

DATE OF DETERMINATION	20 September 2017
PANEL MEMBERS	Michael Leavey (Alternate Chair), Dr John Griffin, Peter Brennan
APOLOGIES	Jason Perica, Kara Krason
DECLARATIONS OF INTEREST	None

Public meeting held at Mid-Coast Council – Forster Office, 4 Breese Parade, Forster on 20 September 2017, opened at 2:45pm and closed at 5:35pm.

MATTER DETERMINED

2017HCC012 – MidCoast – DA521/2017 at 34-36 West Street, Forster (AS DESCRIBED IN SCHEDULE 1)

PANEL CONSIDERATION AND DECISION

The Panel considered: the matters listed at item 6, the material listed at item 7 and the material presented at meetings and the matters observed at site inspections listed at item 8 in Schedule 1.

The Panel determined to approve the development application as described in Schedule 1 pursuant to section 80 of the *Environmental Planning and Assessment Act 1979*, subject to removal of the child care centre, night club and cinema components, and adjustments to conditions of consent.

The Panel adjourned during the meeting to deliberate on the matter and formulate a resolution.

The decision was Unanimous.

REASONS FOR THE DECISION

In terms of wider considerations, the Panel generally agreed with the environmental assessment and balance of considerations in the assessment report, and in particular noting the urban design considerations as part of the assessment of the application and design modifications in response to these.

The Panel noted the proposal is permissible in the B4 Mixed Use zone, is consistent with the B4 zone objectives and is within the allowed building height and floor space ratio applying to the site and the proposal.

The Panel was of the opinion the proposal will be a transformative project and economic driver for Forster, combining community facilities with seniors housing and other accommodation in an accessible location and with supporting facilities that will serve people using the community facilities, future residents and the surrounding areas. While there was support for the general mix of uses, the Panel did not support the child care centre, nightclub or cinemas components being approved as part of the application, for the reasons that:

- the application contains inadequate details of the internal layout of the child care centre, and the external play area does not meet the minimum requirements for a 50 place centre, having regard to the considerations under subclause (2) of Schedule 5 of *State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017* and the requirements of the National Quality Framework Assessment Checklist set out in Part 4 of the *Child Care Planning Guidelines*;
- the application contains insufficient information to support the suitability of the proposed nightclub having regard to potential impacts on future residents, surrounding uses including the child care centre, and having regard to the concerns raised in the submission from the NSW Police Force dated 16 June 2017. The Panel felt that any proposal for a nightclub would need to address

- the suitability of the use in this location, amenity impacts and required measures to address these and be accompanied by a detailed management plan; and
- the application contains insufficient information that substantiates that the cinema development as proposed will meet the needs of the community. The Panel noted the cinema plans showing 3 cinemas with an 800 seat capacity, and associated use areas, and felt there was opportunity to consider options for flexible use of the facility as part of a future application for the facility.

The Panel noted that separate development applications would be required for the child care centre, nightclub and cinemas, and these would be determined by the local council having regard to the threshold for development considered by Joint Regional Planning Panels.

The Panel considered a number of concerns raised by community members about the use of the site in relation to previous master planning, community engagement on the project, non-compliances with planning controls, and impacts on other businesses, the community and surrounding properties. The Panel considered the background to the development of the site, including previous master planning for the surrounding precinct and the recent planning proposal that increased the allowed building height and floor space ratio applying to the land, and the Panel was of the view the proposal is consistent with the planning controls applying to the site. The Panel also gave consideration to the public consultation undertaken for the development application, which included a 30 day exhibition period and three community consultation drop-in sessions, which exceeded the minimum exhibition requirements. Concerns were raised about Council decisions to develop the land as proposed, and arrangements entered into, and the Panel noted these were decisions taken by Council as a land owner and were not matters that impacted on the assessment of the application under the *Environmental Planning & Assessment Act, 1979*, and that the Council had engaged external consultants to independently assess the application.

The Panel had regard to the assessment report and considerations against the 9 design principles of *State Environmental Planning Policy No.65 – Design Quality of Residential Apartment Development* and the *Apartment Design Guide*, design changes made in response to urban design considerations and recommended conditions of consent including operational and management requirements, compliance with the recommended acoustic treatments and improvements to manage vehicular/ traffic conflicts.

The Panel also considered recommended changes to the conditions of consent from Council following the applicant's review of the draft conditions, which clarified a number of requirements and removed some unnecessary requirements.

CONDITIONS

The development application was approved subject to the conditions in the Assessment Report with the following amendments. The reasons for these amendments were:

- to remove the child care centre, nightclub and cinemas components from the approval;
- associated changes to conditions arising from removal of the above components;
- to clarify requirements relating to staging, car parking and deliveries and other administrative changes for certainty; and
- to remove conditions relating to acid sulfate soils based on the Acid Sulphate Soils investigation which was provided with the assessment and concludes that there are no acid sulphate soils present.

Condition 1

Add the following to the end of the condition "*In accordance with Condition 4 the proposed child care centre, nightclub and cinema are not approved under this consent.*"

Condition 2

Add *Supermarket and Gymnasium* to the Stage 2 works and delete from Stage 3. Delete "*cinema*" from Stage 3, delete "*Childcare Centre & Nightclub*" from Stage 4.

Condition 4

Delete and replace with the following

Ambit of Consent and separate application required for non-approved uses and/or differing uses and/or fit outs

This consent does not include approval for the child care centre, nightclub or cinemas. These components of the application are to be removed from the plans prior to the issue of any construction certificate, and are to be subject to a separate development application(s).

Separate development consent shall be obtained for any use and/or fitout of any tenancy that differs from that approved under this development consent, unless such work or use is exempt development.

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

Condition 11

Delete (Cinemas are not approved under the consent)

Condition 12

Delete (Child care centre is not approved under the consent)

Condition 14

Delete (details are to be provided with plans for the public engineering works permit).

Condition 15

Replace 3rd paragraph with the following:

"The plan shall also identify the allocation of car parking spaces for residential uses. A minimum of 496 car parking spaces are to be allocated and provided within the development."

Condition 17

Delete and replace with the following:

"Full details are to be provided in documentation for a Construction Certificate detailing how bicycle storage is to be provided within each stage as described below."

- a) Stage 1 - 1 x class 1 or class 2 bicycle enclosure for each residential unit, 8 x class 2 bicycle enclosure & 20 x class 3 bicycle rails
- b) Stage 2 - 1 x class 1 or class 2 bicycle enclosure for each residential unit, 7 x class 2 bicycle enclosure & 23 x class 3 bicycle rails
- c) Stage 3 - 1 x class 1 or class 2 bicycle enclosure for each residential unit, 3 x class 2 bicycle enclosure & 3 x class 3 bicycle rails
- d) Stage 4 - 6 x class 2 bicycle enclosure & 5 x class 3 bicycle rails.

The bicycle storage is to be designed and implemented in accordance with the Australian Standard AS/NZS 2890.3: Parking facilities - Bicycle parking facilities and Council's DCP 14."

Condition 18

Insert ".-. merge point" after the words "Middle Street" in part b)

Condition 23

Delete the following points, and renumber condition accordingly

- " a) Determine whether acid sulphate soils are present over the development site.*
- b) Should acid sulphate soils be present the Geotechnical Engineer must determine and submit for approval a suitable acid sulphate management plan to the Certifying Authority. All excavation must adhere to the approved acid sulphate soil management plan with any soils first treated to the EPA requirements prior to acceptance at a Council tip."*

Remove the words “acid sulphate soil” from the last paragraph and delete “Management of acid sulphate soils” from the Reason.

Condition 48

Add the words “the relevant Australian Standards,” after the word “with” in the 2nd line of the first paragraph.

Condition 49

Delete and replace with the following:

“Dewatering Management Plan

All works are to be carried out in accordance with the approved Dewatering Management Plan.

Reason: *Management of acidic soils, dewatering, site stability and public safety.”.*

Condition 50

Delete and replace with the following:

“Acidic Soils

Prior to the pouring of any concrete within any excavation of the site the applicant's structural/geotechnical engineer must inspect and certify:

- a) That the concrete is to be placed/constructed to their requirements and recommendations for the site's acidic soil profile; and*
- b) That any potential acidic soils have been treated in accordance with the geotechnical report.*

Reason: *To protect the construction work against acidic soils.”*

Condition 104

Delete (Condition 103 allows for regulation of noise in external areas if deemed to be an issue)

Condition 105

Delete “Cinemas” and “Nightclub” from the table.

Condition 106

Replace “7am” where occurring with “6am”.

PANEL MEMBERS	
 Michael Leavey (Alternate Chair)	 Dr John Griffin
 Peter Brennan	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	2017HCC012 – MidCoast – DA521/2017 at
2	PROPOSED DEVELOPMENT	Mixed use development containing a range of uses including civic/community, commercial, residential, tourist and strata subdivision
3	STREET ADDRESS	34-36 West Street, Forster
4	APPLICANT/OWNER	Enyoc Pty Ltd / Midcoast Council
5	TYPE OF REGIONAL DEVELOPMENT	Council related development over \$5 million
6	RELEVANT MANDATORY CONSIDERATIONS	- Environmental planning instruments: - State Environmental Planning Policy No 44 – Koala Habitat - State Environmental Planning Policy No 55 – Contaminated Lands - State Environmental Planning Policy No 65 – Residential Flat Buildings - State Environmental Planning Policy No 71 – Coastal Protection - State Environmental Planning Policy (Housing for seniors of People with a Disability) 2004 - State Environmental Planning Policy (Infrastructure) 2007 - State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017 - State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 - Draft environmental planning instruments: Draft Coastal Management State Environmental Planning Policy, - Development control plans: - Great Lakes Development Control Plan 2014 - Planning agreements: Nil - Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i>: Nil - Coastal zone management plan: Nil - The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality - The suitability of the site for the development - Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations - The public interest, including the principles of ecologically sustainable development
7	MATERIAL CONSIDERED BY THE PANEL	- Council assessment report: Received by Secretariat on 7 September 2017, report dated 30 August 2017 - Memos dated 15 September 2017 and 19 September 2017 from City Plan Services responding to Panel questions (copies on JRPP website) - Written submissions during public exhibition: Fourteen (14) - Verbal submissions at the public meeting: - Support – Len Roberts - Qualified support - Brad Christensen - Object – Leigh Vaughn Ed Harvey Paul Van Drunen Peter Epov Jillian Herbert Matthew Fraser - On behalf of the applicant – Gavin Maberly-Smith

8	MEETINGS AND SITE INSPECTIONS BY THE PANEL	• Site inspection 20 September 2017 • Final briefing meeting to discuss council's recommendation, 20 September 2017 at 1:45 pm. Attendees: ○ <u>Panel members</u>: Michael Leavey (Alternate Chair), Dr John Griffin, Peter Brennan ○ <u>Council staff</u>: Lisa Schiff, Bruce Moore, Geoff Dowling, Kumar Kuruppu ○ <u>City Plan Services (assessment on behalf of Council)</u> Chris Speak, Garry Fielding, Lydia Kuczera
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the council assessment report