



## **FOR INFORMATION:**

### **Legal Challenge to Planning Proposal PP023**

### **Anson Street, St Georges Basin**

### **Proposed Amendment to Height of Buildings Map**

### **in Shoalhaven Local Environmental Plan 2014**

#### **Overview**

A separate legal challenge has been lodged in the NSW Land and Environment Court (L&EC) against the decision made by the NSW Minister for Planning to grant the initial Gateway approval for Planning Proposal PP023 to amend the Height of Buildings Map in the Shoalhaven Local Environmental Plan (LEP) 2014.

The legal challenge was lodged on 22 December 2017, two days after the commencement of the exhibition of the planning proposal which ran from Wednesday 20 December 2017 to Friday 2 February 2018.

This legal challenge was not publicised until after the completion of the exhibition, to avoid further complicating the planning proposal exhibition process, and confusing the community given the range of matters related to site that are currently ongoing.

#### **The Legal Challenge to the Planning Proposal**

The applicant claims that Council failed to comply with the Ministerial Directions under Section 117 of the Environmental Planning and Assessment (EP&A) Act 1979 and requests that the decision by the Minister (to allow the process associated with Planning Proposal PP023 to proceed further) be suspended until such time as Council complies with the Ministerial Directions.

#### **What are Ministerial Directions?**

Section 117 of the EP&A Act sets out that the Minister can give directions to councils in relation to the preparation of an LEP (or a planning proposal to amend an LEP). The Minister has prepared a set of directions which relate to a range of issues – the directions can be viewed on the NSW Department of Planning's website at <http://www.planning.nsw.gov.au/Plans-for-your-area/Local-Planning-and-Zoning/Policy-Directions-for-Plan-Making>

The directions to which the legal challenge relates are Direction 1.1 Business and Industrial Zones and Direction 3.1 Residential Zones. In accordance with these directions, a planning proposal must not reduce the total floor area for employment uses or reduce the permissible residential density of the land. However, the directions allow for inconsistencies with these requirements if they are justified by a study in support of the planning proposal.

In this case, Planning Proposal PP023 proposes to reduce the maximum height of buildings in the LEP over part of Lot 1 and the whole of Lot 6 DP1082382 Island Point Road (Anson Street), St Georges Basin from 13m to 8.5m which reduces both the potential employment floor area and the permissible residential density, and is therefore inconsistent with these directions. To address these inconsistencies, Council commissioned both a feasibility analysis to look at the

viability of a range of development types on the subject site, and a character assessment and urban design review to consider an appropriate height control for the subject site taking into account the existing and desired future character of the area.

These studies form part of the exhibited Planning Proposal PP023 which can be viewed on the Department of Planning and Environment's website at <http://leptracking.planning.nsw.gov.au/proposal/details.php?rid=5105>

However, the applicant claims that the inconsistencies with Directions 1.1 and 3.1 were not justified by studies prepared in support of the planning proposal which give consideration to the objectives of the directions and, therefore, Council is in breach of the EP&A Act and should not proceed with Planning Proposal PP023 until such time as the planning proposal complies with the directions.

## Hearing Dates

The legal challenge to the planning proposal is scheduled for hearing in the L&EC on 7, 8 and 9 March 2018, with the hearing on the legal challenge to the masterplan development application over the site (RA17/1000 for a concept master plan for mixed use residential flat buildings and commercial development) now scheduled for 4, 5 and 6 June 2018.

This will allow for the matter related to the planning proposal to be determined before the hearing on the masterplan application as the outcome of this legal challenge will have implications for the masterplan application.

## Undertaking by Council

Council has made the following undertaking to the L&EC:

Council undertakes up to, and including, the final day of hearing that:

1. It will not consider or make any resolution concerning Planning Proposal 023 the subject matter of these proceedings; and
2. It will not take any further steps to progress Planning Proposal 023 other than to prepare a report for the Council pursuant to section 57 of the *Environmental Planning and Assessment Act 1979*.

This means that Council can review the submissions received during the exhibition period and prepare a report to Council on the submissions but cannot make any further steps to progress the planning proposal until the hearing has been completed. As such, the outcomes of the recent public exhibition of the planning proposal will not be reported to Council for consideration until after the hearing.

## Further Information

For further information on the legal challenge, please contact Samantha Neilson, Council's Legal Services Manager, on (02) 4429 3545. For further information about the planning proposal, please contact Council's Strategic Planning Section on (02) 4429 5377.