

Minutes 15 September 2009



Minutes of Extra -Ordinary meeting of the Port Stephens Council held in the Council Chambers, Raymond Terrace on 15 September 2009, commencing at 6.03 pm.

PRESENT: Councillors B. MacKenzie (Mayor); R. Westbury (Deputy Mayor); G. Dingle; S. Dover, G. Francis; P. Kafer; K. Jordan; J. Nell; S. O'Brien; S. Tucker, F. Ward; General Manager; Corporate Services Group Manager, Sustainable Planning Group Manager; Commercial Services Group Manager and Executive Officer.

Councillor Steve Tucker was not present at the commencement of the meeting.

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GENERAL MANAGER'S REPORT

PETER GESLING
GENERAL MANAGER

Councillor Steve Tucker entered the meeting at 6.05pm during Item 1.

ITEM NO. 1

FILE NO: 16-2009-418-1

**DEVELOPMENT APPLICATION FOR A MAINTENANCE,
MANUFACTURING AND TESTING FACILITY FOR SANDVIK MINING
EQUIPMENT AND MACHINERY AT NO. 431 MASONITE ROAD
HEATHERBRAE**

**REPORT OF: ANTHONY RANDALL - ACTING MANAGER, DEVELOPMENT AND BUILDING
GROUP: SUSTAINABLE PLANNING**

RECOMMENDATION IS THAT COUNCIL:

- 1) Approve Development Application 16-2009-418-1 for a Maintenance, Manufacturing and Testing Facility for Sandvik Mining Equipment and Machinery, at 431 Masonite Road, Heatherbrae subject to the Conditions contained in Attachment 3.

EXTRA-ORDINARY COUNCIL – 15 SEPTEMBER 2009

303	Councillor Ken Jordan Councillor Daniel Maher	It was resolved that Council approve Development Application 16-2009-418-1 for a Maintenance, Manufacturing and Testing Facility for Sandvik Mining Equipment and Machinery, at 431 Masonite Road, Heatherbrae subject to the Conditions contained in the Supplementary Information.
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In accordance with the Local Government Act 1993, a division is required for this item.

Those for the Motion: Councillors Peter Kafer, Glenys Francis, Ken Jordan, Daniel Maher, Steve Tucker, Shirley O'Brien, Geoff Dingle, John Nell, Frank Ward, Bob Westbury, Sally Dover and Bruce MacKenzie.

Those against the Motion: Nil.

BACKGROUND

The purpose of this report is to present the development application for the establishment of a Maintenance, Manufacturing and Testing Facility for Sandvik Mining Equipment and Machinery to Council for determination. The application is reported to Council to provide for a public, open and transparent assessment and decision-making given that the subject site will be sold by Council to ATB Morton.

The development application seeks consent for construction of industrial scale workshop buildings; ancillary office, training and amenities buildings; 586 at grade car parking spaces, concrete hardstand areas and a machinery testing area. The proposal also includes clearing of approximately 13 hectares of vegetation to establish the development footprint on the 16 hectare site.

The site is zoned 4(a) Industrial General zone which permits industry subject to consent. The proposal is considered to be consistent with the zone objectives.

The proposal will employ up to 80 staff during construction and up to 760 staff when operating at full capacity. Operating hours will consist of 7 days per week/24 hours per day seven day with shift arrangements.

The subject land adjoins an established industrial area to the north, east and west and has a frontage to Masonite Road. The adjoining property to the south is undeveloped and also zoned 4(a) Industrial General.

The key issues associated with this proposal are as follows:-

- Aboriginal Archaeology
- Acid Sulphate Soils
- Air quality
- Bushfire
- Drainage
- Ecology
- Noise
- Roads and Traffic
- Service provision
- Water Management
- Safety, Security and Crime Prevention

An assessment of these issues is provided below and in more detail in Attachment 2.

FINANCIAL/RESOURCE IMPLICATIONS

This Council will receive a substantial financial return on this land following development consent. This revenue has wider community benefits. As part of the sale agreement, Council will fund necessary road upgrading to Masonite Road.

LEGAL AND POLICY IMPLICATIONS

The development application is consistent with relevant Council planning policies, including economic and employment generation to be promoted and enabled.

SUSTAINABILITY IMPLICATIONS

SOCIAL IMPLICATIONS

No significant impacts have been identified to occur to the amenity of surrounding properties as a result of this development. There will clearly be positive social outcomes from the generation of such a substantial number of locally based jobs.

Disabled Access

The application was referred to Council's Community Planner (Ageing and Disability), who has advised that there is no objection in this regard, subject to the imposition of consent conditions.

Safety, Security & Crime Prevention

The application was referred to Council's Community Projects Officer (Community Safety) who has assessed the application against *Crime Prevention Through Environmental Design* principles and considered that they address these principles with respect to territorial reinforcement and access control. However, concerns about passive surveillance were raised. It is considered these can be addressed by the imposition of consent conditions relating to the main office entry wall, window reflectivity and landscaping.

ECONOMIC IMPLICATIONS

The proposed development will create positive effects on the local economy, particularly through employment generated during the construction and operational phases. In the longer term, local employment through the increased demand for goods and services by staff and visitors. The proposal has the potential to attract related business and customers to the area with flow on effects to other industrial and retail establishments.

ENVIRONMENTAL IMPLICATIONS

No significant impacts have been envisaged to occur to the environment as a result of this development.

Ecology

In accordance with the NSW Environmental Planning and Assessment Act 1979 (EP & A Act) an Assessment of Significance (7 part test) was undertaken to assess if the proposal is likely to have a significant impact on threatened species, populations and ecological communities, and/or their habitats, listed under the Threatened Species Conservation Act.

- **Impact Assessment**

Details of the Assessment of Significance for species that were recorded, or for which potential habitat is present in the study area, have been addressed in the application.

The application was accompanied by an Ecological Assessment and Landscape plans that were referred to Council's Environmental Projects Officer.

The proposal would clear native vegetation, including potential foraging habitat for a number of threatened species as set out and summarised in Attachment 2 to this report.

However, it is considered unlikely that the area of vegetation to be removed for the Proposal would result in significant impacts which would adversely affect the threatened species based on:

- The small size of area to be cleared;
- No isolation of currently interconnecting or proximate areas of habitat occurring as result of the proposal;
- Most species concerned are mobile and wide-ranging;
- Large areas of potential habitat would be retained in adjacent to the study area and in the local area including Tomaree National Park, which includes vegetation associations similar to that within the study area; and
- Retention of a habitat buffer of native vegetation (including an intact native shrub layer and groundcover) adjacent to Masonite Road, assisting in minimising the impact of the Proposal by retaining foraging habitat for the species.

Considering the effective isolation of this piece of land due to the F3 freeway deviation, it is considered that the development can occur onsite with the removal of supplementary koala habitat. However, the proponent must still meet the conditions of these waivers as detailed in Appendix 4 of the Comprehensive Koala Plan of Management (CKPoM) which require retention of vegetation onsite, and buffer zones (appropriate to the southern boundaries of the site).

In addition the proponent will need to provide rehabilitation/revegetation program off site in the local area to offset the loss of the supplementary koala habitat. Neighbouring property Weathertex has proposed a similar project, and with the RTA activity in the area there are many opportunities for revegetation, especially on Hunter Water lands. Another opportunity for offset revegetation is the rehabilitation of areas along Windeyer's Creek.

In light of previous comments made regarding the property, requirements within the CKPoM and fieldwork identifying additional environmental significance the applicant has proposed retention of 3ha of vegetation on site and identified and acquired an offset site in Markwell NSW and recommended a range of onsite mitigation measures.

A statutory referral to the Department of Environment, Climate Change and Water was not required as the proposal does not constitute Threatened Species development.

▪ Mitigation Measures

Council require the mitigation measures proposed by Orogen in its development application to be met as conditions of consent. These include the following and are outlined in section 4.3 of the Orogen report.

- Staged clearing
- Pre-clearing surveys for orchid species
- Checking trees during clearing activities
- Felling trees away from retained habitats
- Inspection of hollow bearing trees prior to removal by qualified personnel.
- Relocation of hollow bearing trees to retained habitat
- Erection of nest boxes (3) within retained habitat
- Revegetation and landscaping with endemic species.
- Weed management must be regularly undertaken within the retained habitats.
- Fences along the southern boundary must allow for faunal movement.
- Resource recovery
- Site induction for contractors regarding clearing protocol.

Council also requires that any clearing will occur outside of key breeding periods for identified arboreal mammals and birds onsite and that endemic species identified for landscaping be approved by Council.

Times most appropriate for clearing should be clearly identified by a qualified ecologist taking into consideration identified species on site and their breeding periods.

The proponent has used the Biobanking methodology to assess its development site and proposed offset site (as set out in the Lot 32 DP 1014864 Heatherbrae and Lot 51 DP 774454 , Markwell – Biobank Summary Report).

The Biobank Summary Report, is considered to be satisfactory, however it is proposed to request the background reporting required for preparation of the Biobank Summary Report be provided for assessment as a condition of consent.

A condition is also recommended to ensure that a minimum 701 credits contained in the Markwell site be dedicated to DECCW as an offset for the Sandvik Development.

Aboriginal Archaeology

There is no evidence to suggest that the site contains significant Aboriginal Archaeology. Nonetheless, the application was referred to the Worimi Aboriginal Land Council, who has requested:

- *"The ability to inspect the site following the clearance of surface vegetation and initial earth moving activities, providing for ease of access to determine the true nature of the land and identify Aboriginal culturally significant materials (likely to be) present.*
- *Throughout the duration of initial earth moving activities "only " designed for this particular development, Worimi requests the approved "Aboriginal Site Participation & Monitoring" of works be granted to allow for a continued and accurate assessment of the site, thus ensuring the integrity of the Aboriginal cultural heritage values remain intact."*

These requests can be met by the imposition of consent conditions.

Should any aboriginal site or relic be disturbed or uncovered, all works shall cease and the National Parks and Wildlife Service shall be consulted. Any person who knowingly disturbs an aboriginal site or relic is liable to prosecution under the National Parks and Wildlife Act 1974. This information will be included on the consent as an advice.

Air quality

An Air Quality Impact Assessment was submitted to accompany the application, which demonstrates that emission concentrations and predicted Ground Level Concentrations for air pollutants achieve compliance with Schedule 6 of the Protection of the Environment Operations (Clean Air) Regulation 2002, and the design criteria specified in the Approved Methods for the Modelling and Assessment of Air Pollutants in NSW 2005.

The assessment concludes that the development and operation of the proposed Sandvik facility will achieve the regulatory requirements for the management of air emissions and as such, it is concluded that the development will not pose a significant impact on air quality in the locality.

Bushfire

The development is sited on land classified as being bushfire prone.

A Bushfire Threat Assessment was submitted to accompany the application, which was referred to the local NSW Rural Fire Service for comment. The Rural Fire Service has no objection to the proposal. However, the Service have recommended that a number of conditions be imposed on the consent, in relation to water and utilities, access, evacuation and emergency management, and landscaping.

The recommended conditions are considered acceptable to impose and therefore will be included as consent conditions.

Drainage

A Concept Stormwater Management Plan (CSMP) has been submitted in support of the application. The CSMP was prepared by Barker Ryan Stewart and is revision A, dated 7 July 2009 and subsequently superseded by revision B, dated 20 August 2009. The CSMP covers stormwater runoff, reuse, infiltration and water quality.

Surface Drainage

Information has been submitted by Barker Ryan Stewart that demonstrates the drainage system can cater for 1% AEP rainfall events through infiltration. The system as designed did not consider any capture by tanks or infiltration and storage within the swale drains. Therefore the drainage system appears to cater for 1% AEP rainfall events.

Rainwater Tanks

Modelling of the rainwater tanks was removed from the overall hydraulic analysis. Therefore the provision of tanks for reuse will reduce the volume of water reaching the infiltration ponds which is considered a positive outcome.

Infiltration

The management of stormwater runoff is considered critical to the site. The basin designs have been based on water table observations made during the geotechnical investigations undertaken on site. The Department of Environment, Climate Change and Water (DECCW) advised that the assessment needs to consider the maximum predicted water table level, not just observed water table levels.

DECCW advises that it is Department policy that the 1m separation from the invert of the infiltration basins to underlying groundwater should be to the maximum predicted water table level.

The proposal indicates that basins will be constructed with an invert a minimum 1m above an underlying water table, but sand may have to be replaced between the water table and the invert of the basin. The geotechnical report prepared by Coffey Geotechnics entitled Proposed Industrial Buildings Masonite Road, Heatherbrae, Geotechnical Assessment (dated 1 July 2009), states that "the aquifer on this site is over 30m deep and thus even prolonged wet weather results in only minor variations in groundwater levels." It is noted that subsequent interim advice from the applicant regarding the maximum level of the water table may conflict with the invert level of infiltration for pond 3. However there is sufficient space to enlarge pond 3 to raise the invert to remove the conflict, and the basin invert levels can be conditioned to be above the water table level.

With regards to advice from DECCW, it also advised that the Water Sharing Plan for Tomago-Tomaree Groundwater Sources needs to be considered. The applicant has advised that no approval permit is required for this development due to possible aquifer interference. This should be confirmed by Council prior to issue of the construction certificate.

Supporting documentation submitted by Barker Ryan Stewart indicates that there is sufficient capacity within the drainage system proposed to cater for storm events up to and including the 1% AEP events. The provision of oil separator and catchment devices has been conditioned to reduce the impact on receiving groundwaters.

Noise

A Noise Impact Assessment was submitted to accompany the application.

The assessment results indicate that the predicted $L_{Aeq,15\text{minute}}$ noise levels will be achieved during the day and evening under all operational scenarios.

Operation of mining machinery during the night period is likely to generate an impact exceeding the Project Specific Noise Levels at adjacent residential receivers. Compliance with the Project Specific Noise Level is dependant on ensuring the operation of mining machinery is restricted to the day period.

While the results indicate that typical operations (no machine testing) will comply with the night period Project Specific Noise Level, it is recommended that all workshop doors on the western and northern facades be closed during the night period (10pm to 7am). Closing of all west and north facing workshop doors will also ensure compliance with the Sleep Disturbance criteria at adjacent residential receivers.

Further, assessment of the construction noise impact indicates the proposed development will comply with the Construction Noise Guideline if construction activities are restricted to the standard hours of 7.00am to 6.00pm, Monday to Friday and 8.00am to 1.00pm, Saturday.

In considering the assessment and conclusions drawn, it is considered that the proposed development will not pose a significant noise impact and the recommendations contained in the report, some of which are outlined above will be imposed as consent conditions.

Traffic

A detailed Traffic Impact Assessment (TIA) has been undertaken in support of the development application by Insite Engineering Services Pty Ltd.

Traffic generation

The TIA predicted the traffic generation anticipated from the development proposal. It is expected that the development will generate up to 321 vph in a peak hour of 5-6am and 326 vph in a peak hour of 3-4pm. The majority of these vehicle movements are staff movements with a small number of deliveries and supplies. These vehicle generation rates are broadly consistent with the RTA's Guide to Traffic Generating Developments and Council's DCP. Based on assessment of the TIA submitted, the surrounding road network has sufficient capacity to cater for the increased traffic as a result of the development.

The TIA included analyses of key intersections adjacent to the development site, being:

- ☐ Pacific Highway and Masonite Road / Adelaide Street.
- ☐ Masonite Road and Camfield Drive / Clayton Road.

The analyses were undertaken using the intersection analysis model, SIDRA. The SIDRA model shows that for each peak hour period the level of service that would be experienced (immediately post development and also +10 years) remains satisfactory.

Site access

The development proposes to utilise three access crossings for access to the site. The two northern access crossings are proposed to access the two car parks, with the southernmost access being utilised for heavy vehicle access. It is proposed; as recommended by the Hunter Regional Development Committee (HRDC), to utilise channelised right turn (type CHR) intersections for access to the site. The TIA recommends type CHR intersections with deceleration lanes of a minimum 21m to satisfy year 2019 queuing lengths for at least three vehicles.

For the heavy vehicle access it is assumed that storage of multiple vehicles is unlikely and this is considered a reasonable assumption. As such a storage length of one articulated vehicle is recommended at 19m. This recommendation is supported.

It is also recommended that an acceleration / merge lane be provided at the driveway for the heavy vehicle access to the site. The supplementary plan submitted by Barker Ryan Stewart (09104E11 Rev A) demonstrates the turning circle for an articulated vehicle entering and exiting the site in right turn movements only. The TIA indicates that vehicles would access the site via the Pacific Highway, therefore a right turn exit movement heading south along Masonite Road is unlikely. In accordance with AS2890.2 commercial vehicles can use the full driveway width to enter and exit the site, so it is likely an articulated vehicle may be able to exit the site satisfactorily. This has been conditioned accordingly to occur at CC stage.

The frontage of the site along Masonite Road corresponds with a change in the speed zone of 100 km/h to 70 km/h. As discussed in the TIA, it is recommended that Council and the RTA investigate relocating the interface of this speed limit change further south. This recommendation is supported.

Opposing site access

The supplementary plan submitted by Barker Ryan Stewart (09104E11 Rev A) demonstrates that the opposing property accesses can be satisfactorily accessed. Further details can be provided and assessed at CC stage.

Pedestrian access

Pedestrian access through the car parks is partially provided for by footpaths. It is noted that footpaths are provided along the eastern and southern boundaries of Carpark A and along the western side of Carpark B which may not be fully utilised by all patrons of the car parks. AS2890.1 does not specifically call for pedestrian footpaths in carparking spaces, therefore the provision of footpaths is not considered to be in conflict with the standard.

Pedestrian access from the site to nearby facilities such as businesses to the north is considered to be required. This will also link with the paths at the roundabout at the intersection of Clayton Road and Masonite Road. Therefore it can be conditioned to provide a pedestrian footpath along the western side of Masonite Road to this link.

Masonite Road

It is understood that Masonite Road will be reconstructed by Council as part of the contract sale of land. In any event reconstruction of Masonite Road can be conditioned regardless of the commercial arrangement for the construction of Masonite Road related to sale of the land.

Council's Traffic Engineer has requested that the redevelopment of Masonite Road shall ensure that sufficient pavement width is provided to allow for the

installation of a future bus stop in the vicinity if this becomes warranted. Provision of a condition of consent for this is not supported as there is no direct nexus for this requirement, and is not clear if the bus stop is required.

Council's Traffic Engineer has also called for details on street lighting with an emphasis on the entry and exit points. As discussed below, this is not required for DA assessment but is supported. This can be conditioned as part of an approval.

Street Lighting

The provision of street lighting is recommended for Masonite Road at the intersection points (driveway accesses for the site) and along the pedestrian footpath to Clayton Road.

Lighting within the carparks is shown on the plans as indicative only, however the provision of lighting is considered necessary.

Street lighting and carpark lighting details are not required for DA assessment and can be conditioned as part of a consent.

CONSULTATION

The application was exhibited in accordance with Council policy and no submissions were received as a result of the exhibition period.

OPTIONS

- 1) Adopt the recommendation.
- 2) Reject or amend the Recommendations.

ATTACHMENTS

- 1) Locality Plan
- 2) 79C Assessment
- 3) Recommended Conditions of Consent

COUNCILLORS ROOM

- 1) Development Plans.
- 2) Statement of Environmental Effects
- 3) Noise Impact Assessment
- 4) SEPP 33 Screening Assessment

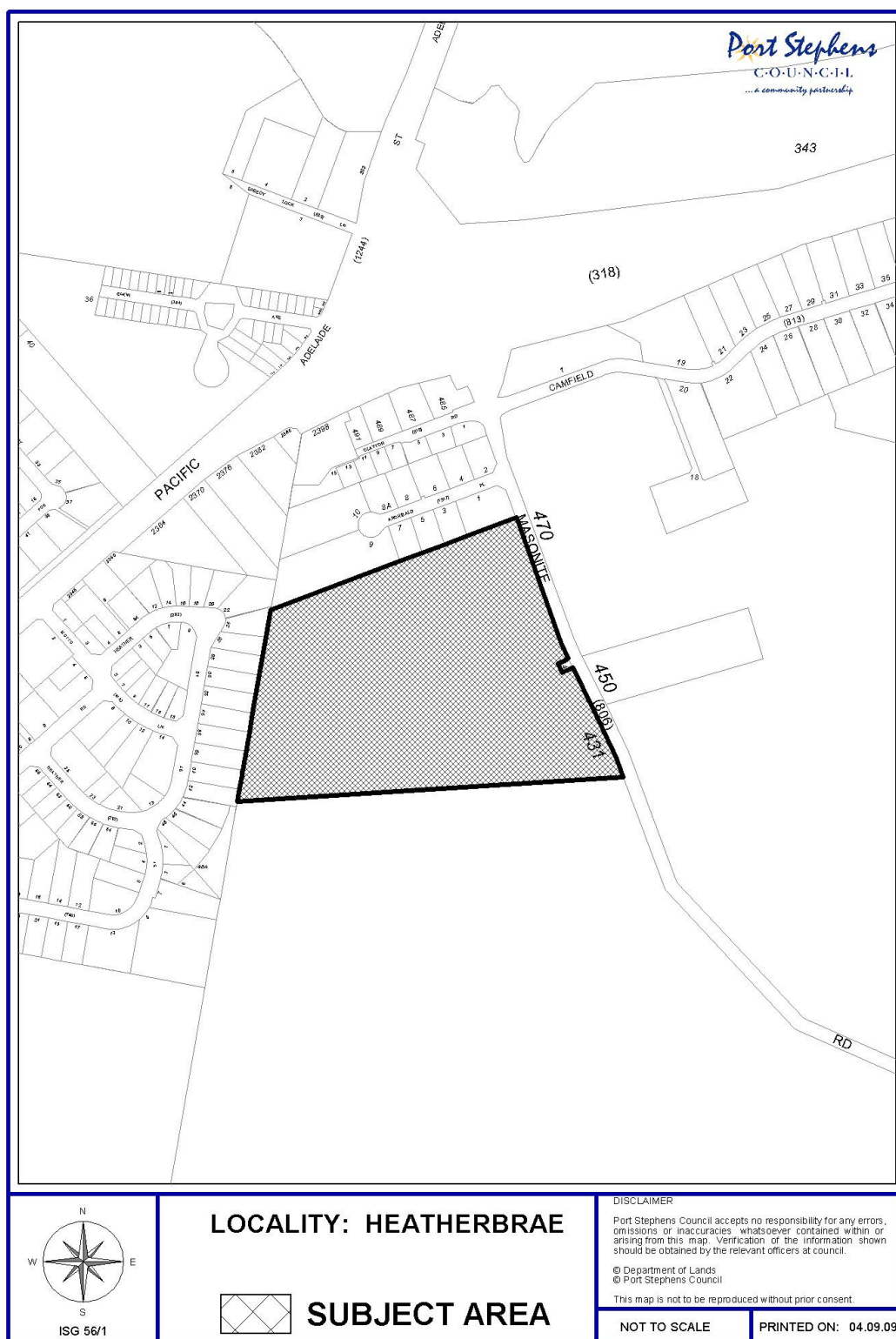
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- 5) Air Quality Impact Assessment
- 6) Geotechnical Assessment
- 7) Ecological Assessment
- 8) Bushfire Threat Assessment
- 9) Traffic Impact Assessment
- 10) Preliminary Archaeological Assessment
- 11) Concept Stormwater Management Plan

TABLED DOCUMENTS

Nil

ATTACHMENT 1 LOCALITY PLAN



ATTACHMENT 2

79C ASSESSMENT OF THE APPLICATION

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

THE PROPOSAL

The development application seeks consent for construction of industrial scale workshop buildings; ancillary office, training and amenities buildings; 586 at grade car parking spaces, concrete hardstand areas and a machinery testing area. The proposal also includes clearing of approximately 13 hectares of vegetation to define the 16 hectare development footprint.

THE APPLICATION

Owner	Port Stephens Council
Applicant	ATB Morton Pty Ltd
Detail Submitted	Development Plans Statement of Environmental Effects Noise Impact Assessment SEPP 33 Screening Assessment Air Quality Impact Assessment Geotechnical Assessment Ecological Assessment Bushfire Threat Assessment Traffic Impact Assessment Preliminary Archaeological Assessment Concept Stormwater Management Plan

THE LAND

Property Description	Lot 32 DP 1014864
Address	431 Masonite Road Heatherbrae
Area	16 hectares
Dimensions	Street Frontage 132m, Approx Depth 350m
Characteristics	Generally level, rectangular block with frontage to Masonite Road. Site is currently largely vegetated.

THE ASSESSMENT

1. Planning Provisions

SEPP	SEPP (Infrastructure) 2007
LEP 2000 – Zoning Relevant Clauses	4(a) – Industrial General 23, 38, 47, 51A.
Development Control Plan Relevant Sections	Development Control Plan 2007 B2 – Environmental and Construction Management B3 – Traffic Parking and Transport B5 – Industrial Development

Environmental Planning and Assessment Act, 1979

The development has been assessed under Section 79C of the Environmental Planning and Assessment Act, 1979.

State Environmental Planning Policy (Infrastructure) 2007

The development involves the construction of industrial scale workshop buildings; ancillary office, training and amenities buildings; 586 at grade car parking spaces, concrete hardstand areas and a machinery testing area. The proposal exceeds 20 000m² and as such the development is considered to be traffic generating. Under the provisions of clause 104, there is a requirement for a development of this size to be referred to the Roads and Traffic Authority (RTA).

This referral was undertaken and the Hunter Regional Development Committee considered the application under the requirements of State Environmental Planning Policy (Infrastructure) 2007, at its meeting on 13 August 2009. The Committee considered the Traffic Impact Assessment submitted and has advised Council that they have no objection to the proposed development provided that a number of matters are addressed. Council's Consultant Development Engineer has advised that these matters can be satisfactorily addressed by way of consent conditions, which are included in attachment 4.

Port Stephens Local Environmental Plan 2000 (LEP)

Clause 23 – Zoning Provisions

The development site is zoned 4(a) Industrial General. Under the provisions of this zone, development for purposes of "Industry" is permissible with development consent. The development is also considered to be consistent with the zone objectives and description.

Clause 38 – Development of Flood Prone Land

The development is sited on land that is slightly flood prone. The portion of the site affected is approximately 0.8% and is located on the south east corner of the site, adjacent to Masonite Road. Other than a small section of the access roadway, there is no development proposed in this flood prone part of the site. The application has been assessed by Council's Flood Engineer who has advised that there are no objections or further requirements from the applicant in this regard.

Clause 47 - Services

Clause 47 states that Council shall not grant its consent to the carrying out of any development on any land unless a water supply and facilities for the removal or disposal of sewage and drainage are available to that land, or arrangements satisfactory to it have been made for the provision of that supply and those facilities.

Hunter Water Corporation has advised that subject to requirements, water and sewerage facilities can be provided to the development. The applicant will be required to obtain a Compliance Certificate under Section 50 of the Hunter Water Corporation Act 1991, prior to the issue of any Construction Certificate, as a condition of consent.

Clause 51A – Acid Sulphate Soils

The subject site is identified as being Class 4 Acid Sulphate Soils.

Clause 51A(2) states that a person must not , without development consent, carry out works more than 2 metres below the natural ground surface, or works likely to lower the watertable to a depth of more than 2 metres below the natural ground surface on class 4 land.

Clause 51A(3) states that Council must not grant consent unless it has considered the adequacy of an Acid Sulphate Soils Management Plan prepared for the proposed development in accordance with the Acid Sulphate Soils Manual, and the likelihood of the proposed development resulting in the discharge of acid water.

The application included an Acid Sulphate Soils Assessment, which states that the results of Acid Sulphate Soils screening tests indicate all of the samples tested were not actual or potential Acid Sulphate Soils. In addition, sandy soils above the water table would be considered oxidised and therefore not potentially Acid Sulphate Soils. Therefore an Acid Sulphate Soils Management Plan is not considered to be necessary and the assessment concludes that Clause 51A of LEP 2000 has been adequately addressed.

Port Stephens Development Control Plan 2007

The development is subject to the controls of Port Stephens Development Control Plan 2007, specifically the controls of Section B2 – Environmental and Construction

Management, B3 – Traffic, Parking and Transport, B5 – Industrial Development, B12 – Advertising Signs.

The development is considered to be generally compliant with the provisions of the Development Control Plan. The issues requiring further attention are discussed below.

Section B2 – Environmental and Construction Management

B2.6 – Contaminated Land

The site has been investigated with respect to the historical land uses to determine whether there is the need for preliminary contamination investigation. The site has not had any approved uses that would give rise to contamination of the site, and therefore the preliminary investigation of the site is not required.

B2.14 - Erosion and Sediment Control

Erosion and sediment control measures for development works must be prepared in accordance with the Erosion and Sediment Control Regional Policy and Code of Practice Managing Urban Stormwater – Soils and Construction (Landcom 2004), and be maintained at all times during the construction period. The development will be required to comply with these requirements, imposed as a consent condition.

B2.15 - Construction Waste

A Waste Management Plan must be provided for all development requiring construction works on site, including details of:

- The volume and type of waste to be generated;
- How waste is to be stored and treated on site; and
- How residual material is to be disposed.

The plan must be accompanied by drawings with specific details showing:

- On site sorting and storage areas,;
- Access for collection vehicles;
- Vegetation to be removed or retained.

The plan must maximise recycling and minimise waste to landfill. The applicant must provide relevant evidence to Council or the accredited certifier of compliance with the specified arrangements.

The applicant did not supply this detail, however these requirements can be adequately addressed by imposing consent conditions.

Section B3 – Traffic, Parking and Transport

B3.8 - Schedule of Car Parking Requirements

Section B3.8 requires a total of 365 car parking spaces for the proposal based on the gross floor area. However 586 car parking spaces are to be provided to accommodate for change of shift. In this regard, the proposal complies.

The car parks are split in to two parking areas. The northern area (Carpark A) will have 382 spaces and provision for motorcycle parking. Carpark B, located along the frontage with Masonite Road will have 198 spaces.

The development requires 12 disabled car parking spaces, and the applicant has stated in the Statement of Environmental Effects that there have been 17 provided. However, the car parking plan identifies only four designated disabled car parking spaces. Due to the oversupply of car parking spaces, the provision of the required disabled car parking spaces will be achievable and imposed as a consent condition.

The car parking layout appears to comply with AS2890.1

Section B5 – Industrial Development

B5.2 – Site Analysis

As required by Section B5.2, a Site Analysis Plan was submitted with the development application. Development in the vicinity of the site includes a range of warehousing, light industrial manufacturing/engineering businesses, and fast food retail outlets. The landscape is dominated by the Weathertex manufacturing facility, in particular the stacks can be seen a substantial distance from the site. The allotment is relatively level with the north eastern corner clear of remnant vegetation, and the balance of the site being heavily vegetated. The site is located on the fringe of a tract of native vegetation which extends across the Tomago Sandbeds to Medowie in the north, Salt Ash to the east and Tomago to the south.

A montage of the proposed development and key perspective views were submitted. Section B5.C4 requires this document to demonstrate that the design has been based on analysis of the site conditions and the relationship of the site to the street and to surrounding development. It is considered that this section of the DCP has been adequately addressed by submission of this montage.

B5.3 – Street Character

The development is consistent with street character principles of Council's DCP, in that it faces the street with clearly recognisable entries and the buildings and carparking areas have a minimal visual impact.

B5.4 – Bulk and Scale

The DCP includes controls for height, setbacks and maximum permissible floor space ratio, which determine the building envelope and hence the building bulk and scale.

	DCP Control	Proposed	Complies
Height	15 metres	14.75 metres	Yes
Building Line	6 metres	18.7 metres	Yes
Floor Space Ratio	1:1	0.18:1	Yes

B5.7 - Side and Rear Setbacks

Buildings are considered to have adequate side and rear setbacks, as required by the DCP.

B5.8 – Building Design Elements

As required by the DCP, the building design is considered sympathetic with the general profile and roofline of surrounding buildings. The DCP also requires colours and materials be sympathetic to the natural environment and existing street context. Reflective surfaces and fluorescent colours are not acceptable. The detail submitted indicates that the proposal complies with this requirement; however it will be reinforced by way of a consent condition.

B5.9 – Vehicle Parking and Access

The DCP discourages large paved areas for parking without adequate landscape screen and shade planting, exposed parking under buildings, parking within the building line setback or immediately behind the front boundary. The proposal includes parking within the building line setback, however adequate landscaping and shade planting has been provided to this area to assist in minimising the visual impact of this hardstand area within the building line setback. Therefore the variation is considered acceptable.

B5.10 – Landscape

A comprehensive Landscape Plan was submitted with the development application, as required by the DCP. As the car park is large, shading from the trees is important, and will also improve visual amenity of the site.

Council's Environmental Projects Officer has advised that in order for the trees specified by the applicant to grow in the carpark, 30m³ of soil per tree is required, as per Street Tree Guidelines produced by Landcom. The plans provided appear to have approx 3-4 m³ per tree (presuming road base is to be used beneath the car park asphalt). If this occurs, the trees will damage the car-park and most likely result in cutting down of the trees for this reason.

Therefore, to obtain 30m³ of soil per tree, structural soil will be required rather than road base underneath the asphalt car park area as per Street Tree Design Guidelines.

Furthermore, the species palette provided is limited. Council's Environmental Projects Officer has suggested the landscape plan be modified to also include:

- *Acacia binervia*
- *Copaniopsis anarcardinoides*
- *Syzigium paniculatum*

The species "*Eucalyptus haemastoma*" should also be substituted for the endemic species to Port Stephens "*Eucalyptus racemosa*"

Subject to the abovementioned minor amendments that will be addressed by way of consent conditions the Landscape Plan is considered acceptable.

Section B12 – Advertising Signage

The site plan identifies a corporate signage structure within the Building Line fronting Masonite Road which states "refer to scope of works for details". However no further detail has been proposed to assess compliance with the Development Control Plan. In this regard, the applicant has been advised that separate development consent will be required for signage, and this will be imposed as a consent condition.

2. Likely Impact of the Development

The proposed development is consistent with the requirements of the Port Stephens Local Environmental Plan 2000 and generally consistent with the requirements of Development Control Plan 2007.

Flora and Fauna

- Assessment Under Section 5A of the EP & A Act

In accordance with the NSW Environmental Planning and Assessment Act 1979 (EP & A Act) an Assessment of Significance (7 part test) was undertaken to assess if the Proposal is likely to have a significant impact on threatened species, populations and ecological communities, and/or their habitats, listed under the Threatened Species Conservation Act.

Details of the Assessment of Significance for these species that were recorded, or for which potential habitat is present in the study area, have been addressed in the application and are summarised below.

- Woodland and Coastal Forest Birds

Glossy-black Cockatoo (one male, one female and one fledgling group) were recorded foraging adjacent to the study area in similar habitat as that within the study area. Based on DECC (2007a) records, species profiles, and the vegetation mapping and fauna habitat assessment undertaken during the field survey, it is considered that potential foraging habitat is present in the study area for the following species:

- Gang-gang Cockatoo (*Callocephalon fimbriatum*);
- Glossy-black Cocatoo (*Calyptorhynchus lathami*);
- Swift Parrot (*Lathamus discolor*); and
- Turquoise Parrot (*Neophema pulchella*).

The Proposal would clear native vegetation that includes potential foraging habitat for threatened woodland and coastal forest birds. However, it is considered unlikely that the area of vegetation to be removed for the Proposal would result in impacts which would adversely affect a local population of Gang-gang Cockatoo, Glossy Black-cockatoo, Swift Parrot or Turquoise Parrot, based on the small size of area to be cleared, no isolation of currently interconnecting or proximate areas of habitat occurring, all the species listed above are highly mobile and large areas of potential habitat would be retained adjacent to the study area and in the local area including Tomaree National Park, which includes similar vegetation associations to that which would be cleared.

Importantly, it is anticipated that a habitat buffer of native vegetation would be retained adjacent to Masonite Road that includes an intact native shrub layer and groundcover, assisting in minimising the impact of the Proposal and retain foraging habitat for Glossy-black Cockatoo.

- Grey-headed Flying Fox

Grey-headed Flying-fox (numerous individuals on each night) were recorded in the study area during the field survey undertaken for this assessment. Native vegetation, including potential foraging habitat for Grey-headed Flying-fox, would be removed by the proposal.

No Grey-headed Flying-fox campsites were recorded within the study area.

A habitat buffer of native vegetation would be retained adjacent to Masonite Road that includes an intact native shrub layer and flowering eucalypts (including known food trees for Grey-headed Flying-fox such as Old Man Banksia, Red Bloodwood and Pink Bloodwood), which would assist in minimising the impact of the Proposal.

It is considered unlikely that the area of vegetation to be removed for the proposal would adversely affect a local population of the Grey-headed Flying-fox, due to:

- the small size of the area to be cleared;

- the availability of other areas of potential foraging habitat on and adjacent to the study area and within the local area;
 - the highly mobile and far-ranging nature of the species; and
 - the low likelihood that isolation of currently interconnecting or proximate areas of habitat would occur for this species.
- Squirrel Glider

The Proposal would clear native vegetation, including potential foraging habitat for Squirrel Glider. However, it is considered unlikely that the area of vegetation to be removed for the Proposal would result in impacts which would adversely affect a local population of Squirrel Glider based on:

- The small size of area to be cleared;
 - No isolation of currently interconnecting or proximate areas of habitat occurring as a result of the Proposal;
 - Large areas of potential habitat adjacent to the study area and in the local area including Tomaree National Park, which includes vegetation associations similar to that within the study area;
 - Retention of the Squirrel Glider den tree within the habitat buffer adjacent to Masonite Road; and
 - Retention of an intact native shrub layer and groundcover within the habitat buffer, which will minimise the impact of the Proposal by retaining foraging habitat for Squirrel Glider.
- Birds of Prey (Owls and Raptors)

Powerful Owl was recorded adjacent to the study area during the field survey, in habitat similar to that present within the study area. Based on DECC (2007a) records and species profiles, and the vegetation mapping and fauna habitat assessment undertaken in this Ecological Assessment, it is considered that potential foraging habitat is present in the study area for the following:

- Square-tailed Kite (*Lophoictinia isura*);
- Barking Owl (*Ninox connivens*);
- Powerful Owl (*N. strenua*); and
- Masked Owl (*Tyto novaehollandiae*).

The proposal would clear native vegetation, including potential foraging habitat for Square-tailed Kite, Barking Owl, Powerful Owl and Masked Owl. However, it is considered unlikely that the area of vegetation to be removed for the Proposal would result in impacts which would adversely affect the Square-tailed Kite, Barking Owl, Powerful Owl or Masked Owl based on:

The small size of area to be cleared;

The highly mobile and ranging nature of the species;

No isolation of currently interconnecting or proximate areas of habitat occurring as a result of the Proposal;

Large areas of potential habitat would be retained adjacent to the study area and in the local area including Tomaree National Park, which includes vegetation associations similar to that within the study area;

Retention of a habitat buffer of native vegetation adjacent to Masonite Road that would provide habitat for arboreal species predated by owls.

- Microchiropteran Bats

Eastern Bent-wing Bat (*Miniopterus schreibersii oceanensis*) was recorded in the study area during the field survey.

Based on DECC (2007a) records and species profiles, and the vegetation mapping and fauna habitat assessment undertaken in this Ecological Assessment, it is considered that potential foraging habitat is present in the study area for the following additional species:

- Little Bent-wing Bat (*Miniopterus australis*);
- Eastern Freetail-bat (*Mormopterus norfolkenis*);
- Yellow-bellied Sheathtail-bat (*Saccolaimys flaviventris*); and
- Greater Broad-nosed Bat (*Scoteanax rueppellii*).

The Proposal would clear native vegetation, including potential foraging habitat for threatened microchiropteran bats. However, it is considered unlikely that the area of vegetation to be removed for the Proposal would result in impacts which would adversely affect Little Bent-wing Bat, Eastern Bent-wing Bat, Eastern Freetail-bat, Yellow-bellied Sheathtail-bat or Greater Broad-nosed Bat based on:

- The small size of area to be cleared;
- No isolation of currently interconnecting or proximate areas of habitat occurring as result of the Proposal;
- All species concerned are highly mobile and wide-ranging;
- Large areas of potential habitat would be retained in adjacent to the study area and in the local area including Tomaree National Park, which includes vegetation associations similar to that within the study area; and
- Retention of a habitat buffer of native vegetation (including an intact native shrub layer and groundcover) adjacent to Masonite Road, assisting in minimising the impact of the Proposal by retaining foraging habitat for these species.

- Conclusion

The impacts to the environment resulting from the proposal are considered acceptable. The development will be situated adjacent to existing industrial land uses and vacant land, and its visual impact will be minimised with substantial landscaping. Furthermore the Building Line required for development in the industrial zone is 6.0 metres. However the Building Line proposed for this development is 18 metres, which will also reduce visual impact.

3. Suitability of the Site

The vacant development site can be serviced to accommodate the needs of the development, and is adjoining existing industrial land uses. It is considered that the proposed development is consistent with the relevant environmental planning instruments and development control plan for development of the site while being compatible with the existing and envisaged industrial streetscape.

4. Submissions

The development was advertised and notified until 29 July 2009. In response to this process there were no submissions received.

5. Public Interest

It is considered to be in the public interest to approve the proposal as it has been demonstrated that the proposal satisfies relevant planning considerations.

ATTACHMENT 3 CONDITIONS

General Conditions

- 1) A Construction Certificate is required prior to commencement of works approved by this application. The person having the benefit of this consent must appoint a principal certifying authority. If Council is not appointed as the Principal Certifying Authority then Council must be notified of who has been appointed. Note: at least two (2) days' notice must be given to Council of intentions to start works approved by this application.
- 2) The development is to be carried out in accordance with the approved plans and documentation submitted with the application set out in Schedule 3, except as modified by the conditions of this development consent or as noted in red by Council on the approved plans.
- 3) Failure to comply with the conditions of consent constitutes a breach and on the spot fines may be issued under the Environmental Planning & Assessment Act 1979 and or the Protection of the Environment Operations Act 1997.
- 4) The development application has not been assessed against the provisions of the Building Code of Australia. A Section 96 application under the Environmental Planning & Assessment Act 1979 will be required if design amendments are necessary to comply with the provisions of the Building Code of Australia.
- 5) A Compliance Certificate under Section 50 of the Hunter Water Corporation Act, 1991 shall be submitted to Council prior to issue of any Construction Certificate. Applications for Section 50 Certificates are to be made direct to the Hunter Water Corporation.
- 6) Pursuant to section 80A(1) of the Environmental Planning and Assessment Act 1979, and the Port Stephens Section 94A Development Contributions Plan, a contribution of 1% of the cost of the development, as determined in accordance with clause 25J of the Environmental Planning and Assessment Regulation 2000, shall be paid to Council

The amount to be paid is to be determined in accordance with the provisions of the Port Stephens Section 94A Development Contributions Plan. The contribution is to be paid **prior to issue of the Construction Certificate.**

A Quantity Surveyor's Detailed Cost Report **(form attached)** setting out an estimate of the proposed cost of carrying out development in accordance with Schedule 2 of the Port Stephens Section 94A Development Contributions Plan must be approved by Council prior to issue of a Construction Certificate.

- 7) The following fees and/or bonds are to be paid as part of this consent:
- a) Subdivision construction certificate/plan approval fee, prior to approval of construction certificate or plans.
 - b) PCA/inspection fee, prior to approval of construction certificate or plans.
 - c) Long Service Levy, prior to issue of construction certificate (verification of payment is required if paid directly to Long Service Board)
 - d) Maintenance Bond, prior to release of subdivision certificate.
 - e) Street Tree Bond/Contribution, prior to release of subdivision.

The rates are as listed in Council's fees and charges. Contact Council's Subdivision Engineer prior to payment.

- 8) Engineering details in accordance with Council's Subdivision & Development Code of proposed road and drainage works shall be submitted to Council for approval prior to issue of the Construction Certificate.

Building Conditions

- 9) The excavated and/or filled areas of the site are to be stabilised and drained to prevent scouring and the finished ground around the perimeter of the building is to be graded to prevent ponding of water and ensure the free flow of water away from the building.
- 10) All building work must be carried out in accordance with the provisions of the Building Code of Australia.
- 11) Where no sanitary facilities currently exist onsite for construction workers toilet accommodation for all tradespersons shall be provided from the time of commencement until the building is complete. The toilet facilities shall be located so as to have minimal impact of adjoining properties and shall not be placed on the road reserve, without separate approval from Council.
- 12) Construction work that is likely to cause annoyance due to noise is to be restricted to the following times:-
- * Monday to Friday, 7am to 6pm;
 - * Saturday, 8am to 1pm;
 - * No construction work to take place on Sunday or Public Holidays.

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

- 13) It is the responsibility of the applicant to erect a PCA sign (where Council is the PCA, the sign is available from Council's Administration Building at Raymond Terrace or the Tomaree Library at Salamander Bay free of charge). The applicant is to ensure the PCA sign remains in position for the duration of works.
- 14) Separate approval is required to occupy, close or partially close the road reserve adjacent to the property under the Roads Act. The storage of materials, placement of toilets and rubbish skips within the road reserve is not permitted.
- 15) A waste containment facility shall be provided on the construction site immediately after the first concrete pour for the building and is to be regularly serviced. Council may issue 'on the spot' fines for pollution/littering offences under the Protection of the Environment Operations Act 1997.
- 16) The construction site is to be adequately protected and drainage controlled to ensure that erosion and sediment movement is kept on your site. Construction sites without appropriate erosion and sediment control measures have the potential to pollute the waterways and degrade aquatic habitats. Offenders will be issued with an 'on the spot' fine under the Protection of the Environment Operations Act 1997.

Note: Erosion and sediment control measures prepared in accordance with the Erosion and Sediment Control Regional Policy and Code of Practice or Managing Urban Stormwater – Soils and Construction produced by Landcom 2004, need to be maintained at all times. A copy of Landcom 2004 bluebook may be purchased by calling (02) 98418600.
- 17) A "KEEP PORT STEPHENS WATERWAYS POLLUTION FREE" sign shall be displayed and be clearly visible from the road frontage for public viewing on the site at the commencement of works and remain in place until completion of the development. Signs are available from Port Stephens Council.
- 18) The Principal Certifying Authority shall only issue an occupation certificate when the building has been constructed in accordance with the approved plans, specifications and conditions of consent. No occupational use is permitted until the Principal Certifying Authority issues an occupation certificate. NOTE: If an accredited certifier approves occupation of a dwelling the accredited certifier is to immediately notify Council in writing.

Disability Access Conditions

- 19) Designated accessible car parking is to be identified using the International Symbol for Access (ISA) – complying vertical and ground signage is required.

Signage is to comply with AS1428.1. Details are to be provided by the Principle Certifying Authority or Council prior to issue of the relevant Construction Certificate.

- 20) Access requirements for the accessible path of travel shall comply with AS1428.1. Details are to be approved by the Principle Certifying Authority or Council prior to issue of the relevant Construction Certificate.
- 21) Signage for accessible parking and facilities should comply with the requirements of AS1428.0. Details are to be approved by the Principle Certifying Authority or Council prior to issue of the relevant Construction Certificate.
- 22) Ramps to comply with AS1428.1. Details are to be approved by the Principle Certifying Authority or Council prior to the issue of the relevant Construction Certificate.
- 23) Access requirements for each of the entrance doors should be implemented in accordance with AS1428.1. Details are to be approved by the Principle Certifying Authority or Council prior to the issue of the relevant Construction Certificate.
- 24) Access requirements for the accessible toilets shall be in accordance with AS1428.1. The Manufacturing Office, the Aftermarket Office and the ground floor of the Training Facility all require a minimum one disabled/unisex toilet. Details are to be approved by the Principle Certifying Authority or Council prior to issue of the relevant Construction Certificate.
- 25) Stairs to comply with AS1428.1. Details are to be approved by the Principle Certifying Authority or Council prior to the issue of the relevant Construction Certificate.
- 26) Controls within the development such as light switches, alarm keypads, intercoms, etc are to be located within the accessible height range of 900-1100mm above the floor level to comply with AS51428.1. Details are to be approved by the Principle Certifying Authority or Council prior to issue of the relevant construction Certificate.
- 27) Access requirements for reception counters shall be in accordance with AS1428.2. Details are to be approved by the Principle Certifying Authority or Council prior to the issue of the relevant Construction Certificate.
- 28) Access requirements for change rooms/shower facilities shall be in accordance with AS1428.1 (2001) and AS1428.2 (1992). Western and Eastern Amenities Buildings both require at least one disabled shower. Details are to be approved by the Principle Certifying Authority or Council prior to the issue of the relevant Construction Certificate.

- 29) Access requirements for lifts shall be in accordance with AS1735.7 (1998). Details are to be approved by the Principle Certifying Authority or Council prior to the issue of the relevant Construction Certificate.
- 30) Access requirements for kitchen/dining/canteen shall be in accordance with AS1428.1 (2001) and AS1428.2 (1992). Details are to be approved by the Principle Certifying Authority or Council prior to the issue of the relevant Construction Certificate.

Landscape Conditions

- 31) Landscaping shall be carried out in accordance with the approved Landscape Plan prepared by Site Image and dated 08.07.2009, except as modified by the conditions of this development consent. The landscape designer must provide a compliance certificate to the Principal Certifying Authority certifying that the landscaping has been carried out in accordance with the approved plan, prior to the issue of the Occupation Certificate. Where Council is not the Principal Certifying Authority, a copy of the certificate must be provided for Council's records.
- 32) Shrubs planted around the main office are not to grow higher than the base of windows.
- 33) Trees located near pathways, car parks, driveways and at building entrances shall be maintained (under –pruned) with a clear trunk to a height of one metre. This also applies to existing vegetation.
- 34) Planting along pedestrian paths must be restricted to groundcovers and shrubs at a maximum height of 500mm and within two metres on either side of the path.
- 35) Landscaping to the site is to comply with the principles of Appendix 5 of 'Planning for Bush Fire Protection 2006'. In this regard the following landscaping principles are to be incorporated into the development:
- Suitable impervious areas being provided immediately surrounding the building such as courtyards, paths and driveways;
 - Grassed areas/mowed lawns/ or ground cover plantings being provided in close proximity to the building;
 - Restrict planting in the immediate vicinity of the building which may over time and if not properly maintained come in contact with the building;
 - Maximum tree cover should be less than 30%, and the maximum shrub cover less than 20%;
 - Planting should not provide a continuous canopy to the building (i.e. trees or shrubs should be isolated or located in small clusters);

- When considering landscape species consideration needs to be given to estimated size of the plant at maturity;
- Avoid species with rough fibrous bark, or which retain/shed bark in long strips or retaining dead material in their canopies;
- Use smooth bark species of trees species which generally do not carry a fire up the bark into the crown;
- Avoid planting of deciduous species that may increase fuel at surface/ground level (i.e. leaf litter);
- Avoid climbing species to walls and pergolas;
- Locate combustible materials such as woodchips/mulch, flammable fuel stores away from the building;
- Locate combustible structures such as garden sheds, pergolas and materials such as timber garden furniture away from the building; and
- Use of low flammability vegetation species.

36) The area contained in the setback to the front boundary is to be landscaped and kept clear of vehicles and materials at all times, with the exception of display vehicles.

37) Landscape Plan to be modified to substitute the species "*Eucalyptus haemastoma*" should be substituted for the endemic species "*Eucalyptus racemosa*".

38) Landscape Plan to be modified to include the following species:

- *Acacia binervia*
- *Copaniopsis anarcardinoides*
- *Syzigium paniculatum*

Details to be approved prior to issue of a Construction Certificate.

Visual Amenity Conditions

39) All work or the storage of goods and materials shall be confined within the buildings. Separate development approval is required for external storage, with the exception of display goods and materials.

40) All vehicle repairs are to be undertaken within the approved buildings. No repairs of any sort shall be carried out in the car parking or common areas.

41) The construction of the building, including the roof, shall be in materials of a low reflective quality. The visible light reflectivity from building material used on the facades shall not exceed 20% and shall be designed so as not to result in glare that causes any nuisance or interference to any person or place.

42) Any lighting on the site is to be directed in such a manner so that no nuisance is caused to adjoining properties or to drivers on surrounding streets.

43) The advertising structures shall comply with Council's signage requirements under Port Stephens Development Control Plan 2007 (DCP).

No advertisement shall be displayed without the consent of Council, unless the advertisement does not require approval under the DCP.

44) A colour scheme providing full details of colours and characters of all external building materials and finishes to be used shall be approved by Council prior to the issue of the Construction Certificate.

Environmental Health Conditions

45) All service entries to workshop areas must be provided with a trafficable bund at least 100mm high, to prevent any spillages from leaving the workshop area and entering the drainage system. The workshop area shall be graded into a pollution control device and or grated drains in accordance with the trade waste agreement issued by the Hunter Water Corporation or collected for refuse/disposal by an EPA licensed waste contractor.

46) Any oils, lubricants, paints, thinners and associated chemicals shall be stored in sealed containers under cover, in a designated bunded area equal to 110% capacity of the largest container, in accordance with AS1940-1993 and AS/NZS 4452:1997, to ensure that accidental spillages are contained therein.

47) All stormwater runoff from the site must pass through a pollution control device capable of removing litter, sediment and oil/grease prior to entering Council's stormwater system. Details of the pollution control device shall be submitted to and approved by Council prior to issue of the relevant Construction Certificate. A report prepared by a hydraulic engineer shall be submitted to Council confirming that the pollution control device has been installed in accordance with the approved specification prior to the issue of an occupation certificate.

48) A Waste Management Plan must be provided for all development requiring construction works on site, including details of:

- The volume and type of waste to be generated;
- How waste is to be stored and treated on site; and
- How residual material is to be disposed.

The plan must be accompanied by drawings with specific details showing:

- On site sorting and storage areas,;
- Access for collection vehicles;
- Vegetation to be removed or retained.

The plan must maximise recycling and minimise waste to landfill. The applicant must provide relevant evidence to Council or the accredited certifier of compliance with the specified arrangements.

Archaeology Conditions

- 49) Worimi Local Aboriginal Land Council are to be granted with the ability to inspect the site following the clearance of surface vegetation and initial earth moving activities, providing for ease of access to determine the true nature of the land and identify Aboriginal culturally significant materials (likely to be) present.
- 50) Throughout the duration of initial earth moving activities, the approved "Aboriginal Site Participation & Monitoring" of works are to be granted to Worimi Local Aboriginal Land Council to allow for a continued and accurate assessment of the site, thus ensuring the integrity of the Aboriginal cultural heritage values remain intact.

Fire Safety Conditions

- 51) A fire safety certificate as prescribed by Section 174 Environmental Planning & Assessment Regulations 2000 which certifies the performance of the implemented fire safety measures in accordance with Section 170 of the Regulation must be submitted to the Principal Certifying Authority and the Commissioner of New South Wales Fire Brigades. A copy of fire safety certificate needs to be forwarded to Council, If Council is not nominated as the Principal Certifying Authority. A further copy of the certificate must also be prominently displayed in the building.
- 52) At least once in each twelve (12) month period, fire safety statements as prescribed by Section 175 Environmental Planning & Assessment Regulations 2000 in respect of each required essential fire safety measure installed within the building are to be submitted to Council. Such certificates are to state that:
- The service has been inspected and tested by a person (chosen by the owner of the building) who is competent to carry out such inspection and test; and
 - That the service was or was not (as at the date on which it was inspected and tested) found to be capable of operating to a standard not less than that specified in the fire safety schedule for the building.

Bushfire Conditions

- 53) At the commencement of building works and in perpetuity the property around the building to a distance of 10 metres, shall be maintained as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones'.
- 54) Water, electricity and gas are to comply with section 4.1.3 of 'Planning for Bush Fire Protection 2006'.
- 55) Fire hydrant spacing, sizing and pressures shall comply with Australian Standard AS 2419.1 – 2005 'Fire Hydrant Installations'.
- 56) Public road access shall comply with the following requirements of section 4.1.3 (1) of 'Planning for Bush Fire Protection 2006'.
- 57) An Emergency/Evacuation Plan is to be prepared detailing the following:
- under what circumstances will the complex be evacuated;
 - where will occupants be evacuated to;
 - roles and responsibilities of persons co-ordinating the evacuation;
 - evacuation; and
 - a procedure to contact the NSW Rural Fire Service District Office / NSW Fire Brigade and inform them of the evacuation and where they will be evacuated to.

Ecology Conditions

- 58) A minimum 701 credits contained at Lot 51 DP 774454 Markwell site be dedicated to NSW Department of Environment Climate Change and Water as an offset for the subject development.
- 59) Any clearing of vegetation on site shall not occur during key breeding periods for identified fauna species on site.
- 60) The approved area for tree clearance must be clearly identified on the site prior to the commencement of works. Tree protection measures (eg protective fencing) shall be implemented around the area to be cleared before the commencement of site works. Stockpiling or storage or mixing of materials, vehicle parking, and disposal of liquids/materials shall not occur within the drip line of trees identified to remain on the site.
- 61) Mitigation measures proposed in the Addendum Ecological Assessment, prepared by Orogen, dated 22 June 2009, are to be met as follows (Section 4.3 of the report):

- Staged clearing
- Pre-clearing surveys for orchid species
- Checking trees during clearing activities
- Felling trees away from retained habitats
- Inspection of hollow bearing trees prior to removal by qualified personnel.
- Relocation of hollow bearing trees to retained habitat
- Erection of nest boxes (3) within retained habitat
- Revegetation and landscaping with endemic species.
- Weed management must be regularly undertaken within the retained habitats.
- Fences along the southern boundary must allow for faunal movement.
- Resource recovery
- Site induction for contractors regarding clearing protocol.

62) 30m³ structural soil will be required for each tree, rather than road base underneath the asphalt car park area as per Street Tree Design Guidelines, produced by Landcom.

63) Submission of background reporting required for preparation of the Biobank Summary Report be provided for assessment by Council, prior to the issue of a Construction Certificate.

CPTED Conditions

64) Cut out to be provided in left hand side of entry (blue wall) for Main Office as for right hand side.

65) Window reflectivity of Main Office (if solar film to be used) must not prevent visibility from building to outside, but must not allow visibility into the building after dark.

Noise Conditions

- 66) All workshop doors on the western and northern facades be closed during the night period (10pm to 7am). Closing of all west and north facing workshop doors will also ensure compliance with the Sleep Disturbance criteria at adjacent residential receivers.

Traffic Conditions

- 67) Driveways, parking and turning areas shall be paved or sealed with either reinforced concrete, pavers or asphalt over a suitably prepared, compacted sub-base. These areas shall be maintained in perpetuity by the existing or future owners and occupiers of the property.
- 68) Driveway access shall be a minimum of 7 metres wide consisting of a concrete pavement from the property boundary to the proposed kerb for the two car accesses. The articulated vehicle driveway access shall be a minimum of 10 metres wide with a concrete pavement. All driveway accesses shall include splays at the junction with the road. Driveway accesses shall be designed in accordance with Council standards and AS 2890.1 and AS2890.2. Details shall be approved by the certifying authority prior to issue of the construction certificate.
- 69) Masonite Road is to be reconstructed generally in accordance with the concept design plan prepared by Barker Ryan Stewart, numbered 09104E11 Rev A dated 25/8/09. Masonite Road is to be reconstructed from the intersection with Archibald Place in accordance with the following:
- The road is to have an asphaltic concrete surface with kerb and gutter on the western side extending to the southern property boundary of the development site.
 - Lane widths shall be a minimum 3.5m plus 2m sealed shoulders on the western side and 1m sealed shoulders on the eastern side.
 - Three (3) type CHR right turn lanes are to be constructed for the subject development.
 - Property accesses on the eastern side of Masonite Road shall be formalised in accordance with Council's standards.
 - An acceleration / merge lane is to be constructed from the southern property access (articulated vehicle access) on the western side of Masonite Road.

An application is to be made to the RTA to extend the 70km/h zone further south along Masonite Road. The location of the commencement of the 70km/h zone is to be identified in consultation with Council.

Engineering details in accordance with Council's Subdivision and Development Code, AS2890.1, AS2890.2 and the RTA's Road Design Guide shall be submitted with a Roads Act application form for approval by Council prior to commencement of works and prior to issue of any Construction Certificate.

- 70) Submission of Works-As-Executed plans and report prepared and certified by a suitably qualified engineer confirming all driveway and manoeuvring areas (levels, grades, location) are built in accordance with conditions of consent and the approved plan.

Minor variations in height can be certified providing they are clearly identified in the report and the engineer certifies that drainage flow paths are not compromised and vehicles will not bottom out.

The documents shall be submitted to, and accepted by the Certifying Authority, prior to issue of the occupation certificate.

- 71) The development shall provide a minimum of 580 onsite car parking spaces, including 12 disabled parking spaces. Parking spaces shall be in accordance with AS2890, clearly line marked with the provision of lighting. Disabled parking spaces shall be separately accessible, clearly line marked and adequately paved and drained in accordance with the Port Stephens Development Control Plan 2007. Car parking must be provided onsite prior to issue of the occupation certificate or use of the development.
- 72) A concrete footpath 1.2m wide and 100mm thick shall be provided to Council's standards from the pedestrian entry of the site to the roundabout at Clayton Road, including perambulator ramps at Clayton Road and Archibald Place prior to Occupation. Details shall be submitted to and approved by Council prior to issue of a Construction Certificate.
- 73) Where Council is nominated as the Principal Certifying Authority, a separate approval under the Roads Act will not be required from Council for all works within Council land and Road Reserves.
- 74) All works as listed as conditions of development consent, which are located in public roads are subject to approval under section 138 of the Roads Act 1993. Engineering details in accordance with Council's Subdivision and Development Code, of such works shall be submitted with a Roads Act application form and then approved by Council prior to approval to commence these works and prior to issue of the Construction Certificates.

The following items are also required to be approved by Council prior to approval being granted to commence works:

- a) Traffic control plans in accordance with the Roads and Traffic Authority – Traffic Control at Worksites Manual;

- b) Payment of fees and bonds (same Principle Certifying Authority fees, inspection fees and maintenance bonds as relevant to subdivisions);
- c) Contractors public liability insurances to a minimum value of \$10 million dollars.

Drainage Conditions

- 75) The development shall provide a drainage system on site to collect pavement runoff from vehicle parking and manoeuvring areas into proprietary oil arrestors before discharge from the site (or to any stormwater detention or infiltration systems on-site). Pollutants shall be disposed of in an approved manner. Roof stormwater must be discharged separately. Full details, shall be approved by the certifying authority prior to issue of the Construction Certificate.
- 76) Stormwater collected from impervious areas shall be retained on-site. A system of retention and infiltration shall be employed to restrict discharge from the site to that of pre-development flows, for 1% AEP ("100 year") storm events. Basin invert levels shall be a minimum of 1m above the predicted maximum groundwater level. Details and calculations shall be approved by an accredited certifier or Council prior to issue of the Construction Certificate.
- 77) The stormwater infiltration system shall be designed and built in accordance with the approved concept plan.

Impervious surface and roof water shall be disposed to the infiltration drainage system. A drainage design indicating all engineering details relevant to site regrading and the collection and disposal of the stormwater from the site is to be submitted to and approved by the certifying authority prior to the issue of a Construction Certificate. Details are to include pit sizes, infiltration system details, existing site levels, finished levels, pipeline sizes, invert levels, pipe grades and calculations.
- 78) Advisory signs shall be prominently located adjacent to the stormwater detention area detailing the purpose of the system, the possible depth of inundation and warning of the danger.
- 79) The stormwater detention system shall be constructed and made operational prior to construction of any hardstand areas within the site, including slabs and parking and manoeuvring areas. A construction staging plan shall be submitted to, and approved by the certifying authority prior to issue of the construction certificate, demonstrating any measures required to provide compliance with this condition. Details shall also include measures necessary to capture and convey stormwater to the system during construction phases.

- 80) Stormwater discharge from adjoining properties shall be catered for. Full details, shall be approved by an accredited certifier or Council prior to issue of the Construction Certificate.
- 81) The stormwater system, including any water quality or quantity components, shall be maintained in perpetuity for the life of the development.
- 82) Submission of Works-As-Executed plans and report prepared and certified by a suitability qualified drainage engineer confirming all drainage works (volume, discharge, levels, location, etc) are built in accordance with conditions of consent and the approved plan. Minor variations in height can be certified providing they are clearly identified in the report and the engineer certifies that the overland flow paths are not altered, discharge rates are not increased, and no additional negative effects are imparted on any dwellings or property. Minor variations can only be certified where it can be demonstrated that the ease of maintenance and monitoring of the system has not been negatively affected.
- The documents shall be submitted to, and accepted by the Certifying Authority, prior to issue of the occupation certificate.
- 83) Approval permit in relation to the Water Sharing Plan for Tomago-Tomaree Groundwater Source, or submission of evidence that such approval permit is not required, prior to issue of the Construction Certificate.

ADVICE

The following general information is provided to assist you with the preparation and prompt processing of your Construction Certificate where such application is made to Council.

- a) Plans in respect of an application for a Construction Certificate must be submitted to the Hunter Water Corporation for checking & stamping prior to application for the Construction Certificate being made.
- b) In the case of residential building work, prior to commencement of work submit to Council or a private certifying authority a copy of the contract of insurance under Part 6 of the Home Building Act 1989 (specific for the building work the subject of this approval) and builders licence details. (Or alternatively present to Council a copy of an Owner Builders Permit issued by the Department of Fair Trading.)
- c) If the value of the work is \$25,000 or more, you will need to pay a levy to the Long Service Corporation prior to issue of the construction certificate. You can either pay the Long Service Levy Corporation direct and show us your receipt OR you can pay us and we'll send your money to them.

Note: Owner builders can ask for a reduction in the levy. For more details contact the Long Service Corporation, Locked Bag 3000, CCDS, Lisarow 2252, phone 131441.

- d) Access to an adjoining property for construction & maintenance work requires the owner(s) consent. It is the responsibility of the owner/applicant to ensure that no part of the structure encroaches onto the adjoining property. The adjoining property owner can take legal action to have an encroachment removed.
- e) The Commonwealth Disability Discrimination Act makes it an offence to discriminate against people on the grounds of disability, in the provision of access to premises, accommodation, or services. This applies particularly to new buildings or significant building alterations. It is the owner/applicants responsibility to ensure compliance with the requirements of this Act. Further information can be obtained from Council or the Human Rights and Equal Opportunity Commission on 008 021 199.

Consideration should be given to the following enhanced access and facilities provisions for the proposed development.

- i) Australian Standard 1428.2 Design for access and mobility – Enhanced and additional requirements – building and facilities.
- ii) Australian Standard 1428.4 Design for access and mobility – Tactile ground surface indicators for the orientation of people with vision impairment.

- iii) Further information about disabled access obligations can be found at the Human Rights and Equal Opportunities Commission website.
- iv) AS1428.2, Clause 9(b) has recommendations for carpet selection. This requirement is not mandatory and has been provided to offer protection from a complaint made under the DDA. It is not required by the Building Code of Australia.
- f) Should any aboriginal site or relic be disturbed or uncovered during the construction of this development, all work shall cease and the National Parks and Wildlife Service shall be consulted. Any person who knowingly disturbs an aboriginal site or relic is liable to prosecution under the National Parks and Wildlife Act 1974.

ITEM NO. 2**FILE NO: 16-2009-160-1****DEVELOPMENT APPLICATION FOR TOURIST FACILITY AT NO. 74-84
GAN GAN ROAD, ANNA BAY****REPORT OF: ANTHONY RANDALL – ACTING MANAGER, DEVELOPMENT & BUILDING
GROUP: SUSTAINABLE PLANNING**

RECOMMENDATION IS THAT COUNCIL:

- 1) Support Development Application No. 16-2009-160-1 subject to the conditions contained in Attachment 3.
- 2) Delegates to the General Manager the determination of Development Application No. 16-2009-160-1 subject to receipt of owner's consent from NSW Land and Property Management Authority for sand dune management works on Part Lot 132 DP 753204.

Councillor Frank Ward left the meeting at 6.24pm and returned at 6.24pm.

EXTRA-ORDINARY COUNCIL – 15 SEPTEMBER 2009

	Councillor John Nell Councillor Glenys Francis	That Council defer the item to allow for a site inspection and then submitted to a Committee meeting of Council.
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In accordance with the Local Government Act 1993, a division is required for this item.

Those for the Motion: Councillors Peter Kafer, Glenys Francis, Geoff Dingle, John Nell and Frank Ward.

Those against the Motion: Councillors Ken Jordan, Daniel Maher, Steve Tucker, Shirley O'Brien, Bob Westbury, Sally Dover and Bruce MacKenzie.

The motion on being put was lost.

	Councillor Daniel Maher Councillor Ken Jordan	That the recommendation be adopted.
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AMENDMENT

	Councillor Glenys Francis Councillor John Nell	That Condition 85 include the requirement of signage to be provided at the reception area of the resort stating that "no permanent occupancy is permitted" and that full detail of Condition 85 be included in the signage.
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In accordance with the Local Government Act 1993, a division is required for this item.

Those for the Motion: Councillors Glenys Francis, John Nell and Frank Ward.

Those against the Motion: Councillors Ken Jordan, Peter Kafer, Daniel Maher, Steve Tucker, Shirley O'Brien, Bob Westbury and Sally Dover.

The amendment on being put was lost.

Councillor Glenys Francis left the meeting at 6.59pm and did not return to the meeting.

304	Councillor Daniel Maher Councillor Ken Jordan	That the recommendation be adopted.
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In accordance with the Local Government Act 1993, a division is required for this item.

Those for the Motion: Councillors Ken Jordan, Daniel Maher, Steve Tucker, Shirley O'Brien, Bob Westbury, Sally Dover and Bruce MacKenzie.

Those against the Motion: Councillors Peter Kafer, John Nell and Frank Ward.

Councillor Geoff Dingle abstained from voting.

The Motion on being put was carried.

BACKGROUND

The purpose of this report is to present a development application to Council for determination at the request of Councillor Nell.

This application seeks consent for a 154 unit tourist facility, comprising seven two storey and eight one storey 'villas' containing 7-14 units each. The proposal also includes a restaurant and bar, and recreational facilities for visitors and guests.

The subject site is identified as No. 74-84 Gan Gan Road, Anna Bay, and is located on the southern side of Gan Gan Road, bounded to the south-east by the 4WD access from Gan Gan Road to Birubi Beach. The site is undeveloped with an undulating topography of primarily sand, with small areas of vegetation heavily infested by weeds. Anecdotal evidence indicates past sand mining has occurred on the land.

The site will have vehicle access from Gan Gan Road via a separate entry/ egress driveway, and via the 4WD access road to the south-east of the site. An emergency access will be located on Gan Gan Road, in the northern portion of the site.

The key issues associated with this proposal are as follows:-

- Compliance with the zone description and objectives
- Sand drift management
- Social and economic impacts
- Visual impacts, and
- Suitability of the site

These matters are summarised below, but are discussed in detail in the Section 79C Assessment contained in Attachment 2.

Compliance with the zone description and objectives

The proposed use, being a 'tourist facility' is permissible in the 1 (a) (Rural Agriculture "A" Zone). In relation to the objectives of this zone, it is noted that the subject site and the adjoining lands on the southern side of Gan Gan road are not currently, or are likely in the future, to be used for rural purposes. The land is not identified as 'prime agricultural land' and due to the soil being predominantly sand, it is unlikely that any conventional rural practices would occur on the subject site. It is noted that the site has no agriculturally viable attributes such as a waterbody or arable soils.

The town centre of Anna Bay is to the west, and is less than 250 metres from the site. This proximity is reflected by the fact that the site is within the general boundaries of the Town Neighbourhood in the Anna Bay Strategy and Town Plan (ABSTP). To the north of Gan Gan Road, rural residential style properties exist buffering the site from large rural allotments. It is not considered that the proposal would have a significant impact to rural land, further to the existing impacts of the residential and rural residential properties in the vicinity. It is further noted that in the future, the development site would be further separated from these rural areas by the residential growth envisaged by the ABSTP.

The scale of the development, being a number of cluster buildings less than two storeys ensures that the bulk and scale of the development are not likely to be dominant features visible to adjoining rural areas. However, tourist facilities of this scale, in more characteristic rural locations may be considered inappropriate with respect to surrounding rural uses, and would have to be assessed on the individual merits of the proposal.

The proposal also involves the subdivision of tourist facilities, which is permissible in the rural zoning given that the purpose of the subdivision is not for dwelling-houses or dual occupancy. It is noted that the subdivision is only for 17 allotments, i.e. one allotment per building rather than one allotment per unit. This system provides greater certainty that permanent occupancy would not take place. Irrespective of these concerns, the proposed conditions of consent prohibit permanent occupancy of the tourist units.

Visual Impact

A Visual Impact Assessment was submitted with the development application. This assessment considered the visual impact of the proposal from Gan Gan Road, the 4WD access track to sand dunes, from Birubi Beach south of site and most significantly from the Stockton Bight sand dunes. These dunes are considered to be of high visual quality to the community and NSW coastal region.

The most significant viewpoint noted is from Birubi Beach where at periods high concentrations of people will have visual access of the western section of the site. However, viewers tend to look south-east towards ocean and sand dunes away from the site therefore reducing visual sensitivity of the development area. The results of the Visual Impact Assessment determined that the impact of development is likely to be medium to low, particularly if taking landscape screening strategies into consideration.

FINANCIAL/RESOURCE IMPLICATIONS

Nil.

LEGAL AND POLICY IMPLICATIONS

The development application is considered to be consistent with Council's policies as detailed in the Section 79C Assessment in Attachment 2.

SUSTAINABILITY IMPLICATIONS

SOCIAL IMPLICATIONS

The proposal is likely to have positive social impacts for Anna Bay and the Tomaree Peninsula through creation of local employment during and post construction, and from resultant capital expenditure in the area. Potential negative social impacts

from the sale of alcohol in the bar/restaurant would need to be managed by the future operators in terms of responsible service of alcohol and security.

ECONOMIC IMPLICATIONS

The proposal is likely to have positive economic implications for Anna Bay, with increased tourist activity and job creation. The proposal is not likely to have any significant adverse economic implications, however, additional tourist facilities may increase competition to existing businesses.

ENVIRONMENTAL IMPLICATIONS

Sand Drift Management

Sand Drift Management is considered to be a highly significant matter for assessment in relation to the proposal. In this regard a Dune Management Plan has been submitted in support of the proposal. The proposed management strategies involve the use of adjoining Crown Land including the construction of dune system formations. The applicant will also be required to have a positive covenant on the title of the land. This covenant would ensure that the management works are maintained for the life of the development.

'Deferred commencement' conditions of consent have been recommended for this proposal, at the request of the applicant as a means of addressing the Department of Lands (now the NSW Land and Property Management Authority) requirements with respect to the management of the Crown Land and to ensure that the development is adequately protected from this coastal hazard. Owner's consent has not at the date of writing been provided for the work on the Crown Land, being Part Lot 132 DP 753204, however this owner's consent is expected to be forthcoming shortly.

Native Vegetation Clearing

The proposal will involve the removal of a small patch of remnant vegetation. To compensate for the removal of these trees, the proposal involves significant areas of landscaping and retention of vegetation areas along the Gan Gan road frontage. In general the development site has previously been cleared of any significant vegetation, and as such the development does not pose an adverse affect on any known threatened species, populations or ecological communities.

The proposal will require a dual consent from the Catchment Management Authority pursuant to the Native Vegetation Act 2003. In this regard offsetting of native vegetation is likely to occur on nearby land, at a ratio yet to be determined. This offsetting will also further mitigate any impacts of the proposal.

Noise Impacts

An Acoustic Assessment was submitted with the proposal to assess the impact of noise generated by the proposed development and the potential impact to nearby residents. The assessment has shown the proposed development can comply with the requirements of the noise emission guidelines for all aspects of the proposed operation.

CONSULTATION

The proposal was notified in accordance with Council's policy and four public submissions (three from one party) were received. Two submissions from Government Authorities were also received. These are discussed in the Attachments.

The owner's consent has been requested to be supplied from the Department of Lands in relation to the use of Crown land adjoining the site for dune hazard management. Owner's consent has not yet been provided from the Department of Lands, therefore Council must defer determination of the development application until the owner's consent is supplied. The recommendation of staff has been framed to achieve this by delegating determination to the General Manager once the owner's consent is received. Representatives for the applicant have advised Council staff that they are entering a Deed of Agreement with the Department of Lands concerning the use of Crown Land, and the owner's consent to the lodging of the application is expected to be provided following the execution of the Deed.

OPTIONS

- 1) Adopt the recommendation.
- 2) Adopt the recommendation with varied conditions of consent.
- 3) Reject the recommendation and refuse the development application. In this instance, reasons for refusal will need to be drafted by Councillors including supporting justification as a basis for defence in any potential legal proceedings.

ATTACHMENTS

- 1) Locality Plan
- 2) Section 79C Assessment
- 3) Conditions of Consent

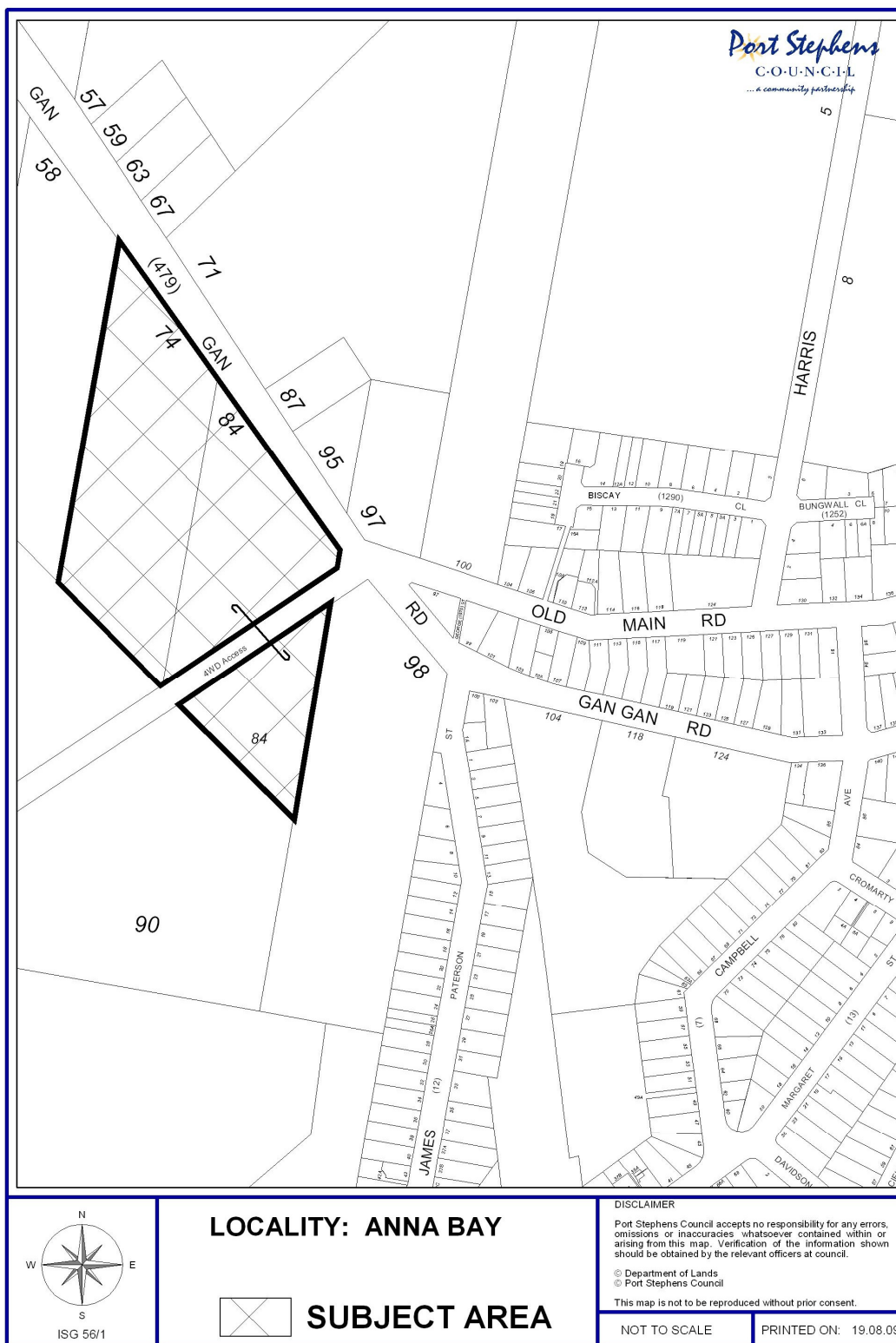
COUNCILLORS ROOM

- 1) Development Plans
- 2) Statement of Environmental Effects and supplementary documents from consultants
- 3) Submission Letters
- 4) Letters from Public Authorities
- 5) Site Plan

TABLED DOCUMENTS

Nil

ATTACHMENT 1 LOCALITY PLAN



ATTACHMENT 2**ASSESSMENT**

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

THE PROPOSAL

The proposal is summarised below:

- Tourist accommodation comprising seven two-storey buildings (or 'villas') and eight one-storey villas. Each two-storey villa will contain ten one-bedroom units, and four two-bedroom units, and each one-storey villa will contain five one-bedroom units, and two two-bedroom units; resulting in a total of one-hundred and fifty-four (154) accommodation units, spread throughout fifteen (15) villas.
- Restaurant and bar fronting Gan Gan Road, containing a restaurant/function area; bar; outdoor decks and reception area.
- Recreational facilities for visitors and guests, i.e. a swimming pool; playground; tennis courts; extensive walking paths and landscaping.

The site will have vehicle access from Gan Gan Road via a separated entry/ egress driveway, and via the 4WD access road to the south-east of the site. An emergency access will be located on Gan Gan Road, in the northern portion of the site.

THE APPLICATION

Owner	Hunter Property Group Pty Ltd; R M Monin Pty Ltd & Liltonia Pty Ltd
Applicant	Paul Le Mottee Project Management
Detail Submitted	Architectural Plans, Statement of Environmental Effects, Survey Plan, Traffic Impact Statement, Plan of Strata Subdivision, Bushfire Assessment, Dune Management Plan, Interim Aboriginal Cultural Heritage Site Survey, Visual Impact Statement, Stormwater Plans, Flora, Fauna and Koala Habitat Assessment Reports, Construction Waste Management Plan, Disability Access Report, Social Impact Comment, Acoustic Assessment, Acid Sulfate Soil Assessment.

THE LAND

Property Description	Lot 2 and 3 DP 502820
Address	74-84 Gan Gan Road, Anna Bay
Area	4.13ha

Dimensions	Irregular shape, with frontage to Gan Gan Road of approximately 303m
Characteristics	Located on the southern side of Gan Gan Road, bounded to the south-east by the 4WD access from Gan Gan Road to Birubi Beach. Site is undeveloped with an undulating topography of primarily sand. Evidence indicates past sand mining. Site has small areas of vegetation heavily infested by weeds.
Surrounding Land Use and Context	<p>Anna Bay is the gateway to the Stockton Sand Dunes. Parts of the Birubi Point area are formally declared as an Aboriginal Place under the National Parks and Wildlife Act 1974. The area is subject to heavy recreational/tourist use.</p> <p>To the northeast and east of Gan Gan Road is existing rural residential development. The southern side of Gan Gan Road adjoining the property is predominantly vacant land [sand dunes], some of which is, or has been mined for sand extraction.</p>

THE ASSESSMENT

1. Planning Provisions

LEP 2000 – Zoning Relevant Clauses	1 (a) (Rural Agriculture “A” Zone) 11, 12, 14A, 15, 44, 47, 51A & 59
Development Control Plan	Port Stephens Development Control Plan 2007
State Environmental Planning Policies (SEPP)	SEPP 44 – Koala Habitat Protection SEPP 55 – Remediation of Land SEPP 64 – Advertising and Signage SEPP 71 – Coastal Protection SEPP (Rural Lands) 2008 Hunter REP1989

Discussion

Port Stephens Local Environmental Plan 2000

Clause 11 Rural zonings - Objectives of the zone - The proposed use, being a ‘tourist facility’ is permissible with consent in the 1(a) rural zone. The relevant objectives are addressed as follows:

- (a) regulating the development of rural land for purposes other than agriculture by ensuring that development is compatible with rural land uses and does not adversely affect the environment or the amenity of the locality, and*

It is noted that the subject site and the adjoining lands on the southern side of Gan Gan Road are not currently, or are likely in the future, to be used for rural purposes. This land is not identified as 'prime agricultural land' and due to the soil being predominantly sand, it is unlikely that any conventional rural practices would occur on the land. The subject site has no agriculturally viable attributes such as a waterbody or arable soils.

The town centre of Anna Bay is to the west, and is less than 250 metres from the site. This proximity is reflected by the fact that the site is within the general boundaries of the Town Neighbourhood in the Anna Bay Strategy and Town Plan (ABSTP).

To the north of Gan Gan Road rural residential style land use exists buffering the site from large rural allotments. It is not considered that the proposal would have a significant impact on rural land, further to the existing impacts of the residential and rural residential properties in the vicinity. It is further noted that in the future, the development site would be further buffered from these rural areas by the residential growth envisaged by the ABSTP.

The scale of the development, being a number of cluster buildings less than two storeys also ensures that the bulk and scale of the development are not likely to be dominant features visible to adjoining rural areas.

However, tourist facilities of this scale or larger, in more characteristic rural locations may be considered inappropriate with respect to surrounding rural uses and/or land constraints. For example, in a recent letter from the Department of Planning dated 12 June 2009, a tourist facility (Spacecon) was considered to be inconsistent with the objectives of the 1(a) zone, based on the proposed size, scale and height being incompatible with existing adjoining development which is of a significantly lower scale.

The 'Spacecon' proposal is significantly different to the one being considered by Council in this assessment. The main points of difference are that the 'Spacecon' development proposes buildings ranging in height from 13.75 metre to 19 metres. The location of this proposal was on the northern side of Nelson Bay Road and is completely surrounded by rural land and environmentally sensitive land (for example SEPP 14 wetlands), and is over 2.5 kilometres from the town centre of Anna Bay. As opposed to this current development which is less than 8 metres in height, not adjoining any useable rural land, and is not considered to be ecologically sensitive. .

- (b) ensuring development will not have a detrimental effect on established agricultural operations or rural activities in the locality, and*

Refer to comments above in (a).

- (c) preventing the fragmentation of grazing or prime agricultural lands, protecting the agricultural potential of rural land not identified for alternative land use, and minimising the cost to the community of:
 - (i) fragmented and isolated development of rural land, and*
 - (ii) providing, extending and maintaining public amenities and services, and**

As identified above, the subject site is not identified as prime agricultural land and is not considered likely to have any conventional agricultural potential. The proposal is centrally located, and therefore the provision, extension and maintenance of public amenities and services are not considered to be a significant issue in this instance.

- (d) protecting or conserving (or both protecting and conserving):
 - (i) soil stability by controlling development in accordance with land capability, and*
 - (ii) trees and other vegetation in environmentally sensitive localities where the conservation of the vegetation is likely to reduce land degradation or biodiversity, and*
 - (iii) water resources, water quality and wetland areas, and their catchments and buffer areas, and*
 - (iv) land affected by acid sulphate soils by controlling development of that land likely to affect drainage or lower the water table or cause soil disturbance, and*
 - (v) valuable deposits of minerals and extractive materials by restricting development that would compromise the efficient extraction of those deposits, and**

Environmental issues are discussed in detail later in this assessment. It is not considered that the proposal will have significant environmental impacts. In terms of mineral deposits and extractive materials, it is noted that anecdotal evidence provided by the applicant suggests that the site has been previously sand mined.

Clause 12 Subdivision within rural zones generally - This clause specifies that subdivision of rural land is permissible for the purpose of the creation of allotments intended to be used for any purpose (excluding dwelling-houses or dual occupancy housing) for which it may be used with or without the consent. This development application seeks consent for subdivision of a tourist facility and restaurant, and therefore subdivision is permissible in this case. In this regard it is also noted that the conditions of consent will specify that all of the tourist units cannot be occupied permanently.

Clause 14A Hotels and restaurants in Zone No 1(a) - This clause specifies that despite any other provision of this Plan, consent must not be granted on Rural 1(a) land for the purpose of a hotel or restaurant unless it is in conjunction with a tourist facility. The proposal complies with this clause, and will be conditioned to ensure that the occupation of the hotel/restaurant is contingent upon the completion of the tourist units.

Clause 15 Advertisements in Rural Zones Nos 1 (a), 1 (c1), 1 (c2), 1 (c3), 1 (c4) and 1 (c5) - This clause specifies that all advertisements on land within a rural zone must relate to development on that land. The proposal complies with this requirement and shall be conditioned to comply with this provision in perpetuity.

Clause 44 Appearance of land and buildings - As the proposal is potentially visible to a waterway or public reserve, consideration of this clause is required and has been addressed as follows:

(a) the height and location of any building that will result from carrying out the development,

The visual impact of the development is discussed in further in Section 2 of the assessment. It is unlikely that the proposal will have an unreasonable impact.

(b) the reflectivity of materials to be used in carrying out the development,

The building facades will not contain highly reflective materials and will generally be shaded via decks or other devices.

(c) the likely effect of carrying out the development on the stability of the land,

The subject site comprises relatively flat areas of sand, with no steep slopes. Details of proposed footings and other measures required to complete the development on such ground will be provided at the Construction Certificate stage. It is not considered that the proposal will have any impacts in terms of stability of land, and the issue of sand drift is discussed in Section 2 of this assessment.

(d) any bushfire hazard,

Bushfire issues are detailed in Section 2 of the assessment, and are considered to be adequately managed.

(e) whether carrying out the development is essential to the viability of the land concerned,

It is noted that the subject site is privately owned land and the proposal is for a use permissible with consent in the zoning. It is not considered that the visual impact of the proposal can be completely mitigated to the adjoining reserve (i.e. the sand dunes), and it is not considered reasonable to refuse the application on these grounds. The development application is considered to have addressed visual impact issues by proposing smaller two storey buildings with reasonable levels of landscaping.

(f) the likely extent and effect of carrying out the development on vegetation on the land concerned.

It is not considered that the proposal will be significant in regard to vegetation loss. Further, the development involves extensive landscaping and retention of existing vegetation along the Gan Gan Road frontage.

Clause 47 Services - It is considered that the development can be adequately serviced with water supply and facilities for the removal or disposal of sewage and drainage. These services will be ensured through the conditions of consent.

Clause 51A Development on land identified on Acid Sulfate Soils Planning Maps - The subject site is identified as containing Class 4 Potential Acid Sulphate Soils on the Port Stephens Acid Sulphate Soil Planning Map, which may have implications for 'works beyond 2m below the natural ground surface'. Accordingly, an Acid Sulphate Soil Assessment was submitted with the proposal. This Report states that no further consideration of this land constraint is required.

Clause 59 Development of known or potential archaeological sites – The subject site is located in proximity to Birubi Point area, which is in the vicinity of a site formally declared as an Aboriginal Place under the National Parks and Wildlife Act 1974. An Interim Aboriginal Cultural Heritage Site Survey conducted by the Worimi Local Aboriginal Land Council (WLALC) was submitted with the proposal. This Survey revealed the presence of artefacts and some materials of Aboriginal culture and heritage significance.

The Survey recommended that to protect the archaeological artefacts and materials, rather than removing them, a 'Keeping Place' be provided temporarily during construction and then permanently post-construction. The details of the 'Keeping Place' are to be negotiated between the applicant and the Aboriginal communities. The Survey made recommendations for the overall management of archaeological matters during the construction phase. These requirements have been imposed as conditions of the consent.

The applicant has provided documentation demonstrating extensive consultation with local Aboriginal communities, including WLALC, Nur-Run-Gee, Murrooma and the Stockton Bight Aboriginal Lands Board. This consultation period was at least 21 days for comment. In this regard, it is considered that Clause 59(b) has been satisfied. With respect to Clause 59(c), the necessary permits have been referenced in the conditions of consent. It is noted that the Department of Environment, Climate Change and Water do not ordinarily issue the permits prior to a development consent being granted.

Accordingly, it is considered that the matters required to be considered as part of this clause have been addressed by the applicant.

Hunter Regional Environmental Plan 1989

Division 1 Rural land - Noting that the subject site is zoned 1(a) Rural Agriculture, the relevant considerations of this policy have been considered. The matters applicable to development applications identified by Division 1 are responded to below:

Clause 27 - Policies for control of development and Clause 28 - Principles - The subject site is not identified as prime crop and pasture land, i.e. Prime Agricultural Land, and accordingly no further consideration of these clauses is required.

Division 3 Environmental hazards – Clause 52 Objectives – The environmental hazards applicable to this site have been discussed in this assessment, and it is considered that the proposal is consistent with the objectives of this Clause.

Clause 53 Policies for plan preparation and control of development - This clause requires with respect to applications for tourist development that the consent authority consider the likelihood of erosion, land slip, flooding, coastal erosion or storm damage, bushfire hazards, mine subsidence and cumulative catchment-wide impacts, together with the means of controlling and managing such impacts. The subject site is not identified as flood prone or as a mine subsidence area. The other considerations, including the catchment-wide impacts of the development with respect to environmental constraints are discussed in this assessment and/or managed through the conditions of consent.

State Environmental Planning Policy No. 44 – Koala Habitat Protection - The Port Stephens Comprehensive Koala Plan of Management has been gazetted to replace this SEPP in Port Stephens. The application is supported by a Koala Habitat Assessment that demonstrates that the proposal will not involve the removal of any preferred koala feed trees and is not expected to significantly impact on Koalas or Koala habitat in the local area. The applicant has also amended the plans to demonstrate further retention of vegetation along the Gan Gan Road frontage to allow faunal movement across the road through the site.

State Environmental Planning Policy No 55—Remediation of Land – Having regard to the previous uses of adjoining land, a Contamination Investigation was required for this proposal. The investigation revealed that the subject site was appropriate for the proposed development and that no remediation works are required.

State Environmental Planning Policy (Infrastructure) 2007 - Given the location and size of the proposal, a referral to the Roads and Traffic Authority was not required pursuant to this Policy.

State Environmental Planning Policy No 64—Advertising and Signage - This policy aims to regulate the quality and positioning of signage, including advertising. The proposal includes an 'entry feature' sign at the site entrance on Gan Gan Road. This

is considered to be a 'business identification sign' and does not require further consideration in accordance with this SEPP.

Despite that the provisions of this policy do not apply to the advertising signage proposed, it is considered that the proposed signage is appropriately designed and positioned, in terms of views and traffic safety. A number of conditions of consent are recommended to ensure that the proposal maintains an appropriate amenity with respect to signage in perpetuity.

State Environmental Planning Policy No 71—Coastal Protection - The relevant matters for consideration pursuant to clause 8 of this Policy are detailed and responded to below:

- (a) *the aims of this Policy set out in clause 2,*
- (a) to protect and manage the natural, cultural, recreational and economic attributes of the New South Wales coast, and*
 - (b) to protect and improve existing public access to and along coastal foreshores to the extent that this is compatible with the natural attributes of the coastal foreshore, and*
 - (c) to ensure that new opportunities for public access to and along coastal foreshores are identified and realised to the extent that this is compatible with the natural attributes of the coastal foreshore, and*
 - (d) to protect and preserve Aboriginal cultural heritage, and Aboriginal places, values, customs, beliefs and traditional knowledge, and*
 - (e) to ensure that the visual amenity of the coast is protected, and*
 - (f) to protect and preserve beach environments and beach amenity, and*
 - (g) to protect and preserve native coastal vegetation, and*
 - (h) to protect and preserve the marine environment of New South Wales, and*
 - (j) to manage the coastal zone in accordance with the principles of ecologically sustainable development (within the meaning of section 6 (2) of the Protection of the Environment Administration Act 1991), and*
 - (k) to ensure that the type, bulk, scale and size of development is appropriate for the location and protects and improves the natural scenic quality of the surrounding area, and*
 - (l) to encourage a strategic approach to coastal management.*

In relation to these aims, the applicant submits the following:

- The proposal will not impact upon significant ecological aspects of the coast and will enhance recreational and economic opportunities within the Anna Bay area by providing a suitable tourist facility.
- The proposal will improve public access to Birubi Beach through the provision of public pedestrian pathways leading to the existing 4WD access road.
- The proposed development complies with the principles of ESD as the proposal is unlikely to cause serious environmental damage (due to the benign commercial nature of the development), while ecological integrity is not significantly impacted upon due to the placement of the proposed development on a non ecologically sensitive site. In this way, the proposal strives to achieve inter-generational equity.

- The proposed development is of an attractive modern design. The visual appearance of an attractive tourist facility at the gateway to the township of Anna Bay is appropriate to the beach-side, casual character of the area.

With respect to these aims, this assessment provides a more detailed assessment in other sections regarding ecological aspects, Aboriginal Heritage matters and visual impacts. The conditions of consent ensure that matters including stormwater management and erosion and sediment control are addressed by the applicant.

This assessment concludes that the proposal is generally consistent with the above mentioned aims.

(b) existing public access to and along the coastal foreshore for pedestrians or persons with a disability should be retained and, where possible, public access to and along the coastal foreshore for pedestrians or persons with a disability should be improved,

(c) opportunities to provide new public access to and along the coastal foreshore for pedestrians or persons with a disability,

The applicant notes that the proposal will provide additional pedestrian pathways from Anna Bay township to the 4WD access road connecting to Birubi Beach. In this way, the proposal provides new and improved access for pedestrians, and persons with a disability.

(d) the suitability of development given its type, location and design and its relationship with the surrounding area,

The applicant notes that the proposal is suitable for the subject site due to the appropriate zoning of the site; the compatibility of design and scale with surrounding existing and future development; and the location of the site being in a 'gateway' location to Anna Bay. The proposal will provide accommodation for a significant number of tourists in a walkable location from shops, recreational opportunities, and other service venues.

(e) any detrimental impact that development may have on the amenity of the coastal foreshore, including any significant overshadowing of the coastal foreshore and any significant loss of views from a public place to the coastal foreshore,

The Visual Impact Assessment concludes that the proposal will not interfere with any significant view corridors to the beach, will have 'low impact' on the area's scenic values, and will not cause any overshadowing of nearby development.

(f) the scenic qualities of the New South Wales coast, and means to protect and improve these qualities,

Refer to above comment.

(g) measures to conserve animals (within the meaning of the Threatened Species Conservation Act 1995) and plants (within the meaning of that Act), and their habitats,

(i) existing wildlife corridors and the impact of development on these corridors,

The Flora and Fauna report submitted with the proposal demonstrates that the development will not have significant impacts. The movement of fauna across Gan Gan Road has been maintained by the preservation of native vegetation in this area.

(j) the likely impact of coastal processes and coastal hazards on development and any likely impacts of development on coastal processes and coastal hazards,

The subject site is located at a sufficient distance from the foreshore to not be affected by most coastal hazards and processes. Sand dune migration is addressed in detail in Section 2 of this assessment.

(k) measures to reduce the potential for conflict between land-based and water-based coastal activities,

The subject site is located at a sufficient distance from the foreshore to not cause any such conflict.

(l) measures to protect the cultural places, values, customs, beliefs and traditional knowledge of Aboriginals,

An Interim Aboriginal Cultural Heritage Site Survey has been prepared for the site and is discussed in Section 2 of this assessment.

(m) likely impacts of development on the water quality of coastal waterbodies.

The proposal includes appropriate waste disposal measures and stormwater retention and treatment measures

(n) the conservation and preservation of items of heritage, archaeological or historic significance,

The proposal will not detrimentally impact upon any items of historical significance.

(p) only in cases in which a development application in relation to proposed development is determined:

(i) the cumulative impacts of the proposed development on the environment, and

(ii) measures to ensure that water and energy usage by the proposed development is efficient

As discussed in this assessment, it is not considered that the proposal will have any detrimental cumulative impacts on the environment. The proposal will be required to comply with the energy efficiency requirements of the Building Code of Australia as a condition of consent.

Clause 13 Flexible zone provisions - No flexible zone provisions are being relied upon for the proposal, as the proposed use is permissible in the zone, and accordingly no further consideration of this clause is applicable.

Clause 14 Public access - It is not considered that the development will, or is likely to, result in the impeding or diminishing, to any extent, of the physical, land-based right of access of the public to or along the coastal foreshore. It is noted that some works will be undertaken on the adjoining Crown Land for the purposes of sand management. However, these works are considered to have a positive environmental benefit to the public for the management of dune systems.

State Environmental Planning Policy (Temporary Structures and Places of Public Entertainment) 2007 - The current application does not seek approval to use the Restaurant/bar as a Place of Public Entertainment, accordingly a separate development application for this purpose will be required at a later date. Irrespective, the considerations, including noise, traffic and parking, for the restaurant/bar note the likelihood for this future use, and that the building is likely to be appropriate for this future use.

State Environmental Planning Policy (Major Development) 2005 (formerly SEPP (Major Projects) 2005) - At the time of lodgement, the proposal was not identified as a project to which this policy applies. Since lodgement amendments to this policy have occurred that would have deemed this proposal be a 'Regional Development', which would have made a 'Joint Regional Planning Panel' the consent authority for the application. This change does not affect the proposal due to the transitional provisions of this policy.

State Environmental Planning Policy (Rural Lands) 2008 - As the subject site is zoned 1(a) Rural Agriculture, the provisions of this policy apply to the proposal. The applicable Rural Subdivision Principles, as identified by Clause 8 of this policy, are as follows:

- (a) the minimisation of rural land fragmentation,*
- (b) the minimisation of rural land use conflicts, particularly between residential land uses and other rural land uses,*
- (c) the consideration of the nature of existing agricultural holdings and the existing and planned future supply of rural residential land when considering lot sizes for rural lands,*
- (d) the consideration of the natural and physical constraints and opportunities of land,*

The assessment of the proposal pursuant to the objectives of the 1(a) Rural Agriculture zone has demonstrated that the proposal is not likely to have any significant impacts to the surrounding rural lands.

Clause 10 Matters to be considered in determining development applications for rural subdivisions or rural dwellings - This clause is only required to be taken into account when considering whether to grant consent to development on land for

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the purposes of a subdivision of land proposed to be used for the purposes of a dwelling and for the erection of a dwelling. The proposal does not involve dwellings, or subdivision for that purpose, and accordingly, no further consideration of this clause is required.

Port Stephens Development Control Plan 2007 (DCP) - It is noted that the DCP does not have a relevant section for tourist facilities, however there are applicable controls with respect to carparking, traffic, environmental management and subdivision. The controls have been considered and are summarised below. Note that a more comprehensive assessment is contained in the Statement of Environmental Effects submitted with the application.

Control/Section	Response
<i>B1.C19 Development must provide footpaths, on road cycleway and dual use paths (for pedestrians and cyclists) in accordance with Figure B1.3: Characteristics of roads and streets</i>	A comprehensive internal footpath network is proposed, including a new public footpath connecting the site to an existing path in the Anna Bay township.
<i>B1.C27 Subdivision must create regular shaped lots, which could accommodate a rectangular building footprint of 15m x 8m or 10m x 12m where that building would comply with all setback requirements and provide suitable vehicular manoeuvring. A 1m setback is required to a right of carriageway.</i>	It is noted that the proposal is a strata subdivision of a tourist facility. This control is related to vacant land residential subdivision rather than the proposed use, and accordingly this control is not considered to be applicable.
<i>Section B2.3 Water Quality Management</i>	Appropriate stormwater management, and erosion and sedimentation control systems will be implemented as per the submitted Stormwater Concept and the relevant conditions of consent.
<i>Section B2.7 Vegetation Management, B2.8 Koala Management and B2.14 Erosion and Sediment Control</i>	The requirements of these sections have been adequately addressed, as detailed in other sections of this assessment.
<i>Section B3.3 Parking Requirements</i>	<p>The DCP requires the provision of 169 spaces. The application for the development proposes the provision of 140 car parking spaces and 4 coach bays. The application has justified this numerical deficiency of 29 spaces, as this shortfall will be offset by the anticipated utilisation of buses/coaches by a significant proportion of guests, estimated at approximately 35% (many of whom are international guests).</p> <p>This rationale is supported by data generated by a recent tourist development operating in the vicinity of the area, and estimates that the utilisation of buses is expected to decrease parking demand to approximately 115 spaces.</p>
<i>Chapter B12 Advertising Signs</i>	The proposal is considered to generally comply with the

	advertising signage requirements of the DCP. Signage has been discussed previously in this assessment.
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Other matters for consideration

- Traffic Issues – A Traffic Report prepared by Better Transport Futures was submitted in support of the proposal, which was assessed by Council's Traffic Engineer. The proposal was considered to be satisfactory and the relevant conditions of consent have been imposed.

- Fire Safety and Health, Building Surveying and Food surveillance issues – the proposal was assessed by the relevant Council staff with respect to these matters. The plans were considered to be generally satisfactory and the relevant conditions of consent have been imposed.

- Port Stephens and Myall Lakes Estuary Management Committee was consulted as part of the assessment on 17 June 2009. No comments were received in relation to the proposal.

- Section 94 contributions – The applicant submitted additional justification with respect to the relevant contributions based on factors including traffic predictions. In this regard, Council's Strategic Engineer recommends the following contributions as a result:
 - Civic Admin- 50% general levy.
 - Open Space- 50% general levy excluding Local Parks and Playground.
 - Recreation- 50% general levy excluding swimming pools and Tennis courts.
 - Community facilities- nil based on facilities being provided as part of the development
 - Fire Emergency- 50% general levy
 - Roads as per the predicted traffic generation of 180 vehicle per day at \$152 per vehicle trip.

- Native Vegetation Act 2003 - As the subject site is zoned 1(a) Rural Agriculture and involves some clearing of native vegetation, the proposal will require a dual consent from the Catchment Management Authority pursuant to this legislation. The conditions of consent alert the applicant to the requirement for this separate approval, however, the documentation submitted with the application suggests that this process is being resolved. In this regard offsetting of native vegetation is likely to occur on nearby land, at a ratio yet to be determined.

- Access for people with a disability - A Disability Access Report was submitted with the proposal that demonstrates that the proposal can meet the relevant disability access requirements. The Report notes that a number of accessible features have been incorporated into the proposed design, such as the provision of 5 'accessible' units; appropriate access to the pool; and car

parking spaces for people with a disability. The conditions of consent will also address the requirements.

Strategic Planning Context

Lower Hunter Regional Strategy - It is noted that the site is identified by this Strategy to be in the Watagan Stockton Green Corridor. The accompanying text on the main map states "Areas of high conservation values joining key corridors through the region. Lands within the corridor will be managed for conservation purposes".

Port Stephens Community Settlement and Infrastructure Strategy (CSIS) - The CSIS the principles of the Regional Strategy and those embodied in the NSW State Governments' Integrating Land Use and Transport Policy (2001) and the NSW Coastal Design Guidelines (2003). This Strategy is related more to strategic policy preparation, i.e. rezoning and policy formulation. However, relevant matters in this document are responded to below.

Matter	Comment
<i>Principle 30 "Natural and rural environments across the LGA will be protected... not allowing inappropriate development of Class 1, 2 and 3 lands.</i>	The proposal is not located on land identified as Class 1, 2 or 3 lands, i.e. prime agricultural land.
<i>Principle 41 "Tourist development in natural or rural scenic areas should be located and designed and be of a scale that is sympathetic to the desired character of the locality and the objectives of the land use zone. Such development shall not be visible from transport corridors identified in Figure 45.</i>	Whilst it is noted that this is not a DCP control and cannot necessarily be considered as part of a Section 79C assessment, as discussed in this assessment, it is considered that the visual appearance of the proposal is reasonable.
<i>Principle 48 - "Tourism activities shall respect the environment on which they rely. This includes the operation of tourism activities and the design and appearance of tourism facilities".</i>	As discussed in the assessment, it is not considered that the proposal will have a significant environmental impact to the surrounding area.

It is noted that the proposal is consistent with other principles identified in the Strategy including:

Principle 44 Economic development and employment shall be focussed in new and existing centres on transport corridors in Figure 45.

Principle 47 Complementary industries and businesses should co-locate in clusters for mutual benefits.

Principle 53 For existing villages, neighbourhoods and towns, new development should be designed to facilitate local employment and business opportunities in accordance with Sections 4 and 5 in Appendix 2.

In general, the development application is considered to be consistent with this policy.

Anna Bay Strategy and Town Plan - This Plan establishes a context and policy direction for future rezoning requests and development controls in the Anna Bay area. It is noted that this Strategy does not necessarily apply to development applications but rather rezonings. However, it is considered that the Strategy provides some context for Anna Bay that is considered with respect to the development.

The Plan identifies that the existing commercial area of Anna Bay reflects a history of low investment and a small primary trade area. This is compounded by the inability of the town to attract passing trade as it is located off the main transport corridor. As discussed in the Social Impact comment discussed later in this assessment, the proposal is likely to create positive social and economic benefits for the town centre which is in close proximity to the site.

The site is not identified for conservation or development in the Anna Bay Strategy. A previous draft of the Plan identified the land as 'Investigation Area', which was subsequently removed. This amendment was due to the identification of the 'Green Corridor'. It is noted that the area is not identified for any future use, but irrespective the site does not require rezoning for the current proposal as it is a permissible use.

The proposal is located within the Town Centre Neighbourhood, which reaffirms the proximity of this site to the commercial area. The design is consistent with the future desired character of this neighbourhood, being smaller building masses, less than three storeys and setback 12 metres from Gan Gan Road to allow for generous street and landscape planting and tree retention.

It is noted that the proposal is consistent with key strategic directions including supporting town centre growth and is likely to attract growth, investment and result in additional employment and services. The proposal is also likely to improve recreation places and community facilities as the proposal involves a new restaurant/bar and facilities associated with a resort including pedestrian paths, tennis courts and pool.

NSW Coastal Policy and NSW Coastal Design Guidelines - These Guidelines were released by the State government and establish design principles for coastal settlements. The goals of the NSW Coastal Policy include:

- *Recognising and accommodating the natural processes of the coastal zone.*
- *Protecting and enhancing the aesthetic qualities of the coastal zone.*
- *Providing for ecologically sustainable development and use of resources.*

The assessment has demonstrated that the proposal is generally consistent with these strategic documents.

2. Likely Impact of the Development

Social Impact

The Social Impact Comment provided with the application notes that the positive economic effects of the development will have strong social impacts for Anna Bay and the Tomaree peninsula. From a social perspective the project will have a positive impact on local employment with a minimum of 50 full time permanent staff and casuals. Local employment results in less car based travel, thereby having a positive social benefit in terms of reduced traffic. The reduced need to travel also results in local employment growth through increased local expenditure.

It is further noted that the predicted capital expenditure of \$15 million and the potential 150 jobs created during the 12 months construction phase will have similar positive benefits. The flow on effects of the economic activity associated with the project will have a positive social impact on Anna Bay and the Tomaree Peninsula as a whole.

The report notes the additional social benefits include the improvements to the site which will enhance the entrance way into the Anna Bay village, and the improvements to the 4wd access.

In terms of mitigating any potential negative impacts, the report makes the following recommendations including appropriate landscaping, development of footpaths, ensuring accessibility for people with disabilities and having appropriate management of alcohol and noise related issues as a result of the restaurant/bar.

Visual Impact

A Visual Impact Assessment prepared by Terras Landscape Architects was submitted with the development application. This assessment considered the visual impact of the proposal from Gan Gan Road, the 4WD access track to sand dunes, from Birubi Beach south of site and most significantly from the Stockton Bight. The Stockton Bight sand dunes are considered to hold high visual quality to the community and NSW coastal region.

The report provides the following analysis from key areas:

- *Birubi Beach 4WD carpark looking north-west* - This area is the starting point for 4WD tours, camel rides and other dune activities. The proposal can be seen from this viewpoint due to the flat topography of the land. A selection of tourists will see the proposal at the beginning of group dune activities when looking away from the ocean towards Gan Gan Road. The most prominent views are to the south-east out towards the ocean and dunes and therefore the visual sensitivity of this view to the north-west is low. The distance from the proposal also reduces visual impact from this viewpoint.

- *Birubi Beach Surf Club (BBSC) looking north-west* - This view is taken from the picnic tables located at BBSC. The proposal can only be seen from this area on the headland and not from BBSC itself which is located further to the east. Again, the view is taken looking away from the prominent view out towards the ocean and dunes indicating that the viewer is unlikely to be focused on this view looking away from the beach. The viewing time from this viewpoint is low as related activities from BBSC occur down on the beach or further east out of the Surf Club. Visual impact is moderate and further reduced when considering landscape screening strategies.
- *From Gan Gan Road* - This is a high traffic road especially on weekends when people come to Anna Bay for 4WD activities. The visual impact along Gan Gan Road is high. The proposal will have street frontage with a setback behind landscaping. Traffic will be able to view proposal whilst travelling towards town centre. Due to the viewers activity which is, car travel to a particular destination and related speed of traffic along Gan Gan Road, the viewing time will be low. However there will be a high visual impact from this view due to scale of proposal and extent along Gan Gan Road, particularly in comparison to what is existing. The visual quality of the existing street frontage is low due to the presence of weed species and can be improved though landscape treatments associated with the proposal.

The most pressing viewpoint noted is from Birubi Beach where at periods high concentrations of people will have visual access of the western section of the site. However viewers tend to look south-east towards ocean and sand dunes away from site therefore reducing visual sensitivity of development area. The results of the Visual Impact Assessment determined that the impact of development is likely to be medium to low, particularly if taking landscape screening strategies into consideration.

Noise Impacts

An Acoustic Assessment was submitted with the proposal to assess the impact of traffic noise from traffic generated by the proposed development and the potential impact of the resort on nearby residents. The assessment also considers the potential impact of the near by sand mining operation on the resort cabins adjacent to the western boundary of the site.

The assessment has shown the proposed development can comply with the requirements of the noise emission guidelines for all aspects of the proposed operation. The significant elements that contribute to the achievement of compliance are the distances between the noise sources and the receivers and the layout of the Hotel building.

The residential cabins on the western boundary of the development will remain largely unaffected by the existing sand mining operation which, is also due to finalise

its operations in the next 12 months, and, will in all likelihood, be finished by the time the proposed development is constructed.

The predicted traffic noise impacts show that there will be no discernible increase in traffic noise at adjacent properties on Gan Gan Road as a result of the proposed development, because the traffic associated with the development is not of sufficient volume to increase the existing noise levels.

The assessment has shown that the proposed development can comply with the requirements of the Protection of The Environment Operations Act and the Noise Control Regulation 2008.

3. Suitability of the Site

Sand Drift Management

Sand Drift Management is considered to be a highly significant matter for assessment in relation to the proposal. In this regard a Dune Management Plan has been submitted in support of the proposal.

The proposed management strategies involved the use of adjoining Crown Land, and accordingly the Department of Lands (now the NSW Land and Property Management Authority - LPMA) has been consulted. The Department has advised that in general the methodology in the plan would satisfy their concerns, however they note that the use of public lands for the purpose of the development would also need to provide a public benefit to the community. Owner's consent has not at the date of writing been provided for extensive sand management works on the adjoining Crown Land, being Part Lot 132 DP 753204, however this owner's consent is expected to be forthcoming shortly.

The Department have requested additional details, to be outlined in an amended Plan. These amendments are recommended to be achieved through 'deferred commencement' conditions of consent. This option has been negotiated by the applicant with the LPMA, to ensure that the concerns of the Department are adequately addressed in terms of their land being relied upon for the proposal.

The applicant will also be required to have a positive covenant on the title of the land. This covenant would ensure that the management works are maintained for the life of the development.

Aboriginal Cultural Heritage

The appropriateness of the proposal in relation to Aboriginal Cultural Heritage matters has been discussed in previous sections of the assessment.

Bushfire prone land

The proposal being a tourist facility is identified as being an 'integrated development' with respect to bushfire. In this regard a Bushfire Protection Assessment was submitted in support of the proposal.

This report makes recommendations with respect to the management of the tourist facility with respect to bushfire, including the provision and maintenance of the Asset Protection Zone on an adjoining property, being Lot 2 in DP 1083740 will be formalised by way of an easement over this lot with an 88B Positive Covenant, under the provisions of the Conveyancing Act of 1919, placed on the development land for the maintenance of the Asset Protection Zone on the adjoining allotment.

The proposal has received a Bushfire Safety Authority from the NSW Rural Fire Service dated 8 September 2009. The requirements of the Bushfire Safety Authority and the Bushfire Protection Assessment have been imposed as conditions of consent.

Flora and fauna issues

The subject site, while predominantly consisting of bare sand and areas of introduced Bitou Bush, contains some small areas of native vegetation. In addition, a limited area of vegetation in the north-western corner is identified as Supplementary Koala Habitat in Port Stephens Comprehensive Koala Plan of Management (CKPoM).

The Report concludes that 'the vegetation and habitats within the subject site are highly disturbed and are generally of low quality and that the proposed development is not likely to have a significant effect on threatened species, populations or ecological communities or their habitats'

The Assessment considered that the subject site does not provide any preferred habitat or preferred feed trees for Koalas, however it may provide a potential movement corridor through Supplementary Koala Habitat to areas located approximately 3km west-north-west of the site. In conclusion, the Assessment found that 'the proposed tourist development within the subject site is not expected to significantly impact on any koalas or koala habitat in the local area'. Further the applicant amended the proposal to retain additional vegetation along the frontage of the site to ensure that the koala corridor between the site and adjoining lands is not unreasonably impacted upon.

4. Submissions

The proposal was notified in accordance with Council's policy and four public submissions (three from one party) were received. Two submissions from Government Authorities were also received. The matters raised in these submissions are summarised and responded to below.

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ISSUE	COMMENT
Inconsistency with the Objectives of the 1 (a) Rural zone objectives.	The objectives of the 1 (a) rural zone and issues relating to the potential environmental impacts have been addressed in the assessment.
That a 'tourist facility' is more accurately characterised as a development of dwelling houses/dual occupancy and/or urban housing and therefore is expressly prohibited.	The LEP2000 2000 defines 'tourist facilities' separately to 'dwelling-houses', 'dual occupancy' and 'urban housing'. As 'tourist facilities' are not prohibited in the zone, it is considered that the use is permissible in the zone.
Approval of application would lead to a precedent	As 'tourist facilities' are permissible in the zoning, it is not considered that approving the proposal would lead to a precedent. All developments are required to be considered on the individual merits of the proposal.
Previous Council refusal of tourist facility on subject land	<p>A previous application on the land was refused by Council (DA 79/2003). This proposal was significantly different from the current proposal, mainly that the previous proposal was greater than 14 metres in height and 5 storeys in height. The current proposal is under 8 metres and two storeys.</p> <p>This proposal does not require the concurrence of the Department, and Council's reasons for refusal for this proposal would not apply to this current development, as detailed in the assessment.</p>
<p>Department of Planning letter not granting concurrence with respect to tourist facility 79/2003, based on:</p> <p>a) <i>amenity, social and economic concerns which are of a State, Regional and local significance' having regard particularly to the provisions of the NSW Coastal Policy 1987 (notably goals 2, 3 and 5, the Coastal Design Guidelines for NSW, Port Stephens Urban Settlement Strategy and the potential environmental risk associated with the development of the site related to the sand drift hazard which is impacting the locality.</i></p> <p>b) <i>'The Coastal Design Guidelines for NSW identify Anna Bay as a coastal village and recommend that the blurred boundaries between the natural and built environments and small scale eco-tourism facilities be retained. Further the guidelines identify the desired character of such coastal villages to be one which nestles within the landscape with a clearly defined edge, a small footprint and small scale buildings and recommends a maximum building height of three storeys in village centres and two storeys in</i></p>	<p>These documents (or more recent versions) have been addressed in the assessment. It is noted that the current proposal is more in line with the Department's comment, being comprised of a number of small scale buildings rather than bulky tall structures.</p> <p>This current proposal was informally referred to the Department who did not request to make comment.</p>

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residential areas.'	
Sand drift management	This issue has been addressed in the assessment.
Aboriginal Heritage	This issue has been addressed in the assessment.
Strata titling of units leading to permanent occupancy	As discussed in the assessment, the subdivision of tourist facilities is permissible in the rural zoning. It is also noted that the subdivision is only for 17 allotments, i.e. one allotment per building rather than one allotment per unit. This system provides greater certainty that permanent occupancy would not take place. Irrespective of these concerns, the proposed conditions of consent prohibit permanent occupancy.
Inconsistency with SEPP 71	This issue has been addressed in the assessment.
Inconsistency with CSIS 2007, principle 30, 41, 48, sections G3.2, G.34, and also in terms of potential permanent occupancy of units as residential dwellings.	The relevant principles have been addressed in the assessment. With respect to G3.2 and G3.4, these criteria specifically relate to rezoning applications. As detailed in the assessment the proposed use is permissible in the zone and does not require rezoning.
Inconsistency with Anna Strategy.	This issue has been addressed in the assessment.
Advertising signage along Gan Gan Road should not be permitted to 'flash'	Addressed with a condition of consent.
Development should be required to contribute specifically to the Birubi Beach 'precinct', for example vehicular and pedestrian linkages	The conditions of consent require Section 94 contributions, as well as partial construction of the 4wd access and footpath areas. The sand dune management works to be performed by the applicant are likely to have public benefits in relation to this environmental hazard.
No objection as long as road and access requirements are met, in terms of turning lanes, pedestrian access and signage	The proposal has been assessed by Council's engineers and the relevant requirements are addressed with conditions of consent.

A submission was received subsequent to the notification period from the local National Parks and Wildlife Service. This is considered to be a late public submission given that it addresses matters outside of this Department's responsibilities under the Environmental Planning and Assessment Act 1979. The matters raised are summarised below:

- Potential impacts to the main 4WD access to the Worimi Conservation Lands
- Visual Impact to areas used by commercial tour operators that use nearby sand dunes and beach areas
- Consideration of NSW Coastal Development Guidelines 2003
- Projections in Traffic Study of current traffic using the 4WD access track underestimated

Visual Impact to the sand dunes and beach areas have been considered in this assessment. It is noted that the proposal will have some visual impact, however, it is also noted that this is privately owned land and the proposal is a permissible land use.

In terms of the 4WD access track traffic projections, it is noted that the proposal will rely on the construction of this access, which is likely to improve access. The majority of traffic for the tourist facility are not likely to use the 4WD access.

A submission was also received from the Port Stephens – Great Lakes Marine Park Authority. No significant concerns that would not be addressed by conditions of consent were raised by the authority.

5. Public Interest

Based on the above assessment, it is not considered that the proposal is contrary to the public interest.

ATTACHMENT 3
CONDITIONS OF CONSENT

This approval is a “deferred commencement” consent pursuant to Section 80 of the Environmental Planning and Assessment Act 1979. The consent does not become operational unless and until the conditions in Part 1 are satisfied within 3 years of the date of issuing this consent, otherwise this consent will lapse. When the conditions in Part 1 have been satisfied, the consent is taken to operate and the conditions in Part 2 apply.

CONDITIONS OF APPROVAL

PART 1

1. The draft Dune Management Plan prepared by Worley Parsons dated 10.3.09 shall be amended to provide additional information with respect to the area of land required to be managed on Lot 132 DP 753204, to ensure that the on-going maintenance of the dune system can be adequately managed in perpetuity in association with the development. Additional strategies would be considered if the Dune Management Plan can demonstrate that they would provide additional benefit to the management of the dune system. However, as a minimum, the amended Dune Management Plan shall detail additional information and rationale for the area of land required to be managed on Lot 132 DP 753204, based on the following management strategies proposed by the draft Dune Management Plan:
 - a) Details of dune system formation, comprising initial dune establishment, dune planting and fencing.
 - b) Details of the on-going maintenance regime for the dune system, including weed control, supplementary planting, maintenance of dune fencing and any other measures that might be required to manage sand drift and dune stabilisation.
 - c) Details of the proposed nature of controlled public access through the dune system and maintenance of such access.

The amended Dune Management Plan shall demonstrate a management strategy based on four zones of management on Lot 132 DP753204, as described below:

- Asset Protection Zone - Adjoining the development site a Bushfire Asset Protection Zone shall be a minimum width of 20 metres and a maximum width of 50 metres.
- 'Zone 1' - Constructed Dune and Native Vegetation Planting - Adjoining the Bushfire Asset Protection Zone, a 'Zone 1' area for a Constructed Dune and Native Vegetation Planting area shall be a minimum width of 50 metres and a maximum width of 70 metres. This area shall comprise a Hind Dune and a Fore Dune.
- 'Zone 2' - Passive Dune Forming - Adjoining 'Zone 1', a 'Zone 2' area for Passive Dune Forming (including fencing and native planting) shall be a minimum width of 50 metres and a maximum width of 80 metres.
- 'Zone 3' - Potential future mechanical removal area - Adjoining 'Zone 2', a 'Zone 3' area for potential future mechanical removal of sand shall be a minimum width of 35 metres and a maximum width of 50 metres.

The length of the management area on Lot 132 shall be at a minimum the entire southern frontage of the development site and connect to the existing knoll and 4WD access track, i.e. a minimum length of 140 metres, and a maximum length of 250 metres.

The amended Dune Management Plan shall be submitted to and approved by the NSW Land and Property Management Authority and Port Stephens Council.

2. The following information shall be provided in the amended Dune Management Plan:
 - a) civil design (levels, batter slopes, setbacks, any incorporation of stormwater features required as a result of the dune management works);
 - b) specification of environmental protection controls during construction and ongoing maintenance of the dune system in conjunction with overall site management plans (e.g. sediment and erosion controls);
 - c) temporary stabilisation design and application methods during dune construction and initial maintenance period;
 - d) inspection requirements for plants;
 - e) planting spatial densities and grid (consideration of bush fire mitigation requirements would need to be balanced with dune performance);
 - f) planting program (sequence, optimal planting seasons, growth media requirements, seed and fertiliser rates, seedling planting methods);
 - g) initial maintenance requirements (a period of 24 months following the initial planting of the primary species and a further 12 months following the planting of secondary/tertiary species until the dune vegetation is self sustaining is expected). The maintenance program would provide, as a minimum the items outlined in Section 2.6 of the report;
 - h) on-going maintenance requirements; and
 - i) dune fencing details and maintenance.
3. The amended Dune Management Plan must demonstrate consultation with the Department of Environment, Climate Change & Water and the Port Stephens Coast and Estuary Management Committee. Copies of correspondence to the agency/committee shall be submitted with the amended plan, and a written response from the agency/committee must also be included. Any issues raised by these Departments/Committees are required to be adequately addressed in the amended Plan.
4. The establishment of a public positive covenant over that part of Lot 132, DP 753204 affecting by the works and activities associated with the amended Dune Management Plan referred to in "Deferred Development Consent" Conditions 1-3, above. Such public positive covenant must bind the current and all future owners of Lots 2 and 23 DP 502820 the subject of this development consent to the establishment and on-going maintenance of the dune system required under "Deferred Development Consent" Condition 1-3 above, and the resultant approved Dune Management Plan.
5. Stormwater collected from impervious areas shall be retained on-site and an on site infiltration system provided to infiltrate the 1% AEP ("100 year") storm event. Detailed plans and calculations which have been prepared by a suitably qualified and experienced engineer are to be submitted to and approved by Council. The on site infiltration system shall be designed in accordance with the requirements of the Port Stephens Development Control Plan (2007), Port Stephens Council Subdivision Guidelines, and the following design advice:

- Details are to include pit sizes, infiltration system details, existing site levels, finished levels, pipeline sizes, invert levels, pipe grades and all calculations of storage volumes and site discharge.
- A Geotechnical assessment of the soil profile shall be undertaken and the steady state infiltration rate calculated during saturated soil conditions.
- Overflows from the infiltration system shall be directed to the public drainage system.
- Calculations shall consider storm durations up to the 12 hour event
- Cellular infiltration structures such as Atlantis units shall not be located under driveway / hardstand areas and shall not be impacted by the roots of landscaping (so as to ensure that long term access is available to the structures for maintenance / replacement).
- Concrete tanks shall be designed in accordance with AS3500.3 – Plumbing and Drainage, Section 8.11 On site stormwater detention systems.

PART 2**General Conditions**

- 1) A Construction Certificate is required prior to commencement of works approved by this application. The person having the benefit of this consent must appoint a principal certifying authority. If Council is not appointed as the Principal Certifying Authority then Council must be notified of who has been appointed. Note: at least two (2) days' notice must be given to Council of intentions to start works approved by this application.
- 2) The development is to be carried out in accordance with the approved plans and documentation submitted with the application set out in Schedule 3, except as modified by the conditions of this development consent or as noted in red by Council on the approved plans.
- 3) Failure to comply with the conditions of consent constitutes a breach and on the spot fines may be issued under the Environmental Planning & Assessment Act 1979 and or the Protection of the Environment Operations Act 1997.
- 4) The proposed development shall be restricted to the following operating/ trading times:
 - Bar/ lounge and function centre: 11am to midnight, 7 days a week
 - Restaurant: 7am to midnight, 7 days a week
 - Accommodation reception: 24 hours a day, 7 days a week
 - Tennis courts and pool: 7am to 10pm, 7 days a week
- 5) A separate development application is required to use the restaurant/bar/function centre as a place of public entertainment.
- 6) A monetary contribution is to be paid to Council, pursuant to section 80A(1) of the Environmental Planning and Assessment Act, 1979 and Section 94 of the Environmental Planning and Assessment Act, 1979 towards the provision of the following public facilities:-

	Per Lot	Total
Civic Administration	(\$189)	(\$29029)
Public Open Space, Parks and Reserves	(\$809)	(\$124586)
Sports and Leisure Facilities	(\$1930)	(\$297220)
Roadworks		(\$27306)

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Fire & Emergency Services

(\$94)

(\$14476)

Note:

a) The above contributions have been determined in accordance with Port Stephens Section 94 Contribution Plan. A copy of the Contributions Plan may be inspected at Council's Customer Service Counter, 116 Adelaide Street, Raymond Terrace.

b) Contributions are to be paid prior to issue of construction certificate.

c) The amount of contribution payable under this condition has been calculated on the basis of costs as at the date of original consent. In accordance with the provisions of the Contributions Plan, this amount shall be INDEXED at the time of actual payment in accordance with movement in the Consumer Price Index as published by the Australian Bureau of Statistics. In this respect the attached fee schedule is valid for twelve months.

- 7) The applicant shall consolidate Lot 2 and 3 of Deposited Plan DP502820 into one allotment. Occupation of any part of the development will not be permitted until confirmation that the plan of consolidation has been registered as a deposited plan with the Land Information Centre.
- 8) The use of the proposed allotments are restricted pursuant to Clause 12(b) of Local Environmental Plan 2000 and accordingly no dwelling or duplex can be built on Lot 2 and 3 of Deposited Plan DP502820. The title of the relevant property shall be endorsed under Section 88B of the Conveyancing Act to give effect to this condition. In this regard Council shall be nominated as the sole authority permitted to alter/remove the endorsement.
- 9) The Occupation Certificate shall be issued for at least 50% of the tourist units prior to the issue of any Occupation Certificate for the Bar/Restaurant.
- 10) A garbage storage area is to be provided, designed and constructed so as to conceal its contents from view from public places and adjacent properties and is to be integrated into the landscaping scheme. The storage area shall be located so as to be readily accessible from within the site, and serviceable by the waste collector from the adjoining road.
- 11) Certification is to be prepared by a registered surveyor and submitted to the Principal Certifying Authority at the stages of construction indicated:
 - a) On completion of ground floor construction, confirmation that the floor levels are in accordance with the Reduced Levels indicated on the approved plan.
 - b) On completion of each subsequent floor level, confirming that the floor levels are in accordance with Reduce Levels indicated on the approved plan.
 - c) When the roof has been completed, confirmation that the building does not exceed the Reduced Levels as indicated on the approved plan.
- 12) Any fencing with frontage to a public road shall not exceed 1 metre in height if it is of solid appearance or 1.5 metres if the overall fence design is at least 50% transparent.
- 13) Landscaping shall be carried out in accordance with the approved Landscape Plan prepared by Terra Landscape Architects and dated May 2009. The landscape designer must provide a compliance certificate to the Principal Certifying Authority certifying that the landscaping has been carried out in

accordance with the approved plan, prior to the issue of the Occupation Certificate. Where Council is not the Principal Certifying Authority, a copy of the certificate must be provided for Council's records.

- 14) Prior to the issue of the Construction Certificate, the landscaping plan shall be amended to include koala feed tree species, that is *Eucalyptus robusta*, *Eucalyptus teriticornis*, *Eucalyptus parramatensis* and *Melaleuca quinquenervia*.
- 15) A Compliance Certificate under Section 50 of the Hunter Water Corporation Act, 1991 shall be submitted to Council prior to endorsement of the final survey plan. Applications for Section 50 Certificates are to be made direct to the Hunter Water Corporation.
- 16) Prior to endorsement of the Subdivision Certificate written evidence must be submitted from Telstra Australia and Energy Australia that satisfactory arrangements have been made for the provision of their respective services to all lots in the proposed subdivision.

Environmental Management Conditions

- 17) A separate approval from the Catchment Management Authority pursuant to the Native Vegetation Act 2003 shall be gained prior to the commencement of any clearing works.
- 18) All existing trees (or groups of trees) which are to remain undisturbed on the site or neighbouring properties shall be indicated on the approved project drawings and shall be adequately protected for the duration of the construction phase of the project. The following measures shall be implemented:
 - Stockpiling or storage or mixing of materials, vehicle parking, disposal of liquids, machinery repairs and refuelling, siting of offices or sheds and the lighting of fires shall not occur within the dripline of trees identified to remain on the site or neighbouring properties.
 - All tree protection works including protective fencing shall be carried out before excavation, grading and site works commence. Protective fencing using bright "bunting" type fencing supported by 1800mm high star pickets is required.
 - Stockpiling or storage or mixing of materials, vehicle parking, disposal of liquids/materials shall not occur within the dripline of trees identified to remain
 - The structural roots of the existing tree, located on the neighbouring property, less than 50mm in diameter are not to be severed
- 19) Clearing shall be selective and minimized in the required Asset Protection Zone. Prior to the issue of the Construction Certificate, a plan shall be submitted and approved by Council's Vegetation Management Officer, which demonstrates all necessary clearing for the Asset Protection Zone, to achieve the requirements of Planning for Bushfire Protection and conditions imposed by the Bushfire Safety Authority from NSW Rural Fire Service dated 8 September 2009.
- 20) Only Virgin Excavated Natural Material (VENM) in accordance with the Environmental Protection Agency NSW statutory definition shall be used for the approved land filling activities. The use of any material other than VENM may require an EPA licence for use as a landfill. The use of any material other than VENM for land filling purposes, without prior approval of council is prohibited. Council will insist on the removal of any prohibited material.

- 21) Any fencing associated with the development should not compromise the potential for safe movement of koalas across the site. The preferred option for minimising restrictions to safe koala movement is that there be no fencing, however suitable fencing may include:
- fences where the bottom of the fence is a minimum of 200 mm above ground level that would allow koalas to move underneath;
 - fences that facilitate easy climbing by koalas; for example, sturdy chain mesh fences, or solid style fences with timber posts on both sides at regular intervals of approximately 20m; or
 - open post and rail or post and wire (No barbed wire is permitted on the bottom strand).
- 22) The development must include measures to effectively minimise the threat posed to koalas by dogs, motor vehicles, swimming pools and corridor severing by adopting the following minimum standards:
- i) The development must include measures that effectively abate the threat posed to koalas by dogs through prohibitions or restrictions on dog ownership.
 - ii) The development must include measures that effectively minimise the threat posed to koalas from traffic by restricting motor vehicle speeds, where appropriate, to 40 kph or less and the installation of koala crossing signage on roads with local fauna rescue service numbers visible.
 - iii) The development must reduce the risk of koala mortality by drowning in backyard swimming pools. Appropriate measures could include: trailing a length of stout rope (minimum diameter of 50mm), which is secured to a stable poolside fixture, in the swimming pool at all times; designing the pool in such a way that koalas can readily escape; or enclosing the pool with a fence that precludes koalas. This last option should include locating the fence away from any trees which koalas could use to cross the fence.
 - iv) The development must allow for continued koala movement across the site primarily via retention of existing vegetation or secondarily through regeneration activities.

Strata Subdivision Conditions

- 23) A Subdivision Certificate must be obtained from Council within five (5) years of the date of this consent, otherwise this approval will lapse. Alternatively, where works are associated with the subdivision, such works must be commenced prior to the expiry of the five (5) year period otherwise this consent will lapse. The applicant must submit completed Subdivision Certificate Application Form (& applicable fee), 6 copies of the Survey Plan, two copies of any 88B Instrument and a check list demonstrating compliance with the conditions of consent.
- 24) A Subdivision Certificate shall not be issued until an Accredited Certifier or Council is satisfied that the requirements of Section 37AA of the Strata Schemes (Freehold Development) Act 1973 and Section 29A of the Strata Schemes (Freehold Development) Regulation 2007 have been met.
- 25) Prior to the issue of a Subdivision Certificate a Strata Management Plan shall be approved by Council. This plan shall incorporate the tourist facility occupancy restrictions as required by the conditions of consent, bush fire asset protection zone management, sand drift management, landscaping maintenance, restrictions on dogs, and any other relevant matter with respect to common property.

- 26) The Subdivision Certificate shall not be issued prior to the issue of the Occupation Certificate for all tourist units.

Fire Safety Conditions

- 27) A fire safety schedule pursuant to Section 168 of the Environmental Planning & Assessment Amendment Regulation 2000 must be attached to the construction certificate, which specifies the fire safety measures that should be implemented in the building premises.
- 28) A fire safety certificate as prescribed by Section 174 Environmental Planning & Assessment Regulations 2000 which certifies the performance of the implemented fire safety measures in accordance with Section 170 of the Regulation must be submitted to the Principal Certifying Authority and the Commissioner of New South Wales Fire Brigades. A copy of fire safety certificate needs to be forwarded to Council, If Council is not nominated as the Principal Certifying Authority. A further copy of the certificate must also be prominently displayed in the building.
- 29) At least once in each twelve (12) month period, fire safety statements as prescribed by Section 175 Environmental Planning & Assessment Regulations 2000 in respect of each required essential fire safety measure installed within the building are to be submitted to Council. Such certificates are to state that:
- a) The service has been inspected and tested by a person (chosen by the owner of the building) who is competent to carry out such inspection and test; and
 - b) That the service was or was not (as at the date on which it was inspected and tested) found to be capable of operating to a standard not less than that specified in the fire safety schedule for the building.
- 30) The whole site is to be serviced with a fire hydrant system in accordance with Australian Standard 2419.2005 to provide hydrant coverage to each building so that the Fire Brigade has adequate water to fight any fire on the site.
- 31) A plan detailing all proposed fire safety measures is to be submitted prior to the issue of the Construction Certificate.

Building Conditions

- 32) Prior to the issue of the Construction Certificate details shall be approved by the Principal Certifying Authority demonstrating that the proposal meets the requirements of Section J of the Building Code of Australia.
- 33) Approved toilet accommodation for all tradespersons on the building site is to be provided from the time work commences until the building is complete. The toilet shall not be placed on the road reserve, without separate approval from Council.
- 34) A waste containment facility shall be provided on the construction site immediately after the first concrete pour for any building and is to be regularly serviced. Council may issue 'on the spot' fines for pollution/littering offences under the Protection of the Environment Operations Act 1997.
- 35) Retaining Walls, not clearly noted on the approved plans or outside the parameters set in Council's Exempt and Complying Development criteria, are to be subject to a separate development application. Such application shall be

lodged and approved prior to any works relating to the retaining wall taking place.

- 36) All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with AS2601-2001 and Workcover Authority requirements. All excavations associated with the erection or demolition of a building must be properly guarded and protected to prevent them from being dangerous to life or property.
- 37) Prior to the commencement of work, provide a 3m wide all weather vehicle access from the kerb and gutter to the building under construction for the delivery of materials & trades to reduce the potential for soil erosion. Sand shall not be stockpiled on the all weather vehicle access.
- 38) Separate approval is required to occupy, close or partially close the road reserve adjacent to the property under the Roads Act. The storage of materials, placement of toilets and rubbish skips within the road reserve is not permitted.
- 39) A "KEEP PORT STEPHENS WATERWAYS POLLUTION FREE" sign shall be displayed and be clearly visible from the road frontage for public viewing on the site at the commencement of works and remain in place until completion of the development. Signs are available from Port Stephens Council.
- 40) All stockpiled materials shall be retained within the property boundaries. Stockpiles of topsoil, sand, aggregate, spoil or other materials shall be stored clear of the all weather vehicle access and drainage lines.
- 41) The Principal Certifying Authority shall only issue an Occupation Certificate when the building has been constructed in accordance with the approved plans, specifications and conditions of consent. No occupational use is permitted until the Principal Certifying Authority issues an occupation certificate. NOTE: If an accredited certifier approves occupation of a dwelling the accredited certifier is to immediately notify Council in writing.
- 42) The swimming pool is to comply with the following:
 - a) The swimming pool is to be fully enclosed with fencing and gates to comply with the Swimming Pool Act 1992 and Regulations.
 - b) All backwash/pool waste water is to be piped/drained to the sewer of the Hunter Water Corporation in accordance with the requirements of the Hunter Water Corporation.
 - c) A durable resuscitation instruction chart is to be displayed in a prominent position in the pool at all times.
- 43) All building work must be carried out in accordance with the provisions of the Building Code of Australia.
- 44) Construction work that is likely to cause annoyance due to noise is to be restricted to the following times:- * Monday to Friday, 7am to 6pm; * Saturday, 8am to 1pm; * No construction work to take place on Sunday or Public Holidays. When the construction site is in operation the L10 level measured over a period of not less than 15 minutes must not exceed the background by more than 10dB(A). All possible steps should be taken to silence construction site equipment.

- 45) It is the responsibility of the applicant to erect a PCA sign (where Council is the PCA, the sign is available from Council's Administration Building at Raymond Terrace or the Tomaree Library at Salamander Bay free of charge). The applicant is to ensure the PCA sign remains in position for the duration of works.
- 46) A Construction Management and Construction Traffic Management Plan shall be submitted and approved by Council, prior to the issue of the Construction Certificate. The plan shall include operational details to minimise any potential impact to adjoining properties; information as construction techniques, noise and vibration management, storage of equipment and building materials, hours of work, primary route for truck movements, and a waste management plan. These measures shall be implemented during the construction phase.

Engineering Conditions

- 47) The development shall provide 140 on-site car parking spaces, including 4 disabled parking spaces, and 4 bus parking areas, in accordance with AS2890.1-2004 and AS2890.2-2002. These spaces shall be separately accessible, clearly line-marked (disabled spaces clearly signposted) and adequately paved and drained in accordance with the Port Stephens Development Control Plan 2007. Car parking must be provided prior to the issue of the Occupation Certificate or use of the development.
- 48) A complete design of a type "A" intersection for the Gan Gan Road driveway entrance is required. This intersection is required to allow safe overtaking of vehicles queued to turn right into the resort. The design shall be in accordance with Council's Standard Drawing S 121. The intersection design shall be presented with swept paths for all bus/coach movements through the intersection, ensuring buses/coaches do not cross the road centreline when exiting/entering the site.
- 49) The reserve road at the frontage of the development site (4wd access road) shall be constructed to the following standard, from the existing pavement at the intersection with Gan Gan Road, to a point 10m beyond the main access driveway, a total distance of approximately 60m;
- Construct and seal road to match existing alignment at Gan Gan Road.
 - Construct kerb and gutter on the development side of the road, returning to TP in Gan Gan Road
 - Construct sealed shoulder on northern side of road.
 - Construct concrete footpath 1.2 metres wide and 100 mm thick, from the main access driveway to Gan Gan Road
 - Construct drainage works as required
 - Upgrade intersection with Gan Gan road to include regulatory signage
- controlled intersection with left and right turning exit lanes and unbroken dividing line.
- 50) Engineering details in accordance with Council's Subdivision & Development Code shall be approved by Council prior to issue of the Roads Act Approval. The developer shall be responsible for the provision of all additional regulatory signage and all adjustments to existing regulatory signage, required as a consequence of the development. This shall be provided at no cost to Council and in accordance with Council and RTA requirements and shall be completed prior to occupation of the site.

- 51) The emergency access vehicle driveway from Gan Gan Road to the property boundary shall have a width of 4.0 metres and shall be constructed as either:-
i) a granular pavement having a minimum compacted depth of 200mm and a concrete layback as shown on Council's Standard Drawing No. S122 or,
ii) in accordance with the options shown on Council's Standard drawing No. S122.
- 52) The construction of the footpath crossing and associated lipless layback must be constructed prior to the issue of any Interim and Final Occupation Certificate.
- 53) The vehicle driveway from the 4WD access roadway to the property boundary incorporating the gutter crossing shall be constructed in accordance with the options shown on Council's Standard Dwg No. S123.
- 54) Where Council is nominated as the Principal Certifying Authority, a separate approval under the Roads Act will be not be required from Council for all works within Council land and Road Reserves.
- 55) Works associated with the approved plans and specifications located within the existing Road Reserve shall not commence until:
i) a Roads Act Approval has been issued, and
ii) all conditions of the Roads Act Approval have been complied with to Council's satisfaction.
- 56) All civil engineering works associated with the Roads Act Approval shall be carried out to the satisfaction of Council (with a letter of practical completion issued) prior to issue of the Subdivision Certificate or Occupation Certificate. All works associated with the Roads Act Approval shall be at no cost to Council.
- 57) Works associated with the Roads Act Approval are subject to:
a. inspection by Council,
b. testing by a registered NATA Laboratory and
c. approval by Council at each construction stage as determined by Council.
- 58) The developer is to provide the following plans and/or CAD files:
a) Road construction plans in CAD form prior to commencement of road works
b) Works-as-executed drawings and CAD files of all engineering works prior to the issue of any Occupation Certificate(s).
c) CAD files which include all lot and road boundaries, lot numbers and easements, prior to the issue of the Occupation certificate. The data is to be supplied to the requirements of Council's GIS Officer.
- The data is to be supplied as ACAD or DXF to the requirements of Council's Civil Asset Engineer.
- 59) Driveways, parking and turning areas shall be paved or sealed with either reinforced concrete, pavers or asphalt over a suitably prepared, compacted sub-base. These areas shall be maintained in perpetuity by the existing or future owners and occupiers of the property(s)
- 60) Filling shall not obstruct any natural stormwater flowpath or water drainage system. Neither shall the fill encroach any adjoining property.

- 61) Erosion control measures shall be put in place to prevent the movement of soil by wind, water or vehicles onto any adjoining property, drainage line, easement, natural watercourse, reserve or road surface, in accordance with "Managing Urban Stormwater", Volume 1:2004 (Landcom).
- 62) The stormwater system, including any water quality or quantity components, shall be maintained in perpetuity for the life of the development.
- 63) Submission of Works-As-Executed plans and report prepared and certified by a suitability qualified drainage engineer confirming all drainage works (volume, discharge, levels, location, etc) are built in accordance with conditions of consent and the approved plan. Minor variations in height can be certified providing they are clearly identified in the report and the engineer certifies that the overland flow paths are not altered, discharge rates are not increased, and no additional negative effects are imparted on any dwellings or property. Minor variations can only be certified where it can be demonstrated that the ease of maintenance and monitoring of the system has not been negatively affected.

The documents shall be submitted to, and accepted by the Certifying Authority, prior to issue of the occupation certificate.

- 64) The onsite infiltration system is to be constructed and made operational to capture, convey, and detain stormwater prior to the construction of any other impervious areas on the site. Once any impervious area is constructed on site, it must immediately be connected to the on site detention system. Details demonstrating how this condition shall be achieved during the construction phase shall be approved by the certifying authority prior to issue of the construction certificate.
- 65) Engineering details in accordance with Council's Subdivision & Development Code of proposed road and drainage works shall be submitted to Council for approval prior to issue of the Construction Certificate.
- 66) All works as listed as conditions of development consent, which are located in public roads are subject to approval under section 138 of the Roads Act 1993. Engineering details in accordance with Council's Subdivision and Development Code, of such works shall be submitted with a Roads Act application form and then approved by Council prior to approval to commence these works and prior to issue of the Construction Certificates.
- 67) The following items are also required to be approved by Council prior to approval being granted to commence works:
- a) Traffic control plans in accordance with the Roads and Traffic Authority – Traffic Control at Worksites Manual;
 - b) Payment of fees and bonds (same Principle Certifying Authority fees, inspection fees and maintenance bonds as relevant to subdivisions);
 - c) Contractors public liability insurances to a minimum value of \$10 million dollars.
- 68) The following fees and/or bonds are to be paid as part of this consent:
- a) Subdivision construction certificate/plan approval fee, prior to approval of construction certificate or plans.
 - b) PCA/inspection fee, prior to approval of construction certificate or plans.
 - c) Long Service Levy, prior to issue of construction certificate (verification of payment is required if paid directly to Long Service Board)

- d) Maintenance Bond, prior to release of subdivision certificate.
- e) Street Tree Bond/Contribution, prior to release of subdivision.

The rates are as listed in Council's fees and charges. Contact Council's Subdivision Engineer prior to payment.

Disability Conditions

- 69) The proposal shall comply with the recommendations of the Disability Access Report prepared by Lindsay Perry Access + Architecture dated 26 February 2009.
- 70) External access to the building required to be accessible must be in accordance with the Building Code of Australia Part D and Australian Standard 1428.1, and must be provided:
 - (i) from the allotment boundary at the main points of entry; and
 - (ii) from any accessible carparking space on the allotment; and
 - (iii) from any adjacent and associated accessible building on the allotment; and
 - (iv) through the principal public entrance.
- 71) The minimum number of accessible car parking spaces shall be provided in accordance with the Building Code of Australia Section D Subsection 3.5 and designed in accordance with Australian Standard 2890.1.
- 72) Access and facilities for the disabled provided in accordance with Australian Standard 1428.1 and the relevant provisions of the Building Code of Australia. These shall be maintained for the life of the development by existing or future owners.

Bushfire Management Conditions

- 73) The development has been granted an approval from the NSW Rural Fire Service dated 8 September 2009. Where conditions are imposed by the authority the development shall comply with the general terms of approval.
- 74) The proposal shall comply with the recommendations of the Bushfire Protection Assessment prepared by Australian Bushfire Protection Planners Pty Limited dated 10.3.09 and the conditions on the Bushfire Safety Authority dated 8 September 2009. A compliance report from the Bushfire Consultant shall be submitted to the Principal Certifying Authority prior to the issue of any Occupation Certificate.
- 75) The following requirements shall be complied with respect to Asset Protection Zones. The intent of measures is to provide sufficient space for fire fighters and other emergency services personnel, ensuring radiant heat levels permit operations under critical conditions of radiant heat, smoke and embers, while supporting or evacuating occupants:
 - a) At the commencement of building works and in perpetuity the entire property shall be managed as an inner protection area (IPA) as outlined within Section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zone.'
 - b) This approval is subject to the proposed easement being registered pursuant to Section 88B of the 'Conveyancing Act 1919' on the adjoining land (Lot 2 DP1083740) for 50 metres of asset protection zone (APZ) as detailed in the information submitted by the applicant. APZs associated with the development shall be managed as outlined within Section 4.1.3 and Appendix 5 of 'Planning for

Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zone.'

- 76) The following requirement shall be complied with respect to Water and Utilities. The intent of measures is to minimise the risk of bush fire attack and provide protection for emergency services personnel, residents and other assisting fire fighting activities:
- a) Water, electricity and gas are to comply with Sections 4.1.3 and 4.2.7 of 'Planning for Bushfire Protection 2006'.
- 77) The following requirement shall be complied with respect to Access. The intent of measures for internal roads is to provide safe operational access for emergency services personnel in suppressing a bushfire, while residents are accessing or egressing the area:
- a) Internal roads shall comply with Section 4.2.7 of 'Planning for Bushfire Protection 2006'.
- 78) The following requirement shall be complied with respect to Evacuation and Emergency Management. The intent of measures is to provide suitable emergency and evacuation (and relocation) arrangements for occupants of special fire protection purpose development:
- a) Arrangements for emergency and evacuation are to comply with Section 4.2.7 of 'Planning for Bushfire Protection 2006'.
- 79) The following requirement shall be complied with respect to Design and Construction. The intent of measures is that buildings are designed and constructed to withstand the potential impacts of bush fire attack.
- a) New construction shall comply with Australian Standard AS3959-1999 'Construction of buildings in bush fire-prone areas' Level 1.

Archaeology Conditions

- 80) The applicant shall gain any necessary permits pursuant to Section 87 or 90 of the National Parks and Wildlife Act 1974 prior to the commencement of any works on site.
- 81) The proposal shall be carried out in accordance with the Interim Aboriginal Cultural Heritage Site Survey dated 2 December 2008 conducted by the Worimi Local Aboriginal Land Council.

Sand Drift Conditions

- 82) All works required by the approved Dune Management Plan shall be completed prior to the issue of any Occupation Certificate.
- 83) The development shall be managed in accordance with the approved Dune Management Plan for the life of the development.
- 84) A Construction Certificate will be required prior to the commencement of works in accordance with the Dune management Plan.

Tourist Facility Management Conditions

- 85) The tourist facility shall not be occupied by any proprietor or occupier for longer than forty two (42) consecutive days or an aggregate one hundred and fifty (150)

days in any twelve (12) month period. Such periods are to be calculated from the date of the first occupation of the tourist facility.

- 86) The occupancy restrictions shall be incorporated into a Management Agreement for the Tourist Facility. A copy of the Management Agreement shall be provided to Council prior to the issue of the occupation certificate. A register shall be kept by the owner or proprietors to record the occupancies and shall be available at any time for inspection by an authorised officer of Council.
- 87) The area contained in the setbacks of the site to adjoining properties and public roads are to be landscaped and kept clear of vehicles, materials and signage at all times.
- 88) The following measures shall be implemented prior to the issue of any Occupation Certificate and maintained for the life of the development:
- a) Equipment such as tanks, pool pumps and air conditioners must be located and/or insulated to minimize visual and acoustic impact on adjoining properties.
 - b) Any rooftop structures (eg. Aerials or air conditioning units) shall be placed so as to not unreasonably obstruct views of adjoining properties.
 - c) All grates, ramps or other components which are built into the driveway areas are to be tight fitting and sound insulated to minimise noise impacts.
 - d) Lighting on the site is to be designed in accordance with Australian Standard 4282-1997 – Control of the obtrusive effects of outdoor lighting. Any lighting on the site is to be directed in such a manner so that no nuisance is caused to adjoining properties or to drivers on surrounding streets.

Acoustic Management Conditions

- 89) The development shall comply with the recommendations of the Acoustic Assessment prepared by Hunter Acoustics dated 27.2.09. Certification from the Acoustic Consultant shall be provided to the Principal Certifying Authority prior to the issue of any Occupation Certificate for the Bar and Restaurant.
- 90) The measures specified by the Acoustic Assessment prepared by Hunter Acoustics dated 27.2.09 shall be maintained for the life of the development.

Environmental Health Conditions

- 91) The fit out of food preparation, storage and service areas are to be designed and constructed to comply with standard 3.2.3 of the Australia New Zealand Food Standards Code and Australian Standard AS 4674-2004 for the construction and fitout of food premises in particular with reference to the following:-

If Council is nominated as the Principal Certifying Authority, details of compliance are to be included in the plans and specifications for the construction certificate. The Food Surveillance Officer shall be given 48 hours notice to inspect the premises prior to commencement of the business. Where Council is not nominated as the Principal Certifying Authority a certificate from an appropriately qualified person confirming compliance with the above legislation and guidelines is to be provided before the issue of the Occupation Certificate.

Prior to occupation the business is to be registered with Council.

- a) Solid Walls - The walls including internal walls of the food premises to the

food preparation areas, kitchens, sculleries, food displays, food serveries and food storage areas shall be of solid construction eg. Brick, concrete, concrete block, lightweight concrete block or other similar approved homogenous material.

b) Wall Finishes - Any kitchens, sculleries, food preparation areas, food serveries and the like shall be finished to a height of at least two (2) metres above the floor level with:-

i. Glazed tiles fixed in accordance with the requirements of AS3958.1;

ii. Stainless steel or other approved impervious material adhered directly to the wall.

c) Rendering Walls Above Two (2) Metres - Where wall tiling does not extend to the ceiling level the wall surface above the tiles shall be rendered to a smooth steel trowel finish flush with the face of the tiles and painted with a durable gloss paint of a light colour.

d) No Ledge On Wall Tiles - The face of the tiles fixed to the vertical wall surfaces shall be flush with the adjoining wall surfaces to reduce the likelihood of the collection of dust and other accumulations on the ledge formed.

e) Ceilings - Ceilings over food preparation, display and storage areas are to be constructed of rigid smooth faced material such as plasterboard or villaboard finished with set joints and a plaster cornice at the walls and is required to be painted in a washable gloss paint of a light colour.

f) Partition Walls Splayed - Any partition walls that do not extend to the ceiling shall be splayed on top at an angle of 60 degrees to prevent storage of articles and ensure ease of vision to detect dust build-up.

g) Floorwastes - Floors are to be adequately graded and drained to the required floor waste(s).

h) Light Fittings - Light fittings being recessed flush to the ceiling surface or be of a 'squareline' type attached to the underside and provided with approved diffuser covers.

i) Vermin Proofing - Windows, external doors and other external openings shall be provided with vermin and insect proofing.

j) Coolroom Construction - Any cool rooms and freezing rooms shall be constructed and drained in accordance with Standard 3.2.3 – Food Premises and Equipment, of the Australia New Zealand Food Standards Code, Australian Standard AS 4674 and Council's local policies.

k) Coolroom Coving - Coving of the coolroom and/or freezer room shall be finished up to a 25mm aluminium "arrowhead" moulding installed 50mm above the finished floor surface to prevent damage to the coving and to allow ease of cleaning.

l) Coolroom Floor - The floor of the coolrooms / freezer rooms must be finished with a trowelled epoxy finish or tile with an epoxy grout or similar to ensure that the floor is impervious and easily cleaned. The concrete floor must be coved a minimum of 25mm and capped with an aluminium arrowhead.

m) Coolroom Shelving - Shelves to the coolroom / freezer rooms shall be constructed of galvanised pipe, angle iron, T iron, flat metal or other approved materials, all of which should be treated to prevent corrosion. The base of the shelves in the coolroom / freezer room must be at least 300mm above the floor surface.

n) Coolroom Top Infill - The coolroom being sealed and vermin proofed against the existing ceiling and wall surface.

o) Plumbing & Electrical - Services pipes, conduits, condensate drains and the like being concealed behind the finished floor and ceiling surfaces. Where such services are installed pre-fabricated panels provide 25mm clearance off

panel surfaces

p) Fixed Thermometers - All hot and cold holding units used for storage of perishable foods eg; coolrooms / freezer rooms, fridges, pie warmers, bain maries, roller grills etc. must be fitted with permanent thermometers accurate to one (1) degree that are able to be read from outside the unit (ie. Without opening the unit) and must be fitted in a location that gives an accurate reading of the temperature of the food.

q) Refrigeration Drainage - The refrigeration condensation drainage shall be conveyed to the reticulated sewerage system where available and in other cases disposed of without causing a nuisance.

r) Equipment 150mm Off Floor - All cookers, ovens, vats, fridges, freezers, benches, cupboards, shelves or similar appliances or equipment are required to be fitted with legs so as the base of the unit is at least 150mm off the floor surface. Further consideration must be given to deep units so as to not hinder cleaning requirements.

s) Coffee Machine Waste - Waste drainage from the coffee machine shall be conveyed to the sewer by approved concealed means.

t) False Bases - False bottoms beneath counters, cupboards, fittings, fixtures and equipment are not permitted. The above shall be installed on approved metal legs not less than 150mm in height.

u) Mechanical Ventilation Application - Where any system of Mechanical Ventilation and/or air conditioning is proposed or installed within the premises such system shall be designed to comply with Australian Standard, 1668, Part 2 and AS 3666, and shall be subject to a separate application to be approved by the Principal Certifying Authority prior to installation.

v) Inspection Requirements - It is the Applicants responsibility to ensure that the appropriate progress and final inspections of the food premises fitout have been carried out by the Principal Certifying Authority.

w) Beer Plumbing - Ensure all beer plumbing and post mix equipment installations including provision for the piped service connections to be dispensing units are installed in concealed locations within the bar area.

x) Loading Dock Floor - The path from the meat coolroom to the loading dock shall be sealed with epoxy or the like.

y) Cleaners Sink - A cleaners sink shall be provided with hot and cold water connected thereto, through a common mixing spout.

z) Hands Free Basin - All hand washbasins shall be provided in sufficient number within a food premises and must be fitted with a "hands free" operation with a single spout to mix hot and cold water.

aa) The sales and coffee area is to be provided with a hand wash basin if coffee is being made in this area.

bb) Any benches/cupboards to be used for service of food in banquet area are not to have false bottoms.

Advertising Signage Conditions

- 92) All advertising structures shall comply with Council's signage requirements under the Local Environmental Plan and Port Stephens Development Control Plan 2007. No advertisement shall be displayed without the consent of Council, unless the advertisement does not require approval under Council or State Government policy. Any exempt advertisements shall relate to the approved development or premises situated on that land. The advertisement must be maintained in a presentable and satisfactory state of repair.

MINUTES FOR EXTRA ORDINARY MEETING – 15 SEPTEMBER 2009

- 93) All signage on the site shall not have:
- any internal or external illumination
 - flashing lights
 - electronically changeable messages
 - animated display, moving parts or simulated movements
 - complex display that holds driver's attention beyond "glance appreciation"
 - display resembling traffic signs or signals

Illumination of the carpark and building during trade hours only is permitted.

- 94) Only advertisement that relates to development on that land, or to premises situated on that land are permitted to be displayed on the property.

- 95) No advertisement material is permitted to be displayed facing the adjoining Crown Land.

There being no further business the meeting closed at 7.01pm.

I certify that pages 1 to 90 of the Open Ordinary Minutes of Council 15 September 2009 were confirmed by Council at its meeting held on 22 September 2009.

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Cr Bruce MacKenzie
MAYOR