

ATTACHMENTS UNDER SEPARATE
COVER

ORDINARY COUNCIL MEETING
8 DECEMBER 2015



PORT STEPHENS
C O U N C I L

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ITEM 1 - ATTACHMENT 1 LOCALITY MAP.



ITEM 1 - ATTACHMENT 2 DEVELOPMENT ASSESSMENT REPORT.

Delegated Assessment: 16-2013-579-1
103A Richardson Road RAYMOND TERRACE

APPLICATION REFERENCES	
Application No.	16-2013-579-1
Property	103A Richardson Rd, Raymond Terrace
Lot and DP	Lot 1 DP 735177
Description of development	Two (2) Lot Subdivision – TT
Applicant	LE MOTTEE GROUP PTY LTD
Date lodged	13/09/2013
Owners Consent	Yes – provided
Capital Investment Value	\$600,000
Present use	Dwelling
Zoning	2(a) Residential – LEP 2000 R2 Low Density Residential – LEP 2013
88B Instrument and Deposited Plan	DP 735177 creates an easement for ROW and services over Lot 2 (Halloran Way) and Lot 4 (Council reserve along Richardson Rd) benefiting the subject site. The terms of the easement indicate the easements are temporary, and are to be extinguished upon access becoming available from Halloran Way.
Submissions	Yes – one
Recommendation	Approval subject to conditions

SITE DESCRIPTION

The site is located at 103A Richardson Road, Raymond Terrace and is legally known as Lot 1 DP 735177. It has an area of approximately 6844m² and is generally flat with a slight slope toward the north. Access to the site is from Richardson Road via an existing handle over Council owned land (104A Richardson Road; Lot 4 DP 735177). A single dwelling and associated ancillary structures (pool, garage, etc.) currently exist upon the site. The existing site improvements are located in the northern section of the site. The site is largely cleared excluding plantings located on the property boundaries and within proximity to the existing dwellings. The land surrounding the site includes residential allotments of varied size.

The site is bush fire prone land (buffer) and has been referred to the Rural Fire Service (RFS) for approval under s 100B *Rural Fires Act 1997*. General Terms of Approval were received on 16 October 2013. Further, Richardson Road is an RMS classified Road. The application was referred to RMS for concurrence which was received on 23 March 2013.

The site is also located within an area affected by aircraft noise (ANEF 2012 (20 to 25) and ANEF2025 (20 to 25)). Residential subdivision of land within aircraft noise affect areas are to be submitted with an acoustic assessment report (DCP2007 Chapter B15 C6). Subdivision with the ANEF 2012/25 20 to 25 noise planning area is conditionally acceptable. It is noted that an acoustic assessment report has not been provided in this instance. The development results in

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one additional allotment only and there are no built works proposed as part of the development application. Further, it is considered that for a typical housing design, compliance with the required internal noise criteria (AS2021-2000) is likely to be reasonably be achieved using standard construction techniques.



Fig. 1: Aerial photos.

PROPOSAL

The applicant proposes the subdivision of the subject site into two residential lots as detailed below. The development also results in the dedication of part of the site as public road. The applicant does not intend to construct the public road at this stage.

1. Proposed lot 1 has an area of 3300m² and is generally regular in shape with an approximate 44.7 metre frontage to the unformed Halloran Way. Proposed Road No.2 traverses the western property boundary and proposed road No.3 traverses the rear property boundary. Access is obtained to the site via right-of-way from Richardson Road.
2. Proposed lot 2 is approximately 2166 m² and is generally regular in shape with a 58.4 metre frontage to proposed road No.3. Access to the site remains via the existing driveway and right-of-way from Richardson Road.

HISTORY

A previous DA over the site (16-2005-1393-1) which proposed a six lot torrens title subdivision was refused by Council staff in April 2007. The application was a subsequent stage of the original subdivision of the land which occurred in 1987 in accordance with a DCP adopted by Council which provided for the subdivision of the subject land (and adjoining sites) in two stages. The first stage provided for the excision of the frontage lot and the creation of a rear lot, subject to the creation/dedication of an intermediate 20 metre wide strip of land for the future extension and construction of Halloran Way. Temporary access to the rear lots was allowed over right -of-ways (per the existing situation). The second stage envisaged the further

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subdivision of the lots at which time property owners would co-operatively construct the main access road – Halloran Way and connect it to Lake View Crescent and extinguish the right-of-ways that currently provide access. The refusal was issued for a number of reasons including non-compliance with the DCPLD7 – Richardson Road Raymond Terrace (the DCP at that time) with regard to the construction of Halloran Way as well as matters regarding the suitable provision of infrastructure to service the site.

The refusal was appealed by the Applicant in the Land & Environment Court (LEC). Initially the appeal was dismissed and consent was refused (*Paul LeMottee Project Management Pty Ltd v Port Stephens Council* [2009] NSW LEC 1176, June 2009). The Court noted it was not appropriate for the proposed six lot subdivision to access via a right-of-way and that adequate stormwater management had not been achieved. The LEC noted that the integrity of the DCP applying to the land had been diminished as a result of previous approvals for development issued by Council contrary to the provisions of the DCP which resulted in the continued deferring of road construction. The LEC in making their findings stayed the decision to provide the applicant with the opportunity to respond. Thus in (*Paul LeMottee Project Management Pty Ltd v Port Stephens Council (No.2)* [2009] NSW LEC 1302, October 2009), the LEC revisited its decision and granted consent to the application as the applicant had provided amendments to; undertake the construction of the first stage of Halloran Way and provision of adequate stormwater drainage measures. The LEC noted at this time that it would be unreasonable for Council to require the applicant to fully construct Halloran Way. Notwithstanding, 16-2005-1393-1 has not been acted on.

Prior to lodgement of the current application the applicant sought pre-lodgement meetings with both Council and RMS regarding, during which both organisations agreed to allowing an additional lot to utilise the existing laneway/ROW, and facilitate contribution toward necessary infrastructure. Further, during the current assessment Council staff have undertaken a number of meetings internally and with the applicant, regarding future policy direction for the area, including addressing the manner in which the construction of Halloran Way will be facilitated. As a result of these discussions, the land owner/developer has suggested that they enter into a Voluntary Planning Agreement with Council to provide funds (\$18,000) for future infrastructure provision. The application also attracts section 94 contribution fees. It is noted that Council had not yet identified the applicable funds per allotment that would be required to facilitate the construction of Halloran Way. There is no section 94 plan in place to levy these fees. Further, it is considered unreasonable to require the construction of Halloran Way its entirety in order to facilitate a two lot subdivision which already has suitable legal access via the existing right of way over 105A Richardson Road Raymond Terrace. There is potential for the further subdivision of the subject site and subject to Council adopting a section 94 contribution for the locality additional funds can be levied to facilitate the construction of Halloran Way at that time.

Further, the LEC identified within the appeal of 16-2005-1393-1 that given Councils ad-hoc approach to the subdivision of the land in 'stage two' of the area without requiring contribution to road construction it is likely that Council will be required to address any shortfall in funding in order to construct the road. It is also noted that the construction of Halloran Way is not identified on Council's forward works program.

PLANNING ASSESSMENT

The proposal has been assessed under the relevant matters for consideration detailed in Section 79C(1) of the Environmental Planning and Assessment Act, 1979 as follows:

Rural Fires Act 1997

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The *Rural Fires Act 1997* (RF Act) seeks to prevent, mitigate and suppress bush and other fires in order to ensure the protection of persons from injury or death and to protect infrastructure and environmental, economic, cultural, agricultural and community assets from damage arising from fires. The site is identified as bushfire prone land. The application was referred to the Rural Fire Service (RFS) in accordance with s.100B and General Terms of Approval (GTAs) were provided dated 16 October 2013. The proposal is considered consistent with the aims of the RF Act and the Planning for Bushfire Protection Policy 2006.

Roads Act 1993

In accordance with the *Roads Act 1993* (R Act) the Roads and Maritime Services (RMS) has powers in relation to road works, traffic control facilities, connections to roads and other works on the classified road network. Richardson Road is a classified (State) road. RMS concurrence is required for connections to Richardson Road under s.138 of the Roads Act. The RMS issued a letter to Council on 25/3/2013 advising that they had no objections to an additional lot accessing Richardson Rd via the existing right-of-way/laneway.

Environmental Planning and Assessment Act 1979

The proposal has been assessed under the relevant matters for consideration detailed in Section 79C(1) of the *Environmental Planning and Assessment Act 1979*.

Environmental planning instruments (s.79C(1)(a)(i))**State Environmental Planning Policy No.44 – Koala Habitat Protection and Port Stephens Comprehensive Koala Plan of Management**

State Environmental Planning Policy No.44 aims to encourage the conservation and management of areas of natural vegetation that provide habitat for koalas, to ensure permanent free-living populations over their present range and to reverse the current trend of population decline. The Port Stephens Koala Plan of Management (CKPoM) takes precedence over the requirements of State Environmental Planning Policy No.44 as it satisfies the requirements of the SEPP for preparation of an individual Koala Plan of Management. Compliance with the CKPoM effectively constitutes compliance with SEPP No.44 within the Port Stephens Local Government Area.

The site is mapped as mainly cleared land with small sections of marginal koala habitat. The development does not require the removal of vegetation and therefore does not sever any wildlife corridor. As a result the proposal does not result in the removal of primary feed trees and is unlikely to impact upon Koala's or their habitat. The development is taken to satisfy the provision of SEPP No.44 and CKPoM.

State Environmental Planning Policy 55 – Remediation of Land

State Environmental Planning Policy 55 (Remediation of Land) provides planning controls for the remediation of contaminated land. The policy states that land must not be developed if it is unsuitable for a proposed use because it is contaminated. If the land is unsuitable, remediation must take place before the land is developed. The site has been historically utilised for residential purposes. Further investigation is not warranted at this time and the development as submitted is satisfactory with regards to SEPP No.55.

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Section 79C(1)(a)(i) provisions of any environmental planning instrument**Local Environmental Plan 2013 (LEP2013)**

The application was lodged on 13 September 2013. As, LEP2013 was imminent at the time of lodgement and Council is required to give the instrument weight as it is a mandatory relevant consideration under s.79C(1)(a)(ii) Environmental Planning and Assessment Act 1979 (EP&A Act 1979). The subject site is zoned R2 Low Density Residential under LEP2013. Subdivision of R2 zoned land can occur if the resulting allotments are equal or greater than the minimum size shown on the relevant lot size map. The subject site is mapped as 1 on Council's land size map and requires a minimum lot size of 500m². The allotments resulting from the proposed development satisfy the minimum lot size requirements under LEP2013.

Notwithstanding, clause 1.8A 'savings provision relating to development applications' applies to the application. Whilst weight must be given to LEP2013 the application is determined under the provisions of LEP2000.

Port Stephens Local Environmental Plan 2000 (LEP 2000)

The site is zoned 2(a) Residential. The proposal is considered to be permissible in the zone and consistent with the zone objectives, subject to recommended conditions of consent.

Zoning

The site is zoned 2(a) Residential and subdivision of land within the 2(a) residential zone is permitted with development consent in accordance with cl.17. The proposed development is consistent with the objectives of the 2(a) residential zone as the residential subdivision of land provides for the housing needs of the community. In addition the subdivision has been designed and sited so as to protect and enhance the existing residential amenity and character of the area.

Clause 17 - Subdivision in residential zones

A minimum lot size of 500sqm applies to 2(a) residential zoned land. The proposed lots sizes are 2166sqm and 3300sqm (which excludes land for proposed road reserves) and therefore the development complies with this requirement and satisfies the provisions of cl.17.

Clause 47 – Services

Clause 47 specifies that development consent cannot be granted unless essential services are available to the development. Arrangements for essential services are available to the development including, water, electricity, sewer, stormwater drainage and vehicular access. In particular it is noted that Hunter Water Corporation has confirmed via correspondence dated 26 September 2013 that the development can connect to Hunter Water reticulated water and sewerage services. Clause 74 is satisfied.

Clause 51A - Development on land identified on Acid Sulfate Soils Planning Map

The site is mapped as having acid sulphate soils level 5 occurring on site. The development requires excavation works associated with infrastructure works (stormwater drainage). However, these works involve minimal cut and are not likely to result in the lowering of the watertable below 1 metre AHD on adjacent class 1, 2, 3, or 4 land. The proposal does not trigger the need for further investigation under this clause. A preliminary acid sulphate soil management plan is not required in this instance.

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Draft environmental planning instrument (Section 79C(1)(a)(ii))

There are no draft Environmental Planning Instruments that are or have been placed on public exhibition that are relevant to this proposal.

Development control plan (s.79C(1)(a)(i))

Port Stephens Development Control Plan 2007

The proposal is considered to be consistent with the relevant controls and principles of DCP 2007, as detailed below:

Part A1 – Introduction**A.1.9 – Community Participation**

The original development lodged with Council was advertised and notified to adjoining neighbours for a period of 14 days from 23 September 2013 to 9 October 2013 and one submission was received. The concerns raised within the submission related to the increased traffic arising from the development and associated impacts to adjoining residential properties and the existing right of way. The submission is addressed in detail elsewhere within this report.

A.1.10 – Developer Contributions

The development attracts developer contributions under s.94A of the *EP&A Act 1979* and in accordance with the Port Stephens Section 94 Development Contributions Plan. A contribution amounting to \$13,725 is required to be levied prior to the release of subdivision certificate. It is noted that at s.94 contribution is levied for 'Richardson Road' this levy applies to stage one of the development area. The proposed development is located in stage two and a associated s.94 levy does not yet apply to this area.

Part B1 – Subdivision and Streets

The development relates to a one into two lot torrens title subdivision and is consistent with the relevant requirements of the policy. The proposed lots are of a shape suitable for their future use to allow for adequate vehicle access and location of future buildings. Utility services (water, electricity sewer, and telecommunications) are available to be connected to the site. The development also makes provisions for future road access and is therefore considered to be acceptable.

Part B2 – Environmental and Construction Management

The application has been assessed against the provisions of Development Control Plan 2013 (DCP2013), B2 – Environmental and Construction Management and is considered satisfactory. Matters pertaining to contamination, vegetation management, and wastewater have been discussed elsewhere within this report. However, it is noted that the development shall be subject to conditions and is not likely to result in a breach of the federal or state legislation described within chapter B2. Further erosion and sediment control measures shall be implemented prior to the commencement of works on site.

Section C2 Richardson Road Raymond Terrace

The proposed development represents progression to Stage 2 of development in the area. However, the DCP is only designed to facilitate Stage 1. The DCP chapter states generally that

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roads are to be provided as per the map, which in this case includes Halloran Way, Road 2 and part of Road 3. It also states that water and sewer are to be provided, along with some undescribed drainage reserves.

The proposed development has legal access via an existing access handle over Council owned land (104A Richardson Road; Lot 4 DP 735177). Provision of stormwater drainage infrastructure can also be facilitated over this allotment via a licence agreement with Council (addressed through conditions of consent). Therefore, unlike the surrounding properties the subject site does not rely upon access on Halloran Way and can be facilitated through the existing access arrangements to the site. As such, given the proposal is for a one into two lot subdivision only it is considered unreasonable to require the applicant to construct Halloran Way and associated infrastructure in its entirety. In this instance deviation from the DCP requirements are considered acceptable. It is also noted that the applicant proposes to enter into a VPA with Council to provide funds for the future construction of Halloran Way.

Part B3 – Parking, traffic and transport

The application has been assessed against the provisions of Development Control Plan 2013 (DCP2013), B3 – Parking, traffic and transport and the road design and access measures proposed as part of the development is satisfactory. The proposed additional lot will use the existing laneway/ROW for legal right of access, which already services the existing dwelling on 103A Richardson Rd and the church on 103 Richardson Rd (which has a parking lot with capacity for approx. 30-40 cars). The additional traffic is not likely to have a significant impact on the existing traffic conditions.

Part B15 – Aircraft noise for buildings

The site is also located within an area affected by aircraft noise (ANEF 2012 (20 to 25) and ANEF2025 (20 to 25)). Residential subdivision of land within aircraft noise affect areas must be submitted with an acoustic assessment report (DCP Chapter B15 C6). An acoustic report has not been requested given the scale of the development and as it is considered that a typical housing design, compliance with the required internal noise criteria (AS2021-2000) can usually be achieved using standard construction techniques.

Planning agreements under 93F (s.79C(1)(a)(iia))

A draft planning agreement that a developer has offered to enter into under section 93F of the Act relates to this development. The developer has proposed to contribute \$18,000 to Council for the future construction of Halloran Way. The VPA is being reported to Council in conjunction with this application.

The Regulations (s.79C(1)(a)(iv))

There are not relevant matters for consideration under s.79C(1)(a)(iv).

Likely impacts (s.79C(1)(b))

The likely impacts of the development have been detailed within this assessment report.

Suitability of the site (s.79C(1)(c))

As detailed within this assessment report the site is considered to be suitable for the proposed development.

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Submissions (s.79C(1)(d))

Public submissions

The development application and accompanying information were placed on public exhibition for a period of 14 days from 23 September 2013 to 9 October 2013. As a result of the notification process, one submission was received. Following assessment, it is considered that the concerns raised in the submission do not warrant refusal of the application in this instance. The concerns raised in the submission are listed below, along with the relevant assessment comments:

1. **Traffic increase:** The submission raised concern that the existing gravel laneway was not suitable for the additional traffic, and that the proposal would generate excessive noise, dust and traffic congestion.

Comment

The existing laneway is used by existing development on 103 and 103A Richardson Rd, which contain a church and dwelling, respectively. An additional lot is not likely to significantly increase the traffic using the existing laneway, nor increase the impacts on adjoining properties. Further, the laneway is suitable for the additional traffic for a new dwelling. It is acknowledged that an additional dwelling could be built on the lot, however, any further intensification of the lot use above and beyond one dwelling would be subject to a new development application which would be assessed on its merits (including access and traffic).

Public interest (s.79C(1)(e))

The proposed development is in the public interest as detailed elsewhere within this report.

RECOMMENDATION

An assessment of the application has been carried out under Section 79C(1) of the *Environmental Planning and Assessment Act, 1979* as amended. The proposed development is considered satisfactory in terms of the relevant matters for consideration under the Act and the development application is recommended for approval subject to conditions of consent.

ITEM 1 - ATTACHMENT 3 CONDITIONS OF CONSENT.**ATTACHMENT 3****SCHEDULE 2****PART A – CONDITIONS OF DEFERRED COMMENCEMENT APPROVAL**

Pursuant to Section 80(3) of the *Environmental Planning and Assessment Act 1979* (NSW) (as amended), this is a deferred commencement condition.

1. This Consent will not become operational until the Voluntary Planning Agreement (VPA) has been executed.

The Applicant shall satisfy the deferred commencement condition listed in Part A, within 12 months from the date of issue of the deferred commencement consent. The consent will lapse if the condition is not satisfied within this period. Upon satisfaction of the matters listed under Part A, and written confirmation from Council to that effect, the consent shall become operative from the date of endorsement included in the written notification subject to the conditions listed in Part B.

PART B – CONDITIONS OF CONSENT APPLICABLE AFTER SATISFACTION OF DEFERRED COMMENCEMENT CONDITION(S)

1. The development must be carried out in accordance with the following plans and documentation and endorsed with Council's stamp, except where amended by other conditions of this consent:

Plan prepared by Le Mottee Group, Ref No. 3369 (Sheet 1 of 1) dated 1/8/2013
Bushfire Report prepared by Le Mottee Group, Ref No. 3369 dated 13/9/2013

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

2. The General Terms of Approval issued by the NSW Rural Fire Service dated 16 October 2013 shall be complied with (attached).

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

3. Prior to the issue of a construction certificate the person having the benefit of this consent shall enter into a licence agreement (or similar) with Council in respect to the use of 104A Richardson Road; Lot 4 DP 735177 for the purpose of providing pipes or other connections associated with the approved stormwater drainage works. The

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licence agreement (or similar) shall be made on terms and conditions to be agreed by Council.

4. 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	(\$1,143)	(\$1,143)
Public Open Space, Parks and Reserves	(\$2,372)	(\$2,372)
Sports and Leisure Facilities	(\$5,595)	(\$5,595)
Cultural and Community Facilities	(\$2,810)	(\$2,810)
Fire & Emergency Services	(\$226)	(\$226)
Roadworks	(\$1,579)	(\$1,579)

Total		\$13,725
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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 a construction certificate or prior to issue of subdivision certificate whichever occurs first.**
 - 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 from the date of original consent.
5. A stormwater detention system to cater for the stormwater runoff from the improvements on proposed Lot 2 shall be designed and built in accordance with the table provided below. A staged orifice structure shall be provided that restricts site discharge to pre-developed flows as per the minor and major events listed in the table. Full calculations shall be provided demonstrating that the staged discharge rates are achieved (i.e. minor volume up to minor event discharges at minor discharge rate and volume in excess of minor volume discharges at equal to or below major discharge rate).

The construction detail shall also include details of the location and type of detention system, orifice, pipes, pits, major overland flow path and the discharge point to the public drainage system.

The stormwater detention system shall include design features in accordance with **Section 8.11 of Australian Standard AS3500.3:2003.**

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Details shall be submitted by a suitably qualified and practising drainage engineer, and approved by the certifying authority **prior to issue of the construction certificate.**

LOT	Average annual rainfall probability	PSD	Storage site specific
		(l/s) per site	(m ³) per site
1	5	44	28.4
1	100	119	55.9
2	5	20	6.1
2	100	53	11.7

6. All work required to be carried out within a public reserve must be separately approved by Council, under Section 68 of the Local Government Act 1993. Engineering plans for the required work within the public reserve, Lot 4 DP 735177, must be prepared and designed and constructed by a suitably qualified professional, in accordance with Council's 'Infrastructure Design and Construction Specification – AUS Spec', and Section B of Development Control Plan 2007 to the satisfaction of Council. The plans are to include details of all existing and proposed public authority and private services including location and level. The required works to be designed are as follows:
 - a) Storm water infrastructure within 'Lot 4 DP 735177' to collect, manage and convey storm water from the proposed public road to the public infrastructure within Richardson Road.
 - b) Water quality devices including water quality modelling to demonstrate pollutant management is in accordance with councils Urban Stormwater and Rural Water Quality Management Plan.
 - c) Widening of the carriageway within 'Lot 4 DP 735177' to 4.0 m and other works to comply with RFS requirements.
 - d) Installation or relocation of private utility services.
 - e) Proposed public utility services.
 - f) Payment of applicable fees and bonds; and
 - g) Contractor's public liability insurances to a minimum value of \$10 million dollars. The engineering plans must be approved by Council **prior to the issuing of a Construction Certificate required under this consent.**
7. All work required to be carried out within a public road reserve (Halloran Way and Richardson Road) must be separately approved by Council, under Section 138 of the Roads Act 1993. Engineering plans for the required work within a public road must be prepared and designed by a suitably qualified professional and constructed in accordance with Council's 'Infrastructure Design and Construction Specification – AUS Spec', and Section B of Development Control Plan 2007 to the satisfaction of Council. The required works to be designed are as follows:
 - a) Storm water infrastructure within Halloran Way and Richardson Road to collect, manage and convey storm water from the proposed development to public infrastructure within Richardson Road.

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- b) Water quality devices including water quality modelling to demonstrate pollutant discharge is in accordance with councils Urban Stormwater and Rural Water Quality Management Plan.
- c) Any works to comply with RFS requirements.
- d) Traffic control plans in accordance with the Roads and Traffic Authority – Traffic Control at Worksites Manual.
- e) Installation or relocation of private utility services.
- f) Proposed public utility services.
- g) Payment of applicable fees and bonds; and
- h) Contractor's public liability insurances to a minimum value of \$10 million dollars.

The engineering plans must be approved by Council **prior to the issuing of a Construction Certificate** required under this consent. 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.
- iii. Works associated with the Roads Act Approval are subject to:
 - a) Inspection by Council,
 - b) Approval by Council at each construction stage as determined by Council.

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

- 8. The person having the benefit of the development consent shall comply with any relevant prescribed conditions of development consent under clause 98 of the Environmental Planning and Assessment Regulation.
- 9. Construction work that is likely to cause annoyance due to noise is to be restricted to the following times:-
 - * Monday to Friday, 7am to 6pm;
 - * Saturday, 8am to 1pm;
 - * No construction work to take place on Sunday or Public Holidays.

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

- 10. 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.
- 11. 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

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'on the spot' fines for pollution/littering offences under the Protection of the Environment Operations Act 1997.

12. During excavation, demolition and construction phases, no building materials, plant or the like are to be stored on the road or footpath without written approval being obtained from Council beforehand. The pathway shall be kept in a clean, tidy and safe condition during building operations. Council reserves the right, without notice, to rectify any such breach and to charge the cost against the person having the benefit of the development consent/owner/builder, as the case may be.
13. Where required, the adjustment or inclusion of any new utility service facilities must be carried out by the person having the benefit of the development consent and in accordance with the requirements of the relevant utility authority. These works shall be at no cost to Council. It is the person having the benefit of the development consent's full responsibility to make contact with the relevant utility authorities to ascertain the impacts of the proposal upon utility services (including water, phone, gas and the like). Council accepts no responsibility for any matter arising from its approval to this application involving any influence upon utility services provided by another authority.
14. Suitable and adequate measures are to be applied to restrict public access to the site and building works, materials and equipment.
15. Rubbish and building refuse generated from the development is to be suitably contained on site at all times. No rubbish shall be stockpiled in a manner which facilitates the rubbish to be blown off site.
16. All lots in the proposed subdivision shall be serviced by the Hunter Water Corporation with water and sewerage facilities.
17. Each lot within the subdivision is to have a separate electricity and telecommunication services. The services must be installed wholly within the respective lot boundaries, proposed public roads and the easement for services over Lot 4 DP 735177. Any 'cross property' services between lots within the subdivision must be removed and made safe in accordance with the relevant Australian standards and utility authority rules.
18. Existing electrical and telecommunication services within Halloran Way and the proposed roads are to be relocated and lowered as necessary to comply with the footpath allocations and minimum depths of the NSW Streets Opening Conference – Guide to Codes and Practices for Streets Opening.

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

19. A Subdivision Certificate must be obtained from Council. The applicant must submit a completed Subdivision Certificate Application Form (with applicable fee), six (6) copies of the Survey Plan, four (4) copies of any 88B Instrument and a check list demonstrating compliance with the conditions of this development consent. The following information shall also be submitted:
 - a) 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.

ITEM 1 - ATTACHMENT 3 CONDITIONS OF CONSENT.

Applications for Section 50 Certificates are to be made direct to the Hunter Water Corporation.

- b) Certification from a registered Surveyor shall be submitted to Council prior to the issues of the Subdivision Certificate, stating that no services (including stormwater) or public utility presently connected to the existing building shall straddle any new boundary. Alternatively, an easement shall be created to cover the services, utilities or structures.
20. **Prior to the issue of a subdivision certificate**, the applicant is to construct and obtain a Certificate of Practical Completion for the infrastructure listed below.
- a) Any roadworks to comply with RFS requirements.
 - b) Stormwater drainage and quality control works.
 - c) On-site stormwater detention for lot 2.
 - d) Water supply and sewerage works (s 50 Certificate from Hunter Water)
21. 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.
22. All civil engineering works associated with the Section 68 Approval shall be carried out to the satisfaction of Council (with a letter of practical completion issued) **prior to issue of the Subdivision Certificate**. All works associated with the Section 68 Approval shall be at no cost to Council.
23. The applicant shall restore, replace or reconstruct any damaged or removed sections of footpath, cycleway, kerb and guttering, road pavement, stormwater, or any other public infrastructure located within the Road Reserve that occur as a result of construction activities, as determined by Council's Development Engineers or Civil Assets Engineer. The applicant shall bear all associated costs with restoring the public infrastructure to satisfaction of the Council. **A Subdivision Certificate shall not be issued until all necessary remediation and repair works have been completed to the satisfaction of Council.**
24. Works-As-Executed plans shall be prepared by a suitability qualified person detailing:
- a. All roads, drainage, traffic management and utility works in accordance with Council's Design and Construction Specifications, policies and standards.
 - b. Information shall also be provided to verify the completion of all works associated with the installation and operation of the on site detention system for Lot 2.
 - c. Information shall also be provided to confirm that services connected to Lot 2 are located to the depths and alignment as required by other conditions.

This shall be submitted to, and accepted by the Council, **prior to issue of the Subdivision Certificate**.

ITEM 1 - ATTACHMENT 3 CONDITIONS OF CONSENT.

25. **A Subdivision Certificate cannot be issued** until an instrument under Section 88B of the Conveyancing Act with accompanying plan is submitted to the Principal Certifying Authority and determined to be satisfactory by the Principal Certifying Authority. The instrument shall include the following details:

- a. Restrictions on the use of Lot 2 to prevent building over onsite detention facilities.

CONDITIONS TO BE SATISFIED AT ALL TIMES

- 26. The width of proposed road 2 shall not be less than 9.5 m and proposed road 3 shall not be less than 13.5 m. Road dedication shall include splay corners in accordance with the proposed plan of subdivision.
- 27. The minimum standard for access to the proposed lots via Richardson Road, Lot 4 DP 735177, Halloran Way and the proposed roads 2 and 3 is in accordance with clause 4.1.3.(2) of "Planning for Bushfire Protection 2006".
- 28. Any works that occur in Lot 4 DP 735177 for the provision of services/infrastructure for the subdivision, are to result in Lot 4 DP 735177 being made safe and returned back to its existing condition.
- 29. Stormwater quantity and quality management for the development site shall be in accordance with the Urban Stormwater and Rural Water Quality Management Plan and shall include:
 - a) On site detention to restrict post development stormwater discharge rates from the site such that they are restricted to pre-developed discharge rates for all critical storm events up to the 1% AEP storm.
 - b) Impervious lot areas are to be drained via on site detention systems.
 - c) The provision of table drains and piped drainage to the southern side of proposed road 3 and eastern side of proposed road 2 and then piped through the Right of Carriageway over lot 4 DP 735177 and connected to the existing piped drainage system in Richardson Road.

ADVICES

- A. 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.
- B. The developer is responsible for full costs associated with any alteration, relocation or augmentation to public utilities whether caused directly or indirectly by this proposal. Such utilities include water, sewerage, drainage, power, communication, footways, kerb and gutter.

ITEM 1 - ATTACHMENT 3 CONDITIONS OF CONSENT.

- C. The respective owners of lots 1 and 2 shall be responsible for all costs associated with the maintenance and any improvements required to the access works to each lot approved by this consent, from the sealed road carriageway of Richardson Road to each lot.
- D. Port Stephens Council shall maintain the stormwater drainage infrastructure located within proposed roads 2 and 3 constructed to Council requirements by this consent.
- E. The stormwater drainage works provided within roads 2 and 3 and connecting to Richardson Road are considered to be temporary until such time as the roads and infrastructure required by Port Stephens Council DCP 2013 C2 Raymond Terrace – Richardson Road are completed.
- F. Council cannot guarantee uninterrupted access or provision of public or private utility services to each lot. Interruptions of unknown duration are expected to occur during the construction period associated with the future construction of roads and infrastructure required by Port Stephens Council DCP 2013 C2 Raymond Terrace – Richardson Road.
- G. Street lighting will not be provided to Roads 2 and 3 until such time as the roads and infrastructure required by Port Stephens Council DCP 2013 C2 Raymond Terrace – Richardson Road are completed.
- H. Prior to the Subdivision Certificate release, contact Council's Mapping Section via email at: addressing@portstephens.nsw.gov.au stating your Development Approval number, address of the property and the assessing officer to obtain the correct house numbering. Be advised that any referencing on Development Application plans to house or lot numbering operates to provide identification for assessment purposes only.

ITEM 1 - ATTACHMENT 3 CONDITIONS OF CONSENT.

SCHEDULE 3

All communications to be addressed to:

Headquarters
15 Carter Street
Lidcombe NSW 2141

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

Headquarters
Locked Bag 17
Granville NSW 2142

Facsimile: 8741 5433



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

Your Ref: 16-2013-579-1
Our Ref: D13/2206
DA13092489125 MS

ATTENTION: Carlos Ferguson



16 October 2013

Dear Sir/Madam

Integrated Development for 1/735177 103a Richardson Road Raymond Terrace 2324

I refer to your letter dated 19 September 2013 seeking general terms of approval for the above Integrated Development in accordance with Section 91 of the 'Environmental Planning and Assessment Act 1979'.

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

Asset Protection Zones

The intent of measures is to minimise the risk of bush fire attack and provide protection for emergency services personnel, residents and others assisting fire fighting activities. To achieve this, the following conditions shall apply:

1. At the issue of subdivision certificate 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 zones'.

Access

The intent of measures for property access is to provide safe access to/from the public road system for fire fighters providing property protection during a bush fire and for occupants faced with evacuation. To achieve this, the following conditions shall apply:

2. Property access roads shall comply with section 4.1.3 (2) of 'Planning for Bush Fire Protection 2006'.

ITEM 1 - ATTACHMENT 3 CONDITIONS OF CONSENT.

General Advice – consent authority to note

This approval is for the subdivision of the land only. Any further development application for class 1,2 & 3 buildings as identified by the 'Building Code of Australia' must be subject to separate application under section 79BA of the EP & A Act and address the requirements of 'Planning for Bush Fire Protection 2006'.

For any queries regarding this correspondence please contact Merryn Spray on 1300 NSW RFS.

ITEM 1 - ATTACHMENT 3 CONDITIONS OF CONSENT.



Transport
Roads & Maritime
Services

25 March 2013

SF2013/012223
CR2013/001307
MJ

General Manager
Port Stephens Council
DX 21406
RAYMOND TERRACE

PORT STEPHENS COUNCIL
Information Services

26 MAR 2013

File No. 16-2005-1393-1
Action by
PACM

Attention: Mr Matthew Brown

RICHARDSON ROAD (MR104): LOT 1 DP 735177, 103A RICHARDSON ROAD, RAYMOND TERRACE

Dear Mr Brown

I refer to your letter dated 13 February 2013, received on 20 February 2013, requesting comment from Roads and Maritime Services (RMS) regarding vehicular access to / from Richardson Road for one additional lot at the subject site. I also refer to a recent meeting held on 12 February 2013.

RMS understands that a Section 98 modification is to be submitted to Council for a two lot subdivision at the subject site being the first stage of the approved six lot subdivision.

RMS Responsibilities

Transport for NSW and RMS primary interests are in the road network, traffic and broader transport issues. In particular, the efficiency and safety of the classified road network, the security of property assets and the integration of land use and transport.

In accordance with the *Roads Act 1993*, RMS has powers in relation to road works, traffic control facilities, connections to roads and other works on the classified road network. Richardson Road (MR104) is a classified (State) road. RMS concurrence is required for connections to Richardson Road with Council consent, under Section 138 of the Act. Council is the roads authority for this road and all other public roads in the area.

RMS Response and Requirements

RMS would have no objections to a future development proposal for one additional lot only (two lots) utilising the existing right of way / driveway / vehicular access to and from Richardson Road. The driveway shall be designed and constructed to Council requirements.

Roads & Maritime Services

59 Darby Street, Newcastle NSW 2300 | Locked Bag 30 Newcastle NSW 2300 DX7813 Newcastle
T 02 4324 0688 | F 02 4324 0342 | E David.N.Young@rms.nsw.gov.au www.rmservices.nsw.gov.au | 13 22 13

ITEM 1 - ATTACHMENT 3 CONDITIONS OF CONSENT.

Any further subdivision of the subject site (previously six lots) will require all vehicular access to the site to be via Halloran Way and the right of way / driveway / vehicular access to and from the site to be closed. This shall be in accordance with previous RMS requirements outlined in correspondence with Council dating from December 2006.

Please note that this is preliminary advice only. RMS reserves the right change its position at the time of receiving the development application and supporting information on referral by Council to RMS for comment and / or requirements. On receipt of the development application, RMS will consider the proposal on its merits in accordance with the relevant legislation and guidelines.

Please contact me on (02) 4924 0688 if you require further advice.



lindsaytaylorlawyers

commercial • environmental • local government

Deed

103A Richardson Road, Raymond Terrace

Planning Agreement

Under s93F of the *Environmental Planning and Assessment Act 1979*

Port Stephens Council

Robert Edwin Blackie

Barbara Blackie

Date:

© Lindsay Taylor Lawyers

lindsaytaylorlawyers

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ABN 29 682 671 304

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ITEM 1 - ATTACHMENT 4 DRAFT PLANNING AGREEMENT.

103A Richardson Road, Raymond Terrace Planning Agreement
Port Stephens Council
Robert Edwin Blackie and Barbara Blackie



103A Richardson Road, Raymond Terrace Planning Agreement

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Robert Edwin Blackie and Barbara Blackie



**103A Richardson Road, Raymond Terrace
Planning Agreement**

Summary Sheet

Council:

Name: Port Stephens Council
Address: 116 Adelaide Street, Raymond Terrace NSW 2324
Telephone: (02) 4980 0377
Facsimile: (02) 4983 1918
Email: tim.crosdale@portstephens.nsw.gov.au
Representative: Tim Crosdale

Developer:

Name: Robert Edwin Blackie and Barbara Blackie
Address: 103A Richardson Road, Raymond Terrace NSW 2324
Telephone: (02) 4987 1969
Facsimile: (02) 4987 1969
Email: bblack0@bigpond.net.au
Representative: Bob Blackie

Land:

See definition of *Land* in clause 1.1.

Development:

See definition of *Development* in clause 1.1.

Development Contributions:

See clause 9.

ITEM 1 - ATTACHMENT 4 DRAFT PLANNING AGREEMENT.

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Robert Edwin Blackie and Barbara Blackie**



Application of s94, s94A and s94EF of the Act:

See clause 8.

Enforcement:

See Part 4.

Registration:

See clause 15.

Restriction on dealings:

See clause 16.

Dispute Resolution:

See Part 3.

ITEM 1 - ATTACHMENT 4 DRAFT PLANNING AGREEMENT.

103A Richardson Road, Raymond Terrace Planning Agreement
Port Stephens Council
Robert Edwin Blackie and Barbara Blackie



103A Richardson Road, Raymond Terrace Planning Agreement

Under s93F of the *Environmental Planning and Assessment Act 1979*

Parties

Port Stephens Council ABN 16 744 377 876 of 116 Adelaide Street, RAYMOND TERRACE, NSW, 2324 (**Council**)

and

Robert Edwin Blackie and Barbara Blackie of 103A Richardson Road, RAYMOND TERRACE, NSW, 2324 (**Developer**)

Background

- A The Developer is the registered proprietor of the Land.
- B The Developer has lodged a Development Application with the Council in relation to the Development.
- C The Developer is prepared to make Development Contributions in accordance with this Deed in connection with the carrying out of the Development.

Operative provisions

Part 1 - Preliminary

1 Interpretation

- 1.1 In this Deed the following definitions apply:

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

Approval includes approval, consent, licence, permission or the like.

Authority means the Commonwealth or New South Wales government, a Minister of the Crown, a government department, a public authority established by or under any Act, a council or county council constituted under the *Local Government Act 1993*, or a person or body exercising functions under any Act including a commission, panel, court, tribunal and the like.

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Claim includes a claim, demand, remedy, suit, injury, damage, loss, Cost, liability, action, proceeding or right of action.

Cost means a cost, charge, expense, outgoing, payment, fee and other expenditure of any nature.

Deed means this Deed and includes any schedules, annexures and appendices to this Deed.

Development means the development as described in Development Application DA 16-2013-579 being the Subdivision of the Land into 2 Final Lots.

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

Development Contribution means a monetary contribution, the dedication of land free of cost, the carrying out of work, or the provision of any other material public benefit, or any combination of them, to be used for, or applied towards a public purpose, but does not include any security or other benefit provided by a Party to the Council to secure the enforcement of that Party's obligations under this Deed for the purposes of s93F(3)(g) of the Act.

Dispute means a dispute or difference between the Parties under or in relation to this Deed.

Final Lot means a lot created in the Development for separate residential occupation and disposition or a lot of a kind or created for a purpose that is otherwise agreed by the Parties, not being a lot created by a subdivision of the Land that is to be dedicated or otherwise transferred to the Council.

GST has the same meaning as in the GST Law.

GST Law has the same meaning as in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other Act or regulation relating to the imposition or administration of the GST.

Land means land comprised in Lot 1 DP 735177, otherwise known as 103A Richardson Road, Raymond Terrace NSW 2324 and any part of that land comprised in a lot created by Subdivision of that land.

Party means a party to this Deed.

Regulation means the *Environmental Planning and Assessment Regulation 2000*.

Subdivision has the meaning given by s4B of the Act.

Subdivision Certificate has the same meaning as in the Act.

1.2 In the interpretation of this Deed, the following provisions apply unless the context otherwise requires:

- 1.2.1 Headings are inserted for convenience only and do not affect the interpretation of this Deed.
- 1.2.2 A reference in this Deed to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
- 1.2.3 If the day on which any act, matter or thing is to be done under this Deed is not a business day, the act, matter or thing must be done on the next business day.

ITEM 1 - ATTACHMENT 4 DRAFT PLANNING AGREEMENT.

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Robert Edwin Blackie and Barbara Blackie**



- 1.2.4 A reference in this Deed to dollars or \$ means Australian dollars and all amounts payable under this Deed are payable in Australian dollars.
- 1.2.5 A reference in this Deed to a \$ value relating to a Development Contribution is a reference to the value exclusive of GST.
- 1.2.6 A reference in this Deed to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- 1.2.7 A reference in this Deed to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- 1.2.8 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Deed.
- 1.2.9 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- 1.2.10 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- 1.2.11 A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- 1.2.12 References to the word 'include' or 'including' are to be construed without limitation.
- 1.2.13 A reference to this Deed includes the agreement recorded in this Deed.
- 1.2.14 A reference to a Party to this Deed includes a reference to the servants, agents and contractors of the Party, the Party's successors and assigns.
- 1.2.15 A reference to 'dedicate' or 'dedication' in relation to land is a reference to dedicate or dedication free of cost.
- 1.2.16 Any schedules, appendices and attachments form part of this Deed.
- 1.2.17 Notes appearing in this Deed are operative provisions of this Deed.

2 Status of this Deed

- 2.1 This Deed is a planning agreement within the meaning of s93F(1) of the Act.

3 Commencement

- 3.1 This Deed takes effect on the date when all Parties have executed this Deed.
- 3.2 The Party who executes this Deed last is to insert on the front page the date they did so and provide a copy of the fully executed and dated Deed to any other person who is a Party.

ITEM 1 - ATTACHMENT 4 DRAFT PLANNING AGREEMENT.

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Port Stephens Council
Robert Edwin Blackie and Barbara Blackie



4 Application of this Deed

- 4.1 This Deed applies to the Land and to the Development.

5 Warranties

- 5.1 The Parties warrant to each other that they:
- 5.1.1 have full capacity to enter into this Deed, and
 - 5.1.2 are able to fully comply with their obligations under this Deed.

6 Further agreements

- 6.1 The Parties may, at any time and from time to time, enter into agreements relating to the subject-matter of this Deed that are not inconsistent with this Deed for the purpose of implementing this Deed.

7 Surrender of right of appeal, etc.

- 7.1 The Developer is not to commence or maintain, or to cause or procure the commencement or maintenance, of any proceedings in any court or tribunal or similar body appealing against, or questioning the validity of this Deed, or an Approval relating to the Development in so far as the subject-matter of the proceedings relates to this Deed.

8 Application of s94, s94A and s94EF of the Act to the Development

- 8.1 This Deed does not exclude the application of s94 or s94A of the Act to the Development.
- 8.2 This benefits under this Deed are not to be taken into consideration when determining a Development Contribution under s94 of the Act in relation to the Development .
- 8.3 This Deed does not exclude the application of s94EF of the Act to the Development.

Part 2 – Development Contributions

9 Provision of Development Contributions

- 9.1 The Developer is to make a monetary Development Contribution of \$18,000.00 to the Council prior to the issuing of the first Subdivision Certificate that creates a Final Lot, to be applied towards roadworks.

ITEM 1 - ATTACHMENT 4 DRAFT PLANNING AGREEMENT.

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- 9.2 The Council is to apply the monetary Development Contribution referred to in clause 9.1 and any interest earned on its investment solely towards the cost of constructing Halloran Way.

10 Payment of monetary Development Contributions

- 10.1 A monetary Development Contribution is made for the purposes of this Deed when the Council receives the full amount of the contribution payable under this Deed in cash or by unendorsed bank cheque or by the deposit by means of electronic funds transfer of cleared funds into an interest bearing bank account nominated by the Council.
- 10.2 The Council, upon receiving a monetary Development Contribution by cash or unendorsed bank cheque under clause 10.1, is to deposit the Development Contribution in an interest bearing bank account nominated by the Council.

Part 3 – Dispute Resolution

11 Dispute resolution – expert determination

- 11.1 This clause applies to a Dispute between any of the Parties to this Deed concerning a matter arising in connection with this Deed that can be determined by an appropriately qualified expert if:
- 11.1.1 the Parties to the Dispute agree that it can be so determined, or
- 11.1.2 the Chief Executive Officer of the professional body that represents persons who appear to have the relevant expertise to determine the Dispute gives a written opinion that the Dispute can be determined by a member of that body.
- 11.2 A Dispute to which this clause applies is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 11.3 If a notice is given under clause 11.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 11.4 If the Dispute is not resolved within a further 28 days, the Dispute is to be referred to the President of the NSW Law Society to appoint an expert for expert determination.
- 11.5 The expert determination is binding on the Parties except in the case of fraud or misfeasance by the expert.
- 11.6 Each Party is to bear its own costs arising from or in connection with the appointment of the expert and the expert determination.
- 11.7 The Parties are to share equally the costs of the President, the expert, and the expert determination.

ITEM 1 - ATTACHMENT 4 DRAFT PLANNING AGREEMENT.

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Robert Edwin Blackie and Barbara Blackie



12 Dispute Resolution - mediation

- 12.1 This clause applies to any Dispute arising in connection with this Deed other than a Dispute to which clause 11 applies.
- 12.2 Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 12.3 If a notice is given under clause 12.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 12.4 If the Dispute is not resolved within a further 28 days, the Parties are to mediate the Dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time and are to request the President of the Law Society to select a mediator.
- 12.5 If the Dispute is not resolved by mediation within a further 28 days, or such longer period as may be necessary to allow any mediation process which has been commenced to be completed, then the Parties may exercise their legal rights in relation to the Dispute, including by the commencement of legal proceedings in a court of competent jurisdiction in New South Wales.
- 12.6 Each Party is to bear its own costs arising from or in connection with the appointment of a mediator and the mediation.
- 12.7 The Parties are to share equally the costs of the President, the mediator, and the mediation.

Part 4 - Enforcement

13 Breach of obligations

- 13.1 If the Council reasonably considers that the Developer is in breach of any obligation under this Deed, it may give a written notice to the Developer:
 - 13.1.1 specifying the nature and extent of the breach,
 - 13.1.2 requiring the Developer to:
 - (a) rectify the breach if it reasonably considers it is capable of rectification, or
 - (b) pay compensation to the reasonable satisfaction of the Council in lieu of rectifying the breach if it reasonably considers the breach is not capable of rectification,
 - 13.1.3 specifying the period within which the breach is to be rectified or compensation paid, being a period that is reasonable in the circumstances.
- 13.2 If the Developer fails to fully comply with a notice referred to in clause 13.1, the Council may step-in and remedy the breach and recover its costs of doing so as a debt due in a court of competent jurisdiction, together with any compensation owing to the Council under the Council's written notice given under clause 13.1.
- 13.3 For the purpose of clause 13.2, the Council's costs of remedying a breach the subject of a notice given under clause 13.1 include, but are not limited to:

ITEM 1 - ATTACHMENT 4 DRAFT PLANNING AGREEMENT.

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- 13.3.1 the costs of the Council's servants, agents and contractors reasonably incurred for that purpose,
- 13.3.2 all fees and charges necessarily or reasonably incurred by the Council in remedying the breach, and
- 13.3.3 all legal costs and expenses reasonably incurred by the Council, by reason of the breach.
- 13.4 Nothing in this clause 13 prevents the Council from exercising any rights it may have at law or in equity in relation to a breach of this Deed by the Developer, including but not limited to seeking relief in an appropriate court.

14 Enforcement in a court of competent jurisdiction

- 14.1 Without limiting any other provision of this Deed, the Parties may enforce this Deed in any court of competent jurisdiction.
- 14.2 For the avoidance of doubt, nothing in this Deed prevents:
 - 14.2.1 a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Deed or any matter to which this Deed relates, or
 - 14.2.2 the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Deed or any matter to which this Deed relates.

Part 5 – Registration & Restriction on Dealings

15 Registration of this Agreement

- 15.1 The Parties agree to register this Deed for the purposes of s93H(1) of the Act.
- 15.2 Not later than 10 days after the commencement of this Deed, the Developer is to deliver to the Council in registrable form:
 - 15.2.1 an instrument requesting registration of this Deed on the title to the Land duly executed by the Developer, and
 - 15.2.2 the written irrevocable consent of each person referred to in s93H(1) of the Act to that registration.
- 15.3 The Developer is to do such other things as are reasonably necessary to enable registration of this Deed to occur.
- 15.4 The Parties are to do such things as are reasonably necessary to remove any notation relating to this Deed from the title to the Land:
 - 15.4.1 in so far as the part of the Land concerned is a Final Lot,
 - 15.4.2 in relation to any other part of the Land, once the Developer has completed its obligations under this Deed to the reasonable satisfaction of the Council or this Deed is terminated or otherwise comes to an end for any other reason.

ITEM 1 - ATTACHMENT 4 DRAFT PLANNING AGREEMENT.

**103A Richardson Road, Raymond Terrace Planning Agreement
Port Stephens Council
Robert Edwin Blackie and Barbara Blackie**



16 Restriction on dealings

- 16.1 The Developer is not to:
- 16.1.1 sell or transfer the Land, other than a Final Lot, or
 - 16.1.2 assign the Developer's rights or obligations under this Deed, or novate this Deed,
- to any person unless:
- 16.1.3 the Developer has, at no cost to the Council, first procured the execution by the person to whom the Land or part is to be sold or transferred or the Developer's rights or obligations under this Deed are to be assigned or novated, of a deed in favour of the Council on terms reasonably satisfactory to the Council, and
 - 16.1.4 the Council has given written notice to the Developer stating that it reasonably considers that the purchaser, transferee, assignee or novatee, is reasonably capable of performing its obligations under this Deed, and
 - 16.1.5 the Developer is not in breach of this Deed, and
 - 16.1.6 the Council otherwise consents to the transfer, assignment or novation, such consent not to be unreasonably withheld.
- 16.2 Clause 16.1 does not apply in relation to any sale or transfer of the Land if this Deed is registered on the title to the Land at the time of the sale.

Part 6 – Indemnities & Insurance

17 Risk

- 17.1 The Developer performs this Deed at its own risk and its own cost.

18 Release

- 18.1 The Developer releases the Council from any Claim it may have against the Council arising in connection with the performance of the Developer's obligations under this Deed except if, and to the extent that, the Claim arises because of the Council's negligence or default.

ITEM 1 - ATTACHMENT 4 DRAFT PLANNING AGREEMENT.

**103A Richardson Road, Raymond Terrace Planning Agreement
Port Stephens Council
Robert Edwin Blackie and Barbara Blackie**



19 Indemnity

- 19.1 The Developer indemnifies the Council from and against all Claims that may be sustained, suffered, recovered or made against the Council arising in connection with the performance of the Developer's obligations under this Deed except if, and to the extent that, the Claim arises because of the Council's negligence or default.

Part 7 – Other Provisions

20 Notices

- 20.1 Any notice, consent, information, application or request that is to or may be given or made to a Party under this Agreement is only given or made if it is in writing and sent in one of the following ways:
- 20.1.1 delivered or posted to that Party at its address set out in the Summary Sheet,
- 20.1.2 faxed to that Party at its fax number set out in the Summary Sheet, or
- 20.1.3 emailed to that Party at its email address set out in the Summary Sheet.
- 20.2 If a Party gives the other Party 3 business days notice of a change of its address, fax number or email, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted, faxed or emailed to the latest address or fax number.
- 20.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
- 20.3.1 delivered, when it is left at the relevant address,
- 20.3.2 sent by post, 2 business days after it is posted,
- 20.3.3 sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number, or
- 20.3.4 sent by email and the sender does not receive a delivery failure message from the sender's internet service provider within a period of 24 hours of the email being sent.
- 20.4 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

21 Approvals and Consent

- 21.1 Except as otherwise set out in this Deed, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given

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under this Deed in that Party's absolute discretion and subject to any conditions determined by the Party.

- 21.2 A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

22 Costs

- 22.1 The Developer is to pay to the Council the Council's costs not exceeding \$2,200.00 of preparing, negotiating, executing and stamping this Deed, and any document related to this Deed within 7 days of a written demand by the Council for such payment.
- 22.2 The Developer is also to pay to the Council the Council's reasonable costs of enforcing this Deed within 7 days of a written demand by the Council for such payment.

23 Entire Deed

- 23.1 This Deed contains everything to which the Parties have agreed in relation to the matters it deals with.
- 23.2 No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Deed was executed, except as permitted by law.

24 Further Acts

- 24.1 Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to effect, perfect or complete this Deed and all transactions incidental to it.

25 Governing Law and Jurisdiction

- 25.1 This Deed is governed by the law of New South Wales.
- 25.2 The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them.
- 25.3 The Parties are not to object to the exercise of jurisdiction by those courts on any basis.

26 Joint and Individual Liability and Benefits

- 26.1 Except as otherwise set out in this Deed:
- 26.1.1 any agreement, covenant, representation or warranty under this Deed by 2 or more persons binds them jointly and each of them individually, and
- 26.1.2 any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

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27 No Fetter

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

28 Illegality

- 28.1 If this Deed or any part of it becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties are to co-operate and do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Deed is entered into.

29 Severability

- 29.1 If a clause or part of a clause of this Deed can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way.
- 29.2 If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Deed, but the rest of this Deed is not affected.

30 Amendment

- 30.1 No amendment of this Deed will be of any force or effect unless it is in writing and signed by the Parties to this Deed in accordance with clause 25D of the Regulation.

31 Waiver

- 31.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Deed, does not amount to a waiver of any obligation of, or breach of obligation by, another Party.
- 31.2 A waiver by a Party is only effective if it is in writing.
- 31.3 A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

32 GST

- 32.1 In this clause:
Adjustment Note, Consideration, GST, GST Group, Margin Scheme, Money, Supply and Tax Invoice have the meaning given by the GST Law.

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GST Amount means in relation to a Taxable Supply the amount of GST payable in respect of the Taxable Supply.

GST Law has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Input Tax Credit has the meaning given by the GST Law and a reference to an Input Tax Credit entitlement of a party includes an Input Tax Credit for an acquisition made by that party but to which another member of the same GST Group is entitled under the GST Law.

Taxable Supply has the meaning given by the GST Law excluding (except where expressly agreed otherwise) a supply in respect of which the supplier chooses to apply the Margin Scheme in working out the amount of GST on that supply.

- 32.2 Subject to clause 32.4, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Deed, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- 32.3 Clause 32.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive.
- 32.4 No additional amount shall be payable by the Council under clause 32.2 unless, and only to the extent that, the Council (acting reasonably and in accordance with the GST Law) determines that it is entitled to an Input Tax Credit for its acquisition of the Taxable Supply giving rise to the liability to pay GST.
- 32.5 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Deed by one Party to the other Party that are not subject to Division 82 of the *A New Tax System (Goods and Services Tax) Act 1999*, the Parties agree:
- 32.5.1 to negotiate in good faith to agree the GST inclusive market value of those Supplies prior to issuing Tax Invoices in respect of those Supplies;
- 32.5.2 that any amounts payable by the Parties in accordance with clause 32.2 (as limited by clause 32.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 32.6 No payment of any amount pursuant to this clause 32, and no payment of the GST Amount where the Consideration for the Taxable Supply is expressly agreed to be GST inclusive, is required until the supplier has provided a Tax Invoice or Adjustment Note as the case may be to the recipient.
- 32.7 Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a party, must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability.
- 32.8 This clause continues to apply after expiration or termination of this Deed.

33 Explanatory Note

- 33.1 The Appendix contains the Explanatory Note relating to this Deed required by clause 25E of the Regulation.

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33.2 Pursuant to clause 25E(7) of the Regulation, the Parties agree that the Explanatory Note is not to be used to assist in construing this Planning Deed.

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Execution

Executed as a Deed

Dated:

Executed on behalf of the Council

General Manager

Witness

Mayor

Witness

Executed by Robert Edwin Blackie

Robert Edwin Blackie

Witness

Executed by Barbara Blackie

Barbara Blackie

Witness

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Robert Edwin Blackie and Barbara Blackie



Appendix

(Clause 33)

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

Explanatory Note

Draft Planning Agreement

Under s93F of the *Environmental Planning and Assessment Act 1979*

Parties

Port Stephens Council ABN 16 744 377 876 of 116 Adelaide Street, Raymond Terrace, NSW, 2324 (**Council**)

Robert Edwin Blackie and Barbara Blackie of 103A Richardson Road, Raymond Terrace, NSW, 2324 (**Developer**)

Description of the Land to which the Draft Planning Agreement Applies

The land comprised in Lot 1 DP 735177 otherwise known as 103A Richardson Road, Raymond Terrace NSW 2324 and any part of that land comprised in a lot created by Subdivision of that land.

Description of Proposed Development

The subdivision of Lot 1 DP 735177 into two Final Lots.

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Summary of Objectives, Nature and Effect of the Draft Planning Agreement

Objectives of Draft Planning Agreement

The objective of the Draft Planning Agreement is to provide for the payment of monetary contributions for the purposes of roadworks.

Nature of Draft Planning Agreement

The Draft Planning Agreement is a planning agreement under s93F of the *Environmental Planning and Assessment Act 1979* (Act). It is a voluntary agreement, under which the Developer makes Development Contributions (as defined in clause 1.1 of the Draft Planning Agreement) for various public purposes (as defined in s 93F(3) of the Act).

Effect of the Draft Planning Agreement

The Draft Planning Agreement:

- relates to the carrying out by the Developer of the Development,
- does not exclude the application of s94, s94A or s94EF of the Act to the Development,
- requires the payment of monetary Development Contributions,
- provides a dispute resolution method for a dispute under the Agreement being mediation and expert determination,
- provides that the Agreement is governed by the law of New South Wales, and
- provides that the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) applies to the Agreement.

Assessment of the Merits of the Draft Planning Agreement

The Planning Purposes Served by the Draft Planning Agreement

The Draft Planning Agreement:

- Promotes and co-ordinates the orderly and economic use and development of the land to which the Deed applies,
- Provides funding for road facilities in the Council's area.

How the Draft Planning Agreement Promotes the Public Interest

The Draft Planning Agreement promotes the public interest by promoting the objects of the Act as set out in s5(a)(ii), (iv), (v) and s5(c) of the Act.

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For Planning Authorities:

Development Corporations - How the Draft Planning Agreement Promotes its Statutory Responsibilities

N/A

Other Public Authorities – How the Draft Planning Agreement Promotes the Objects (if any) of the Act under which it is Constituted

N/A

Councils – How the Draft Planning Agreement Promotes the Elements of the Council's Charter

The Draft Planning Agreement promotes the elements of the Council's charter by:

- enabling road facilities to be provided directly for the community,
- through public notification, keeping the local community and the State government (and through it, the wider community) informed about its activities.

All Planning Authorities – Whether the Draft Planning Agreement Conforms with the Authority's Capital Works Program

This Draft Planning Agreement is not consistent with the Strategic Asset management Plan which forms part of the adopted Integrated Planning Framework.

All Planning Authorities – Whether the Draft Planning Agreement specifies that certain requirements must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued

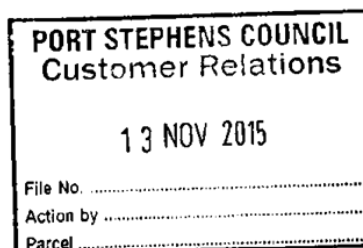
The Draft Planning Agreement requires monetary Development Contributions to be provided before a subdivision certificate is issued.

ITEM 1 - ATTACHMENT 5 LETTER OF OFFER FOR VOLUNTARY PLANNING AGREEMENT.

12 November 2015

103a Richardson Road
Raymond Terrace
NSW 2324

Mr Peter Marler
Strategic Planning Coordinator
Port Stephens Shire Council
116 Adelaide Street
Raymond Terrace
NSW 2324

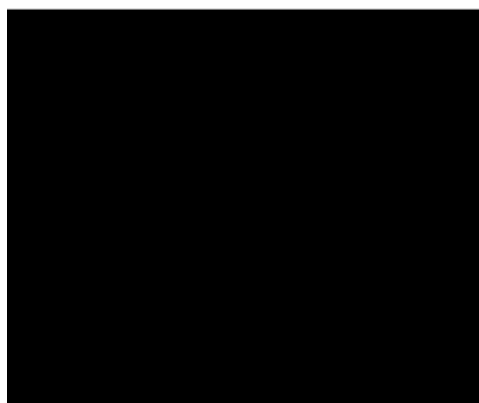


Dear Peter,

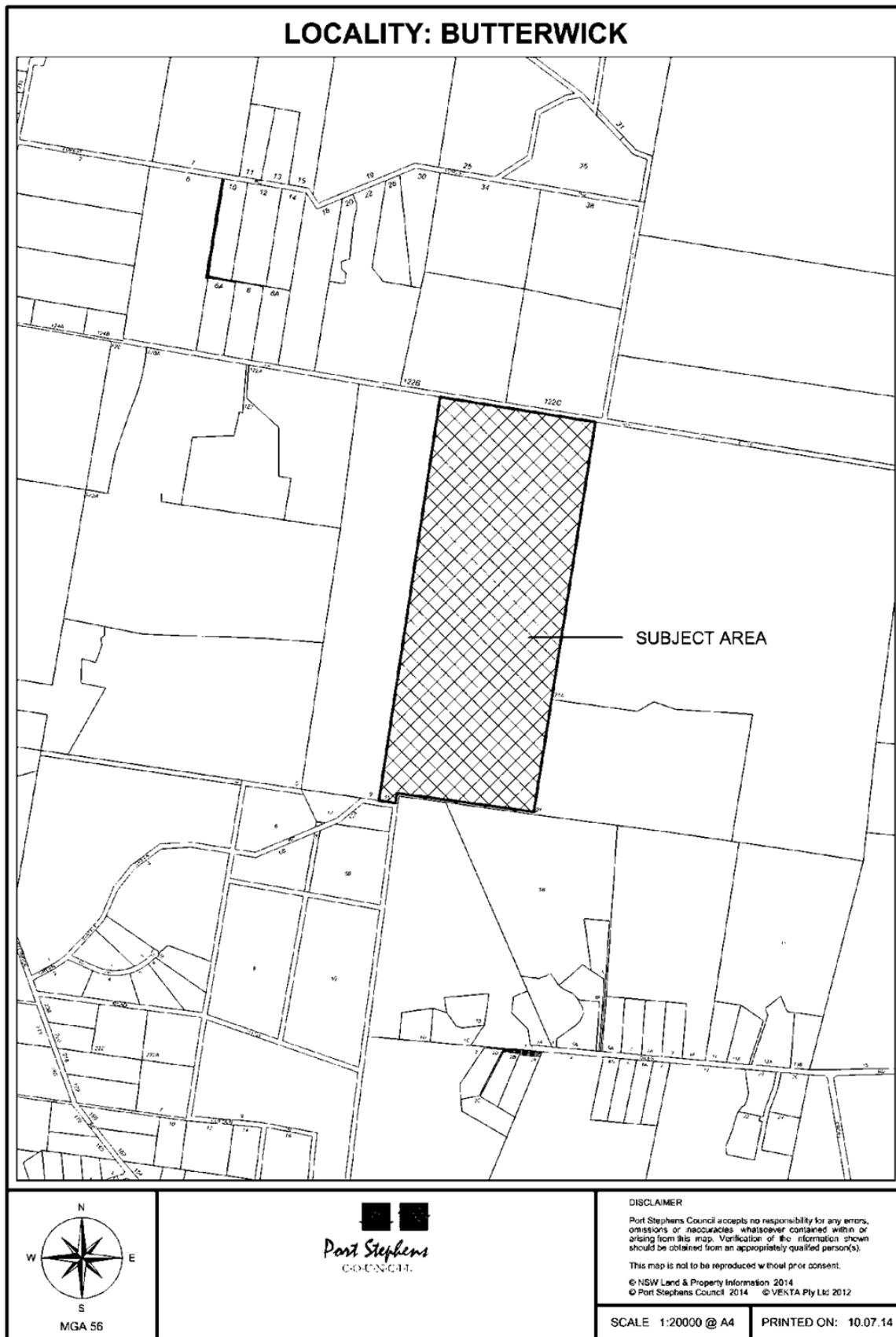
Proposed Voluntary Planning Agreement between Port Stephens Council and Robert Edwin Blackie and Barbara Blackie relating to 103A Richardson Road, Raymond Terrace

1. Robert Edwin Blackie and Barbara Blackie is the applicant in relation to a two lot subdivision in respect of Development Consent No.16-2013-579, as lodged with the Council on 13 September 2013.
2. The applicant offers to enter into the **attached** draft planning agreement with the Council under section 93F of the *Environmental Planning and Assessment Act 1979* if the Council grants consent to the application and imposes a condition under s93I(3) of that Act requiring the planning agreement to be entered into.

Yours faithfully,



ITEM 2 - ATTACHMENT 1 LOCALITY PLAN



ITEM 2 - ATTACHMENT 2 ASSESSMENT REPORT.

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.

SITE DESCRIPTION

The subject site is located within the rural area of Butterwick and is surrounded by large lot rural residential development accessed by both Butterwick Road and Green Wattle Creek Road. The subject site has a frontage to Green Wattle Creek Road which is an unformed Council road. The subject site has a total area of 112.4 hectares and has been historically used for agricultural pursuits. Large portions of the land remain clear of vegetation and are used for grazing cattle.

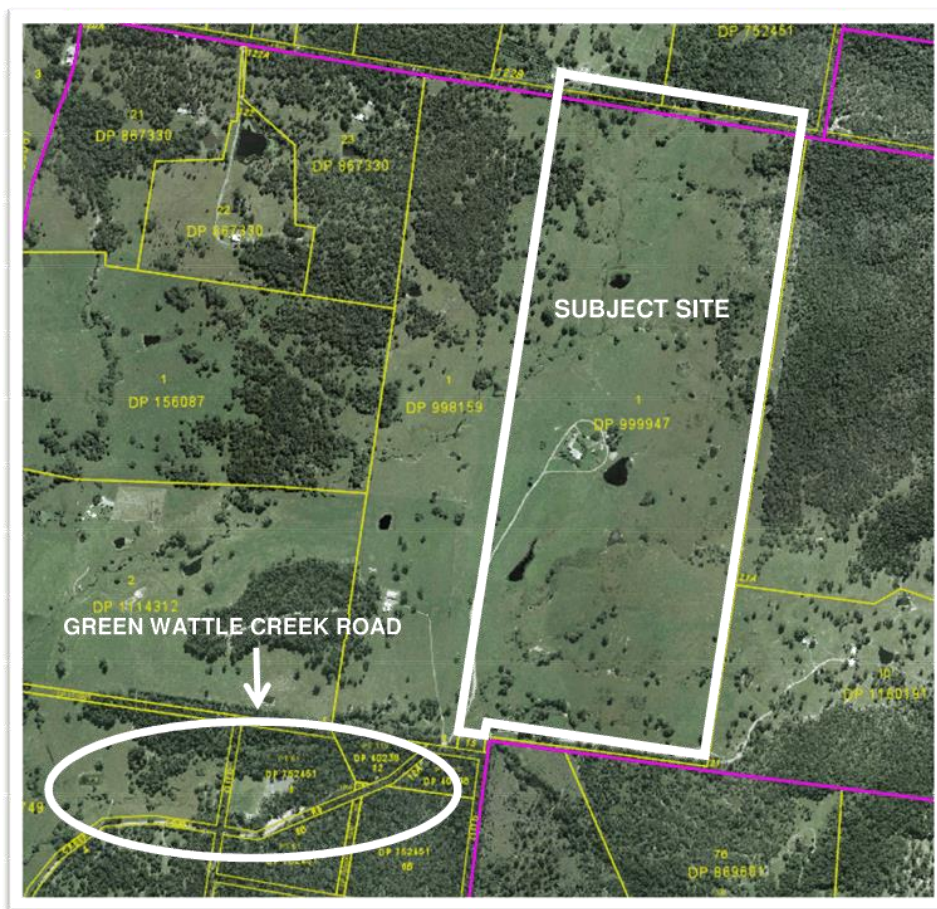


Fig. 1 – Aerial Image of Site

ITEM 2 - ATTACHMENT 2 ASSESSMENT REPORT.**THE PROPOSAL**

The original Development Application granted consent for a Rural Landsharing Community (staged development proposal) and Stage One of the proposal. Approval was granted for:

- The use of the subject site as a Rural Landsharing Community,
- Land tenure, dwelling occupancy rights, and land management arrangements,
- Design principles that are binding upon subsequent stages of the development (i.e. criteria for the location of future buildings),
- The construction of internal roads and drainage,
- The use of the existing dwelling for administration associated with the establishment of the Rural Landsharing Community in the short to mid-term until a purpose built community building is constructed in a subsequent stage, and
- Agricultural activities to be established on the site (associated exempt development).

The application seeks to amend the original development consent as follows:

- Construction of six dwellings as part of Stage One.
- Amendment to the approved concept master plan to make provision for the construction of:
 - Nine dwellings as part of Stage Two.
 - Thirteen dwellings at Stage Three.
 - Community hall (includes dwelling) and shared dwelling as part of Stage Four (an additional stage).
 - It is noted that applicant seeks the approval of an additional dwelling as part of the Section 96 Modification resulting in a total of 30 dwellings. The additional dwelling forms part of the proposed Stage Three.
- Amendments to conditions of consent relating to the timing and design of internal and public roadwork, as follows:
 - Staging of internal road works to correlate with the staged constructions of dwelling,
 - Delete Condition No. 10a). Condition No.10 requires a detailed geotechnical investigation to be prepared to address a number of matters including 10a) being pavement design of the internal roads.
 - Delete Condition No. 11d). Condition No.11 requires that prior to issue of a Construction Certificate the vehicle access way shall be constructed in accordance with detailed criteria. Condition No.11d) requires that road pavement be provided in accordance with the detailed geotechnical reported required under condition No. 10a).
 - Deferral of Condition No.12, which requires upgrade works and sealing of Green Wattle Creek Road. The applicant proposes that works to Green Wattle Creek Road will occur at Stage Three of the development.