

COUNCIL ASSESSMENT REPORT

Panel Reference	PPSHCC-40
DA Number	16-2020-136-1
LGA	Port Stephens
Proposed Development	Construction and use of food and drink premises - pub with undercroft car parking and associated signage and landscaping
Street Address	795 Medowie Road MEDOWIE LOT: 1 DP: 1215257
Applicant/Owner	Applicant - Muir Point Pty Ltd C/- KDC Pty Ltd Owner – Port Stephens Council
Date of DA lodgement	27 March 2020
Number of Submissions	Two (2)
Recommendation	Approval with conditions
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011	The proposal is listed within Schedule 7, Part 3 of the <i>State Environmental Planning Policy (State and Regional Development) 2011</i> , being a Council related development with a capital investment value over \$5 million.
List of all relevant s4.15(1)(a) matters	Environmental planning instruments: s4.15(1)(a)(i) <ul style="list-style-type: none"> State Environmental Planning Policy No.55 – Remediation of Land State Environmental Planning Policy (State and Regional Development) 2011 State Environmental Planning Policy (Koala Habitat Protection) 2019 State Environmental Planning Policy 64 – Advertising and Signage State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 State Environmental Planning Policy (Infrastructure) 2007 Port Stephens Local Environmental Plan 2013 (PSLEP2013) Development Control Plan: s4.15(1)(a)(iii) <ul style="list-style-type: none"> Port Stephens Development Control Plan 2014 (DCP2014)
List all documents submitted with this report for the Panel's consideration	Attachment 1 – Development Plans Attachment 2 – Recommended Conditions of Consent Attachment 3 – Schedule of Appendices for application supporting documentation Attachment 4 – External agency advice from Department of Defence Attachment 5 – External agency advice from Hunter Water Corporation Attachment 6 - External agency advice from Ausgrid
Clause 4.6 requests	N/A
Summary of key submissions	Parking Shortfall Noise Anti-Social Behaviour/crime Lack of police presence
Report prepared by	Dylan Mitchell – Senior Development Planner
Report date	25 November 2020

Summary of s4.15 matters

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?

Yes

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

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**Not Applicable**

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?

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S7.24)?

No

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

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

ASSESSMENT REPORT AND RECOMMENDATION

EXECUTIVE SUMMARY

Development consent is sought for a development application (No. 16-2019-136-1) for the construction and use of food and drink premises - pub with undercroft car parking and associated signage and landscaping at 795 Medowie Road MEDOWIE (LOT: 1 DP: 1215257).

The key components of the development include the following:

- Construction of a single storey building for use as a food and drink premises - pub (total GFA 1,038m²);
- Construction and use of an undercroft car-parking facility, including a total of 54 car parking spaces, 6 motorcycle parking spaces and a bicycle storage area;
- Additional 12 car parking spaces provided at ground level, adjacent the building entrance;
- Loading bay, accessible from Muir Street and catering for Light Rigid vehicles;
- Construction of a new combined ingress and egress driveway on Muir Street and Peppertree Road;
- Three (3) business identification signs and one (1) building identification sign; and
- Landscaping, including internal amenity planting and perimeter planting.

The subject site, comprises a single allotment, legally identified at the time of lodgment as Lot 1 DP 1215257 and measures 53ha in size with an irregular shape. Since the application was originally lodged with Council, a previously approved one into five lot Torrens Title Subdivision (DA 16-2018-789-1) has been registered and the area subject to this application is now known as 24 Peppertree Road, Medowie, legally defined as Lot 1 DP 1264236. The newly created lot comprises 2,009m² of predominately cleared land with frontage to Muir Street to the south and Peppertree Road to the west.

The site is zoned part B2 Local Centre, R2 Low Density Residential and RE1 Public Recreation. However, the area subject to development, is confined to the newly created lot known as Lot 1 DP 1264236, is wholly zoned B2 Local Centre. The proposed food and drink premises is permitted with consent in the B2 zone and the proposed development is considered to be consistent with the zone objectives.

The application was originally lodged and advertised with a development description for the construction and use of food and drink premises and two commercial tenancies with basement car parking. On the 12 August 2020, Council received an amendment to the application, pursuant to Clause 55 of the *EP&A Regulations 2000*. The amendment, included the removal of the two commercial premises and an extension of the food and drink premises, maintaining generally the same building footprint as originally proposed. The land use is also now further defined, being for a food and drink premises – pub, as defined under the PSLEP2013.

The application was first notified and advertised from 10 April 2020 to 24 April 2020, under the original development description. No submissions were received during the first exhibition period. Following receipt of the Clause 55 amendment, the application was re-notified and re-advertised from 1 September 2020 to 15 September 2020. Two unique submissions were received during the second exhibition period.

The key issues in respect of the assessment of the application related to impacts to residential amenity, social impact, drainage and water quality. To address these issues specialist studies were submitted in support of the application, including noise, traffic impact, social impact and stormwater reports. Additional information from the applicant

was also requested during the assessment to address these key issues. The studies were assessed by Council officers and, where appropriate, recommendations and mitigation measures outlined in the specialist studies have been included in the conditions of consent.

The proposal is referred to the Hunter and Central Coast Regional Planning Panel (HCCRPP) for determination pursuant to Schedule 7 'Regionally Significant Development' of the State Environmental Planning Policy (State and Regional Development) 2011 and Schedule 2 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) for Council related development (Council owned land) with a capital investment value over \$5 million.

The development has been assessed under Section 4.15 of the EP&A Act and is considered satisfactory. Accordingly, it is recommended that the application be approved subject to conditions of consent contained in **Attachment 2**.

1. RECOMMENDATION

That DA 16-2020-136-1 for construction and use of food and drink premises - pub with undercroft car parking and associated signage and landscaping at 795 Medowie Road MEDOWIE (LOT: 1 DP: 1215257) be approved subject to the conditions in **Attachment 2**.

2. INTRODUCTION

This report provides a detailed overview of the proposed construction and use of food and drink premises - pub with undercroft car parking and associated signage and landscaping at 795 Medowie Road MEDOWIE (LOT: 1 DP: 1215257). The development application is referred to the Hunter and Central Coast Regional Planning Panel (HCCRPP) for determination pursuant to Schedule 7 'Regionally Significant Development' of the *State Environmental Planning Policy (State and Regional Development) 2011* (SRDSEPP) and Schedule 2 of the *EP&A Act* for Council related development with a capital investment value over \$5 million.

3. BACKGROUND

In 2016, Council adopted the Medowie Planning Strategy (the Strategy). The Strategy provides local direction for land use planning and sustainable growth within Medowie over the 20-year period from 2016 - 2036. The Strategy forecasts a maximum growth scenario of 17,500 people by the year 2036 (from 10,300 people in 2016). The area is expected to accommodate 2,400 new dwellings in residential release areas and additional 180 in rural residential release areas. Approximately 9ha of general commercial rezoning was identified in the Strategy. The site subject for this application is located within the Medowie Town Centre Masterplan and identified for future commercial development under the Strategy.

The site has previously been subject to a rezoning via amendment of the PSLEP2013 (Amendment No. 26) and was gazetted on 13 September 2018. The amendment rezoned part of the subject site from R2 Low Density Residential to B2 Local Centre. The objective of the rezoning was to facilitate future commercial development of the land consistent with the Medowie Planning Strategy.

The site was previously subdivided in 2015 (Council record number 16-2015-6006-1) to enable the extension of Peppertree Road and Muir Street, resulting in the lot configuration at lodgment. There are a number of additional historic application records

relating to the parent lot dating back to 1983 when the site was used for agricultural purposes.

In 2019, development consent was granted under DA 16-2018-789-1 for a one into five lot Torrens title subdivision to formalise the three currently divided sections of the subject site, separated as a result of the Peppertree Road and Muir Street extensions, as illustrated in **Figure 1** below. The approved lots were formally registered with NSW Land and Registry Services in June 2020, after the current application was lodged with Council.

The area subject to the current proposal, is located on approved Lot 1 as created under DA 16-2018-789-1 and is now known as Lot 1 DP 1264236. Immediately to the east of the proposal, on Lot 2 DP 1264236, a development application for an office premises was approved by Council in August 2019. A further development application was approved by Council on 10 December 2019 for a service station, food and drink premises and vehicle workshop on Lot 3 DP 1264236.

Lot 4 DP 1264236 to the south is to be further subdivided into 4 lots, as approved under DA 16-2019-445-1, approved by the HCCRPP on 18 May 2020. The application also included the construction of a commercial premises (multiple-tenancies), a medical centre, a retail premises (pharmacy) and centre-based childcare facility. A further development application, for a food and drink premises – McDonalds restaurant was approved by Council on 9 June 2020 on Lot 4 DP 1264236.

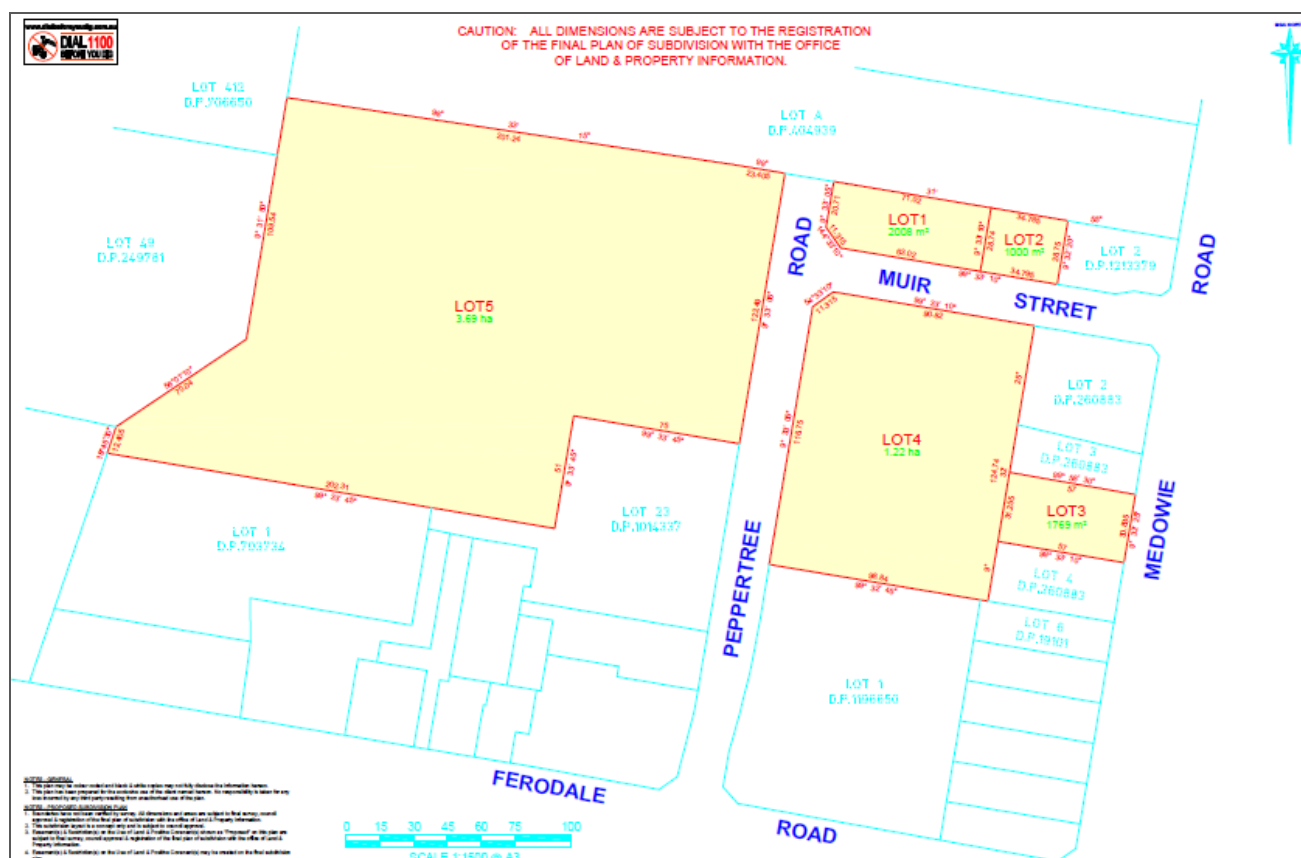


Figure 1: Approved subdivision Plan at 795 Medowie Road as per Approved DA 16-2018-789-1.

4. SITE DESCRIPTION

The subject site, at the time of lodgment comprised a single allotment, legally identified as Lot 1 DP 1215257 and measured 53 ha in size with an irregular shape.

The site area subject to the development includes Lot 1 as created under DA 16-2018-789-1, as shown in **Figure 2** below (blue outline denotes the lot configuration at lodgment

Surrounding Land Uses

To the south and south west, the site adjoins the existing Medowie Local Centre which comprises a mix of retail/business uses, and several food and drink premises. Immediately to the south is a Woolworths supermarket. Approximately 160m further south, is the Medowie Community Centre.



The site is subject to a number of environmental constraints, however, the majority of constraints are located within the vegetated portion of the site to the west of Peppertree Road. The mapped environmental constraints include:

- Bushfire Prone Land;
- Acid Sulfate Soils – Class 5;
- Koala habitat – preferred, 100m buffer over cleared land’ and ‘link over cleared land’ (partial in the western section of the parent lot);
- Endangered Ecological Community- Blue Gum High Forest and Swamp Sclerophyll Forest;
- Flood Prone Land (partial in the western section of the parent lot);

- RAAF Base Williamtown and Salt Ash Air Weapons Range – Height Trigger – 45m;
- RAAF Base Williamtown Bird Strike Group B;
- Hunter Water Corporation Special Area - Grahamstown Dam;
- OEH Biodiversity Values map; and
- Stormwater drainage problem area.

Site Inspection

A site inspection was carried out on 19 May 2020. The subject site can be seen in the images below:



Image 1: View east towards development site and Medowie Road in the distance



Image 2: View north east towards corner of Muir Street and Peppertree Road



Image 3: View north east towards Muir Street Frontage



Image 4: View north towards proposed extension of Peppertree Road reserve

5. PROPOSAL

The development proposes construction and use of a food and drink premises - pub with undercroft car parking, as shown in **Figure 3-4** below.

The key components of the development include the following:

- Construction of a single storey building and use as a food and drink premises - pub (total Gross Floor Area (GFA) 1038m²);
- Construction and use of an undercroft car-parking facility, including a total of 54 car parking spaces, 6 motorcycle parking spaces and a bicycle storage area;
- Additional 12 car parking spaces provided at ground level, adjacent the building entrance;
- Loading bay, accessible from Muir Street and catering for Light Rigid vehicles;
- Three (3) flush mounted panel signs and one (1) building identification sign;

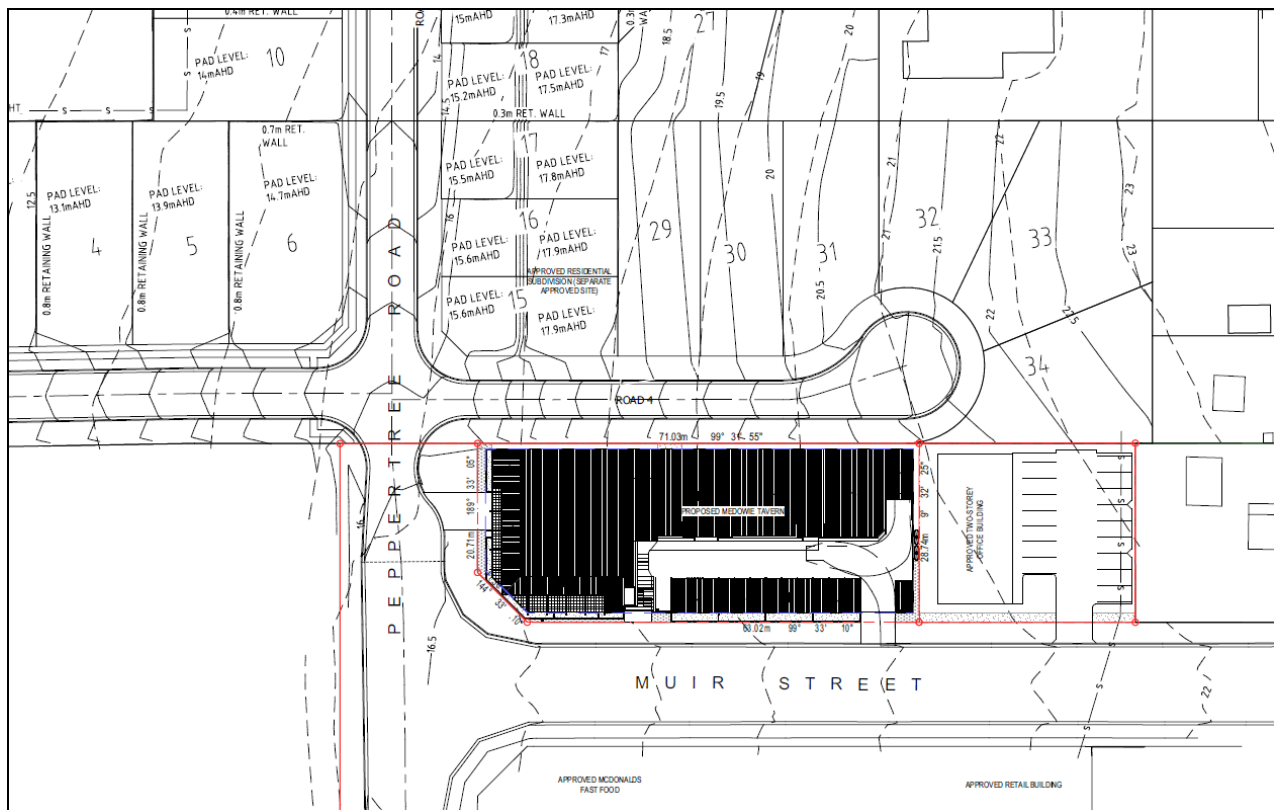
- Construction of new combined ingress and egress driveway on Muir Street and Peppertree Road;
- Landscaping, including internal amenity planting and perimeter planting; and
- Removal of all existing vegetation.

Food and Drink Premises - Pub

The proposed pub building consists of a single storey, with a GFA 1038m² (See **Figure 3-5** below). The proposed layout includes two bars, a sports lounge, gaming area, kitchen, dining and lounge area, café, covered outdoor dining terrace and kids play area (see **Figure 4** below). Back of house facilities include office and storage space, keg room and staff bathrooms. Accessible bathrooms are available to patrons of the development.

Stairs are provided from Muir Street to the entrance of the building as well as a lift providing accessible access to all levels.

The proposed hours of operation are 10am to 12pm, Monday to Saturday and 10am to 10pm Sunday. Up to 10 staff would be present on site at any one time.



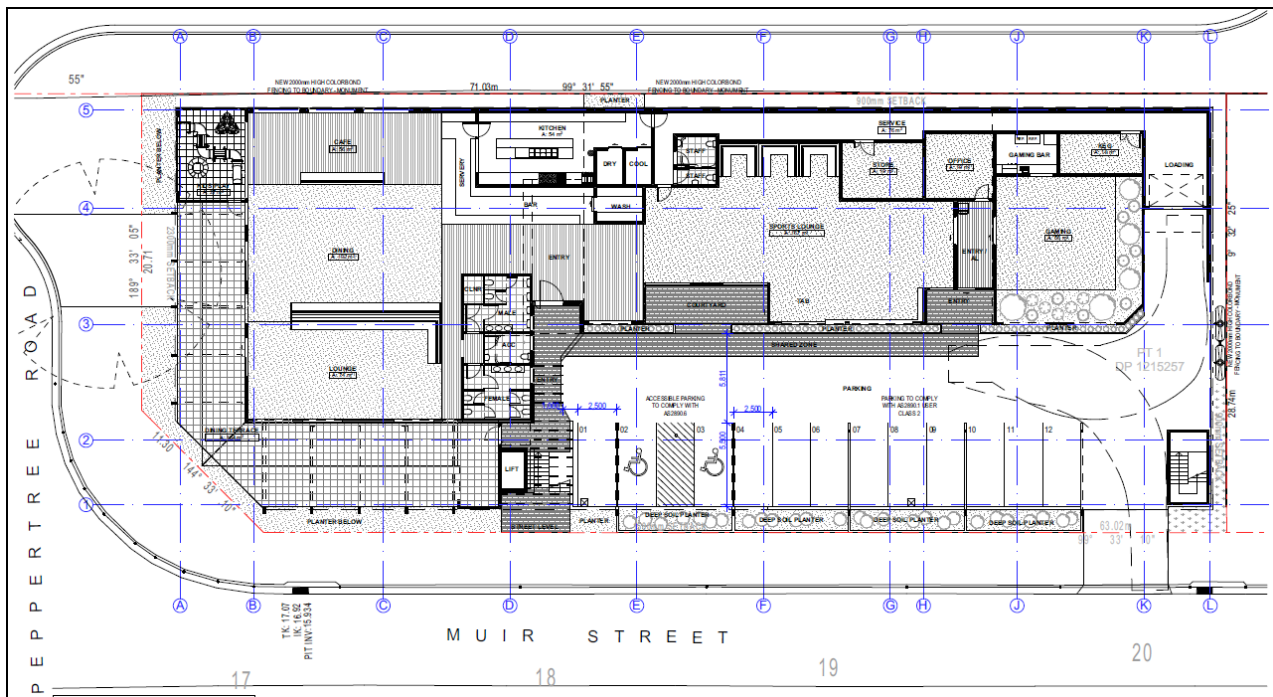


Figure 4: Proposed Site Layout and Internal Floor Plans

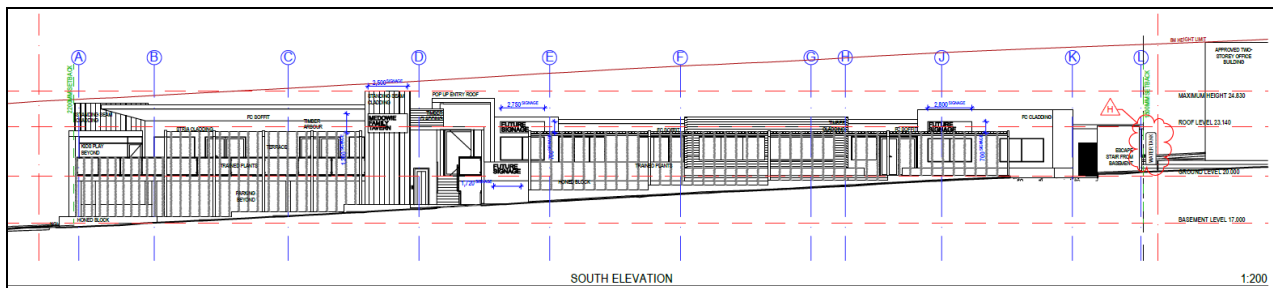


Figure 5: Proposed South Elevation

Access and Car Parking

The proposal includes the extension of Peppertree Road to the north, to enable access to the vehicle crossover into the car park.

It is proposed to construct one vehicle crossover onto Muir Street and one vehicle crossover on Peppertree Road to the undercroft car park. Both driveways will be combined ingress and egress.

The proposal includes the provision of 66 dedicated parking spaces (including 4 disabled spaces), with 12 of the parking spaces are located at ground level and 54 parking spaces located in the undercroft car parking. In addition, 6 motorbike parking space and a bicycle storage area are also included at the undercroft level.

Signage

The proposal includes three flush mounted panel signs and one building identification sign on the southern elevation, fronting Muir Street. Each sign features internal illumination. The dimensions of each sign are as follows:

- Building Identification Sign: 2.5m x 1.2m;
- Sign 1: 2.75m x 0.7m;
- Sign 2: 1.72m x 0.7m; and
- Sign 3: 2.8m x 0.7m.

Site Servicing

A loading bay is proposed at the eastern end of the building with access internally via a walkway at the back of the building. Adequate provision of space has been provided to allow a Light Ridged Vehicle (LRV) to access the site, reverse into the loading bay and exit in a forward direction onto Muir Street.

It is expected that between one and two deliveries would occur daily for the food and drink premises. Deliveries are to be made outside of peak times and during day time hours only, being 7am – 6pm.

Waste generated during operation of the premises is proposed to be stored at the rear of the loading area where there will be a minimum of 2 bulk bins provided (for the separation of general waste and recycling). Waste collection is expected to be undertaken by a private contractor during day time hours, being 7am- 6pm.

6. PLANNING ASSESSMENT

6.1 Biodiversity Conservation Act 2016

The *Biodiversity Conservation Act 2016* (BC Act) requires all types of development (Part 4 and Part 5 developments) to be assessed to determine whether the biodiversity offset scheme is to be applied. The purpose of the *BC Act* is to maintain a healthy, productive and resilient environment for the greatest well-being of the community, now and into the future, consistent with the principles of ecologically sustainable development.

For proposals assessed under Part 4 of the EP&A Act, the application for development consent must be accompanied by a Biodiversity Development Assessment Report (BDAR) as required by the Biodiversity Assessment Methodology (BAM) where it is likely to 'significantly impact on threatened species'.

The proposed development involves the removal of eight preferred koala feed trees (*Eucalyptus Robusta*) of varying maturity, which represents the only vegetation removal that holds ecological significance. The area subject to development has already been substantially modified and cleared of vegetation under previous consents, and represents limited biodiversity value.

The proposal is not located on land mapped on the Biodiversity Values Map and the removal of the eight trees does not cause clearing in excess of the area threshold. The application was assessed by Council's Natural Resources Section and was not found to likely result in significant impact to threatened species or ecological communities or their habitats. As such, the Biodiversity Offset Scheme does not apply to the development.

6.2 Hunter Water Act 1991

The proposed development falls within the Grahamstown Dam Special Area as declared under the *Hunter Water Regulation 2015*. A Stormwater Management Report (MPC Consulting Engineers, 30 July 2020) was submitted with the application. The report outlined measures for the treatment of water and waste water so as to not impact on quality and quantity of water entering drinking water catchments.

The application was referred to Hunter Water Corporation (HWC) for comment in accordance with Section 51 of the *Hunter Water Act 1991* (**Attachment 6**). In response, no objection was made and HWC noted that the development could achieve neutral or beneficial effect (NorBE) on water quality and Council's water quality stripping targets.

6.3 Environmental Planning and Assessment Act 1979

6.3.1 Section 2.15 – Functions of Sydney district and regional planning panels

The HCCRPP is the determining authority for the subject application as the proposal is regionally significant development as identified under Schedule 7 Clause 3 of *SRDSEPP*, being for a Council related development with a capital investment value (CIV) over \$5 million. The cost summary report submitted with the application estimates the proposed CIV at \$5,660,509.

6.3.2 Section 4.46 – Integrated development

Section 4.46 of the *EP&A Act* provides that development is integrated development if in order to be carried out, the development requires development consent and one or more other approvals.

The proposed development does not require approval under any Act listed under S4.46 and therefore the provisions of this clause does not apply.

6.3.3 Section 4.14 - Consultation and development consent - certain bushfire prone land

The proposed development is located on Category 1, 2 and 3 bushfire prone land. Section 4.14 of the *EP&A Act* requires that development for any purpose on bushfire prone land, other than subdivision of land that could lawfully be used for residential or rural residential purposes or development for a special fire protection purpose, consent must not be granted by the consent authority unless it:

- (a) Is satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the regulations) of the document entitled Planning for Bush Fire Protection prepared by the NSW Rural Fire Service in co-operation with the Department (or, if another document is prescribed by the regulations for the purposes of this paragraph, that document) that are relevant to the development (the relevant specifications and requirements), or*
- (b) has been provided with a certificate by a person who is recognised by the NSW Rural Fire Service as a qualified consultant in bush fire risk assessment stating that the development conforms to the relevant specifications and requirements.*

The application included the submission of a Bushfire Assessment Report (BAR), prepared by a Level 3 accredited Bushfire Planning and Design Practitioner. The development type is classified as 'other non-residential development'. The National Construction Code (NCC) does not provide for any bush fire specific performance requirements for these particular classes of buildings. As such AS 3959 and the NASH Standard are not considered as a set of Deemed to Satisfy provisions, however compliance with AS 3959 and the NASH Standard must be considered when meeting the aims and objectives of PBP.

The BAR includes an assessment of the development against Planning for Bushfire Protection 2019 and finds that by applying AS 3959, the building would be subject to a maximum Bushfire Attack Level (BAL) of 40 for the western elevation.

The BAR, concludes that subject to recommendations, relating to APZs, water services and utility management and National Construction Code 2016 Fire safety requirements, the development satisfies the aims and objectives of PBP 2019.

A condition of consent has been recommended, requiring compliance with PBP 2019 and the recommendations of the BAR, as well as a condition requiring the preparation of a

bushfire emergency evacuation and management plan. Subject to the recommended conditions, the proposal satisfies Clause 4.14.

6.3.4 Section 4.15 Evaluation

6.3.4.1 Section 4.15(1)(a)(i) provisions of any environmental planning instrument

State Environmental Planning Policy (State and Regional Development) 2011

SRDSEPP, identifies the types of development that are; State significant development, State significant infrastructure and critical State significant infrastructure, and regionally significant development. Schedule 7 of the SEPP defines development that is regionally significant, and includes a Council related development (Council owned land) with a capital investment value (CIV) over \$5 million. As the proposed development has a CIV over \$5 million the Hunter and Central Coast Joint Regional Planning Panel is the determining authority.

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 (SEPP BASIX)

The provisions of SEPP BASIX does not apply to the proposed development due to the Building Code of Australia (BCA) classification of the buildings. The provisions of this SEPP only apply to Class 1, Class 2 and parts of Class 4 buildings under the BCA.

The buildings that are proposed on site are classified as either Class 5 (Commercial Premises) or Class 6 (Food and drink premises) and are subject to Section J energy efficiency requirements under the BCA that would be addressed as part of any Construction Certificate assessment.

State Environmental Planning Policy 64 – Advertisement and Signage

State Environmental Planning Policy No. 64 – Advertising and Signage (SEPP 64) sets out planning controls for advertising and signage in NSW. SEPP 64 requires signage to be compatible with the future character of an area, provide effective communication in suitable locations and be of high quality design and finish.

The proposal includes three flush mounted panel signs and one building identification sign on the southern elevation, fronting Muir Street. Each sign features internal illumination. The dimensions of each sign are as follows:

- Building Identification Sign: 2.5m x 1.2m;
- Sign 1: 2.75m x 0.7m;
- Sign 2: 1.72m x 0.7m; and
- Sign 3: 2.8m x 0.7m.

The matters for consideration for SEPP No. 64 include Clause 3, which outlines the objectives of the SEPP and Schedule 1 which provides an assessment framework to determine if the proposed signage scheme is acceptable in terms of its impacts. An assessment of the proposed signage scheme against SEPP No. 64 matters for consideration is outlined in the table below.

Matters for consideration	Assessment comment
Clause 3 – Aims and objectives	The proposed signage is compatible with the desired character of the area and will be of an appropriate height, scale and proportion with respect to the site's location within the Medowie Local Centre.

	<p>The proposed signage is considered consistent with the aims and objectives of Clause 3 of the SEPP.</p> <p>Further detailed assessment against Schedule 1 of the SEPP is provided below.</p>
Schedule 1 - Assessment criteria	
<i>1 Character of the area</i>	
<p>Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located?</p> <p>Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?</p>	<p>The proposed signage is compatible with the emerging and desired character of the area. The signage is considered an appropriate height, scale and proportion with respect to the site's location within the Medowie Local Centre and consistent with other existing signage within the locality.</p>
<i>2 Special areas</i>	
<p>Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas?</p>	<p>The subject site is not located in proximity to any heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas. Environmentally significant areas are located to the west of the site, however, it is considered that the proposal would not detract from the amenity or visual quality of these areas.</p>
<i>3 Views and vistas</i>	
<p>Does the proposal obscure or compromise important views?</p> <p>Does the proposal dominate the skyline and reduce the quality of vistas?</p> <p>Does the proposal respect the viewing rights of other advertisers?</p>	<p>The proposal does not obscure or compromise, any important views or vistas.</p> <p>Signage is integrated with the design of buildings, being flush mounted and not protruding above any of the structures on which they are located.</p> <p>The proposed signage has been appropriately located to not obstruct the viewing rights of other advertisers.</p>
<i>4 Streetscape, setting or landscape</i>	
<p>Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape?</p> <p>Does the proposal contribute to the visual interest of the streetscape, setting or landscape?</p> <p>Does the proposal reduce clutter by</p>	<p>The proposed height and scale of the signage matches that of other existing signs in the locality and is appropriate in the context of the streetscape setting of the Medowie Town Centre.</p> <p>The proposed signage contributes to the streetscape through the provision of logical signposting identification of the proposed development whilst remaining consistent with the existing streetscape.</p> <p>The proposed signage is integrated within</p>

<p>rationalising and simplifying existing advertising?</p> <p>Does the proposal screen unsightliness?</p> <p>Does the proposal protrude above buildings, structures or tree canopies in the area or locality?</p> <p>Does the proposal require ongoing vegetation management?</p>	<p>the built form and does not present a cluttered appearance.</p> <p>The proposed signage does not screen unsightliness or protrude above the proposed building structures.</p> <p>The proposal would not require ongoing vegetation management.</p>
<i>5 Site and building</i>	
<p>Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located?</p> <p>Does the proposal respect important features of the site or building, or both?</p> <p>Does the proposal show innovation and imagination in its relationship to the site or building, or both?</p>	<p>The proposed signage is integrated within the built form and is compatible in terms of scale and proportion to the proposed buildings and site.</p> <p>The proposed signage is simple in form, so as to allow the inclusion of graphical information on the signage to be immediately apparent to the observer.</p> <p>The proposed signage displays, a good relationship with the building, through appropriate locational placement and use of a proportionate size and scale.</p>
<i>6 Associated devices and logos with advertisements and advertising structures</i>	
<p>Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed?</p>	<p>The proposed signage includes illumination and conditions of consent have been recommended to regulate levels of illumination in accordance with AS 1158 'Lighting for Roads and Public Spaces' and AS 4282 'Control of Obtrusive Effects of Outdoor Lighting'.</p>
<i>7 Illumination</i>	
<p>Would illumination result in unacceptable glare?</p> <p>Would illumination affect safety for pedestrians, vehicles or aircraft?</p> <p>Would illumination detract from the amenity of any residence or other form of</p>	<p>The proposed illumination will not result in significant glare to the surroundings, pedestrians, traffic, residences or other accommodation, or aircraft, nor would it detract from the amenity of nearby residences. Conditions of consent have been recommended requiring compliance with AS 1158 'Lighting for Roads and Public Spaces' and AS 4282 'Control of Obtrusive Effects of Outdoor Lighting'.</p> <p>The signage is not proposed to include adjustable illumination however, this is not considered to be necessary subject to compliance with Australian standards.</p> <p>Illumination is proposed during operational hours only.</p>

accommodation? Can the intensity of the illumination be adjusted, if necessary? Is the illumination subject to a curfew?	N/A
8 Safety	
Would the proposal reduce the safety for any public road? Would the proposal reduce the safety for pedestrians or bicyclists? Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?	The proposed signage will not reduce the safety of the adjacent roads or footpaths. The proposed signage is integrated into building design, thereby eliminating the possibility for obstruction of sight for pedestrians or cyclists.

State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017

State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 (Vegetation SEPP), aims to protect the biodiversity values and preserve the amenity and other vegetation in non-rural areas of the State. The Vegetation SEPP works in conjunction with the Biodiversity Conservation Act 2016 and the Local Land Services Amendment Act 2016 to create a framework for the regulation of clearing of native vegetation in NSW.

Part 3 of the Vegetation SEPP provides that Council's Development Control Plan (PSDCP) can make declarations with regards to certain matters. The Vegetation SEPP further provides that Council may issue a permit for tree removal. The relevant section of the PSDCP is Section B1 – Tree Management which is assessed elsewhere in this report.

State Environmental Planning Policy (Koala Habitat Protection) 2019

This policy aims to encourage the conservation and management of areas of natural vegetation that provide habitat for koalas to support a permanent free-living population over their present range and reverse the current trend of koala population decline. This Policy commenced on 1 March 2020.

The Port Stephens Council Koala Habitat Planning Map identifies the western portion of the site as 'preferred' Koala habitat and 'preferred 100m buffer over marginal habitat', including land within the Peppertree Road reserve. Land on the eastern side of Peppertree Road, where the development site is located, is partially mapped '100m buffer over cleared land' and 'link over cleared land'.

The proposal includes the removal of eight Eucalyptus Robusta trees, of varying maturity which are identified as preferred koala feed trees in Schedule 2 of SEPP (Koala Habitat Protection) 2019 and therefore require offsetting in accordance with the Port Stephens Comprehensive Koala Plan of Management (CKPoM). The offset ratio required ranges between 6:1 and 10:1, dependant on the diameter of the tree to be removed. In total, 59 offset plantings are required as a result of the proposed tree removal.

Given the scope of the development, it is not considered possible to plant the required offset koala feed trees on site. As such, the replanting would occur on nearby Council owned land. A condition of consent is recommended requiring an offset planting plan to

be prepared, including provisions for the planting and maintenance of the compensatory trees.

The remainder of the area subject to development has already been substantially modified and cleared of vegetation under previous consents, and represents limited biodiversity value. The application, including tree removal has been assessed against Appendix 4 of the CKPoM and found to be consistent with the requirements of the SEPP (Koala Habitat Protection) 2019 by Council's Natural Resources Section, subject to conditions requiring offset planting.

State Environmental Planning Policy No.55 (Remediation of Land) (SEPP No.55)

Under Clause 7, subclause 1 of *State Environmental Planning Policy No 55—Remediation of Land* (SEPP 55), a consent authority must not grant consent unless:

- (a) it has considered whether the land is contaminated, and*
- (b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*
- (c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.*

The site has historically been used as an orchard (agriculture) which is an activity listed as a potentially contaminating activity under the contaminated land planning guidelines.

Clause 7, subclause 2 of SEPP No. 55 requires that before determining an application for consent to carry out development that would involve a change of use on potentially contaminated land, the consent authority must consider a report specifying the findings of a preliminary investigation.

The broader site has been subject to previous contamination investigations (Targeted Detailed Site Investigation for Contamination, prepared by Practical Environmental Solutions Pty Ltd and dated 15 January 2020), including soil sampling which did not identify any Areas of Environmental Concern (AECs) and Potential Contaminants of Concern (PCOCs). No fill materials, no indications of hydrocarbons including staining or olfactory odours were identified or potential asbestos material across the targeted area of site, or in bore holes. No other potentially contaminating activities were identified across the site.

In addition, a visual clearance inspection was completed during the 2017 construction of Peppertree Road and Muir Street where asbestos containing material was removed from the site and a clearance certificate issued for the subject area.

The NSW list of contaminated sites and list of notified sites published by the EPA does not identify the site as being contaminated, nor is there a previous record of contamination in Council's system.

On this basis, the proposal is considered consistent with the requirements of SEPP 55.

State Environmental Planning Policy (Infrastructure) 2007

The application has been referred to AUSGRID in accordance with Clause 45 of the State Environmental Planning Policy (Infrastructure) 2007 (Infrastructure SEPP), as the development is located in proximity to existing electricity infrastructure.

The response from AUSGRID was received on 13 May 2020 and stated that AUSGRID had no objection to the application. AUSGRID highlighted a number of advisory matters to be considered during construction relating to works in proximity to AUSGRID assets and the supply of electricity. The matters raised by AUSGRID have been incorporated in the recommended conditions of consent.

The application was re-referred to AUSGRID following receipt of an amendment to the application, pursuant to Clause 55 of the *EP&A Regulations*, however, no further response was received within the referral period provided by the Infrastructure SEPP.

Port Stephens Local Environmental Plan 2013

Clause 1.3 – Land to which Plan applies

PSLEP2013 applies to land identified upon the 'Land Application Map'. The subject development occurs within this area.

2.3 Zone objectives and Land Use Table

The development application has been lodged for the purposes of a food and drink premises – pub and signage which is permitted with consent in the B2 Zone. The relevant definitions are outlined below:

Food and drink premises means premises that are used for the preparation and retail sale of food or drink (or both) for immediate consumption on or off the premises, and includes any of the following—

- (a) a restaurant or cafe,*
- (b) take away food and drink premises,*
- (c) a pub,*
- (d) a small bar.*

Pub is defined as a licensed premises under the *Liquor Act 2007*, the principal purpose of which is the retail sale of liquor for consumption on the premises, whether or not the premises include hotel or motel accommodation and whether or not food is sold or entertainment is provided on the premises.

The development is appropriately characterised as a pub, in accordance with the above definitions. The proposal is consistent with the zone objectives in that it enhances the mix of retail, business and entertainment uses to serve the needs of the local community, whilst generating local employment opportunities.

Clause 4.3 Height of buildings

The subject site has a maximum building height of 8m under the *PSLEP2013*. The proposal includes a maximum height of 7.96m for all structures and is therefore compliant with the requirements of this clause.

Clause 5.10 Heritage conservation

The objectives of this clause are to conserve environmental heritage, heritage items and conservation areas, archaeological sites and Aboriginal sites and objects of heritage significance.

The site is not listed as locally significant under Schedule 5 of the *PSLEP2013* or on the State Heritage register. An AHIMS search did not reveal any Aboriginal sites on or in proximity to the subject site. Furthermore, the site has previously been subject to

previous ground disturbance from its historical land use as an orchard and associated residential use.

Notwithstanding, an advice is recommended to be included, noting that in the event of any Aboriginal artefact, object or structure being unearthed, all work must cease immediately in the affected area, and Heritage NSW shall be informed of the discovery. Work must not recommence until the material has been inspected and permission has been given by Heritage NSW to proceed.

Clause 7.1 – Acid Sulfate Soils

The objective of this clause is to ensure that development does not disturb, expose, or drain acid sulfate soils and cause environmental damage. The site is mapped as Class 5 Acid Sulfate Soils and as such works within 500m of adjacent Class 1, 2, 3 or 4 land and likely to be below 5m Australian Height Datum (AHD) is considered a potential environmental risk. The site is not located within 500m of adjacent Class 1, 2, 3 or 4 land nor are works proposed below 5m AHD, therefore an Acid Sulfate Soils Management Plan is not necessary to accompany the application.

Notwithstanding, a condition has been recommended that will require the preparation of an ASS Management Plan in the event that ASS is encountered in the zone of works. Accordingly, the proposed development is considered to be satisfactory in regard to the management of ASS.

Clause 7.2 Earthworks

The objectives of Clause 7.2 are to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighboring uses, cultural or heritage items or features of the surrounding land. The proposed earthworks are not exempt development under this plan or any other applicable environmental planning instrument and therefore require consent from Council.

The application includes a site regrading plan. The proposed development includes earthworks associated with the levelling of the building footprint, car parking and storm water drainage.

Proposed earthworks are not considered to result in significant impacts to drainage patterns or soil stability in the locality, impact future use or redevelopment of adjoining land, impact the quality of the fill or soil to be excavated, impact development and likely amenity of adjoining properties, disturb relics or negatively impact any waterway, drinking catchment area or environmentally sensitive area.

The application included civil plans and an erosion and sediment control plan which details how earthworks would be managed during construction. Subject to the recommended conditions of consent relating to erosion and sediment control, the application is considered consistent with the requirements of this clause.

Clause 7.3 – Flood Planning

The objectives of this clause are to minimise flood risk to life and property and avoid significant adverse impacts on flood behaviour and the environment, while allowing development on land that is compatible with the flood hazard.

The western half of the subject site, including approved Lot 5 under DA 16-2018-789-1, is located within flood prone land including high hazard storage, low hazard storage, low hazard fringe, high hazard floodway. However, the area subject to development under

this application is located to the east of the flood hazard and not identified as being flood prone land. Furthermore, the proposed development will not impact the drainage patterns or flood behavior of the flood prone land. On this basis, the proposal is considered consistent with the requirements of this clause.

Clause 7.4 Airspace operations

The objective of this clause is to ensure that the operation of the RAAF Base Williamtown is not compromised by proposed development that penetrates the Limitation or Operations Surface.

The Defence Height Trigger Map for RAAF Base Williamtown identifies the height constraint for the subject land as “*Structures higher than 45m require assessment.*” Based on the height details provided within the application documentation, the proposed structures will not infringe the Obstacle Limitations Surface (OLS) for RAAF Base Williamtown. As such, the proposal does not require referral to Department of Defence (DoD) in accordance with this clause. Referral was given to DoD, relating to bird strike in accordance with the provisions of Chapter B7 of the PS DCP, as discussed elsewhere in this report.

Accordingly, it is considered that the proposal is consistent with the requirements of this clause.

Clause 7.6 Essential services

This clause provides that consent must not be granted unless the consent authority is satisfied that services that are essential for the development are available or that adequate arrangements have been made to make them available.

Development plans, stamped by HWC, confirm that reticulated sewer and water are available for connection to the site. Electricity is available for connection and suitable drainage and vehicular access arrangements have been detailed within the civil engineering plans submitted with the application. Accordingly, it is considered the proposed development satisfies this clause as adequate arrangements have been made to service the site.

Clause 7.8 Drinking water catchments

The objective of this clause is to protect drinking water catchments by minimising the adverse impacts of development on the quality and quantity of water entering drinking water storages.

The proposed development falls within the Grahamstown Dam Special Area as declared under the *Hunter Water Regulation 2015*. A Stormwater Management Report (MPC Consulting Engineers, 30 July 2020) was submitted with the application. The report outlined measures for the treatment of water and waste water so as to not impact on quality and quantity of water entering drinking water storages.

The application was referred to HWC for comment in accordance with Section 51 of the *Hunter Water Act 1991* (**Attachment 5**). In response, no objection was made and HWC noted that the development could achieve neutral or beneficial effect (NorBE) on water quality and Council’s water quality stripping targets.

6.3.4.2 Section 4.15(1)(a)(ii) any draft environmental planning instrument that is or has been placed on public exhibition

Remediation of Land State Environmental Planning Policy

The proposed Remediation of Land SEPP is intended to repeal and replace *SEPP No.55*. The draft SEPP, which was exhibited from 25 January to 13 April 2018, and is currently under consideration.

The proposed SEPP seeks to provide a state-wide planning framework to guide the remediation of land, including outlining provisions that require consent authorities to consider the potential for land to be contaminated when determining development applications; clearly lists remediation works that require development consent; and introducing certification and operational requirements for remediation works that may be carried out without development consent.

Consideration has been given to the suitability of the site with respect to potential land contamination under the SEPP No.55 discussion elsewhere within this report. The subject site has been identified as suitable for the proposed development and further investigation in respect to contamination is not warranted in this instance.

6.3.4.3 Section 4.15(1)(a)(ii) any development control plan (and section 7.11 plan)

The following sections of the PSDCP are relevant to the proposal:

Section B – General Controls

Section B1 – Tree Management

The proposal is identified as a non-rural area as defined by *SEPP (Vegetation in non-rural areas) 2017* however, there is no tree removal or pruning proposed as part of the application and the provisions of Section are not applicable to the proposed development.

Significant trees to be removed as part of the application include eight Eucalyptus Robusta trees. The vegetation represents preferred koala feed trees and are to be offset in accordance with the CKPoM, as detailed elsewhere in this report.

Council's Natural Resources section have reviewed the proposed tree clearing and subject to conditions for offsetting, the proposal is consistent with Section B1 of the PSDCP.

Section B2 – Natural Resources

The area subject to development is located in area identified as koala habitat and an area mapped as containing endangered ecological communities - Blue Gum High Forest and Swamp Sclerophyll Forest.

The proposal includes the removal of eight native Eucalyptus Robusta trees which are to be offset in accordance with the CKPoM, as detailed elsewhere in this report. The remainder of the area subject to development comprises non-native vegetation and regrowth and represents limited biodiversity value.

Council's Natural Resources section have reviewed the proposed vegetation clearing and subject to conditions for offsetting, the proposal is consistent with Section B2 of the PSDCP.

Section B3 – Environmental Management

Acid Sulfate Soils

The subject site is identified as containing Class 5 Acid Sulphate Soils (ASS). The site is not located within 500m of adjacent Class 1, 2, 3 or 4 land nor are works proposed below 5m AHD, therefore an Acid Sulfate Soils Management Plan is not necessary to accompany the application.

Notwithstanding, a condition has been recommended that will require the preparation of an ASS Management Plan in the event that ASS is encountered in the zone of works. Accordingly, the proposed development is considered to be satisfactory in regard to the management of ASS.

Accordingly, the proposed development is considered to be satisfactory in regard to the management of ASS.

Air Quality

The proposed development includes outdoor dining and court yard areas which could be used by patrons for smoking. The outdoor areas are located on the southern elevation, oriented away from the approved residential lots to the north. The distance from the courtyard area to the proposed residential lots to the north (28 metres), combined with the orientation of the development, provides adequate separation distance to eliminate potential impacts emanating from odour.

Any potential impacts as a result of the construction phase will be temporary and will be managed and mitigated by appropriate standard measures.

Earthworks

A site regrade plan is supplied with the application. Only minor early earthworks are required for levelling of the building footprint, car parking and stormwater drainage. A condition has been included that fill will consist of Virgin Excavated Natural Material (VENM) or Excavated natural material (ENM) as defined under the *Protection of Environment Operations Act 1997*. Conditions have also been recommended requiring erosion and sediment control measures to be installed prior to the commencement of works.

Noise

The proposal presents the potential for noise generation from patrons and associated operations with the proposed pub.

A Noise Assessment (Muller Acoustic Consulting, dated 30 July 2020) was provided with the application, which measures and models the potential noise generation for the operation including sleep disturbance noise emissions. The assessment quantifies potential operational noise emissions pertaining to customer vehicles, delivery/collection vehicles, patrons of the pub and mechanical plant associated with the proposed buildings.

The assessment demonstrates that the cumulative emissions from the project would satisfy the relevant criteria at all receivers subject to the following noise controls:

- Construction of a 2m acoustic fence located on the loading dock wall (east elevation);
- Window glazing (minimum 4mm thick);
- Windows are to be closed during live internal music performances;
- There are to be no external live music performances;
- All mechanical plant for cooling and refrigeration are located internally within the underground area; and

- Construction noise management procedures.

Conditions of consent have been recommended requiring compliance with the noise assessment, including the above noise controls.

The noise assessment was reviewed by Council's Environmental Health Officer, who concurred with the findings of the report.

On this basis, the proposal is considered consistent with the requirements of Chapter B3.

Chapter B4 – Drainage and water quality

A Stormwater Management Report (MPC Consulting Engineers, dated 30 July 2020) was submitted with the application and includes adequate water quality and quantity controls in accordance with Council's policy. The stormwater drainage plan has been assessed as being consistent with the Infrastructure Specification and a condition of consent has been recommended requiring the provision of detailed engineering plans, prior to the issue of a Construction Certificate.

Chapter B5 – Flooding

The western half of the subject site, including approved Lot 5 under DA 16-2018-789-1, is located within flood prone land including high hazard storage, low hazard storage, low hazard fringe, high hazard floodway. However, the area subject to development, located to the east of this area is not flood prone land.

Chapter B6 – Essential services

Development plans, stamped by HWC, confirm that reticulated sewer and water are available for connection to the site. Electricity is available for connection and suitable drainage and vehicular access arrangements have been detailed within the civil engineering plans submitted with the application in accordance with Councils policy. Further details on essential services is provided under Clause 7.6 of this report.

Accordingly, it is considered the proposed development satisfies this clause as adequate arrangements have been made to service the site.

Chapter B7 – Williamstown RAAF Base – Aircraft Noise and Safety

The development site is located within the Bird Strike Group B zone under the RAAF Base Williamstown Constraints Map. The development does not constitute any of the development types to be avoided within 3km of the airport runway. Despite this, notice to the Department of Defence (DoD) is required in accordance with the DCP provisions and a referral was sent with the original application.

On 17 August 2020, DoD provided written comment on the application (**Attachment 4**). In response, DoD made no objection to the application subject to the implementation of appropriate conditions for the treatment of organic waste and/or storage of bins associated with the proposed development as the use might be attractive to vermin and/or birds and will potentially increase the risk of bird strike operating from RAAF Base Williamstown. Conditions of consent have been included to address the comments made by DoD.

The application was re-referred to DoD following receipt of an amendment to the application, pursuant to Clause 55 of the *EP&A Regulations*, however, no further response was received.

Chapter B8 - Heritage

The objectives of this clause are to conserve environmental heritage, heritage items and conservation areas, archaeological sites and Aboriginal sites and objects of heritage significance.

The site is not listed as locally significant under Schedule 5 of the *PSLEP2013* or State Heritage register. An AHIMS search did not reveal any Aboriginal sites on or in proximity to the subject site. The site has previously been subject to previous disturbance from its historical land use as an orchard and associated residential use. Further detail on heritage matters has been assessed in the preceding sections of this report against Clause 5.10 of the *PSLEP2013*.

Chapter B9 – Road network and parking

Traffic Impacts

The site is located off Medowie Road, which is a regional road providing primary connection between Medowie and the external road network including the Pacific Highway (to the north), Richardson Road (to the south), and Nelson Bay Road (to the south) for connection to Newcastle Airport. Access to the site is proposed via Peppertree Road to the west and Muir Street to the south of the site, which link the site to Medowie Road.

A Traffic Impact Assessment (TIA) was provided with the application prepared by SECA Solution and dated 4 August 2020. The TIA assesses the development against the requirements of the Guide to Traffic Generating Developments and Austroads Guide to Traffic Management. The TIA includes traffic counts and modelling to predict the proposed developments impact on the surrounding road network.

The modelling confirms that the road network, including key intersections at Medowie Road and Ferodale Road and Medowie Road and Muir Street will operate at an acceptable level of service for the 2029 design horizon allowing for background growth and development traffic flows.

Car parking

The proposed development provides 66 on site car parking spaces, including 4 accessible spaces.

6 dedicated motorcycle spaces and a bicycle storage room are allocated in the undercroft level parking.

The Traffic Impact Assessment includes an assessment of car parking demand for the proposed development. The relevant car parking rates within the PSDCP are as follows:

Use	Car Parking Requirement
Pub	1 car space per 7m ² floor space 1 bike space per 25m ² of bar area
Food and drink premises	1 car space 25m ²

The TIA applies the pub parking rate to the licensed areas of the facility including the sports bar and gaming area, whilst the food and drink premises rate has been applied to

the dining areas, including allowing for the back of house and circulation areas to be incorporated into the dining use and a weather discount applied to the external dining (terrace). Using these calculations, a car parking demand of 69 spaces is generated, resulting in a shortfall of 3 spaces. The TIA includes a justification to support the 3 space shortfall, noting parking efficiencies gained by shared trips, the peak demand times (7pm), being outside of standard work hours and the location within a local centre, close to employment and residential land, thus enhancing the opportunity for pedestrian travel.

The bike space demand is 12 spaces, based on the 225m² bar floor area. The proposed development provides 6 dedicated motorcycle spaces and a bicycle storage room, capable of storing an additional 6 spaces in the undercroft level parking, which satisfies the requirements of this clause.

Relying on the findings of the TIA, the proposed car parking is considered suitable for the proposed development and no adverse impacts are anticipated to occur to the local availability of parking.

Chapter B10 – Social Impact

The development (pub) is a type listed as having the potential for significant social impact, as such a social impact assessment was requested from the applicant following the receipt of an amendment to the application for a pub, pursuant to Clause 55 of the *EP&A Regulations*.

The Social Impact Assessment (SIA) assessed the density of licensed premises within the locality, finding it to be less than half the state average and when considered within the context of a rapidly expanding population in Medowie, it is reasonable to conclude a demonstrated need exists for an additional licensed premise within the area. The SIA further found the geographic area for Medowie exhibits a relative lack of socio-economic disadvantage and is classified as one of the most advantaged areas in the Port Stephens LGA. The SIA identifies a limited number of perceived social and community issues associated with the proposal when considering the Density of Licenced venues, Density of Food and Drink venues, and relying on Noise and Traffic studies provided with the application.

The application also included the submission of a Crime Prevention Through Environmental Design (CPTED) Statement which identifies and assesses the crime risk associated with the proposed operations of the proposed food and drink premises, including late night trading (Midnight). The proposal incorporates a number of crime prevention through environmental design strategies that reduce opportunities for crime by using design and place management principles to reduce the likelihood of essential crime ingredients from intersecting in time and space. The key strategies implemented within the proposal include night lighting, site and building layout which enhances sight lines and passive surveillance, high quality landscaping, fencing and security devices such as CCTV cameras. The proposed strategies are anticipated to effectively assist in crime deterrence and prevention and conditions of consent have been recommended, requiring the implementation of the CPTED Statement recommendations.

A Plan of Management (PoM) for the operation of the pub was also provided with the application. The PoM details key social aspects of the development including, responsible service of alcohol, staff training and complaint handling, litter and waste management, noise, security, and harm minimisation strategies. The PoM has been prepared with regard to policies relevant to the operation of licensed premises including the following:

- Statutory conditions attached to the premises' Liquor License;
- Relevant matters under the Liquor Act 2007 and the Liquor Act Regulations;

- Responsible Promotion of Alcohol Product Guidelines (Liquor & Gaming NSW);
- Prevention of Intoxication on Licensed Premises Guidelines (Liquor & Gaming NSW); and
- Intoxication Guidelines (Liquor & Gaming NSW).

The proposal is anticipated to have an ongoing positive social and economic impact on the local area as well as the broader community through the provision of services and employment opportunities.

The application was also referred to NSW Police, on two occasions, who did not provide a response to the application.

Subject to recommended conditions requiring compliance with the recommendations of the CPTED Statement and PoM, the proposal satisfies the objectives of Chapter B10.

Chapter C2 – Commercial

Chapter C2 applies to development defined as Commercial premises. The proposed development includes a food and drink premises, which forms a lower order use under the commercial premises group term.

C2.A Height

The subject site is subject to a maximum height limit of 8m under the Port Stephens Local Environmental Plan 2013. All structures as part of the development include a maximum height of 7.96m which is compliant with this Clause.

The proposed commercial buildings include a ground floor to ceiling height of a minimum of 3.14m, which does not comply with the minimum requirement of 3.5m under C2.2 of the PSDCP. The variation is considered acceptable in this instance as it would not adversely impact the amenity afforded to patrons given the large open plan layout of the venue and generous outdoor dining areas which create a sense of openness. The finished ground level of commercial buildings are also over 100mm above the adjacent footpath levels. The proposal therefore meets the objectives of this chapter.

C2.B Site Frontage and Setbacks

The proposed development has frontage to two public roads, being Muir Street (primary frontage) and Peppertree Road (secondary frontage). The proposal includes a 1.5m front setback from Muir Street and 2.5m from Peppertree Road, which is not consistent with the 0m front setback control. Notwithstanding, the proposed variation is considered appropriate in this instance, given the approved development adjoining to the east includes a greater front setback of 3m. The 1.5m setback provides an acceptable outcome, as it provides continuity with the adjoining development, whilst maintaining a good level of street activation. The inconsistency between front building setbacks with the adjoining property is further mitigated through the inclusion of landscaping, commensurate with that of the adjoining development, located along the street frontages.

The 2.5m setback from Peppertree Road is considered appropriate for the secondary frontage, given there is no opportunity for future development to the north along Peppertree Road and therefore an activated street frontage is not desirable at this location.

The proposed side setback to the eastern boundary is 0.9m, which does not comply with the 0m setback requirement. Notwithstanding, the proposed setback achieves a more desirable outcome within the context of the adjoining development which is also setback an even greater distance at 3m from the side boundary.

The proposed rear setback is 0.9m, which also does not comply with the 5m setback requirement for commercial development adjoining residential land. The variation is acceptable in this circumstance, given the rear boundary abuts an approved road, forming part of the residential subdivision to the north. The road acts to create a 9.8m setback from the nearest residential property to the north east and contains street tree plantings which effectively break up any visual impacts associated with the rear wall of the development.

C2.C Building Form and Massing

Given the close proximity to the adjoining residential land use to the north, which contains an approved 39 lot residential subdivision, consideration has been given to the maintenance of residential amenity. To address this, the applicant was requested to provide additional information to address visual impacts to adjoining residential land by way of the bulk and scale of the development.

In response, the applicant provided amended north elevations which include the addition of a climbing plant trellis to assist in breaking up the otherwise unbroken wall. The amended plans also include a rear fence and indicative street trees from the approved development to the north. The development achieves a built form that, when viewed from the residential land to the north, presents as a single storey development, despite the overall building height being 7.96m. Taking this into consideration, along with the extensive setback from the development to the nearest residential lot, the development does not adversely impact the nearby residential lots as a result of bulk and scale.

Overall, the building mass and scale of the proposed development, is considered appropriate with respect to existing development within the locality and neighbouring land uses. The building mass would not result in loss of amenity to adjacent properties or the public domain.

C2.D Facades

The development incorporates a schedule of high quality materials and colours, including timber and colorbond cladding, honed blockwork and timber features, which are sympathetic to sites natural setting while complimenting the surrounding built form.

The development provides good passive surveillance through the outdoor alfresco dining area and entry feature which provides activation to the entire Peppertree Road facade and 40% of the Muir Street facade. The remaining 60% of the Muir Street facade comprises car parking forward of the building line which inevitably reduces street activation. Notwithstanding, the overall development provides an adequate level of street activation within the context of the surrounding locality which features a mix of activated frontage and inactivate frontages. The visual impacts of the car parking are effectively mitigated by the timber awning feature lined with climbing plant trellis along the Muir Street frontage, which provides shade for patrons and also acts as a both a screen and complimentary architectural feature. A public footpath is provided across the entire frontage of the development.

In response to the CPTED requirements of this section, the application included the submission of a CPTED Statement, which identifies and assesses the crime risk associated with the proposed operations of the proposed food and drink premises, including late night trading (midnight).

The proposal incorporates a number of CPTED strategies that reduce opportunities for crime by using design and place management principles to reduce the likelihood of essential crime ingredients from intersecting in time and space. The key strategies

implemented within the proposal include night lighting, a car park, site and building layout which enhances sight lines and passive surveillance, high quality landscaping, fencing and security devices such as CCTV cameras. The proposed strategies are anticipated to effectively assist in crime deterrence and prevention.

A condition of consent is recommended, requiring the implementation of CPTED principles, outlined in the CPTED Statement, including inclusion of security cameras within the undercover car parking area, to enhance user safety. Subject to the recommended conditions, the proposal satisfies the requirements of Chapter B10.

C2.E Awnings

The proposed development incorporates awnings of the entry points to the building. However, an awning has not been provided over the pedestrian frontage. The proposed variation is acceptable when considered in the context of other surrounding commercial developments, which typically do not provide awnings, or in instances where awnings are provided, do not extend across the public footpath.

C2.F Building Entries

The building entry points are clearly identified with strong architectural features including large metal arbours lining the main entry with restrained signage either side. All entry structures, including the staircase at the main entry are located so as not to obstruct pedestrian footpaths in the public domain.

C2.G Building Facilities and Services

Plant equipment, storage areas, communication structures and servicing areas are located at the rear of buildings or screened from view from streets, parks and other public spaces. Accessible toilet facilities are available to patrons.

C2.H Public Art

The proposal is for a commercial development with a capital investment over \$2 million with frontage to the public domain. Accordingly, the development must incorporate public art in accordance with Council's Public Art Policy and Guidelines for the approval and installation of public art in Port Stephens.

Concept public art plans have been included on the architectural plan set. The proposed art is located to the east of the main entry, in front of the ground level car parking. The art is proposed to be a sculpture form, emanating the tall trees of Medowie. The concept public art plan has been reviewed by Council's Community Development Section and is supported in principle. A condition of consent is recommended, requiring final Public art approval be obtained prior to the issue of a Construction Certificate.

C2.J Landscaping

The proposed landscaping includes predominately groundcover and shrub plantings along the street frontages, combined with climbing species on climbing plant trellis across the entire frontage of the development to compliment the architectural design of the building. Internal amenity plantings are incorporated in the alfresco and car parking areas.

The site layout presents limited opportunity for shade tree plantings and accordingly, this has been offset with shade structures over the car parks. On this basis, the variation to car park shading requirements is acceptable.

The proposed development does not provide the required 10% deep soil planting, however, street trees are proposed within the road reserve adjacent the development, which will provide continuity with existing street tree plantings and reduce heat island effects within the town centre.

Landscaping, in the form of a climbing plant trellis is proposed along the northern boundary to break up the rear wall of the building. It is noted that street tree plantings have been approved immediately north of the rear boundary as part of the residential subdivision development to the north of the site, which further assist to provide screening of the building.

The proposed landscape species selection has been reviewed by Council's Vegetation Management Officer and found to be consistent with Council's Landscape technical Specification.

Chapter C9 - Signage

The proposed signage includes four flush mounted panel signs that are integrated within the building façade. Illumination is proposed for each sign and a condition has been recommended requiring compliance with AS 1158 'Lighting for Roads and Public Spaces' and AS 4282 'Control of Obtrusive Effects of Outdoor Lighting'.

The proposed signage is compatible with the desired character of the area and will be of an appropriate height, scale and proportion with respect to the sites location within the Medowie Local Centre. The proposed signage does not consist of any of the types listed under C8 of the DCP as generally not being supported.

Port Stephens Development Contribution Plan

The application attracts Section 7.12 Contributions pursuant to the *EP&A Act* and the Port Stephens Development Contributions Plan. A condition has been included that a monetary contribution is to be paid to Council, pursuant to section 7.12 of the *EP&A Act* and the Port Stephens Council Fixed Development Contributions Plan, prior to release of the Construction Certificate.

6.1.3.4 *Section 4.15(1)(a)(iia) Planning agreements*

No planning agreements are relevant to the proposal.

6.1.3.5 *Section 4.15(1)(a)(iv) the regulations (and other plans and policies)*

Clause 55 – Environmental Planning and Assessment Regulation 2000

Clause 55 provides that an amendment or variation to an application, can be made at any time before the application is determined, but only with the agreement of the consent authority. The consent authority is the Hunter and Central Coast Regional Planning Panel.

The application was originally lodged and exhibited with a development description for the construction and use of food and drink premises and two commercial tenancies with basement car parking from. On the 12 August 2020, Council received an amendment to the application, pursuant to Clause 55 of the *EP&A Regulations*. The amendment, as detailed in the attached letter from the applicant (**Appendix O**), includes the removal of the two commercial premises and an extension of the food and drink premises, maintaining generally the same building footprint as originally proposed. The land use is also now further defined, being for a food and drink premises – pub, as defined under the *PSLEP2013*.

Following receipt of the amended application, the application was notified and advertised. The application was also re-referred to all internal stakeholders and external agencies.

Council considers that the amendment can be made pursuant to Clause 55 and it is recommended that the Hunter and Central Coast Regional Planning Panel, as the consent authority, accept the amendment, in accordance with Clause 55 of the *EP&A Regulations*.

Medowie Planning Strategy

In 2016, Council adopted the Medowie Planning Strategy. The Medowie Planning strategy provides local direction for land use planning and sustainable growth within Medowie over the 20-year period from 2016 - 2036. It forecasts a maximum growth scenario of 17,500 people by the year 2036 (from 10,300 people in 2016). The area is expected to accommodate 2,400 new dwellings in residential release areas and additional 180 in rural residential release areas. Approximately 9.0 hectares of area for general commercial rezoning is identified.

The site is located within the Medowie commercial precinct under the Medowie Town Centre Masterplan and identified for future commercial development. The proposal is aligned with Council's local strategy.

6.1.3.6 *Section 4.15(1)(b) the likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality*

Built Environment

The proposal represents a contemporary design and built form of an appropriate height, scale, and bulk suitable within the Medowie Town Centre. The use of quality material finishes combined with articulated facade elements and good street activation, represent a high architectural standard.

Signage is integrated within the built form to minimise visual impacts and achieve compatibility with the existing and future desired character of the locality.

The incorporation of boundary plantings fronting the public domain and screening of car parking areas, creates an enhanced visual appearance of the development, positively contributing to streetscape character.

On this basis, the proposal is considered to positively contribute to the built environment.

Natural Environment

The environmental value of the site is relatively low due to the previous clearing undertaken on the site. The proposed removal of koala feed trees has been found to be acceptable, subject to compensatory plantings being made.

The development incorporates a suitable stormwater management plan and water quality devices in accordance with Council's infrastructure specification and conditions have been recommended to manage any environmental impacts associated with the construction of the development.

Social and Economic Impact

The proposed development makes good use of vacant land and will have a positive social and economic impact through the provision of commercial services to the area

which assist in achieving the demands of surrounding residents, workers, and visitors. The proposal will generate direct employment opportunities during construction and ongoing operation with flow on employment multipliers benefitting the local community.

6.1.3.7 *Section 4.15(1)(c) the suitability of the site for the development*

The site is highly suitable for commercial development, being land identified in the Medowie Planning Strategy as intended for future commercial use and forming part of the envisaged Medowie Commercial Precinct. Further commercial development in this location is considered essential to ensuring adequate services are available to meet the day to day needs of the growing Medowie population.

Consideration has been given to potential amenity impacts to adjoining residential land. Where necessary, impacts have been appropriately managed through sympathetic building design and landscape screening.

The environmental value of the site is relatively low due to the previous clearing undertaken on the site. Removal of the koala feed trees is acceptable, subject to appropriate offsetting.

Based on this assessment, the site is suitable to accommodate the proposal in its current form.

6.1.3.8 *Section 4.15(1)(d) any submissions made in accordance with this act or the regulations*

The proposal was exhibited for a period of 14 days from 10 April 2020 – 24 April 2020 in accordance with the *EP&A Act*, *EP&A Regulations* and Council's Community Consultation Plan. No submissions were received during this time. Following receipt of the Clause 55 amendment, the application was re-notified and re-advertised for a further 14 days, from 1 September 2020 to 15 September 2020. Two submissions were received during the second exhibition period.

The issues identified in the submissions and Council's response are provided in the following table:

Comment	Council response
Parking Shortfall	<p>The proposed development generates a car parking demand of 69 spaces, resulting in a shortfall of 3 spaces. The TIA includes an assessment to justify the 3 space shortfall, noting parking efficiencies gained by shared trips, the peak demand times (7pm) being outside of standard work hours and the location within a local centre, close to employment and residential land, thus enhancing the opportunity for pedestrian travel.</p> <p>On this basis, the proposed car parking is considered suitable for the proposed development and no adverse impacts are anticipated to occur to the local availability of parking.</p>

<p>Noise</p>	<p>Potential noise impacts generated by the development on surrounding properties have been modelled in the noise assessment submitted with the application.</p> <p>The submitted Noise Assessment found the proposal to be within acceptable limits and compliant with criteria contained within acoustic legislation and guidelines. The Noise Assessment was reviewed by Councils Environmental Health Section who concurred with the findings of the report.</p> <p>Any noise complaints are to be documented by staff and addressed in a register kept onsite and available for viewing by Council's compliance section or the NSW Police, in accordance with the Plan of Management.</p> <p>The premises will be monitored and in accordance with the Plan of Management so that loitering after hours does not occur.</p>
<p>Anti-Social Behaviour/crime</p>	<p>The Social Impact Assessment found that the proposal is not likely to result in unacceptable social impacts (such as anti-social behaviour) provided the mitigation measures as detailed in the CPTED Report, Traffic Assessment and Noise Assessment are adopted.</p> <p>The CPTED Statement submitted with the application identifies and assesses the crime risk associated with the proposed operations of the proposed food and drink premises, including late night trading (Midnight).</p> <p>The proposal incorporates a number of CPTED strategies that reduce opportunities for crime by using design and place management principles to reduce the likelihood of essential crime ingredients from intersecting in time and space. The key strategies implemented within the proposal include night lighting, well designed car park, site and building layout which enhances sight lines and passive surveillance, high quality landscaping, fencing and security devices such as CCTV cameras.</p>

Lack of police presence	<p>Police response times are not a relevant planning consideration in the assessment of this DA.</p> <p>NSW police were consulted regarding the proposal, both via written request and verbally, however, no response was received.</p>
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6.1.3.9 Section 4.15 (1)(e) the public interest

Matters pertaining to the public interest have been discussed within this report with approval of the application considered to be in the public interest. The development does not have any significant adverse impacts on the built or natural environment and has positive social and economic impacts.

6.1.3.10 Section 7.12 Contributions

A monetary contribution is to be paid to Council, pursuant to Section 7.12 of the Environmental Planning & Assessment Act 1979 and the Port Stephens Council Fixed Local Infrastructure Contributions Plan, related to the Capital Investment Value (CIV) of the development. Accordingly, a condition has been recommended requiring monetary contribution in accordance with Section 7.12.

7. CONCLUSION

It is recommended that the Hunter and Central Coast Regional Planning Panel, as the consent authority, approve development consent to 16-2019-136-1 (PPSHCC-40) for construction and use of food and drink premises - pub with undercroft car parking and associated signage and landscaping at 795 Medowie Road, Medowie 2318 pursuant to Section 4.16 of the *EP&A Act* subject to the conditions in **Attachment 2**.

Signed (Assessing Officer)



 Dylan Mitchell
 Senior Development Planner

Date: 25/11/2020

Reviewed (Supervising Officer)



 Ryan Falkenmire
 A/ Planning and Developer Relations Coordinator

Date: 25/11/2020

Authorised for submission to HCCRPP



 Rean Lourens
 A/ Manager Development Assessment & Compliance

Date: 25/11/2020