

DRAFT

MINUTES – 13 APRIL 2021



Minutes of Ordinary meeting of the Port Stephens Council held in the Council Chambers, Raymond Terrace on – 13 April 2021, commencing at 6.09pm.

PRESENT:

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

064	Councillor Ken Jordan Councillor John Nell It was resolved that the apologies from Cr Jaimie Abbott and Cr Sarah Smith be received and noted, and leave of absence be granted to Cr Chris Doohan for 13 and 27 April 2021 and Cr Glen Dunkley from 1 to 16 May 2021.
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Note: Cr Jaimie Abbott was present at the meeting from 6.49pm.

065	Councillor Giacomo Arnott Councillor Ken Jordan It was resolved that the Minutes of the Ordinary Meeting of Port Stephens Council held on 23 March 2021 be confirmed.
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Cr Glen Dunkley declared a pecuniary conflict of interest in Item 1. The nature of the interest being family members own a number of units in the premises.

Cr Glen Dunkley declared a significant non-pecuniary conflict of interest in Item 5. The nature of the interest is a close friend owns 2 adjoining properties and 1 property owner undertakes work for his family.

Cr Paul Le Mottee declared a pecuniary conflict of interest in Item 2. The nature of the interest is the Le Mottee Group has undertaken survey work on the site.

Cr Paul Le Mottee declared a pecuniary conflict of interest in Item 3. The nature of the interest is the Le Mottee Group has undertaken survey work on the site.

Mayor Ryan Palmer declared a pecuniary conflict of interest in Item 5. The nature of the interest is the neighbouring property is owned by Mayor Palmer's brother and sister in-law.

Mayor Ryan Palmer declared a pecuniary conflict of interest in Notice of Motion 1. The nature of the interest relates to Mayor Palmer as a board member on Newcastle Airport.

The General Manager declared a pecuniary conflict of interest in Notice of Motion 1. The nature of the interest relates to the General Manager as a board member on Newcastle Airport Pty Ltd.

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MOTIONS TO CLOSE

ORDINARY COUNCIL MEETING - 13 APRIL 2021
PROCEDURAL MOTION

066	Mayor Ryan Palmer Councillor Ken Jordan It was resolved that Confidential Mayoral Minute No.1 be deferred and dealt with prior to confidential Item No. 1 in the confidential session.
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The motion was carried.

ITEM NO. 1

FILE NO: 21/96076
EDRMS NO: PSC2015-01024

MAYORAL MINUTE

MOTION TO CLOSE

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

RECOMMENDATION:

- 1) That pursuant to section 10A(2) (c) of the Local Government Act 1993, the Committee and Council resolve to close to the public that part of its meetings to discuss Confidential Item 1 Mayoral Minute on the Ordinary agenda namely **Drainage investigation - Lemon Tree Passage**.
- 2) That the reasons for closing the meeting to the public to consider this item is that the discussion will include information containing:
 - information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business.
- 3) That the report remain confidential and the minute be released in accordance with Council's resolution.

ORDINARY COUNCIL MEETING - 13 APRIL 2021
MOTION

067	Councillor Glen Dunkley Councillor John Nell It was resolved that Council:
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MINUTES ORDINARY COUNCIL - 13 APRIL 2021

	<ol style="list-style-type: none">1) That pursuant to section 10A(2) (c) of the Local Government Act 1993, the Committee and Council resolve to close to the public that part of its meetings to discuss Confidential Item 1 Mayoral Minute on the Ordinary agenda namely Drainage investigation - Lemon Tree Passage.2) That the reasons for closing the meeting to the public to consider this item is that the discussion will include information containing:<ul style="list-style-type: none">• information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business.3) That the report remain confidential and the minute be released in accordance with Council's resolution.
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The motion was carried.

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.

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

068	<p>Councillor Glen Dunkley Councillor John Nell</p> <p>It was resolved that Council:</p> <ol style="list-style-type: none">1) That pursuant to section 10A(2) (d)i of the 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:<ul style="list-style-type: none">• commercial information of a confidential nature that would, if disclosed prejudice the commercial position of the person who supplied it.3) That the report remain confidential and the minute be released in accordance with Council's resolution.
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The motion was carried.

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.

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

069	<p>Councillor Glen Dunkley Councillor John Nell</p> <p>It was resolved that Council:</p> <ol style="list-style-type: none">1) That pursuant to section 10A(2) (d)i of the 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:<ul style="list-style-type: none">• commercial information of a confidential nature that would, if disclosed prejudice the commercial position of the person who supplied it.3) That the report remain confidential and the minute be released in accordance with Council's resolution.
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The motion was carried.

COUNCIL REPORTS

MINUTES ORDINARY COUNCIL - 13 APRIL 2021

Councillor Glen Dunkley left the meeting at 6:15pm.

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)**.
-

ORDINARY COUNCIL MEETING - 13 APRIL 2021 MOTION

070	<p>Councillor Paul Le Mottee Councillor John Nell</p> <p>It was resolved that Council:</p> <ol style="list-style-type: none">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).
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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 Ken Jordan, Paul Le Mottee, John Nell, Ryan Palmer and Steve Tucker.

Those against the Motion: Cr Giacomo Arnott.

The motion was carried.

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

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.



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



DEVELOPMENT ASSESSMENT REPORT

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:

16-2021-9-1



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.

ITEM 1 - ATTACHMENT 2 PLANNERS ASSESSMENT REPORT.

16-2021-9-1

	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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ITEM 1 - ATTACHMENT 2 PLANNERS ASSESSMENT REPORT.

16-2021-9-1

	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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ITEM 1 - ATTACHMENT 2 PLANNERS ASSESSMENT REPORT.

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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)(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.	

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.

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.

ITEM 1 - ATTACHMENT 3 PROPOSED CONDITIONS OF CONSENT.



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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ITEM 1 - ATTACHMENT 3 PROPOSED CONDITIONS OF CONSENT.

- 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:
- a) the name and address of the person by whom the notice is being given;
 - b) a description of the work to be carried out;
 - c) the address of the land on which the work is to be carried out;
 - d) the Registered number and date of issue of the relevant development consent and construction certificate;
 - e) a statement signed by or on behalf of the Principal Certifying Authority to the effect that all conditions of the consent that are required to be satisfied prior to the work commencing have been satisfied; and
 - f) the date on which the work is intended to commence.
- (3) **Sign of PCA and contact details** – A sign must be erected in a prominent position on the site stating the following:
- a) that unauthorised entry to the work site is prohibited;
 - b) the name of the principal contractor (or person in charge of the site) and a telephone number on which that person can be contacted at any time for business purposes and outside working hours;
 - c) the name, address and telephone number of the Principal Certifying Authority.
- The sign must be maintained while the work is being carried out and must be removed upon the completion of works.
- (4) **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 turbing, 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

Error! Reference source not found.

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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):

Error! Reference source not found.

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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.

MINUTES ORDINARY COUNCIL - 13 APRIL 2021

Councillor Glen Dunkley returned to the meeting at 6:20pm.
Councillor Paul Le Mottee left the meeting at 6:20pm.

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)**.

ORDINARY COUNCIL MEETING - 13 APRIL 2021 MOTION

071	<p>Councillor John Nell Councillor Giacomo Arnott</p> <p>It was resolved that Council 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).</p>
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In accordance with Section 375 (A) of the Local Government Act 1993, a division is required for this item.

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

Those against the Motion: Nil.

The motion was carried.

Cr Glen Dunkley left the meeting at 6.33pm, leaving the meeting inquorate. Those in attendance were Mayor Ryan Palmer, Crs Giacomo Arnott, Ken Jordan, John Nell and Steve Tucker.

MINUTES ORDINARY COUNCIL - 13 APRIL 2021

Cr Jaimie Abbott arrived at the meeting at 6.48pm.

ORDINARY COUNCIL MEETING - 13 APRIL 2021 MOTION

072	Mayor Ryan Palmer Councillor Giacomo Arnott It was resolved that Council recommence the meeting at 6.49pm.
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The motion was carried.

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	<u>Risk Ranking</u>	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)**.

CONSULTATION

Internal

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

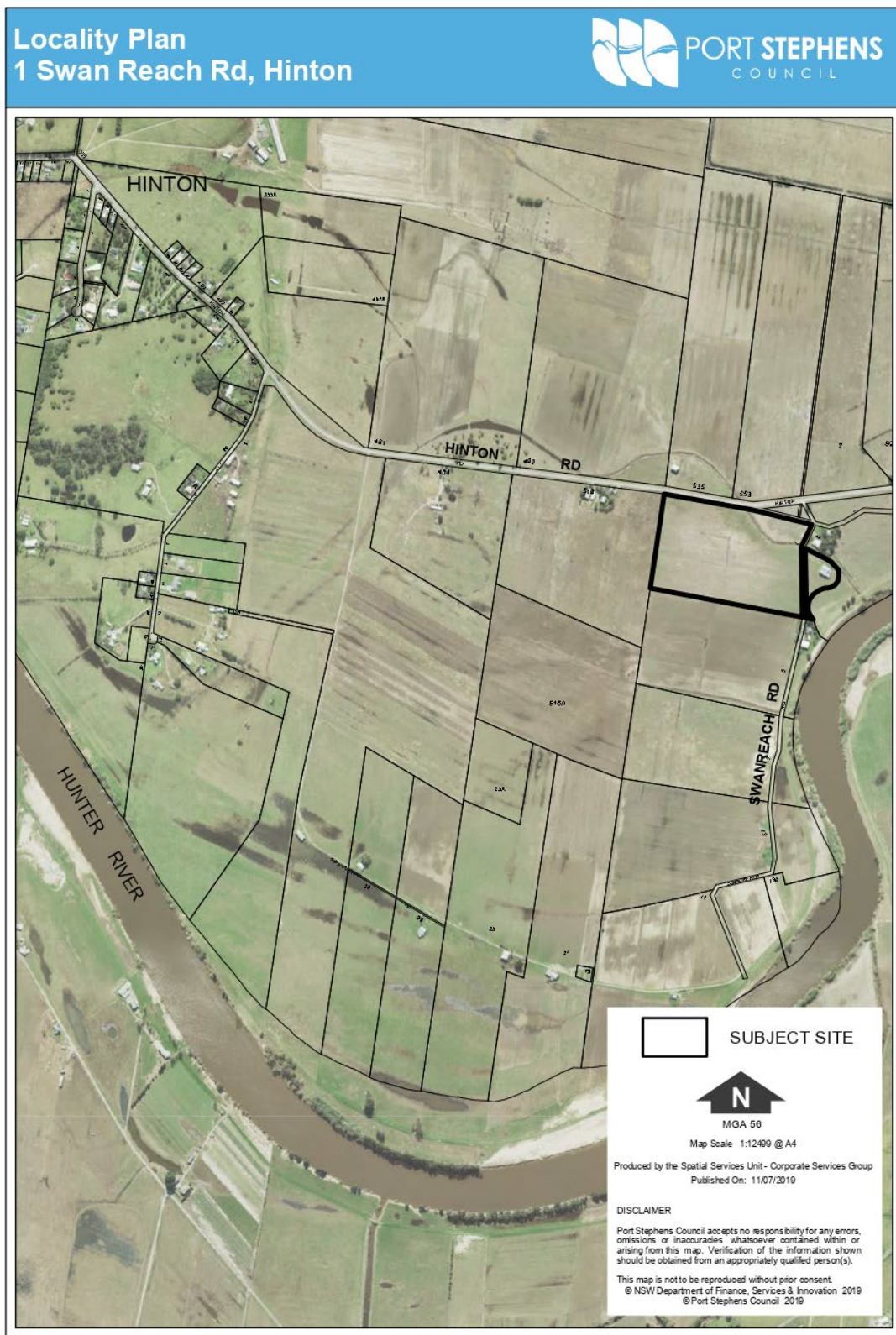
- 1) Locality Plan.
- 2) Assessment Report.
- 3) Reasons for Refusal.
- 4) Call to Council Form.
- 5) Ordinary Council Minutes - 10 September 2019.

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.

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- 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	<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>B5.11 Development located within High Hazard 1 – Floodway adheres to the following:</p> <ul style="list-style-type: none"> • New buildings or structures and fill are not supported unless accompanied by a report <p>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</p>	<p>The proposed property is identified as a High Hazard Floodway category.</p> <p>No flood certificate was submitted with the application. Conflicting levels have been provided by the Applicant.</p> <p>The Applicant has not adequately addressed part B5.11 the DCP or demonstrated that the application benefits the needs of the community.</p>
B6	<input checked="" type="checkbox"/> Essential services are available to the site, where required.	Yes – Onsite septic system required
C4	<p><input checked="" type="checkbox"/> BASIX submitted in accordance with SEPP.</p> <p><input checked="" type="checkbox"/> Site coverage is in accordance with figure BD.</p> <p><input checked="" type="checkbox"/> Proposal ensures development provides continuity to the street and setbacks comply with C4.10-C4.19.</p> <p><input checked="" type="checkbox"/> Development appropriately activates the street with habitable rooms where applicable.</p> <p><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.</p> <p><input checked="" type="checkbox"/> The development would not adversely affect the amenity of neighbouring properties or the public domain.</p>	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

ITEM 2 - 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.	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 no 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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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
COUNCILCALL 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.

ITEM 2 - 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.	

PORT STEPHENS
COUNCILCALL TO COUNCIL FORM
DEVELOPMENT APPLICATION**Development application (DA) call to Council request:**

I/We (Mayor/Councillor/s) Mayor Palmer, Cr Smith and Cr Dunkley request that DA number 16-2019-135-1 for DA description Single Dwelling located at 1 Swanreach Road Hinton 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) Cr Dunkley have a conflict of interest:

☒ No

☐ 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

Please sign or type name & attached to an email.

Date: 3/6/19 enter a date.

Signed: Cr Smith

Please sign or forward supporting email.

Date: 4/6/19 enter a date.

Signed: Cr Dunkley

Please sign or forward supporting email.

Date: 4/6/19 enter a date.

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

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

ITEM 2 - ATTACHMENT 5 ORDINARY COUNCIL MINUTES - 10 SEPTEMBER 2019.**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 2019External 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) 48802255 Fax: (02) 49873012 Email: council@portstephens.nsw.gov.au

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

MINUTES ORDINARY COUNCIL - 10 SEPTEMBER 2019

ITEM 1 - ATTACHMENT 2 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

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 5 ORDINARY COUNCIL MINUTES - 10 SEPTEMBER 2019.**MINUTES ORDINARY COUNCIL - 10 SEPTEMBER 2019****ITEM 1 - 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

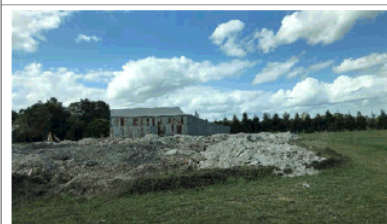


Photo 3: Looking East, approved mound being constructed, proposed site of development and existing metal shed



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

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

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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).

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- 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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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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		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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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)(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 no 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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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*).

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

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.		

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

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.	



PORT STEPHENS
COUNCIL

CALL TO COUNCIL FORM DEVELOPMENT APPLICATION

Development application (DA) call to Council request:

I/We (Mayor/Councillor/s) Mayor Palmer, Cr Smith and Cr Dunkley request that DA number 16-2019-135-1 for DA description Single Dwelling located at 1 Swanreach Road Hinton

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) Cr Dunkley have a conflict of interest:

☒ No

☐ 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

Please sign or type name & attached to an email.

Date: 3/6/19 enter a date.

Signed: Cr Smith

Please sign or forward supporting email.

Date: 4/6/19 enter a date.

Signed: Cr Dunkley

Please sign or forward supporting email.

Date: 4/6/19 enter a date.

ITEM NO. 3

**FILE NO: 21/64900
EDRMS NO: 16-2020-357-1**

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

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

RECOMMENDATION IS THAT COUNCIL:

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

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

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

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

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

Those against the Motion: Nil.

The motion was carried.

BACKGROUND

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

MINUTES ORDINARY COUNCIL - 13 APRIL 2021

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

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

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

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

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

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

Proposal

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

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

Site Description and history

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

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

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

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 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 be 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



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

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

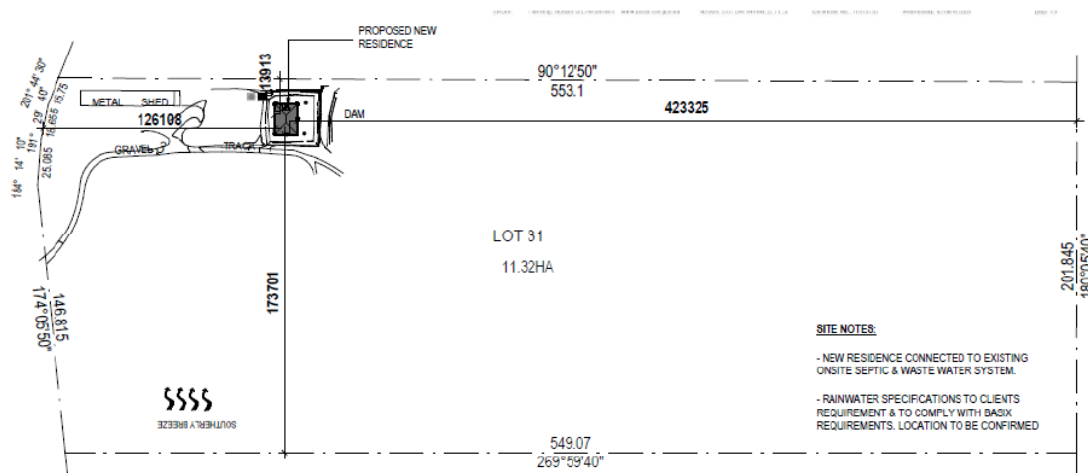


Figure 3: Locality plan

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.

16-2020-357-1

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

SITE INSPECTION

A site inspection was carried out on 3 February 2021.

The subject site can be seen in the images below:



Figure 4: View from proposed development site facing east



Figure 5: View from proposed development site facing west



Figure 6: View of proposed development site facing north



Figure 7: View of proposed development site facing south

REFERRALS

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

Development Engineer

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

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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.

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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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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 3 - ATTACHMENT 2 PLANNERS ASSESSMENT REPORT.

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

Site Facilities and Services

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

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

There are no regulations that apply to the proposal.

Section 4.15 (1)(b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the 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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ITEM 3 - ATTACHMENT 2 PLANNERS ASSESSMENT REPORT.

16-2020-357-1

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

s4.15(1)(e) – The public interest

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

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

Nil.

DETERMINATION

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

ISAAC LANCASTER
DEVELOPMENT PLANNER

**SCHEDULE 1 – REASONS FOR REFUSAL**

The application is recommended for refusal on the following grounds:

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

**PORT STEPHENS COUNCIL**

116 Adelaide Street
Raymond Terrace NSW 2324

PO Box 42
Raymond Terrace NSW 2324

Phone: 02 4980 0255
Email: council@portstephens.nsw.gov.au

www.portstephens.nsw.gov.au

ITEM 3 - ATTACHMENT 4 CALL TO COUNCIL FORM.

PORT STEPHENS
COUNCIL

Call to Council form

Development Application

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

DX 21406 | ABN 16 744 377 876

DEVELOPMENT APPLICATION (DA) CALL TO COUNCIL REQUEST

We (Mayor/Councillor/s)

Name: Ryan Palmer

Name: Sarah Smith

Name: Glen Dunkley

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

for DA description:

Single storey dwelling.

located at: 918 Newline Rd, Eagleton

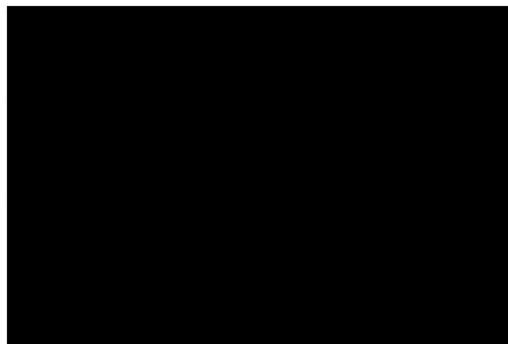
be reported to Council for determination.

REASON

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

SIGNATURE OF APPLICANT/S

Signature



Date 11 8 2020

Signature

Date 11 8 2020

Signature

Date 11 8 2020

PRIVACY

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

MINUTES ORDINARY COUNCIL - 9 MARCH 2021

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

ITEM NO. 1

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

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

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

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

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

Those against the Motion: Nil.

The motion was carried.

BACKGROUND

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

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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.

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

External

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

Notification

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.



**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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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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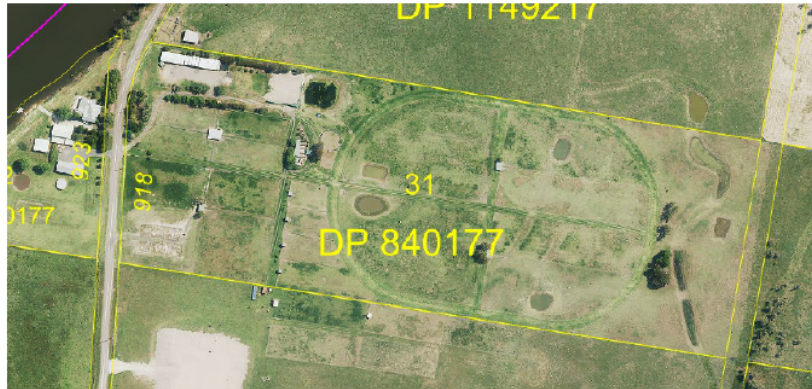


Figure 2: Aerial view of subject site

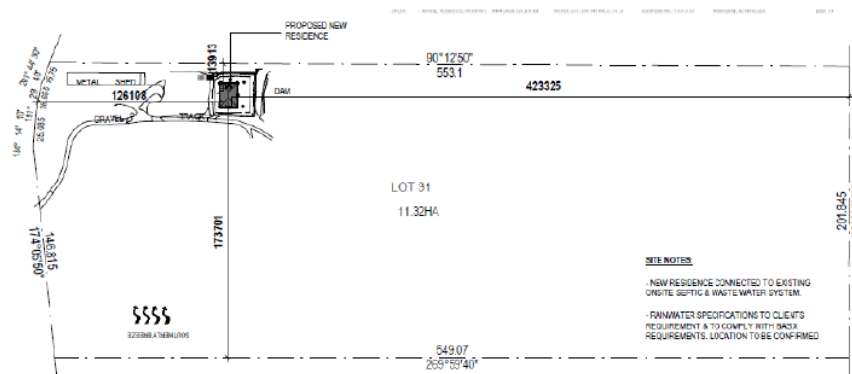


Figure 3: Locality plan

SITE HISTORY

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

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

The following applications have been assessed over the subject site:

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- 16-2016-302 – Land Fill (new stock refuge mound and extension of existing mound) – Approved – 28.06.2016
- 16-2005-215 – Four (4) x Stables & Day Yards – Approved – 21.04.2005
- 16-1998-1384 – Retaining Wall – Approved – 13.10.1998
- 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.

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

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

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

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

Chapter B4 – Drainage and Water Quality

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

Chapter B5 – Flooding

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

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

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

The current flood levels applicable to the site are:

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

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

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

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

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

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

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

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

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

Chapter B8 – Road Network and Parking

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

Chapter C – Development Types

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

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



116 Adelaide Street
Raymond Terrace NSW 2224

PO Box 42
Raymond Terrace NSW 2224

☎ (02) 4968 0255 | 📠 (02) 4967 3612
✉ council@portstephens.nsw.gov.au

DX 21405 | ABN 15 744 377 875

Call to Council form

Development Application

DEVELOPMENT APPLICATION (DA) CALL TO COUNCIL REQUEST

We (Mayor/Councillor/s)

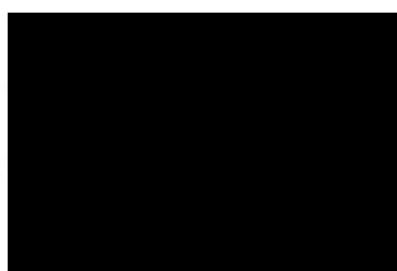
Name:	Ryan Palmer
Name:	Sarah Smith
Name:	Glen Dunkley
request that DA number:	DA16-2020-357-1
for DA description:	Single storey dwelling.
located at:	918 Newline Rd, Eagleton

be reported to Council for determination.

REASON

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

SIGNATURE OF APPLICANT/S

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

PRIVACY

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

Call to Council DA application form | Page 1 of 1

MINUTES ORDINARY COUNCIL - 13 APRIL 2021

Councillor Paul Le Mottee returned to the meeting at 7:01pm.

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)**.
-

ORDINARY COUNCIL MEETING - 13 APRIL 2021 MOTION

074	<p>Councillor John Nell Councillor Giacomo Arnott</p> <p>It was resolved that Council 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).</p>
-----	--

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

Those for the Motion: Crs Jaimie Abbott, Giacomo Arnott, Ken Jordan, John Nell and Steve Tucker.

Those against the Motion: Mayor Ryan Palmer and Cr Paul Le Mottee.

The motion was carried.

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:

MINUTES ORDINARY COUNCIL - 13 APRIL 2021

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)**.

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 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



DEVELOPMENT 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

	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.

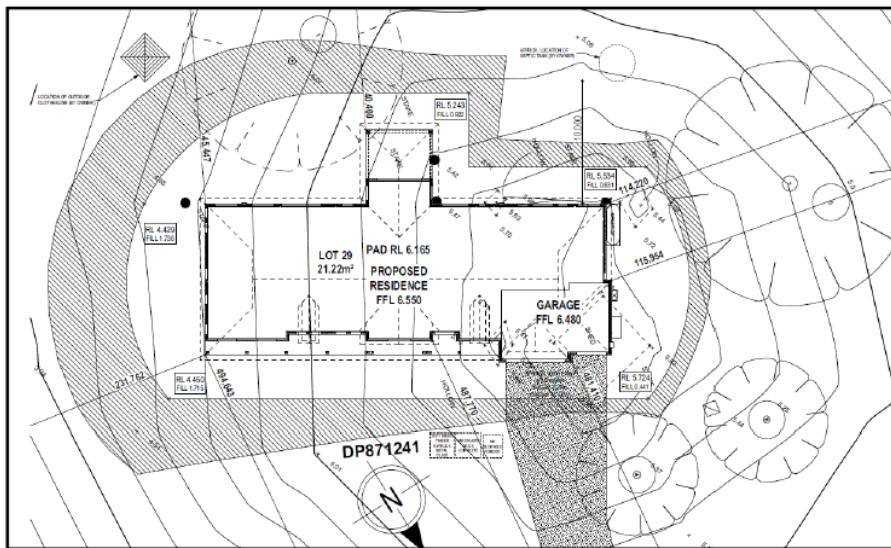


Figure 2 – Proposed dwelling and flood mound

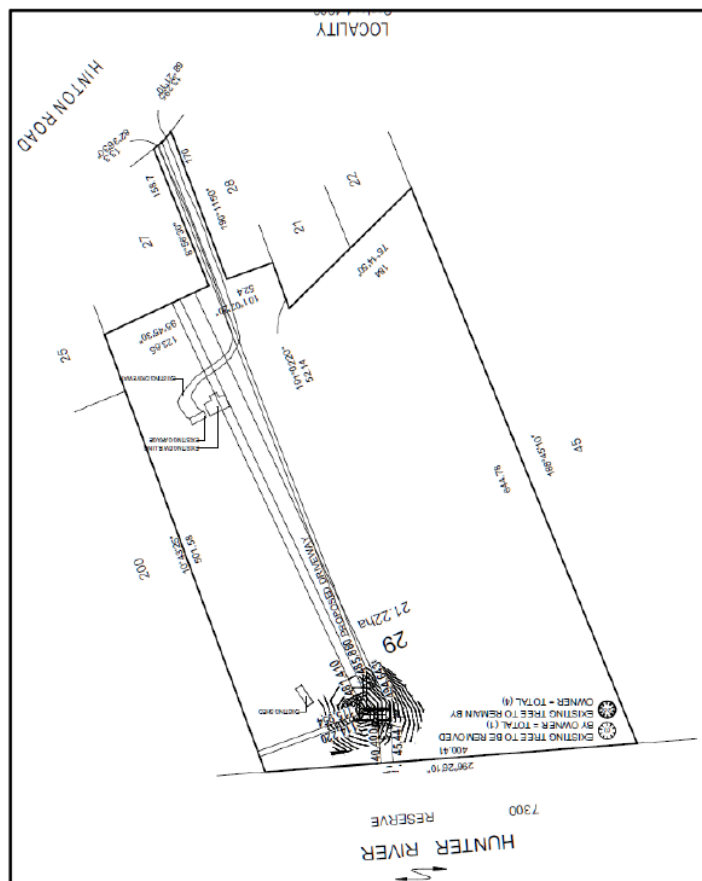


Figure 3 – Proposed site plan



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.

ITEM 4 - 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.

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 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 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**

116 Adelaide Street
Raymond Terrace NSW 2324

PO Box 42
Raymond Terrace NSW 2324

Phone: 02 4980 0255
Email: council@portstephens.nsw.gov.au

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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.





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	<p>Bushfire prone land</p> <p>OEH Referral – HV Flood Mitigation Scheme – Levee</p> <p>Acid Sulfate Soils – Class 3 and 5</p> <p>Koala Habitat Planning – Clear, preferred (river to the rear), Clear Buffer</p> <p>Endangered Ecological Communities – Swamp Sclerophyll forest</p> <p>High Environmental Value Mapping</p> <p>Biodiversity Values Map – rear eastern corner</p> <p>RAAF – high trigger 45m</p> <p>Bird Strike Group A</p> <p>Prime Agricultural Land – prime, local link (rear of site)</p> <p>Biophysical Strategic Agricultural Land – rear of site</p>

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MINUTES ORDINARY COUNCIL - 9 MARCH 2021

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.

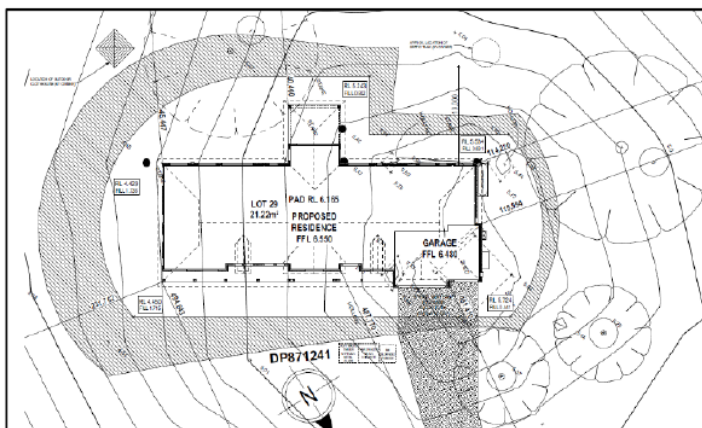


Figure 2 – Proposed dwelling and flood mound

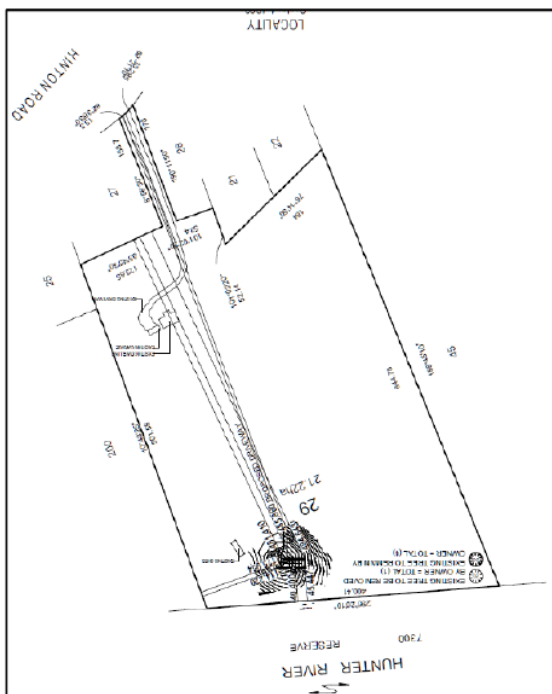


Figure 3 – Proposed site plan



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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MINUTES ORDINARY COUNCIL - 9 MARCH 2021**ITEM 2 - 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

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MINUTES ORDINARY COUNCIL - 9 MARCH 2021**ITEM 2 - 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.

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.

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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MINUTES ORDINARY COUNCIL - 9 MARCH 2021**ITEM 2 - 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 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 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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Raymond Terrace NSW 2324

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MINUTES ORDINARY COUNCIL - 9 MARCH 2021

ITEM 2 - ATTACHMENT 4 CALL TO COUNCIL FORM.



Call to Council form

Development Application

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

DX 21406 | ABN 16 744 377 876

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	22 / 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 - 13 APRIL 2021

Mayor Ryan Palmer vacated the chair at 7:21pm due to a conflict of interest. The Deputy Mayor, Cr Paul Le Mottee chaired the meeting.

ITEM NO. 5

FILE NO: 21/64961
EDRMS NO: 16-2020-477-1

DEVELOPMENT APPLICATION 16-2020-477-1 FOR 2 SEMI-DETACHED DWELLINGS & A 1 INTO 2 LOT TORRENS TITLE SUBDIVISION AT 6 BEENONG CLOSE, NELSON BAY (LOT 196 DP 9165)

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

RECOMMENDATION IS THAT COUNCIL:

- 1) Approve Development Application 16-2020-477-1 for 2 semi-detached dwellings and a 1 into 2 lot Torrens title subdivision at 6 Beenong Close, Nelson Bay (Lot 196 DP 9165) subject to the conditions contained in **(ATTACHMENT 3)**.

ORDINARY COUNCIL MEETING - 13 APRIL 2021 MOTION

075	Councillor Ken Jordan Councillor Steve Tucker It was resolved that Council approve Development Application 16-2020-477-1 for 2 semi-detached dwellings and a 1 into 2 lot Torrens title subdivision at 6 Beenong Close, Nelson Bay (Lot 196 DP 9165) subject to the conditions contained in (ATTACHMENT 3) .
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In accordance with Section 375 (A) of the Local Government Act 1993, a division is required for this item.

Those for the Motion: Crs Ken Jordan, Paul Le Mottee and Steve Tucker.

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

The motion was carried on the casting vote of the Chair.

BACKGROUND

Development Application (DA) 16-2020-477-1 was reported to Council at its meeting on 9 March 2021. At that meeting it was resolved that the DA be deferred for a site inspection. The resolution is provided below:

Meeting Minute 047: It was resolved that Council defer development application 16-2020-477-1 for 2 semi-detached dwellings and a 1 into 2 lot Torrens title subdivision at 6 Beenong Close, Nelson Bay (Lot 196 DP 9165) for inspection (**ATTACHMENT 5**).

Subsequent to the 9 March 2021 meeting, Councillors were invited to attend the site on an individual basis.

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 Councillor Sarah Smith, Councillor Jaimie Abbott and Councillor Chris Doohan (**ATTACHMENT 4**).

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

Subject land:	6 Beenong Close, Nelson Bay (Lot 196 DP 9165)
Total area:	641m ²
Zoning:	R2 – Low Density Residential
Submissions:	6 submissions were received objecting to the proposal
Key issues:	Public submissions were received raising concerns including adverse impacts on the amenity of the area, solar access impacts, privacy impacts and a general concern that the DA was an overdevelopment of the site

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

Proposal

The DA proposes 2 x 2 storey semi-detached dwellings, sharing a party wall and a Torrens title subdivision (1 into 2 lots).

Each dwelling will comprise of living areas on the ground level and 4 bedrooms on the upper level. Patios have been provided to the rear of the building.

The DA seeks to create 2 new allotments (Lot 1961 and 1962) with the following lot areas:

Proposed Lot No.	Proposed Lot Area
Lot 1961	327m ²
Lot 1962	314m ²

The DA comprises a stepped design that conforms to the narrowing of the site towards the rear boundary. The proposed dwellings have been offset from the northern boundary to provide sufficient setback from Council drainage infrastructure.

Site Description and History

The site is irregular in shape and reduces in width from 20m at the frontage to 6m at the rear boundary.

The site is vacant and slopes from the Beenong Close frontage toward the west. Council owned stormwater infrastructure runs along the northern boundary of the site. The infrastructure is not currently protected by a drainage easement.

The site is located at the end of the Beenong Close cul-de-sac. The road reserve between the site and Beenong Close road is relatively wide, measuring 12m in width.

The site is surrounded by established low density residential development.

Key Issues

The key issue identified throughout the assessment of the DA relates to the potential impacts on the amenity of adjoining residential land. A detailed assessment of the development is contained in the Planners assessment report provided at **(ATTACHMENT 2)**.

Amenity Impacts

During the initial notification of the DA, public submissions were received raising concerns including adverse impacts on the amenity of the area, solar access impacts, privacy impacts and a general concern that the DA was an overdevelopment of the site.

In response to the issues raised, an amended design was prepared by the applicant. The amended design included the following:

- Increased side setbacks along the southern boundary
- Reduction in the overall height of the development
- Plantings added along the southern boundary and to the rear of both proposed dwellings
- Inclusion of privacy screens
- Replacement of large windows with highlight windows along the side boundaries to protect the privacy of neighbouring properties.

The amended design is considered on merit to be acceptable despite some setback non-compliances with the DCP as discussed below.

Setbacks

Part D6 Nelson Bay West of the DCP requires subjective front and side setbacks to ensure development 'provides continuity and consistency to the public domain'.

As shown in the table below, the DA does not comply with the side and front setback requirements.

Table 1: DCP D6 setbacks and the proposed setbacks

Required	Proposed Dwelling 1 (south)	Proposed Dwelling 2 (north)
Front minimum setback - 6m	Garage - 4.5m Upper storey - 3.2m	Garage - 3.5m Upper storey - 2.3m
Minimum side setback - 2m	Ground floor - 0.5m to 1.7m Upper storey - 2m	Ground floor - 1.6m Upper floor - 1.6m

The non-compliance with the front setback will not result in a visual impact to the public domain due to the road reserve which measures 12m from the road to the site boundary. Further, the design of the dwellings, with the inclusion of upper level balconies, provides a high level of articulation, which will not appear visually dominant in the streetscape.

The non-compliances with the side setback control results from the irregular shape of the site, coupled with the Council stormwater infrastructure located along the northern boundary.

At its closest point, the garage area of Dwelling 1 (south) is located 500mm from the southern boundary. However, due to the angled nature of the boundary and the associated stepped dwelling design, the non-compliance reduces towards the rear of the site and a significant portion of the Dwelling 1 is compliant with the control. The side setback non-compliance of Dwelling 1 is limited to the ground floor level and is consistent with setbacks seen on neighbouring properties. The inclusion of landscape screening in the side setback area, along with privacy mitigation measures to the windows facing south provides sufficient protections for the southern neighbouring property.

The side setback non-compliance of Dwelling 2 is considered to be minimal, being only 400mm at its closest point. Similarly, to the situation described above, due to the angled boundary and stepped dwelling design, a significant portion of the Dwelling 2 is compliant with the side setback control.

Solar Access

The DA complies with the solar access controls of the DCP, which requires a minimum of 3 hours of solar access to the private open space areas of the neighbouring properties during mid-winter. The solar access impacts are not made worse by the southern side setback non-compliance noting that the non-compliance is limited to the ground floor level. The upper level of the southern elevation, from which the shadows are cast, is compliant with the 2m side setback control. Further, it is noted that the DA is below the 9m height control applying to the site, thereby reducing the potential solar impacts.

MINUTES ORDINARY COUNCIL - 13 APRIL 2021

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

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

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes		
Reserve Funds	No		
Developer Contributions (\$7.11)	Yes		
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?
If the DA is approved, there is a risk that a third party may appeal the determination.	Medium	Adopt the recommendation.	Yes
If the DA is refused, there is a risk that the applicant may appeal the determination.	Medium	Adopt the recommendation.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The DA represents a modern dual occupancy and will result in additional housing to service the needs of the community. The construction of the DA will provide employment opportunities in the locality and support the local building and development industries. This will have direct monetary input to the local economy, and the increased number of residents in the locality will provide ongoing economic input through daily living activities.

The DA will reinforce the residential nature of the locality and is characteristic of other developments in both the local and wider community.

The setback non-compliances have been considered with respect to the site constraints and are considered acceptable in this instance. The DA is therefore recommended for approval subject to the conditions of consent (**ATTACHMENT 3**).

CONSULTATION

Consultation with key stakeholders has been undertaken by both internal and external to Council, including the public notification process.

Internal referral

Consultation was undertaken with Council's Development Service Engineers and Building Surveyors. Their referral comments were considered as part of the Planners Assessment Report Contained at (**ATTACHMENT 2**) and accordingly the DA is recommended for approval subject to the conditions of consent contained within (**ATTACHMENT 3**).

External agency

As the DA includes residential subdivision and the site is mapped as bushfire prone land, the DA was referred to the NSW Rural Fire Service (RFS). The RFS made no objection to the DA subject to conditions requiring compliance with the documentation 'Planning for Bushfire Protection 2019'.

Public Consultation

In accordance with the provision of the Port Stephens Council Community Participation Plan, the DA was exhibited from 31 August 2020 to 14 September 2020. During this period 5 public submissions were received.

Following amendments to the DA, the DA was re-notified from 29 October 2020 to 12 November and from 21 December 2020 to 25 January 2021. During those periods 1 submission was received which stated that their initial concerns remained.

MINUTES ORDINARY COUNCIL - 13 APRIL 2021

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) Proposed Conditions of Consent.
- 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



DEVELOPMENT ASSESSMENT REPORT

APPLICATION DETAILS

Application Number	16-2020-477-1
Development Description	Semi-detached dwellings and Torrens Title Subdivision
Applicant	YOUR HOME DESIGNS PTY LTD
Land owner	Beenong6 Pty Ltd
Date of Lodgement	12/08/2020
Value of Works	\$710,000.00
Submissions	Five (including one resubmission during the second and third notification periods)

PROPERTY DETAILS

Property Address	6 Beenong Close NELSON BAY
Lot and DP	LOT: 196 DP: 9165
88B Restrictions on Title	Unregistered easement along north-west boundary
Current Use	Vacant site
Zoning	R2 LOW DENSITY RESIDENTIAL
Site Constraints	<p>Bush fire prone land – Vegetation Category 1 and buffer</p> <p>Acid Sulfate Soil – Class 5</p> <p>Koala Habitat Planning Map – Clear</p> <p>Stormwater Drainage Requirement Area – Land Locked Catchment. For development 100 year ARI on site infiltration (if not 100 year ARI detention)</p> <p>Combined Corridor Map – Landscape Habitat Link</p> <p>Flood Prone Land – further investigation</p> <p>Height restriction 9m</p> <p>Minimum lot size 500m²</p>
State Environmental Planning Policies	<p>SEPP No. 55 – Remediation of Land</p> <p>SEPP (Koala protection) 2019</p> <p>SEPP (Building Sustainability Index: BASIX) 2004</p>

ITEM 5 - ATTACHMENT 2 PLANNERS ASSESSMENT REPORT.

16-2020-477-1

PROPOSAL

The application proposes semi-detached dwellings and one into two lot Torrens title subdivision. Each dwellings comprises of four bedrooms (including ensuite); open plan kitchen, living and dining area, rumpus area and laundry space. A lift is proposed for dwelling 1. Dwelling 1 also includes a double lock up garage, with dwelling 2 being provided with a single lock up garage and car port.



Figure 1 – Proposed dual occupancy

The proposed subdivision will result in the creation of the following allotments (figure 2):

- Lot 1961 an area of 302m²; and
- Lot 1962 an area of 338m²

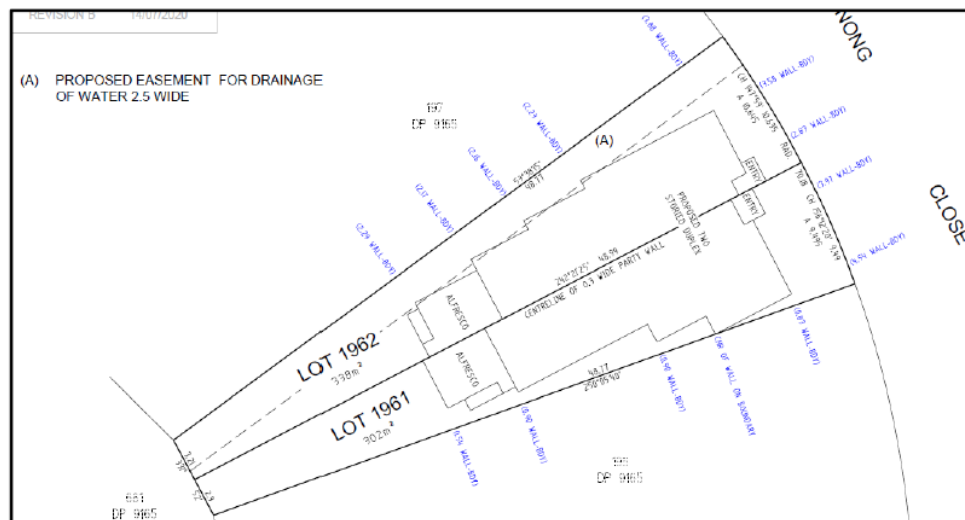


Figure 2 – Proposed subdivision

SITE DESCRIPTION

ITEM 5 - ATTACHMENT 2 PLANNERS ASSESSMENT REPORT.

16-2020-477-1

The subject site is known as at 6 Beenong Close, Nelson Bay (**Figure 3**). The site is legally identified as Lot 196 DP 9165 and has an area of 683m².

The site slopes away from the Beenong Close frontage towards the west.

The subject site is an irregular wedge shape which reduces in width toward the rear of the site; comprising a site frontage of width of 20m and a rear boundary width of 6m. Early investigations identified drainage infrastructure located along the northern boundary of the site.

The land has frontage to Beenong Close that ends in a cul-de-sac a short distance to the east. The road reserve between the subject site and Beenong Close has a relatively large road reserve measuring a minimum of 12m.



Figure 3 – GIS aerial image of subject site

The site is surrounded by established low density residential development. An application similar to the subject application was lodged with Council earlier this year (16-2020-263-1) and rejected on lodgement. The matters raised upon lodgement, related to the unregistered easement along the north-west elevation of the site; which has been considered in the amended design within this application.

Site inspection

A site inspection was carried out on **30 September 2020**. The site is managed grass with one large tree located toward the site frontage. The site falls to the rear and does not have an existing driveway.

The subject site can be seen in the images below:

16-2020-477-15



Image 1 – View of the frontage of the subject site



Image 2 – Adjoining neighbour



Image 3 – Adjoining neighbour

Page 4 of 15

16-2020-477-1



Image 4 – View to the rear of the site



Image 5 – View along the area containing drainage infrastructure

Page 5 of 15

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.

Internal Referrals

Building Surveyor - The application was supported subject to conditions of consent. The proposed development has sufficient separation between the building and boundaries that satisfy minimum BCA fire separation requirements. The amended plan set includes changes to the design to ensure compliance with BCA fire separations requirements.

Development Engineer – The application was supported subject to conditions of consent.

Vegetation Management – The application is supported subject to conditions of consent, which requires a street tree be planted in the road reserve.

External Referrals

Rural Fire Service – the application was referred to the RFS as integrated development under s.100B of the Rural Fires Act 1997. The property is surrounded with residential developments on managed land and grassland. BAL 12.5 is required for all elevations, except the south-west elevation, which is BAL 19.

The development is conditionally supported by the RFS and subject to GTAs.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979**S4.46 – What is integrated development**

The proposed development required integrated referral under section 100B of the Rural Fires Act 1997 as the development includes residential subdivision of bushfire prone land. Per the assessment provided under the referrals section above, the application was referred to RFS and subsequently supported with conditions under Section 100B of the Rural Fires Act 1997.

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

ITEM 5 - ATTACHMENT 2 PLANNERS ASSESSMENT REPORT.

16-2020-477-1

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 and subdivision 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 proposed development is located on a site located in an established residential area. The site does not have an area nor apply to an area of more than 1 hectare and as such the SEPP does not apply. The site is identified as clear from koala habitat and as such the development will not adversely impact koala habitat.

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 R2 Low Density zone. The development addresses the objectives of the zone by providing housing needs for the community and enhancing the existing residential amenity of the area.

Clause 4.1 – Minimum Subdivision Lot Size

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

The proposed lots do not achieve the minimum lot size under this clause, as such an assessment against Cl 4.1C is required.

Clause 4.1C – Exceptions to minimum lot sizes for certain residential development

The proposal is on land that does not achieve the minimum lot size for subdivision applicable in Clause 4.1 that consent may be granted under Clause 4.1C. The subject site is located in the R2 zone and proposes the subdivision of land into two lots for the purpose of semi-detached dwellings. The erection of a dwelling on each lot resulting from the subdivision where the size of each lot is equal to or greater than 250m² is permissible under this clause. The proposed allotments as a result of the subdivision are as follows:

- Proposed lot 1 – 302m²
- Proposed lot 2 – 338m²

Per the above, the proposed subdivision seeks to create allotments, which exceed the minimum lot size specified under the Clause 4.1C, and consequently achieve the objectives and requirements of this clause.

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Clause 4.3 – Height of Buildings

The proposed development has a maximum height of 8.303 metres, which is below the maximum permissible building height of 9 metres specified on the Height of Buildings Map.

Clause 7.1 – Acid Sulfate Soils

The subject land is mapped as containing potential Class 5 acid sulfate soils. The proposed development is not anticipated to entail excavations below 2 metres and therefore it is not expected that acid sulfate soils would be encountered during works.

Clause 7.2 – Earthworks

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

Clause 7.6 – Essential Services

The subject site is serviced by reticulated water, electricity and sewer. In addition, the application has demonstrated that stormwater drainage resulting from roof and hard stand areas can be catered for in accordance with Councils requirements. The subject land also maintains direct access to Beenong Close, 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.

s4.15(s4.15(1)(a)(iii) – Any DCP

PORT STEPHENS DEVELOPMENT CONTROL PLAN 2014		
Clause	Compliant	Notes
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 per the assessment against Clause 7.1 of the LEP, the proposal is unlikely to disturb ASS as part of earthworks on the site. Earthworks are unlikely to result in adverse impacts on the environment.
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 acceptable on-site detention / infiltration proposed or condition for	<p>The site impervious area is 45%, which is below the 65% maximum allowable for the site under DCP chapter D6 lower slopes Nelson Bay West.</p> <p>The proposed development includes water tanks collecting roof water and connected to infiltration pits at the rear of the proposed lots.</p> <p>Due to the established surrounding developments and the subject site being the only remaining undeveloped site; water quality requirements from</p>

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	<p>details added.</p> <p><input checked="" type="checkbox"/> Insignificant increases to adversely impact on water quality; OR</p> <p><input checked="" type="checkbox"/> Stormwater management plan proposed in accordance with this Chapter and Council's standard drawings.</p>	<p>the site are not likely to result in a significant benefit or impact. The application will result in single dwelling erected on separate lots; as such no water quality features are required. Additionally, as the subject site is within an established area and the proposal includes rainwater tanks, there is minimal adverse impacts likely to result on the water quality as result of not requiring water quality for the subject site.</p> <p>The development meets the objectives of the DCP B4 chapter.</p>
B8	<p><input checked="" type="checkbox"/> The development would not generate significant increases in traffic.</p> <p><input checked="" type="checkbox"/> On-site parking provision meets the requirements of figure BQ or merit based assessment; AND,</p> <p><input type="checkbox"/> Suitable disabled parking is provided in line with figure BQ.</p>	<p>Each dwelling consists of four bedrooms, and accordingly requires 2 parking spaces. Dwelling 1 proposes a double car garage and dwelling 2 proposes a single car garage and carport in accordance with the requirements of the DCP. Stacked car parking is also possible in the driveway for additional off street parking.</p>
C1	<p><input checked="" type="checkbox"/> The development is a minor subdivision; AND,</p> <p><input checked="" type="checkbox"/> The proposal would result in lot dimensions appropriate for their proposed use whilst not restricting the provision of services.</p> <p><input checked="" type="checkbox"/> The proposal is consistent with the LEP requirements on subdivisions.</p>	<p>The proposed subdivision is to create two sites:</p> <ul style="list-style-type: none"> • Lot 1961 – 302m²; and • Lot 1962 – 338m². <p>Each lot maintains access to Beenong Close. Due to the irregular site shaped site the lots cannot achieve a regular rectangular shape. The resulting lot shapes are consistent with the existing lots and permit the proposed residential use to occur on the site.</p>
C4	<p><input checked="" type="checkbox"/> Proposal ensures development provides continuity to the street and setbacks comply with C4.10-C4.19.</p> <p><input checked="" type="checkbox"/> Development appropriately activates the street with habitable rooms where applicable.</p> <p><input checked="" type="checkbox"/> The proposed development would be sympathetic to the streetscape as it is consistent with the existing development in its form, height, bulk, design and materials.</p> <p><input checked="" type="checkbox"/> The development would not</p>	<p>Dwelling 1:</p> <ul style="list-style-type: none"> • Front and side setback are considered against chapter D6 of the DCP. • Rear setback – 18.3m. <p>Dwelling 2 is located adjacent to an existing drainage infrastructure along the northern boundary.</p> <ul style="list-style-type: none"> • Front and side setback are considered against chapter D6 of the DCP. • Rear setback – 18.5m. <p>The dual occupancy has been designed to include balconies facing the street and views from internal space looking out on to the street. The development activates the street with a large balcony and enables passive surveillance to occur from the site.</p> <p>Each dwelling has a large alfresco area at the rear which is accessed from the living room on the ground floor. There is also a suitable amount of area</p>

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	adversely affect the amenity of neighbouring properties or the public domain.	<p>for private open space to be achieved for each of the dwellings. Privacy screen are proposed along the south east elevation and on the balconies of both dwellings to restrict unreasonable privacy impacts to adjoining properties.</p> <p>Solar diagrams have been provided demonstrating the likely impacts to the POS of adjoining dwellings and the proposed POS for each of the dwellings. The adjoining dwellings both retain a minimum of 3 hours of sunlight in the private open space area to the rear of the existing dwellings. Amendments to the initial design were made to reduce the overall building height by 300mm and flat reduced solar impacts to adjoining neighbours.</p> <p>The proposal includes landscaping within the front setback and along the rear and side boundaries for each of the dwellings. The landscaping has been supported by Councils vegetation management officer.</p>
D6	Nelson Bay West Lower Slopes additional requirements	<p>The subject site is identified within the Nelson Bay West Lower Slopes area.</p> <p>The proposal does not comply with the setback requirements of the DCP, as a consequence of site topography constraints. The subject site is a wedge shaped allotment and has an easement along the boundary which limits the siting of the development. As such, a merit assessment of the non-compliance is required.</p> <p>Additional requirements apply to land identified in the DCP chapter. Setback requirements include:</p> <ul style="list-style-type: none"> • Minimum Front setback of 6; and • Minimum side setback of 2m are required. <p>Dwelling 1:</p> <ul style="list-style-type: none"> • Front setback –4.5m (garage); • Front upper storey – 3.2m; • Side setback – the garage is setback between of 0.5m and 1.3m from the side boundary on the south-western corner of the garage. The remainder of the dwelling is setback a minimum of 1.7m from the side boundary; • Side upper storey - 2m. <p>Dwelling 2 is located adjacent to an existing drainage easement along the side boundary (2.5m wide).</p> <ul style="list-style-type: none"> • Front setback –garage 3.5m;

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		<ul style="list-style-type: none"> • Front upper storey – 2.3m; • Side setback – minimum 1.6m; • Side upper storey minimum 1.6m. <p>The original proposal and amended design does not strictly comply with the side and front setback requirements. It is considered through the assessment that the non-compliances with the front and side setback will not result in adverse impacts to the public domain or detract from the streetscape.</p> <p>The dwelling frontages are articulated to reduce dominance of the frontage and address street to not negatively impact or detract from the streetscape. Further, the road reserve of the site is large which assists in minimising the visual impact of the proposed design exceedance in the front setback. The upper levels protrude closer to the frontage than the garages, 2.6m balconies have been included attached to the master bedrooms of each dwelling. The articulation created by the balcony reduces the dominance of the frontage.</p> <p>Dwelling 1 garage is setback 1.3m from the side boundary and progressively gets closer to the boundary in the south-west corner of the garage due to the narrowing of the boundary. The remainder of the ground floor is setback a minimum of 1.7m.</p> <p>Dwelling 2 ground and upper floor side setback is 1.6m, resulting in a non-compliance of 0.4m from the D6 setback requirement.</p> <p>The amended design incorporating privacy screens, landscaping and increased side setbacks mitigates amenity and privacy impacts. The proposal is not considered to adversely affect the surrounding area, noting a precedence with the surrounding existing dwellings not strictly meeting these requirements. The subject sites irregular shape and the additional setback requirements of D6 has created constraints for the dwelling design. The design of the proposal has responded to these constraints to achieve an outcome that meets the objectives of the DCP objectives and achieves consistency with the established built form. Further, BCA fire separation requirements are satisfied.</p> <p>Onsite detention is required where impervious surfaces exceeded 65%, the development is approximately 45% impervious area. As such, there is no requirement for onsite detention to be provided.</p> <p>D6.6 requires a landscape plan to be provided achieving a 34% landscape area and 35% endemic</p>
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		species to be used. Amended landscape design plans have been provided demonstrating landscaping long the south-east side boundary and rear of each lot in addition to landscaping in the frontages of each dwelling. The plans note native trees and shrubs are to be used throughout the design, the landscaped area is 47.7%. Satisfying the requirements of the DCP.
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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
<input checked="" type="checkbox"/> Social and Economic Environment: There would be beneficial impacts as a result of the development.	The proposed development represents modern dwellings that will result in additional housing to service the needs of the community. The dwellings will allow for the use of existing services and facilities in the locality without requiring upgrades that burden the public. The construction of the proposed development will provide employment opportunities in the locality and support the local building and development industries. This will have direct monetary input to the local economy, and the increased number of residents in the locality will provide ongoing economic input through daily living activities. There are no anticipated adverse social or economic impacts as a result of the proposed development.
<input checked="" type="checkbox"/> Built Environment: The proposed development would not cause harm to the existing character.	The proposed development will reinforce the residential nature of the locality and is characteristic of other developments in both the local and wider community. The non-compliances have been considered with respect to the site constraints. The proposed front and side setbacks create an envelope that is in consistent with the objectives of chapter D6 DCP. The non-compliances are considered acceptable with merit. The application includes relevant construction methods and services such as an on-site stormwater management system that will prevent adverse impacts on adjoining properties. The proposal addresses the street and provides logical and convenient connections to the road network and pedestrian facilities in the

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	locality. There are no anticipated adverse impacts on the built environment as a result of the proposed development.
<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.	The proposed development includes a stormwater water system that manages stormwater in accordance with Councils quantity and quality requirements. A condition of consent is proposed that requires the installation and maintenance of erosion and sedimentation controls. It is noted that no significant vegetation is proposed to be removed and that the proposal includes a landscaping plan that utilises native species.

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

The subject site is located within an existing residential area and is relatively clear of vegetation. The site has access to all relevant services and the proposed development makes good use of the available land. There are some non-compliances where the proposed development on the site does not achieve the DCP requirements. Despite this, the subject site is considered to be a suitable site for the proposed use and design proposed in this application. The constraints and irregular shape of the site have been considered and the development is considered suitable for the site. The design includes all elements required under the relevant planning instruments and policies and there are no significant impacts on the locality as a result of the development.

s4.15(1)(d) – Any submissions

The application was exhibited from **31 August 2020 to 14 September 2020**, in accordance with the provisions of the Port Stephens Council Community Participation Plan. Five (5) submissions received during this time.

Due to the high level of community interest the application was re-exhibited from **29 October 2020 to 12 November 2020 and 21 December 2020 to 25 January 2021**. One submission was received during each of the subsequent notifications that stated that the issues raised previously remained.

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

Number of submitters	Comment	Council response
3	Overdevelopment of the site – bulk and scale of development is not in keeping with the character of the street. Does not comply with average building line of neighbouring properties	The bulk and scale of the development is not considered to be inconsistent with the zone objectives and the proposal is a permissible land use under the provisions of LEP 2013. To limit the bulk and scale, the applicant designed the development to include variations in setbacks from the side and front boundaries, to break up the building bulk The proposed development has a minimum 3.5m setback from the front property line. The front setback non-compliance is considered acceptable as the front façade is well articulated and the subject site has a large road reserve which acts as a visual aid to reduce the impact to road frontage.
1	The proposed building has no architectural redeeming features	The proposed development is considered to be a modern dual occupancy development consistent with recent

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		developments in the greater Nelson Bay area.
4	Solar Access – create shadows on adjoining properties and restrict solar access	<p>The proposal overshadows the property to the south in mid-winter. There will however be at least 3 hours of sunlight to the open space areas to the south of the development, which complies with the solar access requirements of C.4 of the DCP assessment.</p> <p>Amendments to the design were made to reduce the height of the development by 300mm and to reduce the front property setback to increase solar access to adjoining property.</p> <p>It should be noted that the impact resulting from the proposal will be similar to those created by a standalone double storey dwelling.</p> <p>As detailed in the assessment above, the proposed development is considered to allow an appropriate level of solar access on adjoining site per the requirements of the DCP.</p>
3	Proposal is not consistent with the character and streetscape of the area.	<p>The design of the development is considered to be consistent with the R2 zone objectives as it provides further housing stock for the community through low density residential development. The design is considered to be consistent with the surrounding area through the use of weatherboard cladding, glass, rendered concrete and timber. The design is considered to be a contemporary design which respects the character of the area.</p> <p>The proposed design has been amended by the applicant to include, increase the structures setback from the side boundaries and reduce the height of the development. The height is well below the 9m LEP 2013 height restriction, the setbacks have been increased and landscaping has been included to provide additional privacy screening.</p>
3	Side and front setbacks	<p>The proposed setbacks have been assessed and considered in detail against C4 and D6 of the DCP. A merit assessment of the proposed development has been undertaken.</p> <p>The assessment of the amended design is considered to be an appropriate outcome for the subject site. The amended design has increased the side setbacks for the development resulting in minor non-compliances at certain points, however a significant portion of development is compliant.</p> <p>The dwelling frontages have design articulation and address the site frontage in a manner, which is considered to not negatively impact or detract from the streetscape. The road reserve of the site is large which assists in minimising the visual impact of the front setback.</p>
2	Increase to traffic volume	

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	and on street parking and impact on street visibility	The proposed development includes adequate parking to support two car parks for each dwelling which is required for dwellings with three or more bedrooms. Each dwelling has two car spaces available in addition to stacked parking spaces, which can be accommodated in each of the driveways. The development is not considered likely to create an unacceptable increase to the traffic volume of the street.
3	Privacy impact – loss of privacy for adjoining properties due to height of development and location of windows	Amended plans have been provided by the applicant in response to further information request. These plans provide amendments that consider the privacy impacts on adjoining neighbours. Privacy screens have been added to the southern elevation and will be required on the north west elevation to ensure the adjoining neighbours have continued privacy.
1	Original refusal of application	The previous development application lodged was rejected by Council as it did not consider the Council drainage infrastructure along the northern boundary. The current application has considered this constraint.
2	Stormwater management – mapped as a 1% infiltration area	The stormwater management plan proposes collection of roof water to be piped to a 5,000L tank for each dwelling. The overflow will be piped to the rear of each proposed site to an infiltration pit. Standard conditions of consent requiring consistency with Council requirements.
3	Does not meet the zone objective of the R2 Low Density Residential zone under the PSLEP 2013	The proposed development provides housing needs for the community and as per the detailed assessment in the report is considered to not have a significant impact on the existing residential amenity and character of the area.

s4.15(1)(e) – The public interest

The proposal provides additional accommodation in the locality to service the needs of the community, and is not anticipated to have any significant adverse impacts on surrounding properties or the amenity of the locality. The proposed development reinforces the residential nature of the land and is in keeping with the character of surrounding developments. The proposed development is in the public interest.

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

Development contributions apply for the provision of one dwelling and one lot. Development contributions have been applied.

DETERMINATION

The application is recommended to be approved by the elected Council subject to conditions of consent.

SOPHIE-MARIE EFKARPIDIS | Development Planner

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ITEM 5 - ATTACHMENT 3 PROPOSED CONDITIONS OF CONSENT.

**RECOMMENDED CONDITIONS OF CONSENT****1.0 - General Conditions of Consent**

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

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

Plan reference/ drawing No.	Name of plan	Prepared by	Date
YDH-168 Rev. D6 DA.2	Site Plan	Your Home Designs	4/12/2020
YDH-168 Rev. D6 DA.3	Stormwater Plan	Your Home Designs	4/12/2020
YDH-168 Rev. D6 DA.6	Landscape Plan	Your Home Designs	4/12/2020
YDH-168 Rev. D6 DA.8	Ground Floor	Your Home Designs	4/12/2020
YDH-168 Rev. D6 DA.9	Upper Floor	Your Home Designs	4/12/2020
YDH-168 Rev. D6 DA.10 & DA.11	Elevations	Your Home Designs	4/12/2020
YDH-168 Rev. D6 DA.12	Section	Your Home Designs	4/12/2020
36803 PSP3 1 of 1	Subdivision Plan	North Point Surveys	1/2/2021

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

- (2) **BASIX Certificate** – The applicant must undertake the development strictly in accordance with the commitments listed in the BASIX certificate(s) for the development to which this consent applies.
- (3) **Building Code of Australia** – All building work must be carried out in accordance with the BCA. In this clause, a reference to the BCA is a reference to that Code as in force on the date the application for the relevant Construction Certificate is made.

PORT STEPHENS COUNCIL

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- (4) **Home Building Act** – Pursuant to Section 4.17(11) of the *Environmental Planning & Assessment Act 1979*, residential building work within the meaning of the *Home Building Act 1989* shall not be carried out unless the PCA for the development to which the work relates:
- a) In the case of work for which a principal contractor has been appointed:
 - i. Has been informed in writing of the name and licence number of the principal contractor; and
 - ii. Where required has provided an insurance certificate with the name of the insurer by which work is insured under Part 6 of that Act.
 - b) In the case of work to be carried out by an owner-builder;
 - i. Has been informed in writing of the name of the owner-builder; and
 - ii. If the owner-builder is required to hold an owner-builder permit under that Act; has provided a copy of the owner-builder permit.
- (5) **Home Building Act – Insurance** – Building work that involves residential building work within the meaning of the *Home Building Act 1989*, must not commence until such time as a contract of insurance is in force in accordance with Part 6 of that Act.
- This clause does not apply:
- a) to the extent to which an exemption is in force under Clause 187 or 188 of the *Environmental Planning & Assessment Regulation 2000 (EP&A Regulation 2000)*, subject to the terms of any condition or requirement referred to in Clause 198(6) or 188(4) of the *EP&A Regulation 2000*; or
 - b) to the erection of a temporary building, other than a temporary structure to which subclause (1A) of Clause 98 of the *EP&A Regulation 2000* applies.
- (6) **Excavation for residential building works** – If the approved development involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the consent must, at the person's own expense:
- a) protect and support the adjoining premises from possible damage from the excavation; and
 - b) where necessary, underpin the adjoining premises to prevent any such damage.
- This condition does not apply if the person having the benefit of the consent owns the adjoining land or the owner of the adjoining land has given consent in writing that condition not applying, and a copy of that written consent is provided to the PCA prior to the excavation commencing.
- (7) **Sign on building** – Except in the case of work only carried out to the interior of a building or Crown building work, a sign must be erected in a prominent position on the site showing the name, address and telephone number of the Principal Certifying Authority for the work, the name of any principal contractor and their after-hours contact number, and must contain a statement that unauthorised entry to the site is prohibited.

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ITEM 5 - ATTACHMENT 3 PROPOSED CONDITIONS OF CONSENT.



The sign must be maintained while the work is being carried out and is to be removed when the work is completed.

- (8) **Shoring of adjoining buildings** - Where any excavation required for the development extends below the level of the base of a footing of a building, structure or work on adjoining land (including within a road or rail corridor), the person having the benefit of the consent must protect and support that building, structure or work from possible damage from the excavation, and where necessary underpin the building, structure or work to prevent any such damage.
- (9) **General terms of approval** – The General Terms of Approval from state authorities must be complied with prior to, during, and at the completion of the development.
- The General Terms of Approval are:
1. NSW Rural Fire Service, DA20200909003285-Original-1, 2 November 2020
- A copy of the General Terms of Approval is attached to this determination notice.

2.0 – Prior to Issue of a Construction Certificate

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

- (1) **Driveway gradients and design** - For all driveways that relate to development for the purposes of a dwelling house, the driveway gradient and design must comply with AS 2890.1 'Off street Car Parking' and:
- a) the driveway must be at least 1m from any street tree, stormwater pit or service infrastructure; and
 - b) a Works on Public Infrastructure (Driveway) approval must be obtained prior to the commencement of any works.
- Details demonstrating compliance must be provided to the Certifying Authority.
- (2) **Soil, erosion, sediment and water management** – An Erosion and Sediment Control Plan (ESCP) must be prepared in accordance with Council's Infrastructure Specifications. Details demonstrating compliance must be provided to the Certifying Authority.
- (3) **Section 7.11 Development contributions** – A monetary contribution is to be paid to Council for the provision of one additional lot/dwelling, pursuant to Section 7.11 of the *Environmental Planning & Assessment Act 1979* and the Port Stephens Council Local Infrastructure Contributions Plan 2020 towards the provision of the following public facilities:

Facility	Per Lot/Dwelling	Total \$
Civic Administration – Plan Management	\$596	\$596
Civic Administration – Works Depot	\$1,554	\$1,554
Town Centre Upgrades	\$4,186	\$4,186

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ITEM 5 - ATTACHMENT 3 PROPOSED CONDITIONS OF CONSENT.



Public Open Space, Parks & Reserves	\$1,539	\$1,539
Sports & Leisure Facilities	\$2,327	\$2,327
Cultural & Community Facilities	\$836	\$836
Road Works	\$2,318	\$2,318
Shared Paths	\$3,362	\$3,362
Bus Facilities	\$11	\$11
Fire & Emergency Services	\$229	\$229
Flood & Drainage	\$1,765	\$1,765
Total		\$18,723

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

- a) Subdivision and building work - prior to issue of the Construction Certificate or Subdivision Works Certificate, whichever occurs first.

Note: The amount of contribution payable under this condition has been calculated at the date of consent. In accordance with the provisions of the Contributions Plan, this amount must be indexed at the time of actual payment in accordance with the applicable Index.

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

3.0 - Prior to Issue of a Subdivision Works Certificate

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

- (1) **Subdivision Works Certificate Required** – In accordance with the provisions of Section 6.13 of the *Environmental Planning & Assessment Act 1979 (EP&A Act 1979)*, construction or subdivision works approved by this consent must not commence until the following has been satisfied:
- a) a Subdivision Works Certificate has been issued by a Consent Authority;

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ITEM 5 - ATTACHMENT 3 PROPOSED CONDITIONS OF CONSENT.



- b) a Principal Certifying Authority (PCA) has been appointed by the person having benefit of the development consent in accordance with Section 6.5 of the *EP&A Act 1979*; and
 - c) the PCA is notified in writing of the name and contractor licence number of the owner/builder intending to carry out the approved works.
- (2) **Driveway gradients and design** - For all driveways that relate to development for the purposes of a dwelling house, the driveway gradient and design must comply with AS 2890.1 'Off street Car Parking' and:
 - c) the driveway must be at least 1m from any street tree, stormwater pit or service infrastructure; and
 - d) a Works on Public Infrastructure (Driveway) approval must be obtained prior to the commencement of any works.

Details demonstrating compliance must be provided to the Certifying Authority.
- (3) **Stormwater/drainage plans** – Detailed stormwater drainage plans must be prepared by a qualified Engineer in accordance with the approved plans, Council's Infrastructure Specifications and the current Australian Rainfall and Runoff guidelines using the Hydrologic Soil Mapping data for Port Stephens (available from Council).
 Details demonstrating compliance must be provided to the Certifying Authority.
Note. Under the *Roads Act 1993*, only the Roads Authority can approve commencement of works within an existing road reserve.
- (4) **Soil, erosion, sediment and water management** – An Erosion and Sediment Control Plan (ESCP) must be prepared in accordance with Council's Infrastructure Specifications. Details demonstrating compliance must be provided to the Certifying Authority.
- (5) **Roads Act Approval** – For construction/reconstruction of Council infrastructure, including vehicular crossings, footpath, kerb and gutter, stormwater drainage, an application must be made for a Roads Act Approval Certificate under Section 138B of the *Roads Act 1993*.
- (6) **Bushfire safety – Subdivision** - The site is located within a bushfire prone area. Certification from a by an NSW suitability qualified Bushfire Consultant must be provided to certify that the development complies with:
 - a) the NSW RFS' General Terms of Approval for the DA; and
 - b) the Bushfire Report provided with the DA Bushfire Assessment Report, prepared by Peak Land Management, April 2020; and
 - c) the latest version of NSW Rural Fire Service publication "Planning for Bush Fire Protection 2019."

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ITEM 5 - ATTACHMENT 3 PROPOSED CONDITIONS OF CONSENT.

- (7) **Hunter Water Corporation approval** - A Section 50 Application under the *Hunter Water Act 1991* must be lodged with Hunter Water Corporation (HWC) and details of the Notice of Compliance from HWC must be provided to the Certifying Authority.

4.0 - 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.
- (2) **Notice commencement of work** – Notice must be given to Council at least two days prior to subdivision and/or building works commencing in accordance with Clause 104 of the *Environmental Planning & Assessment Regulation 2000*. The notice must include:
- a) the name and address of the person by whom the notice is being given;
 - b) a description of the work to be carried out;
 - c) the address of the land on which the work is to be carried out;
 - d) the Registered number and date of issue of the relevant development consent and construction certificate;
 - e) a statement signed by or on behalf of the Principal Certifying Authority to the effect that all conditions of the consent that are required to be satisfied prior to the work commencing have been satisfied; and
 - f) the date on which the work is intended to commence.
- (3) **Sign of PCA and contact details** – A sign must be erected in a prominent position on the site stating the following:
- a) that unauthorised entry to the work site is prohibited;

ITEM 5 - ATTACHMENT 3 PROPOSED CONDITIONS OF CONSENT.



- b) the name of the principal contractor (or person in charge of the site) and a telephone number on which that person can be contacted at any time for business purposes and outside working hours;
- c) the name, address and telephone number of the Principal Certifying Authority.

The sign must be maintained while the work is being carried out and must be removed upon the completion of works.

- (4) **Construction Certificate Required** – In accordance with the provisions of Section 6.7 of the *Environmental Planning & Assessment Act 1979 (EP&A Act 1979)*, construction or subdivision works approved by this consent must not commence until the following has been satisfied:

- d) a Construction Certificate has been issued by a Consent Authority;
- e) a Principal Certifying Authority (PCA) has been appointed by the person having benefit of the development consent in accordance with Section 6.5 of the *EP&A Act 1979*; and
- f) the PCA is notified in writing of the name and contractor licence number of the owner/builder intending to carry out the approved works.

- (5) **Site is to be secured** – The site must be secured and fenced to the satisfaction of the Principal Certifying Authority. All hoarding, fencing or awnings (associated with securing the site during construction) is to be removed upon the completion of works.

- (6) **Soil erosion and sediment control** – Soil erosion and sediment controls must be implemented prior to works commencing on the site in accordance with 'Managing Urban Stormwater – Soils and Construction ('the blue book') and any Sediment and Erosion plans approved with this Development Consent.

Soil erosion and sediment control measures must be maintained during construction works and must only be removed upon completion of the project when all landscaping and disturbed surfaces have been stabilised (for example, with site turfing, paving or re-vegetation).

- (7) **All weather access** – A 3m wide all-weather vehicle access is to be provided from the kerb and gutter to the building under construction for the delivery of materials and use by trades people.

No materials, waste or the like are to be stored on the all-weather access at any time.

- (8) **Public liability insurance** – The owner or contractor must take out a Public Liability Insurance Policy with a minimum cover of \$20 million in relation to the occupation of, and works within, public property (i.e. kerbs, gutters, footpaths, walkways, reserves, etc.) for the full duration of the proposed works.

Evidence of this Policy must be provided to Council and the Certifying Authority.

5.0 - During Works

The following conditions of consent shall be complied with during the construction phase of the development.

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ITEM 5 - ATTACHMENT 3 PROPOSED CONDITIONS OF CONSENT.

- (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) **Excavations and backfilling** – All excavations and backfilling associated with this development consent must be executed safely, and be properly guarded and protected to prevent them from being dangerous to life or property, and in accordance with the design of a suitably qualified Structural Engineer.

If an excavation extends below the level of the base of the footings of a building on an adjoining allotment, the person causing the excavation must:

- a) preserve and protect the building from damage; and
- b) if necessary, underpin and support the building in an approved manner; and
- c) give at least seven days notice to the adjoining owner before excavating, of the intention to excavate.

The principal contractor, owner builder or any person who needs to excavate and undertake building work, must contact "Dial Before You Dig" prior to works commencing, and allow a reasonable period of time for the utilities to provide locations of their underground assets.

This condition does not apply if the person having the benefit of the development consent owns the adjoining land or the owner of the adjoining land has given consent in writing to that condition not applying.

- (5) **Building height** – A survey report prepared by a Registered Surveyor confirming that the building height complies with the approved plans or as specified by the development consent, must be provided to the Principal Certifying Authority prior to the development proceeding beyond frame stage.

- (6) **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.

ITEM 5 - ATTACHMENT 3 PROPOSED CONDITIONS OF CONSENT.

(7) **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.

(8) **Unexpected finds contingency (general)** – Should any suspect materials (identified by unusual staining, odour, discolouration or inclusions such as building rubble, asbestos, ash material, etc.) be encountered during any stage of works (including earthworks, site preparation or construction works, etc.), such works must cease immediately until a qualified environmental specialist has been contacted and conducted a thorough assessment.

In the event that contamination is identified as a result of this assessment and if remediation is required, all works must cease in the vicinity of the contamination and Council must be notified immediately.

Where remediation work is required, the applicant will be required to obtain consent for the remediation works.

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

(10) **Bush fire safety – Dwellings** – The site is located within a bushfire prone area and must comply with NSW Rural Fire Service document "Planning for Bushfire Protection 2019." Compliance with the specific requirements of Chapter 7 of PBP2019.

Details demonstrating compliance must be provided to the Certifying Authority.

(11) **Landscape plan / street tree plan** – The following tree species must be planted at no cost to Council along the road verge adjoining the subject site

a) 1 x *Lophostemon confertus* in 75 litre pot size

Details demonstrating compliance must be provided to the Certifying Authority.

(12) **Privacy – Window Sill Height** - To ensure reasonable privacy for the adjoining property, windows along the south east and north-west elevations, must have a minimum sill height of 1.5m above finished floor level.

Alternatively, the window(s) may be permanently fixed to this height (i.e. windows are not to swing or lift open) with obscure glazing provided that the ventilation requirements of the BCA are met.

Details demonstrating compliance must be provided to the Certifying Authority.

6.0 - Prior to Issue of a Subdivision Certificate

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

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ITEM 5 - ATTACHMENT 3 PROPOSED CONDITIONS OF CONSENT.

- (1) **Subdivision Certificate** – The issue of a Subdivision Certificate is not to occur until all conditions of this development consent have been satisfactorily addressed and all engineering works are complete.

Works As Executed Plans must be prepared and provided to the Principal Certifying Authority in accordance with Council's Infrastructure Specifications and approved plans.

- (2) **Dual Occupancy and Subdivision** – Prior to the issue of the subdivision certificate the following is to occur:

- a) The dwellings shall have a satisfactory frame inspection undertaken; and
- b) A report/plan shall be provided from a Registered Surveyor showing that:
 - i) The setback of the buildings from the adjacent and proposed boundaries meets the requirements of the BCA; and

All service lines are wholly contained within their respective lots, or an appropriate Easement or Easements have been shown on the plan of survey and suitably described in the 88B instrument.

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

The applicant will be required to submit documentary evidence that the property has been developed in accordance with the plans approved by this development consent 16-2020-477-1, and of compliance with the relevant conditions of consent, prior to the issuing of a Torrens Plan of Subdivision.

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

- (4) **Burdened lots to be identified** - Any lots subsequently identified during construction of the subdivision as requiring restrictions must also be suitably burdened.

- (5) **Surveyor's Report** – A certificate from a Registered Surveyor must be provided to the Principal Certifying Authority, certifying that all drainage lines have been laid within their proposed easements.

Certification is also to be provided stating that no services or accessways encroach over the proposed boundary other than as provided for by easements as created by the final plan of subdivision.

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

- a) Electricity.
- b) Water.
- c) Sewer.

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ITEM 5 - ATTACHMENT 3 PROPOSED CONDITIONS OF CONSENT.

- d) Gas (where available).

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

- (7) **Landscape plan / street tree plan** –The following tree species must be planted at no cost to Council along the road verge adjoining the subject site

- a) 1 x Lophostemon confertus in 75 litre pot size

Details demonstrating compliance must be provided to the Certifying Authority.

7.0 - Prior to Issue of an Occupation Certificate

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

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

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

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

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

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

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

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

8.0 – Ongoing Use

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

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ITEM 5 - ATTACHMENT 3 PROPOSED CONDITIONS OF CONSENT.



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

- (2) **Privacy Screen** - Any privacy screen/s and landscaping screening must be permanently maintained in accordance with the approved plans for the life of the development.

- (3) **Maintenance of Landscaping** - Landscaping must be maintained in accordance with the approved landscape plan and conditions of this development consent. All landscape areas must be kept free of parked vehicles, stored goods, garbage or waste material at all times.
 If any of the vegetation dies or is removed, it is to be replaced with vegetation of the same species and similar maturity as the vegetation which has died or was removed.

Advice Note(s):

- (1) **'Dial Before you Dig'** – Before any excavation work starts, contractors and others should phone the "Dial Before You Dig" service to access plans/information for underground pipes and cables.

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

- (3) **Aboriginal archaeological deposit** – In the event of any aboriginal artefact, object or structure being unearthed, all work must cease immediately in the affected area, and the Heritage NSW shall be informed of the discovery. Work must not

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ITEM 5 - ATTACHMENT 3 PROPOSED CONDITIONS OF CONSENT.

recommence until the material has been inspected and permission has been given by Heritage NSW to proceed.


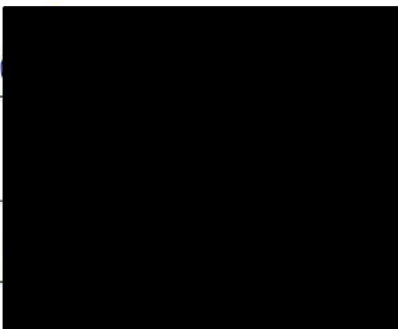
- (4) **Council must be nominated as PCA for subdivision works** – Under Section 6.5 of the *Environmental Planning & Assessment Act 1979*, Council shall be nominated as the Principal Certifying Authority for subdivision work and has the option of undertaking inspection of physical construction works.
- (5) **Component certificates (where Council is PCA)** – Where Council is appointed as the Principal Certifying Authority for the development, the following component certificates, as relevant to the development, shall be provided prior to the issued of a final Occupation Certificate:
- a) Insulation installation certificates.
 - b) Termite management system installation certificates.
 - c) Smoke alarm installation certificate from installing licensed electrician.
 - d) Survey certificate(s), prepared by a registered land surveyor, certifying that the building has been correctly and wholly located upon the subject allotment.
 - e) Certification attesting that retaining walls have been constructed in accordance with Engineers details or manufacturers specifications as applicable.
 - f) All certificates or information relating to BASIX compliance for the development.
 - g) An 'Approval to Operate a Sewage Management System' issued by Council (for areas that are not serviced by a Sydney Water sewer).
 - h) A certificate certifying that the wet areas have been waterproofed in accordance with the requirements of the Building Code of Australia.
 - i) All certificates relating to salinity, as required by conditions of the Development Consent.
 - j) Any other certificates relating to the development (for example, engineering certification for foundations, piers, reinforcing steel or hydraulic certification for all stormwater drainage works).

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

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

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

ITEM 5 - 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>SMITH</u> request that DA number <u>16-2020-477-1</u> for DA description <u>6 BEENONG CLOSE, NELSON BAY</u> located at <u>6 BEENONG CLOSE, NELSON BAY</u> be reported to Council for determination.			
Reason: <u>Public Interest.</u>			
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) _____ 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: Please sign or type name & attached to an email.		Date: Click here to enter a date. <u>27-10-20.</u>	
Signed: Please sign or forward supporting email.		Date: Click here to enter a date. <u>27/10/20</u>	
Signed: Please sign or forward supporting email.		Date: Click here to enter a date. <u>27/10/20.</u>	

MINUTES ORDINARY COUNCIL - 9 MARCH 2021

Mayor Ryan Palmer vacated the Chair at 6:03pm prior to Item 3. The Deputy Mayor, Cr Paul Le Mottee chaired the meeting.

ITEM NO. 3

FILE NO: 21/19711
EDRMS NO: 16-2020-477-1

DEVELOPMENT APPLICATION 16-2020-477-1 FOR 2 SEMI-DETACHED DWELLINGS & A 1 INTO 2 LOT TORRENS TITLE SUBDIVISION AT 6 BEENONG CLOSE, NELSON BAY (LOT 196 DP 9165)

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

RECOMMENDATION IS THAT COUNCIL:

- 1) Approve Development Application 16-2020-477-1 for 2 semi-detached dwellings and a 1 into 2 lot Torrens title subdivision at 6 Beenong Close, Nelson Bay (Lot 196 DP 9165) subject to the conditions contained in **(ATTACHMENT 3)**.

ORDINARY COUNCIL MEETING - 9 MARCH 2021
MOTION

047	Councillor Jaimie Abbott Councillor Giacomo Arnott It was resolved that Council defer development application 16-2020-477-1 for 2 semi-detached dwellings and a 1 into 2 lot Torrens title subdivision at 6 Beenong Close, Nelson Bay (Lot 196 DP 9165) for 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: Crs Jaimie Abbott, Giacomo Arnott, Chris Doohan, Paul Le Mottee, Sarah Smith and Steve Tucker.

Those against the Motion: Cr Ken Jordan.

The motion was carried.

BACKGROUND

The purpose of this report is to present a Development Application (DA) 16-2020-477-1 for 2 semi-detached dwellings and a 1 into 2 lot Torrens title subdivision at 6 Beenong Close, Nelson Bay (Lot 196 DP 9165) 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 the DA has been called up by Councillor Sarah Smith, Councillor Jaimie Abbott and Councillor Chris Doohan (**ATTACHMENT 4**).

The site is zoned R2 Low Density Residential and is currently vacant. A locality plan is provided at (**ATTACHMENT 1**).

Proposal

The DA proposes 2 x 2 storey semi-detached dwellings, sharing a party wall and a Torrens title subdivision (1 into 2 lots).

Each dwelling will comprise of living areas on the ground level and 4 bedrooms on the upper level. Patios have been provided to the rear of the building.

The DA seeks to create 2 new allotments (Lot 1961 and 1962) with the following lot areas:

Proposed Lot No.	Proposed Lot Area
Lot 1961	327m ²
Lot 1962	314m ²

The DA comprises a stepped design that conforms to the narrowing of the site towards the rear boundary. The proposed dwellings have been offset from the northern boundary to provide sufficient setback from Council drainage infrastructure.

Site Description and History

The site is located within R2 Low Density Residential zone.

The site has an area of 641m² and is currently vacant. The site is irregular in shape and reduces in width from 20m at the frontage to 6m at the rear boundary.

The site slopes from the Beenong Close frontage toward the west. Council owned stormwater infrastructure runs along the northern boundary of the site. The infrastructure is not currently protected by a drainage easement.

The site is located at the end of the Beenong Close cul-de-sac. The road reserve between the site and Beenong Close road is relatively wide, measuring 12m in width.

The site is surrounded by established low density residential development.

Key Issues

The key issue identified throughout the assessment of the DA relates to the potential impacts on the amenity of adjoining residential land. A detailed assessment of the

MINUTES ORDINARY COUNCIL - 9 MARCH 2021

development is contained in the Planners assessment report provided at (ATTACHMENT 2).

Amenity Impacts

During the initial notification of the DA, public submissions were received raising concerns including adverse impacts on the amenity of the area, solar access impacts, privacy impacts and a general concern that the DA was an overdevelopment of the site.

In response to the issues raised, an amended design was prepared by the applicant. The amended design included the following:

- Increased side setbacks along the southern boundary
- Reduction in the overall height of the development
- Plantings added along the southern boundary and to the rear of both proposed dwellings
- Inclusion of privacy screens
- Replacement of large windows with highlight windows along the side boundaries to protect the privacy of neighbouring properties.

The amended design is considered on merit to be acceptable despite some setback non-compliances with the DCP as discussed below.

Setbacks

Part D6 Nelson Bay West of the DCP requires subjective front and side setbacks to ensure development 'provides continuity and consistency to the public domain'.

As shown in the table below, the DA does not comply with the side and front setback requirements.

Table 1: DCP D6 setbacks and the proposed setbacks

Required	Proposed Dwelling 1 (south)	Proposed Dwelling 2 (north)
Front minimum setback - 6m	Garage - 4.5m Upper storey - 3.2m	Garage - 3.5m Upper storey - 2.3m
Minimum side setback - 2m	Ground floor - 0.5m to 1.7m Upper storey - 2m	Ground floor - 1.6m Upper floor - 1.6m

The non-compliance with the front setback will not result in a visual impact to the public domain due to the road reserve which measures 12m from the road to the site boundary. Further, the design of the dwellings, with the inclusion of upper level balconies, provides a high level of articulation, which will not appear visually dominant in the streetscape.

MINUTES ORDINARY COUNCIL - 9 MARCH 2021

The non-compliances with the side setback control results from the irregular shape of the site, coupled with the Council stormwater infrastructure located along the northern boundary.

At its closest point, the garage area of Dwelling 1 (south) is located 500mm from the southern boundary. However, due to the angled nature of the boundary and the associated stepped dwelling design, the non-compliance reduces towards the rear of the site and a significant portion of the Dwelling 1 is compliant with the control. The side setback non-compliance of Dwelling 1 is limited to the ground floor level and is consistent with setbacks seen on neighbouring properties. The inclusion of landscape screening in the side setback area, along with privacy mitigation measures to the windows facing south provides sufficient protections for the southern neighbouring property.

The side setback non-compliance of Dwelling 2 is considered to be minimal, being only 400mm at its closest point. Similarly, to the situation described above, due to the angled boundary and stepped dwelling design, a significant portion of the Dwelling 2 is compliant with the side setback control.

Solar Access

The DA complies with the solar access controls of the DCP, which requires a minimum of 3 hours of solar access to the private open space areas of the neighbouring properties during mid-winter. The solar access impacts are not made worse by the southern side setback non-compliance noting that the non-compliance is limited to the ground floor level. The upper level of the southern elevation, from which the shadows are cast, is compliant with the 2m side setback control. Further, it is noted that the DA is below the 9m height control applying to the site, thereby reducing the potential solar impacts.

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

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

MINUTES ORDINARY COUNCIL - 9 MARCH 2021

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes		
Reserve Funds	No		
Developer Contributions (\$7.11)	Yes		
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?
If the DA is approved, there is a risk that a third party may appeal the determination.	Medium	Adopt the recommendation.	Yes
If the DA is refused, there is a risk that the applicant may appeal the determination.	Medium	Adopt the recommendation.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The DA represents a modern dual occupancy and will result in additional housing to service the needs of the community. The construction of the DA will provide employment opportunities in the locality and support the local building and development industries. This will have direct monetary input to the local economy, and the increased number of residents in the locality will provide ongoing economic input through daily living activities.

The DA will reinforce the residential nature of the locality and is characteristic of other developments in both the local and wider community.

The setback non-compliances have been considered with respect to the site constraints and are considered acceptable in this instance. The DA is therefore recommended for approval subject to the conditions of consent **(ATTACHMENT 3)**.

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

Consultation with key stakeholders has been undertaken by both internal and external to Council, including the public notification process.

Internal referral

Consultation was undertaken with Council's Development Service Engineers and Building Surveyors. Their referral comments were considered as part of the Planners Assessment Report Contained at **(ATTACHMENT 2)** and accordingly the DA is recommended for approval subject to the conditions of consent contained within **(ATTACHMENT 3)**.

External agency

As the DA includes residential subdivision and the site is mapped as bushfire prone land, the DA was referred to the NSW Rural Fire Service (RFS). The RFS made no objection to the DA subject to conditions requiring compliance with the documentation 'Planning for Bushfire Protection 2019'.

Public Consultation

In accordance with the provision of the Port Stephens Council Community Participation Plan, the DA was exhibited from 31 August 2020 to 14 September 2020. During this period 5 public submissions were received.

Following amendments to the DA, the DA was re-notified from 29 October 2020 to 12 November and from 21 December 2020 to 25 January 2021. During those periods 1 submission was received which stated that their initial concerns remained.

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) Proposed Conditions of Consent.
- 4) Call to Council Form.

MINUTES ORDINARY COUNCIL - 9 MARCH 2021


COUNCILLORS ROOM

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

TABLED DOCUMENTS

Nil.



 DEVELOPMENT ASSESSMENT REPORT	
APPLICATION DETAILS	
Application Number	16-2020-477-1
Development Description	Semi-detached dwellings and Torrens Title Subdivision
Applicant	YOUR HOME DESIGNS PTY LTD
Land owner	Beenong6 Pty Ltd
Date of Lodgement	12/08/2020
Value of Works	\$710,000.00
Submissions	Five (including one resubmission during the second and third notification periods)
PROPERTY DETAILS	
Property Address	6 Beenong Close NELSON BAY
Lot and DP	LOT: 196 DP: 9165
88B Restrictions on Title	Unregistered easement along north-west boundary
Current Use	Vacant site
Zoning	R2 LOW DENSITY RESIDENTIAL
Site Constraints	Bush fire prone land – Vegetation Category 1 and buffer Acid Sulfate Soil – Class 5 Koala Habitat Planning Map – Clear Stormwater Drainage Requirement Area – Land Locked Catchment. For development 100 year ARI on site infiltration (if not 100 year ARI detention) Combined Corridor Map – Landscape Habitat Link Flood Prone Land – further investigation Height restriction 9m Minimum lot size 500m ²
State Environmental Planning Policies	SEPP No. 55 – Remediation of Land SEPP (Koala protection) 2019 SEPP (Building Sustainability Index: BASIX) 2004

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PROPOSAL

The application proposes semi-detached dwellings and one into two lot Torrens title subdivision. Each dwellings comprises of four bedrooms (including ensuite); open plan kitchen, living and dining area, rumpus area and laundry space. A lift is proposed for dwelling 1. Dwelling 1 also includes a double lock up garage, with dwelling 2 being provided with a single lock up garage and car port.



Figure 1 – Proposed dual occupancy

The proposed subdivision will result in the creation of the following allotments (figure 2):

- Lot 1961 an area of 302m²; and
- Lot 1962 an area of 338m²

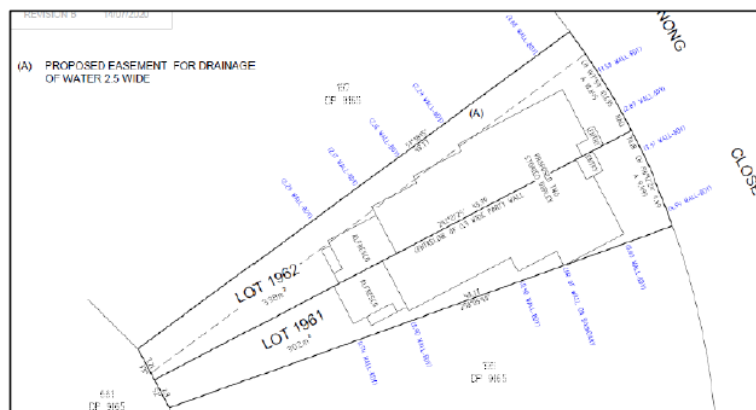


Figure 2 – Proposed subdivision

SITE DESCRIPTION

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The subject site is known as at 6 Beenong Close, Nelson Bay (**Figure 3**). The site is legally identified as Lot 196 DP 9165 and has an area of 683m².

The site slopes away from the Beenong Close frontage towards the west.

The subject site is an irregular wedge shape which reduces in width toward the rear of the site; comprising a site frontage of width of 20m and a rear boundary width of 6m. Early investigations identified drainage infrastructure located along the northern boundary of the site.

The land has frontage to Beenong Close that ends in a cul-de-sac a short distance to the east. The road reserve between the subject site and Beenong Close has a relatively large road reserve measuring a minimum of 12m.



Figure 3 – GIS aerial image of subject site

The site is surrounded by established low density residential development. An application similar to the subject application was lodged with Council earlier this year (16-2020-263-1) and rejected on lodgement. The matters raised upon lodgement, related to the unregistered easement along the north-west elevation of the site; which has been considered in the amended design within this application.

Site inspection

A site inspection was carried out on **30 September 2020**. The site is managed grass with one large tree located toward the site frontage. The site falls to the rear and does not have an existing driveway.

The subject site can be seen in the images below:

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Image 1 – View of the frontage of the subject site



Image 2 – Adjoining neighbour



Image 3 – Adjoining neighbour

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Image 4 – View to the rear of the site



Image 5 – View along the area containing drainage infrastructure

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REFERRALS

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

Internal Referrals

Building Surveyor - The application was supported subject to conditions of consent. The proposed development has sufficient separation between the building and boundaries that satisfy minimum BCA fire separation requirements. The amended plan set includes changes to the design to ensure compliance with BCA fire separations requirements.

Development Engineer – The application was supported subject to conditions of consent.

Vegetation Management – The application is supported subject to conditions of consent, which requires a street tree be planted in the road reserve.

External Referrals

Rural Fire Service – the application was referred to the RFS as integrated development under s.100B of the Rural Fires Act 1997. The property is surrounded with residential developments on managed land and grassland. BAL 12.5 is required for all elevations, except the south-west elevation, which is BAL 19.

The development is conditionally supported by the RFS and subject to GTAs.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979**S4.46 – What is integrated development**

The proposed development required integrated referral under section 100B of the Rural Fires Act 1997 as the development includes residential subdivision of bushfire prone land. Per the assessment provided under the referrals section above, the application was referred to RFS and subsequently supported with conditions under Section 100B of the Rural Fires Act 1997.

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

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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 and subdivision 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 proposed development is located on a site located in an established residential area. The site does not have an area nor apply to an area of more than 1 hectare and as such the SEPP does not apply. The site is identified as clear from koala habitat and as such the development will not adversely impact koala habitat.

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 R2 Low Density zone. The development addresses the objectives of the zone by providing housing needs for the community and enhancing the existing residential amenity of the area.

Clause 4.1 – Minimum Subdivision Lot Size

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

The proposed lots do not achieve the minimum lot size under this clause, as such an assessment against Cl 4.1C is required.

Clause 4.1C – Exceptions to minimum lot sizes for certain residential development

The proposal is on land that does not achieve the minimum lot size for subdivision applicable in Clause 4.1 that consent may be granted under Clause 4.1C. The subject site is located in the R2 zone and proposes the subdivision of land into two lots for the purpose of semi-detached dwellings. The erection of a dwelling on each lot resulting from the subdivision where the size of each lot is equal to or greater than 250m² is permissible under this clause. The proposed allotments as a result of the subdivision are as follows:

- Proposed lot 1 – 302m²
- Proposed lot 2 – 338m²

Per the above, the proposed subdivision seeks to create allotments, which exceed the minimum lot size specified under the Clause 4.1C, and consequently achieve the objectives and requirements of this clause.

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Clause 4.3 – Height of Buildings

The proposed development has a maximum height of 8.303 metres, which is below the maximum permissible building height of 9 metres specified on the Height of Buildings Map.

Clause 7.1 – Acid Sulfate Soils

The subject land is mapped as containing potential Class 5 acid sulfate soils. The proposed development is not anticipated to entail excavations below 2 metres and therefore it is not expected that acid sulfate soils would be encountered during works.

Clause 7.2 – Earthworks

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

Clause 7.6 – Essential Services

The subject site is serviced by reticulated water, electricity and sewer. In addition, the application has demonstrated that stormwater drainage resulting from roof and hard stand areas can be catered for in accordance with Councils requirements. The subject land also maintains direct access to Beenong Close, 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.

s4.15(s4.15(1)(a)(iii)) – Any DCP

PORT STEPHENS DEVELOPMENT CONTROL PLAN 2014		
Clause	Compliant	Notes
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 per the assessment against Clause 7.1 of the LEP, the proposal is unlikely to disturb ASS as part of earthworks on the site. Earthworks are unlikely to result in adverse impacts on the environment.
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 acceptable on-site detention / infiltration proposed or condition for	<p>The site impervious area is 45%, which is below the 65% maximum allowable for the site under DCP chapter D6 lower slopes Nelson Bay West.</p> <p>The proposed development includes water tanks collecting roof water and connected to infiltration pits at the rear of the proposed lots.</p> <p>Due to the established surrounding developments and the subject site being the only remaining undeveloped site; water quality requirements from</p>

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	<p>details added.</p> <p><input checked="" type="checkbox"/> Insignificant increases to adversely impact on water quality; OR</p> <p><input checked="" type="checkbox"/> Stormwater management plan proposed in accordance with this Chapter and Council's standard drawings.</p>	<p>the site are not likely to result in a significant benefit or impact. The application will result in single dwelling erected on separate lots; as such no water quality features are required. Additionally, as the subject site is within an established area and the proposal includes rainwater tanks, there is minimal adverse impacts likely to result on the water quality as result of not requiring water quality for the subject site.</p> <p>The development meets the objectives of the DCP B4 chapter.</p>
B8	<p><input checked="" type="checkbox"/> The development would not generate significant increases in traffic.</p> <p><input checked="" type="checkbox"/> On-site parking provision meets the requirements of figure BQ or merit based assessment; AND,</p> <p><input type="checkbox"/> Suitable disabled parking is provided in line with figure BQ.</p>	<p>Each dwelling consists of four bedrooms, and accordingly requires 2 parking spaces. Dwelling 1 proposes a double car garage and dwelling 2 proposes a single car garage and carport in accordance with the requirements of the DCP. Stacked car parking is also possible in the driveway for additional off street parking.</p>
C1	<p><input checked="" type="checkbox"/> The development is a minor subdivision; AND,</p> <p><input checked="" type="checkbox"/> The proposal would result in lot dimensions appropriate for their proposed use whilst not restricting the provision of services.</p> <p><input checked="" type="checkbox"/> The proposal is consistent with the LEP requirements on subdivisions.</p>	<p>The proposed subdivision is to create two sites:</p> <ul style="list-style-type: none"> • Lot 1961 – 302m²; and • Lot 1962 – 338m². <p>Each lot maintains access to Beencng Close. Due to the irregular site shaped site the lots cannot achieve a regular rectangular shape. The resulting lot shapes are consistent with the existing lots and permit the proposed residential use to occur on the site.</p>
C4	<p><input checked="" type="checkbox"/> Proposal ensures development provides continuity to the street and setbacks comply with C4.10-C4.19.</p> <p><input checked="" type="checkbox"/> Development appropriately activates the street with habitable rooms where applicable.</p> <p><input checked="" type="checkbox"/> The proposed development would be sympathetic to the streetscape as it is consistent with the existing development in its form, height, bulk, design and materials.</p> <p><input checked="" type="checkbox"/> The development would not</p>	<p>Dwelling 1:</p> <ul style="list-style-type: none"> • Front and side setback are considered against chapter D6 of the DCP. • Rear setback – 18.3m. <p>Dwelling 2 is located adjacent to an existing drainage infrastructure along the northern boundary.</p> <ul style="list-style-type: none"> • Front and side setback are considered against chapter D6 of the DCP. • Rear setback – 18.5m. <p>The dual occupancy has been designed to include balconies facing the street and views from internal space looking out on to the street. The development activates the street with a large balcony and enables passive surveillance to occur from the site.</p> <p>Each dwelling has a large alfresco area at the rear which is accessed from the living room on the ground floor. There is also a suitable amount of area</p>

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	adversely affect the amenity of neighbouring properties or the public domain.	<p>for private open space to be achieved for each of the dwellings. Privacy screen are proposed along the south east elevation and on the balconies of both dwellings to restrict unreasonable privacy impacts to adjoining properties.</p> <p>Solar diagrams have been provided demonstrating the likely impacts to the POS of adjoining dwellings and the proposed POS for each of the dwellings. The adjoining dwellings both retain a minimum of 3 hours of sunlight in the private open space area to the rear of the existing dwellings. Amendments to the initial design were made to reduce the overall building height by 300mm and flat reduced solar impacts to adjoining neighbours.</p> <p>The proposal includes landscaping within the front setback and along the rear and side boundaries for each of the dwellings. The landscaping has been supported by Councils vegetation management officer.</p>
D6	Nelson Bay West Lower Slopes additional requirements	<p>The subject site is identified within the Nelson Bay West Lower Slopes area.</p> <p>The proposal does not comply with the setback requirements of the DCP, as a consequence of site topography constraints. The subject site is a wedge shaped allotment and has an easement along the boundary which limits the siting of the development. As such, a merit assessment of the non-compliance is required.</p> <p>Additional requirements apply to land identified in the DCP chapter. Setback requirements include:</p> <ul style="list-style-type: none"> • Minimum Front setback of 6; and • Minimum side setback of 2m are required. <p>Dwelling 1:</p> <ul style="list-style-type: none"> • Front setback –4.5m (garage); • Front upper storey – 3.2m; • Side setback – the garage is setback between of 0.5m and 1.3m from the side boundary on the south-western corner of the garage. The remainder of the dwelling is setback a minimum of 1.7m from the side boundary; • Side upper storey - 2m. <p>Dwelling 2 is located adjacent to an existing drainage easement along the side boundary (2.5m wide).</p> <ul style="list-style-type: none"> • Front setback –garage 3.5m;

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	<ul style="list-style-type: none">• Front upper storey – 2.3m;• Side setback – minimum 1.6m;• Side upper storey minimum 1.6m. <p>The original proposal and amended design does not strictly comply with the side and front setback requirements. It is considered through the assessment that the non-compliances with the front and side setback will not result in adverse impacts to the public domain or detract from the streetscape.</p> <p>The dwelling frontages are articulated to reduce dominance of the frontage and address street to not negatively impact or detract from the streetscape. Further, the road reserve of the site is large which assists in minimising the visual impact of the proposed design exceedance in the front setback. The upper levels protrude closer to the frontage than the garages, 2.6m balconies have been included attached to the master bedrooms of each dwelling. The articulation created by the balcony reduces the dominance of the frontage.</p> <p>Dwelling 1 garage is setback 1.3m from the side boundary and progressively gets closer to the boundary in the south-west corner of the garage due to the narrowing of the boundary. The remainder of the ground floor is setback a minimum of 1.7m.</p> <p>Dwelling 2 ground and upper floor side setback is 1.6m, resulting in a non-compliance of 0.4m from the D6 setback requirement.</p> <p>The amended design incorporating privacy screens, landscaping and increased side setbacks mitigates amenity and privacy impacts. The proposal is not considered to adversely affect the surrounding area, noting a precedence with the surrounding existing dwellings not strictly meeting these requirements. The subject sites irregular shape and the additional setback requirements of D6 has created constraints for the dwelling design. The design of the proposal has responded to these constraints to achieve an outcome that meets the objectives of the DCP objectives and achieves consistency with the established built form. Further, BCA fire separation requirements are satisfied.</p> <p>Onsite detention is required where impervious surfaces exceeded 65%, the development is approximately 45% impervious area. As such, there is no requirement for onsite detention to be provided.</p> <p>D6.6 requires a landscape plan to be provided achieving a 34% landscape area and 35% endemic</p>
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		species to be used. Amended landscape design plans have been provided demonstrating landscaping long the south-east side boundary and rear of each lot in addition to landscaping in the frontages of each dwelling. The plans note native trees and shrubs are to be used throughout the design, the landscaped area is 47.7%. Satisfying the requirements of the DCP.
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s4.15(1)(a)(iia) – Any planning agreement or draft planning agreement entered into under section 7.4

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

s4.15(1)(a)(iv) – The regulations

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

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

	Notes
<input checked="" type="checkbox"/> Social and Economic Environment: There would be beneficial impacts as a result of the development.	The proposed development represents modern dwellings that will result in additional housing to service the needs of the community. The dwellings will allow for the use of existing services and facilities in the locality without requiring upgrades that burden the public. The construction of the proposed development will provide employment opportunities in the locality and support the local building and development industries. This will have direct monetary input to the local economy, and the increased number of residents in the locality will provide ongoing economic input through daily living activities. There are no anticipated adverse social or economic impacts as a result of the proposed development.
<input checked="" type="checkbox"/> Built Environment: The proposed development would not cause harm to the existing character.	The proposed development will reinforce the residential nature of the locality and is characteristic of other developments in both the local and wider community. The non-compliances have been considered with respect to the site constraints. The proposed front and side setbacks create an envelope that is in consistent with the objectives of chapter D6 DCP. The non-compliances are considered acceptable with merit. The application includes relevant construction methods and services such as an on-site stormwater management system that will prevent adverse impacts on adjoining properties. The proposal addresses the street and provides logical and convenient connections to the road network and pedestrian facilities in the

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	locality. There are no anticipated adverse impacts on the built environment as a result of the proposed development.
<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.	The proposed development includes a stormwater water system that manages stormwater in accordance with Councils quantity and quality requirements. A condition of consent is proposed that requires the installation and maintenance of erosion and sedimentation controls. It is noted that no significant vegetation is proposed to be removed and that the proposal includes a landscaping plan that utilises native species.

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

The subject site is located within an existing residential area and is relatively clear of vegetation. The site has access to all relevant services and the proposed development makes good use of the available land. There are some non-compliances where the proposed development on the site does not achieve the DCP requirements. Despite this, the subject site is considered to be a suitable site for the proposed use and design proposed in this application. The constraints and irregular shape of the site have been considered and the development is considered suitable for the site. The design includes all elements required under the relevant planning instruments and policies and there are no significant impacts on the locality as a result of the development.

s4.15(1)(d) – Any submissions

The application was exhibited from **31 August 2020 to 14 September 2020**, in accordance with the provisions of the Port Stephens Council Community Participation Plan. Five (5) submissions received during this time.

Due to the high level of community interest the application was re-exhibited from **29 October 2020 to 12 November 2020 and 21 December 2020 to 25 January 2021**. One submission was received during each of the subsequent notifications that stated that the issues raised previously remained.

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

Number of submitters	Comment	Council response
3	Overdevelopment of the site – bulk and scale of development is not in keeping with the character of the street. Does not comply with average building line of neighbouring properties	The bulk and scale of the development is not considered to be inconsistent with the zone objectives and the proposal is a permissible land use under the provisions of LEP 2013. To limit the bulk and scale, the applicant designed the development to include variations in setbacks from the side and front boundaries, to break up the building bulk The proposed development has a minimum 3.5m setback from the front property line. The front setback non-compliance is considered acceptable as the front façade is well articulated and the subject site has a large road reserve which acts as a visual aid to reduce the impact to road frontage.
1	The proposed building has no architectural redeeming features	The proposed development is considered to be a modern dual occupancy development consistent with recent

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		developments in the greater Nelson Bay area.
4	Solar Access – create shadows on adjoining properties and restrict solar access	<p>The proposal overshadows the property to the south in mid-winter. There will however be at least 3 hours of sunlight to the open space areas to the south of the development, which complies with the solar access requirements of C.4 of the DCP assessment.</p> <p>Amendments to the design were made to reduce the height of the development by 300mm and to reduce the front property setback to increase solar access to adjoining property.</p> <p>It should be noted that the impact resulting from the proposal will be similar to those created by a standalone double storey dwelling.</p> <p>As detailed in the assessment above, the proposed development is considered to allow an appropriate level of solar access on adjoining site per the requirements of the DCP.</p>
3	Proposal is not consistent with the character and streetscape of the area.	<p>The design of the development is considered to be consistent with the R2 zone objectives as it provides further housing stock for the community through low density residential development. The design is considered to be consistent with the surrounding area through the use of weatherboard cladding, glass, rendered concrete and timber. The design is considered to be a contemporary design which respects the character of the area.</p> <p>The proposed design has been amended by the applicant to include, increase the structures setback from the side boundaries and reduce the height of the development. The height is well below the 9m LEP 2013 height restriction, the setbacks have been increased and landscaping has been included to provide additional privacy screening.</p>
3	Side and front setbacks	<p>The proposed setbacks have been assessed and considered in detail against C4 and D6 of the DCP. A merit assessment of the proposed development has been undertaken.</p> <p>The assessment of the amended design is considered to be an appropriate outcome for the subject site. The amended design has increased the side setbacks for the development resulting in minor non-compliances at certain points, however a significant portion of development is compliant.</p> <p>The dwelling frontages have design articulation and address the site frontage in a manner, which is considered to not negatively impact or detract from the streetscape. The road reserve of the site is large which assists in minimising the visual impact of the front setback.</p>
2	Increase to traffic volume	

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	and on street parking and impact on street visibility	The proposed development includes adequate parking to support two car parks for each dwelling which is required for dwellings with three or more bedrooms. Each dwelling has two car spaces available in addition to stacked parking spaces, which can be accommodated in each of the driveways. The development is not considered likely to create an unacceptable increase to the traffic volume of the street.
3	Privacy impact – loss of privacy for adjoining properties due to height of development and location of windows	Amended plans have been provided by the applicant in response to further information request. These plans provide amendments that consider the privacy impacts on adjoining neighbours. Privacy screens have been added to the southern elevation and will be required on the north west elevation to ensure the adjoining neighbours have continued privacy.
1	Original refusal of application	The previous development application lodged was rejected by Council as it did not consider the Council drainage infrastructure along the northern boundary. The current application has considered this constraint.
2	Stormwater management – mapped as a 1% infiltration area	The stormwater management plan proposes collection of roof water to be piped to a 5,000L tank for each dwelling. The overflow will be piped to the rear of each proposed site to an infiltration pit. Standard conditions of consent requiring consistency with Council requirements.
3	Does not meet the zone objective of the R2 Low Density Residential zone under the PSLEP 2013	The proposed development provides housing needs for the community and as per the detailed assessment in the report is considered to not have a significant impact on the existing residential amenity and character of the area.

s4.15(1)(e) – The public interest

The proposal provides additional accommodation in the locality to service the needs of the community, and is not anticipated to have any significant adverse impacts on surrounding properties or the amenity of the locality. The proposed development reinforces the residential nature of the land and is in keeping with the character of surrounding developments. The proposed development is in the public interest.

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

Development contributions apply for the provision of one dwelling and one lot. Development contributions have been applied.

DETERMINATION

The application is recommended to be approved by the elected Council subject to conditions of consent.

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RECOMMENDED CONDITIONS OF CONSENT

1.0 - General Conditions of Consent

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

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

Plan reference/ drawing No.	Name of plan	Prepared by	Date
YDH-168 Rev. D6 DA.2	Site Plan	Your Home Designs	4/12/2020
YDH-168 Rev. D6 DA.3	Stormwater Plan	Your Home Designs	4/12/2020
YDH-168 Rev. D6 DA.6	Landscape Plan	Your Home Designs	4/12/2020
YDH-168 Rev. D6 DA.8	Ground Floor	Your Home Designs	4/12/2020
YDH-168 Rev. D6 DA.9	Upper Floor	Your Home Designs	4/12/2020
YDH-168 Rev. D6 DA.10 & DA.11	Elevations	Your Home Designs	4/12/2020
YDH-168 Rev. D6 DA.12	Section	Your Home Designs	4/12/2020
36803 PSP3 1 of 1	Subdivision Plan	North Point Surveys	1/2/2021

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

- (2) **BASIX Certificate** – The applicant must undertake the development strictly in accordance with the commitments listed in the BASIX certificate(s) for the development to which this consent applies.
- (3) **Building Code of Australia** – All building work must be carried out in accordance with the BCA. In this clause, a reference to the BCA is a reference to that Code as in force on the date the application for the relevant Construction Certificate is made.

PORT STEPHENS COUNCIL

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- (4) **Home Building Act** – Pursuant to Section 4.17(11) of the *Environmental Planning & Assessment Act 1979*, residential building work within the meaning of the *Home Building Act 1989* shall not be carried out unless the PCA for the development to which the work relates:
- a) In the case of work for which a principal contractor has been appointed:
 - i. Has been informed in writing of the name and licence number of the principal contractor; and
 - ii. Where required has provided an insurance certificate with the name of the insurer by which work is insured under Part 6 of that Act.
 - b) In the case of work to be carried out by an owner-builder;
 - i. Has been informed in writing of the name of the owner-builder; and
 - ii. If the owner-builder is required to hold an owner-builder permit under that Act; has provided a copy of the owner-builder permit.
- (5) **Home Building Act – Insurance** – Building work that involves residential building work within the meaning of the *Home Building Act 1989*, must not commence until such time as a contract of insurance is in force in accordance with Part 6 of that Act.
- This clause does not apply:
- a) to the extent to which an exemption is in force under Clause 187 or 188 of the *Environmental Planning & Assessment Regulation 2000 (EP&A Regulation 2000)*, subject to the terms of any condition or requirement referred to in Clause 198(6) or 188(4) of the *EP&A Regulation 2000*; or
 - b) to the erection of a temporary building, other than a temporary structure to which subclause (1A) of Clause 98 of the *EP&A Regulation 2000* applies.
- (6) **Excavation for residential building works** – If the approved development involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the consent must, at the person's own expense:
- a) protect and support the adjoining premises from possible damage from the excavation; and
 - b) where necessary, underpin the adjoining premises to prevent any such damage.
- This condition does not apply if the person having the benefit of the consent owns the adjoining land or the owner of the adjoining land has given consent in writing that condition not applying, and a copy of that written consent is provided to the PCA prior to the excavation commencing.
- (7) **Sign on building** – Except in the case of work only carried out to the interior of a building or Crown building work, a sign must be erected in a prominent position on the site showing the name, address and telephone number of the Principal Certifying Authority for the work, the name of any principal contractor and their after-hours contact number, and must contain a statement that unauthorised entry to the site is prohibited.

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The sign must be maintained while the work is being carried out and is to be removed when the work is completed.

- (8) **Shoring of adjoining buildings** - Where any excavation required for the development extends below the level of the base of a footing of a building, structure or work on adjoining land (including within a road or rail corridor), the person having the benefit of the consent must protect and support that building, structure or work from possible damage from the excavation, and where necessary underpin the building, structure or work to prevent any such damage.

- (9) **General terms of approval** – The General Terms of Approval from state authorities must be complied with prior to, during, and at the completion of the development.

The General Terms of Approval are:

1. NSW Rural Fire Service, DA20200909003285-Original-1, 2 November 2020

A copy of the General Terms of Approval is attached to this determination notice.

2.0 – Prior to Issue of a Construction Certificate

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

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

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

Details demonstrating compliance must be provided to the Certifying Authority.

- (2) **Soil, erosion, sediment and water management** – An Erosion and Sediment Control Plan (ESCP) must be prepared in accordance with Council's Infrastructure Specifications. Details demonstrating compliance must be provided to the Certifying Authority.

- (3) **Section 7.11 Development contributions** – A monetary contribution is to be paid to Council for the provision of one additional lot/dwelling, pursuant to Section 7.11 of the *Environmental Planning & Assessment Act 1979* and the Port Stephens Council Local Infrastructure Contributions Plan 2020 towards the provision of the following public facilities:

Facility	Per Lot/Dwelling	Total \$
Civic Administration – Plan Management	\$596	\$596
Civic Administration – Works Depot	\$1,554	\$1,554
Town Centre Upgrades	\$4,186	\$4,186

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Public Open Space, Parks & Reserves	\$1,539	\$1,539
Sports & Leisure Facilities	\$2,327	\$2,327
Cultural & Community Facilities	\$836	\$836
Road Works	\$2,318	\$2,318
Shared Paths	\$3,362	\$3,362
Bus Facilities	\$11	\$11
Fire & Emergency Services	\$229	\$229
Flood & Drainage	\$1,765	\$1,765
Total		\$18,723

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

- a) Subdivision and building work - prior to issue of the Construction Certificate or Subdivision Works Certificate, whichever occurs first.

Note: The amount of contribution payable under this condition has been calculated at the date of consent. In accordance with the provisions of the Contributions Plan, this amount must be indexed at the time of actual payment in accordance with the applicable Index.

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

3.0 - Prior to Issue of a Subdivision Works Certificate

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

- (1) **Subdivision Works Certificate Required** – In accordance with the provisions of Section 6.13 of the *Environmental Planning & Assessment Act 1979 (EP&A Act 1979)*, construction or subdivision works approved by this consent must not commence until the following has been satisfied:
- a) a Subdivision Works Certificate has been issued by a Consent Authority;

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- b) a Principal Certifying Authority (PCA) has been appointed by the person having benefit of the development consent in accordance with Section 6.5 of the *EP&A Act 1979*; and
 - c) the PCA is notified in writing of the name and contractor licence number of the owner/builder intending to carry out the approved works.
- (2) **Driveway gradients and design** - For all driveways that relate to development for the purposes of a dwelling house, the driveway gradient and design must comply with AS 2890.1 'Off street Car Parking' and:
- c) the driveway must be at least 1m from any street tree, stormwater pit or service infrastructure; and
 - d) a Works on Public Infrastructure (Driveway) approval must be obtained prior to the commencement of any works.
- Details demonstrating compliance must be provided to the Certifying Authority.
- (3) **Stormwater/drainage plans** – Detailed stormwater drainage plans must be prepared by a qualified Engineer in accordance with the approved plans, Council's Infrastructure Specifications and the current Australian Rainfall and Runoff guidelines using the Hydrologic Soil Mapping data for Port Stephens (available from Council).
Details demonstrating compliance must be provided to the Certifying Authority.
Note. Under the *Roads Act 1993*, only the Roads Authority can approve commencement of works within an existing road reserve.
- (4) **Soil, erosion, sediment and water management** – An Erosion and Sediment Control Plan (ESCP) must be prepared in accordance with Council's Infrastructure Specifications. Details demonstrating compliance must be provided to the Certifying Authority.
- (5) **Roads Act Approval** – For construction/reconstruction of Council infrastructure, including vehicular crossings, footpath, kerb and gutter, stormwater drainage, an application must be made for a Roads Act Approval Certificate under Section 138B of the *Roads Act 1993*.
- (6) **Bushfire safety – Subdivision** - The site is located within a bushfire prone area. Certification from a by an NSW suitability qualified Bushfire Consultant must be provided to certify that the development complies with:
- a) the NSW RFS' General Terms of Approval for the DA; and
 - b) the Bushfire Report provided with the DA Bushfire Assessment Report, prepared by Peak Land Management, April 2020; and
 - c) the latest version of NSW Rural Fire Service publication "Planning for Bush Fire Protection 2019."

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- (7) **Hunter Water Corporation approval** - A Section 50 Application under the *Hunter Water Act 1991* must be lodged with Hunter Water Corporation (HWC) and details of the Notice of Compliance from HWC must be provided to the Certifying Authority.

4.0 - 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.
- (2) **Notice commencement of work** – Notice must be given to Council at least two days prior to subdivision and/or building works commencing in accordance with Clause 104 of the *Environmental Planning & Assessment Regulation 2000*. The notice must include:
- a) the name and address of the person by whom the notice is being given;
 - b) a description of the work to be carried out;
 - c) the address of the land on which the work is to be carried out;
 - d) the Registered number and date of issue of the relevant development consent and construction certificate;
 - e) a statement signed by or on behalf of the Principal Certifying Authority to the effect that all conditions of the consent that are required to be satisfied prior to the work commencing have been satisfied; and
 - f) the date on which the work is intended to commence.
- (3) **Sign of PCA and contact details** – A sign must be erected in a prominent position on the site stating the following:
- a) that unauthorised entry to the work site is prohibited;



- b) the name of the principal contractor (or person in charge of the site) and a telephone number on which that person can be contacted at any time for business purposes and outside working hours;
- c) the name, address and telephone number of the Principal Certifying Authority.

The sign must be maintained while the work is being carried out and must be removed upon the completion of works.

- (4) **Construction Certificate Required** – In accordance with the provisions of Section 6.7 of the *Environmental Planning & Assessment Act 1979 (EP&A Act 1979)*, construction or subdivision works approved by this consent must not commence until the following has been satisfied:

- d) a Construction Certificate has been issued by a Consent Authority;
- e) a Principal Certifying Authority (PCA) has been appointed by the person having benefit of the development consent in accordance with Section 6.5 of the *EP&A Act 1979*; and

f) the PCA is notified in writing of the name and contractor licence number of the owner/builder intending to carry out the approved works.

- (5) **Site is to be secured** – The site must be secured and fenced to the satisfaction of the Principal Certifying Authority. All hoarding, fencing or awnings (associated with securing the site during construction) is to be removed upon the completion of works.

- (6) **Soil erosion and sediment control** – Soil erosion and sediment controls must be implemented prior to works commencing on the site in accordance with 'Managing Urban Stormwater – Soils and Construction' ('the blue book') and any Sediment and Erosion plans approved with this Development Consent.

Soil erosion and sediment control measures must be maintained during construction works and must only be removed upon completion of the project when all landscaping and disturbed surfaces have been stabilised (for example, with site turfing, paving or re-vegetation).

- (7) **All weather access** – A 3m wide all-weather vehicle access is to be provided from the kerb and gutter to the building under construction for the delivery of materials and use by trades people.

No materials, waste or the like are to be stored on the all-weather access at any time.

- (8) **Public liability insurance** – The owner or contractor must take out a Public Liability Insurance Policy with a minimum cover of \$20 million in relation to the occupation of, and works within, public property (i.e. kerbs, gutters, footpaths, walkways, reserves, etc.) for the full duration of the proposed works.

Evidence of this Policy must be provided to Council and the Certifying Authority.

5.0 - During Works

The following conditions of consent shall be complied with during the construction phase of the development.

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- (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) **Excavations and backfilling** – All excavations and backfilling associated with this development consent must be executed safely, and be properly guarded and protected to prevent them from being dangerous to life or property, and in accordance with the design of a suitably qualified Structural Engineer.

If an excavation extends below the level of the base of the footings of a building on an adjoining allotment, the person causing the excavation must:
 - a) preserve and protect the building from damage; and
 - b) if necessary, underpin and support the building in an approved manner; and
 - c) give at least seven days notice to the adjoining owner before excavating, of the intention to excavate.
The principal contractor, owner builder or any person who needs to excavate and undertake building work, must contact "Dial Before You Dig" prior to works commencing, and allow a reasonable period of time for the utilities to provide locations of their underground assets.

This condition does not apply if the person having the benefit of the development consent owns the adjoining land or the owner of the adjoining land has given consent in writing to that condition not applying.
- (5) **Building height** – A survey report prepared by a Registered Surveyor confirming that the building height complies with the approved plans or as specified by the development consent, must be provided to the Principal Certifying Authority prior to the development proceeding beyond frame stage.
- (6) **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.



- (7) **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.
- (8) **Unexpected finds contingency (general)** – Should any suspect materials (identified by unusual staining, odour, discolouration or inclusions such as building rubble, asbestos, ash material, etc.) be encountered during any stage of works (including earthworks, site preparation or construction works, etc.), such works must cease immediately until a qualified environmental specialist has been contacted and conducted a thorough assessment.
- In the event that contamination is identified as a result of this assessment and if remediation is required, all works must cease in the vicinity of the contamination and Council must be notified immediately.
- Where remediation work is required, the applicant will be required to obtain consent for the remediation works.
- (9) **Soil, erosion, sediment and water management** – All requirements of the Erosion and Sediment Control Plan or Soil and Water Management Plan must be maintained at all times during the works and any measures required by the plan must not be removed until the site has been stabilised.
- (10) **Bush fire safety – Dwellings** – The site is located within a bushfire prone area and must comply with NSW Rural Fire Service document "Planning for Bushfire Protection 2019." Compliance with the specific requirements of Chapter 7 of PBP2019.
- Details demonstrating compliance must be provided to the Certifying Authority.
- (11) **Landscape plan / street tree plan** – The following tree species must be planted at no cost to Council along the road verge adjoining the subject site
- a) 1 x *Lophostemon confertus* in 75 litre pot size
- Details demonstrating compliance must be provided to the Certifying Authority.
- (12) **Privacy – Window Sill Height** – To ensure reasonable privacy for the adjoining property, windows along the south east and north-west elevations, must have a minimum sill height of 1.5m above finished floor level.
- Alternatively, the window(s) may be permanently fixed to this height (i.e. windows are not to swing or lift open) with obscure glazing provided that the ventilation requirements of the BCA are met.
- Details demonstrating compliance must be provided to the Certifying Authority.

6.0 - Prior to Issue of a Subdivision Certificate

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

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- (1) **Subdivision Certificate** – The issue of a Subdivision Certificate is not to occur until all conditions of this development consent have been satisfactorily addressed and all engineering works are complete.

Works As Executed Plans must be prepared and provided to the Principal Certifying Authority in accordance with Council's Infrastructure Specifications and approved plans.

- (2) **Dual Occupancy and Subdivision** – Prior to the issue of the subdivision certificate the following is to occur:

- a) The dwellings shall have a satisfactory frame inspection undertaken; and
- b) A report/plan shall be provided from a Registered Surveyor showing that:
 - i) The setback of the buildings from the adjacent and proposed boundaries meets the requirements of the BCA; and

All service lines are wholly contained within their respective lots, or an appropriate Easement or Easements have been shown on the plan of survey and suitably described in the 88B instrument.

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

The applicant will be required to submit documentary evidence that the property has been developed in accordance with the plans approved by this development consent 16-2020-477-1, and of compliance with the relevant conditions of consent, prior to the issuing of a Torrens Plan of Subdivision.

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

- (4) **Burdened lots to be identified** - Any lots subsequently identified during construction of the subdivision as requiring restrictions must also be suitably burdened.

- (5) **Surveyor's Report** – A certificate from a Registered Surveyor must be provided to the Principal Certifying Authority, certifying that all drainage lines have been laid within their proposed easements.

Certification is also to be provided stating that no services or accessways encroach over the proposed boundary other than as provided for by easements as created by the final plan of subdivision.

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

- a) Electricity.
- b) Water.
- c) Sewer.

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d) Gas (where available).

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

- (7) **Landscape plan / street tree plan** –The following tree species must be planted at no cost to Council along the road verge adjoining the subject site

a) 1 x Lophostemon confertus in 75 litre pot size

Details demonstrating compliance must be provided to the Certifying Authority.

7.0 - Prior to Issue of an Occupation Certificate

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

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

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

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

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

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

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

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

8.0 – Ongoing Use

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

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- (1) **Residential air conditioning units** – The operation of air conditioning units must operate as follows:
 - a) be inaudible in a habitable room during the hours of 10pm – 7am on weekdays and 10pm to 8am on weekends and public holidays;
 - b) emit a sound pressure level when measured at the boundary of any neighbouring residential property, at a time other than those specified in (a) above, which exceeds the background (LA90, 15 minutes) by more than 5dB(A). The source noise level must be measured as a LAeq 15 minute; and
 - c) not discharge any condensate or moisture onto the ground surface of the premises or into stormwater drainage system in contravention of the requirements of the *Protection of the Environment Operations Act 1997*.
- (2) **Privacy Screen** - Any privacy screen/s and landscaping screening must be permanently maintained in accordance with the approved plans for the life of the development.
- (3) **Maintenance of Landscaping** - Landscaping must be maintained in accordance with the approved landscape plan and conditions of this development consent. All landscape areas must be kept free of parked vehicles, stored goods, garbage or waste material at all times.

If any of the vegetation dies or is removed, it is to be replaced with vegetation of the same species and similar maturity as the vegetation which has died or was removed.

Advice Note(s):

- (1) **'Dial Before you Dig'** – Before any excavation work starts, contractors and others should phone the "Dial Before You Dig" service to access plans/information for underground pipes and cables.
- (2) **Dividing fences** – The erection of dividing fences under this consent does not affect the provisions of the *Dividing Fences Act 1991*. Under this Act, all relevant parties must be in agreement prior to the erection of any approved dividing fence/s under this consent.

Council has no regulatory authority in this area and does not adjudicate civil disputes relating to the provision of, or payment for, the erection of dividing fences. If there is a neighbour dispute about the boundary fence and you are seeking mediation, you may contact the Community Justice Centre, or if legal advice or action is required, you may contact the Chamber Magistrate.
- (3) **Aboriginal archaeological deposit** – In the event of any aboriginal artefact, object or structure being unearthed, all work must cease immediately in the affected area, and the Heritage NSW shall be informed of the discovery. Work must not

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recommence until the material has been inspected and permission has been given by Heritage NSW to proceed.

- (4) **Council must be nominated as PCA for subdivision works** – Under Section 6.5 of the *Environmental Planning & Assessment Act 1979*, Council shall be nominated as the Principal Certifying Authority for subdivision work and has the option of undertaking inspection of physical construction works.
- (5) **Component certificates (where Council is PCA)** – Where Council is appointed as the Principal Certifying Authority for the development, the following component certificates, as relevant to the development, shall be provided prior to the issued of a final Occupation Certificate:
- a) Insulation installation certificates.
 - b) Termite management system installation certificates.
 - c) Smoke alarm installation certificate from installing licensed electrician.
 - d) Survey certificate(s), prepared by a registered land surveyor, certifying that the building has been correctly and wholly located upon the subject allotment.
 - e) Certification attesting that retaining walls have been constructed in accordance with Engineers details or manufacturers specifications as applicable.
 - f) All certificates or information relating to BASIX compliance for the development.
 - g) An 'Approval to Operate a Sewage Management System' issued by Council (for areas that are not serviced by a Sydney Water sewer).
 - h) A certificate certifying that the wet areas have been waterproofed in accordance with the requirements of the Building Code of Australia.
 - i) All certificates relating to salinity, as required by conditions of the Development Consent.
 - j) Any other certificates relating to the development (for example, engineering certification for foundations, piers, reinforcing steel or hydraulic certification for all stormwater drainage works).

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

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

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

 PORT STEPHENS COUNCIL		CALL TO COUNCIL FORM DEVELOPMENT APPLICATION	
Development application (DA) call to Council request:			
I/We (Mayor/Councillor/s) <u>SMITH</u>		request	
that DA number <u>16-2020-477-1</u>		for DA	
description <u>6 BEENONG CLOSE, NELSON BAY</u>		located at	
be reported to Council for determination.			
Reason:			
<u>Public Interest.</u>			
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) _____ 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 email.</small>		Date: Click here to enter a date. <u>27-10-20.</u>	
Signed: <small>Please sign or forward supporting email.</small>		Date: Click here to enter a date. <u>27/10/20</u>	
Signed: <small>Please sign or forward supporting email.</small>		Date: Click here to enter a date. <u>27/10/20.</u>	

MINUTES ORDINARY COUNCIL - 13 APRIL 2021

Mayor Ryan Palmer resumed the chair at 7:32pm.
Councillor Ken Jordan left the meeting at 7:32pm.

ITEM NO. 6

FILE NO: 21/70424
EDRMS NO: PSC2017-00178

COMMUNITY SUPPORT FUND PROGRAM 2020 TO 2021 (ROUND 2)

REPORT OF: STEVEN BERNASCONI - COMMUNICATIONS SECTION
MANAGER

GROUP: DEVELOPMENT SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Approves the provision of financial assistance from applications received for the Community Support Fund 2020 to 2021 (round 2) under Section 356 of the Local Government Act 1993.
 - a. \$2600 to University of Newcastle – Communities for children connecting families picnic.
 - b. \$3405 to Newcastle Legacy Port Stephens Division – purchase of equipment for Port Stephens volunteers.
 - c. \$6000 to Port Stephens Salvation Army – Sensory garden stage 3 works.
 - d. \$6000 to Curious Legends – Curious Giant – youth art workshops with in partnership with Centre for Hope.
 - e. \$6000 to Thou Walla Family Centre and Gan Gan Family Centre - Strong Mind, Strong Heart Families program.
 - f. \$1993.40 to The Shepherd Centre – Kidscape online art and music program for deaf children.
 - g. \$3350 to Gan Gan Family Centre - Community transition to school program.

Councillor Ken Jordan returned to the meeting at 7:33pm, prior to voting on Item 6.

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

076	<p>Councillor John Nell Councillor Giacomo Arnott</p> <p>It was resolved that Council approves the provision of financial assistance from applications received for the Community Support Fund 2020 to 2021 (round 2) under Section 356 of the Local Government Act 1993.</p> <ul style="list-style-type: none">a. \$2600 to University of Newcastle – Communities for children connecting families picnic.b. \$3405 to Newcastle Legacy Port Stephens Division – purchase of equipment for Port Stephens volunteers.c. \$6000 to Port Stephens Salvation Army – Sensory garden stage 3 works.d. \$6000 to Curious Legends – Curious Giant – youth art workshops with in partnership with Centre for Hope.e. \$6000 to Thou Walla Family Centre and Gan Gan Family Centre - Strong Mind, Strong Heart Families program.f. \$1993.40 to The Shepherd Centre – Kidscape online art and music program for deaf children.g. \$3350 to Gan Gan Family Centre - Community transition to school program.
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The motion was carried.

BACKGROUND

The purpose of this report is to seek endorsement of the round 2 recipients of the Community Support Fund Program 2020 to 2021, in accordance with the 'Restart Port Stephens Plan'.

The plan provides a coordinated framework to support the wellbeing of the community and address the social and economic impacts of the COVID-19 pandemic. The plan aims to create an environment that allows economic growth, strengthened social connections and injects vibrancy back in to our local communities.

2020 to 2021 Funding Program

A key initiative of the plan was the restructure of the existing grant and sponsorship funding for 2020 to 2021 to support initiatives to PSC restart Port Stephens. This involved realigning the Port Stephens Council grants program to fund programs that support individuals and organisations through the COVID-19 crisis.

MINUTES ORDINARY COUNCIL - 13 APRIL 2021

Round 1 of the realigned grants program delivered a total of \$36,840 across a total of 7 recipients.

Round 2 of the realigned grants program opened on 1 February 2021 and closed on 14 March 2021. Programs included:

- Community Support Fund
- Vibrant Spaces Fund
- Evening Economy Fund
- Community Event Development Fund

Group	Project Title	Amount	Brief Description
University of Newcastle	Communities for Children Connecting Families Community Picnic Day	\$2,600.00	Community family picnic to promote social re-connection and celebrate community resilience.
Newcastle Legacy - Port Stephens Division	Purchase of computer equipment	\$3,405.00	Purchase of laptops/computer equipment for Port Stephens Volunteers to access Legacy's Central Records.
Port Stephens Salvation Army and the Rotary Club of Salamander Bay	Sensory Community Garden- Stage 3	\$6,000.00	Build and construct pathways linking sections of the Sensory Garden together, improving access.
Curious Legends	Curious Giants	\$6,000.00	Community cultural project involving arts workshops with young people to create and perform with giant illuminated puppets.
Thou Walla Family Centre and Gan Gan Family Centre	Strong Mind, Strong Heart Families	\$6,000.00	Physical and mental health programs for young children and their parents
The Shepherd Centre	Kidscape	\$1,993.40	Online arts & music program for deaf children in Port Stephens
Gan Gan Family Centre	Community Transition to School Network	\$3,350.00	Transition to school program

Table 1 details the recipients recommended for round 2 of the Community Support Fund Program 2020 to 2021. A total of \$29,348.40 is recommended for funding. The assessment process for the Community Support Fund includes assessment by a panel of Councillors (1 representative from each ward), the Mayor and 2 Council

MINUTES ORDINARY COUNCIL - 13 APRIL 2021

staff. The assessment process was carried out in accordance with the fund guidelines.

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2018-2021
Community Partnerships	Assist community service providers to effectively deliver services in the region.

FINANCIAL/RESOURCE IMPLICATIONS

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

LEGAL, POLICY AND RISK IMPLICATIONS

Council provides financial assistance in accordance with Section 356(1) of the Local Government Act 1993.

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
There is a risk that Council may set a precedent when allocating funds to the community and an expectation those funds will always be available.	Low	Adopt the recommendations.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Adopting the recommendation will result in improved social and economic outcomes for the Port Stephens community through opportunities to generate social reconnection and business growth and employment. This aligns with the objectives of the plan.

CONSULTATION

Consultation with key stakeholders has been undertaken by the Economic Development and Tourism and the Community Development and Engagement team.

The realigned grant, sponsorship and donations program for 2020 to 2021 was launched on 28 July 2020 and was promoted through existing community networks and media. The overall response rate for the program included 9 applicants across all funding streams.

OPTIONS

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

ATTACHMENTS

Nil.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ITEM NO. 7

**FILE NO: 21/60091
EDRMS NO: PSC2009-02488**

POLICY REVIEW - CASH INVESTMENT POLICY

REPORT OF: TIM HAZELL - FINANCIAL SERVICES SECTION MANAGER
GROUP: CORPORATE SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Endorse the revised Cash Investment Policy shown at (**ATTACHMENT 1**).
- 2) Place the revised Cash Investment Policy on public exhibition for a period of 28 days and should no submissions be received, the policy be adopted as amended without a further report to Council.
- 3) Revoke the Cash Investment Policy dated 12 December 2020, Minute No. 180 should no submissions be received.

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

077	<p>Councillor Giacomo Arnott Councillor Paul Le Mottee</p> <p>It was resolved that Council:</p> <ol style="list-style-type: none">1) Endorse the revised Cash Investment Policy shown at (ATTACHMENT 1).2) Place the revised Cash Investment Policy on public exhibition for a period of 28 days and should no submissions be received, the policy be adopted as amended without a further report to Council.3) Revoke the Cash Investment Policy dated 12 December 2020, Minute No. 180 should no submissions be received.
------------	--

The motion was carried.

BACKGROUND

The purpose of this report is to seek Council's endorsement of the revised Cash Investment Policy (policy). The objective of the policy is to guide Council's cash investment process and specifically:

- To establish Council's investment philosophy.
- To establish investment risk management guidelines.

MINUTES ORDINARY COUNCIL - 13 APRIL 2021

- To prescribe requirements to be followed in investing surplus funds that are not immediately required for any other purpose.
- To identify the duties of those involved in the investment process.
- To prescribe internal control, investment monitoring and reporting procedures.

Some minor amendments have been made:

- Updated policy into the current format.
- The maximum term to maturity threshold for >1 year reduced to 50% at 5.8.1
- Added 'not including TCorp IM Funds' to S&P Long Term Rating table (category 'Unrated') at 5.8.1.

No other material changes have been made.

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2018-2021
Financial Management	Maximise non-rate revenue and investment to support Council services.

FINANCIAL/RESOURCE IMPLICATIONS

Adoption of the policy will be within existing budget allocations.

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

Section 23A of the Local Government Act 1993 (NSW) requires Council to take guidelines issued by the Chief Executive of the Office of Local Government into consideration before exercising its functions.

The provisions of the revised policy is mandated by the Office of Local Government through section 625 of the Local Government Act 1993 (the Act) as amended. Specifically these provisions mandate that Councils can only invest in securities as defined by the Ministerial Investment Order as detailed in the revised policy **(ATTACHMENT 1)**.

The redrafted policy complies with the Investment Policy Guidelines.

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
There is a risk that Council's legal responsibilities will not be met if the policy is not implemented, which could cause financial and/or reputational damage.	Medium	Accept the recommendations.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Income from investments needs to be optimised to ensure Council can provide facilities and services to the community on a sustainable basis.

CONSULTATION

Consultation with key stakeholders has been undertaken by the Financial Services Section.

Internal

- Finance Reporting Coordinator.
- Executive Team.

External

In accordance with local government legislation, the revised Cash Investment Policy will go on public exhibition for 28 days.

OPTIONS

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

ATTACHMENTS

- 1) Cash Investment Policy.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

Policy



FILE NO: PSC2009-02488

TITLE: CASH INVESTMENT POLICY

OWNER: FINANCIAL SERVICES SECTION MANAGER

1. PURPOSE:

1.1 The purpose of this policy is to guide Council's cash investment process and specifically:

- a) Establish Council's investment philosophy.
- b) Establish investment risk management guidelines.
- c) Prescribe requirements to be followed in investing surplus funds that are not immediately required for any other purpose.
- d) Identify the duties of those involved in the investment process.
- e) Prescribe internal control, investment monitoring and reporting procedures.

2. CONTEXT/BACKGROUND:

2.1 The policy has been subject to periodic review in accordance with Council policy.

3. SCOPE:

3.1 Council has an obligation under its charter as the custodian and trustee of public assets to effectively account for and manage the assets for which it is responsible.

3.2 All Council investments are to be made in accordance with the following process:

- a) Determine surplus funds for investment from daily cash flow analysis.
- b) Determine cash requirements and the required term of the investment.
- c) Seek quotations from financial institutions, having regard for:
 - Section 625 of the Local Government Act 1993 which details how Council's may invest.
 - The Ministerial Order made under section 625(2) of the Local Government Act 1993.
 - Section 14 of the Trustee Act which details the powers of investment to which a trustee is to have regard when exercising the power of investment.
 - Clause 212 of the Local Government (General) Regulation 2005.
 - Investment Policy Guidelines - issued in 2010 by the then Chief Executive of

Policy

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ITEM 7 - ATTACHMENT 1 CASH INVESTMENT POLICY.

Policy



the Department of Local Government (now Office of Local Government) under s23A Local Government Act 1993.

- Local Government Code of Accounting Practice and Financial Reporting.

4. DEFINITIONS:

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

Cash Investment	Money placed with an approved entity that provides a return in the form of interest payments.
Surplus Funds	Money remaining after foreseeable cash flows are calculated.
BBSW	Bank Bill Swap Rate.

5. STATEMENT:

- 5.1 Investment Philosophy and Objectives:

- 5.1.1 Investments are to be allocated to ensure there is sufficient liquidity to meet reasonably anticipated cash flow requirements, as and when they fall due, without incurring the risk of significant costs due to the unanticipated sale of an investment.

- 5.1.2 Preservation of capital and the real value of surplus funds is the principal objective of the investment portfolio.

- 5.1.3 Investments are expected to achieve a market average rate of return consistent with Council's risk tolerance. One dollar invested today is expected to earn interest so that it will increase in value to more than one dollar in the future, 'the time value of money'.

- 5.2 Cash Flow:

- 5.2.1 Council is to plan for future cash flow requirements in its long term financial plan and annual budget.

- 5.2.2 Cash flow is to be monitored daily.

- 5.2.3 Council is to have an overdraft facility to be used to meet unforeseen commitments, with the aim of avoiding use of this facility as the interest rate is likely to exceed the interest rate Council receives on its investments.

- 5.2.4 When appropriate to do so, daily surplus funds are to be automatically swept into an interest bearing bank account to maximise interest earnings.

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ITEM 7 - ATTACHMENT 1 CASH INVESTMENT POLICY.

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5.2.5 Surplus funds that are forecast not to be required for in excess of 30 days are to be identified and invested.

5.3 Risk Management Criteria:

5.3.1 Placement and retention of investments are to be assessed according to the following criteria:

- a) Preservation of capital - the requirement for preventing losses in Council's investment portfolio's total value (considering the time value of money).
- b) Diversification - setting limits to the amounts invested with individual financial institutions or government authorities to reduce credit risk.
- c) Credit risk - the risk that a financial institution or government authority fails to pay the interest or repay the principal invested.
- d) Market risk - the risk that the fair value or future cash flows of an investment will fluctuate due to market prices.
- e) Liquidity risk - the risk Council is unable to redeem the investment at a fair price within a timely period.
- f) Maturity risk - the risk relating to the length of term to maturity. The larger the term the greater the length of exposure and risk of market volatility and interest rate changes.
- g) Financial instruments detailing investments must clearly show they are held in Council's name.

5.4 Authorised Investments:

5.4.1 All investments must be denominated in Australian Dollars (AUD).
Authorised investments are limited to those forms included in the Ministerial Investment Order, presently:

- a) Local, State or Commonwealth Government bonds, debentures or securities.
- b) Interest bearing deposits, debentures or bonds issued by an authorised deposit taking institution (ADI) regulated by Australian Prudential Regulation Authority, (i.e. a bank, building society or credit union granted authority by APRA to carry on a banking business in Australia - a full list of ADIs is available on the APRA website www.apra.gov.au).
- c) Investments with NSW Treasury Corporation or Hourglass Investment facility.

5.5 Prohibited Investments:

5.5.1 This investment policy prohibits any investment carried out for speculative purposes including, but not limited to:

- a) Derivative based instruments.

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ITEM 7 - ATTACHMENT 1 CASH INVESTMENT POLICY.



Policy

- b) Principal only investments or securities that provide potentially nil or negative cash flow.
- c) Stand-alone securities issued that have underlying futures, options forward contracts or swaps of any kind.

5.5.2 This policy also prohibits the use of leveraging (borrowing to invest) of an instrument.

5.6 Quotations on Investments:

5.6.1 Not less than three **3** quotations shall be obtained from authorised institutions whenever an investment is proposed. The best quote for the day shall be accepted after allowing for administrative costs and also allowing for the diversification limits of this policy.

5.7 Term to Maturity:

5.7.1 The term to maturity of any of Council's direct investments must not exceed 10 years.

5.7.2 When the term to maturity exceeds one **1** year, Council must ensure that a secondary market exists for the investment to enable the disposal of the investment prior to maturity if necessary.

5.7.3 To control liquidity risk Council's investment portfolio should be limited to the following term to maturity thresholds:

Term	Minimum %	Maximum %
< 1 year	30	100
> 1 year	0	70 50
> 3 years	0	40
> 5 years	0	30

5.7.4 The maturity thresholds above are to be assessed at the time of making a new investment.

5.8 Diversification:

5.8.1 Council shall diversify its investments by referencing Standard and Poors long term ratings (or equivalent) and limiting investments with any single financial institution as follows:

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S & P Long Term Rating	Portfolio Maximum %	Single Financial Institution Maximum %
AAA (+ or -)	100	30
AA (+ or -)	100	30
A (+ or -)	80	20
BBB (+ or -)	30	10
Unrated (not including TCorp IM Funds)	20	10
Specific Ministerial Approved Forms of Investment		
TCorpIM Cash Funds		30%
TCorpIM Short Term Income Fund		30%
TCorpIM Medium Term Income Fund		20%
TCorpIM Long Term Income Fund		10%

5.8.2 The diversification limit above shall be assessed at the time of making a new investment.

5.8.3 Any subsequent reduction in portfolio size shall be disregarded in relation to assessing diversification limits of existing investments where there is likely to be significant costs or losses for terminating or disposing of an investment.

5.9 Reporting:

5.9.1 A monthly report shall be provided to Council, detailing the investment portfolio including type of investment, individual amounts invested, financial institution name, maturity date and interest rate. The report is to include a certificate as to whether or not the investments have been made in accordance with the Act, regulations and Council's Investment Policy.

5.9.2 For audit purposes certificates must be obtained from banks and investment brokers confirming the amounts of investments held on Council's behalf as at 30 June each year.

5.10 Performance Benchmarks:

5.10.1 Council seeks to gain a return on investment at least equal to the following measures:

Investment	Performance Benchmark
Cash	RBA Cash Rate

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Term Deposits	Bloomberg AusBond Bank Bill index.
Enhanced Investments	Bloomberg AusBond Bank Bill index.

5.11 Duties and Responsibilities of Council Officers:

- 5.11.1 The General Manager is responsible for ensuring that Council's decisions with respect to this investment policy are implemented. The General Manager has delegations to staff in place to make investments in accordance with this policy.
- 5.11.2 CI 212 of the Local Government (General) Regulation 2005 requires the Responsible Accounting Officer to provide a monthly written report to Council on its investments. The Responsible Accounting Officer is responsible for keeping Council's accounting records, ensuring they are kept up to date and in an accessible form. The Financial Services Section Manager is the Responsible Accounting Officer in Port Stephens Council and delegations to staff are in place to keep accounting records and report as required.
- 5.11.3 Council officers involved in investing funds are required to have appropriate skills to undertake the investment function, have delegations in place and read and comply with this investment policy.
- 5.11.4 Council officers involved in investing funds should act with the duty of care, skill, prudence and diligence that a prudent person would exercise when investing and managing their own funds and have regard to the requirements under the Trustee Act 1925.
- 5.11.5 Council officers involved in investing funds must not engage in activities that would conflict with the proper implementation and management of Council's investments.
- 5.11.6 The Finance Officer – Organisational Support, or other delegated Council officer is required to:
 - a) Monitor cash flow on a daily basis and estimate cash requirements.
 - b) Ensure proposed investment products comply with this investment policy.
 - c) Recommend investment of funds in accordance with the requirements of this policy.
 - d) Reconcile principal invested on at least a monthly basis.
 - e) Estimate and account for receipt of all interest due on investments.
 - f) Ensure financial instruments, investment certificates and related documents are kept in safe custody.

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ITEM 7 - ATTACHMENT 1 CASH INVESTMENT POLICY.

Policy



- g) Prepare a monthly report for Council to the satisfaction of the Responsible Accounting Officer.
 - h) Cause the investment register to be updated on Council's website monthly.
 - i) Store all relevant documents, interest advices, market valuations in HPRM EDRMS.
- 5.11.7 To ensure adequate internal controls and separation of duties 2 of the 3 following listed Officers - Finance Revenue Coordinator, Financial Reporting Coordinator or Finance Officer – Accountant - are to authorise investment transactions. If the Finance Revenue Coordinator, Financial Reporting Coordinator and/or Finance Officer – Accountant are absent, investment transactions are to be authorised by either the Financial Services Section Manager, Group Manager Corporate Services or General Manager.
- 5.12 Investment Advisor:
- 5.12.1 When ensuring a proposed investment product complies with this investment policy it may be necessary to obtain independent financial advice. Before considering independent financial advice Council must ensure the financial advisor is licensed by the Australian Securities and Investment Commission. The advisor must confirm that they do not have any conflicts of interest in relation to the investment products being considered. When recommending or reviewing investments any independent financial advisor must provide written confirmation that they are not receiving any commissions or other benefits in relation to the investments being recommended or reviewed. Council is to undertake separate reference checks before relying on information provided by an advisor.
- 6. RESPONSIBILITIES:**
- 6.1 Finance Officer-Organisational Support, Financial Reporting Coordinator, Finance Revenue Coordinator and Finance Officer – Accountant are responsible for complying with, monitoring, evaluating, reviewing and providing advice on this policy.
- 6.2 Financial Services Section Manager is responsible for implementing and complying with this policy.
- 7. RELATED DOCUMENTS:**
- 7.1 Local Government Act 1993.
- 7.2 Local Government Act 1993 - s625 Investment Order (of the Minister) as made from time to time.
- 7.3 Local Government Act 1993 s23A Investment Policy Guidelines issued in 2010 by the then Chief Executive of the Department of Local Government (now Office of Local Government).

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- 7.4 Local Government (General) Regulation 2005.
- 7.5 The Trustee Act 1925 - s14 - Powers of Investment.
- 7.6 Banking Act 1959 - Division 2AA Financial Claims Scheme.

CONTROLLED DOCUMENT INFORMATION:

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EDRMS container No.	PSC2009-02488	EDRMS record No.	TBA
Audience	Council staff and community		
Process owner	Financial Services Section Manager		
Author	Financial Services Section Manager		
Review timeframe	2-3 years	Next review date	TBA
Adoption date	20 December 2005		

VERSION HISTORY:

Version	Date	Author	Details	Minute No.
1.0	20/12/05	Financial Services Section Manager	Policy adopted.	382
2.0	27/03/12	Financial Services Section Manager	Amended policy adopted.	048
3.0	24/06/14	Financial Services Section Manager	Amended policy adopted.	156
4.0	12/04/16	Financial Services Section Manager	This policy has been reviewed and formatted into the new template. Removed all references to Grandfathered Investments as Council no longer holds any	084

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Policy



Version	Date	Author	Details	Minute No.
			<p>investments that do not comply with the most recent Ministerial Investment Order.</p> <p>Removed all references to CDO's as Council no longer holds any of these.</p> <p>Updated the Responsible Accounting Officer from the General Manager to the Financial Services Section Manager.</p> <p>Updated position titles to reflect current organisational chart.</p> <p>Updated the 'related documents' section to reflect current policies and legislation.</p> <p>Adopted by Council.</p>	
5.0	09/08/17	Financial Services Section Manager	<p>Added Financial Reporting Coordinator to authorise investment transactions in 11g.</p> <p>Updated position titles to reflect change in duties from Finance Officer</p> <p>-Revenue Team Leader to Finance Officer Organisational Support.</p> <p>RM8 record number updated from 16/316014 to 17/156898.</p> <p>Updated policy responsibilities to include the responsibilities of each position.</p> <p>Updated percentages in table 8a.</p>	
6.0	24/10/17	Financial Services Section Manager	Adopted by Council.	256
7.0	12/12/18	Financial Services	Updated policy to be in new format.	180

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Policy



Version	Date	Author	Details	Minute No.
		Section Manager	4.1 - Removed 'management directive' and replaced with 'policy'. 5.8.1 - Separated BBB portfolio parameters from unrated ADI's and inserted BBB Portfolio max % to 30% and unrated at 20%. This is due to recent institutional market changes. Added Specific Ministerial Approved Forms of Investments.	
8.0	TBA	Financial Services Section Manager	Updated policy into new format. 5.7.3 – Updated maximum from 70% to 50%. 5.8.1 – Added '(not including TCorp IM Funds)'. 5.8.1 – Removed 'NSW Treasury Corp Deposits and TCorpIM Funds 100%', added new Specific Ministerial Approved Forms of Investment. 5.11.7 – Added additional authorising officer Finance Officer – Accountant. 6.1 – Added additional authorizing officer Finance Officer – Accountant.	TBA

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ORDINARY COUNCIL MEETING - 13 APRIL 2021
MOTION

078	Councillor John Nell Councillor Ken Jordan It was resolved that Items 8 and 9 be determined by multiple vote.
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The motion was carried.

ITEM NO. 8

FILE NO: 21/77534
EDRMS NO: PSC2009-02488

POLICY REVIEW - NAMING AND RENAMING OF RESERVES POLICY

REPORT OF: TIMOTHY CROSDALE - GROUP MANAGER CORPORATE
SERVICES
GROUP: CORPORATE SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Endorse the revised Naming and Renaming of Reserves Policy shown at **(ATTACHMENT 1)**.
 - 2) Place the revised Naming and Renaming of Reserves Policy, as amended on public exhibition for a period of 28 days and should no submissions be received, the policy be adopted, without a further report to Council.
 - 3) Revoke the Naming and Renaming of Reserves Policy dated 11 September 2018, Minute No. 284 should no submissions be received.
-

ORDINARY COUNCIL MEETING - 13 APRIL 2021
MOTION

079	Councillor John Nell Councillor Ken Jordan It was resolved that Council: 1) Endorse the revised Naming and Renaming of Reserves Policy shown at (ATTACHMENT 1) . 2) Place the revised Naming and Renaming of Reserves Policy, as amended on public exhibition for a period of 28 days and should no
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MINUTES ORDINARY COUNCIL - 13 APRIL 2021

	submissions be received, the policy be adopted, without a further report to Council.
	3) Revoke the Naming and Renaming of Reserves Policy dated 11 September 2018, Minute No. 284 should no submissions be received.

The motion was carried.

BACKGROUND

The purpose of this report is to seek Council's endorsement of the revised Naming and Renaming of Reserves Policy (policy).

Clear and unambiguous place names are essential for emergency services, postal service delivery and navigation generally. The Geographical Names Board (GNB) introduced in a policy in 2015 which sets out the criteria for place naming in NSW.

The objective of Council's policy is to ensure consistency with the GNB when naming or renaming reserves in the Port Stephens LGA. The GNB policy was revised in 2019 and amendments have been made to the policy to ensure consistency with the GNB policy.

In addition, a number of minor amendments have been made to the revised policy.

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2018-2021
Community Partnerships	Provide recreational and leisure services.

FINANCIAL/RESOURCE IMPLICATIONS

Adoption of the policy will be within existing budget allocations.

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

Updating the policy so that it is consistent with current GNB policy will ensure consistency in the process, legislative compliance and ease of response for emergency services.

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
There is a risk of legislative non-compliance, which could cause reputational damage	Low	Adopt the recommendations	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

There are no economic or environmental implications associated with the adoption of the revised policy.

The revised policy will encourage applications for naming or renaming of reserves in the Port Stephens LGA that acknowledge traditional owners or commemorate significant historical figures or events.

CONSULTATION

Consultation with key stakeholders has been undertaken by the Strategic Property Unit.

Internal

- Senior Property Officer.
- Strategic Property Coordinator.

External

In accordance with local government legislation the revised policy will go on public exhibition for 28 days.

OPTIONS

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

ATTACHMENTS

- 1) Revised Naming and Renaming of Reserves Policy.

ITEM 8 - ATTACHMENT 1 REVISED NAMING AND RENAMING OF RESERVES POLICY.

Policy



FILE NO: PSC2009-02488

TITLE: NAMING AND RENAMING OF RESERVES POLICY

OWNER: ~~PROPERTY OFFICER~~ **GROUP MANAGER CORPORATE SERVICES**

1. PURPOSE:

- 1.1 The purpose of this policy is to provide consistency in the process of naming and renaming reserves.

2. CONTEXT/BACKGROUND:

- 2.1 The naming and renaming of reserves is a process defined within the Geographical Names Board (GNB) guidelines to comply with the Geographical Names Board Act 1966.
- 2.2 Council must comply with this Act when naming or renaming its reserves.
- 2.3 It involves consultation with GNB, the community, Crown Lands, Historical Society and Local Aboriginal Land Councils (where applicable).

3. SCOPE:

- 3.1 To provide consistency in the process of naming and renaming of Council owned reserves or Crown reserves which Council are appointed the Crown Land Manager.
- 3.2 This policy applies to the naming and renaming of Council owned reserves (either public reserves or drainage reserves) and Crown reserves which where Council is appointed as are the Crown Land Manager.
- 3.3 Requests for the naming of other Crown lands should be referred back to the applicant with the advice they should contact the relevant Crown office directly.
- 3.4 **PART A - THE NAMING OF COUNCIL OWNED RESERVES** (ie. Council holds freehold title) (ie. Council holds freehold title)
- a) An application/enquiry is received at Council either from a person or agency or by a section of Council with the proposal to name or rename a reserve. Initial consultation between Council's Senior Property Officer and relevant Council staff will determine if naming is required or appropriate (eg. reserve possibly already named).

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ITEM 8 - ATTACHMENT 1 REVISED NAMING AND RENAMING OF RESERVES POLICY.

Policy



- b) **Applications** Requests for the naming of reserves are to comply with the **GNB Place Naming Policy** ~~Placename Application~~.
- c) Form (fact sheet) and guidelines as set by the GNB for determination are located on the GNB website www.gnb.nsw.gov.au. Where an application is received seeking commemoration of a living person, the application shall be refused.
- d) Where the application is received seeking the commemoration of a deceased person (12 months must have passed since they deceased) then a Commemorative Naming Form and guidelines as set by the GNB should also be completed.
- e) Where the proposed name has a historical connotation, the relevant local Historical Society shall be notified by mail or email of the proposal and requested to comment on the historical suitability of the name.
- f) Where the proposed name has an Aboriginal connotation, the relevant Local Aboriginal Land Council shall be notified by mail or email of the proposal and requested to comment on the suitability of the name.
- g) **Council must undertake community consultation on the proposal before submitting an application to GNB.**
- h) A recommendation will be prepared for the Ordinary Council Meeting providing relevant details requesting Council apply to the GNB with the proposed name.
- i) If **the** recommendation is approved, Council's **Strategic** Property **team** Section will complete the required application form after liaising with the applicant to obtain all details. This form will be submitted to the GNB with any other required documents for the Board to determine.
- j) If the recommendation is not approved, the applicant is advised to propose a new name and the process will begin again from point-3. **A new application fee will be payable.**
- k) If the GNB determines the name is appropriate **it** that Department will advertise **the proposal for 1 month** ~~in a local newspaper circulating in the area of the reserve proposed to be named/renamed with a copy of the advertisement to be placed in each Councillors mail tray. The advertisement shall include the following: "That comments and submissions on the proposal shall be in writing and will be received by Council for a period of 28 days from the date of advertisement/written notification"~~.
- l) At the close of the advertising/~~public consultation~~ period and if objection(s) have been received, copies of all objections will be reported to Council **for**

Policy

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ITEM 8 - ATTACHMENT 1 REVISED NAMING AND RENAMING OF RESERVES POLICY.

Policy



comment.

- m) The GNB Board will review submissions and either reject, alter or endorse the name. If Council resolves to proceed and change the original proposed name to one provided through the objection process and agrees upon a name(s), application shall be made to the GNB for formal approval of the name(s) resolved.
- n) If no objections are submitted by the public, the name becomes official and the GNB will update the official NSW mapping database and the Geographical Names Register.
- o) The reserve(s) is taken to be officially named upon publication of a notice by the GNB in the New South Wales Government Gazette and local newspaper.
- p) Suitable signage to be erected upon the reserve(s) at such position(s) as determined by the required Facilities and Services staff or his/her nominated representative.

3.5 PART B - THE NAMING OF CROWN RESERVES OVER WHICH COUNCIL HAS BEEN APPOINTED 'CROWN LAND MANAGER'

- a) Requests are to comply with point 3.4b.2-Part A of this policy.
- b) Approval shall be obtained from the Regional District Office of Crown Lands prior to advertising/public consultation.
- c) If approval is obtained, compliance with requirements of points 3.4 c).3 to 3.4 n) 14-inclusive of Part A of this policy.
- d) The scope may also include — what, when and where the policy applies; who will be affected and how it will affect them and what impact the policy will have. Exclusions to policy application should also be included, if applicable.

4. DEFINITIONS:

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

Crown Reserve

Crown reserves are land set aside on behalf of the community for a wide range of public purposes including environmental and heritage protection, recreation and sport, open space, community halls, special events and government services.

Policy

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ITEM 8 - ATTACHMENT 1 REVISED NAMING AND RENAMING OF RESERVES POLICY.

Policy



Crown Land Manager

A Council can be appointed as Land Manager of a Crown reserve by notice in the Government Gazette. An appointed Land Manager is responsible for the care, control and management of the specified Crown reserve. It is important to note that councils are not appointed as Land Manager for all reserves in its area.

5. STATEMENT:

- 5.1 It is Council's intent that this policy specifies the requirements of naming and renaming a Council owned reserve or Crown reserve over which Council has been appointed Crown Land Manager.

6. RESPONSIBILITIES:

- 6.1 Roles and responsibilities - the Senior Property Officer is responsible for the implementation of this policy.
- 6.2 Support and advice - can be obtained from the GNB, Historical Society and Local Aboriginal Land Council and Crown Lands where applicable.
- 6.3 Communication - Council staff and the community will be consulted kept informed via public local newspapers advertising, and either mail or email for the consultation period and after the name is finalised. The GNB will publish the name in the NSW Government Gazette.
- 6.4 Implementation of this policy with adoption of uniform guidelines endorsed by the GNB will enable ratepayers and public authorities such as the Police and Ambulance Services to more easily locate reserves.
- 6.5 The applicant would be responsible for costs. Therefore, if Council was the applicant the costs would be minimal, generally only for signage.

7. RELATED DOCUMENTS:

- 7.1 [GNB - Naming a Place.](#)
- 7.2 [GNB - Place Naming Policy.](#)
- 7.3 [GNB - NSW Place & Road Naming Proposal System.](#)
- 7.4 Council's Road Naming and Renaming Process.

Policy

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ITEM 8 - ATTACHMENT 1 REVISED NAMING AND RENAMING OF RESERVES POLICY.

Policy



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EDRMS container No.	PSC2009-02488	EDRMS record No.	TBA
Audience	Council Staff & Community		
Process owner	Property Officer Group Manager Corporate Services		
Author	Property Officer Senior Property Officer		
Review timeframe	2-3 years	Next review date	TBA
Adoption date	9 October 2012		

VERSION HISTORY:

Version	Date	Author	Details	Minute No.
1	9 October 2012	Property Officer	Policy Adopted	263
2	12 August 2014	Property Officer	Policy Amended	208
3	11 September 2018	Property Officer	Transferred into new format. 3.1 - Change reference from Trust Manager to Crown Land Manager. 3.5 – Change reference from Trust Manager to Crown Land Manager. 5.1 – Change reference from Trust Manager to Crown Land Manager.	284

Policy

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ITEM 8 - ATTACHMENT 1
REVISED NAMING AND RENAMING OF RESERVES POLICY.

Policy



Version	Date	Author	Details	Minute No.
4	TBA	Senior Property Officer	<p>Policy Owner - Updated to Group Manager Corporate Services.</p> <p>3.4 a) - Added 'Senior' to the title to reflect current organisational structure.</p> <p>3.4 b) to p) – Grammatical updates to reflect current GNB Place Naming Policy and process.</p> <p>3.5 - Grammatical updates to reflect current GNB Place Naming Policy and processes.</p> <p>4.1 – Added the definition for 'Crown Land Manager'.</p> <p>6.1 – Added 'Senior' to the title to reflect current organisational structure.</p> <p>6.3 – Communication – updated to current process.</p> <p>Updated Controlled Document Information:</p> <ul style="list-style-type: none"> • Process Owner updated to Group Manager Corporate Services. • Author updated from Property Officer to Senior Property Officer. <p>Amended review timeframe to 3 years in accordance with Council's policy and review process.</p>	TBA

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ITEM NO. 9

**FILE NO: 21/83030
EDRMS NO: PSC2006-6848**

POLICY REVIEW: RISK MANAGEMENT

REPORT OF: TONY WICKHAM - GOVERNANCE SECTION MANAGER
GROUP: GENERAL MANAGER'S OFFICE

RECOMMENDATION IS THAT COUNCIL:

- 1) Endorse the new Risk Management Policy shown at **(ATTACHMENT 1)**.
- 2) Place the new Risk Management Policy, as amended on public exhibition for a period of 28 days and should no submissions be received, the policy be adopted, without a further report to Council.
- 3) Revoke the Enterprise Risk Management Policy dated 23 June 2020, Minute No. 117, should no submissions be received.

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

080	<p>Councillor John Nell Councillor Ken Jordan</p> <p>It was resolved that Council:</p> <ol style="list-style-type: none">1) Endorse the new Risk Management Policy shown at (ATTACHMENT 1).2) Place the new Risk Management Policy, as amended on public exhibition for a period of 28 days and should no submissions be received, the policy be adopted, without a further report to Council.3) Revoke the Enterprise Risk Management Policy dated 23 June 2020, Minute No. 117, should no submissions be received.
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The motion was carried.

BACKGROUND

The purpose of this report is to seek Council's endorsement of the new Risk Management Policy ('policy'). The policy has been developed as part of the implementation of Council's new Enterprise Risk Management System. The policy is shown at **(ATTACHMENT 1)**.

MINUTES ORDINARY COUNCIL - 13 APRIL 2021

The policy establishes the commitment of Port Stephens Council to provide effective risk management culture, governance and practices to support the delivery of its Community Strategic Plan.

Council recognises the purpose of risk management is the creation and protection of value and is committed to managing risk to improve performance, encourage innovation and support the achievement of objectives.

The policy replaces the Enterprise Risk Management policy shown at **(ATTACHMENT 2)**.

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2018-2021
Governance	Reduce risk across Council.

FINANCIAL/RESOURCE IMPLICATIONS

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

LEGAL, POLICY AND RISK IMPLICATIONS

The policy ensures Council meets its legislative obligations in relation to the management of risk.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that Council will not meet its legislative obligations without a method for assessing and controlling risks.	Extreme	Adopt the recommendation.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

There are no sustainability implications associated with the new policy.

CONSULTATION

Consultation with key stakeholders has been undertaken by the Governance Section.

The Local Government Act 1993 requires Council to conduct public consultation on policies prior to final adoption.

Internal

- The Executive Team has been consulted to seek management endorsement.
- The General Manager has been consulted to seek endorsement prior to Council consideration.
- The policy was considered by Council's Audit Committee on 25 February 2021.

External

Following Council adoption, the policy will be publicly exhibited on Council's website.

OPTIONS

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

ATTACHMENTS

- 1) New Risk Management Policy.
- 2) Enterprise Risk Management Policy.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ITEM 9 - ATTACHMENT 1 NEW RISK MANAGEMENT POLICY.

Policy



FILE NO: PSC2006-6848
TITLE: RISK MANAGEMENT
OWNER: GOVERNANCE SECTION MANAGER

1. PURPOSE:

1.1 This policy establishes the commitment of Port Stephens Council (Council) to provide effective risk management culture, governance and practices to support the delivery of its Community Strategic Plan.

2. CONTEXT / BACKGROUND:

2.1 Council recognises the need for risk management to feature as a key consideration in strategic and operational planning, day-to-day management and decision making at all levels in the organisation.

3. SCOPE:

3.1 This policy applies to all Council officers, employees, volunteers and contractors.
 3.2 Council will maintain more detailed management directives and procedures to support risk management in practice. These must align with the expectations described in this policy and provide more substance on Council's Risk Management Plan (and relevant sub-frameworks) and Risk Appetite.

4. DEFINITIONS:

4.1 Key definitions of terms relevant to this policy:

Risk:	The effect of uncertainty on objectives. An <i>effect</i> is a deviation from the expected. It can be positive, negative or both, and can address, create or result in opportunities and threats.
Risk Management:	Coordinated activities to direct and control Council with regard to risk.
Risk Management Framework (RMF):	A set of components that support and sustain risk management throughout Council. These components (foundational and arrangements) are outlined in Council's Risk Management Policy, Risk Appetite Statement and Risk Management Plan.
Risk Appetite:	The amount and type of risk Council is willing to pursue or retain in pursuit of its Community Strategic Plan

Policy

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Policy



5 STATEMENT:

- 5.1 Council recognises that the purpose of risk management is the creation and protection of value and is committed to managing risk to improve performance, encourage innovation and support the achievement of objectives. This understanding is reflected in the following characteristics adopted by Council:
- 5.1.1 Risk management practices encompass the entire organisation, creating connections to avoid silos.
 - 5.1.2 Risk management strategies address the full spectrum of risks and are appropriately scaled to reflect situational context and complexity.
 - 5.1.3 Risk management approaches do not solely consider single events, but also take into account risk scenarios and the interaction of multiple risks.
 - 5.1.4 Risk management practices are infused into business culture and practices, so that strategy and decision-making evolve out of a risk-informed process.
 - 5.1.5 Risk management philosophy focuses not solely on risk avoidance, but also on acceptable risk-taking as a means to value creation.
- 5.2 Council is committed to managing risk within Council's established appetite by identifying, analysing, evaluating and treating exposures that may impact on Council achieving its objectives and/or the continued efficiency and effectiveness of its operations.
- 5.3 Council will incorporate risk management into its planning and decision-making processes (at all levels) and subsequently in its business execution.
- 5.4 Council's risk management process will be aligned to relevant standards and best practice in a manner that aligns with the organisation's culture and maturity.
- 5.5 Council staff will implement and embed the risk management process into their business practices to reinforce their decision-making responsibilities and accountability.
- 5.6 Council is committed to ensuring that all staff, particularly those with management, advisory and decision making responsibilities, obtain a sound understanding of the principles of risk management and the requisite skills to implement risk management effectively.
- 5.7 Council will regularly monitor and review the status of its risk culture and the effective implementation of the Risk Management Plan throughout the organisation as a basis for continuous improvement.

6 RESPONSIBILITIES:

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Policy



- 6.1 The Executive and Senior Leadership Teams are responsible for promoting and leading effective risk management at Council, supported by the Enterprise Risk Management team.
- 6.2 All employees, contractors and volunteers are responsible for managing risk at Council and as such are responsible for compliance with this policy.
- 6.3 Detailed risk management responsibilities for key roles are documented in the Risk Management Plan.

7 RELATED DOCUMENTS:

- 7.1 Risk Appetite Statement
- 7.2 Risk Management Plan
- 7.3 Work Health and Safety Statement of Commitment
- 7.4 Environment Policy
- 7.5 Business Continuity Plan (and sub-plans)

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EDRMS container No.	PSC2006-6848	EDRMS record No.	
Audience	Councillors, employees, volunteers, contractors and community		
Process owner	Governance Section Manager		
Author	Enterprise Risk Manager		
Review timeframe	Three years	Next review date	27 April 2024
Adoption date	tbc		

VERSION HISTORY:

Version	Date	Author	Details	Minute No.
1.0		Enterprise Risk Manager	New policy to replace "Enterprise Risk Management" Policy	

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Policy



FILE NO: PSC2006-6848

TITLE: ENTERPRISE RISK MANAGEMENT

OWNER: GOVERNANCE SECTION MANAGER

1. PURPOSE:

- 1.1 Council's purpose is to provide services and make decisions to enhance our quality of life, our economy and our natural environment. The identification, measurement and control of risks to protect the community, the Council and its assets against loss helps to ensure the sustainability of Council services and facilities and ensure the safety of workers, residents and visitors alike. Similarly, the identification and management of opportunities through the application of risk management principles ensures that Council is well positioned to take or increase risk in order to pursue opportunities.
- 1.2 Council recognises the environmental, social and economic importance of operating in a sustainable manner, ensuring a high level of environmental compliance and performance through continuous improvement and the implementation of our Environmental Management System. Our focus on environmental performance is supported by the Enterprise Risk Management System (ERMS) that includes compliance obligations and consideration of environmental aspects such as prevention of pollution, degradation of ecosystems and resource efficiency as part of the risk assessment process.
- 1.3 Critical incident and business continuity management minimises the risk to staff, protects property and guards Council's reputation from events that have, or are likely to have, noticeable and detrimental operational impact on Council. The ability to respond quickly to limit damage in the short window of opportunity that often occurs at the beginning of a crisis can serve to contain the potential costs to Council.
- 1.4 The principles of risk management require staff to make informed judgements based on best available information concerning the level and cost of risk and opportunity involved in achieving cost-effective outcomes. By implementing an ERMS throughout Council, we will be better positioned to meet our objectives and deliver services and infrastructure in a way that is sustainable and meets our customers' needs. The aim of the ERMS aligns with Delivery Program Objective L1.5 "reduce risks across Council".

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Policy



2. CONTEXT / BACKGROUND:

- 2.1 Port Stephens Council has a responsible approach to risk management, seeking to recognise and manage our exposure to risk in accordance with our vision, purpose and values.
- 2.2 We are committed to managing risk on a systematic, organisation-wide basis consistent with AS/NZS ISO 31000:2009 Risk management – Principles and guidelines, AS/NZS 4801:2001 Occupational Health & Safety Management Systems and AS/NZS ISO 14001:2015 Environmental Management Standards, HB203:2012 Managing Environmental-related risk. This methodology will create sustainable value by both minimising risks to the achievement of our objectives and by identifying potential opportunities, by ensuring the health and safety of our workers and by protecting our environment.
- 2.3 Our ERMS will also align with Council's Business Excellence Framework by facilitating continuous improvement.

3. SCOPE:

- 3.1 Our ERMS will comprehensively integrate all risks, including safety, environmental risks and business risks (financial, property, security, commercial, etc.), into our decision making, business planning and reporting at all levels. A consistent, holistic approach to risk management strengthens our ability to deliver more efficient and effective services to our community.
- 3.2 The key steps for implementing an ERMS across the organisation include:
 - a) Centralising all corporate risk, work health and safety and environmental management documents on the Enterprise Risk Management System on Council's intranet.
 - b) Progressively combining common documents to provide a simpler, more focused management system, a reduction in duplication, more effective audit management and a greater demonstration of due diligence.
 - c) Implementing a communication strategy for the ERMS.

4. DEFINITIONS:

Risk	Effect of uncertainty on objectives (Note: an effect is a deviation from the expected and can be positive and/or negative).
Risk management	Coordinated activities to direct and control an organisation with regard to risk.

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Policy

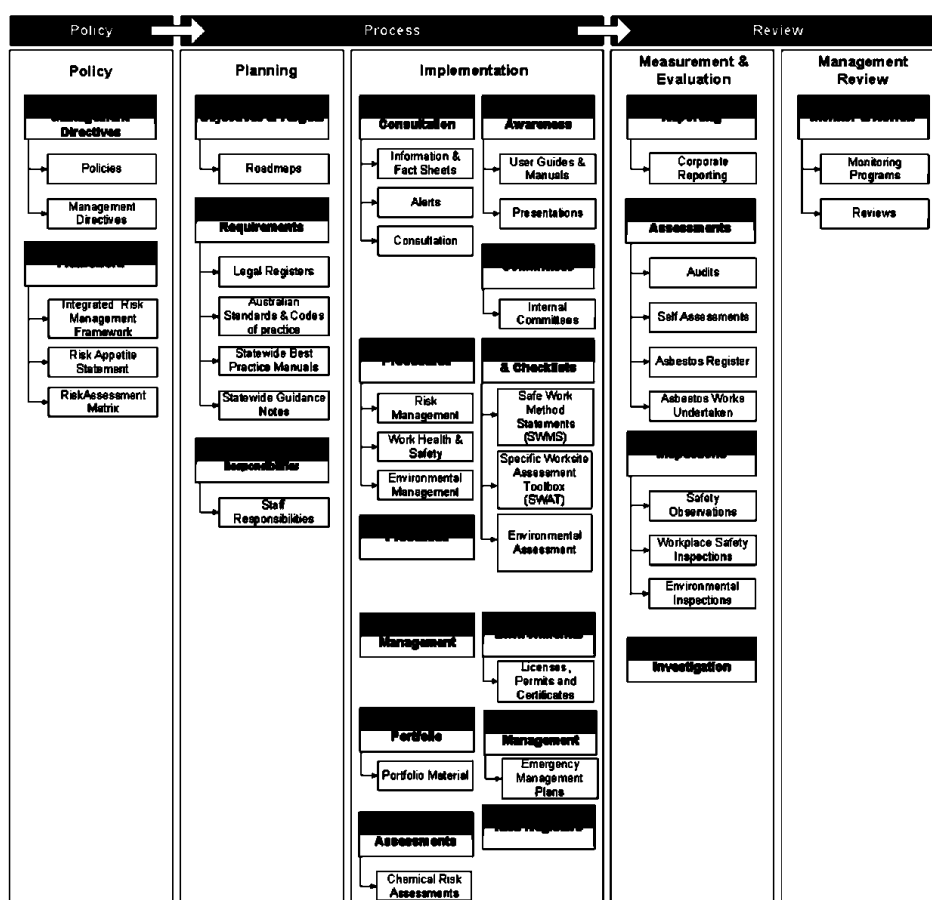


Risk management framework

Set of components that provide the foundations and organisational arrangements for designing, implementing, monitoring, reviewing and continually improving risk management throughout the organisation.

5. STATEMENT:

5.1 Port Stephens Council is committed to developing an effective Enterprise Risk Management System that clearly considers all major risks and opportunities integrated into one common framework. Our ERMS will focus on continually improving comprehensive risk management processes. Overview of the ERMS is shown below.



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Policy



- 5.2 Council is required to identify, evaluate, mitigate, monitor and report business continuity risks to ensure it's able to continue operations in the event of a material business interruption and to continue to provide critical services to the community and stakeholders.
- 5.3 Council is committed to empowering employees to assume accountability and responsibility for risk management in the workplace by creating and promoting a culture of participation and by providing a robust process to monitor and review the effectiveness of risk management across Council.

6. RESPONSIBILITIES:

- 6.1 Risk Management will be led by the Senior Leadership Team, i.e. the General Manager, Group Managers and Section Managers, with support from the Enterprise Risk Management Team. The Senior Leadership Team is committed to guiding effective risk management by the application of the principles detailed in AS/NZS ISO 31000:2009 Risk management – Principles and guidelines.
- 6.2 Every staff member is responsible to implement and embed risk management by:
 - a) identifying, managing and monitoring risks and opportunities in their areas of accountability;
 - b) communicating these areas of risk to their manager or supervisor;
 - c) taking measures to ensure their own safety, that of other employees, customers and other workers; and by
 - d) acting to reduce environmental harm by preventing pollution, degradation of ecosystems and minimising resource use.

7. RELATED DOCUMENTS:

- 7.1 Work Health and Safety Statement of Commitment.
- 7.2 Corporate Integrated Risk Management Framework.
- 7.3 Environment Policy.
- 7.4 Corporate Business Continuity Plan & Group Sub Plans

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EDRMS container No.	PSC2006-6848	EDRMS record No.	20/241526
Audience	Councillors, staff and community		
Process owner	Governance Section Manager		
Author	Risk Management Coordinator		
Review timeframe	Two years	Next review date	22/05/2022
Adoption date	10/06/2014		

VERSION HISTORY:

Version	Date	Author	Details	Minute No.
1.0	10/06/2014	Risk Management Coordinator	Original policy.	135
2.0	26/04/2016	Risk Management Coordinator	Updated into incorporate new Brand Identity Style Guide v1.0; amendments to risk appetite statement table; inclusion of opportunity; updates to environmental performance references; inclusion of key points of Critical Incident & Business Continuity Management Directive.	098

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Policy



Version	Date	Author	Details	Minute No.
3.0	22/05/2018	Risk Management Coordinator	<p>Reviewed the policy, included numbering to each paragraph, updated the version control and file number.</p> <p>1.2 – inserted IRMS.</p> <p>1.4, 2.3, 3.1, 3.2, 3.2.1, 3.2.3 & 5.1 – updated IRMS wording.</p> <p>4 – inserted risk management framework definition</p> <p>5 – deleted point 2), including 'Willingness to Accept risk table'.</p> <p>5 – inserted new risk table.</p> <p>6 – deleted point 2) and inserted 6.2.</p> <p>7 – deleted items 1 to 14 and inserted items 1 to 6.</p> <p>Adopted by Council.</p>	134

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Policy



Version	Date	Author	Details	Minute No.
4.0	23/06/2020	Enterprise Risk Manager	<p>Throughout Policy: updated terminology from “integrated” to “enterprise” per current structure.</p> <p>Updated policy and process owner to “Governance Section Manager”, per current structure.</p> <p>1.4: Updated relevant Operational Objective per current plan.</p> <p>2.2: Added relevant environmental standard HB203:2012</p>	117

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ITEM NO. 10

**FILE NO: 21/76136
EDRMS NO: PSC2021-00625**

**DRAFT INTEGRATED PLANNING AND REPORTING DOCUMENTS AND FEES
AND CHARGES**

REPORT OF: TIMOTHY CROSDALE - GROUP MANAGER CORPORATE
SERVICES
GROUP: CORPORATE SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Endorses the draft Integrated Planning and Reporting Framework documents, being the Delivery Program 2018 to 2022 including the Operational Plan 2021 to 2022 (**ATTACHMENT 1**), Long Term Financial Plan 2021 to 2031 (**ATTACHMENT 2**), Strategic Asset Management Plan 2021 to 2031 (**ATTACHMENT 3**), Workforce Plan 2018 to 2022 (**ATTACHMENT 4**) and the Fees and Charges 2021 to 2022 (**ATTACHMENT 5**).
- 2) Places the draft documents on public exhibition for a period of 28 days, invite submissions and report back to Council.

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

081	<p>Councillor Paul Le Mottee Councillor Ken Jordan</p> <p>It was resolved that Council:</p> <ol style="list-style-type: none">1) Endorses the draft Integrated Planning and Reporting Framework documents, being the Delivery Program 2018 to 2022 including the Operational Plan 2021 to 2022 (ATTACHMENT 1), Long Term Financial Plan 2021 to 2031 (ATTACHMENT 2), Strategic Asset Management Plan 2021 to 2031 (ATTACHMENT 3), Workforce Plan 2018 to 2022 (ATTACHMENT 4) and the Fees and Charges 2021 to 2022 (ATTACHMENT 5).2) Places the draft documents on public exhibition for a period of 28 days, invite submissions and report back to Council.
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The motion was carried.

BACKGROUND

The purpose of this report is to seek Council's endorsement to place the following draft documents which have been reviewed and amended on public exhibition for a period of 28 days and invite submissions, in accordance with the Local Government Act 1993 (Local Government Act):

- Delivery Program 2018 to 2022 including the Operational Plan 2021 to 2022.
- Long Term Financial Plan 2021 to 2031.
- Strategic Asset Management Plan 2021 to 2031.
- Workforce Plan 2018 to 2022.
- Fees and Charges 2021 to 2022.

As there are no changes to the Community Strategic Plan 2018-2028, this document does not require public exhibition.

We have extended our Delivery Program for an additional year to include our 2021 to 2022 program of works due to the Local Government elections being deferred until September 2021. The Delivery Program and Operational Plan are Council's response to the Community Strategic Plan detailing objectives and actions which contribute toward achieving the goals of the Community Strategic Plan.

To implement these plans they need to be appropriately resourced with human, capital and asset resources. The resourcing strategies consist of 3 plans, the Long Term Financial Plan, Strategic Asset Management Plan and the Workforce Plan which provide more detail on the financial, asset and workforce matters that Council is responsible for.

Council, also in accordance with the Local Government Act and other applicable legislation, charges and recovers approved fees and charges for any service it provides as contained within its schedule of fees and charges. All of Council's fees and charges are reviewed on an annual basis, however, Council cannot implement these fees until they have been placed on public exhibition and submissions considered.

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2018-2021
Governance	Provide a strong ethical governance structure.

FINANCIAL/RESOURCE IMPLICATIONS

Council is required to adopt the Operational Plan, Long Term Financial Plan and Fees and Charges before 30 June each year and cannot expend funds or charge fees unless the process, including public exhibition and consideration of submissions is undertaken.

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 Integrated Planning and Reporting Guidelines for NSW Local Government require that Councils review their Delivery Program and update the Long Term Financial Plan each year when preparing the Operational Plan. Council's endorsement is sought to place on public exhibition the extension of the Delivery Program for an additional year.

Section 405 of the Local Government Act requires that before the beginning of each financial year Council must have adopted a detailed plan for the year ahead and place the plan on public exhibition considering submissions prior to adoption.

Section 610 of the Local Government Act requires Council to place the fees and charges on public exhibition, considering submissions prior to adoption.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that failure to follow the public exhibition process will result in Council being unable to fund its operations and suffer loss of reputation.	Low	Adopt the recommendations.	Yes
There is a risk that Council will not endorse the draft documents to go on public exhibition placing Council in breach of legislation leading to reputational loss.	Low	Adopt the recommendations.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The Community Strategic Plan, Delivery Program and Operational Plans are founded on a quadruple bottom line basis of social, economic, environmental and governance implications through the four focus areas Our Community, Our Place, Our Environment and Our Council. The 4 focus areas provide a structure for all of the plans, enabling Council to address key actions while aiming to holistically meet the community's vision of 'A great lifestyle in a treasured environment'.

CONSULTATION

The draft documents have been developed in consultation with staff across Council.

Community input will be considered at a Council meeting in June 2021 following the public exhibition process and prior to adoption of the documents.

In accordance with local government legislation the draft Delivery Program and Operational Plan, draft Long Term Financial Plan, draft Strategic Asset Management Plan, draft Workforce Plan and draft Fees and Charges will go on public exhibition for 28 days.

The documents will be available for download from Council's website under the public exhibition section, with hard copies available for viewing at Council's administration building and libraries.

OPTIONS

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

ATTACHMENTS

- 1) Delivery Program and Operational Plans 2018-2022. (Provided under separate cover)
- 2) Long Term Financial Plan 2021-2031. (Provided under separate cover)
- 3) Strategic Asset Management Plan 2021-2031. (Provided under separate cover)
- 4) Workforce Plan 2018-2022. (Provided under separate cover)
- 5) Fees & Charges 2021-2022. (Provided under separate cover)

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ITEM NO. 11**FILE NO: 21/79087
EDRMS NO: T003-2021****T003-2021 - LINEN SERVICES FOR PORT STEPHENS BEACHSIDE HOLIDAY PARKS**

REPORT OF: TIM HAZELL - FINANCIAL SERVICES SECTION MANAGER
GROUP: CORPORATE SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) That pursuant to section 10A(2)(d) of the Local Government Act, 1993, the Council resolve to close to the public that part of its meetings to discuss Item on the Ordinary Council agenda namely T003-2021 - Linen Services for Port Stephens Beachside Holiday Parks.
- 2) That the reasons for closing the meeting to the public to consider this item be that:
 - i) The report and discussion will include details of commercial information of a confidential nature that would, if disclosed, prejudice the commercial position of the tenderers; and
 - ii) In particular, the report includes confidential pricing information in respect of the T003-2021 - Linen Services for Port Stephens Beachside Holiday Parks.
- 3) That on balance, it is considered that receipt and discussion of the matter in open Council would be contrary to the public interest, as disclosure of the confidential commercial information could compromise the commercial position of the tenderers and adversely affect Council's ability to attract competitive tenders for other contracts.
- 4) That the report of the closed part of the meeting is to remain confidential and that Council makes public its decision including the name and amount of the successful tenderer in accordance with Clause 179 of the Local Government (General) Regulation 2005.
- 5) That Council reject the tender submitted.

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

082	Councillor John Nell Councillor Jaimie Abbott It was resolved that Council reject the tender submitted.
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The motion was carried.

BACKGROUND

The purpose of this report is to reject the tender submission for the tender T003-2021 – Linen Services for Port Stephens Beachside Holiday Parks due to the submission being non-compliant with the tender specifications.

Port Stephens Beachside Holiday Parks comprises Fingal Bay Holiday Park, Halifax Holiday Park, Shoal Bay Holiday Park, Thou Walla and Port Stephens Koala Sanctuary. Each park requires the supply and laundering of quality linen products for their accommodation facilities. The specification and scope of supply is detailed in the tender documents.

The current linen services are delivered by a Sydney based service provided through annual quoted rates, these schedule of rates are current and are market driven.

The tender was advertised from 27 January 2021 and closed on 26 February 2021 with a total 1 submission received at the close of the tender period.

All About Linen Pty Ltd T/A South Pacific Laundry.

Evaluation Summary:

A summary of the evaluation is included in confidential **(ATTACHMENT 1)**. The tenderer did not fully complete the tender requirements.

The tender evaluation committee has deemed this tender submission as non-compliant.

Current Service Engagement:

The incumbent supplier has been engaged on an annual quotation basis and Council will continue with the current arrangement until further market analysis and a detailed financial review can take place. The current supplier is a cost effective option with no significant quality issues and will continue to supply linen to the holiday parks on this basis.

The weightings agreed for this tender were:

Criteria	Weighting (%)
Price	40
Commercial terms and Schedule Compliance	5
Service Delivery	20
Management & Resources	10
Current Commitments	5
Quality Assurance	10
Work, Health & Safety	10
Total	100

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2018-2021
Financial Management	Maintain strong financial sustainability.

FINANCIAL/RESOURCE IMPLICATIONS

There are no significant financial implications from rejecting the tender.

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

There are no significant legal, policy and risk implications.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

There are no significant sustainability implications.

CONSULTATION

Consultation with key stakeholders has been undertaken by the Holiday Parks Section.

Internal

Holiday Parks Business Manager.
 Holiday Parks Operations Manager.
 Holiday Parks Section Manager.

External

Nil.

OPTIONS

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

ATTACHMENTS

- 1) CONFIDENTIAL T003-2021 Linen Service TENDER EVALUATION Weighted Criteria Methodology Summary.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ITEM NO. 12**FILE NO: 21/83943
EDRMS NO: PSC2014-00800****DRAINAGE AT VI BARNETT FIELD IN RAYMOND TERRACE**

REPORT OF: JOHN MARETICH - ASSET SECTION MANAGER
GROUP: FACILITIES & SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) That Council receives and notes the information regarding Vi Barnett Field in Raymond Terrace.
-

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

083	Councillor Giacomo Arnott Councillor Ken Jordan It was resolved that Council receives and notes the information regarding Vi Barnett Field in Raymond Terrace.
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The motion was carried.

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

	Councillor Giacomo Arnott That Council: 1) Receives and notes the information regarding Vi Barnett Field in Raymond Terrace. 2) Will undertake planned consultation with Raymond Terrace Athletics Club by the end of April 2021. 3) Will undertake planned sewer line upgrades by the end of May 2021.
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The amendment lapsed without a seconder.

BACKGROUND

The purpose of this report is to provide Council with an update on Motion 056 raised at the 23 March 2021 Council meeting (**ATTACHMENT 1**). The motion relates to water quality concerns raised by the Raymond Terrace Athletics Club at Vi Barnett Oval, Raymond Terrace.

Council officers were notified of water quality sampling undertaken by members of the Raymond Terrace Athletics Club on 16 February 2021. Test results were received by Council officers on 9 March 2021. The microbiological test results returned readings containing E.coli and faecal coliforms. When found in water these microbiological bacteria can come from a number of sources being human waste, animal waste, agricultural waste and decomposing organic or plant materials. As a precautionary measure, Council officers advised the Athletics Club to cease use of the long jump pit (where the Club sample was taken) until further notice.

Since this notice, Council officers have been investigating potential sources that may be impacting water quality. A solid waste tank existed on-site prior to the construction of the new amenities building. This tank was remediated correctly and can be discounted as a potential source due to the time lapse (remediated October 2018).

The new amenities building has been subject to sewer blockages since commencing operation. The discharge sewer line from the new amenities building is currently planned for replacement in July 2021 to alleviate future sewer blockages. Council officers confirm that due to these blockages, there have been no instances of effluent overflow and discharge that could have been transported overland to the long jump pit.

Council's planned corrective actions are:

- To undertake the planned sewer line upgrades as soon as possible in consultation with the Raymond Terrace Athletics Club.
- Once sewer upgrade works are completed, further investigation will be able to determine whether the new amenities building was the source of water quality impacts.
- If the new amenities building is discounted as the source, further surface water testing will be undertaken with the intent of identifying the source of water quality impacts.

Other potential sources could relate to the flying fox camp at Ross Walbridge Reserve, organic material associated with playing surface maintenance and the wider stormwater catchment that drains to this low lying area.

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2018-2021
Infrastructure and Facilities	Maintain the Council's civil and community infrastructure to support the community.

FINANCIAL/RESOURCE IMPLICATIONS

Investigatory and corrective actions will be funded by recurrent operational budgets.

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

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
There is a risk to public health should the water quality concerns not be adequately managed.	Medium	The Raymond Terrace Athletics Club as the approved user of the facility has been advised to cease use of the long jump pit until further notice. The long jump pit has been cordoned off from public access until further notice.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Council officers are investigating the matter and will put in place corrective actions as soon as possible.

CONSULTATION

Consultation with key stakeholders has been undertaken by the Assets Section.

Internal

- Public Domain and Services
- Environmental Health
- Capital Works

External

- Raymond Terrace Athletics Club

OPTIONS

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

ATTACHMENTS

- 1) Motion 056 put forward at the Ordinary Meeting of Council on 23 March 2021.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ITEM 12 - ATTACHMENT 1 MOTION 056 PUT FORWARD AT THE ORDINARY MEETING OF COUNCIL ON 23 MARCH 2021.**MINUTES ORDINARY COUNCIL - 23 MARCH 2021****MOTIONS TO CONSIDER BUSINESS FOR WHICH NOTICE HAS NOT BEEN GIVEN****ORDINARY COUNCIL MEETING - 23 MARCH 2021
MOTION**

055	Councillor Giacomo Arnott Councillor John Nell It was resolved that Council: <ol style="list-style-type: none">1. Acknowledges the ongoing east coast low weather event battering the East Coast of NSW.2. Notes the impact of this weather event in the Port Stephens LGA, particularly on the Tomaree Peninsula and Raymond Terrace.3. Thanks Council staff who have been providing a 24/7 response to incidents and resident concerns, as well as working to ensure safety for locals where needed.4. Encourages any locals or businesses affected by the weather event to make use of the supports being offered as a result of the disaster declaration for the Local Government Area.5. Writes a letter of thanks to all of the emergency services operating in the LGA and working hard to respond to incidents, particularly the State Emergency Service.
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The Chairperson ruled that the business was a matter of great urgency and the motion was put and carried.

**ORDINARY COUNCIL MEETING - 23 MARCH 2021
MOTION**

056	Councillor Giacomo Arnott Councillor Paul Le Mottee It was resolved that Council: <ol style="list-style-type: none">1. Notes that there is a drainage problem at Vi Barnett Field in Raymond Terrace, resulting in sewerage overflows that are affecting the athletics field.2. Requests a report be prepared by Council staff for the 13 April 2021 Council meeting, outlining proposals to fix the problem as soon as possible.3. Thanks the team at Raymond Terrace Athletics Club for their ongoing support for sport in Raymond Terrace and beyond.
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The Chairperson ruled that the business was a matter of great urgency and the motion was put and carried.

ITEM NO. 13**FILE NO: 21/62335
EDRMS NO: PSC2017-00178****REQUEST FOR FINANCIAL ASSISTANCE**

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

RECOMMENDATION IS THAT COUNCIL:

- 1) Approves provision of financial assistance under Section 356 of the Local Government Act 1993 from Mayor funds and Ward funds to the following:-
 - a. Endorse the provision of funds to John Clarke - Mayoral funds – \$1000 donation towards the production of a new book focused on Worimi History - 'Just Dreaming' and place the proposal on public exhibition for a period of 28 days, in accordance with the Local Government Act 1993 to seek public comment.
 - b. Caring for our Port Stephens Youth (COPSY) – Jupiter – Mayoral funds - \$5600 donation towards the outgoings at the new Tilligerry facility and funding a new program – 'Youth Awareness'.
 - c. Port Stephens SES Rescue Unit – Mayoral funds - \$2189 donation towards the purchase of 2 thermal imaging cameras.
 - d. Ward funds – Cr Giacomo Arnott – Rapid Response – \$260 donation towards construction and installation of street signs for the Raymond Terrace Croquet Club to be undertaken by Council staff.
 - e. Ward funds – Cr John Nell – Rapid Response – \$500 donation towards funding the Nelson Bay Women's Bowling Club's 56th Water Wonderland Carnival.
 - f. Ward funds – Cr Steve Tucker – Rapid Response - \$500 donation towards hand tools for Tanilba Bay Golf Club volunteers.
 - g. Ward funds – Cr Steve Tucker – Rapid Response - \$153 donation towards cost of fire safety audit fee for the 1st Tilligerry Scout Group.
- 2) Should no submissions be received as a result of the public exhibition stated in 1a. above, the funds be approved.

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

084	Councillor John Nell Councillor Ken Jordan It was resolved that Council:
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MINUTES ORDINARY COUNCIL - 13 APRIL 2021

	<ol style="list-style-type: none">1) Approves provision of financial assistance under Section 356 of the Local Government Act 1993 from Mayor funds and Ward funds to the following:-<ol style="list-style-type: none">a. Endorse the provision of funds to John Clarke - Mayoral funds – \$1000 donation towards the production of a new book focused on Worimi History -‘Just Dreaming’ and place the proposal on public exhibition for a period of 28 days, in accordance with the Local Government Act 1993 to seek public comment.b. Caring for our Port Stephens Youth (COPSY) – Jupiter – Mayoral funds - \$5600 donation towards the outgoings at the new Tilligerry facility and funding a new program – ‘Youth Awareness’.c. Port Stephens SES Rescue Unit – Mayoral funds - \$2189 donation towards the purchase of 2 thermal imaging cameras.d. Ward funds – Cr Giacomo Arnott – Rapid Response – \$260 donation towards construction and installation of street signs for the Raymond Terrace Croquet Club to be undertaken by Council staff.e. Ward funds – Cr John Nell – Rapid Response – \$500 donation towards funding the Nelson Bay Women’s Bowling Club’s 56th Water Wonderland Carnival.f. Ward funds – Cr Steve Tucker – Rapid Response - \$500 donation towards hand tools for Tanilba Bay Golf Club volunteers.g. Ward funds – Cr Steve Tucker – Rapid Response - \$153 donation towards cost of fire safety audit fee for the 1st Tilligerry Scout Group.h. West Ward funds – \$1900 donation towards supporting the Raymond Terrace RSL Sub-Branch in the conduct of ANZAC Day services in 2021.2) Should no submissions be received as a result of the public exhibition stated in 1a. above, the funds be approved.
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The motion was carried.

BACKGROUND

The purpose of this report is to determine and, where required, authorise payment of financial assistance to recipients judged by the Mayor and or Councillors as deserving of public funding. The Grants and Donations Policy gives the Mayor and Councillors a wide discretion either to grant or to refuse any requests.

Council's Grants and Donations Policy provides the community, the Mayor and Councillors with a number of options when seeking financial assistance from Council. Those options being:

- 1) Mayoral Funds
- 2) Rapid Response
- 3) Community Financial Assistance Grants – (bi-annually)
- 4) Community Capacity Building

MINUTES ORDINARY COUNCIL - 13 APRIL 2021

Council is unable to grant approval of financial assistance to individuals unless it is performed in accordance with the Local Government Act 1993. This would mean that the financial assistance would need to be included in the Operational Plan or Council would need to advertise for 28 days of its intent to grant approval. Council can make donations to community groups.

The requests for financial assistance are shown below:

MAYORAL FUNDS

John Clarke (Individual)	A Port Stephens writer.	\$1000	Donations towards the production of a new book focused on Worimi History – ‘Just Dreaming’.
Caring for Our Port Stephens Youth (COPSY) - Jupiter	A community group whose purpose is to ensure the best possible, independent youth health and wellbeing service is available to satisfy the needs of the young people living in Port Stephens.	\$5600	Donation towards outgoings at the new Tilligerry facility and towards a new Youth Awareness program.
Port Stephens SES Unit	The NSW SES (New south Wales State Emergency Service) Port Stephens Unit is the local combat agency for floods, storms, tsunami and Road Crash Rescue (RCR).	\$2189	Donation towards the purchase of 2 thermal imaging cameras.

WARD FUNDS

Raymond Terrace Croquet Club	Community sporting club.	\$260	Rapid response donation towards construction and installation of street signs to undertaken by Council staff.
Nelson Bay Women's Bowling Club	Nelson Bay Women's Bowling Club has served the local community of the Tomaree Peninsula for over 65 years. The	\$500	Rapid response donation towards funding bowling carnival.

MINUTES ORDINARY COUNCIL - 13 APRIL 2021

	club hosts various bowls events to raise money for charity.		
Tanilba Bay Golf Club Volunteers	A community of volunteers who undertake maintenance for the golf club.	\$500	Donation towards the cost of new battery operated hand tools.
1 st Tilligerry Scout Group	The Scout Group involves boys and girls aged 6 – 26 in the Scout Program where they engage in peer to peer mentoring and healthy, outdoor adventurous activities.	\$153	Donation towards the cost of fire safety audit fee.

COMMUNITY STRATEGIC PLAN

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

FINANCIAL/RESOURCE IMPLICATIONS

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

LEGAL AND POLICY IMPLICATIONS

To qualify for assistance under Section 356(1) of the Local Government Act 1993, the purpose must assist the Council in the exercise of its functions. Functions under the Act include the provision of community, culture, health, sport and recreation services and facilities.

The policy interpretation required is whether the Council believes that:

- a) applicants are carrying out a function, which it, the Council, would otherwise undertake.

MINUTES ORDINARY COUNCIL - 13 APRIL 2021

- b) the funding will directly benefit the community of Port Stephens.
- c) applicants do not act for private gain.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that Council may set a precedent when allocating funds to the community and an expectation those funds will always be available.	Low	Adopt the recommendations.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Nil.

CONSULTATION

Consultation with key stakeholders has been undertaken by the General Manager's Office.

Consultation has been taken with the key stakeholders to ensure budget requirements are met and approved.

OPTIONS

- 1) Accept the recommendations.
- 2) Vary the dollar amount before granting each or any request.
- 3) Decline to fund all the requests.

ATTACHMENTS

Nil.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ITEM NO. 14**FILE NO: 21/80807
EDRMS NO: PSC2017-00015****INFORMATION PAPERS****REPORT OF: WAYNE WALLIS - GENERAL MANAGER
GROUP: GENERAL MANAGER'S OFFICE**

RECOMMENDATION IS THAT COUNCIL:

Receives and notes the Information Papers listed below being presented to Council on 13 April 2021.

No:	Report Title	Page:
1	Designated Persons' Return	302
2	Elected Members Professional Development Report January – March 2021	303
3	Council Resolutions	305

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

085	Councillor John Nell Councillor Steve Tucker It was resolved that Council receives and notes the Information Papers listed below being presented to Council on 13 April 2021. <hr/> <table><tr><th>No:</th><th>Report Title</th></tr><tr><td>1</td><td>Designated Persons' Return</td></tr><tr><td>2</td><td>Elected Members Professional Development Report January – March 2021</td></tr><tr><td>3</td><td>Council Resolutions</td></tr></table>	No:	Report Title	1	Designated Persons' Return	2	Elected Members Professional Development Report January – March 2021	3	Council Resolutions
No:	Report Title								
1	Designated Persons' Return								
2	Elected Members Professional Development Report January – March 2021								
3	Council Resolutions								

The motion was carried.

INFORMATION PAPERS

ITEM NO. 1

**FILE NO: 21/73388
EDRMS NO: PSC2020-02093**

DESIGNATED PERSONS' RETURN

REPORT OF: TONY WICKHAM - GOVERNANCE SECTION MANAGER
GROUP: GENERAL MANAGER'S OFFICE

BACKGROUND

The purpose of this report is to table Designated Persons' Return/s (return) submitted.

In accordance with the Part 4 – Pecuniary Interest of the Code of Conduct, all designated persons' are required to submit a return. Returns are to be tabled at the first Council meeting after the lodgement date.

The following is a list of position/s who have submitted return/s:

- Ranger (PSC1056).

ATTACHMENTS

Nil.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

- 1) Designated Persons' Return.

ITEM NO. 2

FILE NO: 21/83300
EDRMS NO: PSC2017-00739

ELECTED MEMBERS PROFESSIONAL DEVELOPMENT REPORT - JANUARY TO MARCH 2021

REPORT OF: TONY WICKHAM - GOVERNANCE SECTION MANAGER
 GROUP: GENERAL MANAGER'S OFFICE

BACKGROUND

The purpose of this report is to provide an account of the expenses incurred by the Elected Members in accordance with clause 5.14 of the Councillor Induction and Professional Development Policy for the period January to March 2021.

	Mayor Palmer	Cr Abbott	Cr Arnott	Cr Doohan	Cr Dunkley	Cr Jordan	Cr Le Mottee	Cr Nell	Cr Smith	Cr Tucker
AICD membership renewal ¹					\$550				\$550	\$550
AICD Governance Summit ¹	\$1649				\$1649					
ALGA National General Assembly ²	\$989				\$989					
LGNSW Destination & Visitor Economy Conference ³	\$773							\$773		
Total	\$3411	\$0	\$0	\$0	\$3188	\$0	\$0	\$773	\$550	\$550

¹AICD – Australian Institute of Company Directors

²ALGA – Australian Local Government Association

³LGNSW – Local Government NSW

ATTACHMENTS

Nil.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ITEM NO. 3

**FILE NO: 21/62285
EDRMS NO: PSC2017-00106**

COUNCIL RESOLUTIONS

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

BACKGROUND

The purpose of this report is to inform the Mayor and Councillors of the status of all matters to be dealt with arising out of the proceedings of previous meetings of the Council in accordance with the Code of Meeting Practice.

ATTACHMENTS

- 1) Corporate Services Group report.
- 2) Development Services Group report.
- 3) Facilities & Services Group report.
- 4) General Manager's Office report.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ITEM 3 - ATTACHMENT 1 CORPORATE SERVICES GROUP REPORT.


Outstanding	Division: Corporate Services	Date From: 26/09/2017
	Committee:	Date To: 23/03/2021
	Officer:	
Action Sheets Report		Printed: Tuesday, 6 April 2021

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 27/03/2018	Crosdale, Timothy	COMPULSORY ACQUISITION OF AN EASEMENT FOR ACCESS OVER PART OF 6 GOVERNMENT ROAD, SHOAL BAY	30/12/2021	28/03/2018	
13 066		Crosdale, Timothy				18/66656
1 Apr 2021 Awaiting Minister's approval to proceed with the compulsory acquisition.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 12/02/2019	Crosdale, Timothy	King Street, Raymond Terrace Easements	30/12/2021	14/02/2019	
3		Crosdale, Timothy				19/39843
1 Apr 2021 The Minister for Local Government has approved Council's application to compulsorily acquire an easement through 24A and 26 King Street, Raymond Terrace, for the purposes of construction of a shared pedestrian pathway. Proposed Acquisition Notices have been served on the land owners.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 28/05/2019	Crosdale, Timothy	COMPULSORY ACQUISITION OF PART OF VICTORIA PARADE RESERVE NELSON BAY FOR ROAD PURPOSES	30/12/2021	29/05/2019	
6 110		Crosdale, Timothy				19/148388
1 Apr 2021 Waiting on Aboriginal Land Claim determination by Crown Lands.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 23/07/2019	Crosdale, Timothy	GRANT OF EASEMENTS IN FAVOUR OF AGL - PUNT ROAD, TOMAGO	30/06/2021		
7 169		Crosdale, Timothy				19/200498

ITEM 3 - ATTACHMENT 1 CORPORATE SERVICES GROUP REPORT.


Outstanding	Division: Corporate Services	Date From: 26/09/2017
	Committee:	Date To: 23/03/2021
Action Sheets Report	Officer:	Printed: Tuesday, 6 April 2021

1 Apr 2021
Still in negotiations between AGL and LGL.

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 11/02/2020	Crosdale, Timothy	COMPULSORY ACQUISITION OF PART 879 SWAN BAY ROAD, SWAN BAY FOR ROAD WIDENING PURPOSE	30/12/2021	12/02/2020	
2028		Crosdale, Timothy				20/39141
1 Apr 2021						
Awaiting Minister's approval to proceed with the compulsory acquisition.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 22/09/2020	Crosdale, Timothy	Newline Road, Raymond Terrace	30/06/2021		
2199		Crosdale, Timothy				20/288489
1 Apr 2021						
Approved. Contracts are being prepared by HWC. Awaiting works to be finalised for survey.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 9/02/2021	Crosdale, Timothy	SHOAL BAY CAR PARK	30/04/2021		
6016		Crosdale, Timothy				21/33235
1 Apr 2021						
Investigate the use and feasibility to construct a car park on Crown Land and prepare a report for consideration at a future Council meeting.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 23/02/2021	Crosdale, Timothy	Purchase of Property at Shoal Bay	30/04/2021		
2038		Crosdale, Timothy				21/46402

ITEM 3 - ATTACHMENT 1 CORPORATE SERVICES GROUP REPORT.


Outstanding	Division: Corporate Services	Date From: 26/09/2017
	Committee:	Date To: 23/03/2021
Action Sheets Report	Officer:	Printed: Tuesday, 6 April 2021

1 Apr 2021
Investigate the feasibility of a potential purchase and prepare a report for consideration at a future Council meeting.

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 9/03/2021	Crosdale, Timothy	Proposed sale of land - 77 Dawson Road, Raymond Terrace (Part)	30/06/2021	11/03/2021	
1 051		Crosdale, Timothy				21/60805
1 Apr 2021 Revised Target Date changed From: 30 Jun 2021 To: 30 Jun 2021						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 23/03/2021	Hazell, Tim	Policy Review - Related Party Disclosures Policy	22/04/2021	24/03/2021	
3 060		Crosdale, Timothy				21/77787
1 Apr 2021 Policy currently on exhibition.						

ITEM 3 - ATTACHMENT 2 DEVELOPMENT SERVICES GROUP REPORT.


Outstanding	Division: Development Services	Date From: 26/09/2017
	Committee:	Date To: 23/03/2021
	Officer:	
Action Sheets Report	Printed: Tuesday, 6 April 2021	

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 25/08/2020	Drinan, Kate	DEVELOPMENT APPLICATION 16-2019-679-1 FOR DEMOLITION OF EXISTING STRUCTURE AND CONSTRUCTION OF SHOPTOP HOUSING AND DETACHED DWELLING AT 26 KING STREET, RAYMOND TERRACE	22/06/2021		
1		Pearl, Steven				20/265439
151						
11 Mar 2021						
Revised Target Date changed From: 23 Mar 2021 To: 22 Jun 2021						
Reason: DA 16-2019-679-1 will be reported back to council 22 June 2021.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 9/02/2021	Drinan, Kate	Caravan Parks / Manufactured Housing Estates - Notification of internal residents of alterations and additions to land lease villages	19/03/2021		
1		Pearl, Steven				21/33235
011						
11 Feb 2021						
Revised Target Date changed From: 23 Feb 2021 To: 19 Mar 2021						
Reason: Amend the Community Engagement Strategy to require reasonable attempts be made to notify the relevant residents committee or equivalent in the event that a development application for alterations and additions or a modification application is received for a caravan park/manufactured housing estate.						
Place the revised Community Engagement Strategy on public exhibition for a period of 28 days and should no submissions be received, the strategy be adopted without a further report to Council.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 9/03/2021	Drinan, Kate	DEVELOPMENT APPLICATION 16-2020-357-1 FOR A SINGLE STOREY DWELLING AT 918 NEWLINE ROAD, EAGLETON (LOT 31 DP 840177)	13/04/2021	10/03/2021	

ITEM 3 - ATTACHMENT 2 DEVELOPMENT SERVICES GROUP REPORT.



Outstanding	Division: Development Services	Date From: 26/09/2017
	Committee:	Date To: 23/03/2021
	Officer:	
Action Sheets Report		Printed: Tuesday, 6 April 2021

1	Pearl, Steven	21/60805
045		
25 Mar 2021		
Revised Target Date changed From: 14 Apr 2021 To: 13 Apr 2021		
Reason: Site inspection requested by Councillors, reporting back to Council after site inspection.		

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 9/03/2021	Drinan, Kate	DEVELOPMENT APPLICATION 16-2020-302-1 FOR A DUAL OCCUPANCY (1 EXISTING) AND FLOOD MOUND AT 814 HINTON ROAD, OSTERLEY (LOT 29 DP 871241)	13/04/2021	10/03/2021	
2		Pearl, Steven				21/60805
046						
25 Mar 2021						
Revised Target Date changed From: 14 Apr 2021 To: 13 Apr 2021						
Reason: Site inspection requested by Councillors, reporting back to Council after site inspection.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 9/03/2021	Drinan, Kate	DEVELOPMENT APPLICATION 16-2020-477-1 FOR 2 SEMI-DETACHED DWELLINGS & A 1 INTO 2 LOT TORRENS TITLE SUBDIVISION AT 6 BEENONG CLOSE, NELSON BAY (LOT 196 DP 9165)	13/04/2021	10/03/2021	
3		Pearl, Steven				21/60805
047						
25 Mar 2021						
Revised Target Date changed From: 14 Apr 2021 To: 13 Apr 2021						
Reason: Site inspection requested by Councillors, reporting back to Council after site inspection.						

ITEM 3 - ATTACHMENT 2 DEVELOPMENT SERVICES GROUP REPORT.

Outstanding	Division: Development Services	Date From: 26/09/2017
	Committee:	Date To: 23/03/2021
	Officer:	
Action Sheets Report		Printed: Tuesday, 6 April 2021

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 23/03/2021	Drinan, Kate	Policy Review - Asbestos Management Policy	27/04/2021	24/03/2021	
2 059		Peart, Steven				21/77787
25 Mar 2021 Revised Target Date changed From: 6 Apr 2021 To: 27 Apr 2021 Reason: Policy Review: Asbestos Management Policy currently on exhibition until 23 April 2021.						

ITEM 3 - ATTACHMENT 3 FACILITIES & SERVICES GROUP REPORT.


Outstanding	Division: Facilities & Services	Date From: 26/09/2017
	Committee:	Date To: 23/03/2021
	Officer:	
Action Sheets Report	Printed: Tuesday, 6 April 2021	

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 10/12/2019	Maretich, John	Solar Infrastructure	31/08/2021	11/12/2019	
6		Kable, Gregory				19/388450
264						
1 Apr 2021						
Project will proceed through normal procurement methods and is being scheduled.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 10/12/2019	Gutsche, Tammy	GREEN WASTE DROP OFF - SALAMANDER BAY	30/06/2021	11/12/2019	
7		Kable, Gregory				19/388450
265						
1 Apr 2021						
Will be considered as part of the Waste Management Strategy.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 25/02/2020	Lamont, Brock	Indoor Sports Facility	30/06/2021	26/02/2020	
4		Kable, Gregory				20/50488
042						
1 Apr 2021						
Current discussions with the Dept of Education about co-sharing a single facility has become not viable. West Ward Sports Council discussed item at recent meeting. Business case development and feasibility to be developed once facility parameters agreed.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 9/06/2020	Stewart, Adam	Naming of Pathway, Gan Gan Road, Anna Bay	30/04/2021	10/06/2020	
1		Kable, Gregory				20/164033
101						
1 Apr 2021						
Proposals have been received from the contractors, which will then be presented to Central Ward Councillors.						

ITEM 3 - ATTACHMENT 3 FACILITIES & SERVICES GROUP REPORT.


Outstanding	Division: Facilities & Services	Date From: 26/09/2017
	Committee:	Date To: 23/03/2021
Action Sheets Report	Officer:	Printed: Tuesday, 6 April 2021

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 14/07/2020	Lamont, Brock	REVIEW OF THE OFF LEASH DOG AREAS AND TIMES AT ANNA BAY / BIRUBI POINT, FISHERMANS BAY AND BOAT HARBOUR	30/06/2021		
1 138		Kable, Gregory				20/192934
1 Apr 2021 The findings of the investigation will be presented to Council in May 2021.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 14/07/2020	Stewart, Adam	Tomaree Headland	31/07/2022		
2 139		Kable, Gregory				20/192934
1 Apr 2021 Council has undertaken a site review with National Parks as part of their footpath design assessment. It should be noted that National Parks are still in design phase of this project and at present Council has not allocated funds. Though options are being assessed for a funding source for this project.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 24/11/2020	Miles, Philip	Disposal of Surplus Excavated Materials at Newcastle Airport Development Project Site.	30/09/2021		
11 261		Kable, Gregory				20/358525
1 Apr 2021 Development modification required and legal contracts to be drawn up.						

ITEM 3 - ATTACHMENT 3 FACILITIES & SERVICES GROUP REPORT.



Outstanding	Division: Facilities & Services	Date From: 26/09/2017
	Committee:	Date To: 23/03/2021
Action Sheets Report	Officer:	Printed: Tuesday, 6 April 2021

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 8/12/2020	Stewart, Adam	Fly Point and Little Beach Parking/SMART Parking	28/05/2021		
3		Kable, Gregory				20/391301
1 Apr 2021 Report is being prepared and will be reported back to Council in May 2021.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 9/02/2021	Stewart, Adam	5G Small Cell Technology Rollout in Port Stephens	30/06/2021		
3		Kable, Gregory				21/33235
006						
1 Apr 2021 Works have not commenced given other priorities. Expect this work to be completed by end of June 2021.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 9/02/2021	Lamont, Brock	MEDOWIE REGIONAL PLAYGROUND AND TOWN CENTRE	31/05/2021		
2		Kable, Gregory				21/33235
012						
1 Apr 2021 Staff will investigate and prepare a report for Council as per Notice of Motion.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 9/02/2021	Stewart, Adam	ROAD RESEALS ACROSS PORT STEPHENS	30/06/2021		
4		Kable, Gregory				21/33235
014						
1 Apr 2021 Staff will prepare a report for Council with road recommendations as per Notice of Motion.						

ITEM 3 - ATTACHMENT 3 FACILITIES & SERVICES GROUP REPORT.

Outstanding	Division: Facilities & Services	Date From: 26/09/2017
	Committee:	Date To: 23/03/2021
	Officer:	
Action Sheets Report		Printed: Tuesday, 6 April 2021

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 9/02/2021	Stewart, Adam	FERN BAY SHARED PATHWAY	28/05/2021		
7		Kable, Gregory				21/33235
017						
1 Apr 2021 Staff will start the process to apply for developer contributions.						

ITEM 3 - ATTACHMENT 4 GENERAL MANAGER'S OFFICE REPORT.

Outstanding	Division: General Manager's Office	Date From: 26/09/2017
	Committee:	Date To: 23/03/2021
	Officer:	
Action Sheets Report		Printed: Tuesday, 6 April 2021

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 23/03/2021	Edwards, Ann	Request for Financial Assistance	22/04/2021	24/03/2021	
5 062		Wallis, Wayne				21/77787
Revised Target Date changed to 22 Apr 2021. Reason: Placed on public exhibition until 21 April 2021.						

NOTICES OF MOTION

MINUTES ORDINARY COUNCIL - 13 APRIL 2021

Mayor Ryan Palmer vacated the chair at 8:12pm, due to a conflict of interest. The Deputy Mayor, Cr Paul Le Mottee chaired the meeting.

General Manager left the meeting at 8.12pm, due to a conflict of interest.

NOTICE OF MOTION

ITEM NO. 1

FILE NO: 21/80184

EDRMS NO: PSC2017-00019

AIRFARE INITIATIVE

COUNCILLOR: GIACOMO ARNOTT

THAT COUNCIL:

- 1) Acknowledges the Federal Government's "airfare initiative", which subsidises 800,000 domestic airfares with the aim of assisting in the economic recovery of tourist areas.
 - 2) Notes that Newcastle Airport has no flights inbound being subsidised, and that Port Stephens is not listed as a destination in the initiative.
 - 3) Notes the tourism-heavy nature of industry in Port Stephens, particularly in the Tomaree Peninsula, and the negative impact that COVID has had on it.
 - 4) Assures the tourism industry in Port Stephens that Council is doing everything it can to support it.
 - 5) Writes to Meryl Swanson MP, Federal Member for Paterson, requesting her advocacy to have Newcastle Airport and Port Stephens included in the program.
-

ORDINARY COUNCIL MEETING - 13 APRIL 2021 MOTION

086	Councillor Giacomo Arnott Councillor John Nell It was resolved that Council: 1) Acknowledges the Federal Government's "airfare initiative", which subsidises 800,000 domestic airfares with the aim of assisting in the economic recovery of tourist areas. 2) Notes that Newcastle Airport has no flights inbound being subsidised, and that Port Stephens is not listed as a destination in the initiative.
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MINUTES ORDINARY COUNCIL - 13 APRIL 2021

	<ul style="list-style-type: none">3) Notes the tourism-heavy nature of industry in Port Stephens, particularly in the Tomaree Peninsula, and the negative impact that COVID has had on it.4) Assures the tourism industry in Port Stephens that Council is doing everything it can to support it.5) Writes to Meryl Swanson MP, Federal Member for Paterson, requesting her advocacy to have Newcastle Airport and Port Stephens included in the program.
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The motion was carried.

BACKGROUND REPORT OF: JANELLE GARDNER – ACTING STRATEGY AND ENVIRONMENT SECTION MANAGER

BACKGROUND

On 11 March 2021, the Federal Government announced the Tourism Aviation Network Support (TANS) Program aimed at directing targeted support to regional tourism following the end of the Jobkeeper program.

This program was developed to provide support to regions across Australia who had been impacted by the loss of interstate and international tourism. The program included destinations such as Broome, Kangaroo Island, Far North Queensland and Darwin. The program allows consumers to access reduced ticket prices at the time of booking and is expected to drive tourism aviation surge capacity.

Port Stephens is one of the most popular regional tourism destinations in NSW, with tourism output estimated at \$444.521 million and the industry supporting 2,085 jobs (Remplan, March 2021).

COVID-19 has a significant impact on the Port Stephens visitor economy flowing on across our community to a broad range of businesses from local professional services to larger wholesale food and beverage suppliers and transport providers.

In the very early stages of international visitor restrictions, Port Stephens Council allocated \$500,000 to a Tourism and Business Support Fund. This fund focused on marketing support to attract visitors along with training, advice and guidance programs for business during this time.

Since restrictions were eased, many businesses across Port Stephens have seen growth, however, there are still those that are suffering the impacts of COVID-19. It is vital to their long-term viability that ongoing support is provided to these businesses.

As part of Council's commitment to making business growth easier and growing overnight visitor spend, Council is working closely with Destination Port Stephens

MINUTES ORDINARY COUNCIL - 13 APRIL 2021

(DPS) and Newcastle Airport Pty Ltd to advocate for incentives to drive ongoing visitation to Port Stephens.

This week, Newcastle Airport confirmed that it was included in the TANS program for outbound flights only. Newcastle Airport and Port Stephens Council will continue to advocate for inbound flights to the region to be included in this program.

In addition, Council will write to Meryl Swanson MP, Federal Member for Paterson to ask for her support in further advocating for the inclusion of Newcastle Airport in further stages of the Tourism Aviation Network Support Program.

FINANCIAL/RESOURCE IMPLICATIONS

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

ATTACHMENTS

Nil.

Mayor Ryan Palmer returned to the meeting at 8:17pm.
The General Manager returned to the meeting at 8.17pm.

CONFIDENTIAL ITEMS

In accordance with Section 10A, of the Local Government Act 1993, Council can close part of a meeting to the public to consider matters involving personnel, personal ratepayer hardship, commercial information, nature and location of a place or item of Aboriginal significance on community land, matters affecting the security of council, councillors, staff or council property and matters that could be prejudice to the maintenance of law.

Further information on any item that is listed for consideration as a confidential item can be sought by contacting Council.

ORDINARY COUNCIL MEETING – 13 APRIL 2021 MOTION

087	Councillor Ken Jordan Councillor John Nell It was resolved that Council move into confidential session.
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The following Council officers were present for the Confidential Session:

Senior Governance Officer

CONFIDENTIAL

MAYORAL MINUTE

ITEM NO. 1

**FILE NO: 21/94638
EDRMS NO: PSC2015-01024**

DRAINAGE INVESTIGATION - LEMON TREE PASSAGE

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

088	Mayor Ryan Palmer Councillor John Nell It was resolved that Council commence the drainage investigation at Lemon Tree Passage and potential property acquisition as outlined in the report.
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The motion was carried.

CONFIDENTIAL

ITEM NO. 1

**FILE NO: 20/351114
EDRMS NO: PSC2013-02079**

PROPOSED SALE OF LAND IN RAYMOND TERRACE

**REPORT OF: TIMOTHY CROSDALE - GROUP MANAGER CORPORATE
SERVICES**

GROUP: CORPORATE SERVICES

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

089	<p>Councillor Giacomo Arnott Councillor Ken Jordan</p> <p>It was resolved that Council:</p> <ol style="list-style-type: none">1) Authorise the sale of the lands identified in this report, on the confidential terms and conditions, outlined in this report.2) Authorise the creation of easement for access and reticulation of services in favour of the purchaser over Council owned land at 27 Sturgeon Street, Raymond Street.3) Authorises the Mayor and General Manager to sign and affix the Seal of Council to all relevant documents, including Put and Call Option Deed, Contracts for Sale and easement documentation.
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The motion was carried.

ITEM NO. 2**FILE NO: 21/64335
EDRMS NO: PSC2006-2273****PROPOSED CLOSURE AND SALE OF PATHWAY IN BOAT HARBOUR****REPORT OF: TIMOTHY CROSDALE - GROUP MANAGER CORPORATE
SERVICES****GROUP: CORPORATE SERVICES**

Councillor Ken Jordan left the meeting at 8:30pm.

Councillor Ken Jordan returned to the meeting at 8:31pm.

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

090	Councillor John Nell Councillor Paul Le Mottee It was resolved that Council: <ol style="list-style-type: none">1) Consents to the closure of the pathway between 31 and 33 One Mile Close, Boat Harbour.2) Completes required Council Road Closure Process under Part 4 Division 3 of the Roads Act, 1993, seeking consent if required by Crown Lands.3) Prepares a Plan of First Title Creation and takes all steps required to complete registration by the Land Registry Services NSW.4) Consents to the sale of pathway following closure, on the confidential terms and conditions in this report.5) Authorises the Mayor and General Manager to sign and affix the Seal of Council to all relevant documents required to effect the closure and sale.
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The motion was carried.

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

091	Councillor Giacomo Arnott Councillor Jaimie Abbott It was resolved that Council move out of confidential session.
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There being no further business the meeting closed at 8.34pm.