

## COUNCIL ASSESSMENT REPORT

<b>Panel Reference</b>	2015HCC017
<b>DA Number</b>	DA/851/2015
<b>LGA</b>	Lake Macquarie
<b>Proposed Development</b>	Recreation Facility (Indoor) and Recreation Facility (Outdoor)
<b>Street Address</b>	Lot 1 DP 113863, Lot 971 DP 755233 and Lot 970 DP 755233 17, 17A and 19 Mulbinga Street, Charlestown
<b>Applicant/Owner</b>	LAKE MACQUARIE CITY COUNCIL
<b>Date of DA lodgement</b>	4 June 2015
<b>Number of Submissions</b>	One (1)
<b>Recommendation</b>	Approval, subject to conditions
<b>Regional Development Criteria (Schedule 4A of the EP&amp;A Act)</b>	Private infrastructure and community facility that has a capital investment value of more than \$5 million; and  Council related development that has a value of more than \$5 million.
<b>List of all relevant s79C(1)(a) matters</b>	State Environmental Planning Policy (State and Regional Development) 2011  State Environmental Planning Policy (Infrastructure) 2007  Lake Macquarie Local Environmental Plan 2014  Lake Macquarie Development Control Plan 2014
<b>List all documents submitted with this report for the Panel's consideration</b>	Attachment 1 – Proposed Conditions  Attachment 2 – Plans of Development
<b>Report prepared by</b>	Sara L Gault
<b>Report date</b>	23 November 2016

### Summary of s79C matters

Yes / No

Have all recommendations in relation to relevant s79C matters been summarised in the Executive Summary of the assessment report?

### Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report?

Yes / No / Not  
Applicable

*e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP*

### Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?

Yes / No / Not  
Applicable

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**Special Infrastructure Contributions**

Does the DA require Special Infrastructure Contributions conditions (S94EF)?

**Yes / No / Not  
Applicable**

*Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions*

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**Conditions**

Have draft conditions been provided to the applicant for comment?

**Yes / No**

*Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report*

## Executive Summary

<b>Key Dates:</b>	Lodgement: 4 June 2015 Amended Plans: 8 January 2016 Amended Plans: 19 August 2016
<b>Submission Period:</b>	12 June 2015 to 13 July 2015
<b>Zoning:</b>	RE1 Public Recreation
<b>Approval Bodies:</b>	Nil
<b>Concurrence Body:</b>	Nil
<b>Referral Agencies:</b>	Hunter Water Corporation  Ausgrid  NSW Police
<b>CIV:</b>	\$35 million

## Background

### Site and Locality

The site is located at Charlestown in the north-eastern area of Lake Macquarie. The site is located outside of, but at the immediate periphery of the Charlestown Town Centre – a regional centre. The site consists of three lots with an amalgamated area of approximately 24,490m<sup>2</sup> (2.449ha) with 162.87m frontage to Dickinson Street, 154.5m frontage to Mulbinga Street, 32.725m frontage to Frederick Street and 26.215m frontage to Milson Street.



**Figure 1:** Aerial photo of development site and surrounds (2014)



**Figure 2:** Aerial photo of development site and adjoining properties (2014)

A mix of medium and low-density residential development surrounds the development site. Parkland zoned RE1 Public recreation is located directly opposite the development site to the north and south.

A number of single residential dwelling houses adjoin the northern and eastern boundaries of the development site. A community hall, located on the corner of Dickinson Street and Frederick Street, also shares its rear boundary with the development site.

The existing Charlestown Swim Centre and Charlestown Childcare and Early Learning Centre, are located at the site as can be seen in Figure 2. The existing development contains:

- Outdoor heated 50m swimming pool;
- Outdoor heated 25m swimming pool;
- Outdoor shaded toddler pool;
- Learn to swim toddler pool;
- A rectangular brick building containing change room and toilet facilities, kiosk and offices;
- Formal and informal car parking areas accessed from Dickinson Street;
- An L shaped childcare centre, outdoor play area and associated parking, accessed from Mulbinga Street.

The existing hours of operation of Charlestown Swim Centre are as follows:

Monday to Friday: 5:30am – 7:00pm

Saturday: 6:00am – 6:00pm

Sunday and Public Holidays: 7:00am – 6:00pm



Vehicular access to the development site exists from Dickinson Street and Mulbinga Street and this is proposed to remain.

The development site contains a number of trees and turf, the locations of which can be seen in Figure 2 above. The site is typified by native tree species with some exotic tree plantings.

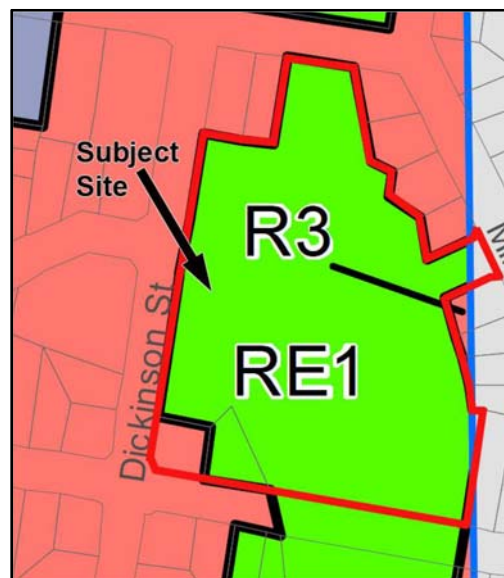
Investigations and community consultation by Lake Macquarie City Council has identified some fundamental issues with the existing Charlestown Swim Centre, namely:

- Ageing pool infrastructure that does not provide contemporary facilities and services to the Lake Macquarie community.
- Lack of broad community access to year-round facilities.
- Facility is currently operating with high overheads.
- The ongoing cost of emergent and cyclical maintenance being delivered to the ageing pool infrastructures.

These issues are resulting in declining attendance at the facility, which in turn (and combined with high operating costs), is resulting in the pool becoming an increasing cost burden on Council. As such, redevelopment of the existing facility is necessary.

### Zoning

At the time of lodgement (4 June 2015), the development site was zoned RE1 Public Recreation and R3 Medium Density Residential, under the Lake Macquarie Local Environmental Plan 2014 (LMLEP 2014) as shown in Figure 3.



**Figure 3:** Zoning map of site and surrounds at time of lodgement.

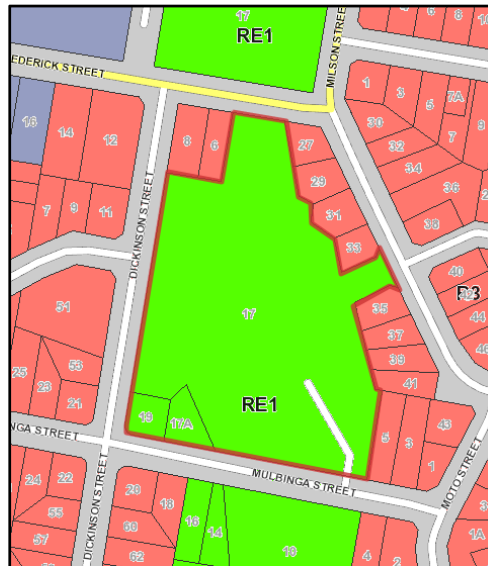
On 16 October 2014, an application was lodged to rezone the development site (RZ/9/2014). The Planning Proposal sought to amend LMLEP 2014 to facilitate the redevelopment of the Charlestown Swim Centre. More specifically, the Planning Proposal proposed to amend the following:

- Rezone 19 Mulbinga Street, Charlestown from R3 Medium Density Residential to RE1 Public Recreation.
- Amend the minimum lot size for 19 Mulbinga Street, Charlestown from 900m<sup>2</sup> to Not Specified.

- Amend the maximum building height for 17, 17A and 19 Mulbinga Street from 8.5 metres and 10 metres to 13 metres.

The Planning Proposal was publicly exhibited from 19 January 2015 to 16 February 2015.

Amendment 4 to the LMLEP 2014 became effective on 10 July 2015 and as such the whole of the development site is now zoned RE1 Public Recreation, as per Figure 4.



**Figure 4:** Current zoning map of site and surrounds as per Amendment 4 to LMLEP 2014, published on 10 July 2015.

Clause 1.8A of the LMLEP 2014 contains a savings provision that development applications lodged prior to but not yet determined as at the date of “commencement of this Plan” must be determined as if the LMLEP 2014 had not commenced.

The date referred to in cl 1.8A is 10 October 2014, being the “commencement date” referred to in cl 1.1AA (28 days after publication of the original LMLEP 2014, which was published on 12 September 2014).

As was the case in *Wingecarribee Shire Council v De Angelis* [2016] NSWCA 189 judgment, clause 1.8A is not ambulatory. That is, the date is fixed and will not change unless an amending instrument changes it.

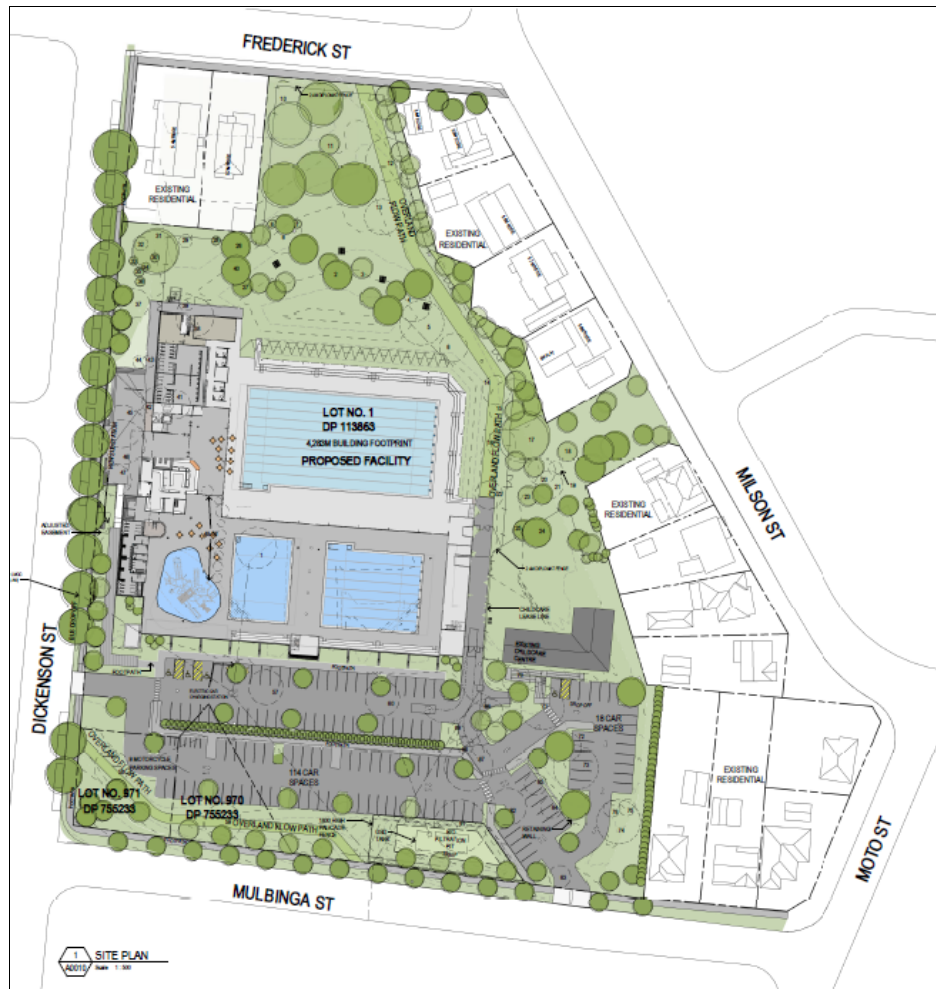
None of the amendments made to the LMLEP 2014 have been in respect of cl 1.8A. On that basis, cl 1.8A could be read as follows: *“If a development application has been made before [10 October 2014] in relation to land to which this Plan applies and the application has not been finally determined before [10 October 2014], the application must be determined as if this Plan had not commenced.”*

In this case, the development application was lodged on 4 June 2015, well after the commencement date, and therefore the application must be determined under the LMLEP 2014 as it stands at the time of determination, including the amendments that came into force on 10 July 2015.

### Proposal

The application proposes the redevelopment of the Charlestown Swim Centre, which includes the demolition of existing structures and the subsequent erection of new

pool structures, a two-storey building containing ancillary facilities and car parking to support the proposed development, as per Figures 5 and 6. The proposal is for a Recreation Facility (Indoor) and Recreation Facility (Outdoor) as defined under LMLEP 2014.



**Figure 5:** Site Plan of proposed development



**Figure 6:** Dickinson Street elevation



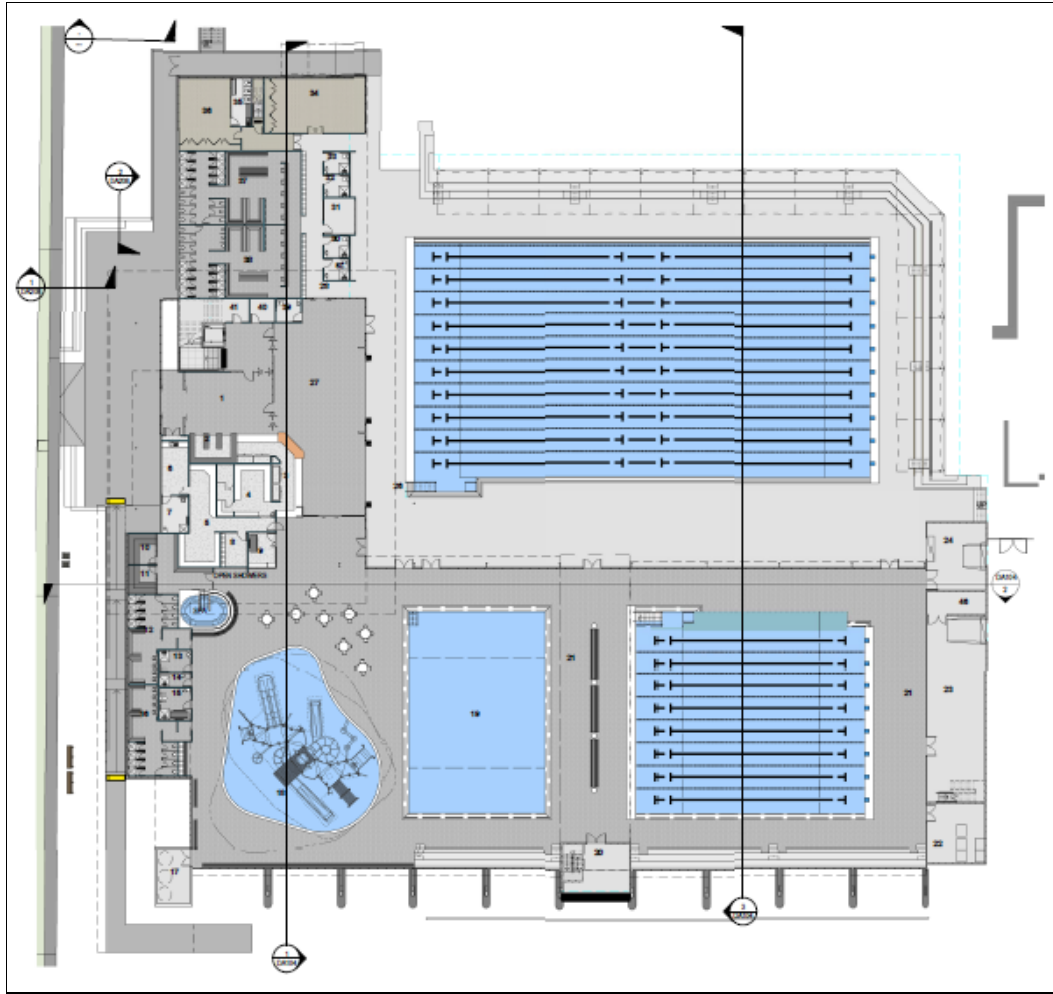
**Figure 7:** Mulbinga Street elevation

All buildings and structures on the site are proposed to be demolished, with the exception of the existing childcare centre and ancillary structures.

The following structures are proposed to be erected at ground floor level, as per Figure 8:

- Outdoor 10 lane 50 metre swimming pool and concourse area
- 500 seat terraced on-grade undercover seating to external 50m pool
- Indoor 8 lane 25 metre swimming pool
- Indoor 15m x 22m multi-purpose pool
- Aqua play area including tipping bucket
- Spa
- Sauna
- Steam room
- Entry foyer and retail space
- Kiosk
- Staff room
- Staff amenities
- Staff locker room
- First aid room
- Indoor male/female amenities and change facilities
- Five accessible/family toilet/change facilities
- One accessible toilet/change facility
- One family change/shower facility
- One accessible change places facility (for high level care)
- Indoor café with capacity to spill onto the outdoor 50m pool concourse
- Space for occasional care and short term child minding
- Multi-purpose room
- Two offices
- Lift
- Four store rooms
- Two plant rooms
- One bin store
- 127 car parking spaces (including 3 accessible spaces and 2 electric vehicle charging spaces) and 9 motorbike parking spaces for the new swim centre
- 10 parking spaces for the existing childcare centre (including one accessible space)
- Bike racks
- New electricity substation

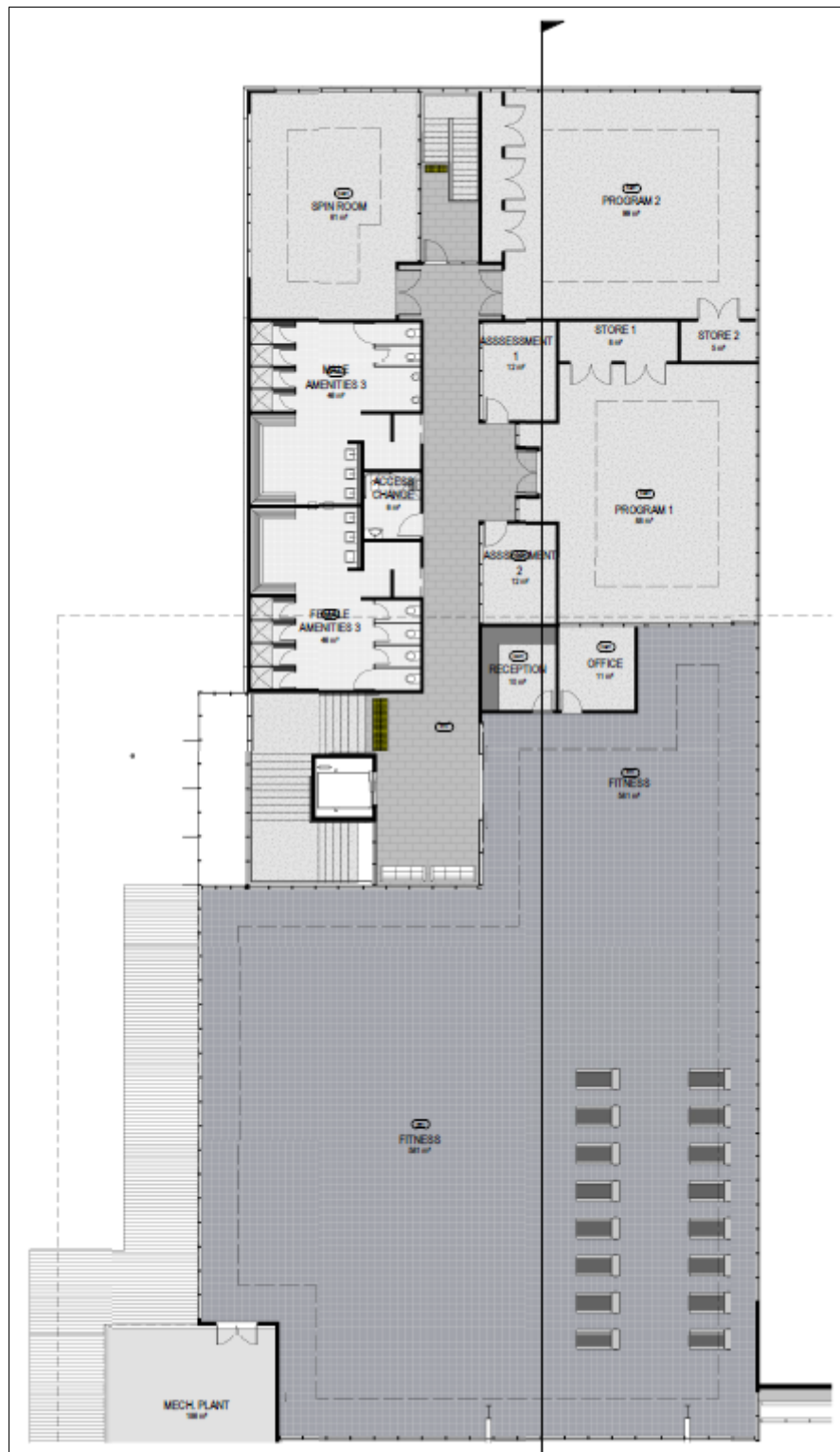




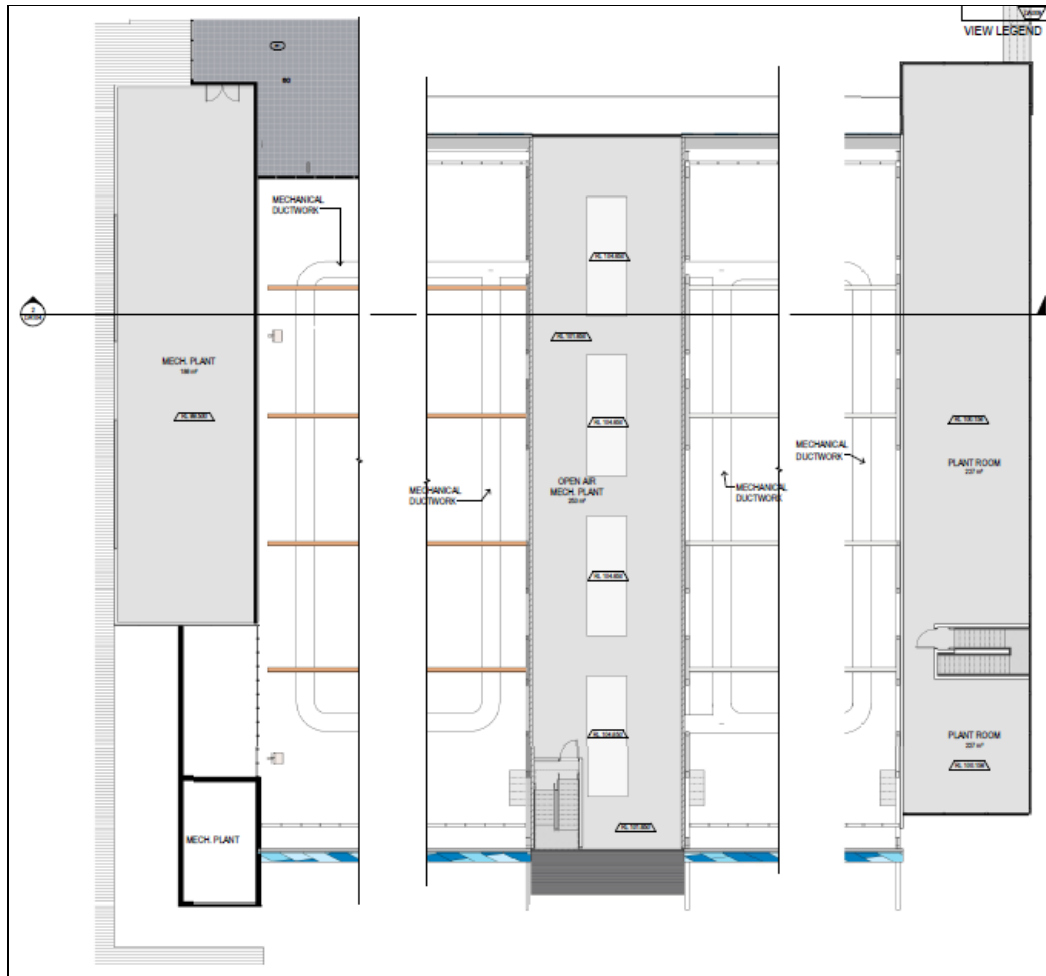
**Figure 8: Ground Floor Plan**

The following is proposed at first floor level, as per Figures 9 and 10:

- Gymnasium, including reception and office
- Two program rooms with storage rooms
- Two allied health/assessment rooms
- One spin room
- Female and male amenities and change facilities
- One accessible toilet/change facility
- Lift
- Mechanical plant rooms and equipment



**Figure 9:** First Floor Plan (North)



**Figure 10: First Floor Plan (South)**

The ground floor of the development has a GFA of 4283m<sup>2</sup>, the first floor has a GFA of 1890m<sup>2</sup> and the outdoor concourse and 50m pool area has an area of 2960m<sup>2</sup>. As such, the proposed development has a total floor area of 9133m<sup>2</sup>, excluding car parking.

The proposed hours of operation of the recreation facility are as follows:

Monday to Saturday: 5:30am – 10:00pm

Sunday and Public Holidays: 6:00am – 10:00pm

Associated landscaping, footpaths, fencing, vehicle access and stormwater works are proposed. On-street parking with in-road street trees is also proposed for Dickinson Street.

## THE ASSESSMENT

This report provides an assessment of the justification 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 Environmental Planning Instrument (EPI)

##### State Environmental Planning Policy (State and Regional Development) 2011

The proposed development is of a class referred to in Schedule 4A of the *Environmental Planning and Assessment Act 1979*. As such, Part 4 (Regional Development) of *SEPP (State and Regional Development) 2011* applies and the development application is determinable by the Joint Regional Planning Panel, in accordance with Part 4 of the *Environmental Planning and Assessment Act 1979*.

##### State Environmental Planning Policy (Infrastructure) 2007

Written notice has been provided to Ausgrid under clause 45(2) of *SEPP Infrastructure 2007*, with comments received in response, setting out Ausgrid requirements. A condition of consent requiring compliance with Ausgrid requirements is recommended, should approval be granted.

##### State Environmental Planning Policy No 19 – Bushland in Urban Areas

The policy generally aims to protect and preserve bushland within urban areas because of its value to the community as part of the natural heritage, its aesthetic value and its value as a recreational, educational and scientific resource.

Bushland is defined within the policy as *land on which there is vegetation which is either a remainder of the natural vegetation of the land or, if altered, is still representative of the structure and floristics of the natural vegetation*.

The development site is zoned RE1 Public Recreation and contains a number of native trees, some of which are proposed to be cleared to make way for the proposed development. The development application was referred to Council's Landscape Architect who provided the following advice:

*The existing tree vegetation on the site is not remnant bushland and is not representative of the structure and floristics of the natural vegetation that would have once existed on the site.*

*The reasons for this are:*

- The majority of trees are classified in the Pidutti Arborist Report as MATURE, consistent with 40-50 years growth. The uniformity of tree ages and sizes would indicate no trees are pre-development trees and they were all planted at roughly the same time (the pool was developed in 1976);*
- The tree species represented on the site contain approximately 12 locally endemic species and 11 non-locally endemic species and therefore cannot be considered representative of natural vegetation of the land; and*
- The Charleston Pool grounds are highly altered with all trees grown in mown turf with all other floristic layers typically found in bushland absent - this lack of floristic diversity combined with the non-endemic nature of 50% of tree species would confirm that the vegetation is not representative of the structure and floristics of the natural vegetation of the land.*



As such, the policy is not applicable to the land.

### ***Lake Macquarie Local Environmental Plan 2014 (LMLEP 2014)***

#### ***Clause 2.2 Zoning of land to which Plan applies***

The subject site is zoned RE1 Public Recreation. Surrounding lands are zoned:

- R3 Medium Density Residential

Refer to the Précis within this report for further discussion regarding zoning at the time of lodgement and the subsequent rezoning of the subject land.

#### ***Clause 2.3 Zone objectives and Land Use Table***

Development for the purposes of a Recreation Facility (Outdoor) and Recreation Facility (Indoor) is permitted with development consent within the RE1 Public Recreation Zone. The proposal has been considered with regard to the relevant objectives of the zone:

- *To enable land to be used for public open space or recreational purposes.*

The proposal is for a Recreation Facility (Indoor) and Recreation Facility (Outdoor), being a public swimming pool complex and ancillary development. The development will be accessible to the public for recreational use.

- *To provide a range of recreational settings and activities and compatible land uses.*

The proposal for the redevelopment of the existing Charlestown Swim Centre provides a greater range of recreational activities on site than currently exists. Included with the proposal for a number of swimming pools is a spa, sauna, aqua play area, a gymnasium and turfed open space area. Other compatible land uses, such as allied health rooms, are also proposed.

- *To protect and enhance the natural environment for recreational purposes.*

While the proposal requires the removal of some existing natural vegetation, it is proposed to provide additional planting which will enhance the natural environment.

- *To facilitate the preservation of the environmental qualities of land.*

The proposed landscaping and stormwater management outcomes ensure the environmental qualities of the land are preserved.

#### ***Clauses 2.4 – 2.6***

Not applicable.

#### ***Clause 2.7 Demolition required development consent***

Consent is sought for demolition. A suitable condition will be placed on any consent granted to ensure demolition work is managed appropriately.

#### ***Clauses 2.8 – 4.2B***

Not applicable.

#### ***Clause 4.3 Building heights***

The maximum height prescribed for the subject site by the height of buildings map is 13 metres.

The building measures 10.1 metres from existing ground level and therefore is compliant with the maximum height prescribed for the land.

Clauses 4.4 – 5.8

Not Applicable

Clauses 5.1 – 5.8

Not Applicable

Clause 5.9 Preservation of Trees or vegetation

Refer to comment provided within Section 2.13 (Preservation of Trees and Vegetation) of Lake Macquarie Development Control Plan 2014 (DCP 2014) consideration.

Clause 5.9AA Trees or vegetation not prescribed by development control plan

Not Applicable

Clause 5.10 Heritage conservation

There are no identified heritage items or locations associated with the subject site. The site is not identified as containing a Sensitive Aboriginal Cultural Landscape. Further consideration of this matter is provided in Section 2.15 (Aboriginal Heritage) of the DCP 2014 discussion within this report. There are no items of European or Natural heritage identified on or within the vicinity of the site, pursuant to Schedule 5 Environmental Heritage.

Clauses 5.11 – 6.5

Not applicable.

Clause 7.1 Acid sulfate soils

The development site is not identified on Council's Acid Sulfate Soils Map as having potential Acid Sulfate Soils.

Clause 7.2 Earthworks

Significant earthworks are required to provide a suitable building platform for the proposed development. Cut in the order of 4346m<sup>3</sup> is proposed, while 9938m<sup>3</sup> of fill is required. As such, a total of 5592m<sup>3</sup> of fill is required to be imported to the site.

The proposal has been considered with regard to the following matters:

- *The likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development.*

A suitable Stormwater Management Plan was submitted in support of the proposal and reviewed by Council's Chief Subdivision Engineer as acceptable.

- *The effect of the development on the likely future use or redevelopment of the land.*

The proposed earthworks are necessary to establish the development and will not have an adverse effect on the future use or redevelopment of the land.

- *The quality of the fill or the soil to be excavated, or both.*

A condition will be placed on any consent granted requiring certification to be provided for any fill imported to the site to ensure the material is suitable for use.

- *The effect of the development on the existing and likely amenity of adjoining properties.*

The bulk of the earthworks proposed are located within the southern portion of the development site and it is considered that there is adequate separation from adjoining properties so as not to cause any adverse impact on the amenity of surrounding dwellings.

- *The source of any fill material and the destination of any excavated material.*

As the amount of required fill exceeds the amount of cut, it is unlikely that excavated material will be transported from the site. As outlined above, a condition will be placed on any consent granted in relation to the source of fill.

- *The likelihood of disturbing relics.*

The subject land is not identified as containing any items or locations of natural, Aboriginal or European heritage. As such, it is unlikely that any relics will be disturbed during earthworks. Nevertheless, suitable conditions will be imposed on any consent granted requiring appropriate steps to be taken should any relics be discovered during earthworks.

- *The proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area.*

Flaggy Creek is located approximately 85 metres to the south-west of the subject land. A suitable Stormwater Management Plan was submitted in support of the proposal. Furthermore, conditions requiring erosion and sediment control measures to be in place during works will be imposed on any consent granted. As such, the proposal is not expected to have any adverse impact on any waterway, drinking water catchment or environmentally sensitive area.

- *Any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

Suitable conditions will be imposed in this regard, should consent be granted.

### Clause 7.3 Flood Planning

The development site is not identified as a Flood Planning Area in Council's Local Environmental Plan 2014. However, a flood study prepared for the development has identified that part of the site is impacted by local flooding. A piped drainage system is located on the site and there will be no change to this drainage system following development. The proposal will upgrade a stormwater overflow path to convey all stormwaters flows, up to the 100 year flood, through the site. This will ensure that the new development is located a minimum of 500mm above the 100 year flood level and that there is no increase in flood levels upstream or downstream of the development.

### Clauses 7.4 – 7.20

Not applicable.

### Clause 7.21 Essential services

The site has available to it all essential services.

The application was referred to Ausgrid for comment under clause 45(2) of SEPP Infrastructure 2004, the following comment was provided:

*Ausgrid requires that due consideration be given to the compatibility of proposed development with existing Ausgrid's infrastructure, particularly in relation to risks of electrocution, fire risks, Electric & Magnetic Fields (EMFs), noise, visual amenity and other matters that may impact on Ausgrid or the development.*

Recommendations were also made in relation to construction of the development, particularly supply of electricity, proximity to existing network assets, method of electricity connection, conduit installation and existing electricity easements. A suitable condition will be placed on any consent granted requiring all Ausgrid requirements to be met.

It is likely that a new electricity substation will be required to service the proposed development. As such, the existing easement for electricity substation is proposed to be relocated further south on Dickinson Street and rotated 90 degrees, as shown on the submitted Site Plan. Written correspondence from Ausgrid, dated 25 May 2016, confirms Ausgrid has no objections to the provision of a new substation, providing the existing substation remains in-situ until the new substation is established and works comply with current network standards. Conditions to this effect will be imposed on any consent granted. A further condition will be imposed requiring the old substation to be decommissioned and removed from the site once the new substation is operational.

Hunter Water Corporation have endorsed the architectural plans and a Notice of Formal Requirements for Proposed Development, dated 12 May 2015, was submitted as part of the Development Application. A condition will be imposed on any consent granted requiring all Hunter Water Corporation requirements to be met.

Clause 7.22 – 7.23

Not applicable.

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

There are no draft instruments which affect the development proposal.

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

*Lake Macquarie Development Control Plan 2014*

**Part 1 Introduction Section 1.15 –Notification Requirements**

As required by the EPA Regulation 2000, relevant government departments were notified, being:

NSW Police;

Hunter Water Corporation; and

Ausgrid, and

Requirements of the Mine Subsidence Board were provided for the development in a letter dated 7 September 2015.

Hunter Water Corporation have endorsed the proposed development plans.

Ausgrid provided comments endorsing the proposal.

Public notification occurred in accordance with the Lake Macquarie Development Control Plan 2014 – Part 1 Section 1.15 Notification which required notification for a minimum 14 day period.

One (1) submission was received. The issues raised are addressed within section 79C(1)(d) of this report.



### 2.1 Site Analysis

The development has considered and addressed all relevant constraints of the site within the plans and supporting documentation.

Photo montages of the proposed development from different vantage points were submitted as part of the Development Application.

### 2.2 – Scenic Values

The subject site is located within a Scenic Management Zone 13, which applies to hinterland or high settlement areas. The proposed development has been considered against Council's *Scenic Management Guidelines 2013*, which identifies the desired future character of the area as follows:

- *Compact, higher density development with a mix of retail, business and residential uses.*

The proposed redevelopment of the existing Swim Centre provides a higher density development comprising of a greater range and number of recreation facilities to support the surrounding retail, business and residential land uses.

- *Active street frontages, a pleasant atmosphere for pedestrians and attractive streets.*

The proposed building is architecturally designed with a strong street presence, particularly at the building entry located off an open forecourt on Dickinson Street. The building will be complimented with new planting and the public domain areas will be enhanced through the addition of new footpaths and street tree planting. As such, the proposed development will enhance the streetscape and create a pleasant atmosphere for pedestrians.

- *Character of buildings and the surrounding landscape should reflect the location and popularity of these areas as social and recreational destinations.*

The proposed development is of a scale and character which represents it's regional significance as a recreational destination while respecting surrounding development.

- *View corridors within the wider landscape should be preserved and enhanced.*

The proposed development will not result in the loss of any significant views currently enjoyed by surrounding development.

It is therefore considered that the proposed development will protect and enhance the scenic value of the locality. Furthermore, Council's Landscape/Streetscape Architect has reviewed the proposed development as acceptable, subject to compliance with conditions of consent.

### 2.3 Geotechnical

The development is located within a T6 zone as per Council's Geotechnical Maps. The application was referred to Council's Development Engineer who advised that geotechnical investigations are not required for the development at DA stage; however, it will be necessary prior to obtaining a Construction Certificate for the development. A suitable condition will be placed on any consent granted to ensure this.

### 2.4 Cut and Fill

As shown on the submitted Bulk Earthworks Plan, prepared by Eclipse Consulting Engineers, up to 3m of cut and 4m of fill is proposed within the building footprint and proposed car park area. The amounts are compliant with Council's control which allow up to 4m cut and/or fill within the building footprint.

Section detail of proposed retaining walls, prepared by Eclipse Consulting Engineers, was submitted with the application as required by Council's controls.

The application was referred to Council's Development Engineer who reviewed the civil engineering plans as acceptable, subject to compliance with conditions of consent.

## 2.5 Mine Subsidence

The development site is located within a Mine Subsidence District. The development application was not lodged as Integrated Development under Section 91 of the *Environmental Planning and Assessment Act 1979*. Conditions of approval from the Mine Subsidence Board, dated 7 September 2015, were submitted with the application and will be included as conditions of any consent granted.

## 2.6 Contaminated Land

The subject site has historically been utilised as a swimming pool, childcare centre and associated car park and the land is not known to be contaminated.

## 2.7 Acid Sulfate Soils

Refer to Clause 7.1 (Acid Sulfate Soils) of the LM LEP 2014 discussion.

## 2.8 Stormwater Management

The development site does not contain any natural watercourses, so the development will not impact on natural waterways.

A Stormwater Management Plan, prepared by Eclipse Consulting Engineers, has been provided and reviewed by Council's Chief Development Engineer as satisfactory. The stormwater management design for the site includes a stormwater detention tank, Enviropods, which will be installed in stormwater inlet pits and will remove gross pollutants at the source, and a Bioretention Basin. These controls ensure that there will be no increase in peak stormwater flows leaving the site and that the stormwater quality leaving the site meets Council's guidelines.

## 2.9 Catchment Flood Management

A stormwater pipe system and overland flow path are located on the site. A flood model of the site has been prepared, which has modelled stormwater flows on the site prior to development and following the development. The model has calculated the predicted flood levels that are applicable to the development site. The levels for the built components of the new development are set a minimum of 500mm above the 100 year flood level. The flood modelling has also demonstrated that the new development will not increase flood levels upstream or downstream of the new development.

## 2.10 Lake Flooding & Tidal Inundation

The site is not subject to Lake flooding, tidal inundation or sea level rise.

## 2.11 Natural Water Systems

Refer to Clause 7.2 (Earthworks) of LM LEP 2014 discussion.

## 2.12 Bushfire Risk

The development site is not identified as bushfire prone land.

### 2.13 Flora & Fauna

As per Council's mapping, the subject land does not form part of any native vegetation corridors and no endangered fauna is identified with the site.

A number of trees are proposed to be removed from the site to make way for the proposed development. Refer to Section 2.14 (Preservation of Trees & Vegetation) discussion below.

The application reasonably complies with the aims and objectives of SEPP19 Bushland in Urban Areas, which is applicable to the site as it is zoned RE1.

### 2.14 Preservation of Trees & Vegetation

A total of 76 trees currently exist on site. 55 of the 76 trees are proposed to be removed to make way for the proposed development, as shown in the submitted Landscape Plans (Issue 5). A tree protection plan, prepared by Joseph Pidutti (consulting arborist) and dated 10 May 2016, was submitted for the 21 trees proposed to be retained. The documentation was reviewed by Council's Arborist who confirmed that the proposed tree removal and retention is justified. Suitable conditions will be imposed on any consent granted requiring tree protection measures to be in place prior to and during construction.

While many of the existing trees on site are proposed to be removed, it is considered that a number of undesirable tree species and trees in poor health will be removed and that replanting with native species will result in an overall improvement to the site and surrounding neighbourhood. Furthermore, the submitted Landscape Design results in a net increase of trees across the site and within the public domain.

### 2.15 European Heritage

Refer to Clause 5.10 (Heritage Conservation) of LM LEP 2014 discussion.

### 2.16 Aboriginal Heritage

The subject site is not identified as a sensitive Aboriginal Landscape and an AHIMS search of the site with a 200m buffer was conducted, which did not identify any recorded sites or declared places in or near the location.

### 2.17 Natural Heritage

Refer to Clause 5.10 (Heritage Conservation) of LM LEP 2014 discussion.

### 2.18 Social Impact

The development was reviewed by Council's Coordinator of Social and Community Planning. It was determined that the development would have an overall social benefit. It is considered that the development will provide important recreational facilities to the benefit of the local and regional community, both now and into the future.

The proposed development provides new recreational facilities, including health and fitness facilities, resulting in a number of social benefits for all demographic groups within the community. The development provides an accessible, family friendly and safe recreational facility that will cater to family groups, young people, the elderly and people with a disability.

In order to maximise the social benefits and further minimise any potential negative impacts, conditions relating to non-discriminatory access and crime prevention are recommended for inclusion in any consent granted. This will ensure that the proposal is inclusive of the whole community and will not attract increased incidents of crime.

It is considered that all social impact concerns raised have been addressed throughout this report. Subject to compliance with conditions, the proposed development will provide significant social benefits to the local and regional community that outweigh any negative impacts generated by the proposal.

### 2.19 Economic Impact

The proposal will result in economic benefits through increased employment, both during the demolition and construction phase, as well as ongoing employment opportunities during operation.

## **Part 6 – Development in Recreation and Tourist Zones – Section 3 Development Design**

### 3.1 Streetscape

The site has an irregular shape and covers an area of approximately 24,490m<sup>2</sup>. The site contains an existing swim centre and childcare centre. The existing swim centre is proposed to be demolished, while the childcare centre is proposed to be retained.

The site is located within a residential setting and is immediately adjacent to the boundary of the Charlestown Town Centre Area Plan, which extends along Dickinson Street. The Charlestown Town Centre comprises a high-density mix of residential and commercial land uses along with areas of open space. The areas surrounding the Charlestown Town Centre and the site are zoned for medium-density residential development and comprise a mix of single detached dwelling houses and multi dwelling housing developments.

As shown in Figures 6 and 7 of this report, the proposed building is of quality built form and will positively contribute to the context of the area. The principle frontage containing the main entry to the building presents to Dickinson Street. A large paved forecourt area delineates the building entry and provides a publically accessible space. The built form and landscaping outcome is reflective of a regional recreational facility and is an appropriate form of development to be located between the Charlestown Town Centre and surrounding medium-density residential development.

The existing Charlestown Swim Centre has long been a fixture within the streetscape. However, the proposed redevelopment will enhance the streetscape in line with the desired character of the area.

### 3.2 Street Setback

The proposed building is setback approximately 7.5 metres from the Dickinson Street property boundary at its closest point (the awning over the forecourt). The majority of the building is setback further. As most of the surrounding development is of a residential nature, it is not considered necessary for the proposed Recreation Facility to strictly adopt the setback of adjoining development.

The nominated setback is considered appropriate for the nature and scale of the development proposed. The setback allows for definition of public and private space, as well as definition of the building entry, and thereby achieves the objectives of Council's controls.

### 3.3 Side Setback

Council's DCP 2014 requires a side setback of 1.5 metres be provided for buildings over 4.5 metres in height and less than three storeys. As the site is irregular in shape, the setbacks from Mulbinga Street and from the existing two residential lots fronting Frederick Street have been assessed as side setbacks, given the building fronts Dickinson Street. The proposed side setbacks are in excess of 23 metres and therefore comply with Council's control.



### 3.4 Rear Setback

For the purposes of this assessment, the setback of the development from existing residential land fronting Milson Street has been assessed as the proposed rear setback. Council's DCP 2014 requires a rear setback of six metres for buildings over 4.5 metres in height and less than three storeys. At its closest point, the proposed building is setback approximately 13.5 metres from the adjacent properties to the east and thereby complies with Council's control.

### 3.5 Setbacks from Residential Zoned Land

Where development adjoins residential zoned land, a setback of 3 metres for ground level and 6 metres for second storey development is required to be provided from the residential zoned land. As outlined in 3.4 above, the proposed building is adequately setback from the adjacent residential zoned land.

The proposed easternmost car parking bays are setback approximately 6 metres from the adjoining residential zoned land.

### 3.6 Building Bulk and Scale

The development proposes walls in excess of 15 metres in length and 4 metres in height. However, the building is well articulated through the incorporation of a mix of glazing, architectural features, materials, colours and landscaping which provide visual relief. In addition, generous setbacks from surrounding streets and development are provided. The proposed bulk and scale is considered appropriate for the nature of the development proposed.

### 3.7 Building Height

Refer to LEP Clause 4.3 (Building Heights) of LM LEP 2014 discussion.

### 3.8 Roofs

The roof of the proposed development is relatively flat and will therefore not add any significant undesirable elements to the built form.

Necessary mechanical plant and equipment is proposed to be integrated into the roof volume and well screened. As such, it is not considered that any plant will adversely impact on the immediate locality.

A suitable condition will be imposed on any consent granted requiring roofing materials and solar panels to be non-reflective to minimise any impact on surrounding developments.

### 3.9 Views

There are no significant views associated with the subject site. There are no significant landforms, items or water views from the site. The development is not located along any ridgeline which would promote views and potential impact on existing views from the public domain or any adjoining land use, thus it is not considered that there will be any significant impact on views associated with the locality.

### 3.10 Solar Access & Orientation

The proposed development has provided shadow diagrams which demonstrate that the proposal does not impact on the solar access enjoyed by surrounding development.

### 3.11 Energy Efficiency & Generation

The development does not require a BASIX certificate. The development will need to comply with Part J of the BCA.

An array of solar panels is proposed atop of the building. The inclusion of renewable energy generation is supported.

### 3.12 Front Fences

Fencing is proposed as part of the development. Fencing is generally nominated within the landscape and architectural plans. A 2.4-metre high palisade fence is proposed to secure the development. The fencing is limited to the northern and eastern area of the site and is generally offset from the property boundary and landscaped.

A 1.8-metre high palisade fence is to be erected around the bio retention basin, which fronts Mulbinga Street.

The proposed fencing is considered necessary for security, to prevent unauthorised access to the pool areas and the bio-retention basin. With the exception of the bio-retention basin, there is no front fencing proposed along Mulbinga Street or Dickinson Street. As such, it is considered that the fencing proposed will not have an adverse impact on the streetscape.

### 3.13 Side and Rear Fences

Refer to Section 3.12 (Front Fences) discussion above.

### 3.14 Landscape Design

Landscape Plans, prepared by Environmental Partnership NSW and dated July 2016, were submitted for the development and reviewed by Council's Landscape Architect as satisfactory for the development proposed.

The landscape design incorporates the following main elements:

- Concrete forecourt area at the building entry
- Street tree planting along Mulbinga Street and Dickinson Street
- Contiguous planting along the common boundary with the residential properties which front Milson Street
- Tree planting within the proposed car park
- Planting within the bio-retention basin
- Provision of tree planting and picnic tables within the open space area north of the proposed outdoor pool.

Subject to compliance with recommended conditions of consent, the proposed landscape design is considered to enhance the existing streetscape and soften the impact of the proposed new building and car park.

### 3.15 Landscape and Tree Planting in Car Parks

In accordance with Council's DCP 2014, the proposal incorporates suitable tree planting within the proposed car park, at a rate of one canopy tree every 6 spaces generally.

### 3.16 Traffic and Transport

Frederick, Milson, Mulbinga and Dickinson Streets, which front the development, are fully constructed with kerb and gutter along the frontage.

Vehicle access to the onsite car park is proposed off Dickinson Street and Mulbinga Street. Vehicles are able to enter and exit the site in a forward direction. The

application was referred to Council's Development Engineer who advised that the proposed access and sight distances to the proposed development are adequate.

Public concrete footpaths, 1.2 metres wide, are proposed along Mulbinga Street fronting the development site and along the full length of Dickinson Street. A condition will be imposed requiring 1.2-metre wide concrete public footpath from the existing bus stop located on Frederick Street, fronting the development site, to connect with the Dickinson Street footpath.

As outlined under Section 3.20 below, adequate onsite parking is provided, therefore, it is not expected that the development will have an adverse impact on traffic within the area.

A school bus stop is located on Dickinson Street, fronting the development. The bus stop is operational between 8:00am to 9:30am and 2:30pm to 4:00pm on school days only. It is recommended that the bus stop be upgraded to achieve accessibility compliance as the bus stop will be used as a drop off and pick up area for pool users. This will require a concrete pad, TGSIs and shelter. A public bus stop is located on Frederick Street, fronting the development site. It is also recommended that this bus stop be upgraded to achieve accessibility compliance, however, a shelter is not required.

A suitable condition will be imposed on any consent granted requiring the upgrade works to be carried out prior to the issue of any Occupation Certificate for the development.

Based on the above, the proposed development is acceptable with regards to traffic and transport.

### 3.17 Design of Parking and Service Areas

The internal driveway and car parking area (including turning movements) are adequate for the development and comply with the DCP 2014 requirements and AS 2890.1 Parking Facilities – Off Street Parking & AS 2890.6 Parking Facilities – Off-street parking for people with disabilities.

The proposed development has included adequate facilities for service vehicles.

Council's Traffic and Transportation Engineer has recommended that conditions be included in any consent granted requiring plans for the Construction Certificate to include the following:

- Pedestrian crossings within the car park area are to be aligned perpendicular to the kerb for disability compliance.
- Pedestrian crossings are to be provided in accordance with AS2890.1 and AS1742.10.
- Pedestrian crossings are to be installed on raised thresholds.
- The concrete median from the Mulbinga Street access shall be extended to the Child Care Centre car park exit. The median shall not be installed in the road reserve.

### 3.18 Bike Parking and Facilities

Council's DCP 2014 requires bike parking to be provided at a rate of one bike parking space per 20 car parking spaces. A bike rack providing parking for up to 10 bicycles is proposed at the main entrance to the building, beneath the covered awning, and thereby exceeds Council's requirements. The proposed development provides adequate change and shower facilities to support the use of bicycles as an alternate mode of transport.

### 3.19 Motor Bike Parking

Council's DCP 2014 requires motor bike parking to be provided at a rate of one motor bike parking space per 20 car parking spaces. Nine (9) motor bike parking spaces are proposed within the car park of the development, exceeding the minimum requirement.

### 3.20 Car Parking Rates

Council's DCP 2014 requires parking for a Recreation Facility (Indoor/Outdoor) – Swimming to be provided at a rate of 15 spaces plus 1 space per 100m<sup>2</sup> of site area. A Recreation Facility (Indoor) – Gymnasium is required to be supplied with 1 parking space per 10m<sup>2</sup> of Gross Floor Area (GFA).

The application was referred to Council's Traffic and Transportation Engineer who advised that the required parking provision can be calculated from both Council's DCP requirements and the Roads and Maritime Services Guide to Traffic Generating Developments. Under the RMS guide, gymnasiums in metropolitan areas are required to be provided with 3 spaces per 100m<sup>2</sup> GFA.

The site currently contains a swim centre and child care centre and has a historical deficiency in parking. The existing swim centre has an area of approximately 4350m<sup>2</sup>, which requires 59 parking spaces under LM DCP 2014. Formally, there are 41 spaces provided, resulting in a deficiency of 18 spaces. The child care centre was approved in 1988 under DA/18/1988 with a total of 10 car parking spaces.

The GFA of the proposed swim centre is 9469m<sup>2</sup>, which requires 110 spaces. The proposed gymnasium located on the first floor of the building has a GFA of 1064m<sup>2</sup> and therefore requires 32 spaces. As such, the total parking demand for the proposed Recreation Facility is 142 spaces, less the deficiency of 18 spaces, resulting in a parking requirement of 124 spaces.

A total of 137 car parking spaces are proposed to be provided on site. This includes 10 spaces for the existing Child Care Centre and 127 spaces for the proposed Recreation Facility. Of the 127 spaces proposed for the Recreation Facility, 3 accessible spaces are provided and 2 electric vehicle charging spaces are proposed.

It is therefore considered that adequate onsite car parking is proposed to support the development.

### 3.21 Non-Discriminatory Access

Council's Ageing and Disability Planner advises that the disability access report, prepared by Bernie Clifford of Before Compliance, is adequate in describing the development and its ability to provide for non-discriminatory use. Subject to compliance with the recommendations within the access report and conditions of consent, the proposed development provides for non-discriminatory access and equitable use. The proposal significantly improves on the existing swim centre by providing a greater range of accessible facilities.

### 3.22 Safety and Security

Crime Prevention Through Environmental Design (CPTED) is a crime prevention strategy that focuses on the planning, design and structure of cities and neighbourhoods. It reduces opportunities for crime by using design and place management principles that reduce the likelihood of essential crime ingredients from intersecting in time and space. CPTED employs four key strategies, access control, territorial re-enforcement and space/activity management.



A safety crime risk matrix was submitted to Council as an alternative to conducting a full crime risk assessment. The matrix was submitted to Council's CPTED Officer who confirmed the strategies identified address the main crime risk associated with the development. However, it is recommended that a comprehensive facility management plan, specifying crime mitigation measures, be submitted before the issue of a Construction Certificate for the development. A suitable condition of consent will be imposed to this effect.

On 23 June 2016, NSW Police conducted a Safer by Design Evaluation on the development. NSW Police have commented and not raised any objection to the development, subject to conditions of consent.

## Part 6 – Development in Recreation and Tourist Zones – Section 4 Operational Requirements

### 4.1 Demolition & Construction Waste Management

The proposal involves the demolition of all existing structures on the land, with the exception of the existing Child Care Centre building and electrical substation, as well as earthworks and the construction of the development in several stages.

A Demolition and Construction Waste Management Plan is required to be prepared and approved prior to the issue of a Construction Certificate for the development. The plan shall identify:

- types and amounts of waste likely to be generated;
- waste storage issues;
- methods of transport and disposal of wastes to an approved facility;
- opportunities for waste reduction, re-use of materials and recycling; and
- requirements for compliance with the Waste Avoidance and Resource Recovery Act 2001.

Suitable conditions will be imposed on any consent granted to ensure demolition and construction waste is managed appropriately, in accordance with the management plan.

### 4.2 Waste Management

The development includes a bin store with ramp access to the ground level loading dock for presentation of bins for collection by a front-loading garbage truck. Turning templates were provided for the development, adequately demonstrating that garbage trucks are able to service the development via the proposed Mulbinga Street access.

A condition will be imposed on any consent granted requiring a detailed Ongoing Use Waste Management Plan to be prepared for the development which details the types and amounts of waste generated by the proposal, storage of waste, disposal of waste, presentation of bins for collection and frequency of waste collection.

### 4.3 On-Site Sewerage Management

Not Applicable

### 4.4 Liquid Trade Waste & Chemical Storage

Suitable conditions will be placed on any consent granted requiring a Trade Waste Agreement to be formalised with the Hunter Water Corporation and also for any chemical storage areas to be bunded.

#### 4.5 Erosion & Sediment Control

The submitted Concept Erosion and Sediment Control Plans, prepared by C & M Consulting Engineers and dated 9 June 2015, were reviewed by Council's Erosion and Sediment Control Officer and satisfactorily address Council's requirements. A detailed plan is required to be prepared and approved, prior to the issue of a Construction Certificate for the development. Conditions of consent to further regulate erosion and sediment control will be included as part of any development consent granted.

#### 4.6 Air Quality

The development will maintain the existing site use as a recreation facility. The proposed redevelopment is not likely to significantly reduce air quality.

#### 4.7 Noise & Vibration

An Acoustic Assessment prepared by Noise and Sound Services, dated April 2016, was reviewed by Council's Environmental Assessment Officer as satisfactory for the proposal. The report assesses the potential noise impacts from the development during the proposed operating hours:

Monday to Saturday: 5:30am – 10:00pm

Sunday and Public Holidays: 6:00am – 10:00pm

Providing that the acoustic designs and treatments recommended in the Acoustic Assessment be carried out to the specification required by the consultant, and that operational aspects are managed to complement those requirements, the existing amenity of the area should be maintained, if not enhanced.

The PA system shall be designed to meet the acoustic consultants requirements. Proposed plant and equipment will be housed in ventilated acoustic enclosures to comply with the EPA Industrial Noise Policy Guidelines at the worst affected premises. Conditions requiring compliance with the above, and with the recommendations of the Acoustic Assessment, will be imposed on any consent granted.

It is noted that the occasional outdoor swimming carnival is expected to have a minor impact on the neighbourhood on an infrequent basis; however this is an integral part of the operation of a Recreation Facility of this type and is therefore acceptable in the circumstances, particularly given the land use is already established at the site.

A condition will be placed on any consent granted requiring the preparation of a Construction Site Noise Management Plan by a suitably qualified acoustic consultant, prior to the issue of any Construction Certificate for the development.

#### **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**

There is no planning agreement that has been entered into under section 93F, and no draft planning agreement that a developer has offered to enter into under section 93F of the Act that relates to this development.

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

The Regulation 2000 provides:

- (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,*

The Government Coastal Policy does not apply.

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

The development includes demolition. Conditions of consent are proposed that require compliance with AS 2601.

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

The following matters were considered and, where applicable, have been addressed elsewhere in this report.

Context & Setting	Waste
Access, transport & traffic	Energy
Public domain	Noise & vibration
Utilities	Natural hazards
Heritage	Technological hazards
Other land resources	Safety, security & crime prevention
Water	Social impact on the locality
Soils	Economic impact on the locality
Air & microclimate	Site design & internal design
Flora & fauna	Construction

### **79C(1)(c) the suitability of the site for development**

#### **Does the proposal fit the locality?**

The outcomes proposed will achieve a highly functional development compatible with the surrounding development.

#### **Are the site attributes conducive to development?**

The site attributes are conducive to development of this nature subject to conditions of consent.

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

### **Public submissions:**

One (1) submission was received during the notification period. The main issues raised in the submission are summarised below:

- Construction materials – potential for the exposed steelwork located under the roof sheeting to corrode from constant attack from condensation from heated chemically treated water below.

### **Planning Comment:**

The plans submitted for Development Application stage do not go to the level of detail required to comment on the likelihood of corrosion of certain construction materials. It is considered that detailed plans will be prepared at the Construction Certificate stage and that the respective builder/architect will advise of suitable materials for construction use.

The submission has been considered and assessed against the relevant Council's controls and it is concluded that satisfactory design outcomes can be achieved and/or conditions of consent can be imposed to provide an appropriate outcome whilst providing a land use that is permissible and in high public demand in the Lake Macquarie area.

### **Submissions from public authorities:**

Submissions were received from NSW Police, Ausgrid, Hunter Water Corporation and Mine Subsidence Board, details of which are provided throughout this report. Conditions will be imposed on any consent granted to ensure compliance with the requirements of the respective public authorities.

No other submissions from public authorities were received.

## **79C(1)(e) the public interest**

The public interest issues have been adequately considered. The proposed development is considered to be in the greater public interest.

## **INTEGRATED DEVELOPMENT**

The application is not Integrated Development under Clause 91 of the Act.

## **CONCLUSION**

Based on the above assessment, and having regard to the submission received, it is concluded that the redevelopment of the existing Charlestown Swim Centre with a modern Recreation Facility containing ancillary services on the site at 17, 17A and 19 Mulbinga Street, Charlestown, will result in an appropriate development with no unreasonable environmental impacts.

Approval of the development, subject to conditions of consent, is considered to be in the public interest and meet the objectives of the Act, and will provide significant benefit to the residents of Lake Macquarie and beyond.

## **RECOMMENDATION**

It is recommended that the application be approved, subject to the conditions contained in Appendix A to this report.

## **ENDORSEMENT**

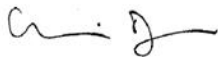
The staff responsible for the preparation of the report, recommendation or advice to any person with delegated authority to deal with the application has no pecuniary interest to disclose in respect of the application.

The staff responsible authorised to assess and review the application have no pecuniary interest to disclose in respect of the application. The report is enclosed and the recommendation therein adopted.



Sara Gault  
**Development Planner**  
**Lake Macquarie City Council**

I have reviewed this report and concur with the recommendation.



Chris Dwyer  
**Acting Chief Development Planner**  
**Development Assessment and Compliance**

**Attachment A: Proposed Conditions of Consent**

**Attachment B: Plans of Development**