

DRAFT

MINUTES – 28 JULY 2015



PORT STEPHENS

COUNCIL

Minutes of Ordinary meeting of the Port Stephens Council held in the Council Chambers, Raymond Terrace on Tuesday 28 July 2015, commencing at 6.10pm.

PRESENT:

Mayor B MacKenzie, Councillors G. Dingle, C. Doohan, S. Dover, K. Jordan, P. Kafer, P. Le Mottee, S. Tucker, General Manager, Corporate Services Group Manager, Acting Facilities and Services Group Manager, Development Services Group Manager and Executive Assistant-Councillor Support.

204

Councillor Chris Doohan
Councillor Ken Jordan

That the apologies from Crs Nell and Morello be received and noted.

MINUTES ORDINARY COUNCIL - 28 JULY 2015

205	Councillor Paul Le Mottee Councillor Sally Dover That the Minutes of the Ordinary Meeting of Port Stephens Council Ordinary Council held on 14 July 2015 be confirmed.
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	Declaration of Interest from Cr Ken Jordan was received and noted. A significant non pecuniary conflict of interest for Item 9 and Item 1 Notice of Motion in regard to 398 Cabbage Tree Road. No other Declarations of Interest were received.
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MOTIONS TO CLOSE

ITEM NO. 1

**FILE NO: PSC2015-01000/599
TRIM REF NO: PSC2014-03187**

MOTION TO CLOSE

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

RECOMMENDATION:

- 1) That pursuant to section 10A(2) (c) of the *Local Government Act 1993*, the Committee and Council resolve to close to the public that part of its meetings to discuss Confidential Item 1 on the Ordinary agenda namely **ACQUISITION OF LAND FOR ROAD WORKS AT 1406B CLARENCE TOWN ROAD, SEAHAM.**
- 2) That the reasons for closing the meeting to the public to consider this item is that the discussion will include information containing:
 - information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business.
- 3) That the report remain confidential and the minute be released in accordance with Council's resolution.

**ORDINARY COUNCIL MEETING - 28 JULY 2015
MOTION**

206	<p>Councillor Steve Tucker Councillor Ken Jordan</p> <p>It was resolved that Council:</p> <ol style="list-style-type: none">1) That pursuant to section 10A(2) (c) of the <i>Local Government Act 1993</i>, the Committee and Council resolve to close to the public that part of its meetings to discuss Confidential Item 1 on the Ordinary agenda namely ACQUISITION OF LAND FOR ROAD WORKS AT 1406B CLARENCE TOWN ROAD, SEAHAM.2) That the reasons for closing the meeting to the public to consider this item is that the discussion will include information containing:<ul style="list-style-type: none">• information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business.3) That the report remain confidential and the minute be released in accordance with Council's resolution.
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COUNCIL REPORTS

MINUTES ORDINARY COUNCIL - 28 JULY 2015

ITEM NO. 1

FILE NO: PSC2015-01000/527

TRIM REF NO: 15/187

DEVELOPMENT APPLICATION 16-2015-107-1 FOR LOG PROCESSING WORKS AT 30 FERODALE ROAD, MEDOWIE (LOT 1 DP733278)

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

GROUP: DEVELOPMENT SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Approve Development Application 16-2015-107-1 for Log Processing Works at 30 Ferodale Road, Medowie (Lot 1 DP733278) subject to the conditions contained in **(ATTACHMENT 3)**.
-

ORDINARY COUNCIL MEETING - 28 JULY 2015

MOTION

207	Councillor Steve Tucker Councillor Chris Doohan That Council move into Committee of the Whole.
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COMMITTEE OF THE WHOLE RECOMMENDATION

	Councillor Steve Tucker Councillor Chris Doohan 1) Approve Development Application 16-2015-107-1 for Log Processing Works at 30 Ferodale Road, Medowie (Lot 1 DP733278) subject to the conditions contained in (ATTACHMENT 3) subject to the following amendments: a) Conditions 3 and 4 be deferred for 6 months. b) Condition 5 Post and wire' be inserted in after 'rural style fencing'. c) Condition 6 be amended to add a further clause: other related timber products d) Condition 8 - 'Where possible/practical' be inserted after 'active dust suppression measures are to be undertaken' e) Condition 11 be amended to remove the first sentence "When the development is in operation the L10 noise level measured over a period of not less than 15 minutes must not exceed the background noise by more than 10db(A) when measured from the property boundary".
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MINUTES ORDINARY COUNCIL - 28 JULY 2015

	<p>f) Condition 12 be amended to increase raw logs from 100 tonnes to 200 tonnes, the maximum height from 2m to 3m and the stacking pattern to neatly stacked logs. It should read: "A maximum of 200 tonnes of raw logs is to be stored on the site at any one time and is to be contained within the log storage area shown on the approved plan. Log piles are to be neatly stacked to a maximum height of 3m above ground level with appropriate upright posts to ensure logs do not collapse".</p> <p>g) Condition 15 have the term 'licensed waste facility' amended to 'disposed of in accordance with legislative requirements'.</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: Crs Chris Doohan, Sally Dover, Ken Jordan, Paul Le Mottee, Bruce MacKenzie and Steve Tucker

Those against the Motion: Crs Geoff Dingle and Peter Kafer

ORDINARY COUNCIL MEETING - 28 JULY 2015 MOTION

	<p>Councillor Geoff Dingle Councillor Peter Kafer</p> <p>The amendment put was that Council:</p> <p>1) Refuse Development Application 16-2015-107-1 for Log Processing Works at 30 Ferodale Road, Medowie (Lot 1 DP733278) subject to the conditions contained in (ATTACHMENT 3).</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: Crs Geoff Dingle and Peter Kafer

Those against the Motion: Crs Chris Doohan, Sally Dover, Ken Jordan, Paul Le Mottee, Bruce MacKenzie and Steve Tucker

The Motion was lost.

**ORDINARY COUNCIL MEETING - 28 JULY 2015
MOTION**

208	<p>Mayor Bruce MacKenzie Councillor Paul Le Mottee</p> <p>It was resolved that Council;</p> <p>1) Approve Development Application 16-2015-107-1 for Log Processing Works at 30 Ferodale Road, Medowie (Lot 1 DP733278) subject to the conditions contained in (ATTACHMENT 3) subject to the following amendments:</p> <ul style="list-style-type: none">a) Conditions 3 and 4 be deferred for 6 months.b) Condition 5 'Post and wire' be inserted in after 'rural style fencing'.c) Condition 6 be amended to add a further clause: other related timber productsd) Condition 8 'Where possible/practical' be inserted after 'active dust suppression measures are to be undertaken'e) Condition 11 be amended to remove the first sentence "When the development is in operation the L10 noise level measured over a period of not less than 15 minutes must not exceed the background noise by more than 10db(A) when measured from the property boundary".f) Condition 12 be amended to increase raw logs from 100 tonnes to 200 tonnes, the maximum height from 2m to 3m and the stacking pattern to neatly stacked logs. It should read: "A maximum of 200 tonnes of raw logs is to be stored on the site at any one time and is to be contained within the log storage area shown on the approved plan. Log piles are to be neatly stacked to a maximum height of 3m above ground level with appropriate upright posts to ensure logs do not collapse".g) Condition 15 have the term 'licensed waste facility' amended to 'disposed of in accordance with legislative requirements'.
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In accordance with Section 375 (A) of the Local Government Act 1993, a division is required for this item.

Those for the Motion: Crs Chris Doohan, Sally Dover, Ken Jordan, Paul Le Mottee, Bruce MacKenzie and Steve Tucker

Those against the Motion: Crs Geoff Dingle and Peter Kafer

BACKGROUND

The purpose of this report is to present to Council for determination, development application 16-2015-107-1. The application has been called to Council by Councillor Dingle due to incompatibility of the proposal with the adjoining industrial zoned land and the context of the locality. A copy of the call up form is included as **(ATTACHMENT 4)**.

The applicant has previously operated the development on the site without consent, and lodged the application following compliance action undertaken by Council staff. The applicant has been formally advised to cease all operations that require development consent, until such consent is obtained or otherwise.

The applicant proposes log processing works (cutting of firewood) on an existing rural residential lot, using the provisions of clause 5.3 of the *Port Stephens Local Environmental Plan 2013 (PSLEP)* to extend the permissible uses of the adjacent IN2 Light Industrial zoned land onto the subject lot. The proposal complies with the relevant legislation and accordingly is recommended for approval subject to conditions. The intent of this LEP clause is to allow some flexibility between zone boundaries.

The key issues associated with the application involve noise, dust, vehicle access, runoff, visual impact and the suitability of the development in the locality. Conditions have been recommended to mitigate potential impacts, including conditions limiting hours of operation, use of dust suppression technologies, installation of additional landscape screening, regular site maintenance, vermin control, compliance with noise standards and alterations to improve the vehicular access. It is considered that subject to compliance with the recommended conditions the development can be undertaken without any significant impact to the environment or surrounding properties.

COMMUNITY STRATEGIC PLAN

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

FINANCIAL/RESOURCE IMPLICATIONS

There are no anticipated financial or resource implications as a result of the proposed development.

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

LEGAL, POLICY AND RISK IMPLICATIONS

The development application is consistent with Council's Local Environmental Plan 2013 and the requirements of Section 79C(a) of the *Environmental Planning & Assessment Act 1979*.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources ?
There is a risk that if the application is refused the determination may be challenged in the Land and Environment Court.	Medium	Support the recommendation and approve the development application subject to conditions of consent.	Yes
There is a risk land use conflict may arise from the development.	Low	Impose conditions of consent as recommended.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The adopted Medowie Strategy characterises the township of Medowie as a 'beautiful town, surrounded by rural and natural landscapes complete with facilities, services, businesses and employment activities that make it a healthy and sustainable community'. The strategy describes Medowie as a growing centre and provides for increased commercial and industrial activities to support the needs of the community.

The proposed development is in keeping with the land use planning principles of the Medowie Strategy by providing a logical extension to existing industrial developments in Abundance Road, and recognises a higher density of development as characterised in the future vision for the township. The proposed development will

result in direct input to the local economy and increase employment opportunities in support of the growing community, consistent with the LEP.

An assessment of the impacts of the development on surrounding land uses has been carried out and is included as **(ATTACHMENT 2)** to this report. The assessment concludes that the proposed development meets the requirements of the Environmental Planning and Assessment Act 1979, the Port Stephens Local Environmental Plan 2013 and relevant chapters of the Port Stephens Development Control Plan 2013, and that (subject to conditions) there are no significant adverse impacts as a result of the proposal.

CONSULTATION

The application was exhibited in accordance with Council policy and three submissions were received. The objections raised are discussed in the assessment included as **(ATTACHMENT 2)** to this report. It is concluded that the matters raised are not of a significance to warrant refusal of the application and can be addressed by appropriate conditions of consent.

OPTIONS

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

ATTACHMENTS

- 1) Locality Plan.
- 2) Assessment Report.
- 3) Conditions of Consent.
- 4) Call to Council Form.

COUNCILLORS ROOM

- 1) Development Plan.
- 2) Statement of Environmental Effects (including addendums).
- 3) Correspondence from applicant with clarifying information.

TABLED DOCUMENTS

Nil.



DISCLAIMER

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ATTACHMENT 2

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

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 application proposes log processing works and proposes to use the provisions of clause 5.3 of the Port Stephens Local Environmental Plan 2013 (LEP) (development near zone boundaries). The proposal is for the purpose of producing split firewood and bagged sawdust which will be sold by commercial distributors. The development includes storage of raw timber in designated storage areas, mechanical chopping and splitting by a mobile plant, as well as the storage of bagged firewood and sawdust products for distribution. No buildings are proposed for the purposes of the development.

The proposed operating hours of the development are Monday to Friday, 8:00am to 6:00pm and Saturday to Sunday 9:00am to 2:00pm. The proposal anticipates that the business will employ 2 to 3 full time people at any one time, however in peak times a small number of additional staff may be employed on a casual basis. The products of the proposed business will be sold by commercial distributors and accordingly there are no anticipated customers to the site.

The proposed development will be accessed from Boundary Road over an existing driveway and is adjacent to existing industrial developments that also front Boundary Road.

Landscaping is proposed to the site to minimise visual impact and protect the rural aspect of the site.

THE APPLICATION

Owner	Jorjia Pty Ltd
Applicant	Jorjia Pty Ltd
Detail Submitted	<ul style="list-style-type: none">• Statement of Environmental Effects;• Statement of Environmental Effects Addendum – May 2015;• Statement of Environmental Effects Addendum – June 2015;• Correspondence dated 26th May 2015;• Correspondence dated 10th June

ITEM 1 - ATTACHMENT 2 ASSESSMENT REPORT.

2015; and

- Site Plan received 10th June 2015.

THE LAND

Property Description	Lot 1 DF733278
Address	30 Ferodale Road, Medowie
Area	The site has an area of 1.069ha
Characteristics	Bushfire Prone Land (Buffer), Acid Sulfate Soils (ASS) Class 5, Koala Habitat (Preferred Habitat Linking Area over Cleared Land), Hunter Water Corporation Drinking Water Catchment

**THE ASSESSMENT
PLANNING PROVISIONS**

<i>Environmental Planning and Assessment Act 1979</i>	s.79C Planning provisions s.79BA Bushfire Prone Land
State Environmental Planning Policies	State Environmental Planning Policy No.44 – Koala Habitat Protection (and Port Stephens Comprehensive Koala Plan of Management) State Environmental Planning Policy 64 – Advertising and Signage
Port Stephens Local Environmental Plan (2013)	Cl2.1 Zone R5 Large Lot Residential Cl5.3 Development near zone boundaries Cl.7.1 Acid sulfate soils Cl.7.8 Drinking water catchments
Port Stephens Development Control Plan 2013	B2 Environment and Construction Management B3 Parking and Traffic B5 Industrial Development

B12 Advertising Signs

STATUTORY ACTS AND REGULATIONS

Environmental Planning and Assessment (EP&A) Act 1979

Section 79BA – Consideration of Bushfire Prone Land

The proposed development is located on bushfire prone land. A bushfire hazard assessment was submitted which addressed the requirements of Planning for Bushfire Protection 2006. The application does not propose any new buildings, however is bounded by an existing industrial building to the south and a residential dwelling to the north. Sufficient separation is available within the development site to allow suitable defence of those buildings by firefighting services and the nature of the timber storage proposed on the site (maximum 100 tonnes of raw logs) will not present an unacceptable risk to spread of fire. The proposed development meets the requirements of section 79BA of the Environmental Planning and Assessment Act 1979.

Section 79C – Planning Assessment

An assessment under Section 79C of the Act has been undertaken throughout this report.

State Environmental Planning Policies

State Environmental Planning Policy No. 44 – Koala Habitat Protection and Port Stephens Comprehensive Koala Plan of Management (CKPoM)

State Environmental Planning Policy No.44 – Koala Habitat Protection aims to encourage the proper conservation and management of areas of natural vegetation that provide habitat for koalas to ensure a permanent free-living population over their present range and reverse the current trend of koala population decline.

The site is mapped as a link between preferred habitat over cleared land. It is noted that there are a number of areas of preferred habitat surrounding the subject land which are more likely to act as a linking mechanism than the subject property, which is situated in a typical rural residential context (adjoining industrial land) with myriad fences and cleared areas. The proposed development is not considered to pose a threat to any koala population or habitat.

State Environmental Planning Policy No. 44 – Advertising and Signage

The applicant has proposed the installation of one free standing business identification sign adjacent to the site access and facing Boundary Road. The subject sign will be located to appear as a logical extension to other signage from industrial developments on Boundary Road and is therefore in keeping with the character of the area. The signage will be located within the property boundaries and in line with proposed landscaping and

will not be prominent in the streetscape. The proposed signage is of modest proportions and will not have any detrimental impacts on the streetscape, views or vistas in the locality, or surrounding landscapes.

Port Stephens Local Environmental Plan (2013)

Clause 2.1 - Zone R5 Large Lot Residential

The subject land is zoned R5 Large Lot Residential, on which Timber or Log Processing Works is prohibited. The application has been lodged under clause 5.3 of the LEP which enables extension of a zone boundary subject to compliance with certain provisions (as discussed in this report). Clause 5.3 requires the development to be consistent with the objectives of the zoning of the subject land. The applicant has provided justification that the development meets the objectives of the R5 zone as follows:

- The proposal includes the retention of the existing dwelling on the site;
- The industry is rural in nature;
- Scenic impacts will be mitigated by the introduction of additional screening landscaping, which will also reduce the visual impact of the large industrial building located on 5 Abundance Road;
- There are no expected environmental impacts on the site or surrounding land as no composting is proposed on site – The NSW Department of Environment and Conservation Environmental Guidelines for Composting and related organic processing facilities describes the main environmental impact associated with wood processing as leachate from composting operations, which will not be undertaken on the site;
- The site has limited fixtures and therefore will not hinder the development of future urban areas;
- The development is small in nature (for a typical log processing works facility) and accordingly will not unreasonably increase the demand for public services or facilities; and
- The development will form a better transition between the typical industrial land to the south and the surrounding residential zoned land.

The applicant has also responded to matters raised in submissions regarding the residential context of the locality and argued that the development will not cause significant adverse impacts on surrounding properties. An assessment of the applicants justification has demonstrated that the proposed development will not have a significant impact on the rural residential context of the site and surrounding properties, as the development is contained within a small portion of the subject lot and will appear as a natural extension to adjacent industrial activities. The applicant will actively collect sawdust through a vacuum system, which is a secondary product of the process that will be on-sold. The proposed development uses a mobile timber splitting plant and limited machinery on site which is commensurate with a small scale industrial operation. The use is considered appropriate as a buffer between industrial and rural residential zoned land.

Adequate screening is proposed in addition to existing vegetation on the site so that the visual impact of the development will be minimised, whilst protecting the adjoining rural residential development. The subject development is minor in scale with low employee

ITEM 1 - ATTACHMENT 2 ASSESSMENT REPORT.

levels and movements to and from the site. The development is not anticipated to have any significant negative impacts on the demand for public services and facilities. Accordingly, the proposed development complies with the objectives of the zone.

Clause 5.3 Development Near Zone Boundaries

The applicant has proposed the development in accordance with clause 5.3 to extend the permissible development types from the adjacent IN2 Light Industrial zone, into the subject site by 20metres. Under this clause the applicant must demonstrate that the proposed development complies with the objectives of both the zone applying to the land, as well as for the zone being extended.

In accordance with the discussion above, the applicant has adequately demonstrated that the development meets the objectives of the R5 Rural Residential zone. The applicant has also justified that the proposed development meets the objectives of the adjacent IN2 Light Industrial zone as follows:

- The proposal represents a new type of industry in the suburb of Medowie;
- The development will provide additional employment opportunities for local residents;
- The development will provide a local source of a sought after product;
- The scale of the development will provide a better transition than currently exists between the industrial and rural residential zoned land;
- The proposal will allow more than one use on the site (a dwelling and a business); and
- The proposed development will not reduce the availability of industrial land.

The justification submitted is acceptable as the development is of a minor industrial nature and is consistent with a number of other small industrial operators on the surrounding industrial land (in terms of its impact). Additionally, the development represents a new type of industry in the locality and adds to the range of light industrial activities in the area. The development forms a logical extension to the current industrial zone and will provide additional employment opportunities. As described elsewhere in this report, the proposed development provides an appropriate buffer between the industrial and rural residential zoned land and supports the use of the industrial land for industrial purposes.

The occupant of the subject property intends to work in the proposed development, whilst maintaining the majority of the property in a rural residential manner. The mobile nature of the plant and materials used in the operation will provide a low impact buffer to other rural residential uses, whilst the industrial nature of the development does not conflict with the industrial activities carried out on the land to the south of the site. The applicant has adequately demonstrated that the development is in keeping with the objectives of both the R5 Rural Residential zone and the IN2 Light Industrial Zone as required under clause 5.3(4)(a) of the LEP. It is further noted under the adopted Medowie Strategy that 'expansion of the light industrial area along Abundance Road is encouraged' (part A2.4) and accordingly the proposal is compatible with the land use planning of the town as required under clause 5.3(4)(b) of the LEP.

Clause 7.1 Acid sulfate soils

ITEM 1 - ATTACHMENT 2 ASSESSMENT REPORT.

The subject site is identified as Class 5 acid sulfate soils (ASS). Accordingly any works within 500 metres of Class 1,2,3 or 4 land which are likely to lower the watertable below 1 metre AHD on the adjacent land requires an Acid Sulfate Soils Management Plan. The proposed development is not likely to lower the watertable of adjacent land and is consistent with the provisions of clause 7.1.

Clause 7.8 Drinking Water Catchments

The subject site is located approximately 420m from Campvale Drain. Campvale drain forms part of the Grahamstown Dam catchment area and is pumped into the Grahamstown Dam drinking water supply via Campvale Pumping station. Grahamstown Dam provides approximately 40% of the drinking water to the Lower Hunter on an on-going basis and can supply up to 75% in times of peak demand. The subject development is not anticipated to have any impacts on the quantity of water entering the water storage as no physical changes to the land are proposed.

There is a potential that sawdust could be washed into Campvale drain. The large separation distance between the development site and the drain means that sawdust may not enter the drain in a single event and could collect in deposits large enough to allow composting to occur. Composting of wood products can cause leachate that in large enough quantities could be harmful to the drinking water supply. It is anticipated that the quantity of sawdust that could enter the drain is small due to the separation distance and that the applicant proposes to collect the sawdust in a storage container via a vacuum system. Additionally, the timber processing on site does not involve the use of any chemicals or treated timber.

Conditions of consent are proposed that require the active collection and storage of sawdust products, as well as regular maintenance to prevent build up on the site. A further condition is proposed to install and maintain in perpetuity, sedimentation fencing downstream of the development to reduce the outflow of sawdust during rain events. The above matters are considered acceptable to avoid any significant adverse impacts on water quality and flows, and are consistent with the clause.

Port Stephens Development Control Plan 2013

B2 Environmental and Construction Management

The application has been assessed against the provisions of chapter B2 – Environmental and Construction Management of the Development Control Plan 2013 (DCP2013). B2 and is satisfactory subject to conditions. No building works are required for the purposes of the development, however in accordance with assessment elsewhere in this report, a sediment barrier is to be installed and maintained in perpetuity to prevent the out washing of sawdust during rain events.

B3 Parking and Traffic

ITEM 1 - ATTACHMENT 2 ASSESSMENT REPORT.

There is sufficient area on-site to accommodate for parking demand. Three stacked on site car parking spaces are provided for employee parking to cater for the expected number of employees on the site. It is acknowledged that one of the anticipated employees already lives on the site and uses existing residential car parking spaces. It is also noted that sufficient area exists on the site for incidental unformed parking in the event of a peak period requiring additional staff. Very limited customers are expected at the site as sales to the public are undertaken offsite at a local distribution point. Additionally, any customers to the site will be collecting finished products which will require loading within the manoeuvring area. The nature of the business is such that formal customer car parking will not be required and the development is acceptable in this regard.

The applicant expects an average of 1 semi-trailer and 7 small trucks attending the site each week and a maximum of 5 semi-trailers and 20 small trucks. The small number of vehicle movements will not have an impact on the local road network and therefore no upgrade of roads or intersections is required. Councils Traffic Engineer has recommended that the existing access driveway be realigned so as to be square to the road, and that a driveway crossing be installed to an industrial standard (not encouraging trucks to drive over the kerb). Relevant conditions of consent have been imposed in this regard. Sufficient on-site manoeuvring area is available on the site for all vehicle types to enter and exit the site in a forward direction.

B5 Industrial Development

Additional landscaping has been proposed to the site to reduce the visibility of the industrial activity and protect the streetscape character. The development will be situated on a multi-use site and will provide a compatible and consistent flow between the residential and industrial uses on the site and adjoining land.

There are no buildings proposed as part of the application, however a shipping container on the site is proposed to be used for storage associated with the operation. The container is currently located in close proximity to the Abundance Road boundary. A condition of consent has been recommended which requires the car parking area and shipping container to switch location, thereby providing a greater setback and better street character. The development is of a minor nature and is appropriate in terms of site coverage, as well as bulk and scale. The development is consistent with the objectives of the Industrial Development chapter of DCP2013.

B12 Signage

A business identification sign is proposed as part of the development. The sign meets the size, number, message and locational requirements of the DCP chapter. The sign will integrate well into the streetscape on Abundance Road. It is not proposed to illuminate the sign.

Section 94A Contribution Plan

ITEM 1 - ATTACHMENT 2 ASSESSMENT REPORT.

Works to redefine the access to the site and to form manoeuvring areas will be undertaken on the site, however are under the threshold value of \$100,000. Accordingly, s.94A contributions are not applicable to the proposed development.

Community consultation

In accordance with Council's DCP, the proposed development was notified to adjoining neighbours. In response 3 submissions were received objecting to the proposal. The key items raised within the objections are addressed as follows:

Matter raised	Response
Obstruction of sight distances for vehicles entering and exiting other developments on Abundance Road	Council's Traffic Engineer has undertaken an assessment of the existing structures on site and the proposed development and concluded that sufficient sight distances are available to allow the safe movement of traffic to and from the subject and adjacent sites. Regardless, a condition of consent is proposed requiring the existing shipping container on the site and the staff car parking to be swapped to create a better presentation to Abundance Road.
Traffic impact on the local road network and pedestrians	The proposed development represents a low traffic impact due to the low number of average and peak vehicles expected at the site. In addition, a condition of consent is proposed requiring the driveway access to be formalised and realigned so as to present minimal impact to pedestrian traffic. Council's Traffic Engineer has undertaken an assessment of the impact of the development on the local road network and noted that there are no upgrades or changes are required to roads or intersections to allow the safe movement of traffic on the road network.
Dust	The proposed development includes an average of 1.3 large vehicle movements to and from the site each day. The low speed of vehicles on the site, necessitated by the short travel distance, is not considered to present a significant dust impact to surrounding developments including residences and the nearby doctor surgery. Further, a condition of consent is proposed that will result in a realigned and sealed driveway access, which will further reduce the dust impact. As discussed elsewhere in this report, the applicant also intends to use a vacuum system to collect sawdust which will reduce the opportunity for dust to affect surrounding properties.
Context	The proposed development presents an acceptable buffer to the current stark separation between the industrial and rural residential zoned land. The development, as discussed elsewhere in this report, meets the objectives of both zones

ITEM 1 - ATTACHMENT 2 ASSESSMENT REPORT.

	and is of a bulk and scale suitable to reinforce the objectives of both zones whilst not being prominent within the landscape. The proposed development is considered to be an improvement to the transition between the existing zones and is in keeping with the context of the locality.
The proposal does not comply with the requirements for a home business or industry	The proposed development was amended under clause 55 of the Environment Planning and Assessment Regulations 2000 to a log processing works, to which the requirements for home businesses and industries do not apply.
Vermine increase as a result of the development	The applicant has responded to this matter advising that he lives in the dwelling located on the subject site and has not noted any increase in vermin as a result of the previous unauthorised operation on the site. The applicants residence will be the most affected property if any increase in vermin occurs. Information received during the assessment gave an undertaking from the applicant that logs and products will be stored on the site in a spaced manner to reduce any potential nesting and hiding places for vermin. Additionally, the applicant has stated that management practices will be put into place if there is any noted vermin on the site. It is considered that the continual turnover of materials on the site will not be conducive to harbourage of vermin and that basic management practices will be adequate to prevent an increase to the normal vermin levels. To this end, a condition of consent is proposed that requires the creation of a vermin reduction program for the site.
Leachate from the processing of timber could pollute drinking water catchment	As discussed elsewhere in this report, leachate is typically formed from the decomposition of timber products when composted. Composting is not proposed on the subject site and is counter-productive for the operation of the proposed business. Accordingly, the development is not anticipated to have any significant impact on the quality of water in Campvale drain or Grahamstown Dam. No treated timber products are handled on site and additional measures to capture sawdust on site are proposed via conditions of consent which will reduce any potential impact to negligible levels.
Permissibility within the R5 zone	The proposed development is not permissible in the R5 Rural Residential zone; however the applicant has applied for the development under clause 5.3 of the Port Stephens Local Environmental Plan 2013, which permits an application to be lodged for a development that is permissible in an adjoining zone. The clause stipulates that the development may only

ITEM 1 - ATTACHMENT 2 ASSESSMENT REPORT.

	<p>take place within 20metres of the zoning boundary. In this instance, the southern boundary of the subject lot represents the zoning boundary with land to the south zoned IN2 Light Industrial. Log Processing Works is permissible in the IN2 zone. In this instance, the proposed development is contained within 20metres of the zoning boundary and the applicant has suitably demonstrated that the proposal complies with the objectives of both the R5 and IN2 zones.</p>
<p>Log storage stockpiles are physically and visually threatening</p>	<p>An existing unauthorised development on the site has resulted in a stockpile of logs that were intended to be processed. The applicant has stated that the existing stockpile is greater than would normally be contained on the site as a result of a large number of deliveries following recent storms in the Port Stephens Local Government Area. Following the deliveries, compliance action undertaken by Council staff has prevented any further processing of the stockpile. The applicant has stated that there is no intention to store similar amounts of raw timber on the site in the future, which is reinforced by the proposed storage area shown on the site plan (smaller than the current stockpile). This will reduce any potential impacts of physical threats from falling or dislodged logs.</p> <p>The existing log stockpile and proposed storage area are located on a large lot and are physically separated by a significant distance from public places. Accordingly, the stockpile is not considered to present a visual impact on the streetscape or from surrounding properties. It is noted the Council is not the regulatory body for Work Health Safety matters (WorkCover regulate these matters).</p>
<p>Noise</p>	<p>The proposed development includes the operation of machinery including a mobile splitting plant and an excavator, in addition to a small number of large vehicles visiting the site. The scale of the development is of such a nature that a noise assessment is not required. A condition of consent is proposed that requires the development to operate within the bounds of the NSW Industrial Noise Policy, as per Council's standard practice. The applicant has provided details of proposed noise amelioration devices that are intended to be used on the site to achieve this requirement. It is noted that the subject site is located within 20metres of existing industrial noise sources, and that the machinery utilised in the development is commensurate with machinery that could be used in existing approved industrial uses on the surrounding land.</p>
<p>Operation of the</p>	<p>The application proposal includes the cutting and splitting of</p>

ITEM 1 - ATTACHMENT 2 ASSESSMENT REPORT.

site outside the proposed development	timber for the purpose of making firewood. There are no other processes proposed as part of this application except for the collection of sawdust as a secondary product. Should operations take place outside of the consent Council officers have compliance functions at their disposal to address those matters.
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Internal referrals

Development Engineering

The application was referred to Council's Development Engineering Section for comment. Subject to conditions of consent the proposed development has been determined to be satisfactory with regard to engineering considerations.

Environmental Health

Council's Environmental Health Officer has assessed the proposed development and initially made comments regarding the particulars of the use of the site, noise impact, stormwater impact and atmospheric emissions. The comments raised have been addressed in the body of this report which note the amended proposal as submitted will not result in unacceptable traffic or noise level increases and will allow acceptable mitigation of stormwater contaminant impact. The proposed development will result in 2 machines being operated on the site including a tractor which will run the hydraulic splitting plant and an excavator which will handle the raw and split timber. The number of machines required for the operation is minimal and are not anticipated to have a significant adverse emission rate. Relevant conditions of consent have been imposed to address the above matters where necessary.

Traffic Engineer

The application was referred to Council's Traffic Engineer who noted that the expected average and maximum traffic movements to and from the site are low and are within the capacity of the existing road network. No upgrades to any roads or intersections are required to allow the safe movement of vehicles to and from the site. The Traffic Engineer commented that the existing driveway access, which is at an obtuse angle to the road, should be realigned so as to be square to the road way and sealed in accordance with Council's requirements. This will reduce the potential impacts on any passing pedestrians. A condition of consent has been recommended in this regard. The Traffic Engineer also commented that existing structures on the site do not impact adequate site distances for traffic entering and exiting other properties in Abundance Road.

Building

The application was referred to Council's Building Team for review who identified that the proposal was satisfactory. No building conditions were proposed as the development does not include the construction of any buildings.

ITEM 1 - ATTACHMENT 2 ASSESSMENT REPORT.

Likely impacts of the development

The assessment has considered the likely impact of the development by identifying the potential impacts of the proposal, available measures to ameliorate impacts and frequency/severity of impacts. The development can be carried out on site without significant adverse impacts to the environment or surrounding residential amenity subject to the conditions held at **Schedule 2**.

The proposed development is consistent with the relevant clauses of Council's LEP and DCP. It is compatible and sympathetic with the existing and envisaged future character of the locality.

Suitability of the site

The subject site is of sufficient size to cater for the proposed development. The proposal is consistent with the context of the locality and provides a suitable buffer development between the industrial developments to the south and the surrounding rural residential developments. Access and egress to and from the site can be carried out safely and in a forward direction. The subject site is suitable for the proposed development.

Public interest

The development will result in positive social and economic outcomes to the subject site and the surrounding local community through the provision of additional jobs in the local community and diversification of local economic inputs. Further, the proposed development will provide a transition development to buffer the adjoining industrial and rural residential developments. The concerns raised during public exhibition have been addressed. The development is in the public interest.

RECOMMENDATION

The application is recommended for approval, subject to conditions.

ATTACHMENT 3

SCHEDULE 2

CONDITIONS OF CONSENT

CONDITIONS THAT IDENTIFY APPROVED PLANS AND LIMITATIONS OF CONSENT

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

Plan Title	Plan Ref. No.	Sheet	Rev. No.	Date	Drawn By
Site Plan, as amended in red	F699	-	-	Feb. 15	RGR Design

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

2. The approved site plan described in condition 1 is to be modified in the following manner:
 - a) The existing shipping container is to be setback into the site to allow the proposed car parking to be located between the site boundary and the shipping container;
 - b) The access driveway is to be realigned in accordance with condition 3 below; and
 - c) A vehicle manoeuvring area is to be provided for cars reversing out of the onsite car parks, to allow a standard B&S vehicle to enter and exit the site in a forward direction.

CONDITIONS TO BE SATISFIED PRIOR TO COMMENCEMENT OF OPERATIONS

3. The existing access driveway is to be realigned so as to be perpendicular to the road edge in Abundance Road. The realigned driveway access is to be constructed in accordance with Council's standard drawing S123 and suitable for heavy vehicle traffic. The realigned driveway access shall give regard to existing street furniture and signage and redundant kerb laybacks are to be reinstated where no longer required. All work required to be carried out within a public road reserve must be separately approved by Council, under Section 138 of the Roads Act 1993.
4. Landscaping is to be installed in accordance with the approved plan and is to provide a continuous landscape screen in the nominated locations. Plant species should be native screening species and are to be maintained and replaced as necessary for the duration of the operation on the site.
5. The proposed development is to be separated from the remainder of the property using a rural style fence, hedging type landscaping, a physical barrier, or the like. Details of the separating feature are to be submitted and agreed to by Council. The

ITEM 1 - ATTACHMENT 3 CONDITIONS OF CONSENT.

separating measure is to be maintained for the duration of the operation. Any landscaping used for the purpose of this condition is to compliment other landscaping on the property.

CONDITIONS TO BE SATISFIED AT ALL TIMES

6. Operations on the site are permitted only for the purpose of commercially producing:
 - a) Firewood;
 - b) Bagged Sawdust; and
 - c) Strainer posts.No other products are permitted to be produced in commercial quantities.
7. The approved operational hours and all activities associated with the operation, including deliveries of materials, are to be undertaken during these times:
 - a) Monday to Friday, 8.30am to 5pm; and
 - b) Saturday, 9am to 2pm.The operation may not be carried out on a Sunday or a Public Holiday.
8. Active dust suppression measures are to be undertaken during operational hours to prevent nuisance dust affecting neighbouring properties and public spaces. The measures shall include:
 - a) Vacuum capture of sawdust during timber cutting and splitting operations;
 - b) Maintenance of the internal roads and manoeuvring areas to ensure a low dust emission surface is achieved; and
 - c) Ongoing maintenance of the site to prevent a build-up of sawdust, woodchips and the like.
9. A sediment barrier is to be installed and maintained for the life of the development along the downstream property boundaries to detain any sawdust, woodchips or the like in rain events. The barrier is to be cleared of any materials following a rain event and is to be incorporated into the regular maintenance of the site.
10. A Vermin Management Plan is to be prepared for the site that details standard work practices to reduce the opportunity for harbourage by vermin, in addition to targeted campaigns of vermin reduction when required. The Vermin Management Plan is to be actively incorporated into the operations of the site at all times. A copy of the plan is to be provided to Council prior to the commencement of operations.
11. When the development is in operation the L₁₀ noise level measured over a period of not less than 15 minutes must not exceed the background by more than 10dB(A) when measured at the property boundary. Mitigation measures should be incorporated into the operations of the site to reduce noise impacts where practicable. In addition, the development shall be managed so as not to cause offensive noise, as defined under the Protection of the Environment Operations Act 1994 and the NSW Industrial Noise Policy. Evidence of compliance with the Act and policy is to be provided to Council within 4 weeks upon request.

ITEM 1 - ATTACHMENT 3 CONDITIONS OF CONSENT.

12. A maximum of 100 tonnes of raw logs is to be stored on the site at any one time and is to be contained within the log storage area shown on the approved plan. Log piles are to be cross stacked in layers to a maximum height of 2 metres above ground level and are to be retained by upright posts that prevent the opportunity for the collapse of log piles.
13. Finished products shall be stored within the storage area shown on the approved plan.
14. All vehicle manoeuvring areas shall be kept clear to allow all vehicles to enter and leave the property in a forward direction.
15. A waste storage and containment facility shall be provided on the site for storage of any sawdust, woodchips and the like or other waste materials. Waste materials shall be removed from the site to a licenced waste facility on a regular basis to prevent any build-up on the site.

ADVICES

- A. The developer is responsible for full costs associated with any alteration, relocation or enlargement to public utilities whether caused directly or indirectly by this proposal. Such utilities include water, sewerage, drainage, power, communication, footways, kerb and gutter.
- B. WorkCover NSW requirements apply to the stacking of heavy materials and should be reviewed with regard to the processes being carried out on the site.

ITEM 1 - ATTACHMENT 4 CALL TO COUNCIL FORM.

CALL TO COUNCIL – DEVELOPMENT APPLICATION

I, Councillor Geoff Dingle

Require development application Number; 016-2015-000001:07-001

A development application for Corjia Pty Ltd 30 Ferodale RD MEDOWIE

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

The reason for this call up to Council is:

The proposed operation fails to meet the provisions of clause 5.3 of the Port Stephens Local Environmental Plan (LEP) Development near zone boundaries

Quote: (1) The objective of this clause is to provide flexibility where the investigation of a site and its surroundings reveals that a use allowed on the other side of a zone boundary would enable a more logical and appropriate development of the site and be compatible with the planning objectives and land uses for the adjoining zone.

The saw mill /wood splitting operations located on the R5 large lot residential property is not compatible with the adjoining IN2 industrial site. The industrial site contains light scale industrial small business applications ranging from small engine repairs, small scale manufacture, car modifications etc. The eastern end of the property has been left undeveloped representing a fire protection zone. Extension of land use does not include large scale storage of raw materials: debarking, timber milling and splitting operations, these are highly visible from the surrounding roads. The operations generate, dust, smell, noise and traffic hazard issues. This operation cannot be contained within a 20 metre strip by nature of the operation, materials storage, transport vehicle and mobile equipment movements.

The proposed industrial development impacts on the amenity of neighbouring business owners their employees, customers and the patients serviced by the Abundance Medical Centre, local homes, residents accessing schools and services in the area.

- Potential for excessive noise, dust and odour impacting on the neighbouring industrial/medical services precinct.
- Impact of rodents currently breeding in timber piles infesting local businesses.
- Fire hazard resulting from large volumes of saw dust, bark waste and log stock.
- Leachates from timber by products entering the Campvale drainage system and neighbouring properties through storm water.
- Poor visual appearance of an operation in the centre of the Medowie community, with all operations exposed from two street fronts.
- Traffic hazards associated with truck and materials movements onto a major access roads to industrial building and the SE link with Raymond terrace. Close to a major tee intersection with poor vision and opposite the busy medical centre entrance.

Signed :

Date: 2nd July, 2015

ITEM NO. 2

**FILE NO: PSC2015-01000/531
TRIM REF NO: PSC2013-00406**

POLICY REVIEW - DEVELOPMENT APPLICATIONS TO BE REPORTED TO COUNCIL

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

RECOMMENDATION IS THAT COUNCIL:

- 1) Endorse the revised 'Development Applications to be Reported to Council' policy shown at **(ATTACHMENT 2)**.
- 2) Place the 'Development Applications to be Reported to Council' policy, as amended on public exhibition for a period of 28 days and should no submissions be received, the policy be adopted as amended, without a further report to Council.
- 3) Revoke the 'Planning Matters to be Reported to Council' policy dated 13 August 2013, Minute Number 217 **(ATTACHMENT 1)**, should no submissions be received.

**ORDINARY COUNCIL MEETING - 28 JULY 2015
COMMITTEE OF THE WHOLE RECOMMENDATION**

	Councillor Chris Doohan Councillor Steve Tucker That the recommendation be adopted.
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In accordance with Section 375 (A) of the Local Government Act 1993, a division is required for this item.

Those for the Motion: Crs Geoff Dingle, Chris Doohan, Sally Dover, Ken Jordan, Peter Kafer, Paul Le Mottee, Bruce MacKenzie and Steve Tucker

Those against the Motion: Nil

**ORDINARY COUNCIL MEETING - 28 JULY 2015
MOTION**

209	Councillor Geoff Dingle Councillor Paul Le Mottee It was resolved that Council:
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MINUTES ORDINARY COUNCIL - 28 JULY 2015

	<ol style="list-style-type: none">1) Endorse the revised 'Development Applications to be Reported to Council' policy shown at (ATTACHMENT 2).2) Place the 'Development Applications to be Reported to Council' policy, as amended on public exhibition for a period of 28 days and should no submissions be received, the policy be adopted as amended, without a further report to Council.3) Revoke the 'Planning Matters to be Reported to Council' policy dated 13 August 2013, Minute Number 217 (ATTACHMENT 1), should no submissions be received.
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In accordance with Section 375 (A) of the Local Government Act 1993, a division is required for this item.

Those for the Motion: Crs Geoff Dingle, Chris Doohan , Sally Dover, Ken Jordan , Peter Kafer, Paul Le Mottee , Bruce MacKenzie and Steve Tucker

Those against the Motion: Nil

BACKGROUND

The purpose of this report is to present to Council an amended policy for adoption. Council has a program of systematically reviewing and updating its policies.

The current Development Applications to be reported to Council Policy was adopted on 26 February 2002 and amended on 13 August 2013 and is provided in **(ATTACHMENT 1)**. This Policy is to advise how Councillors can "call up" a DA for Council consideration.

The policy has been reviewed and minor amendments made to incorporate changes to internal processes (i.e. inclusion of a new internal Peer Review (PR) process). The new policy is also consistent with the new policy template and adopted style guide. The updated policy is provided in **(ATTACHMENT 2)**.

There has been minimal change to the policy, as the current balance of Development Applications determined under delegation v's Council is working effectively.

The percentage of DAs determined under delegation is around 99%. The remaining 1% is determined by elected Council. This is consistent with most other Councils.

The policy is read in conjunction with existing staff delegations, as a Development Application being called up essentially removes respective staff delegations.

COMMUNITY STRATEGIC PLAN

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

FINANCIAL/RESOURCE IMPLICATIONS

There are minimal direct financial/resource implications.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes		Policy update & implementation within existing budget.
Reserve Funds	No		
Section 94	No		
External Grants	No		
Other	No		

LEGAL, POLICY AND RISK IMPLICATIONS

There are positive legal, policy and risk implications in reviewing existing policies and this policy is considered to assist in facilitating more accurate and robust decision making.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk of making poor decisions as a result of an out-dated policy.	Medium	Review current policy.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

There are minimal direct sustainability implications. The policy enables the effective determination of development applications on a merits basis considering all respective legislation.

CONSULTATION

- 1) Consultation has been undertaken with the Executive Team and within the Section, including relevant coordinators within both the Development Assessment and Building Assessment Teams that directly implement this policy.

OPTIONS

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

ATTACHMENTS

- 1) Current Development Applications to be Reported to Council Policy.
- 2) Amended Development Applications to be Reported to Council Policy.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ITEM 2 - ATTACHMENT 1 CURRENT DEVELOPMENT APPLICATIONS TO BE REPORTED TO COUNCIL POLICY.



POLICY

Adopted: 26/02/2002
Minute No: 048
Amended: 13/08/2013
Minute No: 217

FILE NO: PSC2013-00406

TITLE: DEVELOPMENT APPLICATIONS TO BE REPORTED TO COUNCIL

RESPONSIBLE OFFICER: MANAGER DEVELOPMENT ASSESSMENT & COMPLIANCE

BACKGROUND

The majority of development applications (DA's) are determined by Council's assessment officers, utilising delegated authority and may require review or concurrence from the Development Assessment Panel (DAP). This policy is aimed at ensuring that Councillors are aware of how they can access information on the receipt and determination of DA's.

OBJECTIVE

- 1) To ensure that Councillors are provided with the opportunity for input into the determination of DA's prior to decisions being finalised and determinations granted.

PRINCIPLES

- 1) The use of delegated authority provides an opportunity for effective and timely decision making; however, it is appropriate that Council is informed of the exercise of delegated authority.
- 2) Given the scope of planning decisions, it is appropriate that delegated assessment staff, are able to use their discretion and judgement for those matters which should be reported to Council.
- 3) The delegations are drafted such that a Councillor may request the staff delegation be withdrawn and a DA be reported to Council for determination. In this instance a Councillor completes the DA Call Up Form.

ITEM 2 - ATTACHMENT 1 CURRENT DEVELOPMENT APPLICATIONS TO BE REPORTED TO COUNCIL POLICY.

POLICY STATEMENT

Council shall be informed with regard to planning matters in the following way:-

- 1) All current DA's lodged are publicly available and listed on the Council website via the DA Tracker.
- 2) A report is generated weekly of all new DA's lodged and circulated weekly via email to all Councillors and other relevant internal staff.
- 3) At any time prior to determination of a DA, a Councillor may request that the application be reported to Council for determination. A report will be forwarded to Council once all the required information is submitted and once a full assessment has been completed pursuant to section 79C *Environmental Planning and Assessment Act 1979*. However, the Applicant has the ability to advise they are not providing any further information and request Council make a determination.
- 4) Determination of DA's under delegated authority, are in accordance with set procedures. The procedures for determination include Single Officer Determinations (SODs), DAP review or DAP concurrence.
- 5) The Group Manager, Development Services and/or Manager, Development Assessment & Compliance, at their discretion may report any DA to Council for determination.

RELATED POLICIES

The relevant planning matters referred to above are as follows:-

- 1) Sustainability Review – End to End Process
- 2) Application Determination Policy
- 3) Development Control Plan

SUSTAINABILITY IMPLICATIONS

SOCIAL IMPLICATIONS

Positive social implications are likely through providing a clear policy framework for reporting development applications to Council.

ECONOMIC IMPLICATIONS

Nil

ENVIRONMENTAL IMPLICATIONS

ITEM 2 - ATTACHMENT 1 CURRENT DEVELOPMENT APPLICATIONS TO BE REPORTED TO COUNCIL POLICY.

Nil

RELEVANT LEGISLATIVE PROVISIONS

- 1) Environmental Planning & Assessment Act 1979
- 2) Environmental Planning & Assessment Regulations 2000
- 3) Port Stephens Local Environmental Plan

IMPLEMENTATION RESPONSIBILITY

- 1) Development Assessment & Compliance

PROCESS OWNER

- 1) Development Services Group

REVIEW DATE

- 1) Bi-Annually

ITEM 2 - ATTACHMENT 2 AMENDED DEVELOPMENT APPLICATIONS TO BE REPORTED TO COUNCIL POLICY.

Policy



FILE NO: PSC2013-00406
TITLE: DEVELOPMENT APPLICATIONS TO BE REPORTED TO COUNCIL
POLICY OWNER: MATTHEW BROWN – MANAGER DEVELOPMENT ASSESSMENT & COMPLIANCE

PURPOSE:

To ensure that Councillors are provided with the opportunity for input into the determination of Development Application's (DA's) prior to decisions being finalised and determinations granted.

CONTEXT/BACKGROUND:

The majority of DA's are determined by Council's assessment officers, utilising delegated authority and may require review in accordance with Council's Development Assessment Process (DAP). This policy is aimed at ensuring that Councillors are aware of how they can access information on the receipt and determination of DA's.

SCOPE:

- 1) The use of delegated authority provides an opportunity for effective and timely decision making; however, it is appropriate that Council is informed of the exercise of delegated authority.
- 2) Given the scope of planning decisions, it is appropriate that delegated assessment staff, are able to use their discretion and judgement for those matters which should be reported to Council.
- 3) The delegations are crafted such that a Councillor may request the staff delegation be withdrawn and a DA be reported to Council for determination. In this instance a Councillor completes the DA Call Up Form.

DEFINITIONS:

DA Development Application
DAP Development Assessment Process

Policy

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Issue Date: 26/2/2002

Printed: 7/7/2015

Review Date: 28/7/2015

Page: 1 of 3

ITEM 2 - ATTACHMENT 2 AMENDED DEVELOPMENT APPLICATIONS TO BE REPORTED TO COUNCIL POLICY.

Policy



PR Peer Review
SOD Single Officer Determinations

POLICY STATEMENT:

Council shall be informed with regard to planning matters in the following way:

- 1) All current DA's lodged are publicly available and listed on the Council website via the DA Tracker.
- 2) A report is generated weekly of all new DA's lodged and circulated weekly via email to all Councillors and other relevant internal staff.
- 3) At any time prior to determination of a DA, a Councillor may request that the application be reported to Council for determination. A report will be forwarded to Council at the completion of the assessment.
- 4) Determination of DA's under delegated authority, are in accordance with set procedures. The procedures for determination include Single Officer Determinations (SOD's), Peer Review (PR), DAP review.
- 5) The Group Manager, Development Services and/or Manager, Development Assessment & Compliance, at their discretion may report any DA to Council for determination.

POLICY RESPONSIBILITIES:

- 1) Development Assessment and Compliance

RELATED DOCUMENTS:

- 1) Sustainability Review – End to End Process
- 2) Development Control Plan
- 3) Work Practice Note: Development Assessment Process
- 4) Environmental Planning & Assessment Act 1979
- 5) Development Application Guide
- 6) ICAC Corruption Risks in NSW DA process position paper

Policy

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Review Date: 28/7/2015

Page: 2 of 3

ITEM 2 - ATTACHMENT 2 AMENDED DEVELOPMENT APPLICATIONS TO BE REPORTED TO COUNCIL POLICY.

Policy



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TRIM container No	PSC2013-00406 (previously S9100-023)	TRIM record No	
Audience	Elected Council, Public and Development Services		
Process owner	Matthew Brown, Manager Development Assessment & Compliance		
Author	Cindy Dickson, Coordinator Planning & Developer Relations		
Review timeframe	Biennial	Next review date	30/7/2017
Adoption date	26/02/2002		

VERSION HISTORY:

Version	Date	Author	Details	Minute No.
1	26/2/2002	Paul Douglass	Original planning matters to be reported to Council policy.	048
2	23/6/2013	Matthew Brown	Updated policy to Development applications to be reported to Council.	217
3	###	Cindy Dickson	Review and minor updates to policy.	###

Policy

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Issue Date: 26/2/2002

Printed: 7/7/2015

Review Date: 28/7/2015

Page: 3 of 3

ITEM NO. 3

FILE NO: PSC2015-01000/610

TRIM REF NO: 14/508

MODIFICATION TO DEVELOPMENT CONSENT 16-2014-331-1 - EXEMPTION TO S94A DEVELOPMENT CONTRIBUTIONS MURROOK CULTURE CENTRE, 2163 NELSON BAY ROAD, WILLIAMTOWN (LOT 1 DP 748265)

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

GROUP: DEVELOPMENT SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Approve Modification to Development Application DA No. 16-2014-331-2 for a reduction in Section 94A Development Contributions for Murrook Culture Centre, Williamtown subject to the conditions contained in **(ATTACHMENT 3)**.

**ORDINARY COUNCIL MEETING - 28 JULY 2015
COMMITTEE OF THE WHOLE RECOMMENDATION**

	<p>Councillor Ken Jordan Councillor Steve Tucker</p> <p>That the recommendation be adopted.</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: Crs Geoff Dingle, Chris Doohan, Sally Dover, Ken Jordan, Peter Kafer, Paul Le Mottee, Bruce MacKenzie and Steve Tucker

Those against the Motion: Nil

**ORDINARY COUNCIL MEETING - 28 JULY 2015
MOTION**

210	<p>Councillor Geoff Dingle Councillor Paul Le Mottee</p> <p>It was resolved that Council:</p> <ol style="list-style-type: none">1) Approve Modification to Development Application DA No. 16-2014-331-2 for a reduction in Section 94A Development Contributions for Murrook Culture Centre, Williamtown subject to the conditions contained in (ATTACHMENT 3).
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In accordance with Section 375 (A) of the Local Government Act 1993, a division is required for this item.

Those for the Motion: Crs Geoff Dingle, Chris Doohan , Sally Dover, Ken Jordan , Peter Kafer, Paul Le Mottee , Bruce MacKenzie and Steve Tucker

Those against the Motion: Nil

BACKGROUND

The purpose of this report is to present to Council a section 96(1)(a) modification to development application 16-2014-331-1 Alterations and Additions to Cultural Centre. The application requests a reduction in section 94A developer contributions, for which Council staff do not have delegated authority. The elected Council has the ability to approve such a reduction under Section 2.10 of the S94 Development Contributions Plan and accordingly the application is referred to Council for determination.

The subject site is known as the Murrook Culture Centre and is located at No. 2163 Nelson Bay Road, Williamtown (Lot 1 DP 748265). A Locality Plan is included as **(ATTACHMENT 2)** to this report. Development consent was granted for Alterations and Additions to Cultural Centre on 9 September 2014 under DA 16-2014-331-1. This development consent contained Condition No. 6 which required a contribution of 1% of the proposed development cost be paid to Council in accordance with clause 25J of the Environmental Planning and Assessment Regulation 2000, prior to the issue of a Construction Certificate.

The applicant seeks to remove Condition No. 6 from the development consent and has included the following justification in support of the proposal:

- The Murrook Culture Centre is a vital piece of infrastructure for Port Stephens and is primarily developed as a community place and Cultural Education Centre;
- The Murrook Culture Centre already provides for two generous turning lanes for traffic moving in both directions along Nelson Bay Road and the alterations will not generate a significant increase in traffic levels;
- Reinvestment of the Murrook Culture Centre within itself represents substantial investment in community infrastructure which can be celebrated as the lead cultural development program for the Port Stephens Aboriginal community; and
- The alterations and additions to the Culture Centre will enhance current site operations to build on the existing tourism and visitor product, indirectly benefitting other local businesses such as accommodation, retail, food and drink premises and tour operators.

The application was referred to Council's S94 Officer and the S94 Analysis Team in accordance with Council's service level agreements. The S94 Analysis Team provided the following recommendation;

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- Council consider a reduction in S94A Development Contributions from 1% to 0.5% as the primary use of the site is as a community and educational centre.
- Council is to note that the development does result in an intensification of the existing land use and may have impacts upon local infrastructure and the provision of services. As such, a full exemption from S94A levies is not considered appropriate.

The provided justification is considered to sufficiently warrant the reduction of section 94A developer contributions in line with the assessment of the S94 Analysis Team. Accordingly, it is recommended that Council adopt the recommendation and amend existing condition 6 to reduce the applicable contributions rate to 0.5%

COMMUNITY STRATEGIC PLAN

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

FINANCIAL/RESOURCE IMPLICATIONS

As with any Development Application, it could be potentially challenged in the NSW Land and Environment Court. Defending Council's determination would have financial implications.

Should Council approve a reduction or exemption from the levied S94A Development Contributions, Council's income in accordance with the Section 94A Development Contributions Plan would be diminished.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	No		Within operational budget.
Reserve Funds	No		No impact on reserve funds.
Section 94A	Yes		Condition recommended.
External Grants	No		
Other	No		

LEGAL, POLICY AND RISK IMPLICATIONS

The development application is consistent with Council's Local Environmental Plan 2013 and the requirements of Section 79C(a) of the *Environmental Planning and Assessment Act 1979*.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources ?
There is a risk that if the application is refused the determination will be challenged in the Land and Environment Court.	Low	Council's S94A Development Contributions Plan has been prepared and adopted in accordance with legislative requirements under the Environmental Planning and Assessment Act 1979.	Yes
There is a risk that Council will not realise all available Section 94A monies.	High	An exemption of S94A Development Contribution will reduce the level of monies realised by Council. A reduction in the amount levied would assist the facility financially as well as recouping funds for any additional burden on services from the site intensification.	Yes
There is a risk that by Council strictly imposing the Section 94A Contributions as per the Section 94A Plan, the existing business will not be able to operate.	Low	The Murrook Culture Centre has been in operation for a prolonged period of time and the levying of S94A Contributions will not compromise the centre's economic viability.	Yes
There is a risk that Council reducing or exempting the development from Section 94A Contributions could set a precedent.	Medium	Council is to consider the application on its merits and precedent only exists in very similar circumstances.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The proposed modification will result in a reduced section 94A developer contribution being paid to Council. However, the cultural benefits afforded to the community by the development are considered to adequately offset the reduced contribution, in accordance with the assessment by the S94 Analysis Team.

The environmental implications of the proposed modification are considered nil. The impact of the proposed alterations and additions has been assessed and approved as per the original development application 16-2014-331-1. This modification seeks only to modify Condition No. 6 and no environmental impact will result.

CONSULTATION

The application did not require public notification in accordance with Council's policies. The application was referred to Council's S94 Officer as well as the S94 Analysis Team in accordance with Council's service level agreements.

OPTIONS

- 1) Accept the recommendations - Council discretion for a reduction in levied S94A Development Contributions from 1% to 0.5%.
- 2) Amend the recommendations – Council discretion for an exemption in levied S94A Development Contributions from 1% to nil.
- 3) Reject the recommendations.

ATTACHMENTS

- 1) S96(1)(a) Modification Assessment Report 16-2014-331-2.
- 2) Locality Plan 16-2014-331-2.
- 3) Conditions for Approval 16-2014-331-2.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

**ITEM 3 - ATTACHMENT 1 S96(1)(A) MODIFICATION ASSESSMENT REPORT
16-2014-331-2.**

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 subject site is the Murrook Culture Centre located at No. 2163 Nelson Bay Road, Williamtown (Lot 1 DP 748265). Development consent was given for 'Alterations and Addition to Cultural Centre' on 9 September 2014 under DA 16-2014-331-1. This development consent contained Condition No. 6 which required a contribution of 1% of the proposed development cost be paid to Council in accordance with clause 25J of the Environmental Planning and Assessment Regulation 2000, prior to the issue of a Construction Certificate.

A Section 96(1)(a) modification application was submitted by the Worimi Local Aboriginal Land Council on 14 July 2015. The modification proposes an exemption from the payment of the applicable S94A Development Contributions in accordance with Section 2.10 of Council's Section 94A Development Contributions Plan.

THE APPLICATION

Applicant	Worimi Local Aboriginal Land Council
Owners	Worimi Local Aboriginal Land Council
Details Submitted	S94A Exemption Supporting Letter

THE LAND

Property Description	Lot 1 DP 748265
Address	2163 Nelson Bay Road, Williamtown
Site Constraints	Bushfire Prone Land – Category 1 Vegetation and Buffer Koala Habitat – Preferred, Ink, buffer and mainly cleared Flood Prone Land EEC – Swamp Sclerophyll Forest ANEF 2012 – 20-25 ANEF 2025 – 25-30 Department of Defence Height Trigger Map – Referral 7.5m Hunter Water Special Areas Acid Sulphate Soils – Class 4 and 5 Main Road – Nelson Bay Road
Site Area	49,842.84m ² (4.98ha)

PLANNING PROVISIONS

Environmental Planning Assessment Act 1979	s79C Planning Provisions s79BA Bushfire Prone Land
State Environmental Planning Policies (SEPP)	SEPP44 - Koala Habitat Protection
Port Stephens Local Environmental Plan 2013	Zone RU2 Rural Landscape
Port Stephens Section 94A Plan	Section 94A contributions applicable

ITEM 3 - ATTACHMENT 1 S96(1)(A) MODIFICATION ASSESSMENT REPORT
16-2014-331-2.

STATUTORY ACTS AND REGULATIONS

Environmental Planning and Assessment (EP&A) Act 1979

Section 79BA – Consideration of Bushfire Prone Land

The proposed development is located on bushfire prone land however the proposed modification seeks the deletion of a condition relating to the levying of S94 Development Contributions. No further bushfire assessment is required.

Section 79C – Planning Assessment

This assessment report satisfies the items listed under Section 79C of the EP&A Act 1979.

State Environmental Planning Policies

State Environmental Planning Policy No. 44 – Koala Habitat Protection and Port Stephens Comprehensive Koala Plan of Management (CKPoM)

The subject site contains land mapped as preferred koala habitat and habitat link. The modification application does not seek to make any physical changes to the approved development and accordingly, the assessment carried out for the original development consent is considered sufficient for this purpose.

Port Stephens Local Environmental Plan (2013)

The subject site is zoned RU2 - Rural Landscape pursuant to the Port Stephens Local Environmental Plan 2013. The development is considered to meet the objectives of the RU2 Rural Landscape zone and the proposed modification makes no amendments which would offend or compromise the objectives of the zone.

Section 94 Contributions Plan

Council's S94 Analysis Team has provided the following recommendation;

'In accordance with the last paragraph of 2.10, Council can consider to vary the levy to a less amount, at its complete discretion. The total cost of the development is \$3,249,760 with the total Section 94A levies payable of \$32,497.60. In accordance with Section 25J of the *Environmental Planning and Assessment Regulation 2000*, we believe, the proposed application does result in the intensification of the current land use and therefore we should be imposing a Section 94A levy. Section 25J states:

"25J Section 94A levy—determination of proposed cost of development

- (1) *The proposed cost of carrying out development is to be determined by the consent authority, for the purpose of a section 94A levy, by adding up all the costs and expenses that have been or are to be incurred by the applicant in carrying out the development, including the following:*

- (a) *if the development involves the erection of a building, or the carrying out of engineering or construction work—the costs of or incidental to erecting the building, or carrying out the work, including the costs (if any) of and incidental to demolition, excavation and site preparation, decontamination or remediation,*
 - (b) *if the development involves a change of use of land—the costs of or incidental to doing anything necessary to enable the use of the land to be changed,*
 - (c) *if the development involves the subdivision of land—the costs of or incidental to preparing, executing and registering the plan of subdivision and any related covenants, easements or other rights.*
- (2) *For the purpose of determining the proposed cost of carrying out development, a consent authority may have regard to an estimate of the proposed cost of carrying out the development prepared by a person, or a person of a class, approved by the consent authority to provide such estimates.*
- (3) *The following costs and expenses are not to be included in any estimate or determination of the proposed cost of carrying out development:*
- (a) *the cost of the land on which the development is to be carried out,*
 - (b) *the costs of any repairs to any building or works on the land that are to be retained in connection with the development,*
 - (c) *the costs associated with marketing or financing the development (including interest on any loans),*
 - (d) *the costs associated with legal work carried out or to be carried out in connection with the development,*
 - (e) *project management costs associated with the development,*
 - (f) *the cost of building insurance in respect of the development,*
 - (g) *the costs of fittings and furnishings, including any refitting or refurbishing, associated with the development (except where the development involves an enlargement, expansion or intensification of a current use of land),*
 - (h) *the costs of commercial stock inventory,*
 - (i) *any taxes, levies or charges (other than GST) paid or payable in connection with the development by or under any law,*
 - (j) *the costs of enabling access by disabled persons in respect of the development,*
 - (k) *the costs of energy and water efficiency measures associated with the development,*
 - (l) *the cost of any development that is provided as affordable housing,*
 - (m) *the costs of any development that is the adaptive reuse of a heritage item.*
- (4) *The proposed cost of carrying out development may be adjusted before payment, in accordance with a contributions plan, to reflect quarterly or annual variations to readily accessible index figures adopted by the plan*

ITEM 3 - ATTACHMENT 1 S96(1)(A) MODIFICATION ASSESSMENT REPORT
16-2014-331-2.

(such as a Consumer Price Index) between the date the proposed cost was determined by the consent authority and the date the levy is required to be paid.

- (5) *To avoid doubt, nothing in this clause affects the determination of the fee payable for a development application.*

In this circumstance and given that Section 25J allows us to levy the Section 94A levy, we recommend that the levy be reduced from 1% to 0.5% and not completely waive the existing levy as requested. We acknowledge Worimi Local Aboriginal Land Council's submission that the Murrook Culture Centre primary use is a community and educational centre and therefore it is reasonable for Council to consider waiving part of the applicable S94A levy on this development. However it is also noted that the development does result in an intensification of the existing land use and therefore may have impacts on local infrastructure and service provisions.'

It is recommended that Council vary the section 94A levy rate in accordance with the recommendations of the S94 Analysis Team.

COMMUNITY CONSULTATION

The application did not require public notification in accordance with Council's policies. The application was referred to Council's S94 Officer as well as the S94 Analysis Team in accordance with Council's service level agreements.

LIKELY IMPACTS OF THE DEVELOPMENT

This assessment has considered the likely impact of the development by identifying the potential impacts of the proposal on Council and the community. Council is the authority which will be mostly affected by the proposed exemption to the levied S94A fees.

The proposed development remains consistent with the relevant clauses of Council's LEP and is compatible with the existing and envisaged future character of the locality.

SUITABILITY OF THE SITE

As determined under the original development consent, the subject site is of sufficient size to cater for the proposed development. The proposed modification will not alter the suitability of the site for the overall development.

PUBLIC INTEREST

The proposed development seeks variation from the adopted Port Stephens Council S94A Development Contributions Plan. This plan is established to provide an administrative framework for Council to obtain a contribution from developers towards the provision, extension or augmentation of public amenities and services. An assessment by the S94 Analysis Team has determined that a reduce contribution rate of 0.5% is acceptable in the circumstances of the application given the cultural benefits the development will provide to the community.

ITEM 3 - ATTACHMENT 1 S96(1)(A) MODIFICATION ASSESSMENT REPORT
16-2014-331-2.

CONDITIONS TO BE MODIFIED

Modify Condition No. 6

Prior to the issue of Construction Certificate, and pursuant to section 80A(1) of the Environmental Planning and Assessment Act 1979 and the Port Stephens Section 94A Development Contributions Plan, a contribution of the cost of development shall be paid to Council, as determined in accordance with clause 25J of the Environmental Planning and Assessment Regulation 2000. The contribution amount is to be 0.5% of the cost of carrying out the development.

A Cost Summary Report Form (attached) setting out an estimate of the proposed cost of carrying out the development in accordance with Schedule 1 of the Port Stephens Section 94A Development Contributions Plan, must be approved by Council prior to the issue of Construction Certificate. Where the estimated cost of carrying out the whole of the development is more than \$1,000,000, the Cost Summary Report Form must be completed by a Quantity Surveyor who is a registered Associate member or above, of the Australian Institute of Quantity Surveyors.



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CONDITIONS FOR APPROVAL

SCHEDULE 2

CONDITIONS THAT IDENTIFY APPROVED PLANS AND LIMITATIONS OF CONSENT

1. Development Consent is granted for a Community Facility and Associated Office Building and Pool at 2163 Nelson Bay Road, Williamstown (Lot 1 DP 748265).

The development must be carried out in accordance with the following plans and documentation listed below and endorsed with Council's stamp, except where amended by other conditions of this consent:

Plan prepared by: Derive Architecture and Design; Project No: DD149			
Name of Plan	Drawing Number	Issue	Date
Site Plan – Overall Strategic Staging Plan	A-005	E	22/05/2014
Detail Site Plan and Site Analysis Plan	A-006	F	22/05/2014
Existing Floor and Demolition Plan	A100	C	22/05/2014
Existing and Demolition Roof Plan	A103	B	22/05/2014
Ground Floor Plan Part 01	A110	I	22/05/2014
Ground Floor Plan Part 02	A111	I	22/05/2014
Office Premises Ground Floor Plan	A112	H	22/05/2014
Roof Plan Part 01	A113	D	22/05/2014
Roof Plan Part 02	A114	D	22/05/2014
Office Premises Roof Plan	A115	D	22/05/2014
Proposed Elevations Cultural Collections Centre	A310	F	22/05/2014
Proposed Elevations Office Premises	A312	E	22/05/2014
Proposed Sections	A410	C	22/05/2014
Proposed Sections Office Premises	A411	E	22/05/2014

Swimming Pool Plan and Section	A500	E	22/05/2014
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Plan prepared by: Forum / Urban Sanctum Landscape Design ; Project No: US 40302			
Name of Plan	Drawing Number	Issue	Date
Landscape Plan	Sheet 1 of 3	-	April 2014

Plan prepared by: Forum Consulting Engineers			
Name of Plan	Drawing Number	Issue	Date
Concept Stormwater Management Plan	40302-SWD-01 of 03	B	27/05/2014
Concept Stormwater Management Plan	40302-SWD-02 of 03	B	27/05/2014
Concept Stormwater Management Plan	40302-SWD-03 of 03	B	27/05/2014

Document References:

- Statement of Environmental Effects dated March 2014, and
- Geotechnical Engineers Report, prepared by Forum Consulting Engineers and dated 8 August 2014.

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

2. The application shall be carried out in accordance with the recommendations of the Bushfire Threat Assessment, prepared by Firebird ecoSultants Pty Ltd and dated 23 May 2014.
3. The approved use of the land shall not commence until all relevant conditions of this consent have been complied with and a Final or Interim Occupation Certificate has been issued. Where an Interim Occupation Certificate has been issue, only that part of the building to which the Certificate applies may be occupied or used.

CONDITIONS TO BE SATISFIED PRIOR TO DEMOLITION, EXCAVATION OR CONSTRUCTION

4. Prior to any work commencing on site, sediment and erosion control measures shall be installed along the contour immediately downslope of any future disturbed areas. Measures shall be designed in accordance with the document *Managing Urban Stormwater-Soils & Construction Volume 1* (2004) by Landcom. The erosion controls shall be maintained in an operational condition until the development activities have been completed and the site is fully stabilised. Sediment shall be removed from the sediment controls following each heavy or prolonged rainfall periods.
5. Prior to commencement of work, the free national community service "Dial Before You Dig" shall be contacted on 1100 regarding the location of underground services in order to prevent injury, personal liability and even death.

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

6. **Prior to issue of Construction Certificate**, and pursuant to section 80A(1) of the Environmental Planning and Assessment Act 1979 and the Port Stephens Section 94A Development Contributions Plan, a contribution of the cost of development shall be paid to Council, as determined in accordance with clause 25j of the Environmental Planning and Assessment Regulation 2000. The contribution amount is to be 0.5% of the cost of carrying out the development.

A Cost Summary Report Form (attached) setting out an estimate of the proposed cost of carrying out the development in accordance with Schedule 1 of the Port Stephens Section 94A Development Contributions Plan, must be approved by Council **prior to issue of the Construction Certificate**. Where the estimated cost of carrying out the whole of the development is more than \$1,000,000, the Cost Summary Report Form must be completed by a Quantity Surveyor who is a registered Associate member or above, of the Australian Institute of Quantity Surveyors."

7. Prior to the issue of any Construction Certificate, approval shall be obtained under Section 68 of the *Local Government Act 1993*, for the installation of an on-site sewage management system.

The application shall be submitted to Council together with the design details, site assessment report and payment of the prescribed fee.

Following installation of the approved on-site sewage management system, an "application to operate" the system, under the provisions of section 63 of the *Local Government Act 1993*, shall be submitted to and approved by Council, prior to use of the system.

8. Collected stormwater runoff from the proposed structures shall be connected to the existing stormwater drainage system. Details shall be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

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

9. All building work must be carried out in accordance with the provisions of the **Building Code of Australia**.
10. New buildings/extension works shall be constructed in accordance with the requirements of Australian Standard 2021:2000 Acoustics – Aircraft Noise Intrusion – Building Siting and Construction. Development shall be carried out in accordance with the recommendations of the Aircraft Noise Impact Assessment prepared by Reverb Acoustics dated March 2014.
11. All demolition work shall be carried out strictly in accordance with *Australian Standard AS 2601—1991: The Demolition of Structures* and as in force at 1 July 1993.
12. Construction work that is likely to cause annoyance due to noise is to be restricted to the following times:
 - * Monday to Friday, 7am to 6pm;
 - * Saturday, 8am to 1pm;
 - * No construction work to take place on Sunday or Public Holidays.
13. It is the responsibility of the applicant to erect a PCA sign and to ensure the PCA sign remains in position for the duration of works.
14. A waste containment facility shall be provided on the construction site immediately after the first concrete pour for the building and is to be regularly serviced.
15. Where no sanitary facilities currently exist onsite for construction workers toilet accommodation for all tradespersons shall be provided from the time of commencement until the building is complete. The toilet facilities shall be located so as to have minimal impact of adjoining properties and shall not be placed on the road reserve, without separate approval from Council.
16. If asbestos is encountered during construction or demolition work, even if the works are partial demolition (e.g. one wall), measures must be in place in accordance with WorkCover NSW guidelines and the *Occupational Health & Safety Regulations 2001 NSW*. Work shall not commence or continue until all the necessary safeguards required by WorkCover NSW are fully in place. Asbestos waste must only be disposed of at a landfill site authorised to receive such waste.

17. Floor levels for the development shall be constructed in accordance with the minimum Australian Height Datum (AHD) levels as shown on the approved plans.
18. The existing parts of the building which are to remain, are to be upgraded as required to satisfy the performance requirements of the Building Code with particular reference to Parts C, D and E.
19. Building materials shall be of neutral tones, having non-reflective qualities.
20. The swimming pool water reticulation and filtration system installed shall comply with AS 1926.3-2010 and/or AS 2610.2-2007. Incorporating this safety measure may assist in avoiding entrapment of/or injury to young children.

CONDITIONS TO BE SATISFIED PRIOR TO ISSUE OF AN OCCUPATION CERTIFICATE

21. Prior to the issue of the Occupation Certificate, the Principal Certifying Authority shall be satisfied that:
 - 1) Access to the pool/spa shall be restricted by a child resistant barrier in accordance with the Swimming Pools Act 1992 and Regulations:
 - 2) Any mechanical equipment associated with the swimming pool and/or spa pool shall be located in a sound-attenuating enclosure and positioned so that it is setback a minimum of 2 metre from the boundary of any adjoining premises. The Principal Certifying Authority shall be satisfied that the sound levels associated with the swimming pool/spa filtration system and associated mechanical equipment do not exceed 5dB(A) above the background noise level at the boundaries of the site.
22. Prior to issue of the Occupation Certificate all backwash and/or the emptying of a swimming pool is to be piped / drained to an absorption trench equal in capacity to the maximum volume of the backwash cycle. Such absorption trench is to be located so as not to have any effect upon any effluent disposal system. A certificate from the installer, indicating compliance with this condition, must be submitted to the Principal Certifying Authority prior to issue of the Occupation Certificate.
23. A fire safety certificate as prescribed by Section 174 of the Environmental Planning and Assessment Regulations 2000 which certifies the performance of the implemented fire safety measured in accordance with Section 170 of the Regulation must be submitted to the Principal Certifying Authority and the Commissioner of the New South Wales Fire Brigade prior to the issue of an Occupation Certificate. A copy of the fire safety certificate shall be forwarded to Council, if Council is not the Certifying Authority. A further copy of the certificate must also be prominently displayed in the building.

24. Landscaping shall be installed in accordance with the approved plan, prior to the release of the Occupation Certificate.

CONDITIONS TO BE SATISFIED AT ALL TIMES

25. At all times, the hours of operation are to be restricted to:

Monday to Saturday - 6am to midnight
Sunday and public holidays - 6am to 10pm

Other internal operations such as cleaning, preparation, and office administration may be undertaken outside of the above hours provided no disturbance to the amenity of the neighbourhood occurs.

26. At all times for the life of the approved development, all outdoor lighting shall comply with the requirements of the Civil Aviation Safety Authority Manual (CASA) of Standards Part 139 Aerodromes.

27. There shall be no interference with the amenity of the neighbourhood by reason of the emission of any "offensive noise" as defined in the *Protection of the Environment Operations Act 1997*, vibration, smell, fumes, smoke, vapour, steam, soot, ash or dust, or otherwise as a result of the development.

28. The stormwater system, including any water quality or quantity components, shall be maintained in perpetuity for the life of the development.

29. At least once in each twelve (12) month period, fire safety statements as prescribed by Section 175 of the Environmental Planning and Assessment Regulations 2000 in respect of each required essential fire safety measures installed within the building are to be submitted to Council. Such certificated are to state that:

a) the service has been inspected and tested by a person (chosen by the owner of the building) who is competent to carry out such inspections and tests; and

(b) That the service was or was not (as at the date on which it was inspected and tested) found to be capable of operating to a standard not less than that specified in the fire safety schedule for the building.

30. A durable resuscitation chart is to be displayed in a prominent position in the pool area at all times.

ADVICES

- (a) Access to an adjoining property for construction & maintenance work requires the owner(s) consent. It is the responsibility of the owner/applicant to ensure that no part of the structure encroaches onto the adjoining property. The adjoining property owner can take legal action to have an encroachment removed.
- (b) This approval relates to Development Consent only and does not infer any approval to commence excavations or building works upon the land. A Construction Certificate should be obtained prior to works commencing.
- (c) The developer is responsible for full costs associated with any alteration, relocation or enlargement to public utilities whether caused directly or indirectly by this proposal. Such utilities include water, sewerage, drainage, power, communication, footways, kerb and gutter.

MINUTES ORDINARY COUNCIL - 28 JULY 2015

ITEM NO. 4

FILE NO: PSC2015-01000/220
TRIM REF NO: PSC2015-00487

DRAFT PORT STEPHENS RURAL RESIDENTIAL STRATEGY

REPORT OF: TIMOTHY CROSDALE - STRATEGY AND ENVIRONMENT
SECTION MANAGER
GROUP: DEVELOPMENT SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Adopt the draft Port Stephens Rural Residential Strategy (**ATTACHMENT 1**) for the purposes of public exhibition.
- 2) Place the draft Port Stephens Rural Residential Strategy on public exhibition for a minimum of 28 days.
- 3) Report back to Council following public exhibition for consideration.

**ORDINARY COUNCIL MEETING - 28 JULY 2015
COMMITTEE OF THE WHOLE RECOMMENDATION**

	<p>Councillor Paul Le Mottee Councillor Ken Jordan</p> <p>That the recommendation be adopted with the amendments as per the supplementary information received and noted on 28 July 2015 and the amendment that the public exhibition period from 28 days to 42 days.</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: Crs Geoff Dingle, Chris Doohan, Sally Dover, Ken Jordan, Peter Kafer, Paul Le Mottee, Bruce MacKenzie and Steve Tucker

Those against the Motion: Nil

**ORDINARY COUNCIL MEETING - 28 JULY 2015
MOTION**

211	<p>Councillor Geoff Dingle Councillor Paul Le Mottee</p> <ol style="list-style-type: none">1) Adopt the draft Port Stephens Rural Residential Strategy (ATTACHMENT 1) for the purposes of public exhibition.
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MINUTES ORDINARY COUNCIL - 28 JULY 2015

	<ol style="list-style-type: none">2) Place the draft Port Stephens Rural Residential Strategy on public exhibition for a minimum of 28 days.3) Report back to Council following public exhibition for consideration.4) Make amendments as per supplementary information to include the following details to recommendation 1:<ol style="list-style-type: none">a) Update the exclusionary mapping, and relevant investigation areas, to accurately reflect Council's zoning maps contained within the Port Stephens Local Environmental Plan 2013 to be consistent with the locational criteria.b) Develop higher resolution versions of maps within the draft Strategy to facilitate review during the public exhibition period.5) Amend the public exhibition period from 28 days to 42 days.
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In accordance with Section 375 (A) of the Local Government Act 1993, a division is required for this item.

Those for the Motion: Crs Geoff Dingle, Chris Doohan, Sally Dover, Ken Jordan, Peter Kafer, Paul Le Mottee, Bruce MacKenzie and Steve Tucker

Those against the Motion: Nil

BACKGROUND

The purpose of this report is to outline findings from the preparation of the draft Rural Residential Strategy (draft Strategy) and enable its public exhibition.

Council is facing increasing pressure in relation to development and rezoning of rural lands for residential purposes. At a regional level there has not been a clear direction on planning for rural residential land use within the existing Lower Hunter Regional Strategy (LHRS). Rural residential is a legitimate and popular land use.

While studies and strategies have been carried out on existing rural lands, Council does not have a specific strategy that deals with the social, economic and environmental challenges faced by rural residential land planning. As a result Council resolved in 2014 to prepare a Rural Residential Strategy. City Plan Services has been engaged to undertake the draft Strategy.

The purpose of the strategy is to:

- Identify opportunities and constraints relating to new residential development in rural zoned land.
- Provide Council and the community with further clarity around the future use and development of rural lands for residential purposes.
- Provide a framework for which Council can assess the appropriateness of future rural residential development proposals.
- Ensure future development protects the environmental and cultural values of the area.

- Ensure that existing prime agricultural land is preserved and agricultural industries are able to prosper and expand without being unduly limited by neighbouring residential uses.
- Ensure that rural residential development does not hinder the strategic development of urban settlements in the future.
- Ensure new developments can have access to an appropriate level of infrastructure in a cost effective manner.

Defining Rural Residential Development

Rural residential development refers to land in a rural setting, used for dwellings that are not primarily associated with agriculture. Some development may also take place on land with significant but manageable environmental values providing a tree change lifestyle choice.

Owing to the dominant residential nature, rural residential development requires access to most of the services and infrastructure provided in urban settlements.

As part of the draft Strategy rural residential development is grouped into two classes:

- Rural Fringe – adjoining or in close proximity to an urban area or village centre approximately 4000m² to 2ha minimum lot size.
- Rural Living – adjoining farmland or vegetated areas approximately 1ha to 5ha minimum lot size.

Whilst the definition of rural residential development could include one or two lots in a subdivision, this Strategy aims to facilitate coordinated development and is generally intended to apply to proposals or locations with a cluster of 10 or more rural residential lots.

Supply and Demand

Land within the defined rural residential zones in the PS LEP 2013 of R5 Large Lot Residential and E4 Environmental Living comprise of 2.1% of the total area of the Local Government Area (LGA). The Port Stephens Rural Lands Study 2011 calculated that there were approximately 120 vacant lots for rural residential housing in 2010, but the redevelopment of larger lots would create a total of 400 lots. No new areas for rural residential development have been added to the land supply since 2010.

While Council has received planning proposals to rezone land for rural residential development Council has not been in a position to consider these proposals, partly because there isn't a strategy in place to assess the appropriateness of the proposals and also because the Department of Planning and Environment (DP&E) does not approve new rural residential development without an endorsed strategy.

There are rural residential development precincts along the western and northern boundaries of the Port Stephens LGA in the Maitland, Dungog and Great Lakes LGA.

All three Councils have adopted rural residential strategies and have rezoned land to cater for the forecast demand.

Locational Criteria

A set of spatially based locational criteria has been created to assess proposals for rural residential development. This is consistent with Councils approach in other local strategies (i.e. Settlement Strategy and Rural Lands Strategy) and can be easily quantified and mapped. This approach enables Council to set clear criteria for assessing proposals for rural residential land, whilst providing for the opportunity for proponents to establish the merit of their proposal. The criteria provide a robust framework for assessment to take into account localised issues.

Two levels of locational criteria have been created which consider a range of environmental, social and economic factors. These are:

- Exclusionary Criteria; and
- Management Criteria.

A summary of the locational criteria is included in **(ATTACHMENT 2)**.

Exclusionary Criteria

The Exclusionary Criteria applies to land where development is not appropriate due to land constraints. Proposals that are inconsistent with the criteria will require extensive justification at assessment stage.

Management Criteria

The Management Criteria applies to land where further assessment is required at planning proposal stage to determine lot size, infrastructure requirements and manage site specific issues (such as buffers to adjacent land uses or environmental impacts). The Management Criteria applies differently to rural fringe and rural living land to respond to the varying constraints that apply to development close to centres and services and locations that are more remote.

Locations for Future Rural Residential Development

Following application of the exclusionary criteria, a total of 15 investigation areas have been identified as potential rural residential locations as illustrated in **(ATTACHMENT 3)**.

A summary of the development constraints and estimated potential lot yield and timing is given for each area. Timing of development is intended to be a broad sequencing and staging program. Short term locations have fewer matters to resolve, are generally closer to existing services or have potential to be developed independently of other growth areas. Medium and longer term locations tend to have more difficult and uncertain constraints. The onus is on the proposal to demonstrate the location is able to be developed and there is less than 10 years supply of zoned and serviceable land in the LGA through the planning proposal process.

MINUTES ORDINARY COUNCIL - 28 JULY 2015

A summary of each area is outlined in **(ATTACHMENT 4)**.

COMMUNITY STRATEGIC PLAN

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

FINANCIAL/RESOURCE IMPLICATIONS

The cost to engage City Plan Services to prepare the draft Strategy is \$17,000 allocated within the existing budget.

The resource implications for adopting the draft Strategy includes staff time and resources required to implement the draft Strategy including carrying out the exhibition period through to adoption.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes	17,000	Cost to engage Consultant to prepare the draft Strategy.
Reserve Funds	No		
Section 94	No		
External Grants	No		
Other	No		

LEGAL, POLICY AND RISK IMPLICATIONS

Lower Hunter Regional Strategy

The Lower Hunter Regional Strategy (LHRS) is a strategic planning framework to guide the sustainable growth of the lower Hunter of the next 25 years.

It requires that any future rezoning proposal for rural residential development, beyond areas already identified should be:

- Consistent with the Sustainability Criteria.
- Consistent with an endorsed local Council Strategy.
- Maintain the character and role of the existing village centre.

This draft Strategy has been prepared in consultation with the DP&E and is consistent with the Sustainability Criteria which have been addressed by the Strategy and relevant State policies and Ministerial Directions with an aim to have the Strategy endorsed by the DP&E following adoption its by Council.

Port Stephens Planning Strategy 2011

The Port Stephens Planning Strategy 2011 (PSPS) provides the current framework for future growth in the LGA. It also identifies the 'need to ensure that prime

agricultural land and important rural landscapes are protected from undesirable development.'

The PSPS highlights that the LGA is highly constrained for residential development due to environmental factors, flooding and aircraft noise. It is important that any areas with urban potential be protected from premature development which may affect that land's urban development in the medium to long term. The Strategy identifies Wallalong as a potential urban growth area through developing new urban land as well as intensifying the existing development. The PSPS highlights the need to ensure that premature development such as large lot or rural residential development does not occur at Wallalong in the interim.

As a result, areas identified as future or potential urban growth areas identified in the PSPS and key rural land have been excluded from potential rural residential development locations in accordance with the locational criteria.

Rural Lands Study and Strategy 2011

The Rural Land Strategy and Rural Lands Study was undertaken in order to understand the planning issues facing rural land. The rural land within the LGA provides an important resource, both for LGA and the wider region including:

- Productive agriculture.
- Rural landscapes.
- Towns and villages.
- Waterways.
- Native vegetation.
- Industry.
- Community facilities and services.
- Cultural heritage.

The main industries are tourism, agriculture, manufacturing, fishing and oyster farming. The local value of agricultural production is estimated to be \$24.5m in 2005-06. Four main enterprises contribute 91% of that value: poultry for meat 61%, cattle for slaughter 11%, dairy 10% and mushrooms 8%.

The Rural Lands Study acknowledges that the presence of agriculture and non-rural land use in the one location can often generate conflict due to their potential incompatibility. It identifies that conflict mostly occurs from proximity of residential development to intensive agricultural uses like poultry, dairies, horticulture uses and to a lesser extent extensive cropping operations. Poultry farms cause some odours that are considered to be offensive to adjoining residential and rural residential uses and should be avoided. Similarly extensive agricultural cropping can cause noise and dust which will cause a nuisance to adjoining rural residential land uses and, therefore should be avoided.

The Strategy has been prepared in consideration of the importance of existing rural land in the LGA and include a range of measures designed to effectively manage

MINUTES ORDINARY COUNCIL - 28 JULY 2015

potential land use conflicts for residential and intensive agricultural land uses through the application the locational criteria.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that the strategy will not be adopted by Council resulting in Council having no policy framework to consider future rural residential development through planning proposals.	Low	The draft strategy has been prepared in line with Councils resolution to prepare a Rural Residential Strategy and in consultation with Councillors. Consultation with the community is proposed to ensure that the strategy is acceptable.	Yes
There is a risk that the Department of Planning and Environment will not endorse the Strategy.	Medium	The Strategy has been prepared in consultation with the Department of Planning and Environment to ensure any issues have been addressed.	Yes
There is a risk that the Strategy will not be supported by the community.	Low	The Strategy is proposed to be placed on public exhibition to ensure that all community views on the strategy can be considered.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Rural residential development is a valuable form of development and contributes to the diversity and choice of housing in the Port Stephens LGA. It does however require special considerations as it can have environmental, social and economic costs that are significantly higher than those of standard residential development.

This strategy acknowledges that rural land is a finite resource and aims to ensure all social, environmental and economic factors are considered for any future rezoning proposals including:

- Land use conflicts between agricultural activities and the amenity expectation of rural residential dwellers such as noise and odour impacts;
- The need to ensure that prime agricultural land and important rural landscapes are protected;
- Ensuring environmental and cultural values of the area are maintained;
- Providing appropriate and cost effective social and physical infrastructure;

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- Protecting the LGAs limited land available that is considered suitable for future urban development; and
- Ensuring future rural residential development is integrated with existing urban areas.

CONSULTATION

It is proposed that the draft Strategy will go on public exhibition for a minimum 28 days. During this time consultation will be undertaken with key stakeholders, state government agencies and the wider community. This will include direct engagement through meetings/ workshops with stakeholder groups as part of the public exhibition period and through both media and communication channels. Submissions received during the consultation period will be outlined in a report back to Council.

OPTIONS

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

ATTACHMENTS

- 1) Draft Port Stephens Rural Residential Strategy. (Provided under separate cover)
- 2) Locational Criteria. (Provided under separate cover)
- 3) Investigation Areas Map. (Provided under separate cover)
- 4) Investigation Areas Summary Table. (Provided under separate cover)

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ITEM NO. 5

**FILE NO: PSC2015-01000/538
TRIM REF NO: PSC2015-01301**

PLANNING PROPOSAL - BOOMERANG PARK

REPORT OF: TIMOTHY CROSDALE - STRATEGY AND ENVIRONMENT
SECTION MANAGER
GROUP: DEVELOPMENT SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Adopt the Planning Proposal at (**ATTACHMENT 1**) to rezone the subject land within Boomerang Park, from RE1 Public Recreation to R2 Low Density Residential and reclassify the subject land from 'community' to 'operational' land.
- 2) Forward the Planning Proposal to the NSW Department of Planning and Infrastructure under section 56 in the *Environmental Planning and Assessment Act 1979* with a request for a Gateway Determination.

**ORDINARY COUNCIL MEETING - 28 JULY 2015
COMMITTEE OF THE WHOLE RECOMMENDATION**

	<p>Councillor Geoff Dingle Councillor Peter Kafer</p> <p>The amendment put was that Council:</p> <ol style="list-style-type: none">1) Refuse the Planning Proposal at (ATTACHMENT 1) to rezone the subject land within Boomerang Park, from RE1 Public Recreation to R2 Low Density Residential and reclassify the subject land from 'community' to 'operational' land.
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In accordance with Section 375 (A) of the Local Government Act 1993, a division is required for this item.

Those for the Motion: Crs Geoff Dingle and Peter Kafer

Those against the Motion: Crs Chris Doohan, Sally Dover, Ken Jordan, Paul Le Mottee, Bruce MacKenzie and Steve Tucker

The Motion was lost.

**ORDINARY COUNCIL MEETING - 28 JULY 2015
COMMITTEE OF THE WHOLE RECOMMENDATION**

	<p>Councillor Paul Le Mottee Councillor Chris Doohan</p> <p>A motion was moved and seconded that Council:</p> <ol style="list-style-type: none">1) Adopt the Planning Proposal at (ATTACHMENT 1) to rezone the subject land within Boomerang Park, from RE1 Public Recreation to R2 Low Density Residential and reclassify the subject land from 'community' to 'operational' land. With the following amendments:<ol style="list-style-type: none">a) Council reaffirm its position that the site is to be developed for seniors housing only.b) Council register a restriction / covenant on the use of land to formalise it to only be used for seniors housing post gateway determination.2) Forward the Planning Proposal to the NSW Department of Planning and Infrastructure under section 56 in the <i>Environmental Planning and Assessment Act 1979</i> with a request for a Gateway Determination.
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In accordance with Section 375 (A) of the Local Government Act 1993, a division is required for this item.

Those for the Motion: Crs Chris Doohan, Sally Dover, Ken Jordan, Paul Le Mottee, Bruce MacKenzie and Steve Tucker

Those against the Motion: Crs Geoff Dingle and Peter Kafer

The motion was carried.

**ORDINARY COUNCIL MEETING - 28 JULY 2015
MOTION**

212	<p>Councillor Geoff Dingle Councillor Peter Kafer</p> <ol style="list-style-type: none">1) Refuse the Planning Proposal at (ATTACHMENT 1) to rezone the subject land within Boomerang Park, from RE1 Public Recreation to R2 Low Density Residential and reclassify the subject land from 'community' to 'operational' land.
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In accordance with Section 375 (A) of the Local Government Act 1993, a division is required for this item.

MINUTES ORDINARY COUNCIL - 28 JULY 2015

Those for the Motion: Crs Geoff Dingle and Peter Kafer

Those against the Motion: Crs Chris Doohan, Sally Dover, Ken Jordan, Paul Le Mottee, Bruce MacKenzie and Steve Tucker

The motion was lost.

ORDINARY COUNCIL MEETING - 28 JULY 2015 MOTION

	<p>Councillor Peter Kafer Councillor Geoff Dingle</p> <p>Cr Kafer moved a motion of no confidence in Council.</p> <p>The motion was lost.</p>
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ORDINARY COUNCIL MEETING - 28 JULY 2015 MOTION

213	<p>Mayor Bruce MacKenzie Councillor Chris Doohan</p> <p>A motion was moved and seconded that Council:</p> <ol style="list-style-type: none">1) Adopt the Planning Proposal at (ATTACHMENT 1) to rezone the subject land within Boomerang Park, from RE1 Public Recreation to R2 Low Density Residential and reclassify the subject land from 'community' to 'operational' land. With the following amendments.<ol style="list-style-type: none">a) Council reaffirm its position that the site is to be developed for seniors housing only.b) Council register a restriction / covenant on the use of land to formalise it to only be used for seniors housing post gateway determination.2) Forward the Planning Proposal to the NSW Department of Planning and Infrastructure under section 56 in the <i>Environmental Planning and Assessment Act 1979</i> with a request for a Gateway Determination.
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In accordance with Section 375 (A) of the Local Government Act 1993, a division is required for this item.

Those for the Motion: Crs Chris Doohan, Sally Dover, Ken Jordan, Paul Le Mottee, Bruce MacKenzie and Steve Tucker

Those against the Motion: Crs Geoff Dingle and Peter Kafer

The motion was carried.

BACKGROUND

The purpose of this report is to obtain Council's endorsement to submit the Planning Proposal at **(ATTACHMENT 1)** to the Department of Planning & Environment requesting a Gateway determination.

Subject land:	Part Lot 1 DP 1018979, 17E Irrawang Street, Raymond Terrace [see Locality Plan at (ATTACHMENT 2)]
Proponent:	Port Stephens Council (Facilities & Services Group)
Proposed changes:	Reclassify the subject land from 'Community' to 'Operational' Land; and Rezone the subject land from RE1 Public Recreation to R2 Low Density Residential
Area of land:	4.5 hectares (the total area of the park is 21.6 hectares)
Potential lot yield:	Approximately 46 lots

The Planning Proposal seeks to reclassify 4.5 hectares of Council owned land within Boomerang Park from 'community' land to 'operational' land pursuant to Clause 30 of the *NSW Local Government Act 1993*, and rezone the land from RE1 Public Recreation to R2 Low Density Residential pursuant to *Port Stephens Local Environmental Plan 2013* (PSLEP 2013) to allow the land to be developed for residential purposes.

The rezoning and reclassification has resulted from a resolution by Port Stephens Council on 25 November 2014 to adopt the Boomerang Park Masterplan and initiate the process to rezone and reclassify 4.5ha of the park to enable future residential development as identified in the adopted Masterplan.

The land forms part of Boomerang Park, which was first dedicated as a Public Reserve in 1837, following the preparation of a survey for the township of Raymond Terrace. This reserve was subsequently dedicated in September 1892 as a Recreation Reserve. The reserve became known as 'Boomerang Park' in 1914.

Boomerang Park currently accommodates the Raymond Terrace Senior Citizens Centre, the Raymond Terrace Before and After School Care (both fronting Irrawang Street) the Port Stephens All Breeds Dog Obedience Canine Club (fronting Kangaroo Street) and public amenities. A water tower is located in the centre of the park, on

land owned by the Hunter Water Corporation. These uses are not within the area of the park proposed for residential development and will not be impacted by the proposal.

The part of the park proposed to be rezoned and reclassified (the site) has an area of 4.5 hectares and is of a triangular configuration [see Locality Plan at **(ATTACHMENT 2)**]. The site is predominately grassed and contains a small number of mature trees. The site is bounded by parkland to the west, mature trees to the northeast, by an historic (heritage listed) cemetery to the east and fronts Elizabeth Avenue to the South. On the opposite side of Elizabeth Avenue, is an established residential area zoned R2 Low Density Residential. The proposed residential zone is a logical extension to this adjoining zone.

The proposal seeks to accommodate residential development on land within close proximity to existing services and is not required for its current use as a public reserve. The proponent has advised that the site is no longer required for public recreation purposes as it is surplus to the community's needs. In accordance with the NSW Department of Planning and Environment, which recommends a standard of 2.83 hectares of open space per 1,000 residents, there is sufficient public open space within the Raymond Terrace Planning District, even with the proposed removal of 4.5ha of Boomerang Park. Currently, there is 16.94 hectares per 1,000 residents which will be reduced to 16.6 hectares per 1,000 residents should the planning proposal proceed.

As identified in the planning proposal at **(ATTACHMENT 1)**, the following additional investigations will be required post Department of Planning Gateway determination, including:

- Preliminary contamination assessment in accordance with SEPP 55.
- Additional heritage information.
- Further threatened species assessment.

It is considered that the planning proposal has sufficient merit to proceed to gateway on the basis that the additional information will be submitted post-gateway. The planning proposal will not be exhibited until the additional information is provided.

COMMUNITY STRATEGIC PLAN

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

FINANCIAL/RESOURCE IMPLICATIONS

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	No		
Reserve Funds	No		
Section 94	No		
External Grants	No		
Other	Yes	10,500	Stage 1 Rezoning fees. The cost of processing this planning proposal will be covered by Rezoning Fees, in accordance with Council's Fees & Charges.

The future sale of land associated with the rezoning has the potential to yield approximately \$1.7m to Council, subject to the planning proposal proceeding and future land sales.

LEGAL, POLICY AND RISK IMPLICATIONS

The Planning Proposal will be processed in accordance with the plan making procedures in the *Environmental Planning and Assessment Act 1979*, the Local Government Act 1993 and the Department of Planning's Practice Note PN 09-003 (12 June 2009) *Classification and reclassification of public land through a local environmental plan*.

A fact sheet outlining the process for rezoning and reclassification of land can be found at **(ATTACHMENT 3)**.

Practice Note PN 09-003 (12 June 2009) Classification and reclassification of public land through a local environmental plan

The purpose of PN09-003 is to provide guidance on how to classify or reclassify public land through a local environmental plan.

In accordance with the practice note, Council must provide a Statement of Interest when the planning proposal is exhibited. The Statement of Interest seeks to:

- a) Identify land owned by Council proposed to be reclassified; and
- b) Allow the community the opportunity to assess the proposal with a full appreciation of all relevant information.

A copy of the Statement of Interest can be found at Attachment 8 to the Planning Proposal at **(ATTACHMENT 1)**.

Local Government Act 1993

Reclassification of the site from 'community' to 'operational' land under the Local Government Act 1993 will allow Council to sell the land.

The proposed reclassification is to be the subject of a public hearing pursuant to section 29 of the *Local Government Act 1993 and PN09-003*.

In accordance with the relevant legislation, the public hearing will be held **after** the exhibition period.

Section 117 Ministerial Direction 6.2 – Reserving Land for Public Purposes

This Direction requires the approval of the Director-General of the Department of Planning and Environment to remove the reservation of land for a public purpose. The reclassification of the subject land from community land to operational land will involve the revocation of the public reserve status of the subject land.

The proponent has advised that the removal of 4.5ha of open space will have a minimal overall impact on the provision of open space in the Raymond Terrace Planning District. There is currently 16.94ha of open space /1000 residents, and the proposal will reduce this to 16.6ha/1000 residents. This exceeds the NSW Department of Planning and Environment recommendations of 2.83 hectares of open space per 1000 residents

Port Stephens Local Environmental Plan 2013

The objectives of this planning proposal will be achieved by the following amendments to the *Port Stephens Local Environmental Plan 2013*:

- Amend Part 2 Land classified, or reclassified, as operational land—interests changed, Schedule 4 Classification and reclassification of public land to include part of Lot 1 DP 1018979, 17E Irrawang Street, Raymond Terrace (**ATTACHMENT 2**) shows the part of the park that is subject to the reclassification.
- Amend Land Zoning Map Sheet LZN_ 002C for part of Lot 1 DP 1018979 from RE1 Public Recreation to R2 Low Density Residential.
- Amend Lot Size Map Sheet LSZ_002C from no minimum lot size to 500m².
- Amend Height of Building Map Sheet HOB _ 002C – from no maximum building height to 9 metres.

Heritage

Boomerang Park, including the former stone quarry and mature tree planting, is listed under Schedule 5 of the PSLEP 2013 as an item of Environmental Heritage. Further investigations, post-Gateway, are required and include the establishment of curtilage requirements to the former stone quarry and identification of significant trees for retention, in conjunction with an Arborist report.

An Aboriginal Heritage Information Management Systems web service search was undertaken over the subject land. No Aboriginal sites or places have been recorded

in or near the subject land. Consultation with the Worimi Local Aboriginal Land Council will be undertaken following a gateway determination.

It is considered that there is sufficient justification for the planning proposal to proceed to gateway on the basis that the additional information will be submitted post-gateway. The planning proposal will not be exhibited until the additional information is provided.

Lower Hunter Regional Strategy

The Lower Hunter Regional Strategy identifies Raymond Terrace as a Major Regional Centre and projects 300 new dwellings in Raymond Terrace through infill development.

A key component of the LHRS is ensuring that most new development is located in close proximity to major centres and employment lands, maximising access to services and employment opportunities.

The planning proposal is consistent with the Strategy, as it will contribute to achieving the projected infill dwelling projections set for Raymond Terrace in an area that is close to employment opportunities and services.

The Lower Hunter over the next 20 years: A Discussion Paper

The Lower Hunter over the next 20 years: A Discussion Paper aims to facilitate discussion to feed into the development of a new Lower Hunter Regional Strategy. This Discussion Paper provides guiding planning principles for the Lower Hunter, such as providing a diversity of housing choices for different budgets and lifestyles. This planning proposal is considered to be consistent with those applicable planning principles listed in this Paper as a diverse range of housing types are permitted in the R2 Zone.

Integrated Strategic Plan (Port Stephens 2022)

The proposal is consistent with Council's Integrated Strategic Plan (Port Stephens 2022) which states that Council should provide for a range of lot sizes and housing types to respond to demographic needs and affordability. The proposal will potentially add approximately 40 lots to the residential stock in Raymond Terrace.

Port Stephens Planning Strategy (PSPS)

The Planning Proposal is consistent with the directions adopted by the PSPS. The PSPS identifies Raymond Terrace as a Regional Centre that serves the needs of the wider LGA. It is an area of projected population growth, from 13,346 people in 2009 to 21,380 people in 2031. The Strategy identifies potential growth by infill development in the area encompassing Raymond Terrace – Heatherbrae – Nelsons Plains of 800 dwellings during the period 2011 – 2036. The proposed reclassification and rezoning will therefore provide infill residential development opportunities in accordance with the Strategy.

Boomerang Park Plan of Management

The Boomerang Park Plan of Management was adopted in November 2000. The POM provides a framework to enable decisions in regards to the site to be made on a consistent and equitable basis.

The vision for Boomerang Park, as outlined in the POM, is as follows:

“To provide public open space that enables a wide range of recreational, cultural, conservational, educational and community based activities to be undertaken in a manner that adds to the scenic and social attributes of the Raymond Terrace planning district”.

The Boomerang Park Masterplan seeks to facilitate the provision of new infrastructure and facilities that will contribute to the ongoing development, improvement and increased use of the park, in accordance with the vision.

The Boomerang Park Plan of Management will need to be updated to reflect the changes to Boomerang Park. The POM would cease to apply to the site as POMs do not apply to operational land.

Boomerang Park Masterplan

The Boomerang Park Masterplan was adopted by Council on 25 November 2014 and sets the proposed layout and form of the park and facilities. It seeks to enable greater community use and enjoyment of the park by expanding the opportunities for formal and informal use, at a range of scales.

The Masterplan identifies one parcel of land within the Park that is proposed to be further investigated for future reclassification and rezoning. The planning proposal is consistent with Council's resolution of 25 November 2014.

Draft Raymond Terrace & Heatherbrae Strategy 2015-2031

The draft Raymond Terrace & Heatherbrae Strategy was endorsed for public exhibition by Council at its meeting on 26 May 2015. The draft Strategy seeks to implement a quantity to quality approach to public open space, which recognises the limited operating budgets of regional Councils and the significant amount of public open space that they are required to maintain. With regards to Boomerang Park, the draft strategy includes the following Action:

Action No. 25 - Implementation of the Boomerang Park Masterplan which includes quality paths, play equipment, etc. This is subject to securing appropriate funding.

The Planning Proposal is consistent with the draft strategy, which is reflective of Council's endorsement of the Boomerang Park Masterplan.

It is noted that the draft Raymond Terrace and Heatherbrae Strategy will be placed on public exhibition in July 2015.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that community are dissatisfied with the planning proposal process and outcome.	Low	Ensure adequate consultation is undertaken with the community and stakeholders in accordance with established policy and guidelines.	Yes
There is a risk that the land is required for recreation purposes.	Low	Council's Facilities & Services Group have advised that the site is surplus to the recreation needs of the community in accordance with the Department of Planning and Environment standards.	Yes
There is a risk that there is a perceived conflict of interest between Council as the proponent and Council as the consent authority.	Low	Ensure planning proposal is processed in accordance with the <i>Local Government Act 1993</i> , the <i>Environmental Planning and Assessment Act 1979</i> and LEP Practice Note PN09-003.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Additional housing in Raymond Terrace will have a positive economic impact consistent with Council's strategic plans in this area.

The planning proposal and future development of 4.5 hectares of Boomerang Park could provide significant social benefits, such as opportunities to provide a diversity of dwelling stock that would respond to housing affordability in Raymond Terrace.

During the preparation of the Boomerang Park Masterplan, significant concern and opposition to the rezoning was raised. Further information on Council's approach to consult with the community is outlined in the following sections.

The proposed residential use of the site is unlikely to have a significant impact on the environment.

A preliminary assessment of the ecological values of Boomerang Park and potential impacts of the proposed reclassification and rezoning has been undertaken. The area proposed to be developed for residential purposes is predominately cleared of vegetation, although approximately 86 native and exotic trees would potentially be

removed, with some minor impacts expected to a number of threatened species and their habitats.

There is sufficient habitat for a range of native plant and animal species to be maintained or enhanced within Boomerang Park, provided that it is managed in accordance with the adopted Masterplan. Overall, the proposed residential development is considered to have relatively minor ecological impacts and to be of low risk to the values the park or adjacent areas, however these initial assumptions should be further examined through additional ecological surveys and assessments.

It is considered that the preliminary ecological investigations provide a sufficient level of detail for a gateway determination to be made. However, should the planning proposal be supported by the gateway, further ecological investigations will be required to more accurately determine the ecological impacts of the planning proposal.

CONSULTATION

Community consultation will be undertaken in accordance with the gateway determination. However, given the community's concern about the proposal, Council intends to undertake additional community consultation to that required by the 'gateway', including information sessions to provide further detailed response to the community during the exhibition period.

Notice of the public exhibition period will be placed in the local newspaper, The Examiner. The exhibition material will be on display at the following locations during normal business hours:

- Council's Administration Building 116 Adelaide Street, Raymond Terrace.
- Raymond Terrace Library, Port Stephens Street, Raymond Terrace.
- Tomaree Library, Town Centre Circuit, Salamander Bay.
- Medowie Community Centre, Cnr of Medowie and Ferodale Streets, Medowie.

The planning proposal will also be available on Council's website.

In accordance with the *Local Government Act* – a Public Hearing is required for the reclassification of the site and will take place following the exhibition period, as legislated.

OPTIONS

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

ATTACHMENTS

- 1) Planning Proposal - Boomerang Park. (Provided under separate cover)
- 2) Locality Plan. (Provided under separate cover)
- 3) Fact Sheet - Rezoning and Reclassification of Land. (Provided under separate cover)

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ITEM NO. 6

**FILE NO: PSC2015-01000/559
TRIM REF NO: PSC2014-00920**

PLANNING PROPOSAL - KINDLEBARK DRIVE MEDOWIE

REPORT OF: TIMOTHY CROSDALE - STRATEGY AND ENVIRONMENT
SECTION MANAGER
GROUP: DEVELOPMENT SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Adopt the Planning Proposal at (**ATTACHMENT 1**) for the purposes of Section 55 of the *Environmental Planning and Assessment Act 1979* seeking to amend the *Port Stephens Local Environmental Plan 2013* to:
 - a) Rezone land 142 Kindlebark Drive (Lot 10, DP1154803); 1A Heritage Avenue (Lot 61, DP 1106425); 140A Kindlebark Drive (Lot 2, DP 270731); 140 Kindlebark Drive (Lot 3, DP 270731); 1/1 Heritage Avenue (Lot 4, DP 270731); 2/1 Heritage Avenue (Lot 5, DP 270731); and 140B Kindlebark Drive (Lot 6, DP 270731) from R5 Large Lot Residential to R2 Low Density Residential;
 - b) Amend Schedule 1 'Additional permitted uses' in respect of land at 142 Kindlebark Drive (Lot 10, DP 1154803) to permit:
 - hotel or motel accommodation;
 - function centre;
 - restaurant or café;
 - small bar;
 - cellar door premises;
 - commercial premises being 'business premises', 'shops' and 'takeaway food and drink premises'.
 - 2) Forward the Planning Proposal (**ATTACHMENT 1**) to the NSW Department of Planning and Environment for a Gateway Determination and request delegated authority to make the Plan.
-

**ORDINARY COUNCIL MEETING - 28 JULY 2015
COMMITTEE OF THE WHOLE RECOMMENDATION**

**Mayor Bruce MacKenzie
Councillor Chris Doohan**

That the recommendation be adopted.

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

Those for the Motion: Crs Geoff Dingle, Chris Doohan, Sally Dover, Ken Jordan, Peter Kafer, Paul Le Mottee, Bruce MacKenzie and Steve Tucker

Those against the Motion: Nil

**ORDINARY COUNCIL MEETING - 28 JULY 2015
MOTION**

214	<p>Councillor Geoff Dingle Councillor Paul Le Mottee</p> <p>1) Adopt the Planning Proposal at (ATTACHMENT 1) for the purposes of Section 55 of the <i>Environmental Planning and Assessment Act 1979</i> seeking to amend the <i>Port Stephens Local Environmental Plan 2013</i> to:</p> <p>a) Rezone land 142 Kindlebark Drive (Lot 10, DP1154803); 1A Heritage Avenue (Lot 61, DP 1106425); 140A Kindlebark Drive (Lot 2, DP 270731); 140 Kindlebark Drive (Lot 3, DP 270731); 1/1 Heritage Avenue (Lot 4, DP 270731); 2/1 Heritage Avenue (Lot 5, DP 270731); and 140B Kindlebark Drive (Lot 6, DP 270731) from R5 Large Lot Residential to R2 Low Density Residential;</p> <p>b) Amend Schedule 1 'Additional permitted uses' in respect of land at 142 Kindlebark Drive (Lot 10, DP 1154803) to permit:</p> <ul style="list-style-type: none">- hotel or motel accommodation;- function centre;- restaurant or café;- small bar;- cellar door premises;- commercial premises being 'business premises', 'shops' and 'takeaway food and drink premises'. <p>2) Forward the Planning Proposal (ATTACHMENT 1) to the NSW Department of Planning and Environment for a Gateway Determination and request delegated authority to make the Plan.</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: Crs Geoff Dingle, Chris Doohan , Sally Dover, Ken Jordan , Peter Kafer, Paul Le Mottee , Bruce MacKenzie and Steve Tucker

Those against the Motion: Nil

BACKGROUND

In February 2013, Council received a request to amend the *Port Stephens Local Environmental Plan 2013* (PS LEP2013) for land at the corner of Medowie Road and Kindlebark Drive to part B4 Mixed Use and part R2 Low Density Residential.

This request was revised in July 2014 to rezone the subject land to part B1 Neighbourhood Centre and part R2 Low Density Residential through consultation with the Proponent and landowners. The Proposal was resubmitted in April 2015 to rezone the subject lands to R2 Low Density Residential and request additional permitted uses on part of the subject land comprising of Pioneer Ridge Boutique Winery (142 Kindlebark Drive, Lot 10, DP 1154803) (**ATTACHMENT 2**).

This Report recommends that Council proceeds with a planning proposal for the subject land contained within (**ATTACHMENT 1**).

Subject Land: 142 Kindlebark Drive (Lot 10 DP 1154803) (Pioneer Ridge Boutique Winery)
140 Kindlebark Drive (Lot 3 DP 270731)
140A Kindlebark Drive (Lot 2 DP 270731)
140B Kindlebark Drive (Lot 6 DP 270731)
140C Kindlebark Drive (Lot 1 DP 270731)
1A Heritage Avenue (Lot 61 DP 1106425)
1/1 Heritage Avenue (Lot 4 DP 270731)
2/1 Heritage Avenue (Lot 5 DP 270731)
(**ATTACHMENT 3**)

Proponent: Untapped Planning (on behalf of the landowners)

Total Area: 1.06 Hectares

Existing Zoning: R5 Large Lot Residential

Proposed Amendment:

1. Rezone from R5 Large Lot Residential to R2 Low Density Residential (including an amendment to the lot size map and height of building map).
2. Additional permitted uses (Schedule 1) within 142 Kindlebark Drive including hotel or motel accommodation; function centre; restaurant or café; small bar; cellar door premises; business premises; shops; and takeaway food and drink premises.

3. Restriction of size of additional permitted use clause on 142 Kindlebark Drive by limiting the retail floor space of individual tenancies to 100sqm; and restrict the combined commercial premises to 15% of the land to which the provision applies.

Potential Lot Yield: Approximately 15 residential allotments and 1 lot with an additional permitted uses provision to allow development as specified in the proposed amendment statement.

Location Map and Site Maps are included at **(ATTACHMENT 3)** and **(ATTACHMENT 4)** respectively.

The subject lands are currently zoned R5 Large Lot Residential and occupied by a boutique winery with cellar door sales; restaurant and function centre; garden centre and gift gallery (Lot 10, DP 1154803); a dwelling (Lot 61, DP 1106425); and an approved seniors housing complex approved under *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*. The seniors housing complex has four of the approved 17 units constructed or under construction (Lot 1-6, DP 270731).

Part of the site has operated since 1991 as a Rural Industry (winery) with refreshment room and gallery as ancillary uses. Several development applications and modifications have been lodged over time, the table below outlines existing approved land uses on 142 Kindlebark Drive and land uses the Proponent is requesting:

Existing approved land uses	Requested land uses
Rural Industry (winery), refreshment room (restaurant) (ancillary to the Rural Industry), gallery (ancillary to the Rural Industry)	hotel or motel accommodation, function centre, restaurant or café, small bar, cellar door premises, business premises, shops, takeaway food and drink premises. (As per the definitions in the Planning Proposal).

The Planning Proposal seeks to rezone the subject lands to R2 Low Density Residential to increase the opportunity for infill residential development consistent with the adjoining land use to the south. The subject site is also bound on three sides by the street network: Medowie Road to the west, Kindlebark Drive to the south, and Heritage Drive to the east, creating a discrete and appropriate area for residential development.

The Planning Proposal also seeks an amendment to Schedule 1 Additional Permitted Uses of the PS LEP2013 to formalise and reflect the existing development consents

MINUTES ORDINARY COUNCIL - 28 JULY 2015

on part of the subject land at 142 Kindlebark Drive (Pioneer Ridge Boutique Winery). This will allow the landowner to expand and intensify uses on the site (with development consent) which cannot be done through the current limitations of 'existing use rights' under the *Environmental Planning & Assessment Act 1979*.

Rather than rezoning the site to a commercial zone, the Additional Permitted Uses clause permits specific uses on the site, which will enable and facilitate controlled growth and commercial development, and ensures the types and scale of development does not detract from the existing Medowie town centre.

The following additional information will be required post-Gateway Determination if the Planning Proposal is to be supported:

- A Traffic Impact Assessment to demonstrate management of any intensification of the sites; and
- Further economic advice to be undertaken by a suitably qualified economist to demonstrate the economic merit and any implications on the existing town centre.

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2013-2017
Balance the environmental, social and economic needs of Port Stephens for the benefit of present and future generations.	Provide strategic land use planning services.

FINANCIAL/RESOURCE IMPLICATIONS

The Planning Proposal has been assessed within Council's existing resources. There are no direct financial implications if Council adopts the recommendation of this Report.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	No		
Reserve Funds	No		
Section 94	No		
External Grants	No		
Other	Yes	2,000	Stage 1 Planning Proposal fees.

LEGAL, POLICY AND RISK IMPLICATIONS

Environmental Planning and Assessment Act 1979

Under Part 3 of the *Environmental Planning & Assessment Act 1979*, only the Minister or Council as a delegate can initiate a local environmental plan. If Council resolves to proceed with the recommendation of this Report and prepare a Planning Proposal, it will be forwarded to the NSW Department of Planning and Environment for a Gateway Determination.

Lower Hunter Regional Strategy

The Lower Hunter Regional Strategy identifies Medowie as a proposed urban area with boundaries to be defined through local planning. This local planning was undertaken by Council through the preparation and adoption of the Medowie Strategy.

Port Stephens Planning Strategy 2011-2036

Limited infill will occur through the further subdivision and additional dwellings on rural residential lots. The Port Stephens Planning Strategy identifies Medowie as a Priority 1 Infill and New Release Area. The Planning Proposal is generally consistent with the Port Stephens Planning Strategy.

The Port Stephens Commercial and Industrial Lands Study (SGS, July 2010) informs the Port Stephens Planning Strategy and outlines sufficient existing occupied floor space in Medowie. Furthermore, the recent supermarket development on Peppertree Road has assisted in meeting the predicted occupied floor space demand.

The Planning Proposal does not seek to impact on floor space demand in the town centre by limiting the permitted land uses and floor space through Schedule 1 Additional Permitted Uses of LEP2013.

Medowie Strategy 2009

The subject land is not identified for a change in land use in the Medowie Strategy. However, the Medowie Strategy is currently under review and is likely to encourage consolidation of commercial uses within the town centre, and acknowledge existing unique commercial uses on prominent sites (such as Pioneer Ridge Boutique Winery).

The subject land is located on the fringe of the R5 Large Lot Residential Zone, adjacent to land zoned R2 – Low Density Residential with potential for infill development. The proposed rezoning is consistent with the existing adjacent land zoning to the south. The subject land is a large land holding close to the town centre, providing opportunity for infill development and urban consolidation to help achieve housing targets in Medowie.

The existing Medowie Strategy does not identify commercial land uses on the subject land. However, the introduction of a Schedule 1 clause would allow the established existing use to expand to encompass specific complementary uses contained within

the clause. This approach permits the future growth of the business and does not impact on existing commercially zoned land in the town centre. The proposed limitations will ensure the activities on the site will not jeopardize or fragment the commercial hierarchy of the LGA or the Medowie town centre, but will allow a modest expansion of the subject land.

Port Stephens Local Environmental Plan 2013

The Planning Proposal seeks to rezone the subject land from R5 Large Lot Residential to R2 Low Density Residential and to permit (with consent) additional land uses which complement the existing development at 142 Kindlebark Drive (Lot 10, DP 1154803) including: hotel or motel accommodation; café; small bar; business premises; shops; and takeaway food and drink premises.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that the expansion of the commercial uses could negatively impact on other centres.	Medium	Limited the range of permitted land uses via Schedule 1 Additional Permitted Uses of the PS LEP2013.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The Planning Proposal will have a positive social and economic effect through the estimated provision of 15 residential allotments in close proximity to services, public transport, pedestrian and cycle linkages. The additional population will support local businesses in Medowie and Raymond Terrace.

The additional uses on the site will facilitate job creation and an increase in the local economy. The Proponent submits the inclusion of a Schedule 1 – Additional Permissible Uses provision for a portion of the subject site will ensure the ongoing viability, and allow for the growth of the existing business, which includes the winery and restaurant.

The Proponent submits that given the proximity of the site to the major access road to Medowie and siting that there would be minimal additional impacts by allowing additional uses in comparison to the existing and ongoing activities on the site. There is some potential that the proposed additional uses could create amenity impacts for existing nearby residents. Consultation with adjoining landowners will be undertaken post-Gateway Determination during public exhibition.

Any environmental impacts can be managed at the development application stage. The subject land is largely cleared, with only a few remnant trees remaining. The Port Stephens Comprehensive Koala Plan of Management has part of the site as buffer to Preferred Koala Habitat, and the remnant trees could be feed or refuge trees. Future

MINUTES ORDINARY COUNCIL - 28 JULY 2015

development would need to ensure connectivity is maintained and preferably enhanced.

CONSULTATION

Subject to a Gateway Determination, the Planning Proposal will be placed on public exhibition for comment from State agencies and the community for a minimum period of 28 days.

OPTIONS

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

ATTACHMENTS

- 1) Planning Proposal - Port Stephens Council. (Provided under separate cover)
- 2) Locality Map. (Provided under separate cover)
- 3) Site Maps. (Provided under separate cover)
- 4) Planning Proposal - Untapped Planning (April 2015). (Provided under separate cover)

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ITEM NO. 7

**FILE NO: PSC2015-01000/505
TRIM REF NO: PSC2009-09777**

PROPOSED ROAD CLOSURE - UNFORMED FORMER SECTION OF CLARENCE STREET, WALLALONG

REPORT OF: GLENN BUNNY - PROPERTY SERVICES SECTION MANAGER
GROUP: CORPORATE SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Consents to the owners of Lots 17 and 18 DP1006527 making application to Crown Land for the proposed closure and purchase under Section 34 *Roads Act 1993* of a currently unconstructed section of road previously known as Clarence Street, Wallalong.

**ORDINARY COUNCIL MEETING - 28 JULY 2015
COMMITTEE OF THE WHOLE RECOMMENDATION**

	<p>Councillor Peter Kafer Councillor Paul Le Mottee</p> <p>That the recommendation be adopted.</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: Crs Geoff Dingle, Chris Doohan , Sally Dover, Ken Jordan , Peter Kafer, Paul Le Mottee , Bruce MacKenzie and Steve Tucker

Those against the Motion: Nil

**ORDINARY COUNCIL MEETING - 28 JULY 2015
MOTION**

215	<p>Councillor Geoff Dingle Councillor Paul Le Mottee</p> <p>It was resolved that Council:</p> <ol style="list-style-type: none">1) Consents to the owners of Lots 17 and 18 DP1006527 making application to Crown Land for the proposed closure and purchase under Section 34 <i>Roads Act 1993</i> of a currently unconstructed section of road previously known as Clarence Street, Wallalong.
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MINUTES ORDINARY COUNCIL - 28 JULY 2015

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

Those for the Motion: Crs Geoff Dingle, Chris Doohan, Sally Dover, Ken Jordan, Peter Kafer, Paul Le Mottee, Bruce MacKenzie and Steve Tucker

Those against the Motion: Nil

BACKGROUND

The purpose of this report is to recommend written consent be given to the owners of Lot 17 DP1006527 and Lot 18 DP1006527 (the Applicants) at Wallalong for their application to Crown Land for the proposed closure of a currently unformed public road adjoining their properties, formerly part of Clarence Street, Wallalong **(ATTACHMENT 1)**.

Although the road is a dedicated Council public road, as published in NSW Government Gazette dated 26 May 1995 (page 2,821), the road is currently 'unconstructed'. Under the provisions of the current road closure process, if Council cannot provide evidence of any money expended on the road or use of the road by the public then, upon closure, the road will vest in the Crown. Therefore, the application by the adjoining owners should be made directly to the Crown Land office at East Maitland and, as part of this process, Council is required to provide written consent to Crown Land. Other adjoining owners were contacted by Council advising of the proposed road closure.

At its meeting of 27 November 2012 - previous report Minutes dated 27 November 2012 **(ATTACHMENT 2)**, Council resolved to defer consent to the road closure due to two submissions being received at that time from HDB Town Planning on behalf of Wallalong Land Owners Group and members of Wallalong Land Owners Group.

The proposed Wallalong Urban Growth Area rezoning was refused by the Department of Planning Gateway review panel on 11 June 2014 and, subsequent to the 2012 Council meeting, there is currently no new planning proposal submitted to Council for this area. There is no current request, as part of any active planning proposal, to rezone and retain this small section of road to assist future subdivision. Council's strategic planning staff are of the opinion that there are no significant concerns which prevent the resubmission to Crown Land by the Applicants for the proposed road closure to proceed.

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2013-2017
Balance the environmental, social and economic needs of Port Stephens for the benefit of present and future generations.	Provide strategic land use planning services. Provide Development Assessment and Building Certification services.

FINANCIAL/RESOURCE IMPLICATIONS

There are no known or perceived financial/resource implications.

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

LEGAL, POLICY AND RISK IMPLICATIONS

Upon closure the land will vest in the Crown and all actions relating to the road closure process are between Crown Land and the Applicants with no further involvement of Council.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
That the closure of the road for sale will impact on future subdivision proposals.	Low	Accept the recommendation – no current planning proposal that includes the land.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

There are no known social, economic or environmental considerations. The road closure will not change the current use of the area.

CONSULTATION

- 1) Crown Land Office East Maitland and Newcastle.
- 2) Property Officer.
- 3) Applicants.
- 4) Senior Strategic Planner.
- 5) Strategic Planning Coordinator.
- 6) Land Acquisition & Development Manager.
- 7) Property Services Section Manager.

OPTIONS

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

ATTACHMENTS

- 1) Map of proposed road closure area Wallalong.
- 2) Previous report Minutes dated 27 November 2012.

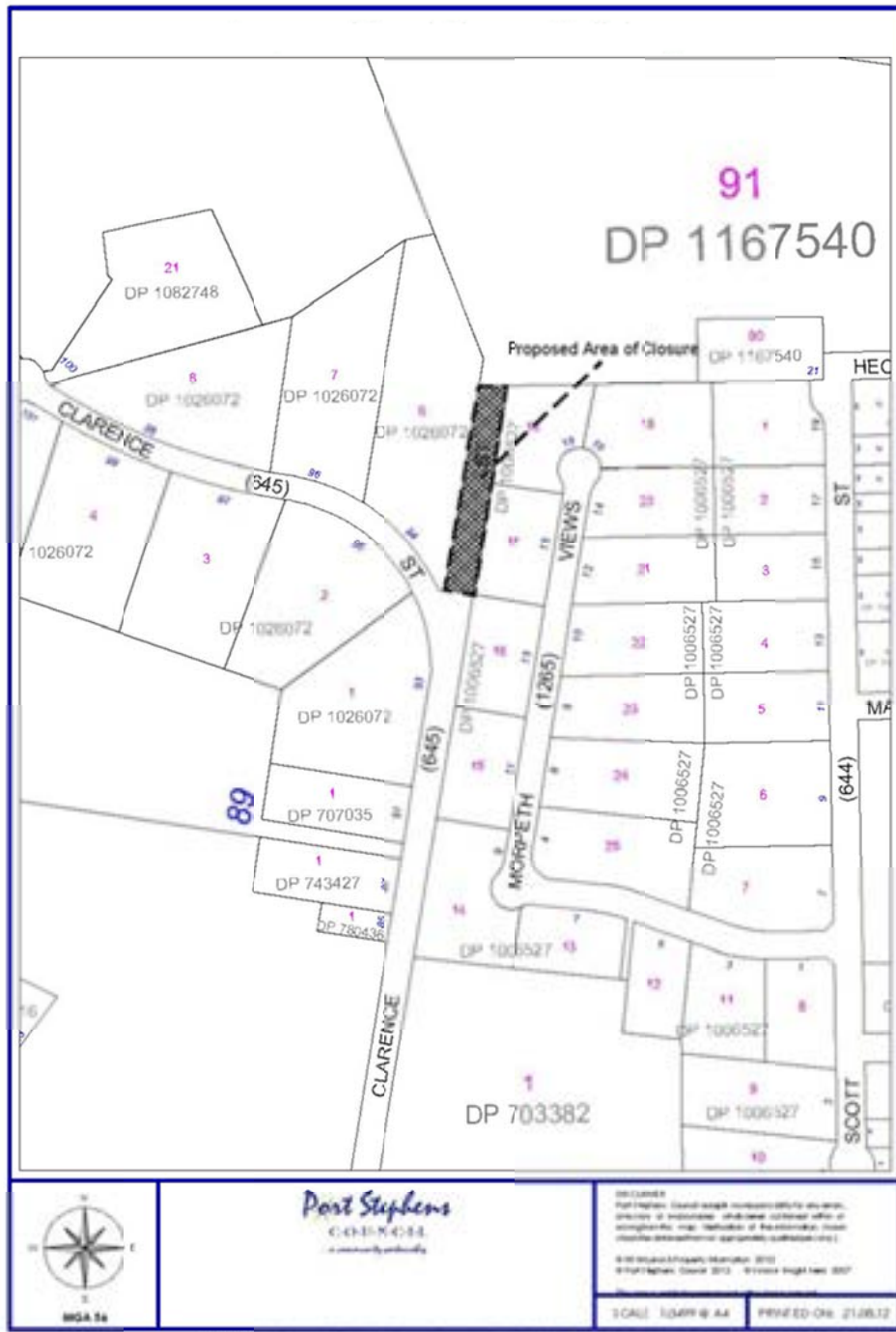
COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ITEM 7 - ATTACHMENT 1 MAP OF PROPOSED ROAD CLOSURE AREA WALLALONG.



MINUTES ORDINARY MEETING – 27 NOVEMBER 2012

ITEM NO. 7

FILE NO: PSC2009-09777

PROPOSED ROAD CLOSURE – UNFORMED SECTION OF CLARENCE STREET, WALLALONG

**REPORT OF: CARMEL FOSTER - PROPERTY SERVICES MANAGER
GROUP: CORPORATE SERVICES**

RECOMMENDATION IS THAT COUNCIL:

- 1) Does not consent to the road closure of the currently unused and unformed section of Clarence Street adjacent to Lots 17 and 18 DP1006527 at Wallalong.
- 2) Request the applicants to withdraw the application.
- 3) Advise Department of Primary Industries Catchment & Lands (DPI) the closure has been rejected by Council due to submission received from adjoining property owner and developer.
- 4) Request the DPI to assist Council staff to overcome submissions received from both the applicants and the developers should the need arise.

ORDINARY COUNCIL MEETING – 27 NOVEMBER 2012

COMMITTEE OF THE WHOLE RECOMMENDATION

	Councillor Ken Jordan Councillor Chris Doohan
	That Council: <ol style="list-style-type: none">1. Defer consent to the road closure of the currently unused and unformed section of Clarence Street adjacent to Lots 17 and 18 DP1006527 at Wallalong.2. Request the applicants to withdraw the application.3. Advise Department of Primary Industries Catchment & Lands (DPI) the closure has been rejected by Council due to submission received from adjoining property owner and developer.4. Request the DPI to assist Council staff to overcome submissions received from both the applicants and the developers should the need arise.

MOTION

	Councillor Ken Jordan Councillor Jahn Morello
306	It was resolved that Council: <ol style="list-style-type: none">1. Defer consent to the road closure of the currently unused and unformed section of Clarence Street adjacent to Lots 17 and 18 DP1006527 at Wallalong.

MINUTES ORDINARY MEETING – 27 NOVEMBER 2012

2. Request the applicants to withdraw the application.
3. Advise Department of Primary Industries Catchment & Lands (DPI) the closure has been rejected by Council due to submission received from adjoining property owner and developer.
4. Request the DPI to assist Council staff to overcome submissions received from both the applicants and the developers should the need arise.

BACKGROUND

The purpose of this report is to recommend that Council request the applicants of a Road Closure Application to withdraw the application. The application is over a currently unformed Public Road. The adjoining owners wish to purchase the land and consolidate it with their properties known as Lot 17 D.P.1006527 and Lot 18 D.P.1006527 as shown in Attachment 1. The areas of the road proposed to be closed are approximately 1600sqm and 1380sqm respectively.

This section of road was formerly part of the now realigned Clarence Street, Wallalong which previously joined Hector Street to the north and was maintained by Council. It has not provided access to any properties since the realignment of Clarence Street and the closure some years ago of part of Hector Street. The area is no longer accessible by vehicle and is currently under Licence Agreement between Council and the applicants (owners of Lots 17 and 18). The Licence termination dates are September 2015 and March 2015 respectively.

Public Authorities, other adjoining property owners and Council staff have been notified of the proposed closure with objections being received from an adjoining owner that proposes to develop the land for residential development. Hunter Water Corporation also advised they have assets within the proposed closure area which would require an easement.

Council's Strategic Planners have concerns regarding the proposed closure due to the objection received from HDB Town Planning & Design (HDB) on behalf of Wallalong Land Owners Group who own the adjoining properties.

The applicant's have been advised of the objection from HDB and have met with a representative from HDB. The applicants wish to continue with the road closure process as they believe there are alternate accesses into the future development such as; High Street, the end of the currently formed Clarence Street or Hector Street if required.

The applicants have agreed to reduce the width of the closure to allow pedestrian access between the new development and the currently constructed Clarence Street to provide the essential connection for the developer's concept plan.

Until such time that Council receives a Development Application for the land it would be imprudent to close the road as it may create a better design outcome for

ITEM 7 - ATTACHMENT 2 PREVIOUS REPORT MINUTES DATED 27 NOVEMBER 2012.

MINUTES ORDINARY MEETING – 27 NOVEMBER 2012

the residential subdivision. If the road is not required for access the applicant can submit a road closure application at that time.

FINANCIAL/RESOURCE IMPLICATIONS

If the closure were to proceed the applicants must meet all costs associated with the closure process. If these costs are not met at different stages throughout the process the next stage is not commenced until such payment is made.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes	\$10,000	Fees and charges for the road closure process are paid for by the applicant, this includes administration charges (there is no cost to Council).
Reserve Funds	No	Nil	
Section 94	No	Nil	
External Grants	No	Nil	
Other	No	Nil	

LEGAL, POLICY AND RISK IMPLICATIONS

If the closure is withdrawn there will be no implications.

If the closure were to proceed then all actions relating to the road closure and purchase are controlled by the Roads Act 1993 with the application being made under Section 34. The DPI makes the final decision and gazettes the closure. The Conveyancing Act controls the actual sale process once the new Certificate of Title has been issued. Council's Road Closure policy details the actions to be followed.

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
Application of rezoning and development of adjoining properties has not yet been received by Council however Council has previously supported future residential development in Wallalong and the road may be needed for access.	High	Adopt the recommendation.	Yes

ITEM 7 - ATTACHMENT 2 PREVIOUS REPORT MINUTES DATED 27 NOVEMBER 2012.**MINUTES ORDINARY MEETING – 27 NOVEMBER 2012**

Failure to comply with legislative requirements.	Low	Legislative requirements to be observed.	Yes
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SUSTAINABILITY IMPLICATIONS

includes Social, Economic and Environmental Implications

The Council has previously supported residential development in Wallalong and due to environmental and noise restrictions within the Port Stephens Local Government Area (LGA) which can prevent and restrict development, the proposal to develop the land will provide much needed housing for the LGA.

CONSULTATION

- 1) Department of Primary Industries Catchments & Lands;
- 2) Council's Property Officer;
- 3) Adjoining Property Owners;
- 4) Public Authorities;
- 5) HDB Town Planning & Design;
- 6) Strategic Planners; and
- 7) Property Services Manager.

OPTIONS

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

ATTACHMENTS

- 1) Locality Map

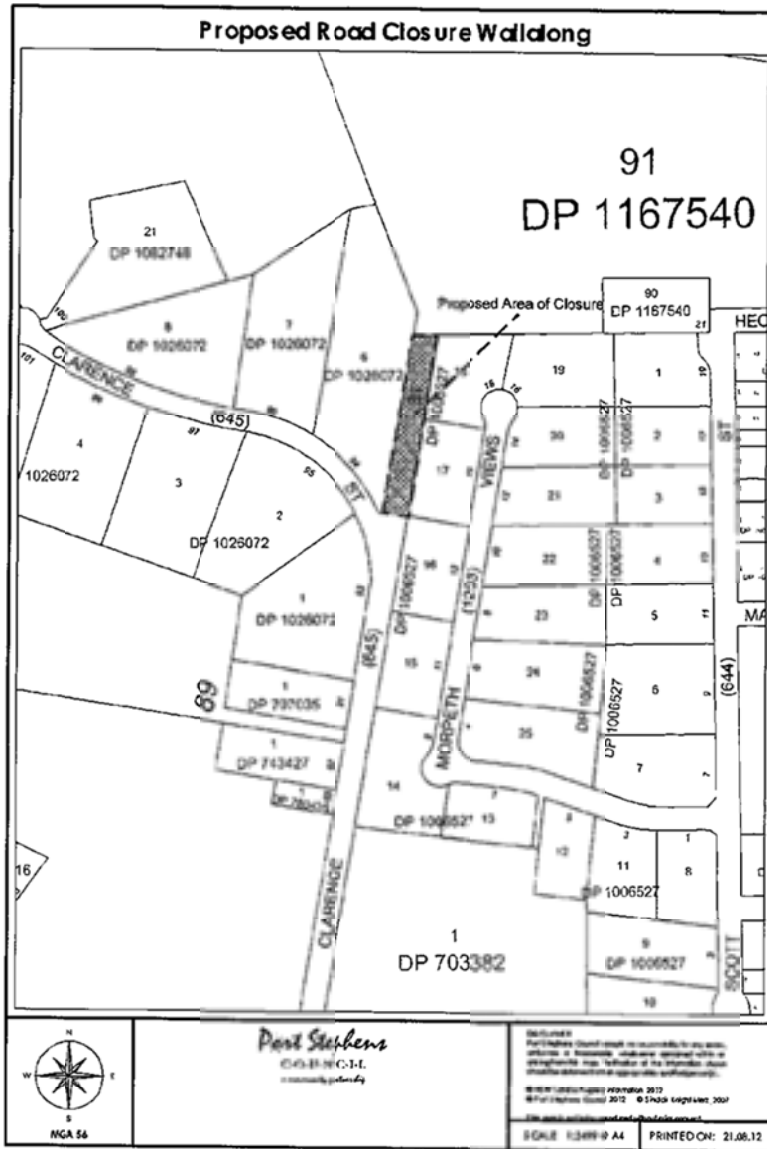
COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

- 1) Submission from HDW Town Planning & Design;
- 2) Letter from applicants.

ATTACHMENT 1



ITEM NO. 8

**FILE NO: PSC2015-01000/569
TRIM REF NO: A2004-0958 &
PSC2011-02308**

ACQUISITION BY HUNTER WATER CORPORATION OF EASEMENTS AT FERN BAY FOR PIPELINE, RIGHT OF CARRIAGEWAY & SERVICES AND A WASTE WATER PUMPING STATION

REPORT OF: GLENN BUNNY - PROPERTY SERVICES SECTION MANAGER
GROUP: CORPORATE SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Consents to the creation of Easements for Pipeline, Right of Carriageway & Services and a Waste Water Pumping Station over Lot 1 DP 1096148, Lot 106 DP 614883 and Lot 25 DP 253447 at Fern Bay.
- 2) Grants authority to affix Council's Seal and signatures to the survey plan and transfer granting easement document prior to lodgement at Land & Property Information.
- 3) Authorises the Land Acquisition & Development Manager to negotiate and accept an agreed compensation amount payable to Council for the acquisitions, with no further report to be provided unless agreement cannot be reached.

**ORDINARY COUNCIL MEETING - 28 JULY 2015
COMMITTEE OF THE WHOLE RECOMMENDATION**

	Councillor Paul Le Mottee Councillor Chris Doohan That the recommendation be adopted.
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**ORDINARY COUNCIL MEETING - 28 JULY 2015
MOTION**

216	Councillor Geoff Dingle Councillor Paul Le Mottee It was resolved that Council: <ol style="list-style-type: none">1) Consents to the creation of Easements for Pipeline, Right of Carriageway & Services and a Waste Water Pumping Station over Lot 1 DP 1096148, Lot 106 DP 614883 and Lot 25 DP 253447 at Fern Bay.2) Grants authority to affix Council's Seal and signatures to the survey
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MINUTES ORDINARY COUNCIL - 28 JULY 2015

	<p>plan and transfer granting easement document prior to lodgement at Land & Property Information.</p> <p>3) Authorises the Land Acquisition & Development Manager to negotiate and accept an agreed compensation amount payable to Council for the acquisitions, with no further report to be provided unless agreement cannot be reached.</p>
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BACKGROUND

The purpose of this report is to seek Council's consent to the creation of various Easements for Pipeline, Right of Carriageway & Services and a Waste Water Pumping Station and accept compensation over Council owned land at Fern Bay coloured yellow on **(ATTACHMENT 1)**.

Council's Property Section is preparing this report on behalf of Council's Community & Recreation Section to formalise the creation of easements by Hunter Water Corporation (HWC) over three Council Community Land parcels at Fern Bay outlined by red edge on **(ATTACHMENT 2)**.

HWC contacted Council regarding various Council owned properties, which have HWC assets constructed upon them. Currently, the acquisition and registration on Title of these easements has not been completed. The land to be burdened by the easements is as follows:-

Address	Use	Lot & DP	Impact
8 Vardon Rd	Tennis Courts & Community Hall	Lot 1 DP 1096148	Low – no above ground improvements visible
8A Vardon Rd	Open Space	Lot 106 DP 614883	Moderate – above ground improvements incl driveways and pump station
10 Vardon Rd	Playground	Lot 25 DP 253447	Low – no above ground improvements visible

The extent of the easements is shown by yellow tint on **(ATTACHMENT 3)**.

The acquisition process to obtain the easements requires the agreement of compensation between the parties and the preparation by HWC of a survey plan and Transfer Granting Easement form for endorsement under seal by Council as the property owner. Once compensation has been agreed and documents have been executed by both parties, HWC will then arrange lodgement of the documents for registration at Land & Property Information (LPI).

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2013-2017
Provide passive and active recreation and leisure services and facilities.	Maintain and develop recreational facilities for residents and visitors.

FINANCIAL/RESOURCE IMPLICATIONS

There will be no cost to Council. HWC has instructed Skelton Valuers to provide a valuation report assessing compensation to be paid to Council for the acquisition of the easements. The compensation offer will be reviewed by Council's Land Acquisition & Development Manager and a Council instructed valuation is likely to be obtained with negotiations to occur as required. HWC will be required to reimbursement Council's reasonable legal and valuation fees.

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

LEGAL, POLICY AND RISK IMPLICATIONS

Council has the authority to grant easements under Section 46 (1) (g) of the *Local Government Act 1993*.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that future uses of the land may be in conflict with the water services that are in place if the easement is not formalised.	Low	Adopt the recommendation.	Yes
There is a risk that Council may be in breach of legislation if the property easement approvals are not in place when works have already been completed.	Low	Adopt the recommendation.	Yes