

# DRAFT

## MINUTES – 28 FEBRUARY 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 – 28 February 2017, commencing at 5.46pm.

**PRESENT:**

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

<b>037</b>	<b>Councillor Steve Tucker</b> <b>Councillor Sally Dover</b>  It was resolved that the Minutes of the Ordinary Meeting of Port Stephens Council Ordinary Council held on 14 February 2017 be confirmed.
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	Cr John Morello declared a less than significant conflict of interest in Item 4. The nature of the is a social relationship.
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# MAYORAL MINUTES



**MAYORAL MINUTE**

**ITEM NO. 1**

**FILE NO: 17/36220**

**RM8 REF NO: PSC2014-2039**

**LOCAL GOVERNMENT ELECTION - POSTAL VOTING**

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**THAT COUNCIL:**

- 1) Write to the Minister for Local Government, The Hon. Gabrielle Upton MP, seeking an exemption from the requirement to pass a resolution 18 months prior to the next local government election, to enable the election to be conducted by postal vote.
- 2) Request that Council be granted the exemption to allow the 2017 Port Stephens local government election to be conducted exclusively by means of postal voting.

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**ORDINARY COUNCIL MEETING - 28 FEBRUARY 2017  
MOTION**

<b>038</b>	<p><b>Mayor Bruce MacKenzie Councillor John Nell</b></p> <p>It was resolved that Council:</p> <ol style="list-style-type: none"><li>1) Write to the Minister for Local Government, The Hon. Gabrielle Upton MP, seeking an exemption from the requirement to pass a resolution 18 months prior to the next local government election, to enable the election to be conducted by postal vote.</li><li>2) Request that Council be granted the exemption to allow the 2017 Port Stephens local government election to be conducted exclusively by means of postal voting.</li></ol>
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**BACKGROUND REPORT OF: TONY WICKHAM – GOVERNANCE MANAGER**

**BACKGROUND**

Section 310B of the *Local Government Act 1993*, requires Council to pass a resolution at least 18 months before the next ordinary election of councillors to determine the voting method. Sub-section (2) below provides two options, one being to conduct the election exclusively by means of postal voting.

**310B Elections may be conducted exclusively by postal voting**

(1) This section applies to:

- (a) the City of Sydney local government area, and
- (b) any other local government area prescribed by the regulations for the purposes of this section.

**(2) A council may by a resolution made at least 18 months before the next ordinary election of councillors determine that voting at that election is to be conducted:**

**(a) by means of attendance and postal voting, or**

**(b) exclusively by means of postal voting.**

(3) Voting at an ordinary election of councillors must be conducted by the same means, whether by means of attendance and postal voting or exclusively by means of postal voting, as the previous ordinary election of councillors was conducted unless the council has determined by a resolution that complies with subsection (2) to change the means of conducting the voting.

(4) Voting at a by-election must be conducted by the same means, whether by means of attendance and postal voting or exclusively by means of postal voting, as the previous ordinary election of councillors was conducted unless the council determines by a resolution made not later than 14 days after the casual vacancy occurred to change the means of conducting the voting.

(5) Voting at a constitutional referendum or council poll must be conducted by the same means, whether by means of attendance and postal voting or exclusively by means of postal voting, as the previous ordinary election of councillors was conducted unless the council determines by a resolution made at the same meeting that the council determined to hold the referendum or take the poll to change the means of conducting the voting.

(6) An election, constitutional referendum or council poll to be conducted exclusively by means of postal voting is to be conducted in accordance with the regulations.

**ATTACHMENTS**

Nil.

**MAYORAL MINUTE**

**ITEM NO. 1**

**FILE NO: 17/50922  
RM8 REF NO: PSC2016-00754**

**VOLUNTARY AMALGAMATION**

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**THAT COUNCIL:**

- 1) Write to the NSW Premier, The Hon. Gladys Berejiklian MP, the Minister for Local Government, The Hon. Gabrielle Upton MP and the Mayor of Dungog Shire Council advising Port Stephens Council is prepared to enter into a voluntary amalgamation with Dungog Shire Council.
- 2) Ask the NSW Premier, The Hon. Gladys Berejiklian MP and the Minister for Local Government, The Hon. Gabrielle Upton MP for a financial contribution (as a minimum, being an amount similar to those recently merged councils) and removal of the rate freeze moratorium period, in order to assist the voluntary amalgamation.

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**ORDINARY COUNCIL MEETING - 28 FEBRUARY 2017  
MOTION**

Councillor Chris Doohan left the meeting at 06:18pm, prior to voting.  
Councillor Chris Doohan returned to the meeting at 06:21pm, prior to voting.

<b>039</b>	<p><b>Mayor Bruce MacKenzie Councillor Chris Doohan</b></p> <p>It was resolved that Council:</p> <ol style="list-style-type: none"><li>1) Write to the NSW Premier, The Hon. Gladys Berejiklian MP, the Minister for Local Government, The Hon. Gabrielle Upton MP and the Mayor of Dungog Shire Council advising Port Stephens Council is prepared to enter into a voluntary amalgamation with Dungog Shire Council.</li><li>2) Ask the NSW Premier, The Hon. Gladys Berejiklian MP and the Minister for Local Government, The Hon. Gabrielle Upton MP for a financial contribution (as a minimum, being an amount similar to those recently merged councils) and removal of the rate freeze moratorium period, in order to assist the voluntary amalgamation.</li></ol>
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## **BACKGROUND**

The NSW Premier announced on 14 February 2017, that all merger proposals that were not before the courts would now not proceed. This meant that the merger proposals between Port Stephens Council and Newcastle City Council, Port Stephens Council and Dungog Shire Council, and Maitland City Council and Dungog Shire Council will now not proceed.

During the recent merger period, Council at its meeting held on 8 March 2016, resolved to make formal application to the Minister for Local Government for a merger between Port Stephens Council and Dungog Shire Council (Minute No.048).

The Dungog Shire and Port Stephens Council merger proposal Delegate's report and Boundaries Commission reports have recently been published on the NSW Stronger Councils website. Following analysis and the public enquiry process, Delegate Peppin recommended that the merger proposal should proceed. This recommendation was supported by the Boundaries Commission review of the proposal and Delegate's report.

Port Stephens Council is a financially sustainable, community focused organisation which is committed to doing the right things, the best way possible. This commitment was recognised by being declared 'Fit' for the future by the Independent Pricing and Regulatory Tribunal (IPART), which deemed that Council met all financial criteria (now and into the future) as well as having the 'scale and capacity' to deliver services, manage assets and meet its strategic obligations for the community it serves.

Port Stephens Council's stated preferred position is to stand alone. However, Council has also recognised the objectives of the Fit for the Future process, which may be briefly summarised as:

- To increase the financial sustainability of councils; and
- in some areas to reduce the number of councils to achieve planning and service delivery goals between State and local government agencies.

In this regard, Port Stephens Council's proposition of a merger between Dungog Shire Council and Port Stephens Council – will achieve the goals of the government in a more financially sustainable fashion, for government and residents, than any other proposed option. Furthermore, it will do so in a way that is largely accepted by the communities most impacted by the change.

Evidence included in Council's merger proposal submission confirms that a merger with Port Stephens Council is a better outcome for Dungog Shire Council and its communities than a merger with Maitland City Council. By similar token, a merger with Dungog Shire Council is a far better outcome – financially, socially and in public opinion terms – for Port Stephens residents than the government's deeply unpopular merger proposal with Newcastle City Council.

Key features of the Port Stephens Council and Dungog Shire merger proposal submitted in June 2016 are:

Name

It is proposed that the name of the new Council be called 'Dungog-Port Stephens Regional Council' to reflect the historic identities of each former local government area.

Overall affordability

Cost to merge of \$2.4 million (over nine years) is less than a Dungog/Maitland merger (\$4.9 million) and Port Stephens/Newcastle (\$7.4 million), and can be absorbed by the new entity without adversely affecting 'Fit for the Future' financial criteria and service delivery.

Infrastructure funding

Backlog of infrastructure (Dungog 14% and Port Stephens 6%) can be funded over time without drawing on rates revenue, through a series of funding strategies well within the capacity of the proposed new council to manage.

Rates impact minimised

Impact on ratepayers is smaller than a merger of Port Stephens and Newcastle, and a merger of Dungog with Maitland.

Increased services

Opportunity exists to increase service levels to the Dungog community immediately at small or no cost, as well as to leverage tourism strengths.

Like-minded communities

Linking small rural and coastal communities, with similar outlooks, values and ways of life, as opposed to tying small communities to cities.

Popular

There is strong community support across both LGA's. The proposed merger is supported by 95.3% of Port Stephens residents (over a merger with Newcastle City Council). 21.6% of all Dungog residents have signed petitions in favour of the merger, while 77.5% of those polled by the Dungog Chronicle were also in favour.

Respectful

The proposed name reflects shared identity and values, acknowledges the increased size, scale and capacity, and reflects the economic and social value already established by the two names.

Merging Port Stephens Council with Dungog Shire Council will also:

- Increase community benefit to areas that otherwise would experience increased costs and decreased service delivery.

## **MINUTES ORDINARY COUNCIL - 28 FEBRUARY 2017**

- Recognise the wants of Dungog Shire resident to become part of the Port Stephens Local Government Area.
- Increase scale and capacity of Dungog Shire Council through access to those areas of impact identified by IPART as being factors in Port Stephens Council having 'scale and capacity'.
- Reduce the number of councils in the area without decreasing the ability for Hunter Councils to deal effectively with state agencies by limiting the impact on that body through decreased representation of communities in the region.

It is understood that the Dungog Shire Council does not have a formal position on the merger proposal; however it has stated that its preferred position is to remain a stand-alone local government area.

### **ATTACHMENTS**

Nil.

# COUNCIL REPORTS

**ITEM NO. 1**

**FILE NO: 17/12899  
RM8 REF NO: 16-2016-780-1**

**DEVELOPMENT APPLICATION 16-2016-780-1 FOR EARTHWORKS  
(EXCAVATION OF POTENTIAL HISTORICAL SITE) AT FLY POINT RESERVE, 98  
SHOAL BAY ROAD, NELSON BAY (LOT 101 DP1175980)**

REPORT OF: MATTHEW BROWN - DEVELOPMENT ASSESSMENT AND  
COMPLIANCE SECTION MANAGER  
GROUP: DEVELOPMENT SERVICES

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Approve Development Application DA No. 16-2016-780-1 for earthworks (excavation of potential historical site) at Fly Point Reserve, 98 Shoal Bay Road, Nelson Bay (Lot 101 DP1175980) subject to the conditions contained in **(ATTACHMENT 3)**.

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**ORDINARY COUNCIL MEETING - 28 FEBRUARY 2017  
MOTION**

<b>040</b>	<b>Councillor Chris Doohan Councillor Paul Le Mottee</b>  It was resolved that Council move into Committee of the Whole.
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Councillor Ken Jordan left the meeting at 06:40pm, prior to voting in Committee of the Whole.

Councillor Ken Jordan returned to the meeting at 06:41pm, prior to voting in Committee of the Whole.

**COMMITTEE OF THE WHOLE RECOMMENDATION**

	<b>Councillor John Nell Councillor Peter Kafer</b>  That Council: <ol style="list-style-type: none"><li>1) Approve Development Application DA No. 16-2016-780-1 for earthworks (excavation of potential historical site) at Fly Point Reserve, 98 Shoal Bay Road, Nelson Bay (Lot 101 DP1175980) subject to the conditions contained in <b>(ATTACHMENT 3)</b>.</li><li>2) Include provision in Condition 6 for an explosive/flammable devices expert to be onsite as part of the management plan.</li></ol>
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## MINUTES ORDINARY COUNCIL - 28 FEBRUARY 2017

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, Paul Le Mottee, John Morello, John Nell and Steve Tucker.

Those against the Motion: Nil.

### ORDINARY COUNCIL MEETING - 28 FEBRUARY 2017 MOTION

<b>041</b>	<p><b>Councillor Chris Doohan</b> <b>Councillor Steve Tucker</b></p> <p>It was resolved that Council:</p> <ol style="list-style-type: none"><li>1) Approve Development Application DA No. 16-2016-780-1 for earthworks (excavation of potential historical site) at Fly Point Reserve, 98 Shoal Bay Road, Nelson Bay (Lot 101 DP1175980) subject to the conditions contained in <b>(ATTACHMENT 3)</b>.</li><li>2) Include provision in Condition 6 for an explosive/flammable devices expert to be onsite as part of the management plan.</li></ol>
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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, Paul Le Mottee, John Morello, John Nell and Steve Tucker.

Those against the Motion: Nil.

### BACKGROUND

The purpose of this report is to present a development application to Council for determination. This application seeks consent to undertake exploratory excavation to identify the location of a suspected former World War 2 military bunker in Fly Point Reserve, Nelson Bay.

The works will involve excavating two (2) trenches to identify the entry arch of the bunker using a mid-sized excavator. Anecdotal evidence indicates the US Military constructed a bunker in what is now known as Fly Point Reserve during the occupation of the Port Stephens area in World War 2. It appears that the bunker was sealed and spoil placed at the entry following decommissioning of the military base, known as HMAS Assault, around the 1950s.

The application has been reported to Council for determination as the development is located on land of which Council is trustee. The facility is also a place of public interest and the discovery of a wartime bunker may result in further heritage and tourism prospects.

### Site

The subject site is legally described as Lot 101 in DP 1175980 and is located at 98 Shoal Bay Road, Nelson Bay. The entire site has a total area of 11.79ha and includes the sea-ward side of Victoria Parade and along Little Beach to the northeast. Victoria Parade provides access to the location of the proposed works. The site is characterised by a small, largely vegetated knoll with steep banks to Nelson Bay along its northern perimeter.

### Site History

Anecdotal evidence suggests that Fly Point Reserve contained a bunker that was used by the United States Landing Force as a storage bunker as part of its wider naval operations within the Port Stephens area during World War 2.

The site has been used for many years post-war for public recreation as a bushland reserve and contains the Native Flora Reserve. The site also includes the former migrant camp, foundations of HMAS Assault, an Aboriginal scar tree and a burial site. Below water items (approximately several hundred metres from the site of the trenches) include Higgins landing barges, army jeeps, various munitions and anchor of USS Henry S Grant.

### Proposed Development

The application proposes to undertake exploratory excavation to identify the location of a suspected World War 2-era military bunker. The works will involve excavating two (2) trenches to identify the entry arch of the bunker using a mid-sized excavator.

The intent of the excavation is to locate the top of the arched entrance to the bunker, based on eye-witness accounts. Further exploratory works may be required, depending on the outcome of this preliminary investigation, as the exact location, contents and condition of the bunker are unknown.

The proposal does not seek to remove any trees and the trenches will be backfilled and the land surface restored following excavation. Works are expected to take approximately one (1) week during normal construction hours with all access via an existing gate on Victoria Parade.

### Assessment Outcomes

The subject land is zoned B2 Local Centre, RE1 Public Recreation and W2 Recreational Waterways under the Port Stephens Local Environmental Plan 2013 (PSLEP2013). The portion of the site upon which the works are proposed is zoned

RE1 Public Recreation. The proposed development is considered to be ancillary to the primary purpose of the site, namely for Public Recreation. The excavation is expected to uncover a suspected former World War 2 military bunker, which may ultimately provide greater historical and recreational value to Port Stephens, providing additional tourism-related recreation in a bushland environment. Accordingly, the development is deemed to be permissible with consent.

The development proposal was assessed against relevant controls and objectives as specified under the applicable State Environmental Planning Policies (No. 44 Koala Protection, No. 55 Remediation of Land and No. 71 Coastal Protection), PSLEP2013 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

The key issues arising out of the assessment of the application relate to the potential impacts on the existing natural environment of the proposed earthworks and the measures to be applied to mitigate any damage to the environment. The application was referred to Council's Heritage Advisor and Vegetation Management Officer, neither of which raised any objections to the proposal.

The proposal will have limited impact on the natural environment, despite the site having a number of constraints including heritage value, high ecological value, bushfire affectation and Koala Habitat. The outcome of this preliminary phase of works will provide the base for further investigations in the event that the bunker is discovered.

Council's Heritage advisor has requested several conditions be imposed to protect the natural environment and any relics that are uncovered. The Vegetation Management officer has requested the works be supervised by an appropriately qualified arborist to ensure trees are protected during the excavation and site reinstatement activities.

During the notification period, Council received two (2) submissions in relation to the proposal. One (1) submission has raised the following concerns:

- Potential for damage to the reserve by heavy equipment;
- Council did not directly notify the Port Stephens Native Flora Garden Committee of the proposal.

The other submission has stated there was no objection to the proposal.

Given the nature of the proposal, the mitigation measures that can be employed to protect the natural environment through conditions of consent and the potential heritage value the discovery of the bunker may bring, the application has been recommended for approval.

**COMMUNITY STRATEGIC PLAN**

<b>Strategic Direction</b>	<b>Delivery Program 2013-2017</b>
Community Safety.	Use Council's regulatory powers and Government legislation to enhance public safety.

**FINANCIAL/RESOURCE IMPLICATIONS**

There are no financial or resource implications that result from the recommendation of this report.

<b>Source of Funds</b>	<b>Yes/No</b>	<b>Funding (\$)</b>	<b>Comment</b>
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 79C of the *Environmental Planning and Assessment Act 1979*.

<b>Risk</b>	<b><u>Risk Ranking</u></b>	<b>Proposed Treatments</b>	<b>Within Existing Resources?</b>
There is a risk that the application may be challenged at the Land and Environment Court if refused.	Low	Approve the application as recommended.	Yes

**SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

The proposal represents the first small, but nonetheless important, step in potentially uncovering another part of Port Stephen's wartime history. The extent of any future exploratory or archaeological activities is dependent on this preliminary stage being undertaken. In the same token, the historical and community value of the bunker will only be known once this initial stage of exploration is undertaken.

There is also the possibility that the bunker may contain explosives or contaminants, which pose more of a risk to the community, the adjoining Marine Park and the surrounding area if left in-situ. The development is not anticipated to have significant adverse impacts on the locality, surrounding properties or public places and accordingly, it is considered that approval of the proposal is an appropriate outcome.

## **CONSULTATION**

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

### Internal

The application was referred to Council's Heritage Advisor and Vegetation Management Officer for assessment and comment.

Heritage Advisor – Council's Heritage Advisor noted that an Aboriginal Heritage Information Management System (AHIMS) search has identified the site contains an Aboriginal site near the location of the proposed trenches and has requested an Aboriginal Heritage due diligence assessment, as well as full consultation with the local Aboriginal community. Following discussions with Council's Heritage Advisor regarding the highly disturbed nature of the location of the trenches, it was agreed to dispense with the need for the due diligence assessment.

The Heritage Advisor has also noted a number of other matters which can be accommodated as conditions of approval, should consent be issued. These include:

- 1) Submission of an application for an exemption under Section 139(4) Type 1B (notification of a relic) of the *Heritage Act 1977*, with a copy of the exemption approval to be provided to Council (upon discovery of any relics during site works);
- 2) Provision of a plan detailing the type and location of safety barriers and retention and reinstatement processes for sandy soils;
- 3) Involvement of an Australian Registered Archaeologist; and
- 4) Submission of a report to Council by the appointed archaeologist, detailing the findings and heritage management processes undertaken.

Vegetation Management Officer – No objections were made, subject to the imposition of conditions requiring tree protection measures and the supervision of an arborist.

### External

The proposed development was referred to the NSW Police for comment, given that the applicant had nominated the Police as being responsible for site security. Following discussions between the Police and the applicant, it was determined that unless something is uncovered during the course of the excavation that would require investigation, no further involvement was required.

The application was also publicly notified and advertised for a period of fourteen (14) days when first received. As a result of this process, two (2) separate submissions were received, one (1) of which was in support of the proposal. The relevant matters raised in the remaining submission have been summarised below:

<b>Issue</b>	<b>Response</b>
<p>The Site is remote and has limited access. Heavy equipment used will damage and degrade the heavily-wooded Port Stephens Native Flora Garden.</p>	<p>The bunker was built during World War 2 with what appears to be a deliberate attempt to conceal it in a vegetated hillside. Since that time, the vegetation has continued to grow and subsequently, Fly Point Reserve and the Native Flora Garden have been created.</p> <p>The applicant has advised that access will be provided to the excavation point along a disused track from an existing gate located approximately mid-way along Victoria Parade. The applicant has also stated that no trees will be removed along the access way or at the excavation site. The site of the proposed trenches is already sufficiently clear to enable the proposed excavator access to the site.</p> <p>Appropriate conditions have been imposed to prevent erosion and sedimentation and for the site to be reinstated following the completion of all excavation activities.</p>
<p>The Port Stephens Native Flora Garden Committee was not specifically notified of the application and the address stated on the application was misleading.</p>	<p>The application has been correctly notified and advertised in accordance with the requirements of the Port Stephens Development Control Plan 2014, with all potentially affected adjoining and adjacent landowners being notified. In addition, the application was placed on public exhibition with a notice placed in local print media for public viewing.</p>

The matters raised have been addressed in detail in the assessment included as **(ATTACHMENT 2)** to this report. The proposed development is considered to suitably address the requirements of the relevant legislation. Mitigation measures proposed in the application, in addition to the proposed conditions of consent are anticipated to adequately address any potential impacts of the development.

### **OPTIONS**

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

### **ATTACHMENTS**

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

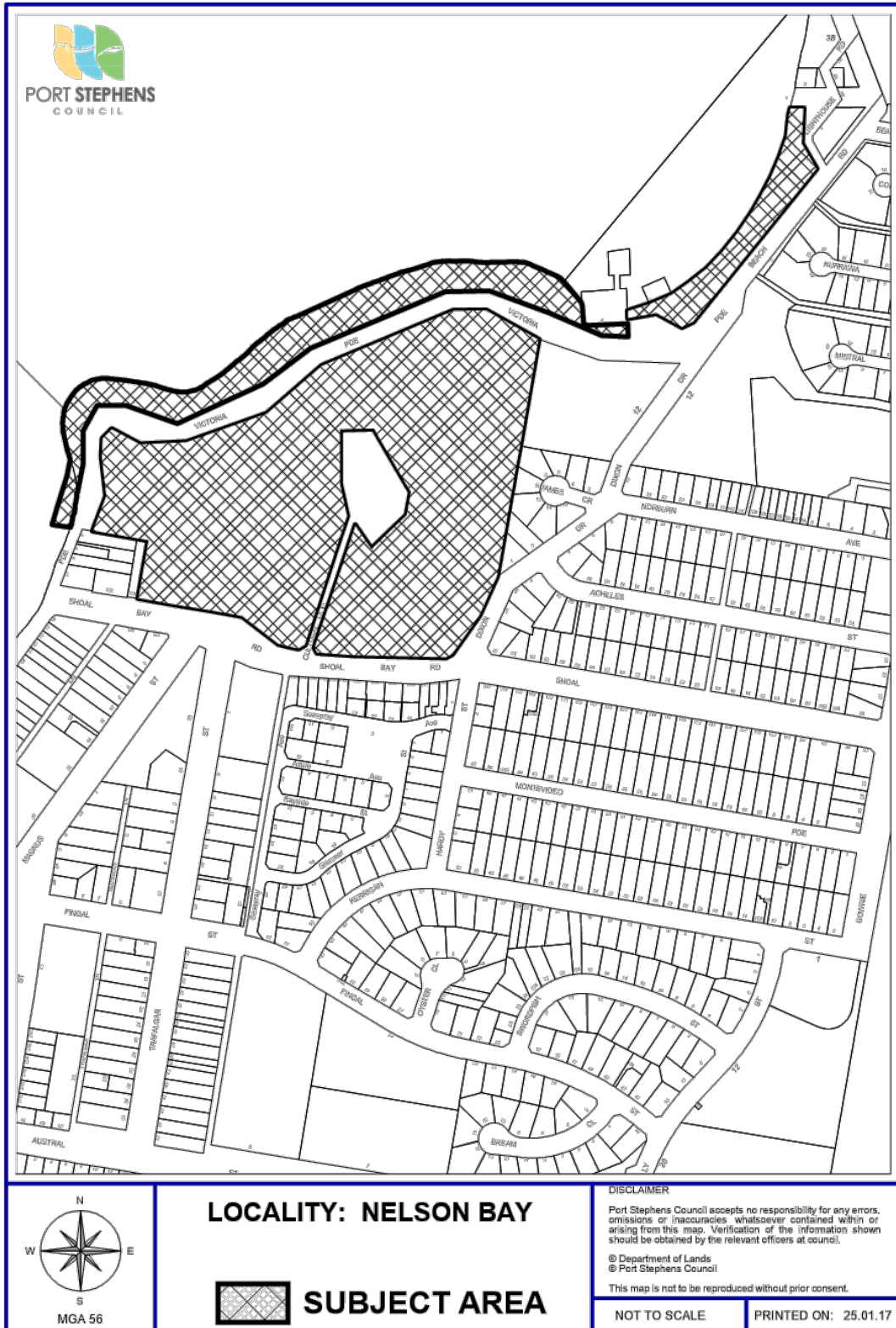
**COUNCILLORS ROOM**

- 1) Development plans.
- 2) Proposed works explanation.

**TABLED DOCUMENTS**

Nil.

**ITEM 1 - ATTACHMENT 1 LOCATION PLAN.**







# DEVELOPMENT ASSESSMENT REPORT

**APPLICATION DETAILS**

<b>Application Number</b>	16-2016-780-1
<b>Development Description</b>	Earthworks (Excavation of Potential Historical Site) - Fly Point Park
<b>Applicant</b>	MR M RAWSON & MR C TENNYSON
<b>Date of Lodgement</b>	14/11/2016
<b>Value of Works</b>	\$0.00

**Development Proposal**

The application proposes to undertake exploratory excavation to identify the location of a suspected former World War 2 military bunker. The works will involve excavating two (2) trenches to identify the entry arch of the bunker using a mid-sized excavator.

The intent of the excavation is to locate the top of the arched entrance to the bunker, based on eye-witness accounts, rather than attempt to find and re-open the bunker. As the likely contents of the bunker are unknown, the application is only for a limited scope of works. Further works (and approvals) will be sought, depending on the outcome of this preliminary investigation and whether the bunker contains material that is salvageable.

The proposal does not seek to remove any trees and the trenches will be backfilled and the land surface restored following excavation. Works are expected to take approximately one (1) week during normal construction hours with all access via an existing gate via Victoria Parade.

**PROPERTY DETAILS**

<b>Property Address</b>	98 Shoal Bay Road NELSON BAY
<b>Lot and DP</b>	LOT: 101 DP: 1175980
<b>Current Use</b>	Public Reserve
<b>Zoning</b>	B2 LOCAL CENTRE / PART W2 RECREATIONAL WATERWAYS / PART RE1 PUBLIC RECREATION
<b>Site Constraints</b>	Bushfire Prone and Buffer Acid Sulfate Soils – Class 1, 3, 4, 5 Koala Habitat Endangered Ecological Community High Environmental Value Port Stephens – Great Lakes Marine Park

- Draft Coastal Management SEPP – Coastal Use Area and Coastal Environment Area
- Landscape Habitat Link
- NSW Wildlife Atlas – Koala
- Flood Policy
- Extant Vegetation

**Site Description**

The subject site is located to the northeast of the Nelson Bay Town Centre between Shoal Bay Road to the south, Victoria Parade to the north and west and Dixon Drive to the east. The site is characterised by a small, largely vegetated knoll with steep banks to Nelson Bay along its northern perimeter. The entire site, which includes the sea-ward side of Victoria Parade and along Little Beach to the northeast, measures approximately 11.79Ha in size.

**Site History**

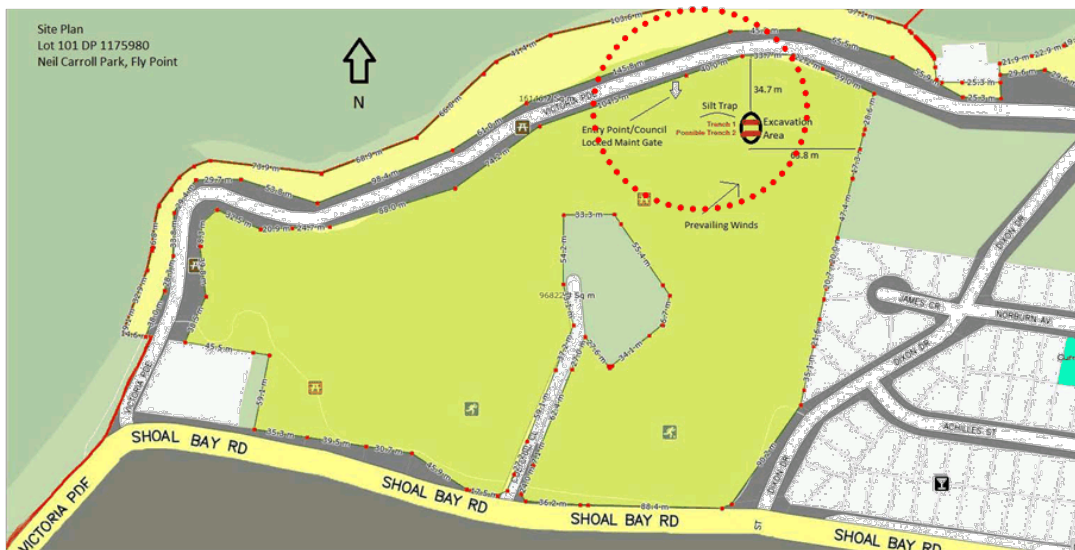
Anecdotal evidence suggests that the site was used by the United States Military as a bunker associated with its wider naval operations within the Port Stephens area during World War 2.

The site has been used for a number of years post-war for public recreation as a bushland reserve and contains the Native Flora Reserve. The site also includes the former migrant camp, foundations of HMAS Assault, an Aboriginal scar tree, a burial site, below water items including Higgins landing barges, army jeeps, various munitions and anchor of USS Henry S Grant.

**Site Inspection**

A site inspection was carried out on 20 December 2016.

The subject site can be seen in Figures 1, 2, 3, 4 and 5 below:



**Figure 1 – Site Plan showing location of proposed trenches**



Figure 2 – Aerial Photo of the subject site showing location of proposed trenches



Figure 3 – The subject site showing location of proposed excavator access point



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Figure 4 – Part of the proposed work area adjacent to the suspected entry to the bunker



Figure 5 – Part of the proposed work area adjacent to the suspected entry to the bunker with evidence of a partial collapse

<b>ASSESSMENT SUMMARY</b>	
<b>Designated Development</b>	The application is not designated development
<b>Integrated Development</b>	The application does not require additional approvals listed under s.91 of the EP&A Act
<b>Concurrence</b>	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.

Heritage Advisor – Council's Heritage Advisor noted that an AHIMS search has identified the site contains an Aboriginal site near the location of the proposed trenches and has requested an Aboriginal Heritage due diligence assessment, as well as full consultation with the local Aboriginal community. Following discussions with Council's Heritage Advisor regarding the highly disturbed nature of the location of the trenches, it was agreed to dispense with the need for the due diligence assessment.

The Heritage Advisor has also noted a number of other matters which can be accommodated as conditions of approval, should consent be issued. These include:

1. Submission of an application for an exemption under Section 139(4) Type 1B (notification of a relic) of the Heritage Act 1977, with a copy of the exemption approval to be provided to Council (upon discovery of any relics during site works);
2. Provision of a plan detailing the type and location of safety barriers and retention and reinstatement processes for sandy soils;
3. Involvement of an Australian Registered Archaeologist; and
4. Submission of a report to Council by the appointed archaeologist, detailing the findings and heritage management processes undertaken.

Vegetation Management Officer – No objections were made, subject to the imposition of conditions requiring tree protection measures and the supervision of an arborist.

**External Referrals**

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

NSW Police – The applications was referred to the Police for comment, given that the applicant has nominated the police as being responsible for site security. Following discussions between the police and the applicant, it was determined that unless something is uncovered during the course of the excavation that would require investigation by the police, no further involvement was required.

**MATTERS FOR CONSIDERATION – SECTION 79C****s79C(1)(a)(i) – The provisions of any EPI****SEPP 44 Koala Habitat Protection**

The proposed development has been considered against Council's Comprehensive Koala Plan of Management (CKPoM) which has been prepared under the SEPP. The Port Stephens Council (PSC) Koala Habitat Mapping 2000 identifies almost the entire site as Mainly Cleared, with a thin strip predominantly along the northern edge of Victoria Parade as being Preferred Habitat and the associated 50m buffer over cleared land.

The proposal does not seek to remove any trees and the works will only be over a short span of time. Conditions have been applied regarding fencing and tree removal to retain the koala movement and habitat on-site and surrounding the site.

**SEPP 55 Remediation of Land**

State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55) aims to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment.

Clause 7 of SEPP 55 stipulates that Council must not consent to the carrying out of any development on land unless it has considered whether the land is contaminated. If the land is found to be contaminated, Council must be satisfied that the land is suitable in its contaminated state or can be remediated to be made suitable for the purpose for which the development is proposed to be carried out.

The proposed work area is not identified as being contaminated at the depths approval is sought for. The applicant has advised that the soil matrix is organic loam topsoil underlain by massive clean sand. The proposed development will assist to identify if contamination is likely however, at which point necessary controls / mitigation can be devised.

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

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 for two relatively small exploratory trenches to identify the location of a suspected former World War 2 military bunker. The location of the proposed trenches is sufficiently separated from Port Stephens with ample space to install appropriate soil stability and erosion control measures. The Site will also be reinstated upon completion of the proposed works.

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.

The proposed development has been considered against the matters for consideration under the SEPP and is acceptable in this regard.

**Port Stephens Local Environmental Plan 2013 (LEP)****Clause 2.3 – Zone Objectives and Land Use Table**

**ITEM 1 - ATTACHMENT 2 DEVELOPMENT ASSESSMENT REPORT.**

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The subject land is zoned B2 Local Centre, RE1 Public Recreation and W2 Recreational Waterways. The portion of the Site upon which the works are proposed is zoned RE1 Public Recreation.

The objectives of the RE1 zone are:

- To enable land to be used for public open space or recreational purposes.
- To provide a range of recreational settings and activities and compatible land uses.
- To protect and enhance the natural environment for recreational purposes.

Although the proposed development does not strictly comply with the zone objectives, the proposed trenches will not prevent the ongoing use of the land for the purposes of public open space or recreation, will not prevent the Site from continuing to provide a range of recreational settings and activities; and will have sufficient safeguards imposed so that the works will not degrade the natural environment to the point that it cannot continue to be used for recreational purposes. The excavation is expected to uncover a suspected former World War 2 military bunker, which may ultimately provide greater historical and recreational value to Port Stephens, providing additional tourism-related recreation in a bushland environment.

The Land Use table to the LEP does not specifically nominate excavation as being permissible in the zone, however such works are normally undertaken in association with other development. Given the historical context and the future recreational, cultural and historical value of the bunker, it is considered the proposed excavation is ancillary to its ordinary use for open space and recreational purposes. Accordingly, the development is deemed to be permissible with consent.

**Clause 5.5 – Development in the Coastal Zone**

The subject site is located within the Coastal Zone as described under the NSW Coastal Policy and the LEP. Clause 5.5 requires the consent authority consider a range of matters aimed at protecting the coastal environment by applying the principles of ecologically sustainable development. The proposal is generally consistent with the provisions of Clause 5.5(1)(b)(i)-(xii), particularly as the works form part of the first steps to identify, protect and preserve a potential World War 2 military bunker, which, if found, will have particular heritage, archaeological and historical significance.

**Clause 5.9 – Preservation of Trees**

The applicant does not propose to remove any trees as part of this stage of the works. Any further activities on the Site are dependent on the outcomes of the excavations proposed in this application. Should any future works be contemplated where trees do need to be removed or damaged, Council will require any such activities to be supported by the appropriate documentation.

**Clause 5.10 – Heritage Conservation**

The Site is classified as a Local Heritage Item (Item No. 130) and is described as *"The Native Flora Reserve, including site of former migrant camp, foundations of HMAS Assault, Aboriginal scar tree, burial site, below water items including Higgins landing barges, army jeeps, various munitions and anchor of USS Henry S Grant"*.

The proposed excavations aim to locate the entrance to a suspected underground bunker, which anecdotal evidence indicates was constructed during World War 2 and subsequently hidden following the departure of the American military some years later. It is anticipated that the discovery of a bunker may have significant historical value, depending on its existence, likely contents and condition.

Clause 5.10(2) requires consent for disturbing or excavating an archaeological site while knowing, or having reasonable cause to suspect, that the disturbance or excavation may result in a relic being discovered, exposed, moved, damaged or destroyed. This application accordingly seeks

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Council's consent. Council's Heritage Advisor raises no objections to the proposal, subject to the inclusion of several conditions of consent, as previously noted.

**Clause 7.1 – Acid Sulfate Soils**

The Site is classified as containing Class 5 Acid Sulfate Soils and is within 500m of another Class of soils. Notwithstanding this, the proposed work area is above 5m AHD and accordingly, no further consideration of the potential for acid sulfate soils is necessary.

**Clause 7.2 – Earthworks**

The proposed earthworks are relatively minor and can be adequately managed so as not to result in any significant adverse impact on the natural environment. Having regard to the provisions of Clause 7.2(3), the following is noted:

- (a) the proposed trenches are unlikely to have any detrimental effect on drainage patterns and soil stability in the locality of the development, given the area was highly disturbed during the construction and subsequent backfilling of the suspected bunker;
- (b) the land is currently used as part of a public reserve and this is unlikely to change;
- (c) the fill quality is yet to be determined however the proposed activities include replacing the soils and reinstating the Site at the completion of the works;
- (d) the existing and likely amenity of adjoining properties is unlikely to be impacted on given the short duration of the project and the proposed work hours;
- (e) no materials will be exported from the Site or imported to it;
- (f) the purpose of the work is to confirm the presence of a suspected World War 2 bunker and identify whether it contains any materials either of risk to society (e.g., munitions and ordinance) or items of historical value;
- (g) the location of the proposed trenches is of a sufficient distance from a waterway to implement erosion and sediment control measures and prevent any adverse impact on the adjoining Port Stephens – Great Lakes Marine Park.
- (h) Adequate measures can be implemented to minimise any potential impact on the natural environment by way of the imposition of Council's standard conditions of approval.

**s79C(1)(a)(ii) – Any draft EPI**

Draft Coastal SEPP – The subject site is located within the Coastal Zone (Coastal Environmental Area and Coastal Use Area) as described under the draft SEPP.

Having regard to the matters for consideration prescribed by Clauses 14(1)(a)-(g) and 15(1)(a)-(b) of the Draft SEPP, the proposal will not have a significant adverse impact on the Coastal Zone. The development is minor in nature and there is no anticipated cultural, access, ecological, visual or amenity impacts on the foreshore or waterway.

**s79C(1)(a)(iii) – Any DCP**

Port Stephens Development Control Plan 2014

**Chapter A.12 – Notification and Advertising**

In accordance with the requirements of chapter A.12, the development application was notified to surrounding land owners for a period of fourteen days between 23 November 2016 and 7 December 2016. A notice was also placed in the Port Stephens Examiner on 24 November 2016. Council did not receive any submissions with respect to the proposal during the notification period. Two Submissions were however received by Council outside of the notification period. The matters raised in the submissions have been discussed in further detail below.



**Chapter B.2A – Environmental Significance**

Although the Site is identified as containing High Environmental Value, the development will not require the removal of any existing trees and is in an existing disturbed portion of the Site. The trenches will be backfilled and the disturbed areas reinstated to Council's satisfaction. In this context, a Seven Part Test is not required.

**Chapter B.2D – Koalas**

Although the Site is identified as containing Koala Habitat, the development will not require the removal of any existing trees and is in an existing disturbed portion of the Site. In this context, a Seven Part Test is not required. There are no applicable controls in the context of the proposal.

**Chapter B.3A – Bushfire prone Land**

Given the nature of the proposal and its expected duration, there are no applicable DCP controls in relation to the Site's bushfire affectation.

**Chapter B.3B – Acid Sulfate Soils**

Refer to previous comments in relation to Clause 7.1 of the LEP.

**Chapter B.3E – Noise**

Given the nature of the proposal, the distance from any adjoining dwellings, the expected duration of the works and the proposed work hours, any noise from machinery can be adequately mitigated through the application of Council's standard conditions of consent.

**Chapter B.3F – Earthworks**

Refer to previous comments in relation to Clause 7.2 of the LEP.

**Chapter B.8 – Heritage**

Refer to previous comments in relation to Clause 5.10 of the LEP.

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

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

**s79C(1)(a)(iv) – The regulations**

No matters prescribed by the 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****Impacts on the Built Environment**

The proposed development will have minimal impacts on the built environment, given its nature, location and context.

**Social and Economic Impacts**

The proposed development is not expected to generate any significant adverse social or economic impacts.

**Impacts on the Natural Environment**

**ITEM 1 - ATTACHMENT 2 DEVELOPMENT ASSESSMENT REPORT.**

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Given that the proposal does not propose the removal of any trees and the site will be reinstated following excavation of the trenches, the proposed development is not expected to result in any significant adverse impact on the existing natural environment. It is noted that the area would have been heavily disturbed during the construction of the bunker (and its subsequent closure) with obvious deformations in the topography, differences in the vegetation around the purported former entry point and evidence of spoil being dumped on the seaward side of Victoria Parade where the excavated rock was disposed of.

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

The subject site is deemed to be suitable for the proposed works. In the event that the location of the bunker is confirmed, further investigations will be required to ascertain the condition, contents and heritage value of the bunker, as well as further options for its on-going preservation and use.

**s79C(1)(d) – Any submissions**

Two submissions have been received in relation to the proposed development, one of which noted there was no objection to the proposal.

<b>Issue Raised</b>	<b>Comment</b>
The Site is remote and has limited access. Heavy equipment used will damage and degrade the heavily-wooded Port Stephens Native Flora Garden	The bunker was built during World War 2 with what appears to be a deliberate attempt to conceal it in a vegetated hillside. Since that time, the vegetation has continued to grow and subsequently, Fly Point reserve and the Native Flora Garden have been created.  The applicant has advised that access will be provided to the excavation point along a disused track from an existing gate located approximately mid-way along Victoria Parade. The applicant has also stated that no trees will be removed along the access way or at the excavation site. The site of the proposed trenches is already sufficiently clear to enable the proposed excavator access to the site, as shown in Figures 3-5.  Appropriate conditions can be imposed to require the installation of soil management measures to prevent erosion and sedimentation and for the Site to be reinstated following the completion of all excavation activities.
The Port Stephens Native Flora Garden Committee was not specifically notified of the application and the address stated on the application is misleading	The application has been correctly notified and advertised in accordance with the requirements of the Port Stephens Development Control Plan 2014 with all potentially affected adjoining and adjacent landowners being notified. In addition, the application was placed on public exhibition with a notice placed in local print media for public viewing.
No objection to the proposal	No reasons stated

**s79C(1)(e) – The public interest**

The proposal represents the first small but nonetheless important step in uncovering another part of Port Stephen's wartime history. The extent of any future exploratory or archaeological activities is dependent on this preliminary stage being undertaken. In the same token, the historical and community value of the bunker will only be known once this initial stage of exploration is undertaken. There is also the possibility that the bunker may contain explosives or contaminants

**ITEM 1 - ATTACHMENT 2      DEVELOPMENT ASSESSMENT REPORT.**

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which pose more of a risk to the community and the environment if left in-situ. Accordingly, it is considered that approval of the proposal is in the public interest.

**DETERMINATION**

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

MICHAEL BREWER | Contract Planner | Date: 24/01/2017



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 16-2016-780-1 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. Details of approvals under Section 78A(3) of the Act are contained in Schedule 3. Details of approvals under Section 91 of the Act are included in Schedule 4.

**Determination Outcome:** Approval, subject to conditions

### APPLICATION DETAILS

**Application No:** 16-2016-780-1

**Property Address:** LOT: 101 DP: 1175980  
**98 Shoal Bay Road, NELSON BAY**

**Description of Development:** **Earthworks (Excavation of Potential Historical Site) - Fly Point Park**

**Date of determination:** 28 February 2017

**Date from which the consent operates:** 28 February 2017

**Date on which the consent shall lapse:** 1 March 2022  
(unless physical commencement has occurred)

MS C DICKSON  
Planning & Developer Relations Coordinator

Adelaide Street (PO Box 42), Raymond Terrace NSW 2324  
DX 21406 Raymond Terrace • Phone: 4980 0255  
Email council@portstephens.nsw.gov.au

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**SCHEDULE 1**

**REASONS WHY THE CONDITIONS HAVE BEEN IMPOSED**

These conditions are required to:

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

**CONDITIONS THAT IDENTIFY APPROVED PLANS AND LIMITATIONS OF CONSENT**

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

<b>Plan/Doc. Title</b>	<b>Plan Ref. No</b>	<b>Sheet.</b>	<b>Date</b>	<b>Drawn By</b>
Location of Trenches	N/A	N/A	Undated	Unknown
Site Map of Proposed Excavation Works at Fly Point, Nelson Bay	N/A	N/A	Undated	Unknown

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.

**CONDITIONS TO BE SATISFIED PRIOR TO AND DURING THE EXCAVATION PHASE**

2. A Construction Management Plan (CMP) must be submitted to Council for approval prior to any activities occurring on-site. The CMP must be kept on site at all times and shall include a plan detailing the type and location of safety barriers, and retention/ reinstatement processes for sandy soils.
3. Prior to the commencement of works, the applicant is required to notify Council in writing of any existing damage to public infrastructure (including landscaping) within the vicinity of the development. The absence of such notification signifies that no damage exists. Upon completion of the excavation and site restoration works, the

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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).

applicant shall rectify any new damage to public infrastructure to the satisfaction of the Council as the Roads Authority.

4. An AQF level 5 certified Arborist shall be required on site when excavation impact upon the Structural Root Zone (SRZ) of any tree or trees within the Public Reserve. The SRZ will be calculated using Australian Standards 4970 Protection of Trees on Development Sites. Where damage has occurred the SRZ a report from the AQF level 5 certified Arborist will be required outlines mitigation options.
5. Work that is likely to cause annoyance due to noise is to be restricted to the following times:
  - a) 7.00am to 6.00pm Monday to Friday
  - b) 7.00am to 5.00pm Saturday

Any work performed outside the abovementioned hours or on a public holiday that may cause offensive noise, as defined under the Protection of the Environment Operations Act 1997, is prohibited.

6. In the event that a relic is discovered during the course of activities on the site, the applicant shall apply to the NSW Office of Environment and Heritage for an exemption under Section 139(4) Type 1B (notification of a relic) of the Heritage Act 1977, with a copy of the exemption approval to be provided to Council. If substantial intact archaeological relics of state or local significance are uncovered, work must cease in the affected area and the Heritage Council must be notified in writing in accordance with s.146 of the Heritage Act 1977.
7. A site notice shall be erected on the site prior to any work commencing and shall be displayed throughout the works period.

The site notice must:

- be prominently displayed at the boundaries of the site for the purpose of informing the public that unauthorised entry to the site is not permitted
  - display project details including, but not limited to the contact details of the relevant parties
  - be durable and weatherproof
  - display the approved hours of work, the name of the site/project manager, the responsible managing company (if any), its address and 24 hour contact phone number for any inquiries, including construction/noise complaint are to be displayed on the site notice
  - be mounted at eye level on the perimeter hoardings/ fencing and is to state that unauthorised entry to the site is not permitted.
8. Suitable and adequate measures are to be applied to restrict public access to the site and building works, materials and equipment.

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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).

9. All excavation, demolition and construction works shall be properly guarded and protected with hoardings or fencing to prevent them from being dangerous to life and property.

If the work:

- a) is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient, or
- b) involves the enclosure of a public place

a hoarding or fence must be erected between the work site and the public place.

If necessary, an awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling into the public place.

The work site must be kept lit between sunset and sunrise if it is likely to be hazardous to persons in the public place. Any such hoarding, fence or awning is to be removed when the work has been completed.

10. All public footpaths and roadways adjacent to the work area must be maintained in a safe condition at all times during the course of the development works. In the case of sites where it is not possible to keep the footpath or road reserve clear during works, written approval from Council shall be obtained prior to any closing of the road reserve or footpath area. The closure shall take place in accordance with Council's written approval. The area shall be signposted and such signposting be maintained in a way that ensures public safety at all times.

Where pedestrian circulation is diverted on to the roadway or verge areas, clear directional signage and protective barricades must be installed in accordance with AS1742-3(1996) 'Traffic Control Devices for Work on Roads'.

11. Topsoil shall only be stripped from approved areas and shall be stockpiled for re-use during site rehabilitation and landscaping. Stockpiles of topsoil, sand, aggregate, spoil or other material stored on the site that is capable of being moved by running water shall be stored clear of any drainage line or easement, natural watercourse, footpath, kerb, and/or road surface. Suitable sediment and erosion control devices shall be installed prior to the stockpile being created. The stockpile shall be treated so its surface is erosion resistant to wind and water action. No stockpiles of topsoil, sand, aggregate, spoil or other material shall be located on the public footpath or road reserve.

### CONDITIONS TO BE SATISFIED AT THE COMPLETION OF THE EXCAVATION PHASE

12. The Site shall be reinstated and revegetated to the satisfaction of Council following the completion of all excavation activities on the Site.
13. Submission of a report to Council by an appointed archaeologist, detailing the findings and heritage management processes undertaken.

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**PORT STEPHENS  
COUNCIL**

## Notice of Determination

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

### **SCHEDULE 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**

- 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.

### **SCHEDULE 3**

#### **APPROVAL UNDER SECTION 78A (3)**

Nil

### **SCHEDULE 4**

#### **APPROVAL UNDER SECTION 91**

Nil



**ITEM NO. 2**

**FILE NO: 17/12826  
RM8 REF NO: 16-2016-612-1**

**DEVELOPMENT APPLICATION 16-2016-612-1 FOR A TELECOMMUNICATIONS FACILITY (MONOPOLE TOWER), SIGNAGE AND LIGHTING AT 82 BENJAMIN LEE DRIVE, RAYMOND TERRACE (LOT 21 DP850074)**

REPORT OF: MATTHEW BROWN - DEVELOPMENT ASSESSMENT AND COMPLIANCE SECTION MANAGER  
GROUP: DEVELOPMENT SERVICES

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Refuse Development Application No. 16-2016-612-1 for a telecommunications facility (monopole tower), signage and lighting at 82 Benjamin Lee Drive, Raymond Terrace (Lot 21 DP850074) for the reasons contained in **(ATTACHMENT 3)**.

---

Councillor John Nell left the meeting at 06:47pm, prior to voting in Committee of the Whole.

Councillor Peter Kafer left the meeting at 06:48pm, prior to voting in Committee of the Whole.

Councillor John Nell returned to the meeting at 06:50pm, prior to voting in Committee of the Whole.

Councillor Peter Kafer returned to the meeting at 06:50pm, prior to voting in Committee of the Whole.

Councillor John Morello left the meeting at 06:51pm, prior to voting in Committee of the Whole.

Councillor John Morello returned to the meeting at 06:56pm, prior to voting in Committee of the Whole.

**ORDINARY COUNCIL MEETING - 28 FEBRUARY 2017  
COMMITTEE OF THE WHOLE RECOMMENDATION**

	<p><b>Councillor Paul Le Mottee Councillor John Nell</b></p> <p>That the recommendation be adopted.</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, Peter Kafer, Paul Le Mottee, John Morello, John Nell and Steve Tucker.

Those against the Motion: Cr Geoff Dingle.

**ORDINARY COUNCIL MEETING - 28 FEBRUARY 2017  
MOTION**

<b>042</b>	<p><b>Councillor Chris Doohan</b> <b>Councillor Steve Tucker</b></p> <p>It was resolved that Council refuse Development Application No. 16-2016-612-1 for a telecommunications facility (monopole tower), signage and lighting at 82 Benjamin Lee Drive, Raymond Terrace (Lot 21 DP850074) for the reasons contained in <b>(ATTACHMENT 3)</b>.</p>
------------	--

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, Peter Kafer, Paul Le Mottee, John Morello, John Nell and Steve Tucker.

Those against the Motion: Cr Geoff Dingle.

**BACKGROUND**

The purpose of this report is to present a development application to Council for determination. The application proposes to remove an existing small pole (holding a business identification sign) and replace it with a new monopole containing three (3) x panel antennas (with an overall height of 22.9m). The monopole will also contain two (2) new car park lights and a new 1.5m x 1m business identification sign. The development is located immediately adjacent to the main vehicular entry access point to the site.

In addition, an outdoor equipment shelter is proposed as part of the development, which will be located adjacent to the existing commercial building (behind the existing 1.8m high colourbond fence). Ancillary equipment associated with operation of the facility is proposed to be installed including cabling, underground conduits, underground pits, cable trays, ladders, bird proofing, earthing, electrical works and air-conditioning equipment.

The application has been reported to Council for determination as the development is located adjacent to two sensitive sites (child care centres) and in close proximity to another, being a primary school. The child care centres are located at 88 Benjamin Lee Drive (Raymond Terrace Early Education Centre) and 89 Benjamin Lee Drive (Bright Horizons Australia Childcare). These child care centres are located 31m and 147m respectively from the location of the proposed tower on the subject site. The playground of Grahamstown Public School is also located 88m to the north of the proposed tower location.

### Site

The subject site is legally described as Lot 21 in DP 850074 and is located at 82 Benjamin Lee Drive, Raymond Terrace (at its intersection with Mount Hall Road). The site has a total area of 794.94m<sup>2</sup> and currently contains a Foodworks retail shop. A small pole sign is located adjacent to the front boundary and main vehicular access point (which is proposed for removal under this application). Other structures on the site include a 1.8m high colourbond fence along part of the front boundary and a shipping container stored behind the fence.

The site forms part of a small group of retail and commercial services, which includes the Lakeside Tavern, all of which share common vehicular access and car parking facilities.

The land to the north and east of the site generally comprises single storey detached dwellings. Several single storey townhouses are located to the southwest, with two child care centres located in close proximity at 88 Benjamin Lee Drive (Raymond Terrace Early Education Centre) and 89 Benjamin Lee Drive (Bright Horizons Australia Childcare) to the west. The Raymond Terrace Early Education Centre immediately adjoins the north western boundary of the Site. A public reserve (lakeside Reserve No.2) is located further to the northwest, with Grahamstown Public School located to the north.

### Site History

The site was previously used for the purposes of a service station, approved on 15 March 1991 in conjunction with the adjoining shopping centre under DA-1991-60003. The subject lot was subsequently excised off the original allotment in a two-lot subdivision, approved under DA-1994-41649 on 7 December 1994.

### Assessment Outcomes

The subject land is zoned B1 Neighbourhood Centre under the *Port Stephens Local Environmental Plan 2013* (PSLEP2013). The proposal is defined as *signage* and a *telecommunications facility* under the PSLEP2013, both of which the applicant contends are ancillary to the principal retail use of the site.

The proposed signage is permissible with consent, while the Land Use Table to the PSLEP2013 does not specifically nominate a telecommunications facility as being permissible in the zone. Notwithstanding this, the provisions of Clause 115 of the *State Environmental Planning Policy (Infrastructure) 2007* (the Infrastructure SEPP) prevail over the LEP with respect to the proposed telecommunications facility and accordingly, the development is permissible with consent.

The development proposal was assessed against relevant controls and objectives as specified under the *Infrastructure SEPP and State Environmental Planning Policy No. 64 – Advertising and Signage (SEPP 64)*, PSLEP2013 and Port Stephens Development Control Plan 2014 (PSDCP2014).

Key Issues

The key issues arising out of the assessment of the application relate to the location of the proposal and the level of impact on the built environment in the context of the surrounding area and adjoining land uses. The current proposal is located directly adjoining sensitive areas (i.e. two childcare centres and a primary school in close proximity), which is not recommended under the relevant guidelines. The applicant has failed to adequately demonstrate why the proposal is required to be in this particular sensitive location (as opposed to other alternative sites which are likely to result in a reduced visual impact).

The development does not satisfy the applicable controls with respect to:

- Compliance with the Location Principles contained within the *NSW Telecommunications Facilities Guideline including Broadband (2010)* with respect to proximity to a "sensitive location" (childcare centres and a school), visual impact and opportunities for alternative locations (Infrastructure SEPP);
- Clause 13 – Matters for Consideration – SEPP No. 64 – scale, location size and context of the proposed monopole upon which the proposed sign is to be mounted on;
- Suitability of the proposed tower in the context of its proximity to the main vehicular access driveway to the site, the adjoining sensitive receivers (childcare centres) and the surrounding area in general;
- Approval of the proposal does not serve the public interest.

Although the applicant has submitted information which states that the predicted levels of radiofrequency electromagnetic energy (RF EME) are well below the maximum exposure limit, it is noted that compliance with this alone does not exempt an applicant from locating telecommunications facilities wherever they please. Industry Code C564:2011 Mobile Phone Base Station Deployment, which applies in respect of siting and design requirements, requires the application of a precautionary approach to the deployment of mobile phone communications infrastructure. In adopting this principle and having due regard to the surrounding context of sensitive land uses in close proximity, the proposal is not considered to be suitable in the location proposed.

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)**. In light of the above matters, the application has been recommended for refusal.

**COMMUNITY STRATEGIC PLAN**

<b>Strategic Direction</b>	<b>Delivery Program 2013-2017</b>
Community Safety.	Use Council's regulatory powers and Government legislation to enhance public safety.

**FINANCIAL/RESOURCE IMPLICATIONS**

The determination could be challenged in the Land and Environment Court. Defending Council's determination could have financial implications.

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 inconsistent with the relevant planning instruments, telecommunications infrastructure development guidelines including; *the Environmental Planning and Assessment Act 1979 (EP&A Act)*, *PSC LEP2013*, *DCP2014*, the *NSW Telecommunications Facilities Guideline including Broadband (2010)*; and *Industry Code C564:2011 Mobile Phone Base Station Deployment*.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk the proposal will have an adverse impact on the wellbeing and amenity of the surrounding area due to the adverse impact on the surrounding area in general and nominated sensitive locations (child care centres).	Medium	Determine the application in line with the recommendation and refuse the application.	Yes
There is a risk that similar unsatisfactory applications will be submitted to Council for assessment.	Low	Determine the application in line with the recommendation and refuse the application.	Yes

**MINUTES ORDINARY COUNCIL - 28 FEBRUARY 2017**

<b>Risk</b>	<b><u>Risk Ranking</u></b>	<b>Proposed Treatments</b>	<b>Within Existing Resources?</b>
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

While it is acknowledged that the intention is to facilitate improved mobile telecommunications within the subject area and therefore enhance social and business transactions and relationships, approval of infrastructure in inappropriate locations is not a sustainable planning outcome which will benefit existing or future generations. Alternative locations exist that are not within close proximity to any sensitive sites and would have a lesser overall visual impact (without reducing the height of the tower). However, the applicant has failed to adequately demonstrate that the subject site is more appropriate than alternative locations or that these locations are impractical.

**CONSULTATION**

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

Internal

The application was referred to Council's Section 94 Contributions Officer and Building Surveyor for assessment and comment. Neither officer raises any objections to the proposal.

External

The proposed development was referred to the Department of Defence (DoD) given the height of the proposal and the potential impact on the operation of RAAF Base Williamtown. The DoD have not raised any objections to the proposal, subject to completion of a *Tall Structures and Cranes Reporting Form* by the applicant and conditions being imposed with respect to lighting in the event of an approval being granted.

The development application was also notified to surrounding land owners for a period of fourteen days between 20 September 2016 and 5 October 2016. Council did not receive any submissions with respect to the proposal during the formal public notification period.

Telephone contact was also made with the two nearby child care centres at 88 and 89 Benjamin Lee Drive to confirm whether they were aware of the proposal. A discussion with the Directors of both centres indicated that neither were aware of the proposal, although the centre at 89 Benjamin Lee Drive was sold and new operators took over in November 2016 – after the public notification process. As a consequence, two (2) objections were received, albeit well after the public notification process.

The issues raised in the two submissions are summarised below, with appropriate responses provided:

<b>Issue</b>	<b>Comment</b>
One objector stated they had not been notified of the proposal.	A review of Council's records indicates a letter was prepared and sent to the objector's address.
Dangers posed from extra traffic from service vehicles.	The additional traffic generated by service vehicles attending the site post-construction will be minimal and within the capacity of the existing road network. It is anticipated that all service vehicles would attend the Site and park within the existing car park immediately adjacent to the proposed equipment shelter. This area is not in close proximity to the adjoining child care centre.
Children exposed to high levels of radiation.	The applicant has submitted a report which states that the predicted levels of radiofrequency electromagnetic energy (RF EME) are well below the maximum exposure limit. Notwithstanding this, it is noted that compliance with this requirement alone does not exempt an applicant from siting telecommunications facilities wherever they please. Industry Code C564:2011 Mobile Phone Base Station Deployment, which applies in respect of siting and design requirements, requires the application of a precautionary approach to the deployment of mobile phone radiocommunications infrastructure. In adopting this principle and having due regard to the surrounding context of sensitive land uses in close proximity, the proposal is not considered to be suitable in the location proposed.

**MINUTES ORDINARY COUNCIL - 28 FEBRUARY 2017**

<b>Issue</b>	<b>Comment</b>
Noise and pollution during construction.	These could be managed through the imposition of Council's standard conditions of consent, should it be of a mind to approve the proposal.
The tower does not complement the surrounding environment.	The assessment of the proposal does not support the proposal on the basis that it will not have an acceptable visual impact, given the siting of the proposal and the context of the surrounding area.
Loss of business as families may choose to use another service where the children are not exposed to such radiation.	While this cannot be easily proven <i>per se</i> and the information submitted by the applicant indicates the RF EME from the proposal will be well below the maximum exposure limit, it is acknowledged that the perceived health impacts of the tower may affect some people's decision to use the child care centre.
Concern from the owner/ operator of a child care centre at the proximity to two child care centres where children 2-5 years are cared for given that the Code states a structure like the proposal should not be erected near a child care centre.	As noted above, Industry Code C564:2011 Mobile Phone Base Station Deployment, requires the application of a precautionary approach to the deployment of mobile phone infrastructure. In adopting this principle and having due regard to the surrounding context of sensitive land uses in close proximity, the proposal is not considered to be suitable in the location proposed.

**OPTIONS**

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

**ATTACHMENTS**

- 1) Locality Plan.
- 2) Development Assessment Report.
- 3) Notice of Determination - reasons for refusal.

**COUNCILLORS ROOM**

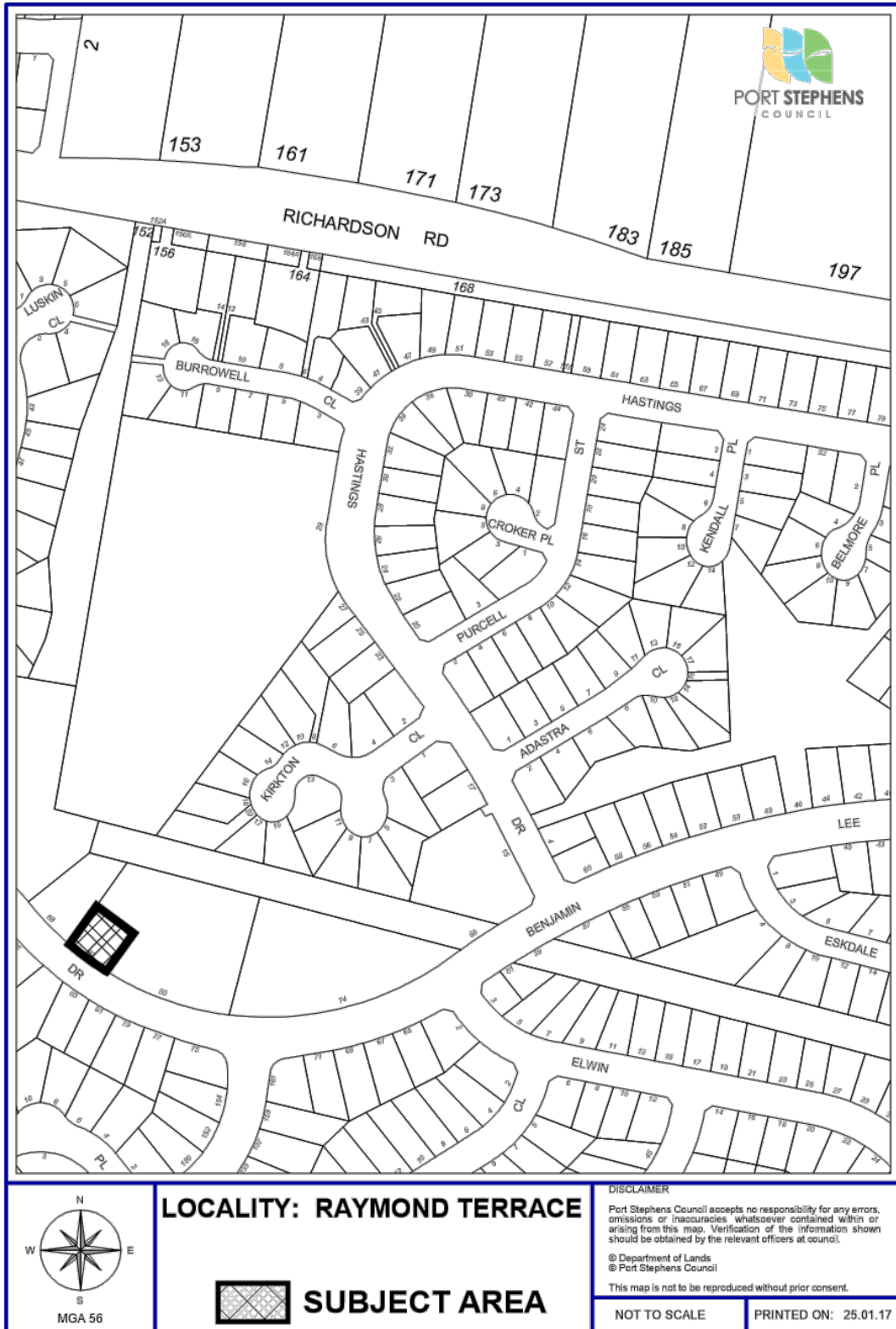
- 1) Development Plans.
- 2) Statement of Environmental Effects prepared by Commplan.



**TABLED DOCUMENTS**

Nil.

ITEM 2 - ATTACHMENT 1 LOCALITY PLAN.





# DEVELOPMENT ASSESSMENT REPORT

## APPLICATION DETAILS

<b>Application Number</b>	16-2016-612-1
<b>Development Description</b>	Telecommunications Facility (Monopole Tower), Signage and Lighting
<b>Applicant</b>	OPTUS
<b>Date of Lodgement</b>	13/09/2016
<b>Value of Works</b>	\$180,000.00

### Development Proposal

The application proposes to remove an existing pole and business identification sign and replace it with a new monopole containing 3 x panel antennas (up to 2.8m in length) mounted at a height of 21.5m (antenna centreline) and 9 x remote radio units (mounted at a height of 18m) located on the monopole. The overall height of the structure (monopole and antennae) will be 22.9m. The monopole will also contain 2 new car park lights and a new 1.5m x 1m business identification sign. The application also proposes the construction of an outdoor equipment shelter adjacent to the existing commercial building and behind the existing 1.8m high colourbond fence; and installation of ancillary equipment associated with operation of the facility including; cabling, underground conduits, underground pits, cable trays, ladders, bird proofing, earthing, electrical works and air-conditioning equipment.

## PROPERTY DETAILS

<b>Property Address</b>	82 Benjamin Lee Drive RAYMOND TERRACE
<b>Lot and DP</b>	LOT: 21 DP: 850074
<b>Current Use</b>	Retail Shop
<b>Zoning</b>	B1 NEIGHBOURHOOD CENTRE
<b>Site Constraints</b>	Acid Sulfate Soils – Class 4 Koala Habitat ANEF 2012 Draft Noise Planning Area Stepping Stones Combined Corridor Height – RAAF Williamtown Bird Strike – RAAF Williamtown

**Site Description**

The subject site is located on the northern side of Benjamin Lee Drive, at its intersection with Mount Hall Road and currently contains a Foodworks retail shop. A small pole sign is located adjacent to the front boundary and main vehicular access point while the front boundary is partly fenced with a 1.8m high colourbond fence. A shipping container is currently stored behind the fence and is partly screened by a large Paperbark tree. A bus stop is located within the adjoining road reserve to Benjamin Lee Drive.

The Site forms part of a small group of retail and commercial services, which includes the Lakeside Tavern, all of which share common vehicular access and car parking facilities.

The land to the north and east of the site generally comprises single storey detached dwellings. Several single storey townhouses are located to the southwest, with the Bright Horizons Childcare Centre is located directly to the west and Raymond Terrace Early Education Centre to the immediate northwest. A public reserve (lakeside Reserve No.2) is located further to the northwest with Grahamstown Public School located to the north

**Site History**

The site was previously used for the purposes of a service station, approved on 15 March 1991 in conjunction with the adjoining shopping centre under DA-1991-60003. The Site was subsequently excised off the original allotment in a two-lot subdivision, approved under DA-1994-41649 on 7 December 1994.

**Site Inspection**

A site inspection was carried out on 20 December 2016.

The subject site can be seen in Figures 1, 2 and 3 below:



Figure 1 – Aerial photo of the Site and surrounding area



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**Figure 2 – Looking northwest at the Site from Benjamin Lee Drive**



**Figure 3 – Looking east at the Site viewed from Benjamin Lee Drive**

**ASSESSMENT SUMMARY**

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

Section 94 Contributions Officer – No objections were made, subject to the imposition of a standard condition requiring the payment of a monetary contribution in the event of an approval being granted.

Building Surveyor – No objections were made, subject to the imposition of standard conditions in the event of an approval being granted.

**External Referrals**

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

Department of Defence (DoD) – The application was referred to the DoD given the height of the proposal and the potential impact on the operation of RAAF Base Williamstown. The DoD have not raised any objections to the proposal, subject to completion of a Tall Structures and Cranes Reporting form by the applicant and conditions being imposed with respect to lighting in the event of an approval being granted.

**MATTERS FOR CONSIDERATION – SECTION 79C**

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

State Environmental Planning Policy (Infrastructure) 2007 (Infrastructure SEPP)

Division 21 of the Infrastructure SEPP applies with the following clauses being of particular relevance:

**Clause 113 – Definitions**

The proposed development is defined (in part) as a *telecommunications facility* comprising of a tower, panel antennae and ancillary facilities. These are defined as follows:

*ancillary facilities* to a telecommunications facility means any of the following:

- (a) safety rails, fences or guards,
- (b) staircases or ladders,
- (c) steel walkways,
- (d) spreader beams supporting shelters,
- (e) screens or shrouds,
- (f) cable trays,
- (g) pole, rail or pedestal mounts,

- (h) electromagnetic energy, safety or operational signage,
- (i) anti climbing devices,
- (j) power supply such as cabling, standby generators or small solar arrays,
- (k) raised platforms on flood liable land.

*panel antenna* means a directional antenna that is flat and has a panel-like appearance.

*telecommunications facility* means:

- (a) any part of the infrastructure of a telecommunications network, or
- (b) any line, cable, optical fibre, fibre access node, interconnect point, equipment, apparatus, tower, mast, antenna, dish, tunnel, duct, hole, pit, pole or other structure in connection with a telecommunications network, or
- (c) any other thing used in or in connection with a telecommunications network.

*tower* means a freestanding ground-based structure that supports a telecommunications facility at a height where it can satisfactorily send and receive radio waves, but does not include the facility.

**Clause 115 – Development permitted with consent**

The proposed telecommunications facility is permissible with consent pursuant to Clause 115(1). Clause 115(3) requires Council consider any published guidelines concerning site selection, design, construction or operating principles for telecommunications facilities. The proposal's compliance with the four principles identified in the NSW Telecommunications Facilities Guideline including Broadband (2010) is addressed in **Table 1** below.

**Table 1 – Compliance Table - NSW Telecommunications Facilities Guideline including Broadband (2010)**

Principle	Comment
<b>Principle 1: A telecommunications facility is to be designed and sited to minimise visual impact.</b>	
a) As far as practical, a telecommunications facility that is to be mounted on an existing building or structure should be integrated with the design and appearance of the building or structure.	The proposal will not be mounted on an existing structure. Rather, it is proposed to remove an existing pole sign to install the new, larger tower. The applicant has not taken advantage of any existing structures on which to mount the proposed antennae and accordingly, the proposal cannot be said to have achieved this component of Principle 1.
b) The visual impact of telecommunications facilities should be minimised, visual clutter is to be reduced particularly on tops of buildings, and their physical dimensions (including support mounts) should be sympathetic to the scale and height of the building to which it is to be attached, and sympathetic to adjacent buildings.	The proposed tower will be located in a position that does not minimise the visual impact of the structure. While the ancillary facilities will be located behind the existing colourbond fence and appear similar to the existing shipping container, the overall height and proximity of the pole to the main vehicular access point for the shopping centre is unsuitable and visually imposing. The location of the pole and the scale of the structure in the context of the existing surrounding development does not demonstrate a sympathetic scale or visual impact has been achieved.

**ITEM 2 - ATTACHMENT 2 DEVELOPMENT ASSESSMENT REPORT.**

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<b>Principle</b>	<b>Comment</b>
c) Where telecommunications facilities protrude from a building or structure and are predominantly backgrounded against the sky, the facility and their support mounts should be either the same as the prevailing colour of the host building or structure, or a neutral colour such as grey should be used.	<p>The immediately adjoining Foodworks building is painted in a beige and orange colour scheme while the existing colourbond fence is a dark green colour. The application proposes to paint the structure white to mitigate the visual appearance of the structure, as opposed to grey.</p> <p>The applicant has only undertaken a qualitative visual impact assessment which does not quantify the statements made with respect to visual impact. While the proposed pole and antennae are of a "slimline design", it will appear at a street-level to be of a height and scale that is not in keeping with the surrounding context and therefore will appear visually obtrusive above the backdrop of the existing built form and nearby trees against the sky. The surrounding area is relatively flat and the proposed tower, when viewed from the surrounding public domain, will adversely impact on the amenity of the area.</p>
d) Ancillary facilities associated with the telecommunications facility should be screened or housed, using the same colour as the prevailing background to reduce its visibility, including the use of existing vegetation where available, or new landscaping where possible and practical.	The proposed ancillary facilities will be appropriately housed within a small structure, located behind an existing colourbond fence. No details of the proposed colour scheme of the building or any supplementary landscaping have however, been provided by the applicant.
e) A telecommunications facility should be located and designed to respond appropriately to its rural landscape setting.	The Site is within a low-density suburban context and not a rural landscape setting.
f) A telecommunications facility located on, or adjacent to, a State or local heritage item or within a heritage conservation area, should be sited and designed with external colours, finishes and scale sympathetic to those of the heritage item or conservation area.	The proposal is not located on or adjacent to a State or local heritage item or within a heritage conservation area.
g) A telecommunications facility should be located so as to minimise or avoid the obstruction of a significant view of a heritage item or place, a landmark, a streetscape, vista or a panorama, whether viewed from public or private land.	The proposal will not obstruct any significant views of a heritage item or place, a landmark, a streetscape, vista or a panorama.
h) The relevant local government authority must be consulted where the pruning,	The application does not propose any tree management works.

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<b>Principle</b>	<b>Comment</b>
<p>lopping, or removal of any tree or other vegetation would contravene a Tree Preservation Order applying to the land or where a permit or development consent is required.</p>	
<p>i) A telecommunications facility that is no longer required is to be removed and the site restored, to a condition that is similar to its condition before the facility was constructed.</p>	<p>N/A</p>
<p>j) The siting and design of telecommunications facilities should be in accordance with any relevant Industry Design Guides.</p>	<p>Industry Code C564:2011 Mobile Phone Base Station Deployment applies, with Section 4 detailing site selection criteria. The Code also states that one of its objectives is "<i>to identify at an early stage community sensitive locations and to apply a Precautionary Approach towards the deployment of mobile phone base stations</i>".</p> <p>The proposal does not satisfy Clause 4.1.5(c) in that the Site adjoins or is in close proximity to two sensitive locations. These include a childcare centre at 88 Benjamin Lee Drive (immediate western boundary – or 31m from the location of the proposed tower) and another childcare centre at 89 Benjamin Lee Drive (approximately 147m to the west). Grahamstown Public School playground is also located 88m to the north of the Site. The lack of adequate justification provided by the applicant in the exploration of alternative sites does not demonstrate an intent to avoid sensitive sites in accordance with Clause 4.1.5(d) of the Code. Accordingly, the proposal also fails to satisfy the above objective, given the proximity to the primary school and two childcare centres.</p>
<p><b>Principle 2: Telecommunications facilities should be co-located wherever practical.</b></p>	
<p>a) Telecommunications lines are to be located, as far as practical, underground or within an existing underground conduit or duct.</p>	<p>New conduits are proposed through an existing bitumen car park between the proposed tower and equipment shelter. While the applicant has not demonstrated the location of any existing conduits or trenches carrying similar services, this would appear to be the shortest and least impacting location of the conduits.</p>
<p>b) Overhead lines, antennas and ancillary telecommunications facilities should, where practical, be co-located or attached to existing structures such as buildings, public</p>	<p>The applicant has not adequately demonstrated that co-location, alternative locations or attachment to existing structures is impractical.</p>

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<b>Principle</b>	<b>Comment</b>
utility structures, poles, towers or other radio-communications equipment to minimise the proliferation of telecommunication facilities and unnecessary clutter.	
c) Towers may be extended for the purposes of co-location.	N/A - the proposal is not a co-located facility.
d) The extension of an existing tower must be considered as a practical co-location solution prior to building new towers.	N/A - the proposal is not a co-located facility.
e) If a facility is proposed not to be co-located the proponent must demonstrate that co-location is not practicable.	The applicant has not provided adequate justification for ruling out or exploring alternative locations. The location of a facility, for example, at the rear of or on the north-east corner of the Lakeside Tavern would have less potential adverse impacts, however this has not been adequately explored by the applicant.
f) If the development is for a co-location purpose, then any new telecommunications facility must be designed, installed and operated so that the resultant cumulative levels of radio frequency emissions of the co-located telecommunications facilities are within the maximum human exposure levels set out in the Radiation Protection Standard. <b>Note:</b> Co-location is 'not practicable' where there is no existing tower or other suitable telecommunications facility that can provide equivalent site technical specifications including meeting requirements for coverage objectives, radio traffic capacity demands and sufficient call quality.	N/A - the proposal is not a co-located facility.
<b>Principle 3: Health standards for exposure to radio emissions will be met.</b>	
a) A telecommunications facility must be designed, installed and operated so that the maximum human exposure levels to radiofrequency emissions comply with Radiation Protection Standard. Refer also to Appendix D.	The applicant has stated that the proposed installation will comply with the Australian Communications Authority regulatory arrangements regarding electromagnetic radiation exposure levels.
b) An EME Environmental Report shall be produced by the proponent of development to which the Mobile Phone Network Code applies in terms of design, siting of facilities	An EME Environmental Report has been submitted, which states that the levels of radiofrequency electromagnetic energy (RF EME) have been calculated in accordance with

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**ITEM 2 - ATTACHMENT 2 DEVELOPMENT ASSESSMENT REPORT.**

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<b>Principle</b>	<b>Comment</b>
and notifications. The Report is to be in the format required by the Australian Radiation Protection Nuclear Safety Agency. It is to show the predicted levels of electromagnetic energy surrounding the development comply with the safety limits imposed by the Australian Communications and Media Authority and the Electromagnetic Radiation Standard, and demonstrate compliance with the Mobile Phone Networks Code.	the methodology developed by the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA). A subsequent response from the applicant dated 21 October 2016 states that the predicted RF EME levels are well below the maximum exposure limit.  Notwithstanding this, it is noted that mere compliance with this standard does not exempt an applicant from satisfying the other Principles.
<b>Principle 4: Minimise disturbance and risk, and maximise compliance</b>	
a) The siting and height of any telecommunications facility must comply with any relevant site and height requirements specified by the Civil Aviation Regulations 1988 and the Airports (Protection of Airspace) Regulations 1996 of the Commonwealth. It must not penetrate any obstacle limitation surface shown on any relevant Obstacle Limitation Surface Plan that has been prepared by the operator of an aerodrome or airport operating within 30 kilometres of the proposed development and reported to the Civil Aviation Safety Authority Australia.	Advice from the DoD states that the proposal will not adversely impact on the Limitation or Obstacle Operations Surfaces applicable to Williamtown Airport or the Salt Ash Weapons Range.
b) The telecommunications facility is not to cause adverse radio frequency interference with any airport, port or Commonwealth Defence navigational or communications equipment, including the Morundah Communication Facility, Riverina.	Advice from the DoD states that the proposal will not adversely impact on the Instrument Flight Rules procedures at Williamtown Airport or any Defence communications.
c) The telecommunications facility and ancillary facilities are to be carried out in accordance with the applicable specifications (if any) of the manufacturers for the installation of such equipment.	Operational matter that can be adequately managed with conditions.
d) The telecommunications facility is not to affect the structural integrity of any building on which it is erected.	The proposed telecommunications facility is not mounted on any building.
e) The telecommunications facility is to be erected wholly within the boundaries of a property where the landowner has agreed to the facility being located on the land.	The proposed telecommunications facility is to be located wholly within the property boundaries.
f) The carrying out of construction of the	Operational matter that can be adequately

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<b>Principle</b>	<b>Comment</b>
telecommunications facilities must be in accordance with all relevant regulations of the Blue Book – ‘Managing Urban Stormwater: Soils and Construction’ (Landcom 2004), or its replacement.	managed with conditions.
g) Obstruction or risks to pedestrians or vehicles caused by the location of the facility, construction activity or materials used in construction are to be mitigated.	Operational matter that can be adequately managed with conditions.
h) Where practical, work is to be carried out during times that cause minimum disruption to adjoining properties and public access. Hours of work are to be restricted to between 7.00am and 5.00pm, Mondays to Saturdays, with no work on Sundays and public holidays.	Operational matter that can be adequately managed with conditions.
i) Traffic control measures are to be taken during construction in accordance with Australian Standard AS1742.3-2002 Manual of uniform traffic control devices – Traffic control devices on roads.	Operational matter that can be adequately managed with conditions.
j) Open trenching should be guarded in accordance with Australian Standard Section 93.080 – Road Engineering AS1165 – 1982 – Traffic hazard warning lamps.	Operational matter that can be adequately managed with conditions.
k) Disturbance to flora and fauna should be minimised and the land is to be restored to a condition that is similar to its condition before the work was carried out.	The application does not propose to remove any existing vegetation. The location of the proposed tower and ancillary equipment is currently paved.
l) The likelihood of impacting on threatened species and communities should be identified in consultation with relevant state or local government authorities and disturbance to identified species and communities avoided wherever possible.	The proposal is unlikely to adversely impact on any known threatened species or communities.
m) The likelihood of harming an Aboriginal Place and / or Aboriginal object should be identified. Approvals from the Department of Environment, Climate Change and Water (DECCW) must be obtained where impact is likely, or Aboriginal objects are found.	The Site is not denoted as containing any Aboriginal objects and is not listed as an Aboriginal Place.
n) Street furniture, paving or other existing facilities removed or damaged during	It is not proposed to alter or remove the existing bus shelter.

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<b>Principle</b>	<b>Comment</b>
construction should be reinstated (at the telecommunications carrier's expense) to at least the same condition as that which existed prior to the telecommunications facility being installed.	

State Environmental Planning Policy No. 64 – Advertising and Signage (SEPP 64))

Clause 4 of SEPP 64 defines the proposed sign as a *Business Identification Sign*, which is "a sign that identifies or names a building, and that may include the name of a business or building, the street number of a building, the nature of the business and a logo or other symbol that identifies the business, but that does not include general advertising of products, goods or services."

The provisions of Part 3 Advertisements of SEPP 64 applies to *business identification signs*. Clause 11 requires consent to be obtained from Council for the proposed sign.

Clause 13 outlines the matters for consideration (as per Schedule 1), which are addressed in **Table 2** below:

**Table 2 – SEPP 64 – Matters for Consideration**

<b>Principle</b>	<b>Comment</b>
<b>Character of the area</b>	
Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located?	The size, positioning and nature of the proposed sign will not have an adverse impact on the existing and desired future character.
Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?	The proposed sign will be of a similar size and colour scheme to the existing sign.
<b>Special areas</b>	
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?	The proposed sign will be acceptable in terms of this matter.
<b>Views and vistas</b>	
Does the proposal obscure or compromise important views?	The proposed sign will be acceptable in terms of this matter.
Does the proposal dominate the skyline and reduce the quality of vistas?	The proposed sign will be acceptable in terms of this matter.
Does the proposal respect the viewing rights of other advertisers?	No.
<b>Streetscape, setting or landscape</b>	

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<b>Principle</b>	<b>Comment</b>
Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape?	The sign itself is acceptable, however the proposed tower that it will be attached to is not considered to be of an appropriate scale, location, size or context.
Does the proposal contribute to the visual interest of the streetscape, setting or landscape?	The proposed sign will have a neutral impact.
Does the proposal reduce clutter by rationalising and simplifying existing advertising?	N/A
Does the proposal screen unsightliness?	No
Does the proposal protrude above buildings, structures or tree canopies in the area or locality?	No. The proposed sign is to be of a height above ground that is similar to the existing pole sign.
Does the proposal require ongoing vegetation management?	No
<b>Site and building</b>	
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?	The sign itself is acceptable, however the proposed tower that it will be attached to is not considered to be of an appropriate scale, location, size or context.
Does the proposal respect important features of the site or building, or both?	As above
Does the proposal show innovation and imagination in its relationship to the site or building, or both?	Not applicable
<b>Associated devices and logos with advertisements and advertising structures</b>	
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?	Lighting is proposed to be internal to the sign. Car park lighting will be fixed to the proposed monopole and aimed onto the carpark below.
<b>Illumination</b>	
Would illumination result in unacceptable glare?	No however the applicant has not submitted any light spill diagrams with respect to the proposed car park lighting.
Would illumination affect safety for pedestrians, vehicles or aircraft?	No

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<b>Principle</b>	<b>Comment</b>
Can the intensity of the illumination be adjusted, if necessary?	Yes
Is the illumination subject to a curfew?	No
<b>Safety</b>	
Would the proposal reduce the safety for any public road?	No – sign replaces an existing sign.
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

Port Stephens Local Environmental Plan 2013 (LEP)

**Clause 2.3 – Zone Objectives and Land Use Table**

The Site is zoned B1 – Neighbourhood Centre and the proposed development is defined as *signage* and a *telecommunications facility*, both of which the applicant contends are ancillary to the principal retail use of the Site.

The proposed signage is permissible with consent while the Land Use table to the LEP does not specifically nominate a telecommunications facility as being permissible in the zone. Notwithstanding this, the provisions of Clause 115 of the Infrastructure SEPP prevail over the LEP with respect to the proposed telecommunications facility and accordingly, the development is permissible with consent.

The objectives for the B1 – Neighbourhood Centre zone are *"To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood."* The development addresses the objectives of the zone.

**Clause 7.1 – Acid Sulfate Soils**

The Site is classified as containing Class 4 Acid Sulfate Soils. While underground trenching of the conduits between the equipment building and the tower is proposed, it is unlikely that these will be at a depth exceeding 2m below the natural ground surface level or will lower the water table by more than 2m below the natural ground surface level.

**Clause 7.4 – Airspace Operations**

Clause 7.4 stipulates that Council must not grant consent where a development penetrates the Limitation or Obstacle Operations Surface. In this regard, Council has consulted with the Department of Defence, who have advised that the proposed tower and antennae will not adversely impact on the Limitation or Obstacle Operations Surfaces.

**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.

**ITEM 2 - ATTACHMENT 2 DEVELOPMENT ASSESSMENT REPORT.**

16-2016-612-1

**Chapter A.12 – Notification and Advertising**

In accordance with the requirements of chapter A.12, the development application was notified to surrounding land owners for a period of fourteen days between 20 September 2016 and 5 October 2016. Council did not receive any submissions with respect to the proposal.

Notwithstanding this, telephone contact was also made with the two nearby child care centres at 88 and 89 Benjamin Lee Drive to confirm whether they were aware of the proposal. A discussion with the Directors of both centres indicated that neither was aware of the proposal, although the centre at 89 Benjamin Lee Drive was sold after the public notification process had closed and new operators took over in November 2016. As a consequence, two (2) objections were received, albeit well after the conclusion of the public notification process.

The issues raised in the two submissions are summarised below, with appropriate responses provided:

Issue	Comment
One objector stated they had not been notified of the proposal.	A review of Council's records indicates a letter was prepared and sent to the objector's address.
Dangers posed from extra traffic from service vehicles.	The additional traffic generated by service vehicles attending the site post-construction will be minimal and within the capacity of the existing road network. It is anticipated that all service vehicles would attend the Site and park within the existing car park immediately adjacent to the proposed equipment shelter. This area is not in close proximity to the adjoining child care centre.
Children exposed to high levels of radiation	The applicant has submitted a report which states that the predicted levels of radiofrequency electromagnetic energy (RF EME) are well below the maximum exposure limit. Notwithstanding this, it is noted that compliance with this requirement alone does not exempt an applicant from siting telecommunications facilities wherever they please. Industry Code C564:2011 Mobile Phone Base Station Deployment, which applies in respect of siting and design requirements, requires the application of a precautionary approach to the deployment of mobile phone radiocommunications infrastructure. In adopting this principle and having due regard to the surrounding context of sensitive land uses in close proximity, the proposal is not considered to be suitable in the location proposed.



**ITEM 2 - ATTACHMENT 2 DEVELOPMENT ASSESSMENT REPORT.**

16-2016-612-1

Noise and pollution during construction	These could be managed through the imposition of Council's standard conditions of consent, should it be of a mind to approve the proposal.
The tower does not complement the surrounding environment	The assessment of the proposal does not support the proposal on the basis that it will not have an acceptable visual impact, given the siting of the proposal and the context of the surrounding area.
Loss of business as families may choose to use another service where the children are not exposed to such radiation.	While this cannot be easily proven <i>per se</i> and the information submitted by the applicant indicates the RF EME from the proposal will be well below the maximum exposure limit, it is acknowledged that the perceived health impacts of the tower may affect some people's decision to use the child care centre.
Concern from the owner/ operator of a child care centre at the proximity to two child care centres where children 2-5 years are cared for given that the Code states a structure like the proposal should not be erected near a child care centre.	As noted above, Industry Code C564:2011 Mobile Phone Base Station Deployment, requires the application of a precautionary approach to the deployment of mobile phone infrastructure. In adopting this principle and having due regard to the surrounding context of sensitive land uses in close proximity, the proposal is not considered to be suitable in the location proposed.

**Chapter B.2D – Koalas**

Although the Site is identified as containing Koala Habitat, the development will not require the removal of any existing trees and is in an existing developed portion of the Site. There are no applicable controls in the context of the proposal.

**Chapter B.3B – Acid Sulfate Soils**

Refer to previous comments in relation to Clause 7.1 of the LEP.

**Chapter B.7 – Williamstown RAAF Base – Aircraft Noise and Safety**

The proposal was referred to the Department of Defence given the height exceeds the 15m referral trigger, as depicted in Figure BN of the DCP. As noted previously, the Department of Defence have not raised any objections to the proposal, subject to the applicant completing a Tall Structures and Cranes Reporting form and conditions being imposed with respect to lighting in the event of an approval being granted.

**Chapter C.8 – Signage**

The proposal does not result in any non-compliances with the provisions of the DCP with respect to signage.

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

**ITEM 2 - ATTACHMENT 2 DEVELOPMENT ASSESSMENT REPORT.**

16-2016-612-1

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

**s79C(1)(a)(iv) – The regulations**

No matters prescribed by the 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****Impacts on the Built Environment**

The proposed development is not considered to be in an appropriate location, given the proximity to two child care centres, which are considered to be sensitive locations. The proposed tower is significantly larger than the existing pole sign and, given its location in close proximity to Benjamin Lee Drive and the main vehicular access point to the Site, will result in an unacceptable level of visual impact. The combination of proximity to the two childcare centres and the access driveway as well as the scale of the development against the surrounding built form result in a development that is not of an appropriate height, scale or context.

**Social and Economic Impacts**

The proposal will not result in any adverse social or economic impacts. The proposal will provide an improved mobile telephone service to the surrounding area. Notwithstanding this, concerns have been raised with respect to the lack of adequate consideration of nearby alternative locations by the applicant. It is considered that alternative nearby locations exist that would be located away from the identified sensitive areas and will have less visual impact, without any significant compromise in mobile network coverage.

**Impacts on the Natural Environment**

The proposed development will not result in an adverse impact on the existing natural environment.

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

The subject site is not considered to be suitable for the proposed development in terms of the proximity of the proposed tower to the Site's vehicular access point, two nearby sensitive locations (child care centres) and the incompatible scale of the tower in terms of the surrounding built environment.

**s79C(1)(d) – Any submissions**

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

**s79C(1)(e) – The public interest**

Approval of the proposal is not deemed to be in the public interest. The location of the proposed tower is not acceptable in terms of its proximity to the Site's vehicular access point, two nearby sensitive locations (child care centres) and the incompatible scale in terms of the surrounding built environment. Alternative locations are available in proximity to the selected location so that the level of service to Optus customers would not be affected which would not have such impacts,

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**ITEM 2 - ATTACHMENT 2 DEVELOPMENT ASSESSMENT REPORT.**

16-2016-612-1

however the applicant has not adequately demonstrated these would be impractical and unsuitable.

**DETERMINATION**

The application is recommended to be refused by Council, subject to the reasons for refusal contained in the notice of determination.

MICHAEL BREWER  
CONTRACT PLANNER

ITEM 2 - ATTACHMENT 3 NOTICE OF DETERMINATION - REASONS FOR REFUSAL.

*Telephone inquiries:*  
MR M BREWER  
*File No:*  
16-2016-612-1  
10-2016-612-1  
*Parcel No:* 30822  
Det Code: ref

OPTUS  
CARE COMMPLAN - DARIUS  
100 NEW SOUTH HEAD ROAD  
EDGECLIFF NSW 2027

Dear Sir/Madam

**Re: NOTICE OF DETERMINATION OF DEVELOPMENT APPLICATION  
No. 16-2016-612-1  
Environmental Planning and Assessment Act, 1979.**

Date of Determination: 28 February 2017  
Proposal: Telecommunications Facility (Monopole Tower), Signage and  
Lighting  
Property Description: **LOT: 21 DP: 850074  
82 Benjamin Lee Drive, RAYMOND TERRACE**

Pursuant to Section 81(1)(a) of the Act notice is hereby given of the determination by the consent authority of the **Development Application No: 16-2016-612-1**.

The Development Application has been determined by refusing of consent. The reasons for the refusal are as set out in Schedule 1.

Note:

1. Section 97 of the Act confers on an applicant who is dissatisfied with the determination of a consent authority a right of appeal to the Land and Environment Court exercisable within 6 months after receipt of this notice.

Yours faithfully

Cindy Dickson  
Planning & Developer Relations Coordinator

**ITEM 2 - ATTACHMENT 3 NOTICE OF DETERMINATION - REASONS FOR REFUSAL.**

**File No: 16-2016-612-1**

**SCHEDULE 1:**

1. **The development fails to satisfy the provisions of 115(3) of State Environmental Planning Policy (Infrastructure) 2007 with respect to compliance with the Location Principles contained within the *NSW Telecommunications Facilities Guideline including Broadband (2010)* in terms of:**
  - **proximity to a "sensitive location" (childcare centres), visual impact and opportunities for alternative locations (s.79C(1)(a)(i) EP&A Act 1979); and**
  - **the Selection Criteria contained in Sections 4.1.5 (c) and (d) of Industry Code C564:2011 Mobile Phone Base Station Deployment in relation to proximity to sensitive locations and intent to avoid such locations (s.79C(1)(a)(i) EP&A Act 1979);**
2. **The development fails to satisfy the provisions of Clause 13 – Matters for Consideration of State Environmental Planning Policy No. 64 – Advertising and Signage with respect to the proposed scale, location, size and context of the proposed tower upon which the proposed sign is to be mounted on (s.79C(1)(a)(i) EP&A Act 1979);**
3. **The proposed scale, location and context of the proposer tower will not have an acceptable visual impact on the site or the surrounding locality when viewed from the public domain (s.79C(1)(b)EP&A Act 1979);**
4. **The site is not suitable for the development given the location, siting, scale, height and context of the proposed tower in relation to its proximity to the main vehicular access driveway to the site, the adjoining sensitive receivers (childcare centres) and the streetscape(s.79C(1)(c)EP&A Act 1979); and**
5. **The site is likely to have significant adverse impacts on the amenity and streetscape of the surrounding area and identified sensitive locations that may result from the approval. The development is therefore not in the public interest (s.79C(e) EP&A Act 1979).**

**ITEM NO. 3**

**FILE NO: 17/13654  
RM8 REF NO: 16-2016-814-1**

**DEVELOPMENT APPLICATION 16-2016-814-1 FOR ONE INTO THREE LOT  
TORRENS TITLE SUBDIVISION AT 155 SALAMANDER WAY, SALAMANDER  
BAY (SUBDIVISION OF PROPOSED LOT 4 UNDER APPROVED DA 16-2015-865-  
1 - PARENT LOT 284 DP806310)**

REPORT OF: MATTHEW BROWN - DEVELOPMENT ASSESSMENT AND  
COMPLIANCE SECTION MANAGER  
GROUP: DEVELOPMENT SERVICES

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Approve Development Application 16-2016-814-1 for a one into three lot subdivision at 155 Salamander Way, Salamander Bay (being the subdivision of proposed Lot 4 under approved DA16-2015-865-1 – parent Lot 284 DP806310), subject to the conditions contained in **(ATTACHMENT 3)**.

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**ORDINARY COUNCIL MEETING - 28 FEBRUARY 2017  
COMMITTEE OF THE WHOLE RECOMMENDATION**

	<p><b>Councillor John Nell</b> <b>Councillor John Morello</b></p> <p>That the recommendation be adopted.</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, Paul Le Mottee, John Morello, John Nell and Steve Tucker.

Those against the Motion: Nil.

ORDINARY COUNCIL MEETING - 28 FEBRUARY 2017  
MOTION

<b>043</b>	<p><b>Councillor Chris Doohan</b> <b>Councillor Steve Tucker</b></p> <p>It was resolved that Council approve Development Application 16-2016-814-1 for a one into three lot subdivision at 155 Salamander Way, Salamander Bay (being the subdivision of proposed Lot 4 under approved DA16-2015-865-1 – parent Lot 284 DP806310), subject to the conditions contained in <b>(ATTACHMENT 3)</b>.</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, Paul Le Mottee, John Morello, 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 16-2016-814-1 for the subdivision of proposed lot 4 under approved DA16-2015-865-1 (parent Lot 284 DP806310) into three lots being:

- Lot 401 with an area of 7837m<sup>2</sup>;
- Lot 402 with an area of 1905m<sup>2</sup>; and
- Lot 403 with an area of 2000m<sup>2</sup>.

As the site is owned by Council, the Manager of Development Assessment and Compliance elected to report the matter to Council pursuant to the *Development Applications to be reported to Council Policy*. The proposal does not trigger reporting to the Joint Regional Planning Panel (JRPP).

The proposed lots will be provided with access to the public road network, which includes Bagnall Beach Road and new roads approved under DA16-2015-865-1 (a Torrens title subdivision of one into seven lots facilitating the larger commercial development of Council land within the Salamander commercial precinct).

The lots will also be connected to essential services and infrastructure (once installed under the previous consent). The development will also benefit from previously approved upgrades including street tree planting. No physical works are proposed under the current application.

## MINUTES ORDINARY COUNCIL - 28 FEBRUARY 2017

It is noted that a separate application has been lodged for the future use of proposed Lot 401 as a supermarket (Aldi). Proposed Lots 402 and 403 will provide for future commercial opportunities in the locality.

The proposal has been assessed against Councils requirements for subdivision of commercial land and no issues have been raised. The proposed development represents an efficient use of the land in support of the commercial area.

### 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, other than those already included in Councils budget for the development of the land.

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

### LEGAL, POLICY AND RISK IMPLICATIONS

The development application is consistent with Council's Local Environmental Plan 2013 and the requirements of Section 79C(a) of the *Environmental Planning & Assessment Act 1979*.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that if the application is refused, the efficient use of available commercial land will not be realised.	Medium	Support the recommendation and approve the development application subject to conditions of consent.	Yes



## **SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

The proposal allows for the delivery of commercial opportunities in the locality on appropriately sized allotments, including the currently proposed Aldi supermarket on proposed Lot 401. In addition, the subdivision will reinforce the locality as a commercial hub, providing for the needs of the local and wider community.

An assessment of the impacts of the development on surrounding land uses has been carried out and is included as **(ATTACHMENT 2)** to this report. The assessment concludes that the proposed development meets the requirements of the *Environmental Planning and Assessment Act 1979*, the *Port Stephens Local Environmental Plan 2013* and relevant chapters of the Port Stephens Development Control Plan 2013. Subject to conditions there are no significant adverse impacts as a result of the proposal.

## **CONSULTATION**

Consultation with key stakeholders has been undertaken by the Development Assessment and Compliance Section to ascertain the extent of impacts posed by the development. Internal stakeholders were identified through an assessment of the scope of the proposal, and external stakeholders were notified in accordance with the Port Stephens Development Control Plan 2014.

### Internal

The application was referred to Council's Development Engineering and Spatial Services teams who supported the proposal and provided relevant conditions to include on a consent.

### External

As a result of the notification and advertising process, Council received two submissions. The first submission was from Hunter Water Corporation who did not raise any concerns with the development. A second submission received raised concerns about access from the Rigby Centre (i.e. KFC) to the new road approved under the previous subdivision. It is noted that this issue does not relate to the current proposal and was relevant at the time of the parent subdivision (which has already been approved under DA 16-2015-865-1). The matters raised in the submission are discussed in the assessment of development impacts included as **(ATTACHMENT 2)** to this report. There are no significant issues raised that would warrant refusal of the proposed development.

**OPTIONS**

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

**ATTACHMENTS**

- 1) Locality Plan.
- 2) Assessment Report.
- 3) Conditions of Consent.

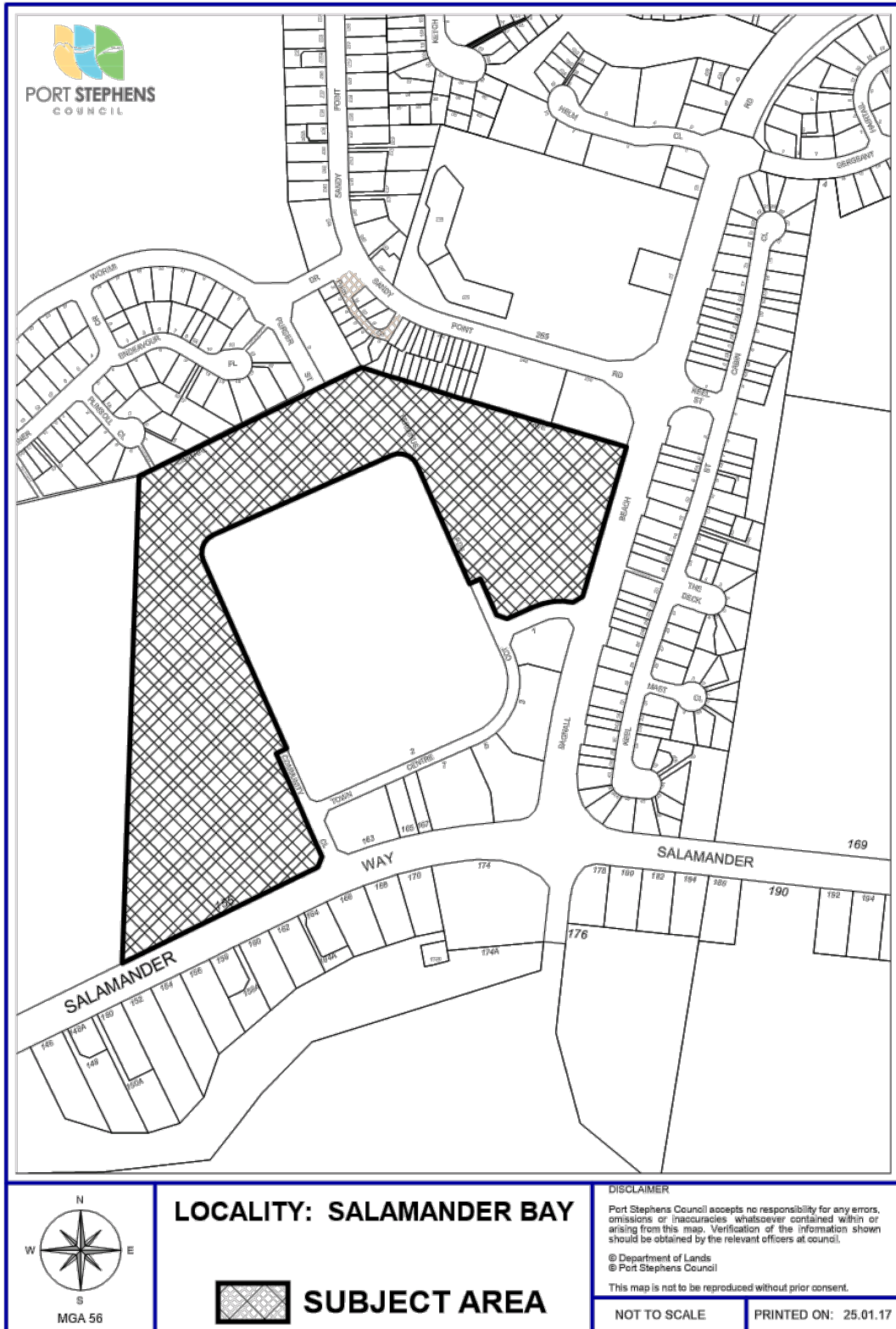
**COUNCILLORS ROOM**

- 1) Development plans.

**TABLED DOCUMENTS**

Nil.

ITEM 3 - ATTACHMENT 1 LOCALITY PLAN.



116 Adelaide Street, Raymond Terrace NSW 2324. Phone: (02) 49800205 Fax: (02) 49873812 Email: council@portstephens.nsw.gov.au

 **DEVELOPMENT ASSESSMENT REPORT**

**APPLICATION DETAILS**

<b>Application Number</b>	16-2016-814-1
<b>Development Description</b>	Three Lot Torrens Title Subdivision of Proposed Lot 4 approved under DA 2015/865
<b>Applicant</b>	ENVIRONMENTAL PROPERTY SERVICES
<b>Date of Lodgement</b>	28/11/2016
<b>Value of Works</b>	\$0.00

**Development Proposal**

The application proposes the subdivision of proposed Lot 4 under approved DA16-2015-865-1 (parent Lot 284 DP806310).

DA16-2015-865-1 was determined on 27<sup>th</sup> April 2016 by the elected Council for a Torrens title subdivision into seven (7) lots. Five (5) of the approved lots (including lot 4) were approved as development lots, whilst the remaining two (2) lots were approved as residue lots.

The current proposal is to subdivide approved Lot 4 into three (3) further lots, being:

- Lot 401 with an area of 7,837m<sup>2</sup>;
- Lot 402 with an area of 1,905m<sup>2</sup>; and
- Lot 403 with an area of 2,000m<sup>2</sup>.

Each lot maintains a direct frontage to either an existing road or one approved under DA16-2015-865-1, and will also be provided essentially services under that approval.

It is noted that no physical works are proposed as part of this application.



Figure 1 - Location of development site

PROPERTY DETAILS	
<b>Property Address</b>	155 Salamander Way SALAMANDER BAY
<b>Lot and DP</b>	LOT: 284 DP: 806310
<b>Current Use</b>	Vacant Land
<b>Zoning</b>	B3 COMMERCIAL CORE
<b>Site Constraints</b>	<p>The current lot is affected by a number of constraints, however the constraints applicable to approved Lot 4 are:</p> <ul style="list-style-type: none"> <li>• Potential Acid Sulfate Soil Class 3</li> <li>• Coastal Zone</li> <li>• Draft Coastal Management SEPP – Land Use area</li> </ul>

**Site Description**

The subject site is located to the northeast of the existing Salamander Bay Shopping Centre and Fronts Bagnall Beach Road. The development site is part of a larger lot which extends along the northern and western sides of the shopping centre, eventually connecting to Salamander Way in the southwest.

A subdivision of the parent lot was recently approved (DA 16-2015-865-1) and the development site is located wholly within approved Lot 4 of that consent. Civil works are currently being undertaken for the purposes of the existing subdivision approval. Figure 2 below shows the location of the development site within the current lot.

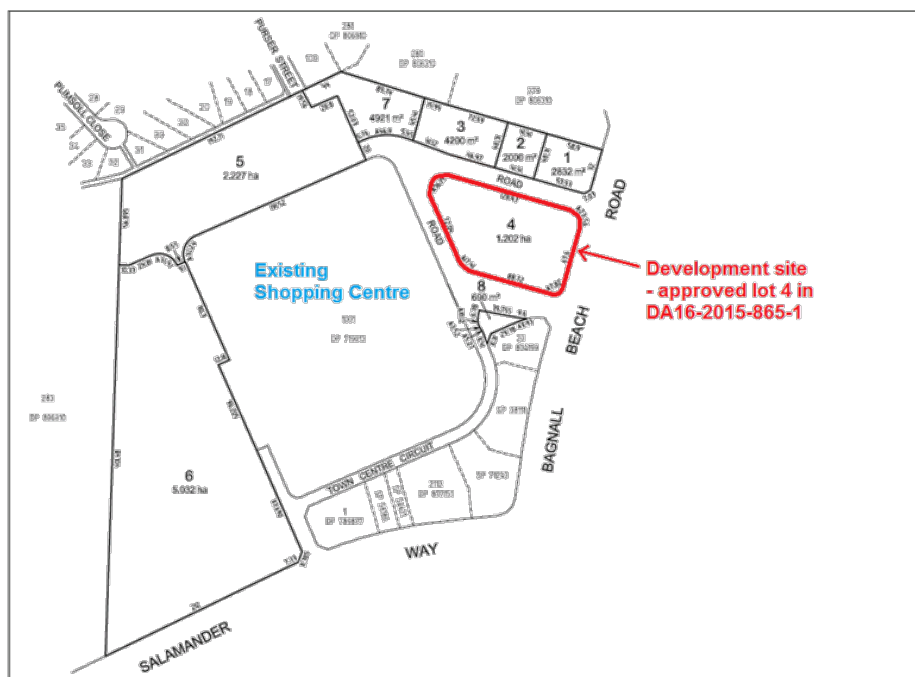


Figure 2 - Location of development site

**ITEM 3 - ATTACHMENT 2 ASSESSMENT REPORT.**

16-2016-814-1

The development site is presently clear of any vegetation, and maintains direct access to the public road network. The site has a minor slope towards the southeast and will be serviced by essential infrastructure provided under the existing subdivision approval.

**Site History**

A number of development applications have been lodged on the subject allotment, with a recent consent being granted for a one into seven lot subdivision. Civil works are currently being undertaken for this purpose. The subject application represents the further subdivision of approved Lot 4.

The development site has previously been cleared of vegetation and has been used for a number of activities including overflow car parking in the tourist season, as well as for temporary events such as the circus.

**Site Inspection**

A site inspection was carried out on 9<sup>th</sup> January 2017, where it was revealed that the development site is currently vacant. Civil works are currently being undertaken for roads and drainage infrastructure that will surround the development site as approved under DA16-2015-865-1.

It was noted at the time of the site inspection that the boundaries of proposed lots, which interface with existing roads, contain sufficient areas that are free of street furniture and the like (so as to permit vehicular access to the proposed lots).

The subject site can be seen in figures 3 and 4 below:



**Figure 3 - Development site viewed from Bagnall Beach Road (at intersection with approved road to be known as Town Centre Circuit)**



**Figure 4 - Interface of development site with Bagnall Beach Road**

<b>ASSESSMENT SUMMARY</b>	
<b>Designated Development</b>	The application is not designated development
<b>Integrated Development</b>	The application does not require additional approvals listed under s.91 of the EP&A Act
<b>Concurrence</b>	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 – No objections were made to the proposed development and conditions of consent were provided.

Spatial Services – Relevant street numbering was provided for the proposed lots and will be included as an advice on any consent.

**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)

**Clause 2.3 – Zone Objectives and Land Use Table**

The proposed development is located on land defined as B3 Commercial Core, in which commercial and retail uses are the predominant permissible development types. The development addresses the objectives of the zone by providing for a number of commercial land uses to serve the needs of the community. This in turn will provide employment opportunities in an accessible location.

**Clause 2.6 – Subdivision**

The application proposes subdivision of approved Lot 4 in DA16-2015-865-1 into three lots, which requires consent under this clause.

**Clause 4.1 – Minimum subdivision lot size**

There is no applicable minimum lot size specified for the subject land. It is considered that the proposed lot sizes will be sufficient to allow for future commercial development and will not result in the fragmentation of land, thereby complying with the objectives of the Clause.

**Clause 5.5 – Development within the Coastal Zone**

The subject land is located within the coastal zone, however is sufficiently separated from the associated waterway and foreshore, therefore resulting in no significant amenity or ecological impacts. The proposal is anticipated to provide for services and facilities that will support the local tourism industry, and thereby increase access to and use of the waterway and foreshore areas. The proposed development is consistent with the principles of the NSW Coastal Policy and meets the requirements of this clause.



**ITEM 3 - ATTACHMENT 2 ASSESSMENT REPORT.**

16-2016-814-1

**Clause 7.1 – Acid Sulfate Soils**

The site is identified as containing potential class 3 Acid Sulfate Soils (ASS). The application does not propose any works and there are no anticipated activities that would expose ASS.

**Clause 7.6 – Essential Services**

Essential services will be provided to the parent lot under DA16-2015-865-1. Only minor further augmentation of services will be required to service the proposed lots. A condition of consent to this effect is proposed.

**SEPP 71 – Coastal Protection**

The application has been assessed against the matters for consideration listed in Clause 8 of the SEPP and it is considered that the provision of additional retail facilities and services will support the local community and tourism industry, increasing access to and use of the local waterway. In addition, the proposal is not anticipated to result in any negative ecological impacts, or any impacts on views to or from the water way. The proposal is consistent with the aims of the SEPP and meets the applicable matters for consideration.

**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 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.

Page 5 of 9



**ITEM 3 - ATTACHMENT 2 ASSESSMENT REPORT.**

16-2016-814-1

**Chapter A.12 – Notification and Advertising**

In accordance with the requirements of chapter A.12, the development application was notified and advertised from 15<sup>th</sup> December 2016 to 4<sup>th</sup> January 2017.

**Chapter B3 – Environmental Management**

There are no works proposed as part of the development and accordingly, there are no anticipated environmental management impacts.

**Chapter B6 – Essential Services**

A condition of consent is proposed requiring the provision of reticulated water, sewer, and electricity to each lot. It is noted that stormwater and drainage infrastructure, as well as public road access will be provided under DA16-2015-865-1. A condition of consent is proposed that prevents the registration of the subdivision, until after registration of Lot 4 approved under DA16-2015-865-1 to ensure these services are available.

**Chapter B9 – Road Network and Parking**

A traffic impact assessment submitted with the application adequately shows that each proposed lot achieves acceptable access to the local road network.

**Chapter C1 – Subdivision**

Clause	Requirement	Assessment
C1.2	Subdivision defined as either minor or major	The proposed subdivision is a one into three lot Torrens title subdivision, with no new roads. Accordingly the subdivision is classified as a minor subdivision.
C1.5	Maximum block dimensions of 50m deep and 80m long	The subject land forms a single block, which has been considered under DA16-2015-865-1. It is noted that the block dimensions exceed the maximum dimensions of the DCP, however this has already been deemed acceptable.
C1.12	All lots provided with a direct street frontage	Each proposed lot will be directly accessible from either an existing street, or one approved under DA16-2015-865-1. It is noted that conditions of consent are proposed that this other subdivision must be registered prior to the registration of lots proposed under this application.
C1.13	Splay Corners	There are no proposed new roads.

**Chapter D8 – Salamander Bay Shopping Centre**

As a result of previous development applications lodged on the subject site, a set of planning principles were developed and adopted by Council. The planning principles gave high level development considerations which have been reproduced in this DCP chapter. The principles in the DCP chapter have been addressed in the table below.

Clause	Requirement	Assessment
D7.1	Identity Hub – Sense of identity for a unified community and commercial precinct	The proposed development provides additional developable commercial lots in support of the existing commercial area. The proposed development lots maintain consistent characteristics with other commercial land within the precinct and will allow for additional commercial and community services options. The increase in commercial options in the precinct will

**ITEM 3 - ATTACHMENT 2 ASSESSMENT REPORT.**

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		reaffirm the locality as a local hub for transport and community retail and service needs.
D7.2	Integration – Ensure future development integrates with and enhances the precinct	The proposal includes the provision of commercial land in a number of size configurations, in keeping with those already provided in the area. In addition, it is noted that a development application for a supermarket (Aldi) has been lodged over proposed Lot 401, and so the current subdivision represents a more efficient configuration of lots.
D7.3	Connectivity – integrated pedestrian and road network	Roads and footpaths that will service the subject lots have been approved under DA16-2015-865-1 and are considered sufficient to provide for appropriate and efficient vehicle and pedestrian movements in the locality.
D7.4	Access Points – Appropriate intersection treatments to accommodate future expansion	The proposal does not include the provision of any further roads. It has been noted that appropriate locations are available to each proposed lot so as to achieve satisfactory vehicular access from public roads.
D7.5	Friendly – Development respects surroundings and users of the development	The application proposes additional commercial lots that suit the needs of future clients, as demonstrated in the lodged current application lodged for a supermarket. The proposed layout maintains a similar style to other commercial land in the locality.
D7.6	Environment – Ensure development protects local ecology	The development site is located away from ecologically sensitive areas and there are no anticipated impacts on the local ecology.
D7.7	Safety – Development designed to ensure safety of neighbours and users of the development	New footpaths to access both the subject and existing commercial areas have been approved under DA16-2015-865-1, which will provide for safe and efficient movement of pedestrians.
D7.8	Community – Development supports and is consistent with community activities	The proposed development does not include the construction of any buildings or propose any specific uses of the land. However, the provision of additional commercial zoned land on which community facilities, recreational facilities and commercial facilities are permissible and will assist in supporting the activities undertaken by the community. It is noted that a separate application has been lodged for a supermarket on one of the proposed lots which promotes the communal benefits of the proposed subdivision.
D7.9	Aesthetics – Designed with human scale in mind and provide holistic approach to precinct	The proposal includes the replication of the existing lot size and configuration characteristics typified throughout adjoining commercial land. The development is services by pedestrian pathways to access new development lots and connecting to existing commercial areas at multiple points. In addition, new street tree plantings both within the proposed site and along Bagnall Beach Road will provide a consistency to the aesthetics of the

**ITEM 3 - ATTACHMENT 2 ASSESSMENT REPORT.**

16-2016-814-1

D7.10	Economic Development – Ensure future development economic advantages to community	commercial precinct. The proposal will allow for the efficient use of the land for commercial purposes, and allow for additional commercial uses of the land. This allows long-term future commercial growth, allowing the provision of additional services and retail options to the local community. The increase in availability of commercial and retail options will improve the ability of the commercial precinct to provide for the needs of the local community, and attract visitors from a wider draw area. The additional customers attracted to the precinct will result in positive impacts on the economic viability of both existing and future developments.
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**s79C(1)(a)(iiia) – Any planning agreement or draft planning agreement entered into under section 93F**

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

**s79C(1)(a)(iv) – The regulations**

There are no relevant clauses of the regulations that apply to this 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 subdivision of the land has been proposed in response to contracts being entered into between the applicant and future tenants. This has allowed the applicant to refine the required lot sizes so as to adequately cater for the desired building and lot configurations of those tenants. The proposal will support the commercial use of the land by providing appropriate sized allotments for commercial tenants, which will have positive impacts on employment opportunities, the availability of retail and professional service options, and consequently the local economy.

**Impacts on the Built Environment**

The proposal will allow for additional individual commercial developments on the site, which will remain consistent with the character of other developments in the locality.

**Impacts on the Natural Environment**

The proposed development does not include any works and accordingly there are no anticipated impacts on the natural environment. As noted elsewhere in this report, stormwater management infrastructure has recently been approved that will cater for the subject lots.

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

The development site is constituted by proposed Lot 4 in DA16-2015-865-1, which has been approved as a development lot. The lot will be adequately serviced by essential infrastructure and will be integrated into the surrounding commercial area. The resulting lots will each maintain direct access to the public road network. The development site is suitable for the proposed use.

**s79C(1)(d) – Any submissions**

Two (2) submissions have been received in relation to the proposed development. The first submission from Hunter Water Corporation did not object to the proposed development, whilst the second submission did not relate to the development site. Instead the objection related to the lack of a new road directly to the south of the Rigby Centre. It is noted that this matter relates to the development that was approved under DA16-2015-865-1, where consideration was given to the road network in the locality. Under that approval, it was considered that a new road was appropriate in the location proposed. The subject development application does not propose any changes to the approved road layout and so accordingly, the submission does not have any bearing on the current proposal.


**s79C(1)(e) – The public interest**

The proposal is in the public interest as it will provide for the efficient use of commercial land and will increase the availability of a range of developable commercial lots. It is noted that one of the lots will likely cater for a supermarket (Aldi), for which a separate development application has been lodged. The development is a logical extension of the surrounding commercial area and will improve the availability of commercial services and facilities in the locality and in support of the local community.

**DETERMINATION**

The application is recommended to be approved, subject to conditions.

BRETT GARDINER  
SENIOR EXECUTIVE PLANNER



**PORT STEPHENS  
COUNCIL**

# Proposed Conditions of Consent

**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
Subdivision Plan	34601H PSP	1	24/01/2017	North Point Surveys

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.

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

2. **Prior to the issue of a subdivision certificate**, the subdivision approved under DA16-2015-865-1 (or an amended version of this consent where no changes are made to the configuration of approved lot 4) is to be registered with the Land and Property Information Service. Alternatively the subdivision certificate for this development and DA 16-2015-865-1 may be issued concurrently if all lots are incorporated on the one plan.
3. For endorsement of the subdivision certificate, the person having the benefit of the development consent shall submit an original plan of subdivision plus an electronic and signed copy on a USB or CD, suitable for endorsement by Council. The following details must be submitted with the plan of subdivision and its copies:
  - a) The endorsement fee current at the time of lodgement;
  - b) The 88B instrument plus six (6) copies; and

**ITEM 3 - ATTACHMENT 3 CONDITIONS OF CONSENT.**

- c) All surveyor's and/or consulting engineers' certification(s) required under the subdivision consent;

Council will check the consent conditions on the subdivision. Failure to submit the required information will delay enforcement of the linen plan and may require payment of rechecking fees.

- 4. **Prior to the issue of a Subdivision Certificate**, satisfactory evidence is to be submitted that separate underground reticulated water, sewerage, telecommunications and electrical power services have been provided to each lot in accordance with the service provider's requirements. Connection points for each service are to be located within the lot boundaries, or within the road reserve adjacent to each lot.
- 5. **Prior to the issue of a Subdivision Certificate**, the Section 50 Hunter Water compliance certificate which refers to the subdivision application must be obtained and submitted to Council.

**ADVICE**

- A. Telecommunications infrastructure to services the premises must be installed which complies with the following:
  - a) The requirements of the *Telecommunications Act 1997* (Cth);
  - b) For a fibre ready facility, the NBN Co's standard specifications current at the time of installation; and
  - c) For a line that is to connect a lot to telecommunications infrastructure external to the premises, the line is located underground.
- B. Unless otherwise stipulated by telecommunications legislation at the time of construction, the development must be provided with all necessary pits and pipes, and conduits to accommodate the future connection of optic fibre technology telecommunications.
- C. Street addressing has been allocated to the approved lots in accordance with the following table:

Lot Number (as shown on stamped plan)	Street Address
401	3 Central Avenue, Salamander Bay
402	1 Central Avenue, Salamander Bay
403	15 Bagnall Beach Road, Salamander Bay <u>or</u> 1A Central Avenue, Salamander Bay

**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.

**ITEM NO. 4**

**FILE NO: 17/23285  
RM8 REF NO: 16-2016-457-2**

**SECTION 96(1A) MODIFICATION TO DEVELOPMENT APPLICATION 16-2016-457-2 FOR APPROVED ALTERATIONS AND ADDITIONS TO CONVERT TWO EXISTING DWELLINGS TO A SINGLE DWELLING HOUSE, SWIMMING POOL AND CONSOLIDATION OF TWO LOTS (MODIFY DESIGN TO DECREASE FLOOR LEVELS AND INCREASE HABITABLE AREAS) - 2 TO 4 DANALENE PDR, CORLETTE (LOTS 4 AND 5 DP214499)**

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

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Refuse the request for a Section 96(1A) modification to development application No. 16-2016-457-2 for approved alterations and additions to convert two existing dwellings to a single dwelling house, swimming pool and consolidation of two lots (modify design to decrease floor levels and increase habitable areas) – 2 to 4 Danalene Parade, Corlette (Lots 4 and 5 DP 214499) for the reasons contained in **(ATTACHMENT 3)**.

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Councillor John Morello left the meeting at 06:59pm, prior to voting in Committee of the Whole.

**ORDINARY COUNCIL MEETING - 28 FEBRUARY 2017  
COMMITTEE OF THE WHOLE RECOMMENDATION**

<p><b>Mayor Bruce MacKenzie Councillor Chris Doohan</b></p> <p>That Council approve the request for a Section 96(1A) modification to development application No. 16-2016-457-2 for approved alterations and additions to convert two existing dwellings to a single dwelling house, swimming pool and consolidation of two lots (modify design to decrease floor levels and increase habitable areas) – 2 to 4 Danalene Parade, Corlette (Lots 4 and 5 DP 214499).</p>
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## MINUTES ORDINARY COUNCIL - 28 FEBRUARY 2017

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, Paul Le Mottee, John Nell and Steve Tucker.

Those against the Motion: Nil.

### ORDINARY COUNCIL MEETING - 28 FEBRUARY 2017 MOTION

<b>044</b>	<b>Councillor Chris Doohan</b> <b>Councillor Steve Tucker</b>  It was resolved that Council approve the request for a Section 96(1A) modification to development application No. 16-2016-457-2 for approved alterations and additions to convert two existing dwellings to a single dwelling house, swimming pool and consolidation of two lots (modify design to decrease floor levels and increase habitable areas) – 2 to 4 Danalene Parade, Corlette (Lots 4 and 5 DP 214499).
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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, Paul Le Mottee, 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) 16-2016-457-2 that proposes modifications to an approval for alterations and additions to convert two existing dwellings to a single dwelling house, swimming pool and consolidation of two lots. The modification involves amendments to the approved building design to decrease finished floor levels and increase habitable areas.

The DA has been reported to the elected Council as the application was called to Council at the request of Mayor MacKenzie.

#### Proposal

DA 16-2016-457-1 was originally approved on 14 November 2016. Consent was granted to consolidate the two allotments, construct a new in-ground swimming pool and undertake alterations and additions to the two dwellings to create a single

dwelling. The section between each dwelling was approved as non-habitable breezeway linking each former house.

The current application proposes amended plans which seek to modify DA 16-2016-457-1 as follows:

- Alter the approved floor levels to decrease the approved floor levels further below the flood planning level of RL 3.4m AHD:
  - Garage – reduced from 2.5m to 2.35m.
  - Kitchen/ Living Area – reduced from 3.1m to 2.52m.
  - Entrance – reduced from 2.53m to 2.52m.
- Amend ground floor to delete approved breezeway (non-habitable) and replace with additional living area (habitable floor space).
- Adjust eastern and western ground floor elevations accordingly.

Conditions 19 and 34 would subsequently need to be deleted:

- Condition 19 – Survey Certificate floor levels of new habitable floor levels above Adaptable Flood Planning Level (AFPL).
- Condition 34 – Breezeway not permitted as habitable floor space.

#### Assessment History

The building design, initially lodged as part of the original application (DA 2016-457-1), is essentially the same as the proposed design that was lodged as part of the application to modify the consent. During the initial assessment, Council officers considered the proposed floor levels at 2.5m to be an inappropriate response to the flood risk of the site. The adopted flood planning level for the site is 3.4m and the development proposed a new building which was of significant size (that had capacity to comply with the flood requirements). Council officers subsequently requested the applicant modify the design to reduce the flood risk and comply with Council's flood policy.

The applicant only partly complied and accordingly, Council imposed conditions requiring floor levels to be at 3.1m, certification of the floor level (Condition 19) and a restriction on the use of the breezeway as habitable floor space (condition 34). It should be acknowledged that Council officers granted a concession to the applicant at the time to reduce levels to 3.1m (as opposed to the flood planning level of 3.4m) giving consideration to the existing development on the site and that the ceiling heights allowed for adaptable housing design where internal floor levels could be raised in the future.

#### Assessment Outcomes

The subject land is zoned R2 Low Density Residential under the *Port Stephens Local Environmental Plan 2013* (PSLEP2013). The proposal is permissible with consent in the R2 zone, under the PSLEP2013.

The proposed amendments were assessed against relevant controls and objectives as specified under State Environmental Planning Policy No.55 – Remediation of Land (SEPP 55), State Environmental Planning Policy No. 71 – Coastal Protection (SEPP 71), State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004, *PSLEP2013* and Port Stephens Development Control Plan 2014 (PSDCP2014).

### Key Issues

The key issues arising out of the assessment of the application relate to the increased risk to flooding created as a consequence of the proposed modifications.

The proposed amendments will result in a development that does not satisfy the applicable controls. The amended development will result in an unacceptable adverse risk of flood impacts and does not comply with the following:

- The *Environmental Planning and Assessment (EP&A) Act 1979*;
- State Environmental Planning Policy No. 71 – Coastal Protection in that it is likely to be adversely impacted by coastal processes and hazards;
- The Port Stephens Local Environmental Plan 2013, specifically in relation to:
  - The objectives identified for the R2 – Low Density residential Zone, as specified in clause 2.3 – Zone Objectives;
  - Clause 7.3 – Flooding given the development will not minimise the flood risk to life and property associated with the use of land, is not compatible with the land’s flood hazard, taking into account projected changes as a result of climate change and does not avoid significant adverse impacts on flood behaviour and the environment;
  - Clause 7.3(3) in that it will not be compatible with the flood hazard of the land (identified as High Hazard Flood Fringe Area) and has not demonstrated that it will not significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties; does not incorporate appropriate measures to manage risk to life from flood; and could result in unsustainable social and economic costs to the community as a consequence of flooding in the future.
- The Port Stephens Development Control Plan 2014 (Chapter B5 – Flooding), in that it has not adequately demonstrated:
  - It will reduce the impact of flooding and flood liability on individual owners and occupiers of flood prone property; or
  - The use and development of flood prone land has risk consequences that are acceptable to the community, takes into account the full spectrum of flood risks and recognises the social, economic and environmental values of flood prone land.
- The NSW Floodplain Development Manual 2005 given the following reasons:
  - Approval of a development which seeks to further reduce the approved floor levels for habitable space below the flood planning level will not have acceptable social or economic impacts;

## MINUTES ORDINARY COUNCIL - 28 FEBRUARY 2017

- The proposed amendments would result in development that would render the site's intended residential use unsuitable given the increased risk to people and property; and
- Approval of a proposal, which seeks to further reduce the floor levels of habitable space in an area that has identified flood constraints and risks, is not in the public interest. Further, approval of the proposed amendments 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.

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**). In light of the above matters, the application has been 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 known financial or resource implications which would result from the proposed recommendation.

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 proposed modification application is inconsistent with the relevant planning instruments and guidelines including; *the Environmental Planning and Assessment Act 1979* (EP&A Act), *SEPP 71 – Coastal Protection*, *PSC LEP2013*, *DCP2014* and the *NSW Government 2005, 'Floodplain Development Manual'*.

<b>Risk</b>	<b><u>Risk Ranking</u></b>	<b>Proposed Treatments</b>	<b>Within Existing Resources?</b>
There is a risk the proposal will expose people and property to risk of damage and death as a consequence of approving development below the applicable flood planning level.	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

Although the impact of the proposed amendments on the natural environment will be minimal, the social and economic effects of flooding and inundation are well documented. Council is therefore obligated to ensure in its decision-making processes that any development does not compound the social, economic and environmental consequences of flood events. Planning controls therefore aim to reduce the risk to people, property and society by ensuring that new development meets certain standard and objective criteria. This is made more difficult in the context of existing buildings.

In this instance, approval of a development which seeks to drop the floor levels for habitable space below the flood planning level will not have acceptable social or economic outcomes.

In terms of the built environment, approval of a development with floor levels below the flood planning area will not have an acceptable level of impact on the built environment, resulting in the continued exposure of new development to unacceptable risk from flooding.

### **CONSULTATION**

#### Internal

The application was referred to Council's Development Engineer and Building Surveyor for assessment and comment. Council's Development Engineer does not support the proposal from a flood risk management perspective, noting that the

proposed habitable floor levels are significantly below the Flood Planning Level. It was also noted that the proposal fails the objectives of Section B5.A of the PSDCP 2013. Council's Building Surveyor raised no objections.

External

No external stakeholders. The application is not required to be publicly notified.

**OPTIONS**

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

**ATTACHMENTS**

- 1) Locality Plan.
- 2) Planner's Assessment Report.
- 3) Reasons for refusal.
- 4) Call to Council Form.

**COUNCILLORS ROOM**

- 1) Development Plans.

**TABLED DOCUMENTS**

Nil.

ITEM 4 - ATTACHMENT 1 LOCALITY PLAN.





APPLICATION DETAILS	
<b>Modification Application Number</b>	16-2016-457-2
<b>Development Description</b>	Two into One Lot Consolidation and Alterations and Additions to Existing Dwellings to Convert to Single Dwelling House and Swimming Pool
<b>Modification Description</b>	Section 96(1A) Amendment to approved alterations and additions to convert two existing dwellings to a single dwelling house, swimming pool and consolidation of two lots - modify design to decrease floor levels and increase habitable areas
<b>Applicant</b>	SENSATIONAL LIVING PTY LTD
<b>Date of Lodgement</b>	15/12/2016

**Modification Proposal**

The application proposes amended plans which seek to modify DA-16-2016-457-1 as follows:

- Alter the following approved floor levels to decrease the approved floor levels to below the flood planning level:
  - Garage – reduced from 2.5m to 2.35m
  - Kitchen/ Living Area – reduced from 3.1m to 2.52m
  - Entrance – reduced from 2.53m to 2.52m;
- Amend ground floor to delete approved breezeway (non-habitable) and replace with additional living area (habitable floor space); and
- Adjust eastern and western ground floor elevations accordingly.

Conditions 19 and 34 would subsequently need to be deleted:

- Condition 19 – Survey Certificate floor levels of new habitable floor levels above Adaptable Flood Planning Level (AFPL); and
- Condition 34 – Breezeway not permitted as habitable floor space.

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



<b>PROPERTY DETAILS</b>	
<b>Property Address</b>	2 Danalene Parade CORLETTE, 4 Danalene Parade CORLETTE
<b>Current Use</b>	Two detached dwellings
<b>Lot and DP</b>	LOT: 4 DP: 214499, LOT: 5 DP: 214499
<b>Zoning</b>	R2 LOW DENSITY RESIDENTIAL
<b>Site Constraints That Affect The Modification</b>	SEPP 71 – Coastal Zone Flood Prone Land High Hazard Flood Fringe Area Flood Planning Level

**Site Description**

The subject site an irregular shaped lot with an east-west orientation. The property is located within the older residential area of Corlette and has direct frontage to Danalene Parade. The frontage of the property has formed kerb and gutter along the entire frontage of the two sites.

**Site History**

The site has been used for low density residential uses for a prolonged period of time. Previous Council approvals for the site include a single dwelling under DA 7-1993-60631-1 and a garage under DA 16-2000-1334-1.

DA-16-2016-457-1 was approved on 14 November 2016. Consent was granted to consolidate the two allotments, construct a new in-ground swimming pool and undertake alterations and additions to the two dwellings to create a single dwelling. The section between each dwelling was approved as non-habitable breezeway linking each former house.

**Site Inspection**

	
<p>The existing dwelling located at No. 2 Danalene Pde. To be predominantly demolished.</p>	<p>The existing dwelling located on No. 4 Danalene Pde. Dwelling to be largely retained.</p>
	
<p>The existing dwelling located at No. 2 Danalene Pde viewed from the adjacent public reserve at the rear.</p>	<p>The existing dwelling located at No. 4 Danalene Pde viewed from the adjacent public reserve at the rear.</p>

<b>ASSESSMENT SUMMARY</b>	
<b>Designated Development</b>	The application is not designated development
<b>Integrated Development</b>	The application does not require additional approvals listed under s.91 of the EP&A Act
<b>Concurrence</b>	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 listed have been used to carry out the assessment against the S79C Matters for Consideration below.

Development Engineer – Did not support the proposal from a flood risk management perspective, noting that the proposed habitable floor levels are significantly below the Flood Planning Level. It was also noted that the proposal fails the objectives of Section B5.A of the Post Stephens Development Control Plan 2013 (PSDCP 2013) and therefore the NSW Floodplain Development Manual 2005. A detailed discussion of the flooding provisions has been provided below.

Building Surveyor – No objections were made and no conditions to be amended.

**External Referrals**

The proposed modification was not referred to any external agencies.

**MODIFICATIONS INVOLVING MINIMAL ENVIRONMENTAL IMPACT – S96(1A)**

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

Notwithstanding the site's flood affectation, the proposed amendments are deemed to be of minor environmental impact. The proposed works are largely within the approved building envelope and will not enlarge the amount of disturbance of the soils or require any additional trees to be removed.

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

The development as modified is substantially the same as the approved development. Although the proposal seeks an increase in gross floor area by virtue of the enlargement of habitable space on the ground floor, the residential use, configuration, external appearance and overall building envelope remain the same.

**S96(1A)(c) – Notification**

The application does not require notification as the proposed amendments are of minimal environmental impact.

**S96(1A)(d) – Submissions**

There were no submissions received relating to the proposed modification.

**S96(3) – Section 79C – Matters for Consideration**

In considering an application to modify a consent, Council must consider those parts of Section 79C (1) that are relevant to the proposal.

**s79C(1)(a)(i) – The provisions of any EPI****Port Stephens Local Environmental Plan 2013 (LEP)****Clause 2.3 – Zone Objectives and Land Use Table**

The subject site is zoned R2 – Low Density Residential. The proposed amendments are in direct conflict with the following objectives:

- *To protect and enhance the existing residential amenity and character of the area.*
- *To ensure that development is carried out in a way that is compatible with the flood risk of the area.*

Approval of the proposed modifications would result in a dwelling with a significant proportion of the ground level habitable floor space well below the flood planning level. This will increase the risk to people and property to flooding. Approving the amendments does not therefore seek to protect the existing residential amenity. Likewise, lowering the approved floor levels so that a greater proportion of the building now has a greater level of inundation does not demonstrate that development will be carried out in a way that is compatible with the flood risk of the area.

**Clause 4.3 – Height of Buildings**

The proposed amendments do not alter the overall height of the approved development.

**Clause 5.5 – Development within the Coastal Zone**

The site is located within the coastal zone and is considered to meet the principles of the NSW Coastal Policy. There proposed amendments will not result in any adverse impacts on the local ecology or water quality as the approved development incorporates a stormwater quality control system and erosion and sediment control devices. The proposed amendments do not encroach on the waterway and there are no anticipated impacts on the access to the foreshore.

**Clause 7.1 – Acid Sulfate Soils**

The subject land is mapped as containing potential Class 2 and 5 acid sulfate soils. The proposed amendments do not alter Council's conclusions with respect requiring an Acid Sulfate Soils Management Plan prior to the issue of Construction Certificate.

**Clause 7.2 – Earthworks**

The proposed amendments do not alter Council's previous conclusions with respect to earthworks.

**Clause 7.3 – Flooding**

The proposed amendments are inconsistent with the following objectives of Clause 7.3:

- (a) *to minimise the flood risk to life and property associated with the use of land,*
- (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,*
- (c) *to avoid significant adverse impacts on flood behaviour and the environment.*

Further, Clause 7.3(3) states that Council **must not** grant development consent (and consequently amend a consent) unless it is satisfied that the development:

- (a) *is compatible with the flood hazard of the land, and*

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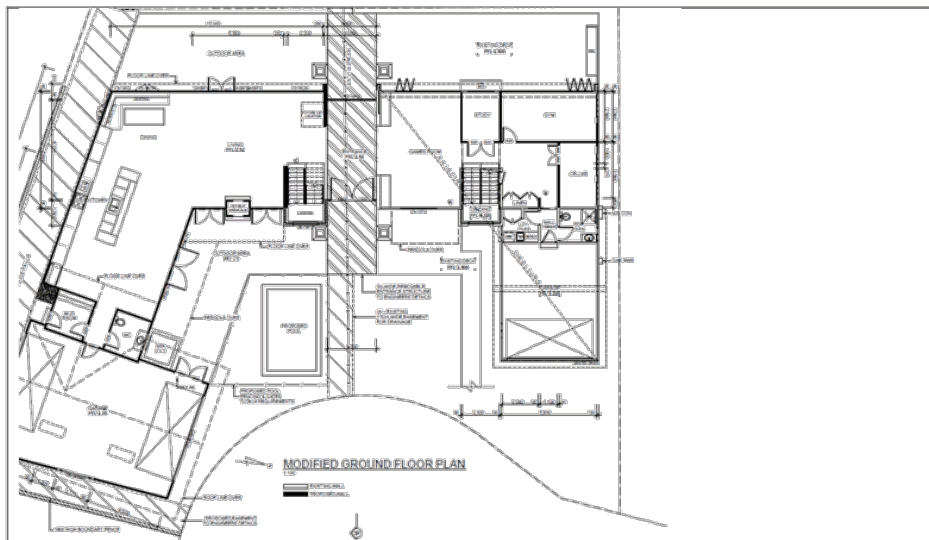
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- (b) will not significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties, and
- (c) incorporates appropriate measures to manage risk to life from flood, and
- (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
- (e) is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.

The proposed amendments are essentially the same as those originally lodged with the development application. Council officers subsequently requested the applicant modify the proposal to reduce the flood risk. The applicant only partly complied and accordingly, Council imposed conditions requiring floor levels to be at 3.1m, certification of the floor level (Condition 19) and a restriction on the use of the breezeway as habitable floor space (Condition 34). It should be acknowledged that the current adopted flood planning level for the site is 3.4m and Council officers granted a concession to the applicant (to 3.1m) given consideration to existing development on the site and that the ceiling heights allowed for adaptable housing design where floor levels could be raised in the future. Council officers originally considered the proposed floor levels at 2.5m to be an inappropriate response to the flood risk of the site and the proposed amendments do not demonstrate any overall improvement in the planning outcomes will be achieved. It was considered that given this is a new building structure compliance with the flood controls could be achieved by minor amendments to the design, however the applicant did not wish to incorporate steps into the building.

The following plan excerpts demonstrate the difference between the original concept put forward by the applicant, the amendments subsequently offered, the approved plans (annotated in red) and the plans that are the subject of this assessment.

**Table 1: Floor Plan Comparison**



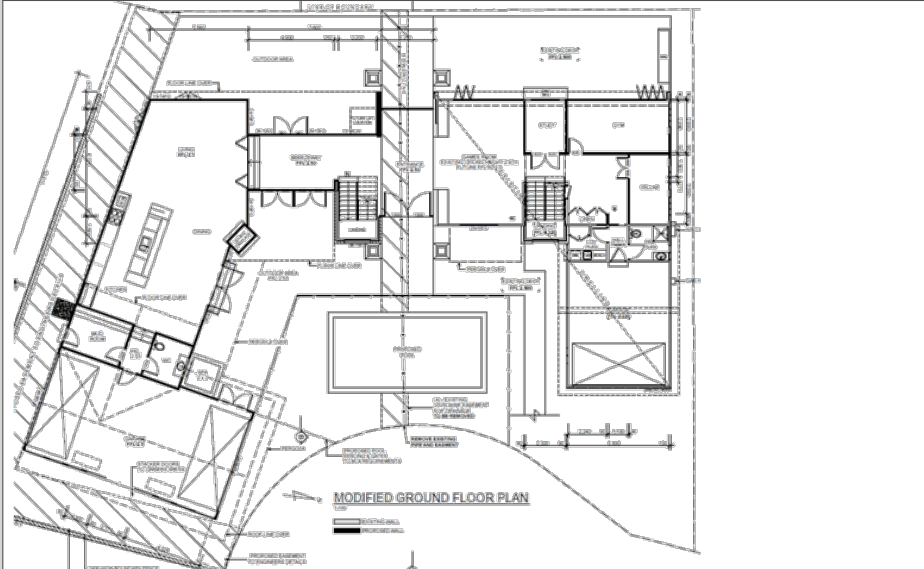
**Original DA Plan proposing a floor level of 2.52m in the Living Area. Flood**



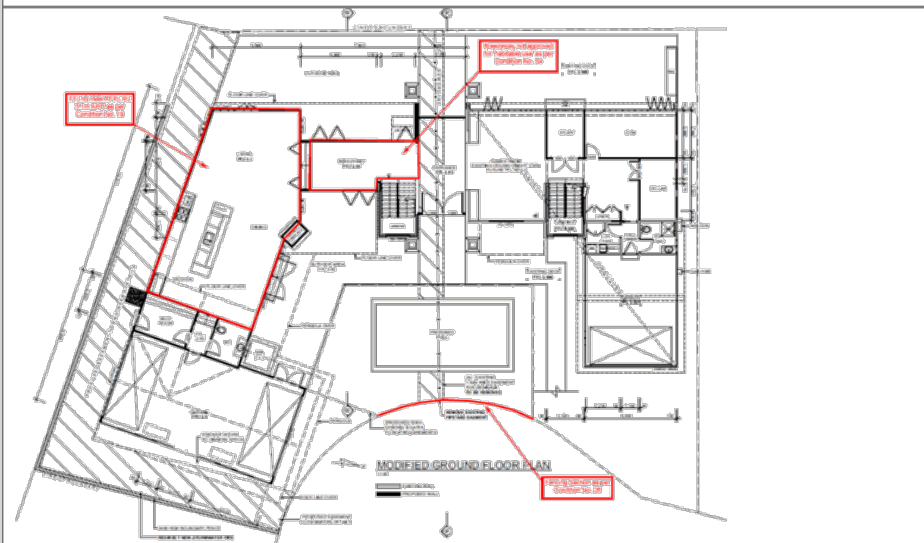
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Planning was noted as a key consideration and although the existing structures were not being completely demolished, Council did not consider the existing floor level (2.52m AHD) appropriate for the newly constructed building area.

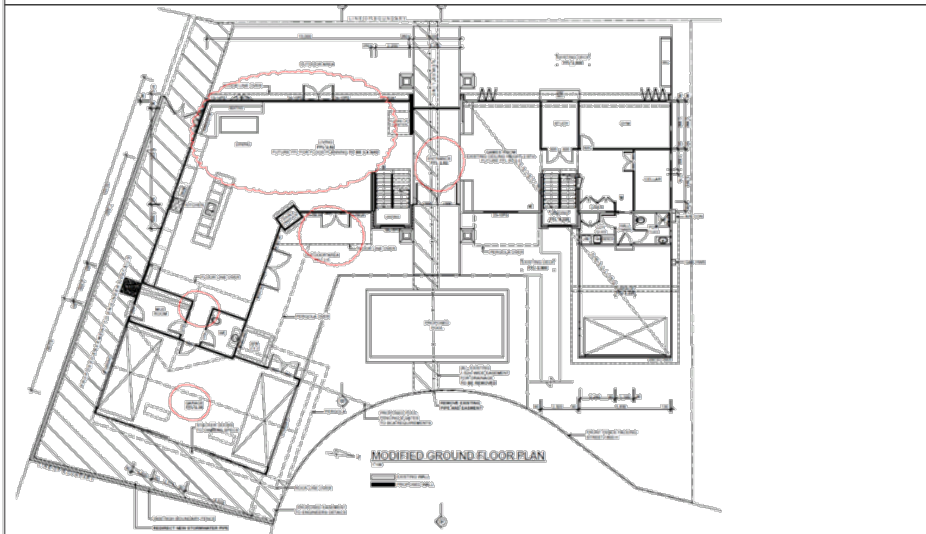


**Amended DA plan** submitted by applicant showing floor levels meeting the Adaptable FPL as detailed within Council's DCP and advice from F&D. The breezeway was retained at the existing level. This was considered a better flood planning outcome as all bedrooms and high use areas (kitchen, living, dining) are at or above the AFPL.



**Approved Floor Plan** reinforcing the floor levels to improve flood risk outcomes. Conditions were imposed to restrict the use of the breeze way structure, survey

confirmation of floor levels during construction and construction under the FPL using flood compatible materials.



**Proposed Amended Floor Plan** seeking to reinstate the original floor plan and levels.

Council's Development Engineer does not support the proposed amendments from a flood risk management perspective, noting that the proposed habitable floor levels are now significantly below the Flood Planning Level. The applicant has not advanced any justification for reverting to a situation that would result in unacceptable planning outcomes and risk to life and property. The amended proposal is accordingly inconsistent with the objectives and provisions of Clause 7.3 of the Port Stephens LEP 2013.

**Clause 7.6 – Essential Services**

The proposed amendments do not alter Council's previous conclusions with respect to the provision of essential services.

SEPP 55 Remediation of Land

The proposed amendments do not alter Council's previous conclusions with respect to contamination.

SEPP 71 Coastal Protection

The proposed amendments generally do not alter Council's previous conclusions made in respect of the SEPP, with the exception of Clause 8 (j), which requires Council consider the likely impact of coastal processes and coastal hazards on development. Lowering the floor level of the approved development on a property that is:

- within the Coastal zone;
- Flood prone land below the nominated flood planning level; and
- Is located adjacent to a water body and is nominated as being within a High Hazard Flood Fringe Area

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will result in a development that is likely to be adversely impacted by coastal processes and hazards, which is inconsistent with the Aims and provisions of the SEPP.

SEPP (BASIX) 2004

The proposed amendments do not alter Council's previous conclusions with respect to BASIX.

**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 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 amendment, with the relevant provisions addressed below.

**Chapter A.12 – Notification and Advertising**

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

**Chapter B3 – Environment Management**

The proposed amendments do not alter Council's previous conclusions with respect to construction hours, waste management, erosion and sediment control, site fencing and amenities during the construction period.



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**Chapter B4 – Drainage and Water Quality**

The proposed amendments do not alter Council's previous conclusions with respect to stormwater management.

**Chapter B5 – Flooding**

The proposal does not satisfy the provisions of this Chapter of the DCP, as demonstrated in the discussion contained in Clause 7.3 of the LEP.

The proposed amendments, which seek to lower the floor levels of habitable space an area designated as a High Hazard Flood Fringe, is not consistent with the following objectives of Chapter B5.A:

- *To reduce the impact of flooding and flood liability on individual owners and occupiers of flood prone property.*
- *That flood risk is considered as early as possible in the planning and development process, is based on the best available flood information and is a flexible, locally-specific, merit-based approach.*
- *To ensure that the use and development of flood prone land has risk consequences that are acceptable to the community, takes into account the full spectrum of flood risks and recognises the social, economic and environmental values of flood prone land.*
- *To implement the principles of the NSW Government 2005, 'Floodplain Development Manual' into new development and satisfy the provisions of PSLEP2013 Clause 7.3.*

The applicant's argument that the originally approved development was merely for an extension to an existing dwelling and therefore the application of flood controls is irrelevant, is flawed and fails to recognise that the approved development is now something entirely different to that which previously existed. It also fails to recognise the best way to achieve sound and sustainable planning outcomes are to design out risks in the first instance.

**Chapter B6 – Essential Services**

The proposed amendments do not alter Council's previous conclusions with respect to utility provision.

**Chapter B9 – Road Network and Parking**

The proposed amendments do not alter Council's previous conclusions with respect to traffic and parking.

**Chapter C4 – Dwelling House, Dual Occupancies and Ancillary Development**

The proposed amendments do not alter Council's previous conclusions with respect to the provisions contained in Chapter C4 of the Port Stephens DCP 2014.

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

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

**s79C(1)(a)(iv) – The regulations**

There are no clauses of the regulations that require consideration for the proposed amendments.

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

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

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**s79C(1)(b) – The likely impacts of the development****Social and Economic Impacts**

The social and economic effects of flooding and inundation are well documented, both locally and in the wider community. It is incumbent therefore on a consent authority to ensure in its decision-making processes that any development does not compound the social, economic and environmental consequences of flood events. Planning controls therefore aim to reduce the risk to people, property and society by ensuring that new development meets certain standard and objective criteria. Often this is difficult to rationalise in the context of recycling existing buildings, where people have previously lived and records do not necessarily show any evidence of the flood events.

Nonetheless, the responsibility to employ sound planning principles and risk-based controls to minimise the impact on any new development, or exacerbating the adverse effects on surrounding areas, lies with Council. In this instance, approval of a development, which seeks to drop the floor levels for habitable space below the flood planning level, will not have acceptable social or economic outcomes.

**Impacts on the Built Environment**

Approval of a development with floor levels below the flood planning area will not have an acceptable level of impact and will result in the continued exposure of new development to unacceptable risk from flooding.

Refusal of the proposed modification will not, as claimed in the applicant, result in the area's viability being degraded or prevent land owners from redeveloping their existing dwellings. In the context of the subject application, the floor levels are contained within the existing building envelope and have not resulted in the loss of any internal amenity in regards to the internal floor to ceiling heights, or the overall height of the building increasing to compensate for the approved floor level. Accordingly, there is no consequential adverse external visual impact of the required floor levels being maintained.

**Impacts on the Natural Environment**

The proposed amendments do not alter Council's previous conclusions with respect to impacts on the natural environment.

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

Although the subject site currently contains two detached dwellings and approval has already been granted for works to be undertaken to create a single new dwelling out of the two structures, Council deliberately imposed specific conditions to ensure the future occupants of the new structure would not be adversely impacted by flooding. The new structure has a significant floor area and is not considered a minor addition. The opportunity exists for the applicant to amend the design to comply with the flood planning controls. The applicant now seeks to have those conditions removed and the floor levels reduced below the Flood Planning Level. Ultimately, in a statutory and policy context, the proposed amendments will result in a development that would now be unsuitable in terms of the associated flood risk.

The applicant contends that because the site currently contains two existing dwellings with floor levels below the AFPL, the new development is justifiable. The applicant also contends that the new development should not be subjected to the flood planning controls that are adopted in State Planning Policy, the LEP and the DCP as the development is existing .. The applicant also argues that refusal of the amendment will lead to the "... *risk of destroying the viability of a locality, hindering ongoing investment and ultimately reducing the value of the area in a spiral towards the*

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*creation of degraded socio-economic fabric.*" This claim has not been supported by any substantive arguments. Support of the proposed amendments would result in significant risk to future occupants. It is considered that design amendments can be accommodated to ensure compliance with the flood planning controls.

**s79C(1)(d) – Any submissions**

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

**s79C(1)(e) – The public interest**

Approval of a proposal, which seeks to reduce floor levels of habitable floor space in an area that has identified flood constraints and risks, is not in the interest of the wider public. Support of the proposal is inconsistent with the objectives of the applicable statutory and policy controls. Further, approval of the proposed amendments would be contrary to Section 5 - Objects of the Environmental Planning and Assessment Act 1979, which seek:

- "(a) to encourage:
- (i) *the proper management, 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,  
... and....*
  - (vii) *ecologically sustainable development, ..."*

**DETERMINATION**

The application is recommended to be refused by Council resolution, subject to the reasons for refusal contained in the notice of determination.

MICHAEL BREWER  
Town Planning Contractor  
7 February 2017



PORT STEPHENS  
COUNCIL

## Notice of Determination Section 96 - Refusal

Under section 81(1)(b) of the *Environmental Planning and Assessment Act 1979* (NSW)

### NOTICE OF DETERMINATION OF MODIFIED DEVELOPMENT CONSENT

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.

**Determination Outcome:** Section 96 Modification - Refused

Despite this determination development consent No.16-2016-457-1 remains operational and is not affected by the outcome of this notice.

### APPLICATION DETAILS

**Application No:** 16-2016-457-1

**Section 96 Application No:** 16-2016-457-2

**Property Address:** **LOT: 4 DP: 214499, LOT: 5 DP: 214499**  
2 Danalene Parade CORLETTE, 4 Danalene Parade  
CORLETTE

**Description of Development:** Section 96(1A) Amendment to approved alterations and additions to convert two existing dwellings to a single dwelling house, swimming pool and consolidation of two lots - modify design to decrease floor levels and increase habitable areas

**Date of original determination:** 14 November 2016

**Date from which the original consent operates:** 14 November 2016

**Date of S96 modification determination:** 14 March 2017

**Date on which the consent lapses (unless substantially commenced):** 15 November 2021

MS C DICKSON  
Planning & Developer Relations Coordinator

Port Stephens Council

Adelaide Street (PO Box 42), Raymond Terrace NSW 2324  
DX 21406 Raymond Terrace • Phone 4980 0255  
Email [council@portstephens.nsw.gov.au](mailto:council@portstephens.nsw.gov.au)

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**SCHEDULE 1**

**REASONS FOR REFUSAL**

1. The proposed amendments 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 amendments will result in a development that fails to satisfy the provisions of Clause 8 (j) – Matters for Consideration of State Environmental Planning Policy No. 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 amendments will result in a development that is in conflict with the following objectives identified for the R2 – Low Density residential Zone, as specified in clause 2.3 – Zone Objectives and Land Use Table of the Port Stephens Local Environmental Plan 2013:
  - To protect and enhance the existing residential amenity and character of the area.
  - To ensure that development is carried out in a way that is compatible with the flood risk of the area (s.79C(1)(a)(i) *EP&A Act 1979*);
4. The proposed amendments 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,
  - 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,
  - to avoid significant adverse impacts on flood behaviour and the environment (s.79C(1)(a)(i) *EP&A Act 1979*);



PORT STEPHENS  
COUNCIL

## Notice of Determination Section 96 - Refusal

Under section 81(1)(b) of the *Environmental Planning and Assessment Act 1979* (NSW)

5. The proposed amendments 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 Flood Fringe Area); has not demonstrated that it will not significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties; 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*);
6. 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 it has not adequately demonstrated:
  - It will reduce the impact of flooding and flood liability on individual owners and occupiers of flood prone property; or
  - The use and development of flood prone land has risk consequences that are acceptable to the community, takes into account the full spectrum of flood risks and recognises the social, economic and environmental values of flood prone land (s.79C(1)(a)(iii) *EP&A Act 1979*)
7. Approval of a development which seeks to reduce the approved floor levels for habitable space below the flood planning level will not have acceptable social or economic impacts (s.79C(1)(b) *EP&A Act 1979*);
8. The proposed amendments would result in development that would render the site's intended residential use unsuitable given the increased risk to people and property (s.79C(1)(c) *EP&A Act 1979*); and
9. Approval of a proposal, which seeks to reduce the floor levels of habitable space in an area that has identified flood constraints and risks, is not in the public interest. Further, approval of the proposed amendments 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*).

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

Adelaide Street (PO Box 42), Raymond Terrace NSW 2324  
DX 21406 Raymond Terrace • Phone 4980 0255  
Email [council@portstephens.nsw.gov.au](mailto:council@portstephens.nsw.gov.au)

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CALL TO COUNCIL FORM  
DEVELOPMENT APPLICATION

I, Mayor Bruce MacKenzie require Development Application Number 16-2016-457-1 for a S96(1A) application to amend the approved floor levels and amend the building design at 2 Danalene Parade, Corlette to be subject of a report to Council for determination by Council.

**Reason:**

The reason for this call-up to Council is to review the flood requirements.

**Declaration of Interest:**

I have considered any pecuniary or non-pecuniary conflict of interest (including political donations) associated with this development application on my part or an associated person.

**I have a conflict of interest? Yes/No** (delete the response not applicable).

If **yes**, please provide the nature of the interest and reasons why further action should be taken to bring this matter to Council:

.....  
.....  
.....  
.....

Signed:



Date:

1/2/17