



Ordinary Council

LATE REPORTS

Business Paper

date of meeting: Wednesday 20 April 2016

location: Council Chambers
17 Burrawan Street
Port Macquarie

time: 5.30pm

Note: Council is distributing this agenda on the strict understanding that the publication and/or announcement of any material from the Paper before the meeting not be such as to presume the outcome of consideration of the matters thereon.

Council's Vision

A sustainable high quality of life for all

Council's Mission

Building the future together
People Place Health Education Technology

Council's Corporate Values

- ★ Sustainability
- ★ Excellence in Service Delivery
- ★ Consultation and Communication
- ★ Openness and Accountability
- ★ Community Advocacy

Council's Guiding Principles

- ★ Ensuring good governance
- ★ Looking after our people
- ★ Helping our community prosper
- ★ Looking after our environment
- ★ Planning & providing our infrastructure



**PORT MACQUARIE
HASTINGS**

How Members of the Public Can Have Their Say at Council Meetings

Council has a commitment to providing members of the public with an input into Council's decision making. The Council's Code of Meeting Practice provides two (2) avenues for members of the public to address Council on issues of interest or concern at the Ordinary Council Meeting. These are:

Addressing Council on an Agenda Item:

If the matter **is** listed in the Council Business Paper, you can request to address Council by:

- Completing the *Request to Speak on an Agenda Item at a Council Meeting*, which can be obtained from Council's Offices at Laurieton, Port Macquarie and Wauchope or by downloading it from Council's website.
- On-line at <http://www.pmhc.nsw.gov.au/About-Us/How-Council-Works/Council-Committee-Meetings/Request-to-speak-on-an-Agenda-Item>

Your request to address Council must be received by Council no later than 4:30pm on the day prior to the Council Meeting.

Council's Code of Meeting Practice sets out the following guidelines for addressing Council:

- Addresses will be limited to 5 minutes.
- If you wish any written information, drawings or photos to be distributed to the Council to support the address, two (2) copies should be provided to the Group Manager Governance & Executive Services prior to the commencement of the meeting.
- Where speakers wish to make an audio visual presentation, a copy is to be provided to the Group Manager Governance & Executive Services by 4.30pm on the day prior to the Council Meeting.
- Council will permit only two (2) speakers "Supporting" and two (2) speakers "Opposing" the *Recommendation* contained in the Business Paper. If there are more than two speakers supporting and opposing, the Mayor will request the speakers to determine who will address Council.

Addressing Council in the Public Forum:

If the matter **is not** listed in the Council Business Paper, you can request to address Council by:

- Completing the *Request to Speak in the Public Forum at Ordinary Council Meeting*, which can be obtained from Council's Offices at Laurieton, Port Macquarie and Wauchope or by downloading it from Council's website.
- On-line at <http://www.pmhc.nsw.gov.au/About-Us/How-Council-Works/Council-Committee-Meetings/Request-to-speak-in-a-Public-Forum>

Your request to address Council must be received by Council no later than 4:30pm on the day prior to the Council Meeting.

A maximum of eight (8) speakers will be heard in the Public Forum. Each speaker will be limited to 5 minutes. Council may ask questions of speakers but speakers **cannot** ask questions of Council.

Council will not determine matters raised in the Public Forum session, however may resolve to call for a further report, when appropriate.

Speakers will be allowed to address Council in the Public Forum on the same issue no more than three (3) times in each calendar year. (Representatives of incorporated community groups may be exempted from this restriction).



Ordinary Council Meeting

Wednesday, 20 April 2016

LATE REPORTS

Items of Business

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**PORT MACQUARIE
HASTINGS**



Looking After Our Environment

What are we trying to achieve?

We understand and manage the impact that the community has on the natural environment. We protect the environment now and in the future.

What will the result be?

- Accessible and protected waterways, foreshores, beaches and bushlands.
- Renewable energy options.
- Clean waterways.
- An environment that is protected and conserved for future generations.
- Development outcomes that are ecologically sustainable and complement our natural environment.
- Residents that are environmentally aware.
- A community that is prepared for natural events and climate change.

How do we get there?

- 4.1 Protect and restore natural areas.
- 4.2 Ensure service infrastructure maximises efficiency and limits environmental impact.
- 4.3 Implement total water cycle management practices.
- 4.4 Continue to improve waste collection and recycling practices.
- 4.5 Provide community access and opportunities to enjoy our natural environment.
- 4.6 Create a culture that supports and invests in renewable energy.
- 4.7 Increase awareness of and plan for the preservation of local flora and fauna.
- 4.8 Plan and take action to minimise impact of natural events and climate change.
- 4.9 Manage development outcomes to minimise the impact on the natural environment.

Looking After Our Environment

Item: 12.03

Subject: DA2014 - 421.2 MODIFICATION TO PONTOON (SAILABILITY) - LOT 2
DP 535212 MCINHERNEY CLOSE, PORT MACQUARIE

Report Author: Matt Rogers

Property: Lot 2 DP 535212, McInherney Close, Port Macquarie
Applicant: Sailability NSW - Port Macquarie Branch
Owner: Port Macquarie-Hastings Council
Application Date: 14 December 2015
Estimated Cost: N/A
Location: Port Macquarie
File no: DA2014 - 421.2
Parcel no: 22006

Alignment with Delivery Program

4.9.2 Undertake transparent and efficient development assessment in accordance with relevant legislation.

RECOMMENDATION

That modification to DA2014 - 421.2 for a pontoon at Lot 2, DP 535212, McInherney Close, Port Macquarie, be determined by granting consent subject to the recommended conditions.

Executive Summary

This report considers a section 96 application to modify the approval for the construction of a pontoon at the subject site and provides an assessment of the application in accordance with the Environmental Planning and Assessment Act 1979.

Following exhibition of the application, two (2) submissions have been received.

The application was reported to Council's Development Assessment Panel (DAP) on 13 April 2016 whereby the following was resolved:

"That it be recommended to Council that modification to DA2014 - 421.2 for a pontoon at Lot 2, DP 535212, McInherney Close, Port Macquarie, be determined by granting consent subject to amendment of the recommended conditions as follows:

- A6 (A195) *The gradients of the footpath shall comply with Australian Standards AS1428.4.1.2009 (for distances up to 9m the maximum gradient*

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is 1:14, for distances up to 15m the maximum gradient is 1:20). The footpath is to provide a continuous unobstructed accessible path of travel.

- *B1 (B195) Prior to release of the Construction Certificate a practising chartered professional structural engineer is to provide certification to the PCA that the building is designed so that all structural members are capable of withstanding flood forces and the impact of any debris (carried by floodwaters) likely to occur for a range of floods up to and including the 1 in 100 year flood including climate change and the relevant freeboard level of 500mm. For the purpose of this requirement, the 1 in 100 year flood level including climate change may be assumed to be RL3.32m AHD. Velocities to be adopted for the calculation of forces created by flood waters and debris loading shall be address velocities for a 1 in 100 year flood including climate change plus freeboard. For the purpose of this requirement, the velocity for the 1 in 100 flood including climate change may be assumed to be 1.35m/s.*
- *F1 The proponent is to enter into an agreement with the Manager of Parks and Gardens of Port Macquarie-Hastings Council for the maintenance of the structure. Council retains the right to remove any unsafe, unsightly or unauthorised structure or part thereof without prior notice.”*

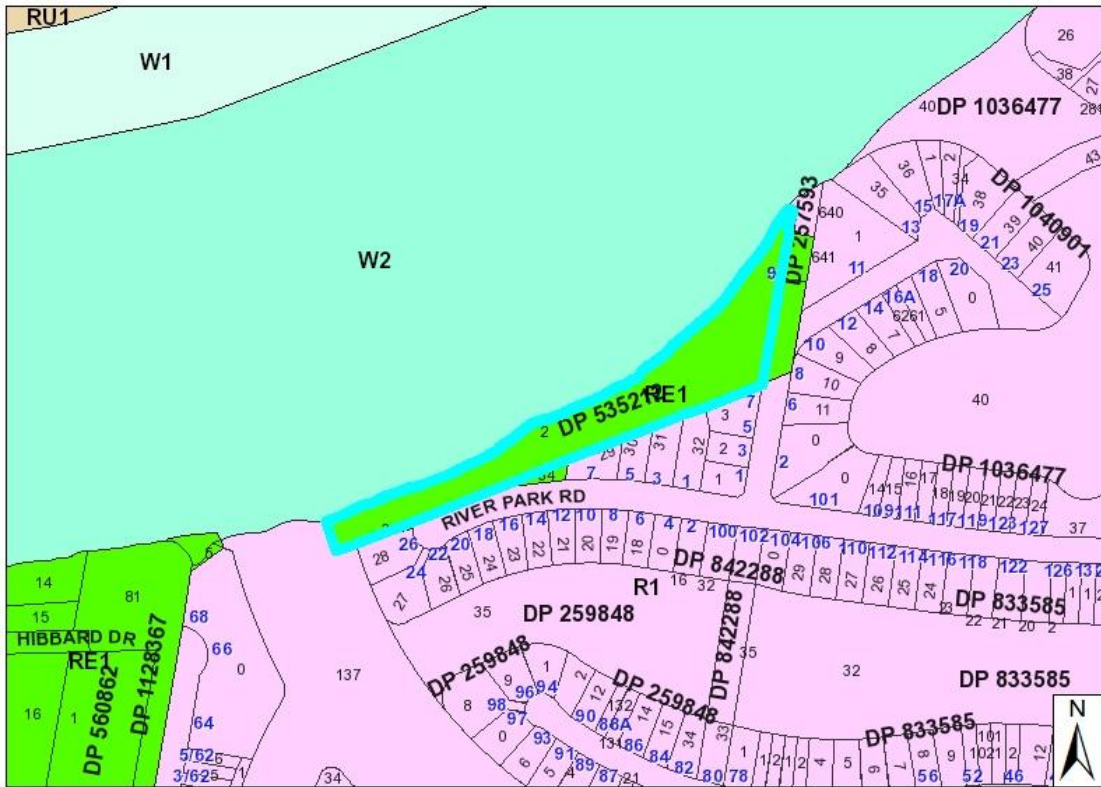
In accordance with Council’s Conflict of Interest - Development Applications Policy all development applications on Council land, which includes Crown land under trust management of Council, where objections have been received are to be referred to Council for determination.

1. BACKGROUND

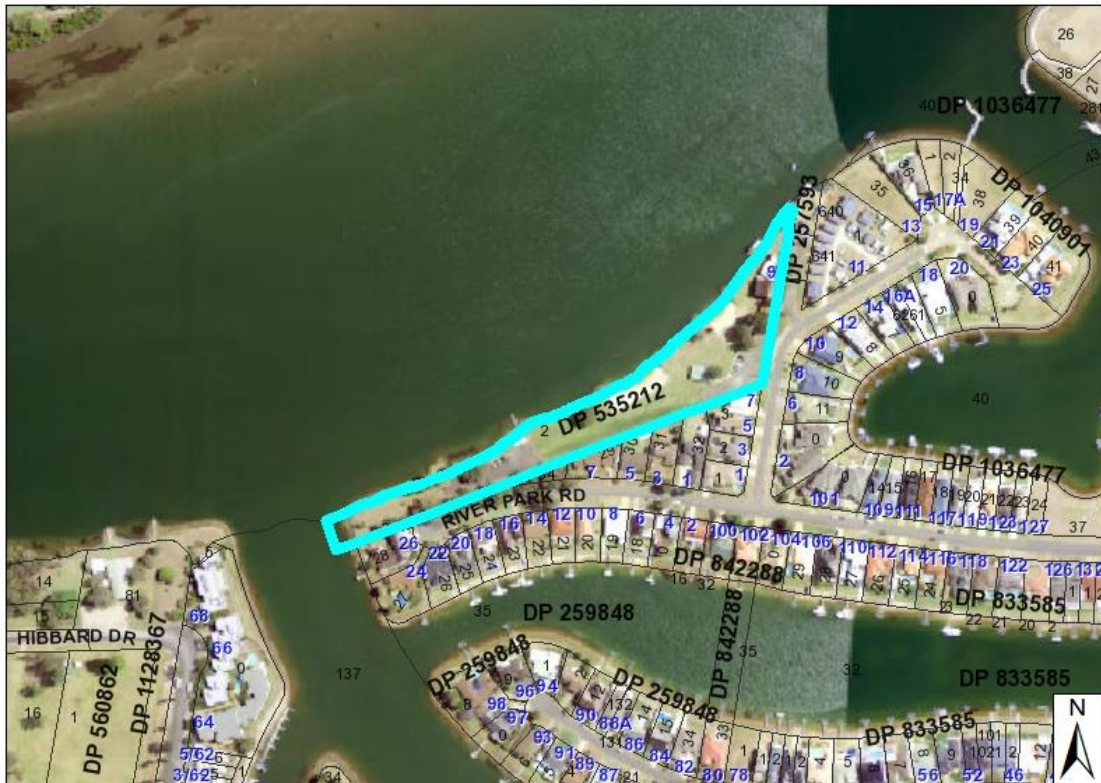
Existing sites features and Surrounding development

The site has an area of 1.351 hectares. The site is zoned RE1 Public Recreation in accordance with the Port Macquarie-Hastings Local Environmental Plan 2011, as shown in the following zoning plan:

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The existing subdivision pattern and location of existing development within the locality is shown in the following aerial photograph:



2. DESCRIPTION OF DEVELOPMENT



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Key aspects of the proposal include the following:

- Modification to the location and design of a pontoon

Refer to attachments at the end of this report.

Application Chronology

- 14 December 2015 - Application lodged
- 18 December 2015 - Referral to NSW Office of Water
- 18 December 2015 - Additional information request outlining reasons for pontoon relocation
- 21 December 2015 - Applicant response with primary reason for pontoon relocation being navigational issues with boat mooring on adjacent wharf
- 23 December 2015 - 21 January 2016 Neighbour notification of proposal
- 5 January 2016 - NSW Office of Water advise previous General Terms of Approval to remain.
- 8 January 2016 - Referral to Roads and Maritime Services (RMS) seeking comment
- 11 February 2016 - RMS comments received. Request for Council to consider if the overall width of the pontoon can be reduced to less than 3m to reduce offshore projection into the navigation channel.
- 15 February 2016 - Request to applicant questioning if width of pontoon or extension distance can be reduced following RMS comment.
- 20 February 2016 - Applicant response outlining there is scope to move pontoon closer to shoreline however more detailed investigation to be undertaken at design stage. Based on intended use a minimum pontoon width of 3m is considered necessary.

Section 96 Modification of consents—generally (1A) Modifications involving minimal environmental impact

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

(a) it is satisfied that the proposed modification is of minimal environmental impact,

The modified proposal is considered to be of minimal environmental impact. The nature of the impacts associated with the modified pontoon location are similar to that which was originally approved.

(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all),

The proposal is considered to be substantially the same development to that which was originally approved. The nature of the structure and it's intended use remain the same. The relocated positioning of the pontoon is not considered to alter the

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'essence' of the development. The revised location is in the same general area, being McInherney Park and the adjoining foreshore.

- (c) it has notified the application in accordance with:**
(i) the regulations, if the regulations so require, or
(ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent,

The modified proposal has been notified to neighbours between 23 December 2015 and 21 January 2016 in accordance with Development Control Plan 2013.

- (d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be**

Two submissions were received following completion of the neighbour notification period.

Key issues raised in the submission received and comments in response to these issues are provided as follows:

Submission Issue/Summary	Planning Comment/Response
Is the pontoon available for use by others outside the hours used by Sailability?	The pontoon would be a public facility for use by anyone at any time.
Parking is already a big problem at the park, especially during events, with overflow parking often across residential driveways and front lawns.	It is considered that the general use of the pontoon will not create any additional parking demand from that already experienced from the park and its facilities. Persons could come to the park via boat and not a vehicle.
Antisocial behaviour and intimidation of neighbours would result from use by the boating fraternity.	There is no evidence to suggest antisocial behaviour would result from erecting a pontoon in this location.
The pontoon should be erected near the sailing club towards existing commercial boating activities.	Noted. The proposal was originally approved in this location however navigational issues from the adjacent mooring have led to the newly proposed location.
Safety concerns would result from conflict with swimmers and power boats / jet skis as previously experienced.	Noted. The pontoon is located between beaches to minimise potential conflict with beach users.
Safety concerns with kids jumping off the pontoon into deep fast flowing waters.	Noted. These risks apply to all public facilities.
Safety concerns for disabled falling off the pontoon. Maybe a mobile temporary structure is best suited to their needs.	Noted. These risks apply to all public facilities. The facility will benefit the public not just Sailability users.
The organisation is asking for a huge footprint in the McInherney Park	The majority of the footprint is within the river. The pontoon would be a public facility

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<p>precinct to the detriment of other park users.</p>	<p>consistent with the intent and uses of public reserves.</p>
<p>The pontoon will have a huge visual impact to neighbouring residences and affect property values.</p>	<p>The pontoon structure is located in a suitable location on the foreshore and is not excessive in size. No adverse visual impacts would result. Whilst not a planning consideration there is no evidence to suggest the proposal would adversely impact property values.</p>



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There are already enough pontoon/jetty facilities around McInherney park for boating enthusiasts a further one is not required. Why can't they use the existing boat ramp pontoon.	Noted. The pontoon needs to meet disabled access gradient requirements and is located opposite the sailing club building to enable easy boat access.
The size of the pontoon is excessive and raises suspicion of ulterior motives by the sailing club and motor boat fraternity.	The size of the pontoon is considered reasonable based on the intended use by Sailability. This application can only be assessed on what is being put forward as part of the application.
Excessive noise levels would result from boat and jet ski traffic having access to the pontoon. Similar to that experienced on the beach some years ago.	Refer to comments under noise heading within the report.
The pontoon will be washed away in floods. Who pays for a new one?	The pontoon will need to be designed to withstand flood forces up to 1:100 plus debris and be constructed of flood compatible materials. The cost of a replacement pontoon would be borne by the proponent.
The proposal should be incorporated into existing pontoon at Westport Park or Settlement Point where there is plenty of parking.	Noted. The pontoon needs to meet disabled access gradient requirements and is located opposite the sailing club building to enable easy boat access.
Regulation surrounding the use of the facility will burden the RMS who are already understaffed.	Noted. Consultation with RMS has led to the revised location.
A 4 knot zone should be created along this stretch of river to address some of the safety concerns. PWC users are not adhering to current regulations.	Noted. Suggested speed limits and enforcement of waterways laws should be reported to the RMS for investigation.
A sign should be placed on the pontoon to ban powering in and out by power boats and jet skis.	There is no proposal to restrict/prohibit any form of water craft from using the pontoon outside Sailability use. The use is no different to the boat ramp pontoon at the western end of the park. No signage is considered necessary.
Council should be monitoring noise levels at McInherney Park especially over weekends to ensure safe decibel levels.	Noted. Reports of excessive noise relating to special events etc would be investigated as necessary following formal complaint.
Objection to removal of boating speed limits, no wash zones and restrictions on boats and PWC access the beaches.	There is no proposal to remove any existing restrictions or signage.

(3) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters

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referred to in section 79C (1) as are of relevance to the development the subject of the application.

- (a) **The provisions (where applicable) of:**
(i) **any Environmental Planning Instrument:**

Port Macquarie-Hastings Local Environmental Plan 2011

In accordance with clause 2.2 the subject site is zoned RE1 Public Recreation. The proposed development for a pontoon is considered to be an ancillary component of the recreation area and a permissible land use with consent.

In accordance with clause 2.3(2) the consent authority must have regard to the objectives of a zone when determining a development application. The objectives of the RE1 Public Recreation zone are as follows:

- To enable land to be used for public open space or recreational purposes.
- To provide a range of recreational settings and activities and compatible land uses.
- To protect and enhance the natural environment for recreational purposes.

In accordance with clause 2.3(2), the proposal is consistent with the zone objectives having regard to the following:

- The proposal is a permissible land use;
- The proposal will provide further recreational activity for the public;
- The proposal will not impact on the natural environment.

In accordance with clause 4.3, the maximum overall height of the pontoon poles above ground level (existing) is approximately 3m which complies with the standard 8.5m height limit applying to the site.

In accordance with clause 4.4, no maximum floor space ratio applies to the site.

In accordance with Clause 5.10, the site does not contain or adjoin any known heritage items or sites of significance.

In accordance with clause 7.3 the land is within the flood planning area. The proposal is affected by the 1:100 flood event for the Hastings River. The proposal has been conditioned to withstand flood forces up to 1:100 plus debris and be constructed of flood compatible materials.

- (ii) **Any draft instruments that apply to the site or are on exhibition:**

No draft instruments apply to the site.

- (iii) **any Development Control Plan in force:**

Port Macquarie-Hastings Development Control Plan 2013

There are no specific building controls that apply to this form of development. The modified proposal is consistent with the applicable general provisions of the plan.

The modified location and design will not result in any increased parking demand.

- (iiia) **any planning agreement that has been entered into under Section 93f or any draft planning agreement that a developer has offered to enter into under Section 93f:**

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No planning agreements are applicable to the proposal.

iv) any matters prescribed by the Regulations:

None applicable to modified proposal.

v) any coastal zone management plan (within the meaning of the [Coastal Protection Act 1979](#)), that apply to the land to which the development application relates:

No coastal zone management plan applies to the land.

(b) The likely impacts of that development, including environmental impacts on both the natural and built environments, social and economic impacts in the locality:

Context & Setting

The site is located at McInherney Park which is Crown Land reserve under the care and control of Council. The park adjoins residential dwellings to the south and the Hastings River to the north.

The park contains a boat ramp, pontoon and associated parking at the western end of the reserve. The central area contains two man-made beaches, covered outdoor bbq/seating area, amenities block and associated parking. The eastern end of the reserve contains the sea scout, sailing club and restaurant building. The proposed pontoon is considered to be complementary to the context and will not give rise to any unmanageable impacts.

Access, Transport & Traffic

The proposal will be unlikely to have any adverse impacts in terms of access, transport and traffic.

Public Domain

The proposal will provide for additional public recreational opportunities in the locality. The facility will be directly accessible from the reserve.

Utilities

The proposal does not require any service connections.

Stormwater

No adverse impacts.

Soils

The proposed development will be unlikely to have any adverse impacts on soils in terms of quality, erosion, stability and/or productivity. A standard site management condition has been applied to ensure measures are in place prior to and during construction.

Air & Micro-climate

The construction of the proposed development will be unlikely to result in any adverse impacts on the existing air quality or result in any pollution.

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Flora & Fauna

Construction of the proposed development will not require removal/clearing of any significant vegetation and therefore will be unlikely to have any significant adverse impacts on biodiversity or threatened species of flora and fauna. Section 5A of the Act is considered to be satisfied.

Waste

Satisfactory arrangements are in place for proposed storage and collection of waste and recyclables. No adverse impacts anticipated.

Energy

No adverse impacts anticipated.

Noise & Vibration

The anticipated boat traffic that would utilise the pontoon is considered similar to that experienced by the boat ramp/pontoon. The modified location of the pontoon is located approximately 60m from the nearest residential dwellings at 5 and 7 McInherney Close. Having regard to the separation distance and nature of public reserve use undertaken on the site no significant adverse noise impacts are anticipated that would warrant refusal of the application. Condition recommended to restrict construction to standard construction hours.

Natural Hazards

The site is not mapped as bushfire prone. The site is mapped as flood prone land. Refer to comments under clause 7.3 of the Port Macquarie-Hastings Local Environmental Plan 2011.

Safety, Security & Crime Prevention

The proposed development will be unlikely to create any concealment/entrapment areas or crime spots that would result in any identifiable loss of safety or reduction of security in the immediate area.

Social Impact in the Locality

Given the nature of the proposed development, the proposal is unlikely to result in any adverse social impacts.

Economic Impact in the Locality

No adverse impacts. Likely positive impacts can be attributed to the construction of the development and associated flow on effects (i.e. increased expenditure in the area).

Site Design and Internal Design

The proposed development design satisfactorily responds to the site attributes and will fit into the locality. No adverse impacts likely.

Construction

No potential adverse impacts identified to neighbouring properties with the construction of the proposal.

Cumulative Impacts

The proposed development is not expected to have any adverse cumulative impacts on the natural or built environment or the social and economic attributes of the locality.

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(c) The suitability of the site for the development:

The subject site remains suitable for the proposal, as modified.

(d) Any submissions made in accordance with this Act or the Regulations:

Two written submissions have been received following public exhibition of the application.

See comments earlier in this report addressing the issues raised in the submissions.

(e) The Public Interest:

The proposed development satisfies relevant planning controls and is unlikely to impact on the wider public interest.

4. DEVELOPMENT CONTRIBUTIONS APPLICABLE

Not applicable.

5. CONCLUSION

The application has been assessed in accordance with Section 96(1A) of the Environmental Planning and Assessment Act 1979.

Issues raised during assessment and public exhibition of the application have been considered in the assessment of the application. Where relevant, conditions have been recommended to manage the impacts attributed to these issues.

The site is suitable for the proposed development as modified, is not contrary to the public's interest and will not have a significant adverse social, environmental or economic impact. It is recommended that the Section 96 application be approved, subject to the recommended conditions of consent provided in the attachment section of this report.

Attachments

- 1 [View](#). DA2014 - 421.2 Plan
- 2 [View](#). DA2014 - 421.2 RMS Comments.
- 3 [View](#). DA2014 - 421.2 Recommended DA Conditions.
- 4 [View](#). DA2014 - 421.2 Submission - Newberry
- 5 [View](#). DA2014 - 421.2 Submission - Watson