PRESENT:

Cr Ron Campbell (Acting Chair) and Cr Lee Watts.

APOLOGIES:

Cr Sue Abbott and Cr Kiwa Fisher

Moved: L Watts Seconded: R Campbell CARRIED

IN ATTENDANCE:

Cr Maurice Collison, Cr Josh Brown, Mr Mathew Pringle (Director Environmental & Community Services), Miss Laura Conway (Administration Officer)

DECLARATIONS OF INTEREST:

Nil

PUBLIC PARTICIPATION:

Nil

BUSINESS ITEMS:

DESC.04.1  DA 101/2017 – Change of Use at 46 Haydon Street, Murrurundi

M Pringle provided a summary of the development application. He stated the premises is currently being used as a retail premises without Council consent.

M Pringle stated that the development application was lodged with Council on 11 August 2017 and additional information including a fire safety report was requested from the applicant. Council has met with the applicant on site, contacted them via written letters and telephone. To date, the applicant has not submitted the required information.

M Pringle also advised that the building is listed as a local heritage item under the Upper Hunter LEP 2013 and the site is zoned R1 General Residential. The proposed use is not permissible within the R1 zone, however, Clause 5.10 of the LEP allows Council to grant consent to the use of a building that is a heritage item, despite the permissibility of the use, if the use will facilitate the conservation of the heritage item. Clause 5.10 requires the applicant to submit a heritage management document that outlines the necessary conservation work. A heritage management document has not been submitted to date.

M Pringle advised that the applicant has requested Council to defer its determination of the application to give them more time to submit the required information.

The committee agreed to defer the development application, giving the applicant 60 days to supply the additional information.

DESC.04.2   Removal of restriction on the use of land

M Pringle provided the Committee with a brief summary of the item and stated that the original restriction was imposed by Council in 1995 under the Scone Local Environmental Plan 1986 (SLEP). Under the current Upper Hunter Local Environmental Plan (UHLEP), the relevant planning provisions of the rural zones has changed, with the restriction of the title of Lot 11 remaining.
The committee agreed that there is no significant impact on the release of the restriction on title of Lot 11 DP 854549 Wallington Road, Parkville and supported the recommendation to approve the release of the restriction.
DEVELOPMENT & ENVIRONMENTAL SERVICES COMMITTEE REPORTS

DESC.04.1 DEVELOPMENT APPLICATION 101/2017 - CHANGE OF USE - 46 HAYDON STREET, MURRURUNDI

RESPONSIBLE OFFICER: Mathew Pringle - Director Environmental & Community Services

AUTHOR: Christine Robinson - Manager Planning, Building & Regulatory Services

PURPOSE

On 11 August 2017 Council received Development Application No. 101/2017 for the change of use of part of a building at Lot 1 DP 75638, No. 46 Haydon Street, Murrurundi to be used for retail purposes.

Despite a number of requests, the applicant has failed to provide sufficient information to enable the proposal to be adequately assessed in accordance with the provisions of the Environmental Planning and Assessment Act 1979. The applicant is using part of the building as a retail premise without consent.

RECOMMENDATION

That Council refuse Development Application No. 101/2017 for the change of use to a retail premises at Lot 1 DP 75638, No. 46 Haydon Street, Murrurundi, for the reasons listed in Attachment 1.

BACKGROUND

Applicant: Stone and Co Vintage Interiors
Owner: SR Stone
Location: Lot 1 DP 75638, No. 46 Haydon Street, Murrurundi
Proposal: Change of Use to a Retail Premises
Zone: R1 General Residential

It was brought to Council’s attention that a retail business was operating from the abovementioned premises without consent. A Council Officer subsequently visited the site and verbally advised the business proprietor that development consent was required for use of the building.

On 11 August 2017, Council received the abovementioned development application. To allow the application to be assessed, additional information regarding fire safety was requested from the applicant in writing on 6 December 2017 and following several verbal requests, and again in writing on 14 February 2019.

The information has not been provided and the business is continuing to operate.

REPORT/PROPOSAL

The former Tattersalls Hotel at 46 Haydon Street, Murrurundi was established as a hotel in 1880 and closed c1952. A search of Council’s records has not revealed any development
consents issued for the site, however after the hotel’s closure, it is understood the building was used as residential flats and lodgings. In the past several years, the building has been unoccupied and became derelict. Photographs of the building from 1999 and 2009 are included as Attachment 3.

In 2017 it was brought to Council’s attention that part of the building was being used for retail purposes. A Council officer conducted a site visit and advised the business proprietor that development consent was required for use of the building. Development Application 101/2017 was received on 11 August 2017.

The building is a listed heritage item and located within a heritage conservation area, and as such the development application was referred to Council’s Heritage Advisor.

The Heritage Advisor requested additional information in relation to heritage matters. Following receipt of the requested information, the Heritage Advisor supported the application subject to no additional work other than that stated, being carried out.

In accordance with Clause 93 of the Environmental Planning and Assessment Regulation 2000, consent to the change of use of a building must not be granted unless the consent authority is satisfied that the building complies (or will comply when completed) with the applicable fire safety provisions. Schedule 1 of the Regulation requires:

A development application must be accompanied by certain documentation. In the case of a development application that involves a change of use of a building (other than a dwelling-house or a building or structure that is ancillary to a dwelling-house and other than a temporary structure):

(i) a list of the Category 1 fire safety provisions that currently apply to the existing building, and
(ii) a list of the Category 1 fire safety provisions that are to apply to the building following its change of use,

The applicant (6 December 2017) was requested to submit a report prepared by a suitably qualified person (such as a Fire Engineer) demonstrating that the fire protection and structural capacity of the building is, or will be, appropriate to the building’s proposed use.

The applicant was further advised to contact the Expert Fire Panel at the Office of Environment and Heritage to obtain current information on fire rating of heritage significant building fabric. It was recommended to consider a performance based response to fire rating in preference to removal or alteration to significant building fabric.

The requested information was not provided and Council became aware that the retail business was continuing to operate, and additionally a food business was operating from the premises and that building and plumbing work was being carried out on the first floor.

A further site visit and meeting with the business proprietor was carried out by Council’s Officer, Christine Robinson and Council’s Heritage Advisor on 6 February 2019. A letter was provided to the applicant on 14 February 2019 making a final request for the fire engineer assessment report and stating that any alterations and additional uses of the building would require further development consent.
As a result, the business proprietor opted to close the food business. An email was provided to Council requesting an extension to provide the report from the Fire Engineer, when repairs and upgrades were complete.

The retail business continues to operate without consent and work is continuing in the building.

**OPTIONS**

1. That Council refuse Development Application No. 101/2017 for the change of use to a retail premises at Lot 1 DP 75638, No. 46 Haydon Street, Murrurundi, for the reasons listed in Attachment 1.

2. To approve Development Application No. 101/2017 for the change of use to a retail premise at Lot 1 DP 75638, No. 46 Haydon Street, Murrurundi, subject to conditions of consent.

**CONSULTATION**

Surrounding properties were notified of the development proposal between 28 September 2017 and 13 October 2017. An advertisement was placed in the Scone Advocate on 28 September 2017. No submissions were received by Council.

The site is a heritage item (no. I163) listed in Council’s Local Environmental Plan 2013 and as such the development application was referred to Council’s Heritage Advisor, Mrs Elizabeth Evans. In response to some of the concerns raised by the Heritage Advisor, additional information was requested to be provided by the applicant.

Internal consultation with the Director Environmental and Community Services, Mr Mathew Pringle has been undertaken in preparation of this report.

**STRATEGIC LINKS**

a. **Community Strategic Plan 2027**

This report links to the Community Strategic Plan 2027 as follows:

**BUILT AND NATURAL ENVIRONMENT**

**Goal 4** Plan for a sustainable future

**CS14** Provide efficient and effective advisory, assessment and regulatory services focused on being Customer ‘friendly’, responsive and environmentally responsible.

We are working to achieve the following Community Priorities:
b. Delivery Program

- Assessment of planning applications.
- Advisory service to the community, including heritage conservation.

c. Other Plans

Not applicable.

**IMPLICATIONS**

a. Policy and Procedural Implications

Nil.

b. Financial Implications

A development application fee of $110 has been paid.

c. Legislative Implications

An assessment of the development application has been undertaken pursuant to Section 4.15 of the *Environmental Planning and Assessment Act 1979* (see Attachment 1).

d. Risk Implications

Council determinations of development applications in relation to local development can be appealed by a third party in the Land and Environment Court in circumstances where incorrect legal process has been applied.

e. Other Implications

Nil.

**CONCLUSION**

Development Application 101/2017 for the change of use to retail has been lodge with Council as the Consent Authority. The application was not supported by sufficient information required under the Environmental Planning and Assessment Regulation 2000 in relation to fire safety. While the applicant has been given a number of opportunities to provide the relevant information, to date nothing has been forthcoming.
RECOMMENDATION

That Council defer its determination of Development Application No. 101/2017 for the change of use to a retail premises at Lot 1 DP 75638, No. 46 Haydon Street, Murrurundi, pending the submission of a fire safety report and heritage management document within 60 days from 29 April 2019.

Moved: L Watts       Seconded: R Campbell     CARRIED
DESC.04.2  
REMoval of restriction on the use of land  
RESPONSIBLE OFFICER: Mathew Pringle - Director Environmental & Community Services  
AUTHOR: Paul Smith - Senior Environmental Planner

PURPOSE

On 7 March 2019 Council received a request to release a restriction on the title of Lot 11 DP 854549 Wallington Road Parkville that “the erection of a building for residential purposes on the lot burdened is prohibited”. The application is being referred to Council as the restriction was registered on title in accordance with condition of consent imposed by Council.

RECOMMENDATION

That Council approve the release of the restriction on title of Lot 11 DP 854549 Wallington Road Parkville, prohibiting the erection of a building for residential purposes.

BACKGROUND

Under the Upper Hunter Local Environmental Plan 2013 (UHLEP) the subject land zoned RU4 Primary Production Small Lots and has a minimum lot size of 40ha. As a result, the lot by virtue of its area (85.84ha) has a dwelling entitlement pursuant to clause 4.2B(3)(a) of UHLEP.

Development Consent No. 32/1994 approved on 17 March 1995, gave approval for the subdivision of land to create Lot 10 (is 4.05ha) and Lot 11 (85.84 ha). As Lot 10 was less than the minimum lot size prescribed by the Scone Local Environmental Plan 1986 (SLEP) (now repealed) the subdivision was approved under State Environmental Planning Policy No. 1 – Development Standards which made provision for a variation of the development standards. The reason given in the application is so that the owners (K &L, K&J and M&E Wenham) can “excise a small lot around the existing cottage that can be owned by Mr John Wenham who will assist other members of the family by being on site to supervise and manage a larger section of the property”.

Council at its ordinary meeting on 20 February 1995 resolved that the objection under State Environmental Planning Policy No. 1 be supported and (of relevance):

“A restriction as to user under Section 88B of the Conveyancing Act shall be placed on the title of proposed Lot 11 which prohibits the erection of a building for residential purposes.”

This was intended to prevent additional dwellings as the SLEP did not have any planning provisions that linked dwelling entitlements to minimum lot sizes. The inconsistency that now exists is because the UHLEP has changed the relevant planning provisions for the rural zones (ie Clause 4.2B(3)(a)), while the restriction of the title of Lot 11 remains.

REPORT/PROPOSAL

On 7 March 2019 Council received a letter from Hills Solicitors on behalf of the owners, Jennifer and Mark Wenham, formerly requesting that the restriction prohibiting the erection of a dwelling house on Lot 11 be released. The release of the restriction will enable the erection of a dwelling house on the land. Given that the land has an area of 85ha, it satisfies the minimum lot size development standard of 40ha under Clause 4.2B(3)(a) of the UHLEP and as such the release of the restriction is now warranted.

OPTIONS
1. That Council approve the release of the restriction on title of Lot 11 DP 854549 Wallington Road Parkville, prohibiting the erection of a building for residential purposes.

2. That Council not approve the release of the restriction on title of Lot 11 DP 854549 Wallington Road Parkville, prohibiting the erection of a building for residential purposes.

**CONSULTATION**

No consultation has been undertaken.

**STRATEGIC LINKS**

a. **Community Strategic Plan 2027**
   This report links to the Community Strategic Plan 2027 as follows:

   Goal 3 – Protect the natural environment
   - Ensure that all actions, decisions and policy response to natural hazards and climate change remain current and reflect capacity, Community expectations and changes in environmental and climate change information.

   Goal 4 – Plan for a sustainable future
   - Plan, facilitate and provide for a changing population for current and future generations

We are working to achieve the following Community Priorities:

![Rural lifestyle and Country feel are valued and protected and the Upper Hunter Shire remains quiet, safe, healthy and welcoming.]

![Protect the natural environment.]

b. **Delivery Program**

Assessment of the request is in accordance with Town Planning Strategy:

CS13 - Implement and regularly review Strategic Land Use Plans, Environmental Planning Instruments and Development Controls, which reflect the needs and expectations of the broad Community.

c. **Other Plans**

NA

**IMPLICATIONS**

a. **Policy and Procedural Implications**

NA
b. Financial Implications

It will be necessary for the landowner to bear all the costs associated with releasing the restriction.

c. Legislative Implications

The landowner will need to pursue matters relevant to releasing the restriction under Section 88B of the Conveyancing Act 1919.

d. Risk Implications

NIL

e. Other Implications

NIL

CONCLUSION

Given that under the UHLEP the land satisfies the minimum lot size development standard for the erection of a dwelling house, it is now appropriate to release the restriction.

RECOMMENDATION

That Council approve the release of the restriction on title of Lot 11 DP 854549 Wallington Road Parkville, prohibiting the erection of a building for residential purposes.

Moved: R Campbell  Seconded: L Watts  CARRIED