

Planning Proposal

The Berry Inn

Prepared for
Aaron Baldwin

Site address
17 Prince Alfred Street, Berry
Lot CP SP 93194

Date
23 August 2024
(Rev 2)

allen price & scarratts pty ltd
land and development consultants

Surveying



Town Planning



Civil Engineering



Project Management



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1. INTRODUCTION

This proponent-led Planning Proposal (PP) has been prepared in accordance with Section 3.32 and 3.33 of the Environmental Planning and Assessment Act 1979 and the following relevant documents:

- Department of Planning and Environment's "Local Environmental Plan Making Guideline"; and,
- Shoalhaven Council's Planning Proposal Policy.

The PP seeks to amend the Shoalhaven Local Environmental Plan (SLEP) 2014 for a proposed part rezoning of Lot CP SP 93194, 17 Prince Alfred Street, Berry from R2 – Low Density Residential to E1 – Local Centre, and to amend the minimum lot size mapping to remove the current controls applying to the site. The purpose of the planning proposal is to ensure the zoning and minimum lot size controls for the site is uniform across the site and reflects the existing approved uses of the site.

The part of the site subject to this PP, is currently used as tourist and visitor accommodation, known as 'The Berry Inn' which consists of six (6) accommodation units.

This rezoning is consistent with the Shoalhaven Local Strategic Planning Statement (SLSPS) "Shoalhaven 2040" as well as strategic outcomes identified in Illawarra – Shoalhaven Regional Plan. The outcome of this rezoning process will result in the whole of Lot CP SP 93194 being zoned E1 Local Centre and having no minimum lot size, consistent with other commercial / economic uses within the Berry Town Centre. The PP results in the site having a uniform control across the site, rather than the site having a split zoning that does not reflect the existing approved uses of the site.

The PP supports the economic and commercial viability of the Berry Inn and the Berry Town Centre, aligning with the Illawarra Shoalhaven Regional Plan 2041, Shoalhaven Local Strategic Planning Statement 2023, and Shoalhaven Destination Management Plan (2018-2023).

To assist Shoalhaven City Council (SCC) to support this PP and formally progress it to the Department of Planning, Housing and Infrastructure (DPHI), this document provides Council with the majority of the background information it requires to demonstrate the strategic justification for this proposal.

The justification and quantum of the rezoning area is explained in this PP which informs subsequent related amendments for the SLEP 2014.



Figure 1. The Berry Inn (Source: The Berry Inn)

2. BACKGROUND

2.1. Site Location

The subject site, being SP93194, is known by two site addresses, including 122 Queen Street, Berry which includes existing Lot 1 of the Strata Plan, located in the north of the site facing Queen Street; and 17 Prince Alfred Street, Berry being Lot 2 of the Strata Plan, located in the southern portion of the site.

The site is located within Berry and approximately 420m south of the Princes Highway (Refer Figure 3 (below) provides an aerial photo of the site. The site forms part of the Berry Town Centre although is not sited within the area specific Shoalhaven Development Control Plan chapter for Berry (Chapter N2).



Figure 2. Aerial image of the site and surrounding uses (Source: Near Maps).

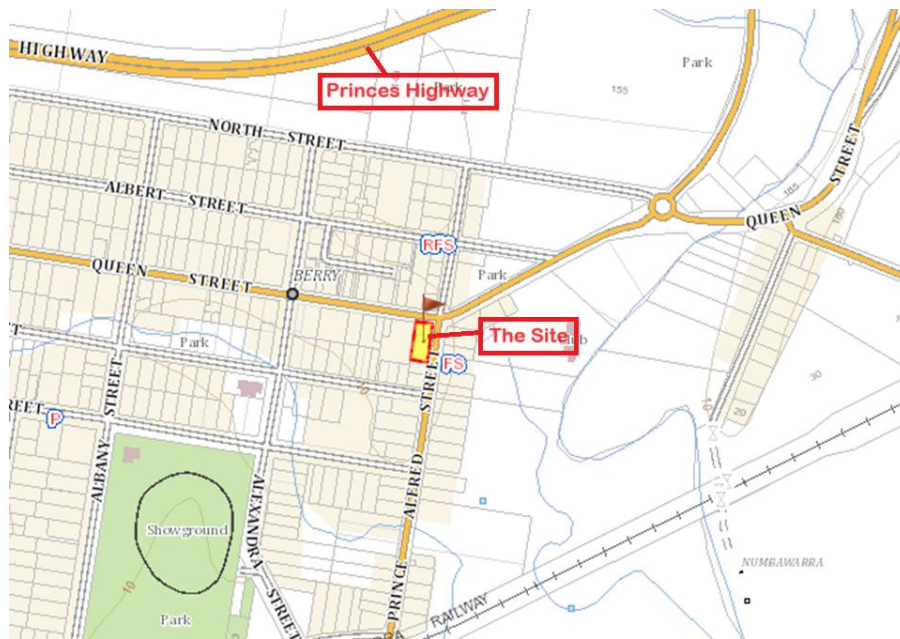


Figure 3. Site Plan (Source: SixMaps).

2.2. Site Description

The site is rectangular in shape and has an approximate area of 1,402m².

The subject site currently contains a number of structures which include the Berry Inn (Figure 1) located along the western rear boundary facing Prince Alfred Street, a carparking area between the Berry Inn and the Prince Alfred Street road frontage (Figure 4), and a two storey office building (former CBC Bank building) which is located on the northern half of the lot facing Queen Street (Figure 5).



Figure 4. View of site from Prince Alfred Street (Source: APS)



Figure 5. 122 Queen Street "Belle Property" (Source: APS)

The current zoning of the site consists of E1 Town Centre zoned land for the northern portion of the site, and R2 Low Density Residential for the southern portion for a distance of approximately 15m from the southern boundary. The zone boundaries do not currently align with the existing structures on the site with the zone boundary dividing the existing Berry Inn building (refer Figure 6).



Figure 6. Existing Zoning overlaid on aerial photograph (Source: NSW Planning Portal Spatial Viewer)

The subject site, SP93194, is a locally heritage listed site under SLEP 2014 (Item No. 88). The heritage significant item is the 'Victorian Free Classical Style former CBC Bank including fence and trees' being the building at 122 Queen Street Berry, facing Queen Street (Lot 1) shown in Figure 5. The description for the heritage listing on the NSW State Heritage Register provides the following:

“A two storey former bank building in the Victorian Free Classical style, constructed of rendered brick with a hipped, corrugated metal roof and sturdy chimneys. There is a two storey verandah to the front, with skillion roof. The upper verandah features a small central pediment, and decorated Classical columns on pillars, with cast iron lace balustrade. Three sets of French windows with fanlights open onto the upper verandah. The lower verandah features a projecting arched portico with scrolled keystone over entrance door; and iron fencing rails between Classical columns on pillars. The lower storey windows are paired and arched; all windows feature heavy mouldings and sill decorations. Pitched roof wing to the rear. Car park at the rear with modern accommodation in the ‘stables’ building. The building is prominently located at the entrance to the main shopping strip”.

The PP does not affect or relate to the items of heritage significance on the site with the existing provisions of Lot 1 remaining unaffected.

2.3. Lawful use and approvals

Approvals for the use of the site generally for tourist and visitor accommodation date back to 1986, Table 1 below outlines the approval history for the site.

Table 1. Approvals history for the site

DA Number	Date of approval	Description
DA86/2591	27 November 1986	Use of the former bank building (Heritage Item No. 88) as a guest house consisting of ten (10) accommodation rooms, and the provision of 12 car parking spaces located to the south of the building.
DA88/3042	3 March 1989	Change of use and alterations of the existing stables/out building located south of the 'guest house' (Bank Building), to be converted into staff and managers accommodation. This included a two bedroom manager's residence and attached single bedroom dwelling referred to as a 'granny flat' to be used as staff accommodation.
DA96/3534	17 December 1996	Alterations to the managers residence and attached 'granny flat' to convert the structure into four (4) tourist accommodation units and retaining the two (2) bedroom managers residence. The consent includes the change of use of the ground floor of the 'guest house' (Bank Building) from tourist accommodation to a coffee shop and retail space, though this part of the consent was never completed.
DA12/2136	21 March 2013	Change of use of the 'guest house' (No. 122 Queen Street – current 'Belle Property' building) to a commercial office space.
SF10446	2 September 2015	Two (2) Lot Strata Subdivision of the existing Commercial Development and Tourist Accommodation with common property. Each Strata Titled Lot consisted of 7 car parking spaces, with the common property being a disabled parking space and the driveway access.
DA19/2104	3 July 2020	Alterations and Additions to the Berry Inn to Create Two (2) Additional Tourist Units
DA23/3181	6 May 2024	Dissolution of strata subdivision and Torrens Title subdivision resulting in two (2) lots. Further discussion below.

2.3.1. Torrens title subdivision approval

Recently, Development Application (DA) No. DA23/3181 was approved on 6 May 2024 by SCC for the "Dissolution of strata subdivision and Torrens Title subdivision resulting in two (2) lots" (refer Figure 7). This granted development consent for the subdivision of the current 1402sqm site into two lots consisting of:

- Lot 1 (888sqm) being 122 Queen Street including the two storey heritage listed building facing Queen Street (occupied by Belle Property), and
- Lot 2 (514sqm) being 17 Prince Alfred Street, including the Berry Inn facing Prince Alfred Street.

The development consent included related car parking changes which will result in the following:

- 6 parking spaces along the southern boundary of proposed Lot 1 including 1 disabled parking space with related easement to benefit proposed Lot 2;
- 1 parking space along the southern side of the proposed shared driveway to benefit Proposed Lot 1 via an easement;
- 8 parking space including 1 disabled parking space along the eastern and western side of the proposed Lot 2 driveway for proposed Lot 2.

The subdivision essentially permits the two existing uses and buildings to be sited on their own free hold title, and operate independently of one another without the shared responsibility and common property of Strata title (refer Figure 8).

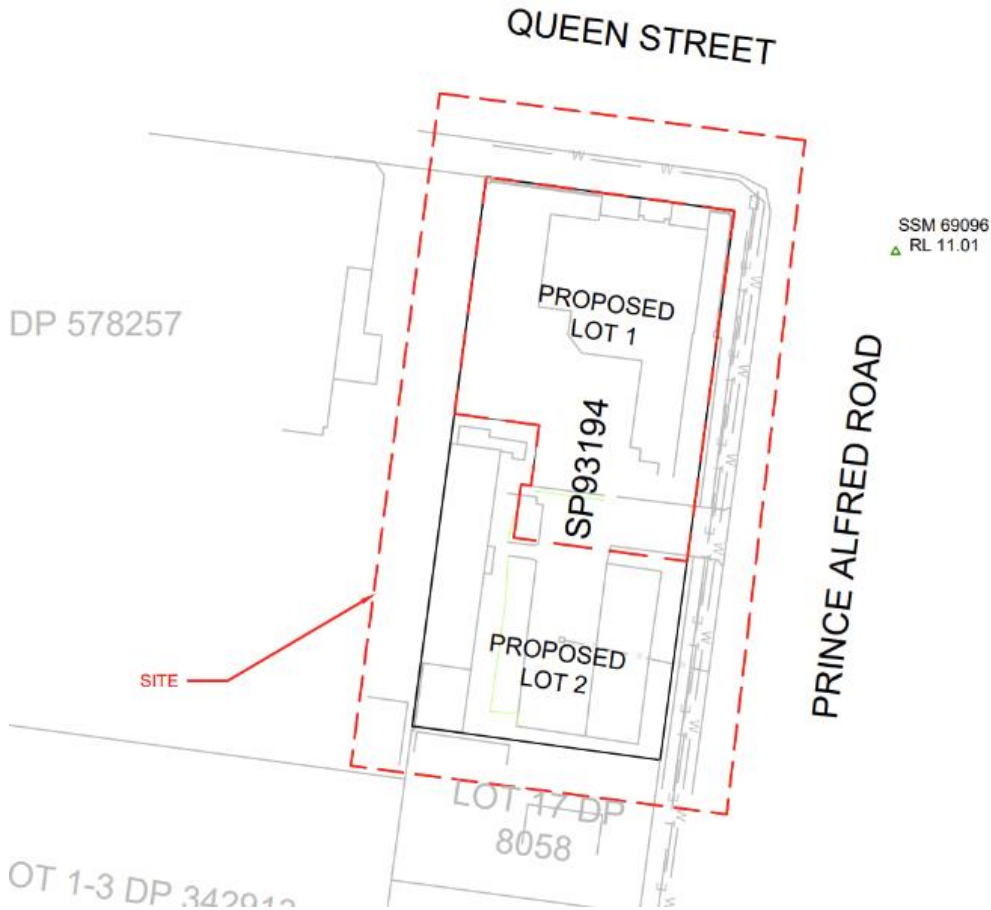


Figure 7. Approved subdivision of site (Source: APS)

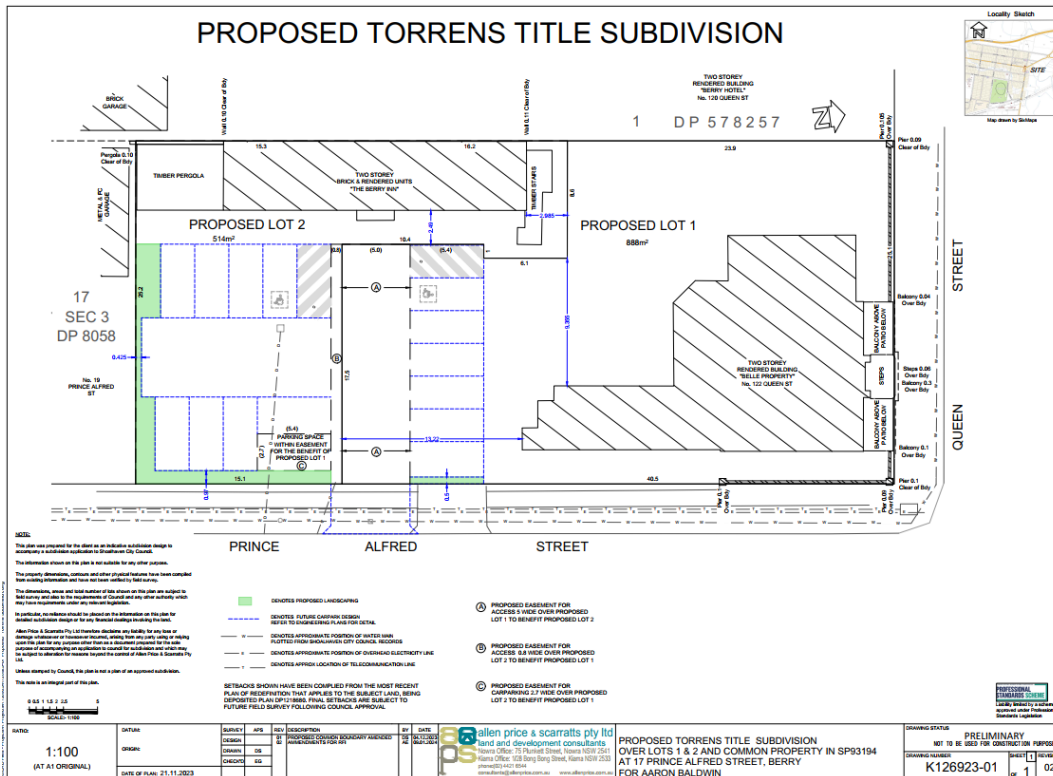


Figure 8. Approved Subdivision Sketch plan (Source: APS)

2.3.2. Current Land Use Zones

Current land use zones affecting the site is shown in Figure 9 . The current lot zone boundary dissects the current lot approximately 15m from the southern boundary, with no consideration of the current structures or buildings on site (refer Figure 6). The split in zoning furthermore is inconsistent with the approved lot configuration under DA23/3181.

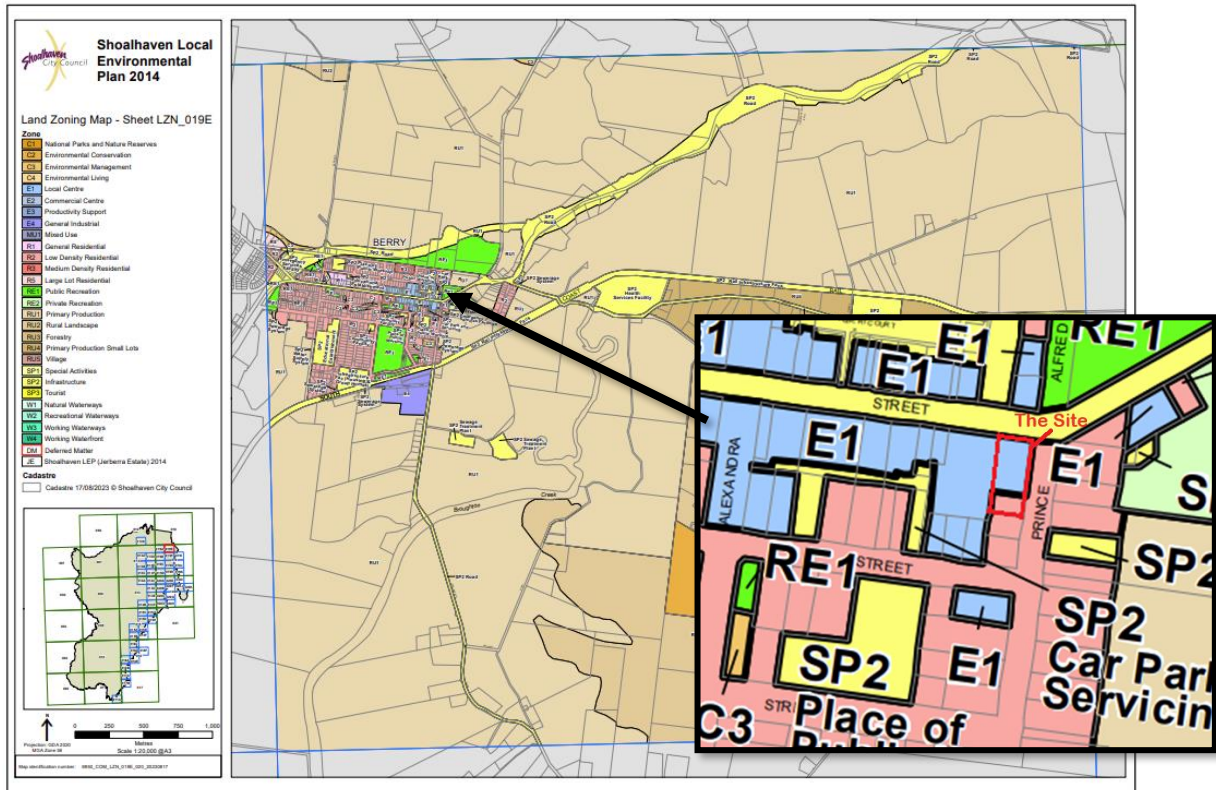


Figure 9. Current Land Zoning Mapping under SLEP 2014 (Source: SLEP Mapping – Legislation.nsw.gov.au)

2.3.3. Current Minimum Lot Size Control

Current minimum lot size controls affecting the site is shown in Figure 10 which shows a portion of the site as having a minimum lot size of 500sqm, to align with the relevant provisions for R2 Low Density Residential Zoned Land. The minimum lot size boundary dissects the current lot configuration, with no consideration of the current structures or buildings on site, reflecting the current zone boundary applying to the site.



Figure 10. Current Lot Size Mapping under SLEP 2014 (Source: SLEP Mapping – Legislation.nsw.gov.au)

2.4. Other SLEP 2014 Site Considerations

2.4.1. Clause 5.3 Development near zone boundaries

Clause 5.3 of SLEP 2014 provides the following:

- (1) *The objective of this clause is to provide flexibility where the investigation of a site and its surroundings reveals that a use allowed on the other side of a zone boundary would enable a more logical and appropriate development of the site and be compatible with the planning objectives and land uses for the adjoining zone.*
- (2) *This clause applies to so much of any land that is within the relevant distance of a boundary between any 2 zones. The relevant distance is 20 metres.*
- (3) *This clause does not apply to—*
 - (a) *land in Zone RE1 Public Recreation, Zone C1 National Parks and Nature Reserves, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone W1 Natural Waterways, or*
 - (b) *land in Zone W2 Recreational Waterways, or*
 - (c) *land within the coastal zone, or*
 - (d) *land proposed to be developed for the purpose of sex services or restricted premises.*
- (4) *Despite the provisions of this Plan relating to the purposes for which development may be carried out, development consent may be granted to development of land to which this clause applies for any purpose that may be carried out in the adjoining zone, but only if the consent authority is satisfied that—*
 - (a) *the development is not inconsistent with the objectives for development in both zones, and*

- (b) *the carrying out of the development is desirable due to compatible land use planning, infrastructure capacity and other planning principles relating to the efficient and timely development of land.*
- (5) *This clause does not prescribe a development standard that may be varied under this Plan.*

For the purpose of a DA for the subject site, the provisions are relevant. It is noted however that *Tourist and Visitor Accommodation* is prohibited within the R2 Low Density Residential zone and the objectives of the R2 zone are as follows:

1 Objectives of zone

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To provide an environment primarily for detached housing and to ensure that other development is compatible with that environment.*

Arguably, a tourist and visitor uses of this scale is incompatible with the R2 Low Density zone as it:

- does not provide for the housing needs of the community,
- does not provide for the day today needs of residents; and
- is not conducive to an environment primarily for detached housing.

Any development application related to the existing use of tourist and visitor accommodation is likely to have difficulty meeting the necessary thresholds outlined in this clause. Consequently, the continued use and development applications submitted for the existing Berry Inn have needed to rely on the existing use rights provisions under the EP&A Act.

The clause also does not extend to any exempt or complying development provisions that may facilitate minor development under SEPP (Exempt and Complying Development Codes) 2008.

2.4.2. Other mapping considerations

In addition to the current land use zone and minimum lot size controls, other SLEP 2014 and site considerations are shown in Figures 11 - 13 and include acid sulfate soils, local heritage and height of buildings. The SLEP 2014 mapping considerations are summarised at Table 2

Table 2. SLEP 2014 Mapping Summary

Map	Control	Description
LZN_19E	Land Zoning Map	Part – E1 Local Centre, Part – R2 Low Density Residential
LSZ_19E	Lot Size Map	Part – No restriction, Part – I, 500sqm
ASS_019	Acid Sulfate Soils Map	Class 5
HER_019E	Heritage Map	Heritage Item – General – Item No. 88
HOB_19E	Height of Building Map	I2 – 8.5m

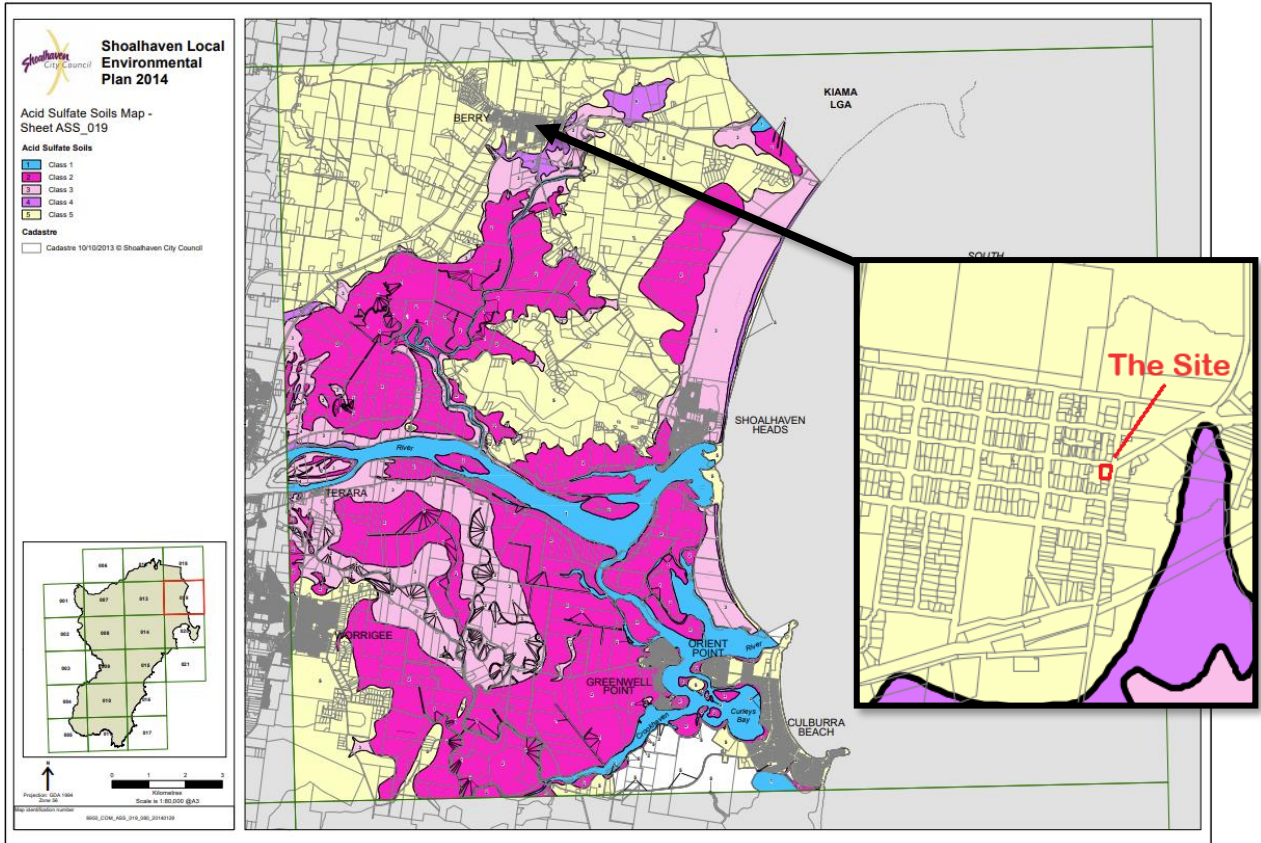


Figure 11. Current Acid Sulfate Soil Mapping under SLEP 2014 (Source: SLEP Mapping – Legislation.nsw.gov.au)

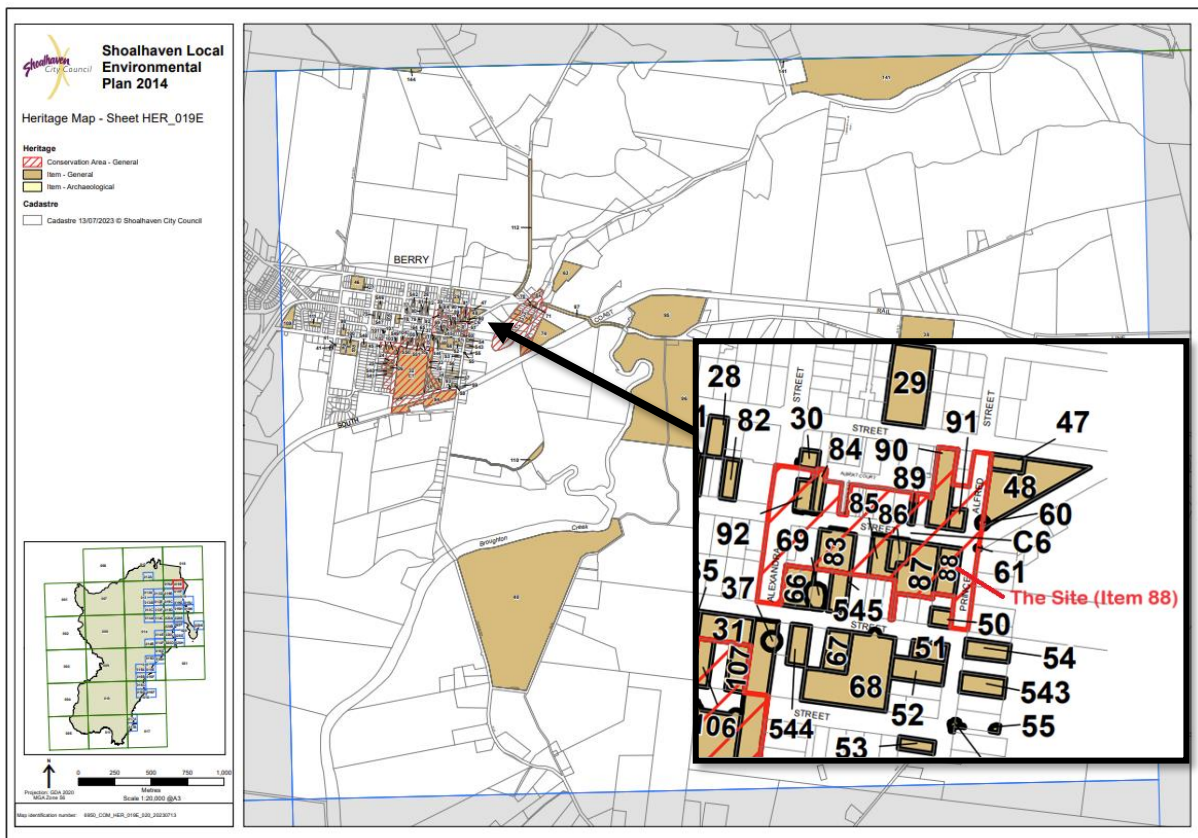


Figure 12. Current Heritage Mapping under SLEP 2014 (Source: SLEP Mapping – Legislation.nsw.gov.au)



Figure 13. Current Height of Building Mapping under SLEP 2014 (Source: SLEP Mapping – Legislation.nsw.gov.au)

3. PART 1 – STATEMENT OF OBJECTIVES OR INTENDED OUTCOMES

(s.3.33(2)(a) *A statement of the objectives or intended outcomes of the proposed instrument*)

The objective of the PP is to amend SLEP 2014 as it applies to SP93194 to:

- a) to better align the zoning and lot size controls with the site's existing use;
- b) avoid the need to potentially rely on existing use rights in respect of the R2 Low Density zoned part of the site; and
- c) resolve the current split zoning by applying the E1 Local Centre zone to the whole site.

The PP achieves several outcomes:

- a) The PP ensures the ongoing viability of an established business and allows it the flexibility in the future to grow and respond to the changing needs of the tourism accommodation market with a land use zoning commensurate to the existing use, rather than relying on restrictive existing use provisions under the EP&A Act.
- b) It will ensure the whole of the existing building on the site within Lot 2 SP 93194, and the future approved lot 2 under DA23/3181, will have a consistent zoning and minimum lot size applying to it, rather than the existing building having a split zoning.
- c) It will enable future development on the site as it relates to the existing approved use, to utilise relevant provisions exempt and complying development controls under State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 under which it is currently excluded from being an “existing use”.

4. PART 2 – EXPLANATION OF PROVISIONS

(s.3.33(2)(b) An explanation of the provisions that are to be included in the proposed instrument)

The PP will be achieved by amending the following SLEP 2014 maps as they relate to the site (SP93194) in accordance with Table 3 and in accordance with the proposed zoning map shown at Figure 14 and Figure 15.

Table 3. Proposed SLEP 2014 Maps for amendment

Map type	Map Sheet Identification Numbers	Reasoning for amendment	Proposed change
Land Zoning - LZN_019E	6950_COM_LZN_019E_020_20230817	Site is currently part – E1 Local Centre and part – R2 Low Density Residential	Rezone the R2 Low Density Residential part of SP93194 to E1 Local Centre.
Minimum Lot Size - LSZ_019E	6950_COM_LSZ_019E_020_20230713	Site is currently part no restriction, Part – 1, 500sqm.	Remove the current 1 – 500sqm minimum lot size (which currently applies to the R2 land) from SP93194 to be consistent with the E1 zoning.

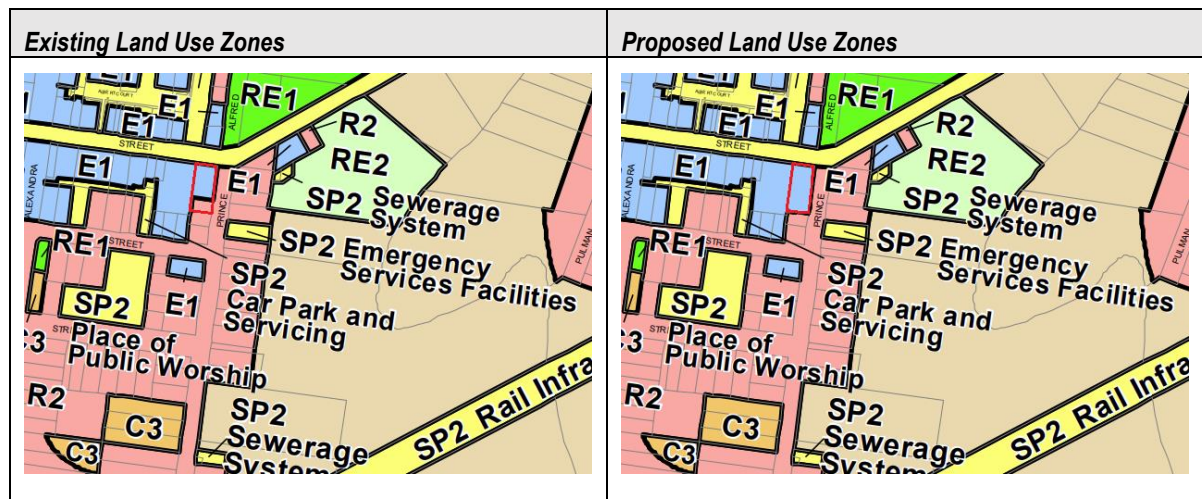


Figure 14. .Showing the existing and proposed Land Use Zones for SP93194

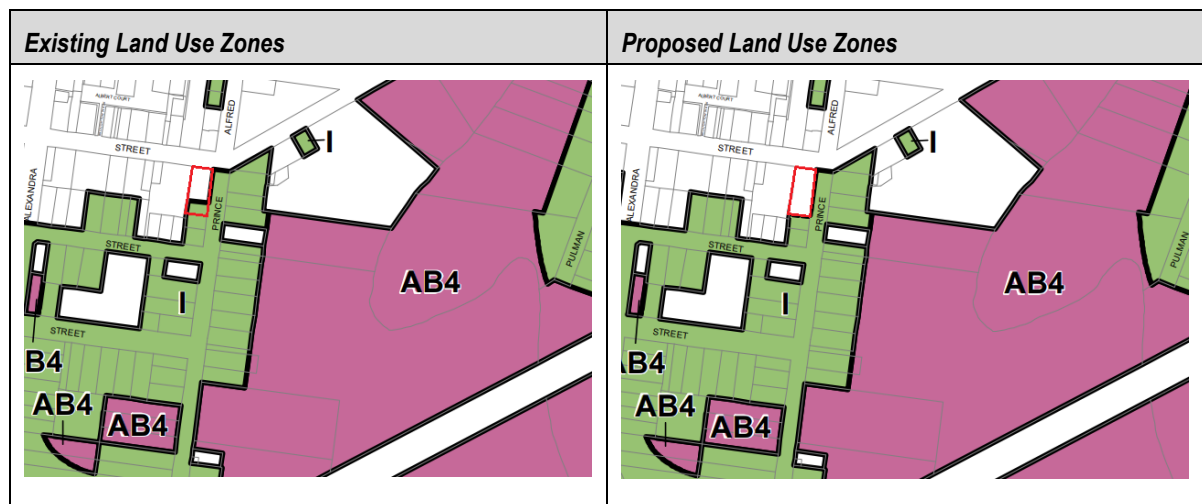


Figure 15. .Showing the existing and proposed Minimum Lot Size for SP93194

5. PART 3 – JUSTIFICATION OF OBJECTIVES, OUTCOMES AND PROCESS

This PP amends SLEP2014 as it applies to SP93194 to enable the existing Tourist and Visitor Accommodation use on the site to continue, with consistent zoning and minimum lot size across the site and the land use zoning and minimum lot sizes reflecting the adjoining town centre controls.

5.1. Section A – Need for the Planning Proposal

5.1.1. Question 1 - *Is the planning proposal a result of an endorsed local strategic planning statement, strategic study or report?*

The PP relates to part of a single lot within the Berry Town Centre. It is not specifically as a result of the endorsed SLSPS or other strategic study/report however as demonstrated through this report, is not inconsistent with the aims and objectives with the relevant strategic plans. The proposal will enable the continuation of development compatible with the locality. The PP is as a result of an identified need to ensure the existing approved use of the site can continue to contribute to a vibrant and active local centre of Berry and continue to serve the needs to the visitors of the area.

5.1.2. Question 2 - *Is the Planning Proposal the best means of achieving the objectives or intended outcomes, or is there a better way?*

The PP is the only planning mechanism of achieving the intended outcomes.

5.2. Section B – Relationship to strategic planning framework

5.2.1. Question 3 – *Assessment Criteria – Does the proposal have strategic merit?*

a) *Will the planning proposal give effect to the objectives and actions of the applicable regional, or district plan or strategy (including any exhibited draft plans or strategies)?*

The PP is consistent with the following regional and local strategic planning framework.

i) *Illawarra Shoalhaven Regional Plan 2041*

The PP is consistent with the Illawarra Shoalhaven Regional Plan 2041. The Plan applies to the LGAs of Kiama, Shellharbour and Wollongong, and represents a strategic vision and direction for planning for the region's future housing over the next 20 years.

The Plan identifies Berry as a charming historic town that contributes to the diversity, heritage and Character of the Illawarra Shoalhaven.

Key inputs to the Plan have included:

- A Regional Approach to Sustainability in the Illawarra Shoalhaven 2020 – embeds sustainability into the Regional Plan identifying regional collaborative opportunities
- Public Spaces in the Illawarra Shoalhaven Region 2020 – investigates and analyses access to public spaces in the Region and identifies opportunities to improve access
- Councils' 2020 Local Strategic Planning Statements and their current Community Strategic Plans. It is noted the URA is consistent with the KLSPS.
- The NSW Government's State Infrastructure Strategy 2018-2038, Future Transport 2056, A 20-year Economic Vision for Regional NSW, and regional economic development strategies for Kiama, Shellharbour and Shoalhaven.

The PP is consistent with the following objectives and strategies identified in the Plan:

- Objective 5: Create a diverse visitor economy

Strategy 5.1 Create an environment for a diverse visitor economy

Through having suitable land use zoning applying to the subject site, the current operations will have the flexibility to adapt to changing needs and market conditions without being unnecessarily burdened with inappropriate land use zoning applying to part of the site.

- Objective 21: Respond to the changing needs of local neighbourhoods

Strategy 22.1 Consider the changing needs of local neighbourhood centres.

Amending the zone and minimum lot size controls of the subject site to reflect the neighbouring commercial/town centre controls will allow the continued operations of the Inn and enable the long term economic viability of an existing business. However, having one consistent zone across the site will also further enable any future use of the premises to adapt over time that is consistent with the economic needs and character of the Berry Town Centre.

- Objective 22: Embrace and respect the region's local character

Strategy 22.1 Support the development of local character statements in accordance with the NSW Government's Local Character and Place Guideline.

Local character statements for the Shoalhaven have not yet been implemented, however the ongoing economic viability of the current tourist and visitor accommodation site is a key objective of the Shoalhaven DCP Chapter N2 – Berry Town Centre.

Illawarra Shoalhaven Regional Plan 2041 outlines that the township of Berry is highly valued as a place for communities to spend leisure time. This PP will ensure the role that the berry Inn has in the tourism sector of the township can continue and with the ability to adapt into the future in line with the overall economic strategic vision for Berry.

ii) *Shoalhaven 2040 – Local Strategic Planning Statement*

The PP is consistent with the SLSPS. The Statement applies to the whole of the City of Shoalhaven. The Statement summarises the City's opportunities and challenges, provides a Vision for Shoalhaven with two supporting Directions, identifies Planning Priorities and sets Actions to help deliver on these priorities.

The PP is consistent with the Directions, Priorities and Actions as outlined below in Table 4.

Table 4. Shoalhaven 2040 – Local Strategic Planning Statement Directions

Direction	Planning Priority	Discussion
Direction 1 Managing Economic Growth	6 - Strengthening commercial centres	The PP will enable the long term viability of the existing Berry inn with zoning and controls that reflect the current lawful use and will ensure its ability to respond and adapt into the future. The continued operations and supply of accommodation within the Berry Town Centre is important to ensuring the activity, economic growth and vibrancy of Berry which relies heavily on the tourism sector.
	7 - Responsible visitor economy	Reviewing the planning controls applying to the subject site is critical in ensuring the Berry Inn can have financial certainty for future development and use of the site, while recognising the strong contribution that accommodation within the Berry Town Centre brings to the economy.
Direction 2 – Natural and Built	13 - Protecting and enhancing neighbourhoods	While the review into special character controls for Berry is still underway, the PP is consistent with the current Berry Town Centre DCP (Chapter N2) through ensuring the ongoing viability of the Berry Inn,

Direction	Planning Priority	Discussion
Environments and Lifestyles		which is both compatible with and contributes to the physical and land use character off Berry.
	14 - Heritage items and places	The overall site is a local heritage item, however the Berry Inn building is not a contributory item. The PP facilitates the continuation of a current existing use into the future, by providing a land use zone and minimum lot size control that is commensurate with the Berry Town Centre and the historic use of the site

iii) *Shoalhaven Destination Management Plan (2018-2023)*

The Shoalhaven Destination Management Plan (DMP) is a strategic document that prioritises key focus areas and actions across the six focus areas of Destination management, Destination marketing, Events, Local industry and advocacy, Infrastructure and investment and Visitor services. While not a recognised land use or planning document, the plan is of relevance to the PP. The DMP identifies that a risk to accommodation in the Shoalhaven is:

Availability of suitable development sites and investors as well as the community's appetite for development all have an impact on new accommodation opportunities.

While an opportunity for accommodation generally to:

Review of tourism land use permissibility in the LEP and alignment with strategic planning policies provides opportunities for greater investment.

The PP ensures the ongoing viability of an established business and allows it the flexibility in the future to grow and respond to the changing needs of the tourism accommodation market with a land use zoning commensurate to the existing use, rather than relying on restrictive existing use provisions under the EP&A Act.

b) *Responding to a change in circumstances, such as the investment in new infrastructure or changing demographic trends that have not been recognised in existing strategic plans?*

The need for balancing the need for affordable housing with the impacts of Short-Term Rental Accommodation and the role of strategically identified and suitable locations for tourist and visitor accommodation is an issue regularly raised by Shoalhaven Council, including most recently at its Ordinary Meeting on Monday 08 April 2024. Further Council's Submission to the NSW Government's Discussion Paper on Short- and Long- Term Rental Accommodation (April 2024) highlighted the role that tourism accommodation has overall in supporting the Shoalhaven's visitor accommodation. The submission however highlights that traditional tourist and visitor accommodation faces challenges including site and investor availability and regulation.

The PP will assist in ensuring the long-term viability and contribution that traditional forms of tourist accommodation have in meeting the needs of tourists and visitors in the Shoalhaven. Having tourist accommodation in strategically identified and co-located centres facilitates the ongoing viability of those centres while minimising land use conflict and improving transparency in the location of visitor accommodation.

The PP allows for future development on the site to have investor certainty in the permissible uses and development on the site, without the underlying need to demonstrate an intricate legal argument regarding existing use rights.

5.2.2. Does the proposal have site-specific merit, having regard to the following?

- a) the natural environment (including known significant environmental values, resources or hazards); and

There are no natural environmental reasons to justify the PP.

- b) the existing uses, approved uses, and likely future uses of land in the vicinity of the proposal; and

The PP seeks to amend SLEP 2014 as it applies to SP93194 to enable the existing Tourist and Visitor Accommodation use on the site to continue as a lawful purpose, with land use zoning and minimum lot sizes reflecting the adjoining town centre controls. Table 1 outlines the existing approved use of the site. The rezoning will ensure that the planning controls of lot on which the approved uses occur, are uniform across the site and consistent with the broader Berry Town Centre in which the site is located.

- c) the services and infrastructure that are or will be available to meet the demands arising from the proposal and any proposed financial arrangements for infrastructure provision

The PP is to amend the planning controls to reflect the existing approved uses across the site and ensure the lot has a uniform zoning and lot size control. There is no increased demand arising from the proposal that would require additional services or infrastructure or financial arrangements.

5.2.3. Question 4 - Will the planning proposal give effect to a council's endorsed local strategic planning statement, or another endorsed local strategy or strategic plan?

As outlined in the above Section 3.1, the PP is not inconsistent with the LSPPS. Table 4 above provides an analysis of the relevant objectives and actions and the outcomes of the PP.

Further to the above, the PP is broadly consistent with the Shoalhaven Council Community Strategic Plan's Priorities of:

- Resilient, Safe, Accessible & Inclusive Communities
- Sustainable, Liveable Environments
- Thriving local economies that meet community needs
- Effective, Responsible & Authentic Leadership

The PP gives effect to the *Development contributes to and enhances neighbourhood character* (Priority: 2.2 Manage growth and development with respect for economic & community values) through facilitating the continuation of an established business that strongly contributes to the character of the Berry Town centre both physically and economically. Additionally, the PP gives effect to an *Enhanced opportunities for a diverse sustainable visitor economy* (Priority: Strengthen and diversify the economy) through ensuring the existing land use can continue to operate, grow and adapt in line with land use controls that best suit the existing and long standing approved use of the site.

The PP also provides a clear land use planning framework for the future operations of the site in line with the outcome of *Decision-makers lead, govern and regulate in an ethical, equitable, transparent and accountable way* (Priority: Provide transparent leadership through effective government and administration). The PP ensures future development on the site that is linked with the existing tourist and visitor operations on the site is permissible in its own right without the need for legal analysis of existing use right provisions, providing certainty to the existing operators and transparency to the community regarding the existing and future permissible use of the land.

5.2.4. Question 5 - Is the Planning Proposal consistent with applicable State Environmental Planning Policies?

The PP is considered generally consistent with applicable State Environmental Planning Policies (SEPP) which are assessed in Table 5 and relevant SEPPs summarised in the following subsections.

Table 5. Applicable SEPPs summary

State Policies Relevant to Subject Site	Relevant	Chapters Relevant to this Application
State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004	✘	✘
State Environmental Planning Policy (Biodiversity and Conservation) 2021	✘	✘
State Environmental Planning Policy (Exempt and Complying Development Codes) 2008	✓	Generally applicable
State Environmental Planning Policy (Housing) 2021	✘	✘
State Environmental Planning Policy (Industry and Employment) 2021	✘	✘
State Environmental Planning Policy (Planning Systems) 2021	✘	✘
State Environmental Planning Policy (Precincts – Central River City) 2021	✘	✘
State Environmental Planning Policy (Precincts – Eastern Harbour City) 2021	✘	✘
State Environmental Planning Policy (Precincts – Regional) 2021	✘	✘
State Environmental Planning Policy (Precincts – Western Parkland City) 2021	✘	✘
State Environmental Planning Policy (Primary Production) 2021	✘	✘
State Environmental Planning Policy (Resilience and Hazards) 2021	✓	Chapter 2: Coastal Management
State Environmental Planning Policy (Resources and Energy) 2021	✘	✘
State Environmental Planning Policy (Transport and Infrastructure) 2021	✘	✘

a) SEPP (Exempt and Complying Development Codes) 2008

Section 1.3 of this Policy outlines the Aims of the Policy as follows:

This Policy aims to provide streamlined assessment processes for development that complies with specified development standards by—

- (a) providing exempt and complying development codes that have State-wide application, and*
- (b) identifying, in the exempt development codes, types of development that are of minimal environmental impact that may be carried out without the need for development consent, and*
- (c) identifying, in the complying development codes, types of complying development that may be carried out in accordance with a complying development certificate as defined in the Act, and*
- (d) enabling the progressive extension of the types of development in this Policy, and*
- (e) providing transitional arrangements for the introduction of the State-wide codes, including the amendment of other environmental planning instruments.*

This Provide opportunities for the continuation and economic viability of the current operations of the site through permitting small scale development what is minimal environmental impact to occur on the site that is commensurate with the approved use of the premises. The current R2 Low Density Residential zoning does not reflect the current operations of the premises and prevents the site from utilising the applicable exempt and complying development provisions limited to uses that are currently permissible within a zone and/or limited to land within an employment zone. The PP enables the progressive extension of the tourist and visitor accommodation use on the site, and ancillary local town centre economic uses that may be enabled through this Policy.

b) SEPP (Resilience and Hazards) 2021 - Chapter 2: Coastal Management

As shown in Figure 16 the SEPP (Resilience and Hazards) 2021 - Chapter 2: Coastal Management mapping applies to the site with the subject site noted as being within a Coastal Environment Area.

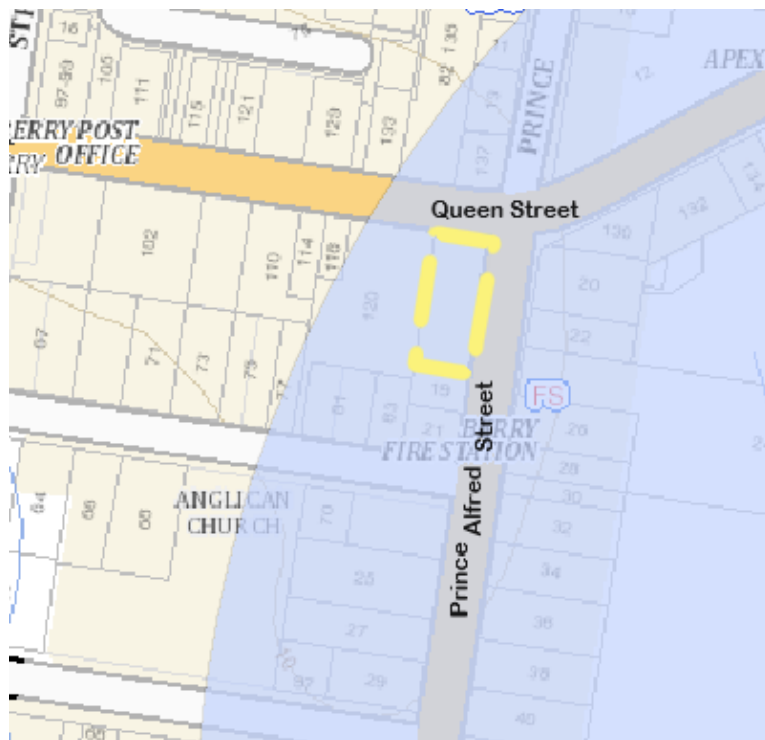


Figure 16. Coastal environment Area Map (Source: NSW Planning Portal Spatial Viewer)

Section 2.1 of this Policy outlines the Aims of the Chapter as follows:

The aim of this Chapter is to promote an integrated and co-ordinated approach to land use planning in the coastal zone in a manner consistent with the objects of the Coastal Management Act 2016, including the management objectives for each coastal management area, by—

- (a) *managing development in the coastal zone and protecting the environmental assets of the coast, and*
- (b) *establishing a framework for land use planning to guide decision-making in the coastal zone, and*
- (c) *mapping the 4 coastal management areas that comprise the NSW coastal zone for the purpose of the definitions in the Coastal Management Act 2016.*

The PP is not inconsistent with these aims with the subject site located within an established built environment, and identified as coastal use only due to the proximity of the Berry Town Centre from Broughton Creek. The change in minimum lot size and land use zone will not undermine the ability of this SEPP from achieving its goals.

Further to this the PP will not affect future development on the land from its ability to comply with the provisions of Section 2.11 Development on land within the coastal use area. The site is not within a foreshore location or in proximity to public spaces or foreshores. The scenic qualities of the coast are not of relevance to the subject site, and the change in zoning and minimum lot size will not have a discernible impact on cultural and built environment heritage.

5.2.5. Question 6 - Is the Planning Proposal consistent with applicable Ministerial Directions (s.9.1 Directions)?

A summary of the PP consistency with relevant Section 9.1 Ministerial Directions (2) of the Environmental Planning and Assessment Act 1979 is provided in **Appendix C** and relevant directions discussed below.

➤ Focus area 1: Planning Systems

Direction 1.1 Implementation of Regional Plans

Application: This direction applies to a relevant planning authority when preparing a planning proposal for land to which a Regional Plan has been released by the Minister for Planning.

Comment: Applies. See Table 6.

Table 6. Direction 1.1

Direction 1.1 - Implementation of Regional Plans	Comment
(1) Planning proposals must be consistent with a Regional Plan released by the Minister for Planning.	Whilst not specifically identified, the PP is generally consistent with the overall intent of the Illawarra Shoalhaven Regional Plan 2041 and outcomes such economic viability and diversity of the visitor economy.

Direction 1.2 Development of Aboriginal Land Council land

Application: This direction applies to all relevant planning proposal authorities when preparing a planning proposal for land shown on the Land Application Map of chapter 3 of the State Environmental Planning Policy (Planning Systems) 2021.

Comment: Does not apply. Not within mapped area.

Direction 1.3 Approval and Referral Requirements

Application: This direction applies to all relevant planning authorities when preparing a planning proposal.

Comment: Applies. See Table 7.

Table 7. Direction 1.3

Direction 1.3 - Approval and Referral Requirements	Comment
<p>(1) A planning proposal to which this direction applies must:</p> <ul style="list-style-type: none"> (a) minimise the inclusion of provisions that require the concurrence, consultation or referral of development applications to a Minister or public authority, and (b) not contain provisions requiring concurrence, consultation or referral of a Minister or public authority unless the relevant planning authority has obtained the approval of: <ul style="list-style-type: none"> i. the appropriate Minister or public authority, and ii. the Planning Secretary (or an officer of the Department nominated by the Secretary), prior to undertaking community consultation in satisfaction of Schedule 1 to the EP&A Act, and (c) not identify development as designated development unless the relevant planning authority: <ul style="list-style-type: none"> i. can satisfy the Planning Secretary (or an officer of the Department nominated by the Secretary) that the class of development is likely to have a significant impact on the environment, and ii. has obtained the approval of the Planning Secretary (or an officer of the Department nominated by the Secretary) prior to undertaking community consultation in satisfaction of Schedule 1 to the EP&A Act. 	<p>The PP is not inconsistent with this direction.</p> <p>The change in land use zoning and minimum lot size provisions affecting the site will not trigger the need for concurrence, consultation or referral of development applications to a Minister or public authority. The proposal makes determination of related exempt and complying provisions relating to commercial / business related functions of the site permissible, reducing the need for DAs for minor works that are related to the existing approved use of the site.</p>

Direction 1.4 Site Specific Provisions

Application: This direction applies to all relevant planning authorities when preparing a planning proposal that will allow a particular development to be carried out

Comment: Applies. See Table 8.

Table 8. Direction 1.4

Direction 1.4 – Site Specific Provisions	Comment
<p>(1) A planning proposal that will amend another environmental planning instrument in order to allow particular development to be carried out must either:</p> <ul style="list-style-type: none"> (a) allow that land use to be carried out in the zone the land is situated on, or (b) rezone the site to an existing zone already in the environmental planning instrument that allows that land use without imposing any development standards or requirements in addition to those already contained in that zone, or (c) allow that land use on the relevant land without imposing any development standards or requirements in addition to those already contained in the principal environmental planning instrument being amended. 	<p>The PP is not inconsistent with this direction.</p> <p>The subject PP seeks to rezone the site to an existing zone, being E1 Local Centre which is already in the SLEP 2014 and allows the existing land use to continue without imposing any development standards or requirements in addition to those already contained in that zone.</p>
<p>(2) A planning proposal must not contain or refer to drawings that show details of the proposed development.</p>	<p>No drawings re include or referred to in the PP. The PP does not facilitate a future development to occur, but legitimises the existing approved use on the site through applying a uniform zone and minimum lot size across the site.</p>

Direction 1.4A Exclusion of Development Standards from Variation

Application: This direction applies when a planning proposal authority prepares a planning proposal that proposes to introduce or alter an existing exclusion to clause 4.6 of a Standard Instrument LEP or an equivalent provision of any other environmental planning instrument.

Comment: Does not apply.

➤ **Focus area 1: Planning Systems – Place-based**

Comment: Does not apply. No Placed based Directions under Directions 1.5 – 1.22 apply to the subject PP.

➤ **Focus area 2: Design and Place**

Comment: This Focus Area was blank when the Directions were made.

➤ **Focus area 3: Biodiversity and Conservation**

Direction 3.1 Conservation Zones

Application: This direction applies to all relevant planning authorities when preparing a planning proposal.

Comment: Applies, however not relevant to the proposal. The PP is within an existing built environment and urban centre it does not does not relate to environmentally sensitive areas.

Direction 3.2 Heritage Conservation

Application: This direction applies to all relevant planning authorities when preparing a planning proposal.

Comment: Applies. See Table 9.

Table 9. Direction 3.2

Direction 3.2 Heritage Conservation	Comment
<p>(1) A planning proposal must contain provisions that facilitate the conservation of:</p> <ul style="list-style-type: none"> (a) items, places, buildings, works, relics, moveable objects or precincts of environmental heritage significance to an area, in relation to the historical, scientific, cultural, social, archaeological, architectural, natural or aesthetic value of the item, area, object or place, identified in a study of the environmental heritage of the area, (b) Aboriginal objects or Aboriginal places that are protected under the National Parks and Wildlife Act 1974, and (a) Aboriginal areas, Aboriginal objects, Aboriginal places or landscapes identified by an Aboriginal heritage survey prepared by or on behalf of an Aboriginal Land Council, Aboriginal body or public authority and provided to the relevant planning authority, which identifies the area, object, place or landscape as being of heritage significance to Aboriginal culture and people. 	<p>Noted.</p> <p>As a locally heritage listed site for European Heritage, and with existing approved uses across the site that will continue to operate the proposal the proposal is not inconsistent with this Direction. The existing provisions under Clause 5.10 of SLEP 2014 facilitate the conservation of heritage on the site and the PP does not seek to remove the heritage listing of the premises. The portion of SP93194 that is sought to be rezoned has no heritage significance, with the significant item being the 'Victorian Free Classical Style former CBC Bank including fence and trees' at 122 Queen Street Berry which faces Queen Street.</p> <p>The accompanying Basic AHIMS Web Service search for the following area at SP93194 has examined the site and not identified any items of significance.</p>

Direction 3.3 Sydney Drinking Water Catchments

Application: This direction applies when a planning proposal authority prepares a planning proposal for land located in the Sydney drinking water catchment in the following local government areas: inc. Shoalhaven

Comment: Does not apply. Not within the Drinking Water Catchment.

Direction 3.4 Application of C2 and C3 Zones and Environmental Overlays in Far North Coast LEPs

Application: This direction applies when a relevant planning authority prepares a planning proposal within the Ballina, Byron, Kyogle, Lismore and Tweed local government areas that introduces or alters an C2 Environmental Conservation or C3 Environmental Management zone or introduces or alters an overlay and associated clause.

Comment: Does not apply

Direction 3.5 Recreation Vehicle Areas

Application: This direction applies to all relevant planning authorities when preparing a planning proposal

Comment: Does not apply, PP will not enable land to be developed for the purpose of a recreation vehicle area (within the meaning of the Recreation Vehicles Act 1983):

Direction 3.6 Strategic Conservation Planning

Application This direction applies to all relevant planning authorities when preparing a planning proposal that relates to land that, under the State Environmental Planning Policy (Biodiversity and Conservation) 2021, is identified as avoided land or a strategic conservation area.

Comment: Does not apply, land is not identified as avoided land or a strategic conservation area.

Direction 3.7 Public Bushland

Application: This direction applies when a planning proposal authority prepares a planning proposal for land in the following local government areas: does not include Shoalhaven.

Comment: Does not apply.

Direction 3.8 Willandra Lakes Region

Application: This direction applies when a planning proposal authority prepares a planning proposal for land identified as the Willandra Lakes World Heritage Property, on the World Heritage Property Map, under the Balranald Local Environmental Plan 2010 and Wentworth Local Environmental Plan 2011.

Comment: Does not apply.

Direction 3.9 Sydney Harbour Foreshores and Waterways Area

Application: This direction applies when a planning proposal authority prepares a planning proposal for land within the Foreshores and Waterways Area as defined in the State Environmental Planning Policy (Biodiversity and Conservation) 2021.

Comment: Does not apply.

Direction 3.10 Water Catchment Protection

Application: This direction applies when a planning proposal authority prepares a planning proposal which will affect land within a regulated catchment, excluding the Sydney Drinking Water Catchment, within the meaning of the State Environmental Planning Policy (Biodiversity and Conservation) 2021.

Comment: Does not apply – does not affect land within a regulated catchment.

➤ Focus area 4: Resilience and Hazards

Direction 4.1 Flooding

Application: This direction applies to all relevant planning authorities that are responsible for flood prone land when preparing a planning proposal that creates, removes or alters a zone or a provision that affects flood prone land.

Comment: Site is not flood prone and direction does not apply as it does not create, remove or alter a zone or a provision that affects flood prone land.

Direction 4.2 Coastal Management

Application: This direction applies when a planning proposal authority prepares a planning proposal that applies to land that is within the coastal zone, as defined under the Coastal Management Act 2016 - comprising the coastal wetlands and littoral rainforests area, coastal vulnerability area, coastal environment area and coastal use area - and as identified by chapter 2 of the State Environmental Planning Policy (Resilience and Hazards) 2021.

Comment: Applies. See Table 10.

Table 10. Direction 4.2.

Direction 4.2 Coastal Management	Comment
(1) A planning proposal must include provisions that give effect to and are consistent with: <ul style="list-style-type: none"> (a) the objects of the Coastal Management Act 2016 and the objectives of the relevant coastal management areas; (b) the NSW Coastal Management Manual and associated Toolkit; (c) section 3.2 of the NSW Coastal Design Guidelines 2023; and (d) any relevant Coastal Management Program that has been certified by the Minister, or any Coastal Zone Management Plan under the Coastal Protection Act 1979 that continues to have effect under clause 4 of Schedule 3 to the Coastal Management Act 2016, that applies to the land. 	<p>The site is located within a Coastal Use Area under the State Environmental Planning Policy (Resilience and Hazards) 2021 (refer Section 5.2.4).</p> <p>The PP seeks to rezone the subject site from residential to employment zoned land so a uniform zone applies to the land that reflect the current approved and ongoing use of the site.</p> <p>The site is within an existing built urban centre which will not affect matters of coastal management or design.</p> <p>The proposal is not inconsistent with this Direction.</p>
(2) A planning proposal must not rezone land which would enable increased development or more intensive land-use on land: <ul style="list-style-type: none"> (a) within a coastal vulnerability area identified by chapter 2 of the State Environmental Planning Policy (Resilience and Hazards) 2021; or (b) that has been identified as land affected by a current or future coastal hazard in a local environmental plan or development control plan, or a study or assessment undertaken: 	<p>N/A – the site is not within a coastal vulnerability area under the SEPP, or affected by coastal hazard mapping under LEP 2014.</p>

Direction 4.2 Coastal Management	Comment
i. by or on behalf of the relevant planning authority and the planning proposal authority, or ii. by or on behalf of a public authority and provided to the relevant planning authority and the planning proposal authority.	
(3) A planning proposal must not rezone land which would enable increased development or more intensive land-use on land within a coastal wetlands and littoral rainforests area identified by chapter 2 of the State Environmental Planning Policy (Resilience and Hazards) 2021.	N/A – the site is not on land within a coastal wetlands and littoral rainforests area under the SEPP.
(4) A planning proposal for a local environmental plan may propose to amend the following maps, including increasing or decreasing the land within these maps, under chapter 2 of the State Environmental Planning Policy (Resilience and Hazards) 2021: (a) Coastal wetlands and littoral rainforests area map; (b) Coastal vulnerability area map; (c) Coastal environment area map; and (d) Coastal use area map. Such a planning proposal must be supported by evidence in a relevant Coastal Management Program that has been certified by the Minister, or by a Coastal Zone Management Plan under the Coastal Protection Act 1979 that continues to have effect under clause 4 of Schedule 3 to the Coastal Management Act 2016.	No amendments to the listed maps are proposed.

Direction 4.3 Planning for Bushfire Protection

Application: This direction applies to all local government areas when a relevant planning authority prepares a planning proposal that will affect, or is in proximity to, land mapped as bushfire prone land. This applies where the relevant planning authority is required to prepare a bush fire prone land map under section 10.3 of the EP&A Act, or, until such a map has been certified by the Commissioner of the NSW Rural Fire Service, a map referred to in Schedule 6 of that Act.

Comment: Site is not in or near bushfire prone land and direction does not apply.

Direction 4.4 Remediation of Contaminated Land

Application: This direction applies when a planning proposal authority prepares a planning proposal that applies to:

- (a) land that is within an investigation area within the meaning of the Contaminated Land Management Act 1997,*
- (b) land on which development for a purpose referred to in Table 1 to the contaminated land planning guidelines is being, or is known to have been, carried out,*
- (c) the extent to which it is proposed to carry out development on it for residential, educational, recreational or childcare purposes, or for the purposes of a hospital – land:*
 - i. in relation to which there is no knowledge (or incomplete knowledge) as to whether development for a purpose referred to in Table 1 to the contaminated land planning guidelines has been carried out, and*
 - ii. on which it would have been lawful to carry out such development during any period in respect of which there is no knowledge (or incomplete knowledge).*

Comment: Does not relate to the subject site.

Direction 4.5 Acid Sulfate Soils

Application: This direction applies to all relevant planning authorities that are responsible for land having a probability of containing acid sulfate soils when preparing a planning proposal that will apply to land having a probability of containing acid sulfate soils as shown on the Acid Sulfate Soils Planning Maps held by the Department of Planning and Environment.

Comment: Site is mapped under SLEP 2014 as having Class 5 Acid Sulfate Soils. The site is more than 250m away from the nearest Class 4, and around 550m from the nearest Class 3 Acid Sulfate Soils.

Direction 4.6 Mine Subsidence and Unstable Land

Application: This direction applies when a relevant planning authority prepares a planning proposal that permits development on land that is within a declared mine subsidence district in the Coal Mine Subsidence Compensation Regulation 2017 pursuant to section 20 of the Coal Mine Subsidence Compensation Act 2017, or has been identified as unstable in a study, strategy or other assessment undertaken by or on behalf of the relevant planning authority or by or on behalf of a public authority and provided to the relevant planning authority

Comment: Does not apply.

➤ Focus area 5: Transport and Infrastructure

Direction 5.1 Integrating Land Use and Transport

Application: This direction applies to all relevant planning authorities when preparing a planning proposal that will create, alter or remove a zone or a provision relating to urban land, including land zoned for residential, employment, village or tourist purposes.

Comment: Applies. See Table 11.

Table 11. Direction 5.1

Direction 5.1 - Integrating Land Use and Transport	Comment
<p>(1) A planning proposal must locate zones for urban purposes and include provisions that give effect to and are consistent with the aims, objectives and principles of:</p> <ul style="list-style-type: none"> (a) Improving Transport Choice – Guidelines for planning and development (DUAP 2001), and (b) The Right Place for Business and Services – Planning Policy (DUAP 2001). 	<p>The PP seeks to rezone the subject site from residential to employment zoned land so a uniform zone applies to the land that reflect the current approved and ongoing use of the site. The site is adjoining the Berry Town Centre, and the PP will facilitate improved business outcomes of the existing business that is co-located with other businesses within the Town Centre. Through applying the E1 zone across the site and amending the minimum lot size applying to the lot, the PP is not inconstant to the objectives and principles of these guidelines and policy.</p>

Direction 5.2 Reserving Land for Public Purposes

Application: This direction applies to all relevant planning authorities when preparing a planning proposal.

Comment: Does not apply. Proposal does not create, alter or reduce existing zonings or reservations of land for public purposes.

Direction 5.3 Development Near Regulated Airports and Defence Airfields

Application: This direction applies to all relevant planning authorities when preparing a planning proposal that will create, alter or remove a zone or a provision relating to land near a regulated airport which includes a defence airfield.

Comment: Does not apply. Proposal does not create, alter or remove a zone or a provision relating to land near a regulated airport which includes a defence airfield.

Direction 5.4 Shooting Ranges

Application: This direction applies to all relevant planning authorities when preparing a planning proposal that will affect, create, alter or remove a zone or a provision relating to land adjacent to and/ or adjoining an existing shooting range.

Comment: Does not apply. Proposal does not affect, create, alter or remove a zone or a provision relating to land adjacent to and/ or adjoining an existing shooting range.

Direction 5.5 High Pressure Dangerous Goods Pipelines

Application: This direction applies when a planning proposal authority prepares a planning proposal that would permit development for one or more of the specified uses in the application area of relevant pipelines.

Comment: Does not apply. Proposal does not permit development for one or more of the specified uses in the application area of relevant pipelines.

➤ Focus area 6: Housing

Direction 6.1 Residential Zones

Application: This direction applies to all relevant planning authorities when preparing a planning proposal that will affect land within an existing or proposed residential zone (including the alteration of any existing residential zone boundary), or any other zone in which significant residential development is permitted or proposed to be permitted.

Comment: Applies. See Table 12.

Table 12. Direction 5.1

Direction 6.1 Residential Zones	Comment
(1) A planning proposal must include provisions that encourage the provision of housing that will: <ul style="list-style-type: none"> (a) broaden the choice of building types and locations available in the housing market, and (b) make more efficient use of existing infrastructure and services, and (c) reduce the consumption of land for housing and associated urban development on the urban fringe, and (a) (d) be of good design 	<p>While the PP seeks to remove the residential zoning of the land, the existing property is not currently suitable or capable of providing for housing. With an existing tourist and visitor approval on the land, the logical zone for the site is to reflect the adjoining business zoning to facilitate the ongoing commercial viability of the premises.</p> <p>The site in its current form does not encourage the provision of housing through it's R2 Low Density residential part zoning, and accordingly the removal of this zone from the land is not inconsistent with this Direction.</p>
(2) A planning proposal must, in relation to land to which this direction applies: <ul style="list-style-type: none"> (a) contain a requirement that residential development is not permitted until land is adequately serviced (or arrangements satisfactory to the council, or other appropriate authority, have been made to service it), and (b) not contain provisions which will reduce the permissible residential density of land. 	N/A

Direction 6.2 Caravan Parks and Manufactured Home Estates

Application: This direction applies to all relevant planning authorities when preparing a planning proposal.

This direction does not apply to Crown land reserved or dedicated for any purposes under the Crown Land Management Act 2016, except Crown land reserved for accommodation purposes, or land dedicated or reserved under the National Parks and Wildlife Act 1974.

Comment: Does not apply. Proposal does not relate to caravan parks or manufactured home estates.

➤ Focus area 7: Industry and Employment

Direction 7.1 Employment Zones

Application: This direction applies to all relevant planning authorities when preparing a planning proposal that will affect land within an existing or proposed Employment zone (including the alteration of any existing Employment zone boundary). For the purpose of this Direction, Employment zones means the following zones • Employment • Mixed Use • W4 Working Waterfront • SP4 Enterprise • SP5 Metropolitan Centre

Comment: Applies. See Table 13.

Table 13. Direction 7.1

Direction 7.1 Employment Zones	Comment
(1) A planning proposal must: <ul style="list-style-type: none"> (a) give effect to the objectives of this direction, (b) retain the areas and locations of Employment zones, (c) not reduce the total potential floor space area for employment uses and related public services in Employment Zones. (d) not reduce the total potential floor space area for industrial uses in E4, E5 and W4 zones, and (a) (e) ensure that proposed employment areas are in accordance with a strategy that is approved by the Planning Secretary. 	<p>The objectives of this direction are to: (a) encourage employment growth in suitable locations, (b) protect employment land in employment zones, and (c) support the viability of identified centres.</p> <p>Through providing a consistent zoning across the land, the PP is consistent with this Direction through encouraging the ongoing commercial viability of an existing business within an existing Town Centre. The rezoning is accordingly not inconsistent with this Direction, which will support the viability of the business within the existing Berry Town Centre.</p>

Direction 7.2 Reduction in non-hosted short-term rental accommodation period

Application: This direction applies to Byron Shire Council when the council prepares a planning proposal to identify or reduce the number of days that non-hosted short-term rental accommodation may be carried out in parts of its local government area.

Comment: Does not apply. Not within Byron Shire.

Direction 7.3 Commercial and Retail Development along the Pacific Highway, North Coast

Application: This direction applies when a relevant planning authority prepares a planning proposal for land within those council areas on the North Coast that the Pacific Highway traverses, being those council areas between Port Stephens Shire Council and Tweed Shire Council, inclusive, and that applies to land in the vicinity of the existing and/or proposed alignment of the Pacific Highway.

Comment: Does not apply. Not location on the North Coast.

➤ Focus area 8: Resources and Energy

Direction 8.1 Mining, Petroleum Production and Extractive Industries

Application: This direction applies to all relevant planning authorities when preparing a planning proposal that would have the effect of:

(a) prohibiting the mining of coal or other minerals, production of petroleum, or winning or obtaining of extractive materials, or

(b) restricting the potential development of resources of coal, other minerals, petroleum or extractive materials which are of State or regional significance by permitting a land use that is likely to be incompatible with such development.

Comment: Does not apply.

➤ Focus area 9: Primary Production

Direction 9.1 Rural Zones

Application: This direction applies when a relevant planning authority prepares a planning proposal that will affect land within an existing or proposed rural zone (including the alteration of any existing rural zone boundary).

Direction (1)(a) applies to all relevant planning authorities.

Direction (1)(b) only applies in the following local government areas: Not including Shoalhaven.

Comment: Does not apply. Proposal does not rezone land from a rural zone to a residential, employment, mixed use, SP4 Enterprise, SP5 Metropolitan Centre, W4 Working Waterfront, village or tourist zone.

Direction 9.2 Rural Lands

Application: This direction applies when a relevant planning authority prepares a planning proposal for land outside the local government areas of lake Macquarie, Newcastle, Wollongong and LGAs in the Greater Sydney Region (as defined in the Greater Sydney Commission Act 2015) other than Wollondilly and Hawkesbury, that:

(a) will affect land within an existing or proposed rural or conservation zone (including the alteration of any existing rural or conservation zone boundary) or

(b) changes the existing minimum lot size on land within a rural or conservation zone.

Comment: Does not affect rural or conservation zoned land.

Direction 9.3 Oyster Aquaculture

Application: This direction applies to any relevant planning authority when preparing a planning proposal in 'Priority Oyster Aquaculture Areas' and oyster aquaculture outside such an area as identified in the NSW Oyster Industry Sustainable Aquaculture Strategy (2006) ("the Strategy"), when proposing a change in land use which could result in:

(a) adverse impacts on a 'Priority Oyster Aquaculture Area' or a "current oyster aquaculture lease in the national parks estate", or

(b) incompatible use of land between oyster aquaculture in a 'Priority Oyster Aquaculture Area' or a "current oyster aquaculture lease in the national parks estate" and other land uses.

Comment: Does apply. Does not relate to Priority Oyster Aquaculture Areas' and oyster aquaculture areas.

9.4 Farmland of State and Regional Significance on the NSW Far North Coast

Application: This direction applies when a relevant planning authority prepares a planning proposal for land within Ballina Shire, Byron Shire, Kyogle Shire, Lismore City, Richmond Valley and Tweed Shire local government areas, except land identified as “urban growth areas” mapped in the North Coast Regional Plan 2041 when preparing a planning proposal, that applies to land: [Not within Shoalhaven].

Comment: Does apply. Site is not within listed areas.

5.3. Environmental, Social and Economic Impact

5.3.1. *Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?*

There is no likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the PP.

5.3.2. *Are there any other likely environmental effects as a result of the Planning Proposal and how are they proposed to be managed?*

There are no likely environmental effects as a result of the PP.

5.3.3. *Has the Planning Proposal adequately addressed any social and economic effects?*

There are no adverse social and economic impacts related to the PP and associated land zone and minimum lot size adjustments.

The associated land rezoning is likely to have positive impacts through facilitating the ongoing economic viability of the township, including the tourism economy and visitor services. The ongoing commercial viability and development certainty of the site will assist in providing the owner and operator of the existing business with certainty moving forward about the site.

5.4. State and Commonwealth Interests

5.4.1. *Is there adequate public infrastructure for the planning Proposal?*

The PP is not expected to result in additional demand on existing public infrastructure, such as utilities, waste management and recycling services, public transport and roads, essential services or community infrastructure as a result of the PP, with the rezoning and minimum lot size amendments simply to reflect the existing operations on the site. The small lot size of the existing site would ultimately limit any potential increased density or development on the site, which would be further assessed at development assessment stage.

The site has existing adequate connections for the supply of water, the supply of electricity, and the disposal and management of sewage essential to the existing and any future development.

5.4.2. *What are the views of State and Commonwealth public authorities consulted in accordance with the Gateway Determination?*

Consultation with State and Commonwealth public authorities will be subject to the Gateway process and based on current assessment it is unlikely that the PP has any impacts which require significant input of State or Commonwealth public authorities.

6. PART 4 – MAPPING

(s.3.33(2)(d) Maps to be adopted by the proposed instrument)

The PP proposes amendments to the maps are outlined in Table 14. At the conclusion of the PP process, it is expected SCC will prepare mapping associated with this amendment in accordance with the Standard Technical Requirements for SLEP 2014 Maps.

Table 14. Proposed amendments to SLEP 2014 mapping

Map type	Map sheet (identification numbers)
Land Zoning – LZN_19E	6950_COM_LZN_019E_020_20230817
Lot Size – LSZ_19E	6950_COM_LSZ_019E_020_20230713

7. PART 5 – COMMUNITY CONSULTATION

(s.3.33(2)(e) *Detailed of the community consultation*)

Preliminary discussions have been held with Council and the local Community Consultative Committee, the Berry Forum, regarding the proposal prior to submission.

In accordance with Section 3.34 of the *Environmental Planning and Assessment Act 1979*, SCC will require the PP to be made publicly available for a minimum of 28 days.

The exhibition would involve:

- Notices on Council's website; and
- Exhibition material and all relevant documents will be available on SCC's website, which can be viewed at Council's Nowra and Ulladulla administration buildings and libraries.

Any further consultation required by the Gateway process can also be undertaken.

8. PART 6 – PROJECT TIMELINE

In accordance with the DPIE guidelines, the following estimated timeline is provided in Table 15 which includes the tasks deemed necessary for the making of this local environmental plan.

The following is an indicative timeline. It is anticipated that a total of four to five months is required for completion of the Gateway Determination requirements including Public Exhibition, Council Reporting, finalisation for the Planning Proposal, drafting of the LEP Amendment by Parliamentary Counsel and finalisation for the LEP Amendment.

Table 15. Estimate project timeline (Standard)

Task	Estimated timeframe (working days)	Date (approximate)
Stage 1 - Pre-lodgement	50 days	November 2024
Stage 2 - Planning Proposal	95 days	January 2025
Stage 3 - Gateway determination	25 days	February 2025
Stage 4 - Post-Gateway	50 days	April 2025
Stage 5 - Public Exhibition & Assessment	95 days	September 2025
Stage 6 - Finalisation	55 days	November 2025
Sub-total (Department Target)	255 working days	August 2025
Total (end to end)	320 working days	November 2025

9. CONCLUSION

The objective of this PP is to amend the SLEP 2014 as it applies SP 93194, specifically Lot 2, to:

- Implement uniform land use zoning and minimum lot sizes across the entire site, aligning with the adjoining town centre controls; and
- Ensure the ongoing legality of the Tourist and Visitor Accommodation use.

The outcome of this is to achieve following:

1. The entire existing building on Lot 2 SP 93194 will have a uniform zoning and minimum lot size, eliminating the current split zoning.
2. The existing Tourist and Visitor Accommodation use will no longer require reliance on existing use rights provisions under Section 4.65 of the EP&A Act for future development approvals.
3. Future development related to the current approved use will be able to utilise relevant exempt and complying development controls under the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008, which it is currently excluded from.
4. The amendments will serve as housekeeping measures to update SLEP 2014 controls on SP93194 to ensure consistency with existing buildings and structures, and reflect the controls of the Berry Town Centre.

The PP is presented as the most suitable mechanism for achieving the necessary zoning changes and outcomes, given the site's context and existing use. The PP aligns with the objectives of the Illawarra Shoalhaven Regional Plan 2041, Shoalhaven Local Strategic Planning Statement 2023, and Shoalhaven Destination Management Plan (2018-2023) particularly reinforcing the PP's relevance in maintaining and enhancing tourism accommodation and the commercial continuity of the existing approved use on site. The PP is relevant for streamlining minor developments and ensuring the site's use aligns with town centre controls.

Overall, the PP aligns with the relevant Local Planning Directions, supporting its consistency with planning requirements. The Proposal is consistent with the objects of the EP&A Act and is justified given the following:

- Economic and Community Benefits - The proposal supports the ongoing operation of the Berry Inn and maintains the economic vitality of the Berry Town Centre.
- Consistency with Planning Frameworks - The PP aligns with State, regional and local planning strategies, ensuring that future uses are consistent with the town's character and needs.
- Environmental and Infrastructure Impacts - The PP does not introduce significant environmental or infrastructure concerns and does not impact the heritage significance of the existing buildings on site.
- Social and Economic Impacts -The PP is expected to have minimal impact aside from the land zoning and lot size adjustments, which will bolster the site's economic viability, support tourism, and provide certainty for the existing business.

In light of the above, we request that Council considers and refers the Planning Proposal to DPHI for a Gateway Determination.

Appendix A – Pre-lodgement Planning Proposal Meeting Minutes – 28/10/2022



Address all correspondence to: The Chief Executive Officer,
PO Box 42, Nowra NSW 2541 Australia
shoalhaven.nsw.gov.au/contact | 1300 293 111

shoalhaven.nsw.gov.au    

Council Reference: 50572E (D22/454921)

28/10/2022

Aaron Baldwin
2 / 21 Albert Street
BERRY NSW 2535

By email only: abaldwin1000@gmail.com

Dear Aaron

Pre-lodgement Planning Proposal Meeting – Lot CP SP 93194, 17 Prince Alfred Street, Berry

I refer to the pre-lodgement planning proposal (PP) meeting held at Council's Nowra Administrative Building on Tuesday, 18 October 2022 in relation to part of the above land. The purpose of this letter is to outline the matters discussed at the meeting.

Meeting Details

The meeting was arranged at your request to discuss a potential PP to resolve the split zoning of the above property. The meeting was attended by Gordon Clark and Eric Hollinger (Council) and yourself.

Matters Discussed

- The land is strata subdivided into two lots and a common property which encompasses a commercial car park. Your land (17 Prince Alfred Street) encompasses "The Berry Inn".
- Your land and the common land (commercial carpark) have a split zoning: B2 Local Centre and R2 Low Density Residential.
- You are concerned about the long-term viability of the Berry Inn tourist and visitor accommodation development, particularly in the event that adjoining B2 land is redeveloped.
- You are seeking to have the R2 section rezoned to B2 (i.e. so it is zoned B2 in its entirety) to enable you to explore other commercial options that are permissible in the B2 zone.
- All owners of the land (including the common property) will need to provide owners' consent.
- Council staff explained that the Department of Planning and Environment has introduced a new Local Environmental Plan Making Guideline (the Guideline). Council's Planning Proposal Guidelines are under review and will be updated in due course.

RESPECT | INTEGRITY | ADAPTABILITY | COLLABORATION

- Council staff acknowledge that the matter is minor in nature. It appears to have strategic and site merit. On this basis, a scoping study is not required.
- To progress the matter as a proponent-initiated PP, you would need to engage a suitably experienced planning consultant to prepare a planning proposal report and submit this to Council via the NSW Planning Portal. The planning proposal report should be prepared in accordance with Division 3.4 of the *Environmental Planning and Assessment Act 1979* and the Department's Guideline, address the strategic and site merit criteria in the Guideline, as well as the criteria set out in Council's current PP Guidelines.
- Given that a scoping study is considered unnecessary in this case, the pre-lodgement fee will not be applied.

Should you decide to proceed, fees for a 'minor PP' will be payable upon lodgement, subject to an initial adequacy review by staff. The PP should be accompanied by Council's PP lodgement form, including political donations disclosure, and a copy of this letter. Staff are available to review a draft PP before it is submitted, or answer any questions that may arise.

If you need further information about this matter, please contact Eric Hollinger, City Futures on (02) 4429 3320. Please quote Council's reference 50572E (D22/454921).

Yours faithfully



Eric Hollinger
Coordinator - Special Projects Team

Appendix C - Summary of the PP consistency against s9.1 Directions

Direction		Applicable	Relevant	Not inconsistent
1 Planning Systems				
1.1	Implementation of Regional Plans	✓	✓	See Section 5.2.5
1.2	Development of Aboriginal Land Council Land	✗	✗	n/a
1.3	Approval and Referral Requirements	✓	✓	See Section 5.2.5
1.4	Site Specific Provisions	✓	✓	See Section 5.2.5
1A Planning Systems – Place Based				
1.5	Parramatta Road Corridor Urban Transformation Strategy	✗	✗	n/a
1.6	Implementation of North West Priority Growth Area Land Use and Infrastructure Implementation Plan	✗	✗	n/a
1.7	Implementation of Greater Parramatta Priority Growth Area Interim Land Use and Infrastructure Implementation Plan	✗	✗	n/a
1.8	Implementation of Wilton Priority Growth Area Interim Land Use and Infrastructure Implementation Plan	✗	✗	n/a
1.9	Implementation of Glenfield to Macarthur Urban Renewal Corridor	✗	✗	n/a
1.10	Implementation of the Western Sydney Aerotropolis Plan	✗	✗	n/a
1.11	Implementation of Bayside West Precincts 2036 Plan	✗	✗	n/a
1.12	Implementation of Planning Principles for the Cooks Cove Precinct	✗	✗	n/a
1.13	Implementation of St Leonards and Crows Nest 2036 Plan	✗	✗	n/a
1.14	Implementation of Greater Macarthur 2040	✗	✗	n/a
1.15	Implementation of the Pyrmont Peninsula Place Strategy	✗	✗	n/a
1.16	North West Rail Link Corridor Strategy	✗	✗	n/a
1.17	Implementation of the Bays West Place Strategy	✗	✗	n/a
1.18	Implementation of the Macquarie Park Innovation Precinct	✗	✗	n/a
1.19	Implementation of the Westmead Place Strategy	✗	✗	n/a
1.20	Implementation of the Camellia-Rosehill Place Strategy	✗	✗	n/a
1.21	Implementation of South West Growth Area Structure Plan	✗	✗	n/a
1.22	Implementation of the Cherrybrook Station Place Strategy	✗	✗	n/a
2 Design and Place				
3 Biodiversity and Conservation				
3.1	Conservation Zones	✗	✓	See Section 5.2.5
3.2	Heritage Conservation	✓	✓	See Section 5.2.5
3.3	Sydney Drinking Water Catchments	✗	✗	n/a
3.4	Application of C2 and C3 Zones and Environmental Overlays in Far North Coast LEPs	✓	✗	n/a
3.5	Recreation Vehicle Areas	✓	✗	n/a
3.6	Strategic Conservation Planning	✗	✗	n/a

Direction		Applicable	Relevant	Not inconsistent
3.7	Public Bushland	x	x	n/a
3.8	Willandra Lakes Region	x	x	n/a
3.9	Sydney Harbour Foreshores and Waterways Area	x	x	n/a
3.10	Water Catchment Protection	✓	x	n/a
4 Resilience and Risk				
4.1	Flooding	x	x	n/a
4.2	Coastal Management	✓	✓	See Section 5.2.5
4.3	Planning for Bushfire Protection	✓	x	n/a
4.4	Remediation of Contaminated Soils	✓	x	n/a
4.5	Acid Sulfate Soils	✓	x	n/a
4.6	Mine Subsidence and Unstable Land	✓	x	n/a
5 Transport and Infrastructure				
5.1	Integrating Land Use and Transport	✓	✓	See Section 5.2.5
5.2	Reserving Land for Public Purposes	x	x	n/a
5.3	Development Near Regulated Airports and Defence Airfields	x	x	n/a
5.4	Shooting Ranges	x	x	n/a
6 Housing				
6.1	Residential Zones	✓	✓	See Section 5.2.5
6.2	Caravan Parks and Manufactured Home Estates	✓	✓	n/a
7 Industry and Employment				
7.1	Employment Zones	✓	✓	See Section 5.2.5
7.2	Reduction in non-hosted short-term rental accommodation period	x	x	n/a
7.3	Commercial and Retail Development along the Pacific Highway, North	x	x	n/a
8 Resources and Energy				
8.1	Mining, Petroleum Production and Extractive Industries	x	x	n/a
9 Primary Production				
9.1	Rural Zones	x	x	n/a
9.2	Rural Lands	x	x	n/a
9.3	Oyster Aquaculture	✓	x	n/a
9.4	Farmland of State and Regional Significance on the NSW Far North Coast	x	x	n/a