

SUPPLEMENTARY COUNCIL ASSESSMENT REPORT

Panel Reference	2015HCC020
DA Number	DA/1043/2015
LGA	Lake Macquarie
Proposed Development	Residential Care Facility
Street Address	Lot 2 DP 788892 158 Macquarie Road, CARDIFF NSW 2285
Applicant/Owner	HAMMONDCARE
Date of DA lodgement	3 July 2015
Number of Submissions	10 – prior to Public Meeting held on 9 February 2017 4 – post Public meeting
Recommendation	Approve subject to conditions attached
Regional Development Criteria (Schedule 4A of the EP&A Act)	General Development over \$20 million
List of all relevant s79C(1)(a) matters	<ul style="list-style-type: none"> • State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 • State Environmental planning Policy No. 44 – Koala Habitat Protection • State Environmental Planning Policy No. 64 – Advertising and Signage • State Environmental Planning Policy (Infrastructure) 2007 • Lake Macquarie Local Environmental Plan 2014 • Lake Macquarie Development Control Plan 2014 • Environmental Planning and Assessment Regulation 2000
List all documents submitted with this report for the Panel's consideration	<ul style="list-style-type: none"> • Draft Conditions of Consent • Plans of Development • New submissions • Legal Interpretations • Clause 4.6 Submission
Report prepared by	Anna Kleinmeulman
Report date	11 May 2017

Summary of s79C matters

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

Yes / ~~No~~

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~~

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

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

Key Dates:	Lodgement 3 July 2015 Amended Plans 19 May 2016 6 September 2016 7 October 2016 11 November 2016 20 December 2016 1 March 2017
Submission Period:	1 st notification: 9 July 2015 to 24 July 2015 2 nd notification: 19 September 2016 to 3 October 2016 3 rd notification: 11 November 2016 to 29 November 2016 Additional submissions allowed: 9 February 2017 to 16 February 2017
Zoning:	R2 Low Density Residential
Approval Bodies:	Mine Subsidence Board (Subsidence Advisory NSW) NSW Rural Fire Service
Concurrence Body:	Nil
Referral Agencies:	Ausgrid Roads and Maritime Service
CIV:	\$24,677,852

Background

This report needs to be read in conjunction with the report considered at the public meeting of the Joint Regional Planning Panel on 9 February 2017, reference 2015HCC020.

The development entails the construction of a 99 bed dementia specific residential aged care facility incorporating administration and servicing building, shop, hairdresser and chapel as well as associated car parking, landscaping and drainage works.

The application went before the Joint Regional Planning Panel at the public meeting held on 9 February 2017. The determination of the application was deferred pending the submission of a supplementary report addressing the following matters:

1. Comments/response from the Roads and Maritime Service, with assistance as may be provided by the Panel Secretariat to encourage a timely response, and the implications of such advice;

2. Allowance for the adjoining neighbour to the north to make a further submission on flooding/stormwater issues, given a December 2016 report was not available for a full 7 days prior to the Panel meeting of 9 February 2017. If the neighbour chooses to make a submission, this be considered provided it is received by the Council by 16 February 2017;
3. A copy of the applicant's Clause 4.6 Variation Request;
4. A copy of any legal advice received by the Council in regard to interpretive aspects of the proposal, such as "natural watercourse"; and consideration of the aerial photographs of the development site provided by the applicant's consultants at the panel meeting;
5. Consideration of the late submission from the adjoining objector (via their legal representative Dibbs Barker), dated 9 February 2017;
6. Clarification regarding the validity of the Mine Subsidence Board GTA's, noting that the wrong plans may have been attached to the GTAs;
7. A list of the revisions to the latest plans provided by the applicant, and plans and clarified supporting information demonstrating compliance with the retention of 20 trees as required by Council's Development Control Plan;
8. Consideration by the applicant and Council staff of appropriate bus availability for users of the Residential Care Facility and evacuation during times of flooding or bushfires; and
9. Clarification regarding assumptions used for traffic modelling.

Upon the submission of a supplementary report addressing the above matters, the Panel favoured further consideration of the application by electronic means rather than before a second public meeting.

1. Roads and Maritime Response

Council received a response from the RMS dated 27 March 2017. The access to the site from Macquarie Road is supported subject to the following conditions of consent which are to be resolved within the concept design phase (WAD phase) in consultation with Roads and Maritime:

- Access to the site from Macquarie Road is to be restricted left in, left out. The raised concrete island proposed to be installed is to be a minimum 8 square metres and to restrict right turning manoeuvres into and out of the access. The concrete island is to be designed and constructed to the satisfaction of Roads and Maritime and Council.
- The southbound carriageway on Macquarie Road will direct stormwater from the proposed development running along the edge of through lane that will pool into the wheel path from Ch. 30 to 90 and shall be resolved.
- Plan C101 provides space for on-road cyclists although there are two pinch points which may compromise cyclist safety:
 - At the commencement of the deceleration lane; and

- The tie in at the southern end of the job.
- Line marking and delineation types are not stated on the plans.
- Typical sections show the existing through lane to remain as is, although the plan shows that the new deceleration edge lane encroaches into the through lane.
- Design speed adopted was for 70km/h not 80km/h. RMS design requirement is for posted speed plus 10km/h.
- Cross sections do not show how the design transitions back into the existing on each end of the job.
- More detail is required on typical sections to indicate retaining wall heights, batter slopes and utilities that are within the clear zone.
- There should be an offset to the TB (give-way) line at the exit to the facility so a vehicle does not block a through cyclist path and force the cyclist onto the through lane.
- The through lane width of the southbound lane has been reduced to 3.2m forcing traffic to move closer to the road centerline and decreasing the safety factor for opposing traffic, 3.5m width should remain.
- Pedestrian facilities into the development – pedestrians should not be expected to walk on the access road to access the bus stop.
- Power pole relocations and other utility adjustments have not been indicated on the plans.

As road works are required on Macquarie Road (B89), Roads and Maritime will require the developer to enter into a WAD with Roads and Maritime. Roads and Maritime would exercise its powers and functions of the road authority, to undertake road works in accordance with Sections 64, 71, 72 and 73 of the Roads Act, as applicable, for all works under the WAD.

- All road works under the WAD shall be completed prior to issuing any Construction Certificate for the proposed development.
- All works associated with the subject development shall be undertaken at full cost to the developer and at no cost to Roads and Maritime or Council, and to Council's requirements.

As per the above advice, it is recommended that the above requirements be included as a condition of consent.

2. Additional Submissions

At the public meeting held on 9 February 2017 the adjoining property owner to the north was given the ability to provide a submission regarding the flooding and stormwater issues affecting the site. The following table outlines the additional submissions received by Council following the public meeting. The issues raised are summarised under Item 5 – Consideration of Late Submissions.

Date	Submitter	Comments
8/2/17	Dibbs Barker Solicitors	Submission discussed at the Public Meeting
9/2/17	Jeff Askew	Traffic issues
15/2/17	Dibbs Barker	Supplementary to submission dated 8/2/17
20/4/17	Dibbs Barker	Response to information submitted by the applicant
1/5/17	Dibbs Barker / Cardno	Additional submission relating to information submitted by the applicant

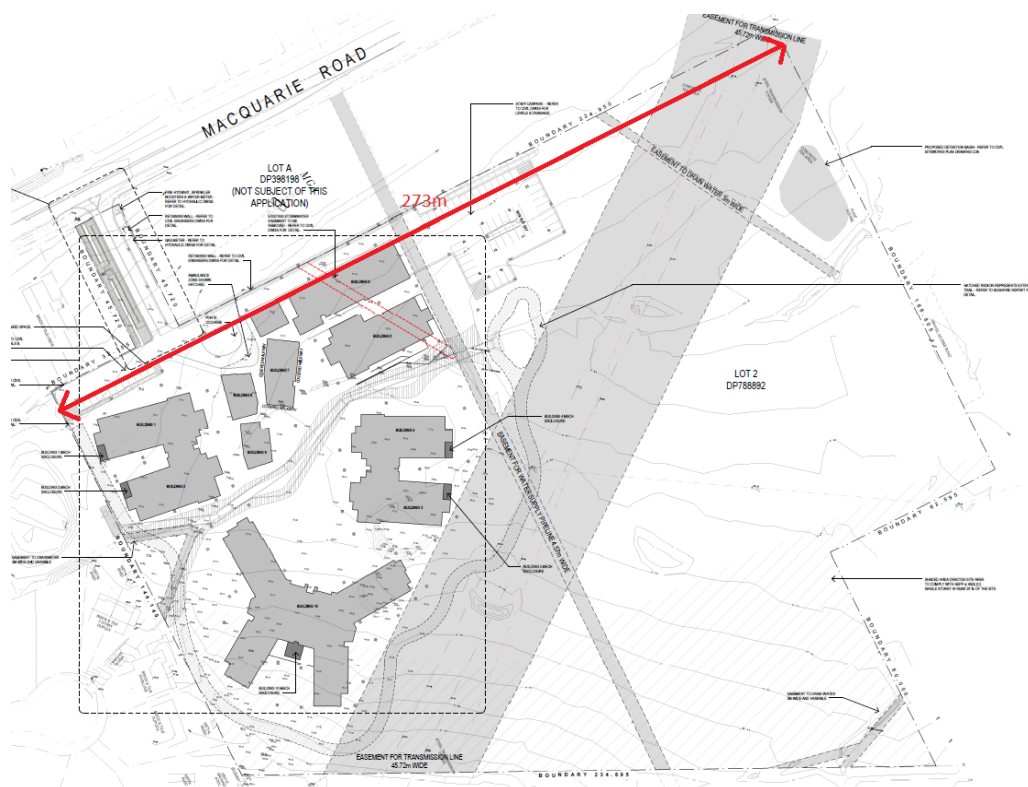
3. Clause 4.6 Exceptions to Development Standards

Clause 40 of SEPP SL requires that the site frontage must be at least 20m wide measured at the building line. The site has a 16.5m battle-axe handle providing vehicular access to the site from Macquarie Road. At the building line, the site has a width of 273.5m and therefore complies with the 20m requirement. Under the Standard Instrument – Principal Local Environmental Plan “building line” is defined as follows:

building line or ***setback*** means the horizontal distance between the property boundary or other stated boundary (measured at 90 degrees from the boundary) and:

- (a) a building wall, or
- (b) the outside face of any balcony, deck or the like, or
- (c) the supporting posts of a carport or verandah roof,

whichever distance is the shortest.



Building layout showing width of the property at the building line

It is considered that the development meets the minimum width requirement at the building line as illustrated above. Should the Panel deem this interpretation to be incorrect, the applicant has submitted a Cl. 4.6 Objection to Development Standards in relation to the standard. This variation is supported due to the minimal impact associated with variation.

A copy of the applicant's Clause 4.6 Exception to Development Standards submission is attached as per the Panel's request.

4. Legal Advice and Consideration of Aerial Photos

Legal Advice

Neither Council or the applicant has sought specific legal advice in regard to the definition of a natural watercourse. Council relies on a definition set out in *Lyons v. Winter* (extract attached) which defines a natural watercourse as follows:

"A stream of water flowing in a defined channel or between something in the nature of banks. The stream may be very small and need not always run, nor need the banks be clearly or sharply defined. But there must be a course, marked on the earth by visible signs, along which water usually flows."

Council's legal team verbally advised that this was the most relevant case in defining a natural watercourse.

During pre-lodgement discussions, the applicant provided legal advice in relation to the applicability of State Environmental planning Policy (Housing for Seniors or People with a

Disability) 2004 (attached). This advice concluded that the site was not classified as environmentally sensitive land as defined under Schedule 1 of the SEPP and therefore was not excluded.

Aerial Photos

Historical aerial photos were presented during the public meeting to demonstrate that a watercourse did not historically occur in the current location. A review of these images has been undertaken and it cannot be conclusively determined whether a watercourse previously existed in the location pre-development or not due to the vegetation coverage and quality of images. The aerial photos show undeveloped bushland prior 1987. The aerial photos from 1993 onwards show a watercourse in the current location. It is considered that greater detail would be required to form a conclusive opinion that a natural watercourse did not exist prior to the development of the golf driving range.

The topography of the land would suggest that the location of the watercourse is a natural low point within the catchment and therefore natural water flows would be directed to this point.

5. Consideration of Late Submissions

At the public meeting of the Joint Regional Planning Panel held on 9 February 2017, the Panel allowed a further 7 days for the legal representative of the adjoining land owner to make a further submission in relation to the stormwater and flooding implications of the proposal. The Panel has also requested that the matters raised during the public meeting be addressed in the supplementary report. In the 7 days following the meeting, Council received two submissions in relation to the proposal. In addition, Dibbs Barker Solicitors have made two further submissions following the applicant's response. A copy of all submissions and the applicants response to the submissions will be provided to the Panel. The issues raised are summarised as follows:

Traffic flow on Macquarie Road

The applicant has submitted additional information with regard to the traffic volume assumptions used within the Traffic and Parking Report submitted with the development application. Traffic volumes are based on a Traffic Study undertaken in 2013 at the intersection of Macquarie Road, Ada Street and Wentworth Street. The results of this study were extrapolated to provide daily traffic flows along Macquarie Road.

Realignment of Macquarie Road

As Macquarie Road is identified as a Classified Road it falls under the control of the Roads and Maritime Service rather than Council. The applicant has submitted a strategic design for the site access which is supported by the RMS subject to conditions. It has been recommended that the conditions imposed by the RMS are included as conditions of consent.

Site Access

It is acknowledged that an alternative access to the site is available via the right of way from Ada Street. The applicant has chosen not to utilise this access (although it will remain a legal access to the property) and has pursued an access from Macquarie Road. The RMS has granted their conditional support for the proposal. In this process they have assessed safety

and the efficient operation of Macquarie Road and have deemed the impacts of the proposal to be acceptable.

Legal Challenge of the Area Plan

At the time of writing this report it is understood that the legal challenge against the Ada Street Area Plan has been withdrawn.

Requirements of Clause 6.3 and 7.15 of the LEP

Clause 6.3 of the LEP relates to land identified on the Urban Release Area Map. The subject site forms part of the “Cardiff Area 1” urban release area. At the time of lodgement, a DCP had not been prepared as required under this clause. The application was held in abeyance for the preparation of the DCP to be undertaken. The Ada Street Cardiff Precinct Plan was prepared and adopted by Council on 9 May 2016. The plan became effective on 6 June 2016 as part of Revision 10 to DCP 2014.

Council is satisfied that the items identified in clause 6.3(3) were considered in the preparation of the Ada Street Cardiff Precinct Plan and that the adoption of this Plan satisfies the requirements of clause 6.3(2).

The submission raises concerns that the Ada Street Cardiff Precinct Plan does not include details of how development of the land is to be achieved in a timely and efficient manner, does not provide a timeline for the release of land and does not make any provision for specific infrastructure.

The Cardiff Area 1 Urban Release Area comprises three lots:

- 116 Macquarie Road – owned by Council;
- 158 Macquarie Road – the site of the proposed development; and
- 50 Ada Street – the objectors property.

Council is satisfied that the Structure Plan contained within the DCP provides sufficient guidance with regard to the development of the land in an efficient manner. Furthermore, the privately owned lots have been granted residential zonings and therefore effectively “released” for development to occur. As demonstrated within the development application, the site is being developed as a stand-alone lot and does not require the provision of any specific infrastructure over any other parcel within the Urban Release Area, therefore the requirement for the provision of infrastructure is not relevant.

Clause 7.15(3) of the LEP states that *development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the existing on-site stormwater detention and any additional stormwater detention required by the proposed development will be detained within the boundaries of the site, or at an alternative location approved by Council.* As discussed in the previous report to the JRPP, the stormwater design presented by the applicant satisfies this clause with a net increase of stormwater detention within the development site.

Council considers that the requirements of this clause have been misinterpreted within the submission which states the clause requires both Lot 1 and the development site (Lot 2) to manage detention collaboratively. Council does not agree with this interpretation of the requirement and identifies the “site” as the lot to be developed under a development application. As such, the development is only required to demonstrate that the existing

detention provided within the lot and additional detention required by the development are detained within the boundaries of the site. This has been achieved by the stormwater design submitted for the proposal.

Applicability of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP SL)

SEPP SL does not apply to land described as “environmentally sensitive land” under Schedule 1. Schedule 1 defines environmentally sensitive land as land identified in another environmental planning instrument by any of the following descriptions or by like descriptions that incorporate any of the words or expressions:

(g) floodway

(h) high hazard flooding

The subject site is not identified as a floodway or high hazard flooding in Council’s Environmental Planning Instrument and therefore the site is not excluded from SEPP SL. Legal advice was presented by the applicant in relation to this matter which is included in Attachment F. The development has been designed to meet Council’s requirements for flood liable land by setting floor heights at or above the probable maximum flood level identified for the site.

Flooding/Stormwater Impacts

The submission contains a lengthy analysis of the applicant’s stormwater and flooding reports, particularly with regard to shortcomings of the modelling and the conclusions drawn. Council’s Development Engineer has reviewed the submitted information provided, namely:

- letter from Taylor Thomson and Whitting dated 12 April 2017,
- GHD Flood Assessment Report dated 22 February 2017, and
- letter from Clayton Utz dated 12 April 2017.

Following assessment Council is satisfied that the stormwater design for the proposal meets the requirements of Clause 7.3 and Clause 7.15 of the LEP and the requirements of DCP 2014.

The submission also contends that there is no evidence that there was or is a natural watercourse where the flow is to be directed, nor that the level of water to be directed onto the adjoining lot is natural.

The definition of natural watercourse is presented in *Lyons v Winter*. This is as follows:

“A stream of water flowing in a defined channel or between something in the nature of banks. The stream may be very small and need not always run, nor need the banks be clearly or sharply defined. But there must be a course, marked on the earth by visible signs, along which water usually flows.”

The watercourse which runs through the development site and continues onto Lot 1 is considered to meet this definition. Council is satisfied that stormwater from the development is being discharged to a natural watercourse and there are not deemed to be any legal restrictions.

The historical aerial photos of the site are inconclusive as to the past presence of a watercourse on the land. Prior to the development of the golf driving range, the land was vacant bushland. The topography of the land would suggest that the location of the watercourse is a natural low point within the catchment and therefore natural water flows would be directed to this point.

Integrated Development

Council is satisfied that the appropriate approvals have been granted by the Mine Subsidence Board (Subsidence Advisory NSW). The applicant has undertaken geotechnical investigations of the mine workings beneath the site and has gained further approval for grouting works to be undertaken. The applicant has submitted additional correspondence from the Mine Subsidence Board illustrating that the Board has no objections to the altered design.

Certainty of the Determination

At the time of writing this report it is understood that all legal challenges in relation to the land have been withdrawn.

6. Mine Subsidence Board General Terms of Approval

Council has obtained a copy of the approval granted by the Mine Subsidence Board dated 27 August 2015 together with the stamped plans. Although the layout of the development has been altered slightly during the assessment process, the development is considered to be substantially the same as previously approved and therefore re-referral to Subsidence Advisory NSW is not considered to be necessary.

It is noted that the original conditional approval required that the applicant undertake additional geotechnical investigations and gain the future approval of any proposed subsidence works by Subsidence Advisory NSW. It is understood that the applicant has undertaken the necessary geotechnical investigations and has gained approval from Subsidence Advisory NSW for grouting of the mine workings that lie below the site. Council is therefore satisfied that the required integrated approval has been granted for the proposal.

7. Plan Revisions and Tree Retention

Plan Revisions

The applicant has provided additional information in relation to the updated plans previously submitted to the Panel as it was not apparent what amendments had been undertaken from the previous revision.

Plan Number	Revisions
A2105 Rev G	Minor linework revision
A2108 Rev B	Skylights revised on Buildings 3 and 4 Minor notation changes

	Roof Plan revised on Building 7
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Tree Retention

The applicant has submitted a revised Tree Retention Plan to address the requirement to retain 20 structurally sound medium-large trees within 40m of the site's common boundary with 14-20 Almora Close. Under the previous plan, 21 trees were being retained within this area and only 18 of these met the criteria of a medium-large tree (10m height, 4m spread). The amended plan indicates the retention of 23 trees within this area of the site. 19 of these meet the criteria of a medium-large tree.

	Tree Number	Height (m)	Spread (m)	Complies
1.	108	22	13	Yes
2.	110	22	11	Yes
3.	113	23	12	Yes
4.	114	18	9	Yes
5.	115	22	6	Yes
6.	116	22	9	Yes
7.	154	20	7	Yes
8.	157	19	9	Yes
9.	159	14	5	Yes
10.	160	20	5	Yes
11.	161	18	9	Yes
12.	162	22	12	Yes
13.	163	11	3	No
14.	164	22	15	Yes
15.	165	12	6	Yes
16.	167	7	6	No
17.	168	7	4	No
18.	169	23	14	Yes
19.	171	7	4	No
20.	172	19	7	Yes
21.	174	23	14	Yes
22.	176	23	14	Yes

23.	177	23	8	Yes
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Of the four trees listed above which do not meet the criteria to be categorized as a medium-large tree, one exceeds the height but does not meet the spread and three exceed the spread but do not meet the height. It is considered that the tree retention as proposed under the current plan meets the objectives of the control. Namely, to ensure the loss of biodiversity arising from development of the land is minimized and/or offset to mitigate the impact of that development, and to protect the scenic landscape, amenity and microclimate benefits provided by on-site vegetation. It is noted that the tree retention plan will be supported by extensive landscaping throughout the developed area of the site as well as additional plantings associated with the implementation of the Vegetation Management Plan.

8. Community Bus and Evacuation Procedures

Community Bus

The applicant has submitted additional information relating to the provision of the community bus service. It is stated that the bus service will operate 7 days per week and is not limited by normal business hours. It is recommended that the proposed condition of consent relating to the provision of a bus service be altered as follows:

Access to Facilities

A mini bus shall be made available to residents of the facility 7 days per week to access facilities in accordance with State Environmental Planning Policy (Housing for Seniors or People With a Disability) 2004. The mini bus shall provide access to:

- *Shops, bank service providers and other retail and commercial services that residents may reasonably require, and*
- *Community services and recreation facilities, and*
- *The practice of a general medical practitioner.*

Evacuation Procedures

The applicant has submitted the following response in regard to the proposed evacuation and emergency management procedures:

“HammondCare operates a network of established Aged Care Homes in New South Wales and Victoria. We have established organisation-wide policies and procedures including a detailed Disaster Plan Response (DPR) and business continuity plan for each site. Our sites are staffed 24 hours per day, 7 days per week.

All care and maintenance site staff are familiar with this DPR and training in it is ongoing. With respect to a bushfire or flooding event at Cardiff, residents would be immediately moved from the threat to the nearest safe location via the pedestrian path network. The Chapel and Training Rooms, nearest to Macquarie Road and the highest point of the site, will serve as a safe assembly point should residents need to be moved to secondary (off-

site) evacuation locations. Alternative access to the site is provided by the driveway from Macquarie Road and a Right of Way from Ada Street.”

It is recommended that the above-mentioned DPR be submitted to the Principal Certifying Authority prior to the issue of an Occupation Certificate to ensure that procedures are in place prior to the facility being occupied.

9. Traffic Modelling

The applicant has submitted supplementary information relating to the traffic modelling assumptions used in the Traffic and Parking Report prepared by Traffic and Transport Planning Associates, dated June 2015.

Data relies on a Traffic Study undertaken in 2013 for a separate development proposed in Ada Street which incorporated AM and PM peak traffic counts at the Macquarie Road, Ada Street and Wentworth Road intersection. The consultant has converted the peak traffic volumes recorded in this study to annual average daily traffic by applying a conversion rate of 13 (i.e. AADT = peak per hour volume x 13) resulting in a southbound flow past the site of 12,900. This equates to the AADT flow quoted in the Traffic and parking Report and is consistent with the most recent published RMS AADT data for Macquarie Road (North of Hillsborough Road) which was 22,247 in 2004.

Council is satisfied that the quoted traffic volumes within the Traffic and Parking Report are a valid representation of the current volumes.

Conclusion and Recommendation

It is considered that all matters identified at the public meeting held on 9 February 2017 have been addressed to the satisfaction of Council. The matters raised in the late submissions are not considered to warrant the submission of further information, additional conditions of consent or refusal of the application. It is recommended that the application is approved subject to conditions of consent.

An amended set of conditions has been included reflecting the additional information submitted by the applicant and the recommended conditions of consent provided by the Roads and Maritime Service.

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 authorized 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.

Should you require further information, please contact the undersigned on 4921 0174 or by e-mail on akleinmeulman@lakemac.nsw.gov.au.

Yours faithfully



Anna Kleinmeulman
Development Planner
Development Assessment and Compliance

I have reviewed this report and concur with the recommendation.



John Andrews
Chief Development Planner
Development Assessment and Compliance

Attachment A: Proposed Conditions of Consent

Attachment B: Amended Plans

Attachment C: Clause 4.6 Submission

Attachment D: New Submissions

Attachment E: Applicant's Response to Submissions

Attachment F: Legal Interpretations