

DRAFT

MINUTES – 1 AUGUST 2017



PORT STEPHENS C O U N C I L

Minutes of Ordinary meeting of the Port Stephens Council held in the Council Chambers, Raymond Terrace on – 1 August 2017, commencing at 5.31pm.

PRESENT:

Mayor B MacKenzie, Councillors G. Dingle, C. Doohan, S. Dover, K. Jordan, P. Kafer, J Nell, S. Tucker, General Manager, Corporate Services Group Manager, Facilities and Services Group Manager, Development Services Group Manager and Governance Manager.

183	Councillor Steve Tucker Councillor Chris Doohan It was resolved that the apologies from Cr John Morello and Cr Paul Le Mottee be received and noted.
184	Councillor John Nell Councillor Ken Jordan It was resolved that the Minutes of the Ordinary Meeting of Port Stephens Council Ordinary Council held on 25 July 2017 be confirmed.
	There were no declaration of Interest received.

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2. SALE OF PART OF 795 MEDOWIE ROAD, MEDOWIE404

MAYORAL MINUTES

MAYORAL MINUTE

ITEM NO. 1

**FILE NO: 17/146366
RM8 REF NO: PSC2015-01024**

MENZIES ART AUCTION "THE AXEMAN"

THAT COUNCIL:

- 1) Authorise the General Manager (or delegate) to bid at Menzies art auction on 10 August 2017 for artwork known as Lot 88 "The Axeman" 1841 by Conrad Martens, to a maximum amount as determined.

**ORDINARY COUNCIL MEETING - 1 AUGUST 2017
MOTION**

185	Mayor Bruce MacKenzie Councillor Ken Jordan It was resolved that Council authorise the General Manager (or delegate) to bid at Menzies art auction on 10 August 2017 for artwork known as Lot 88 "The Axeman" 1841 by Conrad Martens, to a maximum amount as determined.
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BACKGROUND

An opportunity has arisen for Council to purchase by auction a piece of artwork known as "The Axeman" painted in 1841 by Conrad Martens (1801-1878). The artwork is watercolour on paper being 19 x 24 cm.

The scene is of Thomas Windeyer (1819-1850), son of Archibald Windeyer of "Kinross" Raymond Terrace assisting in 1841 with the opening of a road to neighbouring lands purchased by his father. Thomas Windeyer was 23 years old when the drawing was made.

Conrad Martens was an English-born landscape painter active on HMS Beagle from 1833 and in Australia from 1835. When in Sydney, Conrad Martens was a regular visitor to "Kinross", Raymond Terrace.

The artwork is currently held by the Masterpiece Fine Art Gallery, Hobart and is listed for auction by Menzies on 10 August 2017. The estimated Value of the artwork is listed at \$3,000 - \$5,000.

It is proposed that the maximum bid be determined prior to the auction by the Mayor and General Manager, in consultation with a relevant fine art advisor.

ATTACHMENTS

- 1) Art Auction 'The Axeman'.

ITEM 1 - ATTACHMENT 1 ART AUCTION 'THE AXEMAN'.

DUE TO COPYRIGHT LEGISLATION
(ATTACHMENT 1) WILL BE PROVIDED UNDER SEPARATE COVER TO COUNCIL.

THE IMAGE CAN BE VIEWED AT

http://www.menziesartbrands.com/sites/default/files/field/catalogue_items/DM_25021.jpg

MOTIONS TO CLOSE

ITEM NO. 1

FILE NO: 17/146369
RM8 REF NO: PSC2017-01868

MOTION TO CLOSE

REPORT OF: WAYNE WALLIS - GENERAL MANAGER
GROUP: GENERAL MANAGER'S OFFICE

RECOMMENDATION:

- 1) That pursuant to section 10A(2) (c) of the *Local Government Act 1993*, the Committee and Council resolve to close to the public that part of its meetings to discuss Confidential Item 1 on the Ordinary agenda namely ***Sale of part of Proposed Lot 7 in Council's Commercial Subdivision at 155 Salamander Way, Salamander Bay.***
- 2) That the reasons for closing the meeting to the public to consider this item is that the discussion will include information containing:
 - information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business.
- 3) That the report remain confidential and the minute be released in accordance with Council's resolution.

ORDINARY COUNCIL MEETING - 1 AUGUST 2017
MOTION

186	<p>Councillor John Nell Councillor Chris Doohan</p> <p>It was resolved that Council:</p> <ol style="list-style-type: none">1) That pursuant to section 10A(2) (c) of the <i>Local Government Act 1993</i>, the Committee and Council resolve to close to the public that part of its meetings to discuss Confidential Item 1 on the Ordinary agenda namely <i>Sale of part of Proposed Lot 7 in Council's Commercial Subdivision at 155 Salamander Way, Salamander Bay.</i>2) That the reasons for closing the meeting to the public to consider this item is that the discussion will include information containing:<ul style="list-style-type: none">• information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business.3) That the report remain confidential and the minute be released in accordance with Council's resolution.
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ITEM NO. 2

FILE NO: 17/146372
RM8 REF NO: PSC2016-03581

MOTION TO CLOSE

REPORT OF: WAYNE WALLIS - GENERAL MANAGER
GROUP: GENERAL MANAGER'S OFFICE

RECOMMENDATION:

- 1) That pursuant to section 10A(2) (c) of the *Local Government Act 1993*, the Committee and Council resolve to close to the public that part of its meetings to discuss Confidential Item 2 on the Ordinary agenda namely **Sale of part of 795 Medowie Road, Medowie**.
- 2) That the reasons for closing the meeting to the public to consider this item is that the discussion will include information containing:
 - information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business.
- 3) That the report remain confidential and the minute be released in accordance with Council's resolution.

ORDINARY COUNCIL MEETING - 1 AUGUST 2017
MOTION

186A	<p>Councillor John Nell Councillor Chris Doohan</p> <p>It was resolved that Council:</p> <ol style="list-style-type: none">1) That pursuant to section 10A(2) (c) of the <i>Local Government Act 1993</i>, the Committee and Council resolve to close to the public that part of its meetings to discuss Confidential Item 2 on the Ordinary agenda namely Sale of part of 795 Medowie Road, Medowie.2) That the reasons for closing the meeting to the public to consider this item is that the discussion will include information containing:<ul style="list-style-type: none">• information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business.3) That the report remain confidential and the minute be released in accordance with Council's resolution.
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COUNCIL REPORTS

ITEM NO. 1

**FILE NO: 17/146374
RM8 REF NO: 16-2016-876-1**

**DEVELOPMENT APPLICATION NO. 16-2016-876-1 FOR A SERVICE STATION
(ON PROPOSED LOT 1) AT 155 SALAMANDER WAY, SALAMANDER BAY (LOT
284 DP806310)**

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

RECOMMENDATION IS THAT COUNCIL:

- 1) Approve Development Application DA No. 16-2016-876-1 for a Service Station at 155 Salamander Way, Salamander Bay subject to the conditions contained in **(ATTACHMENT 3)**.
-

**ORDINARY COUNCIL MEETING - 1 AUGUST 2017
MOTION**

187	<p>Councillor John Nell Councillor Sally Dover</p> <p>It was resolved that Council approve Development Application DA No. 16-2016-876-1 for a Service Station at 155 Salamander Way, Salamander Bay subject to the conditions contained in (ATTACHMENT 3).</p>
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In accordance with Section 375 (A) of the *Local Government Act 1993*, a division is required for this item.

Those for the Motion: Mayor Bruce MacKenzie, Crs Geoff Dingle, Chris Doohan, Sally Dover, Ken Jordan, Peter Kafer, John Nell and Steve Tucker.

Those against the Motion: Nil.

BACKGROUND

The purpose of this report is to present to Council for determination development application (DA) 16-2016-876-1 for the construction of Service Station at 155 Salamander Way, Salamander Bay. A locality plan is provided in **(ATTACHMENT 1)**.

The development application is being reported to the elected Council for determination as the development is located on land of which Council is the owner.

The application was included in the agenda for the Council meeting held on 27 June 2017, however it was decided that the application be deferred pending a site visit by the elected Councillors. The site visit was undertaken on 30 June 2017 and, as a result, the application has been included in the agenda for this meeting (25 July 2017).

The parent lot (LOT: 284 DP: 806310) is currently being subdivided in accordance with DA16-2015-865-1, which approved the subdivision of the land into seven (7) lots with a number of new roads. The proposed development will be located on Lot 1 of this subdivision. It is understood that the land will remain in Council ownership and will be leased to the proponent. A condition has been incorporated into the proposed Notice of Determination requiring the issue of a Subdivision Certificate for the approved lot prior to the issue of the Occupation Certificate for this application.

PROPOSAL

The application proposes a new Woolworths service station and will comprise four (4) double sided fuel bowsers, one (1) LPG dispenser, fuel storage tanks, a convenience store (200m²) and associated car parking. Fuel storage tanks will be installed towards the Bagnall Beach Road frontage and will consist of four (4) underground fiberglass tanks, with a total capacity of 195kL.

The development also includes stormwater quality measures and landscaping along the frontages.

One way access is provided from Bagnall Beach Road (left-in only) and Central Avenue (exit only). Customer parking (12 spaces) is provided to the east of the convenience store.

The proposed hours of operation will be 24 hours / 7 days a week and the service station will have a maximum of two (2) employees at any one time.

The convenience store contains a service counter, display shelving and fridges. A public toilet has been provided, accessed from inside the store.

The development includes a number of signs consistent with existing service stations in the locality. An 8.5m high pylon sign to be erected in the south-eastern corner of the site.

It is proposed that deliveries be undertaken as follows:

- 3-4 fuel deliveries per week to occur during off peak times;
- 1-2 dry groceries deliveries per week to occur during early morning and early evening periods; and
- Daily fresh food deliveries (using small pallet trucks or small delivery vans) to occur during the day and evening.

The subject site is zoned B3 Commercial Core under PSLEP2013. The proposed development meets the objectives of the B3 zone in that the proposal will provide ongoing business activity and employment opportunities in an accessible location in the Salamander Bay area.

The development application was assessed against relevant controls and objectives as specified under PSLEP21013 and Port Stephens Development Control Plan 2014 (PSDCP2014). The development is considered to be generally compliant with relevant controls and objectives. A detailed assessment of the proposal against the provisions of s.79C *Environmental Planning and Assessment Act 1979* (EP&A Act) is provided at **(ATTACHMENT 2)**.

KEY ISSUES

Access to the proposed development

As stated above, one way access is provided from Bagnall Beach Road (left-in only) and Central Avenue (exit only).

Comment from the RMS was requested regarding impacts on the classified road network. The authority had no objection to the proposal and it was stated that there will be no significant impact on the nearby State road network.

Traffic generation resulting from the proposed development was addressed in the Traffic Report prepared by Colston Budd Rogers & Kafe (dated December 2015). The assessment included a service station on the site and found that the road network would be able to cater for the additional traffic, when the intersection between Terminus Parade and Bagnall Beach Road was upgraded to a signalised intersection. A condition of consent has been included on the Notice of Determination to ensure these works are completed prior to the operational phase of the proposed development.

The application was referred to Council's Traffic Engineer for review of the access arrangements from Central Avenue and Bagnall Beach Road. The assessment found that the proposal would not have negative impacts on the operation of the local road network.

It is therefore considered that the local street network can cater for the additional traffic generated by the proposal.

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2013-2017
Sustainable Development.	Provide Strategic Land Use Planning Services. Provide Development Assessment and Building Certification Services.

FINANCIAL/RESOURCE IMPLICATIONS

There are no anticipated financial or resource implications as a result of the proposed development.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes		
Reserve Funds	No		
Section 94	Yes		Section 94A contributions are applicable to the development.
External Grants	No		
Other	No		

LEGAL, POLICY AND RISK IMPLICATIONS

The development application is consistent with Section 79C of the *Environmental Planning and Assessment Act 1979*.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that a third party or the applicant may appeal the determination.	Low	Approve the application as recommended. The assessment carried out details the merits of the proposed development.	Yes
There is a risk that if the application is refused the ability to provide new commercial development in Salamander Bay will not be realised.	Low	Approve the application as recommended.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The proposed development is anticipated to have positive social and economic impacts through the creation of viable employment and economic activity through both the construction of the development and provide a modern service station facility available to local residents. The development is consistent with surrounding developments and the objectives of B3 zoned land.

The development is not anticipated to have significant impact to the natural environment. The subject site is cleared of significant vegetation and the landscaping required will increase the environmental value of the site. Additionally, the development includes appropriate stormwater management systems ensuring the surrounding water quality and quantity leaving the subject site is in accordance with PSC DCP2014.

CONSULTATION

Consultation with key stakeholders has been undertaken, including through the public notification and advertising process.

Internal

The application was referred to Councils Development Engineer, Building Surveyor, Social Planning, Environmental Health, Natural Resources and Section 94 Officer. Each internal staff member assessed the relevant portion of the original application and where necessary requested additional information.

Following receipt of amended plans and additional information, the application was referred back to the internal staff members for review. No objections were raised by any internal staff to the amended design and relevant conditions have been incorporated into the Schedule of Conditions provided at **(ATTACHMENT 3)**.

External

The application was referred to the RMS for comment. No objections were raised by the RMS however, recommended conditions were suggested. Conditions regarding the signage requirements have been incorporated into the recommended conditions of consent.

Public Consultation

In accordance with the requirements of PSDCP2014, the development application was notified and advertised for a period of 30 days, ending 25 January 2017.

Two (2) submissions have been received in relation to the proposed development. The issues identified in the submissions are discussed below:

Subdivision road layout

A previous development application to subdivide the land aligned an internal access road along the northern boundary of the site. However this consent has since been surrendered and a new consent for subdivision (DA Consent No.16-2015-865-1) has been acted on which includes an internal access road further to the south.

Regardless, the layout of local roads does not form part of the proposed application and is not an applicable consideration for this development application. The site is considered to be suitable to accommodate the proposed development without causing unacceptable impact to the surrounding area.

Determining Body

The submission correctly identified that Council owns the land and provided owner's consent to lodge the application. However, incorrectly identified the Joint Regional Planning Panel (JRPP) as the applicable determining authority.

The mechanisms under which to refer decisions to the Joint Regional Planning Panel (JRPP) are provided by Schedule 4A of the Environmental Planning and Assessment Act 1979. The provisions state that development with a Capital Investment Value (CIV) in excess of \$5 million, where Council is the proponent and/or the land owner, must be referred to the JRPP. As the CIV is below this figure, Council remains the consent authority.

The proposed development can therefore be assessed and determined by Council.

Ownership Arrangements

The land will be leased to the service station operator and will remain in Council ownership. The lessee will be required to remove all buildings (including underground fuel tanks) at the end of the lease and remediate the site to its current state.

Public Toilets

The proposal includes toilets that will be available to the public. For safety reasons, access to the toilets will be provided from inside the convenience store.

Landscaping

The submissions included concerns regarding the species selection provided in the landscape design. These comments were considered during the assessment of the landscape design. A final landscape plan is required to be submitted to and be deemed to be satisfactory by Council prior to the construction certificate. This is to ensure no conflicts between the stormwater design and landscape plan arise, and consideration to appropriate landscaping species will be undertaken.

Street frontage and appearance

Concerns were raised regarding the street frontage and appearance of the proposed service station. It is acknowledged that the current established character of the new precinct has not been fully established, however the development is consistent with development located in B3 zones.

The proposed landscaping will soften the development and provide a positive contribution to the overall streetscape.

OPTIONS

- 1) Accept the recommendation.
- 2) Amend the recommendation.
- 3) Reject the recommendation.

ATTACHMENTS

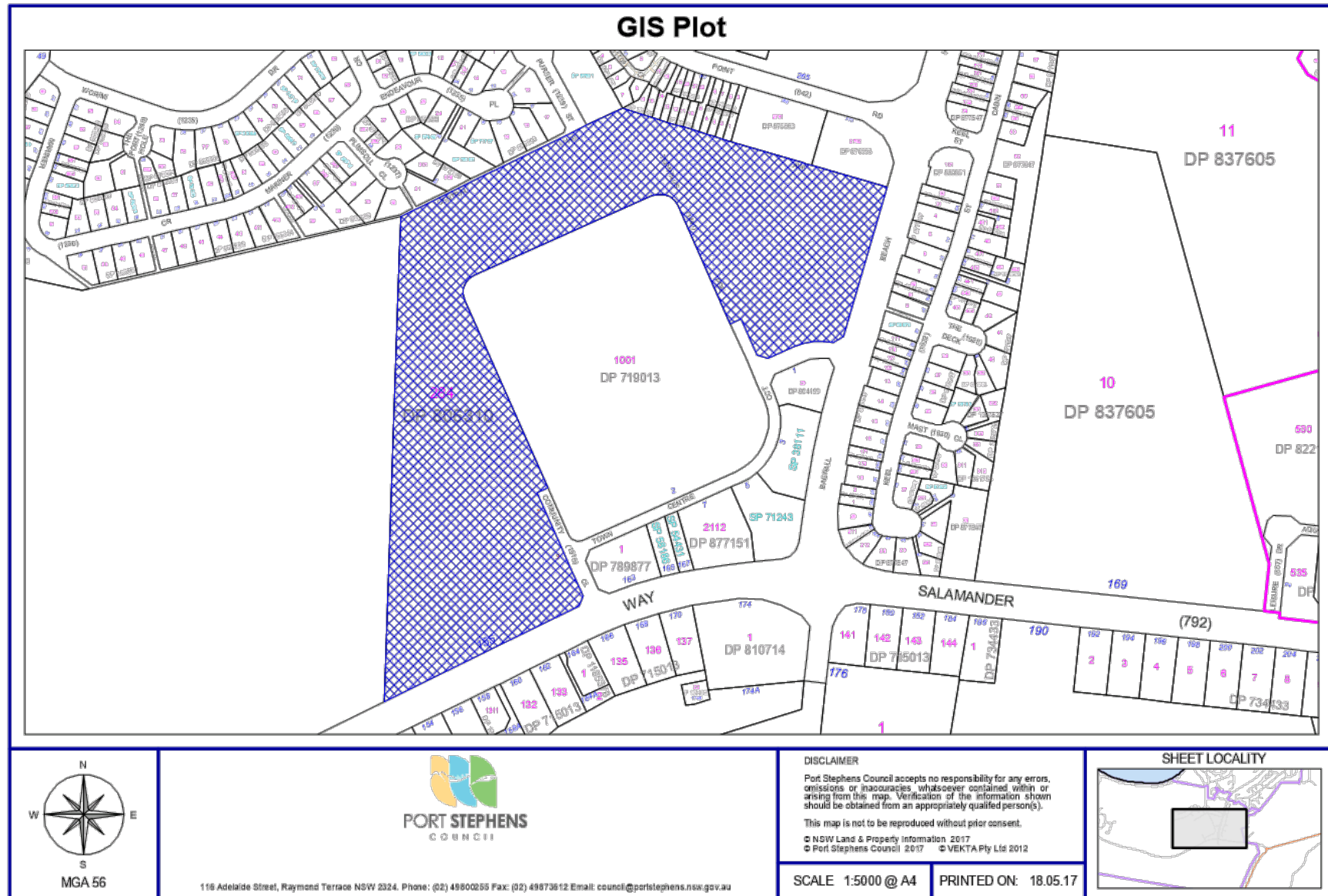
- 1) Locality Plan.
- 2) Assessment Report.
- 3) Notice of Determination.

COUNCILLORS ROOM

- 1) Development plans.

TABLED DOCUMENTS

Nil.



PORT STEPHENS COUNCIL **DEVELOPMENT ASSESSMENT REPORT**

APPLICATION DETAILS

Application Number	16-2016-876-1
Development Description	Service Station (On Proposed Lot 1)
Applicant	KDC PTY LTD
Date of Lodgement	20/12/2016
Value of Works	\$1,660,023

Development Proposal

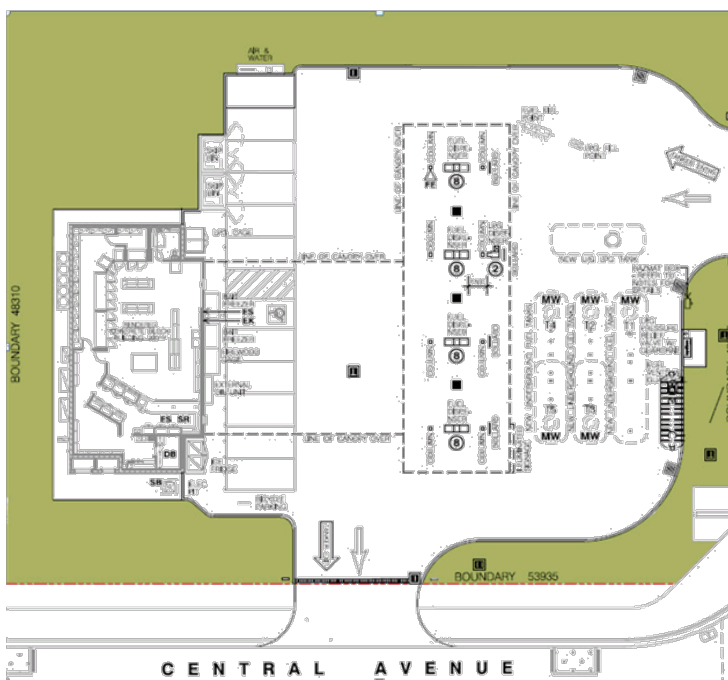


Figure 1: Site layout plan

The application proposes a new Woolworths service station and will comprise four (4) fuel bowsers, one (1) LPG dispenser, fuel storage tanks, a convenience store (200m²) and associated car parking. The development also includes stormwater quality measures and landscaping along the frontages.

One way access is provided from Bagnall Beach Road (left-in only) and Central Avenue (exit only). Customer parking (12 spaces) is provided to the east of the convenience store.

ITEM 1 - ATTACHMENT 2 ASSESSMENT REPORT.

16-2016-876-1

Hours of operation will be 24 hours / 7 days a week and a maximum of two (2) employees will be present at the convenience store..

The convenience store contains a service counter, display shelving and fridges. A public toilet has been provided that will be accessed from inside the store.

The development includes various signs, with an 8.5m high pylon sign to be erected in the south-eastern corner of the site.

Fuel storage tanks will be installed towards the Bagnall Beach Road frontage and will consist of four (4) underground fiberglass tanks, with a total capacity of 195kL.

It is proposed that deliveries be undertaken as follows:

- 3-4 fuel deliveries per week to occur during off peak times;
- 1-2 dry groceries deliveries per week to occur during early morning and early evening periods; and
- daily fresh food deliveries (using small pallet trucks or small delivery vans) to occur during the day and evening.

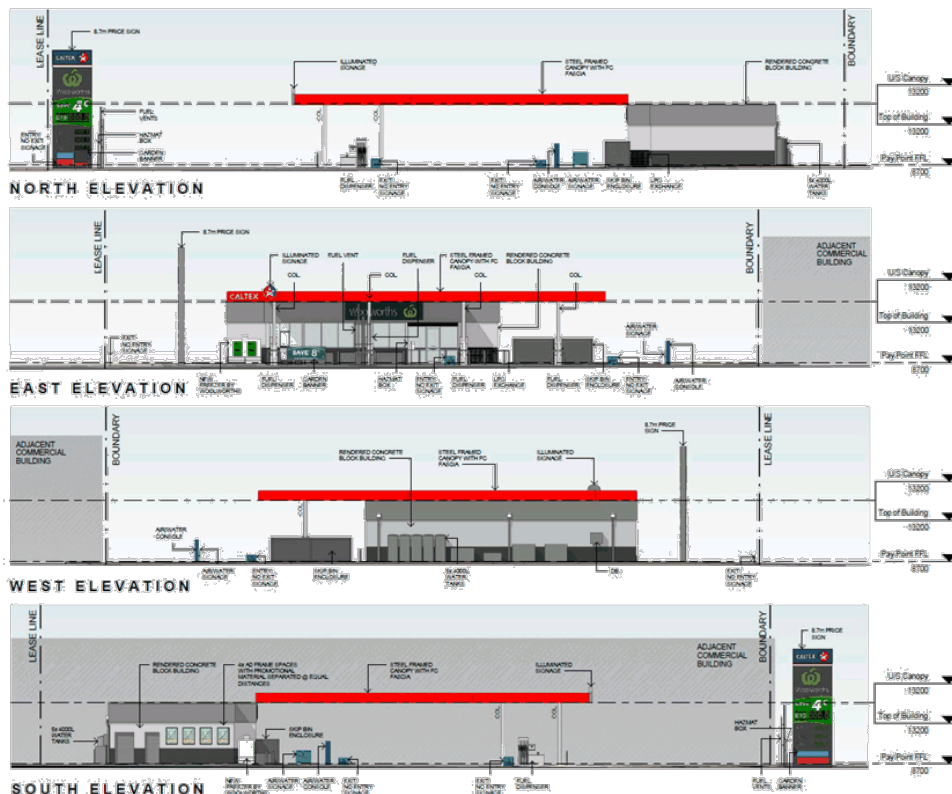


Figure 2: Building elevations

PROPERTY DETAILS	
Property Address	155 Salamander Way SALAMANDER BAY
Lot and DP	LOT: 284 DP: 806310
Current Use	Vacant
Zoning	B3 COMMERCIAL CORE
Site Constraints	Bushfire Prone Land (Cat. 3) Acid Sulfate Soils (Class 3) Koala Habitat (Core & Preferred) Endangered Ecological Community (Swamp Sclerophyll Forest) SEPP 14 Wetland SEPP 71 Coastal Protection / Draft Coastal SEPP

Site Description

The parent lot (LOT: 284 DP: 806310) is currently being subdivided in accordance with DA16-2015-865-1, which approved the subdivision of the land into 7 lots with a number of new roads – see Figure 3 below.

The proposed development will be located on Lot 1 of this subdivision. It is understood that the land remains in Council ownership and will be leased to the proponent. A condition has been incorporated into the Notice of Determination (NoD) requiring the issue of the subdivision certificate for the subdivision approved under DA Consent NO.16-2015-865-1 prior to the issue of the occupation certificate for this application. A condition of the lease is removal of the service station (including underground tanks) and remediation of the site.



Figure 3: Subdivision of parent lot (under DA16-2015-865-1)

The subject site comprises of 11ha and wraps around the existing shopping centre. The western extent of the site contains a childcare centre and Tomaree Library.

ITEM 1 - ATTACHMENT 2 ASSESSMENT REPORT.

16-2016-876-1

The subject area (Lot 1) is currently vacant and earthworks associated with the subdivision currently underway on the new roads.

The site is surrounded by a mix of commercial developments to the north, south and west. The land to the east of Bagnall Beach Road contains residential development.

Site History

Various applications have been approved over the site that includes a child care centre (DA 7-1991-5187-1), multi-purpose community centre (DA 7-1992-60325-1), various temporary events and subdivisions. The subject area (Lot 1) has not previously been developed for any specific purpose and has previously been cleared of vegetation.

Site Inspection

A site inspection was carried out on 9 February 2017.

The subject site can be seen in the figures below:



Figure 4: View of the subject land from Bagnall Beach Road



Figure 5: View along Bagnall Beach Road towards the south



Figure 6: View along Bagnall Beach Road towards the north

ASSESSMENT SUMMARY

Designated Development	The application is not designated development. It is noted that the site will not store more than 2,000 tonnes of petroleum and natural gas is located roughly 380m from the identified Wetland boundary to the west.
Integrated Development	The application does not require additional approvals listed under s.91 of the EP&A Act
Concurrence	The application does not require the concurrence of another body

Internal Referrals

The proposed development was referred to the following internal specialist staff. The comments of the listed staff have been used to carry out the assessment against the S79C Matters for Consideration below.

Development Engineer – The engineers identified issues with the stormwater infiltration and water quality measures. The applicant provided additional information, including amended infiltration calculations. After a review of the additional information, the application was supported with conditions.

Council's Traffic engineer reviewed the access arrangements from Central Avenue and Bagnall Beach Road and found that *'all access is satisfactory with no reference to conditions.'*

Environmental Health – No objections were made and the application was supported with conditions.

Section 94 – Developer contributions are applicable to the development and will be levied at the Construction Certificate stage.

Strategic Planning – The application was reviewed from a CPTED and accessibility perspective. The application was supported unconditionally.

ITEM 1 - ATTACHMENT 2 ASSESSMENT REPORT.

16-2016-876-1

Building – The application was reviewed from a BCA perspective. The application was supported with appropriate conditions.

Natural Resources – The landscape design was reviewed by Council staff and no objections were raised.

External Referrals

The proposed development was referred to the following external agencies for comment.

RMS – The application was referred to the RMS for comment. No objections were raised by the RMS, but specific comments were provided to ensure signage does not interfere with traffic along Bagnall Beach Road.

MATTERS FOR CONSIDERATION – SECTION 79C

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

Port Stephens Local Environmental Plan 2013 (LEP)

The site is located within the B3 Commercial Core and the objectives of the zone are:

- To provide a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community.
- To encourage appropriate employment opportunities in accessible locations.
- To maximise public transport patronage and encourage walking and cycling.
- To facilitate the growth of Raymond Terrace as a regional centre.

The proposal will provide ongoing business activity and employment opportunities in an accessible location in the Salamander Bay area and therefore consistent with the zone objectives.

The proposed development can be defined as a Service Station that means a building or place used for the sale by retail of fuels and lubricants for motor vehicles, whether or not the building or place is also used for any one or more of the following:

- (a) the ancillary sale by retail of spare parts and accessories for motor vehicles,
- (b) the cleaning of motor vehicles,
- (c) installation of accessories,
- (d) inspecting, repairing and servicing of motor vehicles (other than body building, panel beating, spray painting, or chassis restoration),
- (e) the ancillary retail selling or hiring of general merchandise or services or both

The proposal is consistent with the land use definition and is therefore permissible with consent.

Clause 4.3 – Height of Buildings

The proposed canopy height is approximately 5.3m in height, with the free-standing pylon sign extending to 8.7m in height, which is below the maximum permissible building height of 15m specified on the Height of Buildings Map.

Clause 5.5 – Development within the Coastal Zone

The proposed development is located within the coastal zone and is considered to meet the principles of the NSW Coastal Policy. There are no anticipated adverse impacts on the local ecology or water quality as the proposal incorporates a stormwater quality control system and erosion and sediment control devices. The proposal is sufficiently separated from the land that there are no anticipated impacts on the access to the foreshore. The proposed development is in keeping with the character of the locality and is not anticipated to have any negative impacts on views to or from the waterway.

ITEM 1 - ATTACHMENT 2 ASSESSMENT REPORT.

16-2016-876-1

Clause 7.1 – Acid Sulfate Soils

The subject land is mapped as containing potential Class 3 acid sulfate soils. The proposed development is anticipated to entail excavations below 1m and an acid sulfate soils management plan will be required.

Clause 7.2 – Earthworks

The application proposes minor earthworks on the site to achieve a level building platform through the use of balanced cut and fill. The proposed earthworks are relatively minor in nature and are not anticipated to result in any negative impacts on the subject or adjoining land, or any public place. Any material to be exported from the subject site will need to be disposed of responsibly. Conditions of consent have been provided to ensure this requirement is met.

Clause 7.6 – Essential Services

The subject site is serviced by reticulated water, electricity and sewer. In addition, the application has demonstrated that stormwater drainage resulting from roof and hard stand areas can be catered for in accordance with Councils requirements. The subject land also maintains direct access to Bagnall Beach Road and Central Avenue, meeting the requirements of this clause. A condition is proposed that requires the provision of evidence that all essential services are available to the resulting lots, prior to the issue of a subdivision certificate.

Clause 7.9 – Wetlands

The proposal is located on land identified as wetland. However, on registration of approved Lot 1, the site will no longer be near any wetlands. The development will not have a negative impact on the flora and fauna of the wetland, including both native and migratory species, and the characteristics of the ground or surface water.

State Environmental Planning Policy No. 14 – Coastal Wetlands

As discussed in the consideration against Clause 5.5 of the Port Stephens LEP, the proposed development is located within the coastal zone and is considered to meet the principles of the NSW Coastal Policy. There are no anticipated adverse impacts on the local ecology or water quality as the proposal incorporates a stormwater quality control system and erosion and sediment control devices. The proposal is sufficiently separated from the waterbody that there are no anticipated impacts on the access to the foreshore. The proposed development is in keeping with the character of the locality and is not anticipated to have any negative impacts on views to or from the waterway. The proposed development has been considered against the matters for consideration listed in clause 8 of the SEPP and determined to be acceptable in this instance.

State Environmental Planning Policy No. 64 – Advertising and Signage

The application provides an assessment against the criteria set out under Schedule 1 of the SEPP. The assessment is considered satisfactory and the signage will not have a negative impact upon the amenity of the immediate area nor will it compromise traffic safety. The proposal is considered consistent with the aims, objectives and controls of the SEPP.

Criteria	Compliance
1) Character of the area	
Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located?	Yes. The site is located in an established commercial area and the proposed signage is therefore compatible with the character of the area.

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Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?	The area does not have a consistent theme. However, the proposed signage would not be out of character with the development in the surrounding area that includes McDonalds and KFC outlets.
2) Special areas	
Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas?	No. No sensitive areas located in close proximity to the site.
3) Views and Vistas	
Does the proposal obscure or compromise important views?	No. No important views will be impacted by the proposed signage.
Does the proposal dominate the skyline and reduce the quality of vistas?	No. The proposed pylon sign is will be 8.7m in height, which is comparable to the commercial development in the area and will therefore not dominate the skyline. The proposal and will not impact the quality of vistas in the locality.
Does the proposal respect the viewing rights of other advertisers?	Yes. No conflict with surrounding signage will result from proposed signage.
4) Streetscape, setting or landscape	
Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape?	Yes. The surrounding land has predominantly been developed for commercial purposes. Council is currently also considering commercial development on the vacant commercial sites in the subdivision.
Does the proposal contribute to the visual interest of the streetscape, setting or landscape?	No. The proposal and signage are relatively generic and is like many service stations in Australia.
Does the proposal reduce clutter by rationalizing and simplifying existing advertising?	N/A. The site is not developed and no signage is currently present on the site.
Does the proposal screen unsightliness?	No. The site will be developed with a modern service station and does therefore not screen unsightliness.
Does the proposal protrude above buildings, structures or tree canopies in the area or locality?	No. As stated previously, the pylon sign will not extend significantly above the surrounding commercial development.
Does the proposal require ongoing vegetation management?	No vegetation removal is proposed under this application

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5) Site and Building	
Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located?	Yes. As stated previously, the proposed development is relatively generic and is like many service stations in Australia.
Does the proposal respect important features of the site or building, or both?	N/A. The site is not currently developed.
Does the proposal show innovation and imagination in its relationship to the site or building, or both?	No. As stated previously, the proposed development is relatively generic and is like many service stations in Australia.
6) Associated devices and logos with advertisements and advertising structures	
Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed?	No.
7) Illumination	
Would illumination result in unacceptable glare?	Yes. It not anticipated that the signage will significantly impact on the surrounding development.
Would illumination affect safety for pedestrians, vehicles or aircraft?	No. Conditions of consent stipulate that signage must not incorporate the following features: a) Flashing lights; b) Electronically changeable messages, unless in accordance with the Department of Planning's Transport Corridor Outdoor Advertising and Signage Guidelines (July 2007); c) Animated displays, moving parts or simulated movements; d) Complex displays that hold a driver's attention beyond 'glance appreciation'; e) Displays resembling traffic signs or signals, or giving instruction to traffic by using words such as 'halt' or 'stop'; and f) A method of illumination that distracts or dazzles.
Would illumination detract from the amenity of any residence or other form of accommodation?	No. The nearby residential development, opposite Bagnall Beach Road, is located at least 30m from the site and is separated from the site by solid 1.8m fences.
Can the intensity of the illumination be adjusted, if necessary?	No. It is considered that the signage would require adjustment as it is of relatively low intensity.

Is the illumination subject to a curfew?	No. It is considered that the no significant impact to neighbouring residential properties will arise as a result of the proposed signage.
8) Safety	
Would the proposal reduce the safety for any public road?	No. The signage does not include any flashing lights or animation. The signage is similar to other signs associated with service stations.
Would the proposal reduce the safety for pedestrians or bicyclists?	No.
Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?	No.

State Environmental Planning Policy No.71 – Coastal Protection

The proposed development is located in the coastal zone and accordingly the matters for consideration under Clause 8 of this policy apply. The proposed development is not anticipated to have an adverse impact on the ecology, culture or amenity of the foreshore and coastal waters as the development is residential in nature and sufficiently separated from the waterway. In addition, given the separation of the development from the waterway, there are no anticipated impacts on access to, or views to or from the waterway and foreshore area. There are no anticipated conflicts between the proposed land use and the use of the waterway, rather the provision of additional residential opportunities is considered to support the further use of the foreshore. The proposed development has been considered against the matters for consideration under the SEPP and is acceptable in this regard.

SEPP (Infrastructure) 2009

The proposal was referred to the RMS for comment under Clause 104 of the Policy. The RMS did not raise any specific issues.

s79C(1)(a)(ii) – Any draft EPI

Draft State Environmental Planning Policy (Coastal Management) 2016

The draft State Environmental Planning Policy (Coastal Management) 2016 (Coastal SEPP) is on public exhibition until 23 December 2016.

The draft policy aims to balance social, economic and environmental interest by promoting a coordinated approach to coastal management, consistent with the objectives of Part 2 of the Coastal Management Act 2016.

The Act divides the coastal zone into four (4) management areas:

- Coastal Wetland and Littoral Forest areas;
- Coastal Vulnerable areas;
- Coastal Environment areas; and
- Coastal Use areas.

The subject land is located with the Coastal Use area and the objectives for this area are:

- (a) to protect and enhance the scenic, social and cultural values of the coast by ensuring that:
 - (i) the type, bulk, scale and size of development is appropriate for the location and natural scenic quality of the coast, and

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- (ii) adverse impacts of development on cultural and built environment heritage are avoided or mitigated, and
 - (iii) urban design, including water sensitive urban design, is supported and incorporated into development activities, and
 - (iv) adequate public open space is provided, including for recreational activities and associated infrastructure, and
 - (v) the use of the surf zone is considered,
- (b) to accommodate both urbanised and natural stretches of coastline

The proposed development is consistent with the objectives of the Coastal Use areas, as identified in the draft policy, and can therefore be supported.

s79C(1)(a)(iii) – Any DCP

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 – Notification and Advertising

In accordance with the requirements of chapter A.12, the development application was notified and advertised for 30 days until 25 January 2017.

Chapter B2 – Natural Resources

The site does not contain any vegetation and it is considered that the proposal will not have a significant impact on the adjoining wetland.

Chapter B3 – Environment Management

Bushfire – Although the area is identified as bushfire prone, no significant vegetation is located within 140m of the site. The potential threat is therefore minor and no specific bushfire upgrades will be required.

Acid Sulfate Soils – As discussed previously in the report, all works will be undertaken in accordance with the required ASS plan of management. As such, the application is considered to appropriately mitigate potential ASS disturb whilst constructing the proposed development.

Air Pollution – The proponent included appropriate vapour recovery controls (VR1) in the upgrade designs. This complies with the EPA guidelines that require VR1 controls for areas outside of metropolitan Sydney and Newcastle. Ongoing air quality monitoring will also be undertaken during the removal of the existing fuel tanks.

Earthworks – As discussed previously in the report, all earthworks will be undertaken in accordance with the CEMP, while the installation of erosion and sedimentation controls will be required prior to the commencement of any works.

Chapter B4 – Drainage and Water Quality

A stormwater management plan was submitted with the application and includes adequate quality and quantity controls as required by Councils policy. The stormwater drainage plan has been assessed as being consistent with the Infrastructure Specification and conditions have been included in the consent requiring the provision of detailed engineering plans, prior to the issue of a construction certificate.

Chapter B6 – Essential Services

Reticulated water, electricity and sewer are available to the subject site. In addition, an acceptable stormwater management plan has been submitted and the land achieves direct access to a public road.

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Chapter C.8 – Signage

The proposal is generally compliant with the DCP provisions. It is noted that the proposal does not include any signage not generally supported by Council.

As stated previously, the applicant provided a detailed SEPP64 assessment that found that the proposed signage complies with the objectives of the policy.

Chapter B.9 – Road Network & Parking

The DCP requires 1 car space per 20m² of retail floor area associated with service stations. The convenience store has a size of 200m², which calculates to a requirement of ten (10) spaces. The proposal includes 12 spaces, including one (1) disabled space. The proposal therefore complies with the car parking requirements of the DCP.

The layout also includes a bike rack that can accommodate two (2) bicycles.

Comment from the RMS was requested and the authority had no objection to or statutory requirements for the proposed development. Further, it was stated that there will be no significant impact on the nearby State road network.

Traffic generation resulting from the proposed development was addressed in the Traffic Report prepared by Colston Budd Rogers & Kafe (dated December 2015). The assessment included a service station on the site and found that the road network would be able to cater for the additional traffic, where the intersection between Terminus Parade and Bagnall Beach Road was upgraded to a signalised intersection. A condition of consent has been included on the Notice of Determination to ensure these works are completed prior to the operational phase of the proposed development.

The application was referred to Council's Traffic Engineer for review of the access arrangements from Central Avenue and Bagnall Beach Road. The assessment found that *'all access is satisfactory with no reference to conditions.'*

It is therefore considered that the local street network can cater for the additional traffic generated by the proposal.

Chapter D.8– Salamander Bay Shopping Centre – Nelson Bay

The application is located within the Salamander Bay Shopping Centre and, as a result, Chapter D.8 applies to the site. The DCP provisions applicable to the precinct are as follows:

Requirements		Comment
D7.1 Identity Hub	To create a sense of identity for a unified community and commercial precinct	The proposed development will provide support and services to the community.
D7.2 Integration	To ensure future development is sympathetically integrated with the existing surrounds and appropriately activates the precinct	This development will be similar to the surrounding commercial development and will further activate the precinct.
D7.3 Connectivity	To ensure an integrated pedestrian and vehicular network promotes improved connectivity between developments within the precinct, and reaffirms the precinct as a hub	The proposal will not limit access to the precinct. All road works and footpaths will be provided as part of the approved subdivision works.
D7.4 Access Points	To ensure appropriate intersections are considered to accommodate for the expansion of the precinct	The intersections will form part of the road works associated with the subdivision of the land.
D7.5 Friendly	To ensure future development respects neighbours and users of the precinct	The development is considered to be low impact and respects neighbours and precinct users.

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D7.6 Environment	To ensure future development protects the ecological systems within and adjacent to the precinct	The sites location does not impact on any ecological systems.
D7.7 Safety	To ensure future development is designed with the safety of neighbours and users in mind	The applicant provided a number of safety strategies and features that will limit danger to precinct users and neighbours.
D7.8 Community	To ensure future development supports and is consistent with community activities	Due to the nature of the precinct a service station will support and is consistent with community activities.
D7.9 Aesthetics	To ensure diverse aesthetic forms are appropriately developed with the human scale in mind and integrated with in a holistic aesthetic framework for the hub	By employing a modern design using high quality materials the proposed development will continue the precincts aesthetic.
D7.10 Economic Development	To ensure future development offers economic advantages to the community in the immediate and long term	The proposed development will add to the economy activity in the area.

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

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

s79C(1)(a)(iv) – The regulations

There are no specific regulations apply to the proposed development.

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

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

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

Social and Economic Impacts

The proposal will result in positive social and economic impacts. The local economy will benefit from the short-term construction activity and the availability of additional commercial development within the subdivision will increase the economic activity in the existing commercial precinct.

The applicant proposed a number of safety features to limit any antisocial behaviour. It is not considered that the proposal will have a significant impact from a social perspective.

Impacts on the Built Environment

The proposed development will have no adverse impacts on the built environment within its locality. The proposed building is similar in bulk and scale to existing developments in the locality, ensuring that the development is in-keeping with existing buildings in the area. The building is considered to be well sited and designed with respect to the topography of the land and character of the locality.

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Impacts on the Natural Environment

The proposed development is not anticipated to have an impact on the surrounding natural environment. Landscaping will be required to be completed prior to the issue of the occupation certificate which will increase the environmental values of the site.

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

The proposal is permissible in the zone and is considered in keeping with the zone provisions.

The subject site is located within a commercial area and the design is in keeping with the surrounding development in the locality.

The development site is appropriately setback from the surrounding residential properties and is not anticipated to have negative impacts on the amenity of the surrounding development.

s79C(1)(d) – Any submissions

Two (2) submissions have been received in relation to the proposed development.

The issues identified in the submissions are discussed below:

Issues relating to previous development applications

It is understood that previous approvals over the subject site included layout designs that aligned the internal access road along the rear boundary of the adjoining site to the north. This impacted on the layout and access on development on these sites. The previous subdivisions approvals were not utilised and the current subdivision layout was more recently approved.

The conflicts between the subdivision layout and adjoining development are not considered applicable to the current development. However, it can be argued that the proposal will not significantly impact on adjoining development.

Conflict of interest

The submission correctly identified that Council owns the land and provided owner's consent to lodge the application.

The mechanisms under which to refer decisions to the Joint Regional Planning Panel (JRPP) are provided by Schedule 4A of the Environmental Planning and Assessment Act 1979. The provisions state that development with a Capital Investment Value (CIV) in excess of \$5million, where Council is the proponent and/or the land owner, must be referred to the JRPP. As the CIV is well below this figure, Council remains the consent authority.

The proposed development can therefore be assessed and determined by Council.

Ownership Arrangements

The land will be leased to the service station operator and will remain in Council ownership. It is understood that the lessee will be required to remove all buildings (including underground fuel tanks) at the end of the lease and remediate the site to its current state.

Public Toilets

The proposal includes public toilets that will be available to the public. For safety reasons, access to the toilets will be provided from inside the convenience store.

Landscaping

The submissions included concerns regarding the species selection provided in the landscape design. These comments were considered during the assessment of the landscape design. A Landscape plan is required to be submitted to and be deemed to be satisfactory by Council prior

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to the construction certificate. This is ensure no conflicts between the stormwater design and landscape plan arise. .

Street frontage and appearance

The concerns raised in the submissions related to the street frontage and appearance the proposed service station.

It is acknowledged that the current established character of the new precinct has not been fully established, and that the type of development does not lend itself to the improvement of the built environment.

It is considered that the proposed landscaping will soften the development and provide a positive contribution to the overall streetscape.

s79C(1)(e) – The public interest

Following the detailed assessment of the application, it is considered that the proposal is in the public interest.

The development is consistent with Council's Planning controls and is suitable in the locality. The proposal is not considered to have a detrimental cumulative impact on the community or the surrounding locality. The proposed development is considered to be in the public interest.

DETERMINATION

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

REAN LOURENS



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).

Development consent is granted to development application 16-2016-876-1 subject to the conditions in Schedule 1.

Notice is hereby made under Section 81 of the Environmental Planning and Assessment Act 1979 (the Act) of a Development Consent issued under Section 80 of the Act, for the development described below. The consent should be read in conjunction with the conditions contained in Schedule 1 and the notes contained in Schedule 2.

Determination Outcome: Approval, subject to conditions

APPLICATION DETAILS

Application No: 16-2016-876-1

Property Address: LOT: 284 DP: 806310
155 Salamander Way SALAMANDER BAY

Description of Development: Service Station (On Proposed Lot 1)

Date of determination: [Click here to enter a date.](#)

Date from which the consent operates: [Click here to enter an operational date.](#)

Date on which the consent shall lapse: Enter date of approval plus 5 yrs and 1 day.
(unless physical commencement has occurred)

MR R J LOURENS
Senior Development Planner



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:

Plan/Doc.Title	Plan Ref.	Sheet.	Date	Drawn By
Site Plan	2013077	DA00	20/5/2017	Scott Carver Pty Ltd
Proposed Petroleum Filling Station (7 Sheets)	20130077	DA01, DA02, DA04 & DA07 – DA09	6/12/2016	Scott Carver Pty Ltd
Proposed Petroleum Filling Station (1 Sheet)	20130077	DA05	13/12/2016	Scott Carver Pty Ltd

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

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

CONDITIONS TO BE SATISFIED PRIOR TO DEMOLITION, EXCAVATION OR CONSTRUCTION

3. **Prior to the commencement of any demolition**, excavation or construction, 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,



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).

natural watercourse, reserve or road surface, in accordance with Managing Urban Stormwater – Soils and Construction, Volume 1 (Landcom, 2004).

4. **Prior to the commencement of works**, a waste containment facility is to be established on site. The facility is to be regularly emptied, and maintained for the duration of works. No rubbish shall be stockpiled in a manner which facilitates the rubbish to be blown or washed off site. The site shall be cleared of all building refuse and spoil immediately upon completion of the development.

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

5. A monetary contribution is to be paid to Council, pursuant to section 80A(1) of the Environmental Planning and Assessment Act 1979 and the Port Stephens Section 94A Development Contributions Plan, related to the Capital Investment Value (CIV) of the development as determined in accordance with clause 25j of the *Environmental Planning and Assessment Regulation 2000* and outlined in the table below.

Capital Investment Value	Levy Rate (% of CIV)
Up to and including \$100,000	Nil
More than \$100,000 and up to and including \$200,000	0.5%
More than \$200,000	1%

The payment of the S94A contribution is to be accompanied by a Cost Summary Report Form (attached) setting out an estimate of the CIV in accordance with Schedule 1 of the Port Stephens Section 94A Development Contributions Plan, must be approved by Council prior to issue of the Construction Certificate. Where the estimated cost of carrying out the whole of the development is more than \$1,000,000, the Cost Summary Report Form must be completed by a Quantity Surveyor who is a registered Associate member or above, of the Australian Institute of Quantity Surveyors. This condition cannot be taken to be satisfied until a payment has been made in accordance with the CIV stated on a cost summary report submitted to Council in accordance with this condition.

Payment of the above amount shall apply to Development Applications as follows:

- **Building work only - prior to issue of the Construction Certificate.**

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



6. **Prior to issue of the Construction Certificate**, a suitable geotechnical report and subsequent Acid Sulfate Soils Management Plan shall be prepared for any proposed footing / excavation works are more than 1 metre below the natural ground surface or works by which the watertable is likely to be lowered more than 1 metre below the natural ground surface are proposed.
7. **Prior to issue of the Construction Certificate**, a Compliance Certificate under Section 50 of the Hunter Water Act 1991, for this development, shall be submitted to the Certifying Authority.
8. **Prior to issue of any Construction Certificate**, a detailed stormwater drainage plan is to be submitted to the Certifying Authority for a system capable of catering for a range of rainfall scenarios up to and including the 1% AEP Rainfall Event. The detailed plans are to be in accordance with Councils Infrastructure Specification and include the following information:
 - a. Plans for all stormwater drainage works on public land, approved by Council under section 68 of the *Local Government Act, 1993* and consistent with this condition;
 - b. On-Site Stormwater Detention (OSD) via on site infiltration and the infiltration system shall be designed with a factor of safety of 20 applied to the reported infiltration rates provided in the Cardno Geotechnical Report. (i.e 3600mm/hr divided by 20 = 180mm/hr);
 - c. Stormwater pit and pipe network directed to OSD;
 - d. An emergency overland flow path for major storm events, that is directed to the public drainage system;
 - e. Conveyance where necessary, of stormwater through the site from upstream catchments, (including roads and adjoining properties);
 - f. Detailed pavement finished surface levels, to ensure stormwater runoff catchment and its direction into the detention system; and
 - g. Water quality control devices that comply with the requirements of the Port Stephens Development Control Plan 2014.
9. **Prior to the issue of the Construction Certificate**, a Construction Environmental Management Plan (CEMP) is to be submitted to the Council. The required CEMP must outline the sequence and construction methodology and specify mitigating measures to ensure all works are carried out in accordance with appropriate guidelines and standards and with minimal environmental impact in relation to project staging, waste management, traffic management and environmental management.

The CEMP must include, but is not necessarily be limited to:

- a. Soil and Water Management Plan (including erosion and sediment control measures);
- b. Traffic control measures; and
- c. Odour Management Plan to be prepared to address any potential odours that may be created from the removal of existing underground fuel storage tanks and in the event that hydrocarbon contaminated soil is encountered.



- d. Noise and Dust Management;
 - e. Waste Management.
10. **Prior to the issue of a Construction Certificate**, detailed engineering plans for civil works in accordance with the approved plans are to be submitted to the accredited certifier. The detailed plans are to be in accordance with Councils Infrastructure Specification and include the following information:
- a. Plans for all civil works within a road reserve, including driveways, approved by the Roads Authority under the Roads Act and consistent with this condition;
 - b. Any associated works to ensure satisfactory transitions to existing infrastructure;

The above works are to be completed **prior to the issue of a Final Occupation Certificate**.

11. **Prior to the issue of the Construction Certificate**, a detailed Landscape Plan is to be submitted to and be deemed satisfactory by Council.

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

- 12. All building work must be carried out in accordance with the provisions of the Building Code of Australia.
- 13. Where necessary, the excavation and treatment of all potential and actual acid sulfate soils shall be carried out in strict accordance with the provisions of an approved Acid Sulfate Soils Management Plan prepared for the site.
- 14. Any excavated material to be removed from the site is to be assessed, classified, transported and disposed of in accordance with the Department of Environment and Climate Change's (DECC) 'Waste Classification Guidelines Part 1: Classifying Waste' and *Protection of the Environment Operations Act 1997* and the *Protection of the Environment (Waste) Regulation 2005*.
- 15. Any fill material imported into the site is to be Virgin Excavated Natural Material or material subject to a Resource Recovery Exemption that is permitted to be used as a fill material, in accordance with the provisions of the *Protection of the Environment Operations Act 1997* and the *Protection of the Environment (Waste) Regulation 2005*.
- 16. Any fill material subject to a Resource Recovery Exemption received at the site must be accompanied by documentation demonstrating that material's compliance with the conditions of the exemption, and this documentation must be provided to Council officers or the Principal Certifying Authority on request.
- 17. Immediately following the installation of any roof, collected stormwater runoff from the structure must be connected to a stormwater drainage easement/system.



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).

18. Dust suppression is to be actively undertaken during works, through the use of wet-down water tankers or an alternative method agreed by Council.
19. Construction work that is likely to cause annoyance due to noise is to be restricted to the following times:
 - 7.00am to 6.00pm Monday to Friday
 - 7.00am to 5.00pm Saturday
 - no construction work to take place on Sunday or Public Holidays.

When the construction site is in operation the L10 level measured over a period of not less than 15 minutes must not exceed the background by more than 10dB(A). All possible steps should be taken to silence construction site equipment.
20. It is the responsibility of the applicant to erect a PCA sign (where Council is the PCA, the sign is available from Council's Administration Building at Raymond Terrace or the Tomaree Library at Salamander Bay free of charge). The applicant is to ensure the PCA sign remains in position for the duration of works.
21. The construction and fit-out of the food premises must be carried out in accordance with the following:
 - a. The Food Act 2003;
 - b. Food Regulation 2015; and
 - c. Australian Standard 4674-2004 -Construction and Fit-out of Food Premises.

CONDITIONS TO BE SATISFIED PRIOR TO ISSUE OF AN OCCUPATION CERTIFICATE

22. **Prior to the issue of the Occupation Certificate**, the Subdivision Certificate for DA Consent No. 16-2015-865-1 must be registered with NSW Land & Property Services and documentary evidence submitted to Principle Certifying Authority.
23. **Prior to issue of any Occupation Certificate**, evidence that CPTED measures included in the Plan of Management (prepared by Woolworths Limited, dated December 2016) have been implemented must be provided to the Principle Certifying Authority.
24. **Prior to issue of a Construction Certificate**, a design showing a minimum of ten (10) car parking spaces (designed in accordance with the Site Plan & Roof Plan (Plan Ref No.2549) and AS2890 Parts 1, 2 and 6) must be provided to the Principle Certifying Authority.
25. **Prior to the issue of a Final Occupation**, an Operation and Maintenance Plan for the stormwater system shall be prepared by a suitably qualified engineer, detailing a regular maintenance programme for pollution control devices, covering inspection, cleaning and waste disposal, a copy of which shall be supplied to the owner/operator.



26. A fire safety certificate as prescribed by Section 174 Environmental Planning & Assessment Regulations 2000 which certifies the performance of the implemented fire safety measures in accordance with Section 170 of the Regulation must be submitted to the Principal Certifying Authority and the Commissioner of New South Wales Fire Brigades, **prior to the release of the Occupation Certificate**. A copy of fire safety certificate needs to be forwarded to Council; If Council is not nominated as the Principal Certifying Authority. A further copy of the certificate must also be prominently displayed in the building.
27. **Prior to the issue of a Final Occupation Certificate**, the proponent must provide evidence to the Principle Certifying Authority that VR1 control equipment has been installed. This must be done in accordance with Part 6 of the *Protection of the Environment Operations (Clean Air) Regulation 2010* and the Standards and Best Practice Guideline for VR at petrol Service Stations, as published from time to time.
28. **Prior to the issue of a Final Occupation Certificate**, the works approved under the Roads Act approval must be completed and a compliance certificate must be obtained from the Roads Authority.
29. **Prior to the issue of a Final Occupation Certificate**, the following traffic signage must be installed onsite:
 - 'No Entry' sign facing the road at the exit onto Central Avenue; and
 - 'No Exit' sign facing the site at the entry onto Bagnall Beach Road.
30. **Prior to issue of any Occupation Certificate**, evidence that the following requirements - and those specified under Part 2 of the *Protection of the Environment Operations (Underground Petroleum Storage Systems) Regulation 2014* have been met must be provided to the Principle Certifying Authority:
 - a. The UPSS must be appropriately designed, installed and commissioned by duly qualified persons in accordance with the UPSS Regulation.
 - b. The UPSS must have minimum mandatory pollution protection equipment installed, consistent with the Regulation.
 - c. The UPSS must have groundwater monitoring wells installed in accordance with the Regulation.
31. **Prior to issue of any Occupation Certificate**, all landscape works detailed on the approved landscape plan shall be installed. Landscaping shall be maintained in perpetuity. All landscaped areas shall be kept free of parked vehicles, stored goods, garbage or waste material and the like at all times.
32. **Prior to issue of any Occupation Certificate**, an Environment Protection Plan (including procedures for early leak detection and rectification and loss monitoring procedures) must be in place and maintained/updated throughout the life of the Underground Petroleum Storage System).



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).

CONDITIONS TO BE SATISFIED AT ALL TIMES

33. 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:
- 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
 - 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.
34. Ingress to the site shall be off Bagnall Beach Road and egress from the site shall be to Central Avenue.
35. At all times, all signage visible from the road reserve must not incorporate any of the following features:
- Flashing lights;
 - Electronically changeable messages, unless in accordance with the Department of Planning's Transport Corridor Outdoor Advertising and Signage Guidelines (July 2007);
 - Animated displays, moving parts or simulated movements;
 - Complex displays that hold a driver's attention beyond 'glance appreciation';
 - Displays resembling traffic signs or signals, or giving instruction to traffic by using words such as 'halt' or 'stop'; and
 - A method of illumination that distracts or dazzles.
36. Motor vehicles are only permitted to enter and leave the site in a forward direction. On site manoeuvring areas are to be kept clear for this purpose.
37. The toilet facility located within the convenience store must remain open to the general public at all times.

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.



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).

NOTES

- 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.
- Within 60 days of the removal of the tanks, a final remediation/validation report must be submitted to both the certifying authority and Council. The report shall be prepared by an appropriately qualified and experienced environmental consultant and in accordance with the relevant EPA guidelines.
- The Environment Protection Plan must be maintained and updated throughout the life of the Underground Petroleum Storage System.
- Disability Discrimination Act (DDA) are to make it unlawful to discriminate against persons with a disability in connection with employment, the provision of goods, facilities and services or the management of premises. The legal requirements of the Act affect the majority of existing commercial and public building occupiers. The Commonwealth Disability Discrimination Act makes it an offence to discriminate against people on the grounds of disability, in the provision of access to premises.

ITEM NO. 2

**FILE NO: 17/146375
RM8 REF NO: 16-2017-234-1**

**DEVELOPMENT APPLICATION NO. 16-2017-234-1 FOR A MEDICAL CENTRE
(ON PROPOSED LOT 3) AT 155 SALAMANDER WAY, SALAMANDER BAY (LOT
284 DP806310)**

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

RECOMMENDATION IS THAT COUNCIL:

- 1) Approve Development Application number (No.) 16-2017-234-1 for a Medical Centre (on proposed Lot 3) at 155 Salamander Way, Salamander Bay (LOT 284 DP806310) subject to the conditions contained in **(ATTACHMENT 3)**.

**ORDINARY COUNCIL MEETING - 1 AUGUST 2017
MOTION**

188	Councillor John Nell Councillor Steve Tucker It was resolved that Council approve Development Application number (No.) 16-2017-234-1 for a Medical Centre (on proposed Lot 3) at 155 Salamander Way, Salamander Bay (LOT 284 DP806310) subject to the conditions contained in (ATTACHMENT 3) .
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In accordance with Section 375 (A) of the *Local Government Act 1993*, a division is required for this item.

Those for the Motion: Mayor Bruce MacKenzie, Crs Geoff Dingle, Chris Doohan, Sally Dover, Ken Jordan, Peter Kafer, John Nell and Steve Tucker.

Those against the Motion: Nil.

BACKGROUND

The purpose of this report is to present to Council for determination, development application (DA) 16-2017-234-1 for the construction of a Medical Centre at 155 Salamander Way, Salamander Bay. A locality plan is provided in **(ATTACHMENT 1)**.

The development application is being reported to the elected Council for determination as the development is located on land of which Council is the owner.

The parent lot (LOT: 284 DP: 806310) is currently being subdivided in accordance with DA No. 16-2015-865-1, which approved the subdivision of the land into seven (7) lots with a number of new roads. The proposed development will be located on resulting Lot 3 and forms part of the Salamander Bay commercial precinct.

It is understood that the land will be sold to the proponent on registration of the new lots. A condition has been incorporated into the Notice of Determination (NoD) requiring the issue of a Subdivision Certificate for the approved lot prior to the issue of the Occupation Certificate for this application.

Proposal

The application proposes a Medical Centre on approved Lot 3 of the recent commercial subdivision undertaken by Council and accessed from Central Avenue. The proposed building is located to the north of the existing Salamander Bay Shopping Centre. The Medical Centre building is positioned on the western portion of the site and will include the following:

- A General Medical Practice – 655m²;
- Imaging Facilities – 325m²;
- After Hours GP Service – 77m²;
- A Pharmacy – 243m²; and
- Pathology Laboratories – 72m².

The facility will also include an ancillary coffee shop, 52 car parking spaces (located on the eastern section of the site), dedicated bicycle parking, landscaping and business identification signage.

Assessment Outcomes

The subject site is zoned B3 Commercial Core under PSLEP2013. The proposed development meets the objectives of the B3 zone in that the proposal will provide ongoing business activity and employment opportunities in an accessible location in the Salamander Bay area.

The development application was assessed against relevant controls and objectives as specified under PSLEP2013 and Port Stephens Development Control Plan 2014 (PSDCP2014). The development is considered to be generally compliant with relevant controls and objectives. It is however noted that the proposal does not strictly comply with the parking requirements of Chapter c.8 of the PSDCP2014. A discussion relating to the non-compliance has been included in the Key Issues section below.

A detailed assessment of the proposal against the provisions of s.79C *Environmental Planning and Assessment Act 1979* (EP&A Act) is provided at **(ATTACHMENT 2)**.

Key Issues

Parking Provision

As stated above, the parking provision of the proposed development does not strictly comply with the requirements of Chapter c.8 of the DCP.

The most applicable definitions for the proposed development as listed in Figure BQ: On-site Parking Requirements are Medical Centres, Shops and Cafés. The DCP requires the following ratios for the proposed development:

Land Use	Parking Ratio
Medical Centre	1 space / 25m ²
Shop (Pharmacy)	1 space / 20m ²
Cafe	1 space / 25m ²

The parking requirement for the proposed development (using the ratios above) is as follows:

Land Use	Floor Area	Parking Requirement
General Practice	655m ²	26
Imaging	325m ²	13
After-hours GP	77m ²	3
Pharmacy	243m ²	12
Pathology	72m ²	3
Cafe	27m ²	1
Total		58

The application includes a car park to the east of the medical centre that includes 52 spaces.

It is considered that the after-hours GP service component can be removed from the calculation as it will function outside of normal business hours. This will bring the parking requirement down to 55 spaces. Additionally, the proposed uses are similar in nature and customers will use them concurrently and the site is well serviced by public transport, further lowering the demand for onsite car parking.

The minor variation to on-site car parking numbers is supported.

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2013-2017
Sustainable Development.	Provide Strategic Land Use Planning Services. Provide Development Assessment and Building Certification Services.

FINANCIAL/RESOURCE IMPLICATIONS

There are no anticipated financial or resource implications as a result of the proposed development.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes		
Reserve Funds	No		
Section 94	Yes		Section 94A contributions are applicable to the development.
External Grants	No		
Other	No		

LEGAL, POLICY AND RISK IMPLICATIONS

The development application is consistent with Section 79C of the *Environmental Planning and Assessment Act 1979*.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that a third party or the applicant may appeal the determination.	Low	Approve the application as recommended. The assessment carried out details the merits of the proposed development.	Yes
There is a risk that if the application is refused the ability to provide new commercial development in Salamander Bay will not be realised.	Low	Approve the application as recommended.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The proposed development is anticipated to have positive social and economic impacts through the creation of viable employment and economic activity through both the construction of the development and provision of a wider range of essential medical services to local residents. The development is consistent with surrounding developments and the objectives of B3 zoned land.

The development is not anticipated to have significant impact to the natural environment. The subject site is cleared of significant vegetation and the landscaping required will increase the environmental value of the site. Additionally, the development includes appropriate stormwater management systems ensuring the surrounding water quality and quantity leaving the subject site is in accordance with PSC DCP2014.

CONSULTATION

Consultation with key stakeholders has been undertaken, including through the public notification and advertising process.

Internal

The application was referred to Councils Development Engineer, Building Surveyor, Environmental Health Officer, Natural Resources Officer and Section 94 Officer. Each internal staff member assessed the relevant portion of the original application and where necessary requested additional information.

Following receipt of amended plans and additional information, the application was referred back to the internal staff members for review. No objections were raised by any internal staff to the amended design and relevant conditions have been incorporated into the Schedule of Conditions provided at **(ATTACHMENT 3)**.

External

The application was not required to be referred to any external authorities.

Public Consultation

In accordance with the requirements of PSDCP2014, the development application was notified and advertised for a period of 14 days until 10 May 2017.

No submissions were received in relation to the proposed development.

OPTIONS

- 1) Accept the recommendations.
- 2) Amend the recommendations.
- 3) Reject the recommendations.

ATTACHMENTS

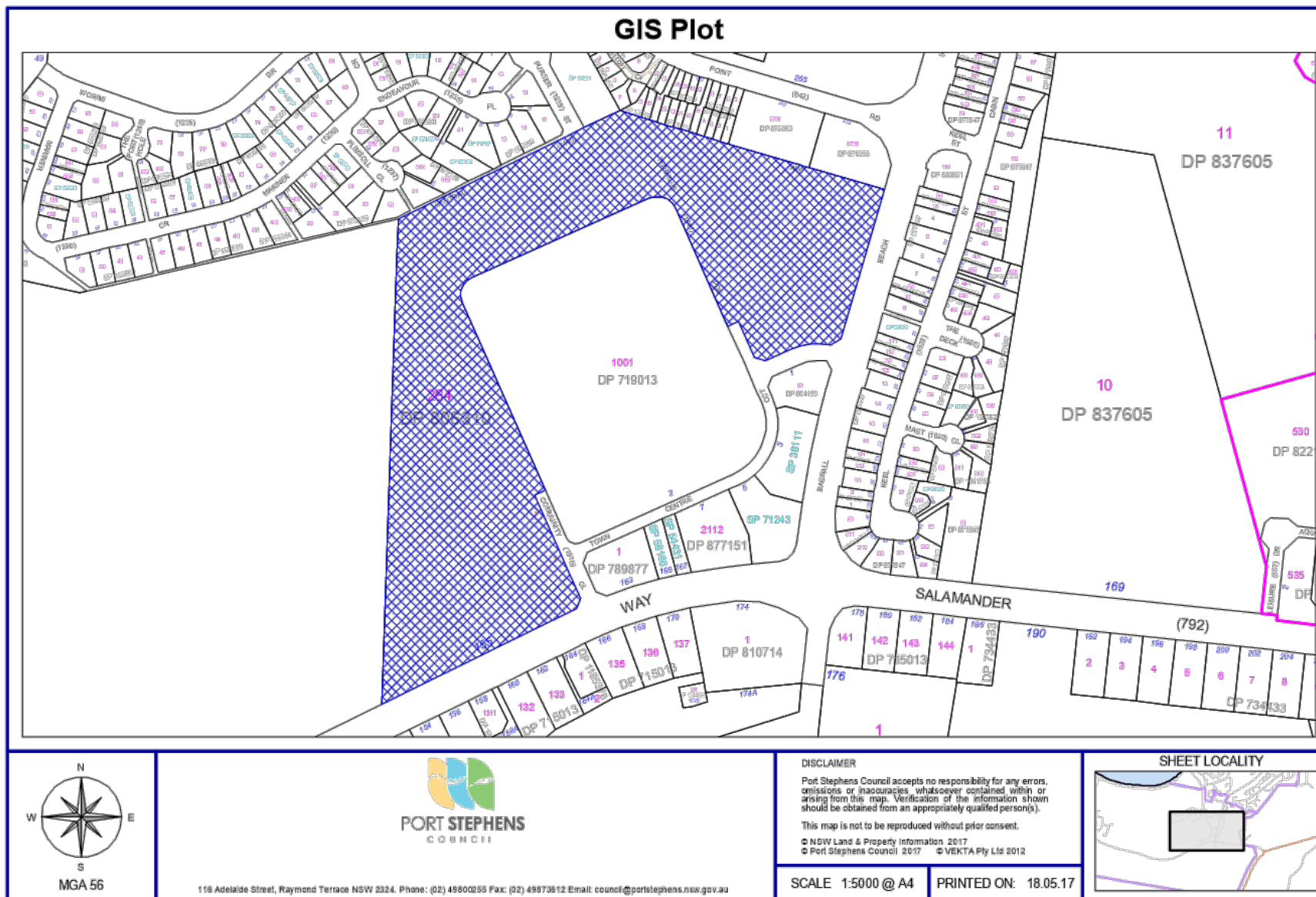
- 1) Locality Plan.
- 2) Assessment Report.
- 3) Notice of Determination.

COUNCILLORS ROOM

- 1) Development Plans.

TABLED DOCUMENTS

Nil.





DEVELOPMENT ASSESSMENT REPORT

APPLICATION DETAILS

Application Number	16-2017-234-1
Development Description	Proposed Medical Centre, Café, Signage and Associated Car Park and Landscaping (Proposed Lot 3)
Applicant	ARCHADIA PROJECTS PTY LIMITED
Date of Lodgement	20/04/2017
Value of Works	\$3,540,506.00

Development Proposal

The application proposes Medical Centre in the Salamander Bay commercial precinct. The site is located on approved Lot 3 of the recent commercial subdivision undertaken by Council and is located to the north of the existing Salamander Bay Shopping Centre. The proposal involves the construction of a new facility on the western portion of the site and will include the following:

- A General Medical Practice – 655m²;
- Imaging Facilities – 325m²;
- Hours GP Service – 77m²;
- A Pharmacy – 243m²; and
- Pathology Laboratories – 72m².

The facility will also include an ancillary coffee shop, 52 car parking spaces (located on the eastern section of the site), dedicated bicycle parking, and associated landscaping.

Access is provided from Central Avenue.

The hours of operation for each of the proposed uses are as follows:

General Medical Practice	Monday – Friday: 8am – 6pm Saturday: 8am – 12pm Sunday: Closed
Imaging	Monday – Friday: 9am – 5pm Saturday & Sunday Closed
After-hours GP	Monday – Friday: 6pm – 12am Saturday: 8:30am – 5pm Sunday: 9am – 5pm
Pharmacy	Monday – Friday: 8:30am – 10pm Saturday: 8:30am – 8pm Sunday: 9am – 7pm
Coffee Shop	Monday – Friday: 8am – 6pm Saturday: 8am – 12pm Sunday: Closed
Pathology	Monday – Friday: 6am – 6pm Saturday & Sunday Closed

16-2017-234-1

Building identification signage is proposed in three locations. The first being an 8.87 metre high pylon sign located adjacent to the main building entrance that will contain the names of the key tenants within the medical centre. The second being a flush wall sign mounted to the southern elevation of the building facing Central Avenue; and the third being a flush wall sign mounted to the eastern elevation of the building facing the car park.

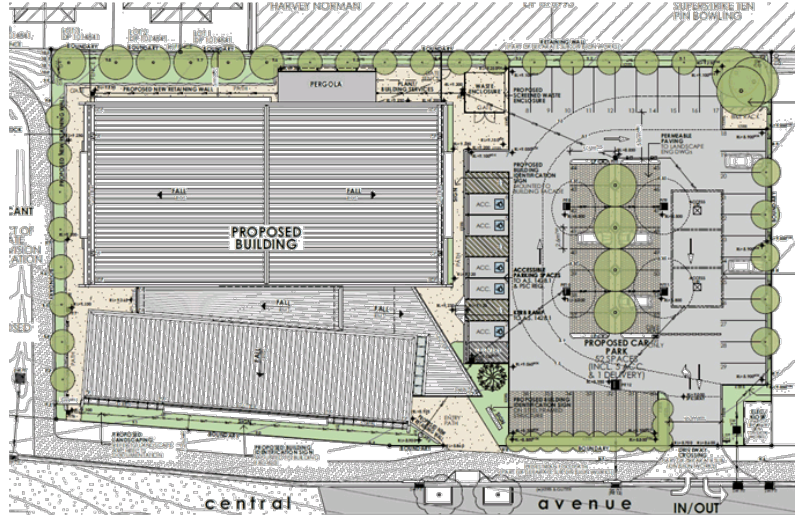


Figure 1: Site Plan of proposed development



Figure 2: Proposed building layout



Figure 3: Concept Perspective with view from Central Avenue

PROPERTY DETAILS	
Property Address	155 Salamander Way SALAMANDER BAY
Lot and DP	LOT: 284 DP: 806310
Current Use	Vacant Land
Zoning	B3 COMMERCIAL CORE
Site Constraints	Bushfire Prone Land (Cat. 3) Acid Sulfate Soils (Class 3) Koala Habitat (Core & Preferred) Endangered Ecological Community (Swamp Sclerophyll Forest) SEPP 14 Wetland SEPP 71 Coastal Protection / Draft Coastal SEPP

Site Description

The parent lot (LOT: 284 DP: 806310) is currently being subdivided in accordance with DA16-2015-865-1, which approved the subdivision of the land into 7 lots with several new roads – see Figure 4 below.

The proposed development will be located on Lot 3 of this subdivision.

A condition has been incorporated into the Notice of Determination (NoD) requiring the issue of the subdivision certificate for the subdivision approved under DA16-2016-814-1, prior to the issue of the Occupation Certificate for this application.

The subject site comprises of 11ha and wraps around the existing shopping centre. The western extent of the site contains a childcare centre and Tomaree Public Library.

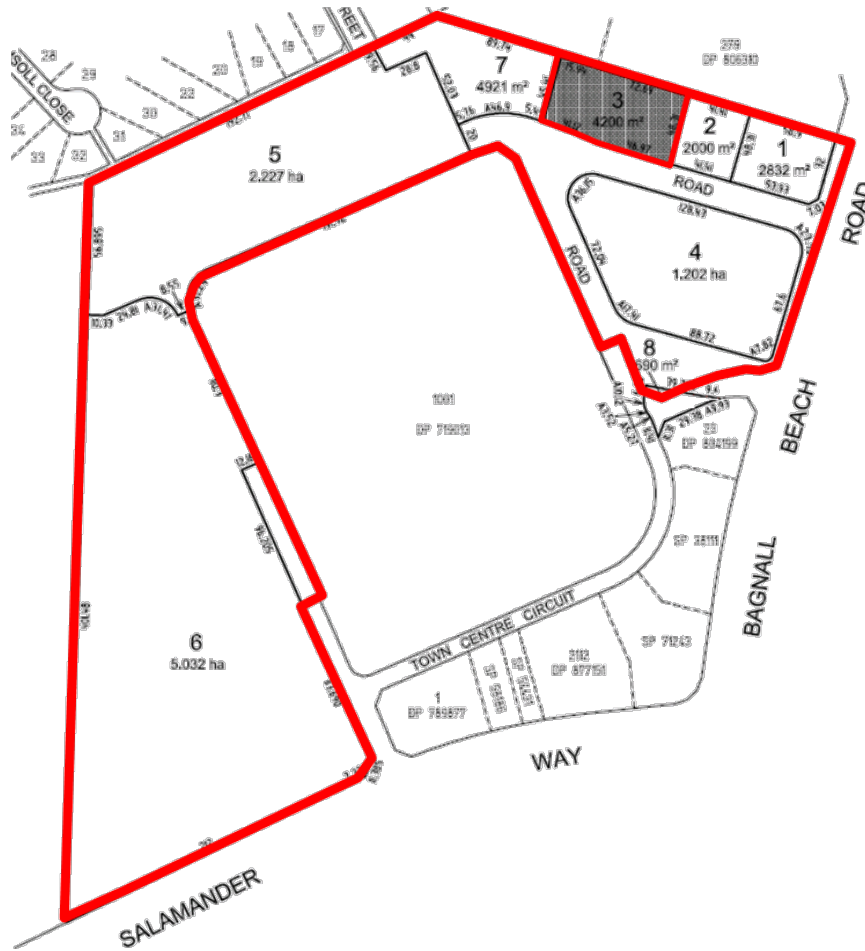


Figure 4: Subject Lot and Approved Subdivision Layout

Earthworks are currently underway around the perimeter of the site to provide roads and essential infrastructure, as well as footpaths, street trees and relevant road corridor furniture. The site is surrounded by a mix of commercial development.

The site is rectangular in shape and has a total area of 4,213m², with a frontage of approximately 88 metres to Central Avenue. The site is relatively flat, with a very minor slope from its north-western (rear) corner to its south-eastern (front) corner.

The site has been previously cleared and filled and is devoid of trees or vegetation. The site contains no buildings or improvements.

Site History

Various applications have been approved over the site that includes a child care centre (DA 7-1991-5187-1), multi-purpose community centre (DA 7-1992-60325-1), various temporary events

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and subdivisions. The subject area (Lot 401) has not previously been developed for any specific purpose.

As mentioned, a 7 Lot Torrens Title has recently been approved over the site. The proposal is located on proposed Lot 3.

Site Inspection

A site inspection was carried out on 9 February 2017. The subject site can be seen in the figures below:



Figure 5: Development site viewed from the intersection of a new road (Central Avenue) with Bagnall Beach Road – existing Salamander Bay Shopping Centre is visible in the background



Figure 6: View of the subject land from Bagnall Beach Road

ASSESSMENT SUMMARY	
Designated Development	The application is not designated development
Integrated Development	The application does not require additional approvals listed under s.91 of the EP&A Act
Concurrence	The application does not require the concurrence of another body

Internal Referrals

The proposed development was referred to the following internal specialist staff. The comments of the listed staff have been used to carry out the assessment against the S79C Matters for Consideration below.

Development Engineer – The engineers identified issues with the stormwater infiltration and water quality measures. The applicant provided additional information, including amended infiltration calculations. After a review of the additional information, the application was supported with conditions.

Environmental Health – The Environmental Health section identified that the plant area is located along the northern boundary in relative close proximity to the residential development in the north. It was concluded that the impacts would be limited by the installation of acoustic fencing to the west of the plant area. No objections were made and the application was supported with conditions.

Section 94 – Developer contributions are applicable to the development and will be levied at the Construction Certificate stage.

Building – The application was reviewed from a BCA perspective. The application was supported with appropriate conditions.

External Referrals

The proposed development was not referred to any external agencies for comment.

MATTERS FOR CONSIDERATION – SECTION 79C

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

Port Stephens Local Environmental Plan 2013 (LEP)

The site is located within the B3 Commercial Core and the objectives of the zone are:

- To provide a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community.
- To encourage appropriate employment opportunities in accessible locations.
- To maximise public transport patronage and encourage walking and cycling.
- To facilitate the growth of Raymond Terrace as a regional centre.

The proposal will provide a wider range of services, ongoing business activity and employment opportunities in an accessible location in the Salamander Bay area and therefore consistent with the zone objectives.

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The proposed development can be defined as a Medical Centre that means a *'premises that are used for the purpose of providing health services (including preventative care, diagnosis, medical or surgical treatment, counselling or alternative therapies) to out-patients only, where such services are principally provided by health care professionals. It may include the ancillary provision of other health services.'*

The proposal is consistent with the land use definition and is therefore permissible with consent.

Clause 4.3 – Height of Buildings

The proposed building height is approximately 6.7m in height, with the proposed pylon sizes extending to 8.87m. Both of these heights are below the maximum permissible building height of 15m specified on the Height of Buildings Map.

Clause 5.5 – Development within the Coastal Zone

The proposed development is located within the coastal zone and is considered to meet the principles of the NSW Coastal Policy. There are no anticipated adverse impacts on the local ecology or water quality as the proposal incorporates a stormwater quality control system and erosion and sediment control devices. The proposal is sufficiently separated from the land that there are no anticipated impacts on the access to the foreshore. The proposed development is in keeping with the character of the locality and is not anticipated to have any negative impacts on views to/or from the waterway.

Clause 7.1 – Acid Sulfate Soils

The subject land is mapped as containing potential Class 3 Acid Sulfate Soils (ASS). The proposed development is anticipated to entail excavations below 1m and an ASS Management Plan will be required.

Clause 7.2 – Earthworks

The application proposes minor earthworks on the site to achieve a level building platform using balanced cut and fill. The proposed earthworks are relatively minor in nature and are not anticipated to result in any negative impacts on the subject or adjoining land, or any public place. Any material to be imported / exported from the subject site will need to be sourced / disposed of responsibly. Conditions of consent have been provided to ensure this requirement is met.

Clause 7.6 – Essential Services

The subject site is serviced by reticulated water, electricity and sewer. In addition, the application has demonstrated that stormwater drainage resulting from roof and hard stand areas can be catered for in accordance with Council's requirements. The subject land also maintains direct access to Central Avenue, meeting the requirements of this Clause.

Clause 7.9 – Wetlands

The proposal is located on land identified as wetland. However, on registration of approved Lot 3, the site will no longer be located on or within close proximity to identified wetlands. The development will not have a negative impact on the flora and fauna of the wetland, including both native and migratory species, and the characteristics of the ground or surface water.

State Environmental Planning Policy No. 64 – Advertising and Signage

The application provides an assessment against the criteria set out under Schedule 1 of the SEPP. The assessment is considered satisfactory and the signage will not have a negative impact upon the amenity of the immediate area nor will it compromise traffic safety. The proposal is considered consistent with the aims, objectives and controls of the SEPP.

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Criteria	Compliance
1) Character of the area	
Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located?	Yes. The site is in an established commercial area and the proposed signage is therefore compatible with the character of the area.
Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?	The area does not have a consistent theme. However, the proposed signage would not be out of character with the development in the surrounding area that similar types of development in the locality. It is noted that recently approved development applications have similar scale signage.
2) Special areas	
Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas?	No sensitive areas located near the site.
3) Views and Vistas	
Does the proposal obscure or compromise important views?	No. Important views will not be impacted by the proposed signage.
Does the proposal dominate the skyline and reduce the quality of vistas?	No. The proposal and will not impact the quality of vistas in the locality.
Does the proposal respect the viewing rights of other advertisers?	Yes. No conflict with surrounding signage will result from proposed signage.
4) Streetscape, setting or landscape	
Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape?	Yes. The surrounding land has predominantly been developed for commercial purposes. The scale of signage is consistent with recently approved development applications.
Does the proposal contribute to the visual interest of the streetscape, setting or landscape?	No. The proposal and signage are relatively generic and is like other similar development in the area.
Does the proposal reduce clutter by rationalizing and simplifying existing advertising?	N/A. The site is not developed and no signage is currently present on the site.
Does the proposal screen unsightliness?	No. The site does not contain any unsightliness.
Does the proposal protrude above buildings, structures or tree canopies in the area or locality?	No. As stated previously, the building identification sign will not extend above the proposed ALDI building and existing surrounding development.
Does the proposal require ongoing vegetation management?	No. No vegetation removal is proposed under this application

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5) Site and Building	
Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located?	Yes. The proposed development is relatively generic and is similar to other development in the area.
Does the proposal respect important features of the site or building, or both?	N/A. The site is not currently developed.
Does the proposal show innovation and imagination in its relationship to the site or building, or both?	No. As stated previously, the proposed development is relatively generic.
6) Associated devices and logos with advertisements and advertising structures	
Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed?	No.
7) Illumination	
Would illumination result in unacceptable glare?	No. It not anticipated that the signage will significantly impact on the surrounding development.
Would illumination affect safety for pedestrians, vehicles or aircraft?	No. Signage does not incorporate illuminated components
Would illumination detract from the amenity of any residence or other form of accommodation?	No. The closest residential development to the proposed pylon sign is separated from the residential development by the proposed medical centre building.
Can the intensity of the illumination be adjusted, if necessary?	No. It is considered that the signage would not require adjustment as it is of relatively low intensity.
Is the illumination subject to a curfew?	No.
8) Safety	
Would the proposal reduce the safety for any public road?	No. The signage does not include any flashing lights or animation.
Would the proposal reduce the safety for pedestrians or bicyclists?	No.
Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?	No. Signage does not incorporate a illuminated component

State Environmental Planning Policy No.71 – Coastal Protection

The proposed development is located in the coastal zone and accordingly the matters for consideration under Clause 8 of this policy apply. The proposed development is not anticipated to have an adverse impact on the ecology, culture or amenity of the foreshore and coastal waters as the development is residential in nature and sufficiently separated from the waterway. In addition, given the separation of the development from the waterway, there are no anticipated impacts on

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access to, or views to or from the waterway and foreshore area. There are no anticipated conflicts between the proposed land use and the use of the waterway, rather the provision of additional residential opportunities is considered to support the further use of the foreshore. The proposed development has been considered against the matters for consideration under the SEPP and is acceptable in this regard.

s79C(1)(a)(ii) – Any draft EPI**Draft State Environmental Planning Policy (Coastal Management) 2016**

The draft State Environmental Planning Policy (Coastal Management) 2016 (Coastal SEPP) is on public exhibition until 23 December 2016.

The draft policy aims to balance social, economic and environmental interest by promoting a coordinated approach to coastal management, consistent with the objectives of Part 2 of the Coastal Management Act 2016.

The Act divides the coastal zone into four (4) management areas:

- Coastal Wetland and Littoral Forest areas;
- Coastal Vulnerable areas;
- Coastal Environment areas; and
- Coastal Use areas.

The subject land is located with the Coastal Use area and the objectives for this area are:

- (a) to protect and enhance the scenic, social and cultural values of the coast by ensuring that:
- (i) the type, bulk, scale and size of development is appropriate for the location and natural scenic quality of the coast, and
 - (ii) adverse impacts of development on cultural and built environment heritage are avoided or mitigated, and
 - (iii) urban design, including water sensitive urban design, is supported and incorporated into development activities, and
 - (iv) adequate public open space is provided, including for recreational activities and associated infrastructure, and
 - (v) the use of the surf zone is considered,
- (b) to accommodate both urbanised and natural stretches of coastline

The proposed development is consistent with the objectives of the Coastal Use areas, as identified in the draft policy, and can therefore be supported.

s79C(1)(a)(iii) – Any DCP**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 – Notification and Advertising

In accordance with the requirements of chapter A.12, the development application was notified and advertised for 14 days until 10 May 2017.

Chapter B2 – Natural Resources

The site does not contain any vegetation and it is considered that the proposal will not have a significant impact on the adjoining wetland.

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Chapter B3 – Environment Management

Bushfire – Although the area is identified as bushfire prone, no significant vegetation is located within 140m of the site. The potential threat is therefore minor and no specific bushfire upgrades will be required.

Acid Sulfate Soils – As discussed previously in the report, all works will be undertaken in accordance with the required ASS plan of management. As such, the application is considered to appropriately mitigate potential ASS disturb whilst constructing the proposed development.

Earthworks – As discussed previously in the report, all earthworks will be undertaken in accordance with the CEMP, while the installation of erosion and sedimentation controls will be required prior to the commencement of any works.

Chapter B.4 – Drainage and Water Quality

A stormwater management plan was submitted with the application and includes adequate quality and quantity controls as required by Councils Policy. The stormwater drainage plan has been assessed as being consistent with the Infrastructure Specification and conditions have been included in the consent requiring the provision of detailed engineering plans, prior to the issue of a Construction Certificate.

Chapter B.6 – Essential Services

Reticulated water, electricity and sewer are available to the subject site. In addition, an acceptable stormwater management plan has been submitted and the land achieves direct access to a public road.

Chapter B.8 – Signage

The proposal is compliant with PSDCP2014 in that the signage proposed is complimentary to its surroundings. The majority of signage is integrated into the building facades and are not a type of signage which is generally not supported. The pylon business identification sign is consistent with existing signage in the area and clearly defines the entry and exit point.

The applicant provided a detailed SEPP64 assessment that found that the proposed signage complies with the objectives of the policy, as detailed above.

Chapter B.9 – Road Network & Parking

The most applicable definitions for the proposed development as listed in Figure BQ: On-site Parking Requirements are Medical Centres, Shops and Cafés.

The DCP requires the following ratios for the proposed development:

Land Use	Parking Ratio
Medical Centre	1 space / 25m ²
Shop (Pharmacy)	1 space / 20m ²
Cafe	1 space / 25m ²

The parking requirement for the proposed development (using the ratios above) is as follows:

Land Use	Floor Area	Requirement
General Practice	655m ²	26
Imaging	325m ²	13
After-hours GP	77m ²	3

ITEM 2 - ATTACHMENT 2 ASSESSMENT REPORT.

16-2017-234-1

Pharmacy	243m ²	12
Pathology	72m ²	3
Cafe	27m ²	1
Total		58

The application includes a car park to the east of the medical centre that includes 52 spaces.

It is considered that the after-hours GP service component can be removed from the calculation as it will function outside of normal business hours. This will bring the parking requirement down to 55 spaces. Additionally, the proposed uses will be used in conjunction with one another, further reducing required number of on-site car parking spaces to service the proposal.

It is considered that the minor variation can be supported as:

- the site is well serviced by public transport;
- cross use between the medical services; and
- a high level of amenity provided by the proposed development.

Traffic generation resulting from the proposed development was addressed in the Traffic Report prepared by Colston Budd Rogers & Kafe (dated December 2015). The assessment included the potential of medical centre on the site and found that the road network would be able to cater for the additional expected traffic.

It is therefore considered that the local street network can cater for the additional traffic generated by the proposal.

Chapter D.8– Salamander Bay Shopping Centre – Nelson Bay

The application is located within the Salamander Bay Shopping Centre and, as a result, Chapter D.8 applies to the site. The DCP provisions applicable to the precinct are as follows:

Requirements		Comment
D7.1 Identity Hub	To create a sense of identity for a unified community and commercial precinct	The proposed development will provide support and services to the community.
D7.2 Integration	To ensure future development is sympathetically integrated with the existing surrounds and appropriately activates the precinct	This development will be similar to the surrounding development and will further activate the precinct.
D7.3 Connectivity	To ensure an integrated pedestrian and vehicular network promotes improved connectivity between developments within the precinct, and reaffirms the precinct as a hub	The proposal will not limit access to the precinct. All road works and footpaths will be provided as part of the approved subdivision works.
D7.4 Access Points	To ensure appropriate intersections are considered to accommodate for the expansion of the precinct	The intersections will form part of the road works associated with the subdivision of the land.
D7.5 Friendly	To ensure future development respects neighbours and users of the precinct	The development is considered to be low impact and respects neighbours and precinct users.
D7.6 Environment	To ensure future development protects the ecological systems within and adjacent to the precinct	The sites location does not impact on any ecological systems as the site is cleared of significant vegetation.

ITEM 2 - ATTACHMENT 2 ASSESSMENT REPORT.

16-2017-234-1

D7.7 Safety	To ensure future development is designed with the safety of neighbours and users in mind	The development provides additional activity in the area that will limit anti-social behaviour.
D7.8 Community	To ensure future development supports and is consistent with community activities	The medical centre will support community activities and add to the range of services available in the area.
D7.9 Aesthetics	To ensure diverse aesthetic forms are appropriately developed with the human scale in mind and integrated with in a holistic aesthetic framework for the hub	By employing a modern design using high quality materials the proposed development will continue the precincts aesthetic.
D7.10 Economic Development	To ensure future development offers economic advantages to the community in the immediate and long term	The proposed development will add to the economy activity in the area.

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

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

s79C(1)(a)(iv) – The regulations

There are no specific regulations apply to the proposed development.

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

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

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

Social and Economic Impacts

The proposal will result in positive social and economic impacts. The local economy will benefit from the short-term construction activity and the availability of a wider range of services. The proposal will increase the economic activity and viability in the existing commercial precinct. The proposal will increase medical services and facilities for the local community.

Impacts on the Built Environment

The proposed development will have no adverse impacts on the built environment within its locality. The proposed building is similar in bulk and scale to existing developments in the locality, ensuring that the development is in-keeping with existing buildings in the area. The building is well sited and designed with respect to the topography of the land and character of the locality.

The application will design and implement public art within the development site contributing to the identity and character of the proposal.

Impacts on the Natural Environment

The proposed development is not anticipated to have an impact on the surrounding natural environment. Landscaping will be required to be completed prior to the issue of the occupation certificate which will increase the environmental values of the site.

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

The proposal is permissible in the zone and is considered in keeping with the zone provisions.

The subject site is located within a commercial area and the design is in keeping with the surrounding commercial development in the locality.

The development site is appropriately setback from the surrounding residential properties and is not anticipated to have negative impacts on the amenity of the surrounding development.

s79C(1)(d) – Any submissions

No submissions have been received in relation to the proposed development.

s79C(1)(e) – The public interest

Following the detailed assessment of the application, it is considered that the proposal is in the public interest. The development is consistent with Council's Planning controls and is suitable in the locality. The proposal is not considered to have a detrimental cumulative impact on the community or the surrounding locality. The proposed development is considered to be in the public interest.



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).

Development consent is granted to development application 16-2017-234-1 subject to the conditions in Schedule 1.

Notice is hereby made under Section 81 of the Environmental Planning and Assessment Act 1979 (the Act) of a Development Consent issued under Section 80 of the Act, for the development described below. The consent should be read in conjunction with the conditions contained in Schedule 1 and the notes contained in Schedule 2.

Determination Outcome: Approval, subject to conditions

APPLICATION DETAILS

Application No: 16-2017-234-1

Property Address: LOT: 284 DP: 806310
155 Salamander Way SALAMANDER BAY

Description of Development: **Proposed Medical Centre, Café, Signage, Associated Car Park and Landscaping (on Proposed Lot 3)**

Date of determination: [Click here to enter a date.](#)

Date from which the consent operates: [Click here to enter an operational date.](#)

Date on which the consent shall lapse: Enter date of approval plus 5 yrs and 1 day. (unless physical commencement has occurred)

MR R J LOURENS
Senior Development Planner



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:

Plan/Doc. Title	Plan Ref. No	Sheet.	Date	Drawn By
Proposed Medical Centre (2 Sheets)	A65	DA03 & DA05	April 2017	ARCHADIA
Proposed Medical Centre (2 Sheets)	A65	DA04 & DA06	June 2017	ARCHADIA
Salamander Medical Centre (2 Sheets)	1395	LP-001 & LP-002	06/06/2017	Moir Landscape Architecture
Medical Centre (4 Sheets)	5.5097	C1 – C4	June 2017	Michael Fitzgerald Consulting Engineers

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

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



CONDITIONS TO BE SATISFIED PRIOR TO DEMOLITION, EXCAVATION OR CONSTRUCTION

3. **Prior to the commencement of works**, a waste containment facility is to be established on site. The facility is to be regularly emptied, and maintained for the duration of works. No rubbish shall be stockpiled in a manner which facilitates the rubbish to be blown or washed off site. The site shall be cleared of all building refuse and spoil immediately upon completion of the development.
4. **Prior to the commencement of works**, the property shall be protected against soil erosion, such that sediment is not carried from the construction site by the action of stormwater, wind or "vehicle tracking". Protection measures may include erosion and sedimentation controls as required. All protection measures are to be installed to the satisfaction of Council prior to the commencement of works, and regularly maintained for the duration of works and until the site is stabilised by vegetation or the like.

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

5. A monetary contribution is to be paid to Council, pursuant to section 80A(1) of the Environmental Planning and Assessment Act 1979 and the Port Stephens Section 94A Development Contributions Plan, related to the Capital Investment Value (CIV) of the development as determined in accordance with clause 25j of the *Environmental Planning and Assessment Regulation 2000* and outlined in the table below.

Capital Investment Value	Levy Rate (% of CIV)
Up to and including \$100,000	Nil
More than \$100,000 and up to and including \$200,000	0.5%
More than \$200,000	1%

The payment of the S94A contribution is to be accompanied by a Cost Summary Report Form (attached) setting out an estimate of the CIV in accordance with Schedule 1 of the Port Stephens Section 94A Development Contributions Plan, must be approved by Council prior to issue of the Construction Certificate. Where the estimated cost of carrying out the whole of the development is more than \$1,000,000, the Cost Summary Report Form must be completed by a Quantity Surveyor who is a registered Associate member or above, of the Australian Institute of Quantity Surveyors. This condition cannot be taken to be satisfied until a payment has been made in accordance with the CIV stated on a cost summary report submitted to Council in accordance with this condition.

Payment of the above amount shall apply to Development Applications as follows:

- **Building work only - prior to issue of the Construction Certificate.**



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).

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

6. **Prior to issue of the Construction Certificate**, a suitable geotechnical report and subsequent Acid Sulfate Soils Management Plan shall be prepared for any proposed footing / excavation works are more than 1 metre below the natural ground surface or works by which the watertable is likely to be lowered more than 1 metre below the natural ground surface are proposed.
7. **Prior to issue of the Construction Certificate**, a Compliance Certificate under Section 50 of the Hunter Water Act 1991, for this development, shall be submitted to the Certifying Authority.
8. **Prior to issue of any Construction Certificate**, a detailed stormwater drainage plan is to be submitted to the certifying authority for a system capable of catering for a range of rainfall scenarios up to and including the 1% AEP Rainfall Event. The detailed plans are to be in accordance with Councils Infrastructure Specification and include the following information:
 - a) Plans for all stormwater drainage works on public land, approved by Council under section 68 of the Local Government Act, 1993 and consistent with this condition;
 - b) On-Site Stormwater Detention (OSD) via on site infiltration
 - c) Stormwater pit and pipe network directed to OSD;
 - d) An emergency overland flow path for major storm events, that is directed to the public drainage system;
 - e) Conveyance where necessary, of stormwater through the site from upstream catchments, (including roads and adjoining properties);
 - f) Detailed pavement finished surface levels, to ensure stormwater runoff catchment and its direction into the detention system;
 - g) Water quality control devices that comply with the requirements of the Port Stephens Development Control Plan 2014.
9. **Prior to the issue of a Construction Certificate**, detailed engineering plans for subdivision and/or civil works in accordance with the approved plans are to be submitted to the accredited certifier. The detailed plans are to be in accordance with Councils Infrastructure Specification and include the following information:
 - a) Plans for all civil works within a road reserve, including driveways, approved by the Roads Authority under the Roads Act and consistent with this condition;
 - b) Any associated works to ensure satisfactory transitions to existing infrastructure;



Notice of Determination

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

The above works are to be completed prior to the issue of a Final Occupation Certificate or Subdivision Certificate, whichever occurs first.

10. **Prior to the issue of the Construction Certificate**, a Construction Environmental Management Plan (CEMP) is to be submitted to the Certifying Authority. The required CEMP must outline the sequence and construction methodology and specify mitigating measures to ensure all works are carried out with minimal environmental impact in relation to project staging, waste management, traffic management and environmental management. The CEMP must include but is not limited to:
 - a) Soil and Water Management Plan (including erosion and sediment control measures);
 - b) Traffic Management ;
 - c) Noise and Dust Management;
 - d) Acid sulfate Soils Management Plan; and
 - e) Waste Management.
11. **The Construction Certificate cannot be issued until** full details of permeable paving methods are provided to the Certifying Authority for assessment and determined to be satisfactory by the Certifying Authority.
12. **Prior to the issue of a Construction Certificate**, detailed structural engineering plans shall be submitted to the PCA.

The details shall be in accordance with this consent, the BCA and Council's Design and Construction Specifications and include the following:

 - a. Structural details for any concrete or masonry drainage structures designed to withstand loadings from the design vehicle;
 - b. Structural details for any boundary retaining walls;
13. **Prior to the issue of the Construction Certificate**, a detailed Landscape Plan is to be submitted to and be deemed satisfactory by Council. The plan must include specific details on the following:
 - a) species selection,
 - b) landscape vaults to ensure conflict with the stormwater infrastructure does not occur
 - c) public art to be incorporated into the design along the sandstone retaining wall along Terminus Parade

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

14. All building work must be carried out in accordance with the provisions of the Building Code of Australia.



Notice of Determination

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

15. Where necessary, the excavation and treatment of all potential and actual acid sulfate soils shall be carried out in strict accordance with the provisions of an approved Acid Sulfate Soils Management Plan prepared for the site.
16. Any excavated material to be removed from the site is to be assessed, classified, transported and disposed of in accordance with the Department of Environment and Climate Change's (DECC) 'Waste Classification Guidelines Part 1: Classifying Waste' and *Protection of the Environment Operations Act 1997* and the *Protection of the Environment (Waste) Regulation 2005*.
17. Any fill material imported into the site is to be Virgin Excavated Natural Material or material subject to a Resource Recovery Exemption that is permitted to be used as a fill material, in accordance with the provisions of the *Protection of the Environment Operations Act 1997* and the *Protection of the Environment (Waste) Regulation 2005*.
18. Any fill material subject to a Resource Recovery Exemption received at the site must be accompanied by documentation demonstrating that material's compliance with the conditions of the exemption, and this documentation must be provided to Council officers or the Principal Certifying Authority on request.
19. Immediately following the installation of any roof, collected stormwater runoff from the structure must be connected to a stormwater drainage easement/system.
20. The proposed permeable paving system, shall be installed, as per the manufacturer's specifications, across all approved hardstand areas in accordance with the approved plans. The permeable paving system shall be constructed and maintained so as to ensure permeability, allowing stormwater to infiltrate across its service, for the life of the development.
21. Dust suppression is to be actively undertaken during works, through the use of wet-down water tankers or an alternative method agreed by Council.
22. Construction work that is likely to cause annoyance due to noise is to be restricted to the following times:
 - Monday to Saturday, 7am to 6pm;
 - Saturday, 8am to 1pm;
 - no construction work to take place on Sunday or Public Holidays.

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

23. Where no sanitary facilities currently exist onsite for construction workers toilet accommodation for all tradespersons shall be provided from the time of commencement until the building is complete. The toilet facilities shall be located so as to have minimal impact of adjoining properties and shall not be placed on the road reserve, without separate approval from Council.



24. It is the responsibility of the applicant to erect a PCA sign (where Council is the PCA, the sign is available from Council's Administration Building at Raymond Terrace or the Tomaree Library at Salamander Bay free of charge). The applicant is to ensure the PCA sign remains in position for the duration of works.
25. The construction and fit-out of the food premises (Café) must be carried out in accordance with the following:
 - a) The Food Act 2003;
 - b) Food Regulation 2015; and
 - c) Australian Standard 4674-2004 -Construction and Fit-out of Food Premises.

CONDITIONS TO BE SATISFIED PRIOR TO ISSUE OF AN OCCUPATION CERTIFICATE

26. **Prior to the issue of the Occupation Certificate**, the Subdivision Certificate for DA Consent No. 16-2016-814-1 must be issued by council and documentary evidence submitted to Principle Certifying Authority.
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 Principal Certifying Authority and the Commissioner of New South Wales Fire Brigades, **prior to the release of the Occupation Certificate**. A copy of fire safety certificate needs to be forwarded to Council. If Council is not nominated as the Principal Certifying Authority. A further copy of the certificate must also be prominently displayed in the building.
28. **Prior to the issue of a Final Occupation Certificate**, the works approved under the Roads Act approval must be completed and a compliance certificate must be obtained from the Roads Authority.
29. **Prior to issue of any Occupation Certificate**, a minimum of 52 car parking spaces (including four (4) disabled car parking spaces) and four (4) bicycle storage spaces are to be provided in accordance with AS2890 Parts 1, 2 and 6 (as current at the time of construction).
30. **Prior to the issue of a Final Occupation**, an Operation and Maintenance Plan for the stormwater system shall be prepared by a suitably qualified engineer, detailing a regular maintenance programme for pollution control devices, covering inspection, cleaning and waste disposal, a copy of which shall be supplied to the owner/operator.
31. The applicant shall restore, replace or reconstruct any damaged sections of kerb and guttering, road pavement, stormwater, or any other public infrastructure located within the Road Reserve which results from construction activities, as determined by Council's Development Engineers or Civil Assets Engineers. The applicant shall bear all associated costs with restoring the public infrastructure to satisfaction of the Council.



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).

An Occupancy Certificate shall not be issued until all necessary remediation and repair works have been completed to the satisfaction of Council.

32. **Prior to the issue of a Final Occupation for the Cafe**, a satisfactory final inspection of the food premises fit-out is to be undertaken by Council.
33. Written certification from an appropriately qualified acoustic consultant is to be submitted to the Principal Certifying Authority **prior to issue of an Occupation Certificate** confirming that noise from all mechanical plant and equipment achieves the required acoustic attenuation to comply with appropriate guidelines, the conditions of consent and the requirements of the *Protection of the Environment Operations Act 1997*.

CONDITIONS TO BE SATISFIED AT ALL TIMES

34. The hours of operation are restricted to the following times:

Land Use	Hours
General Medical Practice	Monday – Friday: 8am – 6pm Saturday: 8am – 12pm Sunday: Closed
Imaging	Monday – Friday: 9am – 5pm Saturday & Sunday: Closed
After-hours GP	Monday – Sunday: 24 hours a day
Pharmacy	Monday – Friday: 8:30am – 10pm Saturday: 8:30am – 8pm Sunday: 9am – 7pm
Coffee Shop	Monday – Friday: 8am – 6pm Saturday: 8am – 12pm Sunday: Closed
Pathology	Monday – Friday: 6am – 6pm Saturday & Sunday: Closed

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

35. 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.



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).

36. Motor vehicles are only permitted to enter and leave the site in a forward direction. On site manoeuvring areas are to be kept clear for this purpose.
37. At all times, all signage visible from the road reserve must not incorporate any of the following features:
 - a) Flashing lights;
 - b) Electronically changeable messages, unless in accordance with the Department of Planning's Transport Corridor Outdoor Advertising and Signage Guidelines (July 2007);
 - c) Animated displays, moving parts or simulated movements;
 - d) Complex displays that hold a driver's attention beyond 'glance appreciation';
 - e) Displays resembling traffic signs or signals, or giving instruction to traffic by using words such as 'halt' or 'stop'; and
 - f) A method of illumination that distracts or dazzles.
38. Landscaping must be maintained in accordance with the landscape design, in perpetuity.
39. The stormwater system, including any water quality or quantity components, shall be maintained in perpetuity for the life of the development.

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

- 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.
- This is not an approval to commence work. Building works cannot commence until a construction certificate is issued by Council or an accredited certifier.



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).

- 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.
- Disability Discrimination Act (DDA) are to make it unlawful to discriminate against persons with a disability in connection with employment, the provision of goods, facilities and services or the management of premises. The legal requirements of the Act affect the majority of existing commercial and public building occupiers. The Commonwealth Disability Discrimination Act makes it an offence to discriminate against people on the grounds of disability, in the provision of access to premises.

ITEM NO. 3

**FILE NO: 17/146376
RM8 REF NO: 16-2015-852-3**

SECTION 96 APPLICATION TO MODIFY DETERMINATION NO. 16-2015-852-1 FOR A COMMUNITY FACILITY, RECREATIONAL FACILITY (OUTDOOR), ASSOCIATED EARTHWORKS, SIGNAGE AND CAR PARKING AT 36 AND 36A FERODALE ROAD, MEDOWIE.

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

RECOMMENDATION IS THAT COUNCIL:

- 1) Approve the Section 96 application for Development Application 16-2015-852-3 subject to the conditions contained in **(ATTACHMENT 3)**.
-

**ORDINARY COUNCIL MEETING - 1 AUGUST 2017
MOTION**

189	<p>Mayor Bruce MacKenzie Councillor Chris Doohan</p> <p>It was resolved that Council approve the Section 96 application for Development Application 16-2015-852-3 subject to the conditions contained in (ATTACHMENT 3).</p>
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In accordance with Section 375 (A) of the *Local Government Act 1993*, a division is required for this item.

Those for the Motion: Mayor Bruce MacKenzie, Crs Chris Doohan, Sally Dover, Ken Jordan, John Nell and Steve Tucker.

Those against the Motion: Crs Geoff Dingle and Peter Kafer.

BACKGROUND

The purpose of this report is to present to Council for determination a Section 96 (S.96) application for modifications to an approved community recreation facility on land located at 36 and 36A Ferodale Road, Medowie, identified as Lot 22 1021843 and Lot 1 DP 1003417 ('the subject site').

The original application was determined by the elected Council as the development is located on land of which Council is the owner. The S.96 application to modify the development will therefore also require determination by the elected Council.

DA No. 16-2016-138-1 (Original Consent)

The original approval was assessed under *Port Stephens Local Environment Plan 2013* and Development Control Plan (DCP) 2014 and approved by the elected Council.

The original development included the following:

- Community Facility;
- Recreation Facility (Outdoor) and associated Earthworks;
- Signage; and
- Car Parking

DA No. 16-2016-163-3

The S96 modification to the existing approval is to amend various components of the development and change a number of the consent conditions.

The application proposes to modify the following aspects of the approved development:

- Relocation of the bowling greens away from the Ferodale Road frontage;
- Redesign of the access and parking areas, including the removal of the southern access road;
- Redesign of the stormwater infrastructure to include a bio-retention system instead of the approved detention pond;
- Amended landscape design to reflect the layout changes;
- Inclusion of an acoustic barrier to the south west of the community facility, in accordance with Condition 16 of the original consent;
- Relocation of the playground equipment to the south west of the community facility;
- Addition of an entry feature at the Ferodale Road; and
- Administrative amendment to the operating hours.

Assessment Outcomes

The proposed amendments to the original consent meet the provisions of S. 96(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) as follows:

- S96(1A)(a) – Minimal Environmental Impact.
Although numerous, the proposed amendments are considered minor in nature and does not involve significant changes to the approved development as a whole. As a result, there are no significant environmental impacts that will result from the proposed modifications.
- S96(1A)(b) – Substantially The Same Development.

MINUTES ORDINARY COUNCIL - 1 AUGUST 2017

The development as modified is substantially the same as the approved development for the following reasons:

- a) There are no significant changes to the components included in the original community facility approval;
- b) The additional signage will not impact on the built form or character of the area.

On this basis, the application is considered substantially the same.

The development application was assessed against relevant controls and objectives as specified under State Environmental Planning Policy No 55 (Remediation of Land), State Environmental Planning Policy No 64 (Advertising and Signage), PSLEP2013 and Port Stephens Development Control Plan 2014 (PSDCP2014). A detailed assessment of the proposal against the provisions of s.96 and s.79C *Environmental Planning and Assessment Act 1979* (EP&A Act) is provided at **(ATTACHMENT 2)**.

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2013-2017
Sustainable Development.	Provide Strategic Land Use Planning Services. Provide Development Assessment and Building Certification Services.

FINANCIAL/RESOURCE IMPLICATIONS

There are no anticipated financial or resource implications as a result of the proposed development.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes		
Reserve Funds	No		
Section 94	No		
External Grants	No		
Other	No		

LEGAL, POLICY AND RISK IMPLICATIONS

The development application is consistent with Section 96 and Section 79C of the *Environmental Planning and Assessment Act 1979*.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that a third party or the applicant may appeal the determination.	Low	Approve the application as recommended. The assessment carried out details the merits of the proposed development.	Yes
There is a risk that if the application is refused the ability to provide functional community facilities in Medowie will not be realised.	Low	Approve the application as recommended.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The proposed amendments will result in a functional development that is anticipated to have positive social and economic impacts through the creation of viable employment and economic activity through both the construction of the development and provision of a community facility to local residents. The development is still considered consistent with surrounding developments and the objectives of RE2 zoned land.

The amendments are not anticipated to have significant impact to the natural environment. The subject site is cleared of significant vegetation and the landscaping required will increase the environmental value of the site. Additionally, the development includes appropriate stormwater management systems ensuring the surrounding water quality and quantity leaving the subject site is in accordance with PSC DCP2014.

CONSULTATION

Consultation with key stakeholders has been undertaken, including through the public notification and advertising process.

Internal

The application was referred to Councils Development Engineer and Vegetation Management Officer. Each internal staff member assessed the relevant portion of the original application.

No significant objections were raised by any internal staff to the amended design and relevant conditions have been incorporated into the Schedule of Conditions provided at **(ATTACHMENT 3)**.

External

The application was referred to the Hunter Water Corporation as the subject site is located within the Hunter Water Drinking Water Catchment and stormwater will be discharged into Campvale Drain.

The referral comments stated that the revised stormwater treatment is likely to meet required water quality standards. However, the following additions to Condition 34 were requested to inform the detailed design:

- The proposed plant species to be used in the bio-swales should be appropriate for stormwater treatment at the site, and should be able to withstand extended periods of dry weather; and
- Underdrains, within the bio-swales, should be designed to have sufficient capacity to transport water to prevent ponding on the surface for extended periods of time and excessive overtopping. These should also not limit the filtering capacity of the bio-filter.

Public Consultation

In accordance with the requirements of PSDCP2014, the development application was notified and advertised for a period of 14 days until 5 July 2017.

No submissions were received in relation to the proposed development.

OPTIONS

- 1) Accept the recommendations.
- 2) Amend the recommendations.
- 3) Reject the recommendations.

ATTACHMENTS

- 1) Locality Plan.
- 2) Assessment Report.

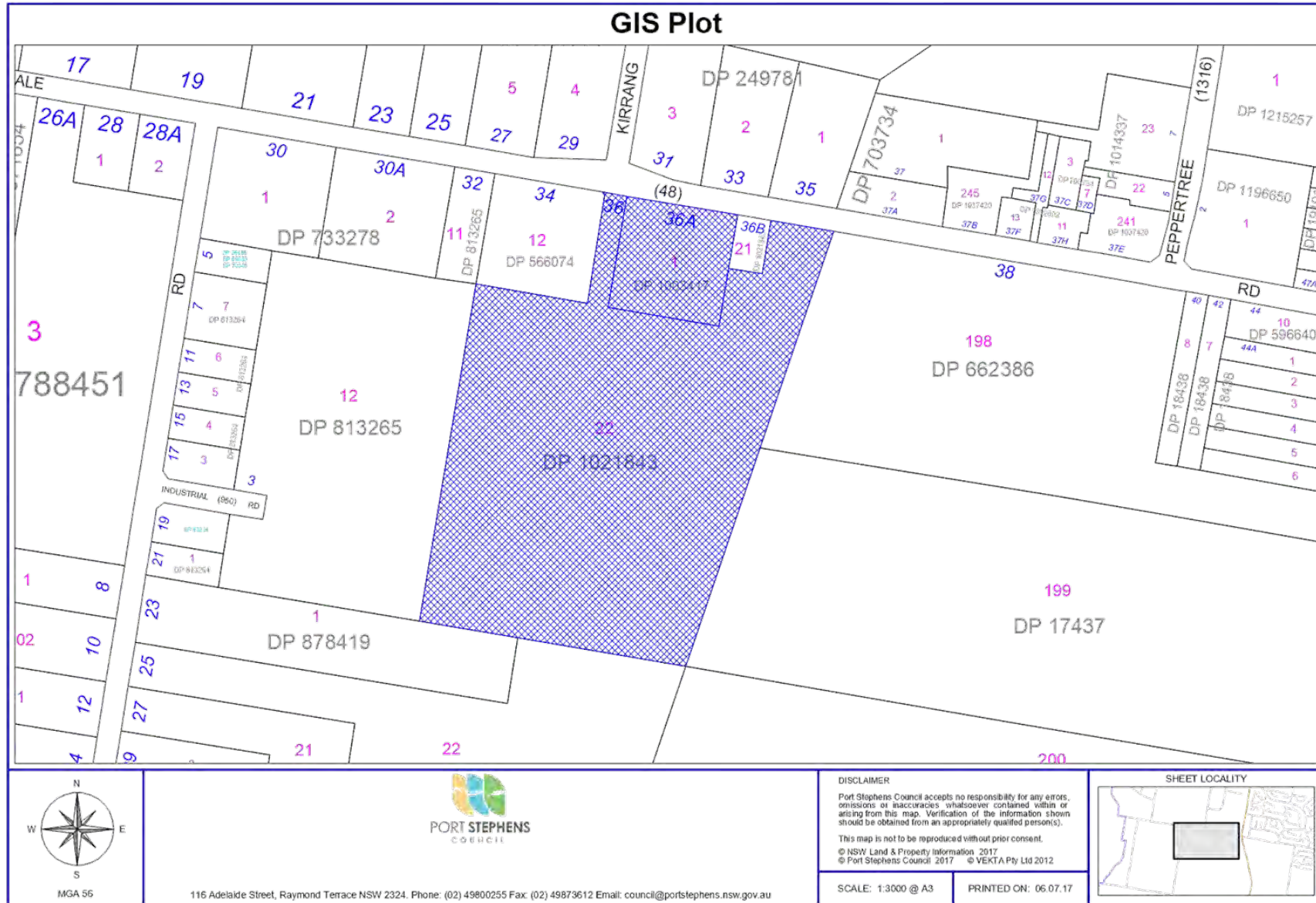
COUNCILLORS ROOM

- 1) DA Plans.

TABLED DOCUMENTS

Nil.

ITEM 3 - ATTACHMENT 1 LOCALITY PLAN.



MGA 56



116 Adelaide Street, Raymond Terrace NSW 2324. Phone: (02) 4980255 Fax: (02) 49873612 Email: council@portstephens.nsw.gov.au

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PORT STEPHENS COUNCIL S96(1A) MODIFICATION APPLICATION ASSESSMENT REPORT

APPLICATION DETAILS

Modification Application Number	16-2015-852-3
Development Description	Community Facility, Recreation Facility (Outdoor) and associated Earthworks, Signage and Car Parking
Modification Description	S.96 Amendment (1A) – Modifications to Bowling Greens, Car Parking Area, Playground Facilities, Stormwater System, Landscaping, Earthworks and Acoustic Barrier, and the Removal of the Southern Access Road
Applicant	PORT STEPHENS COUNCIL
Date of Lodgement	14/06/2017

Modification Proposal

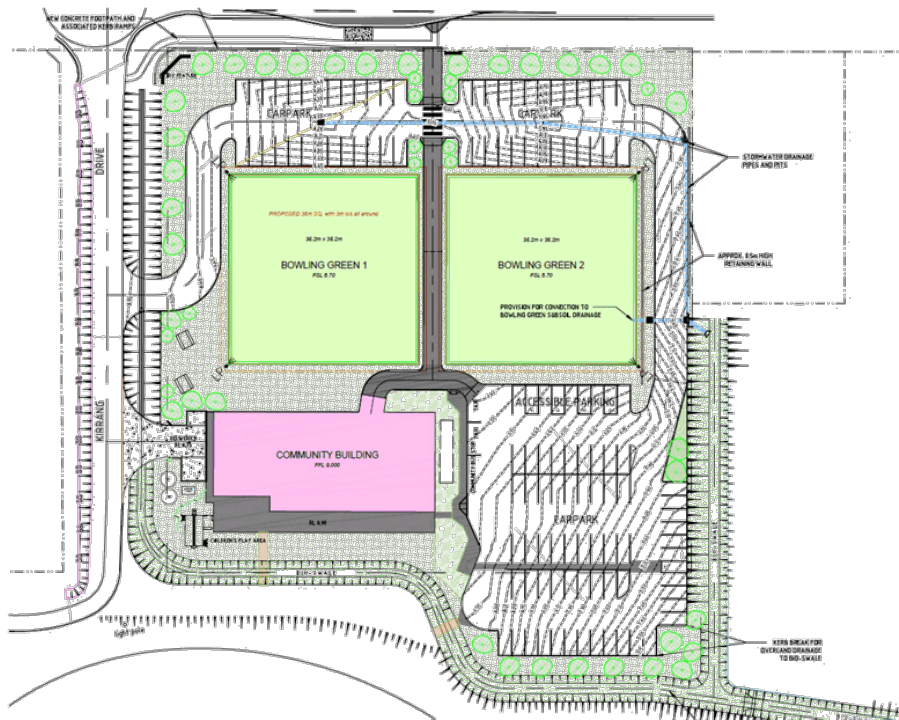


Figure 1: Proposed amendments to layout

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The application proposes to modify the following aspects of the approved development:

- Relocation of the bowling greens

The application proposes the relocation of the bowling greens approximately 18m to the south. This will locate the greens closer to the community facility and provide for easy pedestrian movement between these components. The approved changes rooms will be removed due to the close proximity of the relocated bowling greens to the community facility.
- Redesign of the access and parking areas

The car parking areas will be redesigned to take into account the relocated bowling greens and the removal of the southern access road.

The southern access road has been removed to limit the access points to the facility. As a result, all traffic will be directed towards the northern access, which will limit conflicts with the access to the sporting ovals further to the south.
- Redesign of the stormwater infrastructure

The stormwater infrastructure has been redesigned to incorporate a bio-retention swale system into the proposal. It is considered that this will function more efficiently than the original detention system that required a large basin in close proximity to the Campvale drain to the east.
- Amended landscape design

The landscape design has been amended to take into account the various changes to the layout of the development.
- Inclusion of an acoustic barrier

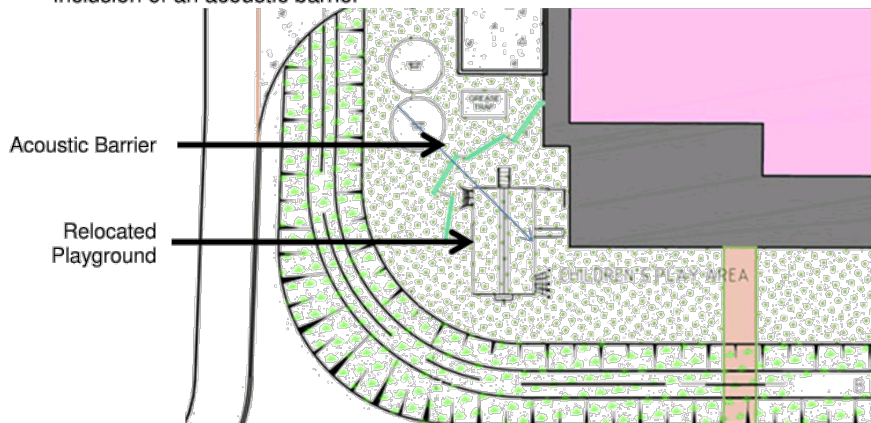


Figure 2: Relocated playground and acoustic barrier

The original application required the construction of an acoustic barrier to limit acoustic impacts on the adjoining residential development. The currently application proposes an alternative solution that incorporates an acoustic structure adjacent to the southern verandah. The application includes a request to remove Condition 16 that requires the provision of a detailed design of the acoustic measures. It is argued that the proposal will provide sufficient detail to not require the condition.

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- Relocation of the playground equipment
The playground equipment has been relocated from the south east of the facility to an area adjacent to the verandah. The application states that the relocated playground will be in closer proximity to the facility and thereby increase safety for children.
- Signage amendments
The proposed amendments include the relocation of the approved signage, which includes a data sign board, from the western edge of the frontage to the centre of the frontage.

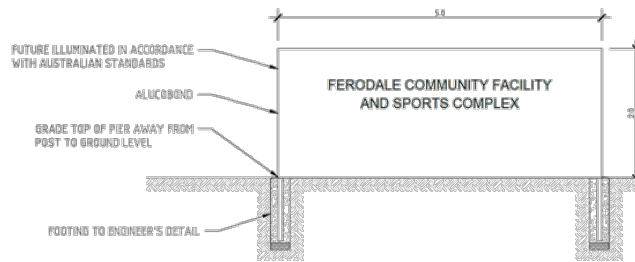


Figure 2: Proposed entry feature

The proposed changes to the signage also include the introduction of an entry feature at the access from Ferodale Road. The signage will be 5m wide by 2m high and will include basic signage identifying the facility.

- Operating Hours
On review of the consent it was found that the operation hours were limited to 12pm (instead of 12am) for Fridays, Saturdays and Sunday before long weekends. It was requested that Condition 37 be amended to reflect this issues.

The conditions of consent proposed to be modified have been discussed in further detail below.

PROPERTY DETAILS	
Property Address	36 Ferodale Road MEDOWIE, 36A Ferodale Road MEDOWIE
Lot and DP	LOT: 22 DP: 1021843, LOT: 1 DP: 1003417
Zoning	RE1 PUBLIC RECREATION
Site Constraints That Affect The Modification	Hunter Water Corporation – Special Areas Flood Prone Land – High Hazard Floodway, High Hazard Flood Storage, Low Hazard Flood Storage and Low Hazard Flood Fringe Drinking Water Catchment

ASSESSMENT SUMMARY

Designated Development	The application is not designated development
Integrated Development	The application does not require additional approvals listed under s.91 of the EP&A Act
Concurrence	The application does not require the concurrence of another body

Internal Referrals

The proposed modification was referred to the following internal specialist staff. The comments of the listed staff have been used to carry out the assessment against the S79C Matters for Consideration below.

Development Engineer – The application was reviewed and supported without any changes to the existing conditions.

Vegetation management – The application was reviewed and it was found that the landscape plans did not include sufficient information to assess. It was requested that an additional condition of consent be included to require the provision of a detailed landscape plan prior to the release of the Construction Certificate. The issues to be specifically addressed are the shading of the new car parking areas and the identification of plant species proposed within the design.

External Referrals

The proposed modification was referred to the following external agencies in accordance with clause 120 of the regulations:

Hunter Water – The application was referred to the Hunter Water as the subject site is located within the Hunter Water Drinking Water Catchment and stormwater will be discharged into the Campvale Drain.

The referral comments stated that the revised stormwater treatment is likely to meet NorBE standards. However, the following additions to Condition 34 were requested to inform the detailed design:

- The proposed plant species to be used in the bio-swales should be appropriate for stormwater treatment at the site, and should be able to withstand extended periods of dry weather; and
- Underdrains, within the bio-swales, should be designed to have sufficient capacity to transport water to prevent ponding on the surface for extended periods of time and excessive overtopping. These should also not limit the filtering capacity of the bio-filter.

MODIFICATION INVOLVING MINIMAL ENVIRONMENTAL IMPACT – S96(1A)

S96(1A)(a) – Minimal Environmental Impact

Although numerous, the proposed amendments are considered minor in nature and does not involve significant changes to the approved development as a whole. There are no significant environmental impacts that will result from the proposed modifications.

S96(1A)(b) – Substantially The Same Development

The development as modified is substantially the same as the approved development for the following reasons:

ITEM 3 - ATTACHMENT 2 ASSESSMENT REPORT.

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- (a) There are no significant changes to the components included in the original community facility approval;
- (b) The additional signage will not impact on the built form or character of the area.

On this basis, the application is considered substantially the same.

S96(1A)(c) – Notification

The application has been notified and advertised for 14 days in accordance with the Development Control Plan.

S96(1A)(d) – Submissions

There were no submissions received relating to the proposed modification.

S96(3) – Relevant Matters under S79C

S79C(1)(a) – Planning Controls, Agreements and Management Plans

State Environmental Planning Policy No 55 (Remediation of Land)

It is considered that the works required under the original consent will not be altered by the proposed changes to the building layout and the proposal is therefore still compliant with the aims and requirements of SEPP55.

State Environmental Planning Policy No 64 (Advertising and Signage)

The objective of SEPP 64 is to ensure signage is generally compatible with the desired amenity and visual character of an area, provide effective communication and is of high quality. An assessment against the provisions of Clause 8 was undertaken in Schedule 1 of the report.

It was found that the signage is consistent with the scale of the development and the context of the broader site.

It should be noted that a contributing factor in supporting the application directly relates to the location and built form.

The sign would therefore have minimal additional impact in the landscape than the current approved building and it is therefore considered that the proposal complies with the provisions of Clause 8 of the Policy.

Port Stephens Local Environmental Plan 2013

Clause 2.3 Zone Objectives and Land Use Table

The site subject to this application is zoned RE2 – Private Recreation. The building associated with the subject modification was approved as a permissible land use within this zone.

The proposal will remain within the approved development footprint, established in the original consent and considered in all specialists' reports. The proposed changes have minimal environmental impact in regard to applying the LEP.

Clause 7.1 Acid Sulfate Soils

The subject site is nominated as Class 5 Acid Sulfate Soils and the works proposed under this modification are located approximately 350m from the closest Class 4 Acid Sulfate Soils. As no excavation below 5m AHD are proposed and it is unlikely to lower the surrounding water table below 1m AHD in adjoining soil classes, the proposal is considered low risk from an ASS perspective.

Clause 7.2 Earthworks

The proposal seeks to modify the approved finished levels of the development. The proposed fill changes reflect the changes to the overall development. The modifications to the previously approved fill levels are considered acceptable.

Clause 7.3 Flood Planning

The subject site is located within Council's Flood Planning Area. The proposal involves elevating the bowling greens from 8.65m AHD and 8.45m AHD to 8.7m AHD. The car parking areas will be graded towards the eastern boundary to drain stormwater to the new bio-retention swales. The development engineers assessed the potential impacts of the new levels and supported the application without changes to the original conditions. It is therefore considered that the proposal will not exacerbate issues relating to flooding.

Clause 7.6 Essential Services

The original assessment concluded that the site could be serviced by all necessary utilities.

The amended access to the site is considered appropriate as it will limit the number of access points to the site and reduce conflict with traffic accessing the sports ovals to the south.

Hunter Water reviewed the amended stormwater drainage design and recommended the introduction two (2) new items to Condition 13 to ensure water quality of water discharged into Campvale Drain.

Clause 7.8 Drinking Water Catchments

The subject site is located within the Grahamstown drinking water catchment. Water quality modelling associated with the amended stormwater management system design was submitted with the application. This modelling has been reviewed by both Council's Engineers and Hunter Water Corporation. As stated above, Council's Development Engineers supported the amendments unconditionally, while Hunter Water supported the proposal with the introductions of two (2) items to Condition 13.

Port Stephens Development Control Plan 2014

The proposal is generally compliant with Chapters B – General Controls, B.9 – Road Network & Parking and C.8 – Signage of the DCP.

The amended car parking areas will add five (5) spaces to the facility, which is seven (7) more than required by the DCP. The proposed alternations to the access to the development was assessed and supported by Council's Development engineers.

The proposed entry feature complies with Chapter C.8. An assessment of the signage has also been undertaken in accordance with the provisions of SEPP 64 and is considered appropriate in the locality.

Medowie Planning Strategy

The development is consistent with the Medowie Planning Strategy that identifies the site for community purposes.

S79C(1)(b) – Likely Impacts

Visual – The proposal involves the relocation of the bowling greens further to the south and will be replaced by car parking. It is considered that the proposed planting along the Ferodale Road frontage will limit the impacts on passing motorists and the development located to the north of Ferodale Road.

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Ecology – The proposed amendments does not alter the development footprint and the proposal is therefore consistent with the original approval.

Flooding – The flooding issues have been address in Clause 7.3 of the LEP above.

Stormwater – The proposed stormwater drainage design was assessed by both Hunter Water and Council's Development Engineers. The design is considered acceptable and Hunter Water requested two (2) additional items be added to Condition 13.

S79C(1)(c) – Site Suitability

It is considered that the minor changes will not impact significantly on the suitability of the site.

S79C(1)(d) – Submissions

The application was notified and advertised for 14 days. During this period no submissions were received.

S79C(1)(e) – Public Interest

No public interest issues arise as a consequence of the proposed modification, particularly given there will be no adverse impacts.

MODIFIED CONDITIONS

Condition 1A

Existing Condition

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

Plan/Doc. Title	Plan Ref. No.	Sheet.	Date	Drawn By
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.

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Amended Condition

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

Plan/Doc. Title	Plan Ref. No.	Sheet.	Date	Drawn By
Site Analysis Plan (As Amended)	PSC2015-02578	01 of 05	08/06/2017	Port Stephens Council
Landscape, Playground & Signage Plan (As Amended)	PSC2015-02578	02 of 05	13/06/2017	Port Stephens Council
Floor Plan (As Amended)	PSC2015-02578	03 of 05	08/06/2017	Port Stephens Council
Elevations	PSC2015-02578	04 of 05	08/06/2017	Port Stephens Council
Sections	PSC2015-02578	05 of 05	08/06/2017	Port Stephens Council
Stormwater Management and Levels Plan	PSC2015-02578	01 of 01	08/06/2017	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.

Condition 13

Existing Condition

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 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 Certifying Authority and Hunter Water Corporation for assessment and determined to be satisfactory.

Amended Condition

- 13A. 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 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 Certifying Authority and Hunter Water Corporation for assessment and determined to be satisfactory.

Note: Hunter Water requested that the applicant specifically address the following matters in the detailed Stormwater Management Plan:

- The proposed plant species to be used in the bio-swales should be appropriate for stormwater treatment at the site, and must be able to withstand extended periods of

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dry weather. It is suggested that provision of a submerged zone be considered by the applicant to help with sustaining bio-filter moisture during dry periods.

- Underdrains included in the bio-swales must have sufficient capacity to transport water to prevent ponding on the surface for extended periods of time and excessive overtopping, and these must not limit the filtering capacity of the bio-filter.

Condition 23.1

23.1. **Prior to the issue of the Construction Certificate**, a landscape plan will be submitted and be consistent with Port Stephens Council Landscape Technical Specification for commercial development.

Condition 36.1

36.1 **Prior to the issue of an Occupation Certificate**, the PCA is to certify that the 3.0m high pre-cast concrete panel acoustic wall, as detailed on the approved plans, has been constructed and is of a continuous solid design.

Condition 37A:

Existing Condition

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.

Amended Condition

- 37A. 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 12.00am
 - Sunday – 9.00am to 10.00pm (12.00am 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.

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Attachment A

State Environmental Planning Policy No. 64 Assessment – Clause 8 Assessment

Clause 8 of the Policy states that Council 'must not grant development consent to an application to display signage unless the consent authority is satisfied:

- (a) that the signage is consistent with the objectives of this Policy as set out in clause 3 (1) (a), and
- (b) that the signage the subject of the application satisfies the assessment criteria specified in Schedule 1.'

Clause 3(1)(a) Assessment:

- (i) is compatible with the desired amenity and visual character of an area, and
- (ii) provides effective communication in suitable locations, and
- (iii) is of high quality design and finish, and

Criteria	Compliance
The Policy aims to ensure that signage:	
(i) is compatible with the desired amenity and visual character of an area	It is considered that the proposed entry feature will not significantly impact on the amenity or visual character of the area.
(ii) provides effective communication in suitable locations	The proposal is aimed at identifying the entry to the community facility. It is therefore considered that the signage provides effective communication without impacting on the surrounding development.
(iii) is of high quality design and finish	The signage is considered of high quality.

Schedule 1 Assessment:

Criteria	Compliance
1) Character of the area	
Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located?	Yes. The site is zoned for recreational purposes and the proposed signage is therefore compatible with the desired character of the site. The site is also identified for this purpose in the Medowie Planning Strategy as a community facility and the associated signage is therefore compatible with the future character of the area.
Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?	The signage on the site does not have a consistent theme. No wider theme has been identified.
2) Special areas	
Does the proposal detract from the amenity or	No sensitive areas located in close proximity to

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ITEM 3 - ATTACHMENT 2 ASSESSMENT REPORT.

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visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas?	the site.
3) Views and Vistas	
Does the proposal obscure or compromise important views?	No important views will be impacted by the proposed signage.
Does the proposal dominate the skyline and reduce the quality of vistas?	The proposed signage has an overall height of 2m and is therefore not anticipated that it will impact on any vistas.
Does the proposal respect the viewing rights of other advertisers?	Yes. No conflict with surrounding signage will result from proposed signage.
4) Streetscape, setting or landscape	
Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape?	Yes. The proposed signage fits into the streetscape and will not dominate the streetscape.
Does the proposal contribute to the visual interest of the streetscape, setting or landscape?	No. The proposal signage structure is relatively generic and is similar to many other similar signage structures in the LGA.
Does the proposal reduce clutter by rationalizing and simplifying existing advertising?	N/A. The site does not currently contain any cluttering.
Does the proposal screen unsightliness?	No.
Does the proposal protrude above buildings, structures or tree canopies in the area or locality?	No. As stated previously, the proposed signage will not extend above the approved or surrounding development.
Does the proposal require ongoing vegetation management?	No vegetation removal is proposed under to facilitate the signage structure.
5) Site and Building	
Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located?	Yes. As stated previously, the proposal signage is relatively generic and is similar to many other similar signage structures in the LGA.
Does the proposal respect important features of the site or building, or both?	Yes.
Does the proposal show innovation and imagination in its relationship to the site or building, or both?	No. As stated previously, the proposed development is relatively generic.
6) Associated devices and logos with advertisements and advertising structures	
Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to	No.

ITEM 3 - ATTACHMENT 2 ASSESSMENT REPORT.

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be displayed?	
7) Illumination	
Would illumination result in unacceptable glare?	N/A.
Would illumination affect safety for pedestrians, vehicles or aircraft?	N/A.
Would illumination detract from the amenity of any residence or other form of accommodation?	N/A.
Can the intensity of the illumination be adjusted, if necessary?	N/A.
Is the illumination subject to a curfew?	N/A.
8) Safety	
Would the proposal reduce the safety for any public road?	No. The signage does not include any flashing lights or animation.
Would the proposal reduce the safety for pedestrians or bicyclists?	No.
Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?	No.

ITEM NO. 4

FILE NO: 17/146382
RM8 REF NO: 16-2017-174-1

SECTION 96 (PART 2) APPLICATION TO MODIFY DETERMINATION NO. 16-2017-174-1 FOR SWIMMING POOL AND DETACHED GARAGE AND WORKSHOP AT NO. 50 REFLECTIONS DRIVE ONE MILE

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

RECOMMENDATION IS THAT COUNCIL:

- 1) Refuse Development Application 16-2017-174-2 (swimming pool, garage and workshop) at 50 Reflections Drive, One Mile as the development fails to satisfy cl.7.3 *Port Stephens Local Environment Plan 2013* with regards to minimising flood risk to life and property associated with the land use (s.79C(1)(a)(i) *Environmental Planning and Assessment Act 1979*).
-

**ORDINARY COUNCIL MEETING - 1 AUGUST 2017
MOTION**

190	<p>Councillor John Nell Councillor Chris Doohan</p> <p>It was resolved that Council approve Development Application 16-2017-174-2 (swimming pool, garage and workshop) at 50 Reflections Drive, One Mile, subject to condition 19 being amended as follows, and including conditions 20 and 21, as follows:</p> <ol style="list-style-type: none">19. The finished floor level of the approved garage and workshop is to be constructed to 1.8m Australian Height Datum (AHD).20. Prior to the issue of a Construction Certificate for the garage or workshop, a set of detailed plans are to be certified by a qualified engineer that the proposed structures will be capable of withstanding the forces of waters in any flood event up to and including the 5% AEP design event.21. All electrical outlets, switches, junctions, cables and the like are to be installed at or above the 1% AEP design event Flood Planning Level (FPL) of 3.2m AHD.
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In accordance with Section 375 (A) of the *Local Government Act 1993*, a division is required for this item.

Those for the Motion: Mayor Bruce MacKenzie, Crs Geoff Dingle, Chris Doohan, Sally Dover, Ken Jordan, John Nell and Steve Tucker.

Those against the Motion: Cr Peter Kafer.

BACKGROUND

The purpose of this report is to present the Section 96 (S96) application to Council. The development application (DA) relates to land located at No. 50 Reflections Drive, One Mile which is identified as Lot: 29 DP 1070133 ('the subject site').

The application had been called to Council for determination by Councillor Chris Doohan as per the call up form – see **(ATTACHMENT 1)**.

The flood planning level (FPL) is the level to which buildings should be constructed to ensure the asset is protected from flooding and water inundation into the future. The Council Flooding Engineers have stipulated a FPL of 3.2m Australian Height Datum (AHD) and a probable maximum flood (PMF) level of RL 3.2m AHD (habitable rooms) for the subject site. A Garage or Carport (non-habitable structure) may be constructed at a lower finished floor level of 0.5m above the 5% AEP at a level of 2.8m AHD.

It is noted that Council resolved on the 14 February 2017 that the proposed dwelling at 50 Reflections Drive DA No. 16-2016-138-2 be approved with a finished floor level of 2.7m AHD.

DA No. 16-2017-174-1 (Original Consent)

The proposed swimming pool was supported under delegation at 2.7m AHD ensuring that the swimming pool was consistent and compatible with the approved dwelling heights.

The proposed shed and carport structures were supported under delegation having a finished floor level of 2.4m AHD which is 400mm below the current FPL for non-habitable structures; this was supported at a meeting of Council.

The approach in the reduced level being supported by flooding engineers is based on a more flexible approach to ancillary structures within the draft Development Control Plan (DCP) provisions in relation to flooding.

DA No. 16-2017-174-2 (S96)

The changes requested via the S96 modification to the existing approval, is to amend the approved finished floor level (FFL) of the shed and carport. The applicant requests to reduce the approved FFL from 2.4m AHD to 1.795m AHD bringing it 0.605m below the recommended FPL for this site.

The applicant has requested the changes to the finished floor levels without supplying any additional information to support the lowering of the FPL and Council was advised that it was not likely to be provided due to time and cost implications. No other significant justification been provided.

In addition to non-compliance with the DCP, the applicant has failed to provide supporting information to justify variation. Council officers therefore cannot adequately assess the impacts of the proposed variation to the flood planning controls and cannot support the application in its current form.

Irrespective of the lack of detail supporting the application, the DA would unlikely be supported given already significant variations and concessions made to the proposed development.

The reduction of the finished floor level below the already revised, flood planning level of the swimming pool, garage and workshop is the sole component of this s96 application.

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2013-2017
Sustainable Development.	Provide Strategic Land Use Planning Services. Provide Development Assessment and Building Certification Services.

FINANCIAL/RESOURCE IMPLICATIONS

There are no financial or resource implications as a result of the recommendations proposed.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes		Operational budget to assess development applications.
Reserve Funds	No		
Section 94	No		
External Grants	No		
Other	No		

LEGAL, POLICY AND RISK IMPLICATIONS

The development application is not consistent with the relevant planning instruments, flood development guidelines and studies including; *The Environmental Planning and*

MINUTES ORDINARY COUNCIL - 1 AUGUST 2017

Assessment Act 1979 (EP&A Act), Port Stephens Local Environment Plan 2013, Port Stephens Development Control Plan 2014, the Port Stephens Council "Areas Affected by Flooding and/or Inundation" Policy, Floodplain Risk Management Policy, and the NSW Floodplain Development Manual 2005.

Section 733 *Local Government Act 1993* provides Council with a general exemption from liability with respect to flood liable land only if the necessary studies and works are carried out in accordance with the principles contained in the NSW Floodplain Development Manual 2005. Endorsement of this development would be contrary to these principles.

A decision contrary to the planning framework may negate the good faith immunity provisions in *Local Government Act 1993*. This could result in individual Councillors being personally accountable and responsible for any subsequent implications resulting from the decision. Further, in the event of any future claim Council's insurers may determine not to cover Council should the application be approved contrary to the recommendation.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that in approving the application Council will be increasing the risk to property and life in flood events.	Medium	Determine the application in line with the recommendation refuse the application.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

As previously stated, property and life could be compromised as occupiers/property could potentially be exposed to floodwaters and/or isolated on or from the property for long periods of time. However, it is noted in this catchment the water would not be fast flowing or floodway.

CONSULTATION

Consultation with key stakeholders has been undertaken by the Development Assessment and Compliance Section in addition to the internal referral process.

Internal

The original application was referred to Councils Flooding Engineers who assessed the relevant information in relation to the proposed design. Additional referral was not warranted as no design changes or additional information had been proposed or provided and the flooding advices remained the same.

External

The application did not require external consultation in accordance with Part A of the Port Stephens Development Control Plan 2014.

OPTIONS

- 1) Accept the recommendations.
- 2) Amend the recommendations.
- 3) Reject the recommendations.

ATTACHMENTS

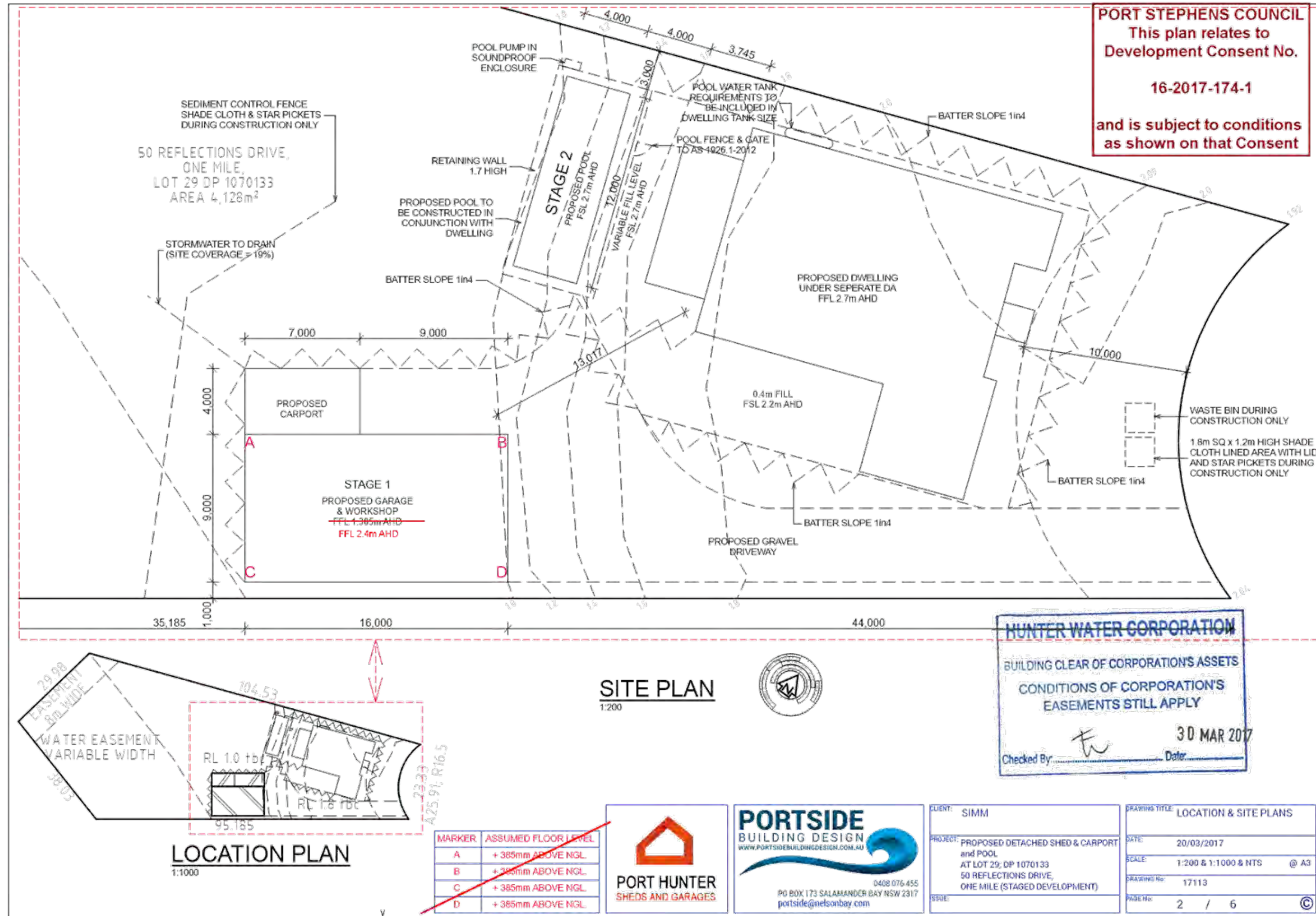
- 1) Call to Council Form.
- 2) Revised Approved Plans.

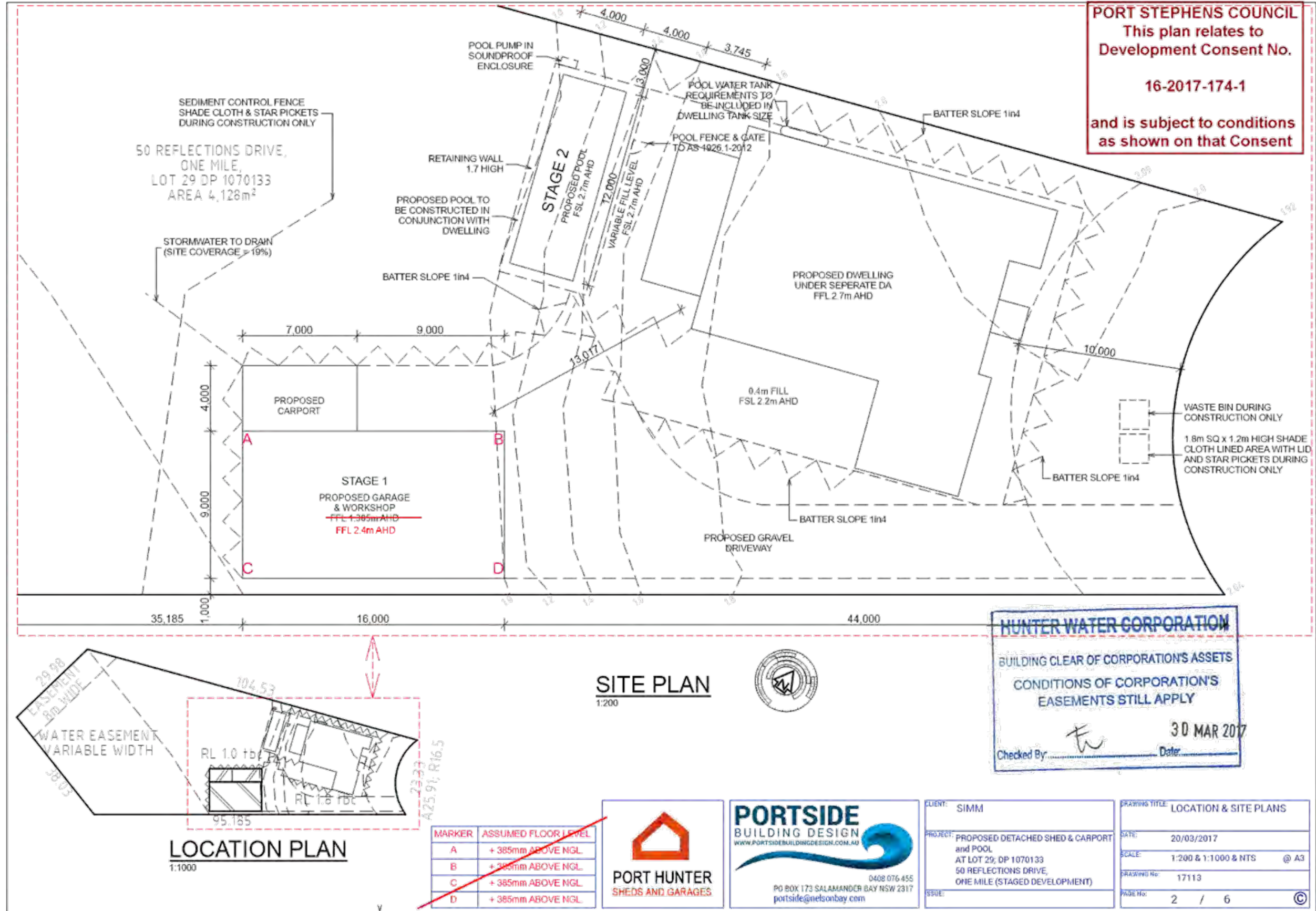
COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

- 1) Revised Approved Plans.





ITEM NO. 5

**FILE NO: 17/146385
RM8 REF NO: 16-2017-90-3**

SECTION 96(1A) MODIFICATION APPLICATION 16-2017-90-3 TO REMOVE SECTION 94 CONTRIBUTIONS TO THE CONSENT FOR DEMOLITION OF EXISTING DWELLING AND CONSTRUCTION OF A NEW SINGLE STOREY DWELLING HOUSE AND ATTACHED SECONDARY DWELLING AT 11 SCOTT STREET, ANNA BAY (LOT: 132 DP: 17775).

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

RECOMMENDATION IS THAT COUNCIL:

- 1) Refuse Section 96(1A) application number (No.) 16-2017-90-3 for the reasons contained in **(Attachment 3)** of this report.
-

**ORDINARY COUNCIL MEETING - 1 AUGUST 2017
MOTION**

	<p>Councillor John Nell Councillor Sally Dover</p> <p>That Council approve Section 96(1A) application number (No.) 16-2017-90-3 and waive 50 percent of the section 94 contribution.</p>
--	---

AMENDMENT

**ORDINARY COUNCIL MEETING - 1 AUGUST 2017
MOTION**

191	<p>Mayor Bruce MacKenzie Councillor Ken Jordan</p> <p>It was resolved that Council approve Section 96(1A) application number (No.) 16-2017-90-3 and waive 100 percent of the section 94 contribution.</p>
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The amendment on being put became the motion, which was put and carried.

In accordance with Section 375 (A) of the *Local Government Act 1993*, a division is required for this item.

Those for the Motion: Mayor Bruce MacKenzie, Crs Geoff Dingle, Chris Doohan, Sally Dover, Ken Jordan, John Nell and Steve Tucker.

Those against the Motion: Cr Peter Kafer.

BACKGROUND

The purpose of this report is to present to Council for determination a S96(1A) modification application which seeks to delete or amend Condition 5 for the purpose of waiving or reducing the S94 contributions applicable to the secondary dwelling approved under 16-2017-90-1.

The Section 94 plan does not provide staff with the ability to consider waiving or reductions in S94 contributions. Accordingly the proposal has been referred to Council for determination.

Site History

On 4 April 2017, Development Consent was issued for the demolition of an existing dwelling and the construction of a new single storey dwelling house and attached secondary dwelling at 11 Scott Street Anna Bay. A locality plan has been included as (**ATTACHMENT 1**) to this report.

Proposed Development

The application proposes to modify Development Consent number 16-2017-90-2 to remove the requirement to pay Section 94 Contributions or reduce the amount applicable to the new secondary dwelling. The applicant has cited financial restrictions of the development as the reason for requesting the removal, bearing in mind the secondary dwelling is to be used by extended family when visiting the occupant who has a medical condition.

Key Issues

Condition 5 of the existing consent requires a Section 94 Contribution payment of \$7440, in accordance with Councils Section 94 Plan. The applicant has requested that this contribution either be waived, or reduced to \$3,843 - an amount equivalent to 1% of the cost of works.

Council's Section 94 Analysis Team has considered the merits of the application and determined that as there is no compelling reason for a variation outside of the financial burden, the reduction or waiving of the fees should not be supported as it is contrary to the Section 94 Plan.

On this basis, the proposed modification is recommended for refusal.

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2013-2017
Sustainable Development.	Provide Strategic Land Use Planning Services. Provide Development Assessment and Building Certification Services.

FINANCIAL/RESOURCE IMPLICATIONS

There are no financial or resource implications that result from the recommendation of this report. However if the application is approved, there will be a negative financial impact on Councils S94 Contribution income.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	No		
Reserve Funds	No		
Section 94	Yes		The approval of this application would result in a reduction in the S94 Contributions payable to Council.
External Grants	No		
Other	No		

LEGAL, POLICY AND RISK IMPLICATIONS

The development application is inconsistent with Council's Section 94 Contribution Plan 2007. A detailed assessment of the application in accordance with S96 of the *Environmental Planning and Assessment Act 1979* is included as (**ATTACHMENT 2**)

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that the approval of the application will undermine the provisions of Council's Section 94 Contribution Plan.	High	Refuse the application as recommended.	No
There is a risk that the refusal of the application will be appealed.	Moderate	Endorse the recommendation to refuse the application.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

In the original assessment of 16-2017-90-1, it was considered that the proposed development would provide beneficial social and economic impacts through the provision of housing and construction jobs. A reduction in payable Section 94 Contributions may however have adverse social impacts through the loss of revenue available for the provision of public services.

CONSULTATION

Consultation with key stakeholders has been undertaken by the Development Assessment and Compliance Section during the development application process.

The objective of the consultation was to inform the relevant parties of the development application and obtain their feedback on the proposal to ensure all potential concerns have been investigated.

Internal

The application was reviewed by the Section 94 Analysis Team who did not support the removal of the condition or a reduction in its value.

External

The original application was not notified as the proposal would not result in significant changes in the consented development.

OPTIONS

- 1) Accept the recommendation.
- 2) Amend the recommendation.
- 3) Reject the recommendation.

ATTACHMENTS

- 1) Locality Plan.
- 2) Assessment Report.
- 3) Notice of Determination - Refusal.

COUNCILLORS ROOM

Nil

TABLED DOCUMENTS

Nil

ITEM 5 - ATTACHMENT 1 LOCALITY PLAN.



LOCALITY: ANNA BAY



SUBJECT AREA

DISCLAIMER
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118 Adelaide Street, Raymond Terrace NSW 2324. Phone: (02) 49800205 Fax: (02) 49873512 Email: council@portstephens.nsw.gov.au

 **PORT STEPHENS COUNCIL** **S96(1A) MODIFICATION APPLICATION ASSESSMENT REPORT**

APPLICATION DETAILS

Modification Application Number	16-2017-90-3
Development Description	Demolition of Existing Dwelling, and Construction of a New Single Storey Dwelling House and Attached Secondary Dwelling
Modification Description	S96 (1A) Modification – Remove Section 94 Contributions (Condition 5)
Applicant	MR J GRAHAM
Date of Lodgement	20/06/2017

Modification Proposal

The application proposes to modify Development Consent number 16-2017-90-2 to remove the requirement to pay Section 94 Contributions or reduce the applicable figure. In making the application, the applicant has cited financial hardship as the reason for requesting the removal, bearing in mind the secondary dwelling is to be used by extended family when visiting the occupant who has a medical condition.

The conditions of consent proposed to be modified have been discussed in further detail below.

PROPERTY DETAILS

Property Address	11 Scott Street ANNA BAY
Lot and DP	LOT: 132 DP: 17775
Zoning	R2 LOW DENSITY RESIDENTIAL
Site Constraints That Affect The Modification	N/A

ASSESSMENT SUMMARY

Designated Development	The application is not designated development
Integrated Development	The application does not require additional approvals listed under s.91 of the EP&A Act
Concurrence	The application does not require the concurrence of another

body

Site History

Development consent was granted on 4th April 2017 for the demolition of an existing dwelling and construction of a new single storey dwelling house and attached secondary dwelling. This consent was modified by S96 application 16-2017-90-2 to alter the timing of payment for Section 94 Contributions to prior to the Occupation Certificate.

Internal Referrals

The proposed modification was referred to the following internal specialist staff. The comments of the listed staff listed have been used to carry out the assessment against the S79C Matters for Consideration below.

Section 94 Analysis Team – The proposal was referred to the analysis team prior to the lodgement of the S96 application, who noted that the S94 plan does not provide flexibility in the waiving or reduction of levies for secondary dwellings. It is also considered that the S94A plan is only applicable to industrial and commercial development and therefore cannot be used in conditioning levies on this development. Therefore the application to remove the condition was not supported.

External Referrals

No external referrals were undertaken.

MODIFICATIONS INVOLVING MINIMAL ENVIRONMENTAL IMPACT – S96(1A)**S96(1A)(a) – Minimal Environmental Impact**

The proposal would not alter the physical form of the consented scheme and therefore would not result in any additional environmental impacts, thereby complying with this requirement.

S96(1A)(b) – Substantially the Same Development

The development as modified is substantially the same as the approved development for the following reasons:

- a) The modification would not alter the physical appearance or add to the level of works of the approved development; and,
- b) The consented buildings would remain as a dwelling house and secondary dwelling.

On this basis, the application is considered substantially the same.

S96(1A)(c) – Notification

Pursuant to the Regulations and the Development Control Plan (DCP), notification of the application is not required.

S96(1A)(d) – Submissions

No submissions have been received in relation to the proposed modification.

S96(3) – S79C(1) Matters for Consideration

The modification relates to the requirement to pay contributions under Section 94 of the Act. Accordingly there are no matters under S79C that are affected by the proposed modification.

RECOMMENDATION

The modification application is recommended to be refused by Council.

LUKE MANNIX
Development Planner



Notice is hereby made under Section 81 of the *Environmental Planning and Assessment Act 1979* (the Act) of a determination issued under Section 80(1)(b) of the Act, for the development described below.

Refused

Despite this determination development consent No. 16-2017-90-2 remains operational and is not affected by the outcome of this notice.

16-2017-90-2

16-2017-90-3

LOT: 132 DP: 17775

4 April 2017

4 April 2017

25 July 2017

5 April 2022

(unless physical commencement has occurred)

MR L H MANNIX
Development Planner

Aide Stree: (PO Box 42), Raymond Terrace NSW 2324
DX 21406 Raymond Terrace • 4980 0255
council@portstephens.nsw.gov.au

16-2017-90-3

Page of



1. The proposed modification is inconsistent with Port Stephens Section 94 Development Contributions Plan 2007 and would be contrary to the public interest (s.79C(1)(e) *Environmental Planning and Assessment Act 1979*).

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 months from the date on which that application is taken to have been determined.

ITEM NO. 6

FILE NO: 17/146387
RM8 REF NO: 16-2016-763-1

SECTION 82A APPLICATION FOR REVIEW OF DETERMINATION NO.16-2016-763-1 FOR EARTHWORKS (FLOOD MOUND), DETACHED DUAL OCCUPANCY (INCORPORATING EXISTING DWELLING) AND ANCILLARY STRUCTURE (SHED) AT NO.1428 RAYMOND TERRACE ROAD, NELSONS PLAINS

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

RECOMMENDATION IS THAT COUNCIL:

- 1) Refuse the Section 82A Application for review of determination of DA No. 16-2016-763-1 for earthworks (flood mound), detached dual occupancy (incorporating existing dwelling) and ancillary structure (shed) at No.1428 Raymond Terrace Road, Nelsons Plains for the reasons contained in **(ATTACHMENT 2)**.

**ORDINARY COUNCIL MEETING - 1 AUGUST 2017
MOTION**

**Mayor Bruce MacKenzie
Councillor Chris Doohan**

That Council approve the Section 82A Application for review of determination of DA No. 16-2016-763-1 for earthworks (flood mound), detached dual occupancy (incorporating existing dwelling) and ancillary structure (shed) at No.1428 Raymond Terrace Road, Nelsons Plains in accordance with the conditions listed below:

CONDITIONS THAT IDENTIFY APPROVED PLANS AND LIMITATIONS OF CONSENT

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

Plan/Doc.Title	Plan Ref. No	Sheet.	Date	Drawn By
Site Plan (1 Sheet)	6350 DET-V3	-	13/02/2017	Le Mottee Group
Site Plan – Proposed House and Shed Position	6350DET-V2	-	02/11/2016	Le Mottee Group

MINUTES ORDINARY COUNCIL - 1 AUGUST 2017

(1 Sheet)				
Proposed Earth Mound (1 Sheet)	6350 ENG1-B	-	04/03/2016	Le Mottee Group
Proposed Residence (6 Sheets)	3731	2 to 7 of 7	24/10/2016	Advantage Building Design
Plan Sheet (1 Sheet)	31074-Cropp	-	27/10/2016	Shed Boss

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

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

CONDITIONS TO BE SATISFIED PRIOR TO DEMOLITION, EXCAVATION OR CONSTRUCTION

3. **Prior to undertaking any works onsite**, the applicant must obtain approval from NSW Office of Environment and Heritage under Section 256(1)(A) of Water Management Act 2000.
4. **Prior to the commencement of work**, for any residential building work within the meaning of the *Home Building Act 1989*, (the HB Act) except for Crown building works certified in accordance with section 109R of the Act, the principal certifying authority must provide to the Council (unless Council is the principal certifying authority) a written notice of:
 - a. In the case where a principle contractor is required to be appointed, the name and licence number of the principal contractor and the name of the insurer by which the work is insured under the HB Act;
 - b. In the case of work to be done by an owner builder, the name of the owner-builder and their permit number if required under the HB Act.
5. **Prior to the commencement of works**, a waste containment facility is to be established on site. The facility is to be regularly emptied, and maintained for the duration of works. No rubbish shall be stockpiled in a manner which facilitates the rubbish to be blown or washed off site. The site shall be cleared of all building refuse and spoil immediately upon

completion of the development.

6. **Prior to the commencement of works**, the property shall be protected against soil erosion, such that sediment is not carried from the construction site by the action of stormwater, wind or “vehicle tracking”. Protection measures may include erosion and sedimentation controls as required. All protection measures are to be installed to the satisfaction of Council prior to the commencement of works, and regularly maintained for the duration of works and until the site is stabilised by vegetation or the like.
7. **Prior to the commencement of works**, a 3m wide all-weather vehicle access from the kerb and gutter to the building under construction is to be provided for the delivery of materials and trades. Sand shall not be stockpiled on the all-weather vehicle access.

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

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

Facility	Per lot/dwelling	Total
Civic Administration	\$1,160.00	\$1,160.00
Public Open Space, Parks and Reserves	\$2,543.00	\$2,543.00
Sports and Leisure Facilities	\$6,865.00	\$6,865.00
Cultural and Community Facilities	\$2,448.00	\$2,448.00
Road Works	\$1,616.00	\$1,616.00
Fire & Emergency Services	\$225.00	\$225.00
	Total	\$14,857.00

Payment of the above amount shall apply to Development Applications as follows:

- a) **Building work only - prior to issue of the Construction Certificate.**

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

	<p>movement in the Consumer Price Index as published by the Australian Bureau of Statistics.</p> <p>9. The finished floor level of all habitable areas shall be a minimum of 5.9m AHD. Design details shall be submitted to the Certifying Authority for approval prior to the issue of a Construction Certificate. During works, a survey certificate verifying compliance with this condition shall be provided to the Certifying Authority as soon as practical on completion of the floor level.</p> <p>10. Prior to the issue of a Construction Certificate, a geotechnical engineer assessment of the mound foundation suitability, in respect of the approved structures, must be provided to the Certifying Authority for assessment and determined to be satisfactory by the Certifying Authority.</p> <p>11. Prior to the issue of a Construction Certificate, an application is to be lodged and approved by Council under section 68 of the <i>Local Government Act 1993</i> for the installation of an on-site sewage management system.</p> <p>12. The vehicle driveway shall have a width to cater for design vehicle paths determined by Australian Standard AS2890 into and out of garage areas for two vehicle parking spaces. This requirement will be met by providing vehicle swept paths and clearances utilising the 85th percentile turning circle as outlined in AS 2890.1: Off-street Car Parking. Details of vehicle access are to be submitted to the certifying authority for assessment prior to the issue of any Construction Certificate.</p> <p>13. The shape, volume and location of the mound is to be in accordance with the submitted plans. The final pad shape, levels and location will be confirmed by the submission of a Survey Plan prepared by a practising registered surveyor to show the existing natural ground contour levels, the full extent and degree of the fill, and finished ground contour levels and cross sections indicating the depth of fill prior to the commencement of use.</p> <p>14. The development shall be constructed in accordance with the NSW Government Floodplain Management Manual (2005). The following design precautions must be adhered to:-</p> <ol style="list-style-type: none"> a. The floor level of any habitable room is to be located at a height not less than the Flood Planning Level (FPL), which is 5.9m AHD. b. No potentially hazardous or offensive material is to be stored on site that could cause water contamination during floods. c. All building materials, equipment, ducting etc. below the FPL shall be flood compatible. d. All main power supply, heating and air conditioning service installations, including meters, shall be located above the FPL. e. All electrical wiring below the FPL shall be suitable for continuous
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submergence in water. All conduits below the FPL shall be self-draining. Earth core leakage systems or safety switched are to be installed.

- f. All electrical equipment installed below the FPL shall be capable of disconnection by a single plug from the power supply.
- g. Where heating equipment and fuel storage tanks are not feasible to be located above the FPL, then they shall be designed for continuous submergence in water and securely anchored to overcome buoyancy and movement that may damage supply lines. All storage tanks shall be vented to an elevation above the FPL.
- h. All ducting below the FPL shall be provided with opening for drainage and cleaning.

Details of the above information are to be submitted to the satisfaction of the Certifying Authority **prior to the issue of the Construction Certificate.**

- 15. **Prior to the issue of the Construction Certificate**, a structural engineer shall provide certification to Council that all building structures and earth mounds are able to withstand the hydrostatic and hydrodynamic flood forces, including debris impact and buoyancy uplift for the 1% AEP flood (**4.9m AHD**).
- 16. A flood management plan which covers evacuation and the provision of emergency food, medical supplies, power/communication, water and effluent disposal etc. incorporating the SES Business Floodsafe Toolkit, shall be submitted and approved by Council **prior to the issue of the Construction Certificate.**
- 17. **A Construction Certificate cannot be issued** until full details of the stormwater drainage design have been provided to the Certifying Authority for assessment and determined to be satisfactory by the Certifying Authority.

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

- 18. All building work must be carried out in accordance with the provisions of the Building Code of Australia.
- 19. Construction work that is likely to cause annoyance due to noise is to be restricted to the following times:-
 - Monday to Saturday, 7am to 5pm;
 - no construction work to take place on Sunday or Public Holidays.

When the construction site is in operation the L10 level measured over a period of not less than 15 minutes must not exceed the

	<p>background by more than 10dB(A). All possible steps should be taken to silence construction site equipment.</p> <p>20. All excavated and/or filled areas are to be retained or battered and suitably drained so as to prevent any subsidence of the surrounding land and constructed so as to deny any flow of water into or around the building or neighbouring buildings or onto neighbouring land.</p> <p>21. Immediately following completion of the earthworks and prior to the commencement of use or storage of materials on the mound;</p> <ul style="list-style-type: none">a) The final pad shape, levels and location will be confirmed by the submission of a detailed survey plan prepared by a Registered Surveyor. The detailed survey plan shall be provided to Council within 14 days of completion.b) The mound is to be top dressed and seeded with fast growing grasses.c) Adequate scour protection shall be provided to the mound, designed by a suitable qualified engineer to withstand the velocities in major flood events. <p>22. Filling associated with the construction of the flood mound, shall not obstruct any natural drainage path or water drainage system. The mound must have batter slopes no steeper than 1 (vertical) to 4 (horizontal). Batter slopes are to be fully contained within the subject property.</p> <p>23. Dust suppression is to be actively undertaken during works, through the use of wet-down water tankers or an alternative method agreed by Council.</p> <p>24. The only fill material that may be received at the development site is:</p> <ul style="list-style-type: none">a) Virgin excavated natural material (VENM) within the meaning of the Protection of the Environment Operations Act 1997 (POEO); orb) 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. <p>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.</p> <p>25. Where no sanitary facilities currently exist onsite for construction workers toilet accommodation for all tradespersons shall be provided from the time of</p>
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commencement until the building is complete. The toilet facilities shall be located so as to have minimal impact of adjoining properties and shall not be placed on the road reserve, without separate approval from Council.

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

CONDITIONS TO BE SATISFIED PRIOR TO ISSUE OF AN OCCUPATION CERTIFICATE

27. **Prior to the issue of an Occupation Certificate**, the commitments listed in BASIX Certificate No. 765587S (or an amended version of this certificate, or a replacement certificate particular to the approved development) are to be installed in the development. Should an amended or replacement certificate be issued, a copy is to be forwarded to the principle certifying authority immediately following its issue.
28. **Prior to the issue of an Occupation Certificate**, a survey certificate shall be provided to the Certifying Authority verifying the finished levels of habitable rooms comply with the FPL of 5.9m AHD.
29. All civil engineering works shall be carried out in accordance with the Construction Certificate and Council's Design and Construction Specification, Policies and Standards, to the satisfaction of Council or the Certifying Authority **prior to issue of the Occupation Certificate**.
30. The provision of a gravel vehicle crossing is required **prior to the issue of the final Occupation Certificate**. A Driveway Construction Application must be made with Council, as the Roads Authority, prior to the commencement of vehicle footpath crossing works.
31. **Prior to the issue of any Occupation Certificate**, an on-site sewage management system is to be installed and a satisfactory final inspection completed by Council.

CONDITIONS TO BE SATISFIED AT ALL TIMES

32. The stormwater system, including any water quality, quantity or infiltration components, shall be maintained in perpetuity for the life of the development.
33. Filling shall not obstruct any natural drainage path or water drainage system. Neither shall the fill encroach onto any adjoining property.

MINUTES ORDINARY COUNCIL - 1 AUGUST 2017

Advice

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

In accordance with Section 375 (A) of the *Local Government Act 1993*, a division is required for this item.

Those for the Motion: Mayor Bruce MacKenzie, Crs Chris Doohan and Steve Tucker.

Those against the Motion: Crs Geoff Dingle, Sally Dover, Ken Jordan, Peter Kafer and John Nell.

The motion was lost.

ORDINARY COUNCIL MEETING - 1 AUGUST 2017 MOTION

192

**Councillor John Nell
Councillor Sally Dover**

It was resolved that Council refuse the Section 82A Application for review of determination of DA No. 16-2016-763-1 for earthworks (flood mound), detached dual occupancy (incorporating existing dwelling) and ancillary structure (shed) at No.1428 Raymond Terrace Road, Nelsons Plains for the reasons contained in **(ATTACHMENT 2)**.

In accordance with Section 375 (A) of the *Local Government Act 1993*, a division is required for this item.

Those for the Motion: Crs Geoff Dingle, Sally Dover, Ken Jordan, Peter Kafer and John Nell.

Those against the Motion: Mayor Bruce MacKenzie, Crs Chris Doohan and Steve Tucker.

BACKGROUND

The purpose of this report is to present a section 82A application for 'Review of Determination' (RD) of Development Application (DA) number (No.) 16-2016-763-1 to Council for determination. The s.82A RD is being reported to Council for determination as the original DA was determined by Council at its meeting of 28

March 2017. In accordance with s.82A of the *Environmental Planning and Assessment Act 1979* ('EP&A Act'), as Council was the determining authority for the DA the s.82A RD must also be determined by Council.

The provisions of s.82A *EP&A Act* provide an applicant that is dissatisfied with the Council's determination of their DA a mechanism to seek an internal review of the original decision. When lodging a s.82A application the applicant is entitled to amend the original application and Council must review its decision on the basis of the amended application. However, the application must remain substantially the same. Section 82A further specifies that the RD must be determined within 6 months of the date that the applicant received notice of the original determination.

The subject DA relates to land located at No. 1428 Raymond Terrace Road, Nelsons Plains which is identified as Lot: 1 DP: 1202026 ('the subject site'). A locality plan is provided at **(ATTACHMENT 1)**. The site is located on the bank of the Hunter River, which traverses the site's western boundary. The development site is located within a 'High Hazard Floodplain' and is relatively flat. The subject site currently contains a dwelling and detached ancillary structures. An existing flood mound is position on the north-west corner of the site.

The subject site is zoned RU1 Primary Production Zone and the proposed land use is permissible within the RU1 Zone. The key issues with the development subject to s.82A review relate to flooding given the sites classification as 'High Hazard Floodplain'. Provision of adequate on-site sewage management (OSMS) also remains outstanding.

Council staff have undertaken a detailed assessment of the application as part of the s.82A review of determination. The s.82A review supports the recommendation endorsed in the original assessment in that the development cannot be supported for the reasons contained in **(ATTACHMENT 2)**.

DA No.16-2016-763-1

The application subject to the s.82A RD (DA No.16-2016-763-1) sought consent for earthworks (flood mound), detached dual occupancy (incorporating existing dwelling) and ancillary structures (shed).

The proposed flood mound has a total footprint of 4,605m² (approximately 81m x 51m), and is raised to a maximum height of 3.37m above existing ground levels, in order to achieve a finished level of 5.4m AHD.

The proposed single storey dwelling comprises three bedrooms, lounge room, kitchen, laundry and bathroom. The dwelling has a proposed maximum height of 5.24m and a finished floor level of 5.9m AHD. The dwelling is positioned on the northwest portion of the proposed earth mound, roughly 68m south of Raymond Terrace Road and 66m east of the Hunter River.

The proposed shed is located 5m south of the proposed dwelling. The shed will incorporate three bays and one pedestrian door, at a size of 167m². The maximum height of the shed is 5.2m.

The original application was refused by Council on 28 March 2017 for the following reasons:

- 1) The proposed development will result in a development that is inconsistent with the objects of the *Environmental Planning and Assessment (EP&A) Act 1979* in that it will be exposed to an unacceptable adverse risk of flooding, which does not encourage:
 - a) the proper management and development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment;
 - b) the promotion and co-ordination of the orderly and economic use and development of land, or
 - c) ecologically sustainable development (s.5(a)(i),(ii) and(vii) *EP&A Act 1979*).
- 2) The proposed development will result in a development that fails to satisfy the provisions of Clause 8 (j) - Matters for Consideration of State Environmental Planning Policy 71 - Coastal Protection in that it is likely to be adversely impacted by coastal processes and hazards (s.79C(1)(a)(i) *EP&A Act 1979*);
- 3) The proposed development will result in a development that is in conflict with the following objectives contained in Clause 7.3 - Flooding of the *Port Stephens Local Environmental Plan 2013*:
 - a) to minimise the flood risk to life and property associated with the use of land; and
 - b) to allow development on land that is compatible with the land's flood hazard, taking into account projected changes as a result of climate change (s.79C(1)(a)(i) *EP&A Act 1979*).
- 4) The proposed development will result in a development that is in conflict with the provisions of Clause 7.3(3) of the *Port Stephens Local Environmental Plan 2013*, in that it will not be compatible with the flood hazard of the land (identified as High Hazard Floodway); does not incorporate appropriate measures to manage risk to life from flood; and is likely to result in unsustainable social and economic costs to the community as a consequence of flooding (s.79C(1)(a)(i) *EP&A Act 1979*);
- 5) The proposed amendments will result in a development that fails to satisfy the provisions of Chapter B5 - Flooding of the Port Stephens Development Control Plan 2014, in that the development is for the provision of housing (s.79C(1)(a)(iii) *EP&A Act 1979*);
- 6) Approval of the proposed development within a high hazard floodway will result in unacceptable social or economic impacts (s.79C(1)(b) *EP&A Act 1979*);

- 7) The subject site is unsuitable for the proposed residential development as the land is situated within a high hazard floodway. The proposed development will thereby increase risk to people and property (s.79C(1)(c) *EP&A Act 1979*); and
- 8) The proposed development would be inconsistent with the adopted principles and strategies which seek to promote the proper management and use of land, promote the social and economic welfare of the community and provide for the orderly and economic use and development of land in an ecologically sustainable manner (s.79C(1)(e) *EP&A Act 1979*).

Basis for s.82A review

The applicant has sought a review of the application (DA No.16-2016-867-1) and has provided the following reasons to justify the review:

- a) The development is permissible within the RU1 Primary Production Zone;
- b) The proposed dual occupancy enables 'practical attendance to agricultural needs' and further that the proposed dwelling provides housing for the owners father which is required for health reasons;
- c) Dwelling houses are located on adjoining properties;
- d) The location of the flood mound will not result in environmental or amenity impacts;
- e) The proposal is consistent with the provisions of SEPP No.71 Coastal Protection;
- f) The flood impact assessment (FIA) prepared by BMT WBM consultants and submitted with the development application concludes that the proposed development will not have any major impact to local flood behaviour. As such, the applicant has demonstrated that the site is suitable for the proposed development. The FIA submitted with the s.82A was revised and dated 5 June 2017.

Key Issues

'High Hazard Floodway'

The key issue arising out of the assessment of this application relate to the flood characteristics of the site. Council's flood study for the area identified the site within a High Hazard Floodway. The modelled flood levels for the site are as follows:

- Hazard Category - High Hazard Floodway;
- 5% AEP event - 3.5m AHD;
- 1% AEP event - 4.8m AHD;
- Flood Planning Level (FPL) - 5.9m AHD;
- Probable Maximum Flood (PMF) - 8.8m AHD.

The proposed development has been designed to satisfy the FPL requirements having a finished floor level (FFL) of 5.9m AHD and is considered to satisfy the hydrological requirements for the site.

However, the proposed development cannot be supported as the use of the site for residential purposes is not compatible with the 'high hazard floodway' categorisation of the site. The High Hazard Floodway categorisation is as a result of the very deep moving water which traverses the site during flood events.

There is considered to be a substantial safety risk associated with the development as the site is likely to become isolated for several days during flood events. Further, there is no acceptable evacuation route for future residents of the site as safe egress during floods cannot be achieved.

Assessment: s.82A Review of Determination No. 16-2016-763-1

The subject land is zoned RU1 Primary Production under the Port Stephens Local Environmental Plan 2013 (LEP2013). The proposal is permissible with consent in the RU1 zone.

The proposal developments was assessed against relevant controls and objectives as specified under, State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004; State Environmental Planning Policy No.55 – Remediation of Land, State Environmental Planning Policy No.71 – Coastal Protection, Port Stephens Local Environmental Plan (LEP2013) and Port Stephens Development Control Plan 2014 (DCP2014).

The assessment of the s.82A RD identified that the proposed development failed to comply with:

- 2) State Environmental Planning Policy No. 71 (SEPP No.71): Clause 8(J) SEPP No.1 requires the consent authority to assess the likely impact of coastal processes and coastal hazards on a proposed development. The subject development will be subject to coastal hazards derived from the flood characteristics of the site. The assessment of the s.82A (RD) has identified that the proposed development is likely to be adversely impacted by coastal processes and hazards. As such, the development is inconsistent with the aims and provisions of SEPP No.71 and cannot be supported. The additional information provided by the applicant has not demonstrated that the development shall not be impacted by coastal processes and coastal hazards.
- 3) Port Stephens Local Environmental Plan 2013 (PSLEP):
- 4) Clause 5.5 – Development in the Coastal Zone: The proposed development is located within the coastal zone and fails to satisfy cl.5.5(3)(d)(i) as the subject development is likely to be adversely impacted by coastal hazards derived from the flood characteristics of the site;
- 5) Clause 7.2 – Earthworks: The extent of fill proposed to facilitate residential development on the site is excessive, further the applicant has not demonstrated that the earthworks can withstand failure during flood events. For these reasons the proposed earthworks are not considered to satisfy cl.7.2;
- 6) Clause 7.3 – Flood Planning: The development is not compatible with the flood hazard of the land and does not incorporate appropriate measure to manage risk to life from flood events;

- 7) Clause 7.6 – Essential Services: The development requires onsite waste water treatment system and the applicant has failed to demonstrate that a suitable OSMS can be accommodated on site taking into account the flood characteristics of the land.
- 8) Port Stephens Development Control Plan 2014: Control B5.8 identifies that residential development within a 'High Hazard Floodway' is not encouraged. The DCP outlines that an application may only be considered where it is demonstrated to have specific community needs/benefits, which does not relate to the provision of housing.

It is noted that the applicant has failed to satisfy cl.7.3(3) and cl.7.6 PSLEP. In *North Ocean Shores Inc. v. Byron Shire Council* [2009] NSW LEC 69, Preston CJ at [19] indicated that a type of clause, such as both clause 7.3 and cl.7.6 PSLEP, requires the consent authority to form the requisite opinion that carrying out of the development is consistent with the relevant objectives before it embarks on a consideration of the merits of the development application, and before it has the power to grant consent. In summary such provisions are 'preconditions' to the granting of consent.

A detailed assessment of the proposed development has been carried out against the requirements of the *EP&A Act 1979* and has been included as **(ATTACHMENT 3)** to this report.

Conclusion

The application is not consistent with:

- Port Stephens LEP2013, in particular cl.5.5, cl.7.2, cl.7.3 and cl.7.6;
- Port Stephens DCP2014, in particular Chapter B5;
- NSW Floodplain Development Manual 2005;
- Floodplain Risk Management Policy (adopted 8 March 2016).

From a practical and strategic view point, it is not sound planning to put people and property in harm's way, via Council approving development applications for residential occupation in high hazard flood ways. It is widely held that residential development in such high velocity and depth flood waters is not 'good planning'.

The proposal is not compatible with the flood hazard of the property and poses significant risk to life and property due to flood risk. Given that the reasons for refusal of DA No.16-2016-763-1 have not been overcome, it is recommended that this s.82A application for review of determination of DA No.16-2016-763-1 be refused for the reasons detailed within **(ATTACHMENT 2)**.

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2013-2017
Sustainable Development.	Provide Strategic Land Use Planning Services. Provide Development Assessment and Building Certification Services.

FINANCIAL/RESOURCE IMPLICATIONS

The proposed development is inconsistent with the relevant planning instruments and guidelines including; the *Environmental Planning and Assessment Act 1979*, LEP2013, DCP2014 and the NSW Government 2005, 'Floodplain Development Manual'.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes		There is scope within Council's existing budget to defend Council's determination if challenged.
Reserve Funds	No		
Section 94	Yes		Section 94 Contributions would be applicable to the proposed development should Council determine to approve the application.
External Grants	No		
Other	No		

LEGAL, POLICY AND RISK IMPLICATIONS

The development application is not consistent with relevant planning instruments, flood development guidelines and studies including: *The Environmental Planning and Assessment Act 1979 (EP&A Act)*, LEP2013, DCP2014, the Port Stephens Council "Areas Affected by Flooding and/or inundation" Policy, Floodplain Risk Management Policy and Paterson River Floodplain Risk Management Study and Plan 2001, and the NSW Floodplain Development Manual 2005. Detailed responses to the relevant environmental planning instruments are provided within the Assessment report contained within **(ATTACHMENT 3)**.

On 10 June 2014 Council adopted the 'Integrated Risk Management Policy'. At point No.2 of the policy statement it is identified that: "Council has no appetite for risks that may compromise the safety and welfare of staff, volunteers, contractors and/or

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members of the public.” It is further noted that "Council will not accept a risk that has potentially catastrophic consequences, regardless of the likelihood of that risk eventuating.” A decision contrary to the recommendation to refuse the s.82A review of determination presents an unacceptable risk to Council as per Council's standard risk management matrix. These unacceptable risks relate to Council and the local community in respect to public safety, Council reputation and legal exposure.

Section 733 *Local Government Act 1993* provides Council with a general exemption from liability with respect to flood liable land only if the necessary studies and works are carried out in accordance with the principles contained in the NSW Floodplain Development Manual 2005. Endorsement of this development would be contrary to these principles. A decision contrary the planning framework may negate the good faith immunity provisions in *Local Government Act 1993*. This could result in individual Councillors being personally accountable and responsible for any subsequent implications resulting from the decision. Further, in the event of any future claim Council's insurers may determine not to cover Council should the application be approved contrary to the recommendation.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk if the application is approved that Council's decision will be ultra-vires as cl.7.3 and cl.7.6 PSLEP are preconditions to the granting of consent and have not been satisfied.	Medium	Determine the application in line with the recommendation.	Yes
There is a risk that if the application is approved, that Council may be liable for any damage or consequences to approving a development located on a site with a known flood risk and that does not have adequate essential services.	Medium	Determine application in line with the recommendation.	Yes
There is a risk the proposal will expose people and property to risk of damage and death as a consequence of approving residential development in a high hazard floodway.	High	Determine the application in line with the recommendation.	Yes

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There is a risk that if the application is approved Council will undermine the weight given to recently adopted policy including DCP2014 and the Floodplain Risk Management Policy.	Medium	Determine application in line with the recommendation.	Yes
There is a risk that if the application is refused, it may be challenged at the Land and Environment Court.	Medium	Defend the refusal of the application in the NSW Land and Environment Court if required.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The social and economic impacts of flooding are well documented. Policies and strategies have been implemented by Council to adequately mitigate the adverse impacts of flooding within the Local Government Area. This includes the Floodplain Risk Management Policy (adopted by Council on 8 March 2016), which aims to reduce the impact of flooding and flood liability on individual owners, and to reduce the private and public losses resulting from floods.

The proposal will increase the residential density within a high hazard floodway, increasing the risk to people and property. The proposed development is considered likely to result in an adverse social and economic impact within the locality.

The flooding constraints of the site and insufficient provision of wastewater services do not enhance and promote the social needs of the community. Supporting such a development is likely to result in an economic cost to the community as it will place undue pressure on emergency services such as the SES, ambulance, fire brigade and police in terms of responding to any natural hazards and any medical emergencies that may occur on the site.

CONSULTATION

Consultation with key stakeholders has been undertaken by the Development Assessment and Compliance Section during the development application process.

The objective of the consultation was to inform the relevant parties of the development application and obtain their feedback on the proposal to ensure all potential concerns have been investigated.

Internal

The application was reviewed by a range of Councils internal specialists. The application was referred to Councils Development Engineering Section, Environmental Health Section, Section 94 Officer and Building Surveyor.

On balance, the proposal was not supported due to the following:

- In accordance with PSDCP2014, dwellings within a High Hazard Floodway area are not desirable. The application presents a high safety risk for residents who are likely to become isolated during floods events;
- The applicant has not demonstrated that a suitable On-Site Sewerage Management System (OSMS) solution can be achieved on the site.

External

No external Government stakeholders were consulted.

In accordance with Council's Notification Policy, the s.82A Review of Determination was not required to be notified or advertised.

OPTIONS

- 1) Accept the recommendation.
- 2) Amend the recommendation.
- 3) Reject the recommendation.

ATTACHMENTS

- 1) Locality Plan.
- 2) Reasons for Refusal.
- 3) Section 82A Review of Determination Assessment Report.

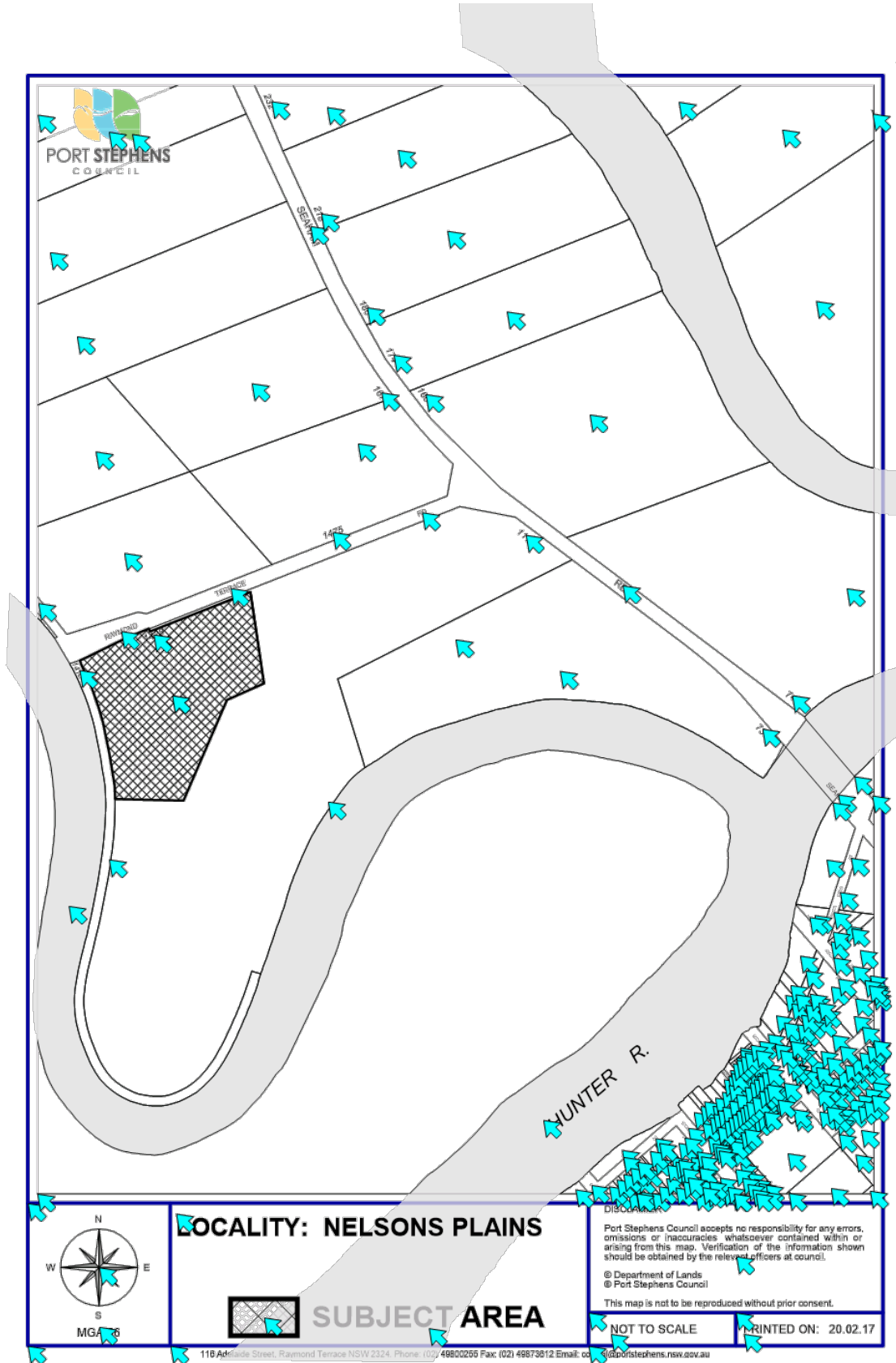
COUNCILLORS ROOM

- 1) Development plans and documentation.

TABLED DOCUMENTS

Nil.

ITEM 6 - ATTACHMENT 1 LOCALITY PLAN.



REASONS FOR REFUSAL

1. The development is inconsistent with the objectives of the *Environmental Planning and Assessment Act 1979 (EP&A Act)* as the development of land identified as 'high hazard floodway' for residential purposes does not promote the orderly and economic use and development of land (s.5(a)(ii) *EP&A Act 1979*).
2. The development fails to satisfy cl.8(j) State Environmental Planning Policy 71 - Coastal Protection (SEPP No.71) in as the development is likely to be adversely impacted by coastal processes and hazards (s.79C(1)(a)(i) *EP&A Act 1979*);
3. The development fails to satisfy cl.7.3 Port Stephens Local Environmental Plan 2013 as the development is not compatible with the flood hazard of the land and fails to incorporate measures to manage risk to life and property from flooding (s.79C(1)(a)(i) *EP&A Act 1979*).
4. The development fails to satisfy cl.7.6 Port Stephens Local Environmental Plan 2013 as adequate essential services, particularly in relation to the disposal and management of wastewater, have not been provided (s.79C(1)(a)(i) *EP&A Act 1979*).
5. The development fails to conform to the controls contained within Port Stephens Development Control Plan 2015 (B5 Flooding) as residential development is identified as incompatible with land classified as 'High Hazard Floodway' (s.79C(1)(a)(i) *EP&A Act 1979*).
6. The development has unacceptable social and economic impacts due to the high risk to life and property associated with locating residential development within a 'High Hazard Floodway' (s.79C(1)(b) *EP&A Act 1979*).
7. The site is not suitable for the development given the flood characteristics of the site (s.79C(1)(c) *EP&A Act 1979*).
8. Given the likely significant adverse impacts on the flood behaviour, risk to life, property and environment that may result from the approval, the development is not in the public interest (s.79C(1)(e) *EP&A Act 1979*).



**DEVELOPMENT ASSESSMENT
REPORT**

APPLICATION DETAILS

Application Number	16-2016-763-1 (s.82A Review of Determination)
Development Description	Earthworks (Flood Mound), Detached Dual Occupancy (Incorporating Existing Dwelling) and Ancillary Structure (Shed)
Applicant	LE MOTTEE GROUP PTY LIMITED
Date of Lodgement (s.82A)	20/06/2017
Value of Works	\$240,000.00
Property Address	1428 Raymond Terrace Road NELSONS PLAINS
Lot and DP	LOT: 1 DP: 1202026
Current Use	Rural residential - existing dwelling and ancillary structures on site.
Zoning	RU1 PRIMARY PRODUCTION
Site Constraints	ASS – Class 2 and 3 Flood Prone Land – High Hazard Floodway SEPP 71 – Coastal Protection OEH Referral – HV Flood Mitigation Scheme Prime Agricultural Land
Designated Development	The applicant is not designated development
Integrated Development	Nil. The application does not require additional approvals listed under s.91 of the EP&A Act
Concurrence	The application may require the concurrence of The Office of Environment and Heritage under s.256 (1)(A) of the Water Management Act. Should the application be recommended for approval Conditions of consent could be imposed addressing this matter.
Number of Submissions	N/A
Recommendation	Refusal

ITEM 6 - ATTACHMENT 3 SECTION 82A REVIEW OF DETERMINATION ASSESSMENT REPORT.

16-2015-221-1

Development Proposal

The application proposes the review of determination (RD) No. 16-2016-763-1 pursuant to s.82A *Environmental Planning and Assessment Act 1979* (EP&A Act).

The application subject to the s.82A RD (DA No. 16-2016-763-1) sought consent for the construction of a flood mound, detached dual occupancy (one existing dwelling) and shed. The proposed flood mound has a total footprint of 4,605m² (approximately 81m x 51m), and is raised to a maximum height of 3.37m above existing ground levels, in order to achieve a finished level of 5.4m AHD.

The proposed single storey dwelling comprises three bedrooms, lounge room, kitchen, laundry and bathroom. The dwelling has a proposed maximum height of 5.24m and a finished floor level of 5.9m AHD. The dwelling is positioned on the northwest portion of the proposed earth mound, roughly 68m south of Raymond Terrace Road and 66m east of the Hunter River.

The proposed shed is located 5m south of the proposed dwelling. The shed will incorporate three bays and one pedestrian door, at a size of 167m². The maximum height of the shed is 5.2m.

Development Application No. 16-2016-763-1 was refused by Council at its meeting of 28 March 2017 for the following reasons:

1. *The proposed development will result in a development that is inconsistent with the objects of the Environmental Planning and Assessment (EP&A) Act 1979 in that it will be exposed to an unacceptable adverse risk of flooding, which does not encourage:*
 - (i) *the proper management and development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,*
 - (ii) *the promotion and co-ordination of the orderly and economic use and development of land, or*
 - (vii) *ecologically sustainable development (s.5(a)(i),(ii) and(vii) EP&A Act 1979);*
2. *The proposed development will result in a development that fails to satisfy the provisions of Clause 8 (j) – Matters for Consideration of State Environmental Planning Policy 71 – Coastal Protection in that it is likely to be adversely impacted by coastal processes and hazards (s.79C(1)(a)(i) EP&A Act 1979);*
3. *The proposed development will result in a development that is in conflict with the following objectives contained in Clause 7.3 – Flooding of the Port Stephens Local Environmental Plan 2013:*
 - *to minimise the flood risk to life and property associated with the use of land, and*
 - *to allow development on land that is compatible with the land's flood hazard, taking into account projected changes as a result of climate change (s.79C(1)(a)(i) EP&A Act 1979);*
4. *The proposed development will result in a development that is in conflict with the provisions of Clause 7.3(3) of the Port Stephens Local Environmental Plan 2013, in that it will not be compatible with the flood hazard of the land (identified as High Hazard Floodway); does not incorporate appropriate measures to manage risk to*

ITEM 6 - ATTACHMENT 3 SECTION 82A REVIEW OF DETERMINATION ASSESSMENT REPORT.

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- life from flood; and is likely to result in unsustainable social and economic costs to the community as a consequence of flooding (s.79C(1)(a)(i) EP&A Act 1979);*
5. *The proposed amendments will result in a development that fails to satisfy the provisions of Chapter B5 – Flooding of the Port Stephens Development Control Plan 2014, in that the development is for the provision of housing (s.79C(1)(a)(iii) EP&A Act 1979);*
 6. *Approval of the proposed development within a high hazard floodway will result in unacceptable social or economic impacts (s.79C(1)(b)EP&A Act 1979);*
 7. *The subject site is unsuitable for the proposed residential development as the land is situated within a high hazard floodway. The proposed development will thereby increase risk to people and property (s.79C(1)(c)EP&A Act 1979); and*
 8. *The proposed development would be inconsistent with the adopted principles and strategies which seek to promote the proper management and use of land, promote the social and economic welfare of the community and provide for the orderly and economic use and development of land in an ecologically sustainable manner (s.79C(1)(e)EP&A Act 1979).*

The applicant has sought an s.82A review of determination No. 16-2016-763-1 and has provided the reasons to justify the review of Council's determination, these reasons are summarised below:

- a. The development is permissible within the RU1 Primary Production Zone.
- b. The proposed dual occupancy enables 'practical attendance to agricultural needs' and further that the proposed dwelling provides housing for the owners father which is required for health reasons.
- c. Dwelling houses are located on adjoining properties.
- d. The location of the flood mound will not result in environmental or amenity impacts.
- e. The proposal is consistent with the provisions of SEPP No.71 Coastal Protection.
- f. The flood impact assessment (FIA) prepared by BMT WBM consultants and submitted with the development application concludes that the proposed development will not have any major impact to local flood behaviour. As such, the applicant has demonstrated that the site is suitable for the proposed development.

For further information relating to the applicants reasons please see 'Addendum for s.82A Review of Determination of Development Application' prepared by Le Mottee Group and dated 20 June 2017.

Site Description

The subject site to land located at No.1428 Raymond Terrace Road, Nelson Plains, which is legally identified as Lot 1 DP 1202026. Access to the site is via Raymond Terrace Road. The lot is part of a large land holding that also comprises No. 117 Seaham Road, Nelson Plains (Lot 2 DP 1202026). It is noted that the land at No.117 Seaham Road comprises the majority of the land owner's operation agricultural land.

The subject site is irregular in shape, is approximately 10.07ha in size, and directly adjoins the Hunter River to the west. The site has a frontage of 228.58m to Raymond Terrace Road to the North. The site is located on a floodplain, rural in character and cleared of significant vegetation. The subject site currently contains a dwelling and detached ancillary structures. A flood mound is positioned on the north-west corner of the subject site.

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No historic approvals or past compliance matters were identified which would limit the proposed development. A cattle mound was approved on the site in 2002.



Fig.1: Aerial image of subject site.

Site Inspection

A site inspection was carried out on 29 June 2017, images of the site as included below.



Img.1-2: Site photos: Existing structures (shed, access and dwelling)

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Img.3: Site photo: Approximate location of proposed dwelling, earthworks and shed (looking west towards Hunter River).

Internal Referrals

The proposed modification was referred to the following internal specialist staff. The comments of the staff listed below have been used to carry out the assessment.

Development and Flood Engineering: It was identified that the subject site is classed as High Hazard Floodway. Council's Engineering Services Section does not support the proposed development as a result of the incompatibility of the proposed residential development with the flood characteristics of the site. The concerns raised by Engineering Services are discussed further within PSLEP 2013 (see cl.7.3 'Flood Planning') Section of this report.

Environmental Health – Waste Water: The subject site is identified under Council's on-site sewage management solution (OSMS) hazard class mapping as 'high hazard'. The sites rating is likely the result of the proximity of the property to a permanent watercourse (Hunter River) and the flood prone status of the property. Properties with a OSMS hazard class rating of 'high' and 'very high' require a high level assessment of the property and proposed development to ensure the proposed OSMS is suitable and sustainable.

An OSMS assessment report by a suitably qualified person has not been submitted either with the original application (DA 16-2016-763) nor with the s.82A review of determination. The OSMS assessment report is not required to address the specifics of the proposed system as this can be addressed at a later date under an s.96 Approval, yet the information provided to date has not satisfactorily demonstrated that an acceptable OSMS can be achieved on the site.

The applicant has not demonstrate that 'the disposal and management of sewage' can be satisfactorily catered for at the subject site, accordingly the proposal fails to comply with cl.7.6 (1)(c) 'Essential Services' PSLEP2013.

Building Surveyor: No objections were made and the application was supported subject to conditions of consent.

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Section 94 Officer: Should Council determine to approve the application a monetary contribution of \$14,931.00 is applicable under Council's s.94 Contributions Plan. Section 94 contributions are levied as a condition of development consent.

External Referrals

Council staff are recommending refusal of the s.82A review of determination and as such the s.82A application was not referred to external agencies for comment. In accordance with s.79B (1) *EP&A Act 1979* consultation with concurrence bodies is not required where a consent authority determines to refuse to grant development consent.

Notwithstanding, should Council determine to approve the application a condition of consent can be imposed addressing approval requirements under s. 256(1)(A) *Water Management Act 2000*.

MATTERS FOR CONSIDERATION – SECTION 79C

The application has been assessed pursuant to Section 79C of the *Environmental Planning and Assessment Act 1979* and the following is a summary of those matters considered relevant in this instance.

s79C(1)(a)(i) – The provisions of any EPI**State Environmental Planning Policy No 55—Remediation of Land (SEPP No.55)**

Clause 7(1) (b) and (c) of SEPP 55 require that where land is contaminated, Council must be satisfied that the land is suitable in its contaminated state or will be suitable after remediation for the purpose for which the development is proposed. If the land requires remediation Council must be satisfied that the land will be remediated before the land is used for that purpose. The existing site has a history of use for rural purposes. The land is not identified as contaminated on Council's records. Further, due to the construction methods proposed there shall be minimal disturbance of existing soils. The proposal is satisfactory when considered against the provisions of SEPP No.55 and further investigation is not warranted.

State Environmental Planning Policy No 71—Coastal Protection (SEPP No.71)

The proposed development is located in the coastal zone and accordingly cl. 8 matters for consideration require assessment under the s.82A review of determination (s.82A RD). In this regard it has been determined that the proposed development is not likely to have an adverse impact on the ecology, culture or amenity of the foreshore and coastal waters as the development is residential in nature and sufficiently separated from the waterway (Hunter River). In addition, given the separation of the development from the waterway, there are no anticipated impacts on access to, or views to or from the waterway and foreshore area. Furthermore, the development is not considered likely to result in conflict between the proposed land use and the use of the waterway.

However, cl.8(j) requires the consent authority to assess the likely impact of coastal processes and coastal hazards on a proposed development. The subject development will be subject to coastal hazards derived from the flood characteristics of the site. The assessment of the s.82A (RD) has identified that the proposed development is likely to be adversely impacted by coastal processes and hazards. As such, the development is inconsistent with the aims and provisions of SEPP No.71 and cannot be supported. The additional information provided by the applicant has not demonstrated that the development shall not be impacted by coastal processes and coastal hazards.

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State Environmental Planning Policy (BASIX) 2004 (SEPP BASIX)

A BASIX Certificate has been submitted for the proposed development which demonstrates that the proposal can achieve required water and energy saving targets compared to the standard model house. A condition of consent has been included in the notice of determination requiring the development to be carried out in accordance with the BASIX Certificate.

Port Stephens Local Environmental Plan 2013 (LEP)

Clause 2.1 Land use zones: The proposed development is defined as 'Dual Occupancy, Earthworks and Ancillary Structure' and is permissible with consent within the RU1 Primary Production Zone. The proposed development is not inconsistent with the objectives of the RU1 Primary Production zone.

Clause 4.3 Height of buildings: Clause 4.3 specifies the maximum height of buildings for development is not to exceed the maximum height shown for the land of the 'height of buildings map'. No specified height is mapped for the property. The height of the proposed dwelling is 5.23 metres from the top of the proposed earth works, the overall height of the proposed development from natural ground level is approx. 8.3metres (building height and height of earthworks).

Clause 5.5 – Development within the Coastal Zone: The proposed development is located within the coastal zone and fails to satisfy cl.5.5(3)(d)(i) as the subject development the subject development is likely to be adversely impacted by coastal hazards derived from the flood characteristics of the site. On this basis development consent cannot be granted to the proposed development.

Clause 7.1 Acid Sulfate Soils: The subject site is identified as Class 2 and 3 acid sulfate soils (ASS). The proposed development is wholly located on land classified as Class 2 ASS. The proposed dwelling, shed and flood mound (earthworks) are not anticipated to adversely impact on ASS occurring on-site. However, the OSMS associated with the proposed dwelling may require excavation below existing ground level and these works could potentially disturb ASS occurring on-site. Should Council determine to approve the development this matter could be addressed through a condition of consent.

Clause 7.2 Earthworks: Clause 7.2 seeks to ensure that earthworks will not have a detrimental impact upon the environment or surrounding properties. The development requires earthworks to achieve a level building platform above the flood planning level, the proposed earthworks have a footprint of 4,605m², top of mound measuring 31.7m by 47.47m, and a maximum height of 3.37m. Consideration has been given to cl.7.2(3); including the proposed earthworks likely impact upon; drainage, soil stability, adjoining properties, relics, and waterways.

The proposal is unlikely to disrupt drainage patterns, impact potential future development on-site and, unlikely to disturb any relics. The applicants FIA has demonstrated that the proposed earthworks are not likely to result in adverse impacts to local flooding characteristics, the assessment undertaken by Engineering Services confirms this.

However, it has been determined that there is a risk of mound or embankment failure due to seepage / saturation induced by temporary or occasional impoundment of water around the earthworks during flood events. Insufficient information was provided with the application demonstrating that the proposed earthworks are capable of withstanding actual localised velocity and shear velocities for saturated soil. Furthermore, velocities of floodwaters around the base of the mound will have the potential to result in scour and erosion to the earthworks. Details of scour protection measures required to mitigate

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localised and shear flood velocities based on saturated soil predictions for the site have not been provided.

The extent of fill proposed to facilitate residential development on the site is excessive, further the applicant has not demonstrated that the earthworks can withstand failure during flood events. For these reasons the proposed earthworks are not considered to satisfy cl.7.2 and are not supported.

Clause 7.3 Flood Planning: Clause 7.3 seeks to minimise the flood risk to life and property associated with the use of land and to allow development only where it is compatible with the land's flood hazard so as to ensure that significant adverse impacts on flood behaviour and the environment are avoided. The subject development is located on land mapped as being within the flood planning area and categorised as High Hazard Floodway. The High Hazard Floodway categorisation is as a result of the very deep moving water, which traverses the site during flood events. The Flood Planning Level (FPL) for the site is 5.9m AHD for habitable dwellings and the Probable Maximum Flood (PMF) for the site is 8.8m AHD. The provisions of cl.7.3 apply to the assessment of the proposed development.

Clause 7.3(3)(a) stipulates that development consent must not be granted to development unless the development is compatible with the flood hazard of the land. The finished floor level (FFL) of the proposed dwelling is 5.9m AHD which satisfies the minimum FFL requirements based on the FPL for the site. It has also been identified that the proposal satisfies the hydrological requirements of the site based upon the peak depth of flood water across the site (approx.2-3m) and peak velocities modelled across the site (0.4m/s to 0.7m/s).

Notwithstanding, the proposed development is not considered to be compatible with the flood hazard of the land due to the substantial safety risk associated with the development of 'High Hazard Floodway' for the purpose of residential development. It is identified that the maximum flood heights in this particular location are known to last for numerous days. For example, in the 2007 'Pasha Bulka' flood event the flood waters maintained a 'maximum height' for approximately four days at the subject location. It took several further days for the flood waters to abate. The proposal does therefore not satisfy cl.7.3(3)(a).

The flood impact assessment prepared by BMT WBM dated 5 June 2017 demonstrates that the proposed development will not have a substantial impact on the local flood characteristics (cl.7.3(3)(b)). It is not anticipated that the proposal will impact adversely impact the environment (cl.7.3(3)(d)).

However, the subject site will essentially become an isolated 'island' during flood events with no reasonable escape route. The applicant has not provided an emergency response plan was provided. Regardless, it is unlikely that the applicant could provide an evacuation plan demonstrating further inhabitants can achieve safe egress during flood events as the sites most likely route of escape (Seaham Road) is also classified as a High Hazard Floodway during significant floods and likely to be dangerous and not trafficable once flood waters rise. The development does not incorporate appropriate measure to manage risk to life from flood, accordingly cl.7.3(3)(c) has not been satisfied.

In addition, Council's Development Control Plan 2014 clearly identifies that residential development is not appropriate within 'High Hazard Floodway' due to the safety risk for potential residents who may find themselves trapped and in danger during flood events. Residential development within this hazard category is not sustainable and will result in social and economic costs to the community; such as loss of life/property and strain to State Emergency Services (SES) resources by way of additional demand on property protection, rescue and evacuation. The development fails to satisfy cl.7.3(3)(e).

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The development is not compatible with the lands flood hazard and will result in an unacceptable risk, therefore it cannot be supported. The development fails to satisfy the provisions of cl.7.3 'Flood Planning'. Further, the proposed development is inconsistent with the NSW Floodplain Development Manual 2005 and Floodplain Risk Management Policy (adopted 8 March 2016).

Clause 7.6 Essential services: Clause 7.6 requires the consent authority to be satisfied that essential services including water, electricity, sewage, stormwater and access are available to the site.

It is considered that the land has connections to both reticulated water and electricity services. The site has an existing access driveway to Raymond Terrace Road.

The development also requires onsite waste water treatment system and the applicant has failed to demonstrate that a suitable OSMS can be accommodated on site taking into account the flood characteristics of the land. As a result of the insufficient information pertaining to this matter cl.7.6 has not been satisfied.

Clause 7.15 – Dual Occupancies on RU1, RU2, E2 or E3 Land

The proposed development is located within the RU1 Primary Production Zone. Clause 7.15 requires that Dual Occupancy development located within the RU1 Zone be designed / sited to give the appearance of a single development. The clause also requires that dwellings use shared facilities including access and essential services and ancillary buildings are to be located in close proximity to the dwellings. The proposed development is considered to satisfy cl.7.15 as the proposal will be viewed as a single development where viewed from Raymond Terrace Road and shall share facilities with the existing dwelling located on site including; driveway and electricity and water services.

s79C(1)(a)(ii) – Any draft EPI

Draft State Environmental Planning Policy (Coastal Management) 2016

The draft State Environmental Planning Policy (Coastal Management) 2016 (Coastal SEPP) was on public exhibition until 23 December 2016.

The subject land is located with the Coastal Use area and it is considered that the proposed development is consistent with the objectives of the Coastal Use areas, as identified in the draft policy, and can therefore be supported.

s79C(1)(a)(iii) – Any DCP

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.

Section A - Introduction

A.12 Development Notification: In accordance with the requirements of chapter A.12, the development application was not notified.

Section B – General provisions

B3.B - Acid sulfate soils: Refer to cl.7.1 LEP2013 discussion above.

B3.C – Contaminated land: Refer to SEPP No.55 discussion above.

B3.F – Earthworks: The extent of earthworks proposed is not supported. Refer to cl.7.2 LEP2013 discussion above for discussion.

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B5 – Flooding: The subject site is has been classified as High Hazard Floodway (refer to cl.7.3 LEP2013 discussion above). The location of the proposed dwelling is not appropriate for residential purposes. The development is not consistent with the outcomes of section B5.8 of the DCP which identifies that residential development within a 'High Hazard Floodway' is not encouraged. The DCP outlines that an application may only be considered where it demonstrated to have specific community needs/benefits, which does not relate to the provision of housing.

Section C - Single and Dual Occupancy Dwellings

C4.7 Site Coverage: The development is located upon rural land and adheres to the maximum non-permeable suffice area.

C4.9 Height: LEP2013 does not provide for specific height limits are set for the property although the current design is approx. 8.3m above natural ground due to the amount of fill required to build above the 1% AEP level. The proposed building height is not inconsistent with C4.9.

C4.F Setback: The proposal complies with the setback requirements. A 53m front setback has been provided to Raymond Terrace Road. A 43.4m side setback to the western boundary (Hunter River) and 154metre rear setback has also been provided.

C4.16 Setback of Garages: The proposed detached shed and garaging is setback 5m behind the proposed dwelling. The development complies with C4.16.

C4.23 Private open space (POS): Adequate open space is provided to cater for both the existing and proposed dwelling. The development exceeds the minimum POS requirements.

C4.24 Solar Access: Both the existing and proposed dwellings exceed the minimum solar access requirements of 2hrs of sunlight to POS between the hours of 9am and 3pm in mid-winter.

C4.32 Ancillary shed on rural land: The proposed ancillary rural shed (and garaging) is setback 5m from adjoining buildings and a minimum of 43m from the site and rear property boundaries. The location of the proposed shed complies with C4.32.

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

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

s79C(1)(a)(iv) – The regulations

Consideration of the regulations is not required in this instance.

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

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

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

The assessment has considered the likely impact of the development by identifying the potential impacts of the proposal, available measures to improve impacts and frequency/severity of the impacts. The development is not compatible with the flood risks associated with the land and may result in unacceptable impacts to life and property. The proposed development is also likely to result in unacceptable demand to SES resources. The social and economic impacts of the development are unacceptable. The development is recommended for refusal, the original determination outcome was correctly made.

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

There site is physically constrained by flooding and is considered unsuitable for the proposed development. Land classified as 'high hazard floodway' is not compatible with residential development.

s79C(1)(d) – Any submissions

In accordance with Council's Notification Policy, the proposed development was not required to be notified or advertised.

s79C(1)(e) – The public interest

The development may result in adverse social, economic and environmental outcomes as the development has not been designed in a manner that is compatible with the flood risk of the land. The development poses an unacceptable risk to life. The development is not within the public interest.

Conclusion

The s.82A Review of Determination has determined that the proposed development should not be supported. The original determination which resulted in the refusal of the Development Application was correctly made. Council staff recommend that the Council determine to refuse the s.82A Review of Determination in accordance with the provided reasons for refusal.

ITEM NO. 7

**FILE NO: 17/146391
RM8 REF NO: 16-2016-867-1**

**SECTION 82A APPLICATION FOR REVIEW OF DETERMINATION
DEVELOPMENT APPLICATION NO.16-2016-867-1 FOR FLOOD MOUND AND
SINGLE STOREY DWELLING AT 174 SEAHAM ROAD NELSON PLAINS (LOT:33
DP: 609041).**

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

RECOMMENDATION IS THAT COUNCIL:

- 1) Refuse Section 82A Application for review of determination of Development Application (DA) number (No.) 16-2016-867-1 for a flood mound and single storey dwelling at 174 Seaham Road, Nelson Plains (Lot: 33 DP: 609041) for the reasons contained in (**ATTACHMENT 3**).
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**ORDINARY COUNCIL MEETING - 1 AUGUST 2017
MOTION**

	<p>Councillor John Nell Councillor Peter Kafer</p> <p>That Council refuse Section 82A Application for review of determination of Development Application (DA) number (No.) 16-2016-867-1 for a flood mound and single storey dwelling at 174 Seaham Road, Nelson Plains (Lot: 33 DP: 609041) for the reasons contained in (ATTACHMENT 3).</p>
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In accordance with Section 375 (A) of the *Local Government Act 1993*, a division is required for this item.

Those for the Motion: Crs Geoff Dingle, Ken Jordan, Peter Kafer and John Nell.

Those against the Motion: Mayor Bruce MacKenzie, Crs Chris Doohan, Sally Dover and Steve Tucker.

The motion was lost.

**ORDINARY COUNCIL MEETING - 1 AUGUST 2017
MOTION**

193	Mayor Bruce MacKenzie
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Councillor Chris Doohan

It was resolved that Council approve Section 82A Application for review of determination of Development Application (DA) number (No.) 16-2016-867-1 for a flood mound and single storey dwelling at 174 Seaham Road, Nelson Plains (Lot: 33 DP: 609041) in accordance with the conditions listed below:

CONDITIONS THAT IDENTIFY APPROVED PLANS AND LIMITATIONS OF CONSENT

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

Plan/Doc.Title	Plan Ref. No	Sheet.	Date	Drawn By
Plan of Proposed Mound (1 Sheet)	6562 Mound-B	1 of 1	24/10/2016	Le Mottee Group
Proposed Brick Veneer Residence (7 Sheets)	16116	1 to 7 of 7	05/12/2016	Valley Homes

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

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

CONDITIONS TO BE SATISFIED PRIOR TO DEMOLITION, EXCAVATION OR CONSTRUCTION

3. **Prior to the commencement of work**, for any residential building work within the meaning of the *Home Building Act* 1989, (the HB Act) except for Crown building works certified in accordance with section 109R of the Act, the principal certifying authority must provide to the Council (unless Council is the principal certifying authority) a written notice of:

- a. In the case where a principle contractor is required to be appointed, the name and licence number of the principal contractor and the name of the insurer by which the work is insured under the HB Act;
 - b. In the case of work to be done by an owner builder, the name of the owner-builder and their permit number if required under the HB Act.
4. **Prior to the commencement of works**, a waste containment facility is to be established on site. The facility is to be regularly emptied, and maintained for the duration of works. No rubbish shall be stockpiled in a manner which facilitates the rubbish to be blown or washed off site. The site shall be cleared of all building refuse and spoil immediately upon completion of the development.
5. **Prior to the commencement of works**, the property shall be protected against soil erosion, such that sediment is not carried from the construction site by the action of stormwater, wind or “vehicle tracking”. Protection measures may include erosion and sedimentation controls as required. All protection measures are to be installed to the satisfaction of Council prior to the commencement of works, and regularly maintained for the duration of works and until the site is stabilised by vegetation or the like.
6. **Prior to the commencement of works**, a 3m wide all-weather vehicle access from the kerb and gutter to the building under construction is to be provided for the delivery of materials and trades. Sand shall not be stockpiled on the all-weather vehicle access.

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

7. The finished floor level of all habitable areas shall be a minimum of 5.9m AHD. Design details shall be submitted to the Certifying Authority for approval **prior to the issue of a Construction Certificate**. During works, a survey certificate verifying compliance with this condition shall be provided to the Certifying Authority as soon as practical on completion of the floor level.
8. **Prior to the issue of a Construction Certificate**, a geotechnical engineer assessment of the mound foundation suitability, in respect of the approved structures, must be provided to the Certifying Authority for assessment and determined to be satisfactory by the Certifying Authority.
9. **Prior to the issue of a Construction Certificate**, an application is to be lodged and approved by Council under section 68 of the *Local Government Act 1993* for the installation of an on-site sewage management system.
10. **Prior to the issue of the Construction Certificate**, detailed engineering plans for civil works are to be submitted to and approved by the Certifying Authority. The detailed plans are to be in accordance with Council’s Infrastructure Specification and include the following information:-

- a. The access ramp showing the grades, changes in grade and dimensions, which are to adhere to the requirements of AS 2890.
- b. Details of the driveway showing compliance with the requirements of the NSW Rural Fire Service 'Planning for Bushfire Protection'.
- c. A concrete dish crossing in accordance with Council's Standard Drawing No. S106. Where driveway grades do not permit a dish crossing, a driveway application is to be submitted so that Council can nominate a pipe size and invert levels.

11. The shape, volume and location of the mound is to be in accordance with the submitted plans. The final pad shape, levels and location will be confirmed by the submission of a Survey Plan prepared by a practising registered surveyor to show the existing natural ground contour levels, the full extent and degree of the fill, and finished ground contour levels and cross sections indicating the depth of fill prior to the commencement of use.

12. The development shall be constructed in accordance with the NSW Government Floodplain Management Manual (2005). The following design precautions must be adhered to:-

- a. The floor level of any habitable room is to be located at a height not less than the Flood Planning Level (FPL), which is **5.9m AHD**.
- b. No potentially hazardous or offensive material is to be stored on site that could cause water contamination during floods.
- c. All building materials, equipment, ducting etc. below the FPL shall be flood compatible.
- d. All main power supply, heating and air conditioning service installations, including meters, shall be located above the FPL.
- e. All electrical wiring below the FPL shall be suitable for continuous submergence in water. All conduits below the FPL shall be self-draining. Earth core leakage systems or safety switched are to be installed.
- f. All electrical equipment installed below the FPL shall be capable of disconnection by a single plug from the power supply.
- g. Where heating equipment and fuel storage tanks are not feasible to be located above the FPL, then they shall be designed for continuous submergence in water and securely anchored to overcome buoyancy and movement that may damage supply lines. All storage tanks shall be vented to an elevation above the FPL.
- h. All ducting below the FPL shall be provided with opening for drainage and cleaning.

Details of the above information are to be submitted to the satisfaction of the Certifying Authority **prior to the issue of the Construction Certificate**.

13. **Prior to the issue of the Construction Certificate**, a structural engineer shall provide certification to Council that all building structures and earth mounds are able to withstand the hydrostatic and hydrodynamic flood forces, including debris impact and buoyancy uplift for the 1% AEP flood (**4.9m AHD**).
14. A flood management plan which covers evacuation and the provision of emergency food, medical supplies, power/communication, water and effluent disposal etc. incorporating the SES Business Floodsafe Toolkit, shall be submitted and approved by Council **prior to the issue of the Construction Certificate**.
15. **A Construction Certificate cannot be issued** until full details of the stormwater drainage design have been provided to the Certifying Authority for assessment and determined to be satisfactory by the Certifying Authority.

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

16. All building work must be carried out in accordance with the provisions of the Building Code of Australia.
17. Construction work that is likely to cause annoyance due to noise is to be restricted to the following times:
 - Monday to Saturday, 7am to 5pm;
 - no construction work to take place on Sunday or Public Holidays.

When the construction site is in operation the L10 level measured over a period of not less than 15 minutes must not exceed the background by more than 10dB(A). All possible steps should be taken to silence construction site equipment.
18. All excavated and/or filled areas are to be retained or battered and suitably drained so as to prevent any subsidence of the surrounding land and constructed so as to deny any flow of water into or around the building or neighbouring buildings or onto neighbouring land.
19. Immediately following completion of the earthworks and prior to the commencement of use or storage of materials on the mound;
 - d) The final pad shape, levels and location will be confirmed by the submission of a detailed survey plan prepared by a Registered Surveyor. The detailed survey plan shall be provided to Council within 14 days of completion.
 - e) The mound is to be top dressed and seeded with fast growing grasses.
 - f) Adequate scour protection shall be provided to the mound, designed by a suitable qualified engineer to withstand the velocities in major

	<p>flood events.</p> <p>20. Filling associated with the construction of the flood mound, shall not obstruct any natural drainage path or water drainage system. The mound must have batter slopes no steeper than 1 (vertical) to 4 (horizontal). Batter slopes are to be fully contained within the subject property.</p> <p>21. Dust suppression is to be actively undertaken during works, through the use of wet-down water tankers or an alternative method agreed by Council.</p> <p>22. The only fill material that may be received at the development site is:</p> <p style="padding-left: 40px;">c) Virgin excavated natural material (VENM) within the meaning of the Protection of the Environment Operations Act 1997 (POEO); or</p> <p style="padding-left: 40px;">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.</p> <p>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.</p> <p>23. 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.</p> <p>24. It is the responsibility of the applicant to erect a PCA sign (where Council is the PCA, the sign is available from Council's Administration Building at Raymond Terrace or the Tomaree Library at Salamander Bay free of charge). The applicant is to ensure the PCA sign remains in position for the duration of works.</p> <p>CONDITIONS TO BE SATISFIED PRIOR TO ISSUE OF AN OCCUPATION CERTIFICATE</p> <p>25. The development shall be constructed in accordance with the stated values of the BASIX certificate 782250S submitted with the application. Prior to the issue of the Occupation Certificate, an appropriately qualified person shall certify compliance with those requirements and provide documentary evidence to the Principle Certifying Authority.</p> <p>26. Prior to the issue of an Occupation Certificate, a survey certificate shall be provided to the Certifying Authority verifying the finished levels of habitable rooms comply with the FPL of 5.9m AHD.</p>
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	<p>27. All civil engineering works shall be carried out in accordance with the Construction Certificate and Council's Design and Construction Specification, Policies and Standards, to the satisfaction of Certifying Authority prior to the issue of the Occupation Certificate.</p> <p>28. Prior to the issue of any Occupation Certificate, an on-site sewage management system is to be installed and a satisfactory final inspection completed by Council.</p> <p>CONDITIONS TO BE SATISFIED AT ALL TIMES</p> <p>29. The stormwater system, including any water quality, quantity or infiltration components, shall be maintained in perpetuity for the life of the development.</p> <p>30. Filling shall not obstruct any natural drainage path or water drainage system. Neither shall the fill encroach onto any adjoining property.</p>
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In accordance with Section 375 (A) of the *Local Government Act 1993*, a division is required for this item.

Those for the Motion: Mayor Bruce MacKenzie, Crs Chris Doohan, Sally Dover and Steve Tucker.

Those against the Motion: Crs Geoff Dingle, Ken Jordan, Peter Kafer and John Nell.

BACKGROUND

The purpose of this report is to present a Section 82A application for 'Review of Determination' (RD) of Development Application (DA) No. 16-2016-867-1 to Council for determination. As prescribed under Section 82B of the *Environmental Planning and Assessment (EP&A) Act 1979*, the 82A review must be conducted by Council as Council determined the development application.

After a detailed assessment, the 82A review has concluded the same recommendation as the initial assessment in that the development cannot be supported, for reasons contained in **(ATTACHMENT 3)**.

Assessments 82A Review of Determination DA No. 16-2015-221-1

The application subject to the s.82A RD (DA No. 16-2016-867-1) sought consent for a flood mound and the construction of a single storey dwelling at 174 Seaham Road, Nelsons Plains. A locality plan has been included as **(ATTACHMENT 1)** to this report. The original application was refused by Council on 28 March 2017 for the following reasons:

- a) The development is not in the public interest (s79C(e) *Environmental Planning and Assessment Act 1979*) given the likely significant adverse impacts on the flood behaviour, property and environment that may result;
- b) The development fails to satisfy cl.7.3 Port Stephens Council Local Environmental Plan 2013 (LEP) as the development is not compatible with the flood hazard of the land (s.79C (1)(a)(i) *Environmental Planning & Assessment Act 1979*).

The applicant has sought a review of the application (DA No. 16-2016-867-1) due to the following reasons:

- a) A dwelling is a use which is permitted with consent under Port Stephens Local Environmental Plan (2013);
- b) The proposed dwelling will make for practical attendance to agricultural needs;
- c) A number of dwelling houses exist in the locality and so the development would not be out of character;
- d) The flood mound has been strategically positioned in the most practical and environmental friendly location and will not impact on the amenity of the locality;
- e) The flood impact assessment lodged with the original application concluded that the proposed development will not have a major impact on the local flood behaviour within the site or neighbouring properties;
- f) The proposed development is considered to be appropriate for the site.

Proposal

The application (DA No. 16-2015-867-1) sought consent for a flood mound and the construction of a single story four bedroom dwelling. The dwelling is proposed to be constructed with a finished floor level (FFL) of 5.9AHD. The flood mound has a total footprint of 8557sqm (approximately 77m x 119m). The mound will be raised a maximum of 4.47m above the existing site levels to achieve a finished level of RL 5.9m.

The proposed dwelling will be positioned in the centre portion of the proposed flood mound, roughly 100m from the Williams River and 430m from Seaham Road. The dwelling is single story, 440sqm in size and will consist of four bedrooms, living room, kitchen, laundry and bathroom. The maximum height of the dwelling is 5.9m. It is noted that no amendments to development plans submitted with the original development application were identified.

The fibro shed and metal shed will be required to be demolished to facilitate the proposed development. The applicant informed Council that the demolition of the existing structures is exempt development as prescribed under *State Environmental Planning Policy (Exempt and Complying Development) 2008*.

Assessment Outcomes

The subject land is zoned RU1 Primary Production under the Port Stephens Local Environmental Plan 2013 (LEP2013). The proposal is permissible with consent in the RU1 zone.

The proposal was assessed against relevant controls and objectives as specified under, State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004, Port Stephens Local Environmental Plan (LEP2013) and Port Stephens Development Control Plan 2014 (DCP2014). Under both the current and proposed DCP, dwellings are not supported in high hazard flood ways.

A detailed assessment of the proposed development has been carried out against the requirements of the *EP&A Act 1979* and has been included as **(ATTACHMENT 2)** to this report.

Key Issues

Flood classification

The key issue arising out of the assessment of this application relate to the flood characteristics of the site. Council's flood study for the area identified the site within a High Hazard Floodway. The modelled flood levels for the site are as follows:

- Flood Planning Level (FPL) – 5.9m AHD;
- 1% AEP – 4.9m AHD;
- 1% in 2100 – 5.4m AHD;
- Probable Maximum Flood Level (PMF) – 8.7m AHD.

Unacceptable adverse risk derived from flood impacts would arise and subsequently the proposal does not comply with the following:

- 1) Section 5 of the *Environmental Planning and Assessment (EP&A) Act 1979* as it relates to the social and economic welfare of the community, the orderly development of land and ecological sustainable development.
- 2) Section 79C of the *Environmental Planning and Assessment (EP&A) Act 1979*
 - a) Clause 7.3(3) of the Port Stephens Local Environmental Plan 2013 (LEP2013) – in that residential development is not considered compatible with the high hazard flood risk applicable to the land. Appropriate mitigation measures have not been incorporated to manage risk to life and flood. Therefore, it is considered that the development will result in unsustainable social and economic costs to the community as a consequence of flooding in the future;
 - b) The subject site is unsuitable for the proposed residential development as the land is situated within a high hazard floodway. The proposed development will thereby increase risk to people and property.

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- c) Chapter B5 – Flooding of the Port Stephens Development Control Plan 2014 (DCP2014). The development is for the provision of housing and as specified by DCP2014 is not supported in a High Hazard Floodway.

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2013-2017
Sustainable Development.	Provide Strategic Land Use Planning Services. Provide Development Assessment and Building Certification Services.

FINANCIAL/RESOURCE IMPLICATIONS

The proposed modification application is inconsistent with the relevant planning instruments and guidelines including; the *Environmental Planning and Assessment Act 1979*, LEP2013, DCP2014 and the NSW Government 2005, 'Floodplain Development Manual'.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes		There is scope within Council's existing budget to defend Council's determination if challenged.
Reserve Funds	No		
Section 94	No		
External Grants	No		
Other	No		

LEGAL, POLICY AND RISK IMPLICATIONS

The development application is not consistent with relevant planning instruments, flood development guidelines and studies including: *The Environmental Planning and Assessment Act 1979 (EP&A Act)*, LEP2013, DCP2014, the Port Stephens Council "Areas Affected by Flooding and/or inundation" Policy, Floodplain Risk Management Policy and Paterson River Floodplain Risk Management Study and Plan 2001, and the NSW Floodplain Development Manual 2005.

Section 733 *Local Government Act 1993* provides Council with a general exemption from liability with respect to flood liable land. However, this exemption is only applicable if the necessary studies and works are carried out in accordance with the principles contained in the NSW Floodplain Development Manual 2005. Endorsement of this development would be contrary to these provisions.

A decision contrary the planning framework may negate the good faith immunity provisions in *Local Government Act 1993*. This could result in individual Councillors being personally accountable and responsible for any subsequent implications resulting from the decision. Further, in the event of any future claim Council's insurers may determine not to cover Council should the application be approved contrary to the recommendation.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk the proposal will expose people and property to risk of damage and death as a consequence of approving residential development in a high hazard floodway.	High	Determine the application in line with the recommendation and refuse the application.	Yes
There is a risk that if the application is refused, it may be challenged at the Land and Environment Court.	Medium	Defend the refusal of the application in the NSW Land and Environment Court if required.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The social and economic impacts of flooding are well documented. Policies and strategies have been implemented by Council to adequately mitigate the adverse impacts of flooding within the Local Government Area. The proposal will increase the residential density within a high hazard floodway, increasing the risk to people and property.

The proposed development is consistent with the rural nature of the locality and is consistent in design characteristics of other developments in the locality. The proposed development does not require the removal of significant vegetation and, due to the size of the subject land; stormwater would be able to be managed in accordance with Councils quantity and quality requirements.

Other than the flood impacts, no other significant impacts to the built and natural environment have been identified.

CONSULTATION

Consultation with key stakeholders has been undertaken by the Development Assessment and Compliance Section during the development application process.

The objective of the consultation was to inform the relevant parties of the development application and obtain their feedback on the proposal to ensure all potential concerns have been investigated.

Internal

The application was reviewed by a range of Councils internal specialists. The application was referred to Councils Development Engineering Section, and Building Surveyor.

On balance, the DA was not supported due to the following:

- In accordance with PSDCP2014, dwellings within a High Hazard Floodway area are not desirable. The application presents a high safety risk for residents who become isolated during floods events;
- The site is nominated as a high hazard rating in regards to On-Site Sewerage Management System (OSMS). Council Environmental Health officer requested a statement from a suitably qualified person outlining that an acceptable waste management solution is achievable on site. As the application is recommended for refusal, the additional information was not requested from the applicant.

External

No external stakeholders were consulted and the application was not publicly notified.

OPTIONS

- 1) Accept the recommendations.
- 2) Amend the recommendations.
- 3) Reject the recommendations.

ATTACHMENTS

- 1) Locailty Plan.
- 2) Planners Assessment Report (82A Review) .
- 3) Reasons For Refusal.

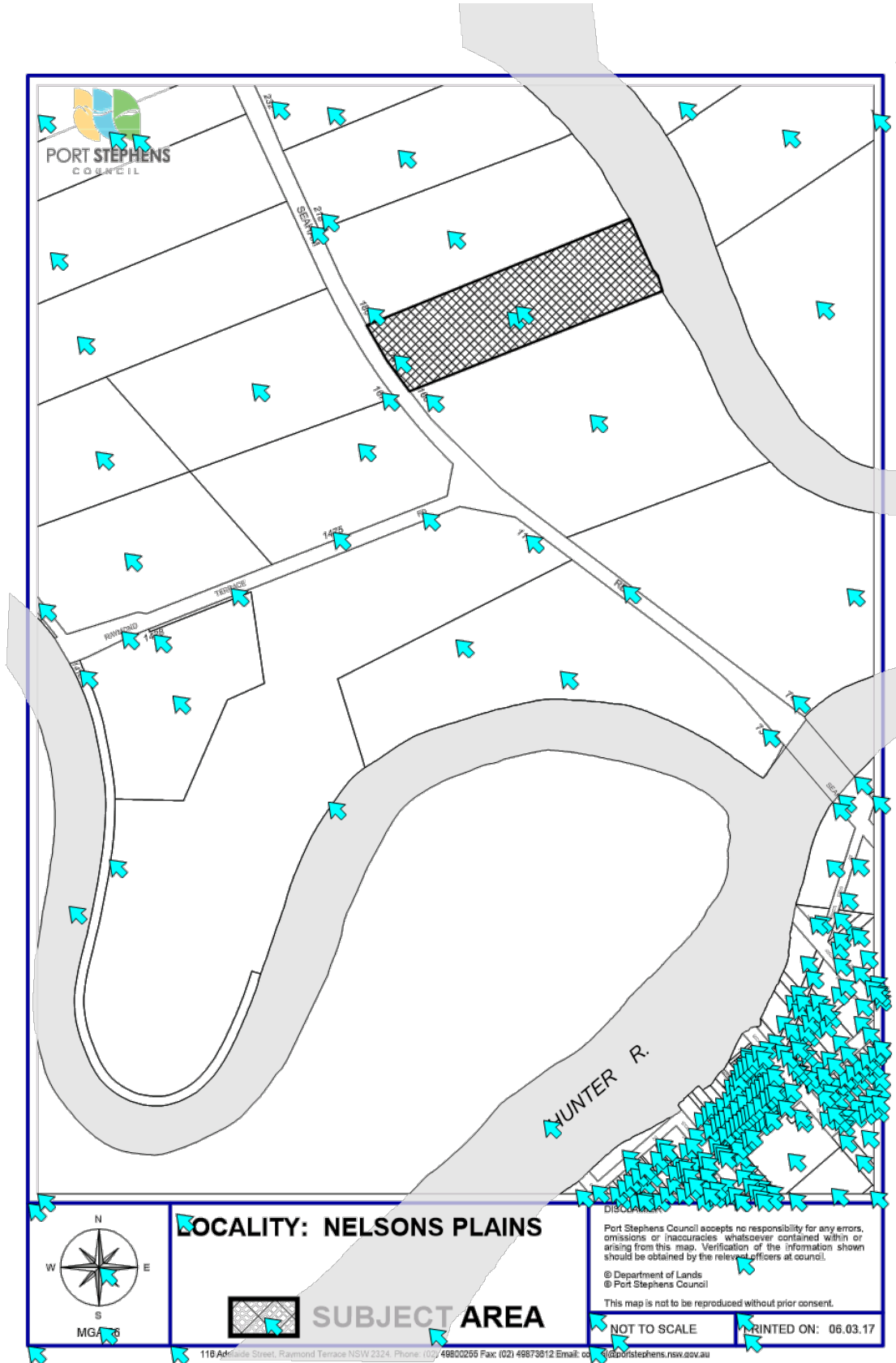
COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ITEM 7 - ATTACHMENT 1 LOCALITY PLAN.





APPLICATION DETAILS

Application Number	16-2016-867-1
Development Description	Flood Mound and Single Story Dwelling
Applicant	LE MOTTEE GROUP PTY LIMITED
Date of Lodgement	02/01/2016
Value of Works	\$550,000.00
Property Address	174 Seaham Road, Nelson Plains
Lot and DP	LOT: 33 DP: 609041
Current Use	Rural
Zoning	RU1 PRIMARY PRODUCTION
Site Constraints	Flood prone land (high hazard floodway) OEH Referral – HV Flood Mitigation Scheme (Levee) ASS Class's 2, and 3. SEPP 71 – Coastal Protection Prime Agricultural Land
Integrated Development	Nil.
Number of Submissions	N/A
Recommendation	Refusal

S82A – Review of Determination

The application proposes the review of determination No. 16-2016-867-1 pursuant to s.82A *Environmental Planning and Assessment Act 1979* (EP&A Act). In accordance with s.82B with the EP&A Act, the 82A review must be conducted by Council as Council determined the development application. The original application was refused by Council on 28 March 2017 for the following reasons:

- a. The development is not in the public interest (s79C(e)) *Environmental Planning and Assessment Act 1979* given the likely significant adverse impacts on the flood behaviour, property and environment that may result.
- b. The development fails to satisfy cl.7.3 Port Stephens Council Local Environmental Plan 2013 (LEP) as the development is not compatible with the flood hazard of the land (s.79C (1)(a)(i) *Environmental Planning & Assessment Act 1979*).

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The applicant has sought a review of the application (DA No.16-2016-867-1) due to the following reasons:

- a. A dwelling is a use which is permitted with consent under Port Stephens Local Environmental Plan (2013)
- b. The proposed dwelling will make for practical attendance to agricultural needs
- c. A number of dwelling houses are existing in the locality and noted that the development would not be out of character.
- d. The flood mound has been strategically positioned in the most practical and environmental friendly location and will not impact on the amenity of the locality.
- e. The flood impact assessment lodged with original application concluded that the proposed development will not have a major impact on the local flood behaviour within the site or neighbouring properties.
- f. The proposed development is considered to be appropriate for the site.

Development Proposal

The application (DA No.16-2015-867-1) sought consent for a flood mound and the construction of a single story four bedroom dwelling. The dwelling is proposed to be constructed with a finished floor level (FFL) of 5.9AHD. The flood mound has a total footprint of 8557sqm (approximately 77m x 119m). The mound will be raised a maximum of 4.47m above the existing site levels to achieve a finished level of RL 5.9m.

The proposed dwelling will be positioned in the centre portion of the proposed flood mound, roughly 100m from the Williams River and 430m from Seaham Road. The dwelling is single story, 440sqm in size and will consist of four bedrooms, living room, kitchen, laundry and bathroom. The maximum height of the dwelling is 5.9m.

The fibro shed and metal shed will be required to be demolished to facilitate the proposed development. The applicant informed Council that the demolition of the existing structures is exempt development as prescribed under *State Environmental Planning Policy (Exempt and Complying Development) 2008*.

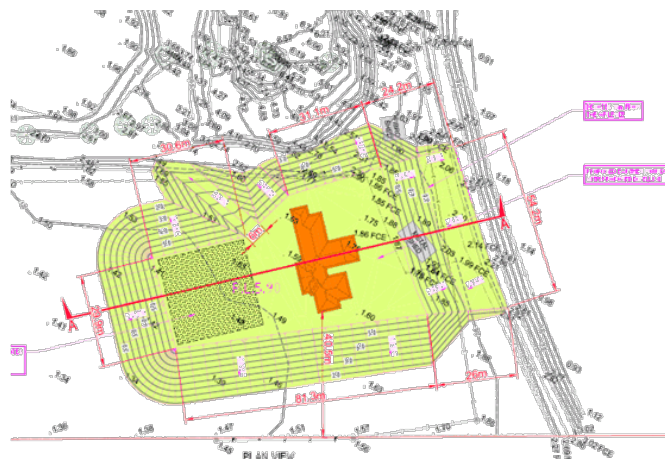


Figure 1: Development Proposal

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Site Description

The subject site is located at No.174 Seaham Road, Nelson Plains which is legally identified as Lot: 33 DP609. Access to the development site is via a driveway roughly 430m in length from Seaham Road. The site is rectangular in shape with a street frontage of 163m with relatively flat topography. A flood levee is constructed to the east of the subject development adjoining the Williams River. A Fibro Shed and Metal Shed are located on the subject site and will be required to be demolished to facilitate the proposed development.



Figure 2: The subject site.

As stated above, the site is located on the Williams River and is therefore flood prone. Council's flood study for the area identified the site within a High Hazard Floodway. The modelled flood levels for the site are as follows:

- Flood Planning Level (FPL) – 5.9m AHD
- 1% AEP – 4.9m AHD
- 1% in 2100 – 5.4m AHD
- Probable Maximum Flood Level (PMF) – 8.7m AHD

Site Inspection

A site inspection was carried out on 29 June 2017.

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Figure 3: Subject site



Figure 4: Looking towards Seaham Road

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Figure 5: Approximant location of dwelling

Internal Referrals

The proposed modification was referred to the following internal specialist staff. The comments of the staff listed below have been used to carry out the assessment.

Development Engineer – The application was referred to Council's Development Engineering section for comment. The Flood Engineers did not support the location of the proposed dwelling within the high hazard floodway. Council's DCP2014 outlines that development within a floodway is not encouraged. An application may only be considered where it demonstrated to have specific community needs/benefits, which does not relate to the provision of housing. Further discussion regarding the flooding issues has been provided below.

Building Surveyor – No objections were made and the application was supported subject to conditions.

Environmental Health – On-site sewage management (OSMS) is required and as such the application was referred to Council's Environmental Health team for comment. It was noted that the property is nominated as a high hazard rating in regards to OSMS. It was requested that a statement from a suitably qualified person outlining that an acceptable waste management solution is achievable on site. As the application is recommended for refusal due to flooding constraints, the additional information was not requested from the applicant.

External Referrals

The proposed modification was referred to the following external agencies for comment.

Office of Environment and Heritage - The application may require the concurrence of The Office of Environment and Heritage under s.256 (1)(A) of the Water Management Act. As Council staff recommended refusal, no consultation with concurrence bodies are required in accordance with Section 79B of the *Environmental Planning and Assessment Act 1979*.

MATTERS FOR CONSIDERATION – SECTION 79C

The application has been assessed pursuant to Section 79C of the *Environmental Planning and Assessment Act 1979* and the following is a summary of those matters considered relevant in this instance.

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s79C(1)(a)(i) – The provisions of any EPI**State Environmental Planning Policy No 55—Remediation of Land**

Clause 7(1) (b) and (c) of SEPP 55 require that where land is contaminated, Council must be satisfied that the land is suitable in its contaminated state or will be suitable after remediation for the purpose for which the development is proposed. If the land requires remediation Council must be satisfied that the land will be remediated before the land is used for that purpose. The existing site has a history of use for rural purposes. The land is not identified as contaminated on Council's records. Further, due to the construction methods proposed there shall be minimal disturbance of existing soils. The proposal is satisfactory when considered against the provisions of SEPP No.55 and further investigation is not warranted.

SEPP (BASIX) 2004

A BASIX Certificate has been submitted for the proposed development which demonstrates that the proposal can achieve required water and energy saving targets compared to the standard model house. A condition of consent has been included in the notice of determination requiring the development to be carried out in accordance with the BASIX Certificate.

Port Stephens Local Environmental Plan 2013 (LEP)

Clause 2.1 Land use zones: The proposed development is defined as 'Dwelling and Earthworks' and is permissible with consent within the RU1 Primary Production Zone. The proposed development is not inconsistent with the objectives of the RU1 Primary Production zone.

Clause 4.3 Height of buildings: Clause 4.3 specifies the maximum height of buildings for development is not to exceed the maximum height shown for the land of the 'height of buildings map'. No specified height is mapped for the property. The height of the proposed dwelling is 5.19metres. The proposal will not fragmentise or alienate resource lands and will not discourage primary industries activities.

Clause 7.1 Acid sulfate soils: The subject site is identified as Class 2 and 3 acid sulfate soils (ASS). Works associated with the development will be undertaken within Class 3 ASS and as filling is required to raise the proposed dwelling above the Flood Planning Level minimal excavation works are anticipated. As such ground disturbance will be kept to a minimum. Should Council determine to approve the development this matter could be addressed via conditions of consent.

Clause 7.2 Earthworks: Clause 7.2 (2)(b) stipulates that development consent is required for the proposed earthworks. Matters outlined in Clause 7.2 (3) require the consent authority to consider matters (a) to (h).

The application proposes earthworks on the site to achieve a level building platform consistent with the existing mound positioned to the north of the subject development. The proposed flood mound will have a total footprint of 8557sqm and requires filling to a maximum of 4.47m. The proposal is unlikely to disrupt drainage patters, impact potential future development on-site and, unlikely to disturb any relics.

The flood report submitted with the application outlines that the earthworks are not anticipated to impact adjoining properties. Soil stability conditions would be incorporated into any conditions of consent issued to ensure scour protection, which would include but not limited to landscaping. Additionally, the use of clean fill would be conditioned.

The application is satisfactory in regard to Clause 7.2 (3).

Clause 7.3 Flood Planning:

The objectives of Clause 7.3 – Flood Planning are to:

- minimise risk to life and property associated with the use of land,
- allow development on land that is compatible with the lands flood hazard
- avoid significant adverse impact on flood behaviour and the environment.

The subject development is located on land mapped as being within the flood planning area and categorised as High Hazard – Floodway. The Flood Planning Level (FPL) for the site is 5.9AHD for habitable dwellings. Clause 7.3(3) outlines that the consent authority must be satisfied that the development:

(a) is compatible with the flood hazard of the land, and

It is noted that the application proposes the construction of a flood mound with a footprint of 8557sqm requiring a maximum of 4.47m in order to construct a dwelling above the FPL and provide space for OSMS. Regardless, residential development is not considered compatible with the high hazard flood risk of the land. Increasing residential density within a high hazard floodway will increase risk to life and property.

(b) will not significantly adversely affect flood behavior resulting in detrimental increases in the potential flood affectation of other development or properties, and

The Flood Impact Assessment (FIA) prepared by BMT WBM stated that the larger storm events (1% AEP and 0.5%AEP) are negligible in terms of depth and provided evidence that velocity changes are contained on-site. The FIA noted that during the 0.5% AEP event flood models indicate a reduction by up to 0.2m/s to the dwelling situated to the south. However, the flood impact assessment report did not include the potential impact of the development to local flood characteristics during lesser, more common storm events. In this regard the impact of the development to local flood characteristics could not be determined.

(c) incorporates appropriate measures to manage risk to life from flood, and

Assessment of the flood characteristic of the subject site concluded that any residential development would present a substantial risk to any future occupant. A satisfactory flood emergency flood plan was not submitted. Seaham Road is the likely escape route during flood events and classified as being positioned on land also nominated as a high hazard floodway.

The probable Maximum Flood (PMF) for the site reaches 8.7AHD, which would result in flood waters 2.8m in depth over the flood mound and 6.2m depth over the driveway, moving up to 0.7m/s. Additionally, the entire length of the 430m driveway would also be inundated from flood waters during the 1% AEP and 0.5%AEP flood events. As noted above flood characteristics during lesser, more common storm events were not provided and therefore cannot be adequately assessed.

The FIA noted that a flood refuge as specified as a requirement under PSDCP2014 is not recommended. It was noted that during extreme flood events any flood refuge mound would present hazardous conditions for the building and occupants. The likely time of inundation is estimated to be in the order of weeks.

The flood characteristic of the site detail that the proposed residential development present a high risk to life and property during flood events.

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(d) will not significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses, and

The Flood Impact Assessment outlined that the velocity at the toe of the flood mound is not above 0.8m/s, therefore the risk of floodwater scouring the flood mound is considered low. However, localised flooding velocities have the potential to be higher, and scour protection is recommended prior to any approval.

(e) is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.

The social and economic impacts of flooding are well documented. Policies and strategies have been implemented by Council to adequately mitigate the adverse impacts of flooding within the Local Government Area. The proposed dwelling will increase the residential density within a high hazard floodway, increasing the risk to people and property, which is inconsistent with this Clause and DCP2014. The increase in residential density will add to the demand on limited NSW State Emergency Services (SES) resources by way of property protection, rescue and evacuation.

As such, it is considered that development consent cannot be granted in accordance with Clause 7.3 of LEP2013 – Flood Planning as the consent authority is not satisfied that matters outlined in Clause 7.3(3) are satisfied.

Clause 7.6 Essential services: The site has access to the majority of essential services listed under this clause.

In regards to sewer management, insufficient information has been lodged to detail that an OSMS can operate on-site. It is noted that additional information regarding an acceptable waste management solution is achievable on site would be required before the any conditions of consent are provided.

The application has demonstrated that stormwater drainage resulting from roof and hard stand areas can be catered for in accordance with Councils requirements. The subject land also maintains direct access to Seaham Road, meeting the requirements of this clause.

s79C(1)(a)(ii) – Any draft EPI

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

s79C(1)(a)(iii) – Any DCP

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.

Section A - Introduction

A.12 Development Notification: In accordance with the requirements of chapter A.12, the development application was not notified.

Section B – General provisions

Chapter B4 – Drainage and Water Quality - Development plans illustrate the provision of a rainwater tank. The stormwater drainage design has been assessed as being consistent with the Infrastructure Specification.

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Chapter B5 – Flooding

The subject land is mapped as being within the Flood Planning Area. Following from the discussion against Clause 7.3 of the LEP2013 above, the proposed development is not acceptable in this regard.

The subject development is located in a High Hazard Floodway, which poses a serve safety risk for future residents due to the likelihood of becoming trapped and in danger during flood events.

DCP2014 states that development within a high hazard floodway is not encouraged and can only be supported where it is demonstrated to have specific community needs/benefits, which does not relate to the provision of housing. As the the proposal is considered inconsistent with the aims and objectives of chapter B5 –Flooding of DCP2014.

Chapter B6 – Essential Services

The site has access to the majority of essential services listed under this clause.

In regards to sewer management, insufficient information has been lodged to detail that an OSMS can operate on-site. It is noted that additional information regarding an acceptable waste management solution is achievable on site would be required before the any conditions of consent are provided.

The application has demonstrated that stormwater drainage resulting from roof and hard stand areas can be catered for in accordance with Councils requirements. The subject land also maintains direct access to Seaham Road, meeting the requirements of this clause. Prior to any approval it is recommended that the vehicle access driveway be upgraded.

Chapter B9 – Road Network and Parking

The proposed dwelling is a four bedroom dwelling and accordingly requires two (2) car parking spaces. Two (2) car parking spaces have been provided for the proposed dwelling, which exceeds the minimum car parking requirements specified under DCP2014.

Section C – Development Types

Chapter C4 – Dwelling Houses, Dual Occupancies and Ancillary Development

Clause	Requirement	Assessment
C4.1	Lodgement Requirements	The application includes relevant information required under this clause.
C4.7	Site coverage not to exceeds 60%	The relatively large area of the lot ensures that site coverage is below 60%. The application has demonstrated that suitable open space, landscaping and vehicle manoeuvring areas will be provided on the site. The site coverage is considered to be satisfactory.
C4.9	Building height to be max. 8m on land with no maximum building height specified in LEP	The proposed development is single story and has a maximum height of 5.1m above ground level. The proposed development is considered acceptable in this instance as the development is in-keeping with the surrounding environment.
C4.10	Minimum front setback of	The proposed development is setback 430m from

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	4.5m in greenfield sites or average of adjacent properties, or 10m in rural, environmental or R5 zoned land	Seaham Road, complying with the minimum setback requirements for rural lots.
C4.12	Side setback for ground floor of min 0.9m or 5m in rural or environmental zones	The proposed development is setback a minimum of 40m, complying with side setback requirements.
C4.14	Rear setback for ground floor of min 2m or 5m in rural or environmental zones	The proposed development is setback a minimum of 110m from the rear property boundary which complies with the minimum setback requirements.
C4.21	Development to be sympathetic to the street character	The proposed development is typical of other developments in the locality and is suitable in the streetscape.
C4.23	Min 50m ² of POS with 35m ² principle POS with min dimensions of 4m x 4m, or 20m ² balcony with minimum width of 3m where ground floor POS cannot be provided	The proposed dwelling is located on a parcel of land approximately 9.6ha in size. The site is relatively flat with minimal vegetation, ensuring adequate usable private open space.
C4.24	Min 2hrs of sunlight to principle POS between 9am to 3pm mid-winter	The proposed proposed dwelling will receive more than 2hrs of sunlight to the principle private open space between the hours of 9am and 3pm in mid-winter.

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

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

s79C(1)(a)(iv) – The regulations

Consideration of the regulations is not required in this instance.

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

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

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

The social and economic impacts of flooding are well documented. Policies and strategies have been implemented by Council to adequately mitigate the adverse impacts of flooding within the Local Government Area. The proposal will increase the residential density within a high hazard floodway, increasing the risk to people and property. The increase in residential density will add to the demand on limited NSW State Emergency Services (SES) resources by way of property protection, rescue and evacuation.

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The proposed development is consistent with the rural nature of the locality and is characteristic of other developments in both the local and wider community. The proposal provides logical and convenient connections to the road network in the locality. There are no anticipated adverse impacts on the built environment as a result of the proposed development.

The proposed development does not require the removal of significant vegetation. Additionally, due to the size of the subject lot stormwater would be able to be managed in accordance with Councils quantity and quality requirements.

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

This site is physically constrained by flooding and is considered unsuitable for the proposed development. The residential nature of the development is inconsistent with the objectives of LEP2013 and DCP2014 due to the flood characteristics of subject site. Residential development is not considered a compatible development type for land situated within a high hazard floodway. The subject site presents a substantial risk to future occupants of the proposed dwelling.

s79C(1)(d) – Any submissions

In accordance with Council's Notification Policy, the proposed development was not required to be notified or advertised.

s79C(1)(e) – The public interest

The development may result in adverse social, economic and environmental outcomes as the residential development is not compatible with the flood risk of the land. The development poses an unacceptable risk to life and property and may also result in adverse flood impacts to surrounding properties. The development is not within the public interest.

Conclusion

The s.82A review application is not supported by Council Staff. Therefore the s.82A review is recommended to be refused.

REASONS FOR REFUSAL

1. The proposed development will result in a development that is inconsistent with the objects of the *Environmental Planning and Assessment (EP&A) Act 1979* in that it will be exposed to an unacceptable adverse risk of flooding, which does not encourage:
 - (i) the proper management and development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,
 - (ii) the promotion and co-ordination of the orderly and economic use and development of land, ... or....
 - (vii) ecologically sustainable development (s.5(a)(i),(ii) and(vii) EP&A Act 1979);
2. The development fails to satisfy cl.7.3 Port Stephens Local Environmental Plan 2013 as the development is not compatible with the flood hazard of the land, fails to incorporate measures to manage risk to life and property from flooding and is likely to result in unsustainable social and economic costs to the community as a consequence of flooding (s.79C(1)(a)(i) EP&A Act 1979).
3. The proposed amendments will result in a development that fails to satisfy the provisions of Chapter B5 – Flooding of the Port Stephens Development Control Plan 2014, in that the development is for the provision of housing (s.79C(1)(a)(iii) EP&A Act 1979);
4. Approval of the proposed development within a high hazard floodway will result in unacceptable social or economic impacts (s.79C(1)(b)EP&A Act 1979);
5. The subject site is unsuitable for the proposed residential development as the land is situated within a high hazard floodway. The proposed development will thereby increase risk to people and property (s.79C(1)(c)EP&A Act 1979); and
6. The proposed development would be inconsistent with the adopted principles and strategies which seek to promote the proper management and use of land, promote the social and economic welfare of the community and provide for the orderly and economic use and development of land in an ecologically sustainable manner (s.79C(1)(e)EP&A Act 1979).

ITEM NO. 8

**FILE NO: 17/146394
RM8 REF NO: PSC2016-01959**

PLANNING PROPOSAL TO AMEND ZONING AND MINIMUM LOT SIZE PROVISIONS AT 63 BOUNDARY RD MEDOWIE (BOWER ESTATE)

REPORT OF: MICHAEL MCINTOSH - GROUP MANAGER DEVELOPMENT SERVICES

GROUP: DEVELOPMENT SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Adopt the planning proposal as publicly exhibited to amend the *Port Stephens Local Environmental Plan 2013 (NSW)* for land at 63 Boundary Road, Medowie to:
 - a. Rezone part Lot 1, DP 1224780 from part E2 Environmental Conservation and part R5 Large Lot Residential to part E2 Environmental Conservation, part R5 Large Lot Residential and part R2 Low Density Residential.
 - b. Reduce the minimum lot size for part Lot 1, DP 1224780 for land proposed to be zoned R2 Low Density Residential from 1,000m² to 500m².
 - c. Apply a height of building limit for part Lot 1, DP 1224780 of 9m. No height of building limit currently exists for this land.
- 2) Request that the Minister for Planning make the Plan in accordance with the *Environmental Planning and Assessment Act 1979 (NSW)* (s59).
- 3) Advise the applicant to prepare an amendment to Part D9 North Medowie – Medowie of the Port Stephens Development Control Plan 2014.

**ORDINARY COUNCIL MEETING - 1 AUGUST 2017
MOTION**

	<p>Councillor Geoff Dingle Councillor John Nell</p> <p>That Council refuse the planning proposal as publicly exhibited to amend the <i>Port Stephens Local Environmental Plan 2013 (NSW)</i> for land at 63 Boundary Road, Medowie to:</p> <ol style="list-style-type: none">a. Rezone part Lot 1, DP 1224780 from part E2 Environmental Conservation and part R5 Large Lot Residential to part E2 Environmental Conservation, part R5 Large Lot Residential and part R2 Low Density Residential.b. Reduce the minimum lot size for part Lot 1, DP 1224780 for land proposed to be zoned R2 Low Density Residential from 1,000m² to 500m².
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MINUTES ORDINARY COUNCIL - 1 AUGUST 2017

- | | |
|--|---|
| | c. Apply a height of building limit for part Lot 1, DP 1224780 of 9m. No height of building limit currently exists for this land. |
|--|---|

The Mayor adjourned the meeting at 6.24pm for 15 minutes due to disorder by Cr Dingle.

The Mayor resumed the meeting resumed at 6.41pm. All those present at the adjournment were present when the meeting resumed.

In accordance with Section 375 (A) of the *Local Government Act 1993*, a division is required for this item.

Those for the Motion: Crs Geoff Dingle and Peter Kafer.

Those against the Motion: Mayor Bruce MacKenzie, Crs Chris Doohan, Sally Dover, Ken Jordan, Bruce MacKenzie, John Nell and Steve Tucker.

The motion was lost.

**ORDINARY COUNCIL MEETING - 1 AUGUST 2017
MOTION**

194	Mayor Bruce MacKenzie Councillor Chris Doohan It was resolved that Council adopt the planning proposal as publicly exhibited to amend the <i>Port Stephens Local Environmental Plan 2013 (NSW)</i> for land at 63 Boundary Road, Medowie to: <ol style="list-style-type: none">a. Rezone part Lot 1, DP 1224780 from part E2 Environmental Conservation and part R5 Large Lot Residential to part E2 Environmental Conservation, part R5 Large Lot Residential and part R2 Low Density Residential.b. Reduce the minimum lot size for part Lot 1, DP 1224780 for land proposed to be zoned R2 Low Density Residential from 1,000m² to 500m².c. Apply a height of building limit for part Lot 1, DP 1224780 of 9m. No height of building limit currently exists for this land. <ol style="list-style-type: none">2) Request that the Minister for Planning make the Plan in accordance with the <i>Environmental Planning and Assessment Act 1979 (NSW)</i> (s59).3) Advise the applicant to prepare an amendment to Part D9 North Medowie – Medowie of the Port Stephens Development Control Plan 2014.
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In accordance with Section 375 (A) of the *Local Government Act 1993*, a division is required for this item.

Those for the Motion: Mayor Bruce MacKenzie, Crs Chris Doohan, Sally Dover, Ken Jordan and Steve Tucker.

Those against the Motion: Crs Geoff Dingle, Peter Kafer and John Nell.

BACKGROUND

At its meeting on 11 July 2017, Council resolved to defer the planning proposal (the proposal) (**ATTACHMENT 1**) to amend the zoning and minimum lot size provisions at 63 Boundary Road, Medowie (the site) to allow time for further consideration.

A two-way presentation on Tuesday, 18 July was held with the Councillors, the Proponent and Council Officers to address the concerns that were raised at this meeting. The remainder of this report will consider the submissions received during the public exhibition period of the proposal. This report seeks endorsement for a request that the proposal be made by the Minister for Planning as publicly exhibited.

At its meeting on 8 November 2016, Council resolved to seek a gateway determination for the proposal from the NSW Department of Planning and Environment (DoPE). On the 9 December 2016, Council received a gateway determination (**ATTACHMENT 2**), which included a condition to publicly exhibit the planning proposal for a minimum of 14 days.

The proposal was initially exhibited for 14 days from 11 May 2017 to 25 May 2017. On 18 May 2017, Council staff met with a number of Medowie residents who had raised concerns in relation to the proposal. Following this meeting, Council staff agreed that the public exhibition period should be extended for additional 14 days in order to allow further time for residents to review the proposal. 12 submissions were received during the public exhibition period; 11 objections and 1 in support of the proposal. The main issues raised in the objections were:

1. Traffic and emergency access/egress;
2. Storm water drainage;
3. Character of Medowie/intent of Medowie Strategy; and
4. Lack of community facilities and open space.

The above issues are further discussed under the 'Consultation' section of this report. Additionally, further detail on the submissions received and responses to these issues is provided in the attached 'Submissions Table' (**ATTACHMENT 3**). No changes have been made to the Planning Proposal as a result of the issues raised.

It is noted that the gateway determination provided Council with written authorisation to exercise the functions of the Minister for Planning under *Environmental Planning and Assessment Act 1979 (s59) (NSW)*. These delegations allow Council to make the LEP Amendment without having to go back to DoPE.

However, an objection received from the Department of Defence means that Council must forfeit its plan making powers back to the Minister for Planning. Further detail on the Department of Defence's objection is provided in the attached 'Submissions Table' (**ATTACHMENT 3**). As a result of this, this report recommends that Council request that the Minister make the Plan.

In accordance with LEP (c6.3), the proponent requires that a site specific Development Control Plan be adopted. Should the LEP be made, the applicant will be required to seek an amendment to the Port Stephens Development Control Plan 2014, in particular Part D9 North Medowie – Medowie. This will ensure that the controls are relevant to and reflective of the amended zone and minimum lot size. As a result, this report also recommends that the applicant prepare a DCP.

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2013-2017
Sustainable Development.	Provide Strategic Land Use Planning Services. Provide Development Assessment and Building Certification Services.

FINANCIAL/RESOURCE IMPLICATIONS

The proponent has paid the relevant rezoning fees in line with the Council's Fees and Charges Policy. In accordance with this Policy, a Stage 3 fee of \$5,250 will be required if the recommendation is supported by Council.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes	\$5,250 \$10,500 \$5,250	Stage 1 fees – 28/06/2016 Stage 2 fees –09/05/2017 Stage 3 fees – To be advised.
Reserve Funds	No		
Section 94	No		
External Grants	No		
Other	No		

LEGAL, POLICY AND RISK IMPLICATIONS

The following summarises the key planning strategies and instruments that relate to the Planning Proposal:

Hunter Regional Plan 2036

The Hunter Regional Plan (HRP) was released on 14 October 2016 and is a 20-year blueprint for the future of the Hunter. The HRP identifies Medowie as a centre of local significance intended to provide future housing and urban renewal opportunities. The proposal will deliver Goal 4 of the HRP which seeks to provide greater housing choice and jobs in the Hunter. Specifically, the proposal satisfies 'Direction 21 – Create a compact settlement' and 'Direction 22 – Promote housing diversity'. The site is also highlighted as an urban release area within the HRP.

Port Stephens Planning Strategy 2011

The Port Stephens Planning Strategy (PSPS) was adopted by Council on 20 December 2011. The PSPS provides the current framework for future growth in the Local Government Area (LGA). The PSPS identifies Medowie as being a main urban release area within the Eastern Growth Corridor of the LGA. Medowie is the fastest growing Planning District, as identified by the PSPS, and notes that there is limited opportunity for infill development and growth will occur on the urban fringe. The proposal is therefore consistent with the PSPS.

Medowie Strategy 2016

The Medowie Strategy 2016 (the Strategy) was adopted by Council on 13 December 2016. Concerns were raised in submissions that the proposal was not consistent with the intent of the Medowie Strategy, that is, to provide smaller lots closer to services and the town centre. A response to these concerns is provided later in this report under 'Consultation'.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that Council could be legally challenged on the procedural merits of the LEP Amendment.	Low	Staff have followed procedural requirements as set out in the <i>Environmental Planning and Assessment Act 1979 (NSW)</i> as well as meeting the conditions prescribed by the Minister for Planning in the gateway determination.	Yes
There is a risk that future	Low	Where relevant,	Yes

MINUTES ORDINARY COUNCIL - 1 AUGUST 2017

landowners will purchase land without knowing they will be subjected to aircraft noise.		development will be subject to the controls of the Port Stephens Development Control Plan 2014. A notation is provided on all section 149(5) Planning Certificates advising the presence of aircraft noise to land within the Port Stephens Local Government Area.	
There is a risk that the LEP Amendment will not proceed given the Department of Defence (DoD's) objection.	Low	A response to DoD's concerns is included in the final planning proposal to be forwarded to the Department of Planning and Environment should Council resolve to proceed with the LEP Amendment.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Concern has been raised in submissions received during the exhibition period that relate to social, economic and environmental implications of the planning proposal proceeding. These include reduced lot sizes becoming a 'low socio-economic ghetto', the validity of a koala refuge within the development, the loss of native vegetation and reduced water quality/increased water quantity leaving the site. A response to these concerns is provided in the attached 'Submissions Table' (**ATTACHMENT 3**).

CONSULTATION

Consultation was undertaken in accordance with the previous report to Council on this matter.

Internal

Council's Traffic and Drainage Engineers have provided responses to submissions raising concerns in relation to stormwater and traffic impacts, discussed below.

It is also noted that Council's Natural Resource team hold no objection to the proposal on environmental grounds.

External

The proposal was notified to adjoining landowners and advertised in the Port Stephens Examiner. Between 11 May and 8 June 2017, the proposal was available on Council's website and Administration Building (Raymond Terrace). A copy was also placed at the Medowie Community Centre.

The main issues raised in submissions that objected to the proposal are:

1. Traffic and emergency access/egress

Objectors raised concerns that the reduced minimum lot size will significantly affect the amenity of the neighbourhood by way of traffic generation. The applicant submitted a Traffic Impact Statement (TIS) to support the planning proposal. The TIS concluded that the proposal will not have a major impact upon the local road network and is acceptable on traffic planning and engineering grounds.

The TIS recommended minor upgrade works to the Medowie Road / Boundary Road intersection, including the construction of a short channelized-right turn treatment and a basic left-turn treatment. The TIS concluded that with these works, the intersection would "continue to offer good levels of service into the future". Council's Traffic Engineer reviewed the proposal and supporting documentation and concluded that the local road network and intersections, including Medowie Road/Boundary Road, will continue to operate at the best level of service.

Additionally, a number of the submissions were concerned that access to Medowie Road is only provided via one road (Boundary Road). In particular, concern was raised that this access point would be incapable of allowing safe traffic egress in the event of an emergency, such as a bushfire, and a second access should be required. The applicant submitted a Bushfire Threat Assessment (BTA) to support the planning proposal.

The BTA considered access to and from the estate in the event of a bushfire and found that the proposal will be able to comply with the access provisions of the NSW Rural Fire Service's (RFS) document 'Planning for Bushfire Protection 2006' (PFBP). The RFS were provided with a copy of the BTA and responded with no objection to the development if matters such primary and secondary access ways complied with the requirements of the PFBP at the time of subdivision.

2. Stormwater drainage

Objectors raised concerns in relation to increased stormwater that would result from the reduced minimum lot size that would increase the lot yield and therefore impervious surfaces (e.g. roofs, driveways etc.). Council staff responded to these concerns by confirming that appropriate modelling had been carried out to achieve a neutral or beneficial on water quality.

A resident on Medowie Road was concerned that their property would be particularly affected by stormwater run-off given their property was low lying. However, Council's Drainage Engineer confirmed that the development does not drain to Medowie road and all stormwater from the development has been/ will be directed to Moffatt's Swamp catchment through three large detention basins to control the post development discharges.

The same concern was shared by residents in Settlers Close. Council's Drainage Engineer addressed this by confirming that some of the natural catchments, which were previously drained through Settlers Close and Square Close, have now been re-directed away from these two streets. Therefore, the residents here are likely to experience less stormwater run-off during an event as a result of the proposal.

3. Character of Medowie/intent of Medowie Strategy

A number of submissions were concerned that the proposal is out of character for Medowie, which is typically a large lot/rural residential settlement. Additionally, objectors questioned the consistency of the proposal with the intent of the Medowie Strategy, being to small lots close to services/town centre and large lots in the peri-urban precincts.

The Medowie Strategy notes the need to identify urban release areas within Medowie, with priority given the sites that are characterised by the following:

- Proximity to existing urban areas;
- Location along main transport routes (Medowie Road and Ferodale Road);
- Access to community facilities;
- Better access to sewer and water infrastructure;
- Reduced land fragmentation;
- Flood-free land; and
- Cleared land.

The subject site is consistent with each of the above criteria and is therefore a preferred urban release area. The subject site is specifically identified by the strategy with an estimated dwelling yield of 480. The proposal is also consistent with the Strategy's recommended minimum lot size for residential development of 500m².

An existing development consent permits the subject site to be subdivided into 345 allotments (DA 16-2015-336-1). Should the proposal proceed the lot yield of the site is expected to increase to 480 being a difference of 135 lots.

4. Lack of facilities and open space

Objectors were concerned that the Bower Estate is not capable of sustaining a high quality of life for the additional lots that would be created by the proposal based on the lack of facilities and open space within the development. The estate will be master planned and should the LEP Amendment proceed, an amendment to Part D9 of the Port Stephens Development Control Plan 2014 (DCP) will be required to address matters such as facilities and open space that may be required by future residents. It is noted that Council's current provisions are made in the DCP for subdivision developments to provide public open space (refer to C1.F and C1.15-17).

The proposal will allow for the provision of adequate facilities including open space for future residents however this will be via the development application process.

OPTIONS

- 1) Accept the recommendations.
- 2) Amend the recommendations.
- 3) Reject the recommendations.

ATTACHMENTS

- 1) Planning proposal. (Provided under separate cover)
- 2) Gateway Determination.
- 3) Submissions table.

COUNCILLORS ROOM

- 1) Original submissions received from external agencies and public.

TABLED DOCUMENTS

Nil.



Our ref: PP_2016_PORTS_008_00
(16/14701)

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

Att: Matthew Borsato

Dear Mr Wallis,

**Planning proposal to amend Port Stephens Local Environmental Plan 2013
– Boundary Road, Medowie.**

I am writing in response to your Council's letter requesting a Gateway determination under section 56 of the Environmental Planning and Assessment Act 1979 ("EP&A Act") in respect of the planning proposal to rezone part of Lots 93 to 96 DP753194 at Boundary Road, Medowie.

As delegate of the Minister for Planning, I have now determined the planning proposal should proceed subject to the conditions in the attached Gateway determination.

The planning proposal's consistency with S117 Directions 3.5 Development Near Licenced Aerodromes, 2.1 Environmental Protection Zones and 4.4 Planning for Bushfire Protection will require further consultation with the Office of Environment and Heritage, Department of Defence and NSW Rural Fire Service respectively. Council may still need to obtain the agreement of the Secretary to comply with the requirements of relevant S117 Directions. Council should ensure this occurs prior to the plan being made.

The Minister delegated plan making powers to councils in October 2012. It is noted that Council has now accepted this delegation. I have considered the nature of Council's planning proposal and have decided to issue an authorisation for Council to exercise delegation to make this plan.

The amending Local Environmental Plan (LEP) is to be finalised within 12 months of the week following the date of the Gateway determination. Council should aim to commence the exhibition of the planning proposal as soon as possible. Council's request to draft and finalise the LEP should be made directly to Parliamentary Counsel's Office 6 weeks prior to the projected publication date. A copy of the request should be forwarded to the Department for administrative purposes.

ITEM 8 - ATTACHMENT 2 GATEWAY DETERMINATION.

The State Government is committed to reducing the time taken to complete LEPs by tailoring the steps in the process to the complexity of the proposal, and by providing clear and publicly available justification for each plan at an early stage. In order to meet these commitments, the Minister may take action under section 54(2)(d) of the EP&A Act if the time frames outlined in this determination are not met.

Attached for your assistance is a simplified guide to the plan making process and reporting requirements to ensure that the LEP Tracking System is kept updated.

Should you have any queries in regard to this matter, I have arranged for Claire Brooks from the Hunter office to assist you. Ms Brooks can be contacted on (02) 4904 2700.

Yours sincerely,

9/12/2016
Monica Gibson
Director Regions, Hunter and Central Coast
Planning Services



Gateway Determination

Planning proposal (Department Ref: PP_2016_PORTS_008_00): to rezone land at Boundary Road, Medowie

I, the Director Regions, Hunter and Central Coast at Department of Planning and Environment as delegate of the Minister for Planning, have determined under section 56(2) of the EP&A Act that an amendment to the Port Stephens Local Environmental Plan (LEP) 2013 for land at part of Lots 93-96 DP 753194 Boundary Road, Medowie should proceed subject to the following conditions:

1. Consultation is required with the NSW Rural Fire Service in relation to s117 direction 4.4 Planning for Bushfire Protection. Council is to amend the Planning Proposal to address the advice provided.
2. Community consultation is required under sections 56(2)(c) and 57 of the Environmental Planning and Assessment Act 1979 ("EP&A Act") as follows:
 - (a) the planning proposal is classified as low impact as described in *A Guide to Preparing LEPs (Department of Planning & Environment 2016)* and must be made publicly available for a minimum of 14 days; and
 - (b) the relevant planning authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 5.5.2 of *A Guide to Preparing LEPs (Department of Planning & Environment 2016)*.
3. Consultation is required with the following public authorities under section 56(2)(d) of the EP&A Act 1979:
 - (a) Office of Environment and Heritage (regarding Section 117 Direction Environment Protection Zones);
 - (b) Transport for NSW - Roads and Maritime Services; and
 - (c) Department of Defence

Each public authority is to be provided with a copy of the planning proposal and any relevant supporting material. Each public authority is to be given at least 21 days to comment on the proposal, or to indicate that they will require additional time to comment on the proposal. Public authorities may request additional information or additional matters to be addressed in the planning proposal.

4. A public hearing is not required to be held into the matter by any person or body under section 56(2)(e) of the EP&A Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).

ITEM 8 - ATTACHMENT 2 GATEWAY DETERMINATION.

5. The timeframe for completing the LEP is to be 12 months from the week following the date of the Gateway determination.

Dated 9th day of December 2016.

**Monica Gibson
Director Regions, Hunter and Central Coas
Planning Services
Department of Planning and Environment**

Delegate of the Minister for Planning

**WRITTEN AUTHORISATION TO EXERCISE DELEGATION**

Port Stephens City Council is authorised to exercise the functions of the Minister for Planning under section 59 of the *Environmental Planning and Assessment Act 1979* that are delegated to it by instrument of delegation dated 14 October 2012, in relation to the following planning proposal:

Number	Name
PP_2016_PORTS_008_00	Planning proposal to rezone land at Boundary Road, Medowie

In exercising the Minister's functions under section 59, the Council must comply with the Department's "*A guideline for the preparation of local environmental plans*" and "*A guide to preparing planning proposals*".

Dated 9th December 2016

Monica Gibson
Director Regions, Hunter and Central Coast
Planning Services
Department of Planning and Environment



Delegated plan making reporting requirements

(Attachment 5 from "A guide to preparing local environmental plans")

Notes:

- The department will fill in the details of Table 3
- RPA is to fill in details for Table 2
- If the planning proposal is exhibited more than once, the RPA should add additional rows to **Table 2** to include this information
- The RPA must notify the relevant contact officer in the regional office in writing of the dates as they occur to ensure the Department's publicly accessible LEP Tracking System is kept up to date
- A copy of this completed report must be provided to the Department with the RPA's request to have the LEP notified

Table 1 – To be completed by the Department

Stage	Date/Details
Planning Proposal Number	PP_2016_PORTS_008_00
Date Sent to Department under s56	21 November 2016
Gateway determination date	9 December 2016

Table 2 – To be completed by the RPA

Stage	Date/Details
Dates draft LEP exhibited	
Date of public hearing (if held)	
Date sent to PCO seeking Opinion	
Date Opinion received	
Date Council Resolved to Adopt LEP	
Date LEP made by GM (or other) under delegation	
Date sent to Department requesting notification (hunter@planning.nsw.gov.au)	
Brief Description of Purpose of planning proposal	

Table 3 – To be completed by the Department

Stage	Date/Details
Notification Date and details	

Additional relevant information:

PLAN MAKING PROCESS POST GATEWAY – FOR DELEGATED MATTERS

1. Post Exhibition Review

- Any unresolved s117 directions must be finalised before progressing with LEP
- If planning proposal is revised, council is to email a copy of the revised proposal to the regional planning team - hunter@planning.nsw.gov.au under Section 58(2) of the Act prior to requesting LEP to be made.
- If changes to planning proposal are substantial then may no longer be authorised by the Gateway determination and a Gateway amendment may be required before LEP is made. Councils are encouraged to contact regional planning team to seek advice before finalising the LEP under delegation.

2. Legal Drafting of the LEP

- Council's request to draft and finalise the plans should be made as soon as possible to ensure timeframes are met. Council should upload the maps and GIS data directly to the department's portal site (<https://data.planningportal.nsw.gov.au/help>).
- Once uploaded Council should email hunter@planning.nsw.gov.au and advise maps are available for checking. Any questions about uploading can be directed to gis@planning.nsw.gov.au.
- Unless otherwise negotiated the department will only undertake a technical review of any maps, to ensure they comply with LEP mapping technical guidelines.
- No maps or mapping/GIS data is to be sent directly to PCO.
- The request for legal drafting should be send to PCO at parliamentary.counsel@pco.nsw.gov.au including the planning proposal, a copy of the gateway determination and details of any change to the proposal arising from the gateway determination. The name and contact details of the council contact officer should also be supplied.
- A copy of the request to PCO should also be forwarded to the department for administrative purposes only – hunter@planning.nsw.gov.au

3. Making of the draft LEP s59

- Council's delegate resolves to finalise the LEP by signing the instrument (see example below).
- If council's delegate decides not to make plan or defer a matter, council should liaise with regional team for assistance.
- Council must also notify PCO if plan not proceeding

4. Notification of LEP

- Council advises and requests the department to make the plan, email request to hunter@planning.nsw.gov.au and the following documents to be provided for notification
 1. Signed LEP - which includes full name of LEP and PCO file reference
 2. Signed map cover sheet and associated maps,
 3. Name and position of the delegate who signed the LEP and date,
 4. Completed Attachment 5 - delegated plan making reporting template,
 5. Copy of council's assessment (s 59 report) which is usually the council report/minutes
 6. PC opinion
- Request to hunter@planning.nsw.gov.au by Tuesday of the week will enable notification by Friday.

Example of signature front page

Fred Smith
General Manager

As delegate for the Minister for Planning
12/12/14

SUBMISSION SUMMARY AND PLANNING RESPONSE

Submission	Summary of Submission	Planning Proposal Response
External Agencies		
Department of Defence (DoD)	<ul style="list-style-type: none"> a. The site is located in proximity to the RAAF Base Williamtown and Salt Ash Air Weapons Range which may expose future residents to high levels of aircraft noise. DoD suggests that noise attenuation measures are adopted in the design and construction of and future residential dwellings. b. The site is constrained by building height controls and any structures proposed in excess of 7.5m must be referred to the DOD. c. DoD does not support the proposed rezoning and requests that Council provide a notation on any section 149(5) Planning Certificate that is likely to be affected by some level of aircraft noise. 	<ul style="list-style-type: none"> a. Given that the site is outside of the mapped ANEF contours Council is unable to require future development to design and construct noise attenuation measures. b. Council currently complies with this requirement and will continue to notify any proposed structure in excess of 7.5m to DoD. c. Council will continue to provide a notation on all section 149(5) Planning Certificates advising recipients that Port Stephens LGA is subject to aircraft noise. As a result of the objection Council will forfeit its plan making powers delegated by the Minister for Planning.
Hunter Water Corporation (HWC)	<ul style="list-style-type: none"> a. HWC has required the developer to prepare revised water and sewer servicing strategies for the potential increased yield of the site. b. HWC has required the developer prepare a revised scope of work to increase the capacity of the wastewater pumping station to cope with the increased yield. c. HWC does not anticipate any significant changes to the design and therefore has no objection to the proposal 	No objection.
Office of Environment & Heritage (OEH)	<ul style="list-style-type: none"> a. The proposal does not increase the area/footprint used for residential purposes therefore OEH has no objection 	No Objection.
Roads & Maritime Service (RMS)	<ul style="list-style-type: none"> a. The TIA addresses a maximum yield of 450 lots rather than 480 lots identified within the planning proposal. Medowie Road intersection upgrade is to be design and constructed in accordance with Austroads standards. b. Developer to take into consideration section 117 (2) direction 3.4 in relation to providing adequate access to public transport and opportunities for pedestrians and cyclists to connect with the surrounding area. Intersection upgrades should provide for on-road cyclists to safely 	<ul style="list-style-type: none"> a. 25 May 2017 – Council forwarded a Threshold Analysis (Better Transport Futures, 16 September 2015) showing that the intersection of Boundary Road and Medowie Road will continue to operate at a high level of service, even up to 600 developed lots. It demonstrates the current intersection design is suitable for the additional development potential that may result from the planning proposal. b. Section 117 Directions have been adequately addressed in the planning proposal.

ITEM 8 - ATTACHMENT 3 SUBMISSIONS TABLE.

Submission	Summary of Submission	Planning Proposal Response
	<p>use the road network.</p> <p>c. Concept design plans and electronic modelling data shall be provided to RMS and a referral made to RMS seeking concurrence under section 138 of the <i>Roads Act 1993</i></p> <p>d. Despite Council's plan to provide a shared path between the subject site and the town centre, provisions should be made for safe connectivity for cyclists where road upgrades are required.</p> <p>e. Discharged stormwater from the rezoned land shall not exceed the capacity of the Medowie Road stormwater drainage system.</p> <p>f. Council should ensure that the applicant is aware of the potential for road traffic noise to impact development on the site (particularly form Medowie Road)</p>	<p>c. 26 May 2017 – Electronic copy of the SIDRA analysis from the proponent was provided to RMS for review.</p> <p>d. Future additional subdivision resulting from the planning proposal will be subject to the development assessment process.</p> <p>e. The planning proposal has been adequately assessed for its impact on stormwater quality and quantity. Appropriate measures are proposed to achieve a neutral or beneficial effect.</p> <p>f. There will be increased levels of traffic generation due to increased lot yield and as a result increased noise and vehicle emissions. The impacts anticipated are not expected to be significant.</p>
<p>Rural Fire Service (RFS)</p>	<p>No objection to the proposal subject to the following matters being satisfied at subdivision stage:</p> <ul style="list-style-type: none"> • APZs around the proposed Koala Habitat Reserve • Tree corridors to be managed as APZs • Detention basin planting to be consistent with APZs • Plan of Management may be required for the areas listed above • Registration of an access entitlement for a secondary access/egress point from Boundary Rd o Country Rd • Public road access to comply with 'Planning for Bushfire Protection 2006' including construction of Western Road • Secondary access mentioned above and northern portion of Western Rd are to comply with the fire trail requirements of 'Planning for Bushfire Protection 2006' 	<p>No Objection. The matters required to be addressed by RFS will form part of the future DA for subdivision.</p>
<p>Public Submissions</p>		
<p>1.</p>	<p>a. Impact of subdivision on property and lifestyle</p> <p>b. Concerned with existing works being carried out close to property</p> <p>c. Concern for drainage from development impacting on property that is low lying on Medowie Road</p> <p>d. Concern for increased traffic and head lights penetrating those houses situated below the road level</p> <p>e. Question raised regarding the upgrading of electricity and internet?</p> <p>f. Opposes 500 square metre allotments</p>	<p>a. The proposal is consistent with the Medowie Strategy to provide residential development with a minimum area of 500 square metres. Potential impacts from the development have been considered and are acceptable.</p> <p>b. The future additional potential development that may occur under the planning proposal will not impact on the roadworks that are already occurring under the existing development consent for residential subdivision.</p> <p>c. The development does not drain to Medowie road. All stormwater</p>

ITEM 8 - ATTACHMENT 3 SUBMISSIONS TABLE.

Submission	Summary of Submission	Planning Proposal Response
		<p>from the development has been directed to Moffatt's Swamp catchment through three large detention basins to control the post development discharges.</p> <p>d. Traffic Impact Assessment (TIA) indicates that intersections will still operate at the best level of service with up to 600 Lots developed. There will be an impact from head lights on properties situated opposite new and existing intersections however the degree of impact will depend on individual situations</p> <p>e. Both electricity and internet services are provided by separate bodies to Council.</p> <p>f. The proposal is consistent with the Medowie Strategy to provide 500 square metre allotments in urban release areas.</p>
2.	<p>a. Concerned with roadworks occurring that have contributed large amounts of dirt to a significant height adjoining property fence lines. Concerned that this will contribute to erosion and sediment run-off into own property</p> <p>b. Concern for increased traffic and head lights penetrating those houses situated below the road level (Medowie Road)</p> <p>c. Support development within the community but concerned about privacy</p> <p>d. Traffic – will a guard rail be provided on Medowie road to stop vehicles from crashing into property?</p>	<p>a. The future additional potential development that may occur under the planning proposal will not impact on the roadworks that are already occurring under the existing development consent for residential subdivision.</p> <p>b. TIA indicates that intersections will still operate at the best level of service. There will be an impact from head lights on properties situated opposite new and existing intersections however the degree of impact will depend on individual situations</p> <p>c. It is understood this issue relates to the potential for traffic lights to shine onto private property on the western site of the intersection of Boundary Road and Medowie Road. This issue is a development and construction management issue that needs to be further investigated, with the assistance of the site developer. Council understands that tree planting will be implemented to assist in addressing this concern and new fencing may have also been provided.</p> <p>d. There are no plans currently for installation of guard rail at this location</p>
3.	<p>a. Concerned that proposal will change the quality of the Bower Estate</p> <p>b. Disappointed that the estate proposes an additional 130 lots after the initial advertisements for the estate included phrases such as:</p> <ul style="list-style-type: none"> • "Impressively spacious home-sites" 	<p>a. The proposal is consistent with the Medowie Strategy to provide 500 square metre allotments in urban release areas. The Medowie Strategy was publicly exhibited and adopted by Council in 2016.</p> <p>b. The Medowie Strategy identifies the site as a key urban release</p>

ITEM 8 - ATTACHMENT 3 SUBMISSIONS TABLE.

Submission	Summary of Submission	Planning Proposal Response
	<ul style="list-style-type: none"> • "Award winning property group" • "Exceptional living environments" • "Compliment the Medowie lifestyle" • "Quality & sustainable environments" • "Time to upsize" <p>c. Concerned that the additional lots will create traffic, pollution and noise impacts.</p>	<p>area with an estimated dwelling yield of 480 lots. The proposal is consistent with the Medowie Strategy.</p> <p>c. There will be increased levels of traffic generation due to increased lot yield and as a result increased noise and vehicle emissions. The impacts anticipated are not expected to be significant</p>
4.	<p>a. Long-time resident concerned about the impact of proposed changes on town.</p> <p>b. Concerned about additional traffic volume and access during an emergency, such as a bushfire or storm event. Requests a second access for safety</p> <p>c. Concern that smaller lots are not consistent with existing character of Medowie that places small lots close to town and large lots further out of town. Concerned that the smaller lots will create a lower socioeconomic area.</p> <p>d. Believes the developer has misled residents of the initial stages based on sale of larger lots and concerned that reduction in minimum lot size will reduce land values for those residents in the initial stages</p> <p>e. Asks "What is to stop the developer submitting an application to rezone to even smaller lots further down the track?"</p> <p>f. Supports creating more affordable housing in the area for first home buyers but does not believe the estate is an appropriate location. Believes that the reduced lots will attract investors and public housing.</p>	<p>a. The proposal is consistent with the Medowie Strategy to provide 500 square metre allotments in urban release areas. The Medowie Strategy was publicly exhibited and adopted by Council in 2016.</p> <p>b. TIA indicates that intersections will still operate at the best level of service. A second access would provide added security in the event of an emergency evacuation however is not warranted on intersection capacity grounds</p> <p>c. The proposal is supported by the Hunter Regional Plan and the Medowie Strategy as a means to provide housing in Medowie and Port Stephens LGA. Social and economic impacts must be considered in the DA for subdivision plus any future development in accordance with s79C of the EP&A Act.</p> <p>d. Residents who bought in Stages 1 and 2 of the Bower Estate were notified of the proposal by the applicant via email during the exhibition period. Land values are not a town planning consideration.</p> <p>e. Council is obligated to consider any planning proposal that has been lodged.</p> <p>f. The proposal will deliver housing that is consistent with the Medowie Strategy.</p>
5.	<p>a. Believes the developer has misled residents of the initial stages based on sale of larger lots. Believes that neighbours should have been informed by Council of the proposed changes earlier.</p> <p>b. Concerned with additional traffic impact and access including during the event of an emergency (like a bushfire). Asks "are there going to be measures put into place so that this doesn't happen? For example another access road to the estate."</p> <p>c. Question regarding the provision of bus services to the estate and</p>	<p>a. Community consultation has been carried out in accordance with s57 of the EP&A Act and the gateway determination issued by the Minister for Planning. Additionally, Council has written to neighbours in proximity to the proposal site for which it has details for. Residents within Stages 1 and 2 of the Bower Estate were unable to be contacted due to the unavailability of ownership information. However, the proponent wrote to these residents via</p>

ITEM 8 - ATTACHMENT 3 SUBMISSIONS TABLE.

Submission	Summary of Submission	Planning Proposal Response
	<p>whether sufficient bus stops will be provided for school children to access buses safely.</p>	<p>email.</p> <p>b. TIA indicates that intersections will still operate at the best level of service. A second access would provide added security in the event of an emergency evacuation however is not warranted on intersection capacity grounds</p> <p>c. Bus routes are being planned. Bus stops have not been identified as yet but will be provided as required.</p>
<p>6.</p>	<p>a. Believes that the rezoning and proposed development will adversely impact on street parking and traffic congestion surrounding the subject site due to the increase of additional residents and their visitor's cars – particularly due to the lack of public transport, residents and their visitors will be more reliant on their own vehicles.</p> <p>b. If Medowie has been ear-marked as a growth area, and medium density housing is required, believes it should be located towards the town centre and shops for walkability purposes. This would also ease additional congestion to public transport infrastructure. The suggested redevelopment is out of character for this area, as all lots surrounding The Bower Estate are 4000sqm minimum and the nearest 500sqm lots are approx. 2km away.</p> <p>c. Believes the smaller lots would attract families of lower socio-economic background and potentially contribute to higher levels of crime in the area.</p> <p>d. Concern for existing residents becoming trapped in an emergency such as a bushfire. Believes the proposal will worsen this risk.</p> <p>e. Sceptical as to whether the proposed "animal house" for local wildlife to retreat to will be utilised given the additional traffic volumes within the estate's road network.</p> <p>f. The proposed development will result in increased noise levels (from homes, as well as traffic) for current residents in the area</p> <p>g. Dissatisfied with Council not providing notification to residents within Stage 1 and 2 of the Bower Estate. Purchased property based on research on Medowie and the Bower Estate being a large lot residential area.</p> <p>h. Considers the McCloy Group to have misled purchasers of the Bower Estate by displaying a Master Plan publicly that is proposed</p>	<p>a. There will be increased levels of traffic generation due to increased lot yield. TIA indicates that intersections will still operate at the best level of service. Off street parking will be required in accordance with Council's DCP</p> <p>b. It is acknowledged that other existing development in the area is 4,000 square metres. The site already has DA approval for approximately 350 residential allotments with an applicable minimum lot size of 1,000 square metres.</p> <p>The site is identified for residential release within the Medowie Planning Strategy for an estimated 480 dwellings 'Precinct A' (based on a general standard yield estimate of 12 dwellings/ha). It is the largest identified release area and its delivery is important to increasing the supply of land for housing. The land is also comparatively unconstrained to some other areas of land within Medowie. It is able to be serviced; is not located within the Grahamstown Dam Drinking Water catchment; biodiversity conservation issues have been resolve; and it is under single ownership.</p> <p>c. The proposal is supported by the Hunter Regional Plan and the Medowie Strategy as a means to provide housing in Medowie and Port Stephens LGA. Social and economic impacts must be considered in the DA for subdivision plus any future development in accordance with s79C of the EP&A Act.</p> <p>d. Council's Traffic Engineer and RFS have concluded that the local road network has the capacity to cater for the increased lot yield.</p> <p>e. Vegetation removal has been considered as part of the proposal and deemed to be non-significant given the large area of retained</p>

ITEM 8 - ATTACHMENT 3 SUBMISSIONS TABLE.

Submission	Summary of Submission	Planning Proposal Response
	to change.	<p>native vegetation north-east of the site. It is intended that koalas will utilise the street tree network to gain access to the refuge.</p> <p>f. There will be increased noise and vehicle emissions due to increased lot yield. The impacts anticipated are not expected to be significant</p> <p>g. Council wrote to neighbours in proximity to the proposal site for which it has details for. Residents within Stages 1 and 2 of the Bower Estate were unable to be contacted due to the unavailability of ownership information. However, the proponent wrote to these residents via email during the exhibition period.</p> <p>h. Council is obligated to consider any planning proposal that has been lodged.</p>
7.	<p>a. The proposal will adversely impact on traffic</p> <p>b. The proposal is out of character for Medowie which is traditionally a large lot area. The proposal has limited open spaces</p> <p>c. The proposal will result in greater loss of vegetation and impact the E2 Environmental Conservation zone</p> <p>d. The proposal will result in overdevelopment</p> <p>e. The land does not meet the objectives of the R2 Low Density Residential zone and is better suited to the objectives of the R5 Large Lot Residential zone</p> <p>f. The proposal does not take into account emergency access/egress</p> <p>g. The proposal will increase noise through high traffic volumes</p> <p>h. The proposal may result in inadequate stormwater drainage</p> <p>i. The means by which the proposal has advanced to this stage is controversial (i.e. the developers proposal to rezone the land while seeking development consent under the existing zone)</p> <p>j. Not all affected residents have been notified of the proposed rezoning</p>	<p>a. There will be increased levels of traffic generation due to increased lot yield. TIA indicates that intersections will still operate at the best level of service.</p> <p>b. The proposal is consistent with the intent of the Medowie Strategy to provide 500 square metre allotments in residential areas. The provision of open space is required by the PSDCP and will be addressed as part of a future DA for subdivision.</p> <p>c. Vegetation removal has been considered as part of the proposal and deemed to be non-significant given the large area of retained native vegetation north-east of the site. The proposal has been considered by Council's Natural Resource staff as well as OEH who maintain no objection to the proposal on environmental grounds.</p> <p>d. The proposed minimum lot size of 500 square metres is not considered to be an overdevelopment with environmental, engineering and planning matters all considered satisfactory. The proposal is consistent with the Medowie Strategy.</p> <p>e. The land will meet the objectives of the R2 zone by providing for the housing needs of the community; enable further facilities or services to meet the day to day needs of residents; protect and enhance the residential amenity of the area; and ensures development is carried out in a way that is compatible with the flood risk of the area.</p> <p>f. Council's Traffic Engineer and RFS have concluded that the local</p>

ITEM 8 - ATTACHMENT 3 SUBMISSIONS TABLE.

Submission	Summary of Submission	Planning Proposal Response
		<p>road network has the capacity to cater for the increased lot yield.</p> <p>g. There will be increased noise and vehicle emissions due to increased lot yield. The impacts anticipated are not expected to be significant</p> <p>h. The proposal has included stormwater drainage system within the development area and three large detention basins to control post development discharges to pre-development discharges. Also, some of the natural catchments, which were previously drained through Settlers Close and Square Close, have now been redirected away from these two streets.</p> <p>i. Council is obligated to consider any planning proposal that has been lodged. The subject planning proposal has merit because it is consistent with the Hunter regional Plan, Port Stephens Planning Strategy and Medowie Strategy.</p> <p>j. Community consultation has been carried out in accordance with s57 of the EP&A Act and the gateway determination issued by the Minister for Planning. Additionally, Council has written to neighbours in proximity to the proposal site for which it has details for. Residents within Stages 1 and 2 of the Bower Estate were unable to be contacted due to the unavailability of ownership information. However, the proponent wrote to these residents via email.</p>
8.	<p>a. The proposal moves high density development to the perimeter of the community and is against town planning outcomes</p> <p>b. The proposal runs counter to the Medowie strategy intent to place the bulk of the population close to the commercial hub of the community.</p> <p>c. Increased traffic flows will impact on existing rural residential communities</p> <p>d. Higher density blocks adjoining the environmental reserve place sustainability pressures on the conservation areas</p> <p>e. The estate will attract young families to the estate with limited open space amenity and poor access to infrastructure options without public transport</p> <p>f. The estate cannot be argued as low cost housing as the land will sell at market value there are no provisions to pass saving from a</p>	<p>a. The site will be master planned and appropriate amendments to the Part D9 of the PSDCP will ensure the estate achieves good planning outcomes.</p> <p>b. The Medowie Strategy identifies the site as a key urban release area with an estimated dwelling yield of 480 lots. The proposal is consistent with the Medowie Strategy.</p> <p>c. There will be increased levels of traffic generation due to increased lot yield. TIA indicates that intersections will still operate at the best level of service.</p> <p>d. The proposal has been considered by Council's Natural Resource staff as well as OEH who maintain no objection to the proposal on environmental grounds.</p>

ITEM 8 - ATTACHMENT 3 SUBMISSIONS TABLE.

Submission	Summary of Submission	Planning Proposal Response
	<p>higher density outcome to consumers</p> <p>g. Larger recreation areas are not included in the proposal; smaller lots equate to a lack of private open space for families</p> <p>h. The community is not walkable based on the shortest route to services and amenities provided by the Medowie community</p> <p>i. All routes to the Medowie commercial hub require access via Medowie Rd a major regional road heavily trafficked and not suitable for pedestrians and cyclists.</p> <p>j. There is risk of health impact from aircraft noise bombing and strafing on the RAAF range.</p> <p>k. Additional storm water drainage risks downstream residents in existing communities</p> <p>l. Higher density adds risk to resident's attempting to leave the area in fire emergencies</p> <p>m. The higher density proposal requires a complete rethink and reallocation of section 94 contributions</p> <p>n. Larger lots must boarder the environmental zones to maintain environmental sustainability this rezoning proposal does not support this approach</p>	<p>e. Open space and public transport opportunities will be provided as part of a future development application for subdivision as per the requirements of the PSDCP.</p> <p>f. Market outcomes are not considered within the planning process. The proposal is consistent with the Medowie Strategy and will assist in providing additional housing to Medowie and the Port Stephens LGA.</p> <p>g. Open space opportunities will be provided as part of a future development application for subdivision as per the requirements of the PSDCP.</p> <p>h. The Medowie Strategy identifies the site as a key urban release area with an estimated dwelling yield of 480 lots. The proposal is consistent with the Medowie Strategy.</p> <p>i. Council's Pathways Plan identifies off-road shared paths connecting to the existing network. S94 funds are being collected for this purpose</p> <p>j. The DoD has raised similar concerns that have been addressed in the response to their submissions above. Appropriate measures will be utilised to ensure residents are aware of the presence of aircraft noise in the LGA.</p> <p>k. As the development provided three large detention basins to control the post development flows and the discharge points are within the existing floodplain area, it would have insignificant risks on downstream residents.</p> <p>l. Council's Traffic Engineer and RFS have concluded that the local road network has the capacity to cater for the increased lot yield.</p> <p>m. Council already has in place a local contributions plan for traffic and transport contributions as a result of additional proposed development across Medowie. It based on the previous Medowie Strategy 2009 version, which estimated a yield of greater than 3,000 dwellings across Medowie.</p> <p>The revised Medowie Strategy, adopted by Council in December 2016, estimates a reduction in yield to a total of approximately 2,700 dwellings.</p>

ITEM 8 - ATTACHMENT 3 SUBMISSIONS TABLE.

Submission	Summary of Submission	Planning Proposal Response
		<p>Council is in the process of commencing a review to the local contributions for traffic and transport infrastructure in Medowie.</p> <p>n. The proposal has been considered by Council's Natural Resource staff as well as OEH who maintain no objection to the proposal on environmental grounds.</p>
9.	<ul style="list-style-type: none"> a. Low density residential housing should be located near the town centre b. The proposal is not in keeping with any blocks in North Medowie (i.e. existing blocks are large lot residential) c. Insufficient supply of open space, and car parking areas with overcrowding leading to anti-social behaviour d. The future lots should not be used for multiple dwellings or two storey dwellings e. Trees should not be removed and questions how koalas will access the refuge f. The single entry/exit point will create traffic issues g. The RAAF does not support the proposal h. Reticulated sewerage required for smaller blocks, concerned with increased stormwater run-off 	<ul style="list-style-type: none"> a. The Medowie Strategy identifies the site as a key urban release area with an estimated dwelling yield of 480 lots. The proposal is consistent with the Medowie Strategy. b. The Medowie Strategy identifies the site as a key urban release area with an estimated dwelling yield of 480 lots. The proposal is consistent with the Medowie Strategy. c. Both open space and off-street parking areas will be provided as part of future DAs for subdivision and the erection of buildings as per the requirements of the PSDCP. d. The proposed R2 zone will permit dual occupancies however minimum site area requirements must be in accordance with the PSLEP (Cl 4.1B). The height of dwellings will be considered in accordance with the PSDCP. A maximum height of building limit has been proposed to 9 metres. e. Vegetation removal has been considered as part of the proposal and deemed to be non-significant given the large area of retained native vegetation north-east of the site. It is intended that koalas will utilise the street tree network to gain access to the refuge. f. TIA indicates that intersections will still operate at the best level of service. g. The DOD has maintained an objection to the proposal based on concerns for dwellings being subject to aircraft noise and the impact of tall structures. A response to DODs concerns is provided in this table above. h. The development will be serviced by a reticulated sewerage system as required by Hunter Water. As the development provided three large detention basins to control the post development flows and the discharge points are within the existing floodplain area, it would have insignificant risks on downstream residents.

ITEM 8 - ATTACHMENT 3 SUBMISSIONS TABLE.

Submission	Summary of Submission	Planning Proposal Response
10.	<p>a. An electronic direct mail (EDM) was forwarded to all purchasers that exchanged contract to purchase land in stages 1 and 2 of the Bower Estate</p> <p>b. The Planning proposal aligns with NSW State Government initiatives regarding housing affordability by increasing the supply of land and the growing need for more housing</p> <p>c. The Planning Proposal aligns with the Medowie Planning Strategy which identifies the Bower Estate a residential release area suitable for R2 Low Density Residential zoning with an estimated dwelling yield of 480 dwellings</p> <p>Matters addressed in EDM referred to above:</p> <p>d. The Planning Proposal if adopted will not affect stages 1 and 2 and the size of existing home sites in any way.</p> <p>e. Planning Proposal - Rezoning: The proposal to reduce the minimum lot size was proposed as a means to enable future growth in Medowie and to accommodate the rising demand for housing in the Port Stephens Local Government Area. In late 2016 the Planning Proposal was endorsed unanimously by the elected Port Stephens Councillors. To transition future home sites with existing home sites at The Bower, McCloy Group is proposing minimum lot sizes of approximately 650m² with larger home sites ranging up to 1000m², averaging 700m² across all future home sites. A total lot yield in the vicinity of approximately 450 lots is envisioned.</p> <p>f. Infrastructure & Safety:</p> <ul style="list-style-type: none"> • Medowie Road speed limit is being decreased to 80km / hour. • The intersection of Medowie Road and Boundary Road currently under construction has been designed to cater for in excess of 450 home sites within The Bower. • Road & Maritime Services has confirmed the increased lot yield will have no effect on the existing road network. • Hunter Water Corporation has no objections to the Planning Proposal with the proposed increase in lots already catered for in the design of the waste water pump station. • Rural Fire Service has reviewed all proposed changes and has no objection to the proposal, seeing it as successfully 	No response required to submission in support of the planning proposal.

ITEM 8 - ATTACHMENT 3 SUBMISSIONS TABLE.

Submission	Summary of Submission	Planning Proposal Response
	<p>meeting safety requirements including emergency egress.</p> <p>g. Housing Affordability & Community Planning: The Planning Proposal's purpose is to support the growing need for housing and a move to align The Bower with NSW State Government initiatives regarding housing affordability. By decreasing lot size and increasing the supply of more affordable land, housing becomes more accessible within the local area. The Planning Proposal does not expand the area of residential housing; approximately 70 hectares of The Bower will remain conserved as Medowie State Conservation Area.</p> <p>h. Masterplans & Future Development: The masterplan as displayed will always be the current approved plan and is always subject to change. Anytime amendments are approved by Council, the masterplan is updated to reflect the amendments. Changes to the masterplan at The Bower are made to meet the changing needs of the housing market taking into consideration changes in best practice in residential community design.</p> <p>i. McCloy Group is continually in discussions with Childcare, Retirement Living and other similar operators that may also benefit the community.</p>	
11.	<p>a. Increased traffic from the development will impact quality of life due to noise and light pollution along Boundary Road</p> <p>b. Believes a bottle neck will be created due to one entry/exit point from The Bower onto Boundary Rd and that this will be a significant issue during a bushfire fire event or other natural hazards (such as storm event causing powerlines to fall over the road carriageway)</p>	<p>a. There will be increased levels of traffic generation due to increased lot yield. TIA indicates that intersections will still operate at the best level of service.</p> <p>b. A second access would provide added security in the event of an emergency evacuation however is not warranted on intersection capacity grounds</p>
12.	<p>a. Community reluctantly accepted 345 lots in the estate with block sizes of a minimum of 1000 square metres.</p> <p>b. 500 square will result in tree removal that will impact upon Koalas</p> <p>c. The Medowie Strategy was to provide high density development close to shops and amenities and for outlying areas to have acreage blocks.</p> <p>d. The estate will eventually become a low socio-economic ghetto with a resultant increase in local crime.</p>	<p>a. The development application was assessed prior to the adoption of the Medowie Strategy which supports 500 square metre allotments on the site.</p> <p>b. Vegetation removal has been considered as part of the proposal and deemed to be non-significant given the large area of retained native vegetation north-east of the site. It is intended that koalas will utilise the street tree network to gain access to the refuge.</p> <p>c. The Medowie Strategy identifies the site as a key urban release</p>

ITEM 8 - ATTACHMENT 3 SUBMISSIONS TABLE.

Submission	Summary of Submission	Planning Proposal Response
		<p>area with an estimated dwelling yield of 480 lots. The proposal is consistent with the Medowie Strategy.</p> <p>d. The proposal is supported by the Hunter Regional Plan and the Medowie Strategy as a means to provide housing in Medowie and Port Stephens LGA. Social and economic impacts must be considered in the DA for subdivision plus any future development in accordance with s79C of the EP&A Act.</p>

ITEM NO. 9

FILE NO: 17/146397
RM8 REF NO: PSC2016-01454

PLANNING PROPOSAL - HOUSEKEEPING AMENDMENT TO PORT STEPHENS LOCAL ENVIRONMENTAL PLAN 2013

REPORT OF: MICHAEL MCINTOSH - GROUP MANAGER DEVELOPMENT SERVICES

GROUP: DEVELOPMENT SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Adopt the Planning Proposal – Housekeeping Amendment to the Port Stephens Local Environmental Plan 2013 (the LEP) (**ATTACHMENT 1**) for the purposes the *Environmental Planning and Assessment Act 1979 (NSW)*(s55) to address administrative matters raised since the commencement of the LEP, including:
 - a) Item 1 – Rezone the following land from RU2 Rural Landscape to SP2 Defence to reflect its purchase by the Commonwealth Department of Defence
 - 2117 Nelson Bay Road, Williamtown (Lot 1 DP 665835);
 - 2119 Nelson Bay Road, Williamtown (Lot 1 DP 665836);
 - 11A Lavis Lane, Williamtown (Lot 67 DP 753192);
 - 14 Lavis Lane, Williamtown (Lot 3 DP 853312);
 - 40 Lavis Lane, Williamtown (Lot 3 DP 741996).
 - b) Item 2 – Rezone 601 Cabbage Tree Road, Williamtown (Lot 1 DP 195630) from RU2 Rural Landscape to E1 National Parks and Nature Reserves to reflect its purchase by the Minister Administering the *National Parks and Wildlife Service Act 1974 (NSW)* for addition to the Hunter Wetlands National Park;
 - c) Item 3 – Review zone map alignments along various stretches of Nelson Bay Road, Tomago Road and the Pacific Highway (including the proposed Heatherbrae Bypass) to reflect the completion of upgrades or associated or intended purchase of land by NSW Roads and Maritime Services for road planning purposes;
 - d) Item 4 – Update the zoning label of 57 Slades Road, Williamtown (Lot 21 DP 1053667) from SP2 Defence to SP2 Defence (Air Transport Facility) to reflect its commercial airport lease conditions;
 - e) Item 5 – Rezone 1 Tuncurry Place, Nelson Bay (Lot 6 Section 4 DP 242131) from R2 Low Density Residential to RE1 Public Recreation to reflect its existing dedication (Crown Land – PSC Trustee) and use as public open space;
 - f) Item 6 – Correct the error in the DP description listed in Schedule 1 Additional permitted uses for certain land at Valerie Road, Salt Ash from DP 79221 to DP 792211;
 - g) Item 7 – Within the IN1 General Industrial Zone add 'storage premises' as a use permissible with consent;

- h) Item 8 – Within the IN2 Light Industrial Zone – add 'dwelling houses' (consistent with a Notice of Motion 27 October 2015) 'mortuaries' and 'recreation facilities (indoor)' as permissible with consent;
 - i) Item 9 – Within the RU2 Rural Landscape Zone – add 'recreation facilities (outdoor)' as permissible with consent;
 - j) Item 10 – Review and address various split-zone map alignments resulting from subdivision and cadastral map shifts;
 - k) Item 11 – Correct errors in the numbering, address descriptions and mapping of various heritage items.
- 2) Submit the Planning Proposal to the NSW Department of Planning and Environment for a gateway determination.
- 3) Request an authorisation to exercise delegation of plan-making functions for the planning proposal.

**ORDINARY COUNCIL MEETING - 1 AUGUST 2017
MOTION**

195	<p>Councillor John Nell Councillor Sally Dover</p> <p>It was resolved that Council:</p> <p>1) Adopt the Planning Proposal – Housekeeping Amendment to the Port Stephens Local Environmental Plan 2013 (the LEP) (ATTACHMENT 1) for the purposes the <i>Environmental Planning and Assessment Act 1979 (NSW)(s55)</i> to address administrative matters raised since the commencement of the LEP, including:</p> <ul style="list-style-type: none"> a) Item 1 – Rezone the following land from RU2 Rural Landscape to SP2 Defence to reflect its purchase by the Commonwealth Department of Defence <ul style="list-style-type: none"> • 2117 Nelson Bay Road, Williamtown (Lot 1 DP 665835); • 2119 Nelson Bay Road, Williamtown (Lot 1 DP 665836); • 11A Lavis Lane, Williamtown (Lot 67 DP 753192); • 14 Lavis Lane, Williamtown (Lot 3 DP 853312); • 40 Lavis Lane, Williamtown (Lot 3 DP 741996). b) Item 2 – Rezone 601 Cabbage Tree Road, Williamtown (Lot 1 DP 195630) from RU2 Rural Landscape to E1 National Parks and Nature Reserves to reflect its purchase by the Minister Administering the <i>National Parks and Wildlife Service Act 1974 (NSW)</i> for addition to the Hunter Wetlands National Park; c) Item 3 – Review zone map alignments along various stretches of Nelson Bay Road, Tomago Road and the Pacific Highway (including the proposed Heatherbrae Bypass) to reflect the completion of upgrades or associated or intended purchase of land
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	<p>by NSW Roads and Maritime Services for road planning purposes;</p> <ul style="list-style-type: none">d) Item 4 – Update the zoning label of 57 Slades Road, Williamtown (Lot 21 DP 1053667) from SP2 Defence to SP2 Defence (Air Transport Facility) to reflect its commercial airport lease conditions;e) Item 5 – Rezone 1 Tuncurry Place, Nelson Bay (Lot 6 Section 4 DP 242131) from R2 Low Density Residential to RE1 Public Recreation to reflect its existing dedication (Crown Land – PSC Trustee) and use as public open space;f) Item 6 – Correct the error in the DP description listed in Schedule 1 Additional permitted uses for certain land at Valerie Road, Salt Ash from DP 79221 to DP 792211;g) Item 7 – Within the IN1 General Industrial Zone add 'storage premises' as a use permissible with consent;h) Item 8 – Within the IN2 Light Industrial Zone – add 'dwelling houses' (consistent with a Notice of Motion 27 October 2015) 'mortuaries' and 'recreation facilities (indoor)' as permissible with consent;i) Item 9 – Within the RU2 Rural Landscape Zone – add 'recreation facilities (outdoor)' as permissible with consent;j) Item 10 – Review and address various split-zone map alignments resulting from subdivision and cadastral map shifts;k) Item 11 – Correct errors in the numbering, address descriptions and mapping of various heritage items. <ul style="list-style-type: none">2) Submit the Planning Proposal to the NSW Department of Planning and Environment for a gateway determination.3) Request an authorisation to exercise delegation of plan-making functions for the planning proposal.
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In accordance with Section 375 (A) of the *Local Government Act 1993*, a division is required for this item.

Those for the Motion: Mayor Bruce MacKenzie, Crs Geoff Dingle, Chris Doohan, Sally Dover, Ken Jordan, John Nell and Steve Tucker.

Those against the Motion: Cr Peter Kafer.

BACKGROUND

The purpose of this report is to present the Planning Proposal (the proposal) for a *housekeeping* amendment to the *Port Stephens Local Environmental Plan 2013* (the LEP) (**ATTACHMENT 1**) for Council's consideration.

The proposal seeks to amend the provisions of the LEP to address administrative matters raised since its commencement on 22 February 2014. Since commencement, a number of matters have been raised from both internal and external stakeholders to Council.

Those matters that have been deemed to be administrative in nature (i.e. do not require supporting studies) forms the content of this proposal.

A summary of those matters is listed in the Council recommendation. A further description and justification for each item is provided within the proposal (**ATTACHMENT 1**). Relevant maps for all subject sites are included within the proposal including the Draft Revised Heritage Mapping.

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2013-2017
Sustainable Development.	Provide Strategic Land Use Planning Services. Provide Development Assessment and Building Certification Services.

FINANCIAL/RESOURCE IMPLICATIONS

There are no financial/resource implications if Council resolves to proceed with the recommendations of this report.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	No		
Reserve Funds	No		
Section 94	No		
External Grants	No		
Other	No		

LEGAL, POLICY AND RISK IMPLICATIONS

Environmental Planning and Assessment Act 1979

Council is the relevant planning authority for the planning proposal under the *Environmental Planning and Assessment Act 1979* (NSW). If Council resolves to adopt the planning proposal it will be forwarded to the NSW Department of Planning and Environment for a gateway determination, which will also include a request for the delegation of plan-making functions.

Port Stephens Local Environmental Plan 2013

The proposal will be implemented through the amendment of the LEP 2013 for each item including associated mapping, land use tables, and schedule of heritage items.

Limitation to Administrative Matters

The proposal is limited to the administrative matters outlined in the recommendations of this report. Other matters have been raised that are beyond the scope of a housekeeping amendment because they have potential for wider strategic land-use planning implications and warrant separate consideration. These matters include:

- 1) Council Notice of Motion 14 July 2015 for the preparation of a report identifying the merits of a planning proposal to permit 'depot(s)' 'truck depot(s)' and 'transport depot(s)' within rural zones, including recommendations for an associated development control plan;
- 2) IN2 Light Industrial zoned of land at the northern end of Raymond Terrace town centre. The relevant land was previously zoned 5(g) Special Urban (Flood Affected) under LEP 2000. It was placed into either the B3 Commercial Core Zone or IN2 Light Industrial Zone based on land-use precincts mapped in a previous development control plan for Raymond Terrace. Further strategic planning investigation is required to address this matter.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that some of the items in the planning proposal will not progress as part of a NSW Department of planning and Environment gateway determination.	Low	The justification for each item is included within the planning proposal. There is some higher risk that the proposed additional land uses will not proceed (refer to Item 9; Item 10; and Item 11).	Yes
There is a risk that the proposal will be delayed by the number of agencies that are required to be consulted.	Low	Council has undertaken preliminary discussions with agencies prior to including specific items in this proposal.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The social, economic and environmental implications are limited because the planning proposal seeks to address administrative matters.

CONSULTATION

Internal

Preliminary consultation was undertaken with the Development Assessment and Compliance Section on a range of matters over time relating to experience with implementation of LEP 2013. Amendments to written clauses have not been included however some additional permitted land uses are proposed.

External

Consultation requirements will be set by a gateway determination. Future public exhibition will be recommended for a period of 28 days. The proposal suggests consultation with a number of key state and federal government agencies.

OPTIONS

- 1) Accept the recommendations.
- 2) Amend the recommendations.
- 3) Reject the recommendations.

ATTACHMENTS

- 1) Planning proposal. (Provided under separate cover)

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.