

DRAFT

MINUTES – 10 MAY 2016



Minutes of Ordinary meeting of the Port Stephens Council held in the Council Chambers, Raymond Terrace on – 10 May 2016, commencing at 6.18pm.

PRESENT:

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

104	Councillor John Morello Councillor Ken Jordan It was resolved that the Minutes of the Ordinary Meeting of Port Stephens Council Ordinary Council held on 26 April 2016 and the Minutes of the Extraordinary Meeting of Port Stephens Council Ordinary Council held on 2 May 2016 be confirmed.
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MINUTES ORDINARY COUNCIL - 10 MAY 2016

	<p>Cr Paul Le Mottee declared a pecuniary conflict of interest in Item 3. The nature of the interest is that the Le Mottee Group have undertaken survey work on the site.</p>
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	<p>Cr Ken Jordan declared a pecuniary conflict of interest in Item 3. The nature of the interest is a friendship.</p>
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Note: All reports were dealt with in Open Council. Council did not move into Committee of the Whole during the meeting.

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MAYORAL MINUTES

MAYORAL MINUTE**ITEM NO. 1****FILE NO: 16/327240
RM8 REF NO: PSC2016-00754****ALLOCATION OF FUNDS - PROPOSED MERGER OF PORT STEPHENS
COUNCIL WITH DUNGOG SHIRE COUNCIL - PUBLIC INQUIRY****THAT COUNCIL:**

- 1) Allocate an amount up to \$20,000 in the 2015-2016 budget from the underlying surplus, for costs associated with the merger proposal between Port Stephens Council and Dungog Shire Council, including the conduct of a public information campaign.

**ORDINARY COUNCIL MEETING - 10 MAY 2016
MOTION**

105	Mayor Bruce MacKenzie Councillor Ken Jordan It was resolved that that Council allocate an amount up to \$20,000 in the 2015-2016 budget from the underlying surplus, for costs associated with the merger proposal between Port Stephens Council and Dungog Shire Council, including the conduct of a public information campaign.
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BACKGROUND

The State government has appointed Mr Peter Peppin as Delegate of the Chief Executive of the Office of Local Government under Section 218F of the *Local Government Act 1993* to conduct a Public Inquiry into the merger proposal with Dungog Shire initiated by Port Stephens Council. Council has been advised that the Public Inquiry will conclude with the closing of submissions on 26 June 2016.

The purpose of this report is to obtain Council's approval to provide a budget allocation for costs associated with the merger proposal, including conducting a public information campaign for residents of the two affected local government areas.

As the Port Stephens/Dungog Shire merger proposal was not previously anticipated in the preparation of the Quarterly Budget Review there was no provision made for undertaking such a public information campaign or preparing further submissions.

We have ascertained as part of the process of making submissions regarding the Minister's proposal for a merger between this Council and Newcastle City Council that there is considerable public support from the Dungog community for a merger

with Port Stephens Council; and from the residents of Port Stephens against a merger with Newcastle Council. However the residents of Port Stephens have not been consulted or advised of the relative merits of a proposed merger with Dungog Shire Council. It is proposed that the public information campaign will provide residents with the necessary information to make an informed decision on the merger proposal.

MERGER PROPOSAL IMPLICATIONS

Port Stephens Council's preferred position is to remain a stand-alone entity. However it is evident that the State government has the view that Port Stephens Council should merge with another LGA. In this context it is preferable that such a merger be with Dungog Shire Council, rather than Newcastle City Council. The proposed expenditure is to inform the community of the relative merits of the Dungog option, to ensure that the community is fully informed on this important issue.

Section 23A of the Local Government Act Guidelines provides that councils undertaking a public information campaign should have the matter "approved at an open council meeting".

MOTIONS TO CLOSE

ITEM NO. 1

**FILE NO: 16/322110
RM8 REF NO: PSC2006-2134**

MOTION TO CLOSE

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

RECOMMENDATION:

- 1) That pursuant to section 10A(2) (d)i of the *Local Government Act 1993*, the Committee and Council resolve to close to the public that part of its meetings to discuss Confidential Item 1 on the Ordinary agenda namely **Sale of 76A Port Stephens Street Raymond Terrace**.
- 2) That the reasons for closing the meeting to the public to consider this item is that the discussion will include information containing:
 - commercial information of a confidential nature that would, if disclosed prejudice the commercial position of the person who supplied it.
- 3) That the report remain confidential and the minute be released in accordance with Council's resolution.

**ORDINARY COUNCIL MEETING - 10 MAY 2016
MOTION**

106	<p>Councillor Steve Tucker Councillor Chris Doohan</p> <p>It was resolved that Council:</p> <ol style="list-style-type: none">1) That pursuant to section 10A(2) (d)i of the <i>Local Government Act 1993</i>, the Committee and Council resolve to close to the public that part of its meetings to discuss Confidential Item 0 on the Ordinary agenda namely Sale of 76A Port Stephens Street Raymond Terrace.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">• commercial information of a confidential nature that would, if disclosed prejudice the commercial position of the person who supplied it.3) That the report remain confidential and the minute be released in accordance with Council's resolution.
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ITEM NO. 2

**FILE NO: 16/322112
RM8 REF NO: PSC2015-03385**

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 2 on the Ordinary agenda namely **Purchase of 15 Horace Street, Shoal Bay**.
- 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 - 10 MAY 2016
MOTION**

107	<p>Councillor Steve Tucker Councillor Chris Doohan</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 2 on the Ordinary agenda namely Purchase of 15 Horace Street, Shoal Bay.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 - 10 MAY 2016

ORDINARY COUNCIL MEETING - 10 MAY 2016 MOTION

108	Mayor Bruce MacKenzie Councillor Ken Jordan It was resolved that Items 1, 2, 3 and 6 be brought forward.
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ITEM NO. 1

FILE NO: 16/283184
RM8 REF NO: 16-2015-660-1

DEVELOPMENT APPLICATION FOR COMMUNITY FACILITY (RAYMOND TERRACE MEN'S SHED) AND TWO LOT SUBDIVISION AT NO. 17E IRRAWANG STREET, RAYMOND TERRACE (BOOMERANG PARK - LOT 1 DP1018979)

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

FRECOMMENDATION IS THAT COUNCIL:

- 1) Approve Development Application DA No. 16-2015-660-1 for the construction of a community facility (Raymond Terrace Men's Shed) and two lot subdivision at 17E Irrawang Street, Raymond Terrace (Boomerang Park – Lot 1 DP1018979) subject to the conditions contained in **(ATTACHMENT 1)**.
 - 2) Waive the Section 94A levies in accordance with provision 2.10 of the Port Stephens Section 94A Development Contributions Plan (Amendment No. 7).
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ORDINARY COUNCIL MEETING - 10 MAY 2016 MOTION

109	Councillor Ken Jordan Councillor Paul Le Mottee It was resolved that Council: <ol style="list-style-type: none">1) Approve Development Application DA No. 16-2015-660-1 for the construction of a community facility (Raymond Terrace Men's Shed) and two lot subdivision at 17E Irrawang Street, Raymond Terrace (Boomerang Park – Lot 1 DP1018979) subject to the conditions contained in (ATTACHMENT 1).2) Waive the Section 94A levies in accordance with provision 2.10 of the Port Stephens Section 94A Development Contributions Plan (Amendment No. 7).
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In accordance with Section 375 (A) of the Local Government Act 1993, a division is required for this item.

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

Those against the Motion: Nil.

BACKGROUND

The purpose of this report is to present to Council for determination a development application (DA) for the construction of a community facility (Raymond Terrace Men's Shed) and two lot subdivision at 17E Irrawang St, Raymond Terrace (Boomerang Park). A locality plan is provided in **(ATTACHMENT 2)**.

The application has been reported to Council as the site is classified as community land. Section 47E of the *Local Government Act 1993* (**'LG Act'**) relates to the development of community land and restricts Council's ability to delegate consent functions to delegated officers (subject to a number of exemptions). The proposed development is not exempt from the provisions of s.47E *LG Act* and therefore a decision to grant consent to the proposed development must be made by resolution of Council.

It is noted that DA's 16-2014-314-1 and 16-2015-518-1 for the construction of a community facility (Raymond Terrace Men's Shed) and a two lot subdivision were determined under delegation. These consents were surrendered by the applicant in October 2015. The current application (16-2015-660-1) has been lodged to ensure compliance with s.47E *LG Act*.

Site Description

The subject site, 17E Irrawang St, Raymond Terrace (Lot 1 DP1018979), is commonly known as Boomerang Park and is located in close proximity to the Raymond Terrace commercial area. It is bounded by Kangaroo Street to the north-east, Irrawang Street to the north-west, Glenelg Street to the south-west and Elizabeth Avenue to the south. The area of the park subject to the proposed development is located adjacent to the junction of Glenelg Street and Elizabeth Avenue. This portion of the park is clear of buildings and structures. The park is used for outdoor recreation purposes and also contains a number of buildings such as the Raymond Terrace Senior Citizens Centre, Raymond Terrace Before and After School Care and the Port Stephens Dog Sports Club. The surrounding streets are predominately residential in nature.

Boomerang Park Landscape Master Plan

Council adopted the Boomerang Park Landscape Master Plan at its meeting on 25 November 2014. The Landscape Master Plan includes six key components, which includes a 'men's shed' building and car park located towards the south western corner. The location of the men's shed in the development application is consistent with the location of the men's shed in the adopted Landscape Master Plan.

Boomerang Park Plan of Management (POM)

The POM was adopted by Council on 26 April 2016. The use of the park and community building by the Raymond Terrace Men's Shed is listed as an appropriate use of the site in the POM. The POM also identifies that the development of a 'men's shed' community building is to be subject to a separate development application.

The proposed development is consistent with the POM as it supports the social, recreational and cultural values of the park and meets the legislative requirements. Further, the proposed men's shed community facility is specifically listed in the POM as a suitable use within the Park. The proposal also aligns with the uses and activities identified in the Landscape Master Plan (adopted by Council 25 November 2014).

Proposal

The proposed development is for a two lot subdivision and construction of a community facility to be used by the Raymond Terrace Men's Shed Group.

The proposal involves the construction of a single storey building (with mezzanine) to be used as a community facility. The building is 655m² in size (approximately 42m x 15m) with a 5m wide awning on the northern side. The building is 5.08m high and is to be constructed of precast concrete panels with a colourbond roof. Solar panels are to be installed on the roof and two water tanks at the rear of the building. A 2.1m high transparent fence is to be provided around the building. Six trees are to be removed in the area of the building footprint.

A 7m wide access road to the facility is proposed to be constructed via the existing Senior Citizens Centre car park, accessed from Irrawang Street. Ten car parking spaces (including two accessible spaces) are to be located on the northern side of the building.

The use by the Raymond Terrace Men's Shed group involves; hours of operation Monday to Saturday 9am to 4pm; 20 people on site at one time and a variety of activities conducted within the shed such as woodwork, metalwork, assembly and youth mentoring.

The subdivision involves the creation of two lots:

- Lot 2 will contain the Raymond Terrace Men's Shed and is 3,816.207m².
- Lot 1 is to contain the remainder of Boomerang Park. The Park is currently 21.48ha in size.

The subdivision will allow the men's shed to independently connect to utility services such as water, electricity and telephone. A right of way benefitting lot 2 is proposed to enable vehicular access to the site via lot 1 (Senior Citizens Centre accessed from Irrawang Street).

Assessment outcomes

The key issue raised during the assessment of the application was the public interest generated by the proposal. A total of 42 submissions were received during the public exhibition process. Thirty seven submissions were received opposing the application, and five submissions supported the application. Three petitions (1200, 800 and 81 signatures) were also received in support of the application.

The submissions objecting to the application raised concerns with:

- use of Council funds;
- inconsistencies with the Boomerang Park Plan of Management;
- the location;
- design;
- impacts on cultural and heritage significance;
- view loss;
- loss of vegetation;
- impact on flora and fauna;
- noise;
- odour; and
- quality of DA information.

The submissions received supporting the application identified that there was a high demand for the facility and noted the value that such as facility has for men's physical, psychology and social wellbeing within the community.

The proposed development is not likely to have adverse impacts on the built environment. The development is located a substantial distance from the street and the buildings appearance will be screened by the existing vegetation on the site. The development is only one storey high and is located in a park setting. It is also located within a reasonable distance from the Seniors Citizen Centre and uses a joint vehicular access point which minimises the impact on the park through additional hardstand areas. The building will not isolate this portion of the park, as there is sufficient room available on all sides to allow members of the community to traverse this area

The development is not likely to have any adverse impacts on the natural environment. The development involves the loss of six trees, four of which are Swamp Mahoganies (koala feed trees). These trees are currently not being used as feed trees and a condition has been placed on the consent requiring 18 replacement koala feed trees to be planted on site in a location consistent with the Plan of Management for Boomerang Park. The two heritage trees, *Araucaria cunninghamii* (Hoop Pine) and *Stenocarpus sinuatus* (Firewheel Tree) will not be impacted by the development and a condition has been placed on the consent requiring temporary construction fencing to be place around the trees for their protection.

The proposed building is located a minimum of 23m from Glenelg Street and any potential noise, odour or air quality impacts will be minimised by the separation

distance, the construction methods of the building and the hours of operation, which will be restricted by conditions of consent.

Boomerang Park is a large park that has the capacity to be used for a variety of functions and by a variety of people, without conflict between the users. The proposed development is consistent with the Master Plan and Plan of Management for Boomerang Park. The proposal is in the public interest as it provides a community facility that will provide many social benefits to the local and broader community.

A detailed assessment of the proposed development is provided within **(ATTACHMENT 3)** in accordance with Section 79C of the *Environmental Planning and Assessment Act 1979* (EP&A Act 1979).

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2013-2017
2.1 Improve facilities and services for an ageing population 11.1 Balance the environmental, social and economic needs of Port Stephens for the benefit of present and future generations.	Identify and plan for the future needs of an ageing population Provide Strategic Land Use Planning Services. Provide Development Assessment and Building Certification Services.

FINANCIAL/RESOURCE IMPLICATIONS

There is a financial implication to Council on account of the officer's recommendation, in that the recommendation is to waive the s.94A levies. The s.94A levy that applies to the development is 1% of the cost of the development. The development application stated a cost of \$600,000, and based on the current estimated cost of works the applicable s.94A levy is \$6,000.

The application was considered by the Section 94 Analysis Team on 27 October 2015. A detailed assessment of the application was made and it was recommended that the s.94A levies be waived in accordance with provision 2.10 of the Port Stephens Section 94A Development Contributions Plan (Amendment No. 7), which states:

Council may consider exempting other development types, or components from the s94A levy or may vary the levy to a lesser amount, at its complete discretion.

The primary argument in support of the waiving of the Section 94 fees in this instance was by virtue that the proposal effectively results in the relocation of an existing use within the community being the Men's Shed. Therefore given this use already exists, the proposal is not anticipated to provide any additional burden on existing infrastructure.

Council endorsement of this recommendation is required as staff do not have delegation to waive s.94A levies.

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Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes		
Reserve Funds	No		
Section 94	Yes		It is recommended that the s94A levy be waived. The proposal attracts a section 94A levy of \$6,000.
External Grants	No		
Other	No		

LEGAL, POLICY AND RISK IMPLICATIONS

The proposed development is generally consistent with Council's *Local Environmental Plan 2013* and *Development Control Plan 2014*. Should Council refuse the application the applicant may appeal to the Land and Environment Court. Defending Council's determination would have financial implications.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that the development application will be challenged at the Land and Environment Court.	Low	Approve the application as recommended.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The proposal is likely to result in a positive social benefit as the Men's Shed group facilitates a community need. The group provides a meeting place and outlet for men, which assists with mental health, physical development and wellbeing. A portion of the facility will also be available to other groups in the community and will not be for the exclusive use by the Men's Shed.

The construction of the facility will cater for employment in the local area and have an economic benefit to the commercial area of Raymond Terrace through incidental spending by contractors, users of the Men's Shed and visitors to the facility.

The proposed development will not involve the loss of significant vegetation or trees. The ecological report forming part of the POM identifies that key habitat for species such as the Koala and the Grey-crowned Babbler are not located in the vicinity of the proposed Men's Shed building. A number of trees are being removed from the site and replacement trees will be planted in a more suitable area within the park. The

heritage trees located near the building and along Elizabeth Avenue will not be impacted upon by the development and will be retained on the site.

MERGER PROPOSAL IMPLICATIONS

The proposed merger is not anticipated to have any implications on the development application.

CONSULTATION

Consultation with key stakeholders has been undertaken by the Development Assessment and Compliance Section. The objective of the consultation was to inform the relevant parties of the development application and obtain their feedback on the proposal to ensure their concerns were considered as part of the assessment process.

Internal

The application was reviewed by a number of internal specialist staff including Council's Development Engineer, Vegetation Management Officer and Building Surveyor. Consultation also occurred with Council's Community and Recreation Coordinator in terms of ensuring the application is consistent with the Plan of Management for Boomerang Park.

External

The development was advertised and notified to adjoining neighbours for a period of 28 days from 22 October 2015 to 18 November 2015. Thirty seven submissions were received opposing the application, and five submissions supporting the application. Three petitions (1,200, 800 and 81 signatures) were received in support of the application. A summary of the submissions is provided in the table below.

Issues raised in support of the application	Comment
The petitions have 2,081 signatures from the general public of Raymond Terrace and surrounding areas in support of the construction and development of a new purpose built Men's Shed in Boomerang Park.	The application has been recommended for approval.
Demand for facility, current site is overcrowded.	Noted.
A portion of the shed can be used for community use.	Noted.
Valuable asset for men's physical,	It is considered likely that the proposed development will result in positive social

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psychological and social health.	impacts.
Issues raised in opposition to the application	Comment
<i>Council funds:</i> Several submissions objected to the use of Council funds being exclusively used for a small minority community group. There is a need for transparency in the use of funds, tendering, contractor involvement and in the assessment of the development application. The money should be spent on improving the current park as it is underutilised due to poor maintenance.	All aspects of the proposal and use of funds are available for viewing by the public as per Council's governance procedures. Council also contributes funding for many other organisations and uses throughout the local government area, which is freely available for public viewing in Council's annual report. The POM has identified areas of the park that require maintenance and a number of recommendations have been made.
<i>Boomerang Park Plan of Management:</i> Concern has been raised over the assessment of the application when the POM needs to be revised. Submissions will be void if a new POM is adopted prior to Council considering the development application. Concerns were raised over the assessment process and bias in the process. The proposal is not consistent with the range of outdoor activities the park was created for. The application should be readvertised after the POM is reviewed.	The POM has been considered in the assessment of the application and the proposal is consistent with the POM. The POM will be considered by Council before the determination of the development application. The application has been assessed on its merits and the process is open and transparent. Extensive community consultation has occurred during the assessment of the development application, Landscape Master Plan and Plan of Management for Boomerang Park.
<i>Location:</i> Concerns were raised in regards to the location of the shed in the park and many suggested alternative sites in the area, with less impact.	The applicant considered several locations for the facility and this site was determined to be the most suitable for the use. The current application can only be assessed in terms of the proposed location and its merits.
<i>Design:</i> Submissions raised concern that the building is industrial in nature, the bulk, scale and size of the building is excessive and there is visual impact on views and the park itself.	The building style is appropriate for the type of facility and use proposed. The building is large in size due to the demand and need for this facility. The entire park is 21.48ha in size and a building of 655m ² will have minimal impact on the overall feel and use of the park. The building is located 23m from the street and will be screened by large trees, which will minimise any visual impact. It is noted that the building will

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	change the character of this portion of the park and will look different to what exists, however only a small portion of the park will be altered by this development.
<i>Historical, cultural and heritage significance:</i> Submissions raised concern over the impact on local connections and that the park was left for the broader community to use. Concerns were also raised over the impact on the heritage significance of the park.	The proposed use of the park is consistent with the POM and Landscape Master Plan. These plans have been developed in consultation with the community. In addition, the area of the park to be developed is small in scale when compared to the overall park, which is predominantly used for open recreation purposes. The proposal is not likely to impact on the heritage or Aboriginal cultural significance of the park or its setting.
<i>Loss of open space:</i> Concern was raised over the loss of parkland for future generations and alienation of the community from this part of the park.	The park is 21.48ha in size and a building of 655m ² is equivalent to 0.003% of the entire site. The loss of this small part of the park still allows for a substantial area of open space for the community. The building also does not alienate parts of the park as access to the park is not blocked off by this development.
<i>Flora and fauna:</i> Concerns were raised over the impact on wildlife (particularly Koalas, Quoll and Grey- crowned Babbler), loss of trees and compliance with the koala plan of management.	The proposal does not involve the removal of significant vegetation or trees from the park. Several trees are to be removed but they are not heritage trees or vulnerable species. The prime habitat vegetation is located towards the central part of the park, near the cemetery. Conditions have been applied for replacement trees to be planted.
<i>Impacts of the use:</i> Concerns were raised over noise, traffic, odour, vibration, and pollution impacts from the development. It was stated that the development will attract anti-social behaviour and will disrupt the peacefulness of the park and will impact on the existing recreational users of the park.	A thorough assessment of the impacts of the development has been made. The development is not likely to have a significant adverse impact on noise, pollution or odour and appropriate operational conditions will be placed on the consent to minimise such impacts. The use will increase the opportunity for casual surveillance of the park which is a positive outcome.
<i>Type of use:</i> The submissions raised	The use is correctly defined as a

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concern that the use is not a community facility and the use for youth mentoring is misleading. Exclusive adult membership and alienation of the community from the park is not compatible with the land use zone. There is a need for the patrons of the men's shed to have clearances due to the proximity to the child care facility.	community facility and is permissible and compatible with the zone. It is not a planning consideration to consider the personal attributes of patrons of the men's shed in regards to clearances near children.
<i>Houses:</i> Objection was raised to the building of houses in the park.	This application does not propose the construction of houses.
<i>Subdivision:</i> Objection was raised to the subdivision of the park.	The subdivision of the land meets Council requirements and will not impact on the use or function of the park.
<i>Quality of information:</i> Concerns were raised over the information submitted with the application and non-compliance with the LEP. It was stated that the determination of the application is not impartial, insufficient details have been submitted to enable a proper assessment, and an inadequate heritage assessment has been conducted. A further submission period was requested after review of the POM. Concerns were raised over the lack of public consultation.	The application has been assessed in accordance to the relevant planning provisions in the LEP and DCP. Sufficient information was provided to enable a thorough assessment of the impacts of the proposal. The application was placed on public exhibition for 28 days and the Landscape Master Plan and POM for Boomerang Park have also been on exhibition and a number of community consultations and enquiries have been held.

After the application is determined, all parties that made a submission will be notified in writing by the Development Assessment and Compliance Section.

OPTIONS

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

ATTACHMENTS

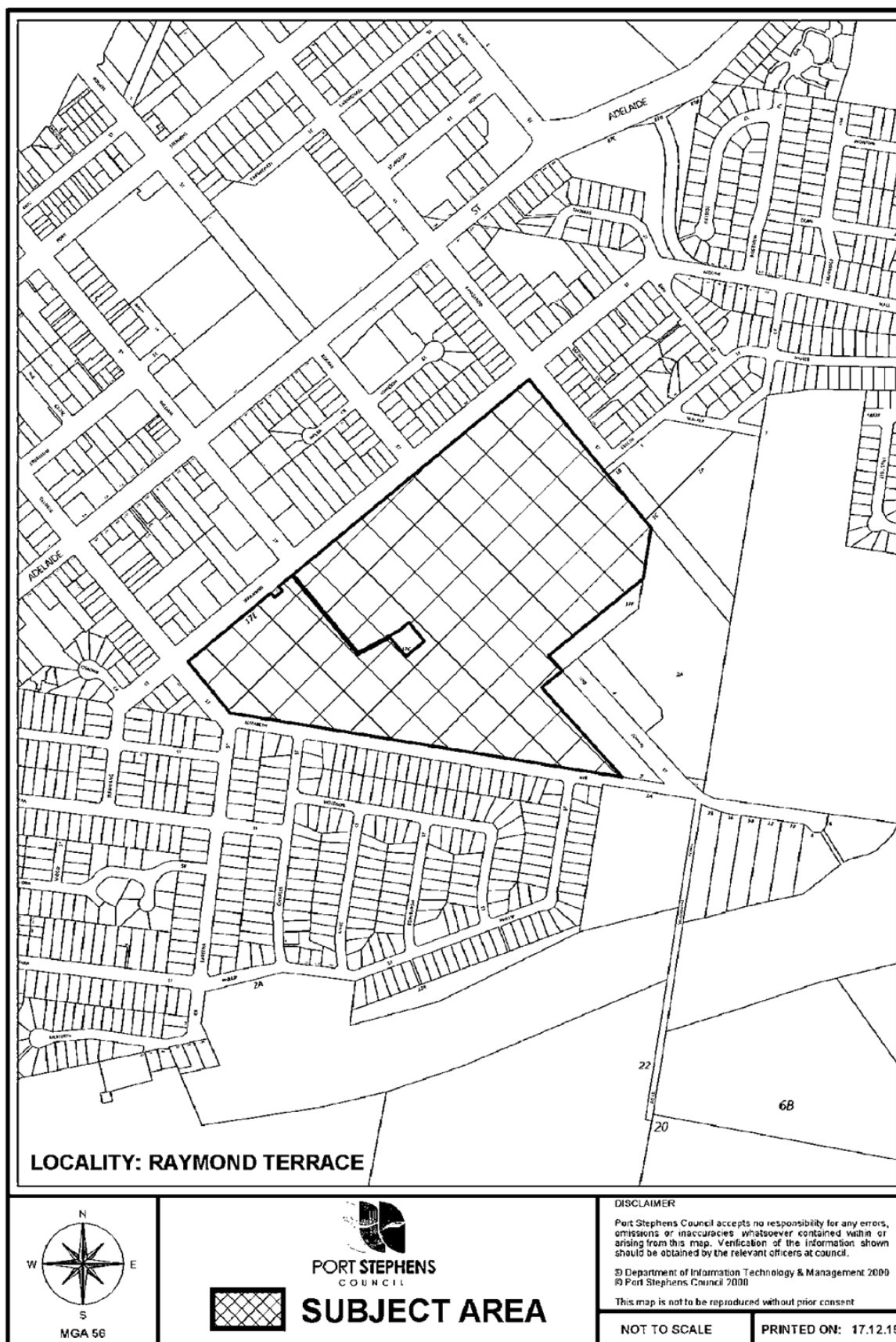
- 1) Conditions of Consent. (Provided under separate cover)
- 2) Planning Assessment Report. (Provided under separate cover)
- 3) Locality Plan.

COUNCILLORS ROOM

- 1) Development Plans.

TABLED DOCUMENTS

Nil.



ITEM NO. 2

**FILE NO: 16/304429
RM8 REF NO: 16-2015-769-1**

DEVELOPMENT APPLICATION NO.16-2015-769-1 FOR SENIORS HOUSING - CONSOLIDATION OF TWO LOTS, DEMOLITION OF EXISTING BUILDING AND CONSTRUCTION OF TWO DETACHED THREE AND FOUR STOREY BUILDINGS FOR SENIORS HOUSING, COMPRISING 56 DWELLINGS AT NO.60 DIEMARS ROAD AND NO. 240 SOLDIERS POINT ROAD, SALAMANDER BAY (LOT 1 DP1074566 AND LOT 161 DP27047, CURRENTLY KNOWN AS SP49188)

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

RECOMMENDATION IS THAT COUNCIL:

- 1) Approve Development Application (DA) No.16-2015-769-1 for seniors housing - consolidation of two lots, demolition of existing building and construction of two detached three and four storey buildings for seniors housing, comprising 56 dwellings at No.60 Diemars Road and No.240 Soldiers Point Road, Salamander Bay (Lot 1 DP1074566 and Lot 161 DP27047, currently known as SP49188), subject to the conditions contained in **(ATTACHMENT 1)**.
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**ORDINARY COUNCIL MEETING - 10 MAY 2016
MOTION**

110	<p>Councillor Paul Le Mottee Councillor Ken Jordan</p> <p>It was resolved that Council approve Development Application (DA) No.16-2015-769-1 for seniors housing - consolidation of two lots, demolition of existing building and construction of two detached three and four storey buildings for seniors housing, comprising 56 dwellings at No.60 Diemars Road and No.240 Soldiers Point Road, Salamander Bay (Lot 1 DP1074566 and Lot 161 DP27047, currently known as SP49188), subject to the conditions contained in (ATTACHMENT 1).</p>
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In accordance with Section 375 (A) of the Local Government Act 1993, a division is required for this item.

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

Those against the Motion: Nil.

BACKGROUND

The purpose of this report is to present Development Application (DA) No.16-2015-769-1 to Council for determination. The DA relates to Seniors Housing and includes the consolidation of two lots, demolition of existing building and construction of two detached three and four storey buildings for seniors housing, comprising 56 dwellings, at No.60 Diemars Road and No.240 Soldiers Point Road, Salamander Bay (Lot 1 DP1074566 and Lot 161 DP27047, currently known as SP49188). A locality plan is provided at (**ATTACHMENT 2**).

Council's Development Assessment and Compliance Manager elected to report the matter to Council due to the nature of the development being of significant interest to the community and the estimated cost of works being \$19.4 million (which is just under the threshold for applications to be reported to and determined by the Joint Regional Planning Panel). Previous applications on the same site have also been the subject of Council reports, hence the report has been tabled at Council.

Previous applications on this site were not supported by Council as a species impact statement (SIS) was not provided. This application relates to a different area of the site removed from the vegetated area and does not require an SIS.

Development proposal

The proposal involves the construction of a seniors housing development comprising two detached buildings collectively including 56 self-contained dwellings. 'Building A' is located towards the rear of the development site and faces the existing seniors village which adjoins the subject site. The building is four stories in height and contains 28 dwellings (ten adaptable two bedroom apartments, 17 two bedroom apartments and one two bedroom plus study apartment).

Building B is three stories in height and fronts Soldiers Point Road. It also includes 28 self-contained dwellings comprising two adaptable two bedroom apartments, 24 two bedroom apartments and two three bedroom apartments. The ground level of each building will include reception areas, lifts, fire exits, storage areas, bicycle racks, bin areas, mobility scooter areas and multiple points of pedestrian access.

Seventy four car parking spaces and one ambulance space are provided at ground level. The car parking is constructed below a first floor landscaped podium which provides private open space for future residents. The development also includes landscaping along the north-west, north-east and south-east perimeter of the site. The proposed vegetation consists of large indigenous trees, indigenous canopy trees, native palms, hedges and turf.

The existing building situated on SP49188 (parent Lot 161 DP27047 at No. 240 Soldiers Point Road) will be demolished. Consolidation of Lot 1 DP1074566 (No.60 Diemars Road) and Lot 161 DP27047 (currently SP49188 which is to be extinguished) (No.240 Soldiers Point Road) will also take place prior to issue of a construction certificate.

Site details

The entire Salamander Haven Retirement Village site has a 92 metre frontage to Soldiers Point Road and a total area of approx. 7.55ha. Existing buildings associated with the Salamander Haven Retirement Village are located on the south-western portion of the site. The development area is contained within the north-east corner of the subject site and comprises a total area of 6,901m². An existing residential building (proposed for demolition) is located on the development site, which otherwise remains largely vacant. The site topography is generally flat and does not contain any significant vegetation. The development surrounding the site consists of an existing senior's village to the west and one and two story dwellings to the north, south and east.

The subject land is zoned R2 Low Density Residential under the *Port Stephens Local Environmental Plan 2013* (LEP2013). The proposed development is defined as 'seniors housing' and is permitted with consent in the zone. The proposal is considered to be generally consistent with the zone objectives by providing for the housing needs of the community, the implementation of facilities and services to meet the day to day needs of residents and the enhancement of the existing residential amenity and character of Salamander Bay.

There is a recognised shortage of seniors housing within the Port Stephens Local Government Area. The Draft Port Stephens Ageing Strategy outlines that 32.86% (21,297) of residents in the Port Stephens Local Government Area (LGA) are 55 and older, exceeding the State average of 26.43%. Additionally, only 5% of housing available to senior members of the community is located within a vertical style living format, therefore the development provides for increased diversity and the efficient use of land.

Assessment outcomes

The development proposal was assessed against the controls in *Development Control Plan (DCP) 2014 Chapter C5 Residential Flat Buildings* and Multi-Dwellings to ensure that an appropriate built outcome was achieved on the site. In this regard, it is noted that the proposed development does not trigger the assessment requirements under either *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004* or *State Environmental Planning Policy No.65 – Design Quality of Residential Flat Development*. The applicant has specifically nominated that the proposal has not been lodged under the provisions of SEPP Seniors. Notwithstanding, the application was assessed by Council's internal SEPP 65 design review panel as best practice.

The proposed development is considered to be generally compliant with Chapter C5 DCP2014. The building is considered to be well sited and designed with respect to the topography of the land and character of Salamander Bay. The construction of the proposed development at the subject site is unlikely to result in any significant adverse impacts upon the local streetscape and amenity of adjoining properties. A detailed assessment of the proposal against the provisions of s.79C *Environmental*

Planning and Assessment Act 1979 (EP&A Act) is provided at (**ATTACHMENT 3**). The Rural Fire Service have also provided General Terms of Approval in relation to the proposed development (**ATTACHMENT 4**).

Key issues

Height, Bulk and Scale

A maximum height limit of 9 meters applies to the site under cl.4.3 LEP2013. Proposed Building A has a maximum height of 14.57 metres and Building B has a maximum height of 11.52 metres, exceeding the maximum building height limit by 5.57m and 2.2m respectively. The applicant has provided an argument under cl.4.6 of the LEP2013. It is considered that the variation to increase the height is supported in this instance given the proposed development:

- Has been significantly amended throughout the assessment to ensure the height, bulk and scale are appropriate for the context and character of the locality. The design incorporates use of earthy coloured materials, multiple vertical and horizontal facade design features and modulation of building sections;
- Is in keeping with the objectives of the R2 Low Density Residential Zone;
- Will utilise cleared, predominantly undeveloped land within a subject site which currently provides housing for senior members of the community;
- Provides opportunity to integrate existing facilities and services, creating a range of housing options for the community and implementing a co-ordinated senior's village;
- Positions Building A at the rear of the development area, setback 56 meters from Soldiers Point Road resulting in only a small portion of the building visible from Soldiers Point Road; and
- Landscaping, incorporating large indigenous trees will further soften the appearance via the addition of a vegetation barrier between the development and street frontages.

Privacy

The siting and design of proposed Building A, including the significant setbacks, ensure that it is unlikely that the construction of the building will result in adverse impacts to privacy. The first and second floor dwellings within Building B have 1.8 metre high privacy screens to eliminate privacy concerns to adjoining units and neighbouring dwellings. Conditions of consent have been recommended (**ATTACHMENT 1**) to ensure the privacy screens are appropriately sized to negate potential privacy concerns to surrounding residential development. Additionally, Building B has been designed with limited windows being located on the north and south elevations. The windows that have been provided to these elevations are not considered likely to result in unacceptable privacy impacts or generate overlooking to neighbouring private open space areas. Landscaping will further negate potential privacy and overlooking concerns.

Overshadowing

The development will result in a reduced level of solar access to No.62 Diemars Road (Lot 312 DP1029246) and No.244 Soldiers Point Road (Lot 2 DP1052060). Despite this the shadow diagrams submitted with the application indicate that No. 244 Soldiers Point Road will still maintain a satisfactory level of solar access. It is acknowledged that as a result of the proposed development the solar access achieved to No.62 Diemars Road does not satisfy minimum solar access requirements as stipulated by PSDCP2104. However, factors such as:

- The north-south lot origination for No.62 Diemars Road;
- The proposed buildings 6 meter setback to the south-east property boundary;
- Existing 1.8 meter high perimeter fence; and
- The small area of usable private open space.

These factors would likely result in the construction of a compliant two story dwelling at the subject site presenting a similar overshadowing impact to No.62 Diemars Road. As a result, whilst the development does result in some overshadowing of neighbouring properties the impact is considered to be reasonable.

Conclusion

The applicant has provided an amended design in order to respond to concerns raised by Council staff during the assessment process. The amended development satisfactorily responds to the surrounding residential context. The development adjoins an existing retirement village and provides for the housing needs of the LGA's aging population. The proposed seniors housing development has been assessed against Council's LEP2013 and DCP2014 and is recommended for approval subject to conditions of consent.

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 financial implications resulting from the recommendation of this report.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes		
Reserve Funds	No		

MINUTES ORDINARY COUNCIL - 10 MAY 2016

Section 94	Yes		Refer to conditions of consent.
External Grants	No		
Other	No		

LEGAL, POLICY AND RISK IMPLICATIONS

The proposed development is consistent with *Port Stephens Local Environmental Plan 2013* (LEP2013) and Port Stephens Development Control Plan 2014 (DCP2014). Further details are provided in the Planners Assessment Report contained in **(ATTACHMENT 3)**

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

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The development will likely result in positive economic, social and environmental outcomes, as detailed below:

The development is expected to produce a total economic output of \$38.5 million. 97 jobs are anticipated to be created and positive economic outcomes will continue post construction via the flow on effects of future residents by way of shopping, working, living and recreational pursuits. In addition, the development will attract s94 contributions equating to \$359,632 for the provision of local infrastructure and facilities in accordance with Section 94 of *EP&A Act*.

The development will provide a range of housing options for residents over the age of 55 and people with a disability. The provision of housing for senior members of the community has been identified as a need within the Port Stephens Planning Strategy 2011 and the Draft Port Stephens Ageing Strategy. Consistent with these documents, the development will be located in close proximity to town centres and public transport options, ensuring social benefits are maximised.

The development area is cleared, with no significant vegetation. The development will include planting of vegetation along the north-west, north-east and south-east perimeter of the development and on the first floor podium. Vegetation will consist of large indigenous trees including Magenta Lilly Pilly (*Syzygium paniculatum*) listed as vulnerable under the *Environmental Protection and Biodiversity Conservation Act 1999* and Spotted Gum (*Corymbia maculate*), indigenous canopy trees, native palms, hedges and turf. Planting of vegetation outlined in the landscaping plan and the requirement of street tree plantings will increase the environmental values of the site.

MERGER PROPOSAL IMPLICATIONS

The proposed merger is not anticipated to have any implications on the development application.

CONSULTATION

Consultation with key stakeholders has been undertaken by the Development Assessment and Compliance Section during the development application process. The objective of the consultation was to inform the relevant parties of the development application and obtain their feedback on the proposal to ensure all potential concerns have been investigated.

Internal

The application was reviewed by a range of Councils internal specialist. The application was referred to Councils Development Engineer, Traffic Engineer, Building Surveyor, Waste Management Officer, Vegetation Management Officer, Section 94 Officer, Social Planning Officer, Business Development and Investment Manager and Spatial Services Officer for comment. Additionally, an internal design review panel of selected Council staff held a review on the design properties on the development.

External

Consultation was undertaken with the applicant proceeding Councils internal design review panel meeting. This process resulted in amended development plans being submitted. The amended design satisfactorily addressed the issues raised by staff in regards to the design initially submitted (refer to **ATTACHMENT 5**). As illustrated within (**ATTACHMENT 5**) the applicant made a number of design changes which included the removal of the proposed fourth floor from 'Building B', reducing the building height to three stories. These changes were able to be accommodated whilst still retaining the dwelling yield.

In accordance with Section 100B of the *Rural Fire Act 1997*, the proposal is defined as a special fire protection propose. As such, the proposal is deemed to be integrated development. The development application was referred to the Rural Fire Service seeking general terms of approval. In response general terms of approval were received 31 January 2016.

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The development was advertised and notified to adjoining neighbours for a period of 14 days in accordance with PSDCP2014, from 23 November 2015 to 9 December 2015. A total of eleven submissions were received. Due to significant design amendments, the application was re-exhibited for a period of 14 days, from 17 February 2016 to 2 March 2016, in which ten submissions were received. The issues raised within the submissions have been assessed and it is considered that the proposed development is satisfactory. The main concerns raised through the public exhibition periods include:

- Privacy
- Overshadowing
- Inconsistent with zoning and zone objectives
- Length of notification period
- Impact to visual amenity
- Height bulk and scale of development
- Creating a precedence of non-compliant development
- Traffic and car parking
- s94 contributions and timing
- Stormwater runoff

A detailed response to the matters raised during the exhibition period is held within the assessment report at **(ATTACHMENT 3)**.

OPTIONS

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

ATTACHMENTS

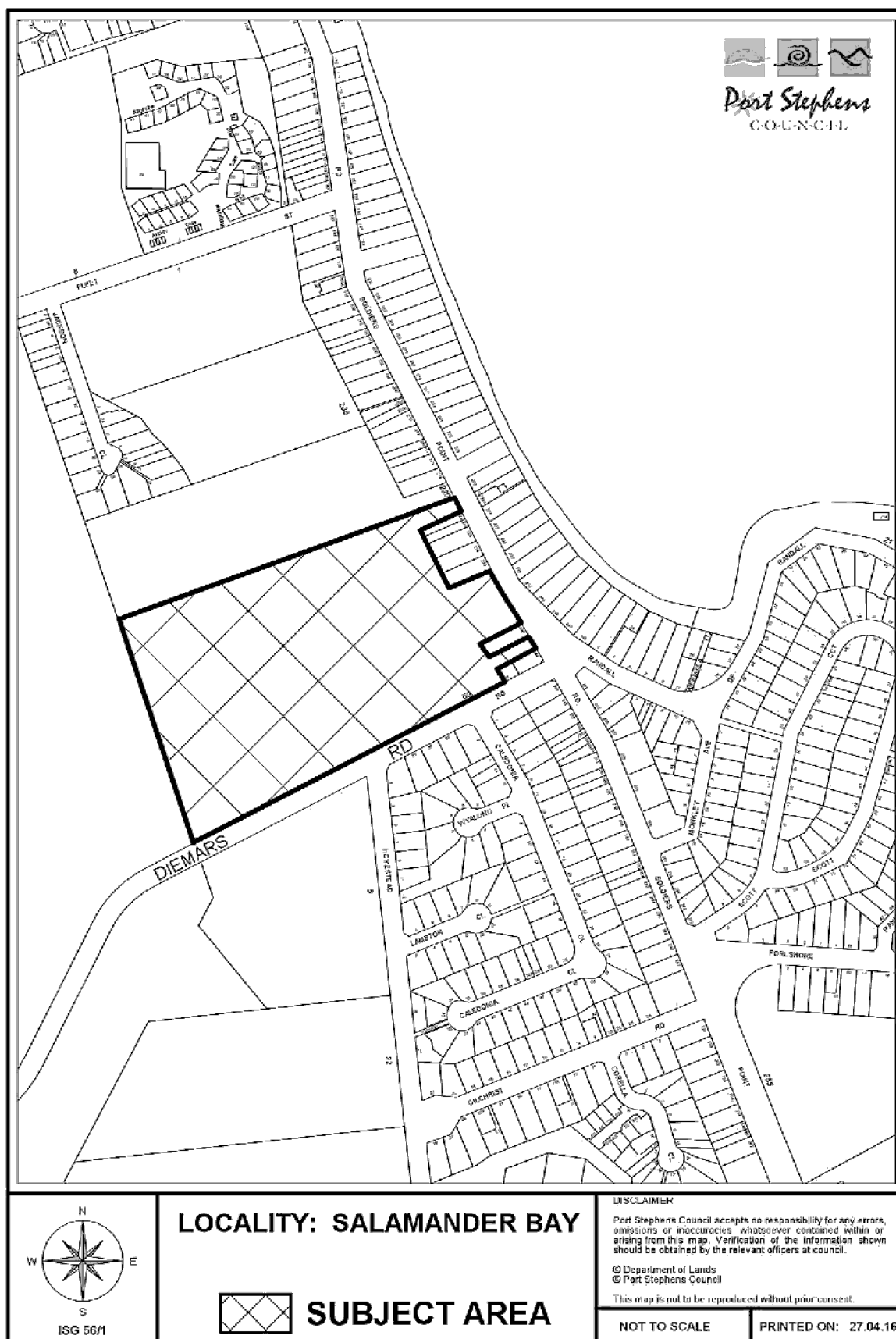
- 1) Conditions of consent. (Provided under separate cover)
- 2) Locality plan.
- 3) Assessment report. (Provided under separate cover)
- 4) Rural Fire Service General Terms of Approval. (Provided under separate cover)
- 5) Design amendments. (Provided under separate cover)

COUNCILLORS ROOM

- 1) Development plans and documentation.

TABLED DOCUMENTS

Nil.



MINUTES ORDINARY COUNCIL - 10 MAY 2016

Councillor Paul Le Mottee left the meeting at 07:09pm, prior to Item 3 in Open Council.

ITEM NO. 3

FILE NO: 16/323264
RM8 REF NO: 16-2015-221-1

SECTION 82A APPLICATION FOR REVIEW OF DETERMINATION NO.16-2015-221-1 FOR SINGLE DWELLING AT NO.7 HIGH STREET HINTON (LOT: 1A DP: 9901).

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

RECOMMENDATION IS THAT COUNCIL:

- 1) Refuse Section 82A Application for review of determination of DA No.16-2015-221-1 for the following reasons:
 - a) The development fails to satisfy cl.7.3 Port Stephens Local Environmental Plan 2013 as the development is not compatible with the flood hazard of the land (s.79C(1)(a)(i) *EP&A Act 1979*).
 - b) The development fails to satisfy cl.7.6 Port Stephens Local Environmental Plan 2013 as adequate essential services, particularly in relation to the disposal and management of wastewater, have not been provided (s.79C(1)(a)(i) *EP&A Act 1979*).
 - c) The development fails to conform to the controls contained within Port Stephens Development Control Plan (B5 Flooding and Control C4.6 Streetscape) (s.79C(1)(a)(i) *EP&A Act 1979*).
 - d) The site is not suitable for the development given the flood characteristics of the site and impacts to the streetscape (s.79C(c) *EP&A Act 1979*).
 - e) Given the likely significant adverse impacts on the flood behaviour, risk to life, property and environment that may result from the approval, the development is not in the public interest (s.79C(e) *EP&A Act 1979*).

ORDINARY COUNCIL MEETING - 10 MAY 2016 MOTION

111	<p>Councillor Ken Jordan Councillor Steve Tucker</p> <p>It was resolved that Council refuse Section 82A Application for review of determination of DA No.16-2015-221-1 for the following reasons:</p> <ol style="list-style-type: none">a) The development fails to satisfy cl.7.3 Port Stephens Local Environmental Plan 2013 as the development is not compatible with
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	<p>the flood hazard of the land (s.79C(1)(a)(i) <i>EP&A Act 1979</i>).</p> <p>b) The development fails to satisfy cl.7.6 Port Stephens Local Environmental Plan 2013 as adequate essential services, particularly in relation to the disposal and management of wastewater, have not been provided (s.79C(1)(a)(i) <i>EP&A Act 1979</i>).</p> <p>c) The development fails to conform to the controls contained within Port Stephens Development Control Plan (B5 Flooding and Control C4.6 Streetscape) (s.79C(1)(a)(i) <i>EP&A Act 1979</i>).</p> <p>d) The site is not suitable for the development given the flood characteristics of the site and impacts to the streetscape (s.79C(c) <i>EP&A Act 1979</i>).</p> <p>e) Given the likely significant adverse impacts on the flood behaviour, risk to life, property and environment that may result from the approval, the development is not in the public interest (s.79C(e) <i>EP&A Act 1979</i>).</p>
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In accordance with Section 375 (A) of the Local Government Act 1993, a division is required for this item.

Those for the Motion: Mayor Bruce MacKenzie, Crs Geoff Dingle, Sally Dover, Ken Jordan, Peter Kafer, John Morello, John Nell and Steve Tucker.

Those against the Motion: Cr Chris Doohan.

BACKGROUND

The purpose of this report is to present a section 82A application for 'Review of Determination' (RD) of Development Application (DA) No.16-2015-221-1 to Council for determination. The DA related to land located at No.7 High Street, Hinton which is identified as Lot: 1A DP: 9901 ('the subject site'). The application has been called to Council by Councillor Jordan on the basis that the land is flood prone. The call to Council form is attached as **(ATTACHMENT 1)**.

The RD was previously reported to Council on 26 April 2016, at which time Councillors resolved to defer consideration of the application in order to facilitate a site inspection. Councillors attended an inspection of the site with Council staff on 2 May 2016.

After a detailed assessment, the 82A review of determination has concluded the same recommendation as the initial assessment in that the development cannot be supported.

It is noted that the site is part of a large land holding that comprises lots 2A and 6A DP 9901, a locality plan is provided at **(ATTACHMENT 2)**. The site is located on the bank of the Paterson River. The site is located on a floodplain and is relatively flat. There is a flood levee constructed to the west of the site adjoining the Paterson

River. The Hinton Bridge is in proximity to the site and is a listed heritage item. An existing shed with associated land fill is located on the site and was approved under (16-2014-384-3).

It is noted that the provisions of s.82A *Environmental Planning and Assessment Act 1979* ('EP&A Act') provide an applicant that is dissatisfied with the Council's determination of their development application (DA) a mechanism to seek an internal review of the original decision. This is known as a 'Review of Determination' (RD). When lodging an s.82A application the applicant is entitled to amend the original application and Council must review its decision on the basis of the amended application. However, the application must remain substantially the same.

Section 82A further specifies that the RD must be determined within 6 months of the date that the applicant received notice of the original determination. It is also required that where the original application was determined by a delegate of the Council, the s82A review must be undertaken by Council or another delegate of the Council who is not subordinate to the delegate who made the determination. Both these requirements have been satisfied in this instance.

The proposed land use is permissible within the RU1 Primary Production Zone. However, the key issues with the development subject to review relate to flooding as the site is classed as High Hazard Floodway and Excessive Depth FPM Zone under the Paterson River Floodplain Risk Management Study and Plan. Provision of adequate on-site sewage management also remains an outstanding issue.

DA No.16-2015-221-1

The application subject to the s.82A RD (DA No.16-2015-221-1) sought consent for the construction of a single four bedroom dwelling set on an elevated platform supported by metal piers and the extension of the existing shed located on site. The dwelling was proposed to be constructed with a finished floor level (FFL) of 7.7AHD. The natural ground surface is approximately 4.1-4.7m AHD. An on-site sewage management system (OSMS) and associated land fill were also proposed. Access to the development was proposed via High Street, Hinton. The original application was refused under delegation on 20 November 2015 for the following reasons:

- 1) The site not suitable for the proposed development (s.79C(c) EP&A Act) as:
 - a) The subject land is located entirely in the High Hazard Floodway. Due to the risk associated with velocities and/or depth which pose a risk to structures and/or the safety of persons the land is deemed unsuitable for residential development;
 - b) The development is considered an inappropriate land use under the NSW Floodplain Development Manual 2005; and
 - c) It is inappropriate to place additional dwelling houses in high risk flood areas and placing further demand on already limited SES resources by way of domestic property protection, rescue/medivac and evacuation.

- 2) The development is inconsistent with the provisions of cl.7.3 of Port Stephens Local Environmental Plan 2013. The development is compatible with the land's flood risk. Significant adverse impacts on the flood behaviour, risk to life, property and environment may result from approval of the development (s.79C(a)(i) EP&A Act).
- 3) The development fails to conform to the controls contained within the Port Stephens Development Control Plan 2014 B5.8 High Hazard 1 – Floodway Development located within High Hazard 1 (s.79C(a)(iii) EP&A Act).

Basis for s.82A review

The applicant has sought review of determination No.16-2015-221-1 on the basis that a Hydraulic Loading Assessment (HLA) report has been prepared by GCA, which identifies that the proposed dwelling is located within a flood storage area rather than a high hazard floodway. The applicant suggests that the area is characterised by relatively low flood velocities which will not pose a significant risk to structures or persons, and that the dwelling can be designed to withstand the effects of major flooding.

Amended plans have also been submitted with the s.82A application which provides for:

- 1) An aerated effluent tank to be located on fill and having a top lid surface of 6.0m AHD.
- 2) An area of filling located to the east of the proposed shed extension to provide an elevated area for the disposal of effluent. This area is at 5.3m AHD which is below the 1 in 20 year flood level.

The applicant has also sought review pursuant to s.82A *EP&A Act* on the basis that Council has previously approved dwellings within proximity to the subject development. In this regard, it is understood that the applicant is referencing the dwelling approved under DA No.16-2014-492-1 located at 19 High Street, Hinton. This dwelling is currently under construction. This approval is discussed below.

DA No.16-2014-492-1 – Dwelling at 19 High Street, Hinton

DA No.16-2014-492-1 sought development consent for an earth mound and single storey dwelling at No.19 High Street, Hinton. The application was approved by Council at its ordinary meeting of 9 December 2014 subject to conditions of consent.

Council staff had recommended that Council refuse the DA on the basis that the subject site was located entirely within the floodway and subject to high hazard flooding. Due to the risk to structures and/or the safety of persons the site was considered to be unsuitable for residential development. The development was found to be inconsistent with cl.7.3 *Port Stephens Local Environmental Plan 2013* (LEP2013) which relates to development on flood prone land and the need to

minimise the flood risk to life and property and to ensure development remains compatible with the land's flood risk.

It is noted that subsequent to the approval of DA No.16-2014-492-1, at its Ordinary Meeting of 14 July 2015 Council adopted Chapter B5 Development Control Plan 2014. Chapter B5 was specifically drafted to relate to Council's Floodplain Risk Management Policy and Flood Hazard Maps at such time that they were adopted by Council. The Floodplain Risk Management Policy and Flood Hazard Maps were adopted by Council at its Ordinary Meeting of 8 March 2016. These instruments form Council's flood planning policy.

Therefore, Council is considering the subject s.82A application within a different policy context to the dwelling approved under DA No.16-2014-692-1. In addition each application must be assessed upon its merits irrespective of past approvals. For example, the Hinton Hotel (which is located to the south of the subject site) would be unlikely to be approved under the current flood planning policy. It is understood that a number of dwellings have historically been approved on flood prone land across the LGA and it is also likely that these dwellings would not be supported under the new flood planning policy. It is appreciated that this may create a sense of confusion within the community. However, Council has a duty to assess and make an informed decision regarding each development application in light of the most recent information available. In this regard, the proposed development is not appropriate due to the flood risk to life and property in accordance with Council's current flood planning policy.

Assessment s.82A Review of Determination No.16-2015-221-1

Flood classification

Council staff do not support the findings in the applicants Hydraulic Loading Assessment (HLA) report. The site is classed as High Hazard Floodway and Excessive Depth FMP Zone under the Paterson River Floodplain Risk Management Study and Plan 2001. The determination of appropriate hydraulic categories was undertaken by specialists at the time of the flood study and floodplain risk management plan for the area and is specific to the catchment. The hydraulic categorisation of floodway is attributed to the substantial volume of water flowing through this property in times of major flooding.

The land has been identified as a pathway taken by major discharges of floodwaters, the obstruction or partial obstruction of which would cause a significant redistribution of floodwaters, or a significant increase in flood levels and that in this area. Further, flood waters; pose a possible danger to personal safety, the evacuation of premises via trucks would be difficult, where able-bodied adults would have difficulty wading to safety, and where there is a potential for significant damage to buildings.

The Floodway and Excessive Depth FPM Zone identifies that part of the floodplain where there is considered to be no potential to implement ameliorative measures and allow for any structures or intensive activity at a level of risk which would be

considered acceptable to the community. The principal risk criterion in this extreme FPM zone category is when velocities exceed levels which may threaten the integrity of built structures or the safety of persons. The other criteria which captures an area within this FPM zone is that of depth which, in the case of the Paterson River Floodplain, expansive areas are subject to deep level flooding during a 1% AEP flood, and evacuation problems may arise due to floods up to and Extreme Flood.

In this regard, the property is affected by very significant flooding in events as frequent as the 20% Annual Exceedance Probability (AEP). AEP refers to the chance or probability of flooding occurring on-site. The AEP rating for the subject site indicates that on average the development would be subject to flooding approximately every five years.

The subject site is also located within the high provisional hazard category for 5% AEP and greater. Therefore there is increased potential for significant structural damage to buildings. The development is not compatible with the lands flood hazard and will result in an unacceptable risk, therefore it cannot be supported.

Impact to SES Resources

The applicant suggests that use of communication systems and construction of floor levels above the 1% AEP mitigate the impacts of the development upon resourcing of the SES. However, communication systems cannot be completely relied upon to mitigate risk during flood. It is very common for power outages to occur during times of storms. Although building floor levels above the 1% AEP flood level mitigates some of the risk associated with major flooding, there are remaining risks associated with floods greater than the 1% AEP as well as access and isolation associated with storms up to the 1% AEP.

Clause 7.3 LEP2013 - Compatibility with flood risk

The applicant has provided an assessment of the forces up to the 1% AEP flood. However, the forces above the 1% AEP have not been assessed by a hydraulic engineer or a structural engineer. There is also no link between the identified hydraulic forces during flood and the design of the house. In addition, the applicants HLA states at section 4:

"It should be remembered that council's information indicates that the probable maximum flood (PMF) is significantly higher than the floor level of the dwelling. Should an event significantly larger than the 1% AEP occur, it is likely that the structure would not survive and an appropriate evacuation plan should be in place to protect the lives of the occupants".

Council have to consider events greater than the 1% AEP, for example the floods that occurred in Dungog in 2015 were greater than 1% AEP. The safety of life or property has not been adequately catered for and the development is not compatible with the flood risk as there is an inappropriate risk to life and property in events greater than the 1% AEP flood event. As such the proposed development fails to satisfy the provisions of cl.7.3 LEP2013, which provides that development consent

must not be granted unless the consent authority is satisfied that the development is compatible with the flood hazard of the land.

In *North Ocean Shores Inc. v. Byron Shire Council* [2009] NSW LEC 69, Preston CJ at [19] indicated that a type of clause, such as clause 7.3 LEP2013, requires the consent authority to form the requisite opinion that carrying out of the development is consistent with the relevant objectives before it embarks on a consideration of the merits of the development application, and before it has the power to grant consent. On this basis, it is considered that the development fails the 'test' set out within cl.7.3(3) and that consent must not be granted. Any decision to the contrary may be found to be ultra-vires.

Clause 7.6 LEP2013 – Essential services

Clause 7.6(1)(c) LEP2014 provides that development consent must not be granted to development unless the consent authority is satisfied adequate arrangements for the disposal and management of sewage have been provided for. The applicant has not addressed the requirement for the submission to Council of an effluent management report prepared by a consultant addressing the high hazard elements of Council's Development Assessment Framework. This issue was raised with the applicant under the original determination (DA 16-2015-221-1).

The proposed on-site sewage management system (OSMS) cannot be supported as Council requires that tank openings and electrical shall be located above the 1:100 flood level or be designed as such that the tank is water and gas tight will all electrical components located above the 1:110 flood level. The applicants proposed OSMS provides a treatment system top of lid at RL 6.0m AHD which represents a 1:20 level. Further the proposed disposal area will be located at 5.3m RL AHD which is below the required 1:20 level.

Again, cl.7.6 LEP2013 provides a precondition to the granting of consent. As such, the application cannot be approved unless Council is satisfied that satisfactory arrangements have been made for the disposal and management of sewage.

Compliance with DCP2014

The development does not comply with the provisions of Chapter B5 DCP2014. Development is not encouraged within a floodway, particularly the provision of housing. The applicant has not demonstrated that the proposed dwelling is structurally sound or that a suitable flood refuge has been provided.

Further, the proposed development is not in keeping with the existing streetscape character. The locality is typified by large rural allotments with isolated structures, namely rural sheds, setback from the road frontage. The proposed dwelling is within 13.6 metres of the frontage which complies with front setback requirements of the DCP. However, the setback does not maintain the existing rural character as surrounding structures have substantial setbacks from the road frontage. The impact to the streetscape and rural character is exemplified by the proposed construction

MINUTES ORDINARY COUNCIL - 10 MAY 2016

method which results in the dwelling being located on 2.7metre pylons. The neighbouring dwelling (16-2014-492-1) is located on a large fill pad as is the sites existing shed. The dwelling will result in an adverse impact to the existing streetscape.

Conclusion

The application is not consistent with:

- Port Stephens LEP2013, in particular cl.7.3 and cl.7.6.
- Port Stephens DCP2014, in particular Chapter B5 and control C4.6.
- Port Stephens Council "Areas Affected by Flooding and/or Inundation Policy", 2006.
- The Paterson River Floodplain Risk Management Study and Plan 2001The NSW Floodplain Development Manual 2005Floodplain Risk Management Policy (adopted 8 March 2016).

From a practical and strategic view point, it is not sound planning to put people and property in harm's way, with Council approving development applications for residential occupation in high hazard flood ways. It is widely held, that residential development in such high velocity and depth flood waters is not 'good planning'.

The proposal is not compatible with the flood hazard of the property and poses significant risk to life and property due to flood risk. Given that the reasons for refusal of DA No.16-2015-221-1 have not been overcome, it is recommended that this s.82A application for review of determination of DA No.16-2015-221-1 be refused for the reasons detailed within **(ATTACHMENT 3)**.

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

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes		There is scope within Council's exiting budget to defend Council's determination if challenged.

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Reserve Funds	No		
Section 94	No		The proposal does not result trigger the application of s.94 contributions.
External Grants	No		
Other	No		

LEGAL, POLICY AND RISK IMPLICATIONS

The development application is not consistent with the relevant planning instruments, flood development guidelines and studies including; *Environmental Planning and Assessment Act 1979* (EP&A Act), LEP2013, DCP2014, the Port Stephens Council "Areas Affected by Flooding and/or Inundation" Policy, Floodplain Risk Management Policy the Paterson River Floodplain Risk Management Study and Plan 2001, and the NSW Floodplain Development Manual 2005. Detailed responses to the relevant environmental planning instruments are provided within the Assessment report contained within **(ATTACHMENT 4)**.

On 10 June 2014 Council adopted the 'Integrated Risk Management Policy'. At point No.2 of the policy statement it is identified that: "Council has no appetite for risks that may compromise the safety and welfare of staff, volunteers, contractors and/or members of the public." It is further noted that "Council will not accept a risk that has potentially catastrophic consequences, regardless of the likelihood of that risk eventuating."

A decision contrary to the recommendation to refuse the s.82A review of determination presents an unacceptable risk to Council as per Council's standard risk management matrix. These unacceptable risks relate to Council and the local community in respect to public safety, Council reputation and legal exposure.

Section 733 *Local Government Act 1993* provides Council with a general exemption from liability with respect to flood liable land only if the necessary studies and works are carried out in accordance with the principles contained in the NSW Floodplain Development Manual 2005. Endorsement of this development would be contrary to these principles. A decision contrary the planning framework may negate the good faith immunity provisions in *Local Government Act 1993*. This could result in individual Councillors being personally accountable and responsible for any subsequent implications resulting from the decision. Further, in the event of any future claim Council's insurers may determine not to cover Council should the application be approved contrary to the recommendation.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk if the application is approved	Medium	Determine the application in line with the	Yes

MINUTES ORDINARY COUNCIL - 10 MAY 2016

that Council's decision will be ultra-vires as cl.7.3 LEP2013 has not been satisfied.		recommendation.	
There is a risk that if the application is approved, that Council may be liable for any damage or consequences to approving a development located on a site with a known flood risk and that does not have adequate essential services.	Medium	Determine application in line with the recommendation.	Yes
There is a risk that is the application is approved Council will undermine the weight given to recently adopted policy including DCP2014 and the Floodplain Risk Management Policy.	Medium	Determine application in line with the recommendation.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The application is inconsistent with the Floodplain Risk Management Policy (adopted by Council on 8 March 2016) which aims to reduce the impact of flooding and flood liability on individual owners, and to reduce the private and public losses resulting from floods. Therefore, proposed development is considered likely to result in an adverse social and economic impact within the locality.

The flooding constraints of the site and insufficient provision of wastewater services do not enhance and promote the social needs of the community. Supporting such a development is likely to result in an economic cost to the community as it will place undue pressure on emergency services such as the SES, ambulance, fire brigade and police in terms of responding to any natural hazards and any medical emergencies that may occur on the site.

MERGER PROPOSAL IMPLICATIONS

The determination of the s.82A review is not anticipated to have any implications upon the proposed Council merger.

CONSULTATION

In accordance with Council's Notification Policy, the proposed development was not required to be notified or advertised.

OPTIONS

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

ATTACHMENTS

- 1) Call to Council form.
- 2) Locality plan.
- 3) Reasons for refusal.
- 4) Assessment report
- 5) Office of Environment and Heritage referral comments.

COUNCILLORS ROOM

- 1) Development Plans and documentation.

TABLED DOCUMENTS

Nil.

ITEM 3 - ATTACHMENT 1 CALL TO COUNCIL FORM.



CALL TO COUNCIL FORM
DEVELOPMENT APPLICATION



I, Councillor Jordan
require Development Application Number.....
for Dwelling on Lot 1A
DP-9901-7 High Street Hinton
at Hinton

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

Reason:

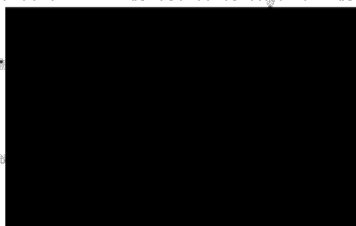
The reason for this call-up to Council is ... Flood Land

Declaration of Interest:

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

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

Signed:



Date:

22/3/2016



ITEM 3 - ATTACHMENT 3 REASONS FOR REFUSAL.

REASONS FOR REFUSAL

1. The development fails to satisfy cl.7.3 Port Stephens Local Environmental Plan 2013 as the development is not compatible with the flood hazard of the land (s.79C(1)(a)(i) EP&A Act 1979).
2. The development fails to satisfy cl.7.6 Port Stephens Local Environmental Plan 2013 as adequate essential services, particularly in relation to the disposal and management of wastewater, have not been provided (s.79C(1)(a)(i) EP&A Act 1979).
3. The development fails to conform to the controls contained within Port Stephens Development Control Plan (B5 Flooding and Control C4.6 Streetscape) (s.79C(1)(a)(i) EP&A Act 1979).
4. The site is not suitable for the development given the flood characteristics of the site and impacts to the streetscape (s.79C(c) EP&A Act).
5. Given the likely significant adverse impacts on the flood behaviour, risk to life, property and environment that may result from the approval, the development is not in the public interest (s.79C(e) EP&A Act).

PORT STEPHENS
COUNCILDEVELOPMENT ASSESSMENT
REPORT**APPLICATION DETAILS**

Application Number	16-2015-221-1
Development Description	Two Storey Dwelling (Section 82A Review)
Applicant	HILL TOP PLANNERS PTY LTD
Date of Lodgement	02/01/2016
Value of Works	\$220,000.00
Property Address	7 High Street HINTON
Lot and DP	LOT: 1A DP: 9901
Current Use	Rural land including farm building (shed)
Zoning	RU1 PRIMARY PRODUCTION
Site Constraints	Flood prone land (high hazard floodway)
Integrated Development	Nil.
Number of Submissions	N/A
Recommendation	Refusal

Development Proposal

The application proposes the review of determination No. 16-2015-221-1 pursuant to s.82A *Environmental Planning and Assessment Act 1979* (EP&A Act). The application subject to the s.82A RD (DA No.16-2015-221-1) sought consent for the construction of a single four bedroom dwelling set on an elevated platform supported by metal piers and the extension of the existing shed located on site. The dwelling was proposed to be constructed with a finished floor level (FFL) of 7.7AHD. The natural ground surface is approximately 4.6-4.7m AHD. An on-site sewage management system (OSMS) and associated land fill were also proposed. Access to the development was proposed via High Street, Hinton. The original application was refused under delegation on 20 November 2015 for the following reasons:

1. *The site not suitable for the proposed development (s.79C(c) EP&A Act) as:*
 - a. *The subject land is located entirely in the High Hazard Floodway. Due to the risk associated with velocities and/or depth which pose a risk to structures and/or the safety of persons the land is deemed unsuitable for residential development,*
 - b. *The development is considered an inappropriate land use under the NSW Floodplain Development Manual 2005,*

ITEM 3 - ATTACHMENT 4 ASSESSMENT REPORT

16-2015-221-1

- c. It is inappropriate to place additional dwelling houses in high risk flood areas and placing further demand on already limited SES resources by way of domestic property protection, rescue/medivac and evacuation.*
- 2. The development is inconsistent with the provisions of cl.7.3 of Port Stephens Local Environmental Plan 2013. The development is compatible with the land's flood risk. Significant adverse impacts on the flood behaviour, risk to life, property and environment may result from approval of the development (s.79C(a)(i) EP&A Act).*
- 3. The development fails to conform to the controls contained within the Port Stephens Development Control Plan 2014 B5.8 High Hazard 1 – Floodway Development located within High Hazard 1 (s.79C(a)(iii) EP&A Act).*

The applicant has sought review of determination No.16-2015-221-1 on the basis that a Hydraulic Loading Assessment (HLA) report has been prepared by GCA, which identifies that the proposed dwelling is located within a flood storage area rather than a high hazard floodway. The applicant suggests that the area is characterised by relatively low flood velocities which will not pose a significant risk to structures or persons, and that the dwelling can be designed to withstand the effects of major flooding.

Amended plans have also been submitted with the s.82A application which provides for:

1. An aerated effluent tank to be located on fill and having a top lid surface of 6.0m AHD.
2. An area of filling located to the east of the proposed shed extension to provide an elevated area for the disposable of effluent. This area is at 5.3m AHD which is below the 1 in 20 year flood level.

Further, Council staff concerns that the proposal would result in impacts to SES resourcing was suggested to be overcome due to use of communication systems, floor levels above the 1% Annual Exceedance Probability (AEP), and the over resourcing of SES in Hinton.

The applicant has also sought review pursuant to s.82A EP&A Act on the basis that Council has previously approved dwellings within proximity to the subject development. In this regard, it is understood that the applicant is referencing the dwelling approved under DA No.16-2014-492-1 located at 19 High Street, Hinton. This dwelling is currently under construction.

Site Description

The subject site to land located at No.7 High Street, Hinton which is legally identified as Lot: 1A DP: 9901. Access to the site is via High Street. The lot is part of a large land holding that comprises lots 2A and 6A DP 9901. The site is irregular in shape with a frontage of 88.48metres and is located on the bank of the Paterson River. The site is located on a floodplain and is relatively flat. There is a flood levee constructed to the west of the site adjoining the Paterson River. An existing shed will associated land fill is located on the site and was approved under (16-2014-384-3).

Site Inspection

A site inspection was carried out and impacts of the site can be seen in figure 1 below:



Fig.1: Proposed location of dwelling

Internal Referrals

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

Development and Flood Engineering: It was identified that the subject site is classed as High Hazard Floodway and Excessive Depth FPM Zone under the Paterson River Floodplain Risk Management Study and Plan. The proposed development has not been supported as detailed within this assessment report.

Environmental Health – Waste Water: It was identified that the adequate provision for on-site sewage management systems (OSMS) has not been provided for. The proposed system does not satisfy Council's requirements as tank openings and electrical are below the 1:100 flood level. Treatment system top of lid will be at RL 6.0m AHD which represents 1:20 level. Further, the disposal area will be located at 5.3m RL AHD which is below the required 1:20 level. The disposal area has also been located below 1:20 flood level.

The applicant was requested under the original application to submit a consultant's report would be required at DA stage addressing the OSMS element of the proposal. This information was not submitted with the s.82A review.

Heritage Officer: The application was referred to Council's heritage officer for comment due to the proximity of the site to Hinton Bridge a State listed heritage item. It was determined that the development would not have an adverse impact upon adjoining heritage items.

External Referrals

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

Office of Environment and Heritage: The application was referred to the Office of Environment and Heritage (OEH) given the proximity of the proposed works to the flood levee. In response, OEH confirmed that the development complies with the guidelines for development on or adjacent to levees. The proposed works were not considered likely to pose a significant risk to any of the Hunter Valley Flood Mitigation Scheme assets or impact on the performance of the declared floodplain, as such approval under s.256 of the *Water Management Act 2000* was not required.

It is noted that OEH did not consider the flood hazard, compliance with Council's LEP or DCP or evacuation requirements.

MATTERS FOR CONSIDERATION – SECTION 79C

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.

s79C(1)(a)(i) – The provisions of any EPI**State Environmental Planning Policy No 55—Remediation of Land**

Clause 7(1) (b) and (c) of SEPP 55 require that where land is contaminated, Council must be satisfied that the land is suitable in its contaminated state or will be suitable after remediation for the purpose for which the development is proposed. If the land requires remediation Council must be satisfied that the land will be remediated before the land is used for that purpose. The existing site has a history of use for rural purposes. The land is not identified as contaminated on Council's records. Further, due to the construction methods proposed there shall be minimal disturbance of existing soils. The proposal is satisfactory when considered against the provisions of SEPP No.55 and further investigation is not warranted.

Port Stephens Local Environmental Plan 2013 (LEP)

Clause 2.1 Land use zones: The proposed development is defined as 'Dwelling and Earthworks' and is permissible with consent within the RU1 Primary Production Zone. The proposed development is not inconsistent with the objectives of the RU1 Primary Production zone.

Clause 4.3 Height of buildings: Clause 4.3 specifies the maximum height of buildings for development is not to exceed the maximum height shown for the land of the 'height of buildings map'. No specified height is mapped for the property. The height of the proposed dwelling is 8.74metres.

Clause 5.10 Heritage conservation: The site is located within proximity to the Hinton Bridge which is a state listed heritage item. Council's Heritage office reviewed the application and determined that the development would not result in adverse impact to surrounding heritage items.

Clause 7.1 Acid sulfate soils: The subject site is identified as Class 4 acid sulfate soils (ASS). Accordingly works more than 2 metres below the natural ground surface and works by which the watertable is likely to be lowered more than 2 metres below the natural ground surface. as a result of excavations for footings, utility services and drainage. Due to the amount of fill excavation it is anticipated that ground disturbance kept to a minimum. Should Council determine to approve the development this matter could be addressed via conditions of consent.

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Clause 7.2 Earthworks: Clause 7.2 seeks to ensure that earthworks will not have a detrimental impact upon the environment or surrounding properties. The development requires earthworks involving approx. 1.72meters of fill to facilitate wastewater disposal. However, fill to a greater extent would be required to ensure compliance with Council's wastewater requirements as the proposed level is below the 1:20 level. The extent of fill is not supported.

Clause 7.3 Flood Planning: Clause 7.3 seeks to minimise the flood risk to life and property associated with the use of land and to allow development only where it is compatible with the land's flood hazard so as to ensure that significant adverse impacts on flood behaviour and the environment are avoided. The application is not acceptable when considered in the context of clause 7.3 as the site is classified as floodway and is located within an area that conveys a significant portion of the flood flow. As such the proposed development may adversely affect other areas and adjoining properties.

Further, the property is affected by very significant flooding in events as frequent as the 20% Annual Exceedance Probability (AEP). AEP refers to the chance or probability of flooding occurring on-site. The AEP rating for the subject site indicates that on average the development would be subject to flooding approximately every five years.

The subject site is also located within the high provisional hazard category for 5% AEP and greater. Therefore there is increased potential for significant structural damage to buildings. The development is not compatible with the lands flood hazard and will result in an unacceptable risk, therefore it cannot be supported.

Clause 7.6 Essential services: Clause 7.6 requires the consent authority to be satisfied that essential services including water, electricity, sewage, stormwater and access are available to the site. The applicant will require onsite waste water treatment system and onsite water supply as the services are not available.

s79C(1)(a)(ii) – Any draft EPI

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

s79C(1)(a)(iii) – Any DCP

Port Stephens Development Control Plan 2014

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

Section A - Introduction

A.12 Development Notification: In accordance with the requirements of chapter A.12, the development application was not notified.

Section B – General provisions

B3.B - Acid sulfate soils: Refer to cl.7.1 LEP2013 discussion above.

B3.C – Contaminated land: Refer to SEPP No.55 discussion above.

B3.F – Earthworks: Refer to cl.7.2 LEP2013 discussion above. The proposal is not considered satisfactory.

B5 – Flooding: Refer to cl.7.3 LEP2013 discussion above. As discussed, the area has been classified as High Hazard Floodway by the Paterson River Floodplain Risk Management Study. The hydraulic classification (i.e. floodway/storage/fringe) is not based only on the velocity of the floodwaters alone. The determination of appropriate hydraulic categories was undertaken by specialists at the time of the flood study and floodplain risk management plan for the area and is specific to the catchment. The hydraulic

ITEM 3 - ATTACHMENT 4 ASSESSMENT REPORT

16-2015-221-1

categorisation of floodway is attributed to the substantial volume of water flowing through this property in times of major flooding. The location of the proposed dwelling is not appropriate for residential purposes.

The development is not consistent with the outcomes of section B5.8 of the DCP which related specifically to High Hazard Floodway, as follows:

- **B5.8:** New buildings or structures and fill are not supported unless accompanied by a report. Development within a floodway is not encouraged. An application may only be considered where it demonstrated to have specific community needs/benefits, which does not relate to the provision of housing.
- **B 5.2:** The hydraulic assessment has not adequately assessed the relevant flooding events as it has addressed the 1% AEP flood event rather than the PMF as required by Section B5.2. A report from a Chartered Professional Structural Engineer has not been provided and it is not certain whether the proposed building will be structurally sound in events up to the PMF. As these requirements have not been met, there is significant risk to life in events greater than the 1% AEP.
- **B5.7:** A flood refuge above the PMF level has not been provided in accordance with the provisions of B5.7.

Part C - Single and Dual Occupancy Dwellings

The application has been assessed against the provisions of Development Control Plan 2013 (DCP2013), B6 – Single and Dual Occupancy Dwellings as follows:

C4.1 Site Coverage: The development is located upon rural land adheres to the maximum non-permeable suffice area.

C4.9 Height: LEP2013 does not provide for specific height limits are set for the property although the current design reached approximately 9.7m above natural ground due to the amount of fill required to build above the 1% AEP level.

C4.F Setback: The proposal complies with the setback requirements. A 13.6metre front setback has been provided to High Street. A 11.7metre side setback and 51metre rear setback has also been provided.

C4.6 Streetscape and privacy: The proposed development is not in keeping with the existing streetscape character. The locality is typified by large rural allotments with isolated dwellings setback from the road frontage. The proposed dwelling is within 13.6metres of the frontage which complies with front setback requirements of the DCP. However, the setback does not maintain the existing rural character as surrounding dwellings have substantial setbacks from the road frontage. The impact to the streetscape and rural character is exemplified by the proposed construction method which results in the dwelling being located on 2.7metre pylons. The neighbouring dwellings are located on large fill pads as per the existing sites shed. The dwelling will result in an adverse impact to the existing streetscape.

C4.H Private open space: Adequate open space and solar access has been provided.

C4.I Private open space: The development results in the adequate provision of car parking and garages.

C4.J Site facilities and services: Suitable site facilities and services can be provided for on-site.

ITEM 3 - ATTACHMENT 4 ASSESSMENT REPORT

16-2015-221-1

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

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

s79C(1)(a)(iv) – The regulations

Consideration of the regulations is not required in this instance.

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

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

s79C(1)(b) – The likely impacts of the development

The assessment has considered the likely impact of the development by identifying the potential impacts of the proposal, available measures to improve impacts and frequency/severity of the impacts. The development is not compatible with the flood risks associated with the land and may result in unacceptable impacts to life and property. The development is recommended for refusal for the following reasons.

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

The site is physically constrained by flooding and is considered unsuitable for the proposed development.

s79C(1)(d) – Any submissions

In accordance with Council's Notification Policy, the proposed development was not required to be notified or advertised.

s79C(1)(e) – The public interest

The development may result in adverse social, economic and environmental outcomes as the development has not been designed in a manner that is compatible with the flood risk of the land. The development poses an unacceptable risk to life and property and may also result in adverse flood impacts to surrounding properties. The development is not within the public interest.

ITEM 3 - ATTACHMENT 5 OFFICE OF ENVIRONMENT AND HERITAGE
REFERRAL COMMENTS.



Office of
Environment
& Heritage

Our reference: DOC16/131656
Contact: Richard Murphy

PORT STEPHENS COUNCIL
116 Adelaide Street
PO Box 42
RAYMOND TERRACE, NSW, 2324
ATTN: Amy Stone

Dear Alisa-Jane Evans,

RE: Request for Comment - Section 82A

Review of DA Determination 16-2015-221-1

I refer to your request for comment / conditions in relation to s.256 approval for 7 High Street Hinton - DA 16-2015-221-1.

The proposed development complies with all our guidelines for development on or adjacent to levees. Based on this and the drawing provided OEH has determined that the proposed works do not pose a significant risk to any of the Hunter Valley Flood Mitigation Scheme assets or impact on the performance of a declared floodplain.

Please note, OEH has not considered flood hazard, compliance with Port Stephens Council's DCP or LCP or evacuation.

If Council, having considered these matters and resolves to approve the development, then OEH cannot see any impediments to providing the necessary consent under s256 of the Water Management Act 2000.

If you would like to discuss this matter, please contact Richard Murphy, Floodplain Engineer on 4927 3144 at the Newcastle Office.

Yours sincerely,

11/03/2016

RICHARD MURPHY
Floodplain Engineer, Hunter-Central Coast
Water Floodplains & Coast
Regional Operations Group

Locked Bag 1002 Dangar NSW 2309
Level 4 26 Honeysuckle Dr Newcastle NSW 2300
Tel: (02) 4904 2500 Fax (02) 4904 2504
ABN 30 641 387 271
www.environment.nsw.gov.au

MINUTES ORDINARY COUNCIL - 10 MAY 2016

Councillor Ken Jordan left the meeting at 07:19pm, prior to Item 6.

Councillor Paul Le Mottee returned to the meeting at 07:19pm.

ITEM NO. 6

FILE NO: 16/315670
RM8 REF NO: PSC2008-3848

282, 282A, 282B & 398 CABBAGE TREE RD WILLIAMTOWN - AGREEMENT FOR LEASE - WILLIAMTOWN SAND SYNDICATE P/L

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

RECOMMENDATION IS THAT COUNCIL:

- 1) Resolves to extend the Sunset Date in the Agreement for Lease from 28 January 2017 to 31 December 2017.
- 2) Authorises the Mayor and the General Manager to sign and affix the Seal of Council to all documents relevant to the extension.

ORDINARY COUNCIL MEETING - 10 MAY 2016 MOTION

112	<p>Mayor Bruce MacKenzie Councillor Paul Le Mottee</p> <p>It was resolved that Council:</p> <ol style="list-style-type: none">1) Extend the Sunset Date in the Agreement for Lease from 28 January 2017 to 31 December 2017.2) Authorises the Mayor and the General Manager to sign and affix the Seal of Council to all documents relevant to the extension.
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BACKGROUND

The purpose of this report is to recommend Council extend the Sunset Date in the Agreement for Lease between Council and Williamtown Sand Syndicate Pty Ltd from 28 January 2017 to 31 December 2017. The extension will provide Williamtown Sand Syndicate (WSS) sufficient time to complete additional site specific reports and a further community consultation program, both requested by the Department of Planning and Environment (DPE).

On 28 July 2015, Council resolved to agree to the assignment of the Agreement for Lease from Castle Quarry Products Pty Ltd to WSS. The assignment came into effect

on 31 July 2015. In accordance with the Agreement for Lease, WSS has worked towards securing all necessary consents to set up and operate a sand extraction facility on Council land. Once all consents have been secured, Council will lease the land to WSS for an annual base rental of \$100,000 and royalty payments of \$5.00 for each tonne of sand extracted. As a result of further investigative studies undertaken by WSS, the available resource on the site has been revised to 3.6 million tonnes, which translates into total income of \$18,000,000 of royalty payments plus the annual base rental.

WSS lodged its application with DPE which then advised Council on 26 November 2015 that the application would go on public exhibition from 4 December 2015 to 1 February 2016. DPE then advised the exhibition period would be extended out to 12 February 2016 and it would convene a community consultation meeting on 15 February 2016 at Tomago Bowling Club.

On 18 February 2016 WSS was briefed by DPE on the community consultation meeting and was advised that it needed to now address significant additional site specific matters and undertake further community consultation before the application could be determined. These additional requirements could not have reasonably been foreseen by WSS. WSS has formulated a program to address the matters raised by DPE. Its program will be:

- 1) Undertake the required site specific reporting and the wider community consultation process.
- 2) Have DPE assess this work and provide responses.
- 3) Have DPE issue its approval.
- 4) Secure approval from the Planning & Assessment Commission.
- 5) Secure Council's commencement approvals.

WSS wrote to Council on 2 May 2016 attaching advice from its lead environmental consultant (Umwelt) in support of its contention that the program of works required to address the further matters raised by DPE will put at risk the securing of all required approvals before the Sunset Date.

Umwelt particularly notes that the project will require referral to the Commonwealth Department of Environment under the *Environment Protection and Biodiversity Conservation Act 1999*. Umwelt has advised that there are no prescribed timeframes for extending such approvals under this Act, and anticipates this may take 9 to 12 months as a minimum.

In order to ensure there is sufficient time to satisfactorily address the additional matters raised by DPE, and acknowledging that the timeliness of processing by third parties is out of its control, WSS has requested Council extend the Sunset Date from the current 28 January 2017 to 31 December 2017. This will provide some protection to both 1) the investment to date and additional investments of WSS in the project and 2) the potential income stream to flow to Council should the project be approved and the Lease commence.

MINUTES ORDINARY COUNCIL - 10 MAY 2016

In support of its request to extend the Sunset Date, WSS has provided a table summarising the Conditions Precedent (**ATTACHMENT 1**) with relevant dates and its revised Indicative Program (**ATTACHMENT 2**).

It is important to note that once all required approvals are secured, the Conditions Precedent are deemed to have been satisfied and the formal Lease commences at that date. WSS must then make rental and royalty payments set out in the Lease.

The additional work being requested by DPE is also viewed as a positive move in seeking to fully address concerns raised by the community.

COMMUNITY STRATEGIC PLAN

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

FINANCIAL/RESOURCE IMPLICATIONS

There are no known financial implications. Any amendments to the Agreement for Lease will be at the cost of WSS.

There are no known resource implications.

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

LEGAL, POLICY AND RISK IMPLICATIONS

There are legal implications in varying the Agreement for Lease, however, these will be mitigated by the use of Legal Services or an external legal services provider to draft appropriate documentation.

MINUTES ORDINARY COUNCIL - 10 MAY 2016

There are no known policy implications.

There are risk implications to Council should the Sunset Date not be extended namely, the risk the project may not proceed with Council losing a significant future income stream.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that Council will lose future non rate revenue.	High	Adopt the recommendations.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Social implications are considered to be limited to potential impacts on local residents which will be adequately managed with appropriate treatments.

Economic implications are considered to be the ability for Council to reduce its reliance on rate revenue for the delivery of services by way of the future income stream the Lease will generate.

There is also an implication for Williamtown Sand Syndicate that due to reasons out of their control, the significant investment they have made to date will not realise a return for the company if they cannot complete the requirements of the Department of Planning and Environment and gain the outstanding approvals.

Environmental implications have been considered by the proponent and the Department of Planning. Both parties considered these are of sufficiently low scale to be managed with appropriate treatments.

MERGER PROPOSAL IMPLICATIONS

There are no known implications for a merged entity.

CONSULTATION

Consultation with key stakeholders has been undertaken by the Property Services Section. The objective of the internal consultation was to gauge the support of the Executive Team to the Sunset Date extension request. The objective of the external consultation was to obtain the advice of the proponent as to the further requirements of the Department of Planning and Environment.

Internal

- Property Strategic Committee was contacted by WSS regarding a Sunset Date extension and supports the request as the Department of Planning has directed the additional site studies and community consultation be carried out by WSS before the application will be determined.

External

- WSS has provided advice on the outcome of the community consultation meeting and the further requirements of the Department of Planning.
- At the community consultation meeting on 14 February 2016, the Department of Planning spoke with Council's Property Development Coordinator and WSS regarding commitment to the project and the need for vegetation of the site post sand extraction operations. No other discussions or correspondence between Property Services and the Department of Planning have since occurred.

OPTIONS

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

ATTACHMENTS

- 1) Conditions Precedent Table.
- 2) Indicative Program.

COUNCILLORS ROOM

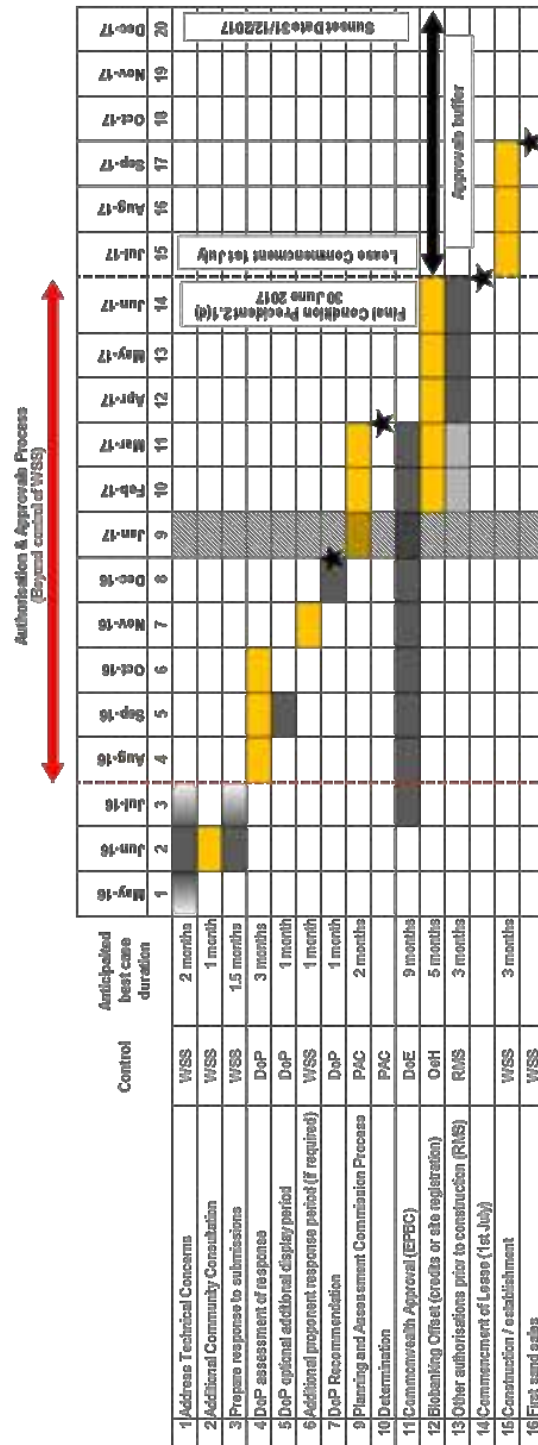
Nil.

TABLED DOCUMENTS

Nil.

ITEM 6 - ATTACHMENT 1 CONDITIONS PRECEDENT TABLE.

Ref	Summary of condition precedent	AFL Time period	AFL Date for completion	Current Status 14/04/2016	Requested Date
2.1 (a)	Prepare request for DGR's	8 weeks from		Satisfied	Satisfied
2.1 (b)	Prepare EIS	12 months from execution	30 April 2015*	Satisfied	Satisfied
2.1 (c)	Apply for all authorisation to undertake the proposed development	12 months from execution	30 April 2015*	Satisfied	Satisfied
2.1 (d)	Obtain all authorisation to undertake and construct the works	24 months from execution	30 April 2016*	Unobtainable until project approved	30 June 2017
2.1 (e)	Obtain Councils approval for lessee's works	6 months from execution	15 January 2014	Satisfied	Satisfied
2.1 (f)	Provide evidence to Council of an Environmental Management system in place.	3 months from precedent 2.1(d)	30 July 2016	Needs to follow consent Conditions for completeness	30 June 2017
2.1(g)	Provide Council with Operational Management Plan	3 months from precedent 2.1(d)	30 July 2016	Needs to follow consent Conditions for completeness	30 June 2017
2.1(h)	Provide Council with survey of extraction areas	3 months from execution	15 October 2013	Satisfied	Satisfied
Sunset Date			28 January 2017		31 December 2017



MINUTES ORDINARY COUNCIL - 10 MAY 2016

Councillor Ken Jordan returned to the meeting at 07:33pm.

Councillor Peter Kafer left the meeting at 07:33pm.

ITEM NO. 4

FILE NO: 16/306933

RM8 REF NO: PSC2008-1497

PLANNING AGREEMENT FOR THE CONSERVATION OF LAND AT BOUNDARY ROAD MEDOWIE

REPORT OF: DAVID ROWLAND - STRATEGY AND ENVIRONMENT SECTION
MANAGER

GROUP: DEVELOPMENT SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Endorse the draft Planning Agreement (**ATTACHMENT 1**) in relation to DA 16-2015-336-1 as offered by the Proponent for the ongoing protection and management, for conservation purposes, of land at Boundary Road Medowie (Lots 93-96 DP 753194) including the transfer of approximately 70 hectares of land to the Minister administering the *National Parks and Wildlife Act 1974* (NSW).
 - 2) Place the draft Planning Agreement on exhibition for a period of not less than 28 days.
 - 3) Enter into the draft Planning Agreement for the purpose of satisfying clause 7.19 *Development at Boundary Road, Medowie* of the *Port Stephens Local Environmental Plan 2013* should no submissions be received.
-

ORDINARY COUNCIL MEETING - 10 MAY 2016 MOTION

113	<p>Mayor Bruce MacKenzie Councillor Ken Jordan</p> <p>It was resolved that Council:</p> <ol style="list-style-type: none">1) Endorse the draft Planning Agreement (ATTACHMENT 1) in relation to DA 16-2015-336-1 as offered by the Proponent for the ongoing protection and management, for conservation purposes, of land at Boundary Road Medowie (Lots 93-96 DP 753194) including the transfer of approximately 70 hectares of land to the Minister administering the <i>National Parks and Wildlife Act 1974</i> (NSW).2) Place the draft Planning Agreement on exhibition for a period of not less than 28 days.3) Enter into the draft Planning Agreement for the purpose of satisfying clause 7.19 <i>Development at Boundary Road, Medowie</i> of the <i>Port</i>
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MINUTES ORDINARY COUNCIL - 10 MAY 2016

	<i>Stephens Local Environmental Plan 2013</i> 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: Mayor Bruce MacKenzie, Crs Geoff Dingle, Chris Doohan, Sally Dover, Ken Jordan, Paul Le Mottee, John Morello, John Nell and Steve Tucker.

Those against the Motion: Nil.

BACKGROUND

The purpose of this report is to present to Council a draft Planning Agreement (the Planning Agreement) for exhibition as offered by the Proponent in relation to DA 16-2015-336-1 (the DA) for a 345 lot residential subdivision at Boundary Road, Medowie.

The aim of the Planning Agreement is to provide satisfactory arrangements for the ongoing protection and management, for conservation purposes, of land at Boundary Road Medowie including the transfer of approximately 70 hectares of land to the Minister administering the *National Parks and Wildlife Act 1974*. The Planning Agreement is intended to provide satisfactory arrangements for the purpose of satisfying clause 7.19 *Development at Boundary Road, Medowie* of the *Port Stephens Local Environmental Plan 2013*.

The Planning Agreement including Letter of Offer and Explanatory Note are at **(ATTACHMENT 1)**. The Planning Agreement is between the Proponent, Council, and the Minister administering the *National Parks and Wildlife Act 1974*. It commits the Proponent, as part of the DA, to provide the following:

- Transfer of approximately 70 hectares of the subject land (that is currently zoned E2 Environmental Conservation) to the Minister administering the *National Parks and Wildlife Act 1974*. It is proposed the environmental land will be reserved under the *National Parks and Wildlife Act 1974* and added to the adjoining Medowie State Conservation Area. It will be transferred to the Minister prior to the issue of a subdivision certificate for Stage 1 of the proposed development.
- Creation of service easements in favour of Council prior to transferring the environmental land to the Minister.
- Monetary Contributions of \$37,200 for the public purpose of reserve establishment; and \$5,750 for the public purpose of upgrading Daniel James Trail, to be paid to the Minister and prior to the release of a subdivision certificate for Stage 1 of the proposed development; and

MINUTES ORDINARY COUNCIL - 10 MAY 2016

- Completion of works on the environmental land including fencing works, rubbish removal, weed control and bushfire works along the western edge of the boundary between the proposed development and the environmental land.

The benefits of the Planning Agreement will not be taken into consideration in determining Section 94 contributions.

The Planning Proposal is to be signed by the Proponent, Council and the Minister following public exhibition.

The DA for a 345 lot residential subdivision at Boundary Road Medowie was lodged on 3 June 2015 and notified for 21 days from 4 to 24 June 2015. The Statement of Environmental Effects accompanying the DA refers to the Proponent agreeing satisfactory arrangements for Clause 7.19 *Development at Boundary Road, Medowie* involves the transfer of the north eastern section of the land to the NSW Office of Environment and Heritage (OEH) under the provisions of a planning agreement and that discussions with OEH for the transfer of the land were ongoing.

On 23 March 2016 following discussions with the OEH the Proponent offered to enter into the Planning Agreement with Council and the Minister administering the *National Parks and Wildlife Act 1979* for the purpose of satisfying clause 7.19 of the *Port Stephens Local Environmental Plan 2013*. The clause provides that development consent must not be granted to development on the subject land unless the consent authority (Council) is satisfied that arrangements, acceptable to Council and the NSW Office of Environment and Heritage, have been made for the ongoing protection and management, for conservation purposes, of the land.

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 significant financial or resource implications as a result of this proposed recommendation.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes		
Reserve Funds	No		
Section 94	No		The benefits of the Planning Agreement will not be taken into

MINUTES ORDINARY COUNCIL - 10 MAY 2016

			consideration in determining Section 94 contributions.
External Grants	No		
Other	Yes		Council's legal fees associated with the review of the Planning Agreement will be paid by the Proponent in accordance with Schedule 1 of the Planning Agreement.

LEGAL, POLICY AND RISK IMPLICATIONS

The Planning Agreement has been reviewed by Council's legal representative. It is consistent with, and protects the Council's interests in relation to the subject matter of the Planning Agreement.

Environmental Planning and Assessment Act 1979 (NSW)

A planning agreement is a voluntary agreement between a planning authority and a developer who has sought to change an environmental planning instrument, made or proposes to make a development application or has made an agreement with a person to whom the preceding applies. They are made in accordance with section 93F of the *Environmental Planning and Assessment Act 1979* (NSW) and Clause 25E(1) of the *Environmental Planning and Assessment Regulation 2000* (NSW).

Section 93G of the Act provides that a planning agreement cannot be entered into, unless public notice has been given of the proposed agreement and a copy of the proposed agreement has been available for inspection by the public for a period of not less than 28 days.

Section 79C(1)(a)(iia) of the Act requires Council, when determining the DA, to take into consideration, so far as is relevant to the proposed development, any planning agreement that has been entered into under Section 94F or any such draft agreement offered by a developer. Determination of the relevant Development Application can be made following exhibition of the Planning Agreement.

Port Stephens Local Environmental Plan 2013

The purpose of entering into the Planning Agreement related to DA 16-2015-336-1 is to satisfy clause 7.19 of the *Port Stephens Local Environmental Plan 2013* being:

- 1) *This clause applies to land at Boundary Road, Medowie, being Lots 93-96 DP 753194.*
- 2) *Despite any other provision of this Plan, development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that arrangements, acceptable to the consent authority and*

the Office of Environment and Heritage, have been made for the ongoing protection and management, for conservation purposes, of the land.

The Planning Agreement is related to the relevant DA. It will provide security to satisfy the Clause for the ongoing protection and management, for conservation purposes, of the land.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that the Planning Agreement will be challenged in the Land and Environment Court.	Low	Ensure all processes are carried out in accordance with relevant legislation.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The Planning Agreement will have positive social and economic implications by facilitating development of part of the subject land for 345 residential lots under the relevant DA. It will have positive environmental implications by providing for the ongoing protection and management, for conservation purposes, of the subject land.

MERGER PROPOSAL IMPLICATIONS

There are no merger proposal implications as a result of the proposed recommendation.

CONSULTATION

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

The objective of the consultation is to ensure the Planning Agreement adequately addresses Council's interests and meets legislative requirements.

Internal

The Planning Agreement has been subject to internal legal review.

External

Consultation with OEH and the Proponent has been undertaken during the drafting of the Planning agreement. OEH advise that the Planning Agreement is in order. The Proponent has offered to enter into the Planning Agreement.

MINUTES ORDINARY COUNCIL - 10 MAY 2016

The Planning Agreement will be placed on public exhibition for a minimum of 28 days. During the public exhibition period the document will be available to view on Council's website and at Council's administration building. A further report will be prepared for Council's consideration should submissions be received during the public exhibition period objecting to the Planning Agreement.

The DA was exhibited for a period of 21 days from 4 June to 24 June 2015 and 3 submissions were received. Concerns were raised over the proposed road layout, traffic noise, amenity impacts, asset protection zones and infrastructure maintenance. The DA plans have been modified to resolve the issues.

OPTIONS

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

ATTACHMENTS

- 1) Draft Planning Agreement for the Conservation of Land at Boundary Road Medowie. (Provided under separate cover)

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ITEM NO. 5**FILE NO: 16/304066
RM8 REF NO: PSC2016-01181****DEDICATION AS PUBLIC ROAD OF PART LOT 600 DP27382 - 308 SOLDIERS
POINT ROAD, SALAMANDER BAY****REPORT OF: GLENN BUNNY - PROPERTY SERVICES SECTION MANAGER
GROUP: CORPORATE SERVICES**

RECOMMENDATION IS THAT COUNCIL:

- 1) Endorses the survey plan dedicating a section of an existing and constructed road as a dedicated public road upon registration of the Plan of Road Opening over Lot 600 DP27382.
 - 2) Grants authority for Council's Seal to be affixed to the Plan of Road Opening and any other documents required by Land & Property Information.
-

**ORDINARY COUNCIL MEETING - 10 MAY 2016
MOTION**

114	Councillor Ken Jordan Councillor John Nell It was resolved that Council: <ol style="list-style-type: none">1) Endorses the survey plan dedicating a section of an existing and constructed road as a dedicated public road upon registration of the Plan of Road Opening over Lot 600 DP27382.2) Grants authority for Council's Seal to be affixed to the Plan of Road Opening and any other documents required by Land & Property Information.
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BACKGROUND

The purpose of this report is to recommend Council approve and endorse a survey plan dedicating a section of George Road, Salamander Bay shown by red hatching on **(ATTACHMENT 1)**, currently constructed over a public reserve, as public road. Registration of the Plan of Road Opening **(ATTACHMENT 2)** over Lot 600 DP27362, also known as 308 Soldiers Point Road, Salamander Bay will formalise this constructed road corridor.

The original subdivision of Council owned land in 1992 created George Road and adjoining lots to form the industrial subdivision in DP818962 **(ATTACHMENT 3)**. At this time, and for reasons unknown, George Road was constructed over "Soldiers

MINUTES ORDINARY COUNCIL - 10 MAY 2016

Point Road Reserve 3" and has been in use since that time. This Plan of Road Opening will formalise George Road as a public road under Section 9(1) of the *Roads Act 1993*.

This matter was reported to Council on 27 October 2015 (**ATTACHMENT 4**), along with another site at Salamander Bay. The proposal at the time of the report was to prepare a planning proposal for both sites, however since this time it has been determined that there is no need for a planning proposal for the George Road location, as the matter can be resolved through the road opening application. Council is therefore advised that the proposed planning proposal for the George Road location as resolved on 27 October 2015 will not proceed.

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2013-2017
Port Stephens has an integrated, connected transport system.	Promote sustainable and improved, accessible and flexible transport modes.

FINANCIAL/RESOURCE IMPLICATIONS

Plan preparation has been completed with minimal costs anticipated by Council's surveyors for lodgement and registration with these costs already included in the Facilities & Services budget.

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

LEGAL, POLICY AND RISK IMPLICATIONS

There are legal and risk implications around the use of part of the property as informal public road, namely Council liability in the event of a traffic accident on non-dedicated public road and ease of identification of George Road by emergency services. There are no known policy implications.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that without dedication as	High	Adopt the recommendations.	Yes

MINUTES ORDINARY COUNCIL - 10 MAY 2016

Public Road Council may be liable in the event of an accident.			
There is a risk that if the road is not identified, emergency services may be at risk of being unable to locate it quickly.	Low	Adopt the recommendations.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

There appears to be no social implications relating to these recommendations.

The economic implications are the reduction in liability by dedicating part of the public reserve as public road.

It appears unlikely any environmental implications will occur due to the nature of the current and continued use of the land as public road.

MERGER PROPOSAL IMPLICATIONS

There are no merger proposal implications from this proposed road dedication.

CONSULTATION

Consultation with key stakeholders has been undertaken by the Property Services Section. The purpose of the internal consultation was to determine if there was any objection to dedicating the land as Public Road.

The purpose of the external consultation provided the preferred mechanism and process as recommended in this report over the previous direction as discussed in the body of the report.

Internal

- 1) Land Acquisition & Development Manager.
- 2) Property Officer.
- 3) Community & Recreation Coordinator.
- 4) Strategic Planner.
- 5) Asset Section Manager.
- 6) Senior Survey & Land Information Manager.

External

- 1) Land & Property Information NSW.
- 2) Local Government Legal.

OPTIONS

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

ATTACHMENTS

- 1) Plan of Road Opening - Hatched.
- 2) Plan of Road Opening - George Road, Salamander Bay.
- 3) DP818962.
- 4) Minutes Council Meeting 27 October 2015.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.



MINUTES ORDINARY COUNCIL - 10 MAY 2016

ITEM 5 - ATTACHMENT 2 PLAN OF ROAD OPENING - GEORGE ROAD, SALAMANDER BAY.

PLAN FORM 6 (2013)		WARNING: Creasing or folding will lead to rejection	
DEPOSITED PLAN ADMINISTRATION SHEET		Sheet 1 of 2 sheet(s)	
Registered:	Office Use Only	Office Use Only	
Title System: TORRENS			
Purpose: ROAD			
PLAN OF ROAD OPENING OVER LOT 600 DP 27382		LGA: PORT STEPHENS Locality: SALAMANDER BAY Parish: TOMAREE County: GLOUCESTER	
 Crown Lands NSW/Western Lands Office Approval I, (Authorised Officer) in approving this plan certify that all necessary approvals in regard to the allocation of the land shown herein have been given. Signature: Date: File Number: Office: 		Survey Certificate I, of : a surveyor registered under the <i>Surveying and Spatial Information Act 2002</i> , certify that: * (a) The land shown in the plan was surveyed in accordance with the <i>Surveying and Spatial Information Regulation 2012</i>, is accurate and the survey was completed on 17/03/2016 * (b) The part of the land shown in the plan ("being"/excluding ^) was surveyed in accordance with the <i>Surveying and Spatial Information Regulation 2012</i>, is accurate and the survey was completed on, the part not surveyed was compiled in accordance with that Regulation. * (c) The land shown in this plan was compiled in accordance with the <i>Surveying and Spatial Information Regulation 2012</i>. Signature: Dated: 17/03/2016 Surveyor ID: Datum Line: 'X' - 'Y' Type: *Urban/*Rural- The terrain is *Level-Undulating / *Steep-Mountainous. *Strike through if inapplicable. ^Specify the land actually surveyed or specify any land shown in the plan that is not the subject of the survey.	
Subdivision Certificate I, *Authorised Person/*General Manager/*Accredited Certifier, certify that the provisions of s.109J of the <i>Environmental Planning and Assessment Act 1979</i> have been satisfied in relation to the proposed subdivision, new road or reserve set out herein. Signature: Accreditation number: Consent Authority: Date of endorsement: Subdivision Certificate number: File number: *Strike through if inapplicable.		Plans used in the preparation of survey/compilation. DP 1070860, DP 818962, DP 1018723, DP 1144318, DP 263269, DP 730267, DP 27382 & DP 47774 If space is insufficient continue on PLAN FORM 6A	
Statements of intention to dedicate public roads create public reserves and drainage reserves, acquire/resume land. IT IS INTENDED TO DEDICATE THE EXTENSION OF GEORGE ROAD TO THE PUBLIC AS PUBLIC ROAD		Signatures, Seals and Section 88B Statements should appear on PLAN FORM 6A Surveyor's Reference:	

ITEM 5 - ATTACHMENT 2 PLAN OF ROAD OPENING - GEORGE ROAD, SALAMANDER BAY.

PLAN FORM 6A (2012) WARNING: Creasing or folding will lead to rejection

DEPOSITED PLAN ADMINISTRATION SHEET		Sheet	2 of 2	sheet(s)
Office Use Only		Office Use Only		
Registered:				
PLAN OF ROAD OPENING OVER LOT 600 DP 27382				
Subdivision Certificate number:		This sheet is for the provision of the following information as required:		
Date of Endorsement:		<ul style="list-style-type: none"> • A schedule of lots and addresses - See 60(c) <i>SSI Regulation 2012</i> • Statements of intention to create and release affecting interests in accordance with section 88B <i>Conveyancing Act 1919</i> • Signatures and seals - see 195D <i>Conveyancing Act 1919</i> • Any information which cannot fit in the appropriate panel of sheet 1 of the administration sheets. 		
<p>THE COMMON SEAL OF PORT STEPHENS COUNCIL WAS HERETO AFFIXED PURSUANT TO RESOLUTION OF COUNCIL DATED</p> <p>..... Mayor</p> <p>..... General Manager</p> <p>If space is insufficient use additional annexure sheet</p>				
Surveyor's Reference: Surveyor's Reference:				

**ITEM 5 - ATTACHMENT 2 PLAN OF ROAD OPENING - GEORGE ROAD,
SALAMANDER BAY.**





ITEM 5 - ATTACHMENT 3 DP818962.

This negative is a photograph made of a permanent record of a document in the custody of the Registrar General NHS day. 24th August 1992

MINUTES ORDINARY COUNCIL - 27 OCTOBER 2015**ITEM NO. 10****FILE NO: PSC2015-01000/954****TRIM REF NO: PSC2015-01625****RECLASSIFICATION OF TWO COUNCIL PROPERTIES AT SALAMANDER BAY**

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

RECOMMENDATION IS THAT COUNCIL:

- 1) Resolves to formally prepare and submit a Planning Proposal to the Department of Planning for two reclassifications of Council property.
- 2) Resolves to approve the funding required to prepare the Planning Proposal as detailed in the body of this report.
- 3) Upon gazettal of the reclassifications, authorise the Mayor and General Manager to sign and affix the Seal of Council to all relevant documents.

**ORDINARY COUNCIL MEETING - 27 OCTOBER 2015
COMMITTEE OF THE WHOLE RECOMMENDATION**

	Councillor Chris Doohan Councillor Sally Dover That the recommendation be adopted.
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**ORDINARY COUNCIL MEETING - 27 OCTOBER 2015
MOTION**

319	Councillor Ken Jordan Councillor Chris Doohan It was resolved that Council: <ol style="list-style-type: none">1) Resolves to formally prepare and submit a Planning Proposal to the Department of Planning for two reclassifications of Council property.2) Resolves to approve the funding required to prepare the Planning Proposal as detailed in the body of this report.3) Upon gazettal of the reclassifications, authorise the Mayor and General Manager to sign and affix the Seal of Council to all relevant documents.
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MINUTES ORDINARY COUNCIL - 27 OCTOBER 2015**BACKGROUND**

The purpose of this report is to seek Council resolution to proceed with the reclassification of two Council owned properties, one for potential sale to adjoining owners and another to formalise a Public Road use.

The properties are both located in Salamander Bay (**shown in red in ATTACHMENT 1**), are currently classified Community Land and are described in the following table:-

Address	Current Zoning	Proposed Zoning	Comments	Intentions
9B Diemars Road	IN 4	IN 4	Land is landlocked, adjoining owner is seeking to acquire.	Reclassify and sell to adjoining owner(s).
308 Soldiers Point Road	RE 1	RE 1	Part not formalised but currently in use as George Road.	Reclassify part, dedicate as Public Road.

Specific details of each property are as follows:-

The property at 9B Diemars Road (**shown in red in ATTACHMENT 2**) comprises a waterfront parcel that is landlocked (ie it has no frontage to a public road) and is partially cleared.

The property is 3,681sqm and consists of some grassed areas and mature vegetation. The land parcel falls moderately to the water and is joined on three sides by properties owned by (1) VC Diemar & Sons Prop P/L and (2) DJ, CE & BG Holbert, both local oyster growers.

The property has absolute waterfrontage to Cromarty's Bay. The southern half of the property is in use unofficially for the storage of oyster racks and the like by Diemars, for which there is no approval or licence from Council. The northern half adjoins Holbert's Oyster Farm processing/retail facility. At the time of writing this report Diemars have expressed interest in acquiring the property, however, both adjoining property owners will be offered the opportunity to acquire the subject property or part thereof.

The landlocked nature of the parcel affects the property's value as it does not have legal street access which limits its practical use. The adjoining lands have an industrial type use and have the same zoning as the subject lot, namely IN4 Working Waterfront. Local industrial land values may provide a guide but will require adjustments for both the landlocked nature of the property and its absolute waterfrontage. A formal valuation, along with negotiations, will form the basis of the sale price for the property to be recommended to Council, once the reclassification has occurred.

The second subject property fronting Soldiers Point Road is a Public Reserve of some 7,645sqm and comprises three distinct sections as follows:

MINUTES ORDINARY COUNCIL - 27 OCTOBER 2015

- Section One runs between the two sections of George Road – about 2,300sqm;
- Section Two (**shown in red in ATTACHMENT 3**) is in use as the northern section of George Road where it intersects with Soldiers Point Road - requires formalisation as Public Road Reserve - about 765sqm improved with tar sealed road surface, concrete kerb and gutters, above ground electricity supply;
- Section Three north of George Road, part of which is improved with the Soldiers Point Rural Fire Station – about 4,580sqm.

It is proposed that only Section Two (the unofficial road reserve) be reclassified. This section will be dedicated as Public Road Reserve, removing a potential legal risk to Council as vehicles travelling along this section of George Road have been travelling over non-Public Road.

The appropriate Council staff have been consulted and no objections have been raised to the proposed reclassification, however, Strategic Planning has advised that the zoning of the Soldiers Point Road parcel should remain as RE 1 Public Recreation in accordance with NSW Department of Planning Practice Note - Zoning for Infrastructure in LEPs.

For the above two properties, a planning proposal will be required for which Property Services will seek fee proposals from suitably experienced planning consultants. The planning proposal will be overseen by Council's Strategic Planning department. A budget for the preparation of the planning proposal is around \$8,000 along with the standard \$21,000 Council fee as advised to Property Services by Strategic Planning.

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2015-2019
Port Stephens Council's services and assets are sustainable in the longer term.	Council will reduce its underlying deficit to break even in 2014-2015 financial year. Council will increase its revenue from non-rates sources. Manage risks across Council. Attract, retain and develop staff to meet current and future workforce needs. Provide enabling business support services for Council's operations.

FINANCIAL/RESOURCE IMPLICATIONS

Formal quotations for the preparation of the planning proposal for these two lots are yet to be obtained, however, fees in the range of \$8,000 to \$10,000 are anticipated in line with previous recent experience. The \$21,000 Council fee will apply for the planning proposal. Total costs are therefore estimated at \$30,000 but will increase if

MINUTES ORDINARY COUNCIL - 27 OCTOBER 2015

additional studies are required as part of the Gateway determination process. Funding will come from the Property Reserve Fund and will be recovered from the sale proceeds.

The sale proceeds from the sale of the Diemars Road property are difficult to estimate due to its landlocked nature and waterfront location but will be determined by a Council-instructed valuation which will inform negotiations between Council and the prospective purchasers.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	No		
Reserve Funds	Yes		Will require fee proposals from suitably qualified planning consultants and Council's fixed Planning Proposal fee. Costs will be funded from the Property Reserve and recovered from the sale proceeds.
Section 94	No		
External Grants	No		
Other	No		

LEGAL, POLICY AND RISK IMPLICATIONS

There are legal and risk implications around the unofficial use of part of the Diemars Road property by one of the adjoining owners for storage purposes. There are legal and risk implications around the use of part of the Soldiers Point Road property as informal Public Road.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources ?
There is a risk that without reclassification and dedication as Public Road of the Soldiers Point Road lot, the Council may be liable in the event of an accident.	High	Adopt the recommendations.	Yes
There is a risk that Council may be liable in the event of an accident arising from any informal use of the land at Diemars Road that is not	Medium	Adopt the recommendations.	Yes

MINUTES ORDINARY COUNCIL - 27 OCTOBER 2015

subject to a formal agreement or licence.			
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SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

It appears unlikely that extensive environmental assessments will be required given the generally cleared nature of the land and the continuation of the long practised surrounding land uses.

The economic implications are the reduction of Council maintenance costs by disposal of the Diemars Road property, the ability to generate non-rate income from the sale of the Diemars Road property and the reduction in liability by dedicating part of the Soldiers Point Road property as Public Road.

CONSULTATION

- 1) Land Acquisition & Development Manager.
- 2) Property Development Coordinator.
- 3) Drainage & Flooding Coordinator.
- 4) Property Development Coordinator.
- 5) Community & Recreation Coordinator.
- 6) Strategic Planner.
- 7) Asset Section Manager.
- 8) Group Manager Facilities & Services.

OPTIONS

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

ATTACHMENTS

- 1) Locality Map.
- 2) Diemars Road.
- 3) Soldiers Point Road.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.





MINUTES ORDINARY COUNCIL - 27 OCTOBER 2015

ITEM 10 - ATTACHMENT 3 SOLDIERS POINT ROAD.



ITEM NO. 7**FILE NO: 16/322999
RM8 REF NO: 16/322999****WORKPLACE SURVEILLANCE POLICY**

REPORT OF: MICHELLE GILLIVER-SMITH - ORGANISATION DEVELOPMENT
SECTION MANAGER
GROUP: CORPORATE SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Endorse the draft Workplace Surveillance Policy.
 - 2) Place the draft policy on public exhibition for 28 days calling for public submission.
 - 3) Should no submissions be received, adopt the draft Workplace Surveillance Policy, refer to **(ATTACHMENT 1)**.
-

**ORDINARY COUNCIL MEETING - 10 MAY 2016
MOTION**

115	<p>Councillor John Nell Councillor Paul Le Mottee</p> <p>It was resolved that Council:</p> <ol style="list-style-type: none">1) Endorse the draft Workplace Surveillance Policy.2) Place the draft policy on public exhibition for 28 days calling for public submission.3) Should no submissions be received, adopt the draft Workplace Surveillance Policy, refer to (ATTACHMENT 1).
------------	---

BACKGROUND

The purpose of this report is to provide Council with the reviewed Workplace Surveillance Policy which was originally adopted on 13 August 2013 Minute No. 228. The policy is required to comply with the requirements of the *Workplace Surveillance Act 2005* and other legislation which requires that workers and the community are made aware of surveillance activities undertaken by Council and the implications of those surveillance for the public and our staff.

The rights of Council, its workers and private individuals are prescribed in legislation that requires Council to have in place management processes to ensure continued legislative compliance. The Workplace Surveillance Policy provides the protocols required to meet our legislative obligations.

MINUTES ORDINARY COUNCIL - 10 MAY 2016

The Workplace Surveillance Policy was reviewed and updated in the new policy template and references to various legislation and other documents updated.

Policy reviewed and updated to ensure less duplication and a reference to Mobile Phones has been updated to Mobile Devices.

Surveillance used for environmental investigations and offences has been further clarified in this policy.

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2013-2017
Port Stephens is a community where people feel safe.	Use Council's regulatory powers and Government legislation to enhance public safety.

FINANCIAL/RESOURCE IMPLICATIONS

There are minimal financial implications.

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

LEGAL, POLICY AND RISK IMPLICATIONS

Review of the Workplace Surveillance Policy provides a continuing framework for workers to operate within to ensure compliance with legislative requirements as well as providing clarity for the public on our surveillance activities and access to information collected.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that without a Workplace Surveillance Policy, Council officers may be in breach of the Code of Conduct when interacting with members	Low	Adopt the recommendation.	Yes

MINUTES ORDINARY COUNCIL - 10 MAY 2016

of the public.			
There is a risk that without a Workplace Surveillance Policy, Council officials may be in breach of the relevant legislation when interacting with members of the public or seeking to use surveillance in relation to workplace matters.	Low	Adopt the recommendation.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The *Workplace Surveillance Act 2005* requires that workers and the community are made aware of surveillance undertaken by Council.

MERGER PROPOSAL IMPLICATIONS

Newcastle City Council has an Information and Communication Technology Surveillance Policy in place.

CONSULTATION

Internal

Consultation with key stakeholders has been undertaken by the Organisation Development Section.

The Consultative Committee provides a forum for consultation between Council and its employees. This policy review will be discussed at Consultative Committee and any comments they may have will be forwarded to the General Manager during the public consultation phase.

External

Following the adoption of the revisions by Council, in accordance with the requirements of the *Local Government Act 1993* the draft Workplace Surveillance Policy will go on public exhibition for a period of 28 days during which time members of the public will be able to comment on the revised policy.

OPTIONS

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

ATTACHMENTS

- 1) Draft Workplace Surveillance Policy.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

Policy



FILE NO: PSC2009-02488
TITLE: WORKPLACE SURVEILLANCE
POLICY OWNER: HUMAN RESOURCES MANAGER

PURPOSE:

The *Workplace Surveillance Act 2005 (NSW)* requires that workers and the community are made aware of surveillance undertaken by Port Stephens Council (Council).

The purpose of this policy is to comply with Council's legal obligations by informing workers and others of the surveillance devices used in our workplace and to enhance safety outcomes for Council.

CONTEXT/BACKGROUND:

The rights of Council, its employees and others, as prescribed in workplace surveillance and privacy legislation, calls for management processes to ensure continued legislative compliance. This Workplace Surveillance Policy establishes the protocol to meet Council's legislative obligations.

Technology advances have made optical devices commonplace through camera and tracking capabilities being part of most mobile devices. Council, in the course of its business, uses these devices. Individual workers have similar capabilities with a Council supplied mobile device or their personal mobile device.

SCOPE:

Council recognises its obligations to ensure, where reasonably practicable, a safe and healthy workplace for its workers and others.

The use of certain devices has the potential through the:

- provision of tracking devices, to identify the geographical location of a worker, if they are in need of emergency assistance;
- provision of CCTV, and surveillance cameras to deter a possible assailant and reduce the safety risks associated with workers and others, to deter assault, vandalism and criminal activity, and/or to capture evidence for environmental investigations;
- monitoring of inputs and outputs of data to manage the risks associated with non-compliance to Council's Code of Conduct and Work Health and Safety (WHS) requirements.

Policy

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Existing workers of Council shall be notified of the installation and intent of tracking devices, CCTV cameras and data surveillance through the dissemination of this policy.

Workers yet to commence with Council shall be given notification of this policy as part of their offer of employment. By accepting employment with Council, the worker will be consenting to the conducting of surveillance in accordance with this policy, immediately upon the commencement of employment with Council.

The clear intention of this policy is not to utilise this information for performance management purposes, however, on occasion, available information may be accessed in the course of a workplace investigation.

Tracking Devices

Council, at times, requires workers to work alone and in isolation to the general workplace. To reduce the risks associated with this, Council may introduce tracking devices to identify the location of the worker, should an emergency response be required. Where tracking devices are utilised surveillance will be continuous and ongoing.

Increasingly, Council's vehicle fleet has equipment that provides back to base, real time capability with regard to location, engine revolutions per minute (RPM), gear ratio and other performance data. This data is invaluable in informing our process improvement activities and for identifying obstacles to our teams that currently prevents them from doing an even better job than they do now. Where a vehicle is supplied standard with a GPS device, the vehicle will display notification that a GPS device is installed in the vehicle.

Where the provision of the device in the vehicle is optional, a risk assessment process shall be completed to ascertain the need for such device. This will occur prior to any operation or function of such device. If the risk assessment deems it necessary to install a GPS device, the vehicle will display notification that a GPS device is installed in the vehicle.

For an 'on person' device, workers will be informed that they are required to carry such a device whilst at work, based on a risk assessment identifying the need for such a device. This will occur prior to any operation or function of any such device.

A Health and Safety Representative (HSR) shall be involved throughout all risk assessments undertaken under this policy.

All Council issued mobile devices that have GPS functionality, can be tracked by Council's Information Communication and Technology Unit.

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Closed Circuit Television (CCTV)

Council uses CCTV surveillance cameras and overt/covert surveillance devices in and around various Council worksites and facilities. This camera surveillance monitors or records visual images of activities on premises or, in any other place. CCTV camera surveillance will be continuous and ongoing.

Signs are located within each site/location to identify the areas affected by the camera surveillance, and are clearly visible at each entrance to that site or location. In the event where Council is conducting an operation in relation to environmental offences and/or investigations, Council will not display signage.

Where Council intends to install new CCTV devices, workers will be notified prior to any operation or function of the new installations which occur after the date of acceptance of this policy by Council.

Use of Surveillance Records – Tracking Devices and CCTV

Council may use and disclose confidentially the surveillance records where that use or disclosure is for a purpose related to the matter raised below regarding workers and management of Council.

Council may also use and disclose the surveillance records where that use or disclosure is related to Council's business activities including:

- To a law enforcement agency in connection with an environmental offence or alleged environmental offence, a criminal offence or alleged criminal offence;
- In connection with bona-fide legal proceedings; or
- As reasonably believed to be necessary to avert an imminent threat of serious violence or substantial damage to property.

Examples of instances in which use or disclosure of surveillance records might occur include but, are not limited to:

- Allegations of breaches of Council's Code of Conduct;
- Allegations of poor performance or unacceptable behaviour;
- Allegations of illegal dumping or other environmental offences;
- If there is an assault, or suspected assault of a person;
- If theft of Council's property (or that of a related entity of Council) is suspected or;
- Criminal damage to Council's equipment or facilities (or that of a related corporation of Council) has occurred;

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- A serious WHS incident as defined by the *Work Health and Safety Act 2011 (NSW)*;
- By request of a worker and Union representative regarding any bona-fide investigation.

All surveillance records are available under the *Government Information (Public Access) Act 2009 (GIPA)*; however, persons wishing to access these records should be aware that there are provisions under GIPA that may override the release of the information.

Generally, CCTV surveillance records will not be used or disclosed unless that disclosure is:

- for a legitimate purpose related to employment of workers or legitimate business activities or functions of the employer; or
- to a member or officer of a law enforcement agency for use in connection with the detection, investigation or prosecution of a criminal offence; or
- for a purpose that is directly or indirectly related to the taking of criminal proceedings; or
- reasonably believed to be necessary to avert an imminent threat of serious violence to persons or of substantial damage to property.

Data Surveillance and Retrieval

The computer usage of workers is not routinely read or monitored, however, they are records of Council and shall be managed accordingly. At times, Council may retrieve or review electronic files, records and correspondence of workers. This applies to all Council's Information and Communication systems including telephones, mobile phones and mobile computing technology. Council also provides a number of software systems, which have the ability to track changes made to data.

Designated workers of Council are also required to utilise a variety of security systems such as silkeys and alarm systems, which provide access to Council sites based on unique logins allocated to workers. Surveillance of workers' use of all of these systems and equipment is undertaken by Council on a continual basis.

Camera Devices

Council frequently uses camera devices to take pictures, or videos, eg for the safety of its employees, promotions, press releases, training applications or incident/environmental investigations. At times, this may require including workers, and/or others in the picture, or video. To comply with the relevant legislation, the following shall apply:

- A Council worker authorised to operate a Council camera device shall obtain express, or implied, consent from workers and or others, prior to taking the photograph or video.
- Workers wishing to take pictures or videos from their personal camera device shall respect a person's privacy and obtain express or implied consent from that person or

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persons prior to taking the picture or video. Council shall devise such policy and procedures to facilitate this approval. In the event where relevant legislation proves that Council can collect evidence/samples as part of an investigation, Council is not required to obtain consent from the person or persons prior to taking the picture or video.

- Pictures or videos of Council processes, procedures or practices shall not be taken without first obtaining permission from the worker's Manager.
- Managers shall ensure that pictures or videos for a use, other than for internal purposes, shall be approved by the Communications Section Manager, prior to use.

Recordings of Conversations

On occasion Council may wish to record conversations. Council will not record a private conversation without the consent, of the principal parties to the private conversation or the persons who took part in the activity, as per the requirements of the *Surveillance Devices Act 2007*.

If expressly agreed, when a recording of a conversation is made in relation to a Council worker who is participating in an investigation, the worker will receive a copy of the recording together with a transcript of the recording which they will then be asked to sign and verify as a true and correct record. This recording cannot occur without the express permission of the worker involved. Council, at no stage, will apply any duress for any interview to be recorded.

Confidentiality and Records

Council workers shall at all times exercise duty of confidentiality. Data shall only be released in compliance with the *Workplace Surveillance Act 2005 (NSW)* and on a need to know basis as prescribed by this policy or by a worker's request.

Non-compliance with duty of confidentiality requirements shall render a Council worker liable to disciplinary procedures which may include termination of employment.

All documents created in relation to this policy will be kept in accordance with the *State Records Act 1998 (NSW)* and Port Stephens Council's Records Management Management Directive.

Members of the public can make application to access Council's data in accordance with the *Government Information Public Access (GIPA) Act 2009* and the *Privacy and Personal Information Protection Act (PPIPA) 1998*.

For the purposes of determining compliance to this policy, random audits will be undertaken of data generation and collection activities by Council's internal auditor. Audit results shall be reported to the relevant Group Manager for determination and the Consultative Committee for review.

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Training

New workers shall be made aware of this policy during the induction process.

Record of worker's awareness of their internet obligations under this management directive shall be achieved by an on-screen declaration prior to internet access.

Record of user awareness and understanding of this management directive will be obtained by the completion of toolboxing of the policy in accordance with the Toolbox Procedure and by publication on Council's Intranet and Internet Site.

Ongoing training and awareness of this policy shall be provided by Council management throughout the employment relationship.

Requesting access to information

All requests for information under this policy from members of the public will be assessed under the *Government Information (Public Access) Act 2009*.

All requests for data retrieval or review from workers (other than approved Information and Communication Technology workers) can only be approved by any two of the following workers, with the exception of the General Manager who may request data retrieval or review without the approval of another manager:

- the General Manager; or
- a Group Manager;
- a Section Manager;
- the Executive Officer;
- the Legal Services Manager;
- the Human Resources Manager.

Any request must specify the reason for data retrieval or review, the specific period to be accessed and the Approved Worker(s) undertaking the investigation.

All requests and approvals must be given in writing.

This shall not apply to requests where an individual piece of data directly related to a task being undertaken by a worker is required. In such case a request to gain the individual piece of data shall require approval from the worker's manager.

Where a worker is required to respond to an investigation or disciplinary matter where data collected through surveillance is utilised, the worker will be entitled to review the data upon

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which Council is relying as part of any investigation or disciplinary matter prior to responding to any allegations.

DEFINITIONS:

An outline of the key definitions of terms included in the policy.

Worker	<p>In this policy, a Worker has the same meaning as Worker under Section 7 of the <i>Work Health and Safety Act 2011</i>, being:</p> <ul style="list-style-type: none">a) an employee, orb) a contractor or subcontractor, orc) an employee of a contractor or subcontractor, ord) an employee of a labour hire company who has been assigned to work in the person's business or undertaking, ore) an outworker, orf) an apprentice or trainee, org) a student gaining work experience, orh) a volunteer, ori) a person of a prescribed class.
Council	Port Stephens Council.
WHS	Work Health and Safety.
HSR	Health & Safety Representative.
Workplace	Means premises, or any other place, where employees work, or any part of such premises or place.

POLICY STATEMENT:

Council recognises they have a number of electronic systems in place which are utilised for surveillance. The surveillance devices used by Council are primarily in place to assist Council to capture relevant data needed for the operation of Council's business, improve service delivery, enhance safety outcomes and ensure compliance with relevant legislative requirements.

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POLICY RESPONSIBILITIES:

- 1) The Human Resources Manager is responsible for implementing, complying with, monitoring, evaluating, reviewing and providing advice on the policy.

RELATED DOCUMENTS:

- 1) Port Stephens Council Enterprise Agreement.
- 2) Code of Conduct.
- 3) Records Management Management Directive.
- 4) Information & Communication Technologies (ICT) Systems & Information Access Management Directive.
- 5) Information & Communication Technologies (ICT) Assets Management Management Directive.
- 6) Use of Mobile Devices Management Directive.
- 7) Telecommunications Management Directive.
- 8) Toolbox Procedure.
- 9) *State Records Act 1998 (NSW)*.
- 10) *Local Government Act 1993 (NSW)*.
- 11) *Workplace Surveillance Act 2005 (NSW)*.
- 12) *Workplace Surveillance Regulations 2012 (NSW)*.
- 13) *Surveillance Devices Act 2007 (NSW)*.
- 14) *Privacy and Personal Information Protection Act 1998 (NSW)*.
- 15) *Government Information (Public Access) Act 2009 (NSW)*.
- 16) *Industrial Relations Act 1996 (NSW)*.

CONTROLLED DOCUMENT INFORMATION:

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RM8 container No	PSC2009-02488	RM8 record No	16/318726
Audience	All employees		
Process owner	Human Resources Manager		
Author	Human Resources Manager		
Review timeframe	Two years	Next review date	###/###/2018

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Policy



Adoption date	13 August 2013
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VERSION HISTORY:

Version	Date	Author	Details	Minute No.
1	13/08/13	Human Resources Manager	Adopted.	228
2	11/04/16	Human Resources Manager	<p>The Workplace Surveillance Policy was reviewed and updated in the new policy template.</p> <p>Reference was changed to the Port Stephens Council Enterprise Agreement 2015.</p> <p>Policy reviewed and updated to ensure less duplication.</p> <p>Reference to Mobile Phones has been updated to Mobile Devices.</p> <p>Surveillance used for environmental investigations and offences has been included in this policy.</p>	

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