

DRAFT

MINUTES – 14 JUNE 2016



Minutes of Ordinary meeting of the Port Stephens Council held in the Council Chambers, Raymond Terrace on – 14 June 2016, commencing at 5.53pm.

PRESENT:

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

148	Councillor Ken Jordan Councillor Chris Doohan It was resolved that the apology from Cr John Nell and Cr Paul Le Mottee be received and noted.
149	Councillor Ken Jordan Councillor John Morello It was resolved that the Minutes of the Ordinary Meeting of Port Stephens

MINUTES ORDINARY COUNCIL - 14 JUNE 2016
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	Council Ordinary Council held on 24 May 2016 be confirmed.
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	<p>Cr Chris Doohan declared a less than significant non-pecuniary conflict of interest in Item 1. The nature of the interest is that Cr Doohan is a former President of the Club.</p>
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	<p>Cr Steve Tucker declared a less than significant non-pecuniary conflict of interest in Item 1. The nature of the interest is Cr Tucker has been closely associated with this project and has served on the Steering Committee in the past. Cr Tucker is no longer associated with the Committee and holds no current office.</p>
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MOTIONS TO CLOSE

ITEM NO. 1

**FILE NO: 16/342534
RM8 REF NO: PSC2016-01077**

MOTION TO CLOSE

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

RECOMMENDATION:

- 1) That pursuant to section 10A(2) (d)i of the *Local Government Act 1993*, the Committee and Council resolve to close to the public that part of its meetings to discuss Confidential Item 1 on the Ordinary agenda namely **Proposed Sale of 18-20 King Street, Raymond Terrace**.
- 2) That the reasons for closing the meeting to the public to consider this item is that the discussion will include information containing:
 - commercial information of a confidential nature that would, if disclosed prejudice the commercial position of the person who supplied it.
- 3) That the report remain confidential and the minute be released in accordance with Council's resolution.

**ORDINARY COUNCIL MEETING - 14 JUNE 2016
MOTION**

150	<p>Councillor Steve Tucker Councillor Chris Doohan</p> <p>It was resolved that Council:</p> <ol style="list-style-type: none">1) That pursuant to section 10A(2) (d)i of the <i>Local Government Act 1993</i>, the Committee and Council resolve to close to the public that part of its meetings to discuss Confidential Item 1 on the Ordinary agenda namely Proposed Sale of 18-20 King Street, Raymond Terrace.2) That the reasons for closing the meeting to the public to consider this item is that the discussion will include information containing:<ul style="list-style-type: none">• commercial information of a confidential nature that would, if disclosed prejudice the commercial position of the person who supplied it.3) That the report remain confidential and the minute be released in accordance with Council's resolution.
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COUNCIL REPORTS

MINUTES ORDINARY COUNCIL - 14 JUNE 2016
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ORDINARY COUNCIL MEETING - 14 JUNE 2016
MOTION

151	Mayor Bruce MacKenzie Councillor Chris Doohan It was resolved that Item 6 be brought forward and dealt with in Open Council prior to moving into Committee of the Whole.
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ITEM NO. 6

**FILE NO: 16/335107
RM8 REF NO: PSC2016-01484**

**FUNDING REQUEST - FEASIBILITY STUDY INTO KOALA HOSPITAL AND
TOURIST FACILITY AT TREESCAPE**

REPORT OF: GLENN BUNNY - PROPERTY SERVICES SECTION MANAGER
GROUP: CORPORATE SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Approves funding of \$64,000 to undertake the required feasibility study into the co-location of the proposed Koala Hospital and Tourist Facility at Treescape Holiday Park.
- 2) Confirms a financial contribution from The Hunter Koala Preservation Society towards the expense of the feasibility study.

**ORDINARY COUNCIL MEETING - 14 JUNE 2016
COMMITTEE OF THE WHOLE RECOMMENDATION**

This item was not considered in Committee of the Whole.

**ORDINARY COUNCIL MEETING - 14 JUNE 2016
MOTION**

152	<p>Mayor Bruce MacKenzie Councillor Chris Doohan</p> <p>It was resolved that Council:</p> <ol style="list-style-type: none">1) Notes the additional information in the report.2) Approves funding of \$64,000 to undertake the required feasibility study into the co-location of the proposed Koala Hospital and Tourist Facility at Treescape Holiday Park.3) Confirms a financial contribution from The Hunter Koala Preservation Society towards the expense of the feasibility study.4) Write to the State Government requesting assistance to secure funding to update the current and historical breadth and depth of distribution of koala populations across the Local Government Area.
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BACKGROUND

The purpose of this report is to inform Council of a proposal from The Hunter Koala Preservation Society to establish a Koala Hospital at Treescape Holiday Park and to seek approval for the necessary funding to undertake a feasibility study.

The Society formed in 1987 and has 120 members, 20 of which are active. The Society is licensed by the Office of Environment and Heritage to rescue, treat and release injured and ill koalas. The Society is supported by local veterinary services, and is partnered by several universities, including Newcastle, in research projects that are seeking to improve the future of koala populations in Port Stephens.

The current Port Stephens koala population is estimated to be between 250 and 400, with 149 confirmed deaths between 2013 and 2015. The koala population in the area is in advanced decline and there is currently a proposition in effect that the Port Stephens koala classification be lifted from vulnerable to endangered.

The Society currently cares for koalas in need via private residences of active members. Due to resourcing requirements, the Society recognises that this is not a sustainable arrangement moving forwards. Structural change is required to ensure that koalas receive the medical treatment that they require when injured or fall ill, that appropriate facilities are available for graduated rehabilitation for release, and a breeding population is created and cared for to bolster the population and ensure local species survival.

In January 2016 The Hunter Koala Preservation Society approached staff to discuss the concept of a Koala Hospital facility to treat, rehabilitate and release, and breed koalas. The Society had undertaken their own site feasibility analysis and, after considering a number of possible locations for the facility, identified Treescape as being their preferred option. The primary reason for Treescape being identified as the preferred site for the facility was that it was centrally located within the geographic area of concern, that it had existing infrastructure, and the Society realised the potential to partner with Council to deliver the facility.

Staff have met with the Society on a number of occasions to discuss the concept and how it could be successfully co-located at Treescape. The proposal from The Society seeks contributions from both parties to the establishment and operation of the facility, and the split in future revenue. The Society has pledged \$120,000 of capital funding to establish the facility and is seeking a similar figure from Council.

The preliminary concept has been developed between staff and representatives of the Society to a point where a footprint for the facility has been identified that does not interrupt the activities of the Park (**ATTACHMENT 1**), and immediate logistical and operational issues such as access and security have been discussed and possible solutions identified.

The proposed concept has also been modified to incorporate an eco-tourism component where resident koalas can be shown to the public in their natural habitat.

MINUTES ORDINARY COUNCIL - 14 JUNE 2016

Preliminary calculations suggest that such a facility would have high visitation and would return funds to the hospital itself ensuring its viability, but also to the Park through year round accommodation packages and profit share from visitation. The facility would be unique to the area and would be a significant addition to Port Stephens tourism. In examining the popularity of comparative facilities, The Port Macquarie Koala Hospital attracts over 80,000 visitors a year.

Discussions have been held with Crown Lands, Office of Environment and Heritage, and National Parks and Wildlife to establish levels of support for the project and identify any immediate impediment to the concept being examined further. All agency responses have been extremely positive and general support has been offered by all.

In order to proceed with the facility, it is recommended that a feasibility study be undertaken that will;

- Calculate the capital investment required to establish the facility;
- Examine staged development versus one-off construction;
- Develop a surveyed site plan for the facility including access and utilities;
- Establish cost and staff resource allocations for the Society and Council;
- Forecast operating costs, expected revenue, and net results for the facility;
- Identify third party processes and licenses required, such as sub-lease arrangements;
- Identify grant funding opportunities for the establishment and continued operation of the facility;
- Identify additional amenities and facilities to service the facility;
- Identify revenue, brand and product offerings for the facility.

The cost of the process has been calculated at \$50,000 and comprises of:

• Site clearing of footprint	\$ 6,000
• Site survey	\$ 7,000
• Planning and economic analysis	\$ 9,000
• Environmental consultants	\$ 5,000
• Architectural services	\$10,000
• Quantity surveying	\$20,000
• Traffic and engineering analysis	\$ 7,000
• Total	\$64,000

A further business paper will be prepared at the completion of the feasibility study.

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2013-2017
Port Stephens has a sustainable and diversified economy.	Provide processes and services that deliver benefit to tourism in Port Stephens. Provide Economic Development services to local business.

FINANCIAL/RESOURCE IMPLICATIONS

The feasibility study has been estimated to cost around \$64,000 for all anticipated services and consultants. It is proposed to allocate this from the Restricted Property Reserve. The HKPS has been approached for a contribution towards the cost of undertaking the feasibility study. Discussions have been positive, but any decision to make a contribution has not yet been approved by the Society.

Whilst not the subject of this report and recommendation, should the facility be developed, future cost implications will include the capital investment to construct the facility and all associated infrastructure works, and the forward operational expenditure to run the facility. In terms of positive implications, there will be expected revenue for the facility, Treescape and the wider tourism industry from visitors.

The feasibility work will seek to identify funding and grant options that may be applied to the development and operation of the hospital.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	No		
Reserve Funds	Yes	64,000	There are funds available in the reserve.
Section 94	No		
External Grants	No		
Other	No		

LEGAL, POLICY AND RISK IMPLICATIONS

The development will require a sub-lease arrangement or similar to enable the facility to exist on the Treescape site. Crown Lands have indicated they have no opposition to this and there is the option to do so under the existing lease conditions.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that developing the facility without due diligence may not be financially viable.	High	Undertake proposed feasibility study and establish business case.	As applied for
There is a risk that the koala populations will continue to decline.	High	Undertake proposed feasibility study and establish business case.	As applied for

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Together Port Stephens Council and The Hunter Koala Preservation Society have an opportunity to provide a facility that will appropriately accommodate animals needing medium to long-term care prior to release, shelter and care for animals displaced because of natural disaster as a prerequisite for translocation/release, provide uniform species management and population recovery via controlled breeding and release programs, and facilitate consistent and linked scientific research, veterinary research and veterinary training into koalas and their survival. This is an important regional initiative not only from an environmental perspective but also from an economic development perspective offering a sustainable tourism model.

NSW received nearly 25.3 million international and domestic nature based visitors - up by 10.5% on the year ending December 2014. Visitors spent nearly 115.9 million nights in the State - up by 8.6% on year end December 2014. This is one of the fastest growing tourism market segments, with nature based travellers representing 82.9% of visitors and 89.0% of nights by all international travellers to NSW. International nature based visitors stayed an average of 26.9 nights in NSW. This was longer than the average for all visitors to the State (25.1 nights).

By establishing an eco-tourism function, income can be generated and reinvested back into the running of the facility. Additionally, Treescape will be able to create accommodation and koala experience packages that will potentially be a profitable offering all year round to the market. School groups are a future target market for Treescape to drive mid-week off peak bookings. The koala facility has synergy with this target market in providing environmental educational opportunities.

MERGER PROPOSAL IMPLICATIONS

There are no known implications of undertaking the feasibility study. Any decision to move forward with the development of the facility will be made following the announcements of any mergers.

CONSULTATION

Consultation with key stakeholders has been undertaken by the Property Services Section with the multiple agencies involved in the concept, and the appropriate staff of Council.

Internal

Consultation has been undertaken with staff in tourism, ecological and sustainability, and management of Treescape Holiday Park in order to seek technical input into whether or not the proposed facility could realistically be located at Treescape, the need for such a facility, and the value of the facility as a tourist attraction. The feedback from these key staff informed the decision to advance with the recommendation to undertake the feasibility study.

External

Consultation has been undertaken with the Hunter Koala Preservation Society, Crown Lands, Office of Environment and Heritage, and National Parks and Wildlife to establish any immediate issues that may be insurmountable, to seek technical input as per each agencies mandate, and to establish levels of support. No impediments were established and support was provided for the concept. The feedback from these key agencies informed the decision to advance with the recommendation to undertake the feasibility study.

OPTIONS

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

ATTACHMENTS

- 1) Koala Hospital Footprint.

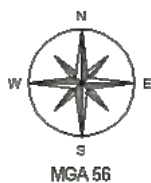
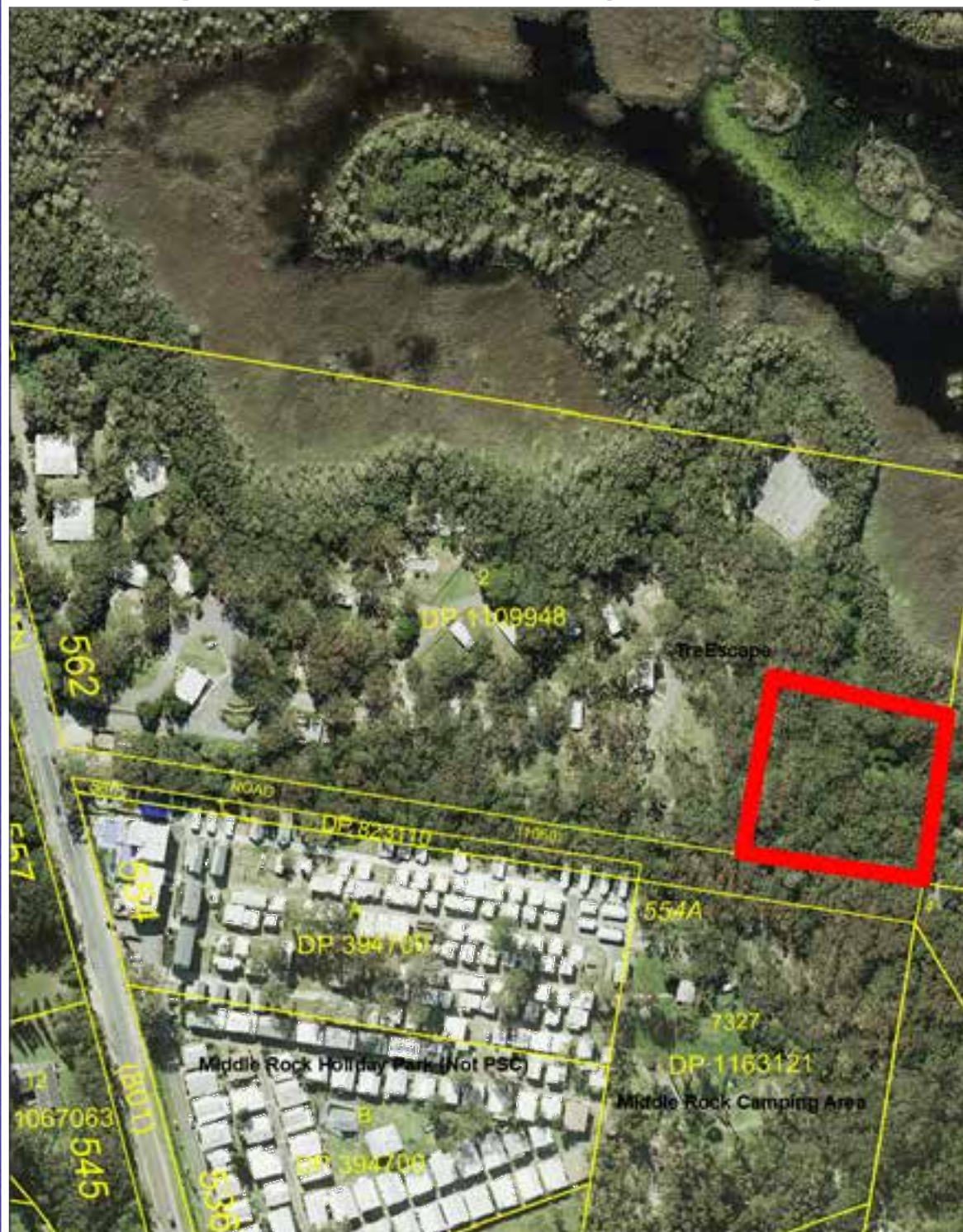
COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

Proposed Location of Koala Hospital - Treescape



DISCLAIMER

Port Stephens Council accepts no responsibility for any errors, omissions or inaccuracies, whatsoever, contained within or arising from this map. Verification of the information shown should be obtained from an appropriately qualified person(s).

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SCALE 1:2500 @ A4

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ITEM NO. 1

**FILE NO: 16/340220
RM8 REF NO: 16-2015-852-1**

DEVELOPMENT APPLICATION 16-2015-852-1 FOR A COMMUNITY FACILITY, RECREATION FACILITY (OUTDOOR), ASSOCIATED EARTHWORKS, SIGNAGE AND CAR PARKING (FERODALE PARK SPORTS COMPLEX) AT 36 AND 36A FERODALE ROAD, MEDOWIE (LOT 1 DP1003417 AND LOT 22 DP1021843)

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

RECOMMENDATION IS THAT COUNCIL:

- 1) Approve Development Application DA No. 16-2015-852-1 for a Community Facility, Recreation Facility (Outdoor), Associated Earthworks, Signage and Car Parking at No. 36 and 36A Ferodale Road, Medowie (Lot 1 DP1003417 and Lot 22 DP1021843), subject to the conditions contained in **(ATTACHMENT 1)**.

**ORDINARY COUNCIL MEETING - 14 JUNE 2016
MOTION**

153	Councillor John Morello Councillor Chris Doohan It was resolved that Council move into Committee of the Whole.
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COMMITTEE OF THE WHOLE RECOMMENDATION

	Councillor Geoff Dingle Councillor Peter Kafer That Council approve Development Application DA No. 16-2015-852-1 for a Licensed Community Facility, Recreation Facility (Outdoor), Associated Earthworks, Signage and Car Parking at No. 36 and 36A Ferodale Road, Medowie (Lot 1 DP1003417 and Lot 22 DP1021843), subject to the conditions contained in (ATTACHMENT 1) .
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The Mayor ruled the motion out of order as the proposed motion was not in accordance with the development application lodged by the applicant.

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ORDINARY COUNCIL MEETING - 14 JUNE 2016 MOTION

	<p>Mayor Bruce MacKenzie Councillor Ken Jordan</p> <p>It was resolved that Council:</p> <ol style="list-style-type: none">1) Receives and notes the supplementary information;2) Approve Development Application 16-2015-852-1 for a Community Facility, Recreation Facility (Outdoor), Associated Earthworks, Signage and Car Parking at No. 36 and 36A Ferodale Road, Medowie (Lot 1 DP1003417 and Lot 22 DP1021843), subject to the amended conditions contained in (ATTACHMENT 1) of the supplementary information, with the following amendments to be included:<ol style="list-style-type: none">a) Condition 13 – Insert consultation with Hunter Water Corporation prior to issue of the Construction Certificate (as per the wording in the supplementary information);b) Condition 36 – Replace wording 'occupation certificate' with 'construction certificate' and move under appropriate heading (re-numbering where appropriate); andc) Include the additional condition requiring all existing fill on the site to be certified.
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In accordance with Section 375 (A) of the Local Government Act 1993, a division is required for this item.

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

Those against the Motion: Cr Geoff Dingle.

ORDINARY COUNCIL MEETING - 14 JUNE 2016 MOTION

154	<p>Mayor Bruce MacKenzie Councillor Chris Doohan</p> <p>It was resolved that Council:</p> <ol style="list-style-type: none">1) Receives and notes the supplementary information;2) Approve Development Application 16-2015-852-1 for a Community Facility, Recreation Facility (Outdoor), Associated Earthworks, Signage and Car Parking at No. 36 and 36A Ferodale Road, Medowie (Lot 1 DP1003417 and Lot 22 DP1021843), subject to the amended conditions contained in (ATTACHMENT 1) of the
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	<p>supplementary information, with the following amendments to be included:</p> <ul style="list-style-type: none">a) Condition 13 – Insert consultation with Hunter Water Corporation prior to issue of the Construction Certificate (as per the wording in the supplementary information);b) Condition 36 – Replace wording 'occupation certificate' with 'construction certificate' and move under appropriate heading (re-numbering where appropriate); anda) Include the additional condition requiring all existing fill on the site to be certified.
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In accordance with Section 375 (A) of the Local Government Act 1993, a division is required for this item.

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

Those against the Motion: Cr Geoff Dingle.

BACKGROUND

The purpose of this report is to present a development application for a community facility (Ferodale Park Sports Complex) and associated works to Council for determination. The application is referred to Council for determination as Council is the owner of the land (operational land) and it is considered that the application may be of interest to the community.

The Site

The subject site is No. 36 and 36A Ferodale Road, Medowie (Lot 1 DP1003417 and Lot 22 DP1021843). The site is located a short distance from the Medowie commercial area and adjoins the existing Ferodale Sports Complex. 36 Ferodale Road is currently used for cricket and AFL with the associated clubhouse, amenities block and car parking also occupying the lot. 36A Ferodale Road is vacant land which has been partially filled in accordance with the historic consent DA 16-2000-1559-1 Bowling Club, Car Park and Landfill.

The Proposal

Consent is sought for the construction of a community facility building, a bowling green (with provision made for another), children's playground, entry signage, landscaped garden and car parking area. The community facility building consists of 3 meeting rooms, 3 offices, a commercial kitchen and servery, public toilet facilities, staff toilet facilities, a loading and delivery area and screened waste storage. Drainage works are also required to convey stormwater to a detention basin prior to discharge into the nearby Campvale Drain.

Key Issues

The key issues relevant to the development application were traffic and access assessment and stormwater management design.

Traffic

The applicant engaged a qualified consultant to undertake a Traffic Impact Assessment for the proposal. The assessment surveyed the existing levels of traffic in the area and projected the increase that would be experienced as a result of the proposal. It has been adequately demonstrated that the existing access arrangements, road infrastructure and amount of car parking proposed is adequate to cater for the expected level of use.

The development does not provide the nexus for an upgrade to be required to the existing Ferodale Road / Kirrang Drive roundabout. This corresponds with the findings of the Traffic Impact Assessment submitted by the applicant. The upgrade and / or traffic calming of the roundabout is currently not within Council's capital works program for the near-future.

The sight distance available from the frontage is extensive and as such, the need for a pedestrian refuge is not warranted to be provided as a result of the development. The pram ramp crossings will be relocated to the east of the bus stop imposed within the conditions. This will allow for increased separation from the area adjacent to the roundabout. To assist in traffic calming in the location, a condition has been recommended requiring the installation of rubber rumble strips over the two delineation markings along Ferodale Road. This will serve to restrict traffic movements to each land, will still allow bus movements across the intersection and is cost effective.

Drainage

The site is partially flood prone and is located adjacent to the Campvale drain. In this regard the use of on-site infiltration to dispose of stormwater was considered unsuitable and ineffective due to the high water table that exists. The applicant provided an alternate solution by which the capacity of the adjacent Campvale drain will be increased through widening (of 1.2 metres) to allow for stormwater discharge during major flood events. Smaller events will be catered for by a stormwater detention basin proposed adjacent to the Campvale drain on the eastern extent of the site. This solution was devised with reference to Council's intended widening works within the greater Campvale Drain area. Widening this small section of the Campvale Drain will assist to improve flow through the culvert at Ferodale Road. It should be acknowledged that further work on the Campvale drain downstream of the site is not warranted under this subject development application, however will be investigated in the future by Council's Facilities and Services group.

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. Provide Development Assessment and Building Certification Services.

FINANCIAL/RESOURCE IMPLICATIONS

Strategic Planning has provided a referral regarding S94A contributions. It has been determined that the proposal is for a public purpose (recreational and community facilities) and S94A levies are not to be imposed in accordance with Council's S94A Development Contributions Plan.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	No		
Reserve Funds	No		
Section 94	Yes		The application will not be levied S94A contributions as it is for a public purpose. Partial funding for the facility may be via Council's collected S94 levies as per Council's resolution at the April 12 2016 Council meeting.
External Grants	No		
Other	No		

LEGAL, POLICY AND RISK IMPLICATIONS

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

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

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refused appropriate community facilities will not be provided for the community.		recommended.	
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SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The application seeks development consent for the construction of a community facility adjacent to the existing Ferodale Sports Complex. The facility will enhance the community use of an area which is located within close proximity to the Medowie commercial area and will provide for a social sporting and community hub to cater for Medowie's continued population growth. The application will provide for a public bus stop along the sites frontage and is centrally located to be used by Medowie and greater Port Stephens residents. As such, the proposed development is considered to have a positive social impact.

The economic implications of the proposed development are considered to be positive by way of increasing economic activity within Medowie and the nearby commercial area. The proposed development will utilise a currently vacant site (being 36A Ferodale Road) and will supplement the existing Ferodale Sports Complex located on 36 Ferodale Road. The realisation of the proposed development will represent the efficient and economic use of existing recreation zoned land.

The environmental implications of the proposal are considered minimal. The proposed development site is currently vacant and does not contain any significant vegetation or animal habitat. Water quality discharge from the site has been assessed and deemed satisfactory. The drainage works will protect the Maundia habitat drain located adjacent to the Campvale Drain. No adverse environmental impacts are considered to result from the proposal.

MERGER PROPOSAL IMPLICATIONS

Council resolved to lodge the development application prior to the announcement of the merger proposal. As such, the application was within the scope of Council's pre-merger works program. The development is not considered to be of the size, scale or cost which would negatively impact or influence the merger proposal.

The proposed development will not produce long term social, economic or environmental implications which would influence the operation of a merged entity.

CONSULTATION

Consultation has been undertaken in accordance with Council policy and ten (10) submissions were received. All submissions received were in support of the proposed development. The submissions are discussed in **(ATTACHMENT 2)**.

Internal

Internal referrals were made to specialist units within Council. A list of these referral units is as follows:

- Development Engineer;
- S94 Officer;
- Building Surveyor;
- Vegetation Management Officer; and
- Environmental Health Officer.

Councillors were also briefed at a two way conversation on 26 April 2016.

External

No external referrals were required as part of this application.

OPTIONS

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

ATTACHMENTS

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

COUNCILLORS ROOM

- 1) Development Plan Set listed within Draft Development Consent.

TABLED DOCUMENTS

Nil.



PORT STEPHENS
COUNCIL

Notice of Determination

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

SCHEDULE 1

REASONS WHY THE CONDITIONS HAVE BEEN IMPOSED

These conditions are required to:

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

CONDITIONS THAT IDENTIFY APPROVED PLANS AND LIMITATIONS OF CONSENT

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

Plan/Doc. Title	Plan Ref. No.	Sheet.	Date	Drawn By
Site Plan (As Amended)	PSC15-2578:xx MED ARCH 01	1/5	17/12/2015	Port Stephens Council
Landscape, Playground and Signage Plan (As Amended) Rev B	PSC15-2578:xx MED ARCH 02	2/5	17/12/2015	Port Stephens Council
Floor Plan (As Amended)	PSC15-2578:xx MED ARCH 03	3/5	17/12/2015	Port Stephens Council
Elevations (As Amended)	PSC15-2578:xx MED ARCH 04	4/5	17/12/2015	Port Stephens Council
Sections	PSC15-2578:xx MED ARCH 05	5/5	17/12/2015	Port Stephens Council
Stormwater Management Plan 1 (As Amended)	SWMP1	1/2	11/03/2016	Port Stephens Council
Stormwater Management Plan 2 (As Amended)	SWMP2	2/2	11/03/2016	Port Stephens Council

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

ITEM 1 - ATTACHMENT 1 CONDITIONS OF CONSENT.



PORT STEPHENS
COUNCIL

Notice of Determination

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

2. A Construction Certificate is required prior to commencement of works approved by this application. The person having the benefit of this consent must appoint a Principal Certifying Authority (PCA). If Council is not appointed as the PCA then Council must be notified of who has been appointed. Note: at least two (2) days' notice must be given to Council of intentions to start works approved by this application.
3. The person having the benefit of the development consent must surrender DA 16-2000-1559-1 to Council by submitting a completed copy of Clause 97 of the *Environmental Planning and Assessment Regulation 2000*.

CONDITIONS TO BE SATISFIED PRIOR TO DEMOLITION, EXCAVATION OR CONSTRUCTION

4. **Prior to the commencement of works**, a construction waste storage facility is to be established on-site and regularly serviced for the duration of the works.
5. **Prior to the commencement of works**, erosion and sediment control measures shall be put in place to prevent the movement of soil by wind, water or vehicles onto any adjoining property, drainage line, easement, natural watercourse, reserve or road surface, in accordance with *Managing Urban Stormwater – Soils and Construction, Volume 1* (Landcom, 2004).
6. **Prior to the commencement of work**, the person having the benefit of this consent shall contact Hunter Water Corporation (HWC) to ensure that the approved works do not impact upon existing or proposed HWC infrastructure. A copy of the information received by HWC shall be provided to Council within 10 days of receipt. Should HWC require modification to the approved development a Section 96 Modification Application and/or modified Construction Certificate Application should be lodged.
7. Hunter Water Corporation shall be notified at least fourteen days **prior to the commencement** of works within the vicinity of Campvale Drain.

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

8. **Prior to the issue of a Construction Certificate**, documentary evidence is to be provided to the PCA that DA 16-2000-1559-1 has been surrendered to Council in accordance with Condition 3 of this consent.
9. **Prior to the issue of a Construction Certificate**, the PCA is to certify that on-site car parking shall be provided for a minimum of 105 vehicles, with provision for six disabled parking spaces, and such being set out generally in accordance with Council's Car Parking requirements. The plans submitted in association with

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Notice of Determination

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

the Construction Certificate application are to demonstrate compliance with this requirement.

10. **Prior to the issue of a Construction Certificate**, the PCA is to certify that the design of parking spaces, access and manoeuvring areas are in accordance with Council's Development Control Plan and AS 2890 as applicable.
 - a. Required access and manoeuvring areas are to be designed for swept path clearances for the 85th percentile vehicle per AS 2890.1 2004.
 - b. Visitor parking spaces are to be located in proximity to the building entrance and clearly linemarked and signposted.
 - c. Disabled parking spaces are to be designed in accordance with AS 2890.6 2009 and be located in proximity to the building disabled access and be clearly linemarked and signposted.
 - d. Loading/unloading areas are to be separated from parking and storage areas. Loading areas must be designed to accommodate appropriate turning paths in accordance with AS 2890.2 2002.
11. **Prior to the issue of a Construction Certificate**, the PCA is to certify that full geometric, drainage and certified structural details for retaining walls intended for use as earth retaining structures together with existing and proposed earthworks levels are satisfactory.
12. Campvale Drain shall be widened 1.2m immediately south of Ferodale Road for approximately 50m and to the northern extent of the Maundia Habitat Drain illustrated on the approved Site Analysis Plan. The drain widening is to taper to the southern extent so as not to significantly impact upon the Maundia Habitat. **Prior to the issue of a Construction Certificate**, design plans shall be prepared in accordance with Council's Infrastructure Specification and be approved by Council as the Asset Owner.
13. All hardstand and roofed area shall be collected and conveyed to Campvale Drain generally in accordance with the approved Stormwater Management Plans. **Prior to the issue of a Construction Certificate**, design plans shall be prepared in accordance with Council's Infrastructure Specification and be approved by Council. A Construction Certificate cannot be issued until full details of the stormwater drainage design, including associated calculations, has been provided to the PCA for assessment and determined to be satisfactory.
14. **Prior to the issue of a Construction Certificate**, the PCA is to certify that design plans provide for kerb & gutter, ancillary drainage and an adjacent sealed road shoulder pavement, making a smooth connection to the existing bitumen seal, for the entire road frontage of the development site.
15. 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.



PORT STEPHENS
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Notice of Determination

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

Engineering plans for the required work within a public road must be prepared and designed by a suitably qualified professional and constructed in accordance with Council's 'Infrastructure Design and Construction Specification – AUS Spec', and Development Control Plan.

The required works to be designed are as follows:

- a. Half width road including kerb and guttering, subsoil drainage, footpath formation, drainage and a minimum width of 5.5 metres wide road pavement across the full frontage of the site in Ferodale road.
- b. Footway formation graded at +2% from the top of kerb to the property boundary, across the frontage of the site in Ferodale road.
- c. 1.2m wide reinforced (SL72 steel fabric, 100mm thick) concrete footpath in an approved location across the frontage of the site in Ferodale road.
- d. All redundant dish crossings and/or damaged kerb and gutter are to be removed and replaced with new kerb and gutter.
- e. Roadside furniture and safety devices including fencing, signage, guide posts, chevrons, directional arrows and guard rail in accordance with RMS and Australian Standards.
- f. Signage and line marking. The signage and line marking plan shall be approved by the Council Traffic Committee.
- g. Pram ramps at the intersection of Ferodale road and the site access point to both sides of Ferodale Road to the satisfaction of Council.
- h. A bus stop is to be provided to comply with the requirements of AS/NZS 1428.4.1:2009 and the Disability Discrimination Act 1992.
- i. The bus stop shall have a seat installed, with other devices as required, in accordance with AS/NZS 1428.4.1:2009 > Appendix D > Figure D1 BUS STOP WITHOUT SHELTER – SET BACK FROM FOOTPATH.
- j. Rubber rumble strips for traffic calming on both sides of the Ferodale Road / Kirrang Drive roundabout along Ferodale Road.

The engineering plans must be approved by Council as the Roads Authority prior to the issuing of a Construction Certificate required under this consent.

16. **Prior to the issue of a Construction Certificate**, the PCA is to certify that the building design incorporates an acoustic barrier in the location as marked in RED on the approved plans. The barrier is to be a minimum of 2.4m high and of solid construction to prevent noise penetration to the west and northwest.
17. **Prior to the issue of a Construction Certificate**, a geotechnical report confirming the adequacy of the foundation material in respect of the proposed construction works for the facility is to be provided to the PCA. Structural engineering plans for the reinforced concrete slab are to reference the geotechnical report and incorporate any recommendations in respect of the works which are contained in the report.



PORT STEPHENS
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Notice of Determination

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

18. **Prior to the issue of a Construction Certificate**, a vaulted system or structural soil placement for the instalment of trees within the car park to be provided to the PCA. The design is to comply with the requirements of the Port Stephens Council Tree Technical Specification 2014.
19. **Prior to the issue of a Construction Certificate**, the PCA is to certify that the design of the kitchen facilities complies with the provisions of AS 4674-2004 *Design, construction and fit-out of food premises*. Particular reference is made to Sections 2.4 (garbage handling) and 4.4 (hand wash basins).
20. **Prior to the issue of a Construction Certificate**, the PCA is to certify that the floor plan has been amended to provide for a cleaners/sluice sink in close proximity to the kitchen.
21. **Prior to the issue of a Construction Certificate**, the PCA is to certify compliance of the cook line and associated mechanical ventilation with AS 4674-2004 and AS 1668.1 and 1668.2.

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

22. All building work must be carried out in accordance with the provisions of the Building Code of Australia.
23. Construction work that is likely to cause annoyance due to noise is to be restricted to the following times:
 - Monday to Friday, 7.00am to 6.00pm;
 - Saturday, 8.00am to 1.00pm; and
 - No construction work to take place on Sunday or Public Holidays.

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

24. It is the responsibility of the applicant to erect a PCA sign (where Council is the PCA, the sign is available from Council's Administration Building at Raymond Terrace or the Tomaree Library at Salamander Bay free of charge). The applicant is to ensure the PCA sign remains in position for the duration of works.
25. 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.

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

26. A fire safety certificate as prescribed by Section 174 Environmental Planning & Assessment Regulations 2000 which certifies the performance of the implemented fire safety measures in accordance with Section 170 of the Regulation must be submitted to the PCA 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 PCA. A further copy of the certificate must also be prominently displayed in the building.
27. The construction of any habitable floor level shall not be less than the Flood Planning level for the site RL 9.0 m AHD. A survey certificate prepared by a Registered Surveyor is to be submitted to the PCA, and approved by the PCA before works proceed above the Flood Planning Level. A copy is to be provided to Council.
28. The development shall be constructed in accordance with the NSW Government Floodplain Management Manual (2005).
29. All outdoor lighting is to be installed in accordance with Australian Standard - AS4282 – Control of the obtrusive effects of outdoor lighting.
30. The flood lighting associated with the bowling greens is to be installed in accordance with the provisions of Australian Standard – AS2560.2.6 Guide to Sports Lighting.

CONDITIONS TO BE SATISFIED PRIOR TO ISSUE OF AN OCCUPATION CERTIFICATE

31. All drainage and civil works shall be carried out in accordance with the Construction Certificate and Council's Design and Construction Specification, Policies and Standards, to the satisfaction of Council or the Certifying Authority prior to issue of the Occupation Certificate.
32. **Prior to the issue of an Occupation Certificate**, the PCA is to certify that one 105 formalised car parking spaces, with six disabled spaces have been provided in accordance with the requirements of the Port Stephens Council DCP and AS2890.1. Parking is to be appropriately line marked and signposted.
33. **Prior to the issue of an Occupation Certificate**, the PCA is to certify that site landscaping has been installed and established in accordance with the approved landscaping plans.
34. **Prior to issue of the Occupation Certificate**, the Section 50 Hunter Water compliance certificate which refers to the development application must be obtained and submitted to both Council and the PCA.

CONDITIONS TO BE SATISFIED AT ALL TIMES

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Notice of Determination

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

35. At all times, the hours of operation for the community facility are to be restricted to:
- Monday to Thursday – 9.00am to 10.00pm
 - Friday and Saturday – 9.00am to 12.00pm
 - Sunday – 9.00am to 10.00pm (12.00pm on long weekends)

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

36. At all times, the bowling greens and associated flood lighting must not be used later than 9.00pm.
37. At all times, the hours of operation for the loading dock and site deliveries are restricted to 7.00am and 6.00pm.
38. At all times, all lighting is to be restricted to operation in keeping with the community facility's operating hours. Incidental lighting in accordance with the NSW Police guidelines for 'Crime Prevention through Environmental Design' and illumination associated with entry signage is exempted from this condition.
39. At all times, the community facility is to operate in a manner so as not to create 'offensive noise' as defined under the *Protection of the Environment Operations Act 1997*.
40. The stormwater system, including any water quality, quantity or infiltration components, shall be maintained in perpetuity for the life of the development.
41. At least once in each twelve (12) month period, fire safety statements as prescribed by Section 175 Environmental Planning & Assessment Regulations 2000 in respect of each required essential fire safety measure installed within the building are to be submitted to Council. Such certificates are to state that:
- a. The service has been inspected and tested by a person (chosen by the owner of the building) who is competent to carry out such inspection and test; and
 - b. That the service was or was not (as at the date on which it was inspected and tested) found to be capable of operating to a standard not less than that specified in the fire safety schedule for the building.

ADVICES

- The 'future bowling green' as illustrated on the approved plans has been granted development consent under this application. A further development application for

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Notice of Determination

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

the construction of the bowling green marked 'future bowling green' on the approved plans is not required.

SCHEDULE 2

RIGHT OF APPEAL

If you are dissatisfied with this decision:

- a review of determination can be made under Section 82A of the Act, or
- a right of appeal under Section 97 of the Act can be made to the Land and Environment Court within six (6) months from the date on which that application is taken to have been determined.

NOTES

- This is not an approval to commence work. Building works cannot commence until a Construction Certificate is issued by Council or an accredited certifier.
- Consent operates from the determination date. For more details on the date from which the consent operates refer to section 83 of the Environmental Planning and Assessment Act 1979.
- Development consents generally lapse five years after the determination date, however different considerations may apply. For more details on the lapsing date of consents refer to section 95 of the Environmental Planning and Assessment Act 1979.

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PORT STEPHENS
COUNCILDEVELOPMENT
ASSESSMENT REPORT**1.0 APPLICATION DETAILS**

Application Number	DA 16-2015-852-1
Development Description	Development Application 16-2015-852-1 – Community Facility, Recreation Facility (Outdoor), Associated Earthworks, Signage and Car Parking
Applicant	PORT STEPHENS COUNCIL
Date of Lodgement	21/12/2015
Value of Works	\$3,000,000.00

1.1 Development Proposal

The proposed development seeks consent for the construction of a community facility building, a bowling green (with provision made for another), children's playground, entry signage, landscaped garden and car parking area. The community facility building consists of 3 meeting rooms, 3 offices, a commercial kitchen and servery, public toilet facilities, staff toilet facilities, a loading and delivery area and screened waste storage. The subject site is located a short distance from the Medowie commercial area and adjoins the existing Ferodale Sports Complex. The applicant is Port Stephens Council.

The proposed operating hours for the community facility are:

- Monday to Thursday – 9.00am to 10.00pm
- Friday and Saturday – 9.00am to 12.00pm
- Sunday – 9.00am to 10.00pm and 12.00pm on Long Weekends
- Public Holidays – No Operation

The facility has been designed to cater for 426 patrons and will be available for a variety of activities like community gatherings, training sessions, sporting presentations and watching sporting games such as cricket, football and bowls which are played on the adjacent sporting facilities. The proposal may be used as an emergency operations centre in the Medowie area if required. The proposed development provides 105 car parking spaces including 6 accessible spaces.

2.0 PROPERTY DETAILS

Property Address	36 and 36A Ferodale Road, Medowie
Lot and DP	Lot 1 DP 1003417 and Lot 22 DP 1021843
Current Use	No. 36A - Vacant Land. Site filling has been commenced under DA 16-2000-1559-1. No. 36 – Ferodale Sports Complex – Cricket and AFL oval.
Zoning	No. 36 – RE1 Public Recreation No. 36A – RE2 Private Recreation

ITEM 1 - ATTACHMENT 2 ASSESSMENT REPORT.

DA16-2015-699-1

Site Constraints

Bushfire Prone Land – Category 1 Vegetation and 100m buffer (No. 36 only)

Acid Sulfate Soils – Class 5

Flood Prone Land – High Hazard Floodway (Campvale Drain), High Hazard Flood Storage, Low Hazard Flood Storage and Flood Fringe. Flood Level 9.00m AHD.

Endangered Ecological Community – Swamp Sclerophyll Forest (No. 36 only)

Preferred Koala Habitat (No. 36 only)

2.1 Site Description and Context

The subject site is located on Ferodale Road; at the roundabout juncture with Kirrang Drive. 36A Ferodale Road is currently vacant land with earthworks carried out in accordance with DA 16-2000-1559-1. 36 Ferodale Road is currently used as the Ferodale Sports Complex with an oval used for cricket and AFL. The site has high visibility and is located a short distance from the Medowie commercial area. The site is accessible via public transport with Ferodale Road being a major bus route for the area. Campvale drain is located on the sites eastern extent. Lot 22 is devoid of vegetation whilst Lot 1 has a stand of vegetation located on its southern extent. No significant vegetation removal is proposed as part of this application.

2.2 Site History

Council records detail the following applications relevant to the subject site:

Application Number	Description	Date
007-1997-248-1	Sports Complex Stage 1	19/11/1997
007-1998-40811-1	Two Lot Subdivision	17/06/1998
007-1998-21017-1	BMX Track	07/07/1998
16-2000-1559-1	Bowling Club, Car Park and Landfill	08/11/2000
16-2003-233-1	Shade Structure	24/04/2003
16-2004-791-1	Telecommunications Base Station	31/08/2004
16-2004-1039-1	Amenities Building, Car Park Lighting and Demolition	14/10/2004
16-2005-1421-1	Floodlight Towers to Sports Fields	11/01/2006
16-2008-574-1	Additions to Community Facility (Lighting and Car Parking)	09/04/2009

No outstanding compliance matters exist for the site. Should the proposed development be given consent, the previous enacted approval (DA 16-2000-1559-1) will be surrendered to enable the proposal to proceed in accordance with the new consent (a condition has been recommended in this regard).

2.3 Site Inspection

A site inspection was carried out on 28th January 2016. The site was vacant at the time and no constraints were noted which would prohibit the use of the site for the proposed purpose. The site is shown below:

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3.0 APPLICATION SUMMARY

Assessing Officer

BROCK LAMONT

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ITEM 1 - ATTACHMENT 2 ASSESSMENT REPORT.

DA16-2015-699-1

Designated Development	The application does not constitute designated development.
Integrated Development	The application does not require any additional approvals listed under s.91 of the EP&A Act. The bushfire prone status of the site is noted; however approval for a residential or special fire protection purpose is not requested.
Number of Submissions	10 (all in support)
Recommendation	Approval with conditions.

3.1 Internal Referrals

The application was referred to the following internal specialist staff. The comments of the staff listed have been used to carry out the assessment under section 4.0.

- 3.1.1 Development Engineer (incorporating traffic, drainage and flooding assessment)** – A request for further information was made regarding the off street car parking assessment undertaken and the stormwater management concept submitted. A Traffic Impact Assessment was supplied by the applicant with the recommendations and findings of the assessment being accepted. The development is considered to form a nexus for the establishment of a public bus stop, rubber rumble strips to act as traffic calming for the adjacent roundabout and kerb for the sites road frontage. This has been conditioned accordingly. Furthermore, the stormwater design and use of on-site infiltration was not considered practical and an alternate arrangement where the adjoining stormwater drain (Campvale drain) was to be widened to cater for the increased capacity was accepted. This solution was devised with reference to Council's intended widening works within the greater Campvale Drain area. Widening this small section of the Campvale Drain will assist to improve flow through the culvert at Ferodale Road. It should be acknowledged that further work on the Campvale drain downstream of the site is not warranted under this subject development application, however will be investigated in the future by Council's Facilities and Services group. Development Engineering completed their referral with a recommendation for approval with conditions.
- 3.1.2 Building Surveyor** – The proposed development was referred to Council's Building Unit for assessment. The application was recommended for approval with conditions. All conditions recommended have been adopted and included within the draft consent attached to this report.
- 3.1.3 Section 94 Officer** – The proposed development is for a public purpose (recreational and community facilities). As such, S94A Developer Contributions are not to be imposed should development consent be granted.
- 3.1.4 Vegetation Management Officer** – The application was referred to Council's Vegetation Management Officer for assessment of the proposed landscaping plan. The landscape plan was considered suitable. A condition has been recommended with regard to car park tree planting.

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ITEM 1 - ATTACHMENT 2 ASSESSMENT REPORT.

DA16-2015-699-1

3.1.5 **Environmental Health Officer** – The application was referred to Council's Environmental Health Unit for comment. Concerns were raised in relation to operational noise and kitchen fitout. The concerns relating to noise were with regard to surrounding residential land uses within 250m of the site. Due to the existing use as a sporting field, background noise levels associated with this use as well as existing traffic noise generated from Ferodale Road, the requirement for an Acoustic Impact Assessment was not considered to be required. The orientation of the building towards the adjoining oval ensures that evening noise will be projected towards the south where no residential land use exists. The imposition of an additional wall on the western building elevation will ensure a barrier between the external deck area and the properties to the sites west. A condition will be placed on the use of the bowling greens and associated lighting during the evening to prevent noise generation (9pm limit). As such, conditions of consent are considered adequate in addressing acoustic impact of the development. The concerns raised regarding the kitchen fitout are considered able to be effectively conditioned on the development consent. The concerns raised by Environmental Health are considered to have been adequately addressed and conditioned accordingly.

3.2 External Referrals

The subject site is adjacent to the Campvale Drain system. This drain is nominated as an Order 1 Stream in accordance with the provisions of the *Water Management Act 2000*. The eastern extent of the site would typically be defined as 'waterfront land', however, works carried out by a public authority are exempted from requiring a 'controlled activity approval' in accordance with Clause 38 of the *Water Management (General) Regulation 2011*.

No external referrals are required for the proposed development.

4.0 MATTERS FOR CONSIDERATION – SECTION 79C**4.1 s79C(1)(a)(i) – The provisions of any EPI****4.1.1 Port Stephens Local Environmental Plan 2013 (PSLEP2013)**

Clause 2.1 Land Use Zones – The proposed development is defined as a 'community facility' and 'recreation facility (outdoor)' in accordance with the PSLEP2013. The land use definition of these terms is provided as follows;

community facility means a building or place:

- (a) owned or controlled by a public authority or non-profit community organisation, and
 - (b) used for the physical, social, cultural or intellectual development or welfare of the community,
- but does not include an educational establishment, hospital, retail premises, place of public worship or residential accommodation.

recreation facility (outdoor) means a building or place (other than a recreation area) used predominantly for outdoor recreation, whether or not operated for the purposes of gain, including a golf course, golf driving range,

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ITEM 1 - ATTACHMENT 2 ASSESSMENT REPORT.

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mini-golf centre, tennis court, paint-ball centre, lawn bowling green, outdoor swimming pool, equestrian centre, skate board ramp, go-kart track, rifle range, water-ski centre or any other building or place of a like character used for outdoor recreation (including any ancillary buildings), but does not include an entertainment facility or a recreation facility (major).

The subject site is zoned RE1 Public Recreation and RE2 Private Recreation in accordance with the PSLEP2013. Both of the proposed land uses are permissible with consent within both land use zones.

The proposed development is considered to meet the objectives of the RE1 and RE2 zones with particular reference to objective 2; 'To provide a range of recreational settings and activities and compatible land uses'.

Clause 4.3 Height of Buildings – The subject site does not have a prescribed building height limit under the PSLEP2013. The proposed development has a maximum physical height of 8m. The maximum height control for adjoining residential zones is 9m and therefore the proposed development is considered to be commensurate in scale with the surrounding area.

Clause 7.1 Acid Sulfate Soils – The subject site is mapped as Class 5 Acid Sulfate Soils. This requires an Acid Sulfate Soils Management Plan to be prepared for works within 500m of Class 1, 2, 3 and 4 nominated land and would have the potential to lower the water table by 1m. No works are proposed as such with the building works being placed on top of the existing fill. As such, an Acid Sulfate Soils Management Plan is not required.

Clause 7.2 Earthworks – The proposed development seeks consent for the completion of the earthworks required in order to sufficiently meet the flood controls affecting the site. The preceding approval was granted for fill to 8.5m AHD. This application will supersede that consent by permitting site filling to 9.0m AHD. The proposed increase in landfill by 0.5m is considered acceptable.

Clause 7.3 Flood Planning – The subject site is mapped as flood prone land. The site contains areas of High Hazard Floodway, High Hazard Flood Storage, Low Hazard Flood Storage and Flood Fringe. Council's engineering unit has determined the flood level for the site is 9.0m AHD. The finished floor level (FFL) detail provided by the applicant notes the building will be constructed with a FFL of 9.0m AHD minimum. The information provided by the applicant is satisfactory and accordingly draft consent conditions relating to the flood prone status of the site have been provided.

Clause 7.6 Essential Services – The subject site is provided with access to all essential services courtesy of the road frontage to Ferodale Road. A condition is proposed requiring confirmation from Hunter Water Corporation for adequate servicing capacity of the development prior to the commencement of works.

4.1.2 Applicable SEPP's

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ITEM 1 - ATTACHMENT 2 ASSESSMENT REPORT.

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SEPP 55 Remediation of Land – As detailed above under site history, the site has been subject to a number of development applications in the past. The historic uses and operations are not considered the types of uses which would lead to the long term contamination of the site. The proposal is considered to be compliant with the provisions of SEPP 55.

SEPP 64 Advertising and Signage – The proposed development seeks consent for the erection of identification signage on the Ferodale Road frontage of the site. The signage is a 3.7m high x 1.5m wide digital data board which is to be erected perpendicular to the front boundary between the carpark and the bowling green. This sign will be used to identify the site and will convey information related to the facilities' upcoming events. The signage may be illuminated in the future. The signage is considered appropriate in size and scale of the development and is consistent with the aims and objectives of SEPP 64.

4.2 s79C(1)(a)(ii) – Any draft EPI

There are no draft EPI's relevant to the proposed development.

4.3 s79C(1)(a)(iii) – Any DCP**4.3.1 Port Stephens Development Control Plan 2014**

The Port Stephens Development Control Plan 2014 (DCP) is applicable to the proposed development and has been assessed below.

Chapter A.12 Development Notification – The development application was notified in accordance with the requirements of Chapter A.12. Ten (10) submissions were received as a result of this process and are discussed under section 4.9 below.

Chapter B3 Environmental Assessment – Waste - The proposed development provides for a screened waste storage area that allows for routine servicing by waste contractors via the loading area.

Chapter B4 Drainage and Water Quality – With the proposed development being situated on flood prone land, Council's Engineering Unit has identified that on-site stormwater infiltration would not be effective for the proposed development. As such, an alternate arrangement has been made with Council's Assets Unit to widen the adjoining Campvale drain in order to increase the stormwater capacity during storm events. The stormwater quality treatment as proposed has also been accepted by Council's Engineering Unit. As such, the development has been supported and conditions of consent have been provided.

Chapter B5 Flooding – A flood planning assessment has been carried out above in accordance with Clause 7.3 of the PSLEP2013. Development Engineering is satisfied with the developments response to flood constraints.

Chapter B6 Essential Services – The subject site is provided access to all essential services as discussed previously.

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Chapter B9 Road Network and Parking – The proposed development is considered a 'community facility' in accordance with Council's DCP Chapter B9. This type of development and the off street car parking generation associated with it is to be 'assessed on merits'. As such, the applicant was requested to provide a Traffic Impact Assessment Report to survey the existing and projected traffic generation and provide car parking and alternative transport measures accordingly. The assessment recommended that 103 car spaces were provided with accessible car parking at a rate of 1 per 20 standard spaces. The proposed development provides for 105 car spaces including 6 accessible spaces. Furthermore, the site is located on the major bus route through Medowie and will provide for bicycle racks, a mini bus car park, taxi zone and motor cycle parking. As such, the proposed development is considered to comply with the relevant provisions of Chapter B9.

Chapter B10 Social Impact – The proposed development is not defined as one of the land uses requiring a SIA in accordance with the PSDCP2014. The proposal is considered to have a positive social impact through provision of an additional recreation facility in the area.

Chapter C8 Signage – The signage proposed is considered consistent with the aims and objectives of SEPP64 as discussed above.

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

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

4.5 s79C(1)(a)(iv) – The regulations

No provisions listed under the regulations are specifically applicable to the proposed development.

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

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

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

4.7.1 Social and Economic Impacts

The proposed development will provide for a social and recreational hub located in close proximity to the Medowie CBD and Ferodale Sports Complex. Flow on economic impacts will be realised in the Medowie CBD as a result of increased interest and activity in the area. The proposed development is considered to have positive social and economic outcomes.

4.7.2 Impacts on the Built Environment

The proposed development will provide for a contemporary community building located on a currently vacant site. Given the high level of exposure afforded to the site, the building design along with signage and landscaping

ITEM 1 - ATTACHMENT 2 ASSESSMENT REPORT.

DA16-2015-699-1

has been scrutinised to ensure a quality visual outcome. The building and ancillary elements are considered complementary to recent development within the Ferodale Road area. As such, the proposed development is considered to have a positive impact upon the built environment in the surrounding area.

4.7.3 Impacts on the Natural Environment

The proposed development is to be carried out on a cleared, development ready site with no significant vegetation or habitat removal required. Downstream water quality impacts have been assessed and are satisfactory. As such, the proposed development is not considered to have any significant impact upon the natural environment.

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

The subject site has been identified for community purposes for a prolonged period. This is demonstrated by the Bowling Club approval granted in 2000. The proposed development is considered to be a well-designed social hub that improves upon the existing sports facilities in the area. The proximity of the site to the Medowie commercial area and the sites location on a major bus route further demonstrates the sites suitability for a community facility use. As such, the proposed development is considered appropriate for the site.

4.9 s79C(1)(d) – Any submissions

Ten (10) submissions were received in relation to the proposed development. All submissions received were in favour of the application. A summary of the key themes provided within the submissions is as follows;

- **Social and Community Benefit** – Potential to improve social and recreational opportunities within the Medowie area. The submissions also note that the facility would improve upon the existing Ferodale Sports Complex.
- **Emergency Response** – The use of the facility in times when an emergency response centre is required. Central location and accessibility.
- **Public Hire** – Benefit of a community facility that may be used for public events, meetings and community education uses.

4.10 s79C(1)(e) – The public interest

The proposed development is permissible with consent on RE1 and RE2 zoned land. The proposed development is generally compliant with applicable legislative controls, policies and Council development control requirements. As such, the approval of the application with appropriate conditions is considered to be within the public interest.

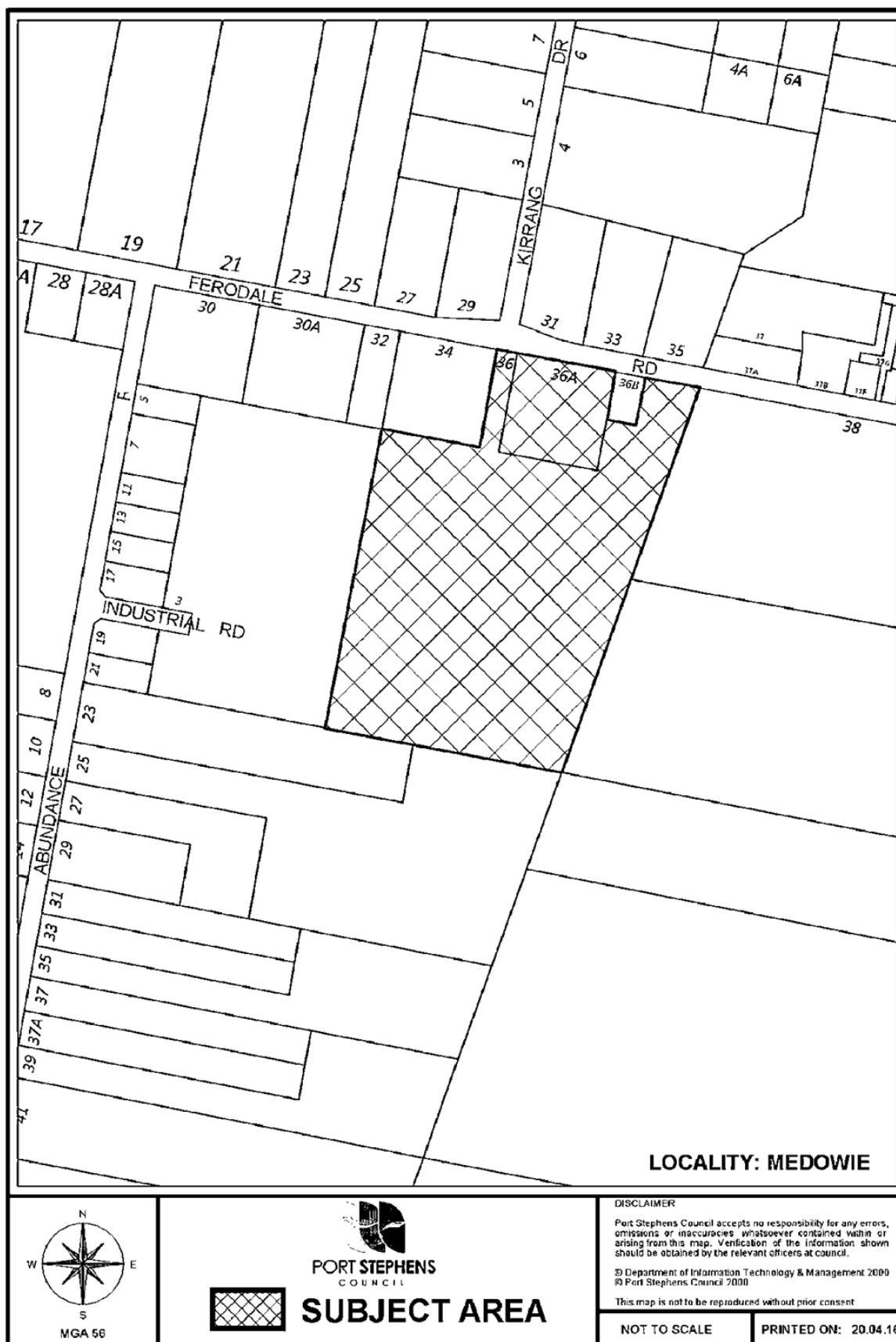
5.0 DETERMINATION

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

Brock Lamont
Development Planner
15/04/2016

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ITEM 1 - ATTACHMENT 3 LOCALITY PLAN.



ITEM NO. 2

FILE NO: 16/328139
RM8 REF NO: 16-2016-178-1

DEVELOPMENT APPLICATION FOR COMMUNITY FACILITY (RURAL FIRE SERVICE BUILDING) AT NO. 1 SUCCESS STREET, TANILBA BAY (LOT 2 DP1048126)

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

RECOMMENDATION IS THAT COUNCIL:

- 1) Approve Development Application DA No. 16-2016-178-1 for a community facility (Rural Fire Service building) at No. 1 Success Street, Tanilba Bay (Lot 2 DP1048126) subject to the conditions contained in (**ATTACHMENT 1**).
-

ORDINARY COUNCIL MEETING - 14 JUNE 2016
COMMITTEE OF THE WHOLE RECOMMENDATION

	Councillor Steve Tucker Councillor Chris Doohan That the recommendation be adopted.
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In accordance with Section 375 (A) of the Local Government Act 1993, a division is required for this item.

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

Those against the Motion: Nil.

ORDINARY COUNCIL MEETING - 14 JUNE 2016
MOTION

155	Mayor Bruce MacKenzie Councillor Chris Doohan It was resolved that Council approve Development Application DA No. 16-2016-178-1 for a community facility (Rural Fire Service building) at No. 1 Success Street, Tanilba Bay (Lot 2 DP1048126) subject to the conditions contained in (ATTACHMENT 1).
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MINUTES ORDINARY COUNCIL - 14 JUNE 2016

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

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

Those against the Motion: Nil.

BACKGROUND

The purpose of this report is to present to Council for determination a development application (DA) for the construction of a community facility (NSW Rural Fire Service building) at No.1 Success Street, Tanilba Bay (Lot 2 DP 1048126) ('the site'). A locality plan is provided in (**ATTACHMENT 2**).

The application has been reported to Council as the site is classified as community land. Section 47E of the *Local Government Act 1993* ('**LG Act**') relates to the development of community land and restricts Council's ability to delegate consent functions to delegated officers (subject to a number of exemptions). The proposed development is not exempt from the provisions of s.47E *LG Act* and therefore a decision to grant consent to the proposed development must be made by resolution of Council.

It is noted that DA16-2012-341-1 for the construction of a community facility (NSW Rural Fire Service building) at 1 Success Street, Tanilba Bay was previously determined under delegation in 2012. This consent was surrendered to Council by the applicant on 3 February 2016. The current application (16-2016-178-1) has been lodged to present an amended design for approval and ensure compliance with s.47E *LG Act*.

The construction of the proposed facility is to be funded by the NSW Rural Fire Service (RFS) through a funding agreement with Council. The funding agreement has Council funding the project initially with the NSW RFS repaying agreed costs through the annual Rural Fire Fighting Fund budget allocation.

Site Description

The subject site is commonly known as RAF Park and has frontages to Lemon Tree Passage Road, Success Street and President Wilson Walk. The site includes established vegetation around its boundaries, however, vegetation is generally cleared within the site.

The site is located on the fringe of an established residential area, with residential dwellings located to the east and west of the site. The NSW Ambulance Service currently operates a facility adjoining the subject site to the north (No. 64 President Wilson Walk, Tanilba Bay). North of the site on the opposite side of Lemon Tree Passage Road is land zoned for Business uses and currently includes a service station and Coles supermarket complex.

Proposal

The proposed development is for the construction of a community facility to be used by the NSW Rural Fire Service. The proposal involves the construction of a single storey community facility building, civil and drainage works and car parking. The building is 428sqm in size (approximately 29mx15m) with a maximum building height of 6.5m. The building will be constructed predominantly out of pre-cast concrete panels and metal wall cladding.

The proposed building will encompass multiple rooms. The proposed truck parking area is 18m x11.05m, with the capability to store four large fire-brigade vehicles. Entry is gained through four individually remote controlled roller shutters. The building will also encompass a multi-function area incorporating a kitchenette, storage area, toilets and office space.

Assessment outcomes

The application was publically exhibited for 14 days during which time two submissions were received. The key matters addressed during the assessment related to stormwater runoff and capability of the surrounding road network to cater for the development.

Stormwater Runoff

The development is located within a sub-catchment of Tanilba Bay that is known to Council as having historic stormwater drainage problems. To ensure that the proposed development does not exacerbate the existing stormwater drainage situation, the development has been required to provide on-site disposal of all stormwater flows up to and including the 1%AEP (i.e. 100 year ARI) design storm.

The applicant has achieved this requirement through the use of two 20,000L rainwater tanks collecting roof water flows, with rainwater tank overflow and stormwater runoff from paved areas discharging through an onsite infiltration system of approximately 25,000L capacity. In the event of failure of the stormwater management system or a storm event exceeding the design criteria, an overflow directed to the adjoining Council piped stormwater system has been provided.

Surrounding Road Network

Access will be derived from President Wilson Walk. The existing road width is approximately 4m wide and is considered to be inadequate to support the increase in vehicle trips associated with the proposed development. The current formation of President Wilson Walk does not allow passing of vehicles without leaving the road carriageway. Any further traffic loading of the current road formation is considered to exceed the functional and safe capacity of the road.

Conditions of consent requiring the upgrade of President Wilson Walk have been recommended. President Wilson Walk shall be widened from the site access for the

MINUTES ORDINARY COUNCIL - 14 JUNE 2016

full frontage of the site and extending to the intersection with Lemon Tree Passage Road to feature a minimum of 6.5m width sealed road pavement. The upgrade to President Wilson Walk ensures that the road network has the capacity to cater for the proposed development.

Conclusion

The assessment of the application has determined that the proposed development was acceptable with regards to its design and siting on the site. The application is being reported to Council for resolution as the development occurs on Community Land and a resolution of Council is required to grant approval to the application.

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. Provide Development Assessment and Building Certification Services.

FINANCIAL/RESOURCE IMPLICATIONS

There will be financial implications to Council arising out of the development approval as Council will be responsible for funding the development initially. A funding agreement is in place and the contribution made by Council will be repaid through the annual Rural Fire Fighting Fund budget allocation.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes		
Reserve Funds	No		
Section 94	No		The development does not attract an s.94 levy.
External Grants	Yes	800,000	A funding agreement is in place in which Council funds the project initially with the NSW RFS repaying agreed costs through the annual Rural Fire Fighting Fund budget allocation.
Other	No		

LEGAL, POLICY AND RISK IMPLICATIONS

The proposed development is generally consistent with *Port Stephens Local Environmental Plan 2013* and *Port Stephens Development Control Plan 2014*. Detailed responses to relevant environmental planning instruments and Port Stephens Development Control Plan 2014 are provided in the Planners Assessment report contained in **(ATTACHMENT 3)**.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that if the application is refused, it may be challenged at the Land and Environment Court.	Low	Approve the application as recommended.	Yes
There is a risk that if the application is refused, emergency response times in the local area may increase.	Medium	Approve the application as recommended.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The proposal is likely to result in positive social benefits as the construction of an additional NSW Rural Fire Service in the local government area will ensure a decrease in response time to emergency situations and an increase in fire brigade resources, machinery and vehicles. The building will also be used for training purposes and community meetings which are considered to a socially beneficial aspect of this development.

Additionally, the construction of the NSW RFS Building will cater for employment in the local area which may result in an economic benefit to the local community.

The proposed development will not involve the removal of significant vegetation on the site and minimal disturbance to vegetation surrounding the perimeter of the development will occur, ensuring existing vegetation buffers to neighbouring dwellings are maintained.

The two Broad-leafed Grass Trees (*Xanthorrhoea aborea*) will be relocated prior to construction works and replanted outside the development footprint, within RAF Park.

MERGER PROPOSAL IMPLICATIONS

The proposed merger is not anticipated to have any implications on the development application.

CONSULTATION

Consultation with key stakeholders has been undertaken by the Development Assessment and Compliance Section during the development application process. The objective of the consultation was to inform the relevant parties of the development application and obtain their feedback on the proposal to ensure all potential concerns have been investigated.

Internal

The application was reviewed by a range of Councils internal specialists. The application was referred to Councils Development Engineer, Building Surveyor and Section 94 Officer for comment. In response approval was recommended subject to the inclusion of conditions of consent.

External

The development was advertised and notified to adjoining neighbours for a period of 14 days in accordance with PSDCP2014, from 18 March 2016 to 6 April 2016. A total of two submissions were received. The issues raised within the submissions have been assessed and it is considered that the proposed development is satisfactory.

The main concerns raised through the public exhibition periods include:

Issues	Comment
Use of Park Land	Approximately 80% of the existing RAF park will remain public open space for the use of local community. The proposed Community Facility has been positioned in the south east corner of the Park to ensure that the remaining park land remains un-fragmented
Location of Community Facility	A Council meeting on the 14 December 2010 approved the location of the Rural Fire Service building at RAF Park, Tanilba Bay. The current application will only be assessed in terms of the proposed location within RAF Park and the design merits of the development.
Drainage/ Flooding Implications	Roof water will be captured by two 20,000L rainwater tanks. Stormwater runoff from the pavement will discharge through an onsite infiltration system with overflow directed to the adjoining Council piped stormwater system. Water flow generated from the proposed development will be managed on-site up to and including the 1%AEP storm event. The development will not add any additional flows to existing infrastructure.
Surrounding Road Network and Access	Access will be derived from President Wilson Walk. The existing road width is approximately 4m wide and is considered to be inadequate to support the increase in vehicle trips associated with

MINUTES ORDINARY COUNCIL - 14 JUNE 2016

	<p>the proposed development in addition with the current residential traffic loading.</p> <p>President Wilson Walk is conditioned to be widen from the site access for the full frontage of the site and extending to the intersection with Lemon Tree Passage Road to feature a minimum of 6.5m width sealed road pavement.</p>
Number of car parking spaces	Six car parking spaces, including one accessible car space will be provided. Plans provided by the applicant illustrate that the site will be able to accommodate up to 23 vehicles on site during training events and community functions.
Tree Preservation	Concerns were raised regarding the preservation of the two Broad-leaved Grass Trees (<i>Xanthorrhoea aborea</i>) located within the development site. The two Broad-leaved Grass Trees (<i>Xanthorrhoea aborea</i>) will be relocated prior to commencement of construction works.
Noise	The proposed community facility is likely to be unmanned except for during training events and in emergency situations. Fire brigade trucks are fitted with noise suppression devices and sirens fitted to Fire Brigade vehicles are primarily used in traffic situations.
Potential Contamination from PFOS and PFOA	The use of firefighting materials containing PFOS and PFOA are likely to be predominantly used off-site. As such, further consideration in regard to potential contamination from firefighting materials in the locality on the development site is not required.
Safety of Residents	A truck leaving the subject site will be travelling at crawl speed due to the weight associated with a full tank of water. It is anticipated that trucks will only be exiting the site during training or emergencies. As such it is not considered that the proposal will create adverse safety implications.

A detailed assessment of the development is held within the assessment report at **(ATTACHMENT 3)**. After the application is determined, all parties that made a submission will be notified in writing by the Development Assessment and Compliance Section.

OPTIONS

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

ATTACHMENTS

- 1) Conditions of consent.
- 2) Locality plan.
- 3) Planners assessment report.

COUNCILLORS ROOM

- 1) Development plans.

TABLED DOCUMENTS

Nil.

ITEM 2 - ATTACHMENT 1 CONDITIONS OF CONSENT.**CONDITIONS OF CONSENT****CONDITIONS THAT IDENTIFY APPROVED PLANS AND LIMITATIONS OF CONSENT**

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

Plan/Doc. Title	Plan Ref. No.	Rev.	Sheet.	Date	Drawn By
Site Plan	PSC12-1968	B	1 of 6	17/03/2016	Port Stephens Council
Development Plans	PSC12-1968	A	2 of 6 to 6 of 6	17/03/2016	Port Stephens Council

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

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

CONDITIONS TO BE SATISFIED PRIOR TO DEMOLITION, EXCAVATION OR CONSTRUCTION

3. Erosion and sediment control measures shall be put in place to prevent the movement of soil by wind, water or vehicles onto any adjoining property, drainage line, easement, natural watercourse, reserve or road surface, in accordance with *Managing Urban Stormwater – Soils and Construction, Volume 1* (Landcom, 2004).

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

4. On-site car parking shall be provided for a minimum of six vehicles, and such being set out generally in accordance with Council's Car Parking requirements. The plans submitted in association with the CC application are to demonstrate compliance with this requirement. The plans are to be approved by the CA as satisfying this requirement prior to the issue of a CC.

ITEM 2 - ATTACHMENT 1 CONDITIONS OF CONSENT.

5. The design of parking spaces, access and manoeuvring areas are to be in accordance with Council's Development Control Plan and AS 2890 as applicable. Details are to be provided to the Certifying Authority **prior to the issue of a Construction Certificate**. The following details are to be provided:
- a. Required access and manoeuvring areas are to be designed for swept path clearances for the 85th percentile vehicle per AS 2890.1 2004.
 - b. Visitor parking spaces are to be located in proximity to the building entrance and clearly line marked and signposted.
 - c. Disabled parking spaces are to be designed in accordance with AS 2890.6 2009 and be located in proximity to the building disabled access and be clearly line marked and signposted.
 - d. Loading/unloading areas are to be separated from parking and storage areas. Loading areas must be designed to accommodate appropriate turning paths in accordance with AS 2890.2 2002.
6. The stormwater infiltration system shall be designed and built in accordance with the approved concept plan. Runoff from impervious areas, including (but not limited to) roof water, shall be discharged into the infiltration drainage system.

A Construction Certificate cannot be issued until a stormwater drainage plan has been provided to the Certifying Authority for assessment and determined to be satisfactory by the Certifying Authority. A stormwater drainage plan must include all engineering details relevant to the collection, management and disposal of stormwater from the site. The plan must include pit sizes, infiltration system details, existing site surface levels, finished site surface levels, pipeline sizes, invert levels, pipe grades and supporting calculations.

7. Structural Certification is required for the underground stormwater detention/infiltration system including demonstrating it can handle expected traffic loadings.

A Construction Certificate cannot be issued until full details of the structural certification of the underground detention/infiltration tanks have been provided to the Certifying Authority for assessment and determined to be satisfactory by the Certifying Authority.

8. President Wilson Walk is to be widen from the site access for the full frontage of the site and extending to the intersection with Lemon Tree Passage Road to feature a minimum of 6.5m width sealed road pavement. All work required to be carried out within a public road reserve must be separately approved by Council as the Roads Act 1993, under Section 138 of the Roads Act 1993 **prior to the issue of a Construction Certificate**.

Engineering plans for the required work within a public road must be prepared and designed by a suitably qualified professional and constructed in accordance with Council's 'Infrastructure Design and Construction Specification – AUS Spec', and Development Control Plan.

ITEM 2 - ATTACHMENT 1 CONDITIONS OF CONSENT.

9. **Prior to the issue of a Construction Certificate**, a Driveway Construction Application is to be lodged with the Roads Authority.

10. **Prior to the issue of a Construction Certificate**, the two Broad-leafed Grass Trees (*Xanthorrhoea aborea*) are to be relocated within RAF Park, outside the development footprint.

Alternately, a tree planting plan can be submitted to Council and be deemed to be satisfactory. The tree planting plan must detail the tree species, number of proposed plantings and location of proposed plantings. The following provision shall apply to the Tree Planting Plan:

- a. Plantings are to be within RAF Park.
- b. Plantings shall be Broad-leafed Grass Trees (*Xanthorrhoea aborea*)

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

11. All building work must be carried out in accordance with the provisions of the Building Code of Australia.
12. 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.
13. 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.
14. It is the responsibility of the applicant to erect a PCA sign and ensure the PCA sign remains in position for the duration of works.
15. A waste containment facility shall be provided on the construction site immediately after the first concrete pour for the building and is to be regularly serviced.
16. The only waste derived fill material that may be applied to the development site is:
- a. Virgin Excavated Natural Material (VENM) within the meaning of the Protection of the Environment Operations Act 1997 (POEO); or
 - b. Any other waste-derived material the subject of a resource recovery order or a resource recovery exemption under clauses 92 & 93 of the *Protection of the Environment Operations (Waste) Regulation 2014* that is permitted to be used as fill material.

ITEM 2 - ATTACHMENT 1 CONDITIONS OF CONSENT.

CONDITIONS TO BE SATISFIED PRIOR TO ISSUE OF AN OCCUPATION CERTIFICATE

17. All civil engineering works shall be carried out in accordance with the Construction Certificate and Council's Design and Construction Specification, Policies and Standards, to the satisfaction of Council or the Certifying Authority **prior to issue of the Occupation Certificate.**
18. **Prior to the issue of a Final Occupation Certificate**, the driveway is to be constructed in accordance with the Driveway Construction Approval and a compliance certificate is to be obtained from the Roads Authority.
19. **Prior to issue of the Occupation Certificate**, 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

20. Use of the site for purposes other than those directly associated with an emergency situation (such as training and meetings) shall only occur between the hours of 9am and 9pm.
21. Outdoor lighting must comply with AS/NZ1158.3: 1999 Pedestrian Area (Category P) Lighting and AS4282: 1997 Control of the Obtrusive Effects of Outdoor Lighting
22. All parking associated with the operation of the development (inclusive of meetings and training activities) is to be accommodated entirely within the site.
23. The stormwater system, including any water quality, quantity or infiltration components, shall be maintained in perpetuity for the life of the development in accordance with an approved Maintenance Plan.
24. At least once in each twelve (12) month period, fire safety statements as prescribed by Section 175 Environmental Planning & Assessment Regulations 2000 in respect of each required essential fire safety measure installed within the building are to be submitted to Council. Such certificates are to state that:
 - a) The service has been inspected and tested by a person (chosen by the owner of the building) who is competent to carry out such inspection and test; and
 - b) That the service was or was not (as at the date on which it was inspected and tested) found to be capable of operating to a standard not less than that specified in the fire safety schedule for the building.

ITEM 2 - ATTACHMENT 1 CONDITIONS OF CONSENT.

ADVICES

- a. The developer is responsible for full costs associated with any alteration, relocation or enlargement to public utilities whether caused directly or indirectly by this proposal. Such utilities include water, sewerage, drainage, power, communication, footways, kerb and gutter.
- b. Should any Aboriginal 'objects' be uncovered by the work, excavation or disturbance of the area is to stop immediately and the Office of Environment and Heritage must be informed accordance with Section 89A of the *National Parks and Wildlife Act, 1974* (as amended). Works affecting Aboriginal 'objects' on the site must not continue until the Office of Environment and Heritage has been informed. Aboriginal 'objects' must be managed in accordance with the *National Parks and Wildlife Act, 1974*.



PORT STEPHENS
COUNCILDEVELOPMENT
ASSESSMENT REPORT**APPLICATION DETAILS**

Application Number	16-2016-178-1
Development Description	Community facility - NSW Rural Fire Service Building
Applicant	MR C J DONALDSON
Date of Lodgement	16/03/2016
Value of Works	\$800,000

Development Proposal

The application proposes the construction of a community facility - Rural Fire Service building and associated civil and drainage works within RAF Park, Tanilba Bay. The building is 428sqm in size and will incorporate a:

- Truck Parking Area - 211sqm in size to accommodate 4 fire brigade trucks. Entry is gained on the eastern elevation via four individually remote controlled garage doors.
- Multi-Function Area – 116sqm in size. The multi-function area is located in the north-west corner of the building and will incorporate a kitchenette.
- Office – 30sqm in size. Access is internally gained from the truck parking area and multi-function area, and externally from the eastern elevation.
- Storage Area - 35sqm in size.
- Toilets – located at the rear of the building. The application proposes a male, female and an accessible toilet.
- Six Car Parking Spaces. Overflow parking located on grassed and hardstand areas.

The site is considered to be suitable to accommodate the proposed development without causing unacceptable impact to the surrounding area.

PROPERTY DETAILS

Property Address	1 Success Street TANILBA BAY
Lot and DP	LOT: 2 DP: 1048126
Current Use	Parkland (RAF Park)
Zoning	RE1 PUBLIC RECREATION
Site Constraints	ASS (Class 4) Maximum Height of Building – 8m (i) SEPP 71 – Coastal Protection Corridor Link – Stepping Stone

Site Description

The subject site (Lot 2, DP 1048126) is an operating Council park, referred to as 'RAF Park'. RAF Park has frontages to Lemon Tree Passage Road, Success Street and President Wilson Walk (as illustrated below). The site possesses established vegetation around its borders and is generally cleared within the site. The site is visible through the vegetation along Success Street, however is mostly shielded from the vegetation along President Wilson Walk.



The site is located on the fringe of an established residential area, with residential dwellings located east and west of the site. The NSW Ambulance Service currently operates a facility adjoins the subject site lot to the north (64 President Wilson Walk, Tanilba Bay).

North of the site on the opposite side of Lemon Tree Passage Road is land zoned for Business uses and currently includes a service station and Coles supermarket complex.

Site History

The following development applications have been submitted on the site:

- 2012 – 16-2012-341-1 – Community Facility (RFS Building) at 1 Success Street, Tanilba Bay
- 2016 – 16-2012-341-2 – A s96(1A) application seeking to amended DA No.16-2012-341-1. Amendments included:
 - Amending the location of truck parking
 - Increase in building width (4m)
 - Minor internal alterations

During the assessment of the recent Section 96 (1A) application lodged (DA No.16-2012-341-2) it was identified that the original development application (Da Consent No. 16-2012-341-1) lodged for a Community Facility (Rural Fire Service building) in 2012 is invalid. The subject site is classified as community land and as such cannot be approved by Council Officers under delegation, as outlined in Section 47E – Development of Community Land of *The Local Government Act 1993*. Development applications of this nature must be determined by the elected Council. As a result, the recent s96(1A) Modification lodged for Additions and Alterations to the Community Facility (Rural Fire Service building) (Da

ITEM 2 - ATTACHMENT 3 PLANNERS ASSESSMENT REPORT.

16-2016-178-1

Consent No. 16-2012-341-2) was withdrawn. The current application will be determined by the elected Council, consistent with *the Local Government Act 1993*.

Plan of Management

Open space management plans specify the subject site as General Community Use. There is no specific plan of management for the RAF Park, Tanilba Bay. As such, the generic Plan of Management applies to the subject site. During the 14 December 2010 Council Meeting, the elected Council approved the location of the Tanilba Bay Fire Station at RAF Park, Tanilba Bay.

Site Inspection

A site inspection was carried out on 19 April 2016, and the site is detailed in the figures below.



Figure 1: Vegetation buffer between the proposal and President Wilson Walk.



Figure 2: Ambulance Station positioned to the north of the subject site.



Figure 3: Existing vegetation along Success Street.



Figure 4: Access from President Wilson Walk.



Figure 5: Location of the two Broad-leaved Grass Tree *Xanthorrhoea aborea*

ITEM 2 - ATTACHMENT 3 PLANNERS ASSESSMENT REPORT.

16-2016-178-1

APPLICATION SUMMARY

Assessing Officer	SAMUEL HARVEY
Designated Development	The application does not constitute designated development
Integrated Development	The application does not require any additional approvals listed under s.91 of the EP&A Act
Number of Submissions	Two submissions were received

Internal Referrals

The proposed modification was referred to internal specialist staff. The comments of the staff listed below have been used to carry out the assessment under section 4.0.

Development Engineer – The application was referred to Councils Development Engineer. Approval was recommended subject to conditions of consent.

Building Surveyor – No objections were made to the proposal. Recommended conditions were received and have been incorporated into the conditions of consent.

Section 94 Officer – The proposal will not attract s94A contributions. In accordance with Councils Section 94 Plan. S94A contributions are not imposed on Community Facilities.

Bushland Management Officer – A site inspection was undertaken with Councils Bushland Management Officer, as concerns were raised regarding two Broad-leafed Grass Trees (*Xanthorrhoea aborea*) being located on-site during the public exhibition period. The development is recommended for approval subject to the relocation of the grass trees prior to construction works.

External Referrals

The proposed modification was not referred to the following external agencies for comment.

Applicable Legislation**Local Government Act 1993**

The subject site is classified as community land. As Council is the applicant, the application must be determined by Council, in accordance with s.47E of the *Local Government Act 1993*.

MATTERS FOR CONSIDERATION – SECTION 79C**s79C(1)(a)(i) – The provisions of any EPI****Port Stephens Local Environmental Plan 2013 (LEP)**

Clause 2.1 – The proposed development is defined as a community facility. A community facility is defined as a building or place that is owned or controlled by a public authority or non-profit organisation and used for the physical, cultural or intellectual development or welfare of the community.

A community Facility is permitted with consent on RE1 Public recreation zoned land. The proposal is in-keeping with the zone objectives by providing a range of recreational settings and activities. The proposed community facility is a compatible land use in the zone and provides activities that will benefit the welfare and cultural development of the local community.

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Clause 4.3 – The maximum height of the building is 6.5m below the maximum building height limit nominated for the site.

Clause 5.9 – Concerns were raised regarding two Broad-leafed Grass Trees (*Xanthorrhoea aborea*) located within the development site. The two Broad-leafed Grass Trees (*Xanthorrhoea aborea*) will be repositioned on-site prior to the commencement of construction works. The proposed development is consistent with objectives of c15.9.

Clause 7.1 – The development site is identified on PSLEP2013 Acid Sulphate Soil maps as Class 4 ASS. The proposal will not undertake works 2m below the natural ground level and as such is considered to be satisfactory in regard to the management of ASS.

Clause 7.2 – Clause 7.2 (2)(b) stipulates that development consent is required for the proposed earthworks. Matters outlined in Clause 7.2 (3) require the consent authority to consider matters (a) to (h).

The proposal is unlikely to disrupt drainage patterns and soil stability, impact potential future development on-site, impact adjoining properties or disrupt relics. Additionally, conditions of consent will condition the use of clean fill and stipulate measures to mitigate potential impacts derived from earthworks.

The application is satisfactory in regard to Clause 7.2 (3).

Clause 7.6 – Essential services are available to the subject area.

State Environmental Planning Policy No.71 – Coastal Protection

This application has been assessed having regard to the aims of the SEPP. It is not expected that the proposed development will have adverse impact on achieving the aims of the SEPP. In addition, the application has had regard to the matters for consideration in Clause 8. The application has been assessed against these matters for consideration. The application will generally comply with the aims of the SEPP and the other matters for consideration under Clause 8.

s79C(1)(a)(ii) – Any draft EPI

There are no draft EPI's relevant to the proposed development.

s79C(1)(a)(iii) – Any DCP

Port Stephens Development Control Plan 2014

The Port Stephens Development Control Plan 2014 (DCP) is applicable to the proposed development and has been assessed below.

Chapter A.12 – In accordance with the requirements of chapter A.12, the development application was notified and advertised for 14 days in response 2 submission objecting to the proposal were received.

Chapter B3 – The objective of Chapter B3.E is to identify and manage potentially offensive noise. The proposed development will hold community meetings and involve the entry and exit of large fire trucks. However, the use of fire trucks will not be a regular occurrence. Fire trucks will only exit the premise for training purposes and in emergency situations. Additionally, sirens are predominantly used on busy roads to alert motorists. As such, the proposal is not anticipated to create unacceptable noise to neighbouring dwellings.

Chapter B4 – The subject site is positioned in a 100yr ARI Infiltration requirement area. Roof water will be captured by two 20,000L rainwater tanks. Stormwater runoff from the pavement will discharge through an onsite infiltration system with overflow direct to Council piped stormwater system.

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Water flow generated from the proposed development will be attenuated up to and including the 1%AEP storm event. As such, the development will not add any additional flows to existing infrastructure.

Chapter B9 – There are no specific parking space requirements outlined in PSDCP2014 for community facilities, other than one accessible space being provided per 20 spaces. Six formalised car parking spaces, including 1 accessible car space are proposed for the development. The car parking spaces are considered to be satisfactory as the use of these car parking spaces will be used during emergency events. Development plans submitted with the application illustrate that a maximum of 16 car parking spaces on the hardstand area and 7 car parking on grass land will be able to be facilitated if required during community meetings and training events.

Car parking is considered to be satisfactory for the proposed development.

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

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

s79C(1)(a)(iv) – The regulations

There are no relevant clauses applicable to the development.

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

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

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

Social and Economic Impacts

The proposal is likely to result in positive social benefits by providing an additional Rural Fire Service building in the Port Stephens Local Government Area. The proposed development will enable a faster response to emergency situations in the locality. The Rural Fire Service also provides a meeting place, providing training and education services to the local community.

Impacts on the Built Environment

The proposed development is not anticipated to have adverse impacts on the surrounding built environment. The proposal is adequately buffered by existing vegetation to neighbouring dwellings.

Impacts on the Natural Environment

The proposed development will involve the repositioned of two Broad-leafed Grass Trees (*Xanthorrhoea aborea*). This is to ensure all potential impacts to the natural environment are minimised. The proposed development will not have adverse impacts on the natural environment.

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

The subject site is suitable for the proposed development. A council meeting held 14 December 2010 resolved to position the proposal at the subject site. The erection of a Rural Fire Service building at the subject site will enable integration of services and facilities with the adjoining ambulance station.

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s79C(1)(d) – Any submissions

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

Issues	Comment
Park Land	Approximately 80% of the existing RAF park will remain public open space for the use of local community. The proposed Community Facility has been positioned in the south east corner of the Park to ensure that the remaining park land remains un-fragmented
Location of Community Facility	A Council meeting on the 14 December 2010 approved the location of the Rural Fire Service building at RAF Park, Tanilba Bay. The current application will only be assessed in terms of the proposed location within RAF Park and the design merits of the development.
Drainage/ Flooding	<p>Roof water will be captured by two 20,000L rainwater tanks. Stormwater runoff from the pavement will discharge through an onsite infiltration system with overflow directed to the adjoining Council piped stormwater system.</p> <p>Water flow generated from the proposed development will be managed on-site up to and including the 1%AEP storm event.</p> <p>The development will not add any additional flows to existing infrastructure.</p>
Surrounding Road Network and Access	<p>Access will be derived from President Wilson Walk. The existing road width is approximately 4m wide and is considered to be inadequate to support the increase in vehicle trips associated with the proposed development in addition with the current residential traffic loading.</p> <p>President Wilson Walk is conditioned to be widen from the site access for the full frontage of the site and extending to the intersection with Lemon Tree Passage Road to feature a minimum of 6.5m width sealed road pavement.</p>
Car parking	Six car parking spaces, including one accessible car space will be provided. Plans provided by the applicant illustrate that the site will be able to accommodate up to 23 vehicles on site during training events and community functions.
Tree Preservation	Concerns were raised regarding the preservation of the two Broad-leaved Grass Trees (<i>Xanthorrhoea aborea</i>) located within the development site. The two Broad-leaved Grass Trees (<i>Xanthorrhoea aborea</i>) will be relocated prior to commencement of construction works.
Noise	The proposed community facility is likely to be unmanned except for during training events and in emergency situations. Fire brigade trucks are fitted with noise suppression devices and sirens fitted to Fire Brigade vehicles are primarily used in traffic situations.
Potential Contamination from PFOS and PFOA	The use of firefighting materials containing PFOS and PFOA are likely to be predominantly used off-site. As such, further consideration in regard to potential contamination from firefighting materials in the locality on the development site is not required.
Safety of	A truck leaving the subject site will be travelling at crawl speed due

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Residents	to the weight associated with a full tank of water. It is anticipated that trucks will only be exiting the site during training or emergencies. As such it is not considered that the proposal will create adverse safety implications.
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s79C(1)(e) – The public interest

The proposal is considered to be in the public interest. The proposed development will provide a Rural Fire Service facility in the locality, enabling quick response times to emergencies and safe storage of fire brigade trucks.

ITEM NO. 3

**FILE NO: 16/315045
RM8 REF NO: 16-2013-757-2**

SECTION 96(1A) MODIFICATION APPLICATION TO DA 16-2013-757-2 - AMEND STAGING, INTERNAL LAYOUTS, NUMBER OF BUILDINGS AND DESIGN TO A SENIORS LIVING DEVELOPMENT AT 118 & 118A SOLDIERS POINT RD, SOLDIERS POINT (LOTS 1 & 2 DP627638)

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

RECOMMENDATION IS THAT COUNCIL:

- 1) Approve Section 96(1A) Modification application to DA No. 16-2013-757-2 to amend approved 100 unit seniors living development (amend staging, internal layouts, number of buildings and design) at 118 & 118A Soldiers Point Rd, Soldiers Point (Lots 1 & 2 DP627638) subject to the conditions contained in **(ATTACHMENT 1)**.

Councillor Peter Kafer left the meeting at 06:37pm during Committee of the Whole and did not return to the meeting.

**ORDINARY COUNCIL MEETING - 14 JUNE 2016
COMMITTEE OF THE WHOLE RECOMMENDATION**

	Councillor Ken Jordan Councillor Sally Dover That the recommendation be adopted.
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In accordance with Section 375 (A) of the Local Government Act 1993, a division is required for this item.

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

Those against the Motion: Nil.

ORDINARY COUNCIL MEETING - 14 JUNE 2016
MOTION

156	<p>Mayor Bruce MacKenzie Councillor Chris Doohan</p> <p>It was resolved that Council approve Section 96(1A) Modification application to DA No. 16-2013-757-2 to amend approved 100 unit seniors living development (amend staging, internal layouts, number of buildings and design) at 118 & 118A Soldiers Point Rd, Soldiers Point (Lots 1 & 2 DP627638) subject to the conditions contained in (ATTACHMENT 1).</p>
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In accordance with Section 375 (A) of the Local Government Act 1993, a division is required for this item.

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

Those against the Motion: Nil.

BACKGROUND

The purpose of this report is to present to Council for determination a Section 96 application to modify an approved 100 unit seniors living development at 118 & 118A Soldiers Point Road, Soldiers Point. The modifications involve amendments to the external elevations, building layouts, the staging of the development and reducing the number of buildings on the site (the number of units will remain at 100). The application has been reported to Council for determination as the original application was determined by Council at its meeting on 15 April 2014.

Site Description

The site contains two lots, Lot 1 contains the Soldiers Point Bowling Club and Lot 2 contains the approved senior's housing development (**'the development site'**). The development site is 1.61ha in size and is accessed via a battle axe handle off Soldiers Point Road. Residential properties surround the development to the north, west and south of the site. Soldiers Point Big 4 Caravan Park is located to the south east of the site. A locality plan of the development is provided in **(ATTACHMENT 2)**.

Proposed modifications

The proposed modifications to the original approval are as follows:

- Staging – modification of the staging plan from the approved three stages, to four stages;

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- Car parking – the parking layout is to be modified to better facilitate the staging of the development. The modification results in one additional car parking space to be provided on the site, with a total of 129 spaces;
- Consolidation of buildings in block F – the approved block F consists of four buildings. The proposal is to consolidate these buildings, to allow for one building F and a new building H;
- Communal space – a communal open space area has been provided within the centre of the development, which includes the provision of a seating area and BBQ facilities;
- Unit mix – the size and layout of the units has been amended based on the market demand associated with the early sales for the development. The modification proposes the replacement of the 19 approved one bedroom units with 18 two bedroom units and one three bedroom unit;
- External facade – modifications are proposed to the external appearance of the development to obtain a more contemporary design. The modification includes enlarging the size of the balconies, amending the style of the handrails, changing the curved roof form of the buildings to a combination of hip and gable elements and the addition of featured privacy screens into the facade of the buildings;
- Footprint and setbacks – the footprint and setback of the development has been amended as detailed in the table below:

	Approved setback	Proposed setback
Eastern setback (adjoining the Bowling Club car park)	Building F – 5m Building A – 7.5m Building B – 11m	Block F and H – 1.025m Building A - 982mm Building B – 982mm
Northern setback	Building E (now G) – 10.2m Building F (now H) – 8.4m	Block G - 8m Block H – 6m
Western setback	Building C, D (now E) and E (now G) – 13.1m Building A - 4m	Block C, E and G (previously F) – 9.3m Building A - 6.4m
Southern setback	Building A – 8m	Building A – 3.9m to the stairwell

- Pedestrian walkway – a walkway has been included along the southern boundary of the site at the request of adjacent neighbours, which links to the Oasis Close walkway and provides access to the Soldiers Point Bowling Club for adjoining residents;
- Storage areas – addition of storage cages in the parking areas. Storage was not included in the original design of the development;

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- Pump station – a pump station has been added to the development to install the relevant services required on the site. This is located towards Soldiers Point Rd, in the area located between the driveway and the adjacent property; and
- Stairwell – deletion of a stairwell on the south western corner of the site.

Approval and construction history

Development consent was granted by Council at its meeting on 15 April 2014 for the seniors living development (100 Units) comprising a three staged development of ten building blocks, as follows:

- Stage 1 - construction of building A on the southern part of the site (20 units), building B (community building, pool and six units) and associated parking;
- Stage 2 – construction of buildings D and E (41 units) and associated parking; and
- Stage 3 - construction of buildings C and F (33 units) and associated parking.

A Construction Certificate (Number CN140557) was issued by a Private Principal Certifying Authority (PCA) on 3 February 2016, for Stage 1 of the development (buildings A and B).

The subject Section 96 application (16-2013-757-2) was received by Council on 1 October 2015. During a site inspection Council officers identified that construction works had commenced on site for a number of the modifications proposed under the subject application. These matters have been passed onto the certifier and the Building Professionals Board for investigation. It should be acknowledged that the compliance issues are being dealt with as a separate matter to the subject application and Council can grant retrospective approval to works under a s.96 application should it be satisfied that the proposal is 'substantially the same' as the original development. An assessment has been undertaken of the proposed modifications and it is considered the proposal is acceptable.

Assessment outcomes

A detailed assessment of the proposed development is provided within **(ATTACHMENT 3)** in accordance with Section 79C of the *Environmental Planning and Assessment Act 1979 (EP&A Act 1979)*. The key matters addressed during the assessment include:

Compliance with State Environmental Planning Policy– Housing for Seniors or People with a Disability (SEPP HSPD)

State Environmental Planning Policy – Housing for Seniors or People with a Disability (SEPP HSPD) is a State Government Policy which seeks to encourage the provision of housing (including residential care facilities) that will increase the supply and diversity of residences that meet the needs of seniors or people with a disability. The provisions of SEPP HSPD take precedent over Council's Local Environmental Plan. A site compatibility certificate was issued by the Department of Planning on 15

November 2013 in order to facilitate the approved development (DA No. 16-2013-757-1). Accordingly, the proposed modifications have been assessed against the provisions of SEPP HSPD.

The modified development has been found to generally satisfy the controls outlined within SEPP HSPD including land size and frontage. The development does however exceed the floor space ratio (FSR) control, which provides a FSR of 0.5:1. The development as modified results in a FSR of 0.59:1, in comparison the development as originally approved had a FSR of 0.47:1. The change in FSR is mainly due to the increase in building footprint associated with the amendments to the internal layout and unit sizes.

Part 7 of SEPP HSPD specifies that non-compliance with FSR requirement cannot be used as a ground for refusal. Accordingly, a merit assessment of the application is required. In this regard, the proposed modifications are supported as there are no significant additional impacts on the surrounding neighbours arising as a result of the non-compliance. Further, the modification as compared to the original approval has not resulted in an increased number of dwellings on the site. The modified development is also considered to satisfy the objectives of SEPP HSPD in that it will increase the supply of housing for seniors and people with a disability and makes efficient use of existing infrastructure and services.

Assessment of modifications – substantially the same test

The proposed amendments to the development are not likely to have any additional impacts to the environment or adjoining properties when compared to the development as approved. Issues such as privacy, height, ecological impacts, and overshadowing were considered in detail under the original application and overall the development was found to be satisfactory.

The modification application has allowed for further consideration to be made to the privacy impacts on the dwellings to the north of the site, and has allowed for the units to be redesigned providing greater internal amenity for the future residents. This includes greater privacy between the internal units on the site, more suitable balcony sizes, the addition of communal open space and better internal layouts and additional storage which provides higher quality accommodation.

It is noted that whilst buildings A and B have already been constructed on site, the modification to these buildings has been assessed retrospectively. The changes proposed to building A and B are not likely to have any significant impacts on the adjacent neighbours and have therefore been supported.

The modified development provides for a new footpath which is located to the southern side of the site. This footpath is to connect with Council's footpath on Oasis Close which provides access to the Bowling Club for the residences to the west of the site. A condition has been placed on the consent for the applicant to create an easement for a right of way over this footpath, allowing legal access for the public onto this part of the site.

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The assessment prepared by Council staff (**ATTACHMENT 3**) concludes that the development as modified is substantially the same as the original development. Further, the modification to the approved development has minimal additional environmental or amenity impacts, when compared to the approved application. On this basis the application is recommended for approval.

Public submissions

The proposal was publically advertised and notified to adjoining neighbours for a period of 14 days (from 14 to 28 October 2015). During the exhibition period four submissions were received. The key themes included impacts on privacy, the scale of the changes to the development, the inclusion of the footpath, compliance with the SEPP Housing for Seniors or People with a Disability, changes in building footprint, external design changes, ecological impacts and concerns with current construction works on site.

The issues raised during the public exhibition process do not warrant refusal of the application and are discussed in more detail in the consultation section of this report and within the assessment report provided with (**ATTACHMENT 3**).

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. Provide Development Assessment and Building Certification Services.

FINANCIAL/RESOURCE IMPLICATIONS

The development generates section 94 contributions as a result of the intensification of the existing land use. A condition of consent was included on the original determination and has been modified to reflect the proposed staging of the development. The total s.94 contributions payable remains unchanged as the number of approved units has not been amended.

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

LEGAL, POLICY AND RISK IMPLICATIONS

An assessment of the impacts of the proposed modifications has been carried out and is included within **(ATTACHMENT 3)** of this report. The assessment concludes that the modified development is generally consistent with the requirements of the *Environmental Planning and Assessment Act 1979*, the *Port Stephens Local Environmental Plan 2013* and relevant chapters of the Port Stephens Development Control Plan 2014 and that (subject to conditions) there are no significant adverse impacts resulting from the development. If Council refuses the application the applicant may appeal to the Land and Environment Court and defending Council's determination would have financial implications.

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

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The proposed modifications to the development are not likely to result in additional significant adverse impacts on the built or natural environment compared to the original approved development. The impacts resulting from the original development have been considered under DA No.16-2013-757-1 and were found to be reasonable subject to conditions of consent.

The development as modified is likely to result in a positive social benefit as it will allow for the provision of seniors and disabled housing in the Soldiers Point locality. The construction of the development will also create additional employment opportunities in the local area and have an economic benefit to the commercial area of Soldiers Point through incidental spending by contractors, future residents and visitors of the development.

MERGER PROPOSAL IMPLICATIONS

A proposed Council merger is not anticipated to have any implications on the development application.

CONSULTATION

Consultation with key stakeholders has been undertaken by the Development Assessment and Compliance Section. The objective of the consultation was to inform the relevant parties of the development application and obtain their feedback on the

proposal to ensure their concerns were considered as part of the assessment process.

Internal

The application was reviewed by a number of internal specialist staff including Council's Development Engineer, Environmental Planner and Building Surveyor.

External

In accordance with Council's Notification Policy, the s.96 application was advertised and notified to adjoining neighbours for a period of 14 days from 14 October to 28 October 2014. During the public exhibition process four submissions were received. The key concerns raised are outlined below. A detailed assessment of the submissions received has been included within the assessment report **(ATTACHMENT 3)**.

The S96 application was also required to be referred to the Rural Fire Service (RFS). A Bushfire Safety Authority and General Terms of Approval were issued for the original development on 15 January 2014 with no general terms of approval required. The RFS issued general terms of approval without any specific conditions in correspondence dated 4 November 2015 **(ATTACHMENT 4)**.

Non-compliance with approved plans:

Objections identified that the development as constructed on site was not in accordance with the approved plans. This issue has been investigated and Council staff lodged information with the Building Professionals Board for their review. It is important to note that the subject application can still be considered on its merits as a separate issue to the compliance matters on the site.

Ecological impacts:

The submissions received raised concerns that the current works on site were having ecological impacts and the conditions of consent had not been complied with. Objectors have been advised that any concerns in regards to non-compliance with the consent must be forwarded to the PCA or the Building Professionals Board for investigation (given Council are not the nominated certifier for the project). It is however noted that the proposed modifications are not likely to result in additional ecological impacts onsite beyond what has already been approved. It is recognised that the development as originally approved (DA No .16-2013-757-2) was found to result in impacts to the fauna and flora on site, however, the impact was found to be acceptable subject to conditions of consent. The proposed modification does not require amendment of any of the environmental conditions on the consent and no additional ecological impacts are likely as part of the development.

Reduction to side setbacks:

An objector identified that the proposed reduction to side setbacks would result in adverse impacts to the privacy of adjoining residential properties. This issue was discussed with the applicant and amended plans were submitted increasing the setback to 8 metres for Building G. The 6 metre setback of building H could not be amended due to BCA requirements, however the north facing balcony was removed and a privacy screen was added to minimise any overlooking of the adjacent properties. These amendments were discussed with the objector and are considered to satisfactorily address the privacy concerns raised.

Description of the development as minor:

An objection was received raising concern that the modification application was submitted under s.96(1A) *EP&A Act*. Section 96(1A) applications apply to modifications with minimal environmental impact and generally allow changes to design, internal layout and other aspects of the proposal. The main criteria to determine whether amendments can be made to an application is to whether the overall changes can be considered to be substantially the same development, as to that original approved. This issue has been considered in detail in the assessment of the application. The lodgement of the application under s.96(1A) has been found to be appropriate.

OPTIONS

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

ATTACHMENTS

- 1) Conditions of Consent.
- 2) Locality Plan.
- 3) Planning assessment report.
- 4) Rural Fire Services Correspondence.

COUNCILLORS ROOM

- 1) Development Plans.

TABLED DOCUMENTS

Nil.

ATTACHMENT 1 – CONDITIONS OF CONSENT**STANDARD CONDITIONS**

1. Development Consent is granted for a staged development of a Self-Care Senior Living development as indicated on the approved plans and documentation.
2. A Construction Certificate is required prior to commencement of works approved by this application. The person having the benefit of this consent must appoint a principal certifying authority. If Council is not appointed as the Principal Certifying Authority then Council must be notified of who has been appointed. Note: at least two (2) days' notice must be given to Council of intentions to start works approved by this application.
3. All building work must be carried out in accordance with the provisions of the Building Code of Australia and the Premises Standard.
- 4A. The development must be carried out in accordance with the plans and documentation listed below and endorsed with Council's stamp, except where amended by other conditions of this consent or as noted in red by Council on the approved plans:

Statement of Environmental Effects report number PR118872 prepared by RPS dated November 2013

Stamped plans prepared by GWH Build titled/numbered/dated:

- Site Master: Staging – A-MOO2 Revision B dated 1/2/16
- Site Master: Ground Floor – A- MOO3 Revision B dated 1/2/16
- Site Master: First Floor – A-MOO4 Revision B dated 1/2/16
- Site Master: Second Floor – A-MOO5 Revision B dated 1/2/16
- Site Master: Third Floor – A-MOO6 Revision B dated 1/2/16
- Site Master: Fourth Floor – A-MOO7 Revision B dated 1/2/16
- Site Master: Fifth Floor – A-MOO8 Revision B dated 1/2/16
- Site Master: East Elevation – A-MO10 Revision B dated 1/2/16
- Site Master: Sections – A- MO11 Revision B dated 1/2/16
- Site Master: Common Landscaped Area– A- MO13 Revision B dated 1/2/16
- Site Master: Footpath – A- MO14 Revision B dated 1/2/16
- Site Master: Access Driveway – A- MO15 Revision B dated 1/2/16
- Site Master: Pump Station – A- MO16 Revision B dated 1/2/16
- Site Master: Staging Car Park – A- MO17 Revision A dated 1/2/16
- Site Master: Landscape Plan – A- MO18 Revision A dated 1/2/16

ITEM 3 - ATTACHMENT 1 CONDITIONS OF CONSENT.

- Building A: Ground Floor Plan 01 – A-A001 Revision B dated 1/2/16
- Building A: Ground Floor Plan 02 – A-A002 Revision B dated 1/2/16
- Building A: First Floor Plan 01 – A-A003 Revision B dated 1/2/16
- Building A: First Floor Plan 02 – A-A004 Revision B dated 1/2/16
- Building A: Second Floor Plan 01 – A-A005 Revision B dated 1/2/16
- Building A: Second Floor Plan 02 – A-A006 Revision B dated 1/2/16
- Building A: Roof Plan 01 – A-A007 Revision B dated 1/2/16
- Building A: Roof Plan 02 – A-A008 Revision B dated 1/2/16
- Building A: Elevations Sheet 01 – A-A009 Revision B dated 1/2/16
- Building A: Elevations Sheet 02 – A-A010 Revision B dated 1/2/16
- Building B: Ground Floor Plan – A-B001 Revision B dated 1/2/16
- Building B: First Floor Plan – A-B002 Revision B dated 1/2/16
- Building B: Second Floor Plan – A-B003 Revision B dated 1/2/16
- Building B: Roof Plan – A-B004 Revision B dated 1/2/16
- Building B: North & East Elevations – A-B005 Revision B dated 1/2/16
- Building B: South & West Elevations – A-B006 Revision B dated 1/2/16

- Building C: Ground Floor Plan – A-C001 Revision B dated 1/2/16
- Building C: First Floor Plan – A-C002 Revision B dated 1/2/16
- Building C: Second Floor Plan – A-C003 Revision B dated 1/2/16
- Building C: Third Floor Plan – A-C004 Revision B dated 1/2/16
- Building C: Fourth Floor Plan – A-C005 Revision B dated 1/2/16
- Building C: Roof Plan – A-C006 Revision B dated 1/2/16
- Building C: North & West Elevation – A-C007 Revision B dated 1/2/16
- Building C: South & East Elevation – A-C008 Revision B dated 1/2/16
- Building E: Ground Floor Plan – A-E001 Revision B dated 1/2/16
- Building E: First Floor Plan – A-E002 Revision B dated 1/2/16
- Building E: Second Floor Plan – A-E003 Revision B dated 1/2/16
- Building E: Third Floor Plan – A-E004 Revision B dated 1/2/16
- Building E: Fourth Floor Plan – A-E005 Revision B dated 1/2/16
- Building E: Fifth Floor Plan – A-E006 Revision B dated 1/2/16
- Building E: Roof Plan – A-E007 Revision B dated 1/2/16
- Building E: North & West Elevation – A-E008 Revision B dated 1/2/16
- Building E: South & East Elevation – A-E009 Revision B dated 1/2/16

- Building F: Ground & First Floor Plan – A-F001 Revision C dated 5/4/16
- Building F: Second & Roof Floor Plan – A-F002 Revision C dated 5/4/16
- Building F: Elevations – A-F003 Revision C dated 1/2/16

ITEM 3 - ATTACHMENT 1 CONDITIONS OF CONSENT.

- Building G: Ground Floor Plan – A-G001 Revision B dated 1/2/16
- Building G: First Floor Plan – A-G002 Revision B dated 1/2/16
- Building G: Second Floor Plan – A-G003 Revision B dated 1/2/16
- Building G: Third Floor Plan – A-G004 Revision B dated 1/2/16
- Building G: Fourth Floor Plan – A-G005 Revision B dated 1/2/16
- Building G: Fifth Floor Plan – A-G006 Revision B dated 1/2/16
- Building G: Roof Plan – A-G007 Revision B dated 1/2/16
- Building G: North & West Elevations– A-G008 Revision B dated 1/2/16
- Building G: South & East Elevations– A-G009 Revision B dated 1/2/16
- Building H: Ground & First Floor Plan – A-H001 Revision B dated 1/2/16
- Building H: Second & Roof Plan – A-H002 Revision B dated 1/2/16
- Building H: Elevations – A-H003 Revision B dated 1/2/16

Engineering Plans prepared by MPC Consulting Engineers Job No. 15-123

- Sedimentation & Erosion Control Plan Stage 1 Drawing No. C01.00 Issue 2 dated 8/1/15
- Sedimentation & Erosion Control Details Stage 1 Drawing No. C02.00 Issue 1 dated 17/12/14
- Stormwater Plan Stage 1 Drawing No. C03.00 Issue 22 dated 8/1/15
- Stormwater Details Stage 1 Drawing No. C04.00 Issue 1 dated 17/12/14
- Pavement Plan Drawing No. C05.00 Issue 1 dated 17/12/14
- Stormwater Plan Stage 2 Drawing No. C101.00 Issue 0 dated 24/4/16
- Sedimentation & Erosion Control Plan Stage 2 Drawing No. C100.00 dated 24/4/16
- Sedimentation & Erosion Control Details Stage 2 Drawing No. C100.5.00 dated 24/4/16

Bushfire Threat Assessment prepared by RPS dated December 2010

BASIX Certificate Number 517588M_02 dated 11 April 2016

Seven Part Test prepared by Wildthing Environmental Consultants Job No: 12122 dated July 2013

Traffic Assessment Report prepared by TPK & Associates dated December 2010

Landscaping Plan prepared by Lee Rowan's Landscaping (as amended by applicant including Hollow Bearing Tree retention Plan), dwrg no. LA3:02

Disability Access Report prepared by Lindsay Perry Access & Architecture Ref 1413 dated 18 February 2014

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

5. 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

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impact of adjoining properties and shall not be placed on the road reserve, without separate approval from Council.

6. Construction work that is likely to cause annoyance due to noise is to be restricted to the following times:-

- * Monday to Friday, 7am to 6pm;
- * Saturday, 8am to 1pm;
- * No construction work to take place on Sunday or Public Holidays.

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

7. 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 building works.
8. A waste containment facility shall be provided on the construction site immediately after the first concrete pour for the building and is to be regularly serviced. The construction site is to be adequately protected and drainage controlled to ensure that erosion and sediment movement is kept on your site. Construction sites without appropriate erosion and sediment control measures have the potential to pollute the waterways and degrade aquatic habitats. Offenders will be issued with an 'on the spot' fine under the Protection of the Environment Operations Act 1997.

Note: Erosion and sediment control measures prepared in accordance with the Erosion and Sediment Control Regional Policy and Code of Practice or Managing Urban Stormwater – Soils and Construction produced by Landcom 2004, need to be maintained at all times. A copy of Landcom 2004 bluebook may be purchased by calling (02) 98418600.

9. Landscaping shall be carried out in accordance with the approved Landscape Plan. A qualified landscape designer must provide a compliance certificate to the Principal Certifying Authority certifying that the landscaping has been carried out in accordance with the approved plan, **prior to the issue of the Occupation Certificate**. Where Council is not the Principal Certifying Authority, a copy of the certificate must be provided for Council's records.
10. In addition to the plantings indicated on the approved landscape plan, Forty (40) replacement Koala feed trees (minimum 75L pot size) to replace the trees removed from the site shall be planted **prior to the issue of the occupation certificate**. Replacement trees are to be maintained to maturity through use of mulch and watering to achieve their natural height.
11. A fauna ecologist shall be employed to supervise the removal of all trees and to advise the site manager and tree clearing staff of any habitat potential and precautions necessary during tree felling. The following strategies need to be employed to mitigate the effect of this clearing on native fauna that occur on the site:
- Prior to removal of habitat trees licensed wildlife carers or consultants shall relocate any fauna species.

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- A hollow-bearing tree plan is to be submitted to **council prior to the issue of a Construction Certificate.**
 - Clearing of hollow-bearing and nesting trees should be restricted to Autumn or Winter months so as to avoid dislocation of wildlife during breeding seasons.
 - Remove and modify hollows and nests from felled trees and re-establish these on the site or as near as possible to the site to provide compensatory habitat. This could include mounting of hollows& nests on trees or poles, or on other buildings or structures.
 - Where original hollows cannot be retained, artificial nesting boxes must be provided to provide compensatory habitat at a ratio of 2:1.
 - In circumstances where native fauna is detected during the removal of habitat trees, clearing should cease until a licensed wildlife carer or consultant relocates the fauna species.
 - Should a threatened species be positively identified, all clearing works shall cease until a plan of management for the possible relocation of the species has been approved by council in consultation with the Office of Environment & Heritage.
 - Where in spite of precautions, wildlife is injured, the fauna ecologist is to take the necessary action to treat the animal, which may include veterinary treatment or transfer of the animal to a volunteer wildlife carer group such as the Native Animal Trust Fund or Hunter Koala Preservation Society.
12. All tree protection works including protective fencing shall be carried out before excavation, grading and site works commence. Stockpiling or storage or mixing of materials, vehicle parking, disposal of liquids/materials shall not occur within the dripline of trees identified to remain on the site.
13. The common fencing along the southern boundary of the site and the Ash Street development stormwater detention area shall be modified to allow the potential for safe movement of koalas to the site. The preferred option for minimising restrictions to safe koala movement is that there be no fencing, however noting the need for some site security suitable fencing may include:
- i. fences where the bottom of the fence is a minimum of 200mm above ground level that would allow koalas to move underneath;
 - ii. fences that facilitate easy climbing by koalas; for example, sturdy chain mesh fences, or solid style fences with timber posts on both sides at regular intervals of approximately 20m; or
 - iii. open post and rail or post and wire (definitely not barbed wire on the bottom strand).
14. Prior to occupying the approved Seniors Living dwelling(s), contact Council's Mapping Section via email at: addressing@portstephens.nsw.gov.au stating your Development Approval number, address of the property and the assessing officer, to obtain the correct house numbering. Be advised that any referencing on Development Application plans to house or lot numbering operates to provide identification for assessment purposes only.

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- 15A. The development shall provide **129** on-site car parking spaces, including disabled parking spaces. Car parking must be **provided prior to the issue of the occupation certificate or use of the development.**

The design of parking spaces, access and manoeuvring areas are to be in accordance with Council's Development Control Plan and AS 2890 as applicable.

- a) Required access and manoeuvring areas are to be designed for swept path clearances for the 85th percentile vehicle per AS 2890.1 2004.
 - b) Visitor parking spaces are to be located in proximity to the building entrance and clearly linemarked and signposted.
 - c) Disabled parking spaces are to be designed in accordance with AS 2890.6 2009 and be located in proximity to the building and be clearly linemarked and signposted.
 - d) Loading/unloading areas are to be separated from parking and storage areas. Loading areas must be designed, with a minimum length of 8.8m, to accommodate appropriate turning paths in accordance with AS 2890.2 2002.
16. The development shall comply with all recommendations outlined in the Disability Access Report prepared by Lindsay Perry Access & Design dated 18 February 2014.
- The qualified access adviser shall certify that the access and facilities has been constructed in accordance with the submitted design details and report, **prior to the issue of the occupation certificate.**
17. The stormwater system, including any water quality or quantity components, shall be maintained in perpetuity for the life of the development.
18. Advisory signs shall be prominently located adjacent to the stormwater detention area detailing the purpose of the system, the depth indicators and warning of dangers associated with the detention basin.
19. All civil engineering works shall be carried out in accordance with the Construction Certificate and Council's Design and Construction Specification, Policies and Standards, to the satisfaction of Council or the Certifying Authority **prior to the issue of the Occupation Certificate.**

CONDITIONS RELATING TO ISSUE OF CONSTRUCTION CERTIFICATE**PLANNING**

- 20A. A monetary contribution is to be paid to Council, pursuant to section 80A(1) of the *Environmental Planning and Assessment Act 1979*, Section 94 of the *Environmental Planning and Assessment Act 1979*, and Councils Section 94 Contribution Plan towards the provision of the following public facilities:

Per dwelling

Total

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Civic Administration	\$557.50	\$55,750
Public Open Space, Parks and Reserves	1,156.00	115,600
Sports and Leisure Facilities	2,726.00	272,600
Cultural and Community Facilities	1,370.00	137,000
Fire & Emergency Services	111.00	11,100
Roadworks	307.80	30,780

Total for the development	\$6,228.00	\$622,830
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Stage One – 26 units

Civic Administration	\$557.50	\$14,495
Public Open Space, Parks and Reserves	1,156.00	30,056
Sports and Leisure Facilities	2,726.00	70,876
Cultural and Community Facilities	1,370.00	35,620
Fire & Emergency Services	111.00	2,886
Roadworks	307.80	8,003

Total	\$6,228.00	\$161,936
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Stage Two – 20 units

Civic Administration	\$557.50	\$11,150
Public Open Space, Parks and Reserves	1,156.00	23,120
Sports and Leisure Facilities	2,726.00	54,520
Cultural and Community Facilities	1,370.00	27,400
Fire & Emergency Services	111.00	2,220
Roadworks	307.80	6,156

Total	\$6,228.00	\$124,566
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Stage Three – 34 units

Civic Administration	\$557.50	\$18,955
Public Open Space, Parks and Reserves	1,156.00	39,304
Sports and Leisure Facilities	2,726.00	92,684
Cultural and Community Facilities	1,370.00	92,684
Fire & Emergency Services	111.00	3,774
Roadworks	307.80	10,465

Total	\$6,228.00	\$211,762
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Stage Four – 20 units

Civic Administration	\$557.50	\$11,150
Public Open Space, Parks and Reserves	1,156.00	23,120
Sports and Leisure Facilities	2,726.00	54,520
Cultural and Community Facilities	1,370.00	27,400
Fire & Emergency Services	111.00	2,220
Roadworks	307.80	6,156

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Total **\$6,228.00** **\$124,566**

Contributions are to be paid **prior to the issue of a Construction Certificate for each stage.**

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

21. A Construction Management Plan shall be submitted and approved by Council, **prior to the issue of the Construction Certificate.** The construction management plan shall specify operational details to minimise any potential impact to adjoining properties. The construction management plan should include but not limited to the following information:- Construction techniques, noise and vibration management, storage of equipment and building materials, hours of work, primary route for truck movements, etc.
22. The trees marked on the approved tree retention plan and hollow bearing tree retention plan shall be retained. The trees must be clearly identified on the site prior to commencement of work. A detailed tree management plan will be submitted for all trees to be retained on site and shall be approved by Council **prior to issue of the Construction Certificate.** The tree management plan will address:-

SULE Safe Useful Life Expectance

Tree protection measures including fence design

Tree valuations (community based) using the Draft Australian standard DR 99307 Amenity Trees - Guide to Valuation

Remediation of the trees to be retained including pruning and mulching works

Tree hazard evaluation form consistent with the International Society of Arboriculture including photographs

ENGINEERING

23. Where car spaces are adjacent to obstructions greater than 150mm, a further clearance of 300mm shall be provided in accordance with Australian Standard AS2890.1 :2004. Details shall be submitted and approved by the Certifying Authority **prior to the issue of the Construction Certificate.**
- 24A. CONDITION DELETED UNDER APPLICATION NO. 16-2016-757-2
- 25A. CONDITION DELETED UNDER APPLICATION NO. 16-2016-757-2
26. The development shall provide a safe pedestrian connection from the development site to the frontage of Soldiers Point Road. The pedestrian connection shall be separate to that of the vehicle travel path. A 1.2m wide footpath shall be

ITEM 3 - ATTACHMENT 1 CONDITIONS OF CONSENT.

constructed from the development, along side the battleaxe handle and connect to the footpath within the road reserve in Soldiers Point Road. Grades to be in accordance with the State Environmental Planning Policy (Housing for seniors or People with a Disability) 2004. Details shall be submitted and approved by the Certifying Authority **prior to the issue of the Construction Certificate.**

27. The stormwater detention system shall be designed and built in accordance with the approved concept plans and the table provided below. A staged orifice structure shall be provided that restricts site discharge to pre-development flows as per the minor and major events listed in the table. Full calculations shall be provided demonstrating that the staged discharge rates are achieved (i.e. minor volume up to minor events discharges at minor discharge rate and volume in excess of minor volume discharges at a rate at equal to or below major discharge rate).

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

Details shall be submitted and certified by a suitably qualified and practising drainage engineer, and approved by the Certifying Authority **prior to the issue of the Construction Certificate.**

Average recurrence interval	PSD (l/s_ per site)	Storage site specific (m3) per site
10	150	70.3
100	150	220

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

A Construction Certificate cannot be issued until full details of the stormwater detention system have been provided to the Certifying Authority for assessment and determined to be satisfactory by the Certifying Authority.

29. A bio- retention basin shall be incorporated into the onsite detention system with a filter area of 100m2 with a filter depth of 0.45m as per the 'water quality assessment' dated 3rd March 2014 by Peter Sullivan & Associates Pty Ltd. The filter volume shall be additional to the storage volume required for the onsite detention. Details shall be submitted to the Certifying Authority for approval **prior to the issue of the Construction Certificate.**
30. The construction of the bio-retention water quality structure shall be in accordance with the Water by Design -Construction and Establishment Guidelines: swales, bio-retention systems and wetlands document. Design details shall be approved **prior to the issue of the Construction Certificate.**
31. All storm events up to the 1% AEP critical storm duration shall be safely diverted around the retaining walls and conveyed from the North Western corner of the lot to the onsite detention basin via the use of catch drains, storm water pipes and the like. Details shall be submitted to the Certifying Authority for approval **prior to the issue of the Construction Certificate.**

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32. A Soil and Water Management Plan in accordance with "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.**

33. All works required to be carried out within a public road reserve must be separately approved by council under Section 138 of the Roads Act 1993.

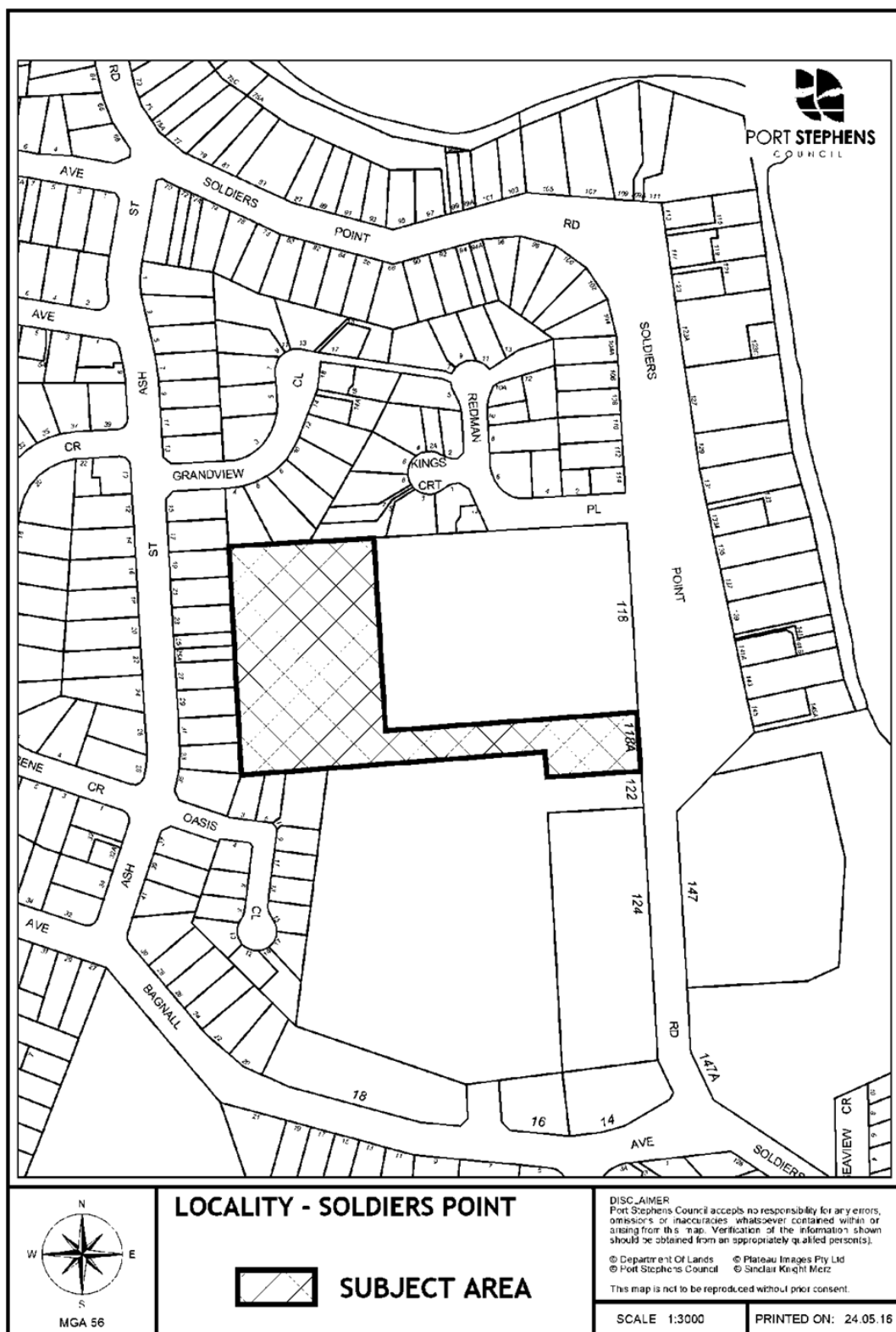
Engineering Plans for the required work within a public road must be prepared and designed by a suitably qualified professional, in accordance with council's 'Infrastructure Design and Construction Specifications -AUS Spec' and section B of Development Control Plan 2007.

The required works to be designed are as follows:

- a) The bus stop on the western side of Soldiers Point Road approximately 90m south of the development shall be upgraded to ensure it complies with the Disability Discrimination Act 1992.
- b) Traffic control plans in accordance with the Roads and Traffic Authority - Traffic Control at Worksites Manual.
- c) Payment of applicable fees and bonds; and
- d) Contractor's public liability insurances to a minimum of \$10 million

The engineering plans must be approved by Council **prior to the issue of the Construction Certificate required under this consent.**

34. The person having the benefit of the development consent shall create an easement for a right of way on the title of the subject property under Section 88B of the Conveyancing Act 1919. The right of way is to apply to the footpath area as shown on the Site Master Plan Drawing Number A-M014 Revision B prepared by GWH Build dated 1/2/16, to allow public access to the Soldiers Point Bowling Club. Council is to be named as the authority whose consent is required to release, vary or modify the restriction. The 88B instrument is to be registered **prior to issue of the Occupation Certificate** for the final stage of the development.



ITEM 3 - ATTACHMENT 3 PLANNING ASSESSMENT REPORT.

ATTACHMENT 3 – PLANNING ASSESSMENT REPORT

1.0 APPLICATION DETAILS

Development Application Number	16-2013-757-2
Development Description	Section 96(1A) amendment to approved seniors living village (100 units) - Modification to the staging, external elevations and building layouts
Applicant	GWH BUILD PTY LTD
Date of Lodgement	01/10/2015
Property Address	118A Soldiers Point Road SOLDIERS POINT, 118 Soldiers Point Road SOLDIERS POINT
Lot and DP	LOT: 2 DP: 627638, LOT: 1 DP: 627638
Current Use	Vacant Land
Zoning	RE2 PRIVATE RECREATION
Site Constraints	Bushfire, Acid sulfate soils, Koala habitat – buffer
Number of Submissions	Four
Designated Development	The application does not constitute designated development
Integrated Development	The application requires approval under s.91 of the EP&A Act from the NSW Rural Fire Service
Recommendation	Approval
Assessing Officer	PRISCILLA EMMETT

1.1 Background

Development consent was granted by Council at its meeting on 15 April 2014 for a seniors living development (100 Units) at 118 & 118A Soldiers Point Road, Soldiers Point. The development comprises a three staged development of ten building blocks, as follows:

- Stage 1 - construction of building A on the southern part of the site (20 x 2 bedroom units), building B (community building and pool and 6 x 1 bedroom units) and associated parking.
- Stage 2 – construction of buildings D and E (2 x 3 bedroom units, 28 x 2 bedroom units and 11 x 1 bedroom units) and associated parking.
- Stage 3 - construction of buildings C and F (13 x 3 bedroom units, 15 x 2 bedroom units and 5 x 1 bedroom) and associated parking.

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A Construction Certificate (Number CN140557) was issued by a Private Principal Certifying Authority (PCA) on 3 February 2016, for Stage 1 of the development (buildings A and B).

The section 96 application (16-2013-757-2) was received by Council on 1 October 2015, seeking modifications to the staging of the development, external elevations and building layouts. A site inspection conducted as part of the assessment identified that construction works had commenced on site for buildings A and B, and it was identified that the works undertaken on the site were not consistent with the approved plans. These include amendments to the internal layout, building footprint (including setbacks) and building facade. Council expressed these concerns with the Private Certifier and the applicant and requested additional information and overlay plans, to clearly visualise the variations to the development. An assessment of the overlay plans was undertaken and a detailed summary of the inconsistencies with the approval was sent to the Certifier on 21 January 2016. In addition, Council sent a complaint to the Building Professionals Board on 2 February 2016 about the Certifier. The complaint is still under investigation by the Board and the compliance issues on site are being dealt with separately to this development application.

The buildings currently under construction can be seen in photos one and two below. The area of the site which will contain the remaining three stages is shown in photo three below.



Photos one and two: Buildings A and B currently under construction

16-2013-757-2



Photo three: The area of the site yet to be constructed upon.

1.2 Proposal

The proposed modification to the approval involves:

- Staging – modification of the staging plan from the approved three stages, to four stages.
- Car parking – the parking layout is to be modified to better facilitate the staging of the development. The modification results in one additional car parking space to be provided on the site, with a total of 129 spaces.
- Consolidation of buildings in block F – the approved block F consists of four buildings. The proposal is to consolidate these buildings, resulting in one building for block F and a new block H. The buildings have been combined to improve privacy issues between the units (on the site) and building separation issues. It will also assist with improving access for emergency vehicles to this part of the site.
- Communal space – a communal open space area has been provided within the centre of the development, which includes the provision of a seating area and bbq facilities. This area will provide additional amenity for the residents.
- Unit mix – the size and layout of the units has been amended based on the market demand associated with the early sales for the development. A summary of the changes to the unit mix is shown in the table below:

	Approved units	Proposed units	Change
1 bedroom units	19	0	-19
2 bedroom units	65	83	+18
3 bedroom units	16	17	+1
TOTAL	100	100	0

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- External facade – modification has been proposed to the appearance of the development to enable a more contemporary design. This includes enlarging the size of the balconies, amending the style of the handrails, changing the curved roof form of the buildings to a combination of hip and gable elements and addition of featured privacy screens into the facade of the buildings.
- Footprint and setbacks – the footprint and setback of the development has been amended as detailed in the table below.

	Approved setback	Proposed setback
Eastern setback (adjoining the Club carpark)	Building F – 5m Building A – 7.5m Building B – 11m	Block F and H – 1.025m Building A - 982mm Building B – 982mm
Northern setback	Building E (now G) – 10.2m Building F (now H) – 8.4m	Block G - 8m Block H – 6m
Western setback	Building C, D (now E) and E (now G) – 13.1m Building A - 4m	Block C, E and G (previously F) – 9.3m Building A - 6.4m
Southern setback	Building A – 8m	Building A – 3.9m to the stairwell

- Pedestrian walkway – a walkway has been included along the southern boundary of the site at the request of adjacent neighbours, which links to the Oasis Close walkway and provides access to the Soldiers Point Bowling Club. The applicant and owner of the site have agreed to create an easement over this land so that legal access is available for the public.
- Storage areas – addition of storage cages in the parking areas. Storage was not included in the original design of the development.
- Pump station – a pump station has been added to the development to install the relevant services required on the site. This is located towards Soldiers Point Rd, in the area located between the driveway and the adjacent property.

Amended architectural and engineering plans were submitted with the application. New BASIX certificates were also supplied with the application to ensure that the provisions of SEPP (Building Sustainability Index: BASIX) 2004 have been complied with.

2.0 PLANNING ASSESSMENT

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

Environmental Planning and Assessment Act 1979

Section 91 - Integrated Development

A Bushfire Safety Authority and General Terms of Approval were issued for the development on 15 January 2014 with no general terms of approval required. The section 96 modification was referred to the RFS in accordance with the requirements of Clause 120 of the *Environmental Planning and Assessment Regulation 2000* and the RFS responded on 4 November 2015 and issued the general terms of approval without any specific conditions.

Section 96(1A)

The application is considered to be substantially the same development, as to that development for which consent was originally granted, for the following reasons:

- The number of units in the seniors living development remains the same. However, the internal floor layout of the development has been amended. As the context of the development for seniors living has not changed, the amendments to the floor layout are acceptable and within the scope of a section 96 application.
- The bulk and scale of the development is generally consistent with the approved plans. Quantitative changes have been made to the footprint and setbacks of the buildings; however these are within the scope of a section 96 application as the intent of the use and general location of the buildings remains in a similar location, without causing additional environmental impacts.
- The visual impact of the development remains the same.
- The car parking numbers on site and the impact on the street network generally remain the same, with only one additional parking space being provided on site.
- The change to the facade and external appearance of the development does not fundamentally change the characteristic and essence of the buildings. These amendments will not create an unacceptable impact on the streetscape.

The modification to the approved consent has minimal additional environmental impacts, when compared to the original application. It is noted that even though the proposal involves a number of changes to the development, a modification under s96(1A) is appropriate as this clause in the Act relates to the environmental impacts of the proposal, not the scale or number of changes. It is also noted that an application under s96(2) of the Act for 'other modifications' requires consideration of the same issues as s96(1A) applications. The proposed changes to the development do not have any additional impacts on the environment, such as privacy, height and overshadowing which have already been considered in detail under the original application. On this basis, the application is considered to be an amendment to the design and can be assessed under section 96(1A) of the Act.

Section 79C(1)(a)**Environmental planning instruments (s.79C(1)(a)(i))****State Environmental Planning Policy –Housing for Seniors or People with a Disability 2004**

A Site Compatibility Certificate was issued by the Director General NSW Planning & Infrastructure on 15 November 2013, which permitted seniors housing development on the site on the basis that certain criteria was met. This criteria was met and addressed in the approved development application.

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The key development standards in the SEPP have been considered in the assessment of the modified development application and are shown in the table below:

Requirement	Proposed modification
Development Standards	
Minimum lot size – 1000m ²	1.6 ha (Lot 2) - Complies
Site frontage – 20m	20m to Soldiers Point Rd, and 136m at rear of site - Complies
Standards that cannot be used as grounds for refusal (if the application is below the following standards)	
FSR – 0.5:1	0.59:1 (Original application FSR 0.47:1)
Landscaped area – 30% of site	Site coverage 39.7%, leaving 60.1% of the site for landscaping
Deep soil zone – 15% of the site	A minimum of 15% of the site is provided as a deep soil zone
Height – 8m	The height of the development has increased by approximately 1.8m at a maximum in part of the development. This is only due to change in roof form from flat and curved to hip and gable. The height of the floor levels has not changed so there are no changes to accessibility issues on the site.
Solar access – 70% of dwellings to have 3 hours sunlight	A minimum of 70% of the dwellings have over 3 hours access to sunlight
Private open space – 10 to 15m ² per dwelling	Balconies have been provided to all units. In addition, communal open space has been provided on the site.
Parking – 0.5 spaces per bedroom	129 spaces have been provided. This is in excess of the required parking numbers.
Design principles	
<p>The design principles of neighbourhood amenity and streetscape, visual and acoustic privacy, stormwater, crime prevention, accessibility and waste management need to be addressed in the development.</p> <p><i>Comments:</i> The above principles were considered in the assessment of the original development application. The elements of the development that are proposed to be</p>	

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modified have also been considered under the above principles. Amendments were made to the plans to address privacy impacts to the properties to the north, through amending the side setback of building G and adding additional planting and privacy screens to building H. A northern balcony has also been deleted from the plans.

The design has been amended to provide better visual and acoustic amenity between the units on the subject site. A number of amendments were also made to improve the visual elements of the design such as the altering the balcony layouts, handrails and roof form which results in a more contemporary design when compared to the original approval. The additional pedestrian walkway on the site also assists with accessibility through the site from Oasis Close and the western part of Soldiers Point.

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

State Environmental Planning Policy No.71 Coastal Protection (SEPP71) aims to ensure that development in coastal areas protects and preserves natural areas of the NSW coast. The site is located within the NSW Coastal Zone as identified under the Coastal Protection Act 1979 (NSW). As such the provisions of SEPP71 apply to the proposed modified development.

Clause 8 of the SEPP prescribes matters for consideration for a consent authority to address where assessing development located within the coastal zone. The development has been assessed against the provisions of cl.8 and is determined to be satisfactory. The development does not impact upon coastal foreshores or public access to foreshores. Further, the development does not result in detrimental impacts upon the amenity of the coastal foreshore or the natural environment.

State Environmental Planning Policy – Building Sustainability Index (BASIX) 2004

The SEPP encourages sustainable residential development and requires the submission of a BASIX Certificate which considers the energy and water impacts of a development. Amended BASIX Certificates have been submitted with the application which meets the principles and objectives of the SEPP.

State Environmental Planning Policy No. 44 – Koala Habitat Protection

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 Koala Habitat within Port Stephens Council Comprehensive Koala Plan of Management (CKPoM). The CKPoM supersedes SEPP 44 as it was approved by the Council and the Director General of the Department of Planning. Compliance with CKPoM constitutes compliance with SEPP 44.

A detailed assessment of the impact on koala habitat was made under the original application and it was concluded that the 'site supported threatened flora and fauna, extenuating circumstances primarily being the nature of surrounding development has detrimentally isolated the site and the key species (koala and *C. dolingoides* as identified'. The application was subsequently approved by Council and a number of ecological conditions were placed on the consent to mitigate any impacts on flora and fauna.

ITEM 3 - ATTACHMENT 3 PLANNING ASSESSMENT REPORT.

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The modified application is not proposing to cause any additional ecological impacts on the site, as compared to the original approval. There are no ecological conditions on the consent that are required to be modified as part of this application.

Local Environmental Plan 2000 (LEP)

The planning instrument applying to the subject site at the time of approval was Port Stephens Local Environmental Plan 2000.

Port Stephens Local Environmental Plan LEP 2013 was gazetted on 22 February 2014 and Section 79C of the EP&A Act requires that the consent authority take into consideration environmental planning instruments that are of relevance to the development subject of the application. In this regard, LEP2013 is the relevant instrument in force at the time of the determination of the section 96(1A) modification and has been considered below.

Local Environmental Plan 2013 (LEP)Clause 2.3 Zone objectives and land use table

The site is zoned RE2 Private Recreation and the use is not permissible in the zone. However, the provisions of *State Environmental Planning Policy – Housing for Seniors or People with a Disability 2004* override the LEP and permit the development on the site. A detailed assessment of the application has been made under the SEPP.

Clause 4.3 – Height of buildings

The subject site has no maximum height limits prescribed.

Clause 7.1 - Acid sulphate soils

The site is mapped as having acid sulphate soils level 4 and 5 occurring on site. The impact on acid sulfate soils was considered under the original assessment and an additional assessment is not required as no changes are being made to the construction methods and depth of excavation works.

Clause 7.2 - Earthworks

The objective of clause 7.2 is to ensure that earthworks for which development consent is required will not have detrimental impact upon environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land. The bulk of the earthworks for the development have already occurred so it is anticipated that there will be no further impacts on neighbours or the environment as a result of the amendment to the design.

Clause 7.6 - Essential services

Clause 7.6 specifies that development consent cannot be granted unless essential services are available to the development. Arrangements for essential services are available to the development including, water, electricity, sewer, stormwater drainage and vehicular access. The proposal satisfies clause 7.6.

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

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

Development Control Plan 2013Part A1 – Introduction

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ITEM 3 - ATTACHMENT 3 PLANNING ASSESSMENT REPORT.

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A.1.10 – Developer Contributions

The development attracts developer contributions under s.94A of the *EP&A Act 1979* and in accordance with the Port Stephens Section 94 Development Contributions Plan. A condition has been imposed on the original consent and is to be modified as part of this application to reflect the revised staging plan.

A.1.9 – Community Participation

The modification to the development was notified to adjoining neighbours for a period of 14 days. A total of four submissions were received. The concerns raised within the submissions are discussed in a later section of this report.

Part B2 – Environmental and Construction Management

The application has been assessed against the provisions of Development Control Plan 2013 (DCP2013), B2 – Environmental and Construction Management and is considered satisfactory. The modified development does not result in additional environmental impacts and the conditions imposed on the original consent satisfactorily ensure that the development satisfies relevant legislation and policies.

Part B3 – Parking, traffic and transport

The number of parking spaces on site has been provided in accordance to the requirements of the SEPP, which overrides the parking controls of the DCP. A parking staging plan has been submitted with this modification to ensure that parking is provided on site to reflect the stages of the development.

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

There is no planning agreement that has been entered into under section 93F, and no draft planning agreement that a developer has offered to enter into under section 93F of the Act that relates to this development.

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

There are no relevant matters for consideration under s.79C(1)(a)(iv).

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

The modifications to the development will not have any additional adverse impacts on the built or natural environment compared to the original approved development. The amended design has allowed for further consideration to be made to the privacy impacts to the dwellings to the north and has allowed for the units to be redesigned providing greater internal amenity for the future residents.

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

The site is considered to be suitable for the proposed development as it is located within close proximity to services and facilities. In addition, the proposal meets the locational criteria under the SEPP - Housing for Seniors or People with a Disability.

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

The development application and accompanying information were placed on public exhibition for a period of 14 days. As a result of the notification process, a total of four submissions were received. The matters raised in the submissions are discussed in the table below and have been considered in the assessment of the application:

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ITEM 3 - ATTACHMENT 3 PLANNING ASSESSMENT REPORT.

16-2013-757-2

Issue	Comments
Description of the development modification as minor	This comment is made in relation to the application being submitted as a s96(1A) application. Section 96(1A) applications apply to modifications with minimal environmental impact and generally allow changes to design, internal layout and other aspects of the proposal. The main criteria to determine whether amendments can be made to an application is to whether the overall changes can be considered to be substantially the same development, as to that original approved. This issue has been considered in detail in the assessment of the application.
Inclusion of footpath is supported, however no easement is proposed over this footpath	The applicant has agreed to the provision of an easement over this footpath and a condition has been placed on the consent.
Changes in building footprint	The footprint of the approved buildings has been amended and these changes have been considered in the assessment of the application.
Unit size – concern over loss of one bedroom units and compliance with the SEPP	Two and three bedroom units are suitable for use as seniors housing. The SEPP does not specify the bedroom sizes of units.
Design changes are subjective and the opinion of the neighbours should be obtained	The neighbours were notified of the application and four submissions were received. The proposed changes to the style of the roof and facade of the building are supported as they offer future residents with better internal amenity and a more contemporary design.
The current works on site are having ecological impacts and the conditions of consent have not been complied with.	The proposed modification does not require any of the environmental conditions on the consent to be amended. Any concerns in regards to non compliance with the consent need to be forwarded onto the Private Certifier for investigation, which is a separate issue to this application. In addition, the proposed modification does not have additional ecological impacts beyond what has already been approved.
Concern over construction changes prior to approval of the section 96 application	This issue has been investigated and Council has made a complaint to the Building Professionals Board regarding the current building works on the site.
Side Setbacks – reduction will impact on privacy	This issue was discussed with the applicant and amended plans were submitted increasing the setback to 8m for Building G. The 6m setback of building H could not be amended due to BCA requirements. However the north facing balcony was removed and a

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ITEM 3 - ATTACHMENT 3 PLANNING ASSESSMENT REPORT.

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	privacy screen was added to minimise any overlooking of the adjacent properties.
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Public interest (s.79C(1)(e))

The proposed development is in the public interest as additional housing opportunities for seniors are provided for in a location that has suitable access to services and facilities.

3. RECOMMENDATION

An assessment of the application has been carried out under Section 79C(1) of the *Environmental Planning and Assessment Act, 1979* as amended. The proposed development is considered satisfactory in terms of the relevant matters for consideration under the Act and the section 96 modification 16-2013-757-2 is recommended for approval subject to conditions of consent.

4. MODIFIED CONDITIONS

The following conditions of consent are to be modified:

4. The reference to the approved plans has been changed with all amended plans being included in the table.

15. The development shall provide **129** on-site car parking spaces, including disabled parking spaces. Car parking must be **provided prior to the issue of the occupation certificate or use of the development.**

The design of parking spaces, access and manoeuvring areas are to be in accordance with Council's Development Control Plan and AS 2890 as applicable.

- a) Required access and manoeuvring areas are to be designed for swept path clearances for the 85th percentile vehicle per AS 2890.1 2004.
- b) Visitor parking spaces are to be located in proximity to the building entrance and clearly linemarked and signposted.
- c) Disabled parking spaces are to be designed in accordance with AS 2890.6 2009 and be located in proximity to the building and be clearly linemarked and signposted.
- d) Loading/unloading areas are to be separated from parking and storage areas. Loading areas must be designed, with a minimum length of 8.8m, to accommodate appropriate turning paths in accordance with AS 2890.2 2002.

20. The condition relating to the section 94 contribution has been amended to reflect the revised staging of the application.

- 24 and 25. These conditions have been deleted as the car parking requirements have been included in condition 15 above.

The following condition has been added to the consent:

34. The person having the benefit of the development consent shall create an easement for a right of way on the title of the subject property under Section 88B of the Conveyancing Act

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ITEM 3 - ATTACHMENT 3 PLANNING ASSESSMENT REPORT.

16-2013-757-2

1919. The right of way is to apply to the footpath area as shown on the Site Master Plan Drawing Number A-M014 Revision B prepared by GWH Build dated 1/2/16, to allow public access to the Soldiers Point Bowling Club. Council is to be named as the authority whose consent is required to release, vary or modify the restriction. The 88B instrument is to be registered **prior to issue of the Occupation Certificate** for the final stage of the development.

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ITEM 3 - ATTACHMENT 4 RURAL FIRE SERVICES CORRESPONDENCE.

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

Facsimile: 8741 5433



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

Your Ref: 16-2013-757-2
Our Ref: D15/3035
DA15101298901 JC

ATTENTION: Priscilla Emmett

4 November 2015

Dear Sir/Madam

**Integrated Development for 2 & 1/627638 118 & 118 A Soldiers Point Road
Soldiers Point**

I refer to your letter dated 7 October 2015 seeking general terms of approval for the above Integrated Development in accordance with section 96 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 without any specific conditions.

For any queries regarding this correspondence please contact Joshua Calandra on 1300 NSW RFS.

Yours sincerely

Jason Maslen
Team Leader

The RFS has made getting information easier. For general information on 'Planning for Bush Fire Protection, 2006', visit the RFS web page at www.rfs.nsw.gov.au and search under 'Planning for Bush Fire Protection, 2006'.

ITEM NO. 4

**FILE NO: 16/321372
RM8 REF NO: 58-2016-2-1**

MARSH ROAD, BOBS FARM - PLANNING PROPOSAL

REPORT OF: DAVID ROWLAND - STRATEGY AND ENVIRONMENT SECTION
MANAGER

GROUP: DEVELOPMENT SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Adopt the Planning Proposal at **(ATTACHMENT 1)** for the purposes of the Environmental Planning and Assessment Act 1979 (s55) (NSW) to enable a recreational facility (outdoor) as permissible with development consent at 775, 777 and 781 Marsh Road, Bobs Farm.
 - 2) Forward the Planning Proposal to the NSW Department of Planning and Environment seeking a Gateway Determination.
 - 3) Consider recreational facilities (outdoor) as a permissible use at certain locations within the Zone RU2 – Rural Landscape as part of a future housekeeping amendment to the Port Stephens Local Environmental Plan 2013.
-

**ORDINARY COUNCIL MEETING - 14 JUNE 2016
COMMITTEE OF THE WHOLE RECOMMENDATION**

	Councillor Ken Jordan Councillor John Morello That the recommendation be adopted.
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In accordance with Section 375 (A) of the Local Government Act 1993, a division is required for this item.

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

Those against the Motion: Nil.

**ORDINARY COUNCIL MEETING - 14 JUNE 2016
MOTION**

157	Mayor Bruce MacKenzie Councillor Chris Doohan It was resolved that Council: <ol style="list-style-type: none">1) Adopt the Planning Proposal at (ATTACHMENT 1) for the purposes of the Environmental Planning and Assessment Act 1979 (s55) (NSW) to enable a recreational facility (outdoor) as permissible with development consent at 775, 777 and 781 Marsh Road, Bobs Farm.2) Forward the Planning Proposal to the NSW Department of Planning and Environment seeking a Gateway Determination.3) Consider recreational facilities (outdoor) as a permissible use at certain locations within the Zone RU2 – Rural Landscape as part of a future housekeeping amendment to the Port Stephens Local Environmental Plan 2013.
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In accordance with Section 375 (A) of the Local Government Act 1993, a division is required for this item.

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

Those against the Motion: Nil.

BACKGROUND

The purpose of this report is to advise Council of a request to amend Schedule 1 – Additional Permitted Uses of the Port Stephens Local Environmental Plan 2013 in regard to land described as 775, 777 and 781 Marsh Road, Bobs Farm to permit a recreational facility (outdoor) (with consent) for the purposes of a water ski park.

Date Lodged: 22 January 2016
Proponent: Griffiths Investment Properties
Subject land: 775, 777 and 781 Marsh Road, Bobs Farm
Lot, DP: Lot 12, DP 1071458 and Lot 223, DP 598773
Zoning: RU2 – Rural Landscape
Site Area: 22.3 hectares
Amendment: Additional Permitted Use – Recreational Facility (outdoor)

The site is currently operating as rural lands with a single detached dwelling.

The Planning Proposal (the Proposal) seeks to contribute to the existing tourism cluster that has developed within this locality by allowing a recreational facility

(outdoor) as permissible with consent on this site. This would then allow a development application for a water ski park to be considered by Council. The principal matters in considering the proposal relate to the strategic merit and the suitability of the land for the proposed additional use which will now be discussed.

Strategic Justification

Strong strategic justification is provided in the Proposal (**ATTACHMENT 1**), which could be summarised through the following points:

- Existing recreational facilities have created a tourism cluster at this location;
- A sample of other LEPs identified recreational facilities (outdoor) are commonly permitted with consent in Zone RU2 – Rural Landscape;
- Locations where recreational facilities (outdoor) are currently permitted with consent include business zones where outdoor recreational facilities, such as a water ski park would never be viable nor appropriate;
- The approach of allowing a recreational facility (outdoor) on this site is consistent with previous completed planning strategies, such as the Rural Residential Strategy, Rural Lands Strategy or Planning Proposal for the Standard Instrument Local Environmental Plan;
- The future consideration of this site as within a potential 'cluster' of tourism activities; and
- The application provides the means to advance the proposal ahead of a broader review of this tourism precinct as part of a future housekeeping amendment to the PSLEP 2013.

Suitability of the Land

The proposed amendment will allow a water ski park, which is consistent with surrounding land uses, which include the go-kart track located on the opposing side of Marsh Road and the golf course located on the corner of Cromarty Lane.

Other surrounding land uses also include residential dwellings, Bobs Farm Public School and floodplain forest to the north. The site has limited value as agricultural land and its proximity to the main arterial road (via Marsh Road) connecting Newcastle to the Tomaree Peninsula means it has exposure from passing traffic.

The proposal is not compatible with the flood prone nature of the land. The northern part of the site is identified as Swamp Mahoney (Paperbark Forest) and any proposal to alter this habitat would need to be considered as a part of a future Development Application. A water ski park is considered suitable with the tourism character of the locality and the low-lying nature of the land.

COMMUNITY STRATEGIC PLAN

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

MINUTES ORDINARY COUNCIL - 14 JUNE 2016

benefit of present and future generations.	Provide Development Assessment and Building Certification Services.
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FINANCIAL/RESOURCE IMPLICATIONS

There are no foreseen financial or resource implications for Council as a consequence of the recommendation of this report.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes		Stage 1 Rezoning Fees – 21 January 2016.
Reserve Funds	No		
Section 94	No		
External Grants	No		
Other	No		

LEGAL, POLICY AND RISK IMPLICATIONS

There are no foreseen legal, policy or major risk implications for Council as a consequence of the recommendations of this report. The most relevant legislation and policies are now discussed.

Environmental Planning & Assessment Act 1979 (EP&A)

Council is the relevant planning authority for making the plan under the Environmental Planning & Assessment Act 1979 (NSW). The proposal has followed the following process for amending a Local Environmental Plan, being:

EP&A Act 1979	Date	Comment
s54 Relevant Planning Authority	14 June 2016	Council Meeting Date.
s55 Planning Proposal		
s56 Gateway Determination		
s57 Community Consultation		
s58 Relevant Planning Authority to vary or Proceed		
s59 Making of Plan		

s117 Ministerial Directions

The Proposal (**ATTACHMENT 1**) lists consistencies and minor inconsistencies with those applicable ministerial directions. The Department will detail what consultation is required to address these consistencies as a part of the Gateway Determination.

Lower Hunter Regional Strategy (LHRS)

The Proposal is identified as a part of the Watagan Stockton & Wallarah Green Corridor and as a part of the Hunter City's Hinterland under the Draft Hunter Regional Plan. The site consists of managed land in turn the site only contains a small amount of remnant vegetation on its northern boundary.

The Proposal will not undermine the centres hierarchy contained within the LHRS. Lands of agricultural value are zoned RU1 – Primary Production, while lands of environmental significance are zoned an appropriate environment zone. The site is in close proximity to existing recreational facilities within the Bobs Farm Area, including a go-kart track, mini golf driving range and a shark/ray centre.

Port Stephens Planning Strategy (PSPS)

The proposal is consistent with Council's local strategic plan, being the Port Stephens Planning Strategy, which identifies land to the east of the site as the Tomaree Tourism and Lifestyle Growth Area.

As previously stated, Nelson Bay Road is the main arterial road that connects Newcastle to Nelson Bay. A number of tourism businesses have sought to situate along this road to take advantage of this main road exposure and proximity to those centres of tourism accommodation, such as Nelson Bay, Fingal Bay and Anna Bay.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that this proposed amendment is encouraging development on flood prone land.	Low.	The Proposal seeks to encourage development that is appropriate on flood prone land.	Yes.
There is a risk that the Proposal is moving ahead of a complete understanding of strategic merit being established.	Low.	The Proposal has strategic merit and the addition of recreational facilities (outdoor) will be considered within a future housekeeping amendment to the LEP.	Yes.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The Proposal is consistent with the LHRS and the PSPS. The PSPS is based on the principles of balancing environmental, social and economic needs as outlined by the Port Stephens Integrated Plans.

MERGER PROPOSAL IMPLICATIONS

The Proposal has no impacts on any potential merger with another Council.

CONSULTATION

The objective of the consultation period is to obtain feedback from stakeholders.

Internal

To date, consultation with key internal stakeholders has included the Natural Resources, Engineering and Economic Development Units.

External

The details of external consultation will be determined and undertaken in accordance with the gateway determination.

OPTIONS

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

ATTACHMENTS

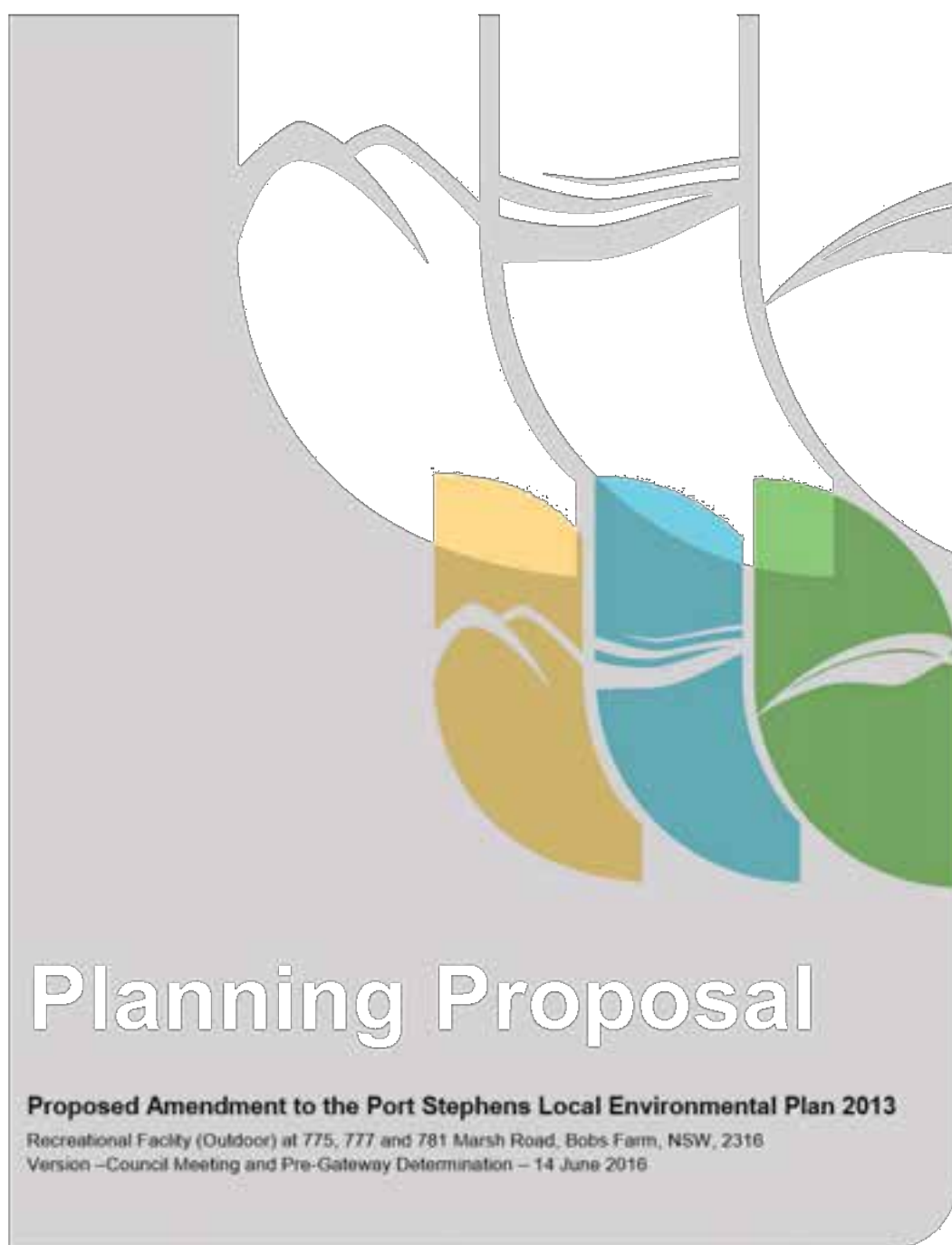
- 1) Planning Proposal.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.



Further Information:

Strategic Planning, Port Stephens Council
(02) 4980 0328
council@portstephens.nsw.gov.au



ITEM 4 - ATTACHMENT 1 PLANNING PROPOSAL.**FILE NUMBERS**

Council: 58-2016-2-1
Department: To be advised following Gateway Determination.

SUMMARY

Subject land: 775, 777 and 781 Marsh Road, Bobs Farm, NSW 2316
Lot, DP: Lot 14, DP 1071458 and Lot 223, DP 598773
Proponent: Griffiths Investment Properties
Total Area: 22.3Ha
Existing Zoning: RU2 Rural Landscape
Proposed Amendment: Insert *recreation facility (outdoor)* under Schedule 1 – Additional Permitted Uses at 781, 775 and 777 Marsh Road to permit (with consent) a water ski centre.
Delegation: To be advised following Gateway Determination.

BACKGROUND

A pre-lodgement meeting was held in relation to 775, 777 and 781 Marsh Road, Bobs Farm on 15 May 2015. The pre-lodgement meeting minutes were issued to the proponent and a planning proposal submitted to Council on 22 January 2016. The planning proposal was seeking to achieve the stated objective by placing a Schedule 1 – Additional Permitted Use for the site. The following information supports this proposal:

1. Traffic Impact Assessment;
2. Ecological Assessment;
3. Business Plan;
4. Flood/Stormwater Study;
5. Dust and Sediment Control Plan;
6. Bushfire Study;
7. Acid Sulphate Soils Assessment;
8. Acoustic Report; and
9. Archaeological Due Diligence Assessment.

No further information was requested as a result of internal referrals. After a strategic review of Council's Zone RU2 – Rural Landscape, it was considered more appropriate that recreation facilities (outdoor) be listed as an additional permissible use within the Zone RU2 – Rural Landscape. This has been based on a strong strategic justification, which primarily relates to the following:

- Existing recreational facilities have created an informal tourism cluster at this location as illustrated by **Figure 1 – Tourist Cluster Map** (p. 5);
- A sample of other LEPs identified recreational facilities (outdoor) are commonly permitted within consent in Zone RU2 – Rural Landscape;
- Locations where recreational facilities (outdoor) are currently permitted with consent include business zones where outdoor recreational facilities, such as a water ski park are unlikely to be viable nor appropriate;

ITEM 4 - ATTACHMENT 1 PLANNING PROPOSAL.

- The approach of allowing a recreational facility (outdoor) on this site is consistent with previous completed planning strategies, such as the Rural Residential Strategy, Rural Lands Strategy or Planning Proposal for the Standard Instrument Local Environmental Plan; and
- It is recommended that Council consideration in the near future of this site to be part of a potential 'cluster' of tourism activities. This application provides a unique opportunity to advance the proposal ahead of a broader review of this tourism precinct as part of a future housekeeping amendment to the PSLEP 2013.

Council Officers informed the proponent that recreational facility (outdoor) in the Zone RU2 – Rural Landscape could be considered as a future housekeeping amendment to the Port Stephens Local Environmental Plan 2013 (the LEP). However, given that the exact timing of this housekeeping LEP was unknown the proponent expressed that they would like the matter to be considered as a Schedule 1 – Additional Permitted Use Amendment to the LEP. This approach was verbally discussed with the NSW Department of Planning and Environment on 22 April 2016. The Department suggested that a Schedule 1 Amendment could be considered appropriate if Council committed to revisiting the broader merits of recreational facilities (outdoor) in this Rural Zone in the near future.

SITE

The site is known as 775, 777 and 781 Marsh Road and is visible from a predominant corner of Nelson Bay Road. The lots are legally described as Lot 14, DP 1071458; Lot 223, DP 598773; and Lot 26, DP 253796. The site is cleared land managed rural land. A residential dwelling is situated in proximity to Marsh Rd.

Residential dwellings are situated to the east, south and west of the site. An existing recreation facility (outdoor) in the form of a go-kart track is located to the south at 778 Marsh Road, Bobs Farm, which is surrounded by residential dwellings. Bobs Farm Public School is located at 764 Marsh Road, Bobs Farm. The north of the site has floodplain forest. Otherwise, the site is predominately cleared managed land that is surrounded by lots of varying sizes.

The site has direct access and frontage to Marsh Road, which is connected to Nelson Bay Road. Nelson Bay road is a classified road under the Roads Act 1993 and serves as the main arterial road connecting Newcastle to Nelson Bay. The site is not identified for a particular purpose or as an identified centre under the Port Stephens Planning Strategy (2011) or the Lower Hunter Regional Strategy (2006) (LHRS). Rather it is identified as a part of the Watagan Stockton & Wallarah Green Corridor. The site is also identified within the Hunter City's Hinterland under the Draft Hunter Regional Plan (HRP) (2015). This description of the site is illustrated by **Figure 2 – Site Plan** (p. 6).

PART 1 – Objective of the proposed Local Environmental Plan

ITEM 4 - ATTACHMENT 1 PLANNING PROPOSAL.

The objective of this proposal to enable a water ski park, which is defined as a recreational facility (outdoor) to be listed as permissible with development consent at 775, 777 and 781 Marsh Road, Bobs Farm.

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

The objective of this proposal will be achieved by amending the Port Stephens Local Environmental Plan 2013 (NSW) Schedule 1 – Additional Permitted Uses by inserting the following additional clause:

8 – Use of certain land at 775, 777 and 781 Marsh Road, Bobs Farm

- (1) This Clause applies to land at 775, 777 and 781 Marsh Road, Bobs Farm, being Lot 14, DP 1071458 and Lot 223, DP 598773
- (2) Development for the purpose of a recreational facility (outdoor) is permitted with consent.

Recreational facility (outdoor) is currently defined as follows under the LEP:

'Recreational facility (outdoor) means a building or place (other than a recreation area) used predominately for outdoor recreation, whether or not operational for the purposes of gain, including a golf course, gold driving range, mini-golf centre, tennis court, paint-ball centre, lawn bowling green, outdoor swimming pool, equestrian centre, skate board ramp, go-kart tract, rifle range, water-ski centre or any other building or place of a like character used for outdoor recreation (including any ancillary buildings), but does not include an entertainment facility or a recreation facility (major).'

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?**

The proposal is not the product of any strategic study or report.

However, a review of the Zone RU2 – Rural Landscape has been conducted and is included as **(Attachment 1)**. This review has identified that a recreation facility (outdoor) is an appropriate use within this rural zone. This strategic review has identified that they are an appropriate inclusion based on the following:

- Existing recreational facilities have created an informal tourism cluster at this location as illustrated by **Figure 1 – Tourist Cluster Map** (p. 5);
- A sample of other LEPs identified recreational facilities (outdoor) are commonly permitted within consent in Zone RU2 – Rural Landscape;
- Locations where recreational facilities (outdoor) are currently permitted with consent include business zones where outdoor recreational facilities, such as a water ski park are unlikely to be viable nor appropriate;
- The approach of allowing a recreational facility (outdoor) on this site is consistent with previous completed planning strategies, such as the Rural

FIGURE 1 – TOURIST CLUSTER MAP

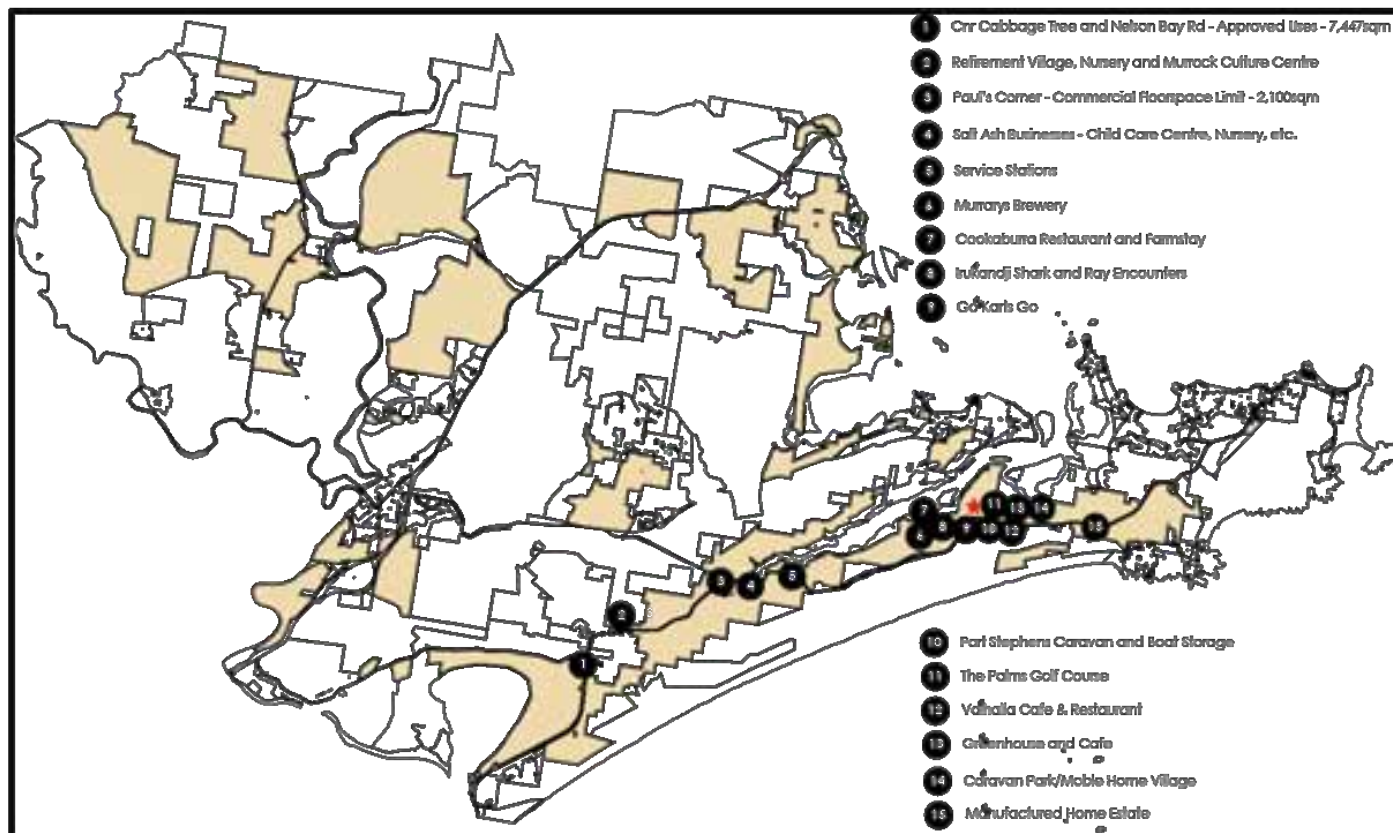
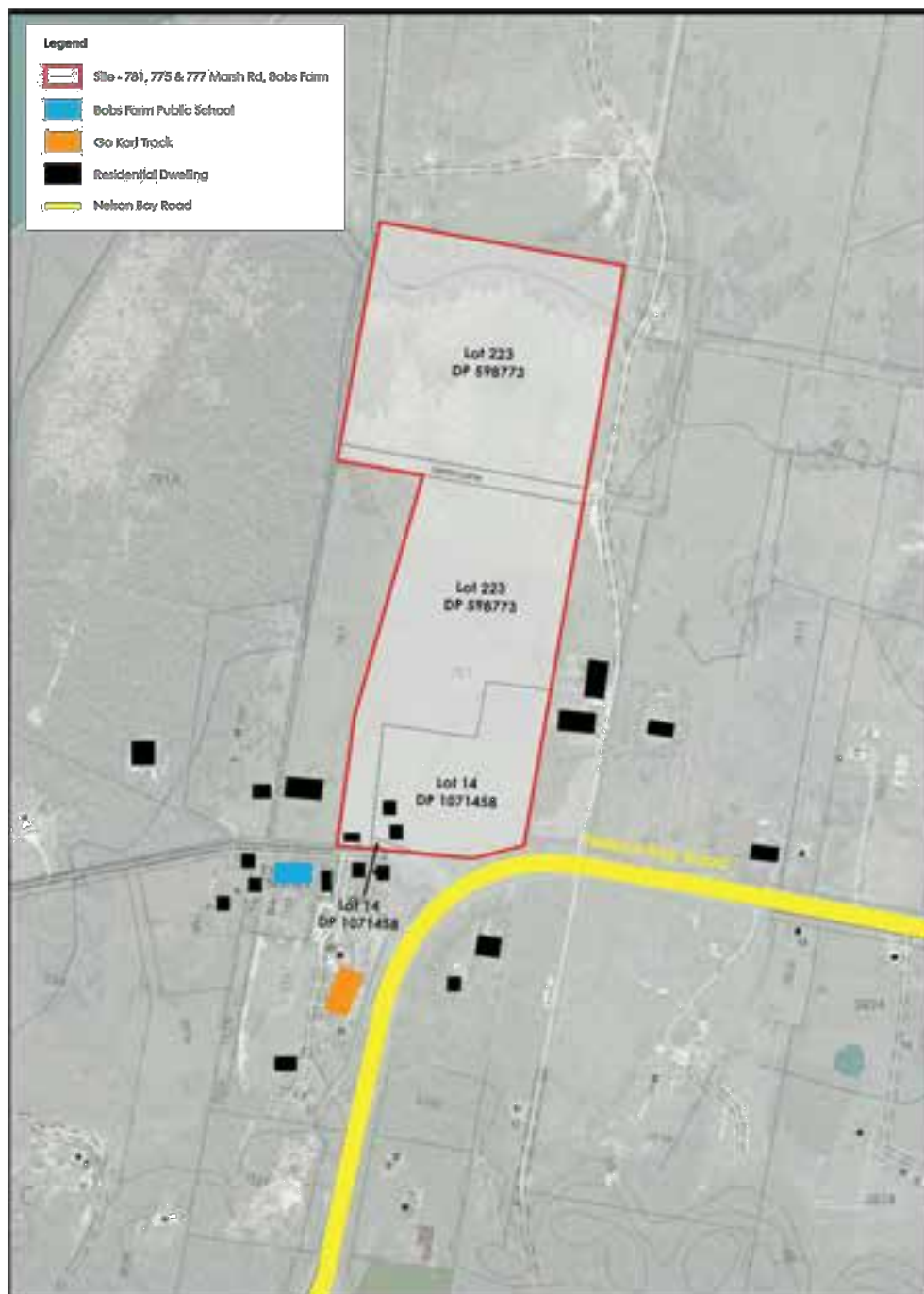


FIGURE 2 – SITE PLAN



ITEM 4 - ATTACHMENT 1 PLANNING PROPOSAL.

- Residential Strategy, Rural Lands Strategy or Planning Proposal for the Standard Instrument Local Environmental Plan; and
- It is recommended that Council consideration in the near future of this site to be part of a potential 'cluster' of tourism activities. This application provides a unique opportunity to advance the proposal ahead of a broader review of this tourism precinct as part of a future housekeeping amendment to the PSLEP 2013.

The Report to Council has sought to commit Council to addressing the wider strategic planning matter of recreational facilities (outdoor) in the Zone RU2 – Rural Landscape, which will be in the form of an upcoming Housekeeping LEP.

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

The other means to achieve the objective would be to list a recreational facility (outdoor) as permissible (with consent) within the Zone RU2 – Rural Landscape.

This approach is best driven by Council as part of a Local Government Area wide review. The Council Report that accompanies this Report commits Council to considering a recreational facility (outdoor) as a permissible use within the Zone RU2 – Rural Landscape through a more appropriate process as part of a future housekeeping amendment to the Port Stephens Local Environmental Plan 2013.

SECTION B – Relationship to Strategic Planning Framework

3. 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)?

The proposal is identified as a part of the Watagan Stockton & Wallarah Green Corridor and as a part of the Hunter City's Hinterland under the Draft Hunter Regional Plan (HRP) (2015). The site consists of managed land and in turn the site only contains a small amount of remnant vegetation on its northern boundary.

The proposal will not undermine the centres hierarchy contained within the LHRS. Lands of agricultural value are zoned RU1 – Primary Production, while lands of environmental significance are zoned an appropriate environmental zone. The site is in close proximity to existing recreational facilities, including a go-kart track, mini golf, driving range and a shark/ray centre.

4. Is the planning proposal consistent with a council's local strategy or other local strategic plan?

The proposal is consistent with the strategic direction that is provided by the Port Stephens Council. 2013, 'Integrated Plans', being to 'Balance the environmental, social and economic needs of Port Stephens for the benefit of present and future generations' and to 'Provide Strategic Land Use Planning Services'.

ITEM 4 - ATTACHMENT 1 PLANNING PROPOSAL.

The proposal is consistent with Council's local strategic plan, being the Port Stephens Planning Strategy (PSPS) (2011), which identifies land to the east of the site as the Tomaree Tourism and Lifestyle Growth Area. As previously stated, Nelson Bay Road is the main arterial road that connects Newcastle to Nelson Bay. A number of tourism businesses have sought to situate along this road to take advantage of this main road exposure and proximity to centres of tourism accommodation, such as Nelson Bay, Fingal Bay and Anna Bay.

5. Is the planning proposal consistent with the applicable State Environmental Planning Policies?

There are no existing or draft State Environmental Planning Policies (SEPPs) that prohibit or restrict the proposed development as outlined in this planning proposal.

An assessment of the SEPPs against the planning proposal is provided below:

SEPP	Relevance	Consistency and Implications
SEPP No 1 – Development Standards	Does not apply.	Clause 4.6 under the PSLEP2013 applies at the development application stage.
SEPP No 14 – Coastal Wetlands	Does not apply.	The land to which this proposal applies is not classified as coastal wetland.
SEPP No 15 – Rural Landsharing Communities	Does not apply.	This proposal is not seeking to draw from the provisions of this SEPP.
SEPP No 19 – Bushland in Urban Areas	Does not apply.	This SEPP does not apply to the Port Stephens Local Government Area.
SEPP No 21 – Caravan Parks	Does not apply.	The proposal is not seeking to draw from the provisions of this SEPP.
SEPP 26 – Littoral Rainforests	Does not apply.	The Port Stephens Local Government Area does not contain any that has been declared as littoral rainforest.
SEPP 29 – Western Sydney Recreation Area	Does not apply.	This SEPP does not apply to the Port Stephens Local Government Area.
SEPP 30 – Intensive Agriculture	Does not apply.	This SEPP is not proposing or will inhibit intensive agriculture.
SEPP 32 – Urban Consolidation (Redevelopment)	Does not apply.	This proposal does not apply to urban land.

ITEM 4 - ATTACHMENT 1 PLANNING PROPOSAL.

of Urban Land)		
SEPP 33 – Hazardous & Offensive Development	Does not apply.	The proposal does not relate to development that could be considered as 'potentially hazardous industry' or 'potentially offensive industry'.
SEPP No 36 – Manufactured Home Estates	Does not apply.	This proposal is not seeking to draw from the provisions of this SEPP.
SEPP No 39 – Spit Island Bird Habitat	Does not apply.	The land to which this proposal applies is not classified as spit island bird habitat.
SEPP 44 – Koala Habitat Protection	Applies.	Consistent. Any future development application will be required to address the requirements of the Port Stephens Comprehensive Koala Plan of Management (CKPoM).
SEPP 47 – Moore Park Showground	Does not apply.	This SEPP does not apply to the Port Stephens Local Government Area.
SEPP 50 – Canal Estate Development	Does not apply.	This proposal does not apply to land that can be defined as Canal Estate.
SEPP 55 – Remediation of Land	Applies.	Consistent. The proposal is not seeking to rezone land to a land use zone that would allow for sensitive land uses. Any future development application would be required to address the provisions of the SEPP.
SEPP 59 – Central Western Sydney Regional Open Space and Residential	Does not apply.	This proposal does not apply to land that is defined as the Central Western Sydney Regional Open Space and Residential.
SEPP 62 – Sustainable Aquaculture	Does not apply.	This proposal does not apply to development for land to which this SEPP applies.
SEPP 64 – Advertising and Signage	Does not apply.	This proposal does not involve advertising or signage.
SEPP 65 – Design of Quality of	Does not apply.	This SEPP applies to development defined as a residential flat building.

ITEM 4 - ATTACHMENT 1 PLANNING PROPOSAL.

Residential Apartment Development		
SEPP 70 – Affordable Housing (Revised Schemes)	Does not apply.	This SEPP does not apply to this proposal.
SEPP 71 – Coastal Protection	Consistent.	This proposal does not seek to intensify development in the coastal zone and any future development application will be subject to the provisions of this SEPP.
SEPP (Affordable Rental Housing) 2009	Does not apply.	This SEPP does not apply to this proposal.
SEPP (BASIX) 2004	Does not apply.	This SEPP applies at the development application stage.
SEPP (Exempt and Complying Development Codes) 2008	Does not apply.	This SEPP applies at the development application stage.
SEPP (Housing for Seniors or People with a Disability) 2004	Does not apply.	This SEPP applies at the development application stage.
SEPP (infrastructure) 2007	Does not apply.	This SEPP applies to significant types of infrastructure, which are listed in this SEPP.
SEPP (Kosciuszko National Park – Alpine Resorts) 2007	Does not apply.	This proposal does not apply to development for land to which this SEPP applies.
SEPP (Kurnell Peninsula) 1989	Does not apply.	This proposal does not apply to development for land to which this SEPP applies.
SEPP (Major Development) 2005	Does not apply.	This proposal is not defined as Major Development for the purposes of this SEPP.
SEPP (Mining, Petroleum Production and Extractive Industries) 2007	Does not apply.	This proposal does not apply to land that has been identified to have the potential to be used for mining, petroleum production or extractive industries.

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SEPP (Miscellaneous Consent Provisions) 2007	Does not apply.	This proposal does not propose to use any of the provisions under this SEPP.
SEPP (Penrith Lakes Scheme) 1989	Does not apply.	This proposal does not apply to development for land to which this SEPP applies.
SEPP (Rural Lands) 2008	Applies.	Consistent. This proposal is consistent with the rural planning principles outlined in this SEPP. Any potential land-use conflicts can be managed through the use of appropriate mitigation measures at the development application stage.
SEPP (SEPP 53 Transitional Provisions) 2011	Does not apply.	This proposal does not apply to development for land to which this SEPP applies.
SEPP (State and Regional Development) 2011	Does not apply.	This proposal is not defined as State and Regional Development for the purposes of this SEPP.
SEPP (Sydney Drinking Water Catchment) 2011	Does not apply.	This proposal does not apply to development for land to which this SEPP applies.
SEPP (Sydney Region Growth Centres) 2006	Does not apply.	This proposal does not apply to development for land to which this SEPP applies.
SEPP (Three Ports) 2013	Does not apply.	This proposal does not apply to development for land to which this SEPP applies.
SEPP (Urban Renewal) 2010	Does not apply.	This proposal does not apply to development for land to which this SEPP applies.
SEPP (Western Sydney Employment Area) 2009	Does not apply.	This proposal does not apply to development for land to which this SEPP applies.
SEPP (Western Sydney Parklands) 2009	Does not apply.	This proposal does not apply to development for land to which this SEPP applies.

6. Is the planning proposal consistent with the applicable Ministerial Directions?

ITEM 4 - ATTACHMENT 1 PLANNING PROPOSAL.

The proposal does not demonstrate any major inconsistencies with the applicable Ministerial Directions. Only a number of the Directions are applicable, which is demonstrated in the following table:

1. Employment and Resources		
Ministerial Directions	Application	Consistency and Implications
1.1 Business and Industrial Zones	This direction applies when a planning proposal will affect land within an existing or proposed business or industrial zone.	Does not apply. This does not involve any business or industrial zones and in turn does not apply.
1.2 Rural Zone	This direction applies when a proposal will affect land within an existing or proposed rural zone.	Consistent. The proposal will introduce an additional permitted use at a density of development that is permissible on site. This is believed to be of minor significance given that a recreational facility (outdoor) will only occur in a minority of circumstances and impacts can be further dealt with at the Development Application Stage.
1.3 Mining, Petroleum Production and Extractive Industries	This direction applies when a proposal will prohibit mining or restrict the development of resources.	Consistent. The proposal will not prohibit mining or restrict the development of resources.
1.4 Oyster Aquaculture	This direction applies to priority oyster aquaculture areas.	Does not apply. The proposal does not apply to land identified as priority oyster areas.
1.5 Rural Lands	This direction applies when the proposal will affect land within an existing rural zone.	Inconsistent. The proposal will affect land within the Zone RU2 – Rural Landscape. The Gateway Determination dated 26/06/15 has considered this to be of minor significance and that no further approval is required.
2. Environment and Heritage		
Ministerial Directions	Application	Consistency and Implications
2.1	This direction	Does not apply.

ITEM 4 - ATTACHMENT 1 PLANNING PROPOSAL.

Environment Protection Zones	applies to land in an environment protection zone or land otherwise identified for environment protection purposes.	The proposal does not apply to land in an environment protection zone or land otherwise identified for environment protection purposes.
2.2 Coastal Protection	This direction applies to a proposal that relates to land in a coastal zone.	Consistent. The proposal does apply to land in the coastal zone, but it is of minor significance because a development application for a major recreation facility (outdoor) will be assessed on its merits.
2.3 Heritage Conservation	This Direction applies to a planning authority that prepares a proposal.	Consistent. The site does not contain any heritage items nor is it situated within a heritage conservation area.
2.4 Recreation Vehicle Areas	This Direction applies to development for the purpose of a recreation vehicle area.	Does not apply. The proposal does not relate to development for the purpose of a recreation vehicle area.
3. Housing, Infrastructure and Urban Development		
Ministerial Directions	Application	Consistency and Implications
3.1 Residential Zones	This Direction applies to a proposal that will affect land within an existing residential zone or another zone where significant residential development is permitted.	Does not apply. The proposal only relates to land that is zoned RU2 – Rural Landscape.
3.2 Caravan Parks and Manufactured Home Estates	This Direction applies to caravan parks and manufactured home estates.	Does not apply. The proposal does not include any reference to caravan parks or manufactured home estates.
3.3 Home Occupations	This Direction seeks to permit	Does not apply. This proposed does not relate to dwelling

ITEM 4 - ATTACHMENT 1 PLANNING PROPOSAL.

	home occupations to be carried out in dwelling houses without the need for development consent.	houses.
3.4 Integrating Land Use and Transport	This direction seeks to ensure that urban structures, building forms, etc. are consistent with the stated planning objectives.	Consistent. The proposal seeks to enable recreational facilities in an appropriate location. Land zoned RU2 – Rural Landscape is the most appropriate location for these uses within the Local Government Area.
3.5 Development Near Licensed Aerodromes	This Direction applies to a planning authority that prepares a proposal.	Consistent. The site is located within the Port Stephens Height Trigger Map and in turn requires referral when structures are proposed to be higher than 45m metres. This is a development application requirement and does not demonstrate an inconsistency with this Direction.
3.6 Shooting Ranges	This Direction applies to a planning proposal that will affect, create, alter or remove a zone relating to an existing shooting range.	Does not apply. The proposal does not relate to an existing shooting range.
4. Hazard and Risk		
Ministerial Directions	Application	Consistency and Implications
4.1 Acid Sulfate Soils	This Direction applies because the land has a probability of containing acid sulfate soils.	Consistent. The site is identified as having a probability of containing Class 3 Acid Sulfate Soils. The proposal is consistent by virtue of Clause 7.1 – Acid Sulfate Soils (ASS) which allows for development that is proposed on land identified to contain ASS.
4.2 Mine Subsidence and Unstable Land	This Direction applies to land within a Mine Subsidence District.	Does not apply. The proposal does not relate to land that has been prescribed a Mine Subsidence District.

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4.3 Flood Prone Land	This Direction applies to a planning authority that prepares a proposal that affects flood prone land.	Consistent. The site is identified as flood prone land. The proposal is consistent by virtue of Clause 7.3 – Flood Planning which allows for development on flood prone land subject to satisfying the provisions listed under this clause.
4.4 Planning for Bushfire Protection	This Direction applies as the land is identified as bushfire prone.	Consistent. The site is identified as bushfire prone land and in turn will be required to satisfy the requirements of the RFS. 2006, 'Planning for Bushfire Protection' at the Development Application stage.
5. Regional Planning		
Ministerial Directions	Application	Consistency and Implications
5.1 Implementation of Regional Strategies	This Direction applies to land that is covered by the Lower Hunter Regional Strategy.	Consistent. The proposal is consistent with the objectives of the Lower Hunter Regional Strategy to create 1600 jobs and is consistent with the PSPS and the <i>Port Stephens Council. 2015, 'Draft Raymond Terrace and Heatherbrae Strategy'</i> .
5.4 Commercial and Retail Development along the Pacific Highway, North Coast	This Direction applies as the site traverses the Pacific Highway and is located in Port Stephens.	Consistent. The proposal has considered access from the Marsh Road and will not undermine the commercial centre role of Raymond Terrace.
6.3 Site Specific Provisions	This Direction applies when a relevant planning authority prepares a proposal to allow a specific use to be carried out.	Consistent. The proposal seeks to add an additional use to the zone RU2 – Rural Landscape.

7. 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 site is cleared of remnant vegetation with the exception of the northern parcel of the lot, which is low-lying and is unlikely to be developed.

ITEM 4 - ATTACHMENT 1 PLANNING PROPOSAL.

Any future development that proposes the removal of this vegetation in order to carry out the additional use of a recreation facility (outdoor) will be required to address relevant legislation and regulations in relation to threatened species, populations or ecological communities or their habitats.

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

No. The site is cleared of remnant vegetation with the exception of the northern parcel of the lot, which is low-lying and is unlikely to be developed.

Any future development that proposes the removal of this vegetation in order to carry out the additional use of a recreation facility (outdoor) will be required to address relevant legislation and regulations in relation to threatened species, populations or ecological communities or their habitats.

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

The proposal has the potential to provide for improved social and economic effects through the creation of jobs during the construction phase and during operation. The Tomaree Peninsula is a regional tourism destination that provides a variety of tourism activities. Enabling the zone RU2 – Rural Landscape on the subject site for this purpose will continue this use at those destinations where market demands exists.

SECTION D – State and Commonwealth Interests

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

The proposal will provide jobs for nearby residents and reinforce the role of Heatherbrae as an employment centre.

11. What are the views of the State and Commonwealth public authorities consulted in accordance with the Gateway Determination?

It is suggested that the following public authorities be consulted during the public exhibition period:

- NSW Rural Fire Service;
- NSW Office of Environment and Heritage;
- NSW Roads and Maritime Services; and
- Department of Primary Industries.

PART 4 - MAPPING

The proposal relates to inserting the development type of recreational facility (outdoor) as an additional permitted use on the site. The relevant map is included as **Attachment 2 – Additional Permitted Uses Map** (p. 26).

ITEM 4 - ATTACHMENT 1 PLANNING PROPOSAL.**PART 5 – DETAILS OF COMMUNITY CONSULTATION**

It is suggested that the gateway determination condition that the planning proposal be placed on public exhibition for a minimum period of 28 days.

All landowners that are adjoining neighbours of the site will be provided with written notice. Public notice will be provided in accordance with the Environmental Planning and Assessment Regulation 2000, which includes a notice in the Port Stephens Examiner and copies of the plans being available during normal business hours. Additionally, notice will be provided via Council's various social media platforms.

This time period and notification platforms will provide adequate time for informed comment to be received on this proposal.

PART 6 – PROJECT TIMELINE

The proposal is to be reported to the Council Meeting of 14 June 2016. In this report, it is recommended that Council resolve to request delegation from the gateway determination to make this plan. The proposal is following this timeframe:

	JUN 16	JUL 16	AUG 16	NOV 16	DEC 16
<i>Council Report</i>					
<i>Gateway Determination</i>					
<i>Public Exhibition</i>					
<i>Council Report</i>					
<i>Parliamentary Counsel</i>					

ATTACHMENTS

The following attachments are supplementary to this proposal:

Attachment 1: Strategic Analysis; and
Attachment 2: Additional Permitted Uses Map

ITEM 4 - ATTACHMENT 1 PLANNING PROPOSAL.**Attachment 1 – Strategic Analysis**

This strategic analysis has been developed by Port Stephens Council to detail how the Zone RU2 – Rural Landscape has been applied within Port Stephens.

Planning Proposal – Standard Instrument LEP

The post exhibition version of this planning proposal dated 23 March 2013 simply states the zone RU2 – Rural Landscape was set to replace the existing zones 1(a) Rural Agriculture and 1(c1) Rural Small Holdings under the Port Stephens Local Environmental Plan 2000. It contains no other reference to the characteristics of the land that was set to be covered by this zone.

Port Stephens Local Environmental Plan 2013

We also need to understand where recreation facilities (outdoor) are encouraged under the Port Stephens Local Environmental Plan 2013 and the market is responding to their permissibility in this zone. A review of the current planning framework has demonstrated that recreational facilities (outdoor) are permissible within the following zones:

Development Type	RU1	RU2	B1	B2	B3	B4	B5	B7	RE1	RE2
Recreation (indoor)	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Recreation (major)	No	No	No	No	Yes	Yes	Yes	Yes	No	No
Recreation (outdoor)	No	No	No	No	Yes	Yes	Yes	Yes	Yes	Yes

What this review demonstrates is that recreational facilities are permitted and encouraged within the range of business zones and recreation zones. This is appropriate in some instances (i.e. bowling greens), but at the same time provides limited opportunities for those more active recreational facilities (i.e. golf driving range, paint-ball centre, equestrian centre, go-kart track, rifle range and water-ski centres). The price of commercial land potentially limits these types of uses in these locations, while only existing caravan parks and bowling greens have been zoned RE2 – Private Recreation. While land that is zoned RE1- Public Recreation is required to be classified for operational purposes and of a sufficient size to then be leased for these purposes. Council's Open Space planning has not provided active consideration for matters such as water ski parks on existing land zoned RE1 – Public Recreation.

Port Stephens Planning Strategy

The Port Stephens Planning Strategy (PSPS) identified that:

'Port Stephens has scenic rural landscapes, characterised by coastal plains, river valleys, forests, wetlands and wooded ridgelines. These landscapes contribute greatly to local identity and to the attractiveness of the area for residents and tourists. The PSPS seeks to focus development in defined areas and to protect the scenic qualities of the coast, waterways and rural areas from inappropriate development' (p.89).

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From this, it could be understood that the prohibition of recreation facilities (outdoor) within the Zone RU2 – Rural Landscape is a direct result of this approach outlined in the PSPS. However, this planning proposal demonstrates that this direction provided by the PSPS fails to identify appropriate locations for these types of facilities with the precedent provided by existing developments and the neighbouring approaches taken by other local government areas. In order to adopt this approach appropriate destinations or precincts should have concurrently been identified by the PSPS.

Rural Land-Use Study

The Port Stephens Council, February 2011, 'Port Stephens Rural Strategy' was developed to inform the Port Stephens Local Environmental Plan 2013.

This Strategy discusses rural landscapes, but doesn't identify particular locations of high scenic value, nor does it address those existing approved uses in rural zones (e.g. go kart tracks, retirement villages, paintball ranges, etc.). It recommends a range of rural zones and minimum lot sizes. It also discusses the need to develop a series of rural planning principles, but doesn't go into sufficient detail in relation to rural landscapes. Rural landscape value is believed to have been preserved in the north western part of the Local Government Area where the land has not been subject to the commercial pressures experienced in the east.

The land zoned RU2 – Rural Landscape appears to be not one of the following:

- Primary Production Agriculture;
- Environmental Significance;
- Rural Residential;
- Forestry; and
- Town Centres.

In turn, existing uses, including paint ball, go kart tracks, manufactured home estates, self-storage premises, child care centres, amusement parks, motels and so forth are present and successfully operating in this zone.

The land zoned RU2 – Rural Landscape could be grouped into the following uses:

- In most cases, primarily cleared lands;
- Remnant vegetation;
- Poultry sheds;
- Rural Residential;
- Various – Business, Rural, Tourism, etc.; and
- Residential Fringe.

These groupings are illustrated by **Figure 2 – Groupings Map** (p. 25). This analysis also raises the question as to what other uses may be appropriate in the strip of land that adjoins Nelson Bay Road. A vast mixture of uses are already taking place here due to past development consents and are not operating on existing use rights. In turn, the question of a more appropriate zone for this location is raised and if

ITEM 4 - ATTACHMENT 1 PLANNING PROPOSAL.

allowing more uses has the potential to undermine existing centres. This will be explored as a part of a future review of the Port Stephens Planning Strategy.

Draft Rural Residential Strategy

Port Stephens Council resolved to place the Draft Rural Residential Strategy on public exhibition on 28 July 2015. This Strategy is a constraints analysis that has drawn on data relating to known constraints, such as flooding to then identify land that may be suitable for the purposes of rural residential development. It does not discuss the role of the Nelson Bay Road Corridor or the attributes that are of the Zone RU2 – Rural Landscape. It does not provide any further guidance in relation to this planning proposal and the permissibility of recreational facilities (outdoor).

Local Government Area – Local Environmental Plans

A review of eight random Local Environmental Plans (LEPs), being:

- Lake Macquarie Council (LMC);
- Former Great Lakes Council (GLC);
- Cessnock City Council (CCC);
- Maitland City Council (MCC);
- Singleton City Council (SCC);
- Former Wyong City Council (WCC);
- Former Gosford City Council (GCC); and
- Coffs Harbour Council (CHC).

Each of these examples identified that recreational facilities (outdoor) are permitted within Zone RU2 – Rural Landscape. From this it can be understood that they're considered a common development type for this zone. The following table illustrates the permissibility of recreation facilities in this zone:

Development Type	PSC	LMC	GLC	CCC	MCC	SCC	WCC	GCC	CHC
Recreation facility (indoor)	No	No	Yes	No	No	No	No	No	No
Recreation facility (major)	No	No	Yes	Yes	No	No	No	No	No
Recreation facility (outdoor)	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

The next key step is to understand whether the Zone RU2 – Rural Landscape has been applied to localities with similar characteristics. This is illustrated by the Map that is provided as Figure 1. What this map demonstrates is that the Zone RU2 – Rural Landscape has been applied to locations within former Great Lakes, Singleton, Cessnock, Maitland and Lake Macquarie in locations that are generally of more scenic value than Port Stephens and yet these locations have permitted recreation facilities (outdoor). For example, the outskirts of the Watagans National Park that follow the main riparian corridors within the Cessnock Local Government Area are zoned RU2 – Rural Landscape. Another example of significant lands of high scenic value that is zoned RU2 – Rural Landscape is land within the former Great Lakes

ITEM 4 - ATTACHMENT 1 PLANNING PROPOSAL.

Local Government Area, which is just to the north of Port Stephens. What this demonstrates is that although these lands are of high scenic value, recreation facilities (outdoor) are still listed as permissible with consent.

The reality is that economic forces will persuade these uses to locate close to existing population and along locations that experience high amounts of passing traffic in order to attract customers (i.e. Nelson Bay Road).

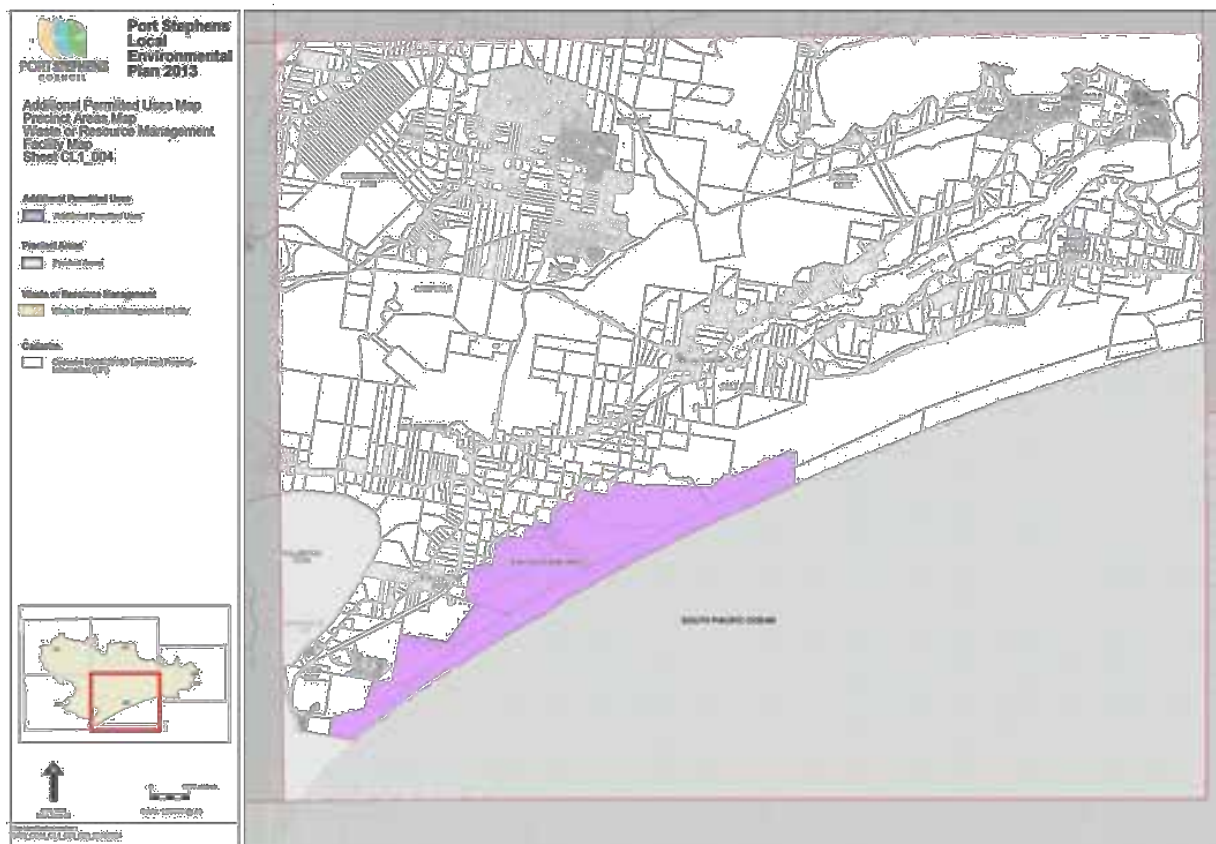
Practice Notes relating to the role of the zone RU2 – Rural Landscape

The LEP Practice Note PN11-002 provides guidance on the standard zones. For the Zone RU2 – Rural Landscape, it states:

'This zone is for rural land used for commercial primary production that is compatible with ecological or scenic landscape qualities that have been conserved (often due to topography). It may apply to land that is suitable for grazing and other forms of extensive agriculture, or intensive plant agriculture (such as viticulture), but where the main purpose of the zone is to protect significant environmental attributes or to provide rural residential accommodation' (p.4).

Nothing within this practice note inhibits the rural landscape zone being utilised for major recreation facilities (outdoor). This is further reinforced by how it has been applied by the other neighbouring local government areas.

Attachment 2 – Additional Permitted Uses Map



ITEM NO. 5**FILE NO: 16/282753
RM8 REF NO: PSC2015-03867****ACQUISITION OF EASEMENT FOR ROAD CORRIDOR OVER PART OF 43
TAYLORS BEACH ROAD, TAYLORS BEACH****REPORT OF: GLENN BUNNY - PROPERTY SERVICES SECTION MANAGER
GROUP: CORPORATE SERVICES**

RECOMMENDATION IS THAT COUNCIL:

- 1) Enters into the Grant of Easement from National Parks & Wildlife Service NSW.
 - 2) Authorises the Mayor and General Manager to sign and affix the Seal of Council to all relevant documents relating to the Grant of Easement including but not limited to the Survey Plan and the Section 88B Instrument.
-

**ORDINARY COUNCIL MEETING - 14 JUNE 2016
COMMITTEE OF THE WHOLE RECOMMENDATION**

	Councillor Ken Jordan Councillor Steve Tucker That the recommendation be adopted.
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**ORDINARY COUNCIL MEETING - 14 JUNE 2016
MOTION**

158	Mayor Bruce MacKenzie Councillor Chris Doohan It was resolved that Council: <ol style="list-style-type: none">1) Enters into the Grant of Easement from National Parks & Wildlife Service NSW.2) Authorises the Mayor and General Manager to sign and affix the Seal of Council to all relevant documents relating to the Grant of Easement including but not limited to the Survey Plan and the Section 88B Instrument.
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BACKGROUND

The purpose of this report is obtain a resolution of the Council to enter into a Grant of Easement under the *National Parks & Wildlife Act 1974* for road purposes over part

MINUTES ORDINARY COUNCIL - 14 JUNE 2016

of land owned by the State Government at Taylors Beach shown by the blue circle on the Locality Map (**ATTACHMENT 1**).

A section of Port Stephens Drive at Taylors Beach shown by red edge on (**ATTACHMENT 2**) has been found to be located outside the current Port Stephens Drive road reserve boundaries but is occupying part of Lot 7141 DP 96643. Lot 7141 forms part of Tilligerry Nature Reserve owned by the Crown and administered by National Parks & Wildlife Service NSW (NPWS).

NPWS has granted consent to Council for road works to occur in the red edged section from 5 March 2016 to 22 May 2016. NPWS also requires Council to formalise the occupation by obtaining an easement over Lot 7141 within six months of the date of the consent for the road works. The easement is to be obtained under the *National Parks & Wildlife Act 1974*. Council has prepared the draft survey plan (**ATTACHMENT 3**) and related Section 88B Instrument (**ATTACHMENT 4**) and these have been forwarded to NPWS for review.

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2013-2017
Port Stephens has an integrated, connected transport system.	Promote sustainable and improved, accessible and flexible transport modes.

FINANCIAL/RESOURCE IMPLICATIONS

Costs are associated with having the documentation reviewed, a survey of the easement completed and lodging relevant plans and documentation with Land and Property Information NSW for registration. An estimate of no more than \$10,000 is considered sufficient to cover these actions. NPWS has not indicated the amount of initial or ongoing fees it requires for the grant of the easement.

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

LEGAL, POLICY AND RISK IMPLICATIONS

There are legal and risk implications around motor vehicle/pedestrian accidents occurring on the current road where it has not been dedicated as public road.

MINUTES ORDINARY COUNCIL - 14 JUNE 2016

The road works consent document provided to Council by NPWS has been reviewed by both Legal Services and the Risk Management Coordinator. A Risk Assessment was completed by the Project Manager to enable the road works to commence.

NPWS will not agree to Council immediately acquiring the road corridor for dedication as public road reserve, despite this being the best outcome for Council. Instead, NPWS has provided a draft Grant of Easement document, substantially different to more traditional easement documents. This document has been reviewed by Legal Services which has advised that a Risk Assessment is required to determine if indemnities required are acceptable to Council. The Risk Assessment was carried out by Property Services and determined that the risks are low and are acceptable to Council.

There do not appear to be any policy implications.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
Without the protection of the easement the road has no formal status, creating potential liability issues in the event of motor vehicle/pedestrian accidents.	Medium	Accept the recommendations.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

There appears to be no social implications.

There should be reduced liability and environmental implications in the event of a motor vehicle accident as the road will have a formal status and associated protections in place.

MERGER PROPOSAL IMPLICATIONS

There are no merger proposal implications from this acquisition of easement proposal.

CONSULTATION

Consultation has been undertaken both internally and externally in relation to this matter. Internal consultation was to determine the needs of the Project Manager for the easement, legal advice in relation to the proposed easement documentation and survey works to define the easement. External consultation was to determine the terms upon which the easement would be granted.

Internal

- 1) Project Manager.
- 2) Senior Survey & Land Information Manager.
- 3) Legal Services Manager.
- 4) Risk Management Coordinator.
- 5) Property Services Manager.

External

- 1) Area Manager, Hunter Coast, NPWS.
- 2) Team Leader Property - Metro, Park Assets Branch, NPWS.

OPTIONS

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

ATTACHMENTS

- 1) Locality Map.
- 2) Unformalised Road Location - Taylors Beach.
- 3) Draft Survey Plan.
- 4) Section 88B Instrument.

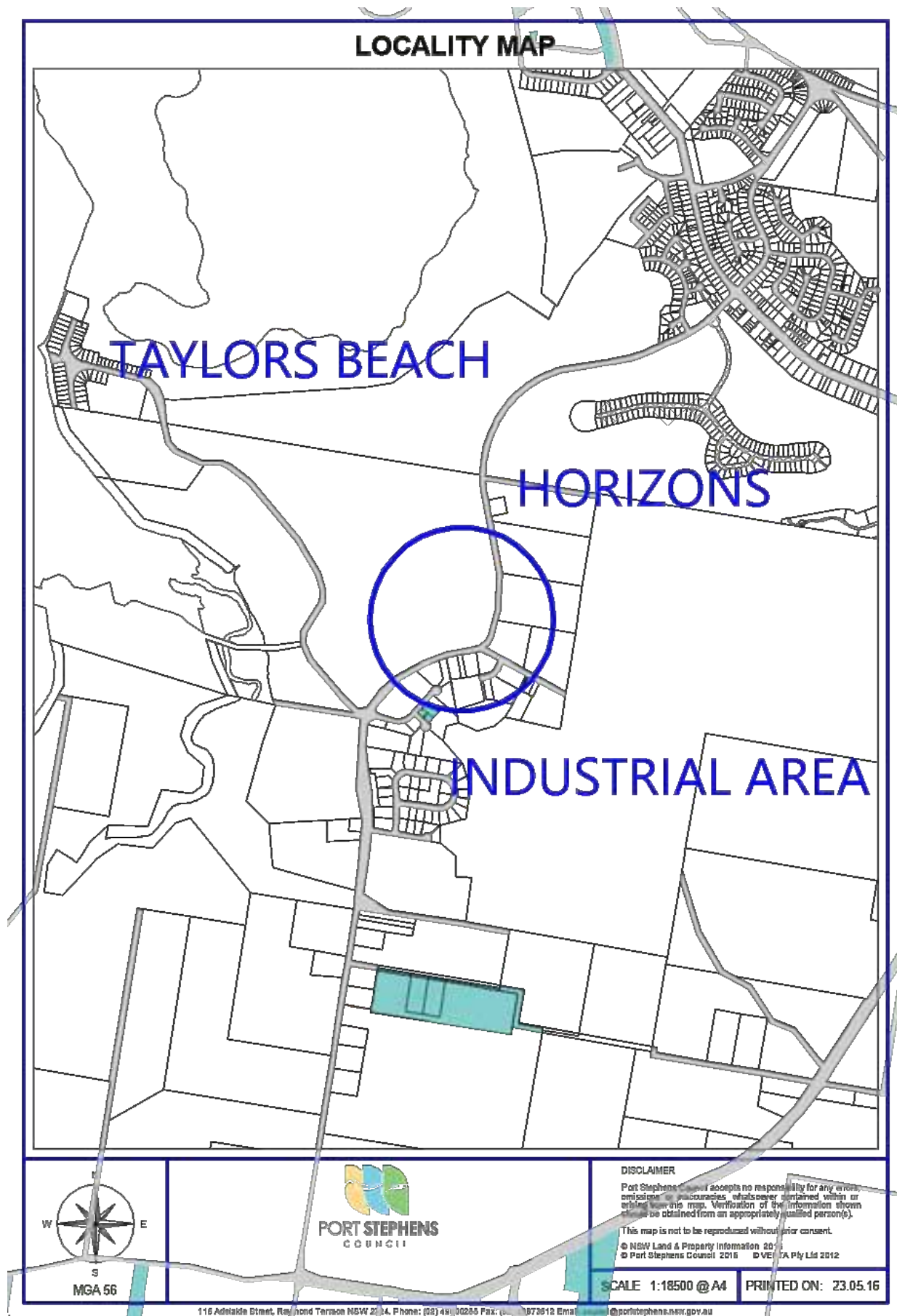
COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

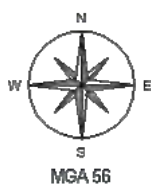
ITEM 5 - ATTACHMENT 1 LOCALITY MAP.



ITEM 5 - ATTACHMENT 2
BEACH.

UNFORMALISED ROAD LOCATION - TAYLORS

Unformalised Road Location - Taylors Beach



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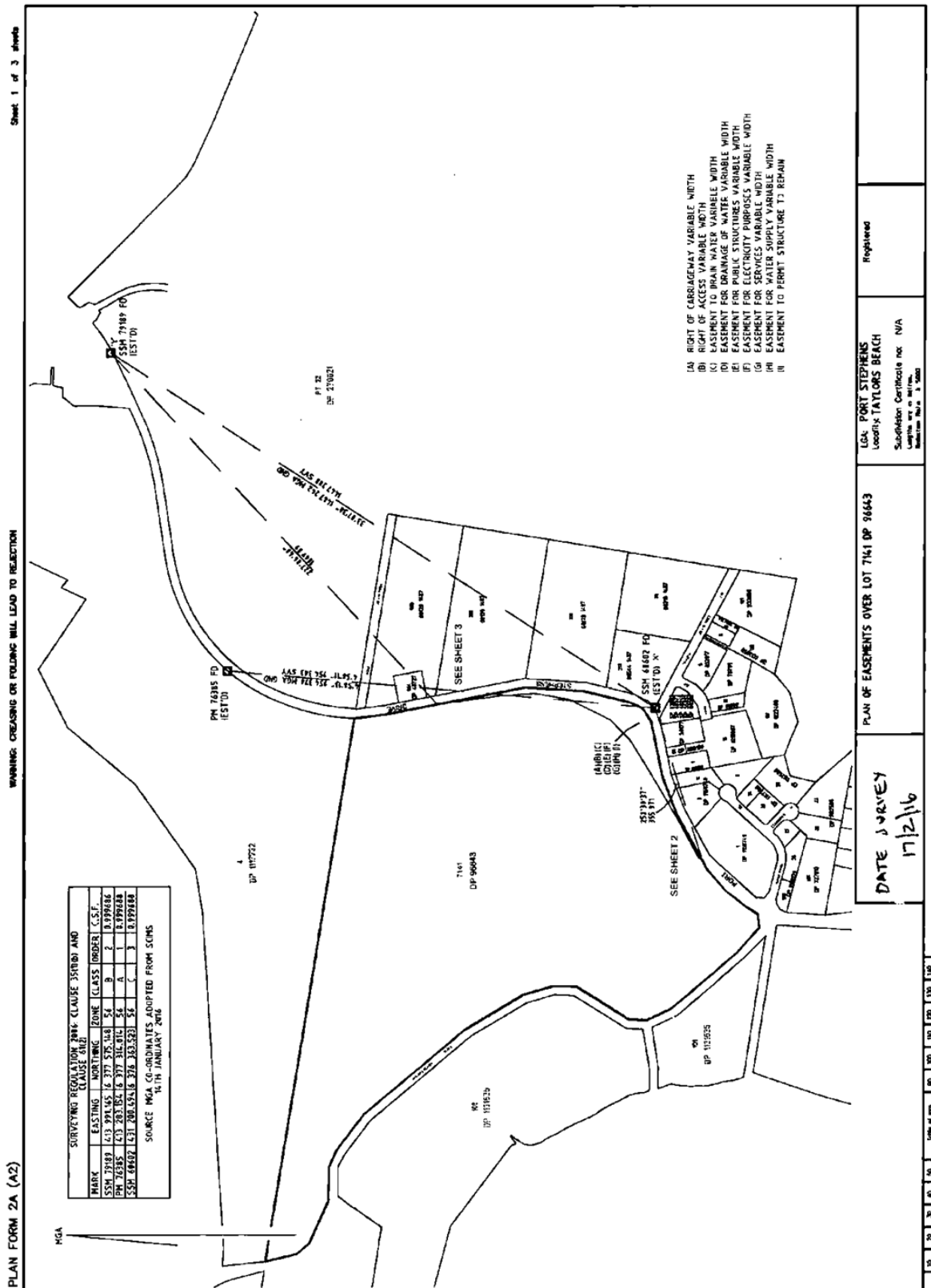
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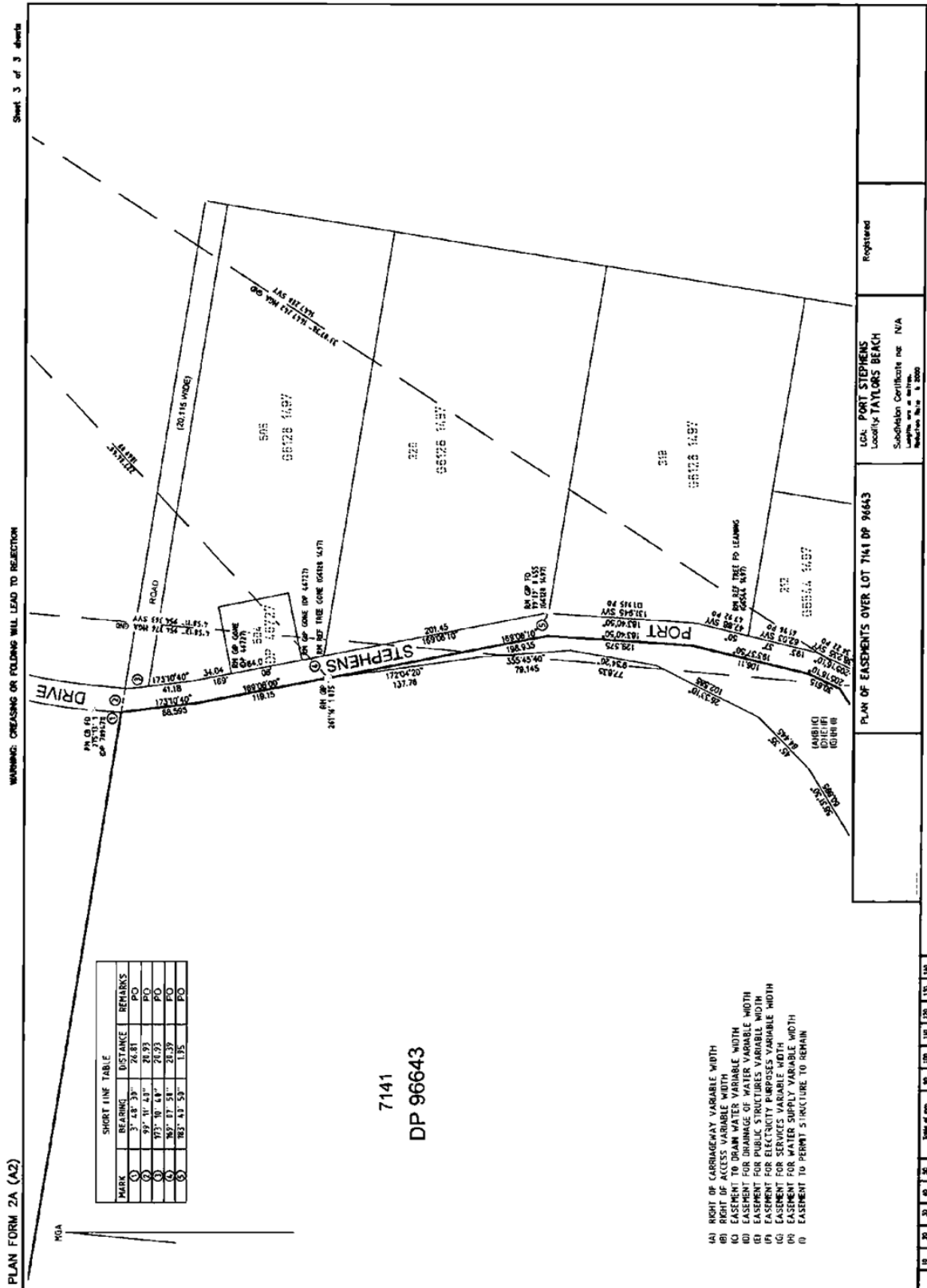
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MINUTES ORDINARY COUNCIL - 14 JUNE 2016

ITEM 5 - ATTACHMENT 4 SECTION 88B INSTRUMENT.

PLAN FORM 6 (2013)

WARNING: Creasing or folding will lead to rejection

DEPOSITED PLAN ADMINISTRATION SHEET		Sheet 1 of 2	sheet(s)
Registered:	Office Use Only	Office Use Only	
Title System: TORRENS			
Purpose: EASEMENT			
PLAN OF EASEMENTS OVER LOT 7141 DP 96643	LGA: PORT STEPHENS Locality: PORT STEPHENS Parish: TOMAREE County: GLOUCESTER		
 <p>Crown Lands NSW/Western Lands Office Approval</p> <p>I, (Authorised Officer) in approving this plan certify that all necessary approvals in regard to the allocation of the land shown herein have been given.</p> <p>Signature:</p> <p>Date:</p> <p>File Number:</p> <p>Office:</p> 	<p>Survey Certificate</p> <p>I, of a surveyor registered under the <i>Surveying and Spatial Information Act 2002</i>, certify that:</p> <p>*(a) The land shown in the plan was surveyed in accordance with the <i>Surveying and Spatial Information Regulation 2012</i>, is accurate and the survey was completed on</p> <p>*(b) The part of the land shown in the plan (*being/*excluding- "EASEMENT") was surveyed in accordance with the <i>Surveying and Spatial Information Regulation 2012</i>, is accurate and the survey was completed on, 12/02/2016 the part not surveyed was compiled in accordance with that Regulation.</p> <p>*(c) The land shown in this plan was compiled in accordance with the <i>Surveying and Spatial Information Regulation 2012</i>.</p> <p>Signature: Dated: 12/02/2016</p> <p>Datum Line: 'X' - 'Y'</p> <p>Type: *Urban/*Rural</p> <p>The terrain is *Level-Undulating / *Steep-Mountainous.</p> <p>*Strike through if inapplicable.</p> <p>*Specify the land actually surveyed or specify any land shown in the plan that is not the subject of the survey.</p>		
 <p>Subdivision Certificate</p> <p>I, *Authorised Person/*General Manager/*Accredited Certifier, certify that the provisions of s.109J of the <i>Environmental Planning and Assessment Act 1979</i> have been satisfied in relation to the proposed subdivision, new road or reserve set out herein.</p> <p>Signature:</p> <p>Accreditation number:</p> <p>Consent Authority:</p> <p>Date of endorsement:</p> <p>Subdivision Certificate number:</p> <p>File number:</p> <p>*Strike through if inapplicable.</p> 			
Statements of intention to dedicate public roads create public reserves and drainage reserves, acquire/resume land.	<p>Plans used in the preparation of survey/compilation.</p> <p>DP 43410, DP 46727, DP 789471, DP 813987, DP 852917, DP 1159740, G6128 1497, G6544 1497 AND G 6318 1497</p>		
Signatures, Seals and Section 88B Statements should appear on PLAN FORM 6A	If space is insufficient continue on PLAN FORM 6A		

WARNING: Creasing or folding will lead to rejection

PORT STEPHENS COUNCIL

(Sheet 1 of 3 sheets)

Plan: Plan of EASEMENTS OVER LOT 7141 DP 96643

Full name and address of the mortgagee of the land:

ITEM 5 - ATTACHMENT 4 SECTION 88B INSTRUMENT.

Instrument setting out terms of Easements or Profits a Prendre intended to be created or released and of Restrictions on the Use of Land or Positive Covenants intended to be created pursuant to section 88B Conveyancing Act 1919

(Sheet 2 of 3 sheets)

Plan: Plan of EASEMENTS OVER LOT 7141 DP 96643

PART 1 (Creation)

Number of Item shown in the intention panel on the plan.	Identity of easement, profit a prendre, restriction or positive covenant to be created and referred to in the plan.	Burdened lot(s) or parcel(s):	Benefited lot(s), road(s), bodies or Prescribed Authorities:
1	RIGHT OF CARRIAGE WAY VARIABLE WIDTH	LOT 7141 DP 96643	PORT STEPHENS COUNCIL
2	RIGHT OF ACCESS VARIABLE WIDTH	LOT 7141 DP 96643	PORT STEPHENS COUNCIL
3	EASEMENT TO DRAIN WATER VARIABLE WIDTH	LOT 7141 DP 96643	PORT STEPHENS COUNCIL
4	EASEMENT FOR DRAINAGE OF WATER VARIABLE WIDTH	LOT 7141 DP 96643	PORT STEPHENS COUNCIL
5	EASEMENT FOR PUBLIC STRUCTURES VARIABLE WIDTH	LOT 7141 DP 96643	PORT STEPHENS COUNCIL
6	EASEMENT FOR ELECTRICITY PURPOSES VARIABLE WIDTH	LOT 7141 DP 96643	PORT STEPHENS COUNCIL
7	EASEMENT FOR SERVICES VARIABLE WIDTH	LOT 7141 DP 96643	PORT STEPHENS COUNCIL
8	EASEMENT FOR WATER SUPPLY VARIABLE WIDTH	LOT 7141 DP 96643	PORT STEPHENS COUNCIL
9	EASEMENT TO PERMIT ENCROACHING STRUCTURE TO REMAIN	LOT 7141 DP 96643	PORT STEPHENS COUNCIL

(Sheet 3 of 3 sheets)

Plan: Plan of EASEMENTS OVER LOT 7141 DP 96643

PART 2 (Terms)

It is hereby agreed and declared that the Easement for Public Structures shall be used by every person authorised by Port Stephens Council and Port Stephens Council may construct, operate, repair, replace, maintain, clear, clean, store, remove, move, improve or do any other things that are necessary or appropriate to any of its structures upon the burdened lot only within the site of the easement.

ITEM NO. 7**FILE NO: 16/335139
RM8 REF NO: PSC2007-0060****ASSIGNMENT OF LEASE - PETER DRON STREET CARPARK, RAYMOND TERRACE****REPORT OF: GLENN BUNNY - PROPERTY SERVICES SECTION MANAGER
GROUP: CORPORATE SERVICES**

RECOMMENDATION IS THAT COUNCIL:

- 1) Authorises the Mayor and the General Manager to sign and affix the seal to the deed of assignment giving effect to the transfer of the Lease being Lots 10 and 11 in Section E DP 939306 and Lot 21 DP 788588 and known as Peter Dron Street car park to the purchaser (Sandran Pty Limited) of the building currently leased to the Department of Defence at 30 King Street, Raymond Terrace.

**ORDINARY COUNCIL MEETING - 14 JUNE 2016
COMMITTEE OF THE WHOLE RECOMMENDATION**

	Councillor Ken Jordan Councillor John Morello That the recommendation be adopted.
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**ORDINARY COUNCIL MEETING - 14 JUNE 2016
MOTION**

159	Mayor Bruce MacKenzie Councillor Chris Doohan It was resolved that Council authorises the Mayor and the General Manager to sign and affix the seal to the deed of assignment giving effect to the transfer of the Lease being Lots 10 and 11 in Section E DP 939306 and Lot 21 DP 788588 and known as Peter Dron Street car park to the purchaser (Sandran Pty Limited) of the building currently leased to the Department of Defence at 30 King Street, Raymond Terrace.
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BACKGROUND

The purpose of this report is to advise Council that a request has been received to transfer (assign) the current lease of the Peter Dron Street car park to a new lessee.

MINUTES ORDINARY COUNCIL - 14 JUNE 2016

This matter arises due to the sale of the property at 30 King Street, Raymond Terrace which is occupied by the Department of Defence (DoD).

The DoD premises was developed in 2007 and under the terms of a lease agreement an additional 110 spaces for DoD car parking was provided on Council land at Peter Dron Street.

The premises at 30 King Street is being sold by the current owners, King Street Raymond Terrace Pty Ltd, to Sandran Pty Limited and, accordingly, the assignment of the current lease to the new owners is now required.

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2013-2017
Port Stephens has a sustainable and diversified economy.	Provide processes and services that deliver benefit to tourism in Port Stephens. Provide Economic Development services to local business.

FINANCIAL/RESOURCE IMPLICATIONS

Execution of the assignment by Council will formalise the terms of the existing lease and transfer all obligations under the lease to the new owner thereby protecting Council's financial position.

The current lessee is responsible for all costs associated with the assignment of this lease.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes	\$25,335 income	Income rental received, subject to annual 3% increase.
Reserve Funds	No		
Section 94	No		
External Grants	No		
Other	No		

LEGAL, POLICY AND RISK IMPLICATIONS

The current lease expires on 25 May 2023 and in accordance with the provisions of the *Conveyancing Act*, leases in excess of three years total duration, including the option period, are to be registered upon the title of the land to which they apply both at the time of execution and at the time of any subsequent assignments. Accordingly,

MINUTES ORDINARY COUNCIL - 14 JUNE 2016

if the lease is to be registered the common seal must be affixed upon signing under Clause 400, *Local Government (General Regulation) 2005*.

The seal of a Council must not be affixed to a document unless the document relates to the business of the Council and the Council has resolved (by resolution specifically referring to the document) that the seal be so affixed.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that should a formalised lease dealing (assignment) not be entered into with the new owners then Council's income stream would not be protected.	High	Accept the recommendations.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Nil.

MERGER PROPOSAL IMPLICATIONS

There are no merger proposal implications from this proposed assignment of lease.

CONSULTATION

Consultation has been undertaken to determine the conditions of the lease in regards to assignment and to ensure correct process has been followed for the recommendation of the reassignment.

Internal

- 1) Property Officer.
- 2) Investment and Asset Manager.

External

Nil.

OPTIONS

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

ATTACHMENTS

Nil.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.