

NOTICE OF MEETING

Notice is hereby given that a meeting of

MidCoastCouncil

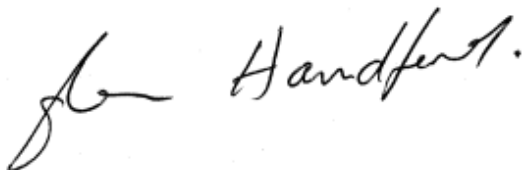
DEVELOPMENT CONTROL UNIT

Will be held at the Administration Centre, 4 Breese Parade, Forster

19 APRIL 2017 AT 3.30PM

The order of the business will be as detailed below (subject to variation by Council)

1. Declaration of Pecuniary or Conflicts of Interest (nature of Interest to be Disclosed)
2. Apologies
3. Confirmation of Minutes
4. Matters Arising from Minutes
5. Address from the Public Gallery
6. Matters for Information
7. Close of Meeting



Glenn Handford
INTERIM GENERAL MANAGER

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CONSIDERATION OF OFFICERS' REPORTS:

DIRECTOR PLANNING & NATURAL SYSTEMS

1 DA 72-2017 - PROPOSED USE OF BUILDING AS DWELLING HOUSE

Report Author Steve Andrews, Development Assessment Planner

File No. / ECM Index DA 72/2017 & PK 17791

Date of Meeting DCU 19 April 2017

DETAILS

Date Received: 17 August 2016 (original submission)

22 December 2016 (amended submission)

Applicant: Mr M & Mrs E Wright

Owner: Mr M & Mrs E Wright

Land: Lot 3 DP608792, 209 Minimbah West Branch Road Minimbah

Area: 8.367 ha

Property Key: PK 17791

Zoning: RU2 - Rural Landscape, GLLEP 2014

SUMMARY OF REPORT

- Development Application seeking consent for the use of an approved shed as a dwelling house and the establishment of a conservation area over land to the western half of the site. The conservation area will ensure that a beneficial habitat corridor connects rural land to the north and south of the site.
- Application notified to neighbouring property owners in accordance with Council's Policy and no submissions were received.
- Non-compliance with Clause 4.2A of Great Lakes Local Environmental Plan 2014 (GLLEP 2014) that prescribes a minimum lot size of 40ha for the erection of a dwelling house in a RU2 - Rural Landscape zone (ie. 40ha development standard).
- The applicant has lodged a written request, in accordance with Clause 4.6 of GLLEP 2014, seeking an exception to the 40ha development standard.
- The development application is required to be determined by Council in accordance with Department of Planning Circular PS 08-014 dated 14 November 2008, as the variation sought in respect of the development standard exceeds 10% (ie. proposed variation 79%).
- Before determining the development application Council is required to obtain the concurrence of the Secretary for the Department of Planning (DoP), pursuant to the provisions of Clause 4.6 of GLLEP 2014. The DoP has advised Council that the Secretary's concurrence had been given to the variation of the development standard.
- Proposed development generally considered to be consistent with the various relevant planning controls and achieves a habitat corridor between rural land to the north and south of the site.

SUMMARY OF RECOMMENDATION

That the application be approved subject to conditions.

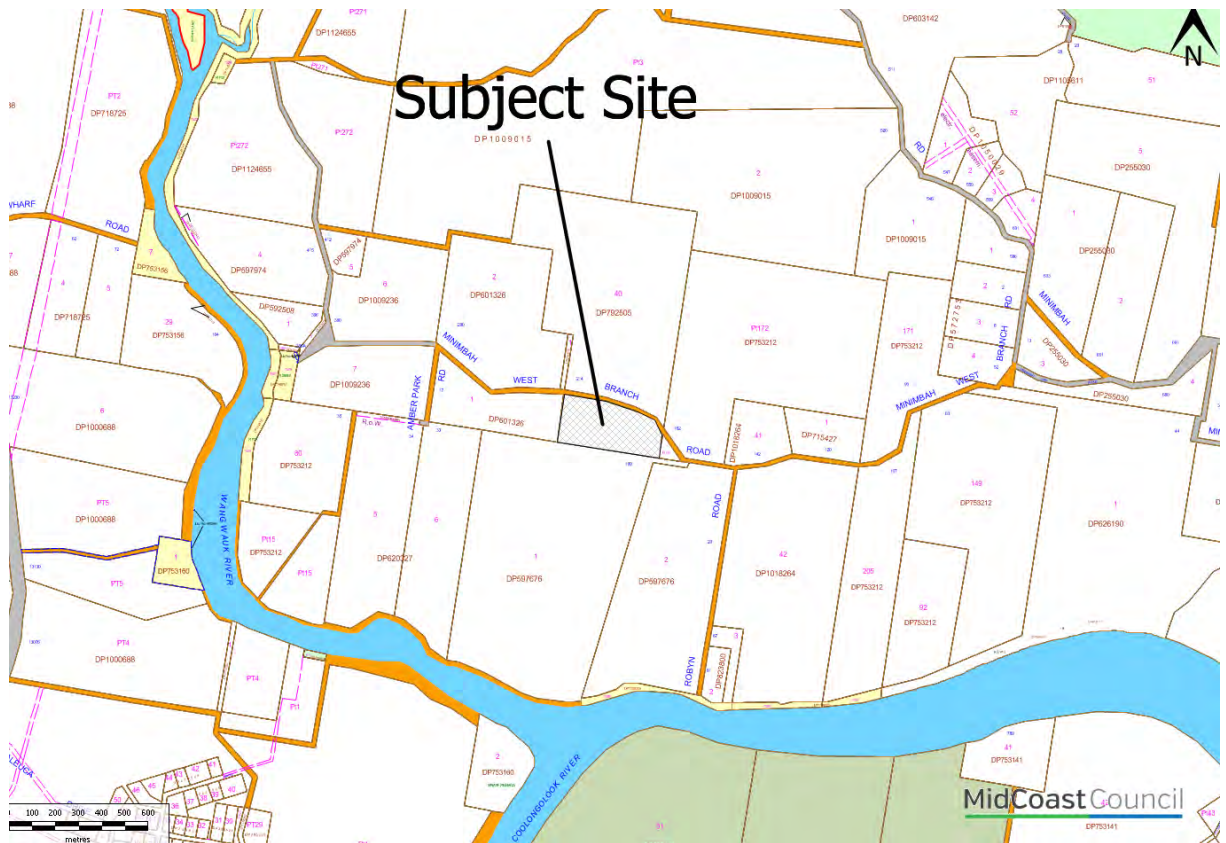
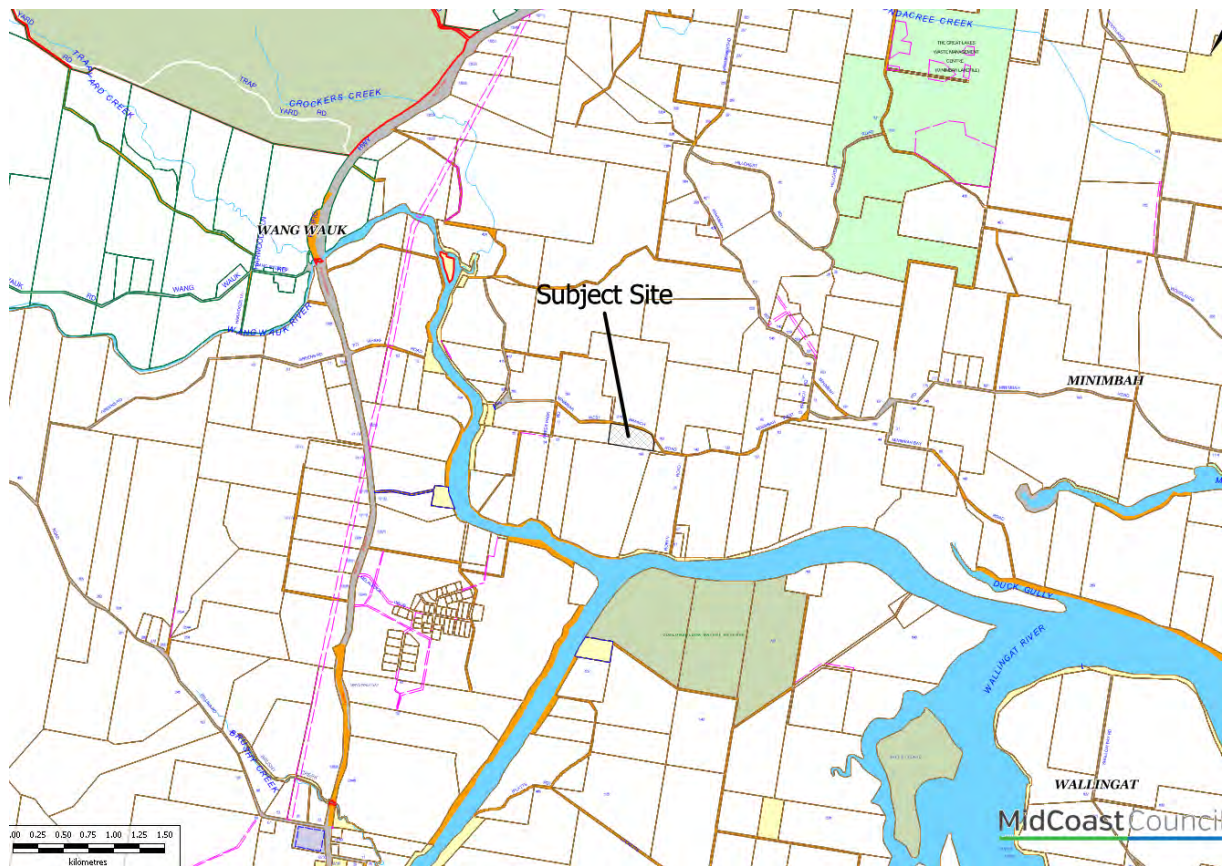
FINANCIAL/RESOURCE IMPLICATIONS

Cost of defending any appeal against Council's decision.

LEGAL IMPLICATIONS

A decision for approval subject to conditions or refusal may lead to an appeal to the Land and Environment Court requiring legal representation.

SUBJECT SITE AND LOCALITY



BACKGROUND

The subject lot 3 was created from the subdivision of Portion 60 Parish of Wang Wauk (without development consent), by registration of DP608792 on 21 April 1980.

DA 756/1981 - Development application for the erection of a dwelling house on the subject site was refused consent on 5 April 1982 for the following reasons:

1. The land is not a lot created in accordance with the provisions of Manning Local Environmental Plan No.1 or a previous planning instrument, nor is it an 'existing' holding pursuant to Clause 10(2)b of Manning Local Environmental Plan No.1.
2. The land has an area less than the general minimum required by Manning Local Environmental Plan No.1 for the erection of a dwelling.
3. The development would be contrary to the purpose of the zoning.

DA 1141/1983 - Development application for the erection of a dwelling house, sheds, orchards and market garden on the subject site was refused consent on 21 December 1982 for the following reasons:

1. The development is contrary to the purpose of the zoning.
2. The land has an area of less than the general minimum lot size of 40ha required by the Interim Development Order.
3. The land is only part of an existing holding as at 15 May 1964.
4. Approval would be contrary to the public interest.

The owner (at that time) lodged an appeal against Council's decision with the Land and Environment Court of NSW. A Section 34 conference took place on 17 May 1983 when the assessor indicated that he supported Council's interpretation. As a result the owner withdrew the appeal.

BA 121/1983 - Building approval was granted 4 March 1983 for the erection of a shed subject to it not being used for human habitation. On the 11 July 1983 Council advised the owner (current owner) that a final inspection of the shed was satisfactory. On the 7 November 1983 Council wrote to the owner (current owner) advising that an inspection of the property had disclosed that the approved shed was being used for residential purposes without development consent. Council requested the owner to, within 14 days, show cause as to why legal proceedings should not be instituted.

Following a response from the owner (current owner) Council, at its meeting on 28 February 1984, considered a report in relation to the illegal occupation of the shed and resolved to allow twelve (12) months in which to vacate the building and remove all illegal building work, failure to comply would result in Council instituting legal proceedings. Council advised the owner of the decision by letter dated 7 March 1984.

Following expiration of the twelve (12) month period, an inspection of the property disclosed that the shed was still being occupied for human habitation and that more building works had been carried out without approval. The matter was reported to the Council meeting on 14 May 1985 when it was resolved to serve notices for removal of all unauthorised building work within 90 days and that occupation of the building be vacated within 30 days. Furthermore, it was resolved that the owner be advised that should Council receive an application, within 14 days, for consent for use of the shed for residential purposes, legal action would be deferred until after determination of such application.

DA 1902/1985 - Development application was lodged 1 April 1985 seeking consent for the illegal conversion of an existing shed (BA 121/1983) into a dwelling. Whilst the Department of Environment and Planning supported the objection under SEPP 1 to the 40ha development standard, that prescribed the minimum lot size on which a dwelling house could be built, there is no record of the application being determined.

Sewage Management System Registration 7824608 - Approval was granted 16 October 2002 for a new on-site sewage management system to service a habitable building comprised of three (3) bedrooms, water-closet, shower, bath, hand basin, kitchen sink and laundry. It was indicated that the building was to be occupied by three (3) persons.

The site is currently serviced for domestic waste and recyclables by the Council. The illegal dwelling house is currently tenanted.

PROPOSAL

The proposal seeks development consent for the habitable use of the approved shed and the conservation of vegetation to the western half of the site that contributes to the ecological connectivity in this locality.

Existing driveway access to the eastern end of the frontage will be retained.

Annexed marked 'A' is a plan of the proposed development.

SITE DESCRIPTION

The site has an area of 8.367ha and is located on the southern side of Minimbah West Branch Road. The eastern half of the site is generally cleared and contains the approved shed (currently illegal dwelling house) that is serviced by an approved on-site sewage management system. The western half of the site contains a significant stand of regrowth vegetation.

The topography of the site and area is generally undulating with an existing dam in the western half.

REPORT

The following matters listed under Section 79C of the Environmental Planning and Assessment Act, 1979, are relevant in considering this application:

- a) ***The provisions of any environmental planning instrument; any proposed instrument that is or has been the subject of public consultation and which have been notified to the consent authority; any DCP; any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F; any matters prescribed by the regulations; any coastal zone management plan that apply to the development application on the subject land.***

Environmental Planning and Assessment Act 1979 (EPAA 1979)

The subject site is mapped as bush fire prone and in accordance with Section 79BA of the EPAA 1979 the application is to be assessed having regard to the provisions of the publication 'Planning for Bushfire Protection 2006'. In this regard the proposed development, including the applicant's bushfire report, were referred to the Rural Fire Service (RFS) for consideration. The RFS has advised that the proposed development is considered to be satisfactory subject to conditions that are included in this report's recommendation.

Great Lakes Local Environmental Plan 2014 (GLLEP 2014)

The following consideration addresses the relevant provisions of the Plan.

Part 1.2 -Aims of the Plan

The relevant aims of the Plan are to protect and enhance the environmental, scenic and landscaped assets of the area and to facilitate the orderly and sustainable economic development of land. The proposed development is considered to be consistent with these aims.

Part 2 - Land use table

The site is located in a RU2 - Rural Landscape Zone and whilst the proposed residential use is permissible in the zone with development consent clause 4.2A of GLLEP 2014 requires a minimum lot size of 40ha to establish a dwelling entitlement. This issue will be discussed further below.

The relevant objectives of the zone are to encourage sustainable primary industry production by maintaining and enhancing the natural resource base, to maintain the rural landscape character of the land, to provide for a range of compatible land uses, including extensive agriculture and to secure a future for agriculture in the area by minimising the fragmentation of rural land and loss of potential agricultural productivity. The proposed development is considered to be consistent with the relevant objectives of the zone.

Part 4 - Principal development standards

This Part identifies various numerical development standards for proposed development. The relevant development standards are:

4.2A Erection of a dwelling house on land in an RU2 Rural Landscape zone.

The relevant objective of the clause is to minimise unplanned rural residential development. The clause provides that development consent must not be granted for a dwelling house on a lot in an RU2 zone and on which no dwelling house has been erected unless:

- a) The lot has a minimum area of 40ha (the subject lot has an area of 8.367ha).
- b) The lot existed prior to the commencement of the Plan on which the erection of a dwelling house was permissible (a dwelling house was not previously permissible on the subject lot under the prior local environmental plan).
- c) The lot resulted from a subdivision for which development consent was granted before the Plan commenced and on which a dwelling house would have been permissible if the plan of subdivision had been registered before that commencement (the subject lot was created without development consent and a dwelling house was not previously permissible).
- d) The lot was an existing holding (the subject lot is not an existing holding).

The subject site does not qualify under the above criteria to permit a dwelling house.

However, Clause 4.6 of the GLLEP 2014 provides a degree of flexibility in applying development standards whereby better development outcomes are achieved. The Clause enables Council to consider a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

1. That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
2. That there are sufficient environmental planning grounds to justify contravening the development standard.

Subject to the Council being satisfied that the applicant's written request adequately addresses the planning issues underlying the development standard, that the proposed development will be in the public interest and that the concurrence has been received from the Secretary for NSW Department of Planning and Environment, development consent may be issued.

The applicant refers to the analysis that was used in respect to the previous provisions of SEPP 1 as determined in the Land and Environment Court (LEC) case *Winten v North Sydney Council* and submits the following reasons to support the view that the proposed development is consistent with the relevant objective of the development standard that seeks to minimise the introduction of unplanned rural residential development.

1. The existing large lot is suitable for rural occupation.
2. The existing lot has limited agricultural potential given its area and its capacity and the proposed development will not interfere with the agricultural potential in the locality
3. The existing lot size is consistent with the lot size of other rural lands in the area that contain dwellings and is consistent with the area's character. In this regard the applicant submits an analysis of twenty-one neighbouring rural properties that have areas of less than 40ha and are occupied with dwelling houses, many of which have been approved under the previous State Environmental Planning Policy No.1 - variations to development standards.
4. Given the limitations indicated above, there is minimal opportunity for the lot to be incorporated into a larger agricultural parcel of land to supplement that use.
5. The proposed development is consistent with the area's character.
6. The large setbacks for the proposed building will provide for a larger buffer to avoid land use conflicts.
7. The proposed development includes the conservation of an area of regrowth vegetation to the western half of the site, which could otherwise be cleared under the provisions of the Native Vegetation Act 2003, that will not only improve the ecological linkage over the land but will also maintain and improve the rural character of the locality.
8. The future dwelling house will not result in any change to the present situation as far as provision and extension of public amenities and services are concerned. The land is not presently serviced by reticulated water or sewer. Roof water is collected and tanked and sewerage is addressed on site by the current effluent management system. Electricity is also available in this locality.
9. The proposed development is consistent with the objects specified in Section 5(a)(i) and (ii) of the EPAA1979. The proposed development will promote the orderly and economic use of the land and will not create a land use conflict between agricultural and residential uses. The conservation of the native regrowth on the western half of the site provides for the proper management of natural resources to improve the ecological values of the environment.
10. The development standard in this rural locality has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (ref. Preston C J in LEC ruling *Wehbe v Pittwater Council*).

Accordingly, the applicant submits that, in accordance with the provisions of Clause 4.6 of GLLEP 2014, strict compliance with the development standard is considered to be unreasonable and unnecessary in the circumstances of the case and there are sufficient environmental planning grounds to justify contravening the development standard. The applicant's submission is supported in this assessment.

In regard to the concurrence from the Secretary for NSW Department of Planning and Environment, unconditional concurrence has been received to the proposed variation of the development standard.

Furthermore, the development application is required to be determined by Council in accordance with Department of Planning Circular PS 08-014 dated 14 November 2008, as the variation sought in respect of the development standard exceeds 10% (ie. proposed variation 79%).

- 4.3 - Height of building - The relevant objectives of the standard are to ensure the scale of proposed buildings is compatible with the existing environmental character and the desired future character of the locality. The maximum height control for the RU2 zone is 8.5m. The current single storey shed has an overall height of less than the development standard and is considered to be consistent with the relevant objectives of this clause.
- 4.4 - Floor space ratio - The relevant objectives of the standard are to ensure the scale of proposed development is compatible with the existing environmental character of the locality. The maximum floor space ratio in the RU2 zone is 0.4:1.00. The current single storey shed has a floor space ratio of well less than the development standard and is considered to be consistent with the objectives area of the clause.

Part 7 - Additional local provisions

- 7.1 - Acid sulfate soils - The objective of the clause are to ensure that development does not disturb, expose or drain acid sulphate soils and cause environmental damage. The Acid Sulphate Soils Planning Map identifies the site as class 5 land. The requirements of that class relates to works within 500 metres of adjacent classes which are likely to lower the watertable below 1.0 metre AHD on the adjacent land. The construction of the approved shed would not have impacted on groundwater levels on adjacent classes of land and therefore it is unlikely that the construction gave rise to potential acid sulphate soils. Accordingly, the proposal is considered to be consistent with the objective of the clause.
- 7.2 - Earthworks - The objective of this provision is to ensure that earthworks will not have a detrimental impact on environmental functions and processes, neighbouring uses and features of the surrounding land. The construction of the approved shed had minimal associated earthworks and there is no current evidence of any adverse impacts. Accordingly, the proposal would be consistent with the objective of this clause.
- 7.3 - Essential services - This clause requires that development consent must not be granted to development unless the Council is satisfied that essential services (ie. water, electricity, sewage, stormwater drainage and road access) are available or that adequate arrangements have been made to make them available. Given the rural locality, the proposal has access to all relevant necessary services subject to the conditions contained in this report's recommendation.
- 7.6 - Stormwater & Water Sensitive Design - The objective of this clause was to minimise the environmental impacts of stormwater on the site and adjoining properties, native bushland, groundwater, wetlands and receiving waters. Given the rural location roof stormwater is collected for re-use with any overflow directed away from existing buildings with no significant impacts. Accordingly, the objective of the clause is achieved.

State Environmental Planning Policy No.44 – Habitat Koala Protection

The Plan applies to the subject rural site. The western half of the site is located in a habitat corridor that connects bushland to the north and south. The proposal will not adversely impact on either the habitat or animal corridor.

State Environmental Planning Policy (Rural Lands) 2008

All development being undertaken on land within a rural or environmental land use zone must be considered against the 'rural planning principles' and the 'rural subdivision principles' contained within Clauses 7 and 8 of the SEPP. Furthermore, the Council is required to consider the matters listed in Clause 10 of the SEPP prior to the determination of a development application. The site is zoned RU2 – Rural Landscape under the Policy. The proposal is considered to be consistent with the rural planning principles, the rural subdivision principles and the desired outcomes having regard to the matters for consideration listed in Clause 10. Accordingly, the proposal is considered to achieve the aims of the Policy.

State Environmental Planning Policy No.71 – Coastal Protection (SEPP71)

The provisions of SEPP71 apply to the proposal as the land is located within the *Coastal Zone*. The site is not located in a *Sensitive Coastal Location*, as defined by SEPP71.

The proposal is considered to satisfactorily address both the aims and the relevant provisions of SEPP 71.

Development Control Plan 2014 (DCP 2014)

The aims of the Plan are to ensure good quality, sustainable development outcomes that maintain a high level of environmental amenity. The Plan is designed to allow flexibility in the application of its controls where strict compliance is considered unreasonable or unnecessary provided the relevant objectives of the Plan have been achieved.

Part 3 Character Statements - The proposal is considered to be contextually appropriate, it will complement the desired character of this small lot rural locality whilst conserving existing vegetation regrowth (that forms a desirable ecological linkage from areas north to south of the site) and not adversely impacting on the locality's agricultural potential.

Part 4 Environmental Considerations - The proposal will not have any significant impact on local ecology, will conserve existing vegetation regrowth (that forms a desirable linkage in this locality) and it is not impacted by any natural event to a significant extent. Appropriate conditions are included in this report's recommendation.

Part 5 Single Dwellings

The relevant provisions are:

- 5.1 Solar Access and Overshadowing - The proposed dwelling house is located and orientated to maximise solar access to within the building and to large areas of open space suitable for outdoor recreation consistent with the objective and requirements of the Plan. The development outcome does not adversely impact the residential amenity of neighbouring properties.
- 5.2 Views and Privacy - The proposed dwelling house does not unreasonably impact on views/outlooks and the privacy relationship with neighbouring properties.
- 5.4 General Building Design - The objective of this provision is to encourage a high quality design that responds to the local environment. The proposed dwelling house in this rural locality is compliant with the relevant provisions and objectives of this part.
- 5.5 Setbacks - The objective is to ensure residential buildings have sufficient separation to provide privacy, solar access, landscaping opportunities and amenity for the building occupants. The proposed dwelling house is compliant with the setback requirements and objectives of this part.

5.8 Private Outdoor Areas - The objective is to provide residents with functional and accessible private open space. The proposed dwelling house is located and orientated so that large areas of private open space suitable for outdoor recreation are provided, consistent with the objective and requirements of this part.

Part 10 Car Parking

The relevant objectives are to ensure that there is adequate and safe provision for access, manoeuvring and parking on site, to integrate vehicular access and parking facilities without compromising street character or landscaping and to provide an adequate level of on-site parking based on anticipated occupancy rates and proximity to alternate and active transport.

The land adjacent to the proposed dwelling house has an off-street parking capability for more than the required two (2) vehicles, compliant with the relevant objectives of the part.

Part 11 Water Sensitive Design

The relevant objectives are to reduce the consumption of potable water, to reduce waste water discharge into the receiving environment, to harvest wastewater and urban stormwater runoff where appropriate. Given the rural location roof stormwater is collected for re-use with any overflow directed away from existing buildings with no significant impacts and consistent with the objectives of the part.

Part 13 Landscaping and Open Space

The relevant objectives of this part are to encourage design outcomes that responds to the topography of the site, provide for retention of vegetation where appropriate and maintain a landscaped setting that contributes to the desired character of the locality and the presentation to the street.

The proposal maintains a bushland setting consistent with that of the locality and the relevant objectives of this part.

Part 14 Waste Management - The relevant objective of this Part is to encourage sustainable waste management that includes re-use and recycling of waste. The site has access to a waste and recycling bin service provided by the Council. Accordingly, the proposal is considered to be consistent with the objective of this part.

b) The likely impacts of development including environmental impacts on both natural and built environments and social/economic impacts in the locality

Context and Setting

The proposal relates positively with the regional and local context and maintains a reasonable relationship with the character, height and scale of neighbouring development as viewed from the surrounding locality.

Site Design

The existing site is suitably sized and configured to accommodate the proposed dwelling house. The internal layout of the dwelling house is considered suitable having regard to the desired residential amenity of future occupants.

Views

The proposal does not unreasonably impact on views and outlooks from neighbouring properties.

Privacy (Aural and Visual)

The proposal has been designed to reasonably address the privacy relationship with neighbouring properties.

Overshadowing

The proposal is positioned and designed to avoid unreasonable overshadowing.

Visual Impact

The proposal has been designed and positioned so as not to detract from the visual qualities of the neighbouring sites and the rural locality.

Flora and Fauna

The proposal does not adversely impact on local flora and fauna and the proposed conserved western half of the site will ensure ecological connectivity with vegetated land to the north and south of the site. Appropriate conditions are included in this report's recommendation.

Precedent and Cumulative Impacts

The proposal, subject to the recommended conditions, does not set an undesirable precedent for future residential development in this rural locality. The proposed development is consistent with the existing development pattern in this rural locality.

Section 94 Contributions

Council's Great Lakes Wide and Forster District Section 94 Plans apply to the proposed development and as the site was originally created without development consent, the site does not benefit from a credit of one (1) dwelling house. Accordingly, an appropriate condition is included in this report's recommendation.

c) The Suitability of the Site for the Development

The topography and configuration of the site are suitable for the proposal. Environmental issues are limited and satisfactorily addressed in the design. Adequate utility services are available.

The site will be managed to limit the potential for spread of bushfire from existing stands of adjacent vegetation. The site is not susceptible to any other natural hazards to a significant extent.

Accordingly, the site is considered to be suitable for the proposed development.

d) Any Submissions Made in Accordance with the Act or Regulations

The application was notified to neighbouring property owners in accordance with Council's Policy and no submissions were received.

e) The Public Interest

There are no adverse matters relevant to the public interest in relation to the proposed development. The proposed development is consistent with the relevant planning strategies and planning policies for the locality, as discussed in this assessment.

The proposal will not detract from the character of this rural locality, nor will it undermine any of the social or economic values of the site or surrounding area. The proposal is considered to be consistent with the objectives of the relevant zone and will not have an unreasonable impact upon any neighbouring properties.

Accordingly, approval of the proposed development would not be contrary to the public interest.

CONCLUSION

The proposal is considered to be suitable for the site and the locality having regard to the current planning controls discussed in this report and maintains a reasonable relationship with neighbouring developments.

The development application is required to be determined by Council in accordance with Department of Planning Circular PS 08-014 dated 14 November 2008, as the variation sought in respect of the development standard exceeds 10% (ie. proposed variation 79%).

RECOMMENDATION

It is recommended that development application DA 72/2017, for the use of the previously approved shed as a dwelling house on Lot 3 DP608792, 209 Minimbah West Branch Road, Minimbah be approved subject to compliance with the following conditions:

GENERAL CONDITIONS

1. Development in accordance with approved plans

The development must be implemented in accordance with the plans and supporting documents set out in the following table except where modified by any conditions of this consent.

Plan type/Supporting Document	Plan No. & version	Prepared by	Dated
Site Plan	15156_A_1 Sheet SO1	Coastplan Group Pty Ltd	24/03/2016
Dwelling House Floor Plan & Photographs	Nil	Coastplan Group Pty Ltd	Nil

The approved plans and supporting documents endorsed with the Council stamp and authorised signature must be kept on site at all times while work is being undertaken.

Reason: Information and to ensure compliance.

2. Variation to approved Plans

All reference to the dwelling envelope and the offset boundary dimensions being deleted from the approved plans referred to in condition 1, above. Also reference to the 'Existing Shed', as indicated on the approved plans, being amended to 'Proposed Dwelling House'.

Reason: To ensure that the approved documentation is consistent with the terms of the development consent.

3. Conservation Area to be managed

No harm shall be caused to the native vegetation and habitat and no development shall be carried out on that part of the subject land that comprises the "Regrowth Native Vegetation to be Conserved" mapped on the plan entitled "Proposed Dwelling Envelope Lot 3 DP608792 West Branch Road Minimbah" prepared by Coastplan Group Pty Ltd, dated 24/03/2016, sheet S01, job 15156_A_1 and drawn by Wade Roberts. No harm shall be caused and must be actively prevented to any part of the "Regrowth Native Vegetation to be Conserved" and the following activities are prohibited:

- a) Clearing, destruction, removal of or injury to local native plants,
- b) Planting of any plants other than local native flora,
- c) Carrying out of any act which may significantly adversely affect any populations of local native flora or local native fauna or their habitats,
- d) Entry of livestock,
- e) Release or introduction of any cat, dog or other domestic animal (excluding an assistance animal as defined by the Companion Animals Act 1998),
- f) Establishment of any transmission lines or other telecommunication cables, except with the consent of Council,
- g) Removal, introduction or disturbance of any soil or rocks
- h) The modification of natural hydrological characteristics or the construction of channels, drains or dams
- i) The use of vehicles
- j) Accumulation of rubbish or the storage of any materials
- k) Removal of any timber including fallen timber
- l) The establishment of any asset protection zone for bushfire protection
- m) Any development

The Regrowth Native Vegetation to be Conserved areas shall be managed in accordance with this condition at all times.

Reason: To conserve an offset for the residual impacts of the approved development.

4. No cats to be kept or introduced to the subject land

No cats shall be kept on or introduced to the subject land at any time.

Reason: To reduce the damage to native wildlife caused by domestic cats in this significant landscape.

5. Marking of the Required APZ on the Land

The Registered Proprietor of the land shall **within sixty (60) days** from the date from which the development consent operates, identify with marker pegs the extent of an approved Asset Protection Zone around the approved dwelling.

The APZ limit shall be permanently marked through the establishment of suitable 1.5-metre high vertical marker posts (4x4" steel or concrete posts) not greater than 30-metres apart and at each change of APZ area angle.

This shall define the APZ and promote the continued management of fuel loads in the understorey over this zone.

It would also mark the boundary of the edge of tree clearing for dwelling occupation and APZ purposes, demonstrating the surrounding native vegetation that must be retained and protected.

Reason: To mark and identify the area of the approved dwelling and APZ.

6. Tree marking

Following the marking of any APZ area required for the approved dwelling, the Registered Proprietor of the land (or their agents) shall conduct a marking program identifying **within ninety (90) days** from the date from which the development consent operates those trees which are to be removed for any construction and APZ purposes.

Trees to be removed shall be clearly marked with an "X". Trees with obvious hollows or cavities useable by vertebrate fauna that are proposed to be removed shall be clearly also marked with an "H". All marking shall be conducted with spray-paint.

Where safe, trees with special habitat benefits, such as hollows, large size, dead trees, trees with special forage values for threatened species, etc, shall be retained on the land. Preference for removal shall be directed in the marking program to trees of limited safe useful life expectancy. Special emphasis shall be directed to retaining trees (where safe) in the APZ, including those of special habitat value as well as trees that provide a visual screen to the approved development.

On completion of the on-subject land marking program, Council's Senior Ecologist and/ or Tree Management Officer shall attend the land and review the marking program, to determine that the marking complies with the requirements of this condition and seeks to minimise and manage tree removal on the land.

No works shall commence on the land, including tree removal, until such time as Council has advised the Registered Proprietor of the land in writing that the tree marking program has been satisfactorily approved.

Reason: To minimise tree removal and direct tree removal to preserve special habitat features.

7. Tree removal to be restricted

Only trees marked (and approved by Council Officers) for removal in accordance with the conditions of this consent shall be cleared from the land for APZ purposes for the approved dwelling.

All other trees on the land shall be protected and managed in accordance with the *Native Vegetation Act 2003* and other relevant statutory controls, including Council's Tree Preservation Order.

There shall be no modification or disturbance of any trees or native vegetation outside the approved access and the approved APZ for any purpose associated with the construction of the approved dwelling, unless such is conducted with the approval of Council.

Reason: To minimise the removal of native vegetation for the approved development.

8. Clearing of native vegetation procedure

During the physical removal of the approved, marked trees, the following shall be adopted at all times:

- Tree removal contractors/ operators shall inspect the crown, foliage and trunks of trees that require removal immediately prior to any felling to investigate the presence of koalas. If a Koala is detected, the tree and no other surrounding trees shall be cleared until the animal has dispersed of its own free will from the area
- Removal of approved trees shall be conducted using directional felling away from trees that are to be retained on the land
- Removal of approved trees shall be conducted in a manner that avoids the movement of heavy machinery in the root zones of trees that are to be retained on the land

If any hollow-bearing trees on the Lot are approved for removal, the following methods shall be adopted during and after their removal:

- i. Tree hollows that are to be removed from the land shall be replaced on a 2:1 basis by the erection of suitable artificial nesting boxes.
- ii. Removal of the identified habitat trees shall be conducted by qualified arborists with an appropriately trained and vaccinated ecologist in attendance, who shall inspect the hollows and recover any injured or displaced native fauna. Council's Senior Ecologist shall be informed prior to the removal operation. The trees shall be felled sensitively using top-down techniques to minimise mortality and injury risks to resident fauna and the arborists shall inspect the hollows progressively as they work.
- iii. Any salvageable hollows from felled trees shall be harvested and retained on the land as cover for terrestrial fauna species.
- iv. The project ecologist shall provide a report to Council's Senior Ecologist within one-week of the hollow tree-clearing operation. This report shall outline the results of the fauna recovery operation including details of the hollows removed (number, entrance diameter, cavity length, cavity dimension), fauna species affected (including number, sex, breeding status) and evidence of former species presence.

Hollow-bearing trees are those trees identified on the land with a "H" in spray-paint as marked or identified by Council's Senior Ecologist.

Trees and shrubs removed from the land shall be commercially re-used (logs or mulch), used in subject land landscaping (as edging or cover for terrestrial fauna) or retained and utilised by the occupier of the lot for the purpose of fuel for internal wood combustion heaters or stoves. Windrowing and pile-burning shall be avoided, except with the consent of the Rural Fire Service.

The modification to the dwelling and other approved structures shall be conducted in a manner that avoids impact, harm or removal trees that are to be retained and stockpiles, machinery and equipment shall not be used or placed in the root zones of trees that are to be retained. Landform modification (cut/ fill) shall not occur in the root zones of trees that are to be retained.

Reason: To protect significant trees and minimise the impacts of the development on native vegetation.

9. Area of "Regrowth Native Vegetation to be Conserved" to be Permanently Protected

The Registered Proprietor of the land shall demonstrably establish an executed legal mechanism that permanently conserves and protects in perpetuity that area of the Lot shown as the "Regrowth Native Vegetation to be Conserved" mapped on the plan entitled "Proposed Dwelling Envelope Lot 3 DP608792 West Branch Road Minimbah" prepared by Coastplan Group Pty Ltd, dated 24/03/2016, sheet S01, job 15156_A_1 and drawn by Wade Roberts.

In this regard, the Registered Proprietor of the land shall prepare and execute a restriction and public positive covenant under s88B and s88E of the Conveyancing Act 1919 to effectively conserve and manage the "Conservation Area".

The Registered Proprietor shall take all necessary steps to ensure restrictions on the use of land and public positive covenants pursuant to the provisions of s88B and/ or s88E of the Conveyancing Act 1919 to the following effect are recorded in the Register kept under the Real Property Act 1900:

- 1) No development shall be carried out on that part of Lot 3 DP608792 that is identified as the "Regrowth Native Vegetation to be Conserved".
- 2) No harm shall be caused and must be actively prevented to any part of the native vegetation and wildlife habitat on that part of Lot 3 DP608792 that is identified as the "Regrowth Native Vegetation to be Conserved", and the following activities, are prohibited unless such are required by law and are conducted only with the written permission of Mid Coast Council:
 - a) Clearing, destruction, removal of or injury to local native plants,
 - b) Planting of any plants other than local native flora,
 - c) Carrying out of any act which may significantly adversely affect any populations of local native flora or local native fauna or their habitats,
 - d) Entry of livestock,
 - e) Release or introduction of any cat, dog or other domestic animal (excluding an assistance animal as defined by the Companion Animals Act 1998),
 - f) Establishment of any transmission lines or other telecommunication cables, except with the consent of Council,
 - g) Removal, introduction or disturbance of any soil or rocks
 - h) The modification of natural hydrological characteristics or the construction of channels, drains or dams
 - i) The use of vehicles
 - j) Accumulation of rubbish or the storage of any materials
 - k) Removal of any timber including fallen timber
 - l) The establishment of any asset protection zone for bushfire protection

This Condition does not preclude the use of any existing trails for bush-walking by the occupier or guests of the land.

The area specified in this condition (the "Conservation Area") shall be surveyed by a Registered Surveyor and then identified on the relevant plan. GDA coordinates (easting and northing) for each change of angle of the areas covered by the s88 instrument shall be provided on the plan.

The registered proprietor of Lot 3 DP608792 shall have registered by the Registrar-General a plan as a deposited plan such that on its registration, the restrictions on the use of land/ public positive covenants set out in this Condition are entered on the appropriate title, **within one-hundred and eighty (180) days** from the date from which the development consent operates

The land burdened by the restrictions on use referred to above is the relevant parts of Lot 3 DP608792.

Mid-Coast Council is the prescribed authority for the purposes of Division 4, Part 6 of the Conveyancing Act 1919, and is to have the benefit of the restrictions/ public positive covenants.

The instrument shall not preclude the applicant from applying for and being granted conservation of the land that is the subject of the instrument for such purposes as property vegetation planning, registered property agreement or future biodiversity banking or carbon trading schemes, to which incentive funding may be available. This instrument does not preclude the removal of weeds, including Lantana.

The conservation mechanism shall be established to the written satisfaction of Mid-Coast Council. The mechanism shall be executed prior to the occupation of the dwelling house and shall be maintained thereafter in perpetuity.

Reason: To provide an offset for the residual impacts of the approved development.

10. Correspondence from the registered proprietor concerning E2 zoning

Prior to the occupation of the approved dwelling house, the Registered Proprietor of the land shall submit a notice in writing to Mid-Coast Council stating that they request that the “Regrowth Native Vegetation to be Conserved” on the Lot be zoned E2 at the earliest possible opportunity.

Reason: To allow the conservation area to be appropriately zoned.

11. S94 contributions

A monetary contribution must be paid to Council, **within thirty (30) days** from the date from which the development consent operates, in accordance with Section 94 of the *Environmental Planning and Assessment Act 1979*. The services and facilities for which the contributions are levied and the respective amounts payable under each of the relevant plans are set out in the following table:

Contributions Plan	Facility	quantity	unit		rate	=	amount
Great Lakes Wide	Library Bookstock	2.2	persons	@	\$77.60	=	\$170.72
Great Lakes Wide	Headquarters Building	2.2	persons	@	\$465.93	=	\$1,025.05
Great Lakes Wide	s94 Admin	2.2	persons	@	\$213.77	=	\$470.29
Great Lakes Wide	Rural Fire Fighting	2.2	persons	@	\$665.26	=	\$1,463.57
Forster District	Major Roads Outer Zone	5	1-way trips	@	\$337.18	=	\$1,685.89
Forster District	Aquatic Centre	2.2	persons	@	\$305.66	=	\$672.44
Forster District	Surf Life Saving	2.2	persons	@	\$90.15	=	\$198.32
Forster District	Open Space	2.2	persons	@	\$1,461.77	=	\$3,215.89
Forster District	Library Facility	2.2	persons	@	\$505.79	=	\$1,112.74
Forster District	Community Facilities	2.2	persons	@	\$552.10	=	\$1,214.62
					Total	=	\$11,229.53

Contribution rates are subject to indexation at the end of the current financial year.

The Contributions Plan and the Standard Schedule for Section 94 Plans may be viewed on Council’s web site or at Council’s offices at Breese Parade, Forster.

Reason: Statutory requirement to be paid towards the provision or improvement of facilities and services.

12. On-site sewage management system - approval to operate

The on-site sewage management system must be completed in accordance with the approved plans and current specifications and standards **prior to occupation of the approved dwelling house**. The system must not be used and/or operated until it has been inspected by a Council Officer and an approval to operate the system has been issued.

Reason: To ensure public health and safety.

13. Adjustment to utility services

All adjustments to existing utility services made necessary by the development are to be undertaken at no cost to Council.

Reason: To ensure utility services remain in a serviceable condition.

14. Driveway levels application

A Rural Driveway Levels Application must be submitted to Council for approval **within thirty (30) days** from the date from which the development consent operates. A Rural Driveway Levels Application Form must be completed and submitted to Council together with the application fee and all required plans and specifications.

Driveways must be constructed by a qualified/licensed contractor at no cost to Council in accordance with the driveway levels and construction standards issued by Council.

Details must include regrading works and removal of road side vegetation to improve the sight distance for drivers of vehicles exiting the site and help comply with Figure 3.2 of AS2890.1.

Reason: To ensure works within Council's road reserve are constructed to a suitable standard for public safety.

15. Driveway details

Plans and specifications detailing vehicular access from the site boundary to the proposed car space(s) must be submitted to and approved by the Council. Vehicular access must be in accordance with section 4.1.3 (2) of Planning for Bush Fire Protection 2006 and Section 2.6.2 of AS 2890.1 for gradient changes. Plans must include the following items:

- a) Car park and driveway layout;
- b) Pavement description;
- c) site conditions affecting the access;
- d) existing and design levels;
- e) longitudinal section from the road centreline to the car space(s);

Reason: To ensure suitable vehicular access is provided to the development.

16. Driveway in accordance with approved Driveways Level Application

The driveway must be constructed from the edge of the road formation to the property boundary in accordance with the approved Driveway Levels Application. Written confirmation from Council must be obtained stating that the constructed driveway is to Council's satisfaction.

Reason: To ensure suitable vehicular access to the development.

17. Installation of erosion & sediment control measures

Prior to the commencement of work, erosion and sediment controls must be in place in accordance with Great Lakes Council Erosion and Sediment Control Policy and “*The Blue Book – Managing Urban Stormwater (MUS): Soils and Construction*” (Landcom). In particular, the following erosion and sediment control measures must be installed:

- a) Silt fence or sediment barrier.
- b) Temporary driveway from the edge of road to the building site.
- c) Temporary downpipes immediately upon installation of the roof covering.

Note: Council may impose on-the-spot fines for non-compliance with this condition.

Reason: To protect the environment from the effects of erosion and sedimentation.

18. Maintenance of erosion and sediment control measures in accordance with approved plan

Erosion and sediment control measures must be maintained at all times in accordance with the approved erosion and sediment control plan until the site has been stabilised by permanent vegetation cover or hard surface.

Reason: To protect the environment from the effects of erosion and sedimentation.

19. Asset Protection Zones

Prior to the occupation of the approved dwelling house and in perpetuity the property around the building shall be managed as follows as outlined within section 4.1.3 and Appendix 5 of ‘Planning for Bush Fire Protection 2006’ and the NSW Rural Fire Service’s document ‘Standards for asset protection zones’:

- north for a distance of 50 metres as an asset protection zone;
- south for a distance of 42 metres as an asset protection zone;
- east for a distance of 61 metres as an asset protection zone; and
- west for a distance of 61 metres as an asset protection zone (APZ).

(Note: in forested areas a portion of the APZ may be maintained as an outer protection zone as specified in Table A2.7 of ‘Planning for Bush Fire Protection 2006’.)

Reason: The intent of measures is to provide sufficient space and maintain reduced fuel loads so as to ensure radiant heat levels of buildings are below critical limits and to prevent direct flame contact with a building.

20. Water and Utilities

In recognition that no reticulated water supply is available to the development, a total of 20,000 litres fire fighting water supply shall be provided for fire fighting purposes **prior to the occupation of the approved dwelling house**. The fire fighting water supply shall be installed and maintained in the following manner:

- a) Fire fighting water supply tank(s) shall be located within the asset protection area and away from the dwelling.
- b) New above ground fire fighting water supply storage’s are to be manufactured using non-combustible material (concrete, metal, etc). Where existing fire fighting water supply storage’s are constructed of combustible (polycarbonate, plastic, fibreglass, etc) materials, they shall be shielded from the impact of radiant heat and direct flame contact.

- c) Non-combustible materials (concrete, metal, etc) will only be used to elevate or raise fire fighting water supply tank(s) above the natural ground level.
- d) A 65mm metal Storz outlet with a gate or ball valve shall be fitted to any fire fighting water supply tank(s) and accessible for a fire fighting truck.
- e) The gate or ball valve, pipes and tank penetration are adequate for the full 50mm inner diameter water flow through the Storz fitting and are constructed of a metal material.
- f) All associated fittings to the fire fighting water supply tank(s) shall be non-combustible.
- g) Any below ground fire fighting water supply tank(s) constructed of combustible (polycarbonate, plastic, fibreglass, etc) materials shall be shielded from the impact of radiant heat and direct flame contact.
- h) A hardened ground surface for fire fighting truck access is to be constructed up to and within 4 metres of the fire fighting water supply (tank or Storz fitting).
- i) Any fire fighting water supply tank(s) located below ground shall be clearly delineated to prevent vehicles being driven over the tank.
- j) All water supplies for fire fighting purposes shall be clearly signposted as a fire fighting water supply.
- k) Below ground fire fighting water supply tank(s) shall have an access hole measuring a minimum 200mm x 200mm to allow fire fighting trucks to access water direct from the tank.
- l) Fire fighting water supply tank(s) and associated fittings, located within 60 metres of a bushfire hazard and on the hazard side of an approved building, shall be provided with radiant heat shielding to protect the tank from bush fire impacts and maintain safe access to the water supply for fire fighters.
- m) A Static Water Supply (SWS) sign shall be obtained from the local NSW Rural Fire Service (RFS) and positioned for ease of identification by RFS personnel and other users of the SWS. In this regard:
 - i. Markers must be fixed in a suitable location so as to be highly visible; and,
 - ii. Markers should be positioned adjacent to the most appropriate access for the water supply.

Note: The definition of below ground dedicated fire fighting water supply tank(s) is when the outlet valve is located below natural ground level.

Reason: The intent of measures is to provide adequate services of water for the protection of buildings during and after the passage of a bush fire, and to locate gas and electricity so as not to contribute to the risk of fire to a building.

21. Access

Property access roads shall comply with section 4.1.3 (2) of 'Planning for Bush Fire Protection 2006'.

Reason: The intent of measures for property access is to provide safe access to/from the public road system for fire fighters providing property protection during a bush fire and for occupants faced with evacuation.

22. Design and Construction

Prior to the occupation of the approved dwelling house, the subject dwelling shall comply with Sections 3 and 5 (BAL 12.5) Australian Standard AS3959-2009 'Construction of buildings in bush fire-prone areas' and section A3.7 Addendum Appendix 3 of 'Planning for Bush Fire Protection'.

Reason: The intent of measures is that buildings are designed and constructed to withstand the potential impacts of bush fire attack.

23. Landscaping

Landscaping within the required asset protection zone is to comply with the principles of Appendix 5 of 'Planning for Bush Fire Protection 2006'.

Reason: To ensure that proposed landscaping does not contribute to the passage of a potential bush fire.

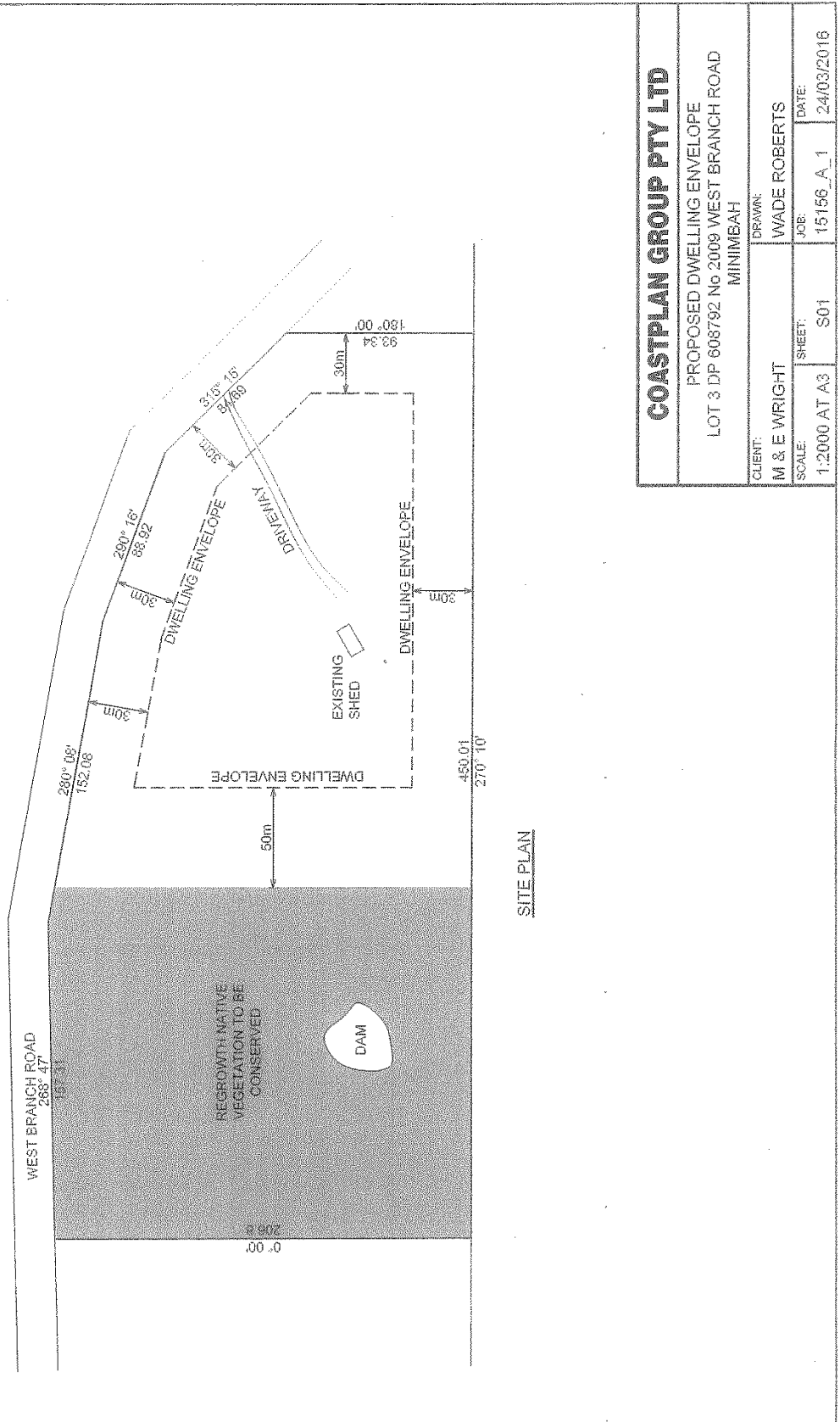
24. Building Certificate

Prior to the occupation of the approved dwelling house, a Building Certificate, pursuant to Section 149 of the Environmental Planning and Assessment Act 1979, shall be obtained from the Council.

Reason: To ensure the approved building is fit for human habitation.

ANNEXURES

A: Plans of proposed development



SITE PLAN

COASTPLAN GROUP PTY LTD			
PROPOSED DWELLING ENVELOPE			
LOT 3 DP 608792 No 2009 WEST BRANCH ROAD			
MINIMBAH			
CLIENT:	DRAWN:	JOB:	DATE:
M & E WRIGHT	WADE ROBERTS	15156_A_1	24/03/2016
SCALE:	SHEET:		
1:2000 AT A3	S01		

2 MODIFICATION DA 206/2015 - SERVICE STATION THE LAKES WAY, TUNCURRY

Report Author Robyn Shelley, Senior Development Assessment Planner

File No. / ECM Index DA 206/2015 & PK 38543

Date of Meeting 19 April 2017

DETAILS

Date Received: 29 November 2016

Applicant: B Poljak

Owner: R Wilson

Land: Lot 51 DP 1071540, The Lakes Way, Tuncurry

Area: 1,938m²

Property Key: 38543

Zoning: IN2 - Light Industrial, GLLEP 2014

SUMMARY OF REPORT

- Council granted conditional approval to a service station on the subject site on 22 September 2015.
- Section 94 contributions were imposed on the consent, including a considerable amount towards Major Roads.
- A Section 96(1A) modification application, the subject of this report, was lodged in relation to the Section 94 contributions for Major Roads.
- The modification application was presented to Council's Development Control Unit Meeting held on 8 March 2017 where it was resolved to defer the matter to have an independent consultant review the traffic analysis.
- The independent review has been received and is discussed in this report.
- Further proposal to modify the water quality component of the development.

SUMMARY OF RECOMMENDATION

That approval to the modification application be approved subject to the recommendation contained in this report.

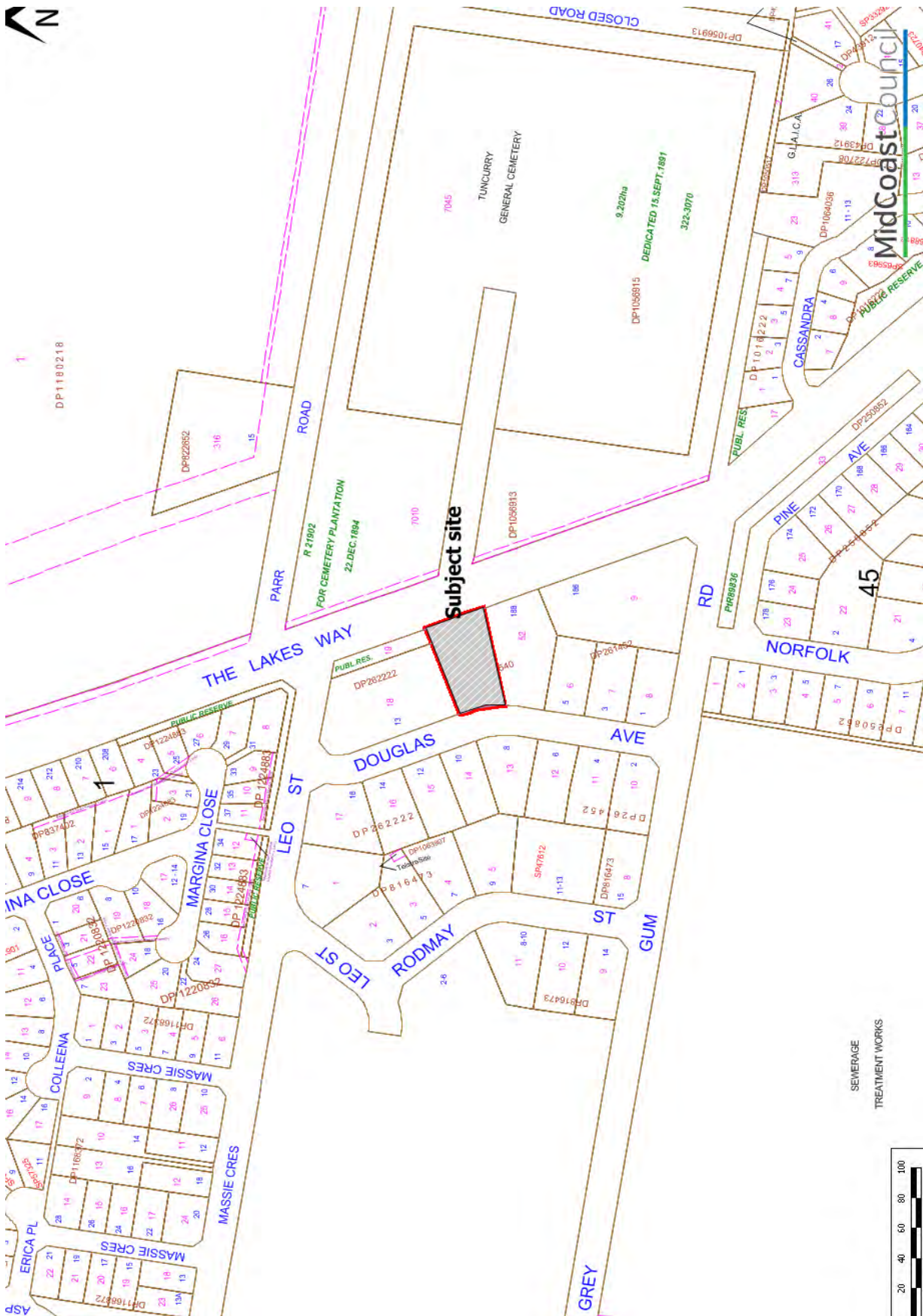
FINANCIAL/RESOURCE IMPLICATIONS

Cost of defending any appeal against Council's decision.

LEGAL IMPLICATIONS

The applicant has the right to appeal against Council's decision.

SUBJECT SITE AND LOCALITY



BACKGROUND

A report was submitted to Council's Development Control Unit Meeting held on 15 March 2017 to consider reducing the Section 94 contributions payable towards Major Roads. The applicant had requested a passing trade discount of 70%, which would result in the Section 94 contributions being assessed on a factor of 0.3 (ie 30% trip generation by the new development). The report is contained in Annexure "A" to this report.

The Development Control Unit resolved:

"That the application to modify development consent No. 206/2015 be deferred to have an independent consultant review the traffic analysis and following receipt of that data another report on this application will be considered at the next available DCU meeting."

REPORT

S94 - Major Roads

An independent consultant (Better Transport Futures) was engaged by Council to review the traffic analysis, in accordance with the DCU resolution.

The independent consultant has reviewed the applicant's submission and Council's original assessment. The consultant's report also references alternate sources of information.

The report notes that passing trade factors for service stations vary between 40% - 90% with the average being closer to 60%. This is based on traffic assessments of service station proposals across eight (8) sites in five (5) States of Australia.

The consultant has concluded that whilst a passing trade discount of 70% is not unreasonable, a discount of 60% would be more appropriate. A copy of the consultant's report is attached as Annexure B.

Water Quality

Following receipt of the original application to modify the Section 94 contributions, the applicant amended the application to also include a minor change to the bio-retention tanks for water quality. The applicant has requested that the two (2) bio-retention tanks as approved by the development application, be combined into one (1) bio-retention tank and relocated to avoid the conflict with the sewer. In this regard the applicant has submitted an amended plan which has been assessed by Council's Natural Systems - Water Quality Section, who have checked the input parameters for the MUSIC model and advised that the amended proposal achieves the water quality objectives for the site.

CONCLUSION

Council, at its Ordinary Meeting held on 22 September 2015, granted conditional consent to the construction of a Woolworths operated service station on the subject site.

The proposal was assessed in accordance with Section 79c of the Environmental Planning and Assessment Act and considered an acceptable development.

An application to modify a development consent was submitted requesting a review of the Section 94 contributions for Major Roads and water quality requirements.

A report was submitted to Council's Development Control Unit Meeting held on 8 March 2017 where it was resolved to defer the matter pending an independent consultant review the traffic analysis. The consultant recommends that a discount of 60% is more appropriate than the 70% discount previously recommended to the DCU.

RECOMMENDATION

It is recommended that the application to modify development consent No. 206/2015 be approved as follows:

Amending Condition No 20 as follows:

20. S94 contributions

Prior to the issue of a construction certificate, a monetary contribution shall be paid to Council in accordance with Section 94 of the *Environmental Planning and Assessment Act 1979*. The services and facilities for which the contributions are levied and the respective amounts payable under each of the relevant plans are set out in the following table:

Contributions Plan	Facility	quantity	unit	rate	amount
Great Lakes Wide	Headquarters Building	\$799,272	\$1 non res	@ \$0.001	= \$799.27
Forster District	Major Roads Inner Zone	244	1-way trips	@ \$674.34	= \$164,539.94
				Total	= \$165,339.21

Contribution rates are subject to indexation. The rates shown above are applicable until 30 June following the date of consent. Payment made after 30 June will be at the indexed rates applicable at that time.

The Contributions Plan and the Standard Schedule for Section 94 Plans may be viewed on Council's web site or at Council's offices at Breese Parade, Forster.

Reason: Statutory requirement to be paid towards the provision or improvement of facilities and services.

Amending Condition No 1 as follows:

1. Development in accordance with approved plans

The development shall be implemented in accordance with the plans and supporting documents set out in the following table except where modified by any conditions of this consent.

Plan type/Supporting Document	Plan No. & version	Prepared by	Dated
Site plan	DA - 03	Scott Carver	31/10/2014
Layout plan	DA - 04	Scott Carver	21/11/2014
Elevations	DA - 05	Scott Carver	14/11/2014
Dangerous goods plan	DA - 06	Scott Carver	14/11/2014
Tanker movement plan	DA - 07	Scott Carver	14/11/2014
Signage plan	DA - 08	Scott Carver	14/11/2014
Signage detail	DA - 09	Scott Carver	14/11/2014
Schedule of finishes	DA - 10	Scott Carver	14/11/2014
Perspectives	DA - 11	Scott Carver	14/11/2014
Floor plan	A - 02	Scott Carver	17/10/2014
Lighting design	09019-1	Hamilton Lighting Systems	06/09/2009
Planting plan	L01 - C	James Pfeiffer Landscape Architects	09/09/2014
Proposed petroleum filling stations	13948_DA_C01 Section 96	Henry&Hymas	12/2016
Concept stormwater design	13948_DA_C01 Section 96	Henry&Hymas	12/2016
Stormwater catchment plan	13948_DA_C03 Section 96	Henry&Hymas	12/2016
Statement of Environmental Effects	214.080	TPG	14/11/2014
Statement of Environmental Effects	Addendum	TPG	09/04/2015
Acid Sulphate Soils Assessment	RGS00998.1-AB	Regional Geotechnical Solutions	01/07/2015
Noise Impact Assessment	15-1867-R1	Reverb Acoustics	02/2015

The approved plans and supporting documents endorsed with the Council stamp and authorised signature shall be kept on site at all times while work is being undertaken.

Reason: Information and to ensure compliance.

Amending Condition No 46 as follows:

46. Implementation of Stormwater Strategy

The stormwater management system detailed in the Stormwater Concept Design Plan (Drawing number 13948_DA_CO2, prepared by Henry and Hymas, Section 96, Dec 2016) shall be constructed and maintained for the life of the development to ensure ongoing compliance with Council's water quality objectives.

Reason: To ensure ongoing functioning of the stormwater system as per modelled and approved plan.

ANNEXURES

A: Report to DCU 15 March 2017

MODIFICATION APPLICATION DA 206/2015 - SERVICE STATION THE LAKES WAY, TUNCURRY

Report Author Robyn Shelley, Senior Development Assessment Planner
File No. / ECM Index DA 206/2015 & PK 38543
Date of Meeting DCU 8 March 2017

DETAILS

Date Received: 29 November 2016
Applicant: B Poljak
Owner: R Wilson
Land: Lot 51 DP 1071540, The Lakes Way, Tuncurry

Area: 1,938m²
Property Key: 38543
Zoning: IN2 - Light Industrial, GLLEP 2014

SUMMARY OF REPORT

- Council granted conditional approval to a service station on the subject site on 22 September 2015.
- Section 94 contributions were imposed on the consent, including a considerable amount towards Major Roads.
- A Section 96(1A) modification application, the subject of this report, was lodged in relation to the Section 94 contributions for Major Roads.

SUMMARY OF RECOMMENDATION

That approval to the modification application be approved subject to the recommendation contained in this report.

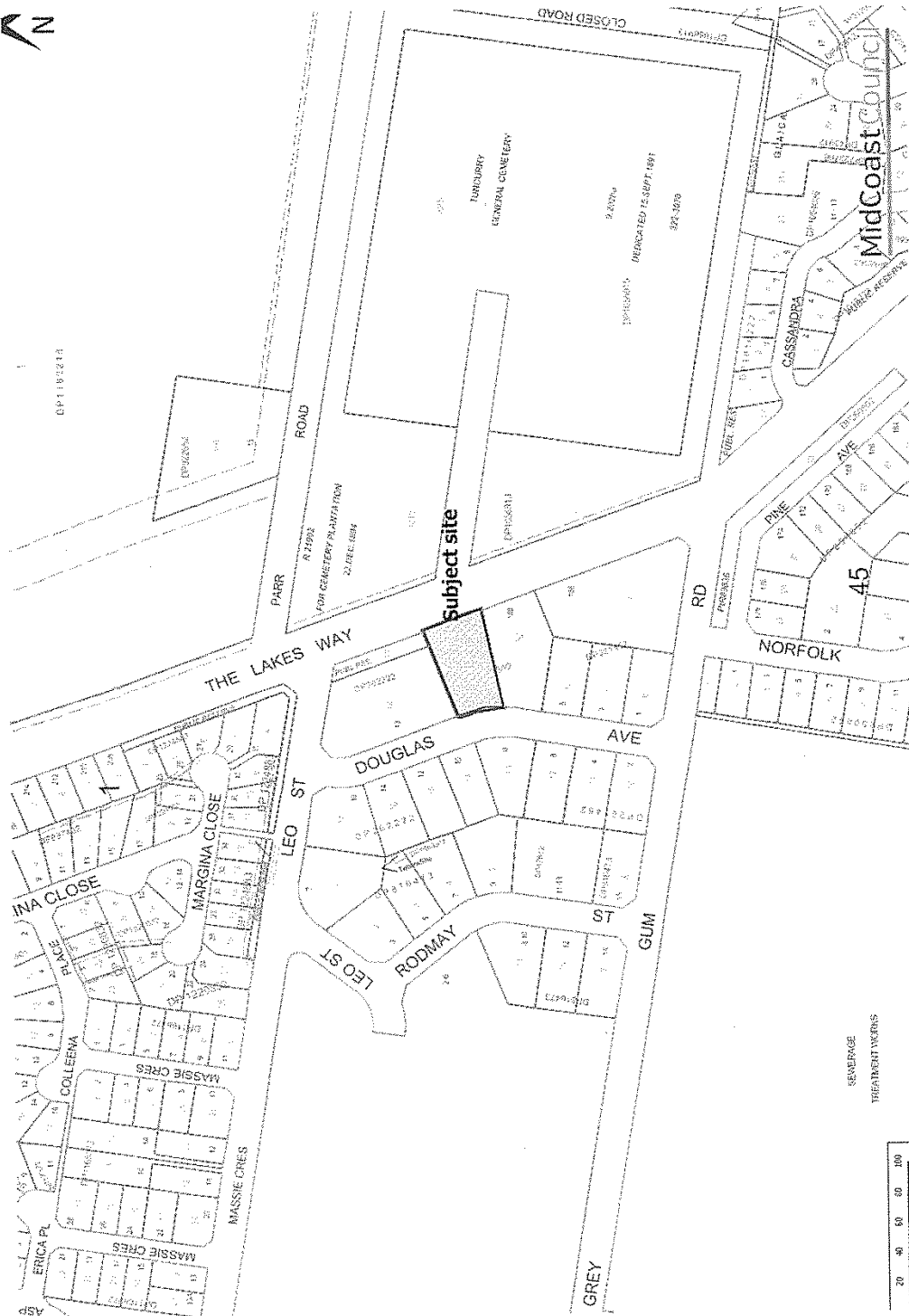
FINANCIAL/RESOURCE IMPLICATIONS

Cost of defending any appeal against Council's decision.

LEGAL IMPLICATIONS

The applicant has the right to appeal against Council's decision.

SUBJECT SITE AND LOCALITY



BACKGROUND

Council, at its Ordinary Meeting held on 22 September 2015, granted conditional consent to the construction of a Woolworths operated service station on the subject site.

The conditions of consent included the imposition of Section 94 contributions (Condition 20). The contributions were comprised of:

- \$799.29 Great Lakes wide Headquarters building.
- \$285,815.93 Forster District Major Roads Inner Zone.

PROPOSAL

A Section 96(1A) modification application was lodged with Council requesting a review of Condition No. 20, specifically the Forster District Major Roads Inner Zone contribution.

REPORT

The Section 96 contributions for Major Roads was determined using a traffic report lodged with the original development application. The traffic report as submitted resulted in Council using 431 trips for the purpose of generating the Section 94 contributions.

Based on 431 two way trips per day the Major Roads contribution amounted to \$285,815.93.

The applicant after discussions with Council staff, submitted an amended assessment of the traffic implications of the proposal, to support a reduction in the roads contribution. The applicant has provided new data based on actual figures from similar service station sites, which suggests that traffic movements will be less than originally stated at 183 two way trips per day.

The new data has been reviewed by Council's Engineering Section who have agreed with the new trip estimates for the service station. Utilising the new data results in 183 two way trips per day, being used to generate the Section 94 contributions.

The Section 94 contribution for Major Roads based on 183 trips is \$123,404.95.

Under the provisions of Section 96 of the Environmental Planning and Assessment Act, 1979, as amended (EP & A Act), Council may only agree to a modification of an existing development consent if the following criteria have been complied with:

- **Minimal environmental impact:**

It is considered that the proposed modification will have minimal environmental impact as no physical alterations are proposed to the development for which consent was originally granted.

- **Substantially the Same Development:**

It is considered that the development is substantially the same development as the development for which consent was originally granted and before that consent was originally granted was modified. The development, the subject of the Section 96 application, is fundamentally and materially the same in degree and character, in that the overall form, bulk and layout remain the same.

- **Any submissions made in accordance with the Act or regulations:**

The modification application was not notified to adjoining landowners as the proposal did not alter the physical layout or structures on the site from that as originally approved.

- **Section 79C Assessment:**

Council in determining a Section 96(1A) modification, must take into consideration relevant matters referred to in Section 79C of the Environmental Planning and Assessment Act, 1979, as amended (EP & A Act).

The application has been assessed having regard to Section 79C of the EP & A Act, including the following relevant environmental planning instruments and policies:

- **Great Lakes Council Local Environmental Plan 2014**

The proposed modification does not introduce any changes with respect to the original assessment in relation to the above document.

CONCLUSION

Council, at its Ordinary Meeting held on 22 September 2015, granted conditional consent to the construction of a Woolworths operated service station on the subject site.

The proposal was assessed in accordance with Section 79c of the Environmental Planning and Assessment Act and considered an acceptable development.

An application to modify a development consent was submitted requesting a review of the Section 94 contributions for Major Roads.

The information was reviewed by Council staff who have agreed to a reduction of the Section 94 contributions for Major Roads.

RECOMMENDATION

It is recommended that the application to modify development consent No. 206/2015 be approved subject to Condition No. 20 being amended to read as follows:

20. S94 contributions

Prior to the issue of a construction certificate, a monetary contribution shall be paid to Council in accordance with Section 94 of the *Environmental Planning and Assessment Act 1979*. The services and facilities for which the contributions are levied and the respective amounts payable under each of the relevant plans are set out in the following table:

Contributions Plan	Facility	quantity	unit	rate	amount
Great Lakes Wide	Headquarters Building	\$799,292	\$1 non res	@ \$0.001	= \$799.29
Forster District	Major Roads Inner Zone	183	1-way trips	@ \$674.34	= \$123,404.95
Total					= \$124,204.24

Contribution rates are subject to indexation. The rates shown above are applicable until 30 June following the date of consent. Payment made after 30 June will be at the indexed rates applicable at that time.

The Contributions Plan and the Standard Schedule for Section 94 Plans may be viewed on Council's web site or at Council's offices at Breese Parade, Forster.

Reason: Statutory requirement to be paid towards the provision or improvement of facilities and services.

B: Consultant's Report



A. Summary of Issues

1. **Application of The Guide to Traffic Generating Developments (Version 2.2, RTA, October 2002)**
(Referred to herein after as The Guide)
Applicant's approach of securing survey data from additional sites of a similar development type to the subject site is consistent with the recommendations of The Guide.
2. **Definition of Trips**

Clarification of 2-way versus 1-way trips is consistent with The Guide
3. **Traffic Generation – Peak to Daily Conversion Factor**

Peak to Daily Conversion Factor of 10.7 is based on additional sites (4) versus the Guide factor is 19 based on 1 site. The collection and use of additional data is consistent with recommendations in The Guide.
4. **Application of Passing Trade Discount**

Council's S94 plan specifies a factor of 0.4 times one way trips to estimate major road contributions for non-residential developments. This is a 60% discount factor.
The applicant seeks to modify this to a 70% discount factor.

Given the range of linked trip discounts in The Guide varies from 15% to 25% for retail, and 35% to 50% for fast food outlets, it is not unreasonable to expect a specialist motor vehicle related development (i.e. its prime purpose is refuelling motor vehicles) to have a high percentage of its transactions occurring while motorists are undertaking trips for other purpose.

Research of alternate passing trade factors applied in Australia point to the US based Institute of Transport Engineers (ITE) Trip Generation Manual (9th Edition) as an alternative reference on this issue. A review of traffic impact assessments of service station proposals across 8 sites in 5 States of Australia revealed they were assessed with assumptions on passing trade ranging from 40% to 90%, with the mean value slightly more than 60%.

While not definitive, I would consider this supports Council's 60% discount factor as being reasonable and in the absence of anything more definitive from the applicant to justify the 70%, I would recommend application of the Councils 0.4 factor as per the Application of the Non-Residential Developments S94 One-Way Trips Table - 18 Nov 2013.
5. **Justification of the unit cost rate (\$663.14)**

Neither the applicant nor Council has raised any issue with the unit cost rate (\$663.14 quoted but it is noted that this value is indexed) applied in the s94 plan and as such this aspect of the contributions calculations has not been reviewed here.

B. Technical Review

1. Council's Original Calculation of s94 Contribution

Council's Original Calculation of s94 Contribution (Major Roads Forster District) was \$285,814.93. This is derived from a cost per trip of \$663.14 (being the applicable indexed amount from the s94 plan at the time of DA assessment), and 431 calculated one way daily trips.

2. Applicant's s96 modification

The applicant's traffic consultant has provided additional information as part of an s96 modification application seeking to reduce the 431 calculated one way daily trips to 183 trips. The calculated amount of \$663.14 is not in question.

The basis of the justification relates to:

- i. Confirmation of the difference between 2-way, and 1-way trips as defined in the Guide.
- ii. A change to the conversion factor applied to the peak to daily trips conversion factor – 19 in the Guide, 10.7 sought by the applicant based on submitted detailed survey data.
- iii. Application of a passing trade factor of 70%, in lieu of the Council's discount factor of 60% for one way trips applied to Non-Residential Developments

A review of the proposed adjustments is outlined below.

3. Factors affecting land use traffic generation

Land use Traffic Generation is a complex, and varied phenomenon. The Guide to Traffic Generating Developments (Guide) (Version 2.2, RTA, October 2002), was produced as a technical resource to assist those involved in the assessment of these development applications. The overall objective being that parties have access to common information relevant to the development approval process.

The Land use traffic generation rates quoted in the guide are based on the Road Authority's report series - *Land Use Traffic Generation - Data and Analysis*.

The guide states that it: *"provides a summary of basic traffic generation information for various land uses to assist people who may not have traffic engineering training. By simplifying generation rates, site-by-site variations from the average are not taken into account. Comparisons may be drawn, however, between the traffic generation potential of various land use types enabling a rough assessment of the traffic generation implications of land use zoning. Departures from the average generation rates for individual development proposals may be adopted, in which case such a departure should be justified with relevant supporting facts."*

With respect to service station development the Guide relies on one site only to quote its peak to daily conversion factor of 19.

Seeking and providing additional data (in the case of the applicant at 4 service station sites) to verify such an important factor is consistent with the recommendations of The Guide

Factors influencing trip generation for a service station development:

- Opening hours
- Presence of (or not) of a convenience store
- Location
- Time of day
- Day of week
- Linked trips (proximity to other trip generators, shops, offices etc.)
- Competition (including fuel discounting promotions, etc.)



"Daily trip generation rates depend on the site's operating hours. For example, at one convenience store surveyed over 24 hours, the total daily trip generation was 19 times the evening peak hour generation. For trips associated with fuel sales, the total daily trip generation was 17 times the evening peak hour generation."

Based on the data provided by the applicant's traffic consultant, the conversion factor for peak hour traffic to daily traffic at 10.7 is considered reasonable, given the data provided is based on actual survey data collected from three similar developments (at Taree, Forster and Gloucester).

Data was also supplied for a 4th site (Batemans Bay), as the basis to adjust the trip numbers to reflect 24 hours. Again based on the information provided, it is reasonable to accept a conversion factor for peak hour traffic to daily traffic at 10.7 in lieu of the Guide factor of 19 which is based on one site survey undertaken in 1990.

Conclusion:

Applying the 10.7 conversion factor, the estimated number of two way daily trips would be:

$114 \times 10.7 = 1220$, or

610 one way trips per day.

6. Section 94 - Factor to identify major road contribution:

Council's S94 plan specifies a factor of 0.4 times one way trips to estimate major road contributions for non-residential developments. (Application of the Non-Residential Developments S94 One-Way Trips Table - 18 Nov 2013.)

This is in fact a form of discounting equivalent to recognising the effects of passing trade or linked trips on traffic generation. It is effectively equivalent to a passing trade or linked trip discount of 60%.

The applicant's traffic consultant has identified a passing trade discount of 70% in the supplied traffic impact assessment supplied with the DA. Equating to 30% of one way trips being generated by the new development as additional trips. The applicant's traffic consultant has then applied 0.3 as the conversion factor.

If 0.3 factor is accepted, the one way trips to estimate major road contribution would be:

$0.3 \times 610 = 183$ trips.

Resulting in a contribution amount of \$121,354.62

If Council's 0.4 factor is applied, the one way trips to estimate major road contribution would be:

$0.4 \times 610 = 244$ trips

Resulting in a contribution amount of \$161,806.16

A review of the original traffic impact assessment confirms that 70% is quoted, but no justification of its derivation is provided.

A review of alternate sources of information on trip generation and in particularly passing trade has been undertaken. For example the US Institute of Transportation Engineers (ITE) produces and updates a comprehensive manual on Trip Generation. The latest version is the 9th Edition. References to this source of trip generation data have been made in technical work for service station development applications in other parts of Australia (e.g. WA). The work has applied a range to the passing trade factor from 40% to 90% in one Qld application.

A 70% passing trade factor is quoted as being within the range of values specified in the ITE Manual. The RTA Guide is referenced at least once in this work with a 40% value, but combined with a fast food outlet.

Traffic assessments of service station proposals reviewed were from 8 sites in 5 States across Australia and included application of assumptions on passing trade as follows:

40%, 50%, 50% (ITE), 56% (ITE 8th Edition), 70%, 70% (ITE 9th Edition), 80% (ITE 9th Edition) and even 90%.

Where there was a specific TIE reference it is noted here.



On this it is considered that while the value of 70% is not unreasonable, Council's 60% is also acceptable. The mean value of the above is actually closer to 60% (@63.25%)

Consequently it is considered that Council's 60% discount factor is reasonable for application to the service station proposal, and in the absence of anything more definitive from the applicant to justify a 70% passing trade factor, it is recommended that Council's 0.4 factor as per the Non-Residential Developments S94 One-Way Trips Table - 18 Nov 2013 is applied.

The resulting calculation of contributions for the Forster District component of the plan is

$0.4 \times 610 = 244$ trips

Resulting in a contribution amount of **\$161,806.16**

(Subject to indexation adjustment)

7. Indexing Section 94 Contribution rate:

The traffic consultant has used the unit rate \$663.14 in calculations for the s96 submission. Ultimately this amount will need to be adjusted to current year S 94 rate.

3 DA 150/2016 - MIXED USE DEVELOPMENT - 7-9 BEACH ST, FORSTER

Report Author Robyn Shelley, Senior Development Assessment Planner

File No. / ECM Index DA 150/2016 & PK 4283

Date of Meeting DCU 19 April 2017

DETAILS

Date Received: 13 October 2015

Applicant: Morson Group

Owner: Beach Head Project Pty Ltd

Land: Lot 4 DP 333246, 7-9 Beach Street, Forster

Area: 404.8m²

Property Key: 4283

Zoning: B2 Local Centre, GLLEP 2014

SUMMARY OF REPORT

- Development application lodged for the construction of a mixed use commercial and residential apartment building with basement car parking.
- Application notified to adjoining landowners.
- One (1) submission was received, objecting to the development.
- The development is generally compliant with the objectives of Great Lakes Development Control Plan 2014.
- The applicants met with Council on 27 February 2017 to discuss non-compliance with parking and general aspects of the building.
- An amended Statement of Environmental Effects with amended plans was lodged on 23 March 2017.

SUMMARY OF RECOMMENDATION

It is recommended that Development Application No. 150/2016 for the construction of a mixed use building on Lot 4 DP 333246, 7-9 Beach Street, Forster be approved

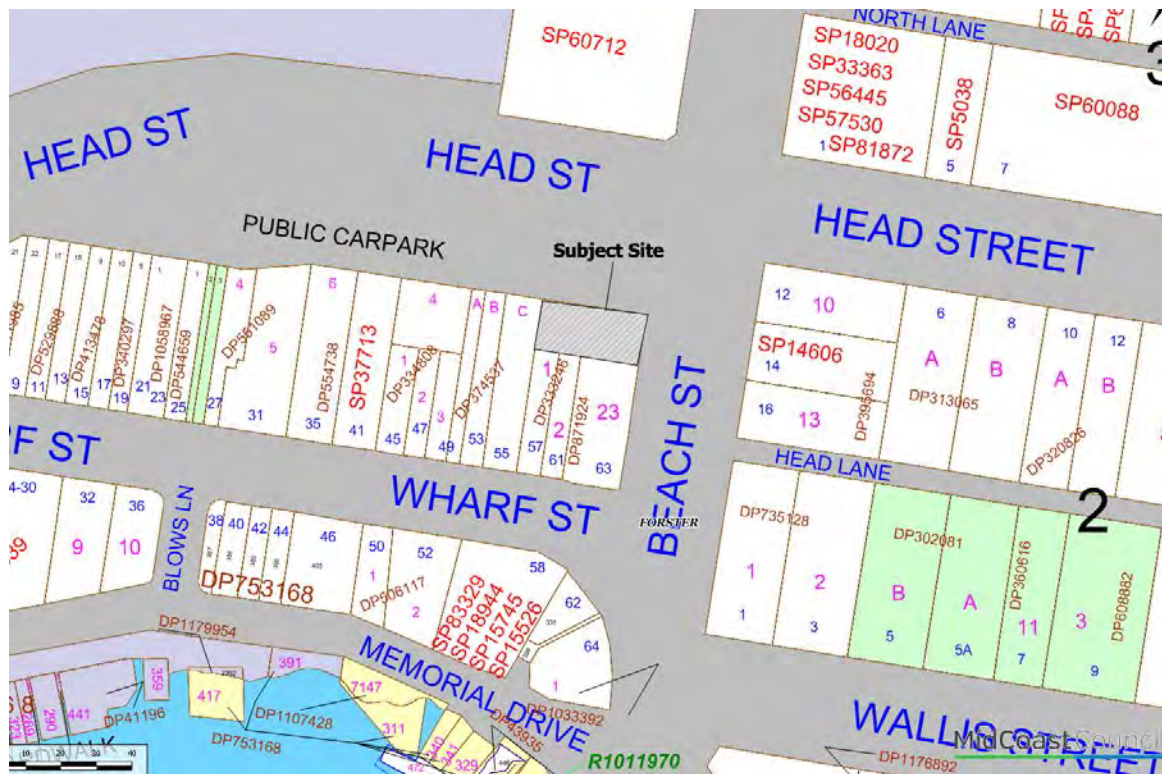
FINANCIAL/RESOURCE IMPLICATIONS

Cost of defending any appeal against Council's decision.

LEGAL IMPLICATIONS

The applicant has the right to appeal against Council's decision.

SUBJECT SITE AND LOCALITY



BACKGROUND

- 20 February 2006, consent (DA 859/2005) was granted for a four (4) storey commercial building on the land. There is no evidence to suggest that this consent was physically commenced.
- 13 November 2015, Development application lodged for a five (5) level mixed use commercial and serviced apartment building.
- 16 November 2015, a letter was submitted to the applicant requesting further information in relation to the management of waste and the suitability of the gradient of the ramp for removing bulk waste bins from the basement car park.
- 13 January 2016, after further review of the application a letter was submitted to the applicant requesting further information in relation to the basement car park.
- 8 April 2016, a letter was submitted to the applicant advising if the information was not received within 30 days of the date of the letter the application would be likely to be recommended for refusal on the grounds of insufficient information.
- 29 April 2016, the applicant submitted amended plans. The Statement of Environmental Effects accompanying the plans stated that the serviced apartments were to be residential apartments.
- 9 June 2016, the applicant was requested to submit further information in relation to the access ramp/driveway and internal parking.
- 3 August 2016, the applicant provided a revised basement car park drawing, and confirmed that the proposed use of the development was to be for serviced apartments. The revised drawings included eight (8) basement car parking spaces for nine (9) serviced apartments.

- 10 August 2016, a meeting was held with the applicant to discuss parking and vehicle manoeuvring areas. The applicant was advised that Council staff would not accept eight (8) car parking spaces for nine (9) serviced apartments.
- 7 November 2016, amended plans were submitted.
- 18 November 2016 an amended Statement of Environmental Effects for residential apartments was submitted to Council to accompany the plans submitted on 7 November.
- 4 December 2016, a letter was submitted to Council detailing the amendments proposed in the plans submitted on 7 November.
- 13 December 2016, the application was re-notified to neighbouring landowners for a period of 28 days. One (1) submission was received.
- The applicants met with Council on 27 February 2017 to discuss non-compliance with parking and general aspects of the building.
- An amended Statement of Environmental Effects with amended plans was lodged on 23 March 2017.

PROPOSAL

The proposal is for the construction of a five (5) storey mixed use commercial and residential apartment building with basement car parking.

The proposal includes:

- Six (6) residential apartments (levels 3, 4 & 5)
- 267m² of commercial floor space (ground floor level)
- 261m² of office/commercial floor space (first floor level)
- Basement car parking (eight (8) spaces)
- The basement car park includes a waste storage area, storage space (allocated to units 5 & 6) and a lift entry.

The ground floor commercial space is proposed to be divided into two (2) commercial tenancies.

- Tenancy 1 has an area of 145m² and is located on the eastern portion of the site. Access to Tenancy 1 is proposed from Beach Street. Tenancy 1 lends itself to uses that rely on an interaction with the public domain for footpath dining, such as restaurants, bars or similar. Tenancy 1 is proposed to be 3m AHD in the eastern part, stepping up to 4m at the western end.
- Tenancy 2 has an area of 122m² and is located on the western end of the ground floor and includes a mezzanine. Tenancy 2 will have a frontage to the Head Street public car park. Tenancy 2 is proposed to be constructed at 4m AHD with access to the tenancy from the Head Street car park. Access is proposed through both stairs and a chair lift.
- There is an outdoor dining area shown on the ground floor plan on the Beach Street footpath. This area is in public ownership and does not form part of this application. Separate consent would be required for use of the public footpath.

The first floor level is divided into three (3) commercial tenancies.

- Office Tenancy 1 (western) proposed area of 97m²
- Office Tenancy 2 (central) proposed area of 82m²
- Office Tenancy 3 (eastern) proposed area 82m²

The three (3) levels above the two (2) commercial/retail ground and first floor tenancies will be occupied by residential apartments. Each level contains two (2) x two (2) bedroom residential apartments, resulting in a total of six (6) residential apartments. Refer to Attachment "A".

SITE DESCRIPTION

The site is located on the corner of Beach Street and Head Street, Forster. There is a single storey commercial building with detached garage on the site. The building is vacant with the last occupancy being a bicycle sales shop. Development Application No. 120/2017 granted consent to the demolition of this building on 11 November 2016.

A single storey commercial building (liquor store) is located immediately to the south of the subject site.

A public car park is located to the north of the site. Single storey commercial buildings and a residential flat building (three storeys) are located on the opposite side of Beach Street to the east. A parking area servicing a property fronting Wharf Street is located to the west of the site.

REPORT

The following matters listed under Section 79C of the Environmental Planning and Assessment Act, 1979, are relevant in considering this application:

- a) ***The provisions of any environmental planning instrument; any proposed instrument that is or has been the subject of public consultation and which have been notified to the consent authority; any DCP; any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F; any matters prescribed by the regulations; any coastal zone management plan that apply to the development application on the subject land.***

Great Lakes Local Environmental Plan 2014 (GLLEP 2014)

Part 1.2 -Aims of the Plan

The relevant aims of the Plan are to facilitate the orderly and sustainable economic development of land, to ensure that development does not create unreasonable or uneconomic demands for the provision of public amenities or services; to promote public transport patronage and encourage walking and cycling and to ensure that development meets any local water quality objectives adopted by Council in relation to groundwater, rivers, estuaries, wetlands and other waterbodies. The proposed development is considered to be consistent with these aims.

Part 2 - Land use table

The site is zoned B2 - Local Centre and the proposed development (mixed use development) is permissible in the zone with development consent. The relevant objectives of the zone are to provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area; encourage employment opportunities in accessible locations; maximise public transport patronage and encourage walking and cycling; enable a range of residential accommodation and tourist and visitor accommodation to be located above commercial uses to promote housing diversity and community activity within the business centre and to ensure that traffic generation from the development can be managed in a way that avoids conflict with the desired pedestrian environment. The proposed development is considered to be consistent with these objectives.

Part 4 - Principal development standards

4.3 - Height of buildings - The objectives of the clause are to ensure that the scale of proposed buildings is compatible with the existing environmental character and the desired future urban character of the locality and to encourage residential development that is consistent with AS4299-1995, *Adaptable housing*.

The height of building map for the subject site is 18m. Relevant to the B2 Local Centre zone the height of building may exceed the maximum height shown for the land on the height of buildings map by 10% if the consent authority is satisfied that:

- a) internal lift access will be provided to all levels in the building, and
- b) the design of the building is consistent with AS4299-1995, *Adaptable housing*.

The height of the building is 18.9m. In accordance with the clause an internal lift is provided to all levels in the building and one (1) residential apartment on each floor, has been designed to be access compliant and as such would be capable of being an adaptable housing apartment.

The proposed building complies with the nominated height for the area. The proposed development achieves the numerical height standards in accordance with the requirements of the LEP in terms of height of buildings.

4.4 - Floor space ratio - The objectives of the clause are to ensure that the scale of proposed buildings is compatible with the existing environmental character and the desired future urban character of the locality, to encourage a diversity of development on land in business zones, which is unlikely to prejudice the supply of retail or business floor space in these zones, to permit a floor space ratio that will provide a transition in built form and land use intensity and to encourage residential development that is consistent with AS4299-1995 *Adaptable housing*.

There is no floor space ratio for the site.

Part 5 - Miscellaneous provisions

5.5 - Development within the coastal zone - The relevant objectives of the clause are to provide for the protection of the coastal environment through promoting the principles of ecologically sustainable development and to implement the principles of the NSW Coastal Policy (discussed later in this report under the heading NSW Coastal Policy 1997). The proposed development is considered to be consistent with the above objectives having regard to the matters listed for consideration under clause 5.5.

Part 7 - Additional local provisions

7.1 - Acid sulfate soils - The objective of the clause is to ensure that development does not disturb, expose or drain acid sulphate soils and cause environmental damage. The Acid Sulphate Soils Planning Map identifies the site as part class 3 & 4 land. The requirements of those classes relate to excavations below 1.0 metre and 2.0 metres. The proposed development will have excavations to depths below 1.0 and 2.0 metres and if approved would require submission of an acid sulphate soil assessment prior to the issue of a construction certificate.

7.2 - Earthworks - The objective of this provision is to ensure that earthworks will not have a detrimental impact on environmental functions and processes, neighbouring uses and features of the surrounding land. The proposed development includes underground car parking which will result in extensive excavation works. Issues of soil erosion, sedimentation and drainage impacts would need to be managed during the construction process. If approval is granted appropriate conditions should be included. Accordingly, the proposed development will be consistent with the objective of this clause.

7.3 - Flood Planning - The objectives of this clause are to minimise the flood risk to life and property associated with the use of land; to allow development on land that is compatible with the lands flood hazard, taking into account projected changes as a result of climate change and to avoid significant adverse impact on flood behaviour and the environment. The clause applies to land identified as "Flood Planning area" on the Flood Planning Map and other land at or below the flood planning level.

The subject site is identified as a "Flood Planning area" on the Flood Planning Map. The development is marginally affected by flooding as a result of sea level rise to the year 2060. The expected flood level is RL 2.4m AHD. The development site levels vary from RL 2.2m AHD to RL 2.9m AHD.

The development has a basement car park and the driveway has been designed with a crest/high point of RL 2.4M AHD to prevent the 2060 flood entering the basement car park. The commercial and residential aspects of the proposal are above the flood level.

The proposed development achieves the objectives of this clause.

7.5 - Stormwater Management - The objective of this clause is to minimise the environmental impacts of stormwater on the site and adjoining properties, native bushland, groundwater, wetlands and receiving waters. The proposed development incorporates a stormwater management strategy with a raingarden that will receive overflow from 100% of the roof area and the second floor balconies. The raingarden has a minimum of 800mm fall from the raingarden inlet to the outlet discharge point into the existing stormwater system. These stormwater management measures will achieve the objectives of this clause.

7.13 - Active street frontages - The objective of this clause is to promote uses that attract pedestrian traffic along certain ground floor street frontages in Zone B1 Neighbourhood Centre and Zone B2 Local Centre. The clause applies to land identified as "Active Street frontage" on the Active Street Frontage Map.

The subject site is identified on the Active Street Frontage Map. The proposal complies with this clause as the ground floor commercial uses present an active street frontage.

7.17 - Residential Accommodation in Zone R4, Zone B1 or Zone B2 - The objective of this clause is to encourage residential development that is consistent with the adaptable housing design guidelines.

The proposed development is considered to comply with Clause 7.17 as an internal lift is provided to all levels in the building and one (1) residential apartment on each floor has been designed to be access compliant and as such would be capable of being an adaptable housing apartment, which could be modified easily and at little cost.

7.21 - Essential services - development consent must not be granted to development unless the consent authority is satisfied that the supply of water, electricity, disposal and management of sewage, stormwater drainage and suitable vehicular access are available to the development.

All essential services are available for the development.

State Environmental Planning Policy No. 65 Design Quality of Residential apartment Development

The aims, and objectives of the policy are:

- 1) This Policy aims to improve the design quality of residential apartment development in New South Wales.
- 2) This Policy recognises that the design quality of residential apartment development is of significance for environmental planning for the State due to the economic, environmental, cultural and social benefits of high quality design.
- 3) Improving the design quality of residential apartment development aims:
 - a) to ensure that it contributes to the sustainable development of New South Wales:
 - i) by providing sustainable housing in social and environmental terms, and
 - ii) by being a long-term asset to its neighbourhood, and
 - iii) by achieving the urban planning policies for its regional and local contexts, and
 - b) to achieve better built form and aesthetics of buildings and of the streetscapes and the public spaces they define, and
 - c) to better satisfy the increasing demand, the changing social and demographic profile of the community, and the needs of the widest range of people from childhood to old age, including those with disabilities, and
 - d) to maximise amenity, safety and security for the benefit of its occupants and the wider community, and
 - e) to minimise the consumption of energy from non-renewable resources, to conserve the environment and to reduce greenhouse gas emissions, and
 - f) to contribute to the provision of a variety of dwelling types to meet population growth, and
 - g) to support housing affordability, and
 - h) to facilitate the timely and efficient assessment of applications for development to which this Policy applies.
- 4) This Policy aims to provide:
 - a) consistency of policy and mechanisms across the State, and
 - b) a framework for local and regional planning to achieve identified outcomes for specific places.

The Policy applies to residential flat buildings, shop top housing and the residential component of mixed use developments. In the case of this development the Policy applies, as the building is at least three (3) or more storeys (not including levels below ground level (existing) or levels that are less than 1.2m above ground level (existing) that provide for car parking and the building concerned contains at least four (4) or more dwellings.

In accordance with Clause 28 of the Policy a consent authority must take into consideration the Apartment Design Guide (the Guide).

The Forster main street area is zoned B2 Local Centre. The Guide describes Local Centres as areas typically characterised by an established main street or shopping strip surrounded by residential uses, a definition that is consistent with the Forster Town Centre.

Compliance Schedule - SEPP65-2015 Apartment Design Guide - Design Criteria and Objectives.

Design Criteria	Compliance	Proposal									
<p>3D-1</p> <p>1. Communal open space has a minimum area equal to 25% of the site</p> <p>2. Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid winter)</p>	<p>No</p> <p>Yes</p>	<p>102m² is required however no common open space is provided because the balcony area exceeds the min. requirement by 210% i.e 60m². The external area provided (all private) is 186m². This exceeds the total external area requirement (Balcony + C.O.S) by 24m².</p> <p>2. Two hours of direct sunlight is achieved to all balconies.</p>									
<p>3E-1</p> <p>1. Deep soil zones are to meet the following minimum requirements:</p> <p>For site areas less than 650m² a minimum of 7% of the site is required as a deep soil planting zone.</p>	<p>N/A</p>	<p>The site is highly constrained due to the fact that it is a small site and is located in a business zone. The dimensions of the site require a 0m setback to all boundaries to accommodate the parking requirements and ground floor retail space.</p> <p>The intention of the Urban planning on this site is for buildings to have a 0m Street Frontage alignment to shape and form the streets. For this reason the design achieves the objective of the town centre.</p>									
<p>3F-1</p> <p>Separation between windows and balconies is provided to ensure visual privacy is achieved. Min required separation distances from buildings to the side and rear boundaries are as follows:</p> <table border="0" data-bbox="263 1099 775 1196"> <tr> <td>Up to 12m (4 storeys)</td> <td>6m</td> <td>3m</td> </tr> <tr> <td>up to 25m (5-8 storey)</td> <td>9m</td> <td>4.5m</td> </tr> <tr> <td>over 25m (9+ storey)</td> <td>12m</td> <td>6m</td> </tr> </table> <p>Gallery access circulation treated as habitable space when measuring privacy separation distances between neighbouring properties.</p>	Up to 12m (4 storeys)	6m	3m	up to 25m (5-8 storey)	9m	4.5m	over 25m (9+ storey)	12m	6m	<p>Yes</p>	<p>B2 Zoning permits "0" boundary setbacks. Windows facing the SW corner are presumed to be built out by Future "0"setback alignments therefore forming a light/air well.</p>
Up to 12m (4 storeys)	6m	3m									
up to 25m (5-8 storey)	9m	4.5m									
over 25m (9+ storey)	12m	6m									
<p>4A-1</p> <p>1. Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid-winter in the Sydney Metropolitan Area and in the Newcastle and Wollongong local government areas.</p> <p>3. A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter</p>	<p>Yes</p> <p>Yes</p>	<p>All Living rooms and private open spaces receive a minimum of 2hours direct sunlight. 100%</p> <p>0% of units receive no sunlight</p>									
<p>4B-3</p> <p>1. At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed</p> <p>3. Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line</p>	<p>Yes</p> <p>N/A</p>	<p>100% of the apartments are cross ventilated which exceeds requirement.</p>									

The relevant provisions of the Plan are discussed as follows:

3. Character Statements - The design of the proposed development is considered to contribute to the existing and desired future character of the Forster Town Centre and to be in keeping with the vision statement for the Forster Town Centre.

The site is identified within the Commercial and Dining Precinct of the Forster Town Centre. The vision for the area is for an active pedestrian-oriented precinct where hospitality and entertainment activities are focussed. The proposed development is considered to be in keeping with the vision for the Commercial and Dining Precinct.

4. Environmental Considerations - The proposed development due to its location will have no detrimental impact upon the quality and function of the natural environment.

Flooding - The site is marginally affected by flooding, at the western end resulting from sea level rise to the year 2060. The whole of the site is located within a flood planning area. The expected flood level is RL2.4m AHD while the development site levels vary from RL2.2m to RL2.9m AHD. The development has a basement car park, at the western end. The driveway has been designed with a crest/high point of RL2.4M AHD to prevent the 2060 flood entering the car park. The ground floor commercial level is between RL3.0m and RL4.5m AHD which is above the expected flood level of RL2.4m AHD.

Effluent Disposal - The proposed development will be serviced by reticulated sewerage.

6. Residential Apartment Buildings, Mixed Use Development and Business Premises - This section contains site and building controls for residential apartment buildings, mixed use development and business (commercial) premises. The development provisions in this section of the Plan are intended to encourage high quality design for high density residential development and mixed use development incorporating a residential component.

6.1 - General Building Design - The objectives are to design medium and high density residential development to respond to the streetscape character; complement and enhance the visual character of the street and neighbourhood through appropriate building scale, form and detail; reduce the visual dominance of garages as viewed from the street; promote high quality architectural design that is contemporary and innovative; ensure corner sites are developed as visually significant elements to promote a strong and legible character; provide an identifiable and desirable street address to each building and dwelling; define the street edge by creating a clear transition between private and public spaces along the street frontage and allow for outlook and surveillance towards the street and the public domain.

The design of the proposed development is considered to be generally consistent with the objectives of the General Building Design Section of the DCP. The development maintains consistency with the desired character of the area by retaining a retail and commercial presence at street level with residential uses at the upper levels. The design of the building provides a visually significant building that is appropriate for a prominent corner site.

6.2 - Pedestrian Amenity - The objectives of the Plan are to incorporate all those elements of individual developments that directly affect the quality and character of the public domain. The pedestrian amenity provisions are intended to achieve a high quality of urban design and pedestrian comfort in public spaces. The environment needs to be safe, functional and accessible to all and needs to take account of the significant proportion of elderly people residing in Great Lakes and the seasonal tourist influx.

The proposed development has an active street frontage and a positive building address to the street. An awning is proposed along the retail, commercial sections of the building. The development does not incorporate excessive driveway crossings.

6.2.2 - Street Address - The objectives are to promote pedestrian activity and safety in the public domain and to encourage building design incorporating a well designed street address.

The ground level commercial premises have been provided along the street frontage providing an active street frontage. Ground floor uses are directly accessible from street level. The building is considered consistent with the relevant street address controls and will contribute positively to the street through the creation of a busy, interesting and safe pedestrian environment.

6.2.3 - Awnings - The objectives are to provide shelter for public streets where a high level of pedestrian activity occurs and to address the streetscape by providing a consistent street front appearance.

The proposed development incorporates an awning to both the Head Street and Beach Street frontages and meets the objectives of the Plan.

6.2.4 - Pedestrian Access - The objectives are to provide safe and easy access to buildings whilst also contributing to the vitality, vibrancy and safety of the public domain; to ensure buildings and places are accessible to people with a disability; to create entrances which provide a desirable identity for residential and mixed use developments and to contribute positively to the streetscape and building façade design.

The building has been designed in a manner that provides safe and easy access which provides access to people with a disability and is considered to contribute positively to the streetscape

6.2.5 - Vehicle Access - The objectives are to restrict vehicular access to buildings in a manner that is compatible with pedestrian movements and safety and to integrate vehicle access without compromising street character; active street frontages, landscape or pedestrian amenity and safety. Vehicular access to the proposed development has been provided in a manner that is compatible with pedestrian movement and safety. It is considered that the vehicle access arrangement meets the objectives of the Plan.

6.2.6 - Safety and Security - The relevant objectives are to ensure residential developments are safe and secure for residents and visitors; to ensure that ground floor use (residential, commercial and retail) provide for casual surveillance and promote pedestrian activity and contribute to the safety of the public domain. The proposed development is considered to meet the relevant objectives of the Plan. The design of the proposal will ensure residents and visitors are safe and secure and also provides for casual surveillance of the surrounding area.

6.3 - Building Configuration

6.3.1 - Adaptable Housing - The objectives are to ensure that building design is sufficiently flexible to allow for changes in use for the life of the building; to ensure a sufficient proportion of dwellings include accessible layouts and features to accommodate changing requirements of residents over time; ensure the provision of housing that will, in its adaptable features, meet the access and mobility needs of any occupant and to save the embodied energy expended in building demolition.

The applicant has noted that the proposed development is compliant with adaptable housing in accordance with the plan. The control includes that at least one (1) dwelling must be designed to be capable of adaptation for disabled or elderly residents in accordance with the Australian Adaptable Housing Standard. The proposed development has been designed with one (1) apartment on each floor that is accessible for persons with a disability and capable of adaptation.

6.3.2 - Dwelling Layout and Mix - The relevant objectives are to provide variety in apartment sizes and layouts to cater for a range of household types, provide flexible living/work spaces within dwelling design and ensure that building design is sufficiently robust to accommodate mixed use and potential changes in use for the life of the building. The proposed development is considered to meet the objectives of the Plan. The proposal provides six (6) residential units comprised of two (2) x two (2) bedroom units on levels 3, 4 & 5. Three (3) of the units (one (1) on each floor) are adaptable units providing future flexibility and change in residential needs.

6.3.3 - Ceiling Heights - SEPP 65 prevails for this section of DCP 2014 - Clause 6A Development control plans cannot be inconsistent with the Apartment Design Guide.

6.3.4 - Storage - SEPP 65 prevails for this section of DCP 2014 - Clause 6A Development control plans cannot be inconsistent with the Apartment Design Guide.

6.3.5 - Basements and Podiums - The objectives are to integrate the siting, scale and design of basement parking into the site and building design.

The ground floor (commercial) and basement levels of the development are built to the boundary on all elevations and there is no podium. The car park entry ramp will be raised to a height of RL2.4m AHD to provide a physical barrier to flood waters. The driveway entrance is 3.3m wide and located facing the Head Street car park. The development is considered to meet the controls for basements.

6.4 - External Building Elements - the design of the proposed development is considered to be consistent with and compatible with the existing and future development in the locality.

6.4.1 - Façade Articulation & 6.4.2 - Roof Design - The relevant objectives of these elements is to contribute positively to the streetscape and public domain, present appropriate design responses to nearby development that complement the streetscape, clearly define the adjoining streets, street corners and public spaces and avoid ambiguous external spaces with poor pedestrian amenity and security, maintain a pedestrian scale in the articulation and detailing of the lower levels of the building and contribute to a visually interesting skyline and to integrate the design of the roof into the overall façade, building compositions and desired contextual response.

The proposed development is considered to meet the relevant objectives of the Plan. The building is well articulated with windows, doors and verandahs to the Head Street & Beach Street frontages. The roof design is considered to integrate into the overall façade of the building. The building has incorporated additional detail to prominent parts such as entrances, upper floor balconies and an awning design which effectively defines the commercial frontage. The southern elevation relies on the probable future construction of a similar height building on the adjoining site to the south. The elevation has a wall plane exceeding 120m², and also relies on future redevelopment of the adjacent land to the south mirroring the proposed development with a zero setback. To add some interest to this large flat wall a vertical plane of glass and hues of brown and grey have been detailed on the plan to soften the impact of a large flat wall plane as viewed from Wharf Street and the surrounding area to the south of the site.

6.5 - Building Amenity

6.5.1 - Acoustic Privacy - The objectives are to ensure a high level of amenity by protecting the acoustic privacy of residents within residential and mixed use developments within apartments and in private open spaces to minimise impacts from noise generating uses (traffic, service vehicles, air conditioners and other plant equipment), to ensure acoustic privacy within mixed-use buildings between uses and between adjacent building.

Noise impacts between the commercial and residential uses are to be addressed by the awning and concrete flooring. Other potential noise sources include Head Street and the Head Street carpark. The applicant has noted that traffic on Head Street is relatively low during the night period.

There is a lift located in a common area on the southern elevation. The lift adjoins, by a common wall, the two (2) bedroom accessible apartments and could potentially create a noise nuisance to those apartments. The living area of the two (2) bedroom apartments adjoins the master bedroom of the three (3) bedroom apartments. This also could also be an area of nuisance in relation to noise generation from televisions etc. The DCP advises that where possible, busy areas should be located adjoining other busy areas and quieter areas should adjoin quieter areas (ie living rooms with living rooms, bedrooms with bedrooms) where apartments join. The applicant has noted that common walls have been designed to achieve the maximum noise transmission rating prescribed by the Building Code of Australia.

6.5.2 - Solar Access and Overshadowing & 6.5.3 Natural Ventilation - SEPP 65 prevails for this section of DCP 2014 - Clause 6A Development control plans cannot be inconsistent with the Apartment Design Guide.

6.5.5 - Site Facilities and Servicing - The development should make appropriate provision for site servicing facilities including mail boxes; communication structures/air conditioners; service vents; loading and unloading areas.

Mail boxes are able to be provided in a central location within the Beach Street entrance; air conditioning units and ventilation structures are to be integrated into the building design away from the street or visible elements of the roof profile; a master antennae can be provided within the building design; commercial tenancies are located adjacent to the Head Street car park which has designated loading bays. No designated service docks are proposed. The applicant has noted that the need for designated loading docks is not considered necessary as the commercial floor space is not large and tenants are unlikely to be reliant on large volume deliveries, such as pallets.

The proposal generally meets the relevant objectives of the Plan with the exception of the provision of loading and unloading areas. This minor variation is considered acceptable.

6.6 - Building Performance

The objectives of the Plan are to minimise the need for artificial lighting and the necessity for mechanical heating and cooling; to minimise greenhouse gas emissions and to provide thermal comfort by minimising temperature variations within buildings. A complying BASIX certificate for the development was lodged with the amended application. The applicant has advised that the commercial components of the building will be subject to Part J of the Building Code of Australia and will be required to achieve minimum standards of energy efficiency. In addition to the minimum construction requirements, the building benefits from the northern orientation of the main frontage to Head Street. The Head Street frontage provides opportunities for good solar access to all levels of the building throughout the morning while providing shade in the afternoon. This frontage incorporates extensive glazing and balcony areas. The attributes naturally reduce the need for excessive heating and cooling. The proposal is considered to be compliant with the relevant objectives.

6.7 - Minimum Allotment Frontages - The relevant objectives of the Plan are to allow for development of sites which are of sufficient size to accommodate the required building envelope, car parking and landscaping requirements, allow for development of sites only where the land is not significantly constrained by flood, geotechnical or other environmental hazards, promote efficient utilisation of land and encourage amalgamation of allotments to provide for improved design outcomes, including solar access and amenity.

6.7.2.1 - Coastal town Centres Additional controls - Forster and Tuncurry - A minimum site width of 30m is required. Site width must be measured for the full length of the primary street frontage boundary and perpendicular to the side boundary.

The site is located on the corner of Beach Street and Head Street. A public carpark is located between the subject site and Head Street. The public carpark is a part of the Head Street road reserve. The length of the boundary to Head Street is 29.77m. The length of the boundary to Beach Street is 13.72m. The length of the frontage at 29.77m is essentially compliant with the 30m requirement of this section of the Plan. Further, in accordance with the Mixed Use zone controls the proposal provides sufficient amenity for future residents in terms of solar access, daylight penetration and privacy; does not adversely impact on the amenity of adjoining buildings with respect to solar access and privacy to living areas and private open space, as there is currently no residential uses directly adjoining the subject site. The development of the site does not create an isolated allotment.

6.8 - Building Depth and Bulk - The objectives of the Plan are to promote the design and development of sustainable buildings; to achieve the development of living and working environments with good internal amenity and minimise the need for artificial heating, cooling and lighting; to achieve useable and pleasant streets and public domain at ground level by controlling the size of upper level floor plates of buildings and to reduce the apparent bulk and scale of buildings by breaking up expanses of building wall with building separation, modulation of form and articulation of facades.

6.8.2 - High Density Residential & Mixed Use Zone controls - The relevant controls for this development are the maximum floor-plate of any residential floor is 18m, exclusive of balconies and the gross floor area of the top-level of the building can be a maximum of 60% of the floor level directly below.

The maximum floor-plate depth of the residential floor is no greater than 18m and complies with the relevant control. The top-level of the building is consistent with the floor below and does not comply with the maximum of 60%.

6.9 - Primary Street Setbacks - Primary street setbacks and building alignments establish the front building. The way in which buildings address the street has important implications for the quality of the public domain.

6.9.2 - High Density Residential & Mixed Use Zones & 6.9.3 - Coastal Town Centres Additional Controls - The relevant objectives of the Plan are to achieve a strong and consistent definition of the public domain, ensure that the external facades of buildings are aligned with the streets that they front, to provide front setbacks appropriate to building function and streetscape character, establish the desired spatial proportions of the street and define the street edge, create transition between public and private space, allow passive surveillance and allow for street landscape character where appropriate.

The building has a zero setback which is consistent with the Forster town centre street alignment and setback plan. The proposal is considered to be consistent with the controls as it creates a transition between public and private space and allows passive surveillance of the street.

6.10 - Side and Rear Setbacks - Side and rear setbacks, where provided, allow ventilation, solar access, increase privacy and reduce adverse wind effects.

6.10.2.2 - Coastal Town Centres Mixed Use and Business Control Tables - The proposed development does not comply with the side and rear setback controls of the Town Centres Mixed Use and Business zone. The Forster Setback table is as follows:

Building Height	Minimum side and rear setbacks
Levels up to 3 storeys	Nil for 1 side boundary and 2.5m for 1 side boundary
	Nil for commercial development
	6m where no rear lane is possible
	3 where rear lane is provided
Levels over 3 storeys	9m where a habitable room/balcony faces a habitable room/balcony on an adjacent property
	6.5m between habitable rooms/balconies and non-habitable rooms/balconies on an adjacent property
	4.5m where a non-habitable room/blank wall faces a non-habitable room/blank wall on an adjacent property.

The development is proposed with nil setback to all boundaries for all levels and therefore does not comply with the above setback requirements.

The first two (2) levels of the proposed development is for commercial/retail use. A nil setback for commercial uses is considered acceptable and is consistent with development within the Forster Commercial District.

Provision of side and rear setbacks for the residential component of the development is considered to be a more acceptable outcome for development in the Forster Commercial District. However, at present there is no residential development adjoining the subject site and therefore to enforce the setback controls would seem unnecessary. The applicant has noted that given the constrained depth of the site to the north and south, the utilisation of a zero side setback is the most efficient and compact use of the available land without compromising the future development potential of adjacent sites.

The applicants in their Statement of Environmental Effects have discussed other examples of mixed use development in the Forster Town Centre area where constraints in relation to the size and shape of those sites have been subject of variations to controls. The applicant has noted that the main example is in relation to the 'Marina' building at 2 Little Street, south-east of the site with frontages to Beach, Little and Wallis Streets and the Reef Building at 2-6 Wharf Street.

The Marina building is comprised of four (4) storey mixed use commercial and residential uses with 100% site coverage for the height of the building.

The Reef building has similarities to the proposed development. The length of the tower at the northern elevation with Wharf Street is similar to the length of the northern elevation of the proposed development with the Head Street Car Park. The north-western part of The Reef building has a western elevation presenting as a five (5) storey built form (commercial ground floor with four (4) floors of residential above) when viewed from the roadway in Memorial Drive. The elevation of this part of the building (north to south) has a length of about 17-19m.

The applicant has given an example of the proposed building, with all setbacks in compliance with the requirements of the DCP. Compliance with all setbacks results in a tower footprint with an area of approximately 56.6m². This limitation would not be viable in terms of the development.

In the case of the proposed development, the subject of this report, given its orientation (the site runs east west) with a frontage to Beach Street it is considered acceptable that the proposed building be allowed with zero setbacks to boundaries.

6.11 - Ground Level Uses - The objectives of the Plan are to support the integration of appropriate retail and commercial uses with housing, provide an identifiable and desirable street address to each building and dwelling; create safe and more active lively streets and urban areas; ensure that the design of mixed-use developments maintains residential amenity and preserves compatibility between uses and allow for outlook and surveillance towards the street and the public domain.

The proposed development complies with the controls of the Plan with the exception of the following:

- Avoid the use of blank building walls at the ground level. The development proposes blank walls to the west and south side boundaries.

Comment: The applicant relies on the argument that the blank walls to the boundary will be covered in the future with like development that will also be built to the boundary. Some treatment by way of different hues and glass have been incorporated in the walls to provide a better outcome to public spaces.

There are other examples of blank walls to adjoining properties ie: the Richards building in Tuncurry part of the eastern elevation of the Reef building at the end of Wharf Street Forster and the south-eastern elevation of the Marina building on Little Street, Forster.

6.12 - Coastal Town Centres Street Frontage Heights - Street frontage heights refer to the height of the building that directly addresses the public street from the ground level up to the first (if any) setback. The objectives of the Plan are to provide a strong, consistent and appropriate definition of the public domain; achieve comfortable street environments for pedestrians in terms of daylight, scale, sense of enclosure and wind mitigation as well as a healthy environment for street trees and to protect solar access to key streets and public spaces. The controls are that the street frontage height of buildings should comply with the heights above mean ground level on the street front as shown in the street frontage height plan. The street height plan for Beach and Head Streets is 2-3 storeys.

The proposed development is considered to comply with the DCP as it has a 2-3 storey street height frontage that directly addresses the public street from the ground level up to the first (if any) setback.

10. Car Parking, Alternative and Active Transport

10.1 - Objectives - to:

- Ensure that there is adequate and safe provision for access, manoeuvring and parking within the development.
- Restrict vehicular access to buildings in a manner that is compatible with pedestrian movements and safety.
- Integrate vehicle access and parking facilities without compromising street character, active street frontages or landscape.
- Promote alternative and active transport for both commuting and recreational transport.
- Provide an adequate level of on-site parking based upon anticipated occupancy rates and proximity to alternate and active transport, such as walking and bicycling.
- Ensure that parking requirements are met without imposing an undue burden on developers or an additional liability on the present and future ratepayers.
- Ensure adequate space is provided in non-residential development for safe vehicle manoeuvring so that vehicles enter and exit the site in a forward direction.

The proposed development generally complies with the objectives of the Plan, however as discussed below the proposal does not provide car parking in accordance with the requirements of the Plan.

10.3.1.2 - Residential Apartment Buildings and Residential Component of Mixed Use Development

Car parking for the residential component is to be provided as follows:

- 1.2 car parking spaces for each two (2) bedroom dwelling.
- 0.2 visitor car parking spaces per dwelling.
- 1 trailer space per eight (8) dwellings.

Car parking requirement calculations shall be rounded up to the nearest whole number.

In accordance with the requirements for car parking under the Plan the proposed development requires the following:

Unit numbers	Rate	Required
6 x 2 bedroom units	1.2 spaces	7.2
6 units	0.2 visitor spaces per unit	1.2
6 units	1 trailer space	1
	Total	9.4

There is provision for eight (8) car parking spaces in the basement car park for the development.

In accordance with the requirements of the Plan for car parking the development has a shortfall of two (2) car spaces for the development when rounded up to the nearest whole number.

In support of the shortfall for car parking the SEE notes that a trailer parking space should not be required as the basement level has no ability for a vehicle towing a trailer to manoeuvre into or within the basement rendering the provision of a trailer parking space as superfluous.

Comment:

It is unusual for trailer parking to be provided within any basement parking, given the additional area required for manoeuvring and it is considered acceptable that trailer parking not be provided in this instance. This being the case there is a shortfall in car parking spaces of .4 of a space. It is considered that given the constrained nature of the site, that the provision of eight (8) car parking spaces for the residential component of the development is acceptable.

10.3.1.3 - All Development Excluding Residential

Car parking for the commercial office/business premises is to be provided as follows:

- Retail/shops - 1 space per 24m² gross leasable floor area.
- Commercial Office/Business Premises - 1 space per 40m², gross leasable floor area.

This site has a credit for 11.9 commercial spaces in accordance with Development Application No. 4116. DA 4116 assessed a commercial premises with a floor area of 238.7m². The credits are a result of the payment of Section 94 contributions.

Car parking requirement calculations shall be rounded up to the nearest whole number.

Level/Use	Title	GLFA	Car parking spaces based on:
			Use of all as Commercial Office 1 per 40m ²
Ground Floor	Tenancy 1	145m ²	3.625
	Tenancy 2	122m ²	3.05
First Floor	Office T1	97m ²	2.425
	Office T2	82m ²	2.05
	Office T3	82m ²	2.05
Sub-Total		528m ²	13.2
Less existing car parking credit			11.9
Total		528m ²	1.3

In accordance with the above table the car parking spaces for all of the commercial tenancies has been calculated using one (1) space per 40m² of gross leasable floor area. This leaves a deficit of 1.3 car spaces.

Retail shops require 1 space per 24m² of Gross leasable floor area. If Tenancy two (2) was to be used for the purpose of a retail/shop the total car parking spaces required would be 3.33.

If any tenancy is used for the purpose of a restaurant, the car parking contribution is one (1) space per 15 seats as the site is located in an area identified in Council's Section 94 contributions plan.

The Section 94 contribution for car parking will be assessed for a shortfall of two (2) car parking spaces (1.3 rounded up to the nearest whole number) for the purpose of the application the subject of this report. Any shortfall in Section 94 contributions for car parking based on the future use of the tenancies (ie: restaurants or retail), would need to be assessed and a contribution paid, when assessing future development applications.

10.4 - Alternative and Active Transport - The objectives are to promote alternative and active transport for both commuting and recreational transport; reduce the barriers to cycling by ensuring bicycle parking is available within the town centres; encourage cycling by providing end of trip bicycle parking facilities; ensure requirements to install bicycle parking does not impose an unreasonable cost burden on developers; allow flexibility in how bicycle parking is provided in small destination developments, while ensuring the needs of cyclists are met and to ensure bicycle parking is safe, secure, convenient and meets the needs of a wide range of cyclists.

In accordance with the gross leasable floor area of the commercial space two (2) Class 2 enclosures and two (2) class 3 bicycle rails will be required. A condition has been included in the recommendation to this report to address these requirements.

11 - Water Sensitive Design - The relevant objectives of the Plan are to protect and enhance the natural water systems by:

- Improving the quality of stormwater runoff from urban catchments.
- Minimisation of the harmful impacts on water balance and surface and groundwater regimes.
- Integration of stormwater management systems incorporating water quality protection, stormwater retention and detention into the landscape.
- Reducing potable water demand.

The proposed development incorporates a stormwater management strategy that includes stormwater collection pits, pipework and bio-retention that will achieve the objectives of this clause.

- 13 - Landscaping and Open Space - SEPP 65 prevails for Open Space - Clause 6A Development control plans cannot be inconsistent with the Apartment Design Guide.

Landscaping

The proposed development does not include extensive landscaping as the development has nil setbacks to boundaries. A landscaped area is proposed in the south-east portion of the first floor level. DCP 2014 13.2.2 notes that 20% of a site in the business zone should be landscaped area. This section of the DCP is in conflict with with the objectives of the Forster Town Centre to provide an efficient use of available commercial land for commercial purposes and also conflicts with the setback controls in Chapter 6 of the DCP (nil for commercial development) as it applies to the construction of a mixed use commercial building. The landscaping is considered to be in accordance with with Section 13.2.4 Planting of Structures of the Plan. The landscaping will incorporate a mass planting area and bio-retention planter box in accordance with the water sensitive design strategy.

- 14 - Waste Management - Waste attributed to the construction of the proposed development can be satisfactorily managed on site and is consistent with the objectives of Part 14.

b) *The likely impacts of development including environmental impacts on both natural and built environments and social/economic impacts in the locality*

Context and Setting

The design of the proposal is considered to relate positively with the regional and local context of the locality.

Site Design and Internal Layout

The size (height, bulk, mass), of the development is considered to be appropriate having regard to the site attributes. The internal layout of each dwelling is functional, providing the occupants with a reasonable level of residential amenity.

Views

There are no unreasonable impacts on views or outlooks.

Privacy (Aural and Visual)

A reasonable privacy relationship with adjoining properties is maintained as at present there is no adjoining residential use.

Overshadowing

The proposal is considered not to unreasonably overshadow the adjoining development as at present there is no adjoining residential use.

Visual Impact

The design of the building is visually appropriate for the locality.

Access, Transport and Traffic

The current road system has sufficient capacity to support the expected increase in traffic generated by the development.

The site has frontages to Beach Street and the Head Street car park which both have a sealed pavement with kerb and guttering.

The applicant has proposed a basement car park with eight (8) spaces including one (1) space for a person with a disability. The vehicle driveway to the basement car park will have access from the Head Street car park and is proposed with a minimum 3.3m wide single lane driveway to access and exit the basement car park

Driveway entrance

A holding bay is proposed at the driveway entrance within the Council car park. To provide this holding bay, the applicant will be required to provide painted 1.0m wide traffic islands adjacent to the driveway entrance.

A bollard will be required to be installed to help ensure the vehicles entering the building from the holding bay will not conflict with pedestrians exiting the internal stair.

Ramp

The driveway ramp width is suitable for one vehicle only to travel on (no vehicles can pass each other). To offset this, the applicant is proposing a holding bay with sensors within the Council car park and lights installed on the wall adjacent to the driveway entrance. This system will be required to be amended with the sensors within the development as they cannot be located within the Council car park eg the proposed traffic lights controlled by a sensor within the basement car park and using an electronic automatic door controller.

Deliveries: There is no truck loading bay provided on the site. The previous businesses on the site also did not have access to a loading bay on the site.

The proposed development will increase the commercial use of the site with the introduction of an additional commercial level. To provide a loading bay would result in extensive amendments being undertaken to the ground floor level of the proposed development which would be to the detriment of active pedestrian areas.

Parking restriction signs adjacent to the development in Beach Street for a loading zone to operate between 7am and 8.30am would be required if the development is approved.

Utilities

Water, telephone, electrical and main sewerage services are available to the site. The development will not place an undue demand on existing services.

Drainage

Stormwater management is to include stormwater collection pits pipework and a bio-retention garden on the first floor level.

Cumulative Impacts

The proposal, subject to the recommended conditions, is generally considered to be satisfactory having regard to the potential to create or contribute to undesirable cumulative impacts.

Consideration has been given to the cumulative impacts in terms of precedent of granting consent to a building that has a height of 18.9m with nil setbacks to all boundaries. The proposed building is the first of its type in the Central Business District (CBD). These considerations included what impact like development may have on Wharf Street, the main street of the CBD and the desired future character of the area. Construction of like development along the main street with no podium or setback for upper residential floors may have a detrimental impact upon the amenity of Wharf Street in that overshadowing would have the effect of creating a unappealing pedestrian area where little or no sunlight was able to penetrate onto the street.

In relation to this development application it is considered that for the reasons discussed in this report and the merits of the structure, that approval of this application would not erode the desired character of the locality.

Future development in the main street would need to give consideration to such matters as height setbacks and potential overshadowing when assessed by Council in the future.

c) *The Suitability of the Site for the Development*

The site is not considered suitable for a development of this height as due to the small size of the allotment there is no capacity to provide setbacks to adjoining land.

d) *Any Submissions Made in Accordance with the Act or Regulations*

The application was notified to adjoining owners in accordance with Council's Policy and one (1) submission was received objecting to the development on the following grounds:

- The Development Control Plan (DCP) shows a 2-3 storey height.
- Part 6.8 of the DCP indicates 4.5m residential front articulation zones.
- Part 6.7 of the DC has a site width of 30m.
- Inadequate car parking in accordance with the DCP

Comment: All of these matters have been discussed in this report and do not require further discussion.

The application was referred to the Department of Primary Industries - Water who have advised that if the proposed basement carpark intercepts groundwater, the proponent is required to obtain the appropriate licenses and/or approvals. The proposal will intercept groundwater and a condition has been included in the recommendation to this report advising of the requirement for licenses and/or approvals under the Water Act 1912 and Water Management Act 2000.

e) *The Public Interest*

The public interest has been considered throughout the assessment of this application and it is considered that the approval of this application is not against the public interest.

CONCLUSION

The proposal is considered to be suitable for the site, the locality and maintains a reasonable relationship with neighbouring developments. Accordingly, the application is supported subject to conditions.

RECOMMENDATION

It is recommended that Development Application No. 150/2016 for the construction of a five storey mixed use development on Lot 4 DP 333246, 7-9 Beach Street, Forster be approved as follows:

GENERAL CONDITIONS

1. Development in accordance with approved plans

The development must be implemented in accordance with the plans and supporting documents set out in the following table except where modified by any conditions of this consent.

Plan type/Supporting Document	Drawing No. & version	Prepared by	Dated
Location Plan	DA01 Revision F	Morson Group	06/03/2017
Basement Floor Plan	DA02 Revision M	Morson Group	07-11-2016
Ground Floor Plan	DA03 Revision H	Morson Group	07-11-2016
First Floor Plan	DA04 Revision E	Morson Group	07-11-2016
Typical Level (L2,L3 & L4)	DA05 Revision F	Morson Group	07-11-2016
North elevation	DA10 Revision E	Morson Group	07-11-2016
East elevation	DA11 Revision E	Morson Group	07-11-2016
West elevation	DA12 Revision E	Morson Group	07-11-2016
South elevation	DA13 Revision E	Morson Group	07-11-2016

The approved plans and supporting documents endorsed with the Council stamp and authorised signature must be kept on site at all times while work is being undertaken.

Reason: Information and to ensure compliance.

2. Separate application for ground and first floor occupation

This consent is granted for the use of the ground and first floor of the development as commercial premises. Separate development consent is required for any other use.

Reason: To ensure compliance with the terms of this consent.

3. Separate application for outdoor eating area

This consent does not include the outdoor eating area as detailed on the plan. Separate development consent is required for any other use.

Reason: To ensure compliance with the terms of this consent.

4. Design Changes – Plan amendments

The proposal must be amended in the following manner:

- a) The proposed outdoor seating deleted from the plans.
- b) Notation placed on the plans stating:
Construction and/or demolition works, including deliveries on or to the site must not unreasonably interfere with the amenity of the neighbourhood and must occur only in accordance with the following:

Monday to Friday, from 7am to 6 pm.

Saturday, from 8 am to 1 pm.

No construction and/or demolition work, including deliveries for construction are to take place on Sundays, School (except for the holidays between 1 July 2017 to 17 July 2017) and Public Holidays.

- c) Amend the Ground Floor Plan car park entrance:-
- i) Detail the levels of the entrance/s to:
 - The Head Street Car park - 0.035 m above the adjacent top of kerb at each point (note there is a 50:1 (2.5%) crossfall from the top of kerb up to the property boundary at each point).
 - Beach Street - match the existing concrete footpath level.

Note: The entrance levels to development must be constructed to these levels. Any transition to the proposed internal floor level must be undertaken within the tenancy.
 - ii) The awning located adjacent to the Head Street car park must be designed and constructed to be no closer than 600 mm from the adjacent car park top of kerb.
 - iii) Show the driveway crest and the adjacent stair landing with a level RL 2.40 m AHD (to help prevent flood water entering the basement).
 - iv) Provide a bollard to protect pedestrians exit/entering the stairs (adjacent to the driveway entrance)
 - v) Provide a striker bar adjacent to the driveway entrance to indicate the maximum height clearance that is available within the basement car park.
- d) Amend the basement floor car park:-
- i) Provide bollard/s across the lift entrance to protect pedestrians. There should be enough room made available for the access for goods and garbage bins to/from the lift.
 - ii) Revise the basement car park so that car parking space CP5 has a minimum length of 5.4m.
 - iii) Notation on the plan that all car parking spaces are to have a minimum 300mm clearance along the sides from any object/wall/enclosure (other than the proposed columns) to allow the opening of doors in accordance with figure 5.2 of AS 2890.1.
- e) Provide an alternate vehicle priority system with a sensor that is not located within the Council car park/infrastructure (eg by having the traffic lights controlled by a sensor within the basement car park and using an electronic automatic door controller).

Plans detailing these amendments must be submitted with the application for a construction certificate.

Reason: To provide suitable vehicle and pedestrian access to the car park

5. Compliance with National Construction Code Series- Building Code of Australia

All building work must be carried out in accordance with the requirements of the *National Construction Code Series - Building Code of Australia* as in force on the date the application for the relevant construction certificate or complying development certificate was made.

Reason: Prescribed condition under the *Environmental Planning & Assessment Regulation 2000*.

6. Adjustment to utility services

All adjustments to existing utility services made necessary by the development are to be undertaken at no cost to Council.

Reason: To ensure utility services are remain in a serviceable condition.

PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

The following conditions must be complied with prior to the issue of any Construction Certificate:

7. Erosion and sediment control plan

Prior to the issue of a construction certificate, an erosion and sediment control plan prepared by a suitably qualified person in accordance with *"The Blue Book – Managing Urban Stormwater (MUS): Soils and Construction"* (Landcom) must be submitted to and approved by the certifying authority. Control over discharge of stormwater and containment of run-off and pollutants leaving the site/premises must be undertaken through the installation of erosion control devices including catch drains, energy dissipaters, level spreaders and sediment control devices such as hay bale barriers, filter fences, filter dams, and sedimentation basins.

Reason: To protect the environment from the effects of erosion and sedimentation.

8. Prior to the release of the Construction Certificate the applicant shall submit details of hoardings to be erected along the site frontages of the development site. The hoarding detail is to be submitted through a Section 138 Roads Activity/Hoarding application and approved of by Council.

- a) If required lighting of the alternative footpath between sunset and sunrise;
- b) the loading and unloading of building materials;
- c) parking space for tradesman's vehicles, where such vehicles must be located near the site due to tools and equipment contained within the vehicle;
- d) removal of any such hoarding, fence or awning as soon as the particular work has been completed.

Reason: To ensure public health and safety during the construction of the development.

9. Geotechnical report – engineering works

Prior to the issue of the Construction Certificate, the Geotechnical Engineer must undertake the following design and:

- a) Determine whether acid sulphate soils are present over the development site.

Should acid sulphate soils be present the Geotechnical Engineer must determine and submit for approval a suitable acid sulphate management plan by the certifying authority. All excavation must adhere to the approved acid sulphate soil management plan with any soils first treated to the EPA requirements prior to acceptance at a Council tip.

- b) Prepare an dewatering management plan that includes the development of a groundwater model for the:
 - i) Construction period. The model shall determine a suitable dewatering system that includes and ensures the re-injection of any extracted groundwater to ground within/adjacent to the development site. The system shall be designed and monitored so that any properties adjacent to the development site are not adversely affected.

Any proposal to reinject the groundwater in an adjacent property will need to approval of the property owner.

- ii) Post development: that includes any requirements for:-
 - Ensuring the re-injection of any extracted groundwater to ground is undertaken within the development site
 - Structural stability of the development with a fluctuating water table that includes the influence of sea level rise to the year 2060. (Note that the 1 in 100 year Wallis Lake flood level for the year 2060 is RL 2.40 m AHD).
 - Tanking and waterproofing the lift wells and the basement carpark up to at least the 1 in 100 flood level RL 2.4m AHD.
 - A suitable medium for the ground water to drain around and under the basement car park. Such a system shall include the assumption that the adjacent properties will be redeveloped and have a similar basement. Such a medium system must ensure the natural/existing flow of the groundwater is maintained and not adversely affect (eg slow/constrain/partially block/dam) the movement of the ground water through this development site and/or adjacent sites.
 - The adjacent properties similarly redeveloped with a basement, and possibly change/influence the groundwater level and characteristics;

The Acid sulphate soil, dewatering management plans and recommendations by the Geotechnical Engineer must be submitted to and approved by the certifying authority prior to the issue of the associated Construction Certificate/s.

Reason: Management of acid sulphate soils, dewatering, site stability and public safety

10. Structural details

Prior to the issue of a construction certificate, structural drawings prepared by a suitably qualified and experienced structural engineer must be submitted to and approved by the certifying authority. The plans must include details for:

- a) All reinforced concrete floor slabs and/or beams or raft slab (having due regard to the possible differential settlement with the water table.
- b) Footings of the proposed structure.
- c) Structural steel beams/columns.
- d) Details of how it is proposed to construct the basement car park with a waterproof membrane and include:
 - i) Management of groundwater. Any extraction of groundwater must be re-injected to ground and not discharged to the Council storm water system;
 - ii) The retaining wall construction.
 - The applicant shall do an investigation of all underground services adjacent to the site including determining the location and level of the service.
 - The basement car park must be designed to withstand heavy excavation machinery (eg Kato excavators) working adjacent to the development in Beach Street and the Head Street car park, should Council need to reconstruct the adjacent stormwater pipelines or undertake other works.
 - The owner's consent for any associated anchor ties constructed within adjacent properties.
 - For any anchor ties constructed within the adjacent Council road reserves and prior to the issue of a construction certificate the applicant must have a minimum \$20,000,000 public liability to cover the time these construction works are in operation and a minimum \$10,000 bond. After the completion of the retaining wall construction:

- The anchor ties must be fully removed for the first 3 metres below the adjacent ground level/s.
- Cut and destressed where ties located over 3.0 metres depth.
- Any anchor ties maintained on the adjacent properties must have an easement created over the affected area
- The applicant's engineer shall inspect and certify that any anchor ties etc have been removed/destressed in compliance with the above conditions.

Reason: To ensure structural stability of the development and safety.

11. Structural certification – flood affected buildings and construction forces

Prior to the issue of a construction certificate, engineering calculations and certification from a qualified structural engineer must be submitted to and approved by the certifying authority. The certificate must certify that the building, its structural components and associated earthworks have been designed to withstand:

- a) Flood forces due to wind wave run-up, water pressure, associated debris and impact loading arising from the 1% annual exceedence probability (AEP) flood. For the purpose of this assessment the 1% AEP flood level can be assumed to be RL 2.40m AHD with a velocity of 1 m/s.
- b) Forces exerted by heavy excavation machinery/vehicles (eg Kato excavators) that may need to access, excavate and replace/repair the adjacent Council stormwater pipelines.
- c) The adjacent Council footpaths excavated 300mm below the adjacent Council stormwater pipeline invert levels.

Reason: To ensure the building is structurally adequate to withstand impacts from flooding in accordance with Council and NSW Government Policy and also excavation forces.

12. Design of basement car park in relation to flood risk

Prior to the issue of a construction certificate, plans and specifications detailing the construction of pedestrian and vehicle exit doors in the basement car park must be submitted and approved by the certifying authority. Pedestrian and vehicle exit doors must be constructed to ensure that doors can be opened within the basement car park during an extreme flood. In particular the design must ensure that:

- a) The doors can be opened when there is an ingress of flood waters from all flood events up to a probable maximum flood (PMF) (eg - the door opens away from the incoming water or in parallel with the adjacent wall.(i.e. a grilled door).
- b) The electrical motor to open the vehicle security door to the garage is located above the PMF level).
- c) All doors can be opened at all times from within the basement car park (internal handles of doors to be unlocked at all times). If applicable, the doors must also comply with the relevant fire regulations.

Reason: To provide safe evacuation in a flood event.

13. Design to ensure the stormwater main will be protected.

Prior to the issue of a construction certificate, details showing that the zone of influence from the proposed development including the proposed excavation works will not adversely affect the adjacent Council pipelines in both Beach Street and the Head Street car park. The details must be prepared and certified by a qualified structural engineer and submitted to and approved by the certifying authority. External walls and footings of the development must not be located within 1.5m of the side of the pipeline.

Reason: To ensure structural adequacy of the drainage line and to maintain access to the pipeline for maintenance purposes.

14. Works within the road reserve

Prior to the issue of a construction certificate, an application for a Public Engineering Works Permit (PEWP) must be submitted to and approved by Council for the road reserve works listed in the table below. Each work must be carried out in accordance with the standard specified in the column opposite the work. All works must include the adjustment and/or relocation of services as necessary to the requirements of the appropriate service authorities.

Work	Standard to be provided
Erect loading zone signs adjacent to the development site in Beach Street	R5 - 23 L & R signs. Times between 7am to 8.30am Mon - Sat to be supplemented with the existing signage using multi panel signage in accordance with AS 1742.11
Minimum of two class 3 bicycle rails in Beach Street	Bicycle rails to be constructed in stainless steel and in accordance with AS 2890.3
Brick paved footpath for the full frontage of the site in Beach Street and the Head Street car park	Reconstruct the existing concrete footpaths to have a cross-fall of 1 % or 1:100 (maximum 2.5% or 1 in 40) in accordance with Council Standard Drawing No. 175 with the following pattern and pavers:- <ul style="list-style-type: none"> • A red brick herringbone pattern (PMP GAAG P23/11 or similar); • A cream header course (PMP GCLGG P23/11 or similar). Notes Pavers to be laid on a 25mm base course over a 100 mm thick concrete base.
Grading, trimming, topsoiling and turfing of the unpaved footpath area	The surface levels are to be finished flush with adjacent road or kerb levels.
Kerb and gutter	Reconstruct the existing kerb and gutter adjacent to the vehicle crossing in the Head Street car park. The invert of the kerb and gutter for the driveway is to be raised by minimum 40 mm with suitably transitions to match the existing. Re-asphalt (AC10 with a tack coat) the adjacent car park pavement to suit. Works to include saw cutting and milling the existing pavement

Work	Standard to be provided
Removal of the disused driveway and vehicular crossing	Including any necessary relocation of services.
Two median islands located adjacent to both sides of the driveway entrance in the Head Street car park	The median island is to be painted only to maintain access of garbage trucks.
Under-grounding of electricity mains along the frontage of the development site	Underground the overhead electricity wires extending from the power pole adjacent to the property in the Head Street car park. Details and undergrounding works to Essential Energy's requirements.

The above works must be constructed to Council's satisfaction prior to the issue of any occupation certificate.

Reason: To ensure works within Council's road reserve are constructed to a suitable standard for public safety.

15. Car parking

Prior to the issue of a construction certificate, plans and specifications detailing access, parking and manoeuvring on the site must be submitted to and approved by the certifying authority. Vehicular access, parking and manoeuvring must be in accordance with *Australian Standard AS/NZS 2890.1: Parking facilities: Off-street car parking* and the plans approved of under the condition titled "Design Changes – Plan amendments"

The plans must include the following items:

- a) Pavement description;
- b) Site conditions affecting the access;
- c) Existing and design levels;
- d) Longitudinal section from the road centreline to the car space(s);
- e) Drainage (pipes, pits, etc.). Any ground water must be managed on site and reinjected to ground within the property. This water must not be drained to the Council stormwater system.
- f) The basement car park is to be drained to the sewer.
- g) Accessible car parking space/s designed in accordance with Australian Standard AS/NZS 2890.6: *Parking facilities - Off-street parking for people with disabilities*;
- h) Turning paths; and
- i) Line-marking and signs.

The engineering plans and specifications must be designed by a qualified practising civil engineer. The civil engineer must be a corporate member of the Institution of Engineers Australia or must be eligible to become a corporate member and have appropriate experience and competence in the related field.

Reason: To ensure suitable vehicular access and manoeuvrability is provided within the development.

16. Stormwater details

Prior to the issue of a construction certificate, plans and specifications detailing the method of stormwater disposal from the site must be submitted to and approved by the certifying authority. The stormwater system must be designed with any down pipes located within the development and to comply with the requirements of *Australian Standard AS/NZS 3500.3: Plumbing and drainage – Stormwater drainage*. The stormwater disposal system must be designed and discharge to the kerb and gutter via a suitably manufactured kerb adaptor. The engineering plans must include connection to the kerb via a suitable kerb adaptor and the pipeline located within the road reserve to be hot dipped galvanised rectangular hollow section.

Reason: To ensure adequate provision is made for stormwater drainage from the site in a proper manner that protects adjoining properties.

17. Bond required to guarantee against damage to public land

Prior to the issue of a construction certificate, a Damage Bond Application form together with payment of a bond in the amount of \$ 32,258.50 and a non-refundable administration fee of \$320 must be submitted to Council. The bond is payable for the purpose of funding repairs to any damage that may result to Council assets from activities/works associated with the construction of the development and to ensure compliance with Council standards and specifications.

A final inspection will be carried out by the responsible Council officer and the bond (minus any fees required for additional inspections) will be considered for refund:

- a) once all works, including landscaping, driveway construction, turfing, etc, have been completed, and
- b) following issue of an occupation certificate by the certifying authority.

The damage bond is reviewed periodically and therefore the fee and bond amount payable will be determined from Council's current fees and charges document at the time of lodgement of the damage bond.

Reason: Protection of public assets.

18. Bond required to guarantee removal of anchor ties

Prior to the issue of a construction certificate, and should anchor ties be proposed in conjunction with the basement construction works within the Council areas, the applicant must first pay to Council a minimum \$10,000 bond to be refunded after:

- a) the removal of the anchor ties; and
- b) certification by the structural/geotechnical engineer that the anchor ties have been removed from the first 3m depth below the adjacent ground level and cut so that they are destressed where depths are greater than 3m.

Reason: Protection of public assets.

19. Bicycle Parking

Prior to the issue of a construction certificate, plans and specifications detailing bicycle parking for the development must be submitted to and approved by the certifying authority. The development must be provided with a class 2 bicycle enclosure suitable for at least two bicycles (compound for use by staff); and two class 3 bicycle rails (u-frame for use by visitors). The bicycle spaces must be designed and constructed in accordance with Australian Standard AS/NZS 2890.3: *Parking facilities - Bicycle parking facilities*.

Reason: To ensure suitable bicycle parking is provided within the development.

20. MidCoast Water approval

Prior to the issue of a construction certificate, a Certificate of compliance from MidCoast Water, stating that satisfactory arrangements have been made and all payments finalised for the provision of water supply and sewerage to the development, must be submitted to the certifying authority.

Reason: To ensure suitable water and sewage disposal is provided to the development.

21. BASIX Certificate

Prior to the issue of a construction certificate, plans and specifications detailing all of the BASIX Certificate commitments must be submitted to and approved by the certifying authority. The proposed development must be constructed in accordance with the requirements of the relevant BASIX Certificate. Where changes to the development are proposed that may affect the water, thermal comfort or energy commitments, a new BASIX Certificate will be required.

Reason: Prescribed condition under the *Environmental Planning and Assessment Regulation 2000*.

22. S94 contributions

Prior to the issue of a construction certificate, a monetary contribution must be paid to Council in accordance with Section 94 of the *Environmental Planning and Assessment Act 1979*. The services and facilities for which the contributions are levied and the respective amounts payable under each of the relevant plans are set out in the following table:

Contributions Plan	Facility	quantity	unit	rate	amount
Great Lakes Wide	Library Bookstock	8.4	persons @	\$77.60 =	\$651.84
Great Lakes Wide	Headquarters Building	8.4	persons @	\$465.93 =	\$3,913.81
Great Lakes Wide	s94 Admin	8.4	persons @	\$213.77 =	\$1,795.67
Forster District	Major Roads Inner Zone	26	1-way trips @	\$674.34 =	\$17,532.94
Forster District	Aquatic Centre	8.4	persons @	\$305.66 =	\$2,567.51
Forster District	Surf Life Saving	8.4	persons @	\$90.15 =	\$757.23
Forster District	Open Space	8.4	persons @	\$1,461.77 =	\$12,278.87
Forster District	Library Facility	8.4	persons @	\$505.79 =	\$4,248.64
Forster District	Community Facilities	8.4	persons @	\$552.10 =	\$4,637.64
Forster District	Forster Parking	2	spaces @	\$18,562.97 =	\$37,125.94
				Total	= \$85,510.09

Contribution rates are subject to indexation. The rates shown above are applicable until 30 June following the date of consent. Payment made after 30 June will be at the indexed rates applicable at that time.

The Contributions Plan and the Standard Schedule for Section 94 Plans may be viewed on Council's web site or at Council's offices at Breese Parade, Forster.

Reason: Statutory requirement to be paid towards the provision or improvement of facilities and services.

PRIOR TO THE COMMENCEMENT OF ANY WORK ASSOCIATED WITH THIS CONSENT

The following conditions must be satisfied prior to the commencement of any building construction or subdivision work:

23. Construction certificate required

Prior to the commencement of any building or subdivision construction work (including excavation), a construction certificate must be issued by a certifying authority.

Enquiries regarding the issue of a construction certificate can be made to Council's Customer Service Centre on 6591 7222.

Reason: Statutory requirement under the *Environmental Planning and Assessment Act 1979*.

24. Notification of commencement and appointment of principal certifying authority

Prior to the commencement of any building or subdivision construction work (including excavation), the person having the benefit of the development consent must appoint a principal certifying authority and give at least two (2) days' notice to Council, in writing, of the persons intention to commence construction work.

Reason: Statutory requirement under the *Environmental Planning and Assessment Act 1979*.

25. Site construction sign

Prior to the commencement of work, a sign or signs must be erected in a prominent position at the frontage to the site.

- a) showing the name, address and telephone number of the principal certifying authority for the work, and
- b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
- c) stating that unauthorised entry to the work site is prohibited.

The sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

Reason: Prescribed condition under the *Environmental Planning and Assessment Regulation 2000*.

26. CCTV

Prior to the commencement of work, a CCTV video inspection of the Council stormwater pipelines adjacent to the site in Beach Street and the Head Street car park must be undertaken and submitted to Council. A list of all defects within the pipeline is to be included.

Reason: To determine any existing damage to the Council Stormwater pipeline before construction works commence.

27. Public safety requirements

All care is to be taken to ensure the safety of the public in general, road users, pedestrians and the adjoining property while the development is being constructed. Public liability insurance cover, for a minimum of \$20 million, is to be maintained for the duration of the construction of the development and Council is to be nominated as an interested party on the policy. Council is not held responsible for any negligence caused by the undertaking of the works.

Reason: To ensure public health and safety during the construction of the development.

28. Erosion & sediment measures in accordance with approved plans

Prior to the commencement of work, erosion and sediment controls must be installed in accordance with the approved erosion and sediment control plan and must be maintained for the duration of the project.

Reason: To protect the environment from the effects of erosion and sedimentation.

29. Traffic management plan

Prior to the commencement of work, a traffic management plan including measures to be employed to control traffic (inclusive of construction vehicles) during construction of the development must be submitted to and approved by the certifying authority. All works that will adversely affect the vehicle and pedestrian movements adjacent to the development are not undertaken during school and public holidays. The traffic control plan must be designed in accordance with the requirements of the Roads and Traffic Authority's Manual, *Traffic Control at Work Sites Version 2* and Australian Standard AS 1742.3: *Manual of uniform traffic control devices - 'Traffic control for works on roads'*.

The plan must incorporate measures to ensure that motorists using the road adjacent to the development, residents and pedestrians in the vicinity of the development are subjected to minimal time delays due to construction of the site or adjacent to the site.

Construction and/or demolition works, including deliveries on or to the site must not unreasonably interfere with the amenity of the neighbourhood and must occur only in accordance with the following:

Monday to Friday, from 7 am to 6 pm.

Saturday, from 8 am to 1 pm.

No construction and/or demolition work, including deliveries are to take place on Sundays, School and Public Holidays.

The traffic control plan must be prepared by an accredited person trained in the use of the current version of RTA *Traffic Control at Work Sites manual*.

Reason: To ensure public safety and amenity during the construction of the development.

30. Toilet facilities - sewerred areas

Prior to the commencement of work, toilet facilities must be provided at or in the vicinity of the work site at the rate of one toilet for every 20 persons or part of 20 persons employed at the site. Each toilet provided must be a standard flushing toilet connected to a public sewer.

Reason: To maintain public health.

CONDITIONS TO BE SATISFIED DURING DEVELOPMENT WORK

The following conditions must be complied with during any development work:

31. Construction

A Structural Engineer and/or Geotechnical Engineer shall inspect and certify that the tanking, waterproofing and medium has been carried out to in accordance with the approved plans, the recommendations by the Geotechnical Engineer and to an acceptable standard. A copy of the certification is to be forwarded to the principle certifying authority.

Reason: To ensure the development is constructed to a suitable standard

32. Wiring in flood prone buildings

All wiring, power outlets, switches, etc, must be provided in accordance with the following requirements:

- a) To the maximum extent possible, all wiring, power outlets, switches, etc, must be located above the flood planning level.
- b) All electrical equipment installed below the flood planning level must be suitable for continuous submergence in water and must not contain fibrous components.
- c) All electrical equipment installed below the flood planning level must be capable of disconnection by a single plug and socket assembly.
- d) Electrical circuits to areas below the flood planning level must be separated from circuits serving areas above the flood planning level.
- e) Only submersible-type splices are to be used below the flood planning level.
- f) All conduits located below flood planning level are to be so installed that they will be self-draining when subjected to flooding.

Reason: To maintain the safety of buildings and occupants during a flood event.

33. Aboriginal heritage

This consent does not authorise the harming of an Aboriginal object or place. Under the National Parks and Wildlife Act 1974, it is the responsibility of all persons to ensure that harm does not occur to an Aboriginal object or place. If an Aboriginal object is found, whilst undertaking development work, all work must stop and the NSW Office of Environment and Heritage notified. All directions of the Office of Environment and Heritage must be complied with at all times.

Reason: To protect Aboriginal heritage.

34. Comply with traffic management plan

The approved traffic management plan must be implemented and maintained for the duration of the development works.

Reason: To ensure public safety during the construction of the development.

35. Construction times

Construction and/or demolition works, including deliveries on or to the site must not unreasonably interfere with the amenity of the neighbourhood and must occur only in accordance with the following:

Monday to Friday, from 7 am to 6 pm.

Saturday, from 8 am to 1 pm.

No construction and/or demolition work, including deliveries are to take place on Sundays or Public Holidays.

Reason: To maintain amenity during construction of the development.

PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE

The following conditions must be satisfied prior to any occupation or use of the building:

36. Stormwater treatment system

Prior to issue of any occupation certificate, the raingarden must be constructed in accordance with the approved plans **Water Sensitive Design Strategy Sheet 1 and 2**, including any amendments contained within these conditions. The raingarden must meet the following criteria:

- a) Have a minimum filter surface area of 6m². The raingarden is to receive overflow from 100% of the roof area and the second floor balconies.
- b) Have a minimum of 800mm fall from the raingarden inlet to the outlet discharge point into the stormwater system.
- c) Be consistent with the specifications contained in Great Lakes Council's Fact Sheet 'Designing a raingarden: Water Sensitive Design section, Great Lakes Development Control Plan' (April 2014) containing (from the base) 150mm of washed 5mm gravel housing a 90mm slotted drainage pipe, 100mm of coarse washed sand with particle size of 1mm, 400mm of sandy loam filter media and 100mm of depth for water detention. The top of the garden is to be finished a minimum of 50mm (freeboard) above the maximum water level water collection.
- d) Contain filter media of uniform sandy loam texture consistent with the specifications contained in Great Lakes Council's Fact Sheet 16 'Filter Media for Raingardens: Guidance for Water Sensitive Provisions of the Great Lakes Development Control Plan' (April 2014).
- e) Have a 90mm slotted drainage pipe at the base of the raingarden is to be laid on a 1:100 grade and connected to the kerb and gutter via a suitably manufactured kerb adaptor. Drainage lines within the road reserve must be sewer grade or other approved equivalent and connected to the kerb and gutter by a rigid kerb adaptor. All drainage works must be installed by a suitably qualified person and in accordance with the requirements of Australian Standard AS/NZS 3500.3: Plumbing and drainage – Stormwater drainage.
- f) Contain an overflow pipe finished 100mm above the sandy loam filter media and topped with a grated cap so that the raingarden retains 100mm of water following rainfall.
- g) Inlet pipes to the raingarden from the roof area and balconies are to contain rock protection to prevent erosion.

- h) Have 50% of the raingarden area planted with a minimum of 2 species from Great Lakes Council's Fact Sheet 15 'Local Plant Selection for Raingardens, Guidance for Water Sensitive Provisions of the Great Lakes Development Control Plan' (April 2014), at densities indicated in the fact sheet. The remaining area is to be planted with species of the owners choosing which are suited to intermittently dry and wet conditions.
- i) Be protected by sediment and erosion control measures during construction and be connected to the stormwater and planted after all hardstand areas have been paved / sealed and cleaned.
- j) Be lined with a HDPE impermeable liner or equivalent to avoid exfiltration of water into surrounding soils.

Reason: To ensure water quality requirements as contained in the Water Sensitive Design section of the Great Lakes Development Control Plan are met.

37. Compliance of Raingarden to Plans

Prior to the issue of any occupation certificate, written certification by the builder or plumber is to be submitted to the certifying authority that construction levels and drainage lines have been installed in accordance with the approved stormwater drainage plans and conditions.

Reason: To ensure compliance with Council's water quality objectives and comply with the Water Sensitive Design section of the Great Lakes Development Control Plan and ensure that the raingarden is constructed in accordance with approved plans and standards and conditions of consent.

38. Raingarden Maintenance

Prior to issue of any occupation certificate a permanent notice identifying the location of the raingarden is to be displayed in the metre box or other visible locations on the property.

The raingarden shall be maintained by the owner in perpetuity including free draining filter media and approved plant species and densities (including the removal of weeds) and protection from erosion and scour within the raingarden.

Reason: To ensure that ongoing compliance with the Water Sensitive Design section of the Great Lakes Development Control Plan.

39. MidCoast Water Certificate of Attainment

Prior to the issue of a final occupation certificate, a Certificate of Attainment from MidCoast Water, stating that satisfactory arrangements have been made and all payments finalised for the provision of water supply and sewerage to the development, must be submitted to the principle certifying authority.

Reason: To ensure suitable water and sewage disposal is provided to the development.

40. Truck Deliveries

Prior to the issue of a final occupation certificate the applicant must submit a management plan for truck deliveries to the site for both the commercial and the residential portions of the development for the approval of the certifying authority. The management plan must:

- a) show deliveries for the commercial and residual areas of the development are undertaken between 7 am and 8.30 am Mon to Sat.
- b) Be incorporated into any future commercial arrangement (eg lease)

Reason: To ensure suitable truck deliveries and environmental amenity.

41. Underground electricity

Prior to the issue of a final occupation certificate, the low voltage overhead power lines, street light overhead power lines and telecommunication cables located along/adjacent to the site frontage in the Head Street car park must be relocated underground at no cost to Council and to the satisfaction of the relevant service authority.

Arrangements for the wires/cables to be relocated must be made directly with the relevant service utility authorities.

Prior to the issue of a final occupation certificate, written evidence must be provided to the principal certifying authority stating that satisfactory arrangements have been made with an electricity supply authority for the provision of underground electricity supply to the development.

Reason: To ensure compliance with the Council/energy supply authority policy for the provision of underground power supply.

42. Completion of car parking areas and provision of signs

Prior to the issue of an occupation certificate, the car parking area must be constructed in accordance with the approved plans and be fully line-marked. Signs must be erected clearly indicating the availability of off-street parking and the location of entry/exit points, visible from both the street and the subject site.

Reason: To ensure that adequate parking facilities for the development are provided on site.

43. Sealed driveway in accordance with approved Driveways Level Application

Prior to the issue of a final occupation certificate, a driveway must be constructed from the edge of the road formation to the property.

Reason: To ensure suitable vehicular access to the development.

44. Street tree planting

Prior to the issue of a final occupation certificate, street tree planting must be installed in accordance with the following schedule:

- a) One *Cupaniopsis anacardiodes* Tuckeroo street tree in Beach Street adjacent to the development. Four *Cupaniopsis anacardiodes* Tuckeroo street trees along the nature reserve in Head Street
- b) the minimum plant pot size is to be 250mm;
- c) planted with a suitable 450 mm deep root barrier;
- d) provided with slow release fertiliser;
- e) be mulched with 100mm of native tree mulch;
- f) be protected by a suitable tree guard;
- g) planted in general accordance with Council standard drawing STD 172;
- h) kept clear of underground public utility services (utility services are to be shown on the detailed design plan);
- i) located not to impeded/reduce sight distance of drivers of vehicles entering/exiting the site;
- j) maintained to a healthy state and watered over a minimum 18 months (that includes two summer growing seasons).

Reason: To maintain environmental and streetscape amenity.

45. CCTV

Prior to the issue of a final occupation certificate and after all significant construction works have been completed, a CCTV video inspection of the Council stormwater pipelines adjacent to the site in Beach Street and the Head Street car park must be undertaken and submitted to Council. The pipeline must be replaced/repared to Council's satisfaction should damage to the pipeline have occurred during the construction works.

Reason: To ensure that any existing damage to the Council Stormwater pipeline is replaced/repared to Council's satisfaction after construction works are finalised.

ONGOING USE

The following conditions must be satisfied during the ongoing use of the development:

46. Operation of car parking area

All car access driveways including the traffic control system for accessing exiting the car park, turning areas, parking spaces and bicycle parking must be provided and maintained in accordance with the approved plans.

Vehicles using any parking area must enter and leave in a forward direction. The driveway and turning areas must be kept clear of obstructions that prevent compliance with this condition.

The car parking spaces are not to be enclosed or have objects (other than the proposed columns) within 300 mm of the sides of the spaces.

Reason: To ensure that adequate parking facilities are provided on site.

47. Truck Deliveries

The management plan for the truck deliveries to the development site (commercial and the residential) portions must be maintained and incorporated into any future commercial arrangement (eg lease)

Reason: To ensure adequate deliveries are provided to the site.

48. Awnings

The property owner must maintain the safety, ongoing structural integrity, and insurance of the awnings where they extend onto the Council land. Any maintenance carried out in accordance with Council's current policy for Awnings. The awnings must be inspected by a structural engineer and certified that the structure is structurally adequate and in good repair at least every 5 years.

Reason: To ensure the ongoing structural stability and safety of the awning.

49. Maintenance of street trees

Street tree planting must be maintained for an 18 month period incorporating at least 2 summer periods.

Reason: To maintain environmental amenity.

OTHER AGENCY CONDITIONS

50. Dewatering activities - Department of Primary Industries - Water

Prior to the issue of a construction certificate, the proponent is required to obtain the appropriate licenses and/or approvals under the Water Act 1912 and the Water Management Act 2000 prior to dewatering activities. The applicant may also be required to address the requirements of the NSW Aquifer Interference Policy. The applicant is to liaise directly with DPI Water regarding dewatering activities.

Reason: To ensure compliance with Government requirements

ATTACHMENTS

A: Plans

Attachment A has been issued to the Administrator and Senior Staff only as a paper conservation measure. However, this Attachment is publicly available on Council's Website, copies are available at Council offices and copies are available on request.

4 DA 203/2017 - EARTHWORKS AND DRAINAGE FOR PRIVATE AIRSTRIP

Report Author Petula Bowden - Senior Town Planner

File No. / ECM Index DA 203/2017

Date of Meeting DCU 19 April 2017

DETAILS

Date Received: 14 November 2016

Applicant: Nathan and Sherinah Peck

Owner: Nathan and Sherinah Peck

Land: Lot 3 DP 858132 No. 814 Manning Point Road Oxley Island

Area: 23.17 ha

Zoning: RU1 Primary Production and E2 Environmental Conservation -Greater Taree LEP 2010

SUMMARY OF REPORT

- The applicant proposes to carry out minor earthworks and install a drainage pipe to facilitate the use of the land at Manning Point Road as a private airstrip.
- The application was notified to adjoining property owners and 6 submissions were received.

SUMMARY OF RECOMMENDATION

It is recommended that Development Application 203/2017/DA, for earthworks and drainage to facilitate the use of the land as an airstrip, on Lot 3 DP 858132, be approved subject to conditions.

FINANCIAL/RESOURCE IMPLICATIONS

Cost of defending any appeal against Council's decision.

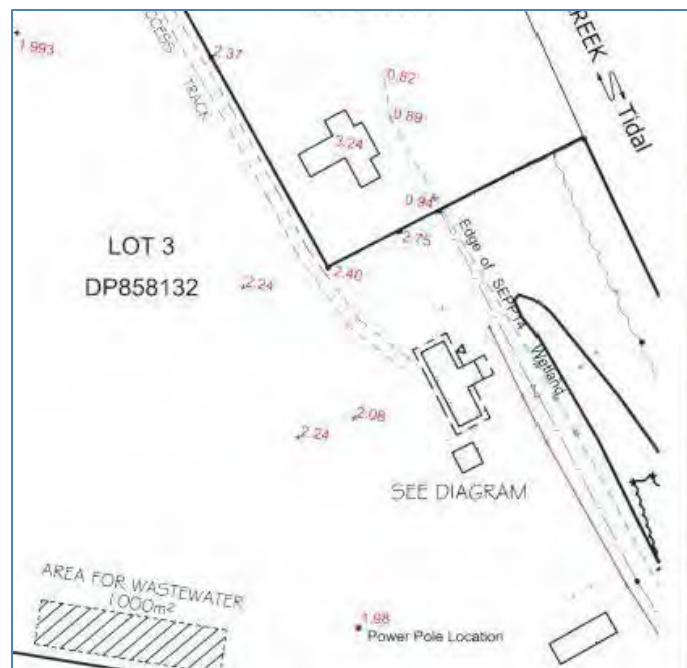
LEGAL IMPLICATIONS

The applicant has the right to appeal against Council's decision.

The physical works proposed comprise installation of a 375mm RCP with headwalls at 0.5% grade across the width of the airstrip in an existing man-made earth drain, and the excavation of an area in the centre of the airstrip to RL 1.0 to create a smooth surface for the landing and takeoff of the aircraft. The airstrip is proposed to be constructed to fully comply with the Civil Aviation Authority Guidelines for Aeroplane Landing Areas: July 1992. Details of this compliance are provided below in this report.

SITE DESCRIPTION

The subject site has an area of 23.17 hectares and is generally rectangular in shape with the exception of the easternmost portion where it adjoins Scotts Creek and No.838 Manning Point Road. The site is generally flat and largely devoid of vegetation. A dwelling, garage and shed are currently under construction on the site (228/2014/DA). An extract of the approved plan for this development is provided below.



REPORT

The following matters listed under Section 79C of the Environmental Planning and Assessment Act, 1979, are relevant in considering this application:

- a) ***The provisions of any environmental planning instrument; any proposed instrument that is or has been the subject of public consultation and which have been notified to the consent authority; any DCP; any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F; any matters prescribed by the regulations; any coastal zone management plan that apply to the development application on the subject land.***

Greater Taree Local Environmental Plan 2010 (GTLEP 2010)

The subject land is zoned RU1 Primary Production and E2 Environmental Conservation pursuant to GTLEP 2010. The development is to be carried out wholly within the area of the site zoned RU1.

The proposed works are defined in the LEP to be earthworks, meaning 'excavation or filling', and drainage, meaning 'any activity that intentionally alters the hydrological regime of any locality by facilitating the removal of surface or ground water. It may include the construction, deepening, extending, opening, installation or laying of any canal, drain or pipe, either on the land or in such a manner as to encourage drainage of adjoining land.'

The proposal seeks to excavate land approximately to RL 1.0 and to smooth out to surrounding levels and to install a small 375mm piped culvert in an existing man-made drain.

Additional works will include the removal of a single tree and fencing across the landing alignment.

These works are permissible in the RU1 as they are considered necessary only for the purpose of utilising the land as an airstrip. Airstrips, being 'a single runway for the landing, taking off or parking of aeroplanes for private aviation only, but does not include an airport, heliport or helipad.' are permissible with consent in the RU1 zone.

The following provisions of the LEP also apply to the proposed development.

5.5 Development within the coastal zone

Complies. This clause addresses matters relating to the protection of the coastal zone. The considerations under SEPP 71 are satisfactory for addressing this clause.

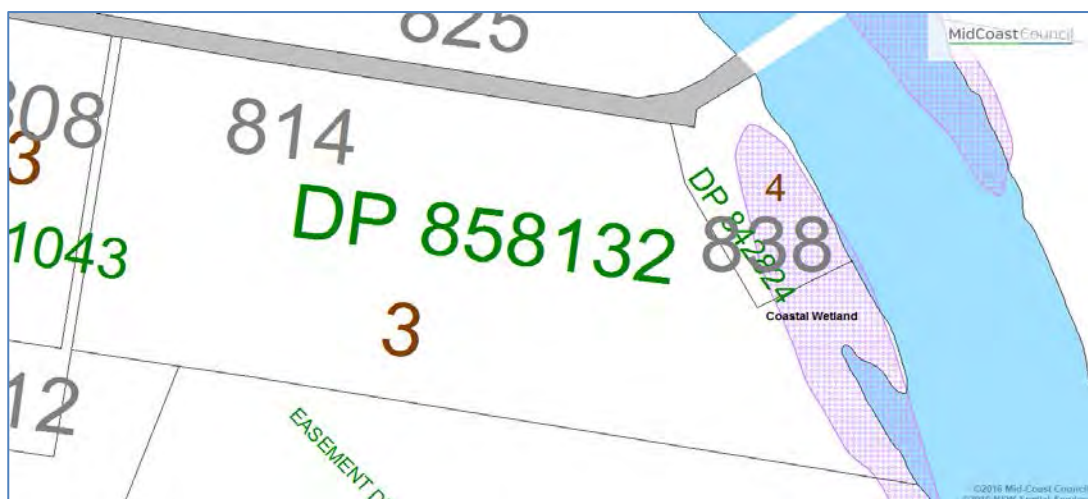
7.3 Earthworks

Complies: This clause provides that earthworks that are of a minor nature, as is the case with this proposal, can be carried out as ancillary to other development for which consent has been given.

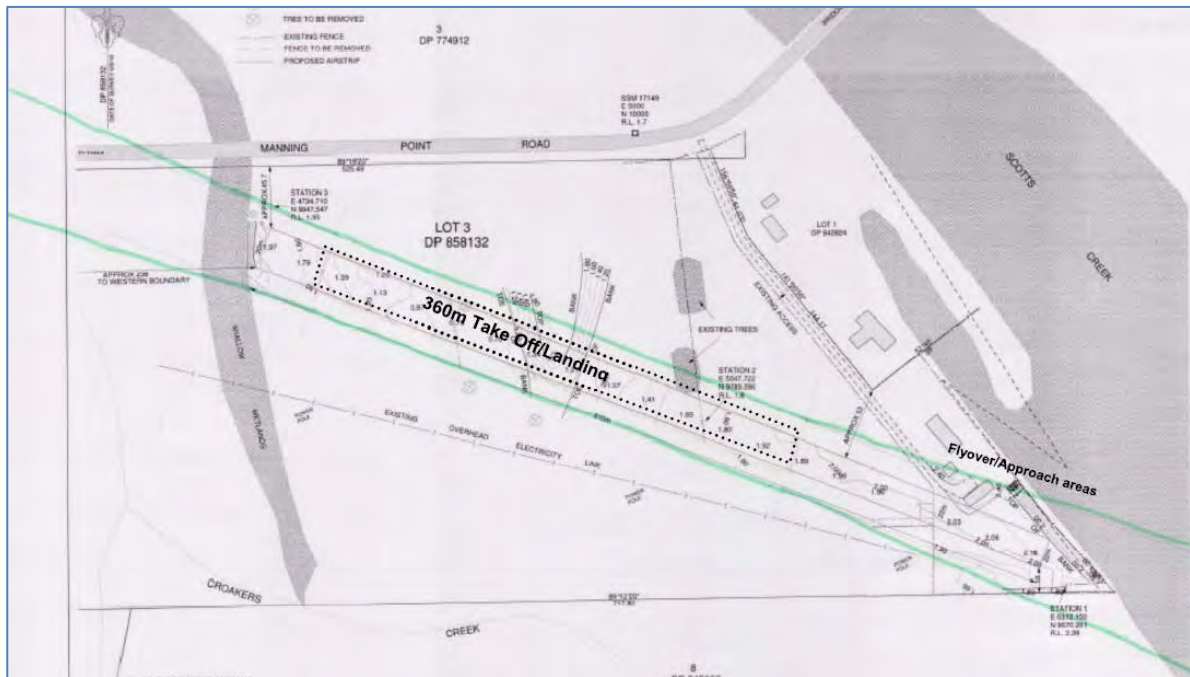
State Environmental Planning Policy

SEPP 14- Coastal Wetlands

Adjacent to the development site is a mapped Coastal Wetland. As the proposed development does not seek to include any works within the area mapped as SEPP 14 wetlands there are no provisions of the SEPP which apply. The map below delineates the SEPP 14 mapped area.

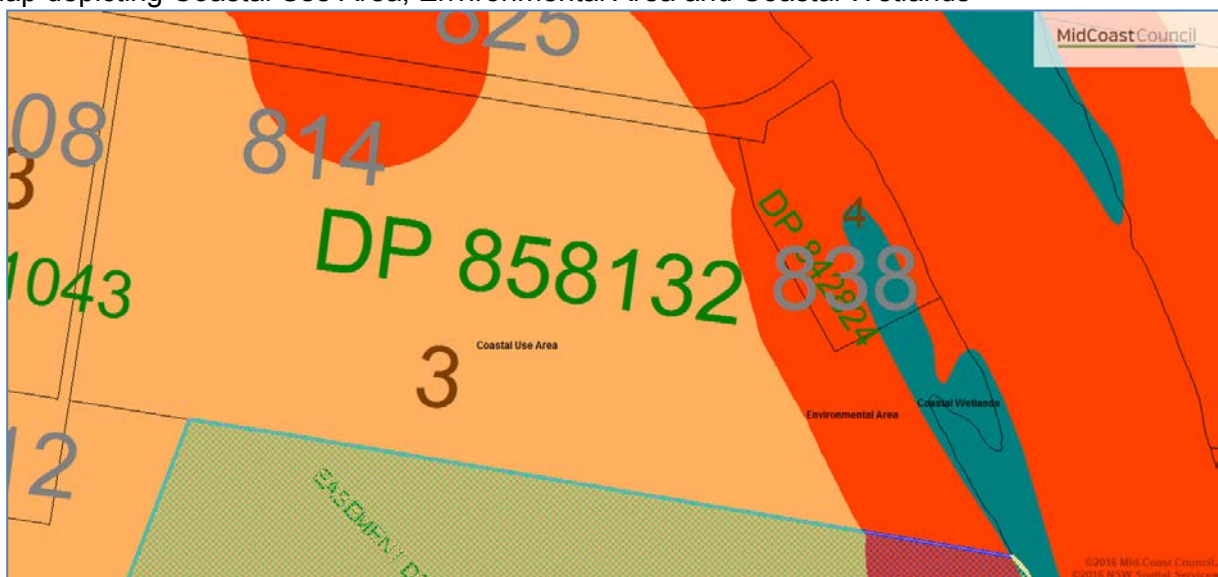


The flyover/approach areas are delineated by the green lines on the map below. The takeoff and landing strip area is nominated by the dotted line.



Draft Coastal Management SEPP

Map depicting Coastal Use Area; Environmental Area and Coastal Wetlands



The mapping accompanying the draft Coastal Management SEPP(extract above) shows that the eastern end of the identified landing area mapped is in proximity to Coastal Wetlands .

Development of land in this area is subject to the provisions of clause 12 of the draft SEPP. The provisions of this draft SEPP require a consent authority to be satisfied that a development does not significantly impact on:

- a) *the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or*
- b) *the quantity and quality of surface and ground water flows to the adjacent coastal wetland or littoral rainforest if the development is on land within the catchment of the coastal wetland or littoral rainforest.*

The proposal results in no significant change to the existing ground surface or physical characteristics of the land in the area and would not result in any significant impacts to the wetland areas.

The airstrip is to be located within the Coastal Use area (mapped within the draft SEPP as land 1km landward of coastal waters, estuaries and coastal lakes).

The provisions of the draft SEPP are replicated below:

Division 4 Coastal use area
15 Development on land within the coastal use area

Development consent must not be granted to development on land that is wholly or partly within the coastal use area unless the consent authority:

- a) *is satisfied that the proposed development:*
 - i) *if near a foreshore, beach, headland or rock platform—maintains or, where practicable, improves existing, safe public access to and along the foreshore, beach, headland or rock platform, and*
 - ii) *minimises overshadowing, wind funnelling and the loss of views from public places to foreshores, and*
 - iii) *will not adversely impact on the visual amenity and scenic qualities of the coast, including coastal headlands, and*
 - iv) *will not adversely impact on Aboriginal cultural heritage and places, and*
 - v) *will not adversely impact on use of the surf zone, and*
- b) *has taken into account the type and location of the proposed development, and the bulk, scale and size of the proposed development.*

The use of this land as an airstrip is not inconsistent with these provisions.

Environmental Planning and Assessment Regulations 2000

The provisions of Schedule 3 of the Regulation nominate Aircraft Facilities as Designated Development in certain circumstances.

Aircraft facilities are defined in the Schedule to mean:

‘Aircraft facilities (including terminals, buildings for the parking, servicing or maintenance of aircraft, installations or movement areas) for the landing, taking-off or parking of aeroplanes, seaplanes or helicopters.’

Subclause (c) provides that:

- c) *in any case, that are located:*
 - i) *so as to disturb more than 20 hectares of native vegetation by clearing, or*
 - ii) *within 40 metres of an environmentally sensitive area, or*
 - iii) *within 40 metres of a natural waterbody (if other than seaplane or helicopter facilities).*

The only ‘facilities’ proposed in this application are the excavation of the small mound and the construction of a culvert across the shallow drain to facilitate the landing of the owner’s aircraft on the land. These works (or facilities) are located well over 40 metres from any natural waterbody or environmentally sensitive area.

It is considered that as there are no works proposed over the area within 40m of the natural waterbody, the proposal does not trigger the designated development provisions contained within Schedule 3 of the Regulation.

Additionally, the provisions of the Regulation (clause 37A) provide that development is not designated development if it is ancillary to other development and is not proposed to be carried out independently of that other development.

In this circumstance the airstrip is to service the future transport needs of the residents of the property and will at no time be utilised for any other purpose. The development is therefore not considered to be designated development.

Draft Local Environmental Plan

na

NSW Coastal Policy 1997

The NSW Coastal Policy applies to the site as it is located within the NSW Coastal Zone. The development is not contrary to the aims of the Policy as the scale of the development is minor in relation to the Policy’s intended aims to protect the foreshore and the State’s coastal assets and any potential impacts can be mitigated through conditions of consent.

Development Control Plan No. 2010

There are no DCP objectives or performance criteria relevant to this proposal. Part D- Environmental Requirements outlines specific objectives and performance criteria for earthworks, however due to the minor nature of the proposal these are not considered relevant.

Civil Aviation Authority Guidelines for Aeroplane Landing Areas: July 1992

There is no legal requirement for the guideline to be observed, however compliance with same will ensure that the airstrip complies with the Civil Aviation Regulations, which must be met.

The guidelines provide the following criteria as guides for the establishment of an airstrip.

Guideline	Criteria	Compliance
Operation from a landing area	Private	Private airstrip
Runway width	15m (10m for aircraft less than 2000kg)	22-30m (var) (max. weight 1106kg)
Runway Length	Equal to or greater than that specified in the aeroplanes flight manual. The flight manual for the Piper PA28-161 Warrior II states 297m for take-off and 181m for landing	360m (520m total)
Runway ends	Clear of objects above 5% slope	Complies
Transverse slope of runway	2.5%	Less than 2%

The proposed airstrip specification comply with these criteria.

b) The likely impacts of development including environmental impacts on both natural and built environments and social/economic impacts in the locality

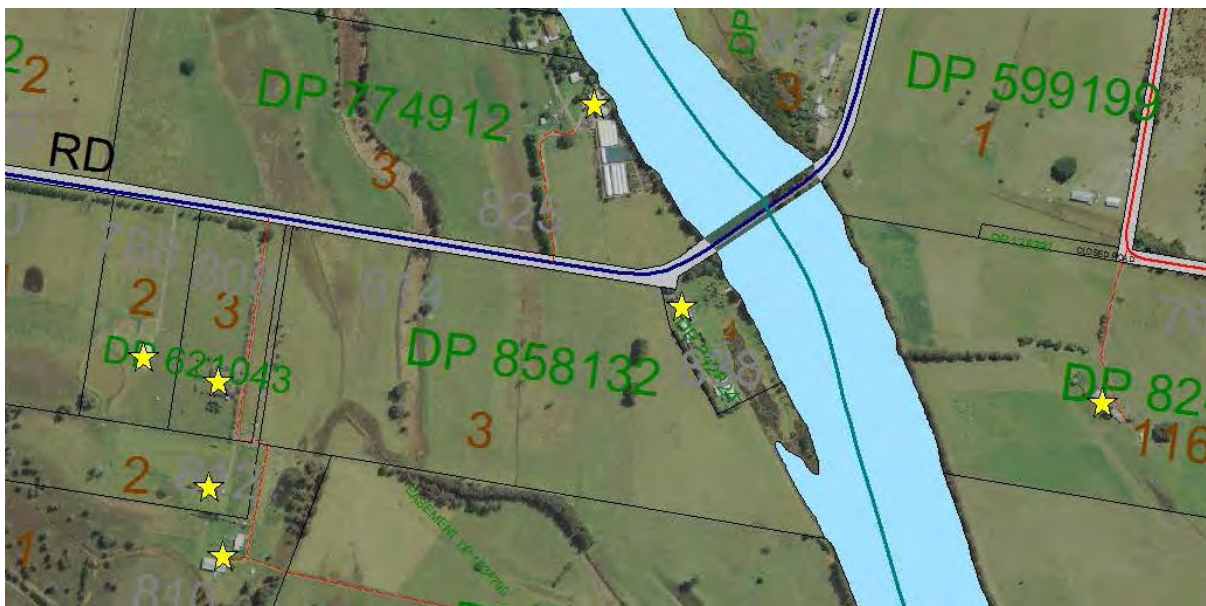
Context and Setting

The subject lot is a rural parcel with an area of 23.17 hectares located adjacent to Scotts Creek. The proposed works are minor in nature and will facilitate the private use of the land as an airstrip for infrequent landings and take-offs.

Acoustic Impact

The reported noise level for the Piper PA 28-161 Warrior is 72.9 dB(A). In comparison a passing diesel truck has a noise level of 85 dB(A) and a lawn mower 90dB(A). The level of noise generated by the aircraft, the limited number of dwellings in proximity to the airstrip and the intended infrequency of its use in the locality are considered acceptable.

The map below depicts the nearby dwellings. The closet dwelling is some 145m to the nearest point of the landing strip.



Drainage

The subject land is low-lying and currently drains to Scotts Creek. Drainage of the site will not be impeded by the minor works proposed nor the use of the site as a private airstrip.

Flora and Fauna

There is no significant flora on the site. A single tree is to be removed to facilitate the airstrip. A nearby Eastern Osprey nest is not considered likely to be impacted by the aircraft activities to be facilitated by the proposed works.

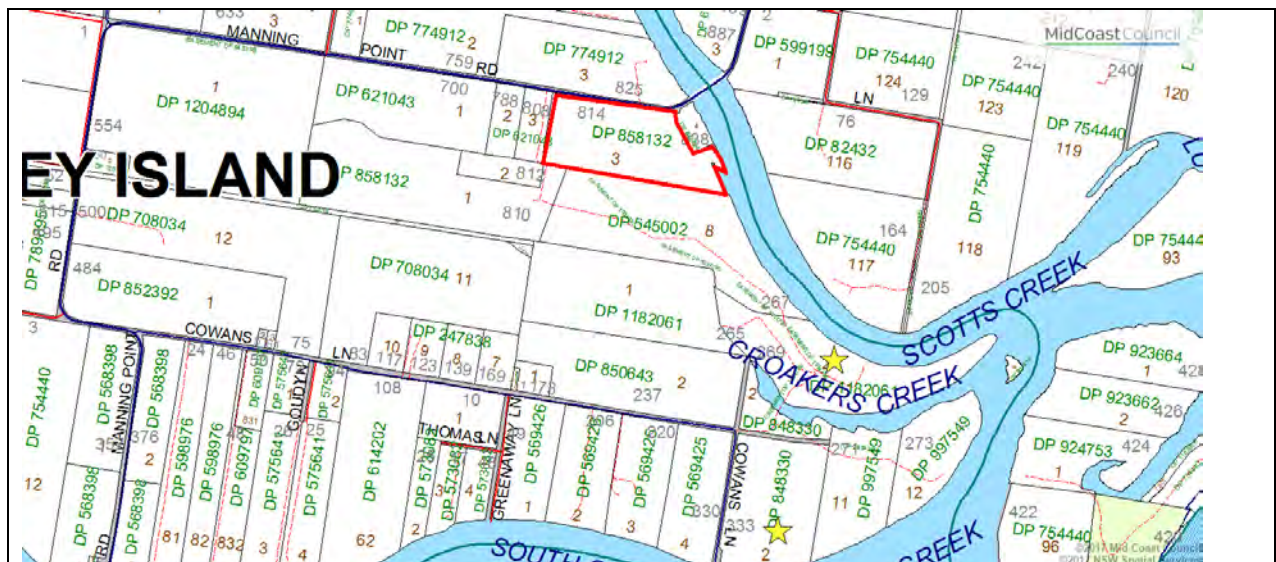
c) The Suitability of the Site for the Development

The proposed development comprises minor earthworks and drainage works. The site has adequate area to facilitate the airstrip. There are no physical site constraints that impede the use of the site for the intended purpose.

d) Any Submissions Made in Accordance with the Act or Regulations

The application was notified to adjoining owners between 23 November and 13 December 2016 in accordance with Council's Policy and six (6) submissions were received. The issues raised in the submissions are discussed below and included in full in Attachment A.

Issue	Comment
Spooking of horses and livestock	There is no evidence to indicate that livestock on adjoining properties will be spooked by nearby flight activity.
Depleted quality of life	The infrequency of the flights and the size of the aircraft involved are not considered to be of such a degree as to deplete the quality of life for adjoining residents.
Noise impact on amenity	The proposed aircraft emits minimal noise and with infrequent flight activity is unlikely to adversely impact on lifestyle amenity
Safety concerns for Pilot near power lines	The safety of the pilot is a matter for himself in terms of risks taken when in flight.
Not compliant with Civil Aviation Authority Guidelines for Aeroplane Landing	The Civil Aviation Authority Guidelines for Aeroplane Landing Areas: July 1992 specify criteria for landing strips. These are discussed above in this report. The proposed use of the land as an airstrip is fully complaint with these guidelines.
Spillage of avgas into waterway risk	There is to be no refuelling on site and as both the airstrip and the parking of the aircraft will occur some 20m from the waterway and wetland spillage of avgas into the waterbodies is unlikely.
Proximity to residences- less than 53 metres	The closest boundary is 53m to the airstrip. The nearest residence is some 100m to the airstrip. This distance is considered adequate given the infrequency of flights and nature of the aircraft.
Storage and refuelling on site	No fuelling of the aircraft will be permissible from the site. The aircraft has a range of 867km
Designated Development	For the reasons outlined in this report the proposal is not deemed to be designated development
Impact on nesting pole of Eastern Osprey	There are 2 Osprey Nests on Oxley island, however both are some distance away near to the end of Cowans Lane. They will not be impacted by the aircraft. The map below depicts the development site in red and the 2 known Osprey nests in yellow.



Alternate facilities at Old Bar	This airstrip would not satisfy the direct route requirements of the landowner
Need limit on number of flight movements	The flight movements are to be limited through a condition of development consent.

e) The Public Interest

The proposed development provides for private access to the subject property. The development will have minimal impacts and is not considered to be contrary to the public interest.

CONCLUSION

The impacts of the proposed development are considered to be acceptable under S79C of the EP&A Act 1979. The development complies with Council's LEP 2010 and DCP 2010.

RECOMMENDATION

Development Application 121/2017/DA is recommended for approval subject to the conditions outlined below:

General Requirements

The following conditions of consent are general conditions applying to the development.

1. The development is to be carried out in accordance with the details submitted with application **203/2017/DA** and the stamped plans (as amended by the following conditions).
2. An Acid Sulfate Soil Management Plan (ASSMP) shall be prepared and submitted to Council for approval prior to the commencement of works. The ASSMP shall be prepared in accordance with the Acid Sulfate Soils Manual published by the Acid Sulfate Soils Management Advisory Committee (1998) to control and minimise the impacts from disturbance to actual or potential acid sulfate soils existing on the site.'
3. Erosion and sediment controls measures are to be provided on the development site for the duration of the earthworks and drainage works to limit the potential for damage to adjoining wetland areas.
4. All areas disturbed by construction activities associated with the construction of the development, shall be revegetated and stabilised so as to prevent erosion occurring.

5. No fuel associated with the aircraft using the airstrip is to be kept on the premises. Re-fuelling of aircraft from the site is not permitted.
 6. Parking of the aircraft is to occur outside of the areas designated as SEPP 14 – Coastal Wetlands at all times.
 7. The use of the airstrip is to be for private transportation purposes only.
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ATTACHMENTS

- A: Submissions
- B: Plans

Attachments A and B have been issued to the Administrator and Senior Staff only as a paper conservation measure. However, these Attachments are publicly available on Council's Website, copies are available at Council offices and copies are available on request.

5 DA-309-2015 MOTORCYCLE EVENT PROPOSED MODIFICATION OF CONSENT.

Report Author Steve Andrews, Assessment Planner

File No. / ECM Index DA309/2015B / PK22816

Date of Meeting DCU 19 April 2017

DETAILS

Date Received: 16 January 2017

Applicant: Mr J Sundell

Owner: Mr J R & Mrs M C Sundell & Bogasi Pty Ltd

Land: Lot 750 DP 879479, Lot 73 DP 849898 & Lot 40 DP 753178; Ebsworth Road Booral

Area: 294.6 ha (combined total area of three lots)

Property Key: Lot 750 - PK 24689; Lot 73 - PK 22816 & Lot 40 - PK17041

Zoning: RU 2 - Rural Landscape, GLLEP 2014

SUMMARY OF REPORT

- Application lodged seeking to modify the development consent to conduct the Transmoto 6 hour Motorcycle Enduro Event.
- Modified application advertised in the local paper and also notified to neighbouring property owners in accordance with Council Policy.
- Two submissions received from the owners of four (4) neighbouring properties.
- Compliance with relevant planning controls
- Proposed temporary use is considered contextually appropriate in this rural location subject to conditions

SUMMARY OF RECOMMENDATION

Modify the development consent subject to conditions.

FINANCIAL/RESOURCE IMPLICATIONS

Cost of defending any appeal against Council's decision.

LEGAL IMPLICATIONS

Cost of defending any appeal against Council's decision.

SUBJECT SITE AND LOCALITY

Refer to Attachment 'A'.

BACKGROUND

The original development application, to conduct the Transmoto 6 Hour Motorcycle Enduro event on 19 July 2015 and then at a similar time in each of the successive four (4) years, was submitted on 27 February 2015. The application was advertised and notified in accordance with Council's Policy for Notification and having regard to submissions from eight (8) neighbouring property owners in respect to possible adverse implications, development consent was granted 11 June 2015 subject to, inter-alia, the following conditions:

2. Limitation of use

This development consent is restricted to one (1) event only on 19th July 2015 subject to the event being operated without nuisance or significant environmental impact. The applicant may seek to modify this condition if it is demonstrated that the event on 19th July 2015 has been conducted to the satisfaction of the Council.

Reason: *To protect the amenity of neighbouring properties and the environment.*

3. Restrictions on propose use

The number of riders in the event being limited to a maximum of 300 riders.

Reason: *To limit the potential environmental implications associated with the proposed use.*

The applicant advised Council that the event was conducted in accordance with Council's approval; 294 riders competed in the event that took place between 8.00am and 2.30pm; dust was managed with a water truck operating on the Saturday but not on the Sunday when it was raining; repair and remediation actions were carried out by the property manager; and litter was collected roadside post the event. It is also noted that Council did not receive any formal complaints concerning the operation of the event, at that time.

Application to modify the development consent in respect to conditions 2 and 3 (see above) was received 2 June 2016. In respect to condition 2 the applicant requested that two (2) events be permitted per year between the months of March and November and in respect to condition 3, to permit a maximum of 500 riders. The second event in the year would cater for a different market such as young ridders. The applicant indicated that for the 2016 year only one (1) event with a maximum of 300 riders would be conducted. The application to modify the development consent was advertised and notified in accordance with Council's Policy for Notification and submissions were recived from five (5) neighbouring properties. In the assessment of the application the neighbour's concerns were balanced against the applicant's submission and in the absence of impartial objective feedback, development consent was modified 5 October 2016, on the basis of the applicant's advice concerning the proposed operation of the 2016 event, subject to, inter-alia, the following conditions:

2. Limitation of use

This development consent is restricted to one (1) event only in 2016 subject to the event being operated without nuisance or significant environmental impact. The applicant may seek to modify this condition if it is demonstrated that the event has been conducted to the satisfaction of the Council.

Reason: *To protect the amenity of neighbouring properties and the environment.*

3. Restrictions on propose use

The number of riders in the event being limited to a maximum of 300 riders.

Reason: *To limit the potential environmental implications associated with the proposed use.*

The Council also resolved at that time:

B. That Council's Ranger inspects the site and locality during and immediately after the approved 2016 event to ascertain compliance with the conditions of the development consent. Council's costs for the inspections being borne by the applicant and paid to Council at least seven (7) days prior to the event. A tax invoice for this service being enclosed with the Council's decision.

C. That a review of the next event be undertaken and reported back to Council.

The approved event took place on the weekend of the 5th and 6th November 2016. Council's Rangers attended the event and their comments are referred to under the later heading:

d) Any Submissions Made in Accordance with the Act or Regulations.

Attached marked 'A' is a copy of the planning assessment report that was considered by Council when making its decision on 5 October 2016 together with referenced Attachments that includes a locality aerial plan indicating the proposed development including motorcycle circuit and camping area.

The subject application to modify the development consent was lodged 16 January 2017 and is assessed in the following report.

MODIFIED PROPOSAL

In accordance with the terms of condition 2 of development consent the applicant seeks to conduct two (2) events per year (on an ongoing yearly basis) between the months of March and November and in respect to condition 3, to permit a maximum of 500 riders. The second event will cater for a different market such as young riders. The applicant would like to conduct the next event on the weekend of the 9th and 10th September 2017.

It should be noted that condition 2 of development consent advised the applicant that he may apply to modify the terms of the condition if it was demonstrated that the 2016 event had been conducted to the satisfaction of the Council. The applicant submitted post the 2016 event that the event had been conducted in accordance with their Plans of Management and Council's approval and this has generally been confirmed by Council's Rangers who inspected the site during the course of the event weekend. At that time, Council did not receive any formal complaints concerning the operation of the 2016 event.

SITE DESCRIPTION

The site for the development consists of three (3) existing large lots under the one ownership with a combined area of 294.6 ha. The site is comprised of cleared and heavily timbered land, with land on adjoining properties to the north, north-east and west generally heavily timbered. Lots 40 and 750 are located within the MidCoast Council Local Government area (LGA) and lot 1 within Dungog Council LGA.

The proposed development will generally take place on land in lots 1 and 40 and in regard to lot 1 Dungog Council have previously advised that development consent is not required for that part of the development in their LGA.

The closest point of the proposed development (i.e. the pit area) is located approximately 6.5 kilometres from The Bucketts Way, via Ebsworth Road and then Gunns Gully Road.

REPORT

The following matters listed under Sections 79C and 96(1A) of the Environmental Planning and Assessment Act, 1979, are relevant in considering this application:

- a) ***The provisions of any environmental planning instrument; any proposed instrument that is or has been the subject of public consultation and which have been notified to the consent authority; any DCP; any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F; any matters prescribed by the regulations; any coastal zone management plan that apply to the development application on the subject land.***

Under the provisions of Section 96(1A) of the EPA Act 1979, Council may modify an existing Development Consent if the following criteria have been complied with:-

- a) ***Minimal Environmental Impact***
The development is substantially the same development as that which was originally granted development consent and no significant environmental impacts arise as a result of the proposed minor modifications.
- b) ***Substantially the Same Development***
The development is substantially the same development as the development for which consent was originally granted.
- c)&d) ***Notification and Consideration of Submissions***
The proposed modifications are not considered to unreasonably impact on the amenity of neighbouring rural properties subject to compliance with the conditions of development consent as varied in this report's recommendation. The application to modify was advertised in the local paper and notified to neighbouring properties in accordance with Council's Policy for Notification. In response, four (4) submissions were received and are considered under the later heading d) *Any Submissions Made in Accordance with the Act or Regulations*

In accordance with Section 96(3) of the EPA Act 1979 the Council, in determining an application for the modification of development consent, must take into consideration such of the matters referred to in Section 79C of the EPA Act 1979 as are of relevance to the subject application. Those relevant matters under Section 79C, are as follows.

Environmental Planning and Assessment Act 1979 (EPAA 1979)

The subject site is mapped as bush fire prone and in accordance with Section 91 of the EPAA 1979 and Section 100B of the Rural Fires Act 1997 the development is classed as 'Integrated' and requires the issue of a Bush Fire Safety Authority by the Rural Fire Service (RFS). The application was previously referred to the RFS who indicated their support for the proposed development subject to conditions that are included in the current development consent as well as a limitation on the period of operation of the Bush Fire Safety Authority to five (5) years from the date of issue of the development consent (i.e. limited to 11 June 2020).

Great Lakes Local Environmental Plan 2014 (GLLEP 2014)

The site is zoned RU2 - Rural Landscape Zone. The proposed recreation facility (outdoor) use is permissible in the RU2 zone with development consent. The relevant objectives of the RU2 zone are to encourage sustainable primary industry production by maintaining and enhancing the natural resource base, to maintain the rural landscape character of the land, to provide for rural tourism in association with the primary industry capability of the land and to enable a range of compatible land uses. The proposed modified development is considered to be consistent with the relevant objectives of the zone.

Furthermore, clause 2.8 of GLLEP 2014 enables the granting of development consent for a temporary use of land if the use does not compromise future development of the land and does not have a detrimental economic, social, amenity or environmental effect on the land provided that the temporary use is limited to a maximum period of 52 days (whether or not consecutive days) in any 12 month period. The proposed temporary use is considered to be consistent with the provisions of this clause having regard to the matters listed for consideration in clause 2.8 (3).

Essential services - Clause 7.21 requires that development consent must not be granted to development unless the Council is satisfied that essential services (i.e. water, electricity, sewage, stormwater drainage and road access) are available or that adequate arrangements have been made to make them available. Given the rural locality, the proposed modified development has access to all relevant necessary services subject to the conditions contained in the current development consent.

State Environmental Planning Policy 44 - Koala Habitat Protection (SEPP 44)

The Plan encourages the conservation and management of natural vegetation areas that provide habitat for koalas to ensure permanent free-living populations will be maintained over their present range.

The proposed temporary event is not considered to have a significant or unreasonable ecological impact and would not contravene the objectives and requirements of ecological legislation, including SEPP44, subject to compliance with the conditions included in this report's recommendation.

State Environmental Planning Policy (Rural Lands) 2008

The relevant aims of this Policy is to facilitate the orderly and economic use and development of rural lands for rural and related purposes, to identify rural planning principles to assist in the proper management, development and protection of rural lands for the purpose of promoting the social, economic and environmental welfare of the State and to implement measures designed to reduce land use conflicts. The proposed temporary development is considered to be consistent with the relevant aims of the Policy having regard to the rural planning principles provided in the Policy.

Development Control Plan 2014

The aims of the Plan are to ensure good quality, sustainable development outcomes that maintain a high level of environmental amenity. The Plan is designed to allow flexibility in the application of its controls where strict compliance is considered unreasonable or unnecessary provided the relevant objectives of the Plan have been achieved.

The relevant provisions of the Plan are discussed as follows:

Part 3 Character Statements - The proposed modified development is considered to be contextually appropriate in this rural locality and subject to conditions included in this report's recommendation, will not have a significant impact on the natural environment.

Part 4 Environmental Considerations - The proposed modified development, subject to conditions included in this report's recommendation, will not have a significant impact on existing ecological processes. Effluent disposal will be managed with temporary facilities and the issue of bush fire has been satisfactorily addressed by the RFS, the recommendations of which are included in the current development consent.

Part 10 Car Parking - The relevant objectives of this Part are to ensure that there is adequate and safe provision for access, manoeuvring and parking on site, to restrict vehicular access to a manner that is compatible with pedestrian movements and safety, to integrate vehicular access and parking facilities without compromising street character or landscaping and to provide an adequate level of on-site parking based on anticipated occupancy rates and proximity to alternate and active transport.

The Plan and the referenced RTA Guidelines do not provide parking generation figures for the subject type of rural use. Public transport is not available in this locality. The event organisers will encourage participants to car pool and respect local traffic conditions as well as the residential amenity of neighbouring properties. Temporary signage will be provided and parking on site will cater for the potential number of vehicles and be managed by parking marshals. Accordingly, the proposed modified development is considered to be consistent with the relevant objectives of the Part.

Part 11 Water Sensitive Design

The relevant objective of this Part is to reduce waste water discharge into the receiving environment. The proposed modified development, subject to the conditions of the current development consent, will be managed to ensure waste water and potential pollutants (associated with the motorcycles) are not discharged into existing watercourses, consistent with the objective of this Part.

Part 14 Waste Management - The relevant objectives of the Part are to encourage sustainable waste management that includes re-use and recycling of commercial waste. The proposed use will include suitable waste management facilities. A satisfactory waste management plan has been submitted with the development application.

Great Lakes Council Erosion and Sediment Control Policy

The aim of this policy is to minimise erosion and sedimentation in catchments, resulting from the disturbance of the soil surface associated with the proposed land use. This is to ensure that potential pollutants are not directed to natural and artificial water bodies.

The proposed modified development will be managed to ensure that erosion and sediment control measures comply with the aims and requirements of the Policy thereby protecting the water quality of neighbouring natural and artificial water bodies. Appropriate conditions are included in the current development consent.

b) *The likely impacts of development including environmental impacts on both natural and built environments and social/economic impacts in the locality*

Context and Setting

The proposed temporary development is considered to be contextually appropriate in this rural locality.

Noise

This issue is addressed in the later heading *d) Any Submissions Made in Accordance with the Act or Regulations* where the concern was raised by the neighbours.

Access, Transport and Traffic

This issue is addressed in the later heading *d) Any Submissions Made in Accordance with the Act or Regulations* where the concern was raised by the neighbours.

Utilities

The proposed events will provide a limited supply of potable water. Participants will be encouraged to bring their own potable water supply.

Portable toilet facilities will be provided as required by a condition of this report's recommendation.

Flora and Fauna

The proposed temporary event is not considered to have a significant or unreasonable ecological impact and would not contravene the objectives and requirements of ecological legislation, subject to compliance with the conditions of the current development consent and those included in this report's recommendation.

Precedent and Cumulative Impacts

The proposed temporary development, subject to the recommended conditions, does not set an undesirable precedent for future similar events in this rural locality. Conditions 2 and 3 are now recommended to be modified on the basis of being reviewable conditions that will allow Council to, in future, review the terms of the conditions should the events not be conducted to the satisfaction of the Council.

c) The Suitability of the Site for the Development

The topography and configuration of the site, given the distant relationship with neighbouring residents, are considered suitable for the proposed events. Environmental issues are limited and satisfactorily addressed. There is a limited natural hazard in terms of bushfire that has been identified and addressed in the risk management and emergency procedures plans. Adequate utility services are available. The modified proposal, subject to the recommended conditions, is unlikely to create an unreasonable impact on the residential amenity of the neighbouring properties.

Accordingly, the site is considered to be suitable for the proposed temporary development.

d) Any Submissions Made in Accordance with the Act or Regulations

The original proposal was advertised and notified to neighbouring property owners in accordance with Council's Policy and eight (8) submissions were received. The subsequent modification of development consent was similarly advertised/ notified, including to those persons who previously made submissions, and submissions were received from the owners of five (5) neighbouring properties. Those previous concerns and the assessment of those concerns are referred to in Attachment 'A' to this report.

The subject application to modify the development consent was advertised and notified to neighbouring property owners in accordance with Council's Policy, including to those persons who previously lodged a submission and submissions were received from the owners of four (4) neighbouring properties. The submissions raise the following concerns:

1. The unsatisfactory conduct of the last approved event on the weekend of 5th and 6th November 2016 in respect of the following issues.

- i) Dumping of rubbish

Comment: The applicant has advised that the public road was cleared of any rubbish prior to and post event and that the organisers strongly promote a successful policy for competitors to take all rubbish with them when they leave the event.

Council's Rangers confirm that there was no visible signs of rubbish dumped before, during and post event.

- ii) Injured and killed wildlife

Comment: The applicant has advised that appropriate 'Wildlife' signage was in place on the public road in accordance with a condition of development consent and there was no evidence of injured or killed wildlife.

Council's Rangers report that there was no visible sign of injured or killed wildlife.

iii) Damage to native vegetation

Comment: Council's Rangers report that there was no visible sign of damage to native vegetation.

iv) Damage to the public road (potholes, juts (? ruts) and damage to the existing wooden bridge. The damage was not repaired following the event.

Comment: The applicant has advised that prior to the event the organisers had approached some young local drivers to halt doing burnouts on the bridge and that post event there was no visible damage to the public access road or the wooden bridge.

Council's records indicate that the condition of the wooden bridge is in good order.

Council's Rangers confirm that there was no visible sign of significant damage to the public road or Council's wooden bridge.

v) Extreme dust from excessive road use caused private property damage and affected health of residents with an asthmatic condition. Water tankers were ineffective and water was taken from Cromarty Creek.

Comment: The applicant has advised that the competitors had a set time to arrive on the Saturday from 12 noon to 3.00pm for registration and they then remained on the property until the event finished on the Sunday. Some competitors arrived later and this was due to a road block by NSW Police on The Pacific Highway due to bushfires. Also the water truck ran continuously throughout the weekend and helped minimise any adverse impacts.

Council's Rangers report that the dust condition was not considered to be unreasonable given the condition of the public road and the limited traffic other than persons arriving and leaving the event. The Rangers recommend that in future two (2) water trucks be provided to limit dust conditions. An appropriate condition is included in this report's recommendation.

vi) Some rally participants drove recklessly and dangerously on the public road. One neighbour was forced off the road and nearly crashed.

Comment: Council's Rangers report that they experienced one (1) local driver, not associated with the event, who was driving dangerously on the weekend, otherwise conditions were satisfactory.

vii) High levels of noise before, during and after the event that affected neighbours, livestock, pets and wildlife.

Comment: Council's Rangers report that before, during and after the event no unreasonable noise was experienced.

viii) Greater number of cars/bikes exceeded permitted numbers.

Comment: Council's Rangers report that the numbers of cars/bikes was consistent with the development consent and not considered excessive.

iv) The event took place notwithstanding bushfires in the area that closed major and minor roads whilst firefighters and residents tried to protect their homes.

Comment: Council's Rangers report that the distant bushfires were not considered to be threat to public safety that warranted termination of the event and there were no adverse impacts by smoke.

Council's Rangers also report that the event was conducted at a highly professional standard, that there were very few spectators and traffic was limited to only arrivals and departures to/from the event. They have recommended that one (1) additional water cart be employed to effectively manage road dust. An appropriate condition is included in this report's recommendation.

NSW Police - The previous approvals as well as the current modified application were referred to and supported by NSW Police. In that regard NSW Police have indicated that the subject motor cycle track has been previously inspected for past events and will be inspected prior to the upcoming event by the Port Stephens Local Area Command - Traffic Office. Report will then be referred to the Program Coordinator - Motor Sport, Office of Sport - Sport and Recreation and another licence will be issued prior to future events, by the Program Coordinator.

On balance, having considered the opposing submissions, the modified development application is supported however conditions 2 and 3 are now recommended to be modified on the basis of being reviewable conditions that will allow Council, in future, to review the terms of the conditions should the events not be conducted to the satisfaction of the Council.

e) *The Public Interest*

The proposed temporary development will not detract from the character of this rural locality, nor will it significantly undermine any of the social or economic values of the site or surrounding area. The modified proposal is considered to be consistent with the objectives of the RU2 - Rural Landscape zone and will not have an unreasonable impact upon the amenity of neighbouring properties subject to compliance with the conditions of the current development consent and those contained in this report's recommendation.

Accordingly, approval of the proposed modified development would not be contrary to the public interest.

CONCLUSION

The modified proposal is considered to be suitable for the site and in this rural locality having regard to current planning controls. The proposed modified development maintains a reasonable amenity relationship with neighbouring developments subject to compliance with the existing conditions of development consent and the recommended conditions.

Although the past conduct of the event has been satisfactory, failure by the applicant to comply with the terms of the conditions of the development consent with future events could result in Council reviewing the terms of conditions 2 and 3 and/or commencing proceedings under Sections 121B (Orders) and 125 (Offences) of the Environmental Planning and Assessment Act 1979. It is also noted that the period for conduct of the events, as referred to in recommended condition 2, will expire on the 11 June 2020, consistent with the expiry of the RFS Bush Fire Safety Authority.

Accordingly, the application for the modification of the development consent is supported.

RECOMMENDATION

It is recommended that development consent granted 11 June 2015 (DA309/2015) for the use of the land for a recreational motorbike rally on land at Gunns Gully Vineyard, Ebsworth Road Booral (Lot 750 DP 879479, Lot 73 DP 849898 & Lot 40 DP 753178) be modified pursuant to Section 96(1A) of the EPA Act 1979 in the following manner:-

Condition 2 being amended to read:

2. Limitation of use (reviewable condition)

This development consent is restricted to two (2) events per year between the months of March and November until 11 June 2020 (refer also to condition 24 of this development consent) subject to the events being operated in accordance with this approval and without nuisance or significant environmental impact.

In accordance with Section 80A (10B) of the *Environmental Planning and Assessment Act 1979*, this condition is a reviewable condition. Upon the condition being reviewed, the number of events may be varied in accordance with the recommendations of the review. The purpose of this reviewable condition is to enable the number of events to be reviewed should complaints be received regarding unreasonable conduct of the events having regard to the conditions of the development consent.

Reason: To protect the amenity of neighbouring properties and the environment.

Condition 3 being maintained to read:

3. Restrictions on propose use (reviewable condition)

The number of riders in the event being limited to a maximum of 500 riders.

In accordance with Section 80A (10B) of the *Environmental Planning and Assessment Act 1979*, this condition is a reviewable condition. Upon the condition being reviewed, the number of approved riders may be varied in accordance with the recommendations of the review. The purpose of this reviewable condition is to enable the number of riders to be reviewed should complaints be received regarding unreasonable conduct of the events having regard to the conditions of the development consent.

Reason: To limit the potential environmental implications associated with the proposed use.

Condition 10 being amended to read:

10. Dust suppression

All necessary works must be undertaken to control dust pollution from the site and connecting public roads over the duration of the event. These works must include, but are not limited to:

- a) restricting topsoil removal;
- b) regularly and lightly watering dust prone areas along Gunns Gully Road and Ebsworth Road In this regard two (2) water tankers are to be used (Note: prevent excess watering as it can cause damage and erosion).

Reason: To maintain neighbouring amenity.

Condition 24 being amended to read:

24. Rural Fire Service requirements

The development must be carried out in compliance with the following conditions detailed in the Bush Fire Safety Authority, reference No.DA16/1986 & DA.16062302481AB, dated 20 July 2016.

- a) The camp area, temporary cooking facility, temporary toilet facility and identified safe refuge area are to be located as per the following:
 - unreferenced, undated Site Plan titled 'Gunns Gully Vineyard Trail Map' submitted with Great Lakes Council's referral on 4th March, 2015; and
 - unreferenced, undated, untitled map prepared by Robbie Warden (Event Manager) and emailed by Great Lakes Council on 29th April, 2015.

b) Asset Protection Zones

The intent of measures is to provide sufficient space for fire fighters and other emergency services personnel, ensuring radiant heat levels permit operations under critical conditions of radiant heat, smoke and embers, while supporting or evacuating occupants. To achieve this, the following conditions shall apply:

- Prior to the commencement of the first event, and in perpetuity, the entire proposed camping ground area, temporary cooking facility and temporary toilet facilities shall be managed as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for Asset Protection Zones'.
- Prior to the commencement of the event, and in perpetuity, the property around the proposed safe refuge area shall be managed as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for Asset Protection Zones' as follows:
 - i) north for a distance of 81 metres as an inner protection area (IPA);
 - ii) south for a distance of 91 metres as an IPA;
 - iii) east for a distance of 137 metres as an IPA;
 - iv) west for a distance of 137 metres as an IPA.

c) Water and Utilities

The intent of measures is to provide adequate services of water for the protection of buildings during and after the passage of a bush fire, and to locate gas and electricity so as not to contribute to the risk of fire to a building. To achieve this, the following conditions shall apply:

- Reticulated or bottled gas is to be installed and maintained in accordance with Australian Standard AS/NZS 1596:2014: 'The storage and handling of LP gas' and the requirements of relevant authorities. Metal piping is to be used.
- All fixed gas cylinders are kept clear of all flammable materials to a distance of 10 metres and be shielded on the hazard side of the installation.
- Gas cylinders kept close to the building/temporary structure shall have release valves directed away from the building/temporary structure. Connections to and from gas cylinders are to be metal. Polymer sheathed flexible gas supply lines to gas meters adjacent to building/temporary structure are not to be used.
- Polymer sheathed flexible gas supply lines to gas meters adjacent to building/temporary structure are not to be used.

d) Evacuation and Emergency Management

The intent of measures is to provide suitable emergency and evacuation (and relocation) arrangements for occupants of special fire protection purpose developments. To achieve this, the following conditions shall apply:

- In recognition of the isolated location of the proposal, arrangements for emergency and evacuation are to comply with section 4.2.7 of 'Planning for Bush Fire Protection 2006'.
- An Emergency/Evacuation Plan is to be prepared consistent with the NSW Rural Fire Service document 'Guidelines for the Preparation of Emergency/Evacuation plans' and Australian Standard AS 3745 2010 'Planning for Emergencies in Facilities' including:

- i) the event will be cancelled if the FDI exceeds 50;
- ii) trigger points for implementation of the emergency evacuation plan are to be developed and clearly state evacuation will occur where the FDI exceeds 50;
- iii) the emergency evacuation plan will include a procedure to contact the NSW Rural Fire Service District Office and inform them of the evacuation and the location they will be evacuated to.
- iv) a copy of the emergency evacuation plan shall be provided to the consent authority and the Local Emergency Management Committee prior to commencement of the development.

General Advice – The identified safe refuge area has been assessed against the criteria for open spaces within the Neighbourhood Safer Places Program. The 'open space' is to be situated to prevent direct flame contact, material ignition and radiant heat levels of 2 kW/m² or provide 310 metres separation distance from a hazard'. The safe refuge area is unable to satisfy this performance criteria; consequently, the event is to be cancelled if the FDI exceeds 50.

This bush fire safety authority has been issued in consideration of the fire weather data available for the subject area during the proposed timeframe of the event.

The bush fire safety authority has been issued for a five (5) year period from the date of the Council Development Consent dated 11/6/2015 and will expire on 11/6/2020.

Details from an appropriately qualified Bushfire Consultant (BPAD) accredited with the Fire Protection Association demonstrating compliance with the above conditions, must be submitted to the Council.

Reason: To ensure work is carried out in accordance with the determination and other statutory requirements.

ATTACHMENTS:

A: Assessment report considered by Council 5 October 2016 in respect of last approved modification

Attachment A has been issued to the Administrator and Senior Staff only as a paper conservation measure. However, this Attachment is publicly available on Council's Website, copies are available at Council offices and copies are available on request.



Lisa Schiff
Director
Planning and Natural Systems