

MINUTES 10 SEPTEMBER 2013



Minutes of Ordinary meeting of the Port Stephens Council held in the Council Chambers, Raymond Terrace on 10 September 2013, commencing at 5.47pm.

PRESENT: Mayor B MacKenzie; Councillors G. Dingle; S. Dover; K. Jordan; P. Kafer; P. Le Mottee; J. Morello; S. Tucker; General Manager; Corporate Services Group Manager; Facilities and Services Group Manager; Development Services Group Manager and Executive Officer.

248	<p>Councillor Ken Jordan Councillor John Morello</p> <p>It was resolved that apologies from Cr C. Doohan and Cr J. Nell be received and noted.</p>
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249	<p>Councillor Sally Dover Councillor Steve Tucker</p> <p>It was resolved that the Minutes of the Ordinary Meeting of Port Stephens Council held on 27 August 2013 be confirmed, subject to an amendment to Item 3. Item 3 should include the nomination of all Central Ward Councillors to the Medowie Strategy Review Consultative Panel.</p>
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	<p>There were no Declaration of Interest received.</p>
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COUNCIL REPORTS

ITEM NO. 1

FILE NO: 16-2011-404-1

DEVELOPMENT APPLICATION FOR FIVE (5) LOT SUBDIVISION AND BOUNDARY REALIGNMENT AT NO. 20 ALBERT ST TAYLORS BEACH

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

GROUP: DEVELOPMENT SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Refuse Development Application 16-2011-404-1 for a five lot subdivision and boundary alignment for the reasons contained in **(ATTACHMENT 3)**.

**ORDINARY COUNCIL MEETING – 10 SEPTEMBER 2013
MOTION**

250	<p>Councillor Ken Jordan Councillor Steve Tucker</p>
	<p>It was resolved that Council move into Committee of the Whole.</p>

COMMITTEE OF THE WHOLE RECOMMENDATION

	<p>Councillor Ken Jordan Councillor Steve Tucker</p>
	<p>That Council support the development application 16-2011-404-1 for a subdivision and boundary alignment, in principle, and request the General Manager to provide appropriate conditions of consent to Council for consideration.</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, Crs Peter Kafer, Paul Le Mottee, Ken Jordan, Steve Tucker, Geoff Dingle, John Morello and Sally Dover.

Those against the Motion: Nil.

AMENDMENT

	Councillor Geoff Dingle Councillor Peter Kafer
	That Council defer Item 1 to allow for a site inspection and for Cr Nell to be present at a Council meeting.

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

Those for the Motion: Cr Geoff Dingle.

Those against the Motion: Mayor Bruce MacKenzie, Crs Peter Kafer, Paul Le Mottee, Ken Jordan, Steve Tucker, John Morello and Sally Dover.

The amendment was lost.

MOTION

252	Councillor Paul Le Mottee Councillor Steve Tucker
	It was resolved that Council support the development application 16-2011-404-1 for a subdivision and boundary alignment, in principle, and request the General Manager to provide appropriate conditions of consent to Council for consideration.

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, Crs Peter Kafer, Paul Le Mottee, Ken Jordan, Steve Tucker, Geoff Dingle, John Morello and Sally Dover.

Those against the Motion: Nil.

BACKGROUND

The purpose of this report is to present a development application to Council for determination. The application was called up by Councillor Nell for 'public interest' reasons.

The proposal is for a five lot subdivision and boundary realignment at 20 Albert St Taylors Beach. There is an existing development approval on this site, which is summarised below.

Existing Development Approval

Development Application No. 16-2001-836-1 was submitted to Council on the 28 June 2001 for a 10 (ten) unit urban housing development and subdivision. The Minister under section 88A of the *Environmental Planning and Assessment Act* 'called in' the matter for his determination in April 2002. The Minister's decision to 'call in' the application was based on concerns relating to the significance of the site in terms of the *NSW Coastal Policy 1997*, particularly the lack of public foreshore access and significant natural constraints to development including flooding and storm surge. The Minister was also concerned that the development had the potential to adversely impact on the surrounding natural environment including SEPP 14 wetlands and the groundwater table.

The Minister refused the application and the applicant appealed this decision. The appeal was upheld by the Land and Environment Court on 20 November 2002 and development consent was issued. The appeal is known as Tilligerry Pastoral Company Pty Limited v The Minister for Planning, being No. 0041 of 2002.

A Construction Certificate was issued for the development on the 31 August 2007 and an Interim Occupation Certificate (for site clearance and earthworks) was issued on 14 December 2007 by a Private Certifier.

Current Development Application

There are a number of concerns with the application and the key issues are as follows:

1. The development does not provide a sufficient buffer distance to the SEPP 14 wetlands and therefore does not employ sufficient measures to mitigate the impacts of the development on the wetlands. The development has not been sited, designed and managed to avoid potential adverse environmental impacts.
2. The development is contrary to Council's Areas Affected by Flooding and/or Inundation Policy that requires a minimum lot size of 1 hectare for the subdivision of low risk flood prone land.
3. The filling of the land to enable subdivision is not a good floodplain management strategy as filling changes flow patterns, localised flood level increases, affects drainage for more frequent storm events, and reduces available flood storage.
4. The increased flood risk generated by the development is too high to be acceptable and Council can not guarantee the new lots can be suitably serviced in the future.
5. The proposal is very marginal from a wastewater perspective, with the risk assessment based on modelling, many assumptions and reliance on the use of an advanced secondary treatment system albeit with a dual barrier disinfection approach to get the desired outcome.
6. The proposal has not demonstrated that a suitable public stormwater system can be achieved within the currently allotted land – pipelines below tidal influences, property water sheet-flowing across the road.

7. The proposal has not demonstrated that stormwater effects can be contained so as to not effect the existing road and properties immediately adjacent to the development.
8. The proposal does not provide adequate flood protection for the proposed road.

The full assessment report is included at Attachment 3 and provides more information on the above issues. The site is considered to be unsuitable for the proposed development due to the likely environmental impacts of the development on the wetlands, EEC (coastal saltmarsh) and Tilligerry Creek. The filling of the site to create flood free building envelopes is considered to be inappropriate as it is inconsistent with Council's Areas Affected by Flooding and/or Inundation Policy and the site is located in an area of high risk flood hazard.

The applicant believes that the proposed subdivision presents a better outcome than the existing approval for 10 dwellings on the site. Whilst it is acknowledged that the environmental impacts of the development are less than the approved development, Council is required to assess this application on its own merits and provide an independent assessment regardless of any previous approval issued for the site. On this basis, the application has significant environmental impacts and can not be supported.

Notwithstanding this, for Councillors information a summary of the previous approval (for a 10 unit urban housing development and subdivision) compared to the proposed development is provided below. The 10 approved dwellings are located in a circular pattern around a large common open space/stormwater detention area, compared to the current proposal which is for a five lot subdivision and boundary alignment with proposed building envelopes for future dwellings.

Proposal	Lots	Car parking RL	Finished floor level of dwellings	Setback from SEPP 14 wetlands	Setback from Tilligerry Creek
Approved development	10	RL1.6m AHD	2.5m AHD	15-20m	15m
Current proposed development	5	RL2.4m AHD	3.2m AHD	10-15m	37.8m

Notwithstanding the previous approval on the site, it is prudent to note that the approval existed before current flooding and environmental issues were known.

FINANCIAL/RESOURCE IMPLICATIONS

The recommendation to refuse the application will not have any direct foreseeable financial or resource implications.

However, if the application is refused and the applicant appeals the decision, there will be financial and resource implications associated with defending an appeal.

There would be financial implications if the application is approved by Council and these include:

increased maintenance costs associated with approving a drainage pipeline/system below current tidal levels,

increased maintenance costs of approving a road that is subject to increases in inundation of flood and drainage events,

increased burden on SES and Council's emergency response funds associated with increased flood response accountabilities.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	No		Within existing budget. However, if the application is approved there will be funding implications on the existing budget.
Reserve Funds	No		
Section 94	No		
External Grants	No		
Other	No		

LEGAL AND POLICY IMPLICATIONS

The development application is inconsistent with Council's Local Environmental Plan 2000, Draft Local Environmental Plan 2013, Development Control Plan 2007, Section 79c of the *Environmental Planning and Assessment Act 1979* and Council's Areas Affected by Flooding and/or Inundation Policy.

Approval of the application is likely to set an undesirable precedent for development of land that is impacted by flooding and located within close proximity to SEPP 14 wetlands and coastal waterbodies.

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
There is a risk that an appeal will be made if the application is refused.	Medium	Adopt the recommendation - the reasons for refusal are considered sound and defensible.	Yes
There is a risk that approving this DA will create an undesirable precedent on land that is effected by flooding and located in close proximity to SEPP 14	Medium	Adopt the recommendation - the reasons for refusal are considered sound and defensible.	Yes

wetlands and coastal waterbodies.			
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SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Adopting the recommendation is unlikely to have any significant or adverse social, economic or environmental implications for Council or the general public, as the application is not supported.

If the recommendation is not supported, approval of the application could have potential economic and social implications for the Council and ratepayers through increased liability for the development of floodprone land and maintenance costs associated with the local infrastructure. In addition, there maybe environmental implications of the development due to the insufficient buffer to the SEPP 14 wetlands and close proximity to Tilligerry Creek given the need for on site sewage management.

CONSULTATION

The application has been reviewed by a number of external agencies including the Marine Park Authority, Rural Fire Service, NSW Office of Water and Department of Primary Industries. It has also been reviewed by internal staff including officers from strategic planning, natural resources, development engineering, environmental health, building and Council's heritage advisor.

The application has been exhibited twice due to amendments to the application. The original notification period resulted in one submission being received. The second notification period resulted in one submission being received plus a petition which included 18 signatures.

The issues raised in the submissions include:

- Drainage concerns as the water ponds in the middle of the site after rainfall and takes many days or weeks to disappear;
- The existing drain in Taylors Beach empties into the Bay and is often full in times of rain or big tides. The additional dwellings will add to this problem;
- Water runoff into adjacent properties due to the landfill and construction of the road;
- The existing boundary fence with the adjacent site on 22 Albert St is in state of disrepair and a new fence is needed;
- Problems with drainage and sewage. However, given the existing approval the preference is for the five lot subdivision rather than the ten lot approval.

The petition has been signed by 18 people and is in support of the proposal on the basis that the water runoff from the site will be adequately treated and will not negatively impact on the existing properties in Albert St and a covenant is placed on the lots restricting buildings to single storeys.

OPTIONS

- 1) Adopt the recommendation;
- 2) Amend the recommendation;
- 3) Reject the recommendation.

ATTACHMENTS

- 1) Locality Plan;
- 2) Assessment;
- 3) Reasons for Refusal.

COUNCILLORS ROOM

- 1) Site plan and development application plans;
- 2) Statement of Environmental Effects.

TABLED DOCUMENTS

Nil.

ATTACHMENT 1
LOCALITY PLAN



116 Adelaide Street, Raymond Terrace NSW 2324. Phone: (02) 49800255 Fax: (02) 49873612 E mail: council@portstephens.nsw.gov.au

**ATTACHMENT 2
ASSESSMENT**

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

THE PROPOSAL

Development consent is sought for a five (5) lot Torrens Title subdivision and boundary alignment of 20 Albert Street, Taylors Beach (Lot 1 DP1115507 and Lot 2 DP 1115507).

The site is located at the north western end of Albert Street. The lots are designed to be parallel with the existing lots facing the waterfront and are accessed via the end of the cul de sac. The lots are numbered from 1 to 5, with Lot 1 being located at the northern end, closest to the SEPP 14 wetlands and Lot 5 being located adjacent to the existing residence at 22 Albert Street.

The sizes of the five lots are as follows:

Lot 1 - 1105m²

Lot 2 – 1095m²

Lot 3 – 1100m²

Lot 4 – 1100m²

Lot 5 – 1115m²

A 3m wide pathway is located between Lot 5 and the existing residence at 22 Albert Street, allowing public access to the waterfront. Albert Street is proposed to be extended to allow vehicular access into the proposed lots, with the road ending partially through the frontage of Lot 1. The proposed road reserve will be 14m wide which will consist of 4m verge on either side with a 6m roadway.

The remainder of the subject site is to be amalgamated into the adjoining Lot 2 DP 1115507, requiring the need for a boundary alignment as part of the application.

The lots are proposed to be used for residential purposes with the site currently ranging in levels from 1.3m AHD to 1.6m AHD. It is proposed to fill the site to 2.4m AHD, with habitable floor levels being at RL3.2m AHD.

Each lot comprises of a 19m foreshore buffer area at natural ground level, a 2m vegetated batter, a 16.8m landscaped area proposed for waste water irrigation at RL2.4m AHD, a 17.5m building envelope area (length only) at RL3.2m AHD and a 6m front setback area which will batter down from RL2.4m AHD to the road reserve which will be located between RL1.3m AHD and RL1.9m AHD.

THE APPLICATION

Owner	Walker Cromarty Sands Development Pty Ltd
Applicant	RPS Australia East
Detail Submitted	Application plans, Statement of Environmental Effects, SEPP 14 Boundary Assessment, Vegetation Management Plan, Drainage Design, Music Model Evaluation, Wastewater Management Plan, Flood Impact Assessment, Flora and Fauna Assessment, Bushfire Assessment, Aboriginal Heritage Due Diligence Report, SEPP 71 Coastal Protection Master Plan Waiver, Offset Plan, Geotechnical Review.

THE LAND

Property Description	Lot 1 DP1115507 and Lot 2 DP 1115507
Address	20 Albert St, Taylors Beach
Area	8710m ² (Lot 1), Lot 2 is 20.8ha
Dimensions	Approximately 91m x 96m, with a small splay on the north eastern corner
Characteristics	The site adjoins the foreshore of Taylors Beach and is relatively flat. The site was cleared in 2007 and there is currently natural and dense regrowth in some areas of the property. Council's GIS mapping shows the site is constrained by bushfire, Class 3 Acid Sulphate Soils, flooding, landscape habitat link, Endangered Ecological Community (Coastal Saltmarsh) and contains an area of SEPP 14 wetlands. The site is bounded by undeveloped coastal wetlands to the north and east, Tilligerry Creek to the west and residential development to the south.

THE ASSESSMENT

1. Planning Provisions

State Environmental Planning Policies (SEPP)	SEPP 14 – Coastal Wetlands SEPP 55 – Remediation of Land SEPP 62 – Sustainable Aquaculture SEPP 71 – Coastal Protection
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LEP 2000 – Zoning Relevant Clauses	2(a) Residential, 1(a) Rural Agriculture 11 – Rural zonings 12 - Subdivision within rural zonings 17 -Subdivision in Residential Zonings 37 & 38 – Flood prone land 44 – Appearance of land and buildings 47 – Services 51A – Acid Sulphate Soils 60 – Archaeological sites
Draft LEP 2013 - Zoning	R2 Low Density Residential, E2 Environmental Conservation 2.3 - Zone objectives and Land Use Table 2.6 - Subdivision – Consent requirements 4.1 – Minimum subdivision lot size 5.5 – Development within the coastal zone 5.10 – Heritage conservation 7.3 – Flood planning 7.6 – Essential services 7.9 - Wetlands
Development Control Plan	B1 – Subdivision and streets B2 – Environmental & Construction Management
Port Stephens Section 94 Plan Rural Fires Act Section 100B	

1.1 State Environmental Planning Policy No. 14 – Coastal Wetlands

SEPP 14 aims to ensure that coastal wetlands are preserved and protected. The north eastern part of the site contains SEPP 14 wetlands. However, the applicant questioned the location of the boundary and submitted a SEPP 14 Wetland Boundary Assessment Report to investigate the actual boundary on the site as compared to the mapped boundary.

Consultation was held with the Department of Planning over this issue to ensure that the correct process was followed. It was found that Council does not have delegation to amend the SEPP 14 boundary. However, Council were advised that although the hard copy map remains the legal instrument, determining the intended location of the boundary line on the ground can require additional investigation. To enable a reasonable interpretation of the line on ground, at a resolution suitable for site-scale planning purposes it was recommended a suitably qualified officer make an on site determination. Council officers reviewed the submitted SEPP 14 Boundary Assessment Report (that was prepared by a suitably qualified expert in this area) and concurred with the proposed boundary of the wetlands, as the ground truthed boundary is within the 25m variation permitted by the Department (ie. advice received from the Department dated 5/5/11 on the accuracy of SEPP 14 wetland boundaries).

On this basis, the application was not considered to be designated development in accordance to Clause 7(1) and 7(3) of the SEPP.

However, Council has significant concerns with the location of the development, in that a sufficient buffer has not been provided to the wetlands. As the SEPP does not specify any buffer distances, this issue is discussed under the DCP Section of this report.

1.2 State Environmental Planning Policy No. 55 – Remediation of Land

SEPP 55 requires consideration to be given to previous uses on the site and whether the site needs to be remediated for future uses. Council's contaminated land register does not list the site as having possible contamination. However, a geotechnical investigation and acid sulphate soil management plan was undertaken for the site and submitted with the application.

1.3 State Environmental Planning Policy No. 62 – Sustainable Aquaculture

SEPP 62 encourages the sustainable expansion of the aquaculture industry in NSW. Part 3A of the SEPP requires consideration of the effects of certain development on the oyster aquaculture industry and requires consultation with the Director General of the Department of Primary Industries.

The application was referred to the Department due to its location and potential impacts on the industry. The Department stated there are numerous priority oyster aquaculture areas located in Tilligerry Creek, some of which are less than one kilometre from the subject site. The following comments were made:

- *The proposed land application areas do not meet the minimum buffer distances recommended in the On-site Sewage Management for Single Households Environment and Health Protection Guidelines (NSW DLG, 1998). However, the Department is satisfied that the proposed triple barrier treatment system will mitigate the associated risk to the sanitary water quality of Tilligerry Creek. The buffer distance could however be increased by placing the effluent disposal area between the road and the proposed building footprint.*
- *Both subsurface effluent and mound disposal are acceptable.*
- *The proposed land application areas straddle the filled building pad and natural soil. Therefore at the time of the final house design the land application areas need to be redesigned to take into account the hydraulic properties of the fill if it is different from the naturally occurring sandy loam. Also, the subsurface irrigation will need pressure compensation to take into account the batter slope and difference in heights between the natural soil and fill so that the effluent is evenly distributed across the entire application area. It is recommended that the systems be classified as high risk under Council's on site sewage management system and be inspected annually for compliance.*

Relocating the effluent area to between the road and the building footprint is not feasible in this location, as the size required for the wastewater treatment area would place the building footprint too close to Tilligerry Creek. It is stated in the Landscape drawings that an area of 274m² is required for sub surface drip irrigation to accommodate a four bedroom dwelling. Relocating this area would place future dwellings at greater risk of flooding and too close to the foreshore protection area, therefore potentially impacting further on the adjacent water body and coastal processes.

1.4 State Environmental Planning Policy No. 71 – Coastal Protection

SEPP 71 aims to protect and manage the New South Wales coast and foreshores and requires certain development applications in sensitive coastal locations to be referred to the Director-General for comment. It also identifies master plan requirements for certain developments in the coastal zone. The application has been granted a waiver from the Department of Planning on preparing a master plan.

The application has been assessed under Clauses 2 and 8 of the policy as shown in the table below.

Clause No. 8	Comments
a) aims of the Policy (cl 2)	The development is not consistent with the aims of the Policy as the development does not protect and manage the natural attributes of the New South Wales coast.
b) existing public access to and along the coastal foreshore for pedestrians or persons with a disability should be retained and, where possible, public access to and along the coastal foreshore for pedestrians or persons with a disability should be improved,	Public access to the foreshore is currently not formally available. However, the site is currently vacant apart from vegetation and people can walk through the site to the foreshore.
c) opportunities to provide new public access to and along the coastal foreshore for pedestrians or persons with a disability,	Public access to the foreshore is proposed as part of the development.
d) the suitability of development given its type, location and design and its relationship with the surrounding area,	The sensitive environmental constraints of the site render the development unsuitable for the site. However, given the adjacent residential dwellings a development that is more respectful to the constraints, particularly the wetlands is more appropriate. However, the applicant was not prepared to remove

	one lot from the proposal, which would have improved the suitability of the site for the development by providing a buffer distance that is more appropriate to the sensitivity of the site.
e) any detrimental impact that development may have on the amenity of the coastal foreshore, including any significant overshadowing of the coastal foreshore and any significant loss of views from a public place to the coastal foreshore,	The development will not have a detrimental impact on the foreshore via overshadowing and view loss. If the development was approved, restrictions would be placed on the scale and type of development allowed on the individual lots due to the sensitive nature of the site.
f) the scenic qualities of the New South Wales coast, and means to protect and improve these qualities,	The scenic quality of the coast will not be impacted by this development as no physical buildings are currently proposed. However, if the development was approved, restrictions would be placed on the scale and type of development allowed on the individual lots to reduce any impact on the scenic quality of the coast.
g) measures to conserve animals (within the meaning of the <i>Threatened Species Conservation Act 1995</i>) and plants (within the meaning of that Act), and their habitats,	A Flora and Fauna Report has been prepared for the site to assess any impacts on animals and their habitats. The application is considered acceptable and no significant impacts have been found.
h) measures to conserve fish (within the meaning of Part 7A of the <i>Fisheries Management Act 1994</i>) and marine vegetation (within the meaning of that Part), and their habitats	The application was referred to the Department of Primary Industries who did not raise any specific concerns, on the basis that Council is supportive of the wastewater system proposed and there are no impacts on the adjacent water body. The wastewater system proposed will have negligible impacts on the water body.
i) existing wildlife corridors and the impact of development on these corridors,	The development will not have a significant impact on wildlife corridors.
j) the likely impact of coastal processes and coastal hazards on development and any likely impacts of development on coastal processes and coastal hazards,	Coastal processes and hazards will have an impact on the development due to the floodprone nature of the site.

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k) measures to reduce the potential for conflict between land-based and water-based coastal activities,	There are no potential conflicts identified on the site. Land based and water based activities in this area complement each other.
l) measures to protect the cultural places, values, customs, beliefs and traditional knowledge of Aboriginals,	A due diligence archaeology assessment was undertaken of the site. No previously unrecorded Aboriginal sites were identified during the survey. A number of recommendations have been made to protect the existing artefact located on the adjacent site.
m) likely impacts of development on the water quality of coastal water bodies,	The wastewater report has revealed that the development can be undertaken without impacting on the water quality of the coast.
n) the conservation and preservation of items of heritage, archaeological or historic significance,	A shell midden is located on the shoreline along the western boundary of the subject site. As such a 20m buffer zone has been included in the proposal to ensure the conservation of this item.
o) only in cases in which a council prepares a draft local environmental plan that applies to land to which this Policy applies, the means to encourage compact towns and cities,	This subclause is not relevant.
p) only in cases in which a development application in relation to proposed development is determined: i) the cumulative impacts of the proposed development on the environment, and ii) measures to ensure that water and energy usage by the proposed development is efficient.	The cumulative impacts of the development on the environment have been considered and on this basis, the application is not supported. Measures to ensure that water and energy usage are efficient will be assessed as part of future residential dwelling applications, if the application is approved.

1.5 Port Stephens Local Environmental Plan 2000

Clause 11 – Rural zonings and Clause 16 Residential zonings

The site is zoned 2(a) Residential and 1(a) Rural Agriculture. The part of the site zoned 1(a) is located on the eastern side, in the area that is proposed to be amalgamated with Lot 2 DP 1115507 (this land is zoned 1(a)). This area is not proposed for residential use as part of this application.

Following assessment of the application, it is considered that the proposal is not consistent with the zone objectives for 2(a) land. The proposal does not sufficiently

address the constraints of the site including flooding and has an unacceptable impact on adjoining environmental land.

However the part of the land zoned 1(a) is consistent with the zone objectives as no changes are proposed to this part of the site other than boundary realignment, which will assist with protecting or conserving the environmental qualities of this site as it contains an area of SEPP 14 wetland.

Clause 12 - Subdivision within rural zones generally

The boundary of Lot 2 DP 1115507 is to be amended to include the residual part of the land that remains from the proposed five lot subdivision. On this basis, no additional lots are created and the requirements of this clause have been met.

Clause 17 - Subdivision in Residential Zonings

The proposed subdivision meets the minimum lot size of 500m² required under this clause.

Clause 37 and 38 - Objectives and development on flood prone land

The site is constrained by flooding and consideration has been made to the risks and extent of potential flooding on the site.

The current 1% AEP Flood level for the site is RL 1.8 m AHD which is expected to increase to RL 2.7m AHD by 2100 with sea level rise and climate change. Similarly tidal inundation is expected to rise to RL 2.0m AHD by 2100.

Council's Li-Dar data indicates that ground levels on the site vary from only RL 1.4m AHD to RL 2.0m AHD (+/- 150 mm). Therefore not only is the site currently significantly inundated during a 1% AEP flood event (depth 0.4 m) but is also likely to be regularly inundated by the year 2100 from normal tidal influences. Flood depths are also set to increase to up to 1.3 m deep. The future flood hazard rating for this site will be high hazard based on this data.

The application includes advice from Royal HaskoningDHV on the flooding issues. This advice makes a case for the proposal on the basis that the site is subject to low hazard flooding and the risk to life and property is not high. This argument however, is based on the fact that the site is to be filled to RL 2.4m AHD and that floor levels will be at the required Flood Planning Level of RL 3.2m AHD (Note Flood Planning Level has since been reviewed and a level of RL 2.7 m AHD would now be applied). Taylor's Beach Road is also below RL 2.0m AHD in places. Therefore it is also likely that future tidal influences will regularly cut Taylor's Beach Road and Council at this stage can not guarantee unimpeded access to the site at all times in the future.

The applicant believes that the proposed subdivision represents less of a flood risk than the currently approved development. It is possible that the site could be a greater risk if dual occupancies and/or units are constructed on each of the individual allotments. The applicant would need to demonstrate how development on each lot is to be restricted to one dwelling per lot before Council could agree with this part of the response and consider an alternate response to this issue.

The existing approved development on the site represents significant current and future flood risk. Therefore it is acknowledged that the proposed new development is a significant improvement in terms of flood liability and that it could be suitably flood proofed. However, there would be some doubt as to the saleability of the existing approved development due to the likely flood risk and cost of flood proofing and insuring the buildings thus making the viability of the development problematic. Therefore the flood liability of the existing approval may not be a significant enough issue to support the current development application, as it is still subject to flooding constraints.

The flood impact assessment has addressed a number of issues regarding flooding and access to the site, which in the end maybe acceptable if the proposed development represented a lower future flood risk than the existing approved development. However the information provided does not demonstrate this case.

A major concern with the application is that it involves a Torrens Title subdivision within a currently flood prone location with small lot sizes. As such it does not comply with Council's current policy for areas affected by flooding and/or inundation which states "*Subdivision of Low Risk Flood Prone land shall only be granted where the minimum lot size created is one hectare*". This policy is currently being reviewed by Council and some changes are proposed. However, the revised policy is likely to be stricter in that "*subdivision would only be granted if flood free building sites are available to all new lots without the need for any filling*". This amendment is proposed as it is considered better floodplain management to only develop land that can naturally provide flood free building areas in areas where there is a plentiful supply of such land.

Whilst filling of the site would ensure any new dwellings on the proposed subdivision lots could be suitably flood proofed, filling of land to enable subdivision is not a good floodplain management / land use strategy. Further, it is contrary to Council's existing flood policy which requires a minimum lot size of one (1) hectare for the subdivision of low risk flood prone land.

Whilst, the proposed development represents a significantly lower future flood risk than the currently approved development, (subject to relevant restrictions being placed on the new land titles) the viability of the approved development because of its flood risk is questioned. As such this is not a relevant argument for approval of the proposed subdivision.

In summary, any subdivision of the subject property is not supported due to the fact that the increased flood risk generated by the development is too high to be acceptable and Council can not guarantee the new lots can be suitably serviced in the future.

Clause 44 - Appearance of land and buildings

The proposed subdivision does not propose the construction of any buildings. However, if the application is approved it is likely that residential dwellings would be constructed on the site. It is not anticipated that there will be any significant or detrimental visual impact when viewed from the waterway, as this area would be an

extension of the existing residential area along this part of Taylors Beach. The applicant has also stated that if approval is granted they would be willing to place an 88b instrument on the land restricting development to single storey. This will assist in minimising any visual impact from the waterway.

Clause 47 Services

A Wastewater Management Plan was submitted with the application.

Council employed a consultant to conduct a peer review on this report as the potential impacts resulting from human effluent entering Port Stephens or local ground waters could be significant if not appropriately considered. In addition, the scale, design and location of the proposed development along with the relevant legislative provisions dictated that the level of review of the wastewater management plan be comprehensive. The aim of the review was to assess the adequacy of the investigation and evaluate the proposed design against identified constraints with a focus on potential risks to the environment, ecosystems, groundwater and human health.

The consultant was requested to provide independent technical advice on the suitability of the proposed system to manage wastewater loads from the development and assess this against the development assessment framework recently developed for on site sewage management. The consultant raised a number of issues and conclusions, and these concerns were adequately addressed by the applicant.

However, from a wastewater perspective the proposal is very borderline with the risk assessment based on modelling, many assumptions and reliance on the use of an advanced secondary treatment system albeit with a dual barrier disinfection approach to get the consultants outcome. The use of such an advanced treatment system itself creates a risk to the environment through system failure.

Concern is raised over the logistics in constructing the effluent management areas between the building envelope and the water as a result of very limited access. It will certainly be challenging and require good planning and communication between the different parties concerned.

If the application is approved, 88b instruments will be required to protect the effluent management areas as well as additional conditions to ensure that these systems have no environmental impact on the sensitive environment. The Department of Primary Industries also expressed concern over the waste water system and recommended that the systems be classified as high risk under Council's on site sewage management system and be inspected annually for compliance.

Clause 51A Acid Sulphate Soils

THE SUBJECT SITE IS IDENTIFIED AS CONTAINING ACID SULPHATE SOILS – CLASS 3 (ASS). ACCORDINGLY, ANY WORKS BELOW 1M FROM THE NATURAL GROUND SURFACE REQUIRES CONSIDERATION UNDER CLAUSE 51A OF THE PORT STEPHENS LEP 2000. IT IS PROPOSED THAT THE LAND WILL BE FILLED TO MEET FLOOD PLANNING LEVELS AND AS SUCH WORKS BEYOND 1M BELOW THE NATURAL GROUND SURFACE WILL NOT OCCUR.

There is no excavation works proposed as part of the submitted development application. As such, the application is considered acceptable with regards to Clause 51A of Port Stephens LEP 2000.

Clause 60– Development in the vicinity of heritage items, heritage conservation areas or archaeological sites

A due diligence archaeological assessment for the subject site was undertaken and recommendations were made. There is a registered shell midden located on the shoreline along the western boundary of Lot 4. A 20m buffer zone was recommended to the shoreline into Lot 4 to avoid any potential impact to the site. The subdivision layout proposes this area to be a foreshore buffer area. If the application is approved, conditions of consent would need to be put in place to ensure that the recommendations in the report are adopted.

Council's Heritage Officer reviewed the archaeological assessment and supports the recommendations of the report.

1.6 Port Stephens Draft Local Environmental Plan 2013

2.3 Zone objectives and Land Use Table

The site is zoned R2 Low Density Residential and E2 Environmental Conservation. The part of the site zoned E2 is located on the eastern side, in the area that is proposed to be amalgamated with Lot 2 DP 1115507 (this land is currently zoned 1(a) under LEP 2000). This area is not proposed for residential use as part of this application.

The proposal does not meet the objectives of the R2 zone in that the development can not be carried out in a way that is compatible with the flood risk of the area. The objectives of the E2 zone have been met, in that the development will protect areas with special ecological values, as this part of the site will be unaffected by the development.

2.6 Subdivision – Consent requirements

Land may be subdivided with development consent.

4.1 Minimum subdivision size

The part of the site zoned R2 requires a minimum lot size of 500m² and the part zoned E2 requires a minimum lot size of 40ha. The part of the site zoned E2 is to be amalgamated with the adjacent lot and will result in a lot size greater than 40ha (Lot 2 DP 1115507 is currently 119.2ha), which meets the requirements of the LEP.

5.5 Development within the coastal zone

This clause aims to protect the coastal environment for the benefit of both present and future generations through promoting the principles of ecological sustainable development. It aims to implement the principles of the NSW Coastal Policy and has a number of criteria where development consent can not be granted.

Consideration is required to be given to:

- a) public access to the foreshore - pedestrian access has been provided on the southern part of the site
- b) visual and amenity impacts of the development (clauses b, c, d) - this impact is difficult to fully assess at this stage as no buildings have been proposed. However, the applicant has proposed an 88B instrument to be placed on the lots restricting the future development to single storey, which will minimise the visual impact from the waterway.
- c) conservation of biodiversity and ecosystems – the proposed development is located within 25m from SEPP 14 wetlands. This buffer distance is considered unsuitable and may impact on the natural scenic quality and the wetland ecosystem. Further discussion on the buffer area is discussed elsewhere in this report.
- d) effluent and stormwater discharged into the sea - the proposed development involves the use of an on site effluent disposal system so there is no direct discharge into the sea. However, the proposed advanced treatment system creates a risk to the environment through potential system failure.

5.10 Heritage conservation

As discussed previously, an archaeological assessment has been submitted with the application which has made a number of recommendations for the site, which are supported by Council.

7.3 Flood planning

As previously discussed Council has concerns over the flooding issues on the site. Whilst it is accepted that filling of the site would ensure any new dwellings on the proposed subdivision lots could be suitably flood proofed, filling of the land to enable subdivision is not a good floodplain management / land use strategy. This is also contrary to Council's existing flood policy which requires a minimum lot size of 1 hectare for the subdivision of low risk flood prone land.

It is also noted that the proposed development amendments represent a significantly lower future flood risk than the currently approved development, subject

to relevant restrictions being placed on the new land titles. The viability of the approved development because of its flood risk is questioned. However, the flooding risks of the subject application are too high and can not be supported.

7.6 Essential Services

Adequate essential services such as water, electricity, sewer management and road access will be made available to the site if the application is approved. Concerns are raised over the proposed on site wastewater system, which has been discussed elsewhere in this report.

7.9 Wetlands

This clause aims to ensure that natural wetlands are preserved and protected from the impacts of development. The development does not provide a sufficient buffer distance to the wetlands and therefore does not employ sufficient measures to mitigate the impacts of the development on the wetlands. The development has not been sited, designed and managed to avoid potential adverse environmental impacts. Further discussion on the buffer issue is provided later in this report.

1.7 Development Control Plan 2007

Section B1 Subdivision

ATTRIBUTE	PROPOSED	COMPLIES
Street layout – avoid the creation of lots that are considerably higher or lower than street level	The sites are proposed to be filled to RL2.4m AHD with the proposed new road having a gradient from the existing level of RL1.3m AHD to RL1.9m AHD (sloping down from north to south).	The sites are proposed to be higher than the existing road by a maximum of 1.1m.
Street and block layout – provide street connections, street frontage and restrictions on the dimensions of the lots	The proposed lot layout reflects the orientation and pattern of existing development in Albert Street and allows for the extension of the road. All lots are proposed to have street frontage and meet the dimension requirements in the DCP.	Yes
Lot layout – regular shaped lots and provision of access points	The proposed lots are regular in shape and propose building envelopes that will allow the construction of a dwelling at a later date. Direct access is provided to Albert Street from each lot.	Yes
Infrastructure provision	Basic details on the provision of road infrastructure and drainage have been provided. Concerns have been raised about the proposed construction specifications. However, as the application is not supported it	More details are required.

MINUTES FOR ORDINARY COUNCIL – 10 SEPTEMBER 2013

	was not considered necessary for the applicant to provide this additional information. However, if the application is approved this detail will need to be supplied.	
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Section B2 Environmental & Construction Management

ATTRIBUTE	PROPOSED	COMPLIES
Water quality management	Stormwater flows are described in the stormwater report which establishes that all stormwater from the development will be managed through a system of roadside swales, surface inlet pits, trash racks and sediment sumps in the drainage pits and final discharge into the existing Council system that flows south away from the wetland areas. Further details on engineering concerns are discussed below.	See comments below
Acid Sulphate soils	The site is proposed to be filled to meet flooding planning levels so it is unlikely that works will occur below 1m from natural ground level.	Yes
Landfill	The proposal is requiring a significant amount of landfill on the site to meet the flood planning level. The habitable floor level is to be RL3.2m AHD and the ground level of the lots are to be filled to RL2.4m AHD, with the exception of the foreshore buffer zone.	Relates to flooding issue
Vegetation management – development near water courses must provide a riparian buffer of up to 40m, buffer zones required for EEC	The site currently contains endangered ecological communities and SEPP 14 wetlands. A Flora and Fauna Assessment report and Vegetation Management Plan were submitted with the application which provides recommendations on the development of the site, associated clearing and the provision of a minimum 10m buffer to the SEPP 14 wetlands and a 19m wide foreshore vegetation buffer. A landscape plan was submitted with	No, see comments below

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	<p>the application detailing the type of street tree planting and vegetation for the site as well as landscaping features such as paths and fences.</p> <p>The technical details including the methodology in the Vegetation Management Plan are accepted. However the buffer distance to the wetlands is considered to be inappropriate and should be extended to 25m to the revised boundary of the SEPP 14 wetland.</p> <p>Additional environmental comments are provided below.</p>	
Mosquito control	<p>The application is only for subdivision and physical barriers for protection against mosquitoes would be required for future applications, if this application is approved.</p>	Yes
Wastewater	<p>Reticulated sewer is not available on the site and the DCP requires a minimum area of 4000m² for on site treatment and disposal of effluent. The lots are below this size and a Wastewater Management Report has been submitted to demonstrate that the effective disposal can occur. Waste water irrigation areas are to be created on each lot and all stormwater drainage is to be designed to avoid discharging into these areas. Restrictions are proposed under 88B of the Conveyancing Act to protect these areas from disturbance and to ensure all roof drainage is connected to a water tank plus oversized roof gutters to contain up to their 1:10 year storm event to minimise gutters overflowing into the irrigation areas.</p>	Yes, however concerns have been raised over construction of this system and the impact if the system fails.

Environmental comments

The Flora and Fauna Assessment report states that the site is highly disturbed due to previous works undertaken to modify vegetation as part of the existing approval on the site. The 7 part test revealed that a significant impact is unlikely to occur to any threatened species, population or community. There are two key recommendations in the report: to ensure that appropriate sediment and erosion controls are implemented prior and during construction works, and for a weed management protocol to be implemented in accordance with the Vegetation Management Protocol prepared for the site to minimise weed transfer and edge effects.

The flora and fauna report and the recommendations are accepted.

The development removes a substantial area of native vegetation which is considered to be 'regrowth' according to the BioBanking Methodology.

A biodiversity assessment was undertaken for the site and it was determined that an offset strategy was required to compensate for the likely impacts of the development. A three hectare offset area is proposed to replace the removal of 0.07ha of Swamp Oak Floodplain Forest EEC (in good condition) and 0.17ha of regrowth. The location of the proposed offset area is on land owned by Council (Lot 51 DP 803471 1 Diemars Rd, Salamander Bay and lot 599 DP 658257 30 Homestead St, Salamander Bay). The offsets suggested are consistent with the BioBanking methodology. However, how the offset areas are to be managed for biodiversity outcomes are not identified. These areas would need to be protected in perpetuity and it needs to be demonstrated to Council that steps have been taken to secure a conservation based land covenant (land covenant under the *Conveyancing Act 1919*, a Voluntary Conservation Agreement (VCA) under the *National Parks and Wildlife Act 1975*, a Biobanking Agreement or transferral to the reserve system). If the application is approved, this matter needs to be included as a condition of consent.

The proposed 10-15m buffer from the building envelope on Lot 1 and the wetland is considered inadequate given the sensitive nature of the foreshore vegetation communities. Council has statutory authority to impose a buffer to sensitive ecological communities to a width appropriate to the sensitivity of the site. B2.C23 of the DCP states that, '*Development must provide buffer zones as screening to roads or for the protection of identified core habitats, koala habitat buffer areas and EEC's*', which does not specify a distance. However, B2.C16 states '*Development near watercourses must provide riparian buffers of up to 40m*'. This control aligns with the Water Management Act 2000 that requires approval from the State Government when a controlled activity (which includes, amongst other things, building works and the deposition or removal of material) occurs within 40m of water front land. While waterfront land in the main refers to the land adjacent to rivers, lakes and estuaries, the Office of Water has previously advised Council that land adjacent to wetlands can be included as waterfront land.

Buffers are zones of low impact designed to protect and screen sensitive habitats from development. These are always placed outside the identified sensitive area (in this case the Saltmarsh/SEPP 14 wetland area). This is because their purpose is to absorb any indirect impact before it enters the wetland area. A buffer placed within

the sensitive area is not a buffer. With respect to buffer widths, the width of buffers are ultimately at the discretion of Council, however, buffers of 40m are consistent with those given in the *Water Management Act 2000* as appropriate for wetlands. Saltmarsh is regarded as a threatened estuarine wetland community (as per *Fisheries Management Act 1998* and the *Threatened Species Conservation Act 1995* and is consistent with the classification of it being a wetland under the *Water Management Act 2000*). A buffer of 40m from the current Saltmarsh edge would wholly eliminate the proposed Lot 1 from consideration.

Although a buffer of 40m is the best outcome, a buffer of 25m in its current form would be supported. The applicant was requested to withdraw Lot 1 from the proposal to allow for a 25m buffer, to minimise the impacts on the SEPP 14 wetlands and Endangered Ecological Communities. However, the applicant has not agreed to increase the buffer distance. Council does not support a reduction in this buffer area, for any length of the wetlands, regardless of the overall size and length of the wetlands.

The applicant believes that the buffer distance is reasonable as they propose 10m for a 50m length to allow for the proposed building platform only. The applicant responded to Council's concerns over the impact of the development of the SEPP 14 wetlands and submitted the following:

- The SEPP 14 wetland has been ground truthed and is located outside the area to be developed.
- The stormwater will be directed away from the wetlands and will connect to the existing Council system. The filled land will be retained by a wall along the northern edge of the building envelope for lot 1 and the lot will be fenced.
- The applicant offered to dedicate 3ha of existing SEPP 14 wetland including saltmarsh EEC to Council or have it protected in perpetuity under a conservation agreement as discussed in an offset report submitted with the application.
- The SEPP 14 boundary is artificial having been changed over time due to earthworks associated with creating the salt evaporation ponds (to the north of the site), the ground is highly disturbed and the wetlands are degraded.
- The SEPP 14 boundary as mapped runs for 8km within lots 1 and 2 in DP 111507. The applicant suggests a development for the length of 50m within this 8km length (at a setback 10-25m) is reasonable.
- The project would replace an approved 10 dwelling development which on completion would have a similar impact and even result in additional impacts due to the waste water and stormwater drainage infrastructure being less sophisticated than what is now proposed.

In relation to the applicant's comments that the adjoining wetlands are degraded, this is why a 25m buffer from the boundary of the existing saltmarsh is necessary. In order to rehabilitate the adjoining saltmarsh land, this land will need to be incorporated into a rehabilitation plan suitable for an offset area and the adjoining land incorporated as part of the offset package.

In addition, Council does not support the dedication of land and would prefer the use of an offset mechanism. If the application is approved a condition of consent will

require details of a covenant or transfer of the land to the reserve system, prior to the issuing of a construction certificate with registration of the agreement/transfer, prior to the release of the subdivision certificate.

Drainage comments

To further assess the proposed infrastructure on site, additional details are required from the applicant including:

- a geotechnical report addressing the pavement design which considers the unique challenges of the site. The current drainage proposal may promote excess infiltration near the road surface compromising the life expectancy of the pavement. The submitted geotechnical report proposed advice in relation to the hydraulic loading of the soil from stormwater generated runoff and the effects on the water table. The stormwater plan needs to be updated to reflect this concern.
- revised plans showing cut and fill on the site that details existing and proposed finished levels.
- details on the transition between the road and the existing road to ensure that concentrated flows are not directed onto neighbouring properties or towards Albert Street.
- how maintenance and inspection of the underground water tanks will be possible, given the water tanks are proposed to be located underneath houses.
- a solution to the predicted sheet-flow of stormwater across the middle of the road. The proposed drainage system causes concern for the safety of vehicles travelling across the road during a storm event and as well as pedestrian safety and convenience, as stormwater is proposed to flow across the verge and road pavement.

The applicant has been made aware of the above drainage issues. However, amendment to the design has not been requested as the application is not supported for a number of environmental reasons. It is considered unreasonable to ask the developer to go to the expense of preparing the amended plans when the application is not supported. Should Council consider supporting this application then it would be advisable to seek a redesign of the road and drainage system before preparing a consent.

1.9 Port Stephens Section 94 Plan

Section 94 contributions apply to the development and payment of Section 94 would be recommended as part of any consent if the application is approved.

1.10 External referral - Marine Parks Authority NSW

The application was referred to the Marine Parks Authority for comment in accordance with Section 20 of the *Marine Parks Act 1997*. The following comment was received:

The immediate concern to our marine park with developments like this is the potential impact on water quality, habitat and in the longer term, ecological process. We appreciate these are routine considerations in Council's development process. Of emphasis to water quality in the marine park are effective sewage management and erosion and sedimentation controls. Ideally the MPA would like to see no increase in nutrient loads or sedimentation entering the Port. This is particularly important here because several oyster leases and a popular bathing beach lie in the vicinity of the proposed subdivision. Our primary interest is that clearing of the site and future building and construction does not lead to runoff and/or effluent migrating beyond the site into the waters of the Port.

Assuming best practice water quality management and water sensitive urban design is employed; the Marine Parks Authority has no objections to the above proposal.

1.11 External referral - NSW Office of Water

The development application was reviewed by the NSW Office of Water as a Controlled Activity Approval is required under the *Water Management Act 2000*, classifying the development as integrated development. General Terms of Approval were issued on the 12 June 2012, which are required to be placed on any consent issued. In addition, the NSW Office of Water stated that a controlled activity approval is required to be issued by the Office before the commencement of any works or activity on waterfront land.

The Office also requires review of the plans if any amendments are made to the plan to determine if any modifications are required to the general terms of approval. The latest set of plans has not been sent to the Office of Water. However, if the application is approved, this should occur before any consent can be issued.

1.12 External Referral - Rural Fire Service

The site is mapped as bushfire prone. As such, the proposed subdivision is integrated development under the provisions of Section 100B of the Rural Fires Act and Environmental Planning & Assessment Act.

The application was referred to the NSW Rural Fire Service, who issued General Terms of Approval for the development on 5/8/11. The conditions for the approval related to asset protection zones, water and utilities and public road access.

The proposed lot layout has been altered since the approval was granted and if the application is approved, the Rural Fire Service may need to amend the terms of approval to reflect the proposed layout and lot numbers.

2. Likely Impact of the Development

The proposed subdivision and future construction of dwellings is considered to have a detrimental impact on both the existing natural and built environment. The inadequate buffer to the wetlands and EEC is considered inappropriate and should be extended. The potential impact on these sensitive ecological communities is not supported and the flood risk associated with the site is too high to be acceptable and Council can not guarantee the new lots can be suitably serviced in the future.

3. Suitability of the Site

The site contains and adjoins land that has a number of sensitive environmental constraints such as SEPP 14 wetlands, endangered ecological communities (coastal saltmarsh), Tilligerry Creek and is also considered to be floodprone. The area is also not serviced by reticulated sewer, so any development on site could have potential impacts on the sensitive ecosystems in the area. The development is considered to be unsuitable for the site as it requires extensive fill to meet flood planning levels, it does not meet the requirements of Council's Flood Policy and is considered to be a high hazard. Filling of land to enable subdivision is not good floodplain management.

In addition, the proposed development is located too close to the SEPP 14 wetlands and the proposed wastewater system even though supported in principle does have a high risk associated with it due to the proximity to Tilligerry Creek.

4. Submissions

This application has been advertised and notified in accordance with Council Policy. Council received two (2) submissions opposing the development and one (1) petition supporting the development from adjoining property owners concerning the proposed development. The main concerns raised with the development relate to drainage, which has been extensively reviewed as part of this application. Comments were also raised over the existing approval on the site compared to the subject application.

5. Public Interest

The application is considered to be not in the public interest as it poses a cumulative impact and risk on the sensitive environmental nature of the site and the adjacent site, albeit the wetlands, coastal saltmarsh and Tilligerry Creek. The flood prone nature of the site also increases pressure on local facilities and emergency services, which is unwarranted given the availability of flood free land in the local government area.

**ATTACHMENT 3
REASONS FOR REFUSAL**

1. The application is considered unacceptable pursuant to the provisions of s.79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 in that the proposed development is inconsistent with the 2a Residential zone objectives of Port Stephens Local Environmental Plan 2000.
2. The application is considered unacceptable pursuant to the provisions of s.79C(1)(a)(ii) of the Environmental Planning and Assessment Act 1979 in that the proposed development is inconsistent with the R2 Low Density Residential zone objectives of Port Stephens Draft Local Environmental Plan 2013.
3. The application is considered unacceptable pursuant to the provisions of s.79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 in that the proposed development does not satisfy the matters for consideration in State Environmental Planning Policy No.71 – Coastal Protection.
4. The application is considered unacceptable pursuant to the provisions of s.79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 in that the proposed development does not meet the objectives and criteria for development on flood prone land of Port Stephens Local Environmental Plan 2000.
5. The application is considered unacceptable pursuant to the provisions of s.79C(1)(a)(iii) in that the proposed development does not provide a sufficient buffer distance to the SEPP 14 wetlands to mitigate the impacts of the development on the wetlands (Section B2 of Port Stephens Development Control Plan 2007).
6. The application is considered unacceptable pursuant to the provisions of s.79C(1)(b) in that the proposed development has likely environmental impacts on the natural and built environments.
7. The application is considered unacceptable pursuant to the provisions of s.79C(1)(c) in that the proposed development is unsuitable for the site.
8. The application is considered unacceptable pursuant to the provisions of s.79C(1)(e) of the Environmental Planning and Assessment Act 1979 in that the proposed development would set an undesirable precedent for similar inappropriate development on environmentally constrained sites and is therefore not in the public interest.

ITEM NO. 2

FILE NO: 16-2010-22-2

SECTION 96 MODIFICATION INVOLVING DESIGN INCREASE IN ROOF CONSTRUCTION FLOOR AREA AND BUILDING LINE SETBACKS FOR PROPOSED TWO (2) STOREY DWELLING AT 227 FORESHORE DRIVE CORLETTE

**REPORT OF: MATTHEW BROWN – DEVELOPMENT ASSESSMENT AND COMPLIANCE
SECTION MANAGER**

GROUP: DEVELOPMENT SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Not support the State Environmental Planning Policy 1 (SEPP1) variation to Clause 19 (floor space ratio) of the Port Stephens Local Environmental Plan 2000(LEP) for the construction of a two storey dwelling at lot 340 DP 27845 No 227 Foreshore Drive Corlette.
- 2) Refuse the Section 96 development application (DA 16-2011-507-2) for the building design modification for the construction of a two storey dwelling at Lot 340 DP 27845 No 227 Foreshore Drive Corlette for the following reasons:
 - a) The proposed Section 96 modification does not comply with the requirements of Clause 19 (floor space ratio) Port Stephens Local Environmental Plan 2000.
 - b) The proposed development is inconsistent with the provisions and Residential 2(a) zone objectives of Port Stephens Local Environmental Plan 2000.
 - c) The proposed development does not comply with the design requirements of Section B6 – Single and Dual Occupancy Dwellings, of Port Stephens Development Control Plan 2007 in relation to bulk and scale, floor area, rear building line setback (foreshore), front building line setback (road), and the side boundary setbacks.
 - d) The proposed dwelling is unsuitable for the proposed development site as it is susceptible to and significantly affected by sea level rise, inundation, erosion and flooding when assessed against Section 79C of the Environmental Planning and Assessment Act 1979.

**ORDINARY COUNCIL MEETING – 10 SEPTEMBER 2013
COMMITTEE OF THE WHOLE RECOMMENDATION**

	<p>Councillor John Morello Councillor Ken Jordan</p>
	<p>That Council approve the development application 16-2010-22-2 for a s96 modification for an increase in roof construction floor area and building line setback for the proposed two storey dwelling, in principle,</p>

	and request the General Manager to provide appropriate conditions of consent to Council for consideration.
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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: Mayor Bruce MacKenzie, Crs Peter Kafer, Paul Le Mottee, Ken Jordan, Steve Tucker, Geoff Dingle, John Morello and Sally Dover.

Those against the Motion: Nil.

MOTION

253	<p>Councillor Paul Le Mottee Councillor Steve Tucker</p> <p>It was resolved that Council approve the development application 16-2010-22-2 for a s96 modification for an increase in roof construction floor area and building line setback for the proposed two storey dwelling, in principle, and request the General Manager to provide appropriate conditions of consent to Council for consideration.</p>
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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: Mayor Bruce MacKenzie, Crs Peter Kafer, Paul Le Mottee, Ken Jordan, Steve Tucker, Geoff Dingle, John Morello and Sally Dover.

Those against the Motion: Nil.

BACKGROUND

The purpose of this report is to present to Council a Section 96 Development Application (DA) to modify DA 16-2010-22-2 to increase its floor area and size. The matter was called up by Mayor MacKenzie for the following reason: 'resident request'.

The key issues with the assessment of the amended DA are the proposed increase in floor space ratio, site coverage, bulk and scale of the proposal. It is to be noted that in the new draft Local Environmental Plan (LEP) floor space ratio is not a consideration. Therefore if this Section 96 was lodged when the new LEP was in force floor space ratio would not be a statutory LEP consideration.

Consent has previously been granted by Council under DA 16-2010-22-1 for the demolition of an existing single storey dwelling and the construction of a new two storey dwelling on Lot 340 DP: 27845, 227 Foreshore Drive Corlette. At the time, officer's recommended refusal of the DA due to its inconsistency with the provisions of a Residential 2(a) Zone, specifically the non compliance with floor

space ratio's, zone objectives, bulk and scale and susceptibility to flooding, inundation and associated erosion.

The subject site is constrained being:

- a. On a Lot size of 247 square metres; and
- b. Given its relative height above sea level is identified as potentially and significantly affected by the impacts of sea level rise, storm surge, wave run-up, inundation and flooding.

The Section 96 modification Development Application 16-2010-22-2 currently before Council for determination is for a proposed modification to DA 16-2010-22-1 to increase the size and alter the design of the proposed two storey dwelling at No 227 Foreshore Drive Corlette. There is no change to the proposed floor levels already approved via previous resolution of Council.

A request to vary a Development Standard, being Clauses 19 of the Port Stephens Local Environmental Plan 2000 (LEP) has been lodged under a SEPP1 application. If Council does not choose to support the variation to the LEP the proposal is not permissible and should be refused. If Council chooses to support the variation then the application can be assessed on its merits.

The proposed two storey dwelling Section 96 modification DA 16-2010-22-2 that is the subject of this Application must be reconsidered against the applicable current planning controls within the current LEP (**ATTACHMENT 2**).

Variation from previous approval

The existing development as approved under DA 16-2010-22-1 includes a building floor area of 308 sqm. This represents a floor space ratio (FSR) of 0.82:1.

The proposed Section 96 modification includes a building floor area of 327 sqm. This represents a floor space ratio (FSR) of 0.89:1.

The provisions of the Residential 2(a) Zone require the FSR to not exceed 0.5:1 with the minimum site area of 500 sqm. Both the existing approval and the proposed Section 96 modification exceed this provision on account of both the lot size of 247 sqm and the proposed FSR of 0.89:1.

Hence the development as proposed is not permissible unless Council supports a variation to the Development Standards within Clause 19 of the LEP with extracts summarised below.

Council is required to assess the request to vary the standards and determine whether the applicant has demonstrated that the LEP controls are considered unreasonable or unnecessary in this instance. To this end, the applicant was invited to demonstrate why the variation is justified in this instance (**ATTACHMENT 4**).

The applicants stated reasons for the variation are summarised as follows:

- *"The dwelling remains complimentary to the surrounding area and built form of neighbouring dwellings.*
- *Provision of the amendments create a minor increase of the existing approved building footprint, the proposal does not cause impacts in terms of privacy, noise or acoustics.*
- *The proposal contributes to the range of residential development in both design and housing type.*
- *Careful consideration has been given to the surrounding development to ensure the proposed addition has regard to the character of the area...."*
- *The footprint of the built form is consistent with the adjacent dwellings including the building setback of surrounding dwellings..."*

When considering variations to the LEP Floor Space Ratio requirements Council must take *'special care when dealing with the applications to extend non-conforming development by more than 10%*, (as per the requirements of Clause 11 Department of Planning Circular B1). This proposal is a non-conforming development and proposes a significant increase in the FSR.

Whilst it is appreciated that the subject site is constrained in both size and elevation it is not considered that a development standard variation should be supported. Rather, an additional increase in FSR to that which has already been approved will likely further exacerbate the overall non compliance of the development.

FINANCIAL/RESOURCE IMPLICATIONS

There are no foreseen financial or resource implications should the recommendation be supported.

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

LEGAL, POLICY AND RISK IMPLICATIONS

A review of the assessment report, the applicant's submission and the submitted information indicates that a decision contrary to the recommendation presents a high risk to Council as per Council's standard risk management matrix. These risks relate to Council, current and any subsequent occupiers of the dwelling, Council reputation and legal exposure. In this instance, a refusal of the application is the viable risk treatment.

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
There is a risk that the proposal will result in an over development of the subject site	High	Endorse the recommendation	Yes
There is a risk that the future proposal will be subject to future impacts from inundation and flooding	Extreme	Endorse the recommendation	Yes
There is a risk that the proposal will impact on the future viability of the development and the property on which it is located	Extreme	Endorse the recommendation	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The development modification is considered an overdevelopment of the site and incompatible with the immediate streetscape in terms of height, bulk and scale. The development poses an unacceptable environmental sustainability impact in terms of bulk, scale, privacy, solar access, and site coverage. The development is contrary to the public interest and expectations, of an orderly and predictable built environment consistent with Council policies.

Noting Council's previous approval for the same floor levels as proposed an approval of this application does not remove the proposed dwelling's susceptibility to the effects of sea level rise, inundation, flooding and the associated consequences due to climate change. The cumulative effects of such decisions may have long term adverse social, economic and environmental implications.

The temporary and intermittent impacts of unsuitable development on such land may contribute to long term and incremental environmental pollution through erosion, waterborne debris, residual debris, structural failure of dwellings, fences, outbuildings and other structures.

Balanced against this are the owner's and communities expectations to be able to upgrade the existing dwelling to suit their wants and complete the associated construction works.

CONSULTATION

The application was exhibited in accordance with Council policy and no submission was received.

OPTIONS

- 1) Adopt the recommendation;
- 2) Amend the recommendation;
- 3) Reject the recommendation and approve the application subject to appropriate conditions.

ATTACHMENTS

- 1) Locality Plan;
- 2) Assessment;
- 3) Site Inspection;
- 4) Applicants SEPP 1 submission.

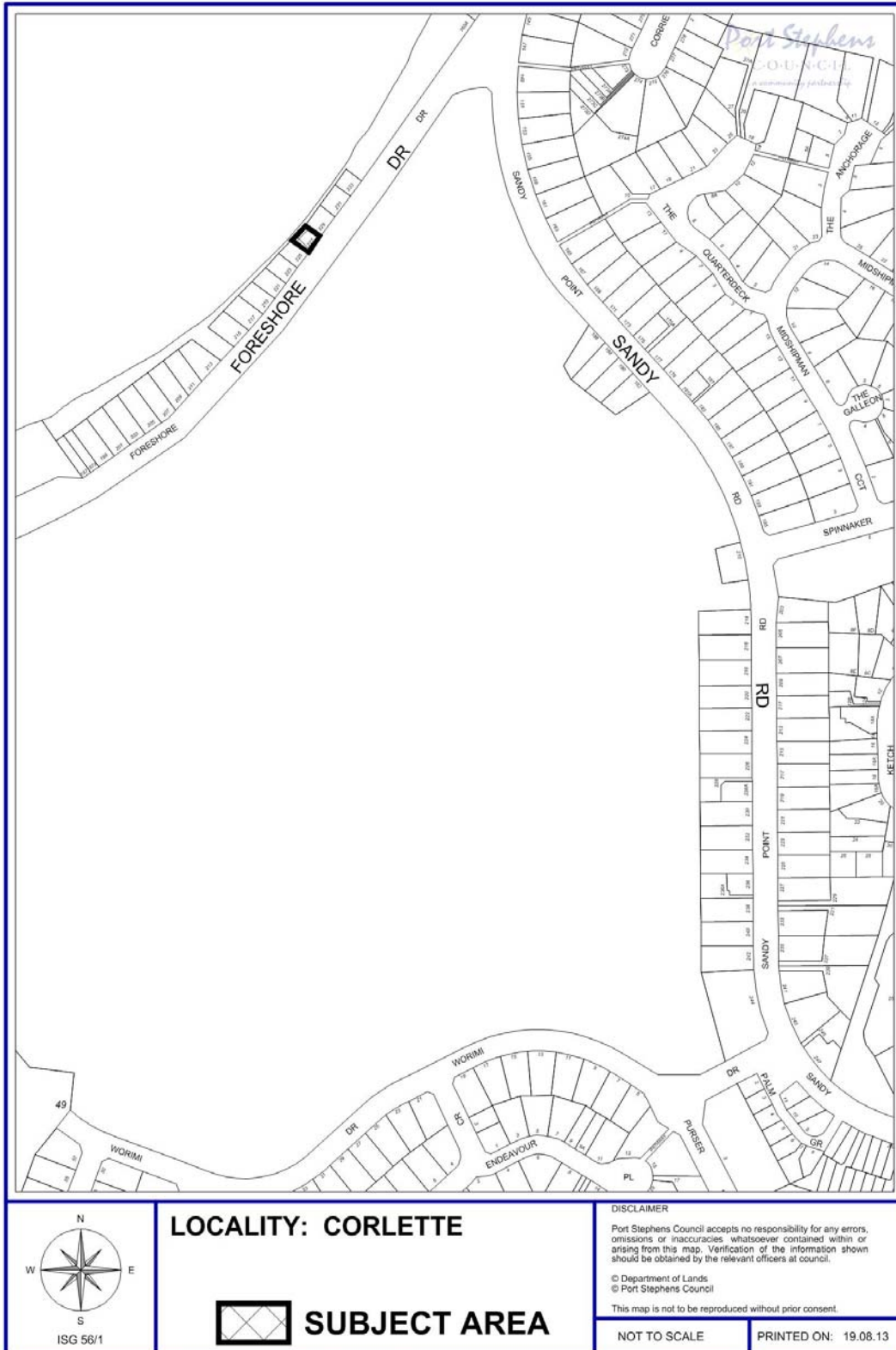
COUNCILLORS ROOM

- 1) Plans – including landscape, site analysis, site roof plan, ground floor, 1st floor and elevations;
- 2) Photographs.

TABLED DOCUMENTS

Nil.

ATTACHMENT 1
LOCALITY PLAN



**ATTACHMENT 2
ASSESSMENT**

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

THE PROPOSAL

The applicant seeks approval under Section 96 to modification DA 16-2010-22-1 for a two storey dwelling to replace the existing cottage.

THE APPLICATION

Owner	Mr R. G & Goodall.
Applicant	Designed Dimension Pty Ltd.
Detail Submitted	Statement of Environmental Effects Development Application Plans Drawing No 1101055-96 Page 1 to 5 Dated 14.8.13.

THE LAND

Property Description	Lot 340 DP 27845
Address	227 Foreshore Drive Corlette
Area	247.1m ²
Dimensions	The development site is a regular shape having a frontage to Foreshore Drive of 15.240m and a rear width of 15.365m. The site's northern boundary is 15.24m and the southern boundary is 17.19m.
Characteristics	The site currently contains a single Storey weatherboard Dwelling and single storey garage. The existing single storey dwelling on site is proposed to be demolished in the context of this application. The site contains a lawn, and is predominantly clear of vegetation. The site is generally flat at the front and slopes toward the Reserve at the rear.

THE ASSESSMENT

1. Planning Provisions

Environmental Planning and Assessment Act 1979

N.S.W Sea Level Rise Policy Statement

State Environmental Planning Policies	SEPP 71
LEP 2000 – Zoning	2(a) Residential
Draft LEP 2013 – Zoning	R2 Low Density Residential
Relevant Clauses	16, 19, 37 & 38
Development Control Plan Port Stephens DCP 2007	

Proposed Development

Attribute	Proposed	Required	Compliance	Variation	Variation approved under DA 16-2010-22-1
NSW Sea Level Rise Policy Statement Subject to Coastal erosion and flooding risk.	Floor Level of 2.16 AHD <i>Garage 2.5 AHD lower non habitable floor level</i> <i>Upper floor habitable rooms 5.5m AHD</i>	Flood Planning Level for non habitable rooms of 2.8m AHD. Flood Planning Level for habitable rooms of 3.4 m AHD.	No Yes	Approx 700mm for the garage; approx 300mm for the ground floor level.	<i>2.16 AHD Garage</i> <i>2.5 AHD lower non habitable floor level</i> <i>habitable rooms 5.5m AHD</i>
LEP Requirements- Pending Support for SEPP1 Variation					
Min. Area Per Dwelling	247m ²	500m ²	N/A	N/A	Existing Use.
Floor Space Ratio	0.89:1 222/247 m ² Lot size	0.50:1 124/247m ² Lot size	No	39% variation sought above LEP requirement	0.82:1 <i>202/247 m² Lot size</i>
Merit	Total building Area of 308m²	Total building area of 327m²	No		At 308m²
Height		9m		Yes	8.910m
DCP Requirements					
Number of storeys (except for loft spaces)	2	2	Yes	<i>Nil</i>	2
Building Line Setback	3 Metres	6 metres	No	50%variation sought above the DCP 2007 requirement	2.4 Metres

MINUTES FOR ORDINARY COUNCIL – 10 SEPTEMBER 2013

Side Setbacks	Northern Boundary (2 Storey) 1190m	2m	<i>No</i>	40%	Northern Boundary (2 Storey) 1190m
	Southern Boundary (1 Storey) 0 mm	0.900m	<i>No</i>	100%	Southern Boundary (1 Storey) 200mm
	Eastern Boundary (2 Storey) 1500mm	2000mm	<i>No</i>	25%.	Eastern Boundary (2 Storey) 1800mm
Rear Setbacks Foreshore	Western Boundary Deck 1.210m to 2.870m Dwelling Lower storey 1.210m to 2.870m	4.5m	<i>No</i>	78 %	Western Boundary Deck 1.210m to 2.870m Dwelling Lower storey 1.210m to 2.870m
	Upper storey 2.700m to 4.295m	4.5m	<i>No.</i>	40%	Upper storey 3.165m to 3.700m
Building heights	Approx 8m RL 10.315	<9m	<i>Yes</i>		Approx 8m RL 10.10
Retaining Walls	<i>600mm</i>	<i>600mm</i>	<i>yes</i>		<i>600mm</i>
BASIX			<i>yes</i>		
Acid Sulphate	<i>Proposed slab on fill</i>	<i>Class 5</i>	<i>yes</i>		<i>Proposed slab on fill</i>
Resident parking	<i>2</i>	<i>2</i>	<i>Yes</i>		
Site coverage House/driveway	Proposed (178m²) 71%	<i>60%</i>	No	11%	

Total house area and driveway Site coverage	Proposed 327m 131%	Merit	No		Approved previously 125% (308m ²)
Acid Sulphate	Proposed development designed to be Slab on ground	The site is classified Acid Sulphate Soils Class 5. No works permitted below 2 metres or more that will structural affect the proposed building.		Yes	

NSW Sea Level Rise Policy

The development in respect to the dwelling site and proposed finished floor level of non habitable rooms is inconsistent with the objectives of the NSW Sea Level Rise Policy and its intended purpose of safeguarding development from inundation from sea water due to sea level rise and other factors relating to climate change.

Port Stephens Local Environmental Plan 2000

Consent of a two (2) storey dwelling in the form proposed is considered consistent with the provisions of Port Stephens Council Local Environmental Plan 2000 except in the instance of flooding risk in association with Sea Level Rise.

The design fails to take into account the environmental constraints of the site.

Clause 19

The proposed development is consistent with the development standards of minimum site area per dwelling, but not consistent for floor space ratio specified within Clause 19 of the Port Stephens LEP 2000. The proposed development is considered to be consistent with the development standard of height specified within Clause 19 of the Port Stephens LEP 2000/

Note: Floor space ratio is not a criteria listed in the Port Stephens Council Draft LEP 2013.

Clause 37

Objectives for development on flood prone land

The objectives for development on flood prone land are:

- (a) to minimise risk to human life and damage to property caused by flooding and inundation through controlling development, and*
- (b) to ensure that the nature and extent of the flooding and inundation hazard are considered prior to development taking place, and*
- (c) to provide flexibility in controlling development in flood prone localities so that the new information or approaches to hazard management can be employed where appropriate.*

It is considered that the development with its proposed finished floor level of RL2.500m is inconsistent with the provisions of this clause and do not satisfy the intent of the objectives. The adoption of a climate change sea level rise increase of .90m with a linear increase till the year 2100 indicates that this development will be unsustainable at its proposed levels within a limited time period.

Clause 38

Development on flood prone land

- (1) *A person shall not carry out development for any purpose on flood prone land except with the consent of the consent authority.*
- (2) *Before granting consent to development on flood prone land the consent authority must consider the following:*
 - (a) *the extent and nature of the flooding or inundation hazard affecting the land,*
 - (b) *whether or not the proposed development would increase the risk or severity of flooding or inundation affecting other land or buildings, works or other land uses in the vicinity,*
 - (c) *whether the risk of flooding or inundation affecting the proposed development could reasonably be mitigated and whether conditions should be imposed on any consent to further the objectives of this plan,*
 - (d) *the social impact of flooding on occupants, including the ability of emergency services to access, rescue and support residents of flood prone areas,*
 - (e) *the provisions of any floodplain management plan or development control plan adopted by the Council.*

In the consideration of (2) of clause 38 it is considered that the proposed development is inconsistent with the objectives of subclauses (a), (c), (d) and (e) given the proposed ground floor non habitable floor level of RL 2.500m. The figure to accommodate for Climate Change, Sea Level Rise at this location is 2.8m AHD for non habitable rooms. (1% wind wave plus 500mm freeboard).

As a result it is expected, based on these figures that the development will be compromised by the increase of sea level and associated climate change phenomenon during its practical lifespan.

The most practical mitigation measure to offset the effects of Climate Change, Sea Level Rise available to the development is the adoption of the new Flood Planning Level (FPL) of 3.4m AHD for habitable rooms and 2.8m AHD for non habitable rooms. Given the proposed ground FFL level of RL 2.500m for the non habitable rooms, the safe and flood free floor level of the development will be compromised.

The social impact is hard to quantify however, the effects of flooding and inundation of seawater into dwellings is well documented. Given the level of development within the coastal fringe it would be acceptable to consider that the ability of emergency services to service individual households would be limited at best. The frequency of flooding events is a main factor in the amenity of the occupants. In the

context of climate change, predictions would indicate that a sea level rise coupled with increased storm events and increased severity that flooding events in this location would increase.

The development is inconsistent with the provisions of the NSW Sea Level Rise Policy and adopted sea level rise increase of .91m in the year 2100. This has been recently amended by the New South Wales Government Guidelines to 0.9m.

State Environmental Planning Policy No. 71 – Coastal Protection

The development is considered to be contrary to the provisions of Clause 16 SEPP 71.

Clause 16 states:

The consent authority must not grant consent to a development application to carry out development on land to which this Policy applies if the consent authority is of the opinion that the development will, or is likely to, discharge untreated stormwater into the sea, a beach, or an estuary, a coastal lake, a coastal creek or other similar body of water, or onto a rock platform.

Port Stephens Development Control Plan 2007

The performance based design requirements of Port Stephens Development Control Plan 2007 are relevant to the assessment of this application. Assessment of the key design considerations are addressed below:

Streetscape, Building Height, Bulk and Scale

The proposed two (2) storey dwelling is not considered to have a serious impact on the surrounding development and associated land uses that comprise residential occupancies.

This matter has been considered and the development in its current form is acceptable in regards to bulk, scale and height.

The objectives and control principles of the DCP indicate that the bulk and scale of a dwelling in 2(a) Residential should be sympathetic to the local street content. The development is to take into consideration its design elements to minimise the impact on the amenity of the adjacent dwellings and land.

The proposal does not comply with the floor space ratio and site coverage objectives. However, due to the size of the allotment, the design presents a compromise with the two neighbouring developments and is it considered generally to comply with the intent of Council's Development Control Plan 2007 Clause B6.5.

Privacy

There are no issues with privacy as the proposal has allowed privacy screens at each end of the first floor balconies to protect the adjoining properties.

Boundary Setbacks

The boundary setback on the all boundaries is not consistent with the intent of the DCP 2007. However, the site is considered to be infill development and as such needs to be considered by Council with the lodgement an Application to vary the requirements of the Development Control Plan 2007 in regards to building line setbacks to all of boundary alignments.

Site Coverage

The development is not compliant with the requirements of floor space ratio and site coverage specified in Clause 19 of the LEP.

The proposed development exceeds the floor space Ratio of 0.5:1. Further consideration has been given to the Development Application as the applicant has requested for variation under a SEPP 1 Application to Council. This matter has been forward to the NSW Department of Planning request concurrence in favour of such variation due to the allotment size and existing building precedence within the surrounding area. Written concurrence has been received from the Department given approval for such variation.

Acoustic Privacy

Whilst external open space forms part of typical residential development, the resulting elevated open space associated with the dwelling and external balcony areas has the potential to have a minor impact on acoustic privacy.

Solar Access

With respect to overshadowing, given the orientation of the allotment and size of the allotment it is considered that the development is not in compliance with the provisions of DCP 2007 in respect to solar access.

Views

The development site and adjacent properties immediately, contain excellent water views of Port Stephens. There were no submissions responding to matters in relation to the reduction of scenic views surrounding the proposed residential development.

Parking & Traffic

The parking and traffic arrangements are in accordance with Council's Development Control Plan 2007.

The development provides garage parking for two (2) cars.

Usable Open Space

The size of the allotment provides extensive ground level open space accessible from living areas.

Landscaping

The proposal provides adequate planter and garden bed landscape areas.

Flora and Fauna

The development site is not identified as containing any threatened flora or fauna or endangered ecological communities. It is not considered that this development will result in adverse impacts to, or pose an unacceptable risk to, threatened flora and fauna.

2. Likely Impact of the Development

The impact of the proposed development on the site is unsuitable as it is susceptible to and significantly affected by sea level rise, inundation and flooding.

The Designed Ground Floor Levels are below the minimum acceptable Australian Height Datum (AHD) benchmark levels for sea level rise for this location (0.91m for the year 2100 for use in developing FPL for AEP flooding events, adopted by Council at its meeting on the 19th May 2009). This has been recently amended by the New South Wales Government Guidelines to 0.9m

The proposed development is inconsistent with the provisions of Port Stephens Local Environment Plan 2000 - in particular, the Residential 2(A) Zone objectives and considerations for development on land affected by or susceptible to by sea level rise, inundation and flooding.

Otherwise, the proposed development is generally consistent with the requirements of Port Stephens Local Environmental Plan 2000 and Development Control Plan 2007. The bulk and scale of a two storey dwelling in the form proposed is generally consistent with the intent and objectives of the controls.

3. Suitability of the Site

The site is constrained as it is susceptible to and significantly affected by likely sea level rise and associated climate change phenomenon, inundation and flooding and hence is unsuitable for the proposed dwelling in its current form.

4. Acid Sulphate Soils

The land is subject to acid sulphate soils Class 5.

5. Submissions

The application was advertised and notified in accordance with Port Stephens Development Control Plan 2007. No submission was received.

6. Public Interest

The proposed building is in keeping with the design characteristics, suitability and appearance within the existing streetscape. However, the proposed dwelling is not consistent with public expectations in relation to the predicted impacts of climate change.

ATTACHMENT 3

Site Inspection Survey – 227 Foreshore Drive Corlette

A site inspection was scheduled and completed by Council on Thursday 17 February 2011, per council resolution at the meeting of 14 December 2010. The full report to Council is attached for Council's information together with the professional officer recommendation for refusal of the Development Application for Two Storey Dwelling at No. 227 Foreshore Drive, Corlette.

During the site inspection it was noted that several existing dwellings within the vicinity of the development site appeared to be larger than what would currently be permissible under the Council's policies (Such as the provisions of Clause 19 of the Port Stephens Local Environmental Plan 2000 (LEP) and the Port Stephens Development Control Plan (DCP)). Accordingly a limited survey of the dwellings and associated buildings within close proximity to 227 Foreshore Drive, Corlette has revealed the following data to inform Council and confirm the observations made at the recent site inspection.

Foreshore Drive street Number	Site Area	Total Floor Area	Floor coverage %	Floor area less garage/store	FSR PSLEP
215	444	424	95%	400	0.90:1
217	437	220	50%	156	0.35:1
219	364	126	35%	126	0.34:1
221	336	287	85%	237	0.70:1
223	232	196	84%	150	0.64:1
225	273	186	68%	168	0.61:1
229	306	418	137%	237	0.77:1
231	305	360	118%	280	0.91:1
233	233	143	61%	91	0.39:1
197	276	221	80%	140	0.50:1
197A	279	221	79%	140	0.50:1
199	562	493	88%	288	0.51:1
201	570	494	87%	441	0.77:1
203	578	288	50%	204	0.35:1
205	586	165	28%	137	0.23:1
207	587	320	55%	280	0.47:1
209	548	405	74%	341	0.62:1
211	503	482	96%	418	0.83:1
213	536	480	90%	416	0.77:1
227 Proposed	247	274	111%	104	0.42 :1
227 Superseded Plan Proposed	247	308	125%	226	0.91:1

NB. The areas are estimates only and in most cases have not been truthed by reference to site survey plans or building plans.

Reference to the data supplied on the table confirms that the bulk and scale of the proposal is well in excess of the average for homes within the area. Most of the buildings are significantly smaller in bulk and scale to the 308m² dwelling proposed in the development application. The development site is the smallest Lot in the vicinity, has a floor area to site coverage of 125% and a FSR (as per the PSLEP provisions) of 0.91:1. It is an unreasonable expectation given the circumstances and the Council's current policies to build a dwelling of the bulk and scale as proposed.

The building at No. 229 and No 231 have floor areas respectively of 418m² and 360m² and were approved prior to the current policies being in force there; not being subject to current measures of site coverage or FSR.

ATTACHMENT 4



Sorensen Design & Planning

Unique Building Design • Town Planning

REQUEST FOR VARIATION TO

DEVELOPMENT STANDARDS

STATE ENVIRONMENTAL PLANNING POLICY
No.1 (SEPP 1)

RICHARD GOODALL

Lot 340, DP 27845; 227 Foreshore Drive, Corlette

June 2013

File No. 1101055

1 ©

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1 INTRODUCTION

Sorensen Design acts on behalf of Richard Goodall in submitting this SEPP No. 1 objection.

This SEPP No.1 objection requests to vary the development standard contained within Clause 19 of the Port Stephens Local Environmental Plan 2000 pertaining to the maximum permissible floor space ratio. The proposed additions will increase the Floor to Space Ratio to 0.83:1, a variation of 66% to the FSR as set down in the LEP.

Strict compliance with the standard in this circumstance would tend to hinder the attainment of the objectives of the *Environmental Planning and Assessment Act 1979*, as set out in sections 5a(i) and (ii); also of relevance are sections 5a(v) and (vii).

5 – Objects

The objects of this Act are:

(a) *to encourage:*

(i) the proper management, 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,

Also,

(v) the provision and co-ordination of community services and facilities,
and

(vii) ecologically sustainable development.

2 SITE DESCRIPTION AND LOCATION CONTEXT

The following information outlines the property details and the proposed development

2.1 Property Location

227 Foreshore Drive Corlette, NSW

2.2 Property Description

Lot 340, DP 27845

2.3 Owner(s)

Richard Goodall

2.4 Zoning

2a Residential

2.5 Application Number

22/2010; approved - 4 August, 2011

2.6 Proposal Definition & Description

The proposal includes replacement of the existing dwelling with a new proposal in residential zone "2a". The proposed development is defined as a 'dwelling' pursuant to the Port Stephens Local Environmental Plan 2000 as follows:

'dwelling' means a room or suite of rooms occupied or used or so constructed or adapted as to be capable of being occupied or used as a separate domicile.

The proposal for the site is considered essential to address the inadequacies and the age of the existing dwelling, the constraints of the site and to ensure the sustainable use of the property into the future.

3 POLICY AND GUIDELINES FOR THIS APPLICATION

The *State Environmental Planning Policy No. 1 - Development Standards* was introduced to allow flexibility in the application of development standards where it can be shown that strict compliance is unreasonable or unnecessary in the circumstances of the case. This environmental instrument can also be applied where strict compliance of the development standard would tend to hinder the attainment of the objects of the *Environmental Planning and Assessment Act 1979* as specified in Section 5(a)(i) and (ii).

Specifically, Clause 6 of SEPP 1 allows the instrument to be used as a mechanism for objecting to a development standard. Clause 6 states:

6 – Making of Applications

Where development could, but for any development standard, be carried out under the Act (either with or without the necessity for consent under the Act being obtained therefore) the person intending to carry out that development may make a development application in respect of that development, supported by a written objection that compliance with that development standard is unreasonable or unnecessary in the circumstances of the case, and specify the grounds of that objection

This SEPP 1 objection is made in accordance with the provisions of Clause 6 as outlined above. Clause 7 of the SEPP grants the discretion and power to the Consent Authority to support a SEPP 1 objection and subsequently issue development consent. Clause 7 states:

7 – Consent may be granted

Where the consent authority is satisfied that the objection is well founded and is also of the opinion that granting consent to that development application is consistent with the aims of this policy as set out in Clause 3, it may, with the concurrence of the Director, grant consent to that development application notwithstanding the development standard the subject of the objection referred to in Clause 6.

While generally accepted that a variation of less than 10 percent is an acceptable deviation from the development standard, SEPP 1 makes no reference to the extent of the variation permissible under its provisions, and substantial variations have been allowed. Farrier (2000) notes, "the Court of Appeal upheld a decision to allow a Floor Space Ratio more than four times and a height ratio more than three times that permitted by the development standards".

In determining whether a development standard should be set aside to permit the granting of development consent, the consent authority should consider the following elements as established by the New South Wales Land and Environment Court in *Winten Property Group Limited v North Sydney Council [2001]* .

[26] First, is the planning control in question a development standard? Second, what is the underlying object or purpose of the standard? Third, is compliance with the development standard consistent with the aims of the policy, and in particular does compliance with the development standard tend to hinder the

attainment of objects specified in section 5(a)(i) and (ii) of the EP&A Act? Fourth, is compliance with the development standard unreasonable or unnecessary in the circumstances of the case? Fifth, is the objection well founded?

In applying the above precedent, this SEPP variation aims to satisfy that:

- The objection is well founded
- Granting of consent meets the aims and underlying principles of the policy
- Non-compliance does not hinder the attainment of the EP & A Act objectives
- Strict compliance would result in an unreasonable and unnecessary planning outcome

It should be noted that this does not mean that the particular development standard is unreasonable or unnecessary for all purposes. It is simply that compliance is not appropriate in this circumstance.

4 THE PROPOSAL

It is proposed to alter the existing approved DA (22/2010) by Section 96 amendment application. The dwelling remains complimentary to the surrounding area and built form of neighbouring existing dwellings.

The development will present to Foreshore Drive and the foreshore reserve of Port Stephens a design which complies with the principles of the Port Stephens Development Control Plan 2007, with increased casual street surveillance. Provision of the amendments create a minor increase of the existing approved building footprint, the proposal does not cause additional impacts in terms of privacy, noise or acoustics.

The subject site is located within a 2(a) residential zone and the proposal is deemed permissible in this area. The following section identifies the objectives of this residential zone, and how the proposal is consistent in meeting these objectives.

4.1 Objectives of the Zone

The objectives of the Port Stephens Local Environmental Plan 2000 (PS LEP 2000) Residential "a" Zone are:

- a) *to encourage a range of residential development providing for a variety of housing types and designs, densities and associated land uses, with adequate levels of privacy, solar access, open space, visual amenity and services, and*
- b) *to ensure that infill development has regard to the character of the area in which it is proposed and does not have an unacceptable effect on adjoining land by way of shading, invasion of privacy, noise and the like, and*
- c) *to provide for non-residential uses that are compatible with the area and service local residents, and*
- d) *to facilitate an ecologically sustainable approach to residential development by minimizing fossil fuel use, protecting environmental assets and providing for a more efficient use of existing infrastructure and services, and*
- e) *to ensure that the design of residential areas takes into account environmental constraints including soil erosion, flooding and bushfire risk.*

4.2 How this proposal addresses the desired objectives of the 2(a) zone

The zone objectives were carefully considered during the design of the proposal. The proposal contributes to the range of residential development in both design and housing type.

The site is located opposite the waterfront of Corlette, and dwellings within the surrounding area have been designed to maximise the views of this unique characteristic. The existing residential character of the street is made up of large double-storey, single storey and dual occupancy dwellings, generally of high quality design.

Careful consideration has been given to the surrounding development to ensure that the proposed addition has regard to the character of the area in which it is proposed and does not have an unacceptable effect on adjoining land by way of shading, invasion of privacy, noise and the like. The size and scale of dwellings within the area has been considered during the design of the proposal and are further detailed with this assessment.

The site has existing infrastructure and services in place and will not result in any additional demands. The proposal is especially consistent with the intention of clause (d) in its compliance with the principles of ecologically sustainable development, and providing for the efficient use of existing infrastructure and services. Overall, the proposed development is consistent with the objectives of the zone, particularly with respect to the existing character of the area.

5 UNDERLYING PRINCIPLES OF THE DEVELOPMENT CONTROL

In determining whether a development standard should be set aside to permit the granting of development consent, it must be demonstrated that compliance with the development standard is unnecessary or unreasonable in the circumstances of the case, having regard to the stated and underlying objectives and intent of the standard and the broader planning objectives for the locality.

Clause 19 'Dwelling-houses, dual occupancy housing and urban housing' of the Port Stephens Local Environmental Plan 2000 states that the ratio of the gross floor area of the building to the site area of the allotment must not exceed 0.5:1 (2(a) Zone, Unspecified areas).

While there are no stated objectives of this Clause, the general underlying principles for implementing Floor Space Ratio are taken to be:

- To provide a degree of consistency for existing residents as to the size and bulk of potential buildings in their neighbourhood
- To allow buildings of sufficient scale to satisfy the needs of residents while preventing development of sites beyond community expectations and the environmental capacity of the zone, and;
- To preserve the amenity of existing dwellings and provide amenity to new dwellings in terms of shadowing, privacy, views, ventilation and solar access

Senior Commissioner Roseth stated in *Salanitro-Chafei v Ashfield Council (2005)*:

The upper level of density that is compatible with the character of typical single-dwelling areas is around 0.5:1. Higher densities tend to produce urban rather than suburban character. This is not to say that a building with a higher FSR than 0.5:1 is necessarily inappropriate in a suburban area; only that once 0.5:1 is exceeded, it requires high levels of design skill to make a building fit into its surroundings.

Existing development within the area, as demonstrated further in this assessment, is typically two-storey dwellings, dual occupancy dwellings and single dwellings. Close examination of the character of the area has been assessed to ensure the design of the proposal fits into the existing surrounds.

Notwithstanding the proposed non-compliance with the FSR standard, the proposed development is considered to perform favourably in relation to the objectives of the development standard. The proposal is consistent with existing residences with regard to size and bulk. The proposal is required to satisfy the needs of the existing residents, but is not considered to be inconsistent with community expectations of built form in the area.

Due to the circumstances of the case, and the area of the site, a merit based assessment is proposed in this circumstance, as rigid implementation of the floor space ratio limit as per the *Port Stephens LEP 2000* is considered unreasonable.

The Land and Environment Court have identified specific planning principles regarding the redevelopment and a merit based assessment. Senior Commissioner Roseth (*Fodor Investments v Hornsby Shire Council [2005] NSWLEC 71*) established a set of questions

or criteria which arise in the assessment of proposals on land with existing use rights where merit assessment must be used to assess such a proposal. While existing use rights are not relevant in this circumstance, a merit based assessment is relevant; therefore the principles set out by Senior Commissioner Roseth have been addressed in this SEPP 1 objection. The relevant questions raised by Senior Commissioner Roseth include:

- How do bulk and scale (as expressed by height, floor space ratio and setbacks) of the proposal relate to what is permissible on surrounding sites?
- What are the impacts on adjoining land?
- What is the internal amenity?

The above planning principle has been applied in a logical manner to ascertain how the proposal is consistent with the underlying principles of the policy, and embodies a design outcome to demonstrate the merits of the proposal.

6 COMPLIANCE WITH THE UNDERLYING PRINCIPLES

To assist in determining whether the proposal, the underlying principles have been addressed. This includes:

- Bulk and Scale of the dwelling
- Satisfying the needs of residents and meeting community expectations
- Preserving the amenity of the dwelling and neighbouring dwellings

6.1 Bulk and Scale

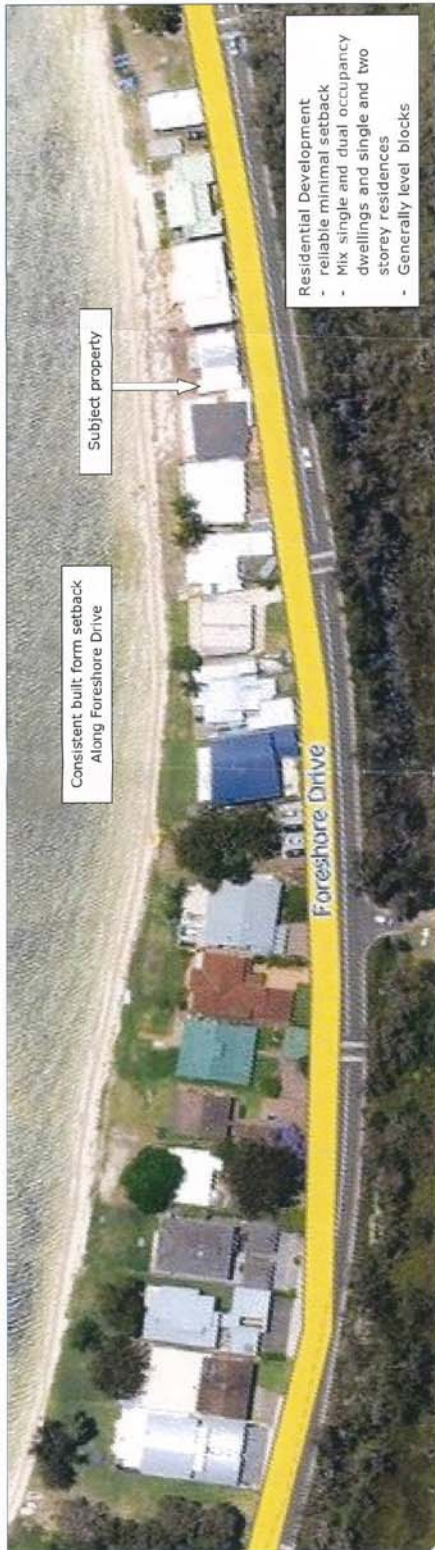
In considering bulk and scale, Senior Commissioner Roseth outlines that the Height, Floor Space Ratio and Setbacks must be considered. As demonstrated in Table 1, the proposal meets the development standards set out in the *Port Stephens LEP 2000* relating to these matters, with the exception of Floor Space Ratio. Considering the size and setbacks of surrounding dwellings, as well as minimal change being made to the building footprint of the approved dwelling by the proposed amendment, the bulk and scale of the proposal is considered balanced and to be in accordance with the neighbouring sites.

Port Stephens LEP Clause 19 – Development Table – Minimum Standards					
Housing Type	Zone	Minimum Site Area per Dwelling	Floor Space Ratio	Maximum Height	Maximum Site Coverage
Dwelling House	2(a)	500m ²	0.5:1	9m	60%
Development Standards for this proposal					
Dwelling House	2(a)	247.13m ² (existing)	0.83:1	8.7m	69%

Table 1: Port Stephens Development Standards

The proposed alterations and additions relate appropriately to the surrounding buildings, providing a suitable transition in bulk and scale between the neighbouring dwellings. The built form outline of existing development is clearly illustrated in Figure 6-1.

Figure 6.1: Aerial View of subject site and surrounding dwellings



The footprint of the built form is consistent with the adjacent dwellings including the building set back of surrounding dwellings, most neighbouring dwellings have garages forward of the building line and within the front building setback.

The merit assessment principle is supported by another planning principle relating to the compatibility of a proposal with surrounding development. Senior Commissioner Roseth (Project Venture Developments v Pittwater Council [2005] NSWLEC 191) stated that the following planning principle is to be applied in assessing the compatibility of a development in the urban environment:

Where compatibility between a building and its surroundings is desirable, its two major aspects are physical impact and visual impact. In order to test whether a proposal is compatible with its context, two questions should be asked:

- Are the proposal's physical impacts on surrounding development acceptable? The physical impacts include constraints on the development potential of surrounding sites.

As the proposed amendment is generally contained within the approved building footprint, the physical impacts are minimal. The design of the proposal includes articulation over the garage and generous areas of glass to mitigate any perceptions of overwhelming built form.

In addition, the effect on neighbouring dwellings has been given careful consideration and it is concluded that due to the proposal not exceeding the existing building height that no development potential will be hindered.

Through careful design and evaluation of adjoining development the physical impacts of the proposal, including building footprint and setback have been considered and will not constrain the development potential of surrounding sites.

- Is the proposal's appearance in harmony with the buildings around it and the character of the street?

To reduce the subjectivity when deciding whether a building appears in harmony with its surroundings, analysis of the existing context should be undertaken and then the proposal tested against it. Senior Commissioner Roseth explained that "for a development to be visually compatible with its context, it should contain, or at least respond to, the essential elements that make up the character of the surrounding urban environment. The most important contributor to urban character is the relationship of built form to surrounding space, a relationship that is created by building height, setbacks and landscaping". The urban character of the area and how the proposal responds to this is addressed throughout this objection, and supporting evidence is provided within the corresponding images. The key factors include that the proposal is consistent with existing built form in height, setbacks, landscaping and land form constraints.

The objectives for building Bulk and Scale are met by the fact that the development is not excessive and relates well to the local context and overall site constraints; encourages design, which creates desirable living conditions; ensures the amenity of surrounding properties is properly considered; and allows adequate opportunity for landscaping.

As indicated in the previous sections, the development has been sited and designed at such a scale to ensure that no significant loss of amenity results for adjacent properties. The design results in additional space that creates desirable living conditions and improves the amenity of the dwelling. As demonstrated in Table 1 the proposal meets the development controls for minimum site area per dwelling (based on approval for the existing dwelling), height and maximum site coverage.

Consistent with many other developments within the area, this proposal is designed to be in keeping with the scale and character of the adjoining urban environment. The bulk and scale is compliant with the objectives listed above. Similar built form design features to the proposed development exist in the streetscape. Figure 6-1 and 6-2 illustrate some of the buildings located in this section of Sandy Point Road and highlights the relationship of the existing building setbacks from the boundary, illustrates the presence of garages and driveways.

Similar large single dwellings and dual occupancies are typical of the built form of the street as shown in Figure 6-1. It is deemed that the proposal meets the underlying principle of bulk and scale and is consistent with the surrounding streetscape and urban environment.

6.2 Satisfy the needs of Residents and Meet Community Expectations

Occupants require the additional vehicle & living space specifically to cater for family members. Through the development of the proposed dwelling in this instance, the needs of the residents will be met, and the internal amenity of the dwelling will be significantly improved by providing a suitable area to cater for the family's needs, and additional usable internal space.

Alternatively, if the proposal is not developed, the occupants will be obliged to seek alternative accommodation for the family members elsewhere in the Port Stephens area. This option has considerable financial constraints and impacts and does not provide an ideal outcome in line with the expectations of the community.

Failure to undertake the proposed development would be inconsistent with the principles of ecologically sustainable development, would remove family members from a stable and predictable environment and result in additional pressure on the family and community services and facilities.

By applying a common-sense analysis to the circumstances of the case, it is clear that the proposal provides the most efficient, cost-effective planning outcome that satisfies the needs of the residents and meets community expectations for families to care for their dependants.

6.3 Preserve Amenity

The amenity of the inside of the dwelling has been carefully considered. The proposals design will provide casual surveillance opportunities as well as providing improved personal living space than presently provided on the site. The deck area provides visual surveillance of the foreshore, whilst windows are provided for observation of the street.

The proposed development is of a high quality design and represents efficient and appropriate use of land that is entirely compatible with the environmental capacity of the site and its surrounding dwellings.

The proposed dwelling will not result in any unreasonable or unacceptable impacts to neighbouring residential properties and buildings in terms of visual bulk and scale, overshadowing, loss of views or privacy. No letters of objection were received from neighbours as a result of the notification process.

The proposal has been designed in consideration of the objectives of the Port Stephens LEP, and it is deemed that the aims of the instrument as outlined in Clause 2 support the development control variation.

The significant planning objectives pertaining to this variation are:

This plan aims to:

(f) – allow flexibility in the planning framework so as to encourage orderly, economic and equitable development while safeguarding the community's interests,

(g) – ensure that development has regard to the principles of ecologically sustainable development

The proposed development is consistent with the objectives of the zone, particularly with respect to the existing character of the area. Clause 44 of the Port Stephens LEP 2000 relates to the appearance of land and buildings.

This clause requires the consent authority to take into account the development of land within view of any waterway or adjacent to a public reserve. In determining whether to grant consent, the consent authority must consider the following:

The height and location of any building that will result from the carrying out the development – the height of the development is consistent with the adjacent buildings.

The proposed dwelling will have no impact on the building height, and will remain at the approved height of 8.7m, below the maximum standard of 9m. Therefore, the height and location of the proposed development will not result in any visually prominent impacts for the waterway or public reserve adjacent to the site.

The reflectivity of materials to be used in carrying out of the development – the proposed dwelling will have a rendered finish. The sliding aluminium framed doors and glass balustrades will be of an attractive and contemporary nature, complying with the requirements of the Building Code of Australia. Therefore, the construction materials are expected to provide visual enhancement to neighbours or visitors to the area.

The likely effect of carrying out the development on the stability of the land – a geotechnical assessment has not been undertaken, as soil stability is not a significant issue for the site.

Any bushfire hazard – the site is not within a bushfire prone area as indicated on the Port Stephens Council Bushfire Map.

Whether carrying out the development is essential to the viability of the land – the site is located between existing residential dwellings and the development of the proposal is in accordance with the character of the streetscape. Redevelopment of the site is essential

to the financial viability of the site and contributes to the positive transformation of the streetscape.

The likely extent and effect of carrying out the development on the vegetation of the land concerned – no native vegetation is to be removed for the development. No other vegetation will be impacted by the proposal, as all building works will take place within Objects of the Environmental Planning and Assessment Act 1979

The relevant objects of the *Environmental Planning and Assessment Act 1979* (EP&A Act) as specified in section 5 are:

To encourage:

- The proper management, 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;
- The promotion and coordination of the orderly and economic use and development of land; and
- Ecologically sustainable development;

The proposal is consistent with the proper management and development of towns by utilising an existing structure with minor additions to meet a need an identified need. The social and economic welfare of the community is promoted through the construction of high quality, energy efficient housing catering for the needs of the local community with good access to facilities and services.

The co-ordination of the orderly and economic use and development of the land is adhered with as the building footprint change is not excessive, the development proposal is the most economic use for the land and the design is consistent with the existing streetscape.

The additions to the existing building will result in some additional hardstand and stormwater runoff will be addressed on-site. The proposal will not impact on the environment and is considered the best social and economic option in accordance with the principles of ecological sustainable development.

7. CONCLUSION

While the proposed development does not strictly comply with the maximum floor space ratio development standard contained in the *Port Stephens LEP 2000*, it nevertheless satisfies the stated and underlying objectives of the development standards and the broader planning and zoning objectives for the locality.

The siting, design and external appearance of the proposal and additional living space areas provided by the development are considered to be appropriate and relate sympathetically to the scale and character of development in the surrounding locality.

The proposal will not give rise to any significant adverse impacts as a result of the non-compliance and relates appropriately in design, bulk, scale and size to neighbouring residential development.

The proposal provides for a high quality, environmentally and ecologically sustainable form of development that recognises the sites restrictions without detrimentally impacting the amenity of surrounding residential development, and will make a positive contribution to the visual amenity and character of the streetscape and the adjacent foreshore area.

As demonstrated in this assessment, the simple differences between the existing building approval and the proposed amendment with regards to FSR illustrate that compliance with the development standards is unnecessary and unreasonable in this circumstance.

The development is seen as entirely acceptable as proposed and should be supported in accordance with the principles of *State Environmental Planning Policy No. 1*.

The request for a SEPP 1 variation is unique to each circumstance and it is considered that a deviation from the standard will not set an undesirable precedent for other proposals and therefore should be supported by Council in this instance.

ITEM NO. 3

FILE NO: PSC2012-04695

T14-2013 TANILBA BAY FORESHORE PROTECTION PROJECT

REPORT OF: BRUCE PETERSEN – COMMUNITY PLANNING AND ENVIRONMENTAL SERVICES SECTION MANAGER
 GROUP: DEVELOPMENT SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) That pursuant to section 10A(2)(d) of the Local Government Act, 1993, the Council resolve to close to the public that part of its meetings to discuss Confidential Attachment Item 3 on the Ordinary Council agenda namely **T14-2013 Tanilba Bay Foreshore Protection Project**;
- 2) That the reasons for closing the meeting to the public to consider this item be that:
 - i) The report and discussion will include details of commercial information of a confidential nature that would, if disclosed, prejudice the commercial position of the tenderers; and
 - ii) In particular, the report includes confidential pricing information in respect of the **T14-2013 Tanilba Bay Foreshore Protection Project**.
- 3) That on balance, it is considered that receipt and discussion of the matter in open Council would be contrary to the public interest, as disclosure of the confidential commercial information could compromise the commercial position of the tenderers and adversely affect Council’s ability to attract competitive tenders for other contracts.
- 4) That the report of the closed part of the meeting is to remain confidential and that Council makes public its decision including the name and amount of the successful tenderer in accordance with Clause 179 of the Local Government (General) Regulation 2005;
- 5) Accept the tender from Robsons Civil Projects Pty Ltd for **T14-2013 Tanilba Bay Foreshore Protection Project** as the preferred contractor based on the value selection process.

ORDINARY COUNCIL MEETING – 10 SEPTEMBER 2013
COMMITTEE OF THE WHOLE RECOMMENDATION

	Mayor Bruce MacKenzie Councillor Steve Tucker
	That Council accept the tender from Robsons Civil Projects Pty Ltd for

	T14-2013 Tanilba Bay Foreshore Protection Project as the preferred contractor based on the value selection process.
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MOTION

254	Councillor Paul Le Mottee Councillor Steve Tucker
	It was resolved that Council accept the tender from Robsons Civil Projects Pty Ltd for T14-2013 Tanilba Bay Foreshore Protection Project as the preferred contractor based on the value selection process.

BACKGROUND

The purpose of this report is to seek approval to appoint Robsons Civil Projects Pty Ltd as the preferred contractors for construction of the revetment wall at Tanilba Bay as part of the Tanilba Bay Foreshore Erosion Management Plan.

The overall purpose of the works is to stabilise the foreshore, reduce the threat of erosion to protect public assets, including the foreshore reserve and road and to enhance the amenity of the foreshore area.

The project involves the construction of a seawall from Peace Park to Foster Park along the Tanilba Bay Foreshore. The works includes the design and construction of a 320 metre revetment wall of rock construction, masonry stairs and a replacement boat ramp to access Tanilba Bay at a total cost of \$460,000 (funded 50/50 by Council and the Office of Environmental & Heritage).

The current project involves the first two stages of a larger foreshore erosion control project (1A and 1B). The first stage, 1A involves the construction of 260 metres of revetment wall, boat ramp, access stairs and landscaping. 1B involves the removal of the Peace Park boat ramp and the construction of a further 60 metres of revetment wall.

It is estimated that the proposal will require the deposition of approximately 970 cubic metres of large rock fill on the site. This will be placed where required by mechanical means. The revetment wall will consist of "open sand" areas retained by rock walls, planted areas of salt marsh plants and boat ramp (to replace the existing boat ramp).

The work on stages 1A and 1B is estimated to take approximately 12 weeks to complete and access to the foreshore and water in this area will be restricted during this period by the erection of safety fencing.

The purpose of the revetment wall construction is to arrest the current erosion of the foreshore in this location. Severe erosion of the foreshore has been occurring for

many years and if not adequately addressed it will put at risk public assets such as major sewer lines, road infrastructure and the foreshore reserve.

This project links to 9.1.1.1 and 8.1.1.1 of Port Stephens Council Operational Plan – 9.1.1.1 of the Operational Plan which requires the completion of erosion works on Tanilba Bay Foreshore and 8.1.1.1.1 to maintain parks, reserves, sporting fields and foreshores managed and by controlled by Council.

Nine tenders were received for construction of the revetment wall. All tenders were evaluated using a Value Selection Methodology system (the standard evaluation system used by this Council). The attributes are weighted according to importance, including the tender price, previous experience, contract program, sub contractors, risk management, work methodology, quality assurance and referee checks.

The selection process (including interviews of contractors) involved a selection panel consisting of both Council staff and representatives of the Office of Environment & Heritage (OEH). OEH was represented, as they are providing 50% of the funding towards this project. The selection panel endorsed the selection of Robsons as the preferred contractor for stages 1A and 1B of this project.

Council is currently considering its options for the next stage of the project. Stage two will involve the construction of pocket beaches (rock work with sand infill) between Peace Park and Tilligerry Habitat, where erosion is also threatening public assets. Stage 2 has not been costed at this stage.

FINANCIAL/RESOURCE IMPLICATIONS

There are no foreseeable finance/resource implications associated with the proposed recommendation.

The total project costs include \$432,659 for the recommended contractor. This allows \$27,340 for contingencies.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes	230,000	
Reserve Funds	No		
Section 94	No		
External Grants	Yes	230,000	The Office of Environment & Heritage
Other	No		

LEGAL, POLICY AND RISK IMPLICATIONS

There are no foreseeable legal, policy and risk implications associated with the proposed recommendation.

All tenders were evaluated using the Value Selection Methodology system (the standard system used by Council)

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
There is a risk that unsuccessful tenders may challenge Council's recommendation.	Low	Support the recommendation following the Value Selection Methodology system.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The purpose of this tender is to:

- Allow for the stabilisation of the shoreline;
- Reduce the threat of erosion to public infrastructure; and
- Enhance the social amenity of the locality.

The construction of the revetment wall will not only help protect public assets that are currently at risk due to severe foreshore erosion, but provide an attractive and safe foreshore structure which allows public access to the waterway via a new boat ramp and access stairs. The structure will also help reduce the ongoing cost of asset replacement or renewal due to erosion in this location.

These works align with the Port Stephens Foreshore Management plan and are included in the adopted 2013-14 operational plan and budget and are the subject of a successful grant.

CONSULTATION

Consultation has been undertaken with the following people and groups:

- Contracts and Procurement Co-ordinator;
- Park & Waterways Asset Co-ordinator;
- Projects Management Coordinator;
- Port Stephens/Myall Lakes Estuary Management Committee;
- Chamber of Commerce;
- NSW Office of Environment & Heritage;
- Mallabula Parks & Reserves;
- Tanilba Bay Parks, Reserves and Hall Committee;
- Marine Park Authority;
- Local residents.

OPTIONS

- 1) Adopt the recommendation. This will reduce the risk of further severe foreshore erosion;
- 2) Amend the recommendation;
- 3) Reject the recommendation. This may lead to further erosion of the foreshore and significant ongoing costs to upgrade foreshore assets due to erosion in this location.

ATTACHMENTS - All listed below are provided under separate cover.

- 1) Confidential - Value Selection Methodology Summary.

COUNCILLORS ROOM

- 1) SMEC Geotechnical Report;
- 2) Tanilba Bay foreshore Protection Drawings.

TABLED DOCUMENTS

Nil.

ITEM NO. 4

FILE NO: PSC2006-0985

NGIOKA HORTICULTURAL THERAPY CENTRE BUSINESS ADVISORY PANEL

REPORT OF: STEVEN BERNASCONI - COMMUNITY SERVICES SECTION MANAGER
GROUP: FACILITIES AND SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Disband the Ngioka Horticultural Therapy Centre 355c Committee;
- 2) Formally acknowledge and thank the existing committee for their commitment to community service;
- 3) Adopt the Schedule to Constitution for the Ngioka Horticultural Therapy Centre Business Advisory Panel as a 355 c Committee of Council (Attachment 1);
- 4) Consider nomination for Councillor representation on the Ngioka Horticultural Therapy Centre Business Advisory Panel.

ORDINARY COUNCIL MEETING – 10 SEPTEMBER 2013
COMMITTEE OF THE WHOLE RECOMMENDATION

	<p>Councillor Sally Dover Councillor Ken Jordan</p>
	<p>That Council:</p> <ol style="list-style-type: none"> 1. Disband the Ngioka Horticultural Therapy Centre 355c Committee; 2. Formally acknowledge and thank the existing committee for their commitment to community service; 3. Adopt the Schedule to Constitution for the Ngioka Horticultural Therapy Centre Business Advisory Panel as a 355c Committee of Council (Attachment 1); 4. Cr Sally Dover be nominated as Council's delegate on the Ngioka Horticultural Therapy Centre Business Advisory Panel.

Cr Peter Kafer recorded his vote against the Committee of the Whole recommendation.

MOTION

255	<p>Councillor Paul Le Mottee Councillor Steve Tucker</p> <p>It was resolved that Council:</p> <ol style="list-style-type: none"> 1. Disband the Ngioka Horticultural Therapy Centre 355c Committee; 2. Formally acknowledge and thank the existing committee for their commitment to community service; 3. Adopt the Schedule to Constitution for the Ngioka Horticultural Therapy Centre Business Advisory Panel as a 355c Committee of Council (Attachment 1); 4. Cr Sally Dover be nominated as Council's delegate on the Ngioka Horticultural Therapy Centre Business Advisory Panel.
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BACKGROUND

The purpose of this report is to disband the Ngioka Horticultural Therapy Centre 355c Committee and in its place install the Ngioka Horticultural Therapy Centre Business Advisory Panel.

The Ngioka Horticultural Therapy Centre links to the Community Strategic Plan specifically: Operational Plan 2013-2014 Objective 3.1.1.3 – "Manage the Ngioka Horticultural Therapy Centre and report back to Council on the future management options for the service".

Since its inception in 1994 the Centre has grown from a fledgling community service to a full time business servicing the disability services sector. Over the years it has had to face significant challenges to the viability of the business specifically: changes to the disability service sector, reductions in Government funding and subsequent increases in the rate subsidy, decreased demand for native plants, changes to the Workplace Health and Safety Act and a stronger focus on providing financially sustainable services for the ratepayers of Port Stephens Council. A renewed focus on business development and strategic positioning within the disability services sector needs to occur in order for the Centre to rise to these challenges and become a financially sustainable community service.

On the 11 December 2012 Council resolved (*Minute Number 331, see Attachment 2*), as part of the sustainability review of the Centre, to continue to operate the Ngioka Centre as a Council run service for two years under a new business model that aims to reduce the ratepayer subsidy to an agreed level. Strong progress has been made on the operational front to change the business approach to the Centre since this resolution. In order to progress the Centre even further a new approach to business is required.

The establishment of a Business Advisory Panel to guide the Centre's development is seen as the best way forward. Panel members would bring with them experience and knowledge in the disability services sector as well as private business acumen.

The Schedule to Constitution of the Ngioka Horticultural Therapy Centre Business Advisory Panel has been developed in line with current 355c Committee standards and relevant legal and insurance requirements (*see Attachment 1*).

The Panel's Constitution and Council's Volunteer Strategy clearly defines the Committee's relationship with Council and provides a framework for the Panel to work within.

FINANCIAL/RESOURCE IMPLICATIONS

There will be minimal impact on resources in establishing the Ngioka Horticultural Therapy Centre Business Advisory Panel and ongoing provision of support. The Panel's main focus will be strategic business advice and feedback to the Ngioka Management Team. Given this scope there is no requirement for the Panel to be provided with the usual annual \$1000 subsidy for 355c Committees.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes	1,000	Advertising position
Reserve Funds	No		
Section 94	No		
External Grants	No		
Other	No		

LEGAL, POLICY AND RISK IMPLICATIONS

Under Section 355c of the Local Government Act, 1993, Council may exercise its functions itself or by delegation to another person or persons. Council must approve the Constitution of such delegated Committees.

The Constitution of the Ngioka Horticultural Therapy Centre Business Advisory Panel consists of the Standard 355c Committee Constitution adopted by Council on 24 June 2003, Minute No 251, and a customised schedule of the Committee's individual activities. The Constitution contains the delegation from Council to undertake specified activities and the framework of how the Panel will operate.

The Committee will be managed and provided with support as outlined in the Volunteer Strategy.

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
There is a risk that Panel members may act in a way that leads to legal, financial and reputation implications to Council.	Low	Requirements are documented in Committee Constitution and Volunteer Strategy. Ongoing support and guidance by Community Services Staff/Responsible Officers. Code of Conduct training prior to commencing duties.	Yes
There is a risk that should Council not implement the Panel it may lead to the Ngioka Centre's inability to lower the ratepayer subsidy and for the new business model to succeed.	Med	Adopted the recommendations.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The new Advisory Panel has the potential to increase opportunities for trade from the Ngioka Centre which has a direct and positive flow onto the local economy.

The new Advisory Panel has the potential to increase the profile and funding of the Ngioka Centre from outside sources, which in turn allows customers to access programs for their clients.

There are no significant implications for the local ecology from adopting the recommendation.

CONSULTATION

- 1) Internal consultation with Council staff has included: Contracts and Services Coordinator, Ngioka Centre Coordinator, Ngioka Centre Program Supervisor Volunteer Strategy Coordinator, Community Options Coordinator and Business Systems and Administration Coordinator;
- 2) Discussions have also been formally held with the current 355c Committee for the Ngioka Centre and these occurred on the 9 November 2011, 19 September 2012, 20 February 2013 and the 24 June 2013;
- 3) East Ward Councillors received briefings on the 11 December 2012, 26 February 2013 and 28 May 2013.

OPTIONS

- 1) Adopt the recommendations;
- 2) Amend the recommendations;
- 3) Reject the recommendations.

ATTACHMENTS

- 1) Ngioka Horticultural Therapy Centre Business Advisory Panel Schedule to Constitution;
- 2) Council Minute Number 331, Ordinary Meeting held 11 December 2012.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ATTACHMENT 1

SCHEDULE TO CONSTITUTION

Item 1	Name of Committee	Ngioka Horticultural Therapy Centre Business Advisory Panel ("The Panel")
Item 2	Name of Council Section	Community Services
Item 3	Functions delegated by Council to committee	<p>The Panel will provide independent strategic advice to the Ngioka Centre Management Team with a focus on business development including, disability programs, planning and service delivery.</p> <p>Ngioka Business Plan</p> <ul style="list-style-type: none"> • The Panel will follow a business plan review process which will be carefully structured to enable the Advisory Panel to gain an understanding of the key issues within the Ngioka Centre business. • The Panel will, in consultation with the Ngioka Management Team, provide advice/feedback on the performance & fundamentals of all aspects of the Ngioka Centre's Business Plan. <p>Government Legislation & Policies</p> <ul style="list-style-type: none"> • The Panel will critically review the Federal Governments National Disability Insurance Scheme (NDIS) regulatory requirements and provide feedback /advice on opportunities to meet and sustain compliance requirements. • The Panel will assist the Ngioka Management Team review and update state governments) Aging, Disability & Homecare (ADHC) policies and procedures to meet (ADHC) regulatory Accreditation requirements due in 2015. • The Panel will provide feedback/advice to the Ngioka Management Team to systematically address key risk / compliance and governance issues within the business. <p>Fees & Charges</p> <ul style="list-style-type: none"> • The Panel will provide feedback/ advice to the Ngioka Centre Management Team in reviewing fees and charges for the Ngioka Centre to ensure appropriate market increases are applied. <p>Ngioka Centre Reporting</p> <p>Quarterly</p> <ul style="list-style-type: none"> • The Panel will receive reports from the Management Team and will review and provide feedback/advice on these reports. • The Panel will provide feedback/advice to the Ngioka Centre Management Team on the actual performance of the business against the planned outcomes outlined in the Ngioka Centre Business Plan and benchmark those results against the broader industry and business sectors. • The Panel will review and provide feedback/advice to the Ngioka Centre Management Team on Monthly and YTD financial results

ATTACHMENT 1

		<p>results via a series of key performance measures including; lead and lag indicators, bar charts, spreadsheets, Councils financial reports etc.</p> <p>Annually</p> <ul style="list-style-type: none"> • The Panel will review and provide feedback /advice to the Ngioka Centre Management Team on the Ngioka Centres Annual Report at the end of each financial year. • The Panel will review the Ngioka Centre’s Asset Management Plan and provide feedback/ advice to the Ngioka Centre Management Team on potential risks to maintenance/capital works delivery targets. • The Panel will provide feedback/advice to the Ngioka Management Team in evaluating the business through customer satisfaction results through annual on-line customer surveys.
Item 4	Restrictions on functions delegated	<ul style="list-style-type: none"> • Any works undertaken will be with the knowledge and approval of the Ngioka Centre Co-ordinator, Contracts & Services Co-ordinator and Community Services Section Manager.
Item 5	Policies, legislation & directives the committee is required to comply with	<p>Principle Policies & Legislation including but not limited to:</p> <ul style="list-style-type: none"> • Work Health & Safety, Act 2011 • Local Government Act, 1993 • Disability Discrimination Act 1992(Aust) • NSW Disability Service Act(NSW) • Privacy & Personal Information Protection Act, 1988 • Code of Conduct • Code of Meeting Practice • Accessing Information Policy • Volunteer Strategy Framework • Disability Access Policy • Child Protection Policy • Port Stephens Local Environmental Plan, 2000 • Environmental and Assessment Act 1979 <p>Business Excellence</p> <ul style="list-style-type: none"> • The Panel will operate in accordance with the Business Excellence Framework which guides Port Stephens Councils organisational improvement and success.
Item 6	Date on which constitution concludes	<ul style="list-style-type: none"> • September of Council Election each four years. Council to re adopt constitution within three months following election.

ATTACHMENT 1

Item 7	Maximum number and make up of committee members	<p>Membership</p> <p>The Panel;</p> <ul style="list-style-type: none"> • Will consist of 4 members from nominations received. • Will be broad ranging and include members involved with disability services, business with finance and marketing experience and community members involved with disability service or clients. • Will be balanced in terms of expertise and gender. • All members will be appointed as individuals and are not to represent a particular organization or its views. <p>Sub Committees</p> <ul style="list-style-type: none"> • The Panel may establish ad hoc sub committees of up to 5 people (for determined amount of time) as required. • Any such sub committee is subject to all the same conditions as a Panel member. • The Panel when establishing sub committees will: <ul style="list-style-type: none"> ○ determine membership ○ establish aims ○ clearly define a process for decision making ○ determine timeframe for sub committee membership <p>Vacancies on the Panel;</p> <ul style="list-style-type: none"> • Will be advertised in the Port Stephens newspapers including newsletters and Port Stephens Councils web site. Interested people will be invited to nominate and participate in a selection process. <p>Term of Office</p> <ul style="list-style-type: none"> • Panel Members will be appointed for two years to create continuity with the business development of the Ngioka Centre. • Panel members may reapply on the expiry of the two year term but no member should serve more than two consecutive terms. • Interested individuals may apply again after a one-year break from the Panel.
Item 8	Councillors	<ul style="list-style-type: none"> • As resolved by Council.
Item 9	Council employees	<p>Port Stephens Council staff as required including but not limited to;</p> <ul style="list-style-type: none"> • Ngioka Centre Co-ordinator • Ngioka Centre Program Co-ordinator • Contracts & Services Co-ordinator • Community Services Section Manager • Ngioka Centre Volunteers will report directly to the Ngioka Centre Management Team and not to the Panel.

ATTACHMENT 1

		<p>Chairperson</p> <ul style="list-style-type: none"> • In the first two year term of the Panel the Ngioka Centre Coordinator will act as the chairperson for the Panel. • The Panel will vote to elect a new chair at the start of each new term. • In the chairs absence an acting chair will be determined by the Panel as required. • Councilors have the right to chair committee meetings as determined in the Standard 355c Committee Constitution.
Item 10	Name of financial institution and type of account	N/A
Item 11	Name of any account operated by the committee	N/A
Item 12	Area assigned to committee	<ul style="list-style-type: none"> • Panel providing feedback/ advice to Ngioka Centre Management Team.
Item 13	<p>Additional clauses or amendments to Standard Constitution or Schedule.</p> <p>To be listed in full - body of constitution not to be altered.</p>	<p>Clause 10 of constitution N/A.</p> <ul style="list-style-type: none"> • Panel will have no financial management responsibility.
Item 14	Changes to constitution or Schedule – Adopted by Council: Meeting Date: Minute No: Resolution	

ATTACHMENT 2

ORDINARY COUNCIL – 11 DECEMBER 2012

ITEM NO. 13

FILE NO: PSC2011-04372

SUSTAINABILITY REVIEW – NGIOKA HORTICULTURAL THERAPY CENTRE

REPORT OF: STEVEN BERNASCONI – COMMUNITY & RECREATION SERVICES MANAGER
 GROUP: FACILITIES & SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Note the information contained in the Service Strategy – Ngioka Horticultural Therapy Centre (Tabled documents 1 and 2) and endorse the findings of the review.
- 2) Prepare an Expression Of Interest to gauge interest from disability service providers to operate the Ngioka Horticultural Centre in partnership with Council.
- 3) Report back to Council subsequent to the Expression Of Interest outlined in Recommendation 2.

ORDINARY COUNCIL MEETING – 11 DECEMBER 2012

MOTION

331	<p>Councillor John Nell Councillor Ken Jordan</p> <p>It was resolved that Council:</p> <ol style="list-style-type: none"> 1. Continue to operate the Ngoika Centre as a Council run service for two years under a new business model that aims to reduce the ratepayer subsidy to an agreed level. 2. Changes to the business might include: <ol style="list-style-type: none"> i. Lobbying for an increase to ADHC funding; ii. Increase client time at Centre through more diverse services; iii. Increase in plant prices to align with benchmark prices; iv. Annual CPI Increase to leased floor space; v. Reviewing staff structure to formalise to 2 EFT; vi. Review centre operating hours; vii Investigate business diversification opportunities as a means of increasing income generation; viii. Review the cost effectiveness of the operation of the Meadowie and Salamander plant storage facilities.
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ATTACHMENT 2

ORDINARY COUNCIL – 11 DECEMBER 2012

MATTER ARISING

332	<p>Councillor Geoff Dingle Councillor Ken Jordan</p> <hr/> <p>It was resolved that Council be invited to visit the Ngoika Centre in the New Year.</p>
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BACKGROUND

The purpose of this report is to present to Council the outcomes of the sustainability review for the Ngoika Horticultural Therapy Centre (Ngoika Centre) and seek endorsement of the recommendations contained in the Ngoika Centre Service Strategy.

The service links to the Community Strategic Plan specifically:

DELIVERY PLAN 1.3.5 *Provide therapeutic and rehabilitation activities for people with disabilities through the Ngoika Centre*

The Ngoika Centre was initiated by Port Stephens Council in 1994, as a unique program to provide horticultural therapy programs to people with a disability. The project had a start up grant from the Area Assistance Scheme, NSW Department of Community Services. Annual recurrent grant funding was later provided to the program in 1997 from the Department of Community Services later to become the Department of Aging Disability and Home Care (ADHC).

There are currently 100 registered clients with this service. Of those the service has regular contact with 68 clients.

The Ngoika Centre provides program activities to clients from Tomaree Lodge, Mai-Wel, Stockton Centre, Life Style Solutions, Port Stephens Disability Service, Tomaree High School, Group Homes, Disability Services Australia as well as individuals who have no affiliation to any other Non Government Organisation.

The program also had the purpose of developing a Native Flora Centre that would propagate the local native plants in the immediate vicinity of the Ngoika Centre and more broadly within the Port Stephens Area.

ATTACHMENT 2

ORDINARY COUNCIL – 11 DECEMBER 2012

FINANCIAL/RESOURCE IMPLICATIONS

Source of Funds	Yes/No	Funding (\$)	Comment
Revenue			
External Grants	Yes	(\$42,560)	ADHC Grant Funding (19% of total cost)
Other	Yes	(\$28,158)	Lease fees and plant sales (13% of total cost)
Sub Total (Revenue)		(\$70,718)	2011/12
Expenditure			
Operating Expenditure	Yes	\$188,844	Total budget excluding corporate overhead
Corporate Overheads	Yes	\$34,675	
Sub Total - Expenditure	Yes	\$223,519	2011/12
Operating surplus/(loss)		(\$152,801)	Ratepayer subsidy 2011/12
Staffing (EFT)			1.53

Should Council adopt a recommendation to reduce or cease the internal provision of Ngioka Centre services then the conditions of the Port Stephens Council Enterprise Agreement Clause 28 will come into effect. This clause establishes Council's duty to notify affected staff and relevant Unions regarding an intention to introduce major changes to programs, sets out duties of the parties, establishes procedures to be followed and conditions relating to staff redeployment or redundancies. Redundancies could incur costs of up to 39 weeks ordinary pay for each employee displaced.

Ngioka Centre incurs an operational loss (aka ratepayer subsidy) over a period of five years averaging \$120,513 peaking at \$152,801 in 2011/12. Losses were incurred before corporate overheads were introduced into the Centre's finances in 2011/12. Continuing to operate the service under the current model will incur annual ratepayer subsidies of at least \$120,000 per annum.

The recommendation to find an alternative organisation to manage the Ngioka Centre has the potential to incur a one off cost of about \$128,000 in staff redundancy and entitlement payments. This one off cost would be recovered over two years by no longer carrying the annual operating loss of \$120,000 p.a.

ATTACHMENT 2

ORDINARY COUNCIL – 11 DECEMBER 2012

LEGAL, POLICY AND RISK IMPLICATIONS

There are no legal impediments to adopting the recommendations however the following legal matters must be considered:

Should Council adopt a recommendation to reduce or cease the internal provision of the Ngioka Centre then the conditions of the Port Stephens Council Enterprise Agreement Clause 28 will come into effect. This clause establishes Council's duty to notify affected staff and relevant Unions regarding an intention to introduce major changes to programs, sets out duties of the parties, establishes procedures to be followed and conditions relating to staff redeployment or redundancies. Redundancies could incur costs of up to 39 weeks ordinary pay for each employee displaced.

At present Port Stephens Council has a funding agreement with Department of Family and Community Services – (ADHC) Ageing, Disability and Homecare to deliver the Ngioka Centre Programs. By signing the funding agreements Port Stephens Council is legally required to financially and operationally control the services. Transferring responsibilities to another organisation requires approval from ADHC for the funding agreement.

The recommendation is in contrast with Council's Community Services Policy (MIN 363, 28 August 2001) which states that Council will directly deliver services to "help ensure that a full range of community services exists and is accessible to all members of the community".

The recommendation is not intended to reduce the availability or accessibility of the Ngioka Centre service to community. Rather the recommendation is intended to move the delivery of this unique service to the disability services sector and reduce the ratepayer burden associated with providing the service.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a financial risk if Council does not consider outsourcing or partnering the service resulting in an ongoing ratepayer subsidy averaging \$120,000 per year.	High	Prepare an Expression of Interest to gauge interest from other disability service providers to operate the service in partnership with Port Stephens Council.	Yes
There is a risk to Council reputation if the service is outsourced totally or by way of partnership to an unsuitable agency resulting in a reduction in	Medium	Enter into a contract agreement with Disability Service provider with specified levels of service.	Yes

ATTACHMENT 2

ORDINARY COUNCIL – 11 DECEMBER 2012

service quality.			
<p>There is a financial risk if Council does not explore internal efficiencies to improve the delivery of the existing service resulting in continued ratepayer subsidies averaging \$120,000 per year.</p>	<p>Medium</p>	<ul style="list-style-type: none"> • Review current staff structure to align with Centre operating hours. • Review Centre operating hours to better align with client times, Centre management time and program administration times. • Review Business capacity for future growth i.e. Disability/ education programs • Review business case for existing Meadowie and Salamander Bay Storage Nurseries • Review increase in use of volunteers and activities to fill service gaps from staffing levels. • Increase discretionary service user fees • Increase fees annually to leased floor space • Explore ways to increase usage of services to then increase income from service user charges - HADS (Home and Disability Service) , MDS (Mid Data Set) reporting • Explore ways to increase income generation opportunities and use of 	<p>Yes</p>

ATTACHMENT 2

ORDINARY COUNCIL – 11 DECEMBER 2012

		<p>facilities</p> <ul style="list-style-type: none"> Investigate business diversification opportunities Investigate running disability programs from Medowie Nursery 	
There is a safety risk to staff and clients if the staff to client ratio is not retained at 2 EFT staff.	Medium	<ul style="list-style-type: none"> Continue to fund staff hours at 2 EFT. 	Yes
There is a risk to Council reputation if a new provider cannot fulfil the requirements of a service agreement resulting in to Centre ceasing to operate in the near future.	Medium	<ul style="list-style-type: none"> PSC enters partnership with new service provider. Continue to operate and implement internal efficiencies and improved service delivery Enter into detailed consultation with all effected parties prior to any considered closure of centre. 	Yes
There is a financial risk if staff redeployment is not available resulting in redundancy payments to be made.	Low	<ul style="list-style-type: none"> If there is no opportunity for staff redeployment Council pay staff redundancy for 1.53 FTE of \$128,198.00 There would be however an ongoing operational saving of a minimum of \$120,000 p.a. returned to the ratepayer. 	Yes

ATTACHMENT 2

ORDINARY COUNCIL – 11 DECEMBER 2012

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Adopting the recommendation is intended to continue to provide a disability therapy service from the Ngioka Centre but in a more affordable way for the ratepayers of Port Stephens.

Adopting the recommendation is not expected to have any adverse effects on the local economy.

Whilst the centre in its current form has a focus on horticultural therapy through propagation of endemic native plant species the future of the centre under the management of another organisation may change this focus. If this was the case the result may be a reduction in supply of native plant species sourced from locally collected seed stock and endemic to the Port Stephens local government area.

CONSULTATION

Contracts & Services Coordinator, Ngioka Centre Coordinator, Ngioka Centre Program Supervisor, Ngioka Centre 335C Committee, ADHC Coordinator, Disability Service User Groups, Port Stephens Council Volunteer Coordinator, Port Stephens Council Business Excellence Coordinator, Port Stephens Council Consultative Committee.

Surveys were sent to user groups requesting responses to a range of questions relating to the Ngioka Centres Disability Programs and Horticultural plant sale service. In particular we asked the question;

"How do you rate the service we provide by Importance and Performance?"

- **DISABILITY SERVICE** - there were 10 surveys sent out with 8 returned - 80%
- Importance – the respondents to all 5 questions said the service was very important %100
- Performance – respondents to all 5 questions overall rated the service good to excellent 85 to 100 %
- **HORTICULTURE SERVICE** - there were 12 surveys sent out with 10 returned - 83%
- Importance – the respondents to all 6 questions said the service was very important - %100
- Performance – respondents to all 6 questions overall rated the service good to excellent 85 to 100 %

ATTACHMENT 2

ORDINARY COUNCIL – 11 DECEMBER 2012

OPTIONS

- 1) Adopt the recommendations contained in the Sustainability Review – Ngioka Centre Service Strategy
- 2) Amend the recommendations contained in the Sustainability Review – Ngioka Centre – Service Strategy and agree to continued operation of the Centre by Council for a further two years under a new business model that aims to reduce the ratepayer subsidy to an agreed amount.
- 3) Reject the recommendations contained in the Sustainability Review – Ngioka Centre Service Strategy

ATTACHMENTS

Nil.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

- 1) Sustainability Review – Ngioka Centre Service Strategy
- 2) Sustainability Review – Ngioka Centre Annexure

ITEM NO. 5

INFORMATION PAPERS

REPORT OF: TONY WICKHAM – EXECUTIVE OFFICER
 GROUP: GENERAL MANAGERS OFFICE

RECOMMENDATION IS THAT COUNCIL:

Receives and notes the Information Papers listed below being presented to Council on 10 September, 2013.

No:	Report Title
1	General Manager's Annual Performance Review

**ORDINARY COUNCIL MEETING – 10 SEPTEMBER 2013
 COMMITTEE OF THE WHOLE RECOMMENDATION**

	Councillor Ken Jordan Councillor Steve Tucker
	That the recommendation be adopted.

251	Councillor Paul Le Mottee Councillor Steve Tucker
	It was resolved that Council move out Committee of the Whole.

MOTION

256	Councillor Paul Le Mottee Councillor Steve Tucker
	It was resolved that the Committee of the Whole recommendation be adopted.

GENERAL MANAGERS INFORMATION PAPERS



INFORMATION ITEM NO. 1

GENERAL MANAGER'S ANNUAL PERFORMANCE REVIEW

REPORT OF: PETER GESLING – GENERAL MANAGER

GROUP: GENERAL MANAGER'S OFFICE

FILE: PSC2005-1318

BACKGROUND

The purpose of this report is to receive and note the outcome of the General Manager's Annual Performance Review and table a copy of the McArthur Final Report - Full Year Review - August 2013, which has been signed by the Mayor and General Manager.

Council established a Performance Feedback process for the General Manager that aligns with the Department of Local Government Guidelines. This includes:

- 1) Establishment of a Performance Feedback Committee to review the General Manager's performance against the agreed Individual Work and Development Plan (IWDP).
- 2) Undertaking an assessment of the statutory Annual Performance Report against the Council Plan.

A further element is available to Council, that any concern should be raised when it occurs. It should include written notification to the Mayor and General Manager. After assessment, the General Manager will respond to the Council to ensure a review in the annual meeting of the Performance Feedback Committee.

The Annual Performance Review and Feedback Process provides an opportunity for Councillors and the General Manager to participate in the review process.

The McArthur summary of the General Manager's Full Year Performance Review process is attached.

The McArthur's Final Full Year Review Report will be distributed under separate cover (tabled document).

ATTACHMENTS

- 1) McArthur Summary of the General Manager's Full Year Performance Review Process.

COUNCILLORS' ROOM

Nil.

TABLED DOCUMENTS

- 1) McArthur Final Report - Full Year Review - August 2013.

ATTACHMENT 1



General Managers Performance Review Final Report

An annual review of the General Manager was conducted on the 20th August 2013 by a review panel consisting of Cr Tucker, Cr Dover, and the Mayor together with Matthew McArthur from McArthur, as the facilitator. Cr Jordan was an apology; however his ratings and comments were tabled along with those of the other panel members.

Prior to this meeting the following activities were conducted:

- The General Manager prepared a report on his achievements for the six months since his mid-year review and completed his self-assessment
- The General Managers Report was provided to the Review Panel and they were asked to rate the general manager based on their observations and the evidence/reports put forward by the General Manager and include comments and feedback where relevant
- Councillors completed the review documents which were submitted to the facilitator who consolidated the comments and scores into a working document which was used as the basis for the performance review discussion.

The consolidated report working document was discussed by the panel until agreement was reached on a single rating for each measure. The facilitator also encouraged any additional feedback or comments that the panel wished to pass on to the General Manager.

Once agreement was reached on all items the General Manager was invited to join the meeting and the ratings were discussed and agreed upon and any relevant feedback was discussed and recorded.

ANNUAL REVIEW OUTCOME

The final agreed scores together with any relevant comments made by the Panel or General Manager are contained on the pages that follow.

Overall the performance of the General Manager was found to be of a satisfactory or very satisfactory standard with performance exceeding requirements at times and a high standard having been set. The General Manager was congratulated on his performance and it was acknowledged that he and the organisations performance had continued to improve over the review period to date.

A summary of the scores with averages applied is contained on the next page with details of the scores for each item contained on the pages thereafter.

Matthew McArthur
Facilitator
August 2013

There being no further business the meeting closed at 6.35pm.

I certify that pages 1 to 94 of the Open Ordinary Minutes of Council 10 September 2013 were confirmed by Council at its meeting held on 24 September 2013.

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Bruce MacKenzie
MAYOR