

MINUTES 14 OCTOBER 2014



Minutes of Ordinary meeting of the Port Stephens Council held in the Council Chambers, Raymond Terrace on 14 October 2014, commencing at 6.12pm.

PRESENT: Mayor B MacKenzie; Councillors G. Dingle; K. Jordan; P. Kafer; P. Le Mottee; J. Morello; J Nell; S. Tucker; General Manager; Acting Corporate Services Group Manager; Facilities and Services Group Manager; Development Services Group Manager and Governance Manager.

254	Councillor John Morello Councillor John Nell
	It was resolved that the apologies from Councillor Sally Dover and Cr Chris Doohan be received and noted.
255	Councillor Paul Le Mottee Councillor Ken Jordan
	It was resolved that the Minutes of the Ordinary Meeting of Port Stephens Council held on 23 September 2014 be confirmed.
	Cr Paul Le Mottee declared a pecuniary conflict of interest in Item 1 and 2 of the Council Reports. The nature of the interest is that the Le Mottee Group has done survey work on the subject sites.

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MOTIONS TO CLOSE

ITEM NO. 1

FILE NO: PSC2005-0970

MOTION TO CLOSE MEETING TO THE PUBLIC

REPORT OF: TONY WICKHAM – EXECUTIVE OFFICER

GROUP: GENERAL MANAGER'S OFFICE

RECOMMENDATION:

- 1) That pursuant to section 10A(2) (c) and (d) (i) of the Local Government Act, 1993, the Council resolve to close to the public that part of its meetings to discuss Confidential Item 1 on the agenda namely **Proposed Development of 3 Tarrant Road, Salamander Bay.**
- 2) That the reasons for closing the meeting to the public to consider this item be that the report and discussion will include:
 - a) commercial information of a confidential nature that would, if disclosed, confer a commercial advantage on a person with whom the Council proposes to conduct business.
 - b) details of commercial information of a confidential nature that would, if disclosed, prejudice the commercial position of the person who supplied it.
- 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 it may prejudice Council's commercial position and Council should have the same protection for its confidential commercial activities as that applying to other persons.
- 4) That the minutes of the closed part of the meeting are to be made public as soon as possible after the meeting and the report is to remain confidential.

ORDINARY COUNCIL MEETING – 14 OCTOBER 2014

MOTION

256	Councillor Steve Tucker Councillor Ken Jordan
	It was resolved that the recommendation be adopted.

COUNCIL REPORTS

ITEM NO. 1

FILE NO: 16-2014-221-1

DEVELOPMENT APPLICATION FOR MULTIPLE DWELLING HOUSING AND FOUR LOT SUBDIVISION AT NO. 116 PORT STEPHENS STREET, RAYMOND TERRACE

**REPORT OF: MATTHEW BROWN – DEVELOPMENT ASSESSMENT AND COMPLIANCE
SECTION MANAGER
GROUP: DEVELOPMENT SERVICES**

RECOMMENDATION IS THAT COUNCIL:

Refuse Development Application 16-2014-221-1 for Multiple Dwelling Housing and Subdivision at No.116 Port Stephens Street, Raymond Terrace for the following reasons;

- 1) The site is not suitable for the proposed development (s.79C(1)(c) *Environmental Planning and Assessment Act (EP&A Act 1979)*) for the following reasons;
 - a. The majority of the site is located within a floodway and high provisional hazard category for 5% Annual Exceedance Probability (AEP) and greater.
 - b. The proposal will result in the intensification of development within the floodway and increase safety risks to the occupants of the development and adjoining properties.
 - 2) The development is inconsistent with the aims and objectives of the R2 Low Density Residential Zone as the development is not compatible with the flood risk of the area (s.79C(1)(a)(i) *EP&A Act 1979*).
 - 3) The development is inconsistent with clause 7.3 'Flood Planning' of *Port Stephens Local Environmental Plan 2013* (s.79C(1)(a)(i) *EP&A Act 1979*). The development of the site for four multi-dwelling houses and associated subdivision is not compatible with the land's high risk flood hazard and would result in unacceptable flood risk to life and property.
 - 4) The development fails to conform to the Floodplain Management in Australia: Best Practice Principles and Guidelines (CSIRO, 2000), NSW Floodplain Development Manual 2005 and the Draft Port Stephens Council Areas Affected by Flooding and/or Inundation Policy.
 - 5) The development is inappropriate for the site given the site is within a high risk flood area and it is therefore not within the public interest (s.79C(1)(e) *EP&A Act 1979*).
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MINUTES FOR ORDINARY MEETING – 14 OCTOBER 2014**ORDINARY COUNCIL MEETING – 14 OCTOBER 2014****MOTION**

257	Councillor Ken Jordan Councillor Paul Le Mottee
	It was resolved that Council move into Committee of the Whole.

Cr Paul Le Mottee left the meeting at 6.14pm prior to Item 1.

COMMITTEE OF THE WHOLE RECOMMENDATION

	Mayor Bruce MacKenzie Councillor John Morello
	That the recommendation be adopted.

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

Those for the Motion: Mayor Bruce MacKenzie, Crs Ken Jordan, Steve Tucker and John Morello.

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

MOTION

The Council meeting was adjourned at 7.05pm for a period of five minutes.

The Council meeting resumed at 7.12 pm with all in attendance at the adjournment being present, with the exception of Cr Paul Le Mottee.

259	Councillor Ken Jordan Councillor John Morello
	It was resolved that Council approve development application 16-2014-221-1 for Multiple Dwelling Housing and Subdivision at No.116 Port Stephens Street, Raymond Terrace, in principle, and request the General Manager to provide draft conditions of consent to the next Council meeting on 28 October 2014.

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, Steve Tucker and John Morello.

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

The Motion was carried on the casting vote of the Acting Mayor.

BACKGROUND

The purpose of this report is to present to Council for determination development application 16-2014-221-1 for multi-dwelling housing and subdivision at No.116 Port Stephens Street, Raymond Terrace (the 'subject site'). The application was called by both Mayor MacKenzie and Councillor Jordan and is put before Council on this basis.

The applicant seeks approval for the construction of four multi-dwelling housing units and associated four lot Torrens title subdivision. The subject site is zoned R2 Low Density Residential under *Port Stephens Local Environmental Plan 2013* (PSLEP2013). The development is permissible within the R2 Low Density Residential zone, however, does not satisfy the objectives of the zone given it is not compatible with the flood risk of the site. The proposal fails to comply with clause 7.3 'Flood Planning' PSLEP2013 and the provisions of the NSW Floodplain Development Manual, therefore is not supported.

Council staff have consistently advised the owner/applicant over the last eight years that residential intensification (over and above a standard lower density dwelling) of the site is unlikely to be supported due to flooding. Previous correspondence to the owner/applicant in 2006 (relating to proposed dual occupancy development) advised that the site was located in a very high and extreme flooding hazard zone and that no additional dwellings would be permitted. Further it has been advised that the development would have an undesirable cumulative effect by increasing the community's susceptibility to flooding, in terms of social, economic and environmental consequences.

Whilst there is currently a resolution of Council relating to all rural dwellings on flood prone land being deferred until such time as the policy position is developed, it's the understanding of Council officers the intent of the Council resolution was not to apply to urban areas, hence this application can continue to be assessed on its merits.

In accordance with Council's Notification Policy, the proposed development was advertised and notified to adjoining neighbours. In response one submission was received and raised concerns regarding the impacts of the development to the adjoining properties in relation to flooding. The submission also noted that only low density development should be supported on the site as multi-dwelling housing was not compatible with the sites flood characteristics.

Site history and surrounding development

In 2004 consent was granted to a two storey dwelling which was located at the front of the site. The ground floor consisted of garage, workshop, laundry and entry. All habitable rooms were located on the upper level. The flood planning level at this time was 5.2m AHD. The habitable area of the approved dwelling achieved a FFL of

5.5AHD. The historical approval is consistent with the flood risk of the site and a single dwelling located at the front of the property is an appropriate form of development for this site.

In 2006 Council staff sought to refuse development consent to dual occupancy development on the site as a result of the sites location in a very high and extreme hazard zone. It was considered that no additional dwellings should be permitted in the sites location. Further that the development would have an undesirable cumulative effect by increasing the community's susceptibility to flooding, in terms of social, economic and environmental consequences. The application was approved by Council in 2007.

The residential development that adjoins the subject site comprises vacant land and single dwelling houses. Adjoining dwelling houses are located on the edge of the floodway towards the street or have raised FFL's. The minimum allotment size of the flood affected lots surrounding the development is 800m². The applicant proposes four allotments of 299m².

Council's records indicated that since 1997 Council has only granted development consent for single dwellings on the flood affected sites within the subject area. Refusal of this current application is consistent with Council's on-going assessment approach for this area and ensures that an undesirable precedent is not set in this highly flood constrained area.

Site suitability – flood risk

The site is located within 80m of the Williams River and is within a known inundation area. The subject site is classified as floodway. Land classified as floodway is not typically compatible with development as blockage of the floodway can cause significant increase in flood levels or significant redistribution of flood flows. This is likely to adversely affect adjoining properties and the overall flood catchment area.

Further, the property is affected by flooding in events as frequent as the 20% Annual Exceedance Probability (AEP). AEP refers to the chance or probability of flooding occurring on-site. The AEP rating for the subject site indicates that the on average the development site would be subject to flooding to a RL of 2.9m AHD approximately every five years. The impacts of flooding to the development are exacerbated as the finished floor levels (FFL) of the proposed development are 5.3m AHD, which is 300mm lower than the recommended flood planning level of the site being 5.6m AHD.

Further, the subject site is located within the high provisional hazard category for 5% AEP and greater. During major flood events it is anticipated there will be an increased danger to personal safety as a result of high velocities and depth of flood water. There is also increased potential for significant structural damage to buildings.

Summary of flooding characteristics:

- The majority of the site is located within a floodway. The front of the block is generally clear of the floodway.
- The lot is located in high provisional hazard category for 5% AEP and greater (i.e. 2% AEP and 1% AEP). This indicates that site is subject to high hazard flooding during the one in 20 year event.
- Current 1% AEP 4.9m AHD (Williamstown Salt Ash Review). In the 100 year event the site would flood to a level of 4.9m AHD.
- 2050 1% AEP 5.1m AHD (Williamstown Salt Ash Review). The 2050 flood characteristic includes sea level rise of 400mm. The data indicates that the site would flood to a level of 5.1m AHD in the 100 year event.
- Current 20% AEP 2.9m AHD (Williams River Flood Study). On average the development site would be subject to flooding to a RL of 2.9m AHD approximately every five years.

The proposal is not an appropriate development type for the site as the increased density is not compatible with the sites flood hazard characteristics. The development cannot be supported due to the risk to property and human safety caused by frequent inundation, the increased consequences of flooding during a major flood event, and the impacts to flood flows within the catchment area.

Conclusion

The key issues associated with the proposal are:

- The site is not suitable for the development as the subject site is classified floodway and high provisional hazard category for 5% AEP and greater. The development will be subject to flooding on average every 5 years.
- The development does not meet the objectives of the R2 Low Density Residential Zone as the development is not compatible with the flood risk of the area.
- The risk to personal safety of future residents during major flood events affecting the subject site will not be acceptable.
- The proposal fails to comply with cl.7.3 PSLEP 2013.
- The development is not consistent with existing development located in the floodway and will set an unacceptable precedent.
- The intensification of development within the floodway will increase safety risks to the occupants of the development and adjoining properties.
- The development site is not sterilised by the flooding constraint. Approval for a dwelling house has previously been granted. However, the proposed multi-dwelling housing and four lot subdivision is not compatible with the flood risk on the site.

The application is recommended for refusal as the subject site is not suitable for the development in accordance with s.79C (1)(c) of the *Environmental Planning and Assessment Act 1979*. A detailed assessment of the proposal is provided within **(ATTACHMENT 2)** in accordance with Section 79C of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

FINANCIAL/RESOURCE IMPLICATIONS

Should Council refuse the application the applicant may appeal Council's determination under s.97 (1) *EP&A Act 1979*. Defending the refusal would have financial implications.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes		Funds to defend Council's refusal of the development application are available within the existing budget.
Reserve Funds	No		
Section 94	No		
External Grants	No		
Other	No		

LEGAL AND POLICY IMPLICATIONS

The Development Application is not consistent with PSLEP2013, DCP2013, Floodplain Management in Australia: Best Practice Principles and Guidelines (CSIRO, 2000), NSW Floodplain Development Manual 2005 and the Draft Port Stephens Council Areas Affected by Flooding and/or Inundation Policy. The development presents a risk to Council and the community if the application is approved.

On 27 November 2012 Council adopted a revised Corporate Risk Management Policy. The policy includes Council's risk appetite statement that explicitly states that Council has no appetite for risks that may compromise the safety and welfare of staff, volunteers, contractors and/or members of the public. The policy also identifies that Council will not accept a risk that has potentially catastrophic consequences, regardless of the likelihood of that risk eventuating.

A decision contrary to the recommendation presents an unacceptable risk to Council as per Council's standard risk management matrix. These unacceptable risks relate to Council and the local community in respect to public safety, Council reputation and legal exposure.

A decision contrary to the planning framework may waive the good faith provisions in the *Local Government Act 1993*. This could result in individuals being personally accountable and responsible for any subsequent implications resulting from the decision. Further, discussions with Council's Corporate Risk Unit confirmed that it is likely Council's insurers may not cover Council should a decision be made contrary to the relevant standards etc.

It is not considered appropriate to place additional dwelling houses in high risk flood areas creating further demand on already limited SES resources by way of domestic property protection, rescue/medivac and evacuation. Given the high risk of flooding across the site and the potential negative impact on adjoining properties, the

proposed development cannot be supported. Council officers have advised the proponent that supported by Council on the site is a single dwelling.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that if the application is refused the determination may be challenged in the Land and Environment Court.	Low	Determine application in line with recommendation. In <i>Webster v Muswellbrook Shire Council</i> [2-13] NSWLEC 1146 and <i>Radray Constructions Pty Ltd v Hornsby Shire Council</i> [2014] NSWLEC1024 the Land and Environment Court dismissed appeals against Council's decision to refuse development applications located within a floodway. Council's refusal of the application would therefore be likely to be upheld.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Despite the economic benefits of the development for the proponent, the development shall have an adverse social and economic impact in the locality. The flooding constraints of the site do not enhance and promote the social needs of the community. Supporting such a development would potentially have an economic cost to the community as it will place undue pressure on emergency services such as the SES, ambulance, fire brigade and police in terms of responding to any natural hazards and any medical emergencies that may occur and affect the site.

CONSULTATION

In accordance with Council's Notification Policy, adjoining neighbours were notified of the proposed development. In response, one objection was received. The submission raised the following matters:

- Impacts of earthworks to flooding of adjoining properties;
- Privacy;
- Development out of character with existing character;
- Increased impact to existing.

OPTIONS

- 1) Adopt the recommendation for refusal;
- 2) Amend the recommendation;
- 3) Refuse the recommendations.

ATTACHMENTS

- 1) Locality Plan;
- 2) Assessment;
- 3) Reasons for refusal.

COUNCILLORS ROOM

- 1) Statement of Environmental Effects;
- 2) Development Plans.

TABLED DOCUMENTS

Nil.

ATTACHMENT 1
LOCALITY PLAN



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

**ATTACHMENT 2
ASSESSMENT**

The application has been assessed pursuant to Section 79C of the *Environmental Planning and Assessment Act 1979* and the following is a summary of those matters considered relevant in this instance.

THE PROPOSAL

The applicant proposes the construction of four multi-dwelling housing units and a Torrens Title subdivision from one into four allotments.

THE APPLICATION

Owner	Malone Enterprises (NSW) Pty Ltd
Applicant	Anthony Malone
Detail Submitted	Development plans including: architectural plans and elevations, stormwater plans, landscape plan and subdivision plan Statement of Environmental Effects Preliminary Acid Sulfate Soil Assessment BASIX certificates

THE LAND

Property Description	Lot:13 DP:846114
Address	No.116 Port Stephens Street, Raymond Terrace
Area	1,197m ²
Site description	The site is located on the northern side of Port Stephens Street at the corner of Swan Street and Port Stephens Street. The site has a cross fall from east to west and is currently vacant.
Characteristics	Flood prone land Acid Sulfate Soils (class 2)

THE ASSESSMENT

PLANNING PROVISIONS

Environmental Planning and Assessment Act 1979 s.79C Planning provisions

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State Environmental Planning Policies	State Environmental Planning Policy No. 55- Remediation of Land
Port Stephens Local Environmental Plan (2013)	Zone R2 Low Density Residential Clause 4.1 Minimum subdivision lot size Clause 4.1B Minimum site area for dual occupancy, multi-dwelling housing and residential flat buildings Clause 4.3 Height of buildings Clause 5.9 Preservation of trees or vegetation Clause 7.1 Acid sulfate soils Clause 7.2 Earthworks Clause 7.3 Flood planning Clause 7.6 Essential services
Port Stephens Development Control Plan 2013	B1 Subdivision and Streets B2 Environment and Construction Management B3 Parking and Traffic B7 Villa and Townhouse development
Port Stephens Section 94 Plan	Section 94 contributions would need to be levied should Council approve the development.

Statutory Acts and Regulations

Environmental Planning and Assessment (EP&A) Act 1979

Section 79C – Planning Assessment

An assessment under Section 79C of the Act has been undertaken throughout this report.

State Environmental Planning Policy No. 55- Remediation of Land

The provisions of State Environmental Planning Policy No.55 require Council to consider the potential for a site to be contaminated. The subject site has a history of rural land use. Inspection of the site and a desktop review of the consent history identified that contaminating activities were not present and further investigation was not warranted.

Port Stephens Local Environmental Plan (2013)

Zone R2 Low Density Residential

The land is zoned R2 Low Density Residential. Multi-dwelling housing and subdivision is a permissible within the zone, however, the proposed development is inconsistent with the objectives of the zone as it is not compatible with the flood risk of the area. Further, the residential development surrounding the subject site comprises only single dwelling houses as a response to the flood constraints of the site. The proposal is out of character with the existing and desired character of the locality

Clause 4.1 Minimum subdivision lot size

Clause 4.1 identifies that the minimum subdivision lot size for the site is 500m² as the site is mapped as 'I' on the 'lot size map' applicable to the site. The proposed lots are 299.5m². However, as the application relates to multi-dwelling housing and clause 4.1B provides an exception to the minimum lot size.

Clause 4.1B Minimum site area for dual occupancy, multi dwelling housing and residential flat buildings

Clause 4.1B identifies that the minimum allotment size for multi-dwelling housing in the R2 Low Density Residential zone is 750m². The subject site has an area of 1,197m² and multi-dwelling housing can be achieved on site. There is no minimum allotment size applicable to the subdivision of the proposed multi-dwelling housing under clause 4.1B.

Clause 4.3 Height of buildings

Clause 4.3 specifies the maximum height of buildings for development is not to exceed the maximum height shown for the land of the 'height of buildings map'. A 9 metre height limit applies to the subject site. As a result of fill the ridge height of unit 1 forms the highest built form on the site and is 8.4metres from natural ground level. The maximum prescribed height limit for the site is 9meters. The height of the development is compliant.

Clause 5.9 Preservation of trees or vegetation

This clause seeks to preserve the amenity of local areas through the preservation of trees and other vegetation and requires Council consent for the removal of trees that are not dead/dying or that will not pose a risk to human life or property. The development results in the removal of

approximately 20 trees on site and within Councils road reserve. The application has been assessed by Council's Vegetation Management Officer who considered the removal of vegetation to be acceptable.

Clause 7.1 Acid sulfate soils

The subject site is identified as Class 2 acid sulfate soils (ASS). Accordingly any works below the natural ground surface requires an Acid Sulfate Soils Management Plan (ASSMP). The development results in disturbance to natural ground surface as a result of excavations for footings, utility services and drainage. The applicant has provided a preliminary Acid Sulfate Soil Assessment which identifies that the material tested on site is not classified as potential acid sulfate soil. Should Council seek to approve the application a condition of consent could be imposed requiring the provision of an ASSMP should acid sulfate soils be encountered during construction.

Clause 7.2 Earthworks

Clause 7.2 seeks to ensure that earthworks will not have a detrimental impact upon the environment or surrounding properties. The development requires earthworks involving a maximum 1 meter of fill and cut to facilitate services and construction. The proposed earthworks are minor in nature and will not have a detrimental impact upon adjoining properties or the environment. Should Council elect to approve the development, conditions of consent addressing earthworks would be required.

Clause 7.3 Flood Planning

Clause 7.3 seeks to minimise the flood risk to life and property associated with the use of land and to allow development only where it is compatible with the land's flood hazard so as to ensure that significant adverse impacts on flood behaviour and the environment are avoided. The application is not acceptable when considered against clause 7.3 as the site is classified as floodway and is located within an area that conveys a significant portion of the flood flow. The area, even if partially blocked by development, would cause a significant increase in flood levels or a significant redistribution of flood flows. As such the proposed development may adversely affect other areas and adjoining properties.

Further, the property is affected by flooding in events as frequent as the 20% Annual Exceedance Probability (AEP). AEP refers to the chance or probability of flooding occurring on-site. The AEP rating for the subject site indicates that on average the development would be subject to flooding approximately every five years. The impacts of flooding to the development are exacerbated as the finished floor levels (FFL) of the proposed development are 5.3m AHD, which is 300mm lower than the recommended flood planning level of the site being 5.6m AHD.

The subject site is also located within the high provisional hazard category for 5% AEP and greater. Therefore there is increased potential for significant structural damage to buildings. The development is not compatible with the lands flood hazard and will result in an unacceptable risk, therefore it cannot be supported.

Clause 7.6 Essential services

Clause 7.6 requires the consent authority to be satisfied that essential services including water, electricity, sewage, stormwater and access are available to the site. The applicant has demonstrated that essential services are available to the site. Clause 7.6 has been satisfied.

Port Stephens Development Control Plan 2013

Part B1 Subdivision and Streets

The proposed subdivision will have no unacceptable impact on existing views. Each proposed block has direct street frontage. The site is currently connected to essential services, with each proposed lot to be separately serviced. The development is therefore satisfactory having regard to the requirements of B1 subdivision and streets.

Part B2 Environmental and Construction Management

The application has been assessed against the provisions of Development Control Plan 2013 (DCP2013), B2 – Environmental and Construction Management and is considered satisfactory. The earthworks and vegetation removal required to facilitate the development are acceptable. Adequate essential services are available to the site.

Part B3 Parking and Traffic

Adequate provision for car parking and access is facilitated on site. Each dwelling is provided with two car parking spaces as required by control B3.8. Separate visitor parking has not been provided as each dwelling is stand alone and parking for visitors can be accommodated in the driveway of each unit. Individual driveway access has been provided to Port Stephens Drive and Swan Street and all proposed driveways are compliant with the access requirements of part B3.4. Should Council elect to approve the development, conditions of consent would be required to ensure the development was satisfactory with regards to the construction requirements held at control B3.7.

Part B7 Villa and Townhouse Development

Controls	Comments
Part B7.2 Streetscape and front setback	<p>The proposed development complies with the streetscape and front setback requirements prescribed under part B7.2. Units 1, 2 and 3 front Swan Street and have a 6m setback with an allowable encroachment for entry porches to a distance of 4.5%. Unit 4 Has a 6m setback to Swan Street and 4.5m setback to Port Stephens Street excluding the encroachment of the entry porch. Whilst the unit has primary access to Port Stephens Street and requires a 6m setback to this frontage the variation is supported given a 6m setback has been provided to Swan Street. The design meets the general intent of the control.</p> <p>All dwellings front the street and unit 1 has been designed to address both Port Stephens Street and Swan Street via the provision of a wraparound veranda. Garages to units 1, 2 and 3 have been setback behind the building line. Unit 4 has sufficient articulation and satisfactorily addresses both street frontages and whilst the garage to this dwelling is not setback behind the building line the design is supported as it presents an appropriate response to the streetscape.</p> <p>The development includes 1.2m high semi-transparent front fencing. The driveway access proposed to each dwelling is also considered appropriate.</p>
Part B7.4 Bulk and scale	Control B7.4 specifies a maximum allowable floor space ratio (FSR) of 0.5:1 and maximum site coverage of 60%. The bulk and scale of the development is acceptable a total FSR of 0.29:1 and 44% site coverage has been proposed.
Part B7.5 Cut and fill	The development results in 1m of fill to the rear of the site (unit 1) and cut associated with the construction works and provision of essential services. A 1m retaining fall and fence is proposed to the rear boundary. The proposed earthworks are compliant with part B7.6 cut and fill.
Part B7.6 Height	As a result of fill the ridge height of unit 1 forms the highest built form on the site and is 8.4metres from natural ground level. The maximum prescribed height limit for the site is 9metres. The height of the development is compliant.
Part B7.7 Side and rear setbacks	Part B7.7 requires a side setback of 900mm to the ground floor and 2metre setback to first storey. A rear setback of 2metres is also required. All four units comply with the setback requirements. Unit 1, 2, and 3 are setback from the side boundary 2metres and 6metres to the rear boundary. Unit 4 is setback 4 metres to the side boundary and 2 metres at the rear (northern boundary).
Part B7.8 Building design elements	Part B7.8 seeks to ensure that development reflects street character through use of local design elements, materials and forms. Developments are to be designed to respond to site context including orientation and solar access. Units 1, 2, and 3 have the same façade yet this has been reversed in unit 2 to provide for variation in form. Unit 4 has been designed to respond to dual street frontages and provides for variation in façade and entry design. Sufficient articulation has been provided to all units and the proposal satisfies part B7.8.

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Part B7.9 Energy efficiency	Valid BASIX certificates have been provided for each unit. The development is satisfactory with regard to energy efficiency.
Part B7.10 Private open space	<p>Part B7.10 seeks to ensure that adequate private open space is catered for in all new developments. A principle private open space of 35m² is required and private open space is required to be accessible from living areas and provided with adequate solar access. The development is generally compliant with the requirements of part B7.10 units 1-3 are provided with a total of 89m². Unit 4 has a total of 46m² provided for at ground level behind the building line. The private open space provision to unit 4 is adequate given the availability of additional space with the site frontage to Port Stephens Street and Swan Street.</p> <p>The private open space is not directly accessible from living areas. As the site is flood affected the provision of habitable floor space at ground floor level could not be supported. As such the deviation from the control can be supported. Private open space is located to the north-east and achieves adequate solar access.</p>
Part B7.11 Privacy and amenity	Development is required to be designed so as to minimise privacy and acoustic impacts to adjoining properties. The setbacks to the proposed units ensure adequate privacy and amenity is maintained to adjoining properties. Further the living area of the dwelling have been located to front Swan Street and Port Stephens Street which minimises opportunities for overlooking of adjoining properties and also provides for passive surveillance of the street.
Part B7.12 Backyard fences and walls.	<p>Fencing is proposed to be installed along the side and rear property boundaries at a maximum height of 1.8metres. Retaining wall of a height of 1metre is proposed to the north-west (rear) property boundary. The combined height of retaining and fencing shall be limited to 1.8metres from natural ground level.</p> <p>Fencing shall also be provided for between the proposed units again to a maximum height of 1.8metres. Fencing shall not protrude forward of the building line.</p>
Part B7.14 Vehicular access and parking	The development complies with the parking requirements prescribed under part B7.14 and part B3. Each unit has two spaces provided (double garage to units 1, 2 and 3 and single garage and car port to unit 4). Separate visitor parking spaces are not proposed. However, each unit is stand alone and visitor parking can be provided on each site within the driveway area. The proposed vehicular access and parking is adequate.
Part B7.15 Stormwater and greywater	The application was referred to Council's Development Engineer and it has been identified that adequate stormwater provision can be achieved on site. Should Council elect to approve the application conditions of consent regarding stormwater would be required.
Part B7.16 Landscape	Part B7.16 requires that landscape planting be provided to create shade, provide privacy and enhance the local streetscape. The development application is supported by an adequate landscape plan. Council's Vegetation Management Officer has reviewed the landscape plan and considers landscaping provision satisfactory. However, driveways associated with the development are in proximity to trees proposed to be retained. Should Council elect to approve the development conditions of consent addressing the protection of retained trees during construction would be required.

MINUTES FOR ORDINARY MEETING – 14 OCTOBER 2014

Part B7.17 Site facilities and services	Site facilities and services including garbage and recycling bin enclosures, mailboxes, clothes drying facilities and the like are required to be integrated into the development design. The development proposes four stand-alone units and adequate space is provided to cater for site facilities and services.
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Part C1 Raymond Terrace Town Centre

Controls	Comments
Part C1.10 Residential areas	<p>The subject site is located within the residential area precinct under part C1 Raymond Terrace Town Centre. Part C1.10 identifies specific development requirements for located within the residential areas mapped within the policy and including the subject site.</p> <p>It is required that new residential development incorporate pitched roof forms and lightweight verandas or porches with posts. The development has appropriate roof forms and porches and verandas. The controls also specify that garages should be detached or located 2 metres from the building line. The development satisfies the intent of this control as garages to units 1, 2 and 3 have been setback 3metres behind the entry porch and veranda. The garage setback to unit 4 is considered acceptable in light of the provision of a single garage only. Unit 4 has also been provided with extensive verandas to compliment the building façade and existing streetscape.</p> <p>Part C1.10 requires that front setbacks are to be calculated in accordance with the setbacks of existing dwellings. The setbacks along Port Stephens Street average 6metres. Unit 4 is setback from Port Stephens Street by 4.5metres to the building line which is less than the existing average. However, unit 4 is located upon a corner allotment. Variation to the front setback of corner developments is a common occurrence as a result of the development need to address dual frontages. The variation to the average Port Stephens Street front setback is supported.</p> <p>There are no existing dwellings located upon Swan Street and as such the setbacks to units 1, 2 and 3 have been assessed in accordance with Part B7.7. The setbacks to Swan Street are satisfactory.</p> <p>C1.10 also specifies that Jacarandas are to be retained or planted where no existing street trees are located. Should Council elect to approve the development the provision of Jacarandas as replacement plantings would be required as a condition of consent.</p>

Section 94 Contribution Plan

The application attracts section 94 contributions. Should Council elect to approve the development a condition of consent would be imposed to levy the required contribution amount prior to issue of subdivision certificate and/or construction certificate whichever occurs first.

Community consultation

In accordance with Council's Notification Policy, the proposed development was advertised and notified to adjoining neighbours. In response one submission was received. The key items raised with objections are outlined as follows:

Matter raised	Response
Proposed earthworks will result in adverse flood impacts to adjoining properties.	The proposed development is not compatible with the sites flood risk and may result in adverse flood impacts to adjoining properties. The application is recommended for refusal.
Development will overlook adjoining properties having an adverse impact upon privacy.	The sitting and design of the development ensures that opportunities to overlook adjoining properties is minimised. Adequate rear setbacks are provided and primary living areas front Swan Street.
Multi-dwelling housing is out of character with the locality being primarily comprised of single dwellings.	Single dwelling development is located in the area given it is compatible with the flood characteristics of the area. Multi-dwelling housing is not an appropriate development type for this locality. The development is not in keeping with the existing or desired future character of the residential area.
The development will contribute to drainage issues affecting Swan, Hunter and Port Stephens Streets.	Council's Development Engineer raised no objection to the development with regard to drainage. However, the development is identified as occurring within a drainage problem area given the flood characteristics of the site. The application is recommended for refusal.
Construction will impact upon existing trees located in Swan Street.	The application was assessed by Council's Vegetation Management Officer and the removal of trees in Swan Street can be supported subject to conditions requiring provision of replacement plantings should Council approve the development.
The visual impact of the development is unacceptable and will impact upon property values	There is no evidence to suggest that the development would adversely impact upon property values of the locality. Further, the development does not result in an adverse visual impact.
The extent of notification was not satisfactory	The application was notified in accordance with Council's Notification Policy.

Internal referrals

Flood Engineer

The application was referred to Council's Flood Engineer as the subject site is affected by flooding. Council's Flood Engineer has reviewed the proposal and does not support the development due to the flooding characteristics of the site, as follows:

- The majority of the site is located within a floodway. The front of the block is generally clear of the floodway.

- The lot is located in high provisional hazard category for 5% AEP and greater (i.e. 2% AEP and 1% AEP). This indicates that site is subject to high hazard flooding during the one in 20 year event.
- Current 1% AEP 4.9m AHD (Williamstown Salt Ash Review). This means that in the 100 year event the site would flood to a level of 4.9m AHD.
- 2050 1% AEP 5.1m AHD (Williamstown Salt Ash Review). The 2050 flood characteristic includes sea level rise of 400mm. The data indicates that the site would flood to a level of 5.1m AHD in the 100 year event.
- Current 20% AEP 2.9m AHD (Williams River Flood Study). This means that the on average the development site would be subject to flooding to a RL of 2.9m AHD approximately every five years.

Multi-dwelling housing and four lot subdivision is not an appropriate development type for the site as the increased density is not compatible with the sites flood hazard characteristics. The development cannot be supported due to the risk to property and personal injury caused by frequent inundation, the increased consequences of flooding during a major flood event, and the impacts to flood flows within the catchment area.

Council's Flood Engineer identified that a single dwelling located within the front portion of the site (towards Port Stephens Street) would be an acceptable development for the site give the flooding characteristics of the property.

Development Engineering

The application was referred to Council's Development Engineering Section for comment. Subject to conditions of consent the proposed development has been determined to be satisfactory with regard to engineering considerations.

Building

The application was referred to Council's Building Team for review and it was identified that the proposal was satisfactory subject to conditions.

Vegetation

The application has been reviewed by Council's Vegetation Officer and it was identified that the proposed driveways present a risk to the structural root zone of existing trees not identified for removal. Should Council seek to approve the development condition of consent would be required to ensure construction methods were implemented to protect existing trees. Alternatively replacement plantings would be required.

Likely impacts of the development

The assessment has considered the likely impact of the development by identifying the potential impacts of the proposal, available measures to ameliorate impacts and frequency/severity of impacts.

The development is not compatible with the land's flood risk and will result in unacceptable impacts to life and property. The development is recommended for refusal of the reasons held at **ATTACHMENT 3**.

Suitability of the site

There site is physically constrained by flooding and is unsuitable for the proposed development.

Public interest

The development will result in adverse social, economic and environmental outcomes as the development has not been designed in a manner that is compatible with the flood risk of the land. The development has an unacceptable risk to life and property and will also result in adverse flood impacts to surrounding properties. The development is not within the public interest.

**ATTACHMENT 3
REASONS FOR REFUSAL**

THAT the consent authority, REFUSE development consent to Development Application No. 16-2014-221-1 for multi-dwelling housing (four units) and a four lot torrens subdivision on land at Lot 13 DP 846114, 116 Port Stephens Street, RAYMOND TERRACE, for the following reasons:

1. The site is not suitable for the proposed development (s.79C(1)(c) *Environmental Planning and Assessment Act (EP&A Act 1979)*) for the following reasons;
 - a. The majority of the site is located within a floodway and high provisional hazard category for 5% Annual Exceedance Probability (AEP) and greater.
 - b. The proposal will result in the intensification of development within the floodway and increase safety risks to the occupants of the development and adjoining properties.
2. The development is inconsistent with the aims and objectives of the R2 Low Density Residential Zone as the development is not compatible with the flood risk of the area (s.79C(1)(a)(i) *EP&A Act 1979*).
3. The development is inconsistent with clause 7.3 'Flood Planning' of *Port Stephens Local Environmental Plan 2013* (s.79C(1)(a)(i) *EP&A Act 1979*). The development of the site for four multi-dwelling houses and associated subdivision is not compatible with the land's high risk flood hazard and would result in unacceptable flood risk to life and property.
4. The development fails to conform to the *Floodplain Management in Australia: Best Practice Principles and Guidelines* (CSIRO, 2000), *NSW Floodplain Development Manual 2005* and the *Draft Port Stephens Council Areas Affected by Flooding and/or Inundation Policy*.
5. The development is inappropriate for the site given the site is within a high risk flood area and it is therefore not within the public interest (s.79C(1)(e) *EP&A Act 1979*).

ITEM NO. 2

FILE NO: 16-2014-168-1

DEVELOPMENT APPLICATION FOR STAGED DEVELOPMENT - RURAL LAND SHARING COMMUNITY AND STAGE 1 AT NO. 15 GREEN WATTLE CREEK ROAD, BUTTERWICK

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

RECOMMENDATION IS THAT COUNCIL:

- 1) Approve Development Application 16-2014-168-1 for rural land sharing community and stage 1 at No.15 Green Wattle Creek Road, Butterwick subject to the conditions contained in **(ATTACHMENT 3)**.

ORDINARY COUNCIL MEETING – 14 OCTOBER 2014
COMMITTEE OF THE WHOLE RECOMMENDATION

	<p>Councillor John Nell Councillor Geoff Dingle</p>
	<p>That Council defer Item 2, development application 16-2014-168-1 for rural land sharing community and stage 1 at No.15 Green Wattle Creek Road, Butterwick, to allow a site inspection by Councillors.</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 Peter Kafer, Steve Tucker, Geoff Dingle, John Nell and John Morello.

Those against the Motion: Crs Ken Jordan and Mayor Bruce MacKenzie.

Mayor Bruce MacKenzie vacated the Chair and left the meeting at 6.30pm and Cr Steve Tucker Chaired the Council meeting.

Cr Paul Le Mottee returned to the meeting at 6.30pm.

MOTION

260	<p>Councillor Ken Jordan Councillor Geoff Dingle</p>
	<p>It was resolved that Council defer Item 2, development application 16-2014-168-1 for rural land sharing community and stage 1 at No.15</p>

MINUTES FOR ORDINARY MEETING – 14 OCTOBER 2014

	Green Wattle Creek Road, Butterwick, to allow a site inspection by Councillors.
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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 Peter Kafer, Steve Tucker, Geoff Dingle, John Nell and John Morello.

Those against the Motion: Crs Ken Jordan.

BACKGROUND

The purpose of this report is to present to Council for determination development application 16-2014-168-1 for a rural land sharing community at No.15 Green Wattle Creek Road, Butterwick (the 'subject site'). The application was called to Council by Cr. Tucker and is put before Council on this basis.

The applicant seeks concept approval for the use of the site as a rural land sharing community. The development is proposed to be undertaken in three stages. Stage one forms part of the subject application and involves construction of internal roads and infrastructure, use of an existing dwelling for administration and the establishment of agricultural activities.

Stages two and three of the development will seek consent under separate applications in the future. Stage two will include construction of 29 dwellings and a purpose built community building. The demolition of the existing dwelling, replacement with a new dwelling and remaining community infrastructure will be within stage three. A total of 30 dwellings will exist on the site upon completion of all three stages.

The development will provide for multiple occupancy on the site and involves the collective management and sharing of unsubdivided land, facilities and resources. The proposal will encourage a community-based environmentally sensitive approach to rural settlement, enabling the pooling of resources and development opportunities for communal rural living.

The proposal is permissible under State Environmental Planning Policy No.15 – Rural Land sharing Communities (SEPP No.15). The subject site is zoned RU2 Rural Landscape under Port Stephens Local Environmental Plan 2013 and rural land sharing communities are not listed as permissible in the RU2 zone. The provisions of SEPP15 override LEP2013 and the proposal can therefore be determined by Council as a permissible form of development.

SEPP No.15 has a number of aims and objectives and does make provision to create opportunities for an increase in the rural population in areas that are suffering or are likely to suffer from a decline in services due to rural population loss. However, the application of the policy is not limited to areas or populations 'in decline', nor are these areas readily defined. Schedule 1 of the SEPP identifies land to which the policy applies and lists Port Stephens as an area in which the SEPP operates.

MINUTES FOR ORDINARY MEETING – 14 OCTOBER 2014

The subject site is located within the rural area of Butterwick and is surrounded by large lot rural residential development accessed by both Butterwick Road and Green Wattle Creek Road. The site has a frontage to Green Wattle Creek Road which is an unformed Council road. The site has a total area of 112.4 hectares and has been historically used for agricultural pursuits. Large portions of the land remain clear of vegetation and are used for grazing cattle.

Existing improvements on site include a residential dwelling, associated structures and farm buildings. The site is bound by a bio-banking site to the east, rural properties utilised for grazing to the east and north, and a vegetated Crown road reserve to the south. Hinton Wallalong Pony Club is located to the south west of the site.

The key issues associated with the proposal are:

- Compliance with SEPP No.15
- Traffic and access
- Wastewater management

The application is recommended for approval as the development is consistent with the provisions of SEPP No.15. Subject to conditions of consent the proposal will not have any significant adverse impacts to adjoining properties. A detailed assessment of the proposal and SEPP No.15 is provided within **(ATTACHMENT 2)** in accordance with Section 79C of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

The application was submitted on 20 March 2014 and information was requested from the applicant on 02 May 2014 regarding a number of matters including wastewater. On 25 September 2014 the requested wastewater report was provided to Council.

FINANCIAL/RESOURCE IMPLICATIONS

Should Council refuse the application the applicant may appeal to the Land and Environment Court. Defending Council's determination would have financial implications.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes		Within operational budget
Reserve Funds	No		
Section 94	No		
External Grants	No		
Other	No		

LEGAL AND POLICY IMPLICATIONS

Should Council refuse the application the applicant may appeal to the Land and Environment Court. The development application is consistent with State Environmental Planning Policy No.15 which permits the development of rural land sharing communities.

MINUTES FOR ORDINARY MEETING – 14 OCTOBER 2014

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that if the development application is refused the applicant will appeal to the Land and Environment Court.	Medium	Support the recommendation and approve the development application subject to conditions of consent.	Yes
There is a risk land use conflict may arise from the development.	Low	Impose conditions of consent as recommended.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Social

The development has a positive social impact through the provision of affordable, quality housing stock that caters for a mixed cross-section of the population. The proposal provides opportunities for flexible employment options and work-life balance. The proposal will be sustainable with respect to the facilitation of car-sharing, car-pooling, bulk purchasing, community bus and work-from-home opportunities. Agricultural and rehabilitation activities on the site will encourage physical exercise, social interaction and outdoor recreational pursuits.

Economic

The proposed development has a total estimated construction outlay, inclusive of all stages and the establishment of the additional agricultural activities, of \$8.450 million. It has been estimated, through the application of the Port Stephens Council Remplan economic modelling tool, that this outlay would have a \$16.545 million benefit to Port Stephens, when considering the direct, industrial and consumption effects of the construction costs.

It is anticipated that this additional expenditure will be spent within the surrounding local villages of Hinton and Woodville, consistent with the objectives of SEPP 15. The proposed development will also provide additional employment opportunities. This will include employment associated with:

- Agriculture and other roles associated with the production of food onsite. The development will be seeking to implement state of the art, best-practice, organic and biodynamic methods for agriculture and value adding which will offer niche specialty roles. In addition, positions such as a Site Maintenance Coordinator, Manager and Administrative officer will need to be filled within the site and occupiers will be given preference to fill these positions.

- Opportunities will also exist for casual, seasonal and/or part-time work on-site in a variety of agricultural and food industry jobs. These positions may be most suitable for youth or seniors.
- Indirect 'flow-on' employment from the project will generate significant advantages to the local economy, businesses, labour force and culture. RemPlan data indicates that a total 46 new jobs will be created in the local region. This will include employment associated with the construction phase and ongoing expenditure within the local community.

Environment

The proposed development will not have a significant impact on any threatened species, and the applicant's proposal to undertake revegetation will result in improved ecological outcomes within the site. An assessment has been undertaken with respect to bushfire hazard, dust impact, traffic impact, impact of agricultural use, geotechnical and on on-site effluent disposal. Any environmental impacts can be adequately mitigated through conditions of consent.

CONSULTATION

In accordance with clause 8 SEPP No.15 and Council's Notification Policy, adjoining neighbours were notified of the proposed development and the application was advertised. In response, 54 submissions were received – 39 supporting the proposal and 15 objecting to the proposal (including one petition with 45 signatures). The key items raised with objections are outlined as follows:

- Visual impact
- Traffic
- Waste management
- Service provision (energy and water)
- Impacts to pony club

It is believed that the proposed conditions of consent address the issues raised within the submissions.

OPTIONS

- 1) Adopt the recommendation;
- 2) Amend the recommendation;
- 3) Refuse the recommendation.

ATTACHMENTS

- 1) Locality Plan;
- 2) Assessment;
- 3) Conditions of consent.

COUNCILLORS ROOM

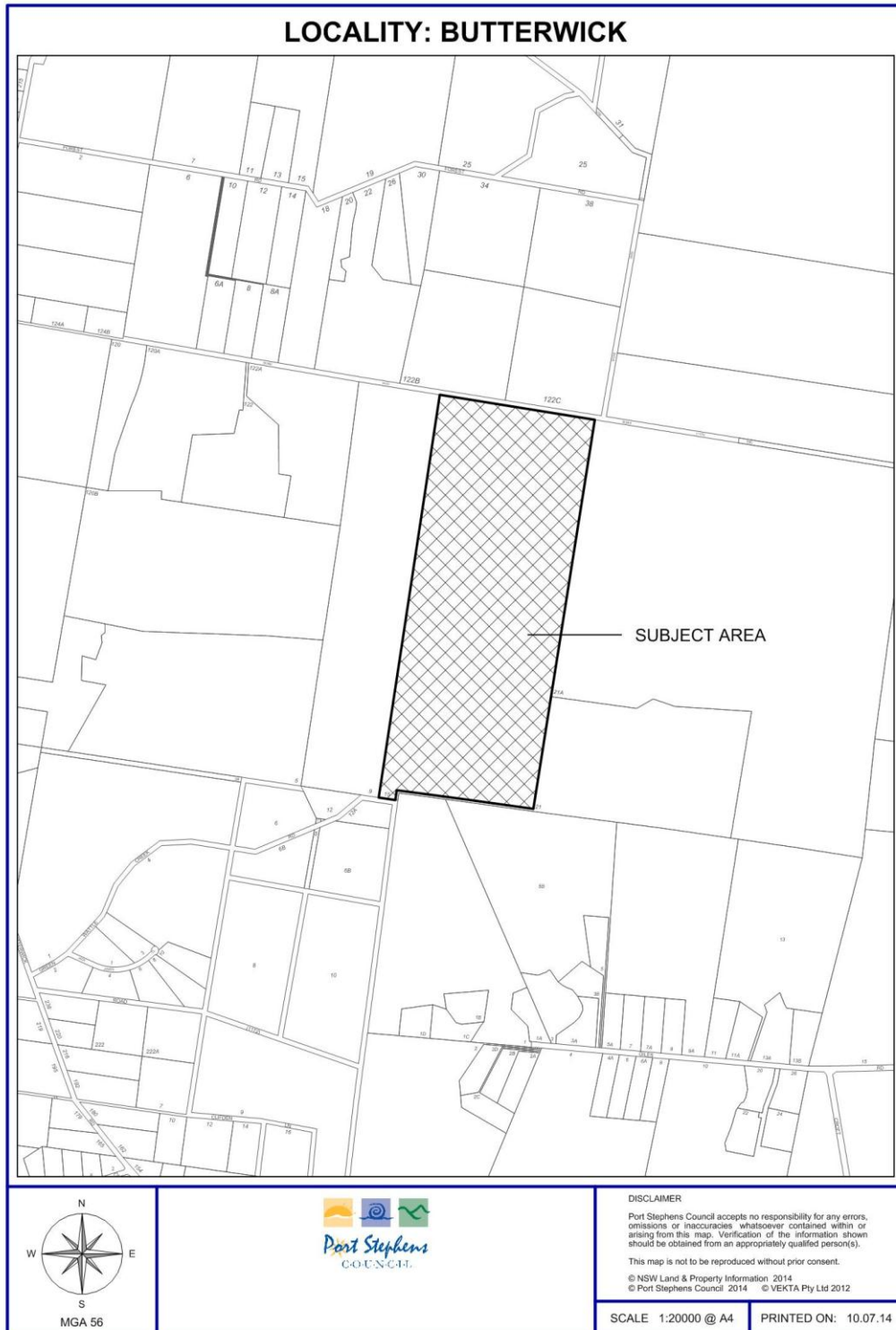
- 1) Statement of Environmental Effects including sub-reports;

2) Development Plans.

TABLED DOCUMENTS

Nil.

ATTACHMENT 1
LOCALITY PLAN



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

**ATTACHMENT 2
ASSESSMENT**

The application has been assessed pursuant to Section 79C of the Environmental Planning and Assessment Act 1979 and the following is a summary of those matters considered relevant in this instance.

THE PROPOSAL

The application relates to a proposed rural land sharing community staged development proposal, as well as stage 1 of the proposal. The subject application seeks consent for:

- The use of the subject site as a rural landsharing community,
- Land tenure, dwelling occupancy rights, and land management arrangements,
- Design principles that are binding upon subsequent stages of the development (i.e. criteria for the location of future buildings),
- The construction of internal roads and drainage,
- The use of the existing dwelling for administration associated with the establishment of the rural landsharing community in the short to mid-term until a purpose built community building is constructed in a subsequent stage, and
- Agricultural activities to be established on the site (associated exempt development).

THE APPLICATION

Owner Applicant	Pineview Transports Pty Ltd CUM GRANO SALIS LTD
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THE LAND

Property Description	Lot 1 DP 999947
Address	15 Green Wattle Creek Road, Butterwick
Area	The site has an area of 112.4ha.
Dimensions	The site is generally regular in shape. The northern boundary of the site measures 730m in length, eastern boundary 1080m, southern boundary to Green Wattle Creek Road 697m (irregular boundary) and the sites eastern boundary 1603m.

Characteristics Bushfire prone land, Acid Sulfate Soils (ASS) Class 5, Koala Habitat (Marginal), Endangered Ecological Communities (Hunter Valley Dry Rainforest), Prime Agricultural Land (Classes 1-3), Combined Corridor Map (Core Habitat, Landscape Habitat Link, Landscape Link, Local Link, Stepping Stone, Western Habitat).

THE ASSESSMENT

PLANNING PROVISIONS

<i>Environmental Planning and Assessment Act 1979</i>	s.79C Planning provisions s.83 Staged development applications s.91 Integrated development applications
<i>Rural Fires Act 1997</i> <i>Water Management Act 2000</i>	s.79BA s.91 Activity approvals
State Environmental Planning Policies	State Environmental Planning Policy 15 – Rural Landsharing Communities State Environmental Planning Policy No.44 – Koala Habitat Protection (and Port Stephens Comprehensive Koala Plan of Management) State Environmental Planning Policy No.55 – Remediation of Land
Port Stephens Local Environmental Plan (2013)	Zone RU2 Rural Landscape Cl.7.1 Acid sulfate soils. Cl.7.2 Earthworks Cl.7.6 Essential services
Port Stephens Development Control Plan 2013	B2 Environment and Construction Management B3 Parking and Traffic B6 Single and Dual Occupancy Dwellings
Port Stephens Section 94 Plan	Section 94 contributions to be levied under stage two.

Statutory Acts and Regulations

Environmental Planning and Assessment (EP&A) Act 1979

Section 79C – Planning Assessment

An assessment under Section 79C of the Act has been undertaken throughout this report.

Section 83B - Staged Development Applications

Section 83B of the *Environmental Planning and Assessment Act 1979* (EP&A Act) provides that a staged development application is a development application that sets out concept proposal for the development of a site and for which detailed proposal for separate parts of the site are to be the subject of subsequent development applications.

The applicant has requested that the development application be treated as a staged development. The applicant has provided the details of the development for the first stage of the development and should Council grant consent to the current application the consent will authorise the carrying out of development on the site relating to stage one.

Rural Fires Act 1997 (Section 79B)

The proposed development is located on bushfire prone land, rural land sharing communities are not listed as 'special fire protection purpose' under 100B of the *Rural Fires Act 1997* and are not integrated development under s.91 of the EP&A Act. Notwithstanding, given the nature of the proposed development the proposal was referred to the Rural Fire Service (RFS) for comment. The RFS provided conditions which have been integrated into the schedule of conditions.

Water Management Act 2000

The development requires the crossing of one waterbody (creek) with infrastructure associated with the disposal of wastewater. The proposal is captured as integrated development under s.91 EP&A Act requiring approvals from the New South Wales Office of Water (NSWOW) under s.91 of the *Water Management Act 2000* for a controlled activity. Accordingly, the application was referred to NSWOW and general terms of approval were issued. The terms of approval form part of the conditions of consent.

State Environmental Planning Policies

State Environmental Planning Policy No. 15 – Rural Land Sharing Communities

State Environmental Planning Policy No. 15 (SEPP No.15) provides that multiple occupancy development is a permissible land use within rural and non-urban zones despite any provisions to the contrary within Council's Local Environmental Plan. Multiple occupancy is defined as the collective management and sharing of unsubdivided land, facilities and resources. The policy encourages a community-based environmentally-sensitive approach to rural settlement, and enables the pooling of resources to development opportunities for communal rural living. The

MINUTES FOR ORDINARY MEETING – 14 OCTOBER 2014

applicant has lodged the proposal under SEPP No.15 and the development complies with the provisions of the SEPP as detailed below:

State Environmental Planning Policy No. 15 – Rural Land Sharing Communities			
Section	Requirement	Comment	
s.2	Aims	The policy aims to facilitate rural land sharing communities committed to environmental sensitive and sustainable land use practices to enable, i) people to collectively own a single allotment of land as a principle place of residence, ii) erection of multiple dwellings on the allotment with shared facilities and resources, iii) pooling of resources.	The development is designed in accordance with the aims of SEPP No.15. The applicant has proposed a clustered style development and does not propose subdivision or separation of legal rights. The development will enhance the environment via revegetation programs and does not create an unreasonable demand for public amenities.
s.3	Land to which policy applies	The policy applies to the Port Stephens LGA. The subject site is not affected by any of the exclusions prescribed within Schedule 2.	
s.5	Relationship to other planning instruments	The policy prevails over the Port Stephens Local Environmental Plan 2013 to the extent of any inconsistency.	
s.7(1)	Rural landsharing community	S.7(1) allows rural land sharing development of 3 or more dwellings with consent if; a) the land is a single allotment not subdivided. b) the land has an area greater than 10hectares, c) the height of the building on the land does not exceed 8 metres, d) not more than 25% of the land consists of prime crop and pasture land, e) no dwelling is situated on prime crop and pasture land, f) structures or works do not occur within and/or impact upon land identified as wildlife corridor/refuge/management area, g) the development is not for tourist accommodation. h) structures are not situation on land with a slope in excess of 18 degrees, and i) the aims of the policy are meet.	The proposed development satisfies the provisions of s.7(1): <ul style="list-style-type: none"> • The site is a single allotment of land. • The land has an area of 112ha. • No building proposed shall exceed 8m. • The sites contains less than 25% prime crop and pasture land. • The dwellings are not located on prime crop and pasture land. • The site is not identified as having a wildlife corridor or the like. • The proposal is not for tourist accommodation. • Proposed structures are not located on land with a slope excess of 18 degrees. • The aims of the policy have been met (refer s.2).
s.7(2)	Allows Council to consent to rural land sharing development despite of any prohibition to rural land sharing development under another environmental planning instrument. The proposed development is being assessed in accordance with this section.		
s.7(3)	The policy restricts the subdivision of land. The proposal does not involve the subdivision of land.		

MINUTES FOR ORDINARY MEETING – 14 OCTOBER 2014

s.8	Notice of development applications – advertised development	Notification and exhibition of the development occurred in accordance with the requirements for advertised development.
s.9 Matters for Council to Consider		
(1)(a)	Land ownership, dwelling occupancy, environment/ community management	<p>The applicant has provided details of the means for establishing land ownership, dwelling occupancy and land management via the Community Management Statement.</p> <p>Land ownership is proposed via registration as a cooperative under the Co-operatives National Law/Co-operatives (<i>Adoption of National Law</i>) Act 2012 NSW.</p> <p>Dwelling occupancy shall be provided under a licensing structure. The Community Management Statement will form part of the approved documents should Council approve the proposed development.</p>
(1)(b) & (c)	Area for the erection of buildings and community use	The applicant has detailed the location of the area proposed for the erection of dwellings/buildings and community uses on the site. The design proposes the clustering of dwellings. The site selected for the dwelling/building site is appropriate as it is not located on prime crop or pasture land. The area is appropriately setback from adjoining properties.
1(d)	Need for community uses ancillary to the site	A community building is proposed for construction under stage three. Stage one proposes the use of the existing dwelling for community infrastructure. The end use community building will comprise a hall/gathering place with ancillary community kitchen.
1(e)	Public road access	Green Wattle Creek Road provides access to the site. Council's Development Engineering Section have assessed the proposed development and have identified that the current road condition is an unsealed poorly maintained gravel road generally of single lane width with poor alignment and significant obstructions. A condition of consent has therefore been included requiring the upgrade of Green Wattle Creek Road.
1(f)	Availability of water supply	The site does not have access to reticulated water. It is proposed that rainwater shall be harvested for use on the property. It has been demonstrated that sufficient harvestable rights for both the proposed dwellings and agricultural pursuits are available to the site.
1(g)	Supply of electricity and telephone services	<p>Grid connected and solar electricity service exists to the current dwelling on site. The existing electricity service is going to be supplemented with non-grid connected solar power for all housing or other renewable energy systems.</p> <p>The existing dwelling also has a telephone service. The existing services can be augmented to service the proposed development.</p>
1(h)	Availability of community facilities	<p>The proposal involves the use of the existing dwelling as a community building under stage one. Stage three will see the construction of additional community infrastructure. In addition the applicant proposes use of a community bus for school drop offs and other transport needs. Child care is expected to be provided by the community on-site.</p> <p>The site is in proximity to Hinton, Wallalong, Maitland and Raymond</p>

MINUTES FOR ORDINARY MEETING – 14 OCTOBER 2014

		Terrace where additional services and facilities are accessible.
1 (i)	Waste disposal	<p>The applicant proposes minimum waste generation by promotion of a waste minimisation strategy. The strategy shall form part of the approved documents should Council approve the development application.</p> <p>The proposed development will require the use of an onsite effluent disposal system. Council's Environmental Health Officer has reviewed the proposed system details and considers that waste water management can be suitably achieved on site subject to conditions of consent.</p>
1 (j)	Impact upon vegetation/ environmental protection	Council's Natural Resource Section have assessed the proposed development and determined that subject to the imposition of conditions the proposed development is acceptable in relation to vegetation and environmental impacts.
1 (k)	Land constraints	The proposed development has been assessed having regard to bush fire threat, landslip and erosion. The applicant has provided a bush fire report and geotechnical assessment. Subject to conditions the proposed development can occur despite land constraints.
1 (l)	Visual impact	The development is considered to be appropriately designed and located so as to minimise the potential for adverse visual impact to adjoining properties. The site topography ensures that views to the dwelling/building site are minimised. The applicant proposes that dwelling designs will respond to the rural context by means of construction (pier and beam) and use of colours and materials that are sympathetic to the existing rural structures on site.
1 (m)	Effect of the proposal upon present and potential use of the site	<p>The applicant has provided a detailed study of the site prepared by an agronomist which concluded that the majority of the site is not considered to be prime crop or pasture land. However, there remains sufficient prime land for the applicant to undertake the agricultural pursuits proposed.</p> <p>The use of the site for rural land sharing community will promote varied and sustainable agricultural pursuits in accordance with the Farm Management Plan. The Farm Management Plan forms part of the approved documents.</p>
1 (n)	Whether the proposal will sterilise access to natural resources	The applicant has provided correspondence from the Department of Mineral Resources which confirms that no mineral or extractive deposits will be sterilised by the development.
1 (o)	Quality of water resources	The application has been referred to NSW Office of Water regarding the proposals likely impact upon existing waterways. The proposal is satisfactory subject to conditions.
1 (p)	Aboriginal land claims.	The land is privately owned and is not subject to an Aboriginal land claim.
1 (q)	Impact upon heritage items	The proposed development is not located within proximity to any listed heritage items. The proposed development will not adversely impact upon any heritage item, relic or site or on their curtilages.

MINUTES FOR ORDINARY MEETING – 14 OCTOBER 2014

1(r)	Land is identified for future urban or rural residential purposes	The proposed site is not located within an urban release area or land identified for rural residential expansion.
1(s)	Benefits to existing village centre.	The applicant has demonstrated that the development will increase the expenditure within the local villages of Woodville and Hinton.
2(a)	Site analysis	The applicant has provided a site analysis which is satisfactory with regards to the requirements of schedule 3 SEPP No.15.
2(b)	Written statement	The Statement of Environmental Effects and associated documentation is satisfactory with regards to demonstrating how the design of the proposed development has had regard to the site analysis.
s.10	Management Plan	The community management statement will, upon the commencement of the land sharing community, become the management plan as required by Clause 10.
s.11	Density	The proposal is 112.4 ha in area and is therefore subject to a maximum dwelling number of 30, in accordance with the requirements of Clause 11 of the SEPP. The applicant proposes 29 dwellings which is consistent with this clause. Future dwellings will need to be designed to ensure compliance with this clause. This will be confirmed at Stage two of the proposal, when the Development Application is lodged for the dwellings.
s.12	Subdivision prohibited	The application does not seek approval for the subdivision of the site.

State Environmental Planning Policy No. 44 – Koala Habitat Protection and Port Stephens Comprehensive Koala Plan of Management (CKPoM)

State Environmental Planning Policy No.44 – Koala Habitat Protection, aims to encourage the proper conservation and management of areas of natural vegetation that provide habitat for koalas to ensure a permanent free-living population over their present range and reverse the current trend of koala population decline.

The site is mapped as Marginal Koala Habitat. Council's Natural Resource Section have assessed the proposed development and it is considered satisfactory subject to conditions of consent.

State Environmental Planning Policy No. 55- Remediation of Land

The provisions of State Environmental Planning Policy No.55 require Council to consider the potential for a site to be contaminated. The subject site has a history of rural land use. Inspection of the site identified that contaminating activities were not present and further investigation was not warranted.

Port Stephens Local Environmental Plan (2013)

Zone RU2 Rural Landscape

The land is zoned RU2 Rural Landscape. The proposed development is not inconsistent with the objectives of the zone. Rural land sharing communities are not listed as a permissible form of development under the provisions of the RU2 Zone, however the proposal satisfies the provisions of s.7 SEPP No.15 (detailed above), and on this basis the proposed development is a permissible form of development. Section 5 SEPP No.15 and clause 1.9 of PSLEP2013 identify that the SEPP prevails to the extent of any inconsistency with Council's LEP.

Clause 7.1 Acid sulfate soils

The subject site is identified as Class 5 acid sulfate soils (ASS). Accordingly any works within 500 metres of Class 1,2,3 or 4 land which are likely to lower the water table below 1 metre AHD on the adjacent land requires an Acid Sulfate Soils Management Plan. The proposed development is not likely to lower the water table of adjacent land and is not inconsistent with the provisions of clause 7.1.

Clause 7.2 Earthworks

The proposed development is consistent with the provisions of clause 7.2. Development consent shall be obtained for each stage and the environmental impacts of the associated earthworks shall be assessed. The earthworks proposed under stage one are satisfactory subject to conditions of consent.

Clause 7.6 Essential services

The applicant has demonstrated that essential services are available to the site. Reticulated water and sewer services are not available however the applicant has provided for appropriate on-site water harvesting and effluent disposal mechanisms.

Port Stephens Development Control Plan 2013

B2 Environmental and Construction Management

The application has been assessed against the provisions of Development Control Plan 2013 (DCP2013), B2 – Environmental and Construction Management and is satisfactory subject to conditions. The proposed development requires minimal cut/fill and vegetation removal. Further, it has been demonstrated that adequate

waste water management and treatment systems can be provided for on-site to cater for the development. Council's Natural Resource Section and Environmental Health Officer have assessed the proposed development and consider that the proposal does not result in adverse impacts to the environment.

B3 Parking and Traffic

Adequate provision for future car parking can be facilitated upon the site. Details of car parking for dwellings and visitors shall be assessed under stage two. There is sufficient area on-site to accommodate for parking demand.

The existing access to the site is satisfactory and can cater for emergency vehicles subject to upgrade works. The upgrade requirements to the access way have been addressed within the schedule of conditions and include provision of an all-weather access 4 metres in length with passing bays every 200 metres.

The development will result in increased traffic generation within the locality. The applicant suggests that a total of 130 vehicle movements per day (65 inbound and 65 outbound) will result from the development. The development will generate fewer movements than a typical residential subdivision as the development will be self-sufficient through the growing and harvesting of crops and cooperative provisions of goods (dry food). It is also anticipated that there future residents shall trip share. A mini bus/people mover will be available to transport children to school and residents to shopping trips and the like.

Green Wattle Creek Road is currently unsealed and is not well maintained. The development does result in increased traffic demand to Green Wattle Creek Road and it is recommended that the road be upgraded in order to cater for the development. A condition has been incorporated into the consent should Council approve the development. The application has been assessed against the provisions of B3 Parking and Traffic and is satisfactory subject to conditions.

B6 Single and Dual Occupancy Dwellings

The applicant does not propose the construction of dwellings under stage one. Stage two which shall comprise the application for the new dwelling houses will require consideration under DCP2013 B6.

Section 94 Contribution Plan

Stage one does not involve the construction of any dwellings. Section 94 contributions shall be levied under stage two.

Community consultation

In accordance with clause 8 SEPP No.15 and Council's Notification Policy, the proposed development was advertised and notified to adjoining neighbours. In response 55 submissions were received – 42 supporting the proposal and 13 objecting to the proposal (including one petition with 45 signatures). The key items raised with objections are outlined as follows:

Matter raised	Response
Traffic and pedestrian safety	The traffic demand generated by the development has potential to result in adverse impacts to adjoining properties. In order to address this matter and ensure safety of road users (and pedestrians) it has been recommended that upgrades occur to Green Wattle Creek Road.
Dust pollution	The proposed development is satisfactory with regards to dust pollution subject to conditions of consent. It is recommended that the applicant seal Green Wattle Creek Road and the sites access. Erosion/dust control conditions are recommended during construction.
Impacts to flora and fauna	The application has been assessed by Council's Natural Resource Section and is supported subject to conditions of consent.
Impacts to adjoining Biobanking site	The application has been assessed by Council's Natural Resource Section and conditions of consent have been imposed to ensure the proposed development does not adversely impact upon the adjoining bio-banking site. Further, the Community Management Plans limits pet ownership.
Emergency access and bushfire risk	The NSW Rural Fire Service (RFS) has provided GTA's supporting the proposal.
Rates and local services	The development is permissible under SEPP No.15. Section 94 contributions shall be levied at Stage 2.
Compliance with SEPP No.15	The application has been assessed against the provisions of SEPP No.15 and is satisfactory. A management plan and details regarding ownership (licensing) have been provided with the application.
Use of the site for tourism	The application does not propose the use of the site for the purpose of tourism.
Impact to rural amenity	The development has been designed and located so as to be sympathetic to surrounding properties and the rural character and amenity of the local area. Site topography and setbacks assist in reducing the visual impact of the proposal. The proposal will not be readily visible from adjoining properties or Green Wattle Creek Road.
Impact to adjoining	The proposed development is adequately setback from adjoining

MINUTES FOR ORDINARY MEETING – 14 OCTOBER 2014

properties including Pony Club	properties as follows: north 549m, east 159m, south 689, and west 332m. Issues were raised regarding the developments impact to the adjoining Pony Club located on Green Wattle Creek Road with respect to increased traffic movements. It is acknowledged that increased traffic movements will occur as are result of the development, however, it is anticipated that the additional traffic can be accommodated within the existing road network without any significant impacts to surrounding properties, including the Pony Club.
Wastewater treatment	Council's Environmental Health Officer has assessed the proposed wastewater treatment system and raises no objection to the proposal subject to conditions.
Services	The site can be adequately serviced by essential infrastructure (electricity and internet) to service providers requirements.
Impact to surrounding waterways	The application has been assessed by NSW Office of Water and is considered acceptable subject to conditions. The proposal is not likely to have adverse impact to surrounding water ways.
Noise	The development has been appropriately located on site to ensure adequate setbacks to adjoining properties. The proposed development and associated traffic movements will not result in adverse noise impacts.
Property values	There is no evidence to suggest that the proposed development would impact upon the value of adjoining properties.
Water and sustainability	The applicant has demonstrated that sufficient water can be harvested on site to cater for the proposed dwellings and associated agricultural pursuits.
Subdivision	Subdivision is prohibited under SEPP No.15 and is not proposed. The applicant has provided information relating to the manner in which land ownership shall occur – via licensing arrangement.
Viability of the proposal	The applicant has provided an agronomist assessment that demonstrates that the development as proposed has been appropriately sited and designed to maximise the agricultural viability of the land.
Support the proposal	There were 42 submissions received in support of the application.

External referrals

Rural Fire Service

The proposed development is located on bushfire prone land, rural land sharing communities are not listed as 'special fire protection purpose' under 100B of the *Rural Fires Act 1997* and therefore the proposal is not integrated development under s.91 of the EP&A Act. Notwithstanding, given the nature of the proposed development the proposal was referred to the Rural Fire Service (RFS) for comment. The RFS provided conditions which will have been incorporated into the recommended schedule of conditions.

NSW Office of Water

The development requires the crossing of one water body (creek) with infrastructure associated with the disposal of wastewater. The proposal is captured as integrated development under s.91 EP&A Act requiring approvals from the NSW Office of Water (NSWOW) under s.91 of the *Water Management Act 2000* for a controlled activity. Accordingly, the application was referred to NSWOW and general terms of approval were issued. The terms of approval have been incorporated into the schedule of conditions.

Internal referrals

Development Engineering

The application was referred to Council's Development Engineering Section for comment. Subject to conditions of consent the proposed development has been determined to be satisfactory.

Environmental Health (Wastewater)

Council's Environmental Health Officer has assessed the applicants proposed on-site sewage management system and considers that waste water management can be suitability achieved on site subject to conditions of consent.

Natural Resources

Council's Natural Resource Section have reviewed the proposed development and hold no objection to the proposed development subject to conditions of consent.

Flood Engineer

The application was referred to Council's Flood Engineer as access to the lot is affected by flooding. Council's Flood Engineer has reviewed the proposal and holds no objection to the proposal subject to conditions of consent.

Building

The application was referred to Council's Building Team for review and it was identified that the proposal was satisfactory subject to conditions.

Likely impacts of the development

The assessment has considered the likely impact of the development by identifying the potential impacts of the proposal, available measures to ameliorate impacts and frequency/severity of impacts. The development can be carried out on site without significant adverse impacts to the environment or surrounding residential amenity subject to the conditions held at **ATTACHMENT 3**.

The proposed development is consistent with the provisions of SEPP No.15 and relevant sections of Council's LEP and DCP. It is compatible and sympathetic with the existing and envisaged future rural character of the locality.

Suitability of the site

The proposed development is permissible under the provisions of SEPP No.15. Essential services can be provided to the site and/or managed on site. There are no physical constraints on the site that make the land unsuitable for the proposed development. The site is suitable for the proposed development.

Public interest

The development will result in positive social, economic and environmental outcomes to the subject site and the surrounding rural villages of Hinton and Wallalong. The concerns raised during public exhibition have been addressed. The development is in the public interest.

**ATTACHMENT 3
CONDITIONS OF CONSENT**

1. SCHEDULE 2

CONDITIONS THAT IDENTIFY APPROVED PLANS AND LIMITATIONS OF CONSENT

1. The development must be carried out in accordance with the following plans and documentation and endorsed with Council's stamp, except where amended by other conditions of this consent:

Stamped plans numbered A003, A100 and A102, prepared by Gregory Burgess Pty Ltd Architects and dated 15/01/14.
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Stamped plans numbered SG-LP-01 and SG-LP-01, prepared by Gregory Burgess Pty Ltd Architects and dated 3/01/14.

Community Management Statement and Rules – Shepherds Ground Co-operative Limited, dated 10 February 2014.

2. The development shall be carried out as a 'Rural Landsharing Community' in accordance with the provisions of State Environmental Planning Policy No.15 Rural Land Sharing Communities.
3. The development shall be carried out in stages. This consent applies to the concept approval and Stage 1 which incorporates;
- a. The use of the subject site as a rural landsharing community,
 - b. Land tenure, dwelling occupancy rights, and land management arrangements,
 - c. Design principles that are binding upon subsequent stages of the development (i.e. criteria for the location of future buildings),
 - d. The construction of internal roads and drainage,
 - e. The use of the existing dwelling for administration associated with the establishment of the rural landsharing community in the short to mid-term until a purpose built community building is constructed in a subsequent stage,
 - f. Agricultural activities to be established on the site (associated exempt development).
4. Prior to the commencement of any building works, separate development consent shall be granted for structures within each stage.
5. The development shall be undertaken in accordance with the General Terms of Approval granted as follows:

- NSW Rural Fire Service dated 14 May 2014; and
- Department of Natural Resources dated 16 June 2014.

CONDITIONS TO BE SATISFIED PRIOR TO DEMOLITION, EXCAVATION OR CONSTRUCTION

6. At least 48 hours prior to the commencement of any development (including demolition, excavation, shoring or underpinning works), a notice of commencement of building or subdivision work form and appointment of the Principal Certifying Authority form shall be submitted to Council.
7. Temporary sediment and erosion control and measures are to be installed prior to the commencement of any works on the site. These measures must be maintained in working order during the construction works up to completion. All sediment traps must be cleared on a regular basis and after each major storm and/or as directed by the Principal Certifying Authority and Council officers.

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

ENGINEERING / STORMWATER

8. A **Soil & Water Management Plan** in accordance 'Managing Urban Storm water; Soils and Construction document, Landcom 2004' is to be prepared by an Engineer whose qualifications are acceptable for membership of the Institution of Engineers Australia (or other professional approved by Council) detailing temporary and permanent measures proposed to be installed and maintained. The plan is to include an analysis of the susceptibility of soil to erosion and is to be submitted with the Engineering plans. Details shall be submitted to the Principal Certifying Authority for approval **prior to the issue of the Construction Certificate**.
9. **A Construction Certificate cannot be issued** until full details of the stormwater drainage design, including overland flow paths, stormwater quality and quantity control measures to manage and convey all stormwater up to the 1% AEP critical storm duration and associated calculations, has been provided to the Certifying Authority for assessment and determined to be satisfactory by the Certifying Authority.

The stormwater system shall be designed and constructed so that water quality targets are met in accordance with Councils Urban Stormwater and Rural Water Quality Management Plan.

ROADWORKS AND ACCESS

10. A detailed geotechnical investigation shall be undertaken and a report prepared addressing the following:
 - a. pavement design of the internal roads;

- b. geotechnical integrity of existing dam 3 including, recommendations as to any necessary remediation works or removal of the dam to ensure dwellings downstream will not be affected due to failure of the existing dam embankment.

Details shall be submitted to the Certifying Authority for approval **prior to the issue of the Construction Certificate.**

- 11. Prior to issue of a Construction Certificate, the vehicle accessway shall be constructed according to the following design criteria:
 - a. be an all-weather access with a minimum trafficable width of 4 metres;
 - b. have an offset of 300 mm or greater from obstructions higher than 150 mm;
 - c. include a passing area at least every 200 metres, with a minimum width of 5.5 metres, and minimum length of 6.5 metres with 45° tapers;
 - d. road pavement in accordance with the detailed geotechnical report required under the conditions of consent for this development.
- 12. All work required to be carried out within a public road reserve must be separately approved by Council, under Section 138 of the Roads Act 1993.

Engineering plans for the required work within a public road must be prepared and designed by a suitably qualified professional, in accordance with Council's 'Infrastructure Design and Construction Specification – AUS Spec', and Section B of Development Control Plan 2007.

The required works to be designed are as follows:

- a. Full width rural road including a minimum 6 metres wide carriageway with 1m wide shoulders, 3% cross fall each side of the centreline, minimum 250mm deep table drain, subsoil drainage for a distance of 400 metres from the sealed section at the intersection of Green Wattle Road and Jack James Close;
- b. 6m wide carriageway is to have a two-coat hot flush bitumen seal for a distance of 400 metres from the sealed section at the intersection of Green Wattle Road and Jack James Close;
- c. Removal of trees where necessary to ensure safe sight distance in accordance with Austroads - Guide to road design;
- d. Roadside furniture and safety devices including signage, guide posts, chevrons, directional arrows in accordance with RTA and Australian Standards;
- e. Signage and line marking. The signage and line marking plan shall be approved by the Council Traffic Committee;
- f. Traffic control plans in accordance with the Roads and Traffic Authority – Traffic Control at Worksites Manual;

- g. Payment of applicable fees and bonds; and
- h. Contractor's public liability insurances to a minimum value of \$10 million dollars.

The engineering plans must be approved by Council **prior to the issue of a Construction Certificate required under this consent.**

CONDITIONS TO BE SATISFIED DURING THE DEMOLITION, EXCAVATION AND CONSTRUCTION PHASES

13. Building work that involves residential building works (within the meaning of the Home Building Act, 1989) must not be carried out unless the principal certifying authority for the development to which the work relates:
- (a) in the case of work to be done by a licensee under that Act:
 - (i) has been informed in writing of the licensee's name and contractor licence number, and
 - (ii) is satisfied that the licence has complied with the requirements of Part 6 of that Act, or
 - (b) in the case of work to be done by any other person:
 - (i) has been informed in writing of the person's name and owner-builder permit, or
 - (ii) has been given a declaration, signed by the owner of the land, that states that the reasonable market cost of the labour and materials involved in the work is less than the amount prescribed for the purposes of the definition of owner-builder work in Section 29 of that Act, and is given appropriate information and declarations under paragraphs (a) and (b) whenever arrangements for the doing of the work are changed in such a manner as to render out of date any information or declaration previously given under either of those paragraphs.
- A certificate purporting to be issued by an approved insurer under Part 6 of the Home Building Act, 1989, that states that a person is the holder of an insurance policy issued for the purposes of this clause, is sufficient evidence that the person has complied with the requirements of that part.
14. All building work must be carried out in accordance with the provisions of the **Building Code of Australia.**
15. Construction work that is likely to cause annoyance due to noise is to be restricted to the following times:
- * Monday to Friday, 7am to 6pm;
 - * Saturday, 8am to 1pm;
 - * No construction work to take place on Sunday or Public Holidays.
16. It is the responsibility of the applicant to erect a PCA sign and to ensure the PCA sign remains in position for the duration of works.

17. Where no sanitary facilities currently exist onsite for construction workers toilet accommodation for all tradespersons shall be provided from the time of commencement until the building is complete. The toilet facilities shall be located so as to have minimal impact of adjoining properties and shall not be placed on the road reserve, without separate approval from Council.
18. During the extraction, removal, and transportation of material associated with the works, the person having the benefit of the consent shall ensure that airborne dust is contained within the work site or transport vehicles, and does not impact on the amenity of the surrounding environment. Effective environmental controls and practices shall be implemented and maintained to the satisfaction of Council or the Principal Certifying Authority.
19. Where required, the adjustment or inclusion of any new utility service facilities must be carried out by the person having the benefit of the development consent and in accordance with the requirements of the relevant utility authority. These works shall be at no cost to Council.

CONDITIONS TO BE SATISFIED PRIOR TO OCCUPATION OF ANY BUILDING

20. Prior to occupation of any building, the Principle Certifying Authority is to be satisfied that restriction as to use of the land under Section 88E of the *Conveyancing Act 1919*, has been created restricting the occupation of the premises to:
 - a. Rural land sharing in accordance with State Environmental Planning Policy No.15.
 - b. Subdivision is prohibited.
- ~~21.~~ Prior to occupation of any building, the Principle Certifying Authority is to be satisfied that a restriction under 88B of the *Conveyancing Act 1919*, has been created as follows:
 - ~~a.~~ The effluent land application areas (including all greywater and compost land application areas) shall not be developed for a future different use. The restriction shall identify the land for use as effluent disposal area only.
22. Prior to occupation of any b the Principal Certifying Authority is to be satisfied that all landscape works, including the removal of all noxious and/or environmental weed species, have been undertaken in accordance with the approved plan(s) and conditions of consent. The species *Sapium sabiferum* identified on the approved species list shall not be used and shall be replaced with a more suitable species for the site.
23. The approved 'Community Management Statement and Rules – Shepherds Ground Co-operative Limited, dated 10 February 2014' shall be amended to include by-laws that appropriately and adequately define the responsibilities for the operation, maintenance, monitoring and, where necessary, the

replacement of the individual and common On-site Sewage Management Systems including but not limited to treatment systems, dry composting systems, reticulation systems and land application areas. The by-laws should be drafted by a suitably qualified person/organisation and should be to the satisfaction of Council.

24. Written evidence from the electricity supply authority shall be submitted to Council stating that satisfactory arrangements have been made for the provision of electricity supply to all dwelling envelopes.
25. Written evidence from the telecommunications authority shall be submitted to Council stating that satisfactory arrangements have been made for the provision of telephone supply to all dwelling envelopes.

CONDITIONS TO BE SATISFIED AT ALL TIMES

26. Access and facilities for persons with disabilities to and within all community buildings and community areas of the development shall be provided at all times in accordance with AS1428.1 – *Design for Access and Mobility* and Part D3 the *Building Code of Australia*.
27. All owners/shareholders shall comply with the approved document 'Community Management Statement and Rules – Shepherds Ground Co-operative Limited, dated 10 February 2014' (as amended by conditions of this consent). The Community Management Statement and Rules shall become the Community Management Statement as required under cl.10 SEPP No.15.
28. Any overflow from the proposed dam/s must not concentrate water on any adjoining property. The stormwater system, including any water quality or quantity components, shall be maintained in perpetuity for the life of the development.
29. All waste shall be contained within a secure enclosure or bin. Rubbish generated from the development is to be suitably contained on site at all times. No rubbish shall be stockpiled in a manner which facilitates the rubbish to be blown off site.
30. All owners/shareholders of the subject site shall use the development as their principal place of residence at all times. The development is not to be used as tourist/holiday accommodation or temporary accommodation of any kind.

NATURAL RESOURCES

31. Where hollow bearing trees cannot be retained hollows shall be harvested and installed in adjacent trees. If hollows are unable to be salvaged they will need to be replaced with nest boxes at a ratio of 2:1.
32. The following key areas are to be revegetated and/or managed to encourage natural regeneration and improve condition:

- a. An area along the southern boundary including Green Wattle Creek, and an area along the northern boundary (including a small remnant of Lower Hunter Valley Dry Rainforest) of the study area (labelled "Landscape Value" in **Figure 3 of Appendix E**)
- b. The area of steep hills including the gully containing a small remnant of Lower Hunter Valley Dry Rainforest in the northeast of the landholding."
- c. Revegetation areas are to be managed and treated for weeds.

All revegetation works are to be carried out using a combination of natural regeneration (as promoted by stock management/exclusion) and replanting where natural regeneration does not occur. Replanting will have an emphasis on tree canopy and mid-storey species that are endemic to the site as described in Section 3.2.2 *Dry sclerophyll forest* and Section 3.2.3 *Riparian forest* in Appendix E. Recommended species can also be obtained by contacting Council's Natural Resource Team.

ADVICES

- a. The contributions levied pursuant to Section 94 of the *Environmental and Assessment Act 1979* for this development have been deferred. Contributions shall be levied on each development consent issued for a dwelling on the subject site. Each dwelling approval will be levied in accordance with the Port Stephens Development Contributions Plan.
- b. Subsequent development applications for stages involving construction of dwellings or community buildings will require additional and detailed assessment by suitably qualified and experienced consultants that satisfactorily addresses detailed design and constructability requirements for installation, construction, operation and maintenance of all On-site Sewage Management infrastructure including land application areas. For preliminary information on the conceptual wastewater servicing strategy the reader is directed to the report on "*Supplementary Effluent Disposal Assessment, Proposed Rural Land Sharing Development, Douglas Partners, Project 81393.01, dated September 2014*".
- c. In the event of any bone or stone artefacts, or discrete distributions of shell, being unearthed during any earthmoving, all work must cease immediately in the affected area, and the National Parks and Wildlife Service (NPWS) shall be informed of the discovery. Work must not recommence until the material has been inspected and permission has been given by NPWS to proceed.

ATTACHMENT 4
GENERAL TERM OF APPROVAL

All communications to be addressed to:

Headquarters
15 Carter Street
Lidcombe NSW 2141

Headquarters
Locked Bag 17
Granville NSW 2142

Telephone: 1300 NSW RFS
e-mail: csc@rfs.nsw.gov.au



Amy Stone
Senior Development Planner
Port Stephens Council
PO Box 42
RAYMOND TERRACE NSW 2324

Your Ref: 16-2014-1681
Our Ref: D14/0986
DA14041191713 JM

14 May 2014

Dear Ms Stone,

Integrated development for 15 Green Wattle Creek Road, Butterwick

I refer to your letter dated 8 April 2014 seeking general terms of approval for the above Integrated Development in accordance with Section 91 of the 'Environmental Planning and Assessment Act 1979'.

This response is to be deemed a bush fire safety authority as required under section 100B of the 'Rural Fires Act 1997' and is issued subject to the following numbered conditions:

Asset Protection Zones

The intent of measures is to provide sufficient space and maintain reduced fuel loads so as to ensure radiant heat levels of buildings are below critical limits and to prevent direct flame contact with a building. To achieve this, the following conditions shall apply:

1. Upon the commencement of the development and in perpetuity the areas detailed below shall be managed as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones':
 - all land within and around the proposed residential development and existing dwelling/proposed community hub;
 - for a distance of 30 metres from the north-eastern edge of the proposed residential development; and,
 - for a distance of 50m in all other directions from the edge of the proposed residential development and existing dwelling/proposed community hub.

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2. Appropriate arrangements shall be put in place in the establishment of the rural landsharing community scheme to ensure the effective documentation, implementation and ongoing maintenance of the required Asset Protection Zones on the site.

Water and Utilities

The intent of measures is to provide adequate services of water for the protection of buildings during and after the passage of a bush fire, and to locate gas and electricity so as not to contribute to the risk of fire to a building. To achieve this, the following conditions shall apply:

3. The provision of water, electricity and gas to the proposed dwellings shall comply with section 4.1.3 of 'Planning for Bush Fire Protection 2006'.
4. Arrangements shall be made within the proposed development for the provision of water supplies for bush fire fighting purposes in accordance with section 4.1.3 of 'Planning for Bush Fire Protection 2006'.

Access

The intent of measures for public roads is to provide safe operational access to structures and water supply for emergency services, while residents are seeking to evacuate from an area. To achieve this, the following conditions shall apply:

5. The existing and proposed access roads within the site shall comply with sections 4.1.3(2) and 4.2.7 of 'Planning for Bush Fire Protection 2006'.

Design and Construction

The intent of measures is that buildings are designed and constructed to withstand the potential impacts of bush fire attack. To achieve this, the following conditions shall apply:

6. The seven proposed dwellings within 100m of the bush fire hazard to the north-east of the proposed development, as outlined in Drawing Ref 5721 BF-V2 'Bushfire Threat Assessment'(Le Mottee Group, 19/2/2014), shall comply with Sections 3 and 5 (BAL 12.5) Australian Standard AS3959-2009 'Construction of buildings in bush fire-prone areas' and section A3.7 Addendum Appendix 3 of 'Planning for Bush Fire Protection'.

Emergency Management Arrangements

The intent of measures is to provide suitable emergency and evacuation (and relocation) arrangements for occupants of special fire protection purpose developments. To achieve this, the following conditions apply:

8. An emergency / evacuation plan is to be prepared consistent with the NSW Rural Fire Service document 'Guidelines for the Preparation of Emergency/Evacuation Plan'. This shall reflect the proposal for a refuge to be provided on the site and shall set out specific arrangements in the instance of a bush fire occurring to the south-west of the site.

General Advice – consent authority to note

It is noted that the dedicated bush fire fighting water supply tanks to dwellings on the north-east side of the proposed development are to be located at the rear of the proposed dwellings. As these dwellings will not have vehicular access from the proposed main circular access road, consideration will need to be given to the provision of access to, or relocation of, these supplies at stage 2 of the development in order to comply with Section 4.1.3 of Planning for Bush Fire Protection 2006.

For any enquiries regarding this correspondence please contact Jason Maslen on 1300 NSW RFS.

Yours sincerely

Michelle Streater
Acting Team Leader, Development Assessment and Planning



Department of
Primary Industries
Office of Water

Contact: Anthony Bryson
Phone: 02 4904 2515
Fax: 02 4904 2503
Email: anthony.bryson@water.nsw.gov.au
Our ref: 20 ERM2014/0334
Your ref: 16-2014-168-1

The General Manager
Port Stephens Council
PO Box 42
Raymond Terrace NSW 2324

Attention: Ms Amy Stone



16 June 2014

Dear Amy

Re: Integrated Development Referral – General Terms of Approval
Dev Ref: 16-2014-168-1
Description of proposed activity: Staged Development - Rural Landsharing
Community - Stage 1.
Site location: 15 Green Wattle Creek Road, Butterwick. Lot 1 DP 999947.

I refer to your recent letter regarding an integrated Development Application (DA) proposed for the subject property. Attached, please find the Office of Water's General Terms of Approval (GTA) for works requiring a controlled activity approval under the *Water Management Act 2000* (WM Act), as detailed in the subject DA.

NOTE: The subject property contains a number of existing dams which if the proposed development is approved may require licensing to comply with current legislation requirements. The proponent should liaise directly with NSW Office of Water in regard to this issue.

Please note Council's statutory obligations under section 91A (3) of the *Environmental Planning and Assessment Act 1979* (EPA Act) which requires a consent, granted by a consent authority, to be consistent with the general terms of any approval proposed to be granted by the approval body.

If the proposed development is approved by Council, the Office of Water requests that these GTA be included (in their entirety) in Council's development consent. Please also note the following:

- The Office of Water should be notified if any plans or documents are amended and these amendments significantly change the proposed development or result in additional works on waterfront land (which includes (i) the bed of any river together with any land within 40 metres inland of the highest bank of the river, or (ii) the bed of any lake, together with any land within 40 metres of the shore of the lake, or (iii) the bed of any estuary, together with any land within 40 metres inland of the mean high water mark of the estuary).
- Once notified, the Office of Water will ascertain if the amended plans require review or variation/s to the GTA. This requirement applies even if the proposed works are part of Council's proposed consent conditions and do not appear in the original documentation.

www.water.nsw.gov.au

26 Honeysuckle Drive NEWCASTLE NSW 2300 | PO Box 2213 DANGAR NSW 2309
Telephone (02) 4904 2500 | Facsimile (02) 4904 2503 | www.water.nsw.gov.au | ABN 47 661 556 763
e information@water.nsw.gov.au | ABN 72 189 919 072

-2-

- The Office of Water should be notified if Council receives an application to modify the development consent and the modifications change any activities on waterfront land.
- The Office of Water requests notification of any legal challenge to the consent.

As the controlled activity to be carried out on waterfront land cannot commence before the applicant applies for and obtains a controlled activity approval, the Office of Water recommends the following condition be included in the development consent:

"The Construction Certificate will not be issued over any part of the site requiring a controlled activity approval until a copy of the approval has been provided to Council".

The attached GTA are not the controlled activity approval. The applicant must apply (to the Office of Water) for a controlled activity approval **after consent** has been issued by Council **and before** the commencement of any work or activity on waterfront land.

Finalisation of a controlled activity approval can take up to eight (8) weeks from the date the Office of Water receives all documentation (to its satisfaction). Applicants must complete and submit (to the undersigned) an application form for a controlled activity approval together with any required plans, documents, the appropriate fee and security deposit or bank guarantee (if required by the Office of Water) and proof of Council's development consent.

Application forms for the controlled activity approval are available from the undersigned or from the Office of Water's website:

www.water.nsw.gov.au [Water licensing](#) > [Approvals](#) > Controlled activities

The Office of Water requests that Council provide a copy of this letter to the applicant.

The Office of Water also requests that Council provides the Office of Water with a copy of the determination for this development application as required under section 91A (6) of the EPA Act.

Yours Sincerely

Anthony Bryson
Water Regulation Officer
Office of Water - South Coast / Hunter

General Terms of Approval
for work requiring a controlled activity approval
under s91 of the Water Management Act 2000

Our Reference: 20 ERM2014/0334
Site Address: 15 Green Wattle Creek Road, Butterwick. Lot 1 DP 999947.
DA Number: 16-2014-168-1
LGA: Port Stephens Council

Number	Condition
Plans, standards and guidelines	
1	<p>These General Terms of Approval (GTA) only apply to the controlled activities described in the plans and associated documentation relating to 16-2014-168-1 and provided by Council:</p> <p>(i) Statement of Environmental Effects for Staged Development Application, Proposed Rural Landsharing Community, Lot 1 DP 999947- 15 Green Wattle Creek Road Butterwick 2321. Ref # 1221149, dated March 2014. Prepared by JW Planning Pty Ltd.</p> <p>Any amendments or modifications to the proposed controlled activities may render these GTA invalid. If the proposed controlled activities are amended or modified the NSW Office of Water must be notified to determine if any variations to these GTA will be required.</p>
2	<p>Prior to the commencement of any controlled activity (works) on waterfront land, the consent holder must obtain a Controlled Activity Approval (CAA) under the Water Management Act from the NSW Office of Water. Waterfront land for the purposes of this DA is land and material in or within 40 metres of the top of the bank or shore of the river identified.</p>
3	<p>The consent holder must prepare or commission the preparation of:</p> <p>(i) Civil Construction Plans (ii) Erosion and Sediment Control Plan (iii) Vegetation Management Plan</p>
4	<p>All plans must be prepared by a suitably qualified person and submitted to the NSW Office of Water for approval prior to any controlled activity commencing. The following plans must be prepared in accordance with the NSW Office of Water's guidelines located at www.water.nsw.gov.au/Water-Licensing/Approvals/default.aspx</p> <p>(i) Vegetation Management Plans (ii) Riparian Corridors (iii) Watercourse crossings</p>
5	<p>The consent holder must (i) carry out any controlled activity in accordance with approved plans and (ii) construct and/or implement any controlled activity by or under the direct supervision of a suitably qualified professional and (iii) when required, provide a certificate of completion to the NSW Office of Water.</p>
Rehabilitation and maintenance	
6	<p>The consent holder must carry out a maintenance period of two (2) years after practical completion of all controlled activities, rehabilitation and vegetation management in accordance with a plan approved by the NSW Office of Water.</p>
Reporting requirements	

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MINUTES FOR ORDINARY MEETING – 14 OCTOBER 2014

Our Reference: 20 ERM2014/0334
Site Address: 15 Green Wattle Creek Road, Butterwick. Lot 1 DP 999947.
DA Number: 16-2014-168-1
LGA: Port Stephens Council

Number	Condition
7	The consent holder must use a suitably qualified person to monitor the progress, completion, performance of works, rehabilitation and maintenance and report to the NSW Office of Water as required.
Disposal	
8	The consent holder must ensure that no materials or cleared vegetation that may (i) obstruct flow, (ii) wash into the water body, or (iii) cause damage to river banks; are left on waterfront land other than in accordance with a plan approved by the NSW Office of Water.
Drainage and Stormwater	
9	The consent holder must stabilise drain discharge points to prevent erosion in accordance with a plan approved by the NSW Office of Water.
Erosion control	
10	The consent holder must establish all erosion and sediment control works and water diversion structures in accordance with a plan approved by the NSW Office of Water. These works and structures must be inspected and maintained throughout the working period and must not be removed until the site has been fully stabilised.
Excavation	
11	The consent holder must ensure that no excavation is undertaken on waterfront land other than in accordance with a plan approved by the NSW Office of Water.
END OF CONDITIONS	

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ITEM NO. 3

FILE NO: 16-2014-41-1

DEVELOPMENT APPLICATION FOR STORAGE SHED AT NO. 69 FRANCIS AVE LEMON TREE PASSAGE

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

RECOMMENDATION IS THAT COUNCIL:

- 1) Refuse Development Application 16-2014-41-1 for a Storage Shed at No. 69 Francis Avenue Lemon Tree Passage for the following reason:
 - a) The development is inconsistent with the objectives of the 2 (a) Residential "A" Zone of Port Stephens Environmental Plan 2000, in regards to design, density, associated land use and is out of character with the immediate landscape and does not maintain an acceptable level of visual amenity.
 - b) The development does not comply with the following clauses of Port Stephens Councils Development Control Plan; Section 4.4- Setbacks; minimum front setback to garages 5.5m, be sympathetic to existing streetscape character and Section 6; side boundary setback of 900mm and a maximum height of 3.6m.

ORDINARY COUNCIL MEETING – 14 OCTOBER 2014
COMMITTEE OF THE WHOLE RECOMMENDATION

	<p>Councillor Ken Jordan Councillor John Morello</p> <p>That Council:</p> <ol style="list-style-type: none"> 1. Officers investigate proceeding with action under the <i>Environmental Planning & Assessment Act 1979</i> to issue a notice of intention to serve an order to reduce the length of the shed at 69 Francis Avenue, Lemon Tree Passage from the Francis Avenue elevation by 2 metres. 2. Issue a 'deferred commencement' approval under Section 80(3) of the <i>Environmental Planning and Assessment Act 1979</i> for development application 16-2014-41-1 for the use of a storage shed at 69 Francis Avenue, Lemon Tree Passage, subject to the conditions in Attachment 1. The consent will not become operational until the requirements of Recommendation 1 have been satisfied and the structure has been reduced in length by 2 metres. 3. Officers investigate the issue of a penalty of \$750 under the <i>Environmental Planning & Assessment Act 1979</i> based on the case law principal that a wrongdoer should not benefit from a wrongdoing (<i>Ireland v Cessnock City Council [1999] NSWLEC 250</i> and <i>Kouflidis v City of Salisbury [1982] 29 SASR 321</i>). The \$750 shall
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MINUTES FOR ORDINARY MEETING – 14 OCTOBER 2014

compensate the original fees that would have been applicable to a development application and construction certificate.

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

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

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

MOTION

261	<p>Councillor Ken Jordan Councillor Geoff Dingle</p> <p>It was resolved that Council:</p> <ol style="list-style-type: none">1. Officers investigate proceeding with action under the <i>Environmental Planning & Assessment Act 1979</i> to issue a notice of intention to serve an order to reduce the length of the shed at 69 Francis Avenue, Lemon Tree Passage from the Francis Avenue elevation by 2 metres.2. Issue a 'deferred commencement' approval under Section 80(3) of the <i>Environmental Planning and Assessment Act 1979</i> for development application 16-2014-41-1 for the use of a storage shed at 69 Francis Avenue, Lemon Tree Passage, subject to the conditions in Attachment 1. The consent will not become operational until the requirements of Recommendation 1 have been satisfied and the structure has been reduced in length by 2 metres.3. Officers investigate the issue of a penalty of \$750 under the <i>Environmental Planning & Assessment Act 1979</i> based on the case law principal that a wrongdoer should not benefit from a wrongdoing (<i>Ireland v Cessnock City Council [1999] NSWLEC 250</i> and <i>Kouflidis v City of Salisbury [1982] 29 SASR 321</i>). The \$750 shall compensate the original fees that would have been applicable to a development application and construction certificate.
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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 Steve Tucker, Paul Le Mottee, Ken Jordan and John Morello.

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

BACKGROUND

The application has been to Council a number of times. The chronology below outlines this;

- 24th June 2014:
Motion 153 – It was resolved that Council Defer Item 3 to Allow for a site Inspection.
- 12th August:
Motion 203 – It was resolved to refuse the application, although it referenced the wrong DA number in the Motion due to a typographical error.
- 26th August:
Motion 220 – It was resolved that Council defer Item 1 – Development application 16-2014-41-1 for a Storage Shed at No.69 Francis Ave Lemon Tree Passage to allow for a site inspection

Another site inspection was subsequently organised. Upon talking to the Mayor, he advised that he thought Councillors had all visited the site in their own time and a site inspection was not required as it has already occurred hence meeting the resolution of Council. Councillors that had accepted the meeting invite were contacted individually and asked if they had already attended or would be attending the site. It was determined no Councillors would be attending the arranged group site inspection, hence it was cancelled. In fulfilling the Council resolution for a site inspection, one site inspection has occurred, another was organised and cancelled due to Councillors already attending the site individually.

The remainder of the report and the recommendation remain the same.

The purpose of this report is to present a development application to Council for determination. The application was called to Council by Mayor MacKenzie.

Consent has been sought for the ongoing use of storage shed on Lot 74 DP: 214619, 69 Francis Ave Lemon Tree Passage. The subject site is zoned 2(a) – Residential Zone "A" which is described in Port Stephens Local Environment Plan 2000 (LEP). The application was lodged prior to LEP2013 being in force and subsequently the application has been primarily assessed under the objectives of LEP2000.

The applicant has constructed the storage shed to completion, including a concrete floor slab without seeking prior consent for the works.

The unauthorised works were originally referred to Council's Compliance Officer through Council's CRM system after a motorist had lodged a complaint about the bulk and scale and general size of the structure, it's location in respect to the property boundary and the vehicular safe sight distances at the intersection of Moreton and Frances Ave Lemon Tree Passage.

In the context of the compliance investigation it was noted that the structural frame at the corner of the shed had been erected 0.15m from the boundary to an eave height of approximately 3.5 metres and ridge height of approximately 3.85 metres.

MINUTES FOR ORDINARY MEETING – 14 OCTOBER 2014

The garage is noted as 10.4 metres in length with a width of 3.9 metres. This results in a floor area of 40.56 square metres.

A meeting with the owner and Council staff occurred on 10 October 2013 at this meeting the owner was advised that due to the large departures from Council development controls it would be unlikely to be supported by staff in its current form if an application had been lodged prior to the works being undertaken. During the meeting the owner advised that they would lodge an application seeking consent for the ongoing use of the structure. Council cannot retrospectively approve the structure however can approve its ongoing use in its current or a redesigned form.

A development application was received by Council for use the ongoing use of the structure. No other applications exist in relation to this particular development.

In assessment of this application it was determined that the built structure exceeds the scope of variation that might normally be applied to such a structure and in respect to its location coupled with its bulk and scale, officers have recommended that the structure is not suitable nor appropriate in the immediate location.

Given the bulk and scale of the unauthorised structure and its proximity to the property boundary it is considered to have an unacceptable environmental impact on the streetscape character of the area and an adverse impact upon the amenity of the streetscape in the immediate vicinity.

The owner has been advised in writing 11 March 2014 that the application as submitted is unlikely to be supported and was given the opportunity to redesign of the current proposal to bring it into line with more conventional dimensions and boundary setback of private residential sheds in close proximity to boundaries and traffic areas. Likely acceptable dimensions would be in the form of a carport with open sides and a maximum height of 3.6m to the ridge. It is however acknowledged that redesign is difficult as the structure has been completed.

If the applicant chooses to amend the design to a more appropriate design for the location they have been advised to provide amended plans showing the conversion to a carport and subsequently seek development consent and apply for a construction certificate for the amended building work. The applicant has indicated that they do not wish to modify the design any further and would like Council to determine the application as submitted.

The following table outlines the key departures of the existing structure from Councils DCP.

DCP 2013 Control	Actual	Complies
Maximum Floor Area 72sq.m	40.5sq.m	Yes
Maximum Height 3.6m	3.85m	No
Front Setback (not less than 4.5m) plus additional 1m setback for a garage	1.35m	No

MINUTES FOR ORDINARY MEETING – 14 OCTOBER 2014

Side and Rear Setback 900mm	Varies from 150mm to approx. 2.0m	No
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FINANCIAL/RESOURCE IMPLICATIONS

There are no foreseen financial or resource implications for Council resulting from the recommendation of this report.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	No		
Reserve Funds	No		
Section 94	No		
External Grants	No		
Other	No		

LEGAL AND POLICY IMPLICATIONS

The development application is not consistent with Council's Local Environmental Plans and local policy including Development Control Plan 2007.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that the Applicant may appeal against refusal.	Medium	Adopt recommendation	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

It is considered that there are potential economic impacts on adjoining property values given the location of the shed as it is considered to be out of character with the immediate streetscape and does not maintain an acceptable level of visual amenity for the immediate community in regards to its bulk and overall scale within the front boundary setback and located in a prominent corner location.

There are positive social and economic impacts for the property owner if Council approve the ongoing use of the shed, as they won't have to modify the structure at a cost.

CONSULTATION

The application was advertised and notified in accordance with standard procedures and no submissions were received.

Assessment staff discussed the application with neighbours who raised no concerns with the structure.

OPTIONS

- 1) Adopt the recommendation;
- 2) Amend the recommendation;
- 3) Refuse the recommendation.

ATTACHMENTS

- 1) Locality Plan;
- 2) Assessment;
- 3) Conditions of consent.

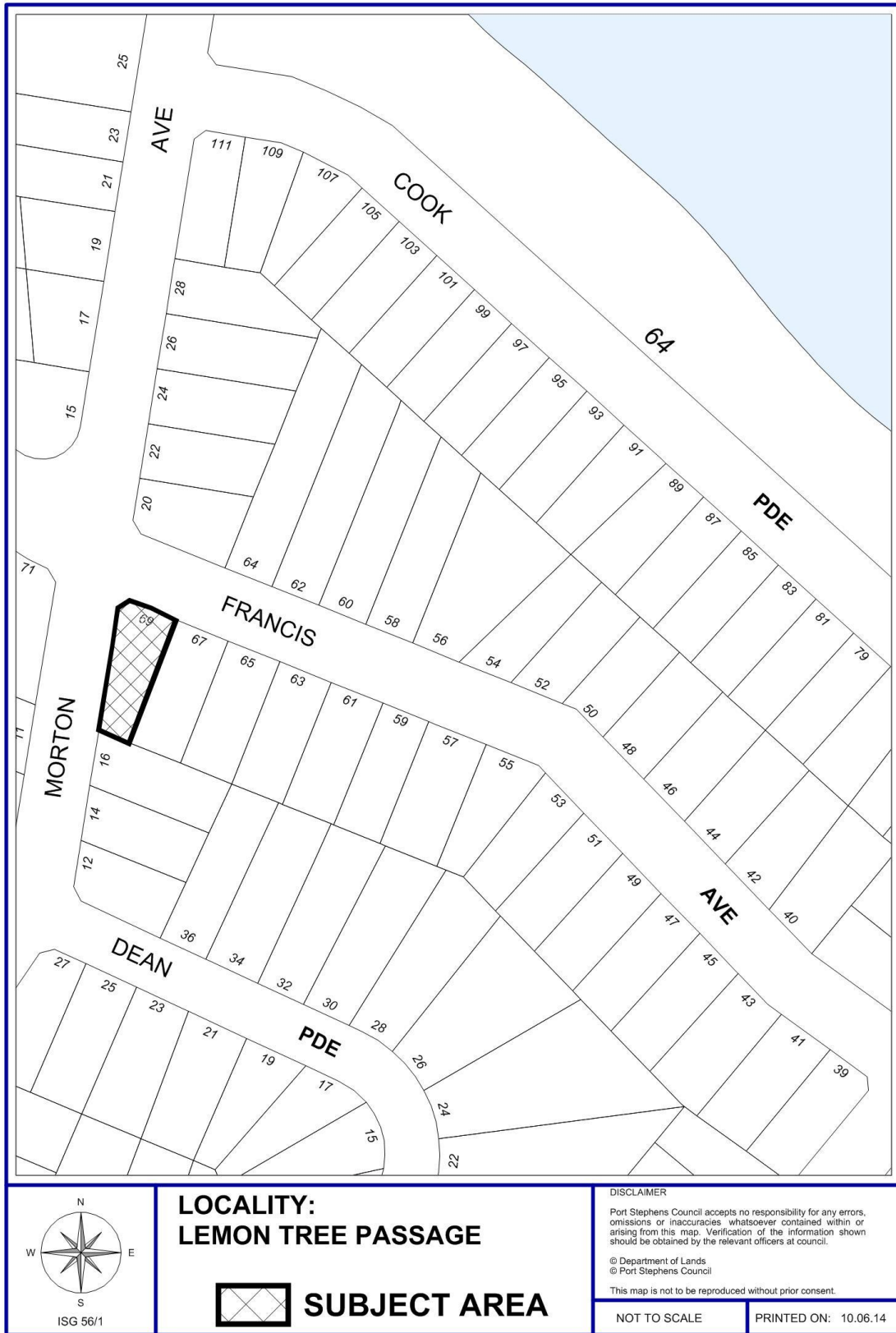
COUNCILLORS ROOM

- 1) A copy of the submitted plans and documentation.

TABLED DOCUMENTS

Nil.

ATTACHMENT 1
LOCALITY PLAN



**ATTACHMENT 2
ASSESSMENT**

Report to Development Assessment Panel

Date: 17th February 2014
File No: 16-2014-41-1
Address: Lot 74 69 Francis Ave Lemon Tree Passage
Proposal: Storage shed.

Council is in receipt of a Development Application to approve the use of a storage shed erected without approval at the above mentioned allotment.

The site has a slight slope/ gradient towards to front of the allotment and a stormwater open drain running parallel on Morton St. The plans are been advertised in accordance with Port Stephens Development Control 2007 Policy.



Shed height exceeds max height by 285mm



Shed is located on the side boundary at rear.
Shed is located approx. 2.0m from side boundary at front.



The Location of the shed encroaches building line front setback by 2.65m, side setback and height are non-compliant with the Port Stephens DCP 2013.

The application does not comply with the following DCP controls

- B6 Cl. 4.4.1- Minimum setback of 4.5m
- B6 Cl. 6.2- Maximum height of 3.6m
Minimum boundary setback of 900mm

Discussed with the applicant that Council would accept some variations to the current design; namely the reduction of bulk for the front half of the structure by changing to a carport and maintaining sight lines through the corner and would have the added benefit of reduction of the bulk of the structure that projects forward of the building line. These are the fundamental design changes we would have requested had this application been presented prior to construction.

The applicant has chosen not to amend his design and has requested the application of the as-built structure be determined by the elected Council.

**ATTACHMENT 3
CONDITIONS OF CONSENT**

1. Development consent is granted for the ongoing use only; of the garage as indicated on the site plan and supporting documents with this application on Lot74 DP:214619 69 Francis Avenue Lemon Tree Passage.
2. The development has not been assessed against the provisions of the Building Code of Australia. An application under the Environmental Planning and Assessment Act 1979 may be required if design amendments are necessary to comply with the provisions of the Building Code of Australia.
3. All building work must be carried out in accordance with the provisions of the Building Code of Australia.

ITEM NO. 4

FILE NO: 16-2012-553-3

SECTION 96 MODIFICATION TO DEVELOPMENT APPLICATION FOR URBAN HOUSING – ADDITIONS TO EXISTING AGED CARE FACILITY (26 VILLAS) (AMEND SECTION 94 CONTRIBUTIONS) AT NO. 38, 38A FARM ROAD & 16 ALA MOANA WAY, FINGAL BAY

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

GROUP: DEVELOPMENT SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Approve the modification to Development Application 16-2012-553-3, resulting in the reduction of Section 94 Contributions from \$294,084 to \$141,631 (excluding CPI indexing);
- 2) Modify the consent to ensure the facility is occupied as an aged care facility, with the property title being amended to restrict occupation to those persons identified within State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004.

**ORDINARY COUNCIL MEETING – 14 OCTOBER 2014
COMMITTEE OF THE WHOLE RECOMMENDATION**

	<p>Councillor John Nell Councillor John Morello</p>
	<p>That the recommendation be adopted and receive and note the Supplementary Information.</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 Steve Tucker, Peter Kafer, Paul Le Mottee, Ken Jordan, Geoff Dingle, John Nell and John Morello.

Those against the Motion: Nil.

MOTION

262	<p>Councillor Ken Jordan Councillor Geoff Dingle</p>
	<p>It was resolved that Council:</p> <ol style="list-style-type: none"> 1) Approve the modification to Development Application 16-2012-

MINUTES FOR ORDINARY MEETING – 14 OCTOBER 2014

	<p>553-3, resulting in the reduction of Section 94 Contributions from \$294,084 to \$141,631 (excluding CPI indexing);</p> <p>2) Modify the consent to ensure the facility is occupied as an aged care facility, with the property title being amended to restrict occupation to those persons identified within State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004.</p> <p>3) Receives and notes the Supplementary Information.</p>
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In accordance with Section 375 (A) of the Local Government Act 1993, a division is required for this item.

Those for the Motion: Crs Steve Tucker, Peter Kafer, Paul Le Mottee, Ken Jordan, Geoff Dingle, John Nell and John Morello.

Those against the Motion: Nil.

BACKGROUND

The purpose of this report is to present a Section 96 (1A) modification to Council for determination.

The modification was lodged on 31 March 2014 seeking an amendment to the Section 94 contributions applied to DA 16-2012-553-2 Urban Housing – Additions to Existing Aged Care Facility (26 Units). The reduction and reimbursement of Section 94 contributions requires the matter to be reported to Council.

The proposal seeks for the reduced Seniors Living rate to be applied to the development, as identified within Port Stephens Section 94 Plan 2007 (S94 Plan). The S94 Plan identifies that developments that comply with the provisions of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP) are eligible for a 50% reduction of all infrastructure categories except road works which attract a 20% reduction.

Although, the development was not lodged under the SEPP, the site is owned and operated by Port Stephens Veterans & Citizens Aged Care Limited. The owner/operator is a not-for-profit social housing organisation which is consistent with social housing providers defined under the SEPP. The applicant has stated that the housing is to be occupied by seniors and disabled persons, consistent with the provisions of the SEPP.

In this regard, the development shall have a smaller demand for infrastructure when compared to a standard residential development. Given the proposal is consistent with developments lodged under the SEPP, a discount to the contribution rate is considered appropriate.

FINANCIAL/RESOURCE IMPLICATIONS

The applicant has already paid the section 94 Contributions levied under 16-2012-553-2. As such, the applicant is seeking a refund of \$152,453. A breakdown of the contributions is as follows;

	Fee Paid	Less	Total Reduced Rate
Civic Administration	\$25,992	50%	\$12,996
Public Open Space, Parks and Reserves	\$53,904	50%	\$26,952
Sports and Leisure Facilities	\$127,080	50%	\$63,540
Cultural and Community Facilities	\$63,888	50%	\$31,944
Fire & Emergency Services	\$5,184	50%	\$2,592
Roadwork's	\$18,036	20%	\$14,429
TOTAL	\$294,084		\$152,453

Section 94 Analysis Team

The Section 94 Analysis Team considered the proposal on 26 August 2014 and has supported the reduction in fees, on the condition that the consent is amended to reflect that the development is for occupation by seniors. On this basis, conditions 1, 4 and 26 have also been amended and condition 25 has been added to the consent restricting the occupation of the housing for seniors or persons with a disability.

Should Council approve a refund in section 94 fees, Councils income in accordance with the section 94 plan would be diminished.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	No		
Reserve Funds	No		
Section 94	Yes	154,453	The proposal will refund \$152,453 from the Section 94 budget.
External Grants	No		
Other	No		

LEGAL AND POLICY IMPLICATIONS

The development application is consistent with Council's Section 94 Plan, if the recommended changes are made to the consent to ensure that the development is for seniors living housing. Council however has the discretion to legally vary contributions.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that the application may be challenged in the Land and Environment Court.	Low	Determine application in line with recommendation, current policy and planning controls.	Yes
There is a risk that Council will fail to realise Section 94 commitments to provide infrastructure in the area.	Medium	Determine application in line with recommendation and amend the consent to restrict the development for seniors and disabled housing to be consistent with provisions of Council's Section 94 Plan.	Yes
There is a risk that the development is not strictly in accordance with the provisions of the SEPP (Housing for Seniors or People with a Disability) 2004	Medium	If the application is approved, amend the consent to restrict the development for seniors living housing to be consistent with the SEPP.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

It is considered that the overall development will provide a positive social outcome to support the ageing population. A reduction in the section 94 contributions applicable to the development will enable the not-for-profit organisation to provide additional services/facilities for the residents living within the development.

However, providing the applicant with a refund of section 94 contributions may have a negative social and economic impact on the broader locality as it would mean that there are less financial resources available for Council to provide local infrastructure in accordance to Council's Section 94 Work Schedules, resulting in a longer lead time to complete such projects.

CONSULTATION

In accordance with Council's policy, no notification or advertising was required.

OPTIONS

- 1) Adopt the recommendation;
- 2) Amend the recommendation;
- 3) Refuse the recommendation.

ATTACHMENTS

- 1) Locality Plan;
- 2) Assessment Report;
- 3) Amended Conditions of Consent.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ATTACHMENT 1
LOCALITY PLAN



ATTACHMENT 2

ASSESSMENT REPORT

The section 96 modification has been assessed pursuant to section 79c of the *Environmental Planning and Assessment Act 1979* and the following is a summary of Those matters considered relevant in this instance.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

Section 96 Considerations

Part A: Substantially the same development

The development as modified is substantially the same development as that approved, for the following reasons:

- A) Modify consent to apply reduced S.94 contributions rate.
- B) Modify the consent to restrict occupation.

On this basis, the application is considered satisfactory.

Part B: Notification

The proposed section 96 modification does not require advertising or notification.

Part C: Consultation with the Minister

Consultation with the Minister, public authority or approval body in respect of a condition imposed as a requirement of a concurrence to the consent is not required in the circumstances of this case.

Part D: Threatened species

The proposed modification will not have a negative impact on any threatened species.

A. Modify Consent to Apply Reduced S.94 Contribution Rate

The proposal seeks for a reduction in section 94 contributions for housing for seniors and people with a disability, as identified within Port Stephens Section 94 Plan 2007 (S94 Plan). The S94 Plan identifies that developments that comply with the provisions of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP) are eligible for a 50% reduction of all infrastructure categories except road works which attract a 20% reduction.

Although, the development was not lodged under the SEPP, the site is owned and operated by Port Stephens Veterans & Citizens Aged Care Limited. The owner/operator is a not-for-profit social housing organisation which is consistent with social housing providers defined under the SEPP. The applicant has stated that the housing is to be occupied by seniors and disabled persons, consistent with the provisions of the SEPP.

In this regard, the development shall have a smaller demand for infrastructure when compared to a standard residential development. Given the proposal is consistent

MINUTES FOR ORDINARY MEETING – 14 OCTOBER 2014

with developments lodged under the SEPP, a discount to the contribution rate is considered appropriate.

The applicant has already paid the section 94 Contributions levied under 16-2012-553-2. As such, the applicant is seeking a refund of \$152,453. A breakdown of the contributions is as follows;

	Fee Paid	Less	Total Reduced Rate
Civic Administration	\$25,992	50%	\$12,996
Public Open Space, Parks and Reserves	\$53,904	50%	\$26,952
Sports and Leisure Facilities	\$127,080	50%	\$63,540
Cultural and Community Facilities	\$63,888	50%	\$31,944
Fire & Emergency Services	\$5,184	50%	\$2,592
Roadwork's	\$18,036	20%	\$14,429
TOTAL	\$294,084		\$152,453

B. Modify the consent to restrict occupation.

The consent shall be modified to ensure the facility is occupied as an aged care facility in accordance with the provisions of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004. The property title will be amended to restrict occupation to those identified within the SEPP.

Section 94 Analysis Team Comment

On the 22 July 2014 the section 94 Analysis team provided a review of the proposed modification to development DA 16-2012-553-3. The application was not supported at that meeting as the following matters were raised:

- Both the SEPP and the amendment to the section 94 plan permitting a discount for section 94 contributions for seniors' developments pre date the application. The Statement of Environmental Effects specifically states in the introduction that the proposal is not being applied for under the seniors SEPP. It hasn't been lodged under SEPP Seniors living; therefore the special provisions do not apply. If the applicant is genuine in their argument, which it would appear to be from the information provided, they should seek to amend their DA consent to link their development to the SEPP and trigger the special provisions. Without the link the development remains unrestricted and can be sold to anyone. If the consent is amended, then the money would have to be refunded as the request has been lodged within the 12 month time period.
- Further to the above the plan specifically states in relation to refunding Section 94 fees-

2.4.7 Refunding of Section 94 Contributions

Council at its complete discretion may consider a refund of contribution where:

- The development consent lapses, is superseded, is surrendered or the development does not proceed and the Contribution has not been spent.*
- Consideration will be given to the costs incurred by Council administering the development application under review.'*

The proposed S96 does not specifically achieve the above requirements. The contributions paid on the development have been spent on items within the Works Schedule which would necessitate internal borrowings being undertaken due to insufficient funds in the sub categories in the Tomaree catchment. There is a financial risk associated with this approach.

The applicant was requested to supply additional information to support the proposal, specifically in relation to why the application was not originally lodged under the SEPP and a draft s88B notation restricting occupation of the dwellings to persons defined in clause 18(1) of the SEPP.

This information was supplied by the applicant and the Section 94 Analysis Team considered it on 26 August 2014, subsequently supporting the reduction in contributions. The Analysis Team supported the proposal on the basis that the consent be amended to reflect that the development is for seniors living. In this regard the following condition was incorporated into the consent:

'The person having the benefit of the development consent shall create the following restrictions on use, on the title of the subject property under Section 88B of the Conveyancing Act 1919:

- a) Restriction identifying that all such accommodation on the property is limited to housing for seniors or people who have a disability, as defined by State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004.*

The authority empowered to release, vary or modify easements, restrictions and covenants on the use of the land required by this consent, shall be nominated as "Port Stephens Council".

Note: Evidence of registration of the 88B restriction shall be provided to Council prior to the issue of any s.94 refund of fees'.

RECOMMENDATION

The development provides a positive social outcome to support the ageing population. A reduction in the section 94 contributions applicable to the development will enable the not-for-profit organisation to provide additional services/facilities to those residents living within the development.

It recommended that a refund amount of \$152,453 be provided to the applicant. Conditions 1, 4 and 26 have been amended and condition 25 (restriction on title) has been added to the consent, to reflect the recommendation.

**ATTACHMENT 3
AMMENDED CONDITIONS OF CONSENT**

SCHEDULE 1

APPROVAL UNDER SECTION 78A (3)

1. Nil required.

SCHEDULE 2

STANDARD

1. The Development Consent No. 16-2012-553-2 has been superseded by this Modified Development Consent No. 16-2012-553-3. The Development Consent No. 16-2012-553-2 must be surrendered to the Council prior to commencement of works associated with the Modified Development Consent or the issue of any Construction Certificate by the Principle Certifying Authority.
2. A Construction Certificate is required prior to commencement of works approved by this application. The person having the benefit of this consent must appoint a principal certifying authority. If Council is not appointed as the Principal Certifying Authority then Council must be notified of who has been appointed. Note: at least two (2) days' notice must be given to Council of intentions to start works approved by this application.
3. The development is to be carried out in accordance with the approved plans and documentation submitted with the application set out in Schedule 3, except as modified by the conditions of this development consent or as noted in red by Council on the approved plans.
4. The development subject of this application, being construction of 26 dwellings under the provisions of Port Stephens Local Environmental Plan 2000, shall not be used for any purpose other than that prescribed in the consent.
5. Certification is to be prepared by a registered surveyor and submitted to the Principal Certifying Authority at the following stages of construction:
 - a. On completion of ground floor construction, confirming that the floor levels are in accordance with the Reduced Levels indicated on the approved plan.
 - b. When the roof has been completed, confirmation that the building does not exceed the Reduced Levels, as indicated on the approved plan.
6. Landscaping shall be carried out in accordance **with the details submitted**. The landscaping must be completed prior to issue of Occupation Certificate.
7. Works associated with the Roads Act Approval are subject to:
 - a. Inspection by Council

- b. Testing by a registered NATA laboratory and
 - c. Approval by Council at each construction stage as determined by Council.
8. Works associated with the approved plans and specifications located within the existing Road Reserve shall not commence until:
- a. A Roads Act Approval has been issued, and
 - b. All conditions of the Roads Act Approval have been complied with to Councils satisfaction.
9. The stormwater system, including any water quality or quantity components, shall be maintained for the life of the development.
10. Lot 5 and lot 6 shall be consolidated **prior to the issue of any Occupation Certificate.**
11. A 3m wide 'easement to drain water' shall be created over existing lot 1 and lot 6 benefitting Port Stephens Council where the Council pipes cross the properties. A draft 88b instrument shall be created where Port Stephens Council shall be nominated as the sole party permitted to release, vary or modify the easement. Details shall be submitted to Council for approval **prior to the issue of Occupation Certificate.**
12. All civil engineering works associated with the Roads Act Approval shall be carried out to the satisfaction of Council (with a letter of practical completion issued) **prior to issue of the Subdivision Certificate or Occupation Certificate.**

All works associated with the Roads Act Approval shall be at no cost to Council.

13. Submission of Works-As-Executed plans and report prepared and certified by a suitably qualified drainage engineer confirming all drainage works (volume, discharge, levels, location, etc.) are built in accordance with conditions of consent and the approved plan. Minor variations in height can be certified providing they are clearly identified in the report and the engineering certifies that the overland flow paths are not altered, discharge rates are not increased, and no additional negative effects are imparted on any dwellings or property. Minor variations can only be certified where it can be demonstrated that the ease of maintenance and monitoring of the system has not been negatively affected.

The documents shall be submitted, and accepted by the Certifying Authority, **prior to the issue of the Occupation Certificate.**

14. The applicant shall restore, replace or reconstruct any sections of footpath, cycleway, kerb and guttering, road pavement, stormwater, or any other public infrastructure located within the Road Reserve that occur as a result of construction activities, as determined by Councils Development Engineers or Civil Assets Engineer.
- The applicant shall bear all associated costs with restoring the public infrastructure to the satisfaction of the Council.

An Occupancy Certificate shall not be issued until all necessary remediation and repair works have been completed to the satisfaction of Council.

15. Driveways, parking turning areas shall be paved or sealed with either reinforced concrete, pavers or asphalt over a suitably prepared, compacted sub-base. These areas shall be maintained in perpetuity by the existing or future owners and occupiers of the property(s). Details shall be submitted to the Certifying Authority for approval **prior to the issue of Construction Certificate**.
16. All building work must be carried out in accordance with the provisions of the *Building Code of Australia*.
17. Where no sanitary facilities currently exist onsite for construction workers toilet accommodation for all tradespersons shall be provided from the time of commencement until the building is complete. The toilet facilities shall be located so as to have minimal impact of adjoining properties and shall not be placed on the road reserve, without separate approval from Council.
18. Construction work that is likely to cause annoyance due to noise is to be restricted to the following times:-
 - * Monday to Friday, 7am to 6pm;
 - * Saturday, 8am to 1pm;
 - * No construction work to take place on Sunday or Public Holidays.

When the construction site is in operation the L₁₀ level measured over a period of not less than 15 minutes must not exceed the background by more than 10dB(A). All possible steps should be taken to silence construction site equipment.

19. It is the responsibility of the applicant to erect a PCA sign (where Council is the PCA, the sign is available from Council's Administration Building at Raymond Terrace or the Tomaree Library at Salamander Bay free of charge). The applicant is to ensure the PCA sign remains in position for the duration of works.
20. A waste containment facility shall be provided on the construction site immediately after the first concrete pour for the building and it to be regularly serviced.
21. A fire safety certificate as prescribed by Section 174 Environmental Planning & Assessment Regulations 2000 which certifies the performance of the implemented fire safety measures in accordance with Section 170 of the Regulation must be submitted to the Principal Certifying Authority and the Commissioner of New South Wales Fire Brigades. A copy of fire safety certificate needs to be forwarded to Council, If Council is not nominated as the Principal Certifying Authority. A further copy of the certificate must also be prominently displayed in the building.
22. At least once in each twelve (12) month period, fire safety statements as prescribed by Section 175 Environmental Planning & Assessment Regulations

2000 in respect of each required essential fire safety measure installed within the building are to be submitted to Council. Such certificates are to state that:

a) The service has been inspected and tested by a person (chosen by the owner of the building) who is competent to carry out such inspection and test; and

b) That the service was or was not (as at the date on which it was inspected and tested) found to be capable of operating to a standard not less than that specified in the fire safety schedule for the building.

23. Access and accessibility to the common areas (foyers) of the two storey class 2 buildings is to conform to the provisions of Part D3 of the Building Code Volume One.

24. The excavated and/or filled areas of the site are to be stabilised and drained to prevent scouring and the finished ground around the perimeter of the building is to be graded to prevent ponding of water and ensure the free flow of water away from the building.

25. The person having the benefit of the development consent shall create the following restrictions on use, on the title of the subject property under Section 88B of the *Conveyancing Act 1919*:

Restriction identifying that all such accommodation on the property is limited to housing for seniors or people who have a disability, as defined by State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004.

The authority empowered to release, vary or modify easements, restrictions and covenants on the use of the land required by this consent, shall be nominated as "Port Stephens Council".

Note: Evidence of registration of the 88B restriction shall be provided to Council prior to the issue of any s.94 refund of fees.

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

PLANNING

26. A monetary contribution is to be paid to Council, pursuant to section 80A(1) of the Environmental Planning and Assessment Act, 1979 and Section 94 of the Environmental Planning and Assessment Act, 1979 towards the provision of the following public facilities;

	Per Lot	Total
Civic Administration	\$541	\$12,996
Public Open Space, Parks and Reserves	\$1,123	\$26,952
Sports and Leisure Facilities	\$2,647	\$63,540

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Cultural and Community Facilities	\$1,331	\$31,944
Fire & Emergency Services	\$108	\$2,592
Roadwork's	\$601	\$14,429

Note:

- a) The above contributions have been determined in accordance with Port Stephens Section 94 Contribution Plan. A copy of the Contributions Plan may be inspected at Council's Customer Service Counter, 116 Adelaide Street, Raymond Terrace.
- b) Contributions are to be paid prior to **issue of construction certificate** except for any construction certificate for preliminary site works and earthworks.
- c) The amount of contribution payable under this condition has been calculated on the basis of costs as at the date of original consent. In accordance with the provisions of the Contributions Plan, this amount shall be INDEXED at the time of actual payment in accordance with movement in the Consumer Price Index as published by the Australian Bureau of Statistics. In this respect the attached fee schedule is valid for twelve months from the date of original consent.

ENGINEERING

27. All work required to be carried out within a public road reserve must be separately approved by Council, under Section 138 of the Roads Act 1993.

Engineering plans for the required work within the public road must be prepared and designed by a suitably qualified professional, in accordance with Council's 'Infrastructure Design and Construction Specification-AUS Spec', and Section B of the Development Control Plan 2007.

The required works to be designed are as follows:

- a) Half width road including standard kerb and guttering, subsoil drainage, footpath formation, drainage and pavement across the full frontage of the site in Farm Rd, Fingal Bay. Pavement shall be constructed as to match into the existing road profile.
- b) Footway formation with a minimum width of 2.5m across the full frontage of the site in Farm Rd.
- c) The piping of stormwater from within the site to Council's drainage system located in Farm Rd and Moana Way.
- d) Traffic control plans in accordance with the Roads and Traffic Authority – Traffic Control at Worksites Manual.
- e) Payment of applicable fees and bonds.

f) Contractors public liability insurances to a minimum value of \$10 million dollars

The engineering plans must be approved by Council **prior to issue of Construction Certificate.**

28. The street trees proposed within the road reserve as per landscape plan dated August 12 are to be relocated inside the property boundary. Details shall be submitted to the Certifying Authority for approval **prior to issue of Construction Certificate.**
29. All landscaping planting on top of stormwater structures such as tunnel trenches, pits and plastic cells (such as Atlantis or Ausdrain cells) must not have a mature height greater than 1.5m in height. Details shall be submitted to the Certifying Authority for approval **prior to issue of Construction Certificate.**
30. The stormwater detention system shall be designed and built in accordance with the approved concept plan and the tables below:

Stormwater Catchment	Volume Required
1	18m ³
2	145m ³
3	220m ³

Average Recurrence Intensity	PSD (l/s) per site
5yr	0
10yr	47
20yr	55
100yr	114

The Construction Certificate cannot be issued until the details of the stormwater infiltration system are provided to the Certifying Authority for assessment and determined to be satisfactory by the Certifying Authority.

29. The stormwater detention system shall be designed and built in accordance with the approved concept plan and detain run-off to the pre-development flows. A staged orifice structure shall be provided that restricts site discharge to pre-development flows as per the minor and major events listed in the table. Full calculations shall be provided demonstrating that the staged discharge rates are achieved (i.e. minor volume up to minor event discharges at equal to or below major discharge rate). Additionally, pit inlet calculations and capture of overland flows to the pits shall be included.

The construction detail shall also include details of the location and type of detention system, orifice, pipes, pits major overland flow paths and the discharge point to the public drainage system.

Details shall be submitted and certified by a suitably qualified and practicing drainage engineer, and approved by the certifying authority **prior to issue of Construction Certificate.**

30. Stormwater quality shall be in accordance with the 'Stormwater Drainage Analysis' dated December 2012 by PCB. Details shall be submitted to the Certifying Authority for approval **prior to issue of Construction Certificate.**

GENERAL ADVICES

- a) Access to an adjoining property for construction & maintenance work requires the owner(s) consent. It is the responsibility of the owner/applicant to ensure that no part of the structure encroaches onto the adjoining property. The adjoining property owner can take legal action to have an encroachment removed.
- b) This approval relates to **Development Consent** only and does not infer any approval to commence excavations or building works upon the land. **A Construction Certificate should be obtained prior to works commencing.**
- c) The developer is responsible for full costs associated with any alteration, relocation or enlargement to public utilities whether caused directly or indirectly by this proposal. Such utilities include water, sewerage, drainage, power, communication, footways, kerb and gutter.

SCHEDULE 3 – APPROVED PLANS AND DOCUMENTATION

Stamped Statement of Environmental Effects prepared by SB Architects
Stamped plans prepared by SB Architects, Ref No. 940, Sheets 1 to 14 dated August 2012
Stamped BASIX Certificates dated 29/8/2012
Stamped Stormwater Plans: Job No. 13E015 dwg 10 Rev A dated 18/02/13 By Port Stephens Engineers Job No. 12E200 dwg 3 Rev A dated 18/02/13 By Port Stephens Engineers Job No. 12E195 dwg 1 Rev A dated 18/02/13 By Port Stephens Engineers Job No. 12E195 dwg 3-6 Rev A dated 18/02/13 By Port Stephens Engineers Job No. 12E195 dwg 9 Rev A dated 28/02/13 By Port Stephens Engineers

ITEM NO. 5

FILE NO: PSC2009-08546

PLANNING PROPOSAL- VARIOUS COUNCIL OWNED LANDS

REPORT OF: TIM CROSDALE – STRATEGY AND ENVIRONMENT, SECTION MANAGER

GROUP: DEVELOPMENT SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Adopt the Planning Proposal (**ATTACHMENT 1**) as publicly exhibited to amend the Port Stephens Local Environmental Plan 2013 for the following sites:
 - a. Reclassify Site 1 - Lot 279, DP 740009 – 27 Garden Avenue, Raymond Terrace community to operational land;
 - b. Reclassify Site 2 - Lot 5, DP 261238 – 9 Rosemount Drive, Raymond Terrace from community to operational land;
 - c. Reclassify Site 3 - Part Lot 1, DP 1093118 – 1 Sketchley Street, Raymond Terrace from community to operational land and rezone from RE1 Public Recreation to R2 Low Density Residential;
 - d. Reclassify Site 4 - Part Lot 23, DP 843416 – 77 Dawson Road, Raymond Terrace from community to operational land;
 - e. Reclassify Site 5 - Lot 133, DP 246855 – 20 Enterprise Drive, Tomago from community to operational land;
 - f. Reclassify Site 6 - Lot 132, DP 246855 – 15 Enterprise Drive, Tomago from community to operational land;
 - g. Reclassify Site 7 - Lot 34, DP 580267 – 13 School Drive, Tomago from community to operational land;
 - h. Reclassify Site 8 - Lot 10, DP 596640 – 44 Ferodale Road, Medowie from community to operational land;
 - i. Reclassify Site 9 - Lots 38, DP 807956 – 1 Coachwood Drive, Medowie from community to operational land;
 - j. Reclassify Site 10 - Lot 29, DP 807956 – 2 Coachwood Drive, Medowie from community to operational land;
 - k. Reclassify Site 11 - Lot 22, Sect 5, DP 241918 – 8 Garuwa Street, Fingal Bay from community to operational land;
 - l. Reclassify Site 12- Lot 25, Sec 5, DP 247555 – 44B Squire Street, Fingal Bay from community to operational land and rezone from RE1 Public Recreation to R2 Low Density Residential.
- 2) Adopt the amended Planning Proposal (**ATTACHMENT 1**) by seeking a revised Gateway Determination and conducting a detailed site survey to accurately.
 - a. Reclassify Site 14 - Part Lot 322, DP 636840 – 9 Mitchell Street, Soldiers Point from community to operational land and rezone from B1 Neighbourhood Centre to RE1 Public Recreation;
 - b. Reclassify Site 15 - Part Lot 2071, DP 852662 - 2A Sunset Boulevard, Soldiers Point from community to operational land and rezone from RE1 Public Recreation to B1 Neighbourhood Centre;

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- c. Classify Part Lot 2071, DP852662, Part Lot 322, DP 636840 and Part Lot 2, DP 211909 as a public road under the Roads Act 1993 (**ATTACHMENT 2**).
- 3) Defer consideration of Site 13 - Lot 109, DP 243096 – 1 Lyndel Close, Soldiers Point from the Planning Proposal (**ATTACHMENT 1**) to allow further information to be provided by the Proponent in response to matters raised by the community;
- 4) Request that the Department of Planning & Environment make the Proposal under section 59(1) of the Environmental Planning & Assessment Act 1979.

ORDINARY COUNCIL MEETING – 14 OCTOBER 2014
COMMITTEE OF THE WHOLE RECOMMENDATION

<p>Councillor John Nell Councillor Ken Jordan</p>
<p>That Council:</p> <ul style="list-style-type: none">1) Adopt the Planning Proposal (ATTACHMENT 1) as publicly exhibited to amend the Port Stephens Local Environmental Plan 2013 for the following sites:<ul style="list-style-type: none">a. Reclassify Site 1 - Lot 279, DP 740009 – 27 Garden Avenue, Raymond Terrace community to operational land;b. Reclassify Site 3 - Part Lot 1, DP 1093118 – 1 Sketchley Street, Raymond Terrace from community to operational land and rezone from RE1 Public Recreation to R2 Low Density Residential;c. Reclassify Site 4 - Part Lot 23, DP 843416 – 77 Dawson Road, Raymond Terrace from community to operational land;d. Reclassify Site 5 - Lot 133, DP 246855 – 20 Enterprise Drive, Tomago from community to operational land;e. Reclassify Site 6 - Lot 132, DP 246855 – 15 Enterprise Drive, Tomago from community to operational land;f. Reclassify Site 7 - Lot 34, DP 580267 – 13 School Drive, Tomago from community to operational land;g. Reclassify Site 8 - Lot 10, DP 596640 – 44 Ferodale Road, Medowie from community to operational land;h. Reclassify Site 9 - Lots 38, DP 807956 – 1 Coachwood Drive, Medowie from community to operational land;i. Reclassify Site 10 - Lot 29, DP 807956 – 2 Coachwood Drive, Medowie from community to operational land;j. Reclassify Site 11 - Lot 22, Sect 5, DP 241918 – 8 Garuwa Street, Fingal Bay from community to operational land;k. Reclassify Site 12- Lot 25, Sec 5, DP 247555 – 44B Squire Street, Fingal Bay from community to operational land and rezone from RE1 Public Recreation to R2 Low Density Residential.2) Adopt the amended Planning Proposal (ATTACHMENT 1) by seeking a revised Gateway Determination and conducting a

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	<p>detailed site survey to accurately.</p> <ul style="list-style-type: none"> a. Reclassify Site 14 - Part Lot 322, DP 636840 – 9 Mitchell Street, Soldiers Point from community to operational land and rezone from B1 Neighbourhood Centre to RE1 Public Recreation; b. Reclassify Site 15 - Part Lot 2071, DP 852662 - 2A Sunset Boulevard, Soldiers Point from community to operational land and rezone from RE1 Public Recreation to B1 Neighbourhood Centre; c. Classify Part Lot 2071, DP852662, Part Lot 322, DP 636840 and Part Lot 2, DP 211909 as a public road under the Roads Act 1993 (ATTACHMENT 2). <p>3) Defer consideration of Site 13 - Lot 109, DP 243096 – 1 Lyndel Close, Soldiers Point from the Planning Proposal (ATTACHMENT 1) to allow further information to be provided by the Proponent in response to matters raised by the community;</p> <p>4) Defer consideration of Site 2 - Lot 5, DP 261238 – 9 Rosemount Drive, Raymond Terrace from community to operational land;</p> <p>5) Request that the Department of Planning & Environment make the Proposal under section 59(1) of the Environmental Planning & Assessment Act 1979.</p>
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In accordance with Section 375 (A) of the Local Government Act 1993, a division is required for this item.

Those for the Motion: Crs Steve Tucker, Paul Le Mottee, Ken Jordan, Geoff Dingle, John Nell and John Morello.

Those against the Motion: Crs Peter Kafer.

MOTION

263	<p>Councillor Ken Jordan Councillor Geoff Dingle</p> <p>It was resolved that Council:</p> <ul style="list-style-type: none"> 1) Adopt the Planning Proposal (ATTACHMENT 1) as publicly exhibited to amend the Port Stephens Local Environmental Plan 2013 for the following sites: <ul style="list-style-type: none"> a. Reclassify Site 1 - Lot 279, DP 740009 – 27 Garden Avenue, Raymond Terrace community to operational land; b. Reclassify Site 3 - Part Lot 1, DP 1093118 – 1 Sketchley Street, Raymond Terrace from community to operational land and rezone from RE1 Public Recreation to R2 Low Density Residential; c. Reclassify Site 4 - Part Lot 23, DP 843416 – 77 Dawson Road,
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	<p>Raymond Terrace from community to operational land;</p> <p>d. Reclassify Site 5 - Lot 133, DP 246855 – 20 Enterprise Drive, Tomago from community to operational land;</p> <p>e. Reclassify Site 6 - Lot 132, DP 246855 – 15 Enterprise Drive, Tomago from community to operational land;</p> <p>f. Reclassify Site 7 - Lot 34, DP 580267 – 13 School Drive, Tomago from community to operational land;</p> <p>g. Reclassify Site 8 - Lot 10, DP 596640 – 44 Ferodale Road, Medowie from community to operational land;</p> <p>h. Reclassify Site 9 - Lots 38, DP 807956 – 1 Coachwood Drive, Medowie from community to operational land;</p> <p>i. Reclassify Site 10 - Lot 29, DP 807956 – 2 Coachwood Drive, Medowie from community to operational land;</p> <p>j. Reclassify Site 11 - Lot 22, Sect 5, DP 241918 – 8 Garuwa Street, Fingal Bay from community to operational land;</p> <p>k. Reclassify Site 12- Lot 25, Sec 5, DP 247555 – 44B Squire Street, Fingal Bay from community to operational land and rezone from RE1 Public Recreation to R2 Low Density Residential.</p> <p>2) Adopt the amended Planning Proposal (ATTACHMENT 1) by seeking a revised Gateway Determination and conducting a detailed site survey to accurately.</p> <p>a. Reclassify Site 14 - Part Lot 322, DP 636840 – 9 Mitchell Street, Soldiers Point from community to operational land and rezone from B1 Neighbourhood Centre to RE1 Public Recreation;</p> <p>b. Reclassify Site 15 - Part Lot 2071, DP 852662 - 2A Sunset Boulevard, Soldiers Point from community to operational land and rezone from RE1 Public Recreation to B1 Neighbourhood Centre;</p> <p>c. Classify Part Lot 2071, DP852662, Part Lot 322, DP 636840 and Part Lot 2, DP 211909 as a public road under the Roads Act 1993 (ATTACHMENT 2).</p> <p>3) Defer consideration of Site 13 - Lot 109, DP 243096 – 1 Lyndel Close, Soldiers Point from the Planning Proposal (ATTACHMENT 1) to allow further information to be provided by the Proponent in response to matters raised by the community;</p> <p>4) Defer consideration of Site 2 - Lot 5, DP 261238 – 9 Rosemount Drive, Raymond Terrace from community to operational land;</p> <p>5) Request that the Department of Planning & Environment make the Proposal under section 59(1) of the Environmental Planning & Assessment Act 1979.</p>
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In accordance with Section 375 (A) of the Local Government Act 1993, a division is required for this item.

Those for the Motion: Crs Steve Tucker, Paul Le Mottee, Ken Jordan, Geoff Dingle, John Nell and John Morello.

Those against the Motion: Crs Peter Kafer.

BACKGROUND

This Report considers submissions received during the public exhibition of a planning proposal to reclassify and rezone 15 individual sites. These sites were identified by the Open Space Consolidation Review 2007 to be surplus to open space requirements.

A brief summary of the Proposal with respect to each Site is provided below. A more detailed explanation of each site provided as **(ATTACHMENT 5)**.

Address:	Site 1 - 27 Garden Av, Raymond Terrace Site 2 - 9 Rosemount Dr, Raymond Terrace Site 3 - 1 Sketchley St, Raymond Terrace Site 4 - 77 Dawson Rd, Raymond Terrace Site 5 - 20 Enterprise Dr, Tomago Site 6- 15 Enterprise Dr, Tomago Site 7 - 13 School Dr, Tomago Site 8 - 44 Ferodale Rd, Medowie Sites 9 & 10 - 1 & 2 Coachwood Dr, Medowie Site 11 - 8 Garuwa St, Fingal Bay Site 12 - 44B Squire St, Fingal Bay Site 13 - 1 Lyndel Cl, Soldiers Point Site 14 - 9 Mitchell St, Soldiers Point Site 15 - 2A Sunset Blvd, Soldiers Point
Classification:	All sites to be reclassified from Community to Operational land
Zoning:	The following five sites will be rezoned as follows: <ul style="list-style-type: none">▪ 1 Sketchley Street, Raymond Terrace RE1 to R2▪ 44B Squire Street, Fingal Bay RE1 to R2▪ 1 Lyndel Close, Soldiers Point RE1 to R2▪ 9 Mitchell Street, Soldiers Point B1 to RE1▪ 2A Sunset Boulevard, Soldiers Point RE1 to B1

Council considered the Proposal at their 28 July 2009 Meeting and resolved to reclassify and/or rezone those sites with the exception of 35a Blanch Street, Boat Harbour, which was removed with a subsequent rescission motion.

On 18 April 2013, Council requested a gateway determination under section 56 of the Environmental Planning & Assessment Act 1979. A gateway determination was issued by the NSW Government – Planning & Infrastructure on 6 June 2013.

The Proposal was placed on public exhibition from 1 August until 9 September 2013. Three submissions from state agencies and 27 submissions from the community were received – one of these submissions included 77 signatures.

A public hearing was held on 3 July 2014 in accordance with the Local Government Act 1993. A subsequent Public Hearing Report (**ATTACHMENT 3**) was submitted by the independent chairperson on 24 July 2014.

Following this, an Independent Review (**ATTACHMENT 4**) was submitted on 10 September 2014. This Review was undertaken given the degree of community interest surrounding the Proposal, particularly in relation to Soldiers Point

In response to matters raised through the Exhibition Process, the Public Hearing and the Independent Review the Proposal (**ATTACHMENT 1**) has been amended to contain the following changes relating to sites 13, 14 & 15.

- Reduction in the Zone B1 Neighbourhood Centre at 9 Mitchell Street, Soldiers Point as the boundaries of the land reclassification did not align with the zone boundaries of the Zone B1 Neighbourhood Centre.
- Reduction of the proposed Zone B1 Neighbourhood Centre at 2A Sunset Boulevard, Soldiers Point. This reduction brings the proposed boundaries of the B1 Neighbourhood Centre Zone in line with the proposed licence area and ensures public access to Sunset Beach is maintained.
- Replacement of R2 Low Density Residential with RE1 Public Recreation across the Sunset Boulevard road reserve to reflect the neighbouring zone.
- Proposed classification of the existing 'Right of Way' at 9 Mitchell Street, Soldiers Point as a 'public road' under the Roads Act 1993. This road classification is in line with the findings of the Independent Review.
- Apply a height of building limit of 8.0m for 2A Sunset Boulevard, Soldiers Point. This was implied by the proposed B1 Neighbourhood Centre Zone, but was not listed in Part 2 – Explanation of Provisions.
- Deferral of Site 13 Lot 109, DP 243096 – 1 Lyndel Close, Soldiers Point from the Planning Proposal to allow further information to be provided by the Proponent in response to matters raised by the community, which includes:
 - A Flora and Fauna Survey to inform the 7-Part Test of Significance to determine whether future development of the Site would pose a significant effect under 5A of the Environmental Planning & Assessment Act 1979;
 - A Statement that addresses the Comprehensive Koala Plan of Management Performance Criteria for Rezoning Requests (Appendix 2, p.63).

Further explanation of these changes as they relate to Sites 14 & 15 is provided as **(ATTACHMENT 2)**. The deferral of Site 13 – 1 Lyndel Close, Soldiers Point is to obtain additional information that will be prepared and reported back to Council. The proponent, being Council's Property Services Section is satisfied that this approach will still enable the proposal objectives for Sites 14 & 15 to be achieved, being:

- Maintaining public access to the Foreshore and consolidation of open space;
- Granting of a non-exclusive licence to the Marina for hard-stand access.

FINANCIAL/RESOURCE IMPLICATIONS

The proponent has paid the following rezoning fees.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes	48,300 10,500	Stage 1 fees – 7 April 2012 Stage 2 fees – 6 May 2014
Reserve Funds	No		
Section 94	No		
External Grants	No		
Other	No		

LEGAL, POLICY AND RISK IMPLICATIONS

Open Space Consolidation Review 2007

The Open Space Consolidation Review 2007 identified sites that were no longer suitable for recreation purposes due to their location, access and size. This Review provided the strategic justification to prepare a planning proposal and seek that these lands be reclassified to allow greater flexibility in their management.

Port Stephens Integrated Planning Framework

The proposed reclassification will allow for increased flexibility in how the land can be managed. This is reflective of a move from a quantity to quality approach as identified in the Open Space Consolidation Review, which is also consistent with directions of the Port Stephens Integrated Planning Framework, such as 2.3.1 - Implement the Draft Port Stephens Open Space Strategy.

Local Government Act 1993

All public land is classified as either Community or Operational land under the Local Government Act 1993. Compared to Community Land, Operational land has no special restrictions other than those that may apply to any piece of land, such as zoning. In contrast, Community Land cannot be sold, cannot be leased/ licenced for more than 21 years and must have a Plan of Management prepared for it.

All fifteen sites are seeking to be reclassified from Community to Operational Land. This is consistent with the adopted Open Space Consolidation Review which no longer identifies these sites for community use.

Environmental Planning & Assessment Act 1979

The Proposal has been undertaken to reclassify and rezone those identified sites under the Environmental Planning & Assessment Act 1979 as follows:

- s55 Relevant planning authority to prepare planning proposal;
- s56 Relevant planning authority seeks a gateway determination ;
- s57 Community consultation;
 - Public exhibition period of 28 days;
 - Public hearing;
- s58 Relevant planning authority may vary proposal ;
- s59 Making of local environmental plan by Minister .

This Proposal involves the reclassification of land and therefore is not required to use its delegations under s59 of the Act. Subject to Council's resolution, Council Officers will liaise with the NSW Government as to the making of this Plan.

Gateway Determination

The Gateway Determination that was provided on 6 June 2013 listed the following specific requirements:

1. Prior to undertaking public exhibition, Council is to update the planning proposal to include a project timeline;
 - The planning proposal was amended to include a project timeline.
2. Community Consultation is conducted in accordance with s56 (2) (c) and s57 of the Environmental Planning & Assessment Act 1979;
 - Consultation was conducted in accordance with the relevant sections and is discussed in detail under Consultation of this Report.
3. Consultation with the Rural Fire Service and Department of Defence;
 - The Rural Fire Service raised no concerns or issues in relation to bushfire;
 - The Department of Defence objected to 27 Garden Avenue and 77 Dawson Road, Raymond Terrace due to aircraft noise. This matter is discussed under the Consultation Section of this Report.
4. A public hearing is held in accordance with the Practice Note PN09-003;
 - A Public Hearing took place on 3 July 2014 and an Independent Report submitted by the independent chairperson on 24 July 2013.
5. The timeframe for completing the planning proposal is to be 12 months from the week following the date of the Gateway Determination;
 - An extension was granted until 13 December 2014.

Public Hearing

The public hearing was conducted in accordance with the following relevant legislation:

1. Giving notice of the arrangements for the public hearing in a local newspaper;
 - Public notice was provided in the Examiner on 4 June 2014.
2. Giving notice in a letter to each of the persons who requested a public hearing when making a submission 21 days before the date of the hearing;
 - Letters were sent to those who made a submission on 6 June 2014.
3. Not later than 4 days after it has received a report from the person presiding at the public hearing, the council must make a copy available;
 - A copy of the Public Hearing Report was made available on 28 July.
4. The person presiding at the public hearing must be independent;
 - Mr Ian Adams was engaged as the independent chair.

This public hearing provided the community with a further opportunity to discuss matters raised by submissions. A Public Hearing Report (**ATTACHMENT 3**) identified the following themes from the presentations at the Hearing:

1. Site 7 – 13 School Drive, Tomago;
 - There appear to be no issues with the proposed reclassification.
2. Site 13 – 1 Lyndel Close, Soldiers Point;
 - Doubt as to the stated potential financial return to Council;
 - Belief that the vegetation on the site is important for Koalas.
3. Sites 14 & 15 – 9 Mitchell Street and 2A Sunset Boulevard, Soldiers Point;
 - Distrust of Council over issues relating to the adjoining Marina;
 - Commercial return for use of public land is not considered adequate;
 - Concern with possibilities of sale of the land and further development;
 - Confusion on location of roads and rights of access given the disparity in features on the ground compared to title plans and zoning plans.

LEP Practice Note – PN 09 -003

The Proposal was placed on public exhibition and the public hearing was conducted in accordance with the *LEP Practice Note – PN 09 -003 – Classification and reclassification of public land through a local environmental plan*.

Independent Review

An Independent Review (**ATTACHMENT 4**) was submitted by Paradigm Planning on the 10 September 2014. The Review was sought due to Council's perceived conflict of interest and community concerns regarding the boundaries of Sites 14 & 15 at

Soldiers Point. The Review suggested that an improved outcome could be achieved by incorporating the following recommendations:

- a. The creation of a public road containing the existing constructed loop road;
- b. Ensuring no land zoned for business purposes is classified as community land;
- c. Protection of public access to the beach area south of the Marina;
- d. Reduced area to be considered for potential licence for the Marina.

These recommendations have been incorporated into the amended planning proposal as discussed under the Background Section of this Report and provided as **(ATTACHMENT 2)**.

Risk Implications

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that Council has acted in self-interest through the reclassification of these Sites.	Low	The reclassification and rezoning has been conducted in accordance with the legislative requirements, which have been confirmed by an Independent Review. The final determination will be made by the Department as Council does not have delegation to make the Plan.	Yes
There is a risk that the legislative processes have not been followed.	Low	Compliance with the relevant legislative processes have been detailed and confirmed by the Independent Review.	Yes
There is a risk that the boundaries of the proposed zones do not accurately reflect buildings on the ground in respect to Sites 14 & 15.	Low	A Site Survey of 2A Sunset Blvd and 9 Mitchell St, Soldiers Point will ensure that the lot boundaries are accurately identified.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The Proposal is consistent with a more sustainable management approach to open space management. Firstly, Council is seeking to act in the broader public interest by concentrating resources on quality open space and consolidate open space accordingly. Secondly, Council is seeking to be more economically sustainable by

reducing expenditure on underutilised sites and redistribute these resources to provide increased quality at more heavily utilised sites. Thirdly, Council is seeking to be more environmentally sustainable by providing an equal distribution of open space based on pedestrian catchments.

CONSULTATION

Public Exhibition

The public exhibition material was on display at the following locations during business hours from 1 August to 9 September 2013:

- Council's Administration Building 116 Pacific Highway, Raymond Terrace
- Raymond Terrace Library, Port Stephens Street, Raymond Terrace
- Tomaree Library, Town Centre Circuit, Salamander Bay
- Port Stephens Council Website <www.portstephens.nsw.gov.au>

Three submissions from state agencies and 27 submissions from the community were received – one of these submissions included 77 signatures. The comments detailed in these submissions are addressed throughout this Proposal (**ATTACHMENT 1**) and a summary with planning comment is provided as (**ATTACHMENT 6**).

A public hearing as required by the gateway determination was chaired by an independent chairperson on 3 July 2014. Public notice of the public hearing was placed in the local newspaper 'The Examiner' 21 days prior and those who made submissions during the public exhibition period were notified by email and letter.

A further 18 submissions were received following the closure of the public exhibition period and the public hearing. One of these submissions was a pro forma letter with 3 signatures. The Independent Review identified these submissions as being largely a restatement of the matters already raised in the submissions to the exhibition period.

A copy of the public hearing report was made available on the Port Stephens Council Website from 16 July 2014. Those who attended the public hearing were notified of its availability.

Following this, an Independent Review was submitted on 10 September 2014. This Review was sought given the degree of community interest surrounding the lot boundaries of Site 14 - 9 Mitchell Street, Soldiers Point and Site 15 - 2A Sunset Boulevard, Soldiers Point.

The recommended Planning Proposal (**ATTACHMENT 1**) contains changes described in the Background Section of this Report and detailed in (**ATTACHMENT 2**). These changes are the result of matters raised during the public exhibition period and the recommendations of the Independent Review.

As per the Council recommendation, Site 13 – 1 Lyndel Close, Soldiers Point will be removed from this Proposal if Council resolves to support the recommendation. This

deferred matter will then be reported back to Council following the assessment of the additional information to be provided by the Proponent.

A summary of key matters raised in submissions is included as **(ATTACHMENT 7)**.

OPTIONS

- 1) Council resolves to adopt the recommendation;
- 2) Council resolves to support the 13 sites and defers Site 14 – 9 Mitchell Street & Site 15 - 2A Sunset Boulevard, Soldiers Point for further investigations;
- 3) Council resolves not to support the revised planning proposal, but to adopt the planning proposal as publicly exhibited;
- 4) Council resolves to adopt the Planning Proposal **(ATTACHMENT 1)** with Site 13 – 1 Lyndel Close, Soldiers Point included;
- 5) Council resolves to not support the planning proposal and notify the Department of Planning and Environment of this decision to not continue.

ATTACHMENTS – Provided Under Separate Cover

- 1) Planning Proposal;
- 2) Explanation of Planning Proposal Change from Public Exhibition;
- 3) Public Hearing Report;
- 4) Independent Review;
- 5) Supplementary Site Information;
- 6) Submission Summary and Planning Response;
- 7) A Summary of Key Matters Raised in Submissions

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ITEM NO. 6

FILE NO: PSC2005-0629

AMENDMENTS TO CONSTITUTION OF 355C ABORIGINAL STRATEGIC COMMITTEE

REPORT OF: ROSS SMART - COMMUNICATIONS SECTION MANAGER
 GROUP: DEVELOPMENT SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Adopt the amended Constitution Schedule for Council's Aboriginal Strategic Committee as shown in **(ATTACHMENT 1)** of this report.

**ORDINARY COUNCIL MEETING – 14 OCTOBER 2014
 COMMITTEE OF THE WHOLE RECOMMENDATION**

	<p>Councillor John Nell Councillor John Morello</p>
	<p>That the recommendation be adopted.</p>

MOTION

264	<p>Councillor Ken Jordan Councillor Geoff Dingle</p>
	<p>It was resolved that Council adopt the amended Constitution Schedule for Council's Aboriginal Strategic Committee as shown in (ATTACHMENT 1) of this report.</p>

BACKGROUND

The purpose of this report is to recommend to Council the adoption of the amended Constitution Schedule of Council's 355C Aboriginal Strategic Committee as per **(ATTACHMENT 1)**.

The reason for this amendment is to strengthen representation and attendance to meetings so that issues are considered by a broader representation from our local Aboriginal communities and decisions are endorsed by a quorum.

The purpose of Council's Aboriginal Strategic Committee as outlined in its constitution is:

- 1) To advise Council in relation to issues of concern between Council and the Aboriginal Community;

MINUTES FOR ORDINARY MEETING – 14 OCTOBER 2014

- 2) To promote a positive public image with respect to issues for Aboriginal people in Port Stephens;
- 3) To provide a consultative mechanism with respect to development issues;
- 4) To improve relations between the Aboriginal and non-Aboriginal community of Port Stephens;
- 5) To exchange information between the Aboriginal community and Council on issues affecting Aboriginal people;
- 6) To promote mutual awareness and respect for the cultures of both Aboriginal and non-Aboriginal communities;
- 7) To promote an increased awareness of the needs of Aboriginal communities and to assist with the development of programs to address those needs where possible and appropriate.

The Aboriginal Strategic Committee plays a key role in assisting Council to fulfil the following actions in Council's 2013-2023 Community Strategic Plan:

6.1 The community is a partner in developing the future of the Local Government Area;

7.1 Port Stephens has a vibrant cultural life.

Councillor membership consists of Councillors Dover and Kafer, who were reappointed to the Committee by Council at its meeting on 23 September 2014. At the same meeting, Councillor Tucker was appointed as an alternate delegate.

To ensure appropriate representation at meetings, the Committee is proposing change its membership. These proposed changes are at **(ATTACHMENT 1)**.

FINANCIAL/RESOURCE IMPLICATIONS

There are no additional financial implications related to these proposed changes.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes		
Reserve Funds	No		
Section 94	No		
External Grants	No		
Other	No		

LEGAL, POLICY AND RISK IMPLICATIONS

Under Section 355(c) of the Local Government Act 1993, Council may exercise its functions itself or by delegation to another person or persons. Council must approve the constitution of such delegated committees.

The Constitution of Council's Aboriginal Strategic Committee consists of the standard 355(b) Committee Constitution adopted by Council, 24 June 2003, Minute No 251, and a customised schedule of the committee's individual activities. The constitution

contains the delegation from Council to undertake specific activities and the framework of how the Committee will operate.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that Council's reputation will be negatively impacted if the committee doesn't function appropriately.	Low	Work with the Committee on an ongoing basis to ensure its structure and format continues to meet the needs of all members.	Yes
There is a risk that there will be non-compliance by volunteers with requirements for a 355(c) committee with potential legal, financial and reputation risk.	Low	Requirements documented in Committee's Constitution, Volunteer Strategy, 355 (c) Committee Information Handbook and regular liaison with the committee regarding its responsibilities.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Council establishes community committees to undertake agreed works and to provide a link between Council and the community. This is part of Council's commitment to community partnerships. Council's support of the Aboriginal Strategic Committee provides this link with the local Aboriginal community.

The Aboriginal Strategic Committee operates under guidance from Council staff to ensure their activities are performed in accordance with recognised practices that provide long term benefits. This committee assists in building and strengthening the community and Council's capacity to respond to Aboriginal issues in a timely and culturally appropriate manner.

CONSULTATION

Discussions have been held with the Chief Executive Officers of both Worimi and Karuah Local Aboriginal Land Councils to seek their views and recommendations on improvements to the current details in the Constitution. These amendments were discussed and endorsed at a meeting of the Aboriginal Strategic Committee on Tuesday 27 May 2014. The minutes of this meeting are at **(ATTACHMENT 2)**, which were reported to Council on 12 August 2014.

OPTIONS

- 1) Adopt the recommendation;
- 2) Amend the recommendation;
- 3) Reject the recommendation.

ATTACHMENTS

- 1) Proposed amended Constitution Schedule of Council's 355(c) Aboriginal Strategic Committee;
- 2) Minutes of 27 May 2014, Aboriginal Strategic Committee.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

**ATTACHMENT 1
PROPOSED AMENDED CONSTITUTION SCHEDULE OF COUNCIL'S 355(C)
ABORIGINAL STRATEGIC COMMITTEE**

Attachment 1

**Amended Constitution Schedule of
Council's S355(c) Aboriginal Strategic Committee**

Item 1	Name of Committee	Aboriginal Strategic Committee	
Item 2	Name of Council Department	Social Planning Team	Delete: <ul style="list-style-type: none"> • Social Planning Team Insert: <ul style="list-style-type: none"> • Community Development & Engagement Unit
Item 3	Functions delegated by Council to committee (Objectives)	<ol style="list-style-type: none"> 1. To advise Council in relation to issues of concern between Council and the Aboriginal community. 2. To promote a positive public image with respect to issues for Aboriginal people in Port Stephens, 3. To provide a consultative mechanism with respect to development issues, 4. To improve relations between the Aboriginal and non-Aboriginal community of Port Stephens, 5. To exchange information between the Aboriginal community and Council on issues affecting Aboriginal people 6. To promote mutual awareness and respect for the cultures of both Aboriginal and non-Aboriginal communities, and 7. To promote an increased awareness of the needs of Aboriginal communities and to assist with the development of programs to address those needs where possible and appropriate. 	
Item 4	Restrictions on functions delegated	The committee may only resolve to undertake actions outlined within this constitution.	
Item 5	Policies, legislation the committee is required to comply with	Principle policies & legislation include: Work Health & Safety Act 2011 LG Act & Regulations 1993 Privacy and Person Information Act 1998 Code of Conduct State Records Act Code of Meeting Practice Accessing Information Policy Child Protection Policy Volunteers Strategy Government Information (Public Access) Act 2009 (GIPAA)	
Item 6	Date on which constitution	September of Council Election each four years. Council to re adopt constitution	

MINUTES FOR ORDINARY MEETING – 14 OCTOBER 2014

Item 7	concludes Maximum number and make up of committee members	within three months following election. 1. The Committee is to consist of up to six Aboriginal Community Representatives. 2. The Committee is to also consist of the following ex-officio members: the Group Manager Development Services, or their delegates. 3. Decisions of the Committee shall be by consensus. 4. Non-members may attend meetings of the Committee and may speak to the Committee. 5. Aboriginal Community members will be nominated according to the following formula:- • Three representatives nominated by the Karuah Local Aboriginal Land Council (LALC); • Three representatives nominated by the Worimi LALC; • Two elders nominated jointly by the Karuah and Worimi LALC's. 6. Casual vacancies may be filled by the Committee according to the formula outlined above.	Delete: The Committee is to also consist of the following ex-officio members: the Group Manager Development Services, or their delegates. Three representatives nominated by the Karuah Local Aboriginal Land Council (LALC), Three representatives nominated by the Worimi LALC, Two elders nominated jointly by the Karuah and Worimi LALC's. Insert: The Committee is to consist of the following ex-officio members: the General Manager and the Group Manager (Development Services), or their delegates. The Chief Executive Officer of the Worimi Local Aboriginal Land Council and two nominated representatives nominated by the Worimi LALC The Chief Executive Officer of Karuah Local Aboriginal Land Council and two representatives nominated by the Karuah LALC
Item 8	Councillors	As resolved by Council.	
Item 9	Council employees	Social Planning Coordinator or delegate and other related staff, attending on an as needed/advisory basis	Delete: Social Planning Coordinator Insert: Community Development & Engagement Coordinator
Item 10	Name of financial institution and type of account	Not applicable	
Item 11	Name of any account operated by the committee	Not applicable	

MINUTES FOR ORDINARY MEETING – 14 OCTOBER 2014

Item 12	Area assigned to committee and/or map	Not applicable	
Item 13	<p>Additional clauses or amendments to Standard Constitution or Schedule.</p> <p>To be listed in full - body of constitution not to be altered.</p>	<p>AMENDMENTS TO STANDARD CONSTITUTION</p> <p>The Aboriginal Strategic Committee is an Advisory Committee which means that some clauses of the Standard 355(c) Committee Constitution require amendment to reflect the operation of the committee.</p> <p>The general operating functions of the Aboriginal Strategic Committee are undertaken by Council Officers.</p> <p>Clause 4. Functions of the Committee</p> <p style="padding-left: 40px;">Additional Sub Clause</p> <p>4.7 Confidentiality And Conflict Of Interest</p> <p style="padding-left: 20px;">According to Councils Code of Conduct:-</p> <p style="padding-left: 40px;">“A conflict of interest arises if a person with a private or personal interest could be influenced in the performance of his or her public or professional duties”.</p> <p>4.7 a) Committee members are to declare any conflicts of interest at the commencement of the meeting or as the relevant item is raised in General Business.</p> <p>4.7 b) Conflicts of interest will be noted reported in minutes and the Chairperson may request the parties involved to leave the room while the matter is decided.</p> <p>4.7 c) A majority of members may decide at any time to close the meeting and begin confidential discussions. Participants excluded from the meeting should be provided with reasons for moving into confidential session.</p> <p>4.7 d) Breach of confidentiality is grounds for dismissal.</p> <p>Clause 7 The Executive – not applicable</p> <p>Clause 9 Meetings</p> <p>The following sub clauses replace the same numbered sub clauses in the Standard 355 (c) Constitution.</p> <p>9.1 The Committee will be chaired by the Mayor or their nominee.</p>	

MINUTES FOR ORDINARY MEETING – 14 OCTOBER 2014

		<p>a) Meetings will be held at the Port Stephens Council Administration Building, but can be held at other community venues as appropriate.</p> <p>b) All agenda items to be submitted prior to the meeting.</p> <p>9.3 Ordinary meetings shall comprise of combined quarterly meetings with representatives from Karuah and Worimi Local Aboriginal Land Councils and Port Stephens Council.</p> <p>At all ordinary meetings five members consisting of two nominated representatives from the Worimi Local Aboriginal Land Council (LALC) and two nominated representatives from the Karuah Local Aboriginal Land Council (LALC), and one Councillor shall constitute a quorum.</p> <p>The Committee shall hold ordinary meetings at least four times a year at a time and frequency to be determined by the committee.</p> <p>Clauses 10 Finances, 11 Records, 12 Reports Not applicable</p> <p>The Social Planning Co-ordinator shall be responsible for the correct recording of all proceedings of the Committee, conduct all correspondence on behalf of the Committee, the receipt of monies and payments of accounts and all other things necessary for the proper control of the Committee's affairs.</p>	<p>Delete: Mayor Insert: Elected Councillor</p> <p>Delete: five members consisting of two nominated representatives from the Worimi Local Aboriginal Land Council (LALC) and two nominated representatives from the Karuah Local Aboriginal Land Council (LALC), and one Councillor</p> <p>Insert: Two aboriginal representatives from either Karuah or Worimi Local Aboriginal Land Councils, one Councillor, the General Manager and the Group Manager (Development Services), or their delegates.</p> <p>Delete: Social Planning Coordinator</p> <p>Insert: Community Development & Engagement Coordinator</p>
Item 14	Changes to constitution or Schedule – Adopted by Council: Meeting Date: Minute No: Resolution:	Adopted by Council 9 October 2012 Min No: 259	

ATTACHMENT 2
MINUTES OF 27 MAY 2014, ABORIGINAL STRATEGIC COMMITTEE

Attachment 2



Aboriginal Strategic Committee
Combined Meeting

MINUTES



Minutes of meeting held on 27 May 2014 at Port Stephens Council

Chair: Cr Dover

Minute taker: Jennifer Underwood

Present:

Neville Lilley
Andrew Smith
Cr Sally Dover
Steven Bernasconi
Ross Smart
Penny Amberg
Jennifer Underwood

Worimi Local Aboriginal Land Council
Worimi Local Aboriginal Land Council
Port Stephens Council
Port Stephens Council
Port Stephens Council
Port Stephens Council
Port Stephens Council

Apologies:

Nadine Russell
Kyle Finlay
Dave Feeney
Cr Peter Kafer

Worimi LALC
Worimi LALC
Karuah LALC
Port Stephens Council

Meeting opened at 9:45am

1. WELCOME TO COUNTRY:

Worimi Elder Neville Lilley acknowledged the land we are meeting on today, Worimi land and paid respects to Elders past/present.

2. GUEST SPEAKER: Rhonda Smith did not attend. She was to discuss input on delivering 3 community workshops to set up an Aboriginal Transport model similar to that in the Hastings region.

Action:	1. Community Development and Engagement Officer to follow up with Rhonda Smith and pass information to the Land Councils.
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3. BUSINESS ARISING FROM PREVIOUS MEETING:

Item 1: Childcare

Andrew Smith contacted Uniting Care Childcare twice, sending an email outlining the request for information regarding their aboriginal commitment and their 'Dreaming As One' report. As yet, he hasn't heard back from the Director Teresa Squires.

Item 2: GP Super Clinic HealthOne Raymond Terrace

The Clinic will be operational on 30 June, with general medical, followed by dental and renal next month. Uncle Neville noted that two of the rooms will be in Gathang language, chosen by the Elders. A tour for the Aboriginal Elders will also be offered prior to the official opening, and Welcome To Country.

Item 4: Geographical Names Board of NSW - Port Stephen Reserves Audit

Identification was unable to be obtained.

Ross Smart departed the meeting.

Item 5: Soldiers Point Marina Extension Development Application

The Soldiers Point Marina Extension DA is currently in the final stages of assessment. The Joint Regional Planning Panel (JRPP) as the determining authority, is to meet on Tuesday 12 June 2014. Council's report and recommendations are due to the panel by COB Thursday 29 May 2014. The JRPP will make Council's report publicly available on their website once received.

All submissions received during the three (3) exhibition periods are being considered by Council in its assessment. The JRPP/Director General Department of Planning will also take them into consideration. As part of this process Council is reviewing documentation provided by the Worimi Local Aboriginal Land Council.

The application is being assessed based upon the information provided by the applicant to date. At this stage, a Species Impact Statement (SIS) has not been provided, and as such it is likely that Council will be unable to recommend support for the proposal.

For any further enquiries please contact Cindy Dickson, Planning and Developer Relations Coordinator. cindy.dickson@portstephens.nsw.gov.au or 4980 0105.

Item 6: Birubi Point Surf Club Development

Steve Bernasconi reported that the first meeting of the Panel was a success. The next meeting will be in July 2014, with plans for 3 meetings a year (March, July and November).

Action:	2. Steve to send the set format for the meeting to Andrew. Also to send "Tool Time For Business" information.
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Item 8: Aboriginal Strategic Committee Schedule to Constitution

It was agreed that a review of the Constitution is required as the last amendments were made in 2012. It was agreed that amendments need to be made to reflect the new structure of Development Services, a revised quorum to streamline process, and the Chair of Committee.

Action:	3. Council's Community Development & Engagement Officer to progress review and forward necessary changes to Committee members for approval via email. A subsequent report will then be presented to Council.
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Item 9: Update on Aboriginal Projects Fund 2013

Karuah Local Aboriginal Lands Council	Works completed- grant acquitted
PS Family Support- Dolphins netball	Acquitted- Second & final payment processed
Tanilba Bay Public School	Acquitted- awaiting final receipts for final payment to be processed
PS Family Support play equipment	Acquitted- awaiting final receipt for final payment to be processed
Lifestyle Solutions morning mingles	Application to extend project to expend funds given in 2013 due to staffing changes- decision made by ASC by 24 June.
Birra-li Happy Days Culture Packs	All items for packs have been delivered. Packs will be given to families on the arrival of an Indigenous newborn-ongoing until all items expended. Acquitted- Second and final payment processed
Irrawang High School Bush Tucker Trail	Acquittal due by end of August 2014. Project delayed in beginning. Is progressing well.
Kuppoondee Worimi Dolphins Rugby team	Acquitted and final receipts received.
Worimi Local Aboriginal Land Council	Acquitted and final receipts received. Part of larger project. DA for amp theatre has been submitted to Council. Total project cost \$3.8m. The concept is for Murrook to be a regionally showcased Interpretive Centre.

Action:	4. Andrew Smith to present concept for the Murrook Centre development at the Joint Aboriginal Strategic Committee which will be held on Tuesday 18 November 2014, from 5.30 – 7.30pm.
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Item 10: Lavis Lane Maintenance

The grading of Lavis Lane has been done. It is already corrugated again. It was reported that there was no funding allocated to seal the road at this stage.

Action:	5. Council's Community Development and Engagement Officer to investigate schedule of grading and query possibility of increased grading on the schedule.
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Item 11: Shower- Henderson Park, Lemon Tree Passage

It was reported that a concrete pad below the shower would alter the height of the shower, making the shower head too low. Funding for it to be dug out for drainage is not in this year's budget, but will be considered in for the next financial year.

Item 12: Port Stephens Council - Cultural Plan

A workshop was held with key stakeholders and Sue Boaden, the cultural planning consultant. Outcomes from this workshop will be formulated into a Draft, which will be distributed to the stakeholders including members of the Aboriginal Strategic Committee. Comments on the previous Draft Cultural Action Plan from the Worimi LALC Board members were noted and appreciated.

Action:	5. Council's Community Development & Engagement Officer to progress review and forward necessary changes to Committee members for approval via email. A subsequent report will then be presented to Council.
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Move to accept Minutes of previous meeting – Neville Lilley
Second – Steve Bernasconi

3. NAIDOC WEEK 2014 PROPOSED PROGRAM

- NAIDOC Week 2014 will be held from 6 – 13 July
- On Monday 7 July, a street march will be held in Raymond Terrace, finishing at Council with a morning tea (this has been held since 2006). As this year's theme is 'Serving Country- Centenary and Beyond', The initial meeting place will be at the cenotaph at Raymond Terrace with a lying of the wreath and 1 minute silence. This will be at 8am for an 8.30am march. Arrival at Council will be between 9am – 9.30am. Council will be holding a BBQ breakfast, with the traditional Welcome To Country, Flag Raising and Smoking Ceremony occurring in the forecourt.
- The Nelson Bay march, with the same format as Raymond Terrace will be held on Wednesday 9 July starting at the Bowling Club and going down Stockton Street. The BBQ is held by the National Parks and Wildlife Service in Apex Park. The march in Nelson Bay began last year.
- On Friday 11 July, a Family Fun Day will be held at the Murrook Cultural Centre from 10am – 2pm. All are welcome.
- It is planned to organise Cultural Awareness Training for Council employees. Jonathan Lilley is the Education, Culture and Heritage Officer and is the contact to organise this.
- Council plans to hold talks and "meet and greets" with current employees of Council who were (or are) trainees. They would like as many Indigenous young people between the ages of 18-25 years to attend. This will be held at Council following the official ceremony on Monday 6 July, with the aim to encourage more opportunities for indigenous young people to become trainees of Council.

Action:	6. Council to send invite to Andrew once details are finalised.

4. NAIDOC WEEK 2015 PROPOSED PROGRAM

A project idea for 2015 NAIDOC week is to run workshops with local young people to design a banner for the street poles in Raymond Terrace (10 poles) and Nelson Bay (6 poles). The Committee liked the idea, with possibility of Elders voting on the winners. This idea would need to be progressed at the beginning of the 2015 calendar year.

5. ABORIGINAL STRATEGIC COMMITTEE PROPOSED AMENDMENTS TO CONSTITUTION

It was noted that the budget associated with the Aboriginal Strategic Committee is operational only, allowing for catering and administration of meetings. Feedback from James Campbell was reported on the Committee potentially being more accessible and representational of the Aboriginal community of Port Stephens generally. It was agreed that it was appropriate for the Minutes of the meetings be distributed to Aboriginal stakeholders, but the membership of the Committee not be opened up. People should be invited to write to the Committee to discuss ideas or provide feedback, and can also be invited to attend meetings as guest speakers.

Action:	7. Community Development and Engagement Team to develop a draft mailing list for distribution of the Committee Minutes, and present back to the Committee for endorsement.
---------	--

It was agreed that the following amendments be made to the Constitution:

- Item 13, Clause 9 - The quorum be two (2) Aboriginal representatives, one (1) Councillor and/or the Group Manager of Development Services or one (1) of their delegates.

6. MEETING DATES FOR ABORIGINAL PROJECT FUND APPLICATION PRESENTATIONS

It was agreed that the date for presentations be Tuesday 24 June from 9.30am. There should be ten minutes allowed for presentations followed by question time.

Action:	8. Community Development and Engagement Officer to organise meeting for presentation on Tuesday 24 June from 9.30am.
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7. GENERAL BUSINESS

1. Steve reported that the *Protecting Our Places* application (\$50,000) for the Soldiers Point midden has been put on hold. The project management for planning is to go ahead as soon as the funding is available. This includes the best methods for conservation of the midden. A site meeting is being held with Sonia Limeburner (OEH). The date of the meeting is now 3 July 2014.

MINUTES FOR ORDINARY MEETING – 14 OCTOBER 2014

Action:	8. - Andrew to invite Worimi representatives to be at the site meeting. - Steve to organise for Capital Works to be invited, and also check date with Jason. - Penny to also attend
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2. Andrew reported on meeting held with Council at the Soldiers Point Caravan Park. The proposal is for 70 sites of long term tenants camping areas to be made into 10 sites constructed as a platform, with nothing being put into ground. There will be walking entry space only, with no vehicle access. This is subject to further consultation. The Stage 2, concept of tree houses is not supported by the Worimi LALC.. Communication between Council and Worimi LALC requires improvement, prior to concepts being reported to Council. Cr Dover reported that it be explored for family camping at Samurai Beach Resort.

Action:	9. Community Development and Engagement Officer to distribute copy of Council Minutes and Resolution to Committee members.
---------	--

3. Andrew reported that there is a scar tree at Bagnalls Beach with white ants that requires attention.

Action:	10. Steve to follow up
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4. Steve enquired about the draft design of signage for Aboriginal Places at Birubi Point. It was agreed that the wording needs to include the relevant Acts for regulatory power with a focus on 'Penalties Apply'.

Action:	11. Steve to send final design to National Parks to possibly use.
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5. A letter from Youyoong AECG was Tabled. The letter requests the use of funds they were granted from the Aboriginal Projects Fund in 2011, be used by changing the delivery of the program. The Project is titled *Ngarra-gu Banba (Listen to Talk)*. The \$2,932 will be utilised to set up a pilot project, from which future funding from a range of sources could be sought to continue the program. The Committee agreed that the funding can be spent on the pilot project, Listen To Talk, and that the project would need to be acquitted prior to consideration of any further funding under the Aboriginal Projects Fund.

Action:	12. Community Development and Engagement Officer to advise Youyoong AECG of the Committee's decision.
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NEXT MEETING

Will be held on Tuesday 26 August 2014 at 9:30am at Council's Administration Building.

Meeting closed 12.25pm

ITEM NO. 7

FILE NO: PSC2005-2667

T12-2014 - WASTE SERVICES TENDER

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 7 on the Ordinary Council agenda namely **T12-2014 - Waste Services Tender**;
- 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 **T12-2014 - Waste Services Tender**;
- 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) Award the contract for Part A – Waste Collection Services of T12-2014 to Sita Australia to the value of \$5,028,481 for the first year, which includes the following services;
 - Weekly collection of a 240 litre residual bin (red lid);
 - Fortnightly collection of a 240 litre recycling bin (yellow lid);
 - The option for residents to upgrade to a 360 litre recycle bin for a one off fee to be set as part of the fees and charges process;
 - Two "on call" bulky waste collection services that permits each residential property to pre book the collection of household bulky, metal and green wastes from the kerbside with the waste collected in one vehicle and recyclable materials separated at Salamander Bay Waste Transfer Station;
 - Scheduled collection of public place litter bins and bins for special events on community land;

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- 6) Endorse the recruitment of an additional operator at the Salamander Bay Waste Transfer Station to sort the bulky waste material collected and delivered by the contractor as of July 1st 2015;
- 7) Award the contract for Part B – Receival and Processing of Recyclables of T12-2014 to Solo Resource Recovery to the value of \$392,787 for the first year;
- 8) Award the contract for Part C – Waste Haulage Service of T12-2014 to Sita Australia to the value of \$210,860 for the first year;
- 9) Delegate authority to the General Manager and the Group Manager of Facilities and Services to finalise the contract documents;
- 10) Authorise the affixing of the Council's seal to the contracts & signing by the General Manager and Mayor.

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COMMITTEE OF THE WHOLE RECOMMENDATION

The following statement was made by General Manager prior to Council considering this item.

"If there has been any approach made to Councillors by any proponent of this tender, then these approaches should be disregarded when considering the awarding of the Waste Contract. Only the details considered during the Tender Assessment Process must be considered in making the decision to award the Waste Contract. The Waste Tender has been through a fully compliant probity audited assessment and the report presented represents that assessment."

	<p>Councillor Ken Jordan Councillor Geoff Dingle</p>
	<p>That Item 7 be deferred to confidential session of the Council meeting as follows:</p> <ol style="list-style-type: none"> 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 7 on the Ordinary Council agenda namely T12-2014 - Waste Services Tender; 2) That the reasons for closing the meeting to the public to consider this item be that: <ol style="list-style-type: none"> 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

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	<p>information in respect of the T12-2014 - Waste Services Tender;</p> <p>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.</p> <p>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.</p>
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MOTION

Council moved into confidential session at the conclusion of the Council Report items to deal with Item 7 in confidential session of the meeting.

270	<p>Councillor Ken Jordan Councillor John Nell</p> <p>It was resolved that Council:</p> <p>1) Award the contract for Part A – Waste Collection Services of T12-2014 to Sita Australia to the value of \$5,028,481 for the first year, which includes the following services;</p> <ul style="list-style-type: none">• Weekly collection of a 240 litre residual bin (red lid);• Fortnightly collection of a 240 litre recycling bin (yellow lid);• The option for residents to upgrade to a 360 litre recycle bin for a one off fee to be set as part of the fees and charges process;• Two "on call" bulky waste collection services that permits each residential property to pre book the collection of household bulky, metal and green wastes from the kerbside with the waste collected in one vehicle and recyclable materials separated at Salamander Bay Waste Transfer Station;• Scheduled collection of public place litter bins and bins for special events on community land; <p>2) Endorse the recruitment of an additional operator at the Salamander Bay Waste Transfer Station to sort the bulky waste</p>
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MINUTES FOR ORDINARY MEETING – 14 OCTOBER 2014

	material collected and delivered by the contractor as of July 1 st 2015;
3)	Award the contract for Part B – Receival and Processing of Recyclables of T12-2014 to Solo Resource Recovery to the value of \$392,787 for the first year;
4)	Award the contract for Part C – Waste Haulage Service of T12-2014 to Sita Australia to the value of \$210,860 for the first year;
5)	Delegate authority to the General Manager and the Group Manager of Facilities and Services to finalise the contract documents;
6)	Authorise the affixing of the Council's seal to the contracts & signing by the General Manager and Mayor.

A division was moved by Cr John Nell and seconded by Cr John Morello.

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

Those against the Motion: Nil.

BACKGROUND

The current waste collection and haulage contracts expire on 30 June 2015. Council's Waste Services Team conducted a public consultation period in the last quarter of 2013. The tender development, submission and review process occurred in the first half of 2014.

The purpose of this report is to recommend the acceptance of tenders and awarding of contracts for Council's waste services namely:

- Part A – Waste Collection Services;
- Part B – Receival and Processing of Recyclables;
- Part C – Waste Haulage Service.

(ATTACHMENT 1) is a summary of the response to each part of the tender, the total score and the total value of each submission.

(ATTACHMENT 2) is the Tender Evaluation Report for T12-2014 which includes value selection methodology, final evaluation scores and non-price points of difference.

(TABLED DOCUMENT 1) is the Probit Plan for T12-2014. This plan details the selection methodology and assessment panel's duties.

FINANCIAL/RESOURCE IMPLICATIONS

Adoption of the recommendations will result in:

- An increase of around \$13.50 to the Domestic Waste Service Charge in 2015/16 from \$372.50 in 2014/15 to an estimate of \$386.00 in 2015/16. As shown in the below table Councils Domestic Waste Service Charge is one of the lowest in comparison to our neighbouring Councils so even with this increase to the Domestic Waste Service Charge Councils charge will still be in line with our neighbouring Councils.

Council	Domestic Waste Service Charge (\$496) 2014/15
Newcastle	\$351.07
Port Stephens	\$372.50
Lake Macquarie	\$383.00
Maitland	\$394.35
Cessnock	\$480.00

- Port Stephens Council in 2013/14 diverted 60% of the waste from the residential kerbside bins, which places Port Stephens Council amongst the leading Councils in NSW for landfill diversion. Adopting the recommendations will continue to provide the residents with a waste collection system that achieves both high landfill diversion rates and value for money.
- An increase of between \$5.00 and \$10.00 per tonne for the haulage of waste from Salamander Bay Waste Transfer Station to various disposal sites. This additional cost will be paid for by the users of the Salamander Bay Waste Transfer Station through increased disposal fees.
- The addition of a new operator (1 EFT) at the Salamander Bay Waste Transfer Station to undertake the sorting of the bulky waste delivered to the site from the new "on call" household waste kerbside collection service.

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Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes	490,138	Expected increase in Domestic Waste Services Charges in 2015/16 as a result of adopting the recommendations. This equates to an extra \$13.50 per property.
Reserve Funds	No		
Section 94	No		
External Grants	Yes	80,000	Construction of slab and shed for bulky waste sorting at Salamander Bay Waste Transfer Station. Use of non-contestable portion of the EPA's Waste Less Recycle More Program.
Other	No		

LEGAL, POLICY AND RISK IMPLICATIONS

There are no legal or policy impediments from adopting the recommendations.

The tender submissions for waste collection (Part A), receipt and processing of recyclables (Part B) and waste haulage (Part C) services were called for in accordance with the Tendering Guidelines for NSW Local Government, the local Government Act (1993) and Port Stephens Councils Procurement Policies.

An independent probity auditor from PKF Lawler approved the probity plan and attended all tender assessment meetings. Each member of the tender review panel and other Council officers that were providing advice during the tender review process all signed confidentiality and declarations of independence. The probity officer raised no probity issues during the assessment process and a final report will be submitted to the General Manager at the conclusion of the tender process.

Adopting the recommendation is aligned with Councils Waste Management and Resource Recovery Policy 2009 – Minute 396 24 November 2009.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that rejecting the recommendations and deferring the appointment of a contractor will result in not enough lead time to enable new services to	High	Adopt the recommendations.	Yes

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begin on 01 July 2015.			
There is a risk that Councils reputation could be damaged if the changes to service delivery under the new contract are not well delivered.	Low	Adopt the recommendations and develop a contract management plan that includes the coordinated transition of contracts and services as well as a communication plan that ensures residents receive the correct advice during the contract change over.	Yes
There is a financial risk of rejecting the recommendations and negotiating with another contractor resulting in greater cost to the ratepayer.	Medium	Adopt the recommendations.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Adoption of the recommendations will result in:

- Greater convenience and an increased level of service for all residents in regards to the safe collection and recycling of their bulky waste, metals and green waste from the kerbside;
- Greater convenience for large households by way of having the option to upgrade their recycling bin to 360 litres for a one off payment;
- Elimination of conflicts between the scheduling of the bulky waste collections and school holidays and other special events held in the Port Stephens area.
- Greater diversion of waste from landfill by way of the capture of more recycling in the larger yellow bins and through the sorting of the waste collected during the "on call" kerbside collections;
- Less potential for illegal dumping of household bulky items as there will be increased capacity and convenience for residents to dispose of unwanted household bulky waste, metals and green waste.

CONSULTATION

Public consultation on future waste services was held from August to October 2013. This included an online survey and public consultation meetings.

Specific advice has been sought and obtained internally from Council's Risk Management Coordinator, Legal Services Manager, Purchasing Officer, Contracts Coordinator, Financial Services Section Manager, Facilities and Services Group

MINUTES FOR ORDINARY MEETING – 14 OCTOBER 2014

Manager, Waste Management Coordinator and Community Services Section Manager.

Councillors received Two Way Conversations on 18 February 2014 and 16 September 2014.

Specific industry advice was sought and obtained externally from Impact Environmental Consulting, PKF Lawler Partners Pty Ltd and a number of other NSW Councils.

The tender evaluation panel for T12-2014 consisted of Council's Waste Management Coordinator, Waste Management Officer, Financial Services Section Manager and Community Services Section Manager.

OPTIONS

- 1) Adopt the recommendations;
- 2) Amend the recommendations;
- 3) Reject the recommendations.

ATTACHMENTS – Confidential (provided under separate cover)

- 1) Summary of results of evaluation of Waste Services Tender T12-2014;
- 2) Tender Evaluation Report for Port Stephens Councils Tender T12-2014.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

- 1) The Probity and Evaluation Plan for Port Stephens Council's Tender T12-2014.

ITEM NO. 8

FILE NO: PSC2005-3645

NAMING OF RESERVE – SOLDIERS POINT

REPORT OF: BRETT FIELD – ACTING PROPERTY SERVICES SECTION MANAGER
GROUP: CORPORATE SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Request the Geographical Names Board (GNB) to approve the application to name Lot 259 DP26875 (122 Soldiers Point Roads, Soldiers Point) as 'John Eckersley Park'.

ORDINARY COUNCIL MEETING – 14 OCTOBER 2014
COMMITTEE OF THE WHOLE RECOMMENDATION

	<p>Councillor John Nell Councillor John Morello</p>
	<p>That the recommendation be adopted.</p>

MOTION

265	<p>Councillor Ken Jordan Councillor Geoff Dingle</p>
	<p>It was resolved that Council request the Geographical Names Board (GNB) to approve the application to name Lot 259 DP26875 (122 Soldiers Point Roads, Soldiers Point) as 'John Eckersley Park'.</p>

BACKGROUND

The purpose of this report is to recommend Council apply to the Geographical Names Board (GNB) to officially name a reserve at Soldiers Point 'John Eckersley Park'.

Council received a request in May 2013 from the Soldiers Point – Salamander Bay Tidy Towns and Landcare 355c Committee (Committee) (**ATTACHMENT 1**) suggesting a public reserve in this area be named after Mr John Eckersley OAM (who is recently deceased). In accordance with GNB Placename policy, a reserve cannot be named after a person until 12 months after they have passed. This time has now lapsed therefore under the terms of the Policy the reserve can now be named as suggested.

The area to be named is known as Lot 259 DP26875 (122 Soldiers Point Road, Soldiers Point) (**ATTACHMENT 2**) and is currently unnamed. Council's Property Officer has

MINUTES FOR ORDINARY MEETING – 14 OCTOBER 2014

liaised with the Secretary of the Committee, Council's Facilities and Services Section and the GNB and all agree in principle to the name.

Sign posting of this park will be completed by the Committee with the approval of Council's Park and Waterways Asset Coordinator.

FINANCIAL/RESOURCE IMPLICATIONS

The application to GNB is at no cost to Council and no further costs should be associated with this matter, as the signposting will be at the Committees cost.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes		Within existing budget.
Reserve Funds	No		
Section 94	No		
External Grants	No		
Other	No		

LEGAL, POLICY AND RISK IMPLICATIONS

The application has been prepared in accordance with Councils Naming and renaming of Reserves Policy.

Once approved by the Board, the GNB will prepare and advertise a Gazette Notice as required under Sections 7 and 7A of the Geographical Names Board Act 1966.

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
There is a risk that if Reserves/Parks are left unidentified this can cause difficulties the general public and authorities such as Emergency Services.	High	Gazette all reserve names to avoid future identification issues.	Yes
There is a risk that the GNB does not recognise unofficially named reserves on their register.	Low	Gazette all reserve names.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Nil.

CONSULTATION

- 1) Property Officer;
- 2) Geographical Names Board;
- 3) Park and Waterways Asset Coordinator;
- 4) Soldiers Point – Salamander Bay Tidy Towns Landcare 355c Committee members.

OPTIONS

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

ATTACHMENTS

- 1) Letter from Soldiers Point – Salamander Bay Tidy Towns and Landcare 355c Committee;
- 2) Locality map 122 Soldiers Point Road, Soldiers Point.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

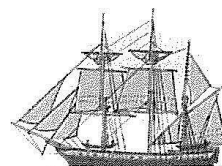
Nil.

ATTACHMENT 1

1

**Soldiers Point – Salamander Bay
Tidy Towns and Landcare 355c Committee**

Chairman: Patrick O'Rourke 02 4981 5516
Secretary: Simon Brooke 02 4984 6315, 0410 582 390
Correspondence to: 26 Randall Drive, Salamander Bay, NSW 2317
E-mail: swbrooke@gmail.com, Web: www.simar.net.au



Mr Peter Gesling
General Manager,
Port Stephens Council,
Raymond Terrace, NSW 2324

23 May 2013

CC to all Councillors

Dear Peter,

As you know, John Eckersley OAM died several months ago, on 7th March. He was widely known for his interest in environmental matters and for his leadership in the community promoting sustainability and long term conservation activities. In particular, he was a strong believer in the capacity of a group of people to get out into their local environment and get hands-on jobs done.

This letter is to ask for your support to name a part of the public reserve as "John Eckersley Park" in his memory. The site is known as 122 Soldiers Point Road, Soldiers Point, between the road and East's Big 4 caravan park, and across the road from the Ibis Salamander Shores Hotel. The site is shown on the attached map, outlined by a green line.

This site was chosen by the Committee, and his wife Joan Eckersley was very pleased with the proposal. Apart from being the first of many of his bush recovery projects (see below), the site is associated with John by the border of native plants near the western boundary of the site, which was added at John's suggestion in 2008. Visually, the area forms a welcome, park-style space when driving into Soldiers Point.

Background

Soon after moving to Soldiers Point on retirement in 1994, John was invited to be Chairman of the then Soldiers Point, Salamander Bay & Taylors Beach Precinct. In this capacity he was invited later by Council to help set up a Tidy Towns group in the precinct area. Initially he worked alone in clearing weeds and litter from areas around Soldiers Point, and was soon joined by a few other like-minded people. The group started two projects in 1995 and they were put up for Tidy Towns Award assessment.

Their first project was clearing a vacant block at the corner of Soldiers Point Road and Bagnall Avenue. This had been used as a rubbish dump and was weed infested. It was finally cleaned up and mowed. This site borders on the south end of the proposed memorial park.

The Soldiers Point – Salamander Bay Tidy Towns and Landcare 355b Committee was fully established by 1996. The Committee's work gradually extended, and it was involved in helping to protect the Wanda Wetlands and Mambo Wetlands from development. The Mambo Wanda Wetlands 355b Committee was later formed to look after this area. John, as Chairman, and many other volunteers were, and continue to be, active in both Committees.

We have continued to support the Keep Australia Beautiful Towns Awards with submissions every year. The highlights were winning the NSW, National titles and finally an International

International "Nations in Bloom" - Gold Award and Category Winner, 2003
NSW Tidy Towns Award, 2001 *Australia's Tidiest Town, 2002*

award for our conservation work, much of which was due to John Eckersley's inspiration and capacity to share activities among many organisations. Winning the National title in 2002 brought a prize of \$400,000 funding to Port Stephens for tourism publicity.

In conclusion, this Committee hopes that Council will agree to name the site "John Eckersley Park", after which we will seek approval from the NSW Geographic Names Board.

Yours sincerely,

Simon Brooke

Simon Brooke
Hon Secretary

Attachment

The yellow pin marks the centre of the proposed Park area, and its boundary is marked by the green line.

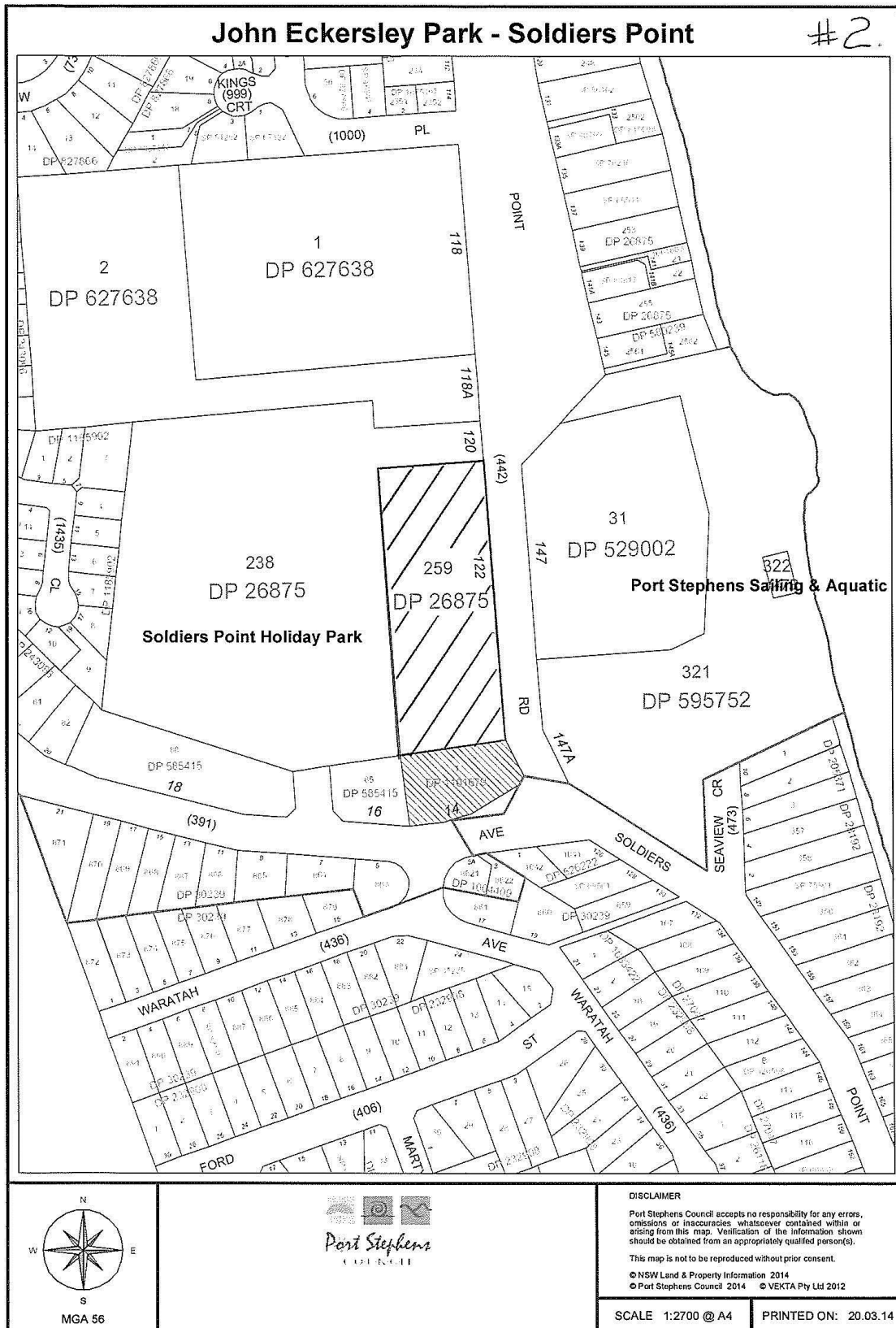
Details of the property are:

PS Council Parcel No. 12401
Lot 259 DP 26875
LEP 2013 Zoning RE1
Area, approximately 8,973 sq m.



International "Nations in Bloom" - Gold Award and Category Winner, 2003
NSW Tidy Towns Award, 2001 *Australia's Tidiest Town, 2002*

ATTACHMENT 2



ITEM NO. 9

FILE NO: PSC2009-02488

POLICY REVIEW: PUBLIC ACCESS TO RECORDS AFTER 30 YEARS

REPORT OF: ZOE PATTISON – BUSINESS SYSTEMS SUPPORT SECTION MANAGER
GROUP: CORPORATE SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Endorse the amendments to the Public Access to Records after 30 Years policy shown at **(ATTACHMENT 1)**;
- 2) Revoke the Public Access to Records after 30 Years policy dated 27 September 2011 (Min No. 344).

ORDINARY COUNCIL MEETING – 14 OCTOBER 2014
COMMITTEE OF THE WHOLE RECOMMENDATION

	<p>Councillor John Nell Councillor Ken Jordan</p>
	<p>That the recommendation be adopted.</p>

MOTION

266	<p>Councillor Ken Jordan Councillor Geoff Dingle</p>
	<p>It was resolved that Council:</p> <ol style="list-style-type: none"> 1) Endorse the amendments to the Public Access to Records after 30 Years policy shown at (ATTACHMENT 1); 2) Revoke the Public Access to Records after 30 Years policy dated 27 September 2011 (Min No. 344).

BACKGROUND

The purpose of this report is to recommend that Council endorse the amendments to the Public Access to Records after 30 Years policy adopted by Council on 27 September 2011, Minute No.344.

All amendments are for administrative purposes only; there is no change to subject matter or the purpose for which the policy is in place.

FINANCIAL/RESOURCE IMPLICATIONS

Costs associated with policy review are covered in the 2014-2015 budget.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes		Resources required to review this policy are covered within the existing Business Systems Support Section budget.
Reserve Funds	No		
Section 94	No		
External Grants	No		
Other	No		

LEGAL, POLICY AND RISK IMPLICATIONS

There is a risk that failure to properly manage Council's documented policies, management directives, strategies and processes may affect Council's objective to ensure the long-term sustainability of services and protect the community's assets.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that Council's administrative processes remain out-dated.	Low	<ul style="list-style-type: none"> ▪ Adopt amendments to the policy and update Council's Policy register. ▪ Communicate to all staff. 	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Nil.

CONSULTATION

- 1) Group Manager Corporate Services;
- 2) Executive Officer;
- 3) Council's Legal Officer.

OPTIONS

- 1) Adopt the recommendations;
- 2) Amend the recommendations;
- 3) Reject the recommendations.

ATTACHMENTS

- 1) Public Access to Records after 30 Years Policy.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ATTACHMENT 1



POLICY

Adopted: 16/05/2000
Minute No:267
Amended: 24/06/2003
Minute No: 245
Amended: 24/07/2007
Minute No: 198
Amended: 27/09/2011
Minute No: 344

FILE NO: PSC2005-1592

TITLE: PUBLIC ACCESS TO RECORDS AFTER 30 YEARS

REPORT OF ~~INFORMATION SERVICES~~ BUSINESS
SYSTEMS SUPPORT SECTION MANAGER

Delete: Information Services
Insert: Business Systems
Support Section Manager

BACKGROUND

The *State Records Act, 1998* promotes the principles of accountability and access by requiring public sector offices, including local government Councils, to create full and accurate records of their business and administrative transactions, and ensuring that records of significant value are preserved. Councils will ensure that all records of continuing value are considered for public access in due course and in accordance with the Attorney General's 'Guidelines on Making Access Directions under Part 6 of the State Records Act 1998'.

OBJECTIVE

- 1) The Policy is intended to outline the access provisions of the *State Records Act, 1998* and to explain the rights and obligations of Council and the public, under Part 6 of the Act.

PRINCIPLES

- 1) All Council records are classed as being in an 'Open Access Period' 30 years after a record was created.
- 2) The 'Open Access Period' means that the public

has a right to request access to any records once it falls into this period, without the need to submit a Government Information (Public Access) request.

- 3) Granting of access to records in the 'Open Access Period' is not automatic.
- 4) An evaluation of the requested record/s will be undertaken by Council staff and a determination of Open to Public Access (OPA) or Closed to Public Access (CPA) will be made. This is known as an Access Direction.
- 5) This Policy does not require Council to keep all records permanently to enable future public access. Council is entitled to destroy records in accordance with the State Records Authority of NSW – Local Government General Disposal Authority.

POLICY STATEMENT

- 1) Assessment as to whether records should be open or closed to public access will be made on the basis of the known or likely contents of a series, group or class of records, not on an individual record basis.
- 2) Criteria for an OPA direction include public interest, whether similar records are already available, OPA precedents, appropriate elapse of time and whether the records are already public knowledge or are available elsewhere. An OPA direction will remain in force until it is revoked.
- 3) Criteria for a CPA direction include whether the information has been provided under an expectation of confidentiality, information protected under other legislation, unreasonable disclosure of sensitive personal information, safety and security. A CPA direction will remain in force for the period (up to five years) specified in the direction and will be reviewed every five years.
- 4) Application for access to records must be in writing, specifying that access be requested under s.54 of the *State Records Act* and detailing the records to which access is required.
- 5) No fee will be payable for Public Access requests.
- 6) Council will notify applicants of its access decision on their requested record/s in writing.
- 7) Documentation of Access Directions will contain sufficient detail to help meet Council's statutory obligations under the *State Records Act 1998*.
- 8) A CPA direction does not affect an individual's entitlement to access a record under the *Government Information (Public Access) Act 2009*.

RELATED POLICIES

- 1) Access to Information Policy.

SUSTAINABILITY IMPLICATIONS

Nil

SOCIAL IMPLICATIONS

This Policy allows the public greater access to records for those records older than 30 years. This means they are not required to request these records through a Government Information (Public Access) request.

ECONOMIC IMPLICATIONS

Nil

ENVIRONMENTAL IMPLICATIONS

Nil

RELEVANT LEGISLATIVE PROVISIONS

- 1) Part 6, *State Records Act 1998 (NSW)*;
- 2) *Government Information (Public Access) Act 2009*.

IMPLEMENTATION RESPONSIBILITY

- 1) ~~Records Management and Information Services Coordinator.~~

PROCESS OWNER

- 1) Information Services Coordinator.

REVIEW DATE

- 1) ~~30 June 2014~~, 14 October 2016.

Delete: Records Management and

Insert: Process Owner

Insert: 1) Information Services Coordinator

Delete: 30 June 2014
Insert: 14 October 2016

ITEM NO. 10

FILE NO: 1190-001 PSC2014-03286

REQUEST FOR FINANCIAL ASSISTANCE

REPORT OF: TONY WICKHAM – EXECUTIVE OFFICER

GROUP: GENERAL MANAGER'S OFFICE

RECOMMENDATION IS THAT COUNCIL:

- 1) Approves provision of financial assistance under Section 356 of the Local Government Act from the respective Mayor and Ward Funds to the following:-
 - a) Mayoral Funds – Mayor Bruce MacKenzie – Port Stephens FM – Donation towards purchasing equipment - \$1,000.00;
 - b) Mayoral Funds – Mayor Bruce MacKenzie – Yacaaba Centre – Donation to continue support services - \$1,000.00;
 - c) Mayoral Funds – Mayor Bruce MacKenzie – Port Stephens Domestic Violence Committee – White Ribbon Day Walk Event Donation - \$1,000.00;
 - d) Mayoral Funds – Mayor Bruce MacKenzie – Shoal Bay Community Association – Stage 2 of Walkway - \$1,000.00
 - e) East Ward Funds – Cr Sally Dover – Yacaaba Centre – Donation to cover cost of DA Fees - \$669.40;
 - f) East Ward Funds – Cr John Nell – Musical Matinees Inc. – Donation towards costs for Performance - \$1,000.00;
 - g) East Ward Funds – Cr John Nell – Shoal Bay Beach Preservation Committee – Foreshore Walkway - \$2,000.00;
 - h) Central Ward Funds – Cr Steve Tucker – Yacaaba Centre – Donation to assist the centre to match funds from Service Support - \$500.00;
 - i) Central Ward Funds – Cr Steve Tucker – Tilligerry Peninsula Chamber of Commerce – Reimbursement of park hire fees - \$450.00;
 - j) Central Ward Funds – Cr Chris Doohan – Medowie Netball Club – Drink bottles with PSC Logo - \$500.00;
 - k) Central Ward Funds – Cr Geoff Dingle – Medowie Public School – Presentation Day - \$250.00;
 - l) West Ward Funds - Cr Ken Jordan – Karuah Blue Grass Festival – Donation to cover cost of park hire fees - \$500.00;
 - m) West Ward Funds – Cr Ken Jordan – Karuah Hall Committee – Air conditioning unit for the hall - \$2,500.00;
-

**ORDINARY COUNCIL MEETING – 14 OCTOBER 2014
COMMITTEE OF THE WHOLE RECOMMENDATION**

	<p>Councillor Paul Le Mottee Councillor Ken Jordan</p>
	<p>That the recommendation be adopted.</p>

MOTION

267	<p>Councillor Ken Jordan Councillor Geoff Dingle</p> <p>It was resolved that Council:</p> <ol style="list-style-type: none"> 1) Approves provision of financial assistance under Section 356 of the Local Government Act from the respective Mayor and Ward Funds to the following:- <ol style="list-style-type: none"> a) Mayoral Funds – Mayor Bruce MacKenzie – Port Stephens FM – Donation towards purchasing equipment - \$1,000.00; b) Mayoral Funds – Mayor Bruce MacKenzie – Yacaaba Centre – Donation to continue support services - \$1,000.00; c) Mayoral Funds – Mayor Bruce MacKenzie – Port Stephens Domestic Violence Committee – White Ribbon Day Walk Event Donation - \$1,000.00; d) Mayoral Funds – Mayor Bruce MacKenzie – Shoal Bay Community Association – Stage 2 of Walkway - \$1,000.00 e) East Ward Funds – Cr Sally Dover – Yacaaba Centre – Donation to cover cost of DA Fees - \$669.40; f) East Ward Funds – Cr John Nell – Musical Matinees Inc. – Donation towards costs for Performance - \$1,000.00; g) East Ward Funds – Cr John Nell – Shoal Bay Beach Preservation Committee – Foreshore Walkway - \$2,000.00; h) Central Ward Funds – Cr Steve Tucker – Yacaaba Centre – Donation to assist the centre to match funds from Service Support - \$500.00; i) Central Ward Funds – Cr Steve Tucker – Tilligerry Peninsula Chamber of Commerce – Reimbursement of park hire fees - \$450.00; j) Central Ward Funds – Cr Chris Doohan – Medowie Netball Club – Drink bottles with PSC Logo - \$500.00; k) Central Ward Funds – Cr Geoff Dingle – Medowie Public School – Presentation Day - \$250.00; l) West Ward Funds - Cr Ken Jordan – Karuah Blue Grass Festival – Donation to cover cost of park hire fees - \$500.00; m) West Ward Funds – Cr Ken Jordan – Karuah Hall Committee –
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MINUTES FOR ORDINARY MEETING – 14 OCTOBER 2014

	Air conditioning unit for the hall - \$2,500.00;
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BACKGROUND

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

The new Financial Assistance Policy provides the community and Councillors with a number of options when seeking financial assistance from Council. Those options being:

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

Council is unable to grant approval of financial assistance to individuals unless it is performed in accordance with the Local Government Act. This would mean that the financial assistance would need to be included in the Management 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 is provide through Mayoral Funds, Rapid Response or Community Capacity Building:-

WEST WARD – Councillors Jordan, Kafer & Le Mottee

Karuah Blue Grass Festival	Reimbursement of park hire fees	\$500.00
Karuah Hall Committee	Airconditioning Unit	\$2,500.00

CENTRAL WARD – Councillors Dingle, Doohan & Tucker

Yacaaba Centre	Donation to Support the Centre	\$500.00
Tilligerry Peninsula	Reimbursement of park hire fees	\$450.00
Chamber of Commerce		
Medowie Netball Club	Drink bottles with PSC Logo	\$500.00
Medowie Public School	Presentation Day	\$250.00

EAST WARD – Councillors Dover, Morello & Nell

Yacaaba Centre	Donation to cover DA Fees	\$669.40
Musical Matinees Inc.	Donation toward cost of Performance	\$1,000.00
Shoal Bay Beach	Foreshore Walkway	\$2,000.00
Preservation Committee		

MINUTES FOR ORDINARY MEETING – 14 OCTOBER 2014

MAYORAL FUNDS – Mayor MacKenzie

Port Stephens GM	Donation towards equipment	\$1,000.00
Yacaaba Centre	Donation to continue support services	\$1,000.00
Port Stephens Domestic Violence Committee	Donation to White Ribbon Walk Event	\$1,000.00
Shoal Bay Community Association	Stage 2 Walkway	\$1,000.00

FINANCIAL/RESOURCE IMPLICATIONS

Council Ward, Minor Works and Mayoral Funds are the funding source for all financial assistance.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes	11,369.40	West Ward Funds \$3,000.00 Central Ward Funds \$1,700.00 East Ward Funds \$3,669.40 Mayoral Funds \$4,000.00
Reserve Funds	No		
Section 94	No		
External Grants	No		
Other	No		

LEGAL, POLICY AND RISK IMPLICATIONS

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

The policy interpretation required is whether the Council believes that:

- a) applicants are carrying out a function which it, the Council, would otherwise undertake;
- b) the funding will directly benefit the community of Port Stephens;
- c) applicants do not act for private gain.

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

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Nil.

CONSULTATION

- 1) Mayor;
- 2) Councillors;
- 3) Port Stephens Community.

OPTIONS

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

ATTACHMENTS

Nil.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ITEM NO. 11

INFORMATION PAPERS

REPORT OF: TONY WICKHAM – EXECUTIVE OFFICER
GROUP: GENERAL MANAGERS OFFICE

RECOMMENDATION IS THAT COUNCIL:

Receives and notes the Information Papers listed below being presented to Council on 14 October 2014.

No:	Report Title	Page:
1	Designated Persons – Pecuniary Interest	

ORDINARY COUNCIL MEETING – 14 OCTOBER 2014
COMMITTEE OF THE WHOLE RECOMMENDATION

	<p>Councillor Ken Jordan Councillor Paul Le Mottee</p>
	<p>That the recommendation be adopted.</p>

258	<p>Councillor John Morello Councillor John Nell</p>
	<p>It was resolved that Council move out Committee of the Whole.</p>

MOTION

268	<p>Councillor Ken Jordan Councillor Geoff Dingle</p>
	<p>It was resolved that Council receive and notes the Information Papers listed below being presented to Council on 14 October 2014.</p>

INFORMATION PAPERS



INFORMATION ITEM NO. 1

DESIGNATED PERSONS - PECUNIARY INTEREST

REPORT OF: WAYNE WALLIS– GENERAL MANAGER

GROUP: GENERAL MANAGER'S OFFICE

FILE: PSC2014-00081

BACKGROUND

The purpose of this report is to advise Council of designated persons who have submitted returns.

Councillors

Cr Bruce MacKenzie

Cr Geoffrey Dingle

Cr Christopher Doohan

Cr Sally Dover

Cr Kenneth Jordan

Cr Peter Kafer

Cr Paul Le Mottee

Cr John Morello

Cr John Nell

Cr Steve Tucker

General Manager's Office

General Manager

Executive Officer

Legal Services Manager

Corporate Services

Group Manager Corporate Services

Business Systems Support Section Manager

Business Development Manager

Contracts Coordinator

Financial Services Section Manager

Investment and Asset Manager

Organisation Development Section Manager (2)

Property Development Coordinator

Property Officer

Property Services Section Manager

Facilities Coordinator

Land Acquisition & Development Manager

Development Services

Assistant Development Planner

Building & Developer Relations Coordinator

Communicate Port Stephens Coordinator
Communications Section Manager
Compliance Officer
Coordinator Environmental Health & Compliance
Coordinator Natural Resources (2)
Developer Contributions Analyst
Development Assessment & Compliance Section Manager
Development Planner (3)
Economic Development Manager
Environment Health & Compliance Project Officer
Environmental Health Officer (2)
Environmental Health Team Leader
Environmental Officer
Group Manager Development Services
Health & Building Surveyor (5)
Major Project Liaison
Planning - Customer Service
Planning & Development Relations Coordinator
Principal Strategic Planner
Ranger (4)
Ranger (contract)
Ranger Team Leader & Compliance
Senior Building Surveyor (2)
Senior Development Planner (3)
Senior Environmental Health officer
Senior Health & Building Surveyor Fire Safety
Senior Ranger
Senior Social Planning Officer
Senior Strategic Planner (2)
Strategic Planner (4)
Strategic Planning Coordinator
Strategy & Environment Section Manager
Tourism & Events Coordinator
Trainee Building Surveyor
Vegetation Management Officer
Waste Compliance & Strategy Coordinator

Facilities & Services

Capital Works Manager
Childrens' Services Coordinator
Civil Assets Engineer
Civil Assets Section Manager
Community & Recreation Assets Coordinator
Community & Recreation Services Manager
Community & Recreation Coordinator
Community Option Coordinator
Community Options Coordinator
Coordinator - Construction

MINUTES FOR ORDINARY MEETING – 14 OCTOBER 2014

Coordinator - Construction (Acting)
Coordinator - Parks - East
Coordinator - Parks - West
Coordinator - Roads
Coordinator - Roadside & Drainage - East
Coordinator - Roadside & Drainage - West
Design & Project Development Engineer
Development Engineer (2)
Development Engineering Coordinator
Drainage and Flooding Coordinator
Fleet & Depot Services Coordinator
Fleet Management Supervisor
Group Manager Facilities & Services
Library Services Manager
Operations Section Manager
Parks and Waterways Officer
Project Manager Civil/Landscape
Senior Development Engineer
Strategic & Projects Management Engineer
Student Development Engineer
Waste Management Coordinator
Public Domain and Services Manager
Transport Project Officer
Facilities & Services Officer

ATTACHMENTS

Nil.

TABLED DOCUMENTS

- 1) Pecuniary Interest Returns 1 July 2013 – 30 June 2014

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 – 14 OCTOBER 2014 MOTION

269	Councillor Ken Jordan Councillor John Morello
	It was resolved that Council move into Confidential session.

Cr Paul Le Mottee returned to the Council meeting 7.16pm.

ITEM NO. 1

FILE NO: A2004-0846

PROPOSED DEVELOPMENT OF 3 TARRANT ROAD, SALAMANDER BAY

REPORT OF: **BRETT FIELD – ACTING PROPERTY SERVICES SECTION MANAGER**

GROUP: **CORPORATE SERVICES**

ORDINARY COUNCIL MEETING – 14 OCTOBER 2014

MOTION

271	Councillor Paul Le Mottee Councillor Ken Jordan
	It was resolved that Council: 1) Adopt OPTION 1- Development of 3 Tarrant Road, Salamander Bay and authorise the Property Services Section to undertake the construction of the subdivision in accordance with Development Consent. 2) Authorise the Property Services Section to call for tenders for the construction of the subdivision works. 3) Authorise the Property Services Section to undertake the sale of the constructed 33 residential allotments.

There being no further business the meeting closed at 7.33pm.

I certify that pages 1 to 145 of the Open Ordinary Minutes of Council 14 October 2014 and the pages 146 to 154 of the Confidential Ordinary Minutes of Council 14 October 2014 were confirmed by Council at its meeting held on 28 October 2014.

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Bruce MacKenzie
MAYOR