

ITEM NO. 2

FILE NO: 16-2010-700-2

S96 APPLICATION TO MODIFY AN APPROVED DUAL OCCUPANCY AND TWO (2) LOT SUBDIVISION AT NO. 2 ADASTRA CLOSE RAYMOND TERRACE

REPORT OF: MATTHEW BROWN - DEVELOPMENT ASSESSMENT AND COMPLIANCE SECTION MANAGER

GROUP: DEVELOPMENT SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Refuse Section 96 application 16-2010-700-2 to modify an approved dual occupancy and two lot subdivision at no. 2 Adastra Close, Raymond Terrace for the reasons below:
 - a) Removal of Condition 40 requiring the preparation of a report by an acoustic engineer will be contrary to the requirements of Development Control Plan 2007 and Australian Standard AS2021-2000;
 - b) Removal of Condition 40 requiring the preparation of a report by an acoustic engineer will expose future occupants to an unacceptable level of aircraft noise in habitable areas.

**ORDINARY COUNCIL MEETING – 26 NOVEMBER 2013
COMMITTEE OF THE WHOLE RECOMMENDATION**

Mayor Bruce MacKenzie and Cr Paul Le Mottee left the meeting at 6.43pm prior to Item 2, in Committee of the Whole.

Deputy Mayor, Cr Sally Dover chaired the meeting at this stage.

	<p>Councillor John Nell Councillor Peter Kafer</p>
	<p>That Council:</p> <ol style="list-style-type: none"> 1) Refuse Section 96 application 16-2010-700-2 to modify an approved dual occupancy and two lot subdivision at no. 2 Adastra Close, Raymond Terrace for the reasons below: <ol style="list-style-type: none"> a) Removal of Condition 40 requiring the preparation of a report by an acoustic engineer will be contrary to the requirements of Development Control Plan 2007 and Australian Standard AS2021-2000;

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	b) Removal of Condition 40 requiring the preparation of a report by an acoustic engineer will expose future occupants to an unacceptable level of aircraft noise in habitable areas.
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In accordance with Section 375 (A) of the Local Government Act 1993, a division is required for this item.

Those for the Motion: Crs Peter Kafer, Geoff Dingle and John Nell.

Those against the Motion: Crs Sally Dover, Chris Doohan, Steve Tucker, John Morello.

The motion was lost.

	Councillor Steve Tucker Councillor Chris Doohan
	That Council approve Section 96 application 16-2010-700-2 to modify an approved dual occupancy and two lot subdivision at no. 2 Adastra Close, Raymond Terrace.

In accordance with Section 375 (A) of the Local Government Act 1993, a division is required for this item.

Those for the Motion: Crs Sally Dover, Chris Doohan, Steve Tucker and John Morello.

Those against the Motion: Crs Peter Kafer, John Nell and Geoff Dingle.

Cr Peter Kafer advised the meeting that he would retire from the meeting at this time due to family reasons. Cr Kafer left the meeting at 7.08pm.

MOTION

Cr Paul Le Mottee and Mayor Bruce MacKenzie left the meeting at 7.16pm, in Open Council.

Item 2 was dealt as the last item and Mayor Mackenzie and Cr Paul Le Mottee did not return to the meeting.

341	Councillor Steve Tucker Councillor Chris Doohan
	It was resolved that Council approve Section 96 application 16-2010-700-2 to modify an approved dual occupancy and two lot subdivision at no. 2 Adastra Close, Raymond Terrace.

In accordance with Section 375 (A) of the Local Government Act 1993, a division is required for this item.

Those for the Motion: Crs Sally Dover, Chris Doohan, Steve Tucker and John Morello.

Those against the Motion: Crs John Nell and Geoff Dingle.

BACKGROUND

The purpose of this report is to present a Section 96 application to Council for determination as requested by Councillor Tucker.

The original development application (DA16-2010-700-1) was previously approved by Council in January 2011 for the erection of a Detached Dual Occupancy Development and a Two Lot Torrens Title Subdivision.

The site is zoned 2(a) Residential within which the development of the site for the purposes of Dual Occupancy is permissible subject to Development Consent.

The development site has a frontage to Adastra Close and Hastings Drive. The site is currently vacant land. To the rear of the site is an area of 6(a) Open Space with the general locality being Residential 2(a) zoned land characterised by single residential developments.

A revised Department of Defence map, ANEF 2025, was issued as of 10 August 2011 in response to the expected roll out of the new Joint Strike Fighter Aircraft (JSF). In response to this revised mapping information Council revised its own policy document DCP2007, chapter B15 which includes the 'Noise Planning Area Map', a composite map which amalgamates both ANEF maps (2012 and 2025 - 10 August 2011) for indentifying noise affectation of sites.

ANEF charts are contour maps that show a forecast of aircraft noise levels that are expected to exist in the future. They are prepared for all of the major and regional airports and most of the minor aerodromes that have a large number of annual movements. The maps are prepared by airport owners. For the major airports the ANEF forms part of their Master Plan and is updated every five years. These ANEF maps are primarily used by local Councils for land use planning. They take into account projected maximum noise levels at various locations and the number of occurrences this is likely to happen. This results in a map showing the worst areas of exposure to aircraft noise.

If a dwelling development site is within the "Noise Affected Area" the dwelling requires acoustic protection to be built into any new dwelling. The development site, whilst within the bounds of the "Noise affected Area" and the old ANEF 2012 lies outside the ANEF 2025 affected contour. This serves to forecast that the noise pollution impact will be reduced if the Joint Strike Fighter aircraft totally replaces the current fighter aircraft at current estimates approximately in the year 2025.

At the time of the original approval the site was identified as being affected by Aircraft Noise and was located within the 25-30 Aircraft Noise Contour under both the ANEF 2025 and ANEC 2025 Aircraft Noise Maps. Under these noise zones the development was classified as "unacceptable development" and recommended for refusal. The application was ultimately supported, subject to conditions, by Council.

Since the original application and approval, the aircraft noise maps have been amended. The site is now identified as being affected by the 20-25 Aircraft Noise Contour under both the ANEF 2025 and ANEF2012 aircraft Noise Maps. It is noted that development for the purpose of Dual Occupancy is "conditionally acceptable" in this noise contour under both the Development Control Plan 2000 and Australian standard 2021-2000.

Development Control Plan 2007 specifies that an acoustic report is required to support a development application for development that is "conditionally acceptable". Such a report shall dictate measures to reduce the amount of aircraft noise in a building. Condition 40 of the development consent gives effect to this requirement.

The Key issues associated with the proposal are;

- Aircraft Noise; and
- Non Compliance with Councils DCP2007 and Australian Standard AS 2021-2000.

A modification has been lodged to the original consent requesting that Condition 40 of Development Consent 16-2010-700-1 be deleted due to the development being infill development.

Condition 40 states;

Prior to issue of a construction certificate an acoustic report shall be submitted to Council prepared by a suitably qualified acoustic engineer. The development shall be constructed in accordance with the recommendations contained within the acoustic report and the acoustic engineer shall issue a compliance certificate before issue of any occupation certificate.

It is not disputed that the land/development is infill development; however this does not negate the need for noise attenuation under the relevant planning controls.

An assessment of these issues has been provided in the attachments.

FINANCIAL/RESOURCE IMPLICATIONS

Should Council adopt the recommendation and refuse the modification application, the applicant may appeal to the Land and Environment Court. Defending the Councils determination would have financial implications.

If council enables the construction of a dual occupancy development without adequate noise attenuation, it may incur a legal liability, costs of which are difficult to determine, but may be significant.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes		Within operational budget
Reserve Funds	No		
Section 94	No		
External Grants	No		
Other	No		

LEGAL AND POLICY IMPLICATIONS

The development application is inconsistent with the following Council Policy.

Port Stephens Development Control Plan 2007, Section B15 – Aircraft Noise
 Australian Standard 2021-2000 – Aircraft Noise.

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
There is a risk that Council may be held liable for the creation of noise affected dwellings by future owners.	High	Refuse Application	Yes
There is a risk that should the modification be refused, the applicant may appeal at the decision with the Land and Environment Court.	Medium	Refuse Application	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Removal of the requirement for the development to be subject to aircraft noise attenuation would result in the future occupants of the dwellings being exposed to unacceptable noise impacts from aircraft.

Under the provisions of DCP2007 and Australian Standard 2021-2000 the dwellings are required to be attenuated to mitigate against the impacts of aircraft noise. Whilst the aircraft noise issue may change in the future and have an element of uncertainty, Council is required to make planning decisions based on legislation at the time of the application. Further it is considered that the noise pollution levels on the site are such that it would have significant adverse impacts on future occupants within the dwellings and also in areas of private open space.

It is considered that the site does not present any environmental issues, native vegetation or flora and fauna that would render the site unsuitable for the proposed development.

CONSULTATION

No exhibition of the proposed modification is required due to the nature of the modification to the existing development consent.

OPTIONS

- 1) Adopt the recommendation;
- 2) Reject or amend the Recommendations.

ATTACHMENTS

- 1) Locality Plan;
- 2) Assessment.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ATTACHMENT 1
LOCALITY PLAN



**ATTACHMENT 2
ASSESSMENT**

The application has been assessed pursuant to Section 79C of the Environmental Planning and Assessment Act 1979 and the following is a summary of those matters considered relevant in this instance.

THE PROPOSAL

The development application (DA16-2010-700-1) was previously approved by Council for the erection of a Detached Dual Occupancy Development and a Two Lot Torrens Title Subdivision.

The site is zoned 2(a) Residential within which the development of the site for the purposes of Dual Occupancy is permissible subject to Development Consent.

The development site has a frontage to Adastra Close and Hastings Drive. The site is currently vacant land. To the rear of the site is an area of 6(a) Open Space with the general locality being Residential 2(a) zoned land characterised by single residential developments.

At the time of the original approval the site was identified as being affected by Aircraft Noise and was located within the 25-30 Aircraft Noise Contour under both the ANEF 2025 and ANEC 2025 Aircraft Noise Maps. Under these noise zones the development was classified as "unacceptable development" and recommended for refusal. The application was ultimately supported, subject to conditions, by Council.

Since the original application and approval, the aircraft noise maps have been amended. The site is now identified as being affected by the 20-25 Aircraft Noise Contour under both the ANEF 2025 and ANEF2012 aircraft Noise Maps. It is noted that development for the purpose of Dual Occupancy is "conditionally acceptable" in this noise contour under both the Development Control Plan 2000 and Australian standard 2021-2000.

Development Control Plan 2007 specifies that an acoustic report is required to support a development application for development that is "conditionally acceptable". Such a report shall dictate measures to reduce the amount of aircraft noise in a building. Condition 40 of the development consent gives effect to this requirement.

The Key issues associated with the proposal are;

- Aircraft Noise
- Non Compliance with Councils DCP2007 and Australian Standard AS 2021-2000.

A modification has been lodged to the original consent requesting that Condition 40 of Development Consent 16-2010-700-1 be deleted due to the development being infill development.

Condition 40 states;

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THE APPLICATION

Owner	GRAFIL PTY LTD
Applicant	Mr R B Mackenzie
Detail Submitted	Modification Form

THE LAND

Property Description	Lot 66 DP 1060406
Address	2 Adastra Close Raymond Terrace
Area	612m ²
Dimensions	Rectangular Corner Block
Characteristics	Vacant

THE ASSESSMENT

1. Planning Provisions

LEP 2000 – Zoning	2(a) - Residential
Relevant Clauses	16, 17, 19, 44
Development Control Plan	Section B15 – Aircraft Noise
State Environmental Planning Policies	Nil

Section B15 – Aircraft Noise

Section B15 outlines the requirements of developments in relation to aircraft noise and attenuation.

The development site is located within the following 20-25 Aircraft Noise Contour in both the ANEF 2012 and ANEF2025 Maps.

Within the 20-25 ANEF Noise Contour, dwelling houses and dual occupancies are considered to be "Conditionally Acceptable" development.

Section B.15 – Aircraft Noise for Buildings states that an acoustic report is required to support a development application for development that is "conditionally

acceptable". Such a report shall dictate measures to reduce the amount of aircraft noise in a building. Further control C1 states;

Conditionally acceptable – design measures are required to reduce aircraft noise

Control C2 specifies the Indoor Design Sound Levels for development. Development must satisfy the indoor design sound levels specified by Table 3.3 of AS 2021-2000 based on average maximum noise levels.

In response to this development control and Australian Standard AS 2021-2000 requirement Condition 40 was placed on the consent. Condition 40 states;

Prior to issue of a construction certificate an acoustic report shall be submitted to Council prepared by a suitably qualified acoustic engineer. The development shall be constructed in accordance with the recommendations contained within the acoustic report and the acoustic engineer shall issue a compliance certificate before issue of any occupation certificate.

Control C3 does allow for limited exceptions to the requirements of the DCP. These exceptions relate to;

- A new single dwelling on a vacant pre-existing lot with a dwelling entitlement and located between the 25-30 noise contours (this would normally be classified as unacceptable development).
- Replacement of a single dwelling on a pre-existing lot in any noise contours (where a dwelling would normally be classified as unacceptable development).
- Development in the vicinity of RAAF Base Williamtown on land zoned for Defence Purposes or within the Defence and Airport Related Employment Zone.

The approved development does not relate to any of these Limited Exceptions and there is no valid planning reason for removing the need to attenuate the building to the Levels required by Australian Standard AS 2021-2000.

2. Likely Impact of the Development

Removal of condition 40 would result in the approval and construction of two (2) dwellings without appropriate aircraft noise attenuation within an area affected by aircraft noise levels.

3. Suitability of the Site

The subject site is located within the 20-25 ANEF2012 Noise contour and as such the development is conditionally acceptable subject to the proposed dwelling containing appropriate noise attenuation measures.

4. Submissions

Nil.

5. Public Interest

It is not considered to be in the public interest to remove conditions relating to the requirement for aircraft noise attenuation.