

Prior to the commencement of the meeting, the Mayor will make the following declaration:

“I acknowledge the Tasmanian Aboriginal Community as the traditional custodians of the land on which we meet today, and pay respect to elders, past and present”.

The Mayor also to advise the Meeting and members of the public that Council Meetings, not including Closed Meeting, are audio-visually recorded and published to Council’s website.

COUNCIL MEETING
MONDAY 18 DECEMBER

TABLE OF CONTENTS

ITEM	SUBJECT	PAGE
1.	APOLOGIES	5
2.	CONFIRMATION OF MINUTES	5
3.	MAYOR’S COMMUNICATION.....	5
4.	COUNCIL WORKSHOPS.....	5
5.	DECLARATIONS OF INTERESTS OF ALDERMAN OR CLOSE ASSOCIATE	6
6.	TABLING OF PETITIONS	7
7.	PUBLIC QUESTION TIME	8
7.1	PUBLIC QUESTIONS ON NOTICE	8
7.2	ANSWERS TO QUESTIONS ON NOTICE	8
7.3	ANSWERS TO PREVIOUS QUESTIONS TAKEN ON NOTICE	8
7.4	QUESTIONS WITHOUT NOTICE.....	8
8.	DEPUTATIONS BY MEMBERS OF THE PUBLIC	9
9.	MOTIONS ON NOTICE	10
10.	REPORTS FROM OUTSIDE BODIES	11
10.1	REPORTS FROM SINGLE AND JOINT AUTHORITIES.....	11
	• SOUTHERN TASMANIAN COUNCILS AUTHORITY	
	• COPPING REFUSE DISPOSAL SITE JOINT AUTHORITY	
	• TASMANIAN WATER CORPORATION	
10.2	REPORTS FROM COUNCIL AND SPECIAL COMMITTEES AND OTHER REPRESENTATIVE BODIES ..	11
11.	REPORTS OF OFFICERS	16
11.1	WEEKLY BRIEFING REPORTS	16
11.2	DETERMINATION ON PETITIONS TABLED AT PREVIOUS COUNCIL MEETINGS	17

11.3 PLANNING AUTHORITY MATTERS

11.3.1	DEVELOPMENT APPLICATION D-2017/492 - 40 AXIOM WAY, ACTON PARK - OUTBUILDING.....	19
11.3.2	DEVELOPMENT APPLICATION D-2017/490 - LOT 580, 40 PASS ROAD, ROKEBY - OUTBUILDING	34
11.3.3	DEVELOPMENT APPLICATION D-2017/387 - 53 ACTON COURT, ACTON PARK – ALTERATIONS AND ADDITIONS TO DWELLING AND OUTBUILDING	45
11.3.4	SUBDIVISION APPLICATION SD-2017/40 - 33 SPITFARM ROAD, OPOSSUM BAY – SUBDIVISION (1 LOT PLUS BALANCE LOT)	65
11.3.5	DEVELOPMENT APPLICATION D-2017/463 - 318 EAST DERWENT HIGHWAY, GEILSTON BAY - CHANGE OF USE - HOURS OF OPERATION.....	77
11.3.6	DEVELOPMENT APPLICATION D-2017/518 - 137 MORNINGTON ROAD, MORNINGTON - CHANGE OF USE TO FITNESS CENTRE	92

11.4 CUSTOMER SERVICE - NIL ITEMS**11.5 ASSET MANAGEMENT**

11.5.1	SEVEN MILE BEACH SPORT AND ACTIVE RECREATION PRECINCT – FUNDING.....	111
--------	--	-----

11.6 FINANCIAL MANAGEMENT - NIL ITEMS**11.7 GOVERNANCE**

11.7.1	AMENDMENTS TO PROPOSED PUBLIC PLACES BY-LAW (NO 1 OF 2018)	119
11.7.2	CLARENCE CITY BAND MANAGEMENT COMMITTEE CONSTITUTION	167
11.7.3	REVIEW OF THE ABORIGINAL AND DUAL NAMING POLICY	195
11.7.4	AMENDMENTS TO THE LOCAL GOVERNMENT (GENERAL) REGULATIONS 2015 – STAKEHOLDER CONSULTATION	202
11.7.5	VOLUNTARY AMALGAMATIONS – CONSULTATION RESULTS.....	216
12.	ALDERMEN’S QUESTION TIME.....	226
12.1	QUESTIONS ON NOTICE	226
12.2	ANSWERS TO QUESTIONS ON NOTICE	226
12.3	ANSWERS TO PREVIOUS QUESTIONS TAKEN ON NOTICE	226
12.4	QUESTIONS WITHOUT NOTICE.....	226

13.	CLOSED MEETING.....	227
13.1	APPLICATIONS FOR LEAVE OF ABSENCE	
13.2	REPORTS FROM SINGLE AND JOINT AUTHORITIES	
13.3	ANNUAL REVIEW – GENERAL MANAGER	

BUSINESS TO BE CONDUCTED AT THIS MEETING IS TO BE CONDUCTED IN THE ORDER IN WHICH IT IS SET OUT IN THIS AGENDA UNLESS THE COUNCIL BY ABSOLUTE MAJORITY DETERMINES OTHERWISE

COUNCIL MEETINGS, NOT INCLUDING CLOSED MEETING, ARE AUDIO-VISUALLY RECORDED AND PUBLISHED TO COUNCIL’S WEBSITE

1. APOLOGIES**2. CONFIRMATION OF MINUTES**

(File No. 10/03/01)

RECOMMENDATION:

That the Minutes of the Council Meeting held on 27 November 2017, as circulated, be taken as read and confirmed.

3. MAYOR'S COMMUNICATION**4. COUNCIL WORKSHOPS**

In addition to the Aldermen's Meeting Briefing (workshop) conducted on Friday immediately preceding the Council Meeting the following workshops were conducted by Council since its last ordinary Council Meeting:

PURPOSE

Planning Scheme

Presentation – Clarence City Band

Public Places By-law

State Government Aboriginal and Dual Naming Policy

Review of Local Government (General) Regulations

Voluntary Amalgamation Survey

DATE

4 December

RECOMMENDATION:

That Council notes the workshops conducted.

5. DECLARATIONS OF INTERESTS OF ALDERMAN OR CLOSE ASSOCIATE (File No)

In accordance with Regulation 8 of the Local Government (Meeting Procedures) Regulations 2015 and Council's adopted Code of Conduct, the Mayor requests Aldermen to indicate whether they have, or are likely to have a pecuniary interest (any pecuniary benefits or pecuniary detriment) or conflict of interest in any item on the Agenda.

6. TABLING OF PETITIONS

(File No. 10/03/12)

(Petitions received by Aldermen may be tabled at the next ordinary Meeting of the Council or forwarded to the General Manager within seven (7) days after receiving the petition.

Petitions are not to be tabled if they do not comply with Section 57(2) of the Local Government Act, or are defamatory, or the proposed actions are unlawful.

The General Manager will table the following petitions which comply with the Act requirements:

7. PUBLIC QUESTION TIME

Public question time at ordinary Council meetings will not exceed 15 minutes. An individual may ask questions at the meeting. Questions may be submitted to Council in writing on the Friday 10 days before the meeting or may be raised from the Public Gallery during this segment of the meeting.

The Chairman may request an Alderman or Council officer to answer a question. No debate is permitted on any questions or answers. Questions and answers are to be kept as brief as possible.

7.1 PUBLIC QUESTIONS ON NOTICE

(Seven days before an ordinary Meeting, a member of the public may give written notice to the General Manager of a question to be asked at the meeting). A maximum of two questions may be submitted in writing before the meeting.

Questions on notice and their answers will be included in the minutes.

Nil.

7.2 ANSWERS TO QUESTIONS ON NOTICE

The Mayor may address Questions on Notice submitted by members of the public.

Nil.

7.3 ANSWERS TO PREVIOUS QUESTIONS TAKEN ON NOTICE

Nil.

7.4 QUESTIONS WITHOUT NOTICE

The Chairperson may invite members of the public present to ask questions without notice.

Questions are to relate to the activities of the Council. Questions without notice will be dependent on available time at the meeting.

Council Policy provides that the Chairperson may refuse to allow a question on notice to be listed or refuse to respond to a question put at a meeting without notice that relates to any item listed on the agenda for the Council meeting (note: this ground for refusal is in order to avoid any procedural fairness concerns arising in respect to any matter to be determined on the Council Meeting Agenda).

When dealing with Questions without Notice that require research and a more detailed response the Chairman may require that the question be put on notice and in writing. Wherever possible, answers will be provided at the next ordinary Council Meeting.

8. DEPUTATIONS BY MEMBERS OF THE PUBLIC

(File No 10/03/04)

(In accordance with Regulation 38 of the Local Government (Meeting Procedures) Regulations 2015 and in accordance with Council Policy, deputation requests are invited to address the Meeting and make statements or deliver reports to Council)

9. MOTIONS ON NOTICE

Nil

10. REPORTS FROM OUTSIDE BODIES

This agenda item is listed to facilitate the receipt of both informal and formal reporting from various outside bodies upon which Council has a representative involvement.

10.1 REPORTS FROM SINGLE AND JOINT AUTHORITIES

Provision is made for reports from Single and Joint Authorities if required

Council is a participant in the following Single and Joint Authorities. These Authorities are required to provide quarterly reports to participating Councils, and these will be listed under this segment as and when received.

- **SOUTHERN TASMANIAN COUNCILS AUTHORITY**

Representative: Ald Doug Chipman, Mayor or nominee

Quarterly Reports

Not required.

Representative Reporting

- **COPPING REFUSE DISPOSAL SITE JOINT AUTHORITY**

Representatives: Ald Jock Campbell
(Ald James Walker, Deputy Representative)

Quarterly Reports

The Copping Refuse Disposal Site Joint Authority has distributed the Quarterly Summary of its Meetings for the period ending 30 November 2017 (refer Attachment 1).

The Copping Refuse Disposal Site Joint Authority has also distributed its Quarterly Report for the period 1 July to 30 September 2017.

In accordance with Regulation 15 of the Local Government (Meeting Procedures) Regulations 2015 the Report will be tabled in Closed Meeting.

Representative Reporting

- **TASWATER CORPORATION**

10.2 REPORTS FROM COUNCIL AND SPECIAL COMMITTEES AND OTHER REPRESENTATIVE BODIES

Nil.



Copping Refuse Disposal Site Joint Authority

27 November 2017

Mr A Paul
General Manager
Clarence City Council
PO Box 96
ROSNY PARK TAS 7018

Mr Robert Higgins
General Manager
Tasman and Sorell Councils
PO Box 126
SORELL TAS 7172

Mr Gary Arnold
General Manager
Kingborough Council
Locked Bag 1
KINGSTON TAS 7050

Dear General Manager,

COPPING REFUSE DISPOSAL SITE JOINT AUTHORITY REPORTS

Participating Councils and the Director of Local Government have reached agreement on the establishment of consistent reporting arrangements for the Authority. The following advice regarding matters discussed at recent Authority and Board meetings is now provided for inclusion in your General Manager's routine report to your Council.

Authority Meeting (electronic) held on 20 September 2017

Matters dealt with:

- Deed of Variation related to the Grant Deed for the C Cell Project.

Authority Meeting (electronic) held on 3 November 2017

Matters dealt with:

- Amendment of the Joint Authority Rules.

Authority Meeting held on 23 November 2017

Matters dealt with:

- The Minutes of the Authority's General Meeting held on 31 August 2017 and the electronic meetings of 20 September 2017 and 3 November 2017 were accepted.
- The Minutes of the Southern Waste Solutions Board for meetings held on 16 August 2017, 29 August 2017 (electronic) and 20 September 2017 were noted.
- The Minutes of the C Cell Pty Ltd Board for meetings held on 18 April 2017 and 20 September 2017 were noted.

.....
Copping Refuse Disposal Site Joint Authority trading as SOUTHERN WASTE SOLUTIONS

Level 4, 29 Elizabeth Street, Hobart
Mobile: +61 0418 990 868 E-Mail: inelson@nelsonhr.com.au
ABN: 87 928 486 460



Copping Refuse Disposal Site Joint Authority

- The September 2017 Quarterly Report was presented and accepted.
- The SWS Board Chair provided an update on Board activities including continued productivity and improvement at the Lutana site, and that operations were otherwise generally on track.
- The C Cell Pty Ltd Board Chair provided an update on Board an update on C Cell construction, activities related to attracting customers to the C Cell and initial operational planning.
- The re-appointment of one SWS Director and the appointment of a new SWS Director were discussed and approved in Closed Meeting.

The following reports are attached in accordance with the decisions of the Authority at its 31 August 2017 meeting:

- September 2017 Quarterly Report (**Attachment 1**).

(**Note:** Minutes of meeting of the Authority may be tabled in open Council meeting unless they contain confidential material. Given its commercial in confidence content The Quarterly Report, Business Plan, Budget and Contractual, Statutory and other obligations reports are requested to be tabled in Closed Meeting). Any Closed Meeting items considered by the Authority should also be tabled only in Closed Meeting of Council.

Board Meeting held on 16 August 2017

Matters dealt with:

- The Minutes of the Board meeting held 24 July 2017 were accepted.
- The Monthly Operational Overview and Financial Report for July 2017 was received and noted.
- The 'per-tonne write-off cost' for future B Cell construction was reviewed and increased in line with the recommendation of the CEO.
- C Cell Leachate Infrastructure transfers were approved.
- The quarterly income statement timing was discussed.
- A wetlands proposal for the Copping site was reviewed and endorsed.
- A proposal from Mike Ritchie was discussed.

.....
Copping Refuse Disposal Site Joint Authority trading as SOUTHERN WASTE SOLUTIONS

Level 4, 29 Elizabeth Street, Hobart
Mobile: +61 0418 990 868 E-Mail: inelson@nelsonhr.com.au
ABN: 87 928 486 460



Copping Refuse Disposal Site Joint Authority

Board Meeting (electronic) held on 29 August 2017

Matters dealt with:

- Approval of the Wetland Proposal.

Board Meeting (electronic) held on 20 September 2017

Matters dealt with:

- The Minutes of the Board meeting held 16 August 2017 and the electronic meeting held on 29 August 2017 were accepted.
- A discussion with the Manager Operations, Mick Barker, occurred.
- The Monthly Operational Overview and Financial Report for August 2017 was received and noted.
- A report dealing with the remaining life for Stage 1 of the Copping site was considered, with required actions to commence planning for Stage 2 to be identified.
- A contract related to a Soil Remediation Facility, which was expired, was not renewed.
- A possible new business opportunity was discussed and noted for further consideration at a suitable time.
- The C Cell Management report was received and noted.

C Cell Pty Ltd Board Meeting on 18 April 2017

Matters dealt with:

- A management report from the CEO was received and noted.
- Leachate management arrangements were discussed and confirmed.
- A budget requested for the next meeting.
- The agenda layout for C Cell meetings was to be standardised with the SWS Board format.
- Previous minutes were approved.

C Cell Pty Ltd Board Meeting on 20 September 2017

Matters dealt with:

- Minutes of the 18 April 2017 meeting were approved.
- A management report from the CEO was received and noted.

.....
Copping Refuse Disposal Site Joint Authority trading as SOUTHERN WASTE SOLUTIONS

Level 4, 29 Elizabeth Street, Hobart
Mobile: +61 0418 990 868 E-Mail: inelson@nelsonhr.com.au
ABN: 87 928 486 460



Copping Refuse Disposal Site Joint Authority

- A budget was adopted.
- C Cell Leachate Infrastructure arrangements were confirmed.
- A major activities timeline was discussed and approved.
- AGM and Board Chair annual report arrangements were confirmed.

(Note: As minutes of meetings of the Board are commercial in confidence it is requested that these be held on file and may be perused by Aldermen / Councillors but not tabled at Council meetings)

Yours sincerely,

Ian Nelson
Secretary

.....
Copping Refuse Disposal Site Joint Authority trading as **SOUTHERN WASTE SOLUTIONS**

Level 4, 29 Elizabeth Street, Hobart
Mobile: +61 0418 990 868 E-Mail: inelson@nelsonhr.com.au
ABN: 87 928 486 460

11. REPORTS OF OFFICERS**11.1 WEEKLY BRIEFING REPORTS**

(File No 10/02/02)

The Weekly Briefing Reports of 27 November and 4 and 11 December 2017 have been circulated to Aldermen.

RECOMMENDATION:

That the information contained in the Weekly Briefing Reports of 27 November and 4 and 11 December 2017 be noted.

Decision: **MOVED** Ald **SECONDED** Ald

“That the Recommendation be adopted”.

CARRIED

11.2 DETERMINATION ON PETITIONS TABLED AT PREVIOUS COUNCIL MEETINGS

11.3 PLANNING AUTHORITY MATTERS

In accordance with Regulation 25 (1) of the Local Government (Meeting Procedures) Regulations 2015, the Mayor advises that the Council intends to act as a Planning Authority under the Land Use Planning and Approvals Act 1993, to deal with the following items:

11.3.1 DEVELOPMENT APPLICATION D-2017/492 - 40 AXIOM WAY, ACTON PARK - OUTBUILDING
(File No D-2017/492)**EXECUTIVE SUMMARY****PURPOSE**

The purpose of this report is to consider the application made for an outbuilding at 40 Axiom Way, Acton Park.

RELATION TO PLANNING PROVISIONS

The land is zoned Rural Living and subject to the Parking and Access Code under the Clarence Interim Planning Scheme 2015 (the Scheme). In accordance with the Scheme the proposal is a Discretionary development.

LEGISLATIVE REQUIREMENTS

The report on this item details the basis and reasons for the recommendation. Any alternative decision by Council will require a full statement of reasons in order to maintain the integrity of the Planning approval process and to comply with the requirements of the Judicial Review Act and the Local Government (Meeting Procedures) Regulations 2015.

Note: References to provisions of the Land Use Planning and Approvals Act 1993 (the Act) are references to the former provisions of the Act as defined in Schedule 6 – Savings and transitional provisions of the Land Use Planning and Approvals Amendment (Tasmanian Planning Scheme Act) 2015. The former provisions apply to an interim planning scheme that was in force prior to the commencement day of the Land Use Planning and Approvals Amendment (Tasmanian Planning Scheme Act) 2015. The commencement day was 17 December 2015.

Council is required to exercise a discretion within the statutory 42 day period which expires with the written consent of the applicant on 20 December 2017.

CONSULTATION

The proposal was advertised in accordance with statutory requirements and 1 representation was received raising the following issues:

- number of outbuildings on-site; and
- use of outbuilding.

RECOMMENDATION:

A. That the Development Application for an outbuilding at 40 Axiom Way, Acton Park (CI Ref D-2017/492) be approved subject to the following conditions and advice.

1. GEN AP1 – ENDORSED PLANS.
2. GEN M7 – DOMESTIC USE.

3. ADVICE – Council is concerned that 3 shipping containers have been placed on the property without a planning permit, as required by the Planning Scheme. Therefore the shipping containers on the site are to be removed within 30 days of the date of this planning permit. Alternatively, a valid development application seeking retrospective approval is to be lodged with Council within the same timeframe. Should these timeframes not be met, Council may commence enforcement action as it is obliged by law to enforce the Planning Scheme.
 4. ADVICE – Although the application is for an outbuilding in this instance, it appears that the outbuilding may also be intended for storage associated with a business. Clause 4.1 of the Clarence Interim Planning Scheme 2015 limits the area to be used for storage of business-related equipment to 50m². The use of more than 50m² for the purposes of commercial storage is defined by the Scheme as within the Storage Use Class, which is prohibited within the zone and could not be approved by Council.
- B. That the details and conclusions included in the Associated Report be recorded as the reasons for Council's decision in respect of this matter.

ASSOCIATED REPORT

1. BACKGROUND

No relevant background.

2. STATUTORY IMPLICATIONS

- 2.1. The land is zoned Rural Living under the Scheme.
- 2.2. The proposal is discretionary because it does not meet certain Acceptable Solutions under the Scheme.
- 2.3. The relevant parts of the Planning Scheme are:
 - Section 8.10 – Determining Applications;
 - Section 13.0 – Rural Living Zone; and
 - Section E6.0 – Parking and Access Code.

- 2.4.** Council's assessment of this proposal should also consider the issues raised in any representations received, the outcomes of the State Policies and the objectives of Schedule 1 of the Land Use Planning and Approvals Act, 1993 (LUPAA).

3. PROPOSAL IN DETAIL

3.1. The Site

The site is a 5684m² lot with 57.14m frontage to Axiom Way. It supports an existing dwelling, 2 outbuildings and a double-car garage, is located within an established rural living area at Acton and slopes gradually down to the south-east. Three shipping containers are also located at the rear of the property, with no record of approval. It is noted that the location of the containers is not shown on the proposal plans, as attached, and it is unclear whether the containers themselves are being stored on the property or used as outbuildings, for storage.

3.2. The Proposal

The proposal is to demolish an existing 90m² outbuilding and construct a 180m² domestic outbuilding in its place. The proposed building would be 4.12m in height above natural ground level, would be accessed via a single roller door on the northern elevation of the building and would be clad using off-white Colorbond wall cladding, and a pale grey Colorbond roof.

The proposed outbuilding would be sited 7.4m from the eastern (side) property boundary and 41.8m from the northern (front) boundary. The outbuilding to be demolished is setback 8.5m from the eastern (side) boundary, meaning that the proposed outbuilding would be 1.1m closer to the side boundary than that existing.

4. PLANNING ASSESSMENT

4.1. Determining Applications [Section 8.10]

“8.10.1 In determining an application for any permit the planning authority must, in addition to the matters required by s51(2) of the Act, take into consideration:

- (a) *all applicable standards and requirements in this planning scheme; and*
- (b) *any representations received pursuant to and in conformity with ss57(5) of the Act;*
- but in the case of the exercise of discretion, only insofar as each such matter is relevant to the particular discretion being exercised”.*

Reference to these principles is contained in the discussion below.

4.2. Compliance with Zone and Codes

The proposal meets the Scheme’s relevant Acceptable Solutions of the Rural Living Zone and Parking and Access Codes with the exception of the following.

Rural Living Zone

Clause	Standard	Acceptable Solution	Proposed
13.4.2 A2	Setback	Building setback from side and rear boundaries must be no less than: <ul style="list-style-type: none"> • 20m. 	Does not comply – 7.4m side setback proposed.

The proposed variation must be considered pursuant to the Performance Criteria P2 of the Clause 13.4.2 as follows.

Performance Criteria	Proposal
<i>“Building setback from side and rear boundaries must maintain the desirable characteristics of the surrounding landscape and protect the amenity of adjoining lots, having regard to all of the following:</i>	see below
<i>(a) the topography of the site;</i>	The site is generally level in the vicinity of the site, and the proposed outbuilding would replace a smaller outbuilding in the same location – on a similarly level portion of the site.
<i>(b) the size and shape of the site;</i>	The site is one in a series of similarly sized and regularly shaped lots in Axiom Way, used for rural living purposes and typically supporting a Single Dwelling and associated domestic outbuildings.

(c) <i>the location of existing buildings on the site;</i>	<p>The proposed outbuilding replaces an existing 90m² outbuilding, located to the south-east (and off-set to the rear) of the existing dwelling. The proposed outbuilding would be to the rear of the double-car garage when viewed from Axiom Way.</p> <p>It is noted that the 3 shipping containers located on the rear of the property are unapproved and the owner has advised that they are temporary in nature. Given that they are unapproved, the existence of the containers is not a relevant consideration in terms of this assessment.</p>
(d) <i>the proposed colours and external materials of the building;</i>	<p>The outbuilding would be clad using a combination of off-white wall cladding and pale grey roof cladding, consistent with the range of styles and colours in the vicinity of the site.</p>
(e) <i>visual impact on skylines and prominent ridgelines;</i>	<p>The proposed building would not be located on a skyline or ridgeline.</p>
(f) <i>impact on native vegetation;</i>	<p>No vegetation clearance would be required to facilitate the proposal.</p>
<p>(g) <i>be sufficient to prevent unreasonable adverse impacts on residential amenity on adjoining lots by:</i></p> <ul style="list-style-type: none"> <i>i. overlooking and loss of privacy;</i> <i>ii. visual impact, when viewed from adjoining lots, through building bulk and massing;</i> 	<p>The proposed outbuilding would not compromise residential amenity, in that there would be no windows that would create an impact in relation to overlooking.</p> <p>Similarly, the replacement building would be screened by existing vegetation to the east when viewed from the adjacent property at 48 Axiom Way. The visual impact of the building would be comparable with that existing, in that the replacement outbuilding would be setback 1.1m closer only to the side (eastern) property boundary. It would have a similar appearance to the existing building when viewed from Axiom Way.</p>

<p>(h) <i>be no less than:</i></p> <p>i. <i>10m; or</i></p> <p>ii. <i>5m for lots below the minimum lot size specified in the acceptable solution; or</i></p> <p>iii. <i>the setback of an existing roofed building (other than an exempt building) from that boundary.</i></p> <p><i>unless the lot is narrower than 40m at the location of the proposed building site”.</i></p>	<p>The site is less than the minimum lot size for the zone, meaning that the proposed 7.4m setback would be in excess of the minimum 5m allowed by (ii) of the criterion.</p>
---	---

Rural Living Zone

Clause	Standard	Acceptable Solution	Proposed
13.4.3 A3	Design	<p>The combined gross floor area of buildings must be no more than:</p> <ul style="list-style-type: none"> • 375m². 	<p>Does not comply – combined gross floor area of all approved buildings of 476m².</p> <p>As noted, the 3 shipping containers located on the rear of the property are unapproved and therefore not included in this gross floor area calculation.</p>

The proposed variation must be considered pursuant to the Performance Criteria P3 of the Clause 13.4.3 as follows.

Performance Criteria	Proposal
<i>“The combined gross floor area of buildings must satisfy all of the following:</i>	see below.
<i>(a) there is no unreasonable adverse impact on the landscape;</i>	<p>The proposed outbuilding would be a replacement of an existing outbuilding in the same location. The proposed outbuilding would be 2.0m wider than the existing building and 5.8m longer. When viewed from Axiom Way, the building would therefore present similarly in terms of appearance. It is considered that the proposed outbuilding would not have an unreasonable impact, being comparable to that existing.</p>

<i>(b) buildings are consistent with the domestic scale of dwellings on the site or in close visual proximity;</i>	The proposed outbuilding would be consistent in terms of scale with existing development both on the subject property and nearby.
<i>(c) be consistent with any Desired Future Character Statements provided for the area”.</i>	not applicable

Rural Living Zone

Clause	Standard	Acceptable Solution	Proposed
13.4.4 A1	Outbuildings	Outbuildings (including garages and carports not incorporated within the dwelling) must comply with all of the following: (a) have a combined gross floor area no more than 100m ² ; (b) have a wall height no more than 6.5m and a building height not more than 7.5m; (c) have setback from frontage no less than that of the existing or proposed dwelling on the site.	Does not comply – combined area of outbuildings of 280m ² , which excludes the unapproved shipping containers. complies complies

The proposed variation must be considered pursuant to the Performance Criteria P1 of the Clause 13.4.4 as follows.

Performance Criteria	Proposal
<i>“Outbuildings (including garages and carports not incorporated within the dwelling) must be designed and located to satisfy all of the following:</i>	see below
<i>(a) be less visually prominent than the existing or proposed dwelling on the site;</i>	The proposed outbuilding would be located to the south-east (rear) of the existing dwelling and double-car garage on the site – and therefore less visually prominent when viewed from Axiom Way.
<i>(b) be consistent with the scale of outbuildings on the site or in close visual proximity;</i>	The proposed outbuilding would be consistent in terms of scale with existing development both on the subject property and nearby.

<i>(c) be consistent with any Desired Future Character Statements provided for the area or, if no such statements are provided, have regard to the landscape.</i>	not applicable
---	----------------

5. REPRESENTATION ISSUES

The proposal was advertised in accordance with statutory requirements and 1 representation was received. The following issues were raised by the representation.

5.1. Number of Outbuildings On-site

The representation raised the number of outbuildings on the site as a concern, noting that there are 3 shipping containers located adjacent the rear property boundary and a third outbuilding adjacent the western property boundary.

- **Comment**

The number of outbuildings on the site is not a relevant consideration under the Scheme. The combined gross floor area, however, is a relevant consideration and is addressed by the assessment above by Clause 13.4.4.

As part of the assessment of this application, the owner has advised that the shipping containers located at the rear of the site are temporary and that they will likely be removed from the site in due course. The owner has, however, requested that the containers be addressed as a separate matter to this application and indicated that they are not prepared to commit to a timeframe for their removal.

The shipping containers are defined by the Scheme as an “outbuilding”, which must meet the relevant requirements of the Rural Living Zone. Specifically, the setback of the containers must meet the requirements of Clause 13.4.2, and the design and gross floor area requirements in relation to Clauses 13.4.3 and 13.4.4 of the Scheme.

If to be permanently located on-site, the containers would require a planning permit, in that the gross floor area for outbuildings on the site is already in excess of the 100m² prescribed by the acceptable solution to Clause 13.4.4. The setback of the containers from the side and rear boundaries would also need to be in excess of 5m to meet the relevant performance criterion and in order to be capable of approval by Council.

Whilst not directly related to the construction of the proposed outbuilding, it is appropriate to include advice on any planning permit granted to advise the owner that the shipping containers are to be removed from the site within 30 days. Alternatively, a valid development application is to be lodged with Council within the same timeframe. In the instance that these timeframes were not met, Council would be in a position to commence enforcement action. In this regard, it is noted that once Council is aware of a Scheme breach, it is obliged, by law, to enforce its Planning Scheme and must take all reasonable steps to do so.

5.2. Use of Outbuilding

The use of the proposed outbuilding has been raised as a concern by the representation, in that if it is intended to operate a business from the outbuilding that measures must be taken (as part of the building) to minimise noise emissions.

- **Comment**

The submitted purpose of the proposed outbuilding is a combination of domestic storage and storage associated with a business owned by the property owner. The owner has submitted, however, that all work is undertaken on specific sites, not on the subject property.

The Scheme enables the use of a part of a dwelling to be used as a “home-based business” with no planning permit required, subject to the following criteria being met.

- “(a) no more than 50m² of floor area of the dwelling is used for the non-residential purposes;*
- (b) the person conducting the business normally uses the dwelling as their principal place of residence;*
- (c) it does not involve employment of more than 2 workers who do not reside at the dwelling;*
- (d) any load on a utility is no greater than for a domestic use;*
- (e) there is no activity that causes electrical interference to other land;*
- (f) there is, on the site, no storage of hazardous materials;*
- (g) there is, on the site, no display of goods for sale;*
- (h) there is, on the site, no advertising of the business other than 1 sign (non-illuminated) not exceeding 0.2m² in area;*
- (i) there is, on the site, no refuelling, servicing or repair of vehicles not owned by a resident;*
- (j) not more than 2 commercial vehicles are on the site at any one time and no commercial vehicle on the site exceeds 2 tonnes; and*
- (k) all vehicles used by the business are parked on the site”.*

The key implication of the above is that the portion of the dwelling (or outbuildings) that can be used for storage associated with the building business is limited to 50m², as described above.

Should the owner be using, or propose to use an area of greater than 50m² for storage of building equipment, the use would most appropriately be defined as within the “Storage” Use Class under the Scheme, which is a prohibited use within the Rural Living Zone.

Application has not been made to operate a business from the site, and it is therefore appropriate to include advice on any planning permit granted that the area to be used for storage of business-related equipment belonging to the owner is to be limited to 50m². Advice should further be included to note that the use of a portion of the site larger than 50m² for storage of building equipment would be prohibited within the zone, and could not be approved by Council.

A condition should be included advising that the proposed outbuilding is to be used for domestic purposes only.

6. EXTERNAL REFERRALS

No external referrals were required or undertaken as part of this application.

7. STATE POLICIES AND ACT OBJECTIVES

7.1. The proposal is consistent with the outcomes of the State Policies, including those of the State Coastal Policy.

7.2. The proposal is consistent with the objectives of Schedule 1 of LUPAA.

8. COUNCIL STRATEGIC PLAN/POLICY IMPLICATIONS

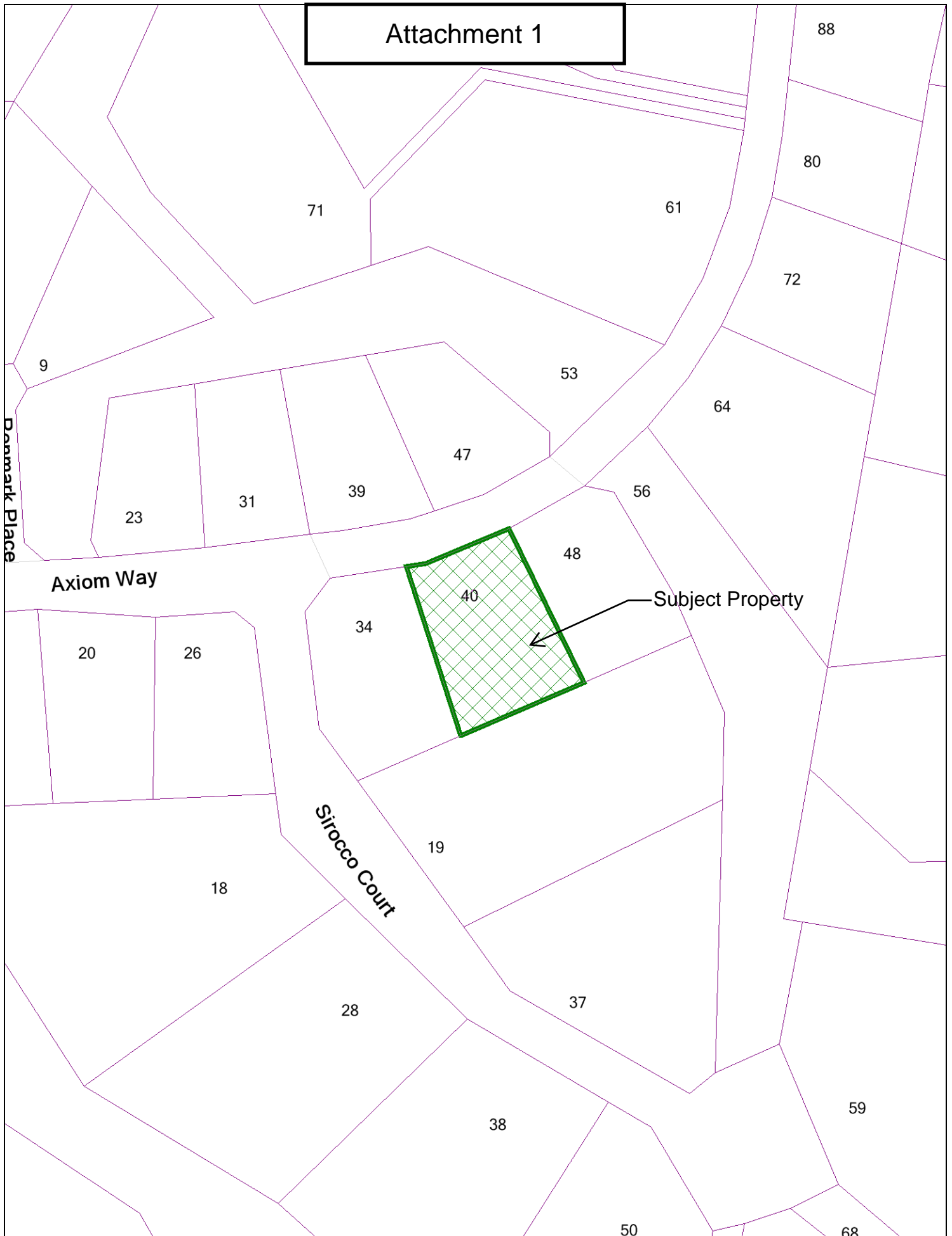
There are no inconsistencies with Council's adopted Strategic Plan 2016-2026 or any other relevant Council Policy.

9. CONCLUSION

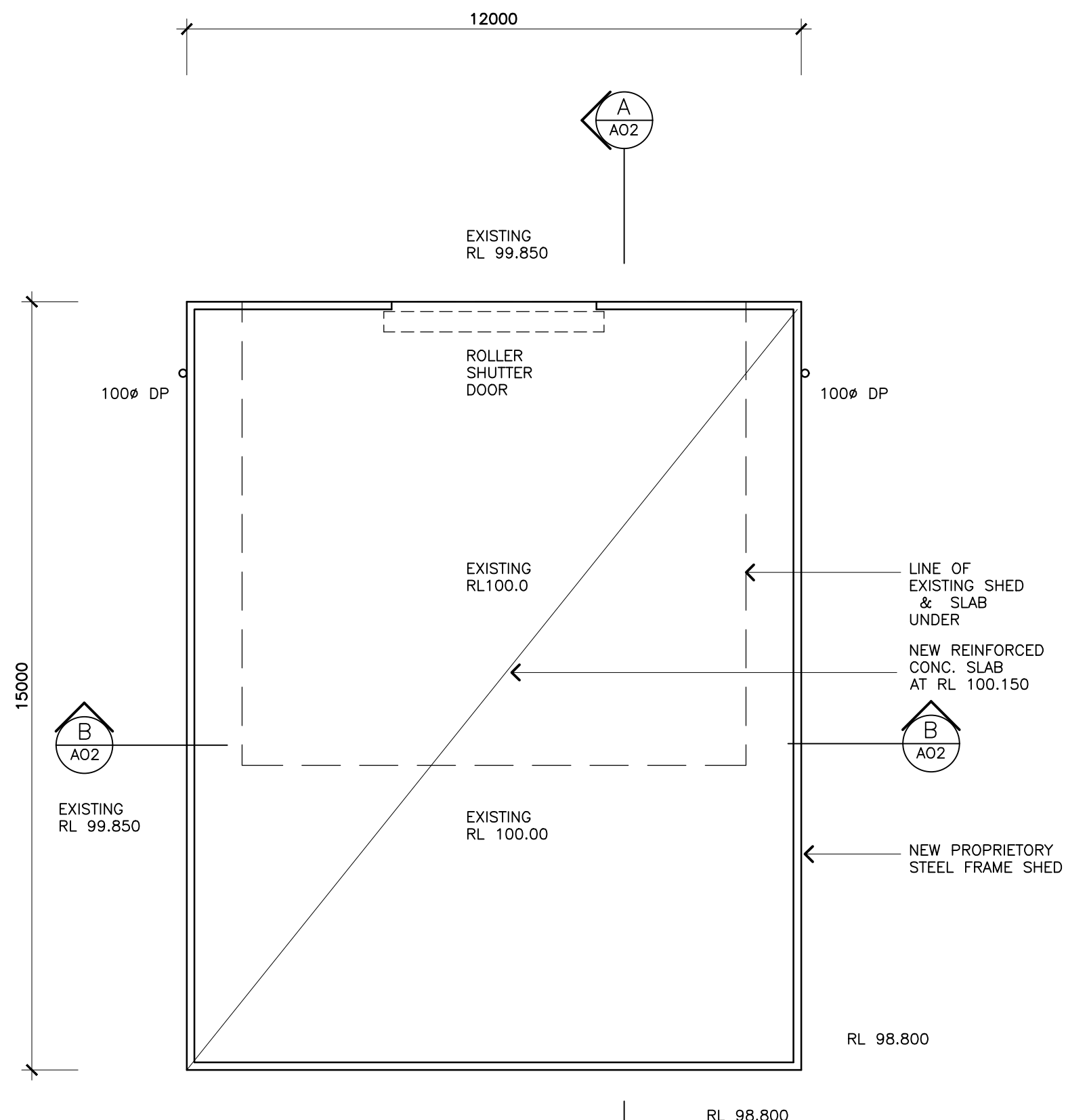
The proposal is for the development of an outbuilding on the subject property at 40 Axiom Way, Acton Park. The development proposed satisfies the relevant requirements of the Scheme and is recommended for approval, subject to the inclusion of appropriate permit conditions.

Attachments: 1. Location Plan (1)
2. Proposal Plan (2)
3. Site Photo (1)

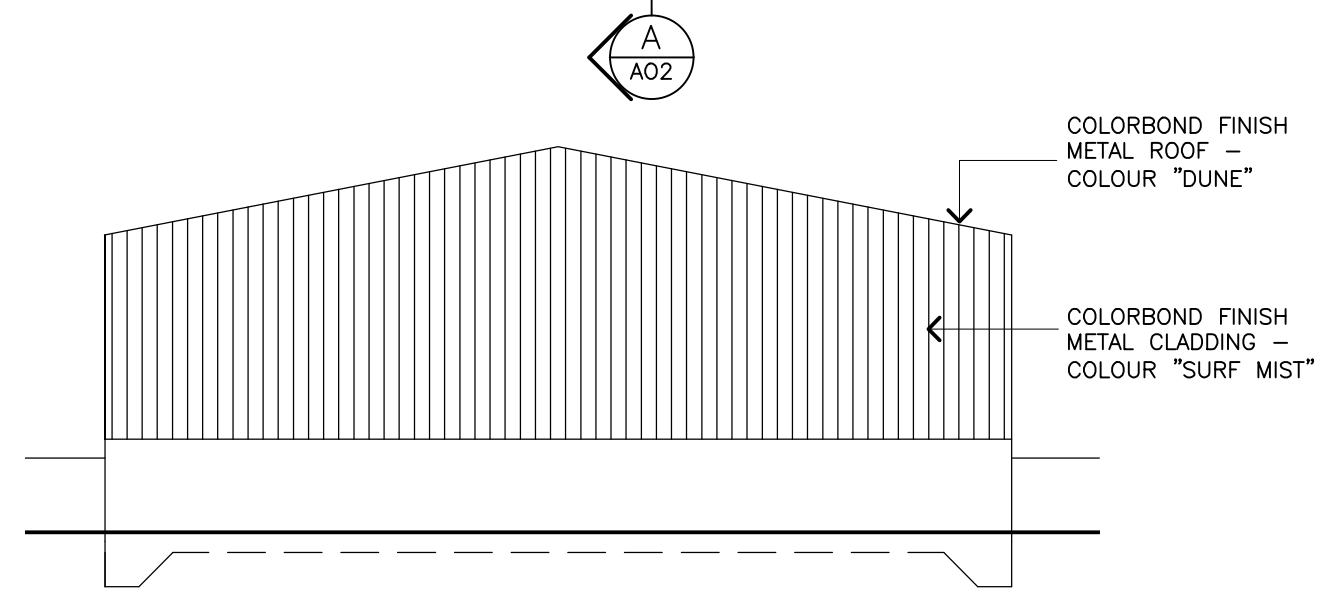
Ross Lovell
MANAGER CITY PLANNING



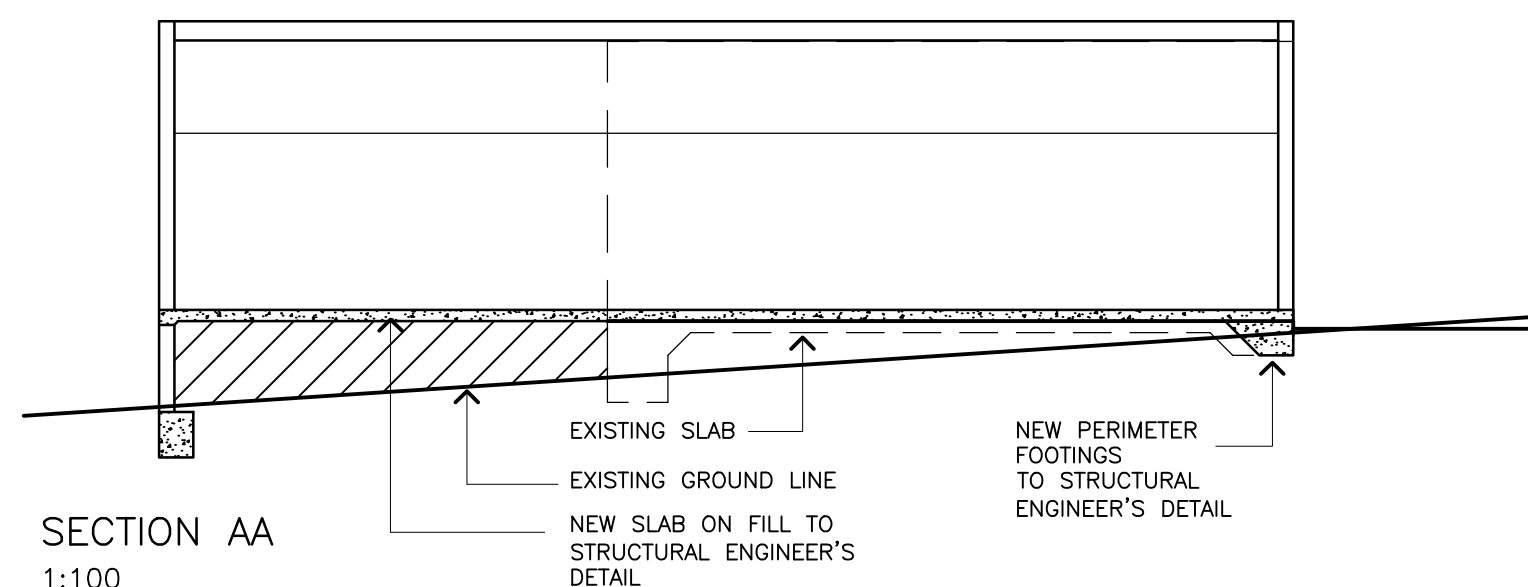
Disclaimer: This map is a representation of the information currently held by Clarence City Council. While every effort has been made to ensure the accuracy of the product, Clarence City Council accepts no responsibility for any errors or omissions. Any feedback on omissions or errors would be appreciated. Copying or reproduction, without written consent is prohibited. **Date:** Wednesday, 6 December 2017 **Scale:** 1:2,499 @A4



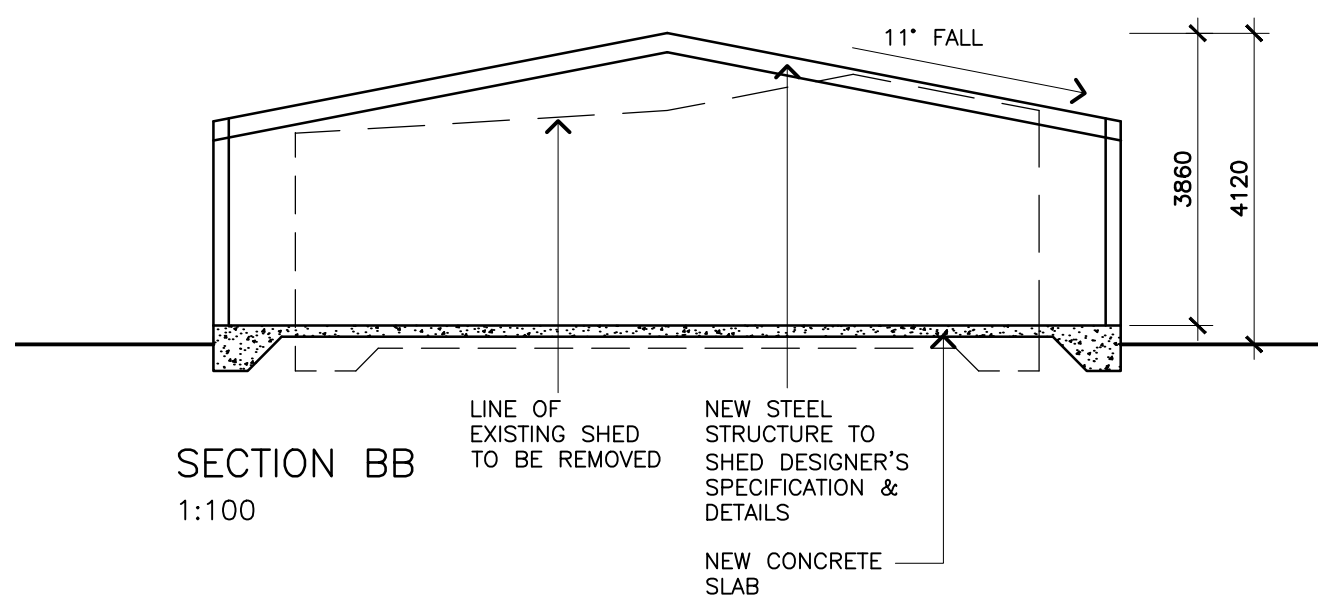
FLOOR PLAN
1:100



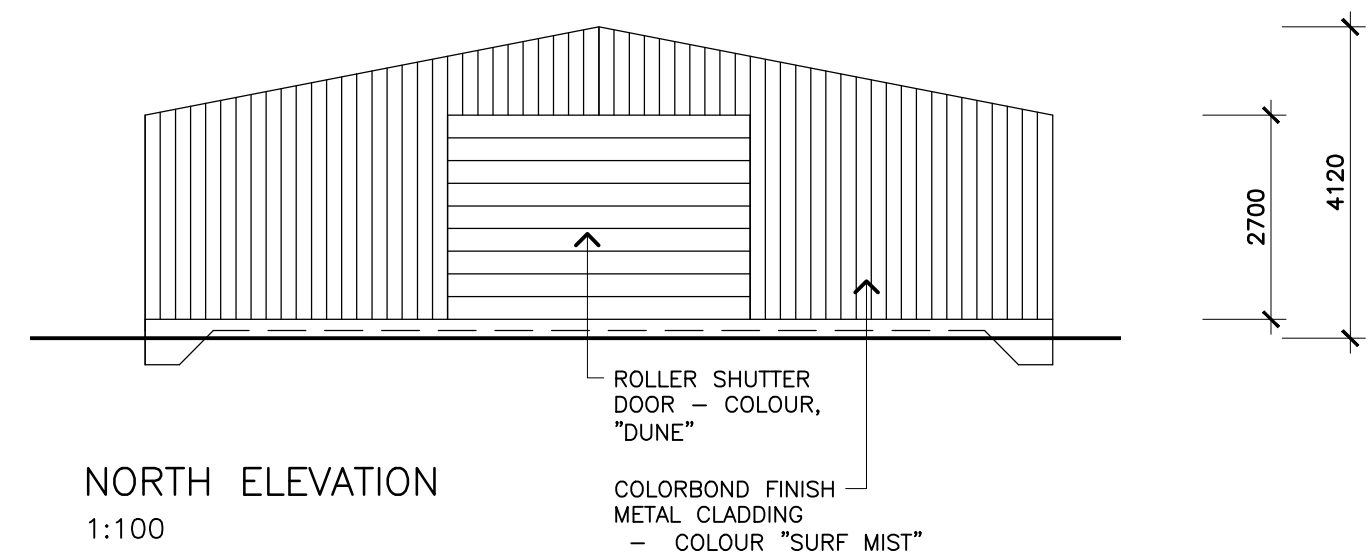
SOUTH ELEVATION
1:100



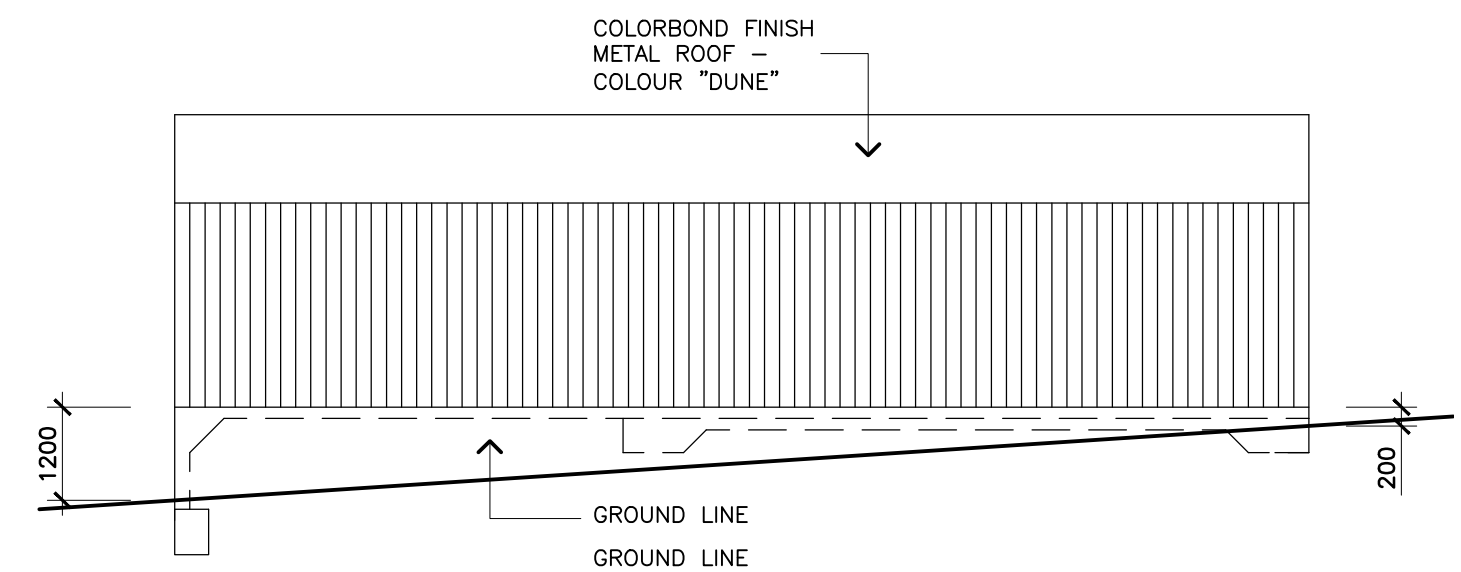
SECTION AA
1:100



SECTION BB
1:100



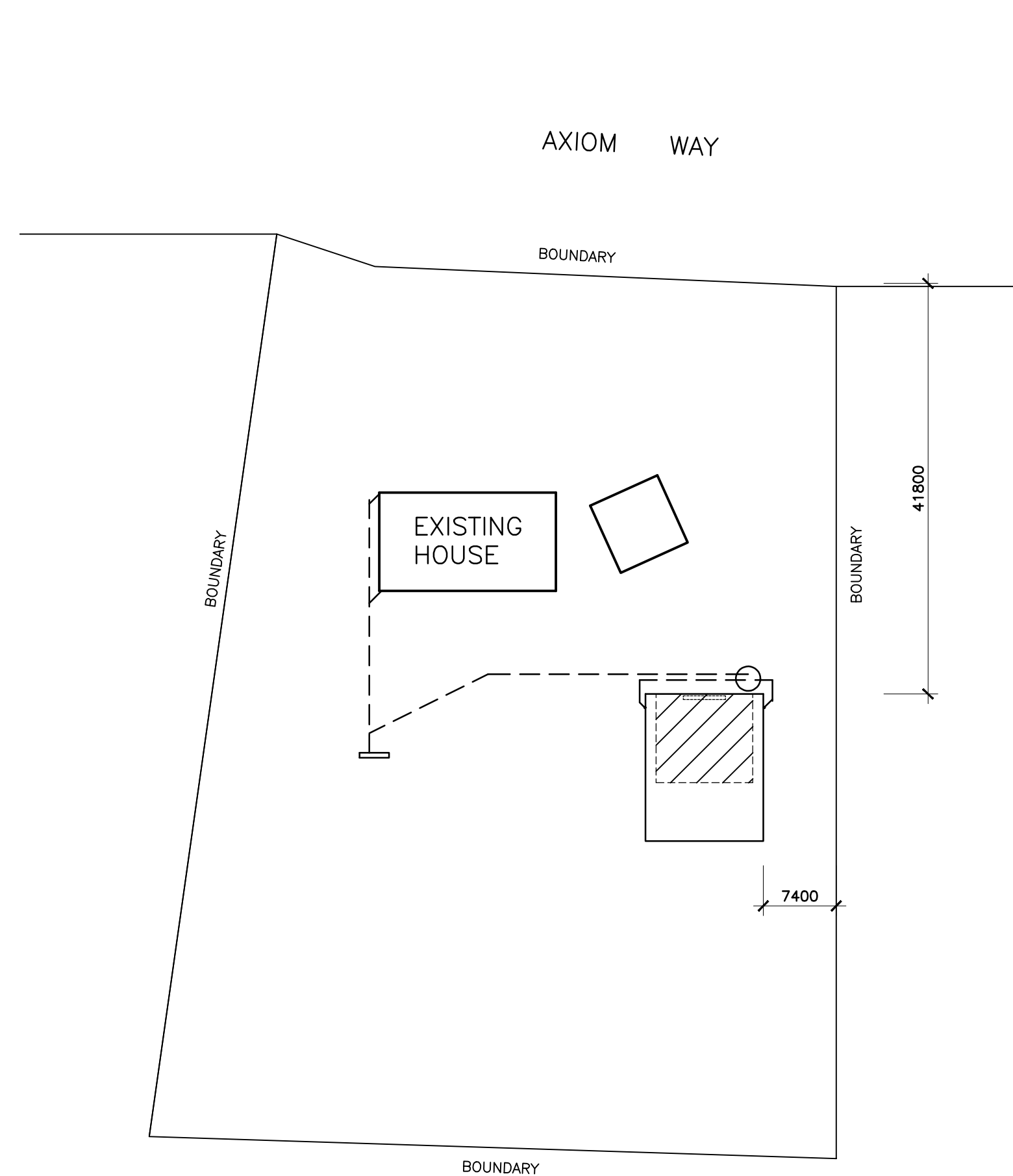
NORTH ELEVATION
1:100



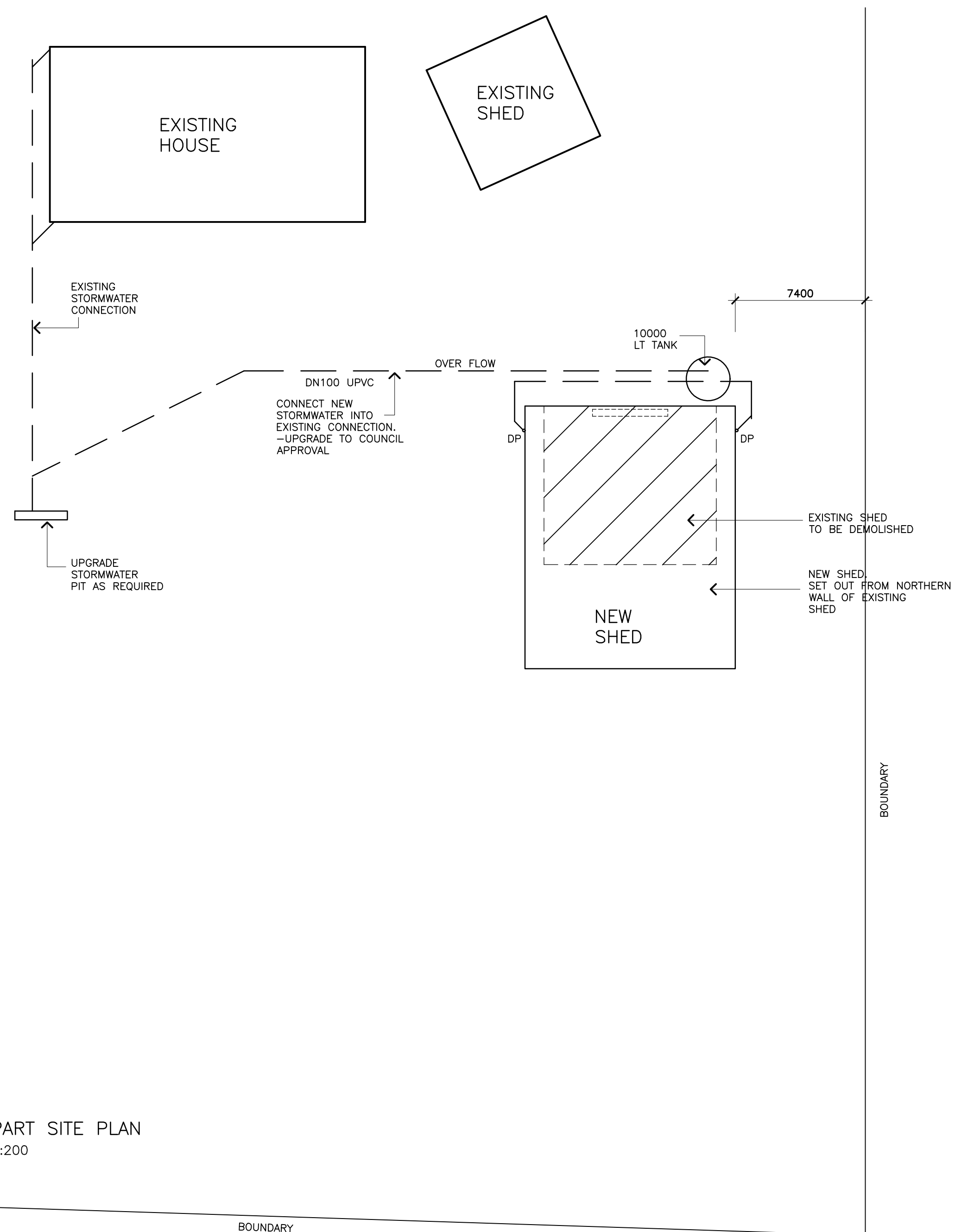
FLOOR PLAN
1:100

NOTE:
PROPRIETARY SHED BUILDING -
STRUCTURAL DETAILS TO
MANUFACTURER'S SPECIFICATION





SITE PLAN
1:500



PART SITE PLAN
1:200



40 Axiom Way, ACTON PARK



Site viewed from Axiom Way, looking southeast to subject property



Site viewed from front property boundary adjacent Axiom Way, looking south

11.3.2 DEVELOPMENT APPLICATION D-2017/490 - LOT 580, 40 PASS ROAD, ROKEBY - OUTBUILDING
(File No D-2017/490)**EXECUTIVE SUMMARY****PURPOSE**

The purpose of this report is to consider the application made for an outbuilding at Lot 580, 40 Pass Road, Rokeby. The lot is located on Emerald Drive and the title has been issued, however, a street number has not yet been allocated and the property retains its original address.

RELATION TO PLANNING PROVISIONS

The land is zoned General Residential and subject to the Parking and Access Code under the Clarence Interim Planning Scheme 2015 (the Scheme). In accordance with the Scheme the proposal is a Discretionary development.

LEGISLATIVE REQUIREMENTS

The report on this item details the basis and reasons for the recommendation. Any alternative decision by Council will require a full statement of reasons in order to maintain the integrity of the Planning approval process and to comply with the requirements of the Judicial Review Act and the Local Government (Meeting Procedures) Regulations 2015.

Note: References to provisions of the Land Use Planning and Approvals Act 1993 (the Act) are references to the former provisions of the Act as defined in Schedule 6 – Savings and transitional provisions of the Land Use Planning and Approvals Amendment (Tasmanian Planning Scheme Act) 2015. The former provisions apply to an interim planning scheme that was in force prior to the commencement day of the Land Use Planning and Approvals Amendment (Tasmanian Planning Scheme Act) 2015. The commencement day was 17 December 2015.

Council is required to exercise a discretion within the statutory 42 day period which was extended with the consent of the applicant until 18 December 2017.

CONSULTATION

The proposal was advertised in accordance with statutory requirements and 1 representation was received raising the issue of use of outbuilding for commercial uses.

RECOMMENDATION:

A. That the Development Application for outbuilding at Lot 580, 40 Pass Road, Rokeby (CI Ref D-2017/490) be approved subject to the following conditions and advice.

1. GEN AP1 – ENDORSED PLANS.

2. GEN M7 – DOMESTIC USE.

B. That the details and conclusions included in the Associated Report be recorded as the reasons for Council's decision in respect of this matter.

ASSOCIATED REPORT

1. BACKGROUND

No relevant background.

2. STATUTORY IMPLICATIONS

2.1. The land is zoned General Residential under the Scheme.

2.2. The proposal is discretionary because it does not meet certain Acceptable Solutions under the Scheme.

2.3. The relevant parts of the Planning Scheme are:

- Section 8.10 – Determining Applications;
- Section 10 – General Residential Zones; and
- Section E6.0 – Parking and Access Codes.

2.4. Council's assessment of this proposal should also consider the issues raised in any representations received, the outcomes of the State Policies and the objectives of Schedule 1 of the Land Use Planning and Approvals Act, 1993 (LUPAA).

3. PROPOSAL IN DETAIL

3.1. The Site

The site is a vacant residential lot and a partly constructed dwelling (BPA-2017/569). The site has a gentle slope down in a northward direction. The surrounding area is residential in nature with the lot to the west containing 2 dwellings, and the lots to the east and south vacant. The lot to the south-west contains 3 dwellings.

3.2. The Proposal

The proposal is for an outbuilding which consists of a double garage with an area of 52.5m² and a carport with a roof area of 45m². The outbuilding is located 700mm at the closest point to the rear (south) boundary and 900mm from the side (west) boundary. The maximum height of the outbuilding is 3.6m above natural ground level.

4. PLANNING ASSESSMENT**4.1. Determining Applications [Section 8.10]**

“8.10.1 In determining an application for any permit the planning authority must, in addition to the matters required by s51(2) of the Act, take into consideration:

- (a) all applicable standards and requirements in this planning scheme; and*
- (b) any representations received pursuant to and in conformity with ss57(5) of the Act;*

but in the case of the exercise of discretion, only insofar as each such matter is relevant to the particular discretion being exercised”.

Reference to these principles is contained in the discussion below.

4.2. Compliance with Zone and Codes

The proposal meets the Scheme’s relevant Acceptable Solutions of the General Residential Zone and Parking and Access Code with the exception of the following.

General Residential Zone

Clause	Standard	Acceptable Solution (Extract)	Proposed
10.4.2 A3	Setbacks and building envelope for all dwellings	A dwelling, excluding outbuildings with a building height of not more than 2.4m and protrusions (such as eaves, steps, porches, and awnings) that extend not more than 0.6m horizontally beyond the building envelope, must:	

		<p>(a) be contained within a building envelope (refer to Diagrams 10.4.2A, 10.4.2B, 10.4.2C and 10.4.2D) determined by:</p> <p>(i) a distance equal to the frontage setback or, for an internal lot, a distance of 4.5m from the rear boundary of a lot with an adjoining frontage; and</p> <p>(ii) projecting a line at an angle of 45 degrees from the horizontal at a height of 3m above natural ground level at the side boundaries and a distance of 4m from the rear boundary to a building height of not more than 8.5m above natural ground level; and</p> <p>(b) only have a setback within 1.5m of a side boundary if the dwelling:</p> <p>(i) does not extend beyond an existing building built on or within 0.2m of the boundary of the adjoining lot; or</p> <p>(ii) does not exceed a total length of 9m or one-third the length of the side boundary (whichever is the lesser).</p>	<p>complies</p> <p>complies</p> <p>Does not comply with (ii) below.</p> <p>complies</p> <p>Does not comply as the length of the building is 13m.</p>
--	--	--	--

The proposed variation must be considered pursuant to the Performance Criteria P2 of the Clause 10.4.2 as follows.

Performance Criteria	Proposal
<p><i>“The siting and scale of a dwelling must:</i></p> <p><i>(a) not cause unreasonable loss of amenity by:</i></p>	
<p><i>(i) reduction in sunlight to a habitable room (other than a bedroom) of a dwelling on an adjoining lot; or</i></p>	<p>The property directly south of the subject lot at 100 Goodwins Road is vacant and there are no current building applications for the site. The property to the south-west at 102 Goodwins Road contains 3 dwellings. Unit 3 is located 4m from the rear boundary of this site and has living room windows facing north and east. The living room is located around 1m above natural ground level.</p> <p>The proposed outbuilding has a height of 2.6m at the rear boundary which is 0.6m higher than a standard 1.8m high boundary fence and will result in minimal overshadowing. In addition, 102 Goodwins Road is located upslope from the outbuilding. On this basis, the overshadowing resulting from the proposal will be minimal and will cause an unreasonable loss of amenity.</p> <p>The property to the west is vacant but a development application for 2 Multiple Dwellings is currently under assessment (D-2017/510). The proposal plans for this development have a 2 storey dwelling adjacent to the proposed outbuilding, however, there are no habitable windows on the ground floor which may be overshadowed by the proposed outbuilding.</p>
<p><i>(ii) overshadowing the private open space of a dwelling on an adjoining lot; or</i></p>	<p>Not applicable, as 100 Goodwins Road, which is directly south of the site is vacant with no current planning or building applications.</p>

(iii) <i>overshadowing of an adjoining vacant lot; or</i>	The proposal will result in overshadowing to the northern part of 100 Goodwins Road, however, as the lot has a length of 64m on its western boundary, there is adequate area to develop a dwelling on the site which will not be impacted by the overshadowing from the proposed outbuilding.
(iv) <i>visual impacts caused by the apparent scale, bulk or proportions of the dwelling when viewed from an adjoining lot; and</i>	The height of the outbuilding is consistent with other outbuildings in the area and will not have an adverse visual impact when viewed from adjoining lots.
(b) <i>provide separation between dwellings on adjoining lots that is compatible with that prevailing in the surrounding area”.</i>	The surrounding area consists of recently developed and vacant residential lots and therefore does not have a prevailing separation between dwellings. Notwithstanding this, there are numerous examples of dwellings and outbuildings being built in close proximity to boundaries and therefore the proposal is considered to meet this Performance Criteria.

5. REPRESENTATION ISSUES

The proposal was advertised in accordance with statutory requirements and 1 representation was received. The following issues were raised by the representor.

5.1. Use of Outbuilding for Commercial Uses

The representor was concerned that the outbuilding may be used in the future for commercial purposes and the noise from such activities will have an unreasonable impact on the amenity of the area.

- **Comment**

The applicant has confirmed that the shed is to be used for domestic purposes only and it is recommended that a condition be imposed on the permit to this effect.

6. EXTERNAL REFERRALS

No external referrals were required or undertaken as part of this application.

7. STATE POLICIES AND ACT OBJECTIVES

7.1. The proposal is consistent with the outcomes of the State Policies, including those of the State Coastal Policy.

7.2. The proposal is consistent with the objectives of Schedule 1 of LUPAA.

8. COUNCIL STRATEGIC PLAN/POLICY IMPLICATIONS

There are no inconsistencies with Council's adopted Strategic Plan 2016-2026 or any other relevant Council Policy.

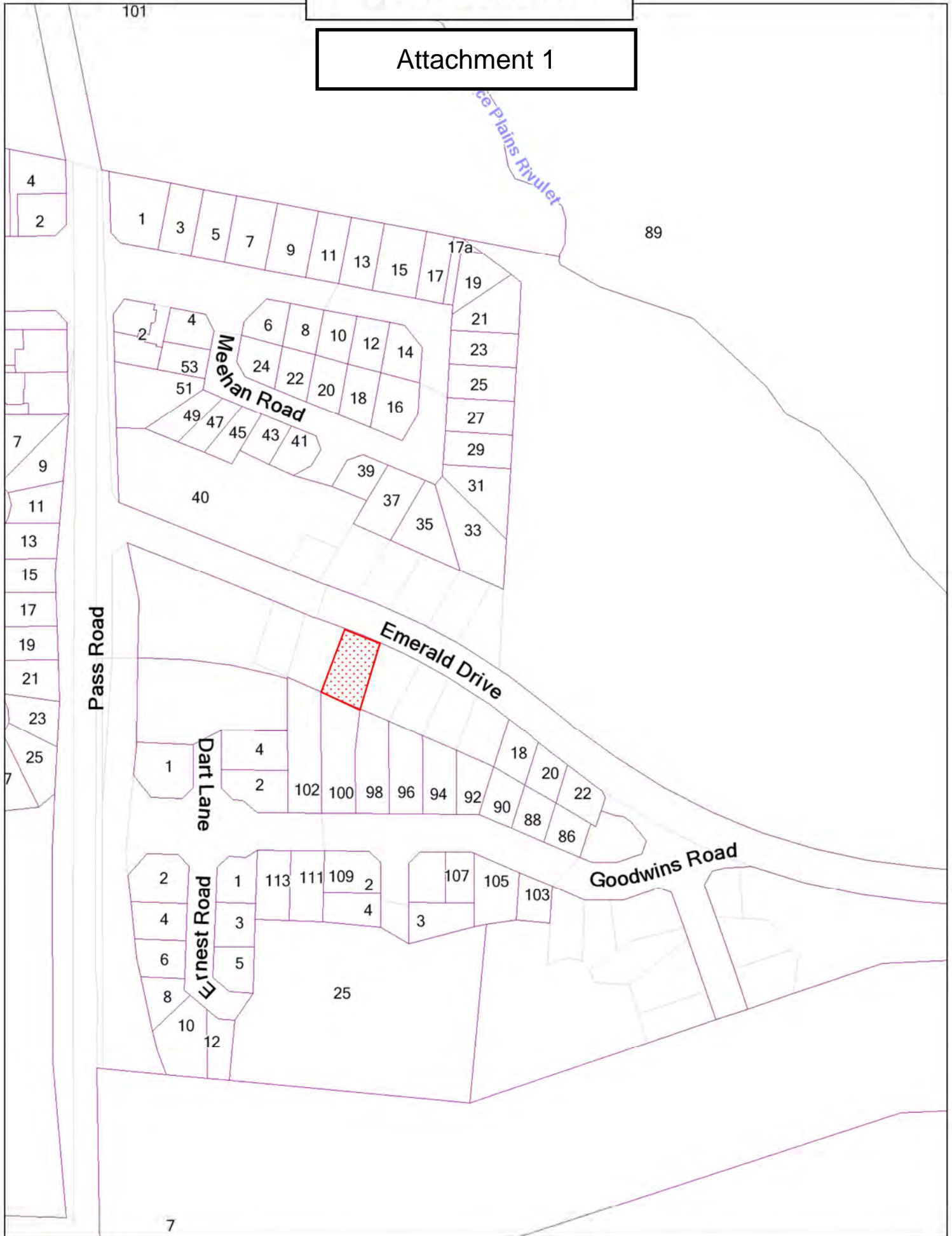
9. CONCLUSION

The proposal is for an outbuilding that requires a variation to the rear boundary setbacks of the Scheme. The proposal is considered to meet the Performance Criteria and is recommended for approval.

Attachments: 1. Location Plan (1)
2. Proposal Plan (2)
3. Site Photo (1)

Ross Lovell
MANAGER CITY PLANNING

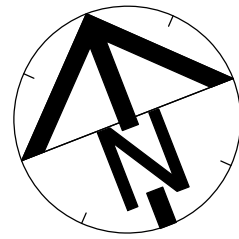
Attachment 1



Disclaimer: This map is a representation of the information currently held by Clarence City Council. While every effort has been made to ensure the accuracy of the product, Clarence City Council accepts no responsibility for any errors or omissions. Any feedback on omissions or errors would be appreciated. Copying or reproduction, without written consent is prohibited. **Date:** Friday, 8 December 2017 **Scale:** 1:2,565 @A4

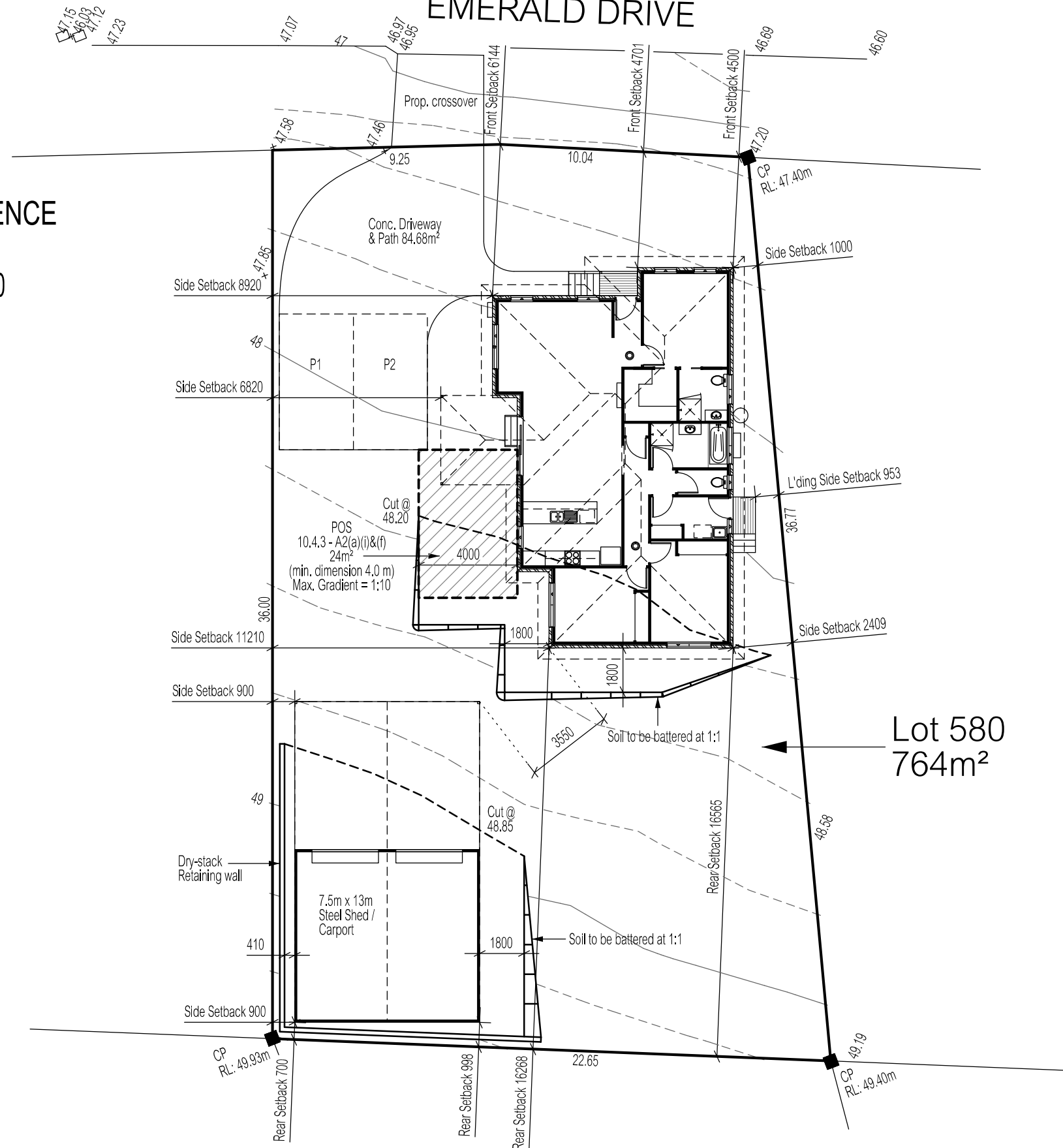
Attachment 2

EMERALD DRIVE



PROPOSED NEW RESIDENCE

HOUSE FFL: 48.70
SHED / CARPORT FFL: 49.00



Electrical allowance:
- Provide 8.0LM electrical cable and connections for gate
- Provide 30.0LM electrical cable and connections for shed

EXPLANATORY NOTES:
CLARENCE CITY COUNCIL INTERIM PLANNING SCHEME

10.4.3 - Site coverage and private open space for all dwellings

A1	(a)	Site Coverage: Max. 50% of Site = 382.00m² Proposed site coverage: 240.56m² (31.48%)
	(c)	Impervious Surfaces: Min. 25% of Site to be free of impervious surfaces = 191.00m² Proposed area free of impervious surfaces: 438.26m² (57.36%)



- NOTES
- Builder to verify all dimensions and levels on site prior to commencement of work
 - All work to be carried out in accordance with the current National Construction Code.
 - Dimensions to take precedence over scale.
 - Do not scale from these drawings.

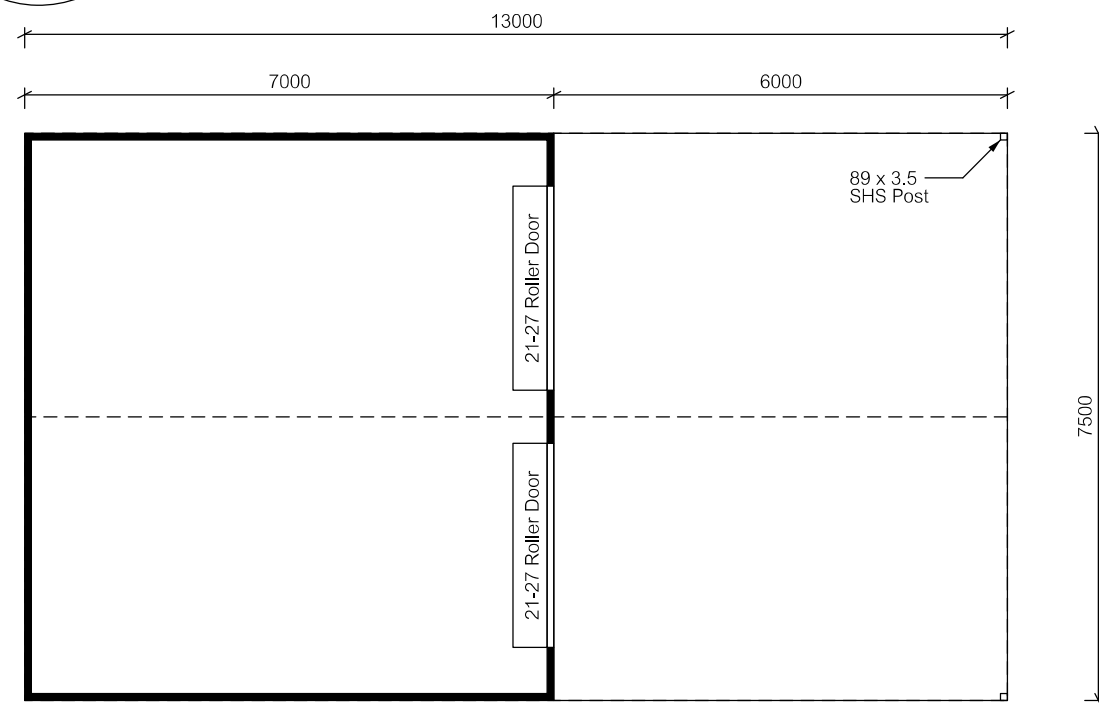
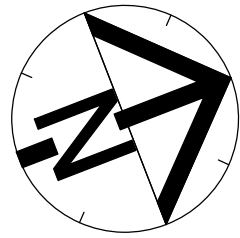
				D	Changes as per cover sheet	15 June 17	LP	Designer:	Client / Project info:
				C	Changes as per cover sheet	05 June 17	LP	ANOTHER PERSPECTIVE PTY LTD PO BOX 21 NEW TOWN VIC. NO. CC2204H (A. Strugnell)	PROPOSED ATKINSON & BAILEY RESIDENCE
				B	Changes as per cover sheet	26 May 17	MM	Ph: (03) 6231 4122 Fx: (03) 6231 4166 Email: info@anotherperspective.com.au	Lot 580, Emerald Drive, ROKEBY
				A	Changes as per cover sheet	19 May 17	LP		
No.	Amendment	Date	Init.	No.	Amendment	Date	Init.		



SITE PLAN

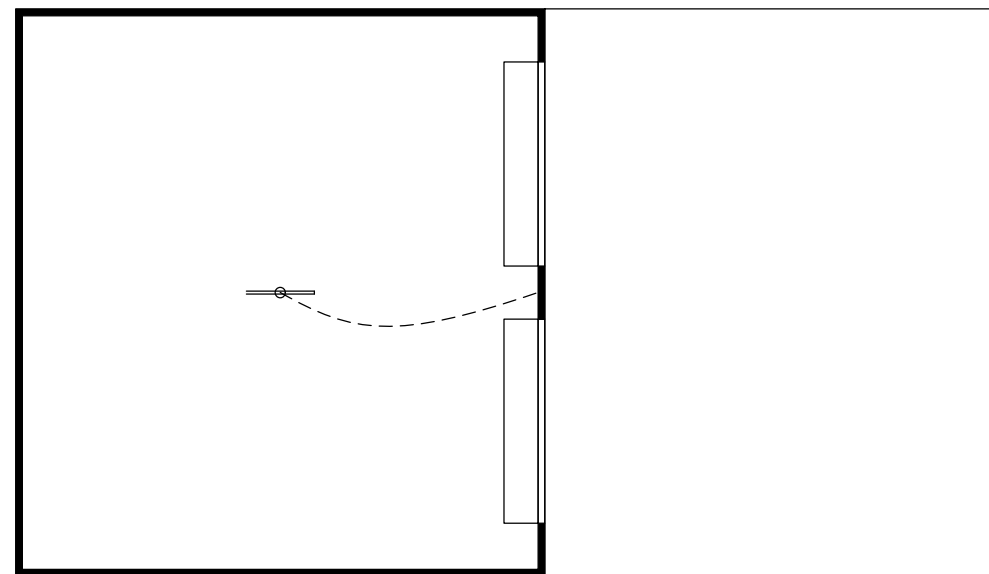
Drawn	LP	H335
Date	09 May 2017	Sheet
Scale	1:200	

01/11



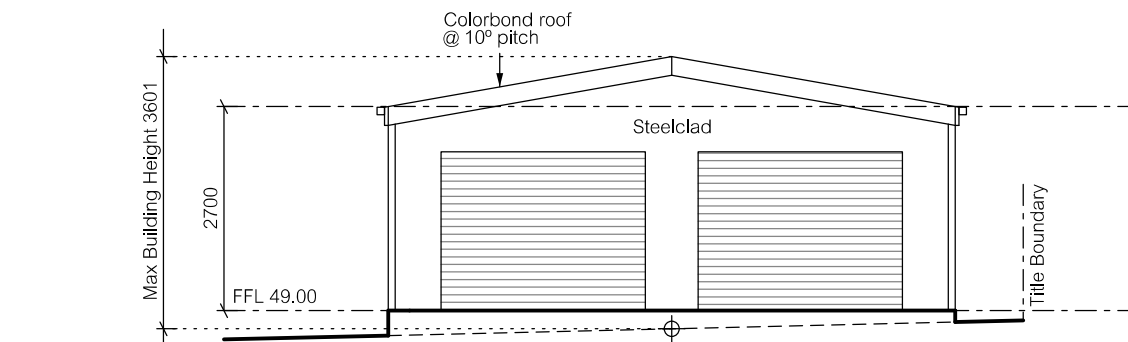
Floor Plan

Refer to manufacturers drawings for further information

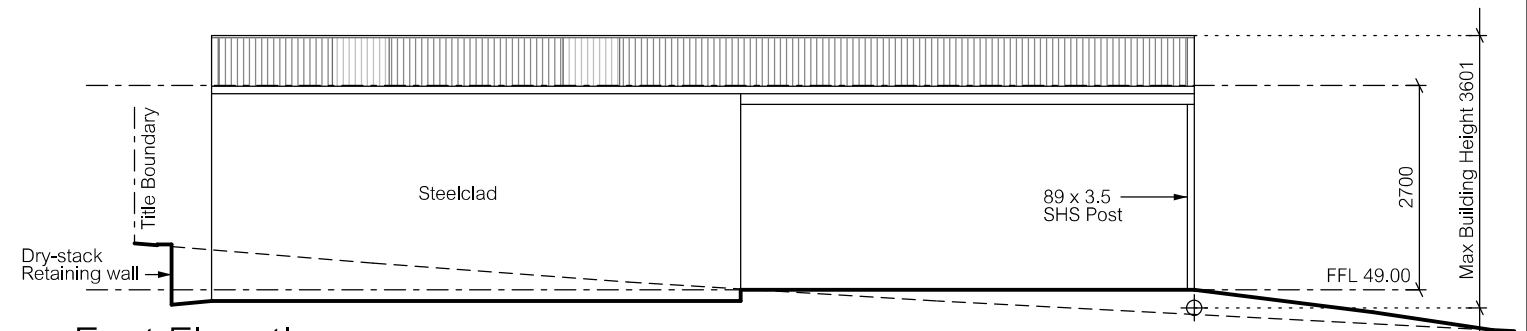


2 x 900 MM FLUORESCENT LIGHT POINT (36W)

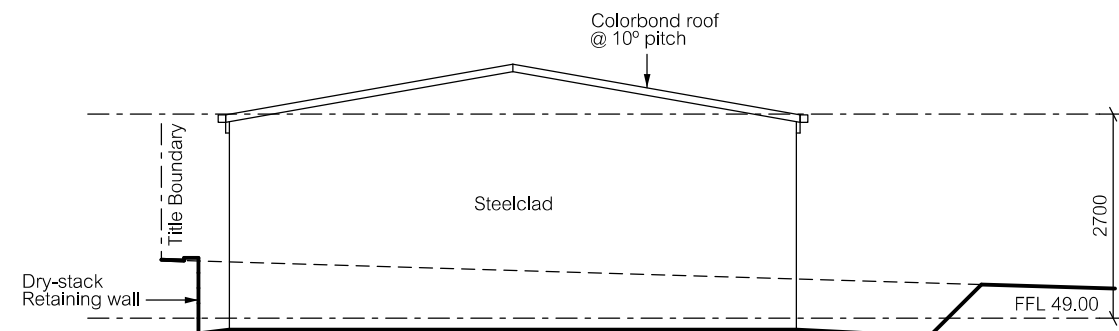
Electrical Shed Plan



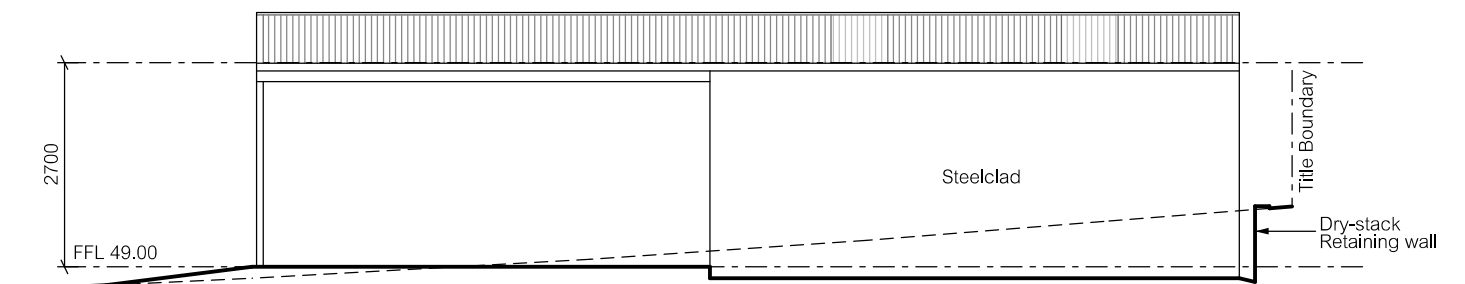
North Elevation



East Elevation



South Elevation



West Elevation

- NOTES
- Builder to verify all dimensions and levels on site prior to commencement of work
 - All work to be carried out in accordance with the current National Construction Code.
 - Dimensions to take precedence over scale.
 - Do not scale from these drawings.

GARAGE AREA = 52,550 sqm
CARPORT AREA = 45,00 sqm
TOTAL AREA = 97,50 sqm

- Articulation joints
- Smoke Alarm (interconnected where more than 1)

ALL window sizes to be checked and/or confirmed on site prior to ordering glazing units.

No.	Amendment	Date	Init.	Designer:
E	Changes as per cover sheet	17 Oct 17	JM	ANOTHER PERSPECTIVE PTY LTD PO BOX 21 NEW TOWN LIC. NO. CC2204H (A. Strugnelli) Ph: (03) 6231 4122 Fx: (03) 6231 4166 Email: info@anotherperspective.com.au
B	Changes as per cover sheet	26 May 17	MM	
A	Changes as per cover sheet	19 May 17	LP	

Client / Project info:
PROPOSED ATKINSON & BAILEY RESIDENCE
Lot 580, Emerald Drive,
ROKEBY



SHED PLANS

Drawn	LP	H335
Date	19 May 2017	Sheet
Scale	1:100	

01b/11

Lot 580, 40 Pass Road, ROKEBY



Site viewed from Emerald Drive.

11.3.3 DEVELOPMENT APPLICATION D-2017/387 - 53 ACTON COURT, ACTON PARK - ALTERATIONS AND ADDITIONS TO DWELLING AND OUTBUILDING
(File No D-2017/387)**EXECUTIVE SUMMARY****PURPOSE**

The purpose of this report is to consider the application made for alterations and additions to dwelling and outbuilding at 53 Acton Court, Acton Park.

RELATION TO PLANNING PROVISIONS

The land is zoned Environmental Living and is subject to the requirements of the Bushfire Prone Areas Code, Landslide Hazard Code, Waterway and Coastal Protection Code, Parking and Access Code and the Stormwater Management Code under the Clarence Interim Planning Scheme 2015 (the Scheme). In accordance with the Scheme the proposal is a Discretionary development.

LEGISLATIVE REQUIREMENTS

The report on this item details the basis and reasons for the recommendation. Any alternative decision by Council will require a full statement of reasons in order to maintain the integrity of the Planning approval process and to comply with the requirements of the Judicial Review Act and the Local Government (Meeting Procedures) Regulations 2015.

Note: References to provisions of the Land Use Planning and Approvals Act 1993 (the Act) are references to the former provisions of the Act as defined in Schedule 6 – Savings and transitional provisions of the Land Use Planning and Approvals Amendment (Tasmanian Planning Scheme Act) 2015. The former provisions apply to an interim planning scheme that was in force prior to the commencement day of the Land Use Planning and Approvals Amendment (Tasmanian Planning Scheme Act) 2015. The commencement day was 17 December 2015.

Council is required to exercise a discretion within the statutory 42 day period which expires on 22 December 2017 as agreed with the applicant.

CONSULTATION

The proposal was advertised in accordance with statutory requirements and 1 representation was received raising the issue of impact on condition of the shared right-of-way.

RECOMMENDATION:

- A. That the Development Application for alterations and additions to dwelling and outbuilding at 53 Acton Court, Acton Park (CI Ref D-2017/387) be approved subject to the following conditions and advice.
1. GEN AP1 – ENDORSED PLANS.
 2. GEN AM3 – EXTERNAL COLOURS.

ADVICE

An application for a Plumbing Permit to install an on-site wastewater disposal system must be submitted and approved as part of a future Building Permit Application.

- B. That the details and conclusions included in the Associated Report be recorded as the reasons for Council's decision in respect of this matter.

ASSOCIATED REPORT**1. BACKGROUND**

No relevant background.

2. STATUTORY IMPLICATIONS

2.1. The land is zoned Environmental Living under the Scheme.

2.2. The proposal is discretionary because it does not meet the Acceptable Solutions under the Scheme in respect of side and rear setbacks, floor area, depth of fill and excavation, external colours and the scale of the outbuilding.

2.3. The relevant parts of the Planning Scheme are:

- Section 8.10 – Determining Applications;
- Section 14.0 – Environmental Living Zone;
- Section E1.0 – Bushfire Prone Areas Code;
- Section E3.0 – Landslide Code;
- Section E6.0 – Parking and Access Code;
- Section E7.0 – Stormwater Management Code; and
- Section E27.0 – Waterway and Coastal Protection Code.

2.4. The Bushfire Prone Areas Code applies to the subject site, however, the use is not a vulnerable or hazardous use therefore the development is exempt from the application of the Code.

In addition, the proposal is exempt under Clause E3.4(c) of the Landslide Code, in that the proposal is for a dwelling addition within a Low Hazard Area.

No works are proposed within the portion of the site covered by the Waterway and Coastal Protection Overlay therefore assessment under the Waterway and Coastal Protection Code is not required.

- 2.5.** Council's assessment of this proposal should also consider the issues raised in any representations received, the outcomes of the State Policies and the objectives of Schedule 1 of the Land Use Planning and Approvals Act, 1993 (LUPAA).

3. PROPOSAL IN DETAIL

3.1. The Site

The subject site is a 2.0ha internal lot located at the cul-de-sac head of Acton Court. The site has a moderate south-easterly fall and contains a single storey dwelling towards the rear. Mature landscaping is provided upslope from the dwelling and along the western side property boundary abutting the shared driveway providing access to lots further to the north.

The site is accessed via a shared gravel driveway with reciprocal rights-of-way over the adjoining access strip associated with 57 Acton Court, Acton Park.

The site is located within an elevated position just below the tree line extending to the top of Mount Rumney to the west.

3.2. The Proposal

Application is made for alterations and additions to the existing dwelling including the construction of a pool house, outbuilding and tennis court. Specifically, it is proposed to extend the northern elevation of the existing dwelling by 5m to provide for a larger living space. The dwelling addition would be glazed on all elevations and would have a flat roof with a maximum height of 2.6m above natural ground level.

The level outdoor area located to the north of the dwelling is proposed to be refurbished with soft and hard landscaping, including the installation of an 8.7m long by 2.6m wide “vergola” structure extending from the western elevation of the living room addition.

A separate pool house is proposed 15.8m to the north of the living room extension at the north of the courtyard area. The pool house would be 19.5m long by 7.7m wide and would be constructed from rendered blockwork walls and vertical timber boards with a moderately pitched gabled roof constructed from “Colorbond”. The eastern elevation of the pool room would reach a maximum height of 7.43m above natural ground level. Extensive areas of floor to ceiling glazing would wrap around the pool house. A new tennis court is proposed downslope to the east of the existing dwelling.

Lastly, it is proposed to construct a 17m long by 12m wide outbuilding near the southern side property boundary. The outbuilding would have a maximum height of 6.6m and would be constructed from blockwork walls and “Colorbond” roofing in a moderately pitched gabled profile.

4. PLANNING ASSESSMENT

4.1. Determining Applications [Section 8.10]

“8.10.1 In determining an application for any permit the planning authority must, in addition to the matters required by s51(2) of the Act, take into consideration:

- (a) all applicable standards and requirements in this planning scheme; and*
- (b) any representations received pursuant to and in conformity with ss57(5) of the Act;*

but in the case of the exercise of discretion, only insofar as each such matter is relevant to the particular discretion being exercised”.

Reference to these principles is contained in the discussion below.

4.2. Compliance with Zone and Codes

The proposal meets the Scheme's relevant Acceptable Solutions of the Environmental Living, Parking and Access Code and the Stormwater Management Code with the exception of the following.

Environmental Living Zone

Clause	Standard	Acceptable Solution (Extract)	Proposed
14.4.2 A2	Setbacks	Building setback from side and rear boundaries must be no less than: <ul style="list-style-type: none"> • 30m. 	Does not comply - the north-western elevation of the proposed pool house would be located 16.43m from the north-western rear property boundary. In addition, the proposed outbuilding would be located 13.01m from the south-eastern side property boundary.

The proposed variation must be considered pursuant to the Performance Criteria (P2) of the Clause 14.4.2 as follows.

Performance Criteria	Proposal
<i>"P2 - Building setback from side and rear boundaries must maintain the desirable characteristics of the surrounding landscape and protect the amenity of adjoining lots, having regard to all of the following:</i>	see assessment below
<i>(a) the topography of the site;</i>	The subject site has a moderate slope with the proposed pool house located on the same contour line as the dwelling to allow for a levelled courtyard to be created between the 2 buildings. The reduced setback from the north-western side boundary is therefore a direct result of the slope constraints and minimises the need for excavation through creating a new levelled pad remote from the curtilage of the existing dwelling.

	<p>The proposed outbuilding would be sited on the low point of the lot and at a significantly lower elevation than the existing dwelling. This is to optimise an available levelled area so as to not obscure views of the dwelling from the street.</p>
<i>(b) the size and shape of the site;</i>	<p>The lot has a land area of 2ha and is sufficiently large to accommodate the proposed pool house and outbuilding in a compliant location. However, doing so would result in the location of buildings further down the slope of the land, which would result in significant earthworks and visual impact through the segregation of buildings across the site.</p>
<i>(c) the location of existing buildings on the site;</i>	<p>The proposed pool house would be located at the northern elevation of the dwelling so that it maintains the same contour level as the existing dwelling for east of access and visual continuity.</p> <p>The siting of the outbuilding 13.014m from the south-eastern side property boundary would be consistent with the setback of the existing garage which is located in the far north-western corner of the lot.</p>
<i>(d) the proposed colours and external materials of the building;</i>	<p>The walls of the dwelling addition, pool house and outbuilding are proposed to be coloured off-white and ivory. The roof of all structures is proposed to be “Shale Grey”. The colour of the existing house is a light grey and it is considered that the new components should match this colour, or alternative use natural darker tones to blend in with the surrounding landscape. The proposed outbuilding being located lower on the slope will be readily visible from the cul-de-sac end of Acton Court. The use of darker, recessive colours is particularly important for this site given its visible, elevated position.</p>
<i>(e) visual impact on skylines and prominent ridgelines;</i>	<p>The proposed buildings would not be associated with a skyline or ridgeline location.</p>

(f) <i>impact on native vegetation;</i>	The site does not contain any native vegetation therefore the proposal will not impact upon such vegetation.
<p>(g) <i>be sufficient to prevent unreasonable adverse impacts on residential amenity on adjoining lots by:</i></p> <p>(i) <i>overlooking and loss of privacy;</i></p> <p>(ii) <i>visual impact, when viewed from adjoining lots, through building bulk and massing;</i></p>	<p>There is ample separation (approximately 100m) between the proposed living room addition, pool house and adjoining dwellings to prevent any unreasonable impacts through overlooking or loss of privacy. The site and adjoining properties are also well landscaped, which further enhances the privacy and seclusion of properties.</p> <p>The proposed outbuilding, being a non-habitable building, would not cause any overlooking or loss of privacy concerns.</p> <p>The proposed living room addition and pool house would not be visible from Acton Court, however, they would be visible from adjoining residential properties. Whilst these buildings are large, they will maintain a low height profile, modern aesthetic and will remain within the existing curtilage of the dwelling along the same contour line. The adjoining dwellings are located downslope and are oriented to the east for view optimisation reasons. The subject property sits below the main view corridor and is masked from adjoining properties by boundary landscaping. The dwelling additions will therefore create a tolerable visual impact.</p> <p>With respect to the proposed outbuilding, its location at the low point of the site, away from adjoining dwellings will ensure minimal visual bulk.</p>
<p>(h) <i>be no less than:</i></p> <p>(i) <i>10m; or</i></p> <p>(ii) <i>5m for lots below the minimum lot size specified in the acceptable solution; or</i></p> <p>(iii) <i>the setback of an existing roofed building (other than an exempt building) from that boundary.</i></p>	<p>The lot being 2ha in area allows for a reduction in setback to no less than 10m. The proposed setbacks therefore comply with the absolute minimum.</p>

<i>unless the lot is narrower than 40m at the location of the proposed building site”.</i>	
--	--

Clause	Standard	Acceptable Solution (Extract)	Proposed
14.4.3 A2	Design	Exterior building surfaces must be coloured using colours with a light reflectance value not greater than 40%.	Does not comply - the colour details provided with the application include the use of an off-white and white, which have a light reflectance value greater than 40%.

The proposed variation must be considered pursuant to the Performance Criteria (P1) of the Clause 14.4.3 as follows.

Performance Criteria	Proposal
<i>“P1 – Exterior building surfaces must avoid adverse impacts on the visual amenity of neighbouring land and detracting from the contribution the site makes to the landscape, views and vistas”.</i>	In the interests of integrating the dwelling addition and outbuilding into the surrounding semi-rural landscape and reducing their visual prominence, it is considered appropriate to require the buildings to be coloured a non-reflective, recessive colour to blend in with the surrounding bushland setting. The use of white colours will not achieve this. A condition to this effect is recommended.

Clause	Standard	Acceptable Solution (Extract)	Proposed
14.4.3 A3	Design	The combined floor area of building must be no more than: <ul style="list-style-type: none"> • 300m². 	Does not comply - the existing dwelling, dwelling addition, pool house and outbuilding would have a combined gross floor area of approximately 687m ² .

The proposed variation must be considered pursuant to the Performance Criteria P3 of the Clause 14.4.3 as follows.

Performance Criteria	Proposal
<i>“P3 - The combined gross floor area of buildings must satisfy all of the following:</i>	see below assessment
<i>(a) there is no unreasonable adverse impact on the landscape;</i>	The proposed dwelling addition and pool house are low in height and will be screened by existing vegetation. It is therefore considered there will be no adverse visual impacts on the surrounding landscape.
<i>(b) buildings are consistent with the domestic scale of dwellings on the site or in close visual proximity;</i>	There are many examples of large dwellings and outbuildings in the immediate vicinity, and it is therefore considered the proposal, whilst large, is consistent with the domestic scale of dwellings in the area.
<i>(c) be consistent with any Desired Future Character Statements provided for the area”.</i>	There are no Desired Future Character Statements for the area.

Clause	Standard	Acceptable Solution (Extract)	Proposed
14.4.3 A4	Design	<p>Fill and excavation must comply with all of the following:</p> <p>(a) height of fill and depth of excavation is no more than 1m from natural ground level, except where required for building foundations;</p> <p>(b) extent is limited to the area required for the construction of buildings and vehicular access.</p>	Does not comply - fill to a height of 2.6m is required to accommodate the pool house building. A large cut exists to the rear of the pool house which would not be impacted. The proposal therefore does not comply with Clause (a).

The proposed variation must be considered pursuant to the Performance Criteria P4 of the Clause 14.4.3 as follows.

Performance Criteria	Proposal
<i>“Fill and excavation must satisfy all of the following:</i>	see below
<i>(a) does not detract from the landscape character of the area;</i>	The proposal runs across the contours of the site and requires limited cut and fill given its size. The proposal is low in height, with a maximum of 7.43m above natural ground level, and it is considered will not detract from the landscape character of the area.
<i>(b) does not unreasonably impact upon the privacy for adjoining properties;</i>	The proposed pool house will be sufficiently screened and is adequate distance from adjoining dwellings to avoid unreasonably impacting on the privacy of adjoining properties.
<i>(c) does not affect land stability on the lot or adjoining land”.</i>	Council’s Engineers have assessed the proposed pool house and consider there will be no impact on land stability on the lot or adjoining land and detailed engineering designs will be required to be submitted as part of the building application.

Clause	Standard	Acceptable Solution (Extract)	Proposed
14.4.4 A1	Outbuildings	<p>Outbuildings (including garages and carports not incorporated within the dwelling) must comply with all of the following:</p> <p>(a) have a combined gross floor area no more than 80m²;</p> <p>(b) have a wall height no more than 5.5m and a building height not more than 6.5m;</p> <p>(c) have setback from frontage no less than that of the existing or proposed dwelling.</p>	<p>Does not comply - the proposed outbuilding would have a floor area of 204m². Combined with the floor area of the existing garage, this equates to an aggregate floor area of 272m² therefore does not comply with Clause (a).</p> <p>In addition, the outbuilding would have a maximum height of 6.4m which exceeds that prescribed under Clause (b).</p>

			Lastly, the proposed outbuilding would be located closer to the road than the existing dwelling therefore does not comply with Clause (c).
--	--	--	--

The proposed variation must be considered pursuant to the Performance Criteria (P1) of the Clause 14.4.4 as follows.

Performance Criteria	Proposal
<i>“P1 - Outbuildings (including garages and carports not incorporated within the dwelling) must be designed and located to satisfy all of the following:</i>	see assessment below
<i>(a) be less visually prominent than the existing or proposed dwelling on the site;</i>	Subject to implementation of a suitable colour schedule, the proposed outbuilding would not detract from the prominence of the main dwelling given its located on the low point of the site and away from the dwelling.
<i>(b) be consistent with the scale of outbuildings on the site or in close visual proximity;</i>	The proposed outbuilding would be domestic in size which is consistent with the scale of other outbuildings within the area.
<i>(c) be consistent with any Desired Future Character Statements provided for the area or, if no such statements are provided, have regard to the landscape”.</i>	There is no Statement of Desired Future Character Statements incorporated. However, as discussed previously, subject to suitable colour treatment, the proposed outbuilding would remain sufficiently recessive in appearance within the surrounding landscape.

Stormwater Management Code

Clause	Standard	Acceptable Solution (Extract)	Proposed
E7.7.1 A1	Buildings and works	A stormwater system for a new development must incorporate water sensitive urban design principles R1 for the treatment and disposal of stormwater if any of the following apply:	Does not comply - the proposal includes new impervious surfaces resulting in a combined impervious surface area of greater than 687m ² therefore does not comply with Clause (a).

		(a) the size of new impervious area is more than 600m ² ; (b) new car parking is provided for more than 6 cars; (c) a subdivision is for more than 5 lots.	
--	--	---	--

The proposed variation must be considered pursuant to the Performance Criteria P2 of the Clause E7.7.1 as follows.

Performance Criteria	Proposal
<i>“P2 - A stormwater system for a new development must incorporate a stormwater drainage system of a size and design sufficient to achieve the stormwater quality and quantity targets in accordance with the State Stormwater Strategy 2010, as detailed in Table E7.1 unless it is not feasible to do so”.</i>	<p>Council’s Development Engineer has advised that the property is of sufficient size to detain all stormwater on-site.</p> <p>Detailed designs of the stormwater drainage will be required as part of the engineering drawings submitted as part of an application for a Plumbing Permit and approved as part of the Building application, to ensure compliance with the State Stormwater Strategy 2010.</p>

5. REPRESENTATION ISSUES

The proposal was advertised in accordance with statutory requirements and 1 representation was received. The following issues were raised by the representor.

5.1. Impact on Condition of the Shared Right-of-Way

The representor has raised concern that construction vehicle use will cause unnecessary wear and tear on the existing right-of-way shared with 57 and 61 Acton Court, Acton Park. Concern is raised by the user of this right-of-way with respect to the maintenance and repair responsibilities between the respective legal users of this right-of-way.

- **Comment**

The matter of contribution towards the construction maintenance and repair of a shared right-of-way over private land is a civil matter to be resolved by agreement between the users of the right-of-way.

6. EXTERNAL REFERRALS

No external referrals were required or undertaken as part of this application.

7. STATE POLICIES AND ACT OBJECTIVES

7.1. The proposal is consistent with the outcomes of the State Policies, including those of the State Coastal Policy.

7.2. The proposal is consistent with the objectives of Schedule 1 of LUPAA.

8. COUNCIL STRATEGIC PLAN/POLICY IMPLICATIONS

There are no inconsistencies with Council's adopted Strategic Plan 2016-2026 or any other relevant Council Policy.

9. CONCLUSION

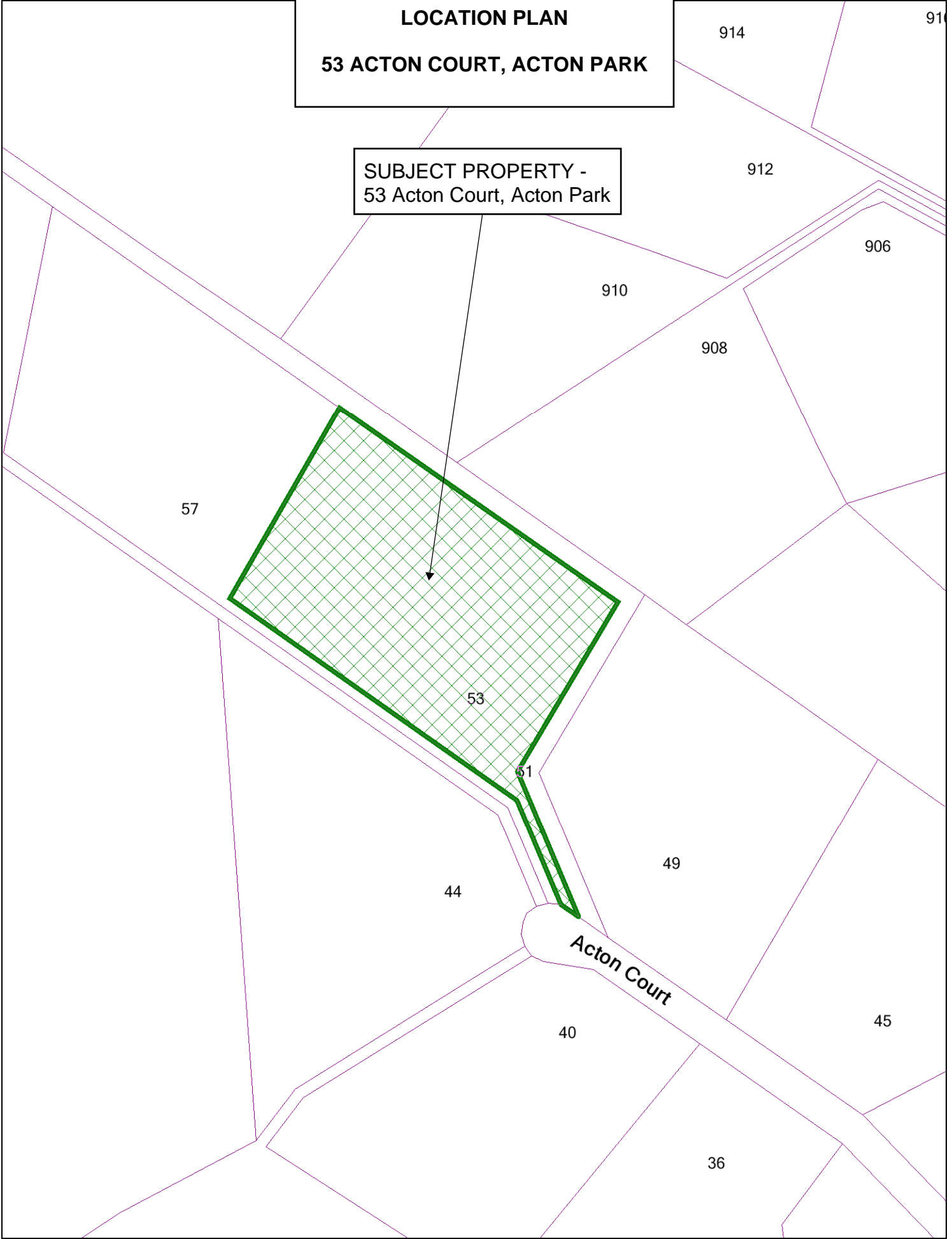
The proposal is for alterations and additions to dwelling and outbuilding at 53 Acton Court, Acton Park. The proposal satisfies all relevant Acceptable Solutions and Performance Criteria of the Scheme and is therefore recommended for conditional approval.

Attachments: 1. Location Plan (1)
2. Proposal Plan (5)
3. Site Photo (1)

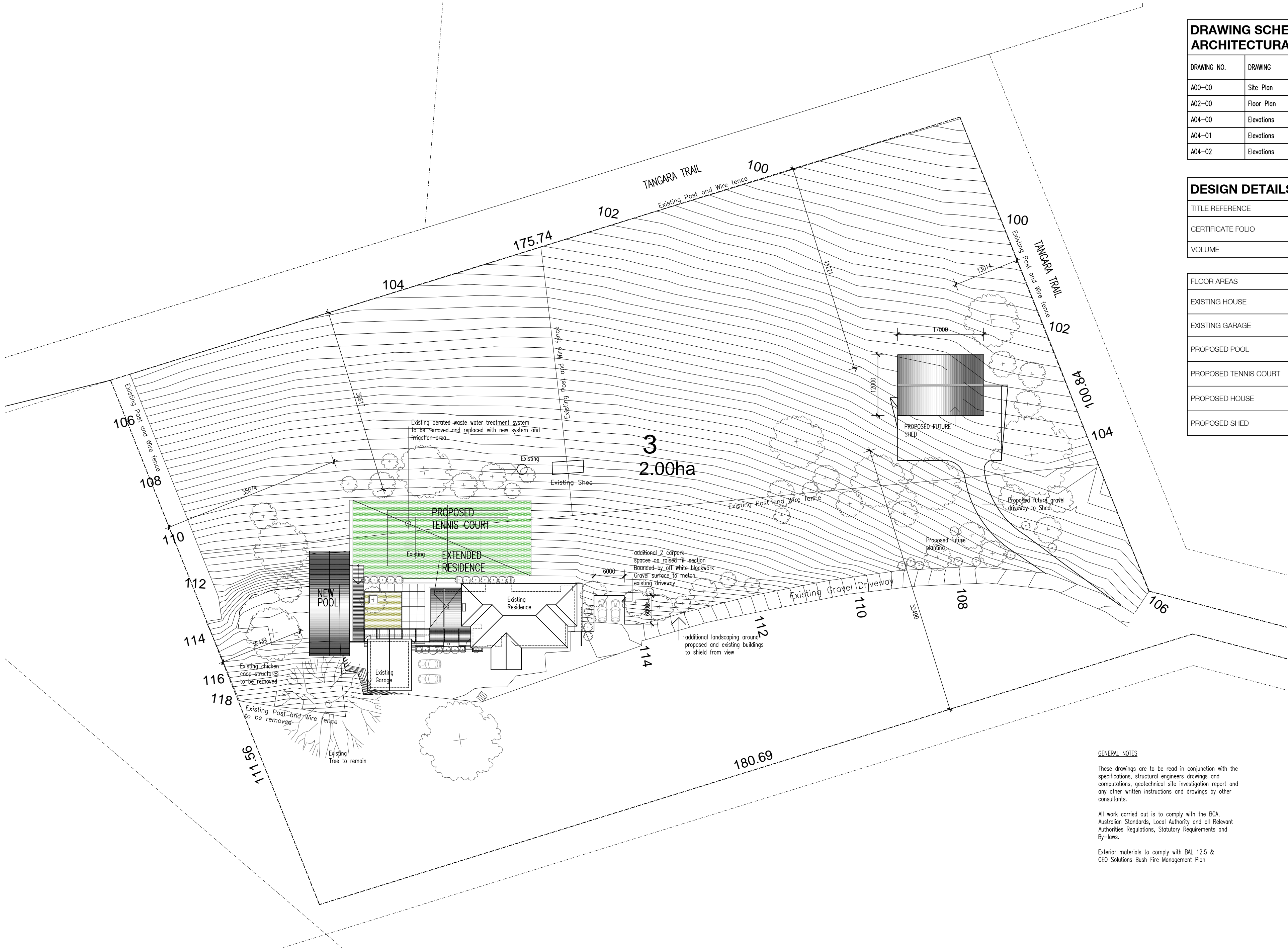
Ross Lovell
MANAGER CITY PLANNING

ATTACHMENT 1
LOCATION PLAN
53 ACTON COURT, ACTON PARK

SUBJECT PROPERTY -
53 Acton Court, Acton Park



Disclaimer: This map is a representation of the information currently held by Clarence City Council. While every effort has been made to ensure the accuracy of the product, Clarence City Council accepts no responsibility for any errors or omissions. Any feedback on omissions or errors would be appreciated. Copying or reproduction, without written consent is prohibited. **Date:** Monday, 4 December 2017 **Scale:** 1:2,489 @A4



DRAWING SCHEDULE - ARCHITECTURAL		
DRAWING NO.	DRAWING	REVISION
A00-00	Site Plan	B
A02-00	Floor Plan	B
A04-00	Elevations	B
A04-01	Elevations	B
A04-02	Elevations	B

DESIGN DETAILS	
TITLE REFERENCE	
CERTIFICATE FOLIO	3
VOLUME	133121

FLOOR AREAS	
EXISTING HOUSE	218 m2
EXISTING GARAGE	68 m2
PROPOSED POOL	155 m2
PROPOSED TENNIS COURT	547 m2
PROPOSED HOUSE	260 m2
PROPOSED SHED	204 m2



Hobart
45 Goulburn Street Hobart TAS 7000
T 61 3 6231 2923
A0CC0C1017F
Melbourne
3 Trivoli Road South Yarra VIC 3141
T 61 3 9627 8902
info@prestonlane.com.au
prestonlane.com.au

GENERAL NOTES

These drawings are to be read in conjunction with the specifications, structural engineers drawings and computations, geotechnical site investigation report and any other written instructions and drawings by other consultants.

All work carried out is to comply with the BCA, Australian Standards, Local Authority and all Relevant Authorities Regulations, Statutory Requirements and By-laws.

Exterior materials to comply with BAL 12.5 & GEO Solutions Bush Fire Management Plan

The Builder/Contractor shall verify job dimensions prior to any work commencing. Figured dimensions shall take precedence over scaled work.

No part of this drawing shall be reproduced or otherwise dealt with without the prior written consent of Preston Lane.



Proprietor
Project
Rob & Natasha Miller
Miller Alterations
53 Acton Court Acton

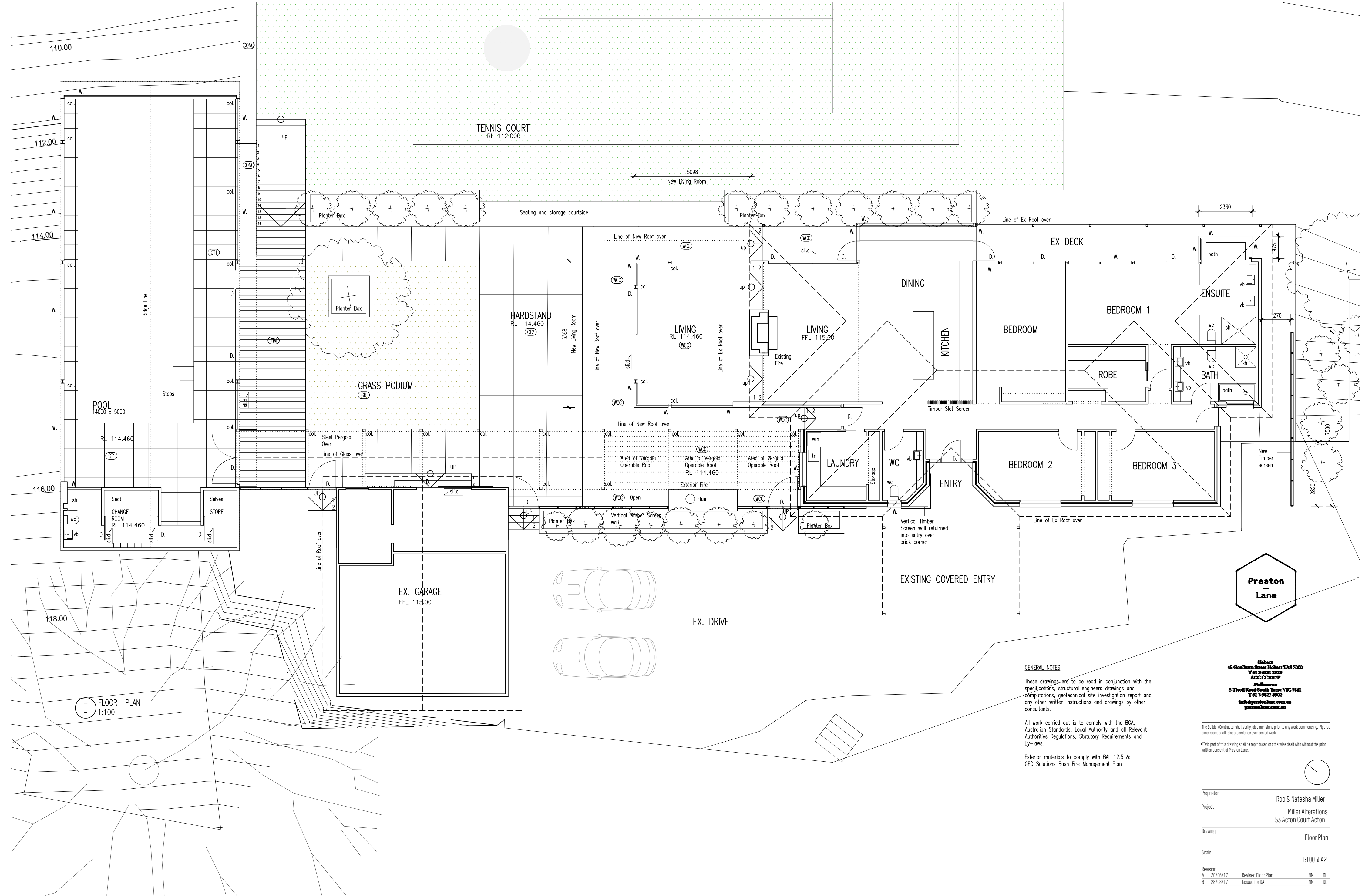
Drawing
Site Plan

Scale
1: 500 @ A2

Revision			
A	20/08/17	Revised Floor Plan	NM DL
B	28/08/17	Issued for DA	NM DL
C	04/10/17	RFI alterations for DA	PN DL

Project No
16078

Drawing Number



GENERAL NOTES

These drawings are to be read in conjunction with the specifications, structural engineers drawings and computations, geotechnical site investigation report and any other written instructions and drawings by other consultants.

All work carried out is to comply with the BCA, Australian Standards, Local Authority and all Relevant Authorities Regulations, Statutory Requirements and By-laws.

Exterior materials to comply with BAL 12.5 & GEO Solutions Bush Fire Management Plan

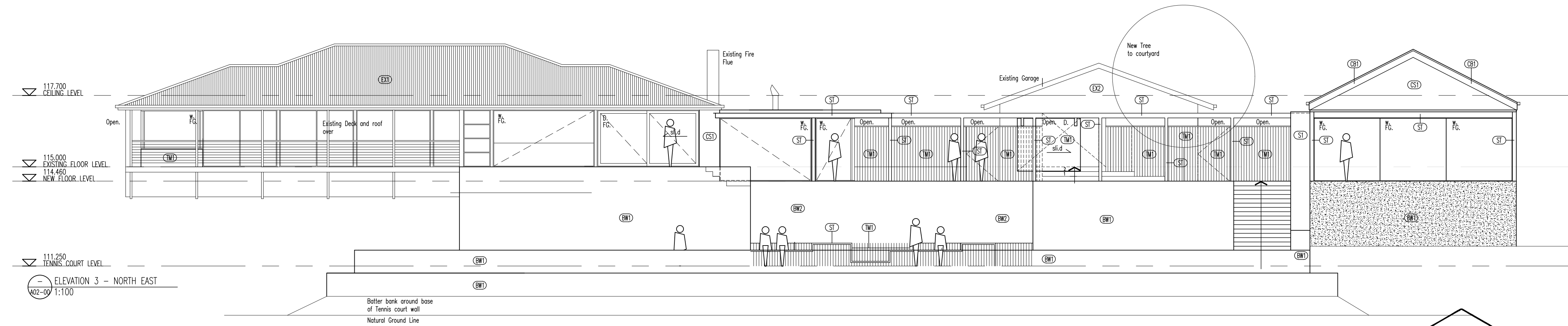
Hobart
45 Goulburn Street Hobart TAS 7000
T 61 3 6231 2525
JACO.COM.AU

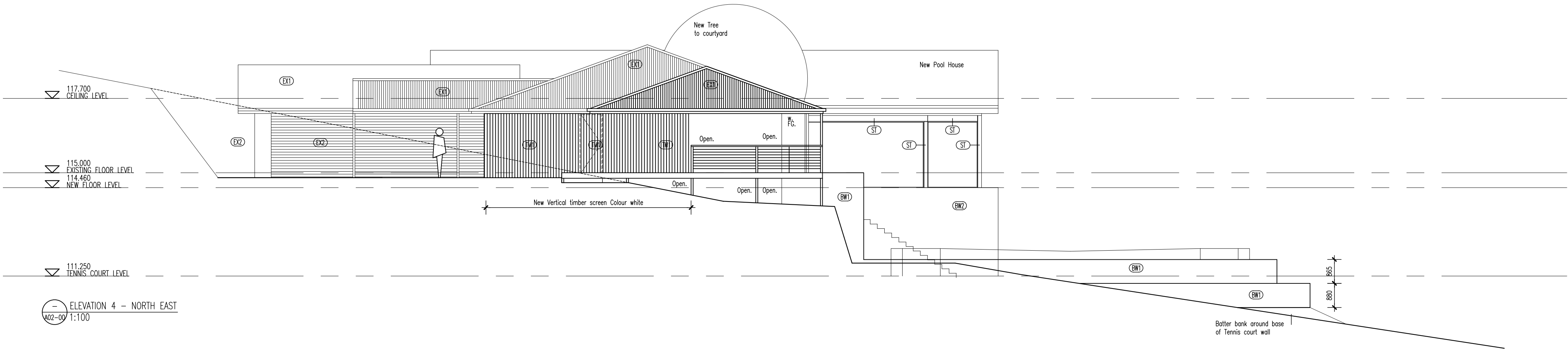
Melbourne
3 Tyrell Road South Yarra VIC 3141
T 61 3 9627 8902
info@prestonlane.com.au
prestonlane.com.au

The Builder/Contractor shall verify job dimensions prior to any work commencing. Figured dimensions shall take precedence over scaled work.

No part of this drawing shall be reproduced or otherwise dealt with without the prior written consent of Preston Lane.

Proprietor	Rob & Natasha Miller		
Project	Miller Alterations 53 Acton Court Acton		
Drawing	Floor Plan		
Scale	1:100 @ A2		
Revision	A - 20/06/17	Revised Floor Plan	NM DL
B - 28/06/17	Issued for DA	NM DL	DL
Project No			
Drawing Number			





GENERAL NOTES

These drawings are to be read in conjunction with the specifications, structural engineers drawings and computations, geotechnical site investigation report and any other written instructions and drawings by other consultants.

All work carried out is to comply with the BCA, Australian Standards, Local Authority and all Relevant Authorities Regulations, Statutory Requirements and By-laws.

Exterior materials to comply with BAL 12.5 & GEO Solutions Bush Fire Management Plan

GLAZING

FG Fixed glazing
AW Openable awning sash

FINISHES

- (TM1) Vertical timber boards, ship lap. Painted off white
- (BR1) White Blockwork. Natural Finish.
- (BR2) Rendered blockwork Colour Off White
- (CS1) Cement sheet cladding. Butt joint silicone seal. Paint finish. Colour Off white
- (CON1) Concrete, exposed aggregate finish. 14mm bluestone aggregate
- (TD1) Timber decking, clear finish. Species to future selection.
- (CB1) Colourbond Roofing, fascias and gutters Shale Grey.
- w. New window aluminium Colour Off White.
- d. New door aluminium Colour Off White
- (ST) Steelwork colour Off White
- (EX1) Existing Roof Colour Grey
- (EX2) Existing Wall Colour Grey
- (EX3) Existing Wall Colour Grey



Hobart
45 Goulburn Street Hobart TAS 7000
T 61 3 6231 2525
A02-00077
Melbourne
3 Throli Road South Yarra VIC 3141
T 61 3 9627 8902
info@prestonlane.com.au
prestonlane.com.au

The Builder/Contractor shall verify job dimensions prior to any work commencing. Figured dimensions shall take precedence over scaled work.

No part of this drawing shall be reproduced or otherwise dealt with without the prior written consent of Preston Lane.



Proprietor Rob & Natasha Miller
Project Miller Alterations
53 Acton Court Acton

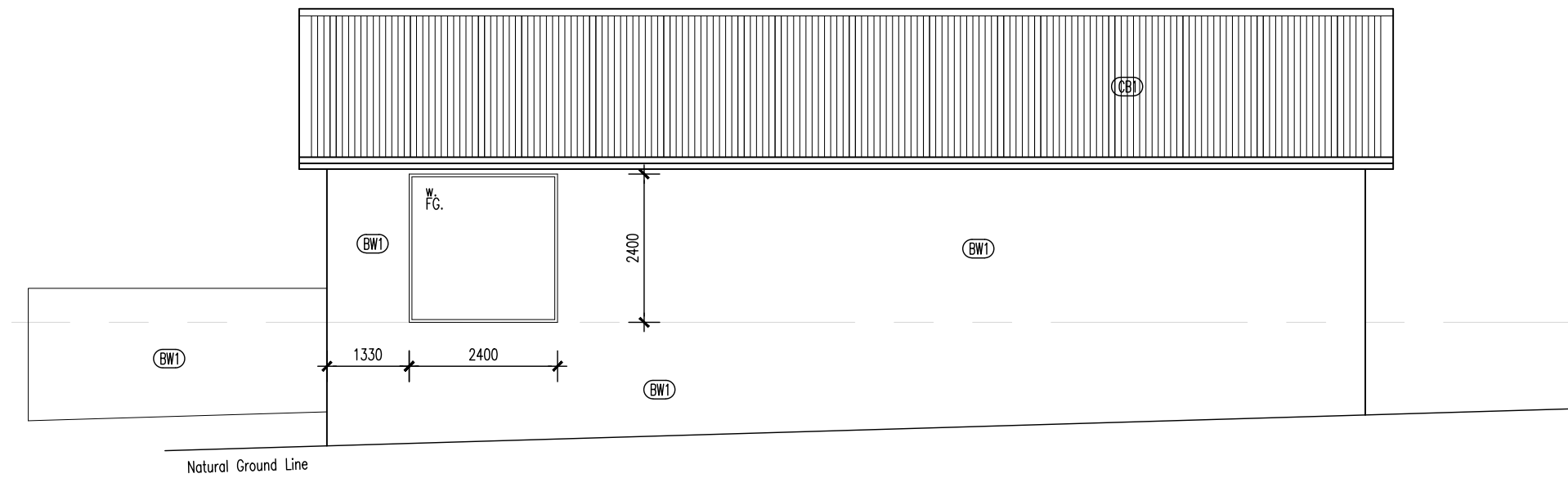
Drawing Elevations

Scale 1:100 @ A2

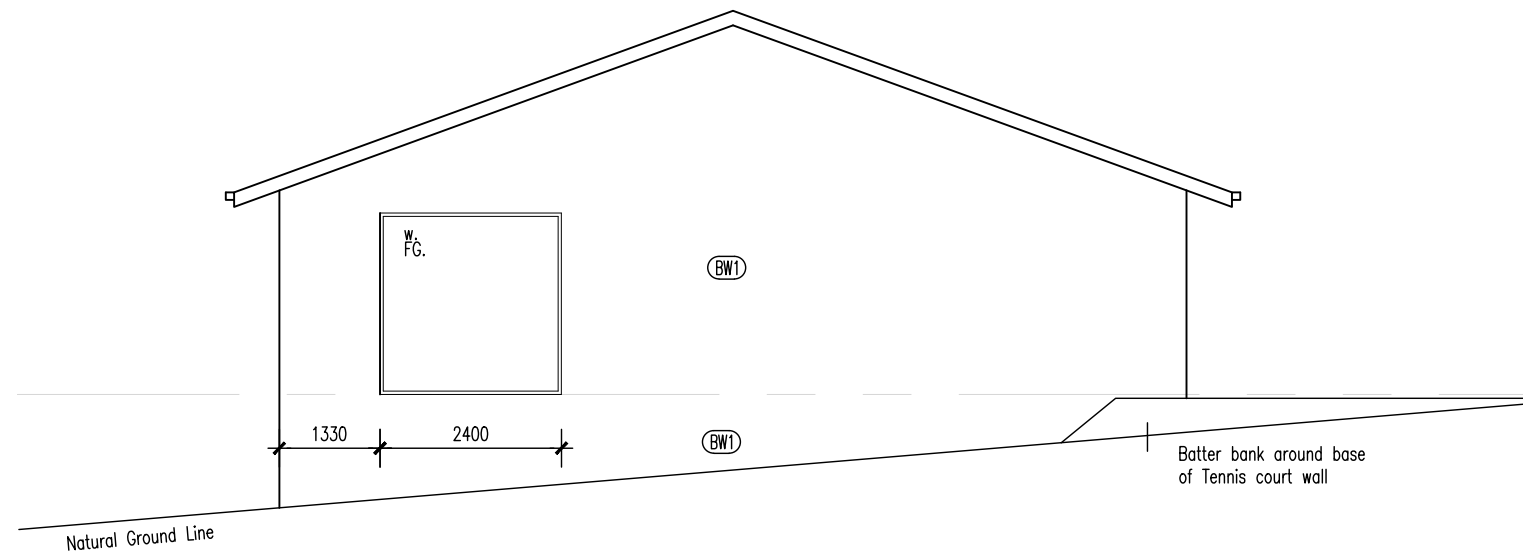
Revision	A - 20/06/17	Revised Floor Plan	NM	DL
	B - 28/08/17	Issued for DA	NM	DL

Project No 16078

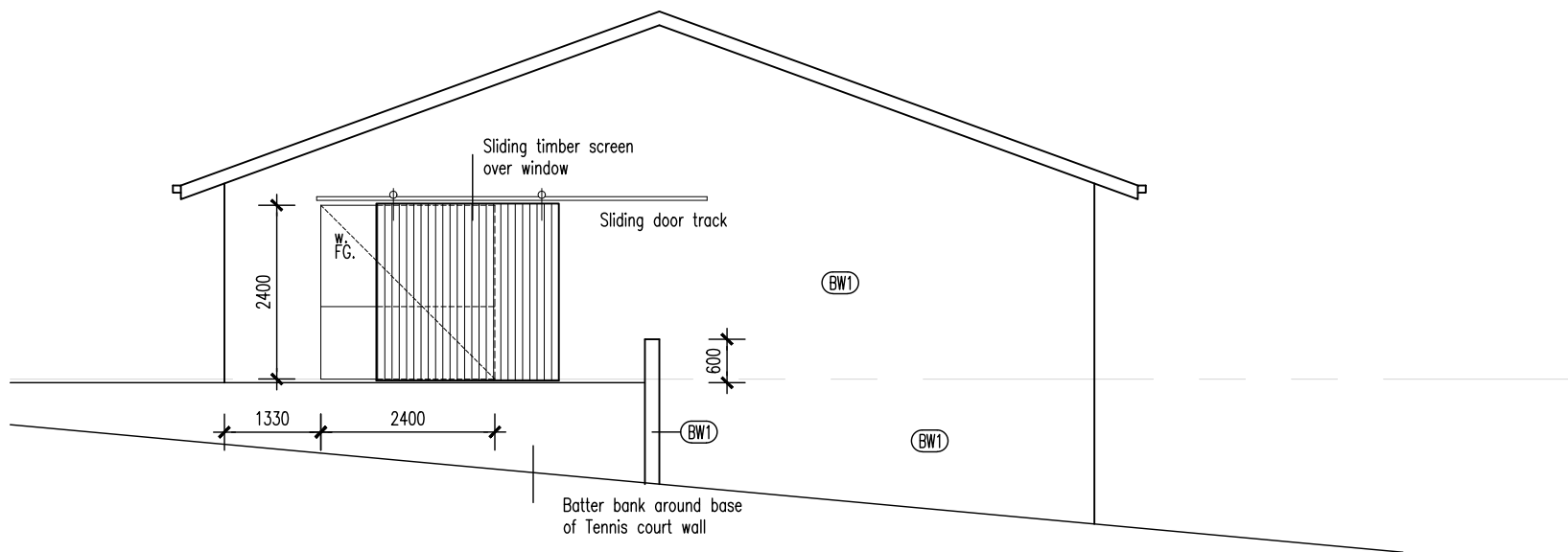
Drawing Number



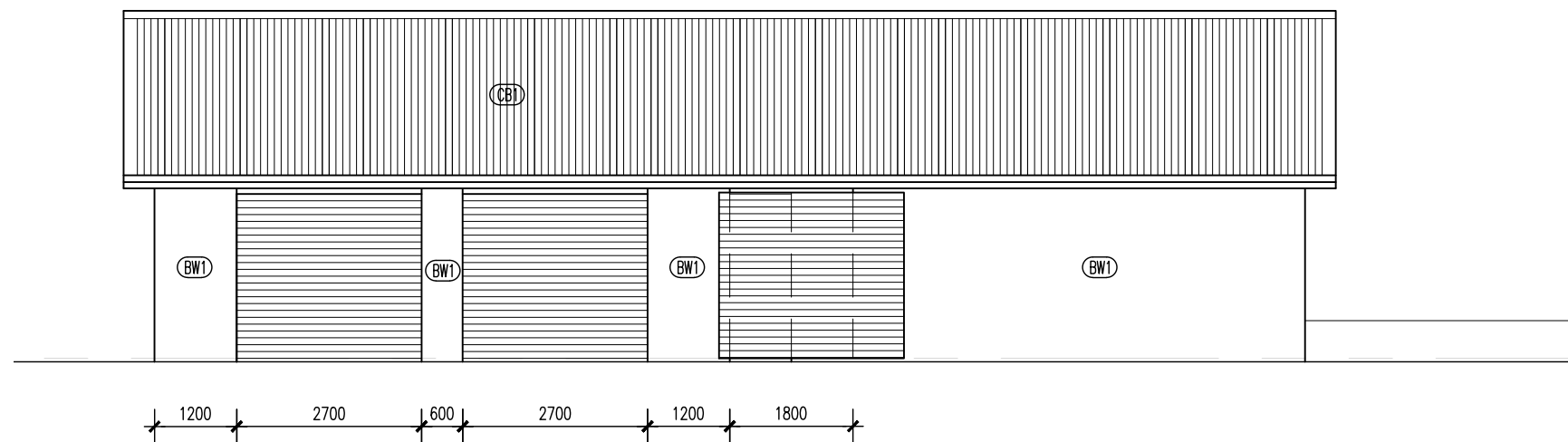
— North Elevation
— 1:100



— East Elevation
A02-00 1:100



— West Elevation
— 1:100



— South Elevation
A02-00 1:100

GENERAL NOTES

These drawings are to be read in conjunction with the specifications, structural engineers drawings and computations, geotechnical site investigation report and any other written instructions and drawings by other consultants.

All work carried out is to comply with the BCA, Australian Standards, Local Authority and all Relevant Authorities Regulations, Statutory Requirements and By-laws.

Exterior materials to comply with BAL 12.5 & GEO Solutions Bush Fire Management Plan

GLAZING

FG Fixed glazing
AW Operable awning sash

FINISHES

- (TM1) Vertical timber boards, ship lap. Painted off white
- (BR1) White Blockwork. Natural Finish.
- (BR2) Rendered blackwork Colour Off White
- (CS1) Cement sheet cladding. Butt joint silicone seal. Paint finish. Colour Off white
- (CONC) Concrete, exposed aggregate finish. 14mm bluestone aggregate
- (TD1) Timber decking, clear finish. Species to future selection.
- (CB1) Colourbond Roofing, fascias and gutters Shale Grey.
- w. New window aluminium Colour Off White.
- d. New door aluminium Colour Off White
- (ST) Steelwork colour Off White
- (EX1) Existing Roof Colour Grey
- (EX2) Existing Wall Colour Grey
- (EX3) Existing Wall Colour Grey



Hobart
45 Goulburn Street Hobart TAS 7000
T 61 3 6231 2562
JACO C01077
Melbourne
3 Threll Road South Yarra VIC 3141
T 61 3 9627 8902
info@prestonlane.com.au
prestonlane.com.au

The Builder/Contractor shall verify job dimensions prior to any work commencing. Figured dimensions shall take precedence over scaled work.

© No part of this drawing shall be reproduced or otherwise dealt with without the prior written consent of Preston Lane.

Proprietor Rob & Natasha Miller
Project Miller Alterations
53 Acton Court Acton

Drawing Elevations
SHED

Scale 1:100 @ A2

Revision
A 20/06/17 Revised Floor Plan NM DL
B 28/06/17 Issued for DA NM DL

Project No 16078

Drawing Number

53 Acton Court, Acton Park



Photo 1: The site when viewed from the cul-de-sac head of Acton Court, Acton Park.

11.3.4 SUBDIVISION APPLICATION SD-2017/40 - 33 SPITFARM ROAD, OPOSSUM BAY - SUBDIVISION (1 LOT PLUS BALANCE LOT)
(File No SD-2017/40)**EXECUTIVE SUMMARY****PURPOSE**

The purpose of this report is to consider the application made for subdivision comprising of 2 lots (1 lot plus the balance lot) at 33 Spitfarm Road, Opossum Bay.

RELATION TO PLANNING PROVISIONS

The land is dual zoned Village and Rural Resource under the Clarence Interim Planning Scheme 2015 (the Scheme). Additionally, the entire site is subject to the Bushfire Prone Code and a small proportion (approximately 5%) to the east is also subject to the Natural Assets and Waterway and Coastal Protection Codes.

For the reasons detailed at Section 4.1 of this report the proposal is a prohibited development and must be refused.

LEGISLATIVE REQUIREMENTS

The report on this item details the basis and reasons for the recommendation. Any alternative decision by Council will require a full statement of reasons in order to maintain the integrity of the Planning approval process and to comply with the requirements of the Judicial Review Act and the Local Government (Meeting Procedures) Regulations 2015.

Note: References to provisions of the Land Use Planning and Approvals Act 1993 (the Act) are references to the former provisions of the Act as defined in Schedule 6 – Savings and transitional provisions of the Land Use Planning and Approvals Amendment (Tasmanian Planning Scheme Act) 2015. The former provisions apply to an interim planning scheme that was in force prior to the commencement day of the Land Use Planning and Approvals Amendment (Tasmanian Planning Scheme Act) 2015. The commencement day was 17 December 2015.

In the circumstance where an applicant purports to lodge a development application for a development which is prohibited, Section 57(2) applies. It reads:

- “(2) The planning authority may, on receipt of an application for a permit to which this section applies, refuse to grant the permit and, if it does so –*
- (a) it does not have to comply with subsection (3) ; and*
 - (b)*
 - (c) it must, within 7 days of refusing to grant the permit, serve on the applicant notice of its decision”.*

There is no time limit which applies to the making of a decision to refuse to grant a permit. Where this power is utilised, there is no obligation to advertise an application for a development which is prohibited.

CONSULTATION

The proposal has not been advertised on the basis that it is prohibited.

RECOMMENDATION:

- A. That the application for a 1 lot subdivision (Plus Balance) at 33 Spitfarm Road, Opossum Bay (CI Ref SD-2017/40) be refused for the following reasons.
1. The lot described as “balance” is unable to meet the 20ha minimum lot size requirement specified at Section 26.5.1P1(a) relating to new lots in the Rural Resource Zone.
 2. The lot described as “balance” is unable to meet the 6.0m minimum frontage requirement specified at Section 26.5.1P1(b) relating to new lots in the Rural Resource Zone.
- B. That the details and conclusions included in the Associated Report be recorded as the reasons for Council’s decision in respect of this matter.

ASSOCIATED REPORT**1. BACKGROUND**

- 1.1.** The subject land has a complex history from a development point of view. The applicant has made and been refused several applications to subdivide the land in various configurations.

Previous applications have proposed residential lots using privately owned land known as Marsh Street for vehicle access. Under the provisions of the previous Eastern Shore (Area 2) Planning Scheme 1986, Council at its Meeting on 28 February 2005 refused an application for a 28 lot subdivision proposal (SD-2004/81). A 29 lot proposal (SD-2005/75) was refused at its Meeting on 19 December 2005 and a 35 lot proposal (SD-2007/62) refused at its Meeting on 12 November 2007.

- 1.2.** Each of these decisions was subsequently appealed to the Resource Management and Planning Appeal Tribunal (the Tribunal). For reasons relating to the status of Marsh Street the appeals resulted in proceedings in the Supreme Court, Full Court and an unsuccessful special leave application to the High Court.
- 1.3.** The legal consequence of the Court orders was that, regardless of the grounds of refusal relied on by Council in its decisions relating to the 28 and 29 lot proposals, the Tribunal could not grant permits and to do so would be contrary to law.
- 1.4.** In accordance with the directions of the Supreme Court, on 18, 19 and 20 July 2016, the Tribunal reheard the 28 and 29 lot [103/05S and 02/06S] appeals and heard the 35 lot appeal [396/07S] concurrently. On 1 August 2016 the Tribunal handed down its decision which concluded inter alia:
- “i. That the Tribunal must refuse each subdivision application because it cannot meet the minimum frontage requirements under the planning scheme and it does not have the minimum lot qualities required under the Local Government Building and Miscellaneous Act 1993.*
- ii. That each of the Council’s decisions to refuse permits in respect of each of the three subdivision proposals be affirmed and directed that no permits are granted”.*

2. STATUTORY IMPLICATIONS

- 2.1.** The land is dual zoned Village and Rural Resource under the Clarence Interim Planning Scheme 2015 (the Scheme). Additionally, the entire site is subject to the Bushfire Prone Code and a small proportion (approximately 5%) to the east is also subject to the Natural Assets and Waterway and Coastal Protection Codes.
- 2.2.** The relevant parts of the Planning Scheme are:
- Section 8.10 – Determining Applications;
 - Section 9.0 – Special Provisions;
 - Section 16.0 and 26.0 – Village and Rural Resource Zones; and

- Section E1.0, E6.0, E11.0, E23.0 and E27.0 – Bushfire Prone, Parking and Access, Waterway and Coastal Protection, On-site Wastewater and Natural Asset Codes.

2.3. For the reasons detailed at Section 4.1 of this report the proposal is a prohibited development and must be refused.

3. PROPOSAL IN DETAIL

3.1. The Site

The land the subject of this application can generally be considered as 33 Spitfarm Road, Opossum Bay. However, the titles to Marsh Street were included with the application documents and they to form part of the subject Site.

No 33 Spitfarm Road is a generally flat lot of 9.84ha, which is mainly cleared. The site contains a dwelling, several outbuildings and building labelled “chalet” on the proposed plan. There is a 88.1m long access strip of variable width to the property on the southern side, known as “Howlin Lane” providing a 3.74m frontage to Spitfarm Road.

The site has the appearance of grazing land and a strong rural character reinforced by established agricultural activity on the adjoining land to the south. However, some dilution of this character is provided by rural residential subdivision adjoining the northern boundary off Bodega Court and the village zoned properties abutting Marsh Street.

Marsh Street is comprised of 2 privately owned lots. “Lot A” is a 512m² lot fronting Spitfarm Road, owned by Qin and Shi (formerly owned by Howlin), with the remaining section “Lot B” being part of 9 Marsh Street, owned by Geappen (formerly owned by Brinckman). The Marsh Street titles are subject to a complex schedule of easements which grant rights of carriage way to the majority (but not all) of the Marsh Street frontages.

Marsh Street is currently a narrow gravel laneway that is used for access to 9 properties including 33 Spitfarm Road. Of relevance to this proposal is that 33 Spitfarm Road has a registered right of carriage way established over Lot B but not Lot A (owned by Qin and Shi).

3.2. The Proposal

It is proposed to subdivide the land at 33 Spitfarm Road into 2 lots as shown in the attachments and described below.

- Lot 1 is a 1335m² lot entirely contained within the Village Zone and contains the existing house. Vehicular access from this lot to Spitfarm Road is proposed via a right of carriage way over the Howlin Lane portion of the balance lot.
- The balance lot (or second lot) is a dual zoned 9.69ha lot surrounding Lot 1 with a 3.74m frontage to Spitfarm Road via Howlin Lane. The lot contains several existing outbuildings and “Chalet” to the east of the house and abuts the Geappen owned portion of Marsh Street. It is proposed to create an additional right of carriage way over the Qin and Shi (Lot A) to benefit the lot.

4. PLANNING ASSESSMENT

4.1. Lot Size and Frontage

The site is dual zoned Village and Rural Resource. The proposal results in one Village zoned lot and a dual zoned balance. Pursuant to Clause 7.5.1, a use or development must comply with each applicable standard in a zone, specific area plan or code.

While Lot 1 could be considered pursuant to the standards specified in the Village Zone and applicable Codes, the dual zoned balance is unable to meet the relevant standards in the Rural Resource Zone. Specifically, the Performance Criteria at 26.5.1P1(a) (relating to new lots in the Rural Resource Zone) specifies a minimum lot size of 20ha and 26.5.1P1(b) specifies a frontage of not less than 6m.

The proposed dual zoned balance lot has an area of 9.69ha and a 3.74m frontage to Spitfarm Road via Howlin lane. The proposed lot does not meet either of the minimum lot area or frontage requirements and there is no discretion to further vary the standard beyond that specified. Accordingly the application is prohibited and must be refused.

4.2. Marsh Street ROW

The applicant requests that a Permit condition be included to provide an additional right of carriage way over the “Lot A” portion of Marsh Street to the benefit of the proposed balance lot.

The Performance Criteria at 16.5.1P4(h) (relating access to internal lots in the Village Zone) specifies that: *“the access strip is adjacent to or combined with no more than three other internal lot access strips and it is not appropriate to provide access via a public road”*.

The “Lot A” portion of Marsh Street is currently burdened by 8 rights of carriage way. Were a permit for the subdivision able to be issued (which it cannot) the required condition would be contrary to 16.5.1P4(h) and on this basis, it would not be possible to include a condition requiring an additional rights of carriage ways over “Lot A”. Notwithstanding, there are other mechanisms outside of LUPAA that would enable the creation of an additional carriage way over “Lot A”. Accordingly, it is considered that the inability to satisfy the requirements of 16.5.1P4(h) should not be listed as a reason to refuse the proposal.

4.3. Codes

The requirements of the Scheme’s Bushfire Prone, Parking and Access Code, Waterway and Coastal Protection, On-site Wastewater and Natural Asset Codes are all applicable to the assessment of the proposal. None of the applicable codes would prevent the consideration and potential approval of the proposed subdivision. However, given that the proposal is prohibited pursuant to 26.5.1P1(a) and 26.5.1P1(b) as discussed at Section 4.1 of this report, a detailed assessment against each of the Codes is not required.

4.4. Additional Matters

On 5 December 2017, officers advised the applicant that the proposal was prohibited and that this report and associated recommendation would be presented to Council for determination. On 6 December 2017, the applicant responded via email raising matters relating to:

- (i) the status of the existing 33 Spitfarm Road property;
- (ii) the purpose and function of Clause 9.8.1; and
- (iii) impact of on the Rural Resource zoned portion of the land.

A copy of the applicant's email is included in the attachments.

- **Comment**

Irrespective of the status/qualities of the existing lot, the proposal is for the creation of 2 new lots, each of which must be assessed under the provisions of the current planning Scheme. In this instance the proposal does not and cannot be modified to satisfy the Performance Criteria at Section 26.5.1 of the Scheme.

Clause 9.8.1 relates use permissibility. It provides direction in circumstances where a structure overhangs land in a different zone, such as shop verandah overhanging a footpath in another zone. The Clause is not relevant to the assessment of this proposal.

It may be that the subdivision of the proposed 1335m² lot from the Village zoned portion of the land would not compromise the ability of the Rural Recourse portion of the lot to fulfil its zone's purpose. This rationale however, does not enable the minimum mandatory lot size and frontage requirements specified at Section 26.5.1 of the Scheme to be varied.

5. REPRESENTATION ISSUES

There is no obligation to advertise an application for a prohibited development. For this reason the proposal was not advertised.

6. EXTERNAL REFERRALS

External legal advice was obtained in relation to this application and that advice is the basis of the report and the recommendation.

7. COUNCIL COMMITTEE RECOMMENDATION

The proposal was not referred to any Committees of Council.

8. STATE POLICIES AND ACT OBJECTIVES

8.1. The proposal is consistent with the outcomes of the State Policies, including those of the State Coastal Policy.

8.2. The proposal is inconsistent with the objectives of Schedule 1 of LUPAA on the basis that the proposal is prohibited.

9. COUNCIL STRATEGIC PLAN/POLICY IMPLICATIONS

The proposal is prohibited under the Scheme.

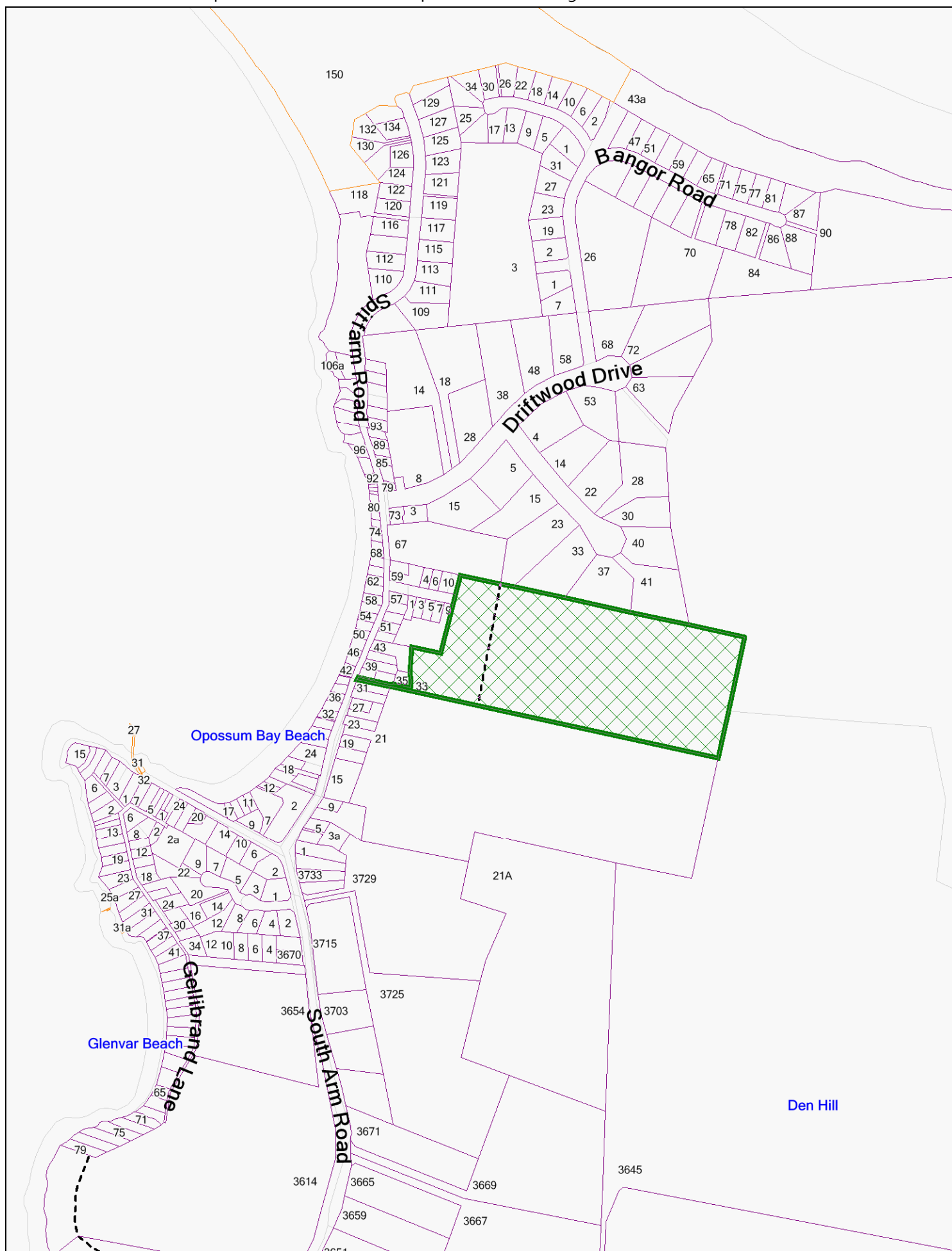
10. CONCLUSION

As detailed at Section 4.1 of this report, the proposed balance lot is unable to meet the minimum lot size and frontage requirements in the Rural Resource Zone and is therefore prohibited.

Attachments: 1. Location Plan (1)
2. Proposal Plan (1)
3. Proposal Plan Showing Proposed Water Tank and “Lot A” (1)
4. Applicant’s Email dated 6 December 2017 (1)

Ross Lovell
MANAGER CITY PLANNING

33 Spitfarm Road Opossum Bay - Location Plan

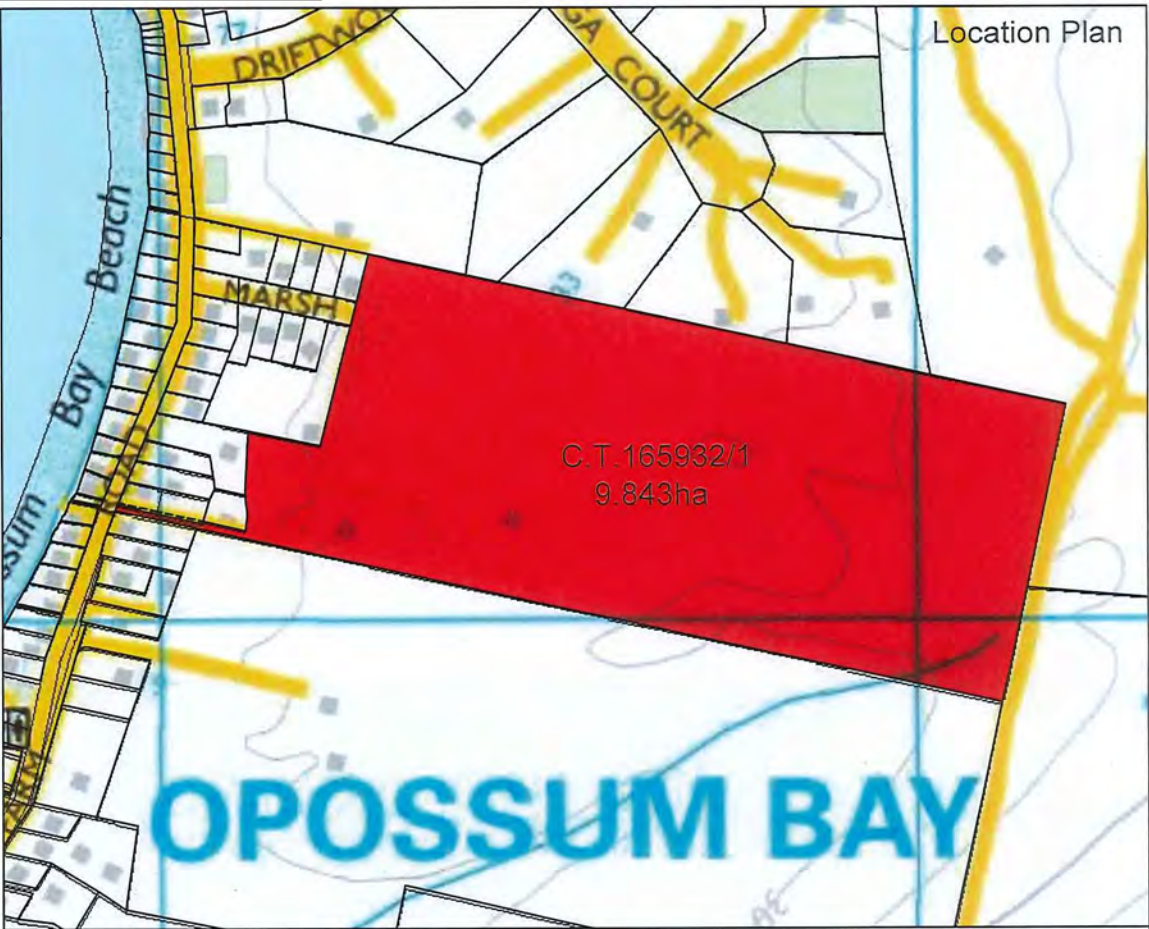


Disclaimer: This map is a representation of the information currently held by Clarence City Council. While every effort has been made to ensure the accuracy of the product, Clarence City Council accepts no responsibility for any errors or omissions. Any feedback on omissions or errors would be appreciated. Copying or reproduction, without written consent is prohibited. **Date:** Friday, 8 December 2017 **Scale:** 1:7,885 @A4



UNIT 1, 2 KENNEDY DRIVE
CAMBRIDGE 7170
PHONE: (03)6248 5898
EMAIL: admin@rbsurveyors.com
WEB: www.rbsurveyors.com

Whole site is subject to the "Bushfire Prone Areas" overlay 119.FRE



This plan has been prepared only for the purpose of obtaining preliminary subdivisional approval from the local authority and is subject to that approval.
All measurements and areas are subject to the final survey.
Base image by TASMAP (www.tasmap.tas.gov.au), © State of Tasmania
Base data from the LIST (www.thelist.tas.gov.au), © State of Tasmania

OWNER: Darryl Robert Howlin
TITLE REFERENCE: C.T.165932/1
LOCATION: 33 SPITFARM ROAD
OPOSSUM BAY

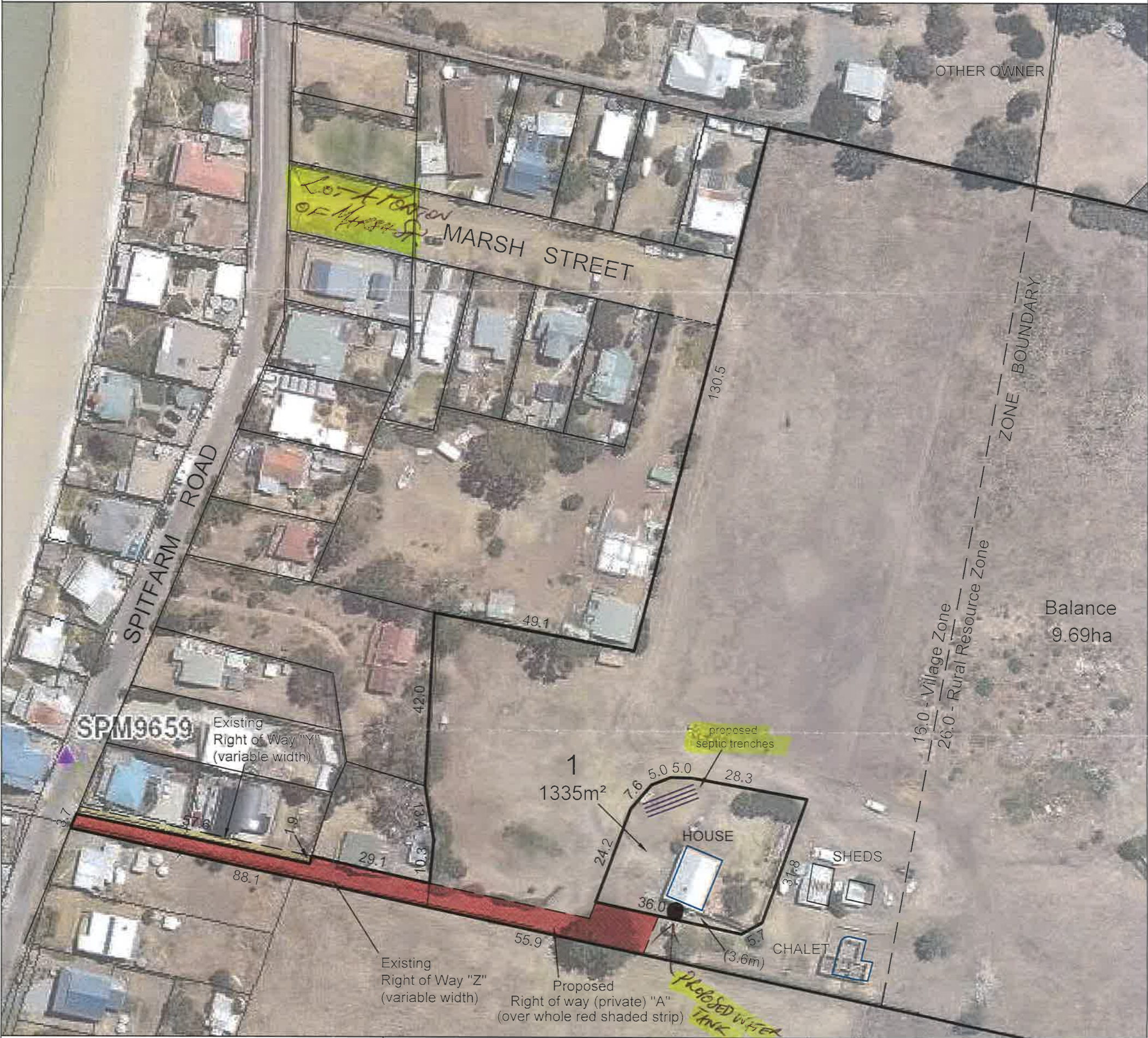
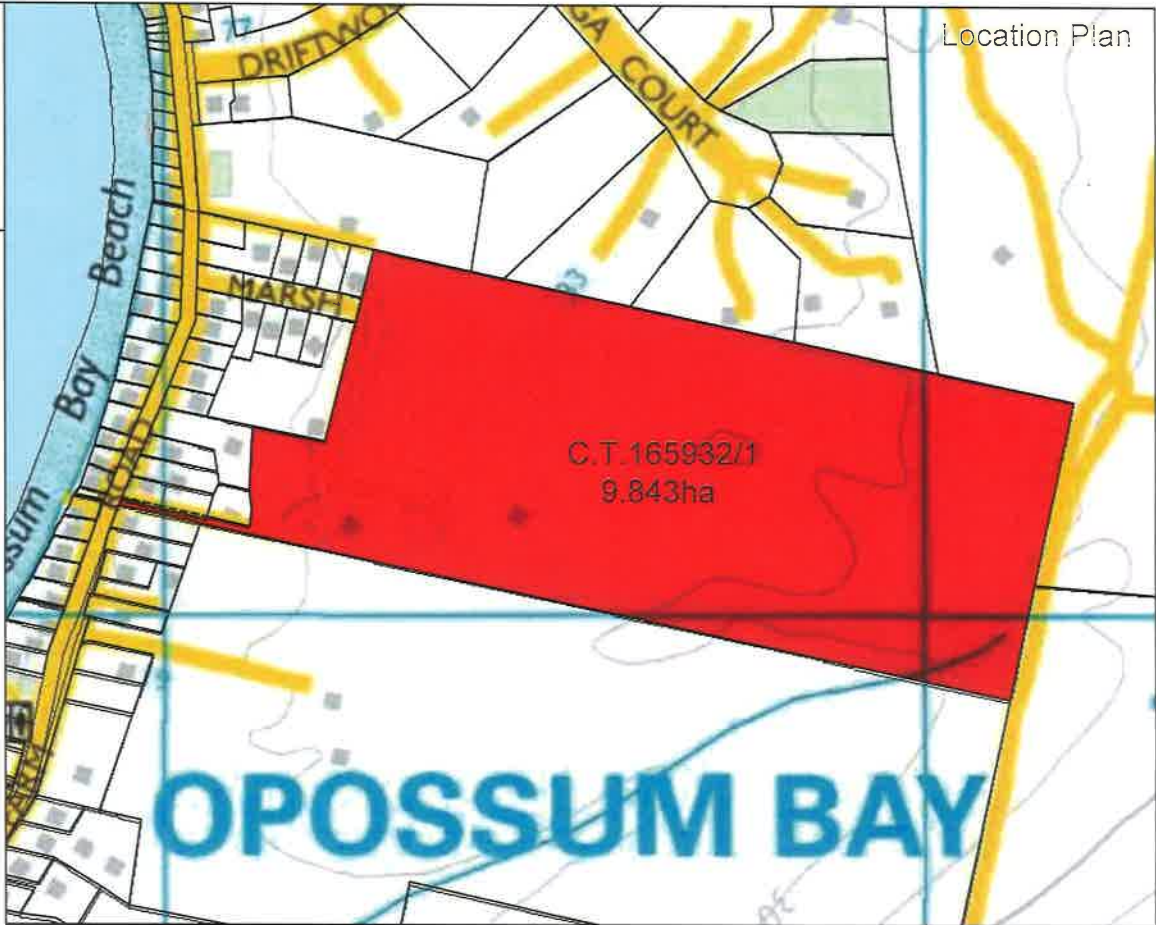
Proposed Subdivision

Date:	14-11-2017	Reference:	HOWLD01 4470-60
Scale:	1:1000 (A3)	Municipality:	clarence



UNIT 1, 2 KENNEDY DRIVE
CAMBRIDGE 7170
PHONE: (03)6248 5898
EMAIL: admin@rbsurveyors.com
WEB: www.rbsurveyors.com

Whole site is subject to the "Bushfire Prone Areas" overlay 119.FRE



This plan has been prepared only for the purpose of obtaining preliminary subdivisional approval from the local authority and is subject to that approval.
All measurements and areas are subject to the final survey.
Base image by TASMAR (www.tasmap.tas.gov.au), © State of Tasmania
Base data from the LIST (www.thelist.tas.gov.au), © State of Tasmania

OWNER: Darryl Robert Howlin
TITLE REFERENCE: C.T.165932/1
LOCATION: 33 SPITFARM ROAD
OPOSSUM BAY

Proposed Subdivision

Date:	14-11-2017	Reference:	HOWLD01 4470-60
Scale:	1:1000 (A3)	Municipality:	clarence

Dan Ford

Dear Mr Lovell

Further to your advice emailed to me by Mr Ford on 5th December 2017 at 4:05 PM, notwithstanding that the whole of my land has the surviving deemed qualities of a "minimum lot" pursuant to the provisions of S 472 (3) (f) of the Local Government Act 1962 which quality meets the frontage requirements of the Clarence Interim Planning Scheme 2015 under the provisions of S 109 (3) of the LG(BMP) Act 1993, could you please advise in respect of the Scheme Section **9.8 Development Overhanging Land in a Different Zone** as to the application of:

"9.8.1 If an application for use or development of land includes development that overhangs land in a different zone to the land upon which the use or development is proposed to take place, the use status of the application is to be determined disregarding the use status in the different zone."

I ask this in respect of your claim that any development of my land (development meaning as defined in the LUPA Act 1993) is "*prohibited*" because the adjoining Village and Rural Resource Zones over my land approved by the Tasmanian Planning Commission at the request of Council is somehow compromised by the subdivision of one lot in the Village Zone when there is no change to the existing and approved Rural Resource Zone of about 20 acres in the balance lot and less about 1300 M2 in the Village Zone.

The Land Use Planning and Approvals Act 1993 provides at S 63A that it is an offence for a planning authority to not make all reasonable attempts to comply with its planning scheme and I fail to see the bona fides of your claim that the development of my land in the Village Zone is somehow "*prohibited*" because part of the balance land is in an approved Rural Resource Zone of about 20 acres which existing area is not affected in any way by the subdivision of 1300M2 of land from the Village Zone.

Your urgent response is requested.

Yours sincerely

11.3.5 DEVELOPMENT APPLICATION D-2017/463 - 318 EAST DERWENT HIGHWAY, GEILSTON BAY - CHANGE OF USE - HOURS OF OPERATION
(File No D-2017/463)**EXECUTIVE SUMMARY****PURPOSE**

The purpose of this report is to consider the application made for a Change of Use (Hours of Operation) at 318 East Derwent Highway, Geilston Bay.

RELATION TO PLANNING PROVISIONS

The land is zoned Local Business and subject to the Bushfire Prone Area, Road and Rail Assets, Signs, Stormwater Management and Parking and Access codes under the Clarence Interim Planning Scheme 2015 (the Scheme). In accordance with the Scheme the proposal is a Discretionary development.

LEGISLATIVE REQUIREMENTS

The report on this item details the basis and reasons for the recommendation. Any alternative decision by Council will require a full statement of reasons in order to maintain the integrity of the Planning approval process and to comply with the requirements of the Judicial Review Act and the Local Government (Meeting Procedures) Regulations 2015.

Note: References to provisions of the Land Use Planning and Approvals Act 1993 (the Act) are references to the former provisions of the Act as defined in Schedule 6 – Savings and transitional provisions of the Land Use Planning and Approvals Amendment (Tasmanian Planning Scheme Act) 2015. The former provisions apply to an interim planning scheme that was in force prior to the commencement day of the Land Use Planning and Approvals Amendment (Tasmanian Planning Scheme Act) 2015. The commencement day was 17 December 2015.

Council is required to exercise a discretion within the statutory 42 day period which expires on 22 December 2017.

CONSULTATION

The proposal was advertised in accordance with statutory requirements and 1 representation was received raising the following issues:

- noise and amenity in a residential area;
- hours of operation;
- use for wholesale food production;
- proposed off-site parking.

RECOMMENDATION:

A. That the Development Application for Change of Use - hours of operation at 318 East Derwent Highway, Geilston Bay (Cl Ref D-2017/463) be approved subject to the following conditions and advice.

1. GEN AP1 – ENDORSED PLANS.

2. GEN – NON STANDARD GENERAL CONDITION – No vehicles are to access or park at 314 East Derwent Highway without prior consent of Council.
 3. GEN AM5 – TRADING HOURS (Monday to Saturday 3am to 5pm, excluding Public Holidays).
 4. EHO 1 – NOISE LEVELS.
 5. GEN S1 – SIGN CONSENT.
- B. That the details and conclusions included in the Associated Report be recorded as the reasons for Council’s decision in respect of this matter.

ASSOCIATED REPORT

1. BACKGROUND

Planning approval D-2016/43 was granted for a change of use to Takeaway Food Shop and Signage at 318 East Derwent Highway, Geilston Bay. Under D-2016/43 approved trading hours and deliveries were Monday to Friday 6.30am to 8pm and Saturday/Sunday/Public Holidays 7am to 8pm.

The current proposal for a food production kitchen at 318 East Derwent Highway is consistent with the previously approved use class but seeks a variation for trading hours.

2. STATUTORY IMPLICATIONS

- 2.1. The land is zoned Local Business under the Scheme.
- 2.2. The proposal is discretionary because it does not meet the Acceptable Solutions under the Scheme.
- 2.3. The relevant parts of the Planning Scheme are:
 - Section 8.10 – Determining Applications;
 - Section 20 – Local Business Zone; and

- Section E1.0 – Bushfire Prone Areas Code, Section E5.0 Road and Railway Assets Code, Section E.6 Parking and Access Code and E17.0 Signs Code.

2.4. Council's assessment of this proposal should also consider the issues raised in any representations received, the outcomes of the State Policies and the objectives of Schedule 1 of the Land Use Planning and Approvals Act, 1993 (LUPAA).

3. PROPOSAL IN DETAIL

3.1. The Site

The site at 318 East Derwent Highway has an area of 556m² and contains an existing commercial building divided into 3 tenancies – a hairdresser, workshop and vacated take away shop.

Along with the adjacent property at 314 East Derwent Highway, which contains an Italian restaurant, the site provides 4 commercial businesses with frontage to the East Derwent Highway. In addition a dwelling and carpark are located to the rear of the restaurant located at 314 East Derwent Highway.

No car parking is available on-site for the tenancies at 318 East Derwent Highway. Whilst there is a parking bay associated with 318 East Derwent Highway, access over 314 East Derwent Highway is required in order for manoeuvring into the space.

The surrounding area is to the north, east and south of the site, including land within 50m of the site, is zoned General Residential. Land on the opposing side of the East Derwent Highway consists of sportsgrounds and is zoned Open Space.

3.2. The Proposal

The proposal is for a change of use for hours associated with the change from a takeaway food shop to a closed food production kitchen. The general operation is wholesale sushi production and cooking of sushi ingredients and cooking of rice.

The proposed hours of operation would be as follows:

- Monday – Saturday: 3am to 5pm.

However, no suppliers would deliver before 7am and no customers would collect orders before 7am.

No signage is proposed as part of the application.

Whilst there is not a requirement to review car parking as the use class is not changing, Council has been advised that staff will be parking off-site across the road from 318 East Derwent Highway.

4. PLANNING ASSESSMENT

4.1. Determining Applications [Section 8.10]

“8.10.1 In determining an application for any permit the planning authority must, in addition to the matters required by s51(2) of the Act, take into consideration:

- (a) all applicable standards and requirements in this planning scheme; and*
- (b) any representations received pursuant to and in conformity with ss57(5) of the Act;*

but in the case of the exercise of discretion, only insofar as each such matter is relevant to the particular discretion being exercised”.

Reference to these principles is contained in the discussion below.

4.2. Compliance with Zone and Codes

The proposal meets the Scheme’s relevant Acceptable Solutions of the Local Business Zone and relevant Codes with the exception of the following.

Local Business Zone

Clause	Standard	Acceptable Solution (Extract)	Proposed
20.3.1	Hours of Operation	Hours of operation of a use within 50m of a residential zone must be within: (a) 7am to 9pm Mondays to Saturdays inclusive;	Does not comply. The proposed hours of operation would be 3am to 5pm Monday to Saturday. Therefore the business would operate 4 hours earlier than under the Acceptable Solution.
		(b) 9am to 5pm Sundays and Public Holidays. except for office and administrative tasks.	not applicable

The proposed variation must be considered pursuant to the Performance Criteria P1 of the Clause 20.3.1 as follows.

Performance Criteria	Proposal
<i>“Hours of operation of a use within 50m of a residential zone must not have an unreasonable impact upon the residential amenity of land in a residential zone through commercial vehicle movements, noise or other emissions that are unreasonable in their timing, duration or extent”.</i>	The proposed hours of operation would potentially cause noise through staff movements and the use of exhaust fans for the cooking process. Council’s Environmental Health Officers are satisfied that the proposed hours would generally have a low impact in terms of noise and emissions. The Environmental Health Officer has advised that noise level from the activity would be below the ambient noise from vehicles using the East Derwent Highway.

Local Business Zone

Clause	Standard	Acceptable Solution (Extract)	Proposed
20.3.4	Commercial Vehicle Movements	Commercial vehicle movements, (including loading and unloading and garbage removal) to or from a site within 50m of a residential zone must be within the hours of: (a) 7am to 5pm Mondays to Fridays inclusive;	Does not comply. The proposed hours for commercial vehicle movements would be from 3am to 5pm.

		(b) 9am to 5pm Saturdays;	Does not comply. In addition to the above, the proposed hours for commercial vehicle movements on Saturday would be from at 3am until 5pm.
		(c) 10am to 12 noon Sundays and public holidays.	not applicable

The proposed variation must be considered pursuant to the Performance Criteria P1 of the Clause 20.3.4 as follows.

Performance Criteria	Proposal
<i>“Commercial vehicle movements, (including loading and unloading and garbage removal) to or from a site within 50m of a residential zone must not result in unreasonable adverse impact upon residential amenity having regard to all of the following: (a) the time and duration of commercial vehicle movements;</i>	The proposed hours of operation results in commercial vehicle movements Monday to Saturday from 3am when 2 work vans arrive between 3am and 6.30am. No suppliers will deliver or customers collect orders before 7am.
<i>(b) the number and frequency of commercial vehicle movements;</i>	Each of the 2 commercial vehicles is expected to come and go 2 to 3 times between 6am and 1pm. Generally there are 1 to 2 vehicle movements resulting from customer pickups per day. Up to 3 supplier deliveries are expected Monday to Friday between the hours of 8am and 12pm. On Saturday , there is one delivery at 4pm.
<i>(c) the size of commercial vehicles involved;</i>	The sushi delivery vans include a VW Caddy and a Hyundai iLoad. The supplier delivery vehicles are all light delivery vehicles.
<i>(d) the ability of the site to accommodate commercial vehicle turning movements, including the amount of reversing (including associated warning noise);</i>	not applicable
<i>(e) noise reducing structures between vehicle movement areas and dwellings;</i>	not applicable

(f) <i>the level of traffic on the road;</i>	The commercial vehicle movements involving 2 work vans, 1-2 customer pickups and up to 3 supplier deliveries will not have an impact on the level of traffic on the East Derwent Highway.
(g) <i>the potential for conflicts with other traffic”.</i>	The change of use of hours will not result or have an impact on the potential for conflicts with other traffic in the area.

5. REPRESENTATION ISSUES

The proposal was advertised in accordance with statutory requirements and 1 representation was received. The following issues were raised by the representor.

5.1. Noise and Amenity in a Residential Area

Concern was raised that the proposed use and operating hours will have a detrimental impact on the residential amenity of the surrounding area due to parking and traffic movements associated noise and activity and the use not being in accordance with the zone purpose.

- **Comment**

The Food Services use class associated with the proposal is an existing approved use class for the property. The proposed change to hours would result in a Monday to Friday start time 4 hours earlier than the standard in the Acceptable Solution and 6 hours earlier than the Acceptable Solution standard for Saturday.

Given that the use class is not changing, the change to operating hours is not likely to cause a significant impact to the surrounding residential amenity as a result of the proposed vehicle movements and the nature of the food operation.

5.2. Hours of Operation

Concern was raised that the proposed 3am start time would result in commercial noise from the properties at 314 East Derwent Highway and 318 East Derwent Highway, in total from 3am to 11pm, 6 days a week which is unacceptable in close proximity to a residential area.

In addition, due to the degraded steep and potholed condition of the existing driveway, commercial vehicle movements associated with the proposal would result in an unacceptable level of noise.

- **Comment**

Whilst there would be 2 commercial vehicles arriving between 3am until 6.30am, the vehicles would be parked off-site and are only expected to come and go up to 3 times a day between 6am and 1pm.

These movements are unlikely to result in an unacceptable level of noise. Furthermore, planning approval can be conditioned to ensure noise levels resulting from the business do not exceed the standards set out in the Acceptable Solution.

As there is no parking on-site at 318 East Derwent Highway, the condition of the driveway relates to the adjoining property at 314 East Derwent Highway.

5.3. Use for Wholesale Food Production

The representor has expressed concern that proposed use of closed wholesale food production is not in accordance with the zone purpose statement for the Local Business Zone, as it is of no benefit to the local community.

- **Comment**

There is no change to the existing Food Services use class as a result of the proposal for a change of hours. Food Services is a Discretionary use class for the Local Business Zone. Therefore the proposed change of hours does not require an assessment under the Scheme against the zone purpose. The assessment is restricted to considering the impact of a change of hours.

5.4. Proposed Off-site Parking

The representor has expressed concern in relation to traffic and parking issues on and around the site. The representor is concerned that the proposed change of hours will exacerbate existing problems as a result of staff parking in the already busy road reservation opposite 318 East Derwent Highway.

- **Comment**

The application was referred to Department of State Growth for comment, however, it did not advise of any concerns associated with the proposal. Given the hours of operation and the nature of the proposed use, it is reasonable to anticipate less traffic impact than the previous take away food use.

6. EXTERNAL REFERRALS

The proposal was referred to Department of State Growth, however, no comments in relation to the proposal were received.

7. STATE POLICIES AND ACT OBJECTIVES

7.1. The proposal is consistent with the outcomes of the State Policies, including those of the State Coastal Policy.

7.2. The proposal is consistent with the objectives of Schedule 1 of LUPAA.

8. COUNCIL STRATEGIC PLAN/POLICY IMPLICATIONS

There are no inconsistencies with Council's adopted Strategic Plan 2016-2026 or any other relevant Council Policy.

9. CONCLUSION

The proposal seeks approval for a change of use (change of hours) at 318 East Derwent Highway, Geilston Bay. The application meets the relevant acceptable solutions and performance criteria of the Scheme.

The proposal is recommended for approval subject to conditions.

Attachments: 1. Location Plan (1)
2. Proposal Plan (3)
3. Site Photo (1)

Ross Lovell
MANAGER CITY PLANNING

ATTACHMENT 1

LOCATION PLAN

318 EAST DERWENT HIGHWAY, GEILSTON BAY

SUBJECT PROPERTY -
318 East Derwent Highway, Geilston Bay

East Derwent Highway

326

322

318

2

314

Araluen Street

19

20

312



Disclaimer: This map is a representation of the information currently held by Clarence City Council. While every effort has been made to ensure the accuracy of the product, Clarence City Council accepts no responsibility for any errors or omissions. Any feedback on omissions or errors would be appreciated. Copying or reproduction, without written consent is prohibited. **Date:** Monday, 4 December 2017 **Scale:** 1:444.8 @A4

Sush Holdings Pty Ltd
 ABN 16 109 023 396
 Shop 2A Bank Arcade
 64-68 Liverpool Street
 Hobart TAS 7000
 Ph 03 6234 6650
 Email sushi@sush.com.au

10 October 2017

To Clarence City Council Planning Department

RE: Change of Use Application, 318 East Derwent Highway, Geilston Bay

This letter should be read as an attachment providing further information to the Application for Change of Use on 318 East Derwent Highway, Geilston Bay TAS 7015.

Relevant Information:

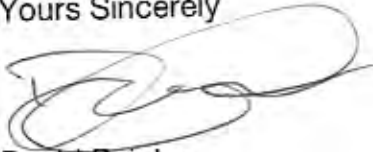
- A Food Licence Application has already been lodged by Sush Holdings Pty Ltd for this site
- The change of use from the previous use will be from a takeaway food business to a closed food production kitchen
- The general operation is wholesale sushi production, and cooking of sushi ingredients, cooking of rice
- The hours of operation are to change to production starting from 3am through to 5pm Monday to Saturday. Currently closed Sundays
- The number of staff to start as early as 3am would not exceed 6.
- Vehicle movements on site between 3am and 6.30am would be our two work vans (VW Caddy and Hyundai iLoad) arriving and parking on site.
- All staff will park offsite, across the East Derwent Highway adjacent to an oval (opposite Araluen St).
- No suppliers deliver before 7am
- No customers collect before 7am
- The waste generation will be similar to the current operator. The grease trap in place is appropriate to our needs and we will arrange our own supplier to pump the grease trap regularly



- Equipment used – normal food production equipment
- There will be no unusual pollution such as fumes, noise, smoke or vibration
- The business has HACCP Food Safety accreditation
- Certificate of Title attached

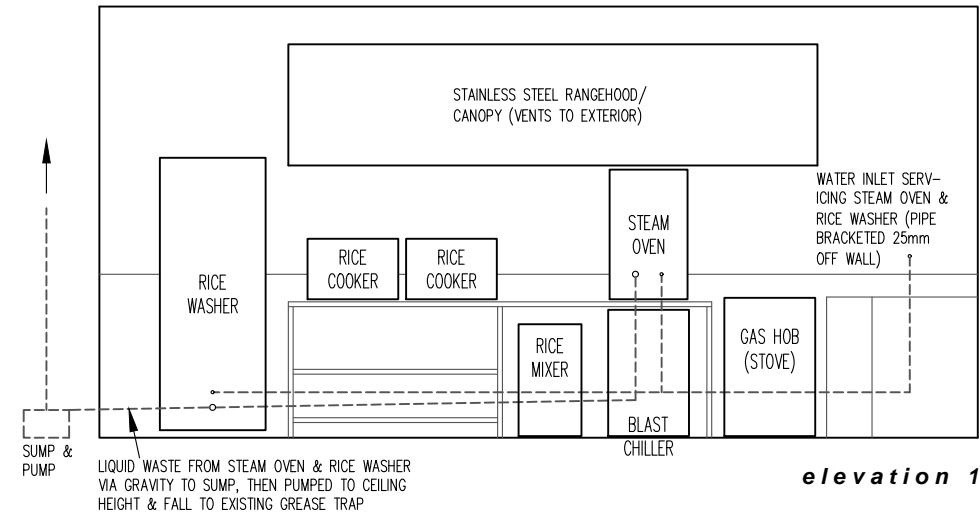
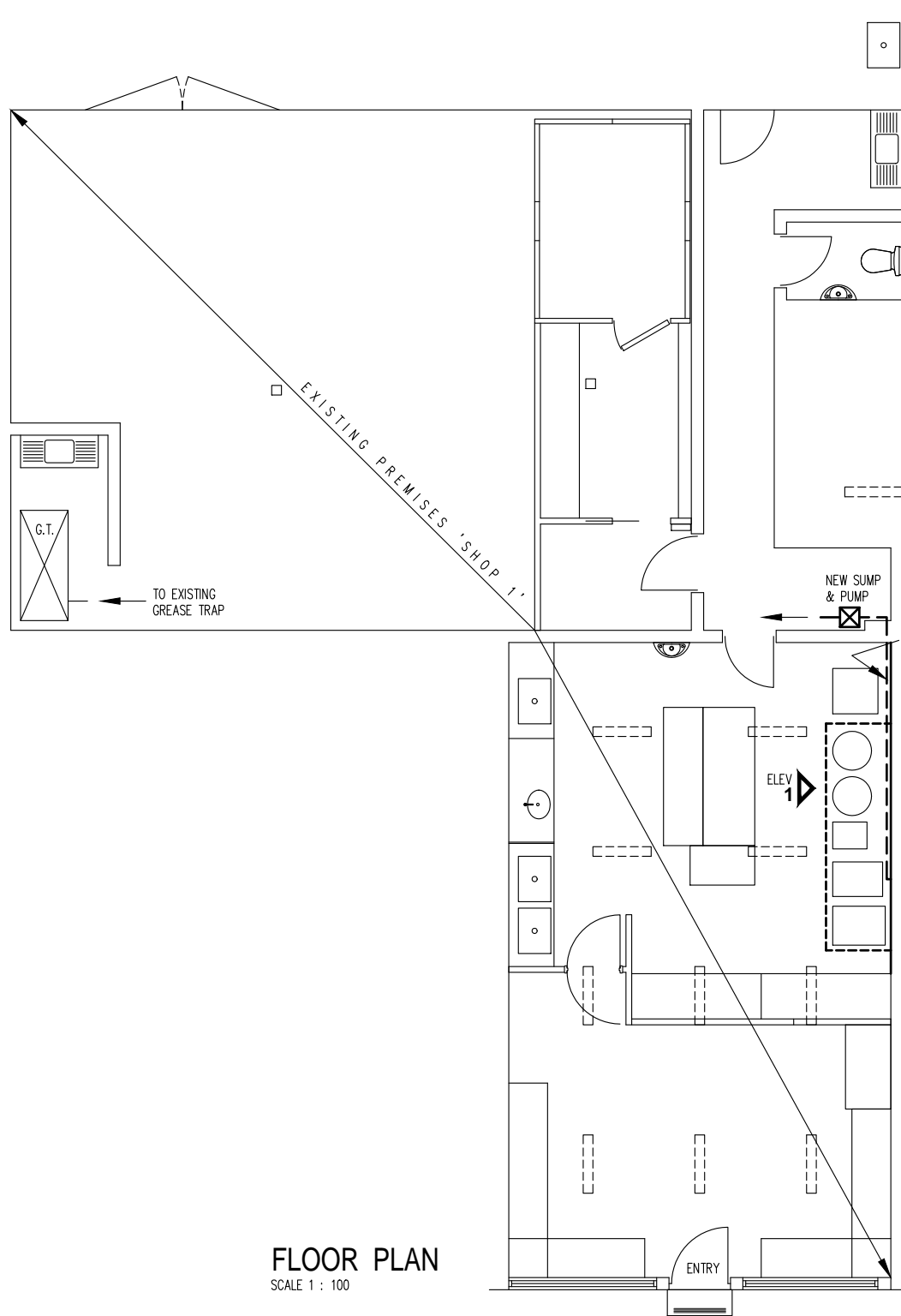
If you have any further questions please contact Emma Robertson at the Sush Office on 6234 6650.

Yours Sincerely

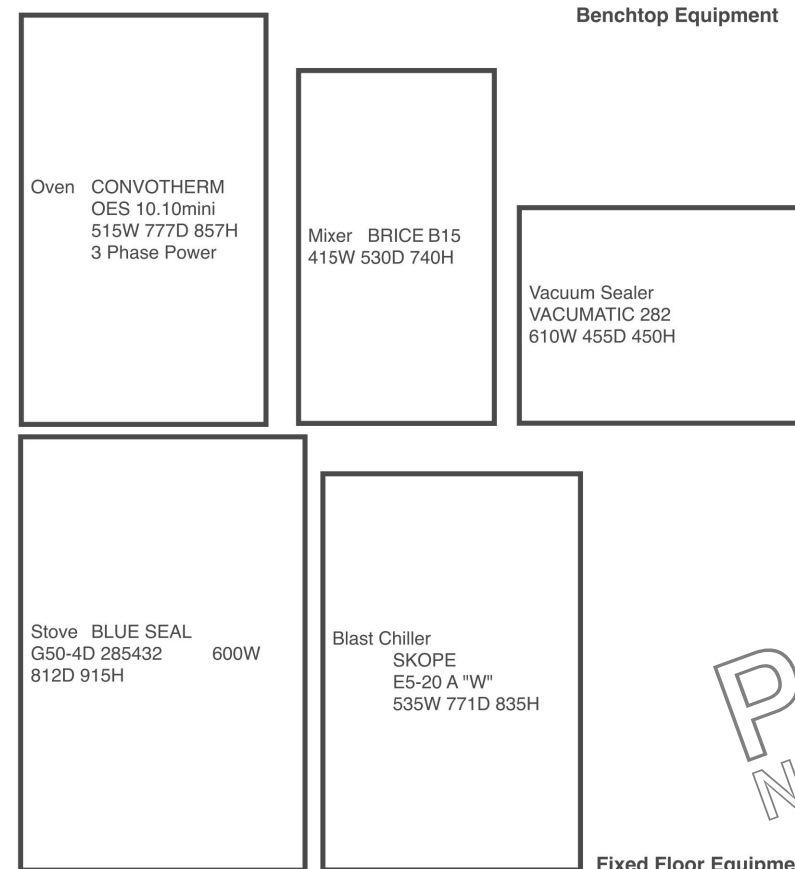


David Painter
Director
Sush Holdings Pty Ltd





Oven	CONVOTHERM	OES 10.10mini	515W 777D 857H
Blast Chiller	SKOPE	E5-20 A "W"	535W 771D 835H
Stove	BLUE SEAL	G50-4D 285432	600W 812D 915H
Mixer	BRICE	B15	415W 530D 740H
Vacuum Sealer	VACUMATIC 282		610W 455D 450H



Fixed Floor Equipment



LOCALITY PLAN
NOT TO SCALE

item	Make	Model	Dimensions	notes
Deep Frier				Requires 3 phase power
Walk-in Cool Room				
Walk-in Freezer				
Upright Fridge				
Oven	CONVOTHE RM	OES 10.10mini	515W 777D 857H	
Blast Chiller	SKOPE	E5-20 A "W"	535W 771D 835H	
Stove	BLUE SEAL	G50-4D 285432	600W 812D 915H	
Mixer	BRICE	B15	415W 530D 740H	
Vacuum Sealer	VACUMATIC 282		610W 455D 450H	

PRELIMINARY
NOT FOR CONSTRUCTION

Chris L. Potter
CONSULTING ENGINEER
M.I.E. Australia C.P. Engineer CC 2679 R
9 Warwick St, HOBART TAS 7000 **tel.** (03) 6231 4143
www.chrispotterengineering.com.au **fax.** (03) 6234 3360

PROPOSED ALTERATIONS TO EXISTING TAKEAWAY SHOP at 1 / 318 EAST DERWENT HWY GEILSTON BAY, for SUSH	Date :	2/10/2017	Job No. :	SUSH1701
	Scale :	Shown at A3	Sheet :	1 of 1
	Drawn :	DA	Issue :	PRELIMINARY

Check all dimensions on site before commencing work. Do not scale from drawing. © Copyright Chris L. Potter.

318 East Derwent Highway, GEILSTON BAY



Photo 1: The subject site when viewed from the East Derwent Highway, Geilston Bay (former Fishbone Shop).

11.3.6 DEVELOPMENT APPLICATION D-2017/518 - 137 MORNINGTON ROAD, MORNINGTON - CHANGE OF USE TO FITNESS CENTRE
(File No. D-2017/518)**EXECUTIVE SUMMARY****PURPOSE**

The purpose of this report is to consider the application made for a change of use to Fitness Centre at 137 Mornington Road, Mornington.

RELATION TO PLANNING PROVISIONS

The land is zoned Light Industrial and is subject to the requirements of the Parking and Access Code under the Clarence Interim Planning Scheme 2015 (the Scheme). In accordance with the Scheme the proposal is a discretionary development.

LEGISLATIVE REQUIREMENTS

The report on this item details the basis and reasons for the recommendation. Any alternative decision by Council will require a full statement of reasons in order to maintain the integrity of the Planning approval process and to comply with the requirements of the Judicial Review Act and the Local Government (Meeting Procedures) Regulations 2015.

Note: References to provisions of the Land Use Planning and Approvals Act 1993 (the Act) are references to the former provisions of the Act as defined in Schedule 6 – Savings and transitional provisions of the Land Use Planning and Approvals Amendment (Tasmanian Planning Scheme Act) 2015. The former provisions apply to an interim planning scheme that was in force prior to the commencement day of the Land Use Planning and Approvals Amendment (Tasmanian Planning Scheme Act) 2015. The commencement day was 17 December 2015.

Council is required to exercise a discretion within the statutory 42 day period which expires on 2 January 2018.

CONSULTATION

The proposal was advertised in accordance with statutory requirements and 1 representation was received raising the issue of parking impact and traffic congestion.

RECOMMENDATION:

A. That the Development Application for a change of use to Fitness Centre at 137 Mornington Road, Mornington (CI Ref D-2017/518) be approved subject to the following conditions and advice.

1. GEN AP1 – ENDORSED PLANS.
2. Personal and group training classes must only be conducted within the following hours:
Monday to Friday: 6am – 9am and 5.30pm – 8pm and 9am – 5pm
Saturday: 8am – 10am
Sunday: Closed

3. The number of persons in attendance must be restricted to the following at all times:

Monday to Friday

6am – 9am and 5.30pm – 8pm – 20 persons and 1 staff

9am – 5pm – 10 persons and 1 staff

Saturday

8am – 10am – 20 persons and 1 staff

Sunday

Closed

4. GEN S1 – SIGN CONSENT.

5. GEN C1 – ON-SITE CAR PARKING [9 spaces] Delete last sentence.

ADVICE

Advice should be sought from a Building Surveyor with respect to the buildings ability to comply with accessibility requirements. It will also be necessary to discuss certification for a change of use of the building from a warehouse/storage (likely 7b), to a place of assembly building (likely 9b) and for the issue of a new Occupancy Permit.

- B That the details and conclusions included in the Associated Report be recorded as the reasons for Council's decision in respect of this matter.

ASSOCIATED REPORT

1. BACKGROUND

A Planning Permit (D-2013/74) was granted in April 2013 for the construction of a 132.3m² "Colorbond" building which replaces a smaller shed located at the rear of the site, which is presently occupied by an auto repairs business.

2. STATUTORY IMPLICATIONS

2.1. The land is zoned Light Industrial under the Scheme.

2.2. The proposal is discretionary because it does not meet the Acceptable Solutions under the Scheme in relation to on-site car parking provision. In addition, the use of the land for "Sport and Recreation" purposes is a discretionary use in the Light Industrial Zone.

2.3. The relevant parts of the Planning Scheme are:

- Section 8.10 – Determining Applications;
- Section 24.0 – Light Industrial Zone; and
- Section E6.0 – Parking and Access Code.

2.4. Council's assessment of this proposal should also consider the issues raised in any representations received, the outcomes of the State Policies and the objectives of Schedule 1 of the Land Use Planning and Approvals Act, 1993 (LUPAA).

3. PROPOSAL IN DETAIL

3.1. The Site

The subject site forms Lot 1 appearing on Stratum Plan 169575. The lot has a land area of 772m² and is developed with a warehouse building utilised formerly as a workshop. Lot 2 appearing on the Stratum Plan is located to the rear and is utilised as a motor repair garage.

The property slopes moderately from the south-west up to the north-east. Access to the site is via the existing driveway from Mornington Road.

3.2. The Proposal

Application is made to convert the use of the existing workshop building (Light Industry) to a fitness centre (Sport and Recreation). The use would involve 1 staff member providing group training specialising in 30 minute high intensity interval training classes and individual personal training.

Classes are intended to be run predominantly outside of normal business hours (ie 8.30am to 5pm Monday to Friday) between the following hours:

Monday to Friday: 6am – 8.45am and 5.30pm – 6.45pm; and
Saturday: 8.15am – 9.30am.

Class numbers between these hours would be limited to 20 participants and would have 30 minute duration.

Several classes are also proposed to run a small number of classes during normal business hours (ie 8.30am to 5pm) with participant numbers capped at 10 to reduce reliance on on-street parking provision. These classes would be conducted at the following times:

Tuesday:	12.15pm (1 class);
Wednesday:	9.30am (1 class);
Thursday:	12.15pm (1 class); and
Friday:	9.30am (1 class).

Individual personal training classes are proposed during the day, however, they would be limited to 1 participant only.

The floor area associated with the use would be 271m². The proposal also involves minor internal alterations to include an accessible toilet facility. No shower facilities would be provided therefore, participants are not expected to linger after class times.

The existing carpark servicing 137 Mornington Road is unmarked. It is proposed to formalise the carpark to accommodate a total of 9 on-site car parking spaces. One of these spaces has been designated as an accessible car space located directly near the entrance to the building.

Car parking for the business to the rear at 137a Mornington Road would not be impacted by the proposed change of use and it is noted that this building is accessed independently to the west of the subject site.

No external building works or signage is proposed as part of the application.

4. PLANNING ASSESSMENT

4.1. Determining Applications [Section 8.10]

“8.10.1 In determining an application for any permit the planning authority must, in addition to the matters required by s51(2) of the Act, take into consideration:

- (a) *all applicable standards and requirements in this planning scheme; and*
- (b) *any representations received pursuant to and in conformity with ss57(5) of the Act;*
but in the case of the exercise of discretion, only insofar as each such matter is relevant to the particular discretion being exercised”.

Reference to these principles is contained in the discussion below.

4.2. Compliance with Zone and Codes

The proposed fitness centre use is a discretionary use in the Light Industrial Zone. The proposed change of use complies with all Use and Development Standards applied to the Light Industrial Zone.

The proposal meets the Scheme’s relevant Acceptable Solutions of the Light Industrial Zone and Parking and Access Code with the exception of the following.

Clause	Standard	Acceptable Solution (Extract)	Proposed
E6.6.1 A1	Number of Car Parking Spaces (Based on Car Parking Plan CPS 2007)	One space per 25m ² floor area (10.16 spaces for floor area of 254m ²). The current use Light Industry has 4 car parking spaces. Therefore 6 additional spaces would be required.	Table E6.6.1 of the Code requires a fitness centre to be provided with 4.5 car parking spaces for each 100m ² of floor area. Based on the floor area of 271m ² , 12 on-site car parking spaces are required for the use. The existing carpark provides no formal on-site car parking and is proposed to be formalised to provide 9 on-site car parking spaces. A deficiency of 3 spaces therefore arises.

The proposed variation must be considered pursuant to the Performance Criteria (P1) of the Clause E6.6.1 as follows.

Performance Criteria	Proposal
<i>“P1 - The number of on-site car parking spaces must be sufficient to meet the reasonable needs of users, having regard to all of the following:</i>	see assessment below
<i>(a) car parking demand;</i>	<p>The peak parking demand for the proposed business will be outside of normal business hours (8.30-5pm) in which other businesses in the area mostly operate. This is a deliberate attempt to minimise demand for on-street parking within the hours in which other commercial and light industrial businesses operate within the area, as there are known manoeuvring issues within the adjacent turning circle.</p> <p>The demand for on-street parking in the area by gym participants during normal business hours would be limited to 1 space, as class numbers during these hours would be limited to 10 participants. There may be some car parking demand overlap on a Monday to Thursday as a result of the commencement of the 5.30pm classes, however, this is unlikely as an analysis of the trading hours for nearby businesses indicates that these businesses close by 5pm.</p> <p>In consultation with Council’s Transport Engineer, the applicant has recognised that there is limited unrestricted on-street parking within Mornington Road (and particularly the turning circle in which the premises relies upon for access) and has modified class times so that there is a 15 minute interval between the cessation and commencement of classes, so as to reduce car parking overlap outside of normal business hours.</p>

	<p>There would be no class overlap associated with the fitness centre timetable for classes intended to be run during normal business hours.</p> <p>The car parking demand generated by the proposal can therefore be adequately contained on-site so as to not cause any significant impact on car parking availability. It is, however, necessary to line mark the car park as the layout would otherwise be unclear and inefficiently used.</p>
(b) <i>the availability of on-street and public car parking in the locality;</i>	<p>Council's Transport Engineer advised they would be concerned if this proposal relied significantly on on-street parking within Mornington Road during normal business hours, as such parking is limited and restricts the manoeuvring of heavy vehicles within the Mornington Road turning circle.</p> <p>However, because it will operate primarily during early morning and evening times when most of the other businesses within the area are closed, the use would not cause an unacceptable demand for on-street car parking.</p> <p>Demand for the use of 2 on-street parks may arise during normal business hours as class numbers would be capped at 10 and provision is made on-site for only 9 spaces. Council's Transport Engineer has advised that reliance on the available nearby on-street parking during normal business hours is reasonable, as designated parking is available within the Mornington Road turning circle.</p>
(c) <i>the availability and frequency of public transport within a 400m walking distance of the site;</i>	<p>There are no bus stops within 400m of the site. Given the nature of the use, it is unlikely gym participants would rely upon public transport as an alternative transport option.</p>
(d) <i>the availability and likely use of other modes of transport;</i>	<p>Given the nature of the use, it is unlikely gym participants would rely upon public transport or cycling as an alternative transport option.</p>

(e) <i>the availability and suitability of alternative arrangements for car parking provision;</i>	There is limited availability for alternative arrangements for car parking as this is not likely to be utilised as a viable alternative, based on the nature of the use.
(f) <i>any reduction in car parking demand due to the sharing of car parking spaces by multiple uses, either because of variation of car parking demand over time or because of efficiencies gained from the consolidation of shared car parking spaces;</i>	The hours of operation are to be managed so that peak demand occurs when most other businesses within the area are closed. This is a reasonable response to avoid pressure on the limited supply of on-street car parking spaces.
(g) <i>any car parking deficiency or surplus associated with the existing use of the land;</i>	Car parking has not been formalised on-site and it is proposed to reconfigure and formalise the car parking area to service the proposed use.
(h) <i>any credit which should be allowed for a car parking demand deemed to have been provided in association with a use which existed before the change of parking requirement, except in the case of substantial redevelopment of a site;</i>	There are no car parking credits in which to apply to the proposed use.
(i) <i>the appropriateness of a financial contribution in-lieu of parking towards the cost of parking facilities or other transport facilities, where such facilities exist or are planned in the vicinity;</i>	Financial contribution in-lieu would not be appropriate as the site is located where Council would be unlikely to provide public parking facilities in the future.
(j) <i>any verified prior payment of a financial contribution in-lieu of parking for the land;</i>	There are no verified prior payments that have been made.
(k) <i>any relevant parking plan for the area adopted by Council;</i>	There are no relevant parking plans for the area adopted by Council.
(l) <i>the impact on the historic cultural heritage significance of the site if subject to the Local Heritage Code”.</i>	There is no historical cultural heritage significance of the site.

5. REPRESENTATION ISSUES

The proposal was advertised in accordance with statutory requirements and 1 representation was received. The following issues were raised by the representor.

5.1. Parking Impact and Traffic Congestion

The representor has raised concern that the traffic generated by the proposed change of use will place increased demand on the available on-street car parking, which will consequently impact upon the ability for larger vehicles to manoeuvre within the Mornington Road turning circle.

Concern is also raised that the on-site parking shortfall will result in gym participants parking on nearby private land.

- **Comment**

Parking is currently restricted within the Mornington Road turning circle with on-street parking available for a total of 3 cars. Attachment 3 shows the parking restrictions within the area. The restrictions are in place to ensure larger vehicles can turn within the turning circle with ease. These parking restrictions are intended to remain in place to ensure adequate turning space for larger vehicles accessing businesses within the area.

The representor has indicated that the office hours associated with their business are between 8am – 4pm, however, they have large trucks exiting the property from 6am. Concern has been raised by the representor that the conduct of early morning classes will interfere with the egress of vehicles from 135 Mornington Road to the rear. The restricted parking areas apply to the road reserve immediately adjacent to the access to 135 Mornington Road, therefore ensuring adequate space for vehicles to continue to enter and exit the site with limited impediment. The parking situation within the turning circle is continually monitored by Council and will be reviewed should issues arise.

The potential for parking impacts upon Mornington Road are recognised by Council and it has been considered necessary to manage such impacts through limiting hours of operation and class sizes. Council's Transport Engineer supports this approach. The applicant has acknowledged this issue and has developed a proposed business plan with hours of operation and class sizes tailored to alleviate the reliance on on-street car parking.

The on-site car parking provision and proposed management of class times and participant numbers will ensure minimal impact upon the availability of on-street parking and vehicle conflict generally within the area.

The representor has also raised concern that the increased demand for parking and limited on-street car parking will result in vehicles parking along the access way servicing 135 Mornington Road to the rear. In response to this concern, the parking of vehicles on private land is a matter for the respective landowner and this could be managed through the inclusion of signage.

6. EXTERNAL REFERRALS

The proposal was referred to TasWater, which has provided a number of conditions to be included on the planning permit if granted.

7. STATE POLICIES AND ACT OBJECTIVES

7.1. The proposal is consistent with the outcomes of the State Policies, including those of the State Coastal Policy.

7.2. The proposal is consistent with the objectives of Schedule 1 of LUPAA.

8. COUNCIL STRATEGIC PLAN/POLICY IMPLICATIONS

There are no inconsistencies with Council's adopted Strategic Plan 2016-2026 or any other relevant Council Policy.

9. CONCLUSION

The proposal is for a change of use to a Fitness Centre at 137 Mornington Road, Mornington. The proposal satisfies all Acceptable Solutions and Performance Criteria of the Scheme and is therefore recommended for conditional approval.

Attachments: 1. Location Plan (1)
2. Proposal Plan (5)
3. Site Photo and Map Showing Parking Restrictions Applied to the Area (1)

Ross Lovell
MANAGER CITY PLANNING

Council now concludes its deliberations as a Planning Authority under the Land Use Planning and Approvals Act, 1993.

ATTACHMENT 1

LOCATION PLAN

137 MORNINGTON ROAD, MORNINGTON

25

131

135

SUBJECT PROPERTY -
137 Mornington Road, Mornington

137a

137

132



Disclaimer: This map is a representation of the information currently held by Clarence City Council. While every effort has been made to ensure the accuracy of the product, Clarence City Council accepts no responsibility for any errors or omissions. Any feedback on omissions or errors would be appreciated. Copying or reproduction, without written consent is prohibited. **Date:** Friday, 8 December 2017 **Scale:** 1:490.1 @A4

From: Aaron Debnam <aidebnam05@gmail.com>
Sent: Sunday, 19 November 2017 4:33 PM
To: Amanda Beyer
Subject: Re: Request for additional information - 137 Mornington Road, Mornington

Hi Amanda,

Thank you again for your time on the phone on Friday, you've been a huge help.

In relation to the ammended car park plan we have sent a request off to Quality Home Designs and are hoping he will get back to us very early this week. I will forward the ammended plan to you as soon as we have it.

In respect of the other two requests please find attached a copy of our timetable. Outside of the classes listed I do have personal training clients but they are one on one, so parking for those sessions is my car and their car only.

We propose that our outside of normal business hours classes (5:30pm onwards/6am Fridays and Saturday mornings) will be capped at 20 members per class and our four classes within business hours (9:30-10am Wednesday/Friday and 12:15pm-12:45pm Tuesday/Thursday will be capped at 10 participants to reflect the parking requirements.

As per our discussion on Friday we are not looking at expanding the timetable currently but if we were to in the future it would be to add further 6am weekday morning classes. If we are able to have permission to operate pre-business hours classes (6-8am mon-fri) as part of this application that would be beneficial.

Please let me know if you require any further information at this stage and as previously mentioned I will forward the ammended parking plan as soon as we have it.

Thank you,
Imogen
FORT FITNESS



GROUP FITNESS TIMETABLE

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
				6:00am	8:15am	
				GRIT	METAFIT	
		9:30am		9:30am	9:00am	
		GRIT		METAFIT	METAPWR	
	12:15pm		12:15pm			
	METAPWR		GRIT			
5:30pm	5:30pm	5:30pm	5:30pm			
GRIT	METAFIT	METAPWR	GRIT			
6:15pm	6:15pm	6:15pm	6:15pm			
METAPWR	METAFIT	GRIT	METAFIT			

On Fri, 17 Nov 2017 at 2:57 pm, Amanda Beyer <abeyer@ccc.tas.gov.au> wrote:

Good afternoon Aaron,

Please see attached correspondence requesting some additional clarification on the business operations.

Once we have received the additional information we will be able to proceed to advertise the application.

Kind regards

Amanda

Amanda Beyer

Planner

Clarence City Council

From: Aaron Debnam [mailto:aidebnam05@gmail.com]

Sent: Friday, 17 November 2017 12:51 PM

To: Amanda Beyer

Subject: Re: Request for additional information - 137 Mornington Road, Mornington

Hi Amanda,

Hope you are well. For our peace of mind due to our time constraints, can you please confirm you've received our response to your request for additional information and the statutory period has commenced?

Thank you,

Imogen and Aaron

On Sun, 12 Nov 2017 at 8:58 pm, Aaron Debnam <aidebnam05@gmail.com> wrote:

Hi Amanda,

Thanks for getting back to us so quickly.

We are not requiring any signage.

In relation to the class cross over we will adjust our class times to 5:30pm and 6:30pm starts providing an extra 15mins for the 5:30pm class to vacate the parking area. We do not believe it will be an issue beyond this extra 15mins as the classes are 30mins maximum in duration, members appreciate only being at the gym for a very short space of time and with

only one staff member the 5:30pm participants are very respectful of leaving promptly at the end of their session knowing there is a later session running.

Please don't hesitate to contact us with any further questions.

Thank you,

Imogen and Aaron

On Fri, 10 Nov 2017 at 5:26 pm, Amanda Beyer <abeyer@ccc.tas.gov.au> wrote:

Good afternoon,

Please see attached request for additional information in relation to your planning application for 137 Mornington Road, Mornington.

Please don't hesitate to contact me should you have any questions.

Kind regards

Amanda

Amanda Beyer

Planner

Clarence City Council

38 Bligh Street | PO Box 96 Rosny Park TAS 7018

Ph 03 6217 9559

Email abeyer@ccc.tas.gov.au

Web www.ccc.tas.gov.au

PROJECT:
**PROPOSED FITNESS CENTRE
at 137 MORNINGTON ROAD, MORNINGTON
for FORT FITNESS**

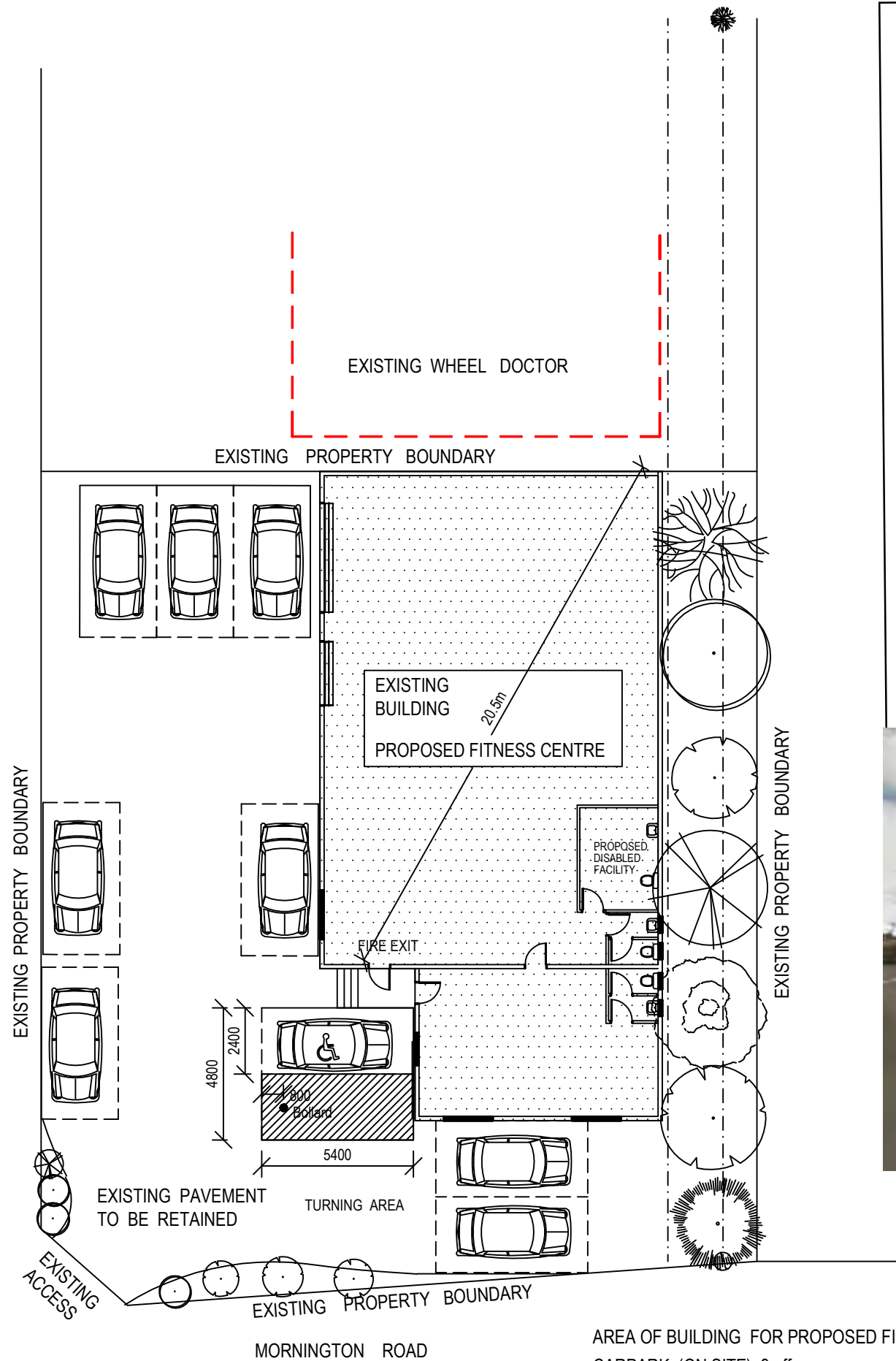
ISSUES
2 Disabled carpark relocated...

SCALES 1:200

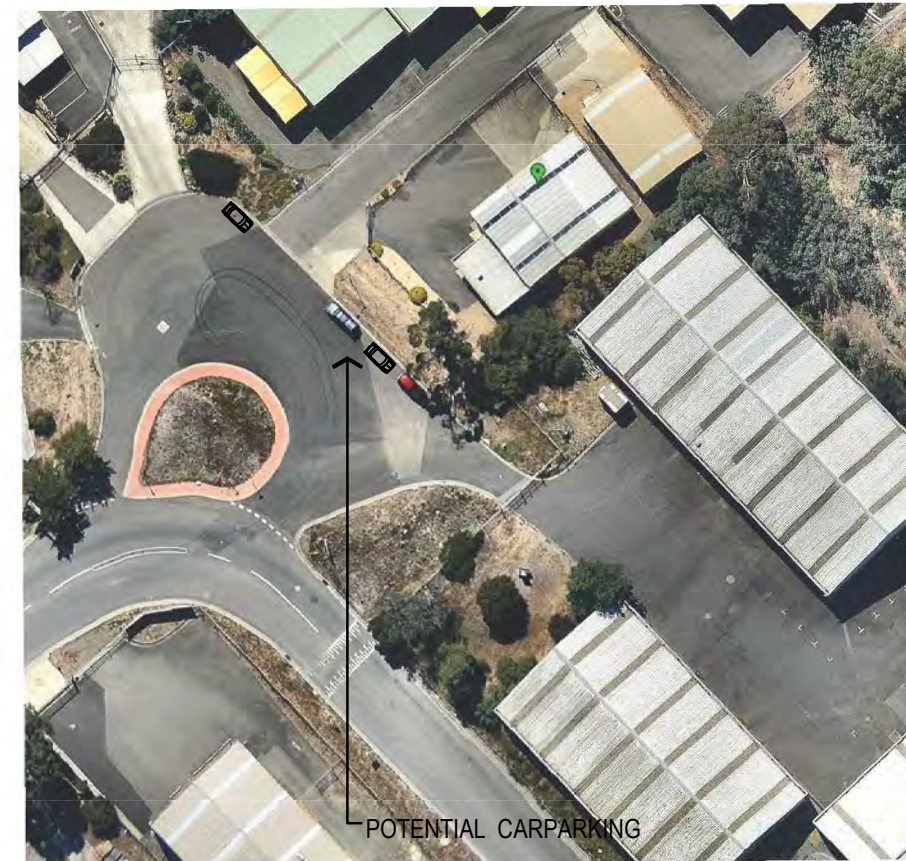
DRAWN: BRIAN DATE: 20/11/17

SITE PLAN

DRAWING No.
2017-059-01
ISSUE NO. 2



AREA OF BUILDING FOR PROPOSED FITNESS CENTRE IS 271 SQ M
CARPARK (ON SITE) 9 off
STREET CARPARK - 1 REQUIRED



All construction work shall be carried out in accordance with State Building regulations, Local Council By-Laws and relevant S.A.A. Codes.

BUILDER TO VERIFY ALL DIMENSIONS AND LEVELS PRIOR TO COMMENCING CONSTRUCTION.

137 Mornington Road, Mornington

Figure 1: The subject site when viewed from Mornington Road, Mornington.



Figure 2: The parking restrictions applied to the Mornington Road turning circle.

11.4 CUSTOMER SERVICE

Nil Items.

11.5 ASSET MANAGEMENT**11.5.1 SEVEN MILE BEACH SPORT AND ACTIVE RECREATION PRECINCT – FUNDING**

(File No)

EXECUTIVE SUMMARY**PURPOSE**

To consider providing in principle support for Stage 1 funding of the Seven Mile Beach Sport and Active Recreation Precinct in association with the requirements of the Federal Government Building Better Regions Fund application.

RELATION TO EXISTING POLICY/PLANS

Council's Strategic Plan 2016 – 2026 and Community Participation are relevant.

LEGISLATIVE REQUIREMENTS

Nil.

CONSULTATION

The Seven Mile Beach community have been consulted twice in Council's adoption of the final Seven Mile Beach Sport and Active Recreation Precinct Master Plan.

FINANCIAL IMPLICATIONS

There are no direct funding implications with Council submitting an application for the Building Better Regions Fund. Should the application be successful a further report will be presented to Council to consider the funding source and possible necessary adjustments to the Annual Estimates.

RECOMMENDATION:

- A. That Council adopts in principle, support to committing to \$7.9Million for financial contribution for the Federal Government Building Better Regions Fund application for Stage 1 of the South East Regional Sports Centre at Seven Mile Beach.
- B. If successful with the Building Better Regions Fund application, Council will consider the appropriate funding source and adjustments to the Annual Estimates at a future Council meeting.

ASSOCIATED REPORT**1. BACKGROUND**

- 1.1. Over recent years Council has experienced pressure to provide additional sporting facilities to meet demand. The State Government offered a parcel of Seven Mile Beach land to Council to examine the opportunities to facilitate additional sporting facilities for the City.

- 1.2.** In 2014, Council engaged Inspiring Place to undertake consultation with the local residents of Seven Mile Beach and key sporting stakeholders to consider recreation opportunities for the parcel. Following extensive consultation a draft master plan for the parcel was formulated for Council's consideration.
- 1.3.** Following consultation, the Seven Mile Beach Sport and Active Recreation Precinct Master Plan was adopted by Council at its Meeting held on Monday, 10 November 2014.

Council's decision was:

- "A. That Council adopts the draft Seven Mile Beach Sport and Active Recreation Precinct Master Plan as the Final Seven Mile Beach Sport and Active Recreation Precinct Master Plan.*
- B. That Council actively seek external funding to assist with the development of the Seven Mile Beach Sport and Active Recreation Precinct Master Plan".*

- 1.4.** In May 2017, Council engaged @Leisure Planners to review the existing master plan, prepare and lodge the Development Application and to make application to the 2018 Building Better Regions Fund. Review of the master plan by the consultant recommended amendments to the plan to improve functionality of the precinct.
- 1.5.** Council, at its Meeting of 4 September 2017, resolved to undertake community consultation on the revised master plan for the Seven Mile Beach Sports and Active Recreation Precinct.
- 1.6.** Aldermen at the Council Workshop held Monday 30 October 2017, discussed the virtues of the previously adopted Inspiring Place prepared Master Plan and the Revised Master Plan prepared by @Leisure Planners. In order to capture the feedback from the most recent consultation and discussion at the Council Workshop, there are now 2 options for consideration:

- Option 1 - Revised Master Plan as prepared by @Leisure Planners; or
- Option 2 – Modify Revised Master Plan prepared by @Leisure Planners by swapping the AFL Oval with the multi-purpose venue and positioning the sports pavilion between these areas. Similar in layout to the Inspiring Place prepared Master Plan.

1.7. Council, at its Meeting of 6 November 2017, resolved to adopt the final master plan for the Seven Mile Beach Sports and Active Recreation Precinct.

- “A. Following community consultation, amend the revised Seven Mile Beach Sport and Active Recreation Precinct Master Plan to include a stormwater catchment pond and associated fenced off-lead dog area surrounding the pond.*
- B. That Council adopts the revised Seven Mile Beach Sport and Active Recreation Precinct Master Plan, with the exception that the location of the sports fields be reversed and that the main sports pavilion be located in the north-west corner of the eastern field, and that this be adopted as the final Seven Mile Beach Sport and Active Recreation Precinct Master Plan including the recommended amendment in ‘A’ above.*
- C. That Council authorises the General Manager to write to the residents of Seven Mile Beach and key stakeholders advising of Council’s decision.*
- D That Council authorises the General Manager to make application for Development Approval based on the final Seven Mile Beach Sport and Active Recreation Precinct Master Plan”.*

2. REPORT IN DETAIL

- 2.1.** The eligibility requirements for the Building Better Regions Fund note it is satisfactory to apply for one stage of project work.
- 2.2.** Also applicants are to provide evidence of its ability to commit to a dollar for dollar contribution.

- 2.3.** It is proposed for Council to apply for Stage 1 of works for the Seven Mile Beach Sport and Active Recreation Master Plan, including:
- Access road leading to the facility;
 - Services to the site;
 - Main AFL oval including lighting;
 - Main Pavilion building including public toilets and change rooms;
 - Grandstand seating;
 - Multi-purpose sportsground;
 - Two thirds of the entire planned car park.
- 2.4.** The estimated cost of Stage 1 including project management services for delivery of this project is \$15.8 Million, with current estimates for the entire Master Plan of works being \$21,060,000.
- 2.5.** The Building Better Regions Fund would require Council to contribute 50% to the total eligible cost, i.e. \$7.9 Million for Stage 1.
- 2.6.** The remaining works could be broken into a number of future stages depending on budget approval, to complete the tennis/netball courts, community precinct, remainder of the car park, small changing facilities for the multi-purpose sportsground, fenced dog exercise area and secondary trails.
- 2.7.** Council has notionally included the cost of this project in its current 10 Year Financial Management Plan. The Plan indicates that Council has the capacity to meet the cost of this project without compromising its key financial ratios. However, the plan does not identify a specific funding source and this will need to be determined by Council at the appropriate time should a decision be made to proceed with the project. Key options available to Council to meet its \$7.9 Million contribution towards the project (should the grant application be successful) include (but are not limited to):
- Use of “standard” sources of capital funding. However, this would be at the expense of other projects and severely limit Council’s ability to deliver new capital works across the City for a period of time.

- Use of existing cash. This is achievable (as demonstrated by the 10 Year Plan), however only \$2 million - \$3 million of cash holdings are unallocated at this time. Consequently, either cash holdings would need to be reinstated over time or a decision made to “cash flow” elements of Council’s financial obligations into the future; not an unreasonable strategy but one which would need to be undertaken in a considered manner.
- Use of borrowings. Council will have no debt at 30 June 2018 and has substantial capacity to borrow without compromising its financial ratios. Borrowing for new, long term infrastructure required to meet pressing community needs is a sound strategy and one which should be employed where appropriate. The current low interest rate environment provides further incentive to borrow for infrastructure.
- Creation of an “internal loan”. This is essentially a variation on “use of existing cash” above, but administered as if the advance was an external loan. This provides a disciplined approach to the replacement of cash used and provides certainty as to the replacement of cash used. This strategy is ideal where cash holdings are high and where there is a material margin between investment returns and market borrowing rates.
- Asset sales. None have been identified, however this option is available should Council determine that it holds surplus assets.

2.8. Should Council be successful with its funding application a further report will be prepared for Council to consider the necessary funding source and adjustment to the Annual Estimates.

2.9. In discussion with the consultants preparing the documentation for the Fund Application, to improve the regional focus of the application it is suggested the title for this development be changed from Seven Mile Beach Sport and Active Recreation Precinct to South East Regional Sports Centre to reflect its status as a regional facility.

3. CONSULTATION**3.1. Community Consultation**

The Seven Mile Beach community has been consulted twice in Council's adoption of the Final Seven Mile Beach Sport and Active Recreation Precinct Master Plan.

3.2. State/Local Government Protocol

Nil.

3.3. Other

Consultation has occurred with State Sporting Organisations to inform the final Seven Mile Beach Sport and Active Recreation Precinct Master Plan.

4. STRATEGIC PLAN/POLICY IMPLICATIONS

Adoption of the revised Seven Mile Beach Sport and Active Recreation Precinct Master Plan aligns with Council Strategic Plan 2016 – 2026, being:

- “• *A regional approach to the planning of major sporting facilities.*
- *Planning for and providing new sporting and recreation facilities to meet community demand”.*

5. EXTERNAL IMPACTS

Nil.

6. RISK AND LEGAL IMPLICATIONS

Implementation of the Seven Mile Beach Sport and Active Recreation Precinct Master Plan will require consideration of the impacts of rising sea level and Council's Interim Planning Scheme 2015 requirements.

7. FINANCIAL IMPLICATIONS

7.1. An amount of \$600,000 is allocated in the 2017/2018 Capital Works Programme to prepare a development application, undertake detailed design and prepare a submission for the Australian Government's Building Better Regions Fund.

7.2. It is proposed that the development of the Master Plan be staged over a number of financial years, subject to Council approval as part of future Annual Plans regardless of the outcome of the grant application to the Building Better Regions Fund.

7.3. There are no direct implications to the Annual Plan with Council submitting an application for the Building Better Regions Fund. Should Council be successful with its fund application, a further report will be prepared for Council to consider the necessary funding source and adjustment to the Annual Estimates.

8. ANY OTHER UNIQUE ISSUES

Nil.

9. CONCLUSION

9.1. Council has adopted the final Seven Mile Beach Sport and Active Recreation Precinct Master Plan.

9.2. In submitting an application for the Building Better Regions Fund, evidence of an ability to commit to the dollar for dollar contribution is required.

9.3. It is therefore appropriate for Council to give in-principle support to meeting its \$7.9 Million contribution should its application be successful for Stage 1 works.

Attachments: Nil.

Ross Graham
GROUP MANAGER ENGINEERING SERVICES

11.6 FINANCIAL MANAGEMENT

Nil Items.

11.7 GOVERNANCE**11.7.1 AMENDMENTS TO PROPOSED PUBLIC PLACES BY-LAW (NO 1 OF 2018)**
(File No 06-03-00)**EXECUTIVE SUMMARY****PURPOSE**

To consider amendments to the proposed Public Places By-law which was endorsed by Council in August 2017, following feedback from the Local Government Division.

RELATION TO EXISTING POLICY/PLANS

The proposed amendments are consistent with existing Council policies and plans.

LEGISLATIVE REQUIREMENTS

The procedures for amending the proposed By-law are set out in the Local Government Act 1993 (“the Act”).

CONSULTATION

The requirements for consultation are set out in the Act.

FINANCIAL IMPLICATIONS

There are none identified.

RECOMMENDATION:

- A. That Council amends the proposed Public Places By-law and Regulatory Impact Statement as set out in Attachments 1 and 2 of the Associated Report to address the issues raised by the Local Government Division.
- B. That separate policy guidelines be prepared for the permitting and effective management of business activities in public places.

NB: A Decision on this Item requires an Absolute Majority of Council

ASSOCIATED REPORT**1. BACKGROUND**

- 9.4.** Council has an existing By-law which regulates the management of public places in the Municipality, being the Public Places and Permits By-law (No 1 of 2007). The existing By-law expired on 12 December 2017 and therefore it is necessary to either renew or replace it.

- 9.5.** At its Meeting of 14 August 2017, Council resolved to make a new Public Places By-law following substantial internal review by Council officers. This proposed By-law was based on the same objectives as the existing By-law and redrafted to be easier to read. The proposed By-law also introduced 2 new areas of regulation, mobile food vending and aircraft (including drones). A Regulatory Impact Statement (RIS) as required under the Act was also endorsed by Council.
- 9.6.** On 15 August the proposed By-law and RIS endorsed by Council was referred to the Local Government Division (“LGD”) for certification as required under the Act. LGD requested some minor changes to the proposed By-law and RIS, which were made by Council and resent to LGD. LGD then advised they still had concerns regarding mobile food vending and drones.
- 9.7.** These concerns were discussed at Council’s Workshop on 4 December 2017.

2. REPORT IN DETAIL

- 2.1.** Council’s existing public place By-law, Public Places and Permits By-Law No 1 of 2007, expires in December 2017. Council officers have undertaken extensive internal review of the existing By-law and drafted a proposed By-law and accompanying RIS, which were endorsed by Council at its Meeting of 14 August 2017.
- 2.2.** The existing By-law has been the subject of a substantial internal review by Council officers. Whilst the proposed By-law is based on the same objectives as the existing By-law, it has been redrafted to be simpler and encompass some additional areas of regulation which over the past decade have become necessary, for example, regulating the use of drones.
- 2.3.** As required under the Act, the proposed By-law and RIS were sent to LGD for certification. In the first instance, LGD wrote to Council and raised several concerns with the proposed By-law, namely:

- the RIS does not quantify the costs and benefits of the proposed By-law;
- the RIS does not set out the fees payable for licences and permits required under the proposed By-law;
- the RIS does not adequately explain what criteria is used to determine whether or not to issue a licence or permit to operate a mobile food business;
- the impact on business or any restriction on competition is unknown; if licence and permit decisions are purely at the discretion of Council, there is a possibility that they could be used to protect “bricks-and-mortar” businesses from competition and limit the number of food vans operating in the municipal area;
- there is no assessment of the cost impact on these businesses, the burden on any conditions on licences and permits and the public benefit derived from regulating these activities;
- the RIS does not identify any specific issue or purpose for regulating the use of drones;
- the By-law should refer to “Clarence City Council” instead of “City of Clarence”;
- there are variations between offences under the proposed By-law and the Police Offences Act 1935.

2.4. Council responded to LGD by making the minor changes and clarifications requested and by amending the RIS to include more detail on the regulation of mobile food vending and aircraft.

2.5. After receiving the amended RIS and proposed By-law, LGD met with Council officers to discuss their 2 outstanding concerns relating to mobile food vending and aircraft.

LGD's Concerns in Relation to Aircraft and Council's Response

- 2.6.** LGD commented that the RIS does not emphasise why there is a need to regulate aircraft including drones. The RIS has been amended to further emphasise that CASA does not regulate recreational drones and so there is a need to manage public safety with smaller recreational devices. Whilst the RIS already referred to public safety issues, the RIS now emphasises that regulation is to address serious public safety concerns, especially around playgrounds.
- 2.7.** LGD also formed the view that the requirement to obtain a permit to use aircraft may impose costs and burdens on users. The RIS has been further amended to indicate that the cost of permits for recreational and business drone use will be kept to a minimum.
- 2.8.** The RIS has been further amended to address these concerns raised by LGD (refer Attachment 1). The yellow highlights are the changes made to specifically address the concerns of LGD in relation to mobile food vending and drones.

LGD's Concerns in Relation to Mobile Food Vending and Council's Response

- 2.9.** The main concern of LGD was that the proposed By-law could be used to protect "bricks-and-mortar" businesses from competition if the by-law placed restrictions on mobile food vans operating on public places. Council had already identified that permitting mobile food vans on public places could have adverse impacts on fixed food premises, which generally have greater overheads. This is similar to concerns raised by gym operators in relation to Council approved "boot" camps on public land. LGD are concerned about the reverse impact that is mobile food vendors being adversely impacted by permit terms and conditions.

- 2.10.** LGD also expressed concern that there is overlap between the proposed By-law and state registration of mobile food businesses under the Food Act 2003. This is a misunderstanding of the Food Act as the purpose of that Act is to certify suitability of a van for food preparation and sale. It does not give mobile food van owner's permission to automatically operate in any location.
- 2.11.** LGD have indicated that certification of the by-law is unlikely if the mobile food vending clause is not removed. For this reason it is proposed to remove the specific mobile food vending provision from the proposed By-law and instead rely on the general "business" permit provision in conjunction with policies to deal with specific business activity in public places.
- 2.12.** The RIS has been further amended to delete references to mobile food vending to address the concerns raised by LGD (refer Attachment 1). The proposed By-law has also been amended to make minor changes suggested by LGD and to delete reference to mobile food vending (refer Attachment 2).

3. CONSULTATION

3.1. Community Consultation

Public consultation in relation to the proposed By-law will occur after the proposed By-law and Regulatory Impact Statement have been certified by the Director for Local Government. The By-law will be advertised and presented to the public for public consultation and submission.

3.2. State/Local Government Protocol

The proposed By-law and Regulatory Impact Statement will be forwarded to the Director for Local Government again for approval.

4. STRATEGIC PLAN/POLICY IMPLICATIONS

There are no specific strategic policy implications that will arise as a result of the amendment to the proposed By-law.

5. EXTERNAL IMPACTS

External impacts are dealt with in detail as part of the Regulatory Impact Statement.

6. RISK AND LEGAL IMPLICATIONS

Upon an absolute majority decision of Council to amend the proposed By-law and RIS, the next steps in making the proposed By-law, which are undertaken at officer level are:

- the Regulatory Impact Statement and proposed By-law are again referred to the Director of Local Government for certification;
- if satisfied that the Regulatory Impact Statement meets all statutory requirements, the Director will issue a certificate of approval to Council;
- Council then gives notice of the proposed By-law and carries out public consultation and advertises the proposed By-law in “The Mercury” and on Council’s website. The proposed By-law must also be available for public inspection and/or purchase;
- through the public consultation process submissions are invited from the community and key stakeholders. All submissions are to be considered by Council;
- if required, alterations to the proposed By-law are to be made only by an absolute majority of Council. If the alteration substantially changes the purpose of the proposed By-law, or its effect on the public, Council must provide public notice;
- Council then makes the By-law under its common seal and has the By-law certified by a legal practitioner and Council’s General Manager;
- the By-law is then published in the Tasmanian Government Gazette within 21 days of being made by Council;
- the General Manager is to make the By-law available for purchase and place the By-law on Council’s website;
- the By-law is submitted to the Subordinate Legislation Committee within 7 working days of publication in the Gazette;
- the By-law is tabled in parliament within 10 sitting days of Gazette publication;

- Council sends the Director of Local Government a sealed copy of the By-law, certifications by the General Manager and legal practitioner and a statement explaining the purpose and effect of the By-law and the outcomes of public consultations in respect of the By-law.

7. FINANCIAL IMPLICATIONS

There are no significant financial impacts foreseen by the creation of this By-law.

8. ANY OTHER UNIQUE ISSUES

Nil.

9. CONCLUSION

It is recommended that Council amends the proposed By-law and RIS as set out in Attachments 1 and 2 and continues the process to make the proposed By-law.

Attachments: 1. Proposed Regulatory Impact Statement as Amended (17)
2. Proposed Public Places By-law as Amended (24)

Andrew Paul
GENERAL MANAGER



PROPOSED PUBLIC PLACES BY-LAW BY-LAW No. 1 OF 2017 REGULATORY IMPACT STATEMENT

1. BACKGROUND TO REGULATORY IMPACT STATEMENT

Under section 156A of the *Local Government Act 1993* (“the Act”), Council is required to prepare a Regulatory Impact Statement (“RIS”) when seeking to make a new by-law or significantly amending an existing by-law.

The preparation of a RIS involves Council undertaking an analysis of the following:

- the objectives of the by-law and the means by which the by-law is intended to achieve them;
- the nature of any restriction on competition;
- an assessment of the costs and benefits of any restriction on competition;
- an assessment of the costs and benefits of any impact on the conduct of business;
- any alternative options considered by Council;
- an assessment of the greatest net benefit or least net cost to the community; and
- an assessment of the direct and indirect economic, social and environmental impact of the by-law.

The RIS is to also provide details on the proposed public consultation process.

After the RIS is endorsed by Council, the RIS and the proposed by-law are submitted to the Director of Local Government, Department of Premier and Cabinet for assessment. If the Director is satisfied that the RIS meets the statutory requirements, the Director will then issue a certificate and Council is permitted to begin the public consultation process.

2. BACKGROUND TO BY-LAW

Council has had a Public Places and Permits By-law in operation since 1995 in respect to the regulation, use and enjoyment of “public places” in the municipality. Prior to 1995, Council had a number of by-laws that regulated public place issues separately eg hawking, use of Council facilities.

Under section 155 of the Act, the existing By-Law will expire after 10 years of operation being 12 December 2017 and is required to either be renewed or repealed and replaced with a new By-Law. Consequently, Council has resolved to repeal the existing By-Law and replace it with the proposed Public Places By-Law No. 1 of 2017.

The Clarence City Council, as a local government authority, undertakes general roles and functions under the Act as well as roles and functions under other State legislation. Section 20 of the Act sets out the broad functions of the Council as being:

- to provide for the health, safety and welfare of the community;
- to represent and promote the interests of the community;
- to provide for the peace, order and good government of the municipal area.

Council owns and manages a range of land and facilities for recreational and public use purposes including vacant land, parks and reserves, public open space, ovals, the Boardwalk, halls, community centres, sporting facility centres, clubrooms, bowling greens, tennis clubs, croquet club, walking tracks, horse trails, playgrounds and other buildings in the municipal area. These facilities, as well as any highway maintainable by Council, fall within the definition of a public place as defined under the By-Law.

In drafting the proposed By-law careful consideration has been given to:

- the benefits and of incorporating the majority of the existing By-Law with some minor changes into the proposed By-law;
- taking into account other existing By-Law provisions adopted by other Tasmanian councils; and
- identifying provisions within State legislation and the need to ensure that the proposed By-law does not duplicate or conflict with those provisions.

3. COUNCIL'S PRACTICES AND POLICIES

Section 145 of the Act provides the Council with the power to make By-laws in respect of any act, matter or thing for which a Council has a function or power under this or any other Act.

The purpose of having the By-law is to ensure that public places are provided for the benefit of the public and public use is regulated to ensure the amenity and safety of users and to ensure Council's assets are protected. It is necessary to protect Council's property and assets in public places as they form an integral part of Council's assets. There is no existing State legislation that would allow Council to regulate and control the use and management of public places.

In drafting the proposed By-law consideration has been given to existing State legislation. Consideration has been given to the following:

- Local Government Act 1993
- Police Offences Act 1934
- Criminal Code Act 1924
- Environmental Management and Pollution Control Act 1994
- Public Health Act 1997
- Litter Act 2007
- Food Act 2003.

As a consequence, Council has resolved its intention to make the proposed Public Places By-Law 2017 to replace the current By-law for the control and management of Council land and recreational facilities.

Council's previous Public Places and Permits By-laws were the subject of consultation prior to formal adoption. In the decade since the making of the existing By-law Council has also undertaken a range of consultative initiatives which also represent Council's framework for the regulation, management and service delivery for recreational and public places facilities. These consultative initiatives included direct and detailed consultation with key stakeholders and the public. Some of these consultative initiatives include:

- Clarence Bicycle Strategy and Action Plan 2013-2017 - **29 July 2013**
- Greater Hobart Mountain Bike Master Plan - **27 August 2012**
- Public Open Space Asset Management Plan - **17 June 2013**
- Seven Mile Beach Sport and Active Recreation Precinct Master Plan - **10 November 2014**
- Sport and Active Recreation Strategy - **5 May 2014**
- Tracks and Trails Action Plan - **3 August 2015**

- Tracks and Trails Strategy 2012 and Tangara Trail Network Management Plan 2012-2017 - **16 July 2012**

Since April 2006, Council has had in place its “Temporary Placement of Portable Furniture Signage and Structures in Public Places Policy and Guidelines” which comprehensively details the licensing of outdoor dining (not including mobile food vans) on public places. In 2012, the “Signage on Council Owned Land and Facilities Policy and Guidelines” was adopted to detail the guidelines for erecting signage on Council’s public places and hired/leased Council sporting facilities.

4. THE OBJECTIVES OF THE BY-LAW (Section 156A(2)(a))

The primary objectives of the proposed By-law are to:

- allow General Manager to control and manage the use of public places including issuing notices concerning the use of a public place, granting a permit or licence to use a public place and closing a public place where necessary;
- address a range of amenity issues associated with the use of public places within the municipality by creating standards of use to ensure the peaceful and enjoyable use of public places by the public;
- encourage the broad use and enjoyment of public places by the general community;
- prohibiting certain activities and creating an offence if such an activity is conducted in a public place;
- prohibiting certain activities unless a permit or licence has been granted under the By-law and creating an offence if such an activity is conducted without a permit or licence;
- allow for the issue of permits and licences for the formal use of public places;
- provide a regulatory framework in which authorised persons and police officers have the appropriate enforcement powers to enforce the By-law
- create offences and penalties for breaches of the By-law and allow for the issue of infringement notices by authorised persons where an offence is committed under the by-law; and
- provide for damage and breaches of the By-law to be remedied by the responsible person at their cost.

The proposed By-law does not apply to an alderman, employee, agent or contractor of Council whilst undertaking activities in a public place within the municipal area for and on behalf of Council. This is to make it clear that the By-law does not apply to Council events such as the Jazz Festival and Carols by Candlelight nor does it apply to activities that Council undertakes on its land such as maintaining vegetation which is otherwise prohibited under the By-law.

Under the existing By-Law and under the proposed By-Law, the term “public place” is given a wide definition and includes:

- any land (including highways) owned by Council or under the control of Council;
- any publicly accessible land;
- any sporting facility and any paths, multi-user paths, tracks or trails;
- any building or structure in or upon that land that is part of any property or facility owned, controlled, managed or maintained by the Council
- any land or a building that is leased or licensed by the Council to another person or entity, or which is otherwise the responsibility of the Council.

The By-Law also does not apply to any public place which is the subject of a lease from Council to a person under Division 1 of Part 12 of the *Local Government Act 1993*. This means that a lease of more than 5 years, which is subject to a Council resolution before it can be entered into, is not affected by the provisions of the By-Law.

It is important to note that whilst the proposed By-Law is worded and set out differently to the existing By-Law, the proposed By-law continues Council's existing By-law and practice in respect of Council land and recreational facilities.

The main differences between the existing By-law and the proposed By-law are summarised as below:

General changes

- there have been numerous numbering, heading and formatting changes as well as reordering of parts and clauses which do not affect the content or context of the proposed By-law;
- penalty amount for each offence has also been reviewed to ensure that the penalty is appropriate for the offence

Part 1 – Preliminary

- clarification that the By-law does not apply to an alderman, employee, or an agent or contractor of Council for activities in a public place within the municipal area of the Clarence City Council in the course of their duties for and on behalf of Council;
- clarification that any reference in the by-law to legislation, a regulation, standard, publication, includes a reference to any update, alteration or amendment of the same;
- clarification that the General Manager has the power to delegate any of his functions under the By-law and can appoint a person or an employee of Council as an authorised person for the purposes of the By-law

Part 2 – Management and Control of Public Places

- clarification of the General Manager's powers to manage and control public places and to make notices;
- redrafting of authorised officers powers to make them clearer;
- clarification that an authorised person may obtain the assistance of a police officer in effecting the functions and powers of an authorised person under the By-law;
- creation of an offence of threatening, intimidating, using abusive language, assaulting, resisting or otherwise obstructing the General Manager, an authorised person or a police officer in the execution of their duties under the By-law;
- new power for General Manager to ban a person from a public place if they have offended against the By-law;
- new power for General Manager to close a public place for reasons such as safety reasons, repairs, to protect a public place or to conduct an event.

Part 3 - Restrictions on Activities in or on a Public Place

- clearer delineation between activities that are strictly prohibited in a public place and activities that are prohibited unless authorised by a permit or licence granted under the By-law;
- prohibitions have been included to cover the following matters:
 - dumping any substance or material, glass, refuse or litter (unless in bin) or leaving a syringe or sharp;
 - diverting or polluting water or selling water;
 - interfering, constructing or reconstructing earth, stone and other like materials;
 - taking wildlife, setting traps or poison, interfering with wildlife;
 - damaging or disturbing relics;
 - erecting a cairn or memorial;
 - possessing declared weeds;

- lighting fires unless in a place designated for fires;
- carrying or using a firearm, weapon, missile or projectile or fireworks;
- using playground equipment contrary to any sign or at an age that is unsuitable for the playground equipment
- prohibition on animals has been clarified as there are some public places where animals are permitted;
- provisions have been added to enable Council to have more control over parking on public places in particular controls over where vehicles may be parked or left;
- creation of offence for a person to create a private vehicular and pedestrian accesses from private land to a public place (except a highway used for the purposes of vehicular traffic) to control unauthorised vehicular and pedestrian access which can have an environmental and amenity impact on a public place;
- regulation of the use of bicycles, segways, wheeled recreational devices (rollerblades, rollerskates, skateboards, scooters, unicycles and other similar wheeled devices) and similar;
- differentiation between unauthorised signage on a public place and signage that may be authorised under the By-law in a specific public place to reflect Council's long-standing practice of prohibiting signage in public places except for Charles Hand Park;
- creation of an offence to park or cause to be parked any vehicle or trailer on any public place for the purposes of using such vehicle or trailer as an advertising device otherwise than for, or in connection with, bona fide purposes of travel and stopping incidentally to such travel.;

Part 4 - Activities in or on A Public Place Requiring a Permit or Licence

- sets out what activities may be allowed in a public place if a permit or licence is granted under the By-law; the existing By-law did not clearly differentiate these activities so the new By-law aims to make it clear what is prohibited and what is permissible subject to the granting of a permit or licence;
- creation of new, specific permit categories to make it administratively easier for staff to categorise a proposed activity and issue the most appropriate permit form;
 - business, commercial trading and trade;
 - sporting activity and personal training;
 - public assembly, speaking and entertainment;
 - private events and functions;
 - signage for public events;
 - structures and obstructions;
 - camping
 - aircraft; and
 - outdoor dining.
 - ~~mobile food vending.~~
- business, commercial activity and trade permit category expanded to include a vessel;
- new offence for person to sell liquor to any person in or on a public place unless authorised by a permit or licence and being the holder of an appropriate authorisation for that specific activity under the *Liquor Licensing Act 1990*;
- sporting activity and personal training permit category has been expanded to include personal training and bootcamps;
- structures and obstructions permit category has been added to provide for situations where a person is permitted to fence in an area of a public place or place a temporary structure eg crane, cherry-picker, skip bin which happens on a regular basis;
- aircraft permit category has been added to address the issue of drones which are expected to become more prevalent in the future as they become cheaper to purchase. The Civil Aviation Safety Authority (CASA) regulate the use of commercial drones, however, recreational drones are not regulated by CASA. Unmanned aircraft such as drones present a

real safety risk to other users of public places particularly children using public places such as playgrounds.

- ~~mobile food vending permit category has been added to provide that Council may issue a permit or licence to a person to use a mobile food premises or vehicle for business on a public place excluding a highway~~

Part 5 – Application Process for a Permit or Licence

- the process for making application for a permit or licence has been reworded so the process is made clearer;
- a specific offence of failure to comply with permit conditions has also been created;
- clauses have been reworded to clearly set out the process for Council to request a security bond or deposit and the process for Council to recover costs from that deposit or bond.

Part 6 – Removal of Objects From a Public Place

- this Part has been substantially reworded to cover the situation of insignificant and valueless articles being left on Council land for example burnt out cars;
- the process differentiates between objects of insignificant value and objects of significant value.

5. NATURE OF ANY RESTRICTION ON COMPETITION (Section 156A(2)(b))

The primary function of the By-law is to govern and regulate the use of Council's public places. Council's public places are provided for the operations of Council and for the benefit of the public for a broad range of uses such as organised sport and recreation, private functions and general recreation and enjoyment. Commercial and private use of public places should not occur without some restrictions and regulations, however, the proposed By-law, as did previous by-laws, makes it possible for public places to be made available for commercial use where appropriate whilst still maintaining public access to public places. The proposed By-law continues to provide for outdoor dining and commercial activities (for example markets, bootcamps). The permit and licence process set out in Part 5 provides the public with guidance on how to apply for a permit or licence and provides that any permit or licence granted will be subject to terms and conditions relevant to the By-law.

The proposed By-law also introduces restrictions on the use of drones in public places. A permit or licence will only be required if the drone will be launched from or landed in a public place. If the drone use is associated with, for example, taking photos of a wedding ceremony on a public place, the wedding ceremony would also require a permit or licence from Council.

It is possible that the proposed by-law could restrict competition as any permit or licence for the use of public places will include conditions that may restrict competitive conduct, for example the hours of operation, restrictions on signage and advertising, restrictions on the operation of drones for commercial use. However, it is completely reasonable for a commercial or private use of public places to be controlled as public places are set aside for public use. The proposed By-law is necessary for Council to retain control over activities undertaken in or on public places to ensure access to and peaceable enjoyment of those public places.

6. COSTS AND BENEFITS OF ANY RESTRICTION ON COMPETITION (Section 156A(2)(c)(i)) AND COST AND BENEFITS OF ANY IMPACT ON THE CONDUCT OF BUSINESS (Section 156A(2)(c)(ii))

The proposed By-law principally relates to the regulation of the use of public places by commercial entities and members of the public. A commercial entity does not have an automatic entitlement to use public places for commercial activities. The proposed By-Law provides for a permit and licence process whereby a commercial entity can make application to Council to use a public place

for a commercial activity. There will be use of public places for commercial activities such as commercial boot camps, fitness classes, outdoor dining, markets etc. These activities are administered by the issue of a permit or licence under the existing By-law which will continue under the proposed By-law. A commercial entity can also apply to Council to lease a public place through the leasing provisions of the Division 1 of Part 12 of the Act. The majority of current commercial use of public places is through a lease agreement which are subject to Council's Leased Facilities Pricing and Term of Lease Policy (11 December 2006) which requires careful consideration of commercial matters. Leases in excess of a 5 year term are also subject to formal Council resolution.

Despite the restrictions the proposed By-law contains, no significant impact on the conduct of business is foreseen. It is impossible to quantify any extra costs for a commercial entity to comply with the By-law as this will depend on several factors including the actual commercial activity. However, any extra cost in complying with a permit or licence can be justified in the interests of public safety, amenity and the protection of Council assets. It is not appropriate for rate-payers to bear the costs of commercial activities in public places. Permit and licence fees will be set under Council's List of Fees which is set at the beginning of the financial year. Relevant extracts from the current List of Fees is attached at Attachment A as a guide to permit and licence fees currently charged.

The potential costs and benefits of any restriction on competition and impact on the conduct of business created by the proposed By-law are identified in the table below:

Issue	Costs	Benefits
The General Manager can make rules for and regulate the use of public places	Use of a public place may require a permit or licence and the payment of a permit or licence fee Reduced and/or more controlled opportunity to use public places	Public access and right to enjoy public places are paramount considerations Protection of Council assets
There will be restrictions on signage and advertising	Reduced opportunities to advertise on public places may limit business exposure	Reducing signage and advertising on public places ensures public places are kept for public use, reduces unsightly advertising, reduces distracting advertising on highways
A permit or licence will be required for outdoor dining in a public place	Restrictions on using public places to conduct outdoor dining for a business Permit or licence fee will apply	Restrictions will ensure safe access in public places particularly footpaths Ensures public places are predominantly kept for public use unless authorised by a permit or licence
A permit or licence will be required for any business,	Areas used for commercial activity may reduce the space	Restrictions on commercial activity ensure that impact on

commercial activity, profession, trade or occupation conducted in a public place	<p>available for public use</p> <p>Permit or licence fee will apply</p> <p>Business operators will either have to pay the permit or licence fee to use a public place or use privately owned land/premises which may involve higher or lower costs</p>	<p>public access and enjoyment is minimised</p> <p>Ensures that public places are used equitably</p> <p>Allows Council to control some use of public places</p> <p>Reduces nuisances, protects public's right to enjoy public places safely</p> <p>Ensures Council assets are protected and used appropriately</p>
A permit or licence (as well as the appropriate authorisation under the <i>Liquor Licensing Act 1990</i>) will be required for a person to sell liquor in or on a public place	Permit or licence fee will apply	Reduces nuisances, protects public's right to enjoy public places safely
A permit or licence will be required to conduct any form of organised sporting activity, training, game, contest, exhibition or competition	<p>Areas used for this type of activity may reduce the space available for public use</p> <p>Permit or licence fee will apply</p> <p>Business operators will either have to pay the permit or licence fee to use a public place or use privately owned land/premises which may involve higher or lower costs</p>	<p>Ensures that public places are used equitably</p> <p>Ensures Council assets are protected and used appropriately</p> <p>Reduces nuisances, protects public's right to enjoy public places safely</p> <p>Ensures that public access to public places is protected</p> <p>Allows Council to control some use of public places</p>
A permit or licence will be required to coach, train or instruct a person in a sporting, recreational or physical fitness activity	<p>Areas used for commercial activity may reduce the space available for public use</p> <p>Business operators will either have to pay the permit or licence fee to use a public place or use privately owned land/premises which may involve higher or lower costs</p>	<p>Ensures Council assets are protected and used appropriately</p> <p>Restrictions on commercial activity ensure that impact on public access and enjoyment is minimised</p> <p>Ensures that public places are used equitably</p>

	<p>Permit or licence fee will apply</p>	<p>Allows Council to control some use of public places</p> <p>Reduces nuisances, protects public's right to enjoy public places safely</p> <p>Ensures that public access to public places is protected</p>
<p>A permit will be required for busking, public entertainment, contests, gatherings etc</p>	<p>Restricts the general public from accessing and using a public place</p> <p>Areas used for commercial activity may reduce the space available for public use</p> <p>Business operators will either have to pay the permit or licence fee to use a public place or use privately owned land/premises which may involve higher or lower costs</p> <p>Permit or licence fee will apply</p>	<p>Sets standards for safe numbers of people that can gather in a public place</p> <p>Will prevent buskers and entertainers setting up in a location that creates a public nuisance, disturbs the peace or impacts on local businesses</p> <p>Provides certainty for buskers that they can lawfully perform in a specific area</p>
<p>A permit or licence will be required to conduct weddings, formal meetings, private functions, events or other private activities of a like nature</p>	<p>Restricts the general public from accessing and using a public place</p> <p>Business operators will either have to pay the permit or licence fee to use a public place or use privately owned land/premises which may involve higher or lower costs</p> <p>Permit or licence fee will apply</p>	<p>Ensures Council assets are protected and used appropriately</p> <p>Ensures public places are predominantly kept for public use unless authorised by a permit or licence</p> <p>Reduces nuisances, protects public's right to enjoy public places safely</p> <p>Ensures that public places are used equitably</p> <p>Allows Council to control some use of public places</p>
<p>A permit or licence will be required (unless in the case of an emergency) to land or launch any aircraft</p>	<p>Areas used for commercial activity may reduce the space available for public use</p>	<p>Permit or licence will require person to ensure public safety and take into account public's right to enjoy public places</p>

<p>Aircraft is defined in broad terms and includes use of recreational devices eg drones, model aircraft</p> <p>The recognised regulatory authority, CASA, does not regulate all of these devices. There is a gap in regulation.</p> <p>Council needs to be mindful of these public safety and duty of care responsibilities where such devices are being used on public land.</p>	<p>Business operators will either have to pay the permit or licence fee to use a public place or use privately owned land/premises which may involve higher or lower costs</p> <p>Permit or licence fee will apply</p> <p>Licence fees will be commensurate with the nature of the activity emphasising low fee thresholds for recreational purposes</p> <p>Fees for commercial activities will in most cases be incidental to the underlying need to ensure that the use is appropriately conducted, has the appropriate safeguards and site management in place and sufficient insurance cover</p>	<p>The nature of drones, model aircraft and similar aircraft and the manner and the high level of skills required for their control pose a significant risk and potential for causing serious harm to the public. Therefore the activity must be appropriately controlled within the public environment</p> <p>CASA does not regulate recreational drones or other unmanned aircraft such as model aircraft , so it is appropriate that Council regulate the use of these devices</p> <p>Ensures Council assets are protected and used appropriately</p> <p>Ensure that there is sufficient scope within Council's regulatory framework to enable Council to exercise its duty of care to the public</p> <p>Ensures public places are predominantly kept for public use unless authorised by a permit or licence</p> <p>Reduces nuisances, protects public's right to enjoy public places safely</p> <p>Ensures that public places are used equitably</p> <p>Allows Council to control some use of public places</p>
<p>A permit or licence will be required for a person to camp in a public place unless it is in an area designated for camping</p>	<p>Campers can only use designated public places</p> <p>Permit or licence fee will apply</p>	<p>The space within public reserves available for general public use and enjoyment will be maximised</p> <p>Ensures Council assets are protected and used</p>

		<p>appropriately</p> <p>Reduces nuisances, protects public's right to enjoy public places safely</p> <p>Allows Council to control some use of public places</p>
Council may close a public place or part of for an event, safety reasons or for repairs	<p>Restricts the public from accessing and using a public place</p> <p>Areas used for commercial activity may reduce the space available for public use</p>	<p>Ensures that public places can be maintained and repaired as necessary</p> <p>Allows for events to occur on public places</p> <p>Ensures Council assets are protected and used appropriately</p> <p>Ensures public places are predominantly kept for public use unless authorised by a permit or licence</p> <p>Restrictions on commercial activity ensure that impact on public access and enjoyment is minimised</p>
A permit or licence will be required for a person to leave, erect, place, build, set up or cause to be left, erected, placed, built or set up, upon, under, over or across a public place, any building, structure, sign or obstruction of any kind, whether temporary or not	<p>Restricts the unauthorised erection of structures and tents in a public place</p> <p>Areas used for commercial activity may reduce the space available for public use</p> <p>Permit or licence fee will apply</p>	<p>Maintains public access, amenity and safety of public places</p> <p>Ensures Council assets are protected and used appropriately</p> <p>Restrictions will ensure safe access in public places particularly footpaths</p> <p>Ensures public places are predominantly kept for public use unless authorised by a permit or licence</p> <p>Reduces nuisances, protects public's right to enjoy public places safely</p> <p>Allows Council to control</p>

		some use of public places
--	--	---------------------------

Whilst it is difficult to quantify the costs and benefits of the proposed By-law on the restriction on competition or the conduct of business but it appears that the benefits of public access and safety along with the protection of Council assets will outweigh the relatively low costs associated with any restriction on competition that the proposed By-law may impose. Any restriction to competition or impact on the conduct of business can be justified in the public interest.

7. ALTERNATIVE OPTIONS CONSIDERED BY COUNCIL (Section 156A(2)(d))

As noted, the By-law is designed to regulate activities and behaviour on public places under Council's ownership or control and is the only appropriate mechanism for Council to carry out its regulatory responsibilities to safeguard the use of public places. It is Council's responsibility to establish appropriate user standards and controls that manage safety and amenity issues on public places.

There are no other current practical options which provide the necessary lawful authority to manage issues as they concern public places as and when they may arise.

8. GREATEST NET BENEFIT/LEAST NET COST TO THE COMMUNITY (Section 156A(2)(e))

The greatest net benefit to the municipality in the making of the proposed By-law is to ensure that appropriate controls can be exercised by Council over its public places. This is a significant benefit of the By-law and this has been demonstrated to date under the existing and previous By-laws. The proposed By-law also has the net benefits of ensuring that public places are protected from misuse and damage, members of the public can peaceably enjoy any public place without unreasonable obstruction and interference from other persons and the use of public places whether for recreational, sporting or commercial use, is regulated. The ability to issue permits or licences for activities provides certainty for event organisers and assures the general public that the permitted activity is appropriate for that public place.

The failure of Council to ensure the above would result in increased costs and inconvenience to Council due to undertaking repairs to damaged assets and facilities which would then flow-on to affect rate-payers. There would also be a risk to users of public places and decreased confidence in using and enjoying public places if Council did not have the ability to control use of its public places. Regulation is the most practical option to achieve the objectives of the proposed By-law and will impose minimal regulatory burden on rate-payers. There are clear financial benefits to both Council and rate-payers in having an appropriate regulatory regime in place that protects public places.

The proposed By-law will impose some costs on persons who apply to formally use a public place through the permit and licence application process. A permit or licence may apply and there may also be associated costs for the person to comply with the terms and conditions of the permit or licence. The permit and licence fees for existing permit categories will not differ from what is currently imposed under the existing By-law. Pursuant to the Act, Council sets Council's List of Fees - fixes the permit and licence fees applicable for a financial year through Council's List of Fees which gives applicants certainty on costs involved in using a public place. It is not possible to set out the fees for the new permit category of aircraft as Council will need to set this fee under the Act. There are fees involved in the formal use of public places to ensure that the user bears the majority of the cost of using the public place and it is not subsidised by ratepayers or Council. These costs

are reasonable and therefore it is considered that the benefits of the proposed By-law outweigh the cost of the By-Law. As a guide, Council's current List of Fees is attached at Attachment A.

These costs are considered to be reasonable given the impacts the proposed By-law is attempting to address. It is therefore considered that the benefits of the proposed By-law far outweigh the cost to any person as a result of the proposed By-law.

9. DIRECT/INDIRECT ECONOMIC IMPACT (Section 156A(2)(f))

The proposed By-law continues Council's long practice of implementing a permit and licence system to grant use of its public places. It is appropriate to impose permit and licence fees on users to ensure that ratepayers and Council are not burdened with those costs.

The bond and recovery of costs provisions under the proposed By-law have been strengthened to give Council the ability to impose a bond on permit and licence applications and to recover costs from users where there has been damage to Council's assets eg failure to clean after hiring a hall, damage to sportsground. This ensures that the economic impact of inappropriate and negligent use of Council's public places is minimised for both Council and ratepayers.

The proposed By-law is a continuation of Council's practice of a permit and licence system to use public places. The same administration costs will apply under the proposed By-law, however, due to further restrictions being included, it is anticipated that there may be an increase in regulatory costs incurred by Council. This possible increase will be partly covered by permit and licence fees and otherwise met by Council.

The benefit to Council of being able to regulate and control use of public places far outweighs the administration costs of implementing and enforcing the proposed By-law and any costs the public may incur in complying with the proposed By-law.

A summary of the possible direct and indirect economic impacts of the proposed By-law are summarised below:

	Direct Impacts	Indirect Impacts
Benefits	<p>Additional activities require a permit or licence under the proposed By-law and may involve a permit or licence fee</p> <p>Provides for commercial use of public places in an orderly manner</p> <p>Affordable space for the public to use for a variety of uses</p> <p>Business are able to use public spaces for outdoor dining and create additional income</p> <p>Start up or micro businesses are able to use public places on an intermittent basis without having to establish a permanent basis</p>	<p>Increased use of public places may have flow on effect for businesses near those public places</p> <p>Economic flow on effect from visits, both locals and tourists, to the whole of the City</p>

	<p>Public events can take place in a public place Reduction in damage to council property will have direct savings for the ratepayers</p> <p>Permit holders will be responsible for any damage caused to a public place</p>	
Costs	<p>Permit holder will be responsible for pay permit or licence fee</p> <p>Permit holders will be responsible for costs in complying with the permit or licence</p>	<p>Increased use of public places may mean increased maintenance and repair costs for Council</p> <p>Increased enforcement costs for Council in responding to complaints associated with use of public places</p> <p>Increased maintenance costs in responding to feedback from the public and responding to higher community expectations</p> <p>If use of public place is not granted, person will have to seek another place</p>

10. DIRECT/INDIRECT SOCIAL IMPACT (Section 156A(2)(f))

The proposed By-law essentially continues provisions already in place under the existing By-law and will continue to regulate the use of public places in the municipality which is in the public interest. Council's public places such as sporting facilities, parks, reserves and public buildings are owned by Council for the benefit of the public to provide opportunities for the general public to access public places for passive, incidental, recreational and social purposes. Council allocates budget and resources toward maintaining and improving public places and needs to ensure they continue to be managed in a way that makes them safe for all users. The proposed By-law has the positive social impact of regulating behaviour in public places to protect the general public from harm and anti-social behaviour and to protect Council's assets from damage.

Council's public places are regularly used by sporting clubs for training and competition and to act as a home ground for a sporting club. Sporting clubs provide important social and recreational opportunities for the general public. The proposed By-law allows Council to set out responsibilities of sporting clubs under a permit or licence which allows a sporting club to contribute to the community as appropriate.

The By-Law's prohibition on certain activities is limited to those activities that have a definitive negative effect on a public place eg the discharge of firearms, vandalism and general damage to assets. It is appropriate to prohibit these types of activities. Those activities that are permissible but need to be regulated eg sporting use, weddings, private functions, commercial activities are able to be carried out upon obtaining a permit or licence. This has the effect of controlling activities that may have an impact on the general public.

The benefit to Council of being able to regulate and control use of public places far outweighs the administration costs of implementing and enforcing the proposed By-law and any costs the public may incur in complying with the proposed By-law.

A summary of the possible direct and indirect social impacts of the proposed By-law are summarised below:

	Direct Impacts	Indirect Impacts
Benefits	<p>Encourages recreational use of public places</p> <p>Encourages physical activity</p> <p>Encourages participation in sporting clubs and events</p> <p>Enhances social cohesion and inclusion</p> <p>Creates pride in the City</p> <p>Improves visual amenity</p> <p>Allow markets, entertainment and cultural events to take place which enhances social cohesion</p> <p>Reduction in noise and nuisance</p> <p>Increased control of inappropriate activities in public places</p> <p>Reduced potential for adverse visual impacts eg signage, structures</p> <p>Encourages outdoor dining</p> <p>Anti-social behaviour and inappropriate use of public places is discouraged and able to be regulated</p> <p>Regulation allows for public places to be used safely and appropriately</p> <p>Regulation of activities will allow Council to maintain and improve its public places for the public to enjoy</p>	<p>Connects and builds stronger communities</p> <p>Creates a sense of community especially within a suburb or neighbourhood</p>

Costs	<p>Restrictions on the types of activities that may occur may disadvantage parts of the community</p> <p>Permit and licence fees may apply</p>	Possible perception that public places are either too available for commercial use or public places are too over-regulated
--------------	--	--

11. DIRECT/INDIRECT ENVIRONMENTAL IMPACT (Section 156A(2)(f))

Council has a duty to ensure that its public places and associated assets are safeguarded from environmental harm. The By-law provides Council with the mechanism to ensure that persons who cause environmental harm or damage to a public place are dealt with by infringement notice and further legal action, where appropriate. In addition, the permit and licence process allows Council the opportunity to regulate environmental risks by imposing terms and conditions on the use of the public place to minimise the risk of environmental harm.

Without regulation under the By-law it is difficult for Council to make offenders accountable for the impact of their activities on other people or on the environment. It is also difficult to require an offender to reimburse Council for the cost of repairing any damage to a public place that may result from their actions or inactions. The proposed By-law allows Council to regulate use of public places to minimise or avoid impacts on the environment. The regulation provided under the proposed By-law is considered to directly benefit the environment.

The benefit to Council of being able to regulate and control use of public places far outweighs the administration costs of implementing and enforcing the proposed By-law and any costs the public may incur in complying with the proposed By-law.

A summary of the possible direct and indirect environmental impacts of the proposed By-law are summarised below:

	Direct Impacts	Indirect Impacts
Benefits	<p>Improved recreational opportunities and lifestyle for the public</p> <p>Protection and preservation of natural and cultural values</p> <p>Reduction of noise and nuisance will benefit not only users of public places but also nearby residents</p> <p>Reduction of dumped litter will reduce environmental harm</p> <p>Protection of wildlife</p> <p>Protection of vegetation</p> <p>Protection of earth and like materials</p>	<p>Visual amenity protected and encouraged</p> <p>Reduced deposition of materials and pollution generating activities</p>



CITY-OF-CLARENCECLARENCE CITY COUNCIL
PUBLIC PLACES BY-LAW (No. 1 of 2017)

A By-law of the Clarence City Council made under Section 145 of the *Local Government Act 1993* for the purpose of providing for the management and control of public places and the process for permits and licences to be issued by the Clarence City Council in relation to the use of public places in the [City of Clarence-municipal area](#).

PART 1 - PRELIMINARY

1. Short Title

This By-law may be cited as the Public Places By-law 2017.

2. Commencement

This By-law commences on the date it is published in the Tasmanian Government Gazette. The [City of Clarence](#)~~Clarence City Council~~ Public Places and Permits By-law (No. 1 of 2007) made on 4 December 2007 and notified in the Tasmanian Government Gazette on 12 December 2007, as amended by erratum notice published 19 December 2007 and by Local Government (Amendment of By-laws) Order 2008, is repealed.

3. Application

- (1) This By-law applies to the municipal area of the [City of Clarence](#)~~Clarence City Council~~.
- (2) This By-law does not apply to an alderman, employee, or an agent or contractor of Council whilst undertaking activities in a public place within the municipal area of the [City of Clarence](#) [City Council](#) for and on behalf of Council.
- (3) A permit or licence issued under the City of Clarence Public Places and Permits By-law (No. 1 of 2007) before the commencement of this By-law is a valid permit or licence.

4. Interpretation

In this By-law:

‘**advertising device**’ means any sign, device or material attached in any way to a vehicle or trailer for the purpose of advertising;

‘**aircraft**’ means any machine that can derive support from the atmosphere from the reactions of the air other than the reactions of the air against the earth’s surface and for the avoidance of doubt includes drones;

‘authorised person’ means the General Manager and a person or an employee of the Council appointed by the General Manager as an authorised person for the purposes of this By-law;

‘building’ includes a building or proposed building or part thereof; or a structure, temporary structure or proposed structure or part thereof and any contents;

‘camp’ includes to erect a shelter or a building suitable for sleeping in overnight, whether or not that portable shelter is on or attached to a vehicle; or being in any such portable shelter at any time during a night; or to sleep at any time during a night in the open or in any vehicle or shelter or a building; or at any time during a night, to place, park or leave a vehicle that appears designed or equipped internally or externally to accommodate overnight sleeping, including a caravan;

‘caravan’ means a trailer, van, caravan, campervan or other structure or conveyance that is used, whether regularly or not, for human habitation or occupation;

‘children’s playground’ means any area in which children’s play equipment is installed for public use;

‘Council’ means the Clarence City Council;

‘event’ means any performance involving a gathering of people including but not limited to a concert or other entertainment, a meeting, parade, sporting event, exhibition, filming or festival, fair, carnival or circus, gathering of people for the sale and purchase of goods, and any markets where private, commercial or charitable groups may gather together using a site on a temporary basis;

‘food’ has the same meaning as the *Food Act 2003*;

‘food business’ has the same meaning as under the *Food Act 2003*;

‘General Manager’ means the General Manager appointed by the Council pursuant to section 61 of the *Local Government Act 1993* and includes a person acting in that capacity;

‘goods’ means any thing, article, substance or matter and any food in a person’s possession for the purpose of sale;

‘highway’ means any local highway maintainable by the Council pursuant to the *Local Government (Highways) Act 1982* and any street, road, way, mall, road reservation and cul-de-sac under the responsibility or the control of the Council;

‘land’ means any land in the municipal area and includes, but is not limited to, playgrounds, sporting facilities, buildings and structures permanently fixed to land, land covered by water, and water covering land;

‘lease’ means a lease agreement entered into by the Council with a person for the use of a public place;

‘licence’ means a licence issued to a person pursuant to this By-law;

‘liquor’ has the same meaning as under the *Liquor Licensing Act 1990*;

‘mobile food premises’ means a vehicle, caravan, trailer, cart, tent, stall, booth, pontoon, table, barbeque, pizza oven, or other mobile structure, that is not permanently fixed to the whole, or part, of a building, structure or land, in, at or from which food is, or is intended to be, handled or sold;

Formatted: Highlight

‘municipal area’ means the ~~City of Clarence~~ Clarence City Council as defined under section 16 of the *Local Government Act 1993*;

‘nature strip’ has the same meaning as the Road Rules 2009 (Tas);

‘notice’ means a notice authorised to be displayed, erected, published or forwarded to another person, by the Council, the General Manager, an authorised person, a police officer, or any other person authorised or approved by the General Manager, and which has been, or is:

- a) displayed or set up in a public place or adjacent to a public place with the approval of the Council, the General Manager, an authorised person; or
- b) published in a daily newspaper circulating, or displayed on a website and placed there with the approval of the Council, the General Manager, an authorised person, or a person on behalf of the Council; or
- c) forwarded by the Council, General Manager or authorised person to a person to whom this By-law applies;
- d) provided as a permit or licence issued to a person in accordance with this By-law; or
- e) printed as part of the written conditions of entry and use of a public place, or a sporting facility and which is set out in a document, that has been provided to a person by the Council, the General Manager, an authorised person or by a person on behalf of or with the agreement of the Council.

“object” means a material thing or article that has either been brought in to a public place or has been lost, left, placed, installed or abandoned in or on a public place and is capable of physical removal and includes abandoned vehicles left in a public place which is not a road or road-related area as defined under the Road Rules 2009;

‘outdoor dining’ means the consumption of food and/or beverages by persons seated in a public place adjacent or near to premises where food and/or beverages are for sale, or have been sold to a person;

‘penalty unit’ means a sum prescribed under the provisions of the *Penalty and Other Penalties Act 1987*;

‘permit’ means a permit issued by the General Manager or an authorised person to a person to authorise an activity in a public place pursuant to this By-law;

‘permit holder’ means a person granted a permit or licence by Council, the General Manager or an authorised person pursuant to this By-law;

‘person’ includes but is not limited to a natural person, a body corporate, club, association and company;

‘plant’ includes any tree, shrub, vegetable, flower or grass; or any seed, fruit, timber or product of a plant;

‘playground’ means an area designated as a playground by the Council;

‘police officer’ means an officer of Tasmania Police;

‘public event’ means any public performance involving a gathering of people for a concert or other entertainment, a meeting, parade, sporting event, exhibition, filming or festival, any fair, market or other gathering of people for the sale and purchase of goods, and any markets where private, commercial or charitable groups may gather together using a site on a temporary basis recognised, sponsored or organised by the Council.

‘public place’ means any land or part of land (including highway) owned by or under the control of the Council, and any publicly accessible land, any sporting facility, any paths, multi-user paths, tracks or trails and any building or structure in or upon that land that is part of any property or facility owned, controlled, managed or maintained by the Council, or which is land or a building that is leased or licensed by the Council to another person or entity, or which is otherwise the responsibility of the Council;

‘sale’ means to sell, agree to sell, offer or expose for sale, barter or exchange;

‘specified offence’ means an offence against the clause specified in column 1 of Schedule 1;

‘sporting facility’ means a public place or part of a public place set apart for the playing or practice of any game or the carrying on of any contest, competition, or exhibition;

‘stall’ means any structure, article or thing in, upon or under which goods are kept for the purposes of sale;

‘vehicle’ has the same meaning as in the *Vehicle and Traffic Act 1999*;

‘vessel’ includes a boat, ship, craft, hovercraft, aircraft or platform, any other form of water craft; any trailer used to transport any of them; and a vehicle that is capable of use in or on water whether floating, partly submersible or submersible and whether or not self-propelled

‘wheeled recreational device’ has the same definition as the *Road Rules 2009*;

‘wildlife’ means any living creature other than -

- a) a dog or cat;
- a) domestic stock;
- b) vermin as defined under the *Vermin Control Act 2000*
- c) fish, within the meaning of the *Living Marine Resources Act 1995*;
- d) an animal that:
 - i. is being farmed under and in accordance with the *Animal Farming (Registration) Act 1994*;
 - ii. has been so farmed and is legally in the possession of any person.

5. Currency of documentation

In this By-law a reference to an Act, regulation, standard, code, publication is to be read as a reference to any subsequent amended, updated, superseded, or altered Act, regulation, standard, code, publication that are current at a point in time.

6. Delegations and appointment of authorised persons

- (1) Where under this By-law a power or function may be exercised by the General Manager, the General Manager may, in accordance with the *Local Government Act 1993*, delegate to an employee of Council, performance of those powers and functions.
- (2) The General Manager may appoint a person or an employee of the Council as an authorised person for the purposes of this By-law.

PART 2 – MANAGEMENT AND CONTROL OF PUBLIC PLACES

7. Notices for the control of public places

- (1) The General Manager may by notice make rules for and regulate the management, control and use of any public place, or a part of a public place in accordance with this By-law.
- (2) A notice under sub-clause (1) may be placed on the public place or published, displayed or forwarded as the General Manager deems appropriate.
- (3) A person in a public place must obey the terms and conditions of any notice issued under sub-clause (1).

Penalty: Fine not exceeding 10 penalty units.

8. Issuing of directions and removal of persons

- (1) An authorised person may issue directions to any person in relation to their use or treatment of or presence in a public place.
- (2) A direction by an authorised person may be given verbally or in writing.
- (3) An authorised person may ask a person whom the authorised person reasonably believes is offending or has offended against this By-law to leave a public place.
- (4) An authorised person may refuse to admit a person to any public place whom the authorised person reasonably believes is offending or has offended against this By-law.
- (5) An authorised person may remove any person from any public place whom the authorised person reasonably believes is offending against this By-law.
- (6) A person must obey the requests and directions of an authorised person concerning the use of a public place.

Penalty: Fine not exceeding 10 penalty units

- (7) If required to do so by the General Manager or an authorised person in relation to a matter arising under this By-law, a person must obey a request to provide his or her name and address when required to do so.

Penalty: Fine not exceeding 5 penalty units

9. Notices and directions generally

- (1) A notice or direction given under this By-law may be subject to such conditions and requirements and subject to such time period as the General Manager or authorised person, where applicable, may determine.
- (2) Unless otherwise specified in a notice or direction, a person to whom a notice or direction is given is to comply with the notice or direction at the cost of that person.
- (3) A notice or direction given under this By-law requiring a person to carry out or undertake action or work may direct that the action or work be done

only by a person with the appropriate qualification, knowledge or expertise.

- (4) The Council may undertake the work required in a notice or direction given pursuant to this By-law if the person to whom a notice or direction is given, fails to comply with the notice or the direction within the time specified in the notice or direction.
- (5) The Council may recover as a debt payable by that person, its expenses in undertaking work under the notice issued or direction given pursuant to this By-law as a debt payable to it from the person who fails to comply with the notice or direction in addition to any penalty imposed under sub-clause (1) and this By-law.

10. Powers of police officers

- (1) An authorised person may obtain the assistance of a police officer in effecting the functions and powers of an authorised person under this By-law.
- (2) A police officer may remove any person from a public place whom they reasonably believe is committing an offence under this By-law.
- (3) A police officer may arrest any person who is on a public place whom the police officer reasonably believes is committing an offence under this By-law.

11. Abuse, obstruction of the General Manager, authorised person or Police Officer

- (1) A person must not:
 - a) threaten or intimidate the General Manager, an authorised person or a police officer or use abusive language to the General Manager, an authorised person or a police officer acting in the course of his or her duties under this By-law; or
 - b) assault, resist or otherwise obstruct the General Manager, an authorised person or a police officer in the execution of his or her duties under this By-law.

Penalty: Fine not exceeding 20 penalty units for each offence

12. Liability of General Manager, authorised persons and police officers

- (1) Subject to the provisions of any Act, the General Manager, an authorised person or a police officer is not liable to any person against whom any action is taken pursuant to this By-law, for any honest act or omission done or made in the exercise or purported exercise of the power or in the performance or purported performance of any function, power or authorisation under this By-law.

13. Rectification of damage or breach

- (1) The General Manager or an authorised person may give notice to a person who has done anything in contravention of this By-law which is capable of being rectified, requiring that person to do work or a thing that the General Manager or authorised person considers is reasonably required to rectify the contravention.
- (2) A notice given under sub-clause (1):
 - a) is to identify the relevant contravention;
 - b) is to state the work or thing to be done that is required to rectify the contravention;
 - c) is to state the time by which the work or thing is to be completed; and
 - d) may require that the work or thing to be done is to be done only by a person with appropriate qualifications.
- (3) A person must not fail to comply with a notice given pursuant to sub-clause (1).
Penalty: Fine not exceeding 10 penalty units
- (4) The General Manager or an authorised person may perform or arrange to rectify the contravention as required under sub-clause (1) if the notice is not complied within the timeframe stipulated in the notice.

14. Recovery of Expenses

- (1) In addition to any penalty imposed in relation to any failure by a person to comply with any provisions of this By-law, any expenses incurred by Council as a consequence of that contravention are recoverable by the Council as a debt payable by that person.

15. Disruption of a sporting event

- (1) A person must not enter onto a sporting facility while a sporting event is in progress, or enter onto a sporting facility during any period prior to, or after the commencement or completion of a sporting event on that sporting facility without permission from the permit holder, an authorised person, or a police officer.

Penalty: Fine not exceeding ~~20~~10 penalty units.

16. Banned entry to a public place

- (1) The General Manager may by notice ban a person who has offended against this By-law from entering any public place for such period of time as the General Manager determines.
- (2) The General Manager may withdraw a ban made under sub-clause (1).
- (3) A person who has been banned from entering a public place under subclause (1) must not enter upon that public place during the period for which the ban applies.

Penalty: Fine not exceeding 10 penalty units

17. Closure of public place

- (1) The General Manager may close any public place or part thereof to members of the public for such periods as the General Manager may determine for:
 - a) safety reasons; or
 - b) protection of a public place; or
 - c) repair, maintenance or improvement of a public place; or
 - d) the conduct of an event or activity permitted under this By-law.
- (2) A person must not enter or remain in any part of a public place that is closed to the public unless authorised by permit or licence or with the written approval of the General Manager.

Penalty: Fine not exceeding 10 penalty units

18. Admission Charges

- (1) A person must not charge for admission or take any collection for admission from any person in, or who is about to enter a public place except with the prior written approval of the General Manager, or except in accordance with the terms and conditions of any lease or licence of that public place.

Penalty: Fine not exceeding 5 penalty units

19. Entrance to public place

- (1) A person must not use, enter, or attempt to enter, any public place or part of a public place without having paid any fee or charge where applicable, and except by access through gates or entrances commonly used by the public or except in accordance with the terms of any notice, or the requirements of an authorised person.

Penalty: Fine not exceeding 5 penalty units

PART 3 – RESTRICTIONS ON ACTIVITIES IN OR ON A PUBLIC PLACE

20. Nuisances

- (1) A person in a public place must not commit a nuisance or cause a nuisance to any other person and must not wilfully obstruct, hinder or annoy any member of the public or interfere with the peaceable use of the public place by any other person.

Penalty: Fine not exceeding 5 penalty units

21. Noise

- (1) A person in a public place must not, unless authorised by a permit or licence use any broadcasting or amplifiers, loudspeakers, sound systems, loud hailer, radio receivers or devices, musical instruments or any other instruments that produce or relay noise or other sound within a public place so as to cause a nuisance to the public.

Penalty: Fine not exceeding 5 penalty units

22. Vandalism and rubbish

- (1) A person in a public place must not:
- damage, remove, dispose of, disfigure, paint, or otherwise interfere with any thing in a public place;
 - do any act or thing that causes, or is likely to cause, any damage to any part of a public place;
 - mark or write on, deface, or paint graffiti on any thing in a public place;
 - break any glass or leave any glass, refuse or other litter in a public place except in a designated disposal area such as a rubbish bin or recycling bin;
 - dump or store any substance or material; or
 - place, leave or drop any syringe or sharp.

Penalty: Fine not exceeding 10 penalty units for each offence

23. Protection of natural assets

- (1) A person in a public place must not:
- pluck or remove any plant, or break, cut or poison any part of, or in any way interfere with or damage any plant, tree, wood, flower, bush, shrub or garden bed or landscape any part of a public place;
 - dig, cut, form, reform, excavate in or remove any earth, soil, turf, loam, sand, gravel, stone or other like material;
 - construct or reconstruct any earth, soil, turf, loam, sand, gravel, stone or other like material;
 - dam up, divert or pollute any water on or under the surface; or

- e) take or collect any water for sale;

Penalty: Fine not exceeding 20 penalty units for each offence

24. Protection of wildlife

- (1) A person in a public place must not:

- a) take or have in their possession any wildlife or products of wildlife;
- b) lay or set any trap or snare or deposit any poisonous or chemical substance;
- c) interfere with the nest, breeding place or habitation of any wildlife;
or
- d) intentionally disturb any wildlife.

Penalty: Fine not exceeding 5 penalty units for each offence

25. Damage to relics

- (1) A person in a public place must not remove, damage, deface or disturb any brick, glass, coin, masonry, ceramics, aboriginal relic or any other object of architectural, archaeological, scientific, historical or cultural interest.

Penalty: Fine not exceeding 20 penalty units

26. Cairns and memorials

- (1) A person in a public place must not erect a cairn or memorial except with the prior written approval of the General Manager.

Penalty: Fine not exceeding 10 penalty units

27. Declared weeds

- (1) A person in a public place must not bring into or be in possession of any plants listed as declared weeds within the meaning of the *Weed Management Act 1999*.

Penalty: Fine not exceeding 5 penalty units

28. Fires

- (1) A person in a public place must not light or maintain any fire unless in a place designated for that purpose.

Penalty: Fine not exceeding 10 penalty units

29. Firearms, fireworks, missiles and harmful implements

- (1) A person in a public place must not:

- a) carry or be in possession of any firearm, weapon, missile or projectile or fireworks; or
- b) use, throw, fire or discharge any firearm, weapon, missile, projectile or fireworks.

Penalty: Fine not exceeding 20 penalty units for each offence.

30. Animals

- (1) A person in a public place must not take, permit or allow any animal to be taken into or remain in any part of a public place except for designated areas and in accordance with the provisions of any legislation or as authorised by a permit or licence.

Penalty: Fine not exceeding 5 penalty units for each offence.

31. Use of vehicles

- (1) A person in a public place must not:

- a) drive or take any vehicle into or onto a public place except in accordance with any directions given by the General Manager, or except in accordance with the terms and conditions of any notice, or the requirements of an authorised person;
- b) park or leave any vehicle in a public place except in an area set aside by Council as a parking area unless authorised to do so by an authorised person;
- c) park or leave any vehicle in a public place in such a way as to obstruct the vision of another person driving a vehicle;
- d) park or leave a vehicle in a position where it obstructs the entry or exit of another vehicle to another parking place or parking area; or
- e) fail to comply with the directions of the General Manager, an authorised person or a police officer supervising vehicles as to the place to park or drive the vehicle; or as to the route or course over which the vehicle is to be driven.

Penalty: Fine not exceeding 10 penalty units for each offence.

32. Private accesses

- (1) A person must not, without the written approval of the General Manager, create an entrance to a public place that allows a means of access through to that public place except to ingress or egress a highway for vehicular access.

Penalty: Fine not exceeding 5 penalty units

- (2) The General Manager may by notice require a person to close any entrance that allows access to a public place.
- (3) A person must not fail to comply with the directions of a notice issued by the General Manager under sub-clause (2).

Penalty: Fine not exceeding 5 penalty units

33. Skateboards and bicycles

- (1) A person in a public place must not ride, drive or otherwise use any bicycle, quad bike, trail bike, tricycle, segway, wheeled recreational device, or other like vehicle or device in a public place except:

- a) on roads where permitted;

- b) on paths or tracks specifically provided for the type of vehicle or device and where signs or notices authorised by the General Manger indicate that such use is allowed; or
- c) such other public place areas where signs or notices authorised by the General Manger indicate that such use is allowed.

Penalty: Fine not exceeding 5 penalty units for each offence

34. Signage and advertising

(1) A person in a public place must not:

- a) paint, affix, or in any manner place any advertisement, bill, poster, sandwich board, notice, or any other like sign in any part of a public place;
- b) erect, exhibit, or display a notice, sign, electoral sign, bill, poster or advertisement on any public place;
- c) give out, distribute, scatter or throw down any handbills, placards, tickets, notices, advertisements, books, cards, offers, pamphlets, papers or like things; or
- d) park or cause to be parked any vehicle or trailer on any public place for the purposes of using such vehicle or trailer as an advertising device otherwise than for or in connection with, bona fide purposes of travel and stopping incidentally to such travel.

Penalty: Fine not exceeding 5 penalty units for each offence

35. Ball games

(1) A person in a public place, including a playground, must not play or practice cricket, golf, football, hockey or other ball games of a like nature unless in an area designated for that purpose.

Penalty: Fine not exceeding 2 penalty units

36. Playgrounds

(1) A person must not:

- a) use any playground equipment in a playground unless the person is of a suitable age for the use of that equipment; or
- b) use any playground equipment contrary to any sign applying to the playground equipment.

Penalty: Fine not exceeding 2 penalty units for each offence

PART 4 –ACTIVITIES IN OR ON A PUBLIC PLACE REQUIRING A PERMIT OR LICENCE

37. Business, commercial activity and trade

- (1) A person in a public place must not, unless authorised by a permit or licence:
- a) carry on any business, commercial activity, profession, trade, or occupation whether for financial reward or consideration or not; or
 - b) set up, place, park or moor any vehicle, vessel, caravan, or stall for the purpose of selling any goods, land, or property or for the purpose of offering for sale or hire or in any other way disposing of goods, land or property or in connection with any business, commercial activity, profession, trade, performance or occupation whether for financial reward or consideration or not.

Penalty: Fine not exceeding 10 penalty units for each offence

- (2) A person must not sell liquor to any person in or on a public place unless authorised by a permit or licence and being the holder of an appropriate authorisation under the *Liquor Licensing Act 1990*.

Penalty: Fine not exceeding 10 penalty units

38. Sporting activity and personal training

- (1) A person in a public place must not, unless authorised by a permit or licence:
- a) conduct any form of organised sporting activity, training, game, contest, exhibition or competition; or
 - b) coach, train or instruct a person in a sporting, recreational or physical fitness activity.

Penalty: Fine not exceeding 5 penalty units for each offence

39. Public assembly, speaking and entertainment

- (1) A person in a public place must not, unless authorised by a permit or licence:
- a) conduct any amusement, busking, entertainment or performance for financial reward;
 - b) organise or participate in an assembly, rally, public speaking or similar activity;
 - c) take up a collection of money; or
 - d) conduct raffles or prize contests.

Penalty: Fine not exceeding 5 penalty units for each offence

40. Private events and functions

- (1) A person in a public place must not, unless authorised by a permit or licence, conduct weddings, formal meetings, private functions, events or other private activities of a like nature.

Penalty: Fine not exceeding 5 penalty units

41. Signage for the promotion of public events

- (1) A person in a public place must not, unless authorised to do so within a designated area under a permit or licence, paint, affix, or in any manner place any advertisement, bill, poster, sandwich board, notice, or any other like sign for the purposes of advertising a public event.

Penalty: Fine not exceeding 5 penalty units

42. Structures and obstructions

- (1) A person in a public place must not, unless authorised by a permit or licence, leave, erect, place, build, set up or cause to be left, erected, placed, built or set up, upon, under, over or across a public place, any building, structure, sign or obstruction of any kind, whether temporary or not.

Penalty: Fine not exceeding 10 penalty units

43. Camping

- (1) A person must not camp in a public place unless authorised by a permit or licence or in an area designated for that purpose.

Penalty: Fine not exceeding 2 penalty units

44. Aircraft

- (1) A person in a public place must not, unless authorised by a permit or licence or in the case of an emergency, land or launch any aircraft.

Penalty: Fine not exceeding 5 penalty units

45. Mobile food vending

For the purposes of this clause only, public place does not include a highway.

- (1) A person must not cause or permit any mobile food premises or vehicle to be placed in any public place or part of a public place for the purpose of conducting a mobile food vending business except in accordance with the terms and conditions of a licence, permit or notice, or in accordance with the approval of the General Manager or an authorised person.

Penalty: Fine not exceeding 10 penalty units

Formatted: Highlight

46. Outdoor Dining

- (1) A person must not cause or permit any thing including furniture and screening to be placed in any public place or part of a public place for the

purpose of encouraging or permitting outdoor dining except in accordance with the terms and conditions of a licence, permit or notice, or in accordance with the approval of the General Manager or an authorised person.

Penalty: Fine not exceeding 10 penalty units

DRAFT

PART 5 – APPLICATION PROCESS FOR A PERMIT OR LICENCE

47.46. Application for permits

- (1) A person may make application to the General Manager for a permit or licence to use any public place for those activities provided for under Part 4 of this By-law.
- (2) An application must be in a form approved by the General Manager and lodged with Council in accordance with the application timeframes set by the General Manager or at least 14 business days before the first day in respect to which the permit or licence is to apply.
- (3) An application is to be accompanied by the payment of the fee or charge imposed by the Council together with the required information as set out in the form of application.
- (4) The General Manager may:
 - a) grant a permit or licence on terms and conditions the General Manager considers appropriate; or
 - b) refuse to grant a permit or licence;on an application made in accordance with this By-law.
- (5) A permit or licence granted pursuant to this By-law is to:
 - a) be in writing and may be in the form of a letter;
 - b) bear the date on which it was issued;
 - c) remain in force for the period for which it was issued, unless it is cancelled or surrendered; and
 - d) be carried by the permit holder at all times while undertaking the activity approved under the permit or licence.
- (6) A permit or licence issued pursuant to this By-law is not assignable or transferable except with the written approval of the General Manager.
- (7) A permit or licence issued pursuant to this By-law may make provision for any appropriate insurance cover as directed or required by the General Manager.
- (8) A person must comply with the terms and conditions of a permit or licence.

Penalty: Fine not exceeding 5 penalty units

48.47. Competing Applications

- (1) If there are competing applications for the use of a public place, the General Manager may determine which application for a permit or licence is to be granted.
- (2) The General Manager may determine that a prior or later application for a permit or licence to use the same public place is to be granted in preference to any other application for that public place.

49.48. Security Bond

- (1) The General Manager may require a permit holder or person to whom this By-law applies to deposit a sum of money with the Council, or enter into a bond with Council for payment to Council of such amounts as the General Manager may determine in order to provide security against any reasonable costs which the Council may incur as a result of the permit holder's failure to comply with a permit or licence or with the provisions of this By-law.

50.49. Recovery of costs from security deposits and bonds

- (1) If a permit holder fails to comply with any terms and conditions of a permit or licence or damages any thing in a public place in the course of their use of a public place, the Council may draw from the deposit or bond paid under clause [49-48](#) in order to:
 - a) carry out the permit holder's obligations under the permit or licence;
 - b) reinstate or repair any damage caused; and
 - c) deduct any costs incurred by Council in taking action under this clause.
- (2) The Council may also recover in a court of competent jurisdiction from the permit holder any expenses incurred by it in carrying out the permit holder's obligations under this By-law less the amount of the bond paid by the permit holder for that purpose, if any, as a debt due to it.

51.50. Suspension or Cancellation of a Permit or Licence

- (1) The General Manager may suspend or cancel a permit or licence if the permit holder fails to observe or comply with the terms and conditions of the permit, licence or the provisions of this By-law.
- (2) The General Manager may cancel a permit or licence at their sole discretion to prevent a nuisance being caused or to protect public safety.
- (3) If a permit or licence is to be suspended or cancelled, the General Manager is to serve a notice on the permit holder stating that the permit or licence is suspended or cancelled and giving the reasons for the suspension or cancellation.
- (4) The suspension or cancellation of a permit or licence issued pursuant to this By-law is to take effect from the time that the notice of the suspension or cancellation is served on the permit holder.
- (5) The General Manager may suspend or cancel a permit or licence by any communication conveyed to the permit holder by any means including notice by radio or television in emergency situations or in situations considered appropriate by the General Manager.
- (6) A permit holder must not use a public place if a permit or licence for the use of that public place has been suspended or cancelled.

Penalty: Fine not exceeding 10 penalty units

- (7) Nothing in this clause is to be construed as preventing or prohibiting the General Manager from suspending or cancelling a permit or licence if this is required due to the exercise of any of Council's functions, powers, rights or duties.

DRAFT

PART 6 – REMOVAL OF OBJECTS FROM A PUBLIC PLACE

52.51. Objects in or on a public place

- (1) If an object is being used in a public place in a manner that causes or is likely to cause a nuisance or harm, or if an object is placed or left in a public place without the approval of the General Manager or an authorised person, an authorised person or police officer may remove the object or cause it to be removed.
- (2) If the owner of the object and their address is known to Council, the General Manager or an authorised person is to give notice to the owner to collect the object from Council within 5 business days.
- (3) If the owner fails to collect the object within 5 business days, the General Manager may cause the object to be returned to the last known address of the owner and any costs incurred in doing so are to be borne by the owner.

53.52. Removed objects of little or insignificant monetary value

- (1) If the owner of the object is not known to Council and the General Manager determines that the object is of little or insignificant monetary value, the General Manager may after 5 business days dispose of the object without further enquiry.
- (2) In determining whether an object is of little or insignificant monetary value, the General Manager may have regard as to whether the object is of no value or the amount that might be received from its sale would not be sufficient to defray the cost of its removal from the public place; or, its storage; or, the disposal of the object; or the public advertising in accordance with this Part.

54.53. Removed objects of monetary value

- (1) If the General Manager determines that an object is of monetary value and the ownership of the object is not known and it is not claimed by the owner or a person on behalf of the owner within 2 business days following its removal from the public place, the General Manager is to notify by way of public advertisement the removal of the object.
- (2) A notice under sub-clause (1) is to give the following details:
 - a) the description of the object and any distinguishing features;
 - b) the place from where the object was removed;
 - c) the date on which the object was removed;
 - d) the place from which the object may be claimed;
 - e) the fees, costs and charges payable in respect of the removal, maintenance and storage of the object; and
 - f) that if the object is not claimed within 10 business days that the object may be disposed of by the General Manager.

- (3) No provision or procedure created under this By-law is to prevent the General Manager or an authorised person from removing an object from a public place, if the object is regarded as dangerous or hazardous to the safety of the public.

55.54. Fees, Costs and Charges

- (1) The owner of an object removed in accordance with this By-law is liable to pay to Council:
- a) any fees, costs and charges specified in a notice under clause [54.53](#); and
 - b) any further fees, costs and charges incurred by the Council including but not limited to the removal, storage, further maintenance, advertising and administrative costs in dealing with the object.
- (2) Any unpaid fees, costs and charges are a debt due to the Council and are recoverable by the Council as a debt payable by the owner.
- (3) The General Manager may retain an object until any fees, costs and charges specified in a notice are paid.

56.55. Object required for prosecution

- (1) Where an object is required by Council for the prosecution of an offence under this By-law, the object is to be released to the owner following the completion of the prosecution proceedings and on payment of the fees, costs and charges unless otherwise directed by a court.
- (2) The General Manager may dispose of an object:
- a) which is not released to the owner under the prosecution proceedings; or
 - b) in such cases where the fees, costs and charges have not been paid, within 20 business days of the completion of prosecution proceedings.

PART 7 - INFRINGEMENTS

57.56. Offences

- (1) Any person who contravenes or fails to comply with any of the relevant provisions of this By-law is guilty of an offence under this By-law and liable on conviction to the penalty set out in the relevant provision.

58.57. Infringement Notices

- (1) In this clause “specified offence” means an offence against the clause specified in column 1 of Schedule 1.
- (2) An infringement notice may be issued in respect of a specified offence and the monetary penalty set out adjacent to the offence in Column 3 of Schedule 1 is the penalty payable under the infringement notice for that offence.
- (3) An authorised person may:
 - a) issue an infringement notice to a person who the authorised officer has reason to believe is guilty of a specified offence; and
 - b) issue one infringement notice in respect of more than one specified offence.
- (4) The *Monetary Penalties Enforcement Act 2005* applies to an infringement notice issued under this by-law.
- (5) In addition to any other method of service, an infringement notice alleging that a vehicle has been used in relation to a specified offence may be served by affixing it to that vehicle.

59.58. Monies Payable to Council as a recoverable debt

- (1) All monies payable to the Council or General Manager in respect of an infringement notice are a debt due to Council and recoverable at law.

SCHEDULE 1 – INFRINGEMENT NOTICE OFFENCES

Column 1 CLAUSE	Column 2 OFFENCE GENERAL DESCRIPTION OF OFFENCE	Column 3 PENALTY (Penalty units)
7(3)	Fail to comply with terms and conditions of a notice	5
8(6)	Fail to comply with the requirements of an authorised person	5
8(7)	Fail to provide name and address	3
11(1)(a)	Threaten or intimidate or use abusive language	10
11(1)(b)	Assault, resist or obstruct	10
13(3)	A person must not fail to comply with a notice given pursuant to sub-clause (1)	5
15(1)	Enter a sporting facility while a sporting event is in progress without permission	403
16(3)	Fail to comply with ban from public place	5
17(2)	Enter or remain in a public place closed to the public	5
18(1)	Charge admission to a public place without permission	2
19(1)	Use or enter or attempt to enter any public place without having paid the applicable fee or charge	2
20(1)	Commit a nuisance or obstruct, hinder or annoy	2.5
21(1)	Produce or relay noise without permission	2.5
22(1)(a)	Damage or interfere with any thing	3
22(1)(b)	Damage public place	3
22(1)(c)	Graffiti any thing	3
22(1)(d)	Break glass or litter	3
22(1)(e)	Dump or store substance or material	3
22(1)(f)	Place syringe or sharp	3
23(1)(a)	Interfere with vegetation	3
23(1)(b)	Interfere with earth	3
23(1)(c)	Construct or reconstruct any earth	3
23(1)(d)	Interfere with water	3
23(1)(e)	Take or collect water for sale	3
24(1)(a)	Possession of wildlife	2
24(1)(b)	Lay or set trap or poison	2
24(1)(c)	Interfere with nest of wildlife	2
24(1)(d)	Intentionally disturb wildlife	2
25(1)	Interference with relics	10
26(1)	Erect a cairn or memorial without permission	3
27(1)	Possession of weeds	2
28(1)	Light fire without approval	5

29(1)(a)	Possession of firearm, weapon, missile or projectile or fireworks	2.5
29(1)(b)	Use firearm, weapon, missile, projectile or fireworks	2.5
30(1)	Take animal into public place without approval	2
31(1)(a)	Drive or take vehicle into public place contrary to directions	5
31(1)(b)	Park or leave vehicle except in parking area without approval	5
31(1)(c)	Park or leave vehicle to obstruct vision	5
31(1)(d)	Obstruct entry or exit of another vehicle	5
31(1)(e)	Fail to comply with directions	5
32(1)	Create entrance to public place without approval	2.5
32(3)	Fail to comply with the directions of a notice	2.5
33(1)	Use vehicle or device outside permitted areas	2.5
34(1)(a)	Advertisement without approval	2.5
34(1)(b)	Signage without approval	2.5
34(1)(c)	Give out advertisements	2.5
34(1)(d)	Park advertising device	2.5
35(1)	Play ball games without approval	1
36(1)(a)	Use playground equipment at unsuitable age	1
36(1)(b)	Use playground equipment contrary to sign	1
37(1)(a)	Carry on business without approval	5
37(1)(b)	Business and trade without approval	5
37(2)	Sell liquor without approval	5
38(1)(a)	Conduct organised sporting activity without approval	2.5
38(1)(b)	Coach, train or instruct without approval	2.5
39(1)(a)	Conduct amusement, entertainment without approval	2.5
39(1)(b)	Organise or participate in assembly, rally without approval	2.5
39(1)(c)	Take up a collection of money without approval	2.5
39(1)(d)	Conduct raffle or prize contest without approval	2.5
40(1)	Conduct private functions without approval	2.5
41(1)	Affix sign to advertise a public event without approval	5
42(1)	Structure or obstruction without approval	5
43(1)	Camp without approval	1
44(1)	Use of aircraft without approval	2.5
45(1)	Mobile food vending without approval	5
46(1)	Outdoor dining without approval	5
47(8)	Fail to comply with terms and conditions of a permit or licence	2.5
50(6)	Use of public place under suspension or cancellation	5

Formatted: Highlight

11.7.2 CLARENCE CITY BAND MANAGEMENT COMMITTEE CONSTITUTION

(File No 22-02-05)

EXECUTIVE SUMMARY**PURPOSE**

The purpose of this report is for Council to consider adoption of the revised Constitution for the Clarence City Band Management Committee.

RELATION TO EXISTING POLICY/PLANS

Strategic Plan 2016-2026 – Strategic Goal areas:

“A people city

Clarence is a city which values diversity and encourages equity and inclusiveness, where people of all ages and abilities have the opportunity to improve their health and quality of life.

A well planned liveable city

Clarence will be a well-planned liveable city with services and supporting infrastructure to meet current and future needs.

Connectivity

Facilitate residents being connected to the community by having access to resources and opportunities to participate in community activity, employment, volunteering and lifelong learning.

Provide collaborative strategic direction and planning to address the needs and aspirations of the community that support community participation, enablement and leadership.

Recognise, celebrate, and support cultural diversity through range of cultural programs, activities and events”.

LEGISLATIVE REQUIREMENTS

The Clarence City Band is managed by a special committee of Council in accordance with the provisions of the Local Government Act, 1993.

CONSULTATION

The Management Committee, with assistance from Council officers, have redrafted the Constitution.

FINANCIAL IMPLICATIONS

There are funds allocated in the Annual Plan for operation of the Committee. There are no direct financial impacts in the revision of the Constitution. Any future funding for the Committee will be based on Council budget deliberations.

RECOMMENDATION:

- A. That the Clarence City Band Management Committee revised Constitution be received and endorsed by Council.

- B. That, in accordance with the Band's new Constitution, Council appoints an Alderman as Council's representative on the Clarence City Band Management Committee.

ASSOCIATED REPORT

1. BACKGROUND

- 1.1.** The Clarence City Band was established by Council in 1988.
- 1.2.** The operations of the Band are overviewed by a Management Committee established as a Special Committee of Council in accordance with the provisions of the Local Government Act, 1993.
- 1.3.** The Management Committee has, with assistance from Council officers, redrafted the Clarence City Band Management Committee Constitution.
- 1.4.** The Bands Strategic Plan and associated initiatives was the subject of a presentation by representative of the Committee to Council at a Workshop on 4 December 2017.

2. REPORT IN DETAIL

- 2.1.** The Management Committee for the Clarence City Band has operated under a Constitution approved by Council since it was initially established in 1988. This Constitution has been revised on a number of occasions in the ensuing years; the most recent of which was in 2004.
- 2.2.** Over the past 2 years the Management Committee for the Band have facilitated a comprehensive review of its operational and governance arrangements. This exercise has included a revision of key operation roles and portfolios; the development of the Bands Strategic Plan; a Membership Policy; Members Code of Conduct and Complaints and Dispute Resolution Policy.

- 2.3.** Additionally to the above matters, the Management Committee, in collaboration with Council officers, have undertaken an extensive review of the Constitution for the Band in order to create a framework that more closely reflects its current operations.
- 2.4.** The Constitution as proposed has reintroduced some important changes to the membership of the Management Committee. The Management Committee has operated at arms-length from Council involvement over the past 10+ years; however, the current Band Committee has favoured a framework which engenders a closer involvement from Council. As with all of Council's management committees, the Band members who are on the Management Committee are volunteers. The revised Constitution is now seeking that an elected member and a Council officer also be on the Management Committee.
- 2.5.** The revised Constitution also deals with a number of provisions in relation to the Band's operational structure, including the Band's formalised roles as Management Committee members; as well as now recognising in its membership the inclusion of "community members" rather than limiting membership to just musicians.

3. CONSULTATION

3.1. Community Consultation

Nil.

3.2. State/Local Government Protocol

Nil.

3.3. Other

The Committee, with input from Council officers, developed the revised Constitution. The Constitution and related matters concerning the governance of the Band has been presented to an Aldermen's Workshop.

4. STRATEGIC PLAN/POLICY IMPLICATIONS

Strategic Plan 2016-2026 – Strategic Goal areas:

“A people city

Clarence is a city which values diversity and encourages equity and inclusiveness, where people of all ages and abilities have the opportunity to improve their health and quality of life.

A well planned liveable city

Clarence will be a well-planned liveable city with services and supporting infrastructure to meet current and future needs.

Connectivity

Facilitate residents being connected to the community by having access to resources and opportunities to participate in community activity, employment, volunteering and lifelong learning.

Provide collaborative strategic direction and planning to address the needs and aspirations of the community that support community participation, enablement and leadership.

Recognise, celebrate, and support cultural diversity through a range of cultural programs, activities and events”.

5. EXTERNAL IMPACTS

The Management Committee, with Council, will continue to work towards promoting the Band and its activities within the Clarence Community.

6. RISK AND LEGAL IMPLICATIONS

The Clarence City Band is managed by a special committee of Council in accordance with the provisions of the Local Government Act, 1993.

7. FINANCIAL IMPLICATIONS

There are funds allocated in the Annual Plan for operation of the Committee. There are no direct financial impacts in the revision of the Constitution. Any future funding for the Committee will be based on Council budget deliberations.

8. ANY OTHER UNIQUE ISSUES

8.1. The Clarence City Band operates from the Council owned Lindisfarne Community Activity Centre. Whilst this arrangement has worked successfully over a number of years, the scale of operation and the size of the Band are now such that are placing a strain on the current capacity of this facility. This matter was discussed in broad terms at a Council Workshop.

8.2. By and large the Management Committee has presided on the Bands activities at a relatively low cost for Council. The Band has been successful in maintaining its equipment and resources for the benefits of its member through funds raised. However, there are pressures on the voluntary resources from which it draws.

9. CONCLUSION

The revised Constitution will greatly assist in the Bands operations and its future directions as outlined in its Strategic Plan.

Attachments: 1. Clarence City Band Management Committee Constitution
[as revised] (23)

Andrew Paul
GENERAL MANAGER

CONSTITUTION OF THE CLARENCE CITY BAND

**This Constitution is effective on the
date it is adopted by the Clarence City
Council and replaces any earlier
Constitution.**

1. Interpretation.....	2
2. Objectives	3
3. Obligations to the Council	3
4. Band Membership.....	4
5. Committee	6
6. Powers and Obligations of the Committee	10
7. Duties of Members.....	12
8. Specific Band Member Positions	12
9. Band and Committee Meetings.....	13
10. Elections	15
11. Review of Constitution	15
Schedule 1	16
Schedule 2	18

Name of Association

The Clarence City Band Management Committee is a special committee of the Council established under the *Local Government Act 1993*. This is the Constitution of the Committee.

1. Interpretation

In this Constitution –

- 1.1. “Annual Financial Statements” means the financial records and statements of the Committee required to be managed by the Committee in accordance with the Constitution;
- 1.2. “Annual Report” means a report to be provided to the Committee in accordance with the Constitution.
- 1.3. “Assets” means the assets and equipment used by the Committee and Band;
- 1.4. “Band” means the Clarence City Band and includes any sub-group of the Band;
- 1.5. “Code of Conduct” means documented expectations of behaviour applicable to members, approved by the Committee and endorsed by the Council.
- 1.6. “Committee” has the meaning set out under Section 5 Committee.
- 1.7. “Committee Member” means those persons elected or appointed to the membership positions set out under Section 5.
- 1.8. “Community Member” is reference to category of membership as set out under Band Membership.
- 1.9. “Council” means the elected and administrative arms of the Clarence City Council;
- 1.10. “Council’s Manager of Financial Services”, “Council’s Corporate Secretary” and “Council’s Communications and Marketing Coordinator” mean those persons fulfilling those roles or another authorised officer of the Council;
- 1.11. “Ensemble” means a subgroup of the Band who practise and perform as a unit.
- 1.12. “Fees” or subscription means those charges applied by the Committee on members on an annual, periodic or otherwise agreed basis.
- 1.13. “Member” has the same meaning as Members of the Band.
- 1.14. “Members of the Band” has the meaning set out under Band Membership (section 4). This term applies to all categories of Band Membership.
- 1.15. “Musician” means playing, or learning to play a musical instrument, conduct or compose music.
- 1.16. “Playing Member” is reference to category of membership as set out under Band Membership.
- 1.17. “Rules” mean those rules created by the Committee in accordance with the Constitution;
- 1.18. “Special General Meeting” or an “Annual General Meeting” have the meanings set out in the Constitution;
- 1.19. “Specific Band Member” means those persons appointed to perform specific tasks of the Music Director, Administrative Officer or Logistics Officer as described in the Constitution;
- 1.20. Words in the singular include the plural and words in the plural include the singular; and
- 1.21. If a word is defined, the definition includes any derivative of the word defined.

2.Objectives

2.1.The objectives of the Band are to: –

- 2.1.1. Serve the community by fostering and performing music
- 2.1.2. Develop, maintain and promote the Band within the City of Clarence;
- 2.1.3. Promote and maintain good fellowship and respect among members;
- 2.1.4. Provide opportunities for members to meet and play together, and to give concerts;
- 2.1.5. Remain a non-political and non-sectarian organisation.

2.2.The objectives of the Committee are to:-

- 2.2.1. Develop and disseminate policies that further the objective of the Band and the wellbeing of the participants;
- 2.2.2. Manage the affairs of the Band on behalf of the Council;
- 2.2.3. Support the development of musical and performance excellence within the Band;
- 2.2.4. Support the musician development program within the Band;
- 2.2.5. Manage and maintain the Band assets and equipment;
- 2.2.6. Make Rules, procedures and codes that are consistent with this Constitution, as are necessary for the purpose of administration and control of the Band; Refer to Powers and Obligations of the Committee:
- 2.2.7. Raise funds for the purpose of meeting expenditures by the Committee for the operation of the Band.

3.Obligations to the Council

- 3.1. The Clarence City Band Management Committee is a special committee of the Council. This is the Constitution of the Committee
- 3.2. All members of the Committee and the Band must act in accordance with all Council policies and applicable legislation when carrying out their respective duties, roles and responsibilities on behalf of the Committee and the Band.
- 3.3. Liaison with the Council for administrative purposes or as called for in this Constitution is the communication between the President as representative of the Band, and the Council's Coordinator Communications and Marketing or his/her nominee.

4. Band Membership

4.1. Band Member Categories

4.1.1. Playing Member

- 4.1.1.1. All people who are Members of the Band immediately prior to the adoption of this Constitution and pay fees are Playing Members of the Band under this Constitution;
- 4.1.1.2. All people who are accepted into the development program, attend regularly and pay fees are Playing Members of the Band;

4.1.2. Life Member

- 4.1.2.1. The Committee may bestow Life Membership on Band Members for exemplary services over an extended period of time.
- 4.1.2.2. The recognition of Life Members of the Band does not change the rights and duties of the member.
- 4.1.2.3. Life Members are not required to pay membership fees.

4.1.3. Community Member

- 4.1.3.1. The Committee may offer community membership to interested persons or consider applications from interested persons.
- 4.1.3.2. The rights and duties of a Community Member are the same as a Playing Member except for playing music and attending rehearsals.
- 4.1.3.3. The proportion of Community Members in the overall band is limited to less than 20 per cent.
- 4.1.3.4. A Community Member is any person whose name is recorded in the Band's membership register as a Community Member and who is NOT an active musician in band activities.
- 4.1.3.5. All persons who are accepted into the Band in this membership category and pay fees are Community Members of the Band;

4.2. Application for Band Membership

- 4.2.1. Any interested person may apply for membership of the Band by completing a Membership Application Form.
- 4.2.2. All applications for Band membership will be considered by the Committee at the next scheduled meeting of the Committee following the receipt of an application.
- 4.2.3. The Committee may accept or reject any application for Band membership by a simple majority.
- 4.2.4. Upon accepting an application for membership of the Band, the Committee will ensure that the new member's details are entered into the Band's register of membership.
- 4.2.5. Subject to any requirements of the Committee, an interested person may play with the Band until a decision is made on his or her application for membership.

4.3. Cessation of Band Membership

A person ceases to be a member if:

- 4.3.1. they resign from membership;
- 4.3.2. they cease paying fees for longer than three months after those fees were due;
- 4.3.3. they cease to attend band activities without explanation;
- 4.3.4. they are expelled from the Band;
- 4.3.5. if the Committee has reason to believe that a member no longer considers himself or herself a participating member of the Band or a Community Member;

4.4. Expulsion of a Member

Expulsion can be considered:

- 4.4.1. for any behaviour inconsistent with the Band's objectives;
- 4.4.2. for threatening to injure, or intentionally injuring, a person whilst involved with Band activities;
- 4.4.3. for behaviour not considered appropriate under the Code of Conduct;
- 4.4.4. for using Assets otherwise than in accordance with the directions of the Committee;
- 4.4.5. for damaging or misusing any Assets or Council equipment; or
- 4.4.6. in any other circumstances considered appropriate by a majority of Committee members.

4.5. Implementation of Expulsion

- 4.5.1. The Committee may consider that a matter does or does not warrant expulsion.
- 4.5.2. The Committee may take action within its authority under this constitution to address any matter which may have led to a potential expulsion.
- 4.5.3. If the Committee, by a majority determines that the Band Member should be expelled from the Band, the Corporate Secretary or his/her nominee should be consulted prior to the proposed expulsion being acted upon or made public.
- 4.5.4. Any directions received from the Council or a Council staff member on matters so authorised under this constitution are to be complied with.
- 4.5.5. The Band Member being expelled may appeal to the Committee.
- 4.5.6. The Corporate Secretary is to be kept informed of any appeal and how it is managed by the Committee.
- 4.5.7. The Band Member can continue active involvement in the Band during consideration of the matter provided no other party is put at risk by their participation, unless the Committee states in writing that the member cease participation until the matter is resolved.

5. Committee

5.1. Membership of Committee

Elected Positions

- 5.1.1. The Committee has the following elected positions:-

Executive Officers of the Committee:

- the President;
- the Vice President;
- the Secretary;
- the Treasurer; and

General Committee Member positions consist of no more than 3;

- 5.1.2. Elected positions are to be filled from Members of the Band;
- 5.1.3. Only 2 of the elected positions on the Committee can be held by persons from the "Community Member" membership category;

Appointed Positions

- 5.1.4. The Council can appoint an alderman as Council Elected Member Representative on the Committee;
- 5.1.5. The General Manager can appoint a Council staff member as Council Officer Representative on the Committee; and

Office Holder Positions

5.1.6. The following positions are by virtue of their appointment members of the Committee:

- the Music Director(s) of the Band;
- the Administrative Officer of the Band; and
- the Logistics Officer.

5.2. Committee Voting

- 5.2.1. All Committee Members have the power to vote on motions considered at a Committee meeting.
- 5.2.2. If the Music Director role is split between two persons, both those persons are members of the Committee and have only one vote but no further subdivision can occur.
- 5.2.3. If the Administrative Officer or Logistics Officer role is split between people, only one vote is assigned to each position.
- 5.2.4. If a person holds multiple roles, that person has one vote only.

5.3. Establishment of Committee

- 5.3.1. Elected appointments to the Committee that exists at the date that this Constitution remain members of the Committee.
- 5.3.2. Elected positions for the Committee including office bearers shall be nominated and elected by ballot at the Annual General Meeting.
- 5.3.3. The Council Representative(s) is appointed by the Council and the General Manager.
- 5.3.4. The Specific Band Members are selected as described in this Constitution.

5.4. Term of Office

Each member elected to the Committee holds office until the appointment of the new Committee at the Annual General Meeting of the following year.

5.5. Casual Vacancies

- 5.5.1. In the event of a casual vacancy in any Executive Officer positions mentioned under Membership of Committee, the Committee may appoint one of its Committee Members to the vacant office and the Committee Member so appointed may continue in office until the appointment of the new Committee at the Annual General Meeting following the date of appointment.
- 5.5.2. In the event of a casual vacancy in a General Member position the Committee may appoint a Member of the Band to the vacant position and the Member so appointed may continue in office until the appointment of the new Committee at the Annual General Meeting following the date of their appointment.
- 5.5.3. A Member of the Band appointed by the Committee to fill a casual vacancy cannot hold an executive position during that period of appointment.
- 5.5.4. The Committee may choose at its discretion to fill a casual vacancy for a General Member position by election using a Special General Meeting specifically called for that purpose.

5.6. Sub-committees

- 5.6.1. The General Committee may appoint sub-committees for clearly defined purposes and may prescribe the reporting and participation requirements;
- 5.6.2. The sub-committee cannot exceed the function or other directive assigned to it by the General Committee;
- 5.6.3. Unless otherwise determined by the Committee, the Chair of the sub-committee is to be a member of the Committee appointed by the Committee;
- 5.6.4. If the Committee appoints a Chair to the sub-committee who is not a Committee member, they are a guest, non-voting member of the Committee for the purposes of reporting and discussing the matters assigned to the sub-committee;
- 5.6.5. The sub-committee must appoint a secretary from within its participants to prepare agenda and minutes for the sub-committee;
- 5.6.6. A sub-committee can only commit funds if it has been specifically authorised to do so by the Committee and must be accountable for such funds;
- 5.6.7. The recommendations of a sub-committee only become a decision of the Committee once they are endorsed by the Committee;
- 5.6.8. The Rules of this Constitution in respect to voting, quorums and membership apply to a sub-committee as if it were the Committee;
- 5.6.9. The Committee can dissolve a sub-committee at any time with immediate effect;
- 5.6.10. Non Band Members can be participants in a sub-committee with approval from the Committee.

5.7. Cessation of Membership of the Committee

- 5.7.1. A person ceases to be a Member of the Committee if:
 - a) they resign from the Committee;
 - b) they cease being a Member of the Band;
 - c) they are expelled from the Band;
 - d) they have not attended three (3) consecutive meetings without agreement with the President, the Committee has made reasonable endeavours to contact the member and the Committee has reason to believe that the committee member no longer considers himself or herself a member of the Committee.

5.8. Expulsion of a Member from the Committee

- 5.8.1. The Committee may expel any member of the Committee whose conduct, in the opinion of the Committee or the Council is discreditable or injurious to the character or interest of the Committee, Band or Council.
- 5.8.2. Before any proposed expulsion is voted on:
 - a) the Committee must provide the member who may be expelled with reasonable notice of the reasons for the proposed expulsion and reasonable opportunity to respond to those reasons;
 - b) the Committee must consult with the Council's Corporate Secretary concerning the proposed expulsion including any material provided by the member before any proposed expulsion is voted on;
 - c) the Council's Corporate Secretary may allow the Committee to proceed to vote, or require the Committee not to proceed with the proposed expulsion or provide an alternative strategy to resolve any issues of concern. The decision of the Council's Corporate Secretary is final;
 - d) the Committee vote to expel a member of the Committee must be supported by at least two-thirds of the voting Committee members.

6. Powers and Obligations of the Committee

6.1. General

- 6.1.1. All members of the Committee and the Band must act in accordance with all Council policies and applicable legislation when carrying out their respective duties, roles and responsibilities on behalf of the Committee and the Band.
- 6.1.2. The Committee shall ensure an annual register of all members is maintained.
- 6.1.3. The Committee must ensure that all membership and personal information is kept secure and confidential and only used for purposes associated with the management of the Committee and the Band.
- 6.1.4. The Committee must report back to the Band on any issue or decision made by the Committee affecting the Band.
- 6.1.5. Committee Members must not unreasonably withhold information they have become aware of which is relevant to the topic under discussion.

6.2. Rules

- 6.2.1. The Committee may make or amend Rules for the management of the Band and its members within the intent of this Constitution and any direction from Council;
- 6.2.2. Rules made by the Committee may not change the functions or the intent of the Constitution; any Rules made by the Committee must, where appropriate, provide for procedural fairness in dealing with Band and member involvement
- 6.2.3. Rules proposed by the Committee, must be published in the Band newsletter and displayed in a visible place within the Band rooms for at least 21 days prior to being decided upon by the Committee;
- 6.2.4. Members may object to any proposed Rule, or the proposed amendment of any Rule, within the notification period or within 28 days after it has been decided upon;
- 6.2.5. If any objection is made to a proposed Rule or proposed amendment under this clause, the Committee must consider the objection at the next Committee meeting.

6.3. Disputes

- 6.3.1. The Committee is to prepare and publish procedures for the handling of disputes and may review those procedures from time to time;
- 6.3.2. Any dispute procedure developed by the Committee is to be approved by the Council's Corporate Secretary prior to publication. ;
- 6.3.3. In the consideration of disputes the Committee must:
 - a) alleviate any risk, real or perceived, to any party involved in the dispute, and
 - b) respect the confidentiality of any party as appropriate;
- 6.3.4. If a dispute is unlikely to be resolved at Band level, the President is required to seek advice from the Council's Corporate Secretary on how to proceed.

6.4. Financial

6.4.1. The Committee may:

- a) raise, and may expend and invest money held by the Committee;
- b) organise fund-raising functions and activities in the interests of the Band;
- c) pay an honorarium to specific band member position of the Committee;
- d) set fees and charges in relation to the services the Band provides;
- e) set fees for membership of the Band including participation in programs
- f) waive, suspend, defer or adjust the payment arrangement of fees for individual members in circumstances the Committee considers appropriate without prejudice to that member's rights and duties.

6.4.2. A financial decision made under this clause is to be in accordance with –

- a) Council policies;
- b) the objectives of the Committee as set out in this Constitution;
- c) legislation; and
- d) directions of the Council.

6.4.3. All cheques, draft bills of exchange, promissory notes and other negotiable instruments must be authorised by at least two of the following:

- a) President;
- b) Vice President;
- c) Secretary;
- d) Treasurer.

6.4.4. The Committee must ensure the Annual Financial Statements are provided to the Council by the 8 August each year so they can be audited by the Council, unless otherwise required by the Council's Manager of Financial Services;

6.4.5. All subscriptions, revenue, donations and other monies paid to the Committee or the Band are to be lodged into a bank account opened in the name of the Band or as approved by the Council.

6.4.6. The Annual Financial Statement is to include:

- a) the financial plan approved at the last Annual General Meeting if available;
- b) a summary of receipts and expenditure against the financial plan;
- c) a summary of any liabilities, projected future expenditure or revenue likely to impact on the financial plan;
- d) a summary of all assets, their value and last valuation; and
- e) a financial plan for the coming year.

6.4.7. The Committee is to maintain a record of all assets and their estimated values in accordance with Council requirements.

6.5.Assets

- 6.5.1. All Assets, Band equipment, and appliances purchased, donated, acquired or given to the Band or the Committee, and any equipment provided for the Band or Committee by the Council remains the property of the Council.
- 6.5.2. The Committee may acquire, purchase, lease, hire or make any Asset needed to carry out its objectives.
- 6.5.3. The Committee may sell or arrange for the sale of an Asset valued at less than \$300 except historical items or memorabilia.
- 6.5.4. The Council's Manager of Financial Services must approve the sale of an Asset if that Asset is worth more than \$300 or is an item of historical interest or is a memorabilia item.
- 6.5.5. The Committee must maintain –
 - a) all Assets, Band equipment, and documents in good condition;
 - b) a comprehensive inventory of the Assets; and
 - c) a copy of the inventory of Assets must be included in the Annual Financial Statements.

7.Duties of Members

7.1.The President has the following duties:

- 7.1.1. to chair all meetings of the Committee, Special General Meetings, and Annual General Meetings except where the Returning Officer is the Chair;
- 7.1.2. to ensure the efficient management of the Band in keeping with the objectives of this Constitution;
- 7.1.3. to instigate policy initiatives in consultation with the Council;
- 7.1.4. to prepare the Annual Report for the Annual General Meeting of the Committee, which is also to be provided to the Council, and which is to include a report on the achievements of the Committee and the Band over the previous year and recommendations for the year(s) ahead.

7.2.The Vice President has the following duties:

- 7.2.1. to chair meetings of the Committee, Special General Meetings, and Annual General Meetings if the President is absent;
- 7.2.2. to assist the President with his or her duties;
- 7.2.3. to assume the role and duties of the President if the President is unable to perform his or her duties.

7.3.The Secretary has the following duties:

- 7.3.1. to prepare an agenda for Committee Meetings;
- 7.3.2. to issue notices of meetings;
- 7.3.3. to keep the minutes of all meetings of the Committee, Special General Meetings, Annual General Meetings;
- 7.3.4. to be responsible for Committee and Band correspondence;
- 7.3.5. to maintain Band membership records;
- 7.3.6. to perform any other duty delegated by the Committee.

7.4. The Treasurer has the following duties:

- 7.4.1. to record all receipts and expenditure of the Band in a format and medium acceptable to the Committee and the Council;
- 7.4.2. to prepare a budget for the Committee for each financial year and provide a copy to the Council once approved by Committee;
- 7.4.3. to submit a report on the financial accounts to the Committee at each monthly meeting or as otherwise required by the Committee;
- 7.4.4. to record and report all receipts and expenditure against items in the budget to the Committee quarterly or as requested, and to the Annual General Meeting;
- 7.4.5. to receive and bank all subscriptions, revenue, donations and other monies into the Band's bank account;
- 7.4.6. to make all authorised disbursements on behalf of the Committee;
- 7.4.7. to keep accounts and records of the credits and liabilities of the Band;
- 7.4.8. issuing and following up on invoices for membership, instrument hire and any other service provided by the Band within the intent of the Constitution and authorised by the Committee
- 7.4.9. to organise asset re-valuation every two years or as required by Council;
- 7.4.10. to produce all financial statements, books, receipts and accounts to the Council for audit by the 8 August each year unless otherwise agreed by the Council's Manager of Financial Services;
- 7.4.11. to open the accounts for inspection by members of the Committee and the Council's Internal Auditor, subject to any reasonable restrictions as to time and manner of inspection;
- 7.4.12. to provide an Annual Financial Statement at each Annual General Meeting;
- 7.4.13. the duties of the Treasurer can be delegated with the Committee's approval within the parameters of an approved budget but the Treasurer's duty to report all receipts or expenditure and to submit all reports cannot be delegated.

7.5. Duties of all Committee Members:

- 7.5.1. attend all Committee meetings;
- 7.5.2. serve on sub-committees as appropriate;
- 7.5.3. perform any duties delegated to them by the Committee;
- 7.5.4. with the exception of the role of President, the duties of office holders can be delegated to Committee Members to reduce work load but not to deflect responsibility, and only with approval of the Committee; and
- 7.5.5. the role of President cannot be delegated other than as described under the role of the Vice President.

7.6. Duties of all Band Members

- 7.6.1. Comply with the Band Constitution and Rules of the Committee;
- 7.6.2. Attend ensemble rehearsals and performances for which the member has made or implied by previous regular attendance a commitment to the ensemble, other than Community Members;
- 7.6.3. Advise the ensemble leader where attendance is not possible;
- 7.6.4. Conduct themselves in a manner respectful of others;
- 7.6.5. Pay fees as determined by the Committee;
- 7.6.6. All participants involved in Band activities, regardless of their financial, playing or appointed status, are required to comply with the Band's Constitution and Rules including the Code of Conduct; and
- 7.6.7. Comply with reasonable directions of the Musical Director or nominated Ensemble Leader within their role described in this Constitution or authorised by the Committee.

8. Specific Band Member Positions

8.1. Appointment Process for Specific Band Member Positions

- 8.1.1. The process of appointment, management, review and dismissal (if applicable) of Specific Band Member positions must follow procedures consistent with Council's human resource policies and practices;
- 8.1.2. If a vacancy occurs the position is to be advertised within the Band;
- 8.1.3. The Committee may advertise publicly through the Council procedures if the Committee considers external participants would benefit the Band. Internal applicants may still apply;
- 8.1.4. If there are multiple applicants for a position the Committee must receive written application and may interview the applicants;
- 8.1.5. A position may be shared subject to approval of the Committee;
- 8.1.6. Each position and any share arrangements are to be reviewed every two years by the Committee;
- 8.1.7. At completion of each review the Committee may determine to retain the current arrangement, to amend duties within the position or to vacate the position without prejudice to the current position holder(s);
- 8.1.8. Any changes to position description, appointment, contractual arrangement and/or honorarium associated with a Specific Band Member position is subject to the consideration and endorsement of the Council's C-Ordinator Communications and Marketing; and
- 8.1.9. Specific provisions in relation of the Specific Band Member Positions (namely Musical Director, Administrative Officer and Logistic Officer) are detailed in Schedule 1 of the Constitution.

9. Band and Committee Meetings

- 9.1.1. Procedure for the conduct of Band and Committee meetings are contained in Schedule 2 of this Constitution.

10. Elections

10.1. General

- 10.1.1. Elections for members of the Committee are to be held at each Annual General Meeting;
- 10.1.2. A Special General Meeting may be called for the purpose of electing a member of the Committee or appointing a person to a casual vacancy of the Committee;
- 10.1.3. The Committee must appoint a Returning Officer for any Committee elections and
- 10.1.4. The Returning Officer is unable to stand for election to any Committee position(s) under consideration by that meeting.

10.2. Nominations to Committee

- 10.2.1. The Returning Officer must call for written nominations for elected members of the Committee at least 21 days before an election is held;
- 10.2.2. The President can call for written nominations within the timeframe if the Returning Officer is not yet appointed;
- 10.2.3. A Returning Officer must be appointed and in position for an election to occur;
- 10.2.4. The Community Member is not required to be a current Band Member at time of nomination, but must be nominated and elected by Band Members;
- 10.2.5. The Council Representatives are appointed by the Council;
- 10.2.6. All other nominees must be current Band Members, nominated and elected by Band Members;
- 10.2.7. The nomination form must include the position for which the person is nominating, signature of the nominee and of the member making the nomination;
- 10.2.8. If there are no nominations for a position on the Committee, the presiding Returning Officer is to ask for verbal nominations at the Annual General Meeting;
- 10.2.9. A member of the Band may make a verbal nomination at a Special General Meeting called for the purpose of electing a member to the Committee or at an Annual General Meeting;
- 10.2.10. A member who is nominated verbally is to state whether he or she is happy for the nomination to be made.
- 10.2.11. If there are no written or verbal nominations for a position on the Committee, that position on the Committee is to remain vacant until a member of the Band: is–
 - a) nominated for the position; and
 - b) voted into that position at a Special General Meeting, called for the purpose of electing the member to the Committee, or at an Annual General Meeting;
- 10.2.12. If there is only one nomination for a position, the appointment must be endorsed by a majority of the members present;

- 10.2.13. If the motion for the election of a member of the Band to a position on the Committee is not passed by a majority of the members present that position is to remain vacant until a new nomination for that position is received in accordance with the Constitution;
- 10.2.14. A member of the Band who was unsuccessful in their nomination to the Committee may submit a new nomination at another election; and
- 10.2.15. Unsuccessful nominees for election to executive office bearer positions will be automatically included as a nominee for a General Committee position.

10.3. Voting for Committee Members

- 10.3.1. All members of the Band who are present at an Annual General Meeting or at a Special General Meeting, called for the purpose of electing Committee Member(s), are entitled to a single vote on the election of a member to the Committee;
- 10.3.2. The Returning Officer is to declare at an Annual General Meeting or at a Special General Meeting called for the purpose of electing a Committee Member(s), that –
 - a) a specific position on the Committee is vacant; or
 - b) all positions on the Committee are vacant;
- 10.3.3. Once a position is declared vacant, the Returning Officer is to read the names of the nominees for the position and may ask the nominees to leave the room;
- 10.3.4. The Returning Officer is to then request the persons attending the Annual General Meeting or the Special General Meeting called for the purpose of electing a Committee Member(s), to cast their votes for the positions on the Committee;
- 10.3.5. A member may cast his or her vote by raising his or her hand when the Returning Officer asks for votes for that person unless the Returning Officer determines the election is to be held by ballot;
- 10.3.6. The nominee with the most votes is to be declared by the Returning Officer elected to the relevant position.
- 10.3.7. If the votes are equal for a nominee to be appointed to the Committee for at least two nominees, the Returning Officer is to –
 - a) exclude any other nominees from the vote; and
 - b) request the members of the Band attending the meeting to vote again for the remaining nominees; and
- 10.3.8. The positions on the Committee are to be voted on in the following order:
 - a) President;
 - b) Vice President;
 - c) Secretary;
 - d) Treasurer;
 - e) General member(s) Refer Membership of Committee,

11. Review of Constitution

- 11.1.1. The Committee may make recommendations to Council on the review of the Committee's responsibilities (Powers and Obligations) and constitutional framework;
- 11.1.2. Council's Corporate Secretary is to be consulted on any proposed amendment to the Constitution prior to its consideration by the Band Members;
- 11.1.3. Recommendations for amendments to the constitutional framework can be made at any time provided that suggested changes are considered at an Annual General Meeting or Special General Meeting called for these purposes. A quorum must be present at the Annual General Meeting or Special General Meeting, and two-thirds of those present and entitled to vote must support the recommendation/s;
- 11.1.4. Any Amendment/s to this Constitution must be approved by Council; and
- 11.1.5. As a minimum timeframe, the Constitution is to be reviewed every four (4) years by report and recommendation to the Council.

SCHEDULE 1

11.2. Music Director

- 11.2.1. The Committee is to maintain a position description and appoint a Music Director;
- 11.2.2. If the Committee decides to appoint multiple music directors, the roles of each must be clearly defined and the duties and obligations described below apply to those ensembles for which each Music Director is responsible;
- 11.2.3. The Music Director is responsible for monitoring and improving:
 - a) the musicality of the Band;
 - b) the engagement of the playing members; and
 - c) the ongoing skills development of players and ensemble leaders;
- 11.2.4. The role of the Music Director includes the following duties and obligations:
 - a) to provide guidance and leadership to members of the Band;
 - b) to liaise with all ensemble leaders;
 - c) to organise and direct rehearsals;
 - d) to co-ordinate performances;
 - e) to be involved in the recruitment of players for the Band;
 - f) to be responsible for the coordination of the selection of music for the ensembles where the Music Director is the principal conductor for that ensemble;
 - g) to liaise with ensemble leaders on the selection of music for the ensembles where the Music Director is not the principal conductor;
 - h) to liaise with the Administrative and Logistics Officers;
 - i) to advise the Committee on potential music purchases; and
 - j) to discuss attendance expectations for each ensemble and event in consultation with players;
- 11.2.5. The Music Director may determine the player composition of each ensemble in consultation with the ensemble leader and the players involved on the basis of the needs of the ensemble and the skills, commitment and availability of the players;
- 11.2.6. If the Music Director, ensemble leader or player are unable to agree on player composition, music selection or any other matter relating to the ensemble, the matter if warranted may be dealt with under an appropriate Band policy;
- 11.2.7. Without diminishing the overall responsibilities and authorities applicable to the role of Music Director for the Band, a Music Director may delegate the responsibility for leading specific ensembles and determining player composition for an assigned ensemble;
- 11.2.8. The Music Director is to provide a report to the Committee on a monthly basis and provide an Annual Report to the Annual General Meeting concerning the activities of the Band over the previous report period, including an outline of the activities of the Band for the forward report period;

- 11.2.9. The Music Director is to provide advice to the Committee as requested, in addition to regular reports; and
- 11.2.10. The Music Director is to liaise and cooperate with any sub-committee established to assist and facilitate Band activities and processes.

11.3. Administrative Officer

- 11.3.1. The Committee is to maintain a position description and appoint an Administrative Officer. The role of the office can be shared if agreed to by the Committee;
- 11.3.2. The Administrative Officer has the following duties and obligations:
 - a) maintain the print music library;
 - b) maintain the uniform pool;
 - c) maintain the music equipment pool including the inventory of instruments providing a report to the Secretary and Committee as required;
 - d) compile, print and distribute the newsletter 'High Note';
 - e) organise the purchases of new equipment and music as directed by the Committee; and
 - f) organise general items such as stationery, logos, programs, tickets, posters, etc;

11.4. The Logistics Officer

- 11.4.1. The Committee is to maintain a position description and appoint a Logistics Officer. The role of the office can be shared if agreed to by the Committee.
- 11.4.2. The Logistics Officer has the following duties and obligations:
 - a) to liaise with the Committee and the Music Director on upcoming performances;
 - b) to liaise with the appointed Council officer at the Council depot to access Band trailer and a suitable vehicle to tow the trailer;
 - c) to organise and supervise the loading and unloading of the trailer at the Band room and events;
 - d) to organise at the events venues the Band staging, seating, stands, etc. with regard to the special needs of the bands and support groups, such as choirs; and
 - e) to supervise the maintenance of the Band room and storage facility.

SCHEDULE 2

11.5. General Provisions

11.5.1. Presiding at meetings

- The President is to preside at all meetings of the Committee at which he or she is present;
- If the President is not present at the meeting of the Committee, the Vice President is to preside at the meeting; and
- If the President and the Vice President are not present at the meeting, a member elected by the members present at the meeting is to preside.

11.5.2. Quorum and voting

- At a meeting of the Committee, a quorum is constituted by a majority of the Committee Members; and
- If a quorum is not present within 30 minutes of the start time, the meeting is cancelled.

11.5.3. Disclosure of interests

- If a member has a direct or indirect, material or pecuniary interest in a matter being considered, to be considered or that has been considered by the Committee, the Member must disclose the nature of the interest to the Committee as soon as the relevant facts come to the Member's knowledge;
- Unless the Committee otherwise determines, a Member who has made a disclosure under subclause (1) in relation to the matter must not –
 - a) be present during the deliberation of the Committee in relation to that matter; or
 - b) take part in any decision of the Committee in relation to the matter; and
- A decision of the Committee is valid notwithstanding a failure by a Member to disclose an interest in accordance with this clause.

11.6. Annual General Meetings

11.6.1. Calling the Annual General Meeting

- The Annual General Meeting is to be held during the calendar month of September each year on a day determined by the Committee;
- If for any reason beyond the reasonable control of the Committee the Annual General Meeting cannot be held on the due date, then the Secretary is to arrange for an alternative date for the Annual General Meeting to be held as soon as practicable and no more than two months after the due date. In these circumstances until the Annual General Meeting is held all Committee Members retain their office;

- Delays beyond the above are to be referred to the Council's Communications and Marketing Coordinator for advice;
- Members of the Band and the Committee must be given 21 days' notice of the date and time of the Annual General Meeting and be provided with an agenda;
- All members of the Band are entitled to attend and vote at the Annual General Meeting;
- A quorum for an Annual General Meeting is at least 25 percent of members of the Band;
- The Annual General Meeting is to be adjourned for 14 days to a date and time to be advised by the Secretary if, after 30 minutes from the time the meeting was to start, there is not a quorum present; and
- If the Annual General Meeting is adjourned under the clause above, and there is not a quorum once the meeting has been recommenced, the members present constitute a quorum.

11.6.2. Procedures of the Annual General Meeting

- The meeting procedures for conducting the Annual General Meeting are the same as a Committee meeting unless stated otherwise in this section;
- The following matters must be dealt with at the Annual General Meeting:
 - a) attendees and apologies;
 - b) minutes of the previous Annual General Meeting;
 - c) minutes from any Special General Meeting that has occurred since the last Annual General Meeting;
 - d) the Annual Report by the President;
 - e) the Annual Report by the Music Director (s);
 - f) the presentation of the Annual Financial Statements, budget and asset register;
 - g) the election of the Committee; and
 - h) general business;
- The incumbent President will chair the meeting prior to the elections;
- The Returning Officer will chair the meeting during any elections; and
- The newly appointed President will chair the meeting after the elections are completed, or completed to the extent possible at that meeting.

11.7. Ordinary Committee Meetings

- 11.7.1. The Committee is to meet at least once each calendar month, unless the Committee otherwise determines, but no less than six times a year;
- 11.7.2. The presiding officer shall accept apologies and declare the meeting open when a quorum is present;
- 11.7.3. The meeting shall consider:
 - minutes from the previous meeting;
 - correspondence in and out;
 - reports; and
 - general business;
- 11.7.4. The presiding officer can call for agenda items from the floor, and can amend the order of the meeting with the agreement of members present;
- 11.7.5. All motions and amendments must be moved and seconded. If no seconder is found, the motion or amendment lapses;
- 11.7.6. A question is decided in the positive by a majority of votes of the members present and voting; and
- 11.7.7. A question is decided in the negative if there is equal or fewer affirmative votes of the members present and voting.

11.8. Special Committee Meetings

- 11.8.1. The President can call a Special Committee Meeting with seven days' notice or shorter if the matter is urgent;
- 11.8.2. A Special Committee Meeting can be called by at least three Committee Members;
- 11.8.3. A Special Committee Meeting can only consider the items raised for consideration;
- 11.8.4. The Special Committee Meeting does not disrupt the Committee Meeting cycle;
- 11.8.5. The quorum and voting rights and procedures for motions for a Special Committee Meeting are the same as a regular Committee Meeting; and
- 11.8.6. The minutes of a Special Committee Meeting must be prepared and tabled at the next regular Committee Meeting.

11.9. Special General Meetings

- 11.9.1. The Committee may call a Special General Meeting for any matter requiring consideration by all Band members;
- 11.9.2. The Committee must call a Special General Meeting if they receive a written request for a Special General Meeting signed by 10 per cent of Members of the Band;
- 11.9.3. Committee and Members of the Band must be given an agenda and must be given 14 days' notice of the date and time of a Special General Meeting called for any purpose other than amendments to the Constitution or election of committee members which requires 21 days notice;

- 11.9.4. The notice of the meeting must include the reason for the Special General Meeting and any supporting document the Band members may reasonably require to form an opinion on the topic;
- 11.9.5. The attendees, voting rights and quorum requirements for a Special General Meeting are the same as for an Annual General Meeting;
- 11.9.6. A Special General Meeting will not have any minutes of previous meeting unless a previous Special General Meeting had occurred about the same subject, but the minutes from a Special General Meeting are to be tabled at the next occurring Annual General Meeting;
- 11.9.7. The President is to chair the Special General Meeting;
- 11.9.8. If the President of the Committee is not present the Vice President is to chair the meeting. If the Vice President is not available, the meeting is to be adjourned to a date and time to be advised to the members by the Secretary and
- 11.9.9. A Special General Meeting must only deal with matters that were notified to the members of the Band.

11.7.3 REVIEW OF THE ABORIGINAL AND DUAL NAMING POLICY

(File No 09-20-01)

EXECUTIVE SUMMARY**PURPOSE**

To consider Council's response to an Issues Paper on the Review of the Aboriginal and Dual Naming Policy circulated to local government by the department of Premier and Cabinet.

RELATION TO EXISTING POLICY/PLANS

The Issues Paper on the Review of the Aboriginal and Dual Naming Policy does not directly relate to any existing Council policies. Nonetheless, Council has in its Strategic Plan a firm commitment to community engagement and consultation; the nature of which appears to be the key focus of the Issues Paper.

LEGISLATIVE REQUIREMENTS

Insofar as Council's statutory obligations are concerned, there are no statutory requirements associated with the purpose of the Issues Paper, however, Council is in the practice of providing responses to such legislative reviews.

CONSULTATION

This Issues Paper is circulated consistent with and in accordance with the standing State/Local Government consultation protocols.

FINANCIAL IMPLICATIONS

There are no financial/resource implications for Council in respect to this matter.

RECOMMENDATION:

- A. That Council notes the issues contained in the Review of the Aboriginal and dual Naming Policy Issues Paper.
- B. That Council endorses the comments and recommendations included in the Draft response to the Issues Paper for submission to the Department of Premier and Cabinet and the Local Government Association of Tasmania (LGAT).

ASSOCIATED REPORT**1. BACKGROUND**

- 1.1.** The Tasmanian Government's Aboriginal and Dual Naming Policy was formally introduced in 2013.
- 1.2.** In May 2017, the Premier announced an intention to undertake a review of the Aboriginal and Dual Naming Policy.

- 1.3.** As part of the consultation process, the Department of Premier and Cabinet has distributed an Aboriginal and dual Naming Policy Issues Paper to Tasmanian Councils for their input into the key questions that have arisen in the application of the Policy.

2. REPORT IN DETAIL

- 2.1.** The local government industry has been specifically written to as part of the review of the Aboriginal and Dual Naming Policy. This is due to the question of greater local government consultation and engagement being sought by Councils through the Premier's Local Government Council. It is appropriate, given this industry request that Council provides input and response to the Issues Paper provided under the review.
- 2.2.** The focus of the Issues Paper centres on the nature of consultation that is facilitated under the existing Policy and whether this should be expanded to encompass other participation.
- 2.3.** The approach taken in the drafting of Council's response has to respond positively for a greater engagement in the dual naming of geographical features and localities, from the local community, particularly to give opportunity to local history and cultural heritage interest groups. This is consistent with Council's own commitments to consult with such representative groups on matters that are of interest and which may have enhanced knowledge in the area.

3. CONSULTATION

3.1. Community Consultation

The Review of the Aboriginal and Dual Naming Policy is the subject of community consultation and open to public submissions.

3.2. State/Local Government Protocol

The Issues Paper on the Review of the Aboriginal and Dual Naming Policy has been circulated to all Councils in accordance with the standing State/Local Government consultation protocols.

3.3. Other

The draft response to the Summary Paper has been circulated to Aldermen and discussed at Aldermen Workshops and further input has been incorporated.

4. STRATEGIC PLAN/POLICY IMPLICATIONS

The Issues Paper on the Review of the Aboriginal and Dual Naming Policy does not directly relate to any existing Council policies. Nonetheless, Council has in its Strategic Plan a firm commitment to community engagement and consultation; the nature of which appears to be the key focus of the Issues Paper.

5. EXTERNAL IMPACTS

Not applicable.

6. RISK AND LEGAL IMPLICATIONS

Insofar as Council's statutory obligations are concerned, there are no statutory requirements associated with the purpose of the Issues Paper, however, Council is in the practice of providing responses to such legislative reviews.

7. FINANCIAL IMPLICATIONS

There are no financial/resource implications for Council in respect to this matter.

8. ANY OTHER UNIQUE ISSUES

None identified.

9. CONCLUSION

In general terms, the greater involvement that can be facilitated at a local level should be encouraged in any review of the current policy. Council submission is consistent with this outcome/objective.

Attachments: 1. Draft Response to the Issues Paper on the Review of the Aboriginal and Dual Naming Policy (4)

Andrew Paul
GENERAL MANAGER

ABORIGINAL AND DUAL NAMING POLICY – DRAFT RESPONSE ISSUES FOR CONSIDERATION

ISSUE 1: NOMINATION OF ABORIGINAL AND DUAL NAME PROPOSALS

Under the Nomenclature Board's Rules for Place Names—in Tasmania, Aboriginal and dual names are to be in the revived palawa kani language. As the custodians of palawa kani, the TAC is the sole authoritative source for authenticating Aboriginal names and their spelling; it is also currently responsible for consulting with the Aboriginal community and providing advice to the Nomenclature Board.

Notwithstanding the TAC's experience in Tasmanian Aboriginal language research, revival and palawa kani, this review provides an opportunity to consider the suggestions that have been made in relation to allowing Aboriginal and dual naming proposals to be made by other organisations, groups and individuals.

QUESTION

Should a revised Aboriginal and Dual Naming Policy:

- 1.1 allow both Aboriginal and non-Aboriginal organisations, local council, or individual to nominate an Aboriginal or dual name directly to the Nomenclature Board?

RECOMMENDED RESPONSE (Y/N)

Yes a broader basis for nomination is supported However, it is noted that neither the current policy or the questions posed in this issues paper seek to reference and explore how the broader Tasmanian community consulted with and is able to participate in the naming processes contemplated

ISSUE 2: AUTHENTICATING ABORIGINAL AND DUAL NAMES

There may be merit in the Policy requiring the provision of supporting information to accompany all future nominations provided to the Nomenclature Board. In addition, it may be appropriate to provide the Nomenclature Board with the ability to consult with various experts in order to ensure the validity and authenticity of proposed Aboriginal names.

QUESTION

Should a revised Aboriginal and Dual Naming Policy:

- 2.1 allow for a register of supplementary organisations or individuals that may provide expert advice on the authentication of proposed Aboriginal and dual names?
- 2.2 include minimum standards for accompanying information to be submitted to the Nomenclature Board with name proposals?
- 2.3 enable the Nomenclature Board to consult or engage with any individual, group or entity if it considers that doing so may improve its decision making on proposed Aboriginal and dual names?

RECOMMENDED RESPONSE(Y/N)

Yes 2.1 and 2.3 are supported however the nature of standards contemplated under 2.2 need further clarification before any response can be considered.

ISSUE 3: LOCAL ABORIGINAL AND DUAL NAMING

Some Aboriginal organisations that are based on local or regional connections are concerned that Aboriginal and dual naming is occurring in their local areas without their express involvement or approval.

More recently, some organisations have requested ownership of, or contribution to, the naming process where a name is proposed in or around their local area.

QUESTION

Should a revised Aboriginal and Dual Naming Policy:

- 3.1 provide improved opportunities for consultation with all Aboriginal organisations and groups, with a view to enhancing consultation and engagement with organisations that have specific interests in the locations where Aboriginal and dual names are proposed?

RECOMMENDED RESPONSE (Y/N)

Yes this proposal is supported on the assumption that consultation is intended to occur with all local “specific cultural heritage/history interest groups” representative of the locality in question.

ISSUE 4: PALAWA KANI AND THE USE, SPELLING, PRONUNCIATION AND WRITING OF TASMANIAN ABORIGINAL LANGUAGES UNDER THE POLICY

An initiative of the TAC's Language Program, palawa kani is a revived form of the original and known Tasmanian Aboriginal languages. It incorporates authentic elements of the original languages remembered by Tasmanian Aborigines from the nineteenth to the twenty first centuries while drawing on an extensive body of historical and linguistic research.

The review will consider whether it is necessary to draw a distinction between palawa kani and original Tasmanian Aboriginal language/s. As a composite language palawa kani comprises select words, phrases and some place names recorded from various historic sources from the estimated dozen original languages.

Some Aboriginal groups are concerned their traditional languages are not encompassed by palawa kani. In many instances, words and phrases from North-East Tasmania— the place where the predominant remnants of language exist — are adopted under palawa kani. This therefore relates partly just to the larger knowledge concerning the traditional people of this area

QUESTION

Should a revised Aboriginal and Dual Naming Policy:

- 4.1 refer to the Aboriginal and dual naming of Tasmanian places and features in Tasmanian Aboriginal languages and to palawa kani — noting that the TAC's palawa kani program can continue to inform name proposals under the Policy?
- 4.2 allow for name proposals to be informed by any Tasmanian language or group — if supported by historical evidence and research?
- 4.3 provide a preference for name proposals to be informed by the language/languages of the original people of the Place or feature to be named?
- 4.4 where more than one name is recorded or known for the one feature or place, adopt the name with the greater weight of historical references as the Aboriginal or dual name?
- 4.5 where a place or feature has more than one name describing parts of the feature or place appropriately name each part based on historical evidence and research?

RECOMMENDED RESPONSE (Y/N)

Yes, these general provisions are supported

ISSUE 5: CONSULTATION, ENGAGEMENT AND THE ROLE OF LOCAL GOVERNMENT

Through the Premier's Local Government Council (PLGC), local government has expressed a desire for improved consultation and engagement with councils, prior to name proposals being considered by the Nomenclature Board.

Such engagement could provide councils with the opportunity to consider any implications associated with new name proposals and local community support

QUESTION

Should a revised Aboriginal and Dual Naming policy:

- 5.1 ensure that all name proposals to the Nomenclature Board are forwarded to the relevant local council for comment, prior to any formal consideration by the Nomenclature Board?

RECOMMENDED RESPONSE (Y/N)

Yes however, should also include consultation with other local specific cultural heritage/history interest groups which are represented in the area

ISSUE 6: REPLACING PLACE NAMES (INCLUDING OFFENSIVE NAMES) WITH ABORIGINAL NAMES

Replacing place names offensive to the Aboriginal community forms a core component of the Policy. Currently other jurisdictions in Australia are actively collaborating with Aboriginal communities to replace offensive and derogatory place names. There is potential in Tasmania for proposals to replace additional offensive place names to be addressed and considered by the Board.

QUESTION

Should a revised Aboriginal and Dual Naming Policy:

6.1 include a specific mechanism for the Nomenclature Board to consider and replace all current place names offensive to the Aboriginal community?

RECOMMENDED RESPONSE

Yes the proposal for the Nomenclature Board to have the final sign off is supported however, subject to appropriate consultation with other local specific cultural heritage/history groups represented in the area

11.7.4 AMENDMENTS TO THE LOCAL GOVERNMENT (GENERAL) REGULATIONS 2015 – STAKEHOLDER CONSULTATION
(File No)**EXECUTIVE SUMMARY****PURPOSE**

To consider Council's response to the review of the Local Government (General) Regulations prepared by the Division of Local Government.

RELATION TO EXISTING POLICY/PLANS

A portion of the response to this paper relates to existing Council policies.

LEGISLATIVE REQUIREMENTS

There are no statutory requirements associated with the purpose of the discussion paper, however, Council is in the practice of providing responses to such legislative reviews.

CONSULTATION

Earlier discussion papers were circulated to all Councils in 2016 and 2017 regarding the targeted review of the Local Government Act in accordance with the standing State/Local Government consultation protocols. The proposed changes to the Local Government (General) Regulations have arisen from that review.

FINANCIAL IMPLICATIONS

None identified.

RECOMMENDATION:

- A. That Council notes the issues contained in the summary of the Amendments to the Local Government (General) Regulations 2015.
- B. That Council endorses the comments and recommendations included in the Draft response to the Amendments for submission to the Local Government Division, Department of Premier and Cabinet and the Local Government Association of Tasmania (LGAT).

ASSOCIATED REPORT**1. BACKGROUND**

- 1.1. The "targeted" review of the Local Government Act 1993 was commenced in April 2016, at which time a discussion paper was distributed to Council seeking input. The second phase of the consultation process was undertaken in April 2017 and Council again provided a response paper.

- 1.2.** As a result of Amendments to the Local Government Act following the review, changes are proposed to the Local Government (General) Regulations specifically relating to gifts and benefits and election expenses. The Department of Premier and Cabinet has forwarded a summary paper to Councils for input.

2. REPORT IN DETAIL

- 2.1.** Feedback is now sought on 3 amendments to the Local Government (General) Regulations, namely:

- The introduction of a gifts and donations register as per the new Part 5A of the *Local Government Act 1993*.
- Amending Regulation 22 to increase the current electoral advertising expenditure limit by a monetary amount as per Recommendation 28 of the Targeted Review Steering Committee.
- Amending the Declaration of Office such that elected members are required to engage in ongoing professional development and abide by the principles of good governance, as per Recommendation 5 of the Steering Committee.

- 2.2.** Details of the proposed amendments have been distributed to Aldermen together with the recommended response. These documents were the subject of Workshop discussion on 4 December 2017. The views expressed from these discussions have been incorporated in a draft Council response (refer Attachment 1).

3. CONSULTATION

3.1. Community Consultation

As with all local government related regulatory reviews this regulations review is the subject of community consultation and open to public submissions.

3.2. State/Local Government Protocol

A consultation paper has been circulated to all Councils in accordance with the standing State/Local Government consultation protocols.

3.3. Other

The draft response to the consultation paper has been circulated to Aldermen and discussed at an Aldermen Workshop and further input has been incorporated.

4. STRATEGIC PLAN/POLICY IMPLICATIONS

The new Part 5A of the Local Government Act requires the introduction of a gifts and donations register. Council's has articulated declaration requirements in its policy on gifts and benefits and this has been drafted to work in tandem with the Code of Conduct.

5. EXTERNAL IMPACTS

Not applicable.

6. RISK AND LEGAL IMPLICATIONS

There are no statutory requirements associated with participation in the review process; however, Council is in the practice of providing responses to such legislative reviews.

7. FINANCIAL IMPLICATIONS

Some financial/resource implications will occur should the reforms identified in the paper take place; however, it is difficult to quantify at this stage.

8. ANY OTHER UNIQUE ISSUES

None identified.

9. CONCLUSION

9.1. Council is in the practice of providing responses to the legislative reform reviews that are conducted on a routine basis.

9.2. Under the normal steps of the consultation Protocol this will be the final opportunity for Council to respond to this current review.

- 9.3.** The response from the local government industry may vary on the subject areas covered and as such a clear indication of what changes will ultimately occur is difficult to ascertain.

Attachments: 1. Draft Response Paper to the Amendments to the Local Government (General) Regulations 2015 – Stakeholder Consultation (10)

Andrew Paul
GENERAL MANAGER

Amendments to the *Local Government (General) Regulations 2015* – Stakeholder Consultation

Consultation

The Local Government Division is seeking comment on the following three amendments to the *Local Government (General) Regulations 2015* (General Regulations):

1. The introduction of a gifts and donations register as per the new Part 5A of the *Local Government Act 1993*. Consultation is focused largely on the gifts and donations register and comment is sought on the attached table which summarises the key issues and possible changes to the General Regulations

Recommendation/Response

(see attached table).

2. Amending regulation 22 to increase the current electoral advertising expenditure limit by a monetary amount as per Recommendation 28 of the Targeted Review Steering Committee. The Local Government Division recommends commencing the new expenditure limits at an agreed amount indexed by CPI each year.
 - Currently, regulation 22 of the General Regulations states that the advertising expenditure limit for a candidate in a single election is \$5,000, while the expenditure limit for a candidate standing for councillor and a mayor or deputy mayor is \$8,000.
 - It is proposed that the advertising expenditure for a candidate in a single election be raised to \$6,500, and the expenditure for a candidate standing for councillor and a mayor or deputy mayor be raised to \$10,500, indexed by CPI each subsequent year. These figures reflect the CPI increase on the current amount since they were last set in 2005 (rounded to the nearest \$500).

Recommendation/Response

That the proposed increase be supported. However, Council notes that the provisions and this increase:-

- a. do not address earlier concerns held regarding the common use of standing for multiple offices being deliberately used to increase the electoral spending limit;
- b. maintains that the spending cap only relates to a limited number of specified classes of expenditure and does not fully cover electoral spending through all communication mediums;
- c. based on the thresholds proposed, do not have regard for size of a local government election in terms of area and/or population; and
- d. do not provide for effective management of electoral spending through a party based franchise and the different tax advantages that individuals can gain through the use of party based “ticketing”.

Amendments to the *Local Government (General) Regulations 2015*

- The intent is to ensure that the levels set out in the General Regulations in 2005 are adjusted for inflation and then automatically indexed each subsequent year, ensuring real values are maintained. The General Regulations will be amended according to the latest CPI calculations at the time of drafting.

Recommendation/Response

That the proposed mechanism for CPI increases be supported.

- In addition, the amount indexed each subsequent year could be rounded to the nearest \$500 for ease of administering the limits.

Recommendation/Response

That the proposal be supported.

3. Amending the Declaration of Office such that elected members are required to engage in ongoing professional development and abide by the principles of good governance, as per Recommendation 5 of the Steering Committee.
- It is suggested that the Declaration could be amended by including the following provisions immediately after (b):
 - (c) *engage in ongoing professional development; and*
 - (d) *abide by the principles of good governance.*

Recommendation/Response

That elements proposed to be included in the declaration appear to be a mismatch of purpose. Abiding by the principles of good governance is embedded in requirements of the Code of Conduct. If specifically identified professional development courses and attainments are considered necessary for the performance of the role of an elected member then this should become a mandatory requirement set by statute.

- In addition to the amendment to the Declaration of Office in the General Regulations, the Local Government Division will be considering how such a Declaration would be practically complied with. We welcome feedback from the sector as to how this may occur. A preferred option would be for councils to self-report. In addition, the Local Government Division could undertake auditing and/or public reporting.

Recommendation/Response

Refer above comment. Any such requirement should be quite specific as to the requirements for course attendance and non-participation within a reasonable timeframe linked with disqualification from office. In this way it would be quite unnecessary for reporting mechanisms to be introduced.

Amendments to the *Local Government (General) Regulations 2015*

	Issue	Summary/intent	Possible changes to the Regulations	Comment
1	What is in scope?	<p>The Act prescribes compulsory disclosure of gifts and donations received by a councillor.</p> <p>The policy will apply to all gifts and donations made to elected members during a financial year.</p>	The Regulations could stipulate that disclosure relates to a councillor's public duties as distinct from their private capacity.	<p>Recommendation/Response Council's previous position on this matter is that it has articulated declaration requirements in its policy on gifts and benefits and this has been drafted to work in tandem with the Code of Conduct. Council further stated that without being able to view what is proposed under the Regulation the amendment on this matter could not be fully considered. It was mindful that any new mechanism could be in conflict/overlap with already (recently) established regulatory provisions in the Code of Conduct and supporting governance frameworks adopted by councils.</p> <p>Recommendation That the proposed changes be supported provided that it is linked with and allows Councils to have a policy for gifts and benefits.</p>

Amendments to the *Local Government (General) Regulations 2015*

	Issue	Summary/intent	Possible changes to the Regulations	Comment
2	What is exempt?	Personal gifts (received not in connection with an election of a candidate) are exempted in the majority of other jurisdictions.	It is suggested that private gifts (i.e.: gifts made to an individual that are not substantially related to their role as an elected member) or a disposition of property under a will are exempted from disclosure.	Recommendation/Response That the proposed distinction between private and role related gifts be supported.
3	Definitions	<p>The majority of jurisdictions that have legislated for this matter all have similar definitions of “gift”, therefore it is suggested that a similar definition be adopted from these jurisdictions.</p> <p>An example is the definition in the City of Brisbane Regulation 2012: A gift is the transfer of money, other property or other benefit— (i) without consideration; or (ii) for a consideration substantially less than full consideration</p>	<p>The definition of “gift” may include a transfer or loan of money, other property or other benefit that is without consideration or for a consideration substantially less than full consideration.</p> <p>It is suggested that the definition of “donation” include a “political donation”.</p>	Recommendation/Response That the proposed definition of gifts be supported. Council has long advocated the disclosure of political donation and as such the proposal to include political donations is also supported.

Amendments to the *Local Government (General) Regulations 2015*

	Issue	Summary/intent	Possible changes to the Regulations	Comment
4	Minimum threshold amount (\$) for disclosure	<p>Only gifts or donations over a certain value need to be declared.</p> <p>Currently across jurisdictions this ranges from \$200 (Qld, WA), \$500 (SA, Vic) and \$1,000 (NSW).</p> <p>Considering the size of local governments across Tasmania, and the thresholds and sizes of the other jurisdictions, it is suggested that any gift or donation exceeding \$50 should be declared</p>	<p>The two options proposed for a minimum threshold are:</p> <p>Option 1 - \$50</p> <p>Option 2 - \$200</p> <p>Currently, the majority of councils have policies in place with a minimum threshold of \$50 and \$150, with some thresholds for disclosure ranging between \$200 and \$500.</p>	<p>Recommendation/Response</p> <p>The Council policy deals with such thresholds and sets the base at \$50. The size of jurisdiction should not have a bearing on the setting of thresholds. This proposal seeks to establish a uniform mandate without any regard for the subtle context considerations that the Council has introduced in its policy. That the minimum threshold be supported, however, seeks that further consideration be given to how Council policy is facilitated through the regulatory provision.</p>

Amendments to the *Local Government (General) Regulations 2015*

	Issue	Summary/intent	Possible changes to the Regulations	Comment
5	Notification requirements – reporting period – councillor requirements – ALL gifts and donations	<p>(New) section 56A(2)(c) – be provided to the general manager within the period prescribed by the regulations.</p> <p>For electoral (campaign) donations, local government jurisdictions have varying reporting periods within which a disclosure return needs to be lodged - from 3 days up to 10 weeks.</p> <p>In its 2014 report Election Funding, Expenditure and Disclosure in NSW: Strengthening Accountability and Transparency, ICAC reviewed best practice examples of disclosure data systems (in the context of election donations). Of particular note, timely reporting was ideally in real-time or continuous.</p> <p>Recently, the Queensland Government introduced real-time donation disclosure for local government elections, requiring disclosure within 7 days of receipt of donations above the disclosure threshold (\$500).</p>	The Local Government Division would be interested in stakeholders' views on the best practice for the timing of disclosure of gifts and donations in Tasmania.	<p>Recommendation/Response</p> <p>The current electoral provisions for returns deal with electoral spending and not donations in kind or otherwise. There is a clear trend nationally towards greater transparency in regard to these matters.</p> <p>That in the interest of full transparency all forms of donation and gifts, monetary or in kind (eg free advertising) should be openly disclosed for such systems to be fully equitable.</p>

Amendments to the *Local Government (General) Regulations 2015*

	Issue	Summary/intent	Possible changes to the Regulations	Comment
6	Notification requirements – successful candidates – electoral/campaign gifts and donations	It is expected that amendments to the regulations will not be made and in force until approximately July 2018. With local government elections to be held in October 2018, it is suggested that a transitionary arrangement could be put in place to account for the compressed timeframe and the need for candidates to be aware of their disclosure obligations.	<p>2018 election – it is suggested that any successful candidate will be required to disclose any electoral gift or donation received during the 90 day period prior to closing day of the polling period.</p> <p>Subsequent elections – it is suggested that any successful candidate will be required to disclose any electoral gift or donation received during the 180 day period prior to closing day of the polling period.</p> <p>Disclosure to the general manager of these electoral gifts and donations could be done within 45 days of a candidate receiving a certificate of election.</p>	Recommendation/Response That the introduction of suitable mechanisms for disclosure be supported.

Amendments to the *Local Government (General) Regulations 2015*

	Issue	Summary/intent	Possible changes to the Regulations	Comment
7	Register - details	<p>The new section 56B(2) requires the register to include the following information:</p> <ul style="list-style-type: none"> (a) the name of the councillor; (b) a description of the gift or donation; (c) any other information required by the regulations to be included. <p>Some councils are currently maintaining gift registers - an example of what Hobart City Council is reporting is available on their website: https://www.hobartcity.com.au/Council/Aldermen</p> <p>In addition, LGAT circulated a draft template register (and policy) to councils in March 2014, which the sector could adopt.</p>	<p>In addition to that required under section 56B(2) of the Act, the register could also contain the following information:</p> <ul style="list-style-type: none"> - Donor name; - Donor's suburb/locality; - Date received; and - Estimated value of the gift/donation. 	<p>Recommendation/Response</p> <p>That the required details (including source and value) to be included in the Register should be clearly stated in the regulations. Given that \$ thresholds are being contemplated the monetary value should be stated.</p>
8	Register – availability	<p>It is standard practice in other jurisdictions that registers are available publically.</p>	<p>It is suggested that councils are to ensure that a copy of the register may be viewed by the public – at the council's public office and on its website.</p> <p>The Local Government Division is interested in stakeholder views on the timing of when registers should be made available to the public.</p>	<p>Recommendation/Response</p> <p>That availability of the Register for public viewing at a Council office during office hours be supported.</p>

Amendments to the *Local Government (General) Regulations 2015*

	Issue	Summary/intent	Possible changes to the Regulations	Comment
9	Register – updates	Regular updating of registers is consistent with standard practice throughout other jurisdictions.	It is suggested that registers are updated monthly, to ensure the register remains current.	Recommendation/Response Monthly updates do not ensure currency. Irregular updates can lead to mistrust on what should be a fully transparent process. The inspected Register should be dealt with as a live document so that any inspection is a point in time occurrence.
10	Compliance and monitoring	<p>General managers are responsible for keeping the register up to date with any disclosed gift or donation.</p> <p>The new section 56A contains a penalty provision for non- disclosure which would be investigated by the Director of Local Government.</p> <p>Currently, the Model Code of Conduct contains provisions relating to “Gifts and Benefits”. These will be amended in conjunction with amendments to the Regulations to ensure that there is consistency and clarity as to the appropriate investigative body for any alleged breach.</p> <p>The sector will be consulted on any amendments to the Model Code of Conduct.</p>	<p>There are no proposed amendments to the Regulations in relation to compliance.</p> <p>A detailed Guideline will be issued following the amendments to the Regulations.</p> <p>Amendments to the Model Code of Conduct will be done in conjunction with the amendments to the Regulations.</p>	Recommendation/Response It is clear that further consultation is intended on the detailed content of the Code of Conduct insofar as it overlaps with the proposed changes to gifts and benefits. As stated in the aforementioned “Responses” particularly in respect to Councils having complementary policies, such provision for policies could have an important bearing on the redrafting of the Code. The Council Policy in respect to Gifts and Benefits is submitted for background consideration.

Amendments to the *Local Government (General) Regulations 2015*

11.7.5 VOLUNTARY AMALGAMATIONS – CONSULTATION RESULTS

(File No 10-13-01)

EXECUTIVE SUMMARY**PURPOSE**

The purpose of this report is to allow Council to consider the results of community consultation in relation to each of the voluntary amalgamation options for the South East Councils and the Greater Hobart Councils.

RELATION TO EXISTING POLICY/PLANS

Council has previously resolved to consult with the community in relation to both the South East and Greater Hobart voluntary amalgamation options.

LEGISLATIVE REQUIREMENTS

There are no legislative requirements in regard to this matter.

CONSULTATION

Community consultation was undertaken in accordance with Council's decisions at their Meeting of 14 August 2017.

FINANCIAL IMPLICATIONS

There are no specific financial considerations at this time.

RECOMMENDATION:

- A. That Council notes the results of the community consultation.
- B. That given the consultation results, Council advises the Minister for Local Government that Council does not wish to pursue a voluntary amalgamation option with the South East Councils.
- C. That given the consultation results, Council advises the Minister for Local Government that Council does not wish to pursue a voluntary amalgamation option with the Greater Hobart Councils.
- D. That Council advises the Minister for Local Government that Council wishes to see the establishment of a Strategic Alliance of Clarence, Hobart, Glenorchy and Kingborough Councils to oversee an integrated approach to strategic planning for sustainable and competitive urban growth within urban Hobart.

ASSOCIATED REPORT**1. BACKGROUND**

- 1.1. Council has participated in 2 voluntary amalgamation studies, one involving the South-East Councils of Clarence, Sorell, Tasman and Glamorgan-Spring Bay and the other involving Clarence, Hobart, Glenorchy and Kingborough.

1.2. Participation in the studies was subject to a number of matters including the following guiding principles:

- the interests of ratepayers must come first;
- any amalgamation must offer:
 - measurable and demonstrable benefits to the residents;
 - efficiency gains;
 - fair representation;
 - a credible and saleable rationale for any amalgamation proposition;
 - a quantifiable advantage with improved service levels in the long term;
 - a strong acknowledgement for capital value rating;
- an acknowledgment that to win long term gains we may need to endure some short term pain.

1.3. The undertaking of the studies also included a set of agreed principles with the Minister for Local Government that any amalgamation must:

- be in the interests of ratepayers;
- improve the level of services for communities;
- preserve and maintain local representation; and
- ensure that the financial status of the entities is strengthened.

1.4. Council, at their Meeting of 3 July resolved as follows:

“That Council receives and notes the SGS Final Feasibility Report ‘Greater Hobart: Local Government Reform’.

- 1. That Council explains and details all the options listed by SGS in any community consultation process conducted by Council into voluntary mergers. These consultation documents are to be drafted to include the strengths and weaknesses for the Clarence community of each option listed by SGS. Furthermore, the consultation information is to overview each option’s adherence to the Minister for Local Government’s guiding principles for voluntary amalgamations.*

2. *That Council determines Option 3 as identified in the SGS report, that being a strategic alliance of the four Councils (Clarence, Glenorchy, Hobart and Kingborough), is its current preferred option, and would be compatible with also pursuing any option identified in the KPMG South East Councils Feasibility Study.*
3. *The Council advises the Minister for Local Government and Hobart, Kingborough and Glenorchy Councils accordingly.*
4. *That the General Manager be requested to report back to Council as a matter of priority in relation to the proposed format and content of the community consultation package.*

The reasons be recorded as follows:

- *Council entered into and lead discussions around voluntary mergers using a ‘without prejudice approach’. Studies were undertaken on the basis of willingness to engage with any neighbouring Council which was also willing to engage.*
- *Including the SGS report options into the consultation process will provide Council with an opportunity to explain why Option 3, ie a strategic alliance, is its preferred position at this time. In particular, regarding the principle of being in the interest of ratepayers.*
- *There has been a recent increase in community sentiment that Council is not adequately consulting with the Clarence community on matters of strategic importance.*
- *Given the expenditure on and depth of analysis provided by the SGS Final Feasibility Report, the Clarence community is entitled to express an opinion on all options listed in the report. This includes those who are of the opinion that a Greater Hobart Council would be preferable to an alliance of the existing Councils.*
- *Consultation results are not binding on Council, however, they provide a greater awareness of community sentiment and further evidence/information to add to the feasibility studies and peer reviews, in order that Council can arrive at a strongly considered final decision as to the matter of its involvement in Tasmanian Local Government voluntary structural reform”.*

and further:

- “1. That Council includes all the options listed by KPMG in its ‘South East Councils Feasibility Study Final Report’ in any community consultation process conducted by Council into voluntary mergers. These consultation documents are to be drafted to include the strengths and weaknesses for the Clarence community of each option listed by KPMG. Furthermore, the consultation information is to overview each option’s adherence to the Minister for Local Government’s guiding principles for voluntary amalgamations.*
- 2. That Council advises the Minister for Local Government and Sorell, Tasman and Glamorgan Spring Bay Councils accordingly.*
- 3. That the General Manager be requested to report back to Council as a matter of priority in relation to the proposed format and content of the community consultation package.*

The reasons be recorded as follows:

- Council entered into and lead discussions around voluntary mergers using a ‘without prejudice approach’. Studies were undertaken on the basis of willingness to engage with any neighbouring council which was also willing to engage.*
- Including all the KPMG report options into the consultation process will provide Council with an opportunity to determine which option, if any if preferred by a majority of the community.*
- There has been a recent increase in community sentiment that Council is not adequately consulting with the Clarence community on matters of strategic importance.*
- Given the expenditure on and depth of analysis provided by the KPMG Final Feasibility Report, the Clarence community is entitled to express an opinion on all options listed in the report.*
- Consultation results are not binding on Council, however, they provide a greater awareness of community sentiment and further evidence/information to add to the feasibility studies and peer reviews, in order that Council can arrive at a strongly considered final decision as to the matter of its involvement in Tasmanian Local Government voluntary structural reform”.*

1.5 At their Meeting of 14 August 2017, Council further resolved:

- “A. That Council approves the undertaking of community consultation in relation to voluntary amalgamation as detailed in the consultation documentation (including the as circulated amendment to the covering letter from the Mayor).*

- B. That Council approves Option 2; direct mail out to the household and those registered on the General Manager's electoral roll as the preferred consultation methodology and that Council's next rates instalment issue be utilised for the bulk of the mail out of the survey material.*
- C. That participants in the survey be provided a two month timeframe for the submission of survey responses".*

1.6 To enable survey respondents to be properly informed the survey material included summary information in respect of all options with the full reports available on Council's website.

2. REPORT IN DETAIL

2.1. In accordance with Council's resolution a survey was posted to 31,000 residents.

2.2. The survey sought feedback in relation to the following questions:

- Q1. No amalgamation for Clarence with Sorell, Tasman or Glamorgan Spring Bay (GSB).
- Q2. Amalgamation of Clarence, Sorell Tasman and GSB.
- Q3. Amalgamation of Clarence, Sorell and Tasman only.
- Q4. Amalgamation of Sorell, Tasman and GSB.
- Q5. Amalgamation of Sorell and Tasman.

Greater Hobart

Do you support Council's preferred position of a strategic alliance between Clarence, Kingborough, Glenorchy and Hobart Councils?

- Q6. Yes
- Q7. No

If not supportive of a strategic alliance, which option, if any, below do you prefer?

- Q8. No amalgamation for Clarence with Kingborough, Hobart or Glenorchy.

Q9. Amalgamation for Clarence, Kingborough, Glenorchy and Hobart.

Q10. Amalgamation of Clarence, Glenorchy and Hobart Councils.

Q11. Amalgamation of Glenorchy and Hobart Councils.

2.3. Total responses received were 5593 noting that a number of respondents did not answer all parts of the survey form. A response rate of around 18%.

2.4. The following responses were received.

Section 1 – South East Council – 5255 valid responses

Q1. No amalgamation for Clarence with Sorell, Tasman or Glamorgan
Spring Bay (GSB)

1858 35.8%

Q2. Amalgamation of Clarence, Sorell Tasman and GSB

1326 25.6%

Q3. Amalgamation of Clarence, Sorell and Tasman only

1160 22.4%

Q4. Amalgamation of Sorell, Tasman and GSB

598 11.5%

Q5. Amalgamation of Sorell and Tasman

245 4.7%

2.5. In its simplest form this equates to:

Those supportive of Clarence amalgamating in the South East

(Q2 and Q3) 48%

Those not supportive of Clarence amalgamating

(Q1, Q4 and Q5) 52%

2.6. Section 2 – Greater Hobart – 5000 valid responses.

Do you support Council's preferred position of a strategic alliance between Clarence, Kingborough, Glenorchy and Hobart Councils?

Q6. Yes - 2240 45%

Q7. No 2760 55%

2.7. Section 3 – also related to the options for a Greater Hobart – 3130 valid responses.

Q8. No amalgamation for Clarence with Kingborough, Hobart or Glenorchy. 1454 46.5%

Q9. Amalgamation for Clarence, Kingborough, Glenorchy and Hobart. 672 21.5%

Q10. Amalgamation of Clarence, Glenorchy and Hobart Councils. 456 14.5%

Q11. Amalgamation of Glenorchy and Hobart Councils. 548 17.5%

2.8 From these numbers it can be resolved that only 36% of respondents were supportive of an amalgamation of Clarence into a Greater Hobart, with 64% opposed to such an amalgamation.**2.9** In relation to Questions 6 and 7 831 responders who did not support a “strategic alliance” did support an amalgamation of Clarence with either Kingborough, Glenorchy and Hobart or Hobart and Glenorchy. As such for the purpose of analysis it is reasonable to assume that in the absence of the preferred amalgamation these respondents may support a fall-back position of a strategic alliance. Such a transfer of responses would result in support for a strategic alliance being a preferred option to no strategic alliance.**2.10** Whilst Council noted in undertaking the survey that it would not be determinative in its own right, serious consideration must be given to the survey findings.

- 2.11** Whilst the reports and analysis undertaken in relation to the potential amalgamations indicated that there were likely some benefits to be achieved, some questions remain in relation to adequate representation, service harmonisation, rating impacts and cross subsidisation. When considered in conjunction with the survey results it is concluded that the majority of the community does not see a case for supporting amalgamation to either the east or west of Clarence.
- 2.12** As such this report recommends that Council advise the Minister for Local Government that Council does not wish to pursue an amalgamation either to the South East or as part of a Greater Hobart.
- 2.13** In regard to next actions, the Minister has recently released terms of reference for the Local Government Board to enquire into a possible amalgamation of Sorell and Tasman Councils and possibly also Glamorgan Spring Bay. Whether or not Council is formally part of the enquiry it would be appropriate for Council to make a submission to the Board in relation to any possible amalgamation to seek to ensure that the interests of Clarence residents were protected. Such matters may relate to boundary matters, financial arrangements or other matters.

3. CONSULTATION

3.1. Community Consultation

The extensive community consultation by way of a survey to 31,000 residents was undertaken. A return rate of approximately 18% was achieved.

3.2. State/Local Government Protocol

Not applicable.

3.3. Other

Not applicable.

4. STRATEGIC PLAN/POLICY IMPLICATIONS

Council's Strategic Plan 2016-2026 provides that Council will: "explore opportunities with neighbouring Councils into the potential benefits of mergers or resource sharing".

5. EXTERNAL IMPACTS

The Minister for Local Government has commissioned the Local Government Board to undertake an enquiry into the possible merger of Sorell and Tasman Councils. The enquiry terms of reference provide for Clarence and/or Glamorgan Spring Bay Council to participate in the review should they agree.

Irrespective of whether Clarence agrees or not to proceed with examining further voluntary amalgamation options Council should make a formal submission to that enquiry to ensure that the interests of Clarence are considered and protected.

6. RISK AND LEGAL IMPLICATIONS

6.1. There are no apparent legal issues at this time.

6.2. There are numerous political risks in both continuing to pursue or not pursue voluntary amalgamation options.

- Such matters may include that proposed realisable gains are not realised, leaving Clarence ratepayers subsidising other former Council areas.
- That not pursuing a voluntary merger may force the current or a future government to proceed with a forced merger on terms not acceptable or favourable to Clarence.
- That in any reference to the Local Government Board, the Board enquiry may impact on, or include parts of the Clarence municipality.

7. FINANCIAL IMPLICATIONS

7.1. In relation to the South-East study it is noted that “savings” of the 4 Council options may be \$7.6m per annum. These savings are predicated on a no change to service levels or rating within the individual municipal areas. Over time it would be expected that there would be some harmonisation of service and rating levels.

7.2. The study for the Greater Hobart finds that whilst there would be significant economic benefit to Clarence from a Greater Hobart merger, such a merger would likely come at an actual financial cost to Clarence and the merged entity.

8. ANY OTHER UNIQUE ISSUES

None at this time.

9. CONCLUSION

A wide ranging survey in relation to merger options has been undertaken with the Clarence community. The survey has achieved a significant response rate of 18%. Analysis of the survey results indicates that generally a majority, albeit small majority of respondents in the case of the South East, do not support a merger as detailed in the studies undertaken.

Attachments: Nil.

Andrew Paul
GENERAL MANAGER

12. ALDERMEN'S QUESTION TIME

An Alderman may ask a question with or without notice at Council Meetings. No debate is permitted on any questions or answers.

12.1 QUESTIONS ON NOTICE

(Seven days before an ordinary Meeting, an Alderman may give written notice to the General Manager of a question in respect of which the Alderman seeks an answer at the meeting).

Nil.

12.2 ANSWERS TO QUESTIONS ON NOTICE

Nil.

12.3 ANSWERS TO PREVIOUS QUESTIONS TAKEN ON NOTICE

Nil.

12.4 QUESTIONS WITHOUT NOTICE

An Alderman may ask a Question without Notice of the Chairman or another Alderman or the General Manager. Note: the Chairman may refuse to accept a Question without Notice if it does not relate to the activities of the Council. A person who is asked a Question without Notice may decline to answer the question.

Questions without notice and their answers will not be recorded in the minutes.

The Chairman may refuse to accept a question if it does not relate to Council's activities.

The Chairman may require a question without notice to be put in writing. The Chairman, an Alderman or the General Manager may decline to answer a question without notice.

13. CLOSED MEETING

Regulation 15 of the Local Government (Meetings Procedures) Regulations 2015 provides that Council may consider certain sensitive matters in Closed Meeting.

The following matters have been listed in the Closed Meeting section of the Council Agenda in accordance with Regulation 15 of the Local Government (Meeting Procedures) Regulations 2015.

- 13.1 APPLICATIONS FOR LEAVE OF ABSENCE
- 13.2 JOINT AUTHORITY MATTER
- 13.3 ANNUAL REVIEW – GENERAL MANAGER

These reports have been listed in the Closed Meeting section of the Council agenda in accordance with Regulation 15 of the Local Government (Meeting Procedures) Regulation 2015 as the detail covered in the report relates to:

- information of a personal and confidential nature or information provided to the council on the condition it is kept confidential;
- applications by Aldermen for a Leave of Absence.

Note: The decision to move into Closed Meeting requires an absolute majority of Council.

The content of reports and details of the Council decisions in respect to items listed in “Closed Meeting” are to be kept “confidential” and are not to be communicated, reproduced or published unless authorised by the Council.

PROCEDURAL MOTION

“That the Meeting be closed to the public to consider Regulation 15 matters, and that members of the public be required to leave the meeting room”.