

# NOTICE OF ORDINARY MEETING

## 8 JUNE 2021



The Mayor and Councillors attendance is respectfully requested:

Mayor: R Palmer (Chair).

Councillors: J Abbott, G Arnott, C Doohan, G Dunkley, K Jordan, P Le Mottee, J Nell, S Smith, S Tucker.

### SCHEDULE OF MEETINGS

TIME	ITEM	VENUE
5:30pm:	Public Access (if applied for)	Council Chambers
Followed by:	Ordinary Meeting	Council Chambers

### Please Note:

In accordance with the NSW Privacy and Personal Information Protection Act 1998, you are advised that all discussion held during the Open Council meeting is public information. This will include any discussion involving the Mayor, a Councillor, staff member or a member of the public. All persons present should withhold from making public comments about another individual without seeking the consent of that individual in the first instance. Should you have any questions concerning the privacy of individuals at the meeting, please speak with the Governance Section Manager or the General Manager prior to the meeting.

Please be aware that Council webcasts its Open Council meetings via its website. All persons should refrain from making any defamatory remarks. Council accepts no liability for any defamatory remarks made during the course of the Council meeting.

For the safety and wellbeing of the public, no signs, placards or other props made from material other than paper will be permitted in the Council Chamber. No material should be larger than A3 in size.

Food and beverages are not permitted in the Council Chamber.

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## **BUSINESS**

- 1) Opening meeting.
- 2) Prayer - We ask Almighty God to give us wisdom and courage so we can serve our community, and uphold justice and equality in Port Stephens. Amen.
- 3) Acknowledgement of Country - Today, we are meeting on Worimi Country, we acknowledge the past, we are working towards a better tomorrow.
- 4) Apologies and applications for a leave of absence by Councillors.
- 5) Confirmation of minutes Ordinary Meeting of 25 May 2021.
- 6) Disclosure of interests.
- 7) Mayoral minute(s) – if submitted.
- 8) Motions to close meeting to the public, if submitted.
- 9) Council Reports.
- 10) General Manager's reports, if submitted.
- 11) Questions with Notice, if submitted.
- 12) Questions on Notice.
- 13) Notices of Motion, if submitted.
- 14) Rescission Motions, if submitted.
- 15) Confidential matters, if submitted.
- 16) Conclusion of the meeting.

## **PRINCIPLES FOR LOCAL GOVERNMENT**

Port Stephens Council is a local authority constituted under the Local Government Act 1993. The Act includes the Principles for Local Government for all NSW Councils.

The object of the principles for councils is to provide guidance to enable councils to carry out their functions in a way that facilitates local communities that are strong, healthy and prosperous.

### **Guiding principles for Council**

#### **1. Exercise of functions generally**

The following general principles apply to the exercise of functions by Council. Council should:

- (a) provide strong and effective representation, leadership, planning and decision-making.
- (b) carry out functions in a way that provides the best possible value for residents and ratepayers.
- (c) plan strategically, using the integrated planning and reporting framework, for the provision of effective and efficient services and regulation to meet the diverse needs of the local community.
- (d) apply the integrated planning and reporting framework in carrying out their functions so as to achieve desired outcomes and continuous improvements.
- (e) work co-operatively with other councils and the State government to achieve desired outcomes for the local community.
- (f) manage lands and other assets so that current and future local community needs can be met in an affordable way.
- (g) work with others to secure appropriate services for local community needs.
- (h) act fairly, ethically and without bias in the interests of the local community.
- (i) be responsible employers and provide a consultative and supportive working environment for staff.

#### **2. Decision-making**

The following principles apply to decision-making by Council (subject to any other applicable law). Council should:

- (a) recognise diverse local community needs and interests.
- (b) consider social justice principles.
- (c) consider the long term and cumulative effects of actions on future generations.
- (d) consider the principles of ecologically sustainable development.
- (e) Council decision-making should be transparent and decision-makers are to be accountable for decisions and omissions.

### 3. Community participation

Council should actively engage with their local communities, through the use of the integrated planning and reporting framework and other measures.

#### **Principles of sound financial management**

The following principles of sound financial management apply to Council. Council should:

- (a) spend responsible and sustainable, aligning general revenue and expenses.
- (b) invest in responsible and sustainable infrastructure for the benefit of the local community.
- (c) have effective financial and asset management, including sound policies and processes for the following:
  - (i) performance management and reporting,
  - (ii) asset maintenance and enhancement,
  - (iii) funding decisions,
  - (iv) risk management practices.
- (d) have regard to achieving intergenerational equity, including ensuring the following:
  - (i) policy decisions are made after considering their financial effects on future generations,
  - (ii) the current generation funds the cost of its services.

#### **Integrated planning and reporting principles that apply to Council**

The following principles for strategic planning apply to the development of the integrated planning and reporting framework by Council. Council should:

- (a) identify and prioritise key local community needs and aspirations and consider regional priorities.
- (b) identify strategic goals to meet those needs and aspirations.
- (c) develop activities, and prioritise actions, to work towards the strategic goals.
- (d) ensure that the strategic goals and activities to work towards them may be achieved within council resources.
- (e) regularly review and evaluate progress towards achieving strategic goals.
- (f) maintain an integrated approach to planning, delivering, monitoring and reporting on strategic goals.
- (g) collaborate with others to maximise achievement of strategic goals.
- (h) manage risks to the local community or area or to the council effectively and proactively.
- (i) make appropriate evidence-based adaptations to meet changing needs and circumstances.

## PORT STEPHENS COMMUNITY STRATEGIC PLAN

The Local Government Act requires Council to adopt a Community Strategic Plan (10+ years). The Plan includes a Delivery Program (3 years), Annual Operational Plan and a Resource Strategy, it also includes the Council's budget.

The Community Strategic Plan is organised into four focus areas:

**OUR COMMUNITY** – Port Stephens is a thriving and strong community respecting diversity and heritage.

**OUR PLACE** – Port Stephens is a liveable place supporting local economic growth.

**OUR ENVIRONMENT** – Port Stephens' environment is clean and green, protected and enhanced.

**OUR COUNCIL** – Port Stephens Council leads, manages and delivers valued community services in a responsible way.

## BUSINESS EXCELLENCE

Port Stephens Council is a quality and a customer service focused organisation. We use the Business Excellence Framework as a basis for driving organisational excellence. The Framework is an integrated leadership and management system that describes elements essential to organisational excellence. It is based on nine (9) principles.

These outcomes align with the following Business Excellence principles:

- 1) Clear direction and mutually agreed plans enable organisational alignment and focus on achievement of goals.
- 2) Understanding what customers and other stakeholders value, now and in the future, enables organisational direction, strategy and action.
- 3) All people work in a system. Outcomes are improved when people work on the system and its associated processes.
- 4) Engaging people's enthusiasm, resourcefulness and participation improves organisational performance.
- 5) Innovation and learning influence the agility and responsiveness of the organisation.
- 6) Effective use of facts, data and knowledge leads to improved decisions.
- 7) Variation impacts predictability, profitability and performance.
- 8) Sustainable performance is determined by an organisation's ability to deliver value for all stakeholders in an ethically, socially and environmentally responsible manner.
- 9) Leaders determine the culture and value system of the organisation through their decisions and behaviour.

## MEETING PROCEDURES SUMMARY

**Starting time** – All meetings must commence within 30 minutes of the advertised time.

**Quorum** – A quorum at Port Stephens Council is six (6).

### **Declarations of Interest**

**Pecuniary** – Councillors who have a pecuniary interest must declare the interest, not participate in the debate and leave the meeting.

**Non-Pecuniary** – Councillors are required to indicate if they have a non-pecuniary interest, should a Councillor declare a significant non-pecuniary they must not participate in the debate and leave the meeting. If a Councillor declares a less than significant non-pecuniary they must state why no further action should be taken. Councillors may remain in the meeting for a less than significant non-pecuniary.

**Confirm the Minutes** – Councillors are able to raise any matter concerning the Minutes prior to confirmation of the Minutes.

**Public Access** – Each speaker has five (5) minutes to address Council with no more than two (2) for and two (2) against the subject.

### **Motions and Amendments**

**Moving Recommendations** – If a Committee recommendation is being moved, ie been to a Committee first, then the motion must be moved and seconded at Council prior to debate proceeding. A Councillor may move an alternate motion to the recommendation.

**Amendments** – A Councillor may move an amendment to any motion however only one amendment or motion can be before Council at any one time, if carried it becomes the motion.

**Seconding Amendments** – When moving an amendment, it must be seconded or it lapses.

**Incorporating Amendments** – If a motion has been moved and the mover and seconder agree with something which is being moved as an amendment by others, they may elect to incorporate it into their motion or amendment as the case may be.

**Voting Order** – When voting on a matter the order is as follows:

1. Amendment (If any)
2. Foreshadowed Amendments – (If any, and in the order they were moved)
3. Motion

**NB – Where an amendment is carried, there must be another vote on the amendment becoming the motion.**

**Voting** – an item is passed where a majority vote for the subject. If the voting is tied the Chairperson has a second (casting) vote which is used to break the deadlock.

**Closed Session** – There must be a motion to close a meeting. Prior to voting on the motion the chairperson will invite the gallery to make representations if they believe the meeting shouldn't be closed. Then Councillors vote on the matter. If adopted the gallery should then be cleared and the matter considered in closed session. Any decision taken in session closed is a resolution. There must be a motion to reopen the Council meeting to the public. If decision occurred in 'closed session', the meeting is advised of the resolution in 'open session'.

**Procedural Motion** – Is a motion necessary for the conduct of the meeting, it is voted on without debate, eg defer an item to the end of the meeting (however, to defer an item to another meeting is not a procedural motion), extend the time for a Councillor to speak etc.

**Points of Order** – when any of the following are occurring or have occurred a Councillor can rise on a 'Point of Order', the breach is explained to the Chairperson who rules on the matter.

A Point of Order can be raised where:

1. There has been any non-compliance with procedure, eg motion not seconded etc.
2. A Councillor commits an act of disorder:
  - a) Contravenes the Act, any Regulation in force under the Act, the Code of Conduct or this Code.
  - b) Assaults or threatens to assault another Councillor or person present at the meeting.
  - c) Moves or attempts to move a motion or an amendment that has an unlawful purpose or that deals with a matter that is outside the jurisdiction of the Council or Committee, or address or attempts to address the Council or Committee on such a motion, amendment or matter.
  - d) Insults or makes personal reflections on or imputes improper motives to any other Councillor, any staff member or alleges a breach of Council's Code of Conduct.
  - e) Says or does anything that is inconsistent with maintaining order at the meeting or is likely to bring the Council or Committee into disrepute.

## **Declarations of Conflict of Interest – Definitions**

**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 or another person with whom the person is associated as provided in Clause 7 of the Code of Conduct.

**Non Pecuniary interests** are private or personal interests the council official has that do not amount to a pecuniary interest as defined in the Code of Conduct. These commonly arise out of family or personal relationships or involvement in sporting, social or other cultural groups and associations and may include an interest of financial nature.

The matter of a report to council from the conduct review committee/reviewer relates to the public duty of a councillor or the general manager. Therefore, there is no requirement for Councillors or the General Manager to disclose a conflict of interest in such a matter.

The political views of a Councillor do not constitute a private interest.



## Form of Special Disclosure of Pecuniary Interest

1. This form must be completed using block letters or typed.
2. If there is insufficient space for all the information you are required to disclose, you must attach an appendix which is to be properly identified and signed by you.

### Important information

This information is being collected for the purpose of making a special disclosure of pecuniary interests under clause 4.36(c) of the Model Code of Conduct for Local Councils in NSW (the Model Code of Conduct).

The special disclosure must relate only to a pecuniary interest that a councillor has in the councillor's principal place of residence, or an interest another person (whose interests are relevant under clause 4.3 of the Model Code of Conduct) has in that person's principal place of residence.

Clause 4.3 of the Model Code of Conduct states that you will have a pecuniary interest in a matter because of the pecuniary interest of your spouse or your de facto partner or your relative or because your business partner or employer has a pecuniary interest. You will also have a pecuniary interest in a matter because you, your nominee, your business partner or your employer is a member of a company or other body that has a pecuniary interest in the matter.

"Relative" is defined by clause 4.4 of the Model Code of Conduct as meaning your, your spouse's or your de facto partner's parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child and the spouse or de facto partner of any of those persons.

You must not make a special disclosure that you know or ought reasonably to know is false or misleading in a material particular. Complaints about breaches of these requirements are to be referred to the Office of Local Government and may result in disciplinary action by the Chief Executive of the Office of Local Government or the NSW Civil and Administrative Tribunal.

This form must be completed by you before the commencement of the council or council committee meeting at which the special disclosure is being made. The completed form must be tabled at the meeting. Everyone is entitled to inspect it. The special disclosure must be recorded in the minutes of the meeting.

**ORDINARY COUNCIL - 8 JUNE 2021**

Special disclosure of pecuniary interests by [full name of councillor]

in the matter of [insert name of environmental planning instrument]

which is to be considered at a meeting of the PORT STEPHENS COUNCIL

to be held on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_

Pecuniary interest	
Address of the affected principal place of residence of the councillor or an associated person, company or body (the identified land)	
Relationship of identified land to the councillor [Tick or cross one box.]	<input type="checkbox"/> The councillor has an interest in the land (eg is the owner or has another interest arising out of a mortgage, lease, trust, option or contract, or otherwise). <input type="checkbox"/> An associated person of the councillor has an interest in the land. <input type="checkbox"/> An associated company or body of the councillor has an interest in the land.
Matter giving rise to pecuniary interest <sup>1</sup>	
Nature of the land that is subject to a change in zone/planning control by the proposed LEP (the subject land) <sup>2</sup> [Tick or cross one box]	<input type="checkbox"/> The identified land. <input type="checkbox"/> Land that adjoins or is adjacent to or is in proximity to the identified land.
Current zone/planning control [Insert name of current planning instrument and identify relevant zone/planning control applying to the subject land]	

<sup>1</sup> Clause 4.1 of the Model Code of Conduct provides that a 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. A person does not have a pecuniary interest in a matter if the interest is so remote or insignificant that it could not reasonably be regarded as likely to influence any decision the person might make in relation to the matter, or if the interest is of a kind specified in clause 4.6 of the Model Code of Conduct.

<sup>2</sup> A pecuniary interest may arise by way of a change of permissible use of land adjoining, adjacent to or in proximity to land in which a councillor or a person, company or body referred to in clause 4.3 of the Model Code of Conduct has a proprietary interest.

Proposed change of zone/planning control [Insert name of proposed LEP and identify proposed change of zone/planning control applying to the subject land]	
Effect of proposed change of zone/planning control on councillor or associated person [Insert one of the following: "Appreciable financial gain" or "Appreciable financial loss"]	

[If more than one pecuniary interest is to be declared, reprint the above box and fill in for each additional interest.]

Mayor/Councillor's signature \_\_\_\_\_

Date \_\_\_\_\_

[This form is to be retained by the council's general manager and included in full in the minutes of the meeting]



## Declaration of Interest form

Agenda item No. \_\_\_\_\_

Report title \_\_\_\_\_

Mayor/Councillor \_\_\_\_\_ declared a

Tick the relevant response:

<input type="checkbox"/>	<b>pecuniary</b> conflict of interest
<input type="checkbox"/>	<b>significant</b> non pecuniary conflict of interest
<input type="checkbox"/>	<b>less than significant</b> non- pecuniary conflict of interest

in this item. The nature of the interest is \_\_\_\_\_

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**If a Councillor declares a less than significant conflict of interest and intends to remain in the meeting, the councillor needs to provide an explanation as to why the conflict requires no further action to manage the conflict. (Attach a separate sheet if required.)**

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**OFFICE USE ONLY:** (Committee of the Whole may not be applicable at all meetings.)

Mayor/Councillor left the Council meeting in Committee of the Whole at \_\_\_\_\_pm.

Mayor/Councillor returned to the Council meeting in Committee of the Whole at \_\_\_\_\_ pm.

Mayor/Councillor left the Council meeting at \_\_\_\_\_ pm.

Mayor/Councillor returned to the Council meeting at \_\_\_\_\_ pm.

# COUNCIL REPORTS

**ITEM NO. 1****FILE NO: 21/75848  
EDRMS NO: 16-2021-69-1****DEVELOPMENT APPLICATION 16-2021-69-1 FOR A 2 STOREY DWELLING AND SWIMMING POOL) AT 14 ALBERT STREET, TAYLORS BEACH**

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 16-2021-69-1 for a 2 storey dwelling and swimming pool at 14 Albert Street, Taylors Beach (Lot 2 DP 1256094) subject to the conditions contained in **(ATTACHMENT 3)**.

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**BACKGROUND**

The purpose of this report is to present a Development Application (DA) 16-2021-69-1 for a 2 storey dwelling and swimming pool at 14 Albert Street, Taylors Beach (Lot 2 DP 1256094) to Council for determination.

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

Subject land:	14 Albert Street, Taylors Beach.
Total area:	1,099m <sup>2</sup>
Zoning:	R2 – Low Density Residential zone.
Submissions:	4 submissions were received objecting to the proposal.
Key issues:	<ul style="list-style-type: none"><li>• A restriction on title limits development on site to single storey.</li><li>• The DA complies with the minimum habitable floor level of 2.7m AHD, contains only 4 bedrooms and is not a dual occupancy; consistent with the restriction.</li><li>• The height of the dwelling is approximately the same height as the 2 single storey dwellings to its north and south.</li><li>• The height of the dwelling does not exceed the 9m height limit applicable to the site as prescribed by LEP 2013.</li><li>• The DA will not unreasonably overshadow the adjoining dwellings.</li><li>• Views from adjoining dwellings will not be compromised by the 2 storey nature of the dwelling.</li></ul>

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 Cr Glen Dunkley, Cr Jaimie Abbott and Cr Sarah Smith (**ATTACHMENT 4**).

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

#### Proposal

The DA proposes the construction of a 2 storey dwelling and swimming pool. The dwelling includes 4 bedrooms, open plan kitchen, dining and lounge area, rear first floor balcony, double garage and outdoor area to the north with an in ground swimming pool.

The height of the proposed dwelling measures 6.93 metres above existing ground level at its highest point.

#### Site description and history

The site is relatively flat and has previously been cleared of vegetation.

Adjoining to the north and south are residential lots, which both contain single storey residential dwellings that are currently under construction. To the east is Albert Street where access to the site is from, to the west is the foreshore of Tilligerry Creek.

The site was created as part of a 5 lot Torrens title subdivision and boundary alignment under DA 16-2011-404-1. The DA was approved by the elected Council on 12 November 2013, subject to additional conditions, which required, amongst other things, a restriction to be placed on title to restrict residential development to a single storey.

Since the approval of the 5 lot subdivision, the following development has been approved on those lots:

- 12 Albert Street – Approved single storey dwelling per DA 16-2020-345-1, which has started construction.
- 16 Albert Street – Approved single storey dwelling per DA 16-2020-214-1, which has started construction.
- 18 Albert Street – Approved single storey dwelling per DA 16-2020-479-1, which does not appear to have started construction.
- 20 Albert Street – No approved DAs on the site to date.

#### Key issues

The key issue identified throughout the assessment of the DA relates to a restriction that applies to the site. A detailed assessment of the DA is contained within the Planners Assessment Report (**ATTACHMENT 2**).

Restriction on title

The following Section 88B restriction on title applies to 12, 14, 16, 18 and 20 Albert Street, Taylors Beach:

‘Dwellings are to have a minimum habitable floor level of RL 2.7 AHD and are restricted to 4 bedrooms in size. NB: A study or utility room of a reasonable size that on the floor plan includes a ‘built in robe’ is classified as a bedroom.

Residential development is restricted to single storey. Dual occupancies are prohibited.’

The authority having the right to release, vary or modify this restriction is Port Stephens Council.’

The DA at 14 Albert Street proposes a 2 storey dwelling which is not consistent with the above restriction. A review of the Council records does not reveal a specific reason for the limitation of development to a single storey. In considering whether to vary the restriction applying to the site, the following points are made:

- The DA complies with the minimum habitable floor level of 2.7m AHD, contains only 4 bedrooms and is not a dual occupancy, which is consistent with the restriction.
- The height of the dwelling, while being 2 storey, is approximately the same height as the 2 single storey dwellings to its north and south. The height of the dwelling is lower than the development located directly to the north of the site which has a maximum height of approximately 7m.
- The height of the dwelling does not exceed the 9m height limit applicable to the site as prescribed by LEP 2013.
- The DA will not unreasonably overshadow the adjoining dwellings and is compliant with the solar access controls of the DCP.
- Views from adjoining dwellings and public domain will not be compromised by the 2 storey nature of the dwelling.

Noting the above, a variation to the single storey restriction is appropriate. As Port Stephens Council is the authority having the right to release, vary or modify this restriction, the approval of this DA would allow the variation to the single storey control. There is no need for the restriction to be formally varied and registered with NSW Land Registry Services.

Conclusion

As detailed in this report, the variation to the restriction is considered appropriate and therefore the Council can approve the DA subject to the conditions 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. Provide land use plans, tools and advice that sustainably support the community. Enhance public safety, health and liveability through use of Council's regulatory controls and services.

**FINANCIAL/RESOURCE IMPLICATIONS**

The DA could potentially be 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		The site is not subject to contributions as they were levied as part of the parent subdivision.
External Grants	No		
Other	No		

**LEGAL, POLICY AND RISK IMPLICATIONS**

The DA is consistent with the relevant planning instruments including the Environmental Planning and Assessment Act 1979 (EP&A Act), LEP 2013, DCP 2014 and associated State Environmental Planning Policies. A detailed assessment against these environmental planning instruments is contained within the Planners Assessment Report contained 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, there is a risk the determination of the DA may be challenged by a third party in the Land and Environment Court.	Low-Medium	Accept the recommendations.	Yes
If the DA is refused, there is a risk that the determination of the DA may be challenged by the applicant in the Land and Environment Court.	Medium	Accept the recommendations.	Yes

**SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

The proposed dwelling will provide additional housing in a residential zone. The proposal will have a positive social impact through the increase in housing stock providing an additional family sized home which is characteristic of the locality. The development is considered to have a positive economic impact through the additional jobs generated during construction.

The proposed development will complement the existing and developing streetscape through the addition of a dwelling that includes a modern architectural design. Whilst the restriction limits development to single storey, the dwelling is approximately the same height as the 2 single storey dwellings to its north and south. It is considered that the dwelling is consistent with the desired built form in the locality.

The proposed development is not considered to have an adverse impact on the immediate or surrounding environment. The proposal does not propose any additional clearing and will manage its onsite stormwater and effluent disposal in accordance with Council's requirements.

**CONSULTATION**

Consultation with key stakeholders has been undertaken for the purposes of the assessment of the application, including consultation with the public through the notification process.

**Internal**

Consultation was undertaken with internal officers from Council's Natural Resources Section. The referral comments from these officers were considered as part of the

assessment contained at **(ATTACHMENT 2)** and accordingly the DA is recommended for approval.

#### External

Consultation with external agencies was not required.

#### Public exhibition

The DA was advertised and notified in accordance with the requirements of the Community Participation Plan for a period of 14 days from 11 February 2021 to 25 February 2021.

During that time, 4 public submissions were received objecting to the DA. The key issues raised in these submissions related to the proposed non-compliance with the single storey restriction, solar access and views. The issues identified in the submissions are discussed within the Planners Assessment Report **(ATTACHMENT 2)**.

### **OPTIONS**

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

### **ATTACHMENTS**

- 1) Locality Plan. [↓](#)
- 2) Planners Assessment Report. [↓](#)
- 3) Proposed conditions of consent. [↓](#)
- 4) Call to Council form. [↓](#)

### **COUNCILLORS ROOM**

- 1) Unredacted Submissions.
- 2) Development Plans (provided to Councillors separately due to privacy and copyright legislation).

### **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 REFERENCES

<b>Application Number</b>	16-2021-69-1
<b>Development Description</b>	Two storey dwelling and swimming pool
<b>Applicant</b>	PERCEPTION PLANNING PTY LTD
<b>Land owner</b>	Mr D & Mrs S Reid
<b>Date of Lodgement</b>	04/02/2021
<b>Value of Works</b>	\$700,000.00
<b>Submissions</b>	Four (4)

## PROPERTY DETAILS

<b>Property Address</b>	14 Albert Street TAYLORS BEACH
<b>Lot and DP</b>	LOT: 2 DP: 1256094
<b>88B Restrictions on Title</b>	(1) Restriction on the Use of Land (2) Restriction on the Use of Land (3) Restriction on the Use of Land (5) Right of footway 1.5 wide
<b>Current Use</b>	Vacant residential
<b>Zoning</b>	R2 LOW DENSITY RESIDENTIAL
<b>Site Constraints</b>	Bushfire Prone Land – Vegetation Buffer, Category 2, Acid Sulfate Soils – Class 3 Koala Habitat Planning Map – Clear, Endangered Ecological Communities – Coastal Saltmarsh High Environmental Value Mapping – OEH Coastal Zone Combined Footprint SEPP (Coastal Management) 2018 – Coastal Wetlands – 100m proximity area Combined Corridor Map – Local Link Approved Water Sensitive Urban Design Strategy High Hazard Flood Fringe Area Flood Planning Level

**State Environmental Planning Policies**

State Environmental Planning Policy (Coastal Management) 2018

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

State Environmental Planning Policy No.55 – Remediation of Land

State Environmental Planning Policy (Koala Habitat Protection) 2020

## ITEM 1 - ATTACHMENT 2 PLANNERS ASSESSMENT REPORT.

**PROPOSAL**

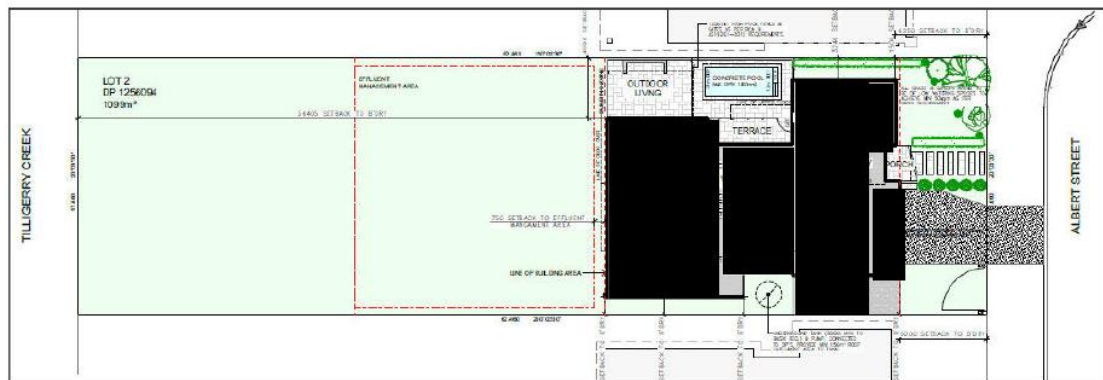
The proposed development is for a two storey dwelling and swimming pool at 14 Albert Street, Taylors Beach.

The ground floor of the proposed dwelling includes a double garage, guest room with ensuite and walk in robe, powder room, laundry, and open plan kitchen, dining, rumpus, and lounge room which has access to the pool area to the north and rear yard to the west.

The first floor contains three bedrooms, one with ensuite and walk in robe, two way bathroom and sitting room with access to a deck to the west.

The outdoor area to the north of the dwelling contains a concrete inground swimming pool and outdoor living area with built in barbeque. To the west of the dwelling is the rear yard which contains the area for onsite effluent disposal and adjoins Tilligerry Creek.

The exterior of the dwelling is a modern design using vertical weathertex cladding, cement rendering, feature stone and a flat parapet roof.



**Figure 1: Proposed site plan**



**Figure 2: Eastern elevation/frontage to Albert Street**

**SITE DESCRIPTION**

The subject site is a vacant parcel of land within the residential area of Taylors Beach. The site is rectangular in shape, measures approximately 1099m<sup>2</sup> in size, and has an east-west axis. The site has previously been cleared and now primarily consists of grassland. Adjoining the site to the north and south are similar sized residential lots that have been developed with single storey dwellings. To the east is Albert Street which is a cul-de-sac and provides access to the site, and to the west is Tilligerry Creek.



**Figure 3:** Aerial view of site (outlined in red)

**SITE HISTORY**

The site was created as part of a five lot Torrens title subdivision and boundary alignment approved under DA 16-2011-404-1. This DA was not supported by Council staff on the grounds of its impacts on wetlands, endangered ecological communities, Tilligerry Creek, flood risk, stormwater and wastewater disposal. Despite this, the DA was approved by the elected Council on 12 November 2013, subject to additional conditions which sought to address the reasons for refusal raised by Council staff. The additional conditions included the following condition, requiring the creation of an 88b restriction:

*'48(f) A restriction is to be placed on Lots 1 to 5, restricting residential development to single storey and prohibiting dual occupancies'.*

Condition 48 (f) is reflected in the current 88B, restriction numbered three in the plan and states:

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*'Dwellings are to have a minimum habitable floor level of RL 2.7 AHD and are restricted to four bedrooms in size. NB: A study or utility room of a reasonable size that on the floor plan includes a 'built in robe' is classified as a bedroom. Residential development is restricted to single storey. Dual occupancies are prohibited.*

*The authority having the right to release vary or modify this restriction is port Stephens Council.'*

The current application requests that Council approve the DA for a two storey dwelling on site.

The DA has had three modifications since then relating to amendments to the drainage plan and building envelopes.

There have been several DAs lodged on other lots within the five (5) lot subdivision, which are summarised below:

- 12 Albert Street – Approved single storey dwelling per DA 16-2020-345-1, which has started construction.
- 16 Albert Street – Approved single storey dwelling per DA 16-2020-214-1, which has started construction.
- 18 Albert Street – Approved single storey dwelling per DA 16-2020-479-1, which does not appear to have started construction.
- 20 Albert Street – No approved DAs on the site to date.

**SITE INSPECTION**

A site inspection was carried out on 17 February 2021. The subject site can be seen in Images 1 to 3 below.



**Image 1:** On site looking west to Tiligerry Creek.



**Image 2:** Looking from west to south-east of site



**Image 3:** Looking from the west to north-east of site

### **PLANNING ASSESSMENT**

The application was assessed by internal specialist staff.

Natural Resources – the Natural resources team supported the application with conditions. They require a geotechnical assessment to be carried out to determine whether the development works will disturb potential acid sulfate soils. This will be conditioned in the consent.

#### **Environmental Planning and Assessment Act 1979**

##### **Section 4.46 - Integrated development**

Section 4.46 EP&A Act provides that development is integrated development if in order to be carried out, the development requires development consent and one or more other approvals. The proposed development is not integrated.

##### **Water Management Act 2000**

The development is adjacent to waterfront land as Tiligerry creek adjoins the site to the west. In accordance with the Water Management (General) Regulation 2018, Schedule 4 Part 2 Item 29 '*Activities with respect to dwellings*', *any activity carried out for the erection of a dwelling house subject to a development consent per the EP&A Act 1979 that is not carried out on the bed or bank of any river, lake or estuary is exempt from requiring a controlled activity permit per Section 91 of the Water Management Act 2000*'. Therefore, a referral to Water NSW is not required.

##### **Rural Fires Services Act 1997**

The development is on land mapped as bushfire prone land. Due to the development not being for a special fire protection purpose or subdivision of land that can be lawfully used for residential

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purposes, a referral from NSW RFS is not required. Assessment of bushfire is provided against Section 4.14 below.

***Section 4.14 – Consultation and development consent (certain bushfire prone land)***

The proposed development is mapped as bushfire prone land, both as vegetation Buffer and Category 2, and as such triggers assessment under the NSW RFS Planning for Bushfire Protection 2019.

A Bushfire Assessment Report (BAR) was provided with the application, prepared by Bushfire Environmental Management Consultancy dated 14 January 2021. The BAR states it was endorsed by a BPAD level 3 certifier BPAD 47789. The BAR assessed that the dwelling is more than 100m from the bushfire threat and outside of the bushfire prone area. Based on the assessment, it was concluded within the report that the building should be classified as BAL LOW and therefore bushfire construction standards for the building are not required. The BAR recommends that a 5,000L water supply be provided to comply with the requirements of PBP 2019. Subject to the recommended conditions, requiring compliance with the recommendations of the bushfire report, the application satisfies the requirements of Section 4.14.

***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 (certificate number 1171939S dated 27 January 2021) 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 residential use of the site 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.

In accordance with clause 8 of this policy, Council must be satisfied prior to granting consent that the land to which the proposed development applies is not potential koala habitat. The site is mapped on Councils koala mapping as 'mainly cleared'. Due to this, and its mapped distance from areas of supplementary and preferred koala habitat, it is considered that the development site is not potential koala habitat.

State Environmental Planning Policy Coastal Management 2018

The subject land is located within the Coastal Use Area, Coastal Environment Area and Coastal Wetlands proximity area and as such the following general matters are required to be considered when determining an application.

As per Clause 11 of the Coastal Management SEPP, development consent must not be granted to development on land identified as 'proximity area for coastal wetlands' unless the consent authority (Council) is satisfied that the proposed development will not significantly impact the biophysical or ecological integrity of the adjacent coastal wetland or the quantity/quality of surface and ground water flows to and from the adjacent wetland.

The proposed development is not considered to impact the biophysical or ecological integrity of the adjacent wetland nor is it considered to impact the quality/quality of the surface and ground water flows to and from said wetlands.

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 Tiligerry Creek to prevent adverse impact on the surrounding environment. The effluent disposal area nominated on site through a positive covenant will be maintained and no development will occur forward of this area near the foreshore.

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 development is an appropriate type and design for the coastal location. The proposed dwelling will not cause overshadowing to the public realm. The design and size of the building is compatible with the natural setting and is compatible with the surrounding development.

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

Therefore, the application generally complies with the aims of the SEPP and the other matters for consideration stipulated under Clause 11, 13, 14, and 15, and can be supported.

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Port Stephens Local Environmental Plan 2013 (LEP)**Clause 1.9A – Suspensions of covenants, agreements and instruments**

Clause 1.9A provides that for the purpose of enabling development on land in any zone to be carried out in accordance with this Plan or with a consent granted under the Act, any agreement, covenant or other similar instrument that restricts the carrying out of that development does not apply to the extent necessary to serve that purpose.

The proposed development is subject to several restrictions on the use of land within the applicable 88B instrument. The applicant proposes to apply for a variation to one of the applicable restrictions. Restriction numbered three in the plan states:

*'Dwellings are to have a minimum habitable floor level of RL 2.7 AHD and are restricted to four bedrooms in size. NB: A study or utility room of a reasonable size that on the floor plan includes a 'built in robe' is classified as a bedroom.*

*Residential development is restricted to single storey. Dual occupancies are prohibited.*

*The authority having the right to release, vary or modify this restriction is Port Stephens Council'.*

The proposal complies with the minimum habitable floor level of 2.7m AHD, contains a maximum four bedrooms, and is not a dual occupancy. The garage is set at RL 2.665 AHD, however, that is not a habitable area and this is considered acceptable. The proposal proposes to construct a two storey dwelling which this restriction prevents.

The applicant provided justification within the Statement of Environmental Effects (SEE) dated 28/01/2021 for why the restriction should be varied including:

- The design takes into consideration the height of the adjoining approved dwellings.
- The height does not exceed the 9m height limit proposed on site.
- Constructing a two storey dwelling does not have adverse impact for overshadowing.
- Views of adjoining dwellings are not compromised and no dwellings can be built to the east of the site that would have views impacted upon.
- The development complies with all other 88B restrictions which apply.

The application is considered consistent with the aims and objectives of the relevant environmental planning instruments applicable to the site. It is considered that the DA has been suitably designed to address the site constraints and that the building height will not cause an adverse impact on the amenity of existing dwellings or to the natural environment.

On this basis, the variation to the restriction is appropriate. **As Council has the power to vary the restriction, no registration to vary the restriction with Land Registry Services is required. The restriction can be varied by the approval of this DA.**

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

The proposed development is defined as a 'Dwelling house', which is permissible with consent in the R2 Low Density Residential zone. The proposed swimming pool is considered ancillary to the dwellings use.

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The development addresses the objectives of the zone as it provides a dwelling designed to provide for the housing needs of a low density residential zone, is well designed to enhance the amenity and character of the area, and is compatible with the flood risk of the area.

**Clause 4.1 – Minimum Subdivision Lot Size**

Clause 4.1 outlines the minimum lot size applicable to the subject sites, as identified on the minimum lot size map, to ensure that lot sizes are able to accommodate development that is suitable for its purpose and consistent with relevant development controls.

The applicable minimum lot size of 500m<sup>2</sup> and the proposed development site is 1099.35m<sup>2</sup>. No subdivision is proposed, and therefore, the proposal is consistent with this clause.

**Clause 4.3 – Height of Buildings**

The proposed development has a maximum height of approximately 7 metres, which is below the maximum permissible building height of 9 metres specified on the Height of Buildings Map. As discussed above against Clause 1.9A, the dwelling is restricted through the 88B instrument of being single storey.

**Clause 5.10 – Heritage conservation**

The site does not contain any heritage items or within a heritage conservation area. The site was not listed in an AHIMS search as containing any Aboriginal items, site or places. Conditions of consent are recommended to be included in the event that Aboriginal objects are uncovered during construction.

Noting this, any potential impact to the heritage significance of the site is considered reasonably avoided and/or mitigated. Subsequently, the development is consistent with the objectives of this clause.

**Clause 7.1 – Acid Sulfate Soils**

The subject land is mapped as containing potential Class 3 Acid Sulfate Soils. The proposed development will include excavation more than 1 metre below ground to construct the swimming pool. A condition has been included requiring a geotechnical assessment of the site be undertaken to determine whether an Acid Sulfate Soil Management Plan is required. The recommendations and/or mitigation measures contained within the ASS Management Plan are to be complied with during works.

**Clause 7.2 – Earthworks**

The application proposes minor earthworks on the site to achieve a level building platform through the use of balanced cut and fill. Earthworks for the dwelling are minor in nature and are not anticipated to result in any negative impacts on the subject or adjoining land, or any public place.

The swimming pool will require cut that is approximately 2 metres deep to provide for a 1.8metre deep pool. Any material exported from the subject site is to be disposed of appropriately. Conditions of consent have been recommended requiring the implementation of sediment and erosion controls and disposal of waste. Subjects to the recommended conditions of consent development accords with the requirements of this clause.

**Clause 7.3 – Flood Planning**

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The proposed development is located on land mapped as being in High Hazard Flood Fringe and Flood Planning Area. The flood planning level relevant to the land is RL 2.7 metres AHD (as imposed via an 88B restriction). The development plans submitted with the proposal show:

- Garage FFL RL 2.655 AHD
- Ground FFL RL 2.750 AHD
- First FFL RL 5.770 AHD

The garage floor is below the habitable floor level, however, as the garage is not a habitable room this is acceptable. The proposal is considered to comply with this clause.

**Clause 7.6 – Essential Services**

The subject site is serviced by electricity. On-site effluent disposal is required and there is a nominated disposal area on site per the 88B. A separate Section 68 application will be required to approve this system. Reticulated water is not available to the site, therefore, water supply will be provided via collection from roof water and stored on site in rain water tanks. The subject land also maintains direct access to Albert Street meeting the requirements of this clause.

**Clause 7.9 – Wetlands**

The proposal is located on land identified as wetland. The application has been assessed by Councils Natural Resources Officer who has determined that the development will not have an adverse impact on the flora and fauna, including either native and migratory species, or the characteristics of the ground or surface water, as the site is highly modified and no longer considered as wetlands.

***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 B1 – Tree Management**

The proposal does not include any tree or significant vegetation removal, therefore, this section is not applicable.

**Chapter B2 – Natural Resources**

The site is located within an LEP mapped wetland, in proximity to endangered ecological communities and on the Koala Habitat Planning Map.

The site is cleared of vegetation and has been listed on councils mapping as Cleared on the Koala Habitat Planning Map. It is considered that the site is not potential koala habitat and will not have an adverse impact on koalas.

The site is mapped on the OEH High Environmental Values Mapping. Considering the site has been cleared and subdivided through a previous DA, these values would have been addressed

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previously. The cleared nature of the site is not expected to contain any current high environmental value.

The site contains an area mapped as Wetland in the PSC LEP 2013. This was assessed in the original subdivision application and there are no wetlands currently present on site. Considering this, the proposal is not expected to have any adverse impact on wetlands.

**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 the clause 7.1 discussion above, the site is mapped as Class 3 and the proposed development could be undertaken, subject to the recommended 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.

**Noise**

The separation distances incorporated into the development will limit any significant impacts on the adjoining development. The impacts of the development during construction could be limited through conditions of consent which limit construction work hours and mitigate noise derived from ventilation and air conditioning systems. Subject to the recommended conditions, the application is satisfactory in regards to noise management.

**Earthworks**

As discussed in clause 7.2 above the proposed development involves minimal earthworks for the dwelling and excavation for the swimming pool. The impacts of the proposed earthworks can be mitigated through the recommended 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 not submitted with the application. The Statement of Environmental Effects outlines that the '*Stormwater will be managed on-site in accordance with Section B4 of the DCP and Council's Standard Drawing S161*'. A condition of consent is recommended to be included requiring a stormwater management plan to Councils standards is provided prior to the release of a Construction Certificate.

**Chapter B5 – Flooding**

The subject land is mapped as being within High Hazard Flood Fringe Area and Flood Planning Area. Following from the discussion against clause 7.3 of the PSLEP above, the proposed development incorporates a habitable floor level above the minimum flood planning level required and is acceptable in this regard.

**Chapter B7 – Heritage**

The site is not situated on land that contains a heritage item or within a heritage conservation area.

**Chapter B8 – Road Network and Parking**

The proposal includes a four bedroom dwelling. In accordance with Figure BU, a dwelling with three or more bedrooms requires two car spaces. The proposal includes a double garage and

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space on the driveway that can accommodate two car spaces and is therefore complaint.

### Chapter C – Development Types

The proposed development is for a dwelling house and thus the provisions of Chapter C4 Dwelling House, Secondary Dwelling, or Dual occupancy are applicable.

### Chapter C4 – Dwelling House, Secondary Dwelling, or Dual occupancy

Reference	Control	Assessment
Objective C4.A Requirement C4.1	<b>Height</b> <ul style="list-style-type: none"> <li>To ensure the height of buildings is appropriate for the context and character of the area</li> <li>To ensure building height reflects the hierarchy of centres and land use structure</li> </ul>	The maximum height limit applicable to the site is 9 metres. The proposed dwelling is approximately 7.12 metres at its highest point.
Objective C4.B Requirement C4.2-C4.11	<b>Setbacks</b> <ul style="list-style-type: none"> <li>To ensure development provides continuity and consistency to the public domain</li> <li>To ensure development contributes to the streetscape and does not detract from the amenity of the area</li> </ul>	<p>The front building line is setback 6 metres. The roof of the front porch is set forward less than 1.5 metres into the front setback.</p> <p>The garage is required to be setback 1 metre from the front building line or setback. The garage is in line with the front building line. Whilst this does not comply with the control, the design of the front façade and articulation used does not result in the garage dominating the streetscape or detracting from the existing amenity.</p> <p>The side setbacks on ground level are 1.5 metres to the north and 1.2 metres to the south. The rear setback is 36.4 metres. The first floor setbacks all exceed the 2 metres minimum required. All side setbacks are compliant with the controls.</p>
Objective C4.C Requirement C4.12-4.18	<b>Streetscape and privacy</b> <ul style="list-style-type: none"> <li>To ensure development activates the streetscape to provide passive surveillance and privacy.</li> </ul>	The dwelling has two bedrooms and a guest room, which face the street providing passive surveillance. There is no deck provided on the frontage which does not comply with control C4.15. It is considered that the development achieves the objectives of this section through the incorporation of multiple windows, which provide overlooking onto the street.

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Objective C4.D  Requirement C4.19-C4.22	<b>Private open space</b> <ul style="list-style-type: none"> <li>To ensure private open space with solar access is provided to allow opportunity for passive and active outdoor recreation</li> </ul>	<p>The dwelling provides compliant open space through the outdoor living area to the north accessed from the lounge area. Due to the orientation, the private open space should receive a minimum 2 hours of sunlight midwinter in the afternoon and the rear yard would receive sunlight all day.</p> <p>Assuming the private open space of the adjoining neighbour to the south is located to the west of the dwelling (rear) they will not be adversely impacted by overshadowing from the proposal.</p>
Objective C4.E  Requirement C4.23-C4.25	<b>Car parking and garages</b> <ul style="list-style-type: none"> <li>To ensure car parking caters for anticipated vehicle movements to and from the development and does not adversely impact on building articulation</li> </ul>	<p>The driveway is no less than 3 metres wide. The garage door is less than 6m wide and less than 50% of the width of the building, compliant with the control.</p>
Objective C4.F  Requirement C4.26-C4.30	<b>Landscaping</b> <ul style="list-style-type: none"> <li>To enhance the appearance and amenity of developments through the retention and/or planting of large and medium sized trees</li> <li>To encourage landscaping between buildings for screening</li> <li>To ensure landscaped areas are consolidated and maintainable spaces that contribute to</li> <li>the open space structure of the area</li> <li>To add value and quality of life for residents and occupants within a development in terms</li> <li>of privacy, outlook, views and recreational opportunities</li> <li>To create and enhance vegetation links between natural areas and reduce weed potential</li> <li>to environmentally sensitive areas</li> <li>To reduce energy consumption through microclimate regulation</li> <li>To reduce air borne pollution by reducing the heat island effect</li> <li>To intercept stormwater to reduce stormwater runoff</li> </ul>	<p>A Landscape Plan was not provided with the application.</p> <p>The Proposed Site Layout provided indicates the rear yard will all be turfed, the outdoor living area to the north will be paved and the front yard will include planting of low watering species to comply with BASIX. Due to the size of the site and the landscaped area comprising approximately 70% of the site, this is considered acceptable.</p> <p>A condition of consent will be included to ensure that the landscape species are selected in accordance with the Councils landscape technical specification.</p>
Objective C4.G	<b>Site facilities and services</b> <ul style="list-style-type: none"> <li>To ensure development provides appropriate facilities and</li> </ul>	<p>An area for waste storage is not included on the plans. It is expected that bins can be stored in the southern setback behind</p>

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Requirement C4.31-C4.32	services in the most appropriate site location	the boat parking to not impact on the visual quality of the street. A clothesline is not shown on plans. It is expected it can be installed along the western façade or within the rear yard.
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**Chapter D Specific Areas**

The site is not located within a Specific Area of the DCP.

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

There are no matters within the regulations that are relevant to the determination of the application.

***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

The proposal will result in a high quality dwelling which will provide additional housing in a residential zone. The proposal will have a positive social impact through the increase in housing stock, providing an additional family sized home which is characteristic of the locality.

The development is considered to have a positive economic impact through the additional jobs generated during construction.

Impacts on the Built Environment

The proposed development will complement the existing and developing streetscape through the proposed modern architectural design. Whilst the 88B restricts the development to single storey, the dwelling is approximately the same height as the two single storey dwellings to its north and south. This is due to the flat roof design.

Impacts on the Natural Environment

The proposed development does not have an adverse impact on the immediate or surrounding environment. The proposal does not propose any additional clearing and will manage its onsite stormwater and effluent disposal in accordance with Councils requirements.

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

The subject site is considered suitable for the proposed development. When considering the development on its merit, a two storey dwelling on this site is considered acceptable.

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

The application was exhibited from 11 February 2021 to 25 February 2021, in accordance with the provisions of the Port Stephens Council Community Participation Plan. Four (4) submissions were

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received during this time. The matters raised during the exhibition period have been detailed in the table below.

No.	Author of submission	Comment	Council response
1	Resident	Development does not comply with single storey requirements in the 88B, privacy and solar access.	The DA has been assessed against the relevant environmental planning instruments and found to be appropriate for the site. Solar access will be achievable into the north-west principal private space of the subject dwelling as well as into the rear outdoor yard.
2	Resident	Development does not comply with single storey requirements in the 88B and impact on views.	The DA has been assessed against the relevant environmental planning instruments and found to be appropriate for the site. The development would not unreasonably obstruct views toward Tilligerry Creek or nearby natural outlooks enjoyed by neighbouring properties. Any impacts to views would be limited those from the side boundaries of neighbouring properties.
3	Resident	Development does not comply with single storey requirements in the 88B	The DA has been assessed to determine that the development is appropriate for the site.
4	Resident	Development does not comply with single storey requirements in the 88B	The DA has been assessed to determine that the development is appropriate for the site.

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

The proposal provides additional accommodation in the locality to service the needs of the community. The proposed variation to the single storey 88B restriction is considered acceptable and will be in the public interest as it provides a quality dwelling which is not considered to have an adverse environmental, social or economic impact.

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

Contributions are not applicable as it is one dwelling proposed on one existing residential lot.

**DETERMINATION**

The application is recommended to be approved by Council, subject to the recommended conditions of consent provided as contained in the notice of determination.



## SCHEDULE 1 – CONDITIONS OF CONSENT

### 1.0 - General Conditions of Consent

The following conditions of consent are general conditions applying to the development.

- (1) **Approved plans and documentation** – Development must be carried out in accordance with the following plans and documentation, and all recommendations made therein, except where amended by the conditions of this development consent:

Plan reference/ drawing No.	Name of plan	Prepared by	Date
2340-DA03 Issue G	Proposed Site Layout	Torren Bell Building Design	27/01/2021
2340-DA04 Issue G	Proposed Lower Floor Layout	Torren Bell Building Design	27/01/2021
2340-DA05 Issue G	Proposed Upper Floor Layout	Torren Bell Building Design	27/01/2021
2340-DA06 Issue G	Elevations	Torren Bell Building Design	27/01/2021
2340-DA07 Issue G	Elevations	Torren Bell Building Design	27/01/2021
2340-DA08 Issue G	Section A-A & Height Limit	Torren Bell Building Design	27/01/2021

Document Title	Prepared by	Date
Bushfire Assessment Report (Version 1)	Bushfire Environmental Management Consultancy	14/01/2021

In the event of any inconsistency between the approved plans and the conditions, the conditions will prevail.

- (2) **BASIX Certificate** – The applicant must undertake the development strictly in accordance with the commitments listed in the BASIX certificate(s) for the development to which this consent applies.
- (3) **Building Code of Australia** – All building work must be carried out in accordance with the BCA. In this clause, a reference to the BCA is a reference to that Code as in force on the date the application for the relevant Construction Certificate is made.
- (4) **Home Building Act** – Pursuant to Section 4.17(11) of the *Environmental Planning & Assessment Act 1979*, residential building work within the meaning of the *Home Building Act 1989* shall not be carried out unless the PCA for the development to which the work relates:

- a) In the case of work for which a principal contractor has been appointed:

PORT STEPHENS COUNCIL

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- i. Has been informed in writing of the name and licence number of the principal contractor; and
    - ii. Where required has provided an insurance certificate with the name of the insurer by which work is insured under Part 6 of that Act.
  - b) In the case of work to be carried out by an owner-builder;
    - i. Has been informed in writing of the name of the owner-builder; and
    - ii. If the owner-builder is required to hold an owner-builder permit under that Act; has provided a copy of the owner-builder permit.
- (5) **Home Building Act – Insurance** – Building work that involves residential building work within the meaning of the *Home Building Act 1989*, must not commence until such time as a contract of insurance is in force in accordance with Part 6 of that Act.
- This clause does not apply:
- a) to the extent to which an exemption is in force under Clause 187 or 188 of the *Environmental Planning & Assessment Regulation 2000 (EP&A Regulation 2000)*, subject to the terms of any condition or requirement referred to in Clause 198(6) or 188(4) of the *EP&A Regulation 2000*; or
  - b) to the erection of a temporary building, other than a temporary structure to which subclause (1A) of Clause 98 of the *EP&A Regulation 2000* applies.
- (6) **Excavation for residential building works** – If the approved development involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the consent must, at the person's own expense:
- a) protect and support the adjoining premises from possible damage from the excavation; and
  - b) where necessary, underpin the adjoining premises to prevent any such damage.
- This condition does not apply if the person having the benefit of the consent owns the adjoining land or the owner of the adjoining land has given consent in writing that condition not applying, and a copy of that written consent is provided to the PCA prior to the excavation commencing.
- (7) **Sign on building** – Except in the case of work only carried out to the interior of a building or Crown building work, a sign must be erected in a prominent position on the site showing the name, address and telephone number of the Principal Certifying Authority for the work, the name of any principal contractor and their after-hours contact number, and must contain a statement that unauthorised entry to the site is prohibited.
- The sign must be maintained while the work is being carried out and is to be removed when the work is completed.

## ITEM 1 - ATTACHMENT 3 PROPOSED CONDITIONS OF CONSENT.



- (8) **Shoring of adjoining buildings** - Where any excavation required for the development extends below the level of the base of a footing of a building, structure or work on adjoining land (including within a road or rail corridor), the person having the benefit of the consent must protect and support that building, structure or work from possible damage from the excavation, and where necessary underpin the building, structure or work to prevent any such damage.
- (9) **Swimming pools and spas** - The swimming pool/spa must comply with:
- the Swimming Pools Act 1992;
  - the Swimming Pools Regulation 2018;
  - AS 1926.1 'Swimming Pool Safety' Part 1: Safety barriers for swimming pools;
  - AS 3500.2 'Plumbing and Drainage' – Sanitary plumbing and drainage';
  - AS1926.3 'Water Recirculation Systems'; and
  - the Building Code of Australia.

## 2.0 – Prior to Issue of a Construction Certificate

The following conditions of consent shall be complied with prior to the issue of a Construction Certificate.

- (1) **Stormwater/drainage plans** – Detailed stormwater drainage plans must be prepared by a qualified Engineer in accordance with the approved plans, Council's Infrastructure Specifications and the current Australian Rainfall and Runoff guidelines using the Hydrologic Soil Mapping data for Port Stephens (available from Council).  
Details demonstrating compliance must be provided to the Certifying Authority.  
**Note.** Under the *Roads Act 1993*, only the Roads Authority can approve commencement of works within an existing road reserve.
- (2) **Roads Act Approval** – For construction/reconstruction of Council infrastructure, including vehicular crossings. Footpath, kerb and gutter, stormwater drainage, an application must be made for a Roadworks Permit under Section 138B of the *Roads Act 1993*.
- (3) **Long service levy** – In accordance with Section 34 of the *Building and Construction Industry Long Service Payments Act 1986*, the applicant must pay a long service levy at the prescribed rate to either the Long Service Payments Corporation or Council for any works that cost \$25,000 or more.
- (4) **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.

## ITEM 1 - ATTACHMENT 3 PROPOSED CONDITIONS OF CONSENT.



- (5) **Driveway gradients and design** - For all driveways that relate to development for the purposes of a dwelling house, the driveway gradient and design must comply with AS 2890.1 'Off street Car Parking' and:

- a) the driveway must be at least 1m from any street tree, stormwater pit or service infrastructure; and
- b) a Works on Public Infrastructure (Driveway) approval must be obtained prior to the commencement of any works.

Details demonstrating compliance must be provided to the Certifying Authority.

- (6) **Potential acid sulfate soils** - A geotechnical assessment of the site is to be undertaken to determine whether the development works will disturb Potential Acid Sulfate Soils (ASS). Should ASS be encountered within the zone of works, an ASS Management Plan is to be prepared by a suitably qualified Geotechnical Engineer and submitted to the Certifying Authority.

The recommendations and/or mitigation measures contained within the ASS Management Plan must be complied with during works.

- (7) **Approval of OSMS under LG Act** - An approval under Section 68 of the Local Government Act 1993 is to be obtained from Council for the installation of an on-site sewage management system (OSMS) prior to the issue of a Construction Certificate.

- (8) **Completion of Roads Act Approval works** - All approved road, footpath and/or drainage works, including vehicle crossings, have been completed in the road reserve in accordance with the Roads Act Approval to the satisfaction of the Council as the Roads Authority.

### 3.0 - Prior to Commencement of Works

The following conditions of consent shall be complied with prior to any works commencing on the development site.

- (1) **Notice of Principal Certifying Authority appointment** – Notice must be given to Council at least two days prior to subdivision and/or building works commencing in accordance with Clause 103 of the *Environmental Planning & Assessment Regulation 2000*. The notice must include:
- a) a description of the work to be carried out;
  - b) the address of the land on which the work is to be carried out;
  - c) the Registered number and date of issue of the relevant development consent;
  - d) the name and address of the Principal Certifying Authority (PCA), and of the person by whom the PCA was appointed;
  - e) if the PCA is an accredited certifier, their accreditation number, and a statement signed by the accredited certifier consenting to being appointed as PCA; and

## ITEM 1 - ATTACHMENT 3 PROPOSED CONDITIONS OF CONSENT.



- f) a telephone number on which the PCA may be contacted for business purposes.
- (2) **Notice commencement of work** – Notice must be given to Council at least two days prior to subdivision and/or building works commencing in accordance with Clause 104 of the *Environmental Planning & Assessment Regulation 2000*. The notice must include:
- a) the name and address of the person by whom the notice is being given;
  - b) a description of the work to be carried out;
  - c) the address of the land on which the work is to be carried out;
  - d) the Registered number and date of issue of the relevant development consent and construction certificate;
  - e) a statement signed by or on behalf of the Principal Certifying Authority to the effect that all conditions of the consent that are required to be satisfied prior to the work commencing have been satisfied; and
  - f) the date on which the work is intended to commence.
- (3) **Sign of PCA and contact details** – A sign must be erected in a prominent position on the site stating the following:
- a) that unauthorised entry to the work site is prohibited;
  - b) the name of the principal contractor (or person in charge of the site) and a telephone number on which that person can be contacted at any time for business purposes and outside working hours;
  - c) the name, address and telephone number of the Principal Certifying Authority.
- The sign must be maintained while the work is being carried out and must be removed upon the completion of works.
- (4) **Construction Certificate Required** – In accordance with the provisions of Section 6.7 of the *Environmental Planning & Assessment Act 1979 (EP&A Act 1979)*, construction or subdivision works approved by this consent must not commence until the following has been satisfied:
- a) a Construction Certificate has been issued by a Consent Authority;
  - b) a Principal Certifying Authority (PCA) has been appointed by the person having benefit of the development consent in accordance with Section 6.5 of the *EP&A Act 1979*; and
  - c) the PCA is notified in writing of the name and contractor licence number of the owner/builder intending to carry out the approved works.
- (5) **Site is to be secured** – The site must be secured and fenced to the satisfaction of the Principal Certifying Authority. All hoarding, fencing or awnings (associated with securing the site during construction) is to be removed upon the completion of works.

## ITEM 1 - ATTACHMENT 3 PROPOSED CONDITIONS OF CONSENT.



- (6) **Soil erosion and sediment control** – Soil erosion and sediment controls must be implemented prior to works commencing on the site in accordance with 'Managing 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).

- (7) **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.

- (8) **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.

- (9) **Damage report – Public Infrastructure** – The applicant is required to notify Council in writing of any existing damage to public infrastructure (including landscaping) within the vicinity of the development, the absence of such notification signifies that no damage exists.

- (10) **Surface water collection from swimming pools and spas** - Swimming pool surrounds and/or paving must be constructed so as to ensure water from the pool overflow or surge does not discharge onto neighboring properties.

Details demonstrating compliance must be provided to the Certifying Authority.

- (11) **Roads Act Approval** – For construction/reconstruction of Council infrastructure, including vehicular crossings, footpath, kerb and gutter, stormwater drainage, an application must be made for a Roads Act Approval Certificate under Section 138B of the *Roads Act 1993*.

#### 4.0 - 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.

## ITEM 1 - ATTACHMENT 3 PROPOSED CONDITIONS OF CONSENT.



- (2) **Toilet facilities** – Temporary toilet(s) must be provided and maintained on site from the time of commencement of building work to completion. The number of toilets provided must be one toilet per 20 persons or part thereof employed on the site at any one time.

The temporary toilet is to be either connected to the sewerage system or an approved septic tank or otherwise may be a chemical toilet supplied by a licensed contractor.

- (3) **Compliance with BCA** – All building work must be carried out in accordance with the requirements of the Building Code of Australia.

- (4) **Swimming pool fence design** – The swimming pool or spa must be fenced so that the pool is effectively isolated from the dwelling and adjoining lands. The swimming pool fence & gate must:

- a) Strictly adhere to the design and location approved with the development consent, and any conditions of the development consent.
- b) Strictly comply with AS1926 'Swimming Pool Safety' – Part 1: Safety barriers for swimming pools.
- c) Have a minimum effective height of 1.2m.
- d) Be self-closing and self-latching. All gates must open outwards from the swimming pool enclosure.
- e) The filtration equipment including any cover, housing or pipe work, must not be located within a distance of 900mm from the outside face of the swimming pool safety fencing enclosure, nor within 300mm from the inside of the swimming pool safety fencing enclosure (where footholds are possible).
- f) Boundary fencing forming part of the swimming pool safety fencing must maintain a minimum effective height of 1.8m and a 0.9m non climbable zone (measured from the top of the inside of the barrier).

The swimming pool safety fencing must be installed prior to the swimming pool being filled with water. The Principal Certifying Authority, or an accredited certifier must inspect the swimming pool safety fencing.

- (5) **Waste water from swimming pools and spas** – All swimming pool waste water must be disposed of as follows:

- a) Where a Hunter Water sewer is available – waste water must be drained or pumped to the sewer.
- b) Where a Hunter Water sewer is not available (such as rural areas) – waste water must be disposed of as follows:

Chlorinated pool waste water:

- i. Discharging to a rubble pit measured 600mm wide x 600mm deep x 3m long, located not less than 3m from any structure or property boundary; or
- ii. Discharging to a tail out drain to disperse the water over a large grassed area or paddock, provided that the land fall does not direct water to

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## ITEM 1 - ATTACHMENT 3 PROPOSED CONDITIONS OF CONSENT.



buildings on the subject or adjoining properties, or create a nuisance to an adjoining property owner.

Saltwater pool waste water:

- iii. Discharging as per point (ii) above.

All pool types:

- iv. Must not be discharged to a septic tank or an on- site sewage management installation or disposal area;
- v. Must not be discharged into a reserve, watercourse, easement or storm water drainage system

- (6) **Finished floor level** - The finished floor level of the ground floor must be a minimum level of Reduced Level 2.75 metres Australian Height Datum in accordance with the approved plans.

A survey report prepared by a Registered Surveyor confirming that the finished floor level complies with the approved plans or floor levels specified by the development consent, must be provided to Principal Certifying Authority prior to the development proceeding beyond floor level stage.

- (7) **Surface water collection from swimming pools and spas** - Swimming pool surrounds and/or paving must be constructed so as to ensure water from the pool overflow or surge does not discharge onto neighbouring properties.

Details demonstrating compliance must be provided to the Certifying Authority.

- (8) **Stormwater disposal** – Following the installation of any roof, collected stormwater runoff from the structure must be:

- a) Diverted through a first flush system before being connected to an existing stormwater easement/system/street.

- (9) **Placement of fill** - Filling must not be placed in such a manner that natural drainage from adjoining land will be obstructed or in such a manner that surface water will be diverted.

Further, any alterations to the natural surface contours must not impede or divert natural surface water runoff so as to cause a nuisance to adjoining property owners.

- (10) **Disposal of stormwater** – Water seeping into any site excavations is not to be pumped into the stormwater system unless it complies with relevant Environmental Protection Agency and Australian and New Zealand Environment and Conservation Council standards for water quality discharge.

- (11) **Bush fire safety – Dwellings** – The site is located within a bushfire prone area and must comply with NSW Rural Fire Service document "Planning for Bushfire Protection 2019. The development must comply with the recommendations of the

## ITEM 1 - ATTACHMENT 3 PROPOSED CONDITIONS OF CONSENT.



Bushfire Assessment Report prepared by Bushfire Environmental Management Consultancy dated 14/01/2021.

- (12) **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.

- (13) **Soil, erosion, sediment and water management** – All requirements of the Erosion and Sediment Control Plan or Soil and Water Management Plan must be maintained at all times during the works and any measures required by the plan must not be removed until the site has been stabilised.

- (14) **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.

### 5.0 - Prior to Issue of an Occupation Certificate

The following conditions of consent shall be complied with prior to the issue of an Occupation Certificate.

- (1) **Occupation Certificate required** - An Occupation Certificate must be obtained prior to any use or occupation of the development.

The Principal Certifying Authority must be satisfied that the development has been constructed in accordance with approved plans, specifications and conditions of this consent.

- (2) **Survey Certificate** – A Registered Surveyor must prepare a Survey Certificate to certify that the location of the building in relation to the allotment boundaries complies with the approved plans or as specified by this consent. The Survey Certificate must be provided to the satisfaction of the Principal Certifying Authority.

- (3) **Footpath crossing construction** – A footpath crossing and driveway must be constructed in accordance with this consent and the approved Construction Certificate prior to use or occupation of the development.

**Note:** A Works on Public Infrastructure (Driveway) approval must be obtained prior to the commencement of such works.

## ITEM 1 - ATTACHMENT 3 PROPOSED CONDITIONS OF CONSENT.



- (4) **Services** – Evidence is to be provided to Council demonstrating that the following reticulated services are available to each lot:

- a) Electricity;
- b) Water;
- c) Sewer; and
- d) Gas (where available).

Should any of the above reticulated services not be available to the development site, a detailed statement is to be provided explaining why connection of the relevant service is not possible or practical.

- (5) **Swimming Pool Register** – In accordance with Part 3A of the *Swimming Pools Act 1992*, all swimming pools (including spas) are required to be Registered on the NSW Swimming Pools Register.

Prior to the issue of any Occupation Certificate, you are required to provide evidence in the form of the Certificate of Registration to the Principal Certifying Authority.

- (6) **Warning notice** – A warning notice complying with the provisions of the *Swimming Pools Regulation 2018*, must be displayed and maintained in a prominent position in the immediate vicinity of the swimming pool, in accordance with Section 17 of the *Swimming Pools Act 1992*.

The Principal Certifying Authority must ensure that this warning notice is provided and displayed prior to the issue of the Occupation Certificate.

Council also recommends that all owners and/or users of swimming pools obtain a copy of the 'Cardiopulmonary Resuscitation Guideline' known as "Guideline 7: Cardiopulmonary Resuscitation" published by the Australian Resuscitation Council.

- (7) **Swimming pool landscaping** - Landscaping of the swimming pool enclosure and surrounds including the provision of outdoor furniture, construction of barbecues and pergolas must not reduce the effectiveness of the swimming pool safety fencing.

All landscaping, furniture, and other similar structures must be located at least 900mm from the outside of the pool safety fencing.

- (8) **Stormwater/drainage works** – All stormwater and drainage works required to be undertaken in accordance with this consent must be completed.

The certification/verification must be provided to the satisfaction of the Principal Certifying Authority.

- (9) **Rectification damage to public infrastructure** – The applicant must rectify any new damage to public infrastructure to the satisfaction of the Council as the Roads Authority.

- (10) **Completion of Roads Act Approval works** - All approved road, footpath and/or drainage works, including vehicle crossings, have been completed in the road

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## ITEM 1 - ATTACHMENT 3 PROPOSED CONDITIONS OF CONSENT.



reserve in accordance with the Roads Act Approval to the satisfaction of the Council as the Roads Authority.

- (11) **On-Site sewerage management inspection** – An onsite sewage management system/waste treatment device is to be installed and obtain approval to operate from Council in accordance with Local Government Act 1993 (Section 68A) prior to the issue of any Occupation Certificate

### 6.0 – Ongoing Use

The following conditions of consent are operational conditions applying to the development.

- (1) **Residential air conditioning units** – The operation of air conditioning units must operate as follows:
- a) be inaudible in a habitable room during the hours of 10pm – 7am on weekdays and 10pm to 8am on weekends and public holidays;
  - b) emit a sound pressure level when measured at the boundary of any neighbouring residential property, at a time other than those specified in (a) above, which exceeds the background (LA90, 15 minutes) by more than 5dB(A). The source noise level must be measured as a LAeq 15 minute; and
  - c) not discharge any condensate or moisture onto the ground surface of the premises or into stormwater drainage system in contravention of the requirements of the *Protection of the Environment Operations Act 1997*.

### 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) **Dividing fences** – The erection of dividing fences under this consent does not affect the provisions of the *Dividing Fences Act 1991*. Under this Act, all relevant parties must be in agreement prior to the erection of any approved dividing fence/s under this consent.
- Council has no regulatory authority in this area and does not adjudicate civil disputes relating to the provision of, or payment for, the erection of dividing fences. If there is a neighbour dispute about the boundary fence and you are seeking mediation, you may contact the Community Justice Centre, or if legal advice or action is required, you may contact the Chamber Magistrate.
- (3) **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.

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## ITEM 1 - ATTACHMENT 3 PROPOSED CONDITIONS OF CONSENT.



- (4) **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.
- (5) **Approved Plans to be on-site** – A copy of the approved and certified plans, specifications and documents incorporating conditions of approval and certification shall be kept on the Site at all times and shall be readily available for perusal by any officer of Council or the Principal Certifying Authority.
- (6) **Council as PCA, PCA sign** – It is the responsibility of the applicant to erect a PCA sign. Where Council is the PCA, the sign is available free of charge, from Council's Administration Building at Raymond Terrace or the Tomaree Library at Salamander Bay. The applicant is to ensure the PCA sign remains in position for the duration of works.
- (7) **Hunter Water Infrastructure - Hunter Water stamped plans– Prior to the commencement of works**, the person having the benefit of this consent shall contact Hunter Water Corporation (HWC) to ensure that the approved works do not impact upon existing or proposed HWC infrastructure. A copy of the information received by HWC shall be provided to Council within 10 days of receipt. Should HWC require modification to the approved development a Section 96 Modification Application and/or modified Construction Certificate Application should be lodged.
- (8) **Building materials not permitted on Council's footpath/road reserve–** No building materials, plant, equipment, refuse or spoil is to be deposited on or be allowed to remain on Council's footpath or outside the boundaries of the development site unless approved by Council in writing. Where building activity cannot avoid occupation of the public road reserve, (such as, for the erection of hoarding, scaffolding, partial closure) separate approval from Council for the use of the road reserve is required.
- (9) **House Number– Prior to the issue of any Occupation Certificate**, a house address number shall be displayed in a prominent area, visible from the adjacent road.
- (10) **Requirements of PCA - Issuing of OC – Prior to the issue of any Occupation Certificate**, the Principal Certifying Authority shall be satisfied that the development has been constructed in accordance with approved plans, specifications and conditions of this consent. No occupational use is permitted until the Principal Certifying Authority issues an Occupation Certificate.

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ITEM 1 - ATTACHMENT 3      PROPOSED CONDITIONS OF CONSENT.



**Note:** The Principal Certifying Authority must submit a copy of the Occupation Certificate to Council, with all associated documentation, within two days of it being issued.

**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, State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004, 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.
- Any submission issues raised have been taken into account in the assessment report and where appropriate conditions of consent have been included in the determination. 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.



### 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.



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: Cr Glen Dunkley

Name: Cr Jaimie Abbott

Name: Cr Sarah Smith

request that DA number: 16-2021-69-1

for DA description: 2 storey dwelling

located at: 14 Albert Street, Taylors Beach

be reported to Council for determination.

### REASON

Public interest

### SIGNATURE OF APPLICANT/S

Signature

Date

16 3 21

Signature

Date

9 3 21

Signature

Date

9 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.

**ITEM NO. 2****FILE NO: 21/111952  
EDRMS NO: 16-2021-220-1****DEVELOPMENT APPLICATION 16-2021-220-1 - 4 AND 4A VARDON ROAD,  
FERN BAY**

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

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Support the Clause 4.6 Variation request to the minimum lot size for the reasons set out within this report.
- 2) Approve Development Application DA No. 16-2021-220-1 for a 2 into 2 lot Torrens title subdivision at 4 and 4A Vardon Road, Fern Bay (Lot 105 DP 614883 and Lot 4 DP 823114) subject to the conditions contained in **(ATTACHMENT 3)**.

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**BACKGROUND**

The purpose of this report is to present a Development Application (DA) 16-2021-220-1 for a 2 into 2 lot Torrens title subdivision to Council for determination.

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

Subject Land:	4 and 4A Vardon Road, Fern Bay (Lot 105 DP 614883 and Lot 4 DP 823114)
Total Area:	77.635ha
Zoning:	RE2 – Private Recreation
Submissions:	Nil
Key issues:	<ul style="list-style-type: none"><li>• Variation to the LEP 2013 minimum lot size for 1 of the proposed lots.</li><li>• The existing undersized lot is not of a size or configuration suitable to accommodate potential land uses permissible in the RE2 zone.</li><li>• The DA will create a suitably sized lot that can be developed appropriately in accordance with the RE2 zone objectives and Clause 4.1(a) of LEP 2013.</li></ul>

The DA seeks to create new lots 40 and 41 and result in the following changes in lot area:

<b>Proposed Lot No.</b>	<b>Existing Lot Area</b>	<b>Proposed Lot Area</b>	<b>LEP Minimum Lot Size</b>
40	76.77ha	71.06ha	20ha
41	0.85ha	6.575ha	20ha

The DA has been reported to Council in accordance with Council's Planning Matters to be Reported to Council Policy as the DA includes a request to vary a development standard by greater than 10%.

The development standard is Clause 4.1 – Minimum Subdivision Lot Size of the LEP 2013 and the extent of the overall variation is 67.1%.

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

#### Proposal

The DA seeks consent for a 2 into 2 lot Torrens title subdivision. The proposal would create new lots 40 and 41 being 71.06ha and 6.575ha respectively.

A right of carriageway is proposed to be created over proposed Lot 40 benefiting proposed Lot 41 to provide access to Vardon Road in the south. The proposal does not seek consent for any physical works.

#### Site Description and History

The site consists of 2 existing lots, known as 4 and 4A Vardon Road, Fern Bay.

The site is currently operated as Newcastle Golf Club. Vegetation corridors exist throughout the site, primarily between fairways.

Access is provided from Vardon Road to the south, with the club house and car parking located within the south western corner.

The site is surrounded by a range of land uses including residential dwellings to the south, a caravan park to the north and manufactured home estate to the west. The land to the east contains bushland.

There are no recent development approvals recorded on the site that are relevant to the current DA.

#### Key Issues

The key issues identified in the DA assessment relates to the proposed lot size of proposed Lot 41 (6.575ha) which is a contravention of the standard under Clause 4.1 minimum subdivision lot size of the LEP 2013. A detailed assessment of the DA is contained within the Planners Assessment Report provided at **(ATTACHMENT 2)**.

### Minimum Lot Size

The DA includes 1 lot which is under the minimum lot size for the site prescribed under Clause 4.1 of the LEP 2013. Lot 41 is proposed to have a lot size of 6.575ha, which represents a 13.425ha departure from the 20ha minimum lot size.

A request to vary the development standard has been submitted by the applicant in accordance with Clause 4.6 of the LEP 2013. From a review of this application, the following is noted:

- The site currently contains 2 lots, with the smaller lot comprising 0.85 hectares. The increased area will result in a better outcome than the existing 95% departure from the minimum lot size.
- The existing undersized lot is not of a size or configuration suitable to accommodate other potential land uses permissible in the RE2 zone. The DA will create a suitably sized lot that can be developed appropriately in accordance with the RE2 zone objectives and Clause 4.1(a) of LEP 2013.
- The proposal will not result in any adverse impact to surrounding development or the locality.
- The zone objectives and objectives of Clause 4.1 are achieved despite the non-compliance.

It is considered that the Clause 4.6 variation request provided by the applicant adequately demonstrates that there are sufficient environmental planning grounds to justify varying the minimum subdivision lot size standard. On this basis, the minimum subdivision lot size variation is supported. A detailed assessment against Clause 4.6 is contained within the Planner Assessment Report (**ATTACHMENT 2**).

### Conclusion

As detailed in the Planners Assessment Report (**ATTACHMENT 2**), the application is considered to be consistent with the aims and objectives of the relevant environmental planning instruments applicable to the DA.

## **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. Provide land use plans, tools and advice that sustainably support the community. Enhance public safety, health and liveability through use of Council's regulatory controls and services.

	Enhance public safety, health and liveability through use of Council's regulatory controls and services.
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**FINANCIAL/RESOURCE IMPLICATIONS**

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

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes		
Reserve Funds	No		
Developer Contributions (\$7.11)	No		Development contributions are not applicable as no additional lots are proposed.
External Grants	No		
Other	No		

**LEGAL, POLICY AND RISK IMPLICATIONS**

The development application is consistent with the relevant planning instruments including the Environmental Planning and Assessment Act 1979 (EP&A Act), Port Stephens Local Environmental Plan 2013 (PS LEP), Port Stephens Development Control Plan 2014 (DCP 2014) and associated State Environmental Planning Policies. A detailed assessment against these environmental planning instruments is contained within the assessment report contained at **(ATTACHMENT 2)**.

Risk	<a href="#">Risk Ranking</a>	Proposed Treatments	Within Existing Resources?
If the DA is approved, there is a risk that the determination of the DA may be challenged by a third party in the Land and Environment Court.	Low	Accept the recommendations.	Yes
If the DA is refused, there is a risk that the determination of the DA may be challenged by the applicant in the Land and Environment Court.	Low	Accept the recommendations.	Yes

## **SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

### Social and Economic Impacts

There are no anticipated adverse social or economic impacts as a result of the proposed development.

### Impacts on the Built Environment

No physical works or changes to the built environment are proposed as part of the application. The proposed development is for subdivision only seeking to establish the site for future development. There are no adverse impacts on the built environment as a result of the proposed development.

### Impacts on the Natural Environment

The proposed development does not provide for any physical works and additionally, no vegetation is proposed to be removed. Therefore, there are no adverse impacts to the natural environment as a result of the proposal.

## **CONSULTATION**

Consultation with key stakeholders was not required, as the DA did not meet the applicable triggers for internal or external referrals. However, consultation was undertaken with the public through the notification process.

### Public Exhibition

The DA was advertised and notified in accordance with the requirements of the Port Stephens Council Community Participation Plan. The application was exhibited for a period of 14 days from 4 May 2021 to 18 May 2021. During that time, no public submissions were received.

## **OPTIONS**

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

## **ATTACHMENTS**

- 1) Locality Plan. [↓](#)
- 2) Planners Assessment Report. [↓](#)
- 3) Recommended Conditions of Consent. [↓](#)

**COUNCILLORS ROOM**

- 1) Development Plans (provided to Councillors separately due to privacy and copyright legislation).

**TABLED DOCUMENTS**

Nil.



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## DEVELOPMENT ASSESSMENT REPORT

### APPLICATION REFERENCES

<b>Application Number</b>	16-2021-220-1
<b>Development Description</b>	Two into two lot Torrens title subdivision
<b>Applicant</b>	INSITE PLANNING SERVICES PTY LTD
<b>Land owner</b>	NEWCASTLE GOLF CLUB LTD
<b>Date of Lodgement</b>	29/03/2021
<b>Value of Works</b>	\$0.00
<b>Submissions</b>	0

### PROPERTY DETAILS

<b>Property Address</b>	4 and 4A Vardon Road FERN BAY
<b>Lot and DP</b>	LOT: 4 DP: 823114 and LOT 105 DP 624883
<b>88B Restrictions on Title</b>	N/A
<b>Current Use</b>	Recreation Facility (outdoor) – golf course
<b>Zoning</b>	RE2 PRIVATE RECREATION
<b>Site Constraints</b>	<p>Bushfire Prone Land – Vegetation Category 1, Vegetation Category 2 and Vegetation Buffer</p> <p>Koala Habitat – preferred, buffer over cleared, link over cleared, mainly cleared</p> <p>Endangered ecological communities – swamp sclerophyll forest</p> <p>Biodiversity Value Mapping</p> <p>Proximity area for coastal wetlands and coastal environment area.</p> <p>Height trigger map</p> <p>Bird Strike Group A</p> <p>Combined corridor map – landscape habitat link, local link and landscape link</p> <p>NSW Wildlife Atlas – Fauna</p> <p>Acid Sulfate Soils – Class 2, 3 and 4.</p>

	LEP Mapped Wetland Flood prone – low hazard fringe area, low hazard flood storage area, high hazard flood storage area, flood prone land (PMF).
<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) 2020

PLANNERS PRE-ASSESSMENT CHECKLIST	
OWNERS CONSENT	YES / N/A
Land owners consent	Yes
If the land owned by a corporation/company, relevant signatures have been provided (sole director, or director/director / director/company secretary).	Yes
For works occurring outside property, neighbouring consent provided.	N/A
For works occurring on common property within Strata, owner's consent from Strata body provided (common seal).	N/A
DA FORM AND AUTHORITY	
Applicant's description of proposal consistent with DA plans.	Yes
DA description correct in Authority (i.e. LEP definition).	Yes
DA lodged over all affected properties and Authority correct.	Yes
Satisfactory cost of works.	Yes
S.4.55 APPLICATION	
Check if S.4.55 to be reported to Council (original DA determined by Council)	N/A
Check whether consent is still valid (check lapse date).	N/A
NOTIFICATION	
Application notified correctly (i.e. check properties notified).	N/A
S.4.55 application only - notify previous objectors.	N/A
REFERRALS	
Check referrals are correct and identify if additional required: i.e. Integrated Development (send within 14 days cl.66(2) EPA Regs 2000	Yes
S.4.55 Application only - Integrated referral bodies notified.	N/A
Call applicant and send email acknowledgement.	Yes

## ITEM 2 - ATTACHMENT 2 PLANNERS ASSESSMENT REPORT.

**PROPOSAL**

The development application seeks consent for a two into two lot Torrens title subdivision. The subject site currently contains two lots, one of which does not meet the minimum lot size. The application proposes to realign the existing boundaries resulting in two lots, one of which will remain less than the minimum lot size. The realignment results in a different lot layout to what currently exists on the site. The proposed subdivision will result in the following allotments:

- Lot 40 – 71.06ha
- Lot 41 – 6.575ha

A right of carriageway is proposed to be created over proposed Lot 40 benefiting Lot 41 providing the lot access to Vardon Road. The proposal does not seek consent for any physical works, only the 'paper' subdivision.

As per the pre-lodgement meeting between Council and the applicant, it is understood that the smaller lot (Lot 41), will be leased to accommodate a seniors housing proposal and will be addressed in a separate application.

In accordance with the Port Stephens Local Environmental Plan (PLSEP) 2013, the minimum lot size for the lots is 20ha. Therefore, proposed Lot 41 is non-compliant with Clause 4.1 of the PLSEP 2013 and proposes a 67.125% variation. Given the application proposes a variation over 10%, the proposal is required to be reported to Council for determination.



**Figure 1. Proposed Subdivision**

**SITE DESCRIPTION**

The subject site consists of two lots, known as 4 and 4A Vardon Road, Fern Bay and are legally described as Lot 105 DP 614883 and Lot 4 DP 823114, respectively.

4 Vardon Road currently has a lot size of 0.85ha and 4a Vardon Road has a lot size of 76.77ha. 4 Vardon Road currently contains ancillary structures to the golf club and provides vehicular access

## ITEM 2 - ATTACHMENT 2 PLANNERS ASSESSMENT REPORT.

to 4A Vardon Road. 4A Vardon Road contains the Newcastle Golf Club, course and associated structures. The site is moderately vegetated, particularly in its eastern portion. The club house and car parking is located within the south western corner of the site. This site has no direct vehicular access to Nelson Bay Road, with access provided from the adjacent lot as noted above. Refer to Figure 2 below.

The site is surrounded by a range of land uses including residential dwellings, a caravan park to the north and manufactured home estate to the west across Nelson Bay Road. Bushland is located directly to the east of the site.



Figure 2. Aerial of the subject site

#### SITE HISTORY

The subject site has a number of applications relating to it, these are summarised in the table below.

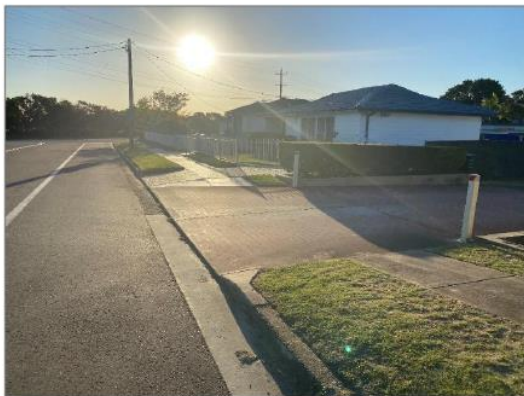
Application Number	Proposal Description	Outcome
DA 16-2011-25-1	Golf Practice Facility	Approved with Conditions
DA 16-2012-42-1	Advertising sign	Approved with Conditions
DA 16-2012-253-1	Proposed subdivision two (2) lots into three (3) lots - TT	Approved with Conditions

It is noted that the subdivision approved under DA 16-2012-253-1 was never formalised.

#### SITE INSPECTION

A site inspection was carried out on 23 April 2021.

The subject site can be seen in figures 1 and 2 below:



**Figure 3.** Existing Vehicular Crossover on Vardon Road



**Figure 4.** Practice facility and ancillary structure at the rear locate on 4 Vardon Road.



**Figure 5.** Existing Golf Club



**Figure 6.** Existing car parking facility



**Figure 7.** Existing access driveway

## **PLANNING ASSESSMENT**

### **REFERRALS**

The proposed development was not required to be referred to internal specialists or external agencies.

### **Environmental Planning and Assessment Act 1979**

#### ***Section 4.46 - Integrated development***

Section 4.46 EP&A Act provides that development is integrated development if in order to be carried out, the development requires development consent and one or more other approvals. The proposed development does not trigger the requirements for integrated development in accordance with Section 4.46 of the EP&A Act.

#### ***Section 4.14 – Consultation and development consent (certain bushfire prone land)***

The subject site is mapped as bushfire prone land, category 1, 2 and buffer and as such triggers assessment under the NSW RFS Planning for Bushfire Protection (PBP) 2019. PBP 2019 specifically addresses residential subdivisions with no other subdivision types addressed. The proposed subdivision is not for residential purposes and therefore no applicable recommendations or measures are noted. In addition, it is also noted that the site is zoned RE2 Private Recreation, this zoning does not permit any type of residential accommodation. Any future development on the site will be assessed against the PBP 2019 as applicable. Should the proposed Lot 41 be developed for seniors living as indicated by the applicant, the proposal will be required to be

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

referred to the NSW RFS as it would be considered a special fire protection purpose under the Rural Fires Act 1997.

***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 (Vegetation in Non-Rural Areas) 2017**

State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 ('Vegetation SEPP'), aims to protect the biodiversity values and preserve the amenity and other vegetation in non-rural areas of the State. The Vegetation SEPP works in conjunction with the Biodiversity Conservation Act 2016 and the Local Land Services Amendment Act 2016 to create a framework for the regulation of clearing of native vegetation in NSW.

Part 3 of the Vegetation SEPP contains provisions similar to those contained in the former (now repealed) clause 5.9 of Port Stephens Local Environmental Plan 2013 and provides that Council's Development Control Plan can make declarations with regards to certain matters. The Vegetation SEPP further provides that Council may issue a permit for tree removal.

The proposal does not seek to remove any vegetation on the site and therefore is consistent with this policy.

**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. 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 contains a mixture of koala habitats being preferred, buffer over cleared, link over cleared, and mainly cleared. The proposed development involves the subdivision of the land with no physical works involved. Therefore, the proposal is consistent with this policy.

**State Environmental Planning Policy Coastal Management 2018**

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

The subject land is located with the Coastal Environment Area, Coastal Use Area and land within proximity to mapped wetlands, as such the following general matters are required to be considered when determining an application.

As per Clause 11 of the Coastal Management SEPP, development consent must not be granted to development on land identified as 'proximity area for coastal wetlands' unless the consent authority (Council) is satisfied that the proposed development will not significantly impact the biophysical or ecological integrity of the adjacent coastal wetland or the quantity/quality of surface and ground water flows to and from the adjacent wetland.

Given the proposal is for subdivision only with no physical works proposed, it is not considered to impact the biophysical or ecological integrity of the adjacent wetland nor is it considered to impact the quantity/quality of the surface and ground water flows to and from said wetlands.

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. No physical works associated with the subdivision are proposed and therefore there will be no adverse impacts to the coastal environment area as a result of the proposal.

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. As noted above, there are no physical works associated with the subdivision are proposed and therefore there will be no adverse impacts to the coastal use area as a result of the proposal.

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

Therefore the application would generally comply with the aims of the SEPP and the other matters for consideration stipulated under Clause 11, 13, 14, and 15, and can therefore be supported.

Port Stephens Local Environmental Plan 2013 (LEP)

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

The site is zoned RE2 Private Recreation. The site was granted development consent (DA 16-2011-25-1) in February 2011 for a 'Golf Practice Facility'. A golf practice facility is considered a 'recreation facility (outdoor)' under the PSLEP which are permissible with consent in the zone.

The proposed subdivision will not impact the approved use nor its compliance with the objectives of the zone in that the site will continue to provide a recreational purpose on suitable land.

**Clause 4.1 – Minimum Subdivision Lot Size**

Clause 4.1 outlines the minimum lot size applicable to the subject sites, as identified on the minimum lot size map, to ensure that lot sizes are able to accommodate development that is suitable for its purpose and consistent with relevant development controls.

The subject site includes a minimum lot size of 20ha and proposes a two into two lot subdivision. The existing lots have lot sizes of:

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

- Existing Lot 4 DP 823114 – 76.77ha
- Existing Lot 106 DP 614883 – 0.85ha

The proposed allotments as a result of the subdivision are as follows:

- Proposed Lot 40 – 71.06ha
- Proposed Lot 41 – 6.575ha

As per the above, proposed lot 40 exceeds the minimum lot size, however, proposed Lot 41 is non-compliant and proposes a 67.125% variation. As such, a Clause 4.6 variation has been prepared for the proposal and is provided at Attachment 1.

**Clause 4.6 – Exceptions to development standards**

As discussed against clause 4.1 above the application includes a proposed variation to the minimum lot size. The development standard is 20ha and the proposed lot size of the development is 6.575ha, representing a 67.125% variation.

A request to vary the building height development standard has been submitted by the applicant in accordance with Clause 4.6 of the PSLEP. That request has been reviewed and the following is noted:

- The site currently contains 2 lots, 1 of which is 76.77 hectares with the other being 0.85 hectares. Therefore, 1 existing lot is currently undersized with a 95% variation to the 20ha minimum.
- The existing undersized lot is not of a size or configuration suitable to accommodate other potential land uses permissible in the RE2 zone. The DA will create a suitably sized lot that can be developed appropriately in accordance with the RE2 zone objectives and Clause 4.1(a).
- The proposal will not result in the fragmentation of rural areas given its location within an urban area.
- The zone objectives and objectives of Clause 4.1 are achieved despite the non-compliance.

It is considered that the applicant's Clause 4.6 variation request adequately demonstrates that there are sufficient environmental planning grounds to justify contravening the minimum lot size standard and compliance with the standard is unnecessary in the circumstances of this application.

On this basis, the minimum lot size variation is supported.

A detailed assessment against clause 4.6 can be found at Attachment 1 of this report.

**Clause 5.10 – Heritage conservation**

The site has not been identified as containing a heritage item nor is it within a heritage conservation area. Notwithstanding, a locally heritage listed item (item no. I34 - Stockton Beach Dune System) is located directly adjacent to the site to the east. However, it is considered that the proposed subdivision will not impact the heritage significance of the listed item.

**Clause 7.1 – Acid Sulfate Soils**

The subject land is mapped as containing potential Class 3 and 4 acid sulfate soils. The proposed development does not involve any earthworks. Therefore, ASS will not be disturbed as a result of the proposal.

**Clause 7.3 – Flood Planning**

The proposed development is located on land mapped as being Flood Planning Area. Given the proposal is for a subdivision only and would not create any additional lots or opportunity for dwellings, the proposal will not increase risk to like or create significant negative impacts on the local flooding characteristics.

**Clause 7.6 – Essential Services**

The subject site is currently serviced by reticulated water, electricity and sewer. The site maintains direct access to Vardon Road via an existing vehicular crossover. This access way will continue to be utilised by both proposed lots with Lot 41 benefiting from a right of carriageway.

**Clause 7.9 – Wetlands**

The proposal is located on land identified as wetland. Given the proposal is for a subdivision only, it is not considered that the proposal will have an impact on the flora and fauna of the wetland, including either native and migratory species, or the characteristics of the ground or surface water.

***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 B1 – Tree Management**

The proposal does not seek to remove or prune any trees to facilitate the subdivision.

**Chapter B2 – Natural Resources**

The site has been identified as containing land of environmental significance as it contains mapped wetlands and koala habitat. The proposal does not seek to undertake any physical works on site and will therefore not impact the existing wetlands nor koala habitat on the land. It is therefore considered that the proposal is compliant with the controls in this Chapter.

**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 site is mapped as containing potential Class 3 and 4 acid sulfate soils. The proposed development does not involve any earthworks. Therefore, ASS will not be disturbed as a

## ITEM 2 - ATTACHMENT 2 PLANNERS ASSESSMENT REPORT.

result of the proposal. In this regard the development is consistent with the objective and requirements of the DCP.

#### Noise

No noise impacts will result from the proposed subdivision.

#### Earthworks

No earthworks are proposed.

### **Chapter B4 – Drainage and Water Quality**

Stormwater management on site will remain unchanged by the proposal. Any future application on site will need to upgrade the stormwater management as required.

### **Chapter B5 – Flooding**

The subject land is mapped as being within the Flood Planning Area. Following from the discussion against clause 7.3 of the PSLEP above, the proposed development is acceptable in this regard. Given the proposal is for a subdivision only, the proposal will not increase risk to life or create significant negative impacts on the local flooding characteristics.

### **Chapter B8 – Heritage**

As detailed within the assessment against Clause 5.10 of the PSLEP, the site has not been identified as containing a heritage item nor is it within a heritage conservation area. Notwithstanding, a locally heritage listed item (item no. 134) is located directly adjacent to the site to the east. However, it is considered that the proposed subdivision will not impact the heritage significance of the listed item.

### **Chapter B9 – Road Network and Parking**

The proposed subdivision does not require additional car parking spaces to be provided on site nor is it expected to increase traffic. The existing car parking will remain unchanged by the proposal as well the current access arrangements. However, proposed Lot 41 will benefit from a right of carriage way from Vardon Street. The proposed subdivision is considered to be compliant with the objectives and requirements of this Chapter.

### **Chapter C – Development Types**

Given the proposed development is for subdivision, Chapter C1 of the DCP applies.

#### **Chapter C1 – Subdivision**

Reference	Control	Assessment
Objective C1.A  Requirement C1.1–C1.4	<b>Lot Size and Dimensions</b> <ul style="list-style-type: none"> <li>To ensure all new lots have a size and shape appropriate to their proposed use, and to allow for the provisions of necessary services and other requirements</li> </ul>	<p>The proposal will result in one compliant lot and one non-compliant lot. However, the subject site will continue to be utilised as an outdoor recreation facility. Any change of use will be required to be considered in a future application noting that the purpose of this subdivision is to facilitate future development of a seniors housing proposal.</p> <p>The lot sizes and shape are considered</p>

## ITEM 2 - ATTACHMENT 2 PLANNERS ASSESSMENT REPORT.

		<p>appropriate for the continued use of the site. Lot 40 will contain the golf club, associated car parking and much of the golf course where as proposed Lot 41 will contain a portion of the golf course. This subdivision will not impact the current operations of the golf course.</p> <p>The proposed subdivision will not impact the street frontage with access continuing to be provided from Vardon Road.</p>
Objective C1.B Requirement C1.5–C1.6	<b>Street Trees</b> <ul style="list-style-type: none"> <li>To ensure street tree planting is of an appropriate species and undertaken in accordance with Council's guidelines.</li> </ul>	Street trees are not proposed nor considered appropriate for the proposed subdivision.
Objective C1.C Requirement C1.7	<b>Solar Access</b> <ul style="list-style-type: none"> <li>To maximise solar access for residential dwellings</li> </ul>	There are no residential dwellings on the site, however those nearby will not be impacted by the proposed subdivision.
Objective C1.D Requirement C1.8-C1.10	<b>Public scale drainage</b> <ul style="list-style-type: none"> <li>To ensure further guidance is provided for subdivision that is consistent with B4 Drainage and Water Quality and the infrastructure specification – design11 (where relevant)</li> </ul>	Stormwater management on site will remain unchanged by the proposal. Any future application on the site will be required to upgrade the stormwater management as required.
Objective C1.E Requirement C1.11- C1.14	<b>Block and street layout</b> <ul style="list-style-type: none"> <li>To ensure local streets are well-connected to the street network with obvious pedestrian and cycle links to higher order streets</li> <li>To ensure priority is provided to residents' needs when designing local streets to encourage usability</li> <li>To ensure pathways follow desire lines</li> </ul>	The proposed block layout is considered appropriate. Existing streets and pedestrian links will remain unchanged by the proposed subdivision.
Objectives C1.F Requirement C1.15-C1.19	<b>Public Open Space</b> <ul style="list-style-type: none"> <li>To provide a hierarchy of public open space in accordance with public open space hierarchy</li> <li>To provide parks that are multi-functional</li> <li>To ensure parks achieve centrality by being located near transport nodes, public buildings, waterfronts, libraries or places of public worship</li> <li>To ensure public open space meets the demands of the local community to encourage usability and critical mass</li> </ul>	The proposal is not for a large scale residential subdivision and therefore these controls are not considered to be applicable.
Objectives C1.G Requirement C1.20-C1.22	<b>Infrastructure</b> <ul style="list-style-type: none"> <li>To ensure detailed consideration is provided to the provision of integrated and quality public infrastructure</li> </ul>	<p>Essential services are currently available to the site as a result of golf course development.</p> <p>The site maintains direct access to Vardon</p>

## ITEM 2 - ATTACHMENT 2 PLANNERS ASSESSMENT REPORT.

		Road via an existing vehicular. This access way will continue to be utilised by both proposed lots with Lot 41 benefiting from a right of carriageway.
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***Section 4.15(1)(a)(iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph)***

There are no clauses of the regulations that require consideration for the proposed development.

***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

The proposed subdivision would render the site suitable for future development. There are no anticipated adverse social or economic impacts as a result of the proposed development.

Impacts on the Built Environment

No physical works or changes to the built environment are proposed as part of the application. The proposed development is a paper subdivision seeking to establish the site for future development. There are no adverse impacts on the built environment as a result of the proposed development.

Impacts on the Natural Environment

The proposed development does not provide for any physical works and additionally, no vegetation is proposed to be removed. Therefore, there are no adverse impacts to the natural environment as a result of the proposal.

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

The site is considered suitable for the proposed development as it will facilitate future development on proposed Lot 41 whilst maintaining the use of Lot 40 as an outdoor recreational facility. There are no anticipated negative impacts on the locality as a result of the development.

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

The application was exhibited from 4 May 2021 – 18 May 2021 in accordance with the provisions of the Port Stephens Council Community Participation Plan. No submissions were received during this time.

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

The proposed development seeks to subdivide the existing lot to facilitate future development of the site. The site currently contains an outdoor recreation facility over 2 lots, and therefore the proposal will not result in any additional lots. However, the current configuration does not accommodate other potential land uses that are appropriate and permissible in the zone. The

proposal is not anticipated to have any adverse impacts on surrounding properties or the amenity of the locality. The proposed development is therefore in the public interest.

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

Development contributions are not applicable as no additional lots are proposed.

**DETERMINATION**

The application is recommended to be approved by Council, subject to the recommended conditions as contained in the notice of determination.

COURTNEY SARGENT

Development Planner

PORT STEPHENS  
COUNCILATTACHMENT 1 – CLAUSE  
4.6 ASSESSMENT REPORT**Clause 4.6 – Exceptions to Development Standards****CLAUSE OBJECTIVES AND EXCLUSIONS****Clause 4.6(1) – Clause Objectives**

Clause 4.6 provides a mechanism to vary the development standards, such as minimum lot size, prescribed within PSLEP2013. The objectives of the clause are to provide an appropriate degree of flexibility in applying certain development standards to particular development, and to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

**Clause 4.6(2) – Exclusions to the operation of clause 4.6**

The development standard(s) is not excluded from the operation of clause 4.6 (Refer clauses 4.6(2); 4.6(6); and 4.6(8) of PSLEP).

**PROPOSED REQUEST****Clause 4.6(3) – Request to vary development standards**

The development application includes a written request to vary development standard(s) in the *Port Stephens Local Environmental Plan 2013* (PSLEP).

The relevant development standard(s) and the extent of the proposed variation(s) is:

Development Standard	Proposed Variation	Extent of Variation (%)
Clause 4.1(3) of the PSLEP	13.425ha	67.1%

As the proposed variation is greater than 10%, the development application will be determined by the elected Council.

**Clause 4.6(3)(a) – Compliance is unreasonable or unnecessary**

Clause 4.6(3)(a) requires the application to justify the contravention of the development standard(s) by demonstrating that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

The Clause 4.6 request makes reference to *Wehbe v Pittwater Council* (2007) LEC 827 (*Wehbe*), to which Chief Justice Preston noted that the starting point with any request for a variation is to demonstrate that compliance with the development standard is unreasonable or unnecessary which should generally be started by showing the proposal can meet the objectives of the development standard. The Clause 4.6 request notes that the objectives of the standard are achieved notwithstanding non-compliance with the standard in that:

PORT STEPHENS  
COUNCILATTACHMENT 1 – CLAUSE  
4.6 ASSESSMENT REPORT

- The site currently contains an outdoor recreation facility over 2 lots, however, the current configuration does not accommodate other potential land uses that are appropriate and permissible in the zone as per 4.1(a).
- The proposal will create an opportunity for the existing owner to consider other forms of development on its land consistent with objective 4.1(a) of the development standard.
- The proposal would not result in the fragmentation of rural areas given it is located within an urban area.

*Clause 4.6(3)(b) – Sufficient environmental planning grounds*

Clause 4.6(3)(b) requires an application to justify the contravention of the development standard(s) by demonstrating that there are sufficient environmental planning grounds to justify contravening the development standard.

The applicant notes that sufficient planning grounds are met in that the proposal would be consistent with the objectives Clause 4.1 as well as the objectives of the RE2 zone in that the proposed subdivision will not result in any environmental impacts, create unreasonable demand on services or conflict with any natural hazards. The applicant also notes that the subdivision would enable the owner of the land to explore development options that are consistent with the zoning of the land. The lot configuration proposed creates opportunities for additional development that will assist in ensuring the sustainability of the existing outdoor recreation facility. The applicant submits that the potential environmental planning benefits justify the contravention of the development standard.

**ASSESSMENT****Clause 4.6(4) – Assessment of request to vary development standards***Clause 4.6(4)(a)(i) - Adequacy of the applicant's request*

Clause 4.6(4)(a)(i) requires the consent authority to be satisfied the Clause 4.6 Application has adequately addressed the matters set out in clause 4.6(3) of the PSLEP listed above.

As stated in the preceding section, in *Wehbe* the Land and Environment Court identified five ways in which a request to vary a development standard may be determined to be well founded. These reasons include:

1. The objectives of the development standard are achieved notwithstanding non-compliance with the standard,
2. The underlying objective or purpose of the development standard is not relevant to the development,

PORT STEPHENS  
COUNCILATTACHMENT 1 – CLAUSE  
4.6 ASSESSMENT REPORT

3. The objective or purpose of the development standard would be defeated or thwarted if compliance was required,
4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard, and
5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable or unnecessary as applied to the land.

The applicant's Clause 4.6 Variation request asserts that compliance with Clause 4.1 (minimum lot size) is unreasonable or unnecessary having regard to the first test set down in *Wehbe*, being that the objectives of the standard are achieved notwithstanding non-compliance with the standard.

Having regard to the first test set down in *Wehbe* it is noted that the objectives of clause 4.1 is to ensure lot sizes are able to accommodate development that is suitable for its purpose and to prevent the fragmentation of rural areas.

The subject site currently has 2 lots, one of which is 76.8 hectares with the other being 0.85 hectares. Therefore, one existing lot is currently undersized with a 95% variation to the 20ha minimum. The proposal seeks to reconfigure the existing lot layout, to create a lot that can be developed appropriately in accordance with the RE2 zoning objectives. The applicant has advised Council previously through a pre-lodgement meeting that proposed Lot 41 is to be leased to accommodate a seniors housing proposal which is to be considered under a separate application and would be required to be consistent with the RE2 zoning objectives. Taking into consideration the size and shape of the existing undersized lot, it is considered that it could not currently be suitably developed to support a proposal of this nature.

In addition, the site is not located within a rural zone nor will it result in the fragmentation of rural area.

On this basis, the objectives of Clause 4.1 are achieved, notwithstanding the non-compliance and therefore compliance with the standard is unnecessary in this instance.

The second, third, fourth and fifth tests set down in *Wehbe* are not considered relevant to the current application, for the reasons set out below:

- The underlying purpose and objective of the minimum lot size standard are still relevant to the development,
- The objective or purpose of the development standard would not be defeated or thwarted if compliance was required,
- The development standard has not been abandoned or destroyed as the objectives of the standard are achieved notwithstanding non-compliance with the numerical standard.



PORT STEPHENS  
COUNCIL

## ATTACHMENT 1 – CLAUSE 4.6 ASSESSMENT REPORT

- The zoning of the subject site is suitable.

*Clause 4.6(4)(a)(ii) - Public interest – consistency with objectives of the standard and objectives of the zone*

Clause 4.6(4)(a)(ii) requires the consent authority to be satisfied the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

As outlined above, notwithstanding the non-compliance with the standard, the objectives of clause 4.1 are achieved noting that the proposed subdivision would facilitate future development on the site suitable to the zone whilst not resulting in the fragmentation of rural areas. Furthermore, the proposal is consistent with the zoning objectives in that the proposed subdivision will not result in any environmental impacts, create unreasonable demand on services or conflict with any natural hazards. Rather, the subdivision will facilitate additional development on the site which will contribute to providing compatible land uses in a recreational setting.

*Clause 4.6(4)(b) - Concurrence of the Secretary*

In accordance with the assumed concurrence, notified in [Planning Circular PS 08-003](#), the concurrence of the Secretary has been obtained (Clause 4.6(4)(b) of PSLEP).

### CONCLUSION

The proposed development is considered to be consistent with the objectives of clause 4.6 given it will achieve better outcomes for and from the development in these particular circumstances because the objectives of the development standard are achieved notwithstanding non-compliance and the proposal is considered to be appropriate in the context of the site.



## DRAFT CONDITIONS OF CONSENT – DA 16-2021-220-1

**1.0 - General Conditions of Consent**

The following conditions of consent are general conditions applying to the development.

- (1) **Approved plans and documentation** – Development must be carried out in accordance with the following plans and documentation, and all recommendations made therein, except where amended by the conditions of this development consent:

Plan reference/ drawing No.	Name of plan	Prepared by	Date
239548-DP-001-C	Plan of Subdivision of Lot 4 DP 823114 and Lot 105 DP 614883	Mathew David London	29/03/2021
239548-DP-001-C	Plan of Subdivision of Lot 4 DP 823114 and Lot 105 DP 614883	Mathew David London	29/03/2021

In the event of any inconsistency between the approved plans and the conditions, the conditions will prevail.

**2.0 - Prior to Issue of a Subdivision Certificate**

The following conditions of consent shall be complied with prior to the issue of a Subdivision Certificate.

- (1) **Requirement for a Subdivision Certificate** - The application for Subdivision Certificate(s) must be made in accordance with the requirements of Clause 157 of the *Environmental Planning & Assessment Regulations 2000*.

The applicant will be required to submit documentary evidence that the property has been developed in accordance with the plans approved by this development consent [DA 16-2021-220-1], and of compliance with the relevant conditions of consent, prior to the issuing of a Torrens Plan of Subdivision.

In addition, one signed original copy of the original plans and/or documents, and final plan of survey/title, must be submitted to Council. A USB containing an electronic copy of all relevant documents must also be provided.

- (2) **Show easements / restrictions on the Plan of Subdivision** - The developer must acknowledge all existing easements and/or restrictions on the use of the land on the final plan of subdivision.
- (3) **Burdened lots to be identified** - Any lots subsequently identified during construction of the subdivision as requiring restrictions must also be suitably burdened.

**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 2 - ATTACHMENT 3 RECOMMENDED CONDITIONS OF CONSENT.



- (4) **Subdivision Certificate** – The issue of a Subdivision Certificate is not to occur until all conditions of this development consent have been satisfactorily addressed.
- (5) **Section 88B Instrument** – The applicant must prepare a Section 88B Instrument which incorporates the following easements, positive covenants and restrictions to user where necessary:
  - a) reciprocal right of carriageway (the owners of the subject properties burdened by the right of carriageway must be responsible for ongoing maintenance and the Public Liability of the right of carriageway);

**Advice Note(s):**

- (1) **Dividing fences** – The erection of dividing fences under this consent does not affect the provisions of the *Dividing Fences Act 1991*. Under this Act, all relevant parties must be in agreement prior to the erection of any approved dividing fence/s under this consent.  
  
Council has no regulatory authority in this area and does not adjudicate civil disputes relating to the provision of, or payment for, the erection of dividing fences. If there is a neighbour dispute about the boundary fence and you are seeking mediation, you may contact the Community Justice Centre, or if legal advice or action is required, you may contact the Chamber Magistrate.
- (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.
- (3) **Council must be nominated as PCA for subdivision works** – Under Section 6.5 of the *Environmental Planning & Assessment Act 1979*, Council shall be nominated as the Principal Certifying Authority for subdivision work and has the option of undertaking inspection of physical construction works.
- (4) **Component certificates (where Council is PCA)** – Where Council is appointed as the Principal Certifying Authority for the development, the following component certificates, as relevant to the development, shall be provided prior to the issued of a final Occupation Certificate:
  - a) Insulation installation certificates.
  - b) Termite management system installation certificates.
  - c) Smoke alarm installation certificate from installing licensed electrician.
  - d) Survey certificate(s), prepared by a registered land surveyor, certifying that the building has been correctly and wholly located upon the subject allotment.
  - e) Certification attesting that retaining walls have been constructed in accordance with Engineers details or manufacturers specifications as applicable.

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## ITEM 2 - ATTACHMENT 3 RECOMMENDED CONDITIONS OF CONSENT.



- f) All certificates or information relating to BASIX compliance for the development.
- g) An 'Approval to Operate a Sewage Management System' issued by Council (for areas that are not serviced by a Sydney Water sewer).
- h) A certificate certifying that the wet areas have been waterproofed in accordance with the requirements of the Building Code of Australia.
- i) All certificates relating to salinity, as required by conditions of the Development Consent.
- j) Any other certificates relating to the development (for example, engineering certification for foundations, piers, reinforcing steel or hydraulic certification for all stormwater drainage works).

Where the appointed PCA is not Council, the matters listed in this condition should be regarded as advisory only.

**Note:** The above certification does not override any requirements of the *Environmental Planning & Assessment Act 1979* with respect to any required critical stage inspections.

- (5) **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.
- (6) **Addressing** – Prior to occupying the development or release of subdivision certificate (whichever occurs first) Council's Spatial Services Team should be contacted via email at: [addressing@portstephens.nsw.gov.au](mailto:addressing@portstephens.nsw.gov.au) to obtain correct property addressing details. Please state your Development Approval number and property address in order to obtain the correct house numbering.

**Note:** Any referencing on Development Application plans to house or lot numbering operates to provide identification for assessment purposes only.

**ITEM NO. 3**

**FILE NO: 21/62356  
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 Ward funds to the following:-
  - a. Central Ward funds – Cr Sarah Smith – Rapid Response – \$500 donation to Anna Bay Tavern Fishing Club towards an insurance premium/Crown Land licence fee to access a boat launching area.

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**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.

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**

Anna Bay Tavern Fishing Club	The Anna Bay Tavern Fishing Club aims to develop community spirit by getting out and enjoying the local area. Members are encouraged to compete in competitions and to fish socially.	\$500	Donation towards an insurance premium/Crown Land licence fee to access a boat launching area at Shelly Beach.
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**COMMUNITY STRATEGIC PLAN**

<b>Strategic Direction</b>	<b>Delivery Program 2018-2021</b>
Community Partnerships	Support financially creative and active communities.

**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 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.

<b>Risk</b>	<b><u>Risk Ranking</u></b>	<b>Proposed Treatments</b>	<b>Within Existing Resources?</b>
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	Accept the recommendation.	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. 4**

**FILE NO: 21/138026**  
**EDRMS NO: PSC2017-0015**

**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 8 June 2021.

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<b>No:</b>	<b>Report Title</b>	<b>Page:</b>
1	Annual Designated Persons, Pecuniary Interest Returns for 2021 to 2022	90
2	Designated Persons' Return	93
3	Council Resolutions	94

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# INFORMATION PAPERS

**ITEM NO. 1**

**FILE NO: 21/122249  
EDRMS NO: PSC2021-01880**

**ANNUAL DISCLOSURE OF INTEREST RETURNS FOR 2021 TO 2022**

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

**BACKGROUND**

The purpose of this report is to advise Council of the Mayor, Councillors and persons designated for the submission of pecuniary interest returns for the period 1 July 2021 to 30 June 2022.

Elected Members\*

Mayor Ryan Palmer  
Cr Jaimie Abbott  
Cr Giacomo Arnott  
Cr Christopher Doohan  
Cr Glen Dunkley  
Cr Kenneth Jordan  
Cr Paul Le Mottee  
Cr John Nell  
Cr Sarah Smith  
Cr Steve Tucker

\*The period covering the Mayor and Councillors will be subject to the outcome of the 2021 local government election. Those elected at the election will be required to submit a disclosure of interest return for the remainder of the period.

General Manager's Office

General Manager  
Governance Section Manager  
Legal Services Manager  
Lawyer

Corporate Services Group

Group Manager Corporate Services  
Organisation Support Section Manager  
Financial Services Section Manager  
Holiday Parks Section Manager  
Marketing and Promotions Manager  
Strategic Property Coordinator  
Corporate Analyst

Development Services Group

Building and Developer Relations Coordinator  
Communication Section Manager  
Development Assessment and Compliance Section Manager  
Development Compliance Officer  
Development Planner (3)  
Economic Development and Tourism Coordinator  
Environmental Health and Compliance Coordinator  
Environmental Health Officer (2)  
Environmental Health Team Leader  
Environmental Planner  
Group Manager Development Services  
Health and Building Surveyor (4)  
Natural Resources Coordinator  
Planning and Developer Relations Coordinator  
Principal Building Surveyor  
Principal Planner  
Principal Strategic Planner  
Ranger (3)  
Ranger Team Leader and Compliance  
Senior Building Surveyor (3)  
Senior Development Planner (2)  
Senior Environmental Health Officer  
Senior Environmental Planner (2)  
Senior Ranger  
Senior Strategic Planner (2)  
Senior Strategic Planner – Growth and Infrastructure  
Strategic Planner (4)  
Strategic Planning Coordinator  
Strategy and Environment Section Manager  
Vegetation Manager Officer  
Waste Compliance and Strategy Coordinator

Facilities & Services Group

Assets Section Manager  
Capital Works Section Manager  
Community Services Section Manager  
Group Manager Facilities & Services  
Public Domain and Services Section Manager

**ATTACHMENTS**

Nil.

**COUNCILLORS ROOM**

Nil.

**TABLED DOCUMENTS**

Nil.

**ITEM NO. 2**

**FILE NO: 21/126084  
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:

- Environmental Health Officer (PSC462).

**ATTACHMENTS**

Nil.

**COUNCILLORS ROOM**

Nil.

**TABLED DOCUMENTS**

- 1) Designated Persons' Return.

**ITEM NO. 3**

**FILE NO: 21/62305  
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.

The General Manager's Office has no outstanding resolutions.

**ATTACHMENTS**

- 1) Corporate Services Group report. [↓](#)
- 2) Development Services Group report. [↓](#)
- 3) Facilities & Services Group report. [↓](#)

**COUNCILLORS ROOM**

Nil.

**TABLED DOCUMENTS**

Nil.

## ITEM 3 - 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> 25/05/2021
	<b>Officer:</b>	
<b>Action Sheets Report</b>	<b>Printed: Monday, 31 May 2021</b>	

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	
13 066		Crosdale, Timothy				18/66656
28 May 2021 Awaiting Minister's approval to proceed with the compulsory acquisition.						

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	
6 110		Crosdale, Timothy				19/148388
28 May 2021 Waiting on Aboriginal Land Claim determination by Crown Lands.						

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	30/12/2021		
7 169		Crosdale, Timothy				19/200498
28 May 2021 Still in negotiations between AGL and LGL.						

## ITEM 3 - 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> 25/05/2021
	<b>Officer:</b>	
<b>Action Sheets Report</b>	<b>Printed: Monday, 31 May 2021</b>	

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		Crosdale, Timothy				20/39141
028						
28 May 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	28/02/2022		
2		Crosdale, Timothy				20/288489
199						
28 May 2021						
Approved. Contracts prepared. Finalising survey levels in contract.						

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						
28 May 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	31/12/2021	14/04/2021	
1		Crosdale, Timothy				21/96728
089						
28 May 2021						
Documentation being prepared by legal representatives.						

**ITEM 3 - 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> 25/05/2021
	<b>Officer:</b>	
<b>Action Sheets Report</b>	<b>Printed: Monday, 31 May 2021</b>	

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	30/04/2022	14/04/2021	
2		Crosdale, Timothy				21/96728
090						
28 May 2021						
Endorsed. Staff progressing the matter.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 11/05/2021	Crosdale, Timothy	Car parking in Shoal Bay	30/12/2021	12/05/2021	
1		Crosdale, Timothy				21/123694
28 May 2021						
Consultation continues with Crown Lands to enable this proposed use.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 25/05/2021	Crosdale, Timothy	PROPOSED SALE OF LAND - MEDOWIE	30/07/2021	26/05/2021	
1		Crosdale, Timothy				21/138820
130						
28 May 2021						
Contracts exchanged on 27 May 2021. Settlement to take place in July 2021.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 25/05/2021	Crosdale, Timothy	PROPOSED SALE OF LAND - WILLIAMTOWN	30/08/2021	26/05/2021	
2		Crosdale, Timothy				21/138820
133						
28 May 2021						
Documentation being prepared by legal representatives.						

## ITEM 3 - ATTACHMENT 2 DEVELOPMENT SERVICES GROUP REPORT.



Outstanding	Division: Development Services	Date From: 26/09/2017
	Committee:	Date To: 25/05/2021
	Officer:	
Action Sheets Report		Printed: Monday, 31 May 2021

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						
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 25/05/2021	Drinan, Kate	DEVELOPMENT APPLICATION 16-2020-445-1 FOR A SINGLE STOREY DWELLING, SHED AND EARTHWORKS ON AN APPROVED FLOOD MOUND AT 232 SEAHAM ROAD, NELSONS PLAINS	8/06/2021	26/05/2021	
1		Peart, Steven				21/138820
31 May 2021						
Rescission motion has been lodged and will be considered at Council meeting of 8 June 2021.						

## ITEM 3 - ATTACHMENT 3 FACILITIES &amp; 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> 25/05/2021
	<b>Officer:</b>	
<b>Action Sheets Report</b>	<b>Printed: Monday, 31 May 2021</b>	

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report 6 264	Ordinary Council 10/12/2019	Maretich, John Kable, Gregory	Solar Infrastructure	31/08/2021	11/12/2019	19/388450
27 May 2021 Once the Capital Works Plan is adopted by Council, funds will be allocated to this project which will then commence.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report 7 265	Ordinary Council 10/12/2019	Gutsche, Tammy Kable, Gregory	GREEN WASTE DROP OFF - SALAMANDER BAY	31/07/2021	11/12/2019	19/388450
26 May 2021 Will be considered as part of the Waste Management Strategy.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report 4 042	Ordinary Council 25/02/2020	Lamont, Brock Kable, Gregory	Indoor Sports Facility	1/12/2021	26/02/2020	20/50488
28 May 2021 Indoor Sports Facility has been included within Development Contributions Plan. Feasibility of project has been commenced however resources are being prioritised to scoping and delivery of Capital works Program. Recruiting in Community and Recreation Assets to achieve full complement and report will be finalised by December 2021.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report 1 101	Ordinary Council 9/06/2020	Stewart, Adam Kable, Gregory	Naming of Pathway, Gan Gan Road, Anna Bay	30/06/2021	10/06/2020	20/164033
27 May 2021 Councillors have agreed to the design and locations of the three plaques. Plaques have been ordered ready for the opening ceremony. Date yet to be determined.						

**ITEM 3 - 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> 25/05/2021
	<b>Officer:</b>	
<b>Action Sheets Report</b>	<b>Printed: Monday, 31 May 2021</b>	

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						
28 May 2021 The findings of the investigation will be presented to Council in June 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						
27 May 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.	1/12/2021		
11		Kable, Gregory				20/358525
261						
28 May 2021 Development modification required and legal contracts to be drawn up.						

**ITEM 3 - 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> 25/05/2021
	<b>Officer:</b>	
<b>Action Sheets Report</b>		<b>Printed:</b> Monday, 31 May 2021

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	31/12/2021		
3		Kable, Gregory				20/391301
27 May 2021 Awaiting completion of the associated Place Plans. Report to prepared and reported back to Council by the end of 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		
3006		Kable, Gregory				21/33235
27 May 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	1/12/2021		
2012		Kable, Gregory				21/33235
28 May 2021 Report due diligence being undertaken. Resources are being prioritised to scoping and delivery of Capital Works Program. Recruiting in Community and Recreation Assets to achieve full complement and report will be finalised by December 2021.						

**ITEM 3 - 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> 25/05/2021
	<b>Officer:</b>	
<b>Action Sheets Report</b>		<b>Printed: Monday, 31 May 2021</b>

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 9/02/2021	Stewart, Adam	ROAD RESEALS ACROSS PORT STEPHENS	31/07/2021		
4		Kable, Gregory				21/33235
014						
20 May 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	31/01/2022		
7		Kable, Gregory				21/33235
017						
27 May 2021 Currently Capital Works have Stage 1 of the Fern Bay path scheduled for a July construction commencement. Stage 2 will proceed following the completion of the detailed design.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 13/04/2021	Lamont, Brock	Drainage at Vi Barnett Field in Raymond Terrace	1/07/2021		
12		Kable, Gregory				21/96728
083						
28 May 2021 Staff have been working with Athletics Club to establish most appropriate window to undertake works. As carnivals are still planned for late July/early August, the sewer upgrade works have been delayed. The planned works will trench through the running surface requiring closure of the entire facility for a period of time.						

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		Kable, Gregory				21/96728
088						
27 May 2021 Drainage investigation and property evaluation has commenced. Discussion with property owners in on going. Any future actions will be determined by Council.						

**ITEM 3 - 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> 25/05/2021
	<b>Officer:</b>	
<b>Action Sheets Report</b>	<b>Printed: Monday, 31 May 2021</b>	

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report 1 125	Ordinary Council 25/05/2021	Maretich, John Kable, Gregory	Nelson Bay Road Upgrade	15/06/2021	26/05/2021	21/138820
27 May 2021 Letter to be sent mid-June.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report 2 126	Ordinary Council 25/05/2021	Maretich, John Kable, Gregory	Anna Bay Drainage Union	1/12/2021	26/05/2021	21/138820
27 May 2021 The State Government agency responsible for Anna Bay Drainage Union shall be consulted with.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report 4 127	Ordinary Council 25/05/2021	Maretich, John Kable, Gregory	Intersection at Vardon Road, Fern Bay	15/06/2021	26/05/2021	21/138820
27 May 2021 Letter to be sent mid-June.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report 5 128	Ordinary Council 25/05/2021	Maretich, John Kable, Gregory	Bus Stop in Seaside Estate, Fern Bay	31/12/2021	26/05/2021	21/138820
27 May 2021 This review shall be undertaken through Local Traffic Committee and consultation with members of the Seaside Community Association						

## ITEM 3 - ATTACHMENT 3 FACILITIES &amp; SERVICES GROUP REPORT.



Outstanding	Division: Facilities & Services	Date From: 26/09/2017
	Committee:	Date To: 25/05/2021
	Officer:	
Action Sheets Report		Printed: Monday, 31 May 2021

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 25/05/2021	Gutsche, Tammy	Lease Renewal - 2B Ridgeway Avenue, Soldiers Point	8/06/2021	26/05/2021	
3		Kable, Gregory				21/138820
132						
28 May 2021						
Endorsed. Documentation being prepared.						

# NOTICES OF MOTION

**NOTICE OF MOTION**

**ITEM NO. 1**

**FILE NO: 21/141580**

**EDRMS NO: PSC2017-00019**

**SHOAL BAY PARKLETS**

**COUNCILLOR: GIACOMO ARNOTT**

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**THAT COUNCIL:**

- 1) Notes the significant community opposition to the parklets at Shoal Bay.
  - 2) Acknowledges that community opposition is based on amenity, safety and business patronage concerns.
  - 3) Affirms its support for the Shoal Bay community, including business people.
  - 4) Agrees to remove the parklets at 9am on 9 June 2021.
- 

**BACKGROUND REPORT OF: GREG KABLE – GROUP MANAGER FACILITIES AND SERVICES**

**BACKGROUND**

The Shoal Bay parklets were installed as part of the NSW Government's Streets as Shared Spaces initiative, where grant funding was made available to pilot projects that improve or activate streets.

The trial was designed to test and experiment with streetscape changes in a low cost and temporary way. As part of the trial, an evaluation program has been designed to gather feedback and guide future decision making for streetscape changes.

Parklets are a place making initiative used globally to temporarily convert car parking spaces into new community spaces. They encourage people to slow down and spend more money with local businesses. They create more space for business activity and create a more inviting public space to sit and relax.

The evaluation and community engagement process with the Shoal Bay community has included:

- Face to face local business conversations
- Regular engagement with Business Port Stephens
- Community drop-in sessions
- Community newsletters
- Direct email and telephone communication

- Surveys, and
- Signage.

Throughout implementation of the trial and the community engagement process, some members of the community and local businesses have provided feedback regarding aspects of the trial. In accordance with the trial evaluation process, the feedback has led to Council replacing lost car parking spaces and increasing pedestrian safety.

Council proposes to continue to evaluate the trial in regular consultation with the Shoal Bay community.

Should this Notice of Motion be supported, staff would require more time to be allowed to plan and organise for the parklets to be removed. The date specified in the Notice of Motion is unrealistic and unachievable.

More specifically, there are also likely financial implications associated with the grant funding body that must be resolved prior to the early termination of the trial.

#### **FINANCIAL/RESOURCE IMPLICATIONS**

<b>Source of Funds</b>	<b>Yes/No</b>	<b>Funding (\$)</b>	<b>Comment</b>
Existing budget	Yes		
Reserve Funds	No		
Developer Contributions (S7.11)	No		
External Grants	No		
Other	No		

#### **ATTACHMENTS**

Nil.

**NOTICE OF MOTION**

**ITEM NO. 2**

**FILE NO: 21/141553**

**EDRMS NO: PSC2017-00019**

**SAND MOVEMENT FROM SHOAL BAY TO FLY POINT**

**COUNCILLOR: JOHN NELL**

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**THAT COUNCIL:**

- 1) Apply for a grant to undertake a desktop study review of sand movement from Shoal Bay to Fly Point, including an underwater survey to assess the risk of the popular Fly Point Marine Sanctuary Zone being affected by sand and, if so, make recommendations to avoid this occurring.
- 

**BACKGROUND REPORT OF: GREG KABLE – GROUP MANAGER FACILITIES AND SERVICES**

**BACKGROUND**

Council commissioned a Coastal Process Study for Little Beach in 2017, prepared by Royal HaskoningDHV. The study makes reference to the sand transport process in the Little Beach area and the risks associated with inundation of the sanctuary zone.

To manage these risks, the report recommends routine sand back passing along Shoal Bay Beach to limit the accumulation of the sand lobe at the western end. Left unchecked, this lobe forms an episodic sand slug which moves westward around Nelson Head and into the deep channel as a result of port currents and wave action.

In response to this, Council undertook a mass sand back passing exercise in October 2019 and again in June 2020. Each occurrence relocated 3000m<sup>3</sup> of sand back to the eastern areas of Shoal Bay beach. Staff have been monitoring the movement of this sand along the beach and, also, the residual sand lobe movement to the west.

These works are known to reduce sand inundation of the sanctuary areas. The upcoming works to replace and upgrade the Little Beach Boat Ramp will also improve sand movement in the area due to the elevated design, preventing sand accumulation and smothering.

Council is investigating funding opportunities to continue to carry out sand back passing works on Shoal Bay beach in future years. At present, the works completed in 2019 and 2020 have provided sufficient reduction in accumulated levels, however, this does not provide a long term solution. Routine sand management and monitoring

is required. These works will form part of the comprehensive Coastal Management Program for Port Stephens, which is currently being developed in partnership with the State Government.

Should this Notice of Motion be supported, staff will seek to identify suitable grant schemes that would allow for full or supplementary budget to undertake sand survey, management and monitoring works in the Little Beach area.

**FINANCIAL/RESOURCE 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		

**ATTACHMENTS**

Nil.

# RESCISSION MOTION

**NOTICE OF RESCISSION**

**ITEM NO. 1**

**FILE NO: 21/141660**

**EDRMS NO: PSC2021-01913**

**DEVELOPMENT APPLICATION 16-2020-445-1 FOR A SINGLE STOREY DWELLING, SHED AND EARTHWORKS ON AN APPROVED FLOOD MOUND AT 232 SEAHAM ROAD, NELSONS PLAINS**

**COUNCILLOR:** GIACOMO ARNOTT  
KEN JORDAN  
JOHN NELL

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**THAT COUNCIL:**

- 1) Rescind its decision of 25 May 2021 (Minute No. 121) on Item No. 1 Development Application 16-2020-445-1 for a Single Storey Dwelling, Shed and Earthworks on an Approved Flood Mound at 232 Seaham Road, Nelsons Plains.

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**ATTACHMENTS**

- 1) Development Application 16-2020-445-1 - 232 Seaham Road, Nelsons Plains - Minute No. 121. [↓](#)

**ITEM 1 - ATTACHMENT 1 DEVELOPMENT APPLICATION 16-2020-445-1 - 232 SEAHAM ROAD, NELSONS PLAINS - MINUTE NO. 121.**

**MINUTES ORDINARY COUNCIL - 25 MAY 2021**

**ITEM NO. 1**

**FILE NO: 21/121926  
EDRMS NO: 16-2020-445-1**

**DEVELOPMENT APPLICATION 16-2020-445-1 FOR A SINGLE STOREY DWELLING, SHED AND EARTHWORKS ON AN APPROVED FLOOD MOUND AT 232 SEAHAM ROAD, NELSONS PLAINS**

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

**RECOMMENDATION IS THAT COUNCIL:**

- 1) Refuse development application 16-2020-445-1 for a dwelling, shed and earthworks on an existing flood mound at 232 Seaham Road, Nelsons Plains (Lot 1 DP 707147) for the reasons contained in **(ATTACHMENT 3)**.

**ORDINARY COUNCIL MEETING - 25 MAY 2021  
MOTION**

	<p><b>Councillor John Nell</b> <b>Councillor Giacomo Arnott</b></p> <p>That Council refuse development application 16-2020-445-1 for a dwelling, shed and earthworks on an existing flood mound at 232 Seaham Road, Nelsons Plains (Lot 1 DP 707147) for the reasons 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: Crs Giacomo Arnott and John Nell.

Those against the Motion: Mayor Ryan Palmer, Crs Chris Doohan, Glen Dunkley, Paul Le Mottee, Sarah Smith and Steve Tucker.

The motion was lost.

**ITEM 1 - ATTACHMENT 1 DEVELOPMENT APPLICATION 16-2020-445-1 - 232 SEAHAM ROAD, NELSONS PLAINS - MINUTE NO. 121.**

**MINUTES ORDINARY COUNCIL - 25 MAY 2021**

**ORDINARY COUNCIL MEETING - 25 MAY 2021**

**MOTION**

121

**Mayor Ryan Palmer**  
**Councillor Chris Doohan**

It was resolved that Council approve development application 16-2020-445-1 for a dwelling, shed and earthworks on an existing flood mound at 232 Seaham Road, Nelsons Plains (Lot 1 DP 707147) for the following reasons:

**1.0 - General Conditions of Consent**

The following conditions of consent are general conditions applying to the development.

(1) **Approved plans and documentation** – Development must be carried out in accordance with the following plans and documentation, and all recommendations made therein, except where amended by the conditions of this development consent:

Plan reference/ drawing No.	Name of plan	Prepared by	Date
HTP-201801 02	Site Plan	Hoover Group	11.06.2020
HTP-201801 03	Perspective Views	Hoover Group	16.12.2019
HTP-201801 04	Floor Plan of Dwelling	Hoover Group	16.12.2019
HTP-201801 06	Floor Plan of Shed	Hoover Group	16.12.2019
HTP-201801 07	Elevations of Dwelling	Hoover Group	16.12.2019
HTP-201801 08	Elevations of Dwelling	Hoover Group	16.12.2019
HTP-201801 09	Elevations of Shed	Hoover Group	16.12.2019
HTP-201801 10	Sections	Hoover Group	16.12.2019

ITEM 1 - ATTACHMENT 1 DEVELOPMENT APPLICATION 16-2020-445-1 - 232  
SEAHAM ROAD, NELSONS PLAINS - MINUTE NO. 121.

MINUTES ORDINARY COUNCIL - 25 MAY 2021

	<p>In the event of any inconsistency between the approved plans and the conditions, the conditions will prevail.</p> <p>(2) <b>BASIX Certificate</b> – The applicant must undertake the development strictly in accordance with the commitments listed in the BASIX certificate(s) for the development to which this consent applies.</p> <p>(3) <b>Building Code of Australia</b> – All building work must be carried out in accordance with the BCA. In this clause, a reference to the BCA is a reference to that Code as in force on the date the application for the relevant Construction Certificate is made.</p> <p>(4) <b>Home Building Act</b> – Pursuant to Section 4.17(11) of the Environmental Planning &amp; Assessment Act 1979, residential building work within the meaning of the Home Building Act 1989 shall not be carried out unless the PCA for the development to which the work relates:</p> <p>a) In the case of work for which a principal contractor has been appointed:</p> <ol style="list-style-type: none"> <li>Has been informed in writing of the name and licence number of the principal contractor; and</li> <li>Where required has provided an insurance certificate with the name of the insurer by which work is insured under Part 6 of that Act.</li> </ol> <p>b) In the case of work to be carried out by an owner-builder;</p> <ol style="list-style-type: none"> <li>Has been informed in writing of the name of the owner-builder; and</li> <li>If the owner-builder is required to hold an owner-builder permit under that Act; has provided a copy of the owner-builder permit.</li> </ol> <p>(5) <b>Home Building Act – Insurance</b> – Building work that involves residential building work within the meaning of the Home Building Act 1989, must not commence until such time as a contract of insurance is in force in accordance with Part 6 of that Act.</p> <p>This clause does not apply:</p> <p>a) to the extent to which an exemption is in force under Clause 187 or 188 of the Environmental Planning &amp; Assessment Regulation 2000 (EP&amp;A Regulation 2000), subject to the terms of any condition or requirement referred to in Clause 198(6) or 188(4) of the EP&amp;A Regulation 2000; or</p>
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**ITEM 1 - ATTACHMENT 1 DEVELOPMENT APPLICATION 16-2020-445-1 - 232  
SEAHAM ROAD, NELSONS PLAINS - MINUTE NO. 121.**

**MINUTES ORDINARY COUNCIL - 25 MAY 2021**

	<p>b) to the erection of a temporary building, other than a temporary structure to which subclause (1A) of Clause 98 of the EP&amp;A Regulation 2000 applies.</p> <p>(6) <b>Approval of OSMS under LG Act</b> - An approval under Section 68 of the Local Government Act 1993 is to be obtained from Council for the installation of an on-site sewage management system (OSMS) prior to the issue of a Construction Certificate.</p> <p><b>NOTE:</b> This consent has not addressed any additional fill for the purpose of providing adequate disposal field or infrastructure location for any wastewater treatment system. Any additional fill required for the provision of any wastewater treatment system is subject to separate approval.</p> <p><b>2.0 – Prior to Issue of a Construction Certificate</b></p> <p>The following conditions of consent shall be complied with prior to the issue of a Construction Certificate.</p> <p>(1) <b>Construction Certificate</b> - The following information must be provided to the Certifying Authority with the Construction Certificate application prepared and certified by a Chartered Professional Structural Engineer:</p> <p>a) Amended plans demonstrating flood free access by upgrading the existing driveway access to an elevation at, or above, the 1% AEP event (5.5m AHD). Plans and design certification are to be prepared to demonstrate the upgrade works of the driveway leading from the dwelling to Hinton Road.</p> <p>(2) <b>Structural engineer's certificate</b> – A certificate must be prepared by a qualified Structural Engineer certifying that the building design is capable of withstanding the effects of flood waters, including immersion, structural stability, buoyancy, impact and loading from debris up to and including the future 1% Annual Exceedance Probability (AEP) event.</p> <p>Details demonstrating compliance must be provided to the Certifying Authority.</p> <p>(3) <b>Soil, erosion, sediment and water management</b> – 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.</p> <p>(4) <b>Long service levy</b> – In accordance with Section 34 of the Building and Construction Industry Long Service Payments Act 1986, the</p>
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**ITEM 1 - ATTACHMENT 1 DEVELOPMENT APPLICATION 16-2020-445-1 - 232  
SEAHAM ROAD, NELSONS PLAINS - MINUTE NO. 121.**

**MINUTES ORDINARY COUNCIL - 25 MAY 2021**

	<p>applicant must pay a long service levy at the prescribed rate to either the Long Service Payments Corporation or Council for any works that cost \$25,000 or more.</p> <p>(5) <b>Free flow of water</b> - The location and design of the proposed doors must allow free access and escape of floodwaters without causing damage to the building. Details demonstrating compliance must be provided to the Certifying Authority.</p> <p>(6) <b>Flood Risk Management Plan</b> – A Flood Risk Management Plan prepared by a suitably qualified Engineer must be provided to the Certifying Authority demonstrating compliance with the following:</p> <ol style="list-style-type: none"> <li>The design must show that the proposed development is capable of withstanding the effects of flood waters, including immersion, structural stability, buoyancy and impact and loading from debris up to and including the 1% Annual Exceedance Probability (AEP) event.</li> <li>Certification that the proposed development/ building flood refuge is capable of withstanding the force of any flood waters experienced up to the Probable Maximum Flood Event (PMF).</li> <li>Certification demonstrating that any damage to the proposed development sustained in a flood will not generate debris capable of causing damage to downstream buildings or property</li> <li>Certification demonstrating that the rainwater tank, finishes, plant fittings and equipment and any other buoyant fixtures will be of materials and functional capacity to withstand the forces of floodwater in events up to and including the 1% AEP event including hydrostatic pressure, hydrodynamic pressure and buoyancy forces.</li> </ol> <p><b>3.0 - Prior to Commencement of Works</b></p> <p>The following conditions of consent shall be complied with prior to any works commencing on the development site.</p> <p>(1) <b>Notice of Principal Certifying Authority appointment</b> – Notice must be given to Council at least two days prior to subdivision and/or building works commencing in accordance with Clause 103 of the Environmental Planning &amp; Assessment Regulation 2000. The notice must include:</p> <ol style="list-style-type: none"> <li>a description of the work to be carried out;</li> <li>the address of the land on which the work is to be carried out;</li> </ol>
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ITEM 1 - ATTACHMENT 1 DEVELOPMENT APPLICATION 16-2020-445-1 - 232  
SEAHAM ROAD, NELSONS PLAINS - MINUTE NO. 121.

MINUTES ORDINARY COUNCIL - 25 MAY 2021

	<ul style="list-style-type: none"> <li>c) the Registered number and date of issue of the relevant development consent;</li> <li>d) the name and address of the Principal Certifying Authority (PCA), and of the person by whom the PCA was appointed;</li> <li>e) if the PCA is an accredited certifier, their accreditation number, and a statement signed by the accredited certifier consenting to being appointed as PCA; and</li> <li>f) a telephone number on which the PCA may be contacted for business purposes.</li> </ul> <p>(2) <b>Notice commencement of work</b> – Notice must be given to Council at least two days prior to subdivision and/or building works commencing in accordance with Clause 104 of the Environmental Planning &amp; Assessment Regulation 2000. The notice must include:</p> <ul style="list-style-type: none"> <li>a) the name and address of the person by whom the notice is being given;</li> <li>b) a description of the work to be carried out;</li> <li>c) the address of the land on which the work is to be carried out;</li> <li>d) the Registered number and date of issue of the relevant development consent and construction certificate;</li> <li>e) a statement signed by or on behalf of the Principal Certifying Authority to the effect that all conditions of the consent that are required to be satisfied prior to the work commencing have been satisfied; and</li> <li>f) the date on which the work is intended to commence.</li> </ul> <p>(3) <b>Sign of PCA and contact details</b> – A sign must be erected in a prominent position on the site stating the following:</p> <ul style="list-style-type: none"> <li>a) that unauthorised entry to the work site is prohibited;</li> <li>b) the name of the principal contractor (or person in charge of the site) and a telephone number on which that person can be contacted at any time for business purposes and outside working hours;</li> <li>c) the name, address and telephone number of the Principal Certifying Authority.</li> </ul> <p>The sign must be maintained while the work is being carried out and must be removed upon the completion of works.</p> <p>(4) <b>Construction Certificate Required</b> – In accordance with the provisions of Section 6.7 of the Environmental Planning &amp; Assessment Act 1979 (EP&amp;A Act 1979), construction or subdivision</p>
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**ITEM 1 - ATTACHMENT 1 DEVELOPMENT APPLICATION 16-2020-445-1 - 232  
SEAHAM ROAD, NELSONS PLAINS - MINUTE NO. 121.**

**MINUTES ORDINARY COUNCIL - 25 MAY 2021**

	<p>works approved by this consent must not commence until the following has been satisfied:</p> <ul style="list-style-type: none"> <li>a) a Construction Certificate has been issued by a Consent Authority;</li> <li>b) a Principal Certifying Authority (PCA) has been appointed by the person having benefit of the development consent in accordance with Section 6.5 of the EP&amp;A Act 1979; and</li> <li>c) the PCA is notified in writing of the name and contractor licence number of the owner/builder intending to carry out the approved works.</li> </ul> <p>(5) <b>Soil erosion and sediment control</b> – Soil erosion and sediment controls must be implemented prior to works commencing on the site in accordance with 'Managing Urban Stormwater – Soils and Construction ('the blue book') and any Sediment and Erosion plans approved with this Development Consent.</p> <p>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).</p> <p>(6) <b>Rubbish generated from the development</b> – 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.</p> <p>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.</p> <p>(7) <b>Flood design measures</b> – Evidence of certification demonstrating that the following flood related design precautions have been adhered to in the design must be submitted to the Principal Certifying Authority:</p> <ul style="list-style-type: none"> <li>a) In sewered areas some plumbing fixtures may be located below the Flood Planning Level (FPL). Where this occurs sanitary drainage is to be fitted with a reflux valve to protect against internal sewage surcharge;</li> <li>b) All materials stored at the site and capable of causing harm to the environment must be stored at a level not less than the FPL or suitable bunding must be placed around such materials to a minimum of the FPL;</li> </ul>
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- c) All building materials, equipment, ducting, etc., below the FPL must be flood compatible and ducting must be provided with openings for drainage and cleaning;
- d) All main power supply, heating and air conditioning service installations, including meters must be located above the FPL. All electrical equipment installed below the FPL must be capable of disconnection by a single plug from the power supply;
- e) All electrical wiring below the FPL must be suitable for continuous submergence in water. All conduits below the FPL must be self-draining. Earth core leakage systems or safety switches are to be installed;
- f) Wherever possible, the premises must be designed to ensure that plant, equipment, storage tanks or other fixtures or fittings liable to damage by floods are located above the FPL or be moveable to levels above the FPL. Should this not have the ability to occur, they shall be suitable for submergence in water and securely anchored to overcome buoyancy and movement. All storage tanks must be vented to an elevation above the FPL.

#### **4.0 - 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) **Toilet facilities** – Temporary toilet(s) must be provided and maintained on site from the time of commencement of building work to completion. The number of toilets provided must be one toilet per 20 persons or part thereof employed on the site at any one time.  
  
The temporary toilet is to be either connected to the sewerage system or an approved septic tank or otherwise may be a chemical toilet supplied by a licensed contractor.
- (3) **Compliance with BCA** – All building work must be carried out in accordance with the requirements of the Building Code of Australia.
- (4) **Finished floor level** - The finished floor level of the dwelling must be a minimum level of Reduced Level 7.4metres Australian Height Datum in accordance with the approved plans.

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	<p>A survey report prepared by a Registered Surveyor confirming that the finished floor level complies with the approved plans or floor levels specified by the development consent, must be provided to Principal Certifying Authority prior to the development proceeding beyond floor level stage.</p>
(5)	<p><b>Stormwater disposal</b> – Following the installation of any roof, collected stormwater runoff from the structure must be:</p> <p>a) Dispersed at ground level, so as not to be concentrated or create nuisance flows onto any buildings, or neighbouring properties. The discharge location must be at least 3m down slope of the building and 6m minimum clearance from receiving down slope property boundaries.</p>
(6)	<p><b>Placement of fill</b> - Filling must not be placed in such a manner that natural drainage from adjoining land will be obstructed or in such a manner that surface water will be diverted.</p> <p>Further, any alterations to the natural surface contours must not impede or divert natural surface water runoff so as to cause a nuisance to adjoining property owners.</p>
(7)	<p><b>Offensive noise, dust, odour and vibration</b> – 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.</p>
(8)	<p><b>Completion of flood mound</b> – Following completion of the earthwork:</p> <p>a) The final pad shape, levels and location will be confirmed by the submission of a detailed survey plan prepared by a Registered Surveyor. The detailed works as executed survey plan must be provided in accordance with Council's Infrastructure Specification to Council within 14 days of completion.</p> <p>b) The mound is to be top dressed and seeded with fast growing grasses.</p>
(9)	<p><b>Bush Fire Safety - Dwellings</b> - The site is located within a bushfire prone area and must comply with NSW Rural Fire Service document "Planning for Bushfire Protection 2019 and AS 3959 2018.'Construction of Buildings in Bushfire Prone Areas' construction and the entire property must be managed as an 'Inner Protection Area' as outlined within Appendix 4 of Planning for Bushfire Protection 2019.</p>

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Details demonstrating compliance must be provided to the Certifying Authority.

**5.0 - Prior to Issue of an Occupation Certificate**

The following conditions of consent shall be complied with prior to the issue of an Occupation Certificate.

- (1) **Occupation Certificate required** - An Occupation Certificate must be obtained prior to any use or occupation of the development.  
  
The Principal Certifying Authority must be satisfied that the development has been constructed in accordance with approved plans, specifications and conditions of this consent.
- (2) **Survey Certificate** – A Registered Surveyor must prepare a Survey Certificate to certify that the location of the building in relation to the allotment boundaries complies with the approved plans or as specified by this consent. The Survey Certificate must be provided to the satisfaction of the Principal Certifying Authority.
- (3) **Services** – Evidence is to be provided to Council demonstrating that the following reticulated services are available to each lot:
  - a) Electricity;
  - b) Water;
  - c) Sewer; and
  - d) Gas (where available).  
Should any of the above reticulated services not be available to the development site, a detailed statement is to be provided explaining why connection of the relevant service is not possible or practical.
- (4) **Flood Risk Management Plan** – A Certificate of Compliance prepared by a suitably qualified Flood engineer must be provided to the Principal Certifying Authority stating that all aspects of the Flood Risk Management Plan have been completed and/or implemented in accordance with the approved Plan.
- (5) **On-Site sewerage management inspection** – An onsite sewage management system/waste treatment device is to be installed and obtain approval to operate from Council in accordance with Local Government Act 1993 (Section 68A) prior to the issue of any Occupation Certificate.

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	<p>(6) <b>Protection and certification of electrical services</b> – All power points, fittings, electrical connections and the incoming meter box are to be located above the Flood Planning Level (FPL) which is RL 5.9m.</p> <p>Switches, light fittings and power points may be located below the FPL provided they are capable of being isolated by a single Residual Current Device (RCD) protected switch that is located above the FPL. Certification of these works are to be provided to the Principal Certifying Authority.</p> <p>(7) <b>Flood Emergency Response Plan</b> - A Flood Emergency Response Plan (FERP) for the proposed development must be provided to the Principal Certifying Authority. The FERP must include the following as a minimum:</p> <ol style="list-style-type: none"> <li>A map of the proposed evacuation route to a suitable location above the Probable Maximum Flood (PMF) that provides adequate shelter from the storm, including the route direction and description and identification of the depth of floodwater along the evacuation route in the 1% Annual Exceedance Probability flood and PMF events.</li> <li>Specific trigger heights linked to the nearest river and tidal gauges used for flood warnings and the specific evacuation route cut-off times linked to the gauge height.</li> <li>Description of the specific flood inundation at the site and the relevant surrounding area, including flood depths, direction of flow, velocities, hazard and specific relevant vulnerabilities.</li> <li>Consideration of and strategies for, the needs of the elderly, disabled and vulnerable who may be on site.</li> <li>A realistic time period for evacuation preparations linked to the trigger heights and evacuation route cut-off times, which includes: <ul style="list-style-type: none"> <li>Locating important papers, valuables etc., that will be evacuated.</li> <li>Locating and stacking possessions that are to be left behind, well above the predicted flood level.</li> <li>Dealing with all utilities such as electricity, gas, water, fuel, toilets, showers, wastewater system (including removal fuses) and moving pumps and machinery above the predicted flood level.</li> <li>Time to gather, identify and load animals (pets, livestock and other animals), including the possible need for additional assistance in handling your animals in an emergency.</li> </ul> </li> </ol>
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- f) Determining the vehicular needs of the site to appropriately respond to the flood risk;
- g) A strategy for a night time flood emergency; and
- h) A strategy for effective flood risk management when the electricity, internet, telecommunications etc., are unavailable.

**Note:** Digital elevation data is available from Geosciences Australia, current flood studies are available on Council's website and river gauge/ tidal gauge data is available from the Bureau of Meteorology website.

### **6.0 – Ongoing Use**

The following conditions of consent are operational conditions applying to the development.

- (1) **Residential air conditioning units** – The operation of air conditioning units must operate as follows:
  - a) be inaudible in a habitable room during the hours of 10pm – 7am on weekdays and 10pm to 8am on weekends and public holidays;
  - b) emit a sound pressure level when measured at the boundary of any neighbouring residential property, at a time other than those specified in (a) above, which exceeds the background (LA90, 15 minutes) by more than 5dB(A). The source noise level must be measured as a LAeq 15 minute; and
  - c) not discharge any condensate or moisture onto the ground surface of the premises or into stormwater drainage system in contravention of the requirements of the Protection of the Environment Operations Act 1997.

### **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) **Dividing fences** – The erection of dividing fences under this consent does not affect the provisions of the Dividing Fences Act 1991. Under this Act, all relevant parties must be in agreement prior to the erection of any approved dividing fence/s under this consent.  
  
Council has no regulatory authority in this area and does not adjudicate civil disputes relating to the provision of, or payment for,

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	<p>the erection of dividing fences. If there is a neighbour dispute about the boundary fence and you are seeking mediation, you may contact the Community Justice Centre, or if legal advice or action is required, you may contact the Chamber Magistrate.</p>
(3)	<p><b>Aboriginal archaeological deposit</b> – 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.</p>
(4)	<p><b>Flood information is subject to change</b> – You are advised that flood information is subject to change if more accurate data becomes available to Council. It is the responsibility of the applicant to use the most up-to-date flood information. Prior to applying for a construction certificate, Council should be contacted to verify the currency of the flood information.</p>
(5)	<p><b>Flood Evacuation Plan</b> – A flood evacuation plan indicating that permanent, fail-safe, maintenance free measures are incorporated in the development to ensure that timely, orderly and safe evacuation of people and potential pollutant material from the buildings on-site should a flood occur. Details demonstrating compliance must be provided to the Certifying Authority with the Construction Certificate application.</p>
(6)	<p><b>Responsibility for damage for tree removal/pruning</b> – 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.</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 Chris Doohan, Glen Dunkley, Paul Le Mottee, Sarah Smith and Steve Tucker.

Those against the Motion: Crs Giacomo Arnott and John Nell.

The motion was carried.

**ITEM 1 - ATTACHMENT 1 DEVELOPMENT APPLICATION 16-2020-445-1 - 232 SEAHAM ROAD, NELSONS PLAINS - MINUTE NO. 121.****MINUTES ORDINARY COUNCIL - 25 MAY 2021****BACKGROUND**

The purpose of this report is to present a development application (DA) 16-2020-445-1 for a dwelling, shed and earthworks on an approved flood mound at 232 Seaham Road, Nelsons Plains (Lot 1 DP 707147) to Council for determination.

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

Subject land:	232 Seaham Road, Nelsons Plains (Lot 1 DP 707147)
Total area:	11.45ha
Zoning:	RU1 – Primary Production
Submissions:	No submissions were received
Key issues:	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 is not compatible with the flood hazard category applying to the site.

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 a single dwelling and shed on an existing flood mound located on the site. The DA also seeks approval to raise the height of the flood mound level from 5.4m AHD to 6.8m AHD. The dwelling is to be constructed above the Flood Planning Level (FPL) and a mezzanine level of the shed is to be constructed above the Probable Maximum Flood (PMF) level.

The dwelling will be located on a concrete pad on top of the raised flood mound, and comprises 4 bedrooms, open plan living, dining and kitchen.

Site Description and History

The site is located within a rural precinct characterised by large rural allotments.

The approved flood mound at the rear of the site is currently constructed at a level of 5.4m AHD.

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

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The key issue identified during assessment relates to the fact that the DA seeks to construct a dwelling on a portion of the site characterised as 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.

LEP/DCP Requirement	Height	DA Proposed	Height
1% AEP (Current day)	4.9m	Flood mound level	6.8m
Flood Planning Level (FPL)	5.9m	Finished Floor Level (FFL)	7.4m
Probable Maximum Flood (PMF)	8.8m	PMF Refuge	10.2m

The entire site is identified within a High Hazard Floodway, as reflected in 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.

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 in a PMF flood. 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 off site. A PMF flood refuge has been included in the DA as an alternative to a safe egress to a flood event. As the DA can provide a flood free refuge, the DA meets the performance based solution 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 flood mound will be raised to 6.8m AHD, which is above the 1% AEP level (4.8m AHD) and the FPL (5.9m AHD). The design of the DA therefore addresses a performance based solution contained in Chapter B5.19 of DCP 2014 and the risk to property has been mitigated for events up to the FPL. The minor increased height of the existing mound has also been assessed to not have a cumulative impact on the larger flood plain storage.

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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 DA is not compatible with the flood hazard category applying to the site.

**Conclusion**

Due to the proposed location of the dwelling in a High Hazard Floodway area, the proposal is inconsistent with the relevant legislation and policies, including:

- Environmental Planning and Assessment Act 1979
- 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 application 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		

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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.	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 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 location of the dwelling within a High Hazard Floodway results in the DA being incompatible with the flood hazard category applying to the site 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:

- Development Engineering
- Flood Advisory Review Panel.

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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

The application was not notified to adjoining properties and no submissions have been received in relation to the proposed development.

**OPTIONS**

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

**ATTACHMENTS**

- 1) Locality Plan.
- 2) Planners Assessment Report.
- 3) Reasons for Refusal.
- 4) Call to Council form.
- 5) Flood plan.
- 6) Development Plans (provided to Councillors separately due to privacy and copyright legislation).

**COUNCILLORS ROOM**

Nil.

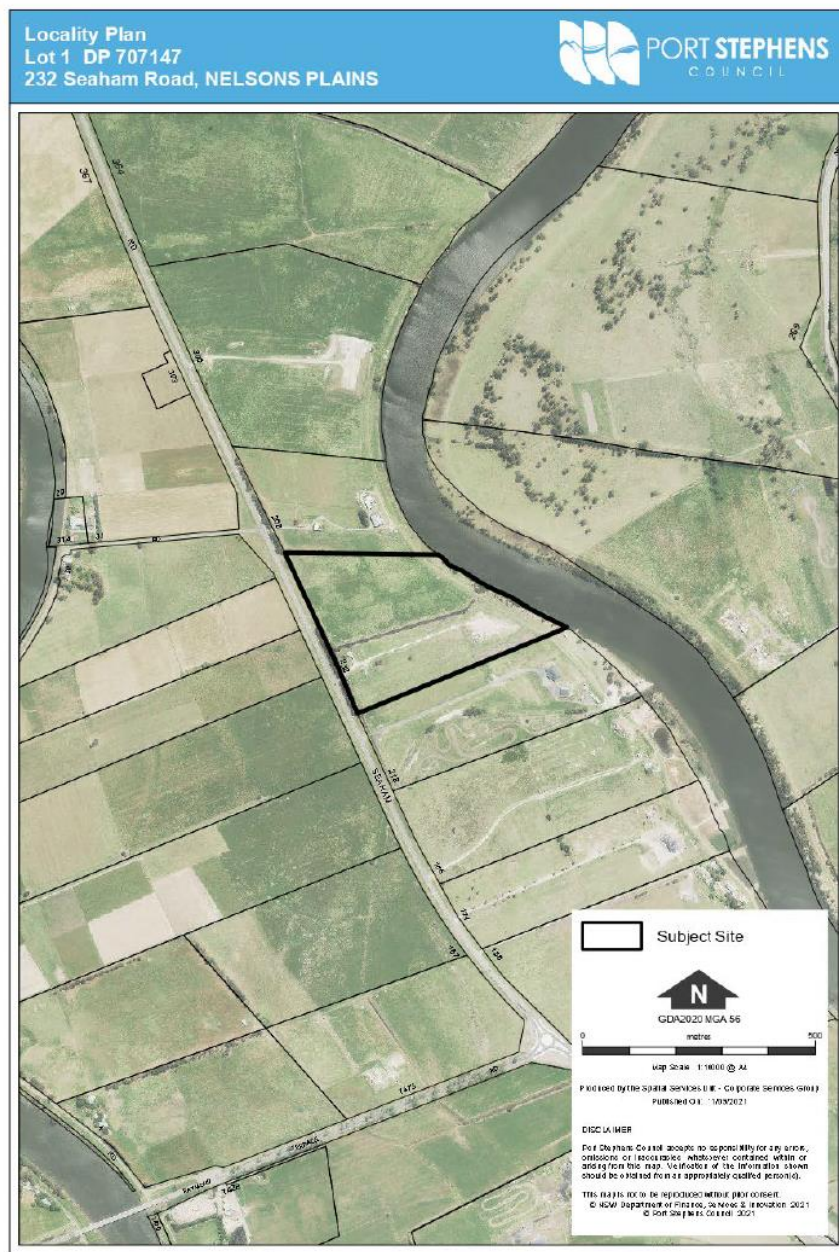
**TABLED DOCUMENTS**

Nil.

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ITEM 1 - ATTACHMENT 1 LOCALITY PLAN.



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



**APPLICATION DETAILS**

<b>Application Number</b>	16-2020-445-1
<b>Development Description</b>	Single storey dwelling, shed and height increase of existing earthmound and access road
<b>Applicant</b>	HILL TOP PLANNERS PTY LTD
<b>Land owner</b>	Phillip Purkamu
<b>Date of Lodgement</b>	28/07/2020
<b>Value of Works</b>	\$460,000.00
<b>Submissions</b>	Nil

**PROPERTY DETAILS**

<b>Property Address</b>	232 Seaham Road NELSONS PLAINS
<b>Lot and DP</b>	LOT: 1 DP: 707147
<b>88B Restrictions on Title</b>	Nil
<b>Current Use</b>	Farmland
<b>Zoning</b>	RU1 PRIMARY PRODUCTION
<b>Site Constraints</b>	Bushfire Prone Land - Class 3 (Buffer) OEH Referral – HV Flood Mitigation Scheme Acid Sulfate Soils – Class (2 and 3) Koala Habitat Planning Map (Mainly Cleared) SEPP (Coastal Management) 2018 – Coastal Zone Combined Footprint Height Trigger Map – RAAF Base Williamtown and Salt Ash Air Weapons Range – DoD Bird Strike Group A – RAAF Base Williamtown and SAWR - DoD Prime Agricultural Land (Classes 1-3)
<b>State Environmental Planning Policies</b>	SEPP (Building Sustainability Index: BASIX) 2004 SEPP (Coastal Management) 2018

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16-2020-445-1

SEPP (Koala Habitat Protection) 2020  
SEPP No. 55 – Remediation of Land

**PLANNERS PRE-ASSESSMENT CHECKLIST**

<b>OWNERS CONSENT</b>	<b>YES / N/A</b>
Land owners consent	<b>Yes</b>
If the land owned by a corporation/company, relevant signatures have been provided (sole director, or director/director / director/company secretary).	<b>N/A</b>
For works occurring outside property, neighbouring consent provided.	<b>N/A</b>
For works occurring on common property within Strata, owner's consent from Strata body provided (common seal).	<b>N/A</b>
<b>DA FORM AND AUTHORITY</b>	
Applicant's description of proposal consistent with DA plans.	<b>Yes</b>
DA description correct in Authority (i.e. LEP definition).	<b>Yes</b>
DA lodged over all affected properties and Authority correct.	<b>Yes</b>
Satisfactory cost of works.	<b>Yes</b>
<b>S.4.55 APPLICATION</b>	
Check if S.4.55 to be reported to Council (original DA determined by Council)	<b>N/A</b>
Check whether consent is still valid (check lapse date).	<b>N/A</b>
<b>NOTIFICATION</b>	
Application notified correctly (i.e. check properties notified).	<b>N/A</b>
S.4.55 application only - notify previous objectors.	<b>N/A</b>
<b>REFERRALS</b>	
Check referrals are correct and identify if additional required: i.e. Integrated Development (send within 14 days cl.66(2) EPA Regs 2000	<b>Yes</b>
S.4.55 Application only - Integrated referral bodies notified.	<b>N/A</b>
Call applicant and send email acknowledgement.	<b>Yes</b>

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**PROPOSAL**

The application seeks approval for the construction of a dwelling and shed on an existing earth mound. Ancillary earthworks also form part of the application. Details of the proposal are as follows:

- Single storey dwelling with a wraparound verandah to be located on the existing earth mound. The internal living spaces (361m<sup>2</sup>) containing four bedrooms, bathroom, ensuite, living/dining area, and lounge areas. The external perimeter verandah area has a footprint of 341m<sup>2</sup> bring the total footprint of the dwelling to 702m<sup>2</sup>.
- Ancillary shed with an area of 504m<sup>2</sup> including a mezzanine is to be constructed on the earth mound adjacent the dwelling. The shed has an overall height of 7.46m with a second storey mezzanine and verandah.
- Ancillary earthworks including the addition of 1400mm of fill to an approved earth mound (raising the height of the mound from 5.4m AHD to 6.8m AHD). 1300mm of fill will also be added to site's vehicular access route. All earthworks will utilise clean fill and will undergo compaction techniques to ensure stability.

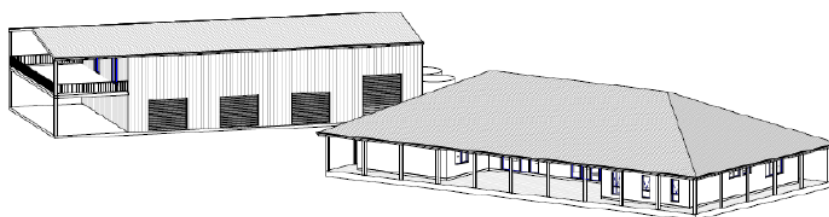


Figure 1: 3D perspective of proposed development

**SITE DESCRIPTION**

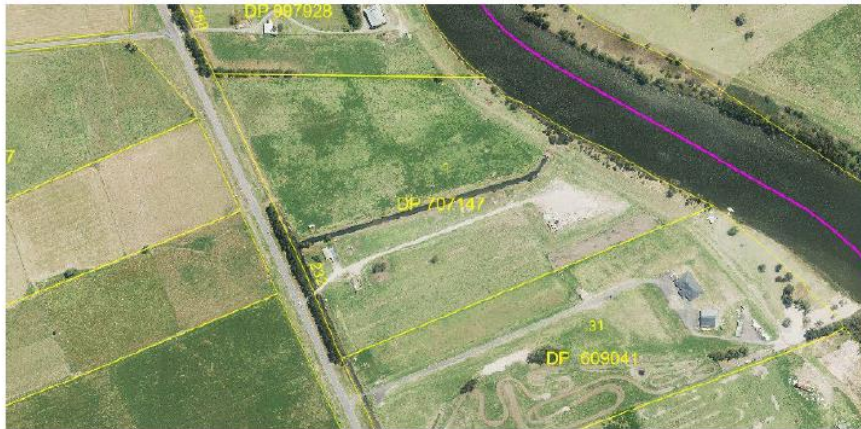
The subject site is legally identified as lot 1 DP 707147, 232 Seaham Road, Nelsons Plains. The irregular shaped lot is located on the eastern side of Seaham Road, within a rural precinct that is characterised by large rural allotments. The lot comprises a total area of 11.58ha with development including an earth mound, shed and unsealed access route identified over the site.

The lot is flat in its topography and is situated in close proximity of the Williams River. 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****SITE HISTORY**

An existing approval was issued in 2003 for a flood mound and hay shed for the purpose of cattle refuge. The fill mound has been constructed and has an approximate finished level of 5.4m AHD.

An application for a single storey dwelling in 2000 was refused by Council as well as an application for a Tourist Facility (Cabins) in 2011, primarily due to flooding concerns.

Building material was identified on the site in 2004; investigation showed the materials were used to backfill excavated holes dug on the property. Asbestos was also identified. The site has been identified under Councils Contaminated Lands Register.

Council identified in 2009 that an unauthorised septic system was operating on site and requested it be removed due to the environment impact it posed noting it was adjacent to a drainage canal that led directly to the Williams River.

Site inspection

A site inspection was carried out in September 2020.

The subject site can be seen in the images below:

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Figure 3: Photo of site taken from road (flood mound in background)



Figure 4: Photo of existing shed located on site

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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.

Development Engineer – Application not supported.

Flood Advisory Review Panel (FARP) – Application not supported.

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979****S4.14 - Consultation and development consent (certain bushfire prone land)**

The Port Stephens Bushfire Prone Land Map has identified the site as bushfire prone with Vegetation Category 3. As the entire site has been identified as managed land, the threat of bushfire to the proposed development has been assessed as BAL low. Recommendations including; the entire site shall be managed as an Inner Protection Area, reliable sources of reticulated water, access requirements and landscaping shall be imposed as conditions of development consent. Council is satisfied the proposal can conform to the specifications and requirements of PBP 2019.

**S4.15 – Matters for Consideration****s4.15(1)(a)(i) – The provisions of any EPI****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 (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.

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The proposed development is setback approximately 80m from the Williams River waterbody, and will therefore not have any significant adverse impacts to the coastal environment.

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.

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. Despite this the site has been identified under Councils Contaminated Lands Register. Council has reviewed site records of land contamination, and is satisfied the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out.

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 30 November 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 land. 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.

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

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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 and 2 acid sulfate soils. The proposed development is not anticipated to involve excavations below 1 metres and therefore it is not expected that acid sulfate soils would be disturbed during works.

**Clause 7.2 – Earthworks**

Earthworks are required as part of the proposal and requires development consent. An earth mound design plan has been prepared that outlines proposed cut, fill, material, placement, compaction methods and AHD levels. Earthworks proposed with this application will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.

**Clause 7.3 – Flood Planning**

The proposed development is located on land mapped as Flood Prone land and is identified as High Hazard Floodway. 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 proposed development seeks to construct a dwelling and shed above the site FPL and 1% AEP flood level; whilst also providing a Probable Maximum Flood (PMF) level refuge. The proposed development thereby seeks to minimise flood risk to life and property associated with the use of land for habitable purposes.

The proposed development has been designed and engineered to withstand flood constraints associated with the site and projected changes as a result of climate change. Conditions of development consent imposed by Council's Development Engineer, will ensure the structural integrity of the earth-mound, dwelling and shed are compatible with the flood risk.

Although the proposed development will result in a slight localised increase in flood velocity, it is accepted this is a negligible risk to adjoining properties and the environment. It is considered that the development will have a negligible affect to adjoining properties and the environment.

Please refer to section B5 of this report, for an assessment of the proposed development against prescribed development control standards for flooding.

**Clause 7.6 – Essential Services**

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Essential services including vehicular access and electricity are available to the lot. The applicant has listed appropriate methods for the provision of water, sewer and stormwater; as reticulated services are not available.

***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 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 controls within this part of the DCP to mitigate risks and consider 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.

The current flood levels applicable to the site are:

- Flood Planning Level - 5.9m AHD
- 1% AEP (Current day) – 4.9m AHD
- Probable Maximum Flood – 8.8m AHD

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

- Proposed Flood Mound – 6.8m AHD
- Dwelling – 7.4m AHD
- PMF Refuge – 10.2m AHD

The DA was assessed by both Council's Development Engineering Section and FARP, 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).

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 in a PMF flood. 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 off site. A PMF flood refuge has been included in the DA as an alternative to a safe egress to a flood event. As the DA can provide a flood free refuge the DA can meet a performance based solution 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 flood mound will be raised to 6.8m AHD which is above the 1% AEP level (4.8m AHD) and the FPL (5.9m AHD). The design of the proposal therefore addresses a performance based solution contained in Chapter B5.19 of DCP 2014 and the risk to property has been mitigated for events at least up to the FPL. The increased height of the existing mound has also been assessed to not have a cumulative impact on the larger flood plain storage.

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 the LEP 2013 and DCP 2014 as the proposal presents unacceptable risk to life and is not compatible with the flood hazard category applying to the site.

**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 are adequate car spaces available for the additional development on the site.

**Chapter C – Development Types**

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

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**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 and shed to be constructed on top of a flood mound with a maximum proposed height of 7.47m and 7.46m respectively. 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 site. 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

The subject site is a rural property with sufficient space for landscaping and plantings. There are no 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. Areas have been designated for sewage management, drainage and potable water supply, all to be connected to the new dwelling.

**s4.15(1)(a)(iia) – Any planning agreement or draft planning agreement entered into under section 7.4**

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**

There are no matters within the regulations that are relevant to the determination of the application.

**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. However, the site is identified as high hazard flood-way and the proposed

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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**

No submissions have been received in relation to the proposed development.

**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 as a result of the development in a significant flood event is not supported 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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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

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ITEM 1 - ATTACHMENT 4 CALL TO COUNCIL FORM.



## 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 16 744 377 878

## DEVELOPMENT APPLICATION (DA) CALL TO COUNCIL REQUEST

We (Mayor/Councillor/s)

Name:

Name:

Name:

request that DA number:

for DA description:

located at:

be reported to Council for determination.

## REASON

Public interest due to review  
of flood policy.

## SIGNATURE OF APPLICANT/S

Signature

Date 8/9/2020

Signature

Date 8/9/2020

Signature

Date 8/9/2020

## 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.

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ITEM 1 - ATTACHMENT 5 FLOOD PLAN.

