



Planning Proposal

Proposed Amendment to the Port Stephens Local Environmental Plan 2013

2885 Pacific Highway, Heatherbrae, NSW, 2324 (Motto Farm Hotel)

Version – Post Public Exhibition & Council Meeting – 27 October 2015

Further Information:

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FILE NUMBERS

Council: PSC2014-03597
Department: PP_2015_PORTS_001_00 (15/03512)

SUMMARY

Subject land: 2885 Pacific Highway, Heatherbrae (Motto Farm Motel)
Lot/DP: Lot 1, DP 264023
Lot 2, DP 264023
Lot 3, DP 264023
Lot 1, DP 350551
Part Lot 101, DP807522
Proponent: Motto Farm Motel C/-TFA Project Group
Total Area: 4.9 Hectares
Existing Zoning: RU2 Rural Landscape
Proposed Clause: Amend of the *Port Stephens Local Environmental Plan 2013* (NSW) Schedule 1 – Additional Permitted Uses to permit (with consent) a 'service station', restaurant or café' and 'take-away food and drink premises' on land at 2885 Pacific Highway, Heatherbrae, NSW, 2324
Delegation: Council has delegation to make this plan

BACKGROUND

In June 2014, Council received a request to amend the *Port Stephens Local Environmental Plan 2013 (NSW)* for land at 2885 Pacific Highway, Heatherbrae, known as 'Motto Farm Motel' (the site). The request seeks to permit (with consent) a 'service station', 'restaurant or café' and 'take-away food premises' at the site.

The site is zoned RU2 – Rural Landscape, which currently prohibits the proposed additional land uses. The proposed works fell outside the provisions of the existing-use rights under the *Environmental Planning & Assessment Act 1979 (NSW)*. As a result, a planning proposal was deemed as being required to allow those stated uses on site.

A pre-lodgement meeting was held on 4 June 2014 and a request to prepare a planning proposal was lodged with Council on 13 October 2014. Council resolved on 10 February 2015 to:

- 1) Adopt the Planning Proposal (ATTACHMENT 1) for the purposes of Section 55 of the *Environmental Planning and Assessment Act 1979* to amend Schedule 1 'Additional permitted uses' of the *Port Stephens Local Environmental Plan 2013* to permit (with consent) a 'service station', 'restaurant or café' and 'take-away food and drink premises' on land at 2885 Pacific Highway, Heatherbrae (Lots 1, 2 and 3, DP 264023; Lot 1, DP 350551 and Lot 101, DP 807522); and
- 2) Forward the Planning Proposal at (ATTACHMENT 1) to the NSW Department of Planning and Environment for a Gateway Determination.

In accordance with Council's resolution to prepare a planning proposal the proposal was forwarded to the Department of Planning & Environment (the Department) on the 12 February 2015. The Department subsequently advised Council of a number of key matters that had been raised by Roads & Maritime Services (RMS) in preliminary discussions, being:

- The required separation of vehicle flows for the existing motel from those of a future service station; and
- The proposed access point to the Pacific Highway to ensure adequate acceleration from the site and to minimise traffic conflict.

These matters were resolved by Council, the applicant and RMS. A Gateway Determination (**ATTACHMENT 1**) was subsequently received on 26 June 2015. The proposal was then placed on public exhibition for 35 days during which three submissions were received during public exhibition from the RMS, Hunter Water Corporation and the Rural Fire Service (RFS) (**ATTACHMENT 2**). No objections to the proposed development were received.

However, the issue of traffic and site contamination were raised through the public exhibition stage, but are able to be dealt with at the development application stage.

SITE

The Site totals 4.9 hectares and is located on the western side of the Pacific Highway at Heatherbrae. The lots are legally described as Lot 1, 2 & 3, DP264023, Lot 1, DP 350551 and Part Lot 101, DP 807552.

A general industrial and business zone for bulky goods occupies the land to the immediate east; large lot residential development is situated to the north; flood prone agricultural land to the west; and a mix of rural and residential land to the south. The site has direct access and frontage to the Pacific Highway, which is the key arterial road along the Australian eastern seaboard. The *Port Stephens Council. 2011, 'Port Stephens Planning Strategy (PSPS)'* includes traffic forecasts that state that daily vehicle movements will increase from 39,528 in 2005 to 131,769 in 2031. At the same time, land has been reserved to by-pass Heatherbrae in the near future.

The *Port Stephens Council. 2011, 'Draft Raymond Terrace and Heatherbrae Strategy'* seeks to facilitate the growth of both Raymond Terrace and Heatherbrae into their role as a major regional centre as identified under the *NSW Government. 2006, 'Lower Hunter Regional Strategy'* (LHRS).

Figure 1 – Aerial Map (p. 5) and **Figure 2 – Cadastral Map** (p. 6) provide contextual illustrations of the Site – 3385 Pacific Highway, Heatherbrae.

PART 1 – Objective of the proposed Local Environmental Plan

The objective of this proposal is to enable the redevelopment of part of the existing motel to accommodate a service station development. The motel will also seek to expand to include ancillary dining and take-away facilities.

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

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

Schedule 1 – Additional permitted uses

7 – Use of certain land at 2885 Pacific Highway, Heatherbrae

- (1) This Clause applies to land at 2885 Pacific Highway, Heatherbrae, being Lots 1, 2 and 3, DP 264023; Lot 1, DP350551; and Lot 101, DP 807522.
- (2) Development for the purpose of a service station, restaurant or café and take-away food and drink premises is permitted with development consent.

These uses are currently defined as follows by the LEP:

- Service station means a building or place used for the sale by retail of fuels and lubricants for motor vehicles, whether or not the building or place is also used for any one or more of the following:
 - a. The ancillary sale by retail of spare parts and accessories for motor vehicles,
 - b. The clearing of motor vehicles,
 - c. Installation of accessories,
 - d. Inspecting, repainting and servicing of motor vehicles (other than body building, panel beating, spray painting or chassis restoration),
 - e. The ancillary retail selling or hiring of general merchandise or services or both.
- Restaurant or café means a building or place the principal purpose of which is the preparation and serving on retail basis, of food and drink to people for consumption on the premises, whether or not liquor, take away meals and drinks or entertainment are also provided.
- Take away food and drink premises means premises that are predominately used for the preparation and retail sale of food or drink (or both) for immediate consumption away from the premises.

PART 3 – Justification for the Planning Proposal

SECTION A – Need for the Planning Proposal

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

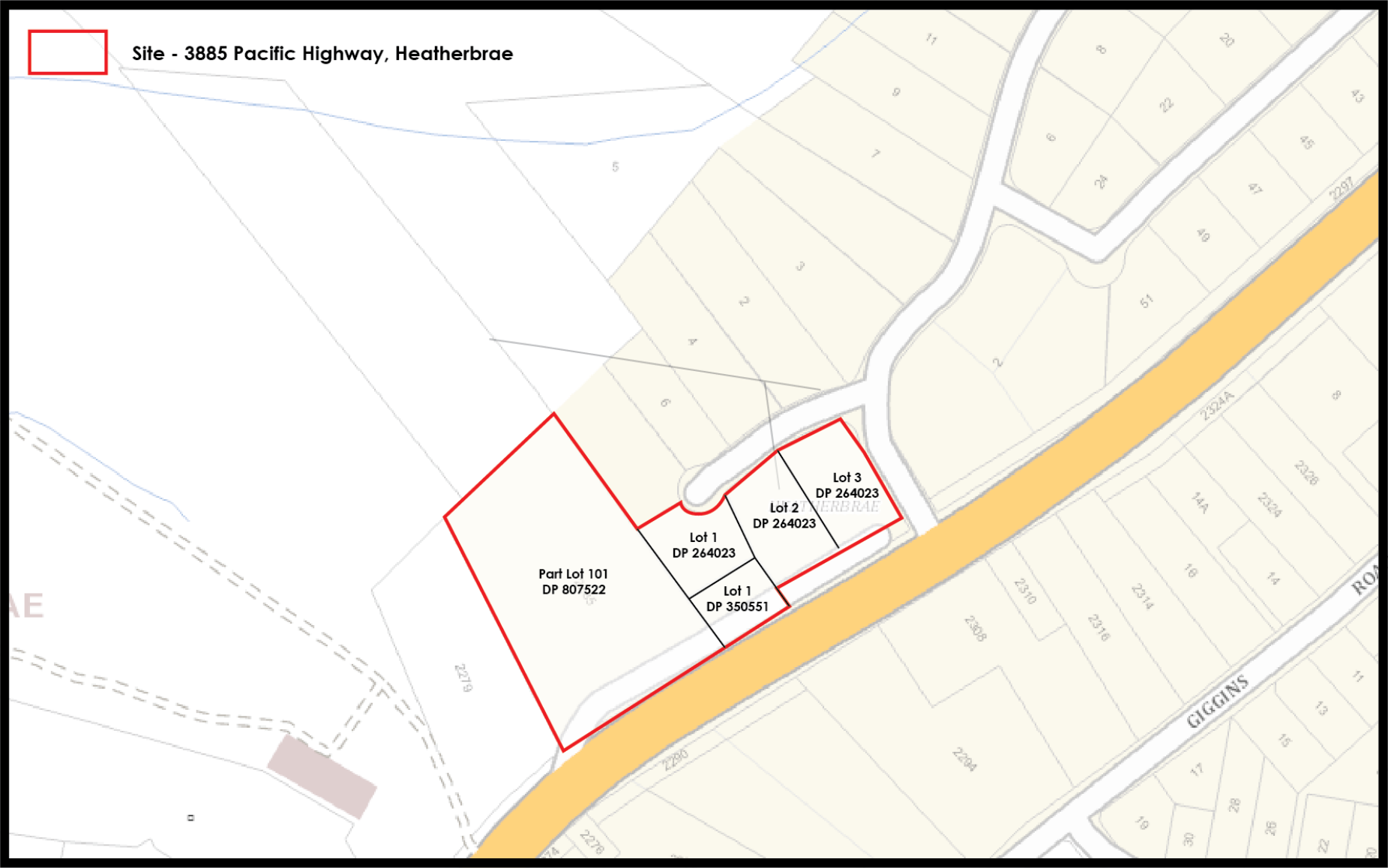
The proposal is not the product of any strategic study or report.

However, it is located on land to which the *Port Stephens Council. 2015, 'Draft Raymond Terrace and Heatherbrae Strategy'* (the Draft Strategy) applies. The Draft Strategy was placed on public exhibition from Thursday, 6 August to Thursday, 3 September 2015. The Draft Strategy does not specifically identify the site, but reinforces the goal for Heatherbrae as a 'key destination for bulky goods'.

FIGURE 1 – AERIAL MAP



FIGURE 2 – CADASTERAL MAP



This goal is in-keeping with the direction provided by the *NSW Government, 2006, 'Lower Hunter Regional Strategy' (LHRS)* and the *Port Stephens Council, 2011, 'Port Stephens Planning Strategy' (PSPS)*.

The proposal is not expected to impact the commercial hierarchy as identified by the *SGS, 2010, 'Commercial and Industrial Lands Study'*. This is given its primary customer base will be Pacific Highway road users.

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

No other means exists to achieve the objectives or intended outcomes.

This planning proposal was required to enable the additional uses on the site. The proposed additional uses are prohibited under the existing RU2 – Rural Landscape zone that applies to the land. The scale of the proposal falls outside the existing-use rights under the *Environmental Planning & Assessment Act 1979 (NSW)* and therefore a planning proposal is required to allow the proposed additional uses.

The approach to use Schedule 1 was deemed as the most appropriate to an alternative zone. The alternative would be a zone B5 – Business Development, which would allow for restricted premises, such as sex shops or a zone, IN1 – General Industrial would allow for sex services premises. These zones were not considered as being appropriate given that this location immediately adjoins land that is zoned R5 – Large Lot Residential.

SECTION B – Relationship to Strategic Planning Framework

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

The proposal is consistent with the hierarchy employed by the *LHRS*. The subject site is identified as an 'existing urban area', while the opposing side of the Pacific Highway is mapped for 'employment land' for the major regional centre of Raymond Terrace. The proposal will contribute to the 1600 jobs to be accommodated by Raymond Terrace and Heatherbrae under the L.

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

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

The proposal is consistent with Council's local strategic plan, being the PSPS, which identifies Heatherbrae as being located within the primary growth corridor. The PSPS identified that the *Port Stephens Council, 2015, 'Draft Raymond Terrace and*

Heatherbrae Strategy' has been discussed as playing a key role in providing further detail to the *PSPS* for the major regional centre of Raymond Terrace, which also incorporates Heatherbrae.

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

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

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

SEPP	Relevance	Consistency and Implications
SEPP 33 – Hazardous & Offensive Development	Provides consideration for the consent of hazardous and offensive development.	Consistent. A service station could be defined as a potentially hazardous industry. A hazard assessment may be required at the development application stage.
SEPP 44 – Koala Habitat Protection	Provides consideration to the protection of koalas and their habitats.	Consistent. The site is identified as 'mainly cleared'. A future development application will demonstrate consistency with the <i>Port Stephens Council, 2011, 'Comprehensive Koala Plan of Management'</i> .
SEPP 55 – Remediation of Land	Provides consideration to suitability based on contamination.	Consistent. A Stage 1 – Contamination Assessment concluded that 'the site is considered suitable for the proposed service station development, providing contingency measures are adopted to address potential contamination if encountered during construction' (p.19)
SEPP 64 – Advertising and Signage	Provides consideration to the compatibility of outdoor signage.	Consistent. All advertising and associated signage will be assessed as part of the development application process.
SEPP – Rural Lands 2008	Provides consideration to the protection of rural lands for rural purposes.	Consistent. The site has 'existing use rights' for a motel. The schedule 1 approach reflects the unique location of the site and the need to tailor a site specific approach. Given the location of this site within an enterprise corridor this site is currently not used for nor will it be used for rural purposes.

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

The proposal's inconsistencies with the Ministerial Directions 1.5 – Rural Lands, 4.1 – Acid Sulfate Soils and 4.3 – Flood Prone Land were identified to be of minor significance by the Gateway Determination (**ATTACHMENT 1**). The Gateway has stated that no further approval is required in relation to these Directions.

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

Ministerial Directions	Application	Consistency and Implications
1.2 Rural Zone	This Direction applies when a proposal will affect land within an existing or proposed rural zone.	Consistent. The proposal will increase the density of development that is permissible on site. This is believed to be of minor significance given the current use of the site as a hotel.
1.5 Rural Lands	This Direction applies when the proposal will affect land within an existing rural zone.	Inconsistent. The proposal will affect land within the Zone RU2 – Rural Landscape. The Gateway Determination dated 26/06/15 has considered this to be of minor significance and that no further approval is required.
2.3 Heritage Conservation	This Direction applies to a planning authority that prepares a proposal.	Consistent. The site does not contain any heritage items nor is it situated within a heritage conservation area. The two Morten bay figs that are located on the neighbouring site are listed heritage items. Council's heritage advisor provided preliminary advice that the proposal will not impact on these items.
3.5 Development Near Licensed Aerodromes	This Direction applies to a planning authority that prepares a proposal.	Consistent. The site is located within the Port Stephens Height Trigger Map and in turn requires referral when structures are proposed to be higher than 45m metres. This is a development application requirement and does not demonstrate an inconsistency with this Direction.
4.1 Acid	This Direction	Inconsistent.

Sulfate Soils	applies because the land has a probability of containing acid sulfate soils.	The site is identified as having a probability of containing Class 4 Acid Sulfate Soils. Clause 7.1 – Acid Sulfate Soils (ASS) allows for development that is proposed on land identified to contain ASS. Pre-lodgement meeting minutes in relation to a future development application has identified the need for an Acid Sulfate Soils and Stormwater Management Plan to be submitted with the development application. The Gateway Determination has considered this to be of minor significance and that no further approval is required.
4.3 Flood Prone Land	This Direction applies to a planning authority that prepares a proposal that affects flood prone land.	Inconsistent. Clause 7.3 – Flood Planning allows for development that is proposed on flood prone land. The proposal does not propose to create, alter or amend a zone or provision that affects flood prone land. The Gateway Determination has considered this to be of minor significance and that no further approval is required.
4.4 Planning for Bushfire Protection	This Direction applies as the land is identified as bushfire prone.	Consistent. The site is identified as bushfire prone land and in turn will be required to satisfy the requirements of the RFS. 2006, 'Planning for Bushfire Protection' at the Development Application stage.
5.1 Implementation of Regional Strategies	This Direction applies to land that is covered by the Lower Hunter Regional Strategy.	Consistent. The proposal is consistent with the objectives of the Lower Hunter Regional Strategy to create 1600 jobs and is consistent with the PSPS and the <i>Port Stephens Council. 2015, 'Draft Raymond Terrace and Heatherbrae Strategy'</i>.
5.4 Commercial and Retail Development along the Pacific Highway, North Coast	This Direction applies as the site traverses the Pacific Highway and is located in Port Stephens.	Consistent. The proposal has considered access from the Pacific Highway and will not undermine the commercial centre role of Raymond Terrace.

6.3 Site Specific Provisions	This Direction applies when a relevant planning authority prepares a proposal to allow a specific use to be carried out.	Consistent. The proposal will allow a particular use to be carried out on site. The Gateway identified that 'prior to undertaking community consultation, the proposed site layout drawings should be removed from the planning proposal to ensure consistency with section 117 Direction 6.3 Site Specific Provisions'. The proposal was amended to remove these proposed site layout drawings prior to public exhibition.
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7. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

No. There are some isolated trees on site and any proposal for their removal will be addressed at the development application stage.

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

Although there are limited environmental implications given that proposal will enable what is essentially an extension of the existing motel the following should be addressed at the development application stage:

- Potential for noise impacts on motel guests and nearby residents as a result of trucks decelerating and accelerating from a potential service station;
- Contingency measures may be required to address potential contamination if encountered during construction; and
- Potential for tree removal and appropriate compensatory landscaping.

The Gateway Determination required Council to demonstrate that the proposal satisfies the requirements of State Environmental Planning Policy (SEPP) 55 – Remediation of Land. Council required the applicant to prepare a Stage 1 – Contamination Assessment, which concluded that the site was suitable for the proposed service station development, provided that measures are adopted to address potential contamination if encountered during construction.

The Traffic Impact Assessment (TIA) provided as a part of the planning proposal and updated through subsequent discussions with the RMS has indicated that traffic generated by the additional permitted uses could be managed through the proposed egress arrangements. These arrangements will be formally assessed at the development application stage.

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

The proposal has been identified as having the potential to have positive economic implications with Regional Economic Modelling and Planning (REMPAN) forecasting 13 jobs and an output of \$685,000.

The proposal will also have a positive social impact by encouraging highway commuters to stop and revive. The applicant has stated that future development will be fitted with lighting and CCTV surveillance technology.

A development application for a 'change of use' from a restaurant to a hotel and associated alterations and additions was lodged and refused by Council in 2011 (DA 2010-487). A court appeal was subsequently dismissed. The group term 'food and drink premises' would allow for a pub and in turn has not been proposed through this amendment. In turn, a pub or small bar continues to be considered as prohibited development at this site.

A summary of reasons for past refusal of this development application included a loss of amenity, traffic and social concerns, which principally related to the impacts of alcohol consumption. A subsequent appeal on the refusal by the proponent to the NSW Land and Environment Court was refused.

The proposal seeks to address previous concerns related to the development application by excluding 'pubs' and 'small bars' as permissible land uses on the site. The proposal limits additional land uses to a 'service station', 'restaurant or café' and 'take-away food premises'. Any liquor served as a part of a restaurant or café is not anticipated to have the negative social impact of the former proposed development application. Additionally, any alcohol serving components of a new restaurant or café will be assessed and managed at the development application stage and relevant liquor licencing requirements.

SECTION D – State and Commonwealth Interests

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

The proposal is located in proximity to the major regional centre of Raymond Terrace. It will provide jobs for nearby residents and reinforce the role of Heatherbrae as an employment centre.

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

No concerns were raised in the three submissions received from the RMS, Hunter Water Corporation and the Rural Fire Service (RFS). RMS stated they have no objection to the proposal provided that the following matters are considered by Council:

- The proposed design vehicle must be able to enter and exit from all proposed access points, including Kingston Parade;
- The proposed ingress from and egress to the Pacific Highway, and associated road works shall be designed and constructed in accordance with the *Austrroads. 2010, 'A Guide to Road Design'* and RMS

supplements, to the satisfaction of RMS and Council. Provision is to be made for cyclists and pedestrians as necessary;

- All road works shall be undertaken at full cost to the developer, and no cost to RMS or Council; and
- As part of any future development application, RMS shall require the developer to undertake a Traffic Impact Study to identify the likely impacts and subsequent road upgrade requirements, prepared in accordance with the *Roads and Traffic Authority, 2002, 'A Guide to Traffic Generating Developments'* shall also be submitted for review.

It is considered appropriate that these matters be addressed at the development assessment stage.

PART 4 - MAPPING

A Port Stephens Local Environmental Plan 2013 Schedule 1 – Additional Permitted Uses (NSW) Map is included as **(ATTACHMENT 3)**.

PART 5 – DETAILS OF COMMUNITY CONSULTATION

The proposal was exhibited from Thursday, 6 August to Thursday, 10 September 2015 (35 days) during normal business hours at the following locations:

- Council's Administration Building, 116 Pacific Highway, Raymond Terrace
- Raymond Terrace Library, Port Stephens Street, Raymond Terrace
- Port Stephens Council Website <www.portstephens.nsw.gov.au>

No concerns were raised in the three submissions received from the RMS, Hunter Water Corporation and the Rural Fire Service (RFS).

PART 6 – PROJECT TIMELINE

The proposal is to be reported to the Council Meeting of 27 October 2015. Pending Council's resolution to exercise its delegation and make the Plan the proposal will be forwarded to the Parliamentary Counsel to make the plan.

The proposal is following this timeframe:

	FEB 15	JUN 15	AUG 15	OCT 15	NOV 15
<i>Council Report</i>					
<i>Gateway Determination</i>					
<i>Public Exhibition</i>					
<i>Council Report</i>					
<i>Parliamentary Counsel</i>					

ATTACHMENTS

The following attachments are supplementary to this proposal:

ATTACHMENT 1: Gateway Determination

ATTACHMENT 2: Agency Submissions

ATTACHMENT 3: Port Stephens Local Environmental Plan 2013 Schedule 1 -
Additional Permitted Uses Map (NSW)

ATTACHMENT 1 – Gateway Determination

ATTACHMENT 2 – Agency Submissions

ATTACHMENT 3: Port Stephens Local Environmental Plan 2013 Schedule 1 – Additional Permitted Uses Map

