

NOTICE OF MEETING

Notice is hereby given that a meeting of

MidCoastCouncil

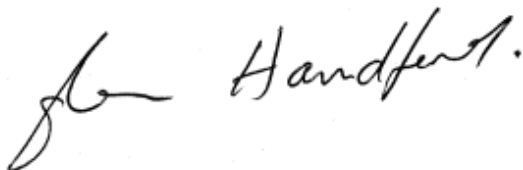
DEVELOPMENT CONTROL UNIT

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

10 MAY 2017 AT 2.30PM

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

TABLE OF CONTENTS

CONSIDERATION OF OFFICERS' REPORTS:..... 1

DIRECTOR PLANNING & NATURAL SYSTEMS..... 1

1 DA 242 2017 - ALTERATIONS & ADDITIONS - 3 SIRIUS KEY, FORSTER 1

2 DA-347-2017 - TWO STOREY DWELLING - 102 AMAROO DR SMITHS LAKE 18

3 DA-60-2014 - TWO LOT SUBDIVISION - THE LAKES WAY ELIZABETH BEACH.....36

4 DA 110-2001-B MODIFICATION - LANDFILL & HARD ROCK EXTRACTIVE
INDUSTRY59

CONSIDERATION OF OFFICERS' REPORTS:

DIRECTOR PLANNING & NATURAL SYSTEMS

1 DA 242 2017 - ALTERATIONS & ADDITIONS - 3 SIRIUS KEY, FORSTER

Report Author Chad Vowles, Coordinator Building Services

File Number DA 242/2017 & PK 6669

Date of Meeting 10 May 2017

DETAILS

Date Received: 29 November 2016

Applicant: RGR Design

Owner: Mr B and Mrs G May

Land: Lot 117 DP 255648, 3 Sirius Key, Forster

Area: 724.5m²

Property Key: 6669

Zoning: R2 Low Density Residential zone, GLLEP 2014

SUMMARY OF REPORT

- Application submitted to construct dwelling alterations and additions and swimming pool.
- Proposal does not comply with the flooding policy requirements or front and side boundary setback provisions of Great Lakes DCP 2014.
- Council requested further information to support application.
- Non-compliance with the Development Control Plan discussed.

SUMMARY OF RECOMMENDATION

That Development Application No. 242/2017, for dwelling alterations and additions and swimming pool located at Lot 117 DP 255648, 3 Sirius Key, Forster, be refused in accordance with the reasons provided in Council's recommendation.

FINANCIAL/RESOURCE IMPLICATIONS

A decision for approval subject to conditions or refusal may lead to an appeal to the Land and Environment Court with inherent cost implications.

LEGAL IMPLICATIONS

A decision for approval subject to conditions or refusal may lead to an appeal to the Land and Environment Court with inherent cost implications.

SUBJECT SITE AND LOCALITY



BACKGROUND

- | | |
|------------------|---|
| 29 November 2017 | Development application received for alterations, additions and swimming pool. |
| 5 December 2016 | Development application neighbour notified. |
| 13 December 2016 | Letter sent to applicant advising that amended plans may be required for variation to the DCP controls relating to flooding policy and boundary setback encroachments, or provide written justification for the proposed variation with DCP requirements. |
| 13 December 2016 | Letter of objection received by Council. Objection states potential impact of privacy of adjoining property. |
| 10 January 2017 | Written request for variation submitted to Council by applicant. Applicant informed by Council that the determination of the application would be at a Council meeting due to objection received relating to privacy and also non-compliance with Council DCP requirements. |
| 16 February 2017 | Amended plans received by Council to address privacy issue objection. Amended plans incorporate a privacy screen. |
| 17 February 2017 | Amended plans with privacy screen emailed to objector for consideration. |
| 20 February 2017 | Objection relating to privacy withdrawn by adjoining landowner. |

PROPOSAL

The proposed development is for internal alterations and additions to a two (2) storey dwelling on a residential allotment. The proposed design will alter the existing ground storey layout by constructing additional habitable rooms and re-purposing existing ground storey rooms.

The upper storey works propose to increase the habitable space by adding additional habitable space and re-fitting the existing layout. A large covered balcony is proposed at the rear of the upper storey.

The external finish to the design will contain a mix of modern rendered brick and sheet cladding materials and a new (lower) skillion sheet metal roof.

A large porte cochere (drive through carport) is proposed forward of the building line between the existing dwelling and front property boundary. An in-ground swimming pool is also proposed in the back yard as part of the development application.

SITE DESCRIPTION

The site is a relatively flat rectangular allotment with a street frontage to Sirius Key, and shares a rear boundary with Dolphin Passage in Forster Keys. The existing two storey dwelling is situated toward the front of the allotment. Only minor landscaping associated with the dwelling exists, with no significant vegetation.

The allotment is located on the western side of a cul-de-sac, and is situated between two (2) existing dwellings.

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)

Under GLLEP 2014 the development site is zoned R2 Low Density Residential. Mapping indicates that there is a 0.5:1 Floor Space Ratio (FSR) requirement and a maximum height of dwellings of 8.5m. The objectives of the R2 zone are:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

Dwellings are permitted with consent on the land. The proposed dwelling is not expected to conflict with objectives of the residential zone, which applies to this site. The proposed dwelling complies with the height requirements and the Floor Space Ratio (FSR) limitation set by the Local Environmental Plan.

Development Control Plan 2014

The proposed development does not comply with the two (2) following clauses of Council's Development Control Plan:

4.2 - Flooding

The application proposes an addition to the habitable floor area below the flood planning level in excess of the maximum allowable size set by Council's DCP.

The objectives of Council's DCP flood policy are as follows:

- The risk of impacts from flooding on people and assets are avoided or otherwise minimised.
- Development is located in response to the identified flood hazard and designed to accommodate flood conveyance and storage.
- Environmental impacts of development on flood prone land are avoided or otherwise minimised.
- Development on flood prone land does not adversely impact neighbouring properties or visual amenity.
- The potential for financial loss or cost to the community as a result of development on flood prone land is limit

The flooding requirements for dwelling alterations and additions under GL DCP 2014 are as follows:

Alterations and Additions

1. Additions and alterations having a gross floor area of 30sqm or less may be constructed at the existing floor level of the building.
2. Additions and alterations having a gross floor area greater than 30sqm are to be designed and located so that any new habitable areas have floor levels located above the 2060 1% AEP flood planning level.

Note: Any replacement or refurbishment of existing floor areas where structural changes are proposed will be considered as part of the 30sqm addition or alteration gross floor area calculation.

3. In circumstances where construction of new habitable areas at the 2060 1% AEP flood planning level is likely to have an adverse impact on adjoining properties or the visual amenity of the location, a variation may be sought. If supported by Council, the habitable areas may be located 500mm below the 2060 1% AEP flood planning level.

Note: Habitable areas generally include any of the following: bedrooms, living room, lounge room, music room, television room, kitchen, dining room, sewing room, study, playroom, family room, home theatre and sunrooms. Please refer to the Building Code of Australia for more information.

The applicant provided the following reasons of justification for the proposed flood policy variation:

- The purpose of the additional ground floor bedroom is for an elderly family member with limited mobility, thus requiring the ground floor access to a bedroom.
- The ground floor bedroom, ensuite and walk-in-robe will allow the family member to be cared for at home rather than a nursing facility.
- The plans are a continuation of the existing finished floor level (920mm lower than flood level) to avoid a split level design/stairs in the design.

Comment:

The proposal does not meet the numerical controls for maximum floor area additions within flood prone areas, and therefore cannot meet the objectives as set by the DCP.

Council's Investigations Engineer confirmed that the 2060 flood planning level for the 1% flood in Forster Keys is 2.4m AHD plus 500mm freeboard, giving a minimum floor level for alterations and additions over 30m² of 2.9m AHD.

The existing dwelling at 3 Sirius Key has a ground floor level of 1.98m AHD, which is approximately 0.92 metres below the 2060 flood planning level of 2.9m AHD which is applied to infill development within the Forster Keys area.

The proposal seeks for consent for additional habitable space on the ground storey (utilising the existing floor level) consisting of a 5th bedroom, ensuite, walk-in-robe and addition to the living area and kitchen on the ground storey.

The additional ground storey habitable floor space proposed by DA 242/2017 is 45.9m², which exceeds the maximum 30m² allowable under Council's DCP by 15.9m² (an exceedance of 53% over Council's DCP allowance).

5.5 Setbacks

The application proposes a carport forward of the existing dwelling which is non-compliant with the minimum setback distance set by Council's DCP.

The primary road (front boundary) setbacks requirements for dwellings in a residential zone under GL DCP 2014 are as follows:

5.5.2.1 Primary Road Setback Controls

1. Where there are existing neighbouring houses within 40m, the primary road setback should be an average of the setbacks of the nearest two neighbouring houses, with the same primary road frontage.
2. Garages, carports and open car parking spaces must be setback at least 6m from the primary road frontage.
3. A reduced primary road setback may be considered when the side and rear boundaries of an allotment are located within (in whole or part) the coastal planning area. It must be demonstrated that the reduced setback does not detrimentally impact upon the amenity of adjoining properties, streetscape or vehicular access and egress from the site.

The applicant provided the following reasons of justification for the proposed front boundary setback distance variation:

- Provide cover for the disabled resident whilst getting in/out of a vehicle.
- The open nature of the design will be a positive contribution to the streetscape.

Comment:

Council's DCP requires a minimum setback between a carport and primary road frontage of 6m as per point 2 of clause 5.5.2.1.

The applicant has proposed a setback of only 2.4m from the front property boundary, which is 3.6m less than the minimum requirement of 6m specified in the DCP (Garages, carports and open car parking spaces must be setback at least 6m from the primary road frontage).

The neighbouring properties either side of the development are currently setback at approximately 6.5m (as per the subject property) clearly establishing an existing 'building line' within Sirius Key. The dwellings found on the south-eastern side of Sirius Key have a uniform and consistent setback at present.

If Council were to approve the application which includes the drive-through porte cochere forward of the existing dwelling at 3 Sirius Key, the streetscape would be dramatically changed, and a new building line reference point will be introduced within the street for future proposed development to cite as a precedent.

Side Setback

The application originally proposed a side boundary setback of 880mm for the rear dwelling additions at ground storey (proposed bedroom 5). The applicant was applying to continue the existing dwelling building line of 880mm, which is non-compliant with the minimum setback distance of 900mm set by Council's DCP. The 900mm setback distance also aligns with the requirements of the Building Code of Australia for reasons of fire separation between properties.

Comment:

The Applicant agreed to amend the plans to achieve the minimum 900mm side boundary setback in a letter to Council on 10 January 2017. The side boundary setback therefore complies with Council's DCP requirements. Any approval of the proposal would incorporate an appropriate condition of 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 development proposed by the application is an addition to an average sized two storey dwelling and will be suitable with regard to its context and setting within the established residential setting.

The bulk and scale of the design is considered acceptable, however the proposed addition of a drive-through porte cochere forward of the existing dwelling is not considered typical for the local area, and is uncommon in the low density residential zones throughout the Forster district. Such covered drive-through designs are more commonly found on large lot residential allotments of an R5 zoning.

Site Design and Internal Layout

The proposal will extend the existing dwelling back towards the rear property boundary and will achieve the Council's minimum setback distance objectives specified in Great Lakes DCP (minimum 9m from drainage reserve).

The elevated rear balcony addition will complement the existing dwelling and provide a private outdoor living space facing the rear of the property and the waterway beyond the rear boundary. Through negotiation with the neighbouring property owner to the south, an amended plan detailing a privacy screen to the south east elevation of the balcony has been submitted to Council, and has satisfied the concerns of the adjoining southern neighbour.

The proposed in-ground swimming pool located in the rear yard will utilise an independent fence as part of the safety barrier, as permitted under the current Australian Standard for Swimming Pool Safety Barriers. The pool will be built at ground level, and is not considered to breach the minimum setback distance from the drainage reserve at the rear, as the objective is to provide view sharing opportunities and amenity to the adjoining landowners. This objective can still be achieved with this pool location and design.

Views

The proposed dwelling additions and pool are not considered to pose an unreasonable level of impact on the views available from the surrounding properties.

Privacy (Aural and Visual)

Council received a letter of objection to the initial set of plans neighbour notified as part of Council's assessment. The adjoining owner of the property located adjacent to the south lodged an objection relating to a potential impact on privacy to the adjoining property backyard from the proposed first storey balcony.

In response, the applicant provided an amended set of plans to Council on 16 February 2017 showing additional privacy screening measures incorporated to the south-east elevation first storey balcony.

The amended plans were re-notified to the adjoining affected landowner, and the objection was officially withdrawn, subject to the privacy screen being incorporated into any approved design.

Visual Impact

The proposed design of a large porte cochere (drive through carport) forward of the established building line within Sirius Key will have a potential negative impact on the streetscape of the area.

At present, the adjoining properties either side of the subject property on the south-eastern side of Sirius Key are setback at approximately 6.5m (as is the existing subject dwelling), and any approval of a carport forward of the establish building line will detract from the existing streetscape of Sirius Key.

Cumulative Impacts

It is considered that approval of the development will result in undesirable precedents for the residential area.

Flood prone sites

The proposed ground storey dwelling additions fail to comply with maximum allowable floor area addition below the 2060 flood planning level (DCP clause 4.2 - flooding), and if approved, may set a precedent for future development applications within the Forster Keys area to also exceed the DCP limitations for flood prone sites for dwelling additions.

Due to the age of the majority of dwellings within the Forster Keys area, Council can expect a large number of development applications for dwelling alterations/additions in the coming years, and if the subject application is approved by Council, the maximum allowable increase in habitable floor area (below the flood planning level) may result in a greater number of dwellings (and occupants) being placed at risk during a 1% (1 in 100 year) flooding event. As a result, any increase in risk may result in Council and emergency services resources during a flood event potentially being unable to cope with potential workloads.

Front boundary setback

If Council were to approve the application which includes the drive-through porte cochere forward of the existing dwelling at 3 Sirius Key, the streetscape would be dramatically changed, and a new building line reference point will be introduced within the street for future proposed development to cite as a precedent.

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

Section 88B Instrument Impacts

The subject site is deemed suitable for the proposal.

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 during the period. The submission related to a potential impact on the privacy of a neighbouring backyard from the proposed upper storey balcony on the southern elevation.

An amended plan was submitted to Council by the Applicant on 16 February 2017 incorporating a privacy screen to the southern elevation.

This amended plan was notified to the adjoining objecting landowner, who was satisfied with the newly proposed privacy screen, and withdrew the submission of objection subject to the privacy screen being required as part of any Council determination of consent.

e) *The Public Interest*

Approval of the development application is not considered in the public's interest due to the potential to set a negative precedence in relation to the greatly reduced front boundary setback proposed, and the potential to undermine the Council's existing stance on limiting development on flood prone land below known flood heights and therefore increasing risk in certain flooding situations.

CONCLUSION

The alterations and additions proposed in the application are not considered to be appropriate in the area due to the failure to comply with Council's requirements restricting the maximum permissible additional habitable floor space below the 2060 flood planning level.

There is opportunity to re-design the proposal to reduce the additional habitable floor area to comply with Council's flooding policy, or incorporate a portion into the upper storey alterations and additions above the specified flood level.

The proposal also fails to meet the objectives or numerical controls relating to front boundary setback requirements. The current design with a large porte cochere (drive through carport) forward of the building line between the existing dwelling and front property boundary will not fit into the existing streetscape and will compromise Council's DCP setback requirements in residential areas if approved.

Council raised both these issues early during the application assessment period, giving the Applicant ample opportunity to re-design the proposal to comply with Council's policy, however the applicant chose to continue with the design and requested the application be determined at a Council meeting.

RECOMMENDATION

That Development Application No. 242/2017, for dwelling alterations and additions and swimming pool located at Lot 117 DP 255648, 3 Sirius Key, Forster, be refused for the reasons:

1. The proposal is not appropriate in terms of clause 8 of State Environmental Planning Policy No.71 - Coastal Protection when considering the suitability of development given its type, location and design and its relationship with the surrounding area.
2. The proposal does not satisfy the objective of 7.3 of the Great Lakes Local Environmental Plan 2014 with regard to flood planning.
3. The proposal does not comply with the objectives of Clause 4.2 of the Great Lakes Development Control Plan.
4. The proposal does not comply with the numerical controls of Clause 4.2 of the Great Lakes Development Control Plan.
5. Should the proposal be approved it would set an undesirable precedent for development on flood prone land in the area.
6. The proposal is not in the public interest.
7. The proposed front setback of the carport does not meet the objectives of Clause 5.5.1 of the Great Lakes Development Control Plan.
8. The proposed front setback of the carport does not comply with the numerical provisions of Clause 5.5.21 of the Great Lakes Development Control Plan.

Conditions attached below should Council approve the Development Application

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	Job No.F783, Revision B, sheet 04B	RGR Design	16/02/2017
Ground floor plan	Job No.F783, sheet 05	RGR Design	June 2016
First floor plan	Job No.F783, Revision A, sheet 06A	RGR Design	16/02/2017
Elevations	Job No.F783, sheet 07 and 08A	RGR Design	June 2016 and 16/02/2017
Section	Job No.F783, sheet 09	RGR Design	October 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. 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*.

3. Insurance requirements under Home Building Act 1989

Residential building work within the meaning of the *Home Building Act 1989* must not be carried out unless the principal certifying authority for the development to which the work relates has been given documentary evidence or written notice of the following information:

- a) in the case of work for which a principal contractor is required to be appointed:
 - i) the name and licence number of the principal contractor, and
 - ii) if the contractor is required to have a contract of insurance for any authorised works, a Statement of Cover with the name of the insurer by which the work is insured under Part 6 of that Act .
- b) in the case of work to be done by an owner-builder:
 - i) the name of the owner-builder, and
 - ii) if the owner-builder is required to hold an owner-builder permit under that Act, the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified above becomes out of date, further work must not be carried out unless the principal certifying authority for the development to which the work relates has been given the notice of the updated information.

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

4. Notification of Home Building Act 1989 requirements

Residential building work within the meaning of the *Home Building Act 1989* must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the following information:

- a) in the case of work for which a principal contractor is required to be appointed:
 - i) the name and licence number of the principal contractor, and
 - ii) the name of the insurer by which the work is insured under Part 6 of that Act,
- b) in the case of work to be done by an owner-builder:
 - i) the name of the owner-builder, and
 - ii) if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified above becomes out of date, further work must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the updated information.

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

5. 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.

PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

The following conditions must be complied with prior to the issue of any construction certificate:

6. Amended Site Plan

Prior to the issue of the construction certificate an amended site plan shall be submitted to Council detailing a 900mm setback from the addition to the southern site boundary.

Reason: To ensure compliance with Great Lakes Development Control Plan 2014.

7. Acid sulphate Soils

Prior to the issue of a Construction Certificate an Acid Sulfate Soils Management Plan, prepared in accordance with the Acid Sulfate Soils Manual, is to be approved by the certifying authority.

Alternatively provide a report prepared in accordance with the Acid Sulfate Soils Manual from a suitably qualified geotechnical engineer that indicates an Acid Sulfate Soils Management Plan is not required for the works.

Any soil that is to be exported from the site is to be disposed of in a lawful manor. Details of the soil disposal are to be submitted and approved by the certifying authority prior to the issue of any construction certificate for works involving excavation of the land.

Reason: Management of acid sulphate soils.

8. 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 of the cut and fill areas.
- b) Footings of the proposed structure.
- c) Structural steel beams/columns.

Reason: To ensure structural stability and safety.

9. 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.

10. Flood planning level for new additions

Prior to the issue of a construction certificate, plans and specification detailing the use of flood compatible materials and fixtures in any new habitable parts of the dwelling and non-habitable areas below the flood planning level must be submitted to and approved by the certifying authority. The flood planning level for this development is R.L. 2.9m A.H.D

Reason: To protect the building from flooding in accordance with Council and NSW Government Policy.

11. Structural certification – flood affected buildings

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 flood forces due to wind wave run-up, water pressure, associated debris and impact loading arising from the 1% annual exceedance probability (AEP) flood.

For the purpose of this assessment the 1% AEP flood level can be assumed to be RL 2.9m AHD.

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

12. 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*.

13. Detail of safety barrier for swimming pool

Prior to the issue of a construction certificate, plans and specifications for the swimming pool barrier must be submitted to and approved by the certifying authority. The barrier must be in accordance with the Swimming Pools Act 1992 and Australian Standard AS1926.1: Swimming pool safety – Safety barriers for swimming pools.

Reason: To ensure the development complies with swimming pool barrier construction standards.

14. 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 \$2000 and an 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.

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:

15. 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*.

16. 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*.

17. Site access

Public access to the site and building works, materials and equipment on the site is to be restricted, when building work is not in progress or the site is unoccupied. The public safety provisions must be in place prior to the commencement of any demolition, excavation or building works and be maintained throughout construction.

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

18. 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.

19. 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.

20. 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*.

CONDITIONS TO BE SATISFIED DURING DEVELOPMENT WORK

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

21. 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.

22. Builders rubbish to be contained on site

All builders rubbish is to be contained on the site in a suitable waste bin/enclosure. Building materials must be delivered directly onto the property. Footpaths, road reserves and public reserves must be maintained clear of rubbish, building materials and other items at all times.

Reason: To ensure that materials and waste do not adversely affect traffic or pedestrian safety and amenity.

23. Temporary pool fencing

Temporary fencing must be installed around the pool site during its construction to prevent entry by children. The temporary fencing must remain in place until permanent fencing is erected.

Reason: Public safety.

24. Maintenance of sediment and erosion control measures

Sediment and erosion control measures must be maintained at all times 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.

25. Removal of asbestos

All asbestos containing material associated with demolition/renovation works must be removed, handled and disposed of in accordance with the requirements of the NSW WorkCover Authority and the following requirements:

- a) If asbestos is present in an amount greater than 10m², then the demolition and removal must be undertaken by a WorkCover licensed demolition contractor who holds the appropriate WorkCover licence (e.g. Asbestos Demolition Licence) for the material to be demolished.
- b) All asbestos must be removed from the site and be disposed of at an approved licensed waste facility. All asbestos waste must be delivered to an approved licensed waste facility in heavy duty sealed polyethylene bags.
- c) The bags are to be marked "Caution Asbestos" with 40mm high lettering. Twenty four (24) hours' notice must be given to the waste facility prior to disposal.
- d) Receipts of the disposal of all asbestos to a licensed waste facility must be provided to Council within fourteen (14) days of the material being disposed.

Reason: To protect public health and safety and to ensure the correct disposal of asbestos waste.

Informative:

The generator and owner of the waste, has a legal obligation under s143 of the Protection of the Environment Operations Act 1997 ("the Act") to ensure the waste is transported to and disposed of at a facility that can lawfully be used as waste facility for that waste.

In NSW, all asbestos sheeting or asbestos waste must be taken to a landfill that can lawfully receive this waste. Transporters of asbestos waste must now use WasteLocate to provide information to the EPA regarding the movement of any load over 100kg of asbestos waste, or 10m² or more of asbestos sheeting within NSW. WasteLocate makes it easy for transporters to comply with these reporting obligations under the Waste Regulation and the Asbestos and Waste Tyre Guidelines by creating a consignment number, which can be used to track the location of the waste.

If you have paid for an asbestos removal service (e.g. from a household or construction site), you should request the WasteLocate consignment number from the transporter. You can then use this number to track the load at <https://wastelocate.epa.nsw.gov.au/> to make sure it has reached its intended destination, just like a parcel in the post. If the load is not delivered, please contact the EPA.

What to do with asbestos waste

For more information on how to safely deal with asbestos at home or in the workplace, please visit:

<http://www.epa.nsw.gov.au/waste/asbestos.htm>

More information on *WasteLocate*

More information about WasteLocate is available on the EPA website at:

<http://www.epa.nsw.gov.au/wasteregulation/transport-asbestos-tyres.htm>

Should you require any further information, please contact the EPA on 131 555.

26. Standards for demolition work

All demolition works must be undertaken in accordance with the provisions of *Australian Standard AS 2601: The demolition of structures*. Prior to demolition, all services must be disconnected and capped off.

Reason: To protect public health and safety.

PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE

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

27. Works to be completed

The building/structure or part thereof must not be occupied or used until an interim occupation/final occupation certificate has been issued in respect of the building or part.

Reason: To ensure compliance with the development consent and statutory requirements.

28. 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 boundary in accordance with the approved Driveway Levels Application. Written confirmation from Council must be obtained stating that the constructed driveway is to Councils' satisfaction.

Reason: To ensure suitable vehicular access to the development.

29. Internal driveway in accordance with the approved plans

Prior to the issue of a final occupation certificate, a driveway must be constructed from the property boundary to the proposed car spaces in accordance with the approved plans.

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

30. Stormwater drainage work

Prior to the issue of a final occupation certificate, stormwater must be collected and disposed of to the kerb and gutter via a suitably manufactured kerb adaptor. Drainage lines within the road reserve must be sewer class or other approved equivalent. 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*.

Reason: To ensure compliance with the development consent and statutory requirements.

31. Smoke Alarm/s required

Prior to the issue of an occupation certificate, a smoke alarm/s must be installed and maintained within the entire building and be located in accordance with the Building Code of Australia. The alarm must be hard wired and comply with the Australian Standard 3786 be contained in each storey.

Reason: Environmental Planning and Assessment Regulation 2000 fire safety requirement.

32. BASIX Compliance

Prior to the issue of a final occupation certificate, all of the required commitments listed in the BASIX certificate must be fulfilled.

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

33. Pool Safety

Prior to the issue of an occupation certificate, a warning sign/resuscitation chart must be erected in the immediate vicinity of the swimming pool/spa that is compliant with the *Swimming Pools Regulation 2008*. The sign must be in a prominent position and be in accordance with the *Swimming Pools Regulation 2008*. Fences, gates, walls, etc. enclosing the general swimming pool area must be maintained in good repair and condition at all times.

The swimming pool/spa must be registered with the NSW Swimming Pool Register with the registration number being provided to the certifier prior to the issue of an occupation certificate.

Reason: Statutory requirement and safety.

34. Swimming pool discharge

Prior to the issue of a final occupation certificate, the discharge of waste water from the swimming pool must be in accordance with *Australian Standard AS/NZS 3500: Plumbing and drainage*.

Reason: To prevent environmental pollution and health impacts.

ONGOING USE

35. Swimming pool pump location

The swimming pool filter pump must be located so that noise from the operation of the pump is not a source of offensive noise, as defined by the *Protection of the Environment Operations Act 1997*, at any other residential premises. If necessary an acoustic enclosure must be provided around the pump to achieve adequate noise attenuation.

Reason: To maintain acoustic amenity to adjoining properties.

36. Swimming pool pump operation

Noise from the swimming pool pump must not be audible within a habitable room in any other residential premises (regardless of whether any door or window to that room is open):

- a) before 8 am or after 8 pm on any Sunday or public holiday, or
- b) before 7 am or after 8 pm on any other day.

Noise associated with the swimming pool pump must not be a source of offensive noise as defined by the *Protection of the Environment Operations Act 1997* at all other times.

Reason: To maintain acoustic amenity to adjoining properties.

2 DA-347-2017 - TWO STOREY DWELLING - 102 AMAROO DR SMITHS LAKE

Report Author David Underwood, District Building Surveyor

File No. / ECM Index DA-347/2017 & PK11691

Date of Meeting 10 May 2017

DETAILS

Date Received: 7 February 2017

Applicant: Mr Paul Haber

Owner: Mr and Mrs Haber & Mr and Mrs Norris

Land: Lot 167 DP 32207, 102 Amaroo Drive, Smiths Lake

Area: 360.4m²

Property Key: 11691

Zoning: RU 5 Village, GLLEP 2014

SUMMARY OF REPORT

- Application submitted for a proposed two storey dwelling
- Proposal does not comply with the floor space ratio limitations of GLLEP 2014
- Non-compliance with the floor space ratio discussed

SUMMARY OF RECOMMENDATION

That Development Application No. 3472017, for a two storey dwelling located at Lot 167 DP 32207, 102 Amaroo Drive, Smiths Lake, be approved subject to conditions of consent.

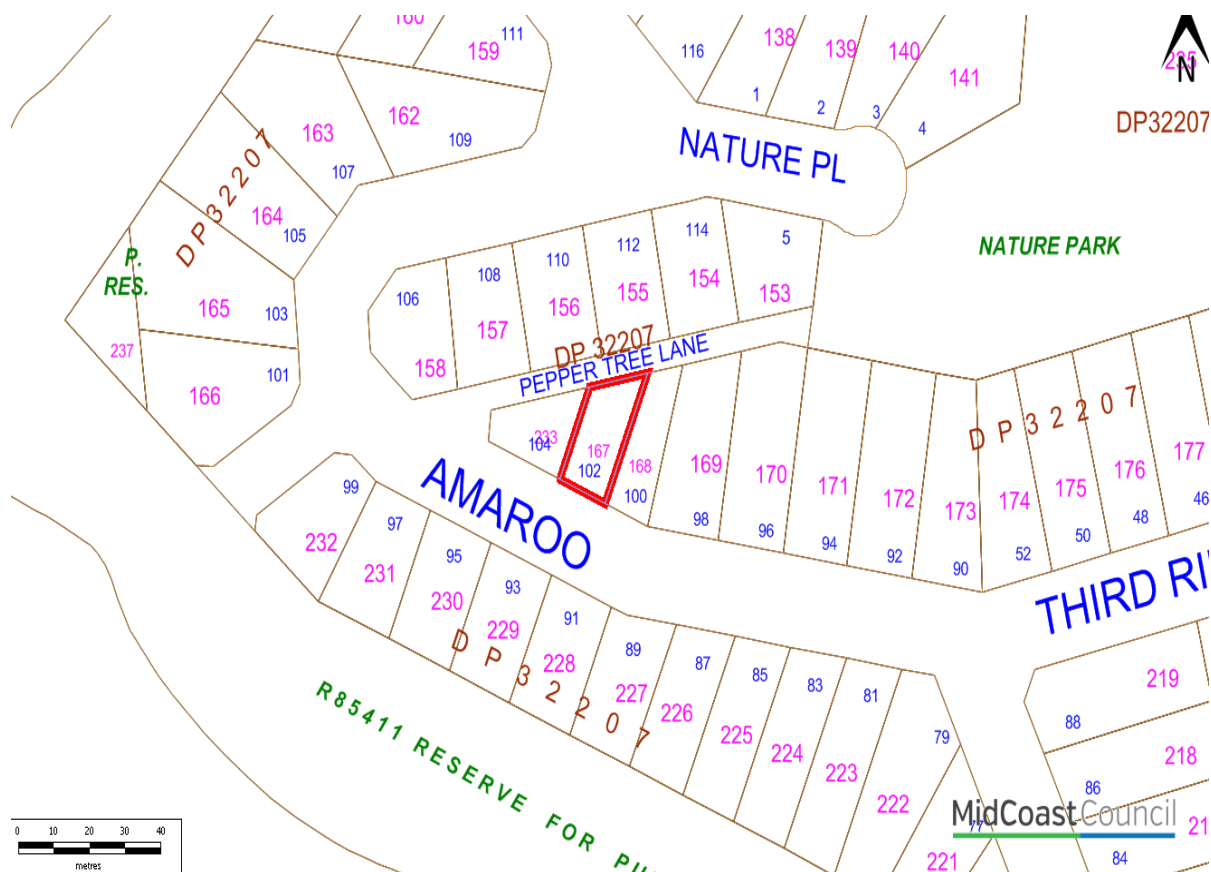
FINANCIAL/RESOURCE IMPLICATIONS

A decision for approval subject to conditions or refusal may lead to an appeal to the Land and Environment Court with inherent cost implications.

LEGAL IMPLICATIONS

A decision for approval subject to conditions or refusal may lead to an appeal to the Land and Environment Court with inherent cost implications.

SUBJECT SITE AND LOCALITY



BACKGROUND

- 7 February 2017 Development application received for a proposed two storey dwelling.
- 20 February 2017 Requested amended notification plans.
- 21 February 2017 Development application neighbour notified.
- 24 February 2017 Development application referred to Councils Tree Management Officer with regard to an adjoining tree being located in close proximity to the development.
- 2 March 2017 Amended plans re notified given some discrepancies with the original notified plans.
- 3 April 2017 Comments received from Tree Management Officer in regards to tree located on adjacent land.
- 7 April 2017 Application received for removal of tree on adjoining land, signed by adjoining land owner, in order to remove tree located in close proximity to proposed driveway.

PROPOSAL

The proposed development is for a two storey dwelling on vacant land. The development will be constructed of light weight materials having a timber frame with FC cladding to external walls and a Colorbond roof.

SITE DESCRIPTION

The subject site is located on the northern side of Amaroo Drive with rear lane frontage from Pepper Tree Lane. The allotment is vacant with existing residences either side of the lot. There is minimal vegetation on 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)

Under GLLEP 2014 the development site is zoned RU5 Village. Mapping indicates that there is a 0.4:1 Floor Space Ratio (FSR) requirement and a maximum height of dwellings of 8.5m. The objectives of the RU5 zone are:

- To provide for a range of land uses, services and facilities that are associated with a rural village.
- To provide for a range of land uses, services and facilities that are associated with a coastal village.
- To enable non-residential development that does not prejudice the established land use pattern within the village.

Dwellings are permitted with consent on the land. The proposed dwelling is not expected to conflict with the objectives of the village zone, which applies to the locality. The proposed dwelling results in compliance with the height requirements; however the proposal does exceed the Floor Space Ratio (FSR) limitation as the proposed dwelling results in a floor space ratio of 0.45:1. Clause 4.6 of the LEP allows for flexibility in applying certain development standards to development applications. The relevant sections of Clause 4.6 have been listed and discussed below.

Clause 4.6 Exceptions to development standards

1. The objectives of this clause are as follows:
 - a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
 - b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

Comment: Given the minor nature of the variation, (18m² over the prescribed ratio) it is considered that flexibility in this instance is reasonable.

2. Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

Comment: The FSR of a building is not a development standard that is excluded from the operation of this clause.

3. Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:
- that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
 - that there are sufficient environmental planning grounds to justify contravening the development standard.

Comment: The applicant has made a written request under 4.6 of the LEP to consider the variation to the FSR limitation. The objectives of Clause 4.4 Floor Space Ratio are as follows:

- 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 those zones,
- to permit a floor space ratio that will provide a transition in built form and land use intensity,
- to encourage residential development that is consistent with AS 4299—1995, Adaptable housing.

The applicants Planning Consultant has provided a written request detailing the following issues as justification for the non-compliance;

- The proposed building has been designed to adhere to the relevant built form controls of the DCP and is contained within the applicable 'envelope' for height and side and rear setbacks. In this respect, the building has proposed a scale that adheres to the adopted planning controls for the locality and is therefore consistent with the 'desired future urban character of the locality'.*
- The FSR exceedance is predominately a result of the unusually small site (approximately 365m²) which is below the 450m² minimum lot size for the locality. The prevailing lot sizes in Amaroo Drive are an average of approximately 575m², with the exception of land at 100 and 104 Amaroo Drive which are both similar undersized allotments. There are no other examples of undersized allotments within the immediate locality.*

On this basis of the average lot size for the locality, the proposed GFA is significantly less than the prevailing floor space (existing) as well as the floor space that is envisaged through the adopted planning controls. Therefore the development is compatible with the scale of buildings within the neighbourhood.
- It is also noted that the site is relatively unique in that it has frontage to both Pepper Tree Lane and Amaroo Drive. This arrangement allows for significant separation between the proposed dwelling and nearest dwelling to the north, on the northern side of Pepper Tree Lane. The effect of the site's location is that there is greater than usual separation between buildings which minimises the apparent scale of buildings in relation to neighbouring dwellings. The increased separation also reduces the potential for amenity impacts.*

The proposal has been considered against Section 79C of the Environmental Planning and Assessment Act and it is considered that there are sufficient planning grounds to justify contravention of the development standard.

A copy of the submission from the applicant is contained on the DA file.

4. Development consent must not be granted for development that contravenes a development standard unless:
 - a) the consent authority is satisfied that:
 - i. the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
 - ii. the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
 - b) the concurrence of the Director-General has been obtained.

Comment: It is considered that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3).

The proposed development will be in the public interest as it is consistent with the objectives of the Floor Space Ratio development standard and the objectives of the RU5 zone that it is proposed to be carried out within.

The Director General's office has previously advised Council that concurrence may be assumed as detailed in Planning Circular PS 08-003. A copy of the letter advising this and a copy of the circular is on file for the viewing of the Development Control Unit (DCU).

5. In deciding whether to grant concurrence, the Director-General must consider:
 - a) whether contravention of the development standard raises any matter of significance for state or regional environmental planning, and
 - b) the public benefit of maintaining the development standard, and
 - c) any other matters required to be taken into consideration by the Director-General before granting concurrence.

Comment: The Director General's office has previously advised Council that concurrence may be assumed as detailed in Planning Circular PS 08-003. A copy of the letter advising this and a copy of the circular is on file for the viewing of the Development Control Unit (DCU).

6. Not relevant to application.
7. After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).
8. Not relevant to application.

State Environmental Planning Policy

State Environmental Planning Policy No. 71 – Coastal Protection (SEPP 71) applies to all land within the coastal zone as defined in the Coastal Protection Act 1979 and accordingly applies to the subject site to the extent of requiring Council to consider the matters listed in Clause 8 of the Policy. In this regard, the proposal is considered acceptable in relation to the scenic qualities of the coast, given that the height of the dwelling is consistent with others in the locality.

NSW Coastal Policy 1997

The 1997 NSW Coastal Policy is a Government Policy, which is a prescribed matter pursuant to Section 79C of the Environmental Planning and Assessment Act 1979. This requires Council to consider the relevant objectives and strategic actions of the policy when assessing development applications.

The objectives and strategic actions of the policy have been reviewed in regard to this application and the development proposal is considered to achieve the relevant objectives and strategic actions of the policy.

Development Control Plan No.

Assessment of the proposal with regards to Councils Development Control Plan (DCP) has revealed the following non compliances;

5.4 General Building Design

Objectives

- To provide a high quality design of new residential development that responds to the environment in which it is located.

Controls

1. Built form is to be articulated into a series of linked massing elements. Each massing element is to have an overall wall length no greater than 12m. Note: this control does not apply to a single storey dwelling, except when located on a corner block.
2. Garages and carports must have a minimum 500mm setback from the front building line of the dwelling for which it is provided.
3. Garages and carports and open car parking spaces must be setback at least 6m from the front property boundary.

Officer's Comments:

- 1) *The eastern first floor elevation has a maximum length of 14.1 metres, which exceeds the 12 metre overall wall length by 2.1 metres. Given that there are windows and contrasting external materials on this elevation it is considered that a variation is supported.*
- 2) *The garage is not setback 500mm from the front wall of the dwelling and does not achieve a 6 metre setback from front boundary. Given that the setback to the garage is 5.5 metres and as there are many others in the Smiths Lake village where the garage is not setback behind the dwelling, it is considered that a variation is supported.*

5.5.2.1 Front Setback Controls

1. Garages, carports and open car parking spaces must be setback at least 6m from the front property boundary.

Officer's Comments:

- 1) *The minor variation of 500mm to the garage setback is considered to meet the objectives of the DCP and is consistent with the streetscape and is therefore is supported.*

Context and Setting

It is considered that the dwelling results in a development which is consistent with the surrounding locality.

Site Design and Internal Layout

The design and layout of the proposal results in a high quality development that is compatible with development in the locality.

Views

The proposed two storey dwelling is not considered to have an unreasonable impact on the views available from the surrounding properties.

Privacy (Aural and Visual)

Given the residential locality it is considered that the level of impact on privacy of adjoining properties is reasonable for the setting.

Overshadowing

Given the orientation of the site, running north south, it is considered that the proposed development still allows for adequate solar access to be provided to neighbouring properties.

Visual Impact

Given that the development is consistent with the surrounding locality, it is considered that the visual impact is not unreasonable with regard to the existing natural and built environment.

Drainage

Assessment of the stormwater treatment and disposal plan indicates that compliance with Councils DCP will be achieved.

Cumulative Impacts

In this instance it is considered that a variation to the FSR requirements are supported given the development is not out of character with the existing built environment. As this type of variation is a case by case scenario it is not considered that it will have negative cumulative impacts for the locality.

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

The subject site is bushfire prone therefore conditions will be imposed in the development consent with regards to bushfire protection.

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 no submissions were received.

e) *The Public Interest*

Approval of the development application is not considered to raised negative impacts with regards to the public's interest.

CONCLUSION

It is concluded that the application for a two storey dwelling resulting in a maximum 0.45:1 Floor Space Ratio is considered acceptable upon this site. Clause 4.6 of the GLLEP "Exceptions to Development Standards" has been considered and it is found that the proposal meets the objectives of Clause 4.4 "Floor Space Ratio" standards as well as satisfying the overall objectives of the RU5 Village zone.

RECOMMENDATION

That Development Application No. 347/2017, for a two storey dwelling located at Lot 167 DP 32207, 102 Amaroo Drive, Smiths Lake be approved subject to conditions of consent.

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
Stormwater Treatment Plan	S01 issue A	accuplan	06/02/2017
Typical Bio Retention Details	S02 issue A	accuplan	06/02/201
Ground Level Plan	DA-01 issue A	Yvonne Haber Architect	A 20/2/17
Upper Level Plans	DA-02 issue A	Yvonne Haber Architect	20/2/17
Roof Plan	DA03 issue B	Yvonne Haber Architect	1/3/17
Elevations	DA-04 issue A	Yvonne Haber Architect	20/2/17
Section	DA-05 issue A	Yvonne Haber Architect	20/2/17

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. 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.

3. Insurance requirements under Home Building Act 1989

Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the principal certifying authority for the development to which the work relates has been given documentary evidence or written notice of the following information:

- a) in the case of work for which a principal contractor is required to be appointed:
 - i) the name and licence number of the principal contractor, and
 - ii) if the contractor is required to have a contract of insurance for any authorised works, a Statement of Cover with the name of the insurer by which the work is insured under Part 6 of that Act .
- b) in the case of work to be done by an owner-builder:
 - i) the name of the owner-builder, and
 - ii) if the owner-builder is required to hold an owner-builder permit under that Act, the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified above becomes out of date, further work must not be carried out unless the principal certifying authority for the development to which the work relates has been given the notice of the updated information.

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

4. Notification of Home Building Act 1989 requirements

Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the following information:

- a) in the case of work for which a principal contractor is required to be appointed:
 - i) the name and licence number of the principal contractor, and
 - ii) the name of the insurer by which the work is insured under Part 6 of that Act,
- b) in the case of work to be done by an owner-builder:
 - i) the name of the owner-builder, and
 - ii) if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified above becomes out of date, further work must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the updated information.

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

5. 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.

PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

The following conditions must be complied with prior to the issue of any construction certificate:

6. 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 of the cut and fill areas.
- b) Footings of the proposed structure.
- c) Structural steel beams/columns.

Reason: To ensure structural stability and safety.

7. 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.

8. Driveway levels application

Prior to the issue of a construction certificate, a Driveway Levels Application must be submitted to Council for approval. A 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.

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

9. Construction of buildings in bushfire-prone areas

Prior to the issue of a construction certificate, plans and specifications detailing the construction of the building to Bushfire Attack Level 12.5 (BAL 12.5) as defined in *Australian Standard AS 3959- Construction of buildings in bushfire-prone areas and section A3.7 Addendum Appendix 3 of "Planning for Bush Fire Protection"* must be submitted to and approved by the certifying authority.

Reason: To ensure the development complies with bush fire construction standards.

10. Preparation of a final landscape plan

Prior to the issue of a construction certificate, a final landscape plan must be submitted to and approved by the certifying authority. The Final Landscape Plan must include the following information:

- a) Demonstration of the predominant use of species that are local native plants
- b) Specification of the details of all proposed plantings on the land, including common and botanical names and potential height/ spread at maturity, planting densities and quantities
- c) A plan of the locations of all proposed planting
- d) A plan of the locations of each tree that is present on the land that is to be retained
- e) A description of the location of all parking and storage areas and the type of material to be used for sealing these areas
- f) Details of earthworks including cut/ fill, mounding and retaining walls
- g) Details of planting procedure and maintenance, including watering, management of safety and risk, replacement of lost and damaged stock
- h) Details of the use of mulch and the type and quantity of soil material to be imported to the land.
- i) The planting of at least three (3) appropriate local native tree species (such as Tuckeroo, Cheese Tree, etc

Reason: To ensure that adequate landscaping is established as part of the development for amenity and local habitat.

11. 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 \$2000 and an 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.

12. Waste management plan

Prior to the issue of a Construction Certificate, a waste management plan prepared in accordance with the requirements of Council's Waste Management Policy must be submitted to and approved by the certifying authority.

Reason: To ensure adequate and appropriate management of waste and recycling.

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:

13. 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*.

14. 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*.

15. Site access

Public access to the site and building works, materials and equipment on the site is to be restricted, when building work is not in progress or the site is unoccupied. The public safety provisions must be in place prior to the commencement of any demolition, excavation or building works and be maintained throughout construction.

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

16. 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.

17. Pollution prevention sign

Council's "PREVENT POLLUTION" sign must be erected and maintained in a prominent position at the frontage of the property so that it is clearly visible to the public for the duration of construction work.

Council's "PREVENT POLLUTION" sign can be purchased at Council's Customer Enquiry Counter at the Forster, Tea Gardens and Stroud administration buildings.

Reason: To increase industry and community awareness of developer's obligations to prevent pollution and to assist in ensuring compliance with the statutory provisions of the Protection of the Environment Operations Act 1997.

18. 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.

19. 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.

CONDITIONS TO BE SATISFIED DURING DEVELOPMENT WORK

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

20. 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.

21. Builders rubbish to be contained on site

All builders rubbish is to be contained on the site in a suitable waste bin/enclosure. Building materials must be delivered directly onto the property. Footpaths, road reserves and public reserves must be maintained clear of rubbish, building materials and other items at all times.

Reason: To ensure that materials and waste do not adversely affect traffic or pedestrian safety and amenity.

22. Maintenance of sediment and erosion control measures

Sediment and erosion control measures must be maintained at all times 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.

23. Compliance with waste management plan

During demolition and/or construction of the development, waste disposal must be carried out in accordance with the approved waste management plan.

Reason: To ensure waste is minimised and recovered for recycling where possible.

24. Survey of building location

A survey certificate prepared by a registered surveyor must be submitted to the certifying authority at the following stages of the development:

- a) Prior to the construction of footings or first completed floor slab showing the area of land, building under construction and boundary setbacks.

Reason: To ensure compliance with the approved plans.

25. Utilities with regard to bushfire protection

Electricity and gas services are to comply with section 4.1.3 of 'Planning for Bush Fire Protection 2006'. All above ground water and gas service pipes external to the building are required to be metal, including and up to any taps.

Reason: To ensure compliance is achieved with Planning for Bushfire Protection.

26. Landscaping with regard to bushfire protection

Landscaping to the site is to comply with the principles of Appendix 5 of 'Planning for Bush Fire Protection 2006'.

Reason: To ensure compliance with Planning for Bushfire Protection 2006.

PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE

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

27. Works to be completed

The building/structure or part thereof must not be occupied or used until an interim occupation/final occupation certificate has been issued in respect of the building or part.

Reason: To ensure compliance with the development consent and statutory requirements.

28. 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 boundary in accordance with the approved Driveway Levels Application. Written confirmation from Council must be obtained stating that the constructed driveway is to Councils' satisfaction.

Reason: To ensure suitable vehicular access to the development.

29. Internal driveway in accordance with the approved plans

Prior to the issue of a final occupation certificate, a driveway must be constructed from the property boundary to the proposed car spaces in accordance with the approved plans.

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

30. BASIX Compliance

Prior to the issue of a final occupation certificate, all of the required commitments listed in the BASIX certificate must be fulfilled.

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

31. House numbering

Prior to the issue of a final occupation certificate, the street number must be displayed at the main driveway entrance approved for the property. The street number for this property is 102.

Reason: To ensure proper identification of buildings.

32. Bushfire mitigation requirements

Prior to the issue of an interim occupation certificate, the following bush fire mitigation requirements must be incorporated into the completed development:

- a) The new building works are to be constructed in accordance with Bushfire Attack Level 12.5 (BAL 12.5) as defined in Australian Standard AS 3959- Construction of buildings in bushfire-prone areas and section A3.7 Addendum Appendix 3 of "Planning for Bush Fire Protection".
- b) Roofing must be gutterless or guttering and valleys must be screened with non-combustible material to prevent the build up of flammable material.

Reason: To improve bush fire safety.

33. 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 for the provision of MidCoast Water Services to the development, must be submitted to the principal certifying authority.

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

34. Stormwater treatment system

Prior to issue of any occupation certificate, the raingarden must be constructed in accordance with the approved plans (Stormwater Treatment Plan S01, Typical Bioretention Details S02), including any amendments contained on these plans and conditions. The raingarden must meet the following criteria:

- a) Have a minimum filter surface area of 2.5m² and positioned along the contours. The raingarden is to receive overflow from a 3KL rainwater tank collecting a minimum 100% of the roof area. The remaining roof area not draining to the rainwater tank is to be connected directly to the raingarden. Runoff from the driveway area is to be collected and directed to the raingarden in accordance with the designs submitted.
- 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 table drain. Drainage lines within the road reserve must be sewer grade or other approved equivalent. 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 rainwater tank and driveway 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.

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

35. 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.

36. 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.

ONGOING USE

37. Asset Protection Zone (APZ)

The entire property must be maintained in perpetuity as an inner protection area (IPA) as outlined within section 4.1.3. and Appendix 5 of '*Planning for Bushfire Protection 2006*' and the NSW Rural Fire Service's document '*Standards for asset protection zones*'.

Reason: To provide sufficient space and maintain reduced fuel loads to ensure radiant heat levels of buildings are below critical limits and to prevent directed flame contact with a building.

ANNEXURE

A: Roof Plan and Elevations

3 DA-60-2014 - TWO LOT SUBDIVISION - THE LAKES WAY ELIZABETH BEACH

Report Author Steve Andrews, Development Assessment Planner

File No. / ECM Index DA-60/2014 & PK 9383

Date of Meeting 10 May 2017

DETAILS

Date Received: 23 August 2013 (Original Submission)

Applicant: Dr J R Watts

Owner: Dr J R Watts

Land: Lot 214 DP 22434, 6 The Lakes Way Elizabeth Beach

Area: 1094m²

Property Key: 9383

Zoning: R2 Village Zone, GLLEP 2014

SUMMARY OF REPORT

- Proposed two (2) lot residential land subdivision. Vehicular access to/from the proposed rear lot is via a right of carriageway from Lakeside Crescent. The proposed front lot has vehicular access via a service road to Bellman Avenue.
- Application considered by DCU 29 January 2015 with resolution to defer for redesign that provides vehicular access to the proposed rear lot from the service road to Bellman Avenue.
- Application considered by DCU 25 February 2016 based on the owner's request for re-consideration. DCU resolved to defer consideration to enable the design to be varied to provide vehicular access to/from the proposed rear lot via the service road to Bellman Avenue.
- The owner submitted on 8 November 2016 a traffic engineering assessment to support vehicular access to/from the proposed rear lot as originally proposed.
- Planning assessment report prepared for DCU meeting 18 January 2017 but withdrawn from the meeting on the request by the owner to enable the owner's traffic consultant to discuss traffic issues with Council's traffic engineer.
- Access issues
- Neighbour notification resulted in no submissions.
- General compliance with planning controls for land subdivision.

SUMMARY OF RECOMMENDATION

That the development application be refused.

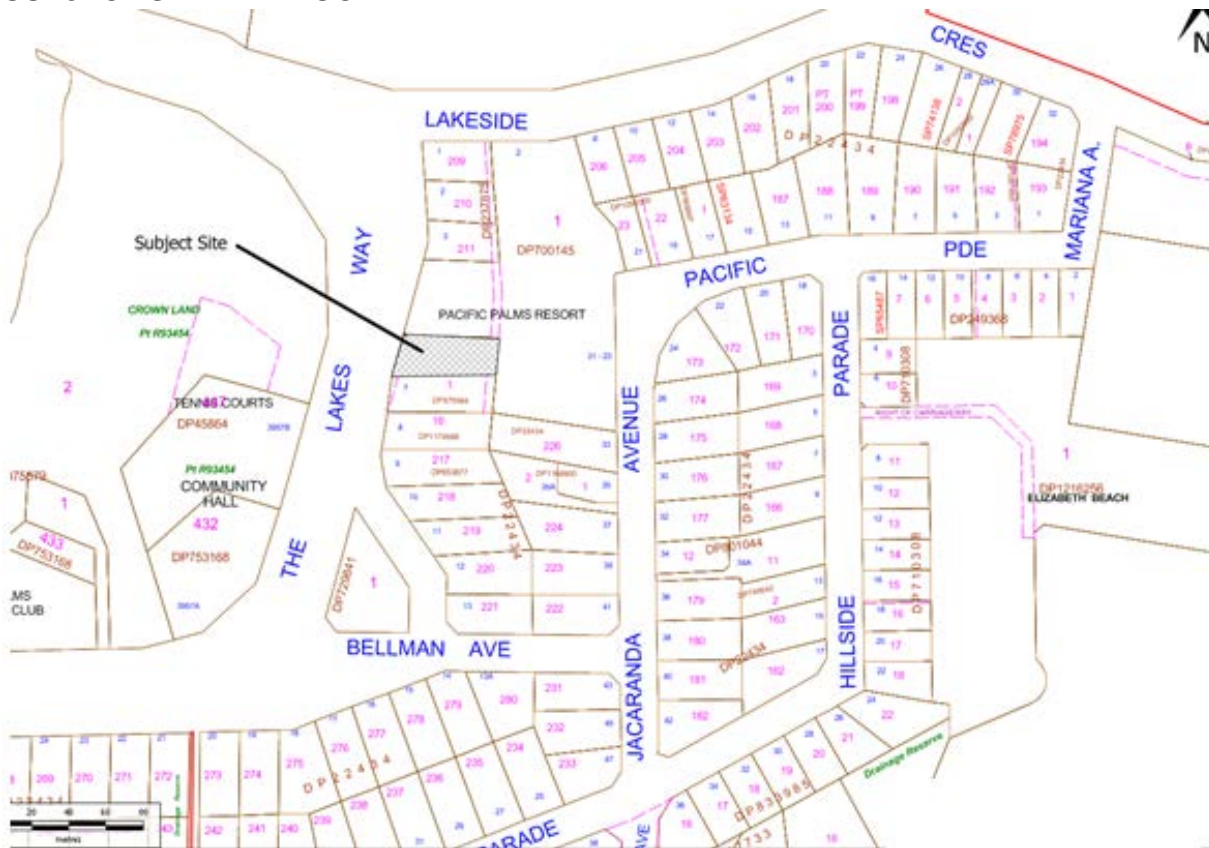
FINANCIAL/RESOURCE IMPLICATIONS

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

21 April 1950

The deposited plan was created for the subdivision of Elizabeth Beach, including the subject site. At the time of subdivision there were no Section 88B Instrument restrictions associated with the subject lot.

16 June 1971

A 3.66 metres wide right of carriageway was created at the rear of the subject site and on all lots to the north and connecting with Lakeside Crescent. The creation of the right of carriageway was a private agreement between the affected landowners at the time and Council had no involvement in its creation or endorsement of the memorandum of transfer. The right of carriageway exists on the land and is utilised by those properties that benefit from it.

16 August 2000

Council advised the owner that access to the subject site directly off The Lakes Way would be impractical and unsafe and that access to the site from Lakeside Crescent over the unmade road reserve bordering the eastern side of The Lakes Way should be investigated.

29 September 2000

Vehicular crossing approval was granted for the subject lot to be accessed from Lakeside Crescent via the unmade road reserve bordering the eastern side of The Lakes Way. This vehicular access did not proceed.

2010/2011

In conjunction with roadwork upgrading on The Lakes Way frontage, the existing gravel driveway that runs along the top of the road batter within The Lakes Way road reserve and provides physical access to the subject site and all lots to the south (total of seven lots) was widened. Included in those works was the conversion of the access to the site (approved 29 September 2000 - see above), to a cycleway. Those works were carried out given the subject site was undeveloped and access was upgraded to Bellman Avenue, to the south.

2013

Prior to the lodgement of the subject development application the owners of the land attended Council's Development Assessment Panel seeking opinion in respect of the proposed subdivision and access via the right of carriageway to Lakeside Crescent. Council officer's indicated that they would not be supportive of the access arrangement via the right of carriageway given the inherent lack of sight distance at the Lakeside road alignment. The owners were advised that a subdivision design that included an access handle to the proposed rear lot from the existing southern access from Bellman Avenue would be a more suitable alternative.

23 August 2013

The subject development application was submitted for the two (2) lot land subdivision of the site whereby vehicular access to the proposed front lot was via the service road to Bellman Avenue (to the south) and to the proposed rear lot was via a right of carriageway to Lakeside Crescent (to the north).

29 January 2015

The DCU considered the development application for a two (2) lot subdivision of the site and resolved:

That consideration of DA 60/2014 for the two (2) lot residential subdivision of Lot 214 DP22434, 6 The Lakes Way, Elizabeth Beach be deferred for 90 days with the view to the applicant revising the proposed design to enable vehicular access to the proposed Lot 1 from the gravel track to the western end of the existing site that connects to Bellman Avenue, to the south. The design should include a widening of the proposed battle-axe handle, at its western end, to enable the parking of two (2) vehicles associated with the future occupants of Lot 1. In conjunction with the revised subdivision design a driveway gradient design compliant with Australian Standard AS 2890.1 should be submitted demonstrating that reasonable vehicular access can be achieved to parking for both proposed lots with access to/from Bellman Avenue in a forward direction.

Attached to Attachment marked 'A' is a copy of the assessment report and the owner's submission that was considered by the DCU at its meeting 29 January 2015.

The owner then advised that before investigating other design options he would approach the RMS authority with the view to the lowering of the speed limit in this section of Lakeside Crescent from 60kph to 50kph. The RMS authority advised the owner by email dated 17 November 2015 that the authority agrees with the speed limit reduction and appropriate signage was erected. Based on the reduction in speed limit on Lakeside Crescent the owner, by letter dated 13 January 2016, applied for the re-consideration of the application.

25 February 2016

The DCU re-considered the development application on the basis of the owner's submission and resolved:

That consideration of DA 60/2014 for the two (2) lot residential subdivision of Lot 214 DP22434, 6 The Lakes Way, Elizabeth Beach be deferred for a further 60 days with the view to the applicant revising the proposed design to enable vehicular access to the proposed Lot 1 from the sealed road to the western end of the existing site that connects to Bellman Avenue, to the south. The design should include a widening of the proposed battle-axe handle, at its western end, to enable the parking of two (2) vehicles associated with the future occupants of Lot 1. In conjunction with the revised subdivision design a driveway gradient design compliant with Australian Standard AS 2890.1 should be submitted demonstrating that reasonable vehicular access can be achieved to parking for both proposed lots with access to/from Bellman Avenue in a forward direction.

Attachment 'A' contains a copy of the assessment report considered by the DCU at its meeting on 25 February 2016.

1 March 2016

The owner was advised of the above resolution.

8 April 2016

The owner advised Council by email that in a few weeks he would be submitting a traffic engineer's report that would support his original proposal that would enable Council to either support the development or reject it.

8 November 2016

The owner submitted a Traffic Impact Statement (TIS) (refer to Annexure 'A') that supported his original proposal. The submission was then to be reported to the DCU meeting 18 January 2017 however, at the owner's request, the matter was withdrawn from consideration to enable the owner's traffic consultant to confer with Council's traffic engineer.

5 April 2017

The owner submitted a letter requesting Council reconsider the original proposal, namely a two (2) lot land subdivision with access top and bottom. The submission (refer to Annexure 'B') is the subject of this report.

PROPOSAL

To subdivide the existing 1094m² undeveloped lot into two (2) lots with areas of 524m² (front lower western lot) and 570m² (rear higher eastern lot). The rear lot will have a 1.5 metre wide pedestrian and service access handle connecting to the service road from Bellman Avenue, that serves the site and all lots to the south. The application includes development concept details that show building envelopes and access arrangements for each of the proposed lots. Vehicular access to the front lower western lot will be from the existing service road that connects with Bellman Avenue. A loop road within the proposed lot will enable forward vehicular entry and exit. The proposed rear higher eastern lot will have vehicular access to/from Lakeside Crescent via the existing right of carriageway that is over the subject and neighbouring properties to the north. The concept design indicates that access to/from the proposed lots will be in a forward direction.

SITE DESCRIPTION

The undeveloped site is located to the eastern higher side of The Lakes Way, between the intersections with Lakeside Crescent and Bellman Avenue. The site is rectangular in shape and slopes up steeply from its front western boundary to the rear eastern boundary. The site contains a number of trees with a generally managed understorey. The site has vehicular access from Lakeside Crescent to the north via a right of carriageway over properties to the north and from Bellman Avenue to the south via the service road over the unmade road reserve. The right of carriageway over the subject site and to the north (to Lakeside Crescent) also serves two (2) properties to the south

The property adjoining to the south is developed with a dwelling house. The adjoining undeveloped land to the north forms part of the land developed with the Pacific Palms Resort, to the east of the site.

REPORT

Vehicular access to/from the proposed front lot via the service road to Bellman Ave is considered satisfactory. Similarly, the proposed land subdivision is generally considered satisfactory having regard to the relevant planning controls, as discussed in the assessment report to the DCU meeting on 29 January 2015, (refer to Attachment A - part Annexure 'A') with the exception of the vehicular access to/from Lakeside Crescent via the existing right of carriageway to the proposed rear lot. In this regard Council is required to consider whether vehicular access is safe.

Council's Traffic Engineer has inspected the site and locality having regard to the TIA submitted by the owner on 8 November 2016 and reported:

The proposed driveway access to this property on Lakeside Crescent is considered dangerous as it is situated on the crest in the road and the vehicular access to this development should be the service road at the western side of the property off Bellman Avenue.

Motorists exiting the driveway on Lakeside Crescent will have limited sight distance of the vehicles approaching them especially those travelling westbound. The Traffic Impact Statement states the Minimum Gap Sight Distance (MGSD) is just met for left turning vehicles out of the driveway with oncoming traffic travelling at 40km/h and the report stated the majority would be travelling at or below 40km/h. It is questionable how high the majority is as the traffic surveys provided showed there was over 45% of vehicles travelling higher than 40km/h. It is noted the speed limit has been reduced to 50km/h since the traffic surveys were taken, however it is unlikely there would have been a marked reduction in travel speeds as only 5% to 7% were travelling above 50km/h when the speed limit was 60km/h. People will travel at the speed they find most comfortable and at a level they consider safe, so it is unlikely that there would have been a significant change in vehicles speed with the reduction in the speed limit. Therefore, the use of 40km/h is considered too low a speed for the calculations of MGSD and a higher speed above 40km/h results in gap distances not being met for this driveway.

The parking of vehicles on the road at the proposed driveway will further reduce sight distance for those entering the carriageway from the driveway and motorists approaching the driveway will have vehicles hidden behind parked vehicles as they enter the roadway. This will increase the potential for crashes as vehicles will be entering the road hidden by the crest and parked vehicles.

The banning of the right turns into and out of the driveway on Lakeside Crescent as suggested in the report would create further dangerous situations for those vehicles wanting to turn right into the driveway. Nearly all vehicles travelling to the property would be coming from The Lakes Way and they would be wanting to turn right into the development from Lakeside Crescent. These right turning vehicles would be forced to travel over the crest and turn around using the driveways east of the crest or U-turn at the Lethbridge Road intersection. Both of these options are not acceptable as they create further turning movements on Lakeside Crescent that would be hazardous to vehicles travelling along these roads.

The reasons listed above clearly show there should be no access to 6 The Lakes Way using Lakeside Crescent as it is not a safe location for a driveway. The service road on the western side of the property must be used as the vehicular access, as proposed by previous DAs and conditions, as it provides the safest access to this development.

In respect to the owner's current submission (refer to Annexure 'B') Council's Traffic Engineer has advised that his previous comments on the proposed development in respect of traffic and road safety issues remains the same and would prefer to have the access to/from the proposed higher eastern lot from Bellman Avenue instead of the existing right of carriageway especially when there is another safer option to access the property. In regard to the "question of equity" of the right of carriageway being currently used for vehicular access by several other properties is not one that Council's Traffic Engineer can answer other than Council should be pursuing the safest option.

Both Council's Engineering Development Officer and the writer agree with Council's Traffic Engineer's comments and strongly support the view that access to/from Lakeside is unsafe and should be minimised.

In terms of equity, the right of carriageway was created by a private agreement between the affected landowners at the time and Council had no involvement in its creation or endorsement of the memorandum of transfer. The right of carriageway exists on the land and is utilised by those properties benefiting from it. Had Council been party to the agreement then I consider that Council would have been opposed to its creation on the basis of insufficient vehicular sight distance and safety.

CONCLUSION

Given the above information and the benefit of a site inspection by Council officers, access to/from the site utilising the right of carriageway to Lakeside Crescent, is considered unsafe under good conditions of daylight and fine weather.

It is recommended that any subdivision of the lot retain access rights along the service road to Bellman Avenue and that this become the primary access point for the development. This design outcome could be addressed by widening the proposed battle axe handle at its western end to accommodate two off-street parking spaces that would serve proposed rear lot 1 and with proposed lot 2, share access from Bellman Avenue.

The development has been assessed in accordance with Section 79C of the Environmental Planning and Assessment Act 1979 and is considered to be a reasonable development suitable for the site and in the context of the locality subject to the design being revised to permit vehicular access to proposed rear higher lot 1 from the existing service road that connects to Bellman Avenue.

Given the lengthy consideration of this application and the owner's desire for the application to be determined either favourably or not and having regard to the alternate design option that Council has encouraged, it is recommended that the current application not be supported.

RECOMMENDATION

It is recommended that development application DA60/2014 for the proposed two (2) lot residential subdivision of Lot 214 DP22434, 6 The Lakes Way, Elizabeth Beach be refused for the following reasons:

1. Vehicular access to/from proposed rear lot 1 to Lakeside Crescent is considered to be unsafe.
2. Vehicular access to/from proposed rear lot 1 to Lakeside Crescent is not considered to be consistent with the relevant provisions of Part 9 - Subdivision, of Great Lakes Development Control Plan 2014.
3. Vehicular access to/from proposed rear lot 1 to Lakeside Crescent is not in the public interest.

ATTACHMENTS

A: Copy of DCU report from 25 February 2016

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.

ANNEXURES

A: Traffic Impact Assessment

Lakeside Crescent is a 2 lane 2 way road that functions as part of the collector road network serving Elizabeth Beach.

In the vicinity of the subject site it has been widened and line marked to provide a short right turn pocket for the adjacent resort development. This right turn facility is located on the apex of a sharp crest curve, immediately east of the RoC that is the subject of this assessment.

Lakeside Crescent in this location has kerb and gutter to its southern edge adjacent to the resort.
At the RoC there is no kerb and gutter. There is no kerb and gutter drainage on the northern pavement edge



Photo 3 – View east on Lakeside Crescent toward crest.



Photo 4 – Right of Carriageway junction with Lakeside Crescent. Resort entrance is to the left of the image.



Photo 5 – View east on Lakeside Crescent from Right of Carriageway.



Photo 6 – View west on Lakeside Crescent toward crest.

- o. Assuming 85th percentile speed of 40 kph or 30 kph (may be lower but would need to be measured)
 - i. Right turn into RoC across one lane of traffic – MGSD is 44 metres (33 @ 30kph)
 - ii. Right turn out of RoC across two lanes of traffic – MGSD is 55 metres (42 at 30 kph)
 - iii. Left turn out into one lane of traffic – MGSD is 55 metres (42 at 30 kph)

The site observations have confirmed that the existing RoC movements are constrained, however the minimum requirements for sight distance are achieved.

A key issue in terms of safe operations and corresponding minimum gap sight distances is the actual speed of vehicles using this stretch of Lakeside Crescent. This issue of speed environment and vehicle operations is discussed below.

6) Comment on Traffic Capacity

Traffic Capacity limits, both mid-block and intersection capacities, are well below the free flow thresholds as described in the Austroads Guidelines. This applies to the existing situation, as well as that with the proposed subdivision in place.

Consequently no traffic capacity assessment is required for this matter.

7) Assessment of speed environment on Lakeside Crescent.

Speed statistics recorded in October 2014 were obtained by the applicant and have been reviewed as part of this assessment (Refer to Attachment B.)

Of importance in analysing this data is the fact that the posted speed limit at the time of recording was 60 kph.

RMS has since agreed to a reduction in the speed limit to 50 kph which did not come into effect until sometime in 2015.

The recorded speed statistics can be summarised as follows:

- a. Posted speed limit 60 kph
- b. Mean speed of 39.0 kph
- c. 85% speed recorded as 45.4 kph or 75% of posted speed limit.

What this data demonstrates is that the actual operating speeds of vehicles were in the main significantly (up to 25%) less than the posted speed limit.

With a reduction in the speed limit to 50 kph it would be expected that the mean and 85 percentile speeds on this section of road would be further reduced.

If the 85th percentile speed were 40 kph this would represent 80% of the posted speed limit. At 37.5 kph it is 75%.

Whilst this speed still does not reduce the minimum gap sight distance to available distance for all movements it will result in an improvement over the existing conditions.

The Austroads guidelines suggest a critical gap acceptance of 5 seconds be available to allow drivers to perform a left turn movement into a one lane flow on an adjacent road. If this gap acceptance factor were 4 seconds, the gap acceptance distance at 30 kph reduces to 33 metres. Alternatively the gap acceptance distance at 40 kph would be 44 metres.

Given that there are no known incidents at this location involving turning movements to or from the RoC this would suggest drivers are prepared to accept a shorter gap when performing turning movements. For the left turn in particular this is aided by the steep downhill grade allowing cars to accelerate away from the crest relatively quickly.

Either way it is strongly recommended that an advisory speed of 30 kph be posted at the crest in Lakeside Crescent along with the appropriate crest advisory signs to improve the safety of turning movements at this location.

It is also strongly recommended that right turns into and from the RoC be banned on safety grounds.



Attachment B – 2014 Speed Surveys

MetroCount Traffic Executive
Speed Statistics

SpeedStat-69 -- English (ENA)**Datasets:**

Site: [2540] LAKESIDE CRES 80m EAST OF MR111
Direction: 8 - East bound A>B, West bound B>A. Lane: 0
Survey Duration: 11:24 Wednesday, 27 August 2014 => 7:38 Monday, 8 September 2014
Zone:
File: 254008Sep2014.EC0 (Plus)
Identifier: M647BPXM MC56-6 [MC55] (c)Microcom 02/03/01
Algorithm: Factory default (v3.21 - 15275)
Data type: Axle sensors - Paired (Class/Speed/Count)

Profile:

Filter time: 11:25 Wednesday, 27 August 2014 => 7:38 Monday, 8 September 2014
Included classes: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12
Speed range: 10 - 160 km/h.
Direction: West (bound)
Separation: All - (Headway)
Name: Default Profile
Scheme: Vehicle classification (ARX)
Units: Metric (meter, kilometer, m/s, km/h, kg, tonne)
In profile: Vehicles = 5968 / 11642 (51.26%)

Speed Statistics

SpeedStat-69

Site: 2540.0.0EW
Description: LAKESIDE CRES 80m EAST OF MR111
Filter time: 11:25 Wednesday, 27 August 2014 => 7:38 Monday, 8 September 2014
Scheme: Vehicle classification (ARX)
Filter: CIs(1 2 3 4 5 6 7 8 9 10 11 12) Dir(W) Sp(10,160) Headway(>0)

Vehicles = 5968
 Posted speed limit = 60 km/h, Exceeding = 20 (0.34%), Mean Exceeding = 63.10 km/h
 Maximum = 68.2 km/h, Minimum = 10.2 km/h, Mean = 40.2 km/h
 85% Speed = 47.2 km/h, 95% Speed = 51.5 km/h, Median = 40.3 km/h
 20 km/h Pace = 30 - 50, Number in Pace = 5062 (84.82%)
 Variance = 55.54, Standard Deviation = 7.45 km/h

Speed Bins (Partial days)

Speed	Bin	Below		Above		Energy	vMult	n * vMult
0 - 10	0	0	0.0%	5968	100.0%	0.00	0.00	0.00
10 - 20	91	1.5%	91	1.5%	5877	98.5%	0.00	0.00
20 - 30	385	6.5%	476	8.0%	5492	92.0%	0.00	0.00
30 - 40	2338	39.2%	2814	47.2%	3154	52.8%	0.00	0.00
40 - 50	2708	45.4%	5522	92.5%	446	7.5%	0.00	0.00
50 - 60	426	7.1%	5948	99.7%	20	0.3%	0.00	0.00
60 - 70	20	0.3%	5968	100.0%	0	0.0%	0.00	0.00
70 - 80	0	0.0%	5968	100.0%	0	0.0%	0.00	0.00
80 - 90	0	0.0%	5968	100.0%	0	0.0%	0.00	0.00
90 - 100	0	0.0%	5968	100.0%	0	0.0%	0.00	0.00
100 - 110	0	0.0%	5968	100.0%	0	0.0%	0.00	0.00
110 - 120	0	0.0%	5968	100.0%	0	0.0%	0.00	0.00
120 - 130	0	0.0%	5968	100.0%	0	0.0%	0.00	0.00
130 - 140	0	0.0%	5968	100.0%	0	0.0%	0.00	0.00
140 - 150	0	0.0%	5968	100.0%	0	0.0%	0.00	0.00
150 - 160	0	0.0%	5968	100.0%	0	0.0%	0.00	0.00
160 - 170	0	0.0%	5968	100.0%	0	0.0%	0.00	0.00
170 - 180	0	0.0%	5968	100.0%	0	0.0%	0.00	0.00
180 - 190	0	0.0%	5968	100.0%	0	0.0%	0.00	0.00
190 - 200	0	0.0%	5968	100.0%	0	0.0%	0.00	0.00

Total Speed Rating = 0.00
 Total Moving Energy (Estimated) = 0.00

Speed limit fields (Partial days)

Limit	Below	Above
0 60 (PSL)	5948 99.7%	20 0.3%

MetroCount Traffic Executive
Speed Statistics

SpeedStat-71 -- English (ENA)**Datasets:**

Site: [2540] LAKESIDE CRES 80m EAST OF MR111
Direction: 8 - East bound A>B, West bound B>A. Lane: 0
Survey Duration: 7:55 Wednesday, 1 October 2014 => 7:02 Wednesday, 8 October 2014
Zone:
File: 254008Oct2014.EC0 (Plus)
Identifier: M647BPXM MC56-6 [MC55] (c)Microcom 02/03/01
Algorithm: Factory default (v3.21 - 15275)
Data type: Axle sensors - Paired (Class/Speed/Count)

Profile:

Filter time: 7:56 Wednesday, 1 October 2014 => 7:02 Wednesday, 8 October 2014
Included classes: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12
Speed range: 10 - 160 km/h.
Direction: West (bound)
Separation: All - (Headway)
Name: Default Profile
Scheme: Vehicle classification (ARX)
Units: Metric (meter, kilometer, m/s, km/h, kg, tonne)
In profile: Vehicles = 6322 / 12370 (51.11%)

Speed Statistics

SpeedStat-71

Site: 2540.0.0EW
Description: LAKESIDE CRES 80m EAST OF MR111
Filter time: 7:56 Wednesday, 1 October 2014 => 7:02 Wednesday, 8 October 2014
Scheme: Vehicle classification (ARX)
Filter: Cls(1 2 3 4 5 6 7 8 9 10 11 12) Dir(W) Sp(10,160) Headway(>0)

Vehicles = 6322
 Posted speed limit = 60 km/h, Exceeding = 13 (0.21%), Mean Exceeding = 65.19 km/h
 Maximum = 77.9 km/h, Minimum = 10.3 km/h, Mean = 39.0 km/h
 85% Speed = 45.4 km/h, 95% Speed = 49.7 km/h, Median = 39.2 km/h
 20 km/h Pace = 29 - 49, Number in Pace = 5491 (86.86%)
 Variance = 50.04, Standard Deviation = 7.07 km/h

Speed Bins (Partial days)

Speed	Bin	Below	Above	Energy	vMult	n * vMult
0 - 10	0	0 0.0%	6322 100.0%	0.00	0.00	0.00
10 - 20	91	91 1.4%	6231 98.6%	0.00	0.00	0.00
20 - 30	479	570 9.0%	5752 91.0%	0.00	0.00	0.00
30 - 40	2876	3446 54.5%	2876 45.5%	0.00	0.00	0.00
40 - 50	2581	6027 95.3%	295 4.7%	0.00	0.00	0.00
50 - 60	282	6309 99.8%	13 0.2%	0.00	0.00	0.00
60 - 70	10	6319 100.0%	3 0.0%	0.00	0.00	0.00
70 - 80	3	6322 100.0%	0 0.0%	0.00	0.00	0.00
80 - 90	0	6322 100.0%	0 0.0%	0.00	0.00	0.00
90 - 100	0	6322 100.0%	0 0.0%	0.00	0.00	0.00
100 - 110	0	6322 100.0%	0 0.0%	0.00	0.00	0.00
110 - 120	0	6322 100.0%	0 0.0%	0.00	0.00	0.00
120 - 130	0	6322 100.0%	0 0.0%	0.00	0.00	0.00
130 - 140	0	6322 100.0%	0 0.0%	0.00	0.00	0.00
140 - 150	0	6322 100.0%	0 0.0%	0.00	0.00	0.00
150 - 160	0	6322 100.0%	0 0.0%	0.00	0.00	0.00
160 - 170	0	6322 100.0%	0 0.0%	0.00	0.00	0.00
170 - 180	0	6322 100.0%	0 0.0%	0.00	0.00	0.00
180 - 190	0	6322 100.0%	0 0.0%	0.00	0.00	0.00
190 - 200	0	6322 100.0%	0 0.0%	0.00	0.00	0.00

Total Speed Rating = 0.00
 Total Moving Energy (Estimated) = 0.00

Speed limit fields (Partial days)

Limit	Below	Above
0 60 (PSL)	6309 99.8%	13 0.2%

B: Owner's Submission (letter dated 5.4.2017)

Dr John R Watts
133 Market Road
WERRIBEE Vic 3030
5 April 2017

The General Manager
Mid Coast Council
P O Box 450
FORSTER NSW 2428

Dear Sir

DA 60/2014 - Subdivision at 6 The Lakes Way Elizabeth Beach

1. This is a steep but large lot (1094 square metres) with an 11 m fall top to bottom. It is serviced by Rights of Carriageway at the top and bottom. It lends itself to construction of two small-to-medium size houses one at the top one at the bottom, with minimal disturbance of the natural ground surface.
2. In January 2015, DCU considered my application to subdivide the lot with access from both top and bottom. There was an apparent safety issue raised by council engineers with the top access ROC where the ROC meets Lakeside Crescent. The sight distance between vehicles on the track and those approaching in Lakeside Crescent is 41.7m compared with the 55m required by the posted speed limit of 60km/h. The DCU resolved that I should prepare a proposal for both lots to be accessed from the bottom only.
3. Because the prevailing speed at the junction is low (85th percentile speed is only 47km/h) and because the 60 km/h speed limit was not consistent with other speed limits in the district, I asked the RMS to review the speed limit and, after appropriate analysis, RMS changed the speed limit for the relevant stretch of Lakeside Crescent to 50km/h which requires a 40m sight distance so with an actual sight distance of 41.7m the junction is compliant.
4. I resubmitted the application and in February 2016 the DCU repeated its resolution that access should be from the bottom only.
5. I commissioned an independent report by a traffic engineer Mark Waugh. He had the opinion that the access to ROC from Lakeside Crescent could be made acceptable with modifications. This information was forwarded onto the council traffic engineers.
6. Despite this, there remains a concern among technical staff with respect to the right turn in and out of the Right of Way which appears worse than it is because the standard prescribes an eyeball to eyeball sight distance whereas

the driver can only see as far as the crest in the road surface. This may explain why in the initial Council report Council's officer mistakenly estimated the sight distance at only 22m. Even now, engineers are still saying that irrespective of the data, the junction is dangerous. They refer to errant drivers exceeding the speed limit, which is a possibility everywhere since all road facilities are designed to speed values which some people exceed. Their position is that professionally they feel unable to endorse the proposal if an alternative exists, namely the bottom access.

7. Clearly the question of whether the top access ROC meeting Lakeside Crescent is suitable for use is not clear cut. A consultant engineer believes so but the opinion of council engineers is different. It should be noted that the road users at this junction seem to have been exercising due caution for the 40 or so years that the houses have existed because Council staff have been unable to find any record of any accident. Furthermore, they have never taken any action to prevent the right turn nor even to erect a cautionary sign.
8. I accept that given a choice between top access and bottom access, a bottom access may be preferable but only as long as bottom access is reasonable. Council asked for a plan that provides parking for both lots at the bottom with pedestrian access for the 10m height to the top house. This requires 60 steps and is not a good solution for elderly or disabled visitors. I feel that this solution would cause discrimination against people with disabilities of mobility. I have also looked at a driveway going halfway up the property but it is steep and it takes up too much space at the expense of landscape planting. In short, I do not consider bottom access is a fair and reasonable alternative.
9. What I am asking for now is equity. I am not asking for right of way, I already have that, it is an entitlement by law. I want the same treatment as the other 4 households, without any regard to any technical issues, so that I can build a house, bringing to 5 the number of houses with access via the same track.
10. I also point out that I have taken more action in the interests of safety than the Council has because my submission to the RMS resulted in a reduction in speed limit from 60km/h to 50km/h. In addition, for the RFS I am providing their requested turnaround area for a Cat 7 appliance, which will be the only turnaround area in the Right of Way.
11. I now request that Council please reconsider the original proposal, namely a subdivision with access top and bottom

Yours sincerely

Dr John R. Watts



4 DA 110-2001-B MODIFICATION - LANDFILL & HARD ROCK EXTRACTIVE INDUSTRY

Report Author Geoff Smyth & Associates, Planning Consultants

File No. / ECM Index DA 110/2001/B

Date of Meeting 10 May 2017

DETAILS

Date Received: 17 August 2000 (original development application)
19 February 2014 (subject modification application received)
13 December 2016 (subject modification application amended)

Applicant: Great Lakes Council - Environmental Services

Owner: Great Lakes Council

Land: Lot 102 DP 1116091 - 333 Hillcrest Road, Minimbah

Area: 188.1ha

Property Key: 38604

Zoning: Part SP2 Infrastructure (Waste and Resource Management Facility) & Part E2 Environmental Conservation, GLLEP 2014

SUMMARY OF REPORT

- In accordance with Council's Policy and previous resolution the subject development application and any subsequent application to modify the development consent, be assessed by an external planning consultant.
 - Extension of the 5 year time limit to quarrying and processing of rock material from condition 3 of the Stage 1 consent.
 - Modification of approved hours of operation or rock drilling in condition 6 of the Stage 1 consent to the same hours for other construction works being 7am to 6pm Monday to Friday.
 - Modification of condition 15 to allow barbed wire to be used for security fencing.
 - Simplification of wording in condition 17 to manage and monitor hollow bearing trees.
 - Deletion of the requirement for a landscape plan to be prepared as required in condition 19.
 - Deletion of requirement in condition 20 for landscape consultant to certify landscaping as a result of deletion of condition 19.
 - Modification of the requirements for tree clearing surveys in condition 23.
 - Modification of the requirements to embellish Bundacree Creek in condition 25.
 - Deletion of condition 27 that aims to impose controls on an existing hardwood plantation agreement under Plantation and Reafforestation Act that is outside of Councils powers.
 - Modification of the restriction on the number of truck movements for rock removal in condition 33 to allow a greater volume of trucks.
 - Modification of condition 54 to recognise landfill boundaries will not contain flora and fauna values.
 - Consideration of submissions received during notification period.
-

SUMMARY OF RECOMMENDATION

The requested modifications to the operation of the quarry are generally reasonable and will not be likely to create any unreasonable increase in impact on adjoining neighbours or in the area as the hours of operation will not be altered. The alteration to the rock drilling times is not supported without an acoustic assessment by suitably qualified personnel.

Some of the requested modifications relate to ecological aspects that were conditions recommended by Council Senior Ecologist. Ecological aspects are not within the area of expertise of Geoff Smyth & Associates, however, Council Senior Ecologist has recommended changes to wording to address the concerns raised in the application for modification. The deletion of the need for a site landscape plan is not supported.

The recommended modifications to conditions are detailed later in this report.

FINANCIAL/RESOURCE IMPLICATIONS

The modifications where supported will improve issues in the operation of the landfill site.

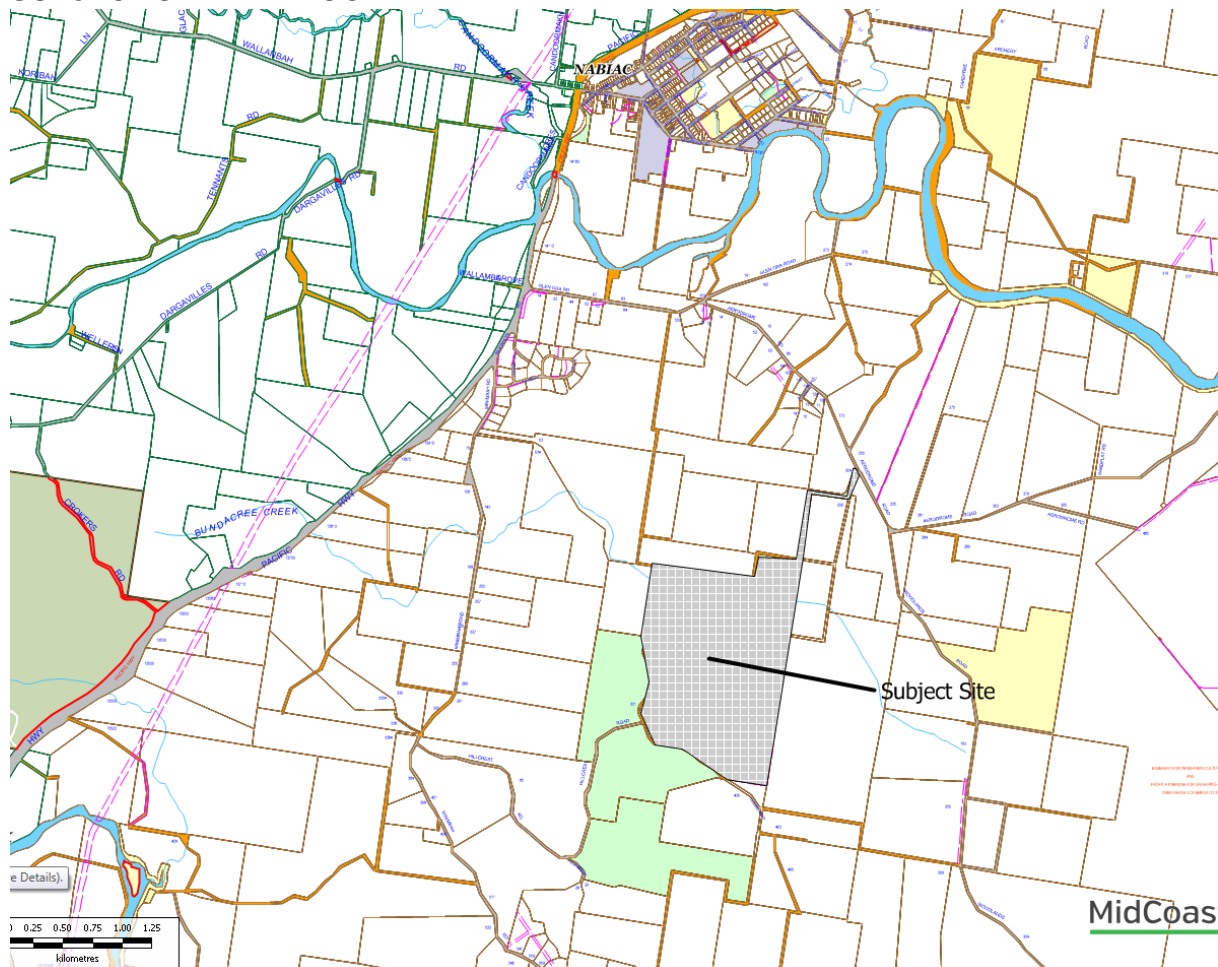
LEGAL IMPLICATIONS

A previous request for modification included, among other matters, a request for the deletion of conditions 3 and 33. A submission was received from Marsdens Law Group that claims that a modification to delete conditions 3 and 33 will result in the development not being substantially the same and therefore the proposed changes cannot be considered by way of a modification.

Council has sought advice from Local Government Legal that suggests a modification to conditions 3 and 33 would be acceptable rather than the removal of these conditions as previously requested. The modification request was amended to include a modification to conditions 3 and 33 as suggested and is supported by a Traffic Assessment report from Better Transport Futures as was also suggested in Councils advice. The modification now appears to adhere to the Council legal advice received.

The amended modification has also requested a modification generally under Section 96 and not specifically Section 96 (1A). The application can be appropriately considered under Section 96 (2) to overcome any limitation on the modification requiring minimal impact before it can be considered under Section 96 (1A) and allowing any impacts to be considered on their merit.

SUBJECT SITE AND LOCALITY



BACKGROUND

Council granted consent for Stage 1 of the landfill on 25 July 2006. The consent was subsequently modified on two occasions in June 2007 and again in July 2008. The consent (as modified) was subject to five (5) deferred commencement conditions and 57 conditions of consent. The deferred commencement conditions required acquisition and restrictions on adjoining lands, along with additional details on landfill infrastructure and ecological management, as well as preparation of a risk management plan for the landfill.

It is understood that the deferred commencement conditions have been met and the consent was declared operative on 25 November 2008. Works have been carried out on the site involving excavation of hard rock and gravel from the landfill area, construction of landfill infrastructure, including internal roads and water management devices. The rock material from the site has also been utilised to upgrade Glen Ora and Aerodrome Roads to a sealed road standard from the landfill entry to the Pacific Highway in accordance with the requirements of the consent.

During the undertaking of works on the site a number of issues with the current consent have been identified. These issues are the subject of this modification.

On 19 February 2014 an application to modify a number of conditions was received. As a result of the notification of this application a submission from Marsdens Law Group was received and Council subsequently sought its own legal advice on the issues raised by Marsdens. The modification application of 19 February 2014 was amended by the current application (submitted 13 December 2016) that seeks to adhere to the Council legal advice.

The amended modification was notified to relevant Government authorities and persons who made submissions to the previous modification.

MODIFIED PROPOSAL

The modified proposal is to amend conditions 3, 6, 15, 17, 19, 20, 23, 25, 27, 33 and 54 of the current development consent, that will be discussed under the following heading Report.

SITE DESCRIPTION

The site is located to the western side of Aerodrome and Woodlands Roads and is accessed via a narrow handle from Aerodrome Road. The topography of the site varies from low, gently undulating land to the eastern end to steeper slopes. The approved landfill is located on the side of a hill in the south western corner of the site.

Vegetation across the site also varies, with cleared land, planted native forests and areas of retained vegetation. The approved landfill area is generally located over parts of the site that are cleared or contain plantation forests.

The surrounding area is comprised of rural and rural residential sized parcels of land with the closest adjoining property dwelling house located approximately 600m to 1000m from the approved landfill area.

Attached 'A' is an aerial photograph of the site and current approved cleared area.

REPORT

The application is to be assessed having regard to the provisions of Section 96(2) of the EPA Act 1979. Under those provisions Council may modify an existing Development Consent if the Council is satisfied that the modified development is substantially the same development as that which was originally granted development consent and the Council has notified the application and has considered any submission made as a result of the notification. The proposed modified development is considered to be substantially the same development as that which was originally approved and has been notified to neighbouring properties that has resulted in five (5) submissions that will be considered under the later heading Submissions Received.

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, as follows.

The modifications, where supported, are considered to involve acceptable environmental impact and the development remains substantially the same as was previously approved. The modifications, where recommended for approval can be approved by Council under Section 96(2) of the Environmental Planning & Assessment Act. It should be noted that an opinion from Marsdens Law Group and subsequent advice from Local Government Legal has resulted in the current requested modifications being amended to recognise legal advice received by Council.

The modifications, where recommended for approval are not designated development as they do not comprise the following matters listed for consideration under Schedule 3 Part 2 Clause 36 of the Environmental Planning & Assessment Regulation 2000.

- Variation to any previous requirements by a public authority.
- Rehabilitation or restoration of disturbed land.
- Any cumulative effect from past changes.
- Increased impact from changes to the scale, character or nature of the development.
- Increased impact on existing vegetation or other special features of the land and the surrounding locality.
- Uncertainty in the degree of potential environmental impacts.
- Increased impact on the receiving environment.
- Require increased mitigation of impacts.
- Impact on compliance with relevant standards, codes of practice or guidelines published by any public authority.

Each of the requested modifications is discussed as follows:

1. Extension of the 5 year time limit for rock extraction and processing (condition 3) to 10 December 2021.

Comment: The hard rock extraction involved drilling, blasting and crushing in addition to the day to day operations of a landfill site and transportation of materials to and from the site. The noise assessment in the Environmental Impact Statement (EIS) found that acquisition of lots with future dwelling potential within 600m of the landfill as well as implementation of noise mitigation measures together with the fact that there were no existing dwellings within 1300m would ensure that noise generation would be within acceptable levels.

Condition 3 was imposed to expedite the process of extracting rock material to further limit impacts on the surrounding area requiring the extraction to be completed over 5 years. The limiting of the extraction period will concentrate impacts to the 5 years but eliminate impacts from this part of the process from that time onwards.

The noise assessment detailed measures to mitigate noise to acceptable levels. In addition lots within 600 m with dwelling entitlements have been purchased by Council. The Council records confirm that no dwelling has been erected within 1300 m and any potential dwelling would require the consent of Council and an assessment of potential noise impacts. In the circumstances, it is considered that the requested extension to 10 December 2021 is reasonable and can be supported.

The modification of the time period in condition 3 recognises Council's legal advice on meeting the test for a modification to ensure that the development remains substantially the same development for which consent was granted.

2. Modify hours of operation in condition 6 for rock drilling.

Comment: Condition 6 imposed eleven noise attenuation measures and limited hours of operation of certain components. The rock drilling was limited to 8am to 5pm Monday to Friday.

The noise assessment in the EIS noted that drilling and blasting will exceed recommended noise criteria, however, the notification of the nearest residents together with the acquisition of certain properties will minimise any noise impacts. The assessment recommended that the rock drilling rig should be restricted to a maximum sound power level of 122dB(A) and hours of drilling restricted to 8am to 5pm Monday to Friday.

The modification requests that the hours for rock drilling be amended to match the construction hours of operation of Monday to Friday from 7am to 6pm. This will involve an increase of 1 hour from 5pm to 6pm in the afternoon and an hour in the morning between 7am to 8am.

Based on the limitation on rock drilling hours recommended by the noise assessment it would appear that to undertake rock drilling between 7am to 8am and from 5pm to 6pm may create an unacceptable noise nuisance. Since the time of the acoustic report the properties likely to be most affected have been purchased by Council and the nearest residence likely to be affected is approximately 1300m away. It is possible that, provided the nearest residences within 2km are given 48 hours' notice prior to drilling, there would not be an issue. Unfortunately, a further acoustic assessment would be required to verify the situation and such a report should be obtained prior to the condition being modified.

The modification is not supported until a further acoustic assessment has been provided to support the extended hours. The EIS noise assessment was specific in providing different hours of operation for rock drilling from the construction hours of operation.

3. Modification to condition 15 to allow barbed wire fencing to be used.

Comment: The requested modification requires barbed wire on top of cyclone mesh fencing for security purposes.

The wording of the condition only required wildlife permeable fencing on the perimeter of the property and permitted cyclone fencing for security around the landfill operation area only. There is no objection to barbed wire being added to the top of the cyclone mesh fencing, however, the property boundary fence must not include barbed wire and remain wildlife permeable. Councils Senior Ecologist has provided suggested amended wording for this condition and is included in this report's recommendation.

4. Simplification of wording in condition 17.

Comment: It is agreed that the current wording of condition 17 is overly complex. The intent of the condition is to ensure that hollow bearing trees are monitored and managed. Councils Senior Ecologist has provided suggested wording to simplify this condition and is included in this report's recommendation.

5. Deletion of the requirement to prepare a landscape plan in condition 19.

Comment: The requested modification is based on the site being surrounded by forested land and not highly visible in the landscape. Landscaping is not considered necessary to provide a visual screen.

It is unclear from the Councils ecologist report as to why the landscape plan is required. It appears that it is meant as a site management plan to provide some planting within the site at appropriate locations. There is no inference that the landscaping was meant as a visual screen. The deletion of this requirement is not supported and Councils Senior Ecologist has provided suggested amended wording for this condition and is included in this report's recommendation.

6. Deletion of requirement in condition 20 for landscape consultant to certify completion of landscaping.

Comment: The requested modification is based on the requested deletion of condition 19 requiring a landscape plan. As the deletion of condition 19 is not supported then this condition 20 should also remain.

7. Modification of wording of condition 23 to adhere to the current standard for pre-clearing surveys required by Council.

Comment: It is understood that Council has updated the requirements for pre-clearing surveys from that required in 2006 when condition 23 was imposed. There is no objection to updating this condition to Councils current requirements. Councils Senior Ecologist has provided suggested amended wording for this condition.

8. Modification of the ecological embellishment requirements for Bundacree Creek in condition 25 to stipulate the extent of enhancement required.

Comment: Condition 25 required an embellishment program to be approved by Council's Manager – Natural Systems and Estuaries Branch. It is understood that the specific enhancement requirements have now been identified and as such there is no objection to these details being included in condition 25. Councils Senior Ecologist has provided suggested amended wording for this condition and is included in this report's recommendation.

9. Deletion of condition 27 that imposes controls on existing hardwood plantation agreement.

Comment: The requested modification is based on the provisions of Section 47 of the Plantations and Reafforestation Act 1999 that provides that the provisions of the Environmental Planning & Assessment Act 1979 do not apply. In this regard it is outside of Council's authority to impose any controls. On this basis the condition can be deleted.

10. Modify the restriction on truck movements in condition 33 to allow a greater volume of trucks.

Comment: Condition 33 limited the number of truck movements for rock removal to 12 per hour for a maximum of 2 consecutive days with no more than 15 two consecutive day periods in a year. The condition is understood to have been imposed for traffic safety reasons.

A modification now seeks to increase the number of trucks to 8 trucks & trailer doing 5 round trips per day for a duration of 2 months per year at 5 days per week. The increase will result in 5 days operation consecutively rather than 2 and 40 days per year rather than 30.

Condition 33 included a requirement that a further assessment report is required before the limit on truck movements could be varied. A report has now been provided by Better Transport Futures that includes the following conclusions and recommendations:

- *The existing road carriageway was sealed some years ago to a width of approximately 10.5m. This includes sealed shoulders of around 1.5m and travel lanes of 3.5 to 3.6m and an overall width of 10.5m.*
- *The carriageway sealing was completed by using pavement materials extracted from the subject site.*
- *This carriageway width and seal configuration equates well to the Austroads criteria for a rural road capable of carrying in excess of 1000 vehicles per day.*
- *Traffic volumes based on peak observations were estimated at a conservatively high 500 vehicles per day.*
- *The forecast traffic flows even allowing for conversion to Equivalent Passenger Car Units (PCU's) remains at very high levels of service as defined by Austroads, effectively still at free flowing conditions.*
- *Operation of the Pacific Highway intersection with Glen Ora Road performs well now, and the forecast flows are still well below the Austroads limits below which capacity analysis is unnecessary.*
- *Turning facilities to the Pacific Highway/Glen Ora Road intersection are of a high standard and designed to the NSW RMS requirements for heavy vehicle use.*
- *The forecasts traffic flows would remain at a comparable level to those relied on in the pavement design work completed at the time of upgrading to Glen Ora and Aerodrome Roads.*
- *Notwithstanding the above, it is recommended that additional advance warning signage including advisory speed signage be installed on the approaches to the curves located between the access to the subject site and the Pacific Highway. This is recommended in the interests of improving overall safety along the route.*

The modified condition recognises Council's legal advice and is supported by a traffic consultant report. On this basis the modification is supported.

The imposition of an additional condition to provide advisory speed signage is understood to be outside the considerations of a requested modification and cannot be imposed as part of this modification process. However, Council can separately agree to providing the signage.

11. Modification to wording of condition 54 to recognise the landfill boundaries.

Comment: There is a perceived inconsistency in the wording of condition 54 that suggests that there is a need to protect flora and fauna within the landfill area where all flora and fauna values will have been removed and no longer exist.

The inconsistency is not accepted by Council staff and as such the condition should remain.

SUBMISSIONS RECEIVED

A previous application for modification was notified for public and Government authority comment and the closing date for receipt of submissions was 28 January 2016.

Five (5) submissions were received including a legal opinion from Marsdens Law Group. A submission was received from the Environment Protection Authority raising no objections but suggesting that the application should be referred to the Office of Environment and Heritage having regard to potential impacts on flora and fauna. The subject application was referred to the Office of Environment and Heritage on 21 December 2016 and no objection has been received. Council's Senior Ecologist supports the proposed modifications.

The concerns raised in previous submissions are summarised as follows:

- There appears to be no explanation or justification for varying the conditions of approval.
- Conditions 3 and 33 should not be removed as there will be no limit on truck movements and the quarry will be open to an unlimited commercial venture.
- The modification to conditions 3 & 33 will result in the development not being substantially the same and therefore the application cannot be dealt with by way of a modification.
- There is no request for a modification of condition 54 from Coastplan.

Comment: The concerns raised in submissions in respect to conditions 3 and 33 have been addressed by the submission of a new request to modify these conditions rather than remove them. The justification for varying conditions is discussed at length in this report. The modification to condition 54 is included in the new request for modification by Coastplan.

The new application for modification was notified for public and Government authority comment and the closing date for receipt of submissions was 20 January 2017.

A submission was received from the Department of Industry (Resources & Energy) and one from another quarry operator stating that they have no issues to raise. The quarry operator has suggested that a condition be imposed to require the provision of annual production data report to be submitted to the Department and made available to others upon request. It is understood that a modification application cannot impose additional conditions for the overall operation of the site. In this regard the requirement for the provision of annual production data should be noted by Council for information and provided to the Department and available to others where possible.

In a similar way, the Traffic Assessment provided by Better Transport Futures recommended that additional advance warning signage including advisory speed signage should be installed on the approaches to curves located between the access to the subject site and the Pacific Highway in the interests of improving overall safety along the route. It is considered that this requirement is not essential as the Traffic Assessment found that the forecast increase in traffic flows is well within the technical traffic carrying capacity limits and will still operate at very high levels of service and there is no basis on traffic capacity or traffic safety grounds to limit the flows beyond that requested in the modification to condition 33. Again, the requirement for additional signage should be noted by Council for information and provided where possible.

A submission was received from the Department of Planning and Environment stating that the Department has no objection and noted that Council must determine whether the modification is within the scope of Section 96.

RECOMMENDATION

That the application to modify development application No. 110/2001 for a Landfill Waste Management Centre and Hard Rock Excavation Industry on Lot 102 DP 1116091, 333 Hillcrest Road, Minimbah, under the provisions of Section 96(2) of the Environmental Planning and Assessment Act 1979, be approved as follows:

Condition 3 - Modify as follows:

3. The extraction and processing of the rock material from Stage 1 shall be completed and stockpiled by 10 December 2021.

Condition 6 - Not modified. (Requires acoustic report to justify).

Condition 15 - Modified as follows:

15. Fencing on the site shall generally be of a form that permits the free unhindered movement of native wildlife, except for those areas where appropriate security fencing is required by operating licences and conditions or where barbed wire is required for the management and control of stock. The use of security fencing and barbed wire fencing shall be minimised and restricted to areas with specific operational requirements.

Condition 17 - wording simplified to read as follows:

17. A program to monitor the nesting boxes and erected hollows on the land shall be implemented. The program shall be delivered by a trained and experienced Ecologist. The nesting box and erected hollows monitoring program shall compile information on the status of nesting boxes and erected hollows and catalogue the rates of wildlife usage of each. The program shall entail the following activities:
 1. The location of each of the erected hollows and nesting boxes shall be plotted on a plan of the area and locational details (GDA coordinates) are to be recorded and maintained.
 2. At each inspection, notes shall be recorded on the presence of animals or evidence of their presence for each nesting box or erected hollow.
 3. At or associated with each inspection, each nesting box or erected hollow shall be cleaned, repaired or replaced and exotic fauna shall be removed and humanely euthanized.
 4. Within one month of each annual inspection, the results of the monitoring program and a summary of the success or otherwise of the program shall be documented. It shall provide commentary on the future maintenance and monitoring program or nesting boxes/hollows on the land.

Condition 19 - Deletion of this condition is not supported. Modify wording as follows:

19. Landscape plantings shall be undertaken as appropriate to enhance the amenity of the approved facility, soften the appearance of built structures, provide a visual buffer and stabilise exposed or modified landforms. Within any environmental or landscape plantings, preference shall be given to the use of local native plant species from all vegetative layers. No plant species that are or have the potential to be invasive environmental or agricultural weeds shall be introduced or planted anywhere on the land for any purpose.

Condition 20 - Deletion of this condition is not supported.

Condition 23 - Modify as follows:

23. The Registered Proprietor of the land shall arrange for pre-clearing surveys of any approved native vegetation removal operations on the land (other than minor clearing activities or maintenance work). The pre-clearing surveys shall be based on the following methods:
1. Pre-clearing surveys shall be conducted by licensed, trained and experienced Ecologists.
 2. Pre-clearing surveys shall be conducted within 10-days of the scheduled commencement of approved clearing work and after the extent of the bounds of approved clearing work has been clearly marked in the field.
 3. Pre-clearing surveys shall be undertaken within the marked clearing area and shall utilise the following methods (as a minimum):
 - a. A search for signs of threatened fauna species shall be undertaken and which shall include (as a minimum) searches for the nests of Ospreys, Square-tailed Kites or other raptors, searches for white-wash or regurgitated pellets and/or nesting evidence of large forest owls, searches for Koala scats and inspection of trees for individual Koalas, searches for nesting and foraging sites of the Glossy Black Cockatoo and any other relevant threatened species search.
 - b. Two nights of spotlighting shall be conducted in the marked clearing area.
 - c. A combined stag watching and ultrasonic bat call detection survey shall be conducted at dusk at the site of any hollow bearing tree within the marked clearing area. The stag watching/ultrasonic bat call detection shall be conducted on two nights and cover the period 30 minutes prior to sunset until 30 minutes after sunset.
 - d. A four night live trapping program shall be conducted, targeting the presence of Brush-tailed Phascogales and Squirrel Gliders in the marked clearing area through the use of ground and tree mounted Elliott style traps. Any individual species captured in the live trapping survey shall be relocated out of the approved clearing area into suitable habitat within the "Conservation Area" identified in Figure 9 of Bell (2006).
 - e. In the event that a hollow is identified and suspected to likely comprise a maternity den or roost of a threatened species, then further investigations of the relevant hollow(s) shall be initiated to determine the resident population and the nature of any breeding event.
 4. The pre-clearing surveys shall be sufficient to determine the presence of critical sites (sites critical for the local population of a threatened species) or inhabited sites (sites in the approved clearing area inhabited or otherwise used by threatened species).
 5. Management descriptions shall be documented prior to any clearing for any identified critical sites or inhabited sites within the approved clearing area. The management prescriptions shall detail the actions to minimise, avoid or compensate for the risks or impacts of the clearing works on affected threatened species. Management prescriptions shall include consideration of the detailing of approved clearing methods, clearing timing, temporary clearing exclusions, ecological supervision, provision of compensatory habitat, translocation, etc.
 6. Documented management prescriptions shall be deployed as part of the clearing activities.

Condition 25 - Modify as follows:

25. The Registered Proprietor of the land shall undertake activities to enhance the ecological condition of the Bundacree Creek channel within the subject land so that the creek can provide enhanced ecosystem services functions and provide habitat for aquatic and dependent fauna. Enhancement activities are described below:
1. Prior to the commencement of any landfilling activities, measures shall be implemented on the land to exclude access by stock to the creek channel and its banks.
 2. Prior to the commencement of any landfilling activities, a practitioner with qualifications and experience in watercourse protection and restoration shall inspect the creek channel and document an Action Plan to guide intervention actions that would lead to enhanced stabilisation and restoration of habitat of the creek channel and enhance environmental performance in the provision of aquatic and riparian habitat. The Action Plan shall consider, but not be limited to, controls on weeds, enhanced stabilisation of bed and banks, erosion controls, channel formation and geometry, aquatic habitat furniture (rocks, logs, islands, etc), plantings, and any other pertinent consideration.
 3. Actions identified within the Action Plan are to be implemented on the land as per the timing set out in the Action Plan.

Condition 27 - Deleted as condition not within Council authority.

Condition 33 - Modify as follows:

33. The applicant shall ensure that following the completion of the upgrading of Glen Ora and Old Aerodrome Roads the number of truck movements associated with rock removal being limited to:
- Eight (8) truck and dog trailer combinations doing five (5) rounds per day, at 25t per load.
 - Duration to be two (2) months of the year or forty (40) days.
 - Five (5) days per week.

Condition 54 - Modification is not supported.

ATTACHMENTS

A: Aerial photograph of the site and current approved cleared area

Attachment A has been issued to the Administrator and Senior Staff only. 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