

# DRAFT

## MINUTES – 28 MARCH 2017



# PORT STEPHENS

## C O U N C I L

Minutes of Ordinary meeting of the Port Stephens Council held in the Council Chambers, Raymond Terrace on – 28 March 2017, commencing at 6.16pm.

**PRESENT:**

Mayor B MacKenzie, Councillors G. Dingle, C. Doohan, K. Jordan, P. Kafer, P. Le Mottee, J Nell, S. Tucker, General Manager, Corporate Services Group Manager, Facilities and Services Group Manager, Acting Development Services Group Manager and Governance Manager.

Cr Ken Jordan and Cr Paul Le Mottee were not present at the commencement of the meeting. Cr Ken Jordan entered the meeting at 6.20pm and Cr Paul Le Mottee entered the meeting at 6.22pm.

<b>056</b>	<b>Councillor John Nell</b> <b>Councillor Chris Doohan</b>  It was resolved that the apologies from Cr Sally Dover and Cr John Morello be received and noted.
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<b>MINUTES ORDINARY COUNCIL - 28 MARCH 2017</b>
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<b>057</b>	<p><b>Councillor Steve Tucker</b> <b>Councillor John Nell</b></p> <p>It was resolved that the Minutes of the Ordinary Meeting of Port Stephens Council Ordinary Council held on 14 March 2017 be confirmed.</p>
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	<p>Cr Ken Jordan declared a significant non-pecuniary conflict of interest in Item 1. The nature of the interest is the neighbour is a family friend.</p> <p>Cr Paul Le Mottee declared a pecuniary conflict of interest in Item 1. The nature of the interest is the Le Mottee Group prepared plans for the applicant.</p> <p>Cr Paul Le Mottee declared a pecuniary conflict of interest in Item 2. The nature of the interest is the Le Mottee Group prepared the application on behalf of the owner.</p> <p>Cr Paul Le Mottee declared a pecuniary conflict of interest in Item 3. The nature of the interest is the Le Mottee Group prepared the application on behalf of the owner.</p> <p>Cr Paul Le Mottee declared a pecuniary conflict of interest in Item 4. The nature of the interest is the Le Mottee Group undertook survey work on the site.</p>
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# MOTIONS TO CLOSE

**ITEM NO. 1**

**FILE NO: 17/61278  
RM8 REF NO: PSC2015-01018**

**MOTION TO CLOSE**

REPORT OF: WAYNE WALLIS - GENERAL MANAGER  
GROUP: GENERAL MANAGER'S OFFICE

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**RECOMMENDATION:**

- 1) That pursuant to section 10A(2) (i) of the *Local Government Act 1993*, the Committee and Council resolve to close to the public that part of its meetings to discuss Confidential Item 1 on the Ordinary agenda namely **CODE OF CONDUCT**.
- 2) That the reasons for closing the meeting to the public to consider this item is that the discussion will include information containing:
  - alleged contraventions of any code of conduct requirements applicable under section 440.
- 3) That the report remain confidential and the minute be released in accordance with Council's resolution.

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**ORDINARY COUNCIL MEETING - 28 MARCH 2017  
MOTION**

<b>058</b>	<p><b>Councillor Chris Doohan Councillor John Nell</b></p> <p>It was resolved that Council:</p> <ol style="list-style-type: none"><li>1) That pursuant to section 10A(2) (i) of the <i>Local Government Act 1993</i>, the Committee and Council resolve to close to the public that part of its meetings to discuss Confidential Item 1 on the Ordinary agenda namely <b>CODE OF CONDUCT</b>.</li><li>2) That the reasons for closing the meeting to the public to consider this item is that the discussion will include information containing:<ul style="list-style-type: none"><li>• alleged contraventions of any code of conduct requirements applicable under section 440.</li></ul></li><li>3) That the report remain confidential and the minute be released in accordance with Council's resolution.</li></ol>
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The motion on being put was carried.

<b>MINUTES ORDINARY COUNCIL - 28 MARCH 2017</b>
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**ORDINARY COUNCIL MEETING - 28 MARCH 2017  
AMENDMENT**

	<b>Councillor Geoff Dingle</b> <b>Councillor Peter Kafer</b>  That Council deal with the matter in Open Council.
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Cr Ken Jordan entered the meeting at 6.20pm.

Cr Paul Le Mottee entered the meeting at 6.22pm.

The amendment on being put was lost.

# COUNCIL REPORTS

ITEM NO. 1

FILE NO: 17/10311  
RM8 REF NO: 16-2016-862-1

**DEVELOPMENT APPLICATION NO. 16-2016-862-1 FOR TORRENS TITLE  
SUBDIVISION OF ONE INTO TWO LOTS, AND NEW SHED AT 111 SOUTH  
STREET, MEDOWIE (LOT 14 DP 1079392)**

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

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Approve Development Application (DA) No.16-2016-862-1 for Torrens title subdivision of one into two lots, and new shed at No.111 South Street, Medowie (Lot 14 DP 1079392), subject to the conditions contained in **(ATTACHMENT 2)**.
  - 2) Approve the request for a refund of DA fees totalling \$735.
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**ORDINARY COUNCIL MEETING - 28 MARCH 2017  
MOTION**

<b>059</b>	<b>Mayor Bruce MacKenzie Councillor John Nell</b>  It was resolved that Council move into Committee of the Whole.
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Councillor Ken Jordan left the meeting at 06:32pm.  
Councillor Paul Le Mottee left the meeting at 06:32pm.  
Councillor Peter Kafer left the meeting at 06:32pm.  
Councillor Peter Kafer returned to the meeting at 06:33pm.

**COMMITTEE OF THE WHOLE RECOMMENDATION**

	<b>Mayor Bruce MacKenzie Councillor John Nell</b>  That Council: <ol style="list-style-type: none"><li>1) Acknowledge the petition received;</li><li>2) Approve Development Application (DA) No.16-2016-862-1 for Torrens title subdivision of one into two lots, and new shed at No.111 South Street, Medowie (Lot 14 DP 1079392), subject to the conditions contained in <b>(ATTACHMENT 2)</b>; and</li><li>3) Approve the request for a refund of DA fees totalling \$735.</li></ol>
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<b>MINUTES ORDINARY COUNCIL - 28 MARCH 2017</b>
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**ORDINARY COUNCIL MEETING - 28 MARCH 2017  
AMENDMENT**

	<b>Councillor John Nell</b>  That the item be deferred to allow for further information and legal advice.
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The amendment lapsed without a seconder.

**ORDINARY COUNCIL MEETING - 28 MARCH 2017  
AMENDMENT**

	<b>Councillor Chris Doohan</b> <b>Councillor John Nell</b>  That the item be deferred to the next Council meeting to allow for further information and seek legal advice.
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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: Cr John Nell.

Those against the Motion: Mayor Bruce MacKenzie, Crs Geoff Dingle, Chris Doohan, Peter Kafer and Steve Tucker.

The amendment on being put was lost.

**ORDINARY COUNCIL MEETING - 28 MARCH 2017  
MOTION**

	<b>Councillor Chris Doohan</b> <b>Councillor Steve Tucker</b>  That Council refuse development application no. 16-2016-862-1 for Torrens title subdivision of one into two lots, and new shed at 111 South Street, Medowie (Lot 14 DP 1079392).
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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 Geoff Dingle, Chris Doohan, Peter Kafer, John Nell and Steve Tucker.

## MINUTES ORDINARY COUNCIL - 28 MARCH 2017

Those against the Motion: Mayor Bruce MacKenzie.

The motion on being put was carried.

Councillor Paul Le Mottee left the meeting at 07:41pm, in Open Council.

Councillor Ken Jordan left the meeting at 07:42pm, in Open Council.

Councillor Ken Jordan returned to the meeting at 07:42pm, in Open Council.

### ORDINARY COUNCIL MEETING - 28 MARCH 2017 MOTION

<b>060</b>	<b>Councillor Chris Doohan</b> <b>Councillor John Nell</b>  It was resolved that Council refuse development application no. 16-2016-862-1 for Torrens title subdivision of one into two lots, and new shed at 111 South Street, Medowie (Lot 14 DP 1079392).
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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 Geoff Dingle, Chris Doohan, Peter Kafer, John Nell and Steve Tucker.

Those against the Motion: Mayor Bruce MacKenzie.

The motion on being put was carried.

### BACKGROUND

The purpose of this report is to present Development Application (DA) No.16-2016-862-1 to Council for determination. The DA proposes a one (1) into two (2) lot Torrens title subdivision and new shed at 111 South Street, Medowie (Lot 14 DP 1079392). A locality plan is provided at **(ATTACHMENT 1)**.

The application has been called to Council by Councillor Jordan. A copy of the call up form has been included as **(ATTACHMENT 3)**.

A two way conversation/briefing was held with Councillors on 21 February 2017.

#### Development Proposal

The application proposes a one into two lot Torrens title subdivision and a shed. The proposed subdivision will create the following allotments:

## MINUTES ORDINARY COUNCIL - 28 MARCH 2017

- Lot 1 with an area of 1,561m<sup>2</sup> which will contain the existing dwelling onsite. Access to this lot is currently provided directly from South Street; and
- Lot 2 with an area of 700m<sup>2</sup> and will be suitable for supporting a future dwelling. Access to this lot will be available from Sylvan Avenue.

The proposed shed will be located to the west of the existing dwelling, along the Sylvan Avenue frontage. Landscaping has been provided to screen the shed from the street.

### Site Details

The subject site is located at Lot 14 DP 1079392 and is known as 111 South Street. It is zoned R2 Low Density Residential and is a corner lot located on the intersection of South Street and Sylvan Street. The site is 2,262m<sup>2</sup> in size and comprises a single storey dwelling located along the South Street frontage.

The site slope towards the south and an existing driveway provides access to the existing dwelling from South Street.

Surrounding developments comprise predominantly detached single dwellings (of both one and two stories in height). The land to the south of the subject land is zoned R2, with a minimum lot size of 600m<sup>2</sup>. The land to the north is zoned R5 Large Lot Residential with a minimum lot size of 2,000m<sup>2</sup>.

A recent approval (DA 16-2015-682-1) for three dual occupancies (six single storey dwellings) across three lots was approved on 1, 1A, and 1D Sylvan Avenue. This is situated to the west of the subject site, directly across the road from the property at 8 Sylvan Avenue. This land is zoned R5, with a minimum lot size of 2,000m<sup>2</sup>.

### Site History

The subject site was previously zoned as 1C (Rural Small Holdings) under Port Stephens Local Environmental Plan 2000, with an accompanying minimum lot size of 2,000m<sup>2</sup>.

A planning proposal was submitted to Council in February 2012 on behalf of Pacific Dunes Estate, which included the subject site. The intent of the rezoning was to facilitate higher densities in Pacific Dunes Estate, by rezoning land 2(a) Residential and lowering the applicable minimum lot size. Council endorsed the proposal with a minimum lot size of 700m<sup>2</sup>. Council resolved to prepare the planning proposal on 24 April 2012 and resolved to proceed with the planning proposal post-exhibition on 13 August 2013. Both resolutions were unanimous.

At some time between the exhibition period and gazettal an administrative error resulted in the minimum lot size being reduced to 450m<sup>2</sup>. The error was not realised until after gazettal of the planning proposal which occurred concurrently with the Port Stephens Local Environmental Plan 2013 (LEP 2013). To date this error has not



been rectified and the current minimum lot size for the site remains at 450m<sup>2</sup>. There are plans however to rectify the matter as part of the forthcoming housekeeping LEP.

### Assessment Outcomes

The proposed shed is considered ancillary to the existing dwelling and is therefore considered permissible with consent in the R2 Low Density Residential zone. An assessment of the shed has determined that it complies with the relevant development standards and Port Stephens Development Control Plan 2014 requirements.

The application includes a one into two lot Torrens title subdivision that requires consent under Clause 3.6 of LEP2013. The proposed development is considered to be compliant with Clause 4.1 – Minimum Subdivision Lot Sizes of LEP2013 and Chapter C1 – Subdivision of Port Stephens of the Development Control Plan (DCP2014) with a lot size of above 450m<sup>2</sup>. In addition, it is noted that the proposal complies with the 700m<sup>2</sup> minimum lot size intended for the land and as endorsed by Council. A detailed assessment of the proposal against the provisions of s.79C *Environmental Planning and Assessment Act 1979* (EP&A Act) is provided at **(ATTACHMENT 4)**.

The development addresses the objectives of the zone by providing the opportunity for additional residential development to cater for the housing needs of the community. The proposal will not have any significant impacts on the amenity of adjoining properties.

### Request for Refund of DA Fees

It is acknowledged that the original proposal incorporated a lot of less than 700m<sup>2</sup> (624m<sup>2</sup>). The applicant had been given preliminary verbal advice that the proposal they were intending to lodge complied with the minimum lot size requirements of the PSLEP 2013. Although this lot was compliant with the requirements of the PSLEP 2013, following consultation, in the interest of the community the applicant amended their original plan to increase this lot size to 700m<sup>2</sup>. This change came at cost to the applicant. Given the change was required largely as a result of an administrative error by Council staff, the applicant has requested a refund of DA fees which total \$735 as compensation for the additional monetary, design and time costs they have been subject to. It is recommended that Councillors consider this refund.

## **COMMUNITY STRATEGIC PLAN**

<b>Strategic Direction</b>	<b>Delivery Program 2013-2017</b>
Sustainable Development.	Provide Strategic Land Use Planning Services. Provide Development Assessment and Building Certification Services.

**FINANCIAL/RESOURCE IMPLICATIONS**

There are no known financial implications resulting from the recommendation of this report.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes		The existing budget can accommodate a fee refund if Councillors wish to support this request.
Reserve Funds	No		
Section 94	Yes		Refer to conditions of consent.
External Grants	No		
Other	No		

**LEGAL, POLICY AND RISK IMPLICATIONS**

The development application is consistent with *Port Stephens Local Environmental Plan 2013* (LEP2013) and Port Stephens Development Control Plan 2014 (DCP2014). Further details are provided in the Planners Assessment Report contained in **(ATTACHMENT 4)**.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that if the application is refused, it may be challenged at the Land and Environment Court.	High	Approve the application as recommended.	Yes
There is a risk that if the application is refused, available development opportunities for residential subdivision may not be realised.	Low	Approve the application as recommended.	Yes

**SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

The development will result in positive economic, social and environmental outcomes. The proposed development represents a one into two lot Torrens title subdivision and will result in an additional residential lot to service the needs of the community.

The proposed subdivision will reinforce the residential character in the locality and will act as a transition between the R2 zone in the south and the R5 zoned land in the north. There are no anticipated adverse impacts on the built environment as a result of the proposed development.

The proposed additional lot has adequate site access for vehicles and is of a size which can easily accommodate a future dwelling. It should be acknowledged that any future dwelling design will be subject to a separate assessment.

## **CONSULTATION**

Consultation with key stakeholders has been undertaken by the Development Assessment and Compliance Section during the development application process.

The objective of the consultation was to inform the relevant parties of the development application and obtain their feedback on the proposal to ensure all potential concerns have been investigated.

### Internal

The application was reviewed by a range of Councils internal specialists. The application was referred to Councils Engineering Section, Building Surveyor, and Section 94 Officer for comment. The application was supported unconditionally by Council's Engineering Section, general conditions of consent were provided by Council's Building Surveyor, and the proposal attracted Section 94 contributions for which a condition is proposed.

A two way conversation/briefing was held with Councillors on 21 February 2017.

### External

In accordance with the requirements of the Port Stephens Development Control Plan 2013, the application was not notified or advertised. However, following interest from surrounding property owners, consultation was undertaken and as a result eight (8) submissions were received.

A meeting was also held with concerned residents.

**MINUTES ORDINARY COUNCIL - 28 MARCH 2017**

The issues identified in the submissions have been addressed below:

<b>Issue Raised</b>	<b>Comment</b>
Parking and Road Networking	<p>A referral was sent to Council's Traffic Engineer to assess the traffic impacts of the proposed subdivision with consideration to submissions.</p> <p>It was concluded there is sufficient frontage to Sylvan Avenue from the proposed lot so as to allow safe access to each proposed lot, with acceptable minimum sight distances in accordance with Austroads requirements. It was noted that Sylvan Avenue is too narrow to support on-street parking, however the lot is sufficiently sized so as to allow for on-site parking of vehicles. Further consideration of car parking will be required during the assessment of any future development on the proposed vacant lot. No new vehicular access is required to the shed.</p>
Zoning and Minimum Lot Sizes	<p>The proposed development exceeds the current minimum lot size of 450m<sup>2</sup>. In addition, the proposal meets the intended minimum lot size of 700m<sup>2</sup> as endorsed by Council. The proposal does not increase lot yield above the densities envisaged in the planning proposal and is in keeping with the objectives of the zone.</p>
Covenants/restrictions on title	<p>A number of submissions stated that the subject site cannot be subdivided as the result of a restriction on the title. However there is no restriction registered over the lot and the subdivision of this site is not burdened.</p>
Notification	<p>In accordance with Chapter A.12 of the Port Stephens Development Control Plan 2014, the application was not initially notified or advertised. However given the level of interest from surrounding land owners, direct consultation was undertaken to identify concerns.</p>
Privacy	<p>Proposed Lot 2 (700m<sup>2</sup>) is deemed to have sufficient space to facilitate future residential development without creating any substantial privacy or amenity issues. The subject land is located downslope from adjoining properties to the north and east, and it is noted that these properties feature garages, driveways and park areas adjacent to the development site. Consideration of privacy impacts from specific development is required to be undertaken during the assessment of any future proposal. There are no anticipated privacy impacts from the subject development.</p>

## MINUTES ORDINARY COUNCIL - 28 MARCH 2017

Increase demand for services	It is considered that the additional allotment, included in the proposal, will not impact significantly on the services in the area. The site is located in a residential area with adequate access to sewer, water, electricity, stormwater and road infrastructure.
Existing streetscape/character	<p>The submissions described the subdivision as out of character from the rest of the Sylvan Ridge Estate. However, the intent of the Pacific Dunes planning proposal was to facilitate smaller residential lots. It is noted that the proposal respects the intended minimum lot size of 700m<sup>2</sup> and the resulting lots will act as a transition between the R2 and R5 zonings.</p> <p>It is considered that the proposed subdivision will not detrimentally impact on the streetscape of character of the area.</p>
Stormwater	The subject site naturally slopes downwards towards Sylvan Avenue and any surface water runoff will naturally fall to this direction.

### CONCLUSION

The proposed development is considered to suitably address the requirements of the Port Stephens Local Environmental Plan 2013 and Port Stephens Development Control Plan 2014. Mitigation measures proposed in the application, in addition to the proposed conditions of consent, are anticipated to adequately address any potential impacts of the development.

### OPTIONS

- 1) Accept the recommendations.
- 2) Amend the recommendations.
- 3) Reject the recommendations.

### ATTACHMENTS

- 1) Locality Plan.
- 2) Notice of Determination.
- 3) Call Up Form.
- 4) Planner's Assessment Report.

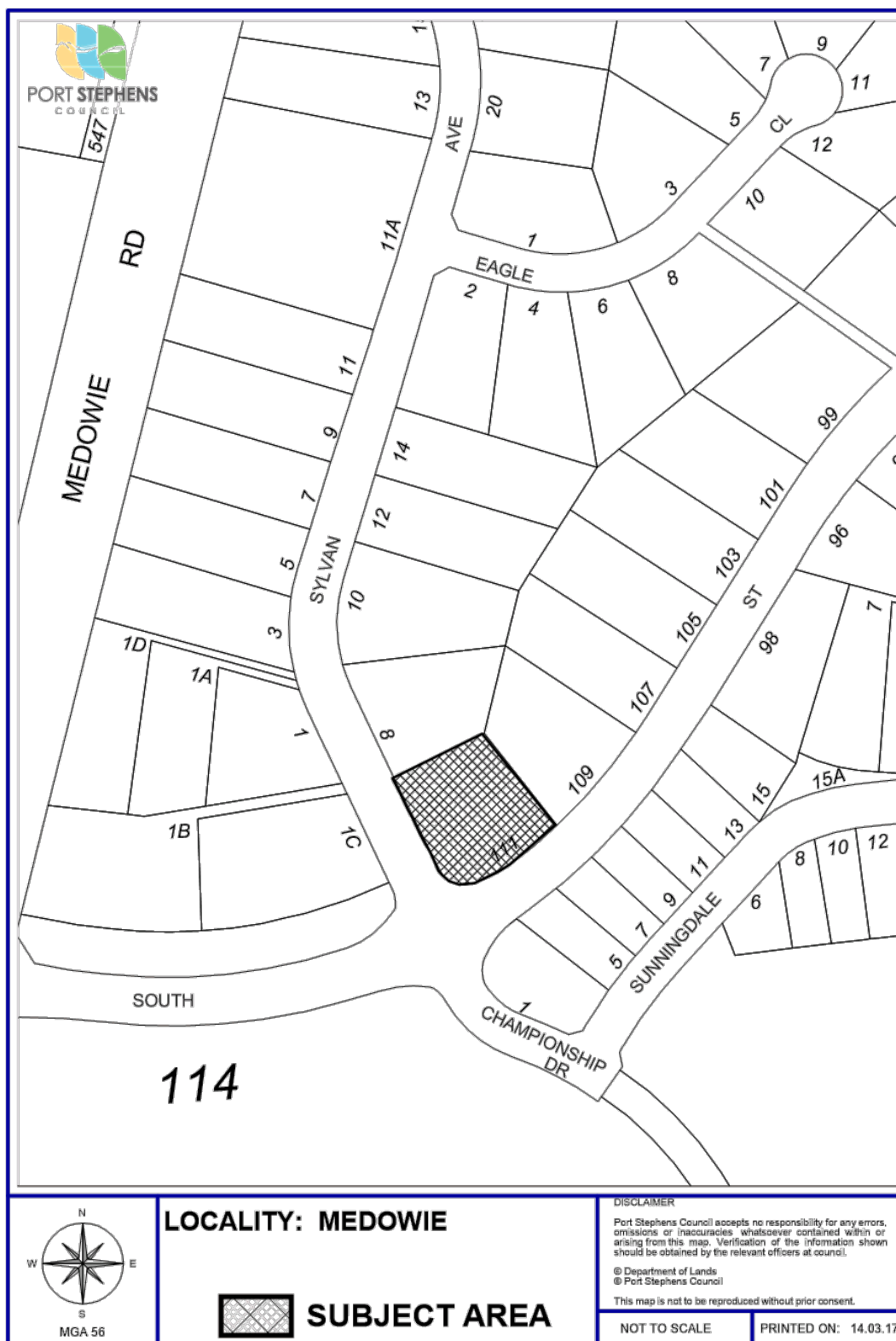
### COUNCILLORS ROOM

- 1) Development plans.

**TABLED DOCUMENTS**

Nil.

ITEM 1 - ATTACHMENT 1 LOCALITY PLAN.



116 Adelaide Street, Raymond Terrace NSW 2324. Phone: (02) 49800266 Fax: (02) 49873812 Email: council@portstephens.nsw.gov.au



**PORT STEPHENS**  
COUNCIL

## Notice of Determination

Under section 80, 80A, 80(1) and 81(1)(a) of the Environmental Planning and Assessment Act 1979 (NSW).

Development consent is granted to development application 16-2016-862-1 subject to the conditions in Schedule 1.

Notice is hereby made under Section 81 of the Environmental Planning and Assessment Act 1979 (the Act) of a Development Consent issued under Section 80 of the Act, for the development described below. The consent should be read in conjunction with the conditions contained in Schedule 1 and the notes contained in Schedule 2. Details of approvals under Section 78A(3) of the Act are contained in Schedule 3.

**Determination Outcome:** Approval, subject to conditions

### APPLICATION DETAILS

**Application No:** 16-2016-862-1

**Property Address:** LOT: 14 DP: 1079392  
111 South Street MEDOWIE

**Description of Development:** Torrens Title Subdivision of One into Two Lots and Shed

**Date of determination:** 28 March 2017

**Date from which the consent operates:** 28 March 2017

**Date on which the consent shall lapse:** 29 March 2022  
(unless physical commencement has occurred)

MR H C JONES  
*Cadet Town Planner*  
Port Stephens Council

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**PORT STEPHENS  
COUNCIL**

## Notice of Determination

Under section 80, 80A, 80(1) and 81(1)(a) of the Environmental Planning and Assessment Act 1979 (NSW).

### SCHEDULE 1

#### REASONS WHY THE CONDITIONS HAVE BEEN IMPOSED

These conditions are required to:

- prevent, minimise, and/or offset adverse environmental impacts including economic and social impacts;
- set standards and performance measures for acceptable environmental performance;
- require regular monitoring and reporting; and
- provide for the ongoing environmental management of the development.

#### CONDITIONS THAT IDENTIFY APPROVED PLANS AND LIMITATIONS OF CONSENT

1. The development must be carried out in accordance with the plans and documentation listed below and endorsed with Council's stamp, except where amended by other conditions of this consent or as noted in red by Council on the approved plans:

Plan/Doc.Title	Plan Ref. No	Sheet.	Date	Drawn By
Proposed Subdivision Contour & Detailed Overlay	6307 PS-V3	1 of 2	7/2/2017	LeMottee Group
Proposed Subdivision	6307 PS-V3	2 of 2	7/2/2017	LeMottee Group
Shed Location Plan	SLP_001	1 of 1	7/2/2017	MM
Shed Detail	30825	1 of 1	26/8/2016	Shed Boss

In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent prevail. If there is any inconsistency between the plans and documentation referred to above the most recent document shall prevail to the extent of any inconsistency.

2. A Construction Certificate is required prior to commencement of works approved by this application. The person having the benefit of this consent must appoint a principal certifying authority. If Council is not appointed as the Principal Certifying Authority then Council must be notified of who has been appointed. Note: at least two (2) days' notice must be given to Council of intentions to start works approved by this application.

#### CONDITIONS TO BE SATISFIED PRIOR TO DEMOLITION, EXCAVATION OR CONSTRUCTION

3. **Prior to the commencement of works on the shed**, erosion and sediment control measures shall be put in place immediately down contour of any disturbed ground, and maintained post completion until the site is fully stabilised, to prevent the movement of soil by wind, water or vehicles onto any adjoining property, drainage

Adelaide Street (PO Box 42), Raymond Terrace NSW 2324  
DX 21406 Raymond Terrace • Phone 4980 0255  
Email council@portstephens.nsw.gov.au

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**PORT STEPHENS**  
COUNCIL

## Notice of Determination

Under section 80, 80A, 80(1) and 81(1)(a) of the Environmental Planning and Assessment Act 1979 (NSW).

line, easement, natural watercourse, reserve or road surface, in accordance with *Managing Urban Stormwater – Soils and Construction, Volume 1* (Landcom, 2004).

### CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE

4. A monetary contribution is to be paid to Council for the provision of 1 additional lot, pursuant to section 80A(1) of the *Environmental Planning and Assessment Act 1979*, Section 94 of the *Environmental Planning and Assessment Act 1979*, and Councils Section 94 Contribution Plan towards the provision of the following public facilities:

Facility	Per lot/dwelling	Total
Civic Administration	\$1,154.00	\$1,154.00
Public Open Space, Parks & Reserves	\$2,529.00	\$2,529.00
Sports and Leisure Facilities	\$6,828.00	\$6,828.00
Cultural and Community Facilities	\$2,435.00	\$2,435.00
Road Works	\$1,607.00	\$1,607.00
Fire & Emergency Services	\$224.00	\$224.00
Medowie Traffic	\$2,516.00	\$2,516.00
<b>Total</b>		<b>\$17,293.00</b>

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

- a) **Subdivision and building work - prior to the issue of the Subdivision Certificate.**

Note: The amount of contribution payable under this condition has been calculated at the time of determination and in accordance with the Port Stephens Section 94 contributions plan. The contribution amount is valid for twelve months from the consent date. Should payment take place after twelve months the contribution shall be INDEXED at the time of actual payment in accordance with movement in the Consumer Price Index as published by the Australian Bureau of Statistics.

### CONDITIONS TO BE SATISFIED DURING THE DEMOLITION, EXCAVATION AND CONSTRUCTION PHASES

6. All building work must be carried out in accordance with the provisions of the Building Code of Australia.
7. Construction work that is likely to cause annoyance due to noise is to be restricted to the following times:
- Monday to Friday, 7:00am to 6:00pm;
  - Saturday, 7:00am to 5:00pm
  - no construction work to take place on Sunday or Public Holidays.

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ITEM 1 - ATTACHMENT 2 NOTICE OF DETERMINATION.



PORT STEPHENS  
COUNCIL

## Notice of Determination

Under section 80, 80A, 80(1) and 81(1)(a) of the Environmental Planning and Assessment Act 1979 (NSW).

When the construction site is in operation the L10 level measured over a period of not less than 15 minutes must not exceed the background by more than 10dB(A). All possible steps should be taken to silence construction site equipment.

8. It is the responsibility of the applicant to erect a PCA sign (where Council is the PCA, the sign is available from Council's Administration Building at Raymond Terrace or the Tomaree Library at Salamander Bay free of charge). The applicant is to ensure the PCA sign remains in position for the duration of works.

### CONDITIONS TO BE SATISFIED PRIOR TO ISSUE OF AN OCCUPATION CERTIFICATE

9. **Prior to release of the Occupation Certificate for the shed**, the applicant shall restore, replace or reconstruct any damaged sections of kerb and guttering, road pavement, stormwater, or any other public infrastructure located within the Road Reserve which results from construction activities, as determined by Council's Development Engineers or Civil Assets Engineer. The applicant shall bear all associated costs with restoring the public infrastructure to satisfaction of the Council.

### CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF A SUBDIVISION CERTIFICATE

10. For endorsement of the Subdivision Certificate, the person having the benefit of the development consent shall submit an original plan of subdivision plus an electronic copy (USB or CD), suitable for endorsement by Council. The following details must be submitted with the plan of subdivision and its copies:
  - a. the endorsement fee current at the time of lodgement;
  - b. the 88B instrument;
  - c. the Section 50 (Hunter Water) Compliance Certificate for the subdivision;
  - d. Documentary evidence detailing essential service connections to both allotments; and
  - e. Proof of payment of Section 94 contribution
11. A registered surveyor shall provide certification that the service as constructed is contained within each lot, or within appropriate easements to accommodate the service. The certification is to be provided to the PCA, **prior to the issue of a Subdivision Certificate.**

### ADVICES

- a. **Prior to making the application for a Subdivision Certificate**, the person having the benefit of this consent is to contact Council's Mapping Section via email at: [addressing@portstephens.nsw.gov.au](mailto:addressing@portstephens.nsw.gov.au) stating your Development Approval number, address of the property and the assessing officer, to obtain the correct house numbering. Be advised that any referencing on Development Application plans to house or lot numbering operates to provide identification for assessment purposes only.

Adelaide Street (PO Box 42), Raymond Terrace NSW 2324  
DX 21406 Raymond Terrace • Phone 4980 0255  
Email [council@portstephens.nsw.gov.au](mailto:council@portstephens.nsw.gov.au)

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**PORT STEPHENS**  
COUNCIL

## Notice of Determination

Under section 80, 80A, 80(1) and 81(1)(a) of the Environmental Planning and Assessment Act 1979 (NSW).

- b. Access to an adjoining property for construction & maintenance work requires the owner(s) consent. It is the responsibility of the owner/the person having the benefit of the development consent to ensure that no part of the structure encroaches onto the adjoining property. The adjoining property owner can take legal action to have an encroachment removed.
- c. The developer is responsible for full costs associated with any alteration, relocation or enlargement to public utilities whether caused directly or indirectly by this proposal. Such utilities include water, sewerage, drainage, power, communication, footways, kerb and gutter.
- d. The development was referred to the NSW Rural Fire Service for an integrated referral. The application was supported unconditionally; the document is referenced D16/4382 and dated 11 January 2017.

### **SCHEDULE 2**

#### **RIGHT OF APPEAL**

If you are dissatisfied with this decision:

- a review of determination can be made under Section 82A of the Act, or
- a right of appeal under Section 97 of the Act can be made to the Land and Environment Court within six (6) months from the date on which that application is taken to have been determined.

#### **NOTES**

- This is not an approval to commence work. Building works cannot commence until a construction certificate is issued by Council or an accredited certifier.
- Consent operates from the determination date. For more details on the date from which the consent operates refer to section 83 of the Environmental Planning and Assessment Act 1979.
- Development consents generally lapse five years after the determination date, however different considerations may apply. For more details on the lapsing date of consents refer to section 95 of the Environmental Planning and Assessment Act 1979.

Adelaide Street (PO Box 42), Raymond Terrace NSW 2324  
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ITEM 1 - ATTACHMENT 3 CALL UP FORM.



CALL TO COUNCIL FORM  
DEVELOPMENT APPLICATION



I, Councillor **Ken Jordan**.....

require Development Application Number..... **16-2016 862-1**

for **subdivision at 111 South Street**

at **111 South Street**

to be subject of a report to Council for determination by Council.

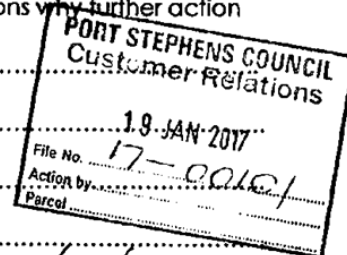
**Reason:**

The reason for this call-up to Council is **the community are not happy with the subdivision, the neighbours were not notified and they should have been told.**

**Declaration of Interest:**

I have considered any pecuniary or non-pecuniary conflict of interest (including political donations) associated with this development application on my part or an associated person. **I have a conflict of interest? Yes/No** (delete the response not applicable).

If **yes**, please provide the nature of the interest and reasons why further action should be taken to bring this matter to Council:



Signed: ...

Date: **18/1/2017**

PORT STEPHENS  
COUNCILDEVELOPMENT  
ASSESSMENT REPORT

## APPLICATION DETAILS

<b>Application Number</b>	16-2016-862-1
<b>Development Description</b>	Torrens Title Subdivision One into Two Lots and new Shed
<b>Applicant</b>	MRS M L MORRISSEY & MR A MORRISSEY
<b>Date of Lodgement</b>	15/12/2016
<b>Value of Works</b>	\$24,000.00

**Development Proposal**

The application proposes a one (1) into two (2) lots Torrens title subdivision and a shed.

The proposed subdivision proposes the following allotments:

- Lot 1 with an area of 1,561m<sup>2</sup> which will contain the existing dwelling onsite. Access to this lot is currently provided directly from South Street; and
- Lot 2 with an area of 700m<sup>2</sup> and will be suitable for supporting a future dwelling. Access to this lot will be available from Sylvan Avenue.

The proposed shed will be located to the west of the existing dwelling, along the Sylvan Avenue frontage. Landscaping has been provided to screen the shed from the street.

The initial application included the addition of a deck to the existing dwelling, however compliance issues were raised and subsequently the deck was withdrawn from the current application. The deck is part of an ongoing compliance action.

## PROPERTY DETAILS

<b>Property Address</b>	111 South Street MEDOWIE
<b>Lot and DP</b>	LOT: 14 DP: 1079392
<b>Current Use</b>	Single Storey Dwelling
<b>Zoning</b>	R2 LOW DENSITY RESIDENTIAL
<b>Site Constraints</b>	Bushfire Prone Land – Category 3 Acid Sulfate Soils – Class 5 Koala Habitat – Preferred Habitat Linking area over Cleared Land RAAF Height Trigger Area – Structures over 15m RAAF Bird Strike zone – Group B Extraneous Lighting (CASA) Port Stephens Development Control Plan 2014 – D10 Pacific Dunes, Medowie Flood Prone Land – Minimal Risk Flood Prone Land

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**ITEM 1 - ATTACHMENT 4 PLANNER'S ASSESSMENT REPORT.**

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**Site Description**

The subject site is located at Lot 14 DP 1079392 and is known as 111 South Street, Medowie. The subject site is 2,262m<sup>2</sup> in size, and comprises a single storey dwelling located along the south Street frontage.

The site is sloping downwards towards the south and driveway provides access from South Street.

The surrounding development comprise of predominantly of detached dwellings, with the Pacific Dunes Golf Course located to the south west of the site.



Figure 1 – Aerial of locality

**Site History**

The following consents have been approved on the subject site:

DA 16-2002-727-1: Approval for a Golf Course (approved 8 August 2002)

DA 16-2004-701-1: Approval for a 3 lot Torrens Title Subdivision & Road Widening (approved 29 October 2004)

DA 16-2013-262-1: Single Storey Dwelling (approved 3 July 2013)

There are no outstanding matters relating to these consents which would prevent the proposed development from being carried out.

A planning proposal was submitted to Council in February 2012 on behalf of Pacific Dunes Estate, which included the subject site. The intent of the rezoning was to facilitate higher densities in the Pacific Dunes Estate and the planning proposal included the site within the Hillside 2 precinct. This precinct was to be rezoning to 2(a) Residential and the provision of a minimum lot size of 700m<sup>2</sup>.

On 24 April Council resolved to prepare a planning proposal for the Pacific Dunes Estate. The planning proposal was merged into the comprehensive Port Stephens Local Environmental Plan

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**ITEM 1 - ATTACHMENT 4 PLANNER'S ASSESSMENT REPORT.**

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2013 (commenced 10 January 2014).

After consultation with Council's Strategic Planning section, it is understood that the current minimum lot size of 450m<sup>2</sup> appears to be a mapping anomaly that occurred during the adoption of PSLEP 2013.

**Site Inspection**

A site inspection was carried out on Friday 3 February 2017.

The subject site can be seen in figures 2 to 7 below:



**Figure 2 – Subject Site**



**Figure 3 – Location of proposed lot**



**Figure 4 – Sylvan Avenue facing north**



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Figure 5 – Proposed lot



Figure 6 – Existing residency



Figure 7 – Proposed lot

#### ASSESSMENT SUMMARY

<b>Designated Development</b>	The application is not designated development
<b>Integrated Development</b>	The application does require additional approvals listed under s.91 of the EP&A Act
<b>Concurrence</b>	The application does not require the concurrence of another body

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**Internal Referrals**

The proposed modification was referred to the following internal specialist staff. The comments of the listed staff have been used to carry out the assessment against the S79C Matters for Consideration below.

Building Surveyor – The application was referred to Council's Building Unit for comment. The application was supported with general conditions of consent provided.

Section 94 Officer – The Contributions Officer reviewed the application and found that S94 contribution will be applicable to the subdivision. A condition of consent has been attached to reflect this requirement.

Traffic Engineer – The application was referred to Council's Traffic Engineer for assessment and comment. It was concluded there is sufficient frontage to Sylvan Avenue from the proposed lot to provide the desired separation of driveways if the lot was subsequently developed. Minimum sight distance on Sylvan Avenue, from an access point to the proposed lot can be achieved in accordance with Austroads requirements. However, it was noted Sylvan Avenue is too narrow to support on-street parking so any future development on the proposed lot will have to consider any parking requirements to accommodate off-street parking. The assessment considered all of the public submissions and the application was supported unconditionally.

**External Referrals**

The proposed modification was referred to the following external agencies for comment.

RFS – The applications was referred to the RFS as integrated development. In response, the application was supported unconditionally by the RFS.

**MATTERS FOR CONSIDERATION – SECTION 79C****s79C(1)(a)(i) – The provisions of any EPI**

Port Stephens Local Environmental Plan 2013 (LEP)

**Clause 2.3 – Zone Objectives and Land Use Table**

The proposed shed is considered ancillary to the existing dwelling. Dwellings are permissible with consent in the R2 Low Density Residential zone. The development addresses the objectives of the zone by providing additional the opportunity for additional residential development that will cater for the housing needs of the community.

**Clause 2.6 – Subdivision****Clause 4.1 – Minimum Lot Size**

Resulting lots of the proposed subdivision both exceed the minimum lot size of 450m<sup>2</sup> applicable to the subject land. Proposed lot 1 has an area of 1,561m<sup>2</sup> and lot 2 has 700m<sup>2</sup>. The applicant has agreed to increase the size of the proposed from 624.3m<sup>2</sup> to 700m<sup>2</sup> in accordance with the planning proposal lodged in 2012.

As discussed above, the current minimum lot size of 450m<sup>2</sup> appears to be a mapping anomaly that occurred during the adoption of PSLEP 2013. Council is bound by the current LEP and given the existing dwelling and the proposed lot size the subdivision does not increase lot yield above the densities envisaged in the planning proposal.

**Clause 4.3 – Height of Buildings**

The proposed shed has a maximum height of 3.05m, which is below the maximum permissible building height of 9m specified on the Height of Buildings Map.

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**Clause 7.1 – Acid Sulfate Soils**

The subject land is mapped as containing potential Class 5 acid sulfate soils. The proposed development is not anticipated to include any significant excavations and therefore there are no expected impacts as a result of acid sulfate soils.

**Clause 7.3 – Flood Planning**

The proposed development is located on land mapped as being a minimal risk flood planning area; however this flood prone land only consists of approximately 75m<sup>2</sup> in the eastern corner of the site. As only the eastern corner of the lot is mapped as flood prone and all of the proposed development is to be undertaken outside of the area, as such the proposed development will not create any significant negative impacts on the local flooding characteristics.

**Clause 7.6 – Essential Services**

The subject site is serviced by reticulated water, electricity and sewer. The subject land also maintains direct access to South Street via the existing driveway. In the future under a separate application the proposed additional lot will gain access from Sylvan Avenue meeting the requirements of this clause. A condition is proposed that requires the provision of evidence that all essential services are available to the resulting lots, prior to the issue of a subdivision certificate.

**s79C(1)(a)(ii) – Any draft EPI**

There are no draft EPI's relevant to the proposed development.

**s79C(1)(a)(iii) – Any DCP****Port Stephens Development Control Plan 2014**

The Port Stephens Development Control Plan 2014 (DCP) is applicable to the proposed development and has been assessed below.

**Chapter A.12 – Notification and Advertising**

In accordance with the requirements of chapter A.12, the development application was not required to be notified.

**Chapter B3 – Environment Management****B3.A Bushfire Prone Land**

The subject site is mapped as Bushfire Prone Land, and as a result is considered integrated development and referred to the New South Wales Rural Fire Service. The application was supported unconditionally by the RFS.

**B3.B Acid Sulfate Soils**

The subject land is mapped as containing potential Class 5 acid sulfate soils. The proposed development is not anticipated to include any significant excavations and therefore there are no expected impacts as a result of acid sulfate soils.

**Chapter B5 – Flooding**

The subject land is mapped as being within the Flood Planning Area. Following from the discussion against Clause 7.3 of the PSLEP above, the proposed development is acceptable in this regard.

**Chapter B6 – Essential Services**

Reticulated water, electricity and sewer are available to the subject site. The area included in proposed Lot 2 naturally slopes towards Sylvan Avenue, thus any stormwater will flow towards the drainage infrastructure located on Sylvan Avenue. Proposed Lot 2 will have direct access to a Sylvan Avenue.

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**Chapter B9 – Road Network and Parking**

There is sufficient frontage to Sylvan Avenue from the proposed lot to provide the desired separation of driveways if the lot was subsequently developed. Minimum sight distance on Sylvan Avenue, from an access point to the proposed lot can be achieved in accordance with Austroads requirements. However it was noted Sylvan Avenue is too narrow to support on-street parking so any future development on the proposed lot will have to consider any parking requirements to accommodate off-street parking. Ample site area is available to accommodate for future on-site parking for a single dwelling.

**Chapter C1 – Subdivision**

Clause	Requirement	Assessment
C1.2	Subdivision defined as either minor or major	The proposed subdivision is a one into two lot Torrens title subdivision, with no new roads. Accordingly the subdivision is classified as a minor subdivision.
C1.5	Maximum lot dimensions of 80m deep and 160m long	The resulting lots have dimensions of: <ul style="list-style-type: none"> <li>Lot 1 – approx. 31.21m deep by approx. 43.24m long; and</li> <li>Lot 2 – approx. 43.24m deep by approx. 19m long.</li> </ul> The above dimensions comply with the DCP.
C1.11	New lots support a building footprint of 15x8m or 10x12m	Proposed Lot 2 is capable of supporting a building footprint in accordance with this requirement.
C1.14	Where possible, lots should be orientated to provide one axis within 30 degrees east and 20 degrees west of true solar north. Where a northern orientation is not possible, lots should be wider to allow private open space on the northern side of the dwelling. Subdivision design should take account for solar access opportunities afforded by land topography.	The resulting lots do not comply with the orientation requirements of the DCP, however the subject site is a result of a previous subdivision and thus is not a subdivision of a green field site.  The subject site does not allow for sufficient solar access in accordance with Chapter 1.14, however both resulting lots are large enough to obtain sufficient northerly solar access into private open spaces and dwellings.
C1.21	Each lot must achieve gravity drainage to the public drainage network, and may include the use of inter-allotment drainage.	Proposed Lot 2 naturally slopes towards Sylvan Avenue, thus any stormwater will flow towards the existing drainage infrastructure located on Sylvan Avenue.

**Chapter C4 – Ancillary Development**

Clause	Requirement	Assessment
C4.1	Lodgement Requirements	The application includes relevant information required under this clause.
C4.9	Building height to be max.	The proposed development has a maximum height of

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**ITEM 1 - ATTACHMENT 4 PLANNER'S ASSESSMENT REPORT.**

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	9m on land with no maximum building height specified in LEP	3.05m above ground level, which is below the maximum permissible building height of 9m specified on the Height of Buildings Map.
C4.10	Minimum front setback of 4.5m in greenfield sites or average of adjacent properties, or 10m in rural, environmental or R5 zoned land	The proposed development is setback approximately 13.5m from the front property boundary which complies with the minimum setback requirements.
C4.11	Minimum setback from secondary street frontage of 2m or 10m in rural or environmental zones	The proposed development is setback between 3.7m and 5.4m from the secondary street frontage property boundary, which complies with the minimum setback requirements.
C4.21	Development to be sympathetic to the street character	The proposed development is typical of other developments in the locality and colour coordinates with the existing dwelling on the subject site.  The proposal is located on a corner lot, accordingly contains a secondary frontage and as such the proposal is screened by an existing 1.8m colourbond fence and existing hedging.
C4.31	Ancillary shed on residential land to have max. gross floor area of 72m <sup>2</sup> and min setback from side and rear boundaries of 0.9m, or uses a merits bases approach to floor area on R5 zoned land with a 10m front boundary setback and 5m rear and side boundary setback	The proposed development includes an ancillary shed to the dwelling located at 111 South Street. The shed has a gross floor area of 34m <sup>2</sup> and is setback between 3.7m and 5.4m from the secondary street frontage (Sylvan Avenue) and approximately 15m from proposed rear property boundary. The floor area and setbacks of the proposed ancillary shed meet the requirements of the DCP.

**Chapter D10 – Pacific Dunes – Medowie (Hillside Lots Precinct)**

Site specific development controls are applicable to the proposed development and have been assessed below as follows.

D10.1	Landscape Plan	The proposed shed is to be screened by the existing hedging, which are represented on the plan.
D10.5	Setbacks – Hillside Precinct	The proposed shed complies with the setback requirements of the Hillside Precinct.

**s79C(1)(a)(iia) – Any planning agreement or draft planning agreement entered into under section 93F**

There are no planning agreements that have been entered into under section 93F relevant to the proposed development.

**s79C(1)(a)(iv) – The regulations**

There are no clauses of the regulations that require consideration for the proposed development.

**s79C(1)(a)(v) – Any coastal management plan**

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**ITEM 1 - ATTACHMENT 4 PLANNER'S ASSESSMENT REPORT.**

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There are no coastal management plans applicable to the proposed development.

**s79C(1)(b) – The likely impacts of the development****Social and Economic Impacts**

The proposed subdivision will result in an additional residential lot and will therefore service the needs of the community. There are no anticipated adverse social or economic impacts as a result of the proposed development.

**Impacts on the Built Environment**

The proposed development will reinforce the residential nature of the locality. It is acknowledged that it is not of the same size as other larger surrounding lots, however these matters were addressed during the planning proposal which created the new minimum lot size for the proposal site. The proposal addresses the street and provides logical and convenient connections to the road network and pedestrian facilities in the locality. There are no anticipated adverse impacts on the built environment as a result of the proposed development.

**Impacts on the Natural Environment**

The proposal is for a Torrens Title subdivision and shed. The development is not envisaged to generate any impacts on the natural environment.

**s79C(1)(c) – The suitability of the site**

The subject site is located within an existing residential area and is relatively clear of vegetation. The site has access to all relevant services and the proposed development makes good use of the available land. The application design includes all elements required under the relevant planning instruments and policies and there are no anticipated negative impacts on the locality as a result of the development.

**s79C(1)(d) – Any submissions**

Eight (8) submissions have been received in relation to the proposed development and are discussed in further detail below.

<b>Issue Raised</b>	<b>Comment</b>
Parking and Road Networking	<p>A referral was sent to Council's Traffic Engineer to assess the traffic impacts of the proposed subdivision with consideration to submissions.</p> <p>It was concluded there is sufficient frontage to Sylvan Avenue from the proposed lot to provide the desired separation of driveways, if the lot was subsequently developed. Minimum sight distance on Sylvan Avenue, from an access point to the proposed lot can be achieved in accordance with Austroads requirements. However it was noted Sylvan Avenue is too narrow to support on-street parking therefore any future development on the proposed lot will have to consider any parking requirements to accommodate off-street parking. Ample site area is available to achieve future on-site parking for a single dwelling.</p>
Zoning and Minimum Lot Sizes	<p>As discussed above, the current minimum lot size of 450m<sup>2</sup> appears to be a mapping anomaly that occurred during the adoption of PSLEP 2013. Council is bound by the current LEP and given the existing dwelling and the proposed lot size the subdivision does not increase lot yield above the densities envisaged in the planning proposal. It is noted that the applicant increased the size of proposed Lot 2 to 700m<sup>2</sup> to reflect the intent of the 2012 planning proposal.</p>

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Covenants/restrictions on title	A number of submissions stated that the subject site cannot be subdivided as the entire Sylvan Ridge Estate has a restriction on the title, which does not allow for the further subdivision of land. However the subject site was under a different Deposited Plan, (Pacific Dunes) which subsequently did not have this same restriction on title. The subdivision of this site is therefore not burdened by this restriction.
Notification	The application was notified in accordance with <i>Chapter A.12</i> of the <i>Port Stephens Development Control Plan 2014</i> .
Privacy	The proposed Lot 2 (700m <sup>2</sup> ) is deemed to have sufficient space to facilitate future residential development without creating any substantial privacy issues.
Increase demand for services	The application is for subdivision and an ancillary shed. It is noted that the subject site is zoned R2 which facilitates future residential development. It is considered that the proposal will not impact significantly on the services in the area.
Existing streetscape/character	The submissions described the subdivision as out of character from the rest of the Sylvan Ridge Estate. However, the intent of the Pacific Dunes Planning Proposal was to facilitate smaller residential lots, and as such the subject site was included in the proposal as an appearance to the entrance of the Pacific Dunes Estate. The original planning proposal had the subject site mapped as a one (1) into three (3) lot subdivision; in conclusion the proposed one (1) into two (2) lot subdivision is an improved outcome as it will act as a transition between two zonings.
Stormwater	The subject site naturally slopes downwards towards Sylvan Avenue, thus any stormwater that will not infiltrate on the current undeveloped site (proposed Lot 2) will drain to the drainage infrastructure located on Sylvan Avenue.

The issues raised in the submissions have been considered in the context of the proposal, surrounding locality and relevant legislation. The issues raised have been determined to not be of significance as to warrant refusal or modification of the proposed development.

**s79C(1)(e) – The public interest**

The additional lot in the locality will service the needs of the community, whilst not anticipated to have any significant adverse impacts on surrounding properties or the amenity of the locality. The proposed development reinforces the residential nature of the land and is in keeping with the character of surrounding developments. The proposed development has created a significant amount of community interest, however complies with all the applicable planning provisions required for the subject development.

The proposed shed is also considered in keeping with the amenity and street scape of the area.

**DETERMINATION**

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

Hugh Jones  
Cadet Town Planner

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**ITEM NO. 2**

**FILE NO: 17/22562  
RM8 REF NO: 16-2016-867-1**

**DEVELOPMENT APPLICATION NO. 16-2016-867-1 FOR EARTH MOUND AND SINGLE STOREY DWELLING AT 174 SEAHAM ROAD, NELSONS PLAINS (LOT 33 DP 60941)**

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

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Refuse the application for DA 16-2016-867-1 (Dwelling, associated earth mound) for the following reasons:
  - a. The development is not in the public interest (s79C(e) *Environmental Planning and Assessment Act 1979*) given the likely significant adverse impacts on the flood behaviour, property and environment that may result.
  - b. The development fails to satisfy cl.7.3 Port Stephens Council Local Environmental Plan 2013 (LEP) as the development is not compatible with the flood hazard of the land (s.79C(1)(a)(i) *EP&A Act 1979*).

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Councillor Ken Jordan returned to the meeting at 07:08pm.

**ORDINARY COUNCIL MEETING - 28 MARCH 2017  
COMMITTEE OF THE WHOLE RECOMMENDATION**

	<p><b>Mayor Bruce MacKenzie Councillor Chris Doohan</b></p> <p>That Council approve development application no. 16-2016-687-1 for an earth mound and single storey dwelling at 174 Seaham Road, Nelsons Plains (Lot 33 DP60941), subject to conditions of consent shown in <b>ATTACHMENT 3.</b></p>
--	---

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

Those for the Motion: Mayor Bruce MacKenzie and Cr Chris Doohan.

Those against the Motion: Crs Geoff Dingle, Ken Jordan, Peter Kafer, John Nell and Steve Tucker.

The motion on being put was lost.



## MINUTES ORDINARY COUNCIL - 28 MARCH 2017

### ORDINARY COUNCIL MEETING - 28 MARCH 2017 MOTION

	<p><b>Councillor John Nell</b> <b>Councillor Geoff Dingle</b></p> <p>That Council:</p> <ol style="list-style-type: none"><li>1) Refuse the application for DA 16-2016-867-1 (Dwelling, associated earth mound) for the following reasons:<ol style="list-style-type: none"><li>a. The development is not in the public interest (s79C(e) <i>Environmental Planning and Assessment Act 1979</i>) given the likely significant adverse impacts on the flood behaviour, property and environment that may result.</li><li>b. The development fails to satisfy cl.7.3 Port Stephens Council Local Environmental Plan 2013 (LEP) as the development is not compatible with the flood hazard of the land (s.79C(1)(a)(i) <i>EP&amp;A Act 1979</i>).</li></ol></li></ol>
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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 Geoff Dingle, Ken Jordan, Peter Kafer, John Nell and Steve Tucker.

Those against the Motion: Mayor Bruce MacKenzie and Cr Chris Doohan.

The motion on being put was carried.

### ORDINARY COUNCIL MEETING - 28 MARCH 2017 MOTION

061	<p><b>Councillor Chris Doohan</b> <b>Councillor John Nell</b></p> <p>It was resolved that Council:</p> <ol style="list-style-type: none"><li>1) Refuse the application for DA 16-2016-867-1 (Dwelling, associated earth mound) for the following reasons:<ol style="list-style-type: none"><li>a. The development is not in the public interest (s79C(e) <i>Environmental Planning and Assessment Act 1979</i>) given the likely significant adverse impacts on the flood behaviour, property and environment that may result.</li><li>b. The development fails to satisfy cl.7.3 Port Stephens Council Local Environmental Plan 2013 (LEP) as the development is not compatible with the flood hazard of the land (s.79C(1)(a)(i) <i>EP&amp;A Act 1979</i>).</li></ol></li></ol>
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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 Geoff Dingle, Ken Jordan, Peter Kafer, John Nell and Steve Tucker.

Those against the Motion: Mayor Bruce MacKenzie and Cr Chris Doohan.

## **BACKGROUND**

The purpose of this report is to present a development application (DA) to Council for determination of a dwelling and earth mound. The DA relates to land located at No. 174 Seaham Road, Nelsons Plains which is identified as Lot: 33 DP: 609041 ('the subject site').

The application has been called to Council by Councillor Jordan. The Call to Council form is attached as **(ATTACHMENT 2)**.

### The Proposal

The proposal is for a single story dwelling structure consisting of four bedrooms (with study) and an associated earth mound. The dwelling proposed has a total footprint of 365.33m<sup>2</sup> located on top of a proposed earth mound with an approximate footprint of 8,527m<sup>2</sup>. For context, the mound is around the size of 1.5 soccer fields.

### Flooding

The key issue with this development application relates to flooding and the associated development implications.

The dwelling and earth mound are proposed to be located within 'High Hazard Floodway', as defined in Port Stephens Council Development Control Plan 2014.

Dwellings are permissible in the rural zone with the exception of flooding when referenced against the relevant DCP requirements. Under both the previous and current DCPs, dwellings located in high hazard flood ways are not supported.

Irrespective of the lands status as a high hazard flood way, the flood planning level (FPL) to which buildings should be constructed to ensure the asset and human life is protected from flooding and water inundation into the future on this site is 5.9 metres AHD with a stated probable maximum flood (PMF) height of 8.8m AHD.

Although an earth mound can be created to ensure the dwelling floor level is above the flood level, the development still results in residents being placed in a high hazard flood affected/isolated area where the possible flood waters are fast flowing and deep. Council has recently supported its DCP flood matrix to further reinforce the safety hazards and risk that proposals of this nature present to future inhabitants in high hazard flood ways.

## MINUTES ORDINARY COUNCIL - 28 MARCH 2017

A flooding report has been submitted as part of the application and includes assessment of the onsite wastewater disposal system. Under the current flooding data and policies, the development would be deemed unsuitable as dwellings in high hazard flood ways are not supported nor viewed as good planning practice.

### COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2013-2017
Balance the environmental, social and economic needs of Port Stephens for the benefit of present and future generations.	Provide Strategic Land Use Planning Services. Provide Development Assessment and Building Certification Services.

### FINANCIAL/RESOURCE IMPLICATIONS

The application could be potentially challenged in the Land and Environment Court. Defending Council's determination could have financial implications.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes		There is scope within Council's existing budget to defend Council's determination if challenged.
Reserve Funds	No		
Section 94	No		
External Grants	No		
Other	No		

### LEGAL, POLICY AND RISK IMPLICATIONS

The development application is not consistent with relevant planning instruments, flood development guidelines and studies including: *The Environmental Planning and Assessment Act 1979 (EP&A Act)*, PSC Local Environmental Plan 2013, DCP2014, the Port Stephens Council "Areas Affected by Flooding and/or inundation" Policy, Floodplain Risk Management Policy and Paterson River Floodplain Risk Management Study and Plan 2001, and the NSW Floodplain Development Manual 2005.

Section 733 *Local Government Act 1993* provides Council with a general exemption from liability with respect to flood liable land only if the necessary studies and works are carried out in accordance with the principles contained in the NSW Floodplain Development Manual 2005. Endorsement of this development would be contrary to these principles.

A decision contrary the planning framework may negate the good faith immunity provisions in *Local Government Act 1993*. This could result in individual Councillors being personally accountable and responsible for any subsequent implications resulting from the decision. Further, in the event of any future claim Council's insurers may determine not to cover Council should the application be approved contrary to the recommendation.

<b>Risk</b>	<b><u>Risk Ranking</u></b>	<b>Proposed Treatments</b>	<b>Within Existing Resources?</b>
There is a risk that in approving the application Council will be increasing the risk to life and property in flood events.	Medium	Determine the application in line with the recommendation refuse the application.	Yes

### **SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

A possible positive socio-economic impact is that the owner is able to build a dwelling on their land. This is outweighed however by the fact that increasing residential occupation within high hazard floodway's does not make good planning sense long term. Property and life could be compromised as owner/occupiers/property could potentially be exposed to floodwaters and/or isolated on or from the property for long periods of time during flooding events imposing further demands on local and SES resources.

### **CONSULTATION**

Consultation with key stakeholders has been undertaken by the Building and Developer Relations Section.

#### Internal

The application was referred to Council's flooding engineers as per Councils service level agreements.

#### External

Appropriate consultation with the applicant has been followed during the assessment process.

The application did not require public notification in accordance with Council policies.

**OPTIONS**

- 1) Accept the recommendations.
- 2) Amend the recommendations.
- 3) Reject the recommendations.

**ATTACHMENTS**

- 1) Locality Plan.
- 2) Call to Council form.
- 3) Proposed conditions.

**COUNCILLORS ROOM**

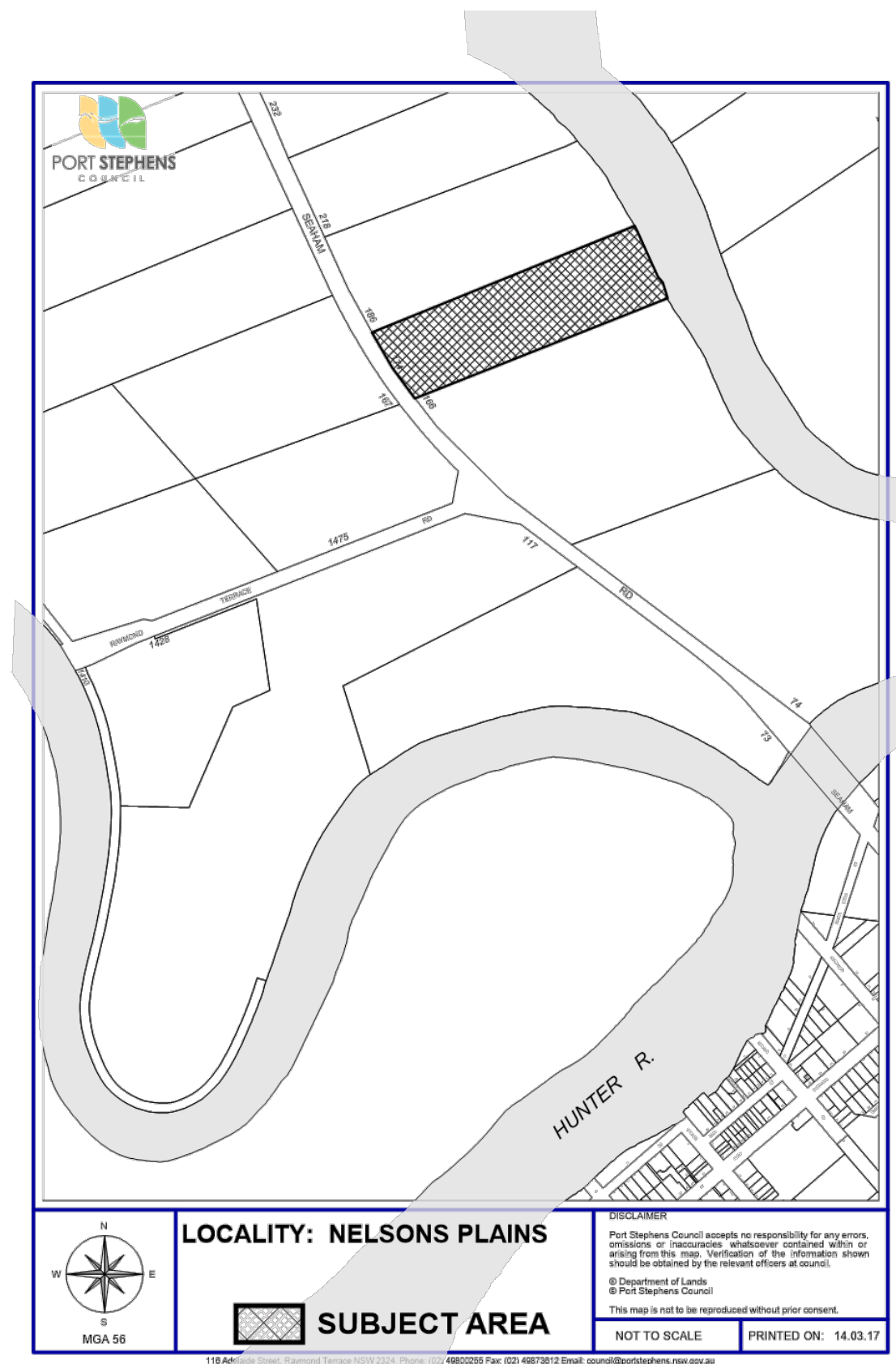
All listed below are also provided under separate cover:

- 1) Development plans.
- 2) Flood Impact Assessment Report.

**TABLED DOCUMENTS**

Nil.

### LOCALITY PLAN.



ITEM 2 - ATTACHMENT 2 CALL TO COUNCIL FORM.



CALL TO COUNCIL FORM  
DEVELOPMENT APPLICATION

I, Councillor Ken Jordan

require Development Application Number 16-2016-867-1

for a single storey dwelling,

at 174 Seaham Road, Nelsons Plains

to be subject of a report to Council for determination by Council.

**Reason:**

The reason this development application has been called to Council is at the owners request.

.....  
.....  
.....

**Declaration of Interest:**

I have considered any pecuniary or non-pecuniary conflict of interest (including political donations) associated with this development application on my part or an associated person.

I have a conflict of interest? **Yes/No** (delete the response not applicable).

If **yes**, please provide the nature of the interest and reasons why further action should be taken to bring this matter to Council:

.....  
.....  
.....

Signed: .....

A large black rectangular box redacting the signature of the councillor.

Date: .....

14/2/2017

**ITEM 2 - ATTACHMENT 3      PROPOSED CONDITIONS.**

**16-2016-867-1 - 174 Seaham Rd Nelsons Plains**

1. No construction or demolition work shall obstruct pedestrian or vehicular traffic in a public place, a hoarding or fence must be erected between the construction site and the public place.
2. Approved toilet accommodation for all tradespersons on the building site is to be provided from the time work commences until the building is complete. The toilet shall not be placed on the road reserve, without separate approval from Council.
3. A waste containment facility shall be provided on the construction site immediately after the first concrete pour for the building and is to be regularly serviced. **Council may issue 'on the spot' fines for pollution/littering offences under the *Protection of the Environment Operations Act 1997*.**
4. If an excavation associated with the erection or demolition of a building extends below the level of the base of the footings of a building on an adjoining allotment, the person undertaking the excavation must preserve and protect the building from damage, which may involve underpinning and supporting the building in an approved manner.

The adjoining property owner shall be given 7 days' notice before excavating below the level of the base of the footings of a building on an adjoining allotment of land. The owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this condition, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

In this condition, allotment of land includes a public road and any other public place.

5. The construction site is to be adequately protected and drainage controlled to ensure that erosion and sediment movement is kept on your site. Construction sites without appropriate erosion and sediment control measures have the potential to pollute the waterways and degrade aquatic habitats. Offenders may be issued with an 'on the spot' fine under the *Protection of the Environment Operations Act 1997*.

**Note:** Erosion and sediment control measures prepared in accordance with the Erosion and Sediment Control Regional Policy and Code of Practice or Managing Urban Stormwater – Soils and Construction produced by Landcom 2004, need to be maintained at all times. A copy of Landcom 2004 bluebook may be purchased by calling (02) 98418600.

6. Prior to the commencement of work, provide a 3m wide all weather vehicle access from the kerb and gutter to the building under construction for the delivery of materials & trades to reduce the potential for soil erosion. Sand shall not be stockpiled on the all-weather vehicle access.
7. All erosion and sediment control measures/works and other pollution control and rehabilitation measures undertaken on the site shall conform to the specifications and standards contained in the current version of;



**ITEM 2 - ATTACHMENT 3      PROPOSED CONDITIONS.**

"Erosion and Sediment Control Regional Policy and Code of Practice"

"Managing Urban Stormwater – Soils and Construction produced by Landcom 2004"

An erosion and sediment control plan shall be submitted for approval with the engineering plans.

8. The development shall take place in accordance with the stated values of the BASIX certificate submitted with the application. **Prior to the issue of any Occupation Certificate** an appropriately qualified person shall certify compliance with these requirements, as applicable. Where minor changes to the development occur (eg. colours and the like) these changes shall be referred to Council **prior to the changes being made.**
9. All work must be carried out in accordance with the requirements of the Building Code of Australia
10. Residential building work for which the Home Building Act 1989 requires there to be a contract of insurance in force in accordance with Part 6 of that Act, that such a contract of insurance is in force before any building work authorised to be carried out by the consent commences.
11. A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
  - (a) showing the name, address and telephone number of the principal certifying authority for the work, and
  - (b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
  - (c) stating that unauthorised entry to the work site is prohibited.

(3) Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
12. Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the following information:
  - (a) in the case of work for which a principal contractor is required to be appointed:
    - (i) the name and licence number of the principal contractor, and
    - (ii) the name of the insurer by which the work is insured under Part 6 of that Act,
  - (b) in the case of work to be done by an owner-builder:
    - (i) the name of the owner-builder, and

**ITEM 2 - ATTACHMENT 3      PROPOSED CONDITIONS.**

*(ii) if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.*

*If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under subclause (2) becomes out of date, further work must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the updated information.*

13. The Principal Certifying Authority shall only issue an Occupation Certificate when the building has been constructed in accordance with the approved plans, specifications and conditions of consent. No occupational use is permitted until the Principal Certifying Authority issues an Occupation Certificate. Note: if an accredited certifier approves occupation of a dwelling the accredited certifier is to immediately notify Council in writing.
14. A concrete dish crossing shall be constructed within the table drain in accordance with **Council's Standard Drawing No. S106**. Driveway grades shall be adjusted, if practical, to achieve this,

OR

Where driveway grades do not permit a dish crossing, a driveway application is to be submitted so that Council can nominate a pipe size and invert levels. The pipe is to be 5.0m long, at a minimum distance of 2.0 m from the edge of the roadway, ensuring an adequate grade within the drain. Gravel backfill and concrete headwalls shall be placed as indicated on Council's Standard Drawing No. S107.

The construction of the footpath crossing and associated lipless layback must be constructed **prior to the issue of any Interim and Final Occupation Certificate.**

15. **Prior to occupying the approved dwelling(s)**, contact Council's Mapping Section via email at: [addressing@portstephens.nsw.gov.au](mailto:addressing@portstephens.nsw.gov.au) stating your Development Approval number, address of the property and the assessing officer, to obtain the correct house numbering. Be advised that any referencing on Development Application plans to house or lot numbering operates to provide identification for assessment purposes
16. The development shall be constructed in accordance with the NSW Government Floodplain Management Manual (2005).  
The Flood Planning Level for this development is 5.9 metres AHD.  
Flood Compatible Building Materials are listed in the attached Schedule 1.

The following design precautions must be adhered to:-

- a. The floor level of any habitable room is to be located at a height not less than the Flood Planning Level. A survey certificate verifying compliance with this condition shall be provided to the Principal Certifying Authority as soon as practical on completion of the floor level.

**ITEM 2 - ATTACHMENT 3      PROPOSED CONDITIONS.**

- b. In sewerred areas some plumbing fixtures may be located below the Flood Planning Level. Where this occurs sanitary drainage is to be fitted with a reflux valve to protect against internal sewage surcharge.
- c. No potentially hazardous or offensive material is to be stored on site that could cause water contamination during floods.
- d. All building materials, equipment, ducting, etc., below the Flood Planning Level shall be flood compatible.
- e. All main power supply, heating and air conditioning service installations, including meters shall be located above the Flood Planning Level.
- f. All electrical wiring below the Flood Planning Level shall be suitable for continuous submergence in water. All conduits below the Flood Planning Level shall be self-draining. Earth core leakage systems or safety switches are to be installed.
- g. All electrical equipment installed below the Flood Planning Level shall be capable of disconnection by a single plug from the power supply.
- h. Where heating equipment and fuel storage tanks are not feasible to be located above the Flood Planning Level then they shall be suitable for continuous submergence in water and securely anchored to overcome buoyancy and movement which may damage supply lines. All storage tanks shall be vented to an elevation above the Flood Planning Level.
- i. All ducting below the Flood Planning Level shall be provided with openings for drainage and cleaning.

Attach schedule for flood compatible materials.

- 17. The Designated flood is the 1 % AEP Flood. A structural engineer shall design provide certification to Council that all building structures and earth mounds are able to withstand the hydrostatic and hydrodynamic flood forces, including debris impact and buoyancy uplift for the 1% AEP Flood **prior to the issue of the Construction Certificate.**
- 18. A flood management plan which covers evacuation and the provision of emergency food, medical supplies, power/communication, water and effluent disposal, etc incorporating the State Emergency Services Business Floodsafe Toolkit, shall be submitted and approved by Council **prior to the issue of the Construction Certificate.**
- 19. A separate application for the installation of an on-site sewage management system shall be approved by Council **prior to the issue of the Construction Certificate.** The application is to be accompanied by full details of the proposed system including

**ITEM 2 - ATTACHMENT 3      PROPOSED CONDITIONS.**

a site assessment complying with Part 2, Division 4 of the Local Government (General) Regulation, 2005 and Councils on-site sewage management policy.

20. **Prior to the release of any Occupation Certificates**, the Principal Certifying Authority shall obtain written confirmation from Port Stephens Council verifying that a satisfactory final inspection has been carried out in relation to any Waste Water Treatment system, the subject of a Local Government Act 1993, Section 68 approval as required under the provisions of this consent.
21. All collected stormwater including overflows from any rainwater tanks shall be dispersed at ground level, so as not to be concentrated or create nuisance flows onto any buildings, or neighbouring properties.

The discharge location shall be at least 3m down slope of the building and 6m minimum clearance from receiving down slope property boundaries.

**ITEM NO. 3****FILE NO: 17/35551  
RM8 REF NO: 16-2016-763-1****DEVELOPMENT APPLICATION NO.16-2016-763-1 FOR FLOOD MOUND,  
DETACHED DUAL OCCUPANCY (INCORPORATING EXISTING DWELLING) AND  
SHED AT 1428 RAYMOND TERRACE ROAD, NELSON PLAINS (LOT:1  
DP:1202026)****REPORT OF: MATTHEW BROWN - DEVELOPMENT ASSESSMENT AND  
COMPLIANCE SECTION MANAGER  
GROUP: DEVELOPMENT SERVICES**

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Refuse Development Application DA No. 16-2016-763-1 for a flood mound, detached dual occupancy (incorporating existing dwelling) and shed at 1428 Raymond Terrace Road, Nelson Plains (Lot 1 DP 1202026) for the reasons contained in (**ATTACHMENT 3**).
- 

**ORDINARY COUNCIL MEETING - 28 MARCH 2017  
COMMITTEE OF THE WHOLE RECOMMENDATION**

	<b>Councillor John Nell Councillor Geoff Dingle</b>  That the recommendation be adopted.
--	--

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

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

Those against the Motion: Mayor Bruce MacKenzie, Crs Chris Doohan and Ken Jordan.

**ORDINARY COUNCIL MEETING - 28 MARCH 2017  
MOTION**

<b>062</b>	<b>Councillor Chris Doohan Councillor John Nell</b>  It was resolved that Council:  1) Refuse Development Application DA No. 16-2016-763-1 for a flood
------------	--

## MINUTES ORDINARY COUNCIL - 28 MARCH 2017

	mound, detached dual occupancy (incorporating existing dwelling) and shed at 1428 Raymond Terrace Road, Nelson Plains (Lot 1 DP 1202026) for the reasons contained in ( <b>ATTACHMENT 3</b> ).
--	--

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

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

Those against the Motion: Mayor Bruce MacKenzie, Crs Chris Doohan and Ken Jordan.

### BACKGROUND

The purpose of this report is to present to Council for determination development application (DA) 16-2016-763-1 that proposes a flood mound, detached dual occupancy (incorporating existing dwelling) and shed.

The application has been called to Council by Councillor Jordan. A copy of the call up form is included as (**ATTACHMENT 4**).

The subject site includes an existing dwelling.

#### Proposal

The application proposes a flood mound, detached dual occupancy (incorporating the existing dwelling) and shed.

The flood mound has a total footprint of 4,605m<sup>2</sup> (approximately 81m x 51m). The mound will be raised a maximum of 3.37m above the existing ground level, to achieve a level of 5.4m AHD.

The proposed dwelling will be positioned on the northwest portion of the proposed earth mound, roughly 68m south of Raymond Terrace Road and 66m east of the Hunter River. The new dual occupancy dwelling is single storey, 251m<sup>2</sup> in size and will consist of three bedrooms, lounge room, kitchen, laundry and bathroom. The maximum height of the dwelling is 5.24m with a finished floor level of 5.9m AHD.

The proposed shed is situated 5m south of the proposed dwelling. The shed will incorporate three bays and one pedestrian door, at a size of 167m<sup>2</sup>. The maximum height of the shed is 5.2m.

#### Assessment Outcomes

The subject land is zoned RU1 Primary Production under the Port Stephens Local Environmental Plan 2013 (LEP2013). The proposal is permissible with consent in the RU1 zone.

## MINUTES ORDINARY COUNCIL - 28 MARCH 2017

The proposed amendments were assessed against relevant controls and objectives as specified under, State Environmental Planning Policy No. 71 – Coastal Protection (SEPP 71), State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004, LEP2013 and Port Stephens Development Control Plan 2014 (DCP2014).

Under both the current and proposed DCP, dwellings are not supported in high hazard flood ways.

### Keys Issues

The key issue arising out of the assessment of this application relate to the flood characteristics of the site. Council's flood study for the area identified the site within a High Hazard Floodway. The modelled flood levels for the site are as follows:

- Flood Planning Level (FPL) – 5.9m AHD
- 1% AEP – 4.8m AHD
- 1% in 2100 – 5.4m AHD
- Probable Maximum Flood Level (PMF) – 8.8m AHD

Unacceptable adverse risk derived from flood impacts would arise and subsequently the proposal does not comply with the following:

- Section 79C of the *Environmental Planning and Assessment (EP&A) Act 1979*;
- Clause 7.3 (3) of the Port Stephens Local Environmental Plan 2013 (LEP2013) – in that residential development, in particular increasing the residential density through dual occupancy developments, is not considered compatible with the land's high hazard flood risk. No measures have been incorporated to manage risk to life and flood. Due to the flood characteristics of the subject site the creation of a satisfactory flood emergency response plan is unlikely. Additionally, it is considered that the development will result in unsustainable social and economic costs to the community as a consequence of flooding in the future;
- Chapter B5 – Flooding of the Port Stephens Development Control Plan 2014 (DCP2014). The development is for the provision of housing and as specified by DCP2014 is not supported in a High Hazard Floodway.

### COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2013-2017
Sustainable Development.	Provide Strategic Land Use Planning Services. Provide Development Assessment and Building Certification Services.

**FINANCIAL/RESOURCE IMPLICATIONS**

The proposed modification application is inconsistent with the relevant planning instruments and guidelines including; the *Environmental Planning and Assessment Act 1979*, SEPP 71 – Coastal Protection, LEP2013, DCP2014 and the NSW Government 2005, 'Floodplain Development Manual'.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes		There is scope within Council's existing budget to defend Council's determination if challenged.
Reserve Funds	No		
Section 94	No		
External Grants	No		
Other	No		

**LEGAL, POLICY AND RISK IMPLICATIONS**

The development application is not consistent with relevant planning instruments, flood development guidelines and studies including: *The Environmental Planning and Assessment Act 1979 (EP&A Act)*, PSC Local Environmental Plan 2013, DCP2014, the Port Stephens Council "Areas Affected by Flooding and/or inundation" Policy, Floodplain Risk Management Policy and Paterson River Floodplain Risk Management Study and Plan 2001, and the NSW Floodplain Development Manual 2005.

Section 733 *Local Government Act 1993* provides Council with a general exemption from liability with respect to flood liable land only if the necessary studies and works are carried out in accordance with the principles contained in the NSW Floodplain Development Manual 2005. Endorsement of this development would be contrary to these principles.

A decision contrary the planning framework may negate the good faith immunity provisions in *Local Government Act 1993*. This could result in individual Councillors being personally accountable and responsible for any subsequent implications resulting from the decision. Further, in the event of any future claim Council's insurers may determine not to cover Council should the application be approved contrary to the recommendation.



<b>Risk</b>	<b><u>Risk Ranking</u></b>	<b>Proposed Treatments</b>	<b>Within Existing Resources?</b>
There is a risk the proposal will expose people and property to risk of damage and death as a consequence of approving residential development in a high hazard floodway.	High	Determine the application in line with the recommendation and refuse the application.	Yes
There is a risk that if the application is refused, it may be challenged at the Land and Environment Court.	Medium	Defend the refusal of the application in the NSW Land and Environment Court if required.	Yes

### **SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

The social and economic impacts of flooding are well documented. Policies and strategies have been implemented by Council to adequately mitigate the adverse impacts of flooding within the Local Government Area. Although residents already reside onsite, the proposed dual occupancy will increase the residential density within a high hazard floodway, increasing the risk to people and property.

The proposed development is consistent with the rural nature of the locality and is consistent in design characteristics of other developments in the locality. The proposed development does not require the removal of significant vegetation and, due to the size of the subject land; stormwater would be able to be managed in accordance with Councils quantity and quality requirements.

Either than the flood impacts already identified, no other significant impacts to the built and natural environment are anticipated.

### **CONSULTATION**

Consultation with key stakeholders has been undertaken by the Development Assessment and Compliance Section during the development application process.

The objective of the consultation was to inform the relevant parties of the development application and obtain their feedback on the proposal to ensure all potential concerns have been investigated.

### Internal

The application was reviewed by a range of Councils internal specialists. The application was referred to Councils Development Engineering Section, Section 94 Officer, Building Surveyor and Environmental Health Officer.

Councils Section 94 Officer and Building Surveyor supported the application, subject to conditions. However, Councils Development Engineering Section and Environmental Health Officer did not support the proposed due to the following:

- In accordance with PSDCP2014, dwellings within a High Hazard Floodway area are not desirable. The application presents a high safety risk for residents who become isolated during floods events.
- The subject site requires on-site sewerage management (OSMS). Prior to any favourable determination a statement from a suitably qualified person outlining an acceptable OSMS solution is achievable on site.

### External

No external stakeholders were consulted and the application was not publicly notified.

### **OPTIONS**

- 1) Accept the recommendations.
- 2) Amend the recommendations.
- 3) Reject the recommendations.

### **ATTACHMENTS**

- 1) Locality Plan.
- 2) Planners Assessment Report.
- 3) Reasons for Refusal.
- 4) Call to Council form.

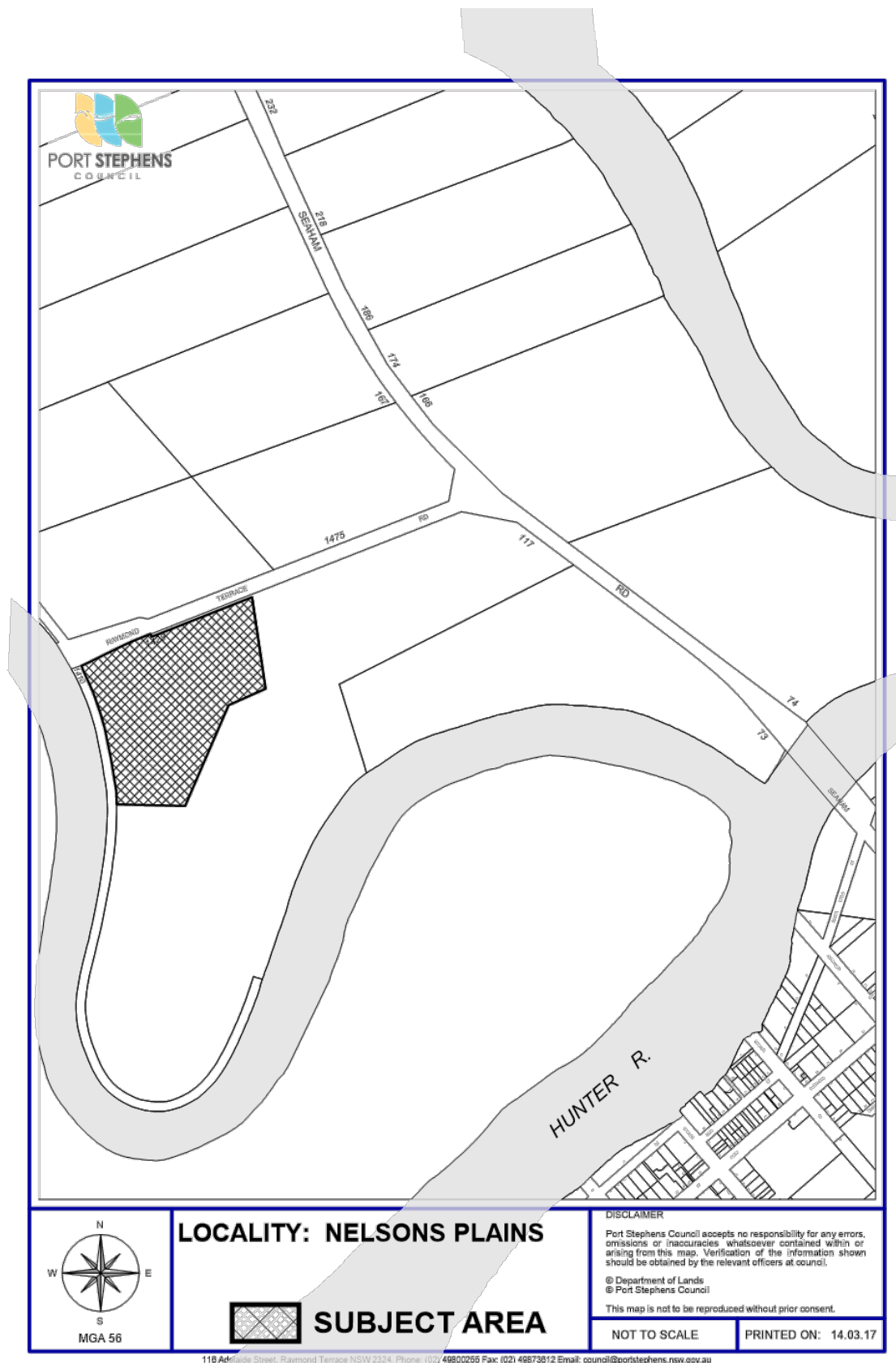
### **COUNCILLORS ROOM**

- 1) Development plans.
- 2) Flood report.

### **TABLED DOCUMENTS**

Nil.

ITEM 3 - ATTACHMENT 1 LOCALITY PLAN.



PORT STEPHENS  
COUNCILDEVELOPMENT  
ASSESSMENT REPORT

## APPLICATION DETAILS

Application Number	16-2016-763-1
Development Description	Flood Mound, Detached Dual Occupancy (Incorporating Existing Dwelling) and Shed
Applicant	LE MOTTEE GROUP PTY LIMITED
Date of Lodgement	08/11/2016
Value of Works	\$240,000.00

Development Proposal

The application proposes a flood mound, detached dual occupancy (incorporating an existing dwelling) and shed. The flood mound has a total footprint of 4,605m<sup>2</sup> (approximately 81m x 51m). The mound will be raised a maximum of 3.37m above the existing site levels, to achieve a finished level of RL 5.4m.

The proposed dwelling will be positioned on the northwest portion of the proposed earth mound, roughly 68m south of Raymond Terrace Road and 66m east of the Hunter River. The dwelling is single storey, 251m<sup>2</sup> in size and will consist of three bedrooms, lounge room, kitchen, laundry and bathroom. The maximum height of the dwelling is 5.24m and a finished floor level of 5.9m AHD.

The proposed shed is situated 5m south of the proposed dwelling. The shed will incorporate three bays and one pedestrian door, at a size of 167m<sup>2</sup>. The maximum height of the shed is 5.2m.

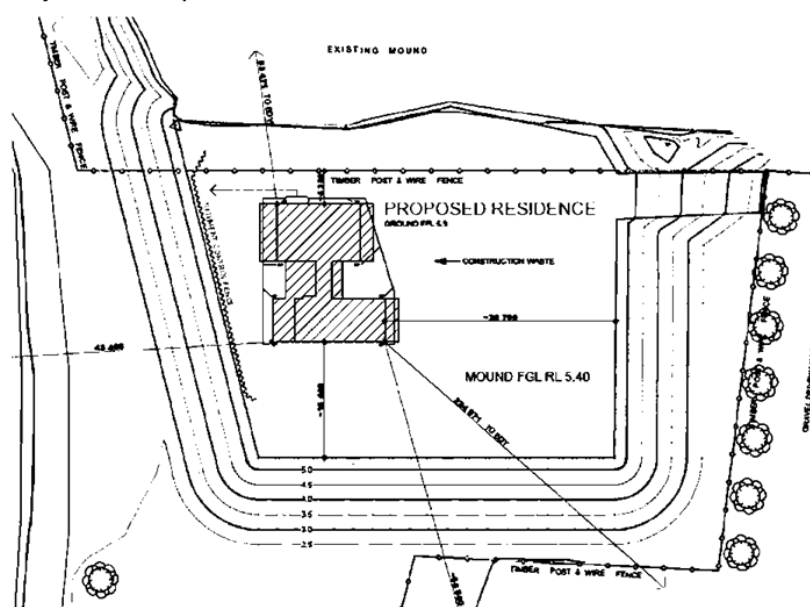


Figure 1: Proposed earth mound and dwelling

**PROPERTY DETAILS**

<b>Property Address</b>	1428 Raymond Terrace Road NELSONS PLAINS
<b>Lot and DP</b>	LOT: 1 DP: 1202026
<b>Current Use</b>	Rural Residential
<b>Zoning</b>	RU1 PRIMARY PRODUCTION
<b>Site Constraints</b>	ASS – Class 2 and 3 Flood Prone Land – High Hazard Floodway SEPP 71 – Coastal Protection OEH Referral – HV Flood Mitigation Scheme Prime Agricultural Land

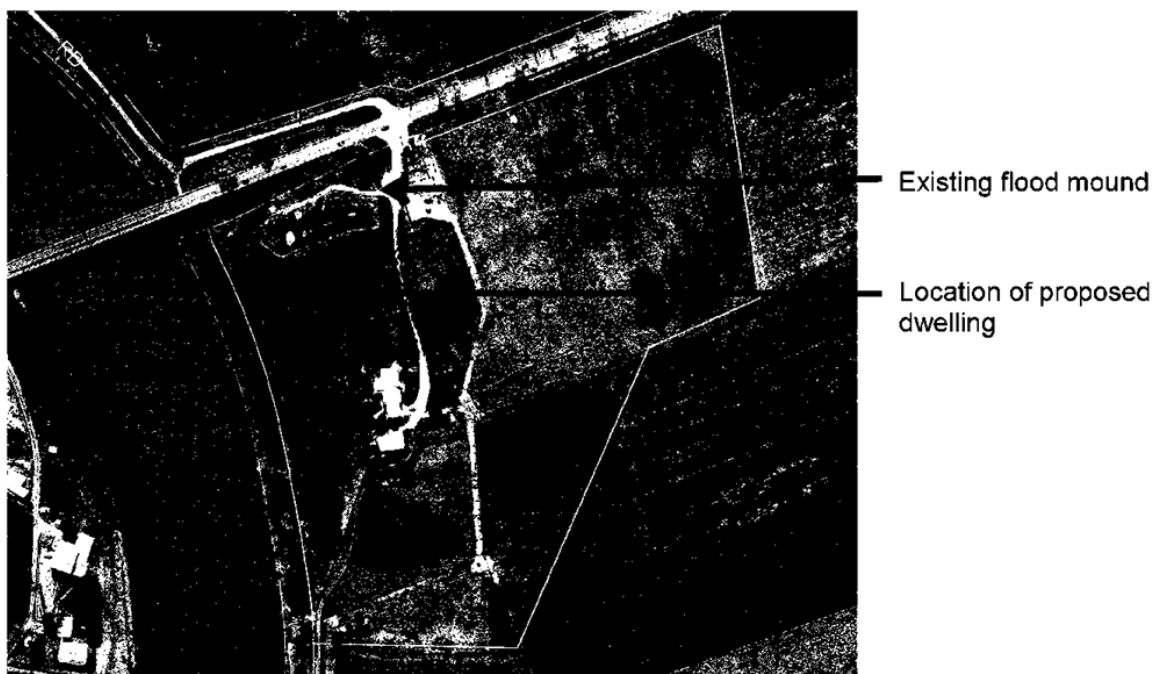


Figure 2: Aerial photo of subject site

**Site Description**

The subject site is located at 1428 Raymond Terrace Road, Nelson Plains (Lot 1 DP 1202026) and is approximately 10.07ha in size.

The site is rural in character and cleared of significant vegetation, adjoining Raymond Terrace Road to the north and Hunter River to the west. The subject site currently contains a dwelling and detached ancillary structures. A flood mound is positioned on the north-west corner of the subject site. Access to the site is provided to Raymond Terrace via a driveway connected to the existing dwelling.

**ITEM 3 - ATTACHMENT 2 PLANNERS ASSESSMENT REPORT.**

16-2016-763-1

As stated above, the site is located on the Hunter River and is therefore flood prone. Council's flood study for the area identified the site within a High Hazard Floodway. The modelled flood levels for the site are as follows:

- Flood Planning Level (FPL) – 5.9m AHD
- 1% AEP – 4.8m AHD
- 1% in 2100 – 5.4m AHD
- Probable Maximum Flood Level (PMF) – 8.8m AHD

**Site History**

No historic approvals or past compliance matters were identified which would prohibit the proposed development. A cattle mound was approved on the site in 2002.

**Site Inspection**

A site inspection was carried out on 15 Februarys 2017.



**Figure 3:** Existing flood mound facing towards the existing dwelling



**Figure 4:** Illustrating the amount of fill required to raise the existing ground level to the level of the existing mound

Page 3 of 11



Figure 5: Existing Dwelling On-site.



Figure 6: Subject development site, towards the existing flood mound.

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## ASSESSMENT SUMMARY

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Designated Development	The application is not designated development
Integrated Development	The application does not require additional approvals listed under s.91 of the EP&A Act

**Concurrence**

The application may require the concurrence of The Office of Environment and Heritage under s.256 (1)(A) of the Water Management Act. The documents and plans were referred to OEH for comment. No comments were received. Nonetheless, as Council staff recommended refusal, no consultation with concurrence bodies are required, in accordance with Section 79B of the *Environmental Planning and Assessment Act 1979*.

**Internal Referrals**

The proposed modification was referred to the following internal specialist staff. The comments of the listed staff have been used to carry out the assessment against the S79C Matters for Consideration below.

**Development Engineer** – The application was referred to Council's Development Engineering section for comment. The Flood Engineers did not support the location of the new dwelling within the high hazard floodway. Council's DCP2014 outlines that development within a floodway is not encouraged. An application may only be considered where it demonstrated to have specific community needs/benefits, which does not relate to the provision of housing. Further discussion regarding the flooding issues has been provided below.

**Building Surveyor** – No objections were made and the application was supported subject to conditions.

**Section 94 Officer** – No objections were made to the proposal. A monetary contribution would be levied on the provision of an additional dwelling.

**Environmental Health** – On-site sewage management required and as such the application was referred to Council's Environmental Health team for comment. In response it was requested that a statement from a suitably qualified person outlining that an acceptable waste management solution is achievable on site. As the application is recommended for refusal due to flooding constraints, the additional information was not requested from the applicant.

**External Referrals**

The proposed modification was referred to the following external agencies for comment.

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**MATTERS FOR CONSIDERATION – SECTION 79C**

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**s79C(1)(a)(i) – The provisions of any EPI**

Port Stephens Local Environmental Plan 2013 (LEP2013)

**Clause 2.3 – Zone Objectives and Land Use Table**

The site is located within the RU1 Primary Production Zone and the objective of the zone is:

- To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.
- To encourage diversity in primary industry enterprises and systems appropriate for the area.
- To minimise the fragmentation and alienation of resource lands.



**ITEM 3 - ATTACHMENT 2 PLANNERS ASSESSMENT REPORT.**

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- To minimise conflict between land uses within this zone and land uses within adjoining zones.

The proposed dwelling and shed, and associated earthworks have been positioned in the corner of the subject site to minimise fragmentation and alienation of resource lands and to minimise conflict between land uses within the zone. The proposed development will not interfere with the primary industry production potential within the locality. The proposed development is consistent with the objectives of the RU1 zone.

The proposed development can be defined as a detached dual occupancy that means 2 detached dwellings on one lot of land, but does not include a secondary dwelling.

The proposal is consistent with the land use definition and is therefore permissible with consent

The proposed development is consistent with the land use definition and is therefore permissible with consent in the zone.

**Clause 4.1B – Minimum Lot Sizes for Dual Occupancies** - This clause is only applicable to Residential and Mixed Use zones.

**Clause 5.5 – Development within the Coastal Zone**

The proposed development is located within the coastal zone and is considered to meet the principles of the NSW Coastal Policy. There are no anticipated adverse impacts on the local ecology or water quality as the proposal incorporates a stormwater quality control system and erosion and sediment control devices. The proposal is sufficiently separated from the waterway and that there are no anticipated impacts on the access to the foreshore. The proposed development is in keeping with the character of the locality and is not anticipated to have any negative impacts on views to or from the waterway.

**Clause 7.1 – Acid Sulfate Soils**

The subject land is mapped as containing potential Class 2 and 3 Acid Sulfate Soils (ASS). The subject development is located on land classified as Class 2 ASS. Although the proposed dwelling and earth mound will not result of acid sulfate soil issues, the on-site waste management may require excavations below existing ground level. Conditions of consent requiring ASS management would be incorporated into the notice of determination, if approval was recommended.

**Clause 7.2 – Earthworks**

Clause 7.2 (2)(b) stipulates that development consent is required for the proposed earthworks. Matters outlined in Clause 7.2 (3) require the consent authority to consider matters (a) to (h).

The application proposes earthworks on the site to achieve a level building platform consistent with the existing mound positioned to the north of the subject development. The proposed flood mound will have a total footprint of 4,605m<sup>2</sup> and requires filling to a maximum of 3.37m. The proposal is unlikely to disrupt drainage patterns, impact potential future development on-site and, unlikely to disturb any relics.

The flood report submitted with the application outlines that the earthworks are not anticipated to impact adjoining properties. Soil stability conditions would be incorporated into any conditions of consent issued to ensure scour protection, which would include but not limited to landscaping. Additionally, the use of clean fill would be conditioned.

The application is satisfactory in regard to Clause 7.2 (3).

**Clause 7.3 – Flood Planning**

The objectives of Clause 7.3 – Flood Planning are to:

- minimise risk to life and property associated with the use of land,
- allow development on land that is compatible with the land's flood hazard

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- avoid significant adverse impact on flood behaviour and the environment.

The subject development is located on land mapped as being within the flood planning area and categorised as High Hazard – Floodway. The Flood Planning Level (FPL) for the site is 5.9AHD for habitable dwellings. Clause 7.3(3) outlines that the consent authority must be satisfied that the development:

*(a) is compatible with the flood hazard of the land, and*

While it is acknowledged that the construction of the proposed flood mound will allow the dwelling to be constructed at the FPL. Residential development, in particular increasing the residential density through dual occupancy developments, is not considered compatible with the high hazard flood risk of the land, due to the increase in risk to life and property during flood events.

*(b) will not significantly adversely affect flood behavior resulting in detrimental increases in the potential flood affectation of other development or properties, and*

The Flood Impact Assessment (FIA) prepared by BMT WBM stated that the larger storm events (1% AEP and 0.5%AEP) are negligible in terms of depth and provided evidence that velocity changes are contained on-site. However, the flood impact assessment report did not include the potential impact of the development to local flood characteristics during lesser, more common storm events. In this regard the impact of the development to local flood characteristics could not be determined.

*(c) incorporates appropriate measures to manage risk to life from flood, and*

The subject site presents a substantial risk to future occupants of the proposed dwelling. No emergency response plan was provided with the application.

Due to the flood characteristics of the subject site the creation of a satisfactory flood emergency response plan is unlikely. Seaham Road, which is also positioned on land categorised as a High Hazard Floodway is the likely escape route during flood events. During significant flood events Seaham Road is likely to be highly dangerous and not trafficable once flood water rise.

Additionally, the access trail providing vehicle access to the subject development site from Raymond terrace Road would be inundated with flood waters in excess of 2.4m. The probable Maximum Flood (PMF) reaches 8.8AHD, which would result in flood water 3.4m in depth over the proposed flood mound and 6.8m in depth over the majority of the subject site moving up to 0.7m/s.

The flood characteristic of the site detail that the proposed residential development present a high risk to life and property during flood events.

*(d) will not significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses, and*

The FIA outlined that the modelled peak velocity around the toe of the proposed flood mound is no greater than 0.9m/s. The potential to scour the flood mound is therefore considered low. However, localised velocities have the potential to be higher, and scour protection works would be required to be implemented prior to any approval.

*(e) is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.*

The social and economic impacts of flooding are well documented. Policies and strategies have been implemented by Council to adequately mitigate the adverse impacts of flooding within the Local Government Area. The proposed dual occupancy will increase the residential density within a high hazard floodway, increasing the risk to people and property, which is inconsistent with this Clause and DCP2014. The increase in residential density will add to the demand on limited NSW State Emergency Services (SES) resources by way of property protection, rescue and evacuation.

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As such, it is considered that development consent cannot be granted in accordance with Clause 7.3 of LEP2013 – Flood Planning as the consent authority is not satisfied that matters outlined in Clause 7.3(3) are satisfied.

**Clause 7.6 – Essential Services**

The site has access to the majority of essential services listed under this clause.

In regards to sewer management, no specific service capacity issues have been identified and an application under Section 68 of the Local government Act 1993 for on-site sewer management will need to be lodged as part of the any Contraction Certificate application. It is noted that additional information regarding an acceptable waste management solution is achievable on site would be required before the any conditions of consent are provided.

The application has demonstrated that stormwater drainage resulting from roof and hard stand areas can be catered for in accordance with Councils requirements. The subject land also maintains direct access to Raymond Terrace Road, meeting the requirements of this clause.

**Clause 7.15 – Dual Occupancies on RU1, RU2, E2 or E3 Land**

The proposed detached Dual Occupancy (incorporating existing dwelling) will be located within the RU1 Primary Production Zone. The proposal has been designed to give the appearance of being a single development due to the location and positioning of the existing and proposed dwelling from Raymond Terrace Road. The proposal will share site facilities such as access via the driveway and essential services (electricity and water). The proposed development requires minimal vegetation removal. Council is satisfied that the proposed development fulfils the objectives of this clause in a suitable manner.

**SEPP 71 Coastal Protection**

The proposed development is located in the coastal zone and accordingly the matters for consideration under clause 8 of this policy apply. The proposed development is not anticipated to have an adverse impact on the ecology, culture or amenity of the foreshore and coastal waters as the development is residential in nature and sufficiently separated from the waterway. In addition, given the separation of the development from the waterway, there are no anticipated impacts on access to, or views to or from the waterway and foreshore area. There are no anticipated conflicts between the proposed land use and the use of the waterway. However, Clause 8(j) requires the Consent Authority to assess the likely impact of coastal processes and coastal hazards on a proposed development. The subject development will be subject to coastal hazards derived from the flood characteristics of the site. In this regard it is considered that the development is likely to be adversely impacted by coastal processes and hazards, which is inconsistent with the aims and provisions of the SEPP.

**SEPP (BASIX) 2004**

A BASIX Certificate has been submitted for the proposed development which demonstrates that the proposal can achieve required water and energy saving targets compared to the standard model house. A condition of consent has been included in the notice of determination requiring the development to be carried out in accordance with the BASIX Certificate.

**s79C(1)(a)(ii) – Any draft EPI****Draft State Environmental Planning Policy (Coastal Management) 2016**

The draft State Environmental Planning Policy (Coastal Management) 2016 (Coastal SEPP) was on public exhibition until 23 December 2016.

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The subject land is located with the Coastal Use area and it is considered that the proposed development is consistent with the objectives of the Coastal Use areas, as identified in the draft policy, and can therefore be supported.

**s79C(1)(a)(iii) – Any DCP**

**Port Stephens Development Control Plan 2014**

The Port Stephens Development Control Plan 2014 (DCP) is applicable to the proposed development and has been assessed below.

**Chapter A.12 – Notification and Advertising**

In accordance with the requirements of chapter A.12, the development application was not notified in accordance with DCP2014.

**Chapter B4 – Drainage and Water Quality**

Development plans illustrate the provision of a rainwater tank with overflows routed to a dispersion trench. The stormwater drainage design has been assessed as being consistent with the Infrastructure Specification.

**Chapter B5 – Flooding**

The subject land is mapped as being within the Flood Planning Area. Following from the discussion against Clause 7.3 of the LEP2013 above, the proposed development is not acceptable in this regard.

The subject development is located in a High Hazard Floodway, which poses a serve safety risk for future residents due to the likelihood of becoming trapped and in danger during flood events.

DCP2014 states that development within a high hazard floodway is not encouraged and can only be supported where it is demonstrated to have specific community needs/ benefits, which does not relate to the provision of housing. As the proposal is for a detached dual occupancy (incorporating an existing dwelling), the proposal is considered inconsistent with the aims and objectives of chapter B5 –Flooding of DCP2014.

**Chapter B6 – Essential Services**

The site has access to the majority of essential services listed under this clause.

In regards to sewer management, no specific service capacity issues have been identified and an application under Section 68 of the Local government Act 1993 for on-site sewer management will need to be lodged as part of the any Contraction Certificate application. It is noted that additional information regarding an acceptable waste management solution is achievable on site would be required before the any conditions of consent are provided.

**Chapter B9 – Road Network and Parking**

The proposed dwelling is a three bedroom dwelling and accordingly requires two (2) car parking spaces. Three (3) car parking spaces have been provided for the proposed dwelling, which exceeds the minimum car parking requirements specified under DCP2014.

**Chapter C4 – Dual Occupancies and Ancillary Development**

Clause	Requirement	Assessment
C4.1	Lodgement Requirements	The application includes relevant information required under this clause.
C4.7	Site coverage not to exceeds 60%	The relatively large area of the lot ensures that site coverage below is 60%. The application has demonstrated that suitable open space, landscaping and vehicle manoeuvring areas will be provided on the site. The site coverage is considered to be satisfactory.

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C4.9	Building height to be max. 8m on land with no maximum building height specified in LEP	The proposed development is single story and has a maximum height of 5.2m above ground level. The proposed development is considered acceptable in this instance as the development is in-keeping with the surrounding environment.
C4.10	Minimum front setback of 4.5m in greenfield sites or average of adjacent properties, or 10m in rural, environmental or R5 zoned land	The proposed development is setback 53m from Raymond Terrace Road, complying with the minimum setback requirements for rural lots.
C4.12	Side setback for ground floor of min 0.9m or 5m in rural or environmental zones	The proposed development is setback a minimum of 43.4m to the Hunter River, complying with side setback requirements.
C4.14	Rear setback for ground floor of min 2m or 5m in rural or environmental zones	The proposed development is setback a minimum of 154m from the rear property boundary which complies with the minimum setback requirements.
C4.16	Garage to be setback min 1m behind building line	The proposed garages are detached from the proposed dwelling and are located 5m behind the building line, in accordance with the requirements of this requirement.
C4.21	Development to be sympathetic to the street character	The proposed development is typical of other developments in the locality and is suitable in the streetscape.
C4.23	Min 50m <sup>2</sup> of POS with 35m <sup>2</sup> principle POS with min dimensions of 4m x 4m, or 20m <sup>2</sup> balcony with minimum width of 3m where ground floor POS cannot be provided	The proposed dwelling is located on a parcel of land approximately 10ha in size. The site is relatively flat with minimal vegetation, ensuring adequate usable private open space.
C4.24	Min 2hrs of sunlight to principle POS between 9am to 3pm mid-winter	The proposed proposed dwelling will receive more than 2hrs of sunlight to the principle private open space between the hours of 9am and 3pm in mid-winter.
C4.32	Ancillary shed on rural land has min. setback of 5m from a building, and 10m from side and rear boundaries	The proposed development includes an ancillary shed to the proposed dwelling. The shed is setback a minimum of 5m from other buildings and a minimum of 43m from side and rear property boundaries.

**s79C(1)(a)(iia) – Any planning agreement or draft planning agreement entered into under section 93F**

There are no planning agreements that have been entered into under section 93F relevant to the proposed development.

**s79C(1)(a)(iv) – The regulations**

There are no clauses of the regulations that require consideration for the proposed development.

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**s79C(1)(a)(v) – Any coastal management plan**

There are no coastal management plans applicable to the proposed development.

**s79C(1)(b) – The likely impacts of the development****Social and Economic Impacts**

The social and economic impacts of flooding are well documented. Policies and strategies have been implemented by Council to adequately mitigate the adverse impacts of flooding within the Local Government Area. The proposed dual occupancy will increase the residential density within a high hazard floodway, increasing the risk to people and property. The increase in residential density will add to the demand on limited NSW State Emergency Services (SES) resources by way of property protection, rescue and evacuation.

**Impacts on the Built Environment**

The proposed development is consistent with the rural nature of the locality and is characteristic of other developments in both the local and wider community. The proposal provides logical and convenient connections to the road network in the locality. There are no anticipated adverse impacts on the built environment as a result of the proposed development.

**Impacts on the Natural Environment**

The proposed development does not require the removal of significant vegetation. Additionally, due to the size of the subject lot stormwater would be able to be managed in accordance with Councils quantity and quality requirements. Additionally, any approval for an additional dwelling over the site would require the installation and maintenance of erosion and sedimentation controls.

**s79C(1)(c) – The suitability of the site**

The subject site is not considered to be suitable for the proposed development. The residential nature of the development is inconsistent with the objectives of SEPP 71 Coastal Protection, LEP2013, and DCP2014 due to the flood characteristics of subject site. Residential development is not considered a compatible development type for land situated within a high hazard floodway. The subject site presents a substantial risk to future occupants of the proposed dwelling.

**s79C(1)(d) – Any submissions**

No submissions have been received in relation to the proposed development and are discussed in further detail below.

**s79C(1)(e) – The public interest**

The approval of a residential development within an identified high hazard floodway is not in the interest of the wider public. Support of this proposal would be inconsistent with the aims and objectives of applicable statutory and policy controls. Additional residential development within a High Hazard Floodway would result in a significant risk to future residents and place further stress on SES resources.

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**DETERMINATION**

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The application is recommended to be refusal.

SAMUEL HARVEY

ITEM 3 - ATTACHMENT 3 REASONS FOR REFUSAL.



PORT STEPHENS  
COUNCIL

## Notice of Determination -REFUSAL

Under section 81(1)(b) of the *Environmental Planning and Assessment Act 1979* (NSW)

### REASONS FOR REFUSAL

1. The proposed development will result in a development that is inconsistent with the objects of the *Environmental Planning and Assessment (EP&A) Act 1979* in that it will be exposed to an unacceptable adverse risk of flooding, which does not encourage:
  - (i) the proper management and development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,
  - (ii) the promotion and co-ordination of the orderly and economic use and development of land, ... or....
  - (vii) ecologically sustainable development (s.5(a)(i),(ii) and(vii) EP&A Act 1979);
2. The proposed development will result in a development that fails to satisfy the provisions of Clause 8 (j) – Matters for Consideration of State Environmental Planning Policy 71 – Coastal Protection in that it is likely to be adversely impacted by coastal processes and hazards (s.79C(1)(a)(i) EP&A Act 1979);
3. The proposed development will result in a development that is in conflict with the following objectives contained in Clause 7.3 – Flooding of the Port Stephens Local Environmental Plan 2013:
  - to minimise the flood risk to life and property associated with the use of land, and
  - to allow development on land that is compatible with the land's flood hazard, taking into account projected changes as a result of climate change (s.79C(1)(a)(i) EP&A Act 1979);
4. The proposed development will result in a development that is in conflict with the provisions of Clause 7.3(3) of the Port Stephens Local Environmental Plan 2013, in that it will not be compatible with the flood hazard of the land (identified as High Hazard Floodway); does not incorporate appropriate measures to manage risk to life from flood; and is likely to result in unsustainable social and economic costs to the community as a consequence of flooding (s.79C(1)(a)(i) EP&A Act 1979);
5. The proposed amendments will result in a development that fails to satisfy the provisions of Chapter B5 – Flooding of the Port Stephens Development Control Plan 2014, in that the development is for the provision of housing (s.79C(1)(a)(iii) EP&A Act 1979);
6. Approval of the proposed development within a high hazard floodway will result in unacceptable social or economic impacts (s.79C(1)(b)EP&A Act 1979);

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ITEM 3 - ATTACHMENT 3 REASONS FOR REFUSAL.



PORT STEPHENS  
COUNCIL

## Notice of Determination -REFUSAL

Under section 81(1)(b) of the *Environmental Planning and Assessment Act 1979* (NSW)

7. The subject site is unsuitable for the proposed residential development as the land is situated within a high hazard floodway. The proposed development will thereby increase risk to people and property (s.79C(1)(c)EP&A Act 1979); and
8. The proposed development would be inconsistent with the adopted principles and strategies which seek to promote the proper management and use of land, promote the social and economic welfare of the community and provide for the orderly and economic use and development of land in an ecologically sustainable manner (s.79C(1)(e)EP&A Act 1979).

### SCHEDULE 2

#### RIGHT OF APPEAL

If you are dissatisfied with this decision:

- a review of determination can be made under Section 82A of the Act, or
- a right of appeal under Section 97 of the Act can be made to the Land and Environment Court within six months from the date on which that application is taken to have been determined.

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ITEM 3 - ATTACHMENT 4 CALL TO COUNCIL FORM.



CALL TO COUNCIL FORM  
DEVELOPMENT APPLICATION

I, Councillor **Ken Jordan**.....

require Development Application Number..... **16-2016-763-1**  
..... **16-2011-543-1**.....

for **a Granny Flat on**  
**rural property in flood zone**  
at **Raymond Terrace Road**  
**(1428 Raymond Terrace Rd)**.....

to be subject of a report to Council for determination by Council.

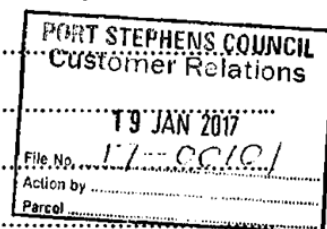
**Reason:**

The reason for this call-up to Council is **the owner**  
**requested that the full**  
**Council review the DA**

**Declaration of Interest:**

I have considered any pecuniary or non-pecuniary conflict of interest (including political donations) associated with this development application on my part or an associated person. **I have a conflict of interest? Yes/No** (delete the response not applicable).

If **yes**, please provide the nature of the interest and reasons why further action should be taken to bring this matter to Council:



Signed: ..

Date: **18/1/2017**

**ITEM NO. 4**

**FILE NO: 17/37611  
RM8 REF NO: 16-2016-866-1**

**DEVELOPMENT APPLICATION NO. 16-2016-866-1 FOR EARTH MOUND AND SINGLE STOREY DWELLING AT 854 NEWLINE ROAD, EAGLETON (LOT 2 DP 1193826)**

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

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Refuse Development Application DA No. 16-2016-866-1 (dwelling and associated earth mound) for the following reasons:
  - a) The development is not in the public interest (s79C(e) *Environmental Planning and Assessment Act 1979*) given the likely significant adverse impacts on the flood behaviour, property and environment that may result.
  - b) The development fails to satisfy cl.7.3 Port Stephens Council Local Environmental Plan 2013 (LEP) as the development is not compatible with the flood hazard of the land (s.79C (1)(a)(i) *Environmental Planning & Assessment Act 1979*).

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**ORDINARY COUNCIL MEETING - 28 MARCH 2017  
COMMITTEE OF THE WHOLE RECOMMENDATION**

	<b>Councillor John Nell Councillor Geoff Dingle</b>  That the recommendation be adopted.
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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 Geoff Dingle, Chris Doohan, Ken Jordan, Peter Kafer, John Nell and Steve Tucker.

Those against the Motion: Mayor Bruce MacKenzie.

**ORDINARY COUNCIL MEETING - 28 MARCH 2017**  
**MOTION**

<b>063</b>	<p><b>Councillor Chris Doohan</b> <b>Councillor John Nell</b></p> <p>It was resolved that Council:</p> <ol style="list-style-type: none"><li>1) Refuse Development Application DA No. 16-2016-866-1 (dwelling and associated earth mound) for the following reasons:<ol style="list-style-type: none"><li>a. The development is not in the public interest (s79C(e) <i>Environmental Planning and Assessment Act 1979</i>) given the likely significant adverse impacts on the flood behaviour, property and environment that may result.</li><li>b. The development fails to satisfy cl.7.3 Port Stephens Council Local Environmental Plan 2013 (LEP) as the development is not compatible with the flood hazard of the land (s.79C (1)(a)(i) <i>Environmental Planning &amp; Assessment Act 1979</i>).</li></ol></li></ol>
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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 Geoff Dingle, Chris Doohan, Ken Jordan, Peter Kafer, John Nell and Steve Tucker.

Those against the Motion: Mayor Bruce MacKenzie.

**BACKGROUND**

The purpose of this report is to present a development application (DA) to Council for determination. The DA relates to land located at No. 854 Newline Rd, Eagleton which is identified as Lot: 2 DP 1193826 ('the subject site').

The application has been called to Council by Mayor MacKenzie. A copy of the call up form is included as **(ATTACHMENT 2)**.

In terms of cumulative impact, it is noted the owners of this site recently obtained approval for a dwelling in high hazard floodway across the road. This has now been sold. The owner is now proposing another dwelling and flood mound on this property.

The proposal

The proposal is for a dwelling and is a single story structure consisting of four bedrooms with a full length veranda on two elevations (East and West) and an associated earth mound. The dwelling proposed has a total footprint of 387.5m<sup>2</sup>; the

earth mound proposed has an approximate footprint of 2,355m<sup>2</sup> excluding the 1:4 batters.

The existing ground level in the vicinity of the proposed location of the dwelling is approximately 1.0m AHD and it is approximated that 11,300m<sup>3</sup> of fill will be required to reach the proposed mound height of 5.8 metres AHD. To construct the mound alone would require approximately 800 'truck and dog' vehicle movements.

The toe of the mound will be located 165.68 metres from Newline Road with the house located 186.47 metres from Newline Road. The toe of the earth mound is located 9.434 metres from the nearest side boundary (South). The dwelling is proposed to be located 43.634 metres from this same southern boundary. A driveway is proposed to run adjacent to this southern boundary to Newline Road; site lines for entry and exit points in relation to the driveway has not been assessed at this stage.

### Flooding

The key issue with this development application relates to flooding and the associated development implications.

The dwelling and earth mound are proposed to be located within 'High Hazard 1 Floodway', as defined in Port Stephens Council Development Control Plan 2014.

The flood DCP chapter was adopted by Council for exhibition on 28 February 2017. The current and proposed DCPs both recommend that dwellings in high hazard flood ways are not supported.

The dwelling is generally permissible in the zone with the exception of flooding when referenced against the relevant Development Control Plan requirements.

The flood planning level (FPL) is the level to which buildings should be constructed to ensure the asset is protected from flooding and water inundation into the future. The Council stipulated level on this site is 6.1 metres AHD. No flooding report supporting the proposal has been submitted as part of the application at this stage. Under the current flooding data and policies, the development would be deemed unsuitable as dwellings in high hazard flood ways are not supported or viewed as good planning practice.

Minimal information in regards to the earth (fill) mound has been provided, and a full assessment against Cl. 7.3 Flood Planning of the LEP under (S.79C(1)(a)(i) *EP&A Act 1979*) cannot be undertaken to determine the impacts and risks associated with the fill mound until the additional information is provided to Council to support the development application assessment.

**COMMUNITY STRATEGIC PLAN**

<b>Strategic Direction</b>	<b>Delivery Program 2013-2017</b>
Balance the environmental, social and economic needs of Port Stephens for the benefit of present and future generations.	Provide Strategic Land Use Planning Services. Provide Development Assessment and Building Certification Services.

**FINANCIAL/RESOURCE IMPLICATIONS**

The determination could be challenged in the Land and Environment Court.  
Defending Council's determination could have financial implications.

<b>Source of Funds</b>	<b>Yes/No</b>	<b>Funding (\$)</b>	<b>Comment</b>
Existing budget	Yes		There is scope within Council's existing budget to defend Council's determination if challenged.
Reserve Funds	No		
Section 94	No		
External Grants	No		
Other	No		

**LEGAL, POLICY AND RISK IMPLICATIONS**

The development application is not consistent with the relevant planning instruments, flood development guidelines and studies including; *The Environmental Planning and Assessment Act 1979 (EP&A Act)*, Port Stephens Local Environment Plan 2013, Port Stephens Development Control Plan 2014, the Port Stephens Council "Areas Affected by Flooding and/or Inundation" Policy, Floodplain Risk Management Policy (adopted 8 March 2016), and the NSW Floodplain Development Manual 2005.

Section 733 *Local Government Act 1993* provides Council with a general exemption from liability with respect to flood liable land only if the necessary studies and works are carried out in accordance with the principles contained in the NSW Floodplain Development Manual 2005. Endorsement of this development would be contrary to these principles.

A decision contrary to the planning framework may negate the good faith immunity provisions in *Local Government Act 1993*. This could result in individual Councillors being personally accountable and responsible for any subsequent implications resulting from the decision. Further, in the event of any future claim Council's insurers may determine not to cover Council should the application be approved contrary to the recommendation.

## MINUTES ORDINARY COUNCIL - 28 MARCH 2017

<b>Risk</b>	<b><u>Risk Ranking</u></b>	<b>Proposed Treatments</b>	<b>Within Existing Resources?</b>
There is a risk that in approving the application Council will be increasing the risk to life and property in flood events.	Medium	Determine the application in line with the recommendation and refuse the application.	Yes
There is a risk that if the application is refused, it may be challenged at the Land and Environment Court.	Medium	Defend the refusal of the application in the NSW Land and Environment Court if required.	Yes

### **SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

As previously stated property and life could be compromised as occupiers/property could potentially be exposed to floodwaters and/or isolated on or from the property for long periods of time.

### **CONSULTATION**

Consultation with key stakeholders has been undertaken by the Building and Developer Relations Section.

#### Internal

The application was referred to Council's Flooding Engineer's in accordance with service level agreements.

#### External

The application did not require external consultation in accordance with Part A of the Port Stephens Development Control Plan 2014.

### **OPTIONS**

- 1) Accept the recommendations.
- 2) Amend the recommendations.
- 3) Reject the recommendations.

### **ATTACHMENTS**

- 1) Locality Plan.
- 2) Call to Council Form.
- 3) Proposed conditions.

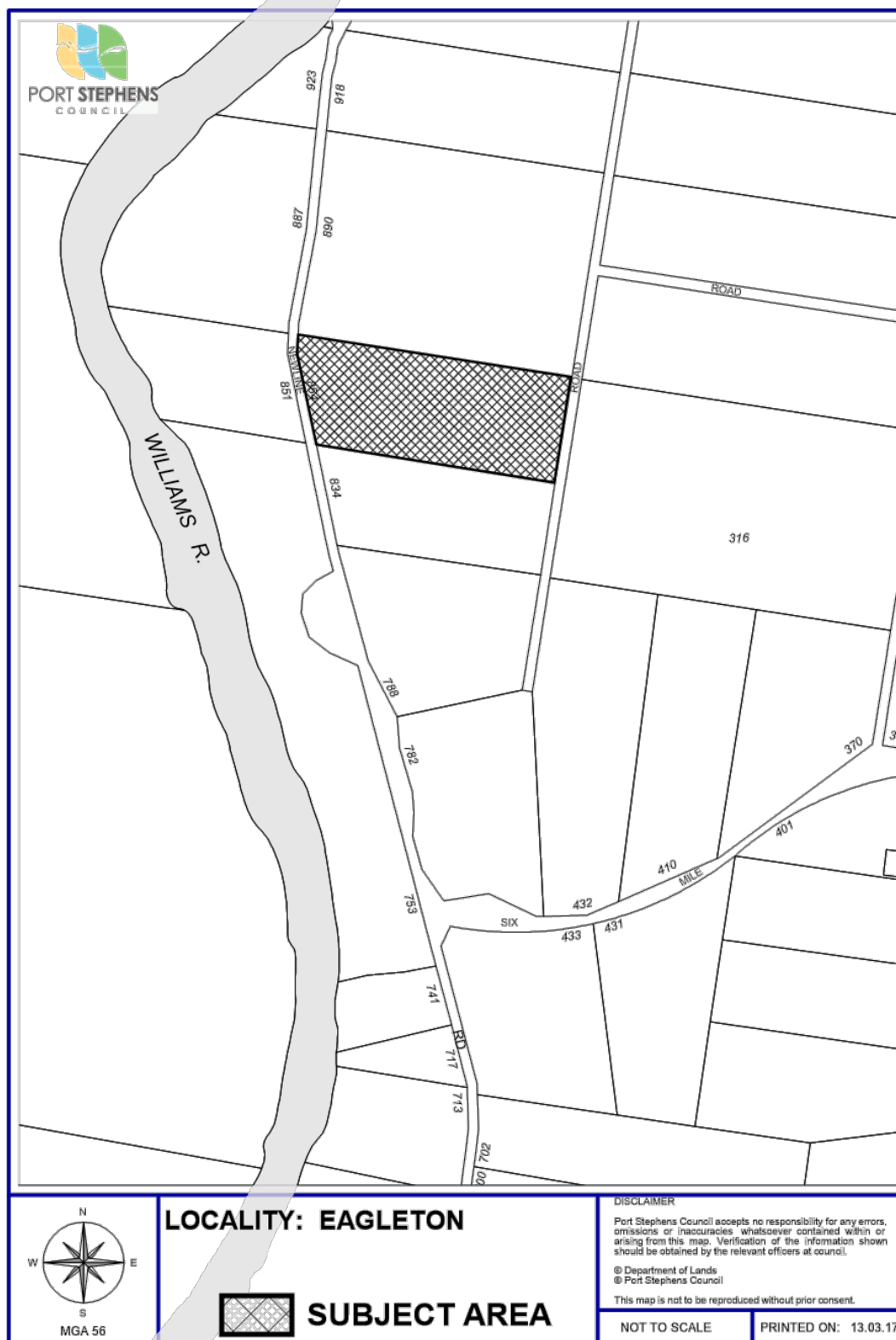
**COUNCILLORS ROOM**

- 1) Development Plans.

**TABLED DOCUMENTS**

Nil.

ITEM 4 - ATTACHMENT 1 LOCALITY PLAN.



11/ Adelaide Street, Raymond Terrace NSW 2324. Phone: (02) 49800205 Fax: (02) 49873812 Email: council@portstephens.nsw.gov.au



ITEM 4 - ATTACHMENT 2 CALL TO COUNCIL FORM.



CALL TO COUNCIL FORM  
DEVELOPMENT APPLICATION

I, Councillor Mayor Mackenzie .....  
require Development Application Number 16-2016-866-1.....  
for Dwelling and earth mound.....

At 854 Newline Road Eagleton.....

to be subject of a report to Council for determination by Council.

**Reason:**

The reason for this call-up to Council is previous precedent.....

**Declaration of Interest:**

I have considered any pecuniary or non-pecuniary conflict of interest (including political donations) associated with this development application on my part or an associated person.

I have a conflict of interest? Yes/No (delete the response not applicable).

If **yes**, please provide the nature of the interest and reasons why further action should be taken to bring this matter to Council:

Signed: ..... Date: 28/2/17

**ITEM 4 - ATTACHMENT 3      PROPOSED CONDITIONS.**

**16-2016-866-1 - 854 Newline Rd, Eagleton**

1. No construction or demolition work shall obstruct pedestrian or vehicular traffic in a public place, a hoarding or fence must be erected between the construction site and the public place.
2. Approved toilet accommodation for all tradespersons on the building site is to be provided from the time work commences until the building is complete. The toilet shall not be placed on the road reserve, without separate approval from Council.
3. A waste containment facility shall be provided on the construction site immediately after the first concrete pour for the building and is to be regularly serviced. **Council may issue 'on the spot' fines for pollution/littering offences under the *Protection of the Environment Operations Act 1997*.**
4. If an excavation associated with the erection or demolition of a building extends below the level of the base of the footings of a building on an adjoining allotment, the person undertaking the excavation must preserve and protect the building from damage, which may involve underpinning and supporting the building in an approved manner.

The adjoining property owner shall be given 7 days' notice before excavating below the level of the base of the footings of a building on an adjoining allotment of land. The owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this condition, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

In this condition, allotment of land includes a public road and any other public place.

5. The construction site is to be adequately protected and drainage controlled to ensure that erosion and sediment movement is kept on your site. Construction sites without appropriate erosion and sediment control measures have the potential to pollute the waterways and degrade aquatic habitats. Offenders may be issued with an 'on the spot' fine under the *Protection of the Environment Operations Act 1997*.

**Note:** Erosion and sediment control measures prepared in accordance with the Erosion and Sediment Control Regional Policy and Code of Practice or Managing Urban Stormwater – Soils and Construction produced by Landcom 2004, need to be maintained at all times. A copy of Landcom 2004 bluebook may be purchased by calling (02) 98418600.

6. Prior to the commencement of work, provide a 3m wide all weather vehicle access from the kerb and gutter to the building under construction for the delivery of materials & trades to reduce the potential for soil erosion. Sand shall not be stockpiled on the all-weather vehicle access.
7. A concrete dish crossing shall be constructed within the table drain in accordance with **Council's Standard Drawing No. S106**. Driveway grades shall be adjusted, if practical, to achieve this,

**ITEM 4 - ATTACHMENT 3      PROPOSED CONDITIONS.**

OR

Where driveway grades do not permit a dish crossing, a driveway application is to be submitted so that Council can nominate a pipe size and invert levels. The pipe is to be 5.0m long, at a minimum distance of 2.0 m from the edge of the roadway, ensuring an adequate grade within the drain. Gravel backfill and concrete headwalls shall be placed as indicated on Council's Standard Drawing No. S107.

The construction of the footpath crossing and associated lipless layback must be constructed **prior to the issue of any Interim and Final Occupation Certificate.**

8. The development shall take place in accordance with the stated values of the BASIX certificate submitted with the application. **Prior to the issue of any Occupation Certificate** an appropriately qualified person shall certify compliance with these requirements, as applicable. Where minor changes to the development occur (eg. colours and the like) these changes shall be referred to Council **prior to the changes being made.**
9. All work must be carried out in accordance with the requirements of the Building Code of Australia
10. Residential building work for which the Home Building Act 1989 requires there to be a contract of insurance in force in accordance with Part 6 of that Act, that such a contract of insurance is in force before any building work authorised to be carried out by the consent commences.
11. A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
  - (a) showing the name, address and telephone number of the principal certifying authority for the work, and
  - (b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
  - (c) stating that unauthorised entry to the work site is prohibited.

(3) Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
12. Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the following information:
  - (a) in the case of work for which a principal contractor is required to be appointed:

**ITEM 4 - ATTACHMENT 3 PROPOSED CONDITIONS.**

- (i) the name and licence number of the principal contractor, and
- (ii) the name of the insurer by which the work is insured under Part 6 of that Act,
- (b) in the case of work to be done by an owner-builder:
  - (i) the name of the owner-builder, and
  - (ii) if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under subclause (2) becomes out of date, further work must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the updated information.

- 13. The Principal Certifying Authority shall only issue an Occupation Certificate when the building has been constructed in accordance with the approved plans, specifications and conditions of consent. No occupational use is permitted until the Principal Certifying Authority issues an Occupation Certificate. Note: if an accredited certifier approves occupation of a dwelling the accredited certifier is to immediately notify Council in writing.
- 14. **Prior to occupying the approved dwelling(s)**, contact Council's Mapping Section via email at: [addressing@portstephens.nsw.gov.au](mailto:addressing@portstephens.nsw.gov.au) stating your Development Approval number, address of the property and the assessing officer, to obtain the correct house numbering. Be advised that any referencing on Development Application plans to house or lot numbering operates to provide identification for assessment purposes
- 15. The development shall be constructed in accordance with the NSW Government Floodplain Management Manual (2005).  
The Flood Planning Level for this development is 6.1 metres AHD.  
Flood Compatible Building Materials are listed in the attached Schedule 1.

The following design precautions must be adhered to:-

- a. The floor level of any habitable room is to be located at a height not less than the Flood Planning Level. A survey certificate verifying compliance with this condition shall be provided to the Principal Certifying Authority as soon as practical on completion of the floor level.
- b. In sewerred areas some plumbing fixtures may be located below the Flood Planning Level. Where this occurs sanitary drainage is to be fitted with a reflux valve to protect against internal sewage surcharge.
- c. No potentially hazardous or offensive material is to be stored on site that could cause water contamination during floods.
- d. All building materials, equipment, ducting, etc., below the Flood Planning Level shall be flood compatible.

ITEM 4 - ATTACHMENT 3 PROPOSED CONDITIONS.

- e. All main power supply, heating and air conditioning service installations, including meters shall be located above the Flood Planning Level.
- f. All electrical wiring below the Flood Planning Level shall be suitable for continuous submergence in water. All conduits below the Flood Planning Level shall be self-draining. Earth core leakage systems or safety switches are to be installed.
- g. All electrical equipment installed below the Flood Planning Level shall be capable of disconnection by a single plug from the power supply.
- h. Where heating equipment and fuel storage tanks are not feasible to be located above the Flood Planning Level then they shall be suitable for continuous submergence in water and securely anchored to overcome buoyancy and movement which may damage supply lines. All storage tanks shall be vented to an elevation above the Flood Planning Level.
- i. All ducting below the Flood Planning Level shall be provided with openings for drainage and cleaning.

Attach schedule for flood compatible materials.

- 16. The Designated flood is the 1 % AEP Flood. A structural engineer shall design provide certification to Council that all building structures and earth mounds are able to withstand the hydrostatic and hydrodynamic flood forces, including debris impact and buoyancy uplift for the 1% AEP Flood **prior to the issue of the Construction Certificate.**
- 17. A flood management plan which covers evacuation and the provision of emergency food, medical supplies, power/communication, water and effluent disposal, etc incorporating the State Emergency Services Business Floodsafe Toolkit, shall be submitted and approved by Council **prior to the issue of the Construction Certificate.**
- 18. A separate application for the installation of an on-site sewage management system shall be approved by Council **prior to the issue of the Construction Certificate.** The application is to be accompanied by full details of the proposed system including a **site assessment** complying with Part 2, Division 4 of the Local Government (General) Regulation, 2005 and Councils on-site sewage management policy.
- 19. **Prior to the release of any Occupation Certificates,** the Principal Certifying Authority shall obtain written confirmation from Port Stephens Council verifying that a satisfactory final inspection has been carried out in relation to any Waste Water Treatment system, the subject of a Local Government Act 1993, Section 68 approval as required under the provisions of this consent.
- 20. All erosion and sediment control measures/works and other pollution control and rehabilitation measures undertaken on the site shall conform to the specifications and standards contained in the current version of;

**ITEM 4 - ATTACHMENT 3      PROPOSED CONDITIONS.**

“Erosion and Sediment Control Regional Policy and Code of Practice”

“Managing Urban Stormwater – Soils and Construction produced by Landcom 2004”

An erosion and sediment control plan shall be submitted for approval with the engineering plans.

21. All collected stormwater including overflows from any rainwater tanks shall be dispersed at ground level, so as not to be concentrated or create nuisance flows onto any buildings, or neighbouring properties.

The discharge location shall be at least 3m down slope of the building and 6m minimum clearance from receiving down slope property boundaries.

**ITEM NO. 5**

**FILE NO: 17/36924  
RM8 REF NO: PSC2015-01647**

**PORT STEPHENS COUNCIL SUBMISSION TO THE DRAFT PLANNING REFORMS 2017**

REPORT OF: DAVID ROWLAND - STRATEGY AND ENVIRONMENT SECTION  
MANAGER  
GROUP: DEVELOPMENT SERVICES

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Endorse the submission (**ATTACHMENT 1**) to the State Government's draft planning legislation updates and forward to the Department of Planning and Environment.
- 

**ORDINARY COUNCIL MEETING - 28 MARCH 2017  
COMMITTEE OF THE WHOLE RECOMMENDATION**

	<b>Mayor Bruce MacKenzie Councillor Ken Jordan</b>  That the recommendation be adopted.
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Councillor Paul Le Mottee returned to the meeting at 07:29pm.

**ORDINARY COUNCIL MEETING - 28 MARCH 2017  
MOTION**

<b>064</b>	<b>Councillor Chris Doohan Councillor John Nell</b>  It was resolved that Council endorse the submission ( <b>ATTACHMENT 1</b> ) to the State Government's draft planning legislation updates and forward to the Department of Planning and Environment.
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**BACKGROUND**

The purpose of this report is to provide Council with an overview of the NSW Government's draft planning legislation updates and seek Council endorsement of Port Stephens Council's submission (**ATTACHMENT 1**).

The NSW Department of Planning and Environment (DP&E) is proposing amendments to the *Environmental Planning and Assessment Act 1979* (EP&A Act) to help improve and provide a planning system that is straightforward for users.

The proposed changes aim to ensure high-quality decisions and planning outcomes with more importance and greater emphasis placed on the strategic plan making process. The proposed changes intend to place importance on up front consultation with the community through community participation plans. The intent is to minimise the need for subsequent approvals (eg more complying development) and consolidation of certain parts of the Act (eg building regulation and certification provisions).

A summary of key comments raised in this submission include:

- The Act and summary of proposals outline a number of proposed templates, model plans, tools and guidance material that local councils will be required to use and develop. Council requests further information on these documents and the expected timeframes to ensure local councils can adequately consider and prepare for the documents and material.
- Council recognises there is a need to provide for community input in the strategic planning process. However this cannot replace consultation in the development assessment process, as many community members will not engage until a proposal directly affects them.
- The mandatory exhibition of applications (such as single storey dwellings and ancillary structures, changes of use of commercial units and the like) that do not fit into the restrictions of complying development as currently proposed will greatly increase the average application processing timeframes of minor developments and will increase administrative costs to applicants.
- The current complying development process is too complex and as a result development applications are often more cost and time effective.
- The proposal to require a statement of reasons for local development applications represents an additional requirement on assessing officers to summarise a document that is already publicly available and provides the same information.
- Consideration needs to be given to the impacts of the Commonwealth *Copyright Act 1968*, on local government. In particular, the responsibility of copyright obligations when copyrighted material is uploaded to a State portal where councils have responsibility for some of the information. It should be noted that councils do not have exemptions under the *Copyright Act 1968*, where the State does.
- Consideration needs to be given to the requirements of the *Privacy and Personal Information Protection Act 1998* on local government when personal information is collected from submissions and applicants, which is linked to the Government Information (Public Access) Act 2009.
- Council is supportive of the:
  - Use of a standard format Development Control Plans (DCP);



## MINUTES ORDINARY COUNCIL - 28 MARCH 2017

- Move towards an online platform for planning information and strongly urges the Department to ensure adequate processes are in place in relation to maintenance and data updates;
- Proposal to provide direction and guidance to better assist Councils in the infrastructure contributions system and looks forward to working with the Department in further developing this;
- Draft Architecture and Design Policy for NSW;
- Consolidation of building regulation and certification provisions into a single part of the Act;
- Department's suggestion to undertake a comprehensive government review of referrals and concurrences which will help to improve and reduce agency referrals and concurrence requirements. Council suggests the expanded scope for internal reviews for integrated development applications should include timeframes for the review of information by the relevant approval bodies.
- Request clarity and further information around the:
  - Provision to provide incentives for early consultation for local development;
  - Proposal to require certifiers who are intending to issue a complying development certificate to give a copy of the proposed certificate, any plans and other applicable documents to Council;
  - Community participation plans and principles such as the proposed model plans, tools, guidance material and definitions on terminology (eg 'mandatory participation') are required for Council to provide substantial comments.

### COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2013-2017
Sustainable Development.	Provide Strategic Land Use Planning Services. Provide Development Assessment and Building Certification Services.

### FINANCIAL/RESOURCE IMPLICATIONS

There are no foreseen financial or resource implications as a result of the recommendation proposed in this report.

The planning reforms proposes a number of proposed templates, model plans, tools and guidance material that local councils will be required to use and develop. It is unclear at this stage what the timing and resource implications of these amendments will be.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes		Review of the draft legislation has been carried out through Council's existing resources.

**MINUTES ORDINARY COUNCIL - 28 MARCH 2017**

Reserve Funds	No		
Section 94	No		
External Grants	No		
Other	No		

**LEGAL, POLICY AND RISK IMPLICATIONS**

There are no foreseen legal, policy or significant risk implications as a result of the recommendations outlined within this report.

The submission has been prepared in line with the Port Stephens Planning Strategy 2011 (PSPS) adopted by Council to guide the operations of the Council, and the future growth and sustainability of the local government area (LGA) as well as other endorsed strategic plans.

<b>Risk</b>	<b><u>Risk Ranking</u></b>	<b>Proposed Treatments</b>	<b>Within Existing Resources?</b>
There is a risk that Council will not endorse the submission resulting in Council missing the deadline to submit feedback on draft planning legislation updates.	Low	Support the submission and endorse the proposed recommendation.	Yes

**SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

The aim of the Act is to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment.

The objectives of the Act include promoting the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources. The proposed Act is intended to provide increased opportunity for community participation in environmental planning and assessment.

The objectives of the Act include promoting the timely delivery of business, employment and housing opportunities as well as to promote good design in the built environment.

The Act aims to protect the environment, including the conservation of threatened and other species of native animals and plants. The objectives of the Act are to

promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State.

## **CONSULTATION**

Consultation with key internal stakeholders has been undertaken by the Strategy and Environment Section.

### Internal

The following key staff were invited to provide feedback on the proposed submission:

- Strategy and Environment Section;
- Development Assessment and Compliance;
- Community Development and Engagement Coordinator;
- Asset Section Manager.

### External

A two-way conversation with Councillors was held March 2017 to discuss the key issues and Councils submission prior to consideration of this recommendation.

## **OPTIONS**

- 1) Accept the recommendations.
- 2) Amend the recommendations.
- 3) Reject the recommendations.

## **ATTACHMENTS**

- 1) Submission to the State Government's draft planning legislation updates.

## **COUNCILLORS ROOM**

Nil.

## **TABLED DOCUMENTS**

Nil.

**ITEM 5 - ATTACHMENT 1 SUBMISSION TO THE STATE GOVERNMENT'S  
DRAFT PLANNING LEGISLATION UPDATES.**

NSW Department of Planning and Environment  
GPO Box 39  
Sydney NSW 2001

Dear Sir or Madam,

**Re: Planning Legislation Updates 2017**

Thank you for the opportunity to provide initial comment on the draft Environmental Planning and Assessment Act 1979 (draft EP&A Act). In general, Council supports the NSW Government's aim to provide a planning system that is straightforward for users and ensures high-quality decisions and planning outcomes as well as to place more importance and certainty on the strategic plan making process.

A summary of key comments raised in this submission include:

- The Act and summary of proposals outline a number of proposed templates, model plans, tools and guidance material that local councils will be required to use and develop. Council requests further information on these documents and the expected timeframes to ensure local councils can adequately consider and prepare for the documents and material;
- Council recognises there is a need to provide for community input in the strategic planning process. However this cannot replace consultation in the development assessment process, as many community members will not engage until a proposal directly affects them;
- The mandatory exhibition of applications (such as single storey dwellings and ancillary structures, changes of use of commercial units and the like) that do not fit into the restrictions of complying development as currently proposed will greatly increase the average application processing timeframes of minor developments and will increase administrative costs to applicants;
- The current complying development process is too complex and as a result development applications are often more cost and time effective;

**ITEM 5 - ATTACHMENT 1 SUBMISSION TO THE STATE GOVERNMENT'S DRAFT PLANNING LEGISLATION UPDATES.**

- The proposal to require a statement of reasons for local development applications represents an additional requirement on assessing officers to summarise a document that is already publicly available and provides the same information;
- Council is supportive of the:
  - Use of a standard format Development Control Plans (DCP);
  - Move towards an online platform for planning information and strongly urges the Department to ensure adequate processes are in place in relation to maintenance and data updates;
  - Proposal to provide direction and guidance to better assist Councils in the infrastructure contributions system and looks forward to working with the Department in further developing this;
  - Draft Architecture and Design Policy for NSW;
  - Consolidation of building regulation and certification provisions into a single part of the Act;
  - Department's suggestion to undertake a comprehensive government review of referrals and concurrences which will help to improve and reduce agency referrals and concurrence requirements. Council suggests the expanded scope for internal reviews for integrated development applications should include timeframes for the review of information by the relevant approval bodies;
- Request clarity and further information around the:
  - Provision to provide incentives for early consultation for local development;
  - Proposal to require certifiers who are intending to issue a complying development certificate to give a copy of the proposed certificate, any plans and other applicable documents to Council;
  - Community participation plans and principles such as the proposed model plans, tools, guidance material and definitions on terminology (e.g. 'mandatory participation') are required for Council to provide substantial comments.

**1) Community participation**

Community participation plans should place an emphasis on consultation at strategic planning stage, and not result in an increase to DA processing times. Existing provisions under the Act for community consultation relating to DA's are considered to be sufficient.

Council acknowledges there are practical limits to the effectiveness of community participation at the strategic planning level. Council recognises there is a need to provide for community input in the development assessment process, as many community members will not engage until a proposal directly affects them. The community participation principles are a good approach and good benchmark for consultation at the right stages in the planning process.

Council requests further information on the community participation plans and principles (such as the proposed model plans, tools, guidance material and definitions on terminology such as 'mandatory participation'). Clarification is sought on the expectations of

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**ITEM 5 - ATTACHMENT 1 SUBMISSION TO THE STATE GOVERNMENT'S DRAFT PLANNING LEGISLATION UPDATES.**

these participation plans. Is it expected this document will outline how Council consults for planning strategies, development applications and amendments to the local environmental plan. The guidance material should also consider people of non-English speaking background.

Changes to the minimum public exhibition requirements for development applications are not supported. The mandatory exhibition of applications such as single storey dwellings and ancillary structures, changes of use of commercial units and the like that do not fit into the restrictions of Complying Development will greatly increase the average application processing timeframes of minor developments and will increase administrative costs to applicants. This does not accord with the stated goal of the legislative update to make the local development process simpler and faster. The Port Stephens Development Control Plan 2013 contains provisions that describe which development types should be notified and or advertised, whilst also providing discretion for assessing officers to either increase or decrease public participation requirements depending on potential for impact. This system allows for a practical approach to public participation, without the imposition of unnecessary delays on assessment times. Council has received feedback in this regard that has been positive and has contributed to our high community satisfaction score.

The requirement to provide a statement of reasons for each development application determination is not supported. Council staff undertake an assessment report which details the acceptability of each development with regard to the relevant matters for consideration under the Act – in essence, a report of the reasons why the application has been assessed as acceptable. These reports are public information and can be reviewed by any interested person, including members of the public.

The proposal to require a statement of reasons represents an additional requirement on assessing officers to summarise a document that is already publicly available and provides the same information. Whilst the premise of providing greater clarity is understood, it is our experience that such reasoning is rarely requested and if so, can already be provided. It is questioned that the motivation for this requirement originates from the sector it is intended to service. The requirement to produce a statement of reasons (even if templates are provided by the Department) will increase assessing officer workloads, increase assessment timeframes, increase costs to Council (unless an increase to application fees are intended), and provide no real benefit to the community.

**2) Local strategic planning**

Council supports the approach to fill the gap in the strategic planning hierarchy. The reforms should recognise the considerable body of evidence based strategic planning that has already been undertaken by Local Governments (examples of such work by Port Stephens Council include the Port Stephens Planning Strategy, Port Stephens Futures, the Nelson Bay Town Centre and Foreshore Strategy, and Anna Bay Strategy).

**ITEM 5 - ATTACHMENT 1 SUBMISSION TO THE STATE GOVERNMENT'S DRAFT PLANNING LEGISLATION UPDATES.**

The proposal to require local councils to develop local strategic planning statements requires further detail on how these local planning statements will be capable in holding enough detail to inform rezoning decisions and guide development. Council requests future guidance on the detail and clarification on the hierarchy. There needs to be clarity in the relationships between local strategic planning and other plans such as state and federal government plans including infrastructure delivery.

The use of a standard Development Control Plans (DCP) format is supported and it is considered this will decrease confusion for developers/consultants/members of the public, thereby increasing the effectiveness of the DCP. The ability for Councils to incorporate their own standards will remain important, as will the ability of Councils to adapt DCPs to local variations. The summary of proposals notes the model provisions will be developed in consultation with local councils. Council looks forward to being involved in this process.

Council is supportive of the move towards an online platform and strongly urges the Department to ensure adequate processes are in place in relation to maintenance and data updates. Council has recently experienced issues with Councils own cadastral base and an inconsistency with the portal using the State LPI cadastral base. It is critical to ensure the information is accurate as more emphasis is placed on accessing planning information online. It is important to ensure it is administered efficiently and effectively for Council, developers and the community users.

**3) Local development**

Council requests clarity around the provision to provide incentives for early consultation for local development. Further information should be given on how the approach would work and the cost cut should not be borne by the relevant Council. Clarification should be given on the notification process for these situations.

Council strongly supports moves to improve and reduce State Government agency referral and concurrence requirements in the development approval processes. Step-in powers in relation to integrated development are supported, however should be widened to include a review of general terms of approval, or a refusal to issue such, where the approval body and consent authority have conflicting requirements. Establishing a more robust assessment criteria and better communication and clarity at the State level for the benefit of all involved parties is essential.

Council is supportive of the Department's suggestion to undertake a comprehensive government review of referrals and concurrences. Council recommends this process include a measure of the proportion of applications which are delayed due to inadequate or incorrect information being provided by applicants. It is important that the development industry and the community understand the extent of this problem and the need to improve the standard of applications in order to facilitate economic development.

**ITEM 5 - ATTACHMENT 1 SUBMISSION TO THE STATE GOVERNMENT'S  
DRAFT PLANNING LEGISLATION UPDATES.**

The proposal to improve the complying development pathway must ensure the controls are clear, concise and straightforward. Consideration should be given on the implications the review will have on the information required for 149 planning certificates.

Council is supportive of reforms to address some existing issues with complying development, such as requiring developers to pay a compliance levy and strengthening enforcement powers to manage illegal work.

Clarification is requested around the proposal to require certifiers who are intending to issue a complying development certificate to give a copy of the proposed certificate, any plans and other applicable documents to council. What are Council liabilities around this process? Is Council expected to check the validity of the certificate?

The current complying development process is too complex and that development applications are often more cost and time effective. However consideration should be given to expanding complying development and the developments relationship to the surrounding streetscape and character of the local area. The difficulty with the complying development system is it considers development in isolation rather than considering the strategic planning for the area.

**4) State Significant Development**

The proposed amendments are supported.

**5) Facilitating infrastructure delivery**

The proposed amendments are supported. Council requests detail on the planning guidelines for infrastructure corridors.

**6) Planning agreements**

Council has made submissions to both the Special Infrastructure Contribution Plan and the Improving Voluntary Planning Agreements Discussion Paper. As both submissions stated, Council is supportive of the proposals to provide direction and guidance to better assist Councils and looks forward to working with the Department in further developing the infrastructure contributions system.

**7) Confidence in decision making**

The funding mechanisms for local planning panels, if imposed by the minister, should not be borne by the relevant Council.

Council suggests the expanded scope for internal reviews for integrated development applications should include timeframes for the review of information by the relevant approval bodies.



**ITEM 5 - ATTACHMENT 1 SUBMISSION TO THE STATE GOVERNMENT'S DRAFT PLANNING LEGISLATION UPDATES.**

**8) Building provisions**

The consolidation of building regulation and certification provisions into a single part of the Act are supported.

Council is supportive of the requirement that a construction certificate must be consistent with a development consent.

The following comments are considered onerous and will place additional cost and strains upon the building industry:

- Clause 152A (1) Concern is raised in regard to this due to the amount of time and cost involved where minor alterations are proposed. Recommend to Delete
- Clause 152A (5) The resources available to NSW F&R to consider each application for occupation certificates would see it being impossible to respond in each case thus it would be seen as a waste of time and resources. Further the 10 day time delay would be seen as a delay for developers who are usually impatient to hand over and allow occupation of buildings as early as possible as time is money in this industry. Recommend to delete
- Clause 152(6) Question as to whom now follows up should the NSW F&R not be satisfied with a system and what delays to building occupation could be expected. Recommend to delete
- Clause 162A (5) Additional critical stage inspections are an additional burden upon Councils stretched resources and would incur additional fees for these inspections. In this day and age Governments should not be placing additional costs upon the housing sector to pay for additional inspections by Council when certification is given on penetrations at completion which covers the same thing. Recommend to delete
- Clause 162A (6) Additional critical stage inspections are an additional burden upon Councils stretched resources and would incur additional fees for these inspections. In this day and age Governments should not be placing additional costs upon the housing sector to pay for additional inspections by Council when certification is given on penetrations at completion which covers the same thing. Recommend to delete
- 167A 'Competent fire safety practitioners' is a term defining a person who is competent to carry out certification of fire services and determine their compliance with relevant standards and legislation. The current system is deemed to be working sufficiently, and the grab by the Building Professionals board (BPB) for another class of accreditation will only see a reduction on the number of these technicians who currently carry out servicing of fire equipment. Further the additional costs associated with registration and undoubtedly ongoing CPD points

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**ITEM 5 - ATTACHMENT 1 SUBMISSION TO THE STATE GOVERNMENT'S DRAFT PLANNING LEGISLATION UPDATES.**

to follow, will produce a shortage of persons willing to maintain their links with the BPB. Again the costs for these measures would be passed onto the clients and again further increase building costs and increase a strain upon the industry struggling to exist. Recommend delete and existing system of owner responsibility to remain

- Clause 170 Properly qualified person to remain. Existing to remain
- Clause 173 Properly qualified person to remain. Existing to remain
- Clause 175 Properly qualified person to remain. Existing to remain
- Clause 178 Properly qualified person to remain. Existing to remain
- Clause 190B Keeping of plans on site does sound like utopia, however the complexity of many strata units and the varying makeup of an executive committee or strata manager would see the plans lost in many instances. Councils have always been seen as the repository for keeping plans and the current system should remain instead of doubling up and introducing a regime which would not work. Recommend to delete

**9) Design**

No objections to the proposed amendments. Council is supportive of the draft Architecture and Design Policy for NSW. The proposal to develop this draft policy into a Design-led Planning Strategy for NSW with design guides, standards and manuals is also supported. Council looks forward to future invitations to workshop and progress these concepts.

The State Government needs to ensure appropriate regulatory tools and measures are in place within the planning system ensuring effective implementation of Strategy. While the non-regulatory material such as design guides, standards and manuals are necessary, it needs to be clearly linked within a range of legislative mechanisms such as a ministerial direction for example.

**10) Enhancing the enforcement toolkit**

The proposed amendments are supported.

**Other Matters**

Consideration needs to be given to the impacts of the Commonwealth Copyright Act 1968, on local government. In particular, the responsibility of copyright obligations when copyrighted material is uploaded to a State portal where councils have responsibility for some of the information. It should be noted that councils do not have exemptions under the Copyright Act 1968, where the State does.

**ITEM 5 - ATTACHMENT 1 SUBMISSION TO THE STATE GOVERNMENT'S  
DRAFT PLANNING LEGISLATION UPDATES.**

Consideration needs to be given to the requirements of the Privacy and Personal Information Protection Act 1998 on local government when personal information is collected from submissions and applicants, which is linked to the Government Information (Public Access) Act 2009.

Council is supportive of the proposal to strengthen the objectives and of the addition and recognition on the importance of heritage. The new objectives of the Act exhibit a more balance approach to the achievement of social, economic and environmental objectives.

The Act and summary of proposals outline a number of proposed templates, model plans, tools and guidance material that local councils will be required to use and develop. Council requests further information on these documents and the expected timeframes to ensure local councils can adequately consider and prepare for the documents and material.

Council also expects the Department will consider monitoring and reporting requirements on the amendments to ensure the Act continues to meet its goals and objectives.

In summary, Council supports the development of the NSW Planning Reforms and looks forward to working with the Department in further developing the Act and non-regulatory material before its finalisation. Please contact Jessica Franklin, Senior Strategic Planner on 4980 0141 if you would like to discuss any of the above points further. Council looks forward to your feedback on this submission.

Yours sincerely,

Mike McIntosh  
**Group Manager Development Services**

29 March 2016

Telephone enquiries  
(02) 4980 0141  
Please quote file no: PSC2015-01647

**ITEM NO. 6****FILE NO: 17/30171  
RM8 REF NO: PSC2013-00406****POLICY REVIEW - COMPLIANCE**

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

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Receive and note the submission **(ATTACHMENT 1)**.
  - 2) Endorse the revised Compliance Policy shown at **(ATTACHMENT 2)**.
  - 3) Revoke the Compliance Policy dated 26 November 2013 (minute no. 344) **(ATTACHMENT 3)**.
- 

**ORDINARY COUNCIL MEETING - 28 MARCH 2017  
COMMITTEE OF THE WHOLE RECOMMENDATION**

	<b>Mayor Bruce MacKenzie</b> <b>Councillor Paul Le Mottee</b>  That the recommendation be adopted.
--	---

**ORDINARY COUNCIL MEETING - 28 MARCH 2017  
MOTION**

<b>065</b>	<b>Councillor Chris Doohan</b> <b>Councillor John Nell</b>  It was resolved that Council:  <ol style="list-style-type: none"><li>1) Receive and note the submission <b>(ATTACHMENT 1)</b>.</li><li>2) Endorse the revised Compliance Policy shown at <b>(ATTACHMENT 2)</b>.</li><li>3) Revoke the Compliance Policy dated 26 November 2013 (minute no. 344) <b>(ATTACHMENT 3)</b>.</li></ol>
------------	---

**BACKGROUND**

Council has a policy framework for the management and regulation of compliance matters in the Port Stephens Local Government Area (LGA).

## MINUTES ORDINARY COUNCIL - 28 MARCH 2017

On 13 December 2016 Council endorsed the Compliance Policy for the purposes of public exhibition and invited submissions on the policy.

The purpose of this report is to advise Council of the submissions received during the exhibition period and recommend the updated policy be adopted.

A total of one submission was received from Tomaree Ratepayers and Residents Association (TRRA) on the revised Compliance, Prosecution and Alternative Dispute resolution Policies (**ATTACHMENT 1**). In their submission, TRAA indicated they are focusing their comments specifically on their concerns with the Compliance Policy and accordingly this report to Council will also focus solely on the Compliance Policy.

The comments from TRRA are noted. The comments focused largely on specific matters and areas of judgment which are considered more of an operational matter rather than policy position.

Given that there was only one (1) submission it is recommended the policy be adopted unchanged.

Council staff will liaise direct with TRRA in relation to the specific points they raised in their submission.

### COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2013-2017
Community Safety.	Use Council's regulatory powers and Government legislation to enhance public safety.

### FINANCIAL/RESOURCE IMPLICATIONS

The recommendation results in no direct financial implications for council.

There are indirect financial savings to council that come with utilisation of the Compliance Policy as our framework for enforcement action, such as saving staff time by not investigating minor trivial matters with little impact.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes		No additional funding is required.
Reserve Funds	No		
Section 94	No		
External Grants	No		
Other	No		

**LEGAL, POLICY AND RISK IMPLICATIONS**

There are no significant legal, policy or risk implications.

The proposed method of addressing compliance matters is available to council currently under the Compliance Policy and legislation and both are legitimate ways to carry out enforcement action if required.

<b>Risk</b>	<b><u>Risk Ranking</u></b>	<b>Proposed Treatments</b>	<b>Within Existing Resources?</b>
There is a risk that compliance and enforcement action will not be delivered consistently without the existing framework.	Low	Adopt the revised policy.	Yes

**SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

There are no direct sustainability implications.

**CONSULTATION**

Consultation with key stakeholders has been undertaken by the Development Assessment and Compliance Section.

Internal

Consultation was undertaken with the Development Assessment and Compliance Sections, which is made up of the Building, Planning and Environmental Health and Compliance Units who make up our key internal stakeholders. The purpose of the liaison was to ascertain if there were any issues presented by the new approach and at the conclusion none were identified.

External

The revised policy was advertised in the Examiner and Council's website from 22 December 2016 to 2 February 2017 seeking public comment.

**OPTIONS**

- 1) Accept the recommendations.
- 2) Amend the recommendations.
- 3) Reject the recommendations.

**ATTACHMENTS**

- 1) Submission from TRRA.
- 2) Revised Compliance Policy.
- 3) Current Compliance Policy.

**COUNCILLORS ROOM**

Nil.

**TABLED DOCUMENTS**

Nil.



2 February 2017

The General Manager  
Port Stephens Council

[council@portstephens.nsw.gov.au](mailto:council@portstephens.nsw.gov.au)

**Subject: Revised Compliance, Prosecution and Alternative Dispute Resolution Policies**

TRRA submits that the revised Compliance, Prosecution and Alternative Dispute Resolution (ADR) Policies miss the opportunity to address some serious community concerns about the way in which conditions of consent for Development Approvals, and other requirements of State laws are being enforced (or not) by Council.

We have focused our comments on the Compliance Policy which is in our view the 'threshold' policy that determines Council's approach to enforcement. Prosecutions and ADR proceedings are two options that might be applicable in some cases, and we acknowledge that the range of factors set out in those two policies are broadly appropriate. Our concerns go more towards Council's overall 'tolerance' of non-compliant behaviour, and willingness to take action – which may in some cases lead to ADR or prosecution.

#### **Consultation**

The report to the Council meeting on 13 December 2016 on the revised compliance policy asserts that 'Consultation with key stakeholders has been undertaken by the Development Assessment and Compliance Section who implement the policy.' but also acknowledges that 'external consultation has not occurred'. The reports on the Prosecutions and ADR Policies similarly assert that 'Consultation with key stakeholders has been undertaken by the General Manager's Office'.

While we acknowledge that, as the reports note: 'the updated [Policies] will be placed on public exhibition' and that we now have the opportunity to comment, we submit that it was inaccurate and misleading to suggest in the reports that 'key stakeholders' had *already* been consulted.

In relation to compliance, the wider community is the key stakeholder, and there are numerous public interest groups and associations which are to a greater or lesser extent representative of the community, complementing the role of elected Councillors. As a regular correspondent with Council on a range of compliance issues, we would regard TRRA as a key stakeholder in this respect. TRRA was not consulted in the preparation of these revised policies and we are not aware of any other groups outside Council who were consulted.



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**Input from customer satisfaction surveys**

We also submit that in relation to this important issue, feedback should be available from Council's 'satisfaction surveys'. Results from the latest survey were published at in August 2016, but no questions appear to have been asked about general compliance, or about DA condition compliance specifically.

However, in response to Q3, satisfaction levels with 'ranger services' – two categories and with 'Managing illegal dumping' are the lowest of all those 'services' listed in Table 1 (and much lower than most others). The graphic on page 10 purports to show a constant improvement in satisfaction with 'managing illegal dumping' since 2014, which is a misleading presentation given that the satisfaction level hardly changes between 2015 and 2016. The graphics for 'ranger services' are at least accurate in showing no significant change in the consistently low levels over 5 years.

Responses to questions on the built environment (Q4), the environment in general (Q5) and 'appearance of your neighbourhood' (Q6) show (despite improvements) significant levels of dissatisfaction (14.5%; 19.1% and 24.7% respectively) – while reasons for this are unknown, failures to enforce compliance with DA conditions, maintenance of vacant sites, illegal dumping etc. may well have contributed.

**The Compliance Policy**

The Compliance Policy claims to be based on the NSW Ombudsman's Enforcement Guidelines for Councils, but we observe that it is considerably less detailed than the Model Policy suggested by the Ombudsman.

While we have no problem with the principle of a 'risk-based' approach taken both in the revised Compliance Policy and the Ombudsman's Guidelines. We accept that Council has limited resources available to devote to enforcement action, and that it is sensible to assess the level of 'detriment' being caused by non-compliance in any particular case.

However, in the list of 'Considerations when considering compliance action' in the Appendix to the Compliance Policy, three items imply a relatively high threshold of 'detriment' before compliance action would be justified:

- 'material damage or impact on human health or the environment' (Technical breach);
- 'significant detrimental effect on the environment or does it constitute a risk to public health or safety' (Magnitude of offence), and
- 'activity affected the natural or built environment and the health, safety and amenity of the area' (Tangible impact)

We submit that these criteria, while relevant, should not be read as ruling out the need for compliance action on other grounds.

Experience suggests that Council staff are exercising their discretion inappropriately in some cases, and that insufficient weight is being given to the importance of 'sending a message' about tolerance of non-compliance.

A culture has been allowed to develop in recent years where landowners and developers do not expect enforcement action to be taken, or that even if it is, penalties will be minor.



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They too will understandably apply a risk assessment – if the costs of non-compliance are low, and the benefits significant, it is hardly surprising that many of them will ignore their legal obligations.

Several recent publicly reported examples illustrate the apparent failure of Council to respond appropriately to community concerns about alleged non-compliance. They are:

- A composting plant at Eagleton
- A sawmill at Medowie
- Reclamation of mangrove swamps at Tanilba Bay
- Dumping of contaminated spoil at Salt Ash and Willamtown.

Council is well aware of the history of these cases and it is not necessary for us to go into detail.

Other cases of poor enforcement include failure to ensure that vacant development sites are adequately maintained – long-running examples being vacant sites on Church Street Nelson bay and the former 'Birubi Beach Resort' at Gan Gan Rd, Anna Bay.

The Principles/Considerations in the Appendix to the Compliance Policy are generally sound, but their effectiveness depends on how they are interpreted and implemented. As explained above, we submit that a basically sound policy has not, in recent years, been implemented with sufficient regard to the public interest in ensuring that everyone in the community has to follow the rules.

We note that one principle is that: 'Council will act in a manner that is impartial and objective when investigating matters of alleged non-compliance.' and conflict of interest is mentioned under the 'Public Interest' consideration. We submit that this needs to be strengthened with an express requirement that any conflicts of interest, whether pecuniary or non-pecuniary, should be disclosed by any Councillor or officer involved in compliance matters.

#### **Conclusion**

We look forward to our concerns being addressed in the reports to Council on these three policies, and in appropriate changes to the policies to send a clearer message that Council is serious about enforcing conditions and requirements.

**Nigel Waters**  
Convenor, Planning Committee  
Tomaree Ratepayers & Residents Association Inc.  
0407 230 342 [planning@trra.com.au](mailto:planning@trra.com.au)



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## Policy



**FILE NO:** PSC2013-00406  
**TITLE:** COMPLIANCE POLICY  
**POLICY OWNER:** DEVELOPMENT ASSESSMENT AND COMPLIANCE SECTION MANAGER

### **PURPOSE:**

The purpose of this policy is to outline Port Stephens Council's general approach to compliance and enforcement. The policy relates to the regulation of development activity, pollution control, regulation of parking, natural resource management, environmental health, the control over the keeping of animals and other regulatory issues within Council's area of responsibility as listed in the community strategic plan.

### **CONTEXT/BACKGROUND:**

As compliance is a challenging area with typically high levels of community interest, a policy is required to set the framework to assist staff and provide clarity for the community. The policy was first developed in 2007 and has been updated/amended a number of times since. The policy provides the context around council officers using their discretion and factors to consider when handling compliance matters.

### **SCOPE:**

This policy provides guidance for all compliance related matters in the Port Stephens local government area. The policy particularly applies to, or is useful for persons the subject of a compliance investigation, the complainant/submission maker, the general public and Council staff.

The NSW Ombudsman's Enforcement Guidelines for Council's have been used as the basis of framing this policy and for developing operational procedures to address compliance issues.

### **DEFINITIONS:**

Discretion	Discretion relates to a Council officers consideration in deciding whether to take enforcement action or not, or what extent of action to take.
Principles	The considerations and value to which Council staff consider any compliance matter against as mentioned in this policy.

## Policy

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ITEM 6 - ATTACHMENT 2 REVISED COMPLIANCE POLICY.

## Policy



### Risk based approach

In a public and environmental context, risk is measured in terms of the likelihood of an event occurring and the risk of harm to human health and the environment.

### POLICY STATEMENT:

Council will carry out its compliance responsibilities in a fair and equitable manner. Council will ensure the relevant principles are considered in compliance investigations and decisions are made in an environmentally and socially responsible manner.

- 1) The initiation of a process of education and creation of awareness within the community in relation to the reasons for and importance of compliance.
- 2) The investigation and enforcement of complaints about unlawful activity or failure to comply with the terms or conditions of approval, notices, licences or breaches of legislation which Council is responsible for enforcing.
- 3) Cooperation with other Government Agencies responsible for enforcing legislation that relates to unlawful activities within Port Stephens.
- 4) To establish clear guidelines for the exercise of discretion in dealing with action requests or complaints about unlawful activity and to assist Council staff.
- 5) Council will consider the guiding principles/considerations in **Appendices 1** to assist Council staff in meeting the above policy statements to act promptly, consistently and effectively to allegations of unlawful activity.

### POLICY RESPONSIBILITIES:

- 1) The policy is implemented primarily via the Manager Development Assessment and Compliance.
- 2) All Council staff that deal with written or verbal requests or complaints alleging unlawful activity are responsible for following the policy framework.
- 3) All formal notifications of alleged unlawful activity will be lodged in Council's customer request system and directed to the responsible officer.

### RELATED DOCUMENTS:

- 1) *Local Government Act, 1993.*
- 2) *Environmental Planning and Assessment Act, 1979.*
- 3) *Protection of the Environment Operations Act, 1997.*
- 4) *Roads Act, 1993.*
- 5) *Companion Animals Act, 1998.*
- 6) *Public Health Act, 2010.*
- 7) *Swimming Pools Act, 1992.*
- 8) *Rural Fires Act, 1997.*
- 9) *Road Transport Act, 2013.*

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- 10) *Food Act, 2003.*
- 11) *Impounding Act, 1993.*
- 12) *Noxious Weeds Act, 1993.*

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<b>RM8 container No</b>	PSC2013-00406	<b>RM8 record No</b>	16/440919
<b>Audience</b>	Council staff, the general public.		
<b>Process owner</b>	Manager Development Assessment and Compliance		
<b>Author</b>	Manager Development Assessment and Compliance		
<b>Review timeframe</b>	Three years	<b>Next review date</b>	1/12/2019
<b>Adoption date</b>			

### VERSION HISTORY:

Version	Date	Author	Details	Minute No.
V1	28/08/2007	Manager Development and Building	Policy adopted by Council	235
V2	26/11/2013	Manager Development Assessment and Compliance	Amended	344
V2.1	xx/10/2016	Development Assessment and Compliance Section Manager	Updated to new template	

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## Policy



### **APPENDICES 1 - COMPLIANCE PRINCIPLES / CONSIDERATIONS**

#### **Education Awareness and Cooperation**

Council will educate the community in relation to regulatory issues and their responsibilities in this regard, taking a proactive role in obtaining cooperation with the community to minimise the occurrence of non-compliances.

Council will encourage the public to try to resolve problems as they arise or come to notice before they escalate into significant issues.

Whilst prior warning is encouraged prior to pursuing a development or environment compliance matter, this is assessed on a case by case basis e.g. on the impacts and severity of alleged offence.

#### **Council's response**

Council's regulatory role requires that it identifies and responds appropriately to unlawful activities that it has responsibility for regulating. In some instances, using a risk based framework, no further investigation or action may be an appropriate response. If a decision is made not to investigate a complaint beyond a certain stage, the decision and the reasons for it must be recorded and appropriately documented.

Based on the circumstances of the alleged offence, Council respond in a way that reflects public interest, resource implications and whether the compliance issue poses a significant risk to public safety, health or to the environment.

All action requests or complaints about alleged unlawful activities should be acknowledged at the earliest opportunity and in any event no later than 7 business days. The response should indicate that Council is investigating the complaint and that a report will be forwarded as soon as possible and no later than a further 28 business days. As soon as possible and within a further 28 business days, a further report should be forwarded to the complainant indicating progress in the matter and where applicable council's decision. It is noted that some compliance matters, by their nature require an exhaustive and lengthy process of information gathering and reporting, hence there is an expectation some compliance matters will be ongoing.

#### **Councils Approach**

Council will ensure confidentiality and respect privacy requirements when dealing with matters of compliance.

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## Policy



The Council will ensure procedural fairness in matters dealing with non-compliance.

Council will act in a manner that is impartial and objective when investigating matters of alleged non-compliance.

### **Anonymous Complaints**

These are complaints made by persons that do not wish to identify themselves but they are required to identify the issue. The complainants need to provide sufficient information to enable Council to identify the activity, its location and nature. In some cases anonymous complaints are not able to be investigated as the follow up action is not able to be reported back to the complainant.

### **Using Discretion**

In regulatory matters, discretion relates to Council's discretion in deciding whether to take enforcement action or not. Council must exercise this discretion in the context of its broad regulatory responsibilities and experience and the merits of the particular case.

### **Prioritising unlawful activity**

Council uses a risk based approach in assessing compliance matters and priorities.

Applying a risk based approach enables Port Stephens Council to make informed regulatory decisions that ensure its compliance focus is on the biggest risks to the public.

As a means to assist in screening and prioritising complaints, council utilises the following methodology. The methodology is not intended to be exhaustive but is guide to ensure the efficient use of Council resources when considering a response to a compliance issue, given the urgency or seriousness of the complaint. Not all complaints will warrant immediate or extensive investigation.

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## Policy



### Compliance Methodology/Considerations

<b>CRITICAL</b> Response time within one (1) business day	<b>MODERATE</b> Response time within seven (7) business days	<b>MINOR</b> Response time within twenty eight (28) business days
<b>Nature</b> <ul style="list-style-type: none"> <li>Requires immediate action</li> <li>The issue is so urgent it needs to be attended to now.</li> </ul>	<b>Nature</b> <ul style="list-style-type: none"> <li>Important but not urgent.</li> <li>The non-compliance does not involve any life threatening issue.</li> <li>It is not critical that the issue be resolved immediately.</li> </ul>	<b>Nature</b> <ul style="list-style-type: none"> <li>Needs attention but is not urgent</li> <li>May escalate to moderate if left unaddressed.</li> <li>In some cases (but not always) it may be resolved without any regulatory intervention.</li> </ul>
<b>Public safety/health issue</b> <ul style="list-style-type: none"> <li>Can involve significant public safety issues, likelihood or serious injury or death.</li> </ul>	<b>Public safety/health issue</b> <ul style="list-style-type: none"> <li>Can include moderate, actual or potential public safety issues.</li> </ul>	<b>Public safety/health issues</b> <ul style="list-style-type: none"> <li>Public safety aspects are minimal or unlikely.</li> </ul>
<b>Environmental harm</b> <ul style="list-style-type: none"> <li>May involve significant pollution or environmental harm.</li> </ul>	<b>Environmental harm</b> <ul style="list-style-type: none"> <li>Can include moderate or potentially serious impacts on the environment.</li> </ul>	<b>Environmental harm</b> <ul style="list-style-type: none"> <li>Environmental harm is minimal or unlikely.</li> </ul>
<b>Examples</b> <ul style="list-style-type: none"> <li>Actions that have or are likely to result in some human harm</li> <li>Can include criminal acts and significant civil breaches.</li> <li>Can include environmental issues that result in long term significant impacts.</li> </ul>	<b>Examples</b> <ul style="list-style-type: none"> <li>Situations that if left could adversely affect human health, safety or the environment over time.</li> </ul>	<b>Examples</b> <ul style="list-style-type: none"> <li>Aesthetic issues</li> <li>Breach of regulation but no immediate or likely adverse impacts</li> <li>Can include neighbour disputes</li> <li>Minor localised issues</li> <li>Technical breaches of legislation.</li> </ul>
<b>Possible responses</b> <ul style="list-style-type: none"> <li>Immediate investigation and action.</li> <li>Some remedy or restoration may be necessary.</li> <li>Intervention may include some legal instruments (may include stop work, prohibition, injunction, clean up order, etc.).</li> </ul> <p>The last resort is typically court action.</p>	<b>Possible responses</b> <ul style="list-style-type: none"> <li>Depending on the particular issue, it may be necessary to gather evidence immediately.</li> <li>Investigations, actions and intervention may be required.</li> <li>Some remedy or restoration may be necessary.</li> <li>Education and awareness may be an option.</li> <li>Warnings may be issued.</li> <li>Stop work orders, clean up notices, infringement notices and other legal instruments may be required.</li> </ul>	<b>Possible responses</b> <ul style="list-style-type: none"> <li>Investigations/enquiries.</li> <li>Written warning/advice.</li> <li>Follow up actions.</li> <li>Education and awareness may be an option.</li> <li>Remediation/compensation may be required.</li> <li>Legal measures would rarely be used for minor compliance issues, however infringement notices may be used in some cases.</li> </ul> <p>No action may be acceptable.</p>

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## Policy



### Considerations when considering compliance action

Council will consider a range of factors when deciding the extent to which a matter will be investigated and enforced. The considerations below guide the decision making of Council staff.

#### Technical breach

Is a minor breach of a regulatory instrument that does not result in any material damage or impact on human health or the environment? It relates primarily to administrative matters, which are in themselves illegal however due to the nature no regulatory action is required.

#### Jurisdiction

Is the matter in question within the jurisdiction of Council? Is there another body that is a more appropriate regulatory agency to investigate and deal with the matter?

#### Permissibility

Is the activity or work permissible with or without consent? If the activity is permissible with consent, is there a consent in place? Would consent have been obtained regardless if it was sought? Is the proposal of the scale similar to exempt or complying development?

Is it possible to determine from the information available to Council whether the activity or work is permissible without consent or whether all conditions of consent are being complied with?

#### Timing issues

Is the complaint premature eg does it relate to some unfinished aspect of work that is still in progress? Has too much time elapsed since the events, the subject of the complaint, took place?

#### Magnitude of offence

Is the complaint trivial, frivolous or vexatious? Is the activity having a significant detrimental effect on the environment or does it constitute a risk to public health or safety? Are there enforcement measures necessary to ensure compliance and bring about the best environmental outcome? The potential or actual risk of environmental harm caused by the incident. When was the unlawful activity carried out and for how long? Why is it so urgent now when/if it has been ongoing before with no action?

#### Tangible impact

How has the unlawful activity affected the natural or built environment and the health, safety and amenity of the area? Would consent have been given to the party if it had been sought for this particular issue? Can the breach be easily remedied?

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### Pattern of behaviour

Does the complaint indicate the existence of a systemic problem, eg if the complaint is one of a series, could there be a pattern to the conduct or a more wide spread problem? Has the person, the subject of the complaint, received a previous warnings? Is contrition or remorse shown? Cooperation with the Council by the offender and their willingness to commit to appropriate remedial actions.

### Voluntary actions by the offender to mitigate any impacts.

Are there any particular circumstances of hardship affecting the complainant, or the person the subject of the complaint?

### Resource constraints

Does the complaint have special significance in terms of Council's existing priorities? Are there significant resource implications in relation to an investigation and any subsequent enforcement action? Is there any precedent which may be set by not taking action?

### Public interest

Is there a potential for a conflict of interest in the investigation or reaction to a complaint? What action would be reasonable and proportionate in this case given the circumstances? What would be in the public interest?

### Alternative approaches

Would an educative approach be more appropriate than a coercive approach? What are the costs and the benefits of taking a formal enforcement action, as opposed to taking informal or no action?

### Likelihood of success

What are the chances of success if the proposed enforcement action was challenged in Court? Is there a Draft Planning Instrument or policy on exhibition that would make the unauthorised use legal?

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*Port Stephens*  
C.O.U.N.C.I.L

POLICY

Adopted: 28/8/07  
Minute No: 235  
Amended: 26/11/13  
Minute No: 344

**FILE NO:** PSC2013-00406

**TITLE:** COMPLIANCE POLICY

**RESPONSIBLE OFFICER:** MANAGER DEVELOPMENT ASSESSMENT AND COMPLIANCE

**BACKGROUND**

The purpose of this policy is to summarise Port Stephens Councils general approach to compliance and enforcement. The policy explains how Port Stephens Council undertakes activities that achieve compliance. The Policy relates to the Regulation of development activity, pollution control, regulation of parking, natural resource management, environmental health, the control over the keeping of animals and other regulatory issues within Council's area of responsibility.

**OBJECTIVE**

The purpose of this Policy is to assist Council staff to act promptly, consistently and effectively to allegations of unlawful activity.

The Policy aims to encourage:

- 1) The initiation of a process of education and creation of awareness within the Community in relation to the reasons for and importance of compliance.
- 2) The investigation and enforcement of complaints about unlawful activity or failure to comply with the terms or conditions of approval, notices, licences or breaches of legislation which Council is responsible for enforcing.
- 3) Cooperation with other Government Agencies responsible for enforcing legislation that relates to unlawful activities within Port Stephens.
  - a. To initiate a process of education and creation of awareness within the Community in relation to the reasons for and the importance of compliance;
  - b. To establish clear guidelines for the exercise of discretion in dealing with action requests or complaints about unlawful activity and to assist Council staff.

**ITEM 6 - ATTACHMENT 3      CURRENT COMPLIANCE POLICY.**

The NSW Ombudsman's Enforcement Guidelines for Council's have been used as the basis of framing this Policy and for developing operational procedures to address compliance issues.

Council has an internal reference document known as the compliance matrix which assists in assigning various compliance matters to respective disciplines.

**PRINCIPLES****Anonymous Complaints**

These are complaints made by persons that do not wish to identify themselves but they are required to identify the issue. The complainants need to provide sufficient information to enable Council to identify the activity, its location and nature. In some cases anonymous complaints are not able to be investigated.

**Prima Facie Evidence**

Is evidence that is sufficient to raise a presumption of fact or to establish the fact in question?

**Technical Breach**

Is a minor breach of a regulatory instrument that does not result in any material damage or impact on human health or the environment? It relates primarily to administrative matters, which are in themselves illegal however due to the nature no regulatory action is required.

**Unlawful Activity**

Is any land-use or other activity that has been or is being carried out:

- Contrary to the terms or conditions of, or in the absence of development consent, approval, notice, permission or license.
- Contrary to an Environmental Planning Instrument that regulates the activities or work that can be carried out on particular land.

**Using Discretion**

In regulatory matters, relates to Council's discretion in deciding whether to take enforcement action or not. Council must exercise this discretion in the context of its broad regulatory responsibilities and experience.

**POLICY STATEMENT****Education Awareness and Cooperation**

**ITEM 6 - ATTACHMENT 3      CURRENT COMPLIANCE POLICY.**

Council will educate the community and commercial operators in relation to regulatory issues and their responsibilities in this regard.

Council will encourage the public to try to resolve problems as they arise or come to notice before they escalate into significant issues.

Council will take a proactive role in cooperation with the community to minimise the occurrence of non-compliance.

Whilst prior warning is encouraging prior to pursuing a development or environment compliance, this is assessed on a case by case basis e.g. on the impacts and severity of alleged offence.

**Response**

Council's regulatory role requires that it identifies and responds appropriately to unlawful activities that it has responsibility for regulating.

Council must respond appropriately to a complaint relating to an alleged unlawful activity. In some instances, using a risk based framework, no further investigation may be a valid response.

Based on the circumstances of the alleged offence, Council respond in a way that reflects public interest, resource implications and whether the compliance issue poses a significant risk to public safety, health or to the environment.

All action requests or complaints about alleged unlawful activities should be acknowledged at the earliest opportunity and in any event no later than 7 business days. The response should indicate that Council is investigating the complaint and that a report will be forwarded as soon as possible and no later than a further 28 business days. As soon as possible and within a further 28 business days, a further report should be forwarded to the complainant indicating progress in the matter and where applicable council's decision.

**Approach**

Council will ensure confidentiality and respect privacy requirements when dealing with matters of compliance.

The Council will ensure procedural fairness in matters dealing with non compliance.

Council will act in a manner that is impartial and objective when investigating matters of alleged non- compliance.

**RESPONSIBILITY**

All Council staff that deal with written or verbal requests or complains alleging unlawful activity are responsible for following these Policy guidelines.

**ITEM 6 - ATTACHMENT 3 CURRENT COMPLIANCE POLICY.**

All notifications of alleged unlawful activity (verbal or written) will be lodged in Council's complaints request system and directed to the responsible officer.

**INVESTIGATING AND PRIORITISING UNLAWFUL ACTIVITY**

Council uses a risk based approach in assessing compliance matters and priorities.

In a public and environmental context, risk is measured in terms of the likelihood of an event occurring and the risk of harm to human health and the environment.

Applying a risk based approach enables Port Stephens Council to make informed regulatory decisions that ensure its compliance focus is on the biggest risks to the public.

As a means of helping to screen and prioritise complaints, Council has developed a "Compliance Methodology" in the following terms:

**Compliance Methodology/Considerations**

<b>CRITICAL</b> Response time within one business day	<b>MODERATE</b> Response time within 7 business days	<b>MINOR</b> Response time within 28 business days
<b>Features</b> Requires immediate action <ul style="list-style-type: none"> <li>The issue is so urgent it needs to be attended to now.</li> <li>Short term localised impacts with minimal harm would not be included.</li> </ul> <b>Public Safety Issue</b> <ul style="list-style-type: none"> <li>Can involve significant public safety issues.</li> </ul> <b>Human health issue</b> <ul style="list-style-type: none"> <li>Can involve significant human health issues.</li> </ul> <b>Environmental harm</b>	<b>Features</b> Important but not urgent <ul style="list-style-type: none"> <li>The non-compliance does not involve any life threatening issue</li> <li>It is not critical that the issue be resolved immediately</li> </ul> <b>Public safety issues</b> <ul style="list-style-type: none"> <li>Can include moderate, actual or potential public safety issues.</li> </ul> <b>Human health issue</b> <ul style="list-style-type: none"> <li>Can include moderate, actual or potential health issues.</li> </ul> <b>Environmental harm</b>	<b>Features</b> Needs attention but is not urgent <ul style="list-style-type: none"> <li>May escalate to moderate if left unaddressed</li> <li>In some cases (but not always) it may be resolved without any regulatory intervention</li> </ul> <b>Public safety issues</b> <ul style="list-style-type: none"> <li>Public safety aspects are minimal or unlikely</li> </ul> <b>Human health issues</b> <ul style="list-style-type: none"> <li>Human health impacts are minimal or unlikely</li> </ul> <b>Environmental harm</b> <ul style="list-style-type: none"> <li>Environmental harm</li> </ul>

<ul style="list-style-type: none"> <li>May involve significant pollution or environmental harm</li> </ul> <p><b>Examples</b></p> <ul style="list-style-type: none"> <li>Actions that have or are likely to result in some human harm or disease.</li> <li>Can include life threatening issues.</li> <li>Can include criminal acts and significant civil breaches.</li> <li>Can include environmental issues that result in long term significant impacts.</li> </ul> <p><b>Responses</b></p> <ul style="list-style-type: none"> <li>Immediate investigation</li> <li>Immediate action</li> <li>Education and awareness may be used</li> <li>Warnings may be issued</li> <li>Mediation may be used</li> <li>Some remedy or restoration may be necessary</li> <li>Intervention may include some legal instruments (may include stop work, prohibition, injunction, clean up order, etc)</li> <li>Arbitration may be an option</li> <li>The last resort would be court action</li> </ul>	<ul style="list-style-type: none"> <li>Can include moderate or potentially serious impacts on the environment</li> </ul> <p><b>Examples</b></p> <ul style="list-style-type: none"> <li>Situations that if left could adversely affect human health, safety or the environment over time</li> <li>Breaches of legislation that carry civil sanctions.</li> </ul> <p><b>Responses</b></p> <ul style="list-style-type: none"> <li>Depending on the particular issue, it may be necessary to gather evidence immediately</li> <li>Investigations, actions and intervention may be required</li> <li>Some remedy or restoration may be necessary</li> <li>Mediation may be necessary</li> <li>Education and awareness may be an option</li> <li>Warnings may be issued</li> <li>Stop work orders, clean up notices, infringement notices and other legal instruments may be required</li> <li>Arbitration may be an option in some cases</li> <li>The last resort would be court action</li> </ul>	<p>is minimal or unlikely</p> <p><b>Examples</b></p> <ul style="list-style-type: none"> <li>Aesthetic issues</li> <li>Breach of Regulation but no immediate or likely adverse impacts</li> <li>Can include neighbour disputes</li> <li>Minor civil breaches</li> <li>Minor localised issues</li> <li>Technical breaches of legislation</li> </ul> <p><b>Responses</b></p> <ul style="list-style-type: none"> <li>Investigations/enquiries</li> <li>Written warning/advice</li> <li>Follow up actions</li> <li>Education and awareness may be an option</li> <li>Mediation</li> <li>Remediation/compensation may be required</li> <li>Legal measures would rarely be used for minor compliance issues, however infringement notices may be used in some cases</li> </ul>
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**ITEM 6 - ATTACHMENT 3      CURRENT COMPLIANCE POLICY.**

The methodology is not intended to be exhaustive but is meant to be a 'guide to ensure the efficient use of Council resources when considering a response to a compliance issue, given the urgency or seriousness of the complaint. Not all complaints will warrant immediate or extensive investigation.

Council will consider a range of factors including those in the methodology when deciding the extent to which a matter will be investigated.

Further matters would include:

**Jurisdiction**

Is the matter in question within the jurisdiction of Council?

Is there another body that is a more appropriate regulatory agency to investigate and deal with the matter?

**Permissibility**

Is the activity or work permissible with or without consent?

If the activity is permissible with consent, is there a consent in place? Would consent have been obtained regardless if it was sought? Is the proposal of the scale similar to exempt or complying development?

Is it possible to determine from the information available to Council whether the activity or work is permissible without consent or whether all conditions of consent are being complied with?

**Timing Issues**

Is the complaint premature eg. does it relate to some unfinished aspect of work that is still in progress?

Has too much time elapsed since the events, the subject of the complaint, took place?

**Magnitude of Offence / Constraints**

Is the complaint trivial, frivolous or vexatious?

Is the activity having a significant detrimental effect on the environment or does it constitute a risk to public health or safety?

Are there enforcement measures necessary to ensure compliance and bring about the best environmental outcome?

The potential or actual risk of environmental harm caused by the incident.



**ITEM 6 - ATTACHMENT 3      CURRENT COMPLIANCE POLICY.**

Is the breach a technical breach only?

When was the unlawful activity carried out and for how long? Why is it so urgent now when/if it has been ongoing before with no action?

**Tangible Impact**

How has the unlawful activity affected the natural or built environment and the health, safety and amenity of the area?

Would consent have been given to the party if it had been sought for this particular issue? Can the breach be easily remedied?

**Pattern of Behaviour**

Does the complaint indicate the existence of a systemic problem, eg if the complaint is one of a series, could there be a pattern to the conduct or a more wide spread problem? Has the person, the subject of the complaint, received a previous warnings?

Is contrition shown? Cooperation with the Council by the offender and their willingness to commit to appropriate remedial actions.

Voluntary actions by the offender to mitigate any impacts.

Are there any particular circumstances of hardship affecting the complainant, or the person the subject of the complaint?

**Policy and Resource Considerations**

Does the complaint have special significance in terms of Council's existing priorities?

Are there significant resource implications in relation to an investigation and any subsequent enforcement action?

Is there any precedent which may be set by not taking action?

**Public Interest Considerations**

Is there a potential for a conflict of interest in the investigation or reaction to a complaint.

Public interest and community expectation about the action taken to provide specific or general deterrence.

What action would be reasonable and proportionate in this case given the circumstances?

What would be in the public interest?

**ITEM 6 - ATTACHMENT 3      CURRENT COMPLIANCE POLICY.**

**Alternative Approaches**

Would an educative approach be more appropriate than a coercive approach?

What are the costs and the benefits of taking a formal enforcement action, as opposed to taking informal or no action?

**Likelihood of Success**

What are the chances of success if the proposed enforcement action was challenged in Court? Is there a Draft Planning Instrument on exhibition that would make the unauthorised use legal?

**If a decision is made not to investigate a complaint beyond a certain stage, the decision and the reasons for it must be recorded and appropriately documented.**

**COMPLIANCE OPTIONS**

**Referral**

Referring the complaint to an external agency for further investigation or prosecution. Referring the issue to an external mediator.

**No Action**

Taking no regulatory action on the basis of lack of evidence or for some other risk based appropriate reason.

**Counselling and Negotiation**

Counselling the subject of the investigation to educate them on the relevant Council requirements. Negotiating with the subject of the investigation and obtaining some undertaking to address the issues of concern.

**Warnings and Notices**

Issuing a letter requiring work to be done or the activity to cease.

Issuing a Notice of Intention to Serve an Order or Notice under the relevant legislation. Issuing a Notice requiring the work to be done under the relevant legislation.

**Infringement Notices and Orders**

Issuing a Penalty Infringement Notice.

**ITEM 6 - ATTACHMENT 3      CURRENT COMPLIANCE POLICY.**

Carrying out the work specified in an Order under the Local Government Act at the cost of the person served with the Order.

**Court Action**

Starting proceedings in the Land and Environment Court for an Order to remedy or restrain a breach of the relevant legislation.

Seeking injunctions from the Land and Environment Court or the Supreme Court.

Issuing a Summons in the Local Court

Taking proceedings for an offence under the relevant legislation.

**RELATED POLICIES**

1)    N/A

**SUSTAINABILITY IMPLICATIONS**

The Compliance Policy can improve sustainability outcomes for the local government area.

**SOCIAL IMPLICATIONS**

The Compliance Policy can improve social outcomes for the local government area.

**ECONOMIC IMPLICATIONS**

The Compliance Policy can improve economic outcomes for the local government area.

**ENVIRONMENTAL IMPLICATIONS**

The Compliance Policy can improve environmental outcomes for the local government area.

**RELEVANT LEGISLATIVE PROVISIONS**

The Local Government Act, 1993 (NSW)  
Environmental Planning and Assessment Act, 1979 (NSW)  
Protection of the Environment Operations Act, 1998 (NSW)  
Roads Act, 1993 (NSW)

**ITEM 6 - ATTACHMENT 3      CURRENT COMPLIANCE POLICY.**

Companion Animals Act, 1998 (NSW)  
Noxious Weeds Act, 1993 (NSW)  
Public Health Act, 1991 (NSW)  
Swimming Pools Act, 1992 (NSW)  
Rural Fires Act, 1997 (NSW)  
Traffic Act, 1999 (NSW)  
Food Act, 1989 (NSW)  
Impounding Act, 1993 (NSW)

**IMPLEMENTATION RESPONSIBILITY**

- 1)    Manager Development Assessment and Compliance

**PROCESS OWNER**

- 1)    Manager Development Assessment and Compliance

**REVIEW DATE**

- 1)    The Policy will be reviewed 3 years after the date on which Council has adopted it.

**ITEM NO. 7****FILE NO: 17/14094  
RM8 REF NO: PSC2015-00513****AUSTRALIA DAY EVENTS IN PORT STEPHENS 2017****REPORT OF: STEPHEN CROWE - COMMUNICATIONS SECTION MANAGER  
GROUP: DEVELOPMENT SERVICES****RECOMMENDATION IS THAT COUNCIL:**

- 1) Note this report on 2017 Council supported Australia Day activities held in Port Stephens.
- 2) Approve the provision of \$1,000 to the Karuah RSL Club to assist with the organisation of 2018 Australia Day activities in Karuah, to be reviewed after this event.
- 3) Approve the continuation of funding arrangements for the Nelson Bay, Raymond Terrace and Lemon Tree Passage events.

**ORDINARY COUNCIL MEETING - 28 MARCH 2017  
COMMITTEE OF THE WHOLE RECOMMENDATION**

	<b>Councillor Ken Jordan Councillor Steve Tucker</b>  That the recommendation be adopted.
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Councillor Peter Kafer left the meeting at 07:33pm.

**ORDINARY COUNCIL MEETING - 28 MARCH 2017  
MOTION**

<b>066</b>	<b>Councillor Chris Doohan Councillor John Nell</b>  It was resolved that Council: <ol style="list-style-type: none"><li>1) Note this report on 2017 Council supported Australia Day activities held in Port Stephens.</li><li>2) Approve the provision of \$1,000 to the Karuah RSL Club to assist with the organisation of 2018 Australia Day activities in Karuah, to be reviewed after this event.</li><li>3) Approve the continuation of funding arrangements for the Nelson Bay, Raymond Terrace and Lemon Tree Passage events.</li></ol>
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## **BACKGROUND**

The purpose of this report is to provide Council with an overview of the planning and delivery of 2017 Australia Day activities held across the local government area and make recommendations to assist future events.

In 2017, Council assisted Australia Day events in Port Stephens were held in four locations:

- Fly Point, Nelson Bay - organised by the Australia Day Nelson Bay Subcommittee with Council financial support of \$12,978;
- Riverside Park, Raymond Terrace - organised by the Rotary Club of Raymond Terrace under agreement with Port Stephens Council with Council financial support of \$12,978;
- Henderson Park, Lemon Tree Passage - organised by the Lions Club of Tilligerry Peninsula Inc. with Council financial support of \$3,030; and
- Karuah RSL Club - organised by the Karuah RSL Club with Council financial support of \$1,000.

In addition to this, considerable staff time is devoted to planning, supporting and running the events with nine staff members also working on the day to ensure successful events.

This year, a strength was the coordination of the events through the 355c committee and joint promotion across the local government area (LGA). Each location offered a range of activities that highlighted the different characteristic of locations around the region.

All events experienced a damp start to the day, which did not dampen the enthusiasm of participants nor crowd numbers.

The events at Raymond Terrace and Nelson Bay incorporated citizenship ceremonies, with Raymond Terrace also hosting the announcement of Council's 2016 annual community awards.

The Karuah event included a community auction which raised approximately \$6,000 for the Karuah, North Arm Cove and Limeburners Rural Fire Brigades, and culminated in a fireworks display in the evening.

The event at Lemon Tree Passage was held for the first time in the new infrastructure, which included new seating and shade areas. The event started with a community breakfast.

The agreement between Port Stephens Council and the Rotary Club of Raymond Terrace saw the club assume responsibility for the community elements, including all entertainment, market and community stalls, and speed boat demonstrations. As per the resolution from the Ordinary Council Meeting (12 April 2016), the Rotary Club of Raymond Terrace will conduct Australia Day celebrations for 2018, to be reviewed after that event.

### Australia Day 355c Committee

The redefined structure and membership of the Australia Day 355c Committee endorsed in April 2015 proved to be effective for the 2017 event. The inclusion of representatives from Lions Club of Tilligerry Peninsula and the Karuah RSL with representatives from Rotary Club of Raymond Terrace, and the Nelson Bay subcommittee, strengthened the coordination and information sharing across the region.

### Australia Day Ambassador

Following the success of appointing one ambassador to speak at events in Raymond Terrace and Nelson Bay for 2016 Australia Day, the same approach was used for the 2017 events. Port Stephens Council utilised the Australia Day Ambassador program via the Australia Day Council of NSW for the appointment of the 2017 ambassador.

Paralympic medallist and legend, Liesl Tesch, was appointed the Port Stephens Australia Day Ambassador. Liesl presented her address at both Raymond Terrace and Nelson Bay and captivated the audiences with her engaging speeches. Liesl was very popular and gave very impressive and heartfelt speeches.

While the opportunity for the Ambassador to visit more than two venues has been considered by the 355c Australia Day Committee, it was not achieved in 2017. At its review meeting in February, the Committee considered this for 2018 but felt the logistics were too challenging for one ambassador. It was also agreed the ambassadorial dinners (one at Raymond Terrace and Nelson Bay) be reintroduced and offered to the 2018 Ambassador.

### Port Stephens Annual Awards and Citizenship Ceremony

As in previous years, the Port Stephens Annual Awards were announced at the Raymond Terrace ceremony. Most recipients then travelled to Nelson Bay where they were acknowledged as part of formal proceedings. There were 30 nominations for 17 nominees for a 2016 Port Stephens Annual Award, and seven recipients were awarded on Australia Day.

The Annual Awards Assessment Panel agreed on a 'Cultural Endeavour' category to be introduced for the 2017 program to acknowledge those in the community that are contributing to the cultural development of Port Stephens. Other recommendations for review will be considered by the assessment panel later this year.

Both venues also undertook citizen ceremonies with 20 people at Nelson Bay and 14 at Raymond Terrace taking the pledge of citizenship.

### Sponsors

Each location attracted sponsors, both cash and in-kind, to support their activities. This support is invaluable and acknowledged by Council. Suez Environment Australia provided waste bins free of charge to the Nelson Bay, Raymond Terrace and Lemon Tree Passage events.

Other sponsors were:

Raymond Terrace - The Mutual Building Society, Raymond Terrace Bowling Club.

Nelson Bay - Marquis Bathroom Products, Port Stephens Coaches, Woolworths, Bunnings Warehouse and 4Hire.

### **COMMUNITY STRATEGIC PLAN**

<b>Strategic Direction</b>	<b>Delivery Program 2013-2017</b>
Governance and Civic Leadership.	Manage the civic leadership and governance functions of Council. Manage relationships with all levels of government, stakeholder organisations and Hunter Councils Inc.

### **FINANCIAL/RESOURCE IMPLICATIONS**

Cash funding for the events is sourced from Council and sponsors. Considerable in-kind support is also received.

As per the Ordinary Council Meeting dated 26 June 2012, Council endorsed funding for the Australia Day Nelson Bay subcommittee and Raymond Terrace Australia Day community group/s of \$12,000 and this would increase by CPI each year. For Australia Day 2017, the amount of \$12,978 was paid to the Australia Day Nelson Bay subcommittee and to the Rotary Club of Raymond Terrace.

At its meeting on 23 July 2013, Council resolved that an annual amount of \$3,000 be provided to the Lions Club of Tilligerry Peninsula Inc. for an event on the Tilligerry Peninsula. At its meeting on 12 April 2016, this amount was to be increased by CPI each year, subject to satisfactory reports of the expenditure of these funds. For Australia Day 2017, the funding amount of \$3,030 was paid to the Lions Club of Tilligerry Peninsula Inc.

At its meeting on 12 April 2016, Council resolved to provide Karuah RSL a one off payment of \$1,000 (not indexed at that time) for the 2017 event, to be reviewed. It is proposed that this amount be offered to Karuah again for the 2018 event.



**MINUTES ORDINARY COUNCIL - 28 MARCH 2017**

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes	29,986	To support community groups undertake Australia Day events.
Reserve Funds	No		
Section 94	No		
External Grants	No		
Other	No		

**LEGAL, POLICY AND RISK IMPLICATIONS**

There are no legal or policy implications related to adopting the recommendations.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that Council's reputation may be damaged to poorly organised events.	Low	The efficient operation of Council's 355c Australia Day Committee and partnership with community groups, has improved the coordination and management of Australia Day events in the local government area. Council staff and volunteers with clear plans and budgets.	Yes
There is risk that attendance at Australia Day events may decrease.	Low	Close involvement of the community in organisation and management of these activities.	Yes

**SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

Adopting recommendations in this report will demonstrate Council's ongoing commitment to the efficient and coordinated management and support of community organised Australia Day activities in the local government area.

**CONSULTATION**Internal

Council's 355c Australia Day Committee met three times in the past 12 months to plan and coordinate events in the local government area. This also included a trial bulk purchase of flags for events.

## **MINUTES ORDINARY COUNCIL - 28 MARCH 2017**

The committee most recently met on 15 February 2015 to review this year's activities and begin planning for 2018.

### External

Council staff from the Marketing and PR, Community Development and Engagement and Visitor Information and Events Units met regularly with the Nelson Bay subcommittee and the Rotary Club of Raymond Terrace during the development of their program.

In recognition of their satisfaction with Council staff support, Rotary Club of Raymond Terrace recently awarded Pride of Workmanship Awards to Council staff.

Staff (both administrative and outdoor based) are in regular contact with all groups to assist with the organisation of the events.

### **OPTIONS**

- 1) Accept the recommendations.
- 2) Amend the recommendations.
- 3) Reject the recommendations.

### **ATTACHMENTS**

Nil.

### **COUNCILLORS ROOM**

Nil.

### **TABLED DOCUMENTS**

Nil.

**ITEM NO. 8****FILE NO: 16/476312  
RM8 REF NO: PSC2016-02892 and  
PSC2016-02870****PORT STEPHENS COUNCIL INTEGRATED PLANS, RESOURCE STRATEGY  
AND FEES AND CHARGES 2017-2018****REPORT OF: WAYNE WALLIS - GENERAL MANAGER  
GROUP: GENERAL MANAGER'S OFFICE**

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**RECOMMENDATION IS THAT COUNCIL**

- 1) Endorse the draft Integrated Plans, Resource Strategy and Fees and Charges 2017-2018 for public exhibition as outlined in this report.
  - 2) Place the draft Integrated Plans, Resource Strategy and Fees and Charges 2017-2018 on public exhibition from 1 to 30 April 2017 and invite submissions.
- 

**ORDINARY COUNCIL MEETING - 28 MARCH 2017  
COMMITTEE OF THE WHOLE RECOMMENDATION**

	<b>Councillor Steve Tucker Councillor Paul Le Mottee</b>  That the recommendation be adopted.
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Councillor Peter Kafer returned to the meeting at 07:37pm.

**ORDINARY COUNCIL MEETING - 28 MARCH 2017  
MOTION**

<b>067</b>	<b>Councillor Chris Doohan Councillor John Nell</b>  It was resolved that Council:  <ol style="list-style-type: none"><li>1) Endorse the draft Integrated Plans, Resource Strategy and Fees and Charges 2017-2018 for public exhibition as outlined in this report.</li><li>2) Place the draft Integrated Plans, Resource Strategy and Fees and Charges 2017-2018 on public exhibition from 1 to 30 April 2017 and invite submissions.</li></ol>
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**BACKGROUND**

## MINUTES ORDINARY COUNCIL - 28 MARCH 2017

The purpose of this report is to seek Council's endorsement to place the draft Integrated Plans 2013-2023 and the draft Resource Strategy 2013-2027 on public exhibition, together with the draft Fees and Charges 2017-2018 for the period 1 to 30 April 2017 and invite submissions, in accordance with Section 405 and Section 610(F) of the *Local Government Act 1993*.

### Exhibition requirements:

As there are no changes to the Community Strategic Plan 2013-2023 nor to the Delivery Program 2013-2017 these do not require public exhibition; however for the convenience of members of the community the draft Operational Plan 2017-2021 are placed in a single document with the two other elements to demonstrate the integrated nature of these plans.

The Resource Strategy comprises the draft Long Term Financial Plan 2017-2027, the Workforce Strategy 2013-2017 and the draft Strategic Asset Management Plan 2017-2027. There are no changes to the Workforce Strategy so it will not be placed on public exhibition.

### Documents:

The Long Term Financial Plan is required to be reviewed and rolled over annually, as are the Strategic Asset Management Plan and the Fees and Charges. For ease of reference by the community these are contained in separate documents for exhibition although the Fees and Charges form part of the Long Term Financial Plan.

The draft Strategic Asset Management Plan 2017-2027 contains the long term infrastructure planning elements, and includes the town centres strategy. Individual asset management plans – previously included in the documents but not required to be exhibited – will be placed on Council's website and summaries are included in the draft Strategic Asset Management Plan 2017-2027 for each asset category.

## COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2013-2017
A Sustainable Council.	Council will maintain its underlying financial performance to budget at break even or better. Council will increase its revenue from non-rates sources. Manage risks across Council. Attract, retain and develop staff to meet current and future workforce needs. Provide enabling business support services for Council's operations.

**FINANCIAL/RESOURCE IMPLICATIONS**

Council is required to adopt the Long Term Financial Plan and Fees and Charges before 30 June each year and cannot expend funds or charge fees unless the process, including public exhibition and consideration of submissions is undertaken.

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

**LEGAL, POLICY AND RISK IMPLICATIONS**

Section 405 of the *Local Government Act 1993* requires Council to have an Operational Plan and to publicly exhibit a draft; and to consider submissions received before adopting its Operational Plan.

The legislation requires a detailed one year Operational Plan (2017-2018); however at Port Stephens Council plans are developed in detail for four years on a rolling basis, so the draft Operational Plan is for 2017-2021. The draft Operational Plan document contains the Statement of Revenue Policy and the draft Statement of Waste Management, together with the draft Budget Summary.

Section 610(F) of the *Local Government Act 1993* requires Council to exhibit the fees and charges it intends to put in place and invite submissions.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that failure to follow the exhibition process will result in Council being unable to fund its operations.	Low	Adopt the recommendations.	Yes
There is a risk that failure to follow the exhibition process will result in loss of reputation.	Low	Adopt the recommendations.	Yes

## **SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

The draft integrated plans have been formulated having regard to the principles of social equity and justice. They contain elements that address considerations of social implications throughout the Plans but especially in the actions associated with the Focus Areas 'Our Citizens' and 'Our Lifestyle'. The Plans associated with the Focus Areas 'Our Economy' and 'Our Environment' address the economic and environmental implications.

The draft Fees and Charges 2017-2018 have economic implications: Council derives around a third of its revenue from fees and charges so it is imperative that the proposed fees are adopted within the statutory timeframe that is prior to 30 June 2017.

## **CONSULTATION**

Consultation with key stakeholders has been undertaken by Corporate Strategy & Planning, Finance Section and Asset Section.

### Internal

- Responsible officers across Council have reviewed the fees and charges, including researching and benchmarking with other councils; and determining issues of affordability.
- Input from Councillors was sought at a workshop on 21 February 2017.
- The draft Operational Plan 2017-2021 and the Resource Strategy documents were developed in consultation with staff across Council.
- Input was sought from Councillors for these Plans at a workshop on 13 December 2016.

### External

- The community of Port Stephens will be consulted and invited to make submissions should Council agree to the recommendations in this report.

In accordance with local government legislation the draft plans will go on public exhibition from 1 to 30 April 2017 for 30 days.

## **OPTIONS**

- 1) Accept the recommendations.
- 2) Amend the recommendations.
- 3) Reject the recommendations.

## **ATTACHMENTS**

Nil.

**COUNCILLORS ROOM**

Nil.

**TABLED DOCUMENTS**

- 1) Fees and Charges 2017-2018.
- 2) Integrated Plans 2013-2023.
- 3) Strategic Asset Management Plan 2017-2027.
- 4) Long Term Financial Plan 2017-2027.

**ITEM NO. 9****FILE NO: 17/54695  
RM8 REF NO: PSC2017-00669****AUDIT COMMITTEE MEMBERSHIP****REPORT OF: WAYNE WALLIS - GENERAL MANAGER  
GROUP: GENERAL MANAGER'S OFFICE**

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Seek an expression of interest from members of the public to serve as independent members of Council's Audit Committee.
  - 2) Increase the number of independent members of the Audit Committee to three (3).
  - 3) Increase the allowance paid to independent Audit Committee members to \$500 per meeting attended.
  - 4) Adopt the revised Audit Committee Charter as detailed in **(ATTACHMENT 1)**.
- 

**ORDINARY COUNCIL MEETING - 28 MARCH 2017  
COMMITTEE OF THE WHOLE RECOMMENDATION**

	<b>Councillor Ken Jordan Councillor Paul Le Mottee</b>  That the recommendation be adopted.
--	---

**ORDINARY COUNCIL MEETING - 28 MARCH 2017  
MOTION**

<b>068</b>	<b>Councillor Chris Doohan Councillor John Nell</b>  It was resolved that Council: <ol style="list-style-type: none"><li>1) Seek an expression of interest from members of the public to serve as independent members of Council's Audit Committee.</li><li>2) Increase the number of independent members of the Audit Committee to three (3).</li><li>3) Increase the allowance paid to independent Audit Committee members to \$500 per meeting attended.</li><li>4) Adopt the revised Audit Committee Charter as detailed in <b>(ATTACHMENT 1)</b>.</li></ol>
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**BACKGROUND**

The purpose of this report is to gain Council's approval to invite members of the public with appropriate skills and experience to lodge an expression of interest to serve as independent members of Council's Audit Committee. The current independent external Audit Committee representatives' term is due to expire on 30 June 2017.

At its meeting held on 9 February 2010 Council first resolved to establish an Audit Committee as an advisory committee of Council comprising two Councillors and two independent external members. It is now recommended that the independent membership be increased to three (3) members, to further broaden the range of expertise and experience of membership on the Committee.

**COMMUNITY STRATEGIC PLAN**

<b>Strategic Direction</b>	<b>Delivery Program 2013-2017</b>
Governance and Civic Leadership.	Manage the civic leadership and governance functions of Council. Manage relationships with all levels of government, stakeholder organisations and Hunter Councils Inc.

**FINANCIAL/RESOURCE IMPLICATIONS**

The meeting allowance payable has been reviewed and a meeting allowance of \$500 per meeting is now considered appropriate to be paid to each independent external representative of the Audit Committee for each meeting attended. This allowance was originally set at \$100 in 2010 and increased to \$200 in 2013.

The increase to \$500 per meeting attended is consistent with other allowances paid when benchmarked with councils of a similar size.

<b>Source of Funds</b>	<b>Yes/No</b>	<b>Funding (\$)</b>	<b>Comment</b>
Existing budget	Yes	\$6,000	This is a potential increase of \$4,400 per year which will be covered within existing budget.
Reserve Funds	No		
Section 94	No		
External Grants	No		
Other	No		

**LEGAL, POLICY AND RISK IMPLICATIONS**

The Audit Committee Charter is consistent with all relevant legislative requirements and Office of Local Government guidelines.

It is proposed that the independent external membership be increased from two (2) to three (3) members. This will mean that the Committee will consist of five (5) voting members – two (2) elected members of Council (excluding the Mayor) and three (3) independent external members. The members of the Committee, taken collectively, will have a broad range of skills and experience relevant to Council's operations.

The independent external members will be required to executive confidentiality agreements, complete pecuniary interest returns and comply with Council's Code of Conduct.

<b>Risk</b>	<b><u>Risk Ranking</u></b>	<b>Proposed Treatments</b>	<b>Within Existing Resources?</b>
There is a risk that Council would not comply with the Office of Local Government guidelines if independent members are not appointed.	Low	Adopt the recommendations.	Yes

**SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

It is considered that the Audit Committee will add significant rigour to Council's governance framework, risk control, compliance and financial reporting and will enhance Council's reputation, operations and financial sustainability.

**CONSULTATION**

Consultation with key stakeholders has been undertaken by the Office of the General Manager.

**Internal**

- General Manager
- Governance Manager

**OPTIONS**

- 1) Accept the recommendations.
- 2) Amend the recommendations.
- 3) Reject the recommendations.

**ATTACHMENTS**

- 1) Revised Audit Committee Charter 2017.

**COUNCILLORS ROOM**

Nil.

**TABLED DOCUMENTS**

Nil.



# AUDIT COMMITTEE CHARTER

Issue Date: xx/xx/xxxx

Review Date: 14 March 2017

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## **1. OBJECTIVE**

The objective of the Audit Committee ('Committee') is to enhance the corporate governance of Port Stephens Council ('Council') through the provision of independent oversight, review and advice. The Committee will assist Council by providing independent assurance and assistance on the organisation's governance, risk, control and compliance frameworks.

In fulfilling its objective, the ability of the Committee to maintain independent and objective judgement is vital.

The Committee will report to Council and provide independent advice and recommendations on matters relevant to the Committee's Charter. The Committee will also act as a forum for communication between Council, General Manager, senior management, internal audit and external audit.

## **2. AUTHORITY**

Port Stephens Council will establish the Audit Committee to operate as an independent and objective advisory committee to Council. The Committee is established as an advisory committee of Council pursuant to Section 355C of the Local Government Act 1993 (as amended).

The Council authorises the Committee, within the scope of its roles and responsibilities, to:

- obtain information it needs from any employee or external party (subject to their legal obligations to protect information and with prior consultation with the General Manager);
- discuss any matters with the internal and external auditors or other external parties (subject to confidentiality considerations);
- request the attendance of any employee at Committee meetings (subject to prior consultation with the General Manager); and
- obtain external legal or other professional advice considered necessary to meet its responsibilities (in accordance with Council procurement arrangements and subject to prior consultation with the General Manager).

The Committee does not have any delegations or authority to implement actions not otherwise specified or authorised by Council. The Committee does not have any management functions and is independent of management.

## **3. COMPOSITION AND TENURE**

The Committee will consist of five voting members – two elected members of Council (excluding the Mayor) and three external independent members.

The members of the Committee, taken collectively, will have a broad range of skills and experience relevant to Council's operations.

### 3.1 Elected Member of Council

The elected member of Council (excluding the Mayor) appointed to the Committee will have relevant and appropriate experience in business, risk, law and financial management.

Appointment of the elected member to the Committee will be determined by Council as resolved from time to time.

Council may resolve to appoint an elected member for consecutive terms.

### 3.2 Independent External Member

The three independent external members will have relevant and appropriate experience in business, risk, law and financial management.

The independent external members will be appointed on the terms and conditions determined by Council.

Council may resolve to appoint an independent external member for consecutive terms.

### 3.3 Invitees (non-voting)

Unless the Committee determines otherwise, the following Council officers and representatives will be required to attend meetings of the Committee for specific agenda items:

- General Manager;
- Group Managers;
- Financial Services Manager;
- Legal Services Manager;
- Governance Manager;
- Risk Management Coordinator;
- Representatives of the external auditor;
- Representatives of the internal auditor;
- Other officers may attend by invitation as requested by the Chair of the Committee.

The Council officers and representatives will have no voting entitlements.

### 3.4 Independent Chair

An independent external member will be the Chair of the Committee.

Appointment of the independent external member Chair to the Committee will be determined by the Committee as resolved from time to time.

The Committee may resolve to appoint an independent external member as Chair for consecutive terms.

In the absence of the Chair the members present at the meeting will elect an acting Chair.

## **4. ROLES AND RESPONSIBILITIES**

The Committee has no executive powers, but may from time to time be delegated specific powers by Council.

In carrying out its responsibilities, the Committee, must at all times, recognise that primary responsibility for management of Council rests with the Council and the General Manager as defined by the *Local Government Act 1993*.

Council or the General Manager may refer any matter to the Committee within the scope of its roles and responsibilities.

The responsibilities of the Committee may be revised or expanded by the Council from time to time.

The Committee's specific responsibilities include:

### 4.1 Risk Management

- Review Council's risk management framework to ensure comprehensive processes exist to identify operational, strategic, financial and fraud risks. Review controls to ensure effective processes to reduce risks to an acceptable residual level.
- Review whether a sound and effective approach has been followed in developing strategic risk management plans for major projects or undertakings.
- Review the impact of the risk management framework on its control environment and insurance arrangements.
- Review whether a sound and effective approach has been followed in establishing business continuity planning arrangements, including whether plans have been tested periodically.
- Review and endorse the Risk management (and related) policies and procedures.



#### 4.2 Control Framework

- Review whether management has adequate internal controls in place, including over external parties such as contractors and advisors.
- Review whether management has in place relevant directives and procedures, and these are periodically reviewed and updated.
- Progressively review whether appropriate processes are in place to ensure adequate compliance to policies and procedures.
- Review whether appropriate policies and procedures are in place for the management and exercise of delegations.
- Review the Code of Conduct as it applies to ethical and lawful behaviour.

#### 4.3 External Accountability

- In consultation with management ensure the annual financial reports comply with applicable Australian Accounting Standards and Department of Local Government Guidelines.
- Review the external audit opinion, including whether appropriate action has been taken in response to audit recommendations and adjustments.
- Consider responses on contentious financial reporting matters in conjunction with Council's management and external consultants.
- Review the processes in place designed to ensure financial information included in the annual report is consistent with the signed financial statements.
- Ensure timely and accurate publishing of the annual report to include the signed financial statements as per Australian Accounting Standards and Department of Local Government Guidelines.
- Ensure appropriate controls are in place to satisfy compliance to State Government reports and recommendations.
- Ensure management has in place an appropriate framework to link organisational objectives and outcomes meet Council expectations.

#### 4.4 Legislative Compliance

- Ensure an appropriate compliance framework exists to identify risks and controls over legislative compliance to relevant laws, regulations and associated government policies.

#### 4.5 Internal Audit

- Ensure the Internal Audit Plan meets the objectives of management and recommend adoption as required.
- Consider the adequacy of internal audit resources to carry out its responsibilities, including completion and compliance of the approved Internal Audit Plan within the designated timeframe.
- Provide input (but not decision) into the tender, remuneration and appointment of the internal auditor.

- Ensure the existence and provide input into an effective long-term internal audit strategic plan.
- Receive audit reports and consider significant issues that have been identified. Review recommendations and ensure appropriate follow up of issues is effected within a timely manner.
- Review and endorse the Internal Audit Charter.
- Periodically review the performance of Internal Audit.

#### 4.6 External Audit

- Note the external auditor's scope and approach, including any reliance on internal auditor activity.
- Review and ensure management implement recommendations contained within the external auditor's management letter as appropriate.
- Provide input (but not decision) into the tender, remuneration and appointment of the external auditor.

#### 4.7 Responsibilities of Members

Members of the Committee are expected to:

- have a good understanding of the Committee's position within the Council's governance framework;
- understand the regulatory and legislative requirements appropriate to Council;
- understand and ensure clearly defined roles and responsibilities for audit related positions and consultancies exist;
- ensure effective communication exists between the Committee, management and key stakeholders;
- provide professional competency to be able to meet the objectives of the Committee; and
- contribute effectively to the quality assurance and continuous improvement process as it relates to the objectives.

### **5. REPORTING**

#### 5.1 Reporting to Council

The Committee, through the Chair, will report regularly to Council on significant governance, risk and internal control issues including:

- significant control weaknesses or breakdowns in critical controls;
- fraudulent or illegal activities;
- evaluation of the effectiveness of the internal and external audit functions; and
- endorsement of the financial statements.

The Committee will also report immediately to the General Manager any matter it deems of sufficient importance.

Where the Committee makes a recommendation to Council on a matter within the scope of its Charter, the matter will be listed as an agenda item for consideration by Council.

The Committee will submit an annual report to Council summarising its activities for the previous year.

#### 5.2 Internal Audit Reporting

At the first Committee meeting after 30 June each year, Internal Audit will provide a performance report of:

- the performance of Internal Audit for the financial year as measured against agreed key performance indicators; and
- the approved Internal Audit Plan of work for the previous financial year showing the current status of each audit.

### **6. ADMINISTRATIVE ARRANGEMENTS**

#### 6.1 Meeting Practice

Unless otherwise specified in this Charter and in accordance with any Local Government Act requirements, the Committee will determine its meeting practice, processes and protocols.

#### 6.2 Voting

Matters under consideration by the Committee will be determined by consensus whenever possible. In the event that consensus cannot be achieved, an item is adopted by the Committee where a majority of members vote for the subject. If the voting is tied the Chair has a second (casting) vote which is used to break the deadlock.

#### 6.3 Meeting Schedule

The Committee will meet at least four times per year, with one of these meetings to include review and endorsement of the annual audited financial reports and external audit opinion.

The need for any additional meetings will be decided by the Chair of the Committee, though the Council, General Manager or other Committee members may make requests to the Chair for additional meetings.

A forward meeting plan, including meeting dates and agenda items, will be agreed by the Committee each year. The forward meeting plan will cover all Committee responsibilities as detailed in this Audit Committee Charter (refer Attachment A).

#### 6.4 Attendance at Meetings and Quorums

A quorum will consist of a majority of Committee members, including at least one independent external member.

#### 6.5 Secretariat

The General Manager will ensure that appropriate secretariat support is provided to the Committee. The secretariat is the liaison between the Committee and the day to day operations and staff of Council.

#### 6.6 Agenda

The secretariat will ensure the agenda for each meeting and supporting papers are circulated to members in sufficient time (at least three working days) before the meeting.

Circulation of the agenda will be by normal postal services or electronic means as determined by the Committee.

#### 6.7 Minutes

Minutes of Committee meetings will be recorded by the secretariat and reviewed by the Chair prior to circulation to members for information and action arising. The minutes will be circulated within three weeks of the meeting being held.

#### 6.8 Implementation of Auditor Recommendations

The Committee will maintain a register to track the implementation of both internal and external audit recommendations. The register will include all audit recommendations, together with management responses, that have yet to be implemented or where implementation is in progress. The status of recommendations will be reviewed by the Committee at each meeting.

#### 6.9 Code of Conduct

Committee members are bound by the terms and conditions of the Port Stephens Council Code of Conduct.

Committee members must declare any conflicts of interest at the start of each meeting. Details of any conflicts of interest must be appropriately minuted.

Where members or invitees at Committee meetings are deemed to have a real or perceived conflict of interest, it may be appropriate they be excused from Committee deliberations on the issue where the conflict of interest may exist.

#### 6.10 Induction

The General Manager will ensure that new Committee members receive relevant information and briefings on their appointment to assist them to meet their Committee responsibilities.

#### 6.11 Performance Assessment

The Chair of the Committee will initiate an annual review of the performance of the Committee. The review will be conducted on a self-assessment basis (unless otherwise determined by the Committee), with appropriate input from management and any other relevant stakeholders, as determined by the Committee.

#### 6.12 Review of Audit Committee Charter

The Committee will review the Audit Committee Charter on an annual basis and make recommendation on any changes to Council for its determination.  
Any changes to the Audit Committee Charter must be approved by Council.

**ATTACHMENT A**Audit Committee –Work Plan

<b>TASK</b>	<b>TIMING</b>
Receive presentations and reports from internal and external auditors	Standing item
Review implementation of internal and external audit recommendations	Standing item
Review risk register actions and implementation	Standing item
Review Fraud and corruption prevention policy	May
Review Risk management framework	May
Approve annual internal audit program	May
Determine Audit Committee meeting schedule	July
Review Audit Committee's performance	July
Review Audit Committee Charter	July
Review and approve the Audit Committee's annual report to Council	October
Review annual financial statements	October

**Audit Committee – Proposed Meeting Schedule**

July

October (Financial Statements)

February

May

**CONTROLLED DOCUMENT INFORMATION:**

This is a controlled document. Hardcopies of this document may not be the latest version. Before using this document, check it is the latest version; refer to Council's website <a href="http://www.portstephens.nsw.gov.au">www.portstephens.nsw.gov.au</a>			
<b>RM8 container No</b>	PSC2015-01492	<b>RM8 record No</b>	
<b>Audience</b>	Audit Committee members		
<b>Process owner</b>	General Manager		
<b>Author</b>	General Manager		
<b>Review timeframe</b>	Two years	<b>Next review date</b>	July 2019
<b>Adoption date</b>	9 February 2010		

**VERSION HISTORY:**

<b>Version</b>	<b>Date</b>	<b>Author</b>	<b>Details</b>	<b>Minute No.</b>
1	09/02/2010	Group Manager Corporate Services	New document.	016
2	19/10/2010	Group Manager Corporate Services	Update to item 3 Composition and Tenure to exclude the Mayor from Audit Committee membership.	337
3	20/12/2011	Group Manager Corporate Services	Update to item 4.6 External Audit to reflect changes made in the DLG Better Practice Audit Committee Guidelines.	462
4	09/10/2012	Executive Officer	No change.	269
5	26/11/2013	Executive Officer	No change.	348
6	14/03/2017	General Manager	Updated to reflect brand identity guidelines. Work plan updated as endorsed by Audit Committee on 27 February 2017.	

**ITEM NO. 10****FILE NO: 17/53434  
RM8 REF NO: A2004-0135****PRIVACY MANAGEMENT PLAN****REPORT OF: TONY WICKHAM - GOVERNANCE MANAGER  
GROUP: GENERAL MANAGER'S OFFICE****RECOMMENDATION IS THAT COUNCIL:**

- 1) Revoke the Privacy Management Plan dated 10 March 2017 (Min No. 050); and
- 2) Endorse the revised Privacy Management Plan shown at **(ATTACHMENT 1)**.

**ORDINARY COUNCIL MEETING - 28 MARCH 2017  
COMMITTEE OF THE WHOLE RECOMMENDATION**

	<b>Councillor Paul Le Mottee Councillor Ken Jordan</b>  That the recommendation be adopted.
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**ORDINARY COUNCIL MEETING - 28 MARCH 2017  
MOTION**

<b>069</b>	<b>Councillor Chris Doohan Councillor John Nell</b>  It was resolved that Council:  <ol style="list-style-type: none"><li>1) Revoke the Privacy Management Plan dated 10 March 2017 (Min No. 050); and</li><li>2) Endorse the revised Privacy Management Plan shown at <b>(ATTACHMENT 1)</b>.</li></ol>
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**BACKGROUND**

The purpose of this report is to seek Council adoption of the revised Privacy Management Plan (PMP).

The *Privacy and Personal Information Protection Act 1998* (the "PPIPA") requires all councils to prepare a Privacy Management Plan outlining their policies and practices to ensure compliance with the requirements of that Act and the *Health Records and Information Privacy Act 2002* (the HRIPA).



## MINUTES ORDINARY COUNCIL - 28 MARCH 2017

In particular, the object of this plan is to inform:

- The community about how their personal information will be used, stored and accessed after it is collected by the Council; and
- Council staff of their obligations in relation to handling personal information and when they can and cannot disclose, use or collect it.

The Privacy and Personal Information Protection Act 1998 ("PPIPA") provides for the protection of personal information and for the protection of the privacy of individuals.

The Information and Privacy Commission provides a number of online resources and information to assist with the review of the PMP. Council has accessed these resources when conducting this review.

The changes are relative minor in nature however they assist with ongoing compliance with PPIPA:

- Inclusion of a privacy disclaimer to assist with overall compliance – see **(ATTACHMENT 2)** 'YOUR PRIVACY' of the PMP.
- Changed the layout of each Principle for ease of reading.
- Updated contact details under section 7.6.
- Updated information relating to the NSW Civil and Administrative Tribunal (NCAT).
- Conducted an overall administrative review, including version control consist with the organisational approach.

### COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2013-2017
Governance and Civic Leadership.	Manage the civic leadership and governance functions of Council. Manage relationships with all levels of government, stakeholder organisations and Hunter Councils Inc.

### FINANCIAL/RESOURCE IMPLICATIONS

The implementation of the PMP will be undertaken within existing budget.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes		
Reserve Funds	No		
Section 94	No		

**MINUTES ORDINARY COUNCIL - 28 MARCH 2017**

External Grants	No		
Other	No		

**LEGAL, POLICY AND RISK IMPLICATIONS**

Council is required to adopt a Privacy Management Plan under the *Privacy and Personal Information Act 1998*.

<b>Risk</b>	<b><u>Risk Ranking</u></b>	<b>Proposed Treatments</b>	<b>Within Existing Resources?</b>
There is a risk that Council would be in breach of the <i>Privacy and Personal Information Act 1998</i> if the Privacy Management Plan is not adopted.	Low	Adopt the recommendations.	Yes
There is a risk that Council may face legal action without the Privacy Management Plan in place.	Low	Adopt the recommendations.	Yes

**SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

Nil.

**CONSULTATION**

Consultation with key stakeholders has been undertaken by the Governance and Legal Services Unit, which include the Information and Privacy Commission – via the on line services.

**OPTIONS**

- 1) Accept the recommendations.
- 2) Amend the recommendations.
- 3) Reject the recommendations.

**ATTACHMENTS**

- 1) 2017 Privacy Management Plan. (Provided under separate cover)

**COUNCILLORS ROOM**

Nil.

**TABLED DOCUMENTS**

Nil.

**ITEM NO. 11****FILE NO: 17/55422  
RM8 REF NO: PSC2007-3003****POLICY REVIEW: COUNCIL PROSECUTIONS POLICY****REPORT OF: LISA MARSHALL - LEGAL SERVICES MANAGER  
GROUP: GENERAL MANAGER'S OFFICE****RECOMMENDATION IS THAT COUNCIL:**

- 1) Receives and notes the submission **(ATTACHMENT 3)**.
- 2) Revokes the Council Prosecutions Policy dated 20 June 2000, Minute No. 319 **(ATTACHMENT 1)**.
- 3) Adopts the revised Council Prosecutions Policy shown at **(ATTACHMENT 2)**.

**ORDINARY COUNCIL MEETING - 28 MARCH 2017  
COMMITTEE OF THE WHOLE RECOMMENDATION**

	<b>Councillor Geoff Dingle Councillor Ken Jordan</b>  That the recommendation be adopted.
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**ORDINARY COUNCIL MEETING - 28 MARCH 2017  
MOTION**

<b>070</b>	<b>Councillor Chris Doohan Councillor John Nell</b>  It was resolved that Council:  <ol style="list-style-type: none"><li>1) Receives and notes the submission <b>(ATTACHMENT 3)</b>.</li><li>2) Revokes the Council Prosecutions Policy dated 20 June 2000, Minute No. 319 <b>(ATTACHMENT 1)</b>.</li><li>3) Adopts the revised Council Prosecutions Policy shown at <b>(ATTACHMENT 2)</b>.</li></ol>
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**BACKGROUND**

The purpose of this report is to provide Council with comments received as part of the public exhibition of the Council Prosecutions Policy ('Policy').

## MINUTES ORDINARY COUNCIL - 28 MARCH 2017

On 13 December 2016 Council endorsed the Policy for the purposes of public exhibition and invited submissions on the Policy. One submission was received from the Tomaree Ratepayers and Residents Association (TRRA). While the submission was made in relation to three policies on public exhibition at the time – the Compliance Policy, Alternative Dispute Resolution Policy and the Council Prosecutions Policy – the primary focus of the submission was on the Compliance Policy. The remaining policies were implicated by reason that they represent possible avenues following on from the provisions of the Compliance Policy. No specific amendments to these policies were submitted.

As such, no further action is required in relation to this Policy as a result of the submission.

The revised Policy is presented for Council's determination.

### COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2013-2017
Governance and Civic Leadership.	Manage the civic leadership and governance functions of Council. Manage relationships with all levels of government, stakeholder organisations and Hunter Councils Inc.

### FINANCIAL/RESOURCE IMPLICATIONS

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

### LEGAL, POLICY AND RISK IMPLICATIONS

The Policy recognises the balance between Council's responsibility to enforce legislation and its ongoing objective of enhancing community relations and awareness. Council has a responsibility to try to ensure that breaches of the law are dealt with appropriately and to meet community expectation that pursuit of Council's enforcement functions will be undertaken in a consistent and equitable manner.

**MINUTES ORDINARY COUNCIL - 28 MARCH 2017**

<b>Risk</b>	<b><u>Risk Ranking</u></b>	<b>Proposed Treatments</b>	<b>Within Existing Resources?</b>
There is a risk that lack of clear policy and principles will lead to an inconsistent and inequitable approach to Council's enforcement functions.	Medium	Adopt the recommendations.	Yes

**SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

The endorsement of clear policy and principles will help ensure a consistent and equitable approach, and effective use of Council resources in relation to Council's enforcement functions.

**CONSULTATION**

Consultation with key stakeholders has been undertaken by the General Manager's Office.

The *Local Government Act 1993* requires Council to conduct public consultation on policies prior to final adoption.

**Internal**

- The Executive Team was consulted to seek management endorsement.
- The General Manager was consulted to seek approval prior to Council consideration on 13 December 2016.

**External**

- Following Council endorsement, the draft revised Policy was placed on public exhibition in the Port Stephens Examiner and on Council's website from 22 December 2016 to 2 February 2017 and public comment was sought.

**OPTIONS**

- 1) Accept the recommendations.
- 2) Amend the recommendations.
- 3) Reject the recommendations.

**ATTACHMENTS**

- 1) Current Council Prosecutions Policy.
- 2) Revised Council Prosecutions Policy.
- 3) Submission received from Tomaree Ratepayers & Residents Association Inc.

**COUNCILLORS ROOM**

Nil.

**TABLED DOCUMENTS**

Nil.

*Port Stephens*  
**C·O·U·N·C·I·L**  
**POLICY**

Adopted:20/6/2000  
Minute No:319  
Amended:  
Minute No:

**FILE NO:    1395-001**

**TITLE:       COUNCIL PROSECUTIONS**

**BACKGROUND**

As part of its regulatory role, Council is responsible for enforcing provisions under a number of NSW Acts and Regulations.

This policy is designed to provide guidance as to when and under what circumstances Council will pursue legal action in relation to alleged offences for which it has authority to prosecute. The policy pertains only to summary and criminal offences for which Council is the prosecuting authority; it does not apply to civil law matters involving Council.

The policy recognises the balance between Council's responsibility to enforce legislation and its ongoing objective of enhancing community relations and awareness. It also acknowledges the importance of the separate roles of Council employees, Councillors and the Courts of Law in dealing with alleged offences.

**OBJECTIVE**

As part of its role in the community, Council needs to ensure that breaches of law, which it has authority to pursue, are dealt with in a consistent and equitable manner. It is also imperative that, in observance of the principles of good government, Council has in place a framework for the proper exercise of powers of enforcement vested in it.

The policy is aimed at providing the basis for separation of powers in relation to Council actions dealing with the enforcement of legislation. It is also aimed at ensuring effective use of Council resources in relation to legislative enforcement.

**PRINCIPLES**

It is through the adoption and use of policies that Council can aim to deal with matters consistently, particularly where such matters have a direct effect on the rights, interests or legitimate expectations of individuals within the community.

Council has a responsibility to try to ensure that breaches of the law are dealt with appropriately and to meet community expectation that pursuit of Council's enforcement



**ITEM 11 - ATTACHMENT 1 CURRENT COUNCIL PROSECUTIONS POLICY.**

functions will be undertaken in a consistent and equitable manner. A consistent approach also helps Council to deal with breaches of the law in a procedurally sound and cost effective way.

**POLICY STATEMENT**

Council's mission is to foster a network of people that focuses on achieving best value services and facilities for our Community.

This envisages that Council will work with the community to achieve its goals. Council sees its role as principally being that of communicating with the community and making each citizen aware of their individual responsibilities in supporting and maintaining a sustainable community.

In its regulatory role, however, Council has a responsibility to use its enforcement functions when necessary. Legal action is one option available to Council when people purportedly break the law.

Council, when it becomes aware of alleged breaches of the law, will aim to ensure alleged offenders are treated equitably by having in place internal procedures and guidelines to address a number of issues including:

- 1) The intent of the alleged offender and the circumstances surrounding the alleged offence.
- 2) Options available to Council to help educate the community and raise awareness about legal obligations and responsibilities with the aim of deterring future similar offences. These options may include alternative dispute resolution procedures as well as sanctions and court action.
- 3) Criteria to help ensure reasonableness and procedural fairness.
- 4) The quality of evidence available to support Court action.
- 5) The legal, administrative and other costs associated with Court action.
- 6) The likelihood of success of any Court action.
- 7) The potential outcomes of any Court action, including the quantum of any fines that Council might receive as a result of Court action.
- 8) The deterrent effect of Court action.
- 9) Alternatives to Court action, including the issuing of infringement notices.
- 10) Whether the alleged offence has wider policy implications for Council.

An administrative review panel will be available if required to assess whether or not Council should pursue legal proceedings in relation to alleged offences. Internal review by the administrative review panel will be undertaken at the direction of the General Manager or the General Manager's delegate. Internal procedures will be used to help determine the stages where internal review can take place.

Requests by staff, Councillors or members of the public for internal review of a matter must be made by representations to the General Manager or the General Manager's delegate,

**ITEM 11 - ATTACHMENT 1 CURRENT COUNCIL PROSECUTIONS POLICY.**

who will then determine whether or not such review is to be undertaken. The administrative review panel will make its recommendations to the General Manager or the General Manager's delegate for determination as to whether or not to proceed.

The final decision to prosecute will be made by the General Manager or the General Manager's delegate. The General Manager may, if he or she deems it appropriate, refer particular cases to Council. Council will be kept informed of any prosecutions by way of monthly information papers.

It should be noted that, where possible, Council will attempt to recover all legal costs incurred as a result of legal proceedings it pursues in relation to alleged offences.

**RELATED POLICIES**

N/A

**REVIEW DATE**

This policy will be reviewed 12 months after the date on which Council adopted it.

**RELEVANT LEGISLATIVE PROVISIONS**

Council has authority to prosecute under a number of NSW Acts and Regulations, including but not restricted to:

*Local Government Act 1993 (NSW)*  
*Environmental Planning and Assessment Act 1979 (NSW)*  
*Protection of the Environment Operations Act 1998 (NSW)*  
*Roads Act 1993 (NSW)*  
*Companion Animals Act 1998 (NSW)*  
*Noxious Weeds Act 1993 (NSW)*  
*Public Health Act 1991 (NSW)*  
*Swimming Pools Act 1992 (NSW)*  
*Rural Fires Act 1997 (NSW)*  
*Traffic Act 1909 (NSW)*  
*Food Act 1989 (NSW)*  
*Impounding Act 1993 (NSW)*

**IMPLEMENTATION RESPONSIBILITY**

The Corporate Governance Unit is responsible for the implementation of this policy in conjunction with other Departments as appropriate.

## Policy



**FILE NO:** PSC2007-3003

**TITLE:** COUNCIL PROSECUTIONS

**POLICY OWNER:** LEGAL SERVICES MANAGER

### **PURPOSE:**

As part of its role in the community, Council needs to ensure that breaches of law, which it has authority to pursue are dealt with in a consistent and equitable manner. It is also imperative that, in observance of the principles of good government, Council has in place a framework for the proper exercise of powers of enforcement vested in it.

The policy is aimed at providing the basis for separation of powers in relation to Council enforcement of legislation. It is also aimed at ensuring effective use of Council resources in relation to legislative enforcement.

### **CONTEXT/BACKGROUND:**

As part of its regulatory role, Council is responsible for enforcing provisions under a number of NSW Acts and Regulations.

The policy recognises the balance between Council's responsibility to enforce legislation and its ongoing objective of enhancing community relations and awareness. It also acknowledges the importance of the separate roles of Council employees, Councillors and the Courts of Law in dealing with alleged offences.

### **SCOPE:**

It is through the adoption and use of policies that Council can aim to deal with matters consistently, particularly where such matters have a direct effect on the rights, interests or legitimate expectations of individuals within the community.

This policy is designed to provide guidance as to when and under what circumstances Council will pursue legal action in relation to alleged offences for which it has authority to prosecute. The policy pertains only to summary and criminal offences for which Council is the prosecuting authority; it does not apply to civil law matters involving Council.

Council has a responsibility to try to ensure that breaches of the law are dealt with appropriately and to meet community expectation that pursuit of Council's enforcement functions will be undertaken in a consistent and equitable manner. A consistent approach also helps Council to deal with breaches of the law in a procedurally sound and cost effective way.

## Policy

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## Policy



### DEFINITIONS:

Councillors	Those elected to represent the ratepayers and residents within the Port Stephens local government area
Employees	Those employed by Port Stephens Council
NSW Acts and Regulations	Various Acts and Regulations passed by the New South Wales Parliament
Policy	A policy that is adopted by Port Stephens Council

### POLICY STATEMENT:

Council's mission is to foster a network of people that focuses on achieving best value services and facilities for our Community.

This envisages that Council will work with the community to achieve its goals. Council sees its role as principally being that of communicating with the community and making each citizen aware of their individual responsibilities in supporting and maintaining a sustainable community.

In its regulatory role, however, Council has a responsibility to use its enforcement functions when necessary. Legal action is one option available to Council when people purportedly break the law.

Council, when it becomes aware of alleged breaches of the law, will aim to ensure alleged offenders are treated equitably by having in place internal procedures and guidelines to address a number of issues including:

- 1) The intent of the alleged offender and the circumstances surrounding the alleged offence.
- 2) Options available to Council to help educate the community and raise awareness about legal obligations and responsibilities with the aim of deterring future similar offences. These options may include alternative dispute resolution procedures as well as sanctions and court action.
- 3) Criteria to help ensure reasonableness and procedural fairness.
- 4) The quality of evidence available to support Court action.
- 5) The legal, administrative and other costs associated with Court action.
- 6) The likelihood of success of any Court action.

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## Policy



- 7) The potential outcomes of any Court action, including the quantum of any fines that Council might be paid as a result of Court action.
- 8) The deterrent effect of Court action.
- 9) Alternatives to Court action, including the issuing of infringement notices.
- 10) Whether the alleged offence has wider policy implications for Council.

An administrative review panel will be available if required to assess whether or not Council should pursue legal proceedings in relation to alleged offences. Internal review by the administrative review panel will be undertaken at the direction of the General Manager or the General Manager's delegate. Internal procedures will be used to help determine the stages where internal review can take place.

Requests by staff, Councillors or members of the public for internal review of a matter must be made by representations to the General Manager or the General Manager's delegate, who will then determine whether or not such review is to be undertaken. The administrative review panel will make its recommendations to the General Manager or the General Manager's delegate for determination as to whether or not to proceed.

The final decision to prosecute will be made by the General Manager or the General Manager's delegate. The General Manager may, if he or she deems it appropriate, refer particular cases to Council. Council will be kept informed of any prosecutions.

It should be noted that, where possible, Council will attempt to recover all legal costs incurred as a result of legal proceedings it pursues in relation to alleged offences.

### **POLICY RESPONSIBILITIES:**

- 1) Legal Services Manager is responsible for the implementation, complying with, monitoring, evaluating, reviewing and providing advice on this policy.
- 2) General Manager is responsible for the complying with and monitoring this policy.
- 3) Group Managers, Section Managers, Co-ordinator Environmental Health and compliance employees are responsible for complying with this policy

### **RELATED DOCUMENTS:**

Council has authority to prosecute under a number of NSW Acts and Regulations, including but not restricted to:

1. *Local Government Act 1993 (NSW)*
2. *Environmental Planning and Assessment Act 1979 (NSW)*
3. *Protection of the Environment Operations Act 1997 (NSW)*

## Policy

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## Policy



4. *Roads Act 1993 (NSW)*
5. *Companion Animals Act 1998 (NSW)*
6. *Noxious Weeds Act 1993 (NSW)*
7. *Public Health Act 2010 (NSW)*
8. *Swimming Pools Act 1992 (NSW)*
9. *Rural Fires Act 1997 (NSW)*
10. *Road Transport Act 2013 (NSW)*
11. *Food Act 2003 (NSW)*
12. *Impounding Act 1993 (NSW)*

In addition to the above, the following also relate to this policy.

1. *Government Information (Public Access) Act 2009*
2. Port Stephens Council Code of Conduct.

**CONTROLLED DOCUMENT INFORMATION:**

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<b>RM8 container No</b>	PSC2013-05562	<b>RM8 record No</b>	
<b>Audience</b>	Management and staff		
<b>Process owner</b>	Manager Legal Services		
<b>Author</b>	Manager Legal Services		
<b>Review timeframe</b>	Two years	<b>Next review date</b>	30 November 2018
<b>Adoption date</b>			

**VERSION HISTORY:**

Version	Date	Author	Details	Minute No.
1.0	20/06/2000	Legal Officer	Adopted by Council.	319
2.0		Legal Services Manager	Minor administrative review and transfer to new corporate policy template.	

## Policy

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**ITEM 11 - ATTACHMENT 3 SUBMISSION RECEIVED FROM TOMAREE RATEPAYERS & RESIDENTS ASSOCIATION INC.**



2 February 2017

The General Manager  
Port Stephens Council

[council@portstephens.nsw.gov.au](mailto:council@portstephens.nsw.gov.au)

**Subject: Revised Compliance, Prosecution and Alternative Dispute Resolution Policies**

TRRA submits that the revised Compliance, Prosecution and Alternative Dispute Resolution (ADR) Policies miss the opportunity to address some serious community concerns about the way in which conditions of consent for Development Approvals, and other requirements of State laws are being enforced (or not) by Council.

We have focused our comments on the Compliance Policy which is in our view the 'threshold' policy that determines Council's approach to enforcement. Prosecutions and ADR proceedings are two options that might be applicable in some cases, and we acknowledge that the range of factors set out in those two policies are broadly appropriate. Our concerns go more towards Council's overall 'tolerance' of non-compliant behaviour, and willingness to take action – which may in some cases lead to ADR or prosecution.

**Consultation**

The report to the Council meeting on 13 December 2016 on the revised compliance policy asserts that 'Consultation with key stakeholders has been undertaken by the Development Assessment and Compliance Section who implement the policy.' but also acknowledges that 'external consultation has not occurred'. The reports on the Prosecutions and ADR Policies similarly assert that 'Consultation with key stakeholders has been undertaken by the General Manager's Office'.

While we acknowledge that, as the reports note: 'the updated [Policies] will be placed on public exhibition' and that we now have the opportunity to comment, we submit that it was inaccurate and misleading to suggest in the reports that 'key stakeholders' had *already* been consulted.

In relation to compliance, the wider community is *the* key stakeholder, and there are numerous public interest groups and associations which are to a greater or lesser extent representative of the community, complementing the role of elected Councillors. As a regular correspondent with Council on a range of compliance issues, we would regard TRRA as a key stakeholder in this respect. TRRA was not consulted in the preparation of these revised policies and we are not aware of any other groups outside Council who were consulted.

**ITEM 11 - ATTACHMENT 3 SUBMISSION RECEIVED FROM TOMAREE RATEPAYERS & RESIDENTS ASSOCIATION INC.**

**Input from customer satisfaction surveys**

We also submit that in relation to this important issue, feedback should be available from Council's 'satisfaction surveys'. Results from the latest survey were published at in August 2016, but no questions appear to have been asked about general compliance, or about DA condition compliance specifically.

However, in response to Q3, satisfaction levels with 'ranger services' – two categories and with 'Managing illegal dumping' are the lowest of all those 'services' listed in Table 1 (and much lower than most others). The graphic on page 10 purports to show a constant improvement in satisfaction with 'managing illegal dumping' since 2014, which is a misleading presentation given that the satisfaction level hardly changes between 2015 and 2016. The graphics for 'ranger services' are at least accurate in showing no significant change in the consistently low levels over 5 years.

Responses to questions on the built environment (Q4), the environment in general (Q5) and 'appearance of your neighbourhood' (Q6) show (despite improvements) significant levels of **dissatisfaction** (14.5%; 19.1% and 24.7% respectively) – while reasons for this are unknown, failures to enforce compliance with DA conditions, maintenance of vacant sites, illegal dumping etc. may well have contributed.

**The Compliance Policy**

The Compliance Policy claims to be based on the NSW Ombudsman's Enforcement Guidelines for Councils, but we observe that it is considerably less detailed than the Model Policy suggested by the Ombudsman.

While we have no problem with the principle of a 'risk-based' approach taken both in the revised Compliance Policy and the Ombudsman's Guidelines. We accept that Council has limited resources available to devote to enforcement action, and that it is sensible to assess the level of 'detriment' being caused by non-compliance in any particular case.

However, in the list of 'Considerations when considering compliance action' in the Appendix to the Compliance Policy, three items imply a relatively high threshold of 'detriment' before compliance action would be justified:

- 'material damage or impact on human health or the environment' (Technical breach);
- 'significant detrimental effect on the environment or does it constitute a risk to public health or safety' (Magnitude of offence), and
- 'activity affected the natural or built environment and the health, safety and amenity of the area' (Tangible impact)

We submit that these criteria, while relevant, should not be read as ruling out the need for compliance action on other grounds.

Experience suggests that Council staff are exercising their discretion inappropriately in some cases, and that insufficient weight is being given to the importance of 'sending a message' about tolerance of non-compliance.



**ITEM 11 - ATTACHMENT 3 SUBMISSION RECEIVED FROM TOMAREE RATEPAYERS & RESIDENTS ASSOCIATION INC.**

A culture has been allowed to develop in recent years where landowners and developers do not expect enforcement action to be taken, of that even if it is, penalties will be minor. They too will understandably apply a risk assessment – if the costs of non-compliance are low, and the benefits significant, it is hardly surprising that many of them will ignore their legal obligations.

Several recent publicly reported examples illustrate the apparent failure of Council to respond appropriately to community concerns about alleged non-compliance. They are:

- A composting plant at Eagleton
- A sawmill at Medowie
- Reclamation of mangrove swamps at Tanilba Bay
- Dumping of contaminated spoil at Salt Ash and Willamtown.

Council is well aware of the history of these cases and it is not necessary for us to go into detail.

Other cases of poor enforcement include failure to ensure that vacant development sites are adequately maintained – long-running examples being vacant sites on Church Street Nelson bay and the former 'Birubi Beach Resort' at Gan Gan Rd, Anna Bay.

The Principles/Considerations in the Appendix to the Compliance Policy are generally sound, but their effectiveness depends on how they are interpreted and implemented. As explained above, we submit that a basically sound policy has not, in recent years, been implemented with sufficient regard to the public interest in ensuring that everyone in the community has to follow the rules.

We note that one principle is that: 'Council will act in a manner that is impartial and objective when investigating matters of alleged non-compliance.' and conflict of interest is mentioned under the 'Public Interest' consideration. We submit that this needs to be strengthened with an express requirement that any conflicts of interest, whether pecuniary or non-pecuniary, should be disclosed by any Councillor or officer involved in compliance matters.

**Conclusion**

We look forward to our concerns being addressed in the reports to Council on these three policies, and in appropriate changes to the policies to send a clearer message that Council is serious about enforcing conditions and requirements.

**Nigel Waters**  
**Convenor, Planning Committee**  
**Tomaree Ratepayers & Residents Association Inc.**  
**0407 230 342**  
[planning@trra.com.au](mailto:planning@trra.com.au)

**ITEM NO. 12****FILE NO: 17/55446  
RM8 REF NO: PSC2008-9962****POLICY REVIEW: ALTERNATIVE DISPUTE RESOLUTION POLICY****REPORT OF: LISA MARSHALL - LEGAL SERVICES MANAGER  
GROUP: GENERAL MANAGER'S OFFICE**

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Receives and notes the submission **(ATTACHMENT 3)**.
  - 2) Revokes the Alternative Dispute Resolution Policy dated 29 April 2009, Minute No. 117 **(ATTACHMENT 1)**.
  - 3) Adopts the revised Alternative Dispute Resolution Policy shown at **(ATTACHMENT 2)**.
- 

**ORDINARY COUNCIL MEETING - 28 MARCH 2017  
COMMITTEE OF THE WHOLE RECOMMENDATION**

	<b>Mayor Bruce MacKenzie Councillor Paul Le Mottee</b>  That the recommendation be adopted.
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**ORDINARY COUNCIL MEETING - 28 MARCH 2017  
MOTION**

<b>071</b>	<b>Councillor Chris Doohan Councillor John Nell</b>  It was resolved that Council:  <ol style="list-style-type: none"><li>1) Receives and notes the submission <b>(ATTACHMENT 3)</b>.</li><li>2) Revokes the Alternative Dispute Resolution Policy dated 29 April 2009, Minute No. 117 <b>(ATTACHMENT 1)</b>.</li><li>3) Adopts the revised Alternative Dispute Resolution Policy shown at <b>(ATTACHMENT 2)</b>.</li></ol>
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**BACKGROUND**

The purpose of this report is to provide Council with comments received as part of the public exhibition of the Alternative Dispute Resolution Policy ('Policy').

## MINUTES ORDINARY COUNCIL - 28 MARCH 2017

On 13 December 2016 Council endorsed the Policy for the purposes of public exhibition and invited submissions on the Policy. One submission was received from the Tomaree Ratepayers and Residents Association (TRRA). While the submission was made in relation to three policies on public exhibition at the time – the Compliance Policy, Alternative Dispute Resolution Policy and the Council Prosecutions Policy – the primary focus of the submission was on the Compliance Policy. The remaining policies were implicated by reason that they represent possible avenues following on from the provisions of the Compliance Policy. No specific amendments to these policies were submitted.

As such, no further action is required in relation to this Policy as a result of the submission.

The revised Policy is presented for Council's determination.

### COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2013-2017
Governance and Civic Leadership.	Manage the civic leadership and governance functions of Council. Manage relationships with all levels of government, stakeholder organisations and Hunter Councils Inc.

### FINANCIAL/RESOURCE IMPLICATIONS

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

### LEGAL, POLICY AND RISK IMPLICATIONS

Due to its business, community and regulatory roles, Council can find itself dealing with conflict in many areas including the building, development assessment & planning areas, and neighbourhood disputes over trees, noise, odours and animals. Many of these disputes may be dealt with effectively by staff as they arise, however at times some disputes may escalate into significant issues which consume considerable time, energy and community money to address.

Mediation, negotiation, facilitation and other forms of Alternative Dispute Resolution can be used when appropriate to assist to resolve difficult disputes or as an alternative to the expensive and time-consuming option of litigation.

<b>Risk</b>	<b><u>Risk Ranking</u></b>	<b>Proposed Treatments</b>	<b>Within Existing Resources?</b>
There is a risk that lack of clear policy and principles in relation to alternative dispute resolution will lead to time-consuming and costly litigation, and more conflict in dispute handling processes.	Medium	Accept the recommendations.	Yes

### **SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

The endorsement of clear policy and principles will help ensure a consistent approach and effective use of Council resources in relation to enforcement and dispute handling.

The Alternative Dispute Resolution process endeavours to:

- establish a clear, consistent and fair process to help address disputes;
- provide an alternative dispute handling process that is less formal and more cooperative than litigation;
- save time and costs;
- reduce conflict in the dispute handling process.

### **CONSULTATION**

Consultation with key stakeholders has been undertaken by the General Manager's Office.

The *Local Government Act 1993* requires Council to conduct public consultation on policies prior to adoption.

#### Internal

- The Executive Team was consulted to seek management endorsement.
- The General Manager was consulted to seek approval prior to Council consideration on 13 December 2016.

External

- Following Council endorsement, the draft revised Policy was placed on public exhibition in the Port Stephens Examiner and on Council's website from 22 December 2016 to 2 February 2017 and public comment was sought.

**OPTIONS**

- 1) Accept the recommendations.
- 2) Amend the recommendations.
- 3) Reject the recommendations.

**ATTACHMENTS**

- 1) Current Alternative Dispute Resolution Policy.
- 2) Revised Alternative Dispute Resolution Policy.
- 3) Submission received from Tomaree Ratepayers & Residents Association Inc.

**COUNCILLORS ROOM**

Nil.

**TABLED DOCUMENTS**

Nil.

**ITEM 12 - ATTACHMENT 1      CURRENT ALTERNATIVE DISPUTE RESOLUTION  
POLICY.**

*Port Stephens*  
**C·O·U·N·C·I·L**

**POLICY**

Adopted: 28/04/2009  
Minute No: 117  
Amended:  
Minute No:

**FILE NO:      PSC2008-9962**

**TITLE: ALTERNATIVE DISPUTE RESOLUTION POLICY**

**AUTHOR:      MANAGER ENVIRONMENTAL SERVICES**

**BACKGROUND**

Due to its business, community and regulatory roles, Council can find itself dealing with conflict in many areas including the building, development assessment and planning areas, neighbourhood disputes over trees noise, odours and animals and industrial relations disputes. Many of these disputes may be dealt with effectively by staff as they arise, however at times some disputes may escalate into significant issues which consume considerable time, energy and community money to address.

Mediation, negotiation, facilitation and other forms of Alternative Dispute Resolution can be used when appropriate to assist resolve difficult disputes or as an alternative to the expensive and time- consuming option of litigation.

Not all difficult issues will warrant the use of alternative dispute resolution processes involving independent negotiators or mediators. Many disputes can be dealt with and resolved informally by staff without the need to resort to other means. This Policy is only meant to cover the more difficult disputes that Council encounters where it is considered that an alternative dispute handling process is the best alternative.

The NSW Ombudsman encourages NSW councils to use Alternative Dispute Resolution as an alternative to litigation and as a means to help resolve disputes between members of the community involving councils.

In accordance with NSW Ombudsman's Guidelines for Local Government, this Policy must not fetter or limit the range of discretion conferred by a statute on Council staff involved in regulatory or enforcement matters. In exercising that discretion, officers must not act under the dictation or at the behest of any third person or body.

This Policy is meant only to provide guidance in the exercise of those powers and at times, depending on the issues surrounding the particular dispute, mediation or negotiation may not be the best option.

**ITEM 12 - ATTACHMENT 1 CURRENT ALTERNATIVE DISPUTE RESOLUTION POLICY.****PURPOSE**

The purpose of this Policy is to provide a process to help resolve disputes that relate to Port Stephens Council. The Policy framework sets out a clear, consistent and fair means to address disputes in an effective and cooperative manner. The Policy also provides an alternative dispute handling process that is less formal and less costly than litigation.

The Policy relates to planning, development, environment, enforcement issues, land management, customer, business, and staff and industrial relations disputes.

**DEFINITIONS****Alternative Dispute Resolution - ADR**

The term "alternative dispute resolution" or "ADR" is often used to describe a wide variety of dispute resolution mechanisms that are short of, or alternative to, full-scale court processes. ADR systems may be generally categorised as negotiation, conciliation/mediation, or arbitration systems.

**Arbitration**

Arbitration is a formal dispute resolution process governed by the Commercial Arbitration Act 1984 NSW (or the equivalent in other states) in which two or more parties refer their dispute to an independent third person (the arbitrator) for determination. Providing that the arbitration is conducted according to the principles of natural justice its procedures may be varied by the parties to suit the size and complexity of their dispute.

In an industrial relations context, Arbitration is a formal dispute resolution process governed by the Industrial Relations Act 1996 (NSW) as amended.

**Development Application (DA)**

A development application is a formal request for permission to carry out development, and includes plans and drawings, a statement of environmental effects and a completed application form.

**Facilitation**

The term facilitation is broadly used to describe any activity which makes tasks for others easy. For example:  
Facilitation is used in business and organisational settings to ensure the designing and running of successful meetings or negotiations. A person who takes on such a role is called a facilitator.

**Mediation**

A process in which parties to a dispute with the assistance of a neutral third party ("the Mediator") identify disputed issues, develop options, consider alternatives and endeavour to reach an agreement. The mediator has no advisory or other determinative role in regard to the content of the dispute or the outcome of its resolution, but may advise on or determine the process of mediation whereby resolution is attempted.

**ITEM 12 - ATTACHMENT 1 CURRENT ALTERNATIVE DISPUTE RESOLUTION POLICY.****Mediation Agreement**

A mediation agreement is a written agreement setting out the terms of settlement reached between the parties to the mediation process. The agreement is confidential except where the terms of the agreement expressly permit part or all of its contents to be divulged to other parties. The agreement must be signed by all parties to the agreement.

**Negotiation**

At its most basic, negotiation is an informal bargaining process. It takes place directly between the people in dispute, but can be assisted by others e.g. lawyers and advocates. The people involved in the dispute communicate directly to try to reach an agreement. Communication may be written or spoken and may take some time.

**Neutral Evaluation**

This is a process provided by the NSW Land and Environment Court. There is no legislative basis for this process, however the Land and Environment Court provides this as a form of mediation in some disputes.

**Section 34 Conferences**

These are conducted by the Land and Environment Court (NSW). These conferences are more formal than other Court managed ADR processes and are presided over by a single Commissioner.

**POLICY OBJECTIVES**

- To establish a clear, consistent and fair process to help address disputes.
- To provide an alternative dispute handling process that is less formal and more cooperative than litigation.
- To save time and costs.
- To reduce conflict in the dispute handling process.

**POLICY PRINCIPLES**

The Alternative Dispute Resolution (ADR) Policy will apply to development, environment and land management disputes and other disputes concerning animals, trees, noise effluent, odours and other forms of pollution. It also applies to business, staff and industrial relations disputes. The following principles relate to the way ADR is applied by Council:



**ITEM 12 - ATTACHMENT 1 CURRENT ALTERNATIVE DISPUTE RESOLUTION POLICY.**

- 1) ADR is a voluntary process.
- 2) To preserve the legitimacy of the process, all parties to ADR are given the opportunity to be represented and have control over the outcomes.
- 3) Where appropriate, ADR is to be initiated as soon as possible to avoid issues escalating.
- 4) Council will ensure confidentiality and respect privacy requirements when dealing with disputes.
- 5) Council will ensure procedural fairness in ADR matters.
- 6) Where mediation is used as one of the ADR options, the mediator is to be suitably qualified, independent and impartial to the dispute at hand.
- 7) Any mediated agreement will be documented and signed by all parties.
- 8) Costs associated with ADR are generally shared between all parties to the dispute unless other arrangements are agreed to by Council.

**POLICY STATEMENT**

**Awareness and Cooperation**

Council will encourage parties to a dispute to resolve issues as they arise or come to notice before they escalate into significant matters.

Council will take a proactive approach to minimise the occurrence of disputes.

Council will train appropriate staff in ADR approaches including negotiation.

**Approach**

Council will not enter into ADR:

- Where there are issues that relate to the content of Council Policies (as opposed to the application of the Policy).
- Where a dispute may create a planning precedent.
- Where the parties are not willing to cooperate.
- Where Council does not believe that ADR is the best option, based on the particular circumstances and broader public interest considerations.

**ITEM 12 - ATTACHMENT 1      CURRENT ALTERNATIVE DISPUTE RESOLUTION POLICY.**

**APPENDIX ONE** provides a summary of the types of disputes that are suitable for ADR.

**APPENDIX TWO** outlines the principles of ADR.

**RELATED POLICIES**

- Compliance Policy
- Complaints/ Requests Handling Policy
- Council Prosecutions Policy
- Grievance and Disputes Procedures contained in Clause 24 of the Port Stephens Council Enterprise Agreement 2008.

**RELEVANT LEGISLATIVE PROVISIONS**

Not Applicable

**IMPLEMENTATION RESPONSIBILITY**

All staff and Councillors involved in Alternative Dispute Resolution.

**REVIEW DATE**

December 2010.

**ITEM 12 - ATTACHMENT 1 CURRENT ALTERNATIVE DISPUTE RESOLUTION POLICY.**

**APPENDIX ONE**

**When is ADR Suitable**

**KEY**

ADR = Alternative Dispute Resolution  
CJC = Community Justice Centre  
M = Mediation  
NA = Not Applicable  
NEG = Negotiation

<b>Issue</b>	<b>ADR Yes/ No</b>	<b>Type of ADR</b>	<b>Comments</b>
<b>Neighbourhood Disputes that are not Council's Responsibility.</b>	Yes- however in all likelihood these will be referred to another agency.	NEG & M	Neighbours to be referred to CJC.  Refer also to Council's Compliance Policy regarding issues that are not Council's Responsibility.
<b>DA related Disputes.</b>	Yes	NEG & M	It is best if potential issues can be resolved early through negotiation and facilitation.
<b>DA dispute raises matters, which may create a planning precedent.</b>	No	NA	
<b>Minor compliance Issues where Council is the regulatory authority.</b>	Yes- however if it is deemed by the delegated officer to be an Infringement issue (or an Infringement Notice has been issued), there is another process of appeal that should be followed.	NEG or M	Refer to Council's Compliance Policy.  Depending on the dispute, it may be advantageous to utilise the CJC.

**ITEM 12 - ATTACHMENT 1 CURRENT ALTERNATIVE DISPUTE RESOLUTION POLICY.**

<b>Issue</b>	<b>ADR Yes/ No</b>	<b>Type of ADR</b>	<b>Comments</b>
<b>Moderate to critical compliance issues.</b>	Yes -however if it is deemed by the delegated officer to be an Infringement issue (or an Infringement Notice has been issued), there is another process of appeal that should be followed.	NEG or M	<p>Mediation can be a suitable alternative to legal action in compliance matters at times.</p> <p>A critical compliance matter can include significant human health, public safety, pollution or environmental harm issues.</p> <p>A moderate compliance matter can include moderate, actual or potential public health, safety or environmental issues.</p> <p>Refer to Council's Compliance Policy for a full definition of compliance issues and preferred responses to these matters.</p>
<b>Illegal acts where the matter is deemed critical and is a criminal offence.</b>	Yes in some instances.	NA	<p>In some cases the issue may be so serious and have such broad impacts that it is best to take some form of regulatory action.</p> <p>Refer to Compliance Policy.</p> <p>A risk management approach is to be taken with these issues when deciding on the best approach.</p>
<b>Contractual Disputes between Council and a third party.</b>	Yes	NEG or M	External Mediator to be selected in accordance with the contract conditions where appropriate.
<b>Industrial Relations issues.</b>	Yes in some cases.	NEG or M	Refer to Council's Grievance & Disputes Procedures contained in the Port Stephens Council Enterprise Agreement 2008.
<b>Industrial Relations disputes that have escalated into a legal</b>	No  See below- Legal Disputes.	See below- Legal Disputes	Refer to Council's Grievance & Disputes Procedures contained in the Port Stephens Council Enterprise Agreement 2008.

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<b>Issue</b>	<b>ADR Yes/ No</b>	<b>Type of ADR</b>	<b>Comments</b>
<b>dispute.</b>			
<b>Staff Vs Staff disputes</b>	Yes but only in accordance with Council's Grievance & Disputes Procedures contained in the Port Stephens Council Enterprise Agreement 2008.	NEG, M	Refer to Council's Grievance & Disputes Procedures contained in the Port Stephens Council Enterprise Agreement 2008.
<b>Customer Vs staff disputes</b>	Yes in some cases.	NEG or M	In some cases, where both parties are agreeable, mediation may be the preferred approach.
<b>Legal Disputes</b>	Yes if the Court is in favour of this & the laws /circumstances allow this to happen.	NEG or M	Court may refer parties to mediation or may insist on some other form of ADR.  The Land and Environment Court provide Mediation and Neutral Evaluation Services for matters before it as well as Section 34 – Conciliation Conferences (see definitions)

**ITEM 12 - ATTACHMENT 1 CURRENT ALTERNATIVE DISPUTE RESOLUTION POLICY.**

**APPENDIX TWO**

**Principles of Alternative Dispute Resolution**

**A) Mediation**

Mediation is one of the most commonly known forms of formal ADR. It is used to help resolve a wide range of disputes by different agencies.

**Initiation of Mediation**

Mediation may be initiated by the General Manager, a Group Manager/ Section Manager or by a resolution of Council. Mediation may be considered in the following situations:

- At the request of either party in a dispute where both parties are willing.
- After consideration of submissions following a public exhibition period for a planning instrument or development application.
- As an alternative to regulatory action in accordance with Council's Compliance Policy.
- As an alternative to legal action in other disputes outlined in this Policy.

Before mediation is initiated, the following issues need to be considered:

Is the dispute within Council's area of responsibility?

Is it best for another agency to deal with the dispute?

Is mediation the best way to deal with the dispute taking into consideration broader public interest issues and the nature of the dispute?

Are all parties willing to enter into the mediation process?

**Selection of the Mediator**

The mediator must be a neutral and impartial person who does not impose a solution on the parties, nor does he or she make a decision for, or give any legal advice to, the parties.

- The mediator must be independent and must be seen to be independent.
- The mediator must be impartial.

**ITEM 12 - ATTACHMENT 1 CURRENT ALTERNATIVE DISPUTE RESOLUTION POLICY.**

- The mediator must be adequately trained and must have the appropriate experience.
- The mediator must be neutral and have no vested interest in the outcome of the dispute.

It will not always be possible to use internal mediators to deal with Council related disputes as they may not be considered independent or neutral. There will be exceptions to this rule however.

In some cases it may be necessary to seek the assistance of an external mediator such as the Community Justice Centre for issues that fall within its jurisdiction. In other cases it may be necessary for Council to engage an external mediator from its panel of approved mediators.

**Notification of Mediation**

Council will inform the parties of the name of the appointed mediator, establish suitable dates and times and where appropriate, provide administrative support to the mediator.

**Provision of Information**

Council will provide the mediator with all relevant information. In the case of a development application, this will include plans and any other information provided by the developer in support of the application. The mediator will be briefed by the relevant Council staff prior to the mediation.

Prior to mediation, if time permits parties will be asked to provide a statement of their issues detailing their concerns. This will be given to all parties to the mediation prior to the meeting.

**Representation and Attendance**

Where a dispute involves a group of individuals with common interests or an incorporated organisation, the group/ organisation may be requested to formally nominate a representative to undertake mediation on their behalf.

**The Process**

The process used for mediation will be similar in most cases. However in complex matters such as those that involve many parties, Council will work with the Mediator to establish an appropriate process, in line with accepted industry standards for mediation.

Generally the mediation process will consist of a number of meetings, including:

- 1) The initial meeting between Council staff and the mediator where the mediator will be briefed on the issues and provided with all relevant information.
- 2) A meeting between the mediator and the parties.

**ITEM 12 - ATTACHMENT 1 CURRENT ALTERNATIVE DISPUTE RESOLUTION POLICY.**

- 3) The mediation meeting (which usually occurs immediately after the above meeting).

It is the responsibility of the mediator to explain the mediation process to all parties.

**Outcomes of the Mediation Process**

Mediation may result in three outcomes:

- 1) Full agreement and settlement.
- 2) Partial settlement.
- 3) No settlement.

Where there has been partial or full settlement of the dispute, the parties will enter into a Mediation Agreement. The Mediation Agreement is a written agreement setting out the terms of settlement reached between the parties to the mediation process. The agreement is confidential except where the terms of the agreement expressly permit part or all of its contents to be divulged to other parties. The agreement must be signed by all parties to the agreement.

**Confidentiality**

Information disclosed in the course of mediation is confidential and must not be divulged by any of the parties or the mediator except where the terms of the agreement expressly allow this.

**Termination of Mediation**

Mediation may be terminated if:

- 1) The parties reach settlement and sign a Mediation Agreement.
- 2) The Mediator declares that further efforts at mediation are unlikely to be successful.
- 3) The parties can't reach settlement.
- 4) The General Manager terminates the mediation process for any of the above reasons or due a breach of time limits on the mediation process.

**Time Limit for Mediation Process**

The General Manager reserves the right to impose a time limit on mediation procedures or terminate the process.



**ITEM 12 - ATTACHMENT 1 CURRENT ALTERNATIVE DISPUTE RESOLUTION POLICY.****B) Negotiation**

Negotiation is fundamentally an informal bargaining process. It takes place directly between the people in dispute, but can at times be assisted by others e.g. lawyers and advocates. The parties involved communicate directly to try to reach an agreement.

Negotiation is also the most basic form of Alternative Dispute Resolution (ADR). It is not as formal as other forms of ADR such as mediation however it is the building block from which all other ADR is built upon.

**Types of approaches**

There are two basic approaches to negotiation, including distributive bargaining and interest based bargaining.

**1) Distributive Bargaining**

An example of this type of negotiation is in labour bargaining with management over wages or salaries or negotiating over the price of goods or services. In this type of bargaining there is little room to move except for the price that is agreed between two parties.

**2) Interest Based Bargaining**

This process is more open and flexible than distributive bargaining and involves problem solving that attempts to reach mutually beneficial outcomes. To achieve this, there is a need for frankness, flexibility and an attempt to understand each other's needs. Examples of this approach include negotiating contract conditions with a supplier, reaching an "out of court" settlement over some dispute or reaching an agreement over the conditions of consent in a difficult development application process.

**Initiation of Negotiation**

In most disputes involving building issues, development assessment and planning matters, neighbourhood disputes (over trees noise, odours and animals), compliance matters and industrial relations, negotiation may be initiated by the staff member dealing with the dispute. Formal negotiation would only be required for high level disputes where the issues have escalated beyond the resources of the staff members to deal with these.

**The Process**

There needs to be a deliberate process supporting all forms of negotiation. The level of work that goes into the negotiation process will vary depending upon the risks involved in the dispute and what is at stake. For example in industrial relations disputes and many large development proposals the stakes can be very high. The basic steps are:

**ITEM 12 - ATTACHMENT 1 CURRENT ALTERNATIVE DISPUTE RESOLUTION POLICY.****Research the Issues**

Determine what the other party wants out of the process. In some cases this may not be obvious without some background reading or conversations.

Begin with a Positive Approach.

Demonstrate a positive attitude and do not form any predetermined negative perceptions of the other party.

Determine how far Council is willing to go in the negotiations. For any significant regulatory matters, industrial relations disputes, contract issues and any other critical matters that need to be negotiated, the staff member involved should come to an agreement with their Manager regarding the limits of negotiation before the process begins.

**Address Issues, not Personalities**

Do not attack the other party's views or opinions. Focus on the issues and show respect for the other person regardless of your own views.

**Be prepared to Bargain and be Flexible**

Not much is cast in stone, including regulatory issues. At times it may appear that there is little room to move in negotiations however attempt to see if there is some way to get past any hurdles in the process. Look for mutually beneficial solutions.

Councils (and delegated staff) have considerable discretion in deciding to enforce the law. If there are good sound reasons not to apply the letter of the law, Council staff may legitimately decide not to enforce the law in some circumstances. In some cases therefore a negotiated decision may not fully meet a particular policy or law however it may result in a better outcome when weighed against the broader public interest.

It is important to document any decisions where this approach has been taken including the reasons. Reference should be made to the NSW Ombudsman's Guidelines in relation to the exercise of discretion.

**Emphasise Win- Win**

It is not always possible to end up with a win- win outcome however win-win should be the mindset. Look for solutions that will give the other party a positive outcome while satisfying Council's objectives. The final solution may not be exactly what both parties originally had in mind however it may satisfy both needs in a different way.

**ITEM 12 - ATTACHMENT 1 CURRENT ALTERNATIVE DISPUTE RESOLUTION POLICY.****Be Open to Third Party Assistance**

At times the negotiation process may not be reaching a satisfactory outcome for either party. If the stakes are high enough, it may be worth bringing in a third party negotiator or engaging in mediation.

**Outcomes of the Negotiation Process**

Where there has been partial or full settlement of the dispute by negotiation, the parties may enter into an agreement. Depending upon the dispute, it is not always necessary to enter into a formal agreement. At times it may be suitable to write to the other party, outlining the main points of agreement or in the case of a development application; the outcomes of negotiation are included in the Conditions of Consent.

If a formal agreement is deemed necessary, it should be a written agreement setting out the terms of settlement reached between the parties to the negotiation process. The agreement is confidential except where the terms of the agreement expressly permit part or all of its contents to be divulged to other parties. The agreement must be signed by all parties to the agreement.

**C) Other Options**

There are times when mediation and negotiation may not be appropriate or the process doesn't work for a particular dispute. At other times the mediation or negotiation process may initially work, however the agreement may not be honoured for various reasons. In these cases, there needs to be other options open to Council. These options can include:

1. Do nothing. This may be a legitimate option if Council considers that it is not in the public interest to pursue a dispute. This is particularly the case where considerable community resources are needed to help resolve an issue where there is little public benefit or there is a low probability of satisfactory resolution.
2. Instigate other measures that help to resolve the issue, not the dispute. For example in contract management there is the opportunity to terminate a contract if both parties are in dispute and it can't be resolved. Another example may include the option of modifying the conditions of an approval issued by Council to address a particular issue that is in dispute.
3. Consider taking legal action to resolve the dispute. If this is considered as a preferred option, the costs of taking action need to be weighed against the benefits. If there is little public benefit in pursuing legal action, or if the action is motivated only on principle, then it may not be worth taking this form of action.

**ITEM 12 - ATTACHMENT 2 REVISED ALTERNATIVE DISPUTE RESOLUTION POLICY.****Policy****FILE NO: PSC2008-9962****TITLE: ALTERNATIVE DISPUTE RESOLUTION POLICY****POLICY OWNER: LEGAL SERVICES MANAGER****PURPOSE:**

The purpose of this policy is to provide a process to help resolve disputes that relate to Port Stephens Council. The policy framework sets out a clear, consistent and fair means to address disputes in an effective and cooperative manner. The Policy also provides an alternative dispute handling process that is less formal and less costly than litigation.

The policy relates to planning, development, environment, enforcement issues, land management, customer and business disputes.

**CONTEXT/BACKGROUND:**

Due to its business, community and regulatory roles, Council can find itself dealing with conflict in many areas including the building, development assessment and planning areas, neighbourhood disputes over trees noise, odours and animals. Many of these disputes may be dealt with effectively by staff as they arise, however at times some disputes may escalate into significant issues which consume considerable time, energy and community money to address.

Mediation, negotiation, facilitation and other forms of Alternative Dispute Resolution can be used when appropriate to assist resolve difficult disputes or as an alternative to the expensive and time-consuming option of litigation.

Not all difficult issues will warrant the use of alternative dispute resolution processes involving independent negotiators or mediators. Many disputes can be dealt with and resolved informally by staff without the need to resort to other means. This policy is only meant to cover the more difficult disputes that Council encounters where it is considered that an alternative dispute handling process is the best option.

The NSW Ombudsman encourages NSW councils to use Alternative Dispute Resolution as an alternative to litigation and as a means to help resolve disputes between members of the community involving councils.

In accordance with NSW Ombudsman's Guidelines for Local Government, this policy must not fetter or limit the range of discretion conferred by a statute on Council staff involved in regulatory or enforcement matters. In exercising that discretion, officers must not act under the dictation or at the behest of any third person or body.

**Policy**

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ITEM 12 - ATTACHMENT 2 REVISED ALTERNATIVE DISPUTE RESOLUTION POLICY.

Policy



This policy is meant only to provide guidance in the exercise of those powers and at times, depending on the issues surrounding the particular dispute, mediation or negotiation may not be the best option.

**SCOPE:**

It is through the adoption and use of policies that Council can aim to deal with matters consistently, particularly where such matters have a direct effect on the rights, interests or legitimate expectations of individuals within the community.

Council has a responsibility to try to ensure that breaches of the law are dealt with appropriately and to meet community expectation that pursuit of Council's enforcement functions will be undertaken in a consistent and equitable manner. A consistent approach also helps Council to deal with breaches of the law in a procedurally sound and cost effective way.

**DEFINITIONS:**

Alternative Dispute Resolution (ADR)	The term "alternative dispute resolution" or "ADR" is often used to describe a wide variety of dispute resolution mechanisms that are short of, or alternative to, full-scale court processes. ADR systems may be generally categorised as negotiation, conciliation/mediation, or arbitration systems.
Arbitration	Arbitration is a formal dispute resolution process governed by the <i>Commercial Arbitration Act 1984</i> (NSW) (or the equivalent in other states) in which two or more parties refer their dispute to an independent third person (the arbitrator) for determination. Providing that the arbitration is conducted according to the principles of natural justice its procedures may be varied by the parties to suit the size and complexity of their dispute.
Development Application (DA)	A development application is a formal request for permission to carry out development, and includes plans and drawings, a statement of environmental effects and a completed application form.
Facilitation	The term facilitation is broadly used to describe any activity which makes tasks for others easy. For example: Facilitation is used in business and organisational settings to ensure the designing and running of successful meetings or negotiations. A person who takes on such a role is called a facilitator.
Mediation	A process in which parties to a dispute with the assistance of a

Policy

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	neutral third party ("the Mediator") identify disputed issues, develop options, consider alternatives and endeavour to reach an agreement. The mediator has no advisory or other determinative role in regard to the content of the dispute or the outcome of its resolution, but may advise on or determine the process of mediation whereby resolution is attempted.
Mediation Agreement	A mediation agreement is a written agreement setting out the terms of settlement reached between the parties to the mediation process. The agreement is confidential except where the terms of the agreement expressly permit part or all of its contents to be divulged to other parties. The agreement must be signed by all parties to the agreement.
Negotiation	At its most basic, negotiation is an informal bargaining process. It takes place directly between the people in dispute, but can be assisted by others e.g. lawyers and advocates. The people involved in the dispute communicate directly to try to reach an agreement. Communication may be written or spoken and may take some time.
Neutral Evaluation	This is a process provided by the NSW Land and Environment Court as a form of mediation in some disputes.
Section 34 Conferences	These are conducted by the Land and Environment Court (NSW). These conferences are more formal than other Court managed ADR processes and are presided over by a single Commissioner.

**POLICY STATEMENT:**

The Alternative Dispute Resolution process endeavours to:

- 1) Establish a clear, consistent and fair process to help address disputes.
- 2) Provide an alternative dispute handling process that is less formal and more cooperative than litigation.
- 3) Save time and costs.
- 4) To reduce conflict in the dispute handling process.

The Alternative Dispute Resolution policy will apply to development, environment and land management disputes and other disputes concerning animals, trees, noise effluent, odours and other forms of pollution. It also applies to business disputes. The following principles relate to the way ADR is applied by Council:

Policy

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**ITEM 12 - ATTACHMENT 2 REVISED ALTERNATIVE DISPUTE RESOLUTION POLICY.**

**Policy**



- 1) ADR is a voluntary process.
- 2) To preserve the legitimacy of the process, all parties to ADR are given the opportunity to be represented and have control over the outcomes.
- 3) Where appropriate, ADR is to be initiated as soon as possible to avoid issues escalating.
- 4) Council will ensure confidentiality and respect privacy requirements when dealing with disputes.
- 5) Council will ensure procedural fairness in ADR matters.
- 6) Where mediation is used as one of the ADR options, the mediator is to be suitably qualified, independent and impartial to the dispute at hand.
- 7) Any mediated agreement will be documented and signed by all parties.
- 8) Costs associated with ADR are generally shared between all parties to the dispute unless other arrangements are agreed to by Council.

**Awareness and Cooperation**

Council will encourage parties to a dispute to resolve issues as they arise or come to notice before they escalate into significant matters.

Council will take a proactive approach to minimise the occurrence of disputes.

**Approach**

Council will not enter into ADR:

1. Where there are issues that relate to the content of Council Policies (as opposed to the application of the Policy).
2. Where a dispute may create a planning precedent.
3. Where the parties are not willing to cooperate.
4. Where Council does not believe that ADR is the best option, based on the particular circumstances and broader public interest considerations.

**POLICY RESPONSIBILITIES:**

- 1) Manager Legal Services is responsible for the implementation of this policy in conjunction with other Council officers as appropriate.

**Policy**

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**ITEM 12 - ATTACHMENT 2 REVISED ALTERNATIVE DISPUTE RESOLUTION POLICY.**

Policy



**RELATED DOCUMENTS:**

1. Compliance Policy
2. Complaint Handling Policy
3. Managing Unreasonable Complainant Conduct
4. Council Prosecutions Policy
5. Port Stephens Council Code of Conduct

**CONTROLLED DOCUMENT INFORMATION:**

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<b>RM8 container No</b>		<b>RM8 record No</b>	
<b>Audience</b>			
<b>Process owner</b>	Manager Legal Services		
<b>Author</b>	Manager Legal Services		
<b>Review timeframe</b>	Two years	<b>Next review date</b>	
<b>Adoption date</b>			

**VERSION HISTORY:**

Version	Date	Author	Details	Minute No.
1.0	28/04/2009	Environmental Services Manager	Adoption by Council	117
2.0		Manager Legal Services	Revision of Policy and incorporation into new styling format	

Policy

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**ITEM 12 - ATTACHMENT 3 SUBMISSION RECEIVED FROM TOMAREE RATEPAYERS & RESIDENTS ASSOCIATION INC.**



2 February 2017

The General Manager  
Port Stephens Council

[council@portstephens.nsw.gov.au](mailto:council@portstephens.nsw.gov.au)

**Subject: Revised Compliance, Prosecution and Alternative Dispute Resolution Policies**

TRRA submits that the revised Compliance, Prosecution and Alternative Dispute Resolution (ADR) Policies miss the opportunity to address some serious community concerns about the way in which conditions of consent for Development Approvals, and other requirements of State laws are being enforced (or not) by Council.

We have focused our comments on the Compliance Policy which is in our view the 'threshold' policy that determines Council's approach to enforcement. Prosecutions and ADR proceedings are two options that might be applicable in some cases, and we acknowledge that the range of factors set out in those two policies are broadly appropriate. Our concerns go more towards Council's overall 'tolerance' of non-compliant behaviour, and willingness to take action – which may in some cases lead to ADR or prosecution.

**Consultation**

The report to the Council meeting on 13 December 2016 on the revised compliance policy asserts that 'Consultation with key stakeholders has been undertaken by the Development Assessment and Compliance Section who implement the policy.' but also acknowledges that 'external consultation has not occurred'. The reports on the Prosecutions and ADR Policies similarly assert that 'Consultation with key stakeholders has been undertaken by the General Manager's Office'.

While we acknowledge that, as the reports note: 'the updated [Policies] will be placed on public exhibition' and that we now have the opportunity to comment, we submit that it was inaccurate and misleading to suggest in the reports that 'key stakeholders' had *already* been consulted.

In relation to compliance, the wider community is *the* key stakeholder, and there are numerous public interest groups and associations which are to a greater or lesser extent representative of the community, complementing the role of elected Councillors. As a regular correspondent with Council on a range of compliance issues, we would regard TRRA as a key stakeholder in this respect. TRRA was not consulted in the preparation of these revised policies and we are not aware of any other groups outside Council who were consulted.

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**Input from customer satisfaction surveys**

We also submit that in relation to this important issue, feedback should be available from Council's 'satisfaction surveys'. Results from the latest survey were published at in August 2016, but no questions appear to have been asked about general compliance, or about DA condition compliance specifically.

However, in response to Q3, satisfaction levels with 'ranger services' – two categories and with 'Managing illegal dumping' are the lowest of all those 'services' listed in Table 1 (and much lower than most others). The graphic on page 10 purports to show a constant improvement in satisfaction with 'managing illegal dumping' since 2014, which is a misleading presentation given that the satisfaction level hardly changes between 2015 and 2016. The graphics for 'ranger services' are at least accurate in showing no significant change in the consistently low levels over 5 years.

Responses to questions on the built environment (Q4), the environment in general (Q5) and 'appearance of your neighbourhood' (Q6) show (despite improvements) significant levels of **dissatisfaction** (14.5%; 19.1% and 24.7% respectively) – while reasons for this are unknown, failures to enforce compliance with DA conditions, maintenance of vacant sites, illegal dumping etc. may well have contributed.

**The Compliance Policy**

The Compliance Policy claims to be based on the NSW Ombudsman's Enforcement Guidelines for Councils, but we observe that it is considerably less detailed than the Model Policy suggested by the Ombudsman.

While we have no problem with the principle of a 'risk-based' approach taken both in the revised Compliance Policy and the Ombudsman's Guidelines. We accept that Council has limited resources available to devote to enforcement action, and that it is sensible to assess the level of 'detriment' being caused by non-compliance in any particular case.

However, in the list of 'Considerations when considering compliance action' in the Appendix to the Compliance Policy, three items imply a relatively high threshold of 'detriment' before compliance action would be justified:

- 'material damage or impact on human health or the environment' (Technical breach);
- 'significant detrimental effect on the environment or does it constitute a risk to public health or safety' (Magnitude of offence), and
- 'activity affected the natural or built environment and the health, safety and amenity of the area' (Tangible impact)

We submit that these criteria, while relevant, should not be read as ruling out the need for compliance action on other grounds.

Experience suggests that Council staff are exercising their discretion inappropriately in some cases, and that insufficient weight is being given to the importance of 'sending a message' about tolerance of non-compliance.

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A culture has been allowed to develop in recent years where landowners and developers do not expect enforcement action to be taken, of that even if it is, penalties will be minor. They too will understandably apply a risk assessment – if the costs of non-compliance are low, and the benefits significant, it is hardly surprising that many of them will ignore their legal obligations.

Several recent publicly reported examples illustrate the apparent failure of Council to respond appropriately to community concerns about alleged non-compliance. They are:

- A composting plant at Eagleton
- A sawmill at Medowie
- Reclamation of mangrove swamps at Tanilba Bay
- Dumping of contaminated spoil at Salt Ash and Willamtown.

Council is well aware of the history of these cases and it is not necessary for us to go into detail.

Other cases of poor enforcement include failure to ensure that vacant development sites are adequately maintained – long-running examples being vacant sites on Church Street Nelson bay and the former 'Birubi Beach Resort' at Gan Gan Rd, Anna Bay.

The Principles/Considerations in the Appendix to the Compliance Policy are generally sound, but their effectiveness depends on how they are interpreted and implemented. As explained above, we submit that a basically sound policy has not, in recent years, been implemented with sufficient regard to the public interest in ensuring that everyone in the community has to follow the rules.

We note that one principle is that: 'Council will act in a manner that is impartial and objective when investigating matters of alleged non-compliance.' and conflict of interest is mentioned under the 'Public Interest' consideration. We submit that this needs to be strengthened with an express requirement that any conflicts of interest, whether pecuniary or non-pecuniary, should be disclosed by any Councillor or officer involved in compliance matters.

**Conclusion**

We look forward to our concerns being addressed in the reports to Council on these three policies, and in appropriate changes to the policies to send a clearer message that Council is serious about enforcing conditions and requirements.

**Nigel Waters**

**Convenor, Planning Committee**

**Tomaree Ratepayers & Residents Association Inc.**

**0407 230 342**

**[planning@trra.com.au](mailto:planning@trra.com.au)**

**ITEM NO. 13****FILE NO: 17/61512  
RM8 REF NO: PSC2017-03945****REQUEST FOR FINANCIAL ASSISTANCE****REPORT OF: WAYNE WALLIS - GENERAL MANAGER  
GROUP: GENERAL MANAGER'S OFFICE**

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Approves provision of financial assistance under Section 356 of the *Local Government Act 1993* from the respective Mayor and Ward Funds to the following:
    - a. East Ward Funds – Cr John Nell – Seaside Singers – donation towards venue hire fees.
    - b. East Ward Funds – Cr Sally Dover – Port Stephens Real Futures Association – donation towards completion of the Real Futures project at Tomaree High School.
- 

**ORDINARY COUNCIL MEETING - 28 MARCH 2017  
COMMITTEE OF THE WHOLE RECOMMENDATION**

	<b>Councillor John Nell Councillor Geoff Dingle</b>  That the recommendation be adopted.
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**ORDINARY COUNCIL MEETING - 28 MARCH 2017  
MOTION**

<b>072</b>	<b>Councillor Chris Doohan Councillor John Nell</b>  It was resolved that Council approves provision of financial assistance under Section 356 of the <i>Local Government Act 1993</i> from the respective Mayor and Ward Funds to the following: <ol style="list-style-type: none"><li>a. East Ward Funds – Cr John Nell – Seaside Singers – donation towards venue hire fees.</li><li>b. East Ward Funds – Cr Sally Dover – Port Stephens Real Futures Association – donation towards completion of the Real Futures project at Tomaree High School.</li></ol>
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**BACKGROUND**

The purpose of this report is to determine and, where required, authorise payment of financial assistance to recipients judged by Councillors as deserving of public funding. The Financial Assistance Policy gives Councillors a wide discretion either to grant or to refuse any requests.

Council's Financial Assistance Policy provides the community and Councillors with a number of options when seeking financial assistance from Council. Those options being:

1. Mayoral Funds
2. Rapid Response
3. Community Financial Assistance Grants – (bi-annually)
4. Community Capacity Building

Council is unable to grant approval of financial assistance to individuals unless it is performed in accordance with the *Local Government Act 1993*. This would mean that the financial assistance would need to be included in the Operational Plan or Council would need to advertise for 28 days of its intent to grant approval. Council can make donations to community groups.

The requests for financial assistance are shown below:

**EAST WARD – Councillors Dover, Morello & Nell**

Seaside Singers	Donation towards venue hire.	\$1,500
Port Stephens Real Futures Association	Donation towards completion of Real Futures project at Tomaree High School.	\$1,000

**COMMUNITY STRATEGIC PLAN**

<b>Strategic Direction</b>	<b>Delivery Program 2013-2017</b>
Governance and Civic Leadership.	Manage the civic leadership and governance functions of Council. Manage relationships with all levels of government, stakeholder organisations and Hunter Councils Inc.

**FINANCIAL/RESOURCE IMPLICATIONS**

<b>Source of Funds</b>	<b>Yes/No</b>	<b>Funding (\$)</b>	<b>Comment</b>
Existing budget	Yes		Within existing budget.
Reserve Funds	No		

**MINUTES ORDINARY COUNCIL - 28 MARCH 2017**

Source of Funds	Yes/No	Funding (\$)	Comment
Section 94	No		
External Grants	No		
Other	No		

**LEGAL AND POLICY IMPLICATIONS**

To qualify for assistance under Section 356(1) of the *Local Government Act 1993*, the purpose must assist the Council in the exercise of its functions. Functions under the Act include the provision of community, culture, health, sport and recreation services and facilities.

The policy interpretation required is whether the Council believes that:

- a) applicants are carrying out a function, which it, the Council, would otherwise undertake;
- b) the funding will directly benefit the community of Port Stephens;
- c) applicants do not act for private gain.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that Council may set a precedent when allocating funds to the community and an expectation those funds will always be available.	Low	Adopt the recommendations.	Yes

**SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

Nil.

**CONSULTATION**

Consultation with key stakeholders has been undertaken by the General Manager's unit.

Consultation has been taken with the key stakeholders to ensure budget requirements are met and approved.

**OPTIONS**

- 1) Accept the recommendation.
- 2) Vary the dollar amount before granting each or any request.
- 3) Decline to fund all the requests.

**ATTACHMENTS**

Nil.

**COUNCILLORS ROOM**

Nil.

**TABLED DOCUMENTS**

Nil.

**MINUTES ORDINARY COUNCIL - 28 MARCH 2017****ITEM NO. 14****FILE NO: 17/61290  
RM8 REF NO: PSC2017-00015****INFORMATION PAPERS****REPORT OF: WAYNE WALLIS - GENERAL MANAGER  
GROUP: GENERAL MANAGER'S OFFICE****RECOMMENDATION IS THAT THAT COUNCIL:**

Receives and notes the Information Papers listed below being presented to Council on 28 March 2017.

<b>No:</b>	<b>Report Title</b>	<b>Page:</b>
1	Destination Port Stephens Funding Agreement 2017	199
2	Community Engagement Activities - Annual Report	202
3	Cash and Investments held as at 28 February 2017	205
4	Designated Persons' Return	209

**ORDINARY COUNCIL MEETING - 28 MARCH 2017  
COMMITTEE OF THE WHOLE RECOMMENDATION**

	<b>Councillor John Nell Councillor Ken Jordan</b>  That the recommendation be adopted.
<b>073</b>	<b>Councillor John Nell Councillor Steve Tucker</b>  It was resolved that Council move out of Committee of the Whole.

**ORDINARY COUNCIL MEETING - 28 MARCH 2017  
MOTION**

<b>074</b>	<b>Councillor Chris Doohan Councillor John Nell</b>  It was resolved that Council receives and notes the Information Papers listed below being presented to Council on 28 March 2017.
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**MINUTES ORDINARY COUNCIL - 28 MARCH 2017**

	<b>No:</b>	<b>Report Title</b>
	1	Destination Port Stephens Funding Agreement 2017
	2	Community Engagement Activities - Annual Report
	3	Cash and Investments held as at 28 February 2017
	4	Designated Persons' Return

# INFORMATION PAPERS

**ITEM NO. 1**

**FILE NO: 17/53719  
RM8 REF NO: PSC2017-00241**

**DESTINATION PORT STEPHENS FUNDING AGREEMENT 2017**

REPORT OF: DAVID ROWLAND - STRATEGY AND ENVIRONMENT SECTION  
MANAGER  
GROUP: DEVELOPMENT SERVICES

**BACKGROUND**

The purpose of this report is to inform Council on the renewal of a three year funding agreement with Port Stephens Tourism Limited (PSTL) trading as Destination Port Stephens (DPS).

Destination Port Stephens was established in July 2015 as a not for profit, incorporated membership association managed by a board of nine industry representatives including two representatives from Port Stephens Council, currently Mike McIntosh and Janelle Gardner.

As part of a three year performance based agreement (which commenced on 1 July 2015), Council committed seed funding of \$390,000 per annum to DPS to allow the organisation to promote Port Stephens to key domestic and international visitors markets, provide product development support, and drive visitation and visitor spend to Port Stephens. These funds are sourced from the Special Rate Variation.

DPS was required to leverage these funds via a range of strategies including grant funding, marketing partnerships, advertising revenue and sponsorship and, as part of the agreement, report on a number of key performance indicators on an annual basis.

Over the past three years, DPS has continued to exceed the expectations of Council. The organisation has a strong and engaged membership, an industry led board and is considered a leading model for effective Council and industry tourism partnerships across the state.

Over the past three years, the organisation has delivered the following achievements:

- Securing \$734,750 from the NSW State Government Visitor Economy Fund for domestic, international and business marketing activities.
- Securing \$114,398 from the Australian Federal Government Export Marketing Development Grant program for international marketing and product development activities.
- Growing membership to a total of 311 (from 213 in 2013-2014).
- Supporting the development of the Naturefest, Love Sea Food and the Love Summer. Love Nelson Bay events.

- Growing the Port Stephens Facebook page to 23,000 followers and Instagram page to 6,700 followers.
- Securing \$423,000 in industry funds for co-operative marketing programs.

Port Stephens is recognised as one of the key regional tourism destinations in NSW and attracts a broad range of domestic and international visitors each year. In the 2015-2016 year, Port Stephens welcomed 2,082,400 domestic visitor nights, 750,840 day visitors and 150,000 international visitor nights. These visitors spent an estimated \$372,000,000 and directly employed approximately 1,669 people.

To ensure the ongoing stability and continued success of the Port Stephens visitor economy, a new three year funding agreement has been approved by Council's Executive Leadership Team.

This ongoing support of DPS highlights Council's commitment to the Port Stephens Visitor Economy and will allow the organisation to continue with existing destination marketing strategies, create new opportunities for the local visitor economy and provide support and advocacy to tourism based business in Port Stephens.

The organisation will act as the key point of contact for the new State Government Destination Networks. Port Stephens is part of the Sydney Surrounds North Destination Network which covers a large area from the Blue Mountains, Central Coast and the Hunter.

The Destination Networks have been established to provide support, information and services to local tourism organisations including the coordination of the Regional Visitor Economy Fund, implementing professional development programs and acting as a conduit between State Government tourism strategies and the regional tourism organisations.

The value of having a strong, united organisation which has the support of both the tourism industry and Council will become more and more important over the next few years. The ability to cut through and clearly communicate the opportunities Port Stephens can provide towards meeting the State Government's goal of doubling overnight visitation by 2020 will ensure the long term support of Destination NSW and the new Destination Networks.

Council will continue to work closely with DPS, regional tourism neighbors and all layers of government to ensure an innovative and collaborative approach to growing the visitor economy and delivering on the community's vision of a great lifestyle in a treasured environment.

## **ATTACHMENTS**

Nil.

**COUNCILLORS ROOM**

Nil.

**TABLED DOCUMENTS**

Nil.

**ITEM NO. 2****FILE NO: 17/15271**  
**RM8 REF NO: PSC2014-01768-03****COMMUNITY ENGAGEMENT ACTIVITIES - ANNUAL REPORT****REPORT OF: STEPHEN CROWE - COMMUNICATIONS SECTION MANAGER**  
**GROUP: DEVELOPMENT SERVICES**

The purpose of this report is to provide an update on community engagement activities undertaken from January to December 2016.

**BACKGROUND**

Council's approach to community engagement was significantly modified following a sustainability review of the social planning unit in 2014. This included a review and significant update of the community engagement materials and mechanisms utilised by Council.

Council's former approach to Community Engagement included a policy, a toolkit for staff and was facilitated by a de-centralised, internal staff Community Engagement Panel. An external Residents Panel was also utilised. While the approach was robust, its delivery and adoption was at times, inconsistent across Council.

The current community engagement framework consists of a simplified engagement spectrum of three levels of increasing engagement activities with seven common steps for implementation. The revised framework provides staff with a systematic approach, one which is facilitated by Community Development and Engagement (CD&E) in conjunction with responsible officers.

The CD&E Unit was set up within the Communications Section with a brief to strengthen Council's engagement with its community and implement the use of the framework across the organisation. This change of approach recognises that all staff currently undertake community engagement to some degree and this framework helps to organise and record the outcomes of their engagement.

The CD&E Unit not only provides an advisory service to other areas of Council on how to engage our community but also undertakes community engagement planning and activities on complex projects in conjunction with internal content owners across the organisation.

The CD&E Unit and the project owner assign a level of engagement to a specific project, strategy, plan or service at the beginning of the project. The early inclusion of Community Engagement and Communications (CEC) plan at the early stage of the project helps to ensure that the project will achieve effective community consultation as widely as possible and meet community expectations in their ability to comment on projects.

Activity In The Past 12 Months

During 2016, there were several significant service improvements in the CD&E Unit which included:

- Development and introduction of a staff training package for Community Engagement;
- Refreshed and more detailed community database (formerly known as Residents Panel) - approximately 1,900 records;
- Introduction of an online engagement platform, EngagementHQ, specifically designed to undertake engagement activities in the online arena;
- Better and more consistent reporting methods; and
- Increased use of social media to increase engagement levels.

A significant improvement was the timely distribution of the 2016-2017 capital works brochure (approximately 23,500 copies) sent via Council's second rates notice and more detailed, up to date capital works program page on Council's website. This page is now refreshed regularly to ensure its currency for resident and ratepayers, with the aim of developing an online interactive map of the local government area.

Using the Customer Satisfaction Survey as a benchmark, it can be argued that there has been an increase in engagement overall by comparing last year's numbers of people completing the General Customer Satisfaction Survey of 744 in 2015 with 1,113 in 2016. The increase could be attributed to the community's interest in local government as a result of the merger environment. The increase in contributors was supported by the use of EngagementHQ and other online means such as Facebook.

Results to the question in the General Customer Satisfaction Survey regarding 'Do you feel you have opportunities to have genuine input into Council's decision-making on policies and matters that affect you?' have seen significant improved results. In particular, respondents in the 'never' category are on a declining trend since 2012, with the 'never' category being reduced from 16.16% in 2015 to 9.69% in 2016.

Further improvements scheduled in 2017 include:

- Rollout of staff training package for Community Engagement;
- Commitment to provide regular updates to community database members;
- Promotion of the use of EngagementHQ as an online consultation tool within the organisation;
- Enhanced coverage of capital works projects via Council's website; and
- Significant increase in the use of targeted and measurable social media campaigns to reach our intended audience more often and in greater numbers.

The following table, which collates the information provided to the Executive Leadership Team on a quarterly basis, shows a substantial increase in the collection of data for Level 1 projects. This has been as a result of a significant improvement in the collection of this data since July 2016, which has resulted in a clearer picture of the spread of projects across the three levels.

**MINUTES ORDINARY COUNCIL - 28 MARCH 2017**

Community engagement activities:

Month	Level 1 - Inform	Level 2 - Consult	Level 3 - Involve
January	0	2	6
February	2	6	5
March	2	7	7
April	5	7	7
May	6	7	7
June	1	7	8
July	6	8	9
August	8	8	9
September	5	8	9
October	14	7	5
November	16	9	6
December	12	10	6

**ATTACHMENTS**

Nil.

**COUNCILLORS ROOM**

Nil.

**TABLED DOCUMENTS**

Nil.



**ITEM NO. 3**

**FILE NO: 17/53390  
RM8 REF NO: PSC2006-6531**

**CASH AND INVESTMENTS HELD AS AT 28 FEBRUARY 2017**

REPORT OF: TIM HAZELL - FINANCIAL SERVICES SECTION MANAGER  
GROUP: CORPORATE SERVICES

**BACKGROUND**

The purpose of this report is to present Council's schedule of cash and investments held at 28 February 2017.

**ATTACHMENTS**

- 1) Cash and investments held at 28 February 2017.
- 2) Monthly cash and investments balance February 2016 to February 2017.
- 3) Monthly Australian Term Deposit Index February 2017 to February 2017.

**COUNCILLORS ROOM**

Nil.

**TABLED DOCUMENTS**

Nil.

# MINUTES ORDINARY COUNCIL - 28 MARCH 2017

## ITEM 3 - ATTACHMENT 1 CASH AND INVESTMENTS HELD AT 28 FEBRUARY 2017.

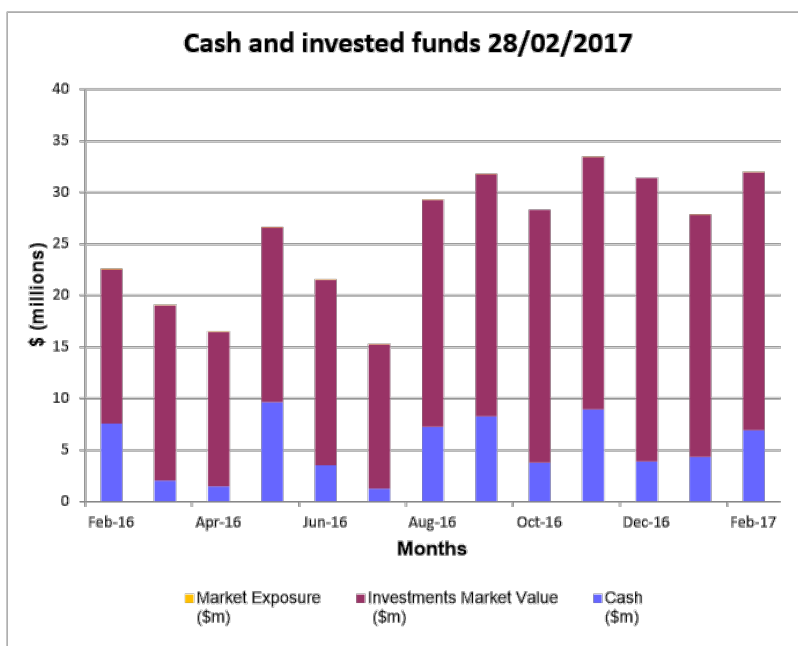
### CASH AND INVESTMENTS HELD AS AT 28 FEBRUARY 2017

ISSUER	BROKER	RATING*	DESC.	YIELD %	TERM DAYS	MATURITY	AMOUNT INVESTED	MARKET VALUE
TERM DEPOSITS								
AMP BANK	CURVE	A+	TD	2.75%	174	8-Mar-17	1,500,000	1,500,000
BANANA COAST CREDIT UNION	CURVE	NR	TD	2.75%	112	8-Mar-17	2,000,000	2,000,000
COMMONWEALTH BANK	CBA	AA-	TD	2.61%	154	22-Mar-17	1,000,000	1,000,000
ANZ	ANZ	AA-	TD	2.60%	98	22-Mar-17	2,000,000	2,000,000
HUNTER UNITED EMPLOYEES CU	RIM	NR	TD	2.90%	181	5-Apr-17	1,000,000	1,000,000
NATIONAL AUSTRALIA BANK	NAB	AA-	TD	2.69%	112	5-Apr-17	2,000,000	2,000,000
BANK OF QUEENSLAND	BOQ	A-	TD	2.75%	168	19-Apr-17	2,000,000	2,000,000
ME BANK	ME BANK	BBB+	TD	2.85%	133	3-May-17	2,000,000	2,000,000
AMP BANK	FARQUHARSON	A+	TD	3.00%	364	17-May-17	2,000,000	2,000,000
BANK OF QUEENSLAND	BOQ	A+	TD	2.80%	182	14-Jun-17	2,000,000	2,000,000
NATIONAL AUSTRALIA BANK	NAB	AA-	TD	2.57%	126	28-Jun-17	2,000,000	2,000,000
POLICE CREDIT UNION LTD (SA)	FARQUHARSON	NR	TD	2.85%	182	12-Jul-17	1,000,000	1,000,000
SUNCORP	SUNCORP	A+	TD	2.65%	182	9-Aug-17	2,000,000	2,000,000
SUNCORP	SUNCORP	A+	TD	2.65%	182	23-Aug-17	1,500,000	1,500,000
SUB TOTAL (\$)							24,000,000	24,000,000
OTHER INVESTMENTS								
ANZ ZERO COUPON BOND	ANZ	AA-	BOND	0.00%	9yrs	1-Jun-17	1,017,877	1,011,040
SUB TOTAL (\$)							1,017,877	1,011,040
INVESTMENTS TOTAL (\$)							25,017,877	25,011,040
CASH AT BANK (\$)							6,915,792	6,915,792
TOTAL CASH AND INVESTMENTS (\$)							31,933,669	31,926,832
CASH AT BANK INTEREST RATE				1.90%				
BBSW FOR PREVIOUS 3 MONTHS				1.83%				
AVG. INVESTMENT RATE OF RETURN				2.63%				
TD = TERM DEPOSIT								
*STANDARD AND POORS LONG TERM RATING								
CERTIFICATE OF RESPONSIBLE ACCOUNTING OFFICER								
I HEREBY CERTIFY THAT THE INVESTMENTS LISTED ABOVE HAVE BEEN MADE IN ACCORDANCE WITH SECTION 625 OF THE LOCAL GOVERNMENT ACT 1993, CLAUSE 212 OF THE LOCAL GOVERNMENT (GENERAL) REGULATION 2005 AND COUNCIL'S CASH INVESTMENT POLICY								
T HAZELL								

**ITEM 3 - ATTACHMENT 2 MONTHLY CASH AND INVESTMENTS BALANCE  
FEBRUARY 2016 TO FEBRUARY 2017.**

**CASH AND INVESTMENTS BALANCE**

Date	Cash (\$m)	Investments Market Value (\$m)	Market Exposure (\$m)	Total Funds (\$m)
Feb-16	7.589	14.989	0.029	22.607
Mar-16	2.038	16.984	0.034	19.055
Apr-16	1.469	14.990	0.028	16.487
May-16	9.650	16.990	0.028	26.668
Jun-16	3.526	17.990	0.028	21.544
Jul-16	1.277	13.998	0.020	15.294
Aug-16	7.269	21.998	0.020	29.287
Sep-16	8.289	23.498	0.020	31.807
Oct-16	3.786	24.503	0.015	28.304
Nov-16	8.940	24.506	0.012	33.458
Dec-16	3.875	27.507	0.010	31.393
Jan-17	4.346	23.507	0.010	27.864
Feb-17	6.916	25.011	0.007	31.934

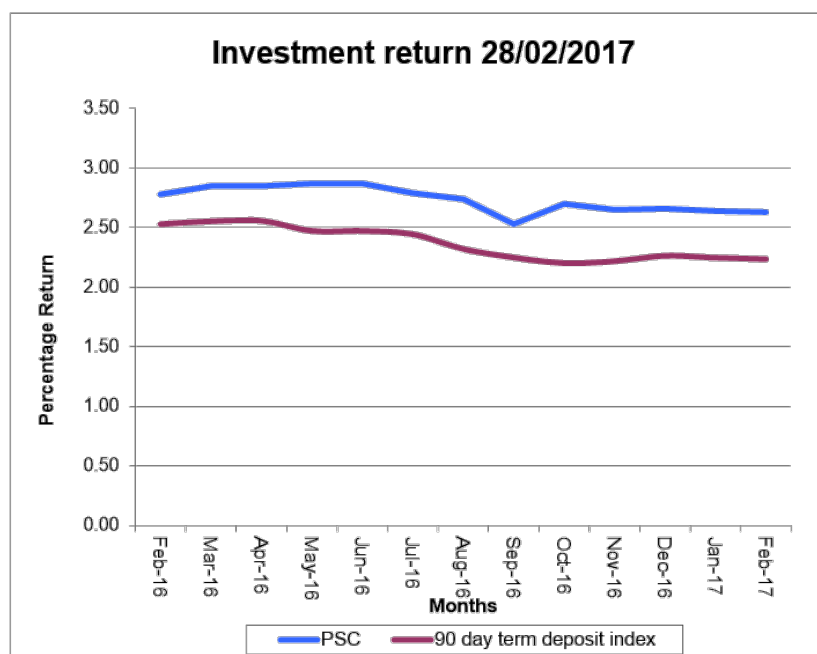


\*market exposure is the difference between the face value of an investment and its current market value.

**ITEM 3 - ATTACHMENT 3 MONTHLY AUSTRALIAN TERM DEPOSIT INDEX  
FEBRUARY 2017 TO FEBRUARY 2017.**

**AUSTRALIAN TERM DEPOSIT ACCUMULATION INDEX**

<b>Date</b>	<b>90 day term deposit index</b>	<b>PSC</b>
Feb-16	2.5293	2.78
Mar-16	2.5539	2.85
Apr-16	2.5578	2.85
May-16	2.4730	2.87
Jun-16	2.4727	2.87
Jul-16	2.4442	2.79
Aug-16	2.3210	2.74
Sep-16	2.2495	2.53
Oct-16	2.2025	2.70
Nov-16	2.2183	2.65
Dec-16	2.2637	2.66
Jan-17	2.2474	2.64
Feb-17	2.2357	2.63



**ITEM NO. 4**

**FILE NO: 17/56881  
RM8 REF NO: PSC2016-00018**

**DESIGNATED PERSONS' RETURN**

REPORT OF: TONY WICKHAM - GOVERNANCE MANAGER  
GROUP: GENERAL MANAGER'S OFFICE

**BACKGROUND**

The purpose of this report is to advise Council of new Council staff who have submitted their Designated Persons' Return/s (Return).

In accordance with Section 450A of the *Local Government Act 1993*, all new staff are required to lodge a Return within three (3) months of commencement. These Returns are to be tabled at the first Council meeting after the lodgement date.

The following is a list of position/s who has submitted Return/s:

- Development Engineer (PSC618).

**ATTACHMENTS**

Nil.

**COUNCILLORS ROOM**

Nil.

**TABLED DOCUMENTS**

- 1) Designated Persons' Return.

# NOTICES OF MOTION

**NOTICE OF MOTION**

**ITEM NO. 1**

**FILE NO: 17/52883**

**RM8 REF NO: PSC2011-02350**

**LEMON TREE PASSAGE MARINE RESCUE 'RADIO AND OBSERVATION ROOM' RELOCATION**

**COUNCILLOR: STEVE TUCKER**

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**THAT COUNCIL:**

- 1) That Council investigate the proposed relocation of the Lemon Tree Passage Marine Rescue 'Radio and Observation Room' to Henderson Park by adding this as a project on the Council Forward Works Plan.
- 

**ORDINARY COUNCIL MEETING - 28 MARCH 2017  
MOTION**

Councillor Paul Le Mottee returned to the meeting at 07:43pm.

<b>075</b>	<b>Councillor Steve Tucker</b> <b>Councillor Chris Doohan</b>  It was resolved that Council investigate the proposed relocation of the Lemon Tree Passage Marine Rescue 'Radio and Observation Room' to Henderson Park by adding this as a project on the Council Forward Works Plan.
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**BACKGROUND REPORT OF: JOHN MARETICH – ASSETS SECTION MANAGER**

**BACKGROUND**

The Marine Rescue Radio and Observation Room is currently at 154 Whitbread Drive, Lemon Tree Passage. Marine Rescue has requested to move to Henderson Park to better manage the operational matters of their business.

While it is not Council's responsibility to provide Marine Rescue facilities as a whole, there has been a request to place the facility above Council's public toilet. This suggestion provides many advantages to both Council asset surveillance and Marine Rescue operations.

It should be noted that the existing public toilet is a single skin brickwork structure with minimal footings and some sealed asbestos containing material. The existing structure would not support an additional floor without underpinning the footing and strengthening the walls. While this project has not been scoped, preliminary

investigation would suggest that it may be more cost effective to demolish the public toilet and construct a new facility that has a second storey for Marine Rescue.

This project would require Marine Rescue funding with Council contribution.

As this proposed project is not a Council sanctioned project in Council's Community Strategic Plan, Long Term Financial Plan or 10 Year Capital Works Program, no detailed planning has been undertaken. This project will be placed in the Council Works Plus Plan. Once funding is sought the project will be placed in the Council's 10 Year Works Program. Though to include this project into the Council's 10 Year Works Program now would require Councillors to agree that this project is a priority and adequate funding would need to be allocated.

#### **ATTACHMENTS**

Nil.



**NOTICE OF MOTION**

**ITEM NO. 2**

**FILE NO: 17/65208**

**RM8 REF NO: PSC2011-04276**

**PUBLIC TOILET FACILITY - BOOMERANG PARK, RAYMOND TERRACE**

**COUNCILLOR: PETER KAER**

---

**THAT COUNCIL:**

- 1) Call upon the General Manager to not proceed with the demolition of the current toilet facility that is located near to the water tank at the top of Boomerang Park.
  - 2) Call upon the General Manager to initiate a community consultation process as soon as possible in regard to this facility and Council's plans for it.
  - 3) Call upon the General Manager to provide all information of incidences of malicious damage and costs associated that appertains to this toilet facility. That this information be part of the community consultative process regarding this facility.
- 

Councillor Paul Le Mottee left the meeting at 07:57pm.

Councillor Paul Le Mottee returned to the meeting at 07:58pm.

**ORDINARY COUNCIL MEETING - 28 MARCH 2017**  
**MOTION**

<b>076</b>	<p><b>Councillor Peter Kaer</b> <b>Councillor Chris Doohan</b></p> <p>It was resolved that Council:</p> <ol style="list-style-type: none"><li>1) Call upon the General Manager to not proceed with the demolition of the current toilet facility that is located near to the water tank at the top of Boomerang Park.</li><li>2) Call upon the General Manager to initiate a community consultation process as soon as possible in regard to this facility and Council's plans for it.</li><li>3) Call upon the General Manager to provide all information of incidences of malicious damage and costs associated that appertains to this toilet facility. That this information be part of the community consultative process regarding this facility.</li><li>4) Conduct a site inspection with Council officers and the NSW Police.</li></ol>
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**BACKGROUND REPORT OF: JOHN MARETICH – ASSET SECTION MANAGER****BACKGROUND**

The purpose of this report is to provide information on the future of the existing public toilets in Boomerang Park.

The current plan is to replace the existing public toilets and co-locate new facilities with the playground. This detail is shown in the Boomerang Park Master Plan and the Boomerang Park Plan of Management adopted by Council on 25 November 2014 and 26 April 2016 respectively.

Community consultation has already been undertaken through three (3) separate processes:

- First, during the development of the Boomerang Park Master Plan:
  - 18 November 2013 – Community workshop at the Senior Citizens hall in Boomerang Park.
  - 16 January 2014 – Consultation with the Youth Advisory Panel at Raymond Terrace Library.
  - 18 June 2014 to 15 July 2014 – Public exhibition of the draft master plan for comment.
- Second, during the development of the playground design for the park, where nine groups including local child care, pre-schools, primary schools and play groups were visited.
- Third, during the development of the Plan of Management:
  - The draft Plan of Management was made available to the public between the dates of 10 February 2016 to 23 March 2016. Details of the exhibition period and community drop in information session were advertised in the local paper 'The Examiner' and on Council's website;
  - The plan was displayed on Council's website, at Council's Administration Building, Raymond Terrace Library, and Tomaree Library, along with an explanation as to how people could provide feedback;
  - Community 'two-on-two' consultation sessions were held on Wednesday 24 February 2016 between 9am and 12pm, where the community could come and view the draft plan and speak with the project team.

The reasons for the replacement of the existing public toilet are:

- The location of public toilets has a direct impact on safety and access. As such, key consideration has been given to the 'Safer by Design' or CPTED (Crime Prevention through Environmental Design) principles, which are actively promoted by NSW Police, in reviewing the location of these facilities. Provision of public toilets has evolved from a time when toilets were intentionally designed to be out of public view. Public toilets should be sited for maximum surveillance, close to picnic areas and car parks. The growing community concern about a range of community safety issues relating to the inappropriate use of public

toilets, including vandalism, use as beats, illicit drug activity and other activities is well documented.

- The existing toilets at Boomerang Park are currently located in the middle of the park, in an isolated location that has poor levels of casual and active surveillance, further hindered by the surrounding low dense vegetation – which obscures sight lines between the playground and the toilets. The known safety risk to Council is high given its unsafe location and poor access.
- The new location will greatly improve visibility, access and safety for maximum use. The new toilets are highly visible opposite the before and after school care facility and from passing vehicular and pedestrian traffic and importantly, greatly improves access for users of the playground. The greater legitimate use of a public toilet, the greater the feeling of security. In addition to this the new facilities provide much improved access for people of all abilities.
- These works are about continuing to improve local amenity, community safety and support active participation of this park.

It should be noted that it is not uncommon for Council cleaning staff to find discarded needles and other latex type protection products on the toilet floor, though records of these findings are not kept.

Should Council decide to keep the existing public toilet, there will be an increase in public toilet maintenance for Boomerang Park.

## **ATTACHMENTS**

Nil.

# CONFIDENTIAL ITEMS

In accordance with Section 10A, of the Local Government Act 1993, Council can close part of a meeting to the public to consider matters involving personnel, personal ratepayer hardship, commercial information, nature and location of a place or item of Aboriginal significance on community land, matters affecting the security of council, councillors, staff or council property and matters that could be prejudice to the maintenance of law.

Further information on any item that is listed for consideration as a confidential item can be sought by contacting Council.

Councillor Peter Kafer left the meeting at 08:02pm, prior to the confidential session.

## ORDINARY COUNCIL MEETING – 28 MARCH 2017

### MOTION

<b>077</b>	<b>Councillor Chris Doohan</b> <b>Councillor Steve Tucker</b>  It was resolved that Council move into confidential session.
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The following Council officers were present for the Confidential Session:

Public Relations and Marketing Coordinator.

**CONFIDENTIAL****ITEM NO. 1****FILE NO: 17/11281  
RM8 REF NO: PSC2015-01018****CODE OF CONDUCT****REPORT OF: TONY WICKHAM - GOVERNANCE MANAGER  
GROUP: GENERAL MANAGER'S OFFICE****ORDINARY COUNCIL MEETING - 28 MARCH 2017  
MOTION**

<b>078</b>	<b>Councillor Ken Jordan Councillor Chris Doohan</b>  It was resolved that Council:  <ol style="list-style-type: none"><li>1) Endorse the Supplementary Report from the conduct reviewer.</li><li>2) Re-confirm its decision of 11 October 2016.</li><li>3) Provide a copy of the Supplementary Report to the Office of Local Government in response to the correspondence.</li></ol>
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**ORDINARY COUNCIL MEETING – 28 MARCH 2017  
MOTION**

<b>079</b>	<b>Councillor Ken Jordan Councillor Chris Doohan</b>  It was resolved that Council move out of confidential session.
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There being no further business the meeting closed at 8.22pm.