



**PORT STEPHENS**  
C O U N C I L

SUPPLEMENTARY INFORMATION

ORDINARY COUNCIL MEETING  
14 JUNE 2016

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## **COUNCIL REPORTS**

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- Nb. Bold Items have not been previously received or viewed by Councillors.

## SUPPLEMENTARY INFORMATION

ITEM NO. 1

FILE NO: 16/345402  
RM8 REF NO: 16-2014-654-5

**SECTION 96(1A) MODIFICATION APPLICATION NO.16-2014-654-5 TO REDUCE THE S.94 CONTRIBUTIONS APPLICABLE TO AN APPROVED MULTI DWELLING HOUSING (15 UNITS) AND 15 LOT SUBDIVISION AT 27 DOWLING STREET, NELSON BAY (LOT 1 DP 235550).**

REPORT OF: MICHAEL MCINTOSH - GROUP MANAGER DEVELOPMENT SERVICES  
GROUP: DEVELOPMENT SERVICES

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### RECOMMENDATION IS THAT COUNCIL:

- 1) Notes the additional information provided by the Applicant.

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### BACKGROUND

A section 96(1A) modification application No.16-2014-654-5 to reduce the section 94 contributions applicable to an approved multi-dwelling housing (15 units) and 15 lot subdivision at 27 Dowling Street, Nelson Bay (Lot 1 DP 235550) was reported to Council at its meeting of 24 May 2016 and Council resolved to adopt the recommendation to refuse the section 96 application.

A rescission motion (Recession Motion item No.1) is before Council for consideration in relation to this matter.

### ISSUES

Council is in receipt of legal advice provided to the Applicant by Mallik Rees Solicitors and Conveyancers which relates to Recession Motion Item No.1. The Applicant's advice is provided for Councils information at **(ATTACHMENT 1)**. It is recommended that Council notes the additional information by the Applicant.

The recommendation of Council staff to refuse the section 96(1A) modification application as detailed within Item No.2 of the 24 May 2016 agenda (and provided at Attachment 1 of the rescission motion) remains unchanged.

### MERGER PROPOSAL IMPLICATIONS

The proposed merger is not anticipated to have any implications on the section 96 modification application.

**ATTACHMENTS**

- 1) Applicant's Legal Advice (Mallik Rees).

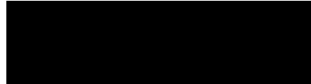


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Wills & Probate • General Law

Our Ref: MJC:20160821  
Your Ref:

1 June 2016

Mr G Ekert



**BY EMAIL**

Dear Mr Ekert,

**Re: Advice – 25-27 Dowling Street Nelson Bay  
S94 Contributions – Port Stephens Council**

We refer to the abovementioned matter and your attendance at our office yesterday.

We confirm that you have purchased a block of land, which at the time of purchase was a vacant block of land, but previously housed 22 Commission Homes.

You have been approved to subdivide the land into 15 lots, with a dwelling to be constructed on each lot. Accordingly, there will be 15 dwellings on the land rather than the previous 22.

As part of the conditions of consent Port Stephens Council (“The Council”) has imposed a condition in relation to s94 contributions requiring the payment of \$190,260. You have instructed your Planners, LeMottee Group to make a modification application to have the amount of s94 contributions reduced to \$93,667. At Councils meeting on 24 May 2016 the Council refused the modification application and it is back before Council at the next Council meeting on 7 June 2016.

The question that needs to be asked is whether a historical credit should be given? In our opinion the answer to this question is yes.

S94(1) permits a consent authority to require the dedication of land or the payment of money as a condition of development consent and provides inter alia as follows:



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Sienna Bella Pty Ltd t/as

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(1) *If a consent authority is satisfied that development for which development consent is sought will or is likely to require the provision of or increase the demand for public amenities and public services within the area, the consent authority may grant the development consent subject to a condition requiring:*

- (a) the dedication of land free of cost, or*
  - (b) the payment of a monetary contribution,*
- or both.*

We are instructed that historically there were 22 dwellings on this block of land and you have approval to construct 15 dwellings. You are therefore not creating any additional demand for public amenities and public services within the area.

We understand that Council is of the opinion that as the original development of 22 dwellings did not pay s94 contributions that it is now your responsibility to pay the contributions. We do not agree with this argument and this is supported by the Court of Appeal decision of *Meriton Apartments Pty Ltd v Council of the City of Sydney* [2001] NSWCA 17 where the Court set aside the orders of Pain J and Senior Commissioner Moore. At paragraph 59 of that judgement the Court said:

*"The simple point is that the relevant provisions of the statute are concerned with the net demand for public amenities and services generated by the development in question. Although the relevant exercise required a determination of the existing demand for such services in order to reach the net demand, the former is based purely on the actual or deemed resident or workforce population of the relevant land at the time of the development application for it is only the future population that generates the demand in respect of which a monetary contribution can be required. That determination cannot be dependent upon whether the demand of the historical population was ever met by the council or, if it was, out of what source of revenue."*

The Court went on to say:

*"Thus the present provisions of the statute neither expressly or impliedly relate to the manner in which a council provides public amenities and services to meet the needs of past populations: rather, they are only concerned with ensuring that the present developer not be required to meet the needs that are not generated by the development in respect of which consent is being sought"*

It is our opinion that you have a right to claim a historical credit for the s94 contribution in that you are not creating any demand, in fact the demand being created is less than the original development on that land. We note nonetheless that you have agreed to pay for the construction of the whole of Trafalgar Lane (despite our preliminary view that you could have applied for a s96 modification to only have to construct half of that lane) and you have agreed to pay s94 contributions. We believe that this is more than a generous offer as it is our view that if argued before the Court you would not be required to pay any s94 contributions.

- 3 -

If Council is not willing to see that what you have offered is more than a generous offer than we believe that you should consider commencing legal proceedings and argue the point before the Court.

We hope that this advice has been of assistance to you and if you require clarification on any point please do not hesitate to contact the writer.

We enclose our tax invoice for work completed in this matter.

Yours faithfully

**COUTTS MALLIK REES**



Marie Caban  
Accredited Specialist  
Local Government & Planning

## SUPPLEMENTARY INFORMATION

ITEM NO. 1

FILE NO: 16/350025  
RM8 REF NO: 16-2015-852-1

**DEVELOPMENT APPLICATION 16-2015-852-1 FOR A COMMUNITY FACILITY, RECREATION FACILITY (OUTDOOR), ASSOCIATED EARTHWORKS, SIGNAGE AND CAR PARKING (FERODALE PARK SPORTS COMPLEX) AT 36 AND 36A FERODALE ROAD, MEDOWIE (LOT 1 DP1003417 AND LOT 22 DP1021843)**

REPORT OF: MICHAEL MCINTOSH - GROUP MANAGER DEVELOPMENT SERVICES  
GROUP: DEVELOPMENT SERVICES

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### RECOMMENDATION IS THAT COUNCIL:

- 1) Consider the supplementary information and approve Development Application DA No. 16-2015-852-1 for a Community Facility, Recreation Facility (Outdoor), Associated Earthworks, Signage and Car Parking at No. 36 and 36A Ferodale Road, Medowie (Lot 1 DP1003417 and Lot 22 DP1021843), subject to the amended conditions contained in **(ATTACHMENT 1)**.

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### BACKGROUND

The purpose of this report is to provide further information in relation to DA 16-2015-852-1 for the proposed community facility, recreation facility (outdoor), associated earthworks, signage and car parking at 36 and 36A Ferodale Road, Medowie (locality plan provided under **ATTACHMENT 3**).

The application was deferred at Council's meeting of 24 May 2016 to allow for further assessment and referral comments to be provided from Hunter Water Corporation. In order to meet Council agenda timelines, the original report was retained unchanged as was previously reported on Council's Business Paper.

Council has now received Hunter Water Corporation's referral correspondence and has modified the draft Notice of Determination and associated conditions **(ATTACHMENT 1)** accordingly. Further to this change, additional detail has been added to the assessment report in relation to Hunter Water Corporation's (HWC's) comments **(ATTACHMENT 2)**.

### ISSUES

In their referral response to Council, HWC have requested increased involvement in the detailed design (construction certificate) stage of the development. This was attributed primarily to HWC's interest in the water quality measures to be



**ORDINARY COUNCIL - 14 JUNE 2016 - SUPPLEMENTARY INFORMATION**

implemented as part of the proposal. HWC have requested that modifications be made to the following conditions:

<b>Original condition</b>	<b>Amended condition (changes underlined)</b>
All hardstand and roofed area shall be collected and conveyed to Campvale Drain generally in accordance with the approved Stormwater Management Plans. <b>Prior to the issue of a Construction Certificate</b> , design plans shall be prepared in accordance with Council's Infrastructure Specification and be approved by Council. A Construction Certificate cannot be issued until full details of the stormwater drainage design, including associated calculations, has been provided to the PCA for assessment and determined to be satisfactory.	All hardstand and roofed area shall be collected and conveyed to Campvale Drain generally in accordance with the approved Stormwater Management Plans. <b>Prior to the issue of a Construction Certificate</b> , design plans shall be prepared in accordance with Council's Infrastructure Specification and be approved by Council <u>and Hunter Water Corporation</u> . A Construction Certificate cannot be issued until full details of the stormwater drainage design, including associated calculations, has been provided to the PCA <u>and Hunter Water Corporation</u> for assessment and determined to be satisfactory.
<b>Prior to issue of the Occupation Certificate</b> , the Section 50 Hunter Water compliance certificate which refers to the development application must be obtained and submitted to both Council and the PCA.	<b>Prior to issue of the <u>Construction Certificate</u></b> , the Section 50 Hunter Water compliance certificate which refers to the development application must be obtained and submitted to both Council and the PCA.

The amended conditions are agreed to and have been imposed on the draft Notice of Determination included as **(ATTACHMENT 1)**. Therefore all requirements of HWC have been met with regard to the development application.

Since the original report was drafted, information has been received by Council officers seeking clarification regarding potential contaminated fill material on the site. A condition has already been imposed on the consent to ensure any new fill material is appropriately certified. The fill already existing on the site was approved and undertaken in accordance with a previous development consent (16-2000-1559-1), however, given the previous consent is to be surrendered and replaced by the subject application, an additional condition has been recommended that any existing fill material on-site be appropriately certified (with documentary evidence provided) prior to issue of a construction certificate.

**MERGER PROPOSAL IMPLICATIONS**

Council resolved to lodge the development application prior to the announcement of the merger proposal. As such, the application was within the scope of Council's pre-

merger works program. The development is not considered to be of the size, scale or cost which would negatively impact or influence the merger proposal.

The proposed development will not produce long term social, economic or environmental implications which would influence the operation of a merged entity.

**ATTACHMENTS**

- 1) Draft Notice of Determination DA 16-2015-852-1.
- 2) Assessment Report DA 16-2015-852-1.
- 3) Locality Plan DA 16-2015-852-1.
- 4) Hunter Water Correspondence.



**PORT STEPHENS COUNCIL**

# Notice of Determination

Under section 80, 80A, 80(1) and 81(1)(a) of the Environmental Planning and Assessment Act 1979 (NSW).

**SCHEDULE 1**

**REASONS WHY THE CONDITIONS HAVE BEEN IMPOSED**

These conditions are required to:

- prevent, minimise, and/or offset adverse environmental impacts including economic and social impacts;
- set standards and performance measures for acceptable environmental performance;
- require regular monitoring and reporting; and
- provide for the ongoing environmental management of the development.

**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:

<b>Plan/Doc. Title</b>	<b>Plan Ref. No.</b>	<b>Sheet.</b>	<b>Date</b>	<b>Drawn By</b>
Site Plan (As Amended)	PSC15-2578:xx MED ARCH 01	1/5	17/12/2015	Port Stephens Council
Landscape, Playground and Signage Plan (As Amended) Rev B	PSC15-2578:xx MED ARCH 02	2/5	17/12/2015	Port Stephens Council
Floor Plan (As Amended)	PSC15-2578:xx MED ARCH 03	3/5	17/12/2015	Port Stephens Council
Elevations (As Amended)	PSC15-2578:xx MED ARCH 04	4/5	17/12/2015	Port Stephens Council
Sections	PSC15-2578:xx MED ARCH 05	5/5	17/12/2015	Port Stephens Council
Stormwater Management Plan 1 (As Amended)	SWMP1	1/2	11/03/2016	Port Stephens Council
Stormwater Management Plan 2 (As Amended)	SWMP2	2/2	11/03/2016	Port Stephens Council

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.



## Notice of Determination

Under section 80, 80A, 80(1) and 81(1)(a) of the Environmental Planning and Assessment Act 1979 (NSW).

2. 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 Certifying Authority. If Council is not appointed as the 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.
3. The person having the benefit of the development consent must surrender DA 16-2000-1559-1 to Council by submitting a completed copy of Clause 97 of the *Environmental Planning and Assessment Regulation 2000*.

### CONDITIONS TO BE SATISFIED PRIOR TO DEMOLITION, EXCAVATION OR CONSTRUCTION

4. **Prior to the commencement of works**, a construction waste storage facility is to be established on-site and regularly serviced for the duration of the works.
5. **Prior to the commencement of works**, erosion and sediment control measures shall be put in place to prevent the movement of soil by wind, water or vehicles 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).
6. **Prior to the commencement of work**, the person having the benefit of this consent shall contact Hunter Water Corporation (HWC) to ensure that the approved works do not impact upon existing or proposed HWC infrastructure. A copy of the information received by HWC shall be provided to Council within 10 days of receipt. Should HWC require modification to the approved development a Section 96 Modification Application and/or modified Construction Certificate Application should be lodged.
7. Hunter Water Corporation shall be notified at least fourteen days **prior to the commencement** of works within the vicinity of Campvale Drain.

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

8. **Prior to the issue of a Construction Certificate**, documentary evidence is to be provided to the Certifying Authority that DA 16-2000-1559-1 has been surrendered to Council in accordance with Condition 3 of this consent.
9. **Prior to the issue of a Construction Certificate**, the Certifying Authority is to certify that on-site car parking shall be provided for a minimum of 105 vehicles, with provision for six disabled parking spaces, and such being set out generally in accordance with Council's Car Parking requirements. The plans submitted in



## Notice of Determination

Under section 80, 80A, 80(1) and 81(1)(a) of the Environmental Planning and Assessment Act 1979 (NSW).

association with the Construction Certificate application are to demonstrate compliance with this requirement.

10. **Prior to the issue of a Construction Certificate**, the Certifying Authority is to certify that the design of parking spaces, access and manoeuvring areas are in accordance with Council's Development Control Plan and AS 2890 as applicable.
  - a. Required access and manoeuvring areas are to be designed for swept path clearances for the 85<sup>th</sup> percentile vehicle per AS 2890.1 2004.
  - b. Visitor parking spaces are to be located in proximity to the building entrance and clearly linemarked and signposted.
  - c. Disabled parking spaces are to be designed in accordance with AS 2890.6 2009 and be located in proximity to the building disabled access and be clearly linemarked and signposted.
  - d. Loading/unloading areas are to be separated from parking and storage areas. Loading areas must be designed to accommodate appropriate turning paths in accordance with AS 2890.2 2002.
11. **Prior to the issue of a Construction Certificate**, the Certifying Authority is to certify that full geometric, drainage and certified structural details for retaining walls intended for use as earth retaining structures together with existing and proposed earthworks levels are satisfactory.
12. Campvale Drain shall be widened 1.2m immediately south of Ferodale Road for approximately 50m and to the northern extent of the Maundia Habitat Drain illustrated on the approved Site Analysis Plan. The drain widening is to taper to the southern extent so as not to significantly impact upon the Maundia Habitat. **Prior to the issue of a Construction Certificate**, design plans shall be prepared in accordance with Council's Infrastructure Specification and be approved by Council as the Asset Owner.
13. All hardstand and roofed area shall be collected and conveyed to Campvale Drain generally in accordance with the approved Stormwater Management Plans. **Prior to the issue of a Construction Certificate**, design plans shall be prepared in accordance with Council's Infrastructure Specification and be approved by Council. A Construction Certificate cannot be issued until full details of the stormwater drainage design, including associated calculations, has been provided to the Certifying Authority for assessment and determined to be satisfactory.
14. **Prior to the issue of a Construction Certificate**, the Certifying Authority is to certify that design plans provide for kerb & gutter, ancillary drainage and an adjacent sealed road shoulder pavement, making a smooth connection to the existing bitumen seal, for the entire road frontage of the development site.
15. 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.



PORT STEPHENS  
COUNCIL

## Notice of Determination

Under section 80, 80A, 80(1) and 81(1)(a) of the Environmental Planning and Assessment Act 1979 (NSW).

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. Half width road including kerb and guttering, subsoil drainage, footpath formation, drainage and a minimum width of 5.5 metres wide road pavement across the full frontage of the site in Ferodale road.
- b. Footway formation graded at +2% from the top of kerb to the property boundary, across the frontage of the site in Ferodale road.
- c. 1.2m wide reinforced (SL72 steel fabric, 100mm thick) concrete footpath in an approved location across the frontage of the site in Ferodale road.
- d. All redundant dish crossings and/or damaged kerb and gutter are to be removed and replaced with new kerb and gutter.
- e. Roadside furniture and safety devices including fencing, signage, guide posts, chevrons, directional arrows and guard rail in accordance with RMS and Australian Standards.
- f. Signage and line marking. The signage and line marking plan shall be approved by the Council Traffic Committee.
- g. Pram ramps at the intersection of Ferodale road and the site access point to both sides of Ferodale Road to the satisfaction of Council.
- h. A bus stop is to be provided to comply with the requirements of AS/NZS 1428.4.1:2009 and the Disability Discrimination Act 1992.
- i. The bus stop shall have a seat installed, with other devices as required, in accordance with AS/NZS 1428.4.1:2009 > Appendix D > Figure D1 BUS STOP WITHOUT SHELTER – SET BACK FROM FOOTPATH.
- j. Rubber rumble strips for traffic calming on both sides of the Ferodale Road / Kirrang Drive roundabout along Ferodale Road.

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

16. **Prior to the issue of a Construction Certificate**, the Certifying Authority is to certify that the building design incorporates an acoustic barrier in the location as marked in RED on the approved plans. The barrier is to be a minimum of 2.4m high and of solid construction to prevent noise penetration to the west and northwest.
17. **Prior to the issue of a Construction Certificate**, a geotechnical report confirming the adequacy of the foundation material in respect of the proposed construction works for the facility is to be provided to the Certifying Authority. Structural engineering plans for the reinforced concrete slab are to reference the geotechnical report and incorporate any recommendations in respect of the works which are contained in the report.



18. **Prior to the issue of a Construction Certificate**, a vaulted system or structural soil placement for the instalment of trees within the car park to be provided to the Certifying Authority. The design is to comply with the requirements of the Port Stephens Council Tree Technical Specification 2014.
19. **Prior to the issue of a Construction Certificate**, the Certifying Authority is to certify that the design of the kitchen facilities complies with the provisions of AS 4674-2004 *Design, construction and fit-out of food premises*. Particular reference is made to Sections 2.4 (garbage handling) and 4.4 (hand wash basins).
20. **Prior to the issue of a Construction Certificate**, the Certifying Authority is to certify that the floor plan has been amended to provide for a cleaners/sluice sink in close proximity to the kitchen.
21. **Prior to the issue of a Construction Certificate**, the Certifying Authority is to certify compliance of the cook line and associated mechanical ventilation with AS 4674-2004 and AS 1668.1 and 1668.2.
22. **Prior to the issue of a Construction Certificate**, certification of any existing fill on-site associated with the development is to be prepared by a suitably qualified consultant and provided to the Certifying Authority. Only material consistent with the following may be used as part of the development:
  - a. Virgin Excavated Natural Material (VENM) 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 exemption under s.91 of the *Protection of the Environment Operations (Waste) Regulation 2014* that is permitted to be used as fill material.

Any fill material that is inconsistent with the above is to be removed from the site **prior to the issue of a Construction Certificate** and disposed of at an appropriate waste disposal facility.

### 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. Construction work that is likely to cause annoyance due to noise is to be restricted to the following times:
  - Monday to Friday, 7.00am to 6.00pm;
  - Saturday, 8.00am to 1.00pm; and
  - No construction work to take place on Sunday or Public Holidays.



**PORT STEPHENS**  
COUNCIL

## Notice of Determination

Under section 80, 80A, 80(1) and 81(1)(a) of the Environmental Planning and Assessment Act 1979 (NSW).

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.

25. It is the responsibility of the applicant to erect a Principal Certifying Authority (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.
26. 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.
27. 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 PCA 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 PCA. A further copy of the certificate must also be prominently displayed in the building.
28. The construction of any habitable floor level shall not be less than the Flood Planning level for the site RL 9.0 m AHD. A survey certificate prepared by a Registered Surveyor is to be submitted to the PCA, and approved by the PCA before works proceed above the Flood Planning Level. A copy is to be provided to Council.
29. The development shall be constructed in accordance with the NSW Government Floodplain Management Manual (2005).
30. All outdoor lighting is to be installed in accordance with Australian Standard - AS4282 – Control of the obtrusive effects of outdoor lighting.
31. The flood lighting associated with the bowling greens is to be installed in accordance with the provisions of Australian Standard – AS2560.2.6 Guide to Sports Lighting.
32. The only fill material that may be received at the development site is:
  - c. Virgin Excavated Natural Material (VENM) within the meaning of the *Protection of the Environment Operations Act 1997 (POEO)*; or





**PORT STEPHENS**  
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## Notice of Determination

Under section 80, 80A, 80(1) and 81(1)(a) of the Environmental Planning and Assessment Act 1979 (NSW).

- d. Any other waste-derived material the subject of a resource recovery exemption under s.91 of the *Protection of the Environment Operations (Waste) Regulation 2014* that is permitted to be used as fill material.

Note: Any waste-derived fill material the subject of a resource recovery exemption received at the development site must be accompanied by documentation as to the material's compliance with the exemption conditions and must be provided to the Principal Certifying Authority.

### CONDITIONS TO BE SATISFIED PRIOR TO ISSUE OF AN OCCUPATION CERTIFICATE

33. All drainage and civil 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 issue of the Occupation Certificate.**
34. **Prior to the issue of an Occupation Certificate**, the PCA is to certify that one 105 formalised car parking spaces, with six disabled spaces have been provided in accordance with the requirements of the Port Stephens Council DCP and AS2890.1. Parking is to be appropriately line marked and signposted.
35. **Prior to the issue of an Occupation Certificate**, the PCA is to certify that site landscaping has been installed and established in accordance with the approved landscaping plans.
36. **Prior to issue of the Occupation Certificate**, the Section 50 Hunter Water compliance certificate which refers to the development application must be obtained and submitted to both Council and the PCA.

### CONDITIONS TO BE SATISFIED AT ALL TIMES

37. At all times, the hours of operation for the community facility are to be restricted to:
- Monday to Thursday – 9.00am to 10.00pm
  - Friday and Saturday – 9.00am to 12.00pm
  - Sunday – 9.00am to 10.00pm (12.00pm on long weekends)

Other internal operations such as cleaning, preparation and office administration may be undertaken outside of the above hours provided that no disturbance to the amenity of the neighbourhood occurs.

38. At all times, the bowling greens and associated flood lighting must not be used later than 9.00pm.



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Under section 80, 80A, 80(1) and 81(1)(a) of the Environmental Planning and Assessment Act 1979 (NSW).

39. At all times, the hours of operation for the loading dock and site deliveries are restricted to 7.00am and 6.00pm.
40. At all times, all lighting is to be restricted to operation in keeping with the community facility's operating hours. Incidental lighting in accordance with the NSW Police guidelines for 'Crime Prevention through Environmental Design' and illumination associated with entry signage is exempted from this condition.
41. At all times, the community facility is to operate in a manner so as not to create 'offensive noise' as defined under the *Protection of the Environment Operations Act 1997*.
42. The stormwater system, including any water quality, quantity or infiltration components, shall be maintained in perpetuity for the life of the development.
43. 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.

### ADVICES

- The 'future bowling green' as illustrated on the approved plans has been granted development consent under this application. A further development application for the construction of the bowling green marked 'future bowling green' on the approved plans is not required.

### SCHEDULE 2

### RIGHT OF APPEAL

If you are dissatisfied with this decision:

- a review of determination can be made under Section 82A of the Act, or
- a right of appeal under Section 97 of the Act can be made to the Land and Environment Court within six (6) months from the date on which that application is taken to have been determined.

### NOTES

Adelaide Street (PO Box 42), Raymond Terrace NSW 2324  
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Email [council@portstephens.nsw.gov.au](mailto:council@portstephens.nsw.gov.au)

16-2015-775-1

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## Notice of Determination

Under section 80, 80A, 80(1) and 81(1)(a) of the Environmental Planning and Assessment Act 1979 (NSW).

- This is not an approval to commence work. Building works cannot commence until a Construction Certificate is issued by Council or an accredited certifier.
- Consent operates from the determination date. For more details on the date from which the consent operates refer to section 83 of the Environmental Planning and Assessment Act 1979.
- Development consents generally lapse five years after the determination date, however different considerations may apply. For more details on the lapsing date of consents refer to section 95 of the Environmental Planning and Assessment Act 1979.



**1.0 APPLICATION DETAILS**

<b>Application Number</b>	DA 16-2015-852-1
<b>Development Description</b>	Development Application 16-2015-852-1 – Community Facility, Recreation Facility (Outdoor), Associated Earthworks, Signage and Car Parking
<b>Applicant</b>	PORT STEPHENS COUNCIL
<b>Date of Lodgement</b>	21/12/2015
<b>Value of Works</b>	\$3,000,000.00

**1.1 Development Proposal**

The proposed development seeks consent for the construction of a community facility building, a bowling green (with provision made for another), children's playground, entry signage, landscaped garden and car parking area. The community facility building consists of 3 meeting rooms, 3 offices, a commercial kitchen and servery, public toilet facilities, staff toilet facilities, a loading and delivery area and screened waste storage. The subject site is located a short distance from the Medowie commercial area and adjoins the existing Ferodale Sports Complex. The applicant is Port Stephens Council.

The proposed operating hours for the community facility are:

- Monday to Thursday – 9.00am to 10.00pm
- Friday and Saturday – 9.00am to 12.00pm
- Sunday – 9.00am to 10.00pm and 12.00pm on Long Weekends
- Public Holidays – No Operation

The facility has been designed to cater for 426 patrons and will be available for a variety of activities like community gatherings, training sessions, sporting presentations and watching sporting games such as cricket, football and bowls which are played on the adjacent sporting facilities. The proposal may be used as an emergency operations centre in the Medowie area if required. The proposed development provides 105 car parking spaces including 6 accessible spaces.

**2.0 PROPERTY DETAILS**

<b>Property Address</b>	36 and 36A Ferodale Road, Medowie
<b>Lot and DP</b>	Lot 1 DP 1003417 and Lot 22 DP 1021843
<b>Current Use</b>	No. 36A - Vacant Land. Site filling has been commenced under DA 16-2000-1559-1. No. 36 – Ferodale Sports Complex – Cricket and AFL oval.
<b>Zoning</b>	No. 36 – RE1 Public Recreation No. 36A – RE2 Private Recreation

**Site Constraints**

Bushfire Prone Land – Category 1 Vegetation and 100m buffer (No. 36 only)  
 Acid Sulfate Soils – Class 5  
 Flood Prone Land – High Hazard Floodway (Campvale Drain), High Hazard Flood Storage, Low Hazard Flood Storage and Flood Fringe. Flood Level 9.00m AHD.  
 Endangered Ecological Community – Swamp Sclerophyll Forest (No. 36 only)  
 Preferred Koala Habitat (No. 36 only)

**2.1 Site Description and Context**

The subject site is located on Ferodale Road; at the roundabout juncture with Kirrang Drive. 36A Ferodale Road is currently vacant land with earthworks carried out in accordance with DA 16-2000-1559-1. 36 Ferodale Road is currently used as the Ferodale Sports Complex with an oval used for cricket and AFL. The site has high visibility and is located a short distance from the Medowie commercial area. The site is accessible via public transport with Ferodale Road being a major bus route for the area. Campvale drain is located on the sites eastern extent. Lot 22 is devoid of vegetation whilst Lot 1 has a stand of vegetation located on its southern extent. No significant vegetation removal is proposed as part of this application.

**2.2 Site History**

Council records detail the following applications relevant to the subject site:

<b>Application Number</b>	<b>Description</b>	<b>Date</b>
007-1997-248-1	Sports Complex Stage 1	19/11/1997
007-1998-40811-1	Two Lot Subdivision	17/06/1998
007-1998-21017-1	BMX Track	07/07/1998
16-2000-1559-1	Bowling Club, Car Park and Landfill	08/11/2000
16-2003-233-1	Shade Structure	24/04/2003
16-2004-791-1	Telecommunications Base Station	31/08/2004
16-2004-1039-1	Amenities Building, Car Park Lighting and Demolition	14/10/2004
16-2005-1421-1	Floodlight Towers to Sports Fields	11/01/2006
16-2008-574-1	Additions to Community Facility (Lighting and Car Parking)	09/04/2009

No outstanding compliance matters exist for the site. Should the proposed development be given consent, the previous enacted approval (DA 16-2000-1559-1) will be surrendered to enable the proposal to proceed in accordance with the new consent (a condition has been recommended in this regard).

**2.3 Site Inspection**

A site inspection was carried out on 28<sup>th</sup> January 2016. The site was vacant at the time and no constraints were noted which would prohibit the use of the site for the proposed purpose. The site is shown below:



Looking east along Ferodale Road from the site frontage.



The fill placed on No. 36A under DA 16-2000-1559-1.



The oval forming part of the Ferodale Sports Complex. Set up for use as an AFL field.



Looking back toward Ferodale Road from the internal area of the site.

**3.0 APPLICATION SUMMARY**

Assessing Officer

BROCK LAMONT



<b>Designated Development</b>	The application does not constitute designated development.
<b>Integrated Development</b>	The application does not require any additional approvals listed under s.91 of the EP&A Act. The bushfire prone status of the site is noted; however approval for a residential or special fire protection purpose is not requested.
<b>Number of Submissions</b>	10 (all in support)
<b>Recommendation</b>	Approval with conditions.

### 3.1 Internal Referrals

The application was referred to the following internal specialist staff. The comments of the staff listed have been used to carry out the assessment under section 4.0.

- 3.1.1 **Development Engineer (incorporating traffic, drainage and flooding assessment)** – A request for further information was made regarding the off street car parking assessment undertaken and the stormwater management concept submitted. A Traffic Impact Assessment was supplied by the applicant with the recommendations and findings of the assessment being accepted. The development is considered to form a nexus for the establishment of a public bus stop, rubber rumble strips to act as traffic calming for the adjacent roundabout and kerb for the sites road frontage. This has been conditioned accordingly. Furthermore, the stormwater design and use of on-site infiltration was not considered practical and an alternate arrangement where the adjoining stormwater drain (Campvale drain) was to be widened to cater for the increased capacity was accepted. This solution was devised with reference to Council's intended widening works within the greater Campvale Drain area. Widening this small section of the Campvale Drain will assist to improve flow through the culvert at Ferodale Road. It should be acknowledged that further work on the Campvale drain downstream of the site is not warranted under this subject development application, however will be investigated in the future by Council's Facilities and Services group. Development Engineering completed their referral with a recommendation for approval with conditions.
- 3.1.2 **Building Surveyor** – The proposed development was referred to Council's Building Unit for assessment. The application was recommended for approval with conditions. All conditions recommended have been adopted and included within the draft consent attached to this report.
- 3.1.3 **Section 94 Officer** – The proposed development is for a public purpose (recreational and community facilities). As such, S94A Developer Contributions are not to be imposed should development consent be granted.
- 3.1.4 **Vegetation Management Officer** – The application was referred to Council's Vegetation Management Officer for assessment of the proposed landscaping plan. The landscape plan was considered suitable. A condition has been recommended with regard to car park tree planting.

3.1.5 **Environmental Health Officer** – The application was referred to Council's Environmental Health Unit for comment. Concerns were raised in relation to operational noise and kitchen fitout. The concerns relating to noise were with regard to surrounding residential land uses within 250m of the site. Due to the existing use as a sporting field, background noise levels associated with this use as well as existing traffic noise generated from Ferodale Road, the requirement for an Acoustic Impact Assessment was not considered to be required. The orientation of the building towards the adjoining oval ensures that evening noise will be projected towards the south where no residential land use exists. The imposition of an additional wall on the western building elevation will ensure a barrier between the external deck area and the properties to the sites west. A condition will be placed on the use of the bowling greens and associated lighting during the evening to prevent noise generation (9pm limit). As such, conditions of consent are considered adequate in addressing acoustic impact of the development. The concerns raised regarding the kitchen fitout are considered able to be effectively conditioned on the development consent. The concerns raised by Environmental Health are considered to have been adequately addressed and conditioned accordingly.

**3.2 External Referrals**

The subject site is adjacent to the Campvale Drain system. This drain is nominated as an Order 1 Stream in accordance with the provisions of the *Water Management Act 2000*. The eastern extent of the site would typically be defined as 'waterfront land', however, works carried out by a public authority are exempted from requiring a 'controlled activity approval' in accordance with Clause 38 of the *Water Management (General) Regulation 2011*.

Hunter Water Corporation – A referral was made to Hunter Water Corporation in accordance with Section 51 of the *Hunter Water Act 1991*. The reason for the referral was due to the proposals potential to have a 'significant adverse effect on the quality of the water from which the Corporation draws its supply of water in a special area'. This referral is an elective clause under the provisions of the Act and was made to provide Hunter Water with the opportunity to comment on the proposal. This referral was made after the preparation of the draft Notice of Determination. Hunter Water requested the amendment of the conditions contained within the below table. The draft Notice of Determination was amended to reflect these requests.

Original condition	Amended condition (changes underlined)
--------------------	---



<p>All hardstand and roofed area shall be collected and conveyed to Campvale Drain generally in accordance with the approved Stormwater Management Plans. <b>Prior to the issue of a Construction Certificate</b>, design plans shall be prepared in accordance with Council's Infrastructure Specification and be approved by Council. A Construction Certificate cannot be issued until full details of the stormwater drainage design, including associated calculations, has been provided to the PCA for assessment and determined to be satisfactory.</p>	<p>All hardstand and roofed area shall be collected and conveyed to Campvale Drain generally in accordance with the approved Stormwater Management Plans. <b>Prior to the issue of a Construction Certificate</b>, design plans shall be prepared in accordance with Council's Infrastructure Specification and be approved by Council and <u>Hunter Water Corporation</u>. A Construction Certificate cannot be issued until full details of the stormwater drainage design, including associated calculations, has been provided to the PCA <u>and Hunter Water Corporation</u> for assessment and determined to be satisfactory.</p>
<p><b>Prior to issue of the Occupation Certificate</b>, the Section 50 Hunter Water compliance certificate which refers to the development application must be obtained and submitted to both Council and the PCA.</p>	<p><b>Prior to issue of the <u>Construction Certificate</u></b>, the Section 50 Hunter Water compliance certificate which refers to the development application must be obtained and submitted to both Council and the PCA.</p>

**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 (PSLEP2013)**

**Clause 2.1 Land Use Zones** – The proposed development is defined as a 'community facility' and 'recreation facility (outdoor)' in accordance with the PSLEP2013. The land use definition of these terms is provided as follows;

**community facility** means a building or place:

- (a) owned or controlled by a public authority or non-profit community organisation, and
  - (b) used for the physical, social, cultural or intellectual development or welfare of the community,
- but does not include an educational establishment, hospital, retail premises, place of public worship or residential accommodation.

**recreation facility (outdoor)** means a building or place (other than a recreation area) used predominantly for outdoor recreation, whether or not operated for the purposes of gain, including a golf course, golf driving range, mini-golf centre, tennis court, paint-ball centre, lawn bowling green, outdoor swimming pool, equestrian centre, skate board ramp, go-kart track, rifle range, water-ski centre or any other building or place of a like character used for outdoor recreation (including any ancillary buildings), but does not include an entertainment facility or a recreation facility (major).

The subject site is zoned RE1 Public Recreation and RE2 Private Recreation in accordance with the PSLEP2013. Both of the proposed land uses are permissible with consent within both land use zones.

The proposed development is considered to meet the objectives of the RE1 and RE2 zones with particular reference to objective 2; '*To provide a range of recreational settings and activities and compatible land uses*'.

**Clause 4.3 Height of Buildings** – The subject site does not have a prescribed building height limit under the PSLEP2013. The proposed development has a maximum physical height of 8m. The maximum height control for adjoining residential zones is 9m and therefore the proposed development is considered to be commensurate in scale with the surrounding area.

**Clause 7.1 Acid Sulfate Soils** – The subject site is mapped as Class 5 Acid Sulfate Soils. This requires an Acid Sulfate Soils Management Plan to be prepared for works within 500m of Class 1, 2, 3 and 4 nominated land and would have the potential to lower the water table by 1m. No works are proposed as such with the building works being placed on top of the existing fill. As such, an Acid Sulfate Soils Management Plan is not required.

**Clause 7.2 Earthworks** – The proposed development seeks consent for the completion of the earthworks required in order to sufficiently meet the flood controls affecting the site. The preceding approval was granted for fill to 8.5m AHD. This application will supersede that consent by permitting site filling to 9.0m AHD. The proposed increase in landfill by 0.5m is considered acceptable.

**Clause 7.3 Flood Planning** – The subject site is mapped as flood prone land. The site contains areas of High Hazard Floodway, High Hazard Flood Storage, Low Hazard Flood Storage and Flood Fringe. Council's engineering unit has determined the flood level for the site is 9.0m AHD. The finished floor level (FFL) detail provided by the applicant notes the building will be constructed with a FFL of 9.0m AHD minimum. The information provided by the applicant is satisfactory and accordingly draft consent conditions relating to the flood prone status of the site have been provided.

**Clause 7.6 Essential Services** – The subject site is provided with access to all essential services courtesy of the road frontage to Ferodale Road. A condition is proposed requiring confirmation from Hunter Water Corporation for adequate servicing capacity of the development prior to the commencement of works.

#### 4.1.2 Applicable SEPP's

**SEPP 55 Remediation of Land** – As detailed above under site history, the site has been subject to a number of development applications in the past. The historic uses and operations are not considered the types of uses which would lead to the long term contamination of the site. The proposal is considered to be compliant with the provisions of SEPP 55.

**SEPP 64 Advertising and Signage** – The proposed development seeks consent for the erection of identification signage on the Ferodale Road frontage of the site. The signage is a 3.7m high x 1.5m wide digital data board which is to be erected perpendicular to the front boundary between the carpark and the bowling green. This sign will be used to identify the site and will convey information related to the facilities' upcoming events. The signage may be illuminated in the future. The signage is considered appropriate in size and scale of the development and is consistent with the aims and objectives of SEPP 64.

**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 Development Notification** – The development application was notified in accordance with the requirements of Chapter A.12. Ten (10) submissions were received as a result of this process and are discussed under section 4.9 below.

**Chapter B3 Environmental Assessment – Waste** - The proposed development provides for a screened waste storage area that allows for routine servicing by waste contractors via the loading area.

**Chapter B4 Drainage and Water Quality** – With the proposed development being situated on flood prone land, Council's Engineering Unit has identified that on-site stormwater infiltration would not be effective for the proposed development. As such, an alternate arrangement has been made with Council's Assets Unit to widen the adjoining Campvale drain in order to increase the stormwater capacity during storm events. The stormwater quality treatment as proposed has also been accepted by Council's Engineering Unit. As such, the development has been supported and conditions of consent have been provided.

**Chapter B5 Flooding** – A flood planning assessment has been carried out above in accordance with Clause 7.3 of the PSLEP2013. Development Engineering is satisfied with the developments response to flood constraints.

**Chapter B6 Essential Services** – The subject site is provided access to all essential services as discussed previously.

**Chapter B9 Road Network and Parking** – The proposed development is considered a 'community facility' in accordance with Council's DCP Chapter B9. This type of development and the off street car parking generation associated with it is to be 'assessed on merits'. As such, the applicant was

requested to provide a Traffic Impact Assessment Report to survey the existing and projected traffic generation and provide car parking and alternative transport measures accordingly. The assessment recommended that 103 car spaces were provided with accessible car parking at a rate of 1 per 20 standard spaces. The proposed development provides for 105 car spaces including 6 accessible spaces. Furthermore, the site is located on the major bus route through Medowie and will provide for bicycle racks, a mini bus car park, taxi zone and motor cycle parking. As such, the proposed development is considered to comply with the relevant provisions of Chapter B9.

**Chapter B10 Social Impact** – The proposed development is not defined as one of the land uses requiring a SIA in accordance with the PSDCP2014. The proposal is considered to have a positive social impact through provision of an additional recreation facility in the area.

**Chapter C8 Signage** – The signage proposed is considered consistent with the aims and objectives of SEPP64 as discussed above.

**4.4 s79C(1)(a)(iiia) – 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**

No provisions listed under the regulations are specifically applicable to the proposed development.

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

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

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

**4.7.1 Social and Economic Impacts**

The proposed development will provide for a social and recreational hub located in close proximity to the Medowie CBD and Ferodale Sports Complex. Flow on economic impacts will be realised in the Medowie CBD as a result of increased interest and activity in the area. The proposed development is considered to have positive social and economic outcomes.

**4.7.2 Impacts on the Built Environment**

The proposed development will provide for a contemporary community building located on a currently vacant site. Given the high level of exposure afforded to the site, the building design along with signage and landscaping has been scrutinised to ensure a quality visual outcome. The building and ancillary elements are considered complementary to recent development within the Ferodale Road area. As such, the proposed development is considered to have a positive impact upon the built environment in the surrounding area.

**4.7.3 Impacts on the Natural Environment**

The proposed development is to be carried out on a cleared, development ready site with no significant vegetation or habitat removal required. Downstream water quality impacts have been assessed and are satisfactory. As such, the proposed development is not considered to have any significant impact upon the natural environment.

**4.8 s79C(1)(c) – The suitability of the site**

The subject site has been identified for community purposes for a prolonged period. This is demonstrated by the Bowling Club approval granted in 2000. The proposed development is considered to be a well-designed social hub that improves upon the existing sports facilities in the area. The proximity of the site to the Medowie commercial area and the sites location on a major bus route further demonstrates the sites suitability for a community facility use. As such, the proposed development is considered appropriate for the site.

**4.9 s79C(1)(d) – Any submissions**

Ten (10) submissions were received in relation to the proposed development. All submissions received were in favour of the application. A summary of the key themes provided within the submissions is as follows;

- **Social and Community Benefit** – Potential to improve social and recreational opportunities within the Medowie area. The submissions also note that the facility would improve upon the existing Ferodale Sports Complex.
- **Emergency Response** – The use of the facility in times when an emergency response centre is required. Central location and accessibility.
- **Public Hire** – Benefit of a community facility that may be used for public events, meetings and community education uses.

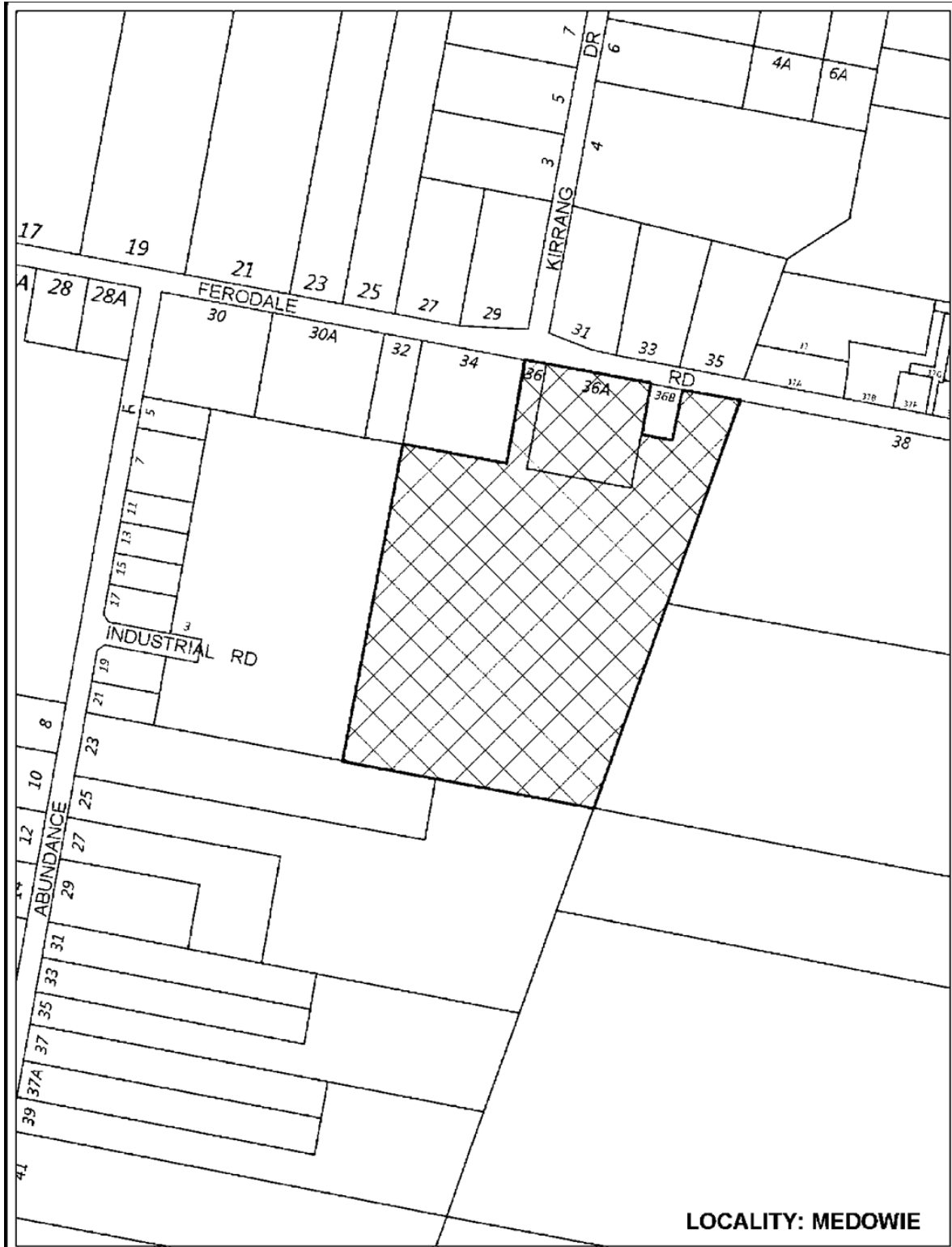
**4.10 s79C(1)(e) – The public interest**

The proposed development is permissible with consent on RE1 and RE2 zoned land. The proposed development is generally compliant with applicable legislative controls, policies and Council development control requirements. As such, the approval of the application with appropriate conditions is considered to be within the public interest.

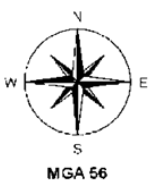
**5.0 DETERMINATION**

- 5.1 The application is recommended to be approved by Council determination, subject to conditions as contained in the notice of determination.

Brock Lamont - Development Planner - 15/04/2016 (amended 10/06/2016)



**LOCALITY: MEDOWIE**



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ITEM 1 – ATTACHMENT 4 HUNTER WATER CORRESPONDENCE



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10 June 2016

Our Ref: HW2016-667

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

Attention: Mr Brock Lamont, Development Planner

Dear Mr Lamont

**DA 16-2015-852-1 – COMMUNITY FACILITY, RECREATIONAL FACILITY (OUTDOOR) AND ASSOCIATED EARTHWORKS, SIGNAGE AND CAR PARKING**

Following the referral from Council on 25 May 2016 and the subsequent meeting between Council and Hunter Water representatives on 31 May 2016, Hunter Water provides the following comments on the proposed development of a multi-purpose community facility/Ferodale Sports Complex at Lot 22 DP 1021843 and Lot 1 DP 1003417, 36 and 36A Ferodale Road, Medowie. The development site is adjacent to Campvale Canal and Hunter Water's Medowie 10 wastewater pumping station.

The proposed development falls within Hunter Water's Grahamstown Dam Drinking Water Special Area as gazetted in the *Hunter Water Regulation 2015*. Grahamstown Dam supplies approximately 40% of drinking water to the Lower Hunter. The Special Area requires appropriate management to protect the drinking water source from adverse impacts from development and related activities, and to prevent inappropriate development. In accordance with the *Hunter Water Regulation 2015*, prevention of pollution or contamination of water in the Special Area is of paramount importance to Hunter Water.

Hunter Water expects that all development in drinking water catchments will demonstrate Neutral or Beneficial Effect on water quality (NorBE). A development is considered to demonstrate NorBE if the development:

- (a) has no identifiable potential impact on water quality, or
- (b) will contain any water quality impact on the development site and prevent it from reaching any watercourse, waterbody or drainage depression on the site, or
- (c) will transfer any water quality impact outside the site where it is treated and disposed of to standards approved by the consent authority.

**Stormwater Quality Management**

The proposed development includes a stormwater management system, which incorporates rainwater storage tanks, standard collection pit and pipe features, two swales, and a wetland as water treatment devices.

Based on the information provided regarding the configuration and expected performance of the stormwater management system, Hunter Water has a number of concerns about the

**ITEM 1 – ATTACHMENT 4 HUNTER WATER CORRESPONDENCE**

ability of the system as currently designed to meet our water quality performance expectations.

Stormwater quality modelling was undertaken for the proposed development using MUSIC. A review of the modelling parameters and assumptions used raised some concerns about the design parameters of the proposed swales and wetland, and the ability of the stormwater management system to meet the desired water quality objectives.

Hunter Water commissioned WBM BMT to undertake an independent expert review of the proposed stormwater management system. The review, which is attached for Council's information, noted a number of concerns as summarised below:

- Modelled perviousness of proposed bowling greens;
- Effectiveness of the existing drains as stormwater treatment swales;
- The location and configuration of the proposed wetland, particularly in terms of:
  - its proximity to Campvale Canal and likely frequency of inundation, and the effects of that on the function and maintenance requirements of the wetland;
  - relative heights of the low flow and high flow outlets, and the ability of the wetland to drain freely to the canal via gravity;
  - effects of possible interception of the groundwater table on the functionality of the wetland as a stormwater treatment device.

Hunter Water is not convinced from the information provided to date that there is sufficient evidence to demonstrate that the stormwater management system has been appropriately designed and subsequently that NorBE will be achieved.

The review included examples of alternate design features that might be successfully employed to achieve the desired water quality outcomes and Hunter Water is keen to work with Council to ensure an effective water quality outcome for the development.

**Consent Conditions**

Protection of water quality in Grahamstown Dam is important to Hunter Water and development located within the Campvale Canal catchment is one of the primary sources of pollutants entering the dam and is of particular concern to Hunter Water. As discussed between representatives of Council and Hunter Water on 31 May 2016, Hunter Water does not object to the proposed development in principle provided water quality run-off can be effectively managed.

Hunter Water is willing to work with Council to ensure that water quality management features related to the development are designed and constructed in such a manner as to ensure NorBE will be met for water entering Campvale Canal. It was proposed that suitable conditions could be included in the Notice of Determination to address Hunter Water's concerns so that the development could be put before Council for determination. Such conditions would provide for the development details to be resolved prior to the issue of a Construction Certificate for the development.

Hunter Water therefore requests that, if the development is approved, the following matters be incorporated into conditions in the Notice of Determination to address Hunter Water's concerns.

**Condition 13**

The existing proposed Condition 13 requires design plans for stormwater management to be prepared in accordance with Council's Infrastructure Specification and approved by Council prior to the issue of a Construction Certificate. Amend this condition, or insert a new



ITEM 1 – ATTACHMENT 4 HUNTER WATER CORRESPONDENCE

condition, to also require approval by Hunter Water Corporation of the design plans and associated design details. The suggested new wording for an amended Condition 13, with the suggested inclusions underlined, would read as follows:

*13. All hardstand and roofed area shall be collected and conveyed to Campvale Drain generally in accordance with the approved Stormwater Management Plans. **Prior to the issue of the Construction Certificate**, design plans shall be prepared in accordance with Council's Infrastructure Specification and be approved by Council and Hunter Water Corporation. A Construction Certificate cannot be issued until full details of the stormwater drainage design, including associated calculations, has been provided to the PCA and Hunter Water Corporation for assessment and determined to be satisfactory.*

Condition 34

The existing proposed Condition 34 requires a Section 50 Hunter Water compliance certificate to be obtained and submitted to Council and the PCA prior to issue of the Occupation Certificate. Move this condition up in the hierarchy of conditions so it is required prior to the issue of the Construction Certificate. The suggested new wording of Condition 34, with the suggested inclusions underlined, would read as follows:

*34. Prior to the issue of the Construction Certificate, the Section 50 Hunter Water compliance certificate which refers to the development application must be obtained and submitted to both Council and the PCA.*

**Section 50 Compliance Certificate Requirements**

Hunter Water's formal notice of requirements for a Section 50 compliance certificate will be amended and reissued in accordance with the contents of this letter.

Hunter Water will require a satisfactory environmental impact assessment supporting the proposed works to be provided before a Section 50 compliance certificate is issued. The existing Statement of Environmental Effects (SEE) provided with the project documentation does not currently meet Hunter Water's standards for such documents.

Specific comments can be provided in relation to the SEE, but key points to note are the need for environmental impacts and suitable controls or mitigation measures to be included in the document. As discussed at the meeting between Council and Hunter Water staff on 31 May, the document should also include plans and drawings that accurately describe all of the proposed works. This particularly relates to the identification of drainage and water quality management features on the plans with sufficient details to enable an understanding of how the development is proposed to operate.

If you require further advice or clarification regarding the submission, or questions regarding the application of NorBE, please contact me on (02) 4979 9545.

**Malcolm Withers**  
**Senior Developer Services Engineer**

Att: Ferodale Road, Medowie – Ferodale Sporting Complex Development (WBM BMT)

ITEM 1 – ATTACHMENT 4 HUNTER WATER CORRESPONDENCE



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10 June 2016

ABN 54 010 830 421

[www.bmtwbm.com.au](http://www.bmtwbm.com.au)

Hunter Water Corporation  
PO Box 5171  
HRMC 2310

Attention: Holly Marlin

Dear Holly

**RE: PROPOSED FERODALE SPORTING COMPLEX DEVELOPMENT, MEDOWIE**

## 1.1 Introduction

Hunter Water Corporation (HWC) has requested that BMT WBM complete an independent review of proposed stormwater management elements outlined in data provided in support of a development application for a proposed multi-purpose community facility at the existing Ferodale Sports Complex. The data reviewed included:

- Statement of Environmental Effects Medowie Multi-Purpose Community Facility – Ferodale Sports Complex (Port Stephens Council, 2015);
- Medowie Community Multipurpose Facility – DA Drawings (9 Drawings) (Port Stephens Council 11/03/16);
- Email sent from Adam Stewart (PSC) to Jordi Bates (HWC) on 3/6/16 at 2.40pm outlining Council's response to HWC queries;
- MUSIC model Existing MUSIC Model2.sqz dated 3/6/16; and
- MUSIC-link outputs – Medowie Sports Club – (Ports Stephens Council, 10/03/16)

Our review focuses on the proposed stormwater quality treatment system and its effectiveness for long-term management of stormwater quality in the drinking water catchment.

## 1.2 Objectives and Targets for Drinking Water Catchments

### 1.2.1 Hunter Water Regulation 2015

The Hunter Water Regulation 2015 (the Regulation) is relevant to mapped "Special Areas" which includes the Grahamstown Catchment that the proposed development site is located within. Special Areas are defined in legislation due to their importance for protecting drinking water supply.

The Regulation specifies that a person/organisation shall not pollute waters in a Special Area. Pollute waters has the same meaning as pollution of waters in the Protection of the Environment Operations Act 1997, but extends to include disturbing geological or other matter (whether natural or artificial) in such a manner as to change, or to be likely to change, the physical, chemical or biological condition of the waters.

It is primarily Council's responsibility as the relevant consent authority to ensure adherence with the Regulation for any proposed development within the Special Areas. The primary mechanism to fulfil this responsibility is the review of all development applications that trigger the Regulation during the approval process. Council is required to refer such development applications to Hunter Water Corporation for comment.

#### 1.2.2 Hunter Water Guidelines for Development in the Drinking Water Catchments 2016

Following introduction of the Hunter Water Regulation 2015, Hunter Water developed this document to provide guidance on their requirements for assessing development activities in the drinking water catchments. The guidelines specify that Hunter Water expects that all development in drinking water catchments will demonstrate a Neutral or Beneficial Effect (NorBE) impact on water quality. A development is considered to demonstrate NorBE if the development:

- (a) has no identifiable potential impact on water quality, or
- (b) will contain any water quality impact on the development site and prevent it from reaching any watercourse, waterbody or drainage depression on the site, or
- (c) will transfer any water quality impact outside the site where it is treated and disposed of to standards approved by the consent authority.

#### 1.2.3 Hunter Water Catchment Management Plan 2011

The Hunter Water Catchment Management Plan (CMP) was prepared to outline a long term water quality improvement plan for the drinking water catchments and water sources relied upon for the lower Hunter. The plan provides clear priorities for improving the protection of the drinking water catchments.

HWC's risk assessments have concluded that the current barriers within the existing drinking water treatment and supply system downstream of dams are generally robust. These barriers include treatment, disinfection, chlorination and distribution in a closed system. The CMP identifies improved source catchment management and reservoir protection as the barriers that offer the greatest potential for further reducing risks to source water quality. The CMP identifies that preventive measures should be applied as close to the source as possible with a focus on prevention in catchments rather than sole reliance on the water treatment and supply system.

The CMP identifies that runoff from urbanised areas currently poses the greatest risk to source drinking water quality. Key pollutants from developing catchments that HWC is concerned with include bacteria, viruses, protozoa, turbidity (suspended solids), nutrients, heavy metals, fuels, pesticides, organics, algal toxins, endocrine disrupting chemicals, and taste/odour compounds.

#### 1.2.4 Port Stephens Council LEP 2013

Clause 7.8 of the LEP outlines an objective to protect drinking water catchments by minimising the adverse impacts of development on the quality and quantity of water entering drinking water storages. The clause applies to land identified as "Drinking Water Catchment" on the Drinking Water Catchment Map which includes the proposed development.

Before determining a development application for development on land to which this clause applies, the consent authority must consider the following:

- whether or not the development is likely to have any adverse impact on the quality and quantity of water entering the drinking water storage, having regard to the distance between the development and any waterway that feeds into the drinking water storage; the on-site use, storage and disposal of any chemicals on the land and the treatment, storage and disposal of waste water and solid waste generated or used by the development,
- any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.

Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:

- the development is designed, sited and will be managed to avoid any significant adverse impact on water quality and flows, or
- if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
- if that impact cannot be minimised—the development will be managed to mitigate that impact.

#### 1.2.5 Port Stephens Council DCP 2014

Port Stephens Council has adopted the Port Stephens Council DCP 2014. The current version of the DCP is Amendment No. 2 issued 10 December 2015. *Section B4 Drainage and Water Quality* outlines Council's requirements for stormwater drainage, on-site detention, water quality and riparian corridors.

Stormwater drainage requirements are relevant to development where the area of impervious surfaces increases and will potentially significantly increase additional flows to public drainage systems. The stormwater drainage plan is required to detail the physical location of a legal discharge point. Sustainable mitigation systems are required to be identified that are feasible for Council to maintain using their available resources.

Water quality requirements are outlined to safeguard the environment by improving the quality of stormwater runoff. Additional requirements for development in drinking water catchments are also provided.

The DCP requires that development within existing lots within the drinking water catchments are required to demonstrate achievement of load based reduction targets for common stormwater pollutants (TSS, TP and TN) before water is released into a public drainage system. Achievement of these targets is required to be demonstrated utilising MUSIC software. The targets are:

- Total nitrogen retention post development load = 45%
- Total phosphorus retention post development load = 60%
- Total suspended solids retention post development load = 90%
- Gross pollutants retention post development load = 90%

### 1.3 Proposed Stormwater Management System

PSC has prepared a Stormwater Management Strategy (SMS) for a proposed multi-purpose community facility at Medowie. The proposed development site is bounded by Ferodale Road to the north; an

adjacent residential dwelling lot to the west; existing recreational and sporting fields to the south and a Hunter Water Pumping Station and Campvale Drain to the east.

The proposed development comprises a new community building, bowling greens, playground, carparking, access roads and landscaping. PSC has estimated that the development will increase the site imperviousness to approximately 53%. An earlier DA approval in November 2000 allowed for filling of the site. We understand that this filling was completed, but no additional approved works were progressed. The proposed finished surface and floor levels suggest that the majority of civil works within the site will be elevated above the surrounding floodplain.

PSC has indicated that surface runoff from the site will be managed in the following ways:

- (1) Surface runoff from the proposed synthetic bowling greens would be directed to Ferodale Road into an existing table drain within the road reserve. The existing table drain has been modelled as a swale in MUSIC.
- (2) Surface runoff from the main south-eastern carpark will be collected in a pit and pipe drainage system and directed to a swale to the east of the development and south of the existing Hunter Water pumping station. No details of the plan location of this eastern swale were provided.
- (3) Surface runoff from the new community building, north-western carpark, existing access road, additional access road and road side parking will be directed to a constructed wetland adjacent to Campvale Drain.

## **1.4 Comments on Proposed Stormwater Management System**

### **1.4.1 Ferodale Table Drain**

The SMS indicates that the only site area being drained to Ferodale Road will be the proposed bowling greens. We understand that the bowling greens are proposed to be synthetic surfaces. These surfaces have been modelled in MUSIC as being 100% pervious. Whilst the synthetic surfaces are likely to be permeable, without specific details of the polymer product proposed and the performance of the product during a range of different intensity rainfall events, it is considered that these surfaces should be conservatively modelled as being approximately 50% impervious.

It is considered that the bowling greens could be more appropriately modelled as permeable paving with direct rainfall on 50% of the surface infiltrating and being treated through the granular base layer, with the remaining 50% of the surface area contributing to surface runoff to be treated elsewhere.

The existing table drain is unlikely to be effective as a stormwater treatment swale as its function is to convey stormwater runoff and is not configured appropriately for stormwater quality treatment (e.g. grass height, batters, distribution of flow across the base). It is suggested that runoff from the bowling greens should be treated in an alternate manner prior to discharge into the road reserve. Some ideas for consideration are shown in Section 1.6.

### **1.4.2 Eastern Swale**

The data reviewed provided limited information on this proposed swale. Email correspondence from Council indicates that stormwater runoff from the south eastern carpark is proposed to be collected by a pit and pipe system, and discharged into the eastern swale. The location of the outlet from the drainage

system is shown on the DA drawings, but no details of the swale were provided. The MUSIC model indicates that the proposed swale would have the following characteristics:

- Length of 60m;
- Gradient of 0.5%;
- V-shaped with a top width of 10m;
- Height of 0.3m; and
- Vegetation maintained 0.1m high.

Ideally, grass swales for stormwater treatment should be trapezoidal shaped with a wider base to evenly distribute flows. V-shaped swales are typically not suitable for stormwater treatment as stormwater will be concentrated at the centre of the swale and may result in erosion rilling. The design could readily be modified as a component of the construction certificate documentation though.

It is considered that the main issue with this swale is likely to be its location in the floodplain near the Campvale Drain. It is considered that the swale would be frequently inundated by flows from upstream in the catchment which would impact on its performance. Ideally, the swale should be located well outside regular flooding flow paths to prevent it filling with sediment from the larger upstream catchment.

It is suggested that Council be contacted to confirm the location of this proposed swale.

#### 1.4.3 Constructed Wetland

A constructed wetland is proposed to be located adjacent to Campvale Drain to the south-east of the proposed building and carpark.

The proposed constructed wetland was modelled with a surface area of 390 m<sup>2</sup>. This is equivalent to approximately 5.8% of the contributing catchment area. Typically constructed wetlands with a ratio exceeding approximately 4% will have the capability if configured appropriately to achieve best practice treatment of stormwater. The provided plans indicate that the constructed wetland has been planned with a similar area as modelled.

The constructed wetland would be located adjacent to Campvale Drain and our understanding is that it would be subject to frequent flood inundation from the upstream catchment (likely to be more frequent than the 5 year ARI event). This potentially will regularly overload the constructed wetland with sediment and other pollutants from the upstream catchment requiring more frequent maintenance and restoration works.

The constructed wetland would be located within 40m of the Campvale Drain. We understand that DPI Water typically does not support the construction of stormwater quality management measures within riparian corridors. It is unclear from a review of the provided data if DPI Water was contacted to discuss the proposal.

The constructed wetland would also be located in an area that remains wet for extended periods following storms, making wet weather access for maintenance challenging (refer Figure 1).

The typical cross-section of the constructed wetland indicates that the low flow outlet would be at RL 6.2m AHD and the high flow weir outlet at RL 6.7m AHD. It is considered that the wetland outlet will be somewhat hydraulically controlled by flows in the adjacent Campvale Drain during regular storm events.

MUSIC assumes a free-draining outlet. In circumstances where downstream water levels control the flow out of the wetland, longer than modelled detention times may occur, with related increased potential for bypass/overflow (and therefore lower treatment) than intended.

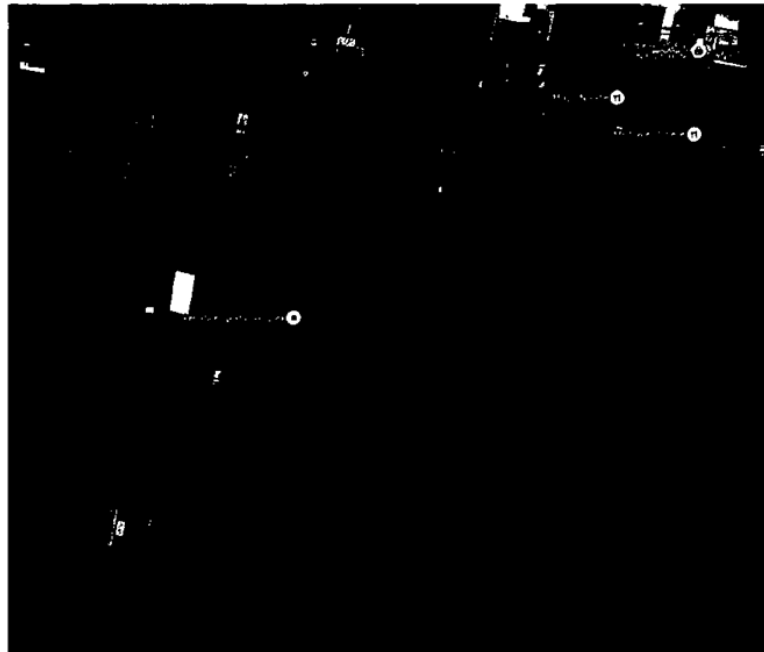


Figure 1 Local Area Surrounding Proposed Development Site (source: GoogleMaps)

It is considered likely that excavation for the constructed wetland would intercept the groundwater table. Based on the proposed design levels, the wetland potentially would form a window to the groundwater table and intercept groundwater. Typically the base of the constructed wetland should be positioned above the seasonally high groundwater table (and typically a freeboard from this groundwater level should be provided to the base).

The constructed wetland as proposed would have limited variation in bed level and therefore reduced potential for planting of a range of wetland species. The wetland is also unlikely to dry for any significant period which will limit the potential for establishment of a range of species that require drying conditions to germinate new plants. Over time the constructed wetland would tend to become dominated by the limited number of species that are tolerant to permanent wet conditions (e.g. cumbungi).

The constructed wetland has been modelled with a notional detention time (time for extended detention to drain completely when full) of approximately 4 hours. For optimum treatment, constructed wetlands should typically be designed with a 48 to 72 hour notional detention time. Even in circumstances where modelling indicates a shorter time provides sufficient treatment, guidelines for design of constructed wetlands typically recommend a minimum 48 to 72 hour notional detention time to ensure that sufficient treatment of the temporarily retained stormwater is achieved.

For the final design, it will be important that a pre-treatment sediment basin (or GPT) is provided to intercept coarse sediment. If a wet sediment basin is provided, it will be important that the detailed

design ensures that the basin will primarily intercept coarse sediment to prevent excessive loads of nutrients being retained in this storage.

### **1.5 MUSIC Model Inputs**

We have checked the MUSIC model input data. Our comments are summarised below:

The meteorological input data (rainfall and potential evapotranspiration) was adopted by PSC from MUSIC-link. The selected template was *Sensitive Catchments Clay Soils – Williamtown RAAF – Zone B* which is the relevant default template for Medowie.

Default baseflow and event flow pollutant concentrations are included in the selected template file. TSS and TN input parameters match those provided in the NSW MUSIC Modelling Guidelines. It appears that the default  $\log_{10}$  mean TP storm flow parameter in the template file is 0.25 rather than -0.60. This error is likely to be resulting in the TP loads and removal efficiency being significantly overestimated. It is recommended that PSC arrange for this parameter (and any others in the default MUSIC-link templates for other PSC locations) to be corrected with eWater as all models currently being developed in the PSC LGA by development applicants are likely to have similar issues.

Although a sub-catchment plan was not provided, BMT WBM has estimated the areas based on the descriptions in the SMS and it appears that the modelled sub-catchment areas draining to each proposed measure are appropriate. It is considered that PSC's estimates of sub-catchment imperviousness are appropriate for most nodes. It is recommended that consideration be given to increasing the imperviousness of the bowling green nodes from 0% to 50% to allow for runoff from the synthetic surface.

A water demand equivalent of 2 kL was adopted for the rainwater tanks proposed to be connected to the proposed community building. The SEE indicates that PSC intends to irrigate surrounding landscaped areas with the captured roof runoff. It is considered that the assumed demand is reasonable for the purposes of evaluating the performance of the stormwater treatment system.

### **1.6 Recommended Alternative Measures**

It is suggested that PSC could consider provision of stormwater treatment measures within the proposed development that are likely to be more effective than the proposed swales and constructed wetland. It is suggested that providing treatment closer to the paved areas outside of the Campvale Drain floodplain would be important for achieving a system that will be efficient to maintain into the future and be less impacted by pollutant loads conveyed from the upstream catchment.

Examples of the types of measures that may be suitable for the proposed development are shown in Figure 2. Many of these measures could effectively be integrated into the landscaping for the site and distributed throughout the development at readily accessible locations to minimise maintenance requirements.



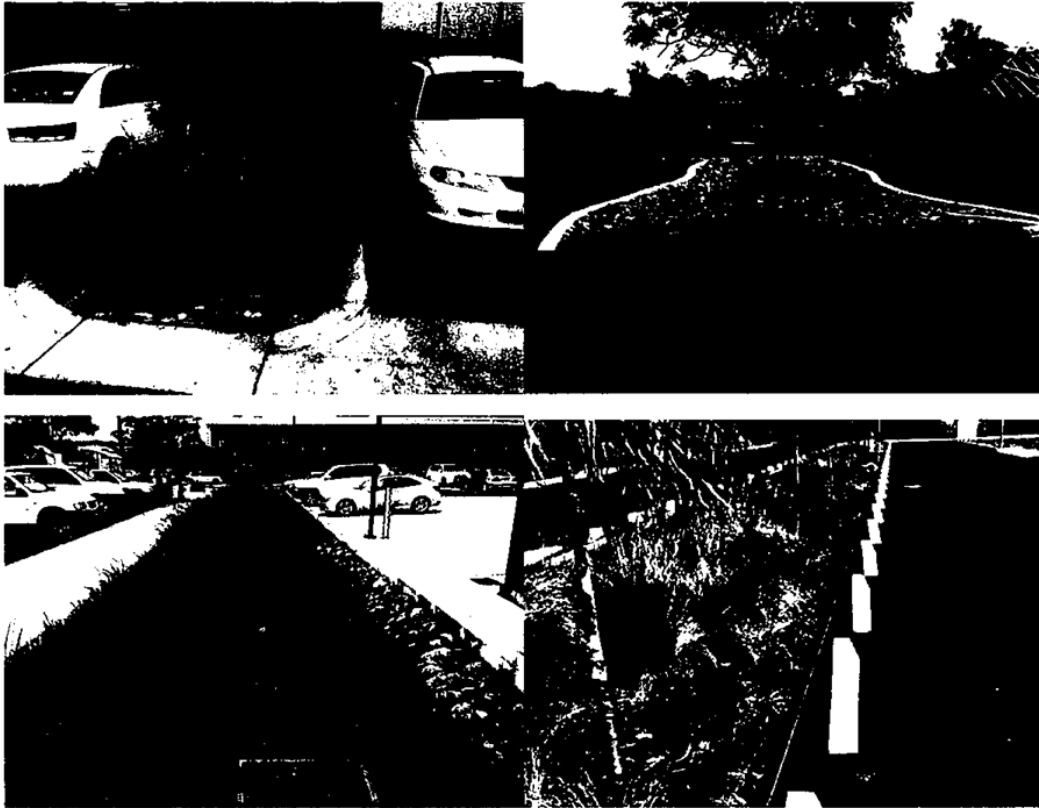


Figure 2 Example Close to Source Stormwater Treatment Measures

## 1.7 Conclusions

BMT WBM has reviewed the data relevant to stormwater management within the proposed Ferodale Road Sporting Complex development. Our review has identified the following key concerns with the current strategy:

- The proposed constructed wetland would be located within the Campvale Drain floodplain and it is considered that it's proposed treatment function would be compromised in the future by regular interaction with flows from the upstream catchment that may impede its performance and require frequent maintenance and restoration works to remain operational.
- The proposed constructed wetland location in the floodplain is likely to be challenging to construct and function due to the presence of groundwater close to the surface and hydraulic interaction with the Campvale Drain flows. It is envisaged that the proposed construction location adjacent to the Campvale Drain may not be supported by DPI Water.
- It is suggested that modification of the constructed wetland outlet to operate in a hydraulically effective manner would be required. Some adjustment of the low level outlet is also recommended in the design stage to ensure that the notional detention time is ideally extended to 48 to 72 hours.

- Limited data is available on the proposed grassed swales. What data is provided suggests that the swales would not be appropriately configured or located to provide a significant benefit to management of stormwater quality from the development.
- There appears to be an error in the default MUSIC-link template file with the TP storm flow parameter. It is considered that this is likely to be resulting in the model significantly overestimating the TP loads and TP removal performance of the proposed treatment measures. It is recommended this be advised to eWater to fix.

Whilst the issues outlined above would require further consideration before it could be confirmed that a revised proposed stormwater management system would achieve Council's load-based targets or Hunter Water Corporation's NorBE targets, it is considered based on our experience that there is sufficient space and potential within the site to implement an effective system to achieve both of these targets.

If you have any questions on the above review, please do not hesitate to contact the undersigned.

Yours Faithfully

**BMT WBM**



**Mark Wainwright**  
NSW Team Leader Urban Water

## SUPPLEMENTARY INFORMATION

ITEM NO. 6

FILE NO: 16/349774  
RM8 REF NO: PSC2016-01484

### FUNDING REQUEST - FEASIBILITY STUDY INTO KOALA HOSPITAL AND TOURIST FACILITY AT TREESCAPE

REPORT OF: GLENN BUNNY - PROPERTY SERVICES SECTION MANAGER  
GROUP: CORPORATE SERVICES

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#### RECOMMENDATION IS THAT COUNCIL:

- 1) Notes the additional information in the report.
- 2) Write to the State Government requesting assistance to secure funding to update the current and historical breadth and depth of distribution of koala populations across the Local Government area.

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#### BACKGROUND

The purpose of this report is to update Council on negotiations with the Hunter Koala Preservation Society (HKPS) for a contribution to the feasibility study, and to clarify an inconsistency in the financial detail of the main report.

Council staff continuously monitor and seek funding opportunities to improve the strategic management of Koala populations in Port Stephens. Recent discussions have identified opportunities to secure funding from State Government sources. This could be used to establish the current and historical breadth and depth of distribution of koala populations across the LGA. This information will enable evidence based decision making in order to conserve permanent free-living populations in Port Stephens.

#### ISSUES

Discussions have been underway with the HKPS and Council since late 2015 with regards to the concept of a Koala Hospital and eco-tourism facility, proposed to be located at Treescape.

In their approach to Council, HKPS has pledged an initial contribution of approximately \$150,000 to the construction and start-up of the facility. The proposed contribution is made up of a combination of required equipment and capital investment.

In addition to this, Council also requested the society to make a monetary contribution to the undertaking of the feasibility study and formulation of the business case. It is acknowledged that HKPS are a not for profit organisation that has limited funds, but it is considered appropriate that both the parties contribute to the feasibility study.

The HKPS committee has considered this request and has conditionally agreed to a contribution of \$10,000 to the study if the facility;

*"HKPS undertake in principle to meet \$10,000 of the \$64,000 required for the PSC feasibility/planning cost subject to PSC giving full and final approval for the project at the conclusion of the feasibility/planning process".*

As proposed the contribution would be payable at the time the facility was approved to proceed.

On page three of the main report there is a reference to \$50,000 which is incorrect, the amount being requested to undertake the feasibility is \$64,000.

#### **MERGER PROPOSAL IMPLICATIONS**

There are no known implications on any proposed merger of proceeding with the recommended action.

#### **ATTACHMENTS**

Nil.