

ATTACHMENTS UNDER SEPARATE
COVER

ORDINARY COUNCIL MEETING
10 MAY 2016



PORT STEPHENS
C O U N C I L

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ITEM 1 - ATTACHMENT 1 CONDITIONS OF CONSENT.

ATTACHMENT 1 – CONDITIONS OF CONSENT

CONDITIONS THAT IDENTIFY APPROVED PLANS AND LIMITATIONS OF CONSENT

- The development must be carried out in accordance with the plans and documentation listed below and endorsed with Council's stamp, except where amended by other conditions of this consent or as noted in red by Council on the approved plans:

Plan/Doc. Title	Plan Ref. No.	Revision	Date	Drawn By
Site Plan	A14051-A002	A	14/10/15	GWH Build
Draft Subdivision Plan	A14051-A003	A	14/10/15	GWH Build
Ground Floor Plan	A14051-A101	A	14/10/15	GWH Build
Mezzanine Plan	A14051-A102	A	14/10/15	GWH Build
Roof Plan	A14051-A103	A	14/10/15	GWH Build
Elevations & Sections	A14051-A501	A	14/10/15	GWH Build
Site Plan Tree Layout	A14051-A002	A	14/10/15	GWH Build

In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent prevail. If there is any inconsistency between the plans and documentation referred to above the most recent document shall prevail to the extent of any inconsistency.

- A Construction Certificate is required prior to commencement of works approved by this application. The person having the benefit of this consent must appoint a principal certifying authority. If Council is not appointed as the Principal Certifying Authority then Council must be notified of who has been appointed. Note: at least two (2) days' notice must be given to Council of intentions to start works approved by this application.

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE

- The applicant shall provide two rainwater 20,500L rainwater tanks in accordance with the approved plan. Details shall be submitted to and approved by the Certifying Authority **prior to the issue of Construction Certificate.**

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4. Collected stormwater runoff shall be piped to:
- an infiltration trench in accordance with Council's Standard Drawing S136 (with overflow pipe), or
 - to water quality improvement devices as determined through condition 5 of this consent, whichever achieves the greatest water quality outcome.

The overflow shall be connected to the site drainage system.

A Construction Certificate cannot be issued until details of the infiltration trench are provided to the Certifying Authority for assessment and determined to be satisfactory by the Certifying Authority.

5. Detailed engineering plans shall be submitted to Council or an accredited Private Certifier (with the appropriate category of accreditation) for approval **prior to issue of the Construction Certificate.**

The details shall be in accordance with this consent, the BCA. Council's Design and Construction Specifications, policies and standards, as a minimum and include but are not limited to:

- Construction of the Right of Carriageway access linking the proposed lot with the existing Senior Citizens Centre carpark. Details are to include, existing and proposed levels, long section and cross sections, pavement design and traffic loading, drainage and earthworks.
 - Design of stormwater drainage from the site including existing levels, design pipe grades and levels, hydraulic calculations, stormwater discharge from Lot 2 and the Right of Carriageway including the rainwater tanks and infiltration trenches.
 - Details of the water quality improvement devices supported by Music water quality modelling. An electronic copy of the Music model is to be supplied.
6. **Prior to the issue of the Construction Certificate** a Soil and Water Management Plan (SWMP) shall be submitted to the Certifying Authority, for the approval of the Certifying Authority, detailing temporary and permanent works to be implemented for the management of potential erosion and sedimentation. Control measures shall be designed to prevent the movement of soil by wind, water or vehicles within the site, onto any adjoining property, drainage line, easement, natural watercourse, reserve or road surface, in accordance with *Managing Urban Stormwater – Soils and Construction, Volume 1* (Landcom, 2004).

CONDITIONS TO BE SATISFIED PRIOR TO COMMENCEMENT OF WORKS

7. **Prior to the commencement of works** all mature trees to be retained on site will be:

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- a. mulched to a depth of 350mm. The extent of the mulch will be measured 6m from the trunk of the retained tree.
- b. Stockpiling or storage or mixing of materials, vehicle parking, disposal of liquids, machinery repairs and refuelling, siting of offices or sheds and the lighting of fires shall **not** occur within 15m of trees identified to remain on the site or neighbouring properties.

CONDITIONS TO BE SATISFIED DURING THE DEMOLITION, EXCAVATION AND CONSTRUCTION PHASES

8. A total of 18 Koala Feed trees, either *Eucalyptus robusta* (Swamp Mahogany), *Eucalyptus parramattensis* (Parramatta red gum), or *Eucalyptus tereticornis* (Forest Red Gum) (or a combination of these species), are to be planted at a location consistent with the Boomerang Park Plan of Management. Council will be notified at the time of planting to ensure an appropriate location is agreed upon. These trees are to be a minimum of 25 litre pot size and appropriate height. The replacement trees are to be maintained to maturity through use of watering and mulch as required to achieve natural height.
9. An Arborist shall be onsite during the excavation of utility trenches within 15m of any mature trees to be retained on site.
10. Trees marked Tree # 2 and Tree #3 on the approved plan 'tree layout' will be fenced with Temporary Construction Fence during the period of construction.
11. The location and boundaries of Lot 2 and the Right of Carriageway are to be generally in accordance with the Draft Subdivision Plan by GWH Build Project No A14051 Dwg A003 Revision A dated 14/10/2015.
12. A Right of Carriageway is to be provided and constructed for vehicular access to Lot 2 from Irawang Street to the north east corner of Lot 2. The Right of Carriageway is to be aligned with the existing footpath crossing and parking area access aisle with the Senior Citizens Centre and follow a uniform curve to Lot 2. The width of the Right of Carriageway is to include the constructed pavement and cut and fill batters and not less than 0.5m clearance to kerbs.
13. A stormwater drainage strategy, including a contour plan, shall be submitted to an accredited certifier or Council for approval, addressing:
 - a. The collection and management of stormwater generated from the right of carriageway and all impervious areas within Lot 2 prior to being discharged to Councils drainage infrastructure.
 - b. Water Quality is in accordance with the objectives of Council's Urban Storm Water and Rural Water Quality Management Plan.
 - c. Legal point(s) of discharge for storm water is achieved.

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14. All building work must be carried out in accordance with the provisions of the Building Code of Australia and the Disability (access to premises - buildings) standard.
15. Where no sanitary facilities currently exist onsite for construction workers toilet accommodation for all tradespersons shall be provided from the time of commencement until the building is complete. The toilet facilities shall be located so as to have minimal impact of adjoining properties and shall not be placed on the road reserve, without separate approval from Council.
16. Construction work that is likely to cause annoyance due to noise is to be restricted to the following times:-
 - * Monday to Friday, 7am to 6pm;
 - * Saturday, 8am to 1pm;
 - * No construction work to take place on Sunday or Public Holidays.

When the construction site is in operation the L₁₀ level measured over a period of not less than 15 minutes must not exceed the background by more than 10dB(A). All possible steps should be taken to silence construction site equipment.

17. It is the responsibility of the applicant to erect a PCA sign (where Council is the PCA, the sign is available from Council's Administration Building at Raymond Terrace or the Tomaree Library at Salamander Bay free of charge). The applicant is to ensure the PCA sign remains in position for the duration of works.
18. The excavated and/or filled areas of the site are to be stabilised and drained to prevent scouring and the finished ground around the perimeter of the building is to be graded to prevent ponding of water and ensure the free flow of water away from the building.
19. During the construction period, the person having the benefit of the consent shall ensure that airborne dust is contained within the work site or transport vehicles and does not impact on the amenity of the surrounding environment.

CONDITIONS TO BE SATISFIED PRIOR TO ISSUE OF AN OCCUPATION CERTIFICATE

20. Ten parking spaces including two disabled parking spaces are to be provided on site to Council's satisfaction **prior to the issue of the Occupation Certificate.**

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF A SUBDIVISION CERTIFICATE

21. Details demonstrating the following items are wholly located within the boundaries for Lot 2 shall be submitted to the Principal Certifying Authority for assessment

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and determined to be satisfactory by the Principal Certifying Authority **prior to the Issue of the Subdivision Certificate.**

- a. Approved building works.
 - b. Approved onsite parking.
 - c. Provision for turning of medium rigid vehicles in accordance with the current Australian Standard AS2890.2.
 - d. Clearance around building for access and maintenance.
22. Works-As-Executed plans shall be prepared by a suitability qualified person detailing all roads and drainage works in accordance with Council's Design and Construction Specifications, policies and standards. This shall be submitted to, and accepted by the Certifying Authority, **prior to issue of the Subdivision Certificate.**
23. All civil engineering works associated with the subdivision shall be carried out to the satisfaction of Council with a letter of Practical Completion issued **prior to issue of the Subdivision Certificate.**
24. Each lot within the subdivision is to have separate electricity service. The service must be installed wholly within the respective lot boundaries unless it is covered by a suitable easement.
- Any 'cross property' electrical wiring between lots within the subdivision must be removed or disconnected and made safe in accordance with the relevant electrical standards.
25. **Prior to issue of a Subdivision Certificate**, the Section 50 Hunter Water compliance certificate which refers to the subdivision application must be obtained and submitted to the Council.
26. **Prior to the issue of a Subdivision Certificate for the relevant stage**, Council is to be provided with written certification from the relevant service authorities that reticulated water, sewer and electrical connections have been made to each created lot.
27. A right of carriageway referenced in condition No.12 of this consent shall be created in accordance with Section 88B of the Conveyancing Act and **submitted with the Subdivision Certificate.**
28. A registered surveyor is to certify that all stormwater components are covered by an easement where necessary.

The Subdivision Certificate cannot be issued until the surveyors certification has been provided to the Principal Certifying Authority for assessment and determined to be satisfactory by the Principal Certifying Authority.

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29. For endorsement of the subdivision certificate, the person having the benefit of the development consent shall submit an original plan of subdivision plus an electronic and signed copy on a USB or CD, suitable for endorsement by Council. The following details must be submitted with the plan of subdivision and its copies:
- a. The endorsement fee current at the time of lodgement
 - b. The 88B instrument
 - c. The Section 50 (Hunter Water) Compliance Certificate for the subdivision
 - d. All necessary easements for services, access, drainage, and/or maintenance shall be indicated on the plan.

CONDITIONS TO BE SATISFIED AT ALL TIMES

30. New signage for this facility is to match the existing signage for the other facilities located on this portion of the park. Existing signs that are to be re-used should complement sign styles within the vicinity. New and existing signage information is to be provided to Council for approval before installation and shall include details on proposed location, size, materials and colours
31. New planting is to complement existing planting undertaken in the vicinity.
32. Where mature plantings will be impacted on they are to be replaced with like plantings.
33. At all times, the hours of operation are to be restricted to:
- Monday to Saturday - 9am to 4pm
- Other internal operations such as cleaning, preparation, and office administration may be undertaken outside of the above hours provided no disturbance to the amenity of the neighbourhood occurs.
34. Mitigation measures should be incorporated into the operations of the site to reduce noise impacts where practicable. In addition, the development shall be managed so as not to cause offensive noise, as defined under the *Protection of the Environment Operations Act 1994* and the NSW Industrial Noise Policy. Evidence of compliance with the Act and policy is to be provided to Council within 4 weeks upon request.

ADVICES

1. Prior to release of the Subdivision Certificate Council's Mapping Section via email at: addressing@portstephens.nsw.gov.au stating your Development Approval number, address of the property and the assessing officer to obtain the correct house numbering. Be advised that any referencing on Development Application plans to house or lot numbering operates to provide identification for assessment purposes only.

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2. Please contact Council's Vegetation Management Officer before the removal of any trees on site. Care needs to be taken during works to protect the Firewheel Tree and the Hoop Pine Tree located near the location of the parking area.
3. Telecommunications infrastructure to services the premises must be installed which complies with the following:
 - a. The requirements of the Telecommunications Act 1997 (Cth);
 - b. For a fibre ready facility, the NBN Co's standard specifications current at the time of installation; and
 - c. For a line that is to connect a lot to telecommunications infrastructure external to the premises, the line is located underground.
4. Unless otherwise stipulated by telecommunications legislation at the time of construction, the development must be provided with all necessary pits and pipes, and conduits to accommodate the future connection of optic fibre technology telecommunications.
5. Provide to Council a written certification form all relevant service providers that the telecommunications infrastructure is installed in accordance with advice 3 and 4 (above) and all applicable legislation at the time of construction.
6. Should any Aboriginal 'objects' be uncovered by the work, excavation or disturbance of the area is to stop immediately and the Office of Environment and Heritage must be informed accordance with Section 89A of the *National Parks and Wildlife Act, 1974* (as amended). Works affecting Aboriginal 'objects' on the site must not continue until the Office of Environment and Heritage has been informed. Aboriginal 'objects' must be managed in accordance with the *National Parks and Wildlife Act, 1974*

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**ATTACHMENT 2
DEVELOPMENT ASSESSMENT REPORT**

1.0 APPLICATION DETAILS

Application Number	16-2015-660-1
Development Description	Community Facility (Raymond Terrace Men's Shed) and Torrens Title Subdivision (two lots)
Applicant	Grahame Berthold
Date of Lodgement	15/10/15
Value of Works	\$600,000

1.1 Development Proposal

The proposed development is for a two lot subdivision and construction of a community facility to be used by Raymond Terrace Men's Shed. The site is located within Boomerang Park, in the south western corner close to the intersection of Glenelg St and Elizabeth Avenue Raymond Terrace.

The proposal involves the construction of a single storey building (with mezzanine) to be used as a community facility. The building is 655m² in size (approximately 42m x 15m) with a 5m wide awning on the northern side. The building is 5.08m high and is to be constructed of precast concrete panels with a colourbond roof. Solar panels are to be installed on the roof and two water tanks at the rear of the building. A 2.1m high transparent fence is to be provided around the building. Six trees are to be removed in the area of the building footprint.

The layout of the building consists of a workshop, recreational room, toilets, kitchen, lunch area, two store rooms, and an office and mezzanine area. Two accessible toilets are also located external to the building.

A 7m wide access road to the facility is proposed to be constructed via the existing Senior Citizens Centre car park, accessed from Irrawang St. Ten parking spaces (including two accessible spaces) are to be located on the northern side of the building.

The use by the Raymond Terrace Men's Shed group involves:

- hours of operation Monday to Saturday 9am to 4pm;
- a maximum of 20 people on site at one time; and
- a variety of activities within the shed such as woodwork, metalwork, assembly and youth mentoring.

The subdivision involves the creation of two lots:

- Lot 2 will contain the Raymond Terrace Men's Shed and is 3816.207m².
- Lot 1 is to contain the remainder of Boomerang Park. The Park is currently 21.48ha in size.

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The subdivision will allow the men's shed to independently connect to utility services such as water, electricity and phone. A right of way benefitting Lot 2 is proposed to enable access to the site via Lot 1 (access via the Senior Citizens Centre accessed off Irrawang St).

2.0 PROPERTY DETAILS

Property Address	17E Irrawang Street RAYMOND TERRACE
Lot and DP	LOT: 1 DP: 1018979
Current Use	Boomerang Park – includes open recreational space and three buildings (Raymond Terrace Seniors Citizens Centre, Raymond Terrace Before and After School Care and the Port Stephens All Breed and Obedience Canine Club).
Zoning	RE1 PUBLIC RECREATION
Site Constraints	The subject land is a local heritage item I45 ("Boomerang Park", including former stone quarry and mature tree planting) and is also adjacent to a conservation area – General and local heritage item I50 (Jacaranda trees (Jacaranda mimosifolia). Other constraints include Acid Sulfate Soils (ASS) Class 5, Bushfire prone land (Vegetation category 1 and vegetation buffer).

2.1 Site Description

Boomerang Park (Lot 1 DP 1018979) is located in close proximity to the Raymond Terrace commercial area. It is bounded by Kangaroo Street to the north east, Irrawang St to the north west, Glenelg St to the south west and Elizabeth Avenue to the south. The area of the park subject to the proposed development is located adjacent to the junction of Glenelg Street and Elizabeth Avenue. This portion of the park is clear of buildings and structures. The Park is used for outdoor recreation purposes and also contains a number of buildings such as the Raymond Terrace Senior Citizens Centre, Raymond Terrace Before and After School Care and the Port Stephens All Breed and Obedience Canine Club. The surrounding streets are predominately residential in nature.

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Photo 1: Looking towards the Seniors Citizen Centre in the location of the proposed Men's Shed



Photo 2: Looking towards Glenelg St, from the Senior Citizen Centre

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Two recent development applications (No's 16-2014-314-1 and 16-2015-518-1) were surrendered by the applicant in October 2015. These consents relate to the construction of a community facility (Raymond Terrace Men's Shed) and a two lot subdivision. It was determined that the consents were invalid as the site is classified as community land and a decision to grant consent needs to be made by resolution of Council, not via delegation by an officer, in accordance with section 47E of the *Local Government Act* (which refers to the development of community land). Hence, the current application has been lodged to ensure the provisions of the *Local Government Act* are met in the assessment and determination of the application.

2.3 Boomerang Park**Boomerang Park Landscape Master Plan**

Council appointed consultants GHD to develop a Landscape Master Plan for Boomerang Park in October 2013. Community consultation was undertaken in the preparation of the Boomerang Park Master Plan which included a community workshop on 18 November 2013, a session with the Youth Advisory Panel on 16 January 2014, and several key stakeholder meetings. It was developed in accordance with the principles established in the Boomerang Park Plan of Management, which was adopted in November 2000.

The Draft Landscape Master Plan proposed six (6) new key components:

- Men's shed building and car park
- Croquet courts
- Community gardens
- Playground and skate park with associated BBQ and picnic facilities
- Activity trail circumnavigating the park with equipment stations
- Possible multi-purpose event space

The Draft Landscape Master Plan also identified three parcels of land within the Park that are proposed to be further investigated for future reclassification and rezoning. On the 10 June 2014, Council resolved to place the Draft Master Plan on public exhibition for 28 days, until the 9 July 2014.

Following the public exhibition period and inclusion of comments from residents, Council adopted the Master Plan at its meeting on 25 November 2014. Further consultation also occurred with local children and their carer's in regards to the development of the playground which was proposed in the Master Plan.

Boomerang Park Draft Plan of Management

Council at its meeting on 9 February 2016 resolved to place the Draft Boomerang Plan of Management (POM) on public exhibition for a period of 42 days from 10 February to 23 March 2016. Community consultation occurred in the form of two on two meetings with staff on 23 February 2016, and a public hearing on 3 March 2016. Community input is required to ensure that the POM meets the needs of the local community and the requirements of Sections 40(A) and 47(G) of the *Local Government Act*. The Draft POM is recommended for adoption by Council and will be placed before Council on 26 April 2016.

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The Draft POM identifies issues affecting the subject land and outlines how the land is intended to be used, improved, maintained and managed into the future. The Draft POM is accompanied by the Landscape Master Plan that shows proposed future uses and developments/improvements to that open space (as discussed previously this was adopted by Council in November 2014).

The Draft POM included an assessment of existing flora and fauna habitats within Boomerang Park. The ecological assessment identified some important flora and fauna species on site, however no critical habitats were found. The only remnant vegetation that was found on site occurs in the central portion of the park and some endemic vegetation is located towards the cemetery. A number of recommendations have been included in the Draft POM to improve the ecological values of the site.

The Draft POM identifies the use of leases and licences required to formalise the use of community land by groups and organisations. These activities must be compatible with the categorisation and zoning of the land and provide benefits and services or facilities for the users of the land. The use of the park and community building by the Raymond Terrace Men's Shed is listed as an appropriate use of the site. It also specifically states that the development of a men's shed community building is to be subject to a separate development application.

The proposed development is consistent with the Draft POM as it supports the ecological, heritage and cultural values of the park and meets the legislative requirements. The men's shed community facility is specifically listed in the POM as a suitable use within the Park and the proposal also aligns with the uses and activities identified in the Landscape Master Plan.

3.0 APPLICATION SUMMARY

Assessing Officer	Priscilla Emmett, Senior Development Planner
Designated Development	The application does not constitute designated development
Integrated Development	The application does not require any additional approvals listed under s.91 of the EP&A Act
Number of Submissions	42 plus three petitions (2081 signatures)
Recommendation	Approval

4.0 MATTERS FOR CONSIDERATION – SECTION 79C

4.1 s79C(1)(a)(i) – The provisions of any EPI

4.1.1 Port Stephens Local Environmental Plan 2013 (LEP)

Part 2 – The proposed development is defined as a community facility. A community facility is defined as a building or place that is owned or controlled by a public authority or non-profit organisation and used for the physical, cultural or intellectual development or welfare of the community.

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The site is zoned RE1 Public Recreation and the proposed use is permissible with consent and is consistent with the objectives of the zone, which is provide for a range for recreational settings and activities and compatible land uses. The proposed community facility is a compatible land use in the zone and provides activities that will benefit the welfare and cultural development of the community.

Clause 2.6 and 4.1 – Subdivision of the site is permissible with development consent. There is no minimum lot size on this site and the proposal is acceptable as it reflects the future use of the site.

Clause 4.3 – The maximum height of the building is 5.08m. There is no minimum height requirement for this site and the proposed height is acceptable and has been assessed on its merits.

Clause 5.10 - The site is listed as a local heritage item I45 ("Boomerang Park", including former stone quarry and mature tree planting) and is also adjacent to the Raymond Terrace Conservation Area – General and local heritage item I50 (Jacaranda trees (Jacaranda mimosifolia). The site is not listed as having aboriginal sites in or near the location.

A heritage management document has not been submitted with the application however the proposal will not disturb the mature tree plantings or former stone quarry located on the site and will have a minimal impact on the heritage significance of the heritage items and general conservation area. Therefore a heritage management document is not considered necessary. In addition, Council's Heritage Officer reviewed the application and raised no concerns in relation to the impact of the development on the heritage significance of the site.

It is considered that the Men's shed building is not dissimilar in design and overall character to the existing buildings in the Park (Seniors Citizens Centre and Before School Care Facility) and therefore should blend in with this area of the site. The proposed external colour scheme has been found to be acceptable. The new building is removed physically and visually from the heritage significant stone quarry.

Consideration has been made to the location of the heritage trees (Hoop Pine and Firewheel Tree) on the site. Conditions are to be placed on the consent in relation to any works occurring near these trees to ensure there is no impact from the development during the construction period. A number of conditions of consent in relation to signage and planting are also recommended to minimise any impact on the heritage significance of the development, to ensure that a cohesive approach to signage and landscaping is undertaken within Boomerang Park.

A search of the Aboriginal Heritage Information Management System identified there are no Aboriginal sites recorded or places declared in or near the location of the proposed Men's Shed. In addition, the area of the proposed development is located near the Senior Citizens Centre where the natural ground has already been disturbed through this development. However, an advice has been imposed requiring all works cease on the site if any Aboriginal objects are uncovered during the activity.

Clause 7.1 – The site is mapped as having Acid Sulfate Soils Level 5 occurring on site.

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The development does not involve works within 500 metres of adjacent class 1, 2, 3 or 4 land that is below 5 metres AHD by which the water table is likely to be lowered. An Acid Sulphate Soils Management Plan is not required.

Clause 7.2 - The development incorporates associated earthworks. The extent of earthworks and potential impacts has been considered during the assessment process. The proposed development is consistent with clause 7.2.

Clause 7.6 – Essential services are available to the site and the subdivision will assist with the ease of access to such services.

4.2 s79C(1)(a)(ii) – Any draft EPI

There are no draft EPI's relevant to the proposed development.

4.3 s79C(1)(a)(iii) – Any DCP**4.3.1 Port Stephens Development Control Plan 2014**

The Port Stephens Development Control Plan 2014 (DCP) is applicable to the proposed development and has been assessed below.

Chapter A.12 – The development application was notified and advertised and a detailed discussion has been provided below.

Chapter B – The proposal is not likely to have any adverse environmental impacts.

No disturbance to acid sulphate soils will occur as part of the development due to the minimum amount of excavation proposed.

The site is classified as bushfire prone. However, the submission of a bushfire threat assessment report was not required as the site is considered to meet the Planning for Bushfire Protection Guidelines. The area located near the proposed men's shed is largely cleared with scattered vegetation.

The development will not impact on drainage and water quality and is below the height trigger requirements for referral to the RAAF.

The removal of six trees in the development footprint is acceptable. Four of these trees are Swamp Mahoganies (koala feed trees). These trees are currently not being used as feed trees and a condition has been placed on the consent requiring 18 replacement koala feed trees to be planted on site in a location consistent with the Plan of Management for Boomerang Park. The two heritage trees, *Araucaria cunninghamii* (Hoop Pine) and *Stenocarpus sinuatus* (Firewheel Tree) will not be impacted by the development and a condition has been placed on the consent requiring temporary construction fencing to be placed around the trees for their protection.

The proposed development will not significantly impact on air or noise quality. The noise impacts from the development through the use of machinery and tools will be minor and will be minimised through the construction methods of the building, the separation distances from the residential area and by limiting the hours of operation of the Men's shed. A number of conditions have been placed on the consent in regards to noise.

There are no specific parking space requirements for community facilities, other than one accessible space being provided per 20 spaces. Ten spaces are proposed on site (including two accessible spaces) in close proximity to the building entrance. The number

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of spaces is acceptable given that the Men's Shed will have a maximum of 20 patrons at one time.

Section C 1– The proposed subdivision layout allows for the separation of the Men's Shed facility from the remainder of the park. It meets the requirements of the DCP in that the layout is acceptable and provides direct access to Glenelg Street for services and allows for an efficient use of the land.

4.3.2 Section 94A Contributions

The application was considered by the Section 94 Analysis Team on 27 October 2015. A detailed assessment of the application was made and it was recommended that the section 94A levies be waived in accordance with provision 2.10 of the Port Stephens Section 94A Development Contributions Plan (Amendment No. 7). Council endorsement of this recommendation is required as delegation does not exist within the Section 94A Plan.

4.4 s79C(1)(a)(iia) – Any planning agreement or draft planning agreement entered into under section 93F

There are no planning agreements that have been entered into under section 93F relevant to the proposed development.

4.5 s79C(1)(a)(iv) – The regulations

The application has been considered pursuant to the provisions of the *Environmental Planning and Assessment Act* and Regulation 2000 in particular Regulation 93 and Regulation 94 and no concerns are raised.

4.6 s79C(1)(a)(v) – Any coastal management plan

There are no coastal management plans applicable to the proposed development.

4.6 s79C(1)(b) – The likely impacts of the development

The development is not likely to have any adverse impacts on the natural environment. The development does not involve the loss of threatened species or significant trees and does not impact on the cultural and heritage significance (including Aboriginal cultural heritage) of the park. The heritage significance of the park relates mainly to the former stone quarry and the mature tree plantings near Elizabeth St. It is noted that the quarry and tree plantings identified in the listing of the park, do not form part of the statement of significance of the listing. The statement indicates that the significant of the park is centred on the park as whole rather than the individual elements such as the quarry or the trees. It has significance as a cultural landscape established for public recreation and history of the establishment of Raymond Terrace. Regardless of the details of the listing, the quarry and the mature tree plantings will be not be impacted upon and the principal use of the land as a recreational park will remain unchanged.

The proposed building is located a minimum of 23m from Glenelg St and any potential noise, odour or air quality impacts will be minimised by the separation distance, the construction methods of the building and the hours of operation, which will be restricted by condition of consent. The proposed building also does not isolate or alienate portions of

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the park as there is sufficient area to access all parts of the park around the proposed facility. Casual surveillance will be increased to this part of the park which is a positive social outcome.

The subdivision layout allows the community facility to have its own individual lot which will assist with the provision of essential services such as water and electricity to the building. The subdivision of the park does not impact on the significance of the park as it is still classified as community land and zoned as public recreation. In addition the proposed development is consistent with the Draft Plan of Management and Landscape Master Plan for Boomerang Park, which encourages community use of the Park.

4.6.1 Social and Economic Impacts

The proposal is likely to result in a positive social benefit as the Men's Shed group facilitates a community need. The group provides a meeting place and outlet for men, which assists with mental health, physical development and wellbeing. A portion of the facility will also be available to other groups in the community and will not be for the exclusive use by the Men's Shed.

The construction of the facility will cater for employment in the local area and have an economic benefit to the commercial part of Raymond Terrace through incidental spending by contractors, users of the Men's Shed and visitors to the facility.

4.6.2 Impacts on the Built Environment

The proposed development is likely to have no adverse impacts on the built environment. The development is located a substantial distance from the street and the buildings appearance will be screened by the existing vegetation on the site. The development is only one storey high and is located in a park setting. It is also located within a reasonable distance from the Seniors Citizen Centre and uses a joint vehicular access point which minimises the impact on the park through additional hardstand areas. The building will not isolate this portion of the park, as there is sufficient room available on all sides to allow members of the community to transverse this area.

4.6.3 Impacts on the Natural Environment

The proposed development will not involve any loss of significant vegetation or trees. The heritage trees located near Elizabeth Avenue will not be impacted upon by the development and will be retained on the site.

The proposal is consistent with the Draft Plan of Management for Boomerang Park. The ecological report forming part of the Draft POM does not identify any threatened flora or fauna species (such as the Koala or the Grey-crowned Babbler) in the vicinity of the proposed Men's shed building. The loss of the four koala feed trees is considered acceptable as these trees are currently not being used by koalas. A condition has been placed on the consent for 18 replacement koala feed trees to be planted on the site in a location consistent with the Draft Plan of Management for Boomerang Park.

4.7 s79C(1)(c) – The suitability of the site

The subject site is suitable for the development as the proposed use is permissible in the zone and the use is consistent with the Master Plan and Draft Plan of Management for Boomerang Park. The building is also located a suitable distance from other activities in the park and will not isolate or alienate the various users of the Park.

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4.8 s79C(1)(d) – Any submissions

Thirty seven submissions were received opposing the application and five submissions and three petitions (800, 81 and 1200 signatures) were received in support of the application. A summary of the submissions is provided in the table below.

Issues raised in support of the application	
The petitions have approximately 2081 signatures from the general public of Raymond Terrace and surrounding areas in support of the construction and development of a new purpose built Men's Shed in Boomerang Park.	
Demand for facility, current site is overcrowded.	
A portion of the shed can be used for community use.	
Valuable asset for men's physical, psychological and social health.	
Issues raised in opposition to the application	Comment
<i>Council funds:</i> Several submissions objected to the use of Council funds being exclusively used for a small minority community group. There is a need for transparency in the use of funds, tendering, contractor involvement and in the assessment of the development application. The money should be spent on improving the current park as it is underutilised due to poor maintenance.	All aspects of the proposal and use of funds are available for viewing by the public as per Council's governance procedures. Council also contributes funding for many other organisations and uses throughout the local government area, which is freely available for public viewing in Council's annual report. The Draft POM that is on exhibition has identified areas of the park that require maintenance and a number of recommendations have been made.
<i>Boomerang Plan of Management:</i> Concern has been raised over the assessment of the application when the POM needs to be revised. Submissions will be void if a new POM is adopted prior to Council considering the development application. Concerns were raised over the assessment process and bias in the process. The proposal is not consistent with the range of outdoor activities the park was created for. The application should be readvertised after the POM is reviewed.	The Draft POM has been considered in the assessment of the application and the proposal is consistent with the POM. It is envisaged that the POM will be considered by Council before the determination of the development application. The application has been assessed on its merits and the process is open and transparent, as can be seen by the amount of community consultation that has occurred during the process.
<i>Location:</i> Concerns were raised in regards to the location of the shed in the park and many suggested alternative sites in the area, which have less impact.	The applicant considered several locations for the facility and this site was determined to be the most suitable for the use. The current application can only be assessed in terms of the proposed location and its merits.
<i>Design:</i> Submissions raised concern that	The building style is appropriate for the type

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<p>the building is industrial in nature, the bulk, scale and size of the building is excessive and there is visual impact on views and the park itself.</p>	<p>of facility and use proposed. The building is large in size due to the demand and need for this facility. The entire park is 21.48ha in size and a building of 655m² will have minimal impact on the overall feel and use of the park. The building is located 23m from the street and will be screened by large trees, which will minimise any visual impact. It is noted that the building will change the character of this portion of the park and will look different to what exists, however only a small portion of the park will be altered by this development.</p>
<p><i>Historical, cultural and heritage significance:</i> Submissions raised concern over the impact on local connections and that the park was left for use by the broader community. Concerns were also raised over the impact on the heritage significance of the park.</p>	<p>The proposed use of the park is consistent with the POM and Landscape Master Plan. These plans have been developed in consultation with the community. In addition, the area of the park to be developed is small in scale when compared to the overall park, which is predominantly used for open recreation purposes. The proposal is not likely to impact on the heritage significance or Aboriginal cultural significance of the park or its setting.</p>
<p><i>Loss of open space:</i> Concern was raised over the loss of parkland for future generations and alienation of the community from this part of the park.</p>	<p>The park is 21.48ha in size and a building of 655m² is equivalent to 0.003% of the entire site. The loss of this small part of the park still allows for a substantial area of open space for the community. The building also does not alienate parts of the park as access to the park is not blocked off by this development.</p>
<p><i>Flora and fauna:</i> Concerns were raised over the impact on wildlife (particularly Koalas, Quoll and Grey-crowned Babbler), loss of trees and compliance with the koala plan of management.</p>	<p>The proposal does not involve the removal of significant vegetation or trees from the park. Several trees are to be removed but they are not heritage trees or vulnerable species. The prime habitat vegetation is located towards the central part of the park as well as the Grey-crowned Babbler foraging trees.</p>
<p><i>Impacts of the use:</i> Concerns were raised over noise, traffic, odour, vibration, and pollution impacts from the development. It was stated that the development will attract anti-social behaviour and will disrupt the peacefulness of the park and impact on the recreational uses.</p>	<p>A thorough assessment of the impacts of the development has been made. The development will not have a significant adverse impact on noise, pollution or odour and appropriate operational conditions will be placed on the consent to minimise such impacts. The use will increase the</p>

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	opportunity for casual surveillance of the park which is a positive outcome.
<i>Type of use:</i> The submissions raised concern that the use is not a community facility and the use for youth mentoring is misleading. Exclusive adult membership and alienation of the community from the park is not compatible with the land use zone. There is a need for the patrons of the men's shed to have clearances due to the proximity to the child care facility.	The use is correctly defined as a community facility and is permissible and compatible with the zone. It is not a planning consideration to consider the personal attributes of patrons of the men's shed in regards to clearances near children.
<i>Houses:</i> Objection was raised to the building of houses in the park.	This application does not propose the construction of houses.
<i>Subdivision:</i> Objection was raised to the subdivision of the park.	The subdivision of the land meets Council requirements and will not impact on the use or function of the park.
<i>Quality of information:</i> Concerns were raised over the information submitted with the application and non-compliance with the LEP. It was stated that the determination of the application is not impartial, insufficient details have been submitted to enable a proper assessment, and an inadequate heritage assessment has been conducted. A further submission period was requested after review of the POM. Concerns were raised over the lack of public consultation.	The application has been assessed in accordance to the relevant planning provisions in the LEP and DCP. Sufficient information was provided to enable a thorough assessment of the impacts of the proposal. The application was placed on public exhibition for 28 days and the Landscape Master Plan and Draft POM for Boomerang Park have also been on exhibition and a number of community consultations and enquiries have been held.

4.9 s79C(1)(e) – The public interest

Boomerang Park is a significantly large park that has the capacity to be used for a variety of functions and for a variety of people, without conflict between the users. The proposed development is consistent with the Master Plan and Draft Plan of Management for Boomerang Park as the use by the Men's shed is listed in the POM as a suitable use of the site. The proposal also has minimal impact on the natural and built environment and has a positive social and economic impact. The proposal is in the public interest as it provides a community facility that will provide many social benefits to the local and broader community.

5 DETERMINATION

The application is recommended for approval, subject to conditions of consent.

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CONDITIONS OF CONSENT

CONDITIONS THAT IDENTIFY APPROVED PLANS AND LIMITATIONS OF CONSENT

1. The development must be carried out in accordance with the plans and documentation listed below and endorsed with Council's stamp, except where amended by other conditions of this consent or as noted in red by Council on the approved plans:

Plan/Doc. Title	Plan Ref. No.	Drawing. No.	Rev	Date	Drawn By
Site Plan	14118	A01	A	Nov 2015	Beraldo Design Pty Ltd
Site Analysis Plan	14118	A00	A	Nov 2015	Beraldo Design Pty Ltd
Development Plans	14118	A100, A101, A102, A 103, A104, A200, A201, A202, A300, A408	B	Nov 2015	Beraldo Design Pty Ltd
Landscaping Plans	15/1804	Sheet 1 of 5 to Sheet 5 of 5	E	2.11.2015	Paul Scrivener Landscape Architecture
Stormwater Management Plan	8931	SW-01 to SW-05	2	AUGUST 2015	Marline Newcastle Pty Ltd

In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent prevail. If there is any inconsistency between the plans and documentation referred to above the most recent document shall prevail to the extent of any inconsistency.

2. The development shall be undertaken in accordance with the General Terms of Approval by NSW Rural Fire Service referenced D15/3641 and dated 31 January 2016.
3. A Construction Certificate is required prior to commencement of works approved by this application. The person having the benefit of this consent must appoint a principal certifying authority. If Council is not appointed as the Principal Certifying Authority then Council must be notified of who has been appointed. Note: at least two (2) days' notice must be given to Council of intentions to start works approved by this application.

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CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE

4. A monetary contribution is to be paid to Council, pursuant to section 80A(1) of the *Environmental Planning and Assessment Act 1979*, Section 94 of the *Environmental Planning and Assessment Act 1979*, and Councils Section 94 Contribution Plan towards the provision of the following public facilities:

Facility	Per lot/dwelling	Total
Civic Administration	\$575.00	\$32,200.00
Public Open Space, Parks and Reserves	\$1192.00	\$66,752.00
Sports and Leisure Facilities	\$2811.00	\$157,416.00
Cultural and Community Facilities	\$1412.00	\$79,072.00
Road Works	\$317.00	\$17,752.00
Fire & Emergency Services	\$115.00	\$6,440.00
	Total	\$359,632.00

Contributions are to be paid **prior to issue of a Construction Certificate or Subdivision Certificate**, whichever occurs first.

Note: The amount of contribution payable under this condition has been calculated at the time of determination and in accordance with the Port Stephens Section 94 contributions plan. The contribution amount is valid for twelve months from the consent date. Should payment take place after twelve months the contribution shall be INDEXED at the time of actual payment in accordance with movement in the Consumer Price Index as published by the Australian Bureau of Statistics.

5. Documentary evidence is to be supplied to the Principal Certifying Authority **prior to the issue of the Construction Certificate** indicating that 60 Diemars Road, Salamander Bay (Lot 1 DP1074566) and 240 Soldiers Point Road, Salamander Bay (Lot 161 DP27047) have been consolidated and the plan registered with NSW Land & Property Information. Existing Strata Plan SP49188 shall be extinguished.
6. A fire safety schedule pursuant to Section 168 of the Environmental Planning & Assessment Amendment Regulation 2000 must be **attached to the Construction Certificate**, which specifies the fire safety measures that should be implemented in the building premises.

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7. All work required to be carried out within a public road reserve must be separately approved by Council, under Section 138 of the Roads Act 1993.

Engineering plans for the required work within a public road must be prepared and designed by a suitably qualified professional and constructed in accordance with Council's 'Infrastructure Design and Construction Specification – AUS Spec', and Development Control Plan.

The required works to be designed are as follows:

- a. An upgrade of the existing public bus stops on both sides of Soldiers Point Road, adjacent to the development to comply with current Disability Standards for Accessible Public Transport (DSAPT) requirements. This includes provision of concrete hard stand, connecting paths, tactile ground surface indicators (TGSI's), seating or shelters as required.
- b. All redundant vehicular crossings to be removed and the footway formation reinstated with turf and a 1.2m wide reinforced (SL72 steel fabric, 100mm thick) concrete footpath in an approved location to match existing footpath along the site frontage.
- c. The piping of stormwater from within the site to Council's drainage system.
- d. Traffic control plans in accordance with the Roads and Maritime Services– Traffic Control at Worksites Manual prepared by an accredited practitioner;
- e. Payment of applicable fees and bonds; and
- f. Contractor's public liability insurances to a minimum value of \$20 million dollars.

The engineering plans must be approved by Council **prior to the issuing of a Construction Certificate** required under this consent.

8. A Construction Management Plan shall be submitted and approved by Council, **prior to the issue of the Construction Certificate**. The construction management plan shall specify operational details to minimise any potential impact to adjoining properties. The construction management plan should include but not limited to the following information:- Construction techniques, noise and vibration management, storage of equipment and building materials, hours of work:, primary route for truck movements, etc.
9. A Soil and Water Management Plan in accordance with "Managing Urban Storm water: Soils and Construction document, Landcom 2004' is to be prepared by an Engineer whose qualifications are acceptable for membership of the Institution of Engineers Australia (or other professional approved by Council) detailing temporary and permanent measures proposed to be installed and maintained. The plan is to include an analysis of the susceptibility of soil to erosion and is to be submitted with the Engineering plans. Details shall be submitted to the Principal Certifying Authority for approval **prior to the issue of the Construction Certificate**.

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10. A suitable geotechnical report and subsequent Acid Sulfate Soils Management Plan shall be prepared if any footing / excavation works are proposed below a depth of 2 metres or works by which the water table is likely to be lowered more than 2 metres below the natural ground surface are proposed.
11. The development shall provide a safe pedestrian connection from the development site to the frontage of Soldiers Point Road. The pedestrian connection shall be separate to that of the vehicle travel path. A 1.2m wide footpath shall be constructed from the development and connect to the footpath within the road reserve in Soldiers Point Road. Grades are to be in accordance with State Environmental Planning Policy (Housing for seniors or People with a Disability) 2004. Details shall be submitted and approved by the Certifying Authority **prior to the issue of the Construction Certificate**.
12. Where car spaces are adjacent to obstructions greater than 150mm, a further clearance of 300mm shall be provided in accordance with Australian Standard AS2890.1:2004. Details shall be submitted and approved by the Certifying Authority **prior to the issue of the Construction Certificate**.
13. The stormwater detention/infiltration system shall be designed and built in accordance with the approved concept plan. A system of detention and / or infiltration shall be employed to restrict discharge from the site to that of pre-development flows, for the 100 year Average Recurrence Interval (equivalent to the 1% Annual Exceedance Probability) critical duration storm event. Runoff from impervious areas, including (but not limited to) roof water, shall be discharged into the infiltration drainage system.

A Construction Certificate cannot be issued until a stormwater drainage plan has been provided to the Certifying Authority for assessment and determined to be satisfactory by the Certifying Authority. A stormwater drainage plan must include all engineering details relevant to the collection, management and disposal of stormwater from the site. The plan must include pit sizes, infiltration system details, existing site surface levels, finished site surface levels, pipeline sizes, invert levels, pipe grades and supporting calculations.
14. Structural Certification is required for the underground stormwater detention/infiltration system including demonstrating it can handle expected traffic loadings. **A Construction Certificate cannot be issued** until full details of the structural certification of the underground detention tanks have been provided to the Certifying Authority for assessment and determined to be satisfactory by the Certifying Authority.
15. Water Quality Modelling shall meet Council's targets within the Urban Stormwater and Rural Water Quality Management Plan. An electronic copy of the MUSIC model shall be provided to the Certifying Authority and the Certifying



Authority shall be satisfied that the parameters within the model are practical for the lot based assumptions and all other parameters **prior to issue of the Construction Certificate.**

16. **Prior to the issue of the Construction Certificate** the applicant shall submit to the Council a Compliance Certificate under Section 50 of the Hunter Water Corporatisation Act, 1991 from the Hunter Water Corporation. Application for the Compliance Certificate shall be made direct to the Hunter Water Corporation.
17. Fixed privacy screens shall be installed for the entire length of the Diemars Road elevation of Building B, as illustrated on the stamped development plans. The privacy screen shall have a height of at least 1.8m above the finished floor level. The privacy screen shall be constructed of a durable material, appropriately integrated and shall be designed so as to prevent direct overlooking to Lot: 2 DP: 1052060 (244 Soldiers Point Road) and Lot: 312 DP: 1029246 (62 Diemars Road).

Amended development plans illustrating the additional fixed privacy screens are to be submitted and be deemed to be satisfactory by Council **prior to the issue of the Construction Certificate.**
18. A Street Tree Planting Plan is to be submitted to and approved by Council **prior to the issue of the Construction Certificate.** The street tree(s) shall be a minimum pot size of 50 litres. The street tree plantings are to be consistent with Port Stephens Council Tree Technical Specifications.
19. **Prior to the issue of the Construction Certificate,** the Certifying Authority shall be satisfied that access for people with disabilities to and from and between the public domain, residential units and all common open space areas is provided. Consideration must be given to the means of dignified and equitable access.
20. Compliant access provisions for people with disabilities shall be clearly shown on the plans submitted with the Construction Certificate. All details shall be provided to the Principal Certifying Authority **prior to the issue of the Construction Certificate.** All details shall be prepared in consideration of the Disability Discrimination Act and the relevant provisions of AS1428.1, AS1428.2, AS1428.4 and AS1735.12.
21. **Prior to the issue of a Construction Certificate,** the Certifying Authority shall be satisfied that all outdoor lighting with comply with AS/NZ1158.3: 1999 Pedestrian Area (Category P) Lightning and AS4282: 1997 Control of the Obtrusive Effects of Outdoor Lighting.
22. **Prior to the issue of any Construction Certificate** construction details shall be provided to the Principal Certifying Authority in relation to the garbage storage area. The following requirements shall be met:

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- a. The garbage washing and bin storage area shall be constructed of, or lined with materials that are durable, impervious to moisture, and capable of being easily cleaned.
- b. The storage area shall be supplied with hot and cold water, roofed and the floor bunded, graded and drained to a sump, which shall be connected to the sewer in accordance with the requirements of the Hunter Water Corporation.
- c. Adequate facilities shall be provided in a screened location within the premises for the separate storage of recyclable and non-recyclable material and arrangements shall be made for the regular removal and disposal of those materials.

The Certifying Authority must ensure that the building plans and specifications submitted by the person having the benefit of the development consent, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

CONDITIONS TO BE SATISFIED DURING THE DEMOLITION, EXCAVATION AND CONSTRUCTION PHASES

23. All building work must be carried out in accordance with the provisions of the Building Code of Australia.
24. Where no sanitary facilities currently exist onsite for construction workers toilet accommodation for all tradespersons shall be provided from the time of commencement until the building is complete. The toilet facilities shall be located so as to have minimal impact of adjoining properties and shall not be placed on the road reserve, without separate approval from Council.
25. Construction work that is likely to cause annoyance due to noise is to be restricted to the following times:-
 - * Monday to Friday, 7am to 6pm;
 - * Saturday, 8am to 1pm;
 - * No construction work to take place on Sunday or Public Holidays.

When the construction site is in operation the L_{10} level measured over a period of not less than 15 minutes must not exceed the background by more than 10dB(A). All possible steps should be taken to silence construction site equipment.

26. It is the responsibility of the applicant to erect a PCA sign (where Council is the PCA, the sign is available from Council's Administration Building at Raymond Terrace or the Tomaree Library at Salamander Bay free of charge). The applicant is to ensure the PCA sign remains in position for the duration of works.

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27. The only waste derived fill material that may be received at the development site is:
 - a. Virgin excavated natural material within the meaning of the Protection of the Environment Operations Act 1997 (POEO); or
 - b. Any other waste-derived material the subject of a resource recovery order and a resource recovery exemption under clauses 92 & 93 of the Protection of the Environment Operations (Waste) regulation 2014 that is permitted to be used as fill material.
28. The excavated and/or filled areas of the site are to be stabilised and drained to prevent scouring and the finished ground around the perimeter of the building is to be graded to prevent ponding of water and ensure the free flow of water away from the building.
29. The demolition and disposal of materials containing asbestos should be carried out in accordance with Workcover Authority Guidelines.
30. Building demolition shall be carried out in accordance with Australian Standard AS2601-2001 - The Demolition of Structures.
31. Prior to demolition, all existing services are to be disconnected, sealed and made safe. The sewer, water and gas service is to be disconnected by a licensed plumber.
32. All builders' refuse, spoil and/or material unsuitable for use in landscape areas shall be removed from the site on completion of the building works.
33. The excavation and treatment of all potential and actual acid sulfate soils shall be carried out in strict accordance with the provisions of an approved Acid Sulfate Soils Management Plan prepared for the site.
34. During excavation, demolition and construction phases, no building materials, plant or the like are to be stored on the road or footpath without written approval being obtained from Council beforehand. The pathway shall be kept in a clean, tidy and safe condition during building operations. Council reserves the right, without notice, to rectify any such breach and to charge the cost against the person having the benefit of the development consent/owner/builder, as the case may be.
35. Certification is to be prepared by a registered surveyor and submitted to the Principal Certifying Authority at the stages of construction indicated:
 - a. On completion of ground floor construction, confirmation that the floor levels are in accordance with the Reduced Levels indicated on the approved plan.

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- b. On completion of each subsequent floor level, confirming that the floor levels are in accordance with Reduce Levels indicated on the approved plan.
- c. When the roof has been completed, confirmation that the building does not exceed the Reduced Levels as indicated on the approved plan.

Works may not proceed beyond the relevant level should such survey information be unavailable or reveal discrepancies between the approved plans and the works as constructed.

- 36. Telecommunications infrastructure to services the premises must be installed which complies with the following:
 - a. The requirements of the Telecommunications Act 1997 (Cth).
 - b. For a fibre ready facility, the NBN Co's standard specifications current at the time of installation.
 - c. For a line that is to connect a lot to telecommunications infrastructure external to the premises, the line is located underground.
- 37. Unless otherwise stipulated by telecommunications legislation at the time of construction, the development must be provided with all necessary pits and pipes, and conduits to accommodate the future connection of optic fibre technology telecommunications.
- 38. Provide to Council a written certification from all relevant service providers that the telecommunications infrastructure is installed in accordance with Condition 35 and Condition 36 and all applicable legislation at the time of construction.
- 39. A waste containment facility shall be provided on the construction site immediately after the first concrete pour for the building and is to be regularly serviced.

CONDITIONS TO BE SATISFIED PRIOR TO ISSUE OF AN OCCUPATION CERTIFICATE

- 40. **Prior to the Issue of the Occupation Certificate** the proponent shall upgrade the existing public bus stops on both sides of Soldiers Point Road, adjacent to the development to comply with current Disability Standards for Accessible Public Transport (DSAPT) requirements. This includes provision of concrete hard stand, connecting paths, tactile ground surface indicators (TGSI's), seating or shelters as required.
- 41. **Prior to the issue of the Occupation Certificate**, the Principal Certifying Authority is to be satisfied that all landscape works have been undertaken in accordance with the approved plans.

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42. A fire safety certificate as prescribed by Section 174 Environmental Planning & Assessment Regulations 2000 which certifies the performance of the implemented fire safety measures in accordance with Section 170 of the Regulation must be submitted to the Principal Certifying Authority and the Commissioner of New South Wales Fire Brigades. A copy of fire safety certificate needs to be forwarded to Council, If Council is not nominated as the Principal Certifying Authority. A further copy of the certificate must also be prominently displayed in the building.
43. The development shall provide 74 on-site car parking spaces, including disabled parking spaces. These spaces shall be separately accessible, clearly line-marked (disabled spaces clearly signposted) and adequately paved and drained in accordance with AS2890 and the Port Stephens Development Control Plan 2014. Car parking must be provided **prior to the issue of the Occupation Certificate.**
44. All redundant lay-backs shall be reinstated to match the adjoining kerb and gutter profile to the satisfaction of Council **prior to the issue of an Occupation Certificate.**
45. All civil engineering works shall be carried out in accordance with the Construction Certificate and Council's Design and Construction Specification, Policies and Standards, to the satisfaction of Council or the Certifying Authority **prior to the issue of the Occupation Certificate.**
46. **Prior to the issue of the Occupation Certificate**, street trees must be planted in accordance with the street tree planting plan, and inspected and approved by Council's Vegetation Management Officer. The tree(s) are to be maintained to maturity through use of mulch and watering to achieve natural height.
47. **Prior to the issue of any Occupation Certificate**, the Principal Certifying Authority shall be satisfied that all commitments listed in BASIX Certificate No. **656090M_02**, or an amended versions of this certificate, have been complied with.
48. **Prior to issue of any Occupation Certificate**, the Principal Certifying Authority must be satisfied that any damaged public infrastructure (including footpaths, drains, kerb and gutter, and utility services) caused as a result of construction works (including damage caused by, but not limited to, delivery vehicles, waste collection, contractors, sub-contractors, concrete vehicles) is fully repaired to the satisfaction of Council's Development Engineer and at no cost for Council.
49. **Prior to the issue of any Occupation Certificate**, the Principal Certifying Authority shall be satisfied that all mechanical ventilation systems are installed in accordance with Part F4.5 of the Building Code of Australia (National Construction Code) and comply with Australian Standards AS1668.2 and AS3666 Microbial Control of Air Handling and Water Systems of Building.
50. **Prior to the issue of an Occupation Certificate**, the Principal Certifying Authority shall be satisfied that:

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- a. the lift design and associated functions are compliant with AS1735.12 & AS1428.2
- b. the level and direction of travel, both in lift and lift lobbies, is audible and visible
- c. the controls for lifts are accessible to all persons and control buttons and lettering are raised
- d. international symbols have been used with specifications relating to signs, symbols and size of lettering comply with AS1428.2
- e. the height of lettering on signage is in accordance with AS1428.1-1993
- f. the signs and other information indicating access and services incorporate tactile communication methods in additional to the visual methods.

CONDITIONS TO BE SATISFIED AT ALL TIMES

51. Outdoor lighting must comply with AS/NZ1158.3: 1999 Pedestrian Area (Category P) Lightning and AS4282: 1997 Control of the Obtrusive Effects of Outdoor Lighting
52. Vents, antennae, air conditioning units and any plant equipment, are to be located within the basement, chased into the building, or screened so as not to be visible from the street or any public place.
53. Air-conditioning and ventilation systems installed at the premises must be installed and maintained to ensure that no offensive or intrusive noise is created, as defined by the Protection of the Environment Operations Act 1997.
54. At least once in each twelve (12) month period, fire safety statements as prescribed by Section 175 Environmental Planning & Assessment Regulations 2000 in respect of each required essential fire safety measure installed within the building are to be submitted to Council. Such certificates are to state that:
 - a) The service has been inspected and tested by a person (chosen by the owner of the building) who is competent to carry out such inspection and test; and
 - b) That the service was or was not (as at the date on which it was inspected and tested) found to be capable of operating to a standard not less than that specified in the fire safety schedule for the building.
55. The stormwater system, including any water quality, quantity or infiltration components, shall be maintained in perpetuity for the life of the development in accordance with an approved Maintenance Plan. Maintenance shall be undertaken in accordance with a Maintenance Plan to be approved by the Certifying Authority. The plan shall include all relevant requirements such as:
 - a) Overall description of system operation.

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- b) Persons responsible for particular actions.
 - c) Requirements for access and confined space access.
 - d) Frequency of periodic inspections.
 - e) Trigger points for exceptional events and required actions.
 - f) Requirements for disposal of debris and sludge etc.
 - g) Description of components and parts list.
56. Motor vehicles are only permitted to enter and leave the site in a forward direction. On site manoeuvring areas are to be kept clear for this purpose.

ADVICES

- a. Consideration to the guidance provided by the Australian Institute of Refrigeration, Air Conditioning and Heating (AIRAH) document Air Conditioning Residential Best Practice Guideline (NSW), which provides general information and appropriate locations for air conditioners to be installed to avoid creating noise nuisance is recommended. This is available at www.airah.org.au/Content/NavigationMenu/Resources/BestPracticeGuide.
- b. The developer is responsible for full costs associated with any alteration, relocation or enlargement to public utilities whether caused directly or indirectly by this proposal. Such utilities include water, sewerage, drainage, power, communication, footways, kerb and gutter.
- c. Should any Aboriginal 'objects' be uncovered by the work, excavation or disturbance of the area is to stop immediately and the Office of Environment and Heritage must be informed accordance with Section 89A of the *National Parks and Wildlife Act, 1974* (as amended). Works affecting Aboriginal 'objects' on the site must not continue until the Office of Environment and Heritage has been informed. Aboriginal 'objects' must be managed in accordance with the *National Parks and Wildlife Act, 1974*.

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APPLICATION REFERENCES	
Application No.	16-2015-769-1
Property	60 Diemars Road SALAMANDER BAY; 240 Soldiers Point Road SALAMANDER BAY
Lot and DP	LOT: 1 DP: 1074566; LOT: 0 SP 49188
Description of development	Consolidation of two lots, demolition of existing building and construction of two detached three and four storey buildings for seniors housing, comprising 56 dwellings.
Applicant	BERALDO DESIGN
Date lodged	17/11/2015
Owners Consent	Yes
Capital Investment Value	\$19,444,000
Present use	Seniors Housing
Zoning	R2 LOW DENSITY RESIDENTIAL
Site Constraints	<ul style="list-style-type: none"> • Bushfire Prone Land (Category 1 & 3) • Acid Sulphate Soils (Class 4) • Koala Habitat – Clear • SEPP 71 – Coastal Protection
88B Instrument and Deposited Plan	No matters were identified on the 88(B) Instrument or Deposited Plan (DP) which would prohibit the proposed development.
Submissions	Yes. <ul style="list-style-type: none"> • First Exhibition Period - 11 Submissions received. • Second Exhibition Period - 10 Submissions Received.

Proposal

The application seeks consent for seniors housing comprising two buildings – 'Building A' and 'Building B', and associated car parking at 60 Diemars Road and 240 Soldiers Point Road, Salamander Bay. The key aspects of the proposed development are listed below:

- Demolition of dwellings located on 240 Soldiers Point Road (Lot 161 DP27047, currently known as SP49188);
- Lot Consolidation of 60 Diemars Road, Salamander Bay and 240 Soldiers Point Road, Salamander Bay;
- Construction of Building A: Four stories in height and contains 28 dwellings which includes ten 10 adaptable two bedroom apartments, 17 two bedroom apartments, and one two bedroom plus study apartment;
- Construction of Building B; three stories in height, containing 28 self-contained dwellings. The proposed dwellings located in Building B contain two adaptable

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- two bedroom apartments, 24 two bedroom apartments and two three bedroom apartments;
- Seventy four undercover car parking spaces and one ambulance space provided at ground level;
- Ground level will also include reception area, lifts, fire exits, storage areas, bicycle racks, bin areas, mobility scooter area and multiple points of pedestrian access; and
- All levels will be accessed via internal stairways and elevators.

Site Description

The entire Salamander Haven Retirement Village site has a 92 metre frontage to Soldiers Point Road and a total area of approx. 7.55ha. Existing buildings associated with the Salamander Haven Retirement Village are located on the south-western portion of the site. The development site is contained within the north-east corner of the subject site and comprises a total area of 6901m². An existing residential building (proposed for demolition) is located on the development site, which otherwise remains largely vacant. The site topography is generally flat and does not contain any significant vegetation. The development surrounding the development site consists of an existing senior's village to the west and one and two story dwellings to the north, south and east.

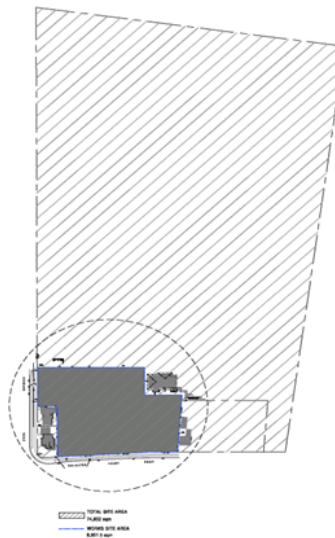


Figure 1: Development Site within Subject Lots

Site History

The following applications have been approved over the subject site:

- **2004** – DA No.16-2004-1681-1. Urban Housing (97 Units and Recreation Facility)
- **2004 – 2007** – DA No.16-2004-1681- 2 to 8. Various minor amendments to Da

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<p>Consent No 16-2014-1681-1.</p> <ul style="list-style-type: none"> • 2007 – 2009 – DA No.16-2007-1117-1 to 3. Additions to Urban Housing. • 2011 – DA No.16-2011-316-1 – Change of Use (workshop) • 2011 – DA No.16-2011-471 – Sixteen Villas, Application Refused • 2014 – v 16-2014-560-1 Eighteen Villa Units .Application Withdrawn (Withdrawn due to ecological constraints) <p>There were no matters identified within the assessment of the site history which would impact upon the assessment of the proposed development.</p>

Environmental Planning and Assessment Act 1979

Classification of development	y/n
Is the development proposal <u>Local</u> Development?	Yes
Is notification necessary?	Yes
Have all adjoining and affected owners been notified (two week period)?	Yes
Is the development proposal <u>Advertised</u> Development?	Yes
Have adjoining and affected properties been notified?	Yes
Has an advertisement been placed in local newspaper?	Yes

INTEGRATED DEVELOPMENT ASSESSMENT

The application requires an additional approval listed under s.91 of the *EP&A Act 1979*.

ACT		APPROVAL	Y/N
<i>Rural Fires Act 1997</i>	S100B	Development of bushfire prone land for a special fire protection purpose as defined in Section 100B of the Rural Fires Act 1997.	Y
Have all integrated referrals been sent?			Y
Have General Terms of Approval been received?			Y
Has a copy been sent to the applicant?			Y

Comment

General Terms of Approval were received on 31 January 2016. GTA's relate to Assets Protection Zones, Water and Utilities and Evacuation and Emergency Management and have been incorporated in the proposed conditions of consent.

INTERNAL REFERRAL ASSESSMENT

Building

The application was referred to Council's Building Surveyor for assessment and it was identified that the development was acceptable subject to the inclusion of conditions of consent. Conditions relate to BCA compliance, demolition, sediment and erosion control, and fire safety.

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Classification of development	y/n
<p>Engineering</p> <p>The application was referred to Councils Engineering Section for comment. No objections to the development, including the amended stormwater plans were raised. The application is considered to be satisfactory in regard to stormwater management, subject to the inclusion of conditions. Recommended conditions have been incorporated into the conditions of consent.</p> <p>Traffic Engineering</p> <p>The application was referred to Councils Traffic Engineer for comment. The application is supported subject to the upgrade of the existing public bus stops on Soldiers Point Road. The bus stops adjacent to the development are conditioned to be upgraded to conform to current Disability Standards for Accessible Public Transport (DSAPT) requirements.</p> <p>Waste Management</p> <p>The application was referred to Councils Waste Management Coordinator. It was noted that the existing aged care facility pays for 90 waste services for existing dwellings on site. The proposed development will not alter this and the service to both old and new dwellings will continue. The applicant advised the following bin numbers for the proposed development:</p> <ul style="list-style-type: none"> • 50 Waste Bins • 50 Recycling Bins <p>Environmental Health</p> <p>The development application proposes self-contained dwellings and no communal dining facilities. As such, it is exempt from the requirements of the <i>Foods Act 1993</i> and the <i>Public Health Act 2010</i> in relation to warm-water systems.</p> <p>Councils Environmental Health Officer raised concerns in relation to noise from air conditioning/ ventilation systems. A condition will be placed on the consent outlining that all air conditioning/ ventilation systems are to ensure that no offensive noise is created as defined by the <i>Protection of the Environment Operations Act 1997</i>. Additionally, it was recommended that consideration is given towards guidance provided by the Australian Institute of Refrigeration, Air Conditioning and Heating (AIRAH) document titled 'Air Conditioning Residential Best Practise Guideline (NSW)'.</p> <p>Vegetation Management</p> <p>The application was referred to Councils Vegetation Management Officer for the assessment of the landscaping proposed. It was noted that the proposed landscaping is sufficient and is consistent with PSDCP2014. A condition requiring street tree planting was recommended and has been incorporated into the conditions of consent.</p>	

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Classification of development	y/n					
<p>Section 94 Contributions</p> <p>The application was referred to Councils Section 94 Officer. It was noted that Section 94 Contributions are applicable to this application. Section 94 contributions total \$6,422 per dwelling equating to \$359,632. A condition of consent requiring the payment of s.94 contributions has been recommended.</p>						
<p>Senior Population/ Disability</p> <p>The application was referred to Councils Social Planning Officer to comment on accessibility of the proposed development. It was recommended that an independent Access Audit be submitted.</p> <p>An amended BCA Compliance Report addressing Chapter D3 of the BCA and applicable Australian standards was submitted to Council 17 December 2015 and was deemed to be satisfactory by Councils Social Planning Officer. Conditions relating to the accessibility were suggested.</p>						
<p>Business Development and Investment</p> <p>The application was referred to Councils Economic Development Coordinator. No recommendations or conditions were stipulated. However, the following was noted:</p> <ul style="list-style-type: none"> • Total economic output of the development is estimated to be \$38.492 Million. • The development is projected to provide 97 jobs. • Residents of the development and their families will contribute with flow-on effects for shopping, working, living and recreational pursuits in the area. <p>An impact summary from the construction phase of the proposed development is illustrated below.</p>						
Impact Summary						
Impact Summary	Direct Effect	Industrial Effect	Consumption Effect	Total Effect	Type 1 Multiplier	Type 2 Multiplier
Output (\$M)	\$19.440	\$14.759	\$4.293	\$38.492	1.759	1.980
Employment (Jobs)	41	41	15	97	2.000	2.366
Wages and Salaries (\$M)	\$3.026	\$3.006	\$0.884	\$6.916	1.993	2.285
Value-added (\$M)	\$5.816	\$5.199	\$2.417	\$13.433	1.894	2.310
<p>Spatial Services</p> <p>The application was referred to Councils Spatial Services Technical Officer. It was noted</p>						

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Classification of development	y/n
<p>that the development will be numbered to 60 Diemars Road, Salamander Bay.</p> <p>Social Planning</p> <p>Comments were received from Councils Senior Social Planning Officer, in relation to the proposals compatibility with Port Stephens Planning Strategy 2011 and housing supply and affordability.</p> <p><u>Port Stephens Planning Strategy 2011</u></p> <p>Port Stephens LGA has an ageing population. The Port Stephens Planning Strategy 2011 outlines that Council will plan for a range of housing types of appropriate densities, location and suitability that are capable of adapting and responding to the ageing of the population.</p> <p>The Port Stephens Planning Strategy 2011 states medium density housing, such as seniors living developments should be generally within a: Five minute walk (400m) of a centre, or Five minute walk (400m) of bus stops with frequent services to major centres, or Ten minute walk (800m) to the town centres. The proposed development is well within walking distances of the Soldiers Point Village centre and bus stops.</p> <p>Social impacts regarding height and bulk were discussed, which have been acknowledged. Potential impacts derived from the height and bulk of the development are assessed elsewhere in this report.</p> <p>Internal Design Review Panel</p> <p>An internal Design Panel of selected Council staff held a review of the design properties of the development as originally submitted. Concerns were raised regarding the height, bulk and scale, which were identified as not being in character with the surrounding area. Overshadowing implications derived for the height variation were also identified.</p> <p>During the Internal Design Review Panel meeting possible amendments were suggested. A meeting was held on 10 December 2015 with members of the internal design review panel and the applicant, in which possible design amendments were discussed.</p> <p>Amended development plans were submitted 5 February 2016. The amended development plans addressed the apparent height, scale and bulk of the development and associated overshadowing implications. The amended development plans are generally consistent with design amendments formulated during the internal design panel.</p>	

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Heritage	y/n
Will the proposal: <ul style="list-style-type: none"> • Affect a heritage item or within the vicinity of a heritage item; • Affect places/sites of known/potential Aboriginal heritage significance; or • Affect known/potential archaeological sites/relics of European heritage significance? 	No

SECTION 5A CONSIDERATIONS	y/n
Having regard for Section 5A of the Environmental Planning and Assessment Act, do any of the following issues require further consideration?	
Whether the life cycle of a threatened species will be disrupted.	No
Whether the life cycle of an endangered population will be disrupted.	No
Whether the habitat of a threatened species or ecological community will be modified.	No
Whether habitat will become isolated from other areas of interconnecting or proximate habitat.	No
Whether critical habitat will be affected.	No
Whether a threatened species, ecological community or habitat are represented in the region's conservation reserves.	No
Whether the development is recognised as a threatening process.	No
Whether any threatened species or ecological community is at the limit of its known distribution.	No
<ul style="list-style-type: none"> • No vegetation removal is proposed. All matters raised under Section 5A do not require further consideration. 	

Section 79C(1) EP&A Act 1979 – potential matters for consideration

(a)(i) the provisions of any environmental planning instrument (EPI)

State Environmental Planning Policies

State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004

The application has not been lodged under SEPP (Housing for Seniors or People with a Disability) 2004. The proposed seniors housing development is permissible under LEP2013 and has been assessed against Council's local planning policies.

State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development

State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development aims to improve the design quality of residential development in New South Wales. Part 1, Clause 4 (1) of SEPP 65 – Application of Policy, stipulates that 'this Policy applies to development for the purpose of a residential flat building, shop top housing or mixed use development with a residential accommodation component'.

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The proposal is for 'Seniors Housing'. Seniors Housing is specifically defined under LEP2013 and is not classified as a Residential Flat Building, Shop Top Housing or Mixed Use Development with a residential component and as a result SEPP65 is not applicable to the proposed development. Notwithstanding, the application has been assessed against the controls in DCP2014 Chapter C5 Residential Flat Buildings and Multi-Dwelling Housing to ensure an appropriate built outcome has been achieved on the site.

State Environmental Planning Policy No. 71 – Coastal Protection

This application has been assessed having regard to the aims of the SEPP. It is not expected that the proposal will have an adverse impact on the surrounding area in achieving the aims of the SEPP. It is noted that the development has no direct access to the waterfront and that the development will not create an unacceptable impact on views of the water front.

The site currently provides housing for seniors and associated services and facilities. In this regard the site is considered suitable for the proposed development. The proposal will provide the opportunity for an integrated senior's village offering a range of housing options to the community.

The application has been assessed against these matters for consideration. The application will generally comply with the aims of the SEPP and the other matters for consideration stipulated under Clause 8.

State Environmental Planning Policy – Building Sustainability Index (BASIX)

A BASIX certificate was submitted with the application confirming that the proposed development will meet the NSW Government's requirements for sustainability with respect to energy and water reduction targets.

Port Stephens Local Environmental Plan 2013

What is the land zoned?	R2 Low Density Residential
What is the proposal for?	<p>The development is consistent with the definition of Seniors Housing. The development incorporates 56 self-contained dwellings that are intended to be used by seniors or people who have a disability.</p> <p>It is noted that the Applicant - Port Stephens Veterans and Citizens Pty Ltd provides seniors housing and that the subject site currently incorporates 97 units used for Seniors Housing.</p>
Is this permissible within the zone?	Seniors Housing is Permitted with Consent
Does it meet the objectives of the zone?	The site is zoned R2 Low Density Residential. Seniors Housing is permitted with development consent in accordance with cl.2.3 LEP2013. The development will provide a diverse range of housing options for members of the community over the ages of 55 and for people with a disability. The proposed development will complement and co-exist with the existing low density single storey dwellings

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		used predominately for the provision of Seniors Housing currently on-site, which will allow integration of facilities. The integration of facilities and services for senior community members ensure that the day to day needs for senior residents are satisfied. The proposed development has been architecturally designed to ensure that the built form is analogous to development in the vicinity.
Part 2: Permitted or Prohibited Development		
Cl.2.7	Demolition requires development consent	<p>Pursuant to cl.2.7 LEP2013 demolition requires development consent if it would not be classified as exempt development under <i>State Environmental Planning Policy (Exempt and Complying Development) 2008</i> if it were being constructed.</p> <p>The dwelling located on 240 Solders Point Road would not be considered to be exempt. As such, development consent is required for the demolition of the building and will be assessed as part of this development application. Conditions have been incorporated in the conditions of consent in relation to the disposal of demolition materials.</p>
Part 4: Principal Development Standards		
4.1B	Minimum Site Area for Dual Occupancy, Multi Story Dwelling Housing and Residential Flat Buildings	The application does not constitute multi-dwelling housing or residential flat building and therefore cl.4.1B is not applicable to the proposal. Regardless, the subject lot size far exceeds the minimum lot size required for these similar types of development.
Cl.4.3	Height of buildings	<p>In accordance with cl.4.3 and the Height of Buildings Map (LEP2013) indicates a maximum building height of 9 meters for the subject site. The proposed development exceeds the nominated maximum height limit.</p> <p>As part of the development application a request for a cl.4.6 exception seeking to increase the height of the development above the nominated height limit for the site has been submitted by the applicant. Proposed, Building A has a maximum height of 14.37 metres and Building B has a maximum height of 11.52 metres exceeding the maximum building height limit for the subject site by 5.37 metres and 2.2 metres respectively.</p> <p>The heights of the buildings are considered to be appropriate for the context and character of the locality. Building B, positioned to front Soldiers Point Road has been amended to be in character with surrounding development.</p>

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		<p>The use of earthy materials and modulation of sections to emulate development in the local vicinity have been incorporated into the design.</p> <p>Building A is positioned at the rear of the development area, setback 56 meters from Soldiers Point Road. The large setback in conjunction with landscaping will result in only a small portion of the building visible from Soldiers Point Road.</p> <p>The proposed height variation is discussed further below (Clause 4.6 – Exceptions to Development Standards).</p>
Cl.4.6	Exceptions to development standards	<p>An exception is requested to cl.4.3 height of buildings which nominates a maximum height limit of 9 meters for the subject site. The application seeks to exceed this development standard by 5.37 metres (maximum height of 14.37 metres). The assessment against cl.4.6 LEP2013 has been carried out below.</p> <p>The applicant has submitted an application in accordance with the requirements outlined in cl.4.6 LEP2013. The submission argues that the proposed development is in keeping with the objectives and that while the height limit nominated for the subject site is exceeded, strict compliance is unreasonable. The amended design of the development decreases the height of Building B to 11.52 metres, while Building A has a maximum height of 14.37 metres.</p> <p>Significant design amendments to Building B, which is positioned to front Soldiers Point Road, have been undertaken. Design amendments were incorporated to reduce the apparent height, bulk and scale of the development. Design amendments included the use of earthy materials and multiple vertical and horizontal facade design features to create a modulation of sections to reflect existing development in the locality in conjunction with the removal of level 3 from 'Building B'. These changes were able to be accommodated whilst still retaining the dwelling yield.</p> <p>There is a recognised shortage of Seniors Housing within the Port Stephens Local Government Area. The shortage in housing for senior members of the community is shown in data outlined in the Draft Port Stephens Ageing Strategy, which details that 32.86% (21,297) of residents in the Port Stephens LGA are 55 and older, exceeding the State average of 26.43%. Additionally, only 5% of housing available to senior members of the community is within a vertical style living format. The proposed development will</p>

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	<p>utilise cleared, predominantly undeveloped land within a subject site which currently provides housing for senior members of the community. The proposal provides the opportunity to integrate existing facilities and services, creating a co-ordinated seniors village. Integration of facilities and services, and the provision of a range of senior housing alternatives is considered to be a positive utilisation of the land and is considered to be a sound planning outcome. This justification is considered to adequately support the exceedance in the nominated height limit for the subject site. Flexibility in regards to the height limit will result in a better outcome.</p> <p>The following environmental planning grounds have been outlined to justify contravening the height of the buildings:</p> <ul style="list-style-type: none"> • Consistent with Port Stephens Local Environmental Plan 2013, Part 2, Clause 2.3 – Zone Objectives and land Use Table. • The proposal will not significantly affect views. • The development is considered to be in the public interest. • The development will not have unacceptable impact on solar access to neighbouring properties. • No privacy implications. • Bulk and scale of existing development in the locality not consistent with R2 Low Density zone for existing development. <p>In accordance with cl.4.6 (a)(i) the applicant has adequately addressed the matters required to be demonstrated by subclause (3), as discussed above. Further, the application is deemed to be in the public interest by providing a range of housing for senior members of the community and community members with a disability. Port Stephens Planning Strategy 2011 identified this need, and recommends a diverse range of housing options to the aging population of Port Stephens.</p> <p>The proposed development will result in the availability of a diverse range of housing options for seniors, ranging from single story dwellings to vertical style living options. The provision of diverse housing options is consistent with the objectives of R2 - Low Density Residential Zoned Land. The integration of facilities to service the senior community ensures that the day to day needs for senior residents are satisfied. In addition, the architecturally designed buildings will protect and enhance the existing residential amenity and character of Salamander Bay by the use of vertical and horizontal designed features on the facade of 'Building B' to</p>
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		<p>reflect existing residential development in the locality. The proposal will incorporate landscaping, including large trees, and generous side setbacks.</p> <p>Concurrence from the Secretary is assumed. The proposal does not raise matters of State or regional significance. Regardless, a referral was sent to the Department of Planning and Environment seeking comments on the proposed development. No comments on the development were received. It was noted that Department of Planning and Environment guidelines in relation to varying development standards be considered.</p> <p>The proposed variation to Clause 4.3 is considered acceptable in this instance. Accordingly, the application is accepted to vary the requirement to comply with the nominated height limit derived under clause 4.3. The proposal is considered to be appropriate in the context of the site.</p>
Part 5: Miscellaneous Provisions		
Cl.5.5	Development within the coastal zone	As outlined in the SEPP 71 discussion, the proposed development is not considered to have any negative impacts on the coastal zone, or access to or use of it. Clause 5.5 is satisfied.
Cl.5.9	Preservation of trees or vegetation	No vegetation will be removed as part of this development application. The proposal will improve existing environmental values of the subject site.
Part 7: Additional Local Provisions		
Cl.7.1	Acid sulphate soils	<p>The development site is identified on PSLEP2013 Acid Sulphate Soil maps as Class 4 ASS. The application included an Acid Sulphate Soils Management Plan and is considered to be satisfactory in regard to the management of ASS.</p> <p>The development is consistent with the objective and requirements of Clause 7.1.</p>
Cl.7.2	Earthworks	<p>Clause 7.2 (2)(b) stipulates that development consent is required for the proposed earthworks. Matters outlined in Clause 7.2 (3) require the consent authority to consider matters (a) to (h).</p> <p>The proposal is unlikely to disrupt drainage patterns and soil stability, impact potential future development on-site, impact adjoining properties or disrupt relics. Additionally, conditions of consent will condition the use of clean fill and stipulate measures to mitigate potential impacts derived from earthworks.</p>

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		The application is satisfactory in regard to Clause 7.2 (3).
Cl.7.6	Essential services	Essential services are available to the development area. Essential services are connected to existing development on-site.
(a)(iii) any development control plan		
Development Control Plan 2014		
Part A1 Section A.1.9 – Development Notification Requirements		
Has the application been appropriately notified?		Yes
Have all adjoining and affected properties been notified?		Yes
Section B – General Provisions		
B3 Environmental Management	Bushfire Prone Land	The application requires an additional approval listed under s.91 of the <i>EP&A Act 1979</i> as the proposed development is classified as a Special Fire Protection Purpose (SFPP) under Section 100(b) of the <i>Rural Fires Act 1997</i> . GTA's were issued from NSW Rural Fire Service and have been incorporated into the conditions of consent.
	Acid Sulphate Soils	The objective of Chapter B3.B – Acid Sulphate Soils is to ensure that developments do not disturb, expose or drain Acid Sulphate Soils and cause environmental damage. An Acid Sulphate Management Plan prepared by Positive Fix Pty Ltd was submitted with the development application. The ASS Management Plan concluded that the proposed basement level is 1.8 meter below the natural surface level and that minimal works are to be carried out beyond 2.0m metres below the existing surface level. In this regard the development is consistent with the objective and requirements of B3.B.
	Noise	Conditions of consent have been imposed to limit construction work hours and mitigate noise derived from ventilation and air conditioning systems. The application is satisfactory in regards to noise management.
	Earthworks	Chapter B3.F DCP2014 outlines objectives and requirements in order to facilitate earthworks as to minimise potential environmental impacts, such as erosion. Conditions of consent will stipulate the use of Virgin Excavated Natural Material (VENM) or an appropriately certified material. Additionally, the earthworks proposed will not have a

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		<p>detrimental impact on drainage patterns or soil stability, subject to conditions of consent. The proposal will not impact future potential development on-site and due to the cleared nature of the site it is highly unlikely that the development will disturb relics.</p> <p>The proposal is consistent with requirements outlined in Councils DCP2014 relating to earthworks.</p>
	Waste	<p>Waste from demolition and building works shall be separated into recyclable and non-recyclable materials. Where possible materials will be re-utilised onsite. All other waste shall be disposed of at an approved facility.</p> <p>100 Bins will be provided for the development, comprising of:</p> <p>General waste: 50 Bins Recyclable materials: 50 Bins Green Waste: N/A</p> <p>Bins will be collected by Council from the private road to the rear of the development site where there is adequate storage and vehicle manoeuvring space.</p>
B4 Drainage and Water Quality	General	<p>The site is identified as a subject lot is identified as a Stormwater Drainage Problem Areas - Predicted area of flooding".</p> <p>On- site stormwater detention calculations have been provided by the applicant. These calculations demonstrate that the 100 year average reoccurrence interval design storm event for the developed scenario does not exceed the 5 year average reoccurrence intervals design storm for the pre-developed scenario. The amended stormwater management plan submitted is considered to be satisfactory.</p>
B9 Road Network and Parking		<p>The application has been assessed against Chapter B9 – Road Network and Parking. The driveway width is at a minimum is 5.5 metres, which is considered to be acceptable. The access road network is via existing intersection constructed as part of previous adjacent development.</p> <p>Port Stephens Veterans and Citizens Pty Ltd currently provide an internal transport service. In addition, public transport options are located within close proximity to the proposed development.</p> <p>PSDCP2014 outline that the required on-site parking for Seniors Housing is that outlined in State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004. The proposed development, encompass 56 self-contained dwellings with a total of 114 bedrooms. Under the SEPP a minimum of 57 car parking spaces are required.</p>

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	<p>The application proposes 74 car parking spaces, incorporating:</p> <ul style="list-style-type: none"> • 56 Parking Spaces (2.6m (W) and 5.4m (L)) • 12 Accessible Car Spaces (Compliant with AS2890.6) • 5 Visitor Parking Spaces • 1 Ambulance Parking Space <p>In addition:</p> <ul style="list-style-type: none"> • 4 parking spaces for mobility scooters and 8 bicycle racks are proposed <p>Proposed parking exceeds minimum requirements outlined under State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 by 17 spaces and is acceptable.</p>
<p>Section C – Development Types</p>	
<p>C5 – Multi Dwelling Housing and Residential Flat Buildings</p>	
<p>It is noted that PSDCP2014 does not have specific provision for the assessment of Seniors Housing.</p>	
<p>However, the proposal shares similar characteristics of that of a residential flat building and as such, provisions of Chapter C5 of PSDCP 2014 will be considered.</p>	
<p>Objectives</p>	
<p>C5.C - Site Dimensions</p>	<p>The amended design provides an appropriate response to the streetscape and front setback through use of varied materials, articulation and modulation of building facades.</p> <p>It is acknowledged that the development will decrease solar access to 62 Diemars Road, Salamander Bay and 244 Soldiers Point Road, Salamander Bay. However, Solar access to private open space (POS) of 244 Soldiers Point Road will satisfy solar access requirements outlined in PSDCP2014. It is noted that 62 Diemars Road will not satisfy the minimum solar access requirements as stipulated by PSDCP2104. However, considering the 6m side setback of the proposed development and the existing 1.8m high perimeter fence the proposed development does not create unacceptable additional impact in regard to solar access. It is considered that a DCP compliant two story dwelling would create similar overshadowing to POS area of 244 Soldiers Point Road.</p> <p>On- site stormwater detention calculations have been provided by the applicant. These calculations demonstrate that the 100 year average reoccurrence interval design storm event for the developed scenario does not exceed the 5 year average reoccurrence intervals design storm for the pre-developed scenario. The amended stormwater management plan submitted is considered to be satisfactory.</p> <p>The amended stormwater management plan submitted is considered to be satisfactory.</p>
<p>C5.D- Height</p>	<p>Clause 4.3 of PSLEP 2013, nominates a 9m height limit for the subject site. The maximum height of the development is 15.37m. A Clause 4.6</p>

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	<p>exception has been submitted and addressed in <i>Clause 4.6 – Exceptions of a Development Standard</i>, as discussion above. The development encompasses two detached buildings, 'Building A' and 'Building B' with a maximum height of 15.37m and 11.52m respectively. The exceedance in the maximum building height nominated for the subject site was found to be acceptable.</p> <p>Section plans submitted with the development application illustrate ceiling heights exceed 2.4m.</p>
<p>C5.E - Site Coverage</p>	<p>Site coverage of the development area is:</p> <p>Development Area = 6901sqm Non- permeable area = 5864.72sqm</p> <p>Coverage of development is 84%.</p> <p>It is noted that the subject site is 75,603sqm. The western portion of the subject site comprise of single story detached dwellings and dense vegetation. The development area has will have a site coverage of 84%, while the entire site has an approximate site area of coverage of 46%.</p> <p>The development has been architecturally designed to be consistent with the character of surrounding development. Modulation and articulation of the building facades have been incorporated in the design to ensure that the development responds to the surrounding environment. Additionally, landscaping incorporating a diverse range of trees, including street trees, palms and shrubs will be planted. Landscaping will further reduce the height, bulk and scale of the development.</p>
<p>C5.F- Setbacks</p>	<p>Building B fronts Soldiers Point Road to the east. The building line of Building B is setback 6m from the front boundary and 10m from Soldiers Point Road. The front setback is consistant with the established building line derived from existing buildings to the north and south of the subject site.</p> <p>The south elevation of 'Building A' fronts Diemars Road, located 6m from the boundary and 11.03m from Diemars Road to the west. The setback from Diemars road is consistant with the front setback of 62 Diemars Road.</p> <p>Building B is setback 6m from the dwelling located north of the site, while Building A has a setback of 44m to the existing building to the north.</p> <p>Building B will have a 6m setback to the existing dwelling to the south.</p> <p>The large side setbacks in combination with landscaping and privacy screening (where applicible). The development will not result in an</p>

ITEM 2 - ATTACHMENT 3 ASSESSMENT REPORT.

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	<p>unacceptable impact in regards to overlooking or privacy of future occupants and adjoining land owners.</p>
<p>C5.G - Streetscape and Privacy</p>	<p>The objective of Chapter C5.G is to ensure developments activate the streetscape to provide passive surveillance and privacy.</p> <p>The proposed development provides multiple direct and legible pedestrian access points from Soldiers Point Road to the main entry points of 'Building B'. Pedestrian access points are located along the western and southern elevation of Building A. Additionally, there are multiple access points to and from the first floor podium between 'Building A' and 'Building B'.</p> <p>The location and large setbacks of 'Building A' ensure no potential privacy concerns arise. First and second floor units on 'Building B' have 1.8 m high privacy screens to eliminate privacy concerns to adjoining units and neighbouring dwellings. Units located on the north and south peripheries of 'Building B' have minimal windows which do not overlook POS of neighbouring properties. Landscaping will further negate potential privacy and overlooking concerns.</p> <p>The use of earthy toned materials and colours, the inclusion of vertical and horizontal facade design features and the creation of modulation of building sections to the Soldiers Point Road elevation of Building B, results in the development in being consistent with the existing streetscape.</p>
<p>C5.H - Car Parking and Garages</p>	<p>Car Parking requirements were assess in PSDCP2014 Chapter B9 – Road Network and Parking discussion above. The number and configuration of car parking is considered to be satisfactory.</p>
<p>C5.I - Private Open Space</p>	<p>The first floor podium provides 1655sqm of private open space (POS) for residents. The podium creates a social meeting place, encouraging social interaction between future occupants.</p> <p>In addition to POS derived from the first floor podium, POS is provided by a courtyard to each ground level dwelling. Courtyards range from 23sqm to 112sqm in size.</p> <p>Dwellings positioned on Levels one, two and three have POS derived from balconies. The number of balconies for each dwelling range from one to two with the overall size varying between dwellings, from 12sqm to 25sqm.</p> <p>The development is considered to be satisfactory in regard to POS.</p>
<p>C5.J - Site Facilities and</p>	<p>The development satisfies objective C5.J of PSDCP2014. Conditions stipulate air-conditioning/ ventilation systems be compliant with the</p>

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Services	<p>requirements stipulated within the <i>Protection of the Environment Operations Act 1997</i> in regards to potential acoustic impacts. Further, a condition has been incorporated into the consent to ensure that all pipes/ ducts intend or closed into the façade of the building.</p> <p>The applicant has submitted plans detailing location of mail boxes and street numbers. Each unit will contain wash and drying facilities, eliminating the need for external drying facilities.</p>	
<p>(a)(iia) - 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</p>		
<p>There is no planning agreement that has been entered into under section 93F, and no draft planning agreement that a developer has offered to enter into under section 93F of the Act that relates to this development.</p>		
<p>(a)(iv) – any matters prescribed by the regulations</p>		
<i>Primary Matters</i>	<i>Specific Considerations</i>	<i>Y/N</i>
Clause 92 EP&A Regulation: Government Coastal Policy	Does the policy apply to the coastal zone of the council area as specified in cl.92 of the EP&A Regulation?	Yes
	Is the proposal consistent with the 'strategic actions' and the 'design and location principles' for the development control in the Policy?	Yes
<p>(b) – the likely impacts of the development</p>		
<p>The likely impacts of the development have been considered, as outlined below.</p> <p><u>Social and Economic Impacts</u></p> <p>The proposed development will have a positive impact on the local port stephens economy. The development is expected to have a total economic output of \$38.5 million. Additionally, 97 jobs are anticipated to be created and positive economic outcomes will continue post construction via the flow on effects of future residents by way of shopping, working, living and recreational pursuits.</p> <p>Furthermore, the construction of 56 dwelling will attract s94 contributions totalling \$359,632.00. These contributions will be used to create and improve community facilities, public open space, sport facilities, and infrastructure and the like, further adding to the positive economic impact of this development.</p> <p>The development will assist in providing a range of housing options for residents over the age of 55 and people with a disability. The Draft Port Stephens Ageing Strategy outlines that 32.86% (21,297) of residents in the Port Stephens LGA are 55 and older, exceeding the State average of 26.43%, illustrating the demand for seniors housing. The provision of housing for Seniors members of the community is also identified as a need in the Port Stephens Planning strategy 2011. Consistent with these documents, the development will be located within close proximity to town centres and public transport options so that</p>		

ITEM 2 - ATTACHMENT 3 ASSESSMENT REPORT.**Development Assessment Report**

social benefits are maximised.

Impacts on the Built Environment

The type of development (Seniors Housing) is not a land use that is expected to produce noise impacts. Privacy impacts, where identified and are considered to be reasonably mitigated to a level that can be reasonably expected in an urban environment. The additions of privacy screens mitigates potential impacts on adjoining land owners as well as future occupants of the development.

The construction of the proposed development at the subject site is unlikely to result in any adverse impacts upon the local streetscape and amenity of adjoining properties. Design amendments were incorporated to reduce the apparent height, bulk and scale of the development. Design amendments include the removal of Level 3 from Building B, the use of earthy materials and articulation and modulation of building sections to reflect existing development in the locality.

The building is considered to be well sited and designed with respect to the topography of the land and character of the locality.

Impacts on the Natural Environment

The development area is cleared, with no significant vegetation. The development will include planting of vegetation along the north-west, north-east and south-east perimeter of the development, and on the first floor podium. Vegetation will consist of large indigenous trees including Magenta Lilly Pilly (*Syzygium paniculatum*) listed as vulnerable under the *Environmental Protection and Biodiversity Conservation Act 1999* and Spotted Gum (*Corymbia maculate*), indigenous canopy trees, native palms, hedges and turf.

The development will have a positive impact in regard to habitat availability for a range of animal species, assist in surface water management and increase social wellbeing due to the provision of shade and associated aesthetic improvement.

(c) – the suitability of the site for the development

The proposed site is considered suitable for the development. The site is owned by Port Stephens Veterans and Citizen Aged Care Ltd and is currently used to provide housing for senior citizens. The site is positioned within a five minute walk (400m) of a local centre, five minute walk (400m) of bus stops with frequent services to major centres and ten minute walk (800m) to the town centre as recommended in the Port Stephens Planning Strategy 2011 for seniors living developments. The subject site has previously been approved for "Urban Housing (97units and recreational Facility)", which provides housing for senior members of the community. As a result, appropriate infrastructure and services are existing. The proposed development is to be located north-east of the existing development and will assist in providing a range of housing for seniors and people with a disability.

(d) –any submissions made in accordance with this Act or the regulations

Community Participation - The development was advertised and notified to adjoining

ITEM 2 - ATTACHMENT 3 ASSESSMENT REPORT.

Development Assessment Report

<p>land owners for a period of 14 days in accordance with PSDCP2014 from 23 November 2015 to 9 December 2015. A total of eleven submissions were received as a result of this process. Due to significant design amendments, the application was re-exhibited for a period of 14 days from 17 February 2016 to 2 March 2016 during which ten (10) submissions were received.</p> <p>The concerns raised within the submissions related primary relating to: overshadowing, privacy, zone objectives, notification periods, impact to visual amenity, height, bulk and scale of the development, the creation of a precedence of non-compliant development, car parking, s94 contributions, car parking and traffic.</p>	
Public Submissions.	<p>11 submissions were received during the initial exhibition period.</p> <p>10 submissions were received as a result of the re-exhibition process. Three submission makers objected to both the first and second exhibition period.</p>
Public submissions	Public submissions
Overshadowing and Privacy	<p>The location and large setbacks of 'Building A' ensure no potential privacy concerns are likely to arise. The first and second floor units on 'Building B' have 1.8meter high privacy screens to eliminate privacy concerns to adjoining units and neighbouring dwellings. Landscaping, which incorporates large trees will further alleviate potential privacy issues</p> <p>Shadow diagrams submitted with the application indicate that No.244 Soldiers Point Road, Salamander Bay will satisfy solar access requirements outlined in PSDCP2014.</p> <p>It is acknowledged that No.62 Diemars Road, Salamander Bay will not satisfy minimum solar access requirements as stipulated by DCP2014, however the impact has still been considered acceptable for reasons outlined within this report. The proposed development incorporates a 6m setback from the south-east boundary. The large side setback in conjunction with the existing 1.8m high perimeter fence and the small area of useable POS area at No.62 Diemars Road limit any potential impact. A compliant two story dwelling will present a similar impact to the subject land. Accordingly the development is not anticipated to present an unacceptable impact in regards to privacy and overshadowing and it is not considered reasonable to restrict the development from proceeding on this basis.</p>
Inconsistent with objectives of R2 Low Density Residential Zone	<p>It is considered that the development is consistent with the objectives of R2 Low Density Residential Land. The proposal will create housing for members of the community over the ages of 55 and for people with a disability. The integration of existing and future facilities and services for senior community members ensure that the day to day needs for senior residents are satisfied.</p> <p>The development has been architecturally designed to ensure that the built form is analogous to development in the vicinity. In addition, the development represents a part of the entire Salamander Haven site</p>

ITEM 2 - ATTACHMENT 3 ASSESSMENT REPORT.

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	which on average presents a low to medium density development considering the large area of open space provided on the site.
Notification Period	There were concerns raised in relation to the length of time of the submission period. The application was exhibited in accordance with DCP2014, which stipulated a 14 days notification and advertising period for Seniors Housing. The application was re-exhibited due to significant design amendments for another 14 days.
Visual impact of the development	The development has been architecturally designed to be in character with surrounding development in the locality. Modulation and articulation of the buildings facades have been incorporated in the design to ensure that the development responds to the surrounding character of the built environment. In addition, landscaping will further soften the appearance via the addition of a vegetation barrier between the development and Soldiers Point Road and Diemars Road.
Height, bulk and scale of the development	Height, bulk and scale has been discussed elsewhere in this report and it is concluded that the development is acceptable in this regard. The amended development plans detail design features that reduce the apparent height, bulk and scale of the development to be consistent with surrounding development. Council officers undertook extensive consultation with the applicant to amend the design to manage height, bulk and scale. Further discussion is included throughout this report.
Creating a precedence of developments of excessive high, bulk and scale	The proposed Seniors Housing development is a permitted use on land zoned R2 Low Density Residential. Clause 4.6 of PSLEP2013 allows development standards to be exceeded, subject to objectives in Clause 4.6 being satisfied. An exception has been requested by the applicant to exceed the maximum nominated building height outlined in cl. 4.3 - Height of buildings. The variation to cl.4.3 has been discussed within this report and was considered to be satisfactory. In this regard the proposed development will not create a precedent of developments of excessive high, bulk and scale. All future developments non-compliant with statutory and non-statutory planning instruments will be assessed on their merit against applicable legislation and planning guidelines.
Inconsistencies in the Statement of Environmental Effects	Statement of Environmental Effects (SEE) submitted is consistent with requirements set out in Schedule 1, Part 1, Clause 2(4) of <i>The Environmental Planning and Assessment Regulations 2000</i> .
Traffic and Car parking	Concerns were raised regarding the number of car parking spaces proposed. Car parking exceeds minimum requirements outlined under State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 by 24 parking spaces. Additionally, Councils Traffic Engineer held no objection to the proposed development in regards to the provisions of on-site parking.
Amount and timing of s94 contributions	Section 94 contributions have been calculated in accordance with Councils s94 Contribution Plan. Contributions total \$359,632.00 and are required to be paid prior to the issue of any Construction

ITEM 2 - ATTACHMENT 3 ASSESSMENT REPORT.

Development Assessment Report

	Certificate.
Stormwater runoff	The south east corner of the subject site is nominated to be predicted areas of flooding. An assessment of the Amended Stormwater Management Plans was undertaken by Councils Development Engineering Section. On- site stormwater detention calculations have been provided by the applicant. These calculations demonstrate that the 100 year average reoccurrence interval design storm event for the developed scenario does not exceed the 5 year average reoccurrence intervals design storm for the pre-developed scenario. The amended stormwater management plan submitted is considered to be satisfactory. The amended Stormwater Management plans are deemed to be satisfactory.
Submissions from public authorities	General Terms of Approval were received on 31 January 2016 from the Rural Fire Service as required under Section 100B of <i>the Rural fires Act 1997</i> . GTA's relate to Assets Protection Zones, Water and Utilities and Evacuation and Emergency Management.

(e) –the public interest

Matters pertaining to the public interest have been discussed within this report. The approval of the application is considered to be in the public interest. The need for Seniors Housing is highlighted as a growing need in NSW and particularly in localities such as Port Stephens that has a higher than average retirement age population.

Ecologically sustainable development	y/n
Having regards for the principles of ecologically sustainable development, do any of the following issues require further consideration?	
Precautionary principle?	No
Intergenerational equity?	No
Conservation of biological diversity and ecological equity?	No
Improved valuation, pricing and incentive mechanisms?	No

Recommendation:

The application is recommended for approval.

Sam Harvey
Development Planner

ITEM 2 - ATTACHMENT 4 RURAL FIRE SERVICE GENERAL TERMS OF APPROVAL.

All communications to be addressed to:

Headquarters
15 Carter Street
Lidcombe NSW 2141

Headquarters
Locked Bag 17
Granville NSW 2142

Telephone: 1300 NSW RFS
e-mail: csc@rfs.nsw.gov.au

Facsimile: 8741 5433



The General Manager
Port Stephens Council
PO Box 42
RAYMOND TERRACE NSW 2324

Your Ref: 16-2015-769-1
Our Ref: D15/3641
DA15112799614 JC

ATTENTION: Samuel Harvey

31 January 2016

Dear Sir/Madam

Integrated Development for 1//1074566 60 Diemars Road Salamander Bay

I refer to your letter dated 23 November 2015 seeking general terms of approval for the above Integrated Development in accordance with Section 91 of the 'Environmental Planning and Assessment Act 1979'.

This response is to be deemed a bush fire safety authority as required under section 100B of the 'Rural Fires Act 1997' and is issued subject to the following numbered conditions:

Asset Protection Zones

The intent of measures is to provide sufficient space and maintain reduced fuel loads so as to ensure radiant heat levels of buildings are below critical limits and to prevent direct flame contact with a building. To achieve this, the following conditions shall apply:

1. At the commencement of building works and in perpetuity the development area as identified in the document Site Coverage Area, Prepared by BD Architects, Dwg No. A106, Project No. 14118, dated November 2015, shall be managed as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones'.

Water and Utilities

The intent of 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. To achieve this, the following conditions shall apply:

ITEM 2 - ATTACHMENT 4 RURAL FIRE SERVICE GENERAL TERMS OF APPROVAL.

2. Water, electricity and gas are to comply with sections 4.1.3 and 4.2.7 of 'Planning for Bush Fire Protection 2006'.

Evacuation and Emergency Management

The intent of measures is to provide suitable emergency and evacuation (and relocation) arrangements for occupants of special fire protection purpose developments. To achieve this, the following conditions shall apply:

3. Arrangements for emergency and evacuation are to comply with section 4.2.7 of 'Planning for Bush Fire Protection 2006'.

For any queries regarding this correspondence please contact Joshua Calandra on 1300 NSW RFS.

Yours sincerely



Jason Maslen
Team Leader

The RFS has made getting information easier. For general information on 'Planning for Bush Fire Protection, 2006', visit the RFS web page at www.rfs.nsw.gov.au and search under 'Planning for Bush Fire Protection, 2006'.



Figure 1: Elevation of 'Building B' fronting Soldiers Point Road as initially submitted with the application.



Figure 2: Amended Elevation of 'Building B' fronting Soldiers Point Road.

ITEM 4 - ATTACHMENT 1 DRAFT PLANNING AGREEMENT FOR THE
CONSERVATION OF LAND AT BOUNDARY ROAD MEDOWIE.



Our Ref: 1046/MM-01-000/2016

23 March 2016

Office of Environment and Heritage
Hunter Central Coast Region
Locked Bag 1002
Dangar NSW 2309

Attention: Ziggy Andersons

Dear Ziggy,

Re: Letter of Offer to enter into a Planning Agreement
Lots 93-96 DP 753194, Boundary Road, Medowie

We refer to our ongoing correspondence since January 2015 regarding the above mentioned Planning Agreement.

Accordingly, McCloy Medowie Pty Ltd irrevocably offers to enter into a Planning Agreement with the Minister administering the National Parks and Wildlife Act 1974 (NSW) and Port Stephens Council pursuant to section 93F of the Environmental Planning and Assessment Act 1979 in connection with Development Application DA-16-2015-336-1, substantially in the form of the attached Planning Agreement.

The Planning Agreement has been finalised in consultation with both the Office of Environment and Heritage and Port Stephens Council in order to satisfy clause 7.19 of the Port Stephens Local Environmental Plan 2013. Due to the extensive consultation that has been undertaken, we understand that all parties are acceptable to the terms in the Planning Agreement and that both the Minister administering the National Parks and Wildlife Act 1974 (NSW) and Port Stephens Council are satisfied that arrangements have been made for the ongoing protection and management, for conservation purposes of the environmental offset land.

We trust the above offer and attached Planning Agreement satisfies the Office of Environment and Heritage and Port Stephens Council and look forward to receiving certification in respect of clause 7.19 of the Port Stephens Local Environment Plan 2013 in a timely manner.

Please note a copy of this Letter of Offer has also been addressed and forwarded to Port Stephens Council.

Yours faithfully,

JAMES GOODE
Project Director

cc: Port Stephens Council – Attention Matthew Borsato

McCloy Medowie
Pty Ltd
ABN 26 169 323 924

Suite 1 Level 3 426 King Street Newcastle West NSW 2300
PO Box 2214 Dangar NSW AUSTRALIA 2309
P 02 4945 7500 F 02 4929 6472 W www.mccloygroup.com.au

ITEM 4 - ATTACHMENT 1 DRAFT PLANNING AGREEMENT FOR THE
CONSERVATION OF LAND AT BOUNDARY ROAD MEDOWIE.



Our Ref: 1047/MM-01-000/2016

23 March 2016

The General Manager
Port Stephens Council
PO Box 42
Raymond Terrace NSW 2324

Attention: Matthew Borsato

Dear Matthew,

Re: Letter of Offer to enter into a Planning Agreement
Lots 93-96 DP 753194, Boundary Road, Medowie

We refer to our ongoing correspondence since January 2015 regarding the above mentioned Planning Agreement.

Accordingly, McCloy Medowie Pty Ltd irrevocably offers to enter into a Planning Agreement with the Minister administering the National Parks and Wildlife Act 1974 (NSW) and Port Stephens Council pursuant to section 93F of the Environmental Planning and Assessment Act 1979 in connection with Development Application DA-16-2015-336-1, substantially in the form of the attached Planning Agreement.

The Planning Agreement has been finalised in consultation with both the Office of Environment and Heritage and Port Stephens Council in order to satisfy clause 7.19 of the Port Stephens Local Environmental Plan 2013. Due to the extensive consultation that has been undertaken, we understand that all parties are acceptable to the terms in the Planning Agreement and that both the Minister administering the National Parks and Wildlife Act 1974 (NSW) and Port Stephens Council are satisfied that arrangements have been made for the ongoing protection and management, for conservation purposes of the environmental offset land.

We trust the above offer and attached Planning Agreement satisfies the Office of Environment and Heritage and Port Stephens Council and look forward to receiving certification in respect of clause 7.19 of the Port Stephens Local Environment Plan 2013 in a timely manner.

Please note a copy of this Letter of Offer has also been addressed and forwarded to The Office of Environment and Heritage.

Yours faithfully

JAMES GOODE
Project Director

cc: Office of Environment and Heritage – Attention Ziggy Anderson

McCloy Medowie
Pty Ltd
ABN 26 169 323 924

Suite 1 Level 3 426 King Street Newcastle West NSW 2300
PO Box 2214 Dangar NSW AUSTRALIA 2309
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ITEM 4 - ATTACHMENT 1 DRAFT PLANNING AGREEMENT FOR THE CONSERVATION OF LAND AT BOUNDARY ROAD MEDOWIE.

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

EXPLANATORY NOTE BOUNDARY ROAD, MEDOWIE

1. Introduction

This Explanatory Note provides a plain English summary to support the exhibition of a proposed draft planning agreement (the **Planning Agreement**) prepared under section 93F of the *Environmental Planning and Assessment Act 1979* (the **Act**).

This Explanatory Note relates to the Planning Agreement proposed to be entered into by the parties described below in respect of land at Boundary Road, Medowie, in the Local Government Area of Port Stephens.

2. Parties to the Planning Agreement

The parties to the Planning Agreement are the Minister administering the *National Parks and Wildlife Act 1974* (the **Minister**), Port Stephens Shire Council (the **Council**) and McCloy Medowie Pty Ltd (ACN 169 323 924) (the **Proponent**).

This Explanatory Note has been prepared jointly by the parties as required by clause 25E of the *Environmental Planning & Assessment Regulation 2000*.

The Proponent has made an offer to enter into the Planning Agreement with the Minister and the Council in connection with the development application described in section 4 below in order to conserve and enhance the natural environment and satisfy clause 7.19 of the *Port Stephens Local Environmental Plan 2013* (**LEP**).

3. Description of Subject Land

The Planning Agreement applies to Lots 93, 94, 95 and 96 in Deposited Plan 753194 known as Boundary Road, Medowie (the **Land**). The Land is owned by the Proponent.

4. Description of the Development

The Proponent is seeking development consent for subdivision of the Land into approximately 345 residential lots, associated stormwater drainage, bulk earthworks and associated infrastructure (**Proposed Development**) and has made an offer to the Minister to enter into the Planning Agreement in connection with the Proposed Development.

5. Summary of Objectives, Nature and Effect of the Planning Agreement

The objective of the Planning Agreement is to ensure that arrangements have been made for the ongoing protection and management, for conservation purposes, of the Land. To achieve these objectives, the Planning Agreement commits the Proponent to provide the following development contributions to the Minister and the Council to offset the potential biodiversity impacts of the Proposed Development:

- (a) transfer of approximately 70 hectares of land to the Minister (**Environmental Land**). It is proposed that the Environmental Land will be reserved under the *National Parks and Wildlife Act 1974* and form part of the adjoining Medowie State Conservation Area. The Environmental Land will be transferred to the Minister prior to the issue of a subdivision certificate for Stage 1 of the Proposed Development;
- (b) creation of service easements in favour of the Council prior to transferring the

ITEM 4 - ATTACHMENT 1 DRAFT PLANNING AGREEMENT FOR THE CONSERVATION OF LAND AT BOUNDARY ROAD MEDOWIE.

Environmental Land to the Minister, including, for example, drainage easements;

(c) monetary contributions of:

(ii) \$37,200 for the public purpose of reserve establishment; and

(iii) \$5,750 for the public purpose of upgrading the James Road trail in Medowie,

to be paid to the Minister within 30 days of the date of execution of the Planning Agreement and prior to the release of a subdivision certificate for Stage 1 of the Proposed Development (**Monetary Contributions**); and

(d) completion of works on the Environmental Land including fencing works, rubbish removal, weed control and bushfire control works along the western edge of the boundary between the Proposed Development and the Environmental Land including annual slashing (**Proponent Works**),

(together, the **Development Contributions**).

The Proponent is required to provide security in the form of a \$37,200 bank guarantee and register the Planning Agreement on the title to the Land in accordance with section 93H of the Act. In addition, the Planning Agreement makes provision for the compulsory acquisition of the Environmental Land by agreement for the amount of \$1.00 should the Proponent fail to transfer the Environmental Land to the Minister, in accordance with section 30 of the *Land Acquisition (Just Terms Compensation) Act 1991*.

The Planning Agreement does not exclude the application of sections 94, 94A or 94EF of the Act to the Proposed Development.

No relevant capital works program by the Minister is associated with the Planning Agreement.

6. Restriction on issue of construction, occupation or subdivision certificate

The Planning Agreement does not specify requirements that must be complied with prior to the issue of a construction certificate or an occupation certificate.

The Planning Agreement requires the payment of the Monetary Contributions and transfer of the Environmental Land to be carried out prior to the issue of the subdivision certificate for Stage 1 of the Proposed Development and therefore contains a restriction on the issue of a subdivision certificate within the meaning of section 109J(1)(c1) of the Act.

7. Assessment of the Merits of the Planning Agreement

7.1 How the Planning Agreement promotes the objects of the Act

The Development Contributions required by the Planning Agreement are consistent with and promote the objects in section 5 of the Act. In particular, the Development Contributions promote:

(a) section 5(a)(i) - "proper management, development and conservation of natural and artificial resources, including...cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment";

(b) section 5(a)(iv) - "the provision of land for public purposes";

(c) section 5(a)(vi) - "the protection of the environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities, and their habitats"; and

ITEM 4 - ATTACHMENT 1 DRAFT PLANNING AGREEMENT FOR THE CONSERVATION OF LAND AT BOUNDARY ROAD MEDOWIE.

(d) section 5(a)(vii) -"ecologically sustainable development".

7.2 How the Planning Agreement promotes the Council's Charter under the Local Government Act

The proposed Planning Agreement promotes the following elements of the Council's charter under clause 8 of the *Local Government Act 1993*:

- (a) to exercise community leadership;
- (b) to properly manage, develop, protect, restore, enhance and conserve the environment of the area for which it is responsible, in a manner that is consistent with and promotes the principles of ecologically sustainable development; and
- (c) to engage in long-term strategic planning on behalf of the local community.

7.3 The planning purposes served by the Planning Agreement

In accordance with section 93F(2) of the Act, the Planning Agreement has the following public purpose:

- (a) the provision of (or the recoupment of the cost of providing) public amenities or public services; and
- (b) the conservation or enhancement of the natural environment.

The Planning Agreement meets those public purposes through:

- (a) requiring the transfer of the Environmental Land to the Minister. It is intended that the Environmental Land will form part of the Medowie State Conservation Area, thereby protecting and restoring land of high ecological value; and
- (b) once reserved, allowing the Environmental Land to be used by the public, thereby providing opportunities for sustainable visitation, public enjoyment and research.

The Parties consider that the Planning Agreement provides an appropriate means of achieving these planning purposes in relation to the Land.

7.4 How the Planning Agreement promotes the public interest

The Planning Agreement promotes the public interest by committing the Landowner to make the Development Contributions that are intended to positively serve the economic and social wellbeing of the community. In addition, the Development Contributions maintain the ecological integrity of the natural environment.

The Development Contributions will provide a benefit to the community by securing the protection and management of the natural environment.

ORDINARY COUNCIL - 10 MAY 2016 - ATTACHMENTS

ITEM 4 - ATTACHMENT 1 DRAFT PLANNING AGREEMENT FOR THE CONSERVATION OF LAND AT BOUNDARY ROAD MEDOWIE.

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 Harris Wheeler

REQUEST
 New South Wales
 Real Property Act 1900

Leave this space clear. Affix additional pages to the left-hand corner.

PRIVACY NOTE: Section 31B of the Real Property Act 1900 (RP Act) authorises the Registrar General to collect the information required by this form for the establishment and maintenance of the Real Property Act Register. Section 96B RP Act requires that the Register is made available to any person for search upon payment of a fee, if any.

(A) **STAMP DUTY** If applicable. Office of State Revenue use only

(B) **TORRENS TITLE** 93/753194, 94/753194, 95/753194 and 96/753194

(C) **REGISTERED DEALING**

Number	Torrens Title
--------	---------------

(D) **LODGED BY**

Document Collection Box	Name, Address or DX, Telephone, and Customer Account Number if any	CODE
	Reference (optional):	R

(E) **APPLICANT** MCCLOY MEDOWIE PTY LTD ACN 169 323 924

(F) **NATURE OF REQUEST** Registration of Planning Agreement pursuant to s.93H Environmental Planning and Assessment Act 1979 (NSW)

(G) **TEXT OF REQUEST** Annexed and marked "A" is a certified copy of the Planning Agreement between Minister administering the National Parks and Wildlife Act 1974 (NSW) as the Minister, McCloy Medowie Pty Ltd as the Proponent and Port Stephens Council as the Council dated

DATE / /

(H) Certified correct for the purposes of the Real Property Act 1900 and executed on behalf of the company named below by the authorised person(s) whose signature(s) appear(s) below pursuant to the authority specified.
 Company: MCCLOY MEDOWIE PTY LTD ACN 169 323 924
 Authority: Section 127(1) of the Corporations Act 2001

Signature of authorised person:

Signature of authorised person:

Name of authorised person:
 Office held:

Name of authorised person:
 Office held:

(I) *This section is to be completed where a notice of sale is required and the relevant data has been forwarded through eNOS.*
 The applicant / applicant's solicitor / applicant's agent certifies that the eNOS data relevant to this dealing has been submitted and stored under eNOS ID No. Full Name: Signature:

* s117 RP Act requires that you must have known the signatory for more than 12 months or have sighted identifying documentation.

**ITEM 4 - ATTACHMENT 1 DRAFT PLANNING AGREEMENT FOR THE
CONSERVATION OF LAND AT BOUNDARY ROAD MEDOWIE.**

HARRIS
WHEELER
L a w y e r s

Minister administering the *National Parks and Wildlife Act 1974* (NSW)
ABN 30 841 387 271

McCloy Medowie Pty Ltd
ABN 26 169 323 924

Port Stephens Council
ABN 16 744 377 876

Planning Agreement

Environmental Planning and Assessment Act 1979 (NSW)

Contact
Newcastle
Katrina Reye
Tel: (02) 4907 6300

ITEM 4 - ATTACHMENT 1 DRAFT PLANNING AGREEMENT FOR THE CONSERVATION OF LAND AT BOUNDARY ROAD MEDOWIE.

THIS PLANNING AGREEMENT is dated

2016

PARTIES:

Minister administering the *National Parks and Wildlife Act 1974 (NSW)* (ABN 30 841 387 271) of Level 32, Governor Macquarie Tower, 1 Farrer Place, Sydney, NSW 2000 ("**the Minister**")

McCloy Medowie Pty Ltd (ABN 26 169 323 924) of Suite 1, Level 3, 426 King Street, Newcastle West, 2300 ("**the Proponent**")

Port Stephens Council (ABN 16 744 377 876) of 116 Adelaide Street, Raymond Terrace NSW ("**the Council**")

INTRODUCTION:

- A. The Proponent owns the Land.
- B. The Proponent proposes to carry out the Proposed Development.
- C. The Proponent has made a Development Application for the Proposed Development to the Council in respect of the Land.
- D. Clause 7.19 of the *Port Stephens Local Environmental Plan 2013* provides that the Council must not grant Development Consent to the Proposed Development unless the Council is satisfied that arrangements, acceptable to the Council and the Minister, have been made for the ongoing protection and management, for conservation purposes, of the Land.
- E. The Proponent has offered to enter into this deed with the Council and the Minister to make arrangements acceptable to the Council and the Minister for the ongoing protection and management, for conservation purposes, of the Land.
- F. The Council and the Minister confirm that this deed reflects arrangements acceptable to them for the ongoing protection and management, for conservation purposes, of the Land and to satisfy the requirements of clause 7.19 of the *Port Stephens Local Environmental Plan 2013*.

IT IS AGREED:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this deed, unless the context clearly indicates otherwise:

Act means the *Environmental Planning and Assessment Act 1979 (NSW)*

Address for Service means the address of each party appearing in this deed at Schedule 2 or any new address notified by any party to all other parties as its new Address for Service

Authority means any federal, state or local government or semi-governmental, statutory, judicial or public person, instrumentality or department

ITEM 4 - ATTACHMENT 1 DRAFT PLANNING AGREEMENT FOR THE CONSERVATION OF LAND AT BOUNDARY ROAD MEDOWIE.

Bank Guarantee means an irrevocable and unconditional undertaking:

- (a) by an Australian bank which is an eligible financial institution for the purposes of Treasury Circular NSW TC14/01 dated 24 January 2014 as amended, supplemented or substituted from time to time; and
- (b) on terms acceptable to the Minister and Council in each of their absolute discretion

to pay the face value of that undertaking (being such an amount as is required under this deed) on demand

Business Day means any day that is not a Saturday, Sunday, gazetted public holiday or bank holiday in Sydney, and concludes at 5 pm on that day

Claims means any allegation, debt, cause of action, liability, claim, proceedings, suit or demand of any nature however arising and whether fixed or unascertained, actual or contingent whether in law, in equity, under statute or otherwise

Commencement Date means the date that this deed comes into operation in accordance with clause 2.1

Completion Notice means a notice issued by the Minister to the Proponent in accordance with clause 7(d)(i) of Schedule 4

Contribution Amount means:

- (a) the amount of \$37,200.00 to be paid to the Minister for the public purpose of reserve establishment; and
- (b) an amount of \$5,750.00 to be paid to the Minister for the public purpose of upgrading the James Road trail in Medowie

Corporations Act means the *Corporations Act 2001* (Cth)

Development Application means DA-16-2015-336-1, being a 127 hectare residential subdivision known as "The Bower" to be located off Medowie Road in Medowie

Development Consent means any development consent granted under section 80 of the Act for all or part of the Proposed Development

Development Contribution means the dedication of the Environmental Offset Land to the Minister, carrying out of the Proponent Works, creation of the Service Easements in favour of Council and payment of the Contribution Amounts to the Minister as set out in Schedule 4

Development Site means the area shown marked as the "Development Site" on the plan attached as Annexure A to this deed

Environmental Offset Land means the land identified as such in Schedule 3

Explanatory Note means the explanatory note required by the Regulation

General Register of Deeds means the land register maintained under the *Conveyancing Act 1919* (NSW)

GST means any form of goods and services tax payable under the GST Law

GST Law means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth)

ITEM 4 - ATTACHMENT 1 DRAFT PLANNING AGREEMENT FOR THE CONSERVATION OF LAND AT BOUNDARY ROAD MEDOWIE.

Land means the land identified as such in Schedule 3

Minister means the Minister administering the *National Parks and Wildlife Act 1974* (NSW) and includes the Minister's nominee, whether nominated before or after the date of this deed

Plan means the plan attached as Annexure A to this deed

Proponent Works means the works described in clause 6 of Schedule 4

Proposed Development means the proposed development described in the Development Application

Real Property Act means the *Real Property Act 1900* (NSW)

Register means the Torrens title register maintained under the Real Property Act

Regulation means the *Environmental Planning and Assessment Regulation 2000* (NSW)

Secured Obligations means the dedication of the Environmental Offset Land to the Minister, carrying out of the Proponent Works and payment of the Contribution Amount to the Minister as set out in Schedule 4

Service Easements means the easements required by Council in connection with the Proposed Development shown on the Plan

Stage 1 means stage 1 of the Proposed Development generally as shown on the staging plan attached as Annexure B to this deed

Subdivision Certificate means a certificate issued under section 109C(1)(d) of the Act

Subdivision Plan means any plan of subdivision approved by the Minister and the Council which creates a separate lot for the Environmental Offset Land

Transfer means a transfer in the approved form under the Real Property Act which is duly stamped, signed and otherwise in registrable form for the purpose of transferring the Environmental Offset Land to the Minister

Umwelt Report means the report prepared by Umwelt dated 21 December 2012 attached as Annexure C to this deed

1.2 Interpretation

In this deed, unless the context clearly indicates otherwise:

- (a) a reference to this deed or another document means this deed or that other document and any document which varies, supplements, replaces, assigns or novates this deed or that other document;
- (b) a reference to legislation or a legislative provision includes any statutory modification, or substitution of that legislation or legislative provision and any subordinate legislation issued under that legislation or legislative provision;
- (c) a reference to a body or authority which ceases to exist is a reference to either a body or authority that the parties agree to substitute for the named body or authority or, failing agreement, to a body or authority having substantially the same objects as the named body or authority;

ITEM 4 - ATTACHMENT 1 DRAFT PLANNING AGREEMENT FOR THE CONSERVATION OF LAND AT BOUNDARY ROAD MEDOWIE.

- (d) a reference to the introduction, a clause, or schedule is a reference to the introduction, a clause, or a schedule of this deed;
- (e) clause headings and the table of contents are inserted for convenience only and do not form part of this deed;
- (f) the introduction and schedules form part of this deed;
- (g) the introduction accurately sets out the circumstances in which the parties have entered into this deed;
- (h) a reference to a person includes a natural person, corporation, statutory corporation, partnership, the Crown or any other organisation or legal entity;
- (i) a reference to a corporation includes its successors and permitted assigns;
- (j) related or subsidiary in respect of a corporation has the same meaning given to that term in the Corporations Act;
- (k) a reference to a right or obligation of a party is a reference to a right or obligation of that party under this deed;
- (l) an obligation or warranty on the part of 2 or more persons binds them jointly and severally and an obligation or warranty in favour of 2 or more persons benefits them jointly and severally;
- (m) a requirement to do anything includes a requirement to cause that thing to be done and a requirement not to do anything includes a requirement to prevent that thing being done;
- (n) including and includes are not words of limitation;
- (o) the words at any time mean at any time and from time to time;
- (p) a reference to a time is to that time in New South Wales;
- (q) a word that is derived from a defined word has a corresponding meaning;
- (r) monetary amounts are expressed in Australian dollars;
- (s) the singular includes the plural and vice-versa;
- (t) words importing one gender include all other genders; and
- (u) a reference to a thing includes each part of that thing.

1.3 Construction

Neither this deed nor any part of it is to be construed against a party, on the basis that the party or its lawyers were responsible for its drafting.

2. OPERATION AND APPLICATION OF THIS DEED

2.1 Operation

This deed:

- (a) constitutes a planning agreement within the meaning of Section 93F of the Act;
- (b) other than clauses 6.3, 7.3 and clause 2 of Schedule 4 which commence on the date of execution of this deed, this deed commences operation and is effective from the date that is the later of the date when the following occurs:
 - (i) this deed is signed by all the parties; and

ITEM 4 - ATTACHMENT 1 DRAFT PLANNING AGREEMENT FOR THE CONSERVATION OF LAND AT BOUNDARY ROAD MEDOWIE.

- (ii) when a Development Consent for the Proposed Development is granted by the Council,
- (c) is terminated when:
 - (i) the Council and the Minister gives written notice to the Proponent stating that the Council and the Minister are satisfied that the Proponent has completed all its obligations under this deed; or
 - (ii) if Council refuses the Development Application; or
 - (iii) if the Development Consent for the Proposed Development lapses under the Act.

2.2 Application

This deed applies to:

- (a) the Land; and
- (b) the Proposed Development.

2.3 Consequences of termination of deed

If this deed is terminated under clause 2.1 the Proponent has no further obligations under this deed.

2.4 Consequences of Rejection of Development Application

If the Development Application is refused by Council and the Proponent has paid any money to the Minister and Council under this deed including any Bank Guarantee, Minister and Council must refund that money to the Proponent within a period of 10 Business Days from the date of the Proponent's request.

3. APPLICATION OF SECTION 94, SECTION 94A, SECTION 94EF OF THE ACT

The application of sections 94, 94A and 94EF of the Act are excluded to the extent stated in Schedule 1.

4. REQUIREMENT TO PROVIDE DEVELOPMENT CONTRIBUTIONS

4.1 Proponent to provide Proponent Contributions

The Proponent is to provide to the Minister the Development Contribution in accordance with Schedule 4 of this deed.

4.2 Acknowledgement

The Proponent acknowledges and agrees that the Minister:

- (a) has no obligation to use or expend the Development Contribution for a particular purpose and has no obligation to repay the Development Contribution; and
- (b) in circumstances where the Development Contribution is transferred to any Authority, has not made any representation or warranty that the Development Contribution will or must be used for a particular purpose by that Authority.

5. INTEREST FOR LATE PAYMENT

If the Proponent fails to pay any monetary amount under this deed on the due date for payment, the Proponent must also pay the Minister interest at a rate of 2% above the loan reference rate charged by the Commonwealth Bank of Australia from time to time. Interest will be payable on the

ITEM 4 - ATTACHMENT 1 DRAFT PLANNING AGREEMENT FOR THE CONSERVATION OF LAND AT BOUNDARY ROAD MEDOWIE.

daily balance of amounts due from the due date for payment of those amounts until all outstanding amounts (including interest on those amounts) have been paid to the Minister.

6. REGISTRATION ON TITLE

6.1 Land ownership

The Proponent represents and warrants that it is:

- (a) the legal and beneficial owner of the Land; and
- (b) legally and beneficially entitled to obtain all consents and approvals and to compel any person referred to in or contemplated by clause 6.3(b) to assist, co-operate and to otherwise do all things necessary for the Proponent to comply with its obligations under this clause 6.

6.2 No warranties

Except as expressly set out in this deed and subject to the Proponent complying with its obligations under this deed to the satisfaction of the Minister and the Council, including but not limited to:

- (a) the Proponent completing the Proponent's Works in accordance with Schedule 4; and
- (b) the Proponent complying with its obligations under clause 4(h) of Schedule 4,

the Proponent makes (and has made) no representations and gives (and has given) no warranties in respect of the Land and the OEH agrees to accept the Environmental Offset Land in its current state and condition.

(Note: this clause does not limit any existing or future obligation imposed on the Proponent under any statutory approval).

6.3 Registration of deed

- (a) As contemplated by section 93H of the Act, the Proponent agrees to lodge this deed for registration with the relevant Authority under the Real Property Act in the folio of the Register for the Land within 5 Business Days of the date of this deed.
- (b) The Proponent at its own expense, will take all practical steps and otherwise do anything that the Minister and the Council reasonably require to procure:
 - (i) The consent of each person, as required by the Registrar-General, who:
 - (A) has an estate or interest in the Land registered under the Real Property Act; or
 - (B) is seized or possessed of an estate or interest in the Land,to the registration of this deed on title to the Land and to the terms of this deed; and
 - (ii) the execution of any documents;
 - (iii) the production of the relevant certificates of title;
 - (iv) payment of any duty liability arising from this deed under the Duties Act 1997 (NSW); and
 - (v) the lodgement of this deed in registrable form at the Land and Property Information for registration by the Registrar-General in the relevant folio of the Register for the Land, or in the General Register of Deeds if this deed relates to land not under the Real Property Act.

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- (c) The Proponent must provide the Minister and the Council with evidence of the registration of this deed with the relevant Authority within 10 Business Days of registration of this deed.

6.4 Release and discharge of deed

The Minister agrees to sign all required consents and other documents required by the Proponent to remove this deed from title to the Land provided that the Minister and the Council are satisfied that the Proponent has satisfied all of its obligations under this deed.

7. ENFORCEMENT

7.1 Proponent to provide Security

The Proponent has agreed to provide security to the Minister and Council (where appropriate) for the performance of the Proponent's obligations under this deed in accordance with this clause.

7.2 Compulsory acquisition

In addition to clause 7.3 below, the parties agree that clause 5 of Schedule 4 is the provision of security for the obligation to dedicate the Environmental Offset Land.

7.3 Bank Guarantee

- (a) Within 10 Business Days of the date this deed is signed, the Proponent is to provide security in the form of a Bank Guarantee in favour of the Minister for the monetary amount in Schedule 5 (**Bank Guarantee Amount**).
- (b) The Minister may call upon the Bank Guarantee to satisfy, either wholly or in part:
 - (i) the Proponent's obligation to pay the Contribution Amounts;
 - (ii) any outstanding rates and charges as may be owing in respect of the Land up to and including the date of the Transfer to the Minister of the Environmental Offset Land;
 - (iii) any other costs of and incidental to the Minister's becoming registered as proprietor of the Environmental Offset Land and/or protecting beforehand its estate or interest therein; and/or
 - (iv) the Proponent's obligation to carry out the Proponent Works, (the **Secured Obligations**).
- (c) The above Bank Guarantee will be held by the Minister.

7.4 Claims under a Bank Guarantee

- (a) The Proponent agrees that the Minister may make claims under a Bank Guarantee on the following basis:
 - (i) the Minister may call upon a Bank Guarantee (in full or in part) in the event that the Proponent fails to provide the Secured Obligations in accordance with this deed and the Minister may retain and use such monies in his discretion to compensate the Minister for the Proponent's breach of the relevant obligation;
 - (ii) the Minister agrees not to make any claim under a Bank Guarantee without providing at least 2 Business Days' prior written notice to the Proponent of its intention to do so;
 - (iii) the amount appropriated by the Minister under clause 7.4(a) must be applied towards the costs and expenses incurred by the Minister in rectifying any default by the Proponent under this deed.

ITEM 4 - ATTACHMENT 1 DRAFT PLANNING AGREEMENT FOR THE CONSERVATION OF LAND AT BOUNDARY ROAD MEDOWIE.

- (b) Should the Minister use the part or whole of the monies under the Bank Guarantee under clause 7.4(a), the Proponent shall, on being advised in writing by the Minister to do so, immediately take steps to ensure that the Bank Guarantee Amount is replaced for the benefit of the Minister.
- (c) Should there be outstanding obligations by the Proponent to be performed after the expiry date of the Bank Guarantee, the Proponent shall arrange for a replacement Bank Guarantee to be delivered to the Minister no later than 1 week prior to that expiry date.

7.5 Release of Bank Guarantee

- (a) Subject to clause 7.5(b), upon the Minister being satisfied that the Secured Obligations have been discharged or if this deed is terminated or discharged pursuant to clause 2.1(c), the Minister will promptly return the Bank Guarantee to the Proponent.
- (b) If the Minister has called upon the relevant Bank Guarantee, then upon satisfaction of the Secured Obligations the Minister will return to the Proponent the Bank Guarantee amount less any monies appropriated by the Minister under clause 7.4(a).

8. DISPUTE RESOLUTION

8.1 Not commence

A party must not commence any court proceedings relating to a dispute unless it complies with this clause 8.

8.2 Written notice of dispute

A party claiming that a dispute has arisen under or in relation to this deed must give written notice to the other party specifying the nature of the dispute.

8.3 Attempt to resolve

On receipt of notice under clause 8.2, the parties must endeavor in good faith to resolve the dispute expeditiously using informal dispute resolution techniques such as mediation, expert evaluation or other techniques agreed by them.

8.4 Mediation

If the parties do not agree within 7 days of receipt of notice under clause 8.2 (or any further period agreed in writing by them) as to:

- (a) the dispute resolution technique and procedures to be adopted;
- (b) the timetable for all steps in those procedures; or
- (c) the selection and compensation of the independent person required for such technique,

the parties must mediate the dispute in accordance with the Mediation Rules of the Law Society of NSW. The parties must request the president of the Law Society of NSW or the president's nominee to select the mediator and determine the mediator's remuneration.

8.5 Court proceedings

If the dispute is not resolved within 42 days after notice is given under clause 8.2 then any party which has complied with the provisions of this clause 7 may in writing terminate any dispute resolution process undertaken under this clause and may then commence court proceedings in relation to the dispute.

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8.6 Not use information

The parties acknowledge the purpose of any exchange of information or documents or the making of any offer of settlement under this clause 8 is to attempt to settle the dispute. No party may use any information or documents obtained through any dispute resolution process undertaken under this clause 8 for any purpose other than in an attempt to settle the dispute.

8.7 No prejudice

This clause 8 does not prejudice the right of a party to institute court proceedings for urgent injunctive or declaratory relief in relation to any matter arising out of or relating to this deed.

9. GST

9.1 Definitions

Words used in this clause that are defined in the GST Law have the meaning given in that legislation.

9.2 Intention of the parties

The parties intend that:

- (a) Divisions 81 and 82 of the GST Law apply to the supplies made under and in respect of this deed; and
- (b) no additional amounts will be payable on account of GST and no tax invoices will be exchanged between the parties.

9.3 Reimbursement

Any payment or reimbursement required to be made under this deed that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which any entity is entitled for the acquisition to which the cost, expense or amount relates.

9.4 Consideration GST exclusive

Unless otherwise expressly stated, all prices or other sums payable, or consideration to be provided under this deed are GST exclusive. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purposes of this clause 9.

9.5 Additional Amounts for GST

To the extent an amount of GST is payable on a supply made by a party under or in connection with this deed (GST Amount), the Recipient will pay to the Supplier the GST Amount. However, where a GST Amount is payable by the Minister or the Council as Recipient of the supply, the Proponent will ensure that:

- (a) the Proponent makes payment of the GST Amount on behalf of the Minister or Council (where appropriate), including any gross up that may be required; and
- (b) the Proponent provides a Tax Invoice to the Minister or the Council (where appropriate).

9.6 Non-monetary consideration

Clause 9.5 applies to non-monetary consideration.

ITEM 4 - ATTACHMENT 1 DRAFT PLANNING AGREEMENT FOR THE CONSERVATION OF LAND AT BOUNDARY ROAD MEDOWIE.

9.7 Assumptions

The Proponent acknowledges and agrees that in calculating any amounts payable under clause 9.5 the Proponent will assume the Minister, is not entitled to any input tax credit

9.8 No merger

This clause will not merge on completion or termination of this deed.

10. ASSIGNMENT AND RESTRICTION ON SALE OF LAND

10.1 Assignment

This deed is personal to each party and neither party may assign the rights or benefits of this deed to any person except:

- (a) to a related body corporate, after obtaining the consent of the other party, which the other party must not withhold if it is reasonably satisfied that the related body corporate has sufficient assets, resources and expertise to perform all of the assigning party's obligations under this deed; or
- (b) to any other person, with the prior consent of the other party, which the other party may acting reasonably give, give conditionally or withhold.

10.2 Restriction on Sale

The Proponent must not sell, transfer or dispose of the whole or any part of the Land unless, before it sells, transfers or disposes of any such part of the Land to another person ("**Transferee**"):

- (a) it satisfies the Minister acting reasonably that the proposed Transferee is financially capable (including, without limitation, by providing financial statements for, and credit standing of, the proposed transferee) of complying with such of the Proponent's obligations under this deed as the Minister acting reasonably shall nominate must be adopted by the Transferee ("**Required Obligations**");
- (b) the rights of the Minister under this deed are not diminished or fettered in any way;
- (c) the Transferee signs a deed in form and substance acceptable to the Minister containing provisions under which the Transferee agrees to comply with the Required Obligations as if it were the Proponent (including obligations which arose before the transfer or assignment);
- (d) the Minister is satisfied that it holds appropriate security to secure the Proponent's obligations under this Agreement, including, without limitation, a guarantee and indemnity in respect of the Transferee's obligations to comply with the Required Obligations (if so required by the Minister);
- (e) any default by the Proponent has been remedied by the Landowner or waived by the Minister; and
- (f) the Proponent and the Transferee pay the Minister's reasonable costs in relation to that assignment.

11. WARRANTIES OF CAPACITY

11.1 General warranties

Each party warrants to each other party that:

- (a) this deed creates legal, valid and binding obligations, enforceable against the relevant party in accordance with its terms; and

ITEM 4 - ATTACHMENT 1 DRAFT PLANNING AGREEMENT FOR THE CONSERVATION OF LAND AT BOUNDARY ROAD MEDOWIE.

- (b) unless otherwise stated, it has not entered into this deed in the capacity of trustee of any trust.

11.2 Power of attorney

If an attorney executes this deed on behalf of any party, the attorney declares that it has no notice of the revocation of that power of attorney.

12. Release and indemnity

- (a) The Proponent agrees that the obligation to provide the Development Contributions is at the risk of the Proponent. The Proponent releases the Minister and the Council from any Claim, liability or loss arising from, and costs incurred in connection with, the Proponent's obligation to provide the Development Contribution.
- (b) The Proponent indemnifies the Minister and the Council against any costs incurred in connection with the Minister or the Council enforcing the Landowner's obligation to provide the Development Contributions in accordance with this deed, except to the extent caused or contributed to by the Minister's or the Council's negligent act or default under this deed.
- (c) The indemnity in clause 12(b) is a continuing obligation, independent of the Proponent's other obligations under this deed and continues after this deed ends.

13. GENERAL PROVISIONS

13.1 Entire agreement

This deed constitutes the entire agreement between the parties regarding the matters set out in it and supersedes any prior representations, understandings or arrangements made between the parties, whether orally or in writing.

13.2 Variation

This deed must not be varied except by a later written document executed by all parties and publicly notified in accordance with clause 25D of the Regulation.

13.3 Annual Report

If requested by Minister or the Council the Proponent must prepare a status report in the form reasonably requested by Minister or the Council detailing the status of performance of its obligations under this deed. The Minister and Council must not request a status report more than once per year.

13.4 Governing Law

This deed is governed by, and is to be construed in accordance with, the law of New South Wales and the parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any court hearing appeals from those courts.

13.5 Change of Circumstances

Either party must review and negotiate variations to this deed in good faith if there is any change of circumstances that materially affects the operation of this deed.

13.6 Waiver

A right created by this deed cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right does not constitute a waiver of that right, nor will a

ITEM 4 - ATTACHMENT 1 DRAFT PLANNING AGREEMENT FOR THE CONSERVATION OF LAND AT BOUNDARY ROAD MEDOWIE.

waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.

13.7 Further assurances

Each party must promptly execute all documents and do everything necessary or desirable to give full effect to the arrangements contained in this deed.

13.8 Time for doing acts

- (a) If:
- (i) the time for doing any act or thing required to be done; or
 - (ii) a notice period specified in this deed,

expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.

- (b) If any act or thing required to be done is done after 5 pm on the specified day, it is taken to have been done on the following Business Day.

13.9 Severance

If any clause or part of any clause is in any way unenforceable, invalid or illegal, it is to be read down so as to be enforceable, valid and legal. If this is not possible, the clause (or where possible, the offending part) is to be severed from this deed without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses) which will continue in full force and effect.

13.10 Preservation of existing rights

The expiration or termination of this deed does not affect any right that has accrued to a party before the expiration or termination date.

13.11 No merger

Any right or obligation of any party that is expressed to operate or have effect on or after the completion, expiration or termination of this deed for any reason, will not merge on the occurrence of that event but will remain in full force and effect.

13.12 Counterparts

This deed may be executed in any number of counterparts. All counterparts taken together constitute one instrument

13.13 Relationship of parties

Unless otherwise stated:

- (a) nothing in this deed creates a joint venture, partnership, or the relationship of principal and agent, or employee and employer between the parties; and
- (b) no party has the authority to bind any other party by any representation, declaration or admission, or to make any contract or commitment on behalf of any other party or to pledge any other party's credit.

ITEM 4 - ATTACHMENT 1 DRAFT PLANNING AGREEMENT FOR THE CONSERVATION OF LAND AT BOUNDARY ROAD MEDOWIE.

13.14 No fetter

Nothing in this deed will be construed as requiring the Minister or Council to do anything that would cause it to be in breach of any of its obligations at law and, without limitation, nothing will be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

13.15 Explanatory note

The Explanatory Note must not be used to assist in construing this deed.

13.16 Legal expenses and stamp duty

- (a) The Proponent must pay its own, Council's and the Minister's reasonable legal costs and disbursements in connection with the negotiation, preparation, execution and carrying into effect of this deed.
- (b) The Proponent must pay for all costs and expenses associated with the giving of public notice of this deed and the Explanatory Note in accordance with the Regulation.
- (c) The Proponent must pay all stamp duty assessed on or in respect of this deed and any instrument or transaction required by or necessary to give effect to this deed.
- (d) If the Proponent breaches this deed and does not remedy the breach within a reasonable period of time specified in a notice of breach issued by the Council or the Minister then the Proponent must pay Council's and the Minister's reasonable legal costs of enforcing this deed.

13.17 Notices

- (a) Any notice, demand, consent, approval, request or other communication (notice) to be given under this deed must be in writing and must be given to the recipient at its Address for Service by being:
 - (i) hand delivered;
 - (ii) sent by facsimile transmission;
 - (iii) sent by email;
 - (iv) sent by prepaid ordinary mail within Australia; or
 - (v) sent by prepaid Express Post International airmail to the Address for Service of the recipient party, if the Address for Service of the sender and the recipient are in different countries.
- (b) A notice is given if:
 - (i) hand delivered, on the date of delivery;
 - (ii) sent by facsimile transmission during any Business Day, on the date that the sending party's facsimile machine records that the facsimile has been successfully transmitted;
 - (iii) sent by prepaid ordinary mail within Australia, on the date that is 2 Business Days after the date of posting; or
 - (iv) sent by prepaid Express Post International airmail between countries, on the date that is 10 Business Days after the date of posting.

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SCHEDULE 1

Requirements under section 93F of the Act

The parties acknowledge and agree that the table set out below provides for certain terms, conditions and procedures for the purpose of the deed complying with the Act.

Requirement under the Act	This Deed
Planning instrument and/or development application (section 93F(1)) The Proponent has: (a) sought a change to an environmental planning instrument; (b) made, or proposes to make a Development Application; (c) entered into an agreement with, or is otherwise associated with a person, to whom paragraph (a) or (b) applies.	(a) No (b) Yes (c) No
Description of the land to which this deed applies (section 93F(3)(a))	See Schedule 3
Description of the change to the environmental planning instrument to which this deed applies (section 93F(3)(b))	NA
The scope, timing and manner of delivery of contribution required by this deed (section 93F(3)(c))	See Schedule 4
The application of section 94 and 94A of the Act (section 93F(3)(d))	The application of these sections is not excluded in respect of the Proposed Development.
Applicability of section 94EF of the Act (section 93F(3)(d))	The application of this section is not excluded in respect of the Proposed Development.
Consideration of benefits under this deed if section 94 applies (section 93F(3)(e))	No. The benefits under this deed are not to be taken into consideration in determining s.94 contributions.
Mechanism for Dispute Resolution (section 93F(3)(f))	See clause 8
Enforcement of this deed (section 93F(3)(g))	See clause 7
No obligation to grant consent or exercise functions (section 93F(10))	See clause 13.14
Registration of the Planning Agreement- (section 93H of the Act)	See clause 6
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a construction certificate is issued (clause 25E(2)(g) Regulation)	No
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before an occupation certificate is issued (clause 25E(2)(g) Regulation)	No
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a subdivision certificate is issued (clause 25E(2)(g) Regulation)	Yes

**ITEM 4 - ATTACHMENT 1 DRAFT PLANNING AGREEMENT FOR THE
CONSERVATION OF LAND AT BOUNDARY ROAD MEDOWIE.**

SCHEDULE 2

Address for service

Minister

Contact: Regional Manager, Hunter Central Coast

Address: Locked Bag 1002, Dangar NSW 2309

Facsimile No: 02 4927 3192

Email address: rog.hcc@environment.nsw.gov.au

McCloy Medowie Pty Ltd

Contact: Mr. James Goode

Address: Suite 1, Level 3, 426 King Street, Newcastle West, 2300

Facsimile No: (02) 4929 6472

Email address: james@mccloygroup.com.au

Port Stephens Council

Contact: Mr. David Rowland

Address: 116 Adelaide Street, Raymond Terrace NSW 2324

Facsimile No: (02) 4987 3612

Email address: david.rowland@portstephens.nsw.gov.au

**ITEM 4 - ATTACHMENT 1 DRAFT PLANNING AGREEMENT FOR THE
CONSERVATION OF LAND AT BOUNDARY ROAD MEDOWIE.**

SCHEDULE 3

Land

(Clause 1.1)

Land

The Land on which the Proposed Development is to be located is 93-96 Boundary Road, Medowie known as Folio Identifier 93-96/753194

Environmental Offset Land

Proposed Lot 2 as shown on the Plan being an area of approximately 69.7 hectares and forming part of the Land.

Service Easements

The proposed service easements are shown on the Plan.

ITEM 4 - ATTACHMENT 1 DRAFT PLANNING AGREEMENT FOR THE CONSERVATION OF LAND AT BOUNDARY ROAD MEDOWIE.

SCHEDULE 4

Development Contribution

(Clause 4)

1. Development Contributions Generally

The Proponent is to provide the following development contributions in accordance with this Schedule:

- (a) The Environmental Offset Land to be transferred to the Minister, free of cost;
- (b) The Service Easements to be provided in favour of Council, free of any cost to Council;
- (c) The Proponent Works to be carried out in favour of the Minister;
- (d) The payment of the Contribution Amounts to the Minister.

The parties acknowledge that the above package of measures comprise the Development Contributions under this deed.

2. Contribution Amounts

- (a) The Proponent must pay each of the Contribution Amounts to the Minister within 30 days of the date of execution of this deed and prior to the release of any Subdivision Certificate for Stage 1.
- (b) The requirement to pay a Contribution Amount is satisfied for the purposes of this deed when the Minister receives the full amount of the Contribution Amounts in cash or by unendorsed bank cheque or by the deposit by electronic funds transfer into a bank account nominated by the Minister.

3. Service Easements

Prior to transferring the Environmental Offset Land to Minister the Proponent must create the Service Easements in favour of Council.

4. Environmental Offset Land Contribution

- (a) The Proponent must transfer the Environmental Offset Land to the Minister prior to the issue of a Subdivision Certificate for Stage 1 in accordance with the following process.
- (b) In order to give effect to the transfer of the Environmental Offset Land to the Minister in accordance with this Schedule the Proponent is to procure the subdivision of the Land to create the Environmental Offset Land as a separate lot (**Environmental Offset Land Subdivision**).
- (c) Within 3 weeks of any Subdivision Certificate being given by the Council for the Subdivision Plan, the Proponent must lodge the Subdivision Plan for registration with the appropriate Authority and promptly notify the Council and the Minister of such lodgment.
- (d) The Proponent must promptly notify the Council and Minister when it receives notification that the Subdivision Plan has been registered and within 5 Business Days of the date of notification that the Subdivision Plan has been registered, serve a Transfer on the Minister with the relevant certificates of title and ensure that:
 - (i) the Environmental Offset Land is free from any encumbrances other than the Service Easements; or

ITEM 4 - ATTACHMENT 1 DRAFT PLANNING AGREEMENT FOR THE CONSERVATION OF LAND AT BOUNDARY ROAD MEDOWIE.

- (ii) relevant discharges in registrable form are also served on the Minister at the same time in relation to any encumbrances other than the Service Easements.
- (e) The Proponent must immediately comply, or procure compliance with, any requisitions raised by the Registrar-General in relation to the transfer of the Environmental Offset Land.
- (f) The Proponent will pay all rates and taxes owing in respect of the Environmental Offset Land up to and including the date of transfer of the Environmental Offset Land after which the Minister will be liable.
- (g) After the transfer of the Environmental Offset Land to the Minister, the Minister agrees to allow the Proponent to enter the Environmental Offset Land to undertake all works in connection with weed control as required in item 4 of the table in clause 6 of this Schedule 4 (**Weed Control Works**) on the terms outlined in clause 7 of this Schedule 4.
- (h) The Proponent must, from the date that this deed is signed by all the parties not undertake any action or activity, prior to the Transfer being registered that will have a detrimental effect on the conservation or Aboriginal heritage values of the Environmental Offset Land except where the Proponent is:
 - i. directed to undertake such action or activity by another government agency or instrumentality (such as the Rural Fire Service);
 - ii. maintaining existing access and existing track; or
 - iii. otherwise required by law to undertake such an action or activity.

5. Compulsory Acquisition of Environmental Offset Land

- (a) If the Proponent does not transfer any part of the Environmental Offset Land to the Minister as required by this deed, the Proponent consents to the Minister compulsorily acquiring that part of the Environmental Offset Land in accordance with the Land Acquisition (Just Terms Compensation) Act 1991 (NSW) for the amount of \$1.00.
- (b) The Proponent and the Minister agree that:
 - (i) this clause 5 is an agreement between them for the purposes of section 30 of the Land Acquisition (Just Terms Compensation) Act 1991 (NSW); and
 - (i) in this clause 5, they have agreed on all relevant matters concerning the compulsory acquisition and the compensation to be paid for the acquisition.
- (c) The Proponent must pay the Minister, promptly on demand, an amount equal to all costs, charges or expenses incurred by the Minister acquiring the whole or any part of the Environmental Offset Land as contemplated by this clause 5.
- (d) The Proponent indemnifies and agrees to keep indemnified the Minister (or his or her nominee) against all claims made against the Minister (or his or her nominee) as a result of any acquisition by the Minister (or his or her nominee) of the whole or any part of the Environmental Offset Land under this clause 5.

6. Proponent Works

- (a) The Proponent must complete the following works to the reasonable satisfaction of the Minister and the Council within the time period referred to in the table set out below.

ITEM 4 - ATTACHMENT 1 DRAFT PLANNING AGREEMENT FOR THE CONSERVATION OF LAND AT BOUNDARY ROAD MEDOWIE.

Item	Timing
1. All internal boundary fences within the Environmental Offset Land are to be removed.	Prior to the transfer of the Environmental Offset Land to the Minister
2. Install fence line and gates at appropriate points along the common boundary of the Development Site and the Environmental Offset Land, as nominated by the Minister, being along the external easement boundary of the proposed drainage easement as shown on the Plan. A vehicle width of 3-4 meters of vegetation will be cleared along the fence line within the Environmental Offset Land. The fencing materials will be steel posts and pickets with 4 plain strands of wire. The Minister will nominate gate locations following a written request from the Developer to do so.	Prior to the transfer of the Environmental Offset Land to the Minister
3. Remove all rubbish from the Environmental Offset Land. However the Proponent will not be required to undertake ongoing rubbish removal from the Environmental Offset Land once the land has been transferred to the Minister	This rubbish removal will be undertaken prior to the transfer of the Environmental Offset Land to the Minister and only undertaken once.
4. Weed control will be undertaken within the Environmental Offset Land including spraying of all noxious weeds, including but not limited to those noxious weeds identified in Figure 1 of the Umwelt Report.	For a period of 3 years from the date the Environmental Offset Land is transferred to Minister.
5. A fence and gate will be placed across the power line easement to prevent unauthorised access to the power easement from Boundary Road as shown on the Plan.	Prior to the transfer of the Environmental Offset Land to the Minister
6. The Proponent agrees to undertake annual slashing by a tractor for bushfire control to the satisfaction of the Minister along the western edge of the common boundary of the Development Site and the Environmental Offset Land to a width of 10 metres. Please note: The perimeter roads shown on the Plan once created will be under the ownership of council and Council will maintain.	Every 12 months from the Commencement Date until the road reserve shown on the Plan becomes Council owned land.

ITEM 4 - ATTACHMENT 1 DRAFT PLANNING AGREEMENT FOR THE CONSERVATION OF LAND AT BOUNDARY ROAD MEDOWIE.

7. Completion of the Proponent's Works

- (a) For the purposes of clause 6(a) of this Schedule, the Proponent's Works are taken to be completed when a Completion Notice is issued in accordance with the process outlined in this clause 7.
- (b) The Proponent is to give the Minister written notice of the date on which it will complete all or part of the Proponent's Works.
- (c) Not later than 5 Business Days after receiving the Proponent's notice under clause 7(b), the Minister will, and the Proponent must permit the Minister to inspect the Proponent's Work in the presence of a representative of the Proponent.
- (d) Not later than 5 Business Days after the inspection referred to in clause 7(c), the Minister, acting reasonably, is to:
 - i. issue a Completion Notice to the Proponent stating that in the Minister's opinion, the Proponent's Works have been completed; or
 - ii. give a written direction to the Proponent to complete, rectify or repair any specified part of the Proponent Work as a pre-condition to the issuing of a Completion Notice.
- (e) The Proponent must, at its cost, promptly comply with a direction given to it by the Minister under clause 7(d)(ii).
- (f) The Minister is to issue a Completion Notice to the Proponent once the Minister is reasonably satisfied that the Minister has complied with any written direction given under clause 7(d)(ii) and no further written direction will be given.

8. Terms of Access to the Environmental Offset Land

- (a) The Minister grants the Proponent a non-exclusive licence to access to the Environmental Offset Land for a period of 3 years from the date of transfer of the Environmental Offset Land to the Minister in accordance with clause 4 of this Schedule 4 (**Term**) for the purpose of undertaking the Weed Control Works.
- (b) The Proponent must:
 - i. provide at least 24 hours' notice of its intention to access the Environmental Offset Land by contacting the National Parks and Wildlife Hunter Coast Area Manager on 02 4984 8200;
 - ii. comply with any reasonable directions given by the Minister in carrying out the Weed Control Works;
 - iii. not undertake any action that would have a detrimental effect on the conservation or Aboriginal heritage values of the Environmental Offset Land; and
 - iv. immediately notify the Minister of any damage caused to the Environmental Offset Land and to make good the damage caused.
- (c) During the Term, the Proponent must effect and maintain insurance policies with a reputable insurance company for:
 - i. public liability for an amount not less than the sum of \$20 million for any one claim; and

ITEM 4 - ATTACHMENT 1 DRAFT PLANNING AGREEMENT FOR THE CONSERVATION OF LAND AT BOUNDARY ROAD MEDOWIE.

- ii. if required by law, workers compensation insurance.
- (d) The insurance policies referred to under sub-clause (c) must:
- i. note the Minister as an interested party (except in the case of workers compensation); and
 - ii. be on terms and conditions reasonably acceptable to the Minister.
- (e) The Proponent must serve evidence of the above insurances to the Minister prior to the Developer accessing the Environmental Offset Land.
- (f) The Proponent indemnifies the Minister and keeps the Minister indemnified from and against all Loss which the Developer may suffer or incur consequent upon or arising directly or indirectly out of:
- i. any act or thing which is a breach or non-observance of this sub-clause by the Proponent including without limitation, the cost to the Developer in carrying out the Weed Control Works;
 - ii. the Proponent's wilful act or negligence;
 - iii. the Proponent's use of the Environmental Offset Land; or
 - iv. the Proponent's use of services to the Environmental Offset Land,
- except to the extent caused directly or indirectly or contributed to by a negligent act or omission of the Minister, his or her employees, consultants or agents.
- (g) The Proponent:
- i. acknowledges that access to the Environmental Offset Land by the Proponent and is at the Proponent's risk; and
 - ii. to the extent permitted by Law, releases the Minister from all Claims arising out of any damage to any Environmental Offset Land or injury or death to any person occurring in the Environmental Offset Land, except to the extent that the Minister causes or contributes to the Claim by a wilful act, negligence or omission.

ITEM 4 - ATTACHMENT 1 DRAFT PLANNING AGREEMENT FOR THE CONSERVATION OF LAND AT BOUNDARY ROAD MEDOWIE.

**SCHEDULE 5
Security**

(clause 6)

Each Bank Guarantee will be:

- (a) in favour of the favouree;
- (b) in the amount; and
- (c) a security for the Secured Obligations

as set out in the table below.

Favouree	Bank Guarantee Amount	Secured Obligations
Minister	\$37,200	The Secured Obligations as defined in clause 7.3(b) of this deed

ITEM 4 - ATTACHMENT 1 DRAFT PLANNING AGREEMENT FOR THE CONSERVATION OF LAND AT BOUNDARY ROAD MEDOWIE.

EXECUTED as a deed

EXECUTED by the Minister administering the *National Parks and Wildlife Act 1974 (NSW)* ABN 30 841 387 271:

Signature of Witness

Minister administering the *National Parks & Wildlife Act 1974 (NSW)*

Name of Witness in full (BLOCK LETTERS)

EXECUTED by MCCLOY MEADOWIE PTY LIMITED ABN 26 169 323 924 in accordance with section 127 of the *Corporations Act 2001 (Cth)* by authority of its directors:

Signature of Director

Signature of Director/Secretary

Name of Director (BLOCK LETTERS)

Name of Director/Secretary (BLOCK LETTERS)

THE COMMON SEAL by PORT STEPHENS COUNCIL was hereunto affixed pursuant to a resolution of Council dated [] Resolution Number - in the presence of:

Signature of General Manager

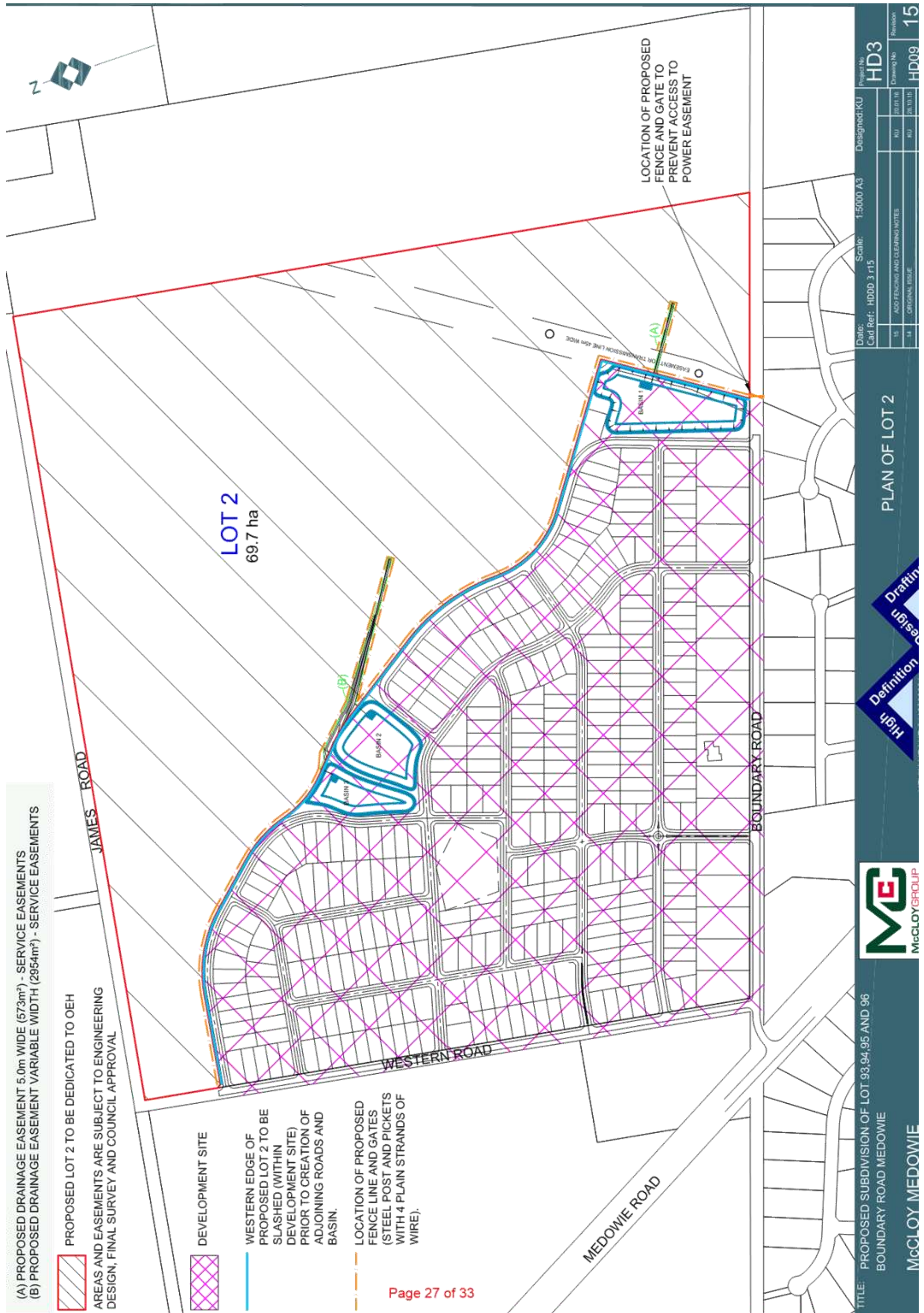
Signature of Mayor

Name of General Manager: WAYNE WALLIS

Name of Mayor: BRUCE MACKENZIE

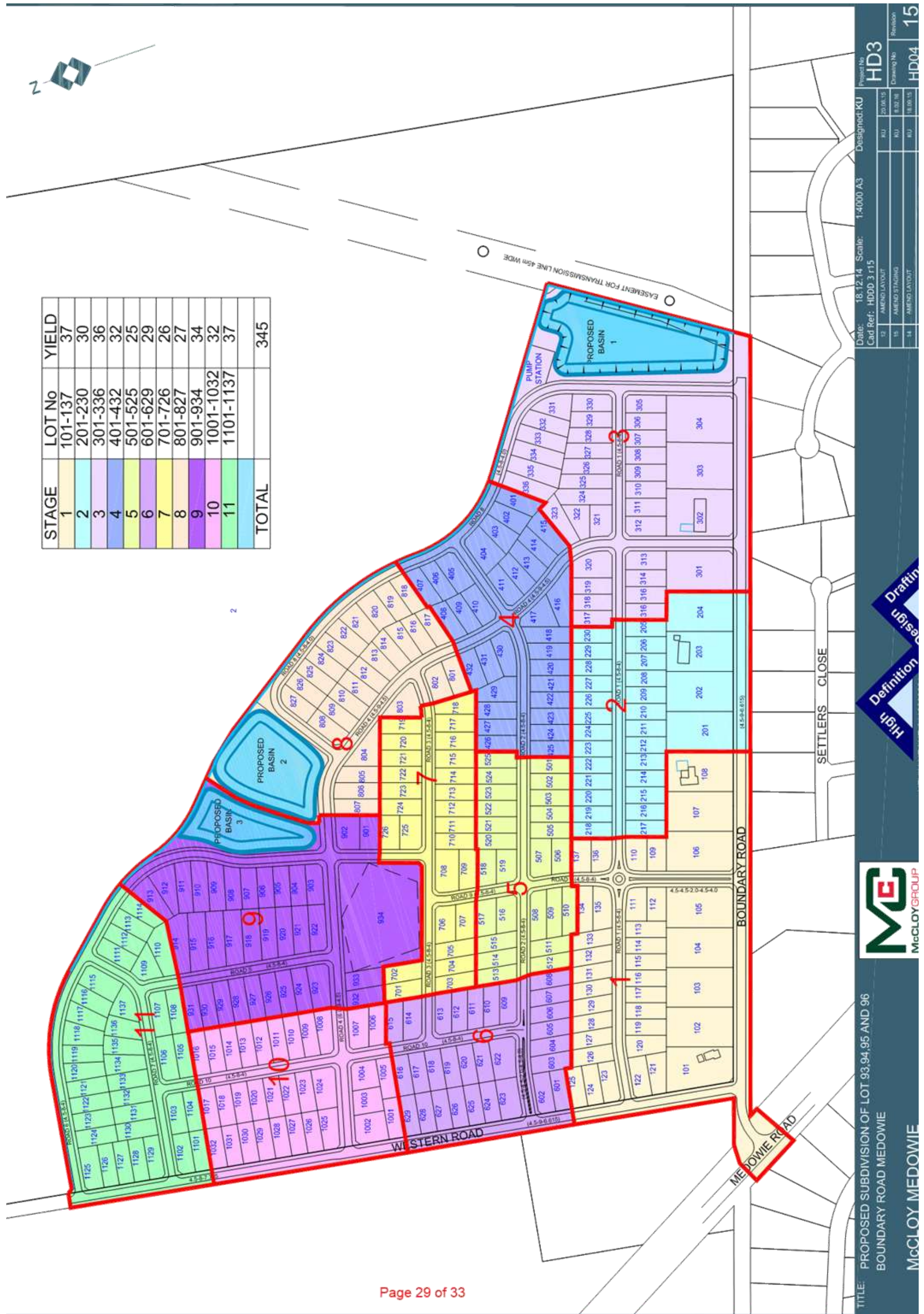
**ITEM 4 - ATTACHMENT 1 DRAFT PLANNING AGREEMENT FOR THE
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Annexure A – Plan



**ITEM 4 - ATTACHMENT 1 DRAFT PLANNING AGREEMENT FOR THE
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Annexure B – Staging Plan



**ITEM 4 - ATTACHMENT 1 DRAFT PLANNING AGREEMENT FOR THE
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Annexure C – Umwelt Report

ITEM 4 - ATTACHMENT 1 DRAFT PLANNING AGREEMENT FOR THE CONSERVATION OF LAND AT BOUNDARY ROAD MEDOWIE.



Our Ref: 2711/TP/RV/RV/211212

21 December 2012

Andrew Simons
Development Manager
Eureka Funds Management
GPO Box 4201
SYDNEY NSW 2001

Dear Andrew

Re: Additional Information Requested by OEH in relation to Lots 93 - 96
Boundary Road, Medowie

Introduction

The Office of Environment and Heritage (OEH) has requested further information in relation to the condition of the 73 hectare portion of the site (being Lots 93 - 96 Boundary Road, Medowie), that is proposed for transferral to public ownership as an offset for the development of the remainder of the site. In their request, OEH have asked for an audit of fences, rubbish and weeds within the proposed offset area.

Methods

Two Umwelt staff assessed the proposed offset area to map infestations of weeds, dumped rubbish and fence condition on 7 December 2012. The majority of the proposed offset area was accessed as part of this survey, however some parts of the Swamp Sclerophyll Forest EEC were too dense to provide reasonable access on foot. Any observed weed, rubbish or fence issues were recorded via GPS and these are provided on Figure 1.

Results

The extent of survey and associated findings are mapped in Figure 1. Three dumped cars were recorded in the proposed offset area, one being within the power line easement and two together to the east of the easement. Several small dumps of rubbish - mainly car parts were recorded around the power line easement.

The whole site is fenced, and there is evidence of internal fencing separating each of the lots. These areas can be seen on the aerial in Figure 1, however it is noted that this aerial is dated. The boundary fence was cut in several locations across the site and in disrepair in other areas. These have been mapped in Figure 1. No internal fences could be located between Lots 94 and 95 or 95 and 96. It is noted that there has been considerable regeneration of the understorey in previously cleared areas, and this may be masking the presence of parts of these previous fences. The internal fence between lots 93 and 94 was present but in disrepair.

Inspired People.
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PO Box 3024
75 York Street
Teralba NSW 2284

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Perth
PO Box 8177
144 Churchill Avenue
Subiaco East WA 6008

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Extremely thick native vegetation prevented access to the areas of the site towards the proposed development site. As a result it was not possible to determine the presence and/or condition of any fencing in these areas, however it is believed that there is no fence between the proposed development and offset areas at this stage.

Given the close proximity of the site to urban areas, there were remarkably few weeds recorded. Those weeds which were identified were in very low densities with very limited management actions required.

Weeds of low environmental significance were found in the power line easement, and these included flat weed (*Hypochaeris radicata*), *Verbena* sp. and *Conyza* sp.. One cotton bush plant (*Gomphocarpus fruticosus*) was recorded to the east of the easement and two pampas grass plants (*Cortaderia selloana*) were recorded towards the centre of Lot 95.

Pampas grass is classified as a Class 4 noxious weed in the Port Stephens LGA. This classification specifies that:

The growth of the plant must be managed in a manner that reduces its numbers spread and incidence and continuously inhibits its reproduction.

The thick native vegetation prevented access to all of the central and southern parts of the Swamp Sclerophyll Forest EEC, however the density of native vegetation (primarily *Melaleucas* and *Leptospermum*) is highly likely to exclude any significant weed infestations in this area.

During the survey, it was identified that the powerline easement was being used by members of the public to gain access to the site in vehicles, some of which have been damaged and/or vandalised and left on site.

Overall, the proposed offset area is in very good ecological condition, with only minor management actions required to address these identified issues.

I trust that this provides you with the information required for the OEH request. Please do not hesitate to contact me if you require any further discussion on this matter.

Yours faithfully,

Rebecca Vere
Senior Ecologist