

# DRAFT

## MINUTES – 27 APRIL 2021



### 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 – 27 April 2021, commencing at 5.30pm.

**PRESENT:**

Mayor R Palmer, Councillors G Arnott, G Dunkley, K Jordan, P Le Mottee, J Nell, S Smith, S Tucker, General Manager, Acting Corporate Services Group Manager, Facilities and Services Group Manager, Acting Development Services Group Manager and Governance Section Manager.

Note: Cr Ken Jordan arrived at 5.38pm.

<b>092</b>	<b>Councillor John Nell</b> <b>Councillor Glen Dunkley</b>  It was resolved that the apology from Cr Jaimie Abbott be received and noted, and leave of absence granted on 13 April 2021 for Cr Chris Doohan be noted.
<b>093</b>	<b>Councillor Steve Tucker</b> <b>Councillor Giacomo Arnott</b>  It was resolved that the Minutes of the Ordinary Meeting of Port Stephens Council held on 13 April 2021 be confirmed.

<b>MINUTES ORDINARY COUNCIL - 27 APRIL 2021</b>
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	Cr Paul Le Mottee declared a pecuniary conflict of interest in Items 1 and 3. The nature of the interest is the Le Mottee Group has undertaken survey work on the site.
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# COUNCIL REPORTS

## MINUTES ORDINARY COUNCIL - 27 APRIL 2021

### ORDINARY COUNCIL MEETING - 27 APRIL 2021 MOTION

<b>094</b>	<b>Mayor Ryan Palmer Councillor John Nell</b>  It was resolved that Item 3 be brought forward and dealt with prior to Item 2.
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Councillor Paul Le Mottee left the meeting at 5:33pm prior to Item 1.

#### ITEM NO. 1

**FILE NO: 21/64711  
EDRMS NO: 16-2020-589-1**

#### **DEVELOPMENT APPLICATION 16-2020-589-1 FOR A DWELLING AND ASSOCIATED SHED AT 828 PATERSON ROAD, WOODVILLE**

REPORT OF: KATE DRINAN - DEVELOPMENT ASSESSMENT AND  
COMPLIANCE SECTION MANAGER  
GROUP: DEVELOPMENT SERVICES

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#### **RECOMMENDATION IS THAT COUNCIL:**

- 1) Refuse Development Application 16-2020-589-1 for a dwelling and associated shed at 828 Paterson Road, Woodville (Lot 1 DP 1258390) for the reasons contained in **(ATTACHMENT 3)**.

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Cr Ken Jordan arrived at 5.38pm during the debate on item 1.

### ORDINARY COUNCIL MEETING - 27 APRIL 2021 MOTION

<b>095</b>	<b>Councillor John Nell Councillor Giacomo Arnott</b>  It was resolved that Council refuse Development Application 16-2020-589-1 for a dwelling and associated shed at 828 Paterson Road, Woodville (Lot 1 DP 1258390) for the reasons contained in <b>(ATTACHMENT 3)</b> .
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**ORDINARY COUNCIL MEETING - 27 APRIL 2021**  
**MOTION**

	<b>Councillor Giacomo Arnott</b>  That Council move into recess for minutes to fix the webcast issue.
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The motion lapsed without a seconder.

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

Those for the Motion: Mayor Ryan Palmer, Crs Giacomo Arnott, Glen Dunkley, Ken Jordan, John Nell, Sarah Smith and Steve Tucker.

Those against the Motion: Nil.

The motion was carried.

**BACKGROUND**

The purpose of this report is to present a development application (DA) 16-2020-589-1 for a dwelling and associated shed at 828 Paterson Road Woodville (Lot 1 DP 1258390) to Council for determination.

A summary of the DA and property details is provided below:

Subject land:	828 Paterson Road Woodville (Lot 1 DP 1258390)
Total area:	9.95ha
Zoning:	RU1 – Primary Production
Submissions:	No submissions were received
Key issues:	Flooding: The DA seeks to construct a dwelling within a high hazard floodway

The DA has been reported in accordance with Council's Planning Matters to be Reported to Council Policy as it has been called up by Mayor Ryan Palmer, Cr Sarah Smith and Cr Glen Dunkley (**ATTACHMENT 4**).

A locality plan is provided at (**ATTACHMENT 1**).

### Proposal

The DA proposes a shed to be constructed at ground level with a dwelling to be located above the shed. The development will be located on an existing flood mound.

The proposed shed has a total footprint of 225m<sup>2</sup>. The eastern and western elevations of the shed includes open carports. There are 3 roller doors proposed on the northern elevation to the garage that provide vehicle access to the garage space (135m<sup>2</sup>).

The proposed dwelling above the shed comprises of 3 bedrooms, 2 bathrooms, open plan living, dining and kitchen area, a laundry and alfresco areas on the western and eastern elevations.

The proposed dwelling is accessed via a set of stairs from the shed below.

### Site Description and History

The site has an existing driveway leading from Paterson Road to the existing flood mound, with heights ranging from 7.5m AHD in the west to 5.5m AHD in the east. The flood mound was previously approved as a stock refuge.

The site is vacant with the exception of a shipping container and machinery.

The Paterson River is located approximately 300m to the west of the site.

The entire extent of the site is mapped as High Hazard Floodway.

### Key issues

The key issue identified during assessment relates to the fact that the DA seeks to construct a dwelling within a High Hazard Floodway. A detailed assessment of the DA is contained within the Planners Assessment Report (**ATTACHMENT 2**).

### Flooding risk

The DA is inconsistent with both the Port Stephens Local Environmental Plan (LEP 2013) and the Development Control Plan 2014 (DCP 2014) noting the High Hazard Floodway categorisation applying to the site.

The current flood levels applicable to the site are:

- Flood Planning Level (FPL) – 7.6m AHD
- 1% AEP (Current day) – 6.6m AHD
- Probable Maximum Flood (PMF) – 9.0m AHD

The proposed development includes finished floor levels (FFL) as follows:

- Existing Flood Mound – 5.5m AHD to 7.5m AHD
- Shed – 5.5m AHD
- Dwelling – 8.6m AHD

The entire site is identified within a High Hazard Floodway, as reflected on Council flood hazard maps and the current Flood Certificate.

Clause 7.3(3) of LEP 2013 states that development must be compatible with the flood hazard of the land and that it must not have a significant adverse effect on flood behaviour. The development is not considered to be compatible with the flood hazard category applying to the site resulting in an unnecessary risk to life and property.

Chapter B.5 of the DCP 2014 provides specific controls for development on flood prone land. DCP 2014 states that dwelling houses on land categorised as High Hazard Floodway may be considered where the proposal can address set performance based solutions. The solutions include an assessment of the development against the risk to life (B5.18), risk to property (B5.19) and the compatibility of development with the site specific flood hazard (B5.20).

Chapter B5.18, in considering the risk to life, requires that evacuation access to an area free of risk from flooding must be provided. The site and its surrounds are significantly flood affected and it is not possible to design an egress from the proposed dwelling to flood free areas offsite. A PMF flood refuge has not been included in the DA as an alternative to a safe egress in a flood event. As the DA cannot provide a suitable egress from the site and a suitable flood refuge has not been provided, the DA does not meet the performance based solutions contained in Chapter B5.18 of DCP 2014.

Chapter B5.19 requires development to address the risk to property during various flood events. While the proposed dwelling is located above the FPL, there is no area for car parking or ancillary storage above the FPL. The design of the DA is such that the risk to property has not been suitably mitigated. Noting this, the proposal is not acceptable having regard to the performance based solutions contained in Chapter B5.19 of DCP 2014.

Chapter B5.20 requires the development to be compatible with the flood hazard category of the site. The site is located within a High Hazard Floodway with high velocity rates. The proposed dwelling will become isolated during large flood events, which increases the risk to life and potentially places an unreasonable and unnecessary strain upon emergency services in a major flooding event.

With consideration of the above, the DA is unable to be supported. The DA is inconsistent with the provisions of both LEP 2013 and DCP 2014 as the proposal presents unacceptable risk to life and property and is not compatible with the flood hazard category applying to the site.

**Conclusion**

Due to the sites location in a High Hazard Floodway, the design of the dwelling and its associated egress, the proposal is inconsistent with the relevant legislation and policies, including:

- Environmental Planning and Assessment Act 1979 (EP&A Act)
- Port Stephens LEP 2013 – Clause 7.3 Flood Planning
- Port Stephens DCP 2014 – Chapter B5 Flooding.

Based on a detailed assessment of the DA, and with consideration to the inconsistencies identified with LEP 2013 and DCP 2014, the DA is recommended for refusal for the reasons contained in **(ATTACHMENT 3)**.

**COMMUNITY STRATEGIC PLAN**

<b>Strategic Direction</b>	<b>Delivery Program 2018-2021</b>
Thriving and Safe Place to Live	Support the amenity and identity of Port Stephens.

**FINANCIAL/RESOURCE IMPLICATIONS**

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

<b>Source of Funds</b>	<b>Yes/No</b>	<b>Funding (\$)</b>	<b>Comment</b>
Existing budget	Yes		
Reserve Funds	No		
Developer Contributions (\$7.11)	No		
External Grants	No		
Other	No		

**LEGAL, POLICY AND RISK IMPLICATIONS**

The DA is inconsistent with the relevant planning instruments including the EP&A Act 1979, LEP 2013 and DCP 2014.

Detailed assessments against these requirements are contained within the Planners Assessment Report provided at **(ATTACHMENT 2)**.

<b>Risk</b>	<b><u>Risk Ranking</u></b>	<b>Proposed Treatments</b>	<b>Within Existing Resources?</b>
If the DA is refused, the applicant may appeal the decision.	Medium	Refuse the DA with reasonable grounds for refusal in accordance with the EP&A Act 1979.	Yes
If the DA is approved, a third party may appeal the determination.	Low	Determine the DA in line with the recommendations.	Yes
If the DA is approved, there is a risk that Council will be held liable for damage or consequences.	Medium	Determine the DA in line with the recommendations.	Yes
If the DA is approved, people and property may be exposed to an unacceptable level of risk.	Medium – High	Determine the DA in line with the recommendations.	Yes

## **SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

Outside of the flood related issues associated with the DA, it is considered that the DA will have a positive economic impact on the local area and the broader community through the creation of employment and economic activity during the construction of the development.

However, the location of the dwelling and associated shed within a High Hazard Floodway presents an unacceptable and unreasonable risk to life and property and is therefore recommended for refusal for the reasons outlined in **(ATTACHMENT 3)**.

## **CONSULTATION**

### Internal

Consultation was undertaken with internal technical staff to facilitate the assessment of the DA including:

- Building and Developer Relations
- Development Engineering
- Strategic Planning (Development Contributions)
- Environmental Health
- Flood Advisory Review Panel.



The referral comments provided by these officers were considered as part of the detailed assessment and are discussed within the Planners Assessment Report **(ATTACHMENT 2)**. The DA is supported by all internal referrals, other than Development Engineering and Flood Advisory Review Panel for the reasons outlined above.

#### External

Consultation was not required with any external agencies during the assessment of this DA.

#### Notification

The application was notified between 6 October 2020 and 20 October 2020 to adjoining properties and no submissions have been received during this period.

### **OPTIONS**

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

### **ATTACHMENTS**

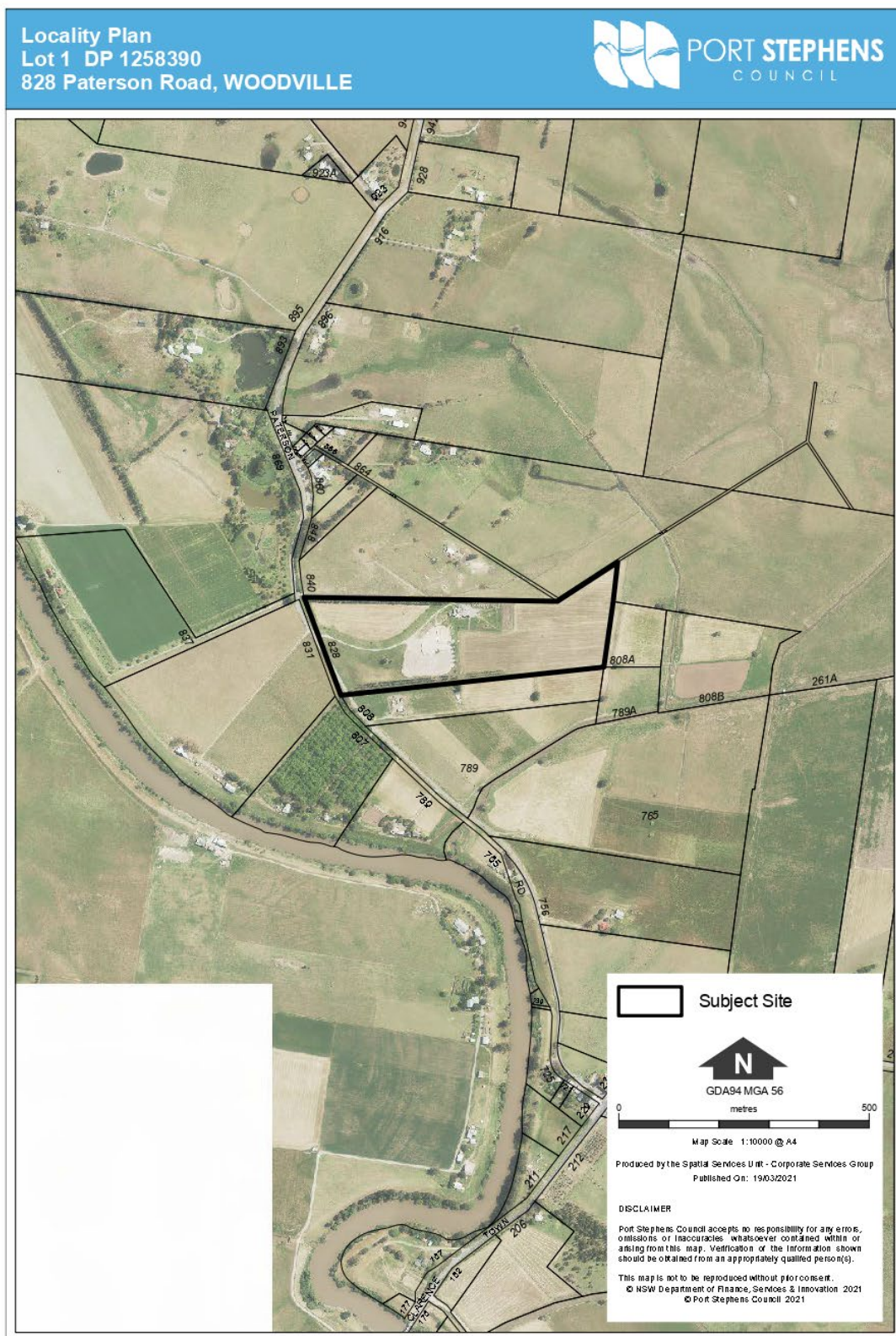
- 1) Location Plan.
- 2) Planners Assessment Report.
- 3) Reasons for Refusal.
- 4) Call to Council Form.

### **COUNCILLORS ROOM**

- 1) Development Plans.

### **TABLED DOCUMENTS**

Nil.





## DEVELOPMENT ASSESSMENT REPORT

### APPLICATION REFERENCES

<b>Application Number</b>	16-2020-589-1
<b>Development Description</b>	Dwelling with Attached Shed and Wastewater Treatment System
<b>Applicant</b>	MR I W SALTER
<b>Land owner</b>	MR I W SALTER
<b>Date of Lodgement</b>	30/09/2020
<b>Value of Works</b>	\$146,000.00
<b>Submissions</b>	Nil.

### PROPERTY DETAILS

<b>Property Address</b>	828 Paterson Road WOODVILLE
<b>Lot and DP</b>	LOT: 1 DP: 1258390
<b>88B Restrictions on Title</b>	Nil
<b>Current Use</b>	Vacant land
<b>Zoning</b>	RU1 PRIMARY PRODUCTION
<b>Site Constraints</b>	Bushfire Prone land Acid Sulfate Soil – Class 3 & 4 Koala Habitat Planning Map – Clear Flood Prone Land – High Hazard Floodway
<b>State Environmental Planning Policies</b>	SEPP – Coastal Management – Coastal Zone Footprint SEPP No. 55 – Remediation of Land SEPP (Building Sustainability Index: BASIX) 2004 SEPP (Koala Habitat Protection) 2019

The proposed dwelling is accessed via a set of stairs from the shed below.



LOT 1  
DP 193948

LOT 7  
9.95 ha (by CALC.)

LOT 15  
DP 1153541

LOT 67  
DP 730971

LOT 68  
DP 730971

PATERNON ROAD

BENCHMARK  
PM 80199  
RL 3.093 (AHD)

UNFORMED

507.4 BY SURVEY  
502.9 BY DEED

179.075 BY SURVEY  
181.55 BY DEED

505.35 BY SURVEY  
506.9 BY DEED

122.89 BY SURVEY

LOT 1  
DP 997074

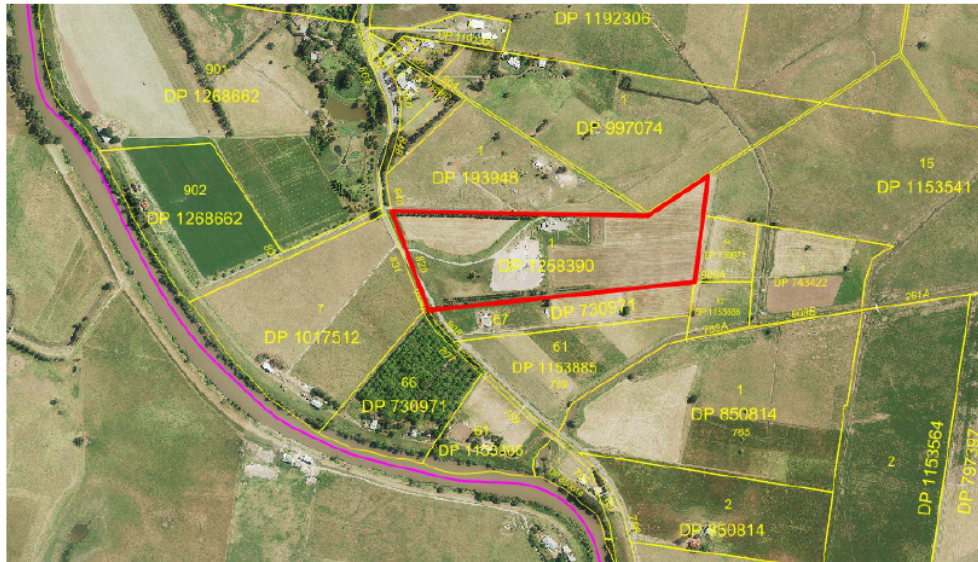
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## ITEM 1 - ATTACHMENT 2 PLANNERS ASSESSMENT REPORT.

**SITE DESCRIPTION**

The site is identified as 828 Paterson Road, Woodville, legally identified as Lot 1 DP 1258390 (**Figure 3**). The site has a frontage to Paterson Road and is oriented to the west. The site is an irregular shape that comes to a point at the north rear corner of the site, following the line of an unformed road. The site has an existing driveway leading from Paterson Road to the existing mound. Paterson River is located to the west of the site, at the rear of the adjacent properties along Paterson Road.



**Figure 3:** GIS aerial image of subject site

**SITE HISTORY**

The site does not support an existing dwelling, there is an existing shipping container and machinery on the site. Previous approvals on the site include:

- 16-2012-706-3 – Approval for land fill and 2 x S4.55 modifications;
- 16-2019-6005-1 – Roads – it was identified that part of the road shoulder was on private property (the subject site). As such a small triangle of land was acquired by Council from the subject property to ensure the sealed road shoulder was entirely within the road reserve.

Two compliance matters are registered on the property, both relating to the approved landfill. One regarding the truck movements on the site and the other regarding the mound size appearing larger than approved.

EPA has concerns with the fill quality being used for the landfill notable building waste being used as a fill material.

**SITE INSPECTION**

A site inspection was carried out on 12 February 2021, the subject site can be seen in images below:

**ITEM 1 - ATTACHMENT 2 PLANNERS ASSESSMENT REPORT.**



Image 1: existing mound and gravel driveway



Image 2: existing mound



Image 3: Existing structures on the site



Image 4: to the rear of the mound



Image 5: existing trucks on the site



Image 6: driveway leading to Paterson Road

**ITEM 1 - ATTACHMENT 2 PLANNERS ASSESSMENT REPORT.****PLANNING ASSESSMENT**

The application was assessed, and comments provided, by the following external agencies and internal specialist staff:

Internal**Development Engineer**

20/10/2020 - The DA was referred to Development Engineering Services for assessment of drainage and flooding matters. The site is identified as land categorised as flood prone lane, the entire site is mapped as high hazard floodway.

As such, the component of the DA for residential use on the site, was not supported.

7/01/2021 - The DA has been reviewed against the recently endorsed amended DCP chapter B5 Flooding, to which additional information has been requested from the applicant to satisfy and demonstrate the development suitability.

The proposal will result in intensifying development in the floodplain creating flood risk to the new development, its users and emergency services.

10/03/2021 – Proposal is not consistent with the Floodplain risk management as the performance based criteria of DCP 2014 was not addressed to Councils satisfaction.

**Environmental Health** – The site does not have connection to sewer, as such requires a S68 application for waste water system to be submitted. A wastewater management plan report has been provided with the application. The report demonstrates a suitable wastewater solution can be achieved for the proposed development. An application will be required to be lodged and approved by Council under section 68 of the Local Government Act for the installation of the OSWM.

**Building Surveyor** - The DA was referred for consideration of BCA and building requirements. The proposal achieved the BCA fire separation requirements and is supported subject to conditions.

**Flood Advisory Review Panel** - Following the recommendation of refusal from Development Engineers, the DA was referred to the Flood Advisory Review Panel (FARP) due to the flood hazard. The DA was reviewed by FARP following the endorsement of the amendments to the DCP chapter B5 Flooding. The proposed use, sitting on the subject property, flood hazard and risk to life and property associated with the development was considered. FARP requested information be provided addressing the performance criteria under the DCP notable the location, level and size of the refuge area.

Additional information was provided including a flood impact assessment and performance based solution. The information is not sufficient to address the above concerns relating to risk to life and property.

**Environmental Planning and Assessment Act 1979*****Section 4.14 – Consultation and development consent (certain bushfire prone land)***

The proposed development is mapped as bushfire prone land, category Category 3 (buffer) and as such triggers assessment under the NSW RFS Planning for Bushfire Protection 2019.

The subject site is managed grassland and is surrounded by managed grassland. There is no fire source within 100m of the site; the land is relatively flat with a fall to the rear (east) and to the side boundary (north). The land surrounding the existing mound on the site is managed and maintained. This could be considered an APZ, being a buffer zone between a bush fire hazard and buildings. The management of the land provides a reduction in fuel source in the surrounding area reducing the risk to the proposed buildings.



**ITEM 1 - ATTACHMENT 2 PLANNERS ASSESSMENT REPORT.**

The PBP require where an APZ of 50m can be provided no further bush fire protection measures (BPMs) are required. An area of 50m radius around the structures proposed in the DA can be maintained and as such no addition BPMs are required.

***Section 4.15 - Matters for consideration***

The proposal has been assessed under the relevant matters for consideration detailed in Section 4.15 of the Environmental Planning and Assessment Act 1979 (EP&A Act).

***Section 4.15(a)(i) - any environmental planning instrument***

An assessment has been undertaken against each of the applicable environmental planning instruments (EPI's), as follows:

**State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004**

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 (SEPP BASIX) was enacted to ensure that dwellings are designed to utilise less potable water and to minimise greenhouse gas emissions by setting energy and water reduction targets for residential houses and units.

A valid BASIX certificate has been submitted with the development application which demonstrates that the water, thermal comfort and energy requirements for the proposal have been achieved. The proposal is considered to satisfy the relevant provisions of SEPP BASIX.

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

Clause 7 of SEPP 55 requires the consent authority to consider whether land is contaminated, is in a suitable state despite contamination, or requires remediation to be made suitable for the proposed development.

It is noted that the NSW list of contaminated sites and list of notified sites published by the EPA does not identify the site as being contaminated, nor has previous record of contamination in Council's system. The land is not within an investigation area, there are no records of potentially contaminating activities occurring on the site, and the dwelling and shed is not listed as a possible contaminating use, per Table 1 of the Guidelines. Noting this, the proposed development satisfies the requirements of SEPP No. 55.

**State Environmental Planning Policy (Koala Habitat Protection) 2020**

This policy aims to encourage the conservation and management of areas of natural vegetation that provide habitat for koalas to support a permanent free-living population over their present range and reverse the current trend of koala population decline. This Policy commenced on 1 March 2020.

The site is located in an area mapped clear, the development application does not include the removal of natural vegetation for koala habitat. The development is not considered to exacerbate impact to the koala habitat or decline in koala habitat.

**State Environmental Planning Policy Coastal Management 2018**

The subject land is located with the Coastal Environmental Area as such the following general matters are required to be considered when determining an application.

As per Clause 13 of the SEPP, development consent must not be granted for development within the coastal environment area unless the consent authority has considered whether the development will cause impact to the integrity of the biophysical and ecological environment, the values and natural coastal processes, marine vegetation, native vegetation and fauna and existing public open space and access to and along the foreshore.

The proposed development is sufficiently setback from the Paterson River, which is more than 400m to the west of the site. The proposed development is not likely to result in any adverse impacts.



**ITEM 1 - ATTACHMENT 2 PLANNERS ASSESSMENT REPORT.**

Clause 15 of the SEPP requires consideration to whether the development would increase the risk of coastal hazards. The proposed development is not likely to increase risk to coastal hazards.

There is minor associated risk with the structure being destroyed by flooding. The proposed structure, in significant flooding events, may result in the destruction of the mound and the structure. In the event of the development being destroyed by flood water materials would be washed down stream affecting surrounding properties and risk to the ecological environment of the river network.

The application can therefore be supported as it generally complies with the aims and the matters for consideration of the Policy.

Port Stephens Local Environmental Plan 2013 (LEP)

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

The DA is defined as a Dwelling and ancillary structure, shed, which is permissible with consent in the RU1 zone. The development is proposed in a manner which does not reduce the primary production land available and accords with the zone objectives.

**Clause 4.2B – Erection of dwelling houses on lands in certain rural, residential and environment protection zones**

The site is located on land in the RU1 Primary Production zone, development consent must not be granted for the erection for a dwelling house unless the land achieves either (3)a, (3)b or (3)c. The land is RU1, has an area of more than 4,000m<sup>2</sup>, and was zoned 1a under the Repealed PS LEP 2000 which permitted a dwelling house on allotments that had areas of more than 4,000m<sup>2</sup>.

CI 4.2B (3)c of the current LEP, the lot would have been a lot referred to under (3)a or b had it not been affected by a subdivision creating or widening public road or public reserve or for another public purpose. Due to the recent road alignment works under application 16-2019-6005-1, the lot was varied from the original lot to permit the widening of the public reserve. As such the erection of a dwelling house is permitted.

**Clause 7.1 – Acid Sulfate Soils**

The site is mapped as containing potential Class 3 and 4 acid sulfate soils. The DA is not anticipated to entail excavations below 1 metres and therefore it is not expected that acid sulfate soils would be encountered during works.

**Clause 7.2 – Earthworks**

The application proposes earthworks on the already approved mound, and will require minor works to achieve a level building platform. Earthworks are minor in nature and are not anticipated to result in any negative impacts on the subject or adjoining land, or any public place. No material is proposed to be imported or exported from the subject site and accordingly, the development accords with the requirements of this clause.

**Clause 7.3 – Flood Planning**

The DA is located on land mapped as being Flood Planning Area and the land is below the flood planning level.

Developments on land identified as flood prone are to demonstrate minimal flood risk to life and property, and to achieve development that is compatible with the flood hazard to avoid significant adverse impacts on the flood behaviour in the environment.

The flood category for the development area is High Hazard Floodway, the entire site and adjoining properties are mapped as the same hazard category. The current driveway connects to Paterson Road the driveway is not constructed above the flood planning level, which is required for an access way that can be used in the event of a flood. As such, the proposed development does not have suitable flood free access from the site.

**ITEM 1 - ATTACHMENT 2 PLANNERS ASSESSMENT REPORT.**

The proposed siting for the development is therefore not supported. In the event of a flood, the development will result in unacceptable risk to life and property. The proposed shed and dwelling are not considered appropriately located on the site to manage risk to life from flood, and avoid unsustainable social and economic costs to the community as a consequence of flood and will be subject to dangerous flood impacts.

**Clause 7.6 – Essential Services**

The site is serviced by electricity. The applicant has noted the subject site has an existing OSMS servicing the existing dwelling; an additional system would be required for the proposed dwelling. The subject land also maintains direct access to Paterson Road, meeting the requirements of this clause.

***Section 4.15(a)(ii) - any draft environmental planning instrument that is or has been placed on public exhibition***

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

***Section 4.15(a)(iii) – any development control plan*****Port Stephens Development Control Plan 2014**

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

**Chapter B3 – Environmental Management****Acid Sulfate Soils**

The objective of this DCP Chapter is to ensure that developments do not disturb, expose or drain Acid Sulfate Soils (ASS) and cause environmental damage. As detailed within clause 7.1 discussion above, the proposed development could be undertaken, subject to conditions of consent, without resulting in adverse impact to ASS. In this regard the development is consistent with the objective and requirements of the DCP.

**Earthworks**

As discussed at clause 7.2 above the proposed development involves minor earthworks atop of the existing mound. The impacts of the proposed earthworks can be mitigated through conditions of consent. The proposal is therefore consistent with requirements outlined in Councils DCP relating to earthworks.

**Chapter B4 – Drainage and Water Quality**

A stormwater management plan was submitted with the application and includes adequate quality and quantity controls as required by Councils policy. The stormwater drainage plan has been assessed as being consistent with the Infrastructure Specification and a condition of consent has been included in the consent requiring the provision of detailed engineering plans, prior to the issue of a construction certificate.

**Chapter B5 – Flooding**

The site is mapped as being within the Flood Planning Area. Chapter B5 outlines objectives to inform and assist with determining development suitability on land designated in particular flood hazards. All new developments are required to address the development control within this part of the DCP to mitigate risks and considered suitability.

Chapter B5 of the DCP 2014 provide more detailed provisions to inform the assessment against the LEP 2013 provisions. The DCP chapter was amended in December 2020 which included performance based solutions for certain development in flood prone areas. The amended chapter states that dwelling houses on land categorised as High Hazard Floodway can be considered, where the newly adopted performance based criteria can be addressed.

**ITEM 1 - ATTACHMENT 2 PLANNERS ASSESSMENT REPORT.**

The area has been classified as flood prone land and is located within a High Hazard Floodway. Further, the existing flood mound is below the flood planning level of the subject site.

The current flood levels applicable to the site are:

- Flood Planning Level - 7.6m AHD
- 1% AEP (Current day) – 6.6m AHD
- Probable Maximum Flood (PMF) – 9m AHD

The proposed development include finished floor level (FFL) as follows:

- Existing Flood Mound – 5.5m – 7.5m AHD
- Shed – 5.5m AHD
- Dwelling – 8.6m AHD

The DA provided a Flood Impact Assessment for the proposal that included flood modelling for a range of flood events on the existing earth mound.

The DA was assessed by Council's Development Engineering Section, which included an assessment of the proposal against the recently adopted performance based solutions listened in B5.D of the DCP.

B5.18 states that evacuation access to an area free of risk from flooding must be provided. The subject land is located central to the flood affected area and it is therefore impossible to provide access to flood free areas offsite. The proponent has also not provided a flood refuge as part of the proposal.

B5.19 requires development to address the risk to property at the expected velocities and levels during various flood events. The existing flood mound is currently located below the 1% AEP level, which will result in the inundation of the ground floor area and any stored items below the dwelling (including vehicles).

B5.20 requires the application to be compatible with the flood hazard category of the site. The site is located within a High Hazard Floodway with high velocity rates. As the site does not have access to flood free areas, the development will become isolated during large flood events.

The development is not therefore consistent with the application of performance based solutions outlined in B5.D of the DCP. Due to the unacceptable safety implications posed by the flood constraints of the site and the inability of the applicant to resolve these flooding issues to an acceptable engineering standard, the application is recommended for refusal.

**Chapter B8 – Road Network and Parking**

The DA includes a shed and a 3 bedroom dwelling, the DCP requires 2 car spaces to be provided to support the development on the site. There is suitable car spaces available on the site. Should the development be supported, there is adequate car spaces available for the additional development on the site.

**Chapter C – Development Types**

The proposed development a Dwelling and Shed therefore the provisions of chapter C4 and 8 are applicable.

**Chapter C4 - Dwelling House, Secondary Dwelling, or Dual Occupancy**Building height

There is no maximum building limit under the LEP, as such the maximum limit of 8m applies to the site. The DA for a single storey dwelling with a maximum proposed height of 7m, to be constructed

**ITEM 1 - ATTACHMENT 2 PLANNERS ASSESSMENT REPORT.**

on top of the flood mound. The dwelling does not exceed the maximum building height under the DCP.

Setbacks

The structure is appropriately setback from all the side and rear boundary setbacks. The DA does not detract from the rural character of the area.

Streetscape and privacy

The structure is appropriately setback to ensure the rural character and streetscape and privacy of the area. The mound benefits from an existing approval

Private open space

The development is proposed on a rural property and is adequately setback to facilitate ample private open space for each of the dwellings on the site.

Landscaping

The site is a rural property the area has sufficient space for landscaping and plantings. There are not matters of privacy to amenities impacts which would require landscape screening to be planted. The site has sufficient space to achieve landscaping requirements.

Site Facilities and Services

The DA location and flood mound top area create suitable area to support facilities and services such as waste storage and clothes drying. As mentioned above, an wastewater management report was provide with the application, demonstrating a suitable outcome for the subject property.

**Chapter C8 – Ancillary structures**

Shed Rural

The proposed shed is location on the approved flood mound. The shed exceeds the setback requirements for sheds in a rural zoned under the DCP. The proposed colour scheme is considered consistent with the existing rural character of the area.

***Section 4.15(1)(a)(iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph)***

There are no regulations that apply to the proposal.

***Section 4.15 (1)(b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality***

Social and Economic Impacts

There would be beneficial impacts as a result of the development. The proposal will result in a dwelling on the site, increasing the housing stock and diversity of the area. The construction of the development would result in employment opportunities during and after the development of the structures and having a monetary contribution to the local area.

Impacts on the Built Environment

The shed and dwelling are to be erected on an approved flood mound. The site slopes to the rear and the dwelling would therefore not adversely impact the character of the area. The dwelling and shed have been designed in a manner to be consistent with the rural character of the area. Overall, the development is not considered likely to result in adverse impacts to the built environment.

Impacts on the Natural Environment

The proposed development is not considered to be compatible with the flood risk associated with the land and may result in an unacceptable impact to life. The proposed development is located within close proximity to the Paterson River to the west. The development is not considered to be a

**ITEM 1 - ATTACHMENT 2 PLANNERS ASSESSMENT REPORT.**

suitable use of the site with regard to the environment and does not align with Councils endorsed policies.

***Section 4.15(1)(c) the suitability of the site for the development***

The subject site is zoned RU1 – Primary Production, whereby the proposed dwelling is a permissible land use under the zoning. The site is identified as high hazard flood-way and the proposed development and use does not align or address all of the necessary requirements under current Council endorsed policy and legislation. Due to the identified flood hazard, the proposal has been assessed as not being a suitable outcome for the site.

***Section 4.15(1)(d) any submissions made in accordance with this act or the regulations*****Public Submissions**

The application was exhibited from 6 October 2020 to 20 October 2020 accordance with the provisions of the Port Stephens Council Community Participation Plan. No submissions were received with relation to the subject development proposal.

***Section 4.15(1)(e) the public interest***

The proposed development is not considered to be in the public interest as the proposed development is not consistent or suitable with the flood category applicable to the subject site. The impact and increase in risk to life and property as a result of the development in a significant flood event is not supportable in this instance.

***Section 7.11 – Contribution towards provision or improvement of amenities or services (developer contributions)***

Nil.

**DETERMINATION**

The application is recommended to be refused by the elected Council.

SOPHIE-MARIE EFKARPIDIS

**SCHEDULE 1 – REASONS FOR REFUSAL**

The application is recommended for refusal on the following grounds:

1. The proposed development fails to satisfy Clause 7.3 - Flood Planning of the Port Stephens Local Environmental Plan 2013 as the development does not demonstrate that it is compatible with the high hazard floodway category of the site, including minimising the risk to life associated with the flood hazard (s4.15(1)(a)(i) EP&A Act);
2. The development does not comply with the controls contained within Chapter B5 Flooding of the Port Stephens Development Control Plan (s4.15(1)(a)(iii) EP&A Act);
3. The proposed development does not demonstrate the site is suitable for the proposed site given the flood category of the land s4.15(1)(c) of the EP&A Act); and
4. The proposed development is not considered to be in the public interest as the development is inconsistent with the adopted principles and strategies which seek to promote the appropriate development of the land (s4.15(1)(e) EP&A Act).

**PORT STEPHENS COUNCIL**

116 Adelaide Street  
Raymond Terrace NSW 2324

PO Box 42  
Raymond Terrace NSW 2324

Phone: 02 4980 0255  
Email: [council@portstephens.nsw.gov.au](mailto:council@portstephens.nsw.gov.au)

[www.portstephens.nsw.gov.au](http://www.portstephens.nsw.gov.au)



116 Adelaide Street,  
Raymond Terrace NSW 2324

PO Box 42  
Raymond Terrace NSW 2324

p (02) 4988 0255 | f (02) 4987 3612  
e council@portstephens.nsw.gov.au

DX 21406 | ABN 16 744 377 876

## Call to Council form

Development Application

### DEVELOPMENT APPLICATION (DA) CALL TO COUNCIL REQUEST

We (Mayor/Councillor/s)

Name:	Mayor Ryan Palmer
Name:	Cr Sarah Smith
Name:	Cr Glen Dunkley
request that DA number:	16-2020-589-1
for DA description:	Dwelling and attached shed and wastewater treatment system
located at:	828 Paterson Road, Woodville

be reported to Council for determination.

### REASON

Public interest
-----------------

### SIGNATURE OF APPLICANT/S

Signature		Date	30 3 21
Signature		Date	30 3 21
Signature		Date	30 3 21

### PRIVACY

Port Stephens Council is committed to protecting your privacy. We take reasonable steps to comply with relevant legislation and Council policy. **Purpose:** The purpose of this form is to enable Council to record the matter raised and taken appropriate action. **Intended recipients:** Council employees, contractors and other third parties where appropriate. **Supply:** Voluntary. **Consequence of Non Provision:** Council may not take action on the matter raised. **Storage and security:** This document will be placed on the relevant file and/or saved in Council's records management system in accordance with Council policy and relevant legislation. **Access:** Please contact Council on 02 4988 0255 to enquire how you can access information.

**ITEM NO. 3**

**FILE NO: 21/99198  
EDRMS NO: 16-2020-357-1**

**DEVELOPMENT APPLICATION 16-2020-357-1 FOR A SINGLE STOREY  
DWELLING AT 918 NEWLINE ROAD, EAGLETON (LOT 31 DP 840177)**

REPORT OF: KATE DRINAN - DEVELOPMENT ASSESSMENT AND  
COMPLIANCE SECTION MANAGER  
GROUP: DEVELOPMENT SERVICES

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Refuse Development Application 16-2020-357-1 for a single storey dwelling at 918 Newline Road, Eagleton (Lot 31 DP 840177) for the reasons contained in **(ATTACHMENT 3)**.
- 

**ORDINARY COUNCIL MEETING - 27 APRIL 2021  
MOTION**

<b>096</b>	<p><b>Councillor John Nell Mayor Ryan Palmer</b></p> <p>It was resolved that Council approve Development Application 16-2020-357-1 for a single storey dwelling at 918 Newline Road, Eagleton (Lot 31 DP 840177) subject to the attached conditions including deferred commencement conditions requiring the flood mound to be raised to the FPL, the ground floor to be deleted and a PMF flood refuge to be provided and an additional condition requiring the existing shed to be decommissioned for habitable uses prior to the issue of an occupation certificate.</p>
------------	---

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

Those for the Motion: Mayor Ryan Palmer, Crs Giacomo Arnott, Glen Dunkley, Ken Jordan, John Nell, Sarah Smith and Steve Tucker.

Those against the Motion: Nil.

The motion was carried.



**BACKGROUND**

Development Application (DA) 16-2020-357-1 was reported to Council at its meeting on 13 April 2021. At that meeting it was resolved that the DA be deferred. The resolution is provided below:

Meeting Minute 073: It was resolved that Council Development Application 16-2020-357-1 for a single storey dwelling at 918 Newline Road, Eagleton (Lot 31 DP 840177) be deferred to the next Ordinary Council meeting to be held on 27 April 2021. **(ATTACHMENT 6).**

The 13 April 2021 Council Report is provided below. No changes have been made to this report since it was reported on 13 April 2021.

Development Application (DA) 16-2020-357-1 was reported to Council at its meeting on 9 March 2021. At that meeting it was resolved that the DA be deferred for a period of 4 weeks to allow for a site inspection. The resolution is provided below:

Meeting Minute 045: It was resolved that Council defer development application 16-2020-357-1 for a single storey dwelling at 918 Newline Road, Eagleton (Lot 31 DP 840177) for a period of 4 weeks **(ATTACHMENT 5).**

Subsequent to the 9 March 2021 meeting, Councillors were invited to attend a site inspection.

The DA has been reported in accordance with Council's Planning Matters to be Reported to Council Policy as it has been called up by Mayor Ryan Palmer, Councillor Sarah Smith and Councillor Glen Dunkley **(ATTACHMENT 4).**

A summary of the DA and property details is provided below:

Subject land:	918 Newline Road, Eagleton (Lot 31 DP 840177)
Total area:	11.5ha
Zoning:	RU1 – Primary Production
Submissions:	1 submission was received objecting to the proposal
Key issues:	Flooding: The subject land is in a high hazard flood risk category. An assessment against the relevant planning provisions found that the application cannot be supported as it will result in an unacceptable risk to life and property, while also being incompatible with the flood hazard category applying to the site.

A locality plan is provided at **(ATTACHMENT 1).**

### Proposal

The DA proposes the construction of an elevated single dwelling on an existing stock refuge mound in the north western portion of the site, 126m from the Newline Road frontage.

The proposed dwelling is to be constructed on piers above the Flood Planning Level (FPL). The dwelling comprises 4 bedrooms, open plan living, dining and kitchen. A laundry and bathroom is to be located in the understorey, below the dwelling.

### Site Description and history

The site has frontage to Newline Road and contains a machinery shed, stables, day yards and an approved stock refuge mound.

The existing stock refuge mound has levels varying between 4.04m AHD and 4.18m AHD.

A DA for a dwelling and shed was refused by Council staff in 1995.

An approval for operation of a wastewater management system was issued in 2004.

The site has recently been subject to an order from Council's Development Compliance section to 'cease use of shed as a dwelling'. The DA for the construction of a dwelling has been lodged in response to that order.

The entire site is mapped as High Hazard Floodway; characterised by the potential for high levels of flood inundation with associated high velocity flood water.

### Key Issues

The key issue identified during assessment relates to the fact that the DA presents an unacceptable risk to life and property. A detailed assessment of the DA is contained within the Planners Assessment Report (**ATTACHMENT 2**).

### Flood risk

The DA is inconsistent with both the Port Stephens Local Environmental Plan (LEP 2013) and the Development Control Plan 2014 (DCP 2014) noting the High Hazard Floodway categorisation applying to the site.

The flood levels applicable to the site are:

- Flood Planning Level (FPL) - 6.0m AHD
- 1% AEP (Current day) – 4.7m AHD
- Probable Maximum Flood (PMF) - 8.9m AHD

The DA includes the following levels:

- Existing stock refuge mound level (no change proposed) – 4.15m AHD
- Dwelling Finished Floor Level (FFL) - 6.55m AHD

Clause 7.3(3) of LEP 2013 states that development must be compatible with the flood hazard of the land and that it must not have a significant, adverse effect on flood behaviour. Despite the DA seeking to resolve a historic unlawful use of the land, the design of the dwelling and its associated egress are not considered to be compatible with the flood hazard category applying to the site resulting in an unnecessary risk to life and property.

Chapter B.5 of the DCP 2014 provides controls for development on flood prone land. DCP 2014 states that dwelling houses on land categorised as High Hazard Floodway may be considered where the proposal can address set performance based solutions. The solutions include an assessment of the development against the risk to life (B5.18), risk to property (B5.19) and the compatibility of development with the site specific flood hazard (B5.20).

Chapter B5.18, in considering the risk to life, requires that evacuation access to an area free of risk from flooding must be provided. The site and its surrounds are significantly flood affected and it is not possible to design an egress from the proposed dwelling to flood free areas offsite. A PMF flood refuge has not been included in the DA as an alternative to a safe egress in a flood event. As the DA cannot provide a suitable egress from the site and a suitable flood refuge has not been provided, the DA does not meet the performance based solutions contained in Chapter B5.18 of DCP 2014.

Chapter B5.19 requires development to address the risk to property during various flood events. The existing stock refuge flood mound is located below the 1% AEP level and the FPL. While a significant portion of the proposed dwelling is located on piers above the FPL, a laundry/bathroom are located well below the FPL. Further, there is no area for car parking or ancillary storage above the FPL. The design of the DA is such that the risk to property has not been suitably mitigated. Noting this, the proposal is not acceptable having regard to the performance based solutions contained in Chapter B5.19 of DCP 2014.

Chapter B5.20 requires the development to be compatible with the flood hazard category of the site. The site is located within a High Hazard Floodway with high velocity rates. As the site does not have access to flood free areas, the proposed dwelling will become isolated during large flood events, which increases the risk to life and potentially places an unreasonable and unnecessary strain upon emergency services in a major flooding event.

With consideration of the above, the DA is unable to be supported. The DA is inconsistent with the provisions of both LEP 2013 and DCP 2014 as the proposal presents unacceptable risk to life and property.

**Conclusion**

Due to the sites location in a High Hazard Floodway and the design of the dwelling and its associated egress, the proposal is inconsistent with the relevant legislation and policies, including:

- Environmental Planning and Assessment Act 1979 (EP&A Act)
- Port Stephens LEP 2013 – Clause 7.3 Flood Planning
- Port Stephens DCP 2014 – Chapter B5 Flooding

Based on a detailed assessment of the DA, and with consideration to the inconsistencies identified with LEP 2013 and DCP 2013, the DA is recommended for refusal for the reasons contained in **(ATTACHMENT 3)**.

**COMMUNITY STRATEGIC PLAN**

<b>Strategic Direction</b>	<b>Delivery Program 2018-2021</b>
Thriving and Safe Place to Live	Support the amenity and identity of Port Stephens.

**FINANCIAL/RESOURCE IMPLICATIONS**

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

<b>Source of Funds</b>	<b>Yes/No</b>	<b>Funding (\$)</b>	<b>Comment</b>
Existing budget	Yes		
Reserve Funds	No		
Developer Contributions (\$7.11)	No		
External Grants	No		
Other	No		

**LEGAL, POLICY AND RISK IMPLICATIONS**

The DA is inconsistent with the relevant planning instruments including the EP&A Act, LEP 2013 and DCP 2014.

Detailed assessments against these requirements are contained within the Planners Assessment Report provided at **(ATTACHMENT 2)**.

<b>Risk</b>	<b><a href="#">Risk Ranking</a></b>	<b>Proposed Treatments</b>	<b>Within Existing Resources?</b>
If the DA is approved, a third party may appeal the determination.	Medium	Determine the DA in line with the recommendations.	Yes
If the DA is approved, there is a risk that Council will be held liable for damage or consequences.	Medium	Determine the DA in line with the recommendations.	Yes
If the DA is approved, people and property may be exposed to an unacceptable level of risk.	Medium - High	Determine the DA in line with the recommendations.	Yes

## **SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

Outside of the flood related issues associated with the proposal, it is considered that the development will have a positive economic impact on the local area and the broader community through the creation of employment and economic activity during the construction of the development.

However, the flood classification of the site and the design of the proposal presents an unacceptable risk to life and property and is therefore recommended for refusal for the reasons outlined in **(ATTACHMENT 3)**.

## **CONSULTATION**

### Internal

Consultation was undertaken with internal technical staff to facilitate the assessment of the DA including:

- Building and Developer Relations
- Development Engineering
- Strategic Planning (Development Contributions)
- Environmental Health
- Flood Advisory Review Panel.

The referral comments provided by these officers were considered as part of the detailed assessment and are discussed within the Planners Assessment Report **(ATTACHMENT 2)**. The DA is supported by all internal referrals, other than Development Engineering and Flood Advisory Review Panel for the reasons outlined above.

### External

No consultation with any external agencies was required to be undertaken during the assessment of this DA.

### Notification

In accordance with the provisions of the Port Stephens Community Participation Plan, the DA was exhibited from 31 August 2020 to 14 September 2020. During this period 1 public submission was received which objects to the DA.

A detailed assessment of the submissions and matters raised were considered as part of the Planners Assessment Report contained at **(ATTACHMENT 2)**.

### **OPTIONS**

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

### **ATTACHMENTS**

- 1) Locality Plan.
- 2) Planners Assessment Report.
- 3) Reasons for Refusal.
- 4) Call to Council Form.
- 5) Ordinary Council Minutes - 9 March 2021.
- 6) Ordinary Council Minutes - 13 Apr 2021.

### **COUNCILLORS ROOM**

Nil.

### **TABLED DOCUMENTS**

Nil.



116 Adelaide Street, Raymond Terrace NSW 2324. Phone: (02) 49800255 Fax: (02) 49873612 Email: [council@portstephens.nsw.gov.au](mailto:council@portstephens.nsw.gov.au)



## DEVELOPMENT ASSESSMENT REPORT

### APPLICATION DETAILS

<b>Application Number</b>	16-2020-357-1
<b>Development Description</b>	Single storey dwelling
<b>Applicant</b>	MR P J ILSLEY
<b>Land owner</b>	MR P J ILSLEY
<b>Date of Lodgement</b>	22/06/2020
<b>Value of Works</b>	\$288,000.00
<b>Submissions</b>	1

### PROPERTY DETAILS

<b>Property Address</b>	918 Newline Road EAGLETON
<b>Lot and DP</b>	LOT: 31 DP: 840177
<b>88B Restrictions on Title</b>	Nil
<b>Current Use</b>	Animal boarding or training establishment
<b>Zoning</b>	RU1 PRIMARY PRODUCTION
<b>Site Constraints</b>	Bushfire Prone Land - Class 3 (Buffer) Acid Sulfate Soils – Class (3) Koala Habitat Planning Map (Link over Cleared) SEPP (Coastal Management) 2018 – Coastal Zone Combined Footprint Height Trigger Map – RAAF Base Williamtown and Salt Ash Air Weapons Range – DoD Prime Agricultural Land (Classes 1-3)
<b>State Environmental Planning Policies</b>	SEPP (Building Sustainability Index: BASIX) 2004 SEPP (Coastal Management) 2018 SEPP (Koala Habitat Protection) 2020 SEPP No. 55 – Remediation of Land



**PLANNERS PRE-ASSESSMENT CHECKLIST****PROPOSAL**

The application proposes a dwelling to support the animal training establishment at the subject site. The proposed development comprises a 201m<sup>2</sup> single storey dwelling, to be located on an existing earth mound (approved under DA 16-2016-302). A concrete slab is proposed over the ground level of the dwelling, with piers proposed to support the first level of the dwelling. The dwelling is a single storey design comprising of four bedrooms, ensuite, open plan living, dining, kitchen space and a stairwell. The ground level will be used for vehicle parking and is identified as a non-habitable space.

The proposal also incorporates the decommissioning of unauthorised living quarters within the site's industrial metal shed and the associated OSSM system being connected to the proposed dwelling.



Figure 1: Proposed development

**SITE DESCRIPTION**

The subject site is legally identified as lot 31 DP 840177, 918 Newline Road, Eagleton. The regularly shaped rural lot is located on the eastern side of Newline Road, within a rural precinct that is characterised by large rural allotments. The lot comprises a total area of 11.5ha with development including a large shed, stables and day yards, earthworks mound, sealed crossover and driveway, multiple dams and small sheds.

The lot is relatively flat in its topography and is situated in close proximity of the Williams River and the entire site is identified within the High Hazard Floodway categorisation. Essential services including vehicular access and electricity are available to the lot, with services including water, wastewater and stormwater able to be managed onsite. No easements or land use restrictions have been identified over the site.

16-2020-357-1



Figure 2: Aerial view of subject site

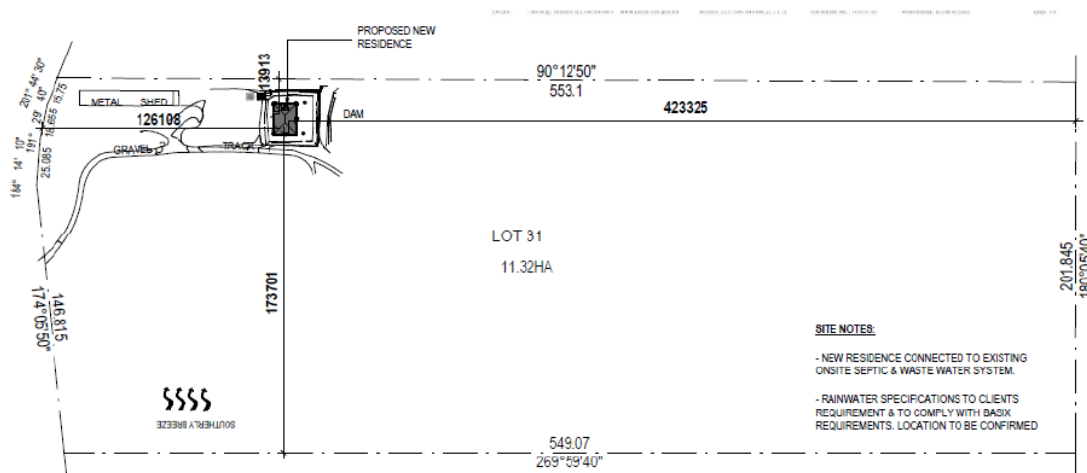


Figure 3: Locality plan

### SITE HISTORY

The site has supported an animal training establishment for approximately 15 years, with structures including a machinery shed, stables, day yards and stock refuge mounds approved over this timeframe. Whilst a development application for a dwelling and shed was refused by Council staff in 1995, an approval for operation of a waste water management system was issued in 2004.

The site has recently been subject to an order from Council's Development Compliance section to 'cease use of shed as a dwelling'. The pending development application for construction of a dwelling (DA 16-2020-357-1) has been lodged in response to this order.

The following applications have been assessed over the subject site:

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

16-2020-357-1

- 16-2016-302 – Land Fill (new stock refuge mound and extension of existing mound) – Approved – 28.06.2016
- 16-2005-215 – Four (4) x Stables & Day Yards – Approved – 21.04.2005
- 16-1998-1384 – Retaining Wall – Approved – 13.10.1998
- BA/DA - 7-1997-1607 – Land Fill & Excavation – Approved – 21.01.1998
- BA/DA – 7-1997-60651 – Machinery Shed – Approved – 12.06.1997
- BA/DA – 7-1997-84 – Land Fill – Approved – 10.02.1997
- BA/DA – 7.1997-56 – Advertising Sign – Approved – 23.01.1997
- BA/DA – 7.1995-1855 – Dwelling and Shed – Refused by Staff – 26.11.1996

**SITE INSPECTION**

A site inspection was carried out on 3 February 2021.

The subject site can be seen in the images below:



**Figure 4: View from proposed development site facing east**



**Figure 5: View from proposed development site facing west**





Figure 6: View of proposed development site facing north



Figure 7: View of proposed development site facing south

## REFERRALS

The proposed development was referred to the following internal specialists and external agencies. The comments provided by the special staff and external agencies have been used to carry out the assessment against the S4.15 Matters for Consideration below.

### Development Engineer

**16/07/2020** – Further information requested for items including; flood compatible design and construction, electrical installations, materials storage and structural certification of dwelling. Three (3) options were provided by Development Engineer as a pathway forward. Not supporting the application on the basis that Council does not support residential development within a high hazard floodway was recommended as the preferred option from a flood risk minimisation perspective.

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

16-2020-357-1

**7/12/2020** – Request for Information issued seeking assessment against the performance based solutions contained in Chapter B5.D of the Port Stephens Council DCP.

**20/12/2021** – Proposal is not consistent with the Floodplain Development Manual as the performance based criteria of DCP 2014 was not addressed to Council's satisfaction.

**Environmental Health** – The proposed waste water system design submitted with the application demonstrates a suitable solution is available through a S68 Onsite Sewer Management System application. The S68 application has been submitted with Council concurrently with the DA and has been supported subject to conditions of consent.

**Building Surveyor** – The proposed new dwelling was referred for consideration of Building Code of Australia (BCA) and building requirements. The proposed new dwelling is sufficiently separated from existing boundaries and the existing dwelling, achieving the BCA fire separation requirements. A CC has been lodged concurrently with the DA application. The proposal is supported subject to conditions.

**Flood Advisory Review Panel** – The application was referred to the Flood Advisory Review Panel (FARP) following the recommendation of refusal from Council Development Engineers due to the flood hazard categorisation. The application was reviewed by FARP on two occasions, the initial review and once more following the endorsement of the amendments to the Chapter B5 Flooding DCP 2014. FARP did not support the application as emergency egress for the proposal will be cut off early in a flood event and sits well below the current day 1% AEP flood level of 5.1m. Additionally, the proposal sits 2.35m below the PMF level of the site and thus a PMF flood Refuge would be required as a minimum but has not been proposed by the applicant. The development is not consistent with the application of performance based solutions outlined in B5.D of the DCP. Due to the unacceptable safety implications posed by the flood constraints of the site and the inability of the applicant to resolve these flooding issues to an acceptable engineering standard, the application is recommended for refusal.

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979*****Section 4.15 - Matters for consideration***

The proposal has been assessed under the relevant matters for consideration detailed in Section 4.15 of the Environmental Planning and Assessment Act 1979 (EP&A Act).

***Section 4.15(a)(i) - any environmental planning instrument***

An assessment has been undertaken against each of the applicable environmental planning instruments (EPI's), as follows:

**State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004**

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 (SEPP BASIX) was enacted to ensure that dwellings are designed to utilise less potable water and to minimise greenhouse gas emissions by setting energy and water reduction targets for residential houses and units.

A valid BASIX certificate has been submitted with the development application which demonstrates that the water, thermal comfort and energy requirements for the proposal have been achieved. The proposal is considered to satisfy the relevant provisions of SEPP BASIX.

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

Clause 7 of SEPP 55 requires the consent authority to consider whether land is contaminated, is in a suitable state despite contamination, or requires remediation to be made suitable for the proposed development.

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

16-2020-357-1

It is noted that the NSW list of contaminated sites and list of notified sites published by the EPA does not identify the site as being contaminated, nor has previous record of contamination in Council's system. The land is not within an investigation area, there are no records of potentially contaminating activities occurring on the site, and the dual occupancy is not listed as a possible contaminating use, per Table 1 of the Guidelines. Noting this, the proposed development satisfies the requirements of SEPP No. 55.

State Environmental Planning Policy (Koala Habitat Protection) 2019

This policy aims to encourage the conservation and management of areas of natural vegetation that provide habitat for koalas to support a permanent free-living population over their present range and reverse the current trend of koala population decline. This Policy commenced on 1 March 2020.

The site is located in an area mapped mainly cleared, the rear of the site along the boundary to the waterfront is mapped and 50m buffer over cleared. The development application does not include the removal of natural vegetation for koala habitat. The development is not considered to exacerbate impact to the koala habitat or decline in koala population.

State Environmental Planning Policy Coastal Management 2018

The subject land is located within the Coastal Environmental Area and Coastal Use Area. The subject is located in close proximity to the Williams River and triggers the consideration of the Coastal Management SEPP.

As per Clause 13 of the SEPP, development consent must not be granted for development within the coastal environment area unless the consent authority has considered whether the development will cause impact to the integrity of the biophysical and ecological environment, the values and natural coastal processes, marine vegetation, native vegetation and fauna and existing public open space and access to and along the foreshore.

The proposed development is setback approximately 120m from the Williams River waterbody, the development is separated from the waterbody by Newline Road and will therefore not have any significant adverse impacts.

As per Clause 14 of the SEPP, development consent must not be granted for development unless the consent authority has considered existing and safe access to and along the foreshore, overshadowing and loss of views, visual amenity and scenic qualities and heritage values. The consent authority must also be satisfied that the development is designed and sited to avoid adverse impacts and to ensure the development has taken into account the surrounding built environment in its design.

The proposed dwelling is not located in close proximity to the Williams River and will not impact on access to the river. The proposed residential use of the site, in conjunction with the existing flood risk as a result of the Hunter River, presents as a potential risk to the ecological environment in the event of the dwelling being destroyed in flood waters.

Clause 15 of the SEPP requires consideration to whether the development would increase the risk of coastal hazards. The proposed development is not likely to increase risk to coastal hazards.

There is minor associated risk with the dwelling being destroyed by flooding. The proposed dwelling, in significant flooding events, may result in the destruction of the mound and structure. In the event of the development being destroyed by flood waters materials would be washed down stream affecting surrounding properties and risk to the ecological environment of the river network. If the proposal were amended to be further setback from the river and potential hazard the risk associated with the flooding could be minimised.

The application can therefore be supported as it generally complies with the aims and the matters for consideration of the Policy.

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Port Stephens Local Environmental Plan 2013 (LEP)**Clause 2.3 – Zone Objectives and Land Use Table**

The proposed development is defined as a 'dwelling house' and is permissible with consent in the RU1 Primary Production zone. The development addresses the objectives of the zone to minimise the fragmentation and alienation of resource lands.

**Clause 4.2B – Erection Of A Dwelling On Land In Certain Rural, Residential And Environmental Protection Zones**

The site is located in the RU1 zone and the lot was created before 22 February 2014 with an area of at least 4,000m<sup>2</sup> on which a dwelling was permissible under the previous Local Environmental Plan.

The site therefore holds a dwelling entitlement.

**Clause 7.1 – Acid Sulfate Soils**

The subject land is mapped as containing potential Class 3 acid sulfate soils. The proposed development is not anticipated to entail excavations below 1 metres and therefore it is not expected that acid sulfate soils would be encountered during works.

**Clause 7.3 – Flood Planning**

The proposed development is located on land mapped as Flood Prone land and the land is below the flood planning level.

Developments on land identified as flood prone are to demonstrate minimal flood risk to life and property, and to achieve development which is compatible with the flood hazard to avoid significant adverse impacts on the flood behaviour in the environment.

The flood category for the development area is High Hazard Floodway. The current driveway connects the site to Newline Road. The driveway is not constructed above the flood planning level, which is required for an access way that can be used in the event of a flood. As such, the proposed development does not have suitable flood free access from the site.

The proposed siting for the development is therefore not supported. In the event of a flood, the development will result in unacceptable risk to life and property. The proposed dwelling is not considered appropriately located on the site to manage risk to life from flood, and avoid unsustainable social and economic costs to the community as a consequence of flood. and will be subject to dangerous flood impacts.

**Clause 7.6 – Essential Services**

The subject site is serviced by reticulated water and electricity. The applicant has noted the subject site has an existing OSMS servicing the existing shed and the system will be connected to the proposed dwelling in due course. The subject land also maintains direct access to Newline Road, meeting the requirements of this clause.

***Section 4.15(a)(ii) - any draft environmental planning instrument that is or has been placed on public exhibition***

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

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

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***Section 4.15(a)(iii) – any development control plan***Port Stephens Development Control Plan 2014

The DCP is applicable to the proposed development and has been assessed below.

**Chapter B3 – Environmental Management**Acid Sulfate Soils

The objective of this DCP Chapter is to ensure that developments do not disturb, expose or drain Acid Sulfate Soils (ASS) and cause environmental damage. As detailed within Clause 7.1 discussion above, the proposed development could be undertaken, subject to conditions of consent, without resulting in adverse impact to ASS. In this regard the development is consistent with the objective and requirements of the DCP.

**Chapter B4 – Drainage and Water Quality**

A stormwater management plan was submitted with the application and includes adequate quality and quantity controls as required by Councils policy. The stormwater drainage plan has been assessed as being consistent with the Infrastructure Specification.

**Chapter B5 – Flooding**

The subject land is mapped as being within the Flood Planning Area. Chapter B5 outlines objectives to inform and assist with determining development suitability on land designated in particular flood hazards. All new developments are required to address the development control within this part of the DCP to mitigate risks and considered suitability.

Chapter B.5 of the DCP 2014 provides more detailed provisions to inform the assessment against the LEP 2013 provisions. The DCP chapter was amended in December 2020 which included performance based solutions for certain development in flood prone areas. The amended chapter states that dwelling houses on land categorised as High Hazard Floodway can be considered, where the newly adopted performance based criteria in the DCP 2014 can be addressed.

The area has been classified as flood prone land and is located within a High Hazard Floodway. Further, the existing flood mound is below the flood planning level on the subject site.

The current flood levels applicable to the site are:

- Flood Planning Level - 6.0m AHD
- 1% AEP (Current day) – 4.7m AHD
- Probable Maximum Flood – 8.9m AHD

The proposed development includes finished floor level (FFL) as follows:

- Existing Flood Mound – 4.15m AHD
- Dwelling – 6.55m AHD

The applicant provided a Flood Impact Assessment for the proposal that included flood modelling for a range of flood events on the existing earth mound. Conclusions from the impact assessment stated *'the structural integrity of the mound and proposed dwelling is expected to be unaffected by flooding for all but extreme events such as the PMF'*.

The DA was assessed by Council's Development Engineering Section, which included an assessment of the proposal against the recently adopted performance based solutions listed in Chapter B5.D of the Port Stephens Council Development Control Plan (DCP).

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

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Chapter B5.18 states that evacuation access to an area free of risk from flooding must be provided. The subject land is located central to the flood affected area and it is therefore impossible to provide access to flood free areas offsite. The proponent has also not provided a flood refuge as part of the proposal.

Chapter B5.19 requires development to address the risk to property at the expected velocities and levels during various flood events. The existing flood mound is currently located below the 1% AEP level, which will result in the inundation of the ground floor area and any stored items below the dwelling (including vehicles).

Chapter B5.20 requires the application to be compatible with the flood hazard category of the site. The site is located within a High Hazard Floodway with high velocity rates. As the site does not have access to flood free areas, the development will become isolated during large flood events.

The development is not therefore consistent with the application of performance based solutions outlined in B5.D of the DCP. Due to the unacceptable safety implications posed by the flood constraints of the site and the inability of the applicant to resolve these flooding issues to an acceptable engineering standard, the application is recommended for refusal.

**Chapter B8 – Road Network and Parking**

The proposal includes a 4 bedroom dwelling, the DCP requires 2 car spaces to be provided to support the development on the site. There is a suitable car spaces available on the site. Should the development be supported, there is adequate car spaces available for the additional development on the site.

**Chapter C – Development Types**

The proposed development comprise of a single dwelling therefore the provisions of Chapter C4 are applicable.

**Chapter D4 - Dwelling House, Secondary Dwelling, or Dual Occupancy**Building height

There is no maximum building limit under the LEP, as such the maximum limit of 8m applies to the site. The proposal is for a single storey dwelling with a maximum proposed height of 7.9m, to be constructed on top of a flood mound. The dwelling does not exceed the maximum building height under the DCP 2014.

Setbacks

The proposal is appropriately setback from all the side and rear boundary setbacks. The proposal is located to the rear of the existing metal shed. The proposal does not detract from the rural character of the area.

Streetscape and privacy

The development is appropriately setback to ensure the rural character and streetscape and privacy of the area is maintained.

Private open space

The development is proposed on a rural property and is adequately setback to facilitate ample private open space for the proposed dwelling.

Landscaping

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

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The subject site is a rural property with sufficient space for landscaping and plantings. There are not matters of privacy which would require landscape screening to be planted. The subject site has sufficient space to achieve landscaping requirements.

Site Facilities and Services

The proposed dwelling location and flood mound area create suitable area to support facilities and services such as waste storage and clothes drying. As mentioned above, the existing OSWS system will be connected to the new dwelling.

***Section 4.15(1)(a)(iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph)***

There are no regulations that apply to the proposal.

***Section 4.15 (1)(b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality***Social and Economic Impacts

There would be beneficial impacts as a result of the development. The proposal will result in a dwelling on the site, increasing the housing stock and diversity of the area. The erection of a lawful dwelling house at the site would also ensure the continuation of a local business (animal training establishment). The construction of the development would result in employment opportunities during and after the development of the structures and having a monetary contribution to the local area.

Impacts on the Built Environment

The proposed development would not cause harm to the existing character. The proposed dwelling is to be erected on a flood mound, given the area is characterised by rural residential development, the dwelling would be built at a similar height to the surrounding properties. The dwelling has been designed in a manner to be consistent with the rural character of the area. Overall, the development is not considered likely to result in adverse impacts to the built environment.

Impacts on the Natural Environment

The proposed development is not considered to be compatible with the flood risk associated with the land and may result in an unacceptable impact to life. The proposed development is located within close proximity to the Williams River to the west. The development is not considered to be a suitable use of the site with regard to the environment and does not align with Councils endorsed policies.

**s4.15(1)(c) – The suitability of the site**

The subject site is zoned RU1 – Primary Production, whereby the proposed dwelling is a permissible land use under the zoning. The site is identified as high hazard flood-way and the proposed development and use does not align or address all of the necessary requirements under current Council endorsed policy and legislation. Due to the identified flood hazard, the proposal has been assessed as not being a suitable outcome for the site.

**s4.15(1)(d) – Any submissions made in accordance with this act or the regulations**

The application was notified in accordance with the provisions of the Port Stephens Council Community Participation Plan. One (1) submission was received with relation to the subject development proposal. The matters raised in this submission have been detailed in the table below.

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

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<b>No.</b>	<b>Author of submission</b>	<b>Comment</b>	<b>Council response</b>
1		Siting of the proposed development	The proposal meets setback requirements outlined in the Port Stephens DCP.
		Loss of amenity and conflict arising between properties	The proposal is permissible under LEP 2013. The proposed dwelling is set approximately 120m from the existing dwelling located opposite Newline Road and it is considered that this will limit any significant amenity issues. The land to the north currently only contains a small shed and cattle yards.
		Flooding Risk	Council Development Engineers and Development Planners have assessed the proposal against relevant environmental planning instruments, development standards and policies. In this instance, the proposal has not been supported on the grounds of flood risk.

**s4.15(1)(e) – The public interest**

The proposed development is not considered to be in the public interest as the proposed development is not consistent or suitable with the flood category applicable to the subject site. The impact and increase in risk to life and property as a result of the development in a significant flood event is not supportable in this instance.

**s7.11 – Contribution towards provision or improvement of amenities or services (developer contributions)**

Nil.

**DETERMINATION**

The application is recommended to be refused by the elected Council.

ISAAC LANCASTER  
DEVELOPMENT PLANNER

**SCHEDULE 1 – REASONS FOR REFUSAL**

The application is recommended for refusal on the following grounds:

1. The proposed development fails to satisfy Clause 7.3 - Flood Planning of the Port Stephens Local Environmental Plan 2013 as the development does not demonstrate that it is compatible with the high hazard floodway category of the site, including minimising the risk to life associated with the flood hazard (s4.15(1)(a)(i) EP&A Act);
2. The development does not comply with the controls contained within Chapter B5 Flooding of the Port Stephens Development Control Plan (s4.15(1)(a)(iii) EP&A Act);
3. The proposed development does not demonstrate the site is suitable for the proposed site given the flood category of the land s4.15(1)(c) of the EP&A Act); and
4. The proposed development is not considered to be in the public interest as the development is inconsistent with the adopted principles and strategies which seek to promote the appropriate development of the land (s4.15(1)(e) EP&A Act).

**PORT STEPHENS COUNCIL**

116 Adelaide Street  
Raymond Terrace NSW 2324

PO Box 42  
Raymond Terrace NSW 2324

Phone: 02 4980 0255  
Email: [council@portstephens.nsw.gov.au](mailto:council@portstephens.nsw.gov.au)

[www.portstephens.nsw.gov.au](http://www.portstephens.nsw.gov.au)

## ITEM 3 - ATTACHMENT 4 CALL TO COUNCIL FORM.

PORT STEPHENS  
COUNCIL

## Call to Council form

Development Application

116 Adelaide Street,  
Raymond Terrace NSW 2324PO Box 42  
Raymond Terrace NSW 2324p (02) 4988 0255 | f (02) 4987 3612  
e council@portstephens.nsw.gov.au

DX 21406 | ABN 16 744 377 876

## DEVELOPMENT APPLICATION (DA) CALL TO COUNCIL REQUEST

We (Mayor/Councillor/s)

Name: Ryan Palmer

Name: Sarah Smith

Name: Glen Dunkley

request that DA number: DA16-2020-357-1

for DA description:

Single storey dwelling.

located at: 918 Newline Rd, Eagleton

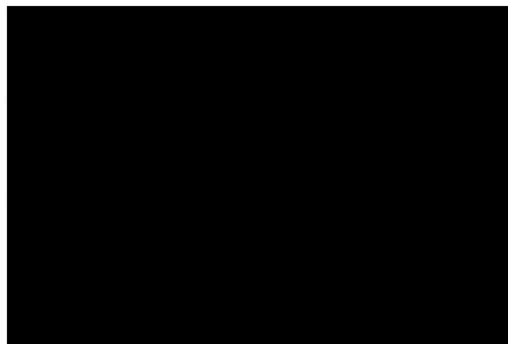
be reported to Council for determination.

## REASON

Public interest as a review of development in areas deemed as floodway is taking place.

## SIGNATURE OF APPLICANT/S

Signature



Date

11 8 2020

Signature

Date

11 8 2020

Signature

Date

11 8 2020

## PRIVACY

Port Stephens Council is committed to protecting your privacy. We take reasonable steps to comply with relevant legislation and Council policy. **Purpose:** The purpose of this form is to enable Council to record the matter raised and taken appropriate action.**Intended recipients:** Council employees, contractors and other third parties where appropriate. **Supply:** Voluntary.**Consequence of Non Provision:** Council may not take action on the matter raised. **Storage and security:** This document will be placed on the relevant file and/or saved in Council's records management system in accordance with Council policy and relevant legislation.**Access:** Please contact Council on 02 4988 0255 to enquire how you can access information.

**MINUTES ORDINARY COUNCIL - 9 MARCH 2021**

Councillor Paul Le Mottee left the meeting at 5:53pm prior to Item 1.

**ITEM NO. 1**

**FILE NO: 20/266215**  
**EDRMS NO: 16-2020-357-1**

**DEVELOPMENT APPLICATION 16-2020-357-1 FOR A SINGLE STOREY DWELLING AT 918 NEWLINE ROAD, EAGLETON (LOT 31 DP 840177)**

REPORT OF: KATE DRINAN - DEVELOPMENT ASSESSMENT AND COMPLIANCE SECTION MANAGER  
GROUP: DEVELOPMENT SERVICES

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Refuse Development Application 16-2020-357-1 for a single storey dwelling at 918 Newline Road, Eagleton (Lot 31 DP 840177) for the reasons contained in (ATTACHMENT 3).
- 

**ORDINARY COUNCIL MEETING - 9 MARCH 2021  
MOTION**

<b>045</b>	<b>Councillor Chris Doohan</b> <b>Councillor Jaimie Abbott</b>  It was resolved that Council defer development application 16-2020-357-1 for a single storey dwelling at 918 Newline Road, Eagleton (Lot 31 DP 840177) for a period of 4 weeks.
------------	--

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

Those for the Motion: Mayor Ryan Palmer, Crs Jaimie Abbott, Giacomo Arnott, Chris Doohan, Ken Jordan, Sarah Smith and Steve Tucker.

Those against the Motion: Nil.

The motion was carried.

**BACKGROUND**

The purpose of this report is to present a development application (DA) 16-2020-357-1 for a single dwelling at 918 Newline Road, Eagleton (Lot 31 DP 840177) to Council for determination.

**MINUTES ORDINARY COUNCIL - 9 MARCH 2021**

The DA has been reported in accordance with Council's Planning Matters to be Reported to Council Policy as it has been called up by Mayor Ryan Palmer, Councillor Sarah Smith and Councillor Glen Dunkley (**ATTACHMENT 4**).

A locality plan is provided at (**ATTACHMENT 1**).

Proposal

The DA proposes the construction of an elevated single dwelling on an existing stock refuge mound in the north western portion of the site, 126m from the Newline Road frontage.

The proposed dwelling is to be constructed on piers above the Flood Planning Level (FPL). The dwelling comprises 4 bedrooms, open plan living, dining and kitchen. A laundry and bathroom is to be located in the understorey, below the dwelling.

Site Description and history

The site is located within the RU1 Primary Production zone with a frontage to Newline Road.

The site has a total area of 11.5ha and includes a machinery shed, stables, day yards and an approved stock refuge mound.

The stock refuge mound has levels varying between 4.04m AHD and 4.18m AHD.

A DA for a dwelling and shed was refused by Council staff in 1995.

An approval for operation of a wastewater management system was issued in 2004.

The site has recently been subject to an order from Council's Development Compliance section to 'cease use of shed as a dwelling'. The DA for the construction of a dwelling has been lodged in response to that order.

The entire site is flood prone and is categorised as High Hazard Floodway.

Key Issues

The key issue identified during assessment relates to the fact that the DA presents an unacceptable risk to life and property. A detailed assessment of the DA is contained within the Planners Assessment Report (**ATTACHMENT 2**).

Flood risk

The DA is inconsistent with both the Port Stephens Local Environmental Plan (LEP 2013) and the Development Control Plan 2014 (DCP 2014) noting the High Hazard Floodway categorisation applying to the site.

**MINUTES ORDINARY COUNCIL - 9 MARCH 2021**

The flood levels applicable to the site are:

- Flood Planning Level (FPL) - 6.0m AHD
- 1% AEP (Current day) – 4.7m AHD
- Probable Maximum Flood (PMF) - 8.9m AHD

The DA includes the following levels:

- Existing stock refuge mound level (no change proposed) – 4.15m AHD
- Dwelling Finished Floor Level (FFL) - 6.55m AHD

Clause 7.3(3) of LEP 2013 states that development must be compatible with the flood hazard of the land and that it must not have a significant, adverse effect on flood behaviour. Despite the DA seeking to resolve a historic unlawful use of the land, the design of the dwelling and its associated egress are not considered to be compatible with the flood hazard category applying to the site resulting in an unnecessary risk to life and property.

Chapter B.5 of the DCP 2014 provides controls for development on flood prone land. DCP 2014 states that dwelling houses on land categorised as High Hazard Floodway may be considered where the proposal can address set performance based solutions. The solutions include an assessment of the development against the risk to life (B5.18), risk to property (B5.19) and the compatibility of development with the site specific flood hazard (B5.20).

Chapter B5.18, in considering the risk to life, requires that evacuation access to an area free of risk from flooding must be provided. The site and its surrounds are significantly flood affected and it is not possible to design an egress from the proposed dwelling to flood free areas offsite. A PMF flood refuge has not been included in the DA as an alternative to a safe egress in a flood event. As the DA cannot provide a suitable egress from the site and a suitable flood refuge has not been provided, the DA does not meet the performance based solutions contained in Chapter B5.18 of DCP 2014.

Chapter B5.19 requires development to address the risk to property during various flood events. The existing stock refuge flood mound is located below the 1% AEP level and the FPL. While a significant portion of the proposed dwelling is located on piers above the FPL, a laundry/bathroom are located well below the FPL. Further, there is no area for car parking or ancillary storage above the FPL. The design of the DA is such that the risk to property has not been suitably mitigated. Noting this, the proposal is not acceptable having regard to the performance based solutions contained in Chapter B5.19 of DCP 2014.

Chapter B5.20 requires the development to be compatible with the flood hazard category of the site. The site is located within a High Hazard Floodway with high velocity rates. As the site does not have access to flood free areas, the proposed dwelling will become isolated during large flood events, which increases the risk to



**MINUTES ORDINARY COUNCIL - 9 MARCH 2021**

life and potentially places an unreasonable and unnecessary strain upon emergency services in a major flooding event.

With consideration of the above, the DA is unable to be supported. The DA is inconsistent with the provisions of both LEP 2013 and DCP 2014 as the proposal presents unacceptable risk to life and property.

**Conclusion**

Due to the sites location in a High Hazard Floodway and the design of the dwelling and its associated egress, the proposal is inconsistent with the relevant legislation and policies, including:

- Environmental Planning and Assessment Act 1979 (EP&A Act)
- Port Stephens LEP 2013 – Clause 7.3 Flood Planning
- Port Stephens DCP 2014 – Chapter B5 Flooding

Based on a detailed assessment of the DA, and with consideration to the inconsistencies identified with LEP 2013 and DCP 2013, the DA is recommended for refusal for the reasons contained in **(ATTACHMENT 3)**.

**COMMUNITY STRATEGIC PLAN**

<b>Strategic Direction</b>	<b>Delivery Program 2018-2021</b>
Thriving and Safe Place to Live	Support the amenity and identity of Port Stephens.

**FINANCIAL/RESOURCE IMPLICATIONS**

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

<b>Source of Funds</b>	<b>Yes/No</b>	<b>Funding (\$)</b>	<b>Comment</b>
Existing budget	Yes		
Reserve Funds	N/A		
Developer Contributions (\$7.11)	N/A		
External Grants	N/A		
Other	N/A		

**LEGAL, POLICY AND RISK IMPLICATIONS**

The DA is inconsistent with the relevant planning instruments including the EP&A Act, LEP 2013 and DCP 2014.

**MINUTES ORDINARY COUNCIL - 9 MARCH 2021**

Detailed assessments against these requirements are contained within the Planners Assessment Report provided at **(ATTACHMENT 2)**.

<b>Risk</b>	<b><a href="#">Risk Ranking</a></b>	<b>Proposed Treatments</b>	<b>Within Existing Resources?</b>
If the DA is approved, a third party may appeal the determination.	Medium	Determine the DA in line with the recommendations.	Yes
If the DA is approved, there is a risk that Council will be held liable for damage or consequences.	Medium	Determine the DA in line with the recommendations.	Yes
If the DA is approved, people and property may be exposed to an unacceptable level of risk.	Medium - High	Determine the DA in line with the recommendations.	Yes

**SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

Outside of the flood related issues associated with the proposal, it is considered that the development will have a positive economic impact on the local area and the broader community through the creation of employment and economic activity during the construction of the development.

However, the flood classification of the site and the design of the proposal presents an unacceptable risk to life and property and is therefore recommended for refusal for the reasons outlined in **(ATTACHMENT 3)**.

**CONSULTATION**Internal

Consultation was undertaken with internal technical staff to facilitate the assessment of the DA including:

- Building and Developer Relations
- Development Engineering
- Strategic Planning (Development Contributions)
- Environmental Health
- Flood Advisory Review Panel.

**MINUTES ORDINARY COUNCIL - 9 MARCH 2021**

The referral comments provided by these officers were considered as part of the detailed assessment and are discussed within the Planners Assessment Report (**ATTACHMENT 2**). The DA is supported by all internal referrals, other than Development Engineering and Flood Advisory Review Panel for the reasons outlined above.

External

No consultation with any external agencies was required to be undertaken during the assessment of this DA.

Notification

In accordance with the provisions of the Port Stephens Community Participation Plan, the DA was exhibited from 31 August 2020 to 14 September 2020. During this period 1 public submission was received which objects to the DA.

A detailed assessment of the submissions and matters raised were considered as part of the Planners Assessment Report contained at (**ATTACHMENT 2**).

**OPTIONS**

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

**ATTACHMENTS**

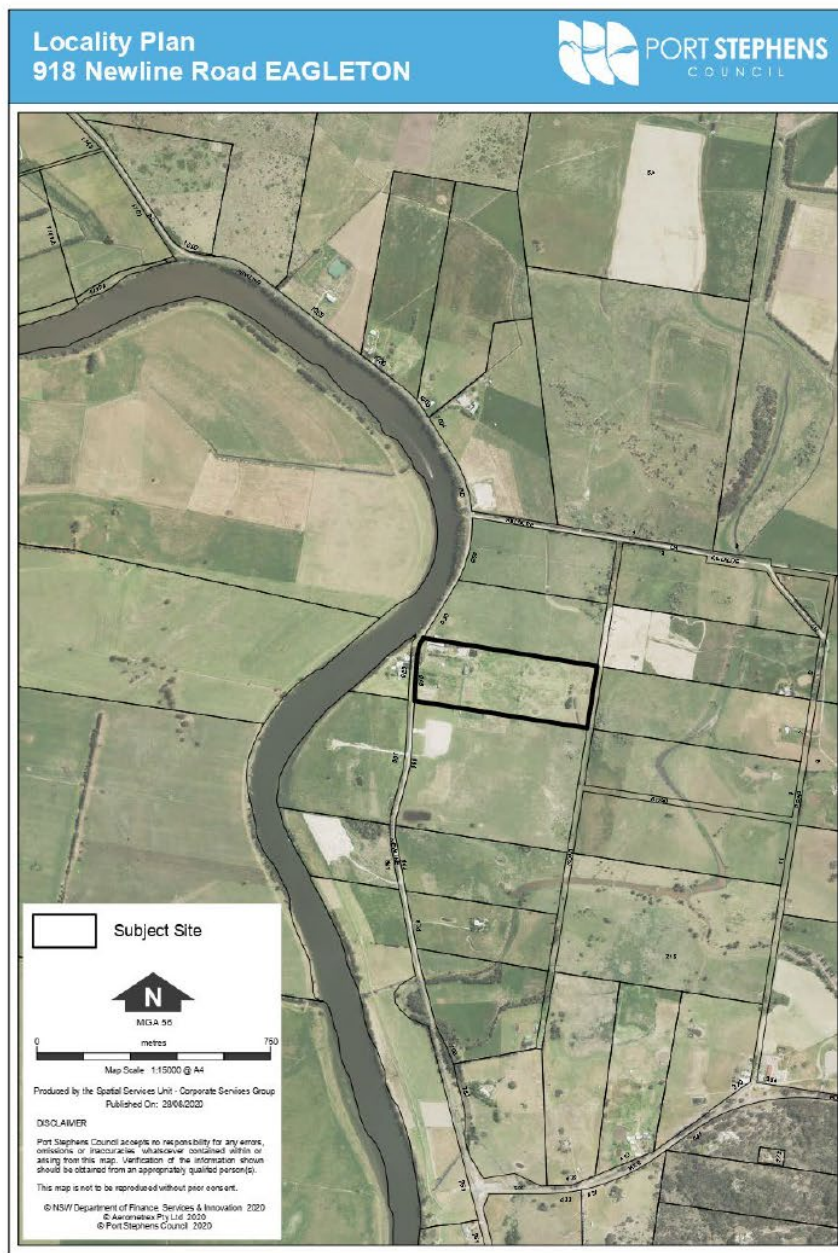
- 1) Locality Plan.
- 2) Planners Assessment Report.
- 3) Reasons for Refusal.
- 4) Call to Council Form.

**COUNCILLORS ROOM**

- 1) Development Plans.
- 2) Unredacted submission.

**TABLED DOCUMENTS**

Nil.



110 Adelaide Street, Raymond Terrace NSW 2324. Phone: (02) 49800205 Fax: (02) 49873612 Email: [council@portstephens.nsw.gov.au](mailto:council@portstephens.nsw.gov.au)



APPLICATION DETAILS

Application Number	16-2020-357-1
Development Description	Single storey dwelling
Applicant	MR P J ILSLEY
Land owner	MR P J ILSLEY
Date of Lodgement	22/06/2020
Value of Works	\$288,000.00
Submissions	1

PROPERTY DETAILS

Property Address	918 Newline Road EAGLETON
Lot and DP	LOT: 31 DP: 840177
88B Restrictions on Title	Nil
Current Use	Animal boarding or training establishment
Zoning	RU1 PRIMARY PRODUCTION
Site Constraints	Bushfire Prone Land - Class 3 (Buffer) Acid Sulfate Soils – Class (3) Koala Habitat Planning Map (Link over Cleared) SEPP (Coastal Management) 2018 – Coastal Zone Combined Footprint Height Trigger Map – RAAF Base Williamtown and Salt Ash Air Weapons Range – DoD Prime Agricultural Land (Classes 1-3)
State Environmental Planning Policies	SEPP (Building Sustainability Index: BASIX) 2004 SEPP (Coastal Management) 2018 SEPP (Koala Habitat Protection) 2020 SEPP No. 55 – Remediation of Land

**MINUTES ORDINARY COUNCIL - 9 MARCH 2021****ITEM 1 - ATTACHMENT 2      PLANNERS ASSESSMENT REPORT.**

16-2020-357-1

**PLANNERS PRE-ASSESSMENT CHECKLIST****PROPOSAL**

The application proposes a dwelling to support the animal training establishment at the subject site. The proposed development comprises a 201m<sup>2</sup> single storey dwelling, to be located on an existing earth mound (approved under DA 16-2016-302). A concrete slab is proposed over the ground level of the dwelling, with piers proposed to support the first level of the dwelling. The dwelling is a single storey design comprising of four bedrooms, ensuite, open plan living, dining, kitchen space and a stairwell. The ground level will be used for vehicle parking and is identified as a non-habitable space.

The proposal also incorporates the decommissioning of unauthorised living quarters within the site's industrial metal shed and the associated OSSM system being connected to the proposed dwelling.



Figure 1: Proposed development

**SITE DESCRIPTION**

The subject site is legally identified as lot 31 DP 840177, 918 Newline Road, Eagleton. The regularly shaped rural lot is located on the eastern side of Newline Road, within a rural precinct that is characterised by large rural allotments. The lot comprises a total area of 11.5ha with development including a large shed, stables and day yards, earthworks mound, sealed crossover and driveway, multiple dams and small sheds.

The lot is relatively flat in its topography and is situated in close proximity of the Williams River and the entire site is identified within the High Hazard Floodway categorisation. Essential services including vehicular access and electricity are available to the lot, with services including water, wastewater and stormwater able to be managed onsite. No easements or land use restrictions have been identified over the site.

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Figure 2: Aerial view of subject site

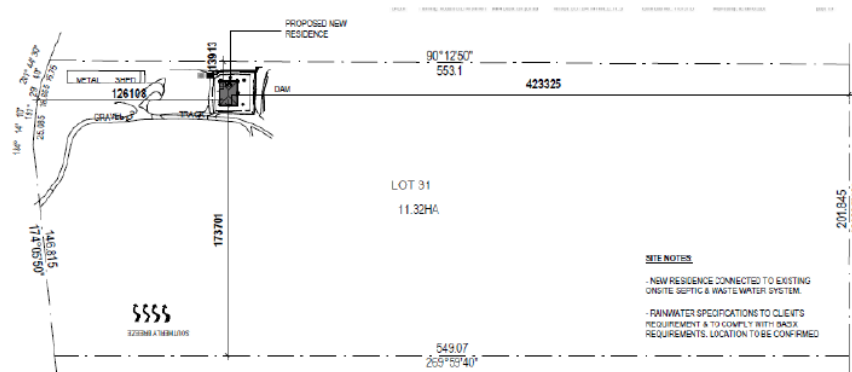


Figure 3: Locality plan

#### SITE HISTORY

The site has supported an animal training establishment for approximately 15 years, with structures including a machinery shed, stables, day yards and stock refuge mounds approved over this timeframe. Whilst a development application for a dwelling and shed was refused by Council staff in 1995, an approval for operation of a waste water management system was issued in 2004.

The site has recently been subject to an order from Council's Development Compliance section to 'cease use of shed as a dwelling'. The pending development application for construction of a dwelling (DA 16-2020-357-1) has been lodged in response to this order.

The following applications have been assessed over the subject site:

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**MINUTES ORDINARY COUNCIL - 9 MARCH 2021**

**ITEM 1 - ATTACHMENT 2      PLANNERS ASSESSMENT REPORT.**

16-2020-357-1

- 16-2016-302 – Land Fill (new stock refuge mound and extension of existing mound) – Approved – 28.06.2016
- 16-2005-215 – Four (4) x Stables & Day Yards – Approved – 21.04.2005
- 16-1998-1384 – Retaining Wall – Approved – 13.10.1998
- BA/DA - 7-1997-1607 – Land Fill & Excavation – Approved – 21.01.1998
- BA/DA – 7-1997-60651 – Machinery Shed – Approved – 12.06.1997
- BA/DA – 7-1997-84 – Land Fill – Approved – 10.02.1997
- BA/DA – 7.1997-56 – Advertising Sign – Approved – 23.01.1997
- BA/DA – 7.1995-1855 – Dwelling and Shed – Refused by Staff – 26.11.1996

**SITE INSPECTION**

A site inspection was carried out on 3 February 2021.

The subject site can be seen in the images below:



Figure 4: View from proposed development site facing east



Figure 5: View from proposed development site facing west

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16-2020-357-1



Figure 6: View of proposed development site facing north



Figure 7: View of proposed development site facing south

#### **REFERRALS**

The proposed development was referred to the following internal specialists and external agencies. The comments provided by the special staff and external agencies have been used to carry out the assessment against the S4.15 Matters for Consideration below.

##### **Development Engineer**

**16/07/2020** – Further information requested for items including; flood compatible design and construction, electrical installations, materials storage and structural certification of dwelling. Three (3) options were provided by Development Engineer as a pathway forward. Not supporting the application on the basis that Council does not support residential development within a high hazard floodway was recommended as the preferred option from a flood risk minimisation perspective.

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**MINUTES ORDINARY COUNCIL - 9 MARCH 2021****ITEM 1 - ATTACHMENT 2      PLANNERS ASSESSMENT REPORT.**

16-2020-357-1

**7/12/2020** – Request for Information issued seeking assessment against the performance based solutions contained in Chapter B5.D of the Port Stephens Council DCP.

**20/12/2021** – Proposal is not consistent with the Floodplain Development Manual as the performance based criteria of DCP 2014 was not addressed to Council's satisfaction.

**Environmental Health** – The proposed waste water system design submitted with the application demonstrates a suitable solution is available through a S68 Onsite Sewer Management System application. The S68 application has been submitted with Council concurrently with the DA and has been supported subject to conditions of consent.

**Building Surveyor** – The proposed new dwelling was referred for consideration of Building Code of Australia (BCA) and building requirements. The proposed new dwelling is sufficiently separated from existing boundaries and the existing dwelling, achieving the BCA fire separation requirements. A CC has been lodged concurrently with the DA application. The proposal is supported subject to conditions.

**Flood Advisory Review Panel** – The application was referred to the Flood Advisory Review Panel (FARP) following the recommendation of refusal from Council Development Engineers due to the flood hazard categorisation. The application was reviewed by FARP on two occasions, the initial review and once more following the endorsement of the amendments to the Chapter B5 Flooding DCP 2014. FARP did not support the application as emergency egress for the proposal will be cut off early in a flood event and sits well below the current day 1% AEP flood level of 5.1m. Additionally, the proposal sits 2.35m below the PMF level of the site and thus a PMF flood Refuge would be required as a minimum but has not been proposed by the applicant. The development is not consistent with the application of performance based solutions outlined in B5.D of the DCP. Due to the unacceptable safety implications posed by the flood constraints of the site and the inability of the applicant to resolve these flooding issues to an acceptable engineering standard, the application is recommended for refusal.

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979****Section 4.15 - Matters for consideration**

The proposal has been assessed under the relevant matters for consideration detailed in Section 4.15 of the Environmental Planning and Assessment Act 1979 (EP&A Act).

**Section 4.15(a)(i) - any environmental planning instrument**

An assessment has been undertaken against each of the applicable environmental planning instruments (EPI's), as follows:

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 (SEPP BASIX) was enacted to ensure that dwellings are designed to utilise less potable water and to minimise greenhouse gas emissions by setting energy and water reduction targets for residential houses and units.

A valid BASIX certificate has been submitted with the development application which demonstrates that the water, thermal comfort and energy requirements for the proposal have been achieved. The proposal is considered to satisfy the relevant provisions of SEPP BASIX.

State Environmental Planning Policy No. 55 – Remediation of Land

Clause 7 of SEPP 55 requires the consent authority to consider whether land is contaminated, is in a suitable state despite contamination, or requires remediation to be made suitable for the proposed development.

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**MINUTES ORDINARY COUNCIL - 9 MARCH 2021****ITEM 1 - ATTACHMENT 2      PLANNERS ASSESSMENT REPORT.**

16-2020-357-1

It is noted that the NSW list of contaminated sites and list of notified sites published by the EPA does not identify the site as being contaminated, nor has previous record of contamination in Council's system. The land is not within an investigation area, there are no records of potentially contaminating activities occurring on the site, and the dual occupancy is not listed as a possible contaminating use, per Table 1 of the Guidelines. Noting this, the proposed development satisfies the requirements of SEPP No. 55.

State Environmental Planning Policy (Koala Habitat Protection) 2019

This policy aims to encourage the conservation and management of areas of natural vegetation that provide habitat for koalas to support a permanent free-living population over their present range and reverse the current trend of koala population decline. This Policy commenced on 1 March 2020.

The site is located in an area mapped mainly cleared, the rear of the site along the boundary to the waterfront is mapped and 50m buffer over cleared. The development application does not include the removal of natural vegetation for koala habitat. The development is not considered to exacerbate impact to the koala habitat or decline in koala population.

State Environmental Planning Policy Coastal Management 2018

The subject land is located within the Coastal Environmental Area and Coastal Use Area. The subject is located in close proximity to the Williams River and triggers the consideration of the Coastal Management SEPP.

As per Clause 13 of the SEPP, development consent must not be granted for development within the coastal environment area unless the consent authority has considered whether the development will cause impact to the integrity of the biophysical and ecological environment, the values and natural coastal processes, marine vegetation, native vegetation and fauna and existing public open space and access to and along the foreshore.

The proposed development is setback approximately 120m from the Williams River waterbody, the development is separated from the waterbody by Newline Road and will therefore not have any significant adverse impacts.

As per Clause 14 of the SEPP, development consent must not be granted for development unless the consent authority has considered existing and safe access to and along the foreshore, overshadowing and loss of views, visual amenity and scenic qualities and heritage values. The consent authority must also be satisfied that the development is designed and sited to avoid adverse impacts and to ensure the development has taken into account the surrounding built environment in its design.

The proposed dwelling is not located in close proximity to the Williams River and will not impact on access to the river. The proposed residential use of the site, in conjunction with the existing flood risk as a result of the Hunter River, presents as a potential risk to the ecological environment in the event of the dwelling being destroyed in flood waters.

Clause 15 of the SEPP requires consideration to whether the development would increase the risk of coastal hazards. The proposed development is not likely to increase risk to coastal hazards.

There is minor associated risk with the dwelling being destroyed by flooding. The proposed dwelling, in significant flooding events, may result in the destruction of the mound and structure. In the event of the development being destroyed by flood waters materials would be washed down stream affecting surrounding properties and risk to the ecological environment of the river network. If the proposal were amended to be further setback from the river and potential hazard the risk associated with the flooding could be minimised.

The application can therefore be supported as it generally complies with the aims and the matters for consideration of the Policy.

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Port Stephens Local Environmental Plan 2013 (LEP)**Clause 2.3 – Zone Objectives and Land Use Table**

The proposed development is defined as a 'dwelling house' and is permissible with consent in the RU1 Primary Production zone. The development addresses the objectives of the zone to minimise the fragmentation and alienation of resource lands.

**Clause 4.2B – Erection Of A Dwelling On Land In Certain Rural, Residential And Environmental Protection Zones**

The site is located in the RU1 zone and the lot was created before 22 February 2014 with an area of at least 4,000m<sup>2</sup> on which a dwelling was permissible under the previous Local Environmental Plan.

The site therefore holds a dwelling entitlement.

**Clause 7.1 – Acid Sulfate Soils**

The subject land is mapped as containing potential Class 3 acid sulfate soils. The proposed development is not anticipated to entail excavations below 1 metres and therefore it is not expected that acid sulfate soils would be encountered during works.

**Clause 7.3 – Flood Planning**

The proposed development is located on land mapped as Flood Prone land and the land is below the flood planning level.

Developments on land identified as flood prone are to demonstrate minimal flood risk to life and property, and to achieve development which is compatible with the flood hazard to avoid significant adverse impacts on the flood behaviour in the environment.

The flood category for the development area is High Hazard Floodway. The current driveway connects the site to Newline Road. The driveway is not constructed above the flood planning level, which is required for an access way that can be used in the event of a flood. As such, the proposed development does not have suitable flood free access from the site.

The proposed siting for the development is therefore not supported. In the event of a flood, the development will result in unacceptable risk to life and property. The proposed dwelling is not considered appropriately located on the site to manage risk to life from flood, and avoid unsustainable social and economic costs to the community as a consequence of flood. and will be subject to dangerous flood impacts.

**Clause 7.6 – Essential Services**

The subject site is serviced by reticulated water and electricity. The applicant has noted the subject site has an existing OSMS servicing the existing shed and the system will be connected to the proposed dwelling in due course. The subject land also maintains direct access to Newline Road, meeting the requirements of this clause.

***Section 4.15(a)(ii) - any draft environmental planning instrument that is or has been placed on public exhibition***

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

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***Section 4.15(a)(iii) – any development control plan*****Port Stephens Development Control Plan 2014**

The DCP is applicable to the proposed development and has been assessed below.

**Chapter B3 – Environmental Management****Acid Sulfate Soils**

The objective of this DCP Chapter is to ensure that developments do not disturb, expose or drain Acid Sulfate Soils (ASS) and cause environmental damage. As detailed within Clause 7.1 discussion above, the proposed development could be undertaken, subject to conditions of consent, without resulting in adverse impact to ASS. In this regard the development is consistent with the objective and requirements of the DCP.

**Chapter B4 – Drainage and Water Quality**

A stormwater management plan was submitted with the application and includes adequate quality and quantity controls as required by Councils policy. The stormwater drainage plan has been assessed as being consistent with the Infrastructure Specification.

**Chapter B5 – Flooding**

The subject land is mapped as being within the Flood Planning Area. Chapter B5 outlines objectives to inform and assist with determining development suitability on land designated in particular flood hazards. All new developments are required to address the development control within this part of the DCP to mitigate risks and considered suitability.

Chapter B.5 of the DCP 2014 provides more detailed provisions to inform the assessment against the LEP 2013 provisions. The DCP chapter was amended in December 2020 which included performance based solutions for certain development in flood prone areas. The amended chapter states that dwelling houses on land categorised as High Hazard Floodway can be considered, where the newly adopted performance based criteria in the DCP 2014 can be addressed.

The area has been classified as flood prone land and is located within a High Hazard Floodway. Further, the existing flood mound is below the flood planning level on the subject site.

The current flood levels applicable to the site are:

- Flood Planning Level - 6.0m AHD
- 1% AEP (Current day) – 4.7m AHD
- Probable Maximum Flood – 8.9m AHD

The proposed development includes finished floor level (FFL) as follows:

- Existing Flood Mound – 4.15m AHD
- Dwelling – 6.55m AHD

The applicant provided a Flood Impact Assessment for the proposal that included flood modelling for a range of flood events on the existing earth mound. Conclusions from the impact assessment stated *'the structural integrity of the mound and proposed dwelling is expected to be unaffected by flooding for all but extreme events such as the PMF'*.

The DA was assessed by Council's Development Engineering Section, which included an assessment of the proposal against the recently adopted performance based solutions listed in Chapter B5.D of the Port Stephens Council Development Control Plan (DCP).

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Chapter B5.18 states that evacuation access to an area free of risk from flooding must be provided. The subject land is located central to the flood affected area and it is therefore impossible to provide access to flood free areas offsite. The proponent has also not provided a flood refuge as part of the proposal.

Chapter B5.19 requires development to address the risk to property at the expected velocities and levels during various flood events. The existing flood mound is currently located below the 1% AEP level, which will result in the inundation of the ground floor area and any stored items below the dwelling (including vehicles).

Chapter B5.20 requires the application to be compatible with the flood hazard category of the site. The site is located within a High Hazard Floodway with high velocity rates. As the site does not have access to flood free areas, the development will become isolated during large flood events.

The development is not therefore consistent with the application of performance based solutions outlined in B5.D of the DCP. Due to the unacceptable safety implications posed by the flood constraints of the site and the inability of the applicant to resolve these flooding issues to an acceptable engineering standard, the application is recommended for refusal.

**Chapter B8 – Road Network and Parking**

The proposal includes a 4 bedroom dwelling, the DCP requires 2 car spaces to be provided to support the development on the site. There is a suitable car spaces available on the site. Should the development be supported, there is adequate car spaces available for the additional development on the site.

**Chapter C – Development Types**

The proposed development comprise of a single dwelling therefore the provisions of Chapter C4 are applicable.

**Chapter D4 - Dwelling House, Secondary Dwelling, or Dual Occupancy**Building height

There is no maximum building limit under the LEP, as such the maximum limit of 8m applies to the site. The proposal is for a single storey dwelling with a maximum proposed height of 7.9m, to be constructed on top of a flood mound. The dwelling does not exceed the maximum building height under the DCP 2014.

Setbacks

The proposal is appropriately setback from all the side and rear boundary setbacks. The proposal is located to the rear of the existing metal shed. The proposal does not detract from the rural character of the area.

Streetscape and privacy

The development is appropriately setback to ensure the rural character and streetscape and privacy of the area is maintained.

Private open space

The development is proposed on a rural property and is adequately setback to facilitate ample private open space for the proposed dwelling.

Landscaping

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16-2020-357-1

The subject site is a rural property with sufficient space for landscaping and plantings. There are not matters of privacy which would require landscape screening to be planted. The subject site has sufficient space to achieve landscaping requirements.

Site Facilities and Services

The proposed dwelling location and flood mound area create suitable area to support facilities and services such as waste storage and clothes drying. As mentioned above, the existing OSWS system will be connected to the new dwelling.

***Section 4.15(1)(a)(iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph)***

There are no regulations that apply to the proposal.

***Section 4.15 (1)(b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality***Social and Economic Impacts

There would be beneficial impacts as a result of the development. The proposal will result in a dwelling on the site, increasing the housing stock and diversity of the area. The erection of a lawful dwelling house at the site would also ensure the continuation of a local business (animal training establishment). The construction of the development would result in employment opportunities during and after the development of the structures and having a monetary contribution to the local area.

Impacts on the Built Environment

The proposed development would not cause harm to the existing character. The proposed dwelling is to be erected on a flood mound, given the area is characterised by rural residential development, the dwelling would be built at a similar height to the surrounding properties. The dwelling has been designed in a manner to be consistent with the rural character of the area. Overall, the development is not considered likely to result in adverse impacts to the built environment.

Impacts on the Natural Environment

The proposed development is not considered to be compatible with the flood risk associated with the land and may result in an unacceptable impact to life. The proposed development is located within close proximity to the Williams River to the west. The development is not considered to be a suitable use of the site with regard to the environment and does not align with Councils endorsed policies.

**s4.15(1)(c) – The suitability of the site**

The subject site is zoned RU1 – Primary Production, whereby the proposed dwelling is a permissible land use under the zoning. The site is identified as high hazard flood-way and the proposed development and use does not align or address all of the necessary requirements under current Council endorsed policy and legislation. Due to the identified flood hazard, the proposal has been assessed as not being a suitable outcome for the site.

**s4.15(1)(d) – Any submissions made in accordance with this act or the regulations**

The application was notified in accordance with the provisions of the Port Stephens Council Community Participation Plan. One (1) submission was received with relation to the subject development proposal. The matters raised in this submission have been detailed in the table below.

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**MINUTES ORDINARY COUNCIL - 9 MARCH 2021**

**ITEM 1 - ATTACHMENT 2      PLANNERS ASSESSMENT REPORT.**

16-2020-357-1

No.	Author of submission	Comment	Council response
1		Siting of the proposed development	The proposal meets setback requirements outlined in the Port Stephens DCP.
		Loss of amenity and conflict arising between properties	The proposal is permissible under LEP 2013. The proposed dwelling is set approximately 120m from the existing dwelling located opposite Newline Road and it is considered that this will limit any significant amenity issues. The land to the north currently only contains a small shed and cattle yards.
		Flooding Risk	Council Development Engineers and Development Planners have assessed the proposal against relevant environmental planning instruments, development standards and policies. In this instance, the proposal has not been supported on the grounds of flood risk.

**s4.15(1)(e) – The public interest**

The proposed development is not considered to be in the public interest as the proposed development is not consistent or suitable with the flood category applicable to the subject site. The impact and increase in risk to life and property as a result of the development in a significant flood event is not supportable in this instance.

**s7.11 – Contribution towards provision or improvement of amenities or services (developer contributions)**

Nil.

**DETERMINATION**

The application is recommended to be refused by the elected Council.

ISAAC LANCASTER  
DEVELOPMENT PLANNER



**MINUTES ORDINARY COUNCIL - 9 MARCH 2021****ITEM 1 - ATTACHMENT 3      REASONS FOR REFUSAL.****SCHEDULE 1 – REASONS FOR REFUSAL**

The application is recommended for refusal on the following grounds:

1. The proposed development fails to satisfy Clause 7.3 - Flood Planning of the Port Stephens Local Environmental Plan 2013 as the development does not demonstrate that it is compatible with the high hazard floodway category of the site, including minimising the risk to life associated with the flood hazard (s4.15(1)(a)(i) EP&A Act);
2. The development does not comply with the controls contained within Chapter B5 Flooding of the Port Stephens Development Control Plan (s4.15(1)(a)(iii) EP&A Act);
3. The proposed development does not demonstrate the site is suitable for the proposed site given the flood category of the land s4.15(1)(c) of the EP&A Act; and
4. The proposed development is not considered to be in the public interest as the development is inconsistent with the adopted principles and strategies which seek to promote the appropriate development of the land (s4.15(1)(e) EP&A Act).

**PORT STEPHENS COUNCIL**

116 Adelaide Street  
Raymond Terrace NSW 2324

PO Box 42  
Raymond Terrace NSW 2324

Phone: 02 4980 0255  
Email: [council@portstephens.nsw.gov.au](mailto:council@portstephens.nsw.gov.au)

[www.portstephens.nsw.gov.au](http://www.portstephens.nsw.gov.au)

MINUTES ORDINARY COUNCIL - 9 MARCH 2021

ITEM 1 - ATTACHMENT 4 CALL TO COUNCIL FORM.



## Call to Council form

Development Application

116 Adelaide Street  
Raymond Terrace NSW 2224  
PO Box 42  
Raymond Terrace NSW 2224  
p (02) 4968 0255 | f (02) 4967 3612  
e council@portstephens.nsw.gov.au  
DX 21405 | ABN 15 744 377 875

### DEVELOPMENT APPLICATION (DA) CALL TO COUNCIL REQUEST

We (Mayor/Councillor/s)

Name: Ryan Palmer

Name: Sarah Smith

Name: Glen Dunkley

request that DA number: DA16-2020-357-1

for DA description: Single storey dwelling.

located at: 918 Newline Rd, Eagleton

be reported to Council for determination.

### REASON

Public interest as a review of development in areas deemed as floodway is taking place.

### SIGNATURE OF APPLICANT/S

Signature

Date 11 8 2020

Signature

Date 11 8 2020

Signature

Date 11 8 2020

### PRIVACY

Port Stephens Council is committed to protecting your privacy. We take reasonable steps to comply with relevant legislation and Council policy. **Purpose:** The purpose of this form is to enable Council to record the matter raised and taken appropriate action. **Intended recipients:** Council employees, contractors and other third parties where appropriate. **Supply:** Voluntary. **Consequence of Non Provision:** Council may not take action on the matter raised. **Storage and security:** This document will be placed on the relevant file and/or saved in Council's records management system in accordance with Council policy and relevant legislation. **Access:** Please contact Council on 02 4968 0255 to enquire how you can access information.

**MINUTES ORDINARY COUNCIL - 13 APRIL 2021****ITEM NO. 3****FILE NO: 21/64900  
EDRMS NO: 16-2020-357-1****DEVELOPMENT APPLICATION 16-2020-357-1 FOR A SINGLE STOREY  
DWELLING AT 918 NEWLINE ROAD, EAGLETON (LOT 31 DP 840177)**

REPORT OF: KATE DRINAN - DEVELOPMENT ASSESSMENT AND  
COMPLIANCE SECTION MANAGER  
GROUP: DEVELOPMENT SERVICES

**RECOMMENDATION IS THAT COUNCIL:**

- 1) Refuse Development Application 16-2020-357-1 for a single storey dwelling at 918 Newline Road, Eagleton (Lot 31 DP 840177) for the reasons contained in (ATTACHMENT 3).

**ORDINARY COUNCIL MEETING - 13 APRIL 2021  
MOTION**

073	<b>Councillor John Nell Councillor Giacomo Arnott</b>  It was resolved that Council Development Application 16-2020-357-1 for a single storey dwelling at 918 Newline Road, Eagleton (Lot 31 DP 840177) be deferred to the next Ordinary Council meeting to be held on 27 April 2021.
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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 Ryan Palmer, Crs Jaimie Abbott, Giacomo Arnott, Ken Jordan, John Nell and Steve Tucker.

Those against the Motion: Nil.

The motion was carried.

**BACKGROUND**

Development Application (DA) 16-2020-357-1 was reported to Council at its meeting on 9 March 2021. At that meeting it was resolved that the DA be deferred for a period of 4 weeks to allow for a site inspection. The resolution is provided below:

**MINUTES ORDINARY COUNCIL - 13 APRIL 2021**

Meeting Minute 045: It was resolved that Council defer development application 16-2020-357-1 for a single storey dwelling at 918 Newline Road, Eagleton (Lot 31 DP 840177) for a period of 4 weeks (**ATTACHMENT 5**).

Subsequent to the 9 March 2021 meeting, Councillors were invited to attend a site inspection.

The DA has been reported in accordance with Council's Planning Matters to be Reported to Council Policy as it has been called up by Mayor Ryan Palmer, Councillor Sarah Smith and Councillor Glen Dunkley (**ATTACHMENT 4**).

A summary of the DA and property details is provided below:

Subject land:	918 Newline Road, Eagleton (Lot 31 DP 840177)
Total area:	11.5ha
Zoning:	RU1 – Primary Production
Submissions:	1 submissions was received objecting to the proposal
Key issues:	Flooding: The subject land is in a high hazard flood risk category. An assessment against the relevant planning provisions found that the application cannot be supported as it will result in an unacceptable risk to risk to life and property, while also being incompatible with the flood hazard category applying to the site.

A locality plan is provided at (**ATTACHMENT 1**).

Proposal

The DA proposes the construction of an elevated single dwelling on an existing stock refuge mound in the north western portion of the site, 126m from the Newline Road frontage.

The proposed dwelling is to be constructed on piers above the Flood Planning Level (FPL). The dwelling comprises 4 bedrooms, open plan living, dining and kitchen. A laundry and bathroom is to be located in the understorey, below the dwelling.

Site Description and history

The site has frontage to Newline Road and contains a machinery shed, stables, day yards and an approved stock refuge mound.

The existing stock refuge mound has levels varying between 4.04m AHD and 4.18m AHD.

A DA for a dwelling and shed was refused by Council staff in 1995.

**MINUTES ORDINARY COUNCIL - 13 APRIL 2021**

An approval for operation of a wastewater management system was issued in 2004.

The site has recently been subject to an order from Council's Development Compliance section to 'cease use of shed as a dwelling'. The DA for the construction of a dwelling has been lodged in response to that order.

The entire site is mapped as High Hazard Floodway; characterised by the potential for high levels of flood inundation with associated high velocity flood water.

**Key Issues**

The key issue identified during assessment relates to the fact that the DA presents an unacceptable risk to life and property. A detailed assessment of the DA is contained within the Planners Assessment Report (**ATTACHMENT 2**).

**Flood risk**

The DA is inconsistent with both the Port Stephens Local Environmental Plan (LEP 2013) and the Development Control Plan 2014 (DCP 2014) noting the High Hazard Floodway categorisation applying to the site.

The flood levels applicable to the site are:

- Flood Planning Level (FPL) - 6.0m AHD
- 1% AEP (Current day) – 4.7m AHD
- Probable Maximum Flood (PMF) - 8.9m AHD

The DA includes the following levels:

- Existing stock refuge mound level (no change proposed) – 4.15m AHD
- Dwelling Finished Floor Level (FFL) - 6.55m AHD

Clause 7.3(3) of LEP 2013 states that development must be compatible with the flood hazard of the land and that it must not have a significant, adverse effect on flood behaviour. Despite the DA seeking to resolve a historic unlawful use of the land, the design of the dwelling and its associated egress are not considered to be compatible with the flood hazard category applying to the site resulting in an unnecessary risk to life and property.

Chapter B.5 of the DCP 2014 provides controls for development on flood prone land. DCP 2014 states that dwelling houses on land categorised as High Hazard Floodway may be considered where the proposal can address set performance based solutions. The solutions include an assessment of the development against the risk to life (B5.18), risk to property (B5.19) and the compatibility of development with the site specific flood hazard (B5.20).

Chapter B5.18, in considering the risk to life, requires that evacuation access to an area free of risk from flooding must be provided. The site and its surrounds are

**MINUTES ORDINARY COUNCIL - 13 APRIL 2021**

significantly flood affected and it is not possible to design an egress from the proposed dwelling to flood free areas offsite. A PMF flood refuge has not been included in the DA as an alternative to a safe egress in a flood event. As the DA cannot provide a suitable egress from the site and a suitable flood refuge has not been provided, the DA does not meet the performance based solutions contained in Chapter B5.18 of DCP 2014.

Chapter B5.19 requires development to address the risk to property during various flood events. The existing stock refuge flood mound is located below the 1% AEP level and the FPL. While a significant portion of the proposed dwelling is located on piers above the FPL, a laundry/bathroom are located well below the FPL. Further, there is no area for car parking or ancillary storage above the FPL. The design of the DA is such that the risk to property has not been suitably mitigated. Noting this, the proposal is not acceptable having regard to the performance based solutions contained in Chapter B5.19 of DCP 2014.

Chapter B5.20 requires the development to be compatible with the flood hazard category of the site. The site is located within a High Hazard Floodway with high velocity rates. As the site does not have access to flood free areas, the proposed dwelling will become isolated during large flood events, which increases the risk to life and potentially places an unreasonable and unnecessary strain upon emergency services in a major flooding event.

With consideration of the above, the DA is unable to be supported. The DA is inconsistent with the provisions of both LEP 2013 and DCP 2014 as the proposal presents unacceptable risk to life and property.

**Conclusion**

Due to the site's location in a High Hazard Floodway and the design of the dwelling and its associated egress, the proposal is inconsistent with the relevant legislation and policies, including:

- Environmental Planning and Assessment Act 1979 (EP&A Act)
- Port Stephens LEP 2013 – Clause 7.3 Flood Planning
- Port Stephens DCP 2014 – Chapter B5 Flooding

Based on a detailed assessment of the DA, and with consideration to the inconsistencies identified with LEP 2013 and DCP 2013, the DA is recommended for refusal for the reasons contained in **(ATTACHMENT 3)**.

**COMMUNITY STRATEGIC PLAN**

<b>Strategic Direction</b>	<b>Delivery Program 2018-2021</b>
Thriving and Safe Place to Live	Support the amenity and identity of Port Stephens.

**MINUTES ORDINARY COUNCIL - 13 APRIL 2021****FINANCIAL/RESOURCE IMPLICATIONS**

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

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes		
Reserve Funds	No		
Developer Contributions (\$7.11)	No		
External Grants	No		
Other	No		

**LEGAL, POLICY AND RISK IMPLICATIONS**

The DA is inconsistent with the relevant planning instruments including the EP&A Act, LEP 2013 and DCP 2014.

Detailed assessments against these requirements are contained within the Planners Assessment Report provided at (**ATTACHMENT 2**).

Risk	<a href="#">Risk Ranking</a>	Proposed Treatments	Within Existing Resources?
If the DA is approved, a third party may appeal the determination.	Medium	Determine the DA in line with the recommendations.	Yes
If the DA is approved, there is a risk that Council will be held liable for damage or consequences.	Medium	Determine the DA in line with the recommendations.	Yes
If the DA is approved, people and property may be exposed to an unacceptable level of risk.	Medium - High	Determine the DA in line with the recommendations.	Yes

**SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

Outside of the flood related issues associated with the proposal, it is considered that the development will have a positive economic impact on the local area and the



**MINUTES ORDINARY COUNCIL - 13 APRIL 2021**

broader community through the creation of employment and economic activity during the construction of the development.

However, the flood classification of the site and the design of the proposal presents an unacceptable risk to life and property and is therefore recommended for refusal for the reasons outlined in **(ATTACHMENT 3)**.

**CONSULTATION**Internal

Consultation was undertaken with internal technical staff to facilitate the assessment of the DA including:

- Building and Developer Relations
- Development Engineering
- Strategic Planning (Development Contributions)
- Environmental Health
- Flood Advisory Review Panel.

The referral comments provided by these officers were considered as part of the detailed assessment and are discussed within the Planners Assessment Report **(ATTACHMENT 2)**. The DA is supported by all internal referrals, other than Development Engineering and Flood Advisory Review Panel for the reasons outlined above.

External

No consultation with any external agencies was required to be undertaken during the assessment of this DA.

Notification

In accordance with the provisions of the Port Stephens Community Participation Plan, the DA was exhibited from 31 August 2020 to 14 September 2020. During this period 1 public submission was received which objects to the DA.

A detailed assessment of the submissions and matters raised were considered as part of the Planners Assessment Report contained at **(ATTACHMENT 2)**.

**OPTIONS**

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

**MINUTES ORDINARY COUNCIL - 13 APRIL 2021**

**ATTACHMENTS**

- 1) Locality Plan.
- 2) Planners Assessment Report.
- 3) Reasons for Refusal.
- 4) Call to Council Form.
- 5) Ordinary Council Minutes - 9 March 2021.

**COUNCILLORS ROOM**

Nil.

**TABLED DOCUMENTS**

Nil.



110 Adelaide Street, Raymond Terrace NSW 2324. Phone: (02) 49800205 Fax: (02) 49873612 Email: [council@portstephens.nsw.gov.au](mailto:council@portstephens.nsw.gov.au)



APPLICATION DETAILS

Application Number	16-2020-357-1
Development Description	Single storey dwelling
Applicant	MR P J ILSLEY
Land owner	MR P J ILSLEY
Date of Lodgement	22/06/2020
Value of Works	\$288,000.00
Submissions	1

PROPERTY DETAILS

Property Address	918 Newline Road EAGLETON
Lot and DP	LOT: 31 DP: 840177
88B Restrictions on Title	Nil
Current Use	Animal boarding or training establishment
Zoning	RU1 PRIMARY PRODUCTION
Site Constraints	Bushfire Prone Land - Class 3 (Buffer) Acid Sulfate Soils – Class (3) Koala Habitat Planning Map (Link over Cleared) SEPP (Coastal Management) 2018 – Coastal Zone Combined Footprint Height Trigger Map – RAAF Base Williamtown and Salt Ash Air Weapons Range – DoD Prime Agricultural Land (Classes 1-3)
State Environmental Planning Policies	SEPP (Building Sustainability Index: BASIX) 2004 SEPP (Coastal Management) 2018 SEPP (Koala Habitat Protection) 2020 SEPP No. 55 – Remediation of Land

**PLANNERS PRE-ASSESSMENT CHECKLIST****PROPOSAL**

The application proposes a dwelling to support the animal training establishment at the subject site. The proposed development comprises a 201m<sup>2</sup> single storey dwelling, to be located on an existing earth mound (approved under DA 16-2016-302). A concrete slab is proposed over the ground level of the dwelling, with piers proposed to support the first level of the dwelling. The dwelling is a single storey design comprising of four bedrooms, ensuite, open plan living, dining, kitchen space and a stairwell. The ground level will be used for vehicle parking and is identified as a non-habitable space.

The proposal also incorporates the decommissioning of unauthorised living quarters within the site's industrial metal shed and the associated OSSM system being connected to the proposed dwelling.



Figure 1: Proposed development

**SITE DESCRIPTION**

The subject site is legally identified as lot 31 DP 840177, 918 Newline Road, Eagleton. The regularly shaped rural lot is located on the eastern side of Newline Road, within a rural precinct that is characterised by large rural allotments. The lot comprises a total area of 11.5ha with development including a large shed, stables and day yards, earthworks mound, sealed crossover and driveway, multiple dams and small sheds.

The lot is relatively flat in its topography and is situated in close proximity of the Williams River and the entire site is identified within the High Hazard Floodway categorisation. Essential services including vehicular access and electricity are available to the lot, with services including water, wastewater and stormwater able to be managed onsite. No easements or land use restrictions have been identified over the site.

16-2020-357-1



Figure 2: Aerial view of subject site

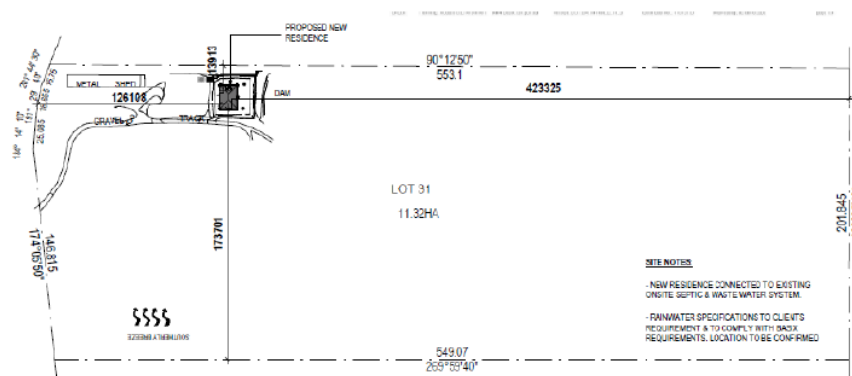


Figure 3: Locality plan

#### SITE HISTORY

The site has supported an animal training establishment for approximately 15 years, with structures including a machinery shed, stables, day yards and stock refuge mounds approved over this timeframe. Whilst a development application for a dwelling and shed was refused by Council staff in 1995, an approval for operation of a waste water management system was issued in 2004.

The site has recently been subject to an order from Council's Development Compliance section to 'cease use of shed as a dwelling'. The pending development application for construction of a dwelling (DA 16-2020-357-1) has been lodged in response to this order.

The following applications have been assessed over the subject site:

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16-2020-357-1

- 16-2016-302 – Land Fill (new stock refuge mound and extension of existing mound) – Approved – 28.06.2016
- 16-2005-215 – Four (4) x Stables & Day Yards – Approved – 21.04.2005
- 16-1998-1384 – Retaining Wall – Approved – 13.10.1998
- BA/DA - 7-1997-1607 – Land Fill & Excavation – Approved – 21.01.1998
- BA/DA – 7-1997-60651 – Machinery Shed – Approved – 12.06.1997
- BA/DA – 7-1997-84 – Land Fill – Approved – 10.02.1997
- BA/DA – 7.1997-56 – Advertising Sign – Approved – 23.01.1997
- BA/DA – 7.1995-1855 – Dwelling and Shed – Refused by Staff – 26.11.1996

**SITE INSPECTION**

A site inspection was carried out on 3 February 2021.

The subject site can be seen in the images below:



Figure 4: View from proposed development site facing east



Figure 5: View from proposed development site facing west

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16-2020-357-1



Figure 6: View of proposed development site facing north



Figure 7: View of proposed development site facing south

#### **REFERRALS**

The proposed development was referred to the following internal specialists and external agencies. The comments provided by the special staff and external agencies have been used to carry out the assessment against the S4.15 Matters for Consideration below.

##### **Development Engineer**

**16/07/2020** – Further information requested for items including; flood compatible design and construction, electrical installations, materials storage and structural certification of dwelling. Three (3) options were provided by Development Engineer as a pathway forward. Not supporting the application on the basis that Council does not support residential development within a high hazard floodway was recommended as the preferred option from a flood risk minimisation perspective.

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**MINUTES ORDINARY COUNCIL - 13 APRIL 2021****ITEM 3 - ATTACHMENT 2      PLANNERS ASSESSMENT REPORT.**

16-2020-357-1

**7/12/2020** – Request for Information issued seeking assessment against the performance based solutions contained in Chapter B5.D of the Port Stephens Council DCP.

**20/12/2021** – Proposal is not consistent with the Floodplain Development Manual as the performance based criteria of DCP 2014 was not addressed to Council's satisfaction.

**Environmental Health** – The proposed waste water system design submitted with the application demonstrates a suitable solution is available through a S68 Onsite Sewer Management System application. The S68 application has been submitted with Council concurrently with the DA and has been supported subject to conditions of consent.

**Building Surveyor** – The proposed new dwelling was referred for consideration of Building Code of Australia (BCA) and building requirements. The proposed new dwelling is sufficiently separated from existing boundaries and the existing dwelling, achieving the BCA fire separation requirements. A CC has been lodged concurrently with the DA application. The proposal is supported subject to conditions.

**Flood Advisory Review Panel** – The application was referred to the Flood Advisory Review Panel (FARP) following the recommendation of refusal from Council Development Engineers due to the flood hazard categorisation. The application was reviewed by FARP on two occasions, the initial review and once more following the endorsement of the amendments to the Chapter B5 Flooding DCP 2014. FARP did not support the application as emergency egress for the proposal will be cut off early in a flood event and sits well below the current day 1% AEP flood level of 5.1m. Additionally, the proposal sits 2.35m below the PMF level of the site and thus a PMF flood Refuge would be required as a minimum but has not been proposed by the applicant. The development is not consistent with the application of performance based solutions outlined in B5.D of the DCP. Due to the unacceptable safety implications posed by the flood constraints of the site and the inability of the applicant to resolve these flooding issues to an acceptable engineering standard, the application is recommended for refusal.

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979****Section 4.15 - Matters for consideration**

The proposal has been assessed under the relevant matters for consideration detailed in Section 4.15 of the Environmental Planning and Assessment Act 1979 (EP&A Act).

**Section 4.15(a)(i) - any environmental planning instrument**

An assessment has been undertaken against each of the applicable environmental planning instruments (EPI's), as follows:

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 (SEPP BASIX) was enacted to ensure that dwellings are designed to utilise less potable water and to minimise greenhouse gas emissions by setting energy and water reduction targets for residential houses and units.

A valid BASIX certificate has been submitted with the development application which demonstrates that the water, thermal comfort and energy requirements for the proposal have been achieved. The proposal is considered to satisfy the relevant provisions of SEPP BASIX.

State Environmental Planning Policy No. 55 – Remediation of Land

Clause 7 of SEPP 55 requires the consent authority to consider whether land is contaminated, is in a suitable state despite contamination, or requires remediation to be made suitable for the proposed development.

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**MINUTES ORDINARY COUNCIL - 13 APRIL 2021****ITEM 3 - ATTACHMENT 2      PLANNERS ASSESSMENT REPORT.**

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It is noted that the NSW list of contaminated sites and list of notified sites published by the EPA does not identify the site as being contaminated, nor has previous record of contamination in Council's system. The land is not within an investigation area, there are no records of potentially contaminating activities occurring on the site, and the dual occupancy is not listed as a possible contaminating use, per Table 1 of the Guidelines. Noting this, the proposed development satisfies the requirements of SEPP No. 55.

State Environmental Planning Policy (Koala Habitat Protection) 2019

This policy aims to encourage the conservation and management of areas of natural vegetation that provide habitat for koalas to support a permanent free-living population over their present range and reverse the current trend of koala population decline. This Policy commenced on 1 March 2020.

The site is located in an area mapped mainly cleared, the rear of the site along the boundary to the waterfront is mapped and 50m buffer over cleared. The development application does not include the removal of natural vegetation for koala habitat. The development is not considered to exacerbate impact to the koala habitat or decline in koala population.

State Environmental Planning Policy Coastal Management 2018

The subject land is located within the Coastal Environmental Area and Coastal Use Area. The subject is located in close proximity to the Williams River and triggers the consideration of the Coastal Management SEPP.

As per Clause 13 of the SEPP, development consent must not be granted for development within the coastal environment area unless the consent authority has considered whether the development will cause impact to the integrity of the biophysical and ecological environment, the values and natural coastal processes, marine vegetation, native vegetation and fauna and existing public open space and access to and along the foreshore.

The proposed development is setback approximately 120m from the Williams River waterbody, the development is separated from the waterbody by Newline Road and will therefore not have any significant adverse impacts.

As per Clause 14 of the SEPP, development consent must not be granted for development unless the consent authority has considered existing and safe access to and along the foreshore, overshadowing and loss of views, visual amenity and scenic qualities and heritage values. The consent authority must also be satisfied that the development is designed and sited to avoid adverse impacts and to ensure the development has taken into account the surrounding built environment in its design.

The proposed dwelling is not located in close proximity to the Williams River and will not impact on access to the river. The proposed residential use of the site, in conjunction with the existing flood risk as a result of the Hunter River, presents as a potential risk to the ecological environment in the event of the dwelling being destroyed in flood waters.

Clause 15 of the SEPP requires consideration to whether the development would increase the risk of coastal hazards. The proposed development is not likely to increase risk to coastal hazards.

There is minor associated risk with the dwelling being destroyed by flooding. The proposed dwelling, in significant flooding events, may result in the destruction of the mound and structure. In the event of the development being destroyed by flood waters materials would be washed down stream affecting surrounding properties and risk to the ecological environment of the river network. If the proposal were amended to be further setback from the river and potential hazard the risk associated with the flooding could be minimised.

The application can therefore be supported as it generally complies with the aims and the matters for consideration of the Policy.

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**MINUTES ORDINARY COUNCIL - 13 APRIL 2021****ITEM 3 - ATTACHMENT 2      PLANNERS ASSESSMENT REPORT.**

16-2020-357-1

Port Stephens Local Environmental Plan 2013 (LEP)**Clause 2.3 – Zone Objectives and Land Use Table**

The proposed development is defined as a 'dwelling house' and is permissible with consent in the RU1 Primary Production zone. The development addresses the objectives of the zone to minimise the fragmentation and alienation of resource lands.

**Clause 4.2B – Erection Of A Dwelling On Land In Certain Rural, Residential And Environmental Protection Zones**

The site is located in the RU1 zone and the lot was created before 22 February 2014 with an area of at least 4,000m<sup>2</sup> on which a dwelling was permissible under the previous Local Environmental Plan.

The site therefore holds a dwelling entitlement.

**Clause 7.1 – Acid Sulfate Soils**

The subject land is mapped as containing potential Class 3 acid sulfate soils. The proposed development is not anticipated to entail excavations below 1 metres and therefore it is not expected that acid sulfate soils would be encountered during works.

**Clause 7.3 – Flood Planning**

The proposed development is located on land mapped as Flood Prone land and the land is below the flood planning level.

Developments on land identified as flood prone are to demonstrate minimal flood risk to life and property, and to achieve development which is compatible with the flood hazard to avoid significant adverse impacts on the flood behaviour in the environment.

The flood category for the development area is High Hazard Floodway. The current driveway connects the site to Newline Road. The driveway is not constructed above the flood planning level, which is required for an access way that can be used in the event of a flood. As such, the proposed development does not have suitable flood free access from the site.

The proposed siting for the development is therefore not supported. In the event of a flood, the development will result in unacceptable risk to life and property. The proposed dwelling is not considered appropriately located on the site to manage risk to life from flood, and avoid unsustainable social and economic costs to the community as a consequence of flood. and will be subject to dangerous flood impacts.

**Clause 7.6 – Essential Services**

The subject site is serviced by reticulated water and electricity. The applicant has noted the subject site has an existing OSMS servicing the existing shed and the system will be connected to the proposed dwelling in due course. The subject land also maintains direct access to Newline Road, meeting the requirements of this clause.

***Section 4.15(a)(ii) - any draft environmental planning instrument that is or has been placed on public exhibition***

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

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**MINUTES ORDINARY COUNCIL - 13 APRIL 2021****ITEM 3 - ATTACHMENT 2      PLANNERS ASSESSMENT REPORT.**

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***Section 4.15(a)(iii) – any development control plan*****Port Stephens Development Control Plan 2014**

The DCP is applicable to the proposed development and has been assessed below.

**Chapter B3 – Environmental Management****Acid Sulfate Soils**

The objective of this DCP Chapter is to ensure that developments do not disturb, expose or drain Acid Sulfate Soils (ASS) and cause environmental damage. As detailed within Clause 7.1 discussion above, the proposed development could be undertaken, subject to conditions of consent, without resulting in adverse impact to ASS. In this regard the development is consistent with the objective and requirements of the DCP.

**Chapter B4 – Drainage and Water Quality**

A stormwater management plan was submitted with the application and includes adequate quality and quantity controls as required by Councils policy. The stormwater drainage plan has been assessed as being consistent with the Infrastructure Specification.

**Chapter B5 – Flooding**

The subject land is mapped as being within the Flood Planning Area. Chapter B5 outlines objectives to inform and assist with determining development suitability on land designated in particular flood hazards. All new developments are required to address the development control within this part of the DCP to mitigate risks and considered suitability.

Chapter B.5 of the DCP 2014 provides more detailed provisions to inform the assessment against the LEP 2013 provisions. The DCP chapter was amended in December 2020 which included performance based solutions for certain development in flood prone areas. The amended chapter states that dwelling houses on land categorised as High Hazard Floodway can be considered, where the newly adopted performance based criteria in the DCP 2014 can be addressed.

The area has been classified as flood prone land and is located within a High Hazard Floodway. Further, the existing flood mound is below the flood planning level on the subject site.

The current flood levels applicable to the site are:

- Flood Planning Level - 6.0m AHD
- 1% AEP (Current day) – 4.7m AHD
- Probable Maximum Flood – 8.9m AHD

The proposed development includes finished floor level (FFL) as follows:

- Existing Flood Mound – 4.15m AHD
- Dwelling – 6.55m AHD

The applicant provided a Flood Impact Assessment for the proposal that included flood modelling for a range of flood events on the existing earth mound. Conclusions from the impact assessment stated *'the structural integrity of the mound and proposed dwelling is expected to be unaffected by flooding for all but extreme events such as the PMF'*.

The DA was assessed by Council's Development Engineering Section, which included an assessment of the proposal against the recently adopted performance based solutions listed in Chapter B5.D of the Port Stephens Council Development Control Plan (DCP).

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**MINUTES ORDINARY COUNCIL - 13 APRIL 2021****ITEM 3 - ATTACHMENT 2      PLANNERS ASSESSMENT REPORT.**

16-2020-357-1

Chapter B5.18 states that evacuation access to an area free of risk from flooding must be provided. The subject land is located central to the flood affected area and it is therefore impossible to provide access to flood free areas offsite. The proponent has also not provided a flood refuge as part of the proposal.

Chapter B5.19 requires development to address the risk to property at the expected velocities and levels during various flood events. The existing flood mound is currently located below the 1% AEP level, which will result in the inundation of the ground floor area and any stored items below the dwelling (including vehicles).

Chapter B5.20 requires the application to be compatible with the flood hazard category of the site. The site is located within a High Hazard Floodway with high velocity rates. As the site does not have access to flood free areas, the development will become isolated during large flood events.

The development is not therefore consistent with the application of performance based solutions outlined in B5.D of the DCP. Due to the unacceptable safety implications posed by the flood constraints of the site and the inability of the applicant to resolve these flooding issues to an acceptable engineering standard, the application is recommended for refusal.

**Chapter B8 – Road Network and Parking**

The proposal includes a 4 bedroom dwelling, the DCP requires 2 car spaces to be provided to support the development on the site. There is a suitable car spaces available on the site. Should the development be supported, there is adequate car spaces available for the additional development on the site.

**Chapter C – Development Types**

The proposed development comprise of a single dwelling therefore the provisions of Chapter C4 are applicable.

**Chapter D4 - Dwelling House, Secondary Dwelling, or Dual Occupancy**Building height

There is no maximum building limit under the LEP, as such the maximum limit of 8m applies to the site. The proposal is for a single storey dwelling with a maximum proposed height of 7.9m, to be constructed on top of a flood mound. The dwelling does not exceed the maximum building height under the DCP 2014.

Setbacks

The proposal is appropriately setback from all the side and rear boundary setbacks. The proposal is located to the rear of the existing metal shed. The proposal does not detract from the rural character of the area.

Streetscape and privacy

The development is appropriately setback to ensure the rural character and streetscape and privacy of the area is maintained.

Private open space

The development is proposed on a rural property and is adequately setback to facilitate ample private open space for the proposed dwelling.

Landscaping

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**MINUTES ORDINARY COUNCIL - 13 APRIL 2021****ITEM 3 - ATTACHMENT 2      PLANNERS ASSESSMENT REPORT.**

16-2020-357-1

The subject site is a rural property with sufficient space for landscaping and plantings. There are not matters of privacy which would require landscape screening to be planted. The subject site has sufficient space to achieve landscaping requirements.

Site Facilities and Services

The proposed dwelling location and flood mound area create suitable area to support facilities and services such as waste storage and clothes drying. As mentioned above, the existing OSWS system will be connected to the new dwelling.

***Section 4.15(1)(a)(iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph)***

There are no regulations that apply to the proposal.

***Section 4.15 (1)(b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality***Social and Economic Impacts

There would be beneficial impacts as a result of the development. The proposal will result in a dwelling on the site, increasing the housing stock and diversity of the area. The erection of a lawful dwelling house at the site would also ensure the continuation of a local business (animal training establishment). The construction of the development would result in employment opportunities during and after the development of the structures and having a monetary contribution to the local area.

Impacts on the Built Environment

The proposed development would not cause harm to the existing character. The proposed dwelling is to be erected on a flood mound, given the area is characterised by rural residential development, the dwelling would be built at a similar height to the surrounding properties. The dwelling has been designed in a manner to be consistent with the rural character of the area. Overall, the development is not considered likely to result in adverse impacts to the built environment.

Impacts on the Natural Environment

The proposed development is not considered to be compatible with the flood risk associated with the land and may result in an unacceptable impact to life. The proposed development is located within close proximity to the Williams River to the west. The development is not considered to be a suitable use of the site with regard to the environment and does not align with Councils endorsed policies.

**s4.15(1)(c) – The suitability of the site**

The subject site is zoned RU1 – Primary Production, whereby the proposed dwelling is a permissible land use under the zoning. The site is identified as high hazard flood-way and the proposed development and use does not align or address all of the necessary requirements under current Council endorsed policy and legislation. Due to the identified flood hazard, the proposal has been assessed as not being a suitable outcome for the site.

**s4.15(1)(d) – Any submissions made in accordance with this act or the regulations**

The application was notified in accordance with the provisions of the Port Stephens Council Community Participation Plan. One (1) submission was received with relation to the subject development proposal. The matters raised in this submission have been detailed in the table below.

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**MINUTES ORDINARY COUNCIL - 13 APRIL 2021**

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

16-2020-357-1

No.	Author of submission	Comment	Council response
1		Siting of the proposed development	The proposal meets setback requirements outlined in the Port Stephens DCP.
		Loss of amenity and conflict arising between properties	The proposal is permissible under LEP 2013. The proposed dwelling is set approximately 120m from the existing dwelling located opposite Newline Road and it is considered that this will limit any significant amenity issues. The land to the north currently only contains a small shed and cattle yards.
		Flooding Risk	Council Development Engineers and Development Planners have assessed the proposal against relevant environmental planning instruments, development standards and policies. In this instance, the proposal has not been supported on the grounds of flood risk.

**s4.15(1)(e) – The public interest**

The proposed development is not considered to be in the public interest as the proposed development is not consistent or suitable with the flood category applicable to the subject site. The impact and increase in risk to life and property as a result of the development in a significant flood event is not supportable in this instance.

**s7.11 – Contribution towards provision or improvement of amenities or services (developer contributions)**

Nil.

**DETERMINATION**

The application is recommended to be refused by the elected Council.

ISAAC LANCASTER  
DEVELOPMENT PLANNER

**MINUTES ORDINARY COUNCIL - 13 APRIL 2021****ITEM 3 - ATTACHMENT 3      REASONS FOR REFUSAL.****SCHEDULE 1 – REASONS FOR REFUSAL**

The application is recommended for refusal on the following grounds:

1. The proposed development fails to satisfy Clause 7.3 - Flood Planning of the Port Stephens Local Environmental Plan 2013 as the development does not demonstrate that it is compatible with the high hazard floodway category of the site, including minimising the risk to life associated with the flood hazard (s4.15(1)(a)(i) EP&A Act);
2. The development does not comply with the controls contained within Chapter B5 Flooding of the Port Stephens Development Control Plan (s4.15(1)(a)(iii) EP&A Act);
3. The proposed development does not demonstrate the site is suitable for the proposed site given the flood category of the land s4.15(1)(c) of the EP&A Act; and
4. The proposed development is not considered to be in the public interest as the development is inconsistent with the adopted principles and strategies which seek to promote the appropriate development of the land (s4.15(1)(e) EP&A Act).

**PORT STEPHENS COUNCIL**

116 Adelaide Street  
Raymond Terrace NSW 2324

PO Box 42  
Raymond Terrace NSW 2324

Phone: 02 4980 0255  
Email: [council@portstephens.nsw.gov.au](mailto:council@portstephens.nsw.gov.au)

[www.portstephens.nsw.gov.au](http://www.portstephens.nsw.gov.au)



## Call to Council form

Development Application

116 Adelaide Street  
Raymond Terrace NSW 2224  
PO Box 42  
Raymond Terrace NSW 2224  
p (02) 4968 0255 | f (02) 4967 3612  
e council@portstephens.nsw.gov.au  
DX 21405 | ABN 15 744 377 875

### DEVELOPMENT APPLICATION (DA) CALL TO COUNCIL REQUEST

We (Mayor/Councillor/s)

Name: Ryan Palmer

Name: Sarah Smith

Name: Glen Dunkley

request that DA number: DA16-2020-357-1

for DA description: Single storey dwelling.

located at: 918 Newline Rd, Eagleton

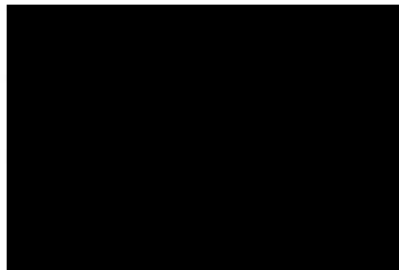
be reported to Council for determination.

### REASON

Public interest as a review of development in areas deemed as floodway is taking place.

### SIGNATURE OF APPLICANT/S

Signature



Date 11 8 2020.

Signature

Date 11 8 2020

Signature

Date 11 8 2020

### PRIVACY

Port Stephens Council is committed to protecting your privacy. We take reasonable steps to comply with relevant legislation and Council policy. **Purpose:** The purpose of this form is to enable Council to record the matter raised and taken appropriate action. **Intended recipients:** Council employees, contractors and other third parties where appropriate. **Supply:** Voluntary. **Consequence of Non Provision:** Council may not take action on the matter raised. **Storage and security:** This document will be placed on the relevant file and/or saved in Council's records management system in accordance with Council policy and relevant legislation. **Access:** Please contact Council on 02 4968 0255 to enquire how you can access information.

**MINUTES ORDINARY COUNCIL - 9 MARCH 2021**

Councillor Paul Le Mottee left the meeting at 5:53pm prior to Item 1.

**ITEM NO. 1**

**FILE NO: 20/266215**  
**EDRMS NO: 16-2020-357-1**

**DEVELOPMENT APPLICATION 16-2020-357-1 FOR A SINGLE STOREY DWELLING AT 918 NEWLINE ROAD, EAGLETON (LOT 31 DP 840177)**

REPORT OF: KATE DRINAN - DEVELOPMENT ASSESSMENT AND COMPLIANCE SECTION MANAGER  
GROUP: DEVELOPMENT SERVICES

**RECOMMENDATION IS THAT COUNCIL:**

- 1) Refuse Development Application 16-2020-357-1 for a single storey dwelling at 918 Newline Road, Eagleton (Lot 31 DP 840177) for the reasons contained in (ATTACHMENT 3).

**ORDINARY COUNCIL MEETING - 9 MARCH 2021**  
**MOTION**

<b>045</b>	<b>Councillor Chris Doohan</b> <b>Councillor Jaimie Abbott</b>  It was resolved that Council defer development application 16-2020-357-1 for a single storey dwelling at 918 Newline Road, Eagleton (Lot 31 DP 840177) for a period of 4 weeks.
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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 Ryan Palmer, Crs Jaimie Abbott, Giacomo Arnott, Chris Doohan, Ken Jordan, Sarah Smith and Steve Tucker.

Those against the Motion: Nil.

The motion was carried.

**BACKGROUND**

The purpose of this report is to present a development application (DA) 16-2020-357-1 for a single dwelling at 918 Newline Road, Eagleton (Lot 31 DP 840177) to Council for determination.

**MINUTES ORDINARY COUNCIL - 9 MARCH 2021**

The DA has been reported in accordance with Council's Planning Matters to be Reported to Council Policy as it has been called up by Mayor Ryan Palmer, Councillor Sarah Smith and Councillor Glen Dunkley (**ATTACHMENT 4**).

A locality plan is provided at (**ATTACHMENT 1**).

Proposal

The DA proposes the construction of an elevated single dwelling on an existing stock refuge mound in the north western portion of the site, 126m from the Newline Road frontage.

The proposed dwelling is to be constructed on piers above the Flood Planning Level (FPL). The dwelling comprises 4 bedrooms, open plan living, dining and kitchen. A laundry and bathroom is to be located in the understorey, below the dwelling.

Site Description and history

The site is located within the RU1 Primary Production zone with a frontage to Newline Road.

The site has a total area of 11.5ha and includes a machinery shed, stables, day yards and an approved stock refuge mound.

The stock refuge mound has levels varying between 4.04m AHD and 4.18m AHD.

A DA for a dwelling and shed was refused by Council staff in 1995.

An approval for operation of a wastewater management system was issued in 2004.

The site has recently been subject to an order from Council's Development Compliance section to 'cease use of shed as a dwelling'. The DA for the construction of a dwelling has been lodged in response to that order.

The entire site is flood prone and is categorised as High Hazard Floodway.

Key Issues

The key issue identified during assessment relates to the fact that the DA presents an unacceptable risk to life and property. A detailed assessment of the DA is contained within the Planners Assessment Report (**ATTACHMENT 2**).

Flood risk

The DA is inconsistent with both the Port Stephens Local Environmental Plan (LEP 2013) and the Development Control Plan 2014 (DCP 2014) noting the High Hazard Floodway categorisation applying to the site.

**MINUTES ORDINARY COUNCIL - 9 MARCH 2021**

The flood levels applicable to the site are:

- Flood Planning Level (FPL) - 6.0m AHD
- 1% AEP (Current day) – 4.7m AHD
- Probable Maximum Flood (PMF) - 8.9m AHD

The DA includes the following levels:

- Existing stock refuge mound level (no change proposed) – 4.15m AHD
- Dwelling Finished Floor Level (FFL) - 6.55m AHD

Clause 7.3(3) of LEP 2013 states that development must be compatible with the flood hazard of the land and that it must not have a significant, adverse effect on flood behaviour. Despite the DA seeking to resolve a historic unlawful use of the land, the design of the dwelling and its associated egress are not considered to be compatible with the flood hazard category applying to the site resulting in an unnecessary risk to life and property.

Chapter B.5 of the DCP 2014 provides controls for development on flood prone land. DCP 2014 states that dwelling houses on land categorised as High Hazard Floodway may be considered where the proposal can address set performance based solutions. The solutions include an assessment of the development against the risk to life (B5.18), risk to property (B5.19) and the compatibility of development with the site specific flood hazard (B5.20).

Chapter B5.18, in considering the risk to life, requires that evacuation access to an area free of risk from flooding must be provided. The site and its surrounds are significantly flood affected and it is not possible to design an egress from the proposed dwelling to flood free areas offsite. A PMF flood refuge has not been included in the DA as an alternative to a safe egress in a flood event. As the DA cannot provide a suitable egress from the site and a suitable flood refuge has not been provided, the DA does not meet the performance based solutions contained in Chapter B5.18 of DCP 2014.

Chapter B5.19 requires development to address the risk to property during various flood events. The existing stock refuge flood mound is located below the 1% AEP level and the FPL. While a significant portion of the proposed dwelling is located on piers above the FPL, a laundry/bathroom are located well below the FPL. Further, there is no area for car parking or ancillary storage above the FPL. The design of the DA is such that the risk to property has not been suitably mitigated. Noting this, the proposal is not acceptable having regard to the performance based solutions contained in Chapter B5.19 of DCP 2014.

Chapter B5.20 requires the development to be compatible with the flood hazard category of the site. The site is located within a High Hazard Floodway with high velocity rates. As the site does not have access to flood free areas, the proposed dwelling will become isolated during large flood events, which increases the risk to

**MINUTES ORDINARY COUNCIL - 9 MARCH 2021**

life and potentially places an unreasonable and unnecessary strain upon emergency services in a major flooding event.

With consideration of the above, the DA is unable to be supported. The DA is inconsistent with the provisions of both LEP 2013 and DCP 2014 as the proposal presents unacceptable risk to life and property.

Conclusion

Due to the sites location in a High Hazard Floodway and the design of the dwelling and its associated egress, the proposal is inconsistent with the relevant legislation and policies, including:

- Environmental Planning and Assessment Act 1979 (EP&A Act)
- Port Stephens LEP 2013 – Clause 7.3 Flood Planning
- Port Stephens DCP 2014 – Chapter B5 Flooding

Based on a detailed assessment of the DA, and with consideration to the inconsistencies identified with LEP 2013 and DCP 2013, the DA is recommended for refusal for the reasons contained in (ATTACHMENT 3).

**COMMUNITY STRATEGIC PLAN**

Strategic Direction	Delivery Program 2018-2021
Thriving and Safe Place to Live	Support the amenity and identity of Port Stephens.

**FINANCIAL/RESOURCE IMPLICATIONS**

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

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes		
Reserve Funds	N/A		
Developer Contributions (\$7.11)	N/A		
External Grants	N/A		
Other	N/A		

**LEGAL, POLICY AND RISK IMPLICATIONS**

The DA is inconsistent with the relevant planning instruments including the EP&A Act, LEP 2013 and DCP 2014.



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Detailed assessments against these requirements are contained within the Planners Assessment Report provided at **(ATTACHMENT 2)**.

<b>Risk</b>	<b><a href="#">Risk Ranking</a></b>	<b>Proposed Treatments</b>	<b>Within Existing Resources?</b>
If the DA is approved, a third party may appeal the determination.	Medium	Determine the DA in line with the recommendations.	Yes
If the DA is approved, there is a risk that Council will be held liable for damage or consequences.	Medium	Determine the DA in line with the recommendations.	Yes
If the DA is approved, people and property may be exposed to an unacceptable level of risk.	Medium - High	Determine the DA in line with the recommendations.	Yes

**SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

Outside of the flood related issues associated with the proposal, it is considered that the development will have a positive economic impact on the local area and the broader community through the creation of employment and economic activity during the construction of the development.

However, the flood classification of the site and the design of the proposal presents an unacceptable risk to life and property and is therefore recommended for refusal for the reasons outlined in **(ATTACHMENT 3)**.

**CONSULTATION**Internal

Consultation was undertaken with internal technical staff to facilitate the assessment of the DA including:

- Building and Developer Relations
- Development Engineering
- Strategic Planning (Development Contributions)
- Environmental Health
- Flood Advisory Review Panel.

**MINUTES ORDINARY COUNCIL - 9 MARCH 2021**

The referral comments provided by these officers were considered as part of the detailed assessment and are discussed within the Planners Assessment Report (**ATTACHMENT 2**). The DA is supported by all internal referrals, other than Development Engineering and Flood Advisory Review Panel for the reasons outlined above.

External

No consultation with any external agencies was required to be undertaken during the assessment of this DA.

Notification

In accordance with the provisions of the Port Stephens Community Participation Plan, the DA was exhibited from 31 August 2020 to 14 September 2020. During this period 1 public submission was received which objects to the DA.

A detailed assessment of the submissions and matters raised were considered as part of the Planners Assessment Report contained at (**ATTACHMENT 2**).

**OPTIONS**

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

**ATTACHMENTS**

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

**COUNCILLORS ROOM**

- 1) Development Plans.
- 2) Unredacted submission.

**TABLED DOCUMENTS**

Nil.

## MINUTES ORDINARY COUNCIL - 27 APRIL 2021

### ITEM 3 - ATTACHMENT 6 ORDINARY COUNCIL MINUTES - 13 APR 2021.


## MINUTES ORDINARY COUNCIL - 13 APRIL 2021

### ITEM 3 - ATTACHMENT 5 ORDINARY COUNCIL MINUTES - 9 MARCH 2021.

## MINUTES ORDINARY COUNCIL - 9 MARCH 2021

### ITEM 1 - ATTACHMENT 1 LOCALITY PLAN.



 <b>DEVELOPMENT ASSESSMENT REPORT</b>	
<b>APPLICATION DETAILS</b>	
Application Number	16-2020-357-1
Development Description	Single storey dwelling
Applicant	MR P J ILSLEY
Land owner	MR P J ILSLEY
Date of Lodgement	22/08/2020
Value of Works	\$288,000.00
Submissions	1
<b>PROPERTY DETAILS</b>	
Property Address	918 Newline Road EAGLETON
Lot and DP	LOT: 31 DP: 840177
88B Restrictions on Title	Nil
Current Use	Animal boarding or training establishment
Zoning	RU1 PRIMARY PRODUCTION
Site Constraints	Bushfire Prone Land - Class 3 (Buffer) Acid Sulfate Soils - Class (3) Koala Habitat Planning Map (Link over Cleared) SEPP (Coastal Management) 2018 - Coastal Zone Combined Footprint Height Trigger Map - RAAF Base Williamtown and Salt Ash Air Weapons Range - DoD Prime Agricultural Land (Classes 1-3)
State Environmental Planning Policies	SEPP (Building Sustainability Index: BASIX) 2004 SEPP (Coastal Management) 2018 SEPP (Koala Habitat Protection) 2020 SEPP No. 55 - Remediation of Land

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**PLANNERS PRE-ASSESSMENT CHECKLIST****PROPOSAL**

The application proposes a dwelling to support the animal training establishment at the subject site. The proposed development comprises a 201m<sup>2</sup> single storey dwelling, to be located on an existing earth mound (approved under DA 16-2016-302). A concrete slab is proposed over the ground level of the dwelling, with piers proposed to support the first level of the dwelling. The dwelling is a single storey design comprising of four bedrooms, ensuite, open plan living, dining, kitchen space and a stairwell. The ground level will be used for vehicle parking and is identified as a non-habitable space.

The proposal also incorporates the decommissioning of unauthorised living quarters within the site's industrial metal shed and the associated OSSM system being connected to the proposed dwelling.



Figure 1: Proposed development

**SITE DESCRIPTION**

The subject site is legally identified as lot 31 DP 840177, 918 Newline Road, Eagleton. The regularly shaped rural lot is located on the eastern side of Newline Road, within a rural precinct that is characterised by large rural allotments. The lot comprises a total area of 11.5ha with development including a large shed, stables and day yards, earthworks mound, sealed crossover and driveway, multiple dams and small sheds.

The lot is relatively flat in its topography and is situated in close proximity of the Williams River and the entire site is identified within the High Hazard Floodway categorisation. Essential services including vehicular access and electricity are available to the lot, with services including water, wastewater and stormwater able to be managed onsite. No easements or land use restrictions have been identified over the site.

16-2020-357-1



Figure 2: Aerial view of subject site

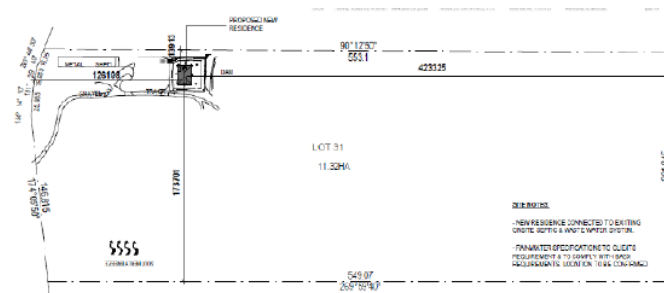


Figure 3: Locality plan

#### SITE HISTORY

The site has supported an animal training establishment for approximately 15 years, with structures including a machinery shed, stables, day yards and stock refuge mounds approved over this timeframe. Whilst a development application for a dwelling and shed was refused by Council staff in 1995, an approval for operation of a waste water management system was issued in 2004.

The site has recently been subject to an order from Council's Development Compliance section to 'cease use of shed as a dwelling'. The pending development application for construction of a dwelling (DA 16-2020-357-1) has been lodged in response to this order.

The following applications have been assessed over the subject site:

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- 16-2016-302 – Land Fill (new stock refuge mound and extension of existing mound) – Approved – 28.06.2016
- 16-2005-215 – Four (4) x Stables & Day Yards – Approved – 21.04.2005
- 16-1998-1384 – Retaining Wall – Approved – 13.10.1998
- BAvDA - 7-1997-1607 – Land Fill & Excavation – Approved – 21.01.1998
- BAvDA – 7-1997-60651 – Machinery Shed – Approved – 12.06.1997
- BAvDA – 7-1997-84 – Land Fill – Approved – 10.02.1997
- BAvDA – 7.1997-56 – Advertising Sign – Approved – 23.01.1997
- BAvDA – 7.1995-1855 – Dwelling and Shed – Refused by Staff – 26.11.1996

**SITE INSPECTION**

A site inspection was carried out on 3 February 2021.

The subject site can be seen in the images below:



Figure 4: View from proposed development site facing east



Figure 5: View from proposed development site facing west

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Figure 6: View of proposed development site facing north



Figure 7: View of proposed development site facing south

#### **REFERRALS**

The proposed development was referred to the following internal specialists and external agencies. The comments provided by the special staff and external agencies have been used to carry out the assessment against the S4.15 Matters for Consideration below.

##### **Development Engineer**

16/07/2020 – Further information requested for items including; flood compatible design and construction, electrical installations, materials storage and structural certification of dwelling. Three (3) options were provided by Development Engineer as a pathway forward. Not supporting the application on the basis that Council does not support residential development within a high hazard floodway was recommended as the preferred option from a flood risk minimisation perspective.

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7/12/2020 – Request for Information issued seeking assessment against the performance based solutions contained in Chapter B5.D of the Port Stephens Council DCP.

20/12/2021 – Proposal is not consistent with the Floodplain Development Manual as the performance based criteria of DCP 2014 was not addressed to Council's satisfaction.

**Environmental Health** – The proposed waste water system design submitted with the application demonstrates a suitable solution is available through a S68 Onsite Sewer Management System application. The S68 application has been submitted with Council concurrently with the DA and has been supported subject to conditions of consent.

**Building Surveyor** – The proposed new dwelling was referred for consideration of Building Code of Australia (BCA) and building requirements. The proposed new dwelling is sufficiently separated from existing boundaries and the existing dwelling, achieving the BCA fire separation requirements. A CC has been lodged concurrently with the DA application. The proposal is supported subject to conditions.

**Flood Advisory Review Panel** – The application was referred to the Flood Advisory Review Panel (FARP) following the recommendation of refusal from Council Development Engineers due to the flood hazard categorisation. The application was reviewed by FARP on two occasions, the initial review and once more following the endorsement of the amendments to the Chapter B5 Flooding DCP 2014. FARP did not support the application as emergency egress for the proposal will be cut off early in a flood event and sits well below the current day 1% AEP flood level of 5.1m. Additionally, the proposal sits 2.35m below the PMF level of the site and thus a PMF flood Refuge would be required as a minimum but has not been proposed by the applicant. The development is not consistent with the application of performance based solutions outlined in B5.D of the DCP. Due to the unacceptable safety implications posed by the flood constraints of the site and the inability of the applicant to resolve these flooding issues to an acceptable engineering standard, the application is recommended for refusal.

#### **ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979**

##### **Section 4.15 - Matters for consideration**

The proposal has been assessed under the relevant matters for consideration detailed in Section 4.15 of the Environmental Planning and Assessment Act 1979 (EP&A Act).

##### **Section 4.15(a)(i) - any environmental planning instrument**

An assessment has been undertaken against each of the applicable environmental planning instruments (EPI's), as follows:

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 (SEPP BASIX) was enacted to ensure that dwellings are designed to utilise less potable water and to minimise greenhouse gas emissions by setting energy and water reduction targets for residential houses and units.

A valid BASIX certificate has been submitted with the development application which demonstrates that the water, thermal comfort and energy requirements for the proposal have been achieved. The proposal is considered to satisfy the relevant provisions of SEPP BASIX.

State Environmental Planning Policy No. 55 – Remediation of Land

Clause 7 of SEPP 55 requires the consent authority to consider whether land is contaminated, is in a suitable state despite contamination, or requires remediation to be made suitable for the proposed development.

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It is noted that the NSW list of contaminated sites and list of notified sites published by the EPA does not identify the site as being contaminated, nor has previous record of contamination in Council's system. The land is not within an investigation area, there are no records of potentially contaminating activities occurring on the site, and the dual occupancy is not listed as a possible contaminating use, per Table 1 of the Guidelines. Noting this, the proposed development satisfies the requirements of SEPP No. 55.

State Environmental Planning Policy (Koala Habitat Protection) 2019

This policy aims to encourage the conservation and management of areas of natural vegetation that provide habitat for koalas to support a permanent free-living population over their present range and reverse the current trend of koala population decline. This Policy commenced on 1 March 2020.

The site is located in an area mapped mainly cleared, the rear of the site along the boundary to the waterfront is mapped and 50m buffer over cleared. The development application does not include the removal of natural vegetation for koala habitat. The development is not considered to exacerbate impact to the koala habitat or decline in koala population.

State Environmental Planning Policy Coastal Management 2018

The subject land is located within the Coastal Environmental Area and Coastal Use Area. The subject is located in close proximity to the Williams River and triggers the consideration of the Coastal Management SEPP.

As per Clause 13 of the SEPP, development consent must not be granted for development within the coastal environment area unless the consent authority has considered whether the development will cause impact to the integrity of the biophysical and ecological environment, the values and natural coastal processes, marine vegetation, native vegetation and fauna and existing public open space and access to and along the foreshore.

The proposed development is setback approximately 120m from the Williams River waterbody, the development is separated from the waterbody by Newline Road and will therefore not have any significant adverse impacts.

As per Clause 14 of the SEPP, development consent must not be granted for development unless the consent authority has considered existing and safe access to and along the foreshore, overshadowing and loss of views, visual amenity and scenic qualities and heritage values. The consent authority must also be satisfied that the development is designed and sited to avoid adverse impacts and to ensure the development has taken into account the surrounding built environment in its design.

The proposed dwelling is not located in close proximity to the Williams River and will not impact on access to the river. The proposed residential use of the site, in conjunction with the existing flood risk as a result of the Hunter River, presents as a potential risk to the ecological environment in the event of the dwelling being destroyed in flood waters.

Clause 15 of the SEPP requires consideration to whether the development would increase the risk of coastal hazards. The proposed development is not likely to increase risk to coastal hazards.

There is minor associated risk with the dwelling being destroyed by flooding. The proposed dwelling, in significant flooding events, may result in the destruction of the mound and structure. In the event of the development being destroyed by flood waters materials would be washed down stream affecting surrounding properties and risk to the ecological environment of the river network. If the proposal were amended to be further setback from the river and potential hazard the risk associated with the flooding could be minimised.

The application can therefore be supported as it generally complies with the aims and the matters for consideration of the Policy.

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Port Stephens Local Environmental Plan 2013 (LEP)**Clause 2.3 – Zone Objectives and Land Use Table**

The proposed development is defined as a 'dwelling house' and is permissible with consent in the RU1 Primary Production zone. The development addresses the objectives of the zone to minimise the fragmentation and alienation of resource lands.

**Clause 4.2B – Erection Of A Dwelling On Land In Certain Rural, Residential And Environmental Protection Zones**

The site is located in the RU1 zone and the lot was created before 22 February 2014 with an area of at least 4,000m<sup>2</sup> on which a dwelling was permissible under the previous Local Environmental Plan.

The site therefore holds a dwelling entitlement.

**Clause 7.1 – Acid Sulfate Soils**

The subject land is mapped as containing potential Class 3 acid sulfate soils. The proposed development is not anticipated to entail excavations below 1 metres and therefore it is not expected that acid sulfate soils would be encountered during works.

**Clause 7.3 – Flood Planning**

The proposed development is located on land mapped as Flood Prone land and the land is below the flood planning level.

Developments on land identified as flood prone are to demonstrate minimal flood risk to life and property, and to achieve development which is compatible with the flood hazard to avoid significant adverse impacts on the flood behaviour in the environment.

The flood category for the development area is High Hazard Floodway. The current driveway connects the site to Newline Road. The driveway is not constructed above the flood planning level, which is required for an access way that can be used in the event of a flood. As such, the proposed development does not have suitable flood free access from the site.

The proposed siting for the development is therefore not supported. In the event of a flood, the development will result in unacceptable risk to life and property. The proposed dwelling is not considered appropriately located on the site to manage risk to life from flood, and avoid unsustainable social and economic costs to the community as a consequence of flood, and will be subject to dangerous flood impacts.

**Clause 7.6 – Essential Services**

The subject site is serviced by reticulated water and electricity. The applicant has noted the subject site has an existing OSMS servicing the existing shed and the system will be connected to the proposed dwelling in due course. The subject land also maintains direct access to Newline Road, meeting the requirements of this clause.

***Section 4.15(a)(ii) - any draft environmental planning instrument that is or has been placed on public exhibition***

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

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**Section 4.15(a)(iii) – any development control plan**Port Stephens Development Control Plan 2014

The DCP is applicable to the proposed development and has been assessed below.

**Chapter B3 – Environmental Management**Acid Sulfate Soils

The objective of this DCP Chapter is to ensure that developments do not disturb, expose or drain Acid Sulfate Soils (ASS) and cause environmental damage. As detailed within Clause 7.1 discussion above, the proposed development could be undertaken, subject to conditions of consent, without resulting in adverse impact to ASS. In this regard the development is consistent with the objective and requirements of the DCP.

**Chapter B4 – Drainage and Water Quality**

A stormwater management plan was submitted with the application and includes adequate quality and quantity controls as required by Councils policy. The stormwater drainage plan has been assessed as being consistent with the Infrastructure Specification.

**Chapter B5 – Flooding**

The subject land is mapped as being within the Flood Planning Area. Chapter B5 outlines objectives to inform and assist with determining development suitability on land designated in particular flood hazards. All new developments are required to address the development control within this part of the DCP to mitigate risks and considered suitability.

Chapter B.5 of the DCP 2014 provides more detailed provisions to inform the assessment against the LEP 2013 provisions. The DCP chapter was amended in December 2020 which included performance based solutions for certain development in flood prone areas. The amended chapter states that dwelling houses on land categorised as High Hazard Floodway can be considered, where the newly adopted performance based criteria in the DCP 2014 can be addressed.

The area has been classified as flood prone land and is located within a High Hazard Floodway. Further, the existing flood mound is below the flood planning level on the subject site.

The current flood levels applicable to the site are:

- Flood Planning Level - 6.0m AHD
- 1% AEP (Current day) – 4.7m AHD
- Probable Maximum Flood – 8.9m AHD

The proposed development includes finished floor level (FFL) as follows:

- Existing Flood Mound – 4.15m AHD
- Dwelling – 6.55m AHD

The applicant provided a Flood Impact Assessment for the proposal that included flood modelling for a range of flood events on the existing earth mound. Conclusions from the impact assessment stated *the structural integrity of the mound and proposed dwelling is expected to be unaffected by flooding for all but extreme events such as the PMF*.

The DA was assessed by Council's Development Engineering Section, which included an assessment of the proposal against the recently adopted performance based solutions listed in Chapter B5.D of the Port Stephens Council Development Control Plan (DCP).

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Chapter B5.18 states that evacuation access to an area free of risk from flooding must be provided. The subject land is located central to the flood affected area and it is therefore impossible to provide access to flood free areas offsite. The proponent has also not provided a flood refuge as part of the proposal.

Chapter B5.19 requires development to address the risk to property at the expected velocities and levels during various flood events. The existing flood mound is currently located below the 1% AEP level, which will result in the inundation of the ground floor area and any stored items below the dwelling (including vehicles).

Chapter B5.20 requires the application to be compatible with the flood hazard category of the site. The site is located within a High Hazard Floodway with high velocity rates. As the site does not have access to flood free areas, the development will become isolated during large flood events.

The development is not therefore consistent with the application of performance based solutions outlined in B5.D of the DCP. Due to the unacceptable safety implications posed by the flood constraints of the site and the inability of the applicant to resolve these flooding issues to an acceptable engineering standard, the application is recommended for refusal.

**Chapter B8 – Road Network and Parking**

The proposal includes a 4 bedroom dwelling, the DCP requires 2 car spaces to be provided to support the development on the site. There is a suitable car spaces available on the site. Should the development be supported, there is adequate car spaces available for the additional development on the site.

**Chapter C – Development Types**

The proposed development comprise of a single dwelling therefore the provisions of Chapter C4 are applicable.

**Chapter D4 - Dwelling House, Secondary Dwelling, or Dual Occupancy****Building height**

There is no maximum building limit under the LEP, as such the maximum limit of 8m applies to the site. The proposal is for a single storey dwelling with a maximum proposed height of 7.9m, to be constructed on top of a flood mound. The dwelling does not exceed the maximum building height under the DCP 2014.

**Setbacks**

The proposal is appropriately setback from all the side and rear boundary setbacks. The proposal is located to the rear of the existing metal shed. The proposal does not detract from the rural character of the area.

**Streetscape and privacy**

The development is appropriately setback to ensure the rural character and streetscape and privacy of the area is maintained.

**Private open space**

The development is proposed on a rural property and is adequately setback to facilitate ample private open space for the proposed dwelling.

**Landscaping**

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The subject site is a rural property with sufficient space for landscaping and plantings. There are not matters of privacy which would require landscape screening to be planted. The subject site has sufficient space to achieve landscaping requirements.

Site Facilities and Services

The proposed dwelling location and flood mound area create suitable area to support facilities and services such as waste storage and clothes drying. As mentioned above, the existing OSWS system will be connected to the new dwelling.

***Section 4.15(1)(a)(iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph)***

There are no regulations that apply to the proposal.

***Section 4.15(1)(b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality***

Social and Economic Impacts

There would be beneficial impacts as a result of the development. The proposal will result in a dwelling on the site, increasing the housing stock and diversity of the area. The erection of a lawful dwelling house at the site would also ensure the continuation of a local business (animal training establishment). The construction of the development would result in employment opportunities during and after the development of the structures and having a monetary contribution to the local area.

Impacts on the Built Environment

The proposed development would not cause harm to the existing character. The proposed dwelling is to be erected on a flood mound, given the area is characterised by rural residential development, the dwelling would be built at a similar height to the surrounding properties. The dwelling has been designed in a manner to be consistent with the rural character of the area. Overall, the development is not considered likely to result in adverse impacts to the built environment.

Impacts on the Natural Environment

The proposed development is not considered to be compatible with the flood risk associated with the land and may result in an unacceptable impact to life. The proposed development is located within close proximity to the Williams River to the west. The development is not considered to be a suitable use of the site with regard to the environment and does not align with Councils endorsed policies.

**s4.15(1)(c) – The suitability of the site**

The subject site is zoned RU1 – Primary Production, whereby the proposed dwelling is a permissible land use under the zoning. The site is identified as high hazard flood-way and the proposed development and use does not align or address all of the necessary requirements under current Council endorsed policy and legislation. Due to the identified flood hazard, the proposal has been assessed as not being a suitable outcome for the site.

**s4.15(1)(d) – Any submissions made in accordance with this act or the regulations**

The application was notified in accordance with the provisions of the Port Stephens Council Community Participation Plan. One (1) submission was received with relation to the subject development proposal. The matters raised in this submission have been detailed in the table below.

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No.	Author of submission	Comment	Council response
1		Siting of the proposed development	The proposal meets setback requirements outlined in the Port Stephens DCP.
		Loss of amenity and conflict arising between properties	The proposal is permissible under LEP 2013. The proposed dwelling is set approximately 120m from the existing dwelling located opposite Newline Road and it is considered that this will limit any significant amenity issues. The land to the north currently only contains a small shed and cattle yards.
		Flooding Risk	Council Development Engineers and Development Planners have assessed the proposal against relevant environmental planning instruments, development standards and policies. In this instance, the proposal has not been supported on the grounds of flood risk.

**s4.15(1)(e) – The public interest**

The proposed development is not considered to be in the public interest as the proposed development is not consistent or suitable with the flood category applicable to the subject site. The impact and increase in risk to life and property as a result of the development in a significant flood event is not supportable in this instance.

**s7.11 – Contribution towards provision or improvement of amenities or services (developer contributions)**

Nil.

**DETERMINATION**

The application is recommended to be refused by the elected Council.

ISAAC LANCASTER  
DEVELOPMENT PLANNER

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**SCHEDULE 1 – REASONS FOR REFUSAL**

The application is recommended for refusal on the following grounds:

1. The proposed development fails to satisfy Clause 7.3 - Flood Planning of the Port Stephens Local Environmental Plan 2013 as the development does not demonstrate that it is compatible with the high hazard floodway category of the site, including minimising the risk to life associated with the flood hazard (s4.15(1)(a)(i) EP&A Act);
2. The development does not comply with the controls contained within Chapter B5 Flooding of the Port Stephens Development Control Plan (s4.15(1)(a)(iii) EP&A Act);
3. The proposed development does not demonstrate the site is suitable for the proposed site given the flood category of the land s4.15(1)(c) of the EP&A Act; and
4. The proposed development is not considered to be in the public interest as the development is inconsistent with the adopted principles and strategies which seek to promote the appropriate development of the land (s4.15(1)(e) EP&A Act).



**PORT STEPHENS COUNCIL**

116 Adelaide Street  
Raymond Terrace NSW 2324

PO Box 42  
Raymond Terrace NSW 2324

Phone: 02 4960 0255  
Email: [council@portstephens.nsw.gov.au](mailto:council@portstephens.nsw.gov.au)

[www.portstephens.nsw.gov.au](http://www.portstephens.nsw.gov.au)





116 Adelaide Street,  
Raymond Terrace NSW 2264

PO Box 42  
Raymond Terrace NSW 2264

p (02) 4988 0255 | f (02) 4987 0012  
e council@portstephens.nsw.gov.au

DX 21405 | ABN 16 744 217 876

## Call to Council form

Development Application

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**DEVELOPMENT APPLICATION (DA) CALL TO COUNCIL REQUEST**

We (Mayor/Councillor/s)

Name: Ryan Palmer

Name: Sarah Smith

Name: Glen Dunkley

request that DA number: DA16-2020-357-1

for DA description: *Single storey dwelling.*

located at: 918 Newline Rd, Eagleton

be reported to Council for determination.

**REASON**

Public interest as a review of development in areas deemed as floodway is taking place.

**SIGNATURE OF APPLICANT/S**

Signature		Date	11 8 2020
Signature		Date	11 8 2020
Signature		Date	11 8 2020

**PRIVACY**

Port Stephens Council is committed to protecting your privacy. We take reasonable steps to comply with relevant legislation and Council policy. Purpose: The purpose of this form is to enable Council to record the matter raised and taken appropriate action. Benefited recipients: Council employees, contractors and other third parties where appropriate. Confidentiality: Voluntary. Consequence of Non Provision: Council may not take action on the matter raised. Storage and security: This document will be placed on the relevant file and/or saved in Council's records management system in accordance with Council policy and relevant legislation. Access: Please contact Council on 02 4988 0256 to enquire how you can access information.

Call to Council DA application form Page 1 of 1

## MINUTES ORDINARY COUNCIL - 27 APRIL 2021

Councillor Paul Le Mottee returned to the meeting at 5:57pm.

### ITEM NO. 2

FILE NO: 21/59882  
EDRMS NO: 16-2020-796-1

### DEVELOPMENT APPLICATION 16-2020-796-1 FOR SITE REMEDIATION AND ASSOCIATED VEGETATION CLEARING AT 44B SQUIRE STREET, FINGAL BAY

REPORT OF: KATE DRINAN - DEVELOPMENT ASSESSMENT AND  
COMPLIANCE SECTION MANAGER  
GROUP: DEVELOPMENT SERVICES

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#### RECOMMENDATION IS THAT COUNCIL:

- 1) Approve Development Application 16-2020-796-1 for site remediation works and associated vegetation clearing at 44B Squire Street, Fingal Bay (Lot 25 DP 247555) subject to the conditions contained in **(ATTACHMENT 3)**.
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### ORDINARY COUNCIL MEETING - 27 APRIL 2021 MOTION

097	<p><b>Councillor John Nell</b> <b>Councillor Glen Dunkley</b></p> <p>It was resolved that Council approve Development Application 16-2020-796-1 for site remediation works and associated vegetation clearing at 44B Squire Street, Fingal Bay (Lot 25 DP 247555) subject to the conditions contained in <b>(ATTACHMENT 3)</b>.</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 Ryan Palmer, Crs Giacomo Arnott, Glen Dunkley, Ken Jordan, Paul Le Mottee, John Nell, Sarah Smith and Steve Tucker.

Those against the Motion: Nil.

The motion was carried.

### BACKGROUND

The purpose of this report is to present a development application (DA) 16-2020-796-1 for site remediation and associated vegetation clearing at 44B Squire Street, Fingal Bay (Lot 25 DP 247555) to Council for determination.

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A summary of the DA and property details is provided below:

Subject land:	44B Squire Street (Lot 25 DP 247555)
Total area:	2,845m <sup>2</sup>
Zoning:	R2 Low Density Residential zone
Submissions:	1 submission was received objecting to the proposal
Key issues:	No significant issues

The DA has been reported in accordance with Council's Planning Matters to be Reported to Council Policy as it is a development where Council is the owner of the land and the estimated cost of works exceeds \$250,000.

A locality plan is provided at **(ATTACHMENT 1)**.

### Proposal

The proposal seeks to undertake remediation and vegetation clearing works over the site, to facilitate a future development application for land subdivision. The works proposed includes:

- Clearing of all grasses and vegetation over the site to enable the removal of a 100mm top layer of soil
- Removal of asbestos and heavy metal contaminated soils to an off-site facility
- Further environmental investigation, remediation and validation to confirm the site is suitable for a future residential use.

The application is supported by a preliminary site investigation that identifies the areas of contamination requiring remediation. A remediation action plan has also been provided which details the necessary works and methodologies to remediate the site to make it suitable for a future residential use.

### Site Description and history

The site is currently vacant and is largely cleared of vegetation with remnant revegetation growth.

The site is located within an existing residential area.

### Key Issues

The key issue identified during assessment relates to the remediation of land and ecological issues. A detailed assessment of the DA is contained within the Planners Assessment Report **(ATTACHMENT 2)**.

### Remediation of Land

The site has been contaminated over time through the illegal dumping of waste materials including asbestos and heavy metals. A preliminary site investigation and

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remediation action plan (RAP) was submitted with the DA to identify the level of contamination on the site and outline a plan to appropriately remediate it to make it suitable for a future residential use. The DA was assessed by Council's Environmental Health team in accordance with State Environmental Planning Policy No 55 — Remediation of Land and Port Stephens Local Environmental Plan 2013. The assessment concluded that the remediation of the site in accordance with the RAP will result in the land being suitable for residential purposes.

### Ecological Issues

A portion of the site is mapped as high environmental value and consequently a Biodiversity Assessment Report (BDAR) was prepared by the applicant. Council's Natural Resources team assessed the BDAR and concluded that all requirements of the Biodiversity Conservation Act were addressed and that the clearing of the site could be supported subject to the recommended conditions of consent **(ATTACHMENT 3)**.

### Conclusion

The DA is considered to be consistent with the aims and objectives of the relevant environmental planning instrument applicable to the subject site, including:

- Environmental Planning and Assessment Act 1979 (EP&A Act)
- Biodiversity Conservation Act 2016
- State Environmental Planning Policy No. 55 – Remediation of Land
- Port Stephens LEP 2013
- Port Stephens DCP 2014.

## COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2018-2021
Community Partnerships	Provide recreational and leisure services.

## FINANCIAL/RESOURCE IMPLICATIONS

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

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes		
Reserve Funds	No		
Developer Contributions (\$7.11)	No		
External Grants	No		

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Source of Funds	Yes/No	Funding (\$)	Comment
Other	No		

**LEGAL, POLICY AND RISK IMPLICATIONS**

The DA is consistent with the relevant planning instruments including the EP&A Act, LEP 2013 and DCP 2014.

Detailed assessment against these requirements is contained within the Planners Assessment Report provided in **(ATTACHMENT 2)**.

Risk	<a href="#">Risk Ranking</a>	Proposed Treatments	Within Existing Resources?
There is a risk that, if the application is refused, the contaminated land will not be remediated and will not be able to be developed for future residential uses.	Medium	Determine the DA in line with the recommendations.	Yes
If the application is refused, there is a risk that a third party may appeal the determination.	Low	Determine the DA in line with the recommendation.	Yes

**SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

It is considered that the development will have a positive economic, social and environmental impact on the local area and the broader community through the clearing and remediation works. On completion of the works, the site will be suitable for residential purposes.

**CONSULTATION**Internal

Consultation was undertaken with internal technical staff to facilitate the assessment of the DA including:

- Environmental Health team
- Natural Resources team

The referral comments provided by these officers were considered as part of the detailed assessment and are discussed within the Planners Assessment Report (**ATTACHMENT 2**). The DA is supported by all internal referrals.

#### External

Consultation was not required with any external agencies during the assessment of this DA.

#### Notification

The DA was notified from 25 December 2020 and 25 January 2021, during which time 1 public submission was received in relation to the proposed development. The issues identified in the submission are discussed within the Planners Assessment Report (**ATTACHMENT 2**).

### **OPTIONS**

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

### **ATTACHMENTS**

- 1) Location Plan.
- 2) Planners Assessment Report.
- 3) Proposed Conditions of Consent.

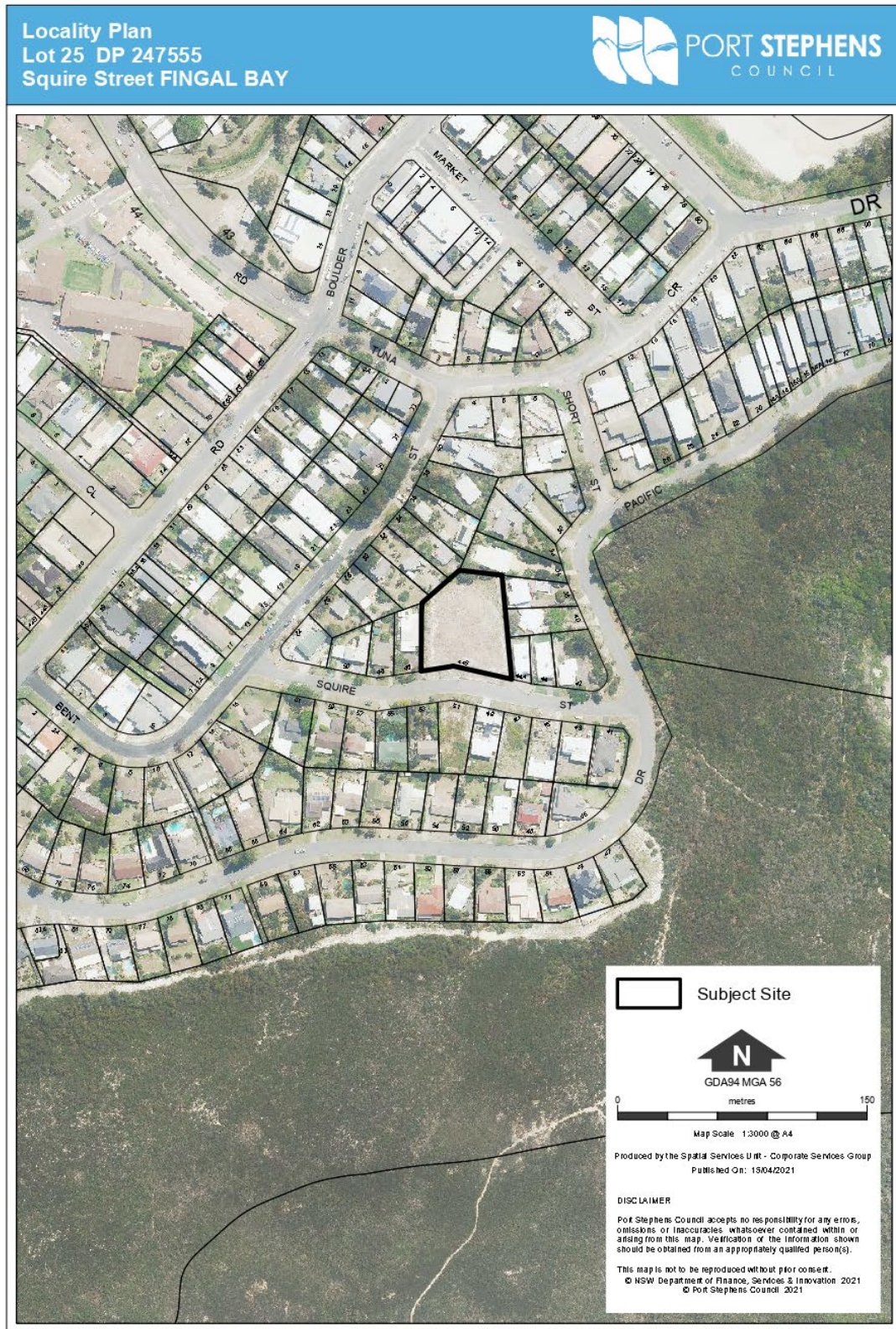
### **COUNCILLORS ROOM**

- 1) Development Plans.
- 2) Unredacted Submission.

### **TABLED DOCUMENTS**

Nil.





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



## DEVELOPMENT ASSESSMENT REPORT

### APPLICATION DETAILS

<b>Application Number</b>	16-2020-796-1
<b>Development Description</b>	Site remediation works and associated vegetation clearing
<b>Applicant</b>	Barker Ryan Stewart
<b>Land owner</b>	PORT STEPHENS COUNCIL
<b>Date of Lodgement</b>	01/12/2020
<b>Value of Works</b>	\$300,000.00
<b>Submissions</b>	1

### PROPERTY DETAILS

<b>Property Address</b>	44B Squire Street FINGAL BAY
<b>Lot and DP</b>	LOT: 25 SEC: 5 DP: 247555
<b>88B Restrictions on Title</b>	Nil
<b>Current Use</b>	Vacant land
<b>Zoning</b>	R2 LOW DENSITY RESIDENTIAL
<b>Site Constraints</b>	Bush fire prone land (Vegetation Category 3 Buffer) Acid Sulfate Soils (Category 5) Koala Habitat Planning Map (Mainly Cleared/Other Vegetation) Port Stephens Rural Residential Strategy – Zone exclusions SEPP (Coastal Zone Combined Footprint)
<b>State Environmental Planning Policies</b>	State Environmental Planning Policy No 55 – Remediation of Land State Environmental Planning Policy (Coastal Management) 2018 State Environmental Planning Policy (Koala Habitat Protection) 2019



**PROPOSAL**

The proposal seeks to undertake remediation and vegetation clearing works over the subject site, to facilitate a future development application for land subdivision. The works proposed (as illustrated in **Figure 1**) specifically include:

- Removal of identified asbestos and heavy metal contaminated soils;
- Clearing of all grasses and vegetation over the site, to enable removal of a 100mm top layer of heavy metal soils; and
- Further environmental investigation, remediation and validation of the identified contamination of the site.

The application is supported by a preliminary site investigation for contamination which identifies the areas of contamination which require remediation. A remediation action plan has been provided, detailing the necessary works and methodologies to remediate the site.



Figure 1: Site remediation plan - 44B Squire Street, Fingal Bay

**SITE DESCRIPTION**

The subject site is a vacant, irregular shaped lot with a frontage to Squire Street, Fingal Bay. The lot is orientated to the south and located within an existing residential area (see **Figure 2**). The subject site has an area of 2,834.81m<sup>2</sup>. The site is largely cleared of vegetation with remnant revegetation regrowth occurring subsequent to the clearing undertaken in late 2019. The site has a peak in the centre of the lot at 29.5m AHD and naturally drains to a low point of 23m AHD in the north-east corner of the site.

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The site is located within an established low density residential zone and adjoins a number of residential lots located to the side and rear boundaries of the lot.



Figure 2: Aerial view of site (Nearmap Pty Ltd; October 2020)

#### **SITE HISTORY**

The site has historically existed as a vacant lot. Multiple incidents of illegal dumping (including asbestos) have been reported over the subject site. An incident of unauthorised vegetation clearing has also been reported over the site. There is only one electronic record of development applications that have been lodged over the site:

- 16-2020-194-1 – Five Lot Torrens Title Subdivision – Application Withdrawn – 23.09.2020

#### Site inspection

A site inspection was carried out on 12<sup>th</sup> January 2021.

The subject site can be seen in Figures 3 and 4 below:

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**Figure 3: Site frontage - photo taken from southern side of Squire Street**



**Figure 4: Highest point of site photographed from northern side of Squire Street**

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**REFERRALS**

The proposed development was referred to the following internal specialists and external agencies. The comments provided by the special staff and external agencies have been used to carry out the assessment against the S4.15 Matters for Consideration below.

Natural Resources – The Biodiversity Development Assessment Report (BDAR) prepared for this proposal was assessed by Council's Natural Resources section, and deemed to meet the requirements of the Biodiversity Assessment Methodology 2020.

Environmental Health – A comprehensive review of the Remediation Action Plan (RAP) prepared for this proposal was undertaken by Council's Environmental Health section. Recommendations outlined in the RAP were endorsed as conditions of development consent.

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979**

**S4.14 - Consultation and development consent (certain bushfire prone land)**

Sub-Clause	Compliant	Notes (where needed or if not compliant)
1	<input checked="" type="checkbox"/> Development is within bushfire prone land and conforms to the specifications and requirements of the PBP, or; <input type="checkbox"/> A certificate has been provided by a suitability qualified bushfire consultant of which confirms the bushfire risk assessment rating and identifies relevant specifications and requirements for compliance with PBP.	<p>The proposal does not seek development consent for a fixed structure (habitable or non-habitable) and therefore does not require any specific bush fire performance requirements under the National Construction Code.</p> <p>In light of this, consideration has been given to the aims and objectives of PBP in regard to access, water supply and services and emergency and evacuation planning, in relation to the future Torrens Title Subdivision Application to be lodged over the lot.</p>
1A	<input type="checkbox"/> The proposal does not confirm to the relevant specifications and requirements and has been referred to the NSW RFS for assessment concerning measures to be taken with respect to protection of persons, property and the environment as a result of bushfire impacts.	

**S4.15 – Matters for Consideration**

**s4.15(1)(a)(i) – The provisions of any EPI**

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<b>STATE ENVIRONMENTAL PLANNING POLICY (COASTAL MANAGEMENT) 2018</b>		
<b>Clause</b>	<b>Compliant</b>	<b>Notes (where needed or if not compliant)</b>
4	<input checked="" type="checkbox"/> Development is within the Coastal Management Areas and the SEPP applies <input type="checkbox"/> Development outside Coastal Management Areas and SEPP does not apply	The proposed development is situated on land identified as being within the Coastal Management Areas and hence the SEPP applies.
13	<input checked="" type="checkbox"/> The development is located within the coastal environment area, and; <input checked="" type="checkbox"/> The development is unlikely to cause impact to the integrity and resilience of the biophysical, hydrological and ecological environment, the coastal environmental values and processes or the water quality of the marine estate, and; <input checked="" type="checkbox"/> The development is designed and sited to avoid adverse impact on the above mentioned areas.	The proposal is situated on land identified as being within the coastal environment area. As the proposal is located within an already developed residential area, it is not expected to cause any negative impact to the surrounding integrity and resilience of the coastal environment, and the values and processes of this environment. The proposal is not expected to adversely impact the surrounding coastal environment, and is seen to be designed and sited to avoid adverse impact.

<b>STATE ENVIRONMENTAL PLANNING POLICY NO. 55 – REMEDIATION OF LAND</b>		
<b>Clause</b>	<b>Compliant</b>	<b>Notes (where needed or if not compliant)</b>
7	<input type="checkbox"/> The proposed development site has no previous record of contamination, nor is it listed on the NSW list of contaminated and notified sites, published by the EPA. <input type="checkbox"/> The land is not within an investigation area, nor are there any records of potentially contaminating activities occurring on the site. <input type="checkbox"/> The proposed use is not listed as a possible contaminating use, per Table 1 of the Guidelines.	The site has been a source of investigation regarding the illegal dumping of waste materials (including asbestos and heavy metals). A preliminary site investigation was submitted with the application which identified areas of contamination including heavy metals and asbestos which require remediation. As a result, remediation of the site is required before the land is suitable for a future purpose (e.g. residential subdivision). A Remediation Action Plan (RAP) has been prepared for the proposal, which outlines the

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		<p>necessary works and methodology to remediate the site.</p> <p>Subject to the implementation of the proposed Remediation Action Plan, the land would be rendered suitable for residential use and therefore satisfies the requirements of SEPP 55.</p>
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<b>STATE ENVIRONMENTAL PLANNING POLICY (KOALA HABITAT PROTECTION) 2019</b>		
<b>Clause</b>	<b>Compliant</b>	<b>Notes (where needed or if not compliant)</b>
3	<input type="checkbox"/> The proposed development encourages the conservation and management of naturally vegetated areas that provide habitat for koalas.	The proposed development is located within an area identified as 'mainly cleared'; on Councils Koala Mapping systems. The proposed development intends to remove low lying vegetation across the site. This vegetation is not deemed necessary for the conservation and management of the surrounding koala population, and hence the removal is not expected to negatively impact koalas or their habitat.
8	<input checked="" type="checkbox"/> The proposed development is consistent with Council's Comprehensive Koala Plan of Management.	The proposal seeks to remove low lying vegetation that is not mapped as preferred koala habitat. The potential for adverse impacts to koala species have been addressed in the Biodiversity Development Assessment Report, and further reviewed by Council's Natural Resources section. The proposal complies with the objectives of Council's CKPoM and can be supported.

<b>PORT STEPHENS LOCAL ENVIRONMENTAL PLAN 2013</b>		
<b>Clause</b>	<b>Compliant</b>	<b>Notes (where needed or if not compliant)</b>
2.1	<input checked="" type="checkbox"/> Permissible in zone and meets zone objectives.	The proposed development has been described as 'site

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		remediation works and associated vegetation clearing'. The proposal is permissible with consent under the land use definition ' <i>environmental protection works</i> ' defined under the LEP as ' <i>works associated with the rehabilitation of land towards its natural state or any work to protect land from environmental degradation</i> '. The proposal satisfies a permissible land use definition and complies with the objectives of the land zone, noting the provision of housing for the community within a low density residential environment.
2.7	<input type="checkbox"/> Demolition proposed and is not included as exempt under the SEPP. <input checked="" type="checkbox"/> Potential asbestos contained with condition of consent added.	Whilst no demolition works are incorporated within this proposal, the presence of asbestos has been identified on the site. A condition of consent is recommended relating to asbestos handling.
5.10	<input checked="" type="checkbox"/> There are no heritage items / archaeological sites / Aboriginal objects or places / conservation areas located on the subject site; OR <input type="checkbox"/> The proposal includes impact on a heritage item / Archaeological site / Aboriginal object or place / conservation area; <input type="checkbox"/> The application is supported with a heritage impact assessment; <input type="checkbox"/> Impacts on the heritage significance of the site is considered reasonably avoided and/mitigated.	The AHIMS search provided with application confirms that no known aboriginal objects are present on the site.
7.1	<input checked="" type="checkbox"/> Potential Class 5 Acid Sulfate Soils (ASS); OR, <input type="checkbox"/> Potential Class 4 ASS with no works more than 2m below ground level; OR, <input type="checkbox"/> Potential Class 3 ASS with no works more than 1m below ground level; OR, <input type="checkbox"/> Potential Class 2 ASS with no works below ground level; OR, <input type="checkbox"/> Potential Class 1 ASS and an acceptable management plan has been submitted.	Proposal involves minor excavation of soil (approximately 100mm). This minor level of earthworks is not expected to lower the water table or expose acid sulfate soils
7.2	<input checked="" type="checkbox"/> Earthworks required, but do not have negative impacts on surrounding properties.	The application proposes earthworks on the site associated with the remediation

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		of contaminated land. These earthworks are minor in nature and are not anticipated to result in any negative impacts on the subject site, adjoining land, or any public place. A condition of consent is recommended to limit the use of fill to clean fill only and for the implementation of sediment and erosion control measures.
7.6	<input checked="" type="checkbox"/> Essential services are available to the site where required.	Reticulated water, sewer and drainage services are available to the site for connection. Electricity service (overhead power lines). The provision of essential services are not required for this proposal.

**s4.15(1)(a)(ii) – Any Draft EPI**

		<b>Notes (what draft EPI if needed and comments where not compliant)</b>
	<input checked="" type="checkbox"/> There are no draft EPI's that are relevant to the proposed development	
	<input type="checkbox"/> A draft EPI is relevant to the proposed development however the application is consistent with the aims and objectives of the document.	

**s4.15(1)(a)(iii) – Any DCP**

<b>PORT STEPHENS DEVELOPMENT CONTROL PLAN 2014</b>		
<b>Clause</b>	<b>Compliant</b>	<b>Notes (where needed or if not compliant)</b>
B1	<input type="checkbox"/> Trees to be removed do not require approval as outlined in B1.1.	The removal of shrubs and undergrowth on the site has been assessed in a Biodiversity Assessment Report (BDAR) and found to be acceptable by Council's Natural Resources Section. Further assessment against the BDAR is given against Section B2 of the PSDCP.
B2	<input type="checkbox"/> Not in proximity of items of environmental	The proposal seeks to remove

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	<p>significance.</p> <p><input checked="" type="checkbox"/> Land does not contain koala habitat or development is consistent with the CKPoM.</p>	<p>low lying vegetation that is not mapped as preferred koala habitat. The potential for adverse impacts to koala species have been addressed in the Biodiversity Development Assessment Report, and further reviewed by Council's Natural Resources section. The proposal complies with the objectives of Council's CKPoM and is not expected to negatively impact koalas or their habitat.</p>
B3	<p><input checked="" type="checkbox"/> Development would not disturb acid sulphate soils or an acceptable ASSMP has been prepared.</p> <p><input checked="" type="checkbox"/> Earthworks would have minimal environmental impacts with conditions on VENM fill and erosion and sediment controls.</p>	<p>As outlined against clause 7.1 of the PSLEP elsewhere in this report, the proposed excavation of 100mm of soil is not expected expose acid sulfate soils.</p>

**s4.15(1)(a)(iia) – Any planning agreement or draft planning agreement entered into under section 7.4**

	Notes (where needed)
<input checked="" type="checkbox"/> There are no planning agreements that have been entered into under section 7.4 relevant to the proposed development.	

**s4.15(1)(a)(iv) – The regulations**

	Notes (where needed)
<input checked="" type="checkbox"/> There are no matters within the regulations that are relevant to the determination of the application.	

**s4.15(1)(b) – The likely impacts of the development**

	Notes (where needed)
<input checked="" type="checkbox"/> <b>Social and Economic Environment:</b> There would be beneficial impacts as a result of the development.	<p>The proposed development will have positive social and economic impact by providing additional land supply, suitable for future residential development. The provision of land in an established residential location would allow for the use of existing services and facilities in the locality without requiring upgrades that</p>

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	burden the public.  The site remediation and clearing operations will provide for additional employment opportunities within the local community.
<input checked="" type="checkbox"/> <b>Built Environment:</b> The proposed development would not cause harm to the existing character.	No permanent building is proposed therefore, the impacts of the proposal on the built environment is negligible.
<input checked="" type="checkbox"/> <b>Natural Environment:</b> There are no adverse impacts expected as a result of the proposed development and appropriate conditions have been added.	The proposal seeks to remediate a contaminated site for the purposes of enabling future residential development. The proposal represents an improvement in soil quality and stormwater drainage quality.  The removal of regrowth vegetation does not pose an adverse impact to the natural environment.

**s4.15(1)(c) – The suitability of the site**

The site is located within a residential zone, and is suitable for future development. There are no unreasonable constraints to future development of the site following the undertaking of remediation and clearing works.

**s4.15(1)(d) – Any submissions**

The application was exhibited from 25 December 2020 – 25 January 2021, in accordance with the provisions of the Port Stephens Council Community Participation Plan. One submission was received during this time. The matters raised during the exhibition period have been detailed in the table below.

No.	Comment	Council response
1	Dust suppression and health implications surrounding the removal of asbestos and heavy metals on the site.	Conditions of development consent are recommended to be included in the Notice of Determination to manage the suppression of dust and handling of asbestos and heavy metals on the site. These conditions of consent will incorporate recommendations from the remediation action plan.

**s4.15(1)(e) – The public interest**

The proposal, involving the remediation of contaminated land and removal of vegetation, will have a positive impact on the community. The remediation of the site will improve the safety of the

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public and natural environment through the removal of site contaminants, that may generate adverse outcomes when spread airborne or through waterways. The proposal will enable opportunity for future residential development in an established residential location.

**s7.11 – Contribution towards provision or improvement of amenities or services (developer contributions)**

The payment of development contributions is not applicable to the development.

**DETERMINATION**

The application is recommended for approval by Councillors, subject to the recommended conditions of consent.

## ITEM 2 - ATTACHMENT 3 PROPOSED CONDITIONS OF CONSENT.



## SCHEDULE 1 – CONDITIONS OF CONSENT

## 1.0 - General Conditions of Consent

- (1) The following conditions of consent are general conditions applying to the development.

Plan reference/ drawing No.	Name of plan	Prepared by	Date
HU190061 021	General Arrangement Plan	Barker Ryan Stewart	24.11.2020
HU190061 801	Erosion and Sediment Control Plan	Barker Ryan Stewart	24.11.2020
HU190061 811	Erosion and Sediment Control Details	Barker Ryan Stewart	24.09.2020

## 2.0 - Prior to Commencement of Works

The following conditions of consent shall be complied with prior to any works commencing on the development site.

- (1) **Public liability insurance** – The owner or contractor must take out a Public Liability Insurance Policy with a minimum cover of \$20 million in relation to the occupation of, and works within, public property (i.e. kerbs, gutters, footpaths, walkways, reserves, etc.) for the full duration of the proposed works.

Evidence of this Policy must be provided to Council and the Certifying Authority.

- (2) **Soil, erosion, sediment and water management** – An Erosion and Sediment Control Plan (ESCP) must be prepared in accordance with Council's Infrastructure Specifications. Details demonstrating compliance must be provided to the Certifying Authority.

- (3) **All Weather Access** – A 3m wide all-weather vehicle access is to be provided from the kerb and gutter to the building under construction for the delivery of materials and use by trades people.

No materials, waste or the like are to be stored on the all-weather access at any time.

- (4) **Remediation work** – Any asbestos containing material encountered during demolition or works, is to be removed in accordance with the requirements of Safe Work NSW and disposed of to an appropriately licenced waste facility.

- (5) **Soil erosion and sediment control** – Soil erosion and sediment controls must be implemented prior to works commencing on the site in accordance with 'Managing

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

Urban Stormwater – Soils and Construction ('the blue book') and any Sediment and Erosion plans approved with this Development Consent.

Soil erosion and sediment control measures must be maintained during construction works and must only be removed upon completion of the project when all landscaping and disturbed surfaces have been stabilised (for example, with site turfing, paving or re-vegetation).

- (6) **Rubbish generated from the development** – Where not already available, 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 must be stockpiled in a manner which facilitates the rubbish to be blown or washed off site. The site must be cleared of all building refuse and spoil immediately upon completion of the development.

### **3.0 - During Works**

The following conditions of consent shall be complied with during the construction phase of the development.

- (1) **Construction hours** – All work (including delivery of materials) must be restricted to the hours of 7.00am to 5.00pm Monday to Saturday inclusive. Work is not to be carried out on Sundays or Public Holidays.

- (2) **Excavations and backfilling** – All excavations and backfilling associated with this development consent must be executed safely, and be properly guarded and protected to prevent them from being dangerous to life or property, and in accordance with the design of a suitably qualified Structural Engineer.

If an excavation extends below the level of the base of the footings of a building on an adjoining allotment, the person causing the excavation must:

- a) preserve and protect the building from damage; and
- b) if necessary, underpin and support the building in an approved manner; and
- c) give at least seven days notice to the adjoining owner before excavating, of the intention to excavate.

The principal contractor, owner builder or any person who needs to excavate and undertake building work, must contact "Dial Before You Dig" prior to works commencing, and allow a reasonable period of time for the utilities to provide locations of their underground assets.

This condition does not apply if the person having the benefit of the development consent owns the adjoining land or the owner of the adjoining land has given consent in writing to that condition not applying.

- (3) **Fill Materials** – The only fill material that may be received at the development site is:

ITEM 2 - ATTACHMENT 3 PROPOSED CONDITIONS OF CONSENT.



- a) Virgin excavated natural material (VENM) within the meaning of the *Protection of the Environment Operations Act (POEO Act 1997)*;  
or
- b) Excavated natural material (ENM) within the meaning of the *POEO Act 1997*;  
or
- a) 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.

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.

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.

Any fill, soil, mulch and plant brought onto the site must be certified as free of weeds and weed seeds.

- (4) **Location of stockpiles** – Stockpiles of soil must not be located on / near any drainage lines or easements, natural watercourses or water bodies, footpath or roadway without first providing suitable protective measures adequate to protect these water bodies. All stockpiles of contaminated materials must be suitably covered to prevent dust and odour nuisance.
- (5) **Unexpected finds contingency (general)** – Should any suspect materials (identified by unusual staining, odour, discolouration or inclusions such as building rubble, asbestos, ash material, etc.) be encountered during any stage of works (including earthworks, site preparation or construction works, etc.), such works must cease immediately until a qualified environmental specialist has been contacted and conducted a thorough assessment.  
  
In the event that contamination is identified as a result of this assessment and if remediation is required, all works must cease in the vicinity of the contamination and Council must be notified immediately.  
  
Where remediation work is required, the applicant will be required to obtain consent for the remediation works.
- (6) **Unexpected Finds Contingency (Remediation)** - Should any additional contamination or hazardous materials be encountered during any stage of the remediation process, all remediation works in the vicinity of the findings must cease and compliance with the contingency recommendations in the approved RAP must be adopted.
- (7) **Soil, erosion, sediment and water management** – All requirements of the Erosion and Sediment Control Plan or Soil and Water Management Plan must be maintained



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

at all times during the works and any measures required by the plan must not be removed until the site has been stabilised.

- (8) **Offensive noise, dust, odour and vibration** – All work must not give rise to offensive noise, dust, odour or vibration as defined in the *Protection of the Environment Operations Act 1997* when measured at the nearest property boundary.

#### **4.0 - Following completion of works**

- (1) **Validation Report** - A Validation Report prepared by a suitability qualified person must be provided to Council within 30 days following completion of the remediation works, which demonstrates:

- a) compliance with the approved Remediation Action Plan (RAP);
- b) that the remediation acceptance criteria (in the approved RAP) has been fully complied with;
- c) that all remediation works undertaken comply with the Contaminated Lands Planning Guidelines, Contaminated Lands Management Act 1997, State Environmental Planning Policy (SEPP) 55 and Council's Management of Contaminated Lands Policy;

and includes:

- a) Works As Executed Plan(s) that identify the extent of the remediation works undertaken (that includes any encapsulation work) prepared by a Registered Surveyor;
- b) a "notice of completion of remediation work" as required under Clause 18 of SEPP 55; and
- c) a statement confirming that the site following remediation of contamination is suitable for the intended use.

#### **Advice Note(s):**

- (1) **'Dial Before you Dig'** – Before any excavation work starts, contractors and others should phone the "Dial Before You Dig" service to access plans/information for underground pipes and cables.
- (2) **Aboriginal archaeological deposit** – In the event of any aboriginal artefact, object or structure being unearthed, all work must cease immediately in the affected area, and the Biodiversity Conservation Division (BCD) shall be informed of the discovery. Work must not recommence until the material has been inspected and permission has been given by BCD to proceed.

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

- (3) **Responsibility for damage for tree removal/pruning** – The applicant is responsible for any damage caused to existing public utilities, footpaths or public roads during the cutting down, grinding, removal and disposal of the timber and roots. Care must also be taken by the applicant and the applicant's agents to prevent any damage to adjoining properties. The applicant or the applicants' agent may be liable to pay compensation to any adjoining owner if, due to tree works, damage is caused to such adjoining property.

**SCHEDULE 2 - REASONS FOR DETERMINATION AND REASONS FOR CONDITIONS****REASONS FOR THE DETERMINATION & CONSIDERATION OF COMMUNITY VIEWS**

*The determination decision was reached for the following reasons:*

- The proposed development, subject to the recommended conditions, is consistent with the objectives of the applicable environmental planning instruments, being; Port Stephens Local Environmental Plan 2013 (PSLEP), State Environmental Planning Policy No 55 - Remediation of Land, State Environmental Planning Policy (Coastal Management) 2018 and State Environmental Planning Policy (Koala Habitat Protection) 2020.
- The proposed development is, subject to the recommended conditions, consistent with the objectives of the Port Stephens Council Development Control Plan 2014 (PSDCP).
- Subject to the recommended conditions the proposed development will be provided with adequate essential services required under the PSLEP.
- The proposed development is considered to be of an appropriate scale and form for the site and the character of the locality.
- The proposed development, subject to the recommended conditions, will not result in unacceptable adverse impacts upon the natural or built environments.
- The proposed development is a suitable and planned use of the site and its approval is within the public interest.
- Council has given due consideration to community views when making the decision to determine the application.

**REASONS WHY THE CONDITIONS HAVE BEEN IMPOSED**

The following conditions are applied to:

1. Confirm and clarify the terms of Council's Approval;
2. Identify modifications and additional requirements that will result in improved compliance, development and environmental outcomes;
3. Prevent, minimise, and/or offset adverse environmental impacts including economic and social impacts;
4. Set standards and performance measures for acceptable environmental performance; and
5. Provide for the ongoing management of the development.



**ITEM 2 - ATTACHMENT 3      PROPOSED CONDITIONS OF CONSENT.****SCHEDULE 3 – RIGHT OF APPEAL AND REVIEW****RIGHT OF APPEAL**

If you are dissatisfied with this decision (including a determination on a review under Section 8.2), Section 8.7 and 8.10 of the Environmental Planning and Assessment Act 1979 gives you the right to appeal to the Land and Environment Court within six months after:

- a) the date on which you receive this notice, or
- b) the date on which that application is taken to have been determined under Section 8.11.

Section 8.8 of the Environmental Planning and Assessment Act 1979, does not give a right of appeal to an objector who is dissatisfied with the determination of the Council to grant consent to a development application, unless the application is for designated development (including designated development that is integrated development). The objector may, within 28 days after the date on which the notice of the determination was given in accordance with the regulations, and in accordance with rules of the Court, appeal to the Court.

**RIGHT OF REVIEW**

Section 8.2 of the Environmental Planning and Assessment Act 1979 provides that the applicant may request the Council to review the determination. The request must be made in writing (or on the review application form) within six months after the date as specified in this notice of determination, together with payment of the appropriate fee. (**See exclusions note below**).

**Exclusions:** A request to review the determination of a development application pursuant to Section 8.2 of the Environmental Planning and Assessment Act 1979 can only be undertaken where the consent authority is Council, other than:

- a) A determination to issue or refuse to issue a complying development certificate, or
- b) A determination in respect of designated development, or
- c) A determination made by the Council under Division 4 in respect of an application by the Crown.

**ITEM NO. 4**

**FILE NO: 21/64475  
EDRMS NO: PSC2015-02099**

**POLICY REVIEW - FORESHORE VESSEL STORAGE POLICY**

REPORT OF: JOHN MARETICH - ASSET SECTION MANAGER  
GROUP: FACILITIES & SERVICES

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Receive and note the submission shown at **(ATTACHMENT 1)**.
  - 2) Revoke the Foreshore Dinghy Storage Policy dated 23 July 2019 (Minute No. 166).
  - 3) Adopt the revised Foreshore Storage Vessel Policy shown at **(ATTACHMENT 2)**.
- 

**ORDINARY COUNCIL MEETING - 27 APRIL 2021  
MOTION**

<b>098</b>	<p><b>Councillor John Nell</b> <b>Councillor Glen Dunkley</b></p> <p>It was resolved that Council:</p> <ol style="list-style-type: none"><li>1) Receive and note the submission shown at <b>(ATTACHMENT 1)</b>.</li><li>2) Revoke the Foreshore Dinghy Storage Policy dated 23 July 2019 (Minute No. 166).</li><li>3) Adopt the revised Foreshore Storage Vessel Policy shown at <b>(ATTACHMENT 2)</b>, with the definition of a kayak and canoe being amended to increase the length of a vessel from 3 metres to 5 metres.</li></ol>
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The motion was carried.

**BACKGROUND**

The purpose of this report is to seek Council's endorsement for the revised Foreshore Storage Vessel Policy (Policy) shown at **(ATTACHMENT 2)**.

During public exhibition, 1 submission was received which has been summarised in **(ATTACHMENT 1)**. The submission was in support of the Policy with concern raised over the cluttered and untidy placement of vessels on foreshore reserves. The submission included recommended amendments to the advertised Policy to improve

## MINUTES ORDINARY COUNCIL - 27 APRIL 2021

consistency and enforcement. In response to the submission minor amendments were made to the advertised Policy.

The revision follows the Notice of Motion of 10 November 2020 shown at **(ATTACHMENT 3)** to amend the Policy to allow the inclusion of kayaks and canoes for the same fees as dinghies at the following foreshore reserves:

- Dutchman's Beach, Nelson Bay.
- Tanilba Park, Tanilba Bay.
- Foster Park, Tanilba Bay.
- Peace Park, Tanilba Bay.

### COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2018-2021
Infrastructure and Facilities	Maintain the Council's civil and community infrastructure to support the community.

### FINANCIAL/RESOURCE IMPLICATIONS

There are minimal financial/resource implications as additional vessel storage racks will not be provided.

Registration does not guarantee a kayak or canoe a position on the vessel storage racks. If storage racks reach capacity, registered vessels must be stored securely in the surrounding area. No storage racks are provided at Tanilba Park, Tanilba Bay.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes		
Reserve Funds	No		
Developer Contributions (\$7.11)	No		
External Grants	No		
Other	No		

### LEGAL, POLICY AND RISK IMPLICATIONS

The removal of unregistered vessels can occur under the Impoundment Act 1993.

**MINUTES ORDINARY COUNCIL - 27 APRIL 2021**

<b>Risk</b>	<b><u>Risk Ranking</u></b>	<b>Proposed Treatments</b>	<b>Within Existing Resources?</b>
There is a risk that the dinghy storage racks at Foster Park and Dutchman's Beach Reserve will reach capacity.	Medium	Terms and Conditions of registration to state that space on the vessel storage racks is not guaranteed. If full, vessels will need to be stored securely adjacent to the area.	Yes
There is a risk that permitting the storage of kayaks and canoes at the four sites will cause a conflict between reserve users and private vessel owners.	Medium	Vessels at Dutchman's Beach Reserve and Foster Park must be stored in the designated storage area. Port Stephens Council Ranger inspections to manage compliance.	Yes
There is a risk that unauthorised kayaks and canoes may be left at foreshore reserves.	Low	Port Stephens Council Rangers to continue foreshore inspections.	Yes
There is a risk that the head height overhang from kayaks and canoes stored on dinghy racks will cause injury to the public.	Medium	Restrict the permitted length of kayaks/canoes to 3 metres in the Policy. This is consistent with dinghy restrictions.	Yes

**SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

Kayaks and canoes provide recreational enjoyment of Port Stephens waterways. The interaction/balance between the general public recreation use of public land and vessel storage needs to be managed. This Policy provides for the management of vessels to gain a better interaction/balance.

The annual registration fee is documented and reviewed annually through the Port Stephens Council Fees and Charges process.

**CONSULTATION**

Consultation with key stakeholders has been undertaken by the Assets Section.

Internal

Review has been undertaken with Community and Recreation Assets.

### External

The revised Foreshore Vessel Storage Policy was placed on public exhibition for a period of 28 days from 11 February 2021 to 10 March 2021. During the public exhibition period, 1 submission was received and is summarised in (**ATTACHMENT 1**).

### **OPTIONS**

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

### **ATTACHMENTS**

- 1) Foreshore Vessel Storage Policy - Submission.
- 2) Foreshore Vessel Storage Policy.
- 3) Notice of Motion -10 November 2020 Dinghy Policy Amendment.

### **COUNCILLORS ROOM**

- 1) Foreshore Vessel Storage Policy – Full Submission.

### **TABLED DOCUMENTS**

Nil.

**ITEM 4 - ATTACHMENT 1      FORESHORE VESSEL STORAGE POLICY - SUBMISSION.****POLICY REVIEW – FORESHORE VESSEL STORAGE POLICY**

<b>No.</b>	<b>Author of submission</b>	<b>Comment</b>	<b>Council response</b>
1	Ratepayer	<p>Raised concern that reserves in Soldiers Point and across LGA are “becoming cluttered and untidy by the placement of dinghies, boats, canoes, trailers, and the like.”</p> <p>States that it is “important that Council protects the beautiful amenity of the area and makes every effort to keep the foreshore reserves tidy, clutter free and an integral part of the Port Stephens waterways.”</p> <p>Submission provided a track changes version of the draft policy with suggested amendments and margin comments.</p>	<p>Proposed amendments were reviewed and consultation undertaken with Rangers to ensure policy permits compliance.</p> <p>Minor amendments were made to the policy following the submission and compliance feedback.</p> <p>Amendments include:</p> <ul style="list-style-type: none"> <li>• Adding the word “foreshore” in front of “reserve” for consistency.</li> <li>• Adding term “and unauthorised” after word abandoned.</li> <li>• Adding the term “with the approval of Council”.</li> <li>• Adding “left with no intention to use, in state of disrepair; unable to be used for its intended purpose; has no registration or has” to Abandoned vessel definition.</li> <li>• Section 5.6 and parts of 5.9 were merged in response to the submission’s misunderstanding of the policy. This is to provide clear direction that registered dinghies can be stored on any Council managed foreshore reserve, not just those with designated storage areas.</li> </ul>

## Policy



**FILE NO:** PSC2015-02099

**TITLE:** FORESHORE DINGHY **VESSEL** STORAGE POLICY

**OWNER:** ASSETS SECTION MANAGER

### 1. PURPOSE:

- 1.1 To provide a framework to enable a balance between the storage of dinghies **vessels** and other recreational activities as well as providing a compliance mechanism to manage this balance.

### 2. CONTEXT/BACKGROUND:

- 2.4 A Notice of Motion was tabled at the 26 June, 2012 Ordinary Council Meeting to address the issue of dinghy and water vessel storage on council foreshore reserves.
- 2.21 ~~he action~~ **This policy** was prompted due to the number of dinghies and other water vessels being stored on foreshore reserves. **Vessels provide resident and visitor access to the waterways of Port Stephens, however,** and it was noted that a number of reserves throughout the Port Stephens Council area were cluttered with abandoned and unauthorised dinghies, kayaks, canoes and catamarans. This was limiting the ability of the residents of Port Stephens and visitors to enjoy our beautiful beaches and waterways. Greater order and management **of vessels** is required to preserve the **equitable access of** foreshore reserves. ~~for the enjoyment of all.~~
- 2.3 ~~Council adopted the Foreshore Dinghy Storage Policy in April 2015.~~

### 3. SCOPE:

- 3.1 Dinghy storage on foreshore reserves is **only** permissible with the approval of Council, under a user pay system where income will be allocated to the maintenance, improvement, enforcement and initial signage of foreshore dinghy storage facilities.
- 3.2 **Kayak and canoe storage on foreshore reserves is only permissible with the approval of Council, under a user pay system at designated reserves listed in this policy.**
- 3.3 A permit system will enable Council to identify **dinghies vessels** stored on foreshore reserves **without approval, unauthorised vessels** and those **which have been abandoned on foreshore reserves** and subsequently will enable their removal.

### 4. DEFINITIONS:

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

#### Policy

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## Policy



Dinghy	A single or multi-hulled vessel up to a maximum length of 3.0 metres.
Kayak and canoe	A single hull vessel up to a maximum length of 3.0 meters. Kayaks and canoes are only permitted on foreshores listed in Policy Statement 5.10.
Unauthorised vessel	Is a vessel not included in the 'dinghy' definition, this would include but not limited to any single or multi-hulled vessel over 3.0 metres in length, a medium/large trailable vessel, trailer sailer, catamaran, sailboard, jetski, surfboard, work punt, pontoon, sailboat (fitted with mast), rowing skull, inflatable boat, canoe, kayak, and the like kayaks and canoes that do not meet the above definition.
Derelict vessel	Is a dinghy or other vessel left on public land, which appears to be unseaworthy by the evidence of damage to affect vessel flotation and users safety.
Abandoned vessel	An abandoned vessel is a dinghy or other vessel left on public land, which appears to be un-owned; or left with no intention to use, in state of disrepair; unable to be used for its intended purpose; has no registration or has expired registration.

### 5. STATEMENT:

- 5.1 Port Stephens Council is committed to providing recreational facilities and services in keeping with Council's vision and key corporate objectives.
- 5.2 This policy will allow Council to fund the maintenance and construction of storage facilities through the collection of fees. The registration will be 12 months, with renewal occurring during July for the financial year. A 6 month registration will be available from January to June of the same financial year.
- 5.3 Dinghy, kayak and canoe storage will be managed to ensure there is minimal environmental impacts.
- 5.4 An inspection will be carried out every three months or inspections will be undertaken as required to determine the percentage of dinghies registered vessels.
- 5.5 Those dinghies vessels not registered or with an expired registration will be deemed abandoned and removed from the foreshore.
- 5.6 Dinghies, kayaks, canoes and unauthorised vessels stored outside of the designated dinghy storage areas are to be removed and impounded by Council authorised officers. Registered dinghies will be permitted to be stored on any Council managed foreshore reserve. Where a designated storage area is provided, registered vessels must be stored within the designated area. All vessels stored outside of these designated storage areas are to be removed and impounded by Council authorised officers. These vessels will be held at

## Policy

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## Policy



Council's impound and may be disposed of in accordance with the Impounding Act 1993.

- 5.7 Dinghies, kayaks and canoes without a permit sticker and stored on a dinghy storage rack will also be removed under the Impounding Act 1993.
- 5.8 Owners of unregistered vessels that have been removed from the foreshore will have 3 months to retrieve their vessel. If the vessel has not been claimed after 3 months, it may be sold by tender.
- 5.9 ~~Dinghies will be permitted to be stored on any Council managed foreshore reserve. In the Council managed foreshore reserves that have designated storage areas, dinghies must be stored within the storage area.~~ Council managed foreshore reserves with designated storage areas include:
  - Shoal Bay Foreshore Reserve, Shoal Bay
  - Marrungbangbaa Reserve, Shoal Bay
  - Dutchman's Beach, Nelson Bay
  - Corlette Point Park, Corlette
  - Roy Wood Reserve, Corlette
  - Georges Reserve, Salamander Bay
  - Wanda Beach Reserve, Salamander Bay
  - Kangaroo Point Reserve, Soldiers Point
  - Everitt Park, Soldiers Point
  - Sunset Beach, Soldiers Point
  - Taylors Beach Foreshore, Taylors Beach
  - John Parade Foreshore, Lemon Tree Passage
  - Koala Park Reserve, Lemon Tree Passage
  - Lilli Pilli Park, Lemon Tree Passage
  - Nyrang Reserve, Lemon Tree Passage
  - Foster Park, Tanilba Bay
  - Peace Park, Tanilba Bay
  - Swan Park, Tanilba Bay.

- 5.10 Kayaks and canoes are permitted to be registered and stored within the designated storage areas of the following reserves:

- Dutchman's Beach, Nelson Bay
- Tanilba Park, Tanilba Bay (no storage area provided)
- Foster Park, Tanilba Bay
- Peace Park, Tanilba Bay.

The registration and storage of kayaks and canoes on all other foreshore reserves is unauthorised.

- 5.11 Council will review the registration fee for dinghy storage annually.

## 6. RESPONSIBILITIES:

### Policy

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## Policy



- 6.1 The Assets Section Manager has overall responsibility for implementation of this policy.
- 6.2 The use of a dinghy is an important method for residents and visitors to enjoy the waterways within the Port Stephens area. The interaction/balance between the general public recreation use of public land and storage of dinghies needs to be managed. This Policy will allow the storage of dinghies to be managed, to ensure equity of access for all.
- 6.3 This policy will allow Council to fund the maintenance and construction of dinghy storage facilities through the collection of fees.
- 6.4 Dinghy storage will be managed to ensure there is minimal environmental impacts.

### 7. RELATED DOCUMENTS:

- 7.1 State Environmental Planning Policy (Coastal Management) 2018.
- 7.2 Crown Land Domestic Waterfront Licences – Guidelines 2018.
- 7.3 Local Government Act 1993.
- 7.4 Impounding Act 1993.

### CONTROLLED DOCUMENT INFORMATION:

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<b>EDRMS container No.</b>	PSC2015-02099	<b>EDRMS record No.</b>	20/402234
<b>Audience</b>	Community, Assets Section, Community and Recreation, Staff and General Manager		
<b>Process owner</b>	Assets Section Manager		
<b>Author</b>	Community and Recreation Coordinator		
<b>Review timeframe</b>	3 years	<b>Next review date</b>	
<b>Adoption date</b>	14/4/2015		

## Policy

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## Policy



### VERSION HISTORY:

Version	Date	Author	Details	Minute No.
1	14/04/2015	Community and Recreation Coordinator	Adopted by Council.	086
2	23/07/2019	Community and Recreation Coordinator	Reviewed and Updated in Council new Policy Template. Policy Owner – Updated. 2.1, 2.2, 2.3, 5.1 Reworded to improve content. 5.1 Removed due to definitions are identified in 4.1. 5.3 Additional wording. 7.1, 7.2, 7.3 Removed old policy and added new policy. Adopted by Council.	166
3		Community and Recreation Coordinator	Reviewed and Updated in Council new Policy Template.  Amendments following Notice of Motion tabled 10 Nov 2020 Ordinary Council meeting to amend policy to permit kayaks/canoes at selected reserves.  Title of policy amended to Foreshore Vessel Storage in line with Notice of Motion. 1.1, 3.3 & 5.5 Word 'dinghy' interchanged with 'vessel'. 2.1, 2.3, 6.2, 6.3 & 6.5 Deleted. 2.2 Reworded to improve content. 3.1 Reworded "foreshore reserves is only permissible with the approval of Council". 3.2 Added "Kayak and Canoe storage on foreshore reserves is only permissible with the approval	

### Policy

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## Policy



Version	Date	Author	Details	Minute No.
			<p>of Council, under a user pay system at designated reserves list".</p> <p>3.3 Added "vessels stored on foreshore reserves without approval, unauthorised vessels and those abandoned on foreshore reserves.</p> <p>4.1 Added "Kayak and Canoe" definition. Added "Kayaks and Canoes that do not meet the above definition to "Unauthorised vessel" definition.</p> <p>Added to Abandoned vessel definition "left with no intention to use, in state of disrepair; unable to be used for its intended purpose; has no registration or has expired registration."</p> <p>5.2 Added "This policy will allow Council to fund the maintenance and construction of storage facilities through the collection of fees.</p> <p>5.3 Added "Dinghy, kayak and canoe storage will be managed to ensure there is minimal environmental impacts.</p> <p>5.4 Reworded to improve content.</p> <p>5.5 Added "or with an expired registration".</p> <p>5.6 Added "Registered dinghies will be permitted to be stored on any Council managed foreshore reserve. Where a designated storage area is provided, registered vessels must be stored within the designated area. All vessels stored outside of these designated storage areas are to be removed and impounded by Council authorised officers." from 5.9.</p> <p>5.7 Added "kayaks and canoes".</p>	

## Policy

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## Policy



Version	Date	Author	Details	Minute No.
			<p>5.9 Sentences removed and added to 5.6. Added additional locations.</p> <ul style="list-style-type: none"> <li>• Marrungbangbaa Reserve, Shoal Bay.</li> <li>• Lilli Pilli Park, Lemon Tree Passage.</li> <li>• Nyrang Reserve, Lemon Tree Passage.</li> <li>• Peace Park, Tanilba Bay.</li> <li>• Swan Park, Tanilba Bay.</li> </ul> <p>5.10 Added "Kayaks and canoes are permitted to be registered and stored within the designated storage areas of the following reserves:</p> <ul style="list-style-type: none"> <li>• Dutchman's Beach, Nelson Bay.</li> <li>• Tanilba Park, Tanilba Bay (no storage area provided).</li> <li>• Foster Park, Tanilba Bay.</li> <li>• Peace Park, Tanilba Bay.</li> </ul> <p>The registration and storage of kayaks and canoes on all other foreshore reserves is unauthorised."</p> <p>6 Added "The Assets Section Manager has overall responsibility for implementation.</p>	

## Policy

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**ITEM 4 - ATTACHMENT 3 NOTICE OF MOTION -10 NOVEMBER 2020  
DINGHY POLICY AMENDMENT.****MINUTES ORDINARY COUNCIL - 10 NOVEMBER 2020****NOTICE OF MOTION****ITEM NO. 1****FILE NO: 20/307943****EDRMS NO: PSC2017-00019****DINGHY POLICY AMENDMENT****COUNCILLOR: JOHN NELL****THAT COUNCIL:**

- 1) Considers amending the Foreshore Dinghy Storage Policy to allow kayaks to be registered and stored on Council managed foreshore reserves.

**ORDINARY COUNCIL MEETING - 10 NOVEMBER 2020  
MOTION**

<b>243</b>	<b>Councillor John Nell Councillor Steve Tucker</b>  It was resolved that Council amends its Dinghy policy to allow the storage of kayaks and canoes, for the same fees as dinghies, on the Foreshores at: <ol style="list-style-type: none"><li>1. Dutchies Reserve</li><li>2. Tanilba Park, Tanilba Bay</li><li>3. Foster Park, Tanilba Bay</li><li>4. Peace Park, Tanilba Bay</li></ol>
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The motion was carried.

**BACKGROUND REPORT OF: JOHN MARETICH – ASSET SECTION MANAGER****BACKGROUND**

The purpose of this report is to provide context of what vessels are allowed under the current Foreshore Dinghy Storage Policy.

The objective of the current Council adopted policy is to allow boat owners to store their dinghies on the foreshore as a way to access their moored vessels. The policy was initiated due to the high number of dinghies and other water vessels being stored on foreshore reserves. The high volume of vessels being stored was limiting the ability for the residents of Port Stephens and visitors to access and enjoy the beaches and waterways.



**ITEM 4 - ATTACHMENT 3 NOTICE OF MOTION -10 NOVEMBER 2020  
DINGHY POLICY AMENDMENT.****MINUTES ORDINARY COUNCIL - 10 NOVEMBER 2020**

At the time of adopting the current policy, it was decided that vessels, other than a dinghy, would not be allowed. Limiting the types of vessels would reduce clutter on the foreshore. Other vessels included kayaks, canoes, stand-up paddleboards and catamarans.

To include kayaks would require a review of the existing policy.

**FINANCIAL/RESOURCE IMPLICATIONS**

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes		Within existing staff resources.
Reserve Funds	No		
Developer Contributions (\$7.11)	No		
External Grants	No		
Other	No		

**ATTACHMENTS**

Nil.

There being no further business the meeting closed at 7.26pm.

**ITEM NO. 5**

**FILE NO: 21/83241  
RM8 REF NO: PSC2011-02442**

**POLICY REVIEW - WORKING TOGETHER AND PROVISION OF INFORMATION  
POLICY**

REPORT OF: TONY WICKHAM - GOVERNANCE SECTION MANAGER  
GROUP: GENERAL MANAGER'S OFFICE

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Endorse the revised Working Together and Provision of Information Policy shown at **(ATTACHMENT 1)**.
  - 2) Place the revised Working Together and Provision of Information Policy, as amended on public exhibition for a period of 28 days and should no submissions be received, the Policy be adopted, without a further report to Council.
  - 3) Revoke the Working Together and Provision of Information Policy dated 28 May 2019, Minute No. 112, should no submissions be received.
- 

**ORDINARY COUNCIL MEETING - 27 APRIL 2021  
MOTION**

<b>099</b>	<p><b>Councillor Paul Le Mottee</b> <b>Councillor Ken Jordan</b></p> <p>It was resolved that Council:</p> <ol style="list-style-type: none"><li>1) Endorse the revised Working Together and Provision of Information Policy shown at <b>(ATTACHMENT 1)</b>.</li><li>2) Place the revised Working Together and Provision of Information Policy, as amended on public exhibition for a period of 28 days and should no submissions be received, the Policy be adopted, without a further report to Council.</li><li>3) Revoke the Working Together and Provision of Information Policy dated 28 May 2019, Minute No. 112, should no submissions be received.</li></ol>
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The motion was carried.

**BACKGROUND**

The purpose of this report is to seek Council's endorsement of the revised Working Together and Provision of Information Policy (Policy) shown at **(ATTACHMENT 1)**.

This Policy seeks to provide Council officials with clarity in respect to their respective obligations and responsibilities in dealing with each other.

The Policy only relates to interaction and provision of information between Council officials.

The Policy has been reviewed as part of Council's ongoing policy review program.

**COMMUNITY STRATEGIC PLAN**

<b>Strategic Direction</b>	<b>Delivery Program 2018-2021</b>
Governance	Manage the civic leadership and governance functions of Council.

**FINANCIAL/RESOURCE IMPLICATIONS**

All costs associated with the development and implementation of the Policy are within the existing 2020-2021 budget.

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

**LEGAL, POLICY AND RISK IMPLICATIONS**

The Policy has been developed to meet requirements of the Office of Local Government and the Code of Conduct.

<b>Risk</b>	<b><u>Risk Ranking</u></b>	<b>Proposed Treatments</b>	<b>Within Existing Resources?</b>
There is a risk that Council officials may interact inappropriately without a policy framework in place.	Low	Adopt the recommendations.	Yes

## **SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

There are no sustainability implications.

## **CONSULTATION**

Consultation with key stakeholders has been undertaken by the Governance Section.

The Local Government Act 1993 requires Council to conduct public consultation on policies prior to final adoption.

### Internal

- The Executive Team has been consulted to seek management endorsement.
- The General Manager has been consulted to seek endorsement prior to Council consideration.

### External

Following Council adoption, the Policy will be publicly exhibited on Council's website.

## **OPTIONS**

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

## **ATTACHMENTS**

- 1) Working Together and Provision of Information Policy.

## **COUNCILLORS ROOM**

Nil.

## **TABLED DOCUMENTS**

Nil.

**ITEM 5 - ATTACHMENT 1  
INFORMATION POLICY****WORKING TOGETHER AND PROVISION OF****Policy****FILE NO: PSC2011-02442****TITLE: WORKING TOGETHER AND PROVISION OF INFORMATION****OWNER: GOVERNANCE SECTION MANAGER****1. PURPOSE:**

- 1.1 This **The Working Together and Provision of Information** policy (the policy) seeks to provide Council officials with clarity in respect to their respective obligations and responsibilities in dealing with each other.
- 1.2 It is recognised that interaction between Council officials may in certain circumstances have the potential to lead to unacceptable behaviours, and it is necessary to document an understanding about what to do if this occurs.
- 1.3 Employees should be aware that the Mayor/Councillors are elected to represent the community, to provide community leadership and guidance, and to facilitate communication between the community and Council. Employees should provide assistance to the Mayor/Councillors in fulfilling their role in accordance with this Policy and the Code of Conduct.
- 1.4 The Mayor and Councillors should be aware that employees have a legitimate right and responsibility to maintain professional integrity and should not be subject to undue pressure. The Mayor and Councillors should avoid placing employees in difficult positions with requests for information and action.

**2. CONTEXT/BACKGROUND:**

- 2.1 Council is committed to providing an environment where the Mayor, all Councillors, employees, contractors, volunteers and customers are treated with respect, dignity and courtesy. As such, we have the right to be in an environment that is free from unacceptable behaviours, and we all have a responsibility to ensure this happens.
- 2.2 To this end, the Local Government Act 1993 and the Model Code of Conduct require appropriate interaction between Council officials. The Mayor, Councillors and Council staff have very different roles to play within Council.
- 2.3 The elected Council is responsible for policy making and strategic direction. The General Manager is responsible for the day to day administration of Council. Under the leadership of the General Manager, the Executive Team provides assistance to the General Manager in managing their respective areas of responsibility.

**Policy**

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## Policy



2.4 This Policy is not intended to limit any statutory and common law rights of the Mayor and Councillors' access to information; nor to limit their obligations as elected officials, but to provide an appropriate framework to work within.

2.5 Council is committed to a community partnership.

### **3. SCOPE:**

3.1 The Mayor and Councillors, as elected officials, will at times be involved in obtaining information from, make representations to, or facilitate communication with, Council staff on behalf of constituents.

3.2 The General Manager has nominated particular roles within Council, which the Mayor and Councillors are able to liaise directly with, to undertake their civic role. It is noted that Councillors are delegates on various committees such as 355 (c) Committees and as such will come into contact with staff other than those nominated. On such occasions, Councillors will be permitted to liaise with operational staff to assist with the operation of committees and groups, however contact should only be for the purpose of fulfilling committee obligations and not general operational matters.

#### Accessing Information by a Councillor

3.3 The Mayor or a Councillor will be provided with access to all relevant information relating to any matter before Council to ensure consideration can be given to any matter requiring a Council resolution. This will be conducted within the limits of the law such as, but not limited to, copyright and privacy legislation.

3.4 The General Manager has the right to refuse access to any documents the Mayor or a Councillor requests to view or obtain a copy of. Some of the limitations of access to certain Council records will be due to:

- a) a record that has been provided on a confidential basis and has been explicitly marked 'confidential' or is confidential under the Public Interests Disclosure Act 1994, Independent Commission Against Corruption (ICAC) Act 1988 or other legislation.
- b) the General Manager has reason to believe that there may be a potential conflict of interest; or
- c) access would violate the right to privacy of a particular individual/s.

3.5 If the General Manager refuses to allow the Mayor or a Councillor to inspect, or be provided with, a copy of a Council record, a written reason for the refusal will be provided.

## Policy

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**ITEM 5 - ATTACHMENT 1  
INFORMATION POLICY****WORKING TOGETHER AND PROVISION OF**

## Policy



- 3.6 If the Mayor or a Councillor seeks access to information outside their civic role, the request will be considered an application under the Government Information (Public Access) Act 2009.
- 3.7 If staff are unsure whether to provide the Mayor or a Councillor with information requested, or whether the request for action should proceed, staff should direct the matter to their Group Manager, the Public Officer or the General Manager for direction. Alternatively, the Mayor or the Councillor may be requested to direct their request through the General Manager's Office.
- 3.8 Should the Mayor or a Councillor be requested to direct their request through the General Manager's Office, the Mayor or a Councillor should not persist with their request through staff.

### Mayor/Councillor requests

- 3.9 The Mayor and Councillors receive a large number of requests from residents seeking assistance of the Mayor/Councillors regarding a variety of Council functions. The Mayor and Councillors also at times seek further information on matters relating to their civic duties.
- 3.10 The Mayor and Councillors are able to lodge these requests verbally, by email, fax or in writing. All requests will be logged in the Councillor Request System (CRM). This enables the request to be tracked and actions recorded. Generally all requests should be directed to the Senior Executive Assistant to ensure the request is logged and forwarded to the appropriate staff for action. This Policy only extends to matters concerning the functions of an elected member where it is not covered by any other legislation and/or Council policy framework. Where the functions of an elected member is covered by other legislation and/or Council policy, the relevant legislation and/or Council policy will take precedence over this policy.
- 3.11 The Mayor and Councillors are responsible to ensure that they comply with any legislation that is imposed on Council such as (but not limited to) the Local Government Act 1993, the Privacy & Personal Information Protection Act 1998 and Copyright Act 1968 (Cth), Government Information (Public Access) Act 2009 and State Records Act 1998.
- 3.12 Only those employees nominated by the General Manager shall provide information to the Mayor/Councillors.
- 3.13 Generally, the Mayor or Councillors seeking to meet with nominated staff do so by way of an appointment and should not expect that staff are readily available. The General Manager has the discretion to require the Mayor/Councillors to put requests in writing, or to lodge a Notice of Motion at a Council meeting.

### Policy

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## Policy



- 3.14 The Mayor and Councillors should generally lodge requests for information or advice in writing to enable a response by the General Manager or a nominated person. All requests will form part of Council's records and will be filed/stored in accordance with the State Records Act 1998.
- 3.15 Any request for information or advice that is refused, a reason for the refusal will be provided in writing. If the Mayor or a Councillor is concerned about the refusal to provide the information or advice, the Mayor or Councillor can raise the matter with the General Manager (or the Mayor if the General Manager refused to provide the information). If the Mayor or Councillor continues to be concerned after enquiries they should lodge a legal Notice of Motion at a Council meeting.
- 3.16 The Mayor and Councillors must not seek to direct Council staff in the performance of their duties. Should the Mayor or a Councillor behave in this manner the staff member should direct the Mayor or Councillor to the Group Manager or the General Manager.
- 3.17 No Council official should take advantage of their official position to improperly influence the Mayor, Councillors, Council staff or delegates in the performance of their public or professional duties.
- 3.18 The Mayor or Councillors should only enter staff only areas, by invitation or by prior arrangements for the purpose of official business.
- 3.19 A listing of employees nominated by the General Manager to communicate with the Mayor or Councillors will be maintained by the General Manager and a copy will be provided to the elected Council.
- 3.20 Acceptable behaviours:
- a) Treat everyone with respect, courtesy and dignity;
  - b) Open and balanced communications;
  - c) Respecting the roles of the other person;
  - d) Be inclusive on all matters;
  - e) Always seek to problem solve rather than placing blame.
- 3.21 Unacceptable behaviours:
- a) Mayor/Councillors and administrators approaching staff and staff organisations to discuss individual or operational staff matters (other than matters relating to broader workforce policy), grievances, workplace investigations and disciplinary matters.

### Policy

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## Policy



- b) Council staff approaching Mayor/Councillors and administrators to discuss individual or operational staff matters (other than matters relating to broader workforce policy), grievances, workplace investigations and disciplinary matters.
- c) Subject to clause 8.6 of Council's Code of Conduct, Council staff refusing to give information that is available to other Councillors, to a particular Councillor.
- d) Mayor/Councillors and administrators, who have lodged an application with the Council, discussing the matter with Council staff in staff only areas of the Council.
- e) Mayor/Councillors and administrators approaching members of local planning panels, or discussion on any application that is either before the panel or that will come before the panel at some future time, except during a panel meeting where the application forms part of the agenda and Councillor has a right to be heard by the panel at the meeting.
- f) Mayor/Councillors and administrators being overbearing or threatening to Council staff.
- g) Council staff being overbearing or threatening to the Mayor/Councillors or administrators.
- h) Mayor/Councillors and administrators making personal attacks on Council staff or engaging in conduct towards staff that would be contrary to the general conduct provisions in Part 3 of the Code of Conduct in public forums including social media.
- i) Mayor/Councillors and administrators directing or pressuring Council staff in the performance of their work, or recommendations they should make.
- j) Council staff providing ad hoc advice to the Mayor/Councillors and administrators without recording or documenting the interaction, as they would if the advice was provided to a member of the community.
- k) Council staff meeting with applicants or objectors alone AND outside office hours to discuss planning applications or proposals.
- l) Mayor/Councillors attending on-site inspection meetings with lawyers and/or consultants engaged by the Council associated with current or proposed legal proceedings, unless permitted to do so by the Council's General Manager or, in the case of the Mayor or administrator, unless they are exercising their functions under section 226 of the LGA.

(Extract from the Code of Conduct)

3.22 All reports of unacceptable behaviours will be dealt with in accordance with the Code of Conduct.

### Access to Council Buildings

3.23 The Mayor and Councillors will be provided with 24 hour access to the Councillors room within the Administration Building. The Mayor will have 24 hour access to the Mayor's Office.

## Policy

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ITEM 5 - ATTACHMENT 1  
INFORMATION POLICY

WORKING TOGETHER AND PROVISION OF

## Policy



- 3.24 Mayor/Councillors will be provided with access to the Administration Building public areas during business hours. Mayor/Councillors will only be provided with access to staff areas during business hours and in the presence of a staff member.
- 3.25 Mayor/Councillors will only be provided with access to the Committee rooms and training room after hours where a staff member is present.

### 4. DEFINITIONS:

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

	<del>Local Government Act 1993.</del>
Council official	Is the mayor, elected councillor, <b>an administrator</b> , council employee, contractor and volunteer.
Council staff/employee	An employee of Port Stephens Council performing duties in accordance with their role or under delegation.
Councillor	In accordance with section 232 (1) and (2) of the Local Government Act 1993.
Mayor	In accordance with section 226 of the Local Government Act 1993.
Record	Is any document that is written or printed material, sound recording, plan, map film, photograph, storage device, model, painting, disc or any other form of document that is held by Port Stephens Council.

### 5. STATEMENT:

- 5.1 The objectives of this Policy are to:
- Provide a documented process on how the Mayor and Councillors can access Council records.
  - Ensure the Mayor and Councillors received advice to assist in undertaking their civic duties in an orderly and regulated manner.
  - Ensure the Mayor and Councillors have access to all relevant Council employees necessary to assist with exercising their civic roles.

### 6. RESPONSIBILITIES:

- 6.1 The General Manager, Group Managers and Section Managers are responsible for the implementation and compliance of the policy.

## Policy

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ITEM 5 - ATTACHMENT 1  
INFORMATION POLICY

## WORKING TOGETHER AND PROVISION OF

## Policy



- 6.2 The Governance Section Manager is responsible for implementation, compliance, monitoring, evaluating, reviewing and providing advice on the policy.

## 7. RELATED DOCUMENTS:

- 7.1 Local Government 1993
- 7.2 Government Information (Public Access) Act 2009
- 7.3 State Records Act 1998
- 7.4 Copyright Act 1968 (Cth)
- 7.5 Independent Commission Against Corruption Act 1988
- 7.6 Code of Conduct

## CONTROLLED DOCUMENT INFORMATION:

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<b>EDRMS container No</b>	PSC2011-02442	<b>EDRMS record No</b>	19/150796 TBA
<b>Audience</b>	Elected Council and Council employees.		
<b>Process owner</b>	Governance Section Manager		
<b>Author</b>	Governance Section Manager		
<b>Review timeframe</b>	Two 3 years	<b>Next review date</b>	March 2024 30 April 2024
<b>Adoption date</b>	24 September 2013		

## VERSION HISTORY:

Version	Date	Author	Details	Minute No.
1.0	24/09/2013	Executive Officer	Adopted by Council	275
2.0	23/09/2014	Executive Officer	Adopted by Council	242
3.0	09/02/2016	Governance Manager	Transferred into the new policy template and corporate branding. Minor wording amendments.	022

## Policy

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ITEM 5 - ATTACHMENT 1  
INFORMATION POLICY

WORKING TOGETHER AND PROVISION OF

Policy



Version	Date	Author	Details	Minute No.
3.1	13/02/2018	Governance Manager	Minor administrative updates to clarify when the policy is applicable under Mayor/Councillor request section.	017
3.2	28 May 2019	Governance Section Manager.	Reviewed the policy, included numbering to each paragraph and updated the version control.  Updated title of policy owner. 3.3 – added 'but not limited to' and 'legislation' deleting 'provisions'. 3.10 – updated Councillor support title. 3.21 – updated unacceptable behaviours to reflect the new Code of Conduct. 6.2 – updated Section Manager title.	112
3.3		Governance Section Manager	The policy was transferred into new policy template and updated version control.  Minor review to the policy at: 1.1 – included policy title. 4.1 – remove "Local Government Act 1993.	

Policy

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**ITEM NO. 6**

**FILE NO: 21/83250  
EDRMS NO: PSC2010-00008**

**POLICY REVIEW: COMPLAINT HANDLING POLICY**

REPORT OF: TONY WICKHAM - GOVERNANCE SECTION MANAGER  
GROUP: GENERAL MANAGER'S OFFICE

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Endorse the revised Complaint Handling Policy shown at **(ATTACHMENT 1)**.
- 2) Place the revised Complaint Handling Policy, as amended on public exhibition for a period of 28 days and should no submissions be received, the Policy be adopted, without a further report to Council.
- 3) Revoke the Complaints Handling Policy dated 26 March 2019, Minute No. 064, should no submissions be received.

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**ORDINARY COUNCIL MEETING - 27 APRIL 2021  
MOTION**

<b>100</b>	<p><b>Councillor Glen Dunkley Councillor Paul Le Mottee</b></p> <p>It was resolved that Council:</p> <ol style="list-style-type: none"><li>1) Endorse the revised Complaint Handling Policy shown at <b>(ATTACHMENT 1)</b>.</li><li>2) Place the revised Complaint Handling Policy, as amended on public exhibition for a period of 28 days and should no submissions be received, the Policy be adopted, without a further report to Council.</li><li>3) Revoke the Complaints Handling Policy dated 26 March 2019, Minute No. 064, should no submissions be received.</li></ol>
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The motion was carried.

**BACKGROUND**

The purpose of this report is to seek Council's endorsement of the revised Complaint Handling Policy (Policy) shown at **(ATTACHMENT 1)**.

## MINUTES ORDINARY COUNCIL - 27 APRIL 2021

The Policy is based on the model complaint handling policy developed by the NSW Ombudsman. It provides a framework for complaint management across Council and introduces an opportunity for continuous improvement with Council's service delivery to the community.

The Policy details roles and responsibilities of all parties to a complaint and the expected behaviours.

The Policy has been reviewed as part of Council's ongoing policy review program.

The Policy is presented for Council's consideration.

### COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2018-2021
Governance	Provide strong civic leadership and government regulations.

### FINANCIAL/RESOURCE IMPLICATIONS

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes		
Reserve Funds	No		
Developer Contributions (\$7.11)	No		
External Grants	No		
Other	No		

### LEGAL, POLICY AND RISK IMPLICATIONS

As part of good governance, this Policy will assist Council in managing complaints with the view to improving service delivery.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that without the appropriate complaints management framework in place, Council would not be compliant.	Low	Adopt the recommendations.	Yes

## **SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

Through openness, transparency and accountability, Council will be able to reduce the impact of complaints on Council resources and focus on provision of Council services.

Management of complaints can require a high level of Council resources. By reducing the number of complaints and by following the structured complaints system, Council will be able to focus resources into delivery of Council services.

## **CONSULTATION**

Consultation with key stakeholders has been undertaken by the Governance Section.

The Local Government Act 1993 requires Council to conduct public consultation on policies prior to final adoption.

### Internal

- The Executive Team has been consulted to seek management endorsement.
- The General Manager has been consulted to seek endorsement prior to Council consideration.

### External

Following Council adoption, the Policy will be publicly exhibited on Council's website.

## **OPTIONS**

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

## **ATTACHMENTS**

- 1) Complaint Handling Policy.

## **COUNCILLORS ROOM**

Nil.

## **TABLED DOCUMENTS**

Nil.



## Policy



**FILE NO:** PSC2010-00008

**TITLE:** COMPLAINT HANDLING POLICY

**POLICY OWNER:** GOVERNANCE SECTION MANAGER

### 1. PURPOSE:

- 1.1 This Policy— **The Complaint Handling Policy (the Policy)** is intended to ensure that we handle complaints fairly, efficiently and effectively. Port Stephens Council's complaint management system is intended to:
- a) enable us to respond to issues raised by people making complaints in a timely and cost-effective way.
  - b) boost public confidence in our administrative process.
  - c) provide information that can be used by us to deliver quality improvements in our services, staff and complaint handling.
- 1.2 This **The** Policy provides guidance to our staff and people who wish to make a complaint **about Council's performance or operations**. ~~on the key principles and concepts of our complaint management system.~~

### 2. CONTEXT/BACKGROUND:

- 2.1 Council has had a Complaint Handling Policy for many years which **has**ve been in alignment with the NSW Ombudsman's model Complaint Handling Policy.
- 2.2 The model policy has been updated following a review of the Australia/New Zealand Standard: Guidelines for complaint management in organisations (AS/NZ 10002:2014).
- 2.3 The Policy provides an open and transparent process for the management of complaints at Council.
- 2.4 Council views a complaint as an opportunity to improve on service delivery when all circumstances have been considered.

### 3. SCOPE:

- 3.1 Port Stephens Council expects staff at all levels to be committed to fair, effective and efficient complaint handling. The following table outlines the nature of the commitment expected from staff and the way that commitment should be implemented.

#### Policy

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## Policy



Who	Commitment	How
General Manager	Promote a culture that values complaints and their effective resolution.	<ul style="list-style-type: none"> <li>• Report publicly on Port Stephens Council's complaint handling.</li> <li>• Provide adequate support and direction to key staff responsible for handling complaints.</li> <li>• Regularly review reports about complaint trends and issues arising from complaints.</li> <li>• Encourage all staff to be alert to complaints and assist those responsible for handling complaints to resolve them promptly.</li> <li>• Encourage staff to make recommendations for system improvements.</li> <li>• Recognise and reward good complaint handling by staff.</li> <li>• Support recommendations for service, staff and complaint handling improvements arising from the analysis of complaint data.</li> <li>• Views a complaint as an opportunity for improved service delivery.</li> </ul>
Manager responsible for complaint handling	Establish and manage our complaint management system.	<ul style="list-style-type: none"> <li>• Provide regular reports to the General Manager on issues arising from complaint handling work.</li> <li>• Ensure recommendations arising out of complaint data analysis are canvassed with the General Manager and implemented where appropriate.</li> <li>• Recruit, train and empower staff to resolve complaints promptly and in accordance with Port Stephens Council's policies and procedures.</li> <li>• Encourage staff managing complaints to provide suggestions on ways to improve the organisation's complaint management system.</li> <li>• Encourage all staff to be alert to complaints and assist those responsible for handling complaints resolve them promptly.</li> <li>• Recognise and reward good complaint handling by staff.</li> </ul>

### Policy

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## ITEM 6 - ATTACHMENT 1 COMPLAINT HANDLING POLICY.

## Policy



Who	Commitment	How
Staff whose duties include complaint handling	Demonstrate exemplary complaint handling practices	<ul style="list-style-type: none"> <li>• Treat all people with respect, including people who make complaints.</li> <li>• Assist people make a complaint, if needed.</li> <li>• Comply with this policy and its associated procedures.</li> <li>• Keep informed about best practice in complaint handling.</li> <li>• Provide feedback to management on issues arising from complaints.</li> <li>• Provide suggestions to management on ways to improve the organisation's complaints management system.</li> <li>• Implement changes arising from individual complaints and from the analysis of complaint data as directed by management.</li> </ul>
All staff	Understand and comply with Port Stephens Council's complaint handling practices.	<ul style="list-style-type: none"> <li>• Treat all people with respect, including people who make complaints.</li> <li>• Be aware of Port Stephens Council's complaint handling policies and procedures.</li> <li>• Assist people who wish to make complaints access the Port Stephens Council's complaints process.</li> <li>• Be alert to complaints and assist staff handling complaints to resolve matters promptly.</li> <li>• Provide feedback to management on issues arising from complaints.</li> <li>• Implement changes arising from individual complaints and from the analysis and evaluation of complaint data as directed by management.</li> </ul>

## Policy

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## Policy



### 3.2 Guiding principles.



### 3.3 Facilitate complaints

#### People focus

3.3.1. Port Stephens Council is committed to seeking and receiving feedback and complaints about our services, systems, practices, procedures, products and complaint handling. Such complaints provide Council with an opportunity for improved service delivery.

3.3.2. Any concerns raised in feedback or complaints will be dealt with within a reasonable time frame, in accordance with Council's Customer Service Charter **Framework**.

3.3.3 People making complaints will be:

- a) provided with information about our complaint handling process.
- b) provided with multiples and accessible ways to make complaints; such as in person, by letter, email or through assistance by other parties including staff.
- c) listened to, treated with respect by staff and actively involved in the complaint process where possible and appropriate.
- d) provided with reasons for our decision/s and any options for redress or review.

#### No detriment to people making complaints

3.3.4 Port Stephens Council will take all reasonable steps to ensure that people making complaints are not adversely affected because a complaint has been made by them or on their behalf.

## Policy

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## Policy



### Anonymous complaints

- 3.3.5 Port Stephens Council accepts anonymous complaints and will carry out an investigation of the issues raised where there is enough information provided. It should be acknowledged that by making an anonymous complaint it may not be obvious to you what action Council has taken.

### Accessibility

- 3.3.6 Port Stephens Council will ensure that information about how and where complaints may be made to or about us is well publicised. Council will ensure that our systems to manage complaints are easily understood and accessible to everyone, particularly people who may require assistance.
- 3.3.7 If a person prefers or needs another person or organisation to assist or represent them in the making and/or resolution of their complaint, we will communicate with them through their representative if this is their wish. Anyone may represent a person wishing to make a complaint with their consent (eg advocate, family member, legal or community representative, member of Parliament, another organisation).

### No charge

- 3.3.8 Complaining to Port Stephens Council is free.

## **3.4 Respond to complaints**

### Early resolution

- 3.4.1 Where possible, complaints will be resolved at first contact with Port Stephens Council.

### Responsiveness

- 3.4.2 Council will promptly acknowledge receipt of complaints.
- 3.4.3 Council will assess and prioritise complaints in accordance with the urgency and/or seriousness of the issues raised. If a matter concerns an immediate risk to safety or security the response will be immediate and will be escalated appropriately.
- 3.4.4 Port Stephens Council is committed to managing people's expectations, and will inform them as soon as possible of the following:

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## Policy



- a) The complaints process.
- b) The expected time frames for our actions.
- c) The progress of the complaint and reasons for any delay.
- d) Their likely involvement in the process.
- e) The possible or likely outcome of their complaint.

3.4.5 Council will advise people as soon as possible when we are unable to deal with any part of their complaint and provide advice about where such issues and/or complaints may be directed (if known and appropriate).

3.4.6 Council will also advise people as soon as possible when we are unable to meet our time frames for responding to their complaint and the reason for our delay.

### Objectivity and fairness

3.4.7 Council will address each complaint with integrity and in an equitable, objective and unbiased manner.

3.4.8 Council will ensure that the person handling a complaint is different from any staff member whose conduct or service is being complained about.

3.4.9 Conflicts of interests, whether actual or perceived, will be managed responsibly. In particular, internal reviews of how a complaint was managed will be conducted by a person other than the original decision maker.

### Responding flexibly

3.4.10 Council staff are empowered to resolve complaints promptly and with as little formality as possible, where appropriate. Council will adopt flexible approaches to service delivery and problem solving to enhance accessibility for people making complaints and/or their representatives.

3.4.11 Council will assess each complaint on its merits and involve people making complaints and/or their representative in the process as far as possible.

### Confidentiality

3.4.12 Council **will** protect the identity of people making complaints where this is practical and appropriate.

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3.4.13 Personal information that identifies individuals will only be disclosed or used by the Council as permitted under the relevant privacy laws, secrecy provisions and any relevant confidentiality obligations.

### **3.5 Manage the parties to a complaint**

#### Complaints involving multiple agencies

3.5.1 Where a complaint involves multiple organisations, we will work with the other organisation/s where possible; to ensure that communication with the person making a complaint and/or their representative is clear and coordinated.

3.5.2 Subject to privacy and confidentiality considerations, communication and information sharing between the parties will also be organised to facilitate a timely response to the complaint.

3.5.3 Where a complaint involves multiple areas within our organisation, responsibility for communicating with the person making the complaint and/or their representative will also be coordinated.

3.5.4 Where our services are contracted out, Council expect contracted service providers to have an accessible and comprehensive complaint management system. Council take complaints not only about the actions of Council staff but also the actions of service providers.

#### Complaints involving multiple parties

3.5.5 When similar complaints are made by related parties we will try to arrange to communicate with a single representative of the group.

#### Empowerment of staff

3.5.6 All staff managing complaints are empowered to implement our complaint management system as relevant to their role and responsibilities.

3.5.7 Staff are encouraged to provide feedback on the effectiveness and efficiency of all aspects of our complaint management system.

#### Managing unreasonable conduct by people making complaints

3.5.8 Council is committed to being accessible and responsive to all people who approach us with feedback or complaints. At the same time our success depends on:

a) Council's ability to do our work and perform our functions in the most effective

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## Policy

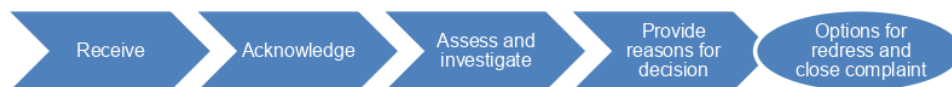


and efficient way possible the health, safety and security of our staff, and Council's ability to allocate our resources fairly across all the complaints we receive.

- b) When people behave unreasonably in their dealings with Council, their conduct can significantly affect the progress and efficiency of Council work. As a result, we will take proactive and decisive action to manage any conduct that negatively and unreasonably affects Council and will support Council staff to do the same in accordance with this policy.

- 3.5.9 For further information on managing unreasonable conduct by people making complaints, please refer to Council's Managing Unreasonable Complainant Conduct policy.

### 3.6 Complaint management system



#### Introduction

- 3.6.1 When responding to complaints, staff should act in accordance with our complaint handling procedures as well as any other internal documents providing guidance on the management of complaints.
- 3.6.2 Staff should also consider any relevant legislation and/or regulations when responding to complaints and feedback.
- 3.6.3 The five key stages in our complaint management system are set out below.

#### Receipt of complaints

- 3.6.4 Unless the complaint has been resolved at the outset, Council will record the complaint and its supporting information. Council will also assign a unique identifier to the complaint file, where appropriate.

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## Policy



3.6.5 The record of the complaint will document:

- a) the contact information of the person making a complaint;
- b) issues raised by the person making a complaint and the outcome/s they want;
- c) any other relevant;
- d) any additional support the person making a complaint requires.

### Acknowledgement of complaints

3.6.6 Council will acknowledge receipt of each complaint promptly, and preferably within seven (7) working days.

3.6.7 Consideration will be given to the most appropriate medium (eg email, letter) for communicating with the person making a complaint.

## **3.7 Initial assessment and addressing of complaints**

### Initial assessment

3.7.1 After acknowledging receipt of the complaint, Council will confirm whether the issue/s raised in the complaint is/are within Council's control. Council will also consider the outcome/s sought by the person making a complaint and, where there is more than one issue raised, determine whether each issue needs to be separately addressed.

3.7.2 When determining how a complaint will be managed, Council will consider:

- a) how serious, complicated or urgent the complaint is.
- b) whether the complaint raises concerns about people's health and safety.
- c) how the person making the complaint is being affected.
- d) the risks involved if resolution of the complaint is delayed.
- e) whether a resolution requires the involvement of other organisations.

### Addressing complaints

3.7.3 After assessing the complaint, we will consider how to manage it. To manage a complaint we may:

- a) Give the person making a complaint information or an explanation.
- b) Gather information from the product, person or area that the complaint is about, or investigate the claims made in the complaint.

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## Policy



- 3.7.4 Council will keep the person making the complaint up to date on our progress, particularly if there are any delays. We will also communicate the outcome of the complaint using the most appropriate medium. Which actions we decide to take will be tailored to each case and take into account any statutory requirements.

### Providing reasons for decisions

- 3.7.5 Following consideration of the complaint and any investigation into the issues raised, Council will contact the person making the complaint and advise them:

- a) the outcome of the complaint and any action we took.
- b) the reason/s for our decision.
- c) the remedy or resolution/s that we have proposed or put in place.
- d) any options for review that may be available to the complainant, such as an internal review, external review or appeal.

- 3.7.6 If in the course of investigation, Council make any adverse findings about a particular individual, we will consider any applicable privacy obligations under the *Privacy and Personal Information Protection Act 1998* and any applicable exemptions in or made pursuant to that Act, before sharing our findings with the person making the complaint.

### Closing the complaint, record keeping, redress and review

- 3.7.7 Council will keep comprehensive records about:

- a) how we managed the complaint.
- b) the outcome/s of the complaint (including whether it or any aspect of it was substantiated, any recommendations made to address problems identified and any decisions made on those recommendations.
- c) any outstanding actions that need to be followed up.

- 3.7.8 Council will ensure that outcomes are properly implemented, monitored and reported to the complaint handling manager and/or senior management.

### Alternative avenues for dealing with complaints

- 3.7.9 Council will inform people who make complaints to or about us about any internal or external review options available to them (including, but not limited, to the NSW Ombudsman and/or the NSW Office of Local Government).

## Policy

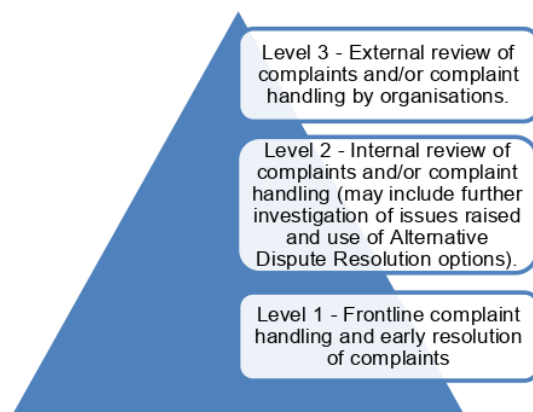
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## Policy



### 3.8 The three levels of complaint handling



3.8.1 Council aims to resolve complaints at the first level, the frontline. Wherever possible staff will be adequately equipped to respond to complaints, including being given appropriate authority, training and supervision.

3.8.2 Where this is not possible, Council may decide to escalate the complaint to a more senior officer within Council. This second level of complaint handling will provide for the following internal mechanisms:

- a) Assessment and possible investigation of the complaint and decision/s already made; and/or
- b) facilitated resolution (where a person not connected with the complaint reviews the matter and attempts to find an outcome acceptable to the relevant parties).

3.8.3 Where a person making a complaint is dissatisfied with the outcome of Council's review of their complaint, they may seek an external review of our decision by the NSW Ombudsman.

3.8.4 All permanent residents who reside in a Port Stephens Beachside Holiday Park have the right to contact the Energy & Water Ombudsman NSW (EWON), including to lodge a complaint or for free independent information and advice. EWON is the government approved dispute resolution scheme for New South Wales energy customers. EWON receives, investigates and resolves customer complaints and disputes.

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## Policy



EWON's contact details are:

Energy & Water Ombudsman NSW

Post Reply Paid 86550,

Sydney South NSW 1234

Freecall 1800 246 545

Online Complaint [www.ewon.com.au/complaints](http://www.ewon.com.au/complaints)

Email [complaints@ewon.com.au](mailto:complaints@ewon.com.au)

Website [www.ewon.com.au](http://www.ewon.com.au)

### 3.9 Accountability and learning

#### Analysis and evaluation of complaints

3.9.1 Council will ensure that complaints are recorded in a systematic way so that information can be easily retrieved for reporting and analysis. Council currently uses two system; **Electronic Document** Records Management System and **the** Customer Request Management system (CRM).

3.9.2 Regular reports will be run on:

- a) the number of complaints received.
- b) the outcome of complaints, including matters resolved at the frontline.
- c) issues arising from complaints.
- d) systemic issues identified.
- e) the number of requests we receive for internal and/or external review of our complaint handling.

3.9.3 Regular analysis of these reports will be undertaken to monitor trends, measure the quality of our customer service and make improvements.

3.9.4 Both reports and their analysis will be provided to the General Manager and senior management for review.

#### Monitoring of the complaint management system

3.9.5 Council will continually monitor our complaint management system to:

- a) ensure its effectiveness in responding to and resolving complaints.
- b) identify and correct deficiencies in the operation of the system.
- c) monitoring may include the use of audits, complaint satisfaction surveys and online listening tools and alerts.

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## Policy



### Continuous improvement

3.9.6 Council is committed to improving the effectiveness and efficiency of our complaint management system. To this end, we will:

- a) support the making and appropriate resolution of complaints.
- b) implement best practices in complaint handling.
- c) recognise and reward exemplary complaint handling by staff.
- d) regularly review the complaints management system and complaint data.
- e) implement appropriate system changes arising out of our analysis of complaints data and continual monitoring of the system.

### 4. DEFINITIONS:

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

Complaint	<p>Expression of dissatisfaction made to or about us, our services, staff or the handling of a complaint where a response or resolution is explicitly or implicitly expected or legally required.</p> <p>A complaint covered by this Policy can be distinguished from:</p> <ul style="list-style-type: none"> <li>a) staff grievances [see our grievance procedure];</li> <li>b) public interest disclosures made by our staff [see our internal reporting policy];</li> <li>c) code of conduct complaints [see our code of conduct for definition, otherwise the complaint may be covered by this policy];</li> <li>d) responses to requests for feedback about the standard of our service provision [see the definition of 'feedback' below];</li> <li>e) reports of problems or wrongdoing merely intended to bring a problem to our notice with no expectation of a response [see definition of 'feedback'];</li> <li>f) service requests [see definition of 'service request' below];</li> <li>g) requests for information [see our access to information policy].</li> </ul>
Complaint management system	All policies, procedures, practices, staff, hardware and software used by Council the management of complaints.
Dispute	An unresolved complaint escalated either within or outside of our organisation.

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## Policy

Feedback	Opinions, comments and expressions of interest or concern, made directly or indirectly, explicitly or implicitly, to or about us, about our services or complaint handling where a response is not explicitly or implicitly expected or legally required.
Grievance	A clear, formal written statement by an individual staff member about another staff member or a work related problem.
Policy	A statement or instruction that sets out how we should fulfil our vision, mission and goals.
Procedure/process	A statement or instruction that sets out how our policies will be implemented and by whom.
Public interest disclosure	A report about wrong doing made by a public official in New South Wales that meets the requirements of the Public Interest Disclosures Act 1994.
Service request	Service request includes: <ul style="list-style-type: none"> <li>a) requests for approval.</li> <li>b) requests for action.</li> <li>c) routine inquiries about the organisation's business.</li> <li>d) requests for the provision of services and assistance.</li> <li>e) reports of failure to comply with laws regulated by the organisation.</li> <li>f) requests for explanation of policies, procedures and decisions.</li> </ul>

### 5. STATEMENT:

- 5.1 This **The** Policy applies to all staff receiving or managing complaints from the public made to or about us, regarding our services, staff and complaint handling.
- 5.2 Staff grievances, code of conduct complaints and public interest disclosures are dealt with through separate mechanisms.

### 6. RESPONSIBILITIES:

- 6.1 General Manager, Group Managers and Section Managers are responsible for implementing and complying with this **the** Policy.
- 6.2 Governance Section Manager is responsible for implementing, complying with, monitoring, evaluating, reviewing and providing advice on the policy.

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## Policy



### 7. RELATED DOCUMENTS:

- 7.1 Local Government Act 1993
- 7.2 Public Interest Disclosure Act 1994
- 7.3 Ombudsman Act 1974
- 7.4 Independent Commission Against Corruption 1988
- 7.5 Government Information (Public Access) Act 2009
- 7.6 Code of Conduct
- 7.7 NSW Ombudsman - Managing Unreasonable Complainant Conduct Practice Manual

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<b>EDRMS container No</b>	PSC2010-00008	<b>EDRMS record No</b>	19/135025 TBA
<b>Audience</b>	Port Stephens community and Council employees		
<b>Process owner</b>	Governance Section Manager		
<b>Author</b>	Governance Section Manager		
<b>Review timeframe</b>	Two 3 years	<b>Next review date</b>	March 2021 30 April 2024
<b>Adoption date</b>	12 July 2016		

### VERSION HISTORY:

Version	Date	Author	Details	Minute No.
1.0	16/02/1999	Assistant General Manager	Adopted by Council	069
2.0	14/12/2010	Executive Officer	Adopted by Council	410
3.0	09/04/2013	Executive Officer	Adopted by Council	088
4.0	12/07/2016	Governance Manager	A major re-drafting in line with the model complaint handling policy of the NSW Ombudsman. Transferred into the new policy template and corporate branding.	209

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## Policy



Version	Date	Author	Details	Minute No.
4.1	14/08/2018	Governance Manager	Reviewed the policy, included numbering to each paragraph and updated version control. 3.9.2 – replaced RM8 with Records Management System	248
4.2	26/03/2019	Governance Section Manager	Reviewed policy and updated version control. Policy owner title updated. 1.1, 3.3.2, 3.4.4, 3.5.8, 3.6.5, 3.7.2, 3.7.3, 3.7.5, 3.7.7, 3.8.2, 3.9.2, 3.9.5, 3.9.6, 4.1 Definition – 'complaint' and 'service request' – all dot points removed and replaced with alpha listing for ease of reference. Included numbering at 3.3.6. 3.5.13 – deleted numbering. 4.1 – Definition 'Complaint' c) updated. 6.2 – Governance Section Manager title updated.	064

### Policy

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## Policy



Version	Date	Author	Details	Minute No.
4.3		Governance Section Manager	<p>The policy was transferred into new policy template and updated version control.</p> <p>Minor review to the policy at:</p> <p>1.1 – change to reflect policy title.</p> <p>1.2, 5.1, 6.1 – replace “this” with “the”.</p> <p>1.2 – update to reflect purpose of the policy.</p> <p>2.1 – replace ‘have’ with ‘has’.</p> <p>3.3.2 – replace “Charter” with “Framework”.</p> <p>3.3.3 – replace ‘multiples’ with ‘multiple’.</p> <p>3.4.12 – insert ‘will’.</p> <p>3.6.4 – include”, where appropriate”.</p> <p>3.7.6 – remove italics.</p> <p>3.8.4 – insert new paragraph</p> <p>3.9.1 – include “Electronic Document” and “the”.</p>	

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**ITEM NO. 7****FILE NO: 21/83295  
RM8 REF NO: A2004-0195****POLICY REVIEW: PECUNIARY INTEREST RETURNS - LODGEMENT****REPORT OF: TONY WICKHAM - GOVERNANCE SECTION MANAGER  
GROUP: GENERAL MANAGER'S OFFICE**

---

**RECOMMENDATION IS THAT COUNCIL:**

- 1) Endorse the revised Pecuniary Interest Returns – Lodgement Policy shown at **(ATTACHMENT 1)**.
  - 2) Place the revised Pecuniary Interest Returns – Lodgement Policy, as amended, on public exhibition for a period of 28 days and should no submissions be received, the Policy be adopted, without a further report to Council.
  - 3) Revoke the Pecuniary Interest Returns – Lodgement Policy dated 226 March 2019, Minute No. 065, should no submissions be received.
- 

**ORDINARY COUNCIL MEETING - 27 APRIL 2021  
MOTION**

<b>101</b>	<b>Councillor Sarah Smith Councillor Glen Dunkley</b>  It was resolved that Council:  <ol style="list-style-type: none"><li>1) Endorse the revised Pecuniary Interest Returns – Lodgement Policy shown at <b>(ATTACHMENT 1)</b>.</li><li>2) Place the revised Pecuniary Interest Returns – Lodgement Policy, as amended, on public exhibition for a period of 28 days and should no submissions be received, the Policy be adopted, without a further report to Council.</li><li>3) Revoke the Pecuniary Interest Returns – Lodgement Policy dated 226 March 2019, Minute No. 065, should no submissions be received.</li></ol>
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The motion was carried.

**BACKGROUND**

The purpose of this report is to seek Council's endorsement of the revised Pecuniary Interest Returns – Lodgement Policy (Policy).

## MINUTES ORDINARY COUNCIL - 27 APRIL 2021

The Policy provides a framework for management and compliance of the Local Government Act 1993 with regard to councillors and designated persons' returns.

The Policy has been reviewed as part of Council's ongoing policy review program.

The Policy is presented for Council's consideration.

### COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2018-2021
Governance	Manage the civic leadership and governance functions of Council.

### FINANCIAL/RESOURCE IMPLICATIONS

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

### LEGAL, POLICY AND RISK IMPLICATIONS

As part of good governance, this Policy will assist Council in managing returns lodged under the Code of Conduct, for councillors and designated persons.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that in the absence of a policy framework, pecuniary interest returns may not be lodged on time and in accordance with the Code of Conduct.	Low	Adopt the recommendations.	Yes

### SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Nil.

## **CONSULTATION**

Consultation with key stakeholders has been undertaken by the Governance Section.

The Local Government Act 1993 requires Council to conduct public consultation on policies prior to final adoption.

### Internal

- The Executive Team has been consulted to seek management endorsement.
- The General Manager has been consulted to seek endorsement prior to Council consideration.

### External

Following Council adoption, the Policy will be publicly exhibited on Council's website.

## **OPTIONS**

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

## **ATTACHMENTS**

- 1) Pecuniary Interest Returns - Lodgement Policy.

## **COUNCILLORS ROOM**

Nil.

## **TABLED DOCUMENTS**

Nil.

**ITEM 7 - ATTACHMENT 1      PECUNIARY INTEREST RETURNS - LODGEMENT POLICY.**

## Policy



**FILE NO:**            A2004-0195

**TITLE:**             PECUNIARY INTEREST RETURNS - LODGEMENT

**OWNER:**           GOVERNANCE SECTION MANAGER

**1.    PURPOSE:**

- 1.1 The purpose of the Pecuniary Interest Returns – Lodgement Policy (the 'Policy') is to ensure compliance with the provision of the Code of Conduct, as amended.
- 1.2 The Code of Conduct includes pecuniary interest responsibilities of the Mayor, Councillors and those staff identified as designated persons under the Act.

**2.    CONTEXT/BACKGROUND:**

- 2.4 ~~The Code of Conduct has been updated following a review of the Local Government Act 1993, and the pecuniary interest provisions have been incorporated into the Code of Conduct which requires the Mayor, Councillors and designated persons to:~~

**2.1 The Local Government Act 1993 requires Council to adopt a Code of Conduct. The Code of Conduct incorporates the pecuniary interest provisions, which requires the Mayor, Councillors and designated persons to:**

- a) make a disclosure within three months of being elected to Council or becoming a designated person, and
- b) make an annual disclosure after June 30 each year and before September 30 of the same year, and
- c) keep the return up to date and ensure changes are made within three months of becoming aware of the changes.

**3.    SCOPE:**

- 3.1 In May each year a report will be submitted to Council listing the Mayor, Councillors and designated persons.
- 3.2 Mayor/Councillors and designated persons will be provided with an information brochure, copy of previous return and an original pecuniary interest form by the 15 July of each year.
- 3.3 The information brochure should include:
  - a) Responsibilities of Councillors and designated persons under the Act.
  - b) Information required on the pecuniary interest form.

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**ITEM 7 - ATTACHMENT 1      PECUNIARY INTEREST RETURNS - LODGEMENT POLICY.**

## Policy

- c) Acceptable method of completing the pecuniary interest form.
  - d) Responsibilities of staff processing the forms.
  - e) Due date.
  - f) Consequences of late returns.
- 3.4 Monthly reminders to be sent to designated persons if they have not forwarded their returns – including a final reminder on or around 23 September.
- 3.5 All returns should be lodged with the General Manager or Executive Administration Coordinator no later than on 30 September of each year.
- 3.6 Upon receipt of returns the Executive Administration Coordinator will:
- a) Provide written receipt to the Mayor/Councillor or designated person and a copy filing in the records management system (EDRMS).
  - b) Check the return to ensure that it has been completed (to best of your knowledge) particularly that it has been dated and signed.
  - c) Executive Administration Coordinator to complete the date the return was received.
  - d) File the return in the Pecuniary Interest Register.
  - e) ~~Store the Pecuniary Interest Register in the strong room for safe keeping.~~
- 3.7 Under no circumstances is a third party (for example a staff member) to complete pecuniary interest returns on behalf of a the Mayor/Councillor or a designated person.
- 3.8 Should the Mayor/Councillors or designated persons require a computer print-out of their property or properties they should formally request the Executive Administration Coordinator to provide a computer printout of property/s owned in the local government area. Once the computer property print-out is obtained, the computer print-out should be transcribed by the Mayor/Councillor or designated person onto the form or on to an attachment (other than Council's original computer print-out).
- 3.9 Forms are to be made available from the General Manager's Office from 30 June each year.
- 3.10 All lodged returns are to be tabled at the first Council meeting after 30 September together with a report identifying any failures to lodge.
- 3.11 Report to the Office of Local Government any person who fails to lodge a Return required by the due date.
- 4. DEFINITIONS:**
- 4.1 An outline of the key definitions of terms included in the policy.

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**ITEM 7 - ATTACHMENT 1  
POLICY.****PECUNIARY INTEREST RETURNS - LODGEMENT**

## Policy



Act	Local Government Act 1993.
Code of Conduct	Port Stephens Council code of Conduct.
Councillor	A councillor of Port Stephens.
Designated person	An employee, volunteer, contractor of Port Stephens Council.
Mayor	The Mayor of Port Stephens.
Pecuniary interest	Is an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person.

### **5. STATEMENT:**

5.1 The objectives of this Policy are to:

- a) inform the Mayor, Councillors and all designated persons of their responsibilities under the Act.
- b) provide transparency for the community.
- c) assist the Mayor, Councillors and all designated persons to identify potential areas of conflict of interest.

### **6. RESPONSIBILITIES:**

- 6.1 The Governance Section Manager is responsible for implementing, complying with, monitoring, evaluating, reviewing and providing advice on the Policy.
- 6.2 The Mayor, Councillors and designated persons are responsible for complying with the Policy.
- 6.3 The Executive Administration Coordinator is responsible for assisting with the implementation of the Policy.

### **7. RELATED DOCUMENTS:**

- 7.1 Local Government Act 1993
- 7.2 Code of Conduct
- 7.3 Pecuniary Interest Register

## Policy

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## ITEM 7 - ATTACHMENT 1 PECUNIARY INTEREST RETURNS - LODGEMENT POLICY.

## Policy



## CONTROLLED DOCUMENT INFORMATION:

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<b>EDRMS container No</b>	A2004-0195	<b>EDRMS record No</b>	19/135094 TBA
<b>Audience</b>	Mayor, Councillors and designated persons.		
<b>Process owner</b>	Governance Section Manager.		
<b>Author</b>	Governance Section Manager.		
<b>Review timeframe</b>	Two 3 years	<b>Next review date</b>	February 2024 30 April 2024
<b>Adoption date</b>	11 February 2014		

## VERSION HISTORY:

Version	Date	Author	Details	Minute No.
1.0	09/05/1995	Assistant General Manager	Adopted by Council.	185
2.0	19/10/2004	Governance Officer	Adopted by Council.	375
3.0	11/02/2014	Executive Officer	Adopted by Council.	018
4.0	10/05/2016	Governance Manager	Transfer policy into the new policy template.	119
5.0	22/05/2018	Governance Manager	Reviewed the policy, included numbering to each paragraph and updated the version control. 1.1 – included to the name of the policy. 3.5 – removed reference to timing. 3.6.1 – replaced the wording (RM8) with (EDRMS). 3.11 - replaced the wording 'Division of Local Government' with 'Office of Local Government'.	135

## Policy

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ITEM 7 - ATTACHMENT 1 PECUNIARY INTEREST RETURNS - LODGEMENT POLICY.

# Policy



Version	Date	Author	Details	Minute No.
6.0	26 March 2019	Governance Section Manager	<p>Reviewed the policy and version control:                      Policy owner updated to Governance Section Manager.</p> <p>1 – updated to remove reference to the Local Government Act and replace with Code of Conduct.</p> <p>2 – removed Chapter 14 reference and included Code of Conduct.</p> <p>2.1 – Deleted and replaced with a new paragraph and included a), b) and c).</p> <p>3.1 – updated to include Mayor and Councillors.</p> <p>3.2, 3.6, 3.7, 3.8 – updated to include the Mayor.</p> <p>3.3 and 3.6 – bullet points replace with alpha listing.</p> <p>3.11 – removed section 449 and inserted 'the due date'.</p> <p>4.1 – updated to include Code of Conduct, Councillor and Mayor.</p> <p>6.1 – updated title to Governance Section Manager.</p>	065
6.1		Governance Section Manager	<p>The policy was transferred into new policy template and updated version control.</p> <p>Minor review to the policy at:</p> <p>2.1 – replaced clause.</p> <p>3.6 e) – removed.</p>	

## Policy

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**ITEM NO. 8**

**FILE NO: 21/83262  
RM8 REF NO: PSC2017-00739**

**POLICY REVIEW: COUNCILLOR INDUCTION AND PROFESSIONAL DEVELOPMENT**

REPORT OF: TONY WICKHAM - GOVERNANCE SECTION MANAGER  
GROUP: GENERAL MANAGER'S OFFICE

---

**RECOMMENDATION IS THAT COUNCIL:**

- 1) Endorse the revised Councillor Induction and Professional Development Policy shown at **(ATTACHMENT 1)**.
  - 2) Place the revised Councillor Induction and Professional Development Policy on public exhibition for a period of 28 days and should no submissions be received, the Policy be adopted, without a further report to Council.
  - 3) Revoke the Councillor Induction and Professional Development Policy dated 14 May 2019, Minute No. 094, should no submissions be received.
- 

**ORDINARY COUNCIL MEETING - 27 APRIL 2021  
MOTION**

<b>102</b>	<p><b>Councillor Glen Dunkley Councillor Ken Jordan</b></p> <p>It was resolved that Council:</p> <ol style="list-style-type: none"><li>1) Endorse the revised Councillor Induction and Professional Development Policy shown at <b>(ATTACHMENT 1)</b>.</li><li>2) Place the revised Councillor Induction and Professional Development Policy on public exhibition for a period of 28 days and should no submissions be received, the Policy be adopted, without a further report to Council.</li><li>3) Revoke the Councillor Induction and Professional Development Policy dated 14 May 2019, Minute No. 094, should no submissions be received.</li></ol>
------------	---

The motion was carried.

Cr Arnott recorded his vote opposing the motion.

**ORDINARY COUNCIL MEETING - 27 APRIL 2021  
AMENDMENT**

	<b>Councillor Giacomo Arnott</b> <b>Councillor John Nell</b>  That Council:  1) Endorse the revised Councillor Induction and Professional Development Policy shown at <b>(ATTACHMENT 1)</b> . 2) Place the revised Councillor Induction and Professional Development Policy on public exhibition for a period of 28 days and should no submissions be received, the Policy be adopted, without a further report to Council. 3) Clause 5.14 to remain as is in the current policy. 4) Revoke the Councillor Induction and Professional Development Policy dated 14 May 2019, Minute No. 094, should no submissions be received.
--	--

The amendment was lost.

**BACKGROUND**

The purpose of this report is to seek Council's endorsement of the revised Councillor Induction and Professional Development Policy (Policy).

The Policy recognises the importance of an induction program and ongoing professional development for the Mayor and Councillors. It is acknowledged those elected to Council come from diverse backgrounds with varying skills and experience.

The commitment to ongoing professional development ensures the necessary support and assistance is available to the Mayor and Councillors in the development of skills necessary to perform their respective roles, and maintain those skills over the term of office.

The revised Policy is provided for Council's consideration.

**COMMUNITY STRATEGIC PLAN**

<b>Strategic Direction</b>	<b>Delivery Program 2018-2021</b>
Governance	Provide a strong ethical governance structure.

**FINANCIAL/RESOURCE IMPLICATIONS**

The financial and resource implications are within the existing budget upon adoption of the Payment of Expenses and Provision of Facilities to Councillors Policy.

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

**LEGAL, POLICY AND RISK IMPLICATIONS**

Council is required to comply with the Regulation and any guidelines issued by the Office of Local Government (OLG).

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that Council may be in breach of the Local Government Act 1993, the Regulations and the OLG should it not comply with all requirements associated with the program.	Low	Adopt the recommendation.	Yes

**SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

Nil.

**CONSULTATION**

Consultation with key stakeholders has been undertaken by the Governance Section.

The Local Government Act 1993 requires Council to conduct public consultation on policies prior to final adoption.

Internal

- The Executive Team has been consulted to seek management endorsement.
- The General Manager has been consulted to seek endorsement prior to Council consideration.

External

Following Council adoption, the Policy will be publicly exhibited on Council's website.

**OPTIONS**

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

**ATTACHMENTS**

- 1) Councillor Induction and Professional Development Policy.

**COUNCILLORS ROOM**

Nil.

**TABLED DOCUMENTS**

Nil.

ITEM 8 - ATTACHMENT 1  
DEVELOPMENT POLICY.

COUNCILLOR INDUCTION AND PROFESSIONAL

## Policy



**FILE NO:** PSC2017-00739

**TITLE:** COUNCILLOR INDUCTION AND PROFESSIONAL  
DEVELOPMENT

**OWNER:** GOVERNANCE SECTION MANAGER

### 1. PURPOSE:

- 1.1 The purpose of this **the Councillor Induction and Professional Development** policy **(the policy)** is to demonstrate Port Stephens Council's commitment to ensuring that the Mayor and Councillors have access to induction and ongoing professional development which will assist them to develop and maintain the skills and knowledge required to effectively perform their civic role and responsibilities under the Local Government Act 1993 ('the Act').

### 2. CONTEXT/BACKGROUND:

- 2.1 This **The** policy has been developed to recognise the diversity of elected officials from a professional development perspective. Those elected to Port Stephens Council come from different backgrounds and it is acknowledged that they will already have some skills and experience to assist them in carrying out their role as a mayor or councillor. In an effort to further assist elected officials with a greater understanding of the local government framework and complexities, professional development has been enacted in the Local Government (General) Regulation 2005.

### 3. SCOPE:

- 3.1 This **The** policy applies to all Councillors of Port Stephens Council, including the Mayor.

### 4. DEFINITIONS:

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

Act	means Local Government Act 1993.
Council	means Port Stephens Council.
Councillors	means Elected members of Port Stephens Council.
General Manager	means General Manager of Port Stephens Council.
Mayor	means Mayor of Port Stephens Council.
Year	means financial year.

## Policy

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## Policy



### 5. STATEMENT:

#### Statement of commitment

5.1 Port Stephens Council is committed to developing an induction and ongoing professional development program for the Mayor and Councillors to ensure they can fulfil their statutory roles and responsibilities. As part of this program, the Mayor and each Councillor will have a professional development plan that identifies specific gaps in their capabilities (ie their knowledge, skills and attributes) and identify professional development activities to build these capabilities.

#### Induction program

5.2 Port Stephens Council will develop an induction program for new and returning Councillors as well as a supplementary program for the Mayor to ensure they are provided all the information they need to effectively fulfil their roles in the first few months of Council's term and feel confident in their ability to do so. The induction program will cover:

- a) an orientation to Council facilities and the local government area.
- b) an overview of the key issues and tasks for the new council including Council's Community Strategic Plan, Delivery Program, Operational Plan, Resourcing Strategy and Community Engagement Plan.
- c) the legislation, rules, principles and political context under which councils operate.
- d) the roles and responsibilities of councillors and the mayor.
- e) Council's organisational structure, workforce management strategy and the roles and responsibilities of the General Manager and Council staff.
- f) what Council does and how it operates, including an overview of integrated planning and reporting, land-use planning, natural resource management, financial management and asset management by Council.
- g) key Council policies and procedures Councillors must comply with including the Code of Conduct.
- h) the role of Council meetings and how to participate effectively in them.
- i) the support available to the Mayor and Councillors and where they can go to get more information or assistance, and
- j) information on the process for taking the oath of office.
- k) other information that may be relevant at the time.

5.3 In the case of the mayor, the program will also cover:

- a) how to be an effective leader of the governing body and the Council.
- b) the role of the Chair and how to chair council meetings.
- c) the Mayor's role in integrated planning and reporting.
- d) the Mayor's role and responsibilities under the Code of Conduct.

## Policy

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## Policy



- e) the Mayor's role and responsibilities in relation to the General Manager's employment.
  - f) the Mayor's role at regional and other representative bodies.
  - g) the Mayor's civic and ceremonial role.
- 5.4 The Mayor and Councillors must have a working knowledge and understanding of these areas by the end of the induction program.
- 5.5 The induction program will also include team building activities to help the governing body establish itself as a cohesive and collaborative team focused on a common purpose with shared values and goals. Activities will aim to ensure the Mayor and councillors:
- a) identify how they would like to work together as a team and identify a common vision for the governing body.
  - b) build relationships with each other based on trust and mutual respect that facilitate collaboration.
  - c) contribute to a positive and ethical culture within the governing body.
  - d) work towards consensus as members of the governing body for the benefit of the community.
  - e) develop respectful negotiation skills and manage alternative views within the governing body without damaging relationships.
  - f) understand what supports or undermines the effective functioning of the governing body.
  - g) respect the diversity of skills and experiences on the governing body, and
  - h) communicate and uphold the decisions of Council in a respectful way, even if their own position was not adopted.
- 3.6 Activities should also help the Mayor, as the leader of the governing body, to:
- a) act as a stabilising influence and show leadership, and
  - b) promote a culture of integrity and accountability within Council and when representing Council in the community and elsewhere.
- 5.7 The Mayor and Councillors, including those re-elected to office, must attend all induction sessions.
- 5.8 Port Stephens Council will evaluate the induction program at the end of each Council term to determine whether it has achieved these outcomes, and to identify and address areas for improvement.

## Policy

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## Policy



### Ongoing professional development program

- 5.9 An individual ongoing professional development plan will be developed for the Mayor and each Councillor to address any gaps in the capabilities (ie the knowledge, skills and attributes) needed to effectively fulfil their role.
- 5.10 Each professional development plan will span the Council's term, and identify professional development activities that the Mayor or Councillor will participate in. Professional development activities will be prioritised according to need and approved by the General Manager where Council funds are required in accordance with Council's Payment of Expenses and Provision of Facilities to Mayor and Councillors policy. The Mayor and Councillors are expected to complete all the activities included in their professional development plan.
- 5.11 Professional development activities will, wherever possible, follow the 70/20/10 principle. The 70/20/10 principle requires that:
- a) 70% of learning activities are provided via learning and developing from experience – for example, on-the-job training, self-directed learning, developmental roles, problem solving, exposure and practice
  - b) 20% of learning activities are provided via learning and training through others – for example, personal or professional networks, coaching, mentoring, feedback, memberships and professional associations, and
  - c) 10% of learning activities are provided via learning and developing through structured programs – for example, training courses, external or in-house workshops, seminars, webinars and other e-learning and briefing sessions conducted by the council, external training providers or industry bodies.
- 5.12 The timing of professional development activities for the Mayor and Councillors will be designed in such a way so as to not overload Councillors with learning activities in the early part of Council's term. The timing will reflect what knowledge and skills Councillors and the Mayor need at various points in Council's term to undertake their roles.
- 5.13 The Mayor and Councillors will be provided with as much notice as possible for upcoming induction and professional development activities.

### Budget

- 5.14 An annual budget allocation will be provided to support the induction and professional development activities undertaken by the Mayor and Councillors. Expenditure will be monitored and reported quarterly on a 6 monthly basis.

## Policy

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**ITEM 8 - ATTACHMENT 1  
DEVELOPMENT POLICY.****COUNCILLOR INDUCTION AND PROFESSIONAL**

## Policy



- 5.15 Approval of training and/or expenses Professional development activities that require Council funds are to be approved by the General Manager in accordance with Council's Payment of Expenses and Provision of Facilities to Mayor and Councillors Policy.

### Evaluation

- 5.16 Council will evaluate the professional development program at the end of each Council term to assess whether it was effective in assisting the Mayor and Councillors to develop the capabilities required to fulfil their civic roles.

### Reporting

- 5.17 The General Manager will publically report each year in Council's annual report:

- a) the name of the Mayor and each individual Councillor that completed Council's induction program (where an induction program has been delivered during the relevant year).
- b) the name of the Mayor and each Councillor who participated in any ongoing professional development program during the year.
- c) the number of training and other activities provided to the Mayor and Councillors during the year as part of a professional development program.
- d) the total cost of induction and professional development activities and any other training provided to the Mayor and Councillors during the relevant year.

## **6. RESPONSIBILITIES:**

- 6.1 The Mayor and each Councillor are responsible for making themselves available to attend any development activities identified in the professional development plan.
- 6.2 The Mayor and all Councillors must make all reasonable endeavours to attend and participate in the induction sessions and professional development activities arranged for them during the term of the Council.
- 6.3 The Governance Section Manager is responsible for planning, scheduling and facilitating induction and professional development activities for the Mayor and Councillors in consultation with the General Manager.
- 6.4 The General Manager has overall responsibility for Port Stephens Council's induction and professional development program.
- 6.5 The Governance Section Manager is responsible for monitoring, evaluating, reviewing and providing advice on the policy.

## **7. RELATED DOCUMENTS:**

- 7.1 Local Government Act 1993
- 7.2 Local Government (General) Regulations 2005

### Policy

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ITEM 8 - ATTACHMENT 1  
DEVELOPMENT POLICY.

## COUNCILLOR INDUCTION AND PROFESSIONAL

## Policy



## 7.3 Councillor Induction and Professional Development Guidelines 2018

## CONTROLLED DOCUMENT INFORMATION:

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<b>EDRMS container No</b>	PSC2017-00739	<b>EDRMS record No</b>	19/142406 TBA
<b>Audience</b>	Mayor and Councillors		
<b>Process owner</b>	Governance Section Manager		
<b>Author</b>	Governance Section Manager		
<b>Review timeframe</b>	Two 3 years	<b>Next review date</b>	March 2021 30 April 2024
<b>Adoption date</b>	14 May 2019		

## VERSION HISTORY:

Version	Date	Author	Details	Minute No.
1.0	14 May 2019	Governance Section Manager	First version of policy based on the model policy provided in the Councillor Induction and Professional Development Guidelines 2018.	094
1.1		Governance Section Manager	The policy was transferred into new policy template and updated version control. Minor review to the policy at: 1.1 – included policy title. 2.1 & 3.1 - replace "this" with "the". 5.14 – included "on a 6 monthly basis" and removed "quarterly".	

## Policy

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**ITEM NO. 9****FILE NO: 21/62340  
EDRMS NO: PSC2017-00178****REQUEST FOR FINANCIAL ASSISTANCE**

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

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Approves provision of financial assistance under Section 356 of the Local Government Act 1993 from Mayoral and Ward funds to the following:-
    - a. West Ward funds - Cr Ken Jordan – Rapid Response - \$500 donation to Seaham Park and Wetlands 355c Committee towards the purchase of fencing materials to create a barrier at East Seaham Reserve.
    - b. Central Ward funds - \$1000 donation to Port Stephens Veteran Golfers Association for the operation of their Golf Week in October 2021.
- 

**ORDINARY COUNCIL MEETING - 27 APRIL 2021  
MOTION**

<b>103</b>	<b>Councillor Ken Jordan Councillor Glen Dunkley</b>  It was resolved that Council approves provision of financial assistance under Section 356 of the Local Government Act 1993 from Mayoral and Ward funds to the following:- <ol style="list-style-type: none"><li>a. West Ward funds - Cr Ken Jordan – Rapid Response - \$500 donation to Seaham Park and Wetlands 355c Committee towards the purchase of fencing materials to create a barrier at East Seaham Reserve.</li><li>b. Central Ward funds - \$1000 donation to Port Stephens Veteran Golfers Association for the operation of their Golf Week in October 2021.</li></ol>
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The motion was carried.

**BACKGROUND**

The purpose of this report is to determine and, where required, authorise payment of financial assistance to recipients judged by the Mayor and or Councillors as deserving of public funding. The Grants and Donations Policy gives the Mayor and Councillors a wide discretion either to grant or to refuse any requests.

## MINUTES ORDINARY COUNCIL - 27 APRIL 2021

Council's Grants and Donations Policy provides the community, the Mayor and Councillors with a number of options when seeking financial assistance from Council. Those options being:

- 1) Mayoral Funds
- 2) Rapid Response
- 3) Community Financial Assistance Grants – (bi-annually)
- 4) Community Capacity Building

Council is unable to grant approval of financial assistance to individuals unless it is performed in accordance with the Local Government Act 1993. This would mean that the financial assistance would need to be included in the Operational Plan or Council would need to advertise for 28 days of its intent to grant approval. Council can make donations to community groups.

The requests for financial assistance are shown below:

### WARD FUNDS

Seaham Park and Wetlands 355c Committee	This Committee assists Council with maintenance and improvements to Seaham Park and surrounding wetlands.	\$500	Donation towards the purchase of fencing materials to create a barrier at East Seaham Reserve.
Port Stephens Veterans Golfers Association	The Association's aim is to have weekly golfing 'get together' followed by fellowship in the clubhouse.	\$1000	Donation towards the operation of the Port Stephens Veterans Golf Association Golf Week to be held in October 2021.

### COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2018-2021
Community Partnerships	Support financially creative and active communities.

### FINANCIAL/RESOURCE IMPLICATIONS

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

**MINUTES ORDINARY COUNCIL - 27 APRIL 2021**

Source of Funds	Yes/No	Funding (\$)	Comment
Developer Contributions (S7.11)	No		
External Grants	No		
Other	No		

**LEGAL AND POLICY IMPLICATIONS**

To qualify for assistance under Section 356(1) of the Local Government Act 1993, the purpose must assist the Council in the exercise of its functions. Functions under the Act include the provision of community, culture, health, sport and recreation services and facilities.

The policy interpretation required is whether the Council believes that:

- a) applicants are carrying out a function, which it, the Council, would otherwise undertake.
- b) the funding will directly benefit the community of Port Stephens.
- c) applicants do not act for private gain.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that Council may set a precedent when allocating funds to the community and an expectation those funds will always be available.	Low	Adopt the recommendations.	Yes

**SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

Nil.

**CONSULTATION**

Consultation with key stakeholders has been undertaken by the General Manager's Office.

Consultation has been taken with the key stakeholders to ensure budget requirements are met and approved.

**OPTIONS**

- 1) Accept the recommendation.
- 2) Vary the dollar amount before granting each or any request.
- 3) Decline to fund all the requests.

**ATTACHMENTS**

Nil.

**COUNCILLORS ROOM**

Nil.

**TABLED DOCUMENTS**

Nil.



**ITEM NO. 10****FILE NO: 21/95038  
EDRMS NO: PSC2017-00015****INFORMATION PAPERS****REPORT OF: WAYNE WALLIS - GENERAL MANAGER  
GROUP: GENERAL MANAGER'S OFFICE**

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**RECOMMENDATION IS THAT COUNCIL:**

Receives and notes the Information Papers listed below being presented to Council on 27 April 2021.

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<b>No:</b>	<b>Report Title</b>	<b>Page:</b>
1	Designated Persons' Return	206
2	March 2021 Cash and Investments	207
3	Quarterly Grants Update - 31 March 2021	210
4	Council Resolutions	212

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**ORDINARY COUNCIL MEETING - 27 APRIL 2021  
MOTION**

<b>104</b>	<b>Councillor Sarah Smith Councillor Glen Dunkley</b>  It was resolved that Council receives and notes the Information Papers listed below being presented to Council on 27 April 2021. <hr/> <table><tr><th><b>No:</b></th><th><b>Report Title</b></th></tr><tr><td>1</td><td>Designated Persons' Return</td></tr><tr><td>2</td><td>March 2021 Cash and Investments</td></tr><tr><td>3</td><td>Quarterly Grants Update - 31 March 2021</td></tr><tr><td>4</td><td>Council Resolutions</td></tr></table>	<b>No:</b>	<b>Report Title</b>	1	Designated Persons' Return	2	March 2021 Cash and Investments	3	Quarterly Grants Update - 31 March 2021	4	Council Resolutions
<b>No:</b>	<b>Report Title</b>										
1	Designated Persons' Return										
2	March 2021 Cash and Investments										
3	Quarterly Grants Update - 31 March 2021										
4	Council Resolutions										

The motion was carried.

# INFORMATION PAPERS

**ITEM NO. 1**

**FILE NO: 21/74863  
EDRMS NO: PSC2020-02093**

**DESIGNATED PERSONS' RETURN**

REPORT OF: TONY WICKHAM - GOVERNANCE SECTION MANAGER  
GROUP: GENERAL MANAGER'S OFFICE

**BACKGROUND**

The purpose of this report is to table Designated Persons' Return/s (return) submitted.

In accordance with the Part 4 – Pecuniary Interest of the Code of Conduct, all designated persons' are required to submit a return. Returns are to be tabled at the first Council meeting after the lodgement date.

The following is a list of position/s who have submitted return/s:

- Strategic Planner (PSC1067).

**ATTACHMENTS**

Nil.

**COUNCILLORS ROOM**

Nil.

**TABLED DOCUMENTS**

- 1) Designated Persons' Return.

**ITEM NO. 2**

**FILE NO: 21/90674  
EDRMS NO: PSC2006-1531**

**MARCH 2021 CASH AND INVESTMENTS**

REPORT OF: TIM HAZELL - FINANCIAL SERVICES SECTION MANAGER  
GROUP: CORPORATE SERVICES

**BACKGROUND**

The purpose of this report is to present Council's schedule of cash and investments held at 31 March 2021.

**ATTACHMENTS**

- 1) March 2021 Cash and Investments.
- 2) March 2021 Cashflow Report.

**ITEM 2 - ATTACHMENT 1 MARCH 2021 CASH AND INVESTMENTS.**

CASH AND INVESTMENTS HELD AS AT 31 MARCH 2021									
ISSUER	BROKER	RATING*	DESC.	YIELD %	TERM DAYS	MATURITY	AMOUNT INVESTED	MARKET VALUE	
TERM DEPOSITS									
JUDO BANK	CURVE	NR	TD	1.05%	256	11-May-21	275,000	275,000	
JUDO BANK	CURVE	NR	TD	1.05%	253	11-May-21	300,000	300,000	
JUDO BANK	FIIG	NR	TD	0.70%	97	8-Jun-21	1,000,000	1,000,000	
AMP BANK	LAMINAR	BBB+	TD	0.80%	295	23-Jun-21	300,000	300,000	
AUSTRALIAN MILITARY BANK	FARQUHARSON	BBB+	TD	1.65%	635	30-Jun-21	1,000,000	1,000,000	
JUDO BANK	CURVE	NR	TD	1.05%	343	4-Aug-21	900,000	900,000	
JUDO BANK	CURVE	NR	TD	1.05%	337	4-Aug-21	300,000	300,000	
MUTUAL BANK	MUTUAL	NR	TD	0.95%	351	18-Aug-21	300,000	300,000	
JUDO BANK	FIIG	NR	TD	0.90%	181	31-Aug-21	700,000	700,000	
AMP BANK	LAMINAR	BBB+	TD	0.80%	383	15-Sep-21	1,000,000	1,000,000	
AUSWIDE BANK	CURVE	BBB	TD	1.75%	727	28-Sep-21	1,000,000	1,000,000	
ICBC	IMPERIUM	A	TD	1.62%	729	13-Oct-21	1,000,000	1,000,000	
AUSWIDE BANK	IMPERIUM	BBB	TD	1.65%	731	15-Oct-21	500,000	500,000	
MACQUARIE BANK	LAMINAR	A	TD	0.70%	286	25-Oct-21	1,000,000	1,000,000	
MUTUAL BANK	MUTUAL BANK	NR	TD	0.90%	159	27-Oct-21	700,000	700,000	
AMP BANK	LAMINAR	BBB+	TD	0.75%	365	25-Nov-21	1,250,000	1,250,000	
DEFENDE BANK	CURVE	BBB	TD	0.60%	367	6-Dec-21	600,000	600,000	
AMP BANK	LAMINAR	BBB	TD	0.75%	371	8-Dec-21	550,000	550,000	
AMP BANK	LAMINAR	BBB	TD	0.75%	376	15-Dec-21	350,000	350,000	
JUDO BANK	LAMINAR	NR	TD	0.84%	385	22-Dec-21	350,000	350,000	
JUDO BANK	LAMINAR	NR	TD	0.85%	383	22-Dec-21	550,000	550,000	
NAB	LAMINAR	AA	TD	0.50%	386	23-Dec-21	1,000,000	1,000,000	
DEFENCE BANK	CURVE	BBB	TD	0.60%	399	5-Jan-22	1,000,000	1,000,000	
NAB	LAMINAR	AA	TD	0.50%	399	5-Jan-22	1,000,000	1,000,000	
NAB	LAMINAR	AA	TD	0.50%	413	19-Jan-22	1,000,000	1,000,000	
JUDO BANK	LAMINAR	NR	TD	0.70%	391	19-Jan-22	750,000	750,000	
MACQUARIE BANK	LAMINAR	A	TD	0.70%	385	1-Feb-22	1,000,000	1,000,000	
AUSWIDE BANK	RIM	BBB	TD	1.73%	701	2-Feb-22	1,250,000	1,250,000	
DEFENCE BANK	CURVE	BBB	TD	0.65%	539	22-May-22	1,000,000	1,000,000	
DEFENCE BANK	CURVE	BBB	TD	0.65%	550	7-Jun-22	600,000	600,000	
SUB TOTAL (\$)							22,525,000	22,525,000	
MACQUARIE BANK (AT CALL)	LAMINAR	A+	AT CALL	0.35%			4,500,000	4,500,000	
TCORP SHORT TERM INCOME FUND	TCORP	AAA					4,000,000	4,009,917	
TCORP MEDIUM TERM GROWTH FUND	TCORP	AAA					4,000,000	4,093,536	
TCORP LONG TERM GROWTH FUND	TCORP	AAA					2,000,000	2,082,353	
CASH ON HAND							4,112,723	4,112,723	
INVESTMENTS TOTAL (\$)							41,137,723	41,323,529	
CASH AT BANK (\$)								0	
TOTAL CASH AND INVESTMENTS (\$)							41,137,723	41,323,529	
CASH AT BANK INTEREST RATE				0.20%					
BBSW FOR PREVIOUS 3 MONTHS				0.19%					
AVG. INVESTMENT RATE OF RETURN ON TDs				0.93%					
TD = TERM DEPOSIT									
AC = AT CALL CASH ACCOUNT									
FRTD = FLOATING RATE TERM DEPOSIT									
*STANDARD AND POORS LONG TERM RATING									
CERTIFICATE OF RESPONSIBLE ACCOUNTING OFFICER									
I HEREBY CERTIFY THAT THE INVESTMENTS LISTED ABOVE HAVE BEEN MADE IN ACCORDANCE WITH SECTION 625 OF THE LOCAL GOVERNMENT ACT 1993, CLAUSE 212 OF THE LOCAL GOVERNMENT (GENERAL) REGULATION 2005 AND COUNCIL'S CASH INVESTMENT POLICY									
T HAZELL									



**Cash flow analysis  
31/03/2021**

**CASHFLOW STATEMENT**

Opening Cash and Investment 1 July 2020  
Closing Cash and Investment 31 March 2021  
**Movement in cash**

YTD	Notes
31,502,431	
41,973,422	
<b>10,470,991</b>	

**Movement in cash represented by:**

Operating Activities

Receipts from ratepayers, customers and government authorities	102,483,470
Payments to suppliers & employees	(69,731,255)
Interest received	277,237
Interest paid	(332,043)
<b>Total</b>	<b>32,697,409</b>

Investing Activities

Receipts from sale of Infrastructure, Property, Plant & Equipment	124,741
Payments for Property, Plant & Equipment	(20,111,072)
<b>Total</b>	<b>(19,986,331)</b>

Financing Activities

Payment of loans	(2,240,088)
Receipt of new loans	
<b>Total</b>	<b>(2,240,088)</b>

**Total Cash Movement**

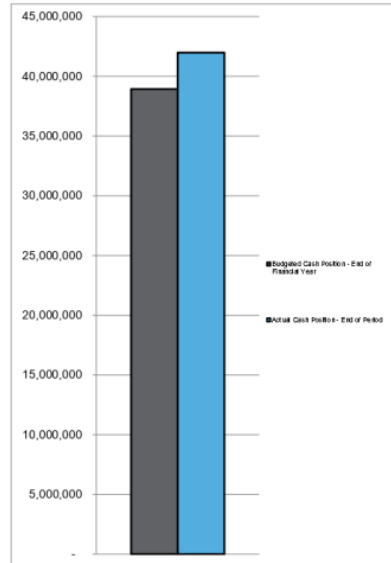
Plus: Opening Cash and Investment 1 July 2020	31,502,431
<b>Closing Cash and Investment 31 March 2021</b>	<b>41,973,423</b>

Budgeted Cash Movement for the Financial Year  
Plus Opening Cash and Investment 1 July 2020  
**Budgeted Cash and Investment Position 30 June 2021**

7,420,913
31,502,431
<b>38,923,344</b>

In front / (behind) on budget

3,050,078	1
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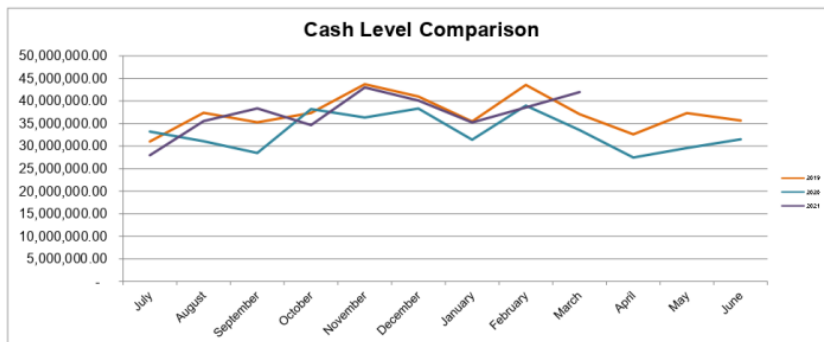


**Notes**

- 1 Council's cash position is up on the budgeted year end position predominately due to the following reasons:
- a) Receipt of State Roads program funding approx \$570k
  - b) Sale of commercial land is complete
  - c) Receipt of various capital grants for \$1.4m and capital contributions for \$1.2m this month

Significant future cash inflows expected in next few months include various 2021 grants, 4th quarter rates and Easter holiday trade.

Significant future cash outflows expected in next few months include: Fingal Bay new amenities block, depot relocation, Birubi Point aboriginal place tourism interchange, smart parking signage, Nelson Bay tennis - fencing and retaining wall replacement, Lakeside leisure centre heat pump replacement, Seabreeze estate drainage, Tomaree sports complex amenities replacement, Riverflat road realignment and sundry plants.



**ITEM NO. 3**

**FILE NO: 21/90294  
EDRMS NO: PSC2017-00180**

**QUARTERLY GRANTS UPDATE - 31 MARCH 2021**

REPORT OF: TIM HAZELL - FINANCIAL SERVICES SECTION MANAGER  
GROUP: CORPORATE SERVICES

**BACKGROUND**

The purpose of this report is to provide Council with a quarterly update on its Grants status.

**ATTACHMENTS**

- 1) Grants update Q3 - 1 January 2021 - 31 March 2021.

**ITEM 3 - ATTACHMENT 1 GRANTS UPDATE Q3 - 1 JANUARY 2021 - 31 MARCH 2021.**
**Quarterly Grants Status Summary**

1 January 2021 - 31 March 2021

Successful				
Grant	Section / Department	Project Title	Project Summary	Value
NSW Seniors Festival Grants Program 2021	Communications - Community Development & Engagement	Seniors Out & About in 2021	Port Stephens Council will provide activities and events that promote seniors 'connection' to each other and their community.	\$8,500
Youth Week 2021	Communications - Community Development & Engagement	Youth Week 2021	Funding to assist Council to deliver local Youth Week activities and events.	\$3,029
Summer Fund Program	Strategy and Environment - Economic Development and Tourism	Port Stephens Place Activation Schedule	A series of place activation events to be facilitated in Port Stephens by working with local businesses and providing a range of entertainment and outdoor dining experiences. Targeted areas for activation will include Nelson Bay and Shoal Bay.	\$10,000
Local Roads and Community Infrastructure Program - Phase 2	Assets - Civil Projects and Community and Recreation	LRCI Phase 2 Projects	Council is currently assessing a range projects to be completed under this funding. After assessment is complete, project nominations will then be submitted to the funding body for approval.	\$2,451,934
				<b>\$2,474,463</b>

Awaiting Outcome				
Grant	Section / Department	Project Title	Project Summary	Value
Your High Street	Assets - Civil Projects	Our Raymond Terrace High Street	Improve the streetscape of Raymond Terrace High Street in accordance with the long term strategy, vision and design principles of our new Raymond Terrace Public Domain Plan	\$350,000
Club Grants Category 3 Infrastructure Grants 2020-21 - February	Assets - Community & Recreation	Mallabula Sports Complex Upgrade	The Mallabula Sports Complex upgrade will provide the community with a new synthetic tennis court with fencing and floodlighting, multisport court and essential renovations to the sports amenities building.	\$115,000
Saluting Their Service Commemorations Program (Major)	Assets - Community & Recreation	Anzac Park Redevelopment	New Commemorative Wall for Port Stephens and associated works in the immediate area	\$81,000
Regional Sport Facility Fund 2020-21 Round 1	Assets - Community & Recreation	Tomaree Sports Complex Masterplan Implementation	Project includes upgrades to change rooms, upgraded Elizabeth Waring Room, new pathways, shade, seating, signage.	\$262,127
Regional Sport Facility Fund 2020-21 Round 1	Assets - Community & Recreation	King Park Sports Complex Masterplan Implementation	Project includes upgrades to change rooms, function room, new pathways, landscaping, shade, seating, and signage.	\$842,330
Building Better Regions Fund - Infrastructure Projects Stream - Round Five	Assets - Community & Recreation	Birubi Point Aboriginal Place Tourism Transport Interchange	A centralised coach parking and tourism operator hub that will provide toilet facilities, multilingual signage and retail opportunities.	\$4,024,787
RSPCA - Keeping Cats Safe at Home	Development Services - Development Assessment and Compliance Section	PSC EOI Submitted	RSPCA Four Year behaviour change project aiming to reduce the impacts of pet cats on wildlife.	-
Tourism Product Development Fund - Experience Enhancement	Holiday Parks - Port Stephens Koala Sanctuary	Nature Escapes at Port Stephens Koala Sanctuary	Upgrade 12 one bedroom motel rooms.	\$150,000
Tourism Product Development Fund - Renew & Refresh	Strategy and Environment - Economic Development and Tourism	Port Stephens Visitor Information Centre Upgrade	Replace flooring and install new artwork	\$10,000
Reducing Social Isolation for Seniors Grant Program	Communications - Community Development & Engagement	Connected Seniors through tech, gather & print	Outreach digital literacy programs, Lunch N Laise Gathering, Seniors Atlas	\$31,718
				<b>\$5,866,962</b>

There were 2 unsuccessful grants to report for period 1 January 2021 to 31 March 2021



**ITEM NO. 4**

**FILE NO: 21/62287  
EDRMS NO: PSC2017-00106**

**COUNCIL RESOLUTIONS**

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

**BACKGROUND**

The purpose of this report is to inform the Mayor and Councillors of the status of all matters to be dealt with arising out of the proceedings of previous meetings of the Council in accordance with the Code of Meeting Practice.

**ATTACHMENTS**

- 1) Corporate Services Group report.
- 2) Development Services Group report.
- 3) Facilities & Services Group report.
- 4) General Manager's Office report.

**COUNCILLORS ROOM**

Nil.

**TABLED DOCUMENTS**

Nil.

**ITEM 4 - ATTACHMENT 1 CORPORATE SERVICES GROUP REPORT.**


<b>Outstanding</b>	<b>Division:</b> Corporate Services	<b>Date From:</b> 26/09/2017
	<b>Committee:</b>	<b>Date To:</b> 13/04/2021
	<b>Officer:</b>	
<b>Action Sheets Report</b>		<b>Printed:</b> Monday, 19 April 2021

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 27/03/2018	Crosdale, Timothy	COMPULSORY ACQUISITION OF AN EASEMENT FOR ACCESS OVER PART OF 6 GOVERNMENT ROAD, SHOAL BAY	30/12/2021	28/03/2018	
13		Crosdale, Timothy				18/66656
066						
16 Apr 2021						
Awaiting Minister's approval to proceed with the compulsory acquisition.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 12/02/2019	Crosdale, Timothy	King Street, Raymond Terrace Easements	30/12/2021	14/02/2019	
3		Crosdale, Timothy				19/39843
16 Apr 2021						
The Minister for Local Government has approved Council's application to compulsorily acquire an easement through 24A and 26 King Street, Raymond Terrace, for the purposes of construction of a shared pedestrian pathway. Proposed Acquisition Notices have been served on the land owners.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 28/05/2019	Crosdale, Timothy	COMPULSORY ACQUISITION OF PART OF VICTORIA PARADE RESERVE NELSON BAY FOR ROAD PURPOSES	30/12/2021	29/05/2019	
6		Crosdale, Timothy				19/148388
110						
16 Apr 2021						
Waiting on Aboriginal Land Claim determination by Crown Lands.						

## ITEM 4 - ATTACHMENT 1 CORPORATE SERVICES GROUP REPORT.



<b>Outstanding</b>	<b>Division:</b> Corporate Services	<b>Date From:</b> 26/09/2017
	<b>Committee:</b>	<b>Date To:</b> 13/04/2021
<b>Action Sheets Report</b>	<b>Officer:</b>	<b>Printed:</b> Monday, 19 April 2021

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 23/07/2019	Crosdale, Timothy	GRANT OF EASEMENTS IN FAVOUR OF AGL - PUNT ROAD, TOMAGO	30/06/2021		
7 169		Crosdale, Timothy				19/200498
16 Apr 2021						
Still in negotiations between AGL and LGL.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 11/02/2020	Crosdale, Timothy	COMPULSORY ACQUISITION OF PART 879 SWAN BAY ROAD, SWAN BAY FOR ROAD WIDENING PURPOSE	30/12/2021	12/02/2020	
2 028		Crosdale, Timothy				20/39141
16 Apr 2021						
Awaiting Minister's approval to proceed with the compulsory acquisition.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 22/09/2020	Crosdale, Timothy	Newline Road, Raymond Terrace	30/06/2021		
2 199		Crosdale, Timothy				20/288489
16 Apr 2021						
Approved. Contracts are being prepared by HWC. Awaiting works to be finalised for survey.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 9/02/2021	Crosdale, Timothy	SHOAL BAY CAR PARK	30/04/2021		
6 016		Crosdale, Timothy				21/33235
16 Apr 2021						
Investigate the use and feasibility to construct a car park on Crown Land and prepare a report for consideration at a future Council meeting.						

## ITEM 4 - ATTACHMENT 1 CORPORATE SERVICES GROUP REPORT.



<b>Outstanding</b>	<b>Division:</b> Corporate Services	<b>Date From:</b> 26/09/2017
	<b>Committee:</b>	<b>Date To:</b> 13/04/2021
	<b>Officer:</b>	
<b>Action Sheets Report</b>		<b>Printed:</b> Monday, 19 April 2021

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 23/02/2021	Crosdale, Timothy	Purchase of Property at Shoal Bay	30/04/2021		
2		Crosdale, Timothy				21/46402
038						
16 Apr 2021						
Investigate the feasibility of a potential purchase and prepare a report for consideration at a future Council meeting.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 9/03/2021	Crosdale, Timothy	Proposed sale of land - 77 Dawson Road, Raymond Terrace (Part)	30/06/2021	11/03/2021	
1		Crosdale, Timothy				21/60805
051						
16 Apr 2021						
Recommendation endorsed by Council. Settlement will occur upon registration of lots.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 13/04/2021	Crosdale, Timothy	Proposed sale of Land in Raymond Terrace	27/04/2021	14/04/2021	
1		Crosdale, Timothy				21/96728
089						
16 Apr 2021						
Recommendation endorsed. Staff to progress the sale as per the recommendations of the report.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 13/04/2021	Crosdale, Timothy	PROPOSED CLOSURE AND SALE OF PATHWAY IN BOAT HARBOUR	27/04/2021	14/04/2021	
2		Crosdale, Timothy				21/96728
090						
16 Apr 2021						
Recommendation endorsed. Staff to progress the closure of the pathway and sale as per the recommendations of the report.						

## ITEM 4 - ATTACHMENT 2 DEVELOPMENT SERVICES GROUP REPORT.



<b>Outstanding</b>	<b>Division:</b> Development Services	<b>Date From:</b> 26/09/2017
	<b>Committee:</b>	<b>Date To:</b> 13/04/2021
	<b>Officer:</b>	
<b>Action Sheets Report</b>	<b>Printed: Monday, 19 April 2021</b>	

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 25/08/2020	Drinan, Kate	DEVELOPMENT APPLICATION 16-2019-679-1 FOR DEMOLITION OF EXISTING STRUCTURE AND CONSTRUCTION OF SHOPTOP HOUSING AND DETACHED DWELLING AT 26 KING STREET, RAYMOND TERRACE	22/06/2021		
1		Peart, Steven				20/265439
151						
11 Mar 2021						
Revised Target Date changed From: 23 Mar 2021 To: 22 Jun 2021						
Reason: DA 16-2019-679-1 will be reported back to council 22 June 2021.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 23/03/2021	Drinan, Kate	Policy Review - Asbestos Management Policy	27/04/2021	24/03/2021	
2		Peart, Steven				21/77787
059						
25 Mar 2021						
Revised Target Date changed From: 6 Apr 2021 To: 27 Apr 2021						
Reason: Policy Review: Asbestos Management Policy currently on exhibition until 23 April 2021.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 13/04/2021	Drinan, Kate	DEVELOPMENT APPLICATION 16-2020-357-1 FOR A SINGLE STOREY DWELLING AT 918 NEWLINE ROAD, EAGLETON (LOT 31 DP 840177)	27/04/2021	14/04/2021	
3		Peart, Steven				21/96728
073						
19 Apr 2021						
Revised Target Date changed From: 27 Apr 2021 To: 27 Apr 2021						
Reason: Deferred to 27 April 2021 for review of conditions.						

**ITEM 4 - ATTACHMENT 3 FACILITIES & SERVICES GROUP REPORT.**



<b>Outstanding</b>	<b>Division:</b> Facilities & Services	<b>Date From:</b> 26/09/2017
	<b>Committee:</b>	<b>Date To:</b> 13/04/2021
<b>Action Sheets Report</b>	<b>Officer:</b>	<b>Printed:</b> Monday, 19 April 2021

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 10/12/2019	Maretich, John	Solar Infrastructure	31/08/2021	11/12/2019	
6		Kable, Gregory				19/388450
264						
15 Apr 2021 Project will proceed through normal procurement methods and is being scheduled.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 10/12/2019	Gutsche, Tammy	GREEN WASTE DROP OFF - SALAMANDER BAY	30/06/2021	11/12/2019	
7		Kable, Gregory				19/388450
265						
15 Apr 2021 Will be considered as part of the Waste Management Strategy.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 25/02/2020	Lamont, Brock	Indoor Sports Facility	30/06/2021	26/02/2020	
4		Kable, Gregory				20/50488
042						
15 Apr 2021 Current discussions with the Dept of Education about co-sharing a single facility has become not viable. West Ward Sports Council discussed item at recent meeting. Business case development and feasibility to be developed once facility parameters agreed.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 9/06/2020	Stewart, Adam	Naming of Pathway, Gan Gan Road, Anna Bay	30/04/2021	10/06/2020	
1		Kable, Gregory				20/164033
101						
16 Apr 2021 Gained confirmation to proceed with wording and location of plaque with Central Ward Councillors.						

## ITEM 4 - ATTACHMENT 3 FACILITIES & SERVICES GROUP REPORT.



<b>Outstanding</b>	<b>Division:</b> Facilities & Services	<b>Date From:</b> 26/09/2017
	<b>Committee:</b>	<b>Date To:</b> 13/04/2021
	<b>Officer:</b>	
<b>Action Sheets Report</b>		<b>Printed:</b> Monday, 19 April 2021

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 14/07/2020	Lamont, Brock	REVIEW OF THE OFF LEASH DOG AREAS AND TIMES AT ANNA BAY / BIRUBI POINT, FISHERMANS BAY AND BOAT HARBOUR	30/06/2021		
1		Kable, Gregory				20/192934
138						
15 Apr 2021 The findings of the investigation will be presented to Council in May 2021.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 14/07/2020	Stewart, Adam	Tomaree Headland	31/07/2022		
2		Kable, Gregory				20/192934
139						
15 Apr 2021 Council has undertaken a site review with National Parks as part of their footpath design assessment. It should be noted that National Parks are still in design phase of this project and at present Council has not allocated funds. Though options are being assessed for a funding source for this project.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 24/11/2020	Miles, Philip	Disposal of Surplus Excavated Materials at Newcastle Airport Development Project Site.	30/09/2021		
11		Kable, Gregory				20/358525
261						
15 Apr 2021 Development modification required and legal contracts to be drawn up.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 8/12/2020	Stewart, Adam	Fly Point and Little Beach Parking/SMART Parking	28/05/2021		
3		Kable, Gregory				20/391301
15 Apr 2021 Report is being prepared and will be reported back to Council in May 2021.						

## ITEM 4 - ATTACHMENT 3 FACILITIES & SERVICES GROUP REPORT.



<b>Outstanding</b>	<b>Division:</b> Facilities & Services	<b>Date From:</b> 26/09/2017
	<b>Committee:</b>	<b>Date To:</b> 13/04/2021
	<b>Officer:</b>	
<b>Action Sheets Report</b>		<b>Printed:</b> Monday, 19 April 2021

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 9/02/2021	Stewart, Adam	5G Small Cell Technology Rollout in Port Stephens	30/06/2021		
3		Kable, Gregory				21/33235
006						
15 Apr 2021						
Works have not commenced given other priorities. Expect this work to be completed by end of June 2021.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 9/02/2021	Lamont, Brock	MEDOWIE REGIONAL PLAYGROUND AND TOWN CENTRE	31/05/2021		
2		Kable, Gregory				21/33235
012						
15 Apr 2021						
Staff will investigate and prepare a report for Council as per Notice of Motion and will be discussed and proposed during the 7 Day Makeover in May 2021.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 9/02/2021	Stewart, Adam	ROAD RESEALS ACROSS PORT STEPHENS	30/06/2021		
4		Kable, Gregory				21/33235
014						
15 Apr 2021						
Staff will prepare a report for Council with road recommendations as per Notice of Motion.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 9/02/2021	Stewart, Adam	FERN BAY SHARED PATHWAY	28/05/2021		
7		Kable, Gregory				21/33235
017						
15 Apr 2021						
Staff will start the process to apply for developer contributions. Design is underway and works scheduled for June 2021.						



## ITEM 4 - ATTACHMENT 3 FACILITIES & SERVICES GROUP REPORT.



<a href="#">Outstanding</a>	<b>Division:</b> Facilities & Services	<b>Date From:</b> 26/09/2017
	<b>Committee:</b>	<b>Date To:</b> 13/04/2021
<b>Action Sheets Report</b>	<b>Officer:</b>	<b>Printed:</b> Monday, 19 April 2021

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 13/04/2021	Lamont, Brock	Drainage at Vi Bamett Field in Raymond Terrace	1/07/2021		
12 083		Kable, Gregory				21/96728
16 Apr 2021 Revised Target Date From: 27 Apr 2021 To: 01 Jul 2021 Council staff have been in discussion with Raymond Terrace Athletics to schedule proposed works around their sporting events.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 13/04/2021	Stewart, Adam	Drainage investigation - Lemon Tree Passage	1/12/2021	14/04/2021	
1 088		Kable, Gregory				21/96728
16 Apr 2021 Drainage investigation and property evaluation has commenced. Discussion with property owners in on going. Any future actions will be determined by Council.						

## MINUTES ORDINARY COUNCIL - 27 APRIL 2021



<b>Outstanding</b>	<b>Division:</b> General Manager's Office	<b>Date From:</b> 26/09/2017
	<b>Committee:</b>	<b>Date To:</b> 13/04/2021
	<b>Officer:</b>	
<b>Action Sheets Report</b>		<b>Printed:</b> Monday, 19 April 2021

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 13/04/2021	Wickham, Tony	POLICY REVIEW: RISK MANAGEMENT	17/05/2021	14/04/2021	
9 080		Wallis, Wayne				21/96728
16 April 2021 Placed on public exhibition until 16 May 2021.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 13/04/2021	Edwards, Ann	Request for Financial Assistance	14/05/2021		
13 084		Wallis, Wayne				21/96728
16 April 2021 Placed on public exhibition until 13 May 2021.						

There being no further business the meeting closed at 6.15pm.