

NOTICE OF ORDINARY MEETING

13 APRIL 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 23 March 2021.
- 6) Disclosure of interests.
- 7) Mayoral minute(s) – if submitted
- 8) Motions to close meeting to the public – if submitted.
- 9) Reports to Council.
- 10) General Manager's reports – if submitted.
- 11) Questions with Notice – if submitted.
- 12) Questions on Notice.
- 13) Notices of motions – 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 - 13 APRIL 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 ¹	
Nature of the land that is subject to a change in zone/planning control by the proposed LEP (the subject land) ² [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]	

¹ 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.

² 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"/>	pecuniary conflict of interest
<input type="checkbox"/>	significant non pecuniary conflict of interest
<input type="checkbox"/>	less than significant non- pecuniary conflict of interest

in this item. The nature of the interest is _____

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.)

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.

MOTIONS TO CLOSE

ITEM NO. 1

FILE NO: 21/89514
EDRMS NO: PSC2013-02079

MOTION TO CLOSE

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

RECOMMENDATION:

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

ITEM NO. 2

FILE NO: 21/89523
EDRMS NO: PSC2006-2273

MOTION TO CLOSE

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

RECOMMENDATION:

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

COUNCIL REPORTS

ITEM NO. 1

**FILE NO: 21/56288
EDRMS NO: 16-2021-9-1**

DEVELOPMENT APPLICATION 16-2021-9-1 FOR ALTERATIONS AND ADDITIONS TO AN EXISTING RESIDENTIAL FLAT BUILDING AT 25 SHOAL BAY ROAD, SHOAL BAY (SP 10173)

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

RECOMMENDATION IS THAT COUNCIL:

- 1) Support the Clause 4.6 variation request to the building height for the reasons outlined within this report.
- 2) Approve Development Application 16-2021-9-1 for alterations and additions to an existing residential flat building at 25 Shoal Bay Road, Shoal Bay (SP 10173) subject to the conditions contained in **(ATTACHMENT 3)**.

BACKGROUND

The purpose of this report is to present a Development Application (DA) 16-2021-9-1 for alterations and additions to an existing residential flat building to Council for determination. The proposal includes a height increase of 0.46m from the approved level.

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 4.3 – Height of Buildings of the Port Stephens Local Environmental Plan 2013 (LEP 2013) and the extent of the overall variation is 30%. However, it should be noted that the proposed works will only increase the building height by 0.46m, representing a 4% increase from the approved height.

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

Subject land:	25 Shoal Bay Road, Shoal Bay (SP 10173)
Total area:	2,131m ²
Zoning:	R3 – Medium Density Residential
Submissions:	Nil

Key issues:	Variation to the LEP 2013 maximum building height provisions resulting from the proposed height increase of 0.46m from the approved level
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A locality plan is provided at **(ATTACHMENT 1)**.

Proposal

The DA proposes to raise the height of the existing residential flat building (RFB) by 0.46m to improve its ability to capture existing stormwater overflows. In addition, the DA also includes the construction of awnings over the existing balconies of the upper levels to improve the usability of those areas.

Site Description and History

The site contains an existing RFB that contains 18 units over 4 levels. The existing RFB on the site has a height of 11.24m and was approved prior to 1975.

The site has pedestrian access via Shoal Bay Road to the north and vehicular Lillian Street to the south.

The lots to the east and west of the site have been developed with RFBs. To the north of the site is Shoal Bay, and to the south is Lillian Street Reserve.

Key Issues

The key issues identified in the DA assessment relates to the proposed height increase of 0.46m, which results in a contravention of the standard under Clause 4.3 – Height of Buildings of LEP 2013. A detailed assessment of the DA is contained within the Planners Assessment Report provided at **(ATTACHMENT 2)**.

Building Height

The existing RFB on the site has a height of 11.24m, which is above the 9m LEP 2013 height limit. The height is proposed to increase to 11.705m under this DA. While only increasing the height by 0.46m results in a 30% variation to the development standard. The DA will only increase the building height by 0.46m, representing a 4% increase from the approved level.

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 increase in height is considered minimal in comparison to the existing height of the development and from the street the increase in height is likely to be negligible (0.46m).
- The increase in height is in the public interest as it will facilitate efficient capture and control of the stormwater on the site.

- There is no expected adverse impact to privacy or overshadowing as the proposed changes to the roof height will be minimal,
- The zone objectives and objectives of clause 4.3 are achieved despite the non-compliance.
- There are sufficient environmental planning grounds to justify the variation.

The applicant's Clause 4.6 variation request adequately demonstrates that there are sufficient environmental planning grounds to justify the varying the height of buildings standard. On this basis the building height variation is supported. A detailed assessment against Clause 4.6 is contained within the Planners Assessment Report provided at **(ATTACHMENT 2)**.

Conclusion

The DA is considered to be consistent with the aims and objectives of the relevant environmental planning instrument applicable to the subject site.

Overall, it is considered that the DA has been suitably designed and will not result in privacy or amenity issues.

COMMUNITY STRATEGIC PLAN

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

FINANCIAL/RESOURCE IMPLICATIONS

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

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

LEGAL, POLICY AND RISK IMPLICATIONS

The DA is consistent with the relevant planning instruments, including the Environmental Planning and Assessment Act 1979 and the LEP 2013. Minor non-

compliances with the DCP 2014 are proposed however, are considered acceptable as detailed within the Planners Assessment Report provided at **(ATTACHMENT 2)**.

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
There is a risk that if approved, the determination of the DA may be challenged by a third party in the Land and Environment Court.	Low	Accept the recommendation	Yes
There is a risk that if approved, the determination of the DA may be challenged by the applicant in the Land and Environment Court	Low	Accept the recommendation	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Social and economic impacts

The DA would increase the viability of the site by providing a more efficient stormwater system. This will reduce the costs of maintenance and cleaning for the owner/s relating to the current stormwater staining, and will also provide short term employment for contactors employed for the construction of this DA. The addition of the awnings and increased capture of stormwater would also provide residents with a more usable balcony in all weather conditions.

Built environment

The DA has been designed to reflect the existing residential context and character by designing the renovations of the roof to reflect the existing design of the building, and keeping any increase or changes to a minimum. This will ensure the design remains in keeping with the residential character of the area, and does not detract or adversely impact the existing development or its usability. The proposed variation to the maximum height is not expected to have any adverse impacts on the built environment and is considered acceptable.

Environmental Impacts

The DA has been lodged primarily to improve the existing stormwater design which will provide greater control over water quality and nuisance flows in accordance with Council's requirements. This will ensure that the alterations do not have an adverse

impact on neighbouring sites or surrounding vegetation. Additionally, there is no vegetation removal proposed as part of this DA.

CONSULTATION

Consultation with key stakeholders was not required, as the DA did not meet the applicable triggers for internal or external referrals. Additionally, no public notification was required in line with Council's Community Participation Plan.

OPTIONS

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

ATTACHMENTS

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

COUNCILLORS ROOM

- 1) Development Plans.

TABLED DOCUMENTS

Nil.





APPLICATION DETAILS

Application Number	16-2021-9-1
Development Description	Alternation and Additions – Renovation works to roof level and addition of awnings to existing balconies
Applicant	STRATA PLUS NORTH (PORT STEPHENS)
Land owner	Proprietors of Strata Plan 10173
Date of Lodgement	07/01/2021
Value of Works	\$233,000.00
Submissions	0

PROPERTY DETAILS

Property Address	25 Shoal Bay Road SHOAL BAY
Lot and DP	LOT: 0 SP: 10173
88B Restrictions on Title	N/A
Current Use	Residential
Zoning	R3 MEDIUM DENSITY RESIDENTIAL
Site Constraints	Bushfire Prone Land – Category 3; Acid Sulfate Soils – class 4 & 5; Koala Habitat Planning Map – Clear; SEPP (Coastal Management) 2018 – Coastal Zone Combined Footprint; Hunter Water Special Areas;
State Environmental Planning Policies	State Environmental Planning Policy (Coastal Management) 2018; State Environmental Planning Policy No 55 – Remediation of Land;

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).	N/A
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).	Yes
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).	Yes
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

PROPOSAL

The Development Application (DA) seeks consent for alterations and additions to an existing 4-storey residential flat building (RFB). The DA proposes alterations and additions to the roof to rectify failures of the existing stormwater system and to construct awnings over the existing balconies. Specifically, the works involve construction of a number of low level pitched metal awnings over the existing upper level projecting balcony concrete slab awnings together with an increase in the height of the existing parapet. The roof works will result in an increase of height over the existing parapet by 450mm and will provide additional coverage for the balconies. The proposal aims to provide a more efficient stormwater system by reducing the overflow of water on the roof through the increased height of the parapet, and includes additional downpipes to control the flow of water.

SITE DESCRIPTION

The subject site is a large residential site (2,000m²) that contains a single RFB and associated parking areas. The current building was approved under repealed planning provisions and the current 11m height of the building does not comply with the provisions under the current LEP.

The site has access to both Shoal Bay Road to the north and Lillian Street to the south, with the garage being accessed via Lillian Street, and pedestrian access via Shoal Bay Road. The site overlooks Shoal Bay to the north, and backs on to Lillian Street Reserve. There are residential developments to the east and west of the subject site.

Along Shoal Bay Road there are a number of residential developments, commercial developments, and tourist accommodation, all of which are in close proximity to the subject site.

SITE HISTORY

The subject site has only been subject to one previous DA on the electronic record. This DA was number 16-2016-53-1 for a fence, which was approved with conditions.

Site inspection

A site inspection was carried out on the 19th of February, 2021.

The subject site can be seen in the images below:

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Photo 1: View of the subject site from the front (north) side showing the existing RFB on the site and the neighbouring residential development to the west.



Photo 2: View of the site from the north, showing the existing RFB and the neighbouring residential development to the east.

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Photo 3: View from the south of the site showing the existing RFB

REFERRALS

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

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

S4.14 - Consultation and development consent (certain bushfire prone land)

Sub-Clause	Compliant	Notes (where needed or if not compliant)
1	<input checked="" type="checkbox"/> Development is within bushfire prone land and conforms to the specifications and requirements of the PBP, or; <input type="checkbox"/> A certificate has been provided by a suitability qualified bushfire consultant of which confirms the bushfire risk assessment rating and identifies relevant specifications and requirements for compliance with PBP.	The site is located within a bushfire prone land, however due to the nature of the DA, it is not considered likely to increase risk to life or property.
1A	<input type="checkbox"/> The proposal does not confirm to the relevant specifications and requirements and has been referred to the NSW RFS for assessment concerning measures to be taken with respect to protection of persons, property and the environment as a result of bushfire impacts.	

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S4.46 – what is integrated development

The DA does not require integrated referral as the works do not meet the applicable triggers.

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

STATE ENVIRONMENTAL PLANNING POLICY (COASTAL MANAGEMENT) 2018		
Clause	Compliant	Notes (where needed or if not compliant)
4	<input checked="" type="checkbox"/> Development is within the Coastal Management Areas and the SEPP applies <input type="checkbox"/> Development outside Coastal Management Areas and SEPP does not apply	The DA is located within the Coastal Use Area and the Coastal Environment Area.
13	<input checked="" type="checkbox"/> The development is located within the coastal environment area, and; <input checked="" type="checkbox"/> The development is unlikely to cause impact to the integrity and resilience of the biophysical, hydrological and ecological environment, the coastal environmental values and processes or the water quality of the marine estate, and; <input checked="" type="checkbox"/> The development is designed and sited to avoid adverse impact on the above mentioned areas.	Given the minor nature of the works, the DA is unlikely to cause impact to the integrity and resilience of the biophysical, hydrological and ecological environment, the coastal environmental values and processes or the water quality of the marine estate.
14	<input checked="" type="checkbox"/> The development is located within the coastal use area, and <input checked="" type="checkbox"/> The development is unlikely to cause impact to the integrity and resilience of the biophysical, hydrological and ecological environment, the coastal environmental values and processes or the water quality of the marine estate, and; <input checked="" type="checkbox"/> The development is designed and sited to avoid adverse impact on the above mentioned areas.	The roof will remain appropriate in the context of the coastal values of the locality.

STATE ENVIRONMENTAL PLANNING POLICY NO. 55 – REMEDIATION OF LAND		
Clause	Compliant	Notes (where needed or if not compliant)
7	<input checked="" type="checkbox"/> The proposed development site has no previous record of contamination, nor is it listed on the NSW list of contaminated and notified sites, published by the EPA. <input checked="" type="checkbox"/> The land is not within an investigation area, nor are there any records of potentially contaminating activities occurring on the site. <input checked="" type="checkbox"/> The proposed use is not listed as a possible	No records of contamination are recorded on the site.

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	contaminating use, per Table 1 of the Guidelines.	
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PORT STEPHENS LOCAL ENVIRONMENTAL PLAN 2013		
Clause	Compliant	Notes (where needed or if not compliant)
2.1	<input checked="" type="checkbox"/> Permissible in zone and meets zone objectives.	The DA is permissible in the zone as it is related to the approved RFB, which is permitted with consent in the zone.
4.3	<input type="checkbox"/> Proposed development is under maximum building height; OR, <input type="checkbox"/> There is no maximum building height and the development satisfies the objectives of the clause.	The maximum building height is 9m, however the existing building is at 11.242m (24.9% over the height limit), which is above this standard. The DA would result in an increase to the height of the roof by 463mm, which would result in a height of 11.705m. This is 30% over the 9m maximum height of buildings standard. To enable the height variation, a Clause 4.6 Variation request has been received by the applicant.
4.6	<input checked="" type="checkbox"/> Applicant has submitted written a written request to vary a development standard. <input checked="" type="checkbox"/> 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, as outlined in the Clause 4.6 Assessment Report accompanying this report.	Council's assessment of the Clause 4.6 request to vary a development standard finds the DA to be consistent with the objectives of Clause 4.6.
7.1	<input checked="" type="checkbox"/> Potential Class 5 Acid Sulfate Soils (ASS); AND, <input checked="" type="checkbox"/> Potential Class 4 ASS with no works more than 2m below ground level;	There are minimal excavations proposed for the purposes of providing a connection to the existing stormwater system. This work is minor, and is not expected to be more than 2m below ground level. As such it is not expected to disturb any Acid Sulfate Soils, and an Acid Sulfate Soils Management Plan is not required.
7.2	<input checked="" type="checkbox"/> Earthworks required, but do not have negative impacts on surrounding properties.	No significant earthworks required.
7.3	<input checked="" type="checkbox"/> Development within flood planning area but no	The proposal is located within

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	anticipated flood risk to life and property, or change in flood characteristics.	flood prone land, however as the DA is related to stormwater works and roof alterations on the existing building, it is not considered the DA would result in any additional risk to life and property.
7.6	<input checked="" type="checkbox"/> Essential services are available to the site where required.	As the building is existing, it can be reasonably assumed that essential services are available as required.
7.8	<input checked="" type="checkbox"/> Development is within the drinking water catchment but will not result in a significant adverse impact on water quality or flows.	The site is located within a drinking water catchment, however it is not expected to have an adverse impact on water quality or flows as the roof and awnings are to connect to the existing stormwater system.

Clause 4.6 Assessment

Clause 4.6 provides a mechanism to vary the development standards, such as building height, 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. A written request for variation was submitted by the applicant as part of the DA.

Clause 4.6(3) – Request to vary development standards

The DA exceeds the maximum allowable building height of the site prescribed under Clause 4.3 of the Port Stephens Local Environmental Plan 2013 (PSLEP). The existing RFB on the site has a height of 11.242m, which is above the 9m height limit under Clause 4.3. As noted previously, the building was approved under planning provisions that are no longer in force.

Notwithstanding, the proposed to increase of the building height to 11.705m under the DA, which will result in a building 0.46m over the existing height, represents a 30% variation to the development standard.

A written request to vary the development standard was submitted by the applicant in accordance with Clause 4.6 of the PSLEP. From a review of this written request, the following is noted:

- The increase in height is considered minimal in comparison to the existing height of the development.
- From the street, the increase in height is likely to be negligible.
- The height is appropriate for the context and character of the site, as other similar RFBs in the area have a similar height. Additionally, the site is located in close proximity to an area with a 15m height limit, meaning the height of the DA provides an appropriate transition to the higher density and scale of nearby residential developments.

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- The increase in height is in the public interest as it will facilitate efficient capture and control of the stormwater on the site.
- There is no expected adverse impact to privacy or overshadowing, as the proposed changes to the roof height will be minimal from the existing height and will not result in additional floor area.
- The zone objectives of Clause 4.3 are achieved despite the non-compliance
- There are sufficient environmental planning grounds to justify the variation.

The applicant's Clause 4.6 variation request adequately demonstrates that there are sufficient environmental planning grounds to justify the variation to the height of buildings standard. On this basis, the building height variation is supported under the DA. A detailed assessment against Clause 4.6 can be found at the end of this report.

s4.15(1)(a)(ii) – Any Draft EPI

		Notes (what draft EPI if needed and comments where not compliant)
	<input checked="" type="checkbox"/> There are no draft EPI's that are relevant to the proposed development	
	<input type="checkbox"/> A draft EPI is relevant to the proposed development however the application is consistent with the aims and objectives of the document.	

s4.15(1)(a)(iii) – Any DCP

PORT STEPHENS DEVELOPMENT CONTROL PLAN 2014		
Clause	Compliant	Notes (where needed or if not compliant)
B1	<input type="checkbox"/> Trees to be removed do not require approval as outlined in B1.1.	No trees are proposed to be removed.
B2	<input checked="" type="checkbox"/> Not in proximity of items of environmental significance. <input checked="" type="checkbox"/> Land does not contain koala habitat or development is consistent with the CKPoM.	The site does not contain, and is not in proximity to, any items of environmental significance or Koala Habitat.
B3	<input checked="" type="checkbox"/> Development would not disturb acid sulphate soils or an acceptable ASSMP has been prepared. <input type="checkbox"/> Earthworks would have minimal environmental impacts with conditions on VENM fill and erosion and sediment controls.	As discussed above, the proposal is not expected to disturb Acid Sulfate Soils.
B4	<input checked="" type="checkbox"/> Non-permeable area not significantly increased and development consistent with figure BD, on-site detention not required; OR, <input type="checkbox"/> Non-permeable area above figure BD and	Non-permeable area is not expected to be increased, as the increased roof area is over existing balconies and

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	<p>acceptable on-site detention / infiltration proposed or condition for details added.</p> <p><input type="checkbox"/> Insignificant increases to adversely impact on water quality; OR</p> <p><input type="checkbox"/> Stormwater management plan proposed in accordance with this Chapter and Council's standard drawings.</p>	<p>hardstand areas.</p> <p>As per the provided stormwater plan, the increase in roof area through the inclusion of awnings over existing balconies is to be serviced via additional downpipes that will connect to the existing stormwater pits. These stormwater pits are connected to the existing system, and will direct all stormwater through the existing system and to the overflow tank. As there is no increase to non-permeable area, no additional water quality measures are required in line with this section of the DCP.</p>
B5	<p><input checked="" type="checkbox"/> Proposed development is on flood prone land; AND,</p> <p><input type="checkbox"/> A flood certificate has been submitted with the application and the finished levels are consistent with Table 2: Development Suitability Table; AND,</p> <p><input type="checkbox"/> The submitted documents are consistent with Table 2: Development Suitability Table.</p>	<p>As discussed above, the site is on flood prone land, but due to the works proposed being located on the roof area of the existing development, it is not considered likely that there will be an increase in flood risk.</p>

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

	Notes (where needed)
<input checked="" type="checkbox"/> There are no planning agreements that have been entered into under section 7.4 relevant to the proposed development.	

s4.15(1)(a)(iv) – The regulations

	Notes (where needed)
<input checked="" type="checkbox"/> There are no matters within the regulations that are relevant to the determination of the application.	

s4.15(1)(b) – The likely impacts of the development

	Notes (where needed)
<input checked="" type="checkbox"/> Social and Economic Environment: There would be beneficial impacts as a result of the development.	The DA is expected to have beneficial social and economic impacts as it would increase the viability and use of the units, while also providing additional short term work for contractors

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	in relation to the construction of the proposal.
<input checked="" type="checkbox"/> Built Environment: The proposed development would not cause harm to the existing character.	The DA is not expected to cause harm to the existing character of the building, as the design reflects the existing roof element and aims to ameliorate the failures of the existing stormwater system.
<input checked="" type="checkbox"/> Natural Environment: There are no adverse impacts expected as a result of the proposed development and appropriate conditions have been added.	As there is no proposed vegetation removal, and the works are solely within the existing footprint, the DA is not expected to have an adverse impact on the natural environment.

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

The subject site is considered suitable for the DA as it provides an applicable zone for residential development.

s4.15(1)(d) – Any submissions

The application was not required to be notified in accordance with the provisions of the Port Stephens Council Community Participation Plan.

s4.15(1)(e) – The public interest

The DA is in the public interest as it will provide an improved stormwater design to reduce related adverse impacts without causing any further overshadowing or privacy impacts. Additionally, it is not expected that the DA will negatively impact the residential character of the area, as the proposed works have been designed to reflect the current design and use, and will not result in additional floor space.

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

No section 7.11 contributions are applicable to this proposal.

DETERMINATION

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

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Appendix A – 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 building height, 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 DA 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	Current Approved Height	Proposed Variation	Extent of Variation (%)
9m	11.242m	11.705m (variation of 0.463m above existing)	30%

As the proposed variation is greater than 10%, the DA will be determined by the full council (rather than the General Manager or nominated Council staff under delegation).

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* [2017 NSWLEC 827], which established five (5) ways in which an applicant may demonstrate that compliance with the development standard may be unreasonable or unnecessary. The submitted Clause 4.6 request addresses the first of these requirements, being that the objectives of the development standard are achieved even with the non-compliance. The following information has been provided to address these points:

Objectives of the development standard are achieved:

- Other RFBs in the area (being 31 Shoal Bay Road, 19-21 Shoal Bay Road, as some examples) have been approved above the current height limit.

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- When viewed from Shoal Bay Road or Lillian Street, the proposed increase in height will not be visually prominent, and will appear as an awning over existing balconies.
- Due to the projecting awnings and nature of the building elevations, the increased height will be largely obstructed or minimal from ground level within the public domain.

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

Clause 4.6(3)(b) requires an applicant 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 Clause 4.6 Application addresses this clause, and has noted that under *Initial Action Pty Ltd v Woolahra Municipal Council* [2018] NSWLEC 118 “environmental planning” refers to the EPA Act, and any subordinate legislation. The applicant has argued that the DA complies with all other environmental planning controls as it will not significantly alter the existing bulk and scale of the existing RFB, and does not have any adverse impacts to the amenity of neighbours. In addition to this, there are no other suitable alternatives to satisfactorily manage stormwater from the building roof without this height increase, as the design allows for the improved capture of stormwater to reduce the discolouration of the building and stormwater gathering on resident’s balconies.

ASSESSMENT**Clause 4.6(4) – Assessment of request to vary development standards**Clause 4.6(4)(a)(i)

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

The written request to vary the height requirements has argued that compliance with Clause 4.3 (building heights) is unreasonable and unnecessary as the DA will still meet the objectives of the development standard notwithstanding the numerical non-compliance. Council agrees that requiring the DA to comply with Clause 4.3 is unreasonable in these circumstances, as the existing RFB on the subject site has an approved height of 11.242m, with the proposed additional 0.462m necessary for the proposed stormwater and drainage solution. This is not considered a substantial increase, and would result in beneficial impacts.

It is noted that the objective of Clause 4.3 is to ensure that the height is appropriate for the context and character of the area, and to ensure that the building reflects the hierarchy of centres and land use structures. The proposed height is considered appropriate for the character and context of the area, as there are a number of the other RFBs of a similar height within the area as the applicant has raised in the written submission. Additionally, not far from the site along Shoal Bay Road is an area with a maximum height of 15m. As the proposal is at the interface of this area, the DA is considered to achieve an appropriate transition in height between this higher density area, and the surrounding 9m maximum height area. Therefore, the proposal is considered to have met the objectives of this zone.

Clause 4.6(4)(a)(ii)

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.

The DA is considered to be in the public interest as it will facilitate the efficient capture of stormwater, thus reducing adverse impacts on residents, and reducing unsightliness caused by

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the staining of stormwater down the sides of the building. In addition to this, the DA is considered to be in line with the objectives of the zone, as it continues to provide appropriate housing for the community, with 18 units available in an appropriate location with direct access to facilities and services for residents. As such, this DA is considered to be in the public interest.

The cumulative impact of the development, should the proposed variation to the development standard be allowed, is likely to be minimal, as the height changes are negligible in comparison to the approved height. The roof has been designed so as to limit adverse impacts as a result of the changes to the existing stormwater system. This variation is not considered likely to result in an undermining of the objectives of the development standard or planning objectives, as the variation to the existing approved height is minimal, and the DA is only for the intention of improving the stormwater system.

In accordance with the assumed concurrence, notified in Planning Circular PS 20-002, the concurrence of the Secretary can be assumed upon approval by the Councillors.

CONCLUSION

The DA 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, and is considered to be appropriate for the context of the site.



RECOMMENDED CONDITIONS OF CONSENT – DA 16-2021-9-1 – 25 SHOAL BAY ROAD, SHOAL BAY

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
DC-14-2020-DA (pg. 9 of 19)	Site Plan	Doug Checinski Building Design	3/12/2020
DC-14-2020-DA (pg. 10 of 19)	Stormwater Drainage Plan	Doug Checinski Building Design	3/12/2020
DC-14-2020-DA (pg.11 of 19)	Sedimentation Plan & Waste Management Plan	Doug Checinski Building Design	3/12/2020
DC-14-2020-DA (pg.13 of 19)	Third Floor Plan	Doug Checinski Building Design	3/12/2020
DC-14-2020-DA (pg.15 of 19)	West Elevation 2	Doug Checinski Building Design	3/12/2020
DC-14-2020-DA (pg.16 of 19)	East Elevation 3	Doug Checinski Building Design	3/12/2020
DC-14-2020-DA (pg. 17 of 19)	North Elevation 1	Doug Checinski Building Design	3/12/2020
DC-14-2020-DA (pg. 18 of 19)	Section X:X	Doug Checinski Building Design	3/12/2020

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

- (2) **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.
- (3) **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:
- In the case of work for which a principal contractor has been appointed:
 - Has been informed in writing of the name and licence number of the principal contractor; and
 - Where required has provided an insurance certificate with the name of the insurer by which work is insured under Part 6 of that Act.

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- 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.
- (4) **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.
- (5) **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.

2.0 - Prior to Commencement of Works

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

- (1) **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
 - f) a telephone number on which the PCA may be contacted for business purposes.

ITEM 1 - ATTACHMENT 3 PROPOSED CONDITIONS OF CONSENT.



- (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:
- the name and address of the person by whom the notice is being given;
 - a description of the work to be carried out;
 - the address of the land on which the work is to be carried out;
 - the Registered number and date of issue of the relevant development consent and construction certificate;
 - 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
 - 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:
- that unauthorised entry to the work site is prohibited;
 - 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;
 - 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) **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).
- (5) **Rubbish generated from the development** – Where not already available, a waste containment facility is to be established on site. The facility is to be regularly emptied and maintained for the duration of works.
- No rubbish must be stockpiled in a manner which facilitates the rubbish to be blown or washed off site. The site must be cleared of all building refuse and spoil immediately upon completion of the development.

3.0 - During Works

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ITEM 1 - ATTACHMENT 3 PROPOSED CONDITIONS OF CONSENT.



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) **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.
- (5) **Offensive noise, dust, odour and vibration** – All work must not give rise to offensive noise, dust, odour or vibration as defined in the *Protection of the Environment Operations Act 1997* when measured at the nearest property boundary.

4.0 - 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) **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.

Advice Note(s):

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ITEM 1 - ATTACHMENT 3 PROPOSED CONDITIONS OF CONSENT.



- (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) **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.
- (4) **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.
- (5) **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.

ITEM NO. 2

**FILE NO: 21/59863
EDRMS NO: 16-2019-135-1**

DEVELOPMENT APPLICATION 16-2019-135-1 FOR A SINGLE STOREY DWELLING ON AN APPROVED FLOOD MOUND AT 1 SWANREACH ROAD, HINTON (LOT 51 DP 1250604).

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

RECOMMENDATION IS THAT COUNCIL:

- 1) Refuse development application 16-2019-135-1 for a single dwelling on an existing flood mound at 1 Swanreach Road, Hinton (LOT 51 DP 1250604) for the reasons contained in **(ATTACHMENT 3)**.

BACKGROUND

Development Application (DA) 16-2019-135-1 was reported to Council at its meeting on 10 September 2019. At that meeting it was resolved that the DA be deferred for a site inspection and to convene the Floodplain Committee to consider amendments to the flood controls. The resolution is provided below:

Meeting Minute 218: It was resolved that Council defer development application 16-2019-135-1 for a single storey dwelling on approved flood mound at 1 Swanreach Road, Hinton (LOT: 51 DP: 1250604) for a site inspection, and convene the Floodplain Committee **(ATTACHMENT 5)**.

Subsequent to the 10 September 2019, the DCP flooding chapter was amended and endorsed by Council in December 2020. Following the changes to the DCP the applicant was requested to address the new controls and Councillors were invited to attend a site inspection.

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

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

Subject land:	1 Swanreach Road, Hinton (Lot 51 DP 1250604)
Total area:	9.497ha
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.

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

Proposal

The DA proposes the construction of a single dwelling on an existing flood mound located on the site. The DA also seeks approval to raise the height of the flood mound level from 5.7m AHD to 6.2m AHD. The dwelling is to be constructed above the Flood Planning Level (FPL).

The dwelling will be constructed on a concrete pad on top of a 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.

Swanreach Road is located over the eastern part of the site and divides the site into two separate portions.

The site contains a machinery shed and an approved flood mound is located on the eastern portion of the site.

The approved flood mound has been constructed at a level of 5.7m 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.

Key issues

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.

The flood levels applicable to the site are:

- Flood Planning Level (FPL) – 6.2m AHD
- 1% AEP (Current day) – 5.7m AHD
- Probable Maximum Flood (PMF) – 8.9m AHD

The DA includes the following levels:

- Flood mound level – 6.2m AHD
- Dwelling Finished Floor Level (FFL) – 6.4m AHD

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

Chapter B5.19 requires development to address the risk to property during various flood events. The existing flood mound will be raised to above the 1% AEP level and the FPL. The design of the DA is therefore compatible with the performance based solutions contained in Chapter B5.19 of DCP 2014 and the risk to property has therefore been suitably mitigated. The increased height of the existing flood mound has also been assessed to not have a cumulative impact on the larger flood plain storage. The DA can therefore be supported from a risk to property perspective.

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

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

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

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

FINANCIAL/RESOURCE IMPLICATIONS

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

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

LEGAL, POLICY AND RISK IMPLICATIONS

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

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

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
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 area presents an unacceptable and unreasonable risk to life and is therefore recommended for refusal for the reasons outlined in **(ATTACHMENT 3)**.

CONSULTATIONInternal

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

- Development Engineering
- Flood Advisory Review Panel

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

External

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

Notification

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

OPTIONS

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

ATTACHMENTS

- 1) Locality Plan. [↓](#)
- 2) Assessment Report. [↓](#)
- 3) Reasons for Refusal. [↓](#)
- 4) Call to Council Form. [↓](#)
- 5) Ordinary Council Minutes - 10 September 2019. [↓](#)

COUNCILLORS ROOM

- 1) Development Plans.

TABLED DOCUMENTS

Nil.



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



APPLICATION DETAILS

Application Number	16-2019-135-1
Development Description	Single Storey Dwelling
Applicant	MR N A WARD
Date of Lodgement	08/03/2019
Value of Works	\$446,480.00

Development Proposal

The applicant seeks approval for the construction of a single dwelling on an approved flood mound at the subject site. Details of the proposal are as follows:

- Single storey dwelling is to be located on an approved flood mound. The flood mound was approved by Council staff under delegation on 31 January 2019 (DA No. 16-2018-621-1) and is currently nearing completion. Advisory Note D of the flood mound consent identifies that the approval of the flood mound is not to be taken as tacit approval for the erection of a dwelling house on the subject site.
- The internal living spaces (260m²) contain four bedrooms, bathroom, powder room, ensuite, kitchen, living/dining area, and lounge areas. The external perimeter verandah area has a footprint of 85m² and the alfresco area had a footprint of 49m² bringing the total footprint of the dwelling to 394m².

PROPERTY DETAILS

Property Address	1 Swanreach Road HINTON
Lot and DP	LOT: 51 DP: 1250604
Zoning	RU1 PRIMARY PRODUCTION
Site Constraints	<i>High Hazard Floodway, Site Access, Onsite septic requirements</i>

Site History

The subject site has a total area of 9.497 hectares, generally flat and is zoned RU1 – Primary Production. Access to the site is direct from both Hinton Road and Swanreach Road. Swanreach Road severs the lot into two portions. The larger portion area is 8.771 hectares and the smaller portion area is 7266m².

ITEM 2 - ATTACHMENT 2 ASSESSMENT REPORT.

16-2019-135-1

An approval was issued in January 2019 for a flood mound. The flood mound currently is nearing completion and has been constructed with an approximate finished level of 5.7 metres Australian Height Datum (AHD). At the time, the flood mound was not assessed intended for residential development. Advisory Note D of the flood mound consent identifies that the approval of the flood mound is not to be taken as tacit approval for the erection of a dwelling house on the subject site.

Site Inspection

Two site inspections were carried out in April 2019 and June 2019. The site can be seen in the photographs below.

The site is surrounded by similar large rural lots for the purposes of farming. The site is located in a high hazard floodway. The land is generally clear of vegetation and comprises mainly of pasture grass. A majority of the subject site is below the level of Hinton Road. The flood mound (under construction) raises the proposed building site above the level of Hinton Rd and is located approximately 11.85 metres away from the Swanreach Road frontage and 180 metres too Hinton Road.

An existing metal farm shed is located to the east of the site, which is to be retained.

Site Photos:



Photo 1: Looking North down Swanreach Road towards Hinton Road, approved mound being constructed and existing metal shed



Photo 2: Looking North-East, approved mound being constructed, proposed site of development and existing metal shed



Photo 3: Looking East, approved mound being constructed, proposed site of development and existing metal shed



Photo 4: Looking South, approved mound being constructed, proposed site of development

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Photo 5: Looking North, approved mound being constructed, proposed site of development

REFERRALS

No external referrals were required. The proposed development was referred to the following internal specialists. The comments of the listed staff have been used to carry out the assessment against the S4.15 Matters for Consideration below.

Council's Flooding Drainage Engineers Comments:

For large floods, flows from the Paterson River and the Hunter River combine just upstream of Hinton and separate to travel on the north side of Hinton over the Hunter Valley Flood Mitigation Levee and on the south side through the Hunter River and across the Swanreach floodplain, joining again in the vicinity of the subject site.

The lot does not have an existing dwelling on the site and introducing or intensifying development in the floodplain creates a flood risk to the new development and its users and emergency services. The site is generally at RL 1.7m AHD to RL 2.3m AHD. Egress from the site is via Swanreach road, with the low point of the road being at RL 2.4m AHD in Swanreach Road, near the intersection with Hinton Road. In the defined flood event (future 1% AEP), the depth of floodwater at the road in this location is 2.8 metres.

Recent flood data obtained from Maitland City Council highlight the area as High Hazard Floodway, not as High Hazard Storage as shown on the Flood Certificate issued in early 2018. This can be seen in the image below with the lot highlighted and velocity vectors showing the hazardous nature of the flood in this location.

Refusal for a dwelling is recommended from a floodplain risk management perspective because:

- i) The proposal is incompatible with the land's flood hazard (being a high hazard floodway and surrounded by high hazard floodway), would create a flood island during events smaller than the defined flood event (future 1% AEP), does not incorporate appropriate measures to manage risk to life from flood and would increase the flood risk to life in the floodplain (*refer to Section 4.15(1)(a)(i) of the EP&A Act 1979 and Clause 7.3 Flood Planning of the Port Stephens LEP 2013*).
- ii) The site is not suitable for this development because of the nature of flooding in this area and the flood hazard across the site (*refer to Section 4.15(1)(c) of the EP&A Act 1979 and Clause 7.3 Flood Planning of the Port Stephens LEP 2013*).

ITEM 2 - ATTACHMENT 2 ASSESSMENT REPORT.

16-2019-135-1

- iii) The proposal will result in flood isolation during floods smaller than the defined flood event (future 1% AEP), would place additional people at risk during floods (in contravention of the Floodplain Development Manual (ISBN 0 7347 5476 0) published by the NSW Government in April 2005), would place extra burden on the State Emergency Services and is not in the public interest (*refer to Section 4.15(1)(e) of the EP&A Act 1979 and Clause 7.3 Flood Planning of the Port Stephens LEP 2013*).

MATTERS FOR CONSIDERATION – SECTION 4.15

s4.15(1)(a)(i) – The provisions of any EPI

STATE ENVIRONMENTAL PLANNING POLICY (BUILDING SUSTAINABILITY INDEX BASIX) 2008		
Clause	Compliant	Notes (where needed or if not compliant)
6	<input checked="" type="checkbox"/> The proposed BASIX affected development, or buildings that become BASIX affected development (conversion of garage for example) is accompanied by a BASIX certificate <input checked="" type="checkbox"/> Condition of consent relating to BASIX	

PORT STEPHENS LOCAL ENVIRONMENTAL PLAN 2013		
Clause	Compliant	Notes (where needed or if not compliant)
2.1	<input checked="" type="checkbox"/> Permissible in zone and meets zone objectives.	
4.1	<input checked="" type="checkbox"/> The proposal is consistent with the Lot Size Map;	
4.2B	<input checked="" type="checkbox"/> Dwelling proposed on RU1, RU2, R5, E2 or E3 land where there is no current dwelling on site. <input checked="" type="checkbox"/> Land zoned RU1, RU2, E2 or E3 and created before 22 February 2014 with an area of at least 4,000m ² on which a dwelling was permissible under the previous LEP; OR,	
4.3	<input checked="" type="checkbox"/> There is no maximum building height and the development satisfies the objectives.	

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ITEM 2 - ATTACHMENT 2 ASSESSMENT REPORT.

16-2019-135-1

5.9AA	<input checked="" type="checkbox"/> Trees will be removed that are not prescribed under DCP.	No nominated vegetation to be removed.
7.1	<input checked="" type="checkbox"/> Potential Class 3 ASS with no works more than 1m below ground level.	The property is affected by ASS Class 3. No works will require the excavation into natural ground. Although consideration must be made for the type of substructure required as the existing mound may not have been engineered for residential purposes. Compaction rates would require piercing into natural ground to provide adequate bearing pressure for the new propose structures.
7.2	<input checked="" type="checkbox"/> Earthworks required, but do not have negative impacts on surrounding properties.	Some earth works will be required to bring the existing fill mound to the required FPL. Minor earthworks will also be required for the proposed septic system required on site, no detail has been provided for the type of system proposed.
7.3	<input checked="" type="checkbox"/> Development within flood planning area but no anticipated flood risk to life and property, or change in flood characteristics.	The development is located in a High Hazard Flood Way. The applicant has submitted a Flood Impact Assessment for the proposal (from BMT dated 11 September 2018) The impact assessment considers a range of flood events (2%, 1%, 0.5% and Probable Maximum Flood (PMF)) and concludes that the construction would have negligible impact on flood levels (less than 0.1m difference) and minor impact on flood velocities (largely confined to the site, estimated at 0.2m/s increase on the north site boundary). It is considered that the

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ITEM 2 - ATTACHMENT 2 ASSESSMENT REPORT.

16-2019-135-1

		proposal is not compatible with the flood hazard of the land as it increases the risk to life. In the event of a flood the site would experience connection loss and there would be limited options for the evacuation of the site, which could place unreasonable strain upon emergency services.
7.6	<input checked="" type="checkbox"/> Essential services are available to the site where required.	

s4.15(1)(a)(ii) – Any Draft EPI

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

s4.15(1)(a)(iii) – Any DCP

PORT STEPHENS DEVELOPMENT CONTROL PLAN 2014		
Clause	Compliant	Notes (where needed or if not compliant)
A.12	<input checked="" type="checkbox"/> Notification and advertising.	Not required for single dwellings
B1	<input checked="" type="checkbox"/> Trees to be removed do not require approval as outlined in B1.1.	No vegetation is required to be removed
B2	<input checked="" type="checkbox"/> Not in proximity of items of environmental significance. <input checked="" type="checkbox"/> Land does not contain koala habitat or development is consistent with the CKPoM.	
B3	<input type="checkbox"/> Development meets bushfire construction requirements. <input checked="" type="checkbox"/> Development would not disturb acid sulphate soils or an acceptable ASSMP has been prepared. <input checked="" type="checkbox"/> Earthworks would have minimal environmental impacts with conditions on VENM fill and erosion and sediment controls.	The flood mound was approved by Council staff under delegation on 31 January 2019 (DA No. 16-2018-621-1) and is currently nearing completion.
B4	<input type="checkbox"/> Non-permeable area not significantly increased and development consistent with figure BD, on-site detention not required; OR, <input type="checkbox"/> Non-permeable area above figure BD and acceptable on-site detention proposed or condition for details added. <input type="checkbox"/> Insignificant increases to adversely impact on water quality.	N/A

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ITEM 2 - ATTACHMENT 2 ASSESSMENT REPORT.

16-2019-135-1

B5	<input checked="" type="checkbox"/> Proposed development is on flood prone land; AND, <input type="checkbox"/> A flood certificate has been submitted with the application and the finished levels are consistent with Table 2: Development Suitability Table; AND, <input type="checkbox"/> The submitted documents are consistent with Table 2: Development Suitability Table. B5.11 Development located within High Hazard 1 – Floodway adheres to the following: <ul style="list-style-type: none"> • New buildings or structures and fill are not supported unless accompanied by a report Note: Development within a floodway is not encouraged. An application may only be considered where it demonstrated to have specific community needs/benefits, which does not relate to the provision of housing	The proposed property is identified as a High Hazard Floodway category. No flood certificate was submitted with the application. Conflicting levels have been provided by the Applicant. The Applicant has not adequately addressed part B5.11 the DCP or demonstrated that the application benefits the needs of the community.
B6	<input checked="" type="checkbox"/> Essential services are available to the site, where required.	Yes – Onsite septic system required
C4	<input checked="" type="checkbox"/> BASIX submitted in accordance with SEPP. <input checked="" type="checkbox"/> Site coverage is in accordance with figure BD. <input checked="" type="checkbox"/> Proposal ensures development provides continuity to the street and setbacks comply with C4.10-C4.19. <input checked="" type="checkbox"/> Development appropriately activates the street with habitable rooms where applicable. <input checked="" type="checkbox"/> The proposed development would be sympathetic to the streetscene as it is consistent with the existing development in its form, height, bulk, design and materials. <input checked="" type="checkbox"/> The development would not adversely affect the amenity of neighbouring properties or the public domain.	The development is setback approximately 11.86m from Swanreach Road and will not have a significant impact on the streetscape or neighbouring properties.

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

	Notes (where needed)
<input checked="" type="checkbox"/> There are no planning agreements that have been entered into under section 7.4 relevant to the proposed development.	N/A

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s4.15(1)(a)(iv) – The regulations

	Notes (where needed)
<input checked="" type="checkbox"/> There are no matters within the regulations that are relevant to the determination of the application.	

s4.15(1)(a)(v) – Any coastal management plan

	Notes (where needed)
<input checked="" type="checkbox"/> There are no coastal management plans that are relevant to the determination of the application.	

s4.15(1)(b) – The likely impacts of the development

	Notes (where needed)
<input checked="" type="checkbox"/> Social and Economic Environment: There would be beneficial impacts as a result of the development.	Yes, Refer to comment above in relation to flooding and the associated social and environmental impacts
<input checked="" type="checkbox"/> Built Environment: The proposed development would not cause harm to the existing character.	
<input checked="" type="checkbox"/> Natural Environment: There are no adverse impacts expected as a result of the proposed development and appropriate conditions have been added.	

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

The subject site is zoned RU1 – Primary Production, whereby the proposed dwelling is a permissible use under the zoning. The site is identified as high hazard flood way and the proposed development and use does not align or address all of the requirements under current Council endorsed policy and legislation. Due to the identified flood hazard, the use of the site for residential accommodation is not 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 it is inconsistent with the adopted principles and strategies which seek to promote the appropriate development of land. The development poses an unacceptable risk to life and may also result in adverse flood impacts to surrounding properties.

DETERMINATION

The application is recommended to be refused under delegated authority, subject to conditions as contained in the notice of determination.


HEIDI MCLOUGHLIN


ITEM 2 - ATTACHMENT 3 REASONS FOR REFUSAL.



REASONS FOR REFUSAL

1. The proposed development fails to satisfy Clause 7.3 (Flood Planning) of the LEP2013 as the development does not demonstrate that it is compatible with the flood characteristics of the site including minimising the flood risk to life associated with the land (s4.15(1)(b) of the *Environmental Planning and Assessment Act 1979* ('EP&A Act'));
2. The development does not comply with the controls contained within Port Stephens Development Control Plan (Chapter B5 Flooding) (s.4.15(1)(a)(i) of the *EP&A Act*);
3. The proposed development does not demonstrate the suitability of the use of the site given the flood characteristics 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 (s.4.15(1)(e) of the *EP&A Act*).

 PORT STEPHENS COUNCIL		CALL TO COUNCIL FORM DEVELOPMENT APPLICATION	
Development application (DA) call to Council request:			
I/We (Mayor/Councillor/s) <u>Mayor Palmer, Cr Smith & Cr Dunkley</u> request that DA number <u>16-2019-135-1</u> for DA description <u>Single dwelling</u> located at <u>1 Swanreach Road, Hinton</u> be reported to Council for determination.			
Reason:			
For public interest due to Council previously having resolved to review the flood policy via a newly formed committee that has not met as yet.			
Declaration of Interest:			
I/We have considered any pecuniary or non-pecuniary conflict of interest (including political donations) associated with this DA on my part or an associated person.			
I/We (Mayor/Councillor/s) <u>Ryan Palmer</u> have a conflict of interest:			
<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes			
If yes , please provide the nature of the interest and reasons why further action should be taken to bring this DA to Council:			
Signed: <small>Please sign or type name & attached to an email.</small>	Date: Click here to enter a date. <u>3/6/19</u>		
Signed: <small>Please sign or forward supporting email.</small>	Date: Click here to enter a date. <u>3/6/19</u>		
Signed: <small>Please sign or forward supporting email.</small>	Date: Click here to enter a date.		

 PORT STEPHENS COUNCIL		CALL TO COUNCIL FORM DEVELOPMENT APPLICATION	
Development application (DA) call to Council request:			
I/We (Mayor/Councillor/s) <u>Mayor Palmer, Cr Smith and Cr Dunkley</u> request that DA number <u>16-2019-135-1</u> for DA description <u>Single Dwelling</u> located at <u>1 Swanreach Road Hinton</u> be reported to Council for determination.			
Reason: For public interest due to Council previously having resolved to review the flood policy via a newly formed committee that has not met as yet.			
Declaration of Interest:			
I/We have considered any pecuniary or non-pecuniary conflict of interest (including political donations) associated with this DA on my part or an associated person.			
I/We (Mayor/Councillor/s) <u>SARAH SMITH</u> have a conflict of interest:			
<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes If yes , please provide the nature of the interest and reasons why further action should be taken to bring this DA to Council:			
Signed: Mayor Palmer <small>Please sign or type name & attached to an email.</small>	Date: <u>3/6/19</u> to enter a date.		
Signed: Cr Smith <small>Please sign or forward supporting email.</small>	Date: <u>4/6/19</u> to enter a date.		
Signed: Cr Dunkley <small>Please sign or forward supporting email.</small>	Date: <u>4/6/19</u> to enter a date.		

 PORT STEPHENS COUNCIL	CALL TO COUNCIL FORM DEVELOPMENT APPLICATION
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Development application (DA) call to Council request:	
I/We (Mayor/Councillor/s) <u>Mayor Palmer, Cr Smith and Cr Dunkley</u> request that DA number <u>16-2019-135-1</u> for DA description <u>Single Dwelling</u> located at <u>1 Swanreach Road Hinton</u> be reported to Council for determination.	
Reason:	
For public interest due to Council previously having resolved to review the flood policy via a newly formed committee that has not met as yet.	
Declaration of Interest:	
I/We have considered any pecuniary or non-pecuniary conflict of interest (including political donations) associated with this DA on my part or an associated person.	
I/We (Mayor/Councillor/s) <u>Cr Dunkley</u> have a conflict of interest:	
<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	
If yes , please provide the nature of the interest and reasons why further action should be taken to bring this DA to Council:	
Signed: Mayor Palmer <small>Please sign or type name & attached to an email.</small>	Date: <u>3/6/19</u> <small>enter a date.</small>
Signed: Cr Smith <small>Please sign or forward supporting email.</small>	Date: <u>4/6/19</u> <small>enter a date.</small>
Signed: Cr Dunkley <small>Please sign or forward supporting email.</small>	Date: <u>4/6/19</u> <small>enter a date.</small>

MINUTES ORDINARY COUNCIL - 10 SEPTEMBER 2019

Councillor Paul Le Mottee left the meeting at 5:32pm prior to item 1.

ITEM NO. 1

FILE NO: 19/159333
EDRMS NO: 16-2019-135-1

DEVELOPMENT APPLICATION - 16-2019-135-1 SINGLE STOREY DWELLING ON APPROVED FLOOD MOUND AT 1 SWANREACH ROAD, HINTON (LOT: 51 DP: 1250604)

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

RECOMMENDATION IS THAT COUNCIL:

- 1) Refuse development application 16-2019-135-1 for a single storey dwelling on approved flood mound at 1 Swanreach Road, Hinton (LOT: 51 DP: 1250604) for the reasons provided within (**ATTACHMENT 3**).

**ORDINARY COUNCIL MEETING - 10 SEPTEMBER 2019
MOTION**

218	Mayor Ryan Palmer Councillor Chris Doohan It was resolved that Council defer development application 16-2019-135-1 for a single storey dwelling on approved flood mound at 1 Swanreach Road, Hinton (LOT: 51 DP: 1250604) for a site inspection, and convene the Floodplain Committee.
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In accordance with Section 375 (A) of the Local Government Act 1993, a division is required for this item.

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

Those against the Motion: Nil.

BACKGROUND

The purpose of this report is to present a development application (DA) to Council for determination. The subject DA relates to land located at 1 Swanreach Road, Hinton legally identified as LOT: 51 DP: 1250604 ('the subject site'). A locality plan is provided at (**ATTACHMENT 1**).

MINUTES ORDINARY COUNCIL - 10 SEPTEMBER 2019

The development application was called to Council by Mayor Palmer, Councillor Smith and Councillor Dunkley as provided at **(ATTACHMENT 4)**.

Proposal

The applicant seeks approval for the construction of a single dwelling on an approved flood mound at the subject site. Details of the proposal are as follows:

- Single storey dwelling is to be located on an approved flood mound. The flood mound was approved by Council staff under delegation on 31 January 2019 (DA No. 16-2018-621-1) and is currently nearing completion. Advisory Note D of the DA consent identifies that the approval of the flood mound is not to be taken as tacit approval for the erection of a dwelling house on the subject site.
- The internal living spaces (260m²) contain 4 bedrooms, bathroom, powder room, ensuite, kitchen, living/dining area, and lounge areas. The external perimeter verandah area has a footprint of 85m² and the alfresco area had a footprint of 49m² bringing the total footprint of the dwelling to 394m².

Site History

The subject site has a total area of 9.497 hectares, is generally flat and is zoned RU1 Primary Production. Access to the site is direct from both Hinton Road and Swanreach Road. Swanreach Road severs the lot into 2 portions. The larger portion area is 8.771 hectares and the smaller portion area is 7266m².

An approval was issued in January 2019 for a flood mound. The flood mound is currently nearing completion and has been constructed with an approximate finished level of 5.7 metres Australian Height Datum (AHD). The flood mound at the time was not assessed for residential development. Advisory Note D of the DA consent identifies that the approval of the flood mound is not to be taken as tacit approval for the erection of a dwelling house on the subject site.

The site is surrounded by similar large rural lots for the purposes of farming. The site is located in a high hazard floodway. The land is generally clear of vegetation and comprises mainly of pasture. A majority of the subject site is below the level of Hinton Road. The flood mound (under construction) raises the proposed building site above the level of Hinton Road and is located approximately 11.85 metres away from the Swanreach Road frontage and 180 metres to Hinton Road.

An existing metal farm shed is located in the east of the site, which is to be retained.

Key Issues

The key issues resulting in the recommendation to refuse the application are outlined in this report. A detailed assessment of the development application is provided at **(ATTACHMENT 2)**.

MINUTES ORDINARY COUNCIL - 10 SEPTEMBER 2019Flood Impacts

The subject site is mapped as flood prone land. Recent flood data obtained from Maitland City Council highlight the subject site as High Hazard Floodway.

The applicant has submitted a Flood Impact Assessment for the proposal (from BMT dated 11 September 2018). The impact assessment considers a range of flood events (2%, 1%, 0.5% and Probable Maximum Flood (PMF)) and concludes that the construction would have negligible impact on flood levels (less than 0.1m difference) and minor impact on flood velocities (largely confined to the site, estimated at 0.2m/s increase on the north site boundary).

Table 1 below shows the finished floor levels of the proposed dwelling relative to Council's Adopted Flood Planning Level.

Description	Level
Councils Adopted Flood Planning Level (FPL)	RL 6.2m AHD
Top of flood mound (Existing)	RL 5.7m AHD (variable)
Finished floor level of proposed dwelling	RL 6.4m AHD

Table 1: Nominated levels relating to the subject site and proposed development.

Despite the finish floor level of the dwelling being 200mm above the adopted Flood Planning Level (FPL), development in a high hazard floodway is not encouraged under section B5.11 of the Port Stephens Development Control Plan 2014 (DCP 2014). An application may only be considered when accompanied with a flood report and demonstrating it has a specific community need/benefit. In this regard, the flood report does not address the current proposal and incorrectly categorises the flood risk. Further, the provision of private housing does not meet community need/benefit criteria and therefore the proposal is inconsistent with Council's adopted policy.

New residential development on land which becomes an island (isolated) during a flood event must provide flood refuge and must be constructed to withstand the flood action events up to the Probable Maximum Flood (PMF) (B5.3 of DCP 2014). The residential component is single storey which does not provide compliant flood refuge. The proposal could be adapted to provide flood refuge during a major event. The PMF level is at 8.9 metres AHD which would require modifications to the proposal to achieve this aspect of the DCP 2014.

Egress from the site is via Swanreach Road, with the low point of the road being at RL 2.4 metres AHD in Swanreach Road, near the intersection with Hinton Road. In the defined flood event (future 1% AEP), the depth of floodwater at the road in this location is 2.8 metres. Noting this, the site would experience the loss of connection to access roads, limiting access to the site and options for safe evacuation during these events. The land and access points have traditionally been developed with the

MINUTES ORDINARY COUNCIL - 10 SEPTEMBER 2019

consideration of the land being prime agricultural and grazing land and were not developed with residential occupation in mind.

In addition to the controls within Council's DCP 2014, clause 7.3 of Council's Local Environmental Plan (LEP 2013) also applies. Clause 7.3(3) states that the development must be compatible with the flood hazard of the land and that it must not have a significant, adverse effect on flood behaviour (resulting in detrimental increases in the potential flood affectation of other development or properties). As outlined above, in the event of a flood, the site would experience connection loss and there would be limited options for the evacuation of the site. This is likely to place unreasonable and unnecessary strain upon emergency services.

The social and economic impacts of flooding are well documented locally and state wide. Legislation, policies and strategies (including the NSW Floodplain Development Manual, Council's LEP 2013 and DCP 2014) have been endorsed and implemented by Council to mitigate the impacts of flooding within the Local Government Area (LGA). On this basis, the development is considered to be inconsistent with clause 7.3(3) of the LEP 2013 and is recommended for refusal.

The proposed residential development cannot be supported for the above mentioned reasons.

Suitability of the Site

The subject site is zoned for rural purposes. The existing filling of the subject site could be considered to allow for additional opportunities for the rural land use and support the social and economic environment through decreasing the stress associated with the loss and recovery during and after the flood.

Based on the information provided the assessment has determined that the site is not suitable for the proposed development as:

- The development does not comply with the requirements under the NSW Floodplain Manual and Council's adopted LEP 2013 and DCP 2014.
- The subject site is not suitable for the proposed residential development due to the high hazard floodway constraints and the associated risks.

Conclusion

The development is inconsistent with the relevant legislation and policies, including:

- Environmental Planning and Assessment Act 1979, including section 4.15(1)(c) the suitability of the site.
- Port Stephens LEP 2013; clause 7.3 Flood Planning.
- Port Stephens DCP 2014; section B5 Flooding.
- Council Floodplain Risk Management Policy.
- NSW Government Floodplain Development Manual 2005.

MINUTES ORDINARY COUNCIL - 10 SEPTEMBER 2019

The key issues arising through the assessment of the application are that the proposed development is not a suitable outcome for the site, and is recommended for refusal for the reasons provided within **(ATTACHMENT 3)**.

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2018-2021
Thriving and Safe Place to Live	Enhance public safety, health and liveability through use of Council's regulatory controls and services.

FINANCIAL/RESOURCE IMPLICATIONS

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

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

LEGAL, POLICY AND RISK IMPLICATIONS

The development application is inconsistent with the relevant planning instruments, flood development guidelines and studies including the Environmental Planning and Assessment Act 1979 (EP&A Act), Port Stephens Local Environmental Plan 2013 (LEP 2013), Port Stephens Development Control Plan 2014 (DCP 2014), Council's Floodplain Risk Management Policy and the NSW Government Floodplain Development Manual 2005.

Detailed assessments against these requirements are contained within the assessment report provided at **(ATTACHMENT 2)**.

In addition, section 733 of the Local Government Act 1993 (LG Act) provides Council with a general exemption from liability with respect to flood liable land only if the necessary studies and works are carried out in accordance with the principles contained in the NSW Floodplain Development Manual 2005.

MINUTES ORDINARY COUNCIL - 10 SEPTEMBER 2019

The approval of the proposed development is considered to be inconsistent with the principles contained within the NSW Floodplain Development Manual and may negate the good faith immunity provisions in the LG Act.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that if the application is approved Councils decisions will contradict the requirements set out under clause 7.3 LEP 2013.	Medium	Determine the application in line with the recommendation.	Yes
There is a risk that if the application is approved, Council may be liable for damage or consequences to approving a development located on a site with a known high flood risk.	Medium	Determine the application in line with the recommendation.	Yes
The risk is that the proposal will expose the property and people to risk of damage and death as a consequence of approving fill and a dwelling within a known flood risk area.	Medium	Determine the application in line with the recommendation.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The key issues arising through the assessment of the application are that the proposed development is not a suitable outcome for the site, and for these reasons the proposed development is recommended for refusal as outlined in **(ATTACHMENT 3)**.

CONSULTATIONInternal referral

Consultation was undertaken with internal officers, including the Engineering section. The referral comments from these officers were considered as part of the assessment provided within **(ATTACHMENT 2)** and accordingly the proposed development is recommended for refusal for the reasons provided within **(ATTACHMENT 3)**.

MINUTES ORDINARY COUNCIL - 10 SEPTEMBER 2019

External agency

Referral to external agencies was not required.

Notification

It is noted that Councils notification policy outlined in Chapter A of the DCP 2014 that single dwellings do not require notification. Accordingly, the proposed development was not placed on public notification.

OPTIONS

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

ATTACHMENTS

- 1) Locality Plan. [↓](#)
- 2) Assessment Report. [↓](#)
- 3) Reasons for Refusal. [↓](#)
- 4) Call to Council Form. [↓](#)

COUNCILLORS ROOM

- 1) Development Plans.

Note: Any third party reports referenced in this report can be inspected upon request.

TABLED DOCUMENTS

Nil.



110 Adelaide Street, Raymond Terrace NSW 2324 Phone: (02) 4800225 Fax: (02) 49573012 Email: council@portstephens.nsw.gov.au

MINUTES ORDINARY COUNCIL - 10 SEPTEMBER 2019

ITEM 1 - ATTACHMENT 2 ASSESSMENT REPORT.

 PORT STEPHENS COUNCIL		DEVELOPMENT ASSESSMENT REPORT	
APPLICATION DETAILS			
Application Number	16-2019-135-1		
Development Description	Single Storey Dwelling		
Applicant	MR N A WARD		
Date of Lodgement	08/03/2019		
Value of Works	\$446,480.00		
Development Proposal			
<p>The applicant seeks approval for the construction of a single dwelling on an approved flood mound at the subject site. Details of the proposal are as follows:</p> <ul style="list-style-type: none"> Single storey dwelling is to be located on an approved flood mound. The flood mound was approved by Council staff under delegation on 31 January 2019 (DA No. 16-2018-621-1) and is currently nearing completion. Advisory Note D of the flood mound consent identifies that the approval of the flood mound is not to be taken as tacit approval for the erection of a dwelling house on the subject site. The internal living spaces (260m²) contain four bedrooms, bathroom, powder room, ensuite, kitchen, living/dining area, and lounge areas. The external perimeter verandah area has a footprint of 85m² and the alfresco area had a footprint of 49m² bringing the total footprint of the dwelling to 394m². 			
PROPERTY DETAILS			
Property Address	1 Swanreach Road HINTON		
Lot and DP	LOT: 51 DP: 1250604		
Zoning	RU1 PRIMARY PRODUCTION		
Site Constraints	<i>High Hazard Floodway, Site Access, Onsite septic requirements</i>		
Site History			
<p>The subject site has a total area of 9.497 hectares, generally flat and is zoned RU1 – Primary Production. Access to the site is direct from both Hinton Road and Swanreach Road. Swanreach Road severs the lot into two portions. The larger portion area is 8.771 hectares and the smaller portion area is 7266m².</p>			

MINUTES ORDINARY COUNCIL - 10 SEPTEMBER 2019**ITEM 1 - ATTACHMENT 2 ASSESSMENT REPORT.**

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An approval was issued in January 2019 for a flood mound. The flood mound currently is nearing completion and has been constructed with an approximate finished level of 5.7 metres Australian Height Datum (AHD). At the time, the flood mound was not assessed intended for residential development. Advisory Note D of the flood mound consent identifies that the approval of the flood mound is not to be taken as tacit approval for the erection of a dwelling house on the subject site.

Site Inspection

Two site inspections were carried out in April 2019 and June 2019. The site can be seen in the photographs below.

The site is surrounded by similar large rural lots for the purposes of farming. The site is located in a high hazard floodway. The land is generally clear of vegetation and comprises mainly of pasture grass. A majority of the subject site is below the level of Hinton Road. The flood mound (under construction) raises the proposed building site above the level of Hinton Rd and is located approximately 11.85 metres away from the Swanreach Road frontage and 180 metres too Hinton Road.

An existing metal farm shed is located to the east of the site, which is to be retained.

Site Photos:

Photo 1: Looking North down Swanreach Road towards Hinton Road, approved mound being constructed and existing metal shed



Photo 2: Looking North-East, approved mound being constructed, proposed site of development and existing metal shed



Photo 3: Looking East, approved mound being constructed, proposed site of development and existing metal shed



Photo 4: Looking South, approved mound being constructed, proposed site of development

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MINUTES ORDINARY COUNCIL - 10 SEPTEMBER 2019

ITEM 1 - ATTACHMENT 2 ASSESSMENT REPORT.

16-2019-135-1



Photo 5: Looking North, approved mound being constructed, proposed site of development

REFERRALS

No external referrals were required. The proposed development was referred to the following internal specialists. The comments of the listed staff have been used to carry out the assessment against the S4.15 Matters for Consideration below.

Council's Flooding Drainage Engineers Comments:

For large floods, flows from the Paterson River and the Hunter River combine just upstream of Hinton and separate to travel on the north side of Hinton over the Hunter Valley Flood Mitigation Levee and on the south side through the Hunter River and across the Swanreach floodplain, joining again in the vicinity of the subject site.

The lot does not have an existing dwelling on the site and introducing or intensifying development in the floodplain creates a flood risk to the new development and its users and emergency services. The site is generally at RL 1.7m AHD to RL 2.3m AHD. Egress from the site is via Swanreach road, with the low point of the road being at RL 2.4m AHD in Swanreach Road, near the intersection with Hinton Road. In the defined flood event (future 1% AEP), the depth of floodwater at the road in this location is 2.8 metres.

Recent flood data obtained from Maitland City Council highlight the area as High Hazard Floodway, not as High Hazard Storage as shown on the Flood Certificate issued in early 2018. This can be seen in the image below with the lot highlighted and velocity vectors showing the hazardous nature of the flood in this location.

Refusal for a dwelling is recommended from a floodplain risk management perspective because:

- i) The proposal is incompatible with the land's flood hazard (being a high hazard floodway and surrounded by high hazard floodway), would create a flood island during events smaller than the defined flood event (future 1% AEP), does not incorporate appropriate measures to manage risk to life from flood and would increase the flood risk to life in the floodplain (refer to Section 4.15(1)(a)(i) of the EP&A Act 1979 and Clause 7.3 Flood Planning of the Port Stephens LEP 2013).
- ii) The site is not suitable for this development because of the nature of flooding in this area and the flood hazard across the site (refer to Section 4.15(1)(c) of the EP&A Act 1979 and Clause 7.3 Flood Planning of the Port Stephens LEP 2013).

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MINUTES ORDINARY COUNCIL - 10 SEPTEMBER 2019

ITEM 1 - ATTACHMENT 2 ASSESSMENT REPORT.

16-2019-135-1

- iii) The proposal will result in flood isolation during floods smaller than the defined flood event (future 1% AEP), would place additional people at risk during floods (in contravention of the Floodplain Development Manual (ISBN 0 7347 5476 0) published by the NSW Government in April 2005), would place extra burden on the State Emergency Services and is not in the public interest (refer to Section 4.15(1)(e) of the EP&A Act 1979 and Clause 7.3 Flood Planning of the Port Stephens LEP 2013).

MATTERS FOR CONSIDERATION – SECTION 4.15

s4.15(1)(a)(i) – The provisions of any EPI

STATE ENVIRONMENTAL PLANNING POLICY (BUILDING SUSTAINABILITY INDEX BASIX) 2008		
Clause	Compliant	Notes (where needed or if not compliant)
6	<input checked="" type="checkbox"/> The proposed BASIX affected development, or buildings that become BASIX affected development (conversion of garage for example) is accompanied by a BASIX certificate <input checked="" type="checkbox"/> Condition of consent relating to BASIX	

PORT STEPHENS LOCAL ENVIRONMENTAL PLAN 2013		
Clause	Compliant	Notes (where needed or if not compliant)
2.1	<input checked="" type="checkbox"/> Permissible in zone and meets zone objectives.	
4.1	<input checked="" type="checkbox"/> The proposal is consistent with the Lot Size Map;	
4.2B	<input checked="" type="checkbox"/> Dwelling proposed on RU1, RU2, R5, E2 or E3 land where there is no current dwelling on site. <input checked="" type="checkbox"/> Land zoned RU1, RU2, E2 or E3 and created before 22 February 2014 with an area of at least 4,000m ² on which a dwelling was permissible under the previous LEP; OR,	
4.3	<input checked="" type="checkbox"/> There is no maximum building height and the development satisfies the objectives.	

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MINUTES ORDINARY COUNCIL - 10 SEPTEMBER 2019

ITEM 1 - ATTACHMENT 2 ASSESSMENT REPORT.

16-2019-135-1

5.9AA	<input checked="" type="checkbox"/> Trees will be removed that are not prescribed under DCP.	No nominated vegetation to be removed.
7.1	<input checked="" type="checkbox"/> Potential Class 3 ASS with no works more than 1m below ground level.	The property is affected by ASS Class 3. No works will require the excavation into natural ground. Although consideration must be made for the type of substructure required as the existing mound may not have been engineered for residential purposes. Compaction rates would require piercing into natural ground to provide adequate bearing pressure for the new propose structures.
7.2	<input checked="" type="checkbox"/> Earthworks required, but do not have negative impacts on surrounding properties.	Some earth works will be required to bring the existing fill mound to the required FPL. Minor earthworks will also be required for the proposed septic system required on site, no detail has been provided for the type of system proposed.
7.3	<input checked="" type="checkbox"/> Development: within flood planning area but no anticipated flood risk to life and property, or change in flood characteristics.	The development is located in a High Hazard Flood Way. The applicant has submitted a Flood Impact Assessment for the proposal (from BMT dated 11 September 2018) The impact assessment considers a range of flood events (2%, 1%, 0.5% and Probable Maximum Flood (PMF)) and concludes that the construction would have negligible impact on flood levels (less than 0.1m difference) and minor impact on flood velocities (largely confined to the site, estimated at 0.2m/s increase on the north site boundary). It is considered that the

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ITEM 2 - ATTACHMENT 5 ORDINARY COUNCIL MINUTES - 10 SEPTEMBER 2019.

MINUTES ORDINARY COUNCIL - 10 SEPTEMBER 2019

ITEM 1 - ATTACHMENT 2 ASSESSMENT REPORT.

16-2019-135-1

		proposal is not compatible with the flood hazard of the land as it increases the risk to life. In the event of a flood the site would experience connection loss and there would be limited options for the evacuation of the site, which could place unreasonable strain upon emergency services.
7.6	<input checked="" type="checkbox"/> Essential services are available to the site where required.	

s4.15(1)(a)(ii) – Any Draft EPI

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

s4.15(1)(a)(iii) – Any DCP

PORT STEPHENS DEVELOPMENT CONTROL PLAN 2014		
Clause	Compliant	Notes (where needed or if not compliant)
A.12	<input checked="" type="checkbox"/> Notification and advertising.	Not required for single dwellings
B1	<input checked="" type="checkbox"/> Trees to be removed do not require approval as outlined in B1.1.	No vegetation is required to be removed
B2	<input checked="" type="checkbox"/> Not in proximity of items of environmental significance. <input checked="" type="checkbox"/> Land does not contain koala habitat or development is consistent with the CKPoM.	
B3	<input type="checkbox"/> Development meets bushfire construction requirements. <input checked="" type="checkbox"/> Development would not disturb acid sulphate soils or an acceptable ASSMP has been prepared. <input checked="" type="checkbox"/> Earthworks would have minimal environmental impacts with conditions on VENM fill and erosion and sediment controls.	The flood mound was approved by Council staff under delegation on 31 January 2019 (DA No. 16-2018-621-1) and is currently nearing completion.
B4	<input type="checkbox"/> Non-permeable area not significantly increased and development consistent with figure BD, on-site detention not required; OR, <input type="checkbox"/> Non-permeable area above figure BD and acceptable on-site detention proposed or condition for details added. <input type="checkbox"/> Insignificant increases to adversely impact on water quality.	N/A

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ITEM 2 - ATTACHMENT 5 ORDINARY COUNCIL MINUTES - 10 SEPTEMBER 2019.

MINUTES ORDINARY COUNCIL - 10 SEPTEMBER 2019

ITEM 1 - ATTACHMENT 2 ASSESSMENT REPORT.

16-2019-135-1

B5	<input checked="" type="checkbox"/> Proposed development is on flood prone land; AND, <input type="checkbox"/> A flood certificate has been submitted with the application and the finished levels are consistent with Table 2: Development Suitability Table; AND, <input type="checkbox"/> The submitted documents are consistent with Table 2: Development Suitability Table. B5.11 Development located within High Hazard 1 – Floodway adheres to the following: • New buildings or structures and fill are not supported unless accompanied by a report Note: Development within a floodway is not encouraged. An application may only be considered where it demonstrated to have specific community needs/benefits, which does not relate to the provision of housing	The proposed property is identified as a High Hazard Floodway category. No flood certificate was submitted with the application. Conflicting levels have been provided by the Applicant. The Applicant has not adequately addressed part B5.11 the DCP or demonstrated that the application benefits the needs of the community.
B6	<input checked="" type="checkbox"/> Essential services are available to the site, where required.	Yes – Onsite septic system required
C4	<input checked="" type="checkbox"/> BASIX submitted in accordance with SEPP. <input checked="" type="checkbox"/> Site coverage is in accordance with figure BD. <input checked="" type="checkbox"/> Proposal ensures development provides continuity to the street and setbacks comply with C4.10-C4.19. <input checked="" type="checkbox"/> Development appropriately activates the street with habitable rooms where applicable. <input checked="" type="checkbox"/> The proposed development would be sympathetic to the streetscene as it is consistent with the existing development in its form, height, bulk, design and materials. <input checked="" type="checkbox"/> The development would not adversely affect the amenity of neighbouring properties or the public domain.	The development is setback approximately 11.86m from Swanreach Road and will not have a significant impact on the streetscape or neighbouring properties.

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

Notes (where needed)	
<input checked="" type="checkbox"/> There are no planning agreements that have been entered into under section 7.4 relevant to the proposed development.	N/A

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MINUTES ORDINARY COUNCIL - 10 SEPTEMBER 2019

ITEM 1 - ATTACHMENT 2 ASSESSMENT REPORT.

16-2019-135-1

s4.15(1)(a)(iv) – The regulations

Notes (where needed)
<input checked="" type="checkbox"/> There are no matters within the regulations that are relevant to the determination of the application.

s4.15(1)(a)(v) – Any coastal management plan

Notes (where needed)
<input checked="" type="checkbox"/> There are no coastal management plans that are relevant to the determination of the application.

s4.15(1)(b) – The likely impacts of the development

Notes (where needed)
<input checked="" type="checkbox"/> Social and Economic Environment: There would be beneficial impacts as a result of the development.
<input checked="" type="checkbox"/> Built Environment: The proposed development would not cause harm to the existing character.
<input checked="" type="checkbox"/> Natural Environment: There are no adverse impacts expected as a result of the proposed development and appropriate conditions have been added.

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

The subject site is zoned RU1 – Primary Production, whereby the proposed dwelling is a permissible use under the zoning. The site is identified as high hazard flood way and the proposed development and use does not align or address all of the requirements under current Council endorsed policy and legislation. Due to the identified flood hazard, the use of the site for residential accommodation is not 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 it is inconsistent with the adopted principles and strategies which seek to promote the appropriate development of land. The development poses an unacceptable risk to life and may also result in adverse flood impacts to surrounding properties.

DETERMINATION

The application is recommended to be refused under delegated authority, subject to conditions as contained in the notice of determination.

HEIDI MCLOUGHLIN

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MINUTES ORDINARY COUNCIL - 10 SEPTEMBER 2019

ITEM 1 - ATTACHMENT 3 REASONS FOR REFUSAL.




PORT STEPHENS
COUNCIL

REASONS FOR REFUSAL

1. The proposed development fails to satisfy Clause 7.3 (Flood Planning) of the LEP2013 as the development does not demonstrate that it is compatible with the flood characteristics of the site including minimising the flood risk to life associated with the land (s4.15(1)(b) of the *Environmental Planning and Assessment Act 1979* ('EP&A Act'));
2. The development does not comply with the controls contained within Port Stephens Development Control Plan (Chapter B5 Flooding) (s.4.15(1)(a)(i) of the *EP&A Act*);
3. The proposed development does not demonstrate the suitability of the use of the site given the flood characteristics 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 (s.4.15(1)(e) of the *EP&A Act*).

MINUTES ORDINARY COUNCIL - 10 SEPTEMBER 2019


ITEM 1 - ATTACHMENT 4 CALL TO COUNCIL FORM.

 PORT STEPHENS COUNCIL		CALL TO COUNCIL FORM DEVELOPMENT APPLICATION	
Development application (DA) call to Council request:			
I/We (Mayor/Councillor/s) <u>Mayor Palmer, Cr Smith & Cr Dunkley</u>		request	
that DA number <u>16-2019-135-1</u>		for DA	
description <u>Single dwelling</u>		located at	
<u>1 Swanreach Road, Hinton</u>			
be reported to Council for determination.			
Reason:			
For public interest due to Council previously having resolved to review the flood policy via a newly formed committee that has not met as yet.			
Declaration of Interest:			
I/We have considered any pecuniary or non-pecuniary conflict of interest (including political donations) associated with this DA on my part or an associated person.			
I/We (Mayor/Councillor/s) <u>Ryan Palmer</u>		have a	
conflict of interest.			
<input checked="" type="checkbox"/> No			
<input type="checkbox"/> Yes			
If yes, please provide the nature of the interest and reasons why further action should be taken to bring this DA to Council:			
Signed: <small>Please sign or type name & attach to an email.</small>		Date: Click here to enter a date. <u>3/6/19</u>	
Signed: <small>Please sign or forward supporting email.</small>		Date: Click here to enter a date. <u>3/6/19</u>	
Signed: <small>Please sign or forward supporting email.</small>		Date: Click here to enter a date.	

MINUTES ORDINARY COUNCIL - 10 SEPTEMBER 2019

ITEM 1 - ATTACHMENT 4


CALL TO COUNCIL FORM.

 PORT STEPHENS COUNCIL		CALL TO COUNCIL FORM DEVELOPMENT APPLICATION	
Development application (DA) call to Council request:			
I/We (Mayor/Councillor/s) <u>Mayor Palmer, Cr Smith and Cr Dunkley</u> request		that DA number <u>16-2019-135-1</u> for DA	
description <u>Single Dwelling</u>		located at <u>1 Swanreach Road Hinton</u>	
be reported to Council for determination.			
Reason:			
For public interest due to Council previously having resolved to review the flood policy via a newly formed committee that has not met as yet.			
Declaration of Interest:			
I/We have considered any pecuniary or non-pecuniary conflict of interest (including political donations) associated with this DA on my part or an associated person.			
I/We (Mayor/Councillor/s) <u>SARAH SMITH</u> have a conflict of interest:			
<input checked="" type="checkbox"/> No			
<input type="checkbox"/> Yes			
If yes , please provide the nature of the interest and reasons why further action should be taken to bring this DA to Council:			
Signed: Mayor Palmer <small>Please sign or type name & attached to an email.</small>		Date: <u>3/6/19</u> to enter a date.	
Signed: Cr Smith <small>Please sign or forward supporting email.</small>		Date: <u>4/6/19</u> to enter a date.	
Signed: Cr Dunkley <small>Please sign or forward supporting email.</small>		Date: <u>4/6/19</u> to enter a date.	

MINUTES ORDINARY COUNCIL - 10 SEPTEMBER 2019

ITEM 1 - ATTACHMENT 4

CALL TO COUNCIL FORM.

 PORT STEPHENS COUNCIL		CALL TO COUNCIL FORM DEVELOPMENT APPLICATION	
Development application (DA) call to Council request:			
I/We (Mayor/Councillor/s) <u>Mayor Palmer, Cr Smith and Cr Dunkley</u> request that DA number <u>16-2019-135-1</u> for DA description <u>Single Dwelling</u> located at <u>1 Swanreach Road Hinton</u> be reported to Council for determination.			
Reason:			
For public interest due to Council previously having resolved to review the flood policy via a newly formed committee that has not met as yet.			
Declaration of Interest:			
I/We have considered any pecuniary or non-pecuniary conflict of interest (including political donations) associated with this DA on my part or an associated person.			
I/We (Mayor/Councillor/s) <u>Cr Dunkley</u> have a conflict of interest:			
<input checked="" type="checkbox"/> No			
<input type="checkbox"/> Yes			
If yes, please provide the nature of the interest and reasons why further action should be taken to bring this DA to Council:			
Signed: Mayor Palmer <small>Please sign or type name & attached to an email.</small>		Date: <u>3/6/19</u> <small>enter a date.</small>	
Signed: Cr Smith <small>Please sign or forward supporting email.</small>		Date: <u>4/6/19</u> <small>enter a date.</small>	
Signed: Cr Dunkley <small>Please sign or forward supporting email.</small>		Date: <u>4/6/19</u> <small>enter a date.</small>	

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

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

RECOMMENDATION IS THAT COUNCIL:

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

BACKGROUND

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

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

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

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

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

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

	while also being incompatible with the flood hazard category applying to the site.
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A locality plan is provided at **(ATTACHMENT 1)**.

Proposal

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

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

Site Description and history

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

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

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

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

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

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

Key Issues

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

Flood risk

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

The flood levels applicable to the site are:

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

The DA includes the following levels:

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

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

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

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

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

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

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

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

Conclusion

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

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

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

COMMUNITY STRATEGIC PLAN

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

FINANCIAL/RESOURCE IMPLICATIONS

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

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

LEGAL, POLICY AND RISK IMPLICATIONS

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

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

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

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

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

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

CONSULTATION

Internal

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

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

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

External

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

Notification

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

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

OPTIONS

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

ATTACHMENTS

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

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.



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



APPLICATION DETAILS

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

PROPERTY DETAILS

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

PLANNERS PRE-ASSESSMENT CHECKLIST**PROPOSAL**

The application proposes a dwelling to support the animal training establishment at the subject site. The proposed development comprises a 201m² single storey dwelling, to be located on an existing earth mound (approved under DA 16-2016-302). A concrete slab is proposed over the ground level of the dwelling, with piers proposed to support the first level of the dwelling. The dwelling is a single storey design comprising of four bedrooms, ensuite, open plan living, dining, kitchen space and a stairwell. The ground level will be used for vehicle parking and is identified as a non-habitable space.

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



Figure 1: Proposed development

SITE DESCRIPTION

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

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

16-2020-357-1



Figure 2: Aerial view of subject site

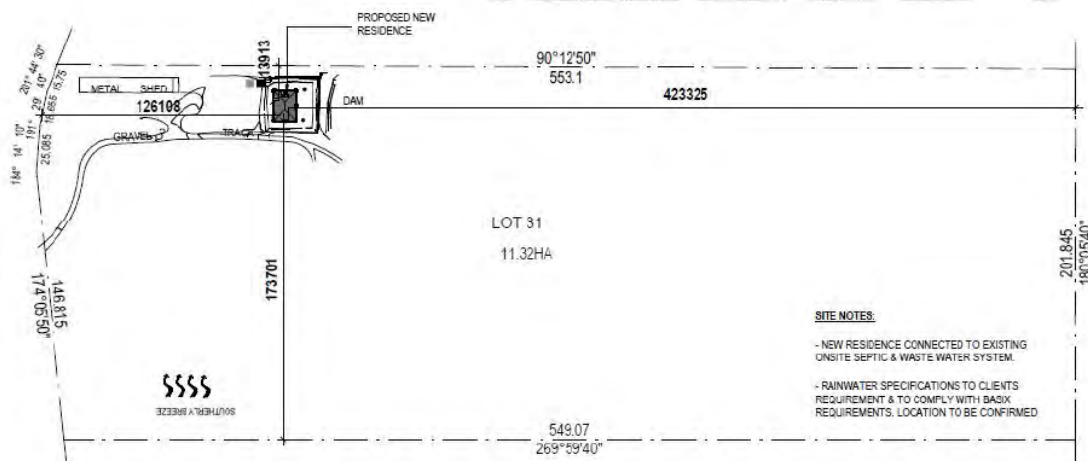


Figure 3: Locality plan

SITE HISTORY

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

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

The following applications have been assessed over the subject site:

ITEM 3 - ATTACHMENT 2 PLANNERS ASSESSMENT REPORT.

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

SITE INSPECTION

A site inspection was carried out on 3 February 2021.

The subject site can be seen in the images below:



Figure 4: View from proposed development site facing east



Figure 5: View from proposed development site facing west

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Figure 6: View of proposed development site facing north



Figure 7: View of proposed development site facing south

REFERRALS

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

Development Engineer

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

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

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

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

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

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

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

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

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

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

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

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

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

State Environmental Planning Policy No. 55 – Remediation of Land

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

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

State Environmental Planning Policy (Koala Habitat Protection) 2019

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

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

State Environmental Planning Policy Coastal Management 2018

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

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

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

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

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

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

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

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

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

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

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

The site is located in the RU1 zone and the lot was created before 22 February 2014 with an area of at least 4,000m² on which a dwelling was permissible under the previous Local Environmental Plan.

The site therefore holds a dwelling entitlement.

Clause 7.1 – Acid Sulfate Soils

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

Clause 7.3 – Flood Planning

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

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

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

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

Clause 7.6 – Essential Services

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

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

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

Section 4.15(a)(iii) – any development control planPort Stephens Development Control Plan 2014

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

Chapter B3 – Environmental ManagementAcid Sulfate Soils

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

Chapter B4 – Drainage and Water Quality

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

Chapter B5 – Flooding

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

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

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

The current flood levels applicable to the site are:

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

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

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

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

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

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

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

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

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

Chapter B8 – Road Network and Parking

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

Chapter C – Development Types

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

Chapter D4 - Dwelling House, Secondary Dwelling, or Dual Occupancy

Building height

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

Setbacks

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

Streetscape and privacy

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

Private open space

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

Landscaping

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

Site Facilities and Services

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

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

There are no regulations that apply to the proposal.

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

Social and Economic Impacts

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

Impacts on the Built Environment

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

Impacts on the Natural Environment

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

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

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

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

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

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

s4.15(1)(e) – The public interest

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

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

Nil.

DETERMINATION

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

ISAAC LANCASTER
DEVELOPMENT PLANNER

**SCHEDULE 1 – REASONS FOR REFUSAL**

The application is recommended for refusal on the following grounds:

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

**PORT STEPHENS COUNCIL**

116 Adelaide Street
Raymond Terrace NSW 2324

PO Box 42
Raymond Terrace NSW 2324

Phone: 02 4980 0255
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www.portstephens.nsw.gov.au

PORT STEPHENS
COUNCIL

Call to Council form

Development Application

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

DX 21406 | ABN 16 744 377 876

DEVELOPMENT APPLICATION (DA) CALL TO COUNCIL REQUEST

We (Mayor/Councillor/s)

Name: Ryan Palmer

Name: Sarah Smith

Name: Glen Dunkley

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

for DA description:

Single storey dwelling.

located at: 918 Newline Rd, Eagleton

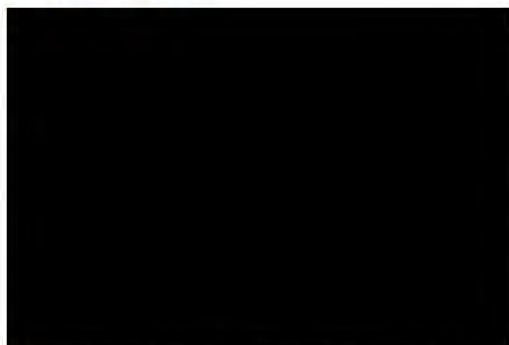
be reported to Council for determination.

REASON

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

SIGNATURE OF APPLICANT/S

Signature



Date 11 8 2020.

Signature

Date 11 8 2020

Signature

Date 11 8 2020

PRIVACY

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

MINUTES ORDINARY COUNCIL - 9 MARCH 2021

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

ITEM NO. 1

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

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

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

RECOMMENDATION IS THAT COUNCIL:

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

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

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

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

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

Those against the Motion: Nil.

The motion was carried.

BACKGROUND

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

MINUTES ORDINARY COUNCIL - 9 MARCH 2021

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

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

Proposal

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

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

Site Description and history

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

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

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

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

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

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

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

Key Issues

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

Flood risk

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

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The flood levels applicable to the site are:

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

The DA includes the following levels:

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

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

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

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

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

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

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

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

Conclusion

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

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

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

COMMUNITY STRATEGIC PLAN

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

FINANCIAL/RESOURCE IMPLICATIONS

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

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

LEGAL, POLICY AND RISK IMPLICATIONS

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

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

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

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

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

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

CONSULTATIONInternal

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

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

MINUTES ORDINARY COUNCIL - 9 MARCH 2021

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

External

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

Notification

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

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

OPTIONS

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

ATTACHMENTS

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

COUNCILLORS ROOM

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


TABLED DOCUMENTS

Nil.



MINUTES ORDINARY COUNCIL - 9 MARCH 2021

ITEM 1 - ATTACHMENT 2 PLANNERS ASSESSMENT REPORT.

 DEVELOPMENT ASSESSMENT REPORT	
APPLICATION DETAILS	
Application Number	16-2020-357-1
Development Description	Single storey dwelling
Applicant	MR P J ILSLEY
Land owner	MR P J ILSLEY
Date of Lodgement	22/06/2020
Value of Works	\$288,000.00
Submissions	1
PROPERTY DETAILS	
Property Address	918 Newline Road EAGLETON
Lot and DP	LOT: 31 DP: 840177
88B Restrictions on Title	Nil
Current Use	Animal boarding or training establishment
Zoning	RU1 PRIMARY PRODUCTION
Site Constraints	Bushfire Prone Land - Class 3 (Buffer) Acid Sulfate Soils - Class (3) Koala Habitat Planning Map (Link over Cleared) SEPP (Coastal Management) 2018 - Coastal Zone Combined Footprint Height Trigger Map - RAAF Base Williamtown and Salt Ash Air Weapons Range - DoD Prime Agricultural Land (Classes 1-3)
State Environmental Planning Policies	SEPP (Building Sustainability Index: BASIX) 2004 SEPP (Coastal Management) 2018 SEPP (Koala Habitat Protection) 2020 SEPP No. 55 - Remediation of Land

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

16-2020-357-1

PLANNERS PRE-ASSESSMENT CHECKLIST**PROPOSAL**

The application proposes a dwelling to support the animal training establishment at the subject site. The proposed development comprises a 201m² single storey dwelling, to be located on an existing earth mound (approved under DA 16-2016-302). A concrete slab is proposed over the ground level of the dwelling, with piers proposed to support the first level of the dwelling. The dwelling is a single storey design comprising of four bedrooms, ensuite, open plan living, dining, kitchen space and a stairwell. The ground level will be used for vehicle parking and is identified as a non-habitable space.

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



Figure 1: Proposed development

SITE DESCRIPTION

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

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

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ITEM 1 - ATTACHMENT 2 PLANNERS ASSESSMENT REPORT.

16-2020-357-1



Figure 2: Aerial view of subject site

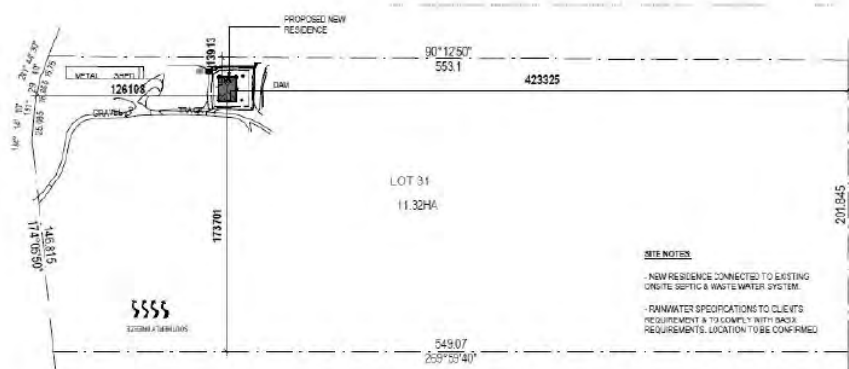


Figure 3: Locality plan

SITE HISTORY

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

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

The following applications have been assessed over the subject site:

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16-2020-357-1

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

SITE INSPECTION

A site inspection was carried out on 3 February 2021.

The subject site can be seen in the images below:



Figure 4: View from proposed development site facing east



Figure 5: View from proposed development site facing west

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16-2020-357-1



Figure 6: View of proposed development site facing north



Figure 7: View of proposed development site facing south

REFERRALS

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

Development Engineer

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

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

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

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

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

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

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

Section 4.15 - Matters for consideration

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

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

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

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

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

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

State Environmental Planning Policy No. 55 – Remediation of Land

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

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

16-2020-357-1

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

State Environmental Planning Policy (Koala Habitat Protection) 2019

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

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

State Environmental Planning Policy Coastal Management 2018

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

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

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

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

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

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

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

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

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

16-2020-357-1

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

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

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

The site is located in the RU1 zone and the lot was created before 22 February 2014 with an area of at least 4,000m² on which a dwelling was permissible under the previous Local Environmental Plan.

The site therefore holds a dwelling entitlement.

Clause 7.1 – Acid Sulfate Soils

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

Clause 7.3 – Flood Planning

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

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

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

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

Clause 7.6 – Essential Services

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

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

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

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Section 4.15(a)(iii) – any development control planPort Stephens Development Control Plan 2014

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

Chapter B3 – Environmental ManagementAcid Sulfate Soils

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

Chapter B4 – Drainage and Water Quality

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

Chapter B5 – Flooding

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

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

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

The current flood levels applicable to the site are:

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

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

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

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

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

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

16-2020-357-1

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

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

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

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

Chapter B8 – Road Network and Parking

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

Chapter C – Development Types

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

Chapter D4 - Dwelling House, Secondary Dwelling, or Dual OccupancyBuilding height

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

Setbacks

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

Streetscape and privacy

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

Private open space

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

Landscaping

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ITEM 1 - ATTACHMENT 2 PLANNERS ASSESSMENT REPORT.

16-2020-357-1

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

Site Facilities and Services

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

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

There are no regulations that apply to the proposal.

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

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

Impacts on the Built Environment

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

Impacts on the Natural Environment

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

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

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

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

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

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MINUTES ORDINARY COUNCIL - 9 MARCH 2021

ITEM 1 - ATTACHMENT 2 PLANNERS ASSESSMENT REPORT.

16-2020-357-1

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

s4.15(1)(e) – The public interest

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

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

Nil.

DETERMINATION

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

ISAAC LANCASTER
DEVELOPMENT PLANNER

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

The application is recommended for refusal on the following grounds:

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

**PORT STEPHENS COUNCIL**

116 Adelaide Street
Raymond Terrace NSW 2324

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MINUTES ORDINARY COUNCIL - 9 MARCH 2021

ITEM 1 - ATTACHMENT 4 CALL TO COUNCIL FORM.



Call to Council form

Development Application

116 Adelaide Street,
Raymond Terrace NSW 2324
PO Box 42
Raymond Terrace NSW 2324
p (02) 4968 0255 f (02) 4967 5612
e council@portstephens.nsw.gov.au
DX 21405 (ABN 18 744 377 875)

DEVELOPMENT APPLICATION (DA) CALL TO COUNCIL REQUEST

We (Mayor/Council/or/s)

Name: Ryan Palmer

Name: Sarah Smith

Name: Glen Dunkley

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

for DA description:

Single storey dwelling.

located at: 918 Newline Rd, Eagleton

be reported to Council for determination.

REASON

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

SIGNATURE OF APPLICANT/S

Signature



Date 11 8 2020.

Signature

Date 11 8 2020

Signature

Date 11 8 2020

PRIVACY

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

ITEM NO. 4**FILE NO: 21/64925
EDRMS NO: 16-2020-302-1****DEVELOPMENT APPLICATION 16-2020-302-1 FOR A DUAL OCCUPANCY (1 EXISTING) AND FLOOD MOUND AT 814 HINTON ROAD, OSTERLEY (LOT 29 DP 871241)**

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

RECOMMENDATION IS THAT COUNCIL:

- 1) Refuse Development Application 16-2020-302-1 for a dual occupancy (1 existing) and flood mound at 814 Hinton Road, Osterley (Lot 29 DP 871241) for the reasons contained in **(ATTACHMENT 3)**.

BACKGROUND

Development Application (DA) 16-2020-302-1 was reported to Council at its meeting on 9 March 2021. At that meeting it was resolved that the DA be deferred for a period of 4 weeks to allow for a site inspection. The resolution is provided below:

Meeting Minute 046: It was resolved that Council defer development application 16-2020-302-1 for a dual occupancy (1 existing) and flood mound at 814 Hinton Road, Osterley (Lot 29 DP 871241) for a period of 4 weeks to allow for a site inspection **(ATTACHMENT 5)**.

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

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

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

Subject land:	814 Hinton Road, Osterley (Lot 29 DP 871241)
Total area:	21.22ha
Zoning:	RU1 – Primary Production
Submissions:	No submission have been received

Key issues:	Flooding: The DA seeks to construct an additional dwelling on a portion of the site which is identified as High Hazard Floodway. There are alternate locations on the site which are affected by lesser flood categories that would have a reduced risk to life and property.
-------------	---

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

Proposal

The DA seeks approval for a detached dual occupancy development, which includes the construction of an additional single level dwelling and a flood mound (on which the dwelling is to be located). A dwelling already exists on the site.

The additional dwelling is to be located to the rear (south west) of the site, in close proximity to the Hunter River.

The new dwelling will comprise of 5 bedrooms, a kitchen and open plan living areas.

The flood mound, on which the dwelling is to be located, will be constructed to a height of 6.165m AHD, which is between 0.5m and 1.8m above existing ground level. The pad level of the mound will be above the 1% AEP (Current day), but not the Flood Planning Level (FPL) that will require an additional 1,161m³ of fill.

Site Description and History

The site is a regular shape, with an access handle providing access from Hinton Road.

The site contains an existing dwelling located in the north western portion of the site, with an ancillary shed located in the south west corner of the site.

The site is flood prone with varying flood risk categories applying to the site. The northern most portion of the site (where the existing dwelling is located) is flood free. Towards the centre of the site, the flood category increases to High Hazard Flood Fringe and High Hazard Flood Storage. The rear of the site, where the proposed dwelling is to be located is identified as High Hazard Floodway.

Key issues

The key issue identified during assessment relates to the fact that the DA seeks to construct an additional 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 impacts

The DA is inconsistent with both the Port Stephens Local Environmental Plan (LEP 2013) and the Development Control Plan 2014 (DCP 2014). The DA seeks to construct an additional dwelling on a portion of the site, which is identified as High Hazard Floodway.

The current flood levels applicable to the site are:

- Flood Planning Level (FPL) - 6.5m AHD
- 1% AEP (Current day) - 5.0 – 5.6m AHD
- Probable Maximum Flood (PMF) - 8.9m AHD

The DA includes the following levels:

- Pad level - 6.165m AHD
- Dwelling Finished Floor Level (FFL) - 6.55m AHD

Clause 7.3(3) of LEP 2013 states that development must be compatible with the flood hazard of the land and that it must not have a significant, adverse effect on flood behaviour. The DA being located in a High Hazard Floodway is not considered to be compatible with the flood hazard category noting the unnecessary risk to life and property. There are alternate locations on the site, which are affected by lesser flood categories that would have a reduced risk to life and property. In addition, the DA does not provide an appropriate flood refuge in a PMF or egress in a major flooding event, which increases the risk to life and potentially places an unreasonable and unnecessary strain upon emergency services in a major flooding event.

Chapter B.5 of the DCP 2014 provides controls for development on flood prone land. DCP 2014 states that residential development (other than a dwelling house) on land categorised as High Hazard Floodway is an unsuitable land use. As the DA would create a dual occupancy development with the inclusion of an additional dwelling within the High Hazard Floodway, the proposal is deemed unsuitable.

Further, Chapter B5.1 of the DCP 2014 states that any proposal must be located on the land with the lowest flood risk. Given there are alternative areas of the site characterised by a lower flood category, the proposal is deemed unsuitable.

During the assessment of the DA, Council officers requested that the proposal be amended to relocate the additional dwelling to a more suitable area of the site, within a flood free area or within a lesser flood hazard category. In response, the applicant provided a flood report and proposed to raise the flood mound to the PMF level (8.9m AHD) and the driveway access to the dwelling to 5.1m AHD (current 5% AEP). It is considered that raising the flood mound to 8.9m AHD would require significant earthworks and would not address the DCP provisions as described above. Further, the proposed driveway level would not achieve the required height for egress as stipulated by DCP 2014, which requires access to be located at the current day 1% AEP.

With consideration to the above, the DA cannot be supported. The DA is deemed to be inconsistent with the provisions of both LEP 2013 and DCP 2014.

Suitability of the Site

As described above, the area on which the additional dwelling is to be located is not suitable given it is categorised as High Hazard Floodway. There are alternate locations on the site, which are affected by lesser flood categories that would have a reduced risk to life and property.

Conclusion

Due to the proposed location of the dwelling and flood mound in a High Hazard Floodway, the DA 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 2013, the DA is recommended for refusal.

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2018-2021
Thriving and Safe Place to Live	Enhance public safety, health and liveability through use of Council's regulatory controls and services.

FINANCIAL/RESOURCE IMPLICATIONS

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

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

LEGAL, POLICY AND RISK IMPLICATIONS

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

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

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

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

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

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

CONSULTATIONInternal

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

- Building and Developer Relations
- Development Engineering
- Strategic Planning (Development Contributions)

- Environmental Health
- Flood Advisory Review Panel.

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

External

The DA was referred to the Department of Planning, Industry and Environment - Biodiversity Conservation Division (BCD) given the additional dwelling is to be located in close proximity to the Hunter River. No final comments have been received by BCD.

Notification

In accordance with the Port Stephens Community Participation Plan, the DA was notified for 14 days from 10 June to 24 June 2020. No public submissions were received.

OPTIONS

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

ATTACHMENTS

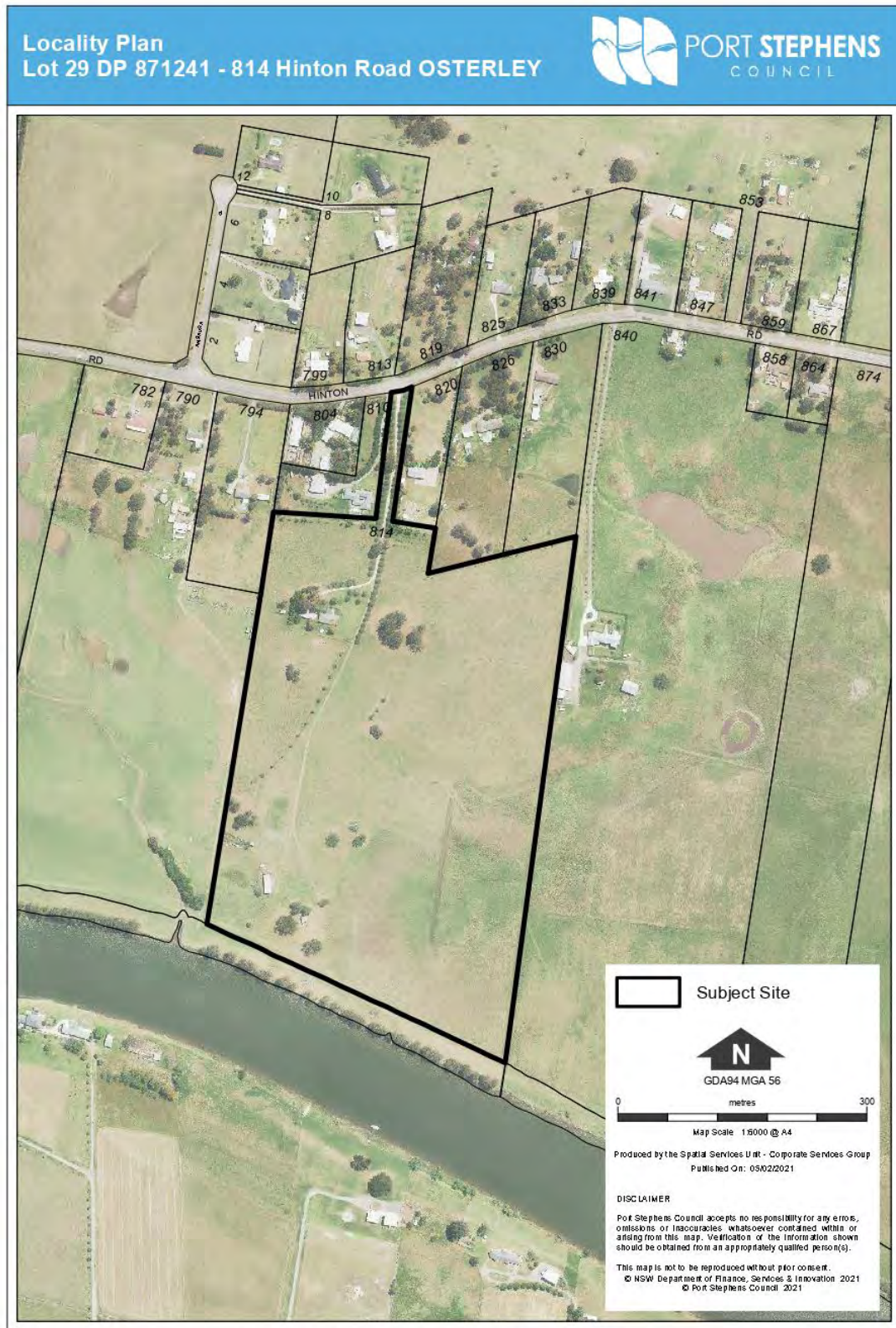
- 1) Locality Plan. [↓](#)
- 2) Planners Assessment Report. [↓](#)
- 3) Reasons for Refusal. [↓](#)
- 4) Call to Council form. [↓](#)
- 5) Ordinary Council Minutes - 9 March 2021. [↓](#)

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.



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

PORT STEPHENS
COUNCILDEVELOPMENT
ASSESSMENT REPORT

APPLICATION REFERENCES

Application Number	16-2020-302-1
Development Description	Dual occupancy (one existing) and flood mound
Applicant	COMPLETE PLANNING SOLUTIONS
Land owner	Mr R J & Mrs M S Vetter
Date of Lodgement	03/06/2020
Value of Works	\$559,135.00
Submissions	Nil

PROPERTY DETAILS

Property Address	814 Hinton Road OSTERLEY
Lot and DP	LOT: 29 DP: 871241
88B Restrictions on Title	Restriction to user – no separate parcel of land shall be created by way of subdivision or by excision from the land burdened.
Current Use	Dwelling and shed
Zoning	RU1 PRIMARY PRODUCTION
Site Constraints	Bushfire prone land OEH Referral – HV Flood Mitigation Scheme – Levee Acid Sulfate Soils – Class 3 and 5 Koala Habitat Planning – Clear, preferred (river to the rear), Clear Buffer Endangered Ecological Communities – Swamp Sclerophyll forest High Environmental Value Mapping Biodiversity Values Map – rear eastern corner RAAF – high trigger 45m Bird Strike Group A Prime Agricultural Land – prime, local link (rear of site) Biophysical Strategic Agricultural Land – rear of site

ITEM 4 - ATTACHMENT 2 PLANNERS ASSESSMENT REPORT.

	Flood prone land – High Hazard Flood Way, High Hazard Storage, Low Hazard Storage and Low Hazard Fringe
State Environmental Planning Policies	SEPP – Coastal Management – Coastal Zone Footprint SEPP No. 55 – Remediation of Land SEPP (Building Sustainability Index: BASIX) 2004 SEPP (Koala Habitat Protection) 2019

PROPOSAL

The proposed development involves the construction of a dual occupancy (one existing dwelling) and a flood mound to be located to the south of the existing dwelling. The proposed dwelling is to be located to the rear of the site, in close proximity to the Hunter River.

The proposal includes a single storey dwelling with 5 bedrooms, kitchen, open-plan living areas, and various other living areas; and an attached garage.

The dwelling is to be constructed on the proposed mound that requires 1,161m³ of fill, creating a pad level at RL 6.165m AHD.

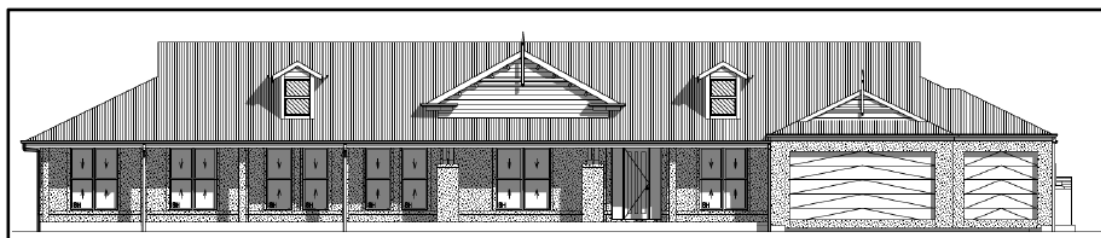


Figure 1 – Proposed dwelling

SITE DESCRIPTION

The subject site is an irregular shape, with a driveway handle connecting to the street, likely as a result of previous subdivisions. The site is identified as 814 Hinton Road, Osterley, legally identified as Lot 29 DP 871241. The site has an existing dwelling located toward the north of the site and shed located in the southwest corner of the lot. The proposed development area for the additional dwelling is located to the rear (south) of the site which has a frontage to the Hunter River.

The site falls from the road frontage in the east towards the Hunter River in the west.

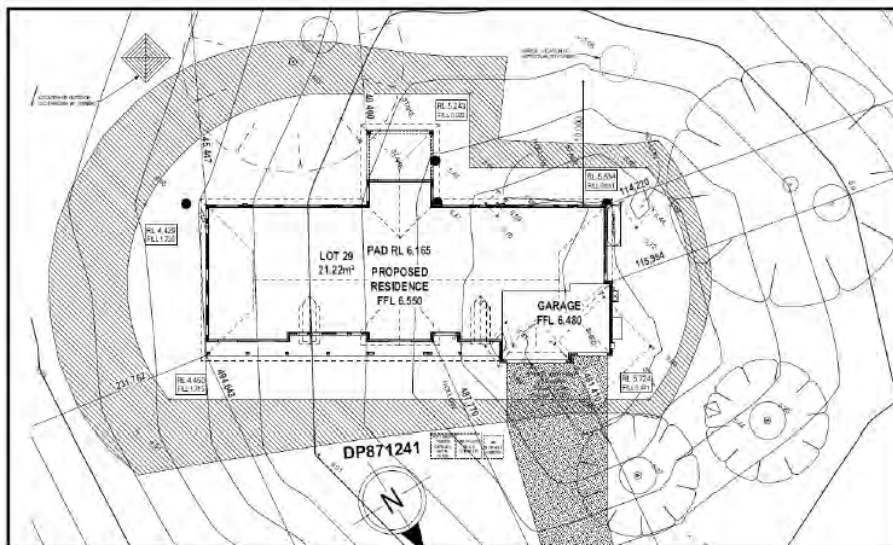


Figure 2 – Proposed dwelling and flood mound

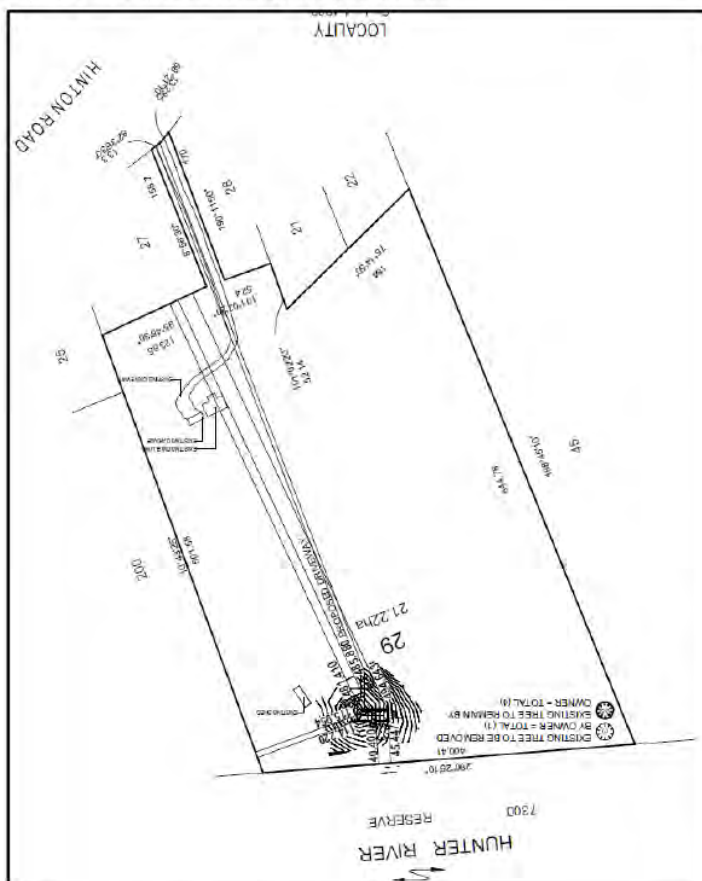


Figure 3 – Proposed site plan



Figure 4 – GIS aerial image of the subject site

SITE INSPECTION

A site inspection was carried out on 21 October 2020. The subject site can be seen in images below:



Image 1 – View south from the site of development to the river



Image 2 – View of site that shows the tree to be retained

ITEM 4 - ATTACHMENT 2 PLANNERS ASSESSMENT REPORT.



Image 3 – View north toward the existing dwelling



Image 4 – View of the existing gravel access way to the rear of the site

PLANNING ASSESSMENT

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

Internal

Development Engineer – The application was referred to Development Engineering Services for assessment of drainage and flooding matters. The site is identified as land categorised as flood prone lane, incorporating a range of flood hazard categories across the site, including high hazard flood fringe, high hazard flood storage and high hazard floodway, moving to the rear of the site.

The proposed development is located on a part of the site identified as high hazard floodway. As such the proposal for additional residential use on the site, is not supported in the current location. The proposal has been reviewed against the recently endorsed amended Chapter B5 Flooding of Port Stephens Development Control Plan 2014 (DCP 2014) and cannot be supported. Further information was requested to relocate the proposal to a lesser flood hazard impacted area of the subject site. The applicant did not wish to relocate the dwelling.

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

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

Flood Advisory Review Panel – As mentioned above, the application was referred to the Flood Advisory Review Panel (FARP) following the recommendation of refusal from Council Development Engineers due to the flood hazard categorisation. The application was reviewed by FARP on two occasions, the initial review and once more following the endorsement of the amendments to the Chapter B5 Flooding DCP 2014. FARP did not support the proposed development in the proposed location as there are flood free areas that would be more suitable for the additional dwelling. An amendment to the design and siting of the development was requested

ITEM 4 - ATTACHMENT 2 PLANNERS ASSESSMENT REPORT.

from the applicant to align with the DCP requirements. The amended information was not provided as the applicant explained, the proposed location was the preferred and desired location for the additional dwelling on the site.

External

Biodiversity Conservation Division – Due to the sites location to the Hunter River, and the proposed dwelling being in close proximity to a flood levee, the application was referred to BCD. Further information was requested and has since been provided to the referral officer. No final comments have been received.

Environmental Planning and Assessment Act 1979

Section 4.15 - Matters for consideration

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

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

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

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

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

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

State Environmental Planning Policy No. 55 – Remediation of Land

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

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

State Environmental Planning Policy (Koala Habitat Protection) 2019

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

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

State Environmental Planning Policy Coastal Management 2018

ITEM 4 - ATTACHMENT 2 PLANNERS ASSESSMENT REPORT.

The subject land is located within the Coastal Environmental Area and Coastal Use Area. The subject is located with the Hunter River to the rear which triggers the consideration of the Coastal Management SEPP.

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

The proposed development is sufficiently setback from the Hunter River waterbody, the development is located adjacent to the flood levee located on the site. The levee separates the subject site from the Hunter River, the proposed development is situated more than 10m from the levee bank and will not likely result in any adverse impacts.

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

The proposed dwelling is located to rear of the site which has a frontage to the Hunter River. The siting of the development raises concerns with the potential to impact on the ecological environment of the Hunter 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 as 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 associated risk with the dwelling being destroyed by flooding, as discussed above. The proposed dwelling and mound, in a significant flooding event 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 impacting the ecological environment of the river network. If the proposal were amended to be further setback from the flood hazards the potential impacts would be minimised.

Port Stephens Local Environmental Plan 2013 (LEP)

Clause 2.3 – Zone Objectives and Land Use Table

The proposed development is defined as a dual occupancy which is permissible with consent in the RU1 Primary production zone. The development is proposed in a manner which does not reduce the primary production land available and accords with the zone objectives.

Clause 7.1 – Acid Sulfate Soils

The subject land is mapped as containing potential Class 3 and 5 acid sulfate soils. The proposed development is not anticipated to entail excavations below 1 metre and therefore it is not expected that acid sulfate soils would be encountered during works.

ITEM 4 - ATTACHMENT 2 PLANNERS ASSESSMENT REPORT.**Clause 7.2 – Earthworks**

The application proposes earthworks on the site to construct the mound for the dwelling to be located above the flood planning level. The mound requires 1,161m³ of fill to be brought onto the site. The proposed mound and fill is located within the high hazard flood area and as such would require appropriate construction and structural certification.

The earthworks are not anticipated to result in adverse impacts to the soil stability, drainage, future development of the area, of the amenity of adjoining properties' or waterways. The material being brought onto the site is required to be quality clean fill to minimise effect and disturbance in the surrounding area. Due to the flood hazard category of the site, the fill is required to be constructed and certified to achieve structural requirements.

Clause 7.3 – Flood Planning

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

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

The flood category for the development area is high hazard flood way, noting the flood hazard lessens to the north. The existing dwelling is not within mapped flood area. The current driveway is not constructed above the flood planning level, which is required for an access way that can be used in the event of a flood. As such, the proposed development does not have suitable flood free access from the site. Additionally, the proposed area for the development is located within close proximity to the Hunter River, which during significant storm and rain fall events is subject to flooding.

In the event of a flood, the development will result in unacceptable risk to life and property. The proposed dwelling is not considered appropriately located on the site. It is noted there are other locations on the site outside of the high hazard category which would be more suitable for the proposed development.

Clause 7.6 – Essential Services

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

Clause 7.15 – Dual occupancies on land in certain rural and environment protection zones

The proposed development is located on land in the RU1 Primary Production zone. Development consent cannot be granted unless the dual occupancy is designed and sited to give the appearance of being a single development; any dwellings are able to use shared facilities such as common driveway and essential services; and any ancillary structures are to be situated within close proximity to the dwellings. Further, any dwellings are to be designed and sited to avoid potential and adverse environmental impacts.

The proposed dual occupancy gives the appearance of one development as the new dwelling is located behind the exiting dwelling; and both dwellings can utilise the same driveway to access the surrounding road network. However, with consideration of the flood category applicable to the site, the dwelling is not considered to be sited to avoid potential adverse environmental impacts.

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.

Earthworks

As discussed above, the proposed development involves the construction of a flood mound to create a level area for the development. The impacts of the proposed earthworks can be mitigated through conditions of consent if approved. The proposal is therefore consistent with requirements outlined in Councils DCP relating to earthworks.

Chapter B4 – Drainage and Water Quality

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

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 development are required to address the development control within this part of the DCP to mitigate risks and considered suitability.

The proposed developed is located on an area of the site identified as high hazard flood way category, B5 considers residential accommodation (other than a dwelling house) as an unsuitable land use on flood prone land mapped as high hazard floodway. As the proposed development is defined as residential accommodation and the subject hazard category is high hazard floodway, the proposed development is not considered to be a suitable land use in accordance with B5. Further, as the proposal includes an additional dwelling (creating a dual occupancy), a performance based solution cannot be prepared. The risk of the new development in the proposed development will result in risk to life and property and is considered unsuitable.

Further, as there are multiple flood hazards identified on the site, B5.1 states proposed development must be located on the land with the lowest flood risk. This has been raised with the applicant and amended design requested; however no amended design has been provided to Councils officers for assessment. Thus, the proposal fails to accord with control B5.1.

Developments in flood prone areas are required to meet the minimum finished floor level (FFL) as specified in figure BJ. The below table provides an outline of the required FFL under the DCP, the FFLs provided in the flood certificate for the site and the proposed FFL for the development.

The finished floor levels proposed for the development meet or exceed the minimum FFL required under figure BJ and the flood certificate.

ITEM 4 - ATTACHMENT 2 PLANNERS ASSESSMENT REPORT.

Required FFL	Flood Certificate	Proposed FFL
Habitable rooms – flood planning level	6.5m AHD	6.50m AHD
Non Habitable rooms – adaptable minimum floor level	5.8m – 6.4m	6.55m AHD
Flood refuge – probable maximum flood level (where evacuation egress from residential accommodation cannot be achieved via a route that is flood free, see B5.14)	Only required where flood free access cannot be achieved. Flood free access is to be at current day 1% AEP event – 5.5m AHD	Proposed driveway increase to 5.1m AHD.

The Flood report prepared and provided to Council to further support the proposal. The report makes alternative designs including raising the flood mound to the PMF level (8.9m AHD) and raise the flood mound to comply with the CP 2014 requirements.

Flood free access is required to achieve the current day 1% AEP, being 5.5m AHD. The proposed driveway does not achieved the DCP provisions. In the event the application is supported, further information to ensure flood free access is achieved to the required flood level would need to be submitted. Alternatively, a flood refuge would need to be provided as per the DCP requirements.

The proposed raising of the mound would require significant earthworks while not addressing the DCP provisions, further proposed driveway access is required to be increased to achieve the current day 1% AEP.

The development application cannot be supported noting it provide residential development in a high hazard floodway, which is inconsistent with the DCP 2014. Further, there are more suitable sites on the property sited on areas unaffected by flooding.

The proposed development in its current location results in a risk to life and property.

Chapter B8 – Road Network and Parking

The proposal includes a 4 bedroom dwelling and the DCP requires 2 car spaces to be provided to support the development on the site. There are a suitable car spaces available on the site.

Chapter C – Development Types

The proposed development is a dual occupancy therefore the provisions of chapter C4 are applicable.

Chapter C4 - Dwelling House, Secondary Dwelling, or Dual Occupancy

Building height

There is no maximum building limit under the LEP, as such the maximum limit of 8m applies to the site. The proposal is for a single storey dwelling with a maximum proposed height of 6.2m, to be constructed on top of a flood mound.

ITEM 4 - ATTACHMENT 2 PLANNERS ASSESSMENT REPORT.Setbacks

The proposal is appropriately setback from the side and rear boundary setbacks. The proposal is located to the rear of the existing dwelling. 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.

Private open space

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

Landscaping

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

Site Facilities and Services

The proposed dwelling location and flood mound create a suitable area to support facilities and services such as waste storage and clothes drying. As mentioned above, an OSWS application has been lodged concurrently with the DA the proposed location and the Wastewater report demonstrates a suitable outcome for the subject property.

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

There are no regulations that apply to the proposal.

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

The proposal will result in a dual occupancy (detached and one existing) development on the site, increasing the housing stock and diversity of the area. The construction of the development would result in employment opportunities during and after the development of the structures and have a monetary contribution to the local area.

Impacts on the Built Environment

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

Impacts on the Natural Environment

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

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

The proposal seeks to erect a new dwelling in a high hazard flood area on the site. The proposed development would be subject to significant flood waters moving at a velocity which would create

ITEM 4 - ATTACHMENT 2 PLANNERS ASSESSMENT REPORT.

a risk to life and property. Further, there are areas on the site with a lessened flood hazard, where the risk to life and property is reduced.

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

The application was exhibited from 10 June to 24 June 2020 in accordance with the provisions of the Port Stephens Council Community Participation Plan. No submissions were received with relation to the subject development proposal.

Section 4.15(1)(e) the public interest

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

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

The application would result in an additional dwelling on the subject site. Therefore s7.11 contributions are applicable pursuant to Council's Local Infrastructure Contribution Plan.

Should the application be supported, a condition of consent is a condition for the payment of contributions will be required.

DETERMINATION

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

SOPHIE-MARIE EFKARPIDIS

DEVELOPMENT PLANNER

**SCHEDULE 1 – REASONS FOR REFUSAL**

The application is recommended for refusal on the following grounds:

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

**PORT STEPHENS COUNCIL**

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Raymond Terrace NSW 2324

PO Box 42
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Call to Council form

Development Application

116 Adelaide Street,
Raymond Terrace NSW 2324

PO Box 42
Raymond Terrace NSW 2324

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

DX 21406 | ABN 16 744 377 876

DEVELOPMENT APPLICATION (DA) CALL TO COUNCIL REQUEST

We (Mayor/Councillor/s)

Name:	Mayor Ryan Palmer
Name:	Cr Paul Le Mottee
Name:	Cr Glen Dunkley
request that DA number:	16-2020-302-1
for DA description:	Dual occupancy (one existing) and flood mound
located at:	814 Hinton Road, Osterly

be reported to Council for determination.

REASON

Public interest

SIGNATURE OF APPLICANT/S

Signature		Date	11 2 21
Signature		Date	23 2 21
Signature		Date	23 2 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.

MINUTES ORDINARY COUNCIL - 9 MARCH 2021

Councillor Paul Le Mottee returned to the meeting at 5:59pm prior to Item 2.

ITEM NO. 2

FILE NO: 21/20001
EDRMS NO: 16-2020-302-1

DEVELOPMENT APPLICATION 16-2020-302-1 FOR A DUAL OCCUPANCY (1 EXISTING) AND FLOOD MOUND AT 814 HINTON ROAD, OSTERLEY (LOT 29 DP 871241)

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

RECOMMENDATION IS THAT COUNCIL:

- 1) Refuse Development Application 16-2020-302-1 for a dual occupancy (1 existing) and flood mound at 814 Hinton Road, Osterley (Lot 29 DP 871241) for the reasons contained in **(ATTACHMENT 3)**.
-

ORDINARY COUNCIL MEETING - 9 MARCH 2021
MOTION

046	Councillor Chris Doohan Councillor Jaimie Abbott It was resolved that Council defer development application 16-2020-302-1 for a dual occupancy (1 existing) and flood mound at 814 Hinton Road, Osterley (Lot 29 DP 871241) for a period of 4 weeks to allow for a site inspection.
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In accordance with Section 375 (A) of the Local Government Act 1993, a division is required for this item.

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

Those against the Motion: Nil.

The motion was carried.

MINUTES ORDINARY COUNCIL - 9 MARCH 2021**BACKGROUND**

The purpose of this report is to present a Development Application (DA) 16-2020-302-1 for a dual occupancy (1 existing) and flood mound at 814 Hinton Road, Osterley (Lot 29 DP 871241) to Council for determination.

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

Proposal

The DA seeks approval for a detached dual occupancy development, which includes the construction of an additional single level dwelling and a flood mound (on which the dwelling is to be located). A dwelling already exists on the site.

The additional dwelling is to be located to the rear (south west) of the site, in close proximity to the Hunter River.

The additional dwelling is to comprise of 5 bedrooms, a kitchen and open plan living areas.

The flood mound, on which the dwelling is to be located, will be constructed to a height of 6.165m AHD, which is 0.5m to 1.8m above existing ground level. The pad level of the mound will be above the 1% AEP (Current day) but not the Flood Planning Level (FPL) and will require 1,161m³ of fill.

Site Description and History

The site is a regular shape, with an access handle providing access from Hinton Road. The site contains an existing dwelling located in the north western portion of the site, with an ancillary shed located in the south west corner of the site.

The site is flood prone with varying flood risk categories applying to the site. The northern most portion of the site (where the existing dwelling is located) is flood free. Towards the centre of the site, the flood category increases to High Hazard Flood Fringe and High Hazard Flood Storage. The rear of the site, where the proposed dwelling is to be located is identified as High Hazard Floodway.

Key issues

The key issue identified during assessment relates to the fact that the DA seeks to construct an additional 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**).

MINUTES ORDINARY COUNCIL - 9 MARCH 2021Flooding impacts

The DA is inconsistent with both the Port Stephens Local Environmental Plan (LEP 2013) and the Development Control Plan 2014 (DCP 2014). The DA seeks to construct an additional dwelling on a portion of the site, which is identified as High Hazard Floodway.

The current flood levels applicable to the site are:

- Flood Planning Level (FPL) - 6.5m AHD
- 1% AEP (Current day) - 5.0 – 5.6m AHD
- Probable Maximum Flood (PMF) - 8.9m AHD

The DA includes the following levels:

- Pad level - 6.165m AHD
- Dwelling Finished Floor Level (FFL) - 6.55m AHD

Clause 7.3(3) of LEP 2013 states that development must be compatible with the flood hazard of the land and that it must not have a significant, adverse effect on flood behaviour. The DA being located in a High Hazard Floodway is not considered to be compatible with the flood hazard category noting the unnecessary risk to life and property. There are alternate locations on the site, which are affected by lesser flood categories that would have a reduced risk to life and property. In addition, the DA does not provide an appropriate flood refuge in a PMF or egress in a major flooding event, which increases the risk to life and potentially places an unreasonable and unnecessary strain upon emergency services in a major flooding event.

Chapter B.5 of the DCP 2014 provides controls for development on flood prone land. DCP 2014 states that residential development (other than a dwelling house) on land categorised as High Hazard Floodway is an unsuitable land use. As the DA would create a dual occupancy development with the inclusion of an additional dwelling within the High Hazard Floodway, the proposal is deemed unsuitable.

Further, Chapter B5.1 of the DCP 2014 states that any proposal must be located on the land with the lowest flood risk. Given there are alternative areas of the site characterised by a lower flood category, the proposal is deemed unsuitable.

During the assessment of the DA, Council officers requested that the proposal be amended to relocate the additional dwelling to a more suitable area of the site, within a flood free area or within a lesser flood hazard category. In response, the applicant provided a flood report and proposed to raise the flood mound to the PMF level (8.9m AHD) and the driveway access to the dwelling to 5.1m AHD (current 5% AEP). It is considered that raising the flood mound to 8.9m AHD would require significant earthworks and would not address the DCP provisions as described above. Further, the proposed driveway level would not achieve the required height for egress as stipulated by DCP 2014, which requires access to be located at the current day 1% AEP.

MINUTES ORDINARY COUNCIL - 9 MARCH 2021

With consideration to the above, the DA cannot be supported. The DA is deemed to be inconsistent with the provisions of both LEP 2013 and DCP 2014.

Suitability of the Site

As described above, the area on which the additional dwelling is to be located is not suitable given it is categorised as High Hazard Floodway. There are alternate locations on the site, which are affected by lesser flood categories that would have a reduced risk to life and property.

Conclusion

Due to the proposed location of the dwelling and flood mound in a High Hazard Floodway, the DA 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 2013, the DA is recommended for refusal.

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2018-2021
Thriving and Safe Place to Live	Enhance public safety, health and liveability through use of Council's regulatory controls and services.

FINANCIAL/RESOURCE IMPLICATIONS

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

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

MINUTES ORDINARY COUNCIL - 9 MARCH 2021

LEGAL, POLICY AND RISK IMPLICATIONS

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

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

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

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

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

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

CONSULTATIONInternal

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

- Building and Developer Relations
- Development Engineering

MINUTES ORDINARY COUNCIL - 9 MARCH 2021

- Strategic Planning (Development Contributions)
- Environmental Health
- Flood Advisory Review Panel.

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

External

The DA was referred to the Department of Planning, Industry and Environment - Biodiversity Conservation Division (BCD) given the additional dwelling is to be located in close proximity to the Hunter River. No final comments have been received by BCD.

Notification

In accordance with the Port Stephens Community Participation Plan, the DA was notified for 14 days from 10 June to 24 June 2020. No public submissions were received.

OPTIONS

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

ATTACHMENTS

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

COUNCILLORS ROOM

- 1) Development Plans.

TABLED DOCUMENTS

Nil.



MINUTES ORDINARY COUNCIL - 9 MARCH 2021

ITEM 2 - ATTACHMENT 2 PLANNERS ASSESSMENT REPORT.



APPLICATION REFERENCES

Application Number	16-2020-302-1
Development Description	Dual occupancy (one existing) and flood mound
Applicant	COMPLETE PLANNING SOLUTIONS
Land owner	Mr R J & Mrs M S Vetter
Date of Lodgement	03/08/2020
Value of Works	\$559,135.00
Submissions	Nil

PROPERTY DETAILS

Property Address	814 Hinton Road OSTERLEY
Lot and DP	LOT: 29 DP: 871241
88B Restrictions on Title	Restriction to user – no separate parcel of land shall be created by way of subdivision or by excision from the land burdened.
Current Use	Dwelling and shed
Zoning	RU1 PRIMARY PRODUCTION
Site Constraints	Bushfire prone land OEH Referral – HV Flood Mitigation Scheme – Levee Acid Sulfate Soils – Class 3 and 5 Koala Habitat Planning – Clear, preferred (river to the rear), Clear Buffer Endangered Ecological Communities – Swamp Sclerophyll forest High Environmental Value Mapping Biodiversity Values Map – rear eastern corner RAAF – high trigger 45m Bird Strike Group A Prime Agricultural Land – prime, local link (rear of site) Biophysical Strategic Agricultural Land – rear of site

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ITEM 2 - ATTACHMENT 2 PLANNERS ASSESSMENT REPORT.

Flood prone land – High Hazard Flood Way, High Hazard Storage, Low Hazard Storage and Low Hazard Fringe

State Environmental Planning Policies

SEPP – Coastal Management – Coastal Zone Footprint
SEPP No. 55 – Remediation of Land
SEPP (Building Sustainability Index: BASIX) 2004
SEPP (Koala Habitat Protection) 2019

PROPOSAL

The proposed development involves the construction of a dual occupancy (one existing dwelling) and a flood mound to be located to the south of the existing dwelling. The proposed dwelling is to be located to the rear of the site, in close proximity to the Hunter River.

The proposal includes a single storey dwelling with 5 bedrooms, kitchen, open-plan living areas, and various other living areas; and an attached garage.

The dwelling is to be constructed on the proposed mound that requires 1,161m³ of fill, creating a pad level at RL 6.165m AHD.

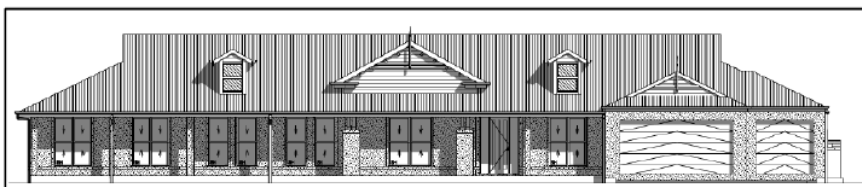


Figure 1 – Proposed dwelling

SITE DESCRIPTION

The subject site is an irregular shape, with a driveway handle connecting to the street, likely as a result of previous subdivisions. The site is identified as 814 Hinton Road, Osterley, legally identified as Lot 29 DP 871241. The site has an existing dwelling located toward the north of the site and shed located in the southwest corner of the lot. The proposed development area for the additional dwelling is located to the rear (south) of the site which has a frontage to the Hunter River.

The site falls from the road frontage in the east towards the Hunter River in the west.

MINUTES ORDINARY COUNCIL - 9 MARCH 2021

ITEM 2 - ATTACHMENT 2 PLANNERS ASSESSMENT REPORT.

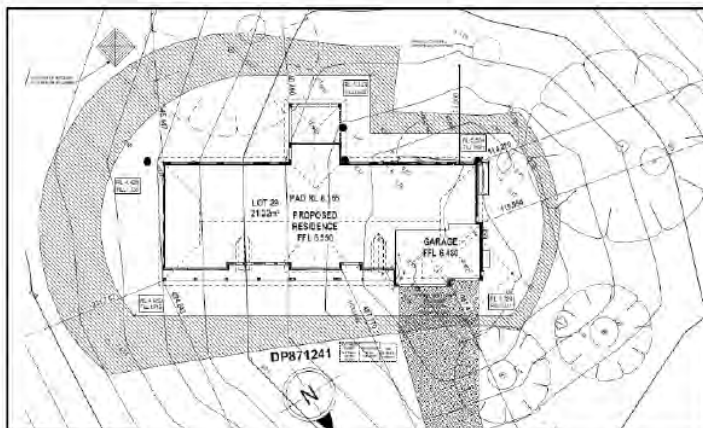


Figure 2 – Proposed dwelling and flood mound

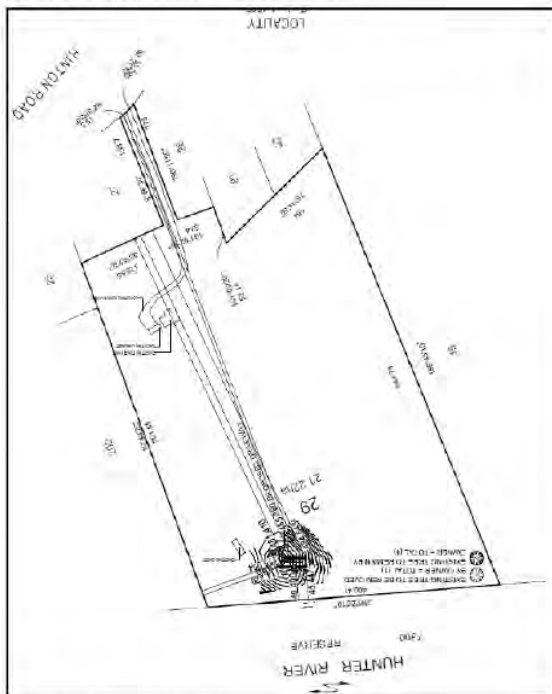


Figure 3 – Proposed site plan



Figure 4 – GIS aerial image of the subject site

SITE INSPECTION

A site inspection was carried out on 21 October 2020. The subject site can be seen in images below:



Image 1 – View south from the site of development to the river



Image 2 – View of site that shows the tree to be retained

MINUTES ORDINARY COUNCIL - 9 MARCH 2021

ITEM 2 - ATTACHMENT 2 PLANNERS ASSESSMENT REPORT.



Image 3 – View north toward the existing dwelling



Image 4 – View of the existing gravel access way to the rear of the site

PLANNING ASSESSMENT

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

Internal

Development Engineer – The application was referred to Development Engineering Services for assessment of drainage and flooding matters. The site is identified as land categorised as flood prone lane, incorporating a range of flood hazard categories across the site, including high hazard flood fringe, high hazard flood storage and high hazard floodway, moving to the rear of the site.

The proposed development is located on a part of the site identified as high hazard floodway. As such the proposal for additional residential use on the site, is not supported in the current location. The proposal has been reviewed against the recently endorsed amended Chapter B5 Flooding of Port Stephens Development Control Plan 2014 (DCP 2014) and cannot be supported. Further information was requested to relocate the proposal to a lesser flood hazard impacted area of the subject site. The applicant did not wish to relocate the dwelling.

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

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

Flood Advisory Review Panel – As mentioned above, the application was referred to the Flood Advisory Review Panel (FARP) following the recommendation of refusal from Council Development Engineers due to the flood hazard categorisation. The application was reviewed by FARP on two occasions, the initial review and once more following the endorsement of the amendments to the Chapter B5 Flooding DCP 2014. FARP did not support the proposed development in the proposed location as there are flood free areas that would be more suitable for the additional dwelling. An amendment to the design and siting of the development was requested

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from the applicant to align with the DCP requirements. The amended information was not provided as the applicant explained, the proposed location was the preferred and desired location for the additional dwelling on the site.

External

Biodiversity Conservation Division – Due to the sites location to the Hunter River, and the proposed dwelling being in close proximity to a flood levee, the application was referred to BCD. Further information was requested and has since been provided to the referral officer. No final comments have been received.

Environmental Planning and Assessment Act 1979

Section 4.15 - Matters for consideration

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

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

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

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

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

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

State Environmental Planning Policy No. 55 – Remediation of Land

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

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

State Environmental Planning Policy (Koala Habitat Protection) 2019

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

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

State Environmental Planning Policy Coastal Management 2018

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The subject land is located within the Coastal Environmental Area and Coastal Use Area. The subject is located with the Hunter River to the rear which triggers the consideration of the Coastal Management SEPP.

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

The proposed development is sufficiently setback from the Hunter River waterbody, the development is located adjacent to the flood levee located on the site. The levee separates the subject site from the Hunter River, the proposed development is situated more than 10m from the levee bank and will not likely result in any adverse impacts.

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

The proposed dwelling is located to rear of the site which has a frontage to the Hunter River. The siting of the development raises concerns with the potential to impact on the ecological environment of the Hunter 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 as 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 associated risk with the dwelling being destroyed by flooding, as discussed above. The proposed dwelling and mound, in a significant flooding event 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 impacting the ecological environment of the river network. If the proposal were amended to be further setback from the flood hazards the potential impacts would be minimised.

Port Stephens Local Environmental Plan 2013 (LEP)

Clause 2.3 – Zone Objectives and Land Use Table

The proposed development is defined as a dual occupancy which is permissible with consent in the RU1 Primary production zone. The development is proposed in a manner which does not reduce the primary production land available and accords with the zone objectives.

Clause 7.1 – Acid Sulfate Soils

The subject land is mapped as containing potential Class 3 and 5 acid sulfate soils. The proposed development is not anticipated to entail excavations below 1 metre and therefore it is not expected that acid sulfate soils would be encountered during works.

MINUTES ORDINARY COUNCIL - 9 MARCH 2021**ITEM 2 - ATTACHMENT 2 PLANNERS ASSESSMENT REPORT.****Clause 7.2 – Earthworks**

The application proposes earthworks on the site to construct the mound for the dwelling to be located above the flood planning level. The mound requires 1,161m³ of fill to be brought onto the site. The proposed mound and fill is located within the high hazard flood area and as such would require appropriate construction and structural certification.

The earthworks are not anticipated to result in adverse impacts to the soil stability, drainage, future development of the area, of the amenity of adjoining properties' or waterways. The material being brought onto the site is required to be quality clean fill to minimise effect and disturbance in the surrounding area. Due to the flood hazard category of the site, the fill is required to be constructed and certified to achieve structural requirements.

Clause 7.3 – Flood Planning

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

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

The flood category for the development area is high hazard flood way, noting the flood hazard lessens to the north. The existing dwelling is not within mapped flood area. The current driveway is not constructed above the flood planning level, which is required for an access way that can be used in the event of a flood. As such, the proposed development does not have suitable flood free access from the site. Additionally, the proposed area for the development is located within close proximity to the Hunter River, which during significant storm and rain fall events is subject to flooding.

In the event of a flood, the development will result in unacceptable risk to life and property. The proposed dwelling is not considered appropriately located on the site. It is noted there are other locations on the site outside of the high hazard category which would be more suitable for the proposed development.

Clause 7.6 – Essential Services

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

Clause 7.15 – Dual occupancies on land in certain rural and environment protection zones

The proposed development is located on land in the RU1 Primary Production zone. Development consent cannot be granted unless the dual occupancy is designed and sited to give the appearance of being a single development; any dwellings are able to use shared facilities such as common driveway and essential services; and any ancillary structures are to be situated within close proximity to the dwellings. Further, any dwellings are to be designed and sited to avoid potential and adverse environmental impacts.

The proposed dual occupancy gives the appearance of one development as the new dwelling is located behind the exiting dwelling; and both dwellings can utilise the same driveway to access the surrounding road network. However, with consideration of the flood category applicable to the site, the dwelling is not considered to be sited to avoid potential adverse environmental impacts.

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

Earthworks

As discussed above, the proposed development involves the construction of a flood mound to create a level area for the development. The impacts of the proposed earthworks can be mitigated through conditions of consent if approved. The proposal is therefore consistent with requirements outlined in Councils DCP relating to earthworks.

Chapter B4 – Drainage and Water Quality

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

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 development are required to address the development control within this part of the DCP to mitigate risks and considered suitability.

The proposed developed is located on an area of the site identified as high hazard flood way category, B5 considers residential accommodation (other than a dwelling house) as an unsuitable land use on flood prone land mapped as high hazard floodway. As the proposed development is defined as residential accommodation and the subject hazard category is high hazard floodway, the proposed development is not considered to be a suitable land use in accordance with B5. Further, as the proposal includes an additional dwelling (creating a dual occupancy), a performance based solution cannot be prepared. The risk of the new development in the proposed development will result in risk to life and property and is considered unsuitable.

Further, as there are multiple flood hazards identified on the site, B5.1 states proposed development must be located on the land with the lowest flood risk. This has been raised with the applicant and amended design requested; however no amended design has been provided to Councils officers for assessment. Thus, the proposal fails to accord with control B5.1.

Developments in flood prone areas are required to meet the minimum finished floor level (FFL) as specified in figure BJ. The below table provides an outline of the required FFL under the DCP, the FFLs provided in the flood certificate for the site and the proposed FFL for the development.

The finished floor levels proposed for the development meet or exceed the minimum FFL required under figure BJ and the flood certificate.

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Required FFL	Flood Certificate	Proposed FFL
Habitable rooms – flood planning level	6.5m AHD	6.50m AHD
Non Habitable rooms – adaptable minimum floor level	5.8m – 6.4m	6.55m AHD
Flood refuge – probable maximum flood level (where evacuation egress from residential accommodation cannot be achieved via a route that is flood free, see B5.14)	Only required where flood free access cannot be achieved. Flood free access is to be at current day 1% AEP event – 5.5m AHD	Proposed driveway increase to 5.1m AHD.

The Flood report prepared and provided to Council to further support the proposal. The report makes alternative designs including raising the flood mound to the PMF level (8.9m AHD) and raise the flood mound to comply with the CP 2014 requirements.

Flood free access is required to achieve the current day 1% AEP, being 5.5m AHD. The proposed driveway does not achieved the DCP provisions. In the event the application is supported, further information to ensure flood free access is achieved to the required flood level would need to be submitted. Alternatively, a flood refuge would need to be provided as per the DCP requirements.

The proposed raising of the mound would require significant earthworks while not addressing the DCP provisions, further proposed driveway access is required to be increased to achieve the current day 1% AEP.

The development application cannot be supported noting it provide residential development in a high hazard floodway, which is inconsistent with the DCP 2014. Further, there are more suitable sites on the property sited on areas unaffected by flooding.

The proposed development in its current location results in a risk to life and property.

Chapter B8 – Road Network and Parking

The proposal includes a 4 bedroom dwelling and the DCP requires 2 car spaces to be provided to support the development on the site. There are a suitable car spaces available on the site.

Chapter C – Development Types

The proposed development is a dual occupancy therefore the provisions of chapter C4 are applicable.

Chapter C4 - Dwelling House, Secondary Dwelling, or Dual Occupancy

Building height

There is no maximum building limit under the LEP, as such the maximum limit of 8m applies to the site. The proposal is for a single storey dwelling with a maximum proposed height of 6.2m, to be constructed on top of a flood mound.

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

The proposal is appropriately setback from the side and rear boundary setbacks. The proposal is located to the rear of the existing dwelling. 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.

Private open space

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

Landscaping

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

Site Facilities and Services

The proposed dwelling location and flood mound create a suitable area to support facilities and services such as waste storage and clothes drying. As mentioned above, an OSWS application has been lodged concurrently with the DA the proposed location and the Wastewater report demonstrates a suitable outcome for the subject property.

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

There are no regulations that apply to the proposal.

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

The proposal will result in a dual occupancy (detached and one existing) development on the site, increasing the housing stock and diversity of the area. The construction of the development would result in employment opportunities during and after the development of the structures and have a monetary contribution to the local area.

Impacts on the Built Environment

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

Impacts on the Natural Environment

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

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

The proposal seeks to erect a new dwelling in a high hazard flood area on the site. The proposed development would be subject to significant flood waters moving at a velocity which would create

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

a risk to life and property. Further, there are areas on the site with a lessened flood hazard, where the risk to life and property is reduced.

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

The application was exhibited from 10 June to 24 June 2020 in accordance with the provisions of the Port Stephens Council Community Participation Plan. No submissions were received with relation to the subject development proposal.

Section 4.15(1)(e) the public interest

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

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

The application would result in an additional dwelling on the subject site. Therefore s7.11 contributions are applicable pursuant to Council's Local Infrastructure Contribution Plan.

Should the application be supported, a condition of consent is a condition for the payment of contributions will be required.

DETERMINATION

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

SOPHIE-MARIE EFKARPIDIS

DEVELOPMENT PLANNER

MINUTES ORDINARY COUNCIL - 9 MARCH 2021**ITEM 2 - 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 2 - ATTACHMENT 4 CALL TO COUNCIL FORM.



Call to Council form

Development Application

116 Adelaide Street,
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PO Box 42
Raymond Terrace NSW 2324
p (02) 4988 0255 | f (02) 4987 3612
e council@portstephens.nsw.gov.au
DX 21406 | ABN 16 744 377 676

DEVELOPMENT APPLICATION (DA) CALL TO COUNCIL REQUEST

We (Mayor/Councillor/s)

Name:	Mayor Ryan Palmer
Name:	Cr Paul Le Mottee
Name:	Cr Glen Dunkley
request that DA number:	16-2020-302-1
for DA description:	Dual occupancy (one existing) and flood mound
located at:	814 Hinton Road, Osterly

be reported to Council for determination.

REASON

Public interest

SIGNATURE OF APPLICANT/S

Signature		Date	11 2 21
Signature		Date	11 2 21
Signature		Date	11 2 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's policy and relevant legislation.