

DRAFT

MINUTES – 27 JUNE 2017



PORT STEPHENS C O U N C I L

Minutes of Ordinary meeting of the Port Stephens Council held in the Council Chambers, Raymond Terrace on – 27 June 2017, commencing at 5.40pm.

PRESENT:

Councillors G. Dingle, C. Doohan (Chair), S. Dover, K. Jordan, P. Le Mottee, J Nell, General Manager, Corporate Services Group Manager, Facilities and Services Group Manager, Development Services Group Manager and Governance Manager.

At 5.35pm five Councillors were present in the Council Chamber. The Code of Meeting Practice (Code) requires a quorum of six councillors to enable a meeting to proceed. In the absence of a quorum, the Code requires a period of thirty minutes to lapse before the meeting can be adjourned.

At 5.40pm Cr Jordan entered the meeting. The Chair opened the meeting at 5.40pm with six Councillors present.

MINUTES ORDINARY COUNCIL - 27 JUNE 2017
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142	Councillor Ken Jordan Councillor Sally Dover It was resolved that apologies from Mayor Bruce MacKenzie, Cr John Morello, Cr Peter Kafer and Cr Steve Tucker be received and noted.
143	Councillor Ken Jordan Councillor Sally Dover It was resolved that the Minutes of the Ordinary Meeting of Port Stephens Council Ordinary Council held on 13 June 2017 be confirmed.
	 Cr Paul Le Mottee declared a pecuniary conflict of interest in item 5. The nature of the interest is that the Le Mottee Group prepared plans for the applicant. Cr Ken Jordan declared a significant non-pecuniary conflict of interest in item 5. The nature of the interest is that Cr Jordan is a friend of a neighbour.

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COUNCIL REPORTS

MINUTES ORDINARY COUNCIL - 27 JUNE 2017
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**ORDINARY COUNCIL MEETING - 27 JUNE 2017
MOTION**

144	Councillor Paul Le Mottee Councillor Ken Jordan It was resolved that Council move into Committee of the Whole.
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**ORDINARY COUNCIL MEETING - 27 JUNE 2017
MOTION**

145	Councillor Ken Jordan Councillor Sally Dover It was resolved that item 6 be brought forward and dealt with prior to item 1 in Committee of the Whole.
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ITEM NO. 6

**FILE NO: 17/106389
RM8 REF NO: PSC2016-03079**

**DEVELOPMENT APPLICATION NO. 59-2016-102-1 FOR TREE REMOVAL AT 5A
NELSON ST, NELSON BAY (LOT 2 DP 574867)**

REPORT OF: LES SEDDON - ACTING STRATEGY & ENVIRONMENT SECTION
MANAGER
GROUP: DEVELOPMENT SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Refuse Development Application (DA) No. 59-2016-102-1 for the removal of one *Araucaria Heterophylla* (Norfolk Island Pine) Tree at 5A Nelson St, Nelson Bay (Lot 2 DP 574867), for the reasons outlined in **(ATTACHMENT 2)**.
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**ORDINARY COUNCIL MEETING - 27 JUNE 2017
COMMITTEE OF THE WHOLE RECOMMENDATION**

	Councillor Sally Dover Councillor Ken Jordan That Council approve Development Application (DA) No. 59-2016-102-1 for the removal of one <i>Araucaria Heterophylla</i> (Norfolk Island Pine) Tree at 5A Nelson St, Nelson Bay (Lot 2 DP 574867).
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MINUTES ORDINARY COUNCIL - 27 JUNE 2017

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

Those for the Motion: Crs Geoff Dingle, Chris Doohan, Sally Dover, Ken Jordan, Paul Le Mottee and John Nell.

Those against the Motion: Nil.

ORDINARY COUNCIL MEETING - 27 JUNE 2017 MOTION

146	<p>Councillor Ken Jordan Councillor Paul Le Mottee</p> <p>It was resolved that Council approve Development Application (DA) No. 59-2016-102-1 for the removal of one <i>Araucaria Heterophylla</i> (Norfolk Island Pine) Tree at 5A Nelson St, Nelson Bay (Lot 2 DP 574867).</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: Crs Geoff Dingle, Chris Doohan, Sally Dover, Ken Jordan, Paul Le Mottee and John Nell.

Those against the Motion: Nil.

BACKGROUND

The purpose of this report is to present Development Application (DA) No. 59-2016-102-1 to Council for determination. The DA is for the removal of one *Araucaria Heterophylla* (Norfolk Island Pine) tree at 5A Nelson St, Nelson Bay (Lot 2 DP 574867).

The application was made on 18 October 2016 to remove one live tree. During later discussions on site the proponent advised, and followed up by email, that they considered the tree poses a threat to people and property. An intent to refuse letter was issued on 16 January 2017 based on the tree being assessed as low risk to people and property.

The applicant has since made representations to both Councillors and Council staff requesting a reassessment.

The application has been called to Council by Councillor Dover. A copy of the call up form has been included as **(ATTACHMENT 3)**.

Site Details

The subject site is located at Lot 2 DP 574867 and is known as 5A Nelson Street, Nelson Bay as per the attached locality plan (**ATTACHMENT 1**). The land is zoned R2 Low Density Residential and is a 'battle axe' lot with street frontage to Nelson Street. The site is 840m² in size and comprises a single storey dwelling. The subject tree is located towards the southern boundary of the property as per photos (**ATTACHMENT 4**).

Assessment Outcomes

A detailed assessment of the proposal against the provisions of s.79C *Environmental Planning and Assessment Act 1979* (EP&A Act) is provided at (**ATTACHMENT 2**).

The proposed tree removal application was assessed and determined that:

- a Basic Tree Risk Assessment (International Society of Arboriculture) was undertaken which found that the risk to person and property was low;
- the tree satisfies the criteria listed in Port Stephens Council's Tree Technical Specification to be considered for listing on Council's Significant Tree Register;
- the tree has a high retention value as per Council's Tree Technical Specification; and
- an arborists report with evidence supporting the removal of the tree was not provided with the application.

The application was assessed as not being consistent with Clause 5.9 of the *Port Stephens Local Environmental Plan 2013* (LEP2013), the objective of which is to "preserve the amenity of the area, including biodiversity values, through the preservation of trees and other vegetation".

The information submitted with the application and the subsequent assessment did not provide evidence to support the approval of the application.

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2013-2017
Sustainable Development.	Provide Strategic Land Use Planning Services. Provide Development Assessment and Building Certification Services.

FINANCIAL/RESOURCE IMPLICATIONS

There are no known financial implications resulting from the recommendation of this report.

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

LEGAL, POLICY AND RISK IMPLICATIONS

The development application is inconsistent with Clause 5.9 of Council's Local Environmental Plan 2013.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that Council's reputation could be harmed by approving removal of such a significant tree in the landscape.	High	Reported to Council to ensure full transparency of decision making for the community.	Yes
There is a risk that if the application is refused, it may be challenged at the Land and Environment Court.	Medium	Adopt the recommendation contained within this report.	Yes
There is a risk the trees may present a danger to nearby property or residents	Low	Adopt the recommendation contained within this report.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The retention of the subject tree will preserve the amenity of the area, including biodiversity value.

There are minimal economic implications from the retention of the tree.

The trees are not identified as being endangered ecological community or as having a high environmental value. The tree is not heritage listed.

CONSULTATION

Consultation with key stakeholders has been undertaken by the Strategy and Environment Section.

The objective of the consultation was to inform the relevant parties of the application and obtain their feedback on the proposal to ensure all potential concerns have been investigated.

Internal

The application was reviewed by Council's Heritage Advisor in order to determine the likely heritage significance of the tree, and the suitability of putting in place an Interim Heritage Order on the tree whilst further investigations were undertaken regarding the trees potential heritage significance. Whilst the tree is understood to be over 100 years of age, an Interim Heritage Order was not considered appropriate in this circumstance.

A number of site inspections were held which included Council's Natural Resources Coordinator, Councillors, the Mayor, Senior Council staff, and the applicant.

External

In accordance with Council's obligations outlined in Chapter A.12 of the DCP 2014 Council has not notified adjoining landowners, nor publicly advertised this DA.

OPTIONS

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

ATTACHMENTS

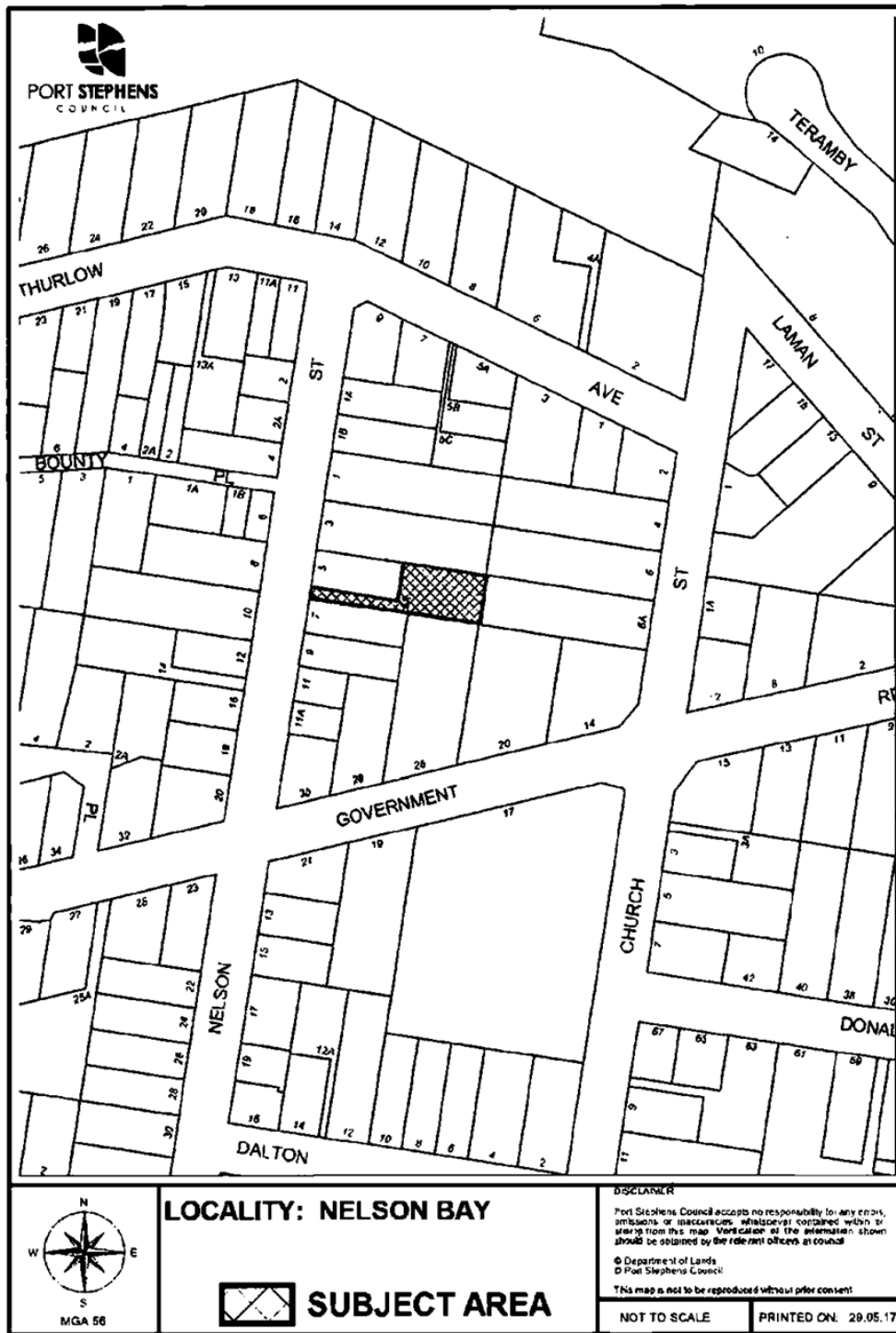
- 1) Locality plan.
- 2) Assessment Report 59-2016-102-1
- 3) Call to Council form.
- 4) Photos - Araucaria Heterophylla (Norfolk Island Pine) Tree at 5A Nelson St, Nelson Bay.
- 5) Reasons for refusal.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.



PORT STEPHENS
COUNCILDEVELOPMENT
ASSESSMENT REPORT

APPLICATION DETAILS

Application Number	59-2016-102-1
Description	Removal of one (1) Tree
Applicant	MRS D A DOYLE
Date of Lodgement	18/10/2016

Development Proposal

The application proposes the removal of one (1) *Araucaria Heterophylla* (Norfolk Island Pine) Tree at 5A Nelson St, Nelson Bay (Lot 2 DP 574867).

The application for removal sighted the following reasons:

- A belief that the tree poses a dangerous threat to people and property;
- Previous falling branches causing damage to property;
- Damage to a boundary fence;
- A belief that tree roots may have been damaged from recent adjacent development.

PROPERTY DETAILS

Property Address	5A Nelson Street NELSON BAY
Lot and DP	LOT: 2 DP: 574867
Current Use	Single Storey Dwelling
Zoning	R2 Low Density Residential

Site Description

The subject site is located at Lot 2 DP 574867 and is known as 5A Nelson Street, Nelson Bay. It is zoned R2 Low Density Residential and is a 'battle axe' lot with street frontage to Nelson Street. The site is 840m² in size and comprises a single storey dwelling.

The subject tree is located towards the southern boundary of the property as per locality plan (Figures 1 & 2).



Figure 1 – Aerial of locality



Figure 2 – Aerial of locality

Site Inspection

A site inspection was carried out on 21st November 2016 by Council's Vegetation Management Officer.

The subject site can be seen in Figures 1 & 2 below:

ASSESSMENT SUMMARY

Designated Development	The application is not designated development
Integrated Development	The application does require additional approvals listed under s.91 of the EP&A Act
Concurrence	The application does not require the concurrence of another body

Internal Referrals

The proposed modification was referred to the following internal specialist staff. The comments of the listed staff have been used to carry out the assessment against the S79C Matters for Consideration below.

Heritage Advisor – The application was referred internally to Council's Heritage Advisor for advice regarding putting in place an Interim Heritage Order on the tree. Council's Heritage Advisor advised that there was not enough information to proceed with putting in place an Interim Heritage Order.

MATTERS FOR CONSIDERATION – SECTION 79C**s79C(1)(a)(i) – The provisions of any EPI****Port Stephens Local Environmental Plan 2013 (LEP)****Clause 5.9 – Preservation of trees or vegetation**

The application was assessed as not having satisfactorily complied with either Clause 5.9 of the Port Stephens Local Environmental Plan 2013 (LEP2013), the objective of which is to "preserve the amenity of the area, including biodiversity values, through the preservation of trees and other vegetation"; or B1 Tree Management of the Port Stephens Development Control Plan 2014 (DCP2014) which gives "effect to LEP2013 clauses 5.9 and 5.9AA by listing those trees or other vegetation that require approval".

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 Development Notification

Chapter A.12 does not require Council to notify adjoining landowners or public exhibit

59-2016-102-1

development applications for tree removal. However, "where Council is of the opinion that the proposed development is minor in nature and its location, size, height, bulk and proposed use will not adversely affect the amenity of the adjoining land, advertising and/or notification of the development may not be required. Conversely, where Council is of the opinion the development may have an impact, Council may choose to notify or advertise".

Council has not notified adjoining landowners, nor publicly advertised this DA.

Chapter B1 Tree Management

Clause 5.9 of the LEP2013 applies as the subject parcel Lot 2 DP 574867 is within the urban area to which B1 – Tree Management as per Figure BB of the DCP2014, and the tree satisfies B1-1 of the DCP2014 whereby "Council approval is required to remove or prune trees or other vegetation listed under Column 1, except where those circumstances listed under Column 2 are satisfied".

The application was referred internally for a heritage assessment given the age of the tree (in excess of 162 years old as assessed by Council's Vegetation Management Officer, an AQF Level 5 qualified Arborists with 30 years' experience), and therefore the potential that the tree may have been planted/established around the time of first settlement of Nelson Bay or earlier. Following this assessment Council's Heritage Advisor advised that there was not enough information to proceed with putting in place an Interim Heritage Order.

Following the decision not to put in place an Interim Heritage Order for the subject tree, an assessment of the application and tree determined that Council approval is required as none of the listed circumstances listed in Column 2 of the B1-1 of the DCP2014 were satisfied, namely that:

- The tree is greater than 3m tall and:
 - The tree is not within 5m of the wall of an approved structure measured from the wall to the trunk of the tree;
 - The removal of the tree is not in accordance with a construction/subdivision certificate;
 - The tree was not grown for fruit or nut production;
 - The removal of the tree was not authorized under the Rural Fires Act 1997 (e.g. covered by the 10/50 Vegetation Clearing Code of Practice);
 - The removal of the tree exceeds exempt maintenance of less than 12 months growth or 10% of foliage in accordance with AS4373-2007;
 - The tree is not declared as an exotic species;
 - The tree is not within a park, easement or reserve and the proposed work is not proposed to be undertaken by a responsible authority;
 - The tree is not dead;
 - The tree is not at risk of immediate failure.

Having determined that consent is required under Clause 5.9 of the LEP2013, an assessment of the tree against B1-2 of the DCP2014 was undertaken to "ensure adequate consideration is provided to the relevant matters for the removal of trees or vegetation". This assessment gave regard for the following and determined that:

- There is no evidence that the tree has damaged or is damaging an existing structure or utility service as substantiated by a qualified person;
- There is no evidence that the tree is interfering with a solar photovoltaic/hot water system;
- There is no evidence that the tree is interfering with the amenity of a habitable room;
- There is no evidence that the tree is threatened by a development consent;
- There is no evidence that the tree is either consistent with or inconsistent with a flora, fauna

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- or conservation strategy;
- There is no evidence that the tree is interfering, or likely to interfere, with the provision of a public utility or road/driveway construction;
- There is no evidence that the tree or its removal would impact on threatened species, populations or ecological communities and their habitats;
- The age of the tree was assessed and determined to have a remaining life expectancy of approximately 40 years which exceeds the 40 year threshold listed in Council's tree technical specifications and therefore the retention value of the tree was determined as *High*;

The tree satisfies the criteria listed in Port Stephens Council's Tree Technical Specification to be considered for listing on Council's Significant Tree Register.

Given the tree's significance and prominence in the landscape its removal has the potential to have a significant impact on the amenity of adjoining properties and the surrounding neighbourhood.

It is noted that an arborist's report consistent with the Port Stephens Tree Technical Specification was not supplied as per under B1.3 of the DCP2014 "to support re-assessment of applications for tree removal on a technical basis".

An assessment of the tree against B1.4-B1.7 of the DCP2014 was undertaken to "ensure adequate information is provided to determine the application for the removal of trees or vegetation". This assessment determined that:

- A public tree was not deemed at risk (B1.4);
- The application is to remove one (1) tree only (B1.5);
- Compensatory planting is not required should the application be refused.
- There is no evidence that the tree is hollow bearing (B1.7).

The information submitted with the application and the subsequent assessment did not provide evidence to support the approval of the application.

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 clauses of the regulations that require consideration for the proposed development.

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

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

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

Social and Economic Impacts

The proposed tree removal would impact on the amenity of the local area given the size, age, prominence and significance of the tree in the landscape. The tree satisfies the criteria listed in Port Stephens Council's Tree Technical Specification to be considered for listing on Council's Significant Tree Register, and its retention value was determined as *High*.

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The removal of the tree is estimated to cost in the order of \$10,000 in contracting arborist fees given the size of the tree.

Impacts on the Built Environment

The proposed tree removal is not expected to impact on the Built Environment.

Impacts on the Natural Environment

The proposed tree removal would have a minor impact on the natural environment.

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

The subject site is located within an existing residential area.

s79C(1)(d) – Any submissions

No submissions have been received in relation to the proposed tree removal.

s79C(1)(e) – The public interest

The subject tree satisfies the criteria listed in Port Stephens Council's Tree Technical Specification to be considered for listing on Council's Significant Tree Register, with a *high* retention value.

DETERMINATION

The application is recommended to be refused.

Les Seddon
Strategy & Environment Section Manager
Port Stephens Council

ITEM 6 - ATTACHMENT 3 CALL TO COUNCIL FORM.



CALL TO COUNCIL FORM
DEVELOPMENT APPLICATION

I, Councillor Cr Dover.....

require Development Application Number.....59-2016-102-1.....

for ... the removal of one *Araucaria Heterophylla* (Norfolk Island Pine) Tree

at ...5A Nelson St, Nelson Bay (Lot 2 DP 574867).....

to be subject of a report to Council for determination by Council.

Reason:

The reason for this call-up to Council is *the tree has caused extensive damage to the sewer lines, deck boards and adjacent fence. It has developed a significant lean and will damage or destroy 4 properties & lives if it blows down in an extreme storm*

Declaration of Interest:

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

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

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

Signed:



Date:

14th June 2017

ITEM 6 - ATTACHMENT 4 PHOTOS - ARAUCARIA HETEROPHYLLA
(NORFOLK ISLAND PINE) TREE AT 5A NELSON ST, NELSON BAY.

ATTACHMENT 3: Photos of the *Araucaria Heterophylla* (Norfolk Island Pine) Tree at 5A Nelson St, Nelson Bay (Lot 2 DP 574867).



Figure 1: Driveway of 5A Nelson St, Nelson Bay with the *Araucaria Heterophylla* (Norfolk Island Pine) Tree in the background.

**ITEM 6 - ATTACHMENT 4 PHOTOS - ARAUCARIA HETEROPHYLLA
(NORFOLK ISLAND PINE) TREE AT 5A NELSON ST, NELSON BAY.**



Figure 2: 5A Nelson St, Nelson Bay showing the *Araucaria Heterophylla* (Norfolk Island Pine) Tree.

ITEM 6 - ATTACHMENT 4 PHOTOS - ARAUCARIA HETEROPHYLLA
(NORFOLK ISLAND PINE) TREE AT 5A NELSON ST, NELSON BAY.



Figure 3: 5A Nelson St, Nelson Bay showing the *Araucaria Heterophylla* (Norfolk Island Pine) Tree.

ITEM 6 - ATTACHMENT 4 PHOTOS - ARAUCARIA HETEROPHYLLA
(NORFOLK ISLAND PINE) TREE AT 5A NELSON ST, NELSON BAY.



Figure 4: Looking east showing the prominence of the *Araucaria Heterophylla* (Norfolk Island Pine) Tree in the skyline.

ITEM 6 - ATTACHMENT 4 PHOTOS - ARAUCARIA HETEROPHYLLA
(NORFOLK ISLAND PINE) TREE AT 5A NELSON ST, NELSON BAY.



Figure 5: Looking west from 6A Church St, Nelson Bay with the *Araucaria Heterophylla* (Norfolk Island Pine) Tree in the background.

ITEM 6 - ATTACHMENT 4 PHOTOS - ARAUCARIA HETEROPHYLLA
(NORFOLK ISLAND PINE) TREE AT 5A NELSON ST, NELSON BAY.



Figure 6: Looking north from Tomaree Community College with the *Araucaria Heterophylla* (Norfolk Island Pine) Tree in the background.

ITEM 6 - ATTACHMENT 5 REASONS FOR REFUSAL.

REASONS FOR REFUSAL

1. The development is inconsistent with clause 5.9 *Port Stephens Local Environmental Plan 2013* (PSLEP) as removal of the subject tree is inconsistent with the objectives of the clause which seeks to preserve amenity and biodiversity (s.79C(1)(a)(i)).
2. The development does not conform to the controls contained within Port Stephens Development Control Plan (DCP) Chapter B1 Tree Management. The subject tree is determined to have a high retention value and its removal would adversely impact upon the amenity of the locality (s.79C (1)(a)(iii) EP& A Act 1979).

ITEM NO. 1

**FILE NO: 17/99210
RM8 REF NO: 16-2016-747-1**

**DEVELOPMENT APPLICATION NO. 16-2016-747-1 FOR AN 11 LOT TORRENS
TITLE SUBDIVISION AT 161 RICHARDSON ROAD, RAYMOND TERRACE (LOT:3
DP:239141)**

REPORT OF: BRETT GARDINER - ACTING DEVELOPMENT ASSESSMENT &
COMPLIANCE SECTION MANAGER
GROUP: DEVELOPMENT SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Approve Development Application DA No. 16-2016-747-1 for an 11 Lot Subdivision at 161 Richardson Road, Raymond Terrace (Lot: 3 DP:239141), subject to the conditions contained in **(ATTACHMENT 3)**.
-

COMMITTEE OF THE WHOLE RECOMMENDATION

	Councillor John Nell 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: Crs Geoff Dingle, Chris Doohan, Sally Dover, Ken Jordan, Paul Le Mottee and John Nell.

Those against the Motion: Nil.

**ORDINARY COUNCIL MEETING - 27 JUNE 2017
MOTION**

147	Councillor Ken Jordan Councillor Paul Le Mottee It was resolved that Council approve Development Application DA No. 16-2016-747-1 for an 11 Lot Subdivision at 161 Richardson Road, Raymond Terrace (Lot: 3 DP:239141), subject to the conditions contained in (ATTACHMENT 3) .
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MINUTES ORDINARY COUNCIL - 27 JUNE 2017

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

Those for the Motion: Crs Geoff Dingle, Chris Doohan, Sally Dover, Ken Jordan, Paul Le Mottee and John Nell.

Those against the Motion: Nil.

BACKGROUND

The purpose of this report is to present to Council for determination development application (DA) 16-2016-747-1 for a one (1) into 11 lot Torrens title subdivision at 161 Richardson Road, Raymond Terrace.

Submissions from Department of Defence and Newcastle Airport raised concerns, however on balance and with appropriate conditions of consent, the recommendation is for the subdivision to be approved.

A locality plan is provided in (**ATTACHMENT 1**).

The development application is being reported to Council given the noise impacts resulting from the close proximity of the subject site to RAAF Base Williamtown.

Proposal

The application proposes a one (1) into 11 lot Torrens title subdivision of 161 Richardson Road, Raymond Terrace. The subdivision will create ten (10) residential lots (Lots 102–111), incorporating the existing dwelling into proposed Lot 111. A drainage reserve (lot 101) is proposed to be located on the southern portion of the subject site, positioned adjacent to Richardson Road.

Lakeview Crescent and Halloran Way will be extended from the subdivision approved by the elected Council on 27 November 2013 over 153 Richardson Road and 2 Halloran Way, Raymond Terrace located directly to the west.

The application also proposes minor earthworks and the provision of essential services to all residential lots.

Assessment Outcomes

The proposed development is for subdivision under Clause 2.6 of *Port Stephens Local Environmental Plan 2013* (PSLEP2013), which permits the subdivision of land with development consent.

The subject site is zoned R2 Low Density Residential under PSLEP2013. The proposed development meets the objectives of the R2 zone in that it will provide for the housing needs of the community within a low density residential environment within close proximity to the essential facilities and services meeting the day to day

needs of future residents. The proposed subdivision pattern and density is consistent with existing subdivision patterns and character of the locality.

Each lot proposed under the application exceeds the minimum subdivision lot size as prescribed under Clause 4.1 PSLEP2013.

The development application was assessed against relevant controls and objectives as specified under PSLEP2013 and Port Stephens Development Control Plan 2014 (PSDCP2014). The development is considered to be generally compliant with relevant controls and objectives. A detailed assessment of the proposal against the provisions of s.79C *Environmental Planning and Assessment Act 1979* (EP&A Act) is provided at **(ATTACHMENT 2)**.

Key Issues

Aircraft Noise

The majority of the subject site is positioned within the ANEF2012 25-30 contour. In accordance with AS2021-2000, PSLEP2013 and PSDCP2014 the development is considered to be 'unacceptable', unless it is determined that the subject site is located in an existing built up area. The elected Council determined on 14 May 2013 that adjoining land at 153 Richardson Road and 2 Halloran Way, Raymond Terrace be defined as 'infill' development or 'within an existing built up area'. As such, the subject lot can also be considered as infill development. The development application is therefore considered to be conditionally acceptable in regard to Aircraft Noise.

Further, the site is identified as being primarily situated within the 20-25 contour on the ANEF2025 map, meaning the aircraft noise exposure will likely reduce in the future.

With consideration for the ANEF2025 map, it has been demonstrated that each proposed lot is able to support a dwelling within the conditionally acceptable 20-25 contour. No dwellings will be positioned within the 25-30 contour.

Recommended conditions of consent require a restriction on the deposited plan and 88B instrument requiring all future dwellings within the proposed subdivision to submit an Acoustic Report detailing that the building design is in accordance with AS2021-2015 Acoustics – Aircraft Noise Intrusion – Building Siting and Construction.

Additionally, an advice has been added to the consent informing that all future dwellings will be required to be inspected prior to the issue of an occupation certificate to confirm that the development satisfies indoor sound levels shown in Table 3.3 Indoor Design Sound Levels for Determination of Aircraft Noise Reduction) in AS 2021—2000.

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2013-2017
Sustainable Development.	Provide Strategic Land Use Planning Services. Provide Development Assessment and Building Certification Services.

FINANCIAL/RESOURCE IMPLICATIONS

There are no anticipated financial or resource implications as a result of the proposed development.

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

LEGAL, POLICY AND RISK IMPLICATIONS

The development application is consistent with Section 79C of the *Environmental Planning and Assessment Act 1979*.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that a third party or the applicant may appeal the determination.	Low	Approve the application as recommended. The assessment carried out details the merits of the proposed development.	Yes
There is a risk that if the application is refused the ability to provide new residential accommodation will not be realised.	Low	Approve the application as recommended.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The proposal represents a logical extension to the adjoining subdivision and will create residential lots located within a reasonable distance to local facilities and services. The proposed lots are considered of sufficient size to allow future residential development.

The proposal will result in a positive economic impact in the locality by stimulating the local economy during the construction phase of the development and support the local economy of Raymond Terrace in the longer term through the increases in population.

The proposed development will have minimal adverse impacts on the built environment. It is anticipated that the lots will be predominantly developed with detached dwellings that fit with the established character of the area.

The proposed development will not have a significant impact on the natural environment. The subject lot is highly disturbed, almost totally cleared of native vegetation and contains maintained lawn and gardens. Additionally, the vegetation provides minimal habitat for native fauna and does not provide connectivity of vegetation corridors.

CONSULTATION

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

Internal

The application was referred to the following Council sections:

- Development Engineering;
- Developer Contributions;
- Vegetation Management;
- Environmental Health;
- House Numbering.

Each internal staff member assessed the relevant portion of the original application and where necessary requested additional information.

Following receipt of amended plans and additional information, the application was referred back to the internal staff members for review. No objections were raised by any internal staff to the amended design and relevant conditions have been incorporated into the Schedule of Conditions provided at **(ATTACHMENT 3)**.

External

Department of Defence – The subject lot is in the proximity of the RAAF Base Williamstown and associated flightpath. Accordingly, the Department of Defence (DoD) were notified and invited to provide comments as specified in PSDCP2014.

The Department objected to the creation of any new residential allotments that would result in noise sensitive developments being constructed on land mapped as being above the ANEF 20 contour. It was stated that compliance with maximum indoor noise levels in accordance with AS2021 would be unlikely and the maximum external aircraft noise for the location could be as high as 90-100dB(A).

However, DoD specified that if Council approved the proposed subdivision, the following considerations should be investigated.

- A notion be included on all titles within the subdivision advising that the land is subject to high levels of aircraft noise and the construction of a dwelling on the lot will be required to comply with AS2021.
- All future DA's for dwelling or any noise sensitive development within the proposed subdivision be designed to be compliant with AS2021 by a suitable qualified Acoustics professional.
- All futures dwellings are to be inspected prior to occupation to confirm that construction has been carried out in accordance with the certified plan.

These requirements have been included as conditions in the attached proposed conditions of consent provided at **(ATTACHMENT 3)**.

Newcastle Airport - Newcastle Airport raised various concerns contained within their submission objecting to the proposed subdivision. Concerns raised related to inconsistencies with Clause 7.5 of PSLEP2013, failure to demonstrate that the proposed subdivision is infill development in accordance with AS2021-2015 and the ANEF contours nominated for the subject site. The matters raised in the submission are discussed in the assessment of development impacts included as **(ATTACHMENT 2)** to this report. The assessment concludes that these matters were sufficiently addressed by the applicant and would not warrant refusal of the proposed development.

Rural Fire Service - The application was referred to the RFS as integrated development in accordance with Section 91 of the Environmental *Planning and Assessment (EP&A) Act 1979*. General Terms of Approval (GTA's) were received on 18 December 2016. The GTA's have been imposed in the Notice of Determination (NOD).

Hunter Water Corporation - The application was referred to Hunter Water Corporation (HWC) in accordance with Section 51 of the *Hunter Water Act 1991*. Stormwater Plans illustrate that stormwater flows will be directed to Richardson Road, which is outside the Grahamstown dam catchment. HWC provided no objection or recommendations.

MINUTES ORDINARY COUNCIL - 27 JUNE 2017

Public Consultation - The application was notified and advertised for 14 days, ending on 23 November 2016. During this period two (2) submissions were received. The following concerns were raised:

Concerns Raised	Comments
The use of the existing driveway associated with the dwelling on the site	The current vehicle access point to the existing dwelling from Richardson Road will be removed prior to the issue of the subdivision certificate. A drive way will be constructed providing access from Baluster Street.
Impact to surrounding property values	No evidence has been presented that property values will be affected by the proposed development. Further, the impacts on the surrounding properties values are not a planning consideration and are not relevant assessment criteria under the provisions of Section 79C of the <i>Environmental Planning and Assessment Act 1979</i> .
Privacy implications to adjoining landowners	The design of the proposed subdivision ensures minimal impacts in regards to potential privacy implications. The location of the drainage easement and internal roads ensures privacy to surrounding properties.
Stormwater to discharge on neighbouring lots	The stormwater plan details that post-development stormwater flow will be equal to or less than pre-development flows, and stormwater generated from hard surfaces will be appropriately catered for.

OPTIONS

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

ATTACHMENTS

- 1) Locailty Plan.
- 2) Planners Assessment Report.
- 3) Proposed Conditions of Consent.

COUNCILLORS ROOM

- 1) Development Plan.

TABLED DOCUMENTS

Nil.



116 Adelaide Street, Raymond Terrace NSW 2324. Phone: (02) 49800266 Fax: (02) 49673612 Email: council@portstephens.nsw.gov.au

PORT STEPHENS
COUNCILDEVELOPMENT
ASSESSMENT REPORT

APPLICATION DETAILS

Application Number	16-2016-747-1
Development Description	One (1) into Eleven (11) Lot Torrens Title Subdivision
Applicant	SPLIT ROCK POINT PTY LTD
Date of Lodgement	01/11/2016
Value of Works	\$350,000.00

Development Proposal

The application proposes a one (1) into 11 lot Torrens title subdivision at 161 Richardson Road, Raymond Terrace. The subdivision will create ten (10) residential lots (Lots 102 – 111), incorporating the existing dwelling on Lot 111. A drainage reserve (lot 101) is proposed to be located on the southern portion of the subject site, positioned to front Richardson Road. The size of each proposed lots are as follows:

Lot No.	Size
101	1,763m ² – Designated drainage reserve
102	637.8m ²
103	500.2m ²
104	518.5m ²
105	567.5m ²
106	543.6m ²
107	540.9m ²
108	523.9m ²
109	646.6m ²
110	764.9m ²
111	1,317m ² – Contains the existing single storey dwelling

The proposal involves the extension of Lakeview Crescent and Baluster Street, and the implementation of essential services to the residential lots. Lakeview Crescent and Baluster Street will be extended from one (1) into 26 Torrens title subdivision approved by the Elected Council on 27 November 2013 over 153 Richardson Road and 2 Halloran Way, Raymond Terrace, which adjoins the subject site from the west. The lot size and arrangement of the proposed subdivision is illustrated below:

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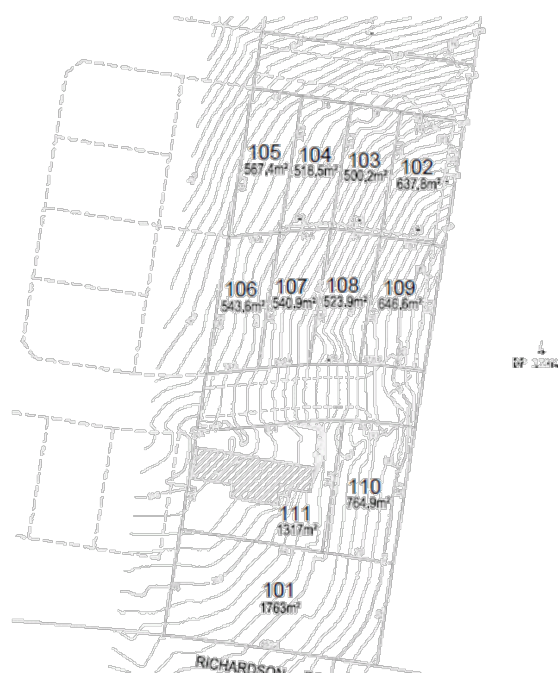


Figure 1: Layout of the subdivision

PROPERTY DETAILS

Property Address	161 Richardson Road RAYMOND TERRACE
Lot and DP	LOT: 3 DP: 239141
Current Use	Residential - Dwelling House
Zoning	R2 LOW DENSITY RESIDENTIAL
Site Constraints	Bush Fire Prone (Categories 1 and 3) ASS (class 5) EEC – Lower Hunter Spotted Gum – Ironbark Forest Combined Corridor Mapping - Stepping Stone Corridor Minimum Lot Size – 500sqm(i) ANEF2012 – 20-25 ANEF, 25-30 ANEF ANEF2025 – 20-25 ANEF, 25-30 ANEF

Site Description

The subject site is currently 1.25ha in size and is generally flat. The subject site currently contains a single story brick dwelling. The property has sparse cover of vegetation.

The properties at 153 Richardson Road and 2 Halloran Way, Raymond Terrace adjoins the subject site from the west and has development approval for a 26 Lot Torrens title subdivision,

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approved under DA Consent No. 16-2011-603-1. Access to the proposed subdivision will be accessed through roads created under this subdivision approval.

RAAF Base Williamtown is located approximately 5.6km to the south east of the site. The land to the west and south of Richardson Road has been development for residential purposes, with the land to the north forming part of the Hunter Water land holdings associated with Grahamstown



Figure 2: Illustrating the subject site within its locality.

Site History**161 Richardson Road, Raymond Terrace**

The Subject Site has the following development approvals:

- 1994 (DA No. 7-1994-42110-1) – Subdivision
- 2015 (DA No.16-2015-816-1) - Alterations to existing dwelling
- 2016 (DA No.16-2016-816-1) – Shed

153 Richardson Road and 2 Halloran Way

A 26 Lot Torrens Title Subdivision was approved by the elected Council over 153 Richardson Road and 2 Halloran Way, Raymond Terrace under DA consent No. 16-2011-603-1. On 14 May 2013 the subject application was reported to Council. Council Resolved that:

- 1) Subject to the outstanding additional information required (as outlined in Attachment 2 of item No 2 in 14 May 2013 business paper) being submitted and assessed, that Council indicate its support for the Development Application 16-2011-603-1. Conditions of development consent be brought back to Council when available.
- 2) In accordance with note 4, Table 2.1 (building site acceptability of ANEF zones) of AS 2021-2000 the site be deemed 'infill' development or 'within an existing built up area' and Council notes that all future development on the site shall achieve the required ANR (Aircraft Noise Reduction) according to Clause 3.2 of AS 2021-2000.
- 3) The requirement for future dwellings to provide the required ANR (Aircraft Noise Reduction) according to Clause 3.2 (the noise reduction requirements) of AS 2021-2000, shall be made aware to the prospective purchasers via a notation on the 149 Certificate.

The application was approved by the Elected Council on 27 November 2013.

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It is noted that the proposed subdivision reduced in lot numbers, from 53 to 26. Amended subdivision plans were submitted after the initial Council meeting. The amended subdivision plans proposed to create lots detailing viable building envelopes within the boundaries of ANEF2025. The site is affected by the 20-25 ANEF contours.

As illustrated below, the approved 26 Lot subdivision of 153 Richardson Road and 2 Halloran Way, Raymond Terrace will adjoin the proposed 11 Lot Subdivision to the west, providing access from Lakeview Crescent and Baluster Street.

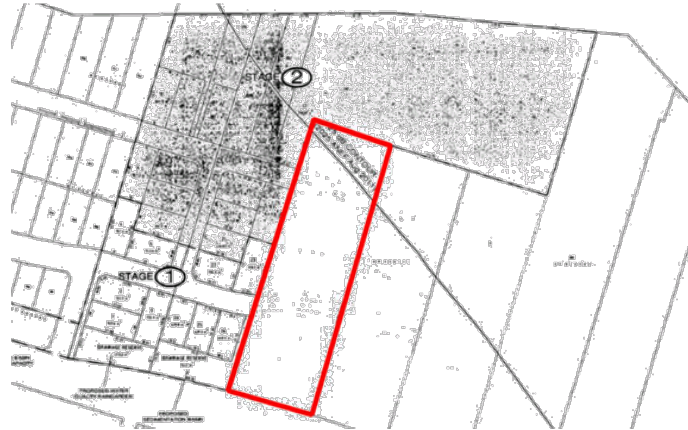


Figure 3: illustrating the location of the proposed subdivision in relation to the subdivision approved under DA No.16-2011-603-1

DA Consent No.16-2011-603-3 incorporated a Stage 0, realigning the property boundaries of 153 Richardson Road, 2 Halloran Way and 161 Richardson Road. The realignment of property boundaries ensure consistency with the proposed subdivision pattern for 161 Richardson Road, as illustrated below:



Figure 4: Property boundaries realign under DA Consent No.16-2011-603-3

The Notice of Determination will include conditions of consent that requires the registration of the 26 lot subdivision prior to the commencement of works on the subject site.

No historic approvals or past compliance matters were identified which would prohibit the proposed development.

Site Inspection

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A site inspection was carried out on 15 February 2017.



Figure 5: Approximate Location of Halloran Way which will provide access to Lots 106 to 111



Figure 6: looking west towards the 26 Lot Torrens Title Subdivision approved under DA No.16-2011-603-4.

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Figure 7: The subject site.



Figure 8: Richardson Road and Halloran Way Intersection.



Figure 9: Illustrating the 26 Lot Torrens Title Subdivision from Lake View Crescent

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ASSESSMENT SUMMARY

Designated Development	The application is not designated development
Integrated Development	The application does require additional approvals listed under s.91 of the EP&A Act.
Concurrence	The application does not require the concurrence of another body

Internal Referrals

The proposed development was referred to the following internal specialist staff. The comments of the listed staff have been used to carry out the assessment against the S79C Matters for Consideration below.

Development Engineer – The application was referred to Councils Development Engineer for comment. On review additional information was requested, information related to:

- DRAINS Model Information
- Halloran Way to be designed as a two-way cross fall
- Stormwater treatment device
- Maintenance access to the bio-retention device
- Update of MUSIC model

Additional Information has been received and the application is considered to be satisfactory, subject to conditions of consent.

Section 94 Officer – No objections were made to the proposal. A monetary contribution is required for the provision of 10 additional lots. S94 contributions are conditioned to be paid prior to the issue of a Construction Certificate..

Natural Resources – No objections to the proposal were raised. A conditions requiring a landscape plan be prepared to the satisfaction of Council prior to the issue of construction certificate was recommended and has been incorporated into the Notice of Determination.

Environmental Health – Initial concerns were raised over the proposed sewer connection to the proposed lots. The engineering plans illustrate that adequate arrangements have been made to adequately dispose and manage sewage.

House Numbering – House numbers have been allocated to each proposed lot. No objections were raised.

External Referrals

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

RFS – The applications was referred to the RFS as integrated development in accordance with Section 91 of the *Environmental Planning and Assessment (EP&A) Act 1979*. General Terms of Approval (GTA's) were received on 18 December 2016. The GTA's have been imposed in the Notice of Determination (NOD).

HWC – The application was referred to Hunter Water Cooperation (HWC) in accordance with Section 51 of the Hunter Water Act 1991. Stormwater Plans illustrate that stormwater flows will be directed to Richardson Road, which is outside the dam catchment. As such, HWC provided no objection or recommendation in regards to the proposed development.

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MATTERS FOR CONSIDERATION – SECTION 79C**s79C(1)(a)(i) – The provisions of any EPI****Port Stephens Local Environmental Plan 2013 (LEP)****Clause 2.3 – Zone Objectives and Land Use Table**

The proposed development meets the objectives of the R2 zone in that it will provide for the housing needs of the community within a low density residential environment within close proximity to the essential facilities and services meeting the day to day needs of residents. The proposed subdivision pattern and density is consistent with existing subdivision pattern and character of the locality. It is noted that the proposed development is not nominated to be flood prone and as such the subject site is compatible with the flood risk of the site.

Clause 2.6 – Subdivisions - consent requirements

Clause 2.6 of the LEP requires development consent for the subdivision of land and, as a result, a development application has been lodged for the proposal. **Clause 4.1 – Minimum subdivision lot size**

The proposed lots are in excess of the minimum lot size of 500m² and will allow for lots sizes that are suitable for its residential purpose.

Clause 7.1 – Acid Sulfate Soils

The subject site is mapped as Class 5 ASS and is a paper subdivision only. No earthworks are which require cut in excess of 2m. As such, no further ASS assessment is required.

Clause 7.2 – Earthworks

The proposed development will incorporate earthworks by way of general subdivision works, site levelling and basin construction. No significant levels of cut and fill will be required as the lots are not flood prone. It is therefore considered that the imposition of erosion and sediment control and fill importation conditions will be sufficient to limit impacts resulting from the proposed earthworks.

Clause 7.5 – Development in Areas subject to aircraft noise

This Clause is applicable to this application as it is identified within the Australian Noise Exposure Forecast (ANEF) mapping. ANEF charts are contour maps that show the forecast of aircraft noise level that is expected to exist in the future. ANEF charts take into account projected maximum noise levels at various locations as well as the number of occurrences of flight activity. ANEF 2012 forecast the expected maximum noise levels as of 2012 and ANEF 2025 charts expected aircraft noise levels as of 2025.

The objective of this clause is to prevent noise sensitive development near the RAAF Base Williamtown and its flight paths. The majority of the subject lot is positioned within the following ANEF contours:

ANEF2012

The majority of the subject site is affected by aircraft noise as shown in the ANEF2012 noise modelling. The site falls within the 25-30 ANEF contour and the provisions of AS2021-2000, PSLEP2013 and PSDCP2014 classifies the noise impacts to be 'unacceptable'. However, this designation only applies to green field development. For development within existing built up areas, Note 4 of Table 2.1 of AS2021-2000 states that infill development should comply with the Aircraft Noise Requirements contained in the Australian standard.

The Elected Council determined on 14 May 2013 that adjoining land at 153 Richardson Road and 2 Halloran Way, Raymond Terrace be defined as 'infill' development or 'within an existing built up area'. As such, the subject lot can also be considered as infill development.

The proposal is therefore conditionally acceptable in regard to the aircraft noise identified under the ANEF2012 modelling.



Figure 10: Illustrating the boundary between 'Conditionally Acceptable' and 'Unacceptable' in accordance with ANEF 2012.

The majority of the site is identified within the 20-25 ANEF contours of the ANEF2025 mapping, meaning the aircraft noise exposure will reduce to a conditionally acceptable level by the year 2025.

The applicant demonstrated that each proposed lot is able to support a dwelling within the 20-25 ANEF contours. No dwellings will be positioned within the unacceptable 25-30 contour.



Figure 11:e

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Conclusion

Recommended conditions of approval outline the following acoustic mitigation measures to adequately manage potential impacts derived from Aircraft noise:

- A notice be included on all titles within the subdivision advising that the land is subject to high levels of aircraft noise and the construction of a dwelling on the lot will be required to comply with AS2021.
- All future DA's for dwelling or any noise sensitive development within the proposed subdivision be designed to be compliant with AS2021 and certified by a suitable qualified Acoustics professional.
- All future dwellings are to be inspected prior to occupation to confirm that construction has been carried out in accordance with the certified plan to conform that the indoor sound levels shown in Table 3.3 *Indoor Design Sound Levels for Determination of Aircraft Noise Reduction* in AS 2021—2000.

Clause 7.6 – Essential Services

A condition has been placed on the consent for the lots to be connected to the relevant utility services. Access to water and sewer is currently available in this area. Standard conditions relating to the receipt of a HWC Section 50 Certificate prior to the issue of Subdivision Certificate have been imposed. Documentary evidence for the provision of all other essential services will also be required.

A condition will be placed on the consent to remove the transpiration area and septic tank, which currently services the existing dwelling.

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 – Notification and Advertising

In accordance with the requirements of chapter A.12, the development application exhibited for a period of 14 days, in accordance with PSDCP2014

Chapter B2 – Natural Resources – The applicant submitted a Flora and Fauna Report with the development application. The document outlined the following environmental values of the site:

- is highly disturbed and almost totally cleared of vegetation and primarily contains maintained lawn and gardens;
- provides minimal habitat for native fauna with species identified being those associated with disturbed and exotic vegetation;
- adjoins a vegetated area however it is noted that the lot to the west has approval to be cleared for a 26 lot subdivision;
- does not provide connectivity and/or movement corridors;
- is mapped as 'mainly cleared' or 'other vegetation' on the Koala Habitat Planning Map as contained in the PSC Comprehensive Koala Plan of Management (CKPoM). Site

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investigations verified this mapping. No preferred Koala feed trees as listed in the PSC Comprehensive Koala Plan of Management (CKPoM) were recorded on site;

- no threatened species or ecological communities have been identified on site. Section 7.1 of the Ecological Assessment (Anderson 2016) provides an assessment of the likelihood of occurrence of TSC Act listed and EPB8C Act listed threatened species and ecological communities;
- is dominated by introduced species. There is no consideration in the assessment of the presence of listed noxious weed species. None of the species listed in Appendix A are listed as noxious weeds for the PSC local government area (LGA).

Due to the disturb nature of the vegetation on-site the proposal will not have a significant impact on the natural environment. As such the proposal subdivision is consistent with the aims and objectives of Chapter B2- Natural Resources.

Chapter B3 – Environmental Management**Bushfire Prone**

The subject site is classified as bushfire prone land. The NSW RFS has reviewed the application and provided General Terms of Approval. The General Terms of Approval (GTA's) have been imposed on the consent as Schedule 3.

Acid Sulphate Soils

The development will not disturb, expose or drain acid sulphate soils on the site as there will be minimum excavation works occurring as part of the development.

Chapter B4 – Drainage and Water Quality

The applicant submitted a Stormwater Management Strategy and Plans with the application. A further information request was issued by Council's Development Engineering Unit with regard to the drainage design and water detention. The development was considered to meet the required water quality parameters. Conditions of consent were recommended by Council's Development Engineering Unit to cater for the Construction Certificate application relative to each stage of the subdivision.

B7 – Williamstown RAAF Base Aircraft Noise & Safety

The subject site is positioned within the Aircraft Noise Planning Area and as such Chapter B7 of PSDCP2014 is applicable. As discussed in PSLEP2013 Clause 7.5 discussed the subject site is located within:

- ANEF2012 – 25-30 contour – Unacceptable (unless defined as infill development) .
- ANEF2025 – 20-25 contour – Conditionally Acceptable

An Aircraft Noise Assessment was submitted with the application. The Aircraft Noise Assessment provided construction measures detailing the indoor noise levels of future dwellings will be able to satisfy AS2021-2015 (Table 3.3). In accordance with PSDCP2014 the Department of Defence (DoD) was invited to provide comments and the concerns raised by DoD are discussed below. It should be noted that all recommended conditions suggested by DoD have been incorporated in the NoD.

C1 – Subdivision

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The layout of the subdivision has been considered in regards to chapter C1 of the DCP. The layout and orientation of the lots allows for future dwelling(s) to be located on the lots as well as allowing sufficient solar access onto the lots.

The proposed lots will be accessed from the west via Lake View Crescent and Halloran Way. A condition has been incorporated into the NoD requiring the issue of the final subdivision certificate for 153 Richardson Road and 2 Halloran Way (DA Consent No. 16-2011-603-1) be release prior to the release of the subdivision certificate for this application. This ensures suitable vehicle access to the proposed subdivision.

The proposed subdivision of 161 Richardson Road has been assessed against appropriate Clauses in Chapter C1, as outlined below.

Clause	Requirement	Assessment
C1.2	Subdivision defined as either minor or major	The proposed subdivision is an 11 lot Torrens title subdivision, with new roads and public drainage being constructed. Accordingly the subdivision is classified as a major subdivision.
C1.5	Maximum lot dimensions of 80m deep and 160m long	The resulting lots have dimensions are below the prescribed maximums controls are therefore comply with the DCP.
C1.11	New lots support a building footprint of 15x8m or 10x12m	Each proposed lot is capable of supporting a building footprint in accordance with this requirement. In addition, the proposal includes a dwelling on each allotment and demonstrates that sufficient area is available to site the buildings, as well as provide sufficient open space and vehicle manoeuvring area on each resulting lot.
C1.12	'Battle-axe lots are only considered when there is no practical way to provide direct street frontage. Right of carriageway is constructed prior to the issuing of a subdivision certificate. Minimum entry width of battle-axe 3.6m and maximum length 30m. Max 3 dwellings sharing access	No battle axe style subdivision is proposed (excluding the drainage reserve) and as such this clause is not is not applicable to this development application
C1.14	Where possible, lots should be orientated to provide one axis within 30 degrees east and 20 degrees west of true solar north. Where a northern orientation is not possible, lots should be wider to allow private open space on the northern side of the dwelling. Subdivision design should take account for solar access opportunities afforded by	The proposal allows for exposed back yards for all dwellings, ensuring ample access to sunlight for future users. The orientation of the lots is considered acceptable. It is noted that the proposed lot layout is consistent with the subdivision approved at 153 Richardson Road, Raymond terrace and existing subdivision patterns in the locality.

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	land topography.	
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It is considered that the application generally complies with the DCP provisions.

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

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

s79C(1)(a)(iv) – The regulations

N/A

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 will result in a positive economic impact in the locality by stimulating the local economy during the construction phase of the development and support the local economy of Raymond Terrace in the longer term through the increases in population.

The lots are positioned within close proximity to essential facilities and services.

Impacts on the Built Environment

The proposed development will have minimal adverse impacts on the built environment. It is anticipated that the lots will be predominantly be developed with detached dwellings that fits with the established character of the area.

Impacts on the Natural Environment

The proposed development will not have a significant impact on the natural environment. The subject lot is highly disturbed, almost totally cleared of native vegetation and contains maintained lawn and gardens. Additionally, the vegetation provides minimal habitat for native fauna and does not provide connectivity of vegetation corridors.

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

The subject site is suitable for the development as the site is located within a reasonable distance to local facilities and services and the proposed lots are of sufficient size to allow future residential dwellings.

s79C(1)(d) – Any submissions

Four (4) submissions were received objecting to the proposal. The Department of Defence, Newcastle Airport and two adjoining landowners raised concerns in regards to the proposed. Concerns raised are discussed below:

Department of Defence

The application was referred to the DoD for comment due to the proximity to RAAF Base Williamtown and associated Aircraft noise. The submission outlined that the site is contained within the 20 Australian Noise Exposure Forecast (ANEF) contours, as shown on the RAAF Base

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Williamstown and Salt Ash Weapons Range 2025 ANEF Map, with a small section of the subject site located within the 25 ANEF contour.

DoD objected to the creation of any new residential allotments which would result in houses or inappropriate noise sensitive developments being constructed within the 25 ANEF or greater contour. The Department identified that the proposed access road and Lots 102 and 103 appear to be located within the 25 ANEF contour and stated that compliance with maximum indoor noise levels in accordance with AS2021 may not be able to be practically achieved. The maximum external aircraft noise for the location could be as high as 90-100dB(A).

DoD commissioned a peer review of the Acoustics report prepared by Spectrum Acoustics. The following requests for additional information were received as part of the peer review process:

- Confirmation of the external design noise level with reference to future noise levels expected at the site, or monitoring of existing noise levels and adjusting accordingly;
- Subsequent recalculation of the Aircraft Noise Reduction, particularly in sleeping areas and dedicated lounges; and
- Derivation of indicative construction of building elements to achieve the Aircraft Noise Reduction of dwelling spaces, with consideration given to spectral components of aircraft noise. The assessment shall also consider typical dwelling and room sizes, noting the roof-ceiling and glazed elements are typically the 'weakest' paths of aircraft noise intrusion. Accordingly, it is expected that construction elements with significantly higher Rw ratings to those specified in the Spectrum Acoustics report will be required.

The additional information was provided by the applicant and forward to DoD for review. In response DoD noted that the 93-99dB(A) detailed in the amended report is consistent with DoD data. However, it was noted that the recalculated Aircraft Noise Requirement (ANR) in bedrooms and the specific construction elements has not been supplied.

The referral concluded that the DoD opposed the proposal and would be concerned with any decision by Council to approve the subdivision. However, DoD specified that if Council approved the proposed subdivision, the following considerations should be investigated:

- A notation be included on all titles within the subdivision advising that the land is subject to high levels of aircraft noise and the construction of a dwelling on the lot will be required to comply with AS2021.
- All future DA's for dwelling or any noise sensitive development within the proposed subdivision be designed to be compliant with AS2021 by a suitable qualified Acoustics professional
- All future dwellings are to be inspected prior to occupation to confirm that construction has been carried out in accordance with the certified plan.

Newcastle Airport

Newcastle Airport raised the following concerns contained within their submission objecting to the proposed subdivision:

Concerns Raised	Comments
Inconsistency with Clause 7.5 of PSLEP2013	As discussed above, the application is consistent with the aims and objectives of Clause 7.5 of PSLEP2013. Conditions of consent will notify potential buyers of the ANEF and require plans to be certified by an Acoustics professional to be compliant with AS2021-2015.

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Failure to demonstrate that the proposed subdivision is infill development in accordance with AS2021-2015	the elected Council deemed 153 Richardson Road and 2 Halloran Way, Raymond Terrace be defined as 'infill' development or 'within an existing built up area', in accordance with note 4, Table 2.1 (building site acceptability of ANEF zones) of AS 2021-2000. As such, the subject site is also considered to be defined as infill development.
Non-compliance with the ANEF mapping	Development Plans submitted illustrate that each lot created within the subdivision will be able to facilitate a dwelling within ANEF2025 20-25 contours. Development within 20-25 contours is conditionally acceptable. Conditions of consent require Table 3.3 – Indoor Design levels to be satisfied.

Public Submissions

In addition to submissions made by the Department of Defence and Newcastle Airport, two (2) other residents raised the following concerns:

Concerns Raised	Comments
The use of the existing driving utilised by the dwelling	The current vehicle access point to the existing dwelling from Richardson Road will be removed prior to the issue of the subdivision certificate. A drive way will be constructed providing access to
Value of surrounding property values	No evidence that property values will be affected by the proposed development was provided. Further, the impacts on the value of the surrounding properties values are not a planning consideration are not relevant assessment criteria under the provision of Section 79C of the Environmental Planning and Assessment Act 1979.
Privacy implications to adjoining landowners	The design of the proposed subdivision ensures minimal impacts in regards to potential privacy implications. The location of the drainage easement and internal roads ensure privacy between 171 Richardson Road and proposed subdivision, particularly Lot 110 is appropriated mitigated.
Stormwater to discharge on neighbouring lots	The stormwater plan detail that post-development stormwater flow will be equal to or less than pre-development flows.

s79C(1)(e) – The public interest

The proposal is a permissible land use within the R2 Low Density Residential Zone and complies with the minimum lot size provisions. The application has been assessed in accordance with the provisions of the Environmental Planning and Assessment Act 1979 and other relevant planning considerations. As such, the approval of the application is considered to be within the public interest as it provides for future housing opportunities in a suitable location.

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16-2016-747-1

DETERMINATION

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

SAMUEL HARVEY



PORT STEPHENS
COUNCIL

Proposed Conditions

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
Proposed Subdivision	114923	Sheet 1 of 1	17/10/2016	Pulver Cooper & Blackly
Proposed Residential Subdivision	UMB160447 .CIV.DA	000, 100, 200, 201, 300, 400, 401 & 500	08/05/2017	UMBRELLA CIVIL
Proposed Residential Subdivision	UMB160447 .CIV.DA	001	06/04/2017	UMBRELLA CIVIL
Proposed Residential Subdivision	UMB160447 .CIV.DA	600 & 700	21/04/2017	UMBRELLA CIVIL

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.



PORT STEPHENS
COUNCIL

Proposed Conditions

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

3. The development shall be undertaken in accordance with the General Terms of Approval and conditions by NSW Rural Fire Service referenced D16/3906 and dated 18 December 2016.

CONDITIONS TO BE SATISFIED PRIOR TO DEMOLITION, EXCAVATION OR CONSTRUCTION

4. Prior to the commencement of work written confirmation must be provided by Hunter Water Corporation (HWC) stating that the approved works do not impact upon existing or proposed HWC infrastructure, or alternatively giving any specific conditions required by HWC. A copy of HWC's written confirmation shall be provided to the Private Certifying Authority (PCA) within 10 days after its issue.
5. Works associated with the approved plans and specifications shall not commence until:
- a Construction Certificate has been issued;
 - the Principal Certifying Authority has been nominated; and
 - Council has received two days' notice of the commencement date.
6. 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

7. A monetary contribution is to be paid to Council for the provision of 10 additional lots, 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:

Facility	Per lot/dwelling	Total
Civic Administration	\$1,160.00	\$11,600.00
Public Open Space, Parks and Reserves	\$2,543.00	\$25,430.00
Sports and Leisure Facilities	\$6,865.00	\$68,650.00
Cultural and Community Facilities	\$2,448.00	\$24,480.00
Road Works	\$1,616.00	\$16,160.00
Fire & Emergency Services	\$225.00	\$2,250.00
Total		\$148,570.00

Payment of the above amount shall apply to Development Applications as follows:

- Subdivision and building work - **prior to the issue of the Construction Certificate, or Subdivision Certificate, whichever occurs first.**

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



PORT STEPHENS
COUNCIL

Proposed Conditions

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

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.

8. A landscape plan is to be prepared to the satisfaction of Council, in accordance with Technical Specification: Landscape Version 1.0 May 2014, **prior to issuing of the Construction Certificate.**
9. Engineering plans for the following subdivision works within the private property must be designed by a suitably qualified professional, in accordance with Council's 'Infrastructure Design and Construction Specification – AUS Spec', and Section B of Development Control Plan 2014 **prior to the issue of a Construction Certificate.**
 - a) Internal roads, drainage and pathways.
 - b) 1.2m wide reinforced (SL72 steel fabric, 100mm thick) concrete footpath in Lake View Crescent and Halloran Way.
 - c) Services conduits (including draw wire) for Power and Phone, within the access corridor in accordance with the relevant authority's specifications and requirements.
 - d) Inter-allotment drainage where stormwater from individual allotments cannot be discharged directly into the street drainage system.
 - e) Secondary stormwater flow path capable of conveying the 1% AEP flood flow.
 - f) A full stormwater design prepared by a Chartered Professional Civil Engineer including:
 - i. Details to demonstrate the post developed flows are restricted to the pre-development flows for the development and water quality is in accordance with Council's Urban Storm water and Rural Water Quality Management Plan.
 - ii. Supporting calculations to demonstrate the Q100 overland flow paths can safely be contained within the road reserve profile and public reserve including the required freeboard. This may involve providing a hydraulic grade line analysis.
 - iii. Details to demonstrate the offline high flow bypass will function effectively to convey all flows greater than 50% of the 1 year ARI critical storm event around the water quality basin.
 - iv. All storm water pipes within the road reserve are to be Class 4.
 - v. Adequate sediment and erosion control at the inlet to all basins to prevent scouring.
 - vi. The proposed water quality biofiltration basin shall be designed and constructed in accordance with the approved plan and Water by Design – Bioretention Technical Design Guideline. Planting within the bioretention basin shall consist of a mix of any of the following plant species:

Wet and usually damp areas
Juncus continuus
Persicaria decipens



PORT STEPHENS
COUNCIL

Proposed Conditions

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

Rununculus inundatus

Villarsia exaltata

Drier areas of basin, intermittent flooding tolerant

Danthonia longifolia

Themeda australis

Lomandra longifolia

Water quality basin walls shall be a maximum 1:4 batters

The engineering plans and any associated reports for the above requirements must form part of the Construction Certificate.

10. All verges shall be fully turfed with couch or buffalo. Details shall be submitted to the Certifying Authority **prior to the issue of the Construction Certificate.**
11. A geotechnical report prepared by a Chartered Professional Geotechnical Engineer detailing the suitability of the road pavement, water quality structure and proposed paved access to the water quality and detention basins in terms of location and structural integrity. Details shall be submitted to the Certifying Authority for approval **prior to the issue of the Construction Certificate.**
12. A utility plan detailing utility layouts shall be submitted to the Certifying Authority **prior to the issue of the Construction Certificate.**
13. Road pavements shall be designed and constructed in accordance with Council's Infrastructure design and Construction Specification and the Geotechnical Report that forms part of the conditions of consent for this development application. Details shall be submitted to the Certifying Authority **prior to the issue of the Construction Certificate.**
14. Regulatory Line marking and signage shall be in accordance with Council's Design and Construction Infrastructure Specification and AS1742. Details shall be submitted to Port Stephens Council's Local Development Committee for approval **prior to the issue of the Construction Certificate.**
15. A Construction Traffic Management Plan shall be prepared, including Vehicle Movement Plans and Traffic Control Plans that will have minimal impact on surrounding traffic. Details shall be submitted and approved by Council **prior to the issue of the Construction Certificate.**
16. Turning heads shall be located at the eastern ends of Halloran Way and Lake View Crescent. Turning Heads shall be designed in accordance with Councils Subdivision Code, Part 2; Figure 3-2 – Typical Turning Head Geometry for Accessways. Details shall be submitted to Council for approval **prior to the issue of the Construction Certificate.**
17. Road verges shall be designed in a manner that will allow future driveway construction to comply with Council's standard drawings for vehicle crossing



PORT STEPHENS
COUNCIL

Proposed Conditions

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

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

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

18. **Prior to the issue of the Subdivision Certificate** for this application (DA Consent No.16-2016-747-1), the Subdivision Certificate for Stages 1 and 2 for the 26 Lot Torrens Title Subdivision (DA Consent No.16-2011-603-4) over 153 Richardson Road, Raymond Terrace and 2 Halloran Way, Raymond Terrace must be issued.
 19. **Prior to the issue of the Subdivision Certificate** the driveway servicing the existing dwelling must be removed (proposed Lot 111). A driveway must be constructed to connect the existing dwelling positioned on proposed Lot 111 to Baluster Street.
 20. For endorsement of the subdivision certificate, the person having the benefit of the development consent shall submit an original plan of subdivision plus an electronic and signed copy on a USB or CD, suitable for endorsement by Council. The following details must be submitted with the plan of subdivision and its copies:
 - a. the endorsement fee current at the time of lodgement;
 - b. a checklist citing compliance with all conditions of consent;
 - c. the 88B instrument;
 - d. the Section 50 (Hunter Water) Compliance Certificate for the subdivision;
 - e. All necessary easements for services, access, drainage, and/or maintenance shall be indicated on the plan; and
 - f. Proof of payment of Section 94 contribution.
- Failure to submit the required information will delay enforcement of the linen plan and may require payment of rechecking fees.
21. Certification from a registered Surveyor shall be submitted to Council **prior to the issue of the Subdivision Certificate**, stating that no services (including stormwater) or public utility presently connected to the existing dwelling shall straddle any new boundary. Alternatively, an easement shall be created to cover the services, utilities or structures.
 22. The existing sewer treatment system on site is to be decommissioned **prior to the issue of the Subdivision Certificate**.
 23. **A Subdivision Certificate cannot be issued** until the Works-As-Executed stormwater drainage plans have been certified by a registered surveyor documenting that levels and dimensions are within the limits specified in Port Stephens Council's Infrastructure Specification, and to the satisfaction of Council.
 27. **Prior to the issue of a Subdivision Certificate**, the developer is to provide the following plans and / or CAD files:



PORT STEPHENS
COUNCIL

Proposed Conditions

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

- a. Road construction plans in CAD format prior to commencement of road works;
- b. Works-as-executed drawings and CAD files of all engineering works prior to the issue of any Subdivision Certificate(s); and
- c. CAD files which include all lot and road boundaries, lot numbers and easements, prior to the issue of the Subdivision Certificate.

All CAD files shall be supplied in AutoCAD or compatible format in a known coordinate system (preferably GDA94 or MGA56).

28. All civil engineering works shall be constructed in accordance with the Construction Certificate and Port Stephens Council's Infrastructure Specification, Policies and Standards, to the satisfaction of Council **prior to issue of the Subdivision Certificate.**
29. All road and drainage infrastructure shall be constructed to the satisfaction of the Principal Certifying Authority **prior to the release of any Subdivision Certificate.**
30. The applicant shall restore, replace or reconstruct any sections of footpath, cycleway, kerb and guttering, road pavement, stormwater, or any other public infrastructure located within the Road Reserve that occur as a result of construction activities, as determined by Council's Development Engineers and the Roads and Maritime Services. The applicant shall bear all associated costs with restoring the public infrastructure to satisfaction of the Council.

A Subdivision Certificate shall not be issued until all necessary remediation and repair works have been completed to the satisfaction of Council and the Roads and Maritime Services.

31. Where a lot cannot drain directly to the street, inter-allotment drainage easements shall be created to provide a legal point of discharge. A draft instrument under Section 88b of the Conveyancing Act 1919 shall be submitted to the Principal Certifying Authority for approval **prior to the issue of the Subdivision Certificate.**
32. **Prior to the issue of a Subdivision Certificate**, an Operation and Maintenance Plan for the stormwater system shall be prepared by a suitably qualified engineer, detailing a regular maintenance programme for pollution control devices, covering inspection, cleaning and waste disposal, a copy of which shall be supplied to the owner/operator.
33. **Concurrent with the registration of the subdivision**, proposed public roads shall be dedicated to Council as road reserve, at no cost to Council.
34. **Prior to issue of the Subdivision Certificate**, a geotechnical report prepared by a suitably qualified engineer shall be submitted to Council that:
 - a. Classifies each lot in accordance with Australian Standard AS2870; and
 - b. Verifies that compaction of any approved fill-material on the lots is in accordance with AS3798 employing 'level 1' inspection and testing.

**PORT STEPHENS**
COUNCIL

Proposed Conditions

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

35. **Prior to issue of the Subdivision Certificate**, a copy of a report prepared by a geotechnical engineer shall be submitted to Council classifying each lot in accordance with Australian Standards AS 2870. A copy of the report is to be made available to each individual land purchaser.
36. **Prior to the issue of a Subdivision Certificate**, evidence is to be provided to Council demonstrating that the following reticulated services are available to each lot:
- a. Telecommunications;
 - b. Electricity;
 - c. Gas;
 - d. Water;
 - e. Sewer.
37. **Prior to the issue of the Subdivision Certificate**, the deposited plan and 88B instrument submitted with the subdivision certificate application is to include details of encumbrances under Section 88B of the *Conveyancing Act 1919*, required to carry out the approved development. In particular, the title of the respective approved lots shall be endorsed with the following:
- a. All future dwellings shall require the submission of an Acoustic Report detailing building design is in accordance with AS2021-2015 Acoustics – Aircraft Noise Intrusion – Building Siting and Construction.

Port Stephens Council shall be nominated as a party needed to authorise the release, variation or modification of easements, restrictions and covenants on the use of the land required by this consent.

CONDITIONS TO BE SATISFIED AT ALL TIMES

38. No vehicles are to enter or exit from Richardson Road, Raymond Terrace.

ADVICES

- A. All future development application for dwellings or any noise sensitive development within the proposed subdivision will be required to be design to be compliant with AS2021. Prior to the issue of Construction Certificates for future dwellings, details are to be provided to the certifying authority demonstrating that the building will meet the relevant provisions of Australian Standard AS2021:2000 Acoustics – Aircraft noise intrusion – Building siting and construction.
- B. All future development applications for dwellings will be required to be inspected prior to the issue of an occupation certificate to confirm that the development satisfies indoor sound levels shown in Table 3.3 *Indoor Design Sound Levels for Determination of Aircraft Noise Reduction* in AS 2021—2000.



PORT STEPHENS
COUNCIL

Proposed Conditions

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

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

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.



PORT STEPHENS
COUNCIL

Proposed Conditions

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

SCHEDULE 3



PORT STEPHENS
COUNCIL

Proposed Conditions

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

All communications to be addressed to:

Headquarters
15 Carter Street
Lidcombe NSW 2141

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

Headquarters
Locked Bag 17
Granville NSW 2142

Facsimile: 8741 5433



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

Your Ref: 16-2016-747-1
Our Ref: D16/3906
DA16112504904 JC

ATTENTION: Samuel Harvey

18 December 2016

Dear Sir/Madam

Integrated Development for 3/239141 161 Richardson Road Raymond Terrace

I refer to your letter dated 18 November 2016 seeking general terms of approval for the above Integrated Development in accordance with Section 91 of the 'Environmental Planning and Assessment Act 1979'.

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

Asset Protection Zones

The intent of measures is to provide sufficient space and maintain reduced fuel loads so as to ensure radiant heat levels of buildings are below critical limits and to prevent direct flame contact with a building. To achieve this, the following conditions shall apply:

1. At the issue of subdivision certificate and in perpetuity the entire property shall be managed as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones'.

Water and Utilities

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

2. Water, electricity and gas are to comply with section 4.1.3 of 'Planning for Bush Fire Protection 2006'.

ID:104904/98483/5

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Adelaide Street (PO Box 42), Raymond Terrace NSW 2324
DX 21406 Raymond Terrace • Phone 4960 0255
Email council@portstephens.nsw.gov.au

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PORT STEPHENS
COUNCIL

Proposed Conditions

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

Access

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

3. Public road access shall comply with section 4.1.3 (1) of 'Planning for Bush Fire Protection 2006'.

General Advice – consent authority to note

- This approval is for the subdivision of the land only. Any further development application for class 1,2 & 3 buildings as identified by the 'Building Code of Australia' must be subject to separate application under section 79BA of the EP & A Act and address the requirements of 'Planning for Bush Fire Protection 2006'.
- The issue of subdivision certificate is dependent on the entire adjacent properties as identified in the NSW RFS Bush Fire Safety Authority, 'Integrated Development for 2&1//239141 153 Richardson Road & 2 Halloran Way Raymond Terrace 2324', D11/1772, dated 13 June 2012 being managed as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones'.
- The issue of subdivision certificate is dependent on the establishment of a road network on adjacent properties as identified in the NSW RFS Bush Fire Safety Authority, 'Integrated Development for 2&1//239141 153 Richardson Road & 2 Halloran Way Raymond Terrace 2324', D11/1772, dated 13 June 2012 which shall comply with public road access shall comply with section 4.1.3 (1) of 'Planning for Bush Fire Protection 2006'.

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'.

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ITEM NO. 2

FILE NO: 17/78421
RM8 REF NO: 16-2016-883-1

**DEVELOPMENT APPLICATION NO. 16-2016-883-1 FOR A SUPERMARKET AT
155 SALAMANDER WAY, SALAMANDER BAY**

REPORT OF: BRETT GARDINER - ACTING DEVELOPMENT ASSESSMENT &
COMPLIANCE SECTION MANAGER
GROUP: DEVELOPMENT SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Approve Development Application No. 16-2016-883-1 subject to the conditions contained in Attachment (**ATTACHMENT 3**).
-

**ORDINARY COUNCIL MEETING - 27 JUNE 2017
COMMITTEE OF THE WHOLE RECOMMENDATION**

	Councillor John Nell Councillor Geoff Dingle 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: Crs Geoff Dingle, Chris Doohan, Sally Dover, Ken Jordan, Paul Le Mottee and John Nell.

Those against the Motion: Nil.

**ORDINARY COUNCIL MEETING - 27 JUNE 2017
MOTION**

148	Councillor Ken Jordan Councillor Paul Le Mottee It was resolved that Council approve Development Application No. 16-2016-883-1 subject to the conditions contained in Attachment (ATTACHMENT 3).
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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: Crs Geoff Dingle, Chris Doohan, Sally Dover, Ken Jordan, Paul Le Mottee and John Nell.

Those against the Motion: Nil.

BACKGROUND

The purpose of this report is to present to Council for determination, development application (DA) 16-2016-883-1 for the construction of supermarket at 155 Salamander Way, Salamander Bay. A locality plan is provided in **(ATTACHMENT 1)**.

The development application is being reported to the elected Council for determination as the development is located on land of which Council is the owner.

The parent lot (LOT: 284 DP: 806310) is currently being subdivided in accordance with DA16-2015-865-1, which approved the subdivision of the land into seven (7) lots with a number of new roads. A subsequent subdivision application (16-2016-814-1) was approved over Lot 4 to create three (3) lots, and the proposed development will be located on the resulting Lot 401.

It is understood that the land will be sold to the proponent on registration of the new lots. A condition has been incorporated into the Notice of Determination (NoD) requiring the issue of a Subdivision Certificate for the approved lot prior to the issue of the Occupation Certificate for this application.

Proposal

The application proposes a new ALDI Supermarket and will comprise of 1,732m² retail floor area and associated parking and infrastructure.

Hours of operation is proposed to be 8am to 8pm, seven days a week. It is proposed that deliveries be undertaken outside of these hours.

The internal layout includes a customer entrance and checkouts in the south. The main shopping area is located to the north of the entrance. The staff areas and public toilets are located in the south-eastern corner of the building, with the storage and loading areas located in the eastern section of the building.

The proposal includes the construction of 119 car parking spaces, incorporating four (4) accessible spaces. Vehicle access is proposed from Central Avenue and Terminus Parade (both currently under construction). Recommended conditions of consent restrict access at Terminus Parade to left in, left out only, to ensure road safety is maintain.

The development includes various business identification signage attached to the building facades, typical of that found on other ALDI stores.

The development also includes stormwater quality measures and landscaping along the frontages.

Assessment Outcomes

The subject site is zoned B3 Commercial Core under PSLEP2013. The proposed development meets the objectives of the B3 zone in that the proposal will provide ongoing business activity and employment opportunities in an accessible location in the Salamander Bay area.

The development application was assessed against relevant controls and objectives as specified under PSLEP2013 and Port Stephens Development Control Plan 2014 (PSDCP2014). The development is considered to be generally compliant with relevant controls and objectives. It is however noted that the proposal does not strictly comply with the setback requirements of Chapter c.2 of the PSDCP2014. A discussion relating to the non-compliance has been included in the Key Issues section below.

A detailed assessment of the proposal against the provisions of s.79C *Environmental Planning and Assessment Act 1979* (EP&A Act) is provided at **(ATTACHMENT 2)**.

Key Issues

Access to the proposed development

As stated above, access is provided from Terminus Parade and Central Avenue.

Comment from the RMS was requested and the authority had no objection to or statutory requirements for the proposed development. Further, it was stated that there will be no significant impact on the nearby State road network.

Traffic generation resulting from the proposed development was addressed in the Traffic Report prepared by Colston Budd Rogers & Kafe (dated December 2015). The assessment included the potential of commercial development on the site and found that the road network would be able to cater for the additional expected traffic. The intersection between Terminus Parade and Bagnall Beach Road was recommended to be upgraded to a signalised intersection within this report. It is noted that the signalisation of this intersection has already been approved under the subdivision DA, and so a condition of consent has been included on the NoD to ensure these works are completed prior to the issue of an occupation certificate for the proposed development.

Council's Traffic engineer reviewed the access arrangements from Terminus Parade and found that the location of this driveway will essentially constitute a 4-way intersection with the car park access opposite. These types of intersections are not supported by Council's design specification. To limit potential traffic conflicts, it is

MINUTES ORDINARY COUNCIL - 27 JUNE 2017

recommended access be limited to left-in/left-out. It is considered that this would cause minimal inconvenience to drivers while still maintaining road safety.

It is therefore considered that the local street network can cater for the additional traffic generated by the proposal.

Non-compliance with setbacks requirements

The proposal does not strictly comply with the PSDCP2014 provision as the building is setback 1.2m from the first 8m of the building frontage and is then setback 3.5m for the next 23m. However, it is noted that the area between the building and road frontage has been sufficiently landscaped softening the appearance of the building. It is considered that the provision is not specifically applicable to the site or this type of development. The development site is not typical of 'high street' style commercial areas as the lot layout means an average setback cannot be established. The proposed development is not anticipated to be prominent within the public realm and is suitably supported by landscaping elements.

The overarching objective of the provision is to provide an active frontage and building articulation. It can be argued that the proposed design complies with this requirement as it provides large windows along the majority of the building façade and addresses the frontage.

It is therefore considered that, although the development does not strictly meet the numerical requirements of the PSDCP2014, the design activates the Terminus Parade frontage by providing the main shop front to the street and provides façade articulation. Further, Chapter C.2 of the PSDCP2014 states that commercial development should be located on the side property boundary. It is noted that the building will be setback approximately 3.5m from the eastern boundary and does not comply with the side setback requirement of the PSDCP2014. The area within the setback will be suitably landscaped and it is considered that this setback will not have a significant impact on future development on the adjacent lot to the east.

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2013-2017
Sustainable Development.	Provide Strategic Land Use Planning Services. Provide Development Assessment and Building Certification Services.

FINANCIAL/RESOURCE IMPLICATIONS

There are no anticipated financial or resource implications as a result of the proposed development.

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

LEGAL, POLICY AND RISK IMPLICATIONS

The development application is consistent with Section 79C of the *Environmental Planning and Assessment Act 1979*.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that a third party or the applicant may appeal the determination.	Low	Approve the application as recommended. The assessment carried out details the merits of the proposed development.	Yes
There is a risk that if the application is refused the ability to provide new commercial development in Salamander Bay will not be realised.	Low	Approve the application as recommended.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The proposed development is anticipated to have positive social and economic impacts through the creation of viable employment and economic activity through both the construction of the development and provision of a modern supermarket facility to local residents. The development is consistent with surrounding developments and the objectives of B3 zoned land.

The development is not anticipated to have significant impact to the natural environment. The subject site is cleared of significant vegetation and the landscaping required will increase the environmental value of the site. Additionally, the development includes appropriate stormwater management systems ensuring the surrounding water quality and quantity leaving the subject site is in accordance with PSC DCP2014.

CONSULTATION

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

Internal

The application was referred to Councils Development Engineer, Building Surveyor, Social Planning Officer, Environmental Health Officer, Natural Resources Officer and Section 94 Officer. Each internal staff member assessed the relevant portion of the original application and where necessary requested additional information.

Following receipt of amended plans and additional information, the application was referred back to the internal staff members for review. No objections were raised by any internal staff to the amended design and relevant conditions have been incorporated into the Schedule of Conditions provided at **(ATTACHMENT 3)**.

External

The application was referred to the RMS for comment. No objections were raised by the RMS however, recommended conditions were suggested. Conditions regarding the signage requirements have been incorporated into the recommended conditions of consent.

Public Consultation

In accordance with the requirements of PSDCP2014, the development application was notified and advertised for a period of 30 days, ending 25 January 2017.

Two (2) submissions have been received in relation to the proposed development. The issues identified in the submissions are discussed below:

Subdivision road layout

A previous development application to subdivide the land aligned an internal access road along the northern boundary of the site. However this consent has since been surrendered and a new consent for subdivision (DA Consent No.16-2015-865-1) has been acted on which includes an internal access road further to the south.

Regardless, the layout of local roads does not form part of the proposed application and is not an applicable consideration for this development application. The site is considered to be suitable to accommodate the proposed development without causing unacceptable traffic impact to the surrounding area.

Determining Body

The submission correctly identified that Council owns the land and provided owner's consent to lodge the application.

The mechanisms under which to refer decisions to the Joint Regional Planning Panel (JRPP) are provided by Schedule 4A of the Environmental Planning and Assessment Act 1979. The provisions state that development with a Capital Investment Value (CIV) in excess of \$5 million, where Council is the proponent and/or the land owner, must be referred to the JRPP. As the CIV is below this figure, Council remains the consent authority.

The proposed development can therefore be assessed and determined by Council.

Ownership Arrangements

The land will be leased to the operator and will remain in Council ownership. The lessee will be required to remove all buildings at the end of the lease and remediate the site to its current state.

Public Toilets

The proposal includes toilets that will be available to the public. For safety reasons, access to the toilets will be provided from inside the convenience store.

Traffic

Concerns were raised regarding the location of the Terminus Parade access across from the existing shopping centre car park and the potential issues with right hand turn movements at this intersection. The issues associated with the location of the Terminus Parade access was identified by Council's Engineering section. To limit the potential conflicts and increase road safety, a condition of consent has been included in the NoD to limit traffic movements at this intersection to left-in/ left-out only. A further requirement for the provision of a raised median at the frontage has been included in the NoD to ensure these movements are controlled.

The submissions also raised concerns with the configuration of the pedestrian footpaths in the precinct, especially the lack of a direct link with the bus terminal directly to the south of Terminus Parade.

It is noted that external footpaths do not form part of this application and can therefore not be altered. It is also noted that the road is relatively wide and provides complex traffic movements leading into the roundabout. It is noted that there are pedestrian footpath options to the west and east to cross Terminus Parade and access the bus terminal.

Landscaping

The submissions included concerns regarding the species selection provided in the landscape design. These comments were considered during the assessment of the landscape design. A Landscape plan is required to be submitted to and be deemed to be satisfactory by Council prior to the issue of a construction certificate. This is to ensure no conflicts between the stormwater design and landscape plan arise.

The submission also stated that the setback along the eastern boundary would create a litter trap and an area for potential anti-social behaviour. These concerns are valid and it is the responsibility of the applicant to remove litter and graffiti on a regular basis. A condition of consent has been included in the NoD to require regular maintenance of all approved landscaped areas that will include the landscaped area along the Central Avenue frontage.

Street frontage and appearance

The submissions identified the non-compliance with the front and side setbacks, contained in Chapter C.2 of the PSDCP2014, as concerns. Council agrees with the submission and acknowledges that the non-compliances exist. It is considered that the front setback requirement does not strictly apply to the current development or the configuration of the site. It does face Terminus Parade and provide pedestrian access directly from this frontage, thereby activating the frontage.

As stated in the submission, the fact that uncertainty regarding the adjoining built form is still unknown, it is difficult to have a full understanding of how the future development will fit within the streetscape. Knowing that the adjoining site will front Bagnall Beach Road near the approved signalised intersection, it is assumed that the access will need to setback from this intersection to ensure road safety, which will most likely result in an access on the western section of the site. This will result in a separation of the buildings by the access. The landscaped setback at the rear of the ALDI building would thereby provide a suitable buffer of the side elevation when viewed from Terminus Parade.

It is considered that the proposed setback will not have a significant impact on the streetscape or limit development on the adjoining land.

Sun Shades in Carparks

The submission requested that the applicant provide shade structures within the car park. It is considered that the provision of shading through the planting of shade trees within the car park will sufficiently address this issue.

OPTIONS

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

ATTACHMENTS

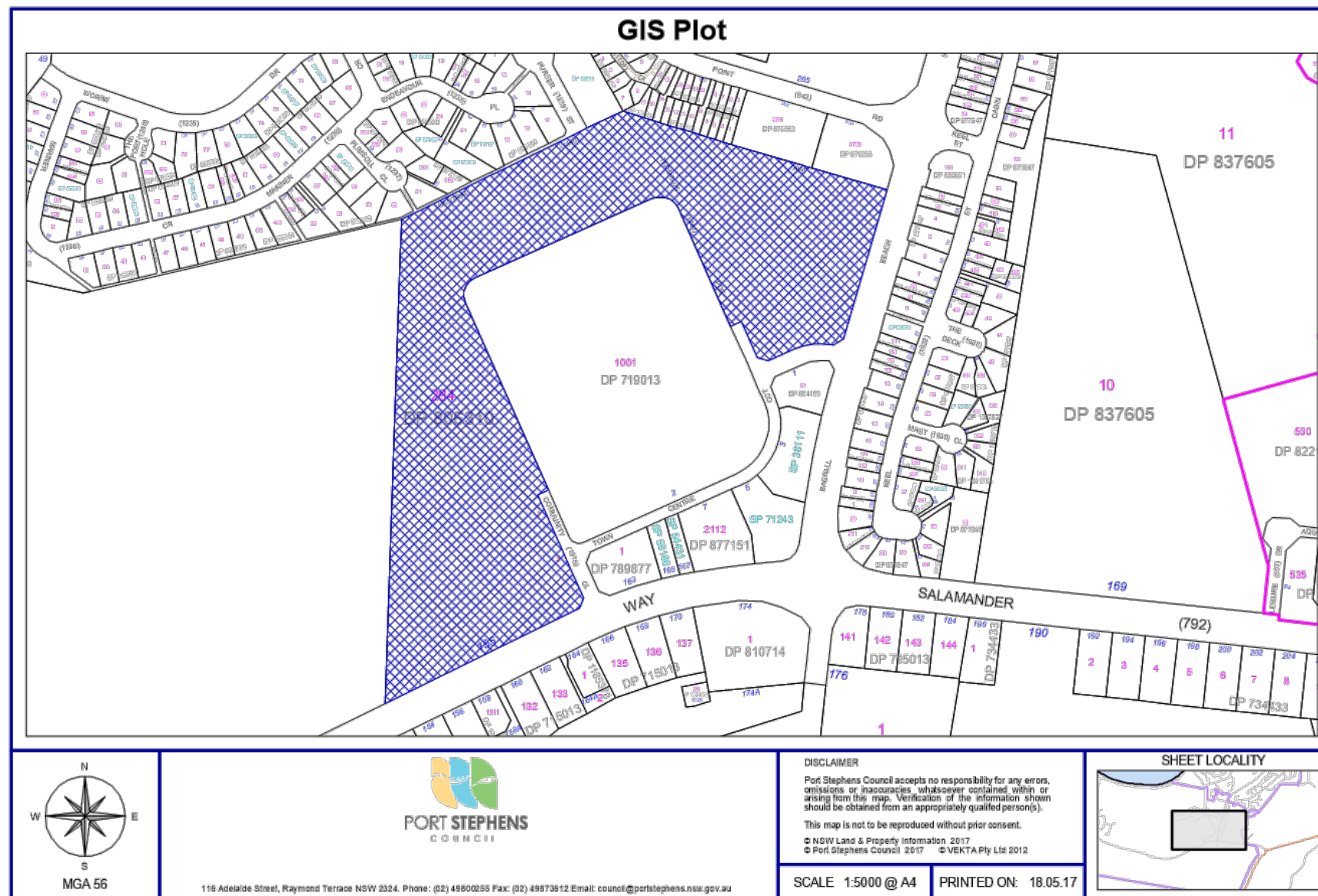
- 1) Locality Plan.
- 2) Assessment Report.
- 3) Notice of Determination.

COUNCILLORS ROOM

- 1) Development Plans.

TABLED DOCUMENTS

Nil.





DEVELOPMENT ASSESSMENT REPORT

APPLICATION DETAILS

Application Number	16-2016-883-1
Development Description	Commercial Premises (Aldi Supermarket) including Signage and Car Parking (on Proposed Lot 4)
Applicant	ALDI STORES
Date of Lodgement	21/12/2016
Value of Works	\$4,809,974.00

Development Proposal

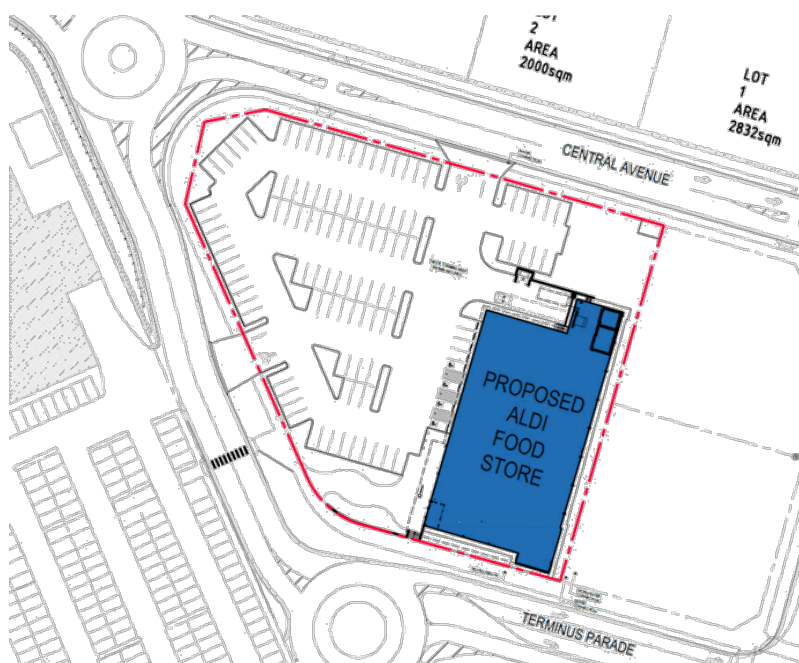


Figure 1: Site layout plan

The application proposes a new ALDI Supermarket and will comprise:

- Commercial Building with a floor area of 1,732m² located in the western portion the site.
- 119 space carparking area in the eastern portion of the site.

The development also includes stormwater quality measures and landscaping along the frontages.

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Access is provided from Central Avenue and Terminus Parade (left-in/left-out only).

Hours of operation is proposed to be 8am to 8pm, seven days a week. It is proposed that deliveries be undertaken after hours.

The internal layout includes a customer entrance and checkouts in the south. The main shopping area is located to the west of the entrance. The staff areas and public toilets are located in the south-eastern corner of the building, with the storage and loading areas located in the eastern section of the building.

The development includes various business identification signage attached to the building facades. An ALDI business identification sign is proposed to be placed at the entrance, measuring 5.4m in height.

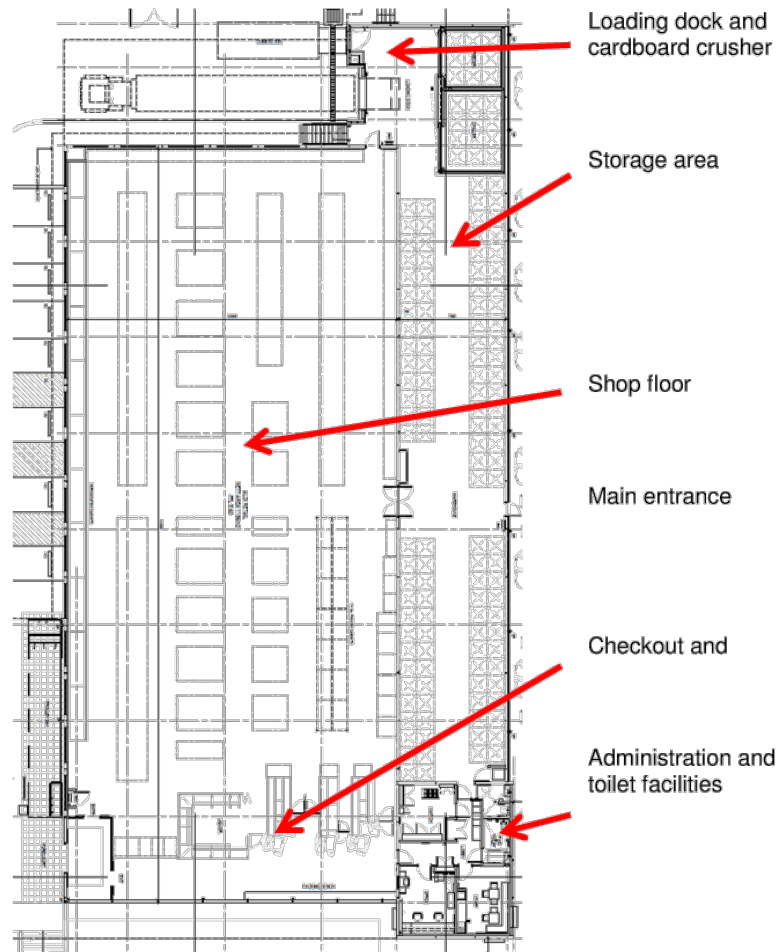


Figure 2: Store Layout

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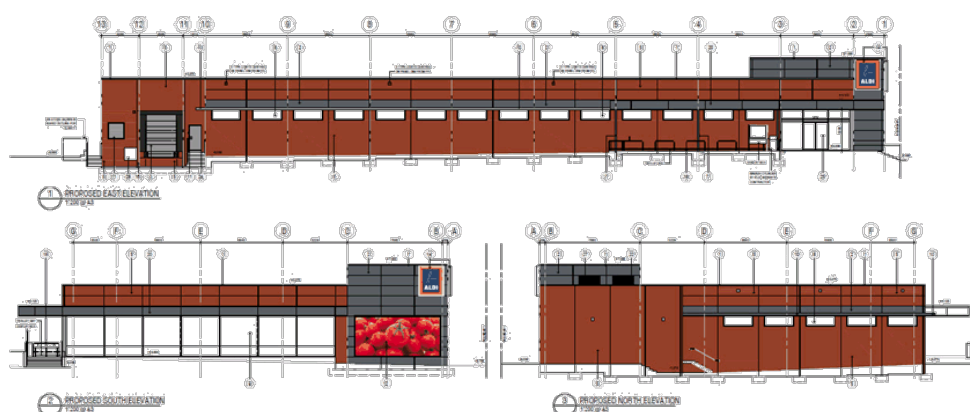


Figure 3: Building elevations

PROPERTY DETAILS

Property Address	155 Salamander Way SALAMANDER BAY
Lot and DP	LOT: 284 DP: 806310
Current Use	Vacant Land
Zoning	B3 COMMERCIAL CORE
Site Constraints	Bushfire Prone Land (Cat. 3) Acid Sulfate Soils (Class 3) Koala Habitat (Core & Preferred) Endangered Ecological Community (Swamp Sclerophyll Forest) SEPP 14 Wetland SEPP 71 Coastal Protection / Draft Coastal SEPP

Site Description

The parent lot (LOT: 284 DP: 806310) is currently being subdivided in accordance with DA16-2015-865-1, which approved the subdivision of the land into 7 lots with several new roads – see Figure 4 below.

The proposed development will be located on Lot 4 of this subdivision. A subsequent approval to further subdivide approved Lot 4 has recently been approved (DA16-2016-814-1), which will create Lot 401, the development site for this proposal – see figure 5 below.

A condition has been incorporated into the Notice of Determination (NoD) requiring the issue of the subdivision certificate for the subdivision approved under DA16-2016-814-1, prior to the issue of the Occupation Certificate for this application.



Figure 4: Subject lot



Figure 5: Subdivision of Lot 4 (under DA16-2016-814-1)

The subject site comprises of 11ha and wraps around the existing shopping centre. The western extent of the site contains a childcare centre and Tomaree Public Library.

The subject area (Lot 401) is currently vacant, clear of vegetation and is relatively level. Earthworks are currently underway around the perimeter of the site to provide roads and essential infrastructure, as well as footpaths, street trees and relevant road corridor furniture. The site is surrounded by a mix of commercial development.

Site History

Various applications have been approved over the site that includes a child care centre (DA 7-1991-5187-1), multi-purpose community centre (DA 7-1992-60325-1), various temporary events and subdivisions. The subject area (Lot 401) has not previously been developed for any specific purpose.

Site Inspection

A site inspection was carried out on 9 February 2017. The subject site can be seen in the figures below:



Figure 6: Development site viewed from the intersection of a new road (Central Avenue) with Bagnall Beach Road – existing Salamander Bay Shopping Centre is visible in the background



Figure 7: View of the subject land from Bagnall Beach Road

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ASSESSMENT SUMMARY

Designated Development	The application is not designated development
Integrated Development	The application does not require additional approvals listed under s.91 of the EP&A Act
Concurrence	The application does not require the concurrence of another body

Internal Referrals

The proposed development was referred to the following internal specialist staff. The comments of the listed staff have been used to carry out the assessment against the S79C Matters for Consideration below.

Development Engineer – The engineers identified issues with the stormwater infiltration and water quality measures. The applicant provided additional information, including amended infiltration calculations. After a review of the additional information, the application was supported with conditions.

Traffic engineer - Access arrangements from Terminus Parade were assessed and it was identified that the location of the proposed driveway will essentially constitute a 4-way intersection with the car park access opposite. These types of intersections are not supported by Council's design specification. To limit conflicts, it is proposed that access be limited to left-in/left-out. It is considered that this would cause minimal inconvenience to drivers while still maintaining road safety. A specific condition of consent has been included in the recommended NoD to implement the left-in, left-out access to/from Terminus Parade.

Environmental Health – No objections were made and the application was supported with conditions.

Section 94 – Developer contributions are applicable to the development and will be levied at the Construction Certificate stage.

Building – The application was reviewed from a BCA perspective. The application was supported with appropriate conditions.

External Referrals

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

RMS – The application was referred to the RMS for comment. No objections were raised by the RMS, but specific comments were provided regarding the timing of the construction of the intersection at Terminus Parade and Bagnall Beach Road and to ensure signage does not interfere with traffic along the local road network.

MATTERS FOR CONSIDERATION – SECTION 79C

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

Port Stephens Local Environmental Plan 2013 (LEP)

The site is located within the B3 Commercial Core and the objectives of the zone are:

- To provide a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community.

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- To encourage appropriate employment opportunities in accessible locations.
- To maximise public transport patronage and encourage walking and cycling.
- To facilitate the growth of Raymond Terrace as a regional centre.

The proposal will provide ongoing business activity and employment opportunities in an accessible location in the Salamander Bay area and therefore consistent with the zone objectives.

The proposed development can be defined as a 'Shop', meaning *'premises that sell merchandise such as groceries, personal care products, clothing, music, homewares, stationery, electrical goods or the like or that hire any such merchandise, and includes a neighbourhood shop, but does not include food and drink premises or restricted premises.'*

The proposal is consistent with the land use definition and is therefore permissible with consent.

Clause 4.3 – Height of Buildings

The proposed height is approximately 7.5m in height, which is below the maximum permissible building height of 15m specified on the Height of Buildings Map.

Clause 5.5 – Development within the Coastal Zone

The proposed development is located within the coastal zone and is considered to meet the principles of the NSW Coastal Policy. There are no anticipated adverse impacts on the local ecology or water quality as the proposal incorporates a stormwater quality control system and erosion and sediment control devices. The proposal is sufficiently separated from the land that there are no anticipated impacts on the access to the foreshore. The proposed development is in keeping with the character of the locality and is not anticipated to have any negative impacts on views to or from the waterway.

Clause 7.1 – Acid Sulfate Soils

The subject land is mapped as containing potential Class 3 Acid Sulfate Soils (ASS). The proposed development is anticipated to entail excavations below 1m and an ASS Management Plan will be required.

Clause 7.2 – Earthworks

The application proposes minor earthworks on the site to achieve a level building platform using balanced cut and fill. The proposed earthworks are relatively minor in nature and are not anticipated to result in any negative impacts on the subject or adjoining land, or any public place. Any material to be imported / exported from the subject site will need to be sourced / disposed of responsibly. Conditions of consent have been provided to ensure this requirement is met.

Clause 7.6 – Essential Services

The subject site is serviced by reticulated water, electricity and sewer. In addition, the application has demonstrated that stormwater drainage resulting from roof and hard stand areas can be catered for in accordance with Council's requirements. The subject land also maintains direct access to Terminus Parade and Central Avenue, meeting the requirements of this Clause.

Clause 7.9 – Wetlands

The proposal is located on land identified as wetland. However, on registration of approved Lot 401, the site will no longer be located on or within close proximity to identified wetlands. The development will not have a negative impact on the flora and fauna of the wetland, including both native and migratory species, and the characteristics of the ground or surface water.

State Environmental Planning Policy No. 14 – Coastal Wetlands

The western portion of the parent lot contains wetland vegetation. However, on registration of approved Lot 401, the site will no longer be within close proximity to wetlands or. The development

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will not have a negative impact on the flora and fauna of the wetland, including both native and migratory species, and the characteristics of the ground or surface water.

State Environmental Planning Policy No. 64 – Advertising and Signage

The application provides an assessment against the criteria set out under Schedule 1 of the SEPP. The assessment is considered satisfactory and the signage will not have a negative impact upon the amenity of the immediate area nor will it compromise traffic safety. The proposal is considered consistent with the aims, objectives and controls of the SEPP.

Criteria	Compliance
1) Character of the area	
Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located?	Yes. The site is in an established commercial area and the proposed signage is therefore compatible with the character of the area.
Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?	The area does not have a consistent theme. However, the proposed signage would not be out of character with the development in the surrounding area that similar types of development in the locality, i.e Woolworth and Coles supermarkets.
2) Special areas	
Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas?	No. No sensitive areas located near the site.
3) Views and Vistas	
Does the proposal obscure or compromise important views?	No. No important views will be impacted by the proposed signage.
Does the proposal dominate the skyline and reduce the quality of vistas?	No. The proposed building identification sign have been incorporated into the building design. The signage is comparable to the commercial development in the area and will not dominate the skyline. The proposal and will not impact the quality of vistas in the locality.
Does the proposal respect the viewing rights of other advertisers?	Yes. No conflict with surrounding signage will result from proposed signage.
4) Streetscape, setting or landscape	
Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape?	Yes. The surrounding land has predominantly been developed for commercial purposes. Council is currently also considering commercial development on the vacant commercial sites.
Does the proposal contribute to the visual interest of the streetscape, setting or landscape?	No. The proposal and signage are relatively generic and is like other similar development in the area.

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Does the proposal reduce clutter by rationalizing and simplifying existing advertising?	N/A. The site is not developed and no signage is currently present on the site.
Does the proposal screen unsightliness?	No. The site does not contain any unsightliness.
Does the proposal protrude above buildings, structures or tree canopies in the area or locality?	No. As stated previously, the building identification sign will not extend above the proposed ALDI building and existing surrounding development.
Does the proposal require ongoing vegetation management?	No. No vegetation removal is proposed under this application
5) Site and Building	
Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located?	Yes. As stated previously, the proposed development is relatively generic and is similar to other development in the area.
Does the proposal respect important features of the site or building, or both?	N/A. The site is not currently developed.
Does the proposal show innovation and imagination in its relationship to the site or building, or both?	No. As stated previously, the proposed development is relatively generic.
6) Associated devices and logos with advertisements and advertising structures	
Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed?	No.
7) Illumination	
Would illumination result in unacceptable glare?	No. It not anticipated that the signage will significantly impact on the surrounding development.
Would illumination affect safety for pedestrians, vehicles or aircraft?	No. Conditions of consent stipulate that signage must not incorporate the following features: a) Flashing lights; b) Electronically changeable messages, unless in accordance with the Department of Planning's Transport Corridor Outdoor Advertising and Signage Guidelines (July 2007); c) Animated displays, moving parts or simulated movements; d) Complex displays that hold a driver's attention beyond 'glance appreciation'; e) Displays resembling traffic signs or signals, or giving instruction to traffic by using words such as 'halt' or 'stop'; and

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	f) A method of illumination that distracts or dazzles.
Would illumination detract from the amenity of any residence or other form of accommodation?	No. The closest residential development is located some distance to the north and east.
Can the intensity of the illumination be adjusted, if necessary?	No. It is considered that the signage would not require adjustment as it is of relatively low intensity.
Is the illumination subject to a curfew?	No. It is considered that the no significant impact to neighbouring residential properties will arise because of the proposed signage.
8) Safety	
Would the proposal reduce the safety for any public road?	No. The signage does not include any flashing lights or animation. The signage will ensure the entry to the proposed ALDI supermarket is visible for motorists.
Would the proposal reduce the safety for pedestrians or bicyclists?	No.
Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?	No.

State Environmental Planning Policy No.71 – Coastal Protection

The proposed development is located in the coastal zone and accordingly the matters for consideration under Clause 8 of this policy apply. The proposed development is not anticipated to have an adverse impact on the ecology, culture or amenity of the foreshore and coastal waters as the development is residential in nature and sufficiently separated from the waterway. In addition, given the separation of the development from the waterway, there are no anticipated impacts on access to, or views to or from the waterway and foreshore area. There are no anticipated conflicts between the proposed land use and the use of the waterway, rather the provision of additional residential opportunities is considered to support the further use of the foreshore. The proposed development has been considered against the matters for consideration under the SEPP and is acceptable in this regard.

SEPP (Infrastructure) 2009

The proposal was referred to the RMS for comment. The RMS did not raise any specific issues.

s79C(1)(a)(ii) – Any draft EPI
Draft State Environmental Planning Policy (Coastal Management) 2016

The draft State Environmental Planning Policy (Coastal Management) 2016 (Coastal SEPP) is on public exhibition until 23 December 2016.

The draft policy aims to balance social, economic and environmental interest by promoting a coordinated approach to coastal management, consistent with the objectives of Part 2 of the Coastal Management Act 2016.

The Act divides the coastal zone into four (4) management areas:

- Coastal Wetland and Littoral Forest areas;

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- Coastal Vulnerable areas;
- Coastal Environment areas; and
- Coastal Use areas.

The subject land is located with the Coastal Use area and the objectives for this area are:

- (a) to protect and enhance the scenic, social and cultural values of the coast by ensuring that:
 - (i) the type, bulk, scale and size of development is appropriate for the location and natural scenic quality of the coast, and
 - (ii) adverse impacts of development on cultural and built environment heritage are avoided or mitigated, and
 - (iii) urban design, including water sensitive urban design, is supported and incorporated into development activities, and
 - (iv) adequate public open space is provided, including for recreational activities and associated infrastructure, and
 - (v) the use of the surf zone is considered,
- (b) to accommodate both urbanised and natural stretches of coastline

The proposed development is consistent with the objectives of the Coastal Use areas, as identified in the draft policy, and can therefore be supported.

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

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

Chapter A.12 – Notification and Advertising

In accordance with the requirements of chapter A.12, the development application was notified and advertised for 30 days until 25 January 2017.

Chapter B2 – Natural Resources

The site does not contain any vegetation and it is considered that the proposal will not have a significant impact on the adjoining wetland.

Chapter B3 – Environment Management

Bushfire – Although the area is identified as bushfire prone, no significant vegetation is located within 140m of the site. The potential threat is therefore minor and no specific bushfire upgrades will be required.

Acid Sulfate Soils – As discussed previously in the report, all works will be undertaken in accordance with the required ASS plan of management. As such, the application is considered to appropriately mitigate potential ASS disturbance whilst constructing the proposed development.

Earthworks – As discussed previously in the report, all earthworks will be undertaken in accordance with the CEMP, while the installation of erosion and sedimentation controls will be required prior to the commencement of any works.

Chapter B.4 – Drainage and Water Quality

A stormwater management plan was submitted with the application and includes adequate quality and quantity controls as required by Councils Policy. The stormwater drainage plan has been assessed as being consistent with the Infrastructure Specification and conditions have been included in the consent requiring the provision of detailed engineering plans, prior to the issue of a Construction Certificate.

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Chapter B.6 – Essential Services

Reticulated water, electricity and sewer are available to the subject site. In addition, an acceptable stormwater management plan has been submitted and the land achieves direct access to a public road.

Chapter B.8 – Signage

The proposal is compliant with PSDCP2014 in that the signage proposed is complimentary to its surroundings. The majority of signage is integrated into the building facades and are not a type of signage which is generally not supported. The pylon business identification sign is consistent with existing signage in the area and clearly defines the entry and exit point.

As stated previously, the applicant provided a detailed SEPP64 assessment that found that the proposed signage complies with the objectives of the policy.

Chapter B.9 – Road Network & Parking

The most applicable definition for the proposed development as listed in Figure BQ: On-site Parking Requirements is a shop. The DCP requires 1 car space per 20m² of retail floor area associated with a shop. The retail area has an area of 1,732m², which calculates to a requirement of 86 spaces. The proposal includes 119 spaces, including four (4) disabled space. The proposal therefore complies with the car parking requirements of the DCP.

A condition of consent has been included in the NoD to require at least four (4) bicycle storage areas.

Comment from the RMS was requested and the authority had no objection to or statutory requirements for the proposed development. Further, it was stated that there will be no significant impact on the nearby State road network.

Traffic generation resulting from the proposed development was addressed in the Traffic Report prepared by Colston Budd Rogers & Kafe (dated December 2015). The assessment included the potential of commercial development on the site and found that the road network would be able to cater for the additional expected traffic. The intersection between Terminus Parade and Bagnall Beach Road was upgraded to a signalised intersection due to the recommendation made within this report. A condition of consent has been included on the NoD to ensure these works are completed prior to the issue of an occupation certificate for the proposed development.

Council's Traffic engineer reviewed the access arrangements from Terminus Parade and found that the location of this driveway will essentially constitute a 4-way intersection with the car park access opposite. These types of intersections are not supported by Council's design specification. A condition has been incorporated into the NoD to modify the entry and exit of the development to left-in, left-out access to/from Terminus Paradeon. This will cause minimal inconvenience to drivers while still maintaining road safety

It is therefore considered that the local street network can cater for the additional traffic generated by the proposal.


Chapter D.2– Commercial

Requirements		Comment
C2.4 Building Height	Building height is provided in accordance with PSLEP2013 Clauses 4.3 and 5.6	Complies. These issues have been discussed in the discussion around the LEP provisions above.
C2.5 Floor to	Minimum ground floor to ceiling height	The proposal provides ceiling heights above 3.5m. The majority of the non-permeable areas are located less

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Ceiling Height	for all development types within a commercial zone is 3.5m Ground level (finished) must be between 100-500mm above adjacent footpath levels	than 500mm above the surrounding footpath levels. The area in the south-eastern corner of the site is elevated above the road frontage. The applicant has provided accessible paths of travel on this area to the shop entry and included sandstone retaining along the frontage to ensure a high level of integration with the surrounding development.
C2.6 Site Coverage	Site Coverage adheres to maximum non-permeable surface area described under Figure BD (p. B-31)	The proposal does not comply with the non-permeable surface area provided in Figure BD. Details on the stormwater management system have been provided to comply with the specific Council infiltration/detention requirements.
C2.9 Front Setback & Façade Articulation	Development is built to the front property line for the ground and first floor	<p>The proposal does not strictly comply with the DCP provision as the building is setback 1.2m from the first 8m of the building frontage and is then setback 3.5m for the next 23m. The area between the building and road frontage has been landscaped to appropriately soften the appearance of the development from the streetscape.</p> <p>It is considered that the provision is not specifically applicable to the site nor this type of development, as it is not typical to other commercial development located in established commercial high street commercial areas.</p> <p>The overarching objective of the provision is to provide an active frontage and building articulation. It can be argued that the proposed design complies with this objective as it provides large windows along most of the building façade and addressed the frontage.</p>  <p>Figure 10: Photomontage of the southern eastern corner of the site.</p> <p>It is therefore considered that, although the development does not strictly meet the numerical requirements of the</p>

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		DCP, the design activates the Terminus Parade frontage by providing the main shop front to the street and sufficient façade articulation.
C2.10 Side Setback	Development should be built to the side boundary to maximise continuous activate street frontage, except where side access is provided	It is note that the building will be setback approximately 3.5m from the eastern boundary and does not comply with the side setback requirement of the DCP. The area within the setback will be suitably landscaped. However the site setback will incorporate appropriate articulation and mix of colours to activate the streetscape.
C2.12 Longitudinal gradient	Where there is a level of change in excess of 500mm at the front property boundary the floor plate and rooflines of development steps with the longitudinal grade of street	The levels do change more than 500mm along the Terminus Parade frontage. Although the roofline remains at one level, it is considered that the proposal will not dominate the street frontage.
C2.14 Proportions	Building proportion is complimentary to the form, proportions and massing of existing building patterns	It is considered that the proposed built form is consistent with the existing building pattern in the area.
C2.15 Materials	Building facades use materials, colours and architectural elements to reduce bulk and scale that are complimentary to existing built-form and natural setting	Complies. The development will include the ALDI corporate colour scheme and it is considered that this is not contrary to the existing built form or impact significantly on the natural setting.
C2.16 Active Street Frontage	Development provides continuity of an active street frontage for localities where business premises or retail premises predominately face the street and have direct pedestrian access from the street as identified in Part D- Specific Areas An active street frontage provides the following:	It is considered that the proposal achieves street activation by providing a paved forecourt for pedestrian connection with a pedestrian crossing that links the site with Salamander Bay Shopping Centre.

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C2.17 Public Footpath	Development provides paving to the public footpath for the entire length of the development street frontage	The development provides paving to the public footpath for the entire length of the development street frontage
C2.19 Access Points	Provide a recognisable entry from the primary street	The development has been provided with dedicated pedestrian access to Terminus Parade via a landscaped walkway. This will provide a recognisable pedestrian entry to the proposal.
C2.20 Entry Structures	Entry structures, such as access ramps are located within the site behind the property boundary so as not to obstruct pedestrian footpaths in public spaces	The entry structures will not obstruct pedestrian footpaths.
C2.21 Location of Building Facilities and Services	Plant, equipment, storage areas, communication structures and servicing areas are located at the rear of a building and not be visible from streets, parks and other public spaces, except for service lanes	The loading area and cardboard crusher will be located to the north of the building. Although these are not located at the rear of the site, significant landscaping will be providing between the loading area and the road frontage.
C2.22 Commercial valued over \$2 million	Commercial development of a significant scale and that provides frontage to the public domain incorporate public art in accordance with the conditions of consent Commercial development of a significant scale provide toilets that are accessible to the public	<p>The applicant agreed to provide public art along the sandstone retaining wall along the Terminus Parade frontage. The public art theme is currently under development and details will be provided to the proponent once completed. A condition of consent has been included in the NOD to provide details on the public art component to Council prior to the release of the Construction Certificate.</p> <p>The applicant agreed to provide access to the onsite toilet 'on request' from staff. This solution was proposed as it will ensure that the facilities are not open to the uncontrolled access and will safeguard against vandalism and other anti-social behaviour.</p>

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Chapter D.8– Salamander Bay Shopping Centre – Nelson Bay

The application is located within the Salamander Bay Shopping Centre and, as a result, Chapter D.8 applies to the site. The DCP provisions applicable to the precinct are as follows:

Requirements		Comment
D7.1 Identity Hub	To create a sense of identity for a unified community and commercial precinct	The proposed development will provide support and services to the community.
D7.2 Integration	To ensure future development is sympathetically integrated with the existing surrounds and appropriately activates the precinct	This development will be similar to the surrounding commercial development and will further activate the precinct.
D7.3 Connectivity	To ensure an integrated pedestrian and vehicular network promotes improved connectivity between developments within the precinct, and reaffirms the precinct as a hub	The proposal will not limit access to the precinct. All road works and footpaths will be provided as part of the approve subdivision works.
D7.4 Access Points	To ensure appropriate intersections are considered to accommodate for the expansion of the precinct	The intersections will form part of the road works associated with the subdivision of the land.
D7.5 Friendly	To ensure future development respects neighbours and users of the precinct	The development is considered to be low impact and respects neighbours and precinct users.
D7.6 Environment	To ensure future development protects the ecological systems within and adjacent to the precinct	The sites location does not impact on any ecological systems as the site is cleared of significant vegetation.
D7.7 Safety	To ensure future development is designed with the safety of neighbours and users in mind	The development provides additional casual surveillance of the area that will limit anti-social behaviour.
D7.8 Community	To ensure future development supports and is consistent with community activities	The ALDI store will support community activities and add to the range of services available in the area.
D7.9 Aesthetics	To ensure diverse aesthetic forms are appropriately developed with the human scale in mind and integrated with in a holistic aesthetic framework for the hub	By employing a modern design using high quality materials the proposed development will continue the precincts aesthetic.
D7.10 Economic Development	To ensure future development offers economic advantages to the community in the immediate and long term	The proposed development will add to the economy activity in the area.

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 specific regulations apply to the proposed development.

ITEM 2 - ATTACHMENT 2 ASSESSMENT REPORT.

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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 will result in positive social and economic impacts. The local economy will benefit from the short-term construction activity and the availability of an additional commercial development which provides essential items to the community within the commercial subdivision. The proposal will increase the economic activity and viability in the existing commercial precinct.

Impacts on the Built Environment

The proposed development will have no adverse impacts on the built environment within its locality. The proposed building is similar in bulk and scale to existing developments in the locality, ensuring that the development is in-keeping with existing buildings in the area. The building is well sited and designed with respect to the topography of the land and character of the locality.

The application will design and implement public art within the development site contributing to the identity and character of the proposal.

Impacts on the Natural Environment

The proposed development is not anticipated to have an impact on the surrounding natural environment. Landscaping will be required to be completed prior to the issue of the occupation certificate which will increase the environmental values of the site.

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

The proposal is permissible in the zone and is considered in keeping with the zone provisions.

The subject site is located within a commercial area and the design is in keeping with the surrounding commercial development in the locality.

The development site is appropriately setback from the surrounding residential properties and is not anticipated to have negative impacts on the amenity of the surrounding development.

s79C(1)(d) – Any submissions

Two (2) submissions have been received in relation to the proposed development.

The issues identified in the submissions are discussed below:

Conflict of interest

The submission correctly identified that Council owns the land and provided owner's consent to lodge the application.

The mechanisms under which to refer decisions to the Joint Regional Planning Panel (JRPP) are provided by Schedule 4A of the Environmental Planning and Assessment Act 1979. The provisions state that development with a Capital Investment Value (CIV) in excess of \$5million, where Council is the proponent and/or the land owner, must be referred to the JRPP. As the CIV is well below this figure, Council remains the consent authority.

The proposed development can therefore be assessed and determined by Council.

Ownership Arrangements

The submissions stated that the ownership arrangements were not clearly identified in the application.

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It is understood that the land will be sold to the applicant on registration of the approved subdivision. The car park and internal footpaths will therefore be located on private property.

Traffic

Concerns were raised regarding the location of the Terminus Parade access across from the existing centre car park and the potential issues with right hand turn movements at this intersection. As stated previously, the issues associated with the location of the Terminus Parade access was identified by Council's Engineering section.

To limit the potential conflicts and increase road safety, a condition of consent has been included in the recommended NoD to limit traffic movements at this intersection to left-in/ left-out only. A further requirement for the provision of a raised median at the frontage has been included in the NoD to ensure these movements are controlled.

The submissions also raised concerns with the configuration of the pedestrian footpaths in the precinct, especially the lack of a direct link with the bus terminal directly to the south of Terminus Parade.

It is noted that external footpaths do not form part of this application and can therefore not be altered. It is also noted that the road is relatively wide and provides complex traffic movements leading into the roundabout. It is noted that there are pedestrian footpath options to the west and east to cross Terminus Parade and access the bus terminal.

Public Toilets

The submission stated that the applicant should provide onsite public toilet facilities. The applicant agreed to provide public access to the toilet facilities within the store. For safety and security reasons, access to the toilets will be provided from inside the store and on request only. A condition of consent has been included in the NoD to ensure this service is provided. The condition also requires identification of this service via signage at the entrance of the store and toilet facilities.

Landscaping

The submissions included concerns regarding the species selection provided in the landscape design. These comments were considered during the assessment of the application. A landscape plan is required to be submitted to and be deemed to be satisfactory by Council prior to the construction certificate. This is to ensure no conflicts between the stormwater design and landscape plan arise.

The submission also stated that the setback along the eastern boundary would create a litter trap and an area for potential anti-social behaviour. These concerns are valid and it is the responsibility of the applicant to remove litter and graffiti on a regular basis. A condition of consent has been included in the NoD to require regular maintenance of all approved landscaped areas that will include the landscaped area along the Central Avenue frontage.

Street frontage

The submissions identified the non-compliance with the front and side setbacks, contained in Chapter C.2 of the DCP, as concerns. It is considered that the front setback requirement does not strictly apply to the current development or the configuration of the site. It does face Terminus Parade and provide pedestrian access directly from this frontage, thereby activating the frontage. Due to the currently un-developed land within close proximity to the development site it is difficult to have a full understanding of how the future development will fit within the streetscape.

It is considered that the proposed setback will not have a significant impact on the streetscape or limit development on the adjoining land.

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Sun Shades in Carparks

The submission requested that the applicant provide shade structures within the car park. It is considered that the provision of shading through the planting of shade trees within the car park will sufficiently address this issue.

s79C(1)(e) – The public interest

Following the detailed assessment of the application, it is considered that the proposal is in the public interest. The development is consistent with Council's Planning controls and is suitable in the locality. The proposal is not considered to have a detrimental cumulative impact on the community or the surrounding locality. The proposed development is considered to be in the public interest.

DETERMINATION

The application is recommended to be approved by Council, subject to recommended conditions as contained in the Notice of Determination.

REAN LOURENS

**PORT STEPHENS**
COUNCIL

Notice of Determination

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

Development consent is granted to development application 16-2016-883-1 subject to the conditions in Schedule 1.

Notice is hereby made under Section 81 of the Environmental Planning and Assessment Act 1979 (the Act) of a Development Consent issued under Section 80 of the Act, for the development described below. The consent should be read in conjunction with the conditions contained in Schedule 1 and the notes contained in Schedule 2.

Determination Outcome: Approval, subject to conditions

APPLICATION DETAILS

Application No: 16-2016-883-1

Property Address: LOT: 284 DP: 806310
155 Salamander Way SALAMANDER BAY

Description of Development: **Commercial Premises (Aldi Supermarket) including Signage and Car Parking (on Proposed Lot 4)**

Date of determination: [Click here to enter a date.](#)

Date from which the consent operates: [Click here to enter an operational date.](#)

Date on which the consent shall lapse: [Enter date of approval plus 5 yrs and 1 day.](#)
(unless physical commencement has occurred)

MR R J LOURENS
Senior Development Planner



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
Proposed ALDI Store (6 Sheets)	16266	DA01 – DA06	December 2016	Conrad Gargett
Development Application (2 Sheets)	20160130	DA001 – DA002	21 November 2016	Scott Carver

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. **Prior to the commencement of works**, a waste containment facility is to be established on site. The facility is to be regularly emptied, and maintained for the duration of works. No rubbish shall be stockpiled in a manner which facilitates the



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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).

rubbish to be blown or washed off site. The site shall be cleared of all building refuse and spoil immediately upon completion of the development.

4. **Prior to the commencement of works**, the property shall be protected against soil erosion, such that sediment is not carried from the construction site by the action of stormwater, wind or "vehicle tracking". Protection measures may include erosion and sedimentation controls as required. All protection measures are to be installed to the satisfaction of Council prior to the commencement of works, and regularly maintained for the duration of works and until the site is stabilised by vegetation or the like.

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

5. A monetary contribution is to be paid to Council, pursuant to section 80A(1) of the Environmental Planning and Assessment Act 1979 and the Port Stephens Section 94A Development Contributions Plan, related to the Capital Investment Value (CIV) of the development as determined in accordance with clause 25j of the *Environmental Planning and Assessment Regulation 2000* and outlined in the table below.

Capital Investment Value	Levy Rate (% of CIV)
Up to and including \$100,000	Nil
More than \$100,000 and up to and including \$200,000	0.5%
More than \$200,000	1%

The payment of the S94A contribution is to be accompanied by a Cost Summary Report Form (attached) setting out an estimate of the CIV in accordance with Schedule 1 of the Port Stephens Section 94A Development Contributions Plan, must be approved by Council prior to issue of the Construction Certificate. Where the estimated cost of carrying out the whole of the development is more than \$1,000,000, the Cost Summary Report Form must be completed by a Quantity Surveyor who is a registered Associate member or above, of the Australian Institute of Quantity Surveyors. This condition cannot be taken to be satisfied until a payment has been made in accordance with the CIV stated on a cost summary report submitted to Council in accordance with this condition.

Payment of the above amount shall apply to Development Applications as follows:

- **Building work only - prior to issue of the Construction Certificate.**

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.



Notice of Determination

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

6. **Prior to issue of the Construction Certificate**, a suitable geotechnical report and subsequent Acid Sulfate Soils Management Plan shall be prepared for any proposed footing / excavation works are more than 1 metre below the natural ground surface or works by which the watertable is likely to be lowered more than 1 metre below the natural ground surface are proposed.
7. **Prior to issue of the Construction Certificate**, a Compliance Certificate under Section 50 of the Hunter Water Act 1991, for this development, shall be submitted to the Certifying Authority.
8. **Prior to issue of any Construction Certificate**, a detailed stormwater drainage plan is to be submitted to the certifying authority for a system capable of catering for a range of rainfall scenarios up to and including the 1% AEP Rainfall Event. The detailed plans are to be in accordance with Councils Infrastructure Specification and include the following information:
 - a) Plans for all stormwater drainage works on public land, approved by Council under section 68 of the Local Government Act, 1993 and consistent with this condition;
 - b) On-Site Stormwater Detention (OSD) via on site infiltration
 - c) Structural certification of the OSD by a qualified Structural Engineer;
 - d) Stormwater pit and pipe network directed to OSD;
 - e) An emergency overland flow path for major storm events, that is directed to the public drainage system;
 - f) Conveyance where necessary, of stormwater through the site from upstream catchments, (including roads and adjoining properties);
 - g) Detailed pavement finished surface levels, to ensure stormwater runoff catchment and its direction into the detention system;
 - h) Water quality control devices that comply with the requirements of the Port Stephens Development Control Plan 2014.
9. **Prior to the issue of a Construction Certificate**, detailed engineering plans for subdivision and/or civil works in accordance with the approved plans are to be submitted to the accredited certifier. The detailed plans are to be in accordance with Councils Infrastructure Specification and include the following information:
 - a) Plans for all civil works within a road reserve, including driveways, approved by the Roads Authority under the Roads Act and consistent with this condition;
 - b) Any associated works to ensure satisfactory transitions to existing infrastructure;

The above works are to be completed prior to the issue of a Final Occupation Certificate or Subdivision Certificate, whichever occurs first.
10. **Prior to the issue of the Construction Certificate**, a Roads Act approval must be lodged with the road authority. The application must include a design showing the western access (with Terminus Parade) as left-in/left-out only with a concrete splitter

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

island constructed to enforce this requirement. A detailed plan including appropriate signage, and provision for pedestrians must also be provided.

11. **Prior to the issue of the Construction Certificate**, a Construction Environmental Management Plan (CEMP) is to be submitted to the Certifying Authority. The required CEMP must outline the sequence and construction methodology and specify mitigating measures to ensure all works are carried out with minimal environmental impact in relation to project staging, waste management, traffic management and environmental management. The CEMP must include but is not limited to:
 - a) Soil and Water Management Plan (including erosion and sediment control measures);
 - b) Traffic Management ;
 - c) Noise and Dust Management;
 - d) Acid sulfate Soils Management Plan; and
 - e) Waste Management.
12. **Prior to the issue of the Construction Certificate**, a detailed Landscape Plan is to be submitted to and be deemed satisfactory by Council. The plan must include specific details on the following:
 - a) species selection,
 - b) landscape vaults to ensure conflict with the stormwater infrastructure does not occur
 - c) public art to be incorporated into the design along the sandstone retaining wall along Terminus Parade

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

13. All building work must be carried out in accordance with the provisions of the Building Code of Australia.
14. Where necessary, the excavation and treatment of all potential and actual acid sulfate soils shall be carried out in strict accordance with the provisions of an approved Acid Sulfate Soils Management Plan prepared for the site.
15. Any excavated material to be removed from the site is to be assessed, classified, transported and disposed of in accordance with the Department of Environment and Climate Change's (DECC) 'Waste Classification Guidelines Part 1: Classifying Waste' and *Protection of the Environment Operations Act 1997* and the *Protection of the Environment (Waste) Regulation 2005*.
16. Any fill material imported into the site is to be Virgin Excavated Natural Material or material subject to a Resource Recovery Exemption that is permitted to be used as a fill material, in accordance with the provisions of the *Protection of the Environment Operations Act 1997* and the *Protection of the Environment (Waste) Regulation 2005*.

**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).

17. Any fill material subject to a Resource Recovery Exemption received at the site must be accompanied by documentation demonstrating that material's compliance with the conditions of the exemption, and this documentation must be provided to Council officers or the Principal Certifying Authority on request.
18. Immediately following the installation of any roof, collected stormwater runoff from the structure must be connected to a stormwater drainage easement/system.
19. Dust suppression is to be actively undertaken during works, through the use of wet-down water tankers or an alternative method agreed by Council.
20. Construction work that is likely to cause annoyance due to noise is to be restricted to the following times:
 - Monday to Saturday, 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.
21. Where no sanitary facilities currently exist onsite for construction workers toilet accommodation for all tradespersons shall be provided from the time of commencement until the building is complete. The toilet facilities shall be located so as to have minimal impact of adjoining properties and shall not be placed on the road reserve, without separate approval from Council.
22. 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.
23. The construction and fit-out of the food premises must be carried out in accordance with the following:
 - a) The Food Act 2003;
 - b) Food Regulation 2015; and
 - c) Australian Standard 4674-2004 -Construction and Fit-out of Food Premises.

CONDITIONS TO BE SATISFIED PRIOR TO ISSUE OF AN OCCUPATION CERTIFICATE

24. **Prior to the issue of the Occupation Certificate**, the Subdivision Certificate for DA Consent No. 16-2016-814-1 must be issued by council and documentary evidence submitted to Principle Certifying Authority.



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

25. **Prior to the issue of the Occupation Certificate**, evidence must be submitted of the Principle Certifying Authority that the signalised intersection works at the intersection of Terminus Parade and Bagnall beach Road has been completed to the satisfaction of the RMS.
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 Principal Certifying Authority and the Commissioner of New South Wales Fire Brigades, **prior to the release of the Occupation Certificate**. 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.
27. **Prior to the issue of a Final Occupation Certificate**, the works approved under the Roads Act approval must be completed and a compliance certificate must be obtained from the Roads Authority.
28. **Prior to issue of any Occupation Certificate**, a minimum of 86 car parking spaces (including four (4) disabled car parking spaces) and four (4) bicycle storage spaces are to be provided in accordance with AS2890 Parts 1, 2 and 6 (as current at the time of construction).
29. **Prior to the issue of a Final Occupation**, an Operation and Maintenance Plan for the stormwater system shall be prepared by a suitably qualified engineer, detailing a regular maintenance programme for pollution control devices, covering inspection, cleaning and waste disposal, a copy of which shall be supplied to the owner/operator.
30. **Prior to the issue of the Final Occupation Certificate**, signage informing the public of the availability of public toilets must be installed at the entrance to the store and the access of the public toilet facilities.

CONDITIONS TO BE SATISFIED AT ALL TIMES

31. The hours of operation are restricted to the following times:

Day	Start Time	Finish Time
Monday to Sunday (incl. Public Holidays)	8am	8pm

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

32. 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:

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

- 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.
33. Motor vehicles are only permitted to enter and leave the site in a forward direction. On site manoeuvring areas are to be kept clear for this purpose.
34. The proposed western boundary driveway access to Terminus Parade shall be restricted to left-in/left-out movements only.
35. At all times, all signage visible from the road reserve must not incorporate any of the following features:
- a) Flashing lights;
 - b) Electronically changeable messages, unless in accordance with the Department of Planning's Transport Corridor Outdoor Advertising and Signage Guidelines (July 2007);
 - c) Animated displays, moving parts or simulated movements;
 - d) Complex displays that hold a driver's attention beyond 'glance appreciation';
 - e) Displays resembling traffic signs or signals, or giving instruction to traffic by using words such as 'halt' or 'stop'; and
 - f) A method of illumination that distracts or dazzles.
36. The toilet facility located within the convenience store must remain open to the general public during business hours.
37. Landscaping must be maintained in accordance with the landscape design, in perpetuity.

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.

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

- 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.
- 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.
- Disability Discrimination Act (DDA) are to make it unlawful to discriminate against persons with a disability in connection with employment, the provision of goods, facilities and services or the management of premises. The legal requirements of the Act affect the majority of existing commercial and public building occupiers. The Commonwealth Disability Discrimination Act makes it an offence to discriminate against people on the grounds of disability, in the provision of access to premises.