

## COUNCIL ASSESSMENT REPORT

### NORTHERN REGIONAL PLANNING PANEL

<b>PANEL REFERENCE &amp; DA NUMBER</b>	PPSNTH-293 – DA2024-141.1
<b>PROPOSAL</b>	Recreational Facility (Outdoor) and Recreational Facility (Indoor) and Kiosk - Port Macquarie Aquatic Facility (as described in Schedule 1)
<b>ADDRESS</b>	<p>LOT: 14 SEC: 16 DP: 758852, LOT: 18 SEC: 16 DP: 758852, LOT: 6 SEC: 16 DP: 758852, LOT: 19 SEC: 16 DP: 758852, LOT: 16 SEC: 16 DP: 758852, LOT: 5 SEC: 16 DP: 758852, LOT: 20 SEC: 16 DP: 758852, LOT: 7 SEC: 16 DP: 758852, LOT: 17 SEC: 16 DP: 758852, LOT: 8 SEC: 16 DP: 758852, LOT: 9 SEC: 16 DP: 758852, LOT: 15 SEC: 16 DP: 758852, LOT: 2 DP: 808449, LOT: 7063 DP: 1040735, LOT: 1 DP: 808449.</p> <p>Gordon Street PORT MACQUARIE, Munster Street PORT MACQUARIE</p>
<b>APPLICANT</b>	Co.op Studio Pty Ltd
<b>OWNER</b>	Council Managed Crown Land
<b>DA LODGEMENT DATE</b>	14 March 2024
<b>APPLICATION TYPE</b>	Development Application
<b>REGIONALLY SIGNIFICANT CRITERIA</b>	Section 2.19(1) and Clause 3 of Schedule 6 of <i>State Environmental Planning Policy (Planning Systems) 2021</i> declares the proposal regionally significant development as the proposal is Council related development with an estimated development cost of more than \$5 million.
<b>CIV</b>	\$67,550,535 (excluding GST)
<b>CLAUSE 4.6 REQUESTS</b>	Clause 4.3 (Height of Buildings) of the <i>Port Macquarie-Hastings Local Environmental Plan 2011</i>
<b>KEY SEPP/LEP</b>	<ul style="list-style-type: none"> <li><i>State Environmental Planning Policy (Biodiversity and Conservation) 2021</i></li> </ul>

	<ul style="list-style-type: none"> <li>• <i>State Environmental Planning Policy (Sustainable Buildings) 2022</i></li> <li>• <i>State Environmental Planning Policy (Industry and Employment) 2021</i></li> <li>• <i>State Environmental Planning Policy (Planning Systems) 2021</i></li> <li>• <i>State Environmental Planning Policy (Resilience and Hazards) 2021</i></li> <li>• <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i></li> <li>• <i>Port Macquarie-Hastings Local Environmental Plan 2011</i></li> <li>• <i>Port Macquarie-Hastings Development Control Plan 2013.</i></li> </ul>
<b>AGENCY REFERRALS</b>	NSW Rural Fire Service Essential Energy NSW Police Force
<b>TOTAL &amp; UNIQUE SUBMISSIONS KEY ISSUES IN SUBMISSIONS</b>	<p>35 unique submissions, predominantly supportive of the proposal, with numerous suggestions made about various elements of the facility, particularly in relation to shade/sun protection.</p> <p>Single objections raised concern with traffic and congestion, loss of parking in Gordon Street, driver distraction, and emergency evacuation.</p>
<b>DOCUMENTS SUBMITTED FOR CONSIDERATION</b>	Architectural Plans, as amended Statement of Environmental Effects Clause 4.6 Written Request - Height Operational Plan of Management CPTED Report Water Strategy Engineering Services Concept Design Report Flood Impact and Risk Assessment Acoustic Report, as amended Bushfire Assessment Traffic Report Architectural Design Report, as amended Survey Plan Landscape Concept Plans and Report

	Demolition, Construction, and Operational Waste Management Plan Civil Engineering Plans Sewer Strategy Arboricultural Impact Assessment BCA Capability Statement Swimming Pool Filtration System Design Report Access Design Assessment Report Preliminary Geotechnical Assessment Stages 1 and Stage 2 Contamination Assessment Acid Sulfate Soils Management Plan
<b>SPECIAL INFRASTRUCTURE CONTRIBUTIONS (\$7.24)</b>	Not Applicable to Port Macquarie Hastings LGA
<b>RECOMMENDATION</b>	Approval, subject to conditions
<b>DRAFT CONDITIONS TO APPLICANT</b>	Yes
<b>SCHEDULED MEETING DATE</b>	22 October 2024
<b>PLAN VERSION</b>	DA001 – Existing and Demolition Plan – Site Plan Revision C, dated 26/09/2023 DA101 – Site Plan, Revision H, dated 26/09/2023 DA161 Stage 1 Works, Revision D, 26/09/2023 DA162 Stage 2 Works, Revision D, 26/09/2023 DA201 – Ground Level Plan, Revision H, 22/08/2024 DA202 – Roof Plan, Revision G, 26/09/2023 DA401 – Elevations, Revision B, 26/09/2023 DA501 – Sections, Revision E, 22/08/2024 DA900 – Signage Details, Revision A, 26/09/2023 DA960 – Materiality, Revision A, 26/09/2023
<b>PREPARED BY</b>	Wes Wilson, Independent Planning Consultant
<b>DATE OF REPORT</b>	25 September 2024, amended 17 October 2024

## EXECUTIVE SUMMARY

The development application (DA2024-141.1) seeks consent for the demolition of existing buildings and structures, removal of five (5) trees, bulk earthworks, signage, and staged construction of the Port Macquarie Aquatic Facility which incorporates a recreation facility (outdoor), a recreation facility (indoor), and kiosk, with associated carparking, landscaping and stormwater infrastructure ('the proposal').

The subject site is known as Macquarie Park and is made up of a number of existing lots with a combined area of approximately 2.9 hectares. The overall site has an irregular shape with frontage to Gordon Street along the northern boundary, and a partial frontage to the end of Munster Street at the western edge of the site.

The site is currently used as sporting fields and contains two amenities buildings, off-street car parking, perimeter tree planting, and a sewer pump station off the southern end of Munster Street, which is currently in the process of being relocated.

The land has an approximate fall from RL 5.2 at the north-east to RL 2.6 at the south-west of the site. Wrights Creek adjoins the south-west corner of the site, running between Grant Street and Lake Road to the south of netball courts to be retained.

The land is affected by flooding, bush fire prone land, contaminated soils, and Class 3 acid sulfate soils.

The site is predominantly zoned RE1 Public Recreation and partly zoned C2 Environmental Conservation pursuant to Clause 2.2 of Port Macquarie-Hastings Local Environmental Plan 2011.

The site is Council managed Crown Land and is the subject of an adopted Plan of Management.

The site is located on the southern fringe of the Port Macquarie Town Centre and adjoins a mix of land uses. To the west of the site on Gordon Street and Munster Street are retail premises, business premises, light industries, a childcare centre, community facility and recreation facility (indoor). These buildings are one and two storeys in scale. To the south of the development are existing netball courts and amenities within the Macquarie Park reserve that are proposed to be retained. Residential uses are located further south of Wrights Creek, with access via Gray Street. The residential uses are generally one and two storeys and of a reasonably low density. To the east of the site fronting Grant Street are a number of two storey buildings with basement parking used for office premises, and a café. On the northern side of Gordon Street are one and two storey residential uses, a veterinary hospital, and a service station.

The existing aquatic centre is located a block to the east of the subject site.

The proposal is defined of '*recreation facility (outdoor)*', '*recreation facility (indoor)*', '*kiosk*', and '*building/business identification signs*', all of which are permissible with consent in the RE1 Zone.

The principle planning controls relevant to the proposal include *State Environmental Planning Policy (Resilience and Hazards) 2021*, *State Environmental Planning Policy (Transport and Infrastructure) 2021*, *Port Macquarie-Hastings Local Environmental Plan 2011 (the LEP)*, *Port Macquarie-Hastings Development Control Plan 2013 (the DCP)*.

The proposal is generally consistent with the relevant provisions of the planning controls; however, seeks a variation to the maximum height limit of 11.5 metres applying to the site. Only small elements of the proposal breach the height limit by up to 4.6 metres, these being the waterslide tower, a small portion of the water slides, and the top section of flood light poles. A Clause 4.6 Written Request has been submitted with the application. The proposed variation to the site's maximum height limit for part of the development is well founded and justified on environmental planning grounds.

There were no concurrence requirements from agencies for the proposal and the application is not integrated development pursuant to Section 4.46 of the *Environmental Planning and Assessment Act 1979* ('EP&A Act'). A referral to Essential Energy pursuant to *State Environmental Planning Policy (Transport and Infrastructure) 2021* ('Transport and Infrastructure SEPP') was sent and raised no objections. NSW Police was also consulted, with no response received.

Jurisdictional prerequisites to the grant of consent imposed by the following controls have been satisfied including:

- Section 4.6 of the Resilience and Hazards SEPP for consideration of whether the land is contaminated.
- Clause 4.6(3) of the LEP.

The application was placed on public exhibition from 20 March 2024 to 23 April 2024, with 35 unique submissions received. Seven (7) submissions solely objected to the proposal, or elements of the proposal; 14 submissions raising suggested changes or requesting specific inclusions in the facility (note several of these also support the overall proposal); and 19 submissions were in favour of the proposal. Issues raised in submissions are considered further in this report.

The application is referred to the Northern Planning Panel ('the Panel') as the development is '*regionally significant development*', pursuant to Section 2.19(1) and Clause 3 of Schedule 6 of *State Environmental Planning Policy (Planning Systems) 2021* as the proposal is Council related development with an estimated cost of more than \$5 million.

A briefing was held with the Panel on 3 May 2024 where key issues were discussed, including height variation, flooding, contamination, noise, presentation to Gordon Street, and consideration of CPTED principles.

The key issues associated with the proposal included:

### **Height Variation**

Small elements of the proposal, including the waterslide tower, a small portion of the water slides, and the top section of flood light poles, breach the maximum height limit of 11.5 metres by up to 4.6 metres.

A Clause 4.6 Written Request has been submitted with the application. The proposed variation to the site's maximum height limit for part of the development is well founded and justified on environmental planning grounds. Compliance with the height development standard is unreasonable and unnecessary on this occasion.

### **Contamination**

A Stage 1 Site Contamination Assessment was submitted with the application. It recommended a Stage 2 Contamination Assessment for the areas of uncontrolled fill. It also recommended further assessment of soils within the vicinity of the existing amenities block following demolition to determine the potential for asbestos or lead paint.

A Stage 2 Site Contamination Assessment was subsequently carried out and submitted with the application. The Stage 2 Site Contamination Assessment has been reviewed by Council's environmental health expert, who is satisfied that, based on the sampling, the soil within the site does not require remediation and the site can be made suitable for the proposed use. Several recommendations are made in relation to the treatment of soils on the site and conditions in relation to these have been included in **Attachment A**.

### **Presentation to Gordon Street**

Concern was initially raised about the presentation of the grandstand to Gordon Street, including treatment of the solid wall facing the street, detail of shade structures, and how unwanted access to the facility from the would be deterred from the three mounds landscape feature.

The applicant has since provided additional detail and clarification of the Gordon Street presentation. It is proposed to use precast concrete panels for the base of the grandstand but soften this with:

- public art, graphics, and/or local storytelling to add interest;
- the three mounds to represent the Three Brothers Mountains to be extensively landscaped to deter access and be situated 1.5m from the grandstand wall so as to limit the ability to climb the grandstand wall.
- Use of non-climbable tensile steel mesh infill to steel canopy to provide security but allow views through the site and passive surveillance of the street and landscaped frontage.
- Provision of informal seating in front of the three mounds to cater for gathering before and after large events and for community engagement at other times.

The final presentation is considered to offer a balance of hardscape, landscape and indigenous interpretation, community engagement, security, and surveillance. The overall theme of the facility is neutral coastal lifestyle, with muted, recessive tones that blend into the natural environment and provide low maintenance, durability, and sustainability.

## Noise

A Noise Impact Assessment was submitted with the application; however, this did not adequately consider early morning use of the pool and plant and equipment (before 7am), 24-hour operation of the gymnasium, large events/carnivals, and use of an amplified Public Announcement (PA) system.

Supplementary information has been submitted with the application addressing potential noise impacts from the facility, particularly early morning pool activities, large events, 24-hour gymnasium, and plant and machinery. Council's acoustic expert has reviewed the supplementary information and confirmed that the proposal meets, or is below, trigger noise levels at residential receivers from 5am to 10pm. The aquatic facility can operate during these times. More restrictive hours of operation (7am-6pm) are recommended for large events and carnivals, and 7am-10pm for the splashpad, slides, and outdoor areas. Various other conditions relating to noise management and amenity protection are also recommended. These are included in **Attachment A**.

Following consideration of the matters for consideration under Section 4.15(1) of the EP&A Act, the provisions of the relevant state environmental planning policies, the LEP and the DCP, the proposal can be supported and is recommended for approval, subject to conditions, which have been reviewed and approved by Council, as required.

## 1. THE SITE AND LOCALITY

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### 1.1 The Site

- The subject site is known as Macquarie Park and is made up of a number of existing lots with a combined area of approximately 2.9 hectares.
- The overall site has an irregular shape with frontage to Gordon Street along the northern boundary, and a partial frontage to the end of Munster Street at the western edge of the site.
- The site is currently used as sporting fields and contains two amenities buildings, off-street car parking, perimeter tree planting, and a sewer pump station off the southern end of Munster Street. The sewer pump station is currently in the process of being relocated as a Part 5 project, and the relocation does not form part of the application.
- The land has an approximate fall from RL 5.2 at the north-east to RL 2.6 at the south-west of the site. Wrights Creek adjoins the south-west corner of the site, running between Grant Street and Lake Road to the south of netball courts to be retained.
- The land is affected by flooding, bush fire, and Class 3 acid sulfate soils.



- The site is predominantly zoned RE1 Public Recreation and partly zoned C2 Environmental Conservation pursuant to Port Macquarie-Hastings Local Environmental Plan 2011.
- A location map, aerial photograph, and photographs of the site and current improvements are included in Figures 1-11 below. The zoning of the site is shown in Figure 13.



**Figure 1 - Location Map**



**Figure 2 - Aerial Photograph**





**Figure 3 – Looking west along the Gordon Street frontage of the site**



**Figure 4 - Looking south from Gordon Street along eastern boundary of the site**





**Figure 5 - Existing amenities building along eastern boundary of the site**



**Figure 6 - Looking south along eastern boundary of the site**





**Figure 7 - Looking west across playing fields**



**Figure 8 - Rear of amenities building for netball courts, immediately south of the site**





**Figure 9 - Looking north along rear of Munster Street properties towards Gordon Street**



**Figure 10 - Looking west towards sewer pump station and end of Munster Street**





**Figure 11 - Looking south towards end of Munster Street (Google Street View)**

## **1.2 The Locality**

- The site is located on the southern fringe of the Port Macquarie Town Centre and adjoins a mix of land uses. To the west of the site on Gordon Street and Munster Street are retail premises, business premises, light industries, a childcare centre, community facility and recreation facility (indoor). These buildings are one and two storeys in scale.
- To the south of the development are existing netball courts and amenities within the Macquarie Park reserve that are proposed to be retained. Residential uses are located further south of Wrights Creek, with access via Gray Street. The residential uses are generally one and two storeys and of a reasonably low density.
- To the east of the site fronting Grant Street are a number of two storey buildings with basement parking used for office premises, and a café.
- On the northern side of Gordon Street are one and two storey residential uses, a veterinary hospital, and a service station.
- The existing aquatic centre is located a block to the east of the subject site.
- Gordon Street is a public transport route and there is an existing bus stop in the site frontage.

## **2. THE PROPOSAL AND BACKGROUND**

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### **2.1 The Proposal**

The proposal seeks consent for a recreation facility (outdoor) and recreation facility (indoor) to be constructed in 3 stages.



Specifically, the proposal involves:

- Demolition of amenities building, lighting and seating;
- Removal of five (5) trees, one of which is dead and two of which are undesirable species;
- Bulk earthworks;
- Business/building identification signage, as follows:
  - 'Port Macquarie Aquatic Facility' illuminated lettering over the main entry facing carpark – 0.35m x 10.2m dimensions
  - 'Port Macquarie Aquatic Facility' lettering on front wall facing Gordon Street – 2m x 4.5m dimensions
  - Totem signage – 2m x 0.75m dimensions close to the pedestrian pathway leading to the carpark
  - Directional and wayfinding signage within the car park, bus parking, and at the various internal locations within the facility.
- Construction of the Port Macquarie Aquatic Facility which incorporates a recreation facility (outdoor), a recreation facility (indoor), and kiosk in 3 stages, as follows:

#### **Stage 1A**

- Demolition of existing buildings and structures
- Removal of trees
- Bulk earthworks
- An outdoor swimming pool (50m with 10 swimming lanes)
- An outdoor swimming pool (25m with 6 swimming lanes)
- Ancillary structures including a covered (with shade structures) grandstand, pool plant, delivery/collection/waste rooms, switch room, storage, and amenities/changerooms together with kiosk, multi-purpose room, and administrative offices
- Vehicle accesses, bus drop off bay, Drop Off/Emergency Bay and at-grade car parking for 112 vehicles, including 7 accessible parking spaces, 3 motorcycle parking spaces, secure parking for 10 bicycles, and provision for future EV charging spaces
- Landscaping for areas shown on Staging Plan for Stage 1A
- Footpath connection to existing cycleway
- Security fencing
- Six (6) light poles and 12 floodlights
- Three (3) business identification signage zones.

The Port Macquarie Aquatic Facility will have the following hours of opening:

<b>Day</b>	<b>Opening Times</b>
Monday-Sunday	5am-10pm for general public use. 7am-6pm for large events. 7am-10pm for splashpad and slides.

**Stage 1B (subject to funding – Stage 1B could proceed with Stage 1A if funding is secured for both at the same time)**

- Shade structures over marshalling areas at each end of the 50m swimming pool
- An indoor swimming pool (20m program pool for children)
- Roof over outdoor 25m swimming pool and 20m program swimming pool
- A gymnasium with a GFA of 446.4m<sup>2</sup>, including gym foyer.
- At-grade car parking for an additional 17 vehicles
- Amended landscaping and fencing to suit extended building and carparking.

The gymnasium will have the following hours of opening:

Day	Opening Times
Monday-Sunday	24 hours

**Stage 2**

- Expansion of the gymnasium with an additional GFA of 332.5m<sup>2</sup>
- Ancillary structures associated with the aquatic facility comprising a waterslide tower, two (2) waterslides and a children's waterpark/splashpad
- Additional pool plant
- At-grade car parking for an additional 41 vehicles
- Amended landscaping and fencing to suit extended building and carparking.

**Table 1: Development Data**

Control	Proposal
Site Area	2.9 Hectares
Clause 4.6 Request	Yes – Clause 4.3 (Height of Buildings) of the Port Macquarie-Hastings Local Environmental Plan 2011. Small portions of the proposal exceed the 11.5m height standard by 4.6m (40%).
Max. Height	16.1 metres to top of water slide tower.
Car Parking spaces	170 car spaces, including 7 accessible parking spaces, and 3 motorcycle spaces, a bus drop off area and light vehicle /emergency vehicle drop off area.
Setbacks	North (building) - 20m North (grandstand) - 11m South - 50m East - 2m West - 16.4m

The proposed development is shown in Figure 12 below and in the set of architectural plans in **Attachment B**.

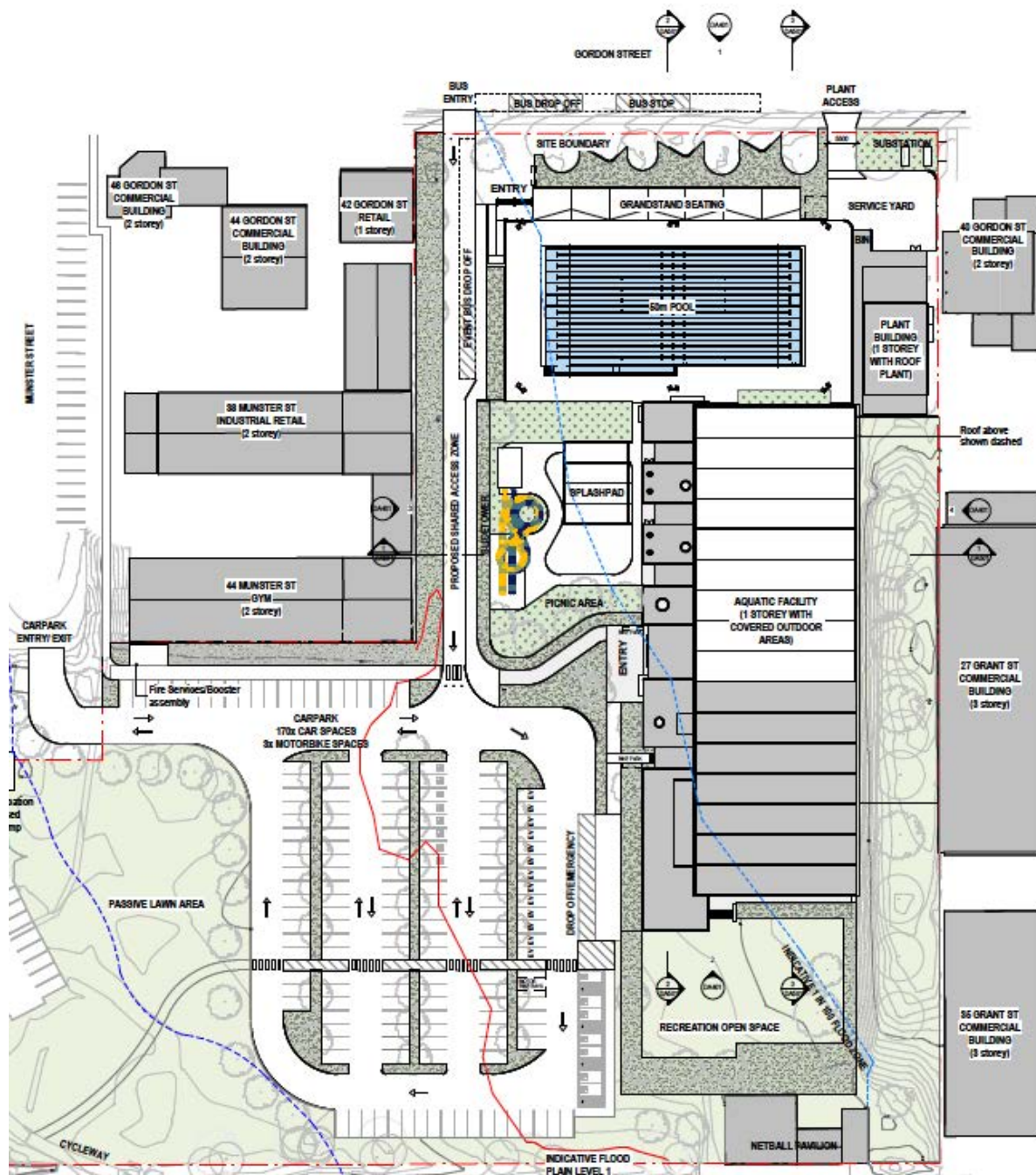


Figure 12 – Aquatic Facility and Gymnasium Site Plan

## 2.2 Background

A Recreation Needs Study was prepared by Ross Planning Pty Ltd for Port Macquarie-Hastings Council in 2014 and made the following comments regarding the current Olympic swimming pool in Port Macquarie:

*'The facility is suffering significant structural issues resulting in water-loss and a constant need for refurbishment of built infrastructure such as pool coping, expansion joints and concourse areas. It is believed that the current location of this facility is not suitable for the ongoing viability of an aquatic centre and that alternative locations for a replacement facility should be sought.'*

*While the nearby Macquarie Park has been previously suggested (and investigated) as a suitable site for such a relocation, investigations undertaken for this Recreation Plan have identified that a broader view regarding the provision of aquatic centres should be employed.'*

In 2019, Otium Planning Group Pty Ltd prepared an Aquatic Facilities Strategy for Port Macquarie-Hastings Council which reviewed previous reports and strategies, consultation, and demand analysis. This strategy identified the '*need to provide a regional aquatic leisure facility in Port Macquarie to replace the existing facility and support the predicted primary population catchment of over 100,000 people by 2036*' and outlined facility components, objectives, and areas required.

In September 2019, Council confirmed its preferred site for a new aquatic facility for Port Macquarie, being Macquarie Park (the subject site), and adopted 'Port Macquarie Aquatic Facility Site Selection Community Engagement Report', which predicated the subsequent community and stakeholder engagement relating to the new aquatic facility.

A 'Demand and Concept Planning Report' for a Port Macquarie Aquatic Facility was prepared by Xypher Sport + Leisure in 2021 and this formed the basis for the current design of the aquatic facility and gymnasium on the subject site.

Community feedback on a concept design for the aquatic facility was sought in 2021 and Council resolved to proceed with the preferred concept design, upon which the current design has been based.

During preparation of the aquatic facility design scheme, Pre-DA lodgement discussions were held between Council's project team and development assessment staff, together with other subject matter experts from Council.

The development application was lodged on 14 March 2024. A chronology of the development application since lodgement is outlined below including the Panel's involvement (briefings, deferrals etc) with the application:

**Table 2: Chronology of the DA**

<b>Date</b>	<b>Event</b>
14 March 2024	DA lodged
20 March – 23 April 2024	Exhibition of the application
14 March 2024	DA referred to external agencies
3 May 2024	Panel briefing
25 June 2024	Request for Information sent to applicant. Issues raised included contamination, acid sulfate soils, CPTED, acoustic assessment, Gordon Street

	presentation, bicycle parking, and shade at both ends of the 50m pool
22 August 2024	Meeting with Council, applicant team, and independent planning consultant to discuss status of requested information
6 September 2024	Additional information received from applicant – - Amended Ground Level Plan, Revision H - Amended Concept Design Report, Revision D, dated 5 September 2024 - Amended Landscape Plans and Report Issue F, dated 29 July 2024 - Amended Noise Impact Assessment, Revision D, dated 6 September 2024 - CPTED Report, Version 3.0, dated 6 September, 2024
13 September 2024	Additional information received from applicant – - Acid Sulfate Soils Management Plan, Reference RGS21005.6-AH, dated 13 September 2024
19 September 2024	Additional information received from applicant – - Amended Stormwater Management Plan, Revision C, dated 19 September 2024
22 September 2024	Additional information received from applicant – - Stage 2 Contamination Assessment
25 September 2024	Draft conditions provided to applicant

## 2.3 Site History

- The site was originally resumed for the purpose of a proposed school in 1951, but the school was never constructed.
- The site, including an alluvial depression, has been filled between 1959 and 1981. The source of the fill is unknown.
- A sewer pump station was installed near the western boundary of the site in the 1970's.
- The amenities buildings, lighting, car parking, and other sporting facilities were constructed between 1991 and present.
- A Pre-DA meeting was held with Council planning and subject matter experts in April 2023.



### 3. STATUTORY CONSIDERATIONS

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When determining a development application, the consent authority must take into consideration the matters outlined in Section 4.15(1) of the *Environmental Planning and Assessment Act 1979* ('the Act'). These matters as are of relevance to the development application include the following:

- (a) *the provisions of any environmental planning instrument, proposed instrument, development control plan, planning agreement and the regulations*
  - (i) *any environmental planning instrument, and*
  - (ii) *any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*
  - (iii) *any development control plan, and*
  - (iiia) *any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and*
  - (iv) *the regulations (to the extent that they prescribe matters for the purposes of this paragraph),*
- (b) *the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*
- (c) *the suitability of the site for the development,*
- (d) *any submissions made in accordance with this Act or the regulations,*
- (e) *the public interest.*

These matters are further considered below.

The proposal is not integrated development pursuant to Section 4.46 of the Act. While part of the site is on Waterfront Land, Council is a public authority and exempt from the need for a Controlled Activity Approval for works on Waterfront Land, pursuant to Clause 41 of the Water Management (General) Regulation 2018.

The proposal required referral to Essential Energy under SEPP (Transport and Infrastructure) 2021. No specific comments or concerns were raised in Essential Energy's response.

The applicant has been provided the opportunity to review draft conditions and there was no disagreement with these.

### 3.1 Environmental Planning Instruments, proposed instrument, development control plan, planning agreement and the regulations

The relevant environmental planning instruments, proposed instruments, development control plans, planning agreements and the matters for consideration under the Regulation are considered below.

#### (a) Section 4.15(1)(a)(i) - Provisions of Environmental Planning Instruments

The following Environmental Planning Instruments are relevant to this application:

- *State Environmental Planning Policy (Biodiversity and Conservation) 2021*
- *State Environmental Planning Policy (Sustainable Buildings) 2022*
- *State Environmental Planning Policy (Industry and Employment) 2021*
- *State Environmental Planning Policy (Planning Systems) 2021*
- *State Environmental Planning Policy (Resilience and Hazards) 2021*
- *State Environmental Planning Policy (Transport and Infrastructure) 2021*
- *Port Macquarie-Hastings Local Environmental Plan 2011*
- *Port Macquarie-Hastings Development Control Plan 2013.*

A summary of the key matters for consideration arising from these State Environmental Planning Policies are outlined in **Table 3** and considered in more detail below.

**Table 3: Summary of Applicable Environmental Planning Instruments**

EPI	Matters for Consideration	Comply (Y/N)
State Environmental Planning Policy (Biodiversity & Conservation) 2021	Chapter 4: Koala Habitat Protection 2021 <ul style="list-style-type: none"> <li>• Section 4.4 - Land to which the Chapter applies.</li> <li>• Section 4.10 - Development assessment on land that is less than 1ha and not subject to a Koala Plan of Management.</li> </ul>	Y
State Environmental Planning Policy (Sustainable Buildings) 2022	Chapter 3: Standards for non-residential development <ul style="list-style-type: none"> <li>• Section 3.2(1) – Sustainability requirements</li> <li>• Section 3.2(2) - Embodied Emissions Material</li> </ul> SEPP requirements have been satisfied.	Y
State Environmental Planning Policy (Industry and Employment) 2021	Chapter 3: Advertising and Signage <ul style="list-style-type: none"> <li>• Section 3.6 granting consent to signage</li> <li>• Section 3.11(1) matters for consideration</li> <li>• Schedule 5 assessment criteria</li> </ul>	Y

	Proposed signage is acceptable.	
State Environmental Planning Policy (Planning Systems) 2021	<p>Chapter 2: State and Regional Development</p> <ul style="list-style-type: none"> <li>Section 2.19(1) declares the proposal regionally significant development pursuant to Clause 3 of Schedule 6 as it comprises Council related development over \$5 million.</li> </ul>	Y
State Environmental Planning Policy (Resilience & Hazards) 2021	<p>Chapter 2: Coastal Management</p> <ul style="list-style-type: none"> <li>Section 2.8(1) - Development on land in proximity to coastal wetlands or littoral rainforest</li> <li>Section 2.10(1) &amp; (2) - Development on land within the coastal environment area</li> <li>Section 2.11(1) - Development on land within the coastal use area</li> </ul> <p>Chapter 4: Remediation of Land</p> <p>The site can be made suitable for the proposed use, subject to preparation of an Unexpected Finds Procedure for the demolition and construction phases, conditions requiring removal of asbestos in accordance with WorkSafe NSW requirements, if found, and classification of soils imported and/or exported from the site. Conditions have been included in <b>Attachment A</b> relating to these.</p>	Y
State Environmental Planning Policy (Transport and Infrastructure) 2021	<p>Chapter 2: Infrastructure</p> <ul style="list-style-type: none"> <li>Section 2.48(2) (Determination of development applications—other development) – electricity transmission - the proposal is satisfactory subject to conditions.</li> <li>Section 2.119 - Development with frontage to classified road – the site does not have frontage to a classified road and referral to Transport for NSW is not required.</li> <li>Section 2.122 - Traffic-generating development – the development is not traffic generating development and referral to Transport for NSW is not required.</li> </ul>	Y
Proposed Instruments	There are no draft environmental planning instruments affecting the site or proposal.	N/A
Port Macquarie-Hastings Local Environmental Plan 2011	<ul style="list-style-type: none"> <li>Clause 2.3 – Permissibility and zone objectives</li> <li>Clause 2.7 - Demolition requires development consent</li> </ul>	Y Y N

	<ul style="list-style-type: none"> <li>• Clause 4.3 - Height of buildings – Variation to maximum height limit sought.</li> <li>• Clause 4.6 - Exceptions to development standards</li> <li>• Clause 5.21 - Flood Planning</li> <li>• Clause 5.22 - Special flood considerations</li> <li>• Clause 7.1 - Acid sulfate soils</li> <li>• Clause 7.13 - Essential services</li> </ul>	Y Y Y Y Y
Port Macquarie-Hastings Development Control Plan 2013	<ul style="list-style-type: none"> <li>• Part B - General Provisions</li> <li>• Part D, Chapter D2.1 - East Port Neighbourhood</li> </ul> <p>Comments relating to compliance with the DCP can be found in the tables found in <b>Appendix C</b>.</p>	Y

Consideration of the relevant SEPPs is outlined below.

### ***State Environmental Planning Policy (Biodiversity and Conservation) 2021***

#### **Chapter 4 Koala Habitat Protection 2021**

Section 4.4 - This SEPP applies to all non-rural zoned land within the Port Macquarie-Hastings Local Government Area. The subject land is zoned RE1 (non-rural zone) and the SEPP applies.

Section 4.10 - Having considered the SEPP, the application and on completion of a site inspection, the consent authority is not prevented from granting consent in this case for the following reasons:

1. The property is not subject to a Koala Plan of Management.
2. There are no significant koala feed trees onsite.
3. The site is disturbed from past residential uses onsite.
4. The site is not considered to be core koala habitat.

### ***State Environmental Planning Policy (Sustainable Buildings) 2022***

#### **Chapter 3 Standard for Non-Residential Development**

The applicant has provided comments satisfying the criteria in Section 3.2(1). An Embodied Emissions Material Form has been provided that quantifies the embodied emissions attributable to the development, satisfying Section 3.2(2).

### ***State Environmental Planning Policy (Industry and Employment) 2021***

#### **Chapter 3 Advertising and Signage**

The proposed development includes the following business/building identification signage:

- 'Port Macquarie Aquatic Facility' illuminated lettering over the main entry facing carpark -0.35m x 10.2m
- 'Port Macquarie Aquatic Facility' lettering on front wall facing Gordon Street – 2m x 4.5m
- Totem signage – 2m x 0.75m close to the pedestrian pathway leading to the carpark
- Directional and wayfinding signage within the car park, bus parking, and at the various internal locations within the facility.

Section 3.6 – Table 4 provides an assessment checklist against Section 3.1(1)(a) and Schedule 5 assessment criteria of the SEPP. There is no advertising proposed.

**Table 4: Section 3.6 Signage Assessment**

<b>Applicable Section for Consideration</b>	<b>Comments</b>	<b>Satisfactory Y/N</b>
Section 3.6(a) Consistent with objectives of the policy as set out in Section 3.1(1)(a)		Y
Schedule 5(1) Character of the area	The site's local context includes commercial land uses that also include business identification signage. Noting that only one of the proposed signs is visible from the public domain, the proposed signage is compatible with the character of the locality.	Y
Schedule 5(2) Special areas	The proposed signage zones will not detract from the visual quality of any surrounding open space and creek and will be designed to include the highest quality material that will contribute to the aesthetic of the area.	Y
Schedule 5(3) Views and vistas	No impact. The signage will be attached to walls and/or will be below the level of the these.	Y
Schedule 5(4) Streetscape, setting or landscape	The scale, form and proportion of the proposed signage is appropriate for the setting and is compatible with the scale and proportion of the buildings and the character of similar signage within Port Macquarie.	Y
Schedule 5(5) Site and building	The proposed signage zones have been integrated into the design of the proposed development and is compatible with the building and structures.	Y



Schedule 5(6) Associated devices and logos with advertisements and advertising structures	None proposed.	Y
Schedule 5(7) Illumination	The level of illumination will be consistent with surrounding signage in Port Macquarie. The level of illumination will comply with AS 4282-2019 Control of the Obtrusive Effects of Outdoor Lighting.	Y
Schedule 5(8) Safety	The proposal will not have any impact on safety.	Y

Based on the above, the signage is compliant with the requirements of the SEPP and is acceptable.

### ***State Environmental Planning Policy (Planning Systems) 2021 ('Planning Systems SEPP')***

#### **Chapter 2: State and Regional Development**

The proposal is *regionally significant development* pursuant to Section 2.19(1) as it satisfies the criteria in Clause 3 of Schedule 6 of the Planning Systems SEPP as the proposal is Council related development over \$5 million. Accordingly, the Northern Regional Planning Panel is the consent authority for the application. The proposal is consistent with this Policy.

### ***State Environmental Planning Policy (Primary Production) 2021***

#### **Chapter 2: Primary Production and Rural Development**

Section 2.28 and 2.29 - The proposed development will create no adverse impact on any oyster aquaculture development or priority oyster aquaculture area. In particular, the development is well buffered to any watercourse, contains no hazardous type use/activities and is well buffered from any oyster growing areas located within the Hastings River.

### ***State Environmental Planning Policy (Resilience and Hazards) 2021***

#### **Chapter 2: Coastal Management**

Section 2.8(1) – The southern part of the site is mapped as land in proximity to coastal wetlands. The proposed development will not significantly impact on the following, subject to imposition of conditions relating to sediment and erosion control measures during construction, revegetation/turfing of all disturbed areas and controlled release of stormwater from the site:

- (a) the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or
- (b) the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.

Section 2.10 & 2.11 - A very small part of the site is within the Coastal Use Area and the whole of the site is within the Coastal Environment Area. Having regard to Section 2.10 and 2.11 of the SEPP, the proposed development is not considered likely to result in any of the following:

- a) any adverse impact on integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment;
- b) any adverse impacts on coastal environmental values and natural coastal processes;
- c) any adverse impact on marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms;
- d) any adverse impact on Aboriginal cultural heritage, practices and places;
- e) any adverse impacts on the cultural and built environment heritage;
- f) any adverse impacts on the use of the surf zone;
- g) any adverse impact on the visual amenity and scenic qualities of the coast, including coastal headlands;
- h) overshadowing, wind funneling and the loss of views from public places to foreshores; and
- i) any adverse impacts on existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability.

#### Chapter 4: Remediation of Land

The provisions of Chapter 4 of *State Environmental Planning Policy (Resilience and Hazards) 2021* ('the Resilience and Hazards SEPP') have been considered in the assessment of the development application. Section 4.6 of Resilience and Hazards SEPP requires consent authorities to consider whether the land is contaminated, and 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.

A Stage 1 Site Contamination Assessment was submitted with the application. The assessment identified areas of environmental concern based on site observations and past landuse, and a limited amount of sampling in the identified areas. Areas of uncontrolled fill from unknown sources that included mixed waste materials were identified. The report recommended a Stage 2 contamination assessment for the areas of uncontrolled fill. It also recommended further assessment of soils within the vicinity of the existing amenities block following demolition to determine the potential for asbestos or lead paint.

A Stage 2 Site Contamination Assessment, otherwise known as a Detailed Site Investigation (DSI), was subsequently undertaken and submitted with the application. A large number of were samples taken from the surface across the site and these found:

1. BTEX (Benzene, Toluene, Ethylbenzene and Xylene), PCBs (Polychlorinated Biphenyls) and heavy metals below Health Impact Levels. These do not require remediation.
2. Copper, Nickel, and Chromium in line with the natural amount found in surrounding soil levels. It is noted that Port Macquarie has high levels of these metals generally and these do not require remediation.
3. Total Recoverable Hydrocarbons, likely from natural sources as opposed to spills, and therefore no remediation is required.
4. No asbestos; however, the amenities building proposed for demolition will need to be assessed for asbestos removal prior to demolition.

The Stages 1 and 2 Site Contamination Assessments have been reviewed by Council's environmental health expert, who is satisfied that, based on the sampling, the soil within the site does not require remediation and the site can be made suitable for the proposed use.

Several recommendations are made in relation to the treatment of soils on the site, as follows:

1. Unexpected Finds Procedure - Additional testing to be carried out during bulk earthworks in the areas of known fill. If any fill is found to be contaminated, work will need to cease, a further Stage 2 Site Contamination Assessment prepared and if necessary, a Remedial Action Plan prepared and implemented.
2. Classification of Soil - Due to imported fill identified on the site, any soil removed from the site must meet the Excavated Natural Material (ENM) Order requirements to be used off-site or be taken to a licenced landfill for lawful disposal.
3. Amenities Building Demolition - The building will need to be assessed for asbestos, and any asbestos removed in accordance with SafeWork NSW requirements, prior to demolition.
4. Soils containing high levels of Copper, Nickel, and Chromium may inhibit plant growth. Virgin soil may need to be imported for these areas if they are to be used for landscaping.

Conditions have been included in **Attachment A** relating to these.

The proposal is considered to be consistent with Chapter 4 of the Resilience and Hazards SEPP, subject to imposition of relevant conditions of consent.

## ***State Environmental Planning Policy (Transport and Infrastructure) 2021***

Section 2.48 - Referral to Essential Energy is required for any of the following:

1. the penetration of ground within 2m of an underground electricity power line or an electricity distribution pole or within 10m of any part of an electricity tower,
2. development carried out:
  - (i) within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists), or
  - (ii) immediately adjacent to an electricity substation, or
  - (iii) within 5m of an exposed overhead electricity power line,
3. installation of a swimming pool any part of which is:
  - (i) within 30m of a structure supporting an overhead electricity transmission line, measured horizontally from the top of the pool to the bottom of the structure at ground level, or
  - (ii) within 5m of an overhead electricity power line, measured vertically upwards from the top of the pool.

A referral to Essential Energy was carried out with no specific comments received. Standard advice about clearances, safety advice, Dial before you Dig etc was provided and this has been provided to the applicant.

Based on the above, the proposed development addresses relevant sections in the SEPP.

## **Port Macquarie-Hastings Local Environmental Plan 2011**

The relevant local environmental plan applying to the site is the *Port Macquarie-Hastings Local Environmental Plan 2011* ('the LEP'). The aims of the LEP are as follows:

- (aa) to protect and promote the use and development of land for arts and cultural activity, including music and other performance arts,*
- (a) to protect, conserve and sustainably manage the ecological biodiversity and natural environment of the Port Macquarie-Hastings area,*
- (b) to facilitate a strong and diverse local economy within the Port Macquarie-Hastings area,*
- (c) to manage and coordinate the orderly, equitable and economic use and development of land within the Port Macquarie-Hastings area,*
- (d) to facilitate the provision and coordination of community services and facilities within the Port Macquarie-Hastings area,*

- (e) to facilitate adaptive planning for natural hazards and risks, including flooding, erosion, inundation, land stability, bush fire risk and acid sulfate soils within the Port Macquarie-Hastings area,*
- (f) to reinforce the role of the Port Macquarie-Hastings area's settlement hierarchy, centred on Port Macquarie and supported by its surrounding towns and villages,*
- (g) to ensure the effective management of public assets within the Port Macquarie-Hastings area,*
- (h) to provide a land use framework for development within the Port Macquarie-Hastings area that is safe, inclusive and equitable, and caters for the housing, employment, entertainment, cultural, welfare and recreational needs of residents and visitors,*
- (i) to ensure that development does not conflict with the hierarchy of business and retail centres in the Port Macquarie-Hastings area and the role of the Greater Port Macquarie Central Business District as the focal point for subregional functions and service delivery,*
- (j) to identify and protect features of environmental, cultural or visual importance within the Port Macquarie-Hastings area,*
- (k) to ensure that new urban development makes a positive contribution to the public domain and streetscape,*
- (l) to facilitate efficient use of urban land and infrastructure by appropriate staging of development and ensuring appropriate density of development,*
- (m) to provide effective and efficient connectivity and movement corridors within and between subdivisions.*

The proposal is consistent with the relevant aims for the following reasons:

- It facilitates the replacement of an ageing community facility (existing Port Macquarie Olympic Pool) that is no longer fit for purpose with a regional facility that reinforces the role of Port Macquarie in the settlement hierarchy and provides inclusive and equitable recreational facilities for both residents and visitors.
- It diversifies the offer of facilities for visitors, thereby promoting a strong and diverse local economy
- It will not impact on any ecology, biodiversity or natural environment.
- It is designed and located to ensure no adverse impacts from natural hazards.
- The design of the facility results in a positive contribution to the public domain and streetscape.

### Zoning and Permissibility (Part 2)

The site is located within the RE1 Public Recreation Zone pursuant to Clause 2.2 of the LEP, as shown in Figure 13 below. It is noted that a very small portion of the site is zoned C2 Environmental Conservation; however, no development is proposed within this zone.



**Figure 13 - Extract of zoning map**

According to the definitions in Clause 1.4 (contained in the Dictionary), the proposal satisfies the definition of *recreation facility (outdoor)*, *recreation facility (indoor)*, and *building/business identification signs*, all of which are permissible with consent in the RE1 Zone under the Land Use Table in Clause 2.3. The proposal also includes a 28m<sup>2</sup> kiosk for use by patrons of the facility. This use is also permissible with consent.

The zone objectives include the following (pursuant to the Land Use Table in Clause 2.3):

- To enable land to be used for public open space or recreational purposes.
- To provide a range of recreational settings and activities and compatible land uses.
- To protect and enhance the natural environment for recreational purposes.

The proposal is considered to be consistent with these zone objectives for the following reasons:

- It facilitates the replacement of an ageing community facility (existing Port Macquarie Olympic Pool) that is no longer fit for purpose with a regional facility that provides inclusive and equitable recreational facilities for both residents and visitors.
- It will not impact on any ecology, biodiversity or natural environment.
- It is designed and located to ensure no adverse impacts from natural hazards.



General Controls and Development Standards (Part 2, 4, 5 and 6)

The LEP also contains controls relating to development standards, miscellaneous provisions and local provisions. The controls relevant to the proposal are considered in **Table 5** below. The proposal does not comply with the height of buildings development standard in Part 4 of the LEP and accordingly, a Clause 4.6 Written Request has been provided with the application for the exceedance of the maximum height limit. This is discussed below Table 5.

**Table 5: Consideration of the LEP Controls**

Control	Requirement	Proposal	Comply
Height of buildings (CI 4.3(2))	11.5 metres	All recreation facility buildings and grandstand are under 11.5 metres.  Water slide tower and light poles (6) – 16.1 metres (RL 20m AHD), representing a 40% variation.	Yes  No. See Clause 4.6 discussion below this table.
Controls relating to miscellaneous permissible uses (CI 5.4(6))	Maximum GFA of 80m <sup>2</sup>	GFA of 28m <sup>2</sup>	Yes
Flood planning (CI 5.21(2))	The consent authority must be satisfied that the development:  (a) is compatible with the flood function and behaviour on the land, (b) will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties,	Part of the site is identified as being within the 1 in 100 (1% AEP) flood zone and a large portion of the site is classified as 'Flood Storage' under the Wrights Creek Flood Study (2018).  A Flood Impact and Risk Assessment was submitted with the application addressing the matters outlined in Clause 5.21(2) and (3).  The Assessment states:  <i>The proposed layout of the development has</i>	Yes

	<p>(c) will not adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of existing evacuation routes for the surrounding area in the event of a flood,</p> <p>(d) incorporates appropriate measures to manage risk to life in the event of a flood,</p> <p>(e) will not adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses.</p>	<p><i>considered the flood extent of Wrights Creek, with a large portion of the development positioned outside the 1% AEP flood extent. The carpark and entry/exit roads will be raised according to the Flood Planning Level 1 (5% AEP Wrights Creek flood level). Only a small portion of the carpark exceeds hazard category H1, with most of the carpark flood free or at H1.</i></p> <p><i>Filling of the land increases flooding within the Munster Street road reserve but does not have an adverse impact on the flood immunity of surrounding properties.</i></p> <p><i>Filling of the land also increases flooding between the southern boundary and the adjoining netball courts; however, a vegetated swale will convey flows in major rainfall events and the impact is considered negligible.</i></p> <p><i>On-site refuge is provided within the subject site. The proposed development is expected to reduce flood inundation across the subject site during the developed case scenario, therefore reducing risk to life due to flooding.</i></p> <p><i>It is considered feasible to implement a Flood</i></p>	
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		<p><i>Emergency Response Plan as part of the development to increase the awareness of flood risks, identify persons responsible for emergency response, and recommend actions to prepare and respond to a flood emergency.</i></p> <p>Council's flood expert has reviewed the Flood Impact and Risk Assessment and provided the following comments:</p> <p><i>"From a catchment flooding perspective (Wrights Creek), the flood risk and impact is confined to Wrights creek and additional flows are a result of overland flows diverted down Munster Street. There are negligible increases to existing risk and impact from the proposal.</i></p> <p><i>There is a recognised increase in levels beyond the 10mm specified in the Flood Policy (2018), however, the increases are within the road reserve and modelled to not be impacting surrounding properties/businesses.</i></p> <p><i>Despite the high hazard nature of Munster Street, the risk remains relatively unchanged to the existing conditions.</i></p>	
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		<p><i>A Flood Emergency Response Plan will be required to be developed and implemented to outline flood behaviour, warning notification, evacuation limitations and emergency response.</i></p> <p>With the implementation of mitigation measures recommended in the Assessment, including a condition requiring preparation and the <i>Flood Emergency Response Plan</i>, the proposal is supported.</p> <p>Various conditions are included in <b>Attachment A</b> relating to flood mitigation, signage, and emergency response planning.</p>	
Acid sulphate soils (ASS) (CI 7.1)	Class 3	<p>Works are proposed more than 1 metres below natural ground surface and may impact on the intermittent watertable.</p> <p>Preliminary geotechnical assessment and testing of the site indicated the present of potential ASS within materials in the south-western corner of the site.</p> <p>An Acid Sulfate Soils Management Plan (ASSMP) has been submitted with the application and a condition is included in <b>Attachment A</b> requiring compliance with the</p>	Yes

		treatment, processing, verification, and water quality monitoring procedures outlined in the ASSMP for all alluvial soils excavated from the site.	
Earthworks (CI 7.2)	<p>The consent authority must consider the following matters:</p> <p>(a) the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality,</p> <p>(b) the effect of the proposed development on the likely future use or redevelopment of the land,</p> <p>(c) the quality of the fill or the soil to be excavated, or both,</p> <p>(d) the effect of the proposed development on the existing and likely amenity of adjoining properties,</p> <p>(e) the source of any fill material and the destination of any excavated material,</p> <p>(f) the likelihood of disturbing relics,</p> <p>(g) the proximity to and potential for adverse impacts on any watercourse, drinking water catchment or environmentally sensitive area.</p>	<p>Up to 1.5 metres of excavation is proposed in parts of the site to create level building areas and accommodate in ground swimming pools.</p> <p>Up to 1.5 metres of fill is also proposed in the location of the proposed water slides and gymnasium.</p> <p>A Preliminary Geotechnical Assessment has been submitted with the application. This assessment discusses underlying soils, groundwater (which was found to be intermittent to depths of proposed excavation), foundation options, soil classifications and disposal, the presence of acid sulfate soils within part of the site, pavement design, and drainage.</p> <p>The assessment formed the basis for the design of the facility, including floor levels, excavation and fill, foundations, carpark design, and stormwater drainage design.</p> <p>Based on the outcomes of the Preliminary</p>	Yes

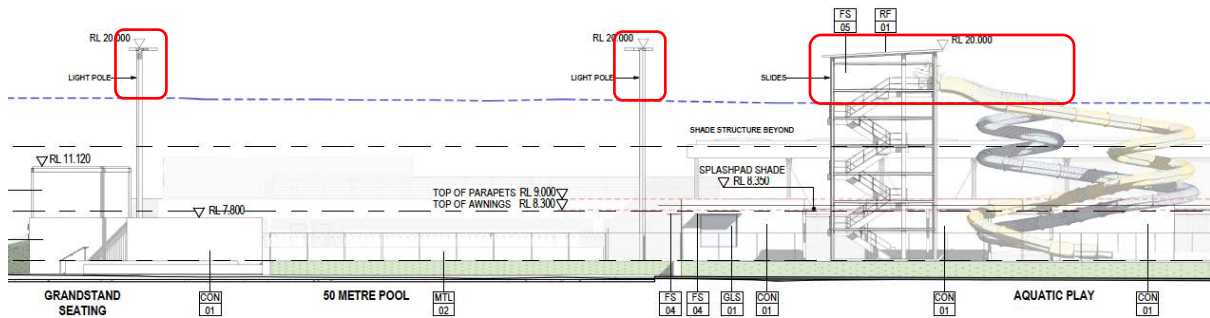
		<p>Geotechnical Assessment, potential impacts associated with matters (a)-(g) can be adequately ameliorated.</p> <p>Conditions are included in <b>Attachment A</b> relating to classification of spoil reused on, or removed from, the site, dewatering of soils if ground or other water is encountered after heavy rainfall, and the treatment of acid sulfate soils. A copy of the Preliminary Geotechnical Assessment can be found in <b>Attachment E</b>.</p>	
Essential Services (CI 7.13)	<p>Adequate arrangements for the following services required:</p> <p>(a) the supply of water,  (b) the supply of electricity,  (c) the disposal and management of sewage,  (d) stormwater drainage or on-site conservation,  (e) suitable road access.</p>	<p>Adequate arrangements can be made for provision of essential services including water supply, electricity supply, sewer, stormwater drainage and suitable road access to service the development.</p> <p>Conditions are included in <b>Attachment A</b> requiring necessary approvals from relevant service providers and utility authorities.</p>	Yes

The proposal is considered to be generally consistent with the LEP, apart from the height of the water slides tower and flood light poles, which are above the maximum height limit identified for the site.

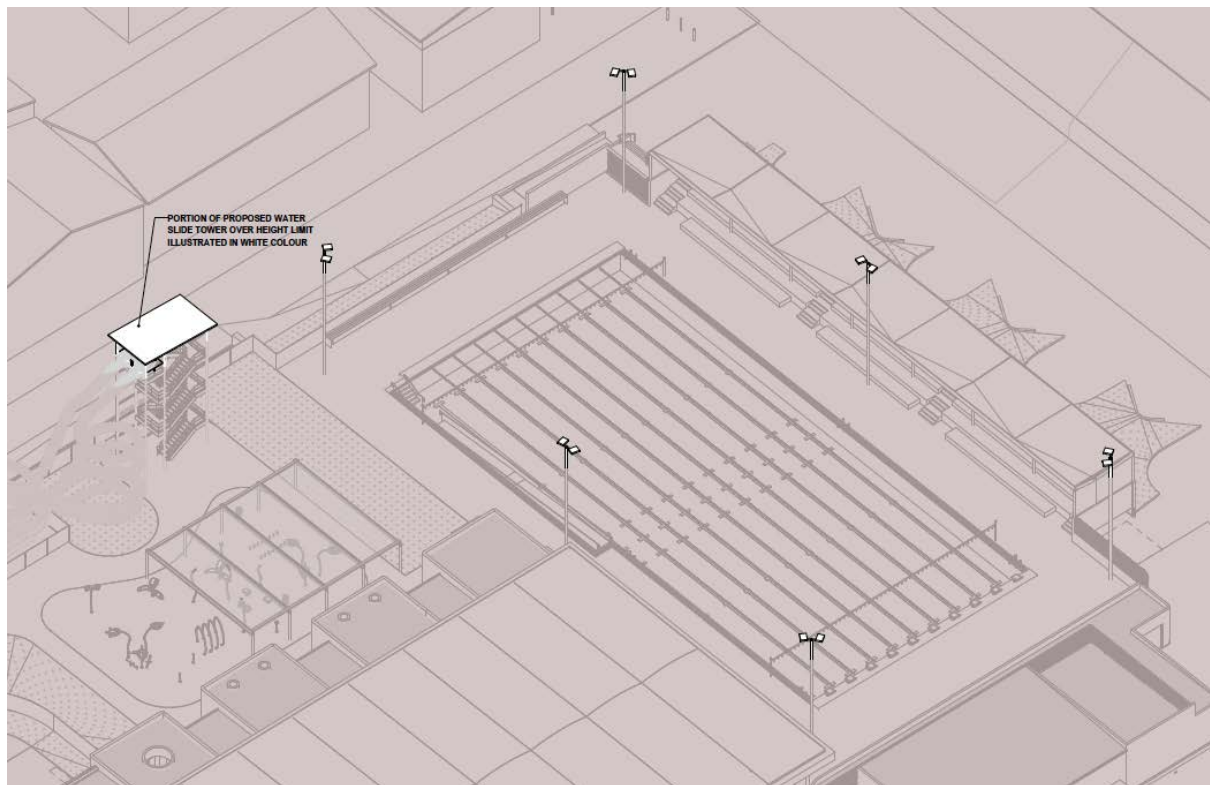
#### Clause 4.6 Written Request

Clause 4.3(2) of the LEP references a Height of Buildings Map, which specifies a maximum height of 11.5 metres for the subject site. A majority of the proposed development is below the maximum height limit; however, several elements breach this by up to 4.6 metres, these being the waterslide tower, a small portion of the water slides, and the top section of flood light poles, as indicated in Figures 14 and 15 below.





**Figure 14 – Elements of the proposal above the 11.5 m height limit**



**Figure 15 – Portion of water slide tower, water slides, and light poles above the 11.5m height limit**

### *Preconditions to be satisfied*

Clause 4.6(4) of the LEP establishes preconditions that must be satisfied before a consent authority can exercise the power to grant development consent for development that contravenes a development standard. Clause 4.6(2) provides this permissive power to grant development consent for a development that contravenes the development standard is subject to preconditions.

The two preconditions are:

1. Clause 4.6(3)(a) – whether compliance with the development standard is unreasonable and unnecessary in the circumstances of the case, and
2. Clause 4.6(3)(b) – whether there are sufficient environmental planning grounds to justify contravening the development standard.

These matters are considered below for the proposed development having regard to the applicant's Clause 4.6 Written Request, a copy of which can be found in **Attachment F**.

Compliance with the development standard is unreasonable and unnecessary in the circumstances of the case

The submitted Clause 4.6 Written Request outlines that the development meets the objectives of Clause 4.3, notwithstanding the variation for small parts of the development. It states that those elements of the proposal above the height limit are *'well distanced from the public domain'* and Gordon Street and *'do not dominate the existing character'*. It further notes that the water slide tower is an open structure that *'allows sightlines to penetrate through which reduces perceived bulk and scale'*. It notes site's location in the Port Macquarie East Civic Precinct and its positive contribution to this, and it also notes that the land to the north of the site, on the northern side of Gordon Street, has a maximum height limit of 19 metres, meaning the water slide tower is *'compatible with the "taller buildings" that are desired within the future character of the locality'*.

The Written Request also outlines that the water slide tower, water slides, and light poles will not have any detrimental visual impacts, or impacts on privacy, solar access, views, or heritage.

The Written Request is considered to satisfy Clause 4.6(3)(a).

Sufficient environmental planning grounds to justify contravening the development standard

The submitted Clause 4.6 Written Request discusses the environmental planning grounds justifying the height variation, including:

1. Improved public benefit – advancement of the recreational offering of the regional aquatic facility for residents and visitors in a manner that could not be achieved through lower water slides. More enjoyable experience for users of the water slides. Cater for a wider demographic, particularly the younger population. Provision of shade and weather protection for staff and users of the water slides.
2. Good design and amenity of the built environment – as previously stated, the water slide tower, water slides, and flood light poles assist in achieving the desired character of the Port Macquarie East Civic Precinct and provide an urban market that is strongly identifiable. A lack of detrimental environmental impacts including visual impacts, or impacts on privacy, solar access, views, or heritage.
3. Consistency with the Objects of the *Environmental Planning and Assessment Act 1979*.

The Written Request is considered to satisfy Clause 4.6(3)(b), providing sufficient environmental planning grounds to justify contravening the maximum height limit.

There is nothing in Clauses 4.3 or 4.6(8) that precludes the operation of Clause 4.6 in this situation.

**(b) Section 4.15 (1)(a)(ii) - Provisions of any Proposed Instruments**

There are no proposed instruments which have been the subject of public consultation under the EP&A Act relevant to the proposal.

**(c) Section 4.15(1)(a)(iii) - Provisions of any Development Control Plan**

The following Development Control Plan is relevant to this application:

**Port Macquarie Hastings Development Control Plan 2013 ('the DCP')**

The development generally complies with the relevant sections of the DCP - refer to the attached Assessment Table in **Attachment C**.

It should be noted that Part C of the DCP does not provide specific controls for the type of development proposed and only controls in Parts B and D2 have been considered.

**(d) Section 4.15(1)(a)(iiia) – Planning agreements under Section 7.4 of the EP&A Act**

There have been no planning agreements entered into and there are no draft planning agreements being proposed for the site.

**(e) Section 4.15(1)(a)(iv) - Provisions of Regulations**

Section 61 of the EP&A Regulation 2021 contains matters that must be taken into consideration by a consent authority in determining a development application, with the following matter being relevant to the proposal:

- Provisions of AS 2601 (demolition) - demolition work on site is capable of compliance with this Australian Standard and is reinforced by conditions. See conditions included in **Attachment A**.

**3.2 Section 4.15(1)(b) - Likely Impacts of Development**

The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality must be considered. In this regard, potential impacts related to the proposal have been considered in response to SEPPs, LEP and DCP controls outlined above and the Key Issues section below.

The consideration of impacts on the natural and built environments includes the following:

- Context and setting – Section 2.2 of this report outlines the extensive site investigations and planning for a replacement of the Port Macquarie Olympic Pool. The subject site was chosen based on extensive community engagement, site suitability, and community needs analysis. The site was considered to have the best access options for all forms of transport, including bus drop off for large events and carnivals, connectivity to an established cycleway, and within walking distance of beaches and the town centre. It is centrally located and reflects Port Macquarie’s status as a regional centre. The site has adequate separation from sensitive receivers and has been designed to respond to the Wrights Creek riparian environment along the southern boundary.

The facility has been set back from Gordon Street to allow retention of the existing avenue of mature Brush Cherry Lilly Pilly trees and the creation of a landscape feature (3 landscaped mounds) that reflects the Three Brothers Mountains (Dooragan, Mooragan, Booragan) that are important to the Birpai people and significant in the Port Macquarie landscape. Retention of almost all mature native trees throughout the rest of the site is achieved and these will provide immediate shade and a softening of the facility.

Football Mid North Coast development squads currently utilise the subject site for training purposes and this will be relocated to new sporting fields at Thrumster. The loss of the sport fields at Macquarie Park does not have an impact to the number and size of sport facilities offered for the population of Port Macquarie.

- Access and traffic – A Site Investigation Transport Review was submitted with the application, a copy of which can be found in **Attachment G**. This found that traffic increase by the facility will not exceed the capacity of the surrounding road network and that the proposed vehicle access arrangements, including the one way bus and emergency vehicle access from Gordon Street and exit via Munster Street, separated loading and delivery zone off Gordon Street, and light vehicle access and exit via Munster Street, are acceptable and will not have a significant impact on the delays or queuing in the area, or the level of service of surrounding intersections.

Council’s traffic expert has reviewed the Traffic and Parking Assessment and considers that it satisfactorily addressed the impacts of the proposed development on the surrounding road network and agrees with its conclusions. Various conditions are included in **Attachment A** relating to further approvals required and the design of accesses, parking, loading area, and public infrastructure.

- Parking - The Site Investigation Transport Review submitted with the application (a copy of which can be found in **Attachment G**) included an empirical assessment of parking demand for the various land uses, and a needs analysis over a week. It determined that the parking demand for the proposed uses will be 110 to 129 spaces for Stage 1, and up to an additional 41 spaces for Stage 2.

The provision of 129 spaces for Stage 1 and an additional 41 spaces (total 170) for Stage 2 is proposed and exceeds the expected parking demand. Seven (7) accessible spaces are proposed within close proximity of the main entrance to the facility. Eight (8) dedicated Parents With Children spaces and electrical provision for future EV charging spaces are also proposed within the carpark close to the facility's main pedestrian entry. A Drop Off/Emergency adjacent to the facility's main pedestrian entry and two Bus Drop Off Zones adjacent to the 50m Pool will cater for larger events/carnivals.

Council's traffic expert has reviewed the parking demand analysis submitted with the application and considers the proposed parking arrangements and numbers acceptable. Various conditions are included in **Attachment A** relating to parking design.

- Public Domain – The site has excellent connectivity to an established cycleway and will provide extensive landscaping and areas for passive recreation to the east and south of the facility. These will be fenced to provide a safe and secure environment for children and users of the facility. Fencing will be open to allow transparency and a connection with the areas surrounding the site. A grassed area leading down to a riparian environment to the west of the carparking area responds to the Wrights Creek riparian environment along the southern boundary.

The facility has been set back from Gordon Street to allow retention of the existing avenue of mature Brush Cherry Lilly Pilly trees and the creation of a landscape feature (3 landscaped mounds) that reflects the Three Brothers Mountains (Dooragan, Mooragan, Booragan) that are important to the Birpai people and significant in the Port Macquarie landscape. Retention of almost all mature native trees throughout the rest of the site is achieved and these will provide immediate shade and a softening of the facility.

Concern was initially raised about the presentation of the grandstand to Gordon Street, including treatment of the solid wall facing the street, detail of shade structures, and how unwanted access to the facility from the would be deterred from the three mounds landscape feature.

The applicant has since provided additional detail and clarification of the Gordon Street presentation. It is proposed to use precast concrete panels for the base of the grandstand but soften this with:

- public art, graphics, and/or local storytelling to add interest;
- the three mounds to represent the Three Brothers Mountains to be extensively landscaped to deter access and be situated 1.5m from the grandstand wall so as to limit the ability to climb the grandstand wall.
- Use of non-climbable tensile steel mesh infill to steel canopy to provide security but allow views through the site and passive surveillance of the street and landscaped frontage.
- Provision of informal seating in front of the three mounds to cater for gathering before and after large events and for community engagement at other times.



The final presentation is shown in Figures 16-19 below and is considered to offer a balance of hardscape, landscape and indigenous interpretation, community engagement, security, and surveillance. The overall theme of the facility is neutral coastal lifestyle, with muted, recessive tones that blend into the natural environment and provide low maintenance, durability, and sustainability.



**Figure 16 – Final presentation of the facility to Gordon Street**



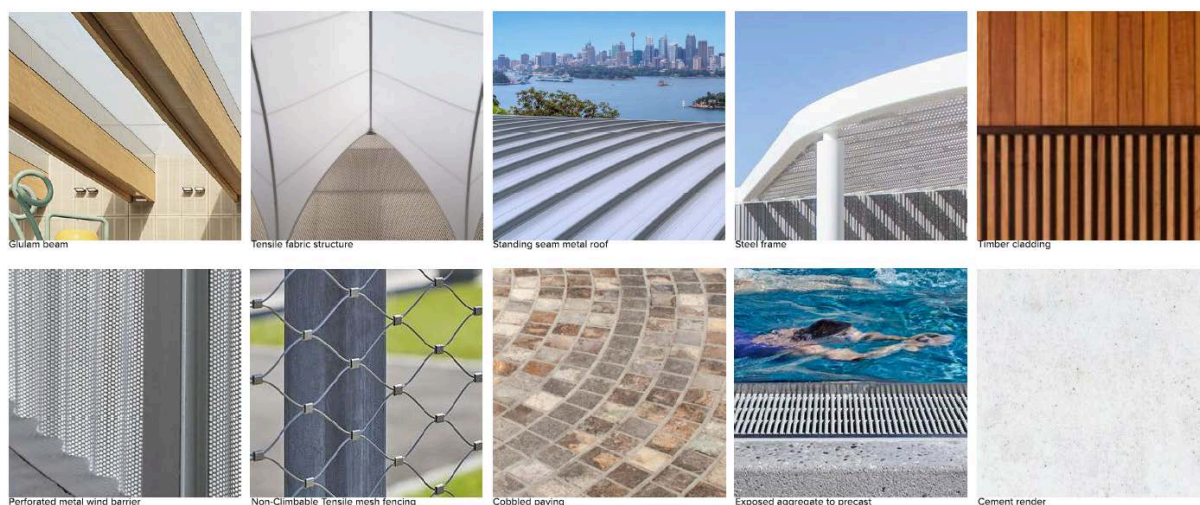
**Figure 17 – Close up of proposed pedestrian entry to the facility from Gordon Street**





**Figure 18 – Proposed grandstand, with non-climbable tensile steel mesh infill to steel canopy to provide security but allow views through the site and passive surveillance of the street and landscaped frontage. Lightweight tensile fabric to provide shade and ‘float’ over the grandstand**

### 3.8 Materials Palette



**Figure 19 – Neutral coastal lifestyle theme, with muted, recessive tones that blend into the natural environment and provide low maintenance, durability, and sustainability**

- Utilities – Adequate arrangements can be made for provision of essential services including water supply, electricity supply, sewer, stormwater drainage and suitable road access to service the development. Upgrade of the electricity supply to service the facility’s needs, including pool heating, cleaning, and provision for future EV charging spaces, with new electricity substations proposed. Running costs of the facility will be offset by the provision of an on-site solar electricity generating system. Potable water usage will be offset by capture and reuse of pool water and roof water. Conditions are included in **Attachment A** requiring necessary approvals from relevant service providers and utility authorities.

- Heritage – The site does not contain any known heritage items or sites of significance. It is not located within a Heritage Conservation Area. The site is disturbed from past uses.
- Other land resources – The site is located within an established urban context and will not sterilise any agricultural resources. It is not within a drinking water catchment.
- Air/soils impacts - The construction and/or operations of the facility will not result in any significant adverse impacts on existing air quality or result in pollution. The proposed development will also not have any significant adverse impacts on soils in terms of erosion, stability and/or productivity subject to a standard condition requiring erosion and sediment controls to be in place prior to and during construction. Standard precautionary site management conditions, including erosion and sediment controls, are included in **Attachment A**.

Stages 1 and 2 Site Contamination Assessments have been submitted with the application. The Stage 2 Site Contamination Assessment found:

- BTEX (Benzene, Toluene, Ethylbenzene and Xylene), PCBs (Polychlorinated Biphenyls) and heavy metals below Health Impact Levels. These do not require remediation.
- Copper, Nickel, and Chromium in line with the natural amount found in surrounding soil levels. It is noted that Port Macquarie has high levels of these metals generally and these do not require remediation.
- Total Recoverable Hydrocarbons, likely from natural sources as opposed to spills, and therefore no remediation is required.
- No asbestos; however, the amenities building proposed for demolition will need to be assessed for asbestos removal prior to demolition.

The Stage 2 Site Contamination Assessment has been reviewed by Council's environmental health expert, who is satisfied that, based on the sampling, the soil within the site does not require remediation and the site can be made suitable for the proposed use. Several recommendations are made in relation to the treatment of soils on the site, as follows:

1. Unexpected Finds Procedure - Additional testing to be carried out during bulk earthworks in the areas of known fill. If any fill is found to be contaminated, work will need to cease, a further Stage 2 Site Contamination Assessment prepared and if necessary, a Remedial Action Plan prepared and implemented.
2. Classification of Soil - Due to imported fill identified on the site, any soil removed from the site must meet the Excavated Natural Material (ENM) Order requirements to be used off-site or be taken to a licenced landfill for lawful disposal.

3. Amenities Building Demolition - The building will need to be assessed for asbestos, and any asbestos removed in accordance with SafeWork NSW requirements, prior to demolition.
4. Soils containing high levels of Copper, Nickel, and Chromium may inhibit plant growth. Virgin soil may need to be imported for these areas if they are to be used for landscaping.

A copy of the Stages 1 and 2 Site Contamination Assessments can be found in **Attachment D**. Conditions have been included in **Attachment A** relating to soil management.

Preliminary geotechnical assessment and testing of the site indicated the present of potential ASS within materials in the south-western corner of the site. An ASSMP has been submitted with the application and a condition is included in **Attachment A** requiring compliance with the treatment, processing, verification, and water quality monitoring procedures outlined in the ASSMP for all alluvial soils excavated from the site.

- Flora and fauna impacts – The site is disturbed and contains sporting fields. Most mature trees will be retained as part of the facility. Part of the site is mapped as containing ‘Biodiversity Values’. No clearing of vegetation of trees within this area is proposed. Conditions are included in **Attachment A** regarding protection of trees during construction.
- Natural environment – Cutting and filling of the land has been limited to that necessary for the inground swimming pools, to ameliorate flood risk, and to provide universal access to the facility.

Flood impacts have been modelled and considered acceptable by Council’s flood expert and, subject to implementation of a Flood Emergency Response Plan, the proposal is supported. Conditions are included in **Attachment A** regarding flood management.

- Stormwater management to be located within the cleared areas of the site. Environmental outcomes will be improved by the management proposed, including retention and reuse, biofiltration, gross pollutant capture, and treatment of water flows from the site. Limited activity will occur within the Coastal Wetland Proximity Buffer or Wrights Creek riparian corridor. Conditions are included in **Attachment A** regarding stormwater management final design details.
- Noise and vibration – A Noise Impact Assessment and supplementary information has been submitted with the application addressing potential noise impacts from the facility, particularly early morning pool activities, large events, 24-hour gymnasium, and plant and machinery. A copy of the Noise Impact Assessment can be found in **Attachment H**. Council’s acoustic expert has reviewed the information and confirmed that the proposal meets, or is below, trigger noise levels at residential receivers from 5am to 10pm. More restrictive hours of operation (7am-6pm) are recommended for large events and carnivals,

and 7am-10pm for the splashpad, slides, and outdoor areas. Various other conditions relating to noise management and amenity protection are also recommended. These are included in **Attachment A**.

- Natural hazards – Flood impacts are considered acceptable by Council's flood expert, subject to implementation of a Flood Emergency Response Plan. Part of the site is bush fire prone land, and a Bush Fire Assessment Report has been submitted with the application. A copy of the Bush Fire Assessment Report can be found at **Attachment I**. While not integrated, the Rural Fire Service has reviewed the proposal and Bush Fire Assessment Report and provided conditions that will be imposed on any consent. The proposal is acceptable, and the risk of bush fire can be ameliorated through design and preparation of a Bush Fire Emergency Management and Evacuation Plan.
- Safety, security and crime prevention – A CPTED Report has been submitted with the application, a copy of which can be found at **Attachment J**. It outlines measures to ensure active and passive surveillance, differentiation of public and private space, reduction in the risk of safety concerns and danger for facility users, and access control. The report makes various recommendations, and a condition is included in **Attachment A** requiring these to be implemented as part of the facility. An Operational Plan of Management has also been prepared, a copy of which can be found at **Attachment K**, and a condition is included in Attachment A requiring this to be finalised and implemented with consideration of all operational considerations outlined in this report, including waste management, noise complaints and amenity protection, flood and bush fire risks, maintenance, security, and staffing. The application was sent to NSW Police for review; however, no response was received.
- Social impact – The facility will have a positive social benefit by providing improved, inclusive, and accessible recreation facilities for all demographic sections of the community as well as visitors to Port Macquarie.
- Economic impact – The proposal facilitates the replacement of an ageing community facility (existing Port Macquarie Olympic Pool) that is no longer fit for purpose with a regional facility that reinforces the role of Port Macquarie in the settlement hierarchy and provides inclusive and equitable recreational facilities for both residents and visitors. It diversifies the offer of facilities for visitors, thereby promoting a strong and diverse local economy. The gymnasium provides an opportunity for Council to create an income stream to fund ongoing maintenance of the facility.
- Site design and internal design – The proposed facility has been designed with consultation with, and input from, the local community and key stakeholders. The design satisfactorily responds to the site attributes and will fit into the locality, providing an accessible and inclusive regional facility for residents and visitors.

- Construction – Construction impacts are considered capable of being managed and standard construction and site management conditions, including limited hours of operation, are included in **Attachment A**.
- Cumulative impacts – The proposed development is not considered to have any significant adverse cumulative impacts on the natural or built environment or the social and economic attributes of the locality.

Accordingly, it is considered that the proposal will not result in any significant adverse impacts in the locality as outlined above.

### **3.3 Section 4.15(1)(c) - Suitability of the site**

The subject site was chosen for a regional aquatic facility based on extensive community engagement, site suitability, and community needs analysis, as outlined in Section 2.2 of this report. Community feedback on a concept design for the aquatic facility on the subject site was sought in 2021 and Council resolved to proceed with the preferred concept design, upon which the current design has been based.

The site was considered to have the best access options for all forms of transport, including bus drop off for large events and carnivals, connectivity to an established cycleway, and within walking distance of beaches and the town centre. It is centrally located and reflects Port Macquarie's status as a regional centre. The site has adequate separation from sensitive receivers and has been designed to respond to the Wrights Creek riparian environment along the southern boundary. The land is not considered to be contaminated and can be made suitable for the proposed land uses.

The facility has been set back from Gordon Street to allow retention of the existing avenue of mature Brush Cherry Lilly Pilly trees. Retention of almost all mature native trees throughout the rest of the site is achieved and these will provide immediate shade and a softening of the facility.

Site constraints have been adequately addressed and where relevant, appropriate conditions of consent recommended.

### **3.4 Section 4.15(1)(d) - Public Submissions**

These submissions are considered in Section 4.3 of this report.

### **3.5 Section 4.15(1)(e) - Public interest**

The proposal facilitates the replacement of an ageing community facility that is no longer fit for purpose with a regional facility that reinforces the role of Port Macquarie in the settlement hierarchy and provides inclusive and equitable recreational facilities for both residents and visitors. It diversifies the offer of facilities for residents and visitors and positively contributes to the public domain and streetscape.

The proposal is in keeping with the aims and objectives of Port Macquarie LEP generally, the RE1 zone, Clause 4.3 Height of buildings, Clause 4.6 Exceptions to development standards, and Port Macquarie Development Control Plan.

The development will not significantly impact on any ecology, biodiversity or natural environment, and has been designed and located to ameliorate adverse impacts from natural hazards.

### Ecologically Sustainable Development

Ecologically sustainable development requires the effective integration of economic and environmental considerations in decision-making processes. The four principles of ecologically sustainable development are:

- the precautionary principle,
- intergenerational equity,
- conservation of biological diversity and ecological integrity,
- improved valuation, pricing and incentive mechanisms.

The principles of ESD require that a balance needs to be struck between the man-made development and the need to retain the natural vegetation. Based on the assessment provided in the report and with recommended conditions of consent, it is considered an appropriate balance has been struck.

The proposal is not considered to be vulnerable to any risks associated with climate change.

Overall, the proposed development satisfies relevant planning controls and will not have any significant adverse impacts on the wider public interest, subject to conditions of consent, as recommended.

## **4. REFERRALS AND SUBMISSIONS**

### **4.1 Agency Referrals and Concurrence**

The development application has been referred to various agencies for comment/concurrence/referral as required by the EP&A Act and outlined below in Table 6.

There are no outstanding issues arising from these concurrence and referral requirements subject to the imposition of the recommended conditions of consent being imposed.

**Table 6: Concurrence and Referrals to agencies**

<b>Agency</b>	<b>Concurrence/ referral trigger</b>	<b>Comments (Issue, resolution, conditions)</b>	<b>Resolved</b>
<b>Concurrence Requirements (s4.13 of EP&amp;A Act)</b>			
<b>Referral/Consultation Agencies</b>			

Rural Fire Service (RFS)	S4.14 – EP&A Act Development on bushfire prone land	<p>A Bush Fire Assessment Report was submitted with the application and referred to the RFS for consideration.</p> <p>The RFS provided recommended conditions to be imposed on any consent granted relating to:</p> <ul style="list-style-type: none"> <li>• APZ – land within 100m of the proposed buildings or to the property boundary, whichever is the lesser, to be managed as an inner protection area,</li> <li>• Provision of services - compliant with Table 6.8c of Planning for Bush Fire Protection 2019,</li> <li>• Landscaping - in accordance with Appendix 4 of Planning for Bush Fire Protection 2019,</li> <li>• Fencing - in accordance with Section 7.6 of Planning for Bush Fire Protection 2019, and</li> <li>• Bush Fire Emergency Management and Evacuation Plan – to be prepared consistent with in accordance with Appendix 4 of Planning for Bushfire Protection 2019.</li> </ul> <p>A condition is included in <b>Attachment A</b> requiring compliance with the RFS conditions.</p>	Y
Electricity supply authority – Essential Energy	Section 2.48 – <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i> - Development near electrical infrastructure	A referral to Essential Energy was carried out with no specific comments received. Standard advice about clearances, safety advice, Dial before you Dig etc was	Y



		provided and this has been provided to the applicant.	
<b>Integrated Development (S 4.46 of the EP&amp;A Act)</b>			
Natural Resources Access Regulator	S89-91 – <i>Water Management Act 2000</i>  Water use approval, water management work approval or activity approval under Part 3 of Chapter 3	The proposal is not integrated development pursuant to Section 4.46 of the Act. While part of the site is on Waterfront Land, Council is a public authority and exempt from the need for a Controlled Activity Approval for works on Waterfront Land, pursuant to Clause 41 of the Water Management (General) Regulation 2018.	N/A

## 4.2 Council Officer Referrals

The development application has been referred to various Council officers for technical review as outlined Table 7.

**Table 7: Consideration of Council Referrals**

<b>Officer</b>	<b>Comments</b>	<b>Resolved</b>
Stormwater	Council's Senior Stormwater Engineer has reviewed the stormwater management proposed for the facility and considers it acceptable, subject to conditions. Various conditions are included in <b>Attachment A</b> relating to further approvals and Council's design requirements.	Y
Flood	A Flood Impact and Risk Assessment was submitted with the application and reviewed by Council's flood expert.  With the implementation of mitigation measures recommended in the Assessment, including a condition requiring preparation and the Flood Emergency Response Plan, the proposal is supported.	Y
Traffic and Parking	A Traffic and Parking Assessment was submitted with the application and reviewed by Council's traffic expert.  They found the report satisfactorily addressed the impacts of the proposed development on the surrounding road network and concluded that the development will not have a significant impact on the delays or queuing in the area, or the level of service of surrounding intersections.	Y

	<p>The parking analysis in the Traffic and Parking Assessment was also reviewed by Council's traffic expert, who deemed it acceptable and concluded that the 170 parking spaces to be provided for the facility will cater for expected demand.</p> <p>Various conditions are included in <b>Attachment A</b> relating to further approvals required and the design of accesses, parking, loading area, and public infrastructure.</p>	
Environmental Health/Noise	<p>Council's Health and Building Regulation Coordinator reviewed the following components of the proposal:</p> <p>Acoustic impact – A Noise Impact Assessment and supplementary information has been submitted with the application addressing potential noise impacts from the facility, particularly early morning pool activities, large events, 24 hour gymnasium, and plant and machinery. Council's acoustic expert has reviewed the information and confirmed that the proposal meets, or is below, trigger noise levels at residential receivers from 5am to 10pm. More restrictive hours of operation (7am-6pm) are recommended for large events and carnivals, and 7am-10pm for the splashpad, slides, and outdoor areas. Various other conditions relating to noise management and amenity protection are also recommended. These are included in <b>Attachment A</b>.</p> <p>Light spillage – A condition is included in <b>Attachment A</b> requiring all lighting to be designed and installed in accordance with AS 4282 so as to avoid light overspill into residential areas.</p> <p>Contamination – Stages 1 and 2 Site Contamination Assessments have been submitted with the application.</p> <p>These have been reviewed by Council's environmental health expert, who is satisfied that, based on the sampling, the soil within the site does not require remediation and the site can be made suitable for the proposed use. Several recommendations are made in relation to the treatment of soils on the site, as follows:</p> <ol style="list-style-type: none"> <li>1. Unexpected Finds Procedure - Additional testing to be carried out during bulk earthworks in the areas of known fill. If any fill is found to be contaminated, work will need to cease, a further Stage 2 Site Contamination Assessment prepared and if</li> </ol>	Y

	<p>necessary, a Remedial Action Plan prepared and implemented.</p> <ol style="list-style-type: none"> <li>2. Classification of Soil - Due to imported fill identified on the site, any soil removed from the site must meet the Excavated Natural Material (ENM) Order requirements to be used off-site or be taken to a licenced landfill for lawful disposal.</li> <li>3. Amenities Building Demolition - The building will need to be assessed for asbestos, and any asbestos removed in accordance with SafeWork NSW requirements, prior to demolition.</li> <li>4. Soils containing high levels of Copper, Nickel, and Chromium may inhibit plant growth. Virgin soil may need to be imported for these areas if they are to be used for landscaping.</li> </ol> <p>A copy of the Stages 1 and 2 Site Contamination Assessments can be found in <b>Attachment D</b>. Conditions have been included in <b>Attachment A</b> relating to soil management.</p> <p>Acid Sulfate Soils – An Acid Sulfate Soils Management Plan (ASSMP) has been submitted with the application and a condition is included in <b>Attachment A</b> requiring compliance with the treatment, processing, verification, and water quality monitoring procedures outlined in the ASSMP for all alluvial soils excavated from the site.</p> <p>Food Safety – Two food preparation areas are proposed and these will need to be constructed in accordance with AS 4674, the NSW Food Act and the Food Standards Code. A condition is included in <b>Attachment A</b> requiring compliance with these.</p>	
Waste/Trade Waste	<p>No concern raised with proposed solid waste storage and collection arrangements.</p> <p>No concern raised with trade waste (wastewater from the pools and grease arrestor).</p> <p>Various conditions are included in <b>Attachment A</b> relating to waste management and a further approval required for trade waste.</p>	Y
Public Domain/ Assets	Acceptable, subject to conditions relating to further approvals and public infrastructure. Conditions are included in <b>Attachment A</b> relating to these matters.	Y
Water And Sewer	Reticulated water and sewer services are available to the site and the proposal is unlikely to have any significant adverse impacts on the water and sewer	Y

	systems. Conditions are included in <b>Attachment A</b> relating to further approvals required and design of infrastructure.	
Trees/Ecology	Acceptable, subject to conditions regarding protection of retained trees, no removal of trees and vegetation within the Biodiversity Values mapped area of the site (none proposed), and no stockpiling of any materials within the Coastal Westland Proximity Buffer. Conditions are included in <b>Attachment A</b> relating to these matters.	Y

### 4.3 Community Consultation

The proposal was notified in accordance with Council's Community Participation Plan from 20 March 2024 to 23 April 2024. The notification included the following:

- Notification letters sent to adjoining and surrounding properties; and
- Notification on the Council's website.

Council received a total of 35 unique submissions, comprising 7 submissions solely objecting to the facility, or elements of the facility, 14 submissions raising suggested changes or requesting specific inclusions in the facility (note several of these also support the overall proposal), and 19 submissions in favour of the proposal. The issues raised in these submissions are considered in **Table 8**.

**Table 8: Community Submissions**

Issue	No of submissions	Council Comments
Support for the facility	19	Noted.
Lack of shade, particularly each end of the 50m pool	5	The applicant was requested to consider providing shade at both ends of the 50m pool for marshalling and weather protection during events/carnivals. The plans now include future 'steel and fabric proprietary shade structures' at both ends of the pool.
Need for 2 x 50m pools and additional facilities, including water polo pool, sauna, enclosure of all pools	5	There have been numerous strategies, demand analyses, and concept planning for a new aquatic facility, as outlined in Section 2.2 of this report.  In September 2019, Council adopted 'Port Macquarie Aquatic Facility Site Selection Community Engagement Report', which predicated subsequent community and



Need to protect the legacy of the existing War Memorial Olympic Swimming Pool. Need to incorporate into the new facility	2	<p>stakeholder engagement relating to the new aquatic facility.</p> <p>A 'Demand and Concept Planning Report' for a Port Macquarie Aquatic Facility was prepared by Xypher Sport + Leisure in 2021 and this formed the basis for the current design of the aquatic facility and gymnasium on the subject site.</p> <p>Community feedback on a concept design for the aquatic facility was sought in 2021 and Council resolved to proceed with the preferred concept design, upon which the current design has been based.</p>
Ensure universal access to all pools	2	The entire facility will be accessible and inclusive, and each pool will be provided with a moveable pool hoist to facilitate access for people with mobility issues. The 50m and 25m pools will also be provided with ramps to facilitate access.
Emergency evacuation concern with service station opposite and child care centre	1	There are no concerns with emergency evacuation relating to an external property and no risk from a fire or explosion at the service station that would warrant refusal of this application.
Waterslide tower and slides will be a distraction to drivers in Gordon Street	1	The waterslide tower and waterslides will be located approximately 75 metres from Gordon Street and is unlikely to create a distraction for drivers.
Traffic, congestion, and loss of parking in Gordon Street	1	<p>A Traffic and Parking Assessment was submitted with the application and satisfactorily addresses the impacts of the proposed development on the surrounding road network. It concludes that the development will not have a significant impact on the delays or queuing in the area, or the level of service of surrounding intersections.</p> <p>The parking analysis in the Traffic and Parking Assessment concludes that the 170 parking spaces to be provided for the facility will cater for expected demand, even with the loss of several parking spaces in Gordon Street.</p>
Lack of innovation, co-located health	1	Not a planning issue to be addressed as part of the current DA.

and community services		
Entry cost	1	Not a planning issue to be addressed as part of the current DA.
Loss of current sportsfields	1	<p>Port Macquarie Football Club has been relocated from Macquarie Park (the subject site) to Wayne Richards Park. Macquarie Park is not a home ground for any local football club.</p> <p>Football Mid North Coast development squads currently utilise the subject site for training purposes and this will be relocated to new sporting fields at Thrumster.</p> <p>The loss of the sport fields at Macquarie Park does not have an impact to the number and size of sport facilities offered for the population of Port Macquarie.</p>

## 5. CONTRIBUTIONS

### Section 7.12 Contributions

The proposal attracts a development contribution under Section 7.12 of the EP&A Act. A condition requiring payment of this is included in **Attachment A**. An estimate of development contributions payable can be found in **Attachment L**.

### Section 64 Water and Sewer Contributions

Water and sewer contributions will be determined as part of the Section 306 notice of requirements under the *Water Management Act 2000*.

## 6. KEY ISSUES

The following key issues are relevant to the assessment of this application having considered the relevant planning controls and the proposal in detail:

### 6.1 Variation to Height Limit

Small elements of the proposal, including the waterslide tower, a small portion of the water slides, and the top section of flood light poles, breach the maximum height limit of 11.5 metres by up to 4.6 metres.

A Clause 4.6 Written Request has been submitted with the application. The proposed variation to the site's maximum height limit for part of the development is well founded and justified on environmental planning grounds. Compliance with the height development standard is unreasonable and unnecessary on this occasion.

## 6.2 Contamination

A Stage 1 Site Contamination Assessment was submitted with the application. It recommended a Stage 2 Site Contamination Assessment for the areas of uncontrolled fill. It also recommended further assessment of soils within the vicinity of the existing amenities block following demolition to determine the potential for asbestos or lead paint.

### Resolution

A Stage 2 Site Contamination Assessment was subsequently carried out and submitted with the application. The Stage 2 Site Contamination Assessment found:

- BTEX (Benzene, Toluene, Ethylbenzene and Xylene), PCBs (Polychlorinated Biphenyls) and heavy metals below Health Impact Levels. These do not require remediation.
- Copper, Nickel, and Chromium in line with the natural amount found in surrounding soil levels. It is noted that Port Macquarie has high levels of these metals generally and these do not require remediation.
- Total Recoverable Hydrocarbons, likely from natural sources as opposed to spills, and therefore no remediation is required.
- No asbestos; however, the amenities building proposed for demolition will need to be assessed for asbestos removal prior to demolition.

The Stage 2 Site Contamination Assessment has been reviewed by Council's environmental health expert, who is satisfied that, based on the sampling, the soil within the site does not require remediation and the site can be made suitable for the proposed use. Several recommendations are made in relation to the treatment of soils on the site and conditions in relation to these have been included in **Attachment A**.

Subject to implementation of the recommendations, the proposal is considered to be consistent with Chapter 4 of the Resilience and Hazards SEPP and the site can be made suitable for the proposed land uses.

## 6.3 Presentation to Gordon Street

Concern was initially raised about the presentation of the grandstand to Gordon Street, including treatment of the solid wall facing the street, detail of shade structures, and how unwanted access to the facility from the would be deterred from the three mounds landscape feature.

### Resolution

The applicant has since provided additional detail and clarification of the Gordon Street presentation. It is proposed to use precast concrete panels for the base of the grandstand but soften this with:

- public art, graphics, and/or local storytelling to add interest;

- the three mounds to represent the Three Brothers Mountains to be extensively landscaped to deter access and be situated 1.5m from the grandstand wall so as to limit the ability to climb the grandstand wall.
- Use of non-climbable tensile steel mesh infill to steel canopy to provide security but allow views through the site and passive surveillance of the street and landscaped frontage.
- Provision of informal seating in front of the three mounds to cater for gathering before and after large events and for community engagement at other times.

The final presentation is considered to offer a balance of hardscape, landscape and indigenous interpretation, community engagement, security, and surveillance. The overall theme of the facility is neutral coastal lifestyle, with muted, recessive tones that blend into the natural environment and provide low maintenance, durability, and sustainability.

## 6.4 Noise

A Noise Impact Assessment was submitted with the application; however, this did not adequately consider early morning use of the pool and plant and equipment (before 7am), 24-hour operation of the gymnasium, large events/carnivals, and use of an amplified Public Announcement (PA) system.

### Resolution

Supplementary information has been submitted with the application addressing potential noise impacts from the facility, particularly early morning pool activities, large events, 24-hour gymnasium, and plant and machinery. Council's acoustic expert has reviewed the supplementary information and confirmed that the proposal meets, or is below, trigger noise levels at residential receivers from 5am to 10pm. The aquatic facility can operate during these times. More restrictive hours of operation (7am-6pm) are recommended for large events and carnivals, and 7am-10pm for the splashpad, slides, and outdoor areas. Various other conditions relating to noise management and amenity protection are also recommended. These are included in **Attachment A**.

## 7. CONCLUSION

This development application has been considered in accordance with the requirements of the EP&A Act and the Regulation as outlined in this report. Following a thorough assessment of the relevant planning controls, issues raised in submissions and the key issues identified in this report, it is considered that the application can be supported.

Overall, the site is considered suitable for the proposed development and the proposal adequately addresses relevant planning controls. The proposed variation to the site's maximum height limit for part of the development is well founded and justified on environmental planning grounds.

The development is not considered to be contrary to the public's interest and will not result a significant adverse social, environmental or economic impacts.



It is considered that the key issues as outlined in Section 6 have been resolved satisfactorily through amendments to the proposal and/or in the recommended draft conditions at **Attachment A**.

## **8. RECOMMENDATION**

That the Development Application No. 2024/141 for Recreation Facility (outdoor) and Recreation Facility (indoor) - Port Macquarie Aquatic Facility at Gordon Street, Port Macquarie be APPROVED pursuant to Section 4.16(1)(a) of the *Environmental Planning and Assessment Act 1979* subject to the draft conditions of consent attached to this report at **Attachment A**.

The following attachments are provided:

- Attachment A: Draft Conditions of Consent
- Attachment B: Architectural and Landscape Plans
- Attachment C: DCP Tables of Compliance
- Attachment D: Flood Impact and Risk Assessment
- Attachment E: Geotechnical Assessment, Stages 1 and 2 Site Contamination Assessments
- Attachment F: Clause 4.6 Written Request
- Attachment G: Site Investigation Transport Review
- Attachment H: Noise Impact Assessment
- Attachment I: Bush Fire Assessment Report
- Attachment J: CPTED Report
- Attachment K: Operational Plan of Management
- Attachment L: Development Contributions Estimate