



TWEED
SHIRE COUNCIL

Mayor: Cr K Milne

Councillors: P Allsop
R Byrnes
C Cherry (Deputy Mayor)
R Cooper
J Owen
W Polglase

Late Agenda

Planning Committee Meeting Thursday 1 November 2018

held at
Harvard Room, Tweed Heads Administration Building, Brett Street, Tweed Heads
commencing at 5.30pm

THIS PAGE IS BLANK

Items for Consideration of the Planning Committee:

| ITEM | PRECIS | PAGE |
|-------------|--|-------------|
| | LATE ITEMS | 5 |
| | LATE REPORTS FROM THE DIRECTOR PLANNING AND REGULATION | 5 |
| 3 | LATE [PR-CM] Development Application DA18/0632 for a Change of Use of an Existing Dwelling to Serviced Apartment at Lot 39 DP 1191156 No. 679 Casuarina Way Casuarina | 5 |

THIS PAGE IS BLANK

LATE ITEMS

LATE REPORTS FROM THE DIRECTOR PLANNING AND REGULATION

- 3 **LATE [PR-CM] Development Application DA18/0632 for a Change of Use of an Existing Dwelling to Serviced Apartment at Lot 39 DP 1191156 No. 679 Casuarina Way Casuarina**

SUBMITTED BY: **Development Assessment and Compliance**

nhm



Making decisions with you
We're in this together

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 2 Making decisions with you
- 2.1 Built Environment
- 2.1.2 Development Assessment - To assess development applications lodged with Council to achieve quality land use outcomes and to assist people to understand the development process.

ROLE: **Provider**

SUMMARY OF REPORT:

The Development Application is seeking approval for a change in use of a dwelling to a serviced apartment for short term tourist accommodation, as a result of Council officers receiving complaints regarding the use of the subject dwelling as a serviced apartment for short term holiday letting. The complaints raise issues mainly in relation to noise late into the night, the house being used as a party house, general rubbish in street and current management of the site not responding to concerns raised by nearby residents.

The site contains a four bedroom two storey dwelling, swimming pool and sauna. Access to the site is via Casuarina Way.

The development application was notified for a period of 14 days, during this period Council received seven submissions all objecting to the proposal. The submissions raised concerns in relation to rubbish overflowing from bins, damage to dwellings on adjoining sites, excess vehicles parked along the road reserve, poor management of the site/use, excessive noise till late at night/early morning, excessive number of people staying in the house, use as a "party house" and that the development is out of character with the residential area.

The issues raised in the submissions are of concern and have implications on the amenity of the surrounding residents, particularly as the use is currently operating with Council receiving complaints prior to the lodgement of the development application and also during the assessment of the development application.

It is evident that the use of the site is not being appropriately managed.

Notwithstanding the above, the applicant's Statement of Environmental Effects included under Appendix 1 "House Rules" which are considered to cover the issues raised in the submissions, the House Rules have been referenced within a condition of consent. The House Rules outlines matters such as:

- contact number for complaints;
- limits the number of occupants to eight;
- prohibits the use of the dwelling for functions and 'Schoolies';
- restricts the use of the pool and outdoor areas to 9pm Sunday to Thursday and 10pm Friday and Saturday;
- restricts outdoor lighting after 9pm Sunday to Thursday and 10pm Friday and Saturday;
- restricts guest parking to the garage or kerbside in Casuarina Way or Sterculia Court;
- ensures pool safety compliances; and
- ensures that waste is to be placed within the Council bins provided.

In addition to the House Rules, further conditions have been recommended to address the issues raised in the submissions in order to maintain an acceptable level of amenity for the local residents.

The NSW Department of Planning and Environmental currently has on exhibition proposed amendments to State Environmental Planning Policy (Exempt and Complying Development Codes) 2008. The amendments will see in the inclusion of short short-term rental accommodation as *exempt* or *complying* development. With regards to the subject site the development could be exempt development.

The consent is recommended to be limited to a 12 month trial period enabling the owner to demonstrate to Council that the site can be appropriately managed with minimal impacts and also to provide a level of comfort to the local residents that if the use causes unacceptable impacts that the use is limited for only 12 months.

RECOMMENDATION:

- A. That Development Application DA18/0632 for a change of use of an existing dwelling to serviced apartment at Lot 39 DP 1191156; No. 679 Casuarina Way Casuarina be approved subject to the following conditions:**

GENERAL

- 1. The development shall be completed in accordance with the Statement of Environmental Effects and Plan Nos DA-1, DA-2, DA-3 and DA-4, prepared by Denis Fish and dated 29/06/2018, except where varied by the conditions of this consent.**

[GEN0005]

- 2. The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia.**

[GEN0115]

3. The change of use of the building to a serviced apartment requires the installation of:
 - i) smoke alarms on or near the ceiling in every bedroom and in every corridor or hallway associated with a bedroom, or if there is no corridor or hallway, in an area between the bedrooms and the remainder of the building in accordance with clause 3.7.2.3 of Volume 2 of the Building Code of Australia, and
 - ii) a system of lighting in the building (Class 1b) to assist evacuation of occupants in the event of a fire, and be activated by the smoke alarm *required* by 3.7.2.4(b) of Volume 2 of the Building Code of Australia and consist of a light incorporated within the smoke alarm; or the lighting located in the corridor, hallway or area served by the smoke alarm. [GENNS01]
4. The use of the existing dwelling as a Serviced Apartment, subject to this consent is limited to a 12 month period commencing from the of issue of occupation certificate. At the completion of the 12 month period, the use of the site as a Serviced Apartment is to cease and the site will revert to use as a permanent residential dwelling only. [GENNS02]
5. The use of the site as a Service Apartment is not permitted until an Occupation Certificate has been issued in accordance with this consent, [GENNS02]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

6. To ensure the building is provided with an adequate level of fire safety as required by the BCA due to the change in classification of the building from class 1a to class 1b the following works are required: i) In a Class 1b building smoke alarms in accordance with clause 3.7.2.4 of the Volume 2 of the BCA must be installed on or near the ceiling - (a) in every bedroom; and (b) in every corridor or hallway associated with a bedroom, or if there is no corridor or hallway, in an area between the bedrooms and the remainder of the building; and (c) on each other storey. ii) In a Class 1b building, a system of lighting must be installed to assist evacuation of occupants in the event of a fire, and (a) be activated by the smoke alarm required by 3.7.2.4(b); and (b) consist of: (i) a light incorporated within the smoke alarm; or (ii) the lighting located in the corridor, hallway or area served by the smoke alarm. Prior to the release of the construction certificate details demonstrating compliance with the above mentioned requirements are to be submitted to and approved by the nominated PCA. Further to the above fire upgrading, the option is available to submit a fire engineering report containing an alternative solution addressing the Performance Requirement P2.3.2 as contained in Volume 2 of the Building Code of Australia. This report is to be submitted to the nominated PCA for assessment and determination prior to issue of the Construction Certificate. [PCCNS01]

PRIOR TO COMMENCEMENT OF WORK

7. The erection of a building in accordance with a development consent must not be commenced until:

- (a) a construction certificate for the building work has been issued by the consent authority, the council (if the council is not the consent authority) or an accredited certifier, and
- (b) the person having the benefit of the development consent has:
 - (i) appointed a principal certifying authority for the building work, and
 - (ii) notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and
- (c) the principal certifying authority has, no later than 2 days before the building work commences:
 - (i) notified the consent authority and the council (if the council is not the consent authority) of his or her appointment, and
 - (ii) notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
- (d) the person having the benefit of the development consent, if not carrying out the work as an owner-builder, has:
 - (i) appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential work is involved, and
 - (ii) notified the principal certifying authority of any such appointment, and
 - (iii) unless that person is the principal contractor, notified the principal contractor of any critical stage inspection and other inspections that are to be carried out in respect of the building work.

[PCW0215]

8. Prior to work commencing, a "Notice of Commencement of Building or Subdivision Work and Appointment of Principal Certifying Authority" shall be submitted to Council at least 2 days prior to work commencing.

[PCW0225]

9. Residential building work:

- (a) Residential building work within the meaning of the *Home Building Act 1989* must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the following information:
 - (i) in the case of work for which a principal contractor is required to be appointed:
 - * in the name and licence number of the principal contractor, and
 - * the name of the insurer by which the work is insured under Part 6 of that Act,

(ii) in the case of work to be done by an owner-builder:

- * the name of the owner-builder, and
- * if the owner-builder is required to hold an owner builder permit under that Act, the number of the owner-builder permit.

(b) If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under subclause (1) becomes out of date, further work must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the updated information.

[PCW0235]

10. Where prescribed by the provisions of the Environmental Planning and Assessment Regulation 2000, a sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

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

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

[PCW0255]

DURING CONSTRUCTION

11. All proposed works are to be carried out in accordance with the conditions of development consent, any approved Management Plans, approved Construction Certificate, drawings and specifications.

[DUR0005]

12. Commencement of work, including the switching on and operation of plant, machinery and vehicles is limited to the following hours, unless otherwise permitted by Council:

Monday to Saturday from 7.00am to 6.00pm

No work to be carried out on Sundays or Public Holidays

The proponent is responsible to instruct and control subcontractors regarding hours of work.

[DUR0205]

13. All building work (other than work relating to the erection of a temporary building) must be carried out in accordance with the requirements of the Building Code of Australia (as in force on the date the application for the relevant construction certificate was made).

[DUR0375]

14. All work associated with this approval is to be carried out so as not to impact on the neighbourhood, adjacent premises or the environment. All necessary precautions, covering and protection shall be taken to minimise impact from:
- Noise, water or air pollution.
 - Dust during filling operations and also from construction vehicles.
 - Material removed from the site by wind.

[DUR1005]

15. The developer/contractor is to maintain a copy of the development consent and Construction Certificate approval including plans and specifications on the site at all times.

[DUR2015]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

16. Prior to issue of an Occupation Certificate, all works/actions/inspections etc required at that stage by other conditions or any approved Management Plans or the like shall be completed in accordance with those conditions or plans.

[POC0005]

17. A person must not commence occupation or use of the whole or any part of a new building or structure (within the meaning of Section 6.9 and 6.10 unless an occupation certificate has been issued in relation to the building or part (maximum 25 penalty units).

[POC0205]

18. The building is not to be occupied or a final occupation certificate issued until a fire safety certificate has been issued for the building to the effect that each required essential fire safety measure has been designed and installed in accordance with the relevant standards.

[POC0225]

19. A final occupation certificate must be applied for and obtained within 6 months of any Interim Occupation Certificate being issued, and all conditions of this consent must be satisfied at the time of issue of a final occupation certificate (unless otherwise specified herein).

[POC0355]

20. Prior to the issue of a final Occupation Certificate, all conditions of consent are to be met.

[POC1055]

21. Upon the issue of an occupation certificate relating to the change of use to serviced apartment Tweed Shire Council is to be notified to enable the swimming pool to be entered on Councils Register of *Swimming pool/s on premises on which there is tourist and visitor accommodation or more than 2 dwellings*. This requirement is pursuant to the Swimming Pool Act 1992 which requires an inspection every three years of the swimming pool.

[POCNS02]

USE

22. A register is to be kept by the owner or proprietors to record the occupancies. The register shall be made available at any time for inspection by an authorised officer of Council.

[USE0025]

23. The use to be conducted so as not to cause disruption to the amenity of the locality, particularly by way of the emission of noise, dust and odours or the like.

[USE0125]

24. The $L_{Aeq, 15 \text{ min}}$ noise level emitted from the premises shall not exceed the background noise level (L_{A90}) in any Octave Band centre frequency (31.5 Hz - 8KHz inclusive) by more than 5dB(A) between 7am and 12 midnight, at the boundary of any affected residence. Notwithstanding the above, noise from the premises shall not be audible within any habitable room in any residential premises between the hours of 12 midnight and 7am weekdays and 12 midnight and 8am weekends.

[USE0165]

25. All externally mounted air conditioning units and other mechanical plant or equipment are to be located so that any noise impact due to their operation which may be or is likely to be experienced by any neighbouring premises is minimised. Notwithstanding this requirement all air conditioning units and other mechanical plant and or equipment is to be acoustically treated or shielded where considered necessary to the satisfaction of the General Manager or his delegate such that the operation of any air conditioning unit, mechanical plant and or equipment does not result in the emission of offensive or intrusive noise.

[USE0175]

26. All externally mounted artificial lighting, including security lighting, is to be shielded to the satisfaction of the General Manager or his delegate where necessary or required so as to prevent the spill of light or glare creating a nuisance to neighbouring or adjacent premises.

[USE0225]

27. Upon receipt of a noise complaint that Council deems to be reasonable, the operator/owner is to submit to Council a Noise Impact Study (NIS) carried out by a suitably qualified and practicing acoustic consultant. The NIS is to be submitted to the satisfaction of the General Manager or his delegate. It is to include recommendations for noise attenuation. The operator/owner is to implement the recommendations of the NIS within a timeframe specified by Council's authorised officer.

[USE0245]

28. The premises shall be maintained in a clean and tidy manner.

[USE0965]

29. Occupancy and use of the premise shall comply with the 'House Rules' submitted with the Development Application to the satisfaction of the General Manager or his delegate.

[USENS01]

- 30. The maximum number of occupants of the property at any one time shall be 8. A sign shall be permanently displayed in the building stating the maximum number of occupants.**

[USENS01]

- 31. Live music shall not be placed external to the building. Acoustic music shall not be played external to the building between 9pm and 8am Sunday to Thursday. Acoustic music shall not be played external to the building between 10pm and 7am Friday and Saturday. The premise shall not be utilised for festivals.**

[USENS01]

- 32. Use of the outdoor entertaining areas and swimming pool are restricted to 7am to 9pm Sunday to Thursday and 7am to 10pm Friday and Saturday.**

[USENS01]

- 33. Structures such as tents, campervans, vehicles or caravans shall not be used for occupancy external to the building.**

[USENS01]

- 34. Open fires shall not be lit or permitted to burn at the premise.**

[USENS02]

- 35. An A3 size sign shall be permanently placed at the front of the property to the satisfaction of the General Manager or his delegate so it can be clearly seen from the public domain advising the public of the land owner's or property manager's contact details including telephone number to enable complaints to be readily made at any time of the day. The land owner or property manager shall be contactable 24 hours 7 days a week to be able to respond to complaints from neighbours within 30 minutes to deal with issues such as parties, noise or anti-social behaviour which may affect residential amenity.**

[USENS02]

- B. That Council issue a Penalty Infringement Notice for the unauthorised use and advise the applicant in writing that the use of the site as a Service Apartment is not permitted until such time as an Occupation Certificate is issued.**

REPORT:

Applicant: Ms AK Plowman and Mr MDL Baylis
Owner: Ms Anna K Plowman & Mr Mark DL Baylis
Location: Lot 39 DP 1191156; No. 679 Casuarina Way Casuarina
Zoning: R1 - General Residential
Cost: \$0

Background:

The existing dwelling on the subject site was approved 11 September 2014 with an occupation certificate issued in 11 July 2017. The dwelling is two storeys in height, consisting of four bedrooms, two formal car parking spaces, a sauna and a swimming pool. Council's Compliance Unit received complaints regarding the use of the dwelling as a serviced apartment for short term accommodation. Following discussions between Council and the landowner, the landowner lodged the subject development application seeking approval for short term accommodation.

The development application was notified for a period of 14 days, during this period Council received seven submissions all objecting to the proposal. The submissions raised concerns in relation to rubbish overflowing from bins, damage to dwellings on adjoining sites, excess vehicles parked along the road reserve, poor management of the site/use, excessive noise till late at night/early morning, excessive number of people staying in the house, use as a "party house" and that the development is out of character with the residential area.

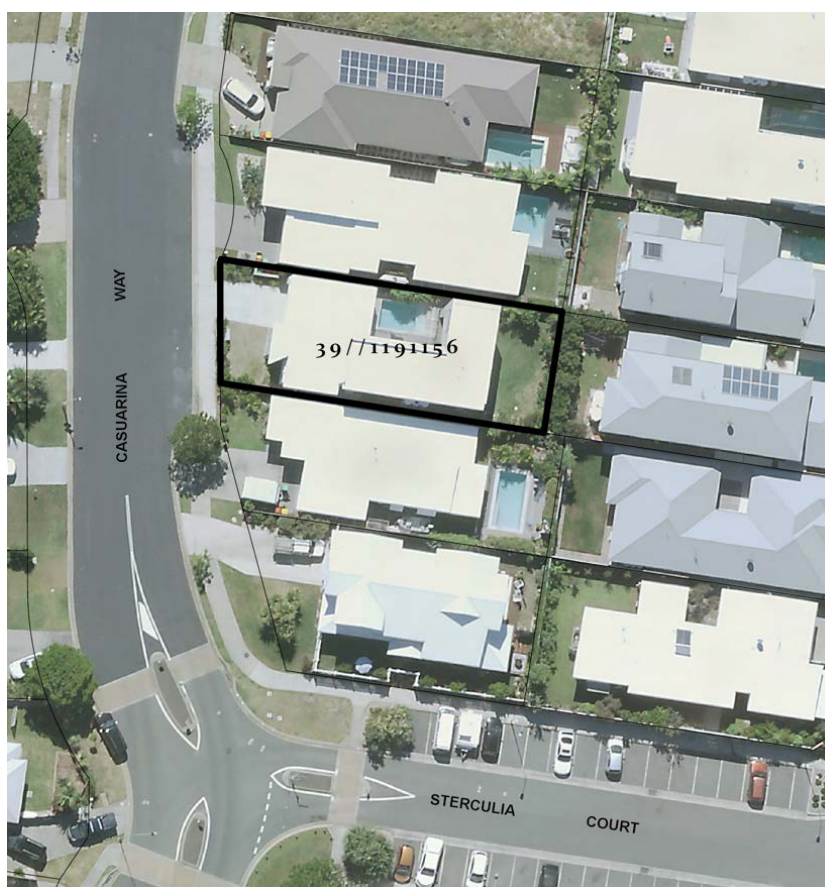


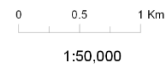
Figure 1: Aerial image of the site, neighbouring properties

SITE DIAGRAM:



Site Plan

Lot 39 DP 1191156
679 Casuarina Way CASUARINA



Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representations or warranties expressed or implied, statutory or otherwise, about its accuracy, reliability, completeness or suitability for any particular purpose and disclaim all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages (including indirect or consequential damage) and costs which may be incurred as a result of data being inaccurate in any way and for any reason. This information is supplied for the general guidance and is to be considered indicative and diagrammatic only. It should not be used for survey or construction purposes and prior to any excavations a "Dial before You Dig" enquiry must be made by calling 1100. The information contained on this document remains valid for 30 days only from the date of supply.



Coordinate System - MGA Zone 56
Datum - GDA 94

Cadastre: 18/07/2018
© NSW LPI & Tweed Shire Council

EO NOT SCALE
COPY ONLY - NOT CERTIFIED

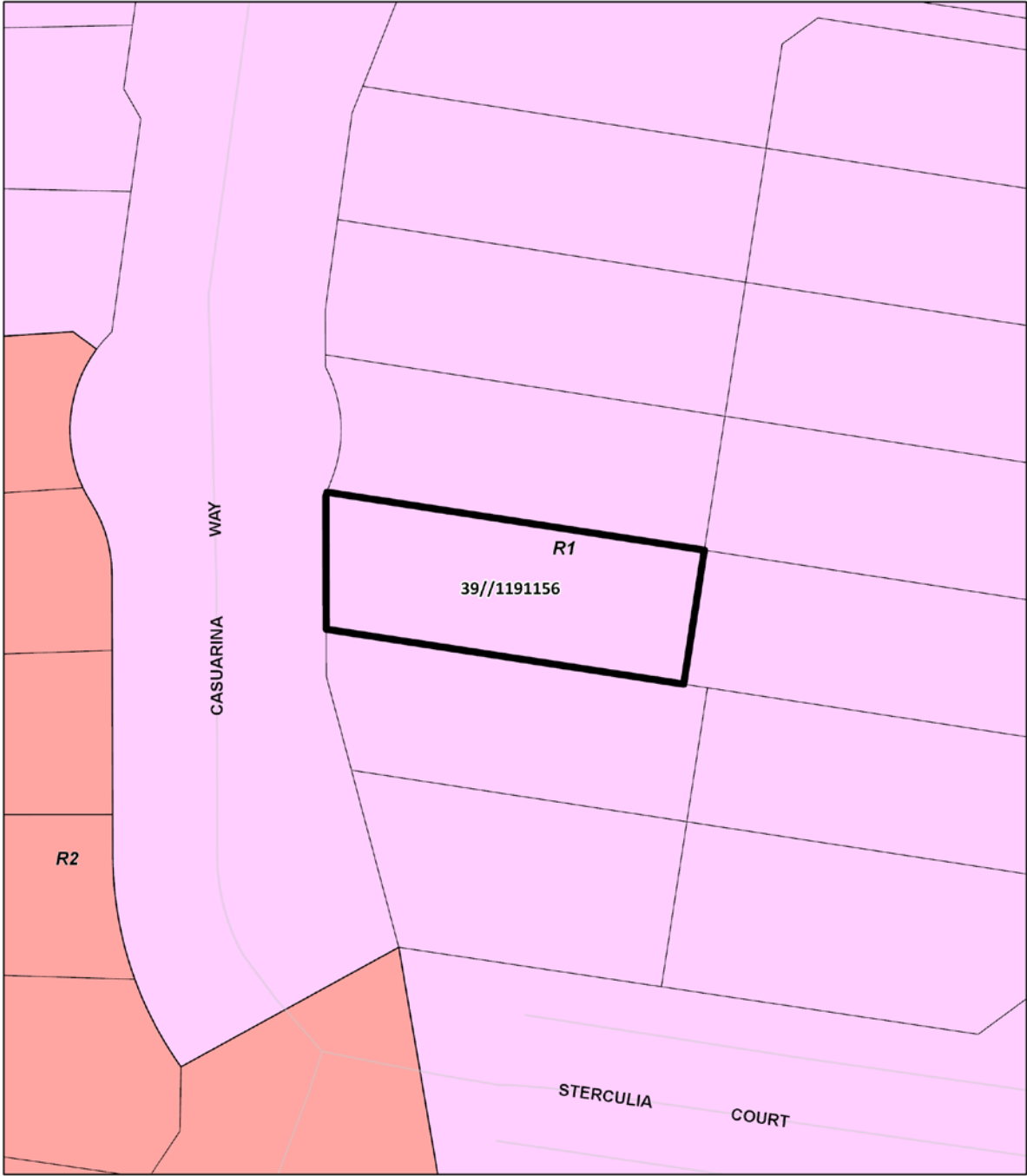
Civic and Cultural Centre
3 Tumbulgum Road
Murwillumbah NSW 2484
PO Box 816
Murwillumbah NSW 2484

T: (02) 6670 2400 / 1300 292 872
F: (02) 6670 2483
W: www.tweed.nsw.gov.au
E: planningreforms@tweed.nsw.gov.au



Date Printed: 30 October, 2018

ZONING MAP:



Subject Land

Subject Land

Tweed Local Environmental Plan 2014

- R1 General Residential
- R2 Low Density Residential

1:500 © A4 Portrait
 0 5 10 m
DO NOT SCALE
 COPY ONLY - NOT CERTIFIED

Map Projection: Universal Transverse Mercator
 Horizontal Datum: Geoidetic Datum of Australia 1994
 Grid: Map Grid of Australia, Zone 56

Site Plan - Local Environmental Plan

Lot 39 DP 1191156
 679 Casuarina Way CASUARINA

© Land and Property Information (LPI) and Tweed Shire Council



Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representations or warranties expressed or implied, statutory or otherwise, about its accuracy, reliability, completeness or suitability for any particular purpose and disclaims all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages (including indirect or consequential damage) and costs which may be incurred as a result of data being inaccurate in any way and for any reason. This information is supplied for the general guidance and is to be considered indicative and diagrammatic only. It should not be used for survey or construction purposes and prior to any excavations a "Dial before You Dig" enquiry must be made by calling 1100. The information contained on this document remains valid for 30 days only from the date of supply.
 Date Printed: 30 October 2018

AERIAL IMAGE:



1:500 A4 Portrait
0 5 10 m
DON'T SCALE
COPY ONLY - NOT CERTIFIED
Map Projection: Universal Transverse Mercator
Horizontal Datum: Geoidetic Datum of Australia 1996
Grid: Map Grid of Australia, Zone 56
GDA

TWEED SHIRE COUNCIL
Civic and Cultural Centre
3 Tumbulgum Road
Murwillumbah NSW 2484
PO Box 816
Murwillumbah NSW 2484
T | (02) 6676 2400 | 1300 292 872
F | (02) 6676 2423
W | www.tweed.nsw.gov.au
E | planning@tweed.nsw.gov.au

Aerial Photography April 2018

Lot 39 DP 1191156
679 Casuarina Way CASUARINA

© 2018 Imagery - Tweed Shire Council
© Cadastre - Tweed Shire Council
Boundaries shown should be considered approximate only.

Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representations or warranties expressed or implied, statutory or otherwise, about its accuracy, reliability, completeness or suitability for any particular purpose and disclaims all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages (including indirect or consequential damage) and costs which may be incurred as a result of data being inaccurate in any way and for any reason. This information is supplied for the general guidance and is to be considered indicative and diagrammatic only. It should not be used for survey or construction purposes and prior to any excavations a "Dig before you Dig" enquiry must be made by calling 1100. The information contained on this document remains valid for 30 days only from the date of supply.
Author: C Lees + GIS
Data Provider: 30 October 2018

HOUSE RULES:

D E N I S F I S H
P L A N N I N G S E R V I C E S



APPENDIX 1

HOUSE RULES - overview

ACCOMODATION, PARTIES & FUNCTIONS

The maximum number of occupants is 8 persons

Only the guests nominated and agreed in the booking may stay in the property overnight

Parties, Functions and 'Schoolies' are strictly prohibited in this property.

Breach of this condition will result in immediate termination and eviction without refund and extra charges for security, cleaning, garbage removal, wear and tear, repairs etc.

Security bond held will be forfeited.

POOL USAGE

To maintain the integrity of the swimming pool safety fence, objects such as a barbeque, pot plants, toys, ladders and chairs must not be within the 900mm (90cm) of the safety fence

The pool gate is not to be propped open and is always kept shut

No glassware is permitted within the fenced pool area

IMPACT ON NEIGHBOURS

Disturbance to your neighbours, including excessive noise, is unacceptable. Excessive noise generation threatens the on-going operation of this holiday house and could result in the termination of your rental agreement, so it is in your interest to have regard to the potential impact on neighbours

Guests must vacate the outdoor entertaining areas & move inside the property by 9pm week nights & 10pm on weekends. Guests will receive a message via text from the Managing Agent to remind them when it is time to vacate the outdoor areas

If after a warning from the managing agent noise continues to affect the amenity of surrounding residents the rental agreement will be terminated and guests will be evicted without refund and extra charges may be imposed for security and any other related expenses.

Guests are not permitted to erect or otherwise provide additional outdoor lighting

Guests are not permitted to change the angle of any of the existing outdoor lights

All external lighting is to be turned off at 9pm week nights & 10pm on weekends, this includes the lighting serving the outdoor terrace & pool



Guest's vehicles are to be parked in the double garage

Any excess guest vehicles are to be parked at kerbside in Casuarina Way or Sterculia Court

All waste is to be placed in the garbage & recycling bins provided by Council

GUEST RESPONSIBILITIES

You must comply with all applicable House Rules and all instructions from Tweed Coast Holidays and the Caretakers of the Property concerning occupancy, property, health, safety and quiet enjoyment of the Property and your neighbour's.

You are responsible for damage, breakages, theft and loss of the Property and any part of it during your stay. You must notify us of this immediately. Management may recover from you repair or replacement cost (at Management's discretion)

Only the guests nominated and agreed in the Booking may stay in the Property overnight. If any other guests stay extra charges will apply and/or the agreement may be terminated without refund.

Smoking is not permitted in the house

Disturbance to your neighbour's, including excessive noise, is prohibited and will result in termination and eviction without refund and extra charges may be made for security and any other expenses. Guests must vacate the outdoor entertaining areas & move inside the property by 9pm week nights & 10pm on weekends. Guests will receive a message via text to remind them when it is time to vacate the outdoor areas.

Before departure, all food must be removed from fridges, all rubbish put in the appropriate council rubbish bins provided, and crockery and cutlery washed and packed away.

The Property must be left in a clean and tidy condition.

Extra cleaning charges may be incurred for the cleaning of dirty dishes, emptying dishwasher, clearing the fridge, removal of rubbish, cleaning of BBQ's etc. Should the cleaning fee be more than the usual cost for cleaning the property, you will be charged the additional costs over and above the normal cleaning fee which will be deducted from the security bond or charged to your credit card.

All furniture and furnishings must be left in the position they were in when you arrived.

The property should be vacated on time and secured. All windows and doors are to be locked. All keys must be returned to Tweed Coast Holidays or as otherwise directed.

D E N I S F I S H
P L A N N I N G S E R V I C E S



You are responsible for the safekeeping and replacement of accommodation keys. If keys and/or remotes are lost the cost of rekeying the property will be charged to your security bond.

Adherence to these House Rules will help to ensure that all neighbours and guests can expect to experience peaceful enjoyment.

Should you have need to contact the agent of the property please call 02 6677 6006.

DEVELOPMENT/ELEVATION PLANS:

SOUTH ELEVATION

TRIMBLECK ROOF SHEETING
 HORIZONTAL CLADDING WITH VERTICAL BATTEN COVER STRIPS
 JOINT SEALANT TO HORIZONTAL JOINTS
 WEATHERTEX CLADDING TIMBER LOOK
 FACE BLOCK WALLS
 HARDES ANON CLADDING
 PAINT FINISH

EAST ELEVATION

TO WALL 1500
 2000
 500 475 600 850
 CMP
 BALCONY
 FACE OF WEST WALL
 JOINERY HEIGHT 2400
 2700
 2700
 JOINERY HEIGHT 2400
 1270

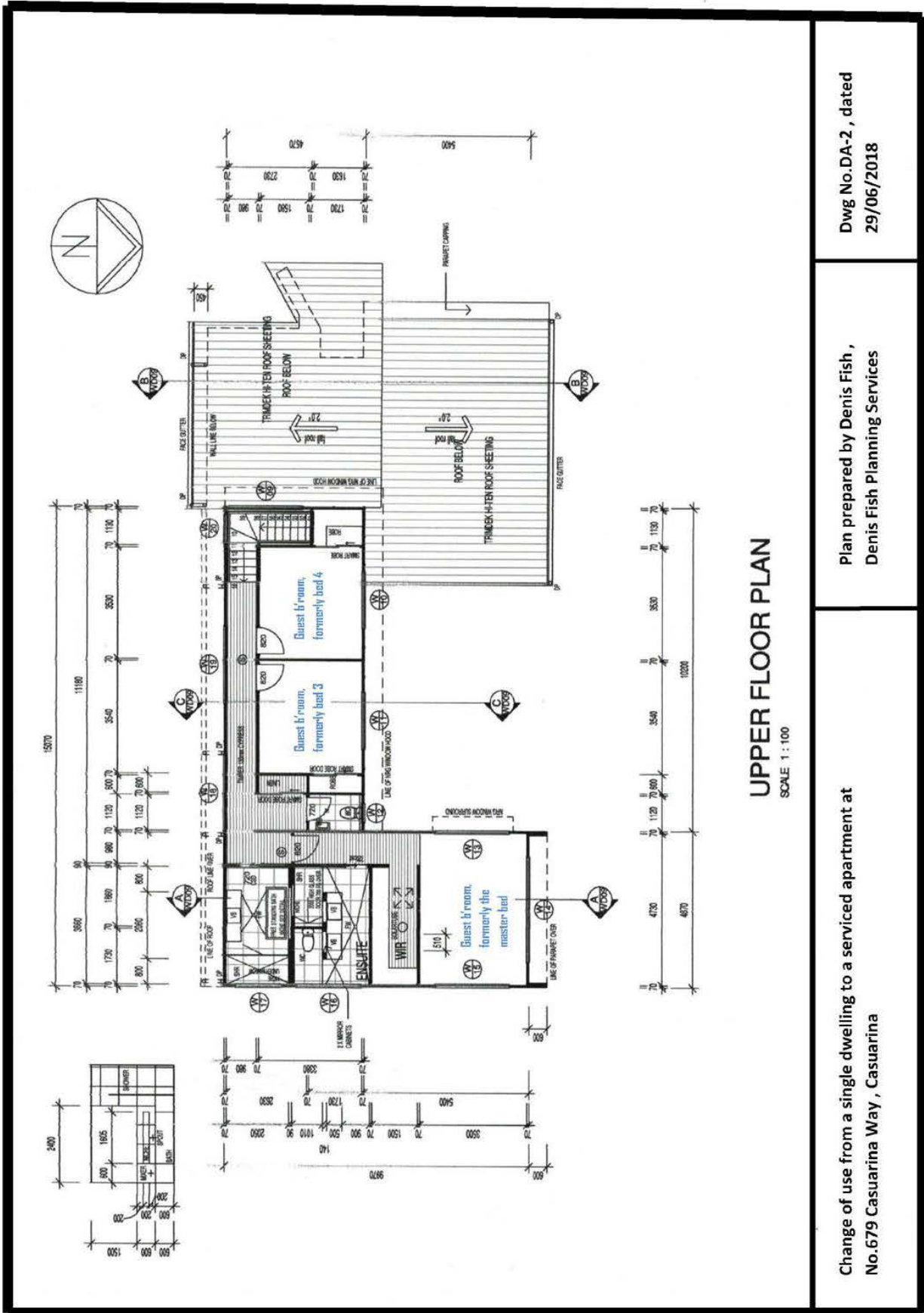
SCALE 1 : 100

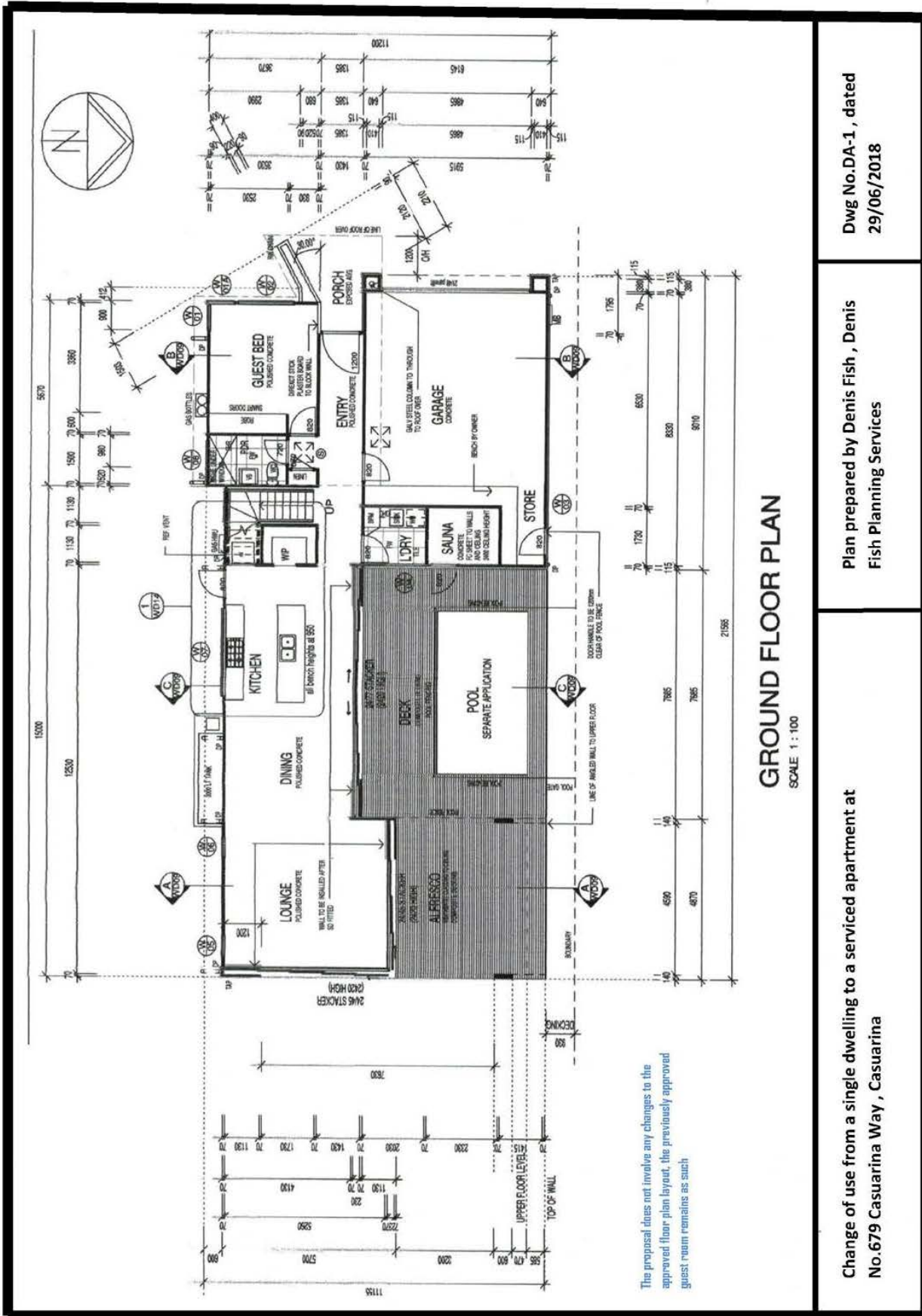
The proposal does not involve any changes to the building exterior, all window & door sizes and locations will remain as approved

Change of use from a single dwelling to a serviced apartment at
 No.679 Casuarina Way , Casuarina

Plan prepared by Denis Fish , Denis
 Fish Planning Services

Dwg No.DA-3 , dated
 29/06/2018

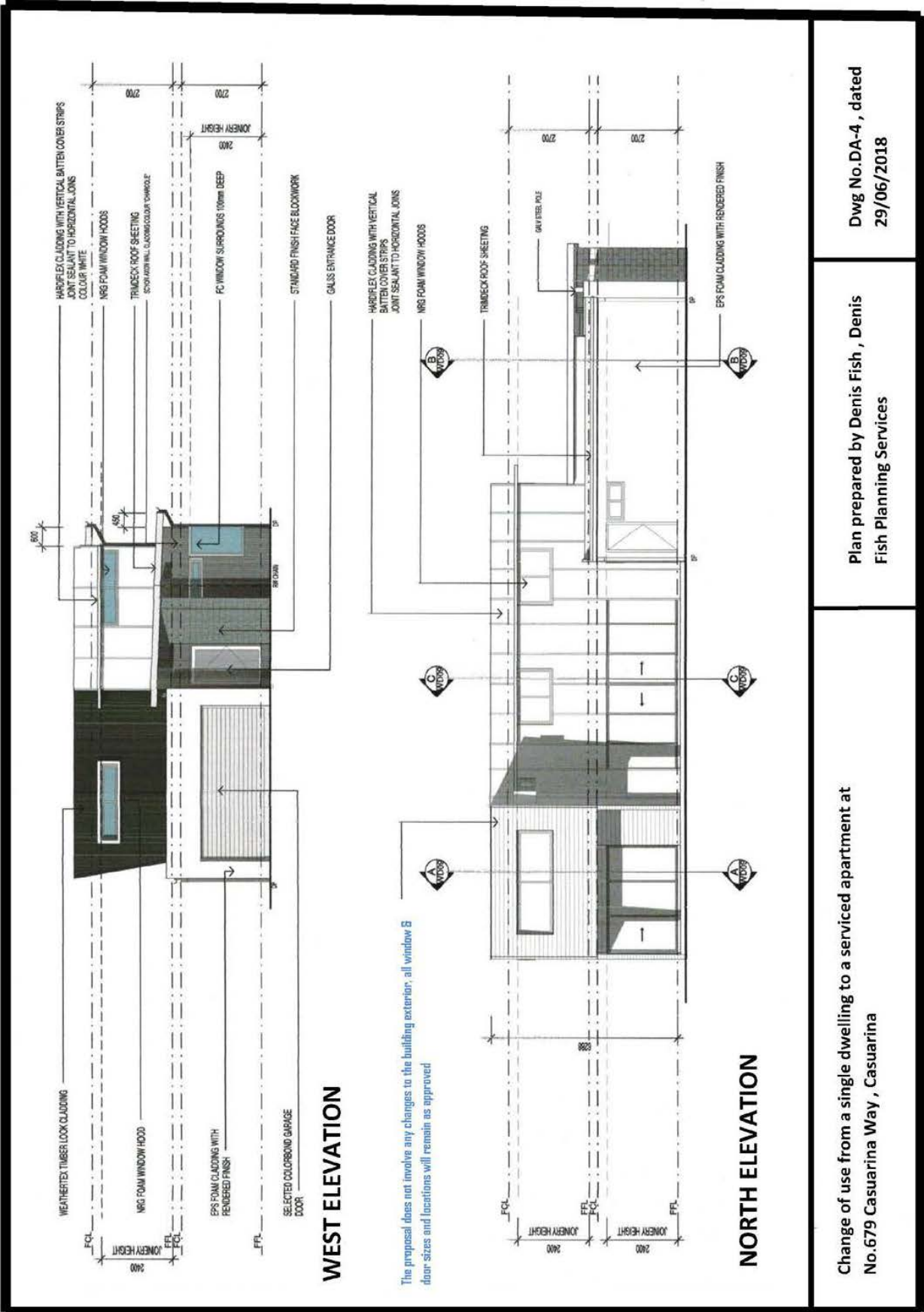




Dwg No. DA-1, dated 29/06/2018

Plan prepared by Denis Fish, Denis Fish Planning Services

Change of use from a single dwelling to a serviced apartment at No. 679 Casuarina Way, Casuarina



Dwg No.DA-4, dated 29/06/2018

Plan prepared by Denis Fish, Denis Fish Planning Services

Change of use from a single dwelling to a serviced apartment at No.679 Casuarina Way, Casuarina

Considerations under Section 4.15 of the Environmental Planning and Assessment Act 1979:

(a) (i) The provisions of any environmental planning instrument

Tweed Local Environmental Plan 2014

Clause 1.2 – Aims of the Plan

The proposed use as a serviced apartment is considered to be consistent with the aims of the plan.

Clause 2.3 – Zone objectives and Land use table

The site is zoned R1 General Residential, to which serviced apartments are permitted with development consent.

The objectives of the zone are:

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To encourage the provision of tourist accommodation and related facilities and services in association with residential development where it is unlikely to significantly impact on amenity or place demands on services beyond the level reasonably required for residential use.*

The serviced apartment is consistent with the zone objectives by providing tourist accommodation. However, the development has the potential to impact on the amenity and services such as: noise, garbage and parking beyond a residential use. The applicant has provided a Site Management Plan which covers these issues in addition conditions have been recommend to protect the residential amenity.

Clause 4.1 to 4.2A - Principal Development Standards (Subdivision)

Subdivision is not proposed.

Clause 4.3 - Height of Buildings

The site has a HOB of 13.6 metres, the proposal is for use only no building works are proposed. The existing approved building height will remain unchanged, which is less than 13.6 metres.

Clause 4.4 – Floor Space Ratio

The site has a FSR of 2:1, the proposal is for use only no building works are proposed. The existing approved FSR will remain unchanged.

Clause 4.6 - Exception to development standards

The proposal does not require a variation to a development standard.

Clause 5.4 - Controls relating to miscellaneous permissible uses

The proposed land use being a serviced apartment is not listed within the clause.

The site is not mapped under the Aboriginal Cultural Heritage Management Plan.

Clause 5.5 – Development within the Coastal Zone

The site is within the coastal zone, however due to the proposal being for a change of use to an existing dwelling that does not require any building works. The proposal is considered to be consistent with the clause and unlikely to adversely impact on the coastal environment.

Clause 5.10 - Heritage Conservation

The site is not identified as having heritage conservation value.

Clause 5.11 - Bush fire hazard reduction

The site is not mapped as being bushfire prone land. Bush fire hazard reduction works are not required.

Clause 7.1 – Acid Sulfate Soils

The site is identified as having Class 4 Acid Sulfate Soils. The proposed change of use does not require disturbance of the soil and therefore Acid Sulfate Soils will not be disturbed.

Clause 7.2 - Earthworks

The proposed change of use does not require earth works.

Clause 7.3 – Flood Planning

This site not prone to flooding.

Clause 7.4 - Floodplain risk management

Not applicable

Clause 7.5 - Coastal risk planning

The site is not within the coastal risk area.

Clause 7.6 - Stormwater Management

The proposed change of use is not required to alter the existing stormwater management.

Clause 7.8 – Airspace operations

Not applicable the subject site is not mapped within an area subject to airspace operations.

Clause 7.9 - Development in areas subject to aircraft noise

Not applicable the subject site is not mapped within an area subject to aircraft noise.

Clause 7.10 - Essential Services

The existing services provided to the dwelling are considered to be acceptable for the proposed change of use to a serviced apartment.

State Environmental Planning Policies

SEPP (Coastal Management) 2018

The site is identified as being within the coastal environment area and the coastal use area. The proposed change of use to the existing dwelling to a serviced apartment is considered to be consistent with the provisions Division 3 Coastal environment area and Division 4 Coastal use area.

The proposed development is considered to address the public interest criteria by not impacting on public access to foreshore areas, does not create overshadowing, wind funnelling or impede views from public places, is not visible from the coast, will not impact on Aboriginal cultural heritage or the surf zone. The site is located approximately 200 metres from the nearest coastal water and therefore is considered not likely to conflict with the Coastal Management SEPP.

State Environmental Planning Policy (Exempt and Complying Development Codes) 2008

Advertising signage is not proposed by the applicant, however Council officers recommend that an A3 size sign be located on the front elevation of the house which is to contain contact details of the land owner or property manager to enable complaints to be managed immediately. Due to the type, size and nature of the sign, requested by Council, the sign is as defined as a wall sign under the State Environmental Planning Policy (Exempt and Complying Codes) 2008 and is exempt development.

(a) (ii) The Provisions of any Draft Environmental Planning Instruments

The NSW Department of Planning and Environmental currently has on exhibition proposed amendments to State Environmental Planning Policy (Exempt and Complying Development Codes) 2008. The amendments will see in the inclusion of short short-term rental accommodation as *exempt* or *complying* development.

The proposed amendments will:

- Introduce a single definition for Short Term Rental Accommodation (STRA);
“the commercial use of an existing dwelling, either wholly or partially, for the purposes of short-term accommodation, but does not include tourist and visitor accommodation.”
- Introduce exempt and complying development pathways that enable STRA as:
 - Exempt development for up to 365 days per year, when the host is present.
 - **Exempt development, when not on bushfire prone land and when the host is not present, for:**
 - No more than 180 days per year in Greater Sydney
 - **Up to 365 days per year outside of Greater Sydney. Councils outside Greater Sydney will be able to decrease the 365 day threshold to no lower than 180 days per year.**
 - Complying development, when on bushfire prone land under BAL29 rating and the host is not present for:
 - No more than 180 days per year in Greater Sydney
 - Up to 365 days per year outside of Greater Sydney. Councils outside Greater Sydney will be able to decrease the 365 day threshold to no lower than 180 days per year; and
- Introduce minimum fire safety and evacuation requirements for premises used for STRA.

It is noted that once the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 has been amended to include STRA the proposed development could operate without any Council approval.

(a) (iii) Development Control Plan (DCP)

Tweed Development Control Plan

A1-Residential and Tourist Development Code

The proposal does not seek to alter the built form of the existing dwelling, rather seeks to change the use to a serviced apartment. The proposal does not require an assessment against A1.

A2-Site Access and Parking Code

The dwelling as approved has two on site car parking spaces in the form of a double car space garage and area for additional parking on site within the driveway. Four

on site car parking spaces is considered adequate to accommodate the proposal (four bedroom, maximum 8 occupants).

A11-Public Notification of Development Proposals

The DA was notified development for a period of 14 days from Wednesday 19 September 2018 to Wednesday 3 October 2018. Council received seven submissions all objecting to the proposal. The contents of the submissions have been addressed as detailed later within this report.

A15-Waste Minimisation and Management

A Waste Management Plan is not required for the proposed change in use, with the site using Council's three bin waste system (1 x 240L Yellow, 1 x 240L Red and 1 x 240L Green). If complaints are received in regards to waste, this will be discussed with the owner with a recommendation that the use of larger bins should be used or the use of a private waste contractor.

B5-Casuarina Beach

Section B5 relates to Urban Design, Management of Infrastructure and Management of Environmental Matters. Having regard to the proposed development, it is considered that the proposed change of use to a serviced apartment will not contribute negatively to the long term urban design or character of the area, and as such does not contravene the urban design principles outlined under section B5.2.2 of the DCP.

The proposal is not considered to contravene the management of any infrastructure or environmental matters in the area. Furthermore, the proposal is not considered to result in an environmental impact on the site, as the proposal does not require any vegetation clearing to be undertaken.

The proposal is considered not to contravene any of the objectives of the DCP.

B9-Tweed Coast Strategy

The Plan sets objectives for future development concentrating on public services and design principals. The Vision statement for this area identified at Clause B9.3.2 is:

To manage growth so that the unique natural and developed character of the Tweed Coast is retained, and its economic vitality, tourism potential, ecological integrity and cultural fabric are enhanced.

Policy Principles are identified at Clause B9.3.3, with characteristics to be considered including the following which are of particular relevance to this application.

The site is indicated as being an urban development area under the provisions of this DCP. The proposed development for change of use from a dwelling to a serviced apartment is considered to be consistent with the objectives of this DCP or the future development of the area. It is considered that the proposal is appropriate having regard to DCP Section B9.

(a) (iii) Any planning agreement or any draft planning agreement under section 7.4

The site is not affected by a planning agreement.

(a) (iv) Any Matters Prescribed by the Regulations

Clause 92(1)(a)(ii) Government Coastal Policy

The site is located within the area covered by the Government Coastal Policy, and has been assessed with regard to the objectives of this policy. The Government Coastal Policy contains a strategic approach to help, amongst other goals, protect, rehabilitate and improve the natural environment covered by the Coastal Policy. The proposed change of use to a serviced apartment does not contradict the objectives of the Government Coastal Policy.

Clause 92(1)(b) Applications for demolition

Not applicable - no demolition is proposed.

Clause 93 Fire Safety Considerations

Not Applicable.

Clause 94 Buildings to be upgraded

Not Applicable.

(a) (v) Any coastal zone management plan (within the meaning of the Coastal Protection Act 1979),

Tweed Shire Coastline Management Plan 2005

This Plan applies to the Shire's 37 kilometre coastline and has a landward boundary that includes all lands likely to be impacted by coastline hazards plus relevant Crown lands. The subject site is not located on the coastal foreshore and is not affected by coastal hazards.

Tweed Coast Estuaries Management Plan 2004

The proposed development is not within Cudgen, Cudgera or Mooball Creeks. This Plan is therefore not relevant to the application.

Coastal Zone Management Plan for Cobaki and Terranora Broadwater (adopted by Council at the 15 February 2011 meeting)

The subject site is not located within the Cobaki or Terranora Broadwater (within the Tweed Estuary), with this Plan therefore not relevant to the proposed development.

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

Access, Transport and Traffic

The proposed short term tourist use is considered to generate an acceptable and similar level of vehicles and traffic as a residential dwelling used for permanent occupation, therefore the existing onsite parking and road network is considered acceptable.

Flora and Fauna

The proposal is considered not to have an adverse impact on existing flora and fauna, as vegetation removal is not proposed or required.

(c) Suitability of the site for the development

Surrounding Landuses/Development

The site is considered suitable for the proposed change of use of the existing dwelling to short term tourist accommodation, subject to conditions ensuring the site is managed in accordance with the house rules.

(d) Any submissions made in accordance with the Act or Regulations

The application was notified for a period of 14 days from Wednesday 19 September 2018 to Wednesday 3 October 2018. Council received seven submissions objecting to the proposal. The submissions raised concerns in relation to rubbish overflowing from bins, damage to dwellings on adjoining sites, excess vehicles parked along the road reserve, poor management of the site/use, excessive noise till late at night/early morning, excessive number of people staying in the house, use as a “party house” and that the development is out of character with the residential area.

The issues raised in the submissions are of concern and have implications on the amenity of the surrounding residents, particularly as the use is currently operating with Council receiving complaints prior to the lodgement of the development application and also during the assessment of the development application.

It is evident that the use of the site is not being appropriately managed.

Notwithstanding the above, the applicant’s Statement of Environmental Effects included under Appendix 1 “House Rules” which are considered to cover the issues raised in the submissions. The House Rules have been referenced within a condition of consent. Accordingly, should the application be granted consent the operation/management of the site as a serviced apartment (short term rental accommodation) is required to comply with the criteria determined under the House Rules (and any other conditions of this consent).

The House Rules outlines matters such as:

- contact number for complaints;
- limits the number of occupants to eight;

- prohibits the use of the dwelling for functions and ‘Schoolies’;
- restricts the use of the pool and outdoor areas to 9pm Sunday to Thursday and 10pm Friday and Saturday;
- restricts outdoor lighting after 9pm Sunday to Thursday and 10pm Friday and Saturday;
- restricts guest parking to the garage or kerbside in Casuarina Way or Sterculia Court;
- ensures pool safety compliances; and
- ensures that waste is to be placed within the Council bins provided.

In addition to the House Rules, further conditions have been recommended to address the issues raised in the submissions in order to maintain an acceptable level of amenity for the local residents.

The consent is recommended to be limited to a 12 month trial period enabling the owner to demonstrate to Council that the site can be appropriately managed with minimal impacts and also to provide a level of comfort to the local residents that if the use causes unacceptable impacts that the use is limited for only 12 months.

(e) Public interest

As outlined within the report above, the proposed use of the dwelling for short term holiday letting is currently creating adverse impacts on the amenity of the local residents. Notwithstanding this, when considering the *draft* changes in legislation pertaining to short term rental accommodation, the applicant’s Statement of Environmental Effects, namely Appendix 1: House Rules and the recommended conditions of consent (in particular a 12 month trial period) the proposal is not considered to be contrary to public interest.

OPTIONS:

- 1A. Approve the application in accordance with the recommendation; and
- 1B. Issue a Penalty Infringement Notice for the unauthorised use and advise the applicant that the use of the site as a Service Apartment is not permitted until such time as an Occupation Certificate is issued; or
2. Refuse the application with reasons for refusal.
3. Approve the application with specified alternate conditions.

Option 1A & 1B is recommended.

CONCLUSION:

The proposed development is permitted with consent within the R1 General Residential zone. Although the use has been operating without approval and adversely impacting on the amenity of the neighbouring residents, the owner has provided House Rules which if complied with will mitigate the issue raised and maintain a reasonable level of amenity. A condition is recommended limiting the use for a 12 month trial period to enable to the owner to demonstrate to Council that the site and use can be appropriately managed. Should the site

not be managed appropriately the use will cease and any future request to amend the consent to extend the use is unlikely to be supported.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

The applicant may appeal any Council determination under Class 1 of the NSW Land and Environment Court.

d. Communication/Engagement:

Not applicable

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.
