

DRAFT

MINUTES – 8 AUGUST 2017



PORT STEPHENS C O U N C I L

Minutes of Ordinary meeting of the Port Stephens Council held in the Council Chambers, Raymond Terrace on – 8 August 2017, commencing at 5.36pm.

PRESENT:

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

216	Councillor John Nell Councillor Ken Jordan It was resolved that the apologies from Cr John Morello, Cr Paul Le Mottee and Cr Peter Kafer be received and noted.
	Cr Ken Jordan declared a significant non-pecuniary conflict of interest in Notice of Motion 1. The nature of the interest is a friendship with the neighbours of the subject property.

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NOTICES OF MOTION

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Councillor Ken Jordan left the meeting at 5:37pm.

NOTICE OF MOTION

ITEM NO. 1

FILE NO: 17/152654

RM8 REF NO: 16-2016-862-1

REFUND OF DEVELOPMENT APPLICATION FEES FOR DA 16-2016-862-1, 111 SOUTH STREET, MEDOWIE

**COUNCILLOR: MAYOR BRUCE MACKENZIE
MATTHEW BROWN**

THAT COUNCIL:

- 1) Refund the development application fees for the DA at 111 South Street, Medowie.

**EXTRAORDINARY COUNCIL MEETING - 8 AUGUST 2017
MOTION**

217	Mayor Bruce MacKenzie Councillor Chris Doohan It was resolved that Council refund the development application fees for the DA at 111 South Street, Medowie.
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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 Chris Doohan, Sally Dover, John Nell and Steve Tucker.

Those against the Motion: Cr Geoff Dingle.

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

Development Application (DA) No.16-2016-862-1 for a one (1) into two (2) lot Torrens title subdivision and new shed at 111 South Street, Medowie (Lot 14 DP 1079392), was refused by Council on 11 July 2017, Minute No. 162.

The notice of motion recommends that the DA fees of \$854.00 paid by the Applicant be refunded to them by Council.

ATTACHMENTS

Nil.

RESCISSION MOTIONS

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Councillor Ken Jordan returned to the meeting at 5:39pm.

NOTICE OF RESCISSION

ITEM NO. 1

FILE NO: 17/152647

RM8 REF NO: 16-2016-763-1

SECTION 82A APPLICATION FOR REVIEW OF DETERMINATION NO.16-2016-763-1 FOR EARTHWORKS (FLOOD MOUND), DETACHED DUAL OCCUPANCY (INCORPORATING EXISTING DWELLING) AND ANCILLARY STRUCTURE (SHED) AT NO.1428 RAYMOND TERRACE ROAD, NELSONS PLAINS

COUNCILLOR: STEVE TUCKER
MAYOR BRUCE MACKENZIE
CHRIS DOOHAN

THAT COUNCIL:

Rescind its decision of 1 August 2017 on Item No. 6 - Section 82A application for review of determination No. 16-2016-763-1 for earthworks (flood mound), detached dual occupancy (incorporating existing dwelling) and ancillary structure (shed) at No. 1428 Raymond Terrace Road, Nelsons Plains.

EXTRAORDINARY COUNCIL MEETING - 8 AUGUST 2017 MOTION

218	Mayor Bruce MacKenzie Councillor Steve Tucker It was resolved that Council rescind its decision of 1 August 2017 on Item No. 6 - Section 82A application for review of determination No. 16-2016-763-1 for earthworks (flood mound), detached dual occupancy (incorporating existing dwelling) and ancillary structure (shed) at No. 1428 Raymond Terrace Road, Nelsons Plains.
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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 Chris Doohan, Sally Dover and Steve Tucker.

Those against the Motion: Crs Geoff Dingle, Ken Jordan and John Nell.

**EXTRAORDINARY COUNCIL MEETING - 8 AUGUST 2017
MOTION**

219

Mayor Bruce MacKenzie
Councillor Chris Doohan

It was resolved that Council approve the Section 82A Application for review of determination of DA No. 16-2016-763-1 for earthworks (flood mound), detached dual occupancy (incorporating existing dwelling) and ancillary structure (shed) at No.1428 Raymond Terrace Road, Nelsons Plains in accordance with the conditions listed below:

CONDITIONS THAT IDENTIFY APPROVED PLANS AND LIMITATIONS OF CONSENT

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

Plan/Doc.Title	Plan Ref. No	Sheet.	Date	Drawn By
Site Plan (1 Sheet)	6350 DET-V3	-	13/02/2017	Le Mottee Group
Site Plan – Proposed House and Shed Position (1 Sheet)	6350DET-V2	-	02/11/2016	Le Mottee Group
Proposed Earth Mound (1 Sheet)	6350 ENG1-B	-	04/03/2016	Le Mottee Group
Proposed Residence (6 Sheets)	3731	2 to 7 of 7	24/10/2016	Advantage Building Design
Plan Sheet (1 Sheet)	31074-Cropp	-	27/10/2016	Shed Boss

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

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

Council of intentions to start works approved by this application.

CONDITIONS TO BE SATISFIED PRIOR TO DEMOLITION, EXCAVATION OR CONSTRUCTION

3. **Prior to undertaking any works onsite**, the applicant must obtain approval from NSW Office of Environment and Heritage under Section 256(1)(A) of Water Management Act 2000.
4. **Prior to the commencement of work**, for any residential building work within the meaning of the *Home Building Act 1989*, (the HB Act) except for Crown building works certified in accordance with section 109R of the Act, the principal certifying authority must provide to the Council (unless Council is the principal certifying authority) a written notice of:
 - a. In the case where a principle contractor is required to be appointed, the name and licence number of the principal contractor and the name of the insurer by which the work is insured under the HB Act;
 - b. In the case of work to be done by an owner builder, the name of the owner-builder and their permit number if required under the HB Act.
5. **Prior to the commencement of works**, a waste containment facility is to be established on site. The facility is to be regularly emptied, and maintained for the duration of works. No rubbish shall be stockpiled in a manner which facilitates the rubbish to be blown or washed off site. The site shall be cleared of all building refuse and spoil immediately upon completion of the development.
6. **Prior to the commencement of works**, the property shall be protected against soil erosion, such that sediment is not carried from the construction site by the action of stormwater, wind or "vehicle tracking". Protection measures may include erosion and sedimentation controls as required. All protection measures are to be installed to the satisfaction of Council prior to the commencement of works, and regularly maintained for the duration of works and until the site is stabilised by vegetation or the like.
7. **Prior to the commencement of works**, a 3m wide all-weather vehicle access from the kerb and gutter to the building under construction is to be provided for the delivery or materials and trades. Sand shall not be stockpiled on the all-weather vehicle access.

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

8. A monetary contribution is to be paid to Council for the provision of 1 additional dwelling, pursuant to section 80A(1) of the *Environmental Planning and Assessment Act 1979*, Section 94 of the *Environmental Planning and Assessment Act 1979*, and Councils Section 94 Contribution

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Plan towards the provision of the following public facilities:

Facility	Per lot/dwelling	Total
Civic Administration	\$1,160.00	\$1,160.00
Public Open Space, Parks and Reserves	\$2,543.00	\$2,543.00
Sports and Leisure Facilities	\$6,865.00	\$6,865.00
Cultural and Community Facilities	\$2,448.00	\$2,448.00
Road Works	\$1,616.00	\$1,616.00
Fire & Emergency Services	\$225.00	\$225.00
	Total	\$14,857.00

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

a) Building work only - prior to issue of the Construction Certificate.

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

9. The finished floor level of all habitable areas shall be a minimum of 5.9m AHD. Design details shall be submitted to the Certifying Authority for approval **prior to the issue of a Construction Certificate**. During works, a survey certificate verifying compliance with this condition shall be provided to the Certifying Authority as soon as practical on completion of the floor level.
10. **Prior to the issue of a Construction Certificate**, a geotechnical engineer assessment of the mound foundation suitability, in respect of the approved structures, must be provided to the Certifying Authority for assessment and determined to be satisfactory by the Certifying Authority.
11. **Prior to the issue of a Construction Certificate**, an application is to be lodged and approved by Council under section 68 of the *Local Government Act 1993* for the installation of an on-site sewage management system.
12. The vehicle driveway shall have a width to cater for design vehicle paths

	<p>determined by Australian Standard AS2890 into and out of garage areas for two vehicle parking spaces. This requirement will be met by providing vehicle swept paths and clearances utilising the 85th percentile turning circle as outlined in AS 2890.1: Off-street Car Parking. Details of vehicle access are to be submitted to the certifying authority for assessment prior to the issue of any Construction Certificate.</p> <p>13. The shape, volume and location of the mound is to be in accordance with the submitted plans. The final pad shape, levels and location will be confirmed by the submission of a Survey Plan prepared by a practising registered surveyor to show the existing natural ground contour levels, the full extent and degree of the fill, and finished ground contour levels and cross sections indicating the depth of fill prior to the commencement of use.</p> <p>14. The development shall be constructed in accordance with the NSW Government Floodplain Management Manual (2005). The following design precautions must be adhered to:-</p> <ul style="list-style-type: none"> a. The floor level of any habitable room is to be located at a height not less than the Flood Planning Level (FPL), which is 5.9m AHD. b. No potentially hazardous or offensive material is to be stored on site that could cause water contamination during floods. c. All building materials, equipment, ducting etc. below the FPL shall be flood compatible. d. All main power supply, heating and air conditioning service installations, including meters, shall be located above the FPL. e. All electrical wiring below the FPL shall be suitable for continuous submergence in water. All conduits below the FPL shall be self-draining. Earth core leakage systems or safety switched are to be installed. f. All electrical equipment installed below the FPL shall be capable of disconnection by a single plug from the power supply. g. Where heating equipment and fuel storage tanks are not feasible to be located above the FPL, then they shall be designed for continuous submergence in water and securely anchored to overcome buoyancy and movement that may damage supply lines. All storage tanks shall be vented to an elevation above the FPL. h. All ducting below the FPL shall be provided with opening for drainage and cleaning. <p>Details of the above information are to be submitted to the satisfaction of the Certifying Authority prior to the issue of the Construction Certificate.</p> <p>15. Prior to the issue of the Construction Certificate, a structural engineer shall provide certification to Council that all building structures and earth mounds are able to withstand the hydrostatic and hydrodynamic flood</p>
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	<p>forces, including debris impact and buoyancy uplift for the 1% AEP flood (4.9m AHD).</p>
16.	<p>A flood management plan which covers evacuation and the provision of emergency food, medical supplies, power/communication, water and effluent disposal etc. incorporating the SES Business Floodsafe Toolkit, shall be submitted and approved by Council prior to the issue of the Construction Certificate.</p>
17.	<p>A Construction Certificate cannot be issued until full details of the stormwater drainage design have been provided to the Certifying Authority for assessment and determined to be satisfactory by the Certifying Authority.</p>
	<p>CONDITIONS TO BE SATISFIED DURING THE DEMOLITION, EXCAVATION AND CONSTRUCTION PHASES</p>
18.	<p>All building work must be carried out in accordance with the provisions of the Building Code of Australia.</p>
19.	<p>Construction work that is likely to cause annoyance due to noise is to be restricted to the following times:-</p> <ul style="list-style-type: none"> • Monday to Saturday, 7am to 5pm; • no construction work to take place on Sunday or Public Holidays. <p>When the construction site is in operation the L10 level measured over a period of not less than 15 minutes must not exceed the background by more than 10dB(A). All possible steps should be taken to silence construction site equipment.</p>
20.	<p>All excavated and/or filled areas are to be retained or battered and suitably drained so as to prevent any subsidence of the surrounding land and constructed so as to deny any flow of water into or around the building or neighbouring buildings or onto neighbouring land.</p>
21.	<p>Immediately following completion of the earthworks and prior to the commencement of use or storage of materials on the mound;</p> <ul style="list-style-type: none"> a) The final pad shape, levels and location will be confirmed by the submission of a detailed survey plan prepared by a Registered Surveyor. The detailed survey plan shall be provided to Council within 14 days of completion. b) The mound is to be top dressed and seeded with fast growing grasses. c) Adequate scour protection shall be provided to the mound, designed by a suitable qualified engineer to withstand the velocities in major flood events.

	<p>22. Filling associated with the construction of the flood mound, shall not obstruct any natural drainage path or water drainage system. The mound must have batter slopes no steeper than 1 (vertical) to 4 (horizontal). Batter slopes are to be fully contained within the subject property.</p> <p>23. Dust suppression is to be actively undertaken during works, through the use of wet-down water tankers or an alternative method agreed by Council.</p> <p>24. The only fill material that may be received at the development site is:</p> <ul style="list-style-type: none"> a) Virgin excavated natural material (VENM) within the meaning of the Protection of the Environment Operations Act 1997 (POEO); or b) Any other waste-derived material the subject of a resource recovery exemption under s.91 of the Protection of the Environment Operations (Waste) Regulation 2014 that is permitted to be used as fill material. <p>Any waste-derived fill material the subject of a resource recovery exemption received at the development site must be accompanied by documentation as to the material's compliance with the exemption conditions and must be provided to the Principal Certifying Authority.</p> <p>25. Where no sanitary facilities currently exist onsite for construction workers toilet accommodation for all tradespersons shall be provided from the time of commencement until the building is complete. The toilet facilities shall be located so as to have minimal impact of adjoining properties and shall not be placed on the road reserve, without separate approval from Council.</p> <p>26. It is the responsibility of the applicant to erect a PCA sign (where Council is the PCA, the sign is available from Council's Administration Building at Raymond Terrace or the Tomaree Library at Salamander Bay free of charge). The applicant is to ensure the PCA sign remains in position for the duration of works.</p> <p>CONDITIONS TO BE SATISFIED PRIOR TO ISSUE OF AN OCCUPATION CERTIFICATE</p> <p>27. Prior to the issue of an Occupation Certificate, the commitments listed in BASIX Certificate No. 765587S (or an amended version of this certificate, or a replacement certificate particular to the approved development) are to be installed in the development. Should an amended or replacement certificate be issued, a copy is to be forwarded to the principle certifying authority immediately following its issue.</p> <p>28. Prior to the issue of an Occupation Certificate, a survey certificate shall</p>
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	<p>be provided to the Certifying Authority verifying the finished levels of habitable rooms comply with the FPL of 5.9m AHD.</p> <p>29. All civil engineering works shall be carried out in accordance with the Construction Certificate and Council's Design and Construction Specification, Policies and Standards, to the satisfaction of Council or the Certifying Authority prior to issue of the Occupation Certificate.</p> <p>30. The provision of a gravel vehicle crossing is required prior to the issue of the final Occupation Certificate. A Driveway Construction Application must be made with Council, as the Roads Authority, prior to the commencement of vehicle footpath crossing works.</p> <p>31. Prior to the issue of any Occupation Certificate, an on-site sewage management system is to be installed and a satisfactory final inspection completed by Council.</p> <p>CONDITIONS TO BE SATISFIED AT ALL TIMES</p> <p>32. The stormwater system, including any water quality, quantity or infiltration components, shall be maintained in perpetuity for the life of the development.</p> <p>33. Filling shall not obstruct any natural drainage path or water drainage system. Neither shall the fill encroach onto any adjoining property.</p> <p>Advice</p> <p>A. Prior to occupying the approved dwelling(s), contact Council's Mapping Section via email at: addressing@portstephens.nsw.gov.au stating your Development Approval number, address of the property and the assessing officer, to obtain the correct house numbering. Be advised that any referencing on Development Application plans to house or lot numbering operates to provide identification for assessment purposes only.</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 Chris Doohan, Sally Dover and Steve Tucker.

Those against the Motion: Crs Geoff Dingle, Ken Jordan and John Nell.

ATTACHMENTS

- 1) Minutes from 1 August 2017.

MINUTES ORDINARY COUNCIL - 1 AUGUST 2017

ITEM NO. 6

FILE NO: 17/146387
RM8 REF NO: 16-2016-763-1

SECTION 82A APPLICATION FOR REVIEW OF DETERMINATION NO.16-2016-763-1 FOR EARTHWORKS (FLOOD MOUND), DETACHED DUAL OCCUPANCY (INCORPORATING EXISTING DWELLING) AND ANCILLARY STRUCTURE (SHED) AT NO.1428 RAYMOND TERRACE ROAD, NELSONS PLAINS

REPORT OF: MICHAEL MCINTOSH - GROUP MANAGER DEVELOPMENT SERVICES
GROUP: DEVELOPMENT SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Refuse the Section 82A Application for review of determination of DA No. 16-2016-763-1 for earthworks (flood mound), detached dual occupancy (incorporating existing dwelling) and ancillary structure (shed) at No.1428 Raymond Terrace Road, Nelsons Plains for the reasons contained in **(ATTACHMENT 2)**.

**ORDINARY COUNCIL MEETING - 1 AUGUST 2017
MOTION**

**Mayor Bruce MacKenzie
Councillor Chris Doohan**

That Council approve the Section 82A Application for review of determination of DA No. 16-2016-763-1 for earthworks (flood mound), detached dual occupancy (incorporating existing dwelling) and ancillary structure (shed) at No.1428 Raymond Terrace Road, Nelsons Plains in accordance with the conditions listed below:

CONDITIONS THAT IDENTIFY APPROVED PLANS AND LIMITATIONS OF CONSENT

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

Plan/Doc.Title	Plan Ref. No	Sheet.	Date	Drawn By
Site Plan (1 Sheet)	6350 DET-V3	-	13/02/2017	Le Mottee Group
Site Plan – Proposed House and Shed Position	6350DET-V2	-	02/11/2016	Le Mottee Group

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(1 Sheet)				
Proposed Earth Mound (1 Sheet)	6350 ENG1-B	-	04/03/2016	Le Mottee Group
Proposed Residence (6 Sheets)	3731	2 to 7 of 7	24/10/2016	Advantage Building Design
Plan Sheet (1 Sheet)	31074-Cropp	-	27/10/2016	Shed Boss

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

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

CONDITIONS TO BE SATISFIED PRIOR TO DEMOLITION, EXCAVATION OR CONSTRUCTION

3. **Prior to undertaking any works onsite**, the applicant must obtain approval from NSW Office of Environment and Heritage under Section 256(1)(A) of Water Management Act 2000.
4. **Prior to the commencement of work**, for any residential building work within the meaning of the *Home Building Act* 1989, (the HB Act) except for Crown building works certified in accordance with section 109R of the Act, the principal certifying authority must provide to the Council (unless Council is the principal certifying authority) a written notice of:
 - a. In the case where a principle contractor is required to be appointed, the name and licence number of the principal contractor and the name of the insurer by which the work is insured under the HB Act;
 - b. In the case of work to be done by an owner builder, the name of the owner-builder and their permit number if required under the HB Act.
5. **Prior to the commencement of works**, a waste containment facility is to be established on site. The facility is to be regularly emptied, and maintained for the duration of works. No rubbish shall be stockpiled in a manner which facilitates the rubbish to be blown or washed off site. The site shall be cleared of all building refuse and spoil immediately upon

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completion of the development.

6. **Prior to the commencement of works**, the property shall be protected against soil erosion, such that sediment is not carried from the construction site by the action of stormwater, wind or "vehicle tracking". Protection measures may include erosion and sedimentation controls as required. All protection measures are to be installed to the satisfaction of Council prior to the commencement of works, and regularly maintained for the duration of works and until the site is stabilised by vegetation or the like.
7. **Prior to the commencement of works**, a 3m wide all-weather vehicle access from the kerb and gutter to the building under construction is to be provided for the delivery of materials and trades. Sand shall not be stockpiled on the all-weather vehicle access.

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

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

Facility	Per lot/dwelling	Total
Civic Administration	\$1,160.00	\$1,160.00
Public Open Space, Parks and Reserves	\$2,543.00	\$2,543.00
Sports and Leisure Facilities	\$6,865.00	\$6,865.00
Cultural and Community Facilities	\$2,448.00	\$2,448.00
Road Works	\$1,616.00	\$1,616.00
Fire & Emergency Services	\$225.00	\$225.00
	Total	\$14,857.00

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

- a) **Building work only - prior to issue of the Construction Certificate.**

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

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	<p>movement in the Consumer Price Index as published by the Australian Bureau of Statistics.</p> <p>9. The finished floor level of all habitable areas shall be a minimum of 5.9m AHD. Design details shall be submitted to the Certifying Authority for approval prior to the issue of a Construction Certificate. During works, a survey certificate verifying compliance with this condition shall be provided to the Certifying Authority as soon as practical on completion of the floor level.</p> <p>10. Prior to the issue of a Construction Certificate, a geotechnical engineer assessment of the mound foundation suitability, in respect of the approved structures, must be provided to the Certifying Authority for assessment and determined to be satisfactory by the Certifying Authority.</p> <p>11. Prior to the issue of a Construction Certificate, an application is to be lodged and approved by Council under section 68 of the <i>Local Government Act 1993</i> for the installation of an on-site sewage management system.</p> <p>12. The vehicle driveway shall have a width to cater for design vehicle paths determined by Australian Standard AS2890 into and out of garage areas for two vehicle parking spaces. This requirement will be met by providing vehicle swept paths and clearances utilising the 85th percentile turning circle as outlined in AS 2890.1: Off-street Car Parking. Details of vehicle access are to be submitted to the certifying authority for assessment prior to the issue of any Construction Certificate.</p> <p>13. The shape, volume and location of the mound is to be in accordance with the submitted plans. The final pad shape, levels and location will be confirmed by the submission of a Survey Plan prepared by a practising registered surveyor to show the existing natural ground contour levels, the full extent and degree of the fill, and finished ground contour levels and cross sections indicating the depth of fill prior to the commencement of use.</p> <p>14. The development shall be constructed in accordance with the NSW Government Floodplain Management Manual (2005). The following design precautions must be adhered to:-</p> <ol style="list-style-type: none"> The floor level of any habitable room is to be located at a height not less than the Flood Planning Level (FPL), which is 5.9m AHD. No potentially hazardous or offensive material is to be stored on site that could cause water contamination during floods. All building materials, equipment, ducting etc. below the FPL shall be flood compatible. All main power supply, heating and air conditioning service installations, including meters, shall be located above the FPL. All electrical wiring below the FPL shall be suitable for continuous
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	<p>submergence in water. All conduits below the FPL shall be self-draining. Earth core leakage systems or safety switched are to be installed.</p> <p>f. All electrical equipment installed below the FPL shall be capable of disconnection by a single plug from the power supply.</p> <p>g. Where heating equipment and fuel storage tanks are not feasible to be located above the FPL, then they shall be designed for continuous submergence in water and securely anchored to overcome buoyancy and movement that may damage supply lines. All storage tanks shall be vented to an elevation above the FPL.</p> <p>h. All ducting below the FPL shall be provided with opening for drainage and cleaning.</p> <p>Details of the above information are to be submitted to the satisfaction of the Certifying Authority prior to the issue of the Construction Certificate.</p> <p>15. Prior to the issue of the Construction Certificate, a structural engineer shall provide certification to Council that all building structures and earth mounds are able to withstand the hydrostatic and hydrodynamic flood forces, including debris impact and buoyancy uplift for the 1% AEP flood (4.9m AHD).</p> <p>16. A flood management plan which covers evacuation and the provision of emergency food, medical supplies, power/communication, water and effluent disposal etc. incorporating the SES Business Floodsafe Toolkit, shall be submitted and approved by Council prior to the issue of the Construction Certificate.</p> <p>17. A Construction Certificate cannot be issued until full details of the stormwater drainage design have been provided to the Certifying Authority for assessment and determined to be satisfactory by the Certifying Authority.</p> <p>CONDITIONS TO BE SATISFIED DURING THE DEMOLITION, EXCAVATION AND CONSTRUCTION PHASES</p> <p>18. All building work must be carried out in accordance with the provisions of the Building Code of Australia.</p> <p>19. Construction work that is likely to cause annoyance due to noise is to be restricted to the following times:-</p> <ul style="list-style-type: none"> Monday to Saturday, 7am to 5pm; no construction work to take place on Sunday or Public Holidays. <p>When the construction site is in operation the L10 level measured over a period of not less than 15 minutes must not exceed the</p>
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	<p>background by more than 10dB(A). All possible steps should be taken to silence construction site equipment.</p>
20.	All excavated and/or filled areas are to be retained or battered and suitably drained so as to prevent any subsidence of the surrounding land and constructed so as to deny any flow of water into or around the building or neighbouring buildings or onto neighbouring land.
21.	<p>Immediately following completion of the earthworks and prior to the commencement of use or storage of materials on the mound;</p> <ul style="list-style-type: none">a) The final pad shape, levels and location will be confirmed by the submission of a detailed survey plan prepared by a Registered Surveyor. The detailed survey plan shall be provided to Council within 14 days of completion.b) The mound is to be top dressed and seeded with fast growing grasses.c) Adequate scour protection shall be provided to the mound, designed by a suitable qualified engineer to withstand the velocities in major flood events.
22.	Filling associated with the construction of the flood mound, shall not obstruct any natural drainage path or water drainage system. The mound must have batter slopes no steeper than 1 (vertical) to 4 (horizontal). Batter slopes are to be fully contained within the subject property.
23.	Dust suppression is to be actively undertaken during works, through the use of wet-down water tankers or an alternative method agreed by Council.
24.	<p>The only fill material that may be received at the development site is:</p> <ul style="list-style-type: none">a) Virgin excavated natural material (VENM) within the meaning of the Protection of the Environment Operations Act 1997 (POEO); orb) Any other waste-derived material the subject of a resource recovery exemption under s.91 of the Protection of the Environment Operations (Waste) Regulation 2014 that is permitted to be used as fill material. <p>Any waste-derived fill material the subject of a resource recovery exemption received at the development site must be accompanied by documentation as to the material's compliance with the exemption conditions and must be provided to the Principal Certifying Authority.</p>
25.	Where no sanitary facilities currently exist onsite for construction workers toilet accommodation for all tradespersons shall be provided from the time of

MINUTES ORDINARY COUNCIL - 1 AUGUST 2017

commencement until the building is complete. The toilet facilities shall be located so as to have minimal impact of adjoining properties and shall not be placed on the road reserve, without separate approval from Council.

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

CONDITIONS TO BE SATISFIED PRIOR TO ISSUE OF AN OCCUPATION CERTIFICATE

27. **Prior to the issue of an Occupation Certificate**, the commitments listed in BASIX Certificate No. 765587S (or an amended version of this certificate, or a replacement certificate particular to the approved development) are to be installed in the development. Should an amended or replacement certificate be issued, a copy is to be forwarded to the principle certifying authority immediately following its issue.
28. **Prior to the issue of an Occupation Certificate**, a survey certificate shall be provided to the Certifying Authority verifying the finished levels of habitable rooms comply with the FPL of 5.9m AHD.
29. All civil engineering works shall be carried out in accordance with the Construction Certificate and Council's Design and Construction Specification, Policies and Standards, to the satisfaction of Council or the Certifying Authority **prior to issue of the Occupation Certificate**.
30. The provision of a gravel vehicle crossing is required **prior to the issue of the final Occupation Certificate**. A Driveway Construction Application must be made with Council, as the Roads Authority, prior to the commencement of vehicle footpath crossing works.
31. **Prior to the issue of any Occupation Certificate**, an on-site sewage management system is to be installed and a satisfactory final inspection completed by Council.

CONDITIONS TO BE SATISFIED AT ALL TIMES

32. The stormwater system, including any water quality, quantity or infiltration components, shall be maintained in perpetuity for the life of the development.
33. Filling shall not obstruct any natural drainage path or water drainage system. Neither shall the fill encroach onto any adjoining property.

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	Advice A. Prior to occupying the approved dwelling(s) , contact Council's Mapping Section via email at: addressing@portstephens.nsw.gov.au stating your Development Approval number, address of the property and the assessing officer, to obtain the correct house numbering. Be advised that any referencing on Development Application plans to house or lot numbering operates to provide identification for assessment purposes only.
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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 Chris Doohan and Steve Tucker.

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

The motion was lost.

**ORDINARY COUNCIL MEETING - 1 AUGUST 2017
MOTION**

192	Councillor John Nell Councillor Sally Dover It was resolved that Council refuse the Section 82A Application for review of determination of DA No. 16-2016-763-1 for earthworks (flood mound), detached dual occupancy (incorporating existing dwelling) and ancillary structure (shed) at No.1428 Raymond Terrace Road, Nelsons Plains for the reasons contained in (ATTACHMENT 2) .
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In accordance with Section 375 (A) of the *Local Government Act 1993*, a division is required for this item.

Those for the Motion: Crs Geoff Dingle, Sally Dover, Ken Jordan, Peter Kafer and John Nell.

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

BACKGROUND

The purpose of this report is to present a section 82A application for 'Review of Determination' (RD) of Development Application (DA) number (No.) 16-2016-763-1 to Council for determination. The s.82A RD is being reported to Council for determination as the original DA was determined by Council at its meeting of 28

MINUTES ORDINARY COUNCIL - 1 AUGUST 2017

March 2017. In accordance with s.82A of the *Environmental Planning and Assessment Act 1979* ('EP&A Act'), as Council was the determining authority for the DA the s.82A RD must also be determined by Council.

The provisions of s.82A EP&A Act provide an applicant that is dissatisfied with the Council's determination of their DA a mechanism to seek an internal review of the original decision. When lodging a 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.

The subject DA relates to land located at No. 1428 Raymond Terrace Road, Nelsons Plains which is identified as Lot: 1 DP: 1202026 ('the subject site'). A locality plan is provided at (**ATTACHMENT 1**). The site is located on the bank of the Hunter River, which traverses the site's western boundary. The development site is located within a 'High Hazard Floodplain' and is relatively flat. The subject site currently contains a dwelling and detached ancillary structures. An existing flood mound is position on the north-west corner of the site.

The subject site is zoned RU1 Primary Production Zone and the proposed land use is permissible within the RU1 Zone. The key issues with the development subject to s.82A review relate to flooding given the sites classification as 'High Hazard Floodplain'. Provision of adequate on-site sewage management (OSMS) also remains outstanding.

Council staff have undertaken a detailed assessment of the application as part of the s.82A review of determination. The s.82A review supports the recommendation endorsed in the original assessment in that the development cannot be supported for the reasons contained in (**ATTACHMENT 2**).

DA No.16-2016-763-1

The application subject to the s.82A RD (DA No.16-2016-763-1) sought consent for earthworks (flood mound), detached dual occupancy (incorporating existing dwelling) and ancillary structures (shed).

The proposed flood mound has a total footprint of 4,605m² (approximately 81m x 51m), and is raised to a maximum height of 3.37m above existing ground levels, in order to achieve a finished level of 5.4m AHD.

The proposed single storey dwelling comprises three bedrooms, lounge room, kitchen, laundry and bathroom. The dwelling has a proposed maximum height of 5.24m and a finished floor level of 5.9m AHD. The dwelling is positioned on the northwest portion of the proposed earth mound, roughly 68m south of Raymond Terrace Road and 66m east of the Hunter River.

MINUTES ORDINARY COUNCIL - 1 AUGUST 2017

The proposed shed is located 5m south of the proposed dwelling. The shed will incorporate three bays and one pedestrian door, at a size of 167m². The maximum height of the shed is 5.2m.

The original application was refused by Council on 28 March 2017 for the following reasons:

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

MINUTES ORDINARY COUNCIL - 1 AUGUST 2017

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

Basis for s.82A review

The applicant has sought a review of the application (DA No.16-2016-867-1) and has provided the following reasons to justify the review:

- a) The development is permissible within the RU1 Primary Production Zone;
- b) The proposed dual occupancy enables 'practical attendance to agricultural needs' and further that the proposed dwelling provides housing for the owners father which is required for health reasons;
- c) Dwelling houses are located on adjoining properties;
- d) The location of the flood mound will not result in environmental or amenity impacts;
- e) The proposal is consistent with the provisions of SEPP No.71 Coastal Protection;
- f) The flood impact assessment (FIA) prepared by BMT WBM consultants and submitted with the development application concludes that the proposed development will not have any major impact to local flood behaviour. As such, the applicant has demonstrated that the site is suitable for the proposed development. The FIA submitted with the s.82A was revised and dated 5 June 2017.

Key Issues'High Hazard Floodway'

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

- Hazard Category - High Hazard Floodway;
- 5% AEP event - 3.5m AHD;
- 1% AEP event - 4.8m AHD;
- Flood Planning Level (FPL) - 5.9m AHD;
- Probable Maximum Flood (PMF) - 8.8m AHD.

The proposed development has been designed to satisfy the FPL requirements having a finished floor level (FFL) of 5.9m AHD and is considered to satisfy the hydrological requirements for the site.

MINUTES ORDINARY COUNCIL - 1 AUGUST 2017

However, the proposed development cannot be supported as the use of the site for residential purposes is not compatible with the 'high hazard floodway' categorisation of the site. The High Hazard Floodway categorisation is as a result of the very deep moving water which traverses the site during flood events.

There is considered to be a substantial safety risk associated with the development as the site is likely to become isolated for several days during flood events. Further, there is no acceptable evacuation route for future residents of the site as safe egress during floods cannot be achieved.

Assessment: s.82A Review of Determination No. 16-2016-763-1

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

The proposal developments was assessed against relevant controls and objectives as specified under, State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004; State Environmental Planning Policy No.55 – Remediation of Land, State Environmental Planning Policy No.71 – Coastal Protection, Port Stephens Local Environmental Plan (LEP2013) and Port Stephens Development Control Plan 2014 (DCP2014).

The assessment of the s.82A RD identified that the proposed development failed to comply with:

- 2) State Environmental Planning Policy No. 71 (SEPP No.71): Clause 8(J) SEPP No.1 requires the consent authority to assess the likely impact of coastal processes and coastal hazards on a proposed development. The subject development will be subject to coastal hazards derived from the flood characteristics of the site. The assessment of the s.82A (RD) has identified that the proposed development is likely to be adversely impacted by coastal processes and hazards. As such, the development is inconsistent with the aims and provisions of SEPP No.71 and cannot be supported. The additional information provided by the applicant has not demonstrated that the development shall not be impacted by coastal processes and coastal hazards.
- 3) Port Stephens Local Environmental Plan 2013 (PSLEP):
- 4) Clause 5.5 – Development in the Coastal Zone: The proposed development is located within the coastal zone and fails to satisfy cl.5.5(3)(d)(i) as the subject development is likely to be adversely impacted by coastal hazards derived from the flood characteristics of the site;
- 5) Clause 7.2 – Earthworks: The extent of fill proposed to facilitate residential development on the site is excessive, further the applicant has not demonstrated that the earthworks can withstand failure during flood events. For these reasons the proposed earthworks are not considered to satisfy cl.7.2;
- 6) Clause 7.3 – Flood Planning: The development is not compatible with the flood hazard of the land and does not incorporate appropriate measure to manage risk to life from flood events;

MINUTES ORDINARY COUNCIL - 1 AUGUST 2017

- 7) Clause 7.6 – Essential Services: The development requires onsite waste water treatment system and the applicant has failed to demonstrate that a suitable OSMS can be accommodated on site taking into account the flood characteristics of the land.
- 8) Port Stephens Development Control Plan 2014: Control B5.8 identifies that residential development within a 'High Hazard Floodway' is not encouraged. The DCP outlines that an application may only be considered where it is demonstrated to have specific community needs/benefits, which does not relate to the provision of housing.

It is noted that the applicant has failed to satisfy cl.7.3(3) and cl.7.6 PSLEP. 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 both clause 7.3 and cl.7.6 PSLEP, 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. In summary such provisions are 'preconditions' to the granting of consent.

A detailed assessment of the proposed development has been carried out against the requirements of the *EP&A Act 1979* and has been included as **(ATTACHMENT 3)** to this report.

Conclusion

The application is not consistent with:

- Port Stephens LEP2013, in particular cl.5.5, cl.7.2, cl.7.3 and cl.7.6;
- Port Stephens DCP2014, in particular Chapter B5;
- NSW Floodplain Development Manual 2005;
- Floodplain 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, via 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.16-2016-763-1 have not been overcome, it is recommended that this s.82A application for review of determination of DA No.16-2016-763-1 be refused for the reasons detailed within **(ATTACHMENT 2)**.

MINUTES ORDINARY COUNCIL - 1 AUGUST 2017**COMMUNITY STRATEGIC PLAN**

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

FINANCIAL/RESOURCE IMPLICATIONS

The proposed development is inconsistent with the relevant planning instruments and guidelines including; the *Environmental Planning and Assessment Act 1979*, LEP2013, DCP2014 and the NSW Government 2005, 'Floodplain Development Manual'.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes		There is scope within Council's existing budget to defend Council's determination if challenged.
Reserve Funds	No		
Section 94	Yes		Section 94 Contributions would be applicable to the proposed development should Council determine to approve the application.
External Grants	No		
Other	No		

LEGAL, POLICY AND RISK IMPLICATIONS

The development application is not consistent with relevant planning instruments, flood development guidelines and studies including: *The Environmental Planning and Assessment Act 1979 (EP&A Act)*, LEP2013, DCP2014, the Port Stephens Council "Areas Affected by Flooding and/or inundation" Policy, Floodplain Risk Management Policy and Paterson River Floodplain Risk Management Study and Plan 2001, and the NSW Floodplain Development Manual 2005. Detailed responses to the relevant environmental planning instruments are provided within the Assessment report contained within **(ATTACHMENT 3)**.

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

MINUTES ORDINARY COUNCIL - 1 AUGUST 2017

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 that Council's decision will be ultra-vires as cl.7.3 and cl.7.6 PSLEP are preconditions to the granting of consent and have not been satisfied.	Medium	Determine the application in line with the recommendation.	Yes
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 the proposal will expose people and property to risk of damage and death as a consequence of approving residential development in a high hazard floodway.	High	Determine the application in line with the recommendation.	Yes

MINUTES ORDINARY COUNCIL - 1 AUGUST 2017

There is a risk that if 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
There is a risk that if the application is refused, it may be challenged at the Land and Environment Court.	Medium	Defend the refusal of the application in the NSW Land and Environment Court if required.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The social and economic impacts of flooding are well documented. Policies and strategies have been implemented by Council to adequately mitigate the adverse impacts of flooding within the Local Government Area. This includes 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.

The proposal will increase the residential density within a high hazard floodway, increasing the risk to people and property. The 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.

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.

MINUTES ORDINARY COUNCIL - 1 AUGUST 2017Internal

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

On balance, the proposal was not supported due to the following:

- In accordance with PSDCP2014, dwellings within a High Hazard Floodway area are not desirable. The application presents a high safety risk for residents who are likely to become isolated during floods events;
- The applicant has not demonstrated that a suitable On-Site Sewerage Management System (OSMS) solution can be achieved on the site.

External

No external Government stakeholders were consulted.

In accordance with Council's Notification Policy, the s.82A Review of Determination was not required to be notified or advertised.

OPTIONS

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

ATTACHMENTS

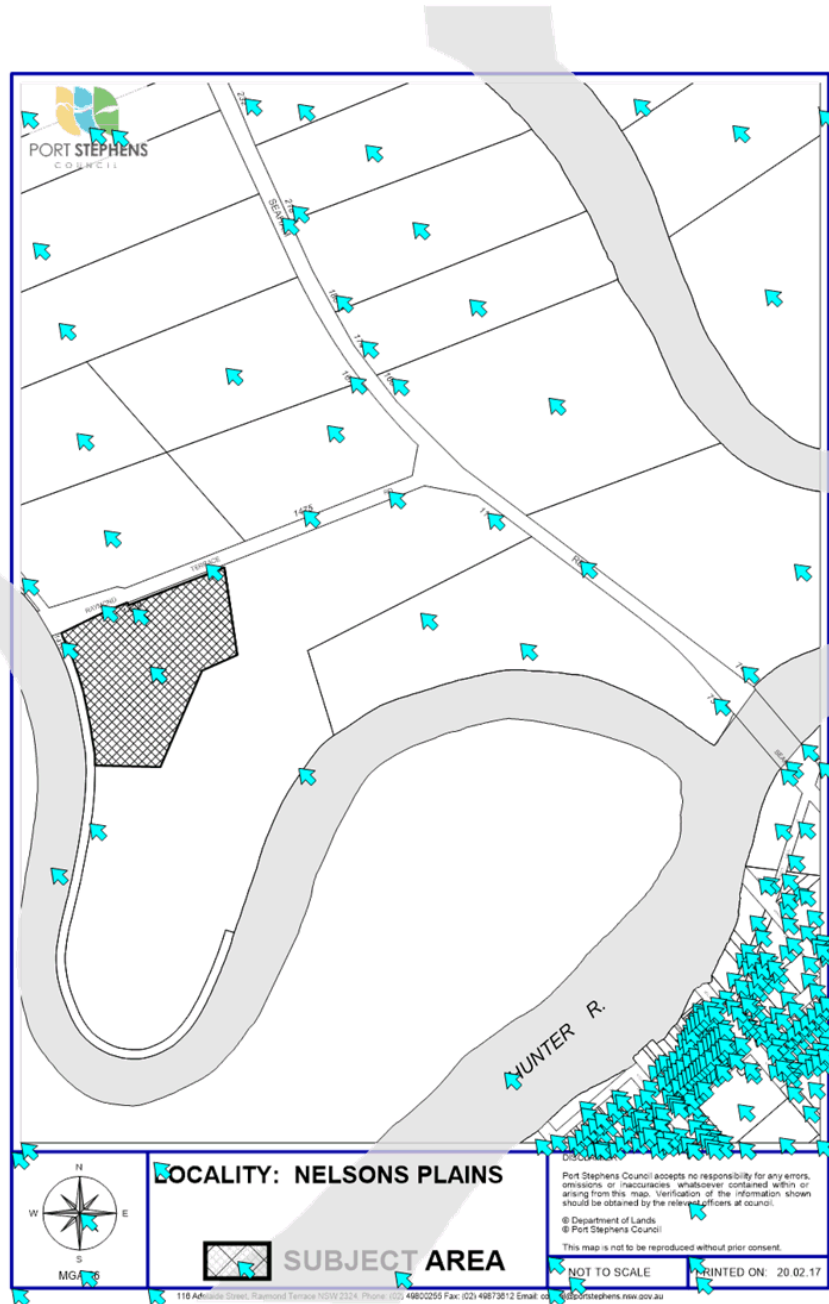
- 1) Locality Plan.
- 2) Reasons for Refusal.
- 3) Section 82A Review of Determination Assessment Report.

COUNCILLORS ROOM

- 1) Development plans and documentation.

TABLED DOCUMENTS

Nil.



REASONS FOR REFUSAL


1. The development is inconsistent with the objectives of the *Environmental Planning and Assessment Act 1979 (EP&A Act)* as the development of land identified as 'high hazard floodway' for residential purposes does not promote the orderly and economic use and development of land (s.5(a)(ii) *EP&A Act 1979*).
2. The development fails to satisfy cl.8(j) State Environmental Planning Policy 71 - Coastal Protection (SEPP No.71) in as the development is likely to be adversely impacted by coastal processes and hazards (s.79C(1)(a)(i) *EP&A Act 1979*);
3. 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 and fails to incorporate measures to manage risk to life and property from flooding (s.79C(1)(a)(i) *EP&A Act 1979*).
4. 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*).
5. The development fails to conform to the controls contained within Port Stephens Development Control Plan 2015 (B5 Flooding) as residential development is identified as incompatible with land classified as 'High Hazard Floodway' (s.79C(1)(a)(i) *EP&A Act 1979*).
6. The development has unacceptable social and economic impacts due to the high risk to life and property associated with locating residential development within a 'High Hazard Floodway' (s.79C(1)(b) *EP&A Act 1979*).
7. The site is not suitable for the development given the flood characteristics of the site (s.79C(1)(c) *EP&A Act 1979*).
8. 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(1)(e) *EP&A Act 1979*).

MINUTES EXTRAORDINARY COUNCIL - 8 AUGUST 2017

ITEM 1 - ATTACHMENT 1 MINUTES FROM 1 AUGUST 2017.

MINUTES ORDINARY COUNCIL - 1 AUGUST 2017

ITEM 6 - ATTACHMENT 3 SECTION 82A REVIEW OF DETERMINATION ASSESSMENT REPORT.

 PORT STEPHENS COUNCIL	DEVELOPMENT ASSESSMENT REPORT
APPLICATION DETAILS	
Application Number	16-2016-763-1 (s.82A Review of Determination)
Development Description	Earthworks (Flood Mound), Detached Dual Occupancy (Incorporating Existing Dwelling) and Ancillary Structure (Shed)
Applicant	LE MOTTEE GROUP PTY LIMITED
Date of Lodgement (s.82A)	20/06/2017
Value of Works	\$240,000.00
Property Address	1428 Raymond Terrace Road NELSONS PLAINS
Lot and DP	LOT: 1 DP: 1202026
Current Use	Rural residential - existing dwelling and ancillary structures on site.
Zoning	RU1 PRIMARY PRODUCTION
Site Constraints	ASS – Class 2 and 3 Flood Prone Land – High Hazard Floodway SEPP 71 – Coastal Protection OEH Referral – HV Flood Mitigation Scheme Prime Agricultural Land
Designated Development	The applicant is not designated development
Integrated Development	Nil. The application does not require additional approvals listed under s.91 of the EP&A Act
Concurrence	The application may require the concurrence of The Office of Environment and Heritage under s.256 (1)(A) of the Water Management Act. Should the application be recommended for approval Conditions of consent could be imposed addressing this matter.
Number of Submissions	N/A
Recommendation	Refusal

Page 1 of 11

MINUTES ORDINARY COUNCIL - 1 AUGUST 2017**ITEM 6 - ATTACHMENT 3 SECTION 82A REVIEW OF DETERMINATION ASSESSMENT REPORT.**

16-2015-221-1

Development Proposal

The application proposes the review of determination (RD) No. 16-2016-763-1 pursuant to s.82A *Environmental Planning and Assessment Act 1979* (EP&A Act).

The application subject to the s.82A RD (DA No. 16-2016-763-1) sought consent for the construction of a flood mound, detached dual occupancy (one existing dwelling) and shed. The proposed flood mound has a total footprint of 4,605m² (approximately 81m x 51m), and is raised to a maximum height of 3.37m above existing ground levels, in order to achieve a finished level of 5.4m AHD.

The proposed single storey dwelling comprises three bedrooms, lounge room, kitchen, laundry and bathroom. The dwelling has a proposed maximum height of 5.24m and a finished floor level of 5.9m AHD. The dwelling is positioned on the northwest portion of the proposed earth mound, roughly 68m south of Raymond Terrace Road and 66m east of the Hunter River.

The proposed shed is located 5m south of the proposed dwelling. The shed will incorporate three bays and one pedestrian door, at a size of 167m². The maximum height of the shed is 5.2m.

Development Application No. 16-2016-763-1 was refused by Council at its meeting of 28 March 2017 for the following reasons:

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

MINUTES ORDINARY COUNCIL - 1 AUGUST 2017**ITEM 6 - ATTACHMENT 3 SECTION 82A REVIEW OF DETERMINATION ASSESSMENT REPORT.**

16-2015-221-1

- life from flood; and is likely to result in unsustainable social and economic costs to the community as a consequence of flooding (s.79C(1)(a)(i) EP&A Act 1979);
5. *The proposed amendments will result in a development that fails to satisfy the provisions of Chapter B5 – Flooding of the Port Stephens Development Control Plan 2014, in that the development is for the provision of housing (s.79C(1)(a)(iii) EP&A Act 1979);*
 6. *Approval of the proposed development within a high hazard floodway will result in unacceptable social or economic impacts (s.79C(1)(b)EP&A Act 1979);*
 7. *The subject site is unsuitable for the proposed residential development as the land is situated within a high hazard floodway. The proposed development will thereby increase risk to people and property (s.79C(1)(c)EP&A Act 1979); and*
 8. *The proposed development would be inconsistent with the adopted principles and strategies which seek to promote the proper management and use of land, promote the social and economic welfare of the community and provide for the orderly and economic use and development of land in an ecologically sustainable manner (s.79C(1)(e)EP&A Act 1979).*

The applicant has sought an s.82A review of determination No. 16-2016-763-1 and has provided the reasons to justify the review of Council's determination, these reasons are summarised below:

- a. The development is permissible within the RU1 Primary Production Zone.
- b. The proposed dual occupancy enables 'practical attendance to agricultural needs' and further that the proposed dwelling provides housing for the owners father which is required for health reasons.
- c. Dwelling houses are located on adjoining properties.
- d. The location of the flood mound will not result in environmental or amenity impacts.
- e. The proposal is consistent with the provisions of SEPP No.71 Coastal Protection.
- f. The flood impact assessment (FIA) prepared by BMT WBM consultants and submitted with the development application concludes that the proposed development will not have any major impact to local flood behaviour. As such, the applicant has demonstrated that the site is suitable for the proposed development.

For further information relating to the applicants reasons please see 'Addendum for s.82A Review of Determination of Development Application' prepared by Le Mottee Group and dated 20 June 2017.

Site Description

The subject site to land located at No.1428 Raymond Terrace Road, Nelson Plains, which is legally identified as Lot 1 DP 1202026. Access to the site is via Raymond Terrace Road. The lot is part of a large land holding that also comprises No. 117 Seaham Road, Nelson Plains (Lot 2 DP 1202026). It is noted that the land at No.117 Seaham Road comprises the majority of the land owner's operation agricultural land.

The subject site is irregular in shape, is approximately 10.07ha in size, and directly adjoins the Hunter River to the west. The site has a frontage of 228.58m to Raymond Terrace Road to the North. The site is located on a floodplain, rural in character and cleared of significant vegetation. The subject site currently contains a dwelling and detached ancillary structures. A flood mound is positioned on the north-west corner of the subject site.

MINUTES EXTRAORDINARY COUNCIL - 8 AUGUST 2017

ITEM 1 - ATTACHMENT 1 MINUTES FROM 1 AUGUST 2017.

MINUTES ORDINARY COUNCIL - 1 AUGUST 2017

ITEM 6 - ATTACHMENT 3 SECTION 82A REVIEW OF DETERMINATION ASSESSMENT REPORT.

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



Fig.1: Aerial image of subject site.

Site Inspection

A site inspection was carried out on 29 June 2017, images of the site as included below.



Img.1-2: Site photos: Existing structures (shed, access and dwelling)

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Img.3: Site photo: Approximate location of proposed dwelling, earthworks and shed (looking west towards Hunter River).

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. Council's Engineering Services Section does not support the proposed development as a result of the incompatibility of the proposed residential development with the flood characteristics of the site. The concerns raised by Engineering Services are discussed further within PSLEP 2013 (see cl.7.3 'Flood Planning') Section of this report.

Environmental Health – Waste Water: The subject site is identified under Council's on-site sewage management solution (OSMS) hazard class mapping as 'high hazard'. The sites rating is likely the result of the proximity of the property to a permanent watercourse (Hunter River) and the flood prone status of the property. Properties with a OSMS hazard class rating of 'high' and 'very high' require a high level assessment of the property and proposed development to ensure the proposed OSMS is suitable and sustainable.

An OSMS assessment report by a suitably qualified person has not been submitted either with the original application (DA 16-2016-763) nor with the s.82A review of determination. The OSMS assessment report is not required to address the specifics of the proposed system as this can be addressed at a later date under an s.96 Approval, yet the information provided to date has not satisfactorily demonstrated that an acceptable OSMS can be achieved on the site.

The applicant has not demonstrate that 'the disposal and management of sewage' can be satisfactorily catered for at the subject site, accordingly the proposal fails to comply with cl.7.6 (1)(c) 'Essential Services' PSLEP2013.

Building Surveyor: No objections were made and the application was supported subject to conditions of consent.

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Section 94 Officer: Should Council determine to approve the application a monetary contribution of \$14,931.00 is applicable under Council's s.94 Contributions Plan. Section 94 contributions are levied as a condition of development consent.

External Referrals

Council staff are recommending refusal of the s.82A review of determination and as such the s.82A application was not referred to external agencies for comment. In accordance with s.79B (1) *EP&A Act 1979* consultation with concurrence bodies is not required where a consent authority determines to refuse to grant development consent.

Notwithstanding, should Council determine to approve the application a condition of consent can be imposed addressing approval requirements under s. 256(1)(A) *Water Management Act 2000*.

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 (SEPP No.55)**

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.

State Environmental Planning Policy No 71—Coastal Protection (SEPP No.71)

The proposed development is located in the coastal zone and accordingly cl. 8 matters for consideration require assessment under the s.82A review of determination (s.82A RD). In this regard it has been determined that the proposed development is not likely to have an adverse impact on the ecology, culture or amenity of the foreshore and coastal waters as the development is residential in nature and sufficiently separated from the waterway (Hunter River). In addition, given the separation of the development from the waterway, there are no anticipated impacts on access to, or views to or from the waterway and foreshore area. Furthermore, the development is not considered likely to result in conflict between the proposed land use and the use of the waterway.

However, cl.8(j) requires the consent authority to assess the likely impact of coastal processes and coastal hazards on a proposed development. The subject development will be subject to coastal hazards derived from the flood characteristics of the site. The assessment of the s.82A (RD) has identified that the proposed development is likely to be adversely impacted by coastal processes and hazards. As such, the development is inconsistent with the aims and provisions of SEPP No.71 and cannot be supported. The additional information provided by the applicant has not demonstrated that the development shall not be impacted by coastal processes and coastal hazards.

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State Environmental Planning Policy (BASIX) 2004 (SEPP BASIX)

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

Port Stephens Local Environmental Plan 2013 (LEP)

Clause 4.1 Land use zones: The proposed development is defined as 'Dual Occupancy, Earthworks and Ancillary Structure' 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 5.23 metres from the top of the proposed earth works, the overall height of the proposed development from natural ground level is approx. 8.3metres (building height and height of earthworks).

Clause 5.5 – Development within the Coastal Zone: The proposed development is located within the coastal zone and fails to satisfy cl.5.5(3)(d)(i) as the subject development the subject development is likely to be adversely impacted by coastal hazards derived from the flood characteristics of the site. On this basis development consent cannot be granted to the proposed development.

Clause 7.1 Acid Sulfate Soils: The subject site is identified as Class 2 and 3 acid sulfate soils (ASS). The proposed development is wholly located on land classified as Class 2 ASS. The proposed dwelling, shed and flood mound (earthworks) are not anticipated to adversely impact on ASS occurring on-site. However, the OSMS associated with the proposed dwelling may require excavation below existing ground level and these works could potentially disturb ASS occurring on-site. Should Council determine to approve the development this matter could be addressed through a condition of consent.

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 to achieve a level building platform above the flood planning level, the proposed earthworks have a footprint of 4,605m², top of mound measuring 31.7m by 47.47m, and a maximum height of 3.37m. Consideration has been given to cl.7.2(3); including the proposed earthworks likely impact upon; drainage, soil stability, adjoining properties, relics, and waterways.

The proposal is unlikely to disrupt drainage patterns, impact potential future development on-site and, unlikely to disturb any relics. The applicants FIA has demonstrated that the proposed earthworks are not likely to result in adverse impacts to local flooding characteristics, the assessment undertaken by Engineering Services confirms this.

However, it has been determined that there is a risk of mound or embankment failure due to seepage / saturation induced by temporary or occasional impoundment of water around the earthworks during flood events. Insufficient information was provided with the application demonstrating that the proposed earthworks are capable of withstanding actual localised velocity and shear velocities for saturated soil. Furthermore, velocities of floodwaters around the base of the mound will have the potential to result in scour and erosion to the earthworks. Details of scour protection measures required to mitigate

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localised and shear flood velocities based on saturated soil predictions for the site have not been provided.

The extent of fill proposed to facilitate residential development on the site is excessive, further the applicant has not demonstrated that the earthworks can withstand failure during flood events. For these reasons the proposed earthworks are not considered to satisfy cl.7.2 and are 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 subject development is located on land mapped as being within the flood planning area and categorised as High Hazard Floodway. The High Hazard Floodway categorisation is as a result of the very deep moving water, which traverses the site during flood events. The Flood Planning Level (FPL) for the site is 5.9m AHD for habitable dwellings and the Probable Maximum Flood (PMF) for the site is 8.8m AHD. The provisions of cl.7.3 apply to the assessment of the proposed development.

Clause 7.3(3)(a) stipulates that development consent must not be granted to development unless the development is compatible with the flood hazard of the land. The finished floor level (FFL) of the proposed dwelling is 5.9m AHD which satisfies the minimum FFL requirements based on the FPL for the site. It has also been identified that the proposal satisfies the hydrological requirements of the site based upon the peak depth of flood water across the site (approx.2-3m) and peak velocities modelled across the site (0.4m/s to 0.7m/s).

Notwithstanding, the proposed development is not considered to be compatible with the flood hazard of the land due to the substantial safety risk associated with the development of 'High Hazard Floodway' for the purpose of residential development. It is identified that the maximum flood heights in this particular location are known to last for numerous days. For example, in the 2007 'Pasha Bulka' flood event the flood waters maintained a 'maximum height' for approximately four days at the subject location. It took several further days for the flood waters to abate. The proposal does therefore not satisfy cl.7.3(3)(a).

The flood impact assessment prepared by BMT WBM dated 5 June 2017 demonstrates that the proposed development will not have a substantial impact on the local flood characteristics (cl.7.3(3)(b)). It is not anticipated that the proposal will impact adversely impact the environment (cl.7.3(3)(d)).

However, the subject site will essentially become an isolated 'island' during flood events with no reasonable escape route. The applicant has not provided an emergency response plan was provided. Regardless, it is unlikely that the applicant could provide an evacuation plan demonstrating further inhabitants can achieve safe egress during flood events as the sites most likely route of escape (Seaham Road) is also classified as a High Hazard Floodway during significant floods and likely to be dangerous and not trafficable once flood waters rise. The development does not incorporate appropriate measure to manage risk to life from flood, accordingly cl.7.3(3)(c) has not been satisfied.

In addition, Council's Development Control Plan 2014 clearly identifies that residential development is not appropriate within 'High Hazard Floodway' due to the safety risk for potential residents who may find themselves trapped and in danger during flood events. Residential development within this hazard category is not sustainable and will result in social and economic costs to the community; such as loss of life/property and strain to State Emergency Services (SES) resources by way of additional demand on property protection, rescue and evacuation. The development fails to satisfy cl.7.3(3)(e).

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The development is not compatible with the lands flood hazard and will result in an unacceptable risk, therefore it cannot be supported. The development fails to satisfy the provisions of cl.7.3 'Flood Planning'. Further, the proposed development is inconsistent with the NSW Floodplain Development Manual 2005 and Floodplain Risk Management Policy (adopted 8 March 2016).

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.

It is considered that the land has connections to both reticulated water and electricity services. The site has an existing access driveway to Raymond Terrace Road.

The development also requires onsite waste water treatment system and the applicant has failed to demonstrate that a suitable OSMS can be accommodated on site taking into account the flood characteristics of the land. As a result of the insufficient information pertaining to this matter cl.7.6 has not been satisfied.

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

The proposed development is located within the RU1 Primary Production Zone. Clause 7.15 requires that Dual Occupancy development located within the RU1 Zone be designed / sited to give the appearance of a single development. The clause also requires that dwellings use shared facilities including access and essential services and ancillary buildings are to be located in close proximity to the dwellings. The proposed development is considered to satisfy cl.7.15 as the proposal will be viewed as a single development where viewed from Raymond Terrace Road and shall share facilities with the existing dwelling located on site including; driveway and electricity and water services.

s79C(1)(a)(ii) – Any draft EPI

Draft State Environmental Planning Policy (Coastal Management) 2016

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

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

s79C(1)(a)(iii) – Any DCP

Port Stephens Development Control Plan 2014

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

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: The extent of earthworks proposed is not supported. Refer to cl.7.2 LEP2013 discussion above for discussion.

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B5 – Flooding: The subject site is has been classified as High Hazard Floodway (refer to cl.7.3 LEP2013 discussion above). 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 identifies that residential development within a 'High Hazard Floodway' is not encouraged. The DCP outlines that an application may only be considered where it demonstrated to have specific community needs/benefits, which does not relate to the provision of housing.

Section C - Single and Dual Occupancy Dwellings

C4.7 Site Coverage: The development is located upon rural land and 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 is approx. 8.3m above natural ground due to the amount of fill required to build above the 1% AEP level. The proposed building height is not inconsistent with C4.9.

C4.F Setback: The proposal complies with the setback requirements. A 53m front setback has been provided to Raymond Terrace Road. A 43.4m side setback to the western boundary (Hunter River) and 154metre rear setback has also been provided.

C4.16 Setback of Garages: The proposed detached shed and garaging is setback 5m behind the proposed dwelling. The development complies with C4.16.

C4.23 Private open space (POS): Adequate open space is provided to cater for both the existing and proposed dwelling. The development exceeds the minimum POS requirements.

C4.24 Solar Access: Both the existing and proposed dwellings exceed the minimum solar access requirements of 2hrs of sunlight to POS between the hours of 9am and 3pm in mid-winter.

C4.32 Ancillary shed on rural land: The proposed ancillary rural shed (and garaging) is setback 5m from adjoining buildings and a minimum of 43m from the site and rear property boundaries. The location of the proposed shed complies with C4.32.

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 proposed development is also likely to result in unacceptable demand to SES resources. The social and economic impacts of the development are unacceptable. The development is recommended for refusal, the original determination outcome was correctly made.

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

There site is physically constrained by flooding and is considered unsuitable for the proposed development. Land classified as 'high hazard floodway' is not compatible with residential 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. The development is not within the public interest.

Conclusion

The s.82A Review of Determination has determined that the proposed development should not be supported. The original determination which resulted in the refusal of the Development Application was correctly made. Council staff recommend that the Council determine to refuse the s.82A Review of Determination in accordance with the provided reasons for refusal.

NOTICE OF RESCISSION

ITEM NO. 2

FILE NO: 17/152649

RM8 REF NO: 16-2016-867-1

**SECTION 82A APPLICATION FOR REVIEW OF DETERMINATION
DEVELOPMENT APPLICATION NO.16-2016-867-1 FOR FLOOD MOUND AND
SINGLE STOREY DWELLING AT 174 SEAHAM ROAD, NELSONS PLAINS (LOT
33, DP 609041)**

COUNCILLOR: GEOFF DINGLE
PETER KAHER
JOHN NELL

THAT COUNCIL:

Rescind its decision of 1 August 2017 on Item No. 7 - Section 82A application for review of determination development application No. 16-2016-867-1 for flood mound and single storey dwelling at 174 Seaham Road, Nelsons Plains (lot 33, DP 609041).

**EXTRAORDINARY COUNCIL MEETING - 8 AUGUST 2017
MOTION**

	<p>Councillor Geoff Dingle Councillor John Nell</p> <p>That Council rescind its decision of 1 August 2017 on Item No. 7 - Section 82A application for review of determination development application No. 16-2016-867-1 for flood mound and single storey dwelling at 174 Seaham Road, Nelsons Plains (lot 33, DP 609041).</p>
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In accordance with Section 375 (A) of the *Local Government Act 1993*, a division is required for this item.

Those for the Motion: Crs Geoff Dingle, Ken Jordan and John Nell.

Those against the Motion: Mayor Bruce MacKenzie, Crs Chris Doohan, Sally Dover and Steve Tucker.

The motion was lost.

ATTACHMENTS

- 1) Minutes 1 August 2017.

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ITEM NO. 7

FILE NO: 17/146391
RM8 REF NO: 16-2016-867-1

**SECTION 82A APPLICATION FOR REVIEW OF DETERMINATION
DEVELOPMENT APPLICATION NO.16-2016-867-1 FOR FLOOD MOUND AND
SINGLE STOREY DWELLING AT 174 SEAHAM ROAD NELSON PLAINS (LOT:33
DP: 609041).**

REPORT OF: MICHAEL MCINTOSH - GROUP MANAGER DEVELOPMENT
SERVICES
GROUP: DEVELOPMENT SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Refuse Section 82A Application for review of determination of Development Application (DA) number (No.) 16-2016-867-1 for a flood mound and single storey dwelling at 174 Seaham Road, Nelson Plains (Lot: 33 DP: 609041) for the reasons contained in (**ATTACHMENT 3**).

**ORDINARY COUNCIL MEETING - 1 AUGUST 2017
MOTION**

	Councillor John Nell Councillor Peter Kafer That Council refuse Section 82A Application for review of determination of Development Application (DA) number (No.) 16-2016-867-1 for a flood mound and single storey dwelling at 174 Seaham Road, Nelson Plains (Lot: 33 DP: 609041) for the reasons contained in (ATTACHMENT 3).
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In accordance with Section 375 (A) of the *Local Government Act 1993*, a division is required for this item.

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

Those against the Motion: Mayor Bruce MacKenzie, Crs Chris Doohan, Sally Dover and Steve Tucker.

The motion was lost.

**ORDINARY COUNCIL MEETING - 1 AUGUST 2017
MOTION**

193	Mayor Bruce MacKenzie
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Councillor Chris Doohan

It was resolved that Council approve Section 82A Application for review of determination of Development Application (DA) number (No.) 16-2016-867-1 for a flood mound and single storey dwelling at 174 Seaham Road, Nelson Plains (Lot: 33 DP: 609041) in accordance with the conditions listed below:

CONDITIONS THAT IDENTIFY APPROVED PLANS AND LIMITATIONS OF CONSENT

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

Plan/Doc. Title	Plan Ref. No	Sheet.	Date	Drawn By
Plan of Proposed Mound (1 Sheet)	6562 Mound-B	1 of 1	24/10/2016	Le Mottee Group
Proposed Brick Veneer Residence (7 Sheets)	16116	1 to 7 of 7	05/12/2016	Valley Homes

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

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

CONDITIONS TO BE SATISFIED PRIOR TO DEMOLITION, EXCAVATION OR CONSTRUCTION

3. **Prior to the commencement of work**, for any residential building work within the meaning of the *Home Building Act* 1989, (the HB Act) except for Crown building works certified in accordance with section 109R of the Act, the principal certifying authority must provide to the Council (unless Council is the principal certifying authority) a written notice of:

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	<p>a. In the case where a principle contractor is required to be appointed, the name and licence number of the principal contractor and the name of the insurer by which the work is insured under the HB Act;</p> <p>b. In the case of work to be done by an owner builder, the name of the owner-builder and their permit number if required under the HB Act.</p>
4.	<p>Prior to the commencement of works, a waste containment facility is to be established on site. The facility is to be regularly emptied, and maintained for the duration of works. No rubbish shall be stockpiled in a manner which facilitates the rubbish to be blown or washed off site. The site shall be cleared of all building refuse and spoil immediately upon completion of the development.</p>
5.	<p>Prior to the commencement of works, the property shall be protected against soil erosion, such that sediment is not carried from the construction site by the action of stormwater, wind or "vehicle tracking". Protection measures may include erosion and sedimentation controls as required. All protection measures are to be installed to the satisfaction of Council prior to the commencement of works, and regularly maintained for the duration of works and until the site is stabilised by vegetation or the like.</p>
6.	<p>Prior to the commencement of works, a 3m wide all-weather vehicle access from the kerb and gutter to the building under construction is to be provided for the delivery of materials and trades. Sand shall not be stockpiled on the all-weather vehicle access.</p>
	<p>CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE</p>
7.	<p>The finished floor level of all habitable areas shall be a minimum of 5.9m AHD. Design details shall be submitted to the Certifying Authority for approval prior to the issue of a Construction Certificate. During works, a survey certificate verifying compliance with this condition shall be provided to the Certifying Authority as soon as practical on completion of the floor level.</p>
8.	<p>Prior to the issue of a Construction Certificate, a geotechnical engineer assessment of the mound foundation suitability, in respect of the approved structures, must be provided to the Certifying Authority for assessment and determined to be satisfactory by the Certifying Authority.</p>
9.	<p>Prior to the issue of a Construction Certificate, an application is to be lodged and approved by Council under section 68 of the <i>Local Government Act 1993</i> for the installation of an on-site sewage management system.</p>
10.	<p>Prior to the issue of the Construction Certificate, detailed engineering plans for civil works are to be submitted to and approved by the Certifying Authority. The detailed plans are to be in accordance with Council's Infrastructure Specification and include the following information:-</p>

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- a. The access ramp showing the grades, changes in grade and dimensions, which are to adhere to the requirements of AS 2890.
 - b. Details of the driveway showing compliance with the requirements of the NSW Rural Fire Service 'Planning for Bushfire Protection'.
 - c. A concrete dish crossing in accordance with Council's Standard Drawing No. S106. Where driveway grades do not permit a dish crossing, a driveway application is to be submitted so that Council can nominate a pipe size and invert levels.
11. The shape, volume and location of the mound is to be in accordance with the submitted plans. The final pad shape, levels and location will be confirmed by the submission of a Survey Plan prepared by a practising registered surveyor to show the existing natural ground contour levels, the full extent and degree of the fill, and finished ground contour levels and cross sections indicating the depth of fill prior to the commencement of use.
12. The development shall be constructed in accordance with the NSW Government Floodplain Management Manual (2005). The following design precautions must be adhered to:-
- a. The floor level of any habitable room is to be located at a height not less than the Flood Planning Level (FPL), which is 5.9m AHD.
 - b. No potentially hazardous or offensive material is to be stored on site that could cause water contamination during floods.
 - c. All building materials, equipment, ducting etc. below the FPL shall be flood compatible.
 - d. All main power supply, heating and air conditioning service installations, including meters, shall be located above the FPL.
 - e. All electrical wiring below the FPL shall be suitable for continuous submergence in water. All conduits below the FPL shall be self-draining. Earth core leakage systems or safety switched are to be installed.
 - f. All electrical equipment installed below the FPL shall be capable of disconnection by a single plug from the power supply.
 - g. Where heating equipment and fuel storage tanks are not feasible to be located above the FPL, then they shall be designed for continuous submergence in water and securely anchored to overcome buoyancy and movement that may damage supply lines. All storage tanks shall be vented to an elevation above the FPL.
 - h. All ducting below the FPL shall be provided with opening for drainage and cleaning.

Details of the above information are to be submitted to the satisfaction of the Certifying Authority **prior to the issue of the Construction Certificate.**

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13. **Prior to the issue of the Construction Certificate**, a structural engineer shall provide certification to Council that all building structures and earth mounds are able to withstand the hydrostatic and hydrodynamic flood forces, including debris impact and buoyancy uplift for the 1% AEP flood (**4.9m AHD**).
 14. A flood management plan which covers evacuation and the provision of emergency food, medical supplies, power/communication, water and effluent disposal etc. incorporating the SES Business Floodsafe Toolkit, shall be submitted and approved by Council **prior to the issue of the Construction Certificate**.
 15. **A Construction Certificate cannot be issued** until full details of the stormwater drainage design have been provided to the Certifying Authority for assessment and determined to be satisfactory by the Certifying Authority.
- CONDITIONS TO BE SATISFIED DURING THE DEMOLITION, EXCAVATION AND CONSTRUCTION PHASES**
16. All building work must be carried out in accordance with the provisions of the Building Code of Australia.
 17. Construction work that is likely to cause annoyance due to noise is to be restricted to the following times:
 - Monday to Saturday, 7am to 5pm;
 - no construction work to take place on Sunday or Public Holidays.

When the construction site is in operation the L10 level measured over a period of not less than 15 minutes must not exceed the background by more than 10dB(A). All possible steps should be taken to silence construction site equipment.
 18. All excavated and/or filled areas are to be retained or battered and suitably drained so as to prevent any subsidence of the surrounding land and constructed so as to deny any flow of water into or around the building or neighbouring buildings or onto neighbouring land.
 19. Immediately following completion of the earthworks and prior to the commencement of use or storage of materials on the mound;
 - d) The final pad shape, levels and location will be confirmed by the submission of a detailed survey plan prepared by a Registered Surveyor. The detailed survey plan shall be provided to Council within 14 days of completion.
 - e) The mound is to be top dressed and seeded with fast growing grasses.
 - f) Adequate scour protection shall be provided to the mound, designed by a suitable qualified engineer to withstand the velocities in major

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	<p>flood events.</p> <p>20. Filling associated with the construction of the flood mound, shall not obstruct any natural drainage path or water drainage system. The mound must have batter slopes no steeper than 1 (vertical) to 4 (horizontal). Batter slopes are to be fully contained within the subject property.</p> <p>21. Dust suppression is to be actively undertaken during works, through the use of wet-down water tankers or an alternative method agreed by Council.</p> <p>22. The only fill material that may be received at the development site is:</p> <p>c) Virgin excavated natural material (VENM) within the meaning of the Protection of the Environment Operations Act 1997 (POEO); or</p> <p>d) Any other waste-derived material the subject of a resource recovery exemption under s.91 of the Protection of the Environment Operations (Waste) Regulation 2014 that is permitted to be used as fill material.</p> <p>Any waste-derived fill material the subject of a resource recovery exemption received at the development site must be accompanied by documentation as to the material's compliance with the exemption conditions and must be provided to the Principal Certifying Authority.</p> <p>23. Where no sanitary facilities currently exist onsite for construction workers toilet accommodation for all tradespersons shall be provided from the time of commencement until the building is complete.</p> <p>24. It is the responsibility of the applicant to erect a PCA sign (where Council is the PCA, the sign is available from Council's Administration Building at Raymond Terrace or the Tomaree Library at Salamander Bay free of charge). The applicant is to ensure the PCA sign remains in position for the duration of works.</p> <p>CONDITIONS TO BE SATISFIED PRIOR TO ISSUE OF AN OCCUPATION CERTIFICATE</p> <p>25. The development shall be constructed in accordance with the stated values of the BASIX certificate 782250S submitted with the application. Prior to the issue of the Occupation Certificate, an appropriately qualified person shall certify compliance with those requirements and provide documentary evidence to the Principle Certifying Authority.</p> <p>26. Prior to the issue of an Occupation Certificate, a survey certificate shall be provided to the Certifying Authority verifying the finished levels of habitable rooms comply with the FPL of 5.9m AHD.</p>
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| | <p>27. All civil engineering works shall be carried out in accordance with the Construction Certificate and Council's Design and Construction Specification, Policies and Standards, to the satisfaction of Certifying Authority prior to the issue of the Occupation Certificate.</p> <p>28. Prior to the issue of any Occupation Certificate, an on-site sewage management system is to be installed and a satisfactory final inspection completed by Council.</p> <p>CONDITIONS TO BE SATISFIED AT ALL TIMES</p> <p>29. The stormwater system, including any water quality, quantity or infiltration components, shall be maintained in perpetuity for the life of the development.</p> <p>30. Filling shall not obstruct any natural drainage path or water drainage system. Neither shall the fill encroach onto any adjoining property.</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 Chris Doohan, Sally Dover and Steve Tucker.

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

BACKGROUND

The purpose of this report is to present a Section 82A application for 'Review of Determination' (RD) of Development Application (DA) No. 16-2016-867-1 to Council for determination. As prescribed under Section 82B of the *Environmental Planning and Assessment (EP&A) Act 1979*, the 82A review must be conducted by Council as Council determined the development application.

After a detailed assessment, the 82A review has concluded the same recommendation as the initial assessment in that the development cannot be supported, for reasons contained in **(ATTACHMENT 3)**.

Assessments 82A Review of Determination DA No. 16-2015-221-1

The application subject to the s.82A RD (DA No. 16-2016-867-1) sought consent for a flood mound and the construction of a single storey dwelling at 174 Seaham Road, Nelsons Plains. A locality plan has been included as **(ATTACHMENT 1)** to this report. The original application was refused by Council on 28 March 2017 for the following reasons:

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- a) The development is not in the public interest (s79C(e)) *Environmental Planning and Assessment Act 1979* given the likely significant adverse impacts on the flood behaviour, property and environment that may result;
- b) The development fails to satisfy cl.7.3 Port Stephens Council Local Environmental Plan 2013 (LEP) as the development is not compatible with the flood hazard of the land (s.79C (1)(a)(i) *Environmental Planning & Assessment Act 1979*).

The applicant has sought a review of the application (DA No. 16-2016-867-1) due to the following reasons:

- a) A dwelling is a use which is permitted with consent under Port Stephens Local Environmental Plan (2013);
- b) The proposed dwelling will make for practical attendance to agricultural needs;
- c) A number of dwelling houses exist in the locality and so the development would not be out of character;
- d) The flood mound has been strategically positioned in the most practical and environmental friendly location and will not impact on the amenity of the locality;
- e) The flood impact assessment lodged with the original application concluded that the proposed development will not have a major impact on the local flood behaviour within the site or neighbouring properties;
- f) The proposed development is considered to be appropriate for the site.

Proposal

The application (DA No. 16-2015-867-1) sought consent for a flood mound and the construction of a single story four bedroom dwelling. The dwelling is proposed to be constructed with a finished floor level (FFL) of 5.9AHD. The flood mound has a total footprint of 8557sqm (approximately 77m x 119m). The mound will be raised a maximum of 4.47m above the existing site levels to achieve a finished level of RL 5.9m.

The proposed dwelling will be positioned in the centre portion of the proposed flood mound, roughly 100m from the Williams River and 430m from Seaham Road. The dwelling is single story, 440sqm in size and will consist of four bedrooms, living room, kitchen, laundry and bathroom. The maximum height of the dwelling is 5.9m. It is noted that no amendments to development plans submitted with the original development application were identified.

The fibro shed and metal shed will be required to be demolished to facilitate the proposed development. The applicant informed Council that the demolition of the existing structures is exempt development as prescribed under *State Environmental Planning Policy (Exempt and Complying Development) 2008*.

MINUTES ORDINARY COUNCIL - 1 AUGUST 2017Assessment Outcomes

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

The proposal was assessed against relevant controls and objectives as specified under, State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004, Port Stephens Local Environmental Plan (LEP2013) and Port Stephens Development Control Plan 2014 (DCP2014). Under both the current and proposed DCP, dwellings are not supported in high hazard flood ways.

A detailed assessment of the proposed development has been carried out against the requirements of the *EP&A Act 1979* and has been included as **(ATTACHMENT 2)** to this report.

Key IssuesFlood classification

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

- Flood Planning Level (FPL) – 5.9m AHD;
- 1% AEP – 4.9m AHD;
- 1% in 2100 – 5.4m AHD;
- Probable Maximum Flood Level (PMF) – 8.7m AHD.

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

- 1) Section 5 of the *Environmental Planning and Assessment (EP&A) Act 1979* as it relates to the social and economic welfare of the community, the orderly development of land and ecological sustainable development.
- 2) Section 79C of the *Environmental Planning and Assessment (EP&A) Act 1979*
 - a) Clause 7.3(3) of the Port Stephens Local Environmental Plan 2013 (LEP2013) – in that residential development is not considered compatible with the high hazard flood risk applicable to the land. Appropriate mitigation measures have not been incorporated to manage risk to life and flood. Therefore, it is considered that the development will result in unsustainable social and economic costs to the community as a consequence of flooding in the future;
 - b) The subject site is unsuitable for the proposed residential development as the land is situated within a high hazard floodway. The proposed development will thereby increase risk to people and property.

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- c) Chapter B5 – Flooding of the Port Stephens Development Control Plan 2014 (DCP2014). The development is for the provision of housing and as specified by DCP2014 is not supported in a High Hazard Floodway.

COMMUNITY STRATEGIC PLAN

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

FINANCIAL/RESOURCE IMPLICATIONS

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

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

LEGAL, POLICY AND RISK IMPLICATIONS

The development application is not consistent with relevant planning instruments, flood development guidelines and studies including: *The Environmental Planning and Assessment Act 1979 (EP&A Act)*, LEP2013, DCP2014, the Port Stephens Council "Areas Affected by Flooding and/or inundation" Policy, Floodplain Risk Management Policy and Paterson River Floodplain Risk Management Study and Plan 2001, and the NSW Floodplain Development Manual 2005.

Section 733 *Local Government Act 1993* provides Council with a general exemption from liability with respect to flood liable land. However, this exemption is only applicable 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 provisions.

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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 the proposal will expose people and property to risk of damage and death as a consequence of approving residential development in a high hazard floodway.	High	Determine the application in line with the recommendation and refuse the application.	Yes
There is a risk that if the application is refused, it may be challenged at the Land and Environment Court.	Medium	Defend the refusal of the application in the NSW land and Environment Court if required.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

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

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

Other than the flood impacts, no other significant impacts to the built and natural environment have been identified.

CONSULTATION

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

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

Internal

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

On balance, the DA was not supported due to the following:

- In accordance with PSDCP2014, dwellings within a High Hazard Floodway area are not desirable. The application presents a high safety risk for residents who become isolated during floods events;
- The site is nominated as a high hazard rating in regards to On-Site Sewerage Management System (OSMS). Council Environmental Health officer requested a statement from a suitably qualified person outlining that an acceptable waste management solution is achievable on site. As the application is recommended for refusal, the additional information was not requested from the applicant.

External

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

OPTIONS

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

ATTACHMENTS

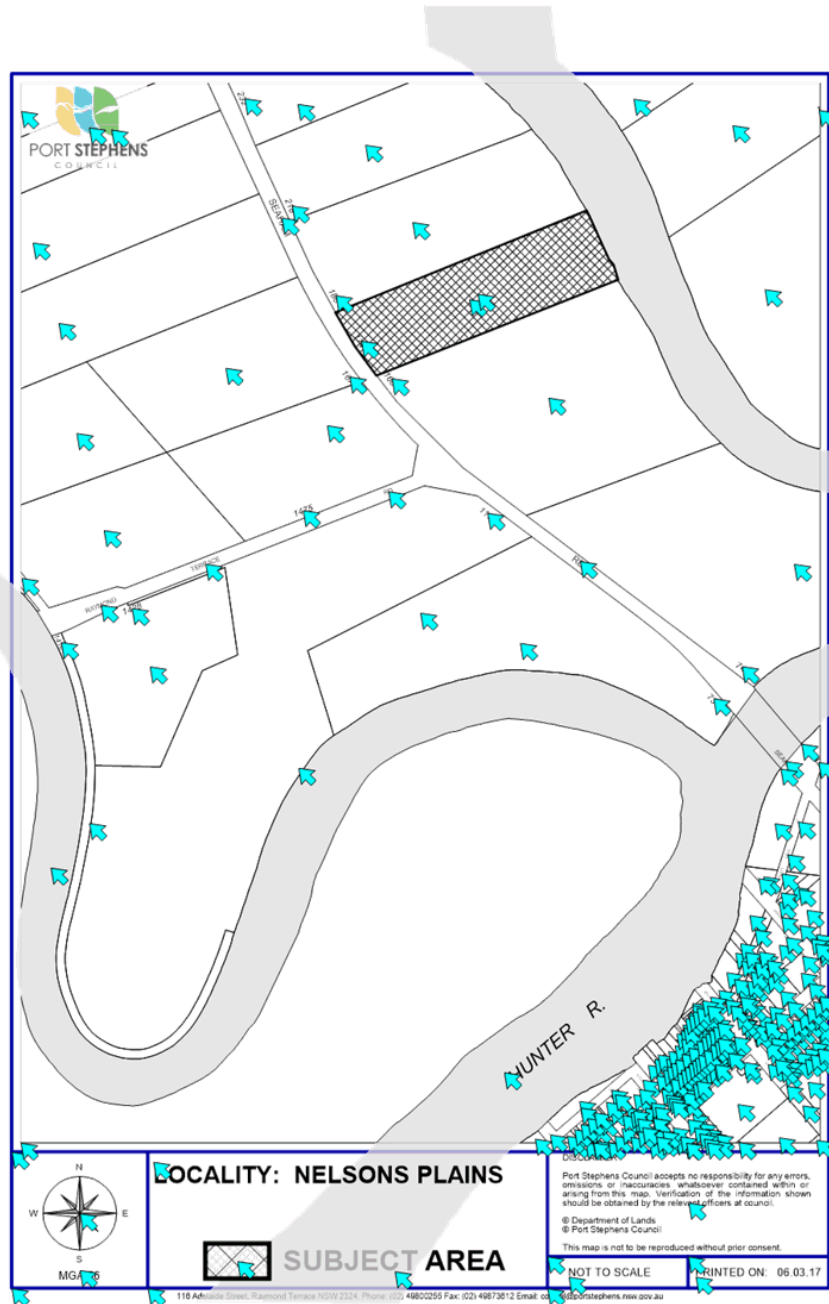
- 1) Locailty Plan.
- 2) Planners Assessment Report (82A Review) .
- 3) Reasons For Refusal.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.



MINUTES ORDINARY COUNCIL - 1 AUGUST 2017**ITEM 7 - ATTACHMENT 2 PLANNERS ASSESSMENT REPORT (82A REVIEW)****APPLICATION DETAILS**

Application Number	16-2016-867-1
Development Description	Flood Mound and Single Story Dwelling
Applicant	LE MOTTEE GROUP PTY LIMITED
Date of Lodgement	02/01/2016
Value of Works	\$550,000.00
Property Address	174 Seaham Road, Nelson Plains
Lot and DP	LOT: 33 DP: 609041
Current Use	Rural
Zoning	RU1 PRIMARY PRODUCTION
Site Constraints	Flood prone land (high hazard floodway) OEH Referral – HV Flood Mitigation Scheme (Levee) ASS Class's 2, and 3. SEPP 71 – Coastal Protection Prime Agricultural Land
Integrated Development	Nil.
Number of Submissions	N/A
Recommendation	Refusal

S82A – Review of Determination

The application proposes the review of determination No. 16-2016-867-1 pursuant to s.82A *Environmental Planning and Assessment Act 1979* (EP&A Act). In accordance with s.82B with the EP&A Act, the 82A review must be conducted by Council as Council determined the development application. The original application was refused by Council on 28 March 2017 for the following reasons:

- a. The development is not in the public interest (s79C(e)) *Environmental Planning and Assessment Act 1979* given the likely significant adverse impacts on the flood behaviour, property and environment that may result.
- b. The development fails to satisfy cl.7.3 Port Stephens Council Local Environmental Plan 2013 (LEP) as the development is not compatible with the flood hazard of the land (s.79C (1)(a)(i) *Environmental Planning & Assessment Act 1979*).

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The applicant has sought a review of the application (DA No.16-2016-867-1) due to the following reasons:

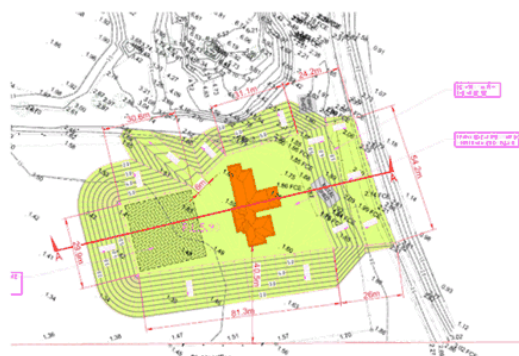
- a. A dwelling is a use which is permitted with consent under Port Stephens Local Environmental Plan (2013)
- b. The proposed dwelling will make for practical attendance to agricultural needs
- c. A number of dwelling houses are existing in the locality and noted that the development would not be out of character.
- d. The flood mound has been strategically positioned in the most practical and environmental friendly location and will not impact on the amenity of the locality.
- e. The flood impact assessment lodged with original application concluded that the proposed development will not have a major impact on the local flood behaviour within the site or neighbouring properties.
- f. The proposed development is considered to be appropriate for the site.

Development Proposal

The application (DA No.16-2015-867-1) sought consent for a flood mound and the construction of a single story four bedroom dwelling. The dwelling is proposed to be constructed with a finished floor level (FFL) of 5.9AHD. The flood mound has a total footprint of 8557sqm (approximately 77m x 119m). The mound will be raised a maximum of 4.47m above the existing site levels to achieve a finished level of RL 5.9m.

The proposed dwelling will be positioned in the centre portion of the proposed flood mound, roughly 100m from the Williams River and 430m from Seaham Road. The dwelling is single story, 440sqm in size and will consist of four bedrooms, living room, kitchen, laundry and bathroom. The maximum height of the dwelling is 5.9m.

The fibro shed and metal shed will be required to be demolished to facilitate the proposed development. The applicant informed Council that the demolition of the existing structures is exempt development as prescribed under *State Environmental Planning Policy (Exempt and Complying Development) 2008*.



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Site Description

The subject site is located at No.174 Seaham Road, Nelson Plains which is legally identified as Lot: 33 DP609. Access to the development site is via a driveway roughly 430m in length from Seaham Road. The site is rectangular in shape with a street frontage of 163m with relatively flat topography. A flood levee is constructed to the east of the subject development adjoining the Williams River. A Fibro Shed and Metal Shed are located on the subject site and will be required to be demolished to facilitate the proposed development.



Figure 2: The subject site.

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

- Flood Planning Level (FPL) – 5.9m AHD
- 1% AEP – 4.9m AHD
- 1% in 2100 – 5.4m AHD
- Probable Maximum Flood Level (PMF) – 8.7m AHD

Site Inspection

A site inspection was carried out on 29 June 2017.

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Figure 3: Subject site



Figure 4: Looking towards Seaham Road

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Figure 5: Approximant 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 Engineer – The application was referred to Council's Development Engineering section for comment. The Flood Engineers did not support the location of the proposed dwelling within the high hazard floodway. Council's DCP2014 outlines that development within a floodway is not encouraged. An application may only be considered where it demonstrated to have specific community needs/benefits, which does not relate to the provision of housing. Further discussion regarding the flooding issues has been provided below.

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

Environmental Health – On-site sewage management (OSMS) is required and as such the application was referred to Council's Environmental Health team for comment. It was noted that the property is nominated as a high hazard rating in regards to OSMS. It was requested that a statement from a suitably qualified person outlining that an acceptable waste management solution is achievable on site. As the application is recommended for refusal due to flooding constraints, the additional information was not requested from the applicant.

External Referrals

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

Office of Environment and Heritage – The application may require the concurrence of The Office of Environment and Heritage under s.256 (1)(A) of the Water Management Act. As Council staff recommended refusal, no consultation with concurrence bodies are required in accordance with Section 79B of the *Environmental Planning and Assessment Act 1979*.

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.

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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.

SEPP (BASIX) 2004

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

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 5.19metres. The proposal will not fragmentise or alienate resource lands and will not discourage primary industries activities.

Clause 7.1 Acid sulfate soils: The subject site is identified as Class 2 and 3 acid sulfate soils (ASS). Works associated with the development will be undertaken within Class 3 ASS and as filling is required to raise the proposed dwelling above the Flood Planning Level minimal excavation works are anticipated. As such ground disturbance will be kept to a minimum. Should Council determine to approve the development this matter could be addressed via conditions of consent.

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

The application proposes earthworks on the site to achieve a level building platform consistent with the existing mound positioned to the north of the subject development. The proposed flood mound will have a total footprint of 8557sqm and requires filling to a maximum of 4.47m. The proposal is unlikely to disrupt drainage patterns, impact potential future development on-site and, unlikely to disturb any relics.

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

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

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Clause 7.3 Flood Planning:

The objectives of Clause 7.3 – Flood Planning are to:

- minimise risk to life and property associated with the use of land,
- allow development on land that is compatible with the lands flood hazard
- avoid significant adverse impact on flood behaviour and the environment.

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

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

It is noted that the application proposes the construction of a flood mound with a footprint of 8557sqm requiring a maximum of 4.47m in order to construct a dwelling above the FPL and provide space for OSMS. Regardless, residential development is not considered compatible with the high hazard flood risk of the land. Increasing residential density within a high hazard floodway will increase risk to life and property.

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

The Flood Impact Assessment (FIA) prepared by BMT WBM stated that the larger storm events (1% AEP and 0.5%AEP) are negligible in terms of depth and provided evidence that velocity changes are contained on-site. The FIA noted that during the 0.5% AEP event flood models indicate a reduction by up to 0.2m/s to the dwelling situated to the south. However, the flood impact assessment report did not include the potential impact of the development to local flood characteristics during lesser, more common storm events. In this regard the impact of the development to local flood characteristics could not be determined.

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

Assessment of the flood characteristic of the subject site concluded that any residential development would present a substantial risk to any future occupant. A satisfactory flood emergency flood plan was not submitted. Seaham Road is the likely escape route during flood events and classified as being positioned on land also nominated as a high hazard floodway.

The probable Maximum Flood (PMF) for the site reaches 8.7AHD, which would result in flood waters 2.8m in depth over the flood mound and 6.2m depth over the driveway, moving up to 0.7m/s. Additionally, the entire length of the 430m driveway would also be inundated from flood waters during the 1% AEP and 0.5%AEP flood events. As noted above flood characteristics during lesser, more common storm events were not provided and therefore cannot be adequately assessed.

The FIA noted that a flood refuge as specified as a requirement under PSDCP2014 is not recommended. It was noted that during extreme flood events any flood refuge mound would present hazardous conditions for the building and occupants. The likely time of inundation is estimated to be in the order of weeks.

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

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

The Flood Impact Assessment outlined that the velocity at the toe of the flood mound is not above 0.8m/s, therefore the risk of floodwater scouring the flood mound is considered low. However, localised flooding velocities have the potential to be higher, and scour protection is recommended prior to any approval.

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

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

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

Clause 7.6 Essential services: The site has access to the majority of essential services listed under this clause.

In regards to sewer management, insufficient information has been lodged to detail that an OSMS can operate on-site. It is noted that additional information regarding an acceptable waste management solution is achievable on site would be required before the any conditions of consent are provided.

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

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

Chapter B4 – Drainage and Water Quality - Development plans illustrate the provision of a rainwater tank. The stormwater drainage design has been assessed as being consistent with the Infrastructure Specification.

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Chapter B5 – Flooding

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

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

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

Chapter B6 – Essential Services

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

In regards to sewer management, insufficient information has been lodged to detail that an OSMS can operate on-site. It is noted that additional information regarding an acceptable waste management solution is achievable on site would be required before the any conditions of consent are provided.

The application has demonstrated that stormwater drainage resulting from roof and hard stand areas can be catered for in accordance with Councils requirements. The subject land also maintains direct access to Seaham Road, meeting the requirements of this clause. Prior to any approval it is recommended that the vehicle access driveway be upgraded.

Chapter B9 – Road Network and Parking

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

Section C – Development Types**Chapter C4 – Dwelling Houses, Dual Occupancies and Ancillary Development**

Clause	Requirement	Assessment
C4.1	Lodgement Requirements	The application includes relevant information required under this clause.
C4.7	Site coverage not to exceeds 60%	The relatively large area of the lot ensures that site coverage is below 60%. The application has demonstrated that suitable open space, landscaping and vehicle manoeuvring areas will be provided on the site. The site coverage is considered to be satisfactory.
C4.9	Building height to be max. 8m on land with no maximum building height specified in LEP	The proposed development is single story and has a maximum height of 5.1m above ground level. The proposed development is considered acceptable in this instance as the development is in-keeping with the surrounding environment.
C4.10	Minimum front setback of	The proposed development is setback 430m from

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	4.5m in greenfield sites or average of adjacent properties, or 10m in rural, environmental or R5 zoned land	Seaham Road, complying with the minimum setback requirements for rural lots.
C4.12	Side setback for ground floor of min 0.9m or 5m in rural or environmental zones	The proposed development is setback a minimum of 40m, complying with side setback requirements.
C4.14	Rear setback for ground floor of min 2m or 5m in rural or environmental zones	The proposed development is setback a minimum of 110m from the rear property boundary which complies with the minimum setback requirements.
C4.21	Development to be sympathetic to the street character	The proposed development is typical of other developments in the locality and is suitable in the streetscape.
C4.23	Min 50m ² of POS with 35m ² principle POS with min dimensions of 4m x 4m, or 20m ² balcony with minimum width of 3m where ground floor POS cannot be provided	The proposed dwelling is located on a parcel of land approximately 9.6ha in size. The site is relatively flat with minimal vegetation, ensuring adequate usable private open space.
C4.24	Min 2hrs of sunlight to principle POS between 9am to 3pm mid-winter	The proposed proposed dwelling will receive more than 2hrs of sunlight to the principle private open space between the hours of 9am and 3pm in mid-winter.

s79C(1)(a)(iiiia) – 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 social and economic impacts of flooding are well documented. Policies and strategies have been implemented by Council to adequately mitigate the adverse impacts of flooding within the Local Government Area. The proposal will increase the residential density within a high hazard floodway, increasing the risk to people and property. The increase in residential density will add to the demand on limited NSW State Emergency Services (SES) resources by way of property protection, rescue and evacuation.

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16-2015-221-1

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

The proposed development does not require the removal of significant vegetation. Additionally, due to the size of the subject lot stormwater would be able to be managed in accordance with Council's quantity and quality requirements.

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

The site is physically constrained by flooding and is considered unsuitable for the proposed development. The residential nature of the development is inconsistent with the objectives of LEP2013 and DCP2014 due to the flood characteristics of subject site. Residential development is not considered a compatible development type for land situated within a high hazard floodway. The subject site presents a substantial risk to future occupants of the proposed dwelling.

s79C(1)(d) – Any submissions

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 residential development is not 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.

Conclusion

The s.82A review application is not supported by Council Staff. Therefore the s.82A review is recommended to be refused.

REASONS FOR REFUSAL

1. The proposed development will result in a development that is inconsistent with the objects of the *Environmental Planning and Assessment (EP&A) Act 1979* in that it will be exposed to an unacceptable adverse risk of flooding, which does not encourage:
 - (i) the proper management and development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,
 - (ii) the promotion and co-ordination of the orderly and economic use and development of land, ... or....
 - (vii) ecologically sustainable development (s.5(a)(i),(ii) and (vii) *EP&A Act 1979*);
2. The 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, fails to incorporate measures to manage risk to life and property from flooding and is likely to result in unsustainable social and economic costs to the community as a consequence of flooding (s.79C(1)(a)(i) *EP&A Act 1979*).
3. The proposed amendments will result in a development that fails to satisfy the provisions of Chapter B5 – Flooding of the Port Stephens Development Control Plan 2014, in that the development is for the provision of housing (s.79C(1)(a)(iii) *EP&A Act 1979*);
4. Approval of the proposed development within a high hazard floodway will result in unacceptable social or economic impacts (s.79C(1)(b) *EP&A Act 1979*);
5. The subject site is unsuitable for the proposed residential development as the land is situated within a high hazard floodway. The proposed development will thereby increase risk to people and property (s.79C(1)(c) *EP&A Act 1979*); and
6. The proposed development would be inconsistent with the adopted principles and strategies which seek to promote the proper management and use of land, promote the social and economic welfare of the community and provide for the orderly and economic use and development of land in an ecologically sustainable manner (s.79C(1)(e) *EP&A Act 1979*).

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There being no further business the meeting closed at 5.54pm.