



Making sense of the approval to build 17 units on 44 Duncan St, Huskisson

Two members of the Voice committee met (in an online meeting) with three Council planners last week (27 May 2020) to clarify how our planning laws were able to approve the building of 17 units on a single house block, 44 Duncan St, Huskisson.

We still think that it is entirely out of character and an unreasonable development for Huskisson, but we think we have a clearer understanding of why it was approved.

We have additional questions going to Council, and will post this information to you also. The answers they gave us are below.

Why don't we have a Development Control Plan for high density development?

The need for a generic Development Control Plan Chapter for high density residential development has previously been considered by Council on more than one occasion. To-date however Council has voted to defer to the NSW Government's existing State Environmental Planning Policy - Residential Flat Buildings and the referenced Apartment Design guidelines, and whatever the LEP designates for the zone. The State Government already has design guidelines in place for Residential Flats which the Shoalhaven Council is already required to adhere to. As such Council has not seen the need for a new Citywide Development Control Plan chapter covering high density residential development and currently relies on the prevailing State Government legislation and guidelines.

Planning hierarchy and planning decisions.

Generally State planning rules can overrule/guide any other Local planning controls, and the LEP overrules any DCPs.

Council is obliged to follow any state planning rules as a priority, locally the LEP is the most important plan, and the Development control Plans are 'guidelines' that are to be applied flexibly. They can't be more onerous than state controls. This approach to DCP's and their application is legislated.

In simple terms, a Development Control Plan is a guideline. The Apartment Design Guide is similarly a guide. Where it is not possible to satisfy the criteria, the designer must demonstrate how a design response has addressed the objective of the control.

What happens on 44 Duncan St now?

The block is now being advertised for sale at \$2.95 million, with the approved DA. The development consent goes with the land. The new owner has three options:

1. Build as approved
2. Propose amendments to the current approval - this would need to follow a process.
3. Put in a completely new DA

Where is the outline / detail for the *desired future character* of Huskisson?

There is currently no detailed document on the overall desired future character - it is inferred by the zones in the LEP, and relates back to the Jervis Bay Settlement Strategy, and Illawarra-Shoalhaven Regional Plan and other broader documents that comment on the role that Huskisson plays. Planning principles laid down by the Land & Environment Court are also relevant in this regard.

Section 4.15 of the Act is an important planning principle that is considered by the Land and Environment Court.

Ideally the Shoalhaven would have adopted character statements for all its towns and villages, but this is not currently the case. A character statement would assist in providing a legal framework for assessment but would not act as a prohibition on development.

How is height of building measured?

The height of a planned building is taken to be the height from the existing ground level - in 44 Duncan St the building is dug down into the ground a bit enabling it to comply with the 11m height limit.

Public versus private interests in assessing the application

In approving the DA Council 'considered all issues' and decided that there were enough community benefits to approve the development. Having said this they also said that a DA is:

'Very rarely rejected on the grounds of not meeting 'public interest''

The benefits for the community are reported to be:

- Short term jobs
- Increased population
- More services and facilities
- Provides housing choice in 'jewel in the crown'

Note: the dis-benefits were not noted, or talked about in our discussion.

The building has been approved for permanent occupation not tourist accommodation. But there is nothing to stop people from leasing out on Airbnb.

Council staff noted that they 'can't dictate market and resulting over or under supply'. Council's role is to assess development applications when lodged in accordance with the policy framework available at the time. Private business decisions, market considerations and demand are not areas where Council can step in.

It was also noted that the NSW State government is looking (or has) at short term accommodation and may, if not already, be bringing in a rule where if someone is planning to rent through Airbnb the host will need to live onsite.

Historic permissibility

The first formal Local Environmental Plan zoning for Shoalhaven land was in 1985, and this area was designated 2(b2). This allowed opportunities for residential flat buildings and also motels. Via the NSW Standard LEP Instrument process Councils had to create new plans using a provided list of zones. Shoalhaven followed a 'like for like' approach and under this 2(b2) translated to R3 Medium Density. The zone title applies across the State and as such people's idea of what it covers can be different. What is most important are the zone objectives and the permissible/prohibited uses that the zone contains.

Precedence and impact on infrastructure

The precedence set by this decision means that the whole R3 zone might be developed with apartment blocks through time. Brief discussion with the planners suggested that infrastructure needs had been accommodated:

- The overall sewerage system has been planned / built for future growth
- Stormwater - the post development runoff flows have to be the same as the pre development

44 Duncan St has to have onsite detention of runoff.

Note we didn't talk about roads, electricity supply, or water supply.

For each development all relevant Government departments are notified and asked to provide comment - so if council thinks it will affect JB waters they will let Marine Parks know. The referral agencies depend on the location and type of development.

Landscaping

The DA indicates that they will use public land for their landscaping - but this is because Council has asked for street planting. Most larger developments, if approved, can require street tree planting, footpaths etc.

Future for Duncan St

We can expect similar developments in the R3 zone as this is what the zone allows. What has occurred in the past and will occur in the future is likely to have been determined by underlying land values - the higher the land value the more likely it will be that higher density development is economically viable.

Is it possible to change the LEP?

It is not unusual to change a Local Environment Plan but it must have the support of the Council. Height and floor space ratio controls in the LEP can be changed on a local level but this is a long and detailed process.

The LEP can have complete revision, area specific revision or site specific revision.

Back zoning - It is very rare for Government to support back zoning or reducing development potential - as people who own properties in that zone will argue that they've been disadvantaged; this could lead to court cases. The question of making changes to the LEP highlights the significance of 44 Duncan St as a precedence. This development capacity has however existed since 1985.

Any changes to the R3 zone in Huskisson are difficult in isolation i.e. ensuring they will not necessarily apply to the whole of Shoalhaven - but if you want to prohibit a use in a zone for example - that **will** apply across the whole of city; but things like FSR or heights can apply to specific areas/sites. Proposed changes would need lots of justification, and the support of the Council to go down that path.

Independent review panel

Many councils have an independent review panel to assess significant development applications such as this one. A motion has been put to council to set up an independent design review panel but council resolved not to have one.