

Our Ref:230879

8 November 2024

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## Objection to Development Application – RA23/1002 (79 – 83 Princess Street & 120 – 122 Queen Street, Berry)

### 1. Executive Summary

This submission is in response to the Development Application for alterations and additions to the Berry Hotel, construction of a new accommodation building comprising of 31 units, and associated works located at 77-83 Princess Street and 120-122 Queen Street, Berry, and has been prepared by Barker Ryan Stewart on behalf of the Berry Forum. It is noted that a submission has previously been made by Barker Ryan Stewart on behalf of the Berry Forum regarding this proposal, dated 10 November 2023, and the application has since been amended and re-notified. As such, this submission seeks to make comment on the amended design.

A review of the amended proposal has identified several key concerns which include:

- Adverse impacts to heritage items and the heritage conservation area due to the scale and design of the development,
- Insufficient parking provided to cater for the increase in scale of the development,
- Inadequate loading/unloading facilities,
- Impractical and insufficient noise mitigation measures,
- Non-compliances with the applicable planning legislation and requirements, and
- The proposal continues to represent an overdevelopment of the site which has not been addressed through revised design and technical documentation.

These issues have been discussed in more detail below.

It is noted that these concerns are largely consistent with the previous submission made as the amendments to this proposal have not resulted in any meaningful changes to the likely impacts of the development. Furthermore, the amended proposal is not considered to have adequately addressed the reasons for refusal included in the determination issued by Shoalhaven City Council on 27 June 2024. As such, it is argued that this application should not be supported in its current form as it represents an overdevelopment of the site and has not suitably addressed or mitigated likely adverse impacts to the character or amenity of the area.

## 2. Introduction

This submission has been prepared by Barker Ryan Stewart on behalf of the Berry Forum (community consultative body for the Berry Region). This submission is in response to the amended plans and reports lodged as part of the appeal of the determination raised by the proponents to the NSW Land and Environment Court for the proposed alterations and additions to the Berry Hotel at 77 – 83 Princess Street & 120 – 122 Queen Street, Berry (Council reference number RA23/1002). It is understood that this application was refused by the Southern Regional Planning Panel on 27 June 2024, with the reasons for refusal largely relating to the non-compliance with the height limit, heritage requirements, stormwater, and parking requirements.

The proposed development comprises of alterations and additions to the Berry Hotel, demolition of an existing dwelling, construction of a new hotel accommodation building, consolidation into four lots, changes to the existing access arrangements, and associated parking and landscaping works on the subject site. Additionally, works are proposed on the adjoining Council owned land at 77 Princess Street to formalise the existing parking spaces. The applicant has made design changes to this proposal as part of the appeal, which includes the following:

### Accommodation building

- Removal of the second floor and roof top terrace.
- Minor reduction in the overall height.
- Minor increase of setbacks to the eastern elevation of the ground floor and first floor, and a minor reduction to the eastern setback of the basement elevation.
- Decrease in the total number of accommodation units from 33 to 31.
- Minor internal layout changes, including a reduction to the staff laundry and reception area, and an addition three units to the ground floor and two to the first floor.
- Allocation of two parking spaces for staff use.
- Removal of all ground floor terraces along the southern elevation that are west of the pedestrian entry.

### Existing hotel building

- Reduction in roof height of the outdoor dining pergola and bistro area.
- Minor change to the side setbacks of the outdoor dining pergola.
- Changes to the internal demolition, resulting in beams and corner posts of the existing walls to be retained.
- Portion of the existing heritage fence to be retained to allow for pedestrian access.

### Parking

- Relocation of the accessible parking spaces.
- Minor changes to the parking and pedestrian areas.
- Amended landscaping.
- Relocation of the OSD to the front of the basement entry.
- Dual use of parking spaces 24-28 as a loading zone between 7am and 11am Monday to Saturday.

An extract from the current site plan is provided in Figure 1 below to provide an overview of the proposed development.

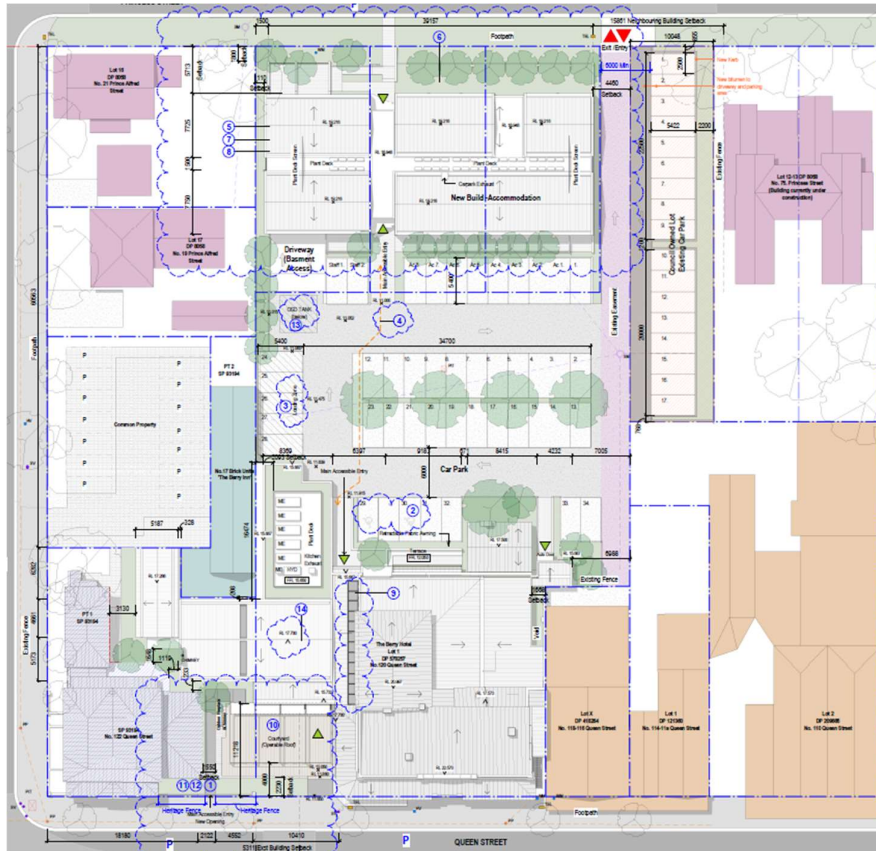


Figure 1: Extract from the Site Plan submitted with the DA, with changes circled in blue (H&E Architects, 2024)

### 3. Site Analysis

The subject site is comprised of seven lots, including a Council-owned lot, and is located along the main commercial street within Berry. The site is bordered by Queen Street to the north, Prince Alfred Street to the east, and Princess Street to the south, and contains several structures including the Berry Hotel and associated parking, the CBC building, and a dwelling. The included lots are as follows:

- 83 Princess Street (Lot 1 DP 342913), which is currently vacant
- 79-81 Princess Street (Lots 2-3 DP 342913), which currently contains a dwelling, and ancillary garage and shed
- 120 Queen Street (Lot 1 DP 578257), which currently contains the Berry Hotel
- 122 Queen Street (SP 93194), which currently contains a two storey commercial premises and the Berry Inn
- 77 Princess Street (Lot 1 DP 209665), which is a Council-owned parcel and currently contains an unlined gravel carpark

Queen Street operates as the main commercial centre of Berry, which provides a range of commercial and business opportunities connected with pedestrian pathways. Princess Street and Prince Alfred Street contain some commercial premises but are predominantly low-density residential development. The subject site and surrounding area contain several heritage items and the Queen Street Heritage Area, which contributes to the heritage character of the locality and wider area.

Figure 2 below is an aerial view of the subject site and surrounding area.



Figure 2: Aerial view of the subject site (outlined in red) and the council owned lot (outlined in blue). (Nearmap, 2024)

#### 4. Heritage

As seen in Figure 3 below, the subject site contains two local heritage items and is partially located within a heritage conservation area. The heritage items on the site include the Berry Hotel and the former CBC Bank Building as identified under schedule 5 of the Shoalhaven Local Environmental Plan 2014 (SLEP). Both heritage items are located along Queen Street and are incorporated into the Queen Street Heritage Conservation Area, along with several other heritage items on adjoining properties and the surrounding locality. The heritage items on the subject site include:

- Item 87: Two storey Victorian hotel and detached kitchen including *Acmena smithii* (Lilly Pillies -2) at 120 Queen Street; and
- Item 88: Former CBC bank including fence and trees at 122 Queen Street.

As required by Clause 5.10 of the SLEP, before development consent can be granted, consideration must be given to the effect of the proposed development on the heritage significance of the item or area concerned. This is further reinforced by Chapter 2 and Chapter N2 of the Shoalhaven Development Control Plan 2014 (SDCP), which outlines general controls for European heritage items and for the Berry Town Centre that predominantly relate to maintaining heritage items and ensuring that new development is compatible with the heritage character of the area. While changes have been made to the proposal to lessen its impact on the heritage items and conservation area, aspects of the development and the built form remain inconsistent with the heritage character of the area and detract from the heritage item and conservation area.



Figure 3: Extract from the ePlanning Spatial Viewer Heritage mapping (2024)

#### Alterations and additions along Queen Street

The Berry Hotel, including the detached kitchen and two Lilly Pillies (*Acmena smithii*), is located at 120 Queen Street. The former CBC Bank Building, including fencing and trees is located at 122 Queen Street. Both items are located within the Queen Street Heritage Conservation Area and contribute to the heritage character of the area. The State Heritage Inventory notes that this conservation area "should be managed so as to retain its historic, aesthetic, and social values" which specifically includes the retention of "the continuity and character of the streetscapes". This heritage conservation area (HCA) includes several other heritage items, including the Berry Museum, former E S and A Bank and garden at 135 Queen Street (item 90), which is a state heritage item located directly across the road from the subject site.

It is noted that the revised Heritage Impact Statement (HIS) states that the Lilly Pillies "have been reduced to stumps" with no further discussion provided, which suggests that they are dead/removed. However, the provided Arborist Report identifies tree 24 as "*Acmena smithii* x 2 (stumps with epicormic branches/foliage being hedged – low retention. Not considered a tree!)" Given that the Lilly Pillies are included in the heritage listing for 120 Queen Street, Berry, it is unclear why the HIS has not provided any further discussion or assessment of the proposed removal of the Lilly Pillies and why the Arborist Report has considered these trees to have 'low retention value' despite the heritage listing and it having good vitality on a scale of good, fair, poor, and dead as identified in *Annexure A: Observations as seen on the day of inspection of trees*. It is also noted that the State Heritage Inventory listing for the trees noted that "cuttings of sucker shoots (at base of trees) should be taken for future planting as should the collection of seeds", which suggests that the retention of these trees is highly desirable. Furthermore, the Lilly Pillies are shown in *Annexure B: Tree location plan* in the Arborist Report but are not included in the existing tree plan provided as part of the Landscape plan set. The HIS, Arborist Report, and Landscape plan should be amended to be consistent and provide a more detailed consideration of the impact to the Lilly Pillies, and consideration should be given to the inclusion of Lilly Pilly plantings into the proposed landscaping areas.

The amendment to the height of the roofline of the bistro and outdoor dining area brings the development more in line with the streetscape (see Figure 4 below), however, the concerns regarding the buffer

between the CBC building and the proposed additions to the Berry Hotel remain. The setback of the outdoor dining pergola has been increased to 2.122m from 1.25m, which does not fully address the separation issues. This narrow separation, in addition to the heritage fence which extends across the CBC building and part of the pergola and the proposed extension of the Berry Hotel extending behind the CBC building, results in the proposed development effectively connecting both structures without sympathetically aligning with either building (see Figures 4 & 5). It is noted that the Berry Hotel and CBC building have long stood independently in the streetscape and this is reflected in the existing generous setbacks of the Berry Museum and former E S and A Bank and garden directly across the road at 135 Queen Street. This building separation between heritage items positively contributes to the streetscape by providing visual interest, highlights the heritage items, provides additional opportunities for landscaping along the street front, and maintains the heritage character of the area. The proposed alterations are therefore inconsistent with the established streetscape of this area, and the development risks overcrowding the heritage items.

The visual disconnect is further emphasized through the use of material and finishes that are inconsistent with the heritage structures. Timber cladding and galvanised steel cladding for the roof is proposed, while the existing Berry Hotel utilises red brick, black trim around windows and walls, and a red roof feature, and the CBC building features tan-coloured rendered walls with a darker yellow/tan roof (see Figure 6 & 7). The design, materials, and colour scheme of the proposed additions are significantly different to the Berry Hotel and CBC building and do not maintain the visual importance of heritage items as required by Section 5.2, Chapter N2 of the SDCP. The design is not considered to be sympathetic to the heritage and aesthetic values of the area and has not adequately considered the impact of the proposal on the heritage significance of the item. As such, the proposal is not consistent with the relevant heritage requirements with the SDCP or Clause 5.10 of the SLEP.

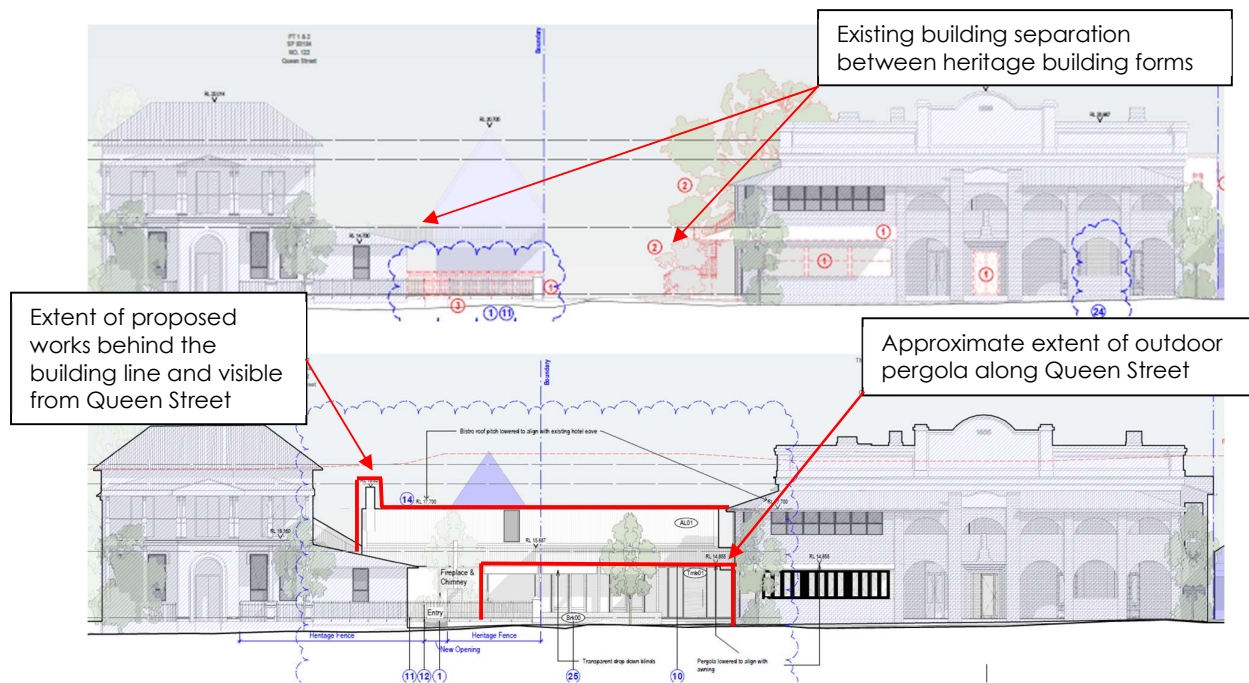


Figure 4: Extract from the elevation plans, showing the existing elevation (top) and proposed elevation (bottom) (H&E Architects, 2024)

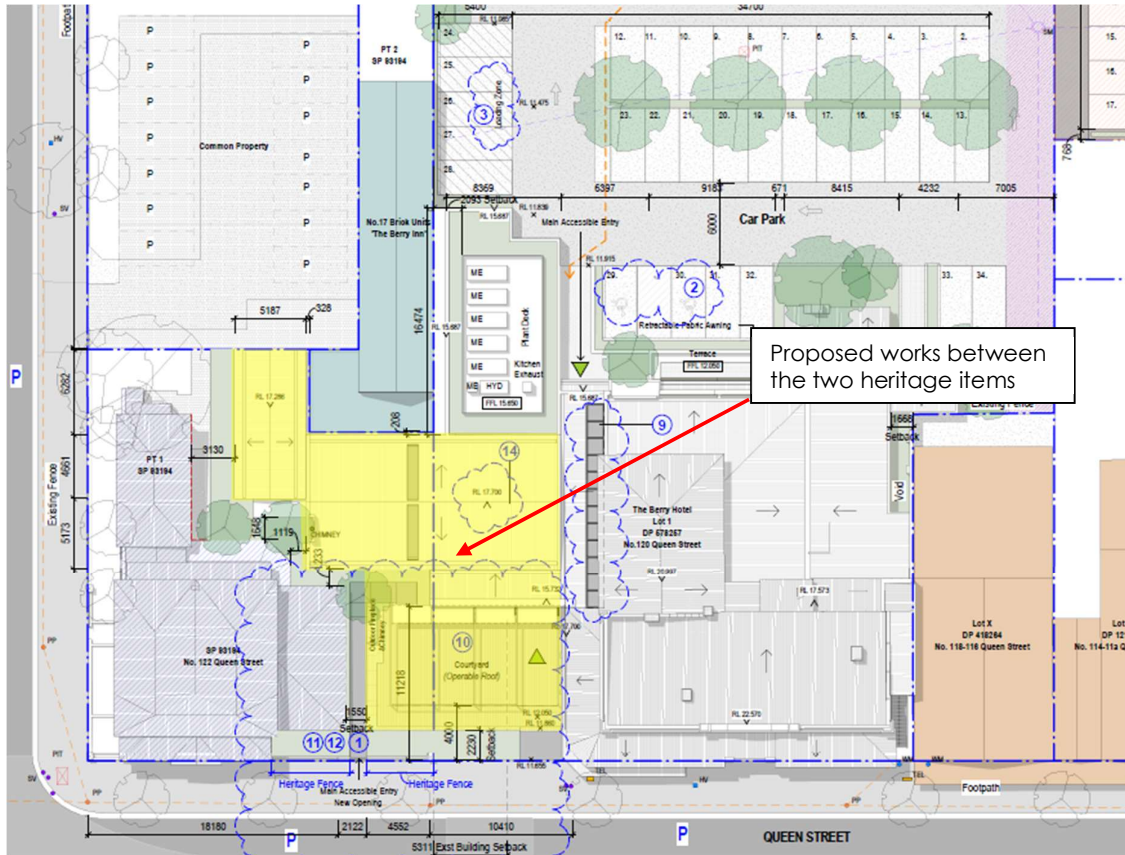


Figure 5: Extract from the site plan, identifying the development area between the Berry Hotel and CBC building (H&E Architects, 2024)



Figure 6: Images of the Berry Hotel and CBC building, sourced from the Heritage Impact Assessment (John Oultram Heritage & Design, 2024)



Figure 7: Extract from the materials and finishes plan (H&E Architects, 2024)

#### Accommodation building along Princess Street

The accommodation building is located within the south of the subject site with orientation towards Princess Street. Whilst this area of the subject site does not contain any heritage items and is not included within the heritage conservation area, the accommodation building remains close to heritage items on adjoining sites in addition to those on the subject site as seen in Figure 3 above. These items include a former Federation weatherboard shop at 21 Prince Alfred Street (item 50) on the adjoining property to the east, a Federation Weatherboard Cottage at 71 Princess Street (item 545), the former two storey Anglican rectory and garden at 68 Princess Street (item 66), and St Luke's Anglican Church at 68A Princess Street (item 68) across the road from the subject site, among others. Therefore, any development along this frontage should be complementary to the surrounding heritage items and the heritage character of the area.

It is noted that Shoalhaven City Council is currently in the process of developing a Planning Proposal for a new Princess Street Heritage Conservation Area and accompanying DCP chapter. This planning proposal seeks to add the new heritage conservation area (HCA) and several heritage items in the area into schedule 5 of the SLEP. While the confirmed boundaries of the proposed HCA are not yet available, previously published information shows 79-83 Princess Street as being included within the HCA along with other heritage and non-heritage sites along Princess Street. As of 11 October 2024, the initial review and community consultation of the Planning Proposal has been completed, with the Planning Proposal to be submitted to the Department of Heritage in the coming month. The initial draft of the accompanying DCP has been started and is to be finalised with community consultation to occur in the coming months. While the Planning Proposal and DCP chapter is still in the relatively early stages, it is indicative of the clear heritage character of the area and suggests that a more thorough assessment of the heritage character is appropriate for development along Princess Street.

The amendments to the design of the accommodation building, such as the removal of the second floor



and the change to the roof pitch, have assisted in minimising the impact of the development, particularly from the pool and roof-top terrace area. However, these design changes do not result in any large changes to the height or setbacks of the building, and therefore do little to reduce the overall bulk and scale of the accommodation building. It is noted that the change to the roof design will also increase the height of the eastern elevation, which faces the single storey heritage listed shop at 21 Prince Alfred Street. Additionally, these changes are not considered to be sufficient from a heritage perspective and the proposal is not sympathetic to the heritage character of the area. The revised building design will visually dominate the streetscape, and the conflicting materials and colour scheme will unnecessarily detract from the surrounding items.

The proposed accommodation building will present to the street as a medium density development, akin to a row of town houses, due to the protruding internal walls and privacy screening that visually divides the building (see Figure 8 & 9 below). This design is significantly different to the heritage and non-heritage development surrounding in the area, noting that the area is comprised of predominantly low-density forms. The surrounding area, particularly Princess Street, does not accommodate terraced housing or other similar built forms which leads to the proposal being visually distinct from surrounding developments. Additionally, the vertical features of the proposal, such as the protruding walls and vertical privacy screens, contribute to the medium-density aesthetic and modern design of the proposal. Many two-storey heritage items in the area use horizontal design features, such as wrap-around verandas, which is also reflected in many non-heritage developments in the area though verandas, increased setbacks for upper floors, and/or material changes between storeys. These design attributes have not been considered for the proposed accommodation building, and as such the design provides no connection to the surrounding heritage character of the area. Due to the scale and location of this proposal along Princess Street, the proposal would visually dominate the streetscape and become a main focal point, as seen in Figure 8 below. This would overwhelm the heritage items in the immediate area, including the heritage item on the adjoining site to the east, and is therefore not considered to be sympathetic to the heritage character of the area.

This disconnect between the proposed accommodation building and surrounding heritage character of the area is further exacerbated by the proposed materials and finishes, and the colour scheme. Most heritage items in the area utilise a natural red brick or painted weatherboard along the external façade, with the colour scheme often incorporating the natural red colour of the brick or yellow or blue tones. However, the proposed development seeks to use natural timber cladding, painted weatherboard, and painted brick, with the colour scheme being natural timber, and white/grey (see Figure 10 below). While elements of this design, such as the use of painted weatherboards, provides some connection to surrounding heritage items, the colour scheme and material choices as a whole make the proposal appear as distinctly modern with no connection to surrounding heritage items or the heritage character of the area.

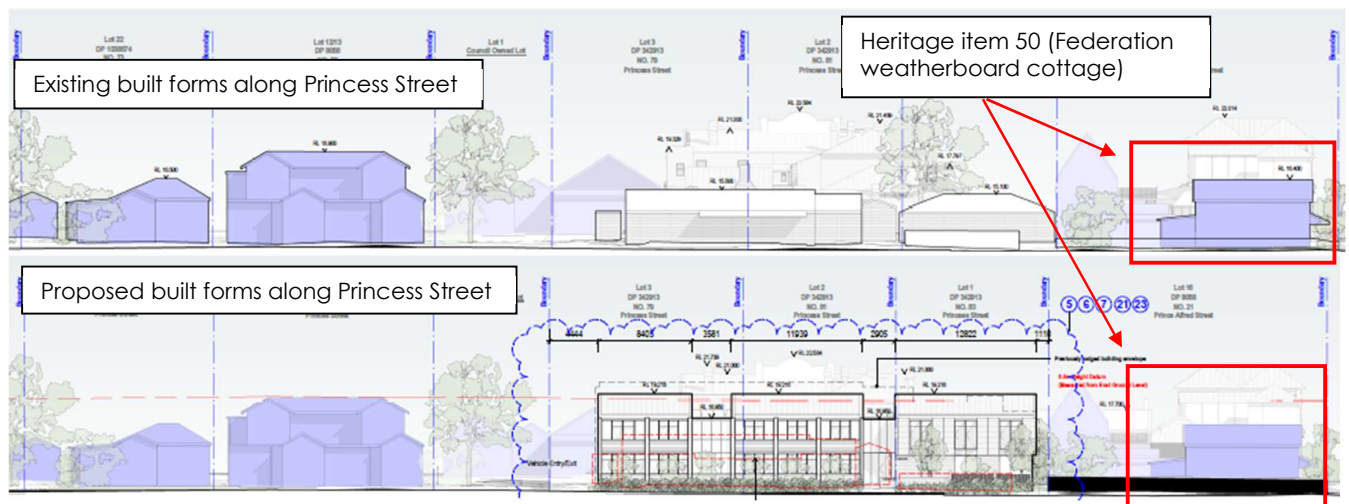


Figure 8: Extract from the Princess Street elevations, with the existing elevations (top) and proposed elevations

(bottom) (H&E Architects, 2024)

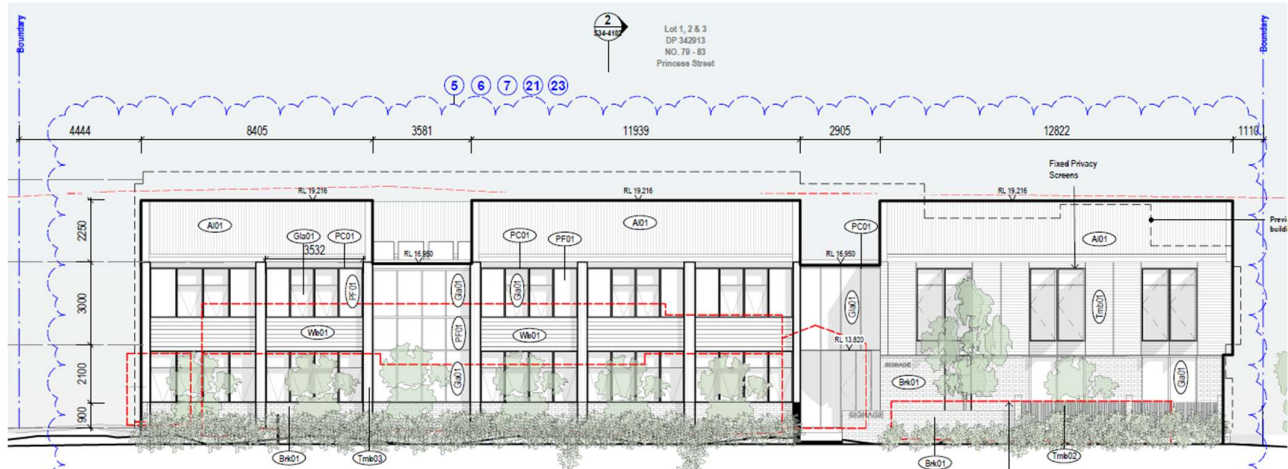


Figure 9: Detailed elevations of the accommodation building (H&E Architects, 2024)



Figure 10: Extract from the materials and finishes plan for the accommodation building (H&E Architects, 2024)

### 5. Development Inconsistencies with the Shoalhaven Character Assessment Report

The amended design remains generally inconsistent with the desired future character statement for the area outlined in the Shoalhaven Character Assessment Report 2020 (SCAR), noting that the built form of the accommodation building and the inconsistency with the heritage character are the main concerns.

The SCAR notes that one of the elements to improve is that “new developments [are] to be sympathetic to heritage, rural and fine-grain character, ensuring cohesiveness to the heritage core’s built-form attributes”, while one of the elements to retain is “consistent heritage style buildings, materials, colour palette, and detailing...[and] formal and well-kept landscaping and maintenance”.

It is acknowledged that the SDCP does not specifically require development to comply with the future desired character statements in the SCAR, however, the objectives of Chapter N2: Berry Town Centre within the SDCP are consistent with the key considerations of the SCAR, particularly in regard to ensuring development is complementary to the heritage character of the town and retaining the visual importance of heritage items. Given this, it would not be unreasonable to expect a development to be consistent with the SCAR. As discussed above, the proposal’s design, materials, and colour scheme are not sympathetic to, or cohesive with, the heritage character of the area or the streetscape character of the area. Based on this, the proposal is inconsistent with both the SCAR and the specific area controls within Chapter N2 of the SDCP and should not be supported.

## 6. Traffic and Parking Impacts

BRS have calculated the parking requirement for the proposal as follows:

|  | Existing          | Additional:<br>DCP<br>requirement | Additional:<br>TIA parking<br>rate | Total = TIA<br>parking rate<br>+ existing | Total =<br>DCP +<br>existing |
|--|-------------------|-----------------------------------|------------------------------------|---|------------------------------|
| Licensed floor area                      | 660m <sup>2</sup> | 381m <sup>2</sup>                 | 381m <sup>2</sup>                  | 1041m <sup>2</sup>                        | 1041m <sup>2</sup>           |
| Ancillary Office GFA                     | 20m <sup>2</sup>  | 123m <sup>2</sup>                 | 123m <sup>2</sup>                  | 143m <sup>2</sup>                         | 143m <sup>2</sup>            |
| <b>Parking</b>                           |                   |                                   |                                    |   |                              |
| Pub                                      | 9                 | 76                                | 19                                 | 28  | 85                           |
| Staff, offices, manager<br>Accommodation | 0                 | 3                                 | 3                                  | 3   | 3                            |
| Total                                    | 14                | 17                                | 17                                 | 31  | 31                           |
| <b>Total</b>                             | 23                | 96                                | 39                                 | 62  | 119                          |
| <b>Parking proposed</b>                  |                   |                                   |                                    | 67  | 67                           |
| <b>Difference</b>                        |                   |                                   |                                    | +5  | -52                          |

The site currently contains 23 parking spaces, which do not appear to be allocated to specific uses, and the proposed development seeks to provide an additional 44 parking spaces, resulting in a total of 67 parking spaces. This does not include the 17 parking spaces formalised on the council-owned land as part of this proposal.

The addendum to the Traffic Impact Assessment (TIA) provided with the application notes that the proposed development is relying on the parking credit from the existing development, and has put forward a parking rate of 1 parking space per 20m<sup>2</sup> of licensed floor area instead of the 1 per 5m<sup>2</sup> required under section 5.1, Chapter G21: Car Parking and Traffic within the SDCP for the additional floor area proposed based on a parking survey carried out. It is noted that there is no guarantee that a parking credit would apply as this is subject to Council’s assessment, and that the SDCP requires any alternative parking requirement put forward must include comparisons of other similar clubs/hotels in similar locations. No such comparisons have been provided, and therefore the proposed parking variation does not comply with Council’s requirements. While a parking credit is not wholly unreasonable, there are concerns that the current parking arrangements are insufficient for the existing use. Based on the parking rate of 1 to 20m<sup>2</sup> put forward by the applicant, the proposal currently has a demand of 33 parking spaces, which exceeds the current provision of 23 parking spaces. Furthermore, the 33 parking spaces is only based on the licensed floor area (LFA) and does not take into consideration the existing accommodation or office uses. Given that this parking rate was determined through a survey of the number of patrons and their transport methods to the Berry Hotel, it would be reasonable to assume that some patrons are currently having to

use off-site parking areas due to the existing parking shortfall. This suggests that the existing parking arrangements are already insufficient, and there are concerns that applying this parking credit and approving the development in its current form would, at a minimum, perpetuate the existing parking shortfall.

If the parking credit is applied, then a DCP compliant design would require a minimum of 119 parking spaces, resulting in a shortfall of 52 parking spaces based on the current design. If Council's parking rate was applied to the existing development as well, then a total of 243 parking spaces would be required, resulting in a shortfall of 176 parking spaces.

As discussed above, the proponent's traffic engineers have put forward a parking rate of 1 parking space per 20m<sup>2</sup>, which would result in an additional 19 parking spaces being required, or 28 parking spaces for the hotel in total. The Plan of Management and amended Acoustic Report provided with this application state that the Berry Hotel has a capacity of 450 patrons. Based on the travel mode survey conducted within the TIA, 23.8% of patrons on Saturday and 26.7% of patrons on Sunday drove to the hotel (not including passengers). If these rates remain consistent for the current proposal, then 107 – 120 car parking spaces would be required for the Berry Hotel at maximum capacity. It is noted that this calculation does not include the parking requirements for the accommodation rooms or ancillary offices, and therefore the proposed 67 car parking spaces is inadequate for the proposed development. It has been noted within this application that the Berry Hotel seeks to continue appealing to tourists, and therefore it would not be unreasonable to assume that a higher-than-normal proportion of patrons would be accessing the site by car during busy periods, further expanding the demand for parking spaces. Under section 5.10 in Chapter N2: Berry Town Centre of the SDCP, development of the Berry Hotel is to include on-site parking that is "sufficient for the tourist/commercial component of the development on this site". The proposed development does not satisfy this requirement and therefore should not be supported in its current form.

Several concerns raised in the previous submission lodged regarding this proposal by BRS on behalf of the Berry Forum on 10 November 2023 have not been addressed or satisfied by the amended designs. These include:

- The potential for buses carrying tour groups or guests attending events at the Berry Hotel (such as weddings) has not been considered, and no bus parking provision has been made. Nor is it likely that a bus could enter and exit the site in a forward direction.
- The removal of the vehicle access to Queen Street will direct all ingress and egress to Princess Street, and the potential impact of this on the surrounding road network has not been sufficiently addressed.
- No updated assessment of the potential number of vehicle trips per hour has been provided so the accuracy of this remains unclear, especially given that there has been an updated parking survey which found that most patrons arrived by car (drove and parked or dropped off). Additionally, the previous assessment of +20 vehicles in peak hour is inconsistent with the updated Acoustic Report's estimation of +17.

Further to this, the following issues have been raised upon review of the Loading Dock Management Plan (LDMP) and updated parking assessment:

- The identified loading zone is located over parking spaces 24 – 28 and is to be kept clear between 7am and 11am Monday to Saturday and will be signposted to reflect this. However, beyond signposting, no other management strategies have been put forward to demonstrate how these parking spots will be kept clear during this time, and it would be unrealistic to assume that signposting alone would be sufficient to ensure that the parking spaces identified are clear during this time. This is inconsistent with section 6.4, Chapter G21 of the DCP which requires service areas (such as loading docks) to be able to operate independently of other parking areas.
- The LDMP has included swept paths for a small rigid vehicle only, however it is noted that section 6.3, Chapter G21 of the SDCP requires commercial and industrial development with a floor area greater than 500m<sup>2</sup> to include minimum turning paths for AS2890.2 Heavy Rigid Trucks, 19.0m semi-trailer, and turning circles to accommodate a 14.5m rigid bus where bus access can be expected. This has not been provided.
- The LDMP states that waste collection and deliveries will occur 12.25 times a week and will be

completed by a small rigid vehicle (6.4m length x 2.4m wide) only. However, the previously provided waste management plan (WMP), which has not been updated to support the amended design, states that the vehicles to be used for waste collection will include a front or rear load compactor vehicle with a maximum length of 10.5m for general waste, flatbed truck with an overall length of 7.5m for food waste, and a rear loader with an overall length of 8.5m for recyclables. No swept paths for these larger vehicles have been provided, and it appears unlikely that they could access the site. Additionally, given the amount of waste expected to be generated by the development as outlined in the WMP, a small rigid vehicle for waste collection and deliveries is considered unrealistic and impractical.

- The LDMP states that reversing manoeuvres are not permitted when exiting the loading dock, while elsewhere it states that reversing manoeuvres are to be performed under supervision. The reason for the restriction on reversing manoeuvres is unclear, though it is assumed that it is related to the Acoustic Report, however the practicality of this is questioned given that reversing manoeuvres would be expected, even if not strictly necessary based on the provided swept paths.
- No management of parking allocation for the accommodation building, staff, and patrons of the Berry Hotel has been provided.
- The parking schedule within section 5.1, Chapter G21 of the SDCP requires that provision be made for emergency vehicles to gain ready access to the club/pub. No discussion of this has been provided, and swept paths for larger vehicles (such as a fire truck) have not been provided so it is unclear if suitable access is available.
- No consideration has been given to access of the existing right of carriageway for commercial vehicles (including deliveries and waste collection) for adjoining properties which currently use this accessway. There are concerns that the proposal would unreasonably restrict the number and size of vehicles which utilise this access, and would therefore adversely impact operation of the existing businesses.

## 7. Acoustic Impact

An amended Acoustic Report has been provided to support the amended proposal; however, it appears that the amendments to this report are minimal and have not significantly addressed concerns relating to the scale of the redevelopment and its ability to comply with the recommendations of this report. It is noted that the acoustic testing carried out has not been updated, meaning that the current report continues to rely on the data collected from 8 – 15 November 2022. This is despite there being no data collected from logger B during this testing period and this period not being during peak tourist season, which typically aligns with school holidays. The amended report has provided more data in the body of the report and additional discussion on some matters, such as sleep disturbance, but has not provided any significant changes to the recommendations.

There are a number of noise exceedances in the tables for the scenarios modelled, which have not been discussed beyond a short note to say that 1 – 4dB exceedance is not typically perceptible to a person with normal hearing, would only occur when the venue is at full capacity, and that this will not have an adverse impact on the amenity of the area. However, it is noted that this exceedance appears to be beyond 1 – 4dB in some scenarios, with Table 15 in particular showing an exceedance of up to 12 dB. No assessment of this potential impact has been addressed or considered. The statement that the proposed development is unlikely to be occupied at maximum capacity is an unfounded assumption that, while possible, is not guaranteed. It is also noted that the adopted source noise modelling utilised in the report considers live music as a 2-piece band but does not consider any larger bands or amplified music. If the proposed development cannot meet maximum capacity and comply with the noise impact requirements then this would suggest that the proposal should be reduced in scale.

The current Acoustic Report also notes that compliance is expected to be achieved only if the provided recommendations are complied with. The recommendations for the Berry Hotel include:

- *All windows and doors (except lounge bar and bistro) should remain closed except as used for entry and exit*
- *During live music, all windows and doors should remain closed, except as used for entry and exit.*
- *Lounge bar and bistro doors and windows may be open during daytime and evening hours only*

(7am to 10pm), provided live music is not occurring. These doors and windows are to be closed between 10pm and 7am.

- The Sports Bar Terrace should have a solid barrier of at least 1.8m in height that surrounds the terrace. Note: This does not appear to be reflected in the current plans
- Noise testing to be carried out after construction to determine if further acoustic treatments are required. Suggested acoustic measures include tape on speakers of gaming machines or further restricting patron capacity.
- Patron capacities are not to exceed the maximum outlined in Table 1 of the Acoustic Report (see Figure 11 below). Note: based on this table, the Berry Hotel has a maximum capacity of 450 patrons, excluding staff

While there have been some changes to the recommendations, there are still major concerns that these recommendations are not practical and therefore unlikely to be implemented. The requirement for additional noise testing after construction does not guarantee that any acoustic measures required by this testing can be implemented without redesign or further construction works that require subsequent modifications to this proposal. Other mitigation measures suggested that do not require construction works including “reducing noise from gaming machines i.e. placing tape on speakers” and capacity restrictions that would require constant monitoring and are not considered practical long-term solutions. If the information currently available for this proposal is not sufficient to confirm that the recommendations alone are sufficient to mitigate potential noise impacts, then the application should not be supported until further studies, mitigation measures, and/or a redesign of the proposal has been provided. Additionally, the closure of all windows and doors except for entry and exit would be difficult to monitor and enforce, especially during busy periods where it would be reasonable to expect that doors would be in frequent use. It is queried if ventilation and internal climate control has been adequately considered given these recommendations will require windows to be sealed and closed.

Further recommendations for the accommodation buildings have been provided which also raise some concerns, including:

- Accommodation room terraces should not be occupied after 10pm
- Solid barriers surrounding the accommodation room terraces should be at least 1.5m high. Note: This does not appear to be reflected in the current plans

While this appears to be more achievable than the previous design due to the removal of the rooftop terrace and pool area, there are still concerns about the scale of the development if restrictions on the use of accommodation room terraces and the inclusion of a solid barrier around the terraces is required to comply with noise regulations. Given that the proposed accommodation rooms are associated with the Berry Hotel, which operates until 2am Monday to Saturday, it would be expected that the terraces and other common areas of the hotel might be used after 10pm and would be difficult for staff to monitor.

| Sports Bar with TAB         | Lounge Bar and Dining   | Lounge Terrace | Bistro and Dining Pavillion             | Pergola Outdoor Dining | Sports Bar Terrace | Lounge Room (inc gaming area) | Private Dining Room |
|-----------------------------|---|----------------|---|------------------------|--------------------|-------------------------------|---------------------|
| 100 patrons with live music | 105 patrons <sup>1</sup>  | 15 patrons     | 80 patrons <sup>1</sup> with live music | 80 patrons             | 20 patrons         | 20 patrons                    | 30 patrons          |
| Notes: 1.                   | The northern doors of the bistro and the eastern doors of the lounge bar are expected to remain open. |                |   |                        |                    |                               |                     |

Figure 11: Patron capacity for the Berry Hotel (Koikas Acoustics, 2024)

## 8. Access Design

The architectural plans have been amended to show a continuous path of travel between the Berry Hotel and accommodation building, however as this pathway still intersects the car park and has not been accompanied by an updated Access Report, it is not clear if this design has satisfactorily addressed the

previous access concerns raised in the submission by BRS on behalf of the Berry Forum, dated 10 November 2023, and therefore these concerns are reiterated. These comments have been copied below for clarity:

The Access Report has been reviewed and queries raised around the availability of access between the Pub and the Hotel accommodation building. It appears that a person would be required to use the car park aisle to exit the 'Main Accessible Entry' at the Pub and travel through the car park aisle to reach the 'Main Accessible Entry' in the Hotel accommodation building.

Further consideration of the Ground Floor plan and access via the central carparking reveals

- The only path of travel denoted on the map is through the pub building.
- No pedestrian pathway 1200mm is provided as per recommendations for best practice in the access Report.
- The Main Accessible Entry (Accommodation) to Main Accessible Entry (Pub) continuous accessible path is not marked.
- Main Accessible Entry to Main Accessible Entry is not direct but involves dog legs along the traffic movement aisles which:
  - cross the EW traffic movement aisle;
  - face oncoming traffic in the NS traffic movement aisle;
  - move behind the two accessible carparks (where drivers might reasonably be expected to have reduced capacity to see a pedestrian);
  - obstruct vision of oncoming cars along WE traffic movement aisle at the next dogleg;
  - cross the traffic movement aisle immediately in front of the loading dock where all deliveries are made and from where all waste is collected, further obstructing view of oncoming traffic

It does not appear that a suitable accessible path of travel is provided by way of a pedestrian path between the Pub and new accommodation building which will impact the safety of persons using the site that require accessible path of travel. We note this is at odds with the 'Best Practice Options for Consideration' provided in the Access Report submitted with the DA that identifies the following

*We recommend a best practice approach to accessibility that goes beyond minimum standards and embraces the intent of the DDA. The following measures will promote inclusion and participation for all users.*

#### *Accessways*

*We recommend that the accessible path of travel be a minimum 1200mm wide to comply with AS1428.2. Wider pathways will allow easy access for more people who have a permanent disability, people with a temporary disability, people pushing prams and elderly people using walking frames and the like. This is in keeping with the principles of Universal Design. For or a wheelchair and a pram to pass 1500mm is required and for two wheelchairs to pass requires 1800mm.*

## **9. Built form Impacts to Princess Street**

In addition to the built form impacts discussed in the heritage section above, the previous Acoustic report required 1.8m terrace walls around each of the terraces, while the amended Acoustic Report has reduced this to a 1.5m high wall and the amended design has reduced the number of terraces along the Princess Street elevation (see Figure 12 below). As detailed in the Acoustic Report, the acoustic wall will need to be constructed of solid materials. Additionally, the front setback of the ground floor terraces fronting Princess Street has been reduced from 2.06m to 1.8m. This reduction in the number and scale of the acoustic walls along Princess Street is an improvement, however the remaining walls are still a concern.

No acoustic walls have been depicted in the amended architectural plans or 3D renders of the proposal, and do not appear to have been considered in the Heritage Impact Statement (HIS). Additionally, the architectural plans show the partial demolition and replacement of an existing timber fence across the intended location of the acoustic walls, which the HIS states that, along with the proposed landscaping, will "maintain the streetscape setting to heritage items and wider streetscape". This suggests that no consideration of the visual impact of the acoustic wall on the streetscape or heritage character of the

area has been undertaken, which should be addressed before any further assessment or determination. Additionally, it is noted that the acoustic walls are not consistent with front in the area or surrounding residential development. Section 5.1, Chapter N2 Berry Town Centre states that properties that face Princess Street should be used for housing and should complement the residential streetscape. Residential fencing along a street frontage in the surrounding area is typically no more than 1.2m high and is not of solid material (such as Colourbond or masonry construction). As such, the replacement of a residential-style fence with the required acoustic wall is not consistent with the SDCP.



Figure 12: Extract from the Acoustic report identifying the location of acoustic walls in red (Koikas Acoustics, 2024)

## 10. Conclusion

The subject site is located within the commercial centre of Berry and the Queen Street Heritage Conservation Area, and therefore contributes to both the commercial character and the heritage character of the area. The rear of the site fronts Princess Street, which is a predominantly residential area and contains a number of heritage items despite not being within a heritage conservation area. The Berry Hotel and CBC building on the subject site are local heritage items, which are to be maintained as part of this proposal. As such, it is important for the proposed development to acknowledge and complement the existing heritage items and character of the area, while still responding to the commercial character of Queen Street and the residential character of Princess Street. The proposed development represents a significant intensification of the site, and concerns relating to heritage, parking, noise impacts, and the built form make it clear that this proposal is an overdevelopment of this site and should not be supported in its revised form.

The proposed development has not been designed to reflect the design features or provide visual connection to surrounding heritage items and does not respect the heritage character of the conservation area. In particular, the proposed additions along Queen Street are inconsistent with the heritage items on either side and do not respect the heritage character of the area. The accommodation building along Princess Street is likewise inconsistent with adjoining heritage items, and the built form will visually dominate the streetscape and remains inconsistent with the density and character of that area.

In addition to this, the supporting assessments have not provided an appropriate assessment of parking



spaces which factors the potential number of patrons that can be accommodated within the site, and the impracticality of the loading dock further reflects the overdevelopment proposed. In its current form the proposal would have adverse impacts on parking availability in the Berry town centre and is likely to result in internal conflicts within the parking allocation between the Berry Hotel and the tourist accommodation proposed. Pedestrian connection through the site remains a concern as no amended access report has been provided.

The increase in scale and capacity of the proposed development will result in an increase to noise impacts which has not been suitably addressed. The proposed mitigation measures are impractical or insufficient and it is considered likely that the development will breach the legislative noise regulations.

In conclusion, the proposed development has not adequately addressed or mitigated the likely impacts of this development and represents an overdevelopment of the site. The changes made to the design are insufficient, and there remains a number of significant non-compliances with the SLEP and SDGP as outlined in this letter. As such, it is clear that a significant redesign to reduce the size and scale of the proposal would be required to achieve compliance with the relevant requirements. Therefore, the proposed development is not supported by the Berry Forum and should not be supported by the Consent Authority.

Kind regards,

Samantha Krossman | Town Planner  
**Barker Ryan Stewart Pty Ltd**