

## NOTICE OF DETERMINATION

### DEVELOPMENT APPLICATION (AMENDED)

**To the Applicant:**

McCloy Project Management Pty Ltd  
C/- Barr Property and Planning  
PO Box 3107  
MEREWETHER NSW 2291

**LAND:**

99 RACECOURSE ROAD, RUTHERFORD  
LOT 100 DP1091841

**DEVELOPMENT:**

Section 4.55 Modification to Approved Community Title  
Residential Subdivision – Realignment of boundaries in Stages  
18-26, relocate the shared pathway in Stage 7 and Amend the  
lot sizes for Lots 716-720 and 801-804 in Stages 7 & 8.

The application submitted on 15 MAY 2018 to modify Development Application No. DA08-2357 pursuant to Section 4.55 (1A) of the Environmental Planning and Assessment Act, 1979, (as amended) has been modified in the manner and to the extent indicated in the Amended Schedule of Conditions as attached.

Those conditions which have been modified are identified within the shaded boxes contained within the schedule.

**Amended Consent Issued: 25 July 2018**

**Original Consent Endorsement Date: 22 March 2011**



PER GENERAL MANAGER

This notice should be retained and read in conjunction with the original Notice of Determination issued on 22 March 2011 and previous Section 96 Modifications dated 13 December 2011, 9 October 2012, 14 May 2013, 5 May 2015, 6 May 2015, 17 February 2017, 1 November 2017 and 20 November 2017. Please note the date of consent remains the original endorsement date, and that the consent lapses 5 years from this original endorsement date unless the conditions of consent specify a reduced period. Any reference in the Environmental Planning and Assessment Act, 1979 or any other Act to a development consent shall, in the case of this matter, be a reference to the original development consent as modified herein.

**Right of Appeal:**

If you are dissatisfied with this decision, section 8.9 of the Environmental Planning and Assessment Act, 1979 gives you the right to appeal to the Land and Environment Court.



## Schedule of Conditions DA 08-2357

(As Amended by Section 4.55 (1A) dated 25 July 2018)

### *Proposed 445 lot Community Title Residential Subdivision and Associated Recreational Areas, Racecourse Road, Rutherford.*

#### APPROVED PLANS AND DOCUMENTATION

1. The development shall be carried out in accordance with the stamped approved plans and documentation as detailed in the following schedule and any amendments arising through conditions of this consent or as shown in red colour on the plans. The amended and relevant original plans include:

| Plan/Report Ref. N°   | Dwg N°   | Rev N° | Revision Date | Prepared by: (consultant)      |
|---|----------|--------|---------------|--------------------------------|
| Overall Plan  | HD01     | 32     | 25.05.18      | High Definition Design Pty Ltd |
| Staging Plan  | HD02     | 32     | 25.05.18      | High Definition Design Pty Ltd |
| Precinct 2  | P2       | 25     | 01.11.17      | High Definition Design Pty Ltd |
| Precinct 3  | P3       | 25     | 01.11.17      | High Definition Design Pty Ltd |
| Geotechnical Investigations   | n/a      | 1      | 22/9/2010     | Coffey Geotechnics             |
| Stormwater Plan   | n/a      | B      | 31/8/2010     | ADW Johnson                    |
| Bushfire Hazard Assessment  | n/a      | n/a    | July 2010     | Tattersall Lander              |
| Aboriginal Heritage CMP   | n/a      | n/a    | 24/1/2011     | Mary Dallas Consulting         |
| Field Validation Survey   | n/a      | n/a    | 3/3/2008      | BACTEC SE Asia                 |
| Stony Creek Rehabilitation  | n/a      | B      | 22/9/2010     | Terras                         |
| Riparian Rehabilitation   | n/a      | n/a    | 14/9/2010     | ERM Australia                  |
| Project No: 15051C, General Arrangement and Typical Sections – Stage 6 Plan | C01, C10 | 1      | 23/03/2015    | GCA Engineering Solutions      |
| Project No: 15051C, Plan Sheet and Site Regrading Plan – Stage 6 Plan       | C02, C16 | 1      | 31/03/2015    | GCA Engineering Solutions      |
| Project No: HD69  | HD03     | 17     | 22.06.17      | High Definition Design Pty Ltd |
| Residential subdivision stage 7   | C760     | I      | 23.10.17      | Costin Roe Consulting          |
| Residential subdivision stage 7   | C761     | E      | 27.09.17      | Costin Roe Consulting          |
| Residential subdivision stage 7   | C762     | D      | 27.09.17      | Costin Roe Consulting          |
| Residential subdivision stage 7   | C765,    | G      | 23.10.17      | Costin Roe Consulting          |
| Residential subdivision stage 8   | C860     | G      | 23.10.17      | Costin Roe Consulting          |



|                                 |                            |   |          |                       |
|---------------------------------|----------------------------|---|----------|-----------------------|
| Residential subdivision stage 8 | C861,<br>C863              | C | 18.08.17 | Costin Roe Consulting |
| Residential subdivision stage 8 | C862                       | B | 18.08.17 | Costin Roe Consulting |
| Residential subdivision stage 8 | C865                       | B | 19.06.17 | Costin Roe Consulting |
| Stages 18-25 Layout Plan        | C01307<br>9.01-<br>Fig 01  | B | 17.02.17 | Costin Roe Consulting |
| Figure 2 Basin 1 Plan           | C01307<br>9.01 –<br>Fig 02 | B | 17.02.17 | Costin Roe Consulting |
| Figure 3 Basin Plan             | C01307<br>9.01 –<br>Fig 03 | B | 17.02.17 | Costin Roe Consulting |

*Note: A Construction Certificate application will be required for all proposed retaining walls where such walls exceed a height of 1000mm. Such application is to be supported by a design prepared and certified by a practicing structural engineer.*

*Condition Amended 13 December 2011*

*Condition Amended 9 October 2012*

*Condition Amended 14 May 2013*

*Condition Amended 5 May 2015*

*Condition Amended 6 May 2015*

*Condition Amended 17 February 2017*

*Condition Amended 7 September 2017*

*Condition Amended 1 November 2017*

*Condition Amended 20 November 2017*

*Condition Amended 25 July 2018*

2. A separate development application shall be lodged for the community facilities building and associated car parking area for consideration by the Council.
3. All passive and active recreation areas, open space areas and riparian areas are to be contained in a 'community association lot'.

*Condition Amended 13 December 2011*

## CERTIFICATES & REPORTS

4. **Prior to issue of the Subdivision Certificate**, provide a Community Management Statement to the satisfaction of Council which includes measures to address:
  - Appropriate building design guidelines for residential lots
  - Appropriate building design guidelines including fencing and structures within the open space community association lot
  - On-going maintenance of the Aboriginal Heritage Conservation Areas
  - On-going maintenance of the riparian lands and open space / recreational areas and facilities
  - On-going maintenance of retained, rehabilitated and re-established habitat



- On-going maintenance of stormwater detention and water quality ponds and associated structures
- On-going maintenance of landscaped noise attenuation mounds and barriers

## CONTRIBUTIONS & FEES

5. Pursuant to Section 80A(1) of the Environmental Planning and Assessment Act 1979, and the Maitland S94 Contributions Plan (City Wide) 2006, a contribution of **\$5,749,200** shall be paid to the Council.

The contribution is calculated from Council's adopted Section 94 Contributions Plan in the following manner:

|  | lots  | rate    | Total              |
|--|-------|---------|--------------------|
| 2006(A) Citywide Rec & Open Space          | 450 x | \$4,940 | \$2,223,000        |
| 2006(A) Citywide Road & Traffic Facilities | 450 x | \$4,590 | \$2,065,500        |
| 2006(A) Citywide Cultural Facilities       | 450 x | \$886   | \$398,700          |
| 2006(A) Citywide Community Facilities      | 450 x | \$1,969 | \$886,050          |
| 2006(A) Citywide Cycleways/Shared Paths    | 450 x | \$203   | \$91,350           |
| 2006(A) Citywide Management/Admin          | 450 x | \$188   | \$84,600           |
|  |       |         | <b>\$5,749,200</b> |

*The above contributions rates are indexed, at least annually, with reviewed rates to apply from 1st February each year in accordance with the provisions of the Maitland Section 94 Contributions Plan (Citywide) 2006. Please refer to Council's web page for the current rates applicable.*

*Payment of the above amount shall apply to Development Applications as follows:*

- Subdivision only - prior to issue of the Subdivision Certificate.
- Building work only - prior to issue of the Construction Certificate.
- Subdivision and building work - prior to the issue of the Construction Certificate, or Subdivision Certificate, whichever occurs first.
- Where no construction certificate is required - prior to issue of an Occupation Certificate.
- For extractive industries - annually from the date of issue of development consent.

*The above "contribution" condition has been applied to ensure that:*

- Where the proposed development results in an increased demand for public amenities and services, payment towards the cost of providing these facilities/services is made in accordance with Council's adopted contributions plan prepared in accordance with the provisions of section 94 of the Environmental Planning and Assessment Act, 1979.*
- Council's administration expenses are met with respect to the processing of the application.*

*Condition Amended 9 October 2012*

6. Prior to the issue of the Subdivision Certificate, "house numbering" and "subdivision certificate" fees, in accordance with Council's *Schedule of Fees and Charges*, shall be paid to Council.



7. **Prior to issue of the Construction Certificate** for stages 5, 6, 7 and 8, provide to the Council independent certification of remediation (search and removal) of unexploded military ordnance from the site. **Prior to the issue of the Construction Certificate** for any stage, this area shall be isolated on site, to prohibit unauthorised entry. The area shall remain isolated until such times as independent certification of the remediation is provided to Council in accordance with this condition.

*Condition Amended 13 December 2011*

8. **Prior to issue of the Subdivision Certificate** for each stage, original plans and/or documents of survey/title, and four copies, shall be submitted to Council.

*Condition Amended 13 December 2011*

9. **Prior to issue of the Subdivision Certificate** for each stage, a copy of a report prepared by a geotechnical engineer shall be submitted to Council:

- classifying each lot in accordance with Australian Standard AS 2870, and
- verifying that compaction of any approved fill-material on the lots is in accordance with AS3798 employing "level 1" inspection and testing.

*Condition Amended 13 December 2011*

10. **Prior to issue of the Construction Certificate**, application (together with a plan) shall be made, and submitted to Council, for road names. The suggested names shall offer options, which shall be supported with reasons (historical or otherwise) for the chosen names.

#### UTILITY SERVICES

11. Underground water, sewerage (with direct connection to a Hunter Water treatment facility), telecommunications and electrical power services shall be reticulated for each lot in accordance with the service provider's requirements.
12. Street and pathway lighting shall be provided in accordance with the requirements of the power supply authority and Australian Standard AS 1158;
- adopting categories P4 (collector roads) & P5 (local roads) for the appropriate road type within the subdivision,
  - providing "cut-off" luminaries (such as "Aeroscreen" or similar)

13. **Prior to issue of the Subdivision Certificate** for each stage, a certificate of compliance under Section 50 of the Hunter Water Act 1991 for this development shall be submitted to Council.

*Condition Amended 13 December 2011*

14. **Prior to issue of the Subdivision Certificate**, for each stage, documentary evidence from the suppliers of electrical power, and communications (and including gas if applicable), confirming that satisfactory arrangements have been made for the installation of infrastructure services, shall be submitted to Council.

*Condition Amended 13 December 2011*



## VEGETATION & LANDSCAPING

15. **Prior to the issue of the Construction Certificate** for each stage, a detailed "landscape plan", in accordance with Council's tree planting guidelines showing proposed street plantings, shall be submitted to Council for approval. The plan shall include details of the type of species, and the mature height and spread. All landscaping shall be maintained by the owner/applicant for a minimum period of 2 years.

*Condition Amended 13 December 2011*

16. **Prior to the issue of the Construction Certificate** for each stage, a detailed "landscape plan", shall be submitted to Council for approval for the rehabilitation of Stony Creek. The landscape plan shall be consistent with the recommendations of the Stony Creek Rehabilitation Report, Version B prepared by Terras and dated 22.9.2010. The plan shall include details of the type of species, and the mature height and spread.

*Condition Amended 13 December 2011*

17. **Prior to the issue of the Subdivision Certificate**, for each stage the site shall be cleared of all trees:

- within the road reserve
- along proposed lot boundaries

*Condition Amended 13 December 2011*

18. **Prior to issue of the Subdivision Certificate**, for each stage, all weeds, rubbish and the like, shall be destroyed and/or removed from within the proposed community land.

*Condition Amended 13 December 2011*

19. **Prior to issue of the Subdivision Certificate** for Stages 6, 7, 8, 19, 20, 21, 22, 23, 24, 25, 26 and 27, an acoustic fence to height RL24 and minimum 1200m in length shall be constructed along the top of the existing noise mound along the southern boundary of the site to mitigate rail noise and shall be certified to be in accordance with the recommendations in the report by Renzo Tonin.

*Condition Amended 13 December 2011*

20. **Prior to issue of the Subdivision Certificate**, for each stage, provide evidence of satisfactory completion of Stony Creek restoration and rehabilitation works.

*Conditions Amended 13 December 2011*

## FAUNA

21. **Prior to commencement of works involving clearing of native vegetation**, a qualified ecologist shall inspect, supervise and report to Council regarding the removal and relocation of any threatened fauna species, which in the professional opinion of the ecologist, require such treatment.

## BUSHFIRE

22. Compliance with the General Terms of Approval of the New South Wales Rural Fire Service dated 6 December 2011 as follows:



- a) At the commencement of residential building works the proposed landscape plan prepared by Terras Landscape Architects, reference 8733.5 dated 23 September 2010 shall be implemented in full for this development.
- b) Water, electricity and gas are to comply with Section 4.1.3 of Planning for Bushfire Protection 2006.
- c) Public road access on bushfire prone lands shall comply with Section 4.1.3(1) of Planning for Bushfire Protection 2006 with the exception that dead end roads greater than 200 metres in length are acceptable.

*Advice: Any further development application for class 1, 2 & 3 buildings as identified by the Building Code of Australia may be subject to a separate application under Section 790BA of the EP & A Act and address the requirements of Planning for Bushfire Protection 2006.*

*Condition Amended 13 December 2011*

## RIPARIAN CORRIDOR

- 23. Compliance with the General Terms of Approval of the New South Wales Office of Water dated 20 January 2009 provided as Attachment 'A' to this schedule of conditions.

## FLOODING

- 24. All residential lots shall have a finished surface level that is at a minimum of 500mm above the 1%AEP storm event for the watercourses traversing the site.

## ARCHAEOLOGY

- 25. Compliance with the General Terms of Approval of the New South Wales Department of Environment Climate Change and Water dated 9 November 2010 provided as Attachment 'B' to this schedule of conditions.
- 26. Prior to issue of the Subdivision Certificate, provide evidence of compliance with the recommendations of the Aboriginal Heritage Conservation Management Plan to the satisfaction of Council.

## ROADS & PATHS

- 27. Kerb and gutter and road construction with an asphaltic concrete wearing surface of all proposed roads, together with all necessary stormwater drainage and infrastructure facilities, shall be provided in accordance with Council's Manual of Engineering Standards.
- 28. An intersection treatment, catering for left-turn, right-turn and through-traffic movements in Racecourse Rd at its junction with Road 1, incorporating approved linemarking within the existing carriageway, and approved signposting, shall be provided in accordance with Council's requirements. Road 1 shall incorporate dedicated left-turn and right-turn lanes into Racecourse Rd.
- 29. Road alignment at the following locations shall be amended to eliminate "broken-back" curves compliant with Council's Manual of Engineering Standards:
  - a) Road 2 between Road 5 & Road 6,



b) ~~Road 21 adjacent to lots 5125 & 5137,~~

c) ~~Road 10 between lots 3005 & 3009.~~

~~Road 2 between Road 16 & Road 18 shall be aligned to provide compatible compound curves.~~

*Condition Deleted 13 December 2011*

30. The proposed Roads 17 & 18 shall be 9m carriageway width within a 20m road reserve.

*Note: The 5.5m wide footways will incorporate a shared path and should including enhanced landscaping.*

*Condition Amended 13 December 2011*

31. ~~Within Road 20, the section of proposed road reserve between lots 5701 & 5705 shall be reallocated into allotment(s).~~

*Condition Deleted 13 December 2011*

32. ~~Cul-de-sac turning heads shall be circular, in accordance with Council's Manual of Engineering Standards.~~

*Condition Deleted 13 December 2011*

33. A shared pedestrian/cycle pathway 2.5m and 2m wide shall be provided in accordance with the approved Overall Site Plan, Revision 3, dated 17.11.11, and Council's Manual of Engineering Standards.

*Condition Amended 13 December 2011*

- 33A. Additional southern shared pedestrian/cycleway paths 2.5m and 2.0m wide shall be provided from the main east/ west shared pedestrian/cycleway path to provide linkages with Grand Parade to the east of Stage 21, Riverside Close being to the east of Stages 25 & 26 and to Empire Crescent within Stage 24.

*Condition Added 20 November 2017*

34. A pedestrian path 1.5m wide shall be provided along all roads, other than those with shared pathways, in accordance with Council's Manual of Engineering Standards.

35. A concrete driveway within the *handle* of battle-axe lots shall be provided in accordance with Council's Manual of Engineering Standards. The minimum width of *handles* shall be 3.5m.

## FENCING

36. All fencing between the community association open space lot and adjoining residential lots and roadways shall be of an open style design.

## DEMOLITION OF STRUCTURES

37. All demolition works are to be carried out in accordance with Australian Standard AS 2601-2001.

## ACCESSIBILITY

38. All internal paths and access ways within the community association lot shall be designed to meet the accessibility standards under AS 1428.



## STORMWATER DRAINAGE

39. A major/minor stormwater drainage system shall be provided, in accordance with Council's Manual of Engineering Standards, catering for:
- discharge from contributing catchment areas in their ultimate developed state,
  - discharge from adjoining properties in appropriate easements (where necessary) to the public drainage system.
40. A stormwater detention system shall be designed and approved for the subject subdivision to reduce post-developed discharges to pre-developed discharges, for the critical storm up to and including the 1% AEP ("100 year") event, in accordance with Council's Manual of Engineering Standards.
41. A stormwater retention system shall be designed, approved and constructed to entrap gross pollutants, nutrients and hydrocarbons generated from the contributing catchment areas in their ultimate developed state, in accordance with Council's Manual of Engineering Standards. Gross pollutant traps shall be located adjacent to public roads to facilitate vehicle access.

## EROSION CONTROL

42. The site and its surrounding environs shall be protected from the effects of erosion (as water and wind borne particles) and off-site "vehicle tracking", by the application of adequate controls. Details in accordance with Council's Manual of Engineering Standards and the manual, "*Managing Urban Stormwater*" shall be submitted as part of the Construction Certificate application.

## CIVIL WORKS – Certification

43. Prior to issue of the Construction Certificate, for each stage, for the road and drainage works, an engineering design shall be prepared, in accordance with Council's Manual of Engineering Standards, for approval.

*Condition Amended 13 December 2011*

44. Prior to commencement of works within an existing public road reserve;
- an engineering design, in accordance with Council's Manual Of Engineering Standards, shall be submitted to Council for approval
  - consent under the Roads Act for the approved works, shall be issued by Council
  - all relevant Council fees shall be paid
  - a traffic control plan in accordance with the RTA publication "Traffic Control at Worksites" shall be submitted to, and be approved by, Council.

45. Prior to issue of the Subdivision Certificate, for each stage, all necessary works shall be carried out in accordance with this consent and Council's Manual of Engineering Standards.

*Condition Amended 13 December 2011*



## LAND TITLE

*Note: Lot numbers quoted in the following "Land Title" conditions refer to the approved plan. Any requirements for specified lots within nominated reports must be cross-referenced with the approved plan.*

46. A restriction on the title of lots 1309, 1310, 2610-2612, 2601-2609, 2505-2507, 2406-2409, 2306-2309, 2205-2208, 2105-2113, 813-828 and 805, under Section 88B of the Conveyancing Act (or alternatively a clause giving the same effect in the Community Management Statement), shall prohibit dwellings other than single storey construction on the affected lots.

*Condition Amended 13 December 2011*

*Condition Amended 14 May 2013*

*Condition Amended 20 November 2017*

- ~~47. Prior to issue of the Subdivision Certificate, a restriction on the title of lots 901-912, 1005-1018, 1102-1116, 1209-1219, 1301-1313, 1401-1412, 1501-1512, 1601-1614, 1701-1709, 1801-1822, 2602-2604, 2610-2612, 2701-2712 and 2714-2720, under Section 88B of the Conveyancing Act (or alternatively a clause giving the same effect in the Community Management Statement), shall be created to give effect to the requirement for incorporation of noise mitigation measures in the construction of dwellings to achieve maximum internal nighttime noise levels of 30dB(A).~~

*Condition Amended 13 December 2011*

*Condition Deleted 14 May 2013*

48. Prior to issue of the Subdivision Certificate, a restriction on the title of lots 2610-2612, under Section 88B of the Conveyancing Act (or alternatively a clause giving the same effect in the Community Management Statement), shall be created to give effect to the requirement for construction to BAL-12.5 (AS3959-2009).

*Condition Amended 13 December 2011*

49. The proposed public roads shall be dedicated to Council, at no cost to Council.
50. The community land containing the proposed stormwater basins and associated quality and quantity control devices shall be nominated in the Community Management Statement to permit access for Council, at Council's discretion.
51. The authority empowered to release, vary or modify restrictions and covenants on the use of the land required by this consent, shall be nominated as "Maitland City Council".
52. The authority empowered to release, vary or modify inter-allotment drainage easements shall be nominated as "the lots burdened and benefitted, only with the consent of Maitland City Council".

## ADDITIONAL CONDITIONS

53. A construction certificate application, for each stage, is required for all proposed retaining walls where such walls exceed a height of 1000mm. Such application is to be supported by a design prepared and certified by a practicing structural engineer.

*Condition Added 5 May 2015*



54. The approved lot to be created within Lot 3 in DP270823 referred to as future Lot 100 is to be developed for a non-residential land use purpose.

*Condition Added 6 May 2015*

55. No retaining walls are approved within existing or future dedicated public land including road reserves. All batter slopes shall comply with the 'desirable' requirements as listed in Council's Manual of Engineering Standards.

*Condition Added 1 November 2017*

56. For Stages 7 and 8, retaining walls on common boundaries shall be in accordance with approved retaining wall plan. No walls shall exceed the maximum height of 1.5 metres.

*Condition Added 1 November 2017*

57. Prior to the issue of a construction certificate for works in association with the creation of the cul de sac off Discovery Way pursuant to DA 17-1137 for Seniors Housing the super lot within Stage 10 shall be registered with Lands Title and a copy provided to Council.

*Condition Added 20 November 2017*

58. Discovery Way cul de sac shall be included in the linen plan and dedicated as road to Council at no cost and a subdivision certificate lodged with Council in accordance Conditions 8, 11, 13 and 14 of this consent.

*Condition Added 20 November 2017*

## ADVICES

*The following advices are limited in scope and should not be understood to encompass all areas of responsibility of the consent holder, relating to the development.*

- A. You are advised that a separate approval may be required under the **Native Vegetation Act 2003** and it is recommended that contact is made with the relevant Catchment Management Authority prior to any clearing of native vegetation on the site.
- B. You are advised that, in accordance with Council's planning provisions, only Council may issue the **Subdivision Certificate**.
- C. You are advised that in regard to potential soil erosion from the construction site, such pollution of the environment is an offence under the **Protection of the Environment & Operations (POEO) Act** and may incur infringement fines.
- D. You are advised that, in accordance with the EP&A Act, (sec.109F) payment of the building industry **Long Service Leave levy**, where applicable, must be paid prior to issue of any Construction Certificate.
- E. You are advised that, in accordance with Council's planning provisions, Council as the appointed Principle Certifying Authority (PCA) will conduct "**critical stage inspections**" during



construction. The appropriate fee in accordance with Council's Schedule of Fees & Charges must be paid to Council prior to commencement of construction.

- F. You are advised to record and notify Council in writing, of any existing **damage to the street infrastructure** (including landscaping) in the vicinity of proposed works associated with this consent, prior to commencement of construction. The absence of such notification signifies that no damage exists. Where necessary repairs are carried out by Council, the owner of the development property shall be held liable for the cost of those repairs.
- G. You are advised that the issue of this development consent does not negate the responsibility of the land owner in respect to any **restriction, covenant or easement** applicable to this property and that Council will not be held responsible when action on this consent results in any loss or damage by way of breach of matters relating to title of the property.
- H. Any future development application for a child care facility/land use, within proposed Lot 100, will be required to consider the potential impacts by way of noise, light, smell or general activities of nearby Industrial and Business Zone.

*Advice Added 6 May 2015*