

20 February 2015

SF2013/013775

TB

General Manager  
Lake Macquarie City Council  
PO BOX 1906  
HRMC NSW 2310

**Attention: Mr Brian Gibson**

**PACIFIC HIGHWAY (A43): PROPOSED MASTERS, BULKY GOODS AND RESTAURANT DEVELOPMENT, LOTS 10, 11, 12, 13 AND 14 DP 1013486, 4B SOUTH STREET, WINDALE (DA 251/2013)**

Dear Mr Gibson,

I refer to the above development and the recent correspondence from Roads and Maritime detailing the draft conditions of consent provided to Council on 9 February 2015. I also refer to a letter from Roads and Maritime to you dated 17 April 2013 (which I again attach for your ease of reference).

As you are aware, Roads and Maritime has been involved with this development application for a number of years and has previously agreed a number of road and intersection upgrades that the developer would have to complete to provide for access to the Pacific Highway, a classified (State) road. Roads and Maritime has been acting in good faith and in accordance with its usual approach to considering requests for new accesses onto State Roads.

RMS understands that the current development application for the above land proposes access from both South Street and the Pacific Highway. RMS' comments have been provided on this basis. However, if those proposed access arrangements alter, Roads and Maritime would need to be provided with an updated traffic assessment for its consideration.

Roads and Maritime's attention has recently been drawn to the Land and Environment Courts' decisions in *Modern Motels Pty Limited v Fairfield City Council* [2013] NSWLEC 138 and *Benson McCormack Architects v Manly Council* [2013] NSWLEC 1223 which relate to the application of the State Environmental Planning Policy (Infrastructure) 2007 (ISEPP). In light of the application of clause 101 of the ISEPP to the proposed development, a consent authority must not grant consent to a development on land that has a frontage to a classified road, which is the case with the subject development application, unless the consent authority is satisfied in relation to the matters set out in clause 101(2) of the ISEPP. Accordingly, it is a matter for the consent authority to reach the state of satisfaction required by clause 101(2) of the ISEPP. That said, RMS notes the following matters which it considers are relevant to making an assessment of the subject development application having regard to clause 101 of the ISEPP:

- it appears physically practicable, based on the material presently available to Roads and Maritime, for the land to be accessed by vehicles solely from South Street and Lake Street, which are roads other than classified roads;
- subject to Roads and Maritime's requirements as detailed in its previous correspondence with the Council, Roads and Maritime considers that the effects of the proposed development on the safety, efficiency and ongoing operation of the Pacific Highway are reasonable. However, Roads and Maritime cannot say that the safety, efficiency and ongoing operation of the Pacific Highway will not be adversely affected at all by the development having regard to the factors outlined in clause 101(2)(b)(i) to(iii) of the ISEPP.

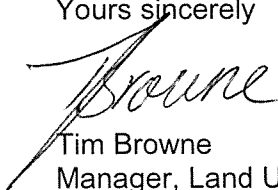
### **Roads and Maritime Response and Requirements**

Ultimately, it is a matter for the consent authority to reach the state of satisfaction mandated by clause 101(2) of the ISEPP before deciding whether or not to grant development consent to the subject development application. Should Council be minded to recommend approval to the Joint Regional Planning Panel, Roads and Maritime's requirements as outlined in the review of the draft conditions provided to Council on 9 February 2015 still apply.

On determination of this matter, it would be appreciated if a copy of the Notice of Determination is forwarded to Roads and Maritime for record and / or action purposes.

Should you require further advice please contact me on (02) 4924 0688.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Browne', is written over a horizontal line.

Tim Browne  
Manager, Land Use Assessment  
Hunter Region