of the potential social impacts arising from the development.
Insufficient Information	Insufficient information was submitted with regard to inconsistencies between documents, signage, compliance with the BCA, design and operation of the kitchen, implementation of CPTED Principles for the kids play area, waste management and social impact.
Cumulative Impact	The approval of the development is likely to set an undesirable precedent for developing site within the wider locality with regard to shortfall in car parking, heritage impacts, amenity, bulk, scale and variations to the maximum building height.
Operational concerns	<p>The proposed car park layout and access to the development will result in adverse impacts on the safety of patrons and the public. One of the main accessible entrances is located at the rear of the hotel in the car park area. There are no separate identified pedestrian access paths from the rear of the site through the car park area to the hotel.</p> <p>The design of the development has the potential to result in conflict between pedestrians, vehicles and service vehicles accessing the site.</p> <p>The use of the accessible entrance at the rear of the Site for exiting patrons at the closure of the premises may also result in adverse safety, crime risk and amenity impacts on adjoining residential development. This is not adequately addressed or managed in the Plan of Management or documentation submitted with the Development Application.</p> <p>Furthermore, the Plan of Management does not adequately demonstrate how the rooftop terrace / pool area will limit the amount of users and/or require absolute compliance, particularly with respect to acoustic measures.</p>

(e) The Public Interest

The public interest is served through the detailed assessment of this DA under *the Environmental Planning and Assessment Act 1979*, the *Environmental Planning and Assessment Regulation 2021*, Environmental Planning Instruments, Development Control Plan and policies.

That assessment has demonstrated that the proposed development is not in the public interest.

8. RECOMMENDATION

This application has been assessed having regard for Section 4.15 (Matters for consideration) under the EPA Act. As such, it is recommended that Development Application No. RA23/1002 be refused for the following reasons:

1. The proposed development contravenes clause 4.3 Height of buildings of the SLEP 2014, and the applicant's Clause 4.6 written request fails to provide sufficient environmental planning grounds to justify the contravention having regard to the objectives of the standard nor does it demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.
2. The development does not comply with the provisions of Clause 5.10 Heritage Conservation of SLEP 2014. The development will detract from the contributing features of heritage items and results in unacceptable impacts upon the character of the Berry Town Centre Heritage Conservation Area in terms of siting, bulk scale, massing, architectural expression, materials, details, carparking arrangements and the removal of the heritage listed Lilly Pilly trees.
3. The form, bulk and scale of the development is not compatible with and has not been designed to respect the significance and character of the heritage items and surrounding heritage conservation area in accordance with the objectives of Section 3.2, Chapter 2 of the SDCP 2014 or the performance criteria and acceptable solutions specified under Section 5.2, Chapter N2 of the SDCP 2014.
4. The proposed development is inconsistent with the objectives of the E1 Local Centre zone under the SLEP 2014 in that the scale and streetscape presentation of the development is not compatible with the character of the surrounding residential environment.
5. The form, bulk and scale results in adverse impacts on the character of the area and is inconsistent with relevant provisions of the SDCP 2014, specifically:
 - a. Objectives of Section 4, Chapter N2 of the SDCP relating to the Berry Town Centre in that an provides an excessive increase in bulk and scale is proposed that is inconsistent with adjoining development and does not respect the heritage characteristics of the town and setting.
 - b. The performance criteria and acceptable solutions of Section 5.2, Chapter N2 of the SDCP 2014 in that bulk and scale of the development and associated variation to the maximum building height is incompatible with the character and sitting of the area, adjoining heritage

items, Berry Town Centre Heritage Conservation Area and that inadequate relief or articulation to the presented to the streetscape.

- c. The performance criteria and acceptable solution of Section 5.2, Chapter N2 of the SDCP 2014 in that the proposed in that the proposed development is not complementary in form and results in excessive visual bulk and scale that detracts from the character of the surrounding area.
6. The proposed development is inconsistent with Chapter G21 of the SDCP 2014 in relation to car parking, loading facilities and pedestrian connectivity. Specifically:
 - a. Section 5.1 of the SDCP in that the significant shortfall of parking will result in adverse traffic and parking impacts on the surrounding area.
 - b. The performance criteria and acceptable solution of Section 6.4, Chapter G21 of the SDCP 2014 in that loading facilities are not appropriately separated from the vehicular and pedestrian circulation and insufficient information has been provided to demonstrate how service vehicles will satisfactorily enter and exit the site in a forward direction and circulate throughout the site.
 - c. The performance criteria and acceptable solution of Section 5.3 and 6.2, Chapter G21 of the SDCP 2014 in that the proposed development does include satisfactory pedestrian connectivity between buildings, car parks, and pathways external to the site.
 - d. The performance criteria and acceptable solution of Section 6.1, Chapter G21 of the SDCP 2014 in that insufficient information has been submitted with the application to demonstrate the safety, efficiency and ongoing operation of the external road network will be maintained.
7. The proposed development will have an adverse impact on the streetscape and is inconsistent with relevant provisions of the SDCP 2014, specifically:
 - a. The performance criteria and acceptable solution of Section 5.2, Chapter N2 of the SDCP 2014 in that the intended use and streetscape presentation along Princess Street is inconsistent with the residential character and amenity of the streetscape.
 - b. The objectives, controls, performance criteria and acceptable solutions specified in Section 4, 5.2, Section 5.9.1 and, Chapter N2 of the SDCP 2014 in that development proposed along the Princess Street frontage is commercial in nature, provides excessive bulk, scale and height and does not complement the existing residential character or streetscape.
 - c. The performance criteria and acceptable solution of Section G17 in that the height of the fencing along Princess Street inhibits natural surveillance.
8. The development is inconsistent with the Objectives, Performance Solutions and Acceptable Solutions provided in Section 5.1, Chapter G2 of the SDCP 2014 in that the discharge to the existing kerb in Princess Street is not acceptable based on the amount of discharge flow and the number of pipes required to provide sufficient capacity for the development. In addition, insufficient

information has been submitted regarding new public stormwater main to connect the development to via a new road pit.

9. Insufficient information has been submitted to demonstrate compliance with Clause 7.1 of the SLEP 2014.
10. Insufficient information has been submitted with the application to demonstrate the development and associated uses have been designed or can be managed in a manner that mitigates adverse amenity impacts on adjoining residents and ensures the ongoing safety of patrons and the public.
11. Approval of the proposal would set an undesirable precedent for development within the Berry Town Centre.
12. The information submitted with the development application does not satisfactorily demonstrate that the site is suitable for the proposed use.
13. Having regard to the above matters, the granting of development consent is not considered to be in the public interest.

The application is not satisfactory with regard to the heads of consideration of s4.15 of Environmental Planning and Assessment Act 1979 and as such the application is recommended for refusal. The reasons for refusal cannot be adequately addressed through conditions of consent.