



Att: M Felipe,  
Planning Panels Secretariat  
PO Box 39,  
Sydney NSW 2001

Contact: Mr Richard Forbes  
Our Ref: DA 8/2017/662/1  
Your Ref:

Dear Mellisa,

**Development Application No. 8/2017/662/1**  
**Panel Reference. 2017 HCC057.**  
**Property – LOT: 22 DP: 791884, LOT: 40 DP: 755255 Palmers Lane POKOLBIN**

I refer to the above Development Application which was referred to the Panel for determination and e-mail advice dated 20 August, 2019 requesting confirmation of responses to matters raised by the Panel.

With respect to questions from the Panel (shown below in italics) in consideration of Planning Report 2017HCC057 – Palmers Lane, Council wishes to advise as follows:

*Question 1 - With permanent occupation, with condition 62 but permanent occupation isn't really defined. Would staying 50 weeks and being away for 2 qualify as not being permanent occupation? Perhaps a maximum number of weeks per year might be more appropriate?*

The dictionary definition of "tourist & visitor accommodation" under the Standard Instrument does not quantify (in days/weeks) what comprises "temporary or short-term" but it is clear to the extent that the wording could not be construed to mean permanent.

With respect to qualifying a time period over which any or all of the serviced apartments may be occupied by a guest, it is suggested that as a point of reference, the occupancy period proposed to be nominated for short-term rental accommodation (STRA) under the DPIE "Short-term Rental Accommodation Planning Framework", Explanation of Intended Effect, October/November 2018 could be considered a reasonable restriction based on planning grounds.

The proposed STRA framework recommends that Councils outside of Greater Sydney have the option to reduce the number of days an STRA can be occupied (from 365 days) to no lower than 180 days, based on local needs.

Should such a restriction be imposed by the subject consent it would at least be consistent with the likely controls to be imposed by Council upon future STRA in the location. Should the Panel resolve accordingly, Condition 62 of the Schedule of Conditions of Consent could be amended by the inclusion of the following;

No Serviced Apartment subject of this development consent shall be occupied on a permanent basis. No Serviced Apartment shall be let to an occupant for a period of time exceeding one-hundred & eighty (180) days.

*Question 2 - The flood emergency plan should commit to storing water and basic food to last 12 hours, rather than anticipating it will be available, as it does. This could be a condition of approval to be included in part A1 of Appendix A - 'Prepare - During Normal Daily Operations', similar to the commitment for Emergency Kits.*

Condition 53 of the proposed consent requires the adoption of the final Flood Management Plan. Should the Panel resolve accordingly, condition 53 may be modified specifically to include the following wording;

The flood emergency plan should commit to storing drinking water and basic food items sufficient for the predicted maximum number of occupants on the site to last for a minimum period of 12 hours.

*Question 3 - Could you confirm wording of a condition regarding not allowing strata titling in the future?*

As previously indicated, Strata title subdivision in zone RU4 is prohibited by clause 4.3B of the Cessnock Local Environmental Plan, 2011. It is suggested that a condition is redundant as effect cannot be given to a Strata scheme which is precluded by Clause 4.2B of the Cessnock Local Environmental Plan, 2011. Where a condition is imposed to prohibit strata titling in the circumstance where the future provisions of the Standard Instrument are amended, the condition imposed would be unenforceable. It should be noted that the clause currently states;

The size of any lot resulting from a subdivision of land to which the clause applies for a strata plan scheme (other than any lot comprising common property within the meaning of the Strata Schemes (Freehold Development) Act 1973 or Strata Schemes (Leasehold Development) Act 1986) is not to be less than the minimum size shown on the Lot Size Map (40 Hectares) in relation to that land. Where the Panel resolves to impose a condition of consent it is suggested that this comprise a part of the conditions grouped under "Terms of Consent" and stating;

No future strata title subdivision of the development subject of the development consent under the Strata Schemes (Freehold Development) Act 1973 or Strata Schemes (Leasehold Development) Act 1986 shall be permitted.

Should you have any further enquiries please contact Mr Richard Forbes of Council's Planning and Environment Section on (02) 4993 4182 or via email [richard.forbes@cessnock.nsw.gov.au](mailto:richard.forbes@cessnock.nsw.gov.au).

Yours faithfully

A handwritten signature in black ink, appearing to be 'R. Forbes', followed by a period.

Richard Forbes  
Team Leader Development Services

20 August, 2019.