

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

14 JUNE 2017 AT 2PM

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

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



Glenn Handford
INTERIM GENERAL MANAGER

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CONSIDERATION OF OFFICERS' REPORTS:

DIRECTOR PLANNING & NATURAL SYSTEMS

1 316-2017-DA - ERECTION DETACHED SHED - OXLEY ISLAND

Report Author Sonja Linney, District Building Surveyor

File No. / ECM Index 316/2017/DA

Date of Meeting 14 June 2017

DETAILS

Date Received: 7 February 2017

Applicant: Mike Faine (Faine Group Architects)

Owner: Mr Chris Page

Land: 108 Cowans Lane Oxley Island

Area: 21.61ha

Property Key: 23751

Zoning: RU1 Primary Production, GTCC LEP 2010

SUMMARY OF REPORT

1. Application submitted for erection of large shed for multifunctional use as a storage facility, garaging of vehicles, storage of tools, farm equipment and general use.
2. Consideration given to Council's DCP with the maximum wall height and the roof pitch identified as minor issues.
3. No Submission from adjoining properties.
4. Justification provided by applicant regarding the overall floor area 800m², which is 300m² more than the current DCP allows.

SUMMARY OF RECOMMENDATION

It is recommended that Development Application No. 316/2017/DA for a shed located on Lot 62 DP 614202, 108 Cowans Lane, Oxley Island be approved subject to conditions.

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.

POLICY IMPLICATIONS:

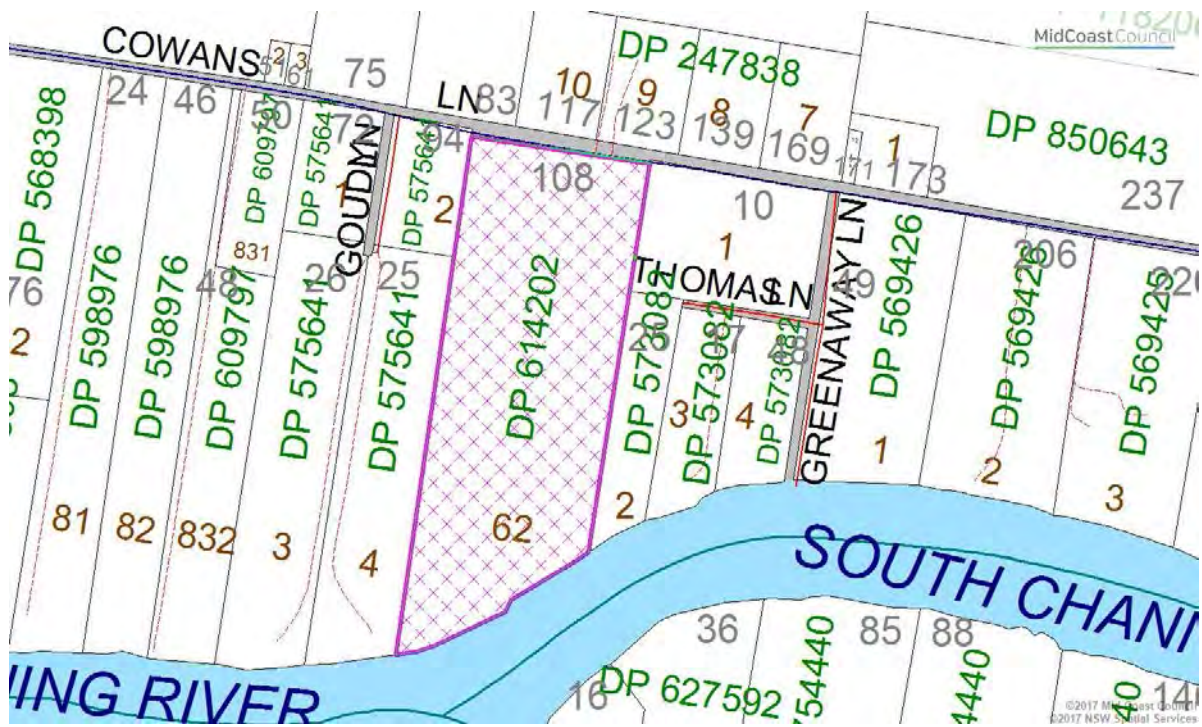
Nil.

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.

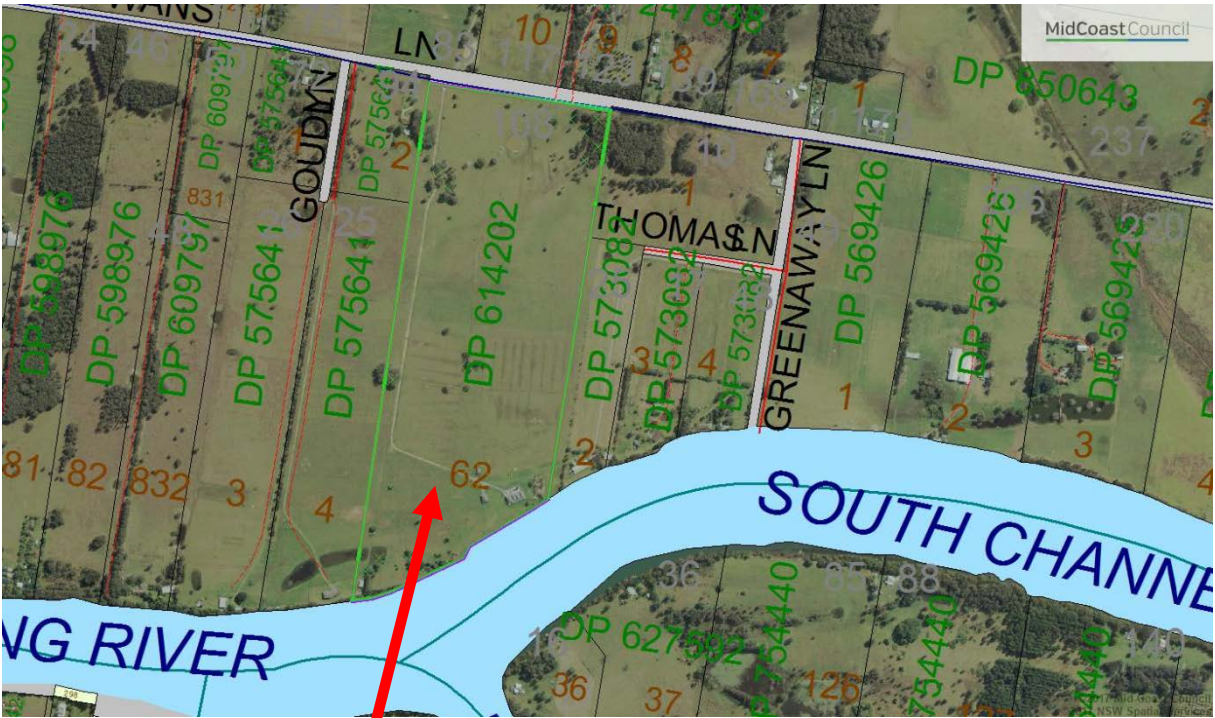
SUBJECT SITE AND LOCALITY

Proposed Site



Proposed Site Photographs





Proposed Location



Adjoining neighbour



Adjoining neighbour



Adjoining neighbour

BACKGROUND

316/2017/DA – Submitted to Council on 7 February 2017. The proposal was notified to adjoining neighbours from 21 February 2017 – 13 March 2017 with no submissions received.

PROPOSAL

The proposal is for a large shed for multifunctional use as a storage facility, garaging of vehicles, storage of tools, farm equipment and general use. The proposed method of construction is concrete tilt panel with a flat metal roof. The proposal is located in excess of 100 metres from the west, east and northern boundaries and approximately 80 metres from the eastern riverbank. The proposed shed is 40 metres in length, 20 metres in width and 5.191 metres (front) and 5.524 metres (rear) in height.

SITE DESCRIPTION

The property is located to the southern side of Cowans Lane and adjoined by the Manning River. It is a large rural property that is used for broad scale agricultural activities. The topography of the site is relatively flat and is cleared for agricultural use a dwelling house, machinery shed and in-ground swimming pool, exist on the land. The adjoining properties are also occupied by dwelling houses on rural allotments. Access to the site is from a maintained carriageway that connects to Cowans Lane on the northern boundary.

REPORT

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

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

Environmental Planning and Assessment Act 1979 (EPAAA 1979)

The subject site is mapped as bush fire prone and in accordance with Section 79BA of the EPAA 1979 the application is not to be assessed against the publication 'Planning for Bushfire Protection 2006' as the proposed shed is located greater than 10 metres from the existing dwelling.

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

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

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

State Environmental Planning Policy (Rural Lands) 2008

All development being undertaken on land within a rural or environmental land use zone must be considered against the 'rural planning principles' contained within Clause 7 and the matters for consideration for rural dwellings under Clause 10 of the SEPP. The site is zoned RU1 – Primary Production under the Policy. The proposed shed is considered to be consistent with the rural planning principles and the matters for consideration. Accordingly, the proposed development is considered to achieve the aims of the Policy.

Greater Taree City Council Local Environmental Plan 2010

The site is subject to the provisions of Greater Taree City Council Local Environmental Plan 2010 (LEP). The land is zoned RU1 – Primary Production under the provisions of the LEP.

Sheds/Farm buildings are permissible in the RU1 zone with the consent of Council. Clause 2.3 of the LEP states, that the consent authority must have regard to the objectives for development in a zone when determining a development application in respect of land within the zone.

Zone RU1 Primary Production

1. Objectives of zone:

- To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.
- To encourage diversity in primary industry enterprises and systems appropriate for the area.
- To minimise the fragmentation and alienation of resource lands.
- To minimise conflict between land uses within this zone and land uses within adjoining zones.
- To permit small scale rural tourism uses associated with primary production and environmental conservation with minimal impact on primary production and the scenic amenity of the area.
- To maintain the rural landscape character of the land.
- To protect and enhance the native flora, fauna and biodiversity links.

The proposal is consistent with the objectives of the zone.

NSW Coastal Policy 1997

The New South Wales Coastal Policy is a broad policy for the Coastal Zone that is required to be considered having regard to the provisions of Clause 92 of the Environmental Planning and Assessment Regulations 2000.

The site is located within the Coastal Zone. Relevant to the principles of the Coastal Policy, the proposed development will not compromise the natural, cultural heritage (both indigenous and European) and spiritual values of the coastal area. The proposed development is considered to be a low impact development that incorporates the principles of ESD and implements the planned development of this locality.

The proposed development will not compromise the goals or strategic actions of the Coastal Policy.

Development Control Plan No. DCP 2010

J3.1 Objectives

Ancillary development

Subclause	Objectives	Performance criteria	Assessment Summary
1.	<ul style="list-style-type: none"> To minimise the visibility of ancillary structures and outbuildings from the street, adjoining properties and public spaces; To ensure that the appearance of ancillary structures and outbuildings is of a high quality and where appropriate integrates with the streetscape; To ensure ancillary structures and outbuildings are compatible in height, bulk and scale with the existing or proposed development on site in the rural locality. 	All ancillary structures and outbuildings should be of a quality construction, have minimal visual impact on adjoining properties, be constructed using materials, colours and finishes that complement the principal dwelling, including low reflective neutral/earth tones and blend with the natural landscape.	Tilt panel is the proposed construction method. The concrete panels will be screened with judicious planting, the building can be screened from view, including from the river. No foreseen impacts on adjoining properties. Notification completed with no submissions received.
2.	<ul style="list-style-type: none"> To minimise the visibility of ancillary structures and outbuildings from the street, adjoining properties and public spaces; To ensure that the appearance of ancillary structures and outbuildings is of a high quality and where appropriate integrates with the streetscape; To ensure ancillary structures and outbuildings are compatible in height, bulk and scale with the existing or proposed development on site in the rural locality. 	All ancillary structures and outbuildings are to be located such that they do not impact on the agricultural or environmental land uses/qualities.	Consistent with objectives and controls.
3.	<ul style="list-style-type: none"> To ensure ancillary structures and outbuildings are compatible in height, bulk and scale with the existing or proposed development on site in the rural locality. 	The maximum wall height for ancillary structures and outbuildings is 4.5m and the roof height is not to exceed 7m at any given point.	The building height has been kept under the maximum 7 metre roof limit, but a higher wall compartment is required to allow headroom at the roller doors for the large vehicles.
4.	<ul style="list-style-type: none"> To minimise the visibility of ancillary structures and outbuildings from the street, adjoining properties and public spaces; 	Enclosed ancillary structures and outbuildings are to be setback 20m from the primary road boundary and 10m to the rear and side boundaries.	Complied with all the setback requirements. Consistent with objectives and performance criteria.

Subclause	Objectives	Performance criteria	Assessment Summary
5.	<ul style="list-style-type: none"> To ensure ancillary structures and outbuildings are compatible in height, bulk and scale with the existing or proposed development on site in the rural locality. 	<p>The maximum floor area of ancillary structures used in conjunction with agriculture is 500m².</p>	<p>The proposed development is considered to be contextually appropriate in its rural setting. The relevant objectives of this clause are to encourage high quality design that responds to the environment and to ensure that sheds are located so as not to adversely affect adjoining properties. The design of the proposed shed is not considered to detract from its rural setting. The proposed shed is 800m², which is 300m² more than the current DCP allows (500m²). The owner has a large number of vehicles, including a car collection, motorcycles, agricultural machinery, boats etc. The owner has stated that 'the shed is not going to be used for carrying out any earthmoving or mechanical business or servicing of machines used in our construction business' in a document titled Memo 2 that was submitted to Council on 11/4/2017. A copy of this document is available on the Development Application file. The 800m² shed will store all equipment. The proposal is consistent with other sheds located in the vicinity.</p> <p>Property - 227 Polsons Road, Oxley Island (689/2001/DA & 611/2001/CC) has a shed with a floor area 1884m².</p> <p>Property- 206 Cowans Lane, Oxley Island (106/2002/DA, 113/2002/DA, 645/2005/CC & 757/2005/DA) has a shed with a floor area 2334m².</p>

Subclause	Objectives	Performance criteria	Assessment Summary
6.	<ul style="list-style-type: none"> • To minimise the visibility of ancillary structures and outbuildings from the street, adjoining properties and public spaces; • To ensure that the appearance of ancillary structures and outbuildings is of a high quality and where appropriate integrates with the streetscape; • To ensure ancillary structures and outbuildings are compatible in height, bulk and scale with the existing or proposed development on site in the rural locality. 	Ancillary structures and outbuildings may be used for habitable space, but must not be used as a separate occupancy.	Proposal not to be used as habitable space. Consistent with objectives and performance criteria.
J.7	<ul style="list-style-type: none"> • To minimise the visibility of ancillary structures and outbuildings from the street, adjoining properties and public spaces; • To ensure ancillary structures and outbuildings are compatible in height, bulk and scale with the existing or proposed development on site in the rural locality. 	Farm buildings should feature pitched roofs within the range of 15-25 degrees.	The proposed building pitch is 3 degrees, this allows the wall height to be kept under the maximum 7 metre roof limit. .

The proposal is consistent with other sheds located on adjoining properties:

Property - 227 Polsons Road, Oxley Island (689/2001/DA & 611/2001/CC) has a shed with a floor area 1884m².

Property - 206 Cowans Lane, Oxley Island (106/2002/DA, 113/2002/DA, 645/2005/CC & 757/2005/DA) has a shed with a floor area 2334m².

Accordingly, the proposed development is generally considered to be consistent with the relevant objectives and requirements of Greater Taree City Council DCP 2010.

Mid Coast Council Erosion and Sediment Control Policy

The aim of this policy is to minimise erosion and sedimentation in catchments, resulting from the disturbance of the soil surface associated with building works, changes in land use and urban development, the installation of services and road construction and maintenance. This is to ensure that potential pollutants are not directed to natural and artificial water bodies.

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

Council Policy

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

Context and Setting

The proposed development is considered to be contextually appropriate on this large site (29.61 HA) in this rural location. The adjoining properties 25 Thomas Lane, Oxley Island has 4.166HA and 25 Goudy Lane has 13.98HA.

Site Design and Internal Layout

The large rural site readily accommodates the proposed shed.

Views

View Assessment

The proposed building will not adversely impact views on the rural setting and the Manning River and does not impact on views from distant neighbouring properties. The proposal will have landscaping so that the building will recede into the landscape overtime.

Privacy (Aural and Visual)

The proposed shed will not create an unreasonable increased level of impact on the privacy or amenity of the surrounding properties, particularly as the proposal will have landscaping so that the building will recede into the landscape overtime.

Overshadowing

The proposed development does not overshadow distant neighbouring properties.

Visual Impact

The design of the shed does not pose a negative visual impact when viewed from the, adjoining properties or the adjoining coastal land (Manning River), given the existing vegetation in the riverbank and the proposed landscaping.

Flora and Fauna

The proposed development does not have a significant impact on local flora and fauna.

Cumulative Impacts

Approval of the proposed development does not establish an undesirable precedent for future development in this rural locality.

The proposal is consistent with other sheds located on adjoining properties-

Property - 227 Polsons Road, Oxley Island (689/2001/DA & 611/2001/CC) has a shed with a floor area 1884m².

Property- 206 Cowans Lane, Oxley Island (106/2002/DA, 113/2002/DA, 645/2005/CC & 757/2005/DA) has a shed with a floor area 2334m².

c) The Suitability of the Site for the Development

The site is suitably sized, configured and located to accommodate the scale and design of the proposed shed. With the exception of flood, the site is not subject to any significant natural hazards. The issue of flood has been addressed by the engineering department and their requirements are included as conditions of consent (see Annexure A).

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

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

e) The Public Interest

The proposal, subject to the recommended conditions, does not establish an undesirable precedent for future development in the locality. The proposal is considered to be consistent with the planning requirements for the area.

CONCLUSION:

The proposal is considered to be suitable for the site and the locality having regard to the development controls for this rural locality and maintains a reasonable relationship with neighbouring properties. *Whilst the building exceeds the maximum floor area; it is located on a very large rural property, is located approximately 100 metres from property boundaries (north, east and west) and approximately 80 metres from the riverbank and is not visually prominent from areas outside the subject land. As such, the effects of this non-compliance with the floor area does not result in significant impacts to the surrounding landscape.*

RECOMMENDATION:

It is recommended that 316/2017/DA for the erection of a shed on Lot 62 DP614202, 108 Cowans Lane, Oxley Island be approved subject to compliance with the conditions contained in Annexure A.

ANNEXURES:

A: Conditions of Consent

DEFERRED COMMENCEMENT CONDITION/S

- A. In accordance with Section 80(3) of the Environmental Planning and Assessment Act, 1979, this is a deferred commencement consent. The consent will not operate until evidence, as specified in the following deferred commencement conditions, has been submitted to and approved by the consent authority and written notice given under Section 100(4)(b) of the *Environmental Planning and Assessment Regulation 2000* that the deferred commencement conditions have been satisfied and the date from which the consent operates:
- a) A landscaping plan and specifications detailing the landscaping treatment of the site must be submitted to and approved by Council. The plan must be prepared by a suitably qualified landscape architect or horticulturalist who has appropriate experience and competence in landscaping and must include the following information:
 - a) Proposed location for planted shrubs and trees,
 - b) Botanical names and pot supply sizes of shrubs and trees to be planted,
 - c) Mature height of trees to be planted.

Reason:To ensure the building has no adverse visual impacts on the locality.

Evidence required to satisfy the above deferred commencement condition must, in accordance with Clause 95(3) of the *Environmental Planning and Assessment Regulation 2000*, be submitted to Council within 12 months of the date of this consent.

Under Section 80A of the Environmental Planning and Assessment Act 1979, the following conditions will apply, following written notice given under Section 100(4)(b) of Environmental Planning and Assessment Regulation 2000 and subject to any further conditions reasonably arising from compliance to the terms of the deferred commencement condition.

GENERAL CONDITIONS

General Requirements

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

1. The development is to be carried out in accordance with the details submitted with application **316/2017/DA, Memo 2** submitted via email on 11 April 2017 and the stamped plans (as amended by the following conditions).
2. All building works must be carried out in accordance with the provisions of the Building Code of Australia.
3. The drainage and onsite sewage management works must be inspected during construction by MidCoast Council to verify compliance with this consent the Plumbing Code of Australia and the Australian Standards. An inspection fee will apply in accordance with Council's Annual Fees and Charges schedule. Inspections must be carried out at the following stages:
 - a. Arrangements are to be made for Council to carry out inspections of the building during the following stages of its construction when:
 - i. Plumbing has been installed prior to covering in.
 - ii. Internal drainage lines are laid in position and prior to covering in.
 - iii. External drainage lines are laid in position and prior to covering in.
 - iv. Installation of the Onsite Sewage Management System and associated disposal areas are complete.

- b. Plumbers and Drainers are required to submit the following documents at the required stages of the work.
 - i. A Notice of Work (NoW) is to be submitted to Council no later than 2 business days before the work is carried out.
 - ii. A Certificate of Compliance (CoC) and a Sewer Service Diagram (SSD) are to be submitted to Council prior to the final inspection.

NOTE: The approved documentation has been provided by the Water and Sewerage Authority Mid Coast Water or alternatively the forms can be completed electronically on Council's web site and sent via email to tareecouncil@midcoast.nsw.gov.au

4. The shed must not be used for human habitation, commercial or industrial purposes.

Prior to the Issue of the Construction Certificate

The following conditions of consent must be complied with prior to the issue of the Construction Certificate.

5. The submission of an application under the provisions of Section 68 of the Local Government Act 1993 is required to be submitted to and approved by Council for the amended drainage.

Prior to Commencement of Works

The following conditions of consent must be complied with prior to any works commencing on the development site.

6. A Construction Certificate is to be issued by an Accredited Certifier prior to commencement of any construction works. The application for this Certificate is to satisfy all of the requirements of the *Environmental Planning and Assessment Regulation 2000*.
7. No work shall commence until you:
 - a. Lodge with MidCoast Council any Construction Certificate obtained from an Accredited Certifier (together with associated plans and documents) - a fee applies for this service.
 - b. Submit a notice of commencement giving Council:
 - i. Not less than two (2) days notice of the date on which it is proposed to commence work associated with this Development Consent.
 - ii. Details of the appointment of a Principal Certifying Authority.
 - iii. Details of the name, address and licence details of the Builder.
8. Soil erosion and sediment control measures are to be provided on the development site in accordance with Council's Development Control Plan 2010.
9. Signage is required to be erected in a prominent position on any work site on which building or demolition work is being carried out. The signage shall indicate:
 - a. The name, address and telephone number of the principal certifying authority for the work; and
 - b. The name of the principal contractor and a telephone number at which that person may be contacted outside of working hours; and
 - c. That unauthorised entry to the work site is prohibited.

The sign is to be removed when the work has been completed.
10. Soil erosion and sediment control measures are to be provided on the development site in accordance with Council's Development Control Plan 2010.

During Construction Works

The following conditions of consent must be complied with during the construction stage of the development.

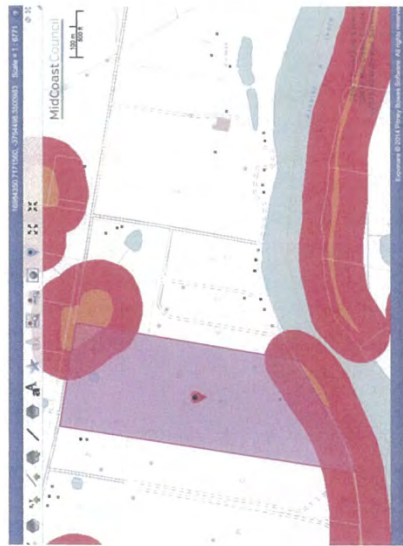
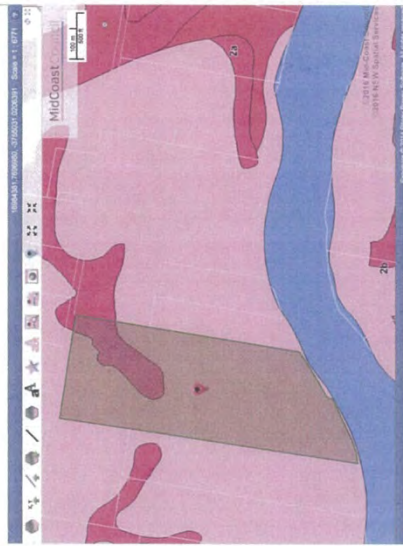
11. Work during construction which may result in noise nuisance being created, shall be restricted to hours of operation between 7 a.m. to 5 p.m. Monday to Friday, and 8 a.m. to 12 noon Saturdays. No work is permitted on Sundays and Public Holidays.
12. A copy of the stamped approved plans must be kept on site for the duration of site works and be made available upon request to either the Principal Certifying Authority or an officer of the Council.
13. All possible and practical steps shall be taken to prevent nuisance to the inhabitants of the surrounding neighbourhood from wind blown dust, debris, noise and the like during the demolition, excavation and building works.
14. All adjustments to existing utility services made necessary by the development are to be undertaken by the developer at no cost to Council.
15. Downpipes and the associated stormwater disposal system are to be suitably connected to the site stormwater connection point immediately after the guttering is positioned in order to prevent erosion of the site from roof water run off.
16. No portion of the building shall encroach onto any drainage or other easement.
17. The minimum finished floor level of the shed is to be RL 3.17 metres AHD which is the 1% AEP flood level. Certification from a Registered Surveyor confirming that the minimum floor levels have been achieved must be submitted to the Principal Certifying Authority when the dwelling reaches floor level stage.
Note: Framework associated with the building is not to be erected until such time as the floor level certification is received.
18. All adjustments to existing utility services made necessary by the development are to be undertaken by the developer at no cost to Council.

Prior to Issue of the Occupation Certificate

The following conditions of consent shall be complied with prior to the issue of an Occupation Certificate.

19. The building shall be completed in accordance with the relevant provisions and requirements of the Building Code of Australia.
20. An application for an Occupation Certificate must be submitted to and approved by the Principal Certifying Authority prior to occupation of the building.
21. Council is required to issue an approval to operate the Onsite Sewage Management (OSSM) facility.
22. Downpipes and the associated stormwater disposal system including overflow from rainwater tanks installed in conjunction to the development are to be suitably connected to the site stormwater connection point immediately after the guttering is positioned in order to prevent erosion of the site from roof water runoff. The stormwater is then to be disposed of to the system servicing the allotment.

Annexure B: Plans of Development



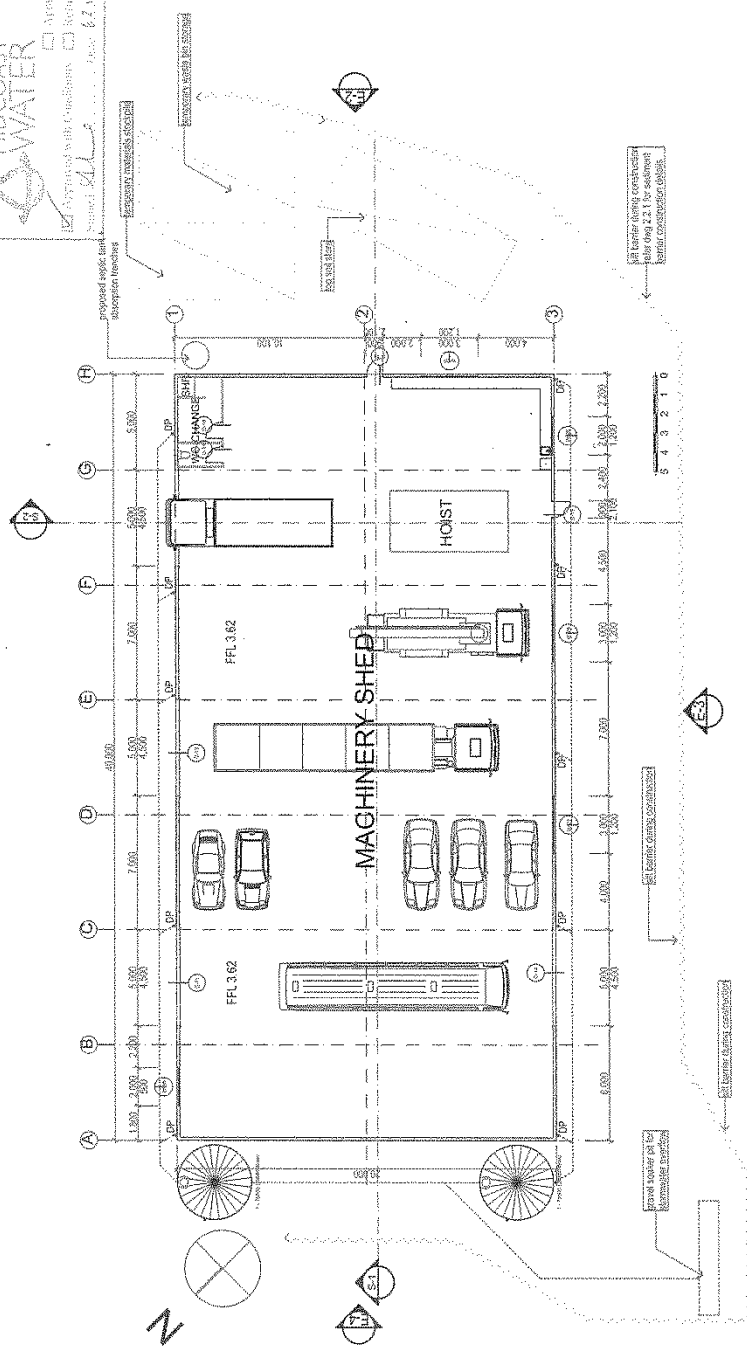
108 Cowans Lane Location Plan

MIDCOAST WATER

Approved with Conditions Refused
 Signed *ALC* Date 6.2.17

<p>Page Group Architects 108 Cowans Lane 2530 108 Cowans Lane, Page Group Architects 2530 108 Cowans Lane, Page Group Architects 2530</p>	<p>Page Machinery Shed Rangeage 108 Cowans Lane, Page Group Architects 2530 108 Cowans Lane, Page Group Architects 2530</p>	<p>108 Cowans Lane (only) Island NSW 2530 108 Cowans Lane 108 Cowans Lane</p>	<p>Zone A A100</p>	<p>DA 488</p>
<p>Site and Location SITE LOCATION PLAN</p>				

MIDCOAST WATER
 Approved with Conditions
 Subject to the following conditions:
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GROUND FLOOR PLAN
1:200

1.

<p>Page Machinery Shed Project No: 17/11096 Date: 14/06/2017 Drawn by: [Name] Checked by: [Name]</p>		<p>DA PLANS 0. GROUND FLOOR</p>	<p>DA 488</p>
<p>Project No: 17/11096</p>	<p>Sheet No: A</p>	<p>Scale: 1:200</p>	<p>Date: 14/06/2017</p>
<p>DB Council Lane, Quily Island NSW 2450</p>			

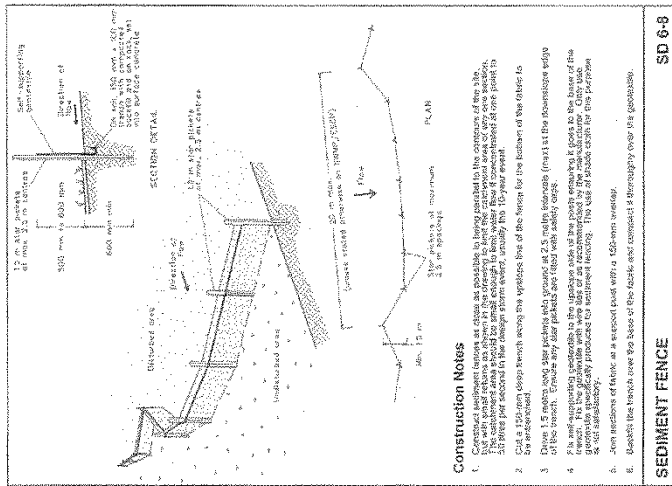
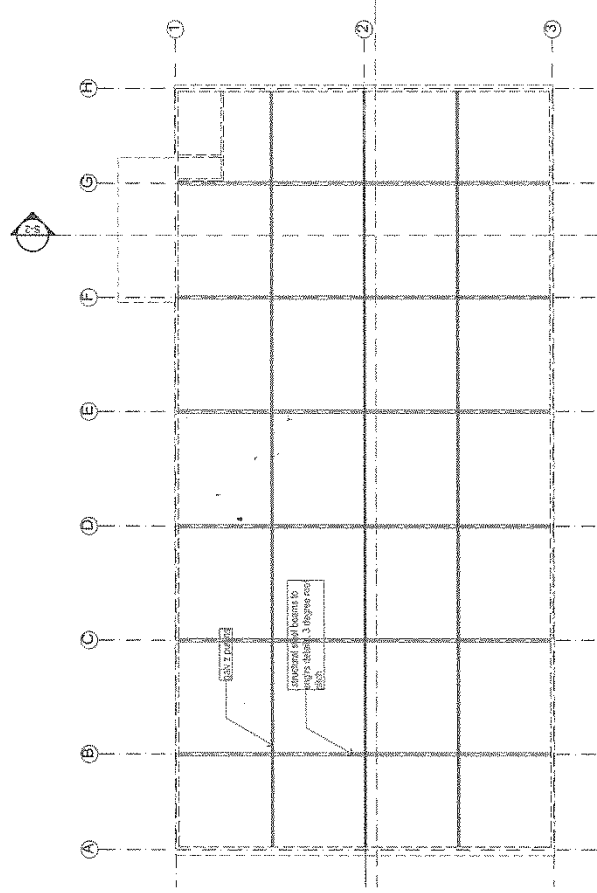


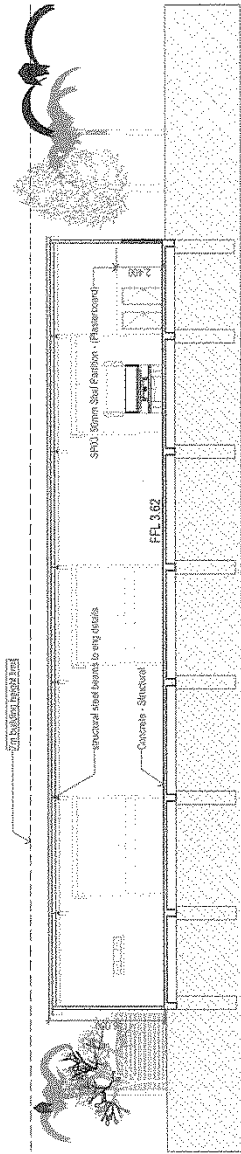
Figure 1: Sediment fencing
SOURCE: NSW Landcom, Managing Urban Stormwater, Soils and Construction Volume 1 March 2004.



ROOF FRAME
1:200

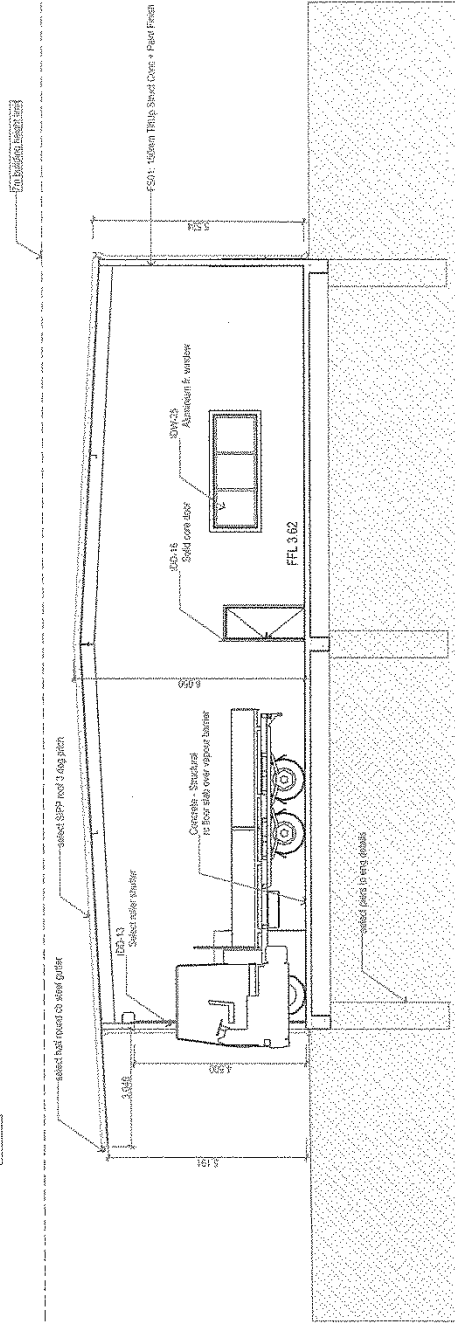
2.

<p>Project: Page Machinery Shed</p> <p>Client: Page Machinery</p> <p>Address: 108 Convent Lane, Coley Island NSW 2430</p> <p>Drawn by: DA 488</p> <p>Checked by: DA 488</p> <p>Scale: 1:200</p>		<p>Sheet: A</p> <p>Project: 1. ROOF FRAME PLAN</p> <p>DA 488</p>
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SECTION 1:200

S-1



SECTION 1:100

S-2

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**2 DA-169-2017 - HOLIDAY RENTAL ACCOMMODATION, AMAROO DR
SMITHS LAKE**

Report Author Steve Andrews, Assessment Planner, (Forster)

File No. / ECM Index DA169/2017 & PK11600

Date of Meeting 14 June 2017

DETAILS

Date Received: 19 October 2016

Applicant: Dr P S Haber

Owner: Dr P S Haber, Mrs M Haber, Prof. M D Norris, Mrs C M Norris

Land: Lot 228 DP32207 - 91 Amaroo Drive, Smiths Lake

Area: 556.4m²

Property Key: PK 11600

Zoning: RU5 - Village zone, GLLEP 2014

SUMMARY OF REPORT

- Development Application 169/2017 seeking consent for the use of the approved eight (8) bedroom dwelling house for short term holiday rental accommodation.
- Application notified in accordance with Council's Policy and submissions were received from the owners of three (3) neighbouring properties.
- Planning issues with respect to the scale and land use conflict with neighbouring residential properties.

SUMMARY OF RECOMMENDATION

Approve subject to conditions

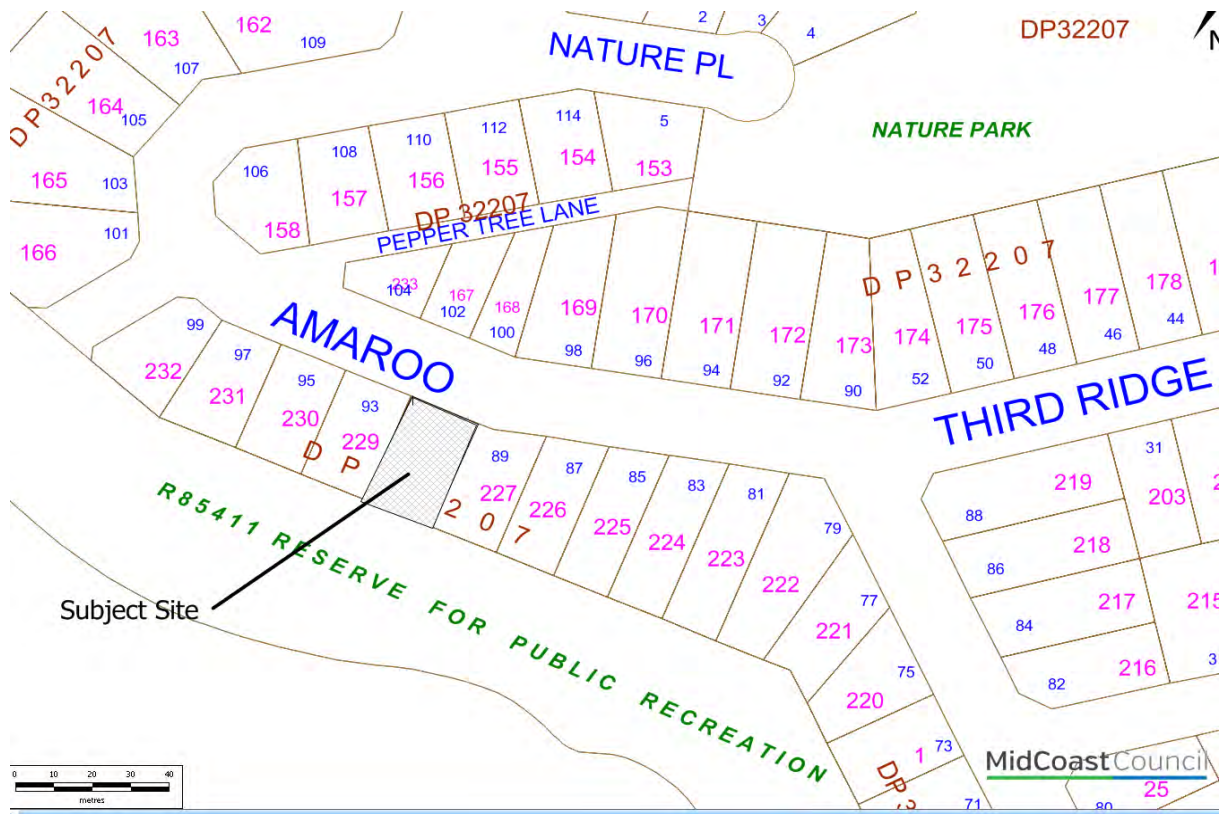
FINANCIAL/RESOURCE IMPLICATIONS

Cost of defending any appeal against Council's decision.

LEGAL IMPLICATIONS

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

SUBJECT SITE AND LOCALITY



BACKGROUND

BA 193/1991

Building approval was granted 8 May 1991 for the construction of a three (3) storey, three (3) bedroom dwelling house on the site. The approved building was constructed.

DA 591/2007

Development consent was granted 2 May 2007 for alterations and additions to the existing three (3) storey dwelling house that resulted in an increase in bedrooms to six (6). Construction Certificate 637/2007 was issued by Council on 19 June 2007 and later modified on 4 January 2010 to permit the conversion of the ground floor level storeroom into a seventh bedroom. The building work has been completed with an Occupation Certificate issued by Council on 19 July 2010.

DA 119/2011

Development consent was granted 18 January 2011 for alterations and additions to the existing three (3) storey, seven (7) bedroom dwelling house and the addition of a portable spa pool. The alterations included changes to the layout of the upper level floor plan whereby an eighth bedroom was created. Construction Certificate 463/2011 was issued by a private certifier on 18 May 2011 and the building work has been completed.

DA 277/2012

Development consent was granted 2 April 2012 for the construction of a two (2) storey dwelling house with attached balconies and a double garage on the owner's other property opposite the subject site, 102 Amaroo Drive. The development consent was modified 15 August 2012 to reduce the size of the approved dwelling house due to construction costs and to detach the double garage which would be subject to a separate development application. No building work has commenced and no Construction Certificate has been issued. That development consent lapsed on 2 April 2017 as there was no physical commencement of the approved development. Development application 347/2017 was submitted on 7 February 2017 for a new dwelling on 102 Amaroo Drive and that application is currently under Council assessment.

DA 327/2014

Development consent was granted 16 April 2014 for the proposed detached double garage on the owner's other property opposite the subject site, 102 Amaroo Drive. No building work has commenced and no Construction Certificate has been issued. That development consent will expire on 16 April 2019 if physical commencement of the approved development has not occurred.

DA 246/2015 & DA 349/2015 - Illegal uses

In response to a complaint Council investigated allegations that the approved dwelling house on the subject site was being used for short term holiday rental accommodation, that the site was being advertised accordingly on the internet with the capacity to sleep eighteen (18) persons and that 102 Amaroo (opposite and under the same ownership) had been under-scrubbed, provided with an aggregate surface and used as a car park for guests residing at the subject site. Council, by letter dated 22 October 2014, advised the owner of both properties, in the absence of an exemption from development consent, to submit a development application for the illegal use of the two (2) properties. The owner, by email dated 7 November 2014, advised Council that they were investigating avenues to obtain development consent for the use of 102 Amaroo Drive for car parking purposes. Planning consultant for the owner advised Council that development applications were being prepared for the use of both properties.

Development application 246/2015 for the car park on 102 Amaroo Drive was submitted on 22 December 2014. The applicant's planning consultant was advised by email 6 January 2015 that assessment of DA246/2015 would be held pending the submission of a development application for the use of 91 Amaroo Drive for holiday rental accommodation. Development application 349/2015 for the use of 91 Amaroo Drive as a dwelling for short term holiday rental was submitted on 1 April 2015.

The period of time that elapsed following the submission of the two (2) development applications was generally attributed to the delayed response from the Rural Fire Service (RFS) who were required to determine whether a bushfire safety authority could be issued given that the site is located in a bushfire prone area and their final determination that the development application was for 'Integrated Development' (requiring their prior approval).

A status report on the progress of the two (2) development applications was submitted to Council at its meeting on 23 February 2016, when it was resolved that:

1. *The matter be deferred at the request of the applicant.*
2. *Council request the local Rural Fire Service to expedite their review and advice to Council.*

Following Council's letter to the RFS dated 2 March 2016, in response to the above resolution, a bushfire safety authority from the RFS was received on 29 March 2016 enabling the subject development applications to be considered and determined by Council.

Following consultation with the owner on the planning issues identified by Council officers the owner, by letter dated 14 June 2016, advised Council that the two (2) development applications had been withdrawn.

19 October 2016

The subject development application was submitted seeking consent for use of the existing dwelling-house for short term holiday accommodation at times when the building is not occupied as a residential dwelling house by the owners of the land. The development application is the subject of this assessment report.

PROPOSAL

To use the existing approved eight (8) bedroom dwelling-house for short term holiday rental accommodation at times when the building is not occupied as a residential dwelling house by the owners of the land. Six (6) of the bedrooms have queen beds, two (2) of the bedrooms contain two (2) single beds each and thereby accommodating a maximum of sixteen (16) occupants.

Accommodation bookings and facility management is via the internet and a dedicated on-call property manager resides locally. Cleaning and maintenance staff also reside locally. The applicant advises that the facility is managed in accordance with the Holiday Rental Code of Conduct that addresses the potential impact of property amenities and factors including noise, guest overcrowding, garbage and car parking.

Bookings for the short term holiday rental accommodation use of the dwelling house are on the basis of only a single booking by an organised group, not unrelated occupants.

No building works are proposed.

The past occupation of the approved dwelling house for short term holiday rental accommodation has utilised the owner's other land to the opposite side of the road, 102 Amaroo Drive as a car park without development consent. The subject development application does not include that property or its use as a car park.

The applicant points out that other dwelling houses in the locality are used for short term holiday rental accommodation, including the adjoining dwelling house at 89 Amaroo Drive that provides accommodation for up to eight (8) guests. That adjoining property was originally approved (18 April 1973 - BA 34/1973) as a two (2) bedroom dwelling house. Following a complaint concerning the use of that property for short term holiday rental accommodation Council's investigation concluded that three (3) bedrooms had been approved and that the downstairs approved rumpus room was being used for sleeping accommodation. Accordingly, Council required the owner to cease the use of the downstairs sleeping accommodation and to alter the advertising of the short term holiday rental accommodation, on the Stayz website, to indicate the occupancy is limited to six (6) adults. The Stayz website currently indicates that three (3) bedrooms are available.

SITE DESCRIPTION

The site is located to the southern, lower side of Amaroo Drive and has rear frontage to the public reserve that borders the lake. The site is occupied by an approved three (3) storey, eight (8) bedroom dwelling house with an attached double garage.

Existing dwelling houses occupy each of the adjoining properties to the subject 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.***

Environmental Planning and Assessment Act 1979 (EPAA 1979)

The site is bushfire prone and in accordance with Section 79BA and 91 of the EPAA1979 and Section 100B of the Rural Fires Act 1997, the application is for Integrated Development and requires a bushfire safety authority to be issued by the Rural Fire Service (RFS). The RFS have issued a bushfire safety authority subject to conditions. Those conditions should be imposed if Council favourably considers this development application.

Great Lakes Local Environmental Plan 2014 (GLLEP 2014)

The Plan makes local environmental planning provisions for land in Great Lakes and in this regard aims (relevant to the proposed development):

- to facilitate the orderly and sustainable economic development of land;
- to promote the health and wellbeing of the population; and
- to minimise land use conflicts.

The scale of the proposed development is not considered to be consistent with the above objectives and this will be discussed in the following assessment.

The following consideration addresses the relevant provisions of the Plan.

Part 2 - Land use table

The site is located in a RU5 Village zone. The proposed use of the site for tourist and visitor accommodation (i.e. short term holiday rental accommodation) is permissible in the zone with development consent. The relevant objective of the zone is to provide for a range of land uses, services and facilities that are associated with a coastal village. The scale of the proposed tourist and visitor accommodation use is not considered to be consistent with the existing residential amenity associated with this coastal village (a tranquil environmentally sensitive locality) and the capacity of the site (in terms of parking and traffic) and therefore not consistent with the relevant objective of the zone. The issue of residential amenity will be considered in more detail later in this assessment, in particular under the heading of *d) Any Submissions Made in Accordance with the Act or Regulations*.

In respect to scale of the proposed development the following analysis has been conducted on 103 properties in Smiths Lake village, advertised on Stayz and Airbnb websites, for holiday rental accommodation. The (*) recognises the subject property.

Guests	Number of Properties	Percentage
16(*)	1(*)	1.0%
15	2	1.9%
14	1	1.0%
13	1	1.0%
12	8	7.8%
11	2	1.9%
10	19	18.4%
9	3	2.9%
8	27	26.2%
7	3	2.9%
6	19	18.4%
5	8	7.8%
4	5	4.9%
3	0	0.00%
2	4	3.9%
1	0	0.00%

Of the 103 properties 95% cater for 12 or less guests, 69% of the properties cater for between 6 and 10 guests. The subject development provides the highest level of accommodation and of the properties catering for more than 12 guests the subject property use as short term holiday accommodation is the only one, in accordance with Council's records, that has generated neighbour complaints concerning unreasonable noise, offensive language, availability of on-street parking and traffic safety.

Bedrooms	Number of Properties	Percentage
8(*)	1(*)	1.0%
7	0	0.00%
6	3	2.9%
5	9	8.7%
4	39	38.0%
3	36	35.0%
2	11	10.7%
1	4	3.9%

Of the 103 properties 99% have six or less bedrooms, 87% have less than 5 bedrooms and 73% of properties have between 3 and 4 bedrooms. The subject development is the only one with greater than 6 bedrooms (at 8 bedrooms) and has operated with complaints from neighbouring properties (refer to the later heading *d) Any Submissions Made in Accordance with the Act or Regulations* that addresses those neighbour concerns).

Part 4 - Principal development standards

This Part identifies various numerical development standards for proposed development. There are no numerical development standards applicable to the proposed development.

Part 5 - Miscellaneous provisions

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

Part 7 - Additional local provisions

7.21 - Essential services - This clause requires that development consent must not be granted to development unless the Council is satisfied that essential services (i.e. water, electricity, sewage, stormwater drainage and road access) are available or that adequate arrangements have been made to make them available. The site has access to all relevant necessary services.

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

The provisions of SEPP71 apply to the proposed development as the site is located within the *Coastal Zone* and within a *Sensitive Coastal Location*, as defined by SEPP71.

The proposed development is generally considered to be appropriate having regard to the aims and the relevant provisions of SEPP 71.

NSW Coastal Policy 1997

The New South Wales Coastal Policy is a broad policy for the *Coastal Zone* that is required to be considered having regard to the provisions of Clause 92 of the Environmental Planning and Assessment Regulation 2000.

The site is located within the *Coastal Zone*. Relevant to the principles of the Coastal Policy, the proposed development will not compromise the cultural heritage (both indigenous and European) and spiritual values nor adversely impact on the ecologically sustainability of the *Coastal Zone*.

Planning Proposal - Short-term Holiday Rental of Dwellings

Council resolved, at its meeting of the Strategic Committee on 10 June 2014, to prepare a Planning Proposal (PP) and Development Control Plan (DCP) with respect to the short-term holiday rental of dwellings. The current draft PP seeks to amend GLLEP 2014 and the draft DCP addresses such matters as parking, waste management, duration of use and the number of visitors/tourists residing in the dwelling. Both documents have been placed on public exhibition, adopted as draft documents by Council and the PP is currently with Planning NSW to be approved for gazettal. Accordingly the PP is a matter for consideration under Section 79C of the EPAA 1979, in respect to the subject development application. The draft DCP is considered to be a matter that is in the public interest having regard to the matters for consideration under Section 79C.

The objectives of the Planning Proposal are:

- To enable the use of dwellings for short term holiday accommodation.
- To prescribe the circumstances when development consent is required for the use of dwellings such purpose.
- To allow the continuation of the letting of dwellings on a short term basis in those zones where dwellings are permitted with development consent.
- To ensure the use operates at a scale that is compatible with maintaining the residential amenity of the surrounding neighbourhood.

The current draft amendment of GLLEP 2014 will require that development consent be obtained for the use of a lawful dwelling containing five (5) or more bedrooms, as short term holiday accommodation and that such use be limited to a maximum period for which any person is accommodated to sixty (60) consecutive days in a twelve (12) month period. The proposed development seeks to utilise the approved eight (8) bedroom dwelling, which sleeps up to sixteen (16) occupants, for short term holiday accommodation. In regard to the period of occupation the applicant has indicated that the building will be used for short term holiday accommodation when not occupied by the owners.

The objective of the draft DCP is:

- To ensure that the use of a dwelling for Short-Term Accommodation is compatible with the scale, amenity and environment of the surrounding neighbourhood.

The scale of the proposed development is not considered to be consistent with the existing residential amenity associated with this coastal village (a tranquil environmentally sensitive locality) and the capacity of the site (in terms of parking and traffic) and therefore not consistent with the relevant objectives of the draft DCP. The issue of residential amenity will be considered in more detail later in this assessment, in particular under the heading of *d) Any Submissions Made in Accordance with the Act or Regulations*.

The relevant draft DCP's controls are assessed as follows:

Amenity

- i. Privacy screening and landscaping may be required on the site to reduce overlooking and visual intrusion from outdoor private areas.

Comment: The proposed development is not considered to raise the amenity issues of overlooking and visual intrusion.

- ii. Noise attenuation barriers may be required where there is the potential to impact on the amenity of neighbouring properties.

Comment: Neighbours have submitted that past and more current use of the site as short term holiday rental accommodation has resulted in the occupants creating excessive noise and offensive language notwithstanding the local property manager's best intentions to limit such occurrences. Other neighbouring smaller short term holiday rental properties, in the absence of complaint, appear to operate satisfactorily. Therefore the scale of the proposed development would appear to be a contributing factor to the unreasonable impacts on the residential amenity of the occupants of the neighbouring dwelling houses. The earlier analysis under the heading *Great Lakes Local Environmental Plan 2014 (GLLEP 2014)* addresses the issue of scale of use and other similar uses in the village.

The submitted Noise Impact Assessment (NIA) satisfactorily addresses the issue of noise, having regard to the amenity of the neighbouring properties. The NIA's conclusions have been included in this report's recommendation and require measures for noise attenuation. This issue is discussed in more detail under the later heading *Privacy (Aural and Visual)*.

- iii. Outdoor lighting shall be designed and located to limit impacts on surrounding residences. Note: a light spill diagram may be required for outdoor recreation areas where swimming pools, spas, tennis courts or similar structures are located.

Comment: The proposed development is not considered to raise the amenity issue of unreasonable light spill.

Car parking

- I. The draft DCP prescribes the minimum number of car parking spaces on site for the subject development should be five (5) with the ability for one (1) space to be stack parked. Also any on-street parking spaces for the development should be identified in the development application.

Comment: The applicant refers to the submitted Traffic Impact Statement that supports the proposed development and concludes that the existing parking available on-site (for four (4) vehicles) and on the road verge immediately adjacent to the subject site (for two (2) vehicles) is capable of catering for up to six (6) cars or five (5) cars and one (1) trailer and is consistent with the provision on neighbouring properties and is able to meet the expected demand levels for the property being operated for the proposed use.

In accordance with the draft DCP, the scale of the proposed development (8 bedrooms) would generate a demand for five (5) off-street parking spaces. The compliant off-street parking capacity of the site is two (2) vehicles in the double garage (if maintained for that use) and one (1) vehicle stack parked on the driveway, leaving a deficiency of two (2) vehicles that would require to be parked on-street. This does not account for trailer or boat trailer parking and the potential outcome may lead to a conflict in the use of vehicles given that each of the five (5) vehicles, on average, would carry 3.2 persons. However, if the scale of the proposed development was reduced to say six (6) bedrooms for twelve (12) guests then the site and the property frontage could more reasonably accommodate four (4) vehicles and any trailer.

- II. On-street parking spaces available for the premises must be identified in the development application.

Comment: The vehicle parking spaces identified in the application include two (2) spaces in the double garage, two (2) stacked spaces on the existing driveway and two (2) parallel spaces to the property frontage, on Amaroo Drive.

Waste disposal

- I. All premises must be fitted with water saving devices. Details of water saving devices to all fixtures and fittings should be included in the application.

Comment: No detail was submitted in this regard however if the application is to be favourably determined then an appropriate condition could be included in a development consent.

- I. The location and design of waste storage facilities must be detailed within the application to enable assessment of the capacity of these facilities to accommodate additional waste produced by the short-term rental accommodation.

Comment: A waste management plan, in accordance with Council's requirements, could be required by a condition of development consent if this application is favourably determined.

Number of visitors and duration of use

- I. The maximum number of guests must not exceed 2 adults per bedroom.

Comment: The proposed development is consistent with this requirement.

Dogs

- I. The development application is to indicate whether dogs will or likely to be kept on the premises, If so, details of suitable fencing and gates are to be provided that are capable of confining the dog regardless of breed, age, size or physical condition.

Comment: Favourable determination of this development application could include a condition addressing the above requirement.

Holiday Rental Code of Conduct

The Holiday Rental Code of Conduct was prepared by the Holiday Rental Industry Association along with the NSW Department of Planning and Environment and Destination NSW that became effective from 1 May 2012. The Code has since been amended and relaunched by the Holiday Rental Industry Association (HRIA) in March 2013. On the 24 March 2015 the code was relaunched as the National Holiday and Short Term Rental Code of Conduct that became effective on 31 May 2015. The Code had been developed to provide a self-regulatory approach to the management of residential properties that are used for the purposes of short term holiday rental accommodation.

The objectives of the Code are:

- a) To establish acceptable standards of behaviour for holiday rental guests and visitors to minimise any adverse social or environmental impacts;
- b) To assist owners and managers of holiday rental accommodation to meet the needs of all stakeholders including guests, neighbours, local communities, local councils and government authorities; and
- c) To inform the community of the standards of conduct expected from holiday rental owners, managers, guests, and visitors so as to effectively minimise amenity impacts.

The Code generally applies to residential development with a maximum of six (6) bedrooms unless Council permits holiday rental in properties with more than six (6) bedrooms. The maximum number of guests must not exceed two (2) adults per bedroom and the number of guest's visitors must not conflict with residential amenity of the locality. Of relevance to the subject development applications, access and parking should ensure ease of access with minimum disturbance to other residents or neighbouring properties, guests must not engage in anti-social behaviour or create offensive noise to neighbouring properties between 10.00 pm and 8.00 am and during arrival and departure at any time and any gathering, celebration or entertainment must not conflict with the residential amenity of the locality.

The applicant has indicated that the subject short term holiday rental accommodation use is managed in accordance with the Code and associated 'house rules' prescribed by the accommodation manager and as such the environmental impacts of the proposed use are similar to the existing use of the site as a dwelling house.

The neighbours, in their submissions that will be discussed under the later heading *d) Any Submissions Made in Accordance with the Act or Regulations*, submit that the proposed use has raised a number of issues that have unreasonably impacted on the residential amenity of the locality. Accordingly the proposed use, based on the neighbour's submissions, has not operated strictly in accordance with the Code and therefore, as discussed in this assessment report the scale of the proposed use is not considered appropriate having regard to the objectives of the Code.

Development Control Plan 2014 (DCP 2014).

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

The relevant provisions of the Plan are discussed as follows:

Part 3 Character Statements

The site is located in a peaceful and tranquil sensitive environmental 'coastal village'. The scale of the proposed use is considered to be contextually inappropriate having regard to the current and desired environmental character of the locality and the small scale of existing residential development.

Part 4 Environmental Considerations

- 4.1 Ecological Impacts - The proposed development does not have a significant ecological impact.
- 4.4 Effluent Disposal - The proposed development is connected to MidCoast Water's reticulated sewage system.
- 4.7 Bushfire - The site is bushfire prone and in accordance with Section 79BA and 91 of the EPAA1979 and Section 100B of the Rural Fires Act 1997, the application for the proposed use as tourist and visitor accommodation has been determined by the Rural Fire Service (RFS) as being 'Integrated Development' requiring a bushfire safety authority to be issued by the RFS. The RFS have issued a bushfire safety authority subject to conditions. Those conditions are included in this report's recommendation.

Part 10 Car Parking, Access, Alternative and Active Transport

The relevant objectives of this Part are to ensure there is adequate and safe provision for access, manoeuvring and parking within a development without compromising street character and to promote alternate and active transport. Part 10 does not provide off street parking generation rates for the proposed use nor does the referenced Roads and Maritime publication 'Guide to Traffic Generating Developments 2002'.

The applicant has submitted a traffic impact assessment report prepared by Better Transport Futures. The report concludes that the existing parking available on-site and on the road verge immediately adjacent to the subject site is consistent with that of neighbouring properties and capable of meeting the expected demand levels for the property being operated as short term rental accommodation.

Under DCP 2014 the parking generation demand for an eight (8) bedroom dwelling house is two (2) off-street parking spaces. Council's Planning Proposal (discussed earlier) will require five (5) off-street parking spaces for the subject use, with a maximum of one (1) stacked parking space arrangement. The proposed development will, subject to use of the existing double garage (used as a games room, with pool table and table tennis) as being capable of accommodating on site three (3) off-street parking spaces, one (1) of which is stack parked on the driveway, leaving a deficiency of two (2) vehicles that would require to be parked on-street. This does not account for trailer or boat trailer parking and the potential outcome may lead to a conflict in the use of vehicles given that each of the potential five (5) vehicles, on average, would carry 3.2 persons. However, if the scale of the proposed development was reduced to say six (6) bedrooms for twelve (12) occupants then the site and the property frontage could more reasonably accommodate four (4) vehicles and any trailer.

Disability Discrimination Act 1992 (DDA 1992) & Premises Standards

This Commonwealth legislation is a matter for consideration by Council when assessing a development application. The relevant objectives of this legislation are to eliminate, as far as possible, discrimination against persons on the ground of disability in the areas of accommodation, to ensure, as far as practicable, that persons with disabilities have the same rights to equality before the law as the rest of the community; and to promote recognition and acceptance within the community of the principle that persons with disabilities have the same fundamental rights as the rest of the community.

The Commonwealth Disability (Access to Premises - Buildings) Standards 2010 effectively underpins the requirements of the DDA 1992 and provides certainty to building certifiers, building developers and building managers that, if access to buildings is provided in accordance with the Standards, the provision of that access, to the extent covered by the Standards, will not be unlawful under the DDA 1992.

The Standard defines an existing building with four (4) or more bedrooms used for rental accommodation as a 'specified Class 1b building'. When the subject building is not in use as a single dwelling it is considered to be in use as a Class 1b building. Clarification on this interpretation is contained in the detailed guideline that has been prepared by the Australian Human Rights Commission to assist in the understanding of the application of the Commonwealth Disability (Access to Premises - Buildings) Standards 2010. The guideline by example indicates that an existing farmhouse that is converting two (2) bedrooms to farm stay short term accommodation (generally for unrelated guests), access is not required by the Premises Standards, however if four (4) or more bedrooms are being made available to guests at least one (1) bedroom and associated sanitary facilities (and at least one (1) of each type of room or space for use in common by residents) must be made available (ref. Part D3 of the guideline). Also, if an existing dwelling house is being converted to a Class 1b bed and breakfast then accessible facilities are required if the number of rental bedrooms is four (4) or more. Accordingly, the proposed development is considered to be similar to these examples except that the proposal is for related guests (either family and /or related friends) as opposed to generally unrelated guests with a farm stay or a bed and breakfast. In the absence of any further clarity it cannot be assumed that the requirements of the guideline apply to the proposed use.

Notwithstanding the above, the guideline points out that Class 1b buildings not covered by the definition (with less than four (4) bedrooms in a converted building) would continue to be subject to possible DDA complaints by virtue of the fact that it is not within the scope of the Standard because it is not a specified Class 1b building.

The applicant submits that the subject building use remains as a class 1a building for the purposes of the Building Code of Australia (BCA) and that the proposal is the use of the dwelling house for short term holiday rental accommodation. The building classification provisions of the Commonwealth Disability (Access to Premises - Buildings) Standards 2010 do not align with those of the BCA and therefore the applicant's interpretation is questionable.

From consultation with other Councils, the NSW Legislative Assembly Committee on Environment and Planning (who have reviewed the adequacy of the regulation of short term holiday letting in NSW) and the Australian Human Rights Commission, there is no further clarity in respect of this matter and its applicability to the proposed use. Council could be conservative in their interpretation of the legislation and the guidelines having regard to the operation and nature of the proposed use and the current lack of suitable access and facilities for persons with a disability. A reduction in scale of the proposed development to four (4) bedrooms (aligning with the above guidelines) would reduce but not remove the potential risk of a discrimination action. In the absence of clarity and given the potential costs associated with providing the facilities and access for persons with a disability to and in the current building, it is considered unreasonable to require retrospective compliance.

Council Enforcement Policy

The aims of the Policy are to establish clear guidelines for Council's response to unlawful activity and to encourage voluntary compliance by initiating a process of public awareness. In this regard the Policy provides principles and consideration for the exercise of discretion by Council officers during the investigation and enforcement process to ensure transparency, procedural fairness and natural justice.

The use of the approved dwelling house for tourist and visitor accommodation requires the development consent of the Council. The use has operated for approximately eight (8) years accordingly to the owner's planning consultant. Complaints from neighbouring residents alerted Council to the use and investigations led to the lodgement of the previous (DA349/2015) and then the subject development application.

The planning consultant submits the following in support of his client's actions in respect of the use of the dwelling house for tourist and visitor accommodation.

The use of the existing dwelling for short-term holiday rental has been ongoing for at least 8 years, and certainly since our clients have owned the land.

The use of the dwelling has no consent, the same as just about every other similar use in the Great Lakes LGA.

Since being alerted to issues by Council's officer, Mr Pevitt, our clients have cooperated fully with his requests, including the lodgement of the subject development application.

Based on the Planning Proposal prepared by Council for Draft Amendment to Great Lakes Local Environmental Plan 2014 (Short-term holiday rental of dwellings), development consent will need to be sought for any such use of a dwelling (sic) five or more bedrooms for the purpose of short-term tourist and visitor accommodation.

Based on Council's Planning Proposal, an issue only arises with respect to a requirement for lodgement of a development application in this case as the dwelling has more than four bedrooms. Assuming that the amendment to the LEP proceeds, then consent for use of a lawful dwelling for short-term tourist and visitor accommodation will not be required if the dwelling has only four bedrooms or less. Until the amendment to the LEP proceeds, though, any and all uses of existing dwellings for short-term tourist and visitor accommodation within the Great Lakes LGA (that does not presently have development consent) is technically being operated without development consent.

Our clients respectfully request that Council not apply the offence and penalty provisions of the EP&A Act for the following reasons:

- *The lodgement of the development application has pre-empted the amendment to the LEP with respect to provisions relating to use of an existing dwelling for short-term tourist and visitor accommodation: and*
- *Our clients have cooperated fully with Council with respect to lodgement of the DA.*

Given the cooperation of the owners in lodging a well prepared development application and having regard to the nature of the proposed use, the Policy's options for dealing with unlawful activity and the terms of this report's recommendation, a penalty infringement notice should not be served in this case.

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

Context

The scale and nature of the proposed use is not considered to be contextually appropriate for this site that is within a small scale tranquil residential locality. Accordingly, a reduction in the scale of the proposed development is recommended.

Site Design and Internal Layout

The site for the proposed use cannot accommodate all required off-street parking associated with the scale of the proposed use, as discussed previously. The internal layout of the building has been adapted for the proposed use however appropriate access and facilities for persons with a disability have not been modelled into the existing design. This later issue is discussed previously under the heading *Disability Discrimination Act 1992 (DDA 1992) & Premises Standards*

Views and Visual Impact

The proposed development will not adversely impact on views of the surrounding locality nor will it visually detract from outlooks from neighbouring properties.

Privacy (Aural and Visual)

The proposed use, based on the objections from the neighbouring properties, has operated with instances of unreasonable noise and offensive language notwithstanding the local property manager's best intentions to limit such occurrences. The scale of the proposed use is considered to be a contributing factor to this issue. The applicant has submitted a Noise Impact Assessment (NIA) that has been assessed by Council's Environmental Health Officer as acceptable subject to limiting the scale of the proposed development (as recommended) and applying conditions that include those recommended in the NIA. Those conditions are included in this report's recommendation.

Visual privacy with neighbouring properties will be retained.

Overshadowing

The proposed use does not create any unreasonable overshadowing of neighbouring properties.

Flora and Fauna

The proposed use does not have a significant adverse impact on local flora and fauna.

Cumulative Impacts

The scale of the proposed use is considered to be contextually inappropriate having regard to the residential use and amenity of the neighbouring properties. Approval of the development as proposed would establish an undesirable precedent for further similar scale development in the locality that cumulatively would erode/change the environmental character of the village.

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

The site is not considered to be suitable for the scale of the proposed tourist and visitor accommodation use as discussed in this assessment. A more modest scale of use would be compatible with the neighbouring small scale residential use of land.

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

Notification of the previously withdrawn development application for the proposed use resulted in the submission of concerns from fourteen (14) neighbouring properties.

The subject application was notified to neighbouring property owners, including those neighbours who previously raised concerns, and three (3) submissions were received.

The submissions in response to both above notifications refer to the following issues:

1. The proposed use is contrary to the objectives for the RU5 Village zoning under GLLEP 2014 in particular the proposed development prejudices the established land use pattern in the village.

Comment: The objective concerning prejudicial impacts relates to non-residential development and therefore not to the proposed development. The issue of GLLEP 2014 objectives was assessed earlier under the heading *Great Lakes Local Environmental Plan 2014 (GLLEP 2014)*. The concerns raised by the neighbours are supported to the extent of the inappropriate scale of the proposed use, as previously discussed.

2. The proposed use is contrary to provisions of Council's Development Control Plan 2014

Comment: This issue was assessed earlier under the heading *Planning Proposal - Short-term Holiday Rental of Dwellings* and also under the heading *Development Control Plan 2014 (DCP 2014)*. The concern raised by the neighbour is supported to the extent of the comments made previously in respect to the inappropriateness scale of the proposed use.

3. Scale of Holiday Rental Use

- An eight (8) bedroom home with the potential to accommodate up to 16 to 18 adults and an unlimited number of children is not consistent with the scale of use of other residential properties and property holiday rentals in the village. The use is worse than a motel where an on-site manager is available to subdue unruly behaviour. A neighbour suggests that the use should be restricted to eight (8) adults and their immediate children, only.

Comment: The concern of the neighbours is supported to the extent of the comments made in this assessment report regarding the scale of the proposed use. The number of beds in the building can accommodate up to sixteen (16) occupants only. An analysis of 103 other properties in the Smiths Lake village providing the same use, was discussed under the earlier heading *Great Lakes Local Environmental Plan 2014 (GLLEP 2014)*. The proposed use is dissimilar to a motel as it operates on the basis of accommodating related occupants within the one building and over a varying period, without an on-site manager, the group dynamics of which can result in a greater adverse impact on the residential amenity of a locality. The neighbour's suggestion of limiting the scale of the use is supported to the extent of this report's recommended outcome.

- The use should be operated in accordance with a Council adopted regulation that incorporates appropriate protections for neighbouring residential properties.

Comment: The neighbour's concerns can be satisfactorily addressed by the conditions of a favourable determination of this development application.

- The use can often generate overflowing garbage bins left in the street for collection day and neighbour's bins have been taken and used by occupants of the holiday use.

Comment: No evidence is available to enable a comment however the concern can be satisfactorily addressed by a conditions of a favourable determination of this development application

- A similar proposal in Gosford LGA was refused by the Land and Environment Court and Gosford Council now prohibits short term rental accommodation with more than six (6) bedrooms.

Comment: In 2013 the Land and Environment Court heard the case of 'Dobrohotoff vs Bennis'. The case concerned the use of a six (6) bedroom dwelling-house located within a 2(a) low density residential zone (under Gosford Planning Scheme Ordinance) in Terrigal to provide short term holiday accommodation. The Court heard that the dwelling had for a number of years been used by tenants who engaged in anti-social behaviour, using the dwelling for 'hens' and 'bucks' nights and frequent parties. These parties consistently impacted upon the surrounding areas amenity with loud music and flashing lights continuing into the early hours of the morning.

In her finding, Justice Pepper ruled that the use of a 'dwelling' for the purpose of short term holiday accommodation was prohibited in residential zones under Gosford Planning Scheme Ordinance and that the house could no longer be used for such purpose for the following reasons:

- i) The only relevant development permissible with consent within the 2(a) Residential zone of the Gosford Planning Scheme Ordinance (GPSO) was a 'dwelling house';
- ii) The term 'dwelling house' refers to a building designed for the use as a dwelling for a single family;
- iii) The term dwelling contained the notion of a domicile, which has the notion of a permanent home;
- iv) The temporary nature of the short term holiday accommodation land use did not constitute a 'dwelling house' or a 'domicile'; and
- v) As the use did not constitute a 'dwelling house' under the GPSO, the use of the property for short term holiday accommodation was not otherwise permissible and as such, was prohibited within the zone and in breach of the Environmental Planning and Assessment Act 1979.

The above case varies from that of the proposed development in that the proposed tourist and visitor accommodation use is permissible in the RU5 Village zone under GLLEP 2014 (as discussed previously under the heading *Great Lakes Local Environmental Plan 2014 (GLLEP 2014)*). The residential amenity impacts are however similar to that experienced by the neighbours of the subject site and in that regard the judge indicated that it was not unreasonable for the neighbours (in that case) to expect a degree of peace and quiet in the use of their house and their backyard.

The Gosford Local Environmental Plan requires a development application for short term rental accommodation comprised of 5 or 6 bedrooms. There does not appear to be a prohibition for short term rental accommodation.

- Suggestion that a sign should be displayed on the property indicating restrictions on the use and 24 hour contact details for complaints.

Comment: The owner's planning consultant has indicated that the proposed use is managed in accordance with the Holiday Rental Code of Conduct. The Code is designed to ensure that the residential amenity of the property and the neighbours is maintained and in this regard house rules are required to be displayed and handed to guests that include fundamental obligations of guests and visitors on noise, residential amenity, parking, garbage and recycling, security, hours and use of spas, use of deck and balcony areas, smoking, pets, use of BBQ's, damages and breakages, departure arrangements and emergency contact numbers.

The neighbours' suggestion is supported to the extent of the conditions of this report's recommendation restricting the proposed tourist and visitor accommodation use to six (6) bedrooms for twelve (12) guests and the provision of external signage indicating the contact phone number for the property manager.

- Suggestion that the use would be better located in a rural or semi-rural area or alternatively the use downsized to the off-street parking capability of 91 Amaroo Drive.

Comment: The neighbours' suggestion regarding the downsizing of the proposed tourist and visitor accommodation use is supported (as discussed earlier) to the extent of the conditions of this report's recommendation restricting the use of the proposed tourist and visitor accommodation use to a maximum of six (6) bedrooms for twelve (12) guests.

4. Noise - Unreasonable noise given the potential number of occupants and vehicles (advertised to cater for 16 adults and an unlimited number of children) and also late at night and early morning. The property is locally known as the 'party house' and the parties are becoming continuous and louder. The unreasonable noise created is considered to be offensive to neighbouring properties as identified in the Protection of the Environment Operations Act 1997 and in the Holiday Rental Code of Conduct.

The submitted Noise Impact Assessment does not survey neighbouring property owners or NSW Police regarding record of complaints, does not acknowledge the noise difference between long and short term use, does not recognise that noise from the use is different to that typical in the locality and that the methodology used is aimed at large industrial complexes and therefore not strictly applicable to the subject use.

Comment: The owner's planning consultant has advised that the client is aware of past occurrences of unreasonable noise.

The neighbours' comments are noted and serve to indicate that the past operation of the use may not be consistent with the desired residential amenity of the locality and the expectation referred to by Justice Pepper in the Land and Environment Court proceedings discussed in 3 above. Appropriate conditions are included in this report's recommendation that address the scale of the proposed use and the issue of unreasonable noise.

In respect to the comments directed to the submitted Noise Impact Assessment (NIA), that assessment was revised in submission dated 23 March 2017 and has been assessed by Council's Environmental Health Officer as acceptable subject to limiting the scale of the proposed development (as recommended) and applying conditions that include those recommended in the NIA. Those conditions are included in this report's recommendation.

5. Anti-social behaviour - The neighbours submit that bucks and hens parties have in the past been conducted on the subject property some with strippers. Also schoolies week, fire-works, offensive language, drunken occupants returning from local clubs on the courtesy bus or local restaurants with associated noise at unreasonable hours. The behaviour has also included urinating on neighbour's properties and in public places. This behaviour is not appropriate for exposure to local young families and drives local residents indoors. There is no local Police presence to satisfactorily address these inappropriate activities and the local management of the sites is remote from the site and is not effective in controlling inappropriate behaviour.

Comment: The neighbours' comments are noted and serve to indicate that the past operation of the use may not be consistent with the desired residential amenity of the locality and the expectation referred to by Justice Pepper in the Land and Environment Court proceedings discussed in 3 above. Appropriate conditions are included in this report's recommendation that address the scale of the proposed use.

6. Traffic and Parking

- The existing double garage has been used as a games room and not for parking of vehicles. Occupants leave the door open and play table tennis, snooker and pool late at night causing noise nuisance to neighbouring properties. The use of the garage for activities other than for parking of cars is confirmed by a floor plan layout on one holiday rental website.

Comment: Although advised that the use of the double garage as a games room has ceased the current advertising of the short term holiday rental accommodation use on the internet retains the games room use of the garage negating its desired purpose. The concerns of the neighbours' are supported in this regard and serve to indicate that the operation of the use may not be consistent with the desired residential amenity of the locality and the expectation referred to by Justice Pepper in the Land and Environment Court proceedings discussed in 3 above. A condition requiring the use of the garage for the accommodation of vehicles is included in this report's recommendation/

- On street parking is in high demand thereby impacting on local residents and their visitors.

Comment: The scale of the proposed short term holiday rental accommodation use and lack of suitable off-street parking on the site contributes to the locality's demand for on street parking. This issue was discussed under an earlier sub-heading *Part 10 Car Parking, Access, Alternative and Active Transport*. Accordingly, the concerns of the neighbours are supported and appropriate conditions are included in this report's recommendation.

- There has been up to seventeen (17) vehicles associated with the use parked in the locality and this has obstructed the school bus and large trucks.

Comment: The neighbours' comments are noted and serve to indicate that the scale of the proposed use may not be appropriate having regard to the residential amenity of the locality.

- The submitted Traffic Impact Statement (TIS) indicates that five (5) to six (6) parking spaces are available on site and this is not possible given the use of the double garage as a games room and only two (2) spaces are available on the driveway. This forces on-street parking demand. The TIS survey was conducted during the week and not at prime time on the weekend.

Comment: The TIS indicates that four (4) parking spaces are available on-site with two (2) on-street parking spaces, thereby totalling potentially six (6) spaces. Also vehicles with trailers, in lieu of just vehicles, could park on the driveway. It is considered that given the number of potential occupants (16) and possible demand for trailer parking for recreational vehicles, on occasions six (6) spaces may be inadequate. The issue of parking was discussed under an earlier sub-heading *Part 10 Car Parking, Access, Alternative and Active Transport*. Accordingly, the concerns of the neighbours are supported and appropriate conditions are included in this report's recommendation.

7. Privacy

Building occupants have once climbed onto the roof of the subject building and impacted on the privacy of neighbouring properties.

Comment: Noted

8. Trespass

Trespass has occurred onto neighbouring properties to access the rear yard of 91 Amaroo Drive, due to existing site vegetation. Also, occupants of other nearby rental properties use the subject car park and trespass onto neighbouring properties as a short cut to their properties. This practice raises concerns with neighbour's safety and security and should not require neighbours to unnecessarily fence their land.

Comment: Inspection disclosed access to the rear yard of 91 Amaroo Drive is readily available without access over neighbouring adjoining land. The issue of trespass is a private civil matter and not a matter for Council's assessment.

9. Disabled Access

The neighbour's submission questions whether suitable access for persons with a disability has been provided.

Comment: Access and facilities for persons with a disability have not been incorporated into the existing building design. The neighbour's concern is noted and the issue is assessed in more detail under an earlier heading *Disability Discrimination Act 1992*.

10. Previous Petition

The neighbours draw Council's attention to a petition that was submitted 1 December 2014, prior to the lodgement of the previous development applications with signatories from seven (7) neighbouring properties, which demanded Council to take action in respect of the subject holiday rental use. The concerns raised related to the number of guests accommodated on the subject property, the number of vehicles attributed to the use, the number of boats and trailers, the use of the subject garage for recreational activities rather than for the parking of vehicles, restricting pets to be housed in the subject front yard, lack of contact for complaints and applying the same set of restrictions to all holiday rentals in Smiths Lake.

Comment: The concerns raised in the petition have been addressed in this report.

11. Precedent

If allowed the proposed use would establish a dangerous precedent not only for Smiths Lake, but within the entire Council area.

Comment: The scale of the proposed use is considered to be contextually inappropriate having regard to the residential amenity of the neighbouring properties. Approval of the development as proposed would establish an undesirable precedent for further similar scale development that cumulatively would continue to erode the tranquil environmental character of the village. Therefore the concern of the neighbours' is supported.

12. Contrary to Holiday Rental Code of Conduct

The proposed use is not being conducted in accordance with the provisions of the Code and as a party house that conflicts with the residential amenity of the locality.

Comment: The Code and the implications in respect of the proposed use are discussed earlier under the heading *Holiday Rental Code of Conduct*. The neighbour's concerns can be satisfactorily addressed, as recommended, by conditions of a favourable determination of the development application.

13. Loss of property value

Comment: Property value is not a matter for consideration under Section 79C of the EPAA 1979 and no further comment is offered.

e) *The Public Interest*

The scale of the proposed tourist and visitor accommodation use is considered to be contextually inappropriate in this tranquil and small scale residential village. Approval of the development as proposed would establish an undesirable precedent for further similar scale development that would continue to erode the tranquil environmental character of the locality, would have an adverse social impact on the residents and therefore would not be in the public interest.

CONCLUSION

Tourist and visitor accommodation uses of a small residential scale are considered appropriate in this coastal village. The proposed use should be scaled back to six (6) bedrooms for twelve (12) persons thereby providing the owners with a reasonable financial return on their holiday home whilst relating the proposed use more appropriately to the capacity of the site and the scale of neighbouring residential development. This can be achieved in the form of a reviewable condition, whereby Council could review the terms of the condition should complaints be received regarding the operation of the approved use. The existing double garage should be maintained for its intended use, to accommodate vehicles and this issue is addressed in this report's recommendation.

RECOMMENDATION

It is recommended that development consent be granted to DA 169/2017 for the use of 91 Amaroo Drive Smiths Lake for tourist and visitor accommodation subject to compliance with the conditions outlined in Annexure A.

ANNEXURES

A: Conditions of Consent

GENERAL CONDITIONS

1. Limitation of Proposed Use

The short term holiday rental accommodation use is to be limited to a maximum number of six (6) bedrooms for twelve (12) guests. The approved use is to be available for rent for a period of no more than sixty (60) consecutive days in any twelve (12) period.

In accordance with Section 80A (10B) of the *Environmental Planning and Assessment Act 1979*, this condition is a reviewable condition. Upon the condition being reviewed, the limitations on proposed use may be varied in accordance with the recommendations of the review. The purpose of this reviewable condition is to enable the limitations of proposed use to be reviewed should complaints be received regarding noise or other disorderly or antisocial behaviour.

Reason: To ensure that the approved use is appropriate for the site and is compatible with the neighbouring residential environment and amenity.

2. Smoke Alarm/s

Prior to the continuance of the use, smoke alarms must be installed and maintained within the entire building and be located in accordance with the National Construction Code Series 2014 - Building Code of Australia. The alarms must be hard wired and comply with the Australian Standard 3786.

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

3. Spa pool to be registered

Under current legislation, the spa pool is required to be registered with the NSW Government on the swimming pool register. The property is required to have a compliance certificate for a tourist facility and a copy of the certificate is to be submitted to Council prior to continuance of the use.

Reason: Comply with current State legislation

4. Existing Garage Use

The existing double garage is to be used only for the accommodation of motor vehicles associated with the approved use of the building.

Reason: To ensure that the approved use has suitable off-street parking accommodation.

5. Noise

Noise associated with the premises (including all associated mechanical plant and equipment) must not be a source of 'offensive noise' at the nearest affected premises:

'offensive noise' is defined under the *Protection of the Environment Operations Act 1997* as noise:

- a) that, by reason of its level, nature, character or quality, or the time at which it is made, or any other circumstances:
 - i) is harmful to (or is likely to be harmful to) a person who is outside the premises from which it is emitted, or
 - ii) interferes unreasonably with (or is likely to interfere unreasonably with) the comfort or repose of a person who is outside the premises from which it is emitted, or
- b) that is of a level, nature, character or quality prescribed by the regulations or that is made at a time, or in other circumstances, prescribed by the regulation.

Musical instruments or electrically amplified sound equipment must not be used in such a manner that it emits noise that can be heard within a habitable room in any other residential premises (regardless of whether any door or window that that room is open):

- a) before 8am and after midnight on any Friday, Saturday or day immediately before a public holiday, or
- b) before 8am and after 10pm on any other day.

Reason: To maintain acoustic amenity to adjoining properties.

6. Functions and parties

The premises must not be let for any purpose which involves a function or gathering. Functions and gatherings include (but are not limited to) weddings, hens parties, bucks parties etc. The property must not be let as a 'party house'.

Any celebration or entertainment, held by guests letting the house, must not conflict with residential amenity and must comply with all House Rules.

Reason: To ensure the amenity of the adjoining premises.

7. Music

Amplified and live music must not be permitted in outdoor areas.

Reason: To protect the amenity of adjoining premises.

8. Boundary Fence

A solid 1.8 metre high fence that is free of cracks and gaps must be provided along the eastern and western property boundary. The fences must at minimum extend from the rear property boundary to the rear building line and must be constructed prior to the rental of the dwelling for short-term holiday rental accommodation.

Reason: To protect the amenity of adjoining premises.

9. Spa and Deck Enclosure

The eastern and western extent of the rear deck and spa area must be fully enclosed from floor level to roof height. The enclosure must be constructed from solid material that is free of cracks and gaps. Details of the proposed enclosure must be submitted to and approved by Council and the enclosure must be constructed prior to the rental of the dwelling for short-term accommodation.

Reason: To protect the amenity of adjoining premises.

10. Use of the Spa and Deck

The use of the outdoor spa and deck areas must be restricted to the hours between 7:00am to 10:00pm Monday to Sunday.

Reason: To protect the amenity of adjoining premises.

11. Outdoor lighting

Outdoor lighting shall be designed and located to limit impacts on neighbouring properties.

Reason: To maintain a reasonable standard of residential amenity.

12. Management of dogs

The owner of any dog must take all reasonable precautions to prevent the dog from escaping from the property.

There must be no more than three (3) dogs at any one time on the property.

Adequate fencing or an enclosure must be provided capable of confining the dog regardless of breed, age, size or physical condition.

Fence gates must be kept closed at all times when the dog is on the property; be fitted with a proper latch or other means of fastening the gate; and be capable of preventing the escape of the dog.

Fences and gates must be maintained in good order and condition at all times.

Reason: To ensure that any dogs kept on the property do not impact on the residential amenity of the neighbourhood.

13. Compliance with the Holiday Rental Code of Conduct

Unless otherwise provided in these conditions of development consent the approved use is to be operated in accordance with the requirements of the publication 'Holiday Rental Code of Conduct' prepared by the Holiday Rental Industry Association in conjunction with leading advertising and industry groups that became effective nationally on 31 May 2015.

Reason: To ensure the appropriate management of the approved use and to minimise the potential for unreasonable impacts on the residential amenity relationship with neighbouring properties.

14. Signage

A sign shall be erected to the frontage of the property in clear view to the public indicating the telephone contact details of the property manager.

Reason: To ensure the effective management of the use having regard to the residential amenity of the locality.

15. Waste Minimisation Plan

Prior to the commencement of the approved use, a waste minimisation plan prepared in accordance with the requirements of Council's Waste Management Policy must be submitted to and approved by the Council.

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

16. Water Saving Devices

Water saving devices are to be provided to all fixtures and fittings on the property.

Reason: To ensure the economical use of water having regard the potential occupation of the property.

OTHER AGENCY CONDITIONS

17. Rural Fire Service requirements

The approved use must be conducted in accordance with the following conditions detailed in the bush fire safety authority issued by the Rural Fire Service in letter to Council dated 22 March 2016.

- a) Water, electricity and gas are to comply with Sections 4.1.3 and 4.2.7 of 'Planning for Bush Fire Protection 2006'.

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

- b) A Bush Fire Management and Evacuation Plan is to be prepared in accordance with the NSW Rural Fire Service publication 'Development Planning - Guide to Developing a Bush Fire Emergency Management Plan (NSW RFS 2014)' and shall detail the following matters:

- i) under what circumstances will the facility be closed;
- ii) under what circumstances will the facility be evacuated;
- iii) where the occupants will be evacuated to;
- iv) roles and responsibilities of persons coordinating the evacuation;
- v) roles and responsibilities of owner/manager of the dwelling; and
- vi) a procedure to contact the NSW Rural Fire Service District Office/NSW Fire and Rescue Brigade and inform them of the evacuation and where they will be evacuated to.

Reason: The intent of these measures is to provide suitable emergency and evacuation (and relocation) arrangements for occupants of special fire protection purpose developments.

Details from an appropriately qualified bushfire consultant (BPAD) accredited with the Fire Protection Association of Australia or a building certifier accredited with the Building Professionals Board demonstrating compliance with the above requirements must be submitted to the Council prior to the continuing of the approved use and within three (3) months of this development consent, whichever is the lesser,

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

3 DA-521-2017 - CIVIC PRECINCT - 34-36 WEST STREET, FORSTER
Report Author Robyn Shelley, Senior Development Assessment Planner
File No. / ECM Index DA 521/2017 & PK 25416
Date of Meeting 14 June 2017

DETAILS

Date Received: 15 May 2017
Applicant: Enyoc Pty Ltd
Owner: MidCoast Council
Land: Lots 11, 12 & 13 DP 47987, 34-36 West Street, Forster

Area: 1.21ha
Property Key: 25416
Zoning: B4 Mixed Use, GLLEP 2014

SUMMARY OF REPORT

Applications lodged for or on behalf of Council are required to be reported to Council, to determine whether the application can be assessed by Council Officers or by external consultants.

SUMMARY OF RECOMMENDATION

That the information contained in this report in respect of Development Application No. 521/2017, seeking consent for a mixed use development containing a range of uses including civic/community, commercial, residential and tourist uses at Lots 11, 12 & 13 DP 47987, 34-36 West Street, Forster, be noted and that in accordance with Council's 'Applications by Council' Policy, that the application is to be assessed by an independent consultant and any subsequent application to modify the consent be similarly assessed by an independent planning consultant.

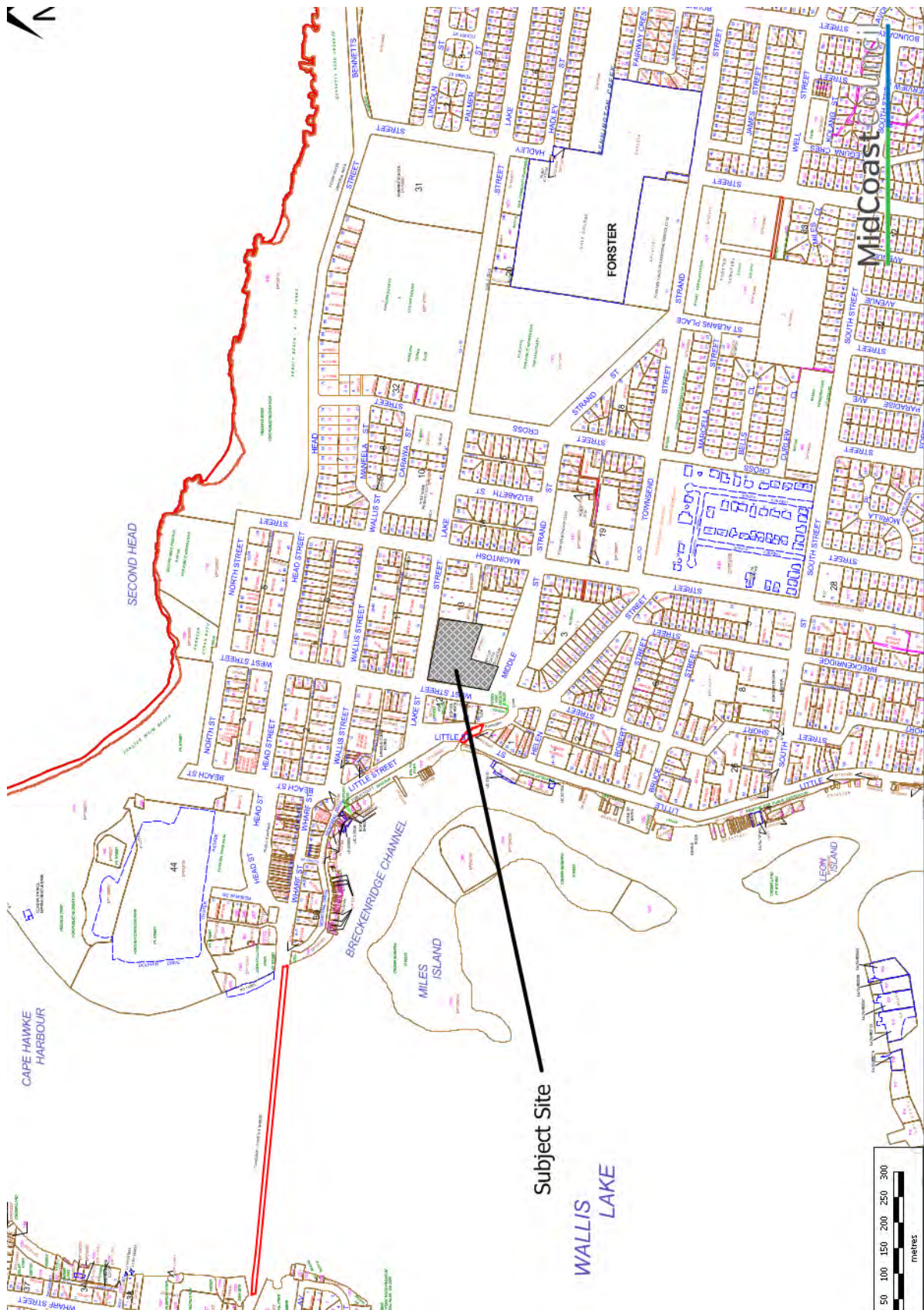
FINANCIAL/RESOURCE IMPLICATIONS

Should Council resolve to have the application assessed by a Consultant, this will result in a financial cost to Council.

LEGAL IMPLICATIONS

Nil

SUBJECT SITE AND LOCALITY



PROPOSAL:

Council has received a development application from Coastplan Group Pty Ltd seeking consent for a mixed use development that will provide civic / community uses, commercial uses, residential uses and tourist uses on Lots 11, 12 & 13 DP 47987, 34-36 West Street, Forster. Details of the development are as follows:

Civic / Community Uses

- Library
- Community Centre
- Visitor information Centre
- Community Plaza (Flexible)
- Community Plaza (Outdoor)
- Community Gardens

Commercial / Entertainment uses

- Supermarket
- Restaurant/cafes (5)
- Cinemas
- Nightclub

Residential Uses

- Seniors Self Care Dwellings (139)
- Penthouse Apartments (4)
- Residents Club, Terraces and facilities

Hotel / Serviced Apartments

- Hotel Rooms (84)
- Service Apartments (18)
- Hotel Facilities and Café / Restaurant

Car Parking

- 513 car parking spaces (294 public + 219 resident)

Strata Subdivision

- One Strata lot for the civic / community facilities
- One strata lot for the commercial / entertainment facilities
- One strata lot for the retirement village units
- One strata lot for the hotel
- Individual strata lots for the penthouse units
- Common areas will include a basement carpark, pedestrian plaza areas and access areas.

REPORT:

Council's 'Applications by Council' Policy states:

"Council is to be advised by Information Report to an Ordinary Meeting or Development Control Unit (DCU) meeting, as soon as practicable after lodgement, of all applications either lodged by Council, co-jointly with Council or on behalf of Council. All such applications are to be clearly notified as applications made by, or on behalf of Council.

Where an application confers a substantial commercial benefit to Council, the application is to be assessed by independent consultants unless Council resolves to assess the application internally and states the reason for this decision within the resolution.

Where an application has the potential to impact significantly on the environment, the application is to be assessed by independent consultants unless Council resolves to assess the application internally and states the reasons for this decision within the resolution".

The subject land is owned by MidCoast Council and the development is being undertaken as a private venture with the civic / community facilities being delivered for and on behalf of Council. Upon completion of the development, MidCoast Council will hold ownership of the civic / community facilities strata. The remaining strata lots will be held in private ownership.

Council has engaged an independent planning consultant to undertake assessment of the development application and the relevant consent authority is to be the NSW Government Joint Regional Planning Panel.

CONCLUSION:

The proposed development has the potential to confer a substantial commercial benefit to Council. In accordance with Council's 'Applications by Council' Policy receipt of the application is being reported to Council's Development Control Unit and the application is to be assessed by an independent consultant.

RECOMMENDATION:

It is recommended that the information contained in this report in respect of Development Application No. 521/2017, seeking consent for a mixed use development containing a range of uses including civic/community, commercial, residential and tourist uses at Lots 11, 12 & 13 DP 47987, 34-36 West Street, Forster, be noted, with the application being assessed by an independent planning consultant and any subsequent application to modify the consent being similarly assessed by an independent planning consultant.



Lisa Schiff
Director
Planning and Natural Systems