

28/06/2024

Mr Lee Carmichael  
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By email only: lee@jervisbaytownplanning.com.au

Dear Lee

**Scoping Proposal Feedback – 28 Bowen Street and  
34-38 Hawke Street HUSKISSON - Lot 1 Sec 5 DP 758530,  
Lot/s A, B, C DP 33476, 28 Bowen Street and  
34-38 Hawke Street, Huskisson**

Thank you for attending the meeting on 20 June 2024, to discuss your scoping proposal for a potential future Planning Proposal (PP) over Lot 1 Sec 5 DP 758530, Lot/s A, B, C DP 33476, at 28 Bowen Street and 34-38 Hawke Street, Huskisson (the subject site). This prelodgement letter summarises Council's feedback on the scoping proposal and issues that would need to be addressed, should you wish to prepare and submit a Planning Proposal (PP).

### **Current height controls**

The subject site currently has two building height limits in the SLEP 2014:

- 28 Bowen Street has a mapped height of buildings (HOB) of 7.5 m
- 34-38 Bowen Street is uncoloured on the HOB map overlay and hence has a height limit of 11 m under clause 4.3(2A).

### **Intended Outcome**

Based on the information provided to Council, it is understood that the PP would seek to increase the height limit over 28 Bowen Street to 11 m to facilitate a hotel and tourist resort development on the site, subject to a future Development Application.

### **Site Description and Context (including current applicable LEP provisions)**

The subject site is legally identified as Lot 1 Sec 5 DP 758530, Lot/s A, B, C DP 33476, at 28 Bowen Street and 34-38 Hawke Street, Huskisson. The subject site

- Has direct legal and practical access from Bowen Street and Hawke Street.
- Is bounded by Bowen Street to the north, an unformed lane to the east, a single storey dwelling to the south and is bounded by Hawke Street to the west.
- Is directly south of the White Sands Park.

- Is zoned R3 Medium Density Residential.
- Has an area of approx. 4,040 m<sup>2</sup>\*
- Is located adjacent to land zoned R3 Medium Density Residential and is directly opposite land zoned RE1 Public Recreation.
- Is mapped as being a Coastal Use Area and Coastal Environment Area.

### History of current building height controls

Prior to the preparation of the LEP 2014, building height controls largely sat outside the Local Environmental Plan (LEP) and were generally controlled via Development Control Plans (DCP's) and a provision in the previous Illawarra Regional Environmental Plan (REP) that enabled Council to consider development up to 11 m.

With the move to the new Standard LEP Instrument, Council was required to include 'height of building' controls in its new LEP. This occurred in LEP 2014 in two ways:

- Zones, areas or sites with height limits in existing DCP's were mapped on the Height of Buildings (HOB) map overlay.  
The 7.5 m HOB that currently applies to 28 Bowen Street was derived from Residential Development in Foreshore Areas – DCP 62, which in turn was derived from Council's Code to Control Building Height and Amenity of Waterfront Areas. The 7.5 m maximum height applied to the first residential lot back from the waterfront, hence applies to 28 Hawke Street.
- The 11 m height limit that applied to the remaining land under the Illawarra REP (including 34-38 Hawke Street) was carried over to the LEP via Clause 4.3 (Height of Buildings).

### Legal and Policy Framework

The Planning Proposal / LEP amendment process is set out in the Department of Planning & Environment's [Local Environmental Plan Making Guideline](#) and [Division 3.4 of the Environmental Planning and Assessment Act 1979](#).

As stated in the DPE Guideline, a Planning Proposal must have strategic merit and site merit to be progressed. Council's [Guideline for Proponent Initiated Planning Proposals \(PPs\)](#) includes a list of the current strategic planning documents to assist with strategic merit assessment. Council's Guideline also states that Council is more likely to support a PP request if one or more of the following criteria are met:

1. There is a clear error or anomaly in the LEP
2. Council is satisfied that the proposed amendment is minor and has sound justification
3. The proposal would not create an undesirable precedent
4. The proposal would provide considerable public/community benefit

### Scoping Proposal Referrals

In accordance with the Department of Planning & Environment's [Local Environmental Plan Making Guideline](#), the scoping proposal was referred to the following sections of Council and Government agencies.

| Referral recipient                           | Reason                                                                                                                                     |
|----------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------|
| Department of Planning and Environment (DPE) | Feedback for Strategic Merit and comment on any studies considered necessary to assess the strategic merit of the proposed LEP amendments. |

|                                         |                                                                                                                                                                |
|-----------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------|
| City Futures – Tourism                  | Comment on potential tourism impacts of the likely future development.                                                                                         |
| City Futures – Economic Development     | Consideration for required reports (i.e. feasibility reports) to support a future PP, preliminary assessment of likely economic impacts.                       |
| City Development – Development Services | Likely supporting reports required to demonstrate strategic and site merit. Any concerns regarding character, land use conflict and existing site development. |

Referral responses inform the strategic and site merit comments contained below.

### **Strategic Planning Comments**

The following advice is based on the scoping proposal and supporting information, the referral responses received, and our discussions to date.

#### ***Strategic merit***

- Any PP would need to include a detailed assessment of the strategic framework – refer to Council’s Guideline for Proponent-Initiated Planning Proposals (PPs).
- The relevant s.9.1 Ministerial Directions include, but are not limited to:
  - 1.1 Implementation of Regional Plans
  - 3.2 Heritage Conservation (including proximity to heritage-listed items)
  - 4.2 Coastal Management (including an assessment against the NSW Coastal Design Guidelines 2023 )
  - 5.1 Integrating Land Use and Transport
- The PP should demonstrate that it will not set an undesirable precedent, e.g. that could encourage heights to be increased in foreshore areas.
- The PP will also require a detailed assessment against the Illawarra Shoalhaven Regional Plan 2041, Shoalhaven 2040: Local Strategic Planning Statement, Shoalhaven 2032 Community Strategic Plan, Nowra-Bomaderry Structure Plan 2008, Shoalhaven Affordable Housing Strategy 2017 and Shoalhaven Growth Management Strategy.
- A detailed assessment against the NSW DPHI Local Environment Plan Making Guideline (August 2023).

Subject to addressing the above and reviewing the required technical reports and a detailed PP report, the proposed PP appears to have the required strategic merit to progress to formal assessment.

#### ***Site merit comments***

- The subject site currently contains an existing tourist development (two storey motel, restaurant, pool and at-grade parking). The site is cleared of any natural vegetation.
- PPs must demonstrate how the likely environmental effects (including economic, social and biophysical) of the planning proposal will be managed.
- The site is adjacent to residential properties.
- The PP would need to demonstrate that the proposed increase in the height limit from 7.5 m to 11 m will not unduly impact on:

- neighbouring properties, i.e. overlooking / loss of privacy, overshadowing and solar access, and land use conflict
- View corridors and broader visual qualities, e.g. from the foreshore area.
- The PP would need to demonstrate the services and infrastructure are adequate for the intended outcome.
- Refer to the recommended supporting studies outlined further in this letter.
- Any future development would need to consider and be consistent with Council's Development Adjoining Narrow Laneways – Interim Policy (POL22/23).

### ***Comments on proposed LEP amendment***

#### **Increase to mapped Maximum Height of Building (HOB)**

The scoping proposal indicates that an increase to the mapped Maximum Height of Buildings (HOB) mapping that applies to Lot 1 Sec 5 DP 758530 from 7.5 m to 11 m. That is, the proposal seeks to deliver a uniform height limit of 11 m across the subject site.

Should a PP ultimately proceed on this basis, consideration would be given to mapping the subject site in its entirety as 11 m.

### **Information to be submitted with the Planning Proposal (PP) request**

The following information would be required with a PP request:

- 1) Landowner(s)' Consent - [Link to Owners' Consent Form](#)
- 2) Planning Proposal Report, including a detailed assessment of strategic and site merit, and prepared in accordance with:
  - a) the statutory provisions under the EP&A Act and the DPE Guideline
  - b) section 3.2 of [Council's Guideline for Proponent-Initiated Planning Proposals \(PPs\)](#)
- 3) Supporting studies and other information
  - a) Site analysis plan
  - b) Massing Diagrams showing indicative building heights and 7.5 m and 11 m height planes
  - c) Shadow Diagrams
  - d) Visual Impact Assessment, including assessment of views from surrounding streets and public spaces, with consideration of Tenacity Consulting v Warringah [2004] NSWLEC 140. The assessment must be prepared by an appropriately qualified person.
- 4) A copy of this letter
- 5) Any agency consultation

PP requests must be submitted through the NSW Planning Portal. PPs that are illegible, unclear or not accompanied by all the required information specified in pre-lodgement advice will not be accepted for assessment.

If the PP request is accepted, an invoice for the applicable lodgement fee will be issued to the proponent or landowner. Assessment of the PP commences upon payment of the PP lodgement fee.

### **Council's Planning Proposal fees**

Based on our current understanding, the PP would be classed as *Standard* for the purpose of applying Council's planning proposal fees. The PP category may be revised to Complex, for example, if for any reason a DCP and/or Planning Agreement is required.

The applicable base fees to progress both a standard PP and complex PP from lodgement to finalisation are set out in Table 1 for the 2024/2025 financial year.

**Table 1 - Base PP fees for standard and complex PPs 2024/2025FY**

| <b>Standard<br/>PP</b> | <b>Fee #</b> | <b>Description</b>                | <b>Trigger</b>                    | <b>Amount</b>      |
|------------------------|--------------|-----------------------------------|-----------------------------------|--------------------|
|                        | 14849        | Lodgement                         | Lodgement of an adequate PP       | \$2,821.90         |
|                        | 14850        | Gateway Request                   | Council resolution to progress PP | \$14,750.95        |
|                        | 15892        | Exhibition & Statutory Processing | Favourable Gateway Determination  | \$5,643.75         |
|                        | <b>Total</b> |                                   |                                   | <b>\$23,216.60</b> |
| <b>Complex<br/>PP</b>  | <b>Fee #</b> | <b>Description</b>                | <b>Trigger</b>                    | <b>Amount</b>      |
|                        | 15894        | Lodgement                         | Lodgement of an adequate PP       | \$11,287.50        |
|                        | 14852        | Gateway Request                   | Council resolution to progress PP | \$29,500.80        |
|                        | 15895        | Exhibition & Statutory Processing | Favourable Gateway Determination  | \$22,575.00        |
|                        | <b>Total</b> |                                   |                                   | <b>\$63,363.30</b> |

**Notes:**

1. Other fees may apply (e.g. if a public hearing is required)
2. The above fees are for 2024/2025 FY and will increase from 1/7/2025
3. The above fees do not attract GST.

**Disclaimer**

Please note that this advice is based on the information you have provided with the scoping proposal. Should the proposal change or new information comes to hand, further advice must be sought from Council before submitting a PP request.

Following receipt and review of the PP request, additional issues may arise that are not detailed in this letter. However, you will be advised of this as soon as possible following the submission of a PP.

If you need further information about this matter, please contact Kaitlin Aldous, City Futures on (02) 4429 3570 . Please quote Council's reference 75770E/1 (D24/267999).

Yours faithfully



**Eric Hollinger**  
**Coordinator – Special Projects**