

JRPP No.:	2010HCC003
DA No.:	16-2009-811-1
Proposed Development:	Eight (8) Lot Commercial Subdivision – Torrens Title
Applicant:	RPS Harper Somers O’Sullivan Pty Ltd
Report By:	Leonard Allen (Port Stephens Council

Assessment Report and Recommendation

Precise

The development application proposes an eight (8) lot commercial subdivision of the subject site to create seven (7) commercial allotments with the eighth allotment being set aside for environmental and stormwater purposes. The subdivision will also incorporate the construction of an internal ring road network.

The submitted Statement of Environmental Effects (SoEE) states that negotiations are underway for end users of the proposed allotments,

- Lot 1 – Aldi
- Lot 2 - Unknown
- Lot 3 – Childcare Centre and Library (both existing)
- Lot 4 – Medical Centre
- Lot 5 - Unknown
- Lot 6 – Big W
- Lot 7 – Future Development

The proposed lot sizes as follows,

Proposed Lot No.	Lot Size	Purpose
1	6280m ²	Development Lot
2	5941m ²	Development Lot
3	1.75ha	Development Lot
4	5001m ²	Development Lot
5	2736m ²	Development Lot
Reserve	2207m ²	Reserve
6	1.97ha	Development Lot
7	3.05ha	Development Lot
Total	8.99ha	

Each of the proposed allotments will have individual road frontages to a proposed internal link road with connections to Salamander Way and Bagnall Beach Road.

The development has been found to have a Capital Investment Value of \$5.5million.

The development will require the excavation of the rear of the site, with the soil removed to be used to fill the western edge of the development. The SoEE states that the site regrading will aid in the development of the Stormwater System for the subdivision.

In terms of ecological impact, it is proposed in the application to supply an offset site nearby across Salamander Way to compensate for the loss of 3 hectares of Swamp Forest classified as an Endangered Ecological Community. The planting of 300 Koala feed trees has also been proposed to compensate for the loss of 6 trees during construction.

Location

The development site, known as Lot 284 DP 806310 (155 Salamander Way), is zoned 3(a) – Business General under the provisions of the Port Stephens Local Environmental Plan 2000 and is located adjacent to an existing commercial area.

The site is located adjacent to and surrounding the existing commercial internalised shopping centre and is accessible to both Bagnall Beach Road and Salamander Way. Internal vehicular access is also available via Town Centre Circuit which provides the existing access to the existing development on the adjacent allotment.

The development site is centrally located to service the Tomaree Peninsula with commercial services and is the last remaining vacant Commercial zoned land on the peninsula. The draft report “Port Stephens Commercial and Industrial Lands Study” prepared by SGS Economics and Planning identifies the site as a Stand Alone Shopping Centre.

The development site has an area of some 11.05 hectares and is currently vacant with the exception of the existing library and childcare centre located in the western portion of the site. These facilities are grouped together and each have separate car parking provided. The proposal seeks to retain these buildings and uses and site them on proposed Lot 3. Access to this site is proposed to be retained via Town Centre Circuit.

The majority of the commercial land at Salamander Bay is occupied by the Salamander Shopping Centre and other ancillary commercial operations. The area serves as a shopping precinct for the Tomaree Peninsular.

The commercial area is significantly different from the other existing commercial zoned land within the Tomaree Peninsular in that at no other point on the peninsula is there a concentration of shopping services. This is due to the function of the Salamander commercial area as the dominant shopping precinct. This is reflected in the site being identified as a Stand Alone Shopping Centre in the draft report “Port Stephens Commercial and Industrial Lands Study” prepared by SGS Economics and Planning. Nelson Bay and Shoal Bay commercial areas serve as distinct town centres with a mix of commercial and residential development. The Salamander Bay commercial area comprises a mix of anchor retail companies which provides a different function and service to the Nelson Bay and Shoal Bay commercial.



Figure 1 – Location, Lot 264 DP 806310

Surrounding development

To the north of the subject site is an existing residential area zoned 2(a) – residential.

To the east, the site is bound by Bagnalls Beach Road across which is a further area of 2(a) zoned residential land.

To the south is Salamander Way beyond which is residential dwellings on land zoned 7(f3) – Environmental Protection.

To the west the site is bound by the Mambo Wetland which is zoned 7(a) – Environmental Protection.

The subject site is U shaped and wraps around an existing 3(a) commercial area which is currently developed. Figure 1 shows the site in relation to the existing surrounding uses.

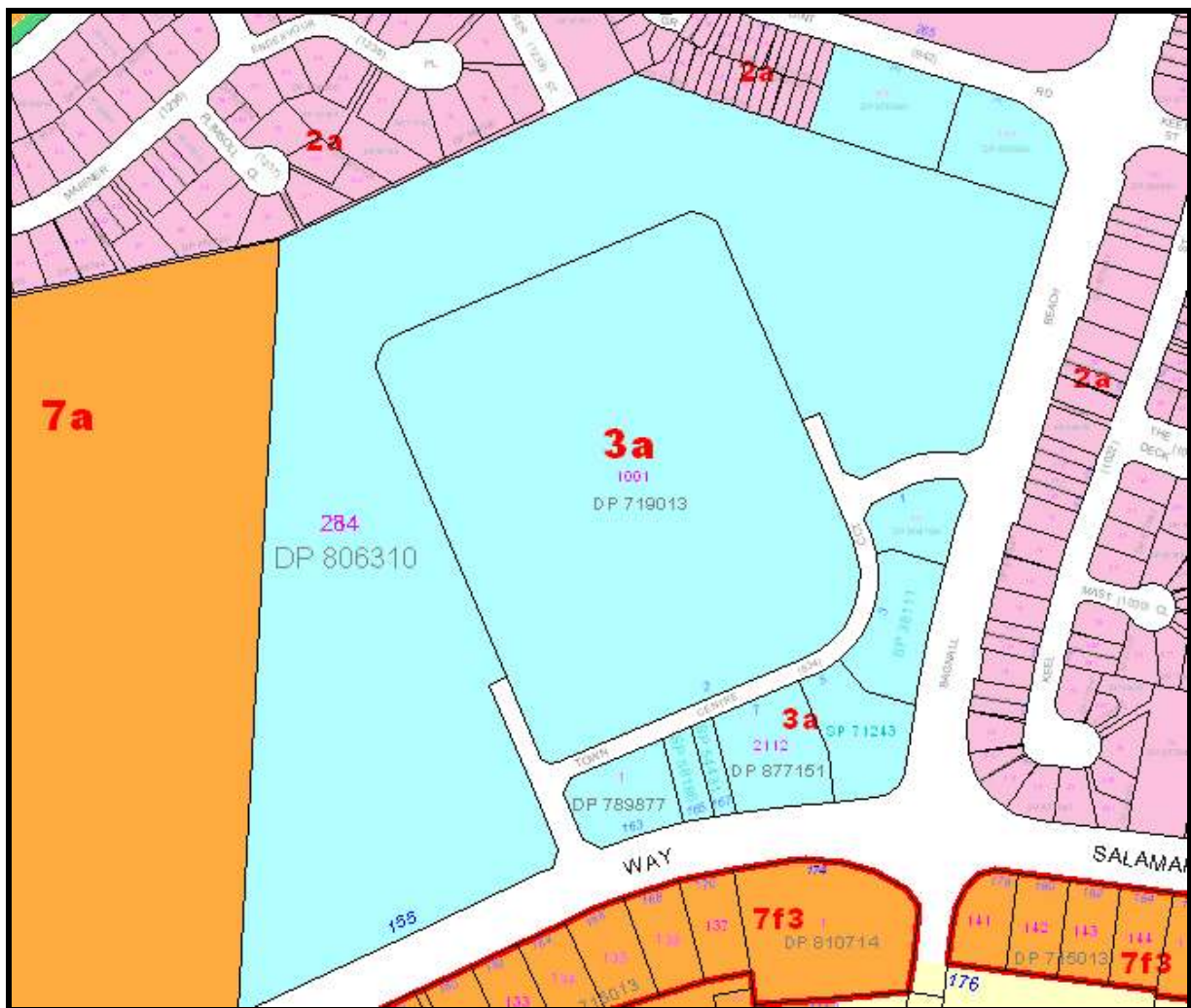


Figure 2– Site Zoning

The Assessment

This report provides an assessment of the material presented in the application against all relevant State and local planning legislation and policy.

Section 79C: Potential Matters for Consideration

79C(1)(a)(i) the provisions of any Environment Planning Instrument (EPI)

Environmental Planning and Assessment Act, 1979

Clause 91 of the Environmental Planning and Assessment Act, 1979 specifies what development is considered to be integrated as it requires consent under another act. In the case of the proposed subdivision, it is considered that the provisions of Section 90 of the National Parks and Wildlife Act, 1974.

The application was referred to the NPWS on 19 December 2009 and General Terms of Approval were issued on 4th December 2009 and are incorporated into the draft conditions of approval.

State Environmental Planning Policy 14 – Coastal Wetlands

SEPP 14 applies to land subject to the provisions of Clause 4;

(1) Subject to subclause (2), this policy applies to the land outlined by the outer edge of the heavy black line on the map.

(2) This policy does not apply to land dedicated or reserved under the National Parks and Wildlife Act 1974 as an Aboriginal area, historic site, national park, nature reserve, state game reserve or state recreation area.

SEPP 14 wetlands are identified on adjacent sites, however no wetlands are present on the subject site, so SEPP 14 is not applicable to this development.

State Environmental Planning Policy 44 – Koala Habitat Protection

The subject site contains koala feed trees and habitat and therefore falls under the provisions of SEPP44. A specific plan of management, the Port Stephens Comprehensive Koala Plan of Management (CKPoM) applies to the site and an assessment against the guidelines is discussed in this report under the heading 79C(1)(b) *the likely impacts of the development*.

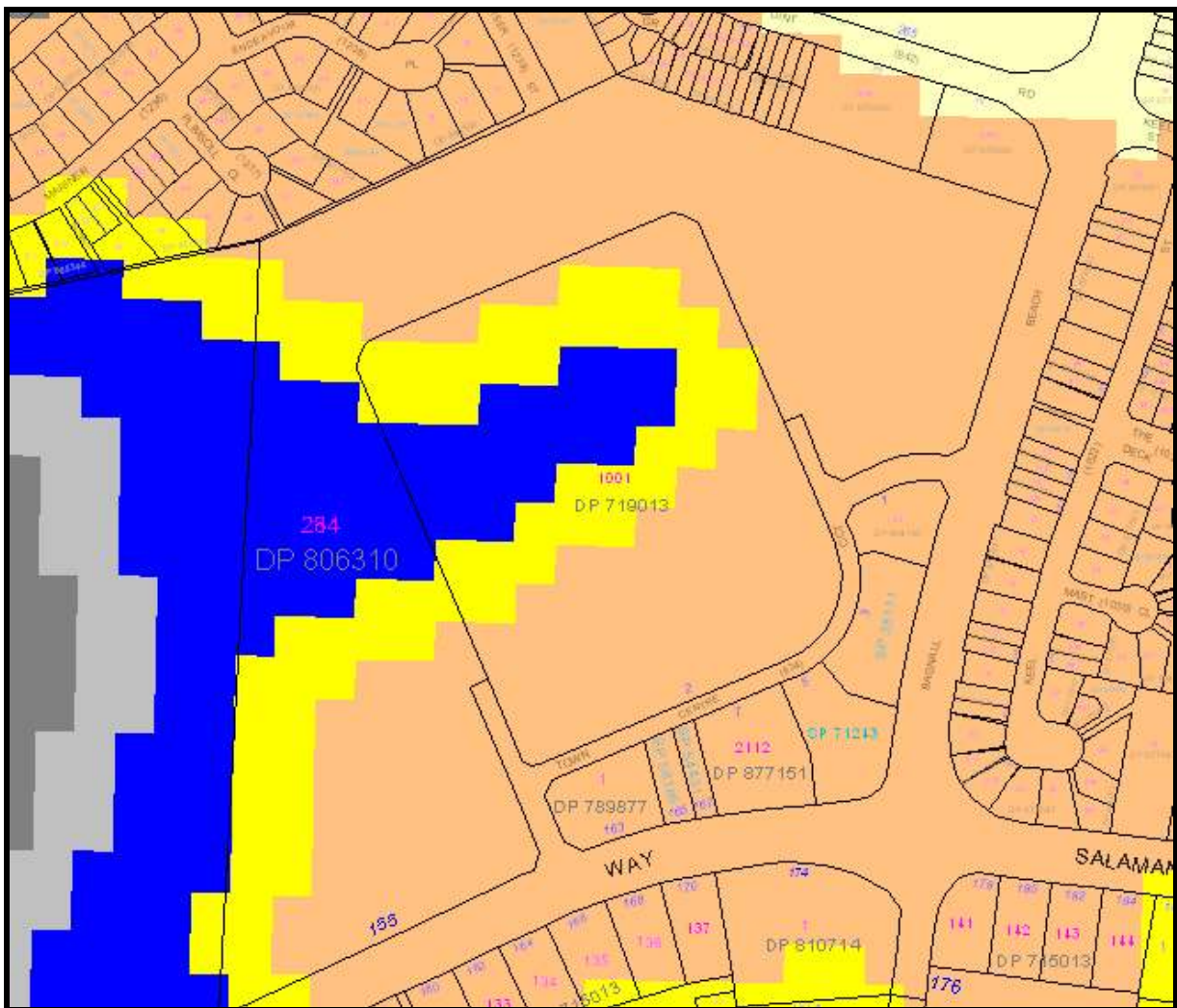


Figure 3 – Core Koala Habitat

State Environmental Planning Policy 62 - Aquaculture

Part 3A of SEPP62 is considered to be of relevance to this application being the provisions for consideration of effects of proposed development on oyster aquaculture. Part 3A of SEPP 62 states;

Part 3A Consideration of effects of proposed development on oyster aquaculture

15A Application of Part

This Part applies to all development and all land.

15B Consultation with Director-General of Primary Industries

(1) Before determining a development application for any development, a consent authority:

- (a) must consider whether, because of its nature and location, the development may have an adverse effect on oyster aquaculture development or a priority oyster aquaculture area, and*
- (b) if it suspects that the development may have that effect, must give notice of the application to the Director-General of the Department of Primary Industries.*

(2) In determining a development application for any development, a consent authority must consider any comments received from the Director-General of the Department of Primary Industries pursuant to subclause (1), including, in particular, such comments as identify:

- (a) any adverse effect that the development may have on, or ways in which the development may impede or be incompatible with, any oyster aquaculture development or priority oyster aquaculture area, and*
- (b) any measures to avoid or minimise any such adverse effect, impediment or incompatibility.*

Note. *Development may be incompatible with or impede oyster aquaculture if, for example, the development will limit access to oyster leases or have an impact on water quality and, consequently, on the health of oysters and of consumers of those oysters.*

(3) This clause does not require a consent authority to consider any comments received more than 21 days after notice was given as referred to in subclause (1) (b).

15C Development consent may be refused if development adversely affects oyster aquaculture

A consent authority may refuse to grant consent to development:

- (a) if it is satisfied that the development will have an adverse effect on, or impede or be incompatible with:*
 - (i) any oyster aquaculture development that is being carried out (whether or not within a priority oyster aquaculture area), or*
 - (ii) any oyster aquaculture development that may in the future be carried out within a priority oyster aquaculture area, or*
- (b) if it is not satisfied that appropriate measures will be taken to avoid or minimise any such adverse effect, impediment or incompatibility.*

15D NSW Oyster Industry Strategy to be considered

In exercising their functions under this Part, a consent authority and the Director-General of the Department of Primary Industries must each take into consideration the NSW Oyster Industry Sustainable Aquaculture Strategy.

The development proposes to detain water on site, and while the Statement of Environmental Effects (page 64) states that no water will be discharged into the adjoining wetlands, the submitted stormwater plans and discussion of stormwater in the Statement of Environmental Effects (page 61) indicate overflow will drain toward the wetlands. Through the use of detention and infiltration in swales it is considered that the development will not result in an increase of water into the wetland or a dilution of the salt water environment through the introduction of fresh water.

The nearest priority oyster aquaculture area is approximately 1.5 kilometres away as identified on the maps prepared by the NSW Department of Primary Industries "Oyster Industry Sustainable Aquaculture Strategy" dated August 2006 and the development is not considered to contribute any adverse impacts. As such no referral has been deemed necessary to the NSW Department of Primary Industries.

State Environmental Planning Policy 71 – Coastal Protection

The development site is subject to the provisions of State Environmental Planning Policy 71. Clause 7 and 8 are applicable to the application.

Clause 7 requires that Clause 8 is considered in the assessment of an application.

Clause 8 specifies the matters for consideration.

8 Matters for consideration

The matters for consideration are the following:

(a) the aims of this Policy set out in clause 2,

Comment: The development is considered to be consistent with the aims of the policy.

(b) existing public access to and along the coastal foreshore for pedestrians or persons with a disability should be retained and, where possible, public access to and along the coastal foreshore for pedestrians or persons with a disability should be improved,

Comment: The development will not have any impacts upon existing public access to the coastal foreshore.

(c) opportunities to provide new public access to and along the coastal foreshore for pedestrians or persons with a disability,

Comment: The development will not create any impediments to future opportunities for access to the coastal foreshore.

(d) the suitability of development given its type, location and design and its relationship with the surrounding area,

Comment: The development is considered to be suitable for the location and its constraints.

(e) any detrimental impact that development may have on the amenity of the coastal foreshore, including any significant overshadowing of the coastal foreshore and any significant loss of views from a public place to the coastal foreshore,

Comment: The development will not impact upon the amenity of the foreshore.

(f) the scenic qualities of the New South Wales coast, and means to protect and improve these qualities,

Comment: The development is considered to have no impact on the scenic quality of the foreshore area.

(g) measures to conserve animals (within the meaning of the Threatened Species Conservation Act 1995) and plants (within the meaning of that Act), and their habitats,

Comment: The development site does contain areas of Preferred Koala habitat, however the design of the proposal is considered to adequately mitigate against any impacts. An assessment of the impacts on flora and fauna is elsewhere in this report.

(h) measures to conserve fish (within the meaning of Part 7A of the Fisheries Management Act 1994) and marine vegetation (within the meaning of that Part), and their habitats

Comment: The development will have no impacts upon fish or their habitat.

(i) existing wildlife corridors and the impact of development on these corridors,

Comment: The existing Koala corridor has been considered in the assessment of this proposal. Further detail is contained in the environmental assessment.

(j) the likely impact of coastal processes and coastal hazards on development and any likely impacts of development on coastal processes and coastal hazards,

Comment: The development is considered to be unlikely to impact upon the coastal process.

(k) measures to reduce the potential for conflict between land-based and water-based coastal activities,

Comment: The development will not result in conflict between land and water based activities.

(l) measures to protect the cultural places, values, customs, beliefs and traditional knowledge of Aboriginals,

Comment: There is no known cultural places on the site.

(m) likely impacts of development on the water quality of coastal waterbodies,

Comment: The development is not considered to result in adverse impacts to coastal waterbodies.

(n) the conservation and preservation of items of heritage, archaeological or historic significance,

Comment: The development will not impact on items of heritage, archaeological or historic significance.

(o) only in cases in which a council prepares a draft local environmental plan that applies to land to which this Policy applies, the means to encourage compact towns and cities,

Comment: The application is not the subject of a draft LEP.

(p) only in cases in which a development application in relation to proposed development is determined:

(i) the cumulative impacts of the proposed development on the environment, and

(ii) measures to ensure that water and energy usage by the proposed development is efficient.

Comment: It is considered that the development will not result in any adverse cumulative impacts on the general locality. The development has been designed to retain vegetation and habitat where practical.

State Environmental Planning Policy (Major Projects)

Part 3 Regional Development of SEPP (Major Projects) states;

13B General development to which Part applies

(2) This Part also applies to development that has a capital investment value of more than \$5 million if:

(a) a council for the area in which the development is to be carried out is the applicant for development consent, or

- (b) the council is the owner of any land on which the proposed development is to be carried out, or*
- (c) the development is to be carried out by the council, or*
- (d) the council is a party to any agreement or arrangement relating to the development (other than any agreement or arrangement entered into under the Act or for the purposes of the payment of contributions by a person other than the council).*

The development was determined to have a Capital Investment Value of \$5.5million and as such it is considered that Part 3 Regional Development of SEPP (Major Projects) applies and the Joint Regional Planning Panel is the consent authority under the provisions of Clause 13F(1)(a)

State Environmental Planning Policy (Infrastructure)

SEPP (Infrastructure) outlines matters to be considered in the assessment of certain development applications. The following clauses are considered to be relevant to the assessment of this proposal.

Clause 101 – Development with frontage to Classified Road.

Clause 101 states;

(1) The objectives of this clause are:

- (a) to ensure that new development does not compromise the effective and ongoing operation and function of classified roads, and*
- (b) to prevent or reduce the potential impact of traffic noise and vehicle emission on development adjacent to classified roads.*

(2) The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that:

- (a) where practicable, vehicular access to the land is provided by a road other than the classified road, and*
- (b) the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of:*
 - (i) the design of the vehicular access to the land, or*
 - (ii) the emission of smoke or dust from the development, or*
 - (iii) the nature, volume or frequency of vehicles using the classified road to gain access to the land, and*
- (c) the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.*

Neither Salamander Way, nor Bagnalls Beach Road are classified as a “State Classified Road”, the nearest being Nelson Bay Road which is over 1km from the subject site along Salamander Way. It is considered that the development will not trigger Clause 101.

Clause 104 – Traffic Generating Development.

Schedule 3 of SEPP (Infrastructure) contains triggers for which certain applications are to be referred to the RTA.

For subdivisions the following triggers apply;

- 200 allotments for connection to any road,
- 50 allotments with access from classified road.

As the subdivision has less than 50 allotments proposed, it is considered that no referral to the RTA under clause 104 is required for this development proposal.

Port Stephens Local Environmental Plan 2000 (PSLEP)

The subject site is zoned 3(a) – Business General “A” zone under the provisions of the Port Stephens Local Environmental Plan 2000. The following clauses are considered to be applicable to the development as proposed.

Clause 21 – Business Zonings

Clause 21 contains the 3(a) Business General zone objectives and description.

(1) Description of the zone

The Business General “A” Zone covers both the major commercial centres of Port Stephens and the smaller neighborhood shopping centres. It is characterised by a mix of commercial uses and some associated tourist accommodation and residential uses. Small, low impact industrial activities that involve retailing or direct service to the public may be appropriate in this zone.

(2) Objectives of the zone

The objectives of the Business General “A” Zone are:

- (a) to provide for a range of commercial and retail activities, and uses associated with, ancillary to, or supportive of, retail and service facilities, including tourist development and industries compatible with a commercial area, and*
- (b) to ensure that neighborhood shopping and community facilities retain a scale and character consistent with the amenity of the locality, and*
- (c) to maintain and enhance the character and amenity of major commercial centres, to promote good urban design and retain heritage values where appropriate, and*
- (d) to provide commercial areas that are safe and accessible for pedestrians, and which encourage public transport patronage and bicycle use and minimise the reliance on private motor vehicles, and*
- (e) to provide for waterfront-associated commercial development whilst protecting and enhancing the visual and service amenity of the foreshores.*

The proposed subdivision is considered to be consistent with the zone objectives and description. The proposal will result in the creation of allotments suitable for a wide variety of commercial uses while providing pedestrian linkages through the site and into the surrounding residential areas.

The subdivisions is consistent with the existing adjoining development, however will result in an improvement to the vehicular access and pedestrian movement through the site.

The underlying structure plan of the proposed subdivision is a key determining factor in achieving good urban design outcomes. Particularly the design and location of lot boundaries, vehicular access ways, car parks and pedestrian pathways.

Without careful consideration at the subdivision stage in setting an appropriate underlying structure plan, development of such a subdivision could result in a poor quality urban design outcome. In this case stand alone, disconnected and disjointed buildings surrounding by car park are one such scenario.

The internalised centre that exists on site presently provides such an urban design outcome, with a large building entirely surrounded by car parking, with virtually no passive surveillance, display opportunities or externalised people spaces existing, other than in a small area on the western side of the centre.

Important urban design outcomes that should be resolved at the subdivision stage is clearly defined and constructed pedestrian pathways that provide separation between cars and people traversing the centre; integrated with landscaping features that link the eastern end of proposed Lots 1, 3, 4, and 5 with the western terminus of the pedestrian mall proposed along the northern end of the existing centre.

Ideally pedestrian paths should be grade separated from the existing car park surface so that they dominate the activities occurring in the carpark, and allow pedestrians to move freely through the site without conflicting with vehicles parking and exiting the centre.

Challenges such as this are usually best managed from a planning perspective by a detailed masterplan or site specific Development Control Plan. The applicant has not provided either of these planning strategies to guide the ultimate design outcome.

The approach proposed relies entirely on a test of merits of Development Applications lodged for uses of the proposed lots (after they are constructed and registered) against Council's generic commercial development controls which are designed to deal with outcomes proposed in a traditional commercial context of shops fronting streets.

As mentioned a key feature of the proposed subdivision is the built form relationship between proposed Lot 6 and the existing internalised centre at its northern end; through the provision of an external potential future pedestrian pathway linking into the internalised centre from Lot 6.

The development on Lot 6 would otherwise be isolated and disjointed from the remainder of the centre, and would present as a 'stand alone' development alongside and existing fully internalised centre. Such an outcome would result in a poor urban design outcome, as shoppers would have to walk around the outside of buildings and through car parks to access all parts of the centre.

The centre at Lake Haven in Wyong Local Government Area is an example of such an urban outcome whereby car parks are the linkages between the internalised centre from the external shops sitting in the car park. In that centre pedestrians must navigate their way along pedestrian paths that are not well defined in the car park, and are subservient to it.

To achieve a quality outcome in circumstances where a development site has a pre-existing internalised centre surrounded by car park, the dominant feature in linking the existing internalised centre with the proposed developments on lots external to the centre; should be distinctly defined pedestrian pathways, linking and activating the building edges and lot boundaries of the proposed subdivision with the internalised centre; in order to create a shopping experience that is pleasant, safe and clearly defined.

The design and location of the future built form outcome on proposed Lot 6 will be crucial to the quality of the urban design outcome. This part of the proposal presents an opportunity to provide a "main street" outcome in the form of a "pedestrian mall" linking the internalised centre with the future developments on proposed Lot 1 to 6.

Activating streetscapes through display windows with covered awnings to shelter the pathways, along with some externalised specialty shops, and a pedestrian "mall" like connection should link the proposed reserve (proposed lot 5) and the community development precinct to the west on proposed Lots 3, 4 and 5, with the development on proposed Lot 6 providing a built outcome linkage to the northern end of the internalised centre, where a new connection could be opened.

This space needs to be carefully designed to avoid it becoming a space that could be otherwise attractive to anti-social behaviour such as graffiti, litter, and other risky behaviour. Narrow poorly lit, lane ways with limited or no passive surveillance, or passive ownership by adjoining users is the type of design outcome that should be avoided.

The proposed Lot 6 shows a BIG W store located directly and adjacent but separated by a pedestrian area between approximately 5 and 18 metres wide, punctuated with several specialty shops opposite the northern end of the existing centre.

Due to the strategic importance of this outcome to provide a pedestrian street to link to the existing centre, and in the absence of planning controls such as a site specific DCP or Masterplan submitted with the application, it is considered necessary (to ensure the good urban design outcomes are reached) that conditions be imposed requiring “restrictions as to user” under 88B of the Conveyancing Act be placed on the title of the lots to clearly define the specific areas to be set-aside for connecting pathways, with the remainder of the proposed lots left to be built upon with shops and car parks.

The Council will be the sole authority permitted to alter, modify or remove the restriction, and will be able to consent to site design changes proposed within individual Development Applications, that otherwise provide alternative acceptable urban design outcomes that may not strictly comply with the 88B instrument. This provides Council as the consent authority for development applications for built outcomes on the lots with a clear platform to maintain the important pedestrian links that are key to the integration of the existing internalised centre with development on the lots proposed surrounding the exterior of the existing car park of the internalised centre. It also identifies for the developers of the lots the need to design outcomes that provide for the pedestrian links. The restriction on title can be varied to suit the developers design objectives whilst still providing suitable pedestrian linkages in perpetuity.

Clause 22 – Subdivision in Business Zones

Clause 22 states;

22 Subdivision in business zones

(1) A person shall not subdivide land in a business zone except with the consent of the consent authority.

(2) The consent authority may grant consent for a subdivision of land within a business zone only if each allotment to be created by the proposed subdivision will be of a size, and will have a ratio of depth to frontage, that the consent authority considers appropriate:

- (a) having regard to the purpose for which the allotment is intended to be used, or*
- (b) to facilitate future commercial development of the land.*

End users have been identified for many of the proposed allotments. It is considered that each allotment is suitable in terms of size, frontage and depth to cater for the proposed uses and a variety of other commercial uses. Each end use of these sites will be subject to individual development applications that will need to address issues including, Urban Design and Street Activisation and Safer by Design Principles through the built design.

Clause 44 – Appearance of Land and Buildings

Clause 44 states;

44 Appearance of land and buildings

(1) The consent authority may consent to the development of land within view of any waterway or adjacent to any main or arterial road, public reserve or land zoned as open space, only if it takes into consideration the probable aesthetic appearance of the proposed building or work or that land when used for the proposed purpose and viewed from that waterway, main or arterial road, public reserve or land zoned as open space.

(2) The consent authority may consent to development of land on or near any ridgeline visible from a public road only if it is satisfied that the development would not be likely to detract substantially from the visual amenity of the locality.

(3) In determining whether to grant a consent referred to in subclause (1) or (2), the consent authority shall consider the following:

- (a) the height and location of any building that will result from carrying out the development,*
- (b) the reflectivity of materials to be used in carrying out the development,*
- (c) the likely effect of carrying out the development on the stability of the land,*
- (d) any bushfire hazard,*

- (e) *whether carrying out the development is essential to the viability of the land concerned,*
(f) *the likely extent and effect of carrying out the development on vegetation on the land concerned.*

The proposed subdivision is consistent with the existing height and bulk and scale of adjoining commercial precinct and Salamander Town Centre. The subdivision will not result in any adverse impact in terms of visual appearance, although the siting of buildings, pathways, façade location, car parking and access locations will need to be carefully considered to ensure the subdivision achieves a well integrated commercial centre.

The future built form will need to be assessed at individual development application stages for its visual impact to ensure that the subdivision does not create any adverse visual impacts.

Clause 47 – Services

This clause requires that a consent authority shall not grant consent unless there is provision for water supply facilities and removal and disposal of sewerage and drainage on the land.

The subject site has access to reticulated water and sewer.

Clause 51A – Development on land identified on Acid Sulfate Soils Planning Maps

This clause applies to land identified on the Acid Sulfate Soils Planning Map. The development site is identified as Category 3 and as such clause 51A is applicable.

Category 3 requires that a person must not, without development consent, carry out works beyond 1m of the natural ground surface. Filling of the site to accommodate the development will reduce the likelihood of Acid Sulfate Soils being disturbed. Conditions of consent have been included to require the provision of an Acid Sulfate Soils Management Plan prior to the issue of a Construction Certificate for the proposal.

79C(1)(a)(ii) the provisions of any draft EPI

Not applicable.

79C(1)(a)(iii) the provisions of any Development Control Plan (DCP)

Port Stephens Development Control 2007.

Chapter B1 – Subdivision and Streets

Chapter B1 applies to all development permissible under the Port Stephens Local environmental Plan 2000 that involves the subdivision of land or the creation of streets for residential, commercial, industrial and tourist developments.

The eight (8) lot Torrens title subdivision is considered to be consistent with the controls of Chapter B1 – Subdivision and Streets of DCP2007.

Provision has been made in the conditions of consent to allow for the creation of a public park in accordance with Section B1.7 – Parks and Open Space and B4.12 – Public Domain improvements. It is considered that the commercial subdivision creating the Salamander Town Centre should provide for passive open space. Proposed Lot 3, containing the child care centre and public Library is considered to be suitable for the provision of this public open space (refer principle B1P18), connected to the integrated pedestrian network in accordance with Principle B1.P15.

Chapter B2 – Environmental and Construction Management

Chapter B2 applies to all development permissible under the Port Stephens Local environmental Plan 2000.

B2.3 – Water Quality Management

The submitted Stormwater Design has incorporated water quality management and resulted in no increase in discharge into the adjoining wetlands. Stormwater is discussed elsewhere in this report.

B2.4 – Acid Sulfate

This clause applies to land identified on the Acid Sulfate Soils Planning Map. The development site is identified as Category 3 Acid Sulfate Soils.

Category 3 requires that a person must not, without development consent, carry out works beyond 1m of the natural ground surface. Filling of the site to accommodate the development will reduce the likelihood of Acid Sulfate Soils being disturbed. Cutting is proposed in the northern portion of the site, which may result in the unearthing of Acid Sulfate Soils. Conditions of consent have been included to require the provision of an Acid Sulfate Soils Management Plan prior to the issue of a Construction Certificate for the proposal.

B2.5 – Landfill

The use of virgin excavated natural material is proposed for filling the site. It is envisaged that the majority of the required fill will be sourced on site via significant excavation.

B2.6 – Contaminated Land

The site is not known to be contaminated.

B2.7 – Vegetation Protection

Retention and protection of vegetation on site has been considered in the assessment of the Port Stephens Comprehensive Koala Plan of Management.

B2.8 – Koala Management

Retention and protection of vegetation and Koala habitat on site has been considered in the assessment of the Port Stephens Comprehensive Koala Plan of Management.

B2.9 – Mosquito Control

A construction management plan, incorporating mosquito management, has been conditioned so as to be provided prior to issue of the construction certificate.

B2.10 – Weed Control

A construction management plan, incorporating weed control, has been conditioned so as to be provided prior to issue of the construction certificate.

B2.11 – Tree Management

A construction management plan, incorporating vegetation management, has been conditioned so as to be provided prior to issue of the construction certificate.

B2.12 – Waste Water

The proposed subdivision will be connected to reticulated water and sewer

B2.13 – Aircraft Noise

The development site is not identified as being constrained by the ANEF2025 Aircraft Noise maps.

B2.14 – Erosion and Sediment Control

A construction management plan, incorporating erosion and sediment control, has been conditioned so as to be provided prior to issue of the construction certificate.

B2.15 – Construction Waste

A construction management plan, incorporating construction waste management, has been conditioned so as to be provided prior to issue of the construction certificate.

B2.16 – Works in the Public Domain

Conditions have been included giving effect to this section of the DCP.

B2.17 – Support for Neighbouring Buildings

The development does not propose any works that will undermine any adjoining structures.

Chapter B3 – Traffic and Parking

Chapter B3 applies to all development permissible under the Port Stephens Local environmental Plan 2000. Vehicular access parking and circulation are considered to be crucial in the good design of villages, neighbourhoods and town centres. The development is considered to be consistent with the requirements of this chapter of the DCP.

Chapter B4 – Commercial and Mixed Use Development

Chapter B1 applies to all development permissible under the Port Stephens Local environmental Plan 2000 that involves the subdivision of land or the creation of streets for residential, commercial, industrial and tourist developments.

It is considered that the proposed allotments are capable of sustaining development that is compliant with the provisions of this section of the DCP. All future development for end users however will need to demonstrate compliance with this section of the DCP.

79C(1)(a)(iia) any planning agreement that has been entered into or any draft planning agreement that the developer has offered to enter into

Not applicable.

79C(1)(a)(iv) any matters prescribed by the regulations

The Regulation 2000 provides:

92 What additional matters must a consent authority take into consideration in determining a development application?

(cf clause 66 of EP&A Regulation 1994)

(1) For the purposes of section 79C (1) (a) (iv) of the Act, the following matters are prescribed as matters to be taken into consideration by a consent authority in determining a development application:

(a) in the case of a development application for the carrying out of development:

(i) in a local government area referred to in the Table to this clause, and

(ii) on land to which the Government Coastal Policy applies, the provisions of that Policy,

(b) in the case of a development application for the demolition of a building, the provisions of AS 2601.

(2) In this clause:

AS 2601 means the document entitled Australian Standard AS 2601—1991: The Demolition of Structures, published by Standards Australia, and as in force at 1 July 1993.

Government Coastal Policy means the publication entitled NSW Coastal Policy 1997: A Sustainable Future for the New South Wales Coast, as published by the Government (and including any maps accompanying that publication and any amendments to those maps that are publicly notified), a copy of which may be inspected during ordinary office hours:

- (a) at any of the offices of the Department, or
- (b) at the offices of any of the councils of the local government areas listed in the Table to this clause.

The coastal policy has been considered in the assessment of the application and the development is not considered to be contrary to the policy.

79C(1)(b) the likely impacts of the development

The following matters were considered and, where applicable, have been addressed

Urban Design Issues

Consideration has been given to the Urban Design merits of the proposal. While it is acknowledged much of the final urban appearance and activation of the street will be dependant upon the individual applications upon the proposed allotments, the underlying structure planning of the subdivision has been considered in the context of the subdivision design.

Of relevance to this consideration of Urban Design is the draft document "Town Centre Urban Design Guidelines". While not adopted by Council for the locality, it does provide an insight into good urban design outcomes for the centre. The applicant has considered the content of the report and concluded:

The draft document illustrates a preferred development scenario of multistorey mixed use development with home businesses on the ground floor and also commercial space with office development above. The development of commercial land for residential mixed use is not considered the best use of the site and it is considered that the Deicke Richards strategic planning concept does not meet the requirements of the Tomaree community with regards to commercial development. The layout of the proposed subdivision follows a similar road network design as the draft Salamander Bay Town Centre Urban Design Guidelines but accounts for the intended commercial uses of the site.

Elements of the draft document "Town Centre Urban Design Guidelines" were unable to be acted upon due to the expansion of the shopping centre in the period since the guidelines initial drafting. The proposal advocates some elements of the report though, specifically the provision of a pedestrian area along northern end, the interface work to activate the site frontages and linkages of proposed lot 6, and a loop road, albeit in a different configuration.

The proposed road network deviates from that of the report, however the applicant has justified this citing traffic management of large vehicles within the site. Some elements of the Urban Design Report have been retained in the proposal, specifically the proposed access points to be created off Salamander Way and Bagnalls Beach Road.

The external ring road also has allowed for the terracing of the site with the road situated at an RL approximately 2m lower than that of the adjoining dwellings and the finished level of proposed lot 6 being lower again. This will serve to mitigate against any noise or visual impacts of the development on the surrounding residential area.

The application has proposed some building envelopes for the proposed allotments. Without the benefit of buildings on these allotments it can not be determined if these building enveloped adequately address the issue of Urban Design, Built Form Outcomes, Street Activation or the provisions of Chapter B4 of DCP2007. The application has been conditioned so as to not give effect to these indicative building envelopes, requiring all future applications for end users to individually justify the merits of the individual applications.

The application was supported by a Pedestrian Linkage Plan (prepared by terras landscape architects, dated 7 June 2010, , ref: 8386.5 Rev: C). Due to the strategic importance of this outcome to provide a pedestrian street to link to the existing centre, and in the absence of planning controls such as a site specific DCP or Masterplan submitted with the application, it is

considered necessary (to ensure the good urban design outcomes are reached) that conditions be imposed requiring “restrictions as to user” under 88B of the Conveyancing Act be placed on the title of the lots to clearly define the specific areas to be set-aside for connecting pathways, with the remainder of the proposed lots left to be built upon with shops and car parks.

The Council will be the sole authority permitted to alter, modify or remove the restriction, and will be able to consent to site design changes proposed within individual Development Applications, that otherwise provide alternative acceptable urban design outcomes that may not strictly comply with the 88B instrument. This provides Council as the consent authority for development applications for built outcomes on the lots with a clear platform to maintain the important pedestrian links that are key to the integration of the existing internalised centre with development on the lots proposed surrounding the exterior of the existing car park of the internalised centre. It also identifies for the developers of the lots the need to design outcomes that provide for the pedestrian links, and the restriction on title can be lifted once the pedestrian links are provided.

Comprehensive Koala Plan of Management (CKPoM)

The CKPoM lists a number of criteria that should be addressed with a development application where koala habitat is identified. The general aims and objectives of these performance criteria are listed below;

i) To ensure that the koala population in the Port Stephens LGA is sustainable over the longterm.

The planting of 300 koala feed trees plus the additional offset land being conserved in perpetuity will contribute to the sustainability of the local koala population and adequately mitigate against any impacts of the proposal.

ii) To protect koala habitat areas from any development which would compromise habitat quality or integrity.

The koala habitat on the site will be altered by the proposed development although the abovementioned mitigation measures have been incorporated to mitigate against the potential to compromise habitat quality and integrity.

iii) To ensure that any development within or adjacent to koala habitat areas occurs in an environmentally sensitive manner.

The proposed development will incorporate environmentally sensitive landscaping and koala feed trees on the sites western edge to mitigate the loss of 6 koala feed trees through the replanting of 300 koala feed trees. The proposal will also rectify an existing drainage problem of untreated stormwater flows and ensure that all stormwater from the site is appropriately treated before entering the adjacent wetland area. This will effectively result in an increase in water quality in the wetland.

iv) To ensure that acceptable levels of investigation are undertaken, considered and accepted prior to any development in or adjacent to koala habitat areas.

The applicant has explored various potential outcomes for the subdivision in order to mitigate against any impacts to Koala's. The final design represents what the applicant considers to be the best outcome in terms of vegetation removal and traffic movement.

v) To encourage koala habitat rehabilitation and restoration.

It is considered that the planting of 300 koala feed trees on site plus the additional offset land being proposed for the conservation in perpetuity is consistent with the rehabilitation and restoration of koala habitat.

vi) Maintain interconnection between areas of Preferred and Supplementary Koala Habitat and minimise threats to safe koala movements between such areas.

The proposal includes the removal of some koala habitat, but it will not result in the complete isolation of koala's between areas to the north and south of the site. The koala corridor will still provide connection between areas to the north and south with the narrowest point in the corridor approximately 50m wide.

vii) To ensure that development does not further fragment habitat areas either through then removal of habitat or habitat links or through the imposition of significant threats to koalas.

The koala habitat on the site represents the eastern extremity of the vegetation. The development does include removal of the eastern part of the vegetation but this will not result in fragmenting of the vegetation as the remaining vegetation will remain contiguous.

viii) To provide guidelines and standards to minimise impacts on koalas during and after development, including any monitoring requirements.

During the development of the proposal, the construction environmental management plan will include measures to advise workers to be aware that koalas may use the area and provide appropriate mechanism to ensure the safety and well being of koalas should they be encountered. The clearing of vegetation on the site is to be undertaken in accordance with a vegetation clearing plan to minimise any impact on fauna including koalas. The inclusion of the 300 koala feed trees will assist to provide an ongoing refuge for koalas after the development of the proposal.

ix) To provide readily understandable advice to proponents preparing development applications and for Council officers involved in the assessment of those applications.

Council has provided readily understandable advice throughout the preparation and assessment of this proposal.

The CKPoM also states that *Council may waive the provisions of a), b) and c) of these criteria only for the purposes of establishing a building envelope and associated works, and only if the proponent can demonstrate:*

1. That the building envelope and associated works including fire fuel reduction zones cannot be located in such a way that would avoid the removal of native vegetation within Preferred or Supplementary Koala Habitat, Habitat Buffers, or Habitat Linking Areas, or removal of preferred koala food trees;

In the design of the subdivision the applicant has examined various scenarios to determine the most appropriate development outcome for the site. A number of potential road network options were explored and ruled out due to the need for truck transport routes with adequate turning allowances and pavement widths, plus the need to improve traffic circulation through and around the site. The following information outlines the factors considered by the applicant in the design of the subdivision layout and the importance of the proposed ring road for the site. The following design rational was provided by the applicant.

"The design includes a 20m wide road reserve that connects the east part of the site with the west as a ring road. This layout is essential to ameliorate the current traffic congestion associated with traffic entering, moving through and leaving the Salamander Shopping Centre via Salamander Way and Bagnall Beach Road. The proposed ring road provides a significantly wider pavement width than any of the existing roads through the site. This will not only serve as a preferred traffic distribution option that will relieve the current entry/exit locations but also provide a suitable transport route for delivery trucks that currently service Salamander Shopping Centre. At present, trucks servicing the Woolworths and K-Mart loading docks have to undertake a complex series of turns to enter these facilities. The ring road will provide an option to mitigate this problem where trucks can travel around the development area and simply enter the K-Mart dock via a single reverse motion and can leave in

a forward direction. The ring road also provides a second entry via proposed road 1 for trucks entering the Woolworths loading dock. At present, trucks have to use the 8m pavement road with a 90° turn to enter the car park and the loading dock. This requires the trucks to cross over the opposite direction of traffic lanes and at busy times results in congestion. The provision of the ring road and proposed road 1 provides a significant improvement in truck access as well as traffic circulation. Without the ring road, the traffic circulation through the site would be restricted and truck circulation would be impaired. Alternate options where the ring road was altered to an internal road with multiple turns to accommodate existing vegetated areas resulted in restrictions to the truck circulation and a poor traffic circulation outcome.

The ring road option also provides a number of additional benefits for the design that if not included would impact on the development and potentially adjacent neighbouring properties. The ring road serves as an Asset Protection Zone between the vegetation in the west and the commercial development providing emergency access for fire fighting trucks in accordance with the Rural Fire Service Planning for Bushfire Guidelines. The road reserve at the northern end of the property also provides a 17m buffer between the neighbouring residences and future development. Without the ring road, future development could build right to the property boundary adjacent to these residences. The change in road level along the northern boundary will also provide acoustic benefits for the neighbouring residences, as the road will be at a lower level with a retaining wall screening road noise to the residences. The road reserve along the ring road also provides drainage benefits as underground infiltration tanks are provided in this area to assist with the stormwater requirements of the site. The stormwater from the Salamander Shopping Centre western car park currently drains untreated water directly into the vegetated land identified as Lot 5 on the Concept Plan. With the provision of a drainage reserve to the north of this location, the stormwater will now be treated and incorporated into the stormwater system for the subdivision. This provides a significant improvement in the water quality and quantity leaving the site and rectifies an existing poor stormwater outcome. Retaining vegetation on site and developing around it would result in poor traffic circulation outcomes, poor bushfire design outcomes and restrict the potential to ameliorate the existing stormwater issues on the site. The alternate designs also split development allotments and result in uneconomic and poor design outcomes. Therefore, it is considered that the design cannot be undertaken in a way that would retain native vegetation as the operational aspects of the proposal would be greatly compromised."

2. That the location of the building envelope and associated works minimises the need to remove vegetation as per 1 above;

The matters listed in response to Criteria 1 outline why the works are required in the proposed configuration. In addition to the above information, the position of proposed road 1 has been located to minimise the loss of koala feed trees that currently exist adjacent to the existing Library car park. The road has been positioned adjacent to the existing trees to retain them in the road reserve.

3. That, in the case of subdivisions, they are designed in such a way as to retain and enhance koala habitat on the site and are consistent with the objectives of this appendix; and

The matters outlined in response to Criteria 1 outline the justification to the design of the subdivision. The proposal is considered to be consistent with the overall objectives of the performance criteria as listed and responded to above.

4. That koala survey methods (as per the Guidelines for Koala Habitat Assessment in Appendix 6) have been used to determine the most appropriate location for the building envelope and associated works (so as to minimise the impact on koala habitat and any koala populations that might occur on the site).

The koala survey methods have been used to determine the appropriate design of the proposal. The proposal justification is outlined in the response to Criteria 1 above.

The Performance Criteria includes the following:

Proposed development (other than agricultural activities) must:

a) Minimise the removal or degradation of native vegetation within Preferred Koala Habitat or Habitat Buffers;

The applicant has requested that a Waiver apply.

b) Maximise retention and minimise degradation of native vegetation within Supplementary Koala Habitat and Habitat Linking Areas;

The applicant has requested that a Waiver apply.

c) Minimise the removal of any individuals of preferred koala food trees, where ever they occur on a development site. In the Port Stephens LGA these tree species are Swamp Mahogany (Eucalyptus robusta), Parramatta Red Gum (Eucalyptus parramattensis), and Forest Red Gum (Eucalyptus tereticornis), and hybrids of any of these species. An additional list of tree species that may be important to koalas based on anecdotal evidence is included in Appendix 8;

The applicant has requested that a Waiver apply.

d) Make provision, where appropriate, for restoration or rehabilitation of areas identified as Koala Habitat including Habitat Buffers and Habitat Linking Areas over Mainly Cleared Land. In instances where Council approves the removal of koala habitat (in accordance with dot points 1-4 of the above waive clause), and where circumstances permit, this is to include measures which result in a "net gain" of koala habitat on the site and/or adjacent land;

The proposed offset land provided as amelioration for the clearing of the site for the proposed subdivision is consistent with the habitat conservation measures listed in the CKPoM:

Tomaree Peninsula KMU

Habitat Conservation: Incentives-based measures Regarding the application of incentives-based conservation measures in the Tomaree Peninsula KMU the following, in particular, should be investigated:

- Land between Anna Bay/Boat Harbour and Salamander Bay/Taylors Beach that contains Preferred Koala Habitat in particular, and/or*
- Supplementary Koala Habitat, Habitat Buffers or Habitat Linking Areas;*
- and which landholders are willing to either rezone to Environmental Protection (or put in place a Voluntary Conservation Zone, should one be established) or set aside under a Voluntary Conservation Agreement*

Habitat Restoration

Areas in the Tomaree Peninsula KMU that should be investigated for habitat restoration projects include:

- Land between Anna Bay/Boat Harbour and Salamander Bay/Taylors Beach that is identified as Habitat Buffer or Habitat Linking Area over Mainly Cleared Land. Given that there are large contiguous patches of Preferred Koala Habitat in this area, it should be of the highest priority for koala habitat restoration projects on the Tomaree Peninsula;*

The planting of 300 koala trees on site plus the proposed conservation in perpetuity of the offset site, which is located within the large contiguous patch of preferred Koala habitat, is consistent with this key action of the CKPoM and performance criteria d).

e) Make provision for long term management and protection of koala habitat including both existing and restored habitat;

Existing koala feed trees will be maintained on site adjacent to the existing Library and around the proposed drainage reserve. A Plan of Management is to be prepared for the proposed offset land offered to ameliorate the impact of the proposed development. The Plan of Management is to make provision for the long term management of the site, including the protection of koala habitat.

f) Not compromise the potential for safe movement of koalas across the site. This should include maximising tree retention generally and minimising the likelihood that the proposal would result in the creation of barriers to koala movement, such as would be imposed by certain types of fencing. The preferred option for minimising restrictions to safe koala movement is that there be no fencing (of a sort that would preclude koalas) associated with dog free developments within or adjacent to Preferred or Supplementary Koala Habitat, Habitat Buffers or Habitat Linking Areas. Suitable fencing for such areas could include:

- i) fences where the bottom of the fence is a minimum of 200 mm above ground level that would allow koalas to move underneath;*
 - ii) fences that facilitate easy climbing by koalas; for example, sturdy chain mesh fences, or solid style fences with timber posts on both sides at regular intervals of approximately 20m; or*
 - iii) open post and rail or post and wire (definitely not barbed wire on the bottomstrand).*
- However, where the keeping of domestic dogs has been permitted within or adjacent to Preferred or Supplementary Koala Habitat, Habitat Buffers or Habitat Linking Areas, fencing of a type that would be required to contain dogs (and which may also preclude koalas) should be restricted to the designated building envelope. Fences which are intended to preclude koalas should be located away from any trees which now or in the future could allow koalas to cross the fence.*

The movement of koalas through the site will not be restricted by fencing at the subdivision development stage. Although, as the site is a commercial shopping centre, the movement of koalas through the site will not be encouraged. Future developments will not have restrictions as to fencing type enforced.

g) Be restricted to identified envelopes which contain all buildings and infrastructure and fire fuel reduction zone. Generally there will be no clearing on the site outside these envelopes. In the case of applications for subdivision, such envelopes should be registered as a restriction on the title, pursuant to the Conveyancing Act 1919; and

The application has been supported by a Concept Plan showing indicative building envelopes. While the building envelopes are not to be required by future development, it is considered that the size of the footprints and built areas will not change.

h) Include measures to effectively minimise the threat posed to koalas by dogs, motor vehicles and swimming pools by adopting the following minimum standards.

- i) The development must include measures that effectively abate the threat posed to koalas by dogs through prohibitions or restrictions on dog ownership. Restrictions on title may be appropriate.*
- ii) The development must include measures that effectively minimise the threat posed to koalas from traffic by restricting motor vehicle speeds, where appropriate, to 40 kph or less.*
- iii) The development must reduce the risk of koala mortality by drowning in backyard swimming pools. Appropriate measures could include: trailing a length of stout rope (minimum diameter of 50mm), which is secured to a stable poolside fixture, in the swimming pool at all times; designing the pool in such a way that koalas can readily escape; or enclosing the pool with a fence that precludes koalas. This last option should include locating the fence away from any trees which koalas could use to cross the fence.*

The application is for the subdivision of land for the purposes of Commercial Development, as such the movement of koalas through the site will not add be threatened by dogs or swimming pools. However, as the site is a commercial shopping centre, the movement of koalas through the site will not be encouraged to avoid conflict with motor vehicles.

It is considered that the applicant has adequately addressed the waiver provision requirements for criteria a) through c). Assessment of the remaining criteria has concluded that the performance criteria have been adequately met.

Stormwater Issues

The stormwater and water quality control system's have been assessed by Council's Drainage Engineer. It is considered that the stormwater system proposed is adequate subject to conditions of consent requiring the provision of details prior to the issue of a Construction Certificate.

79C(1)(c) the suitability of the site for development
Does the proposal fit the locality?

The proposal is suited to the locality, subject to appropriate conditions.

Are the site attributes conducive to development?

The site attributes are conducive to development.

79C(1)(d) any submissions made in accordance with this Act or the Regulations?

Public submissions:

A total of 21 submissions were received from the public. These are summarised in the table below:

The proposal was notified until the 18th November 2009 with a total of twenty-one (21) submissions were received, all objecting to the proposal. A summary of the major issues raised is included below.

- Impacts of 20m Road Reserve adjoining the Mambo wetland.
 - Removal of stand of Melaleuca that provides a buffer between the commercial area.
- Impacts of proposed road along the sites northern boundary
 - Removal of vegetation and significant earthworks.
- Impacts of Stormwater Discharge into Wetlands
 - Concern around stormwater and pollutants entering wetland.
 - Increased Runoff into the wetland.
- Loss of Koala Habitat
 - Lots 4 and 5 contain mature and juvenile Swamp Mahogany. Requests that these lots be removed from the subdivision due to their importance to the Koala population.
 - The proposed road way will sever a Koala Corridor.
- Impacts to adjoining residential dwellings in Endeavour Place and Plimsoll Close.
 - Loss of natural area at rear of allotments and the buffer it provides to the commercial area,
 - Impacts of proposal on Flora and Fauna,
 - Noise, privacy and Odour concerns due to the proximity of the proposed road way to the rear of the existing residential allotments and the houses sited on them,
 - Concerns the proposal will devalue the existing residential properties,
 - Concerns raised about excavation along rear boundary of residential properties,
 - Impacts of noise and dust during construction,
 - Concerns that the internal "ring road" will become a race track,
 - Concerns the road way will increase vandalism of property.
- Impacts of Development on the Salamander Child Care Centre
 - Lack of consultation

- Impacts of the road to the south of the Child Care Centre in terms of loss of car parking, proximity to the building, unsafe carpark access point, increase of emissions into building.
 - Concern about construction impacts
 - Concern that the development will result in a loss of clients.
 - Impacts of the development on the amenity and environment in the locality.
- Concerns around lack of master plan.

Issue Raised	Submission Address														
	5A Plimsoll Close	6 Plimsoll Close	7 Plimsoll Close	14 Plimsoll Close	3/12 Endeavour Place	15 Endeavour Place	16A Endeavour Place	17 Endeavour Place	18 Endeavour Place (Four Submissions)	19 Endeavour Place	Purser Street	7 Eucalyptus Drive, One Mile Beach	Mambo Wetlands Committee	Salamander Child Care Centre, 155 Salamander Way	Unknown Address
impacts from Ring road on dwellings	X	X	X	X		X	X		X		X				X
Ring Road being Used as a Race Track		X													
Increase in Crime and Anti-Social behaviour	X	X	X	X			X		X		X				X
Privacy	X	X	X	X	X		X	X	X		X				X
Removal of Bushland Buffer impacting on amenity	X	X	X	X		X	X	X	X	X	X		X	X	X
Flora /Fauna	X			X		X	X		X		X				X
Noise/dust	X		X	X	X		X		X	X	X				X
Runoff into wetland/Stormwater Impacts	X		X	X			X		X		X		X		X
Reduction in land value			X						X	X					
Loss of Koala Habitat												X			
Separation and Fragmentation of Koala Corridors												X			
Removal of buffer between development and wetlands													X		
Need to encroach on wetland to construct road													X		
Lack of consultation														X	
Impact of proposed road on child care centre														X	
Loss of parking for child care centre														X	
Construction impact on child care centre														X	
Loss of clients due to development														X	
Lack of Masterplan														X	

79C(1)(e) the public interest

There are a significant number of objections to the proposal from the community (21).

Many of these objections are based on concerns relating to the location of the rear ring road and the loss of vegetation acting as a buffer between the commercial and residential activities.

Assessment of the application has concluded that the lower relative level of the road compared to the adjoining dwellings, the proposed vegetation and the low finished ground level of the commercial allotment will result in minor impacts to the adjoining properties.

The commercial subdivision will provide the community with employment opportunities, increased access to commercial premises and improved pedestrian linkages from the adjoining residential areas into and around the commercial town centre.

Conclusion:

Based on the above assessment it is concluded that the subdivision of commercially zoned land at 155 Salamander Way will result in minimal impact on the environment and adjoining properties, and is consistent with the zone objectives.

Recommendation:

It is recommended that the application be approved subject to the attached conditions of consent contained within Appendix A.

Leonard Allen
SENIOR DEVELOPMENT PLANNER

I have reviewed the above planning assessment report and concur with the recommendation.

Ken Solman
ACTING MANAGER DEVELOPMENT AND BUILDING

APPENDIX A – CONDITIONS

1. The development is to be carried out in accordance with the approved plans and documentation submitted with the application set out in Schedule 3, except as modified by the conditions of this development consent or as noted in red by Council on the approved plans.
2. Failure to comply with the conditions of consent constitutes a breach and on the spot fines may be issued under the Environmental Planning & Assessment Act 1979 and or the Protection of the Environment Operations Act 1997.
3. Construction work that is likely to cause annoyance due to noise is to be restricted to the following times:-

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

When the construction site is in operation the L_{10} 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.

4. 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.
5. The development has been granted an approval from the Department of Environment, Climate Change and Water dated 4th December 2009 (copy attached in schedule 4) under their relevant legislation. Where conditions are imposed by the authority the development shall comply with the general terms of approval.
6. 300 replacement trees to replace the trees removed from the site shall be planted prior to the issue of the occupation certificate. Trees to be replaced in accordance with Section 2.3 – Proposed Development (Retain Koala Habitat Trees) of the Statement of Environmental Effects (prepared by RPS Harper Somers O'Sullivan /dated October 2009). Replacement trees are to be maintained to maturity through use of mulch and watering to achieve their natural height. Details confirming the plantings shall be provided to Council **prior to issue of Subdivision Certificate**.
7. The burning of green waste is not permitted. All useable trees and shrubs should be milled for use in construction materials, furniture, fencing or similar products. Other tree waste should be wood chipped for erosion control or site rehabilitation. Roots and stumps may be disposed of at Council approved refuse sites.
8. A fauna ecologist shall be employed to supervise the removal of all trees and to advise the site manager and tree clearing staff of any habitat potential and precautions necessary during tree felling. The following strategies need to be employed to mitigate the effect of this clearing on native fauna that occur on the site:
 - Prior to removal of habitat trees licensed wildlife carers or consultants shall relocate any fauna species.
 - Clearing of hollow-bearing and nesting trees should be restricted to Autumn or Winter months so as to avoid dislocation of wildlife during breeding seasons.

- Remove and modify hollows and nests from felled trees and re-establish these on the site or as near as possible to the site to provide compensatory habitat. This could include mounting of hollows & nests on trees or poles, or on other buildings or structures.
 - Where original hollows cannot be retained, artificial nesting boxes must be provided to provide compensatory habitat.
 - In circumstances where native fauna is detected during the removal of habitat trees, clearing should cease until a licensed wildlife carer or consultant relocates the fauna species.
 - Should a threatened species be positively identified, all clearing works shall cease until a plan of management for the possible relocation of the species has been approved by council in consultation with the Department of Environment & Conservation.
 - Where in spite of precautions, wildlife is injured, the fauna ecologist is to take the necessary action to treat the animal, which may include veterinary treatment or transfer of the animal to a volunteer wildlife carer group such as the Native Animal Trust Fund or Hunter Koala Preservation Society.
9. A Subdivision Certificate must be obtained from Council within five (5) years of the date of this consent, otherwise this approval will lapse. Alternatively, where works are associated with the subdivision, such works must be commenced prior to the expiry of the five (5) year period otherwise this consent will lapse. The applicant must submit completed Subdivision Certificate Application Form (& applicable fee), 6 copies of the Survey Plan, two copies of any 88B Instrument and a check list demonstrating compliance with the conditions of consent.
10. Where a condition of development consent requires the preparation of an instrument under Section 88B of the Conveyancing Act, two (2) copies of the instrument shall be provided to the Council prior to endorsement of the Subdivision Certificate.
11. All lots in the proposed subdivision shall be serviced by the Hunter Water Corporation with water and sewerage facilities.
12. A Compliance Certificate under Section 50 of the Hunter Water Corporation Act, 1991 shall be submitted to Council prior to endorsement of the final survey plan. Applications for Section 50 Certificates are to be made direct to the Hunter Water Corporation.
13. The submission of documentary evidence from Energy Australia that satisfactory arrangements have been made for:
- (i) The provision of easements in favour of Energy Australia over private land for existing and proposed power lines and, where the development requires, the relocation of power lines or other assets of Energy Australia;
 - and**
 - (ii) The provision of a grid based underground electricity supply to each of the resultant lots in the subdivision;
- Prior to endorsement of the Subdivision Certificate.
14. Prior to endorsement of the Subdivision Certificate written evidence must be submitted from the Hunter Water Corporation, Telstra Australia and Energy Australia that satisfactory arrangements have been made for the provision of their respective services to all lots in the proposed subdivision.

15. New stormwater lintels within the subdivision shall display signage “Clean Drains = Clean Waterways”.
16. The proposed subdivision road names shall be submitted and approved by Council **prior to the issue of any Subdivision Certificate**.
17. All erosion and sediment control measures/works and other pollution control and rehabilitation measures undertaken on the site shall conform to the specifications and standards contained in the current version of;

- Erosion and Sediment Control Regional Policy and Code of Practice
- Managing Urban Stormwater – Soils and Construction produced by Landcom 2004,

An erosion and sediment control plan shall be submitted for approval with the engineering plans.

18. Each lot within the subdivision is to have a separate electricity service. The service must be installed wholly within the respective lot boundaries unless it is covered by a suitable easement.

Any ‘cross property’ electrical wiring between lots within the subdivision must be removed or disconnected and made safe in accordance with the relevant electrical standards.

19. Certification from a registered Surveyor shall be submitted to Council prior to the issues of the Subdivision Certificate, stating that no services (including stormwater) or public utility presently connected to the existing building shall straddle any new boundary. Alternatively, an easement shall be created to cover the services, utilities or structures.
20. Only Virgin Excavated Natural Material (VENM) in accordance with the Environmental Protection Agency NSW statutory definition shall be used for the approved land filling activities. The use of any material other than VENM may require an EPA licence for use as a landfill. The use of any material other than VENM for land filling purposes, without prior approval of council is prohibited. Council will insist on the removal of any prohibited material.
21. Upon completion of the landfill activities, submit a survey plan prepared by a registered surveyor confirming that the landfilling has been undertaken in accordance with the approved plans and documentation. Council will insist on the removal of excessive fill to an authorised site.
22. The following measures shall be implemented to minimise soil erosion:
 - a) All available topsoil shall be stockpiled and re-used at the completion of the earthworks.
 - b) The area of disturbance shall be kept to a minimum.
 - c) All stockpiles shall be spread and compacted within 4 weeks of placement on site.
 - d) The fill shall be progressively rehabilitated and stabilised with any partially completed filling areas being rehabilitated and stabilised if left untouched for more than 3 months.
 - 3) All disturbed areas shall be stabilised within 14 days of completion of the filling operations with topsoil being spread evenly and lightly rolled prior to grass cover by either turfing or seeding.
23. Landscaping shall be carried out in accordance **with the details submitted** (plan dated 7 June 2010, prepared by terras landscape architects, ref: 8386.5 Rev: C). The landscaping must be completed prior to issue of Occupation Certificate.
24. Traffic signals shall be constructed at the intersection of Town Centre Circuit and Bagnall Beach Road prior to the development of lots 2, 3, 5, 7.

25. Provision shall be made in proposed lot 7 to cater for any road widening required for the construction of traffic signals and associated road works at the intersection of Town Centre Circuit and Bagnall Beach Road.
26. On-road parking shall be restricted where required by provision of 'Restricted Parking Area' signage. A detail plan shall be submitted to Council for Traffic Committee approval at least 3 months prior to implementation.
27. The developer shall be responsible for the provision of any additional regulatory signage and any adjustments required to existing regulatory signage, as a consequence of the development. All works to be carried out at no cost to Council and in accordance with Council requirements. Such signage modifications shall be referred to Port Stephens Local Traffic Committee for approval prior to issue of the construction certificate (allow at least 3 months).
28. Stormwater Infiltration Devices (SPEL GPT's) shall be installed at the inlet to the infiltration system.
29. Stormwater drainage design including a contour plan, catchment plans, drainage calculations, Infiltration calculations for up to 100 year ARI flows shall be submitted to Council for approval, indicating the proposed pipeline layout, overland flow paths, infiltration basin details and stormwater quality and quantity control measures in accordance with "Auspec" and Councils DCP 2007.
30. Steady state infiltration must be obtained from a number of field testing and minimum result with an appropriate factor of safety shall be used for infiltration calculations.
31. The capacity of the existing downstream basin (storage and outlet) must be investigated for its adequacy and full details shall be provided to Council.
32. Stormwater detention/infiltration basins, stormwater treatment devices, overland flow paths shall be endorsed by a positive covenant and a registered surveyor is to certify that all stormwater systems are covered with an easement.
33. Easements in favour of PSC over drainage system through private properties are to be provided.
34. Stormwater discharge from adjoining properties shall be conveyed through the development and capacity of the pipe system shall be catered for.
35. Design discharges for up to 100 year ARI storm events, from the proposed development site should be limited to the predevelopment conditions.
36. Detention and infiltration basin batters are to be designed and constructed with side batter no steeper than 1V:4H. Areas where batter slopes steeper than 1V:4H shall be fenced (pool fence).
37. Infiltration system must be located above predicted maximum groundwater level.
38. All Stormwater Detention Basins water levels must be restricted below the level of road and private properties.
39. Maintenance access to all Stormwater Detention Basins and the embankments are to be provided.
40. Signage explaining the purpose of the basins, depth indicators and hazards associated with basin shall be provided.

41. All the infiltration pipe system must have pits with weir arrangement to capture, retain and infiltrate stormwater. All pollutants (silt, gross pollutants etc) must be collected prior to entering the infiltration system.
42. No fencing shall be permitted on any allotment boundary that prevents pedestrian movement between allotments. The title of these properties shall be endorsed under Section 88B of the Conveyancing Act 1919 to give effect to this condition. Council shall be nominated as the prescribed authority permitted to release, vary or modify the instrument.
43. This consent does not grant approval for the building envelopes contained within the concept plan (prepared by RPS Harper Somers O'Sullivan, Ref:25856). The siting of buildings on the approved allotments shall be the subject of future development applications that suitable satisfy the requirements of Section B4 of Development Control Plan 2007.
44. The Plan of Management for the offset land should be provided to Council for approval prior to issue of the Subdivision Certificate. The developer shall also be responsible for the plans implementation.

CONDITIONS RELATING TO ISSUE OF CONSTRUCTION CERTIFICATE

45. A Mosquito/Vector Management Plan shall be submitted and approved by Council **prior to the issue of the construction certificate**. The Mosquito/Vector Management Plan shall include but not be limited to control methods such as;
 - a. ensuring that grounds maintenance, maintenance of common area gardens and maintenance of riparian zones are carried out to a high standard;
 - b. utilizing where possible mosquito repellent plant species within the landscaping plan;
 - c. removing as far as practicable any potential *A. qegypti* breeding sites near human habitation;
 - d. reducing daytime shelter for *C.annulirostris* around buildings and areas of human activity by limiting, as far as practicable the presence of vegetation in such places;
 - e. providing appropriate screening to outdoor living areas and on all buildings;
 - f. encouraging the use of small area deterrents and personal repellents;
 - g. using populations of native larvivoracious fish to consume larvae within permanent water bodies; and
 - h. maintaining the depths of permanent water bodies through the removal of sedimentation, as required.
 - i. Pond design so as to discourage mosquito breeding.
46. The subject land may contain Potential Acid Sulfate Soils. An Acid Sulfate Soils Management Plan prepared by a qualified consulting engineer in accordance with the Acid Sulfate Soils Manual shall be provided to Council **prior to issue of Construction Certificate or Subdivision Certificate**.

The plan should address the following:-

- a) Whether acid sulfate soils are actually located on the site;

- b) The extent to which any acid sulfate soils are to be disturbed and the means to be employed to mitigate any harm these soils may cause to proposed structures and/or the environment.
47. Pursuant to section 80A(1) of the Environmental Planning and Assessment Act 1979, and the Port Stephens Section 94A Development Contributions Plan, a contribution of 1% of the cost of the development, as determined in accordance with clause 25J of the Environmental Planning and Assessment Regulation 2000, shall be paid to Council
- The amount to be paid is to be determined in accordance with the provisions of the Port Stephens Section 94A Development Contributions Plan. The contribution is to be paid **prior to issue of the Subdivision Certificate**.
- A Quantity Surveyor's Detailed Cost Report (**form attached**) setting out an estimate of the proposed cost of carrying out development in accordance with Schedule 2 of the Port Stephens Section 94A Development Contributions Plan must be approved by Council prior to issue of a Construction Certificate.
48. Provisions shall be made for the widening of minor road 2 to facilitate the construction of a cul-de-sac head or turning facility at the end of Minor Road 2. Details are to be approved by Council **prior to issue of a Construction Certificate**.
49. Performance criteria of the Stormwater treatment devices (SPEL GPT's) shall be provided to Council **prior to issue of a Construction Certificate**.
50. Reach P8-P6 of the stormwater system is to be constructed with Ribloc pipes to increase the system infiltration. Details to be provided to Council **prior to issue of a Construction Certificate**.
51. The inlet pit 8 must be constructed as flush on ground. Details to be provided to Council **prior to issue of a Construction Certificate**.
52. Batter slopes for road embankments shall be constructed at a slope of 1:3 (V:H), Details to be provided to Council **prior to issue of a Construction Certificate**.
53. A Construction Management Plan shall be submitted to Council for approval prior to issue of Construction Certificate. The Construction Management Plan shall include but not be limited to details of the management of;
- i. Vegetation
 - ii. Weeds
 - iii. Erosion and Sediment Control
 - iv. Acid Sulfate Soils
 - v. Mosquito's
54. The pedestrian linkages indicated on the pedestrian connections plan (dated 7 June 2010, prepared by terras landscape architects, ref: 8386.5 Rev: C) shall be incorporated into easements for pedestrian access. The titled of these properties shall be endorsed under Section 88B of the Conveyancing Act 1919 to give effect to this condition. Council shall be nominated as the prescribed authority permitted to release, vary or modify the instrument.

55. A large Public Recreation Park dedicated to passive recreation shall be provided on proposed Lot 3. This space shall be classified as community land for the purposes of public passive recreation and be linked to the integrated pedestrian network. The park shall be designed in accordance with Section B1 of port Stephens Development Control Plan 2007. Details of the park shall be provided to Council prior to issue of Construction Certificate.
56. Works associated with the approved plans and specifications located within the existing Road Reserve shall not commence until:
- i) a Roads Act Approval has been issued, and
 - ii) all conditions of the Roads Act Approval have been complied with to Council's satisfaction.

GENERAL ADVICES

- a) Access to an adjoining property for construction & maintenance work requires the owner(s) consent. It is the responsibility of the owner/applicant to ensure that no part of the structure encroaches onto the adjoining property. The adjoining property owner can take legal action to have an encroachment removed.
- b) Consent for the removal of any trees should be obtained from Council under the provisions of the Tree Preservation Order applying to the land. **A copy of this Tree Preservation Order is attached.**
- c) This approval relates to **Development Consent** only and does not infer any approval to commence excavations or building works upon the land. **A Construction Certificate should be obtained prior to works commencing.**
- d) Should any aboriginal site or relic be disturbed or uncovered during the construction of this development, all work shall cease and the **National Parks and Wildlife Service** shall be consulted. Any person who knowingly disturbs an aboriginal site or relic is liable to prosecution under the **National Parks and Wildlife Act 1974.**
- e) The developer is responsible for full costs associated with any alteration, relocation or enlargement to public utilities whether caused directly or indirectly by this proposal. Such utilities include water, sewerage, drainage, power, communication, footways, kerb and gutter.
- f) 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, accommodation, or services. This applies particularly to new buildings or significant building alterations. It is the owner/applicants responsibility to ensure compliance with the requirements of this Act. Further information can be obtained from Council or the Human Rights and Equal Opportunity Commission on 008 021199.

SCHEDULE 3 – APPROVED PLANS AND DOCUMENTATION

Statement of Environmental Effects prepared by RPS Harper Somers O'Sullivan /dated October 2009

Stamped plans

- Subdivision Plan, prepared by RPS Harper Somers O'Sullivan, Ref:25856
- Pedestrian Linkage Plan prepared by terras landscape architects, dated 7 June 2010, , ref: 8386.5 Rev: C
- Concept Plan prepared by RPS Harper Somers O'Sullivan, Ref:25856
- Engineering Plans prepared by Barker Harle, Ref: 90262
 - Sheet C1, Rev E, Dated 17/03/2010
 - Sheet C2, Rev D, Dated, 01/03/2010
 - Sheet C3, Rev D, Dated 01/03/2010
 - Sheet C4, Rev D, Dated 01/03/2010
 - Sheet C5, Rev D, Dated 01/03/2010
 - Sheet C6, Rev A, Dated 01/03/2010
 - Sheet C7, Rev B, Dated 17/03/2010
 - Sheet XS1, Rev D, Dated 01/03/2010
 - Sheet XS2, Rev D. Dated 01/03/2010
 - Sheet XS3, Rev D, Dated 01/03/2010
 - Sheet XS4, Rev D, Dated 01/03/2010
 - Sheet C8, Rev A, Dated 24/03/2010
 - Sheet PSW1, Rev C, Dated 24/03/2010
 - Sheet PSW2, Rev B, Dated 26/03/2010
 - Sheet PSW3, Rev A, Dated 25/03/2010