

ITEM 2 - ATTACHMENT 2 ASSESSMENT REPORT.

- A 75% reduction in Section 94 Contributions payable in relation to the construction of the 30 dwelling houses on the basis that they will have a reduced impact on local infrastructure and services given the site will pool resources and provide for affordable housing.

SITE DESCRIPTION

Property Description	Lot 1 DP 999947
Address	15 Green Wattle Creek Road, Butterwick
Area	The site has an area of 112.4ha.
Dimensions	The site is generally regular in shape. The northern boundary of the site measures 730m in length, eastern boundary 1080m, southern boundary to Green Wattle Creek Road 697m (irregular boundary) and the sites western boundary 1603m.
Characteristics	<ul style="list-style-type: none"> - RU2 Rural Landscape - Bushfire prone land, - Acid Sulfate Soils (ASS) Class 5, - Koala Habitat (Marginal), - Endangered Ecological Communities (Hunter Valley Dry Rainforest), - Prime Agricultural Land (Classes 1-3), - Combined Corridor Map (Core Habitat, Landscape Habitat Link, Landscape Link, Local Link, Stepping Stone, Western Habitat).

PLANNING PROVISIONS

<i>Environmental Planning and Assessment Act 1979</i>	<ul style="list-style-type: none"> - s.79C Planning provisions - s.83 Staged development applications - s.91 Integrated development applications
<i>Rural Fires Act 1997</i>	<ul style="list-style-type: none"> - s.79BA
<i>Water Management Act 2000</i>	<ul style="list-style-type: none"> - s.91 Activity approvals
State Environmental Planning Policies	<ul style="list-style-type: none"> - State Environmental Planning Policy 15 – Rural Landsharing Communities - State Environmental Planning Policy No.44 – Koala Habitat Protection (and Port Stephens Comprehensive Koala Plan of Management) - State Environmental Planning Policy No.55 – Remediation of Land

ITEM 2 - ATTACHMENT 2 ASSESSMENT REPORT.

	- State Environmental Planning Policy – Building Sustainability Index (BASIX)
Port Stephens Local Environmental Plan 2013 (LEP2013)	Assessed under 16-2014-168-1
Port Stephens Development Control Plan 2014 (DCP2014)	- Section A – Introduction - Section B – General Controls - Section C – Development Types
Port Stephens Section 94 Plan	A reduction in Section 94 Contributions is requested.

Section 79C(1)(a)(i)- provisions of any environmental planning instrument

Environmental Planning and Assessment (EP&A) Act 1979

Section 79C – Planning Assessment

An assessment under Section 79C of the Act has been undertaken throughout this report.

Section 83B - Staged Development Applications

Section 83B of the *Environmental Planning and Assessment Act 1979* (EP&A Act) provides that a staged development application is a development application that sets out concept proposal for the development of a site and for which detailed proposal for separate parts of the site are to be the subject of subsequent development applications.

The original Development Application (16-2014-168-1) was approved as a staged development. The applicant seeks approval for amendments to Stage One of the development which was approved under 16-2014-168-1. Amendments are also proposed to the approved concept master plan and staging.

Section 91 – Integrated planning approvals

Rural Fires Act 1997 (Section 79B)

The proposed development is located on bushfire prone land, Rural Landsharing Communities are not listed as 'special fire protection purpose' under 100B of the *Rural Fires Act 1997* and are not integrated development under s.91 of the EP&A Act. However, the nature original application was referred to the Rural Fire Service (RFS). The current Section 96 Application was referred to RFS for comment. In response, RFS would have confirmed that there is no objection to the proposal subject to compliance with the RFS General Terms of Approval (GTAs) dated 14 May 2014 and *Planning for Bushfire Protection 2006*. However, the RFS do not support the staging of the provision of roads and access. Any deviation from the issued GTAs would be required to be supported by a revised bush fire assessment to demonstrate an alternative approach compliant with the performance criteria of *Planning for Bushfire Protection 2006*.

Water Management Act 2000

The development requires the crossing of one waterbody (creek) with infrastructure associated with the disposal of wastewater. The original Development Application was 'integrated development' under s.91 EP&A Act requiring approvals from the New

ITEM 2 - ATTACHMENT 2 ASSESSMENT REPORT.

South Wales Office of Water (NSWOW) under s.91 of the *Water Management Act 2000* for a controlled activity. Accordingly, the application was referred to NSWOW and GTAs were issued dated 16 June 2014. The Section 96 Modification was referred to NSWOW and no objection was raised subject to the inclusion of the original GTAs on any modified consent issued.

Section 96 – Modification of Consents**Part A: Substantially the same development**

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

- a. The approval remains in form and substance as a 'Staged Development - Rural Landsharing Community'.
- b. The modifications recommended for approval relate to the timing of the construction of the dwellings and community buildings associated with the approved development. However, the end result shall reflect the original approval in this regard the modification proposes alterations without radical transformation (*Sydney City Council v Ilenance Pty Ltd*).
- c. The proposed additional dwelling can be accommodated on site without impacts to adjoining properties. The additional dwelling can be facilitated in accordance with SEPP No.15.
- d. The reduction to the section 94 contributions pertains to a condition of consent that does not alter the substance of the development.

On this basis, the application is considered satisfactory, the amendments that are supported by the recommendation are 'beneficial and facultative' (*North Sydney Council v Michael Standley and Associates*). It is noted that the proposed amendments to the provision of internal and external roadwork is not supported.

Part B: Notification

The proposed section 96 modification has been notified in accordance with the provisions of the regulations. Details are included elsewhere within this report.

Part C: Consultation with the Minister

Consultation with the Minister, public authority or approval body in respect of a condition imposed as a requirement of a concurrence to the consent is not required in the circumstances of this case.

Part D: Threatened species

The proposed modification will not have a negative impact on any threatened species.

ITEM 2 - ATTACHMENT 2 ASSESSMENT REPORT.

State Environmental Planning Policies**State Environmental Planning Policy No. 15 – Rural Landsharing Communities**

State Environmental Planning Policy No. 15 (SEPP No.15) provides that multiple occupancy development is a permissible land use within rural and non-urban zones despite any provisions to the contrary within Council's *Local Environmental Plan 2013* (LEP2013). Multiple occupancy is defined as the collective management and sharing of unsubdivided land, facilities and resources. The policy encourages a community-based environmentally-sensitive approach to rural settlement, and enables the pooling of resources to development opportunities for communal rural living. The original Development Application was lodged and assessed under SEPP No.15. An assessment of the provisions relevant to the Section 96 Modification is detailed below:

State Environmental Planning Policy No. 15 – Rural Landsharing Communities			
Section		Requirement	Comment
s.7(1)	Rural Landsharing Community	<p>Section 7(1) allows rural Landsharing development of 3 or more dwellings with consent if;</p> <ul style="list-style-type: none">- N/A- N/A- the height of the building on the land does not exceed 8 metres,- N/A- no dwelling is situated on prime crop and pasture land,- structures or works do not occur within and/or impact upon land identified as wildlife corridor/refuge/management area,- the development is not for tourist accommodation.- structures are not situated on land with a slope in excess of 18 degrees, and- i) the aims of the policy are met.	<p>The proposed development satisfies the provisions of s.7(1):</p> <ul style="list-style-type: none">- No building proposed shall exceed 8m.- The dwellings are not located on prime crop and pasture land.- The site is not identified as having a wildlife corridor or the like.- The proposal is not for tourist accommodation.- Proposed structures are not located on land with a slope excess of 18 degrees.- The aims of the policy have been met (refer s.2).
s.8	Notice of development applications – advertised development	Notification and exhibition of the development occurred in accordance with the requirements for advertised development.	
s.9 Matters for Council to Consider			
1(e)	Public road access	Green Wattle Creek Road provides access to the site. The current road condition is an unsealed poorly maintained gravel road generally of single lane width with poor alignment and significant obstructions. The road is a No Through Road which currently services four existing dwellings, including: the existing dwelling located on the site, two with	

ITEM 2 - ATTACHMENT 2 ASSESSMENT REPORT.

		<p>driveways located adjacent to Lot 1 DP 999947 access and another located 450m north east from Jack James Close. Furthermore, an equestrian centre is also located approximately 930m from the Jack James Close intersection, which will also have a considerable amount of traffic generation. A condition of consent included within the conditions of consent requires the upgrading of Green Wattle Creek Road (condition No.12).</p> <p>The applicant seeks approval for the deferral of condition No.12 which required the upgrade works and sealing of Green Wattle Creek Road. Consent is sought to amend condition No.12 to require the works to Green Wattle Creek Road prior to Stage Two commencing.</p> <p>Based on the RTA's "Guide to Traffic Generating Development", single residential dwellings generate an estimated 7.4 vehicle trips per day per dwelling and 0.78 peak hour vehicle trips per dwelling. The proposed development is to be in Four Stages. According to Council's Infrastructure Specification 'Rural Minor Access – No Through Road'. Green Wattle Creek Road requires a sealed 6m wide pavement with 1m sealed shoulders either side, for up to a maximum of 15 dwellings or 150 vehicle per day (vdp). The dwellings and traffic volume for Stage One of the proposal is assessed as being sufficient to require the construction and sealing of the pavement from Jack James Close to the subject site alone.</p> <p>However, the original consent only specifies sealing of the first 400 metres from Jack James Close, this already provides the applicant with a concession in relation to infrastructure provision requirements. Further, the deferral of Condition No.12 results in safety concerns from an Emergency Service Vehicle perspective (Rural Fire Service) and is also likely to result in adverse dust impacts. In this regard the Air Quality Report submitted with the Section 96 Modification has not sufficiently alleviated Council staff concerns regarding dust impacts. Roadwork to Green Wattle Creek Road is warranted on the basis of traffic volume for Stage One alone. Deferral of Condition No.12 cannot be supported.</p>
1(k)	Land constraints	<p>The original development was assessed having regards to bush fire threat, landslip and erosion. The Section 96 Modification to the provision of public and internal roadwork cannot be supported on the basis that the subject site is bushfire prone and the deferral and staging of access to the site is not acceptable in accordance with the provisions of <i>Planning for Bushfire Protection 2006</i>.</p>
s.11	Density	<p>The proposal is 112.4 ha in area and is therefore subject to a maximum dwelling number of 30, in accordance with the requirements of Clause 11 of the SEPP. The applicant proposes 30 dwellings which is consistent with this clause.</p> <p>Clause 11(3) specifies that the council must not consent to the application if those dwellings are so designed that they could, in the opinion of the council, reasonably accommodate in total more people than the number calculated by multiplying that maximum number of dwelling by four. In relation to the current proposal this would be 120 people.</p> <p>The Section 96 Modification proposes that six dwellings be constructed as part of Stage One including five two bedrooms, and one four bedroom home. The proposed dwellings are consistent with clause 11(3) as it is not anticipated that these dwellings will be occupied by more than 24 people.</p>

ITEM 2 - ATTACHMENT 2 ASSESSMENT REPORT.

		Future dwellings, under Stages Two, Three and Four will need to be designed to ensure compliance with this clause. This will be assessed when the Development Application is lodged for the dwellings under each stage.
--	--	---

State Environmental Planning Policy No. 44 – Koala Habitat Protection and Port Stephens Comprehensive Koala Plan of Management (CKPoM)

The original Development Application (16-2014-168-1) was assessed against the provisions of State Environmental Planning Policy No.44 – Koala Habitat Protection, and was determined to be satisfactory. The current Section 96 Modification does not result in amendments which require further consideration under SEPP No.44. The development remains consistent with SEPP No.44.

State Environmental Planning Policy No. 55- Remediation of Land

The original Development Application (16-2014-168-1) was assessed against the provisions of State Environmental Planning Policy No.55 – Remediation of Land, and was determined to be satisfactory. The current Section 96 Modification does not result in amendments which require further consideration under SEPP No.55. The development remains consistent with SEPP No.55.

State Environmental Planning Policy – Building Sustainability Index (BASIX)

Valid BASIX certificates have been submitted with the application confirming that the proposed development will meet the NSW Government's requirements for sustainability with respect to energy and water reduction targets.

Port Stephens Local Environmental Plan (2013)

The original Development Application (16-2014-168-1) was assessed against the provisions of LEP2013 and was determined to be satisfactory. The current Section 96 Modification does not result in amendments which require further consideration under LEP2013. The development remains consistent with Council's LEP.

Section 79C(1)(a)(ii) - any draft environmental planning instrument that is or has been placed on public exhibition

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

Section 79C(1)(a)(iii) any development control plan

The relevant chapters of Port Stephens Development Control Plan 2014 are discussed below:

ITEM 2 - ATTACHMENT 2 ASSESSMENT REPORT.**Port Stephens Development Control Plan 2014****Section A – Introduction**

The Section 96 Modification was notified and advertised in accordance with Section A DCP 2104. A detailed assessment of the submissions received during the public exhibition process is included elsewhere within this report.

Section B – General Provisions

The Section 96 Modification has been considered against the provisions of Section B DCP2014 as follows:

B3 Environmental and Construction Management

The original Development Application (16-2014-168-1) was assessed against the provisions of B3 Environmental and Construction Management and was determined to be satisfactory. It is noted that additional conditions of consent have been imposed to ensure adequate provision of an on-site wastewater system to service the site. The current Section 96 Modification does not result in amendments which require further consideration under this section. The development remains consistent with DCP2014 Part B3 Environmental and Construction Management.

B9 Road Network and Parking

The Section 96 Modification proposes amendments to conditions associated with the external and internal road network. An assessment of the amendments to conditions is as follows:

1. *Staging of internal road works to correlate with the staged constructions of dwelling*

Comment

The staging of the internal roads is not compliant with the provisions of *Planning for Bushfire Protection 2006* and GTAs previously issued by the RFS. The RFS do not support the staging of the provision of roads and access. Any deviation from the issued GTAs would be required to be supported by a revised bush fire assessment to demonstrate an alternative approach compliant with the performance criteria of *Planning for Bushfire Protection 2006*. Staging of the internal road works is not supported.

2. *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.*

Comment

Condition 10(a) is intended to ensure that sufficient road pavement thickness is to be provided for the proposed dwellings and to RFS requirements. Given, the amount of potential traffic likely to utilise the development and the RFS's requirements it is considered that a pavement design is warranted. Removal of Condition 10(a) is not supported.

ITEM 2 - ATTACHMENT 2 ASSESSMENT REPORT.

3. 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 report required under condition No. 10a).

Comment

Condition 11(d) requires the road pavement to be constructed to the requirements outlined within the geotechnical report required by Condition 10(a). The pavement will need to be constructed to the given standard within the geotechnical report due to the potential traffic likely to be generated from the use and in accordance with RFS requirements. Removal of condition 11(d) is not supported.

4. 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.

Comment

Removal of condition No.12 is not supported as discussed in detail under SEPP No.15.

Section C – Development Types**C4 Dwelling houses, Dual Occupancy or Ancillary Structures**

The Section 96 Modification proposes the construction of six dwellings as part of Stage One. Assessment of the proposed dwellings against Section C Part C4 DCP2014 is detailed below:

Development Control Plan 2014:C4 Dwelling houses, Dual Occupancy or Ancillary Structures		
Section	Requirement	Comment
C4.7: Site coverage	Maximum non-permeable area of 7.5%	- The subject site has an area of 112.4ha. The proposal complies with the provisions of SEPP No.15 in regard to density. Notwithstanding, the proposed six dwellings have a combined area of approx. 652sqm. This equates to less than 1% of the total site area. The proposed dwellings will not result in a maximum permeable area of 7.5%.
C4.9 Building height	Maximum height limit of 8 metres (no LEP height specified)	- House No.1: Max height of 8.04metres. - House No.2: Max height of 7.96metres. - House No.3: Max height of 8.18 metres. Minor variation is supported. - House No.20: Max height of 7.98metres. - House No.21: Max height of 7.98metres. - House No.22: Max height of 8.9metres. The variation is supported as the dwelling is single storey in height. The variation is a result of site topography. Further, the dwelling is not located within proximity to the boundaries to adjoining properties (external to the site) and therefore the variation does not result in unreasonable impacts.

ITEM 2 - ATTACHMENT 2 ASSESSMENT REPORT.

C4.F	Setbacks	- The proposed dwellings are located within the centre of a large rural allotment. The setbacks for all dwellings exceed the minimum requirements.
C4.G	Streetscape and privacy	- The proposed dwellings are located upon a large rural allotment. Controls included under C4.G do not apply.
C4.H	Private open space	- The dwellings form part of a Rural Landsharing Development. Shared open space exists for all dwellings. The availability of open space and solar access to all dwellings is satisfactory.
C4.I	Car Parking and Garages	- On-site parking is provided for as part of the Rural Landsharing Development. Internal roads and parking spaces are required to be completed prior to release of Occupation Certificate for all Dwelling in Stage One. Parking and Access to the site is suitable (subject to conditions of consent).
C4.J	Site Facilities and Services	<ul style="list-style-type: none"> - Sufficient area exists on site for clothes drying. - Council's provides waste services to Green Wattle Creek Road. There is sufficient road frontage to service the development. There is also an option for the owner to indemnify Council to allow internal collection from a private road. Alternatively, the owner may elect to utilise a private collection service. Regardless of the applicants preferred waste collection option the site can be suitability serviced. There is also sufficient area on site to provide for waste storage facilities.

Section 94 Contribution Plan

The applicant is seeking a reduction in Section 94 Contributions payable in relation to the construction of the 30 dwelling houses on the basis that they will have a reduced impact on local infrastructure and services given the site will pool resources and provide for affordable housing. For example, the development includes provision of community facilities, on-site water and electricity provision, community Common, community hall, commercial kitchen and private roads. The applicant sought a 75% reduction of Section 94 fees.

The application was reported to Council's Section 94 Analysis Team for assessment, as a result it was recommended that any reduction of Section 94 contribution should be in line with the reduction provided to caravan parks under Council's adopted Section 94 plan, as follows:

- Civic administration – 50% reduction,
- Public Open Space, Parks and Reserves – 50% reduction,
- Sports and Leisure Facilities – 50% reduction,
- Cultural and Community Facilities – 50% reduction,
- Roadworks – 33% reduction,
- Fire and Emergency Services – 50% reduction.

ITEM 2 - ATTACHMENT 2 ASSESSMENT REPORT.

Council's endorsement is required for any reduction in Section 94 Contributions as Council staff do not have delegation to vary Section 94 Contributions. It is noted that applicant's request for a 75% reduction in Section 94 Contributions is not recommended for approval. However, a reduction in Section 94 Contributions as detailed above has been recommended for approval.

Section 79C(1)(a)(iv) - the regulations (to the extent that they prescribe matters for the purposes of this paragraph)

Division 5 of Part 9

Sections 93 and 94 of the *Environmental Planning and Assessment Regulation 2000* have been considered due to the intended use of the existing dwelling as an administration building. Subject to conditions the proposal fulfils the fire safety and structural adequacy requirements of the regulations and is therefore considered appropriate. In accordance with the requirements of the regulation, a condition of consent is included requiring the submission of annual fire safety statement from the applicant. It is noted that conditions pertaining to fire safety were not included upon the original consent. Upon review of the Section 96 modification it was determined that fire safety conditions are required.

Section 79C(1)(b) - the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

The assessment has considered the likely impact of the development by identifying the potential impacts of the proposal, available measures to ameliorate impacts and frequency/severity of impacts as detailed within this report. On this basis it is recommended that consent be granted to the proposed amendments to staging and reduction to Section 94 Contributions, subject to the conditions held at

ATTACHMENT 3.

The applicants proposed amendments to external and internal roadwork have not been recommended for approval. The likely impacts of the proposed amendments to roadwork was determined to be unsatisfactory as detailed elsewhere within this report.

Section 79C(1)(c) - the suitability of the site for the development

The development is permissible under the provisions of SEPP No.15. However, not all of the amendments proposed by the applicant under the current Section 96 Modification are suitable for the subject site. As a result of the bushfire constraints to the site and access off an unformed Council road, the proposed amendments to conditions relating to roadwork are not acceptable. As such, not all aspects of the applicant's Section 96 Modification have been recommended for approval.

ITEM 2 - ATTACHMENT 2 ASSESSMENT REPORT.

Section 79C(1)(d) - any submissions made in accordance with this act or the regulations

In accordance with clause 8 SEPP No.15 and Council's Notification Policy (Section A DCP 2014), the proposed development was advertised and notified to adjoining neighbours. The main issues raised by the objectors are summarised in the following table and comment provided:

Matter raised	Response
Adequacy of Green Wattle Creek Road	<p>A number of the submissions raised concern with the adequacy of Green Wattle Creek Road to cater for the development should the proposal to defer upgrade/sealing be deferred. It was noted that impacts would include: increased traffic, unreasonable safety impacts, and dust impacts. A number of submissions also identified that damage has already occurred to Green Wattle Creek Road due to increase traffic being generated from the site.</p> <p>As detailed within this report, Council staff do not support the removal or deferral of conditions relating to the required upgrading of Green Wattle Creek Road. The conditioned upgrades are necessary to cater for the traffic generated to the site and to cater for emergency access in the event of a bushfire. Resulting dust impacts should the conditions be amended were also a concern to Council staff.</p>
Adequacy of internal roads and bushfire access	<p>Submissions received objected to the staging of the internal road. Primarily issues raised related to adequate access to the site in the event of a bushfire. Dust impacts to adjoining properties were also noted.</p> <p>Council staff do not support the staging of internal roads, in particular full construction of the roads prior to release of Occupation Certificate for any dwelling in stage two is required in order to ensure compliance with the RFS GTAs and <i>Planning for Bushfire Protection 2006</i>.</p>
Section 96 process and substantially the same.	<p>A number of submissions noted that the applicant should not be able to amend the proposal, or alternatively that the proposed modification does not satisfy the 'substantially the same test'.</p> <p>Section 96 of the EP&A Act provides a mechanism to allow applicants to amend or vary their approval. Further, as detailed within this report the proposed amendments do not result in a radical transformation of the approval and the form and substance of the development remains unchanged. Inclusion of an additional dwelling has been considered in part of this assessment. The section 96 process has been utilised appropriately.</p>
Use of additional dwelling	<p>One submission queried the use of the proposed 30th dwelling for use of aged care. The 30th dwelling is to be completed at Stage Three. This consent gives concept approval for use of the site as a Rural Landsharing Community, 30 dwellings, infrastructure and Stage One (six dwellings only). Consent is not granted to the 30th dwelling or its use for aged care. Further, it is understood that the applicant does not propose construction of an aged care facility at the site.</p>
Use of site for events / commercial ventures	<p>Consent has not been granted for commercial ventures and events. This matter is not a relevant matter for consideration under the subject application. Any unauthorised use of the site would be a matter for Council's Compliance Section.</p>
Wastewater	<p>The modification does not seek to amend staging of waste water services. Conditions of consent have been imposed to ensure satisfactory completion of on-site wastewater systems.</p>

ITEM 2 - ATTACHMENT 2 ASSESSMENT REPORT.

Financial viability of the project and opportunity to sell the site	Submissions identified that the project was not financially viable and as such the modification should not be supported. It was noted that the applicant may sell the site. The financial viability of a development proposal or ability for a proponent to sell the development site, is not a relevant consideration under s 79C EP& A Act.
Public interest	One submission identified that the proposal is not within the public interest. It is correct that the proposed deferral to internal and external roadwork is not in the public interest as a result of potential adverse impacts to; traffic, safety, dust, and emergency access. As a result the amendments to the external and internal roadwork are not recommended for approval.

Section 79C(1)(e) - the public interest

The original development will result in positive social, economic and environmental outcomes to the subject site and the surrounding rural villages of Hinton and Wallalong. As detailed elsewhere in this report the applicant's modification to public and internal roads and accessways are not within the public interest. However, the proposed amendments to the staging, additional dwelling and reduction in Section 94 Contribution (at the recommended rates) are in the public interest. The amendments assist in the facilitation of the development which once completed shall result in positive environmental, economic, and social impacts.

ITEM 2 - ATTACHMENT 3 MODIFIED CONDITIONS OF CONSENT.

ATTACHMENT 3
CONDITIONS OF CONSENT

SCHEDULE 1

CONDITIONS THAT IDENTIFY APPROVED PLANS AND LIMITATIONS OF CONSENT

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

Plan/Doc. Title	Dwg. No.	Date	Drawn By
Proposed Master Plan'	A003	15/01/14	Gregory Burgess Pty Ltd Architects
Note Relates to concept approval only. In the case of any inconsistencies the approved staging plan prevails.			
Detailed Master Plan	A100	15/01/14.	Gregory Burgess Pty Ltd Architects
Note: Approval for indicative colour palette and location of effluent disposal area only			
Detailed Plan and Section	A102	15/01/14.	Gregory Burgess Pty Ltd Architects
Landscape Plan (1/2)	SG-LP-01	3/01/14.	Gregory Burgess Pty Ltd Architects
Note Landscaping only. In the case of any inconsistencies the approved staging plan prevails.			
Landscape Plan (2/2)	SG-LP-02	3/01/14.	Gregory Burgess Pty Ltd
Staging Plan	-	26/09/15	Tom Chen, Ecobuild
Note: As amended in red.			
Floor Plan (House One)	1	20/09/15	Tom Chen, Ecobuild
Elevations (House One)	2	20/09/15	Tom Chen, Ecobuild
Elevations (House One)	3	20/09/15	Tom Chen, Ecobuild
Section (House One)	4	20/09/15	Tom Chen, Ecobuild
Floor Plan (House Two)	1	20/09/15	Tom Chen, Ecobuild
Elevations (House Two)	2	20/09/15	Tom Chen, Ecobuild
Elevations (House Two)	3	20/09/15	Tom Chen, Ecobuild
Sections (House Two)	4	20/09/15	Tom Chen, Ecobuild
Floor Plan (House Three)	1	20/09/15	Tom Chen, Ecobuild
Elevations (House Three)	2	20/09/15	Tom Chen, Ecobuild
Elevations (House Three)	3	20/09/15	Tom Chen, Ecobuild
Sections (House Three)	4	20/09/15	Tom Chen, Ecobuild
Floor Plan (House 20)	1	20/09/15	Tom Chen, Ecobuild
Elevations (House 20)	2	20/09/15	Tom Chen, Ecobuild
Elevations (House 20)	3	20/09/15	Tom Chen, Ecobuild
Sections (House 20)	4	20/09/15	Tom Chen, Ecobuild
Floor Plan (House 21)	1	20/09/15	Tom Chen, Ecobuild

ITEM 2 - ATTACHMENT 3 MODIFIED CONDITIONS OF CONSENT.

Elevations (House 21)	2	20/09/15	Tom Chen, Ecobuild
Elevations (House 21)	3	20/09/15	Tom Chen, Ecobuild
Sections (House 21)	4	20/09/15	Tom Chen, Ecobuild
Floor Plan (House 22)	1	17/09/15	Tom Chen, Ecobuild
Elevations (House 22)	2	17/09/15	Tom Chen, Ecobuild
Elevations (House 22)	3	17/09/15	Tom Chen, Ecobuild
Sections (House 22)	4	17/09/15	Tom Chen, Ecobuild
Community Management Statement and Rules		10/02/14.	Shepherds Ground Co-operative Limited

2. The development is approved as a 'Rural Landsharing Community' in accordance with the provisions of State Environmental Planning Policy No.15 Rural Landsharing Communities.
- 3A. The development shall be carried out in stages. This consent applies to the concept approval and Stage One which involves;
 - a. The use of the subject site as a Rural Landsharing Community (including 30 dwellings),
 - b. Six dwellings (as part of Stage One),
 - c. Land tenure, dwelling occupancy rights, staging plan, and land management arrangements,
 - d. Design principles that are binding upon subsequent stages of the development (i.e. criteria for the location of future buildings),
 - e. The construction of internal roads and drainage,
 - f. 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,
 - g. Agricultural activities to be established on the site (associated exempt development), and
 - h. On Site Waste Water System.
- 4A. Prior to the commencement of any building works, in Stage Two, Three and Four, separate development consent shall be granted for structures within each stage.
- 5A. The development shall be undertaken in accordance with the General Terms of Approval granted (and attached to this consent) as follows:
 - a. NSW Rural Fire Service dated 14 May 2014; and
 - b. Department of Natural Resources dated 16 June 2014.

ITEM 2 - ATTACHMENT 3 MODIFIED CONDITIONS OF CONSENT.**CONDITIONS TO BE SATISFIED PRIOR TO DEMOLITION, EXCAVATION OR CONSTRUCTION**

6. At least 48 hours prior to the commencement of any development (including demolition, excavation, shoring or underpinning works), a notice of commencement of building or subdivision work form and appointment of the Principal Certifying Authority form shall be submitted to Council.
7. Temporary sediment and erosion control and measures are to be installed prior to the commencement of any works on the site. These measures must be maintained in working order during the construction works up to completion. All sediment traps must be cleared on a regular basis and after each major storm and/or as directed by the Principal Certifying Authority and Council officers.

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE**ENGINEERING / STORMWATER**

8. A Soil & Water Management Plan in accordance 'Managing Urban Storm water; Soils and Construction document, Landcom 2004' is to be prepared by an Engineer whose qualifications are acceptable for membership of the Institution of Engineers Australia (or other professional approved by Council) detailing temporary and permanent measures proposed to be installed and maintained. The plan is to include an analysis of the susceptibility of soil to erosion and is to be submitted with the Engineering plans. Details shall be submitted to the Principal Certifying Authority for approval prior to the issue of the Construction Certificate.
9. A Construction Certificate cannot be issued until full details of the stormwater drainage design, including overland flow paths, stormwater quality and quantity control measures to manage and convey all stormwater up to the 1% AEP critical storm duration and associated calculations, has been provided to the Certifying Authority for assessment and determined to be satisfactory by the Certifying Authority.

The stormwater system shall be designed and constructed so that water quality targets are met in accordance with Councils Urban Stormwater and Rural Water Quality Management Plan.

ROADWORKS AND ACCESS

10. A detailed geotechnical investigation shall be undertaken and a report prepared detailing the following:
 - a. pavement design of the internal roads, and
 - b. geotechnical integrity of existing dam 3 including, recommendations as to any necessary remediation works or removal of the dam to ensure dwellings downstream will not be affected due to failure of the existing dam embankment.

ITEM 2 - ATTACHMENT 3 MODIFIED CONDITIONS OF CONSENT.

Details shall be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

11. The vehicle accessway shall be constructed according to the following design criteria:
 - a. be an all-weather access with a minimum trafficable width of 4 metres;
 - b. have an offset of 300 mm or greater from obstructions higher than 150 mm;
 - c. include a passing area at least every 200 metres, with a minimum width of 5.5 metres, and minimum length of 6.5 metres with 45° tapers;
 - d. road pavement in accordance with the detailed geotechnical report required under the conditions of consent for this development.
12. All work required to be carried out within a public road reserve must be separately approved by Council, under Section 138 of the Roads Act 1993. Engineering plans for the required work within a public road must be prepared and designed 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. The required works to be designed are as follows:
 - a. Full width rural road including a minimum 6 metres wide carriageway with 1m wide shoulders, 3% cross fall each side of the centreline, minimum 250mm deep table drain, subsoil drainage for a distance of 400 metre from the sealed section at the intersection of Green Wattle Road and Jack James Close.
 - b. 6m wide carriageway is to have a two-coat hot flush bitumen seal for a distance of 400 metre from the sealed section at the intersection of Green Wattle Road and Jack James Close.
 - c. Removal of trees where necessary to ensure safe sight distance in accordance with Austroads - Guide to road design.
 - d. Roadside furniture and safety devices including signage, guide posts, chevrons, directional arrows in accordance with RTA and Australian Standards.
 - e. Signage and line marking. The signage and line marking plan shall be approved by the Council Traffic Committee.
 - f. Traffic control plans in accordance with the Roads and Traffic Authority – Traffic Control at Worksites Manual;
 - 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.

ITEM 2 - ATTACHMENT 3 MODIFIED CONDITIONS OF CONSENT.**WASTE WATER**

- 12.1. Prior to issue of the Construction Certificate for Stage One submit to Council an application to Install, Alter or Construct a Waste Treatment Device or Human Waste Storage Facility. The application shall be prepared in accordance with the Local Government Act, 1993 (S68-part C5), the Local Government (General) Regulation, 2005 (Part 2, Division 4) and Councils On-site Sewage Management Policy. The application must include a detailed assessment report by suitably qualified and experienced Waste Water Consultant. The report must satisfactorily address the detailed design and constructability requirements for the installation, construction, operation and maintenance of all On-site Sewage Management infrastructure including greywater treatment system, composting systems effluent land application areas. For preliminary information on the conceptual wastewater servicing strategy the reader is directed to the report on "Supplementary Effluent Disposal Assessment, Proposed Rural Land Sharing Development, Douglas Partners, Project 81393.01, dated September 2014". Note: Significant changes to preliminary system design, hydraulic loading, proposed system locations or any assessment element detailed within the Supplementary Effluent Disposal Assessment Report will require further investigations to be undertaken and amendment to the report.

CONTRIBUTIONS AND FEES

- 12.2. 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:-

STAGE ONE (SIX DWELLINGS – ONE CREDIT APPLIED)

	Per dwelling	Total
Civic Administration	\$571.50	\$2857.5
Public Open Space, Parks and Reserves	\$1186	\$5930
Sports and Leisure Facilities	\$2797.50	\$13987.5
Cultural and Community Facilities	\$1405	\$7025
Road Works	\$521	\$2605
Fire & Emergency Services	\$113	\$565
Total		\$32969.50

STAGE TWO (NINE DWELLINGS)

	Per dwelling	Total
Civic Administration	\$571.50	\$5143.50

ITEM 2 - ATTACHMENT 3 MODIFIED CONDITIONS OF CONSENT.

Public Open Space, Parks and Reserves	\$1186	\$10674
Sports and Leisure Facilities	\$2797.50	\$25177.50
Cultural and Community Facilities	\$1405	\$12645
Road Works	\$521	\$4689
Fire & Emergency Services	\$113	\$1017
Total		\$59346

STAGE THREE (13 DWELLINGS)

	Per dwelling	Total
Civic Administration	\$571.50	\$7429.50
Public Open Space, Parks and Reserves	\$1186	\$15418
Sports and Leisure Facilities	\$2797.50	\$36367.50
Cultural and Community Facilities	\$1405	\$18265
Road Works	\$521	\$6773
Fire & Emergency Services	\$113	\$1469
Total		\$85722

STAGE FOUR (TWO DWELLINGS)

	Per dwelling	Total
Civic Administration	\$571.50	\$1143
Public Open Space, Parks and Reserves	\$1186	\$2372
Sports and Leisure Facilities	\$2797.50	\$5595
Cultural and Community Facilities	\$1405	\$2810
Road Works	\$521	\$1042
Fire & Emergency Services	\$113	\$226
Total		\$13188

Note:

- 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.
- Contributions are to be paid **prior to the issue of any Construction Certificate for each Stage.**
- 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

ITEM 2 - ATTACHMENT 3 MODIFIED CONDITIONS OF CONSENT.

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.

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

13. Building work that involves residential building works (within the meaning of the Home Building Act, 1989) must not be carried out unless the principal certifying authority for the development to which the work relates:
- a. in the case of work to be done by a licensee under that Act:
 - i. has been informed in writing of the licensee's name and contractor licence number, and
 - ii. is satisfied that the licence has complied with the requirements of Part 6 of that Act, or
 - b. in the case of work to be done by any other person:
 - i. has been informed in writing of the person's name and owner-builder permit, or
 - ii. has been given a declaration, signed by the owner of the land, that states that the reasonable market cost of the labour and materials involved in the work is less than the amount prescribed for the purposes of the definition of owner-builder work in Section 29 of that Act, and is given appropriate information and declarations under paragraphs (a) and (b) whenever arrangements for the doing of the work are changed in such a manner as to render out of date any information or declaration previously given under either of those paragraphs.

A certificate purporting to be issued by an approved insurer under Part 6 of the Home Building Act, 1989, that states that a person is the holder of an insurance policy issued for the purposes of this clause, is sufficient evidence that the person has complied with the requirements of that part.

14. All building work must be carried out in accordance with the provisions of the Building Code of Australia.
15. 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.
16. It is the responsibility of the applicant to erect a PCA sign and to ensure the PCA sign remains in position for the duration of works.

ITEM 2 - ATTACHMENT 3 MODIFIED CONDITIONS OF CONSENT.

17. 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.
18. During the extraction, removal, and transportation of material associated with the works, the person having the benefit of the consent shall ensure that airborne dust is contained within the work site or transport vehicles, and does not impact on the amenity of the surrounding environment. Effective environmental controls and practices shall be implemented and maintained to the satisfaction of Council or the Principal Certifying Authority.
19. 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.

CONDITIONS TO BE SATISFIED PRIOR TO ISSUE OF AN OCCUPATION CERTIFICATE

20. Prior to the issue of the Occupation Certificate, the Principal Certifying Authority is to be satisfied that restriction as to use of the land under Section 88E of the *Conveyancing Act 1919*, has been created restricting the occupation of the premises to:
 - a. Rural Landsharing Community in accordance with State Environmental Planning Policy No.15.
 - b. Subdivision prohibited.
21. Prior to the issue of the Occupation Certificate, the Principal Certifying Authority is to be satisfied that an restriction under Section 88B of the *Conveyancing Act 1919*, has been created as follows:
 - a. The effluent land application areas (including all greywater and compost land application areas) shall not be developed for a future different use. The restriction shall identify the land for use as effluent disposal area only.
22. Prior to the release of any Occupation Certificate, the Principal Certifying Authority is to be satisfied that all landscape works, including the removal of all noxious and/or environmental weed species, have been undertaken in accordance with the approved plan(s) and conditions of consent. The species *Sapium sabiferum* identified on the approved species list shall not be used and shall be replaced with a more suitable species for the site.
23. The approved 'Community Management Statement and Rules – Shepherds Ground Co-operative Limited, dated 10 February 2014' shall be amended to include by-laws that appropriately and adequately define the responsibilities for the operation, maintenance, monitoring and, where necessary, the replacement of the individual

ITEM 2 - ATTACHMENT 3 MODIFIED CONDITIONS OF CONSENT.

and common On-site Sewage Management Systems including but not limited to treatment systems, dry composting systems, reticulation systems and land application areas. The by-laws should be drafted by a suitably qualified person/organisation and should be to the satisfaction of Council.

- 24.1 Written evidence from the electricity supply authority shall be submitted to Council stating that satisfactory arrangements have been made for the provision of electricity supply to all dwelling(s) and approved dwelling envelopes (for each remaining Stage).
- 25.1. Written evidence from the telecommunications authority shall be submitted to Council stating that satisfactory arrangements have been made for the provision of telephone supply to all dwelling(s) and approved dwelling envelopes (for each remaining Stage).
- 25.2. Prior to the issue of the Occupation Certificate, the Principal Certifying Authority shall be satisfied that all commitments listed in BASIX Certificate No's 667448S, 665818S, 681691S, 681693S, 681692S and 681694S have been complied with. Should there be any changes to the specifications of the development (e.g. colour, insulation, etc.), except where restricted or excluded by any condition of consent, an amended/new BASIX Certificate shall be obtained and may be relied upon as having complied with this condition.

PRIOR TO COMMENCEMENT OF USE

- 25.3. Prior to the occupation of the administration and office buildings the owner is to provide Council with a Final Fire Safety Certificate as prescribed by Clause 174 and 107 EP&A Reg 200 as per the attached fire safety schedule for the premises.
- 25.4. The administration and office buildings are to be fitted with portable fire extinguishers prior to commencement of use or issue of any Occupation Certificate for the site.
- 25.5. Prior to commencement of use of the administration and office 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.

CONDITIONS TO BE SATISFIED AT ALL TIMES

- 26. Access and facilities for persons with disabilities to an within all community buildings and community areas of the development shall be provided at all times in accordance with AS1428.1 – Design for Access and Mobility and Part D3 the Building Code of Australia.
- 26.1. At least once in each twelve (12) month period, fire safety statements as prescribed by Section 175 Environmental Planning & Assessment Regulations 2000 in respect

ITEM 2 - ATTACHMENT 3 MODIFIED CONDITIONS OF CONSENT.

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.
27. All owners/shareholders shall comply with the approved document 'Community Management Statement and Rules – Shepherds Ground Co-operative Limited, dated 10 February 2014' (as amended by conditions of this consent). The Community Management Statement and Rules shall become the Community Management Statement as required under cl.10 SEPP No.15.
28. Any overflow from the proposed dam/s must not concentrate water on any adjoining property. The stormwater system, including any water quality or quantity components, shall be maintained in perpetuity for the life of the development.
29. All waste shall be contained within a secure enclosure or bin. Rubbish 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.
30. All owners/shareholders of the subject site shall use the development as their principle place of residence at all times. The development is not to be used as a tourist/holiday accommodation or temporary accommodation of any kind.

NATURAL RESOURCES

31. Where hollow bearing trees cannot be retained hollows shall be harvested and installed in adjacent trees. If hollows are unable to be salvaged they will need to be replaced with nest boxes at a ratio of 2:1.
32. The following key areas are to be revegetated and/or managed to encourage natural regeneration and improve condition:
- a. An area along the southern boundary including Green Wattle Creek, and an area along the northern boundary (including a small remnant of Lower Hunter Valley Dry Rainforest) of the study area (labelled "Landscape Value" in Figure 3 of Appendix E)
 - b. The area of steep hills including the gully containing a small remnant of Lower Hunter Valley Dry Rainforest in the northeast of the landholding."
 - c. Revegetation areas are to be managed and treated for weeds.

All revegetation works are carried out using a combination of natural regeneration (as promoted by stock management/exclusion) and replanting where natural regeneration does not occur. Replanting will have an emphasis on tree canopy and mid-storey species that are endemic to the site as described in Section 3.2.2 Dry

ITEM 2 - ATTACHMENT 3 MODIFIED CONDITIONS OF CONSENT.

sclerophyll forest and Section 3.2.3 Riparian forest in Appendix E. Recommended species can also be obtained by contacting Council's Natural Resource Team.

ADVICES

- A. ADVICE DELETED UNDER 16-2014-168-2
- B. ADVICE DELETED UNDER 16-2014-168-2
- C. In the event of any bone or stone artefacts, or discrete distributions of shell, being unearthed during any earthmoving, all work must cease immediately in the affected area, and the National Parks and Wildlife Service (NPWS) shall be informed of the discovery. Work must not recommence until the material has been inspected and permission has been given by NPWS to proceed.
- D. Given the nature of the proposed development it is recommended that the submitted Section 68 Application address the development in its entirety and is not limited to the approved six dwellings approved under Stage One.

ITEM 2 - ATTACHMENT 3 MODIFIED CONDITIONS OF CONSENT.

SCHEDULE 2
RURAL FIRE SERVICE

All communications to be addressed to:

Headquarters
15 Carter Street
Lidcombe NSW 2141

Headquarters
Locked Bag 17
Granville NSW 2142

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



Amy Stone
Senior Development Planner
Port Stephens Council
PO Box 42
RAYMOND TERRACE NSW 2324

Your Ref: 16-2014-1681
Our Ref: D14/0986
DA14041191713 JM

14 May 2014

Dear Ms Stone,

Integrated development for 15 Green Wattle Creek Road, Butterwick

I refer to your letter dated 8 April 2014 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 provide sufficient space and maintain reduced fuel loads so as to ensure radiant heat levels of buildings are below critical limits and to prevent direct flame contact with a building. To achieve this, the following conditions shall apply:

1. Upon the commencement of the development and in perpetuity the areas detailed below shall be managed as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 6 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones':
 - all land within and around the proposed residential development and existing dwelling/proposed community hub;
 - for a distance of 30 metres from the north-eastern edge of the proposed residential development; and,
 - for a distance of 50m in all other directions from the edge of the proposed residential development and existing dwelling/proposed community hub.

Page 1 of 3

ITEM 2 - ATTACHMENT 3 MODIFIED CONDITIONS OF CONSENT.

2. Appropriate arrangements shall be put in place in the establishment of the rural landsharing community scheme to ensure the effective documentation, implementation and ongoing maintenance of the required Asset Protection Zones on the site.

Water and Utilities

The intent of measures is to provide adequate services of water for the protection of buildings during and after the passage of a bush fire, and to locate gas and electricity so as not to contribute to the risk of fire to a building. To achieve this, the following conditions shall apply:

3. The provision of water, electricity and gas to the proposed dwellings shall comply with section 4.1.3 of 'Planning for Bush Fire Protection 2006'.
4. Arrangements shall be made within the proposed development for the provision of water supplies for bush fire fighting purposes in accordance with section 4.1.3 of 'Planning for Bush Fire Protection 2006'.

Access

The intent of measures for public roads is to provide safe operational access to structures and water supply for emergency services, while residents are seeking to evacuate from an area. To achieve this, the following conditions shall apply:

5. The existing and proposed access roads within the site shall comply with sections 4.1.3(2) and 4.2.7 of 'Planning for Bush Fire Protection 2006'.

Design and Construction

The intent of measures is that buildings are designed and constructed to withstand the potential impacts of bush fire attack. To achieve this, the following conditions shall apply:

6. The seven proposed dwellings within 100m of the bush fire hazard to the north-east of the proposed development, as outlined in Drawing Ref 5721 BF-V2 'Bushfire Threat Assessment' (Le Mottee Group, 19/2/2014), shall comply with Sections 3 and 5 (BAL 12.5) Australian Standard AS3959-2009 'Construction of buildings in bush fire-prone areas' and section A3.7 Addendum Appendix 3 of 'Planning for Bush Fire Protection'.

Emergency Management Arrangements

The intent of measures is to provide suitable emergency and evacuation (and relocation) arrangements for occupants of special fire protection purpose developments. To achieve this, the following conditions apply:

ITEM 2 - ATTACHMENT 3 MODIFIED CONDITIONS OF CONSENT.

8. An emergency / evacuation plan is to be prepared consistent with the NSW Rural Fire Service document 'Guidelines for the Preparation of Emergency/Evacuation Plan'. This shall reflect the proposal for a refuge to be provided on the site and shall set out specific arrangements in the instance of a bush fire occurring to the south-west of the site.

General Advice – consent authority to note

It is noted that the dedicated bush fire fighting water supply tanks to dwellings on the north-east side of the proposed development are to be located at the rear of the proposed dwellings. As these dwellings will not have vehicular access from the proposed main circular access road, consideration will need to be given to the provision of access to, or relocation of, these supplies at stage 2 of the development in order to comply with Section 4.1.3 of Planning for Bush Fire Protection 2006.

For any enquiries regarding this correspondence please contact Jason Maslen on 1300 NSW RFS.

Yours sincerely

Michelle Streater
Acting Team Leader, Development Assessment and Planning

ITEM 2 - ATTACHMENT 3 MODIFIED CONDITIONS OF CONSENT.

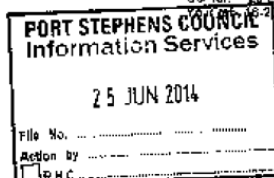
SCHEDULE 3
NSW OFFICE OF WATER

Department of
Primary Industries
Office of Water

Contact: Anthony Bryson
Phone: 02 4904 2515
Fax: 02 4904 2503
Email: anthony.bryson@water.nsw.gov.au
Our ref: 20-ERM2014/0334
16-2014-168-1

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

Attention: Ms Amy Stone



16 June 2014

Dear Amy

Re: Integrated Development Referral – General Terms of Approval
Dev Ref: 16-2014-168-1
Description of proposed activity: Staged Development - Rural Landsharing
Community - Stage 1.
Site location: 15 Green Wattle Creek Road, Butterwick. Lot 1 DP 999947.

I refer to your recent letter regarding an integrated Development Application (DA) proposed for the subject property. Attached, please find the Office of Water's General Terms of Approval (GTA) for works requiring a controlled activity approval under the *Water Management Act 2000* (WMA Act), as detailed in the subject DA.

NOTE: The subject property contains a number of existing dams which if the proposed development is approved may require licensing to comply with current legislation requirements. The proponent should liaise directly with NSW Office of Water in regard to this issue.

Please note Council's statutory obligations under section 91A (3) of the *Environmental Planning and Assessment Act 1979* (EPA Act) which requires a consent, granted by a consent authority, to be consistent with the general terms of any approval proposed to be granted by the approval body.

If the proposed development is approved by Council, the Office of Water requests that these GTA be included (in their entirety) in Council's development consent. Please also note the following:

- The Office of Water should be notified if any plans or documents are amended and these amendments significantly change the proposed development or result in additional works on waterfront land (which includes (i) the bed of any river together with any land within 40 metres inland of the highest bank of the river, or (ii) the bed of any lake, together with any land within 40 metres of the shore of the lake, or (iii) the bed of any estuary, together with any land within 40 metres inland of the mean high water mark of the estuary).
- Once notified, the Office of Water will ascertain if the amended plans require review or variations to the GTA. This requirement applies even if the proposed works are part of Council's proposed consent conditions and do not appear in the original documentation.

www.water.nsw.gov.au

26 Honeysuckle Drive NEWCASTLE NSW 2300 | PO Box 2213 DANGAR NSW 2309
Telephone (02) 4904 2500 | Facsimile (02) 4904 2503 | www.water.nsw.gov.au | ABN 47 661 556 763
e information@water.nsw.gov.au | ABN 72 189 919 072

ITEM 2 - ATTACHMENT 3 MODIFIED CONDITIONS OF CONSENT.

-2-

- The Office of Water should be notified if Council receives an application to modify the development consent and the modifications change any activities on waterfront land.
- The Office of Water requests notification of any legal challenge to the consent.

As the controlled activity to be carried out on waterfront land cannot commence before the applicant applies for and obtains a controlled activity approval, the Office of Water recommends the following condition be included in the development consent:

"The Construction Certificate will not be issued over any part of the site requiring a controlled activity approval until a copy of the approval has been provided to Council".

The attached GTA are not the controlled activity approval. The applicant must apply (to the Office of Water) for a controlled activity approval **after consent** has been issued by Council and **before** the commencement of any work or activity on waterfront land.

Finalisation of a controlled activity approval can take up to eight (8) weeks from the date the Office of Water receives all documentation (to its satisfaction). Applicants must complete and submit (to the undersigned) an application form for a controlled activity approval together with any required plans, documents, the appropriate fee and security deposit or bank guarantee (if required by the Office of Water) and proof of Council's development consent.

Application forms for the controlled activity approval are available from the undersigned or from the Office of Water's website:
www.water.nsw.gov.au [Water licensing](#) [Approvals](#) [Controlled activities](#)

The Office of Water requests that Council provide a copy of this letter to the applicant.

The Office of Water also requests that Council provides the Office of Water with a copy of the determination for this development application as required under section 91A (6) of the EPA Act.

Yours Sincerely

Anthony Bryson
Water Regulation Officer
Office of Water - South Coast / Hunter



Proposed amendment to Schedule 1 of Port
Stephens Local Environmental Plan 2013
Lot 11 DP881743, 713 Newline Road, Eagleton



ITEM 3 - ATTACHMENT 1 PLANNING PROPOSAL - 713 NEWLINE ROAD, EAGLETON.**FILE NUMBERS**

Council: PSC2015-01071
Department: PP_2015_PORTS_007_00 (14/02614)

SUMMARY

Subject land: Lot 11 DP881743, 713 Newline Road, Eagleton
Proponent: LeMottee Group
Proposed Changes: Amendment to Schedule 1 of the *Port Stephens Local Environmental Plan 2013* to allow detached dual occupancy development on the subject land
Zone: RU1 Rural Production
Area of land: Six (6) hectares

BACKGROUND

The land holder is seeking to change the approved use of a tourist facility and manager's residence to a detached dual occupancy on the subject land. However, under the *Port Stephens Local Environmental Plan 2013 (PSLEP 2013)*, a detached dual occupancy is not permitted on the subject land as a minimum lot size of 20 hectares is required on land in the RU1 Primary Production Zone. The subject site is 6 hectares.

Previously, the proposed dual occupancy was also not permitted under Clause 14 of the *Port Stephens LEP 2000*, which prohibited dwelling houses and dual occupancy on lots, such as this one, that were created for another intended use. Furthermore, as discussed below, there is a convenient on the title of the property restricting its use for dual occupancy. The convenient was created at the time of the development application to restrict the use of the land.

In order to allow the proposed change of use, an amendment to Schedule 1 Additional Permitted Uses of the *Port Stephens Local Environmental Plan 2013*, to include development for the purposes of a detached dual occupancy on the subject land, is required.

In November 1998, approval was granted on the subject land for a tourist facility, manager's residence and subsequent subdivision, pursuant to Clause 12(b) of the *Port Stephens LEP 1987*, which, at the time, allowed for the subdivision of rural land for an approved use other than dwellings. As such,

ITEM 3 - ATTACHMENT 1 PLANNING PROPOSAL - 713 NEWLINE ROAD, EAGLETON.

the subdivision did not result in an additional dwelling entitlement. The development consent required the land to be burdened by an 88B instrument restriction under the *Conveyancing Act 1919*, prohibiting a dwelling or duplex (Condition 6 of L1055/98).

The tourist facility included a water-ski school and associated tourist lodge. However, the business became unviable in 2003 due to changes made by the Department of Land & Conservation, Waters Authority and Council regarding the use of waterways.

A Mayoral Minute dated 28 July 2009 (**Attachment 1**) resolved to initiate an amendment to Clause 14 of the *Port Stephens LEP 2000* to enable the permissibility of dwellings on allotments created for approved uses prior to the appointed date (being 29 December 2000). Clause 14 dealt with dwelling houses and dual occupancies in Rural Zones. This amendment sought to allow the proposed change of use however it did not proceed. The matter was considered through the preparation of the principal LEP (*PSLEP2013*), but was not included because the LEP sought to transition the existing provisions into the standard instrument template, without any significant policy change. As such, a standard minimum lot size for rural land use was applied.

Since this time, the land holder has lodged numerous development applications seeking a change of use from tourist facility and manager's residence to detached dual occupancy. These applications have been refused as dual occupancy is prohibited under previous and current LEPs.

At its meeting on 10 March 2015, Council refused a development application for a change of use from tourist facility to dual occupancy due to the proposed development being prohibited under the *PSLEP 2013* (report located in **Attachment 2**). However, at this time, Council indicated support for the applicant to lodge a planning proposal seeking an amendment to Schedule 1 to allow the use of the existing buildings for detached dual occupancy. Council also resolved to waive any fees associated with the planning proposal.

On 11 August 2015, Council resolved to prepare the subject planning proposal pursuant to Section 55 of the *Environmental Planning and Assessment Act 1979 (NSW)* and forward it to the Department of Planning and Environment for a gateway determination (**Attachment 3**).

Following the plan being made, a new Development Application seeking a change of use to a detached dual occupancy will need to be lodged. Further, as there is an operational consent over the land which prohibits dual-occupancy/dwellings on the subject lot (condition 6 of L1055/98), a Section 96 application must also be lodged (concurrently) seeking the removal of this condition. The 88B instrument restriction will also need to be removed from the title of the property.

ITEM 3 - ATTACHMENT 1

PLANNING PROPOSAL - 713 NEWLINE ROAD, EAGLETON.

SITE

The planning proposal relates to Lot 11 DP881743, 713 Newline Road, Eagleton. **Figure 1 – 713 Newline Road** (Page 3) identifies the site.

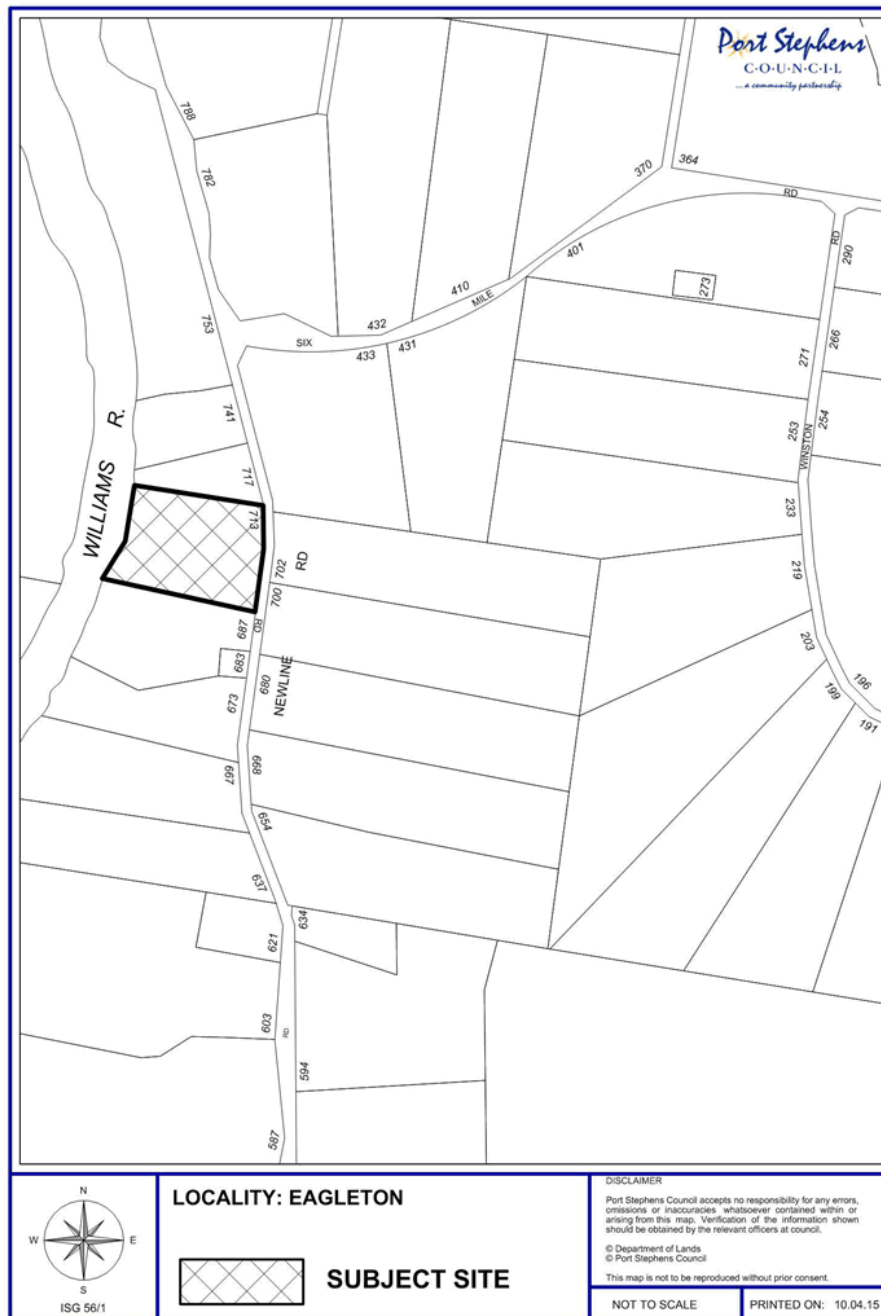


Figure 1 – Locality Plan – 713 Newline Road, Eagleton

ITEM 3 - ATTACHMENT 1 PLANNING PROPOSAL - 713 NEWLINE ROAD, EAGLETON.

PART 1 – Objective of the proposed Local Environmental Plan Amendment

The planning proposal aims to allow detached dual occupancy as an additional permitted use on Lot 11 DP881743, 713 Newline Road, Eagleton.

PART 2 – Explanation of the provisions to be included in proposed LEP

Under the provisions of the *PSLEP 2013*, a dual occupancy is only permissible on land in the RU1 Zone where it has a minimum size of 20ha. The subject site is approximately 6 ha. In order for the proposed detached dual occupancy to be permitted, an amendment to Schedule 1 Additional Permitted Uses of the *PSLEP 2013* is required.

The planning proposal will be implemented by an amendment of the *Port Stephens Local Environmental Plan 2013* by adding the following to Schedule 1 – Additional Permitted Uses:

X Use of certain land at Newline Road, Eagleton

- (1) This clause applies to land at Newline Road, Eagleton, being Lot 11 DP881743
- (2) Development for the purpose of a detached dual occupancy is permitted with consent.

PART 3 – Justification for the Planning Proposal

SECTION A – Need for the Planning Proposal

1. Is the planning proposal a result of any strategic study or report?

No. The Planning Proposal is the result of a development application that sought a change of use of an existing tourist facility and managers residence to a detached dual occupancy on the subject land. Under the *PSLEP 2013*, the proposed change of use is not permissible and the application was refused. However, Council resolved to encourage the proponent to lodge a planning proposal to enable an additional permitted use of the site.

The dual occupancy is a prohibited use, and the subdivision and existing buildings were specifically approved for a tourist facility, with a covenant restricting their use as a dwelling / dual occupancy. Furthermore, additional development in rural areas increases the potential for land use conflict between the rural residential land and agricultural pursuits and increases demand for services in remote areas. For these reasons, it is considered that the proposal has limited strategic justification, despite the minimal environmental impacts of the change of use.

2. Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

ITEM 3 - ATTACHMENT 1 PLANNING PROPOSAL - 713 NEWLINE ROAD, EAGLETON.

Under the provisions of the LEP 2013, a dual occupancy is prohibited on the subject land. An amendment to Schedule 1 is required in order for the existing buildings on the land to be used as a dual occupancy. In this instance, an amendment to Schedule 1 is the best means of allowing a dual occupancy on the subject land, as it will not change the use of other rural land.

3. Is there a community benefit?

The proposal will have minimal social or economic benefit to the community.

SECTION B – Relationship to Strategic Planning Framework

4. Is the planning proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies)?

Lower Hunter Regional Strategy (LHRS)

The approved use of the site for a tourist facility is no longer viable. The planning proposal will allow the existing buildings on the site to be used as a detached dual occupancy. No additional development will be permitted as part of this proposal and it will create a viable use for the land.

The planning proposal is inconsistent with the objectives of the LHRS, which seeks to limit new dwelling entitlements in Rural Zones. However, it is consistent with the applicable Sustainability Criteria. An assessment of the planning proposal against the Sustainability Criteria is contained in **Attachment 4**.

5. Is the planning proposal consistent with the local Council's Community Strategic Plan, or other local strategic plan?

Integrated Planning and Reporting Framework

The Planning Proposal is a statutory planning document, which either directly or indirectly addresses a broad range of measures contained within Council's integrated plans, such as Direction 11.1.1.2 – Prepare and review statutory plans.

Port Stephens Planning Strategy (PSPS)

The PSPS aims to ensure that current and future agriculture is not compromised by the fragmentation of rural land. It further aims to ensure that prime agricultural land and important rural landscapes are protected from undesirable development.

The planning proposal is consistent with the aims of the PSPS as it will not compromise agricultural land or provide provisions that will allow for its further fragmentation. Given that no further development potential will be created as

ITEM 3 - ATTACHMENT 1 PLANNING PROPOSAL - 713 NEWLINE ROAD, EAGLETON.

it is proposed to change the use of the existing buildings, the proposal will have no impact on the rural vista in the area.

State Environmental Planning Policies

6. Is the planning proposal consistent with applicable state environmental planning policies?

There are no existing or draft SEPPs that prohibit or restrict the proposed development as outlined in this planning proposal. An assessment of relevant SEPPs against the planning proposal is provided in the table below.

Table 1: Relevant State Environmental Planning Policies

SEPP	Relevance	Consistency and Implications
SEPP 44 – Koala Habitat Protection	The SEPP encourages the conservation and management of natural vegetation areas that provide habitat for koalas to ensure permanent free-living populations will be maintained over their present range.	Part of the subject land contains Preferred Koala Habitat/cleared buffer area, however it is mostly cleared land and contains little vegetation. The location of the existing buildings is cleared land and the proposal does not include tree removal. The planning proposal will not impact upon koala habitat.
SEPP (Rural Lands) 2008	The SEPP aims to facilitate economic use and development of rural lands, reduce land use conflicts and provides development principles.	The proposal complies with the objectives of the SEPP as it provides for the most economically viable use of the land. The proposal will not impact on the surrounding rural land use.

ITEM 3 - ATTACHMENT 1 PLANNING PROPOSAL - 713 NEWLINE ROAD, EAGLETON.

Section 117 Ministerial Directions

7. *Is the planning proposal consistent with applicable Ministerial Directions?*

An assessment of relevant s.117 Directions against the planning proposal is provided in the table below.

Table 2: Relevant s.117 Ministerial Directions

Ministerial Direction	Aim of Direction	Consistency and Implications
1. EMPLOYMENT AND RESOURCES		
1.2 Rural Zones	The objective of this direction is to protect the agricultural production value of rural land.	The planning proposal is inconsistent with this Direction as it seeks to increase the permissible density in a rural zone. This inconsistency is considered to be of minor significance as it will provide a mechanism for the viable use of existing buildings on the site.
1.4 Rural Lands	The objective of this direction is to protect the agricultural production value of rural land and facilitate the economic development of rural lands for rural related purposes.	The planning proposal seeks to amend provisions applying to rural zoned land. However, the planning proposal will not impact on the economic viability of rural land.
2. ENVIRONMENT AND HERITAGE		
2.1 Environmental Protection Zones	The objective of this direction is to protect and conserve environmentally sensitive areas.	The planning proposal will have minimal environmental impact.
3. HOUSING, INFRASTRUCTURE AND URBAN DEVELOPMENT		
3.3 Home Occupations	The objective of this direction is to encourage the carrying out of low impact small businesses in dwelling houses.	Pursuant to the PSLEP 2013, Home occupation is permitted without consent in the RU1 Zone.

ITEM 3 - ATTACHMENT 1 PLANNING PROPOSAL - 713 NEWLINE ROAD, EAGLETON.

4. HAZARD AND RISK		
4.1 Acid Sulfate Soils	The objective of this direction is to avoid significant adverse environmental impacts from the use of land that has a probability of containing acid sulphate soils	The subject site is identified as containing Acid Sulfate Soils. However, the planning proposal seeks to allow a change of use of existing buildings. As such, no works are proposed and ASS will not be impacted.
4.3 Flood Prone Land	The objectives of this direction are to ensure that development of flood prone land is consistent with the NSW Government's Flood Prone Land Policy and the principles of the <i>Floodplain Development Manual 2005</i> , and that the provisions of an LEP on flood prone land are commensurate with flood hazard and include consideration of the potential flood impacts both on and off the subject land.	The subject land is partially flood prone. However, the existing buildings are located above the 1:100 year floodplain.
4.4 Planning for Bushfire Protection	The objectives of this direction are to protect life, property and the environment from bush fire hazards, by discouraging the establishment of incompatible land uses in bush fire prone areas, to encourage sound management of bush fire prone areas.	The proposal is satisfies the requirements of <i>Planning for Bushfire protection Guidelines 2006</i> .
5. REGIONAL PLANNING		
5.1 Implementation of Regional Strategies	The objective of this direction is to give legal effect to the vision, land use strategy, policies, outcomes and actions contained in regional strategies.	The planning proposal is inconsistent with the LHRS as it seeks to increase dwelling density on rural land. The planning proposal is of minor significance and satisfies the 'sustainability

ITEM 3 - ATTACHMENT 1 PLANNING PROPOSAL - 713 NEWLINE ROAD, EAGLETON.

		criteria' contained in the LHRs. An assessment of the sustainability criteria is located at Attachment 4.
6. LOCAL PLAN MAKING		
6.3 Site Specific Provisions	The objective of this direction is to discourage unnecessarily restrictive site specific planning controls.	<p>The planning proposal is inconsistent with this Direction as it proposes site specific provisions.</p> <p>The proposal is of minor significance as the proposed site specific provisions will limit the land use changes to this specific site and not alter the rural zone.</p>

SECTION C – Environmental, Social and Economic Impact

8. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

No. The buildings already exist and therefore the proposal is unlikely to have any significant adverse impacts to the environment or surrounding rural amenity.

9. Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

No.

10. Has the planning proposal adequately addressed any social and economic effects?

The proposal will have minimal social and economic impacts.

SECTION D – State and Commonwealth interests

11. Is there adequate public infrastructure for the planning proposal?

The proposal will not generate a significant demand for additional public infrastructure.

ITEM 3 - ATTACHMENT 1 PLANNING PROPOSAL - 713 NEWLINE ROAD, EAGLETON.

12. What are the views of the State and Commonwealth public authorities consulted in accordance with the gateway determination?

Council is not required to undertake government agency consultation. Due to the local nature and minimal impact of the proposal, it is unlikely that any agencies will have an interest in the planning proposal.

Part 5 - Details of Community Consultation

The planning proposal was exhibited for a period of fourteen (14) days, in accordance with the gateway determination (**Attachment 5**), from 15th October to 29th October.

Notice of the public exhibition period was placed in The Examiner. The exhibition material was on display at the following locations during normal business hours:

- Council's Administration Building 116 Adelaide Street, Raymond Terrace
- Raymond Terrace Library, Port Stephens Street, Raymond Terrace
- Council's website.

No submissions were received during the exhibition period.

Part 6 – Project timeline

The planning proposal is expected to be reported to Council following the completion of the public exhibition period.

The following timetable is proposed:

	AUG15	SEPT 15	OCT 15	NOV 15	DEC 15	JAN 16	FEB 16
Council consideration							
Gateway Determination							
Public Exhibition							
Council Report							
Parliamentary Counsel							

**ITEM 3 - ATTACHMENT 1 PLANNING PROPOSAL - 713 NEWLINE ROAD,
EAGLETON.**

Attachment 1 – Mayoral Minute dated 28 July 2009

ORDINARY COUNCIL – 28TH JULY 2009

MAYORAL MINUTE

ITEM NO. 1

FILE NO:16-2009-165-1

AMENDMENT TO CLAUSE 14 OF THE PORT STEPHENS LOCAL ENVIRONMENTAL PLAN 2000

THAT COUNCIL:

Resolve to initiate a draft amendment to Clause 14 of the Port Stephens Local Environmental Plan 2000 to enable permissibility of dwellings on allotments created for approved uses prior to the appointed date.

BACKGROUND

Clause 14 – Dwelling houses and dual occupancy housing in Rural zones.

Clause 14 of the Port Stephens Local Environmental Plan, 2000 outlines the matters to be considered in the development of dwelling houses and dual occupancies within the Rural zones.

Clause 14 states inter alia;

(2) The consent authority shall not consent to the erection of a dwelling house or dual occupancy housing on an allotment of land to which this clause applies if;

(i) if the allotment was created before the appointed day – the consent authority is of the opinion that the allotment was intended to be used for any one or more of the purposes (other than the purpose of dwelling house or dual occupancy housing) for which it could have been used (with or without the consent of the consent authority) under the environmental planning instrument under which it was created,

Clauses 14(2)(i) and 14(2)(ii) serve specifically to prohibit the development of dwellings and/or dual occupancies on allotments that were created for another intended use (other than dwellings and/or dual occupancies).

Development Proposal

Council is in receipt of a Development Application (16-2009-165-1) proposing the change of use from Tourist Facility (Ski School) and Managers Residence to Dual Occupancy.

The Ski School was approved on 5th November 1998 by Development Consent L1055/98 which encompassed approvals for the use of the subject site for Managers Residence, Tourist Lodge, Subdivision and Water Ski School.

**ITEM 3 - ATTACHMENT 1 PLANNING PROPOSAL - 713 NEWLINE ROAD,
EAGLETON.**

ORDINARY COUNCIL – 28TH JULY 2009

Consent condition Number 6 restricted the use of the site in the following way

The use of the proposed allotments is restricted pursuant to clause 12(b) of Local environmental Plan 1987 and accordingly no dwelling or duplex can be built on the proposed residue Lot1. 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.

This condition was reflected in the allotments 88B instrument, specifically in Terms of Easement or Restrictions secondly referred to in the plan.

The provisions of Condition 6 of Development Consent L1105/98, the Section 88B instrument for DP 881743 and Clause 12(b) of the LEP 1987 all serve to prohibit this development.

In June 2006, Council received correspondence requesting that the 88B be released by Council to allow a Dual Occupancy on the site. Council's Senior Development Planner responded on 28th August 2006 stating that this restriction on the title of the land could not be varied given that the original approval was granted pursuant to the provisions of Clause 12(b) of the Local Environmental Plan 1987.

Under the provisions of Council's current Planning Instrument, the Port Stephens Local Environmental Plan 2000, Clause 14 deals with dwelling houses and dual occupancies in the rural zone.

Given that the proposal for subdivision and Tourist Facility was approved under Clause 12(b) of the Port Stephens Local Environmental Plan 1987 development for the purposes of Dwelling House or Dual Occupancy Housing is prohibited by clause 14 of LEP 2000.

Hence to enable this request by the land owner to be considered for approval, a relevant amendment is required to the Port Stephens Local Environmental Plan 2000.

ITEM 3 - ATTACHMENT 1 PLANNING PROPOSAL - 713 NEWLINE ROAD, EAGLETON.**Attachment 2 – Council Report and Minutes 10 March 2015****MINUTES ORDINARY COUNCIL – 10 MARCH 2015****ITEM NO. 1****FILE NO: 16-2014-222-1**

DEVELOPMENT APPLICATION FOR A CHANGE OF USE FROM TOURIST LODGE AND MANAGERS RESIDENCE TO DETACHED DUAL OCCUPANCY DEVELOPMENT AT NO 713 NEWLINE ROAD, EAGLETON (LOT 11 DP881743)

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

RECOMMENDATION IS THAT COUNCIL:

- 1) Refuse Development Application 16-2014-222-1 for change of use from Tourist Facility to Detached Dual Occupancy Development at 713 Newline Road, Eagleton (Lot 11 DP 881743) for the following reasons:
 - a. The proposed development is prohibited under Clause 4.28 of Port Stephens Local Environmental Plan 2013 (Section 79C(1)(a) of the Environmental Planning & Assessment Act 1979);
 - b. The site does not satisfy the minimum lot size and other requirements for Dual Occupancy development on Rural Land under the Port Stephens Local Environmental Plan (LEP) 2013 (Section 79C(1)(a) of the Environmental Planning & Assessment Act 1979);
- 2) Council officers write to the owner/applicant encouraging them to lodge a planning proposal for consideration by NSW Planning and Environment to amend the Port Stephens LEP 2013 to enable an additional permitted use on the site (for purposes of a dual occupancy).

ORDINARY COUNCIL MEETING – 10 MARCH 2015**MOTION**

040	Councillor Steve Tucker Councillor John Nell
	It was resolved that Council move into Committee of the Whole.

Cr Paul Le Mottee left at 5.31pm, prior to Item 1, in Committee of the Whole.

COMMITTEE OF THE WHOLE RECOMMENDATION

	Mayor Bruce MacKenzie Councillor Sally Dover
	That Council: 1) Refuse Development Application 16-2014-222-1 for change of use

ITEM 3 - ATTACHMENT 1 PLANNING PROPOSAL - 713 NEWLINE ROAD, EAGLETON.**MINUTES ORDINARY COUNCIL – 10 MARCH 2015**

	<p>from Tourist Facility to Detached Dual Occupancy Development at 713 Newline Road, Eagleton (Lot 11 DP 881743) for the following reasons:</p> <ul style="list-style-type: none"> c. The proposed development is prohibited under Clause 4.28 of Port Stephens Local Environmental Plan 2013 (Section 79C(1)(a) of the Environmental Planning & Assessment Act 1979); d. The site does not satisfy the minimum lot size and other requirements for Dual Occupancy development on Rural Land under the Port Stephens Local Environmental Plan (LEP) 2013 (Section 79C(1)(a) of the Environmental Planning & Assessment Act 1979; <p>2) Council officers write to the owner/applicant encouraging them to lodge a planning proposal for consideration by NSW Planning and Environment to amend the Port Stephens LEP 2013 to enable an additional permitted use on the site (for purposes of a dual occupancy).</p> <p>3) Given Council has previously indicated support for this rezoning application via minute no 221 of 28 July 2009, and it was Council's understanding the proposal would be included in the comprehensive Local Environmental Plan (LEP), Council resolve that no fees are applicable for the planning proposal.</p>
--	--

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

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

Those against the motion: Nil.

MOTION

Cr Paul Le Mottee left the meeting at 6.04pm, prior to Item 1, in Open Council.

042	<p>Councillor Chris Doohan Councillor John Nell</p> <p>It was resolved that Council:</p> <ul style="list-style-type: none"> 1) Refuse Development Application 16-2014-222-1 for change of use from Tourist Facility to Detached Dual Occupancy Development at 713 Newline Road, Eagleton (Lot 11 DP 881743) for the following reasons: <ul style="list-style-type: none"> e. The proposed development is prohibited under Clause 4.28
------------	--

ITEM 3 - ATTACHMENT 1 PLANNING PROPOSAL - 713 NEWLINE ROAD, EAGLETON.**MINUTES ORDINARY COUNCIL – 10 MARCH 2015**

	<p>of Port Stephens Local Environmental Plan 2013 (Section 79C(1)(a) of the Environmental Planning & Assessment Act 1979);</p> <p>f. The site does not satisfy the minimum lot size and other requirements for Dual Occupancy development on Rural Land under the Port Stephens Local Environmental Plan (LEP) 2013 (Section 79C(1)(a) of the Environmental Planning & Assessment Act 1979;</p> <p>2) Council officers write to the owner/applicant encouraging them to lodge a planning proposal for consideration by NSW Planning and Environment to amend the Port Stephens LEP 2013 to enable an additional permitted use on the site (for purposes of a dual occupancy).</p> <p>3) Given Council has previously indicated support for this rezoning application via minute no 221 of 28 July 2009, and it was Council's understanding the proposal would be included in the comprehensive Local Environmental Plan (LEP), Council resolve that no fees are applicable for the planning proposal.</p>
--	---

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

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

Those against the motion: Nil.

BACKGROUND

The purpose of this report is to present to Council for determination development application 16-2014-222-1. The application has been called to Council by Councillor Jordan due to community interest. A copy of the call up form is included at **(ATTACHMENT 1)**.

Proposal

The application seeks to change the approved use of a tourist facility and managers residence to a detached dual occupancy under the Port Stephens Local Environmental Plan 2013 located at 713 Newline Road, Eagleton **(ATTACHMENT 2)**.

The key issue with the application relates to permissibility under the Port Stephens Local Environmental Plan 2013. Other impacts of the development are suitable and compliant with the relevant Development Control Plan (DCP) requirements. This is outlined in the Assessment **(ATTACHMENT 3)**.

**ITEM 3 - ATTACHMENT 1 PLANNING PROPOSAL - 713 NEWLINE ROAD,
EAGLETON.****MINUTES ORDINARY COUNCIL – 10 MARCH 2015**

Since 2006, Council staff have advised the owner/applicant on a number of occasions that the change of use is prohibited. A report to Council in 2009 resulted in the issue of a refusal. Council has previously advised via Council resolution it would support a planning proposal to change the zoning provisions to accommodate such a use.

Site History

Approval for a tourist facility, managers residence and a subdivision was granted pursuant to Clause 12(b) of the Port Stephens Local Environmental Plan 1987 (DA 1055/98) on 5 November 1998. This clause allowed for subdivision of rural land for an approved use, excluding dwellings, therefore did not include a dwelling entitlement.

The tourist facility was sought to be run as a water-ski school and associated tourist lodge. The site is burdened with an 88B instrument restriction under the Conveyancing Act 1919 prohibiting a dwelling or duplex.

In 2006 the owners sought Council's approval to remove the restriction on the use of the land contained in the 88B instrument. The basis of the request related to changes to the way in which the water-ski school was able to operate, which the owner advised would render the business unviable.

In 2003, the Department of Land & Conservation, Waters Authority and Port Stephens Council undertook a joint investigation into stream bank erosion and the adoption of a new Boating Traffic Management Plan for the Williams River. Following this, Boating Traffic Management Plans were adopted which prohibit slow speed towing, including wakeboarding or knee boarding in the stretch of the river some distance either side of the subject site's frontage to the river. The owner advised that this impacted negatively on the business as novice skiers or wake boarders could not be trained properly without being able to access other areas on the river and requested removal of the 88B restriction.

At the time of the request, Council advised that the restriction could not be removed given a dwelling or duplex was prohibited under the Port Stephens Local Environmental Plan 2000 (as a result of the previous subdivision not being for this purpose).

In 2009, the owners lodged another development application for a change of use from tourist facility to dual occupancy and sought amendment to Clause 14 of Council's Local Environmental Plan 2000 to allow the development. The development application was also refused by Council as consent for the subdivision had been granted pursuant to Clause 12(b) of Port Stephens Local Environmental Plan 1987 on the basis that the new lot would only be for the tourist facility and development for a dual occupancy was prohibited.

Although the site is considered suitable for the proposed development from a merits perspective, the application cannot be supported given the proposal is not permissible under the Port Stephens LEP 2013. The purpose of this LEP provision is to minimise the fragmentation of agricultural land.

ITEM 3 - ATTACHMENT 1 PLANNING PROPOSAL - 713 NEWLINE ROAD, EAGLETON.

MINUTES ORDINARY COUNCIL – 10 MARCH 2015

Council officers have sought to assist the owner/applicant by seeking them to lodge a planning proposal requesting an amendment to the Port Stephens LEP 2013 to enable an additional permitted use on the site (for the purposes of a dual occupancy). If a planning proposal was lodged, Council officers have advised they would support making a submission to the NSW Planning & Environment for their consideration.

FINANCIAL/RESOURCE IMPLICATIONS

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

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

LEGAL, POLICY AND RISK IMPLICATIONS

The development application is prohibited under Council's Local Environmental Plan 2013 and is therefore not consistent with the requirements of Section 79C(a) of the *Environmental Planning & Assessment Act 1979*.

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
There is a risk that if the application is refused the determination may be challenged in the Land and Environment Court.	Low	Council is confident the assessment is robust and if required is able to proceed through the legal process.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Part of Council's role is to provide services and make decisions that enhance quality of life. The proposal seeks to return a viable use to the land and there are no social and economic implications for Council by allowing for provision of housing within buildings that currently exist on the land.

The Applicant advises that the current existing use was rendered inoperable as a result of concerns over boating and stream bank erosion of the Williams River.

**ITEM 3 - ATTACHMENT 1 PLANNING PROPOSAL - 713 NEWLINE ROAD,
EAGLETON.****MINUTES ORDINARY COUNCIL – 10 MARCH 2015**

Both the manager's residence and tourist lodge (originally a dwelling) exist on the site. The site is well maintained and the proposal does not have any adverse environmental impacts nor will the development have any adverse social or economic implications. |

CONSULTATION

|The application did not require public notification in accordance with Council's policies. The application was referred to Council's building surveyors in accordance with Council's service level agreements. Consultation with the applicant and site inspection with the owners has taken place. |

OPTIONS

- |1) Adopt the recommendations;
- 2) Amend the recommendations;
- 3) Reject the recommendations. |

ATTACHMENTS

- |1) Councillor Call to Council Form;
- 2) Locality Plan;
- 3) Assessment;
- 4) Conditions/Reasons for refusal. |

COUNCILLORS ROOM

- |1) Statement of Environmental Effects;
- 2) Site Photos. |

TABLED DOCUMENTS

|Nil.

MINUTES ORDINARY COUNCIL – 10 MARCH 2015

ATTACHMENT 1
COUNCILLOR CALL UP FORM

116 Adelaide Street, Raymond Terrace NSW 2324
CALL TO COUNCIL FORM
DEVELOPMENT APPLICATION

I, Councillor Ken Jordan
require Development Application Number..... 16-2014-222-1.....
for a :change of use – tourist lodge to dual occ
.....
at 713 Newline Road, Eagleton.....
.....
to be subject of a report to Council for determination by Council.
Reason:
The reason for this call-up to Council is *so the*
..... *applicant can do public*
..... *access and the Councillors*
..... *can do site visit*
.....
Declaration of Interest:
I have considered any pecuniary or non-pecuniary conflict of interest (including political donations) associated with this development application on my part or an associated person. I have a conflict of interest? Yes/No (delete the response not applicable).
If yes, please provide the nature of the interest and reasons why further action should be taken to bring this matter to Council:
.....
.....
.....
.....
Signed: .. Date: *20/1/2015*
0255 1 Facsimile: 02 4987 3612
www.portsteps.org.au Web: www.portsteps.nsw.gov.au

ITEM 3 - ATTACHMENT 1 PLANNING PROPOSAL - 713 NEWLINE ROAD, EAGLETON.

MINUTES ORDINARY COUNCIL – 10 MARCH 2015

ATTACHMENT 2
LOCALITY PLAN



ITEM 3 - ATTACHMENT 1 PLANNING PROPOSAL - 713 NEWLINE ROAD, EAGLETON.**MINUTES ORDINARY COUNCIL – 10 MARCH 2015****ATTACHMENT 3
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 application is for a change of use from the approved tourist facility and managers residence to a detached dual occupancy under Port Stephens Local Environmental Plan 2013.

THE APPLICATION

Owner Applicant	Mr. G.A & Ms N M Wright Le Mottee Group
--------------------	--

THE LAND

Property Description	Lot 11 DP881743
Address	713 Newline Road, Eagleton
Area	The site has an area of 5.258ha.
Dimensions	The site has irregular dimensions, however, is generally rectangular in shape and has frontage to the Williams River.
Characteristics	Bushfire prone land, Acid Sulphate Soils (ASS) Class 5, Koala Habitat (cleared buffer/preferred), Prime Agricultural land (classes 1-3), Partially flood affected.

ITEM 3 - ATTACHMENT 1 PLANNING PROPOSAL - 713 NEWLINE ROAD, EAGLETON.

MINUTES ORDINARY COUNCIL – 10 MARCH 2015



Figure 1 – Aerial Image of Development Site

THE ASSESSMENT

PLANNING PROVISIONS

Environmental Planning and Assessment Act 1979	s.79C Planning provisions Rural Fires Act 1997 (79BA)
State Environmental Planning Policies	State Environmental Planning Policy Rural Lands (2008) State Environmental Planning Policy No.44 – Koala Habitat Protection (and Port Stephens Comprehensive Koala Plan of Management)
Port Stephens Local Environmental Plan (2013)	Zone RU1 Primary Production Clause 4.2B Erection of dwelling houses on land in certain rural, residential and environmental protection zones Cl.7.1 Acid sulphate soils. Cl.7.10 – Williams River Catchment
Port Stephens Development Control Plan 2013	B2 Environment and Construction Management

ITEM 3 - ATTACHMENT 1 PLANNING PROPOSAL - 713 NEWLINE ROAD, EAGLETON.**MINUTES ORDINARY COUNCIL – 10 MARCH 2015**

B3 Parking and Traffic
B6 Single and Dual Occupancy Dwellings

Port Stephens Section 94 Plan

Section 94 contributions are not applicable as section 94 levies raised under DA 1055/98.

Statutory Acts and Regulations***Environmental Planning and Assessment (EP&A) Act 1979*
Section 79C – Planning Assessment**

An assessment under Section 79C of the EP& A Act 1979 has been undertaken throughout this report.

Rural Fires Act 1997 (Section 79B)

The proposed development is located on bushfire prone land (south east corner of the site only). The two existing building structures on site were in existence prior to the change of use to the mangers residence and tourist lodge in 1998. The change of use to a dual occupancy development is not a 'special fire protection purpose' under 100B of the *Rural Fires Act 1997* and the proposal is not integrated development under s.91 of the *EP&A Act 1979*. The site is clear of trees and is not within 100m of any significant vegetation. The site is also within 70m of the Williams River. The proposal therefore satisfies Planning for Bushfire Requirements 2006 and does not require referral to RFS, or any upgrades should Council elect to approve the dwelling.

State Environmental Planning Policies***State Environmental Planning Policy (Rural Lands) 2007***

The proposal complies with the aims of this State Policy which include the facilitation of the orderly and economic use and development of rural lands for rural and related purposes. The approved use on the site is no longer viable and return of the site to a dual occupancy use will ensure the ongoing viability of land use having regard to social, economic and environmental considerations.

State Environmental Planning Policy No. 44 – Koala Habitat Protection and Port Stephens Comprehensive Koala Plan of Management (CKPoM)

State Environmental Planning Policy No.44 – Koala Habitat Protection, aims to encourage the proper conservation and management of areas of natural vegetation that provide habitat for koalas to ensure a permanent free-living population over their present range and reverse the current trend of koala population decline.

The site is mapped as containing Preferred Koala Habitat/cleared buffer area (western and south western part of the site only). The site is mostly cleared and

ITEM 3 - ATTACHMENT 1 PLANNING PROPOSAL - 713 NEWLINE ROAD, EAGLETON.**MINUTES ORDINARY COUNCIL – 10 MARCH 2015**

contains little vegetation. The proposal does not include tree removal and the change of use to dual occupancy development will not impact upon koala habitat.

Port Stephens Local Environmental Plan (2013)**Zone RU1 Primary Production**

The land is zoned RU1 Primary Production. The proposed development is not inconsistent with the objectives of the zone. Dwelling houses and Dual Occupancies are permissible forms of development under the provisions of the RU1 Zone, subject to compliance with the other provisions of the LEP.

Clause 4.2B Erection of dwelling houses on land in certain rural, residential and environment protection zones

Clause 4.2B(3) states that development consent must not be granted for the erection of a dwelling house on land to which this clause applies unless the land:

- (a) Is a lot that is at least the minimum lot size shown on the Lot Size Map under Port Stephens Local Environmental Plan 2013.

The current lot size is 5.258ha and therefore does not meet the minimum lot size of 20ha required under this Clause.

Alternatively, Clause 4.2B(3) states development consent can be granted for land in the RU1 Primary Production zone if it is a lot created before the Plan commenced that has an area of at least 4,000 square metres and on which the erection of a dwelling house was permissible immediately before that commencement.

This Clause does not apply because the original approval under Clause 12(B) of Port Stephens Local Environmental Plan 1987 for a Tourist Facility, Manager's Residence and Subdivision resulted in extinguishing the dwelling entitlement relating to this land.

The applicant provided an argument that the development should be permissible as the buildings were already in existence and clause 4.2B relates to the 'erection' of dwelling houses and dual occupancies. Council officers sought legal advice in this regard (from Local Government Legal) who confirmed that the term dwelling house encompasses both the development and use of the land (see case law *Dobrohotoff v Bennic* [2013])

Furthermore, the *Interpretations* Act 1987 provides that in interpreting a provision of an Act the interpretation that would best achieve the purpose of object (whether or not that purpose is expressly stated) is to be preferred.

In this regard, the principle objective of Clause 4.2(B)3 is to minimise unplanned rural residential development. The objective is achieved by restricting new dwelling entitlements on land to which the clause applies. The objective of Clause 4.2B would be undermined if the clause were interpreted to allow Council to grant consent to a

ITEM 3 - ATTACHMENT 1 PLANNING PROPOSAL - 713 NEWLINE ROAD, EAGLETON.**MINUTES ORDINARY COUNCIL – 10 MARCH 2015**

change of use of a building for the purpose of a dwelling/dual occupancy. In addition an interpretation of Clause 4.2B that would allow a change of use to a building so as to create a primary dwelling entitlement is contrary to the objectives of the RU1 Primary Production zone. Therefore, legal advice confirmed that Clause 4.2B should be interpreted as if it was drafted as follows:

'development consent must not be granted for the erection of, or for the purpose of a dwelling house on land...'

Clause 7.1 Acid Sulphate soils

The subject site is identified as containing Acid Sulphate soils (ASS). No works are being undertaken as part of the proposal which is likely to lower the water table below. The proposal is therefore not inconsistent with the provisions of clause 7.1.

Clause 7.3 – Flood Planning

The site is partially flood prone, however, both of the buildings are located outside of the area on the site subject to flooding. In this regard, the proposed development is compatible with the flood hazard of the land and there will be no unsustainable impacts.

Clause 7.10 – Williams River Catchment

The objectives of this clause include environmental protection of the Williams River Catchment. The proposal will promote the sustainable use of the land and will have less impact than the existing approved use of the site given skiing and wakeboarding activities will no longer be undertaken within the river.

Port Stephens Development Control Plan 2013**B2 Environmental and Construction Management**

The proposal does not result in adverse impacts to the environment. As detailed above, it is anticipated environmental impacts will decrease (bank erosion within the Williams River) as a result of a decrease in skiers and wakeboarders associated with the tourist facility.

B3 Parking and Traffic

The site provides for existing parking and access and is not considered to require further consideration under Port Stephens Development Control Plan 2013.

B6 Single and Dual Occupancy Dwellings

The two buildings currently exist on the site and comply with the relevant requirements for dwellings under the plan.

**ITEM 3 - ATTACHMENT 1 PLANNING PROPOSAL - 713 NEWLINE ROAD,
EAGLETON.**

MINUTES ORDINARY COUNCIL – 10 MARCH 2015

Section 94 Contribution Plan

Section 94 Levies were raised under DA 1055/98 at the time the land was subdivided and therefore are not applicable to the subject proposal.

Community consultation

Consultation with the applicant and site inspection with the owners has taken place.

Internal referrals

Building

The application was referred to Council's Building Surveying Team for review and it was identified that the proposal was satisfactory in regard to building matters.

Likely impacts of the development

The proposal does not present any significant adverse impacts to the environment or surrounding rural amenity.

Suitability of the site

There are no physical constraints on the site that make the land unsuitable for the proposed development. The site is well maintained, retains its rural character and amenity and is suitable for the proposed development.

Public interest

The development does not result in negative social, economic and environmental outcomes. Council has no significant issues with the proposed use of the site, however, the change of use is prohibited under Port Stephens Local Environmental Plan 2013.

**ITEM 3 - ATTACHMENT 1 PLANNING PROPOSAL - 713 NEWLINE ROAD,
EAGLETON.**

MINUTES ORDINARY COUNCIL – 10 MARCH 2015

**ATTACHMENT 4
REASONS FOR REFUSAL**

- 1) The proposed development is prohibited under Clause 4.2B of Port Stephens Local Environmental Plan 2013 (Section 79C(1)(a) of the *Environmental Planning & Assessment Act 1979*); and
- 2) The site does not satisfy the minimum lot size and other requirements for Dual Occupancy development on Rural Land under the Port Stephens Local Environmental Plan (LEP) 2013 (Section 79C(1)(a) of the *Environmental Planning & Assessment Act 1979*)

**ITEM 3 - ATTACHMENT 1 PLANNING PROPOSAL - 713 NEWLINE ROAD,
EAGLETON.**

Attachment 3 – Council Report and Minutes 11 August 2015

ORDINARY COUNCIL - 8 DECEMBER 2015 - ATTACHMENTS

ITEM 3 - ATTACHMENT 1 PLANNING PROPOSAL - 713 NEWLINE ROAD, EAGLETON.

MINUTES ORDINARY COUNCIL - 11 AUGUST 2015

ITEM NO. 2

FILE NO: PSC2015-01000/598

TRIM REF NO: PSC2015-01071

PLANNING PROPOSAL - 713 NEWLINE ROAD, EAGLETON

REPORT OF: TIMOTHY CROSDALE - STRATEGY AND ENVIRONMENT
SECTION MANAGER

GROUP: DEVELOPMENT SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Adopt the Planning Proposal at (**ATTACHMENT 1**) to amend Schedule 1 Additional Permitted Uses of *Port Stephens Local Environmental Plan 2013* to include development for the purposes of a dual occupancy on the subject land.
- 2) Forward the Planning Proposal to the NSW Department of Planning and Environment under section 56 in the *Environmental Planning and Assessment Act 1979* with a request for a Gateway Determination.

Cr Paul Le Mottee left the meeting at 5:57pm during Committee of the Whole.

ORDINARY COUNCIL MEETING - 11 AUGUST 2015

MOTION

233	Councillor Ken Jordan Councillor John Morello
	That Council move into Committee of the Whole.

ORDINARY COUNCIL MEETING - 11 AUGUST 2015 COMMITTEE OF THE WHOLE RECOMMENDATION

	Councillor Ken Jordan Councillor John Morello
	That Council:
	<ol style="list-style-type: none">1) Adopt the Planning Proposal at (ATTACHMENT 1) to amend Schedule 1 Additional Permitted Uses of <i>Port Stephens Local Environmental Plan 2013</i> to include development for the purposes of a dual occupancy on the subject land.2) Forward the Planning Proposal to the NSW Department of Planning and Environment under section 56 in the <i>Environmental Planning and Assessment Act 1979</i> with a request for a Gateway Determination.

ITEM 3 - ATTACHMENT 1 PLANNING PROPOSAL - 713 NEWLINE ROAD, EAGLETON.**MINUTES ORDINARY COUNCIL - 11 AUGUST 2015**

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

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

Those against the Motion: Nil

Cr Paul Le Mottee returned to the meeting at 5:58pm during Committee of the Whole.

Cr Paul Le Mottee left the meeting at 6:26pm during open Council.

**ORDINARY COUNCIL MEETING - 11 AUGUST 2015
MOTION**

234	Mayor Bruce MacKenzie Councillor Ken Jordan It was resolved that Council: 1) Adopt the Planning Proposal at (ATTACHMENT 1) to amend Schedule 1 Additional Permitted Uses of <i>Port Stephens Local Environmental Plan 2013</i> to include development for the purposes of a dual occupancy on the subject land. 2) Forward the Planning Proposal to the NSW Department of Planning and Environment under section 56 in the <i>Environmental Planning and Assessment Act 1979</i> with a request for a Gateway Determination.
------------	---

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

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

Those against the Motion: Nil

Cr Paul Le Mottee returned to the meeting at 6:28pm during open Council.

ITEM 3 - ATTACHMENT 1 PLANNING PROPOSAL - 713 NEWLINE ROAD, EAGLETON.**MINUTES ORDINARY COUNCIL - 11 AUGUST 2015****BACKGROUND**

The purpose of this report is to seek Council's endorsement to submit the Planning Proposal at (**ATTACHMENT 1**) to the Department of Planning and Environment, requesting a Gateway Determination.

Subject land: Lot 11 DP881743, 713 Newline Road, Eagleton

Proponent: LeMottee Group

Proposed Changes: Amend Schedule 1 of the Port Stephens Local Environmental Plan 2013 to allow detached dual occupancy development on the subject land.

Zone: RU1 Rural Production

Area of land: Six (6) hectares

The land holder is seeking to change the approved use of a tourist facility and manager's residence to a detached dual occupancy on the subject land. However, under the *Port Stephens Local Environmental Plan 2013 (PSLEP 2013)*, a dual occupancy is not permitted on the subject land as a minimum lot size of 20 hectares is required on land in the RU1 Primary Production Zone. The subject site is six hectares. A Locality Plan (**ATTACHMENT 2**) shows the subject site.

Previously, the proposed dual occupancy was also not permitted under Clause 14 of the *Port Stephens LEP 2000*, which prohibited dwelling houses and dual occupancy on lots, such as this one, that were created for another intended use. Furthermore, as discussed below, there is a covenant on the title of the property restricting its use for dual occupancy.

In order to allow the proposed change of use, an amendment to Schedule 1 Additional Permitted Uses of the PSLEP 2013, to include development for the purposes of a dual occupancy on the subject land, is required.

In November 1998, approval was granted on the subject land for a tourist facility, manager's residence and subsequent subdivision, pursuant to Clause 12(b) of the *Port Stephens LEP 1987*, which, at the time, allowed for the subdivision of rural land for an approved use other than dwellings. As such, the subdivision did not result in an additional dwelling entitlement. The development consent required the land to be burdened by an 88B instrument restriction under the *Conveyancing Act 1919*, prohibiting a dwelling or duplex (Condition 6 of L1055/98).

The tourist facility included a water-ski school and associated tourist lodge. However, the business became unviable in 2003 due to changes made by the Department of Land and Water Conservation, Waters Authority and Council regarding the use of waterways.

ITEM 3 - ATTACHMENT 1 PLANNING PROPOSAL - 713 NEWLINE ROAD, EAGLETON.**MINUTES ORDINARY COUNCIL - 11 AUGUST 2015**

A Mayoral Minute dated 28 July 2009 resolved to initiate an amendment to Clause 14 of the Port Stephens LEP 2000 to enable the permissibility of dwellings on allotments created for approved uses prior to the appointed date (being 29 December 2000). Clause 14 dealt with dwelling houses and dual occupancies in Rural Zones. This amendment sought to allow the proposed change of use however it did not proceed. The matter was considered through the preparation of the principal LEP, but was not included because the LEP sought to transition the existing provisions into the standard instrument template, without any significant policy change. As such, a standard minimum lot size for dual occupancy development was applied.

Since this time, the land holder has lodged numerous development applications seeking a change of use from tourist facility and manager's residence to dual occupancy. These applications have been refused as dual occupancy is prohibited under previous and current LEPs.

At its meeting on 10 March 2015, Council refused a development application for a change of use from tourist facility to dual occupancy due to the proposed development being prohibited under the LEP 2013. However, at this time, Council recommended that Council Officers write to the applicant, encouraging them to lodge a planning proposal seeking an amendment to Schedule 1 to allow the use of the existing buildings for dual occupancy. Council also resolved to waive any fees associated with the planning proposal.

Should the planning proposal be supported, a new Development Application seeking a change of use to a dual occupancy will need to be lodged. Further, as there is an operational consent over the land which prohibits dual-occupancy/dwellings on the subject lot (condition 6 of L1055/98), a Section 96 application must also be lodged (concurrently) seeking the removal of this condition. The 88B instrument restriction will also need to be removed from the title of the property.

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2013-2017
Balance the environmental, social and economic needs of Port Stephens for the benefit of present and future generations.	Provide Strategic Land Use Planning Services.

FINANCIAL/RESOURCE IMPLICATIONS

Council Officers determined that the planning proposal is a Category A Local Environmental Plan under Council's current Fees & Charges 2015-2016, attracting a total fee of \$8,696. However, at its meeting held on 10 March 2015, Council resolved to waive the planning proposal fees.

ITEM 3 - ATTACHMENT 1 PLANNING PROPOSAL - 713 NEWLINE ROAD, EAGLETON.**MINUTES ORDINARY COUNCIL - 11 AUGUST 2015**

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes		The planning proposal will be progressed under existing budget allocation.
Reserve Funds	No		
Section 94	No		
External Grants	No		
Other	No		

LEGAL, POLICY AND RISK IMPLICATIONS**Port Stephens Local Environmental Plan 2013**

Under the provisions of the PSLEP 2013, a dual occupancy is only permissible on the subject land where it has a minimum size of 20ha. The subject site is approximately six hectares.

In order for the proposed dual occupancy to be permitted, an amendment to Schedule 1 Additional Permitted Uses of the PSLEP 2013 is required as follows:

The proposal will be implemented by an amendment of the *Port Stephens Local Environmental Plan 2013* by adding the following to Schedule 1 – Additional Permitted Uses:

X Use of certain land at Newline Road, Eagleton

- 1) This clause applies to land at Newline Road, Eagleton, being Lot 11 DP881743
- 2) Development for the purpose of a detached dual occupancy is permitted with consent.

Development in Rural Zones

The dual occupancy is a prohibited use, and the subdivision and existing buildings were specifically approved for a tourist facility, with a covenant restricting their use as a dwelling / dual occupancy. Furthermore, additional residents in rural areas increases the potential for land use conflict between the rural residential use of the land and agricultural pursuits and increases demand for services in remote areas. For these reasons, it is considered that the proposal has limited strategic justification, despite the minimal environmental impacts of the change of use.

Port Stephens Planning Strategy 2011

The Port Stephens Planning Strategy 2011 aims to ensure that current and future agriculture is not compromised by the fragmentation of rural land. It further aims to ensure that prime agricultural land and important rural landscapes are protected from undesirable development.

ITEM 3 - ATTACHMENT 1 PLANNING PROPOSAL - 713 NEWLINE ROAD, EAGLETON.

MINUTES ORDINARY COUNCIL - 11 AUGUST 2015

The planning proposal is consistent with the aims of the PSPS as it will not compromise agricultural land or provide provisions that will allow for its further fragmentation. Given that no further development potential will be created as it is proposed to change the use of the existing buildings, the proposal will have no impact on the rural vista in the area.

Lower Hunter Regional Strategy

The planning proposal is inconsistent with the objectives of the Lower Hunter Regional Strategy, which seeks to limit new dwelling entitlements in Rural Zones. However, it is consistent with the applicable Sustainability Criteria. An assessment of the planning proposal against the Sustainability Criteria is contained in the Planning Proposal at **(ATTACHMENT 1)**.

Environmental Planning and Assessment Act 1979

Part 3 of the Act requires Council to endorse the plan in order for it to be submitted to the Department of Planning for a Gateway Determination.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that precedent is created.	Low	The circumstances on the subject land are unique and provide sufficient justification for the proposal. It is unlikely that similar circumstances exist and as such precedent is unlikely.	Yes
There is a risk that the planning proposal will be rejected by the Department of Planning and Infrastructure due to an inconsistency with the Lower Hunter Regional Strategy.	Low	Provide a detailed assessment of the planning proposal against the Sustainability Criteria - see Attachment 3 to planning proposal at (ATTACHMENT 1) .	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The proposal will have minimal social or economic benefit to the community.

However, it will provide a mechanism for the viable use of existing buildings on the site and will have a significant positive economic benefit for the land owner.

The planning proposal is unlikely to have any environmental implications as the buildings already exist on the land and no further development is proposed.

**ITEM 3 - ATTACHMENT 1 PLANNING PROPOSAL - 713 NEWLINE ROAD,
EAGLETON.**

MINUTES ORDINARY COUNCIL - 11 AUGUST 2015

Acid Sulfate Soils

The subject site is identified as containing Acid Sulfate Soils. However, the planning proposal seeks to allow a change of use of existing buildings. As such, no works are proposed and ASS will not be impacted.

Flooding

The subject land is partially flood prone. However, the existing buildings are located above the 1:100 year floodplain and no further development will be permitted on flood prone land.

Rural Vista

The buildings already exist and therefore the proposal will have no impact on the surrounding rural vista.

CONSULTATION

The planning proposal will be exhibited in accordance with the gateway determination. Given the minor nature of the proposal, it is likely that a 14 day exhibition period will suffice.

The gateway determination will detail government agency consultation requirements.

OPTIONS

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

ATTACHMENTS

- 1) Planning Proposal - 713 Newline Road, Eagleton. (Provided under separate cover)
- 2) Locality Plan. (Provided under separate cover)

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ITEM 3 - ATTACHMENT 1 PLANNING PROPOSAL - 713 NEWLINE ROAD, EAGLETON.

Attachment 4 – Sustainability Criteria Assessment

Criteria	Comment
Infrastructure provision	The planning proposal will allow the land holder to lodge an application for a 'change of use' for existing buildings on the site. There is adequate infrastructure in place and the proposal will not generate additional infrastructure requirements.
Access	There is existing and adequate access to the site. The planning proposal and subsequent change of use will have a negligible impact on the existing road network.
Housing diversity	The planning proposal will provide additional housing supply in the LGA. However, this contribution is insignificant.
Employment lands	The planning proposal will not add to, or subtract from employment lands. The existing business on the site is no longer viable due to changes made to the way in which the river can be utilised. The planning proposal will allow an alternate, viable use of the land.
Avoidance of risk	<p>The subject land is partially flood prone. However, the existing buildings are located above the 1:100 year flood level.</p> <p>The proposal satisfies the requirements of Planning for Bushfire protection Guidelines 2006.</p> <p>The proposal will not create land use conflict with adjoining development, which is predominately rural / rural-residential development.</p>
Natural resources	The planning proposal will not impact on natural resources, including agriculture. The current approved use of the site for a tourist facility is no

ITEM 3 - ATTACHMENT 1 PLANNING PROPOSAL - 713 NEWLINE ROAD, EAGLETON.

	longer viable, and the proposed use for dual occupancy represents the most appropriate and viable use for the site.
Environmental protection	<p>The planning proposal will have minimal environmental impact as the site is mostly cleared and contains little vegetation. No new buildings are proposed.</p> <p>The change of use could potentially improve conditions in the Williams River by decreasing the number of skiers and wakeboarders using the river in association with the tourist facility.</p>
Quality and equity services	Government services in nearby Raymond Terrace can be easily accessed by future residents. The planning proposal will have negligible impact on existing services.

**ITEM 3 - ATTACHMENT 1 PLANNING PROPOSAL - 713 NEWLINE ROAD,
EAGLETON.**

Attachment 5 – Gateway Determination



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

Our ref: PP_2015_PORTS_007_00 (14/02614)

Att: Sarah Connell

Dear Mr Wallace,

Planning Proposal to amend Port Stephens Local Environmental Plan 2013

I am writing in response to Council's letter requesting a Gateway determination under section 56 of the Environmental Planning and Assessment Act 1979 ("EP&A Act") in respect of the planning proposal to allow additional permitted uses (dual occupancy) at 713 Newline Road, Eagleton.

As delegate of the Minister for Planning, I have now determined the planning proposal should proceed subject to the conditions in the attached Gateway determination.

I have also agreed the planning proposal's inconsistencies with Section 117 Directions 1.2 Rural Zones, 1.5 Rural Lands and 6.3 Site Specific Provisions are of minor significance. The inconsistencies with section 117 Direction 5.1 Implementation of Regional Strategies are of minor significance and the planning proposal is not considered to undermine the land use strategy, policies, outcomes or actions of the Lower Hunter Regional Strategy. No further approval is required in relation to these Directions.

The Minister delegated plan making powers to councils in October 2012. It is noted that Council has now accepted this delegation. I have considered the nature of Council's planning proposal and have decided to issue an authorisation for Council to exercise delegation to make this plan.

The amending Local Environmental Plan (LEP) is to be finalised within 9 months of the week following the date of the Gateway determination. Council should aim to commence the exhibition of the planning proposal as soon as possible. Council's request to draft and finalise the LEP should be made directly to Parliamentary Counsel's Office 6 weeks prior to the projected publication date. A copy of the request should be forwarded to the Department for administrative purposes.

The State Government is committed to reducing the time taken to complete LEPs by tailoring the steps in the process to the complexity of the proposal, and by providing clear and publicly available justification for each plan at an early stage. In order to meet these commitments, the Minister may take action under section 54(2)(d) of the EP&A Act if the time frames outlined in this determination are not met.

Attached for your assistance is a simplified guide to the plan making process and reporting requirements to ensure that the LEP Tracking System is kept updated.

Hunter and Central Coast Region - Hunter Office - Level 2 26 Honeysuckle Drive (PO Box 1226) Newcastle NSW 2300
Phone 02 4904 2700 Fax 02 4904 2701 Website planning.nsw.gov.au

**ITEM 3 - ATTACHMENT 1 PLANNING PROPOSAL - 713 NEWLINE ROAD,
EAGLETON.**

Should you have any questions regarding this matter, I have arranged for Amy Blakely from the Hunter office to assist you. Ms Blakely can be contacted on (02) 4904 2723.

Yours sincerely,

15 September 2015

**David Rowland
General Manager
Hunter and Central Coast Region
Planning Services**

ITEM 3 - ATTACHMENT 1 PLANNING PROPOSAL - 713 NEWLINE ROAD, EAGLETON.



Planning &
Environment

Gateway Determination

Planning Proposal (Department Ref: PP_2015_PORTS_007_00): to allow dual occupancy at 713 Newline Road, Eagleton under Schedule 1 Additional Permitted Uses.

I, the General Manager, Hunter and Central Coast Region at the Department of Planning and Environment as delegate of the Minister for Planning, have determined under section 56(2) of the EP&A Act that an amendment to the Port Stephens Local Environmental Plan (LEP) 2013 to allow dual occupancy at 713 Newline Road, Eagleton should proceed subject to the following conditions:

1. Community consultation is required under sections 56(2)(c) and 57 of the Environmental Planning and Assessment Act 1979 ("EP&A Act") as follows:
 - (a) the planning proposal must be made publicly available for a minimum of **14 days**; and
 - (b) the relevant planning authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 5.5.2 of *A Guide to Preparing LEPs (Planning & Infrastructure 2013)*.
2. A public hearing is not required to be held into the matter by any person or body under section 56(2)(e) of the EP&A Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).
3. The timeframe for completing the LEP is to be **9 months** from the week following the date of the Gateway determination.

15 September 2015

David Rowland
General Manager
Hunter and Central Coast Region
Planning Services
Department of Planning and Environment

Delegate of the Minister for Planning

**ITEM 3 - ATTACHMENT 1 PLANNING PROPOSAL - 713 NEWLINE ROAD,
EAGLETON.****Planning &
Environment****WRITTEN AUTHORISATION TO EXERCISE DELEGATION**

Port Stephens Council is authorised to exercise the functions of the Minister for Planning under section 59 of the *Environmental Planning and Assessment Act 1979* that are delegated to it by instrument of delegation dated 14 October 2012, in relation to the following planning proposal:

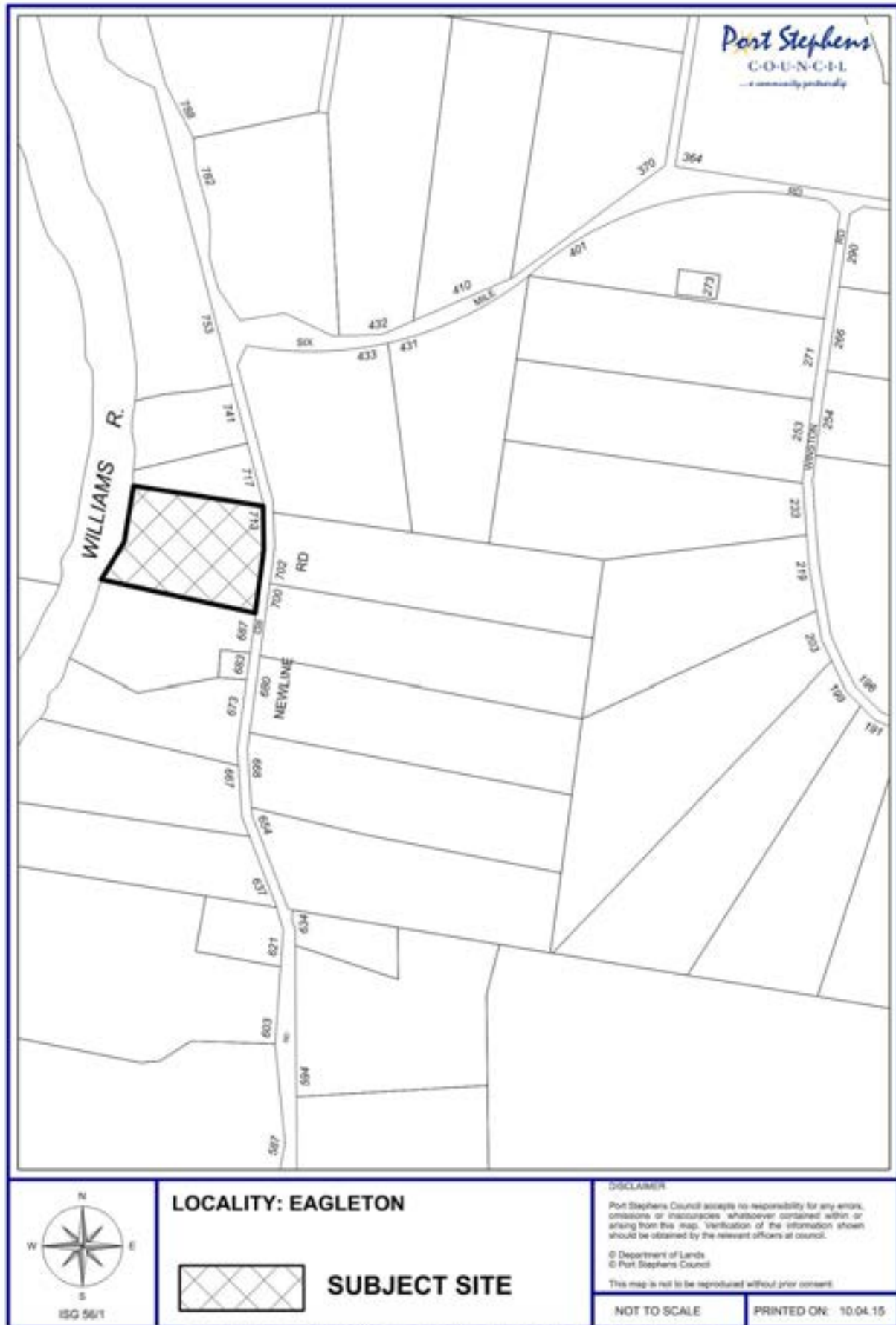
Number	Name
PP_2015_PORTS_007_00	Planning proposal to allow service stations, restaurants or cafés, and take away food and drink premises at 2885 Pacific Highway, Heatherbrae under Schedule 1 Additional Permitted Uses

In exercising the Minister's functions under section 59, the Council must comply with the Department's "*A guideline for the preparation of local environmental plans*" and "*A guide to preparing planning proposals*".

Dated 15 September 2015

David Rowland
General Manager
Hunter and Central Coast Region
Planning Services
Department of Planning and Environment

ITEM 3 - ATTACHMENT 2 LOCALITY PLAN.



ITEM 3 - ATTACHMENT 3 GATEWAY DETERMINATION.



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

Our ref: PP_2015_PORTS_007_00 (14/02614)

Att: Sarah Connell

Dear Mr Wallace,

Planning Proposal to amend Port Stephens Local Environmental Plan 2013

I am writing in response to Council's letter requesting a Gateway determination under section 56 of the Environmental Planning and Assessment Act 1979 ("EP&A Act") in respect of the planning proposal to allow additional permitted uses (dual occupancy) at 713 Newline Road, Eagleton.

As delegate of the Minister for Planning, I have now determined the planning proposal should proceed subject to the conditions in the attached Gateway determination.

I have also agreed the planning proposal's inconsistencies with Section 117 Directions 1.2 Rural Zones, 1.5 Rural Lands and 6.3 Site Specific Provisions are of minor significance. The inconsistencies with section 117 Direction 5.1 Implementation of Regional Strategies are of minor significance and the planning proposal is not considered to undermine the land use strategy, policies, outcomes or actions of the Lower Hunter Regional Strategy. No further approval is required in relation to these Directions.

The Minister delegated plan making powers to councils in October 2012. It is noted that Council has now accepted this delegation. I have considered the nature of Council's planning proposal and have decided to issue an authorisation for Council to exercise delegation to make this plan.

The amending Local Environmental Plan (LEP) is to be finalised within 9 months of the week following the date of the Gateway determination. Council should aim to commence the exhibition of the planning proposal as soon as possible. Council's request to draft and finalise the LEP should be made directly to Parliamentary Counsel's Office 6 weeks prior to the projected publication date. A copy of the request should be forwarded to the Department for administrative purposes.

The State Government is committed to reducing the time taken to complete LEPs by tailoring the steps in the process to the complexity of the proposal, and by providing clear and publicly available justification for each plan at an early stage. In order to meet these commitments, the Minister may take action under section 54(2)(d) of the EP&A Act if the time frames outlined in this determination are not met.

Attached for your assistance is a simplified guide to the plan making process and reporting requirements to ensure that the LEP Tracking System is kept updated.

Hunter and Central Coast Region - Hunter Office - Level 2 26 Honeysuckle Drive (PO Box 1226) Newcastle NSW 2300
Phone 02 4904 2700 Fax 02 4904 2701 Website planning.nsw.gov.au

ITEM 3 - ATTACHMENT 3 GATEWAY DETERMINATION.

Should you have any questions regarding this matter, I have arranged for Amy Blakely from the Hunter office to assist you. Ms Blakely can be contacted on (02) 4904 2723.

Yours sincerely,

15 September 2015

**David Rowland
General Manager
Hunter and Central Coast Region
Planning Services**

ITEM 3 - ATTACHMENT 3 GATEWAY DETERMINATION.



Planning &
Environment

Gateway Determination

Planning Proposal (Department Ref: PP_2015_PORTS_007_00): to allow dual occupancy at 713 Newline Road, Eagleton under Schedule 1 Additional Permitted Uses.

I, the General Manager, Hunter and Central Coast Region at the Department of Planning and Environment as delegate of the Minister for Planning, have determined under section 56(2) of the EP&A Act that an amendment to the Port Stephens Local Environmental Plan (LEP) 2013 to allow dual occupancy at 713 Newline Road, Eagleton should proceed subject to the following conditions:

1. Community consultation is required under sections 56(2)(c) and 57 of the Environmental Planning and Assessment Act 1979 ("EP&A Act") as follows:
 - (a) the planning proposal must be made publicly available for a minimum of **14 days**; and
 - (b) the relevant planning authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 5.5.2 of *A Guide to Preparing LEPs (Planning & Infrastructure 2013)*.
2. A public hearing is not required to be held into the matter by any person or body under section 56(2)(e) of the EP&A Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).
3. The timeframe for completing the LEP is to be **9 months** from the week following the date of the Gateway determination.

15 September 2015

David Rowland
General Manager
Hunter and Central Coast Region
Planning Services
Department of Planning and Environment

Delegate of the Minister for Planning

ITEM 3 - ATTACHMENT 3 GATEWAY DETERMINATION.**Planning &
Environment****WRITTEN AUTHORISATION TO EXERCISE DELEGATION**

Port Stephens Council is authorised to exercise the functions of the Minister for Planning under section 59 of the *Environmental Planning and Assessment Act 1979* that are delegated to it by instrument of delegation dated 14 October 2012, in relation to the following planning proposal:

Number	Name
PP_2015_PORTS_007_00	Planning proposal to allow service stations, restaurants or cafés, and take away food and drink premises at 2885 Pacific Highway, Heatherbrae under Schedule 1 Additional Permitted Uses

In exercising the Minister's functions under section 59, the Council must comply with the Department's "*A guideline for the preparation of local environmental plans*" and "*A guide to preparing planning proposals*".

Dated 15 September 2015

David Rowland
General Manager
Hunter and Central Coast Region
Planning Services
Department of Planning and Environment