

From: Dylan Mitchell [REDACTED]

Sent: Wednesday, 12 June 2024 5:25 PM

To: Tahlia Hutchinson [REDACTED]

Cc: Bradley James [REDACTED]; [REDACTED]

Subject: RE: IPC Questions on Notice - Eagleton Quarry Project SSD-7332

Hi Tahlia,

Apologies again for the delay in my response. I provide the following in response to the two questions posed in the IPC letter. The IPC's questions are in italics followed by Council's response.

1. *a response to a request raised by the Applicant in their meeting with the Commission, for a dispensation on haulage contributions relating to Barleigh Ranch Way for a period of time (which the Applicant has suggested to be for a period of 5 years) given the upfront costs to construct the local road infrastructure; and*

Council does not support the request for the following reasons:

- Only a portion of the road to be constructed or improved is owned and maintained by Council. We cannot discount haulage contributions for improvements to a private road.
- Council's haulage model assumes the haulage routes come to Council in excellent condition. The model relies on collecting funds over the life of the project to ensure there are enough funds to undertake future maintenance works. These works include minor maintenance such as line marking and signage, as well as more intensive repairs such as resurfacing and pothole repair in later stages of the project. A discount in funding over the first 5 years would mean Council is underfunded at later stages of the project to carry out these larger repairs.
- Council has never discounted haulage fees for new quarries or on new haulage routes for the above reasons. This would set an undesirable precedent.

2. *a copy of Council's assessment report and the approved plans for DA-16-2021-160 for the relocation of a right of way and construction of private road.*

Please see the attached copy of the requested assessment report and approved plans.

If you have any further questions, please do not hesitate to contact me on the below details.

Kind Regards,



Dylan Mitchell

Principal Development Planner

p [REDACTED] | m [REDACTED]
w portstephens.nsw.gov.au



We acknowledge the Worimi people as the original Custodians and inhabitants of Port Stephens.

We acknowledge and pay respects to Worimi elders past and present. May we walk the road to tomorrow with mutual respect and admiration as we care for the beautiful land and waterways together.

Artwork by Adam Manning.



From: Tahlia Sexton [REDACTED]
Sent: Thursday, 23 May 2024 4:00 PM
To: Dylan Mitchell [REDACTED]
Cc: Bradley James [REDACTED]; Ryan Falkenmire [REDACTED]
Subject: IPC Questions on Notice - Eagleton Quarry Project SSD-7332

Dear Dylan,

Please find attached a Questions on Notice letter relating to the Eagleton Quarry Project.

To assist in responding to Question 1, in regard to the Applicant's meeting with the Commission, please find a copy of the meeting transcript [here](#) and a copy of the Applicant's presentation [here](#) which are published on the Commission's website.

Note that Council's response will be published on the Commission's website.

Please do not hesitate to reach out should you have any questions.

Best regards,

Tahlia Hutchinson (nee Sexton) | Senior Planning Officer

Office of the Independent Planning Commission NSW
Suite 15.02 Level 15 135 King Street Sydney NSW 2001

[REDACTED] | www.ipcn.nsw.gov.au



New South Wales Government
Independent Planning Commission

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APPLICATION DETAILS

Application Number	16-2021-160-1
Development Description	Relocation of right of way and construction of private road
Applicant	PERCEPTION PLANNING PTY LTD
Land owner	Italia Road Holdings Pty Ltd
Date of Lodgement	08/03/2021
Value of Works	\$251,986.74
Submissions	0

PROPERTY DETAILS

Property Address	45 Italia Road BALICKERA, 49 Italia Road BALICKERA
Lot and DP	LOT: 2 DP: 1158962, LOT: 1 DP: 245116
88B Restrictions on Title	Right of carriageway, 10 wide (vide DP 115223). S975916 & 6634679 Easement for transmission line, 30.48 wide (Vide DP 201624). H752549 Lot 1
Current Use	Driving Track and Driver Training
Zoning	RU2 RURAL LANDSCAPE
Site Constraints	Bushfire Prone Land (Category 3, Category 1) Acid Sulfate Soils – Class 5 Koala Habitat Planning Map – Marginal Buffer, Buffer, Clear, Marginal Link High Environmental Values Mapping – OEH Height Trigger – 7.5m & 45m Bird Strike Group A Combined Corridor – Landscape Habitat Link, Western Habitat Boral Quarry Buffer HW Special Area – Grahamstown Dam

	Drinking Water Draw Zones – Grahamstown Dam Hydro Catchment NSW Wildlife Atlas – Fauna Weed Infestations Flood Prone Land PMF & Flood Prone Land subject to further investigation
State Environmental Planning Policies	SEPP (Infrastructure) 2007 SEPP No. 55 – Remediation of Land SEPP (Koala Habitat Protection) 2019

PLANNERS PRE-ASSESSMENT CHECKLIST

OWNERS CONSENT	YES / N/A
Land owners consent	Yes
If the land owned by a corporation/company, relevant signatures have been provided (sole director, or director/director / director/company secretary).	Yes
For works occurring outside property, neighbouring consent provided.	N/A
For works occurring on common property within Strata, owner's consent from Strata body provided (common seal).	N/A
DA FORM AND AUTHORITY	
Applicant's description of proposal consistent with DA plans.	Yes
DA description correct in Authority (i.e. LEP definition).	Yes
DA lodged over all affected properties and Authority correct.	Yes
Satisfactory cost of works.	Yes
S.4.55 APPLICATION	
Check if S.4.55 to be reported to Council (original DA determined by Council)	N/A
Check whether consent is still valid (check lapse date).	N/A
NOTIFICATION	
Application notified correctly (i.e. check properties notified).	Yes
S.4.55 application only - notify previous objectors.	N/A
REFERRALS	

Check referrals are correct and identify if additional required: i.e. Integrated Development (send within 14 days cl.66(2) EPA Regs 2000

Yes

S.4.55 Application only - Integrated referral bodies notified.

N/A

Call applicant and send email acknowledgement.

Yes

PROPOSAL

The proposed development is to create a new road and right of carriageway to the east of the site. The road will be constructed as:

- 150mm gravel sub-base laid road, graded and rolled with water cart; and
- A second 150mm base coarse of stabilised FCR gravel with 2% cement added via a pugmill.

A swale drain will run along the side of the proposed road.

The applicant will also apply for a right of carriageway easement to be located over this road, benefitting those who are already entitled to use the existing right of carriage way located north of the proposed road.

The road will only be constructed when the road extension to Barleigh Ranch Way has been completed which is subject to Eagleton Quarry SSD-7332 currently under assessment.

It was outlined the purpose of relocating the road is to:

- Provide an alternative pathway to the current right-of-way within the Subject Land at the request of the landowner to reduce potential for encumbrance on Circuit Italia and enable the land owner to better utilise their property (i.e. for it not to be dissected by the right of way).
- Provide safe access and egress to private landowners, Port Stephens Gardenland, MX Central and Hunter Valley Paintball, and the Eagleton Quarry (if approved) in lieu of the existing right-of-way.



Figure 1: Proposed road outlined in red.

SITE DESCRIPTION

The subject site consists of two separate lots of land, Lot 1 DP 245116 and Lot 2 DP 1158962. These two lots will be referred to as the Site hereon in. Along the eastern boundary is the A1 Pacific Highway, along the north-eastern boundary is Italia Road and an electricity easement, and to the north is a separate lot which contains the Car Club and part of the associated track. Along the southern boundary is Barleigh Ranch Way and the adjacent lot to the west contains the Boral quarry.

There is currently a racetrack on site used for driver training. The race track is located in the western half of the site, and the existing road which transects the site is located to the east of the race track.

The site is heavily vegetated in the areas not cleared for the roads.



Figure 2: Aerial view of the site.

SITE HISTORY

Lot 1 and Lot 2 has had a previous development application approved DA16-2011-564-1 (reduce existing track, relocate existing pit area and access road, relocate driver training area) which has been subsequently amended.

Lot 2 has also had two DAs for boundary re-alignments.

Site inspection

A site inspection was carried out on 11 June 2021. The subject site can be seen in the images below:



Figure 3: Approximate new intersection location.



Figure 4: Neighbour to the east.

REFERRALS

The proposed development was referred to the following internal specialists and external agencies. The comments provided by the special staff and external agencies have been used to carry out the assessment against the S4.15 Matters for Consideration below.

Internal

Development Contributions – A Section 7.12 fixed development contribution applies as the works proposed exceed \$100,000. A condition of consent will be included.

Property Services – Application was supported unconditionally.

Strategic Planning – The application was supported with conditions.

Natural Resources – Application was supported with conditions.

Development Engineer – Application supported with conditions.

External

Hunter Water – No objection to the proposal.

TfNSW – No objection to the proposal. Conditions included in determination to require the intersection is designed to the relevant Australian Standards.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

S4.14 - Consultation and development consent (certain bushfire prone land)

Sub-Clause	Compliant	Notes (where needed or if not compliant)
1	<input type="checkbox"/> Development is within bushfire prone land and conforms to the specifications and requirements of the PBP, or; <input type="checkbox"/> A certificate has been provided by a suitability qualified bushfire consultant of which confirms the bushfire risk assessment rating and identifies relevant specifications and requirements for compliance with PBP.	The site is mapped as bushfire prone. Due to the development being for a road and clearing only, no bushfire requirements apply.
1A	<input type="checkbox"/> The proposal does not conform to the relevant specifications and requirements and has been referred to the NSW RFS for assessment concerning measures to be taken with respect to protection of persons, property and	

	the environment as a result of bushfire impacts.	
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S4.46 – what is integrated development

The Water Management Act 2000 provides objectives to promote the sustainable and integrated management of water sources in the State undertaken on waterfront land in NSW. The south-western extent of the proposed road is near but outside the area of waterfront land defined by survey and site inspection. Notwithstanding, the activity meets an exemption for a controlled activity under Schedule 4 (23) of the Water Management (General) Regulation 2018 as development can be considered a vehicular crossing or access track that does not impound water.

S4.15 – Matters for Consideration

s4.15(1)(a)(i) – The provisions of any EPI

STATE ENVIRONMENTAL PLANNING POLICY (INFRASTRUCTURE) 2007		
Clause	Compliant	Notes (where needed or if not compliant)
101	<input checked="" type="checkbox"/> Development with frontage to classified road.	<p>The site has a frontage to the A1 Pacific Highway which is a classified road. The proposed road and intersection are located along Italia Road and Barleigh Ranch Way.</p> <p>The development results in the continuing effective and ongoing operation of the classified road and prevents additional traffic noise and emissions to other development along the highway.</p> <p>Consultation with TfNSW did not result in the need for any further information to be required that could not be conditioned in the consent.</p>

STATE ENVIRONMENTAL PLANNING POLICY NO. 55 – REMEDIATION OF LAND		
Clause	Compliant	Notes (where needed or if not compliant)
7	<input checked="" type="checkbox"/> The proposed development site has no previous record of contamination, nor is it listed on the NSW list of contaminated and notified sites, published by the EPA. <input checked="" type="checkbox"/> The land is not within an investigation area, nor are there any records of potentially contaminating activities occurring on the site. <input checked="" type="checkbox"/> The proposed use is not listed as a possible contaminating use, per Table 1 of the Guidelines.	<p>The existing land use is not considered a contaminating activity nor is the proposed.</p>

STATE ENVIRONMENTAL PLANNING POLICY (KOALA HABITAT PROTECTION) 2020		
Clause	Compliant	Notes (where needed or if not compliant)
3	<input checked="" type="checkbox"/> The proposed development encourages the conservation and management of naturally vegetated areas that provide habitat for koalas.	No preferred or supplementary koala habitat would be removed. It is proposed 0.38 ha of marginal habitat would be impacted. No preferred koala feed trees will be removed. This is consistent with this objective.
8	<input checked="" type="checkbox"/> The proposed development is consistent with Council's Comprehensive Koala Plan of Management.	The site is mapped on the Koala Habitat Planning Map as Marginal Buffer, Buffer, Clear, Marginal Link. The 0.38ha to be removed is Marginal habitat which does not contain preferred koala feed trees. This is considered acceptable.

PORT STEPHENS LOCAL ENVIRONMENTAL PLAN 2013		
Clause	Compliant	Notes (where needed or if not compliant)
2.1	<input checked="" type="checkbox"/> Permissible in zone and meets zone objectives.	Roads are permitted with consent in RU2 Rural Landscape zones. The development will provide a new road across the site which will allow the continued operation of the existing rural land uses, which is consistent with the objectives of this zone.
5.10	<input checked="" type="checkbox"/> There are no heritage items / archaeological sites / Aboriginal objects or places / conservation areas located on the subject site; OR <input type="checkbox"/> The proposal includes impact on a heritage item / Archaeological site / Aboriginal object or place / conservation area; <input type="checkbox"/> The application is supported with a heritage impact assessment; <input type="checkbox"/> Impacts on the heritage significance of the site is considered reasonably avoided and/mitigated.	<p>An Aboriginal Due Diligence Assessment has been completed by McCardle Cultural Heritage. There were no Aboriginal artefacts or PAD identified and a ground survey of the area was carried out.</p> <p>The recommendations in Section 6 of that report are suitable and are supported by suggested conditions of consent.</p> <p>There are no recorded locations of European Heritage located within 1 km of the proposed development site.</p>
7.1	<input checked="" type="checkbox"/> Potential Class 5 Acid Sulfate Soils (ASS); OR, <input type="checkbox"/> Potential Class 4 ASS with no works more than 2m below ground level; OR, <input type="checkbox"/> Potential Class 3 ASS with no works more than 1m below ground level; OR,	The proposed development does not contain deep excavations which are likely to impact acid sulfate soils or impact the water table.

PORT STEPHENS LOCAL ENVIRONMENTAL PLAN 2013		
	<input type="checkbox"/> Potential Class 2 ASS with no works below ground level; OR, <input type="checkbox"/> Potential Class 1 ASS and an acceptable management plan has been submitted.	
7.2	<input checked="" type="checkbox"/> Earthworks required, but do not have negative impacts on surrounding properties.	The proposed development includes minor earthworks required for grading of site and construction of the proposed access road and intersection. Impacts upon the surrounding environment and neighbours are expected to be minor.
7.3	<input checked="" type="checkbox"/> Development within flood planning area but no anticipated flood risk to life and property, or change in flood characteristics.	Parts of the site are mapped as flood prone. The proposed location of the road is located outside any area mapped as flood prone and does not require and specific flood requirements.
7.6	<input checked="" type="checkbox"/> Essential services are available to the site where required.	Access is all that is required for the road which is available from Italia Road and Barleigh Ranch Way (once constructed).
7.8	<input checked="" type="checkbox"/> Development is within the drinking water catchment but will not result in a significant adverse impact on water quality or flows.	A referral was sent to Hunter Water. Hunter Water recommended water quality modelling is completed which will form part of the conditions of consent.

s4.15(1)(a)(ii) – Any Draft EPI

		Notes (what draft EPI if needed and comments where not compliant)
	<input checked="" type="checkbox"/> There are no draft EPI's that are relevant to the proposed development	
	<input type="checkbox"/> A draft EPI is relevant to the proposed development however the application is consistent with the aims and objectives of the document.	

s4.15(1)(a)(iii) – Any DCP

PORT STEPHENS DEVELOPMENT CONTROL PLAN 2014		
Clause	Compliant	Notes (where needed or if not compliant)
B1	<input type="checkbox"/> Trees to be removed do not require approval as outlined in B1.1.	There is 0.38ha of native vegetation to be removed. Natural Resources had no

		objection to the removal of this vegetation and provided conditions of consent.
B2	<input checked="" type="checkbox"/> Not in proximity of items of environmental significance. <input checked="" type="checkbox"/> Land does not contain koala habitat or development is consistent with the CKPoM.	<p>The proposal is considered to have minimal impact on biodiversity including the removal of 0.38ha of native vegetation and one hollow bearing tree. No significant impacts are considered likely to occur.</p> <p>No preferred or supplementary koala habitat would be removed. The 0.38ha to be removed is marginal habitat and no preferred koala feed trees will be removed.</p> <p>No waterways occur within the proposed development footprint.</p>
B3	<input checked="" type="checkbox"/> Development would not disturb acid sulphate soils or an acceptable ASSMP has been prepared. <input checked="" type="checkbox"/> Earthworks would have minimal environmental impacts with conditions on VENM fill and erosion and sediment controls.	<p>The proposed development does not contain deep excavations which are likely to impact acid sulfate soils or impact the water table.</p> <p>The proposed development includes minor earthworks required for grading of site and construction of the proposed access road and intersection. Impacts upon the surrounding environment and neighbours are expected to be minor.</p>
B4	<input checked="" type="checkbox"/> Non-permeable area not significantly increased and development consistent with figure BD, on-site detention not required; OR, <input type="checkbox"/> Non-permeable area above figure BD and acceptable on-site detention / infiltration proposed or condition for details added. <input type="checkbox"/> Insignificant increases to adversely impact on water quality; OR <input type="checkbox"/> Stormwater management plan proposed in accordance with this Chapter and Council's standard drawings.	<p>Conditions will be imposed to manage stormwater up to and including the 1% AEP. The creation of this road is to relocate the existing, and the existing road is to be remediated, as such the proposal is considered to not have a significant adverse impact on water quality.</p>
B5	<input checked="" type="checkbox"/> Proposed development is on flood prone land; AND, <input type="checkbox"/> A flood certificate has been submitted with the application and the finished levels are consistent with Table 2: Development Suitability Table; AND, <input type="checkbox"/> The submitted documents are consistent with Figure BI: Development Suitability Table.	<p>Parts of the site are mapped as flood prone. The proposed location of the road is located outside any area mapped as flood prone and does not require any specific flood requirements.</p>

B8	<input checked="" type="checkbox"/> The development would not generate significant increases in traffic. <input type="checkbox"/> On-site parking provision meets the requirements of figure BQ or merit based assessment; AND, <input type="checkbox"/> Suitable disabled parking is provided in line with figure BQ.	The road is to replace the current road further north. It will not generate additional trips and will be used only by those benefitted by the use of the right of carriageway.
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s4.15(1)(a)(iia) – Any planning agreement or draft planning agreement entered into under section 7.4

	Notes (where needed)
<input checked="" type="checkbox"/> There are no planning agreements that have been entered into under section 7.4 relevant to the proposed development.	

s4.15(1)(a)(iv) – The regulations

	Notes (where needed)
<input checked="" type="checkbox"/> There are no matters within the regulations that are relevant to the determination of the application.	

s4.15(1)(b) – The likely impacts of the development

	Notes (where needed)
<input checked="" type="checkbox"/> Social and Economic Environment: There would be beneficial impacts as a result of the development.	The road will allow the site owner to better utilise the site as the current right of carriageway dissects the middle of the site.
<input checked="" type="checkbox"/> Built Environment: The proposed development would not cause harm to the existing character.	
<input checked="" type="checkbox"/> Natural Environment: There are no adverse impacts expected as a result of the proposed development and appropriate conditions have been added.	The removal of 0.38ha of vegetation is considered to have no adverse impact to the natural environment or koalas.

s4.15(1)(c) – The suitability of the site

The subject site is suitable as it currently has an existing road serving this purpose. The proposal will facilitate a better location than the existing road however.

s4.15(1)(d) – Any submissions

The application was exhibited from 18 March 2021-1 April 2021 in accordance with the provisions of the Port Stephens Council Community Participation Plan. No submissions were received with relation to the subject development proposal.

s4.15(1)(e) – The public interest

The proposal is considered in the public interest. It will allow a suitable connection through for neighbours benefitted by the right of carriageway.

s7.11 – Contribution towards provision or improvement of amenities or services (developer contributions)

A monetary contribution is to be paid to Council, pursuant to Section 7.12 of the Environmental Planning & Assessment Act 1979 and the Port Stephens Council Fixed Development Contributions Plan, related to the Capital Investment Value (CIV) of the development as determined in accordance with clause 25j of the Environmental Planning and Assessment Regulation 2000. This will be conditioned in the consent.

DETERMINATION

The application is recommended to be approved under delegated authority, subject to conditions as contained in the notice of determination.

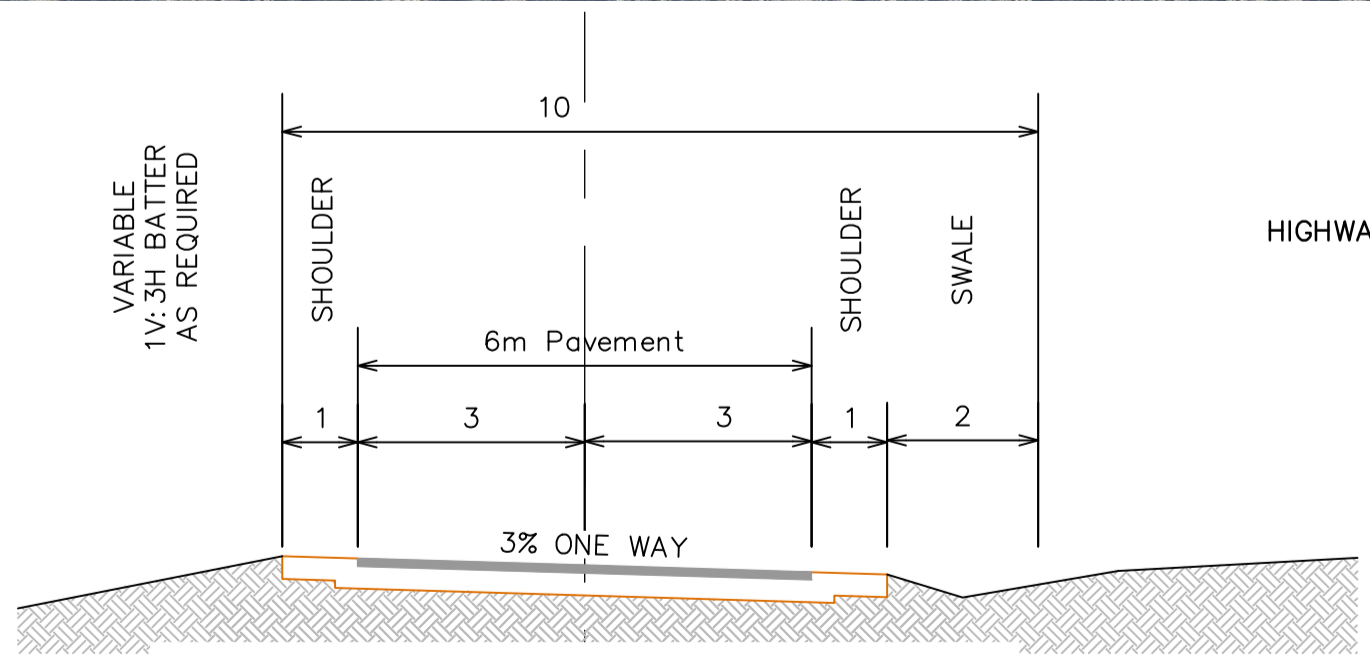
EMILY ALLEN
Senior Development Planner

239810-ESK-301-G



100mm AT FULL SIZE

LOT 1 DP.245116
&
LOT 2 DP.1158962



TYPICAL RIGHT OF WAY
R.R. 1: 100

PRELIMINARY ONLY

ALL EASEMENTS ARE APPROXIMATE ONLY AND ARE SUBJECT TO FINAL DESIGN, CONSTRUCTION AND FINAL SURVEY.

NOT FOR CONSTRUCTION

REV.	DATE	AMENDMENT	DRAWN	CHECK	DESIGN	VERIFY	SCALES		Hunter Office Unit 7/335 Hillsborough Rd Warners Bay N.S.W. 2282 Phone: (02) 4978 5100 Fax: (02) 4978 5199 email: hunter@adwjohnson.com.au www.adwjohnson.com.au ABN 62 129 445 398	CLIENT EAGLETON ROCK SYNDICATE PTY LTD	PROPERTY DESCRIPTION		PROJECT		
A	B	C	D	E	F	G	0 25 50 A1 / A3 1:1250 / 1:2500				0 1 2 3 4 A1 / A3 1:100 / 1:200	LOT 2 DP1158962 & LOT 1 DP245116 BARLEIGH RANCH WAY EAGLETON	EAGLETON QUARRY	PLAN TITLE GENERAL ARRANGEMENT PROPOSED CONNECTING RIGHT OF WAY ITALIA ROAD TO BARLEIGH RANCH WAY	
A	18.09.2018	INITIAL ISSUE	R.C.	L.G.	M.A.	L.G.									
B	23.10.2018	AMENDED ISSUE	J.N.	L.G.	M.A.	L.G.									
C	14.12.2018	UPDATE CROSS SECTION	J.N.	L.G.	M.A.	L.G.									
D	11.06.2020	UPDATED ROAD ALIGNMENT	D.W.	L.G.	M.A.	L.G.									
E	01.07.2020	BASE UPDATE	D.W.	L.G.	M.A.	L.G.									
F	08.07.2020	EASEMENT UPDATE	D.W.	L.G.	M.A.	L.G.									
G	10.07.2020	EASEMENT UPDATE	D.W.	L.G.	M.A.	L.G.									
							ALL DIMENSIONS ARE IN METRES. DO NOT SCALE								
SURVEYED		ADW Johnson		DATUM		A.H.D.		PROJECT No.		239810		DISCIPLINE		ESK	
								NUMBER		301		REV.		G	

PERCEPTION PLANNING PTY LTD
PO Box 107
CLARENCE TOWN NSW 2321

DEVELOPMENT APPLICATION NOTICE OF DETERMINATION

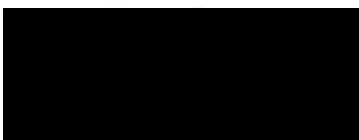
Issued under the *Environmental Planning and Assessment Act 1979*
Sections 4.16, 4.17 & 4.18 (1)(a) and Schedule 1, Clause 20(2)

Development Consent No:	16-2021-160-1
Property Address:	45 Italia Road BALICKERA, 49 Italia Road BALICKERA LOT: 2 DP: 1158962, LOT: 1 DP: 245116
Description of Development:	Relocation of right of way and construction of private road
Determination:	Approved – Development consent granted subject to the conditions specified in this notice and in accordance with the stamped approved plans.
Determination Date:	22 July 2021
Consent to operate from:	22 July 2021
Consent to lapse on: (unless physical commencement has occurred)	22 July 2026

Information contained in this decision:

- Schedule 1 – Conditions of consent
- Schedule 2 – Reasons for determination and reasons for conditions
- Schedule 3 – Rights of appeal and review

SIGNED on behalf of Port Stephens Council



MS E ALLEN
Senior Development Planner
(Development Assessment and Compliance)



SCHEDULE 1 – CONDITIONS OF CONSENT

1.0 - General Conditions of Consent

The following conditions of consent are general conditions applying to the development.

- (1) **Approved plans and documentation** – Development must be carried out in accordance with the following plans and documentation, and all recommendations made therein, except where amended by the conditions of this development consent:

Plan reference/ drawing No.	Name of plan	Prepared by	Date
239810 – 301 – Rev. G	General Arrangement Proposed Connecting Right Of Way Italia Road To Barleigh Ranch Way	ADW Johnson	10.07.2020

In the event of any inconsistency between the approved plans and the conditions, the conditions will prevail.

2.0 - Prior to Commencement of Works

The following conditions of consent shall be complied with prior to any works commencing on the development site.

- (1) **Site is to be secured** – The site must be secured and fenced to the satisfaction of the Council. All hoarding, fencing or awnings (associated with securing the site during construction) is to be removed upon the completion of works.
- (2) **Prior to commencement of works** the access road shall:
- Be designed and certified by a suitably qualified engineer to comply with Australian Standards AS2890
 - Be designed with road side drainage to manage stormwater up to and including the 1% AEP storm event in accordance with Australian Rainfall and Runoff 2019.
- (3) **Prior to commencement of works** a Roads Act Approval is to be obtained for works at the intersection of Italia Road and the Access Road, and the intersection of Barleigh Ranch Way and the Access Road, in accordance with the conditions of this consent.
- (4) **Soil erosion and sediment control** – Soil erosion and sediment controls must be implemented prior to works commencing on the site in accordance with 'Managing Urban Stormwater – Soils and Construction (the blue book)' and any Sediment and Erosion plans approved with this Development Consent.

Soil erosion and sediment control measures must be maintained during construction works and must only be removed upon completion of the project when all landscaping and disturbed surfaces have been stabilised (for example, with site turfing, paving or re-vegetation).

- (5) **Protection of trees /existing street trees** – Protection of trees to be retained must be in accordance with AS490 ‘Protection of Trees on Development Sites’ and the following:
- a) No existing nature strip(s), street tree(s), tree guard(s), protective bollard(s), garden bed surrounds or root barrier installation(s) must be disturbed, relocated, removed or damaged during earthworks, demolition, excavation (including any driveway installation), construction, maintenance and/or establishment works applicable to this consent, without Council agreement and/or consent.

3.0 - During Works

The following conditions of consent shall be complied with during the construction phase of the development.

- (1) **Construction hours** – All work (including delivery of materials) must be restricted to the hours of 7.00am to 5.00pm Monday to Saturday inclusive. Work is not to be carried out on Sundays or Public Holidays.
- (2) **Location of stockpiles** – Stockpiles of soil must not be located on / near any drainage lines or easements, natural watercourses or water bodies, footpath or roadway without first providing suitable protective measures adequate to protect these water bodies. All stockpiles of contaminated materials must be suitably covered to prevent dust and odour nuisance.
- (3) **Soil, erosion, sediment and water management** – All requirements of the Erosion and Sediment Control Plan or Soil and Water Management Plan must be maintained at all times during the works and any measures required by the plan must not be removed until the site has been stabilised.
- (4) **Offensive noise, dust, odour and vibration** – All work must not give rise to offensive noise, dust, odour or vibration as defined in the *Protection of the Environment Operations Act 1997* when measured at the nearest property boundary.
- (5) **Delivery register** - The applicant must maintain a register of fill deliveries which includes date, time, truck registration number, quantity of fill, origin of fill and type of fill delivered.

This register must be made available to Council officers on request and be provided to the Council at the completion of the development.

- (6) **Fill material** – The only fill material that may be received at the development site is:
 - a) Virgin excavated natural material (VENM) within the meaning of the *Protection of the Environment Operations Act (POEO Act 1997)*;
 - or
 - b) Excavated natural material (ENM) within the meaning of the *POEO Act 1997*;

or

- c) Any other waste-derived material the subject of a resource recovery exemption under s.91 of the *Protection of the Environment Operations (Waste) Regulation 2014* that is permitted to be used as fill material.

Any waste-derived fill material the subject of a resource recovery exemption received at the development site must be accompanied by documentation as to the material's compliance with the exemption conditions and must be provided to the Principal Certifying Authority.

Any fill, soil, mulch and plant brought onto the site must be certified as free of weeds and weed seeds.

- (7) **All relevant staff and subcontractors** should be made aware of their obligations under the National Parks and Wildlife Service Act (1974, which may be implemented as a heritage induction).
- (8) **If suspected archaeological relics** as defined under the Heritage Act 1977 (as amended) are located during the proposed activities, works within that area must cease. Heritage NSW must be notified as required under Section 146 of the Act. The archaeological relic must be avoided. If it is not practicable to avoid the archaeological relic, additional approvals would be required under the Act.
- (9) **If unrecorded Aboriginal object/s are identified** in the Project Area during works, then all works in the immediate area must cease and the area cordoned off. Heritage NSW must be notified via the Enviroline 131 555. The proponent should also contact a suitably qualified Archaeologist to ensure the site is adequately assessed and managed.

4.0 – Prior to Use

The following conditions of consent are to be satisfied prior to the use of the road.

- (1) **The approved private road** must not be used until the extension of the road formation within the Barleigh Ranch Way road reserve is constructed.
- (2) **The existing 10m right of way (as shown on DP115227)** must not be extinguished until Barleigh Ranch Way has been extended and the approved private road has been constructed.
- (3) **All existing users benefitted by the existing 10m right of way (as shown on DP115227),** must be benefitted by the new road.
- (4) **Prior to commencement of use** certification must be provided by a qualified Civil Engineer certifying the access road has been designed and constructed in accordance with conditions of consent.

- (5) **Prior to commencement of use** all approved road, footpath and/or drainage works, including vehicle crossings, have been completed in the road reserve in accordance with the *Roads Act* Approval to the satisfaction of the Council as the Roads Authority.
- (6) **A monetary contribution** is to be paid to Council, pursuant to Section 7.12 of the *Environmental Planning & Assessment Act 1979* and the Port Stephens Council Fixed Development Contributions Plan, related to the Capital Investment Value (CIV) of the development as determined in accordance with clause 25j of the *Environmental Planning and Assessment Regulation 2000* and outlined in the table below.

Capital Investment Value	Levy Rate (\$ of CIV)
Up to and including \$100,000	Nil
More than \$100,000 and up to and including \$200,000	0.5%
More than %200,000	1%

The payment of the fixed development consent levy is to be accompanied by a Cost Summary Report Form setting out an estimate of the CIV in accordance with Schedule 1 of the Port Stephens Council Fixed Development Contributions Plan.

Where the estimated cost of carrying out the whole of the development is more than \$1,000,000, the Cost Summary Report Form must be completed by a Quantity Surveyor who is a Registered Associate member or above, of the Australian Institute of Quantity Surveyors.

This condition cannot be taken to be satisfied until a payment has been made in accordance with the CIV stated on a cost summary report submitted to Council in accordance with this condition.

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

- a) Where no building work is proposed - prior to commencement of use.

- (7) **Completion of Roads Act Approval works** - All approved road, footpath and/or drainage works, including vehicle crossings, have been completed in the road reserve in accordance with the *Roads Act* Approval to the satisfaction of the Council as the Roads Authority.

Advice Note(s):

- (1) **Dial Before you Dig** - Before any excavation work starts, contractors and others should phone the "Dial Before You Dig" service to access plans/information for underground pipes and cables.
- (2) **Works near/adjoining electricity network assets** - There are electricity network assets adjacent to the proposed development. Any works undertaken adjacent to

Ausgrid assets must be undertaken with care in accordance with Ausgrid Network Standard Document NS 156 – Work Near or Around Underground Cables.

SCHEDULE 2 - REASONS FOR DETERMINATION AND REASONS FOR CONDITIONS

REASONS FOR THE DETERMINATION & CONSIDERATION OF COMMUNITY VIEWS

The determination decision was reached for the following reasons:

- The proposed development, subject to the recommended conditions, is consistent with the objectives of the applicable environmental planning instruments, being; Port Stephens Local Environmental Plan 2013 (PSLEP), State Environmental Planning Policy No 55 - Remediation of Land, State Environmental Planning Policy (Infrastructure) 2007, and State Environmental Planning Policy (Koala Habitat Protection) 2020.
- The proposed development is, subject to the recommended conditions, consistent with the objectives of the Port Stephens Council Development Control Plan 2014 (PSDCP).
- Subject to the recommended conditions the proposed development will be provided with adequate essential services required under the PSLEP.
- The proposed development is considered to be of an appropriate scale and form for the site and the character of the locality.
- The proposed development, subject to the recommended conditions, will not result in unacceptable adverse impacts upon the natural or built environments.
- The proposed development is a suitable and planned use of the site and its approval is within the public interest.
- Council has given due consideration to community views when making the decision to determine the application.

REASONS WHY THE CONDITIONS HAVE BEEN IMPOSED

The following conditions are applied to:

1. Confirm and clarify the terms of Council's Approval;
2. Identify modifications and additional requirements that will result in improved compliance, development and environmental outcomes;
3. Prevent, minimise, and/or offset adverse environmental impacts including economic and social impacts;
4. Set standards and performance measures for acceptable environmental performance; and
5. Provide for the ongoing management of the development.

SCHEDULE 3 – RIGHT OF APPEAL AND REVIEW

RIGHT OF APPEAL

If you are dissatisfied with this decision (including a determination on a review under Section 8.2), Section 8.7 and 8.10 of the Environmental Planning and Assessment Act 1979 gives you the right to appeal to the Land and Environment Court within six months after:

- a) the date on which you receive this notice, or
- b) the date on which that application is taken to have been determined under Section 8.11.

Section 8.8 of the Environmental Planning and Assessment Act 1979, does not give a right of appeal to an objector who is dissatisfied with the determination of the Council to grant consent to a development application, unless the application is for designated development (including designated development that is integrated development). The objector may, within 28 days after the date on which the notice of the determination was given in accordance with the regulations, and in accordance with rules of the Court, appeal to the Court.

RIGHT OF REVIEW

Section 8.2 of the Environmental Planning and Assessment Act 1979 provides that the applicant may request the Council to review the determination. The request must be made in writing (or on the review application form) within six months after the date as specified in this notice of determination, together with payment of the appropriate fee. (**See exclusions note below**).

Exclusions: A request to review the determination of a development application pursuant to Section 8.2 of the Environmental Planning and Assessment Act 1979 can only be undertaken where the consent authority is Council, other than:

- a) A determination to issue or refuse to issue a complying development certificate, or
- b) A determination in respect of designated development, or
- c) A determination made by the Council under Division 4 in respect of an application by the Crown.