

Partner Michael Mantei  
Our ref MXM:MXM:MM221105

7 December 2023

PRM Architects  
PO Box 323  
GERRINGONG NSW 2534



MADISON MARCUS  
BE EMPOWERED

By email: [patrick@prmarchitects.com.au](mailto:patrick@prmarchitects.com.au)

Dear Patrick,

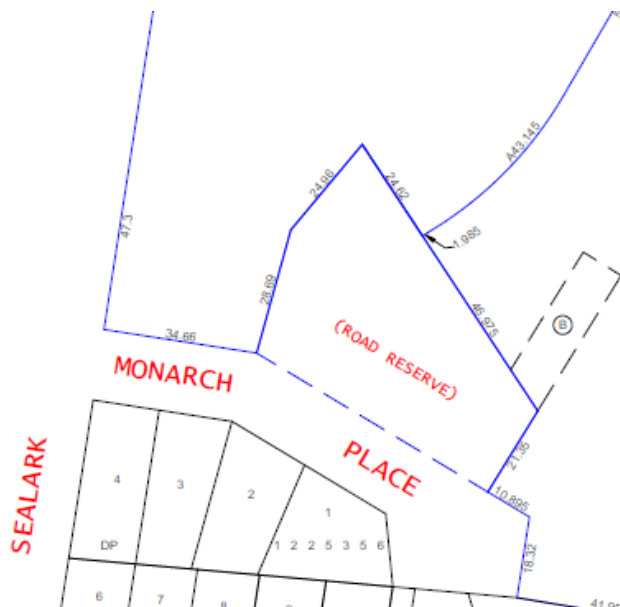
**Wowley Creek Planning Proposal (RR-2023-10), Lot 5 DP 1255356 Sealark Road Callala Bay**

I refer to your recent request for my response to a recommendation of the Regional Strategic Planning Panel concerning the future use of land described in the Panel's record of decision dated 5 October 2023 as a "drainage lot", which adjoins the land the subject of the Wowley Creek Planning Proposal (Lot 5 DP 1255356).

The Regional Panel recommended that the Planning Proposal should be revised to address, among other things:

- The drainage lot secured for development immediately to the south under separate development consent should be unencumbered by any works associated with this Planning Proposal;

I assume the "drainage lot" referred to in the above recommendation is that part of the Monarch Place road reserve that is irregular in shape and adjoins the site to the south, identified by the words "road reserve" in the following extract of a survey plan prepared for the Planning Proposal (hereafter called Monarch Place):



**SYDNEY**

PO Box Q742, QVB NSW 1230  
Level 10, 60 Castlereagh Street, Sydney NSW 2000  
P: +612 8022 1222 F: +612 8022 1221

**PARRAMATTA**

PO Box 57, Parramatta NSW 2124  
Level 36, 8 Parramatta Sq, 10 Darcy Street, Parramatta NSW 2150  
P: +612 9762 0400 F: +612 8022 1221



SYDNEY | PARRAMATTA | MELBOURNE | BRISBANE | ADELAIDE | PERTH | SHANGHAI

The drainage lot is not in fact a lot - it does not have a separate title identification. The drainage lot is part of the Monarch Place road reserve.

You have shown me a concept plan for the potential future subdivision of Lot 5 DP 1255356. The concept plan assumes that a future public road will be constructed on Monarch Place.

The Planning Proposal does not presently encumber, and does not need to encumber Monarch Place in order for the Planning Proposal to proceed. The existing zoning of Monarch Place and its designation as a public road under the *Roads Act 1993* provide the legal framework governing the future use and development of Monarch Place as a public road. Monarch Place is located within zone C3 Environmental Management under *Shoalhaven Local Environmental Plan 2014*. Development for the purposes of a road is permitted with development consent in the C3 zone. No change in zoning of Monarch Place is required to permit construction of a road.

An additional level of control is afforded by the *Roads Act*. The approval of Shoalhaven City Council as the roads authority for Monarch Place is required under section 138 of the *Roads Act* for the construction of any improvements on Monarch Place. In the event that a development application for construction of a road on Monarch Place is refused by Shoalhaven City Council, it is relevant to note that the Land and Environment Court has the power to give landowner's consent, in place of Shoalhaven City Council, for the lodgement of a development application for construction of a road on Monarch Place (see s39 *Land and Environment Court Act 1979*).

If the Strategic Planning Panel is saying that Monarch Place cannot be used for the construction of a road, then such a decision would be premature. There are no legal constraints to the construction of a public road on Monarch Place. The suitability of Monarch Place for the construction of a road, and the impacts of a road on the land including on the existing detention basin, are matters that are appropriately dealt with by a development application and an application under section 138 of the *Roads Act*. It is sufficient at this stage, in my view, for the Panel to be satisfied that Monarch Place is legally capable (which it is) of being developed for the purposes of a public road.

Yours faithfully



**Madison Marcus Law Firm**

Contact: Michael Mantei  
Partner  
Email: Michael.Mantei@madisonmarcus.com.au  
Direct Line: 02 9762 0406