

Submission to Department of Planning (DoP)

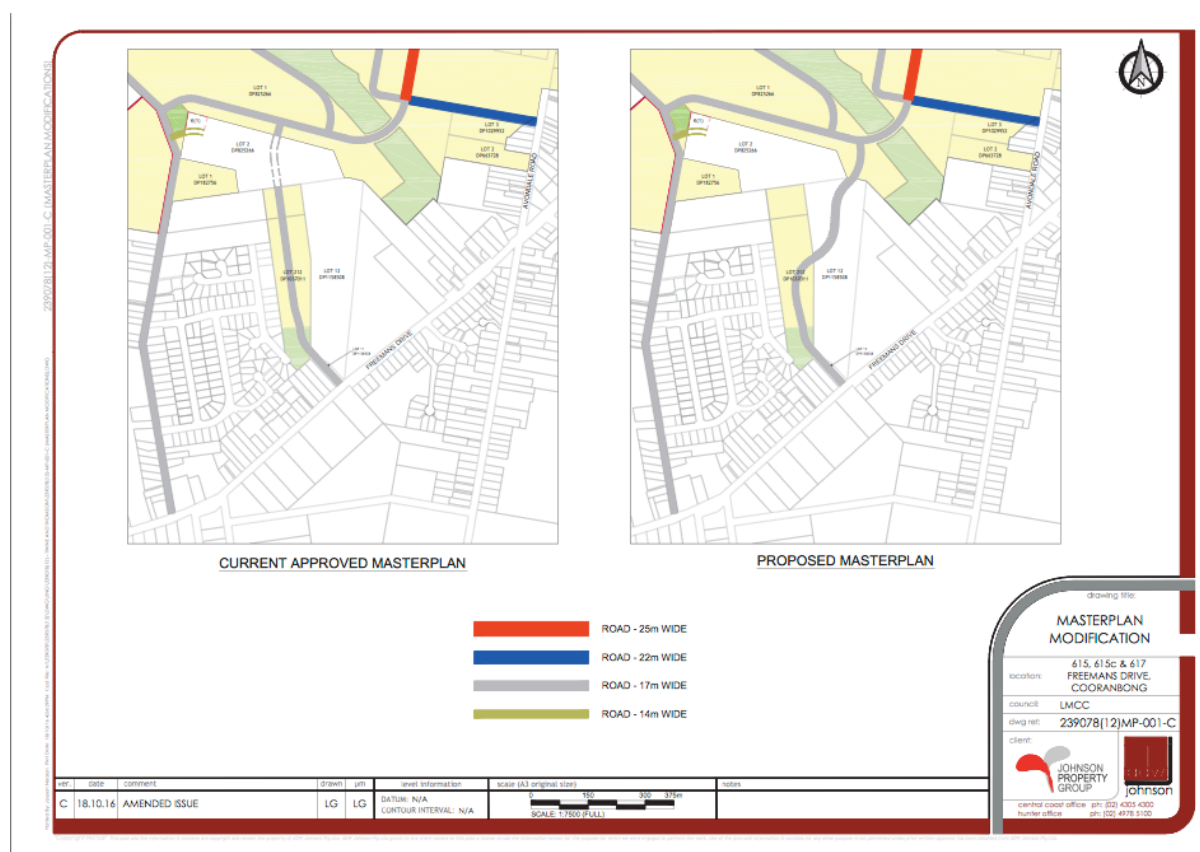
By - Michael Dabson, Raymond & Inkeri Dabson

Regarding: MP_0147 MOD 4 – Modification to Concept Plan North Cooranbong Residential Precinct. (Modification)

Adjacent landowners: Michael Dabson & Raymond & Inkeri Dabson,
97/99 Alton Road, Cooranbong.
Lot 2, DP 825266 (**Lot 2**)

Dear Sir/Madam,

Thank you for inviting a response to the proposed change to the “Current Approved Masterplan” to the Concept road. Below is the diagram of the Submission by the Johnson Property Group (JPG) to the Department of Planning (DOP) showing the proposed changes by JPG from the present approved Concept Plan: (See Appendix 2 for larger diagrams)



The executive summary of the modification application concludes:

“It is considered that inclusive of the modification, the environmental, social and economic benefits to the region identified via the Concept Plan are not diminished”.

We disagree, as there are considerable dis-benefits to our property should the revised plan be approved.

A cursory review of the two Master plan extracts copied above (one approved, one proposed) demonstrates the impact on our property. That impact includes:

1. The removal of the north south road through our property itself.
2. The removal of the connecting nib to the east west road to the north of our property
3. The removal of the connecting road to the south of our property.
4. The removal of the road within the land to the south (with no explanation of what changes to the approved DA at 615 Freemans Drive are proposed)
5. The provision of a road to the south east of our property that makes no connection to our property whatsoever. In fact, the addition of that road will limit the development pattern of our property by failing to properly address that connection, or any connection.

The justification given for the modification is to remove reliance by ACA/JPG on Lot 2 for the north south road. The application also notes that Lot 2 does not form part of the Concept Approval. The executive summary states:

“The proposed alternative road connection:

- *Allows JPG, who is responsible for delivering the majority of the wider release area and the VPA, to deliver road connectivity and VPA obligations in its own right without reliance on other land owners who do not form part of the concept plan”*
- *...”*

However, if the revised concept plan is to be achieved, and developed in the form proposed, then those “other landowners” (Lot 2) may be even more reliant on JPG for any development of their own land. That is not a fair or appropriate planning or legal outcome. That said, we do not accept the view apparently taken by JPG/ACA as to the status of the road immediately to the west of our property. We expand on that matter below.

In addition, the stated justification for the amendment also ignores the following:

1. - The initial Concept Approval provided for a park and road connection to the western boundary of our land.
2. - With the then proposed north south road there were 3 possible connections to our property provided by the road system contemplated by that Approval.
3. - The impact of the Concept Approval, and any modification to it, on our property is a relevant factor when assessing any such modification. The fact that the Concept Approval does not include our property does not mean that impacts on our property can be ignored when making that assessment. To the contrary, such impacts must be considered as part of that assessment.

The following history is also relevant:

History: - TWO recent submissions by Lot 2 to LMCC.

The modification now being sought, to the road route of the Currently Approved Concept Masterplan, by JPG follows two submissions by the owners of Lot 2, DP 825266 to the Lake Macquarie City Council (LMCC). (*6th Nov. 2015, and 21st Oct. 2016*) These two submissions to LMCC requested that LMCC require JPG to construct the approved road at 615 Freemans Drive right to the boundary of Lot 2, DP 825266 and to not stop the construction of this road short of this boundary.

These submissions were made by the owners of Lot 2, to enable Lot 2 to have future road access available to their land from the south, in order to be able to submit a Development Application (DA) to Council for the subdivision of their land. (See Appendix 1)

Legal status of the western road abutting Lot 2.

Currently Lot 2 has insufficient built road frontage to Alton Road, which prevents Lot 2 DP 825266 from being able to be developed, with only a 5m (undisputed) frontage to Alton Road. If the view of the developer is accepted, this effectively “landlocked” situation for subdivision development may require agreement with the adjacent landowners Australasian Conference Association Limited (ACA). However, we do not accept that the current approved concept can be legally implemented or that it correctly reflects the lawful status of the road immediately adjacent to the western boundary of Lot 2.

By way of explanation, a copy of the deposited plan for Lot 2, DP 825266 is attached. See Appendix 3(i). It is included to demonstrate that the road there shown as Alton Road, on that plan, abuts our property.

In the 2008 VPA with Council, that road was shown as being in the ownership of Council. In our view, that is correct, as otherwise our property does not have a road frontage to a dedicated road, apart from a 5m section at the south. We also say that our property is entitled to an easement or right of way over the portion of Alton Road abutting the western boundary of our property, on the basis of the principles set out in the decision of *Dabbs v Seaman* (1925) 36 CLR 538.

If all parties acknowledged that the road shown in that Deposited Plan provided access for Lot 2 to the adjoining road system, (whether as road, easement or otherwise) then the issues that this submission raises can be largely avoided.

The north south road access across Lot 2

This road access across Lot 2 was granted by the owners of Lot 2, the Dabsons, in order to provide to ACA/JPG a needed fourth access road to service ACA's and JPG's subdivision needs for their 2300-lot development. This 135m road access going across Lot 2 was readily granted by the owners of Lot 2 in writing to the DOP in 2008; and still stands.

This access across Dabson land was granted, specifically to provide JPG/ACA with a required fourth-road access route to service their 2300-lot subdivision. It was solely for the benefit of ACA-owned land. Dabsons would have preferred if this road was not going across their land, assuming that access from Alton Road was available.

This grant by Lot 2 to allow a road of access to ACA lands was done without any financial charge for any subsequent commercial benefit that would flow to ACA and JPG.

A commercial benefit would flow to ACA in having landowners' consent from Lot 2 for this road. This (4th) road was an essential north-south access road across Lot 2, critical at that time in order to gain Concept Approval from the DOP for four roads to adequately service the 2300-lot ACA subdivision. This granting of the right of a road across Lot 2, available to ACA at any time it was needed by ACA, was given in writing to the DOP in 2008. Appendix 8 (i) to (v).

The owners of Lot 2 in doing so provided to the 2300-lot subdivision the critical fourth access road needed to service the JPG/ACA subdivision, and for it thus to gain Concept approval at that time, by having sufficient roads of access available to it (ACA/JPG), to be able to service 2300 lots of this very large subdivision project. The removal of that access now questions all of the assumptions underlying the proposed road pattern surrounding our property.

The Concept Plan's western road access to Lot 2

Under the DOP approved Concept Plan there is a 30m road access proposed to Lot 2 coming off Alton Road. This has been approved as a road access to Lot 2 by the DOP and LMCC in the Concept Plan. This access road has been designed by JPG planners. It also goes across 90m² of ACA owned land. This design plan, if developed, (and to the extent it is valid or lawful) provides control to that landowner of the 90m² area (ACA) over this possible access route to Lot 2 – see the heading “Anomaly” below. Again, we do not concede this right is available to ACA.

This modification application assumes that the western road access to our property will be able to be implemented in the form shown in the Concept Approval. However, having regard to the status of the road abutting our property to the west (as shown in the Deposited Plan), and the other matters raised above, this is not an assumption which, in our opinion, can be made. Therefore the removal of the two further access points is of even greater concern.

There are matters of justice and fairness involved in road planning decisions, for the DOP to consider. They relate to the power of control that adjoining owners, and here, a large developer, may have over much smaller adjacent landholdings (if the assumptions the adjoining landowners may hold, about the status of the adjacent land here are correct).

A road access is needed by Lot 2 before the owners of Lot 2 can submit a Development Application (DA) to the local Council (LMCC).

The 30m of road leading onto Lot 2, by the JPG's own design, must go there, and cannot be varied (apparently having regard to the location of the proposed park) if the Concept Plan is to be implemented. It was specifically designed to provide a road access along the southern side of the planned South Park, as well as providing access to Lot 2.

Although the DOP and LMCC have approved this road under the 3A Concept Plan, we have concerns about the implementation of this access for the reasons set out above.

1.7 LOCAL PARK SOUTH

Objectives

- a. To ensure that the Local Park south is accessible.

Controls

- 1 The minimum 5000sqm Local Park is to be constructed in accordance with the design requirements agreed and approved as part of the Part 3A Concept Plan and have frontage to three roads (one of which is Alton Road) as shown in Figure 6 – Road Treatment to Local Park South.



Figure 6 - Road Treatment to Local Park South

The Concept Plan requires that three roads be available on three sides of the future Cooranbong South Park (north, west, and south). The JPG planners have designed the 30m road to be one of these three. It also provides an access road to Lot 2 from Alton Road.

The southern boundary road of the approved Cooranbong South Park gives direct and short access to Lot 2 across 30m of land to the west, coming from an existing publicly gazetted road. It is to be noted that a part of this road along the south boundary of the future park is placed over Lot 2 itself, and this part of the road on Lot 2 forms part of the approved 3A Concept Plan, in addition to the 30m section that is not on Lot 2.

The 135 metre access Road

This also is also true of the approved road across Lot 2 from north to south, namely, that this 135m road across Lot 2 is also part of the 3A Concept approved Plan for the North Cooranbong area.

This road plan for a 135m 3A Concept road across Lot 2 (with landowners approval granted) became a designated part of the 3A Concept Plan road even after Lot 2 withdrew from the 3A Application itself. This was possible because of Lot 2's freely granted permission for this 3A Concept road to go right across their land; a permission that still stands. This road was then placed on Lot 2, by JPG planners, with Lot 2's permission, and is part of the approved 3A Concept Plan.

As mentioned, this 135m road across Lot 2 was specifically to provide access to the ACA land and was needed to adequately service the 2300-lot -subdivision's road-access needs from Freemans Drive (four roads were needed). This is the road that JPG is now

seeking to relocate in their present Submission to the DOP. However, to succeed in doing so will also remove an alternative road access to Lot 2.

We respectfully submit that the DOP needs to address road access to Lot 2.

That the 135m road across Lot 2 is still required and needed, as part of the 3A Concept Plan, was recently acknowledged by Bryan Garland, Development Director for the JPG in an email to Michael Dabson of 11th February, 2015:

It is to be noted that this information was cc'd to both the director of JPG, Keith Johnson, and to Kelvin Peuser of ACA.

- "Yes we will still need the road connection across Lot 2 as required by the Part 3A master plan." (11th February 2015 – Bryan Garland, Development Director, Johnson Property Group)

This was in response to a query by the owners of Lot 2 to JPG, as they were endeavouring to design a road layout for their land (to be able to put in a DA to Council), and we wished to know whether this road across our land was still needed by ACA/JPG. We had granted this right to ACA/JPG in 2008. Lot 2 would still stand by our permission for this road across Lot 2 at any time it was needed by JPG, and we needed to know if this road access to ACA land across our land was still needed by ACA/JPG.

Bryan Garland ✉

To: Michael Dabson
Cc: Keith Johnson, Kelvin Peuser
Lot 2

11 February 2015 4:12 pm

[Hide Details](#)
[Bryan Garland](#)

Dear Michael

Sorry I missed you today. Had I known you were coming in then I would have arranged to be there.

Yes we will still need the road connection across Lot 2 as required by the Part 3A master plan.

Many thanks
Bryan

Bryan Garland

Development Director
Johnson Property Group

M 0408 991 888 | T 02 8023 8888 | E bryang@johnsonpropertygroup.com.au



Head Office

Level 12, 48 Hunter Street, Sydney NSW 2000
PO Box A1308, Sydney South NSW 1235
www.johnsonpropertygroup.com.au



The owners of Lot 2 have been unable to submit a DA to LMCC for the subdivision of their property, for the last eight years, and seemingly cannot do so until the issue of

road access is resolved. The removal of the additional, north south access, only serves to make the road access position for Lot 2 even more difficult.

The relocation of this road to bypass Lot 2, as is being now suggested in the Submission by JPG to the Department of Planning also needs to be read in the light of the history since 2008, by the DOP. (More historical information is included in the Appendices. Appendix 9 pp 23-40)

An anomaly

The 30m western access road to Lot 2 was designed and drawn up by JPG planners themselves, and was submitted to the DOP and LMCC and it received approval in 2008. (see Appendix 3ii & 3iii).

Both the DOP and LMCC have approved this road, which forms part of the 3A Concept Masterplan, as noted.

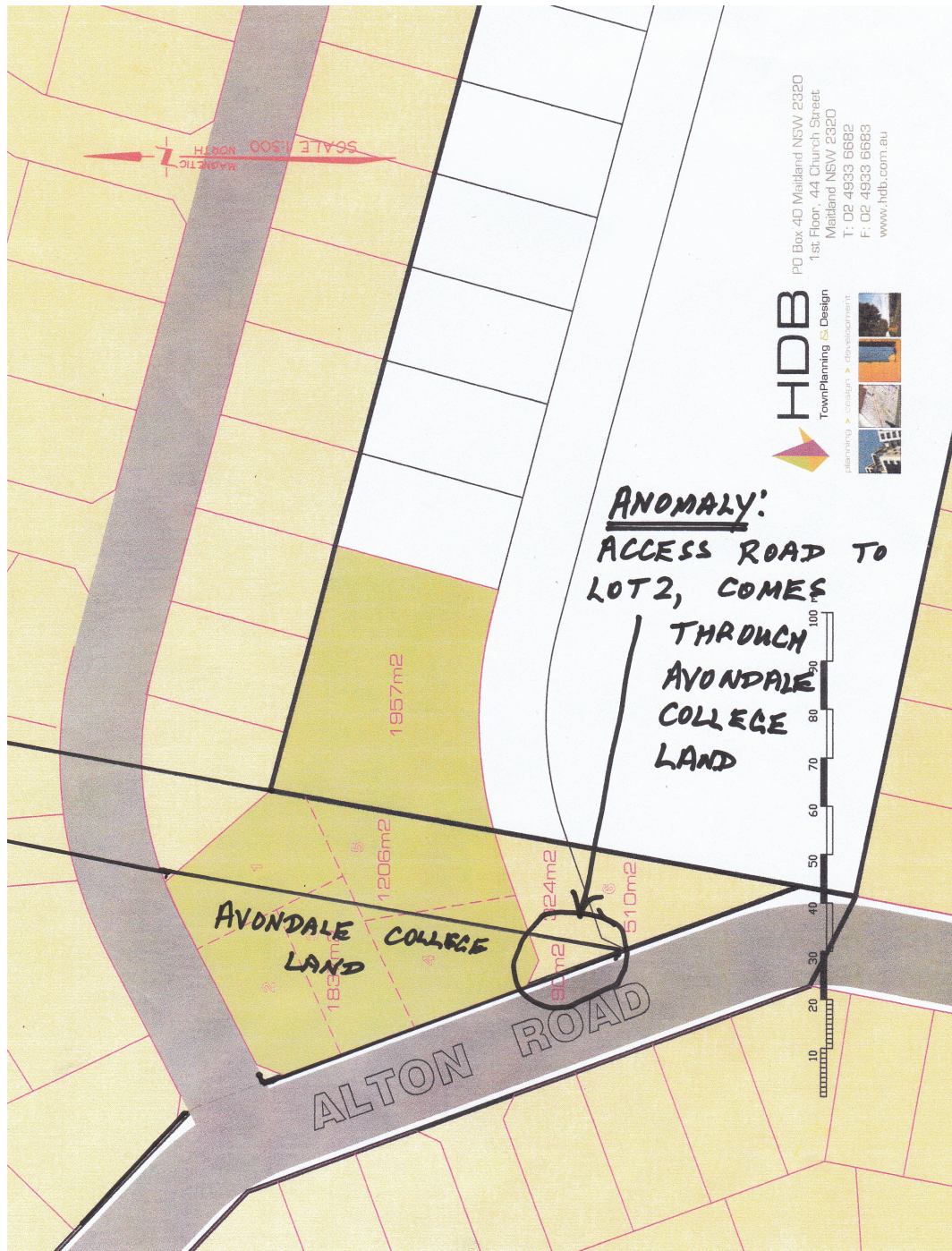
It is to be observed that this 30m road has been drawn up by JPG in such a way that it traverses a small 90m² section of ACA land. This is shown in the diagrams below; and see Appendix 3(ii) & 3(iii). This gives JPG/ACA control of when this access road might be allowed to be constructed, and thus when Lot 2 may be able (allowed) to submit a DA to LMCC for the subdivision of their land. Whether this was intentional or not, this is the result.

This “anomaly” was pointed out in an email to Bryan Garland of 11th Oct 2008 (Cc'd to DOP and LMCC at the same time) but no alterations were made to the road design. (see Appendix 4 (i) to (iii) for email and diagrams)

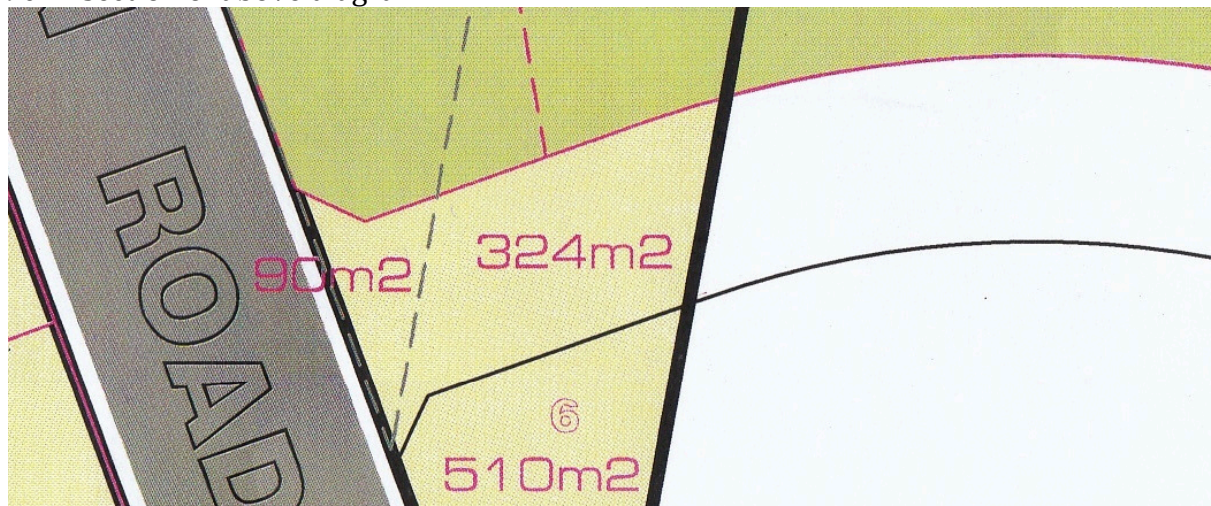
The 90m² section of the JPG-designed road could effectively block Lot 2's use of this planned road access, by its neighbour ACA,. It could prevent Lot 2 from being able to submit any DA to Council for their land's development, unless approval was received from ACA.

An alternative design suggestion at the time (2008) from Lot 2 was ignored; a straightforward suggestion that if adopted by JPG planners, would have removed this 90m² effective “gate” that could later hinder or prevent Lot 2 from being able to put in a DA for their land to Council. That design (See Appendix 4) suggested in an email to JPG, of 11th Oct 2008, by the owners of Lot 2, was not replied to.

Below: - (next page) diagram sent to JPG planners, and cc'd to the DOP and LMCC in 2008, pointing out the “anomaly”



90m² section of above diagram



Further Background History 2008:

In 2008, JPG under its 3A application placed two of the four required access roads to the ACA/JPG 2300-lot development through Lot 2. One of these two roads was an 82-foot (25m) wide four-lane dual-carriageway road, which is the widest road possible in a residential subdivision. In addition, JPG initially planned for that 82 ft (25m) wide east-west access road to go right through the two newly-constructed landowners' homes as well. (see Appendix 5)

In their plan, that went on public exhibition, ACA/JPG also had placed all of the 5,000m² South Park onto Lot 2, with none of it on the ACA or JPG adjacent lands – of around 200+ ACA/JPG lots which the South Park will also service. This action of park placement was also done without the landowners being consulted about the park being placed onto their land. (see Appendix 5).

On the basis of the past plans and designs by JPG planners for Lot 2, in 2008, the owners of Lot 2 had to withdraw from the 3A Application. (See Appendix 6 - letter to DOP, 15th Sept. 2008, and Appendix 7 - letter to Keith Johnson, 15th Sept. 2008 – Notifying JPG of Lot 2's withdrawal from 3A Application, and reasons.)

Landowner's permission granted to JGP in 2008:

The owners of Lot 2, in 2008 well understood that subsequent to their withdrawal from the 3A Application, they could have withheld permission for the needed 135m north-south road across their land, it was within their legal rights to do so. However there did not then seem to be another ready access route then available to ACA/JPG.

Mr Thomson's land (at 617 Freemans Drive) was not then a possibility. It did not become a possibility until after Mr Thomson passed away in 2013. ACA subsequently purchased the land, with a private Sewerage Treatment Plant in mind to service the 2300-lot development. With this land purchase a possible alternative road route for the approved fourth access road to ACA land across Lot 2, would become a possibility to ACA/JPG other than the approved 135 access route across Lot 2.

The reason the Dabsons gave their permission for this essential north-south access road to go across their land (Lot 2) back in 2008, (see Appendix 8), was because they were aware of the benefits it would bring to Avondale College in the large 2300-lot subdivision being able to receive Concept approval to go ahead. They wished to co-operate with and assist the Adventist Church's 2300-lot development and not hinder it.

Thus, in 2008, the owners of Lot 2, in a spirit of co-operation, granted to JPG/ACA (free of any charge) the needed, and "critical" 135m north-south access road right across their land. This future road was then essential as a fourth access road from Freemans Drive, to help service the Church's 2300-lot subdivision.

This is the road that is now the subject of this submission to the DOP from JPG/ACA.

However to remove this road now, will remove one needed access point for our property.

Lot 2 withdrew from the 3A Application in order to protect its land rights. Subsequently the DOP and LMCC oversaw and approved the relocating of the 25m wide east- west road through Lot 2 on to ACA land, and the moving of 60% of the South Park off Lot 2; which previously had been 100% placed on Lot 2 by the JPG planners.

After that withdrawal, the approved concept plan - if implemented - still has significant relevance and impacts on Lot 2.

The effect of the proposed modification on Lot 2

Lot 2's access route to Freemans Drive through 615 Freemans Drive (from the southern end of the 135 m approved Concept Road) is at present part of the approved Concept Plan by the DOP for Lot 2's future subdivision.

If the DOP agrees for this road to be relocated, it has potentially significant consequences for Lot 2. By doing so the DOP would be agreeing to remove a road access to Lot 2. This is currently one of two approved roads by LMCC and the DOP giving possible future access to Lot 2. This road could enable the owners of Lot 2 to be able to submit a DA to Council in the future for a plan of subdivision for their land, and for a DA to be approved by LMCC. "Preventing" Lot 2 from having this as a possible access route to service their property obviously limits that possibility.

In the approved Concept Plan of the DOP and LMCC, since 2008 only two road accesses are shown as being available to Lot 2 in the Concept Plan: - the north-south road across Lot 2 from JPG land to ACA land, and the east-west road from Lot 2 alongside the proposed South Park.

As mentioned, this present application to the DOP by JPG, if approved will remove the north-south road that could provide access to Lot 2. It would introduce further uncertainty as to the availability of a road access for our property. Obviously, if proper road access was assured, this uncertainty could be avoided (for example if Lot 2 could construct the Concept-approved east-west 30m road of access across ACA owned-land from Lot 2 to Alton Road, and also be able to do this at any time, or if the easement, or road status of the road shown on our western boundary was acknowledged).

It would be helpful to all parties, including the DOP and LMCC, if resolution of other related planning matters were resolved simultaneously, such as APZs' needed by both parties and sewerage and stormwater easement matters. A joint meeting of all parties could resolve these matters.

For the history (in diagrams) from 2006 to 2016, of the planning of the four roads of access to the ACA/JGP 2300-lot subdivision, refer to Appendix 9.

The diagrams there show quite clearly the history of the planning of these essential four roads of access, being planned by JPG Planners from 2006 onwards. They are self-explanatory. As mentioned, initially there were two of JPG's needed access roads placed by JPG planners through Lot 2. This was then reduced to one, with Lot 2's approval granted for this road to go across their land in writing to the DOP. See Appendix 8(i) to (v).

The diagrams in the Appendices also give details of the acquisition of land to provide an access road to 615 Freemans Drive that would enable it to be developed by JPG. It was

compulsorily acquired by Council in order to provide 615 Freemans Drive with a road access. (see Appendix 10)

JPG with the present modification is now seeking to remove the north-south road of access to Lot 2 and is seeking approval from the DOP to do so.

The owners of Lot 2 however, strongly object to this alternative road of access to their property being removed, while the other road access remains unresolved.

In Summary:

The owners of Lot 2 do not wish their road access to be reduced, and made dependent on a planning outcome that may never be achieved, or that requires the agreement of other landowners, namely ACA, or the developer JPG. (This is the very reason JPG gives for making the modification itself).

It is not a good planning outcome for development of residential land to be restricted, and under the control of a neighbouring development. A large developer might well desire that any nearby land development be delayed, possibly indefinitely. In saying that, we repeat that we do not accept the position that the developer adopts regarding the status of the adjoining land.

Residential land unable to be developed is never a satisfactory planning outcome.

In particular, with reference to the present situation:

- 1.) Currently, Lot 2 has insufficient built frontage to Alton Road for a road to be able to be constructed to the current Alton Road thus permitting the subdivision of Lot 2;
- 2.) If the approved road through 615 Freemans Drive - which will provide a road access to Lot 2 - is removed under JPG's present submission to the DOP, then development of Lot 2 will be further constrained as it does not have sufficient physical width of land to allow a road to be constructed onto Lot 2 from Alton Road, (only 5 metres).
- 3.) Present Alton Road access is insufficient, without access being granted and allowed from Alton Road by ACA, - via the 30m road that has both DOP and LMCC approval as part of the 3A Concept Plan, or through the easement or road status of Alton Road being confirmed .
- 4.) Lot 2 agreed to participate in the 3A Concept Plan based on mutual co-operation between the parties, but withdrew for reasons already noted.
- 5.) Lot 2 has co-operated in the past allowing JPG access through Lot 2, free of any charge.
- 6.) The proposed modifications to the Concept Plan now being sought by JPG, may cause Lot 2 substantial loss and damage, if accepted by the DOP without alleviating modifications ensuring Lot 2 the access that is necessary to develop Lot 2.
- 7) The 30m road access to Lot 2, has been designed to provide access to both the South Park and to Lot 2. It has been designed by JPG planners themselves, and been approved in the DOP's Concept Plan and by LMCC. Lot 2 had no input into the design. The 30m western access road to Lot 2 will be the only possible road access left available to Lot 2 if this modification to the Concept Plan presently before the DOP is accepted by the DOP, and that alternative access (at least via the Concept Plan process) is seemingly

effectively under the complete and full control of the applicant for this proposed modification. Again, we do not concede that the Concept Plan design is able to be carried in to effect, having regard to the easement or road status of Alton Road referred to above.

In Conclusion:

We would desire that the DOP, before making a final decision, consult with all parties including Lake Macquarie City Council, and consider having a meeting with all interested parties so that the planning outcome can be resolved properly and not piecemeal, and to the benefit of all parties involved.

Yours faithfully,

Michael Dabson, Raymond Dabson and Inkeri Dabson