

# **SECTION 4.56 EP&A ACT 1979 ASSESSMENT REPORT**

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## **MODIFICATION TO DA 738/2006 – AMEND SHORT-TERM SITES PER STAGE**

**212 AND 296 BLACKHEAD RD HALLIDAYS POINT, NSW, 2430  
(LOT: 3 DP260256 AND LOT: 411 DP1279178) (PREVIOUSLY LOT  
4 DP260256)**

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<b>PP Reference</b>		J004576		
<b>Prepared for (client)</b>		Halliday Point Caravan Park		
<b>Document Versions and Control</b>				
S4.56 Assessment, 212 and 296 Blackhead Rd Halliday Point				
Version	Date	PP ref	Author	Reviewed by
1 (draft)	09/10/24	S4.56 – Blackhead Rd (revise ST sites)	ED	MB / Client
2	10/10/24	S4.56 – Blackhead Rd (revise ST sites)	ED	MB / Client
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## SUPPORTING DOCUMENTATION

The following documents are contained under separate cover:

Appendix	Document	Reference
1	Original Court Orders	Dated 4 November 2008
2	Proposed Plans	Prepared by DRB Consulting Engineers (ref: 210850, rev: L dated 03.10.24)
3	Site Plan Overlay – Approved vs Proposed	DRB Consulting Engineers (ref: 210850, Rev: B and dated 04.10.2024)
4	Property Title	411/-/DP1279178
5	Property Title	3/-/DP260256
6	AHIMs Search Results	Dated 6 April 2022
7	Deposited Plan 260256, 1271891 and 1279178	N/A
8	Stormwater Strategy Plan for Lots 3 & 4 DP 260256 Blackhead Road, Hallidays Point	Prepared by Lidbury Summers and Whiteman (File No. 7539, sheet 1 of 2, issue E dated 10/11/08).
9	Staging Plan	Prepared by Lidbury Summers and Whiteman (File No. 7539, sheet 1 of 2, issue A dated 10/11/08).
10	Statement of Environmental Effects	Prepared by Coastplan Group (dated August 2008)
11	<i>Hallidays Point Development Pty Limited and anor v Greater Taree City Council</i>	(No. 2) [2008] NSWLEC 1446
12	Flora and Fauna Assessment	Prepared by Travers Environmental (dated 19 August 2008)
13	Addendum to Stormwater Strategy	Prepared by Lidbury Summers and Whiteman (dated 17 July 2008)
14	Access and Traffic Impact Report	Prepared by David Stewart Consulting (dated July 2008)
15	Conceptual Stormwater Drainage Quality Modelling Report	Prepared by Coastplan Group Pty Ltd (dated July 2008)

## EXECUTIVE SUMMARY AND OVERVIEW

Perception Planning has been engaged by Hallidays Point Lifestyle Pty Ltd (**'the Owner'**) to prepare a Section 4.56 Application to modify DA 738/2006 (amend short-term sites per stage) at 212 and 296 Blackhead Rd Hallidays Point NSW, 2430 (Lot: 3 DP260256 and Lot: 411 DP1279178) (previously Lot: 4 DP260256), referred to as **'the Site'** for the purpose of this Section 4.56 Report.

The Owner took possession of the site on 28 January 2022, with the intention of progressing the development of the approved Rural Tourist Facility under DA 738/2006. To ensure the development's commercial viability and adequately protect the unique conservation areas throughout the Site, the Owner is seeking to modify DA 738/2006. The document aims to assist MidCoast Council, as the consent authority, in assessing a proposed modification to development consent DA 738/2006 that the Land and Environment Court approved on 4 November 2008 (**'the 2008 Consent'**).

The application proposes to modify the number of short-term sites within Stages 2B, 2C and 3, as follows (as modified and developed):

1. Increase number of short-term sites within Stage 2B from 33 to 61 sites (an overall increase of 28 sites)
2. Decrease number of short-term sites within Stage 2C from 44 to 29 (an overall decrease of 15 sites)
3. Decrease number of short-term sites within Stage 3 from 84 to 71 (an overall decrease of 13 sites).

No change to the total number of sites approved by DA 738/2006 is proposed as part of this modification. The total number of sites will remain as 292. No additional changes are proposed to the qualitative aspects of the development as part of this modification, relating to the recreational facilities, trails or supporting facilities and structures.

To enable a detailed assessment by the MidCoast Council to be undertaken, this Section 4.56 Report sets out the proposed modification under the following key headings:

- Site Owner and Operator
- Site Particulars
- Site History
- Proposed Modification
- Overview of Section 4.56 Assessment
- Section 4.56 Assessment.

For s4.56 of the *Environmental Planning and Assessment Act 1979* (EP&A Act), the test of substantially the same development does not require reference to any modifications (i.e., the comparison is against the 2008 Consent).

## 1.0 SITE OWNER AND OPERATOR

Hallidays Point Lifestyle Pty Ltd (**‘the Owner’**) took possession of 296 Blackhead Road, Hallidays Point (Lot 411 DP1279178) on 28 January 2022 to progress the development of the Rural Tourist Facility under DA 738/2006. The Facility is operated by Hallidays Point Lifestyle Park Pty Ltd (**‘the Operator’**).

Stages 1, 2A and 2B of the six-stage development were, for the most part, completed before settlement. The existing development is comprised of bulk earthworks (including roads, drainage, power, water, sewage, etc.), a tourist office (pavilion), 33 sites and the amenities to service these sites (including toilets, showers, laundry) and the equestrian stables. A service station (approved under stage 2B) has not been developed. These works have been undertaken entirely on Lot 411. Future Stages 2C and 3 are planned for development entirely on Lot 411. The final stage of the development (being Stage 4 under the existing DA) is proposed for the adjacent property at 212 Blackhead Road, Hallidays Point (Lot 3 DP260256). This property is owned separately by Ursula Donnantuoni, Josephine Lettieri, and Pasquale Antonio Lettieri. They are not involved in the planning, implementation, or operations of any stages of the development other than Stage 4.

The Owner seeks to progress the staged development of the Site broadly in accordance with the existing DA. To date, the Owner has primarily focused on improving the facilities and broader infrastructure of the existing developed areas on-site. This has led to increased occupancy through positive word-of-mouth and social media. Good use is now being made of the existing stables and other temporary equestrian facilities because of their recent upgrade. There is strong interest in the plans to create walking trails and wildlife corridors through the Site.

## 2.0 SITE PARTICULARS

<b>Property Address</b>	212 and 296 Blackhead Rd Hallidays Point, NSW, 2430 ( <b>‘the Site’</b> )
<b>Lot and DP</b>	Lot 3 DP260256 (No. 212) & Lot 411 DP1279178 (No. 296) – previously Lot 4 DP260256 Each Deposited Plan is provided at <b>APPENDIX 7</b> . The property titles are provided at <b>APPENDIX 4 &amp; 5</b> .
<b>Lot Size</b>	Lot 3: 40.65 ha Lot 411: 40.4 ha
<b>Current Use</b>	Rural tourist facility
<b>Zoning</b>	C2 – Environmental Management (prev. E2) RU1 – Primary Industry
<b>Site Constraints (NSW Spatial Viewer, 2022)</b> *Based on current mapped constraints, rather than those identified in the original DA.	<ul style="list-style-type: none"><li>• Coastal Wetlands</li><li>• Bushfire prone land – category 1 and buffer</li><li>• Acid sulfate soils class 2a and 5</li><li>• Minimum Lot Size – 40 ha.</li></ul>

The Site is located at 212 and 296 Blackhead Rd Hallidays Point, NSW, 2430, legally identified as Lot 3 DP260256 and Lot 411 DP1279178 (previously Lot 4 DP260256) (**FIGURE 1**). A review of the titles indicates that Lot 4 DP260256 was subdivided and registered accordingly in 2021 (under Lot 41 DP1271891), to provide a separated title internal to the Lot for the purposes of MidCoast Council Sewer Pump Station, being Lot 40 DP1271891. Then, the title and DP were amended again in 2022 under Lot: 411 DP1279178 (registered 12/01/2022) to provide additional entitlements to the Council, being:

- (R) – road widening 4950m<sup>2</sup>
- (W) – easement to drain water (4 wide)
- (D) – restriction on use of land (water detention system) (site)

A copy of each DP is provided at **APPENDIX 7**.

The Site comprises two irregular shaped parcels of land with an area of approximately 81.3 ha, with each Lot meeting the MLS of 40 ha. The Site maintains direct access to Blackhead Road. Land adjoining the site to the east, west and south is zoned RU1 Primary Production and C2 Environmental Conservation. To the north, on the opposite side of Blackhead Road, is R1 General Residential zoned land. This Urban Release Area is known as 'Tallwoods' Estate. Recreation zoned land is also located to the north. These areas are shown in **FIGURE 5**, obtained from the MidCoast Housing Strategy.

The Site comprises areas of rural pasture with limited vegetation and areas of dense vegetation within the conservation-zoned areas. Several natural water courses located within the conservation areas traverse the site.

The Site maintains development approval as a 'rural tourist facility' (as further detailed below), with areas partially developed for this purpose within Lot 411. The Site is generally flat, with tracks, bridges, roads, and other infrastructure already in place (MidCoast Council has recently constructed a major sewer transfer point on the site). Partial construction of the rural tourist facility (Stage 2A and 2B) has occurred. Aerial images of the site are provided below.





**Figure 1:** GIS Aerial image of the site (Source: NearMaps, 2021)



**Figure 2:** Aerial image of constructed development over Lot 411 (Source: NearMaps, 2021)





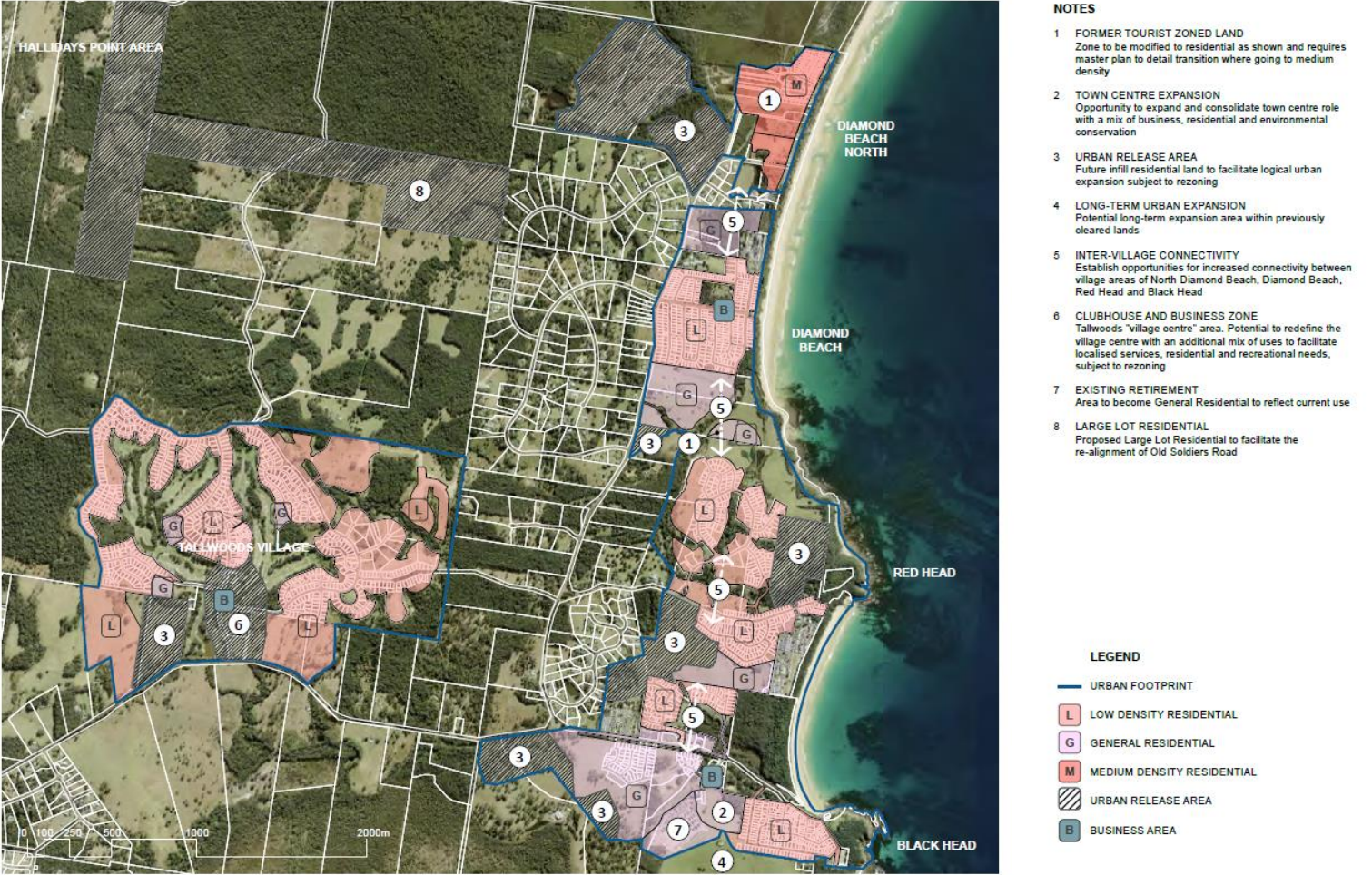
**Figure 3:** Drone image of existing site development



**Figure 4:** Drone image of existing site development



Figure 5: MidCoast Housing Strategy Hallidays Point



### 3.0 SITE HISTORY

#### Approval History

For s4.56 of the *Environmental Planning and Assessment Act 1979* (EP&A Act), the test of substantially the same development does not include reference to any modifications (i.e., the comparison is against the 2008 Consent). The following information on various modifications is only provided for context. The project and site history can be summarised as follows:

1. The Land and Environment Court (LEC) granted development consent to development application DA 738/2006 (rural tourist facility) in *Hallidays Point Development Pty Limited and Anor v Greater Taree City Council (No 2)* [2008] NSWLEC 1446 (**Judgement**) and provided conditions of approval in relation to Stage 1 (Concept Approval) on 4 November 2008 (**2008 Consent**). The concept approval is described in order 2 of the Judgement as follows:

*“... a 292 sites rural tourist facility incorporating equestrian facilities, community playing fields and ancillary retail, café and service station facilities at Blackhead Road, Hallidays Point to be undertaken in 4 stages as depicted in the staging plan prepared by Lidbury Summers and Whiteman (File No. 7539, sheet 1 of 1, issue A dated 10/11/08 is approved subject to the conditions in Annexure A...”*

The 2008 Consent is provided at **APPENDIX 1**.

2. The 2008 Consent does not provide specific details relating to the staging approved. In the absence of this, the 2008 Consent referenced the following documentation, depicting the staging approved:
  - *Condition No. 1(a) Site layout depicted in the Stormwater Strategy plan for Lots 3 & 4 DP 260256 Blackhead Road, Hallidays Point prepared by Lidbury Summers and Whiteman (File No. 7539, sheet 1 of 2, issue E dated 10/11/08) (**APPENDIX 8**). This is further confirmed by Condition 2.*
  - *Condition No. 1(b)*
    - *Statement of Environmental Effects (July 2008) Coastplan Group (**APPENDIX 10**).*
    - *Flora and Fauna Assessment (August 2008) Travers Environmental*
    - *Bushfire Protection Assessment (August 2008) Travers Environmental*
    - *Access to Stormwater Strategy (July 2008) LSW*
    - *Access and Traffic Impact Report (July 2008) Davis Stewart Consulting*
    - *Conceptual Stormwater Drainage Modelling Report (July 2008) Coastplan Group*
  - *Condition No. 2 Pursuant to Section 80(4) of the EP&A Act, this consent is granted for the development to be undertaken in 4 stages as depicted in the staging plan for Lots 3 & 4 DP 260256 Blackhead Road, Hallidays Point prepared by Lidbury Summers and Whiteman (File No. 7539, sheet 1 of 1, issue A dated 10/11/08) (**APPENDIX 9**).*

3. The 2008 Consent required further development consents to be obtained for stages 2, 3 and 4 of the development (Condition 3).
4. The 2008 Consent has been modified by the Council on two occasions, being:
  - a. Modification 738/2006/DA/A (**Mod A**) granted on 27 March 2013 for the modification of staging and amendments to conditions because of the staging changes. Mod A contained the following conditions regarding staging:
    - i. **Condition 2** – consent was granted for the development to be undertaken in four stages as depicted in the staging plan prepared by Lidbury Summers and Whiteman (sewer and water strategy dev):
      - **Stage 1** – concept approval.
      - **Stage 2A** – Bulk earthworks for part stage 2.
      - **Stage 2B** – 33 sites with amenities block, shop, office and temporary stables.
      - **Stage 2C** – 44 sites and stables / equestrian facilities.
      - **Stage 3** – 122 sites, service station, oval and community building.
      - **Stage 4** – 93 sites.
    - ii. **Condition 3** – the applicant shall obtain further development consent for each of the stages 2, 3 and 4 of the development (noting approvals relating to Stages 2A and 2B have been issued, per the below).
  - b. Modification 738/2006/DA/B (**Mod B**) granted on 9 December 2014 for the modification of staging and amendments to conditions because of staging changes.
  - c. In summary, the effect of Mod A and B was to stagger Stage 2, creating Stage 2, 2B and 2C of the development, and to amend the staging of infrastructure and tourist site numbers.
  - d. Staged development consents have been granted by Council with respect to the carrying out of works under the 2008 Consent, including:
    - i. Development consent 166/2013/DA for bulk earthworks (Stage 2A of the 2008 Consent) on 27 March 2013.
    - ii. Development consent 247/2016/DA for Stage 2B – Rural Tourist Facility on 13 July 2016. Further modifications have been made to 247/2016/DA, being:
      - 247/2016/DA/A, approval dated 22 August 2016
      - 247/2016/DA/B, approval dated 17 August 2016
      - 247/2016/DA/C, approval dated 17 November 2017
      - 247/2016/DA/D, refusal dated 29 May 2018
      - 247/2016/DA/E, approval dated 29 October 2018



At the time of writing, the site comprises 33 short-term accommodation sites constructed as part of existing Stage 2B. Stages 2C, 3 and 4 are yet to be constructed.

These 33 sites are subject to a current caravan park operating licence issued by Council, with an amenities block, administration building (which includes office, kitchen, amenities, and swimming pool facilities), and equestrian stables consistent with the concept plan and supporting documentation (including SoEE) lodged and approved under 247/2016/DA (as amended). The following key points were relied on by the applicant as part of the 2008 Consent:

- Approval for the rural tourist facility was sought in stages, the first being for the 'concept' with no physical works, and three following stages during construction, each subject to a separate DA.
- Assessment was undertaken on the basis that land to the north, on the opposite side of Blackhead Road, will no longer provide a rural backdrop and should be regarded as an urbanised background that forms part of Tallwoods Estate.
- A 'rural tourist facility' was not defined by the LEP in force at the time of assessment in November 2008. However, at that time there was a definition for a 'tourist facility'. Consequently, as the Court noted at paragraph [33] in the Judgement, it is appropriate to consider the zone objectives to assist within interpreting the 'rural tourist facility' use as a subclass of the 'tourist facility' use defined in the LEP as was then in force. The proposed equestrian facilities and community sporting fields assisted the Court in its ultimate decision that the development should be characterised as a 'rural tourist facility'.

The original DA documentation is provided within the following:

- Court Orders - dated 4 November 2008 (**APPENDIX 1**)
- *Hallidays Point Development Pty Limited and anor v Greater Taree City Council* (No 2) [2008] NSWLEC 1446 3 (**APPENDIX 11**)
- Stormwater Strategy Plan for Lots 3 & 4 DP 260256 dated 10.11.08 (**APPENDIX 8**)
- Staging Plan for Proposed Development of Lots 3 and 4 DP 260256 dated 10.11.08 (**APPENDIX 9**)
- Statement of Environmental Effects, prepared by Coastplan Consulting, dated August 2008 (**APPENDIX 10**)
- Flora and Fauna Assessment, prepared by Travers Environmental, dated 19 August 2008 (**APPENDIX 12**)
- Addendum to Stormwater Strategy, prepared by Lidbury Summers & Whiteman, dated 17 July 2008 (**APPENDIX 13**)
- Access and Traffic Impact Report, prepared by David Stewart Consulting, dated July 2008 (**APPENDIX 14**)
- Conceptual Stormwater Drainage Quality Modelling Report, prepared by Coastplan Group Pty Ltd, dated July 2008 (**APPENDIX 15**).

## 4.0 PROPOSED MODIFICATION

The Owners of Lot 411 DP1279178 are seeking to modify the existing DA to obtain better commercial, tourism, environmental and social outcomes from the development, within the area already constructed and used for tourism purposes (Stage 2B).

It is in this context that the applicant proposes the following modifications to the 2008 Consent (as modified and developed). The proposed layout is provided in **APPENDIX 2**.

- **Stage 1:** No change proposed.
- **Stage 2:** Amend the number short-term sites as follows:
  - **Stage 2B:** Increase number of short-term sites from 33 to 61 sites (an overall increase of 28 sites)
  - **Stage 2C:** Decrease the number of short-term sites from 44 to 29 (an overall decrease of 15 sites).

It is noted that Stage 2B and 2C were introduced as part of Mod A. 33 short-term sites currently exist on-site within Stage 2B. The modification as proposed will require the slight reduction in size of the existing 33 short-term sites, ensuring no development beyond the existing area boundary of Stage 2B.

- **Stage 3:** Decrease the number of short-term sites from 84 to 71 (an overall decrease of 13 sites).
- **Stage 4:** Increase the number of short-term sites from 93 to 131 (an overall increase in 38 sites).

The location of each site is generally the same as approved by the 2008 Consent, and within the same building envelope, ensuring visual impacts to Blackhead Road are mitigated.

No change to the total number of sites approved by DA 738/2006 is proposed as part of this modification. The total number of sites will remain as 292. No additional changes are proposed to the qualitative elements as part of this modification, relating to the recreational facilities, trails or supporting facilities and structures.

Whilst the number of sites in the 2008 Staging Plan (**APPENDIX 9**) yields 293 sites rather than the approved 292, for the purpose of this Application, we assume that there was an error in the overall numbers of sites in the 2008 Staging Plan, and that the total number of sites (as approved) is 292. The Judgment clearly refers to consent being granted for 292 sites, and there is a shaded site in the south of Stage 2 of the development that does not appear to have direct road access. For the purposes of this assessment, this site has been ignored, and the number of sites within Stage 2 has been assumed as 76.

The proposed changes to the number of sites within each stage will improve the commercial viability of the development within the area already developed and used for tourist purposes, prior to future stages being developed.



## 5.0 OVERVIEW OF SECTION 4.56 ASSESSMENT

This report has been prepared pursuant to the *Environmental Planning and Assessment Act 1979* (EP&A Act) and the *Environmental Planning and Assessment Regulation 2021* (EP&A Regulation 2021) and reviews the relevant environmental planning instruments and guidelines regarding subject Section 4.56 modification application. It also assesses the potential environmental impacts of the proposed modification with reference to the relevant heads of consideration listed under Section 4.15 of the EP&A Act. The proposed modification to the 2008 Consent is consistent with the current objectives of the EP&A Act (Section 1.8) for the following reasons:

- a) It promotes the social and economic welfare of the community by providing and short-term housing and tourism opportunities.
- b) It creates local tourism opportunities by providing eco-tourism facilities as well as rural and equestrian facilities.
- c) It enhances the State's wetlands and natural habitat areas through the effective management and conservation of those areas within the Site.
- d) It facilitates ecologically sustainable development by integrating relevant economic, environmental, and social considerations in decision-making about environmental planning and assessment.
- e) It promotes sustainable economic development through environmentally sensitive building design, habitat protection and a target net zero carbon footprint.
- f) It protects the environment, including the conservation of threatened and other species of native animals and plants, ecological communities, and their habitats. More than 60% of the land will be under conservation zoning or open rural landscape.
- g) It does not result in any additional impacts to the built and cultural heritage (including Aboriginal cultural heritage),
- h) It promotes good design and amenity of the built environment through the incorporation of compliant design with the Local Government Regulation, and improved landscaping and screening elements.

## 6.0 SECTION 4.56 ASSESSMENT

The power under s4.56 is simply one to "modify the consent", as explained by Preston CJ in *Scrap Realty Pty Limited v Botany Bay City Council* [2008] NSWLEC 333 (19 December 2008) at [13-14]:

*"Originally, the power to modify consents was restricted to modifying "details" of a consent. That restriction was removed in 1985 and the power was enlarged to be, simply, to modify the consent: see North Sydney Council v Michael Standley & Associates Pty Ltd [1998] NSWSC 163; (1998) 43 NSWLR 468 at 475. The concept of modification involves "alteration without radical transformation": see Sydney City Council v Ilenace Pty Ltd [1984] 3 NSWLR 414 at 421; North Sydney Council v Michael Standley Pty Ltd [1998] NSWSC 163; (1998) 43 NSWLR 468 at 474. The object of the modification is the consent" [our emphasis].*

For the purpose of the proposed modification, the relevant provision within s4.56 which provides the consent authority the power to modify the 2008 Consent is subsection (1). That subsection provides:

- (1) A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the Court and subject to and in accordance with the regulations, modify the development consent if:**
- (a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and**

The first 'test' of the modification application is whether or not the proposal is 'substantially the same' development as was originally granted under the 2008 Consent. This test needs to be first satisfied before an assessment of the likely environmental impacts of the proposed modification is considered under s.4.15(1) of the EP&A Act.

The following observations are also made in relation to the question of 'substantially the same development' and the proposed development.

### **Quantitative comparison**

For ease of reference, from a quantitative perspective, the key numeric elements in comparing the 2008 Consent and the Proposed Modification are identified in **TABLE 1** below.

**Table 1:** Quantitative elements

<b>Element</b>	<b>2008 Consent</b>	<b>Proposed Modification</b>
<b>Land</b>	Lot 3 DP260256 and Lot 411 DP1279178	No change.
<b>Disturbance Footprint</b>	As set out in the 2008 Stormwater Strategy Plan ( <b>APPENDIX 8</b> ).	No change.
<b>Overall number of sites</b>	292 short term sites	292 short term sites (No change)
<b>Maximum occupancy per year</b>	292 short-term sites x 180 nights = 52,560 tourist site nights	No change.
<b>Stage 1</b>	Concept approval	No change.
<b>Stage 2</b>	76 short-term tourist sites Entrance, office, shop, and fuel Facilities. Equestrian facilities including	<b>Stage 2B:</b> 61 short-term sites <b>Stage 2C:</b> 29 short-term sites <b>Total:</b> 90 short-term sites (14 sites or 18% increase in short-term sites).

	stables, horse jumping area and dressage arena	
<b>Stage 3</b>	123 short term sites, oval and community centre	71 short-term sites (51 sites or 31% decrease in short-term sites).
<b>Stage 4</b>	93 sites and remaining facilities	131 short-term sites (38 sites or 29% increase in short-term sites).

When comparing the proposed modified development to the 2008 Consent, the following observations are made regarding the qualitative context:

- The total number of sites remains at 292, with no qualitative change.
- The amendment to the number of short-term sites within each stage is minor in nature, such that the main difference relates to the development of 212 Blackhead Rd (Lot: 3/-/DP260256) being wholly within Stage 4, rather than split between Stage 3 and 4 as originally approved. Stage 3 is limited to 296 Blackhead Rd (Lot: 411/-/DP1279178) as modified.
- Whilst the size and layout of the sites within each stage has been modified, they remain within the same envelope as approved. The size of each short-term site is generally the same as originally approved.
- It is noted that Stage 2B and 2C were introduced as part of Mod A. 33 short-term sites currently exist on-site within Stage 2B. The modification as proposed will require the slight reduction in size of the existing 33 short-term sites, ensuring no development beyond the existing area boundary of Stage 2B. Generally, the sites measure 230sqm in size, which when compared to the modern legislation relating to caravan parks (rural tourist facilities alike), the sites measure 3.8 times the required size (65sqm min) meeting the objectives of the rural zone.

From a quantitative perspective, the development proposed in this application is 'substantially the same' as the approved development (2008 Consent).

### **Qualitative comparison**

From a qualitative perspective, the development as modified will be substantially the same as what was originally granted consent, namely, *'a rural tourist facility incorporating equestrian facilities, community playing fields and ancillary retail, café and service station facilities at Blackhead Road, Hallidays Point to be undertaken in 4 stages'*.

### **Recreational Facilities**

No change to the approved recreation facilities within the 2008 Consent are proposed as part of this modification.

### **Approved use and long-term sites**

No change to the approved use or typology of sites is proposed as part of this modification.

### **Environmental Impacts**

The revised layout (site locations) has been generally designed to be within the envelope approved by the 2008 Consent. This ensures impacts on the wetlands and associated buffer areas is the same as originally approved. This is qualified within the Site Overlay Plan at **ATTACHMENT 3**.

#### Visual Impacts

Based on the Court judgement, a key reason for granting the 2008 Consent was the determination that following a reduction in the number of dwellings along Blackhead Road, the development would appear discrete and separated by a green corridor and would thereby be “*acceptable in the rural area where it is located*”. Vegetation screening along Blackhead Road as required by the 2008 Consent will continue to be imposed and will not change because of this modification. This will eliminate any potential visual impacts from adjoining roads or Tallwoods Estate. The short-term sites within Stage 2B are generally within the envelope approved by the 2008 Consent, and slightly extend closer to Blackhead Road. However, the setback of the sites is substantial and are screened by existing vegetation, which ensures visual impacts are mitigated – refer to Site Overlay Plan provided at **ATTACHMENT 3**.

The quantitative and qualitative aspects of the proposed modification are substantially the same as that for which the consent was originally granted.

***(b) 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, and***

Council will determine whether the application is required to be notified in accordance with this sub-section.

***(c) it has notified, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development application of the proposed modification by sending written notice to the last address known to the consent authority of the objector or other person, and***

Council will determine who the application is required to be notified to in accordance with this sub-section.

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

Council will consider any submission made as part of the assessment process.

***(1A) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons***

***given by the consent authority for the grant of the consent that is sought to be modified.***

Consideration of the relevant matters referred to in section 4.15(1) is provided below.

***(1) Matters for consideration -general: In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application—***

***(a) the provisions of -***

***(i) any environmental planning instrument***

No additional assessment under any EPI is required as part of this modification, as the layout remains within the approved envelope within each stage, considered as part of the original DA.

***(ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and***

Not applicable.

***(iii) any development control plan, and***

No additional assessment under any EPI is required as part of this modification, as the layout remains within the approved envelope within each stage, considered as part of the original DA.

***(iiia) any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and***

Not applicable.

***(iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph),***

Not applicable.

***(v) (Repealed)***

Noted.

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

### Built impacts

The size of each short-term site is commensurate with the rural character of the site, and the controls relating to the nature of the use. The land will continue to be utilised for rural tourism activities (including equestrian facilities, ecotourism walks and playing fields) and provide short-term tourist accommodation as the predominant use.

Development under this application will maintain the rural character of the land and locality and will not detract from any existing use of the site or surrounding sites. The proposed reconfiguration of short-term sites will provide a compatible land use within an area characterised by rural development of similar size and scale. The development is complimentary to the existing use on the site and does not conflict with other land uses surrounding the subject site. This modification application proposes no change to the existing access or parking areas. To this extent, the proposed modified development has no adverse built impact.

### Economic and social impacts

Social impact is best defined by (Armour 1992) that describes changes that occur in:

- people's way of life (how they live, work, play and interact with one another on a day-to-day basis);
- their culture (shared beliefs, customs and values); and
- their community (its cohesion, stability, character, services and facilities).

There are no anticipated adverse economic impacts resulting from the proposed modified development; instead, it is considered the proposal will contribute positively to the social elements of the locality through reconfiguring the short-term sites to be delivered earlier in the development for use by the community, whilst not reducing or departing from the rural tourist nature of the site.

The proposed development is consistent with the existing urban and rural context, will not involve an increased risk to public safety and will not threaten the current sense of community, identity, or cohesiveness. Instead, it will contribute to enhancing these aspects in the locality.

Provision of additional short-term sites within the extent of existing established area, will improve financial viability as it enables the owners to implement their plans for a sustainable net zero carbon development, which protects the site's environmental and rural attributes. The proposed modified development will also allow for the use of existing services and facilities (electricity, water, sewer, and roads) in the locality without requiring upgrades that burden the public.

### Environmental

The proposal does not incorporate any change to the development envelope, or the extent of development already approved. All conservation zones and buffer areas will be protected, and where appropriate, introduced plants will be removed and these areas re-vegetated with endemic species. The proposed development will continue to incorporate all necessary



utilities and services including access, carparking, landscaping and stormwater and drainage infrastructure. No additional vegetation clearing (except for weed removal) will be undertaken as part of the modified development.

The original 2008 Consent is conditional upon compliance with any Bushfire Safety Authority issued by NSW RFS (condition no. 44). This condition will continue to operate under any modification application and consequently any new requirements of the NSW RFS in relation to 'Planning for Bushfire Protection 2019' will be met.

No adverse environmental impacts will result from the proposed modified development. In fact, the owners intend to revegetate large areas of the Site with endemic plant species to support and protect the local ecosystem. Building the environmental and eco-tourism credentials of the development is a primary goal.

***(c) the suitability of the site for the development,***

The site will remain suitable for development because of the modification. The site has access to all relevant services and the proposed development provides for a balanced use of the available land within the Hallidays Point.

The application addresses all the elements required under the relevant planning instruments and policies. There are no anticipated negative impacts on the locality because of the development. Where variations are proposed, suitable justification has been provided within the relevant Section to demonstrate consistency with the locality and land development on adjoining boundaries.

***(d) any submissions made in accordance with this Act or the regulations,***

Council as the consent authority will determine whether notification is required and in turn will take into consideration any submissions made.

***(e) the public interest.***

The proposed modified development continues to be in the public interest, for reasons explained within this report, in particular:

- a) It promotes the social and economic welfare of the community by providing affordable long-term and short-term housing opportunities.
- b) It creates local tourism opportunities by providing eco-tourism facilities as well as rural and equestrian facilities.
- c) It enhances the State's wetlands and natural habitat areas through the effective management and conservation of those areas within the Site.
- d) It facilitates ecologically sustainable development by integrating relevant economic, environmental, and social considerations in decision-making about environmental planning and assessment.
- e) It promotes sustainable economic development through environmentally sensitive building design, habitat protection and a target net zero carbon footprint.
- f) It protects the environment, including the conservation of threatened and other species of native animals and plants, ecological communities, and their habitats.

More than 60% of the land will be under conservation zoning or open rural landscape.

- g) It does not result in any additional impacts to the built and cultural heritage (including Aboriginal cultural heritage),
- h) It promotes good design and amenity of the built environment through the incorporation of compliant design with the Local Government Regulation, and improved landscaping and screening elements.

The proposed modified development provides short-term and long-term accommodation to service the needs of the local and wider community, whilst not anticipated to have any significant adverse impacts on surrounding properties or the amenity of the locality. The proposed development reinforces the rural nature of the land and is in keeping with the character of surrounding developments, as further detailed under the built, natural, social and economic impacts section of this report.

## CONCLUSION

The proposed s4.56 modification application will deliver positive outcomes for the property, community, and the local area. It will not adversely affect the enjoyment or amenity of any surrounding properties. The development (as modified) is substantially the same as the development the Court originally approved. This report confirms the proposed development is within the public interest from a social, economic, and environmental perspective.

We look forward to the Council's determination of this matter. Please don't hesitate to contact us if we can provide any further information or clarity.

Kind Regards,

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