

# DRAFT

## MINUTES – 10 APRIL 2018



# PORT STEPHENS C O U N C I L

Minutes of Ordinary meeting of the Port Stephens Council held in the Council Chambers, Raymond Terrace on – 10 April 2018, commencing at 5.42pm.

PRESENT:

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

<b>072</b>	<b>Councillor Glen Dunkley</b> <b>Councillor Giacomo Arnott</b>  It was resolved that the Minutes of the Ordinary Meeting of Port Stephens Council Ordinary Council held on 27 March 2018 be confirmed.
------------	--

Councillor Jaimie Abbott left the meeting at 5:48pm in Open Council.

<b>073</b>	<b>Councillor Paul Le Mottee</b> <b>Councillor John Nell</b>  It was resolved that the apologies from Cr Chris Doohan, Cr Ken Jordan and Cr Steve Tucker be received and noted.
------------	--

**MINUTES ORDINARY COUNCIL - 10 APRIL 2018**

	There were no Declaration of Interest received.
--	---

# INDEX

SUBJECT PAGE NO

**COUNCIL REPORTS..... 4**

1. MODIFICATION OF CONSENT - APPLICATION TO MODIFY DETERMINATION NO. DA 16-2016-679-1 FOR MULTI-DWELLING HOUSING (8 TWO STOREY UNITS) AND ASSOCIATED STRATA TITLE SUBDIVISION AT 2 BAGNALL AVENUE, SOLDIERS POINT .....5
2. MINOR ZONE BOUNDARY ADJUSTMENT AT 100 SALAMANDER WAY, SALAMANDER BAY .....35
3. DRAFT DEVELOPMENT CONTROL PLAN CHAPTER D16 MEDOWIE PLANNING STRATEGY (PRECINCT E) .....41
4. POLICY REVIEW - ENVIRONMENT POLICY .....53
5. POLICY REVIEW - ACQUISITION AND DIVESTMENT OF LAND POLICY .....61
6. POLICY - FLOODPLAIN RISK MANAGEMENT .....82
7. INFORMATION PAPERS .....94

**INFORMATION PAPERS ..... 95**

1. PORT STEPHEN COUNCIL 2017 LOCAL GOVERNMENT ELECTION REPORT .....96

**NOTICES OF MOTION ..... 102**

1. LOCAL ELECTION POSTAL VOTING.....103
2. BOBS FARM DRAINAGE .....107
3. COUNCIL MEETING WEBCASTING.....109

# COUNCIL REPORTS



**ITEM NO. 1**

**FILE NO: 18/59846  
EDRMS NO: 16-2016-679-2**

**MODIFICATION OF CONSENT - APPLICATION TO MODIFY DETERMINATION NO. DA 16-2016-679-1 FOR MULTI-DWELLING HOUSING (8 TWO STOREY UNITS) AND ASSOCIATED STRATA TITLE SUBDIVISION AT 2 BAGNALL AVENUE, SOLDIERS POINT**

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

---

**RECOMMENDATION IS THAT COUNCIL:**

- 1) Approve Section 4.55 (1A) Modification No. 16-2016-679-2 for Multi-Dwelling Housing (8 Two Storey Dwellings) and Associated Strata Title Subdivision at 2 Bagnall Avenue. Soldiers Point, subject to the conditions contained in **(ATTACHMENT 3)**.

---

Councillor Jaimie Abbott returned to the meeting at 5:50pm in Committee of the Whole.

**ORDINARY COUNCIL MEETING - 10 APRIL 2018  
MOTION**

<b>074</b>	<b>Councillor Giacomo Arnott Councillor Sarah Smith</b>  It was resolved that Council move into Committee of the Whole.
------------	---

**COMMITTEE OF THE WHOLE RECOMMENDATION**

	<b>Councillor John Nell Councillor Giacomo Arnott</b>  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 Ryan Palmer, Crs Jaimie Abbott, Giacomo Arnott, Glen Dunkley, Paul Le Mottee, John Nell and Sarah Smith.

Those against the Motion: Nil.

## MINUTES ORDINARY COUNCIL - 10 APRIL 2018

### ORDINARY COUNCIL MEETING - 10 APRIL 2018 MATTER ARISING

	<p><b>Councillor John Nell</b> <b>Councillor Giacomo Arnott</b></p> <p>It was resolved that Council refer to intersection concerns in the vicinity of 2 Bagnall Avenue, Soldiers Point to the Local Traffic Committee.</p>
--	--

### ORDINARY COUNCIL MEETING - 10 APRIL 2018 MOTION

<b>075</b>	<p><b>Councillor Jaimie Abbott</b> <b>Councillor Paul Le Mottee</b></p> <p>It was resolved that Council approve Section 4.55 (1A) Modification No. 16-2016-679-2 for Multi-Dwelling Housing (8 Two Storey Dwellings) and Associated Strata Title Subdivision at 2 Bagnall Avenue, Soldiers Point, subject to the conditions contained in <b>(ATTACHMENT 3)</b>.</p>
------------	---

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

Those for the Motion: Mayor Ryan Palmer, Crs Jaimie Abbott, Giacomo Arnott, Glen Dunkley, Paul Le Mottee, John Nell and Sarah Smith.

Those against the Motion: Nil.

### ORDINARY COUNCIL MEETING - 10 APRIL 2018 MATTER ARISING

	<p><b>Councillor Jaimie Abbott</b> <b>Councillor Paul Le Mottee</b></p> <p>It was resolved that Council refer to intersection concerns in the vicinity of 2 Bagnall Avenue, Soldiers Point to the Local Traffic Committee.</p>
--	--

### BACKGROUND

The purpose of this report is to present to Council for determination a Section 4.55(1A) (formerly Section 96 (1A)) Modification of Consent to an approved multi-

dwelling development on land located at 2 Bagnall Avenue, Soldiers Point, identified as Lot 1 DP 1101679 ('the subject site').

The DA is being reported to Council as the development is being carried out by Council.

DA No. 16-2016-679-1 (Original Consent)

The original development was assessed under *Port Stephens Local Environment Plan 2013 (LEP)* and *Development Control Plan (DCP) 2014* and approved by the elected Council.

The approved development included eight (8) two storey dwellings and associated strata subdivision.

DA No. 16-2016-679-2

The Section 4.55(1A) proposes the inclusion of a retaining wall along the northern, eastern and western boundaries. The inclusion of the retaining wall was necessitated after rock was discovered onsite as part of the geotechnical investigations.

The maximum height of the retaining wall will be 0.8m in the north western corner of the site. The retaining walls extend along the entire northern boundary, while the eastern and western boundaries will only be partly retained. Some design changes were also required as a result of the proposed retaining.

These include:

- building heights were increased by a maximum of 0.8m to 8.9m AHD; and
- internal layouts and courtyards of Units 6, 7 and 8 have been amended to conform with the retaining wall design.

Assessment Outcomes

The proposed amendments to the original consent meet the provisions of Section 4.55(1A) of the *Environmental Planning and Assessment Act 1979 (EP&A Act)* as follows:

- Section 4.55(1A)(a) – Minimal Environmental Impact.

The proposal will only results in minor environmental impacts, which includes:

Solar Access

The applicant provided a shadow diagram that demonstrates that the amended development complies with the specific provisions of the Port Stephens DCP.

The increase in the building height will result in additional overshadowing of the adjoining properties to the west and the internal open space areas of Units 1, 2 and 3.

The shadow diagrams provided as part of the application shows that the adjoining property in the west will only be overshadowed in the mornings and will receive the required 3 hour period of solar access during winter months.

The plans show that the solar access to the open space of Units 1, 2 and 3 will not be altered significantly and these units will still receive direct sunlight for at least 4 hours in mid-June.

It is therefore considered that the proposed increase in the building height will not significantly alter internal or external solar access to the site.

#### Visual Impacts / Privacy

The inclusion of the retaining wall along the northern boundary faces a public reserve and will not impact the visual amenity of any development. The visual impacts are considered minor as the slatted fencing will provide visual interest, resulting in a sympathetic interface between the private and public spaces.

The impacts of the inclusion of the retaining wall along the eastern boundary will face Soldiers Point Road. The retaining wall will extend along the northern section of the boundary, tapering out with the rise in the natural topography.

Similarly, the retaining wall along the western boundary will taper out over the length of the property boundary, with the highest section of the retained area located in the north western corner. It is considered that impact on the adjoining property is therefore limited to this section of the boundary. The proposed development is located away from the western boundary, with only one large window (the upper level window of Unit 1) providing overlooking opportunities. An additional condition will be included in the amended consent to require a privacy screen over this window. The boundary fencing will also be limited to 1.5m in height (above the retaining wall) to limit the impacts of the scale of the retaining on the adjoining development. It should be noted that the western boundary does not include a large open space component, with the majority of land along this boundary utilised for storage, water tanks and driveways.

It is therefore considered that the impacts from the proposed changes on the adjoining site are minor and can be managed by limiting the height of the approved fencing and the screening of the westerly facing window of Unit 1.

#### Private Open Space

The inclusion of retaining within the open space areas of Units 1 – 5 will result in the loss of useable area, however the reduction in open space ranges between 1.4m<sup>2</sup> and 2.3m<sup>2</sup> and is considered minor in nature. In addition, significant public open

space is located in the adjoining reserve, which will provide additional recreational space to residents.

- Section 4.55(1A)(b) – Substantially The Same Development.

The development as modified is considered substantially the same as the approved development as the footprint and design remain the same, with only minor alterations to the building height and layout.

On this basis, the application is considered substantially the same.

The Development Application was assessed against relevant controls and objectives as specified under Port Stephens Local Environment Plan 2013 (PSLEP2013) and Port Stephens Development Control Plan 2014 (PSDCP2014).

A detailed assessment of the proposal against the provisions of Section 4.55 and Section 4.15 *Environmental Planning and Assessment Act 1979* (EP&A Act) is provided at **(ATTACHMENT 2)**.

**COMMUNITY STRATEGIC PLAN**

<b>Strategic Direction</b>	<b>Delivery Program 2013-2017</b>
Sustainable Development.	Provide Strategic Land Use Planning Services. Provide Development Assessment and Building Certification Services.

**FINANCIAL/RESOURCE IMPLICATIONS**

There are no anticipated financial or resource implications as a result of the proposed development.

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

**LEGAL, POLICY AND RISK IMPLICATIONS**

The development application is consistent with Section 4.15 of the *Environmental Planning and Assessment Act 1979*.

<b>Risk</b>	<b><u>Risk Ranking</u></b>	<b>Proposed Treatments</b>	<b>Within Existing Resources?</b>
There is a risk that a third party or the applicant may appeal the determination.	Low	Approve the application as recommended. The assessment carried out details the merits of the proposed development.	Yes
There is a risk that if the application is refused the ability to provide new residential accommodation will not be realised.	Low	Approve the application as recommended.	Yes

### **SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

The amended design only proposes the introduction of retaining to negate the removal of rock from the site. It is therefore considered that the amended design will not alter either the short or long term economic development.

The amended development is generally consistent with surrounding developments and is in keeping with the residential context of the locality, with no increase to the approved building footprint. The development is not anticipated to have significant adverse impacts on the locality, surrounding properties or public places.

A detailed assessment of the proposed development has been carried out against the requirements of the *EP&A Act 1979* and has been provided at **(ATTACHMENT 2)**.

### **CONSULTATION**

Consultation with key stakeholders has been undertaken, including through the public notification and advertising process.

#### Internal

The application was referred to the following Council sections:

- Development Engineering; and
- Building Surveying.

Each internal staff member assessed the relevant portion of the original application and where necessary requested additional information.

## MINUTES ORDINARY COUNCIL - 10 APRIL 2018

No objections were raised by any internal staff to the amended design and relevant conditions have been incorporated into the Schedule of Conditions provided at **(ATTACHMENT 3)**.

### External

The initial application was referred to the Rural Fire Service (RFS) as integrated development and as a result the current application was referred to the RFS for assessment. The RFS advised that it had no objection to the proposed modification and that the original Bushfire Safety Authority still applies.

### Public Consultation

The application was notified and advertised for 14 days, ending on 22 November 2017. During this period, 16 submissions objecting to the proposal were received from individuals and community groups.

The issues identified in the submissions are addressed below:

Objection	Comments
Increased building height and bulk	<p>The building height will increase by 0.8m to negate the need to remove rock from the site. The increased height is considered acceptable as it is still under the PSLEP height limit of 9m.</p> <p>When viewed from Bagnall Avenue, the height of the amended development will not be altered significantly. Although a retaining wall will be incorporated along the northern boundary, the bulk of the proposal will not dominate the public reserve as the development is well setback from the rear boundary. The inclusion of the retaining wall will not significantly impact on users of the park.</p> <p>The scale of the development will be increased when viewed from the adjoining property in the west. However, the proposed development is located away from the western boundary, with the area between the building and the fence utilised for storage and water tanks.</p>
Overshadowing	<p>The applicant provided a shadow diagram that demonstrates that the amended development complies with the specific provisions of the PSDCP.</p>

**MINUTES ORDINARY COUNCIL - 10 APRIL 2018**

Privacy/Amenity of adjoining development	The proposed development will not be altered and it is considered that the privacy of the adjoining development will not be compromised. However, an additional condition will be included in the amended consent to require a privacy screen over the upper level window of Unit 1.
Provision of private open space	As discussed above, the inclusion of retaining within the open space areas of Units 1 – 5 will result in a reduction in available private open space. These areas will still be available to residents however, and the reduction in open space of between 1.4m <sup>2</sup> and 2.3m <sup>2</sup> is considered minor in nature. Significant public open space is located in the adjoining reserve, which will provide additional recreational space to residents.
Increased traffic along Bagnall Avenue	The additional traffic generated by the approved development was assessed during the original application. The amended design does not increase the density of the development and it is therefore considered that the amended development will generate the same vehicle movements as the approved development. It is therefore considered that the existing road infrastructure can cater for the approved development without the need for upgrades.
Visual impact on the public reserve	The inclusion of the retaining wall along the northern boundary facing the public reserve is not considered to present a negative impact on the visual amenity of the adjoining public reserve. The fencing proposed along this interface will not be of solid construction, thereby providing visual interest and a sympathetic interface between the private and public spaces.
Use of park	<p>Although the public reserve is available for recreation use of future residents, the existing consent does not allow for the use of the public reserve as private open space. Clothes drying and similar private activities will therefore not be permitted outside the boundary of the subject site.</p> <p>Any access and/or use of the public reserve during the construction phase will need to be negotiated with Council's Facilities and Services Section.</p>



## MINUTES ORDINARY COUNCIL - 10 APRIL 2018

Drainage impacts on adjoining properties	Council's Development Engineering Section assessed the proposed stormwater drainage design and concluded that no stormwater runoff would result onto the adjoining sites from the development of the site. It should be noted that the current modifications to the site levels will increase the opportunity to drain overflow water to Council's drainage network.
Construction impacts	<p>The hours of noise generating construction has been limited in an existing condition of consent, to 7am to 5pm Monday to Saturday, with no construction work to take place on Sunday or Public Holidays. It is not intended to alter this condition.</p> <p>Council cannot control the length of the construction process, but it is considered that the filling of the site will negate the need for the removal of rock from the site. This is considered to lessen the impacts of construction work as the removal of the rock would have significant implications on both the amenity of surrounding residences and the timeframe of the construction phase.</p>
Transparency	The original application was reviewed by an external planning consultant and approved by the elected Council. No transparency issues were raised or identified during this process.

### OPTIONS

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

### ATTACHMENTS

- 1) Location Plan.
- 2) Assessment Report.
- 3) Determination.

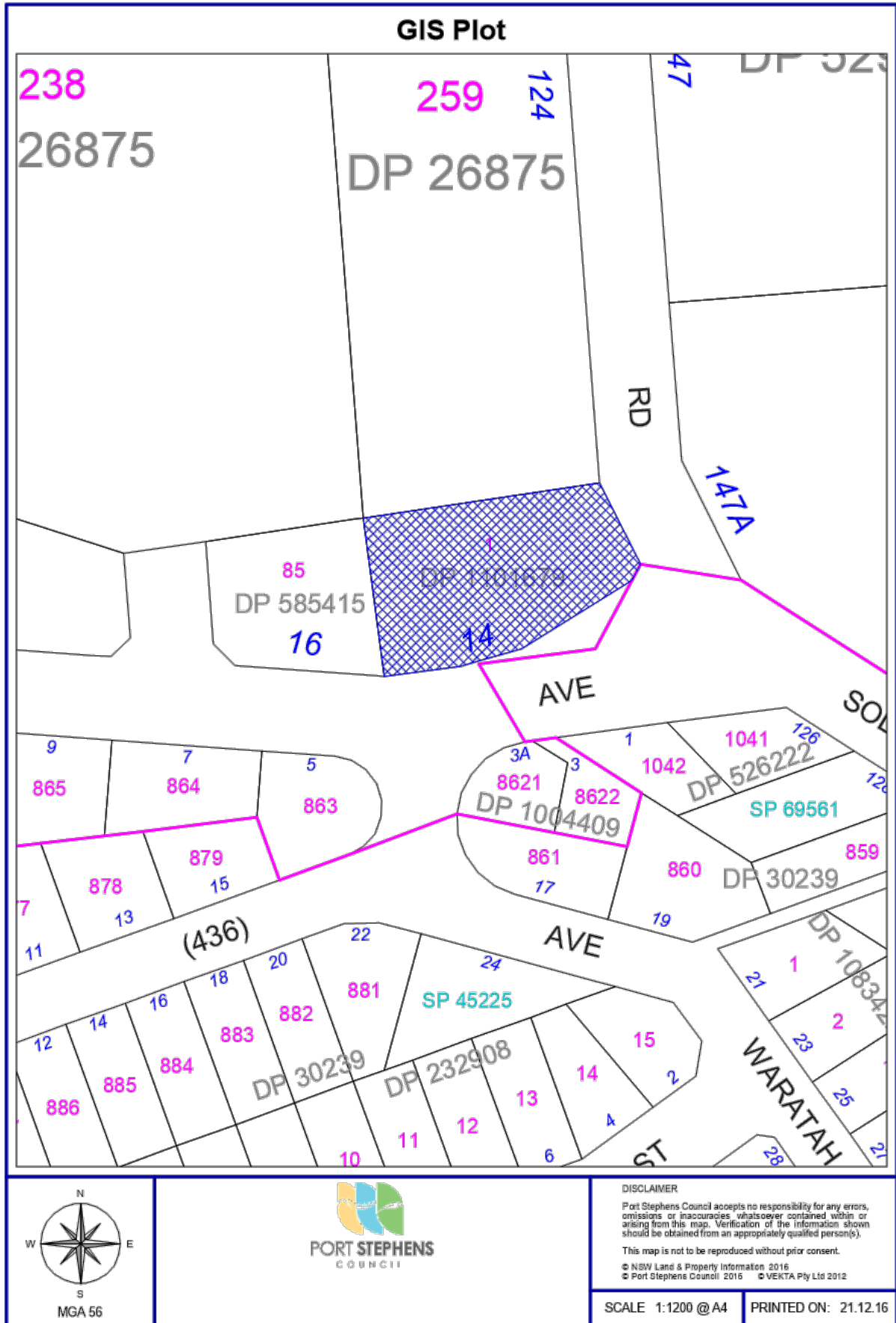
### COUNCILLORS ROOM

- 1) Development Plans.

### TABLED DOCUMENTS

Nil.

ITEM 1 - ATTACHMENT 1 LOCATION PLAN.



DISCLAIMER  
 Port Stephens Council accepts no responsibility for any errors, omissions or inaccuracies whatsoever contained within or arising from this map. Verification of the information shown should be obtained from an appropriately qualified person(s).  
 This map is not to be reproduced without prior consent.  
 © NSW Land & Property Information 2016  
 © Port Stephens Council 2016 © VEKTA Pty Ltd 2012

SCALE 1:1200 @ A4 PRINTED ON: 21.12.16

116 Adelaide Street, Raymond Terrace NSW 2324. Phone: (02) 4980255 Fax: (02) 49872612 Email: council@portstephens.nsw.gov.au

 **PORT STEPHENS COUNCIL** **S4.55(1A) MODIFICATION APPLICATION ASSESSMENT REPORT**

**APPLICATION DETAILS**

<b>Modification Application Number</b>	16-2016-679-2
<b>Development Description</b>	Multi-Dwelling Housing (8 Two Storey Units) and Associated Strata Title Subdivision
<b>Modification Description</b>	Amendments to Building Design and Retaining Wall
<b>Applicant</b>	ENVIRONMENTAL PROPERTY SERVICES
<b>Date of Lodgement</b>	31/10/2017

**Modification Proposal**

The application proposes the inclusion of a retaining wall along the northern, eastern and western boundaries. The inclusion of the retaining was necessitated after rock was discovered onsite as part of the geotechnical investigations.

The maximum height of the retaining wall will be 0.8m in the north western corner of the site. The retaining walls extend along the entire northern boundary, while the eastern and western boundaries will only be partly retained. Some design changes were also required as a result of the proposed retaining. These include:

- building heights were increase by a maximum of 0.8m to 8.9m AHD; and
- internal layouts and courtyards of Units 6, 7 & 8 have been amended to conform with the retaining wall design.

The conditions of consent proposed to be modified have been discussed in further detail below.



Figure 1: South western elevation (view from adjoining property)

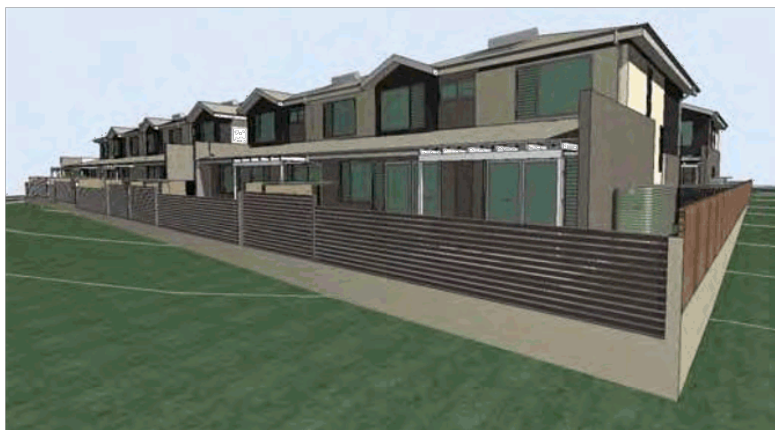


Figure 2: North western elevation (view from public reserve)

**PROPERTY DETAILS**

<b>Property Address</b>	2 Bagnall Avenue SOLDIERS POINT
<b>Lot and DP</b>	LOT: 1 DP: 1101679
<b>Zoning</b>	R2 LOW DENSITY RESIDENTIAL
<b>Site Constraints That Affect The Modification</b>	Acid sulfate soils – Class 4 and 5 Bushfire Prone

**ASSESSMENT SUMMARY**

Designated Development	The application is not designated development
Integrated Development	The application does require additional approvals listed under s.4.46 of the EP&A Act
Concurrence	The application does not require the concurrence of another body

**Internal Referrals**

The proposed modification was referred to the following internal specialist staff. The comments of the listed staff listed have been used to carry out the assessment against the S4.15 Matters for Consideration below.

Development Engineer – The amended drainage and driveway designs were assessed. The proposed modifications were supported with the inclusion of a condition requiring structural certification for the proposed retaining walls prior to the release of the Construction Certificate.

Building Surveyor – No objections were made and the existing building related conditions remained unchanged.

**External Referrals**

The proposed modification was referred to the following external agencies in accordance with Clause 120 of the *Environmental Planning and Assessment Regulation 2000*:

RFS – The initial application was referred to the RFS as integrated development and as a result the current application was referred to the RFS for assessment. The RFS advised that it had no objection to the proposed modification and that the original Bushfire Authority still applies.

**MODIFICATIONS INVOLVING MINIMAL ENVIRONMENTAL IMPACT – S4.55(1A)**

**S4.55(1A)(a) – Minimal Environmental Impact**

The proposal will only result in minor environmental impacts, which includes:

Solar Access – The increase in the building height will result in additional overshadowing of the adjoining properties to the west and the internal open space areas of Units 1, 2 and 3.

The shadow diagrams provided as part of the application shows that the adjoining property in the west will only be overshadowed in the mornings and will receive the required 3 hour period of solar access during winter months.

The solar access shows that the solar access to the open space of Units 1, 2 and 3 will not be altered significantly and these units will still receive direct sunlight for at least 4 hours in mid-June.

It is therefore considered that proposed increase in the building height will not significantly alter internal or external solar access to the site.

Visual Impacts / Privacy – The inclusion of the retaining wall along the northern boundary facing the public reserve and will not impact on the visual amenity of any development. The visual impacts are considered minor as the slatted fencing will provide a sympathetic interface between the private and public spaces.

The retaining wall along the eastern boundary will only be viewed by passing motorists. The retaining wall will only extend along the northern section of the boundary, as it tapers out with the rise in the natural topography. It is considered that the distance from the roadway and the inclusion of street trees in the road reserve will further limit the potential visual impacts of the retaining wall along Soldiers Point Road.

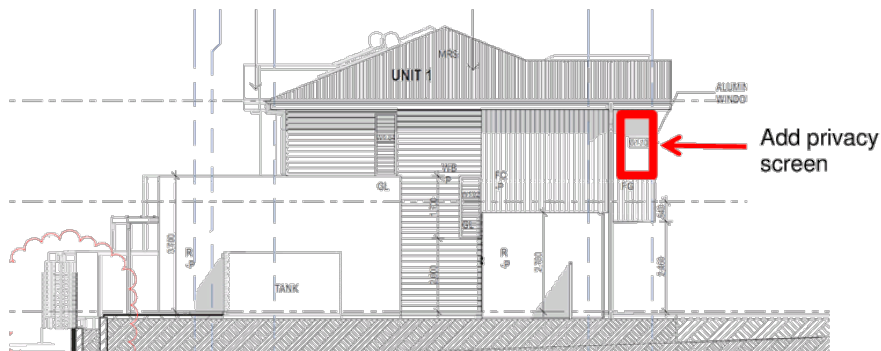


Figure 3: Western elevation (showing privacy screen over large upper level window)

**ITEM 1 - ATTACHMENT 3 DETERMINATION.**

16-2016-679-2

Similarly, the retaining wall along the western boundary will taper out over the length of the property boundary, with the highest section of the retaining located in the north western corner. It is considered that impact on the adjoining property is therefore limited to this section of the boundary. The proposed development is located away from the western boundary, with only one large window providing overlooking opportunities. A condition will be added to the consent to require privacy measures on this window (refer Figure 3). The boundary fencing will also be limited to 1.5m in height (above the retaining wall) to limit the impacts of the scale of the retaining on the adjoining development. It should be noted that the western boundary does not include a large open space component, with the majority of land along this boundary utilised for storage, water tanks and driveways.

It is therefore considered that the impacts from the proposed changes on the adjoining site are minor and can be managed by limiting the height of the approved fencing and the screening of the westerly facing window of Unit 1.

Private Open Space – The inclusion of retaining within the open space areas of Units 1 – 5 will result in the loss of the use of these areas. It is however also noted that these areas will still be available to residents. The reduction in open space range between 1.4m<sup>2</sup> and 2.3m<sup>2</sup> and is considered minor in nature. Significant public open space is located in the adjoining reserve, which will provide additional recreational space to residents.

**S4.55(1A)(b) – Substantially The Same Development**

The development as modified is considered substantially the same as the approved development, as the footprint and design of the approved development have remained the same, with only minor alterations to the building height and layout designs.

On this basis, the application is considered substantially the same.

**S4.55(1A)(c) – Notification**

In accordance with Councils Development Control Plan, the application has been notified and advertised for a 14 day period until 22 November 2017.

**S4.55(1A)(d) – Submissions**

During the notification period 16 submissions were received from individuals and community groups. The submissions received during this period has been addressed in the S4.15(1A)(d) discussion below.

**S4.55(3) – S4.15(1) Assessment**

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

The application is consistent with the provision of the PSLEP2103 and all relevant SEPPs applicable to the proposal.

s4.15(1)(a)(ii) – Any Draft EPI

		<b>Notes (what draft EPI if needed and comments where not compliant)</b>
	<input type="checkbox"/> There are no draft EPI's that are relevant to the proposed development	
	<input checked="" type="checkbox"/> A draft EPI is relevant to the proposed	The proposal is generally consistent

**ITEM 1 - ATTACHMENT 3 DETERMINATION.**

16-2016-679-2

	development however the application is consistent with the aims and objectives of the document.	with the objective of the Coastal Use Area defined under the draft Coastal SEPP.
--	---	--

s4.15(1)(a)(iii) – Port Stephens Development Control Plan 2014

Chapter	Compliant	Notes (where needed or if not compliant)
B	<input checked="" type="checkbox"/> General Controls	The proposal will not result in any additional vegetation removal or create additional impacts from an Acid Sulfate Soils perspective. Servicing of the site will not be altered by the proposed amendments. The RFS issued Bushfire Authority for the amended design.
C	<input checked="" type="checkbox"/> Development Types  C5.20 – Private Open Space   C5.21 – Solar Access   C5.22 – Solar Access	The proposal is generally compliant with the provision of the DCP. The chapters of specific relevance are discussed below.  It should be noted that the approved design did not comply with the private open space provisions contained in the DCP. The non-compliance with the private open space provisions have been discussed in S4.55(1A)(a) above and it is considered that the minor change in the open space configuration resulting from the introduction of a retaining wall is acceptable in this instance.  The applicant provided a sun study that shows that the open space areas of the units will receive in excess of the required solar access during winter months.  The amended shadow diagrams indicate that the proposal will not overshadow the adjacent sites to the west in the afternoon periods during winter months.

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

	<b>Notes (where needed)</b>
--	-----------------------------

**ITEM 1 - ATTACHMENT 3 DETERMINATION.**

16-2016-679-2

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

s4.15(1)(a)(iv) – The regulations

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

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

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

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

Social and Economic Impacts

The amended design only proposes the introduction of retaining to negate the removal of rock from the site. It is therefore considered that the amended design will not alter either the short or long term economic development.

The amended proposal will not result in any social impacts.

Impacts on the Built Environment

The original assessment found that the design will fit well within the existing built environment.

The amended application does not propose an increase in either the building footprint and it is therefore considered that impacts on the built environment will be minimal.

The proposed increase in the building height resulting from the amended design will also not result in unacceptable privacy impacts, with a specific measure introduced to limit privacy impacts.

Impacts on the Natural Environment

The proposal does not alter the stormwater management or add to vegetation removal. It is therefore considered that the proposal will not change the impacts from those expected in the original development. The amended landscape design was assessed and found to be generally compliant with the relevant requirements.

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

Site suitability was assessed under the original application. It was concluded that development was appropriate for the site as the subject site is located in close proximity to the Salamander Bay CBD. The proposal will thereby further assist in establishing the Salamander Bay as a viable centre through increased population and increase use of facilities and services in the area.

The amended design will not alter impacts on the amenity of the surrounding development.

It is therefore considered that the site is still suitable for the proposed development.



**ITEM 1 - ATTACHMENT 3 DETERMINATION.**

16-2016-679-2

s4.15(1)(d) – Any submissions

During the notification period 16 submissions were received from individuals and community groups. The matters raised in the submissions objecting to the development are discussed in the table below:

Objection	Comments
Increased building height and bulk	<p>The building height will increase by 0.8m to negate the need to remove rock from the site. The increased height is considered acceptable as it is still under the PSLEP height limit of 9m.</p> <p>When viewed from Bagnall Avenue, the height of the amended development will not be altered significantly. Although a retaining wall will be incorporated along the northern boundary, the bulk of the proposal will not dominate the public reserve as the development is well setback from the rear boundary. The inclusion of the retaining wall will not significantly impact on users of the park.</p> <p>The scale of the development will be increased when viewed from the adjoining property in the west. However, the proposed development is located away from the western boundary, with the area between the building and the fence utilised for storage and water tanks.</p>
Overshadowing	The applicant provided a shadow diagrams that indicate that the amended development complies with the specific provisions of the PSDCP.
Privacy / Amenity of adjoining development	The proposed development will not be altered and it is considered that the privacy of the adjoining development will not be compromised. However, an additional condition will be included in the amended consent to require a privacy screen over the upper level window of Unit 1.
Provision of private open space	As discussed above, the inclusion of retaining within the open space areas of Units 1 – 5 will result in the loss of the use of these areas. It is however also noted that these areas will still be available to residents. The reduction in open space range between 1.4m <sup>2</sup> and 2.3m <sup>2</sup> and is considered minor in nature. Significant public open space is located in the adjoining reserve, which will provide additional recreational space to residents.
Increased traffic along Bagnall Avenue	The additional traffic generated by the approved development was assessed during the original application. The amended design does not increase the density of the development and it is therefore considered that the amended development will generate the same vehicle movements as the approved development. It is therefore considered that the existing road infrastructure can cater for the approved development without the need for upgrades.
Visual impact on the public reserve	The inclusion of the retaining wall along the northern boundary facing the public reserve and will not impact on the visual amenity of the adjoining public reserve. The fencing proposed

**ITEM 1 - ATTACHMENT 3 DETERMINATION.**

16-2016-679-2

	along this interface will not be of solid construction, thereby providing a sympathetic interface between the private and public spaces.
Use of park	Although the public reserve is available for recreation use of future residents, the existing consent does not allow for the use of the public reserve as private open space. Clothes drying and similar private activities will therefore not be permitted outside the boundary of the subject site.  Any access and/or use of the public reserve during the construction phase will need to be negotiated with Council's Facilities and Services Section.
Drainage impacts on adjoining properties	The amended stormwater design shows that runoff from the new building will be contained within the site and diverted to Council's drainage infrastructure.
Construction impacts	The construction has been limited to the 7am to 5pm Monday to Saturday, 7am to 5pm, with no construction work to take place on Sunday or Public Holidays.  Council cannot control the length of the construction process, but it is considered that the filling of the site will negate the need for the removal of rock from the site, that would have significant implication on both the amenity of surrounding residences and extend the timeframe of the construction phase.
Transparency	The original application was reviewed by an external planning consultant and approved by the elected Council. No transparency issues were raised identified during this process.

s4.15(1)(e) – The public interest

The assessment found that the development is considered suitable in the locality. The proposal will stimulate local investment and improve use of existing facilities and services in the LGA. It is considered that the development will not have significant cumulative impacts on the community or the surrounding locality. The proposed development is considered to be in the public interest.

**MODIFIED CONDITIONS**

Existing Condition 1

The development must be carried out in accordance with the plans and documentation listed below and endorsed with Council's stamp, except where amended by other conditions of this consent or as noted in red by Council on the approved plans:

Plan/Doc.Title	Plan Ref.	Sheet.	Date	Drawn By
Townhouse Development (2 Sheets)	11044	DA02 & DA03	29/11/16	EJE Architecture
Townhouse Development (4 Sheets)	11044	DA04 – DA07	22/08/2016	EJE Architecture

**ITEM 1 - ATTACHMENT 3 DETERMINATION.**

16-2016-679-2

Landscape Plan (3 Sheets)	1346	DA002 – DA004	17/8/2016	Moir Landscape Architecture
------------------------------	------	---------------	-----------	-----------------------------------

In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent prevail. If there is any inconsistency between the plans and documentation referred to above the most recent document shall prevail to the extent of any inconsistency.

Amended Condition 1

The development must be carried out in accordance with the plans and documentation listed below and endorsed with Council's stamp, except where amended by other conditions of this consent or as noted in red by Council on the approved plans:

Plan/Doc.Title	Plan Ref.	Sheet.	Date	Drawn By
Townhouse Development (6 Sheets)	11044	A04	11/10/2017	EJE Architecture
	11044	A01 – A03 and A05 – A06	12/10/2017	
Tender / Construction (4 Sheets)	1449	LS-101, LS-102,	10/10/2017	Moir Landscape Architecture
		LP-201, LP-202	11/10/2017	

In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent prevail. If there is any inconsistency between the plans and documentation referred to above the most recent document shall prevail to the extent of any inconsistency.

New Condition 8.1

Where retaining walls exceed 1m in height, detailed plans prepared and certified by a suitably qualified practising structural engineer shall be provided to the satisfaction of the Certifying Authority, **prior to the issue of a Construction Certificate.**

New Condition 8.2

Privacy screens shall be installed on the western facing upper level windows of Unit 1. The screens must be permeable and cover at least 50% of the windows areas.

Amended development plans illustrating the additional privacy screens are to be submitted and be deemed to be satisfactory by the Certifying Authority **prior to the issue of the Construction Certificate.**

New Condition 21.1

**Prior to the release of any Occupation Certificate**, a fence is to be provided along the full length of the common boundary with LOT: 1 DP: 1101679 (2 Bagnall Avenue) and Lot: 1 DP: 1231489 (4 Bagnall Avenue). The fencing must not extend more than 1.5m above the approved retaining wall.

**DETERMINATION**

The modification application is recommended to be approved by Council, subject to amended conditions as shown above.

REAN LOURENS



**SCHEDULE 1**

**REASONS WHY THE CONDITIONS HAVE BEEN IMPOSED**

These conditions are required to:

- prevent, minimise, and/or offset adverse environmental impacts including economic and social impacts;
- set standards and performance measures for acceptable environmental performance;
- require regular monitoring and reporting; and
- provide for the ongoing environmental management of the development.

**CONDITIONS THAT IDENTIFY APPROVED PLANS AND LIMITATIONS OF CONSENT**

1A. The development must be carried out in accordance with the plans and documentation listed below and endorsed with Council's stamp, except where amended by other conditions of this consent or as noted in red by Council on the approved plans:

Plan/Doc.Title	Plan Ref.	Sheet.	Date	Drawn By
Townhouse Development (6 Sheets)	11044	A04	11/10/2017	EJE Architecture
	11044	A01 – A03 and A05 – A06	12/10/2017	
Tender / Construction (4 Sheets)	1449	LS-101, LS-102,	10/10/2017	Moir Landscape Architecture
		LP-201, LP-202	11/10/2017	

In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent prevail. If there is any inconsistency between the plans and documentation referred to above the most recent document shall prevail to the extent of any inconsistency.

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.



**PORT STEPHENS**  
COUNCIL

## Notice of Determination

Under section 4.16, 4.17 and 4.18(1)(a) and 4.55 of the Environmental Planning and Assessment Act 1979.

3. The development shall be undertaken in accordance with conditions specified by the NSW Rural Fire Service (referenced D16/3461 and dated 22 November 2016) contained within Schedule 3 of this consent, as specified under Section 100B of the *Rural Fires Act 1997*.

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

4. A monetary contribution is to be paid to Council for the provision of 7 additional lots, pursuant to section 80A(1) of the *Environmental Planning and Assessment Act 1979*, Section 94 of the *Environmental Planning and Assessment Act 1979*, and Councils Section 94 Contribution Plan towards the provision of the following public facilities:

Facility	Per lot/dwelling	Total
Civic Administration	\$1,146.00	\$8,022.00
Public Open Space, Parks and Reserves	\$2,511.00	\$17,577.00
Sports and Leisure Facilities	\$6,778.00	\$47,446.00
Cultural and Community Facilities	\$2,417.00	\$16,919.00
Road Works	\$1,595.00	\$11,165.00
Fire & Emergency Services	\$222.00	\$1,554.00
<b>Total</b>		<b>\$102,683.00</b>

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

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

**Note:** The amount of contribution payable under this condition has been calculated at the time of determination and in accordance with the Port Stephens Section 94 contributions plan. The contribution amount is valid for twelve months from the consent date. Should payment take place after twelve months the contribution 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.

5. Detailed engineering plans shall be submitted to Council or an accredited Private Certifier (with the appropriate category of accreditation) for approval **prior to issue of the Construction Certificate.**

The details shall be in accordance with this consent, the BCA, Council's Design and Construction Specifications, policies and standards, as a minimum and include but are not limited to:

- a) Vehicle manoeuvring and parking;
- b) Pavement construction details and design traffic loading;
- c) Structural details for boundary retaining walls;
- d) Construction erosion and sediment control;



## Notice of Determination

Under section 4.16, 4.17 and 4.18(1)(a) and 4.55 of the Environmental Planning and Assessment Act 1979.

6. The shared vehicle driveway shall have a width to cater for design vehicle paths determined by Australian Standard AS2890 into and out of garage areas for two (2) vehicle parking spaces for each dwelling and the provision of three (3) visitor parking spaces onsite. This requirement will be met by providing vehicle swept paths utilising the 85th percentile turning circle as outlined in AS 2890.1: Off-street Car Parking. Details of vehicle access are to be submitted to the certifying authority for assessment **prior to the issue of any Construction Certificate.**

**A Construction Certificate cannot be issued** until full details of the driveway have been supplied to the Certifying Authority for assessment and determined to be satisfactory by the Certifying Authority.

7. The following details of the stormwater drainage system piped to **Soldiers Point Road**, are required **prior to the issue of any Construction Certificate**:
- a) The driveway and other ground level hardstand areas shall be graded to the street drainage network where practical or so that water runoff is shed to the approved stormwater drainage system. All ground surface collected stormwater overflows shall be dispersed as sheet flow at ground level in a manner that does not create concentrated or nuisance flows for nearby buildings or neighbouring properties.
  - b) A detailed on site detention/infiltration plan shall be prepared by a suitably qualified and experienced engineer to adequately attenuate ground surface collected stormwater for all storm events up to and including the 1% Annual Exceedance Probability (AEP) event.
  - c) The design shall include details of the location (including levels), type and size of detention/infiltration system, orifice, roof guttering (with gutter guards to prevent blockage), downpipes, pipes, pits and the boundary pit discharge point to the public drainage system.
  - d) Complete design calculations are to be provided demonstrating the system's capacity to contain/infiltrate and convey concentrated roof stormwater run-off, via guttering and downpipes suitably sized, into the **Soldiers Point Road** kerb and gutter network.
  - e) The stormwater quality treatment train shall treat storm water, prior to discharge, to PSC DCP 2014 targets. Small Scale Site Quality Model or DCP deem to comply methodology may be used to demonstrate how the following targets are met:
    - i. Total nitrogen retention post-development load: 45%
    - ii. Total phosphorus retention post-development load: 60%
    - iii. Total suspended solids post-development load: 90%
    - iv. Gross pollutants post-development load: 90%
8. **Prior to the issue of a Construction Certificate**, all works required to be carried out within a public road reserve must be separately approved by Council, under Section 138 of the Roads Act 1993. Contact Council's Facilities and Services Section regarding this approval. This must include the removal of the existing layover and the rectification of the kerb & gutter.



## Notice of Determination

Under section 4.16, 4.17 and 4.18(1)(a) and 4.55 of the Environmental Planning and Assessment Act 1979.

- 8.1 Where retaining walls exceed 1m in height, detailed plans prepared and certified by a suitably qualified practising structural engineer shall be provided to the satisfaction of the Certifying Authority, **prior to the issue of a Construction Certificate.**
- 8.2 Privacy screens shall be installed on the western facing upper level windows of Unit 1. The screens must be permeable and cover at least 50% of the windows areas.

Amended development plans illustrating the additional privacy screens are to be submitted and be deemed to be satisfactory by the Certifying Authority, **prior to the issue of the Construction Certificate.**

### CONDITIONS TO BE SATISFIED PRIOR TO DEMOLITION, EXCAVATION OR CONSTRUCTION

9. Erosion and sediment control measures shall be put in place to prevent the movement of soil by wind, water or vehicles onto any adjoining property, drainage line, easement, natural watercourse, reserve or road surface, in accordance with Managing Urban Stormwater – Soils and Construction, Volume 1 (Landcom, 2004).

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

10. All building work must be carried out in accordance with the provisions of the Building Code of Australia.
11. Civil Works within the development site are subject to:
- a) inspection by Council, or the Certifying Authority;
  - b) testing by a registered NATA Laboratory; and
  - c) Approval by Council or the Certifying Authority at each construction stage as determined by Council's Design and Construction Specification, policies and standards.
12. Construction work that is likely to cause annoyance due to noise is to be restricted to the following times:
- Monday to Saturday, 7am to 5pm;
  - 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.

13. 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.

14. 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.
15. A waste containment facility shall be provided on the construction site immediately after the first concrete pour for the building and is to be regularly serviced. Council may issue 'on the spot' fines for pollution/littering offences under the Protection of the Environment Operations Act 1997.

### CONDITIONS TO BE SATISFIED PRIOR TO ISSUE OF AN OCCUPATION CERTIFICATE

16. The Principal Certifying Authority shall only **issue an Occupation Certificate** when:
  - All site landscaping has been installed and established as per the approved plan to the satisfaction of the Principal Certifying Authority.
  - The building has been constructed in accordance with the approved plans, specifications and conditions of consent. No occupational use is permitted until the Principal Certifying Authority issues an occupation certificate. Note: If an accredited certifier approves occupation of a dwelling the accredited certifier is to immediately notify Council in writing.
  - All civil engineering works shall be carried out in accordance with the Construction Certificate and Council's Design and Construction Specification, Policies and Standards, to the satisfaction of the Principal Certifying Authority.
17. **Prior to the issue of the Occupation Certificate**, the requirements set out within BASIX Certificate No. 754129M dated 23/08/2016 are to have been constructed, installed and complied with to the satisfaction of the Principle Certifying Authority.
18. The provision of a reinforced concrete vehicle footpath crossing with a minimum width of 6.0m is required **prior to the issue of the Occupation Certificate**. A Driveway Construction Application must be made with Council, as the Roads Authority, prior to the commencement of vehicle footpath crossing works.
19. **Prior to the issue of the Occupation Certificate**, Works-As-Executed plans and an accompanying report prepared and certified by a suitability qualified hydraulic engineer confirming all stormwater drainage systems are constructed in accordance with the approved plan shall be submitted to the Principle Certifying Authority for assessment and determination.

Minor variations can be accepted providing they are clearly identified in the report





PORT STEPHENS  
COUNCIL

## Notice of Determination

Under section 4.16, 4.17 and 4.18(1)(a) and 4.55 of the Environmental Planning and Assessment Act 1979.

and the hydraulic engineer certifies that site flow up to the 1% annual exceedance probability (AEP) rainfall event are conveyed from all roof areas on site to the **Soldiers Point Road kerb and gutter** drainage network.

20. The applicant shall restore, replace or reconstruct any damaged sections of kerb and guttering, footpaths, road pavement, stormwater, or any other public infrastructure located within the Road Reserve which results from construction activities, as determined by Council's Development Engineers or Civil Assets Engineer. The applicant shall bear all associated costs with restoring the public infrastructure to satisfaction of the Council.

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

21. **Prior to the issue of the Occupation Certificate**, the person having the benefit of the consent is to contact Council's Mapping Section via email at: **addressing@portstephens.nsw.gov.au** stating your Development Approval number, address of the property and the assessing officer, to obtain the correct house numbering. Be advised that any referencing on Development Application plans to house or lot numbering operates to provide identification for assessment purposes only.

- 21.1 **Prior to the release of any Occupation Certificate**, a fence is to be provided along the full length of the common boundary with LOT: 1 DP: 1101679 (2 Bagnall Avenue) and Lot: 1 DP: 1231489 (4 Bagnall Avenue). The fencing must not extend more than 1.5m above the approved retaining wall.

### CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF A SUBDIVISION CERTIFICATE

22. **The Subdivision Certificate must not be issued** until all conditions of development consent have been satisfied and an Occupation Certificate has been issued by the Principal Certifying Authority.

**Prior to the issue of a Subdivision Certificate**, evidence is to be provided to Council demonstrating that essential services as specified under Clause 7.6 of the *Port Stephens Local Environmental Plan 2013* have been provided to each created lot. To support this, a Section 50 Compliance Certificate is to be provided from Hunter Water Corporation.

23. **Prior to issue of the Subdivision Certificate**, one signed original copy of the original plans and/or documents, and final plan of survey/title, shall be submitted to Council. All easements as illustrated on the approved Subdivision Plan are to be included on the plan and associated 88B instrument. A USB containing an electronic copy of all relevant documents must also be provided.



PORT STEPHENS  
COUNCIL

## Notice of Determination

Under section 4.16, 4.17 and 4.18(1)(a) and 4.55 of the Environmental Planning and Assessment Act 1979.

### CONDITIONS TO BE SATISFIED AT ALL TIMES

24. The stormwater system (including any water quality or quantity components) and access driveways shall be maintained in perpetuity for the life of the development.

### SCHEDULE 2

#### RIGHT OF APPEAL

If you are dissatisfied with this decision:

- a review of determination can be made under Section 8.2 of the Act, or
- a right of appeal under Section 8.7 of the Act can be made to the Land and Environment Court within six (6) months from the date on which that application is taken to have been determined.

#### NOTES

- This determination contains references to section numbers as they appeared in the *Environmental Planning and Assessment Act 1979* (the Act) prior to the commencement of the *Environmental Planning and Assessment Amendment Act 2017*. The *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017* applies so that these references are taken to be a reference to the renumbered or relocated provision (See clause 4A).

<https://www.legislation.nsw.gov.au/#/view/regulation/2018/67/part2/sec4a>

- This is not an approval to commence work. Building works cannot commence until a construction certificate is issued by Council or an accredited certifier.
- Consent operates from the determination date. For more details on the date from which the consent operates refer to Section 4.20 of the Environmental Planning and Assessment Act 1979.
- Development consents generally lapse five years after the determination date, however different considerations may apply. For more details on the lapsing date of consents refer to Section 4.53 of the Environmental Planning and Assessment Act 1979.

Ade aide Stree: (PO Box 42), Raymond Terrace NSW 2324  
DX 21406 Raymond Terrace • Phone 4980 0255  
Email [council@portstephens.nsw.gov.au](mailto:council@portstephens.nsw.gov.au)

16-2016-679-2

Page 8 of 12



PORT STEPHENS  
COUNCIL

## Notice of Determination

Under section 4.16, 4.17 and 4.18(1)(a) and 4.55 of the Environmental Planning and Assessment Act 1979.

### HOW TO READ MODIFIED CONDITIONS

The following conventions are used within this modified condition set:

- New conditions will generally be added to the end of the existing condition set and will be subsequently numbered. If a condition is added within the existing condition set, it will be suffixed with the appendage .1. For example if a new condition is to be added after existing condition 12, the new condition will be condition 12.1. If a second condition is to be added, it will be condition 12.2 and so on;
- The condition number of an amended condition is suffixed with the letter A. For example if condition 4 is amended, it becomes condition 4A. If the condition is amended a second time, it will become condition 4B and so on; and
- If a condition is deleted, the condition number will remain within the condition set with only the text 'CONDITION DELETED UNDER (DA REFERENCE NUMBER)' shown.

Should you have any questions about how to interpret this modified condition set, please contact Council.



PORT STEPHENS  
COUNCIL

## Notice of Determination

Under section 4.16, 4.17 and 4.18(1)(a) and 4.55 of the Environmental Planning and Assessment Act 1979.

### SCHEDULE 3

### APPROVAL UNDER SECTION 4.46

All communications to be addressed to:

Headquarters  
15 Carter Street  
Lidcombe NSW 2141

Telephone: 1300 NSW RFS  
e-mail: [csc@rfs.nsw.gov.au](mailto:csc@rfs.nsw.gov.au)

Headquarters  
Locked Bag 17  
Granville NSW 2142

Facsimile: 8741 5433



The General Manager  
Port Stephens Council  
PO Box 42  
RAYMOND TERRACE NSW 2324

Your Ref: 16-2016-679-1  
Our Ref: D16/3461  
DA16101704303 JC

ATTENTION: Rean Lourens

22 November 2016

Dear Sir/Madam

#### Integrated Development for 1/1101679 14 Bagnall Avenue Soldiers Point

I refer to your letter dated 21 November 2016 seeking general terms of approval for the above Integrated Development in accordance with Clause 55(1) of the Environmental Planning and Assessment Regulation 2000.

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. At the issue of subdivision certificate and in perpetuity the entire property 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'.

#### 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:

2. Water, electricity and gas are to comply with section 4.1.3 of 'Planning for Bush Fire Protection 2006'.

ID:104303/98420/5

Page 1 of 3

Ade aide Stree: (PO Box 42), Raymond Terrace NSW 2324  
DX 21406 Raymond Terrace • Phone 4980 0255  
Email [council@portstephens.nsw.gov.au](mailto:council@portstephens.nsw.gov.au)

16-2016-679-2

Page 10 of 12



PORT STEPHENS  
COUNCIL

## Notice of Determination

Under section 4.16, 4.17 and 4.18(1)(a) and 4.55 of the Environmental Planning and Assessment Act 1979.

### Access

The intent of measures for property access is to provide safe access to/from the public road system for fire fighters providing property protection during a bush fire and for occupants faced with evacuation. To achieve this, the following conditions shall apply:

3. Property access roads shall comply with section 4.1.3 (2) 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:

4. New construction to the roof of proposed Block B and as identified in Figure 5-1: Bushfire Attack Levels Map in the document 'Bushfire Threat Assessment for Proposed 1 into 8 Lot Strata Subdivision and the Development of 8 Townhouses at 14 Bagnall Avenue, Soldiers Point', prepared by Firebird ecoSultants, dated September 2016 and shall comply with Sections 3 and 7 (BAL 29) 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'.
5. New construction to the proposed Block B as identified in Figure 5-1: Bushfire Attack Levels Map in the document 'Bushfire Threat Assessment for Proposed 1 into 8 Lot Strata Subdivision and the Development of 8 Townhouses at 14 Bagnall Avenue, Soldiers Point', prepared by Firebird ecoSultants, dated September 2016 and shall comply with Sections 3 and 6 (BAL 19) 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'.
6. New construction to proposed Blocks A, B & C as identified in Figure 5-1: Bushfire Attack Levels Map in the document 'Bushfire Threat Assessment for Proposed 1 into 8 Lot Strata Subdivision and the Development of 8 Townhouses at 14 Bagnall Avenue, Soldiers Point', prepared by Firebird ecoSultants, dated September 2016 and 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'.

### Landscaping

7. Landscaping to the site is to comply with the principles of Appendix 5 of 'Planning for Bush Fire Protection 2006'.

This letter is in response to a further assessment of the application submitted and supersedes our previous general terms of approval dated 3 November 2016.

Page 2 of 3

Ade aide Stree: (PO Box 42), Raymond Terrace NSW 2324  
DX 21406 Raymond Terrace • Phone 4980 0255  
Email [council@portstephens.nsw.gov.au](mailto:council@portstephens.nsw.gov.au)

16-2016-679-2

Page 11 of 12



PORT STEPHENS  
COUNCIL

## Notice of Determination

Under section 4.16, 4.17 and 4.18(1)(a) and 4.55 of the Environmental Planning and Assessment Act 1979.

For any queries regarding this correspondence please contact Joshua Calandra on 1300 NSW RFS.

Yours sincerely



Nika Fomin  
Manager, Planning and Environment Services (East)

The RFS has made getting information easier. For general information on 'Planning for Bush Fire Protection, 2006', visit the RFS web page at [www.rfs.nsw.gov.au](http://www.rfs.nsw.gov.au) and search under 'Planning for Bush Fire Protection, 2006'.

**ITEM NO. 2**

**FILE NO: 18/29615  
EDRMS NO: PSC2017-02843**

**MINOR ZONE BOUNDARY ADJUSTMENT AT 100 SALAMANDER WAY,  
SALAMANDER BAY**

REPORT OF: STEVEN PEART - STRATEGY & ENVIRONMENT SECTION  
MANAGER

GROUP: DEVELOPMENT SERVICES

---

**RECOMMENDATION IS THAT COUNCIL:**

- 1) Endorse the making of an amendment to the Port Stephens Local Environmental Plan 2013 (**ATTACHMENT 1**) which seeks to rectify minor mapping inconsistencies at 100 Salamander Way, Salamander Bay by:
  - a. Rezoning 0.11ha of land from E2 Environmental Conservation to SP2 Infrastructure: School/Child Care Centre; and
  - b. Rezoning 0.15ha of land from SP2 Infrastructure: School/Child Care Centre to E2 Environmental Conservation.
- 2) Authorise the exercise of delegations to make the plan under Section 3.36 of the *Environmental Planning and Assessment Act 1979*.

---

**ORDINARY COUNCIL MEETING - 10 APRIL 2018  
COMMITTEE OF THE WHOLE RECOMMENDATION**

	<p><b>Councillor Paul Le Mottee Councillor Glen Dunkley</b></p> <p>That the recommendation be adopted.</p>
--	--

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

Those for the Motion: Mayor Ryan Palmer, Crs Jaimie Abbott, Giacomo Arnott, Glen Dunkley, Paul Le Mottee, John Nell, and Sarah Smith.

Those against the Motion: Nil.

**ORDINARY COUNCIL MEETING - 10 APRIL 2018  
MOTION**

<b>076</b>	<p><b>Councillor Jaimie Abbott</b> <b>Councillor Paul Le Mottee</b></p> <p>It was resolved that Council:</p> <ol style="list-style-type: none"><li>1) Endorse the making of an amendment to the Port Stephens Local Environmental Plan 2013 (<b>ATTACHMENT 1</b>) which seeks to rectify minor mapping inconsistencies at 100 Salamander Way, Salamander Bay by:<ol style="list-style-type: none"><li>a. Rezoning 0.11ha of land from E2 Environmental Conservation to SP2 Infrastructure: School/Child Care Centre; and</li><li>b. Rezoning 0.15ha of land from SP2 Infrastructure: School/Child Care Centre to E2 Environmental Conservation.</li></ol></li><li>2) Authorise the exercise of delegations to make the plan under Section 3.36 of the <i>Environmental Planning and Assessment Act 1979</i>.</li></ol>
------------	--

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

Those for the Motion: Mayor Ryan Palmer, Crs Jaimie Abbott, Giacomo Arnott, Glen Dunkley, Paul Le Mottee, John Nell, and Sarah Smith.

Those against the Motion: Nil.

**BACKGROUND**

The purpose of this report is to seek endorsement to make an amendment to the Port Stephens Local Environmental Plan 2013 (LEP) to adjust a zone boundary on Council owned land at 100 Salamander Way, Salamander Bay (legally known as Lot 21 DP1044009 and Lot 23 DP1044009).

The amendment is necessary to correct a minor mapping anomaly and ensure consistency with a BioBanking agreement prepared and registered by the Office of Environment and Heritage on 17 November 2015.

The amendment aligns the E2 Environment Conservation Zone with the boundary of the established BioBank site. The minor discrepancies between the BioBank site and the land zoned E2 currently prevent the retirement of credits under the Agreement.

0.26ha of land will be affected by the zone boundary adjustment.



In accordance with the Council decision on 13 February 2018, the planning proposal was exhibited from 21 February 2018 until 8 March 2018. One submission objecting to the proposal was received.

Council has also been delegated the function of making the amendment following public exhibition.

**COMMUNITY STRATEGIC PLAN**

<b>Strategic Direction</b>	<b>Delivery Program 2013-2017</b>
Sustainable Development.	Provide Strategic Land Use Planning Services. Provide Development Assessment and Building Certification Services.

**FINANCIAL/RESOURCE IMPLICATIONS**

The amendments have been prepared within Council’s existing resources. There are no direct financial implications if Council adopts the recommendations.

<b>Source of Funds</b>	<b>Yes/No</b>	<b>Funding (\$)</b>	<b>Comment</b>
Existing budget	Yes		The amendments have been prepared using existing Council resources.
Reserve Funds	No		
Developer Contributions (Section 7.11)	No		
External Grants	No		
Other	No		

**LEGAL, POLICY AND RISK IMPLICATIONS**

Environmental Planning and Assessment Act 1979

The *Environmental Planning and Assessment Act 1979* (EP&A Act) details the legislative process for the making of a local environmental plan. The amendments have been prepared consistent with the process for expedited minor amendments under Section 3.22 of that Act (formerly Section 73A).

There are no outstanding issues that would inhibit Council in exercising delegations to make this Plan under Section 3.36 of the EP&A Act (formerly Section 59).

Gateway Determination

A Gateway Determination was received on 19 December 2017 with no amendments to the proposal. The determination required a minimum 14 days public exhibition and no agency consultation. The planning proposal was publicly exhibited from 21 February 2018 to 8 March 2018 in accordance with the Gateway Determination.

#### Ministerial Section 117 Directions and Port Stephens Planning Strategy

The amendment is consistent with the relevant Ministerial Section 117 directions for environmental plans and the Port Stephens Local Planning Strategy 2011, given it will facilitate a registered BioBanking agreement. Overall, the planning proposal will increase the amount of land that is currently zoned E2 on the site.

Given the minor nature of the amendments, no significant risk implications have been identified.

<b>Risk</b>	<b><u>Risk Ranking</u></b>	<b>Proposed Treatments</b>	<b>Within Existing Resources?</b>
There is a risk that the decision will be found invalid.	Low	The terms of the delegations, Gateway Determination, and relevant legislation have been complied with.	Yes

#### **SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

The amendment is minor and will have an overall positive impact, given it will facilitate a registered BioBanking agreement and increase the amount of land that is currently zoned E2 on the site.

#### **CONSULTATION**

##### Internal

The planning proposal was referred to Council's Natural Resources Team. The Natural Resources team supports the zone boundary adjustment for the purposes of aligning the E2 Environmental Conservation Zone with the boundary of the established BioBank site.

##### External

The planning proposal was publicly exhibited from 21 February 2018 to 8 March 2018 in accordance with the Gateway Determination.

One submission was received, opposing the zone boundary adjustment on the following grounds:




## MINUTES ORDINARY COUNCIL - 10 APRIL 2018

- The planning proposal is a means of rectifying a situation that has been allowed to exist in which development has taken place outside its original boundaries (with reference to the St Phillips Christian College using the neighbouring site); and
- Part of the land zoned E2 Environmental Conservation includes wetlands identified under the *State Environmental Planning Policy No 14—Coastal Wetlands*, and has been filled in and is already a carpark.

In response to the submission, this planning proposal does not authorise the carrying out of development on the site. An application for a car park at St Phillips Christian College was approved by Council on 13 June 2017 (a modification was recently approved on 12 December 2017). This planning proposal does not authorise the carrying out of work contrary to the conditions of that consent.

*State Environmental Planning Policy No 14—Coastal Wetlands* (the SEPP) applies to portions of the land affected by the planning proposal.



-  Subject Site
-  Area of land affected by the planning proposal
-  SEPP 14 Wetland boundary

The planning proposal will facilitate the retirement of credits under the BioBanking agreement that will secure the protection of a significant portion of land identified as coastal wetlands in perpetuity. Consistent with the SEPP, this will ensure a large portion of coastal wetland at Salamander Bay is preserved and protected. Any

development applications on the land to which the SEPP applies will continue to be subject to the restrictions and assessment requirements under the SEPP.

Although the BioBanking agreement does not capture all of the land identified as SEPP 14 wetland on the site, the preparation of the agreement involved ground truthing the precise location of the wetlands. The boundaries of the land that should be reserved and protected under the BioBanking agreement have been agreed to by the NSW Office of Environment and Heritage.

The Gateway Determination specified that no consultation was required with agencies. The Minister for Environment is a party to the registered BioBanking agreement and the Office of Environment and Heritage are aware the amendment is required to facilitate the agreement.

### **OPTIONS**

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

### **ATTACHMENTS**

Nil.

### **COUNCILLORS ROOM**

Nil.

### **TABLED DOCUMENTS**

- 1) Planning Proposal.

**ITEM NO. 3**

**FILE NO: 18/45988  
EDRMS NO: PSC2006-2237**

**DRAFT DEVELOPMENT CONTROL PLAN CHAPTER D16 MEDOWIE PLANNING STRATEGY (PRECINCT E)**

REPORT OF: STEVEN PEART - STRATEGY & ENVIRONMENT SECTION  
MANAGER

GROUP: DEVELOPMENT SERVICES

---

**RECOMMENDATION IS THAT COUNCIL:**

- 1) Prepare the Draft Port Stephens Development Control Plan 2014 Chapter D16 Medowie Planning Strategy (Precinct E) (**ATTACHMENT 1**) in accordance with the provisions of section 3.43 of the *Environmental Planning and Assessment Act 1979* (NSW).
- 2) Place the Draft Port Stephens Development Control Plan 2014 Chapter D16 Medowie Planning Strategy (Precinct E) on exhibition for a period of 28 days.
- 3) If no submissions are received during the exhibition period, adopt the Draft DCP without a post-exhibition report to Council.

---

**ORDINARY COUNCIL MEETING - 10 APRIL 2018  
COMMITTEE OF THE WHOLE RECOMMENDATION**

	<p><b>Councillor Paul Le Mottee Councillor Jaimie Abbott</b></p> <p>That the recommendation be adopted.</p>
--	---

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

Those for the Motion: Mayor Ryan Palmer, Crs Jaimie Abbott, Giacomo Arnott, Glen Dunkley, Paul Le Mottee, John Nell and Sarah Smith.

Those against the Motion: Nil.

**ORDINARY COUNCIL MEETING - 10 APRIL 2018  
MOTION**

<b>077</b>	<p><b>Councillor Jaimie Abbott</b> <b>Councillor Paul Le Mottee</b></p> <p>It was resolved that Council:</p> <ol style="list-style-type: none"> <li>1) Prepare the Draft Port Stephens Development Control Plan 2014 Chapter D16 Medowie Planning Strategy (Precinct E) (<b>ATTACHMENT 1</b>) in accordance with the provisions of section 3.43 of the <i>Environmental Planning and Assessment Act 1979</i> (NSW).</li> <li>2) Place the Draft Port Stephens Development Control Plan 2014 Chapter D16 Medowie Planning Strategy (Precinct E) on exhibition for a period of 28 days.</li> <li>3) If no submissions are received during the exhibition period, adopt the Draft DCP without a post-exhibition report to Council.</li> </ol>
------------	--

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

Those for the Motion: Mayor Ryan Palmer, Crs Jaimie Abbott, Giacomo Arnott, Glen Dunkley, Paul Le Mottee, John Nell and Sarah Smith.

Those against the Motion: Nil.

**BACKGROUND**

The purpose of this report is to recommend that Council prepare and exhibit a site-specific draft Development Control Plan to provide guidance to the development of certain land at Medowie rezoned for residential development and conservation.

It is recommended that Council prepare and exhibit site-specific Draft Port Stephens Development Control Plan 2014 Chapter D16 Medowie Planning Strategy (Precinct E) (The Draft DCP) (**ATTACHMENT 1**).

The purpose of the Draft DCP is to provide site-specific guidance to the development of certain land at Medowie Road that is under final assessment by the NSW Department of Planning and Environment for rezoning from RU2 Rural Landscape to R2 Low Density Residential and E2 Environmental Conservation (**ATTACHMENT 2**).

**COMMUNITY STRATEGIC PLAN**

<b>Strategic Direction</b>	<b>Delivery Program 2013-2017</b>
----------------------------	-----------------------------------

## MINUTES ORDINARY COUNCIL - 10 APRIL 2018

Sustainable Development.	Provide Strategic Land Use Planning Services. Provide Development Assessment and Building Certification Services.
--------------------------	--

### FINANCIAL/RESOURCE IMPLICATIONS

Preparation of the Draft DCP is included within fees and charges for planning proposals that have been paid by the proponent for consideration of the rezoning of the subject land.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	No		
Reserve Funds	No		
Developer Contributions (Section 7.11)	No		
External Grants	No		
Other	Yes	\$42,228	Included within planning proposal fees for consideration of rezoning the subject land (inclusive of stages 1 to 3).

### LEGAL, POLICY AND RISK IMPLICATIONS

#### Port Stephens Development Control Plan 2014

The Draft DCP will be added as a site-specific chapter to the comprehensive Port Stephens Development Control Plan Chapter 2014 (PSDCP 2014).

The Draft DCP provides site-specific controls, where required, in order to provide additional direction on site-specific matters. These matters include (but are not limited to):

- Development layout
- Accommodating development in sub-precincts (including for 'lifestyle developments')
- Connection to Medowie Road
- Shared-path connections
- Storm water basin locations
- Storm water culverts under Medowie Road
- Vegetation management and offsets
- Landscaping along Medowie Road
- Managing the potential requirement for land remediation
- Managing the risk from odour and noise from poultry farming

- Considering road noise from Medowie Road
- Ensuring any requirements for extraneous lighting and building height associated with Williamstown RAAF Base and Newcastle Airport are addressed (note: the land is not within 2012 Australian Noise Exposure Forecast or 2025 Australian Noise Exposure Forecast Contours).

The general controls of the comprehensive PSCDCP 2014 will apply, where appropriate, to manage relevant general matters relating to the development (for example C1 Subdivision; B9 Road Network and Parking; B4 Drainage and Water Quality; B5 Flooding; B2 Natural Resources; and B7 Williamstown RAAF Base – Aircraft Noise and Safety). This will avoid the unnecessary duplication of development controls.

#### Port Stephens Local Environmental Plan 2013

The land subject of the Draft DCP is under final assessment by the Department for rezoning from RU2 Rural Landscape to a combination of R2 Low Density Residential and E2 Environmental Conservation under the Port Stephens Local Environmental Plan 2013 (PSLEP 2013).

The Draft DCP will satisfy Part 6 Urban Release Areas of PSLEP 2013 which requires the preparation of a Development Control Plan for the site (an 'urban release area') before development consent can be provided. The objective is to ensure that development on land in an urban release area occurs in a logical and cost effective manner, in accordance with a staging plan, and with site-specific controls.

#### Development Application 16-2017-799-1

The part of the land on the western side of Medowie Road is subject to Development Application 16-2017-799-1 lodged on 7 November 2017 for multi-dwelling housing (comprising 238 moveable dwellings, community facilities, swimming pool and associated infrastructure). The Development Application is seeking a number of variations to standard development controls to achieve a 'lifestyle' development outcome.

The Draft DCP facilitates the consideration of DA 16-2017-799-1 by requiring development applications for 'lifestyle' developments to include a master plan, demonstrating consideration and achievement of the objectives of C5 Multi Dwelling Housing or Seniors Living, and identifying key common development design controls for dwellings (for example for dwelling setbacks).

The Development Application was lodged on 7 November 2017, prior to the rezoning being finalised, and is under consideration by the Development Assessment and Compliance Section.

No Development Application has been lodged for the land on the eastern side of Medowie Road.



## MINUTES ORDINARY COUNCIL - 10 APRIL 2018

<b>Risk</b>	<b><u>Risk Ranking</u></b>	<b>Proposed Treatments</b>	<b>Within Existing Resources?</b>
There is a risk that consideration of Development Applications may be delayed if a site-specific Development Control Plan is not progressed for the subject land.	Medium	Place the draft updated DCP chapter on public exhibition for 28 days. If no submissions are received, adopt the draft DCP without a post-exhibition report to Council.	

### **SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

The DCP has positive social and economic outcomes by providing further site-specific guidance for the development and conservation of the subject land in addition to its respective R2 Low Density Residential and E2 Environmental Conservation zonings and various other planning instrument provisions that may apply.

It also assists to achieve the planning outcomes envisioned for the site identified by the Medowie Planning Strategy, including road and shared-path connections to surrounding areas, conservation outcomes, and the provision of land to meet the demand for housing.

### **CONSULTATION**

Preliminary consultation with key stakeholders has been undertaken by the Strategy and Environment Section during the preparation of the Draft DCP. The objective was to identify and consider any significant issues prior to exhibition.

#### Internal

A preliminary draft Development Control Plan was provided to the Facilities and Services Group for review. This led to the insertion of a development control requiring the consideration of the existing stormwater drainage culverts under Medowie Road, and minimising the duplication controls for matters that are already adequately provided for in other existing sections of the comprehensive PSDCP 2014.

#### External

The Draft DCP, prepared by the Strategy and Environment Section, has been informed by the review of earlier draft Development Control Plans submitted by consultants for the proponents for the development of the land. Their suggestions have been included where considered as appropriate. The exhibition provides the opportunity for these stakeholders to comment on the Draft DCP prepared by the Strategy and Environment Section.

It recommended that the Draft DCP is placed on exhibition for a period of 28 days.

Notice will be placed in a local newspaper and exhibition material will be made available on Council's website and at Council's Administration Building in Raymond Terrace. It is proposed to directly notify the owners and adjoining owners of the subject land.

**OPTIONS**

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

**ATTACHMENTS**

- 1) Draft DCP Chapter D16 Medowie Planning Strategy (Precinct E).
- 2) Subject Land and Draft Zoning.

**COUNCILLORS ROOM**

Nil.

**TABLED DOCUMENTS**

Nil.

ITEM 3 - ATTACHMENT 1 DRAFT DCP CHAPTER D16 MEDOWIE PLANNING STRATEGY (PRECINCT E).

D16  
MEDOWIE PLANNING STRATEGY (PRECINCT E)

**D16 Medowie Planning Strategy (Precinct E)**

Application		
This part applies to the land identified in Figure DAG Medowie Planning Strategy (Precinct E) Land Application Map.		
Objectives		
D16.A	Layout and Staging	<ul style="list-style-type: none"> <li>To ensure the timely and efficient release of urban land.</li> <li>To make provision for necessary infrastructure and sequencing.</li> <li>To ensure consideration is given to the overall planning and coordination of development within the precinct and sub-precincts.</li> </ul>
Requirements		
D16.1	Layout	Overall development layout needs to be consistent with the Figure DAH.
D16.2	Staging	A <b>development application</b> for large-scale <b>residential accommodation</b> or <b>major subdivision</b> must include a staging plan demonstrating that development will occur in a coordinated sequence.
D16.3		Initial <b>residential accommodation</b> or <b>major subdivision</b> is to take place in proximity to the main intersection with Medowie Road and be staged sequentially from that location.
	Sub-Precincts	A <b>development application</b> for large-scale <b>residential accommodation</b> or <b>major subdivision</b> is able to occur separately within 'sub-precincts': one on the western side of Medowie Road and another on the eastern side of Medowie Road.
D16.4	'Lifestyle' Developments	A <b>development application</b> for 'lifestyle' <b>residential accommodation</b> must include a master plan demonstrating consideration and achievement of the objectives of C5 Multi Dwelling Housing or Seniors Living and identifying key common <b>development</b> design controls for dwellings (for example <b>dwelling setbacks</b> ).
Objectives		
D16.B	Natural Resources	<ul style="list-style-type: none"> <li>To provide an overall landscaping strategy for the protection and enhancement of riparian areas and remnant vegetation, including visually prominent locations, and landscaping requirements for both the public and private domain.</li> <li>To provide an attractive and low maintenance landscape along Medowie Road.</li> </ul>
Requirements		
D16.5	General	Environmental areas, corridors and additional planting with koala feed trees will be retained and enhanced in general accordance with Figure DAH.
D16.6	Vegetation management and biodiversity offsets	<b>Development</b> must take into consideration the implications of the <b>Vegetation Management Plan</b> that applies to land within the precinct.
D16.7		Clearing of land on the eastern side of the precinct shall not occur until the requirements of the associated <b>Vegetation Management Plan</b> are implemented (a <b>Vegetation Management Plan</b> has been prepared that provides for vegetation offsets and improvements to vegetation corridors within the site – refer to Vegetation Management Plan, Kleinfelder, 10 March 2017).
D16.8	Landscaping along Medowie Road	A <b>landscaping plan</b> for major residential development or <b>major subdivision</b> must provide for an attractive and low maintenance landscape along the frontage with Medowie Road.

D16  
MEDOWIE PLANNING STRATEGY (PRECINCT E)

Objectives		
D16.C	Transport Movement Hierarchy	<ul style="list-style-type: none"> <li>To provide an overall transport movement hierarchy for major circulation routes and connections to achieve a simple and safe movement system for private vehicles, public transport, pedestrians and cyclists.</li> <li>To maintain good traffic flow and safety along Medowie Road.</li> <li>To achieve connection between adjoining land and potential future residential precincts identified by the <i>Medowie Planning Strategy</i>.</li> <li>To ensure pedestrian and cycle connections are provided to the town centre, the Ferodale Park Sports Complex and the Medowie Community Centre for precinct residents and the broader community.</li> </ul>
Requirements		
D16.9	General	The transport movement hierarchy for private vehicles, pedestrians and cyclists needs to be generally consistent with the layout shown in precinct plan at Figure DAH.
D16.10	Road Connections to other Precincts	The road layout must provide for potential future connections to other potential future residential planning precincts identified by the <i>Medowie Planning Strategy</i> including Brocklesby Road.
D16.11	Road Connections to Medowie Road	A roundabout intersection must be provided to Medowie Road to serve as the main access point for development.
D16.12		The main roundabout intersection must be designed to accommodate upgrades for increased future traffic flows along Medowie Road identified by the <i>Medowie Planning Strategy</i> .
D16.13		The main roundabout intersection may be provided by a staged approach to facilitate development of a single sub-precinct. Consideration for the future roundabout intersection must be included in the design and construction of any interim intersection.
D16.14		Additional intersections beyond with Medowie Road must be limited in number and provided as left-in/left-out only.
D16.15		No direct <b>driveway</b> access to and from Medowie Road is permitted.
D16.16		Shared Path Connections
D16.17	A <b>shared path</b> must be provided along the eastern side of Medowie Road, in conjunction with the development of the land on the eastern side of Medowie Road. The shared-use path must be provided along the eastern frontage with Medowie Road and connect north to Ferodale Road (to the extent that a <b>shared path</b> is able to be accommodated).	
D16.18	A <b>shared path</b> must be provided along the western side of Medowie Road, in conjunction with the development of land on the western side of Medowie Road. The <b>shared path</b> must be provided along the western frontage with Medowie Road and connect north to Ferodale Road and connect south to the small local neighbourhood centre (to the extent that a <b>shared path</b> is able to be accommodated).	
D16.19	A <b>shared path</b> must be provided directly linking the precinct to the Ferodale Sports Complex, in conjunction with the development of land on the western side of Medowie Road - subject to engineering, risk, and cost/benefit assessment. Alternative solutions and routes can be considered.	
D16.20	Consideration must be given to a potential mid-block <b>shared path</b> linking the western sub-precinct to the Medowie Community Centre - subject to engineering, risk, and cost/benefit assessment. Alternative solutions and routes can be considered.	

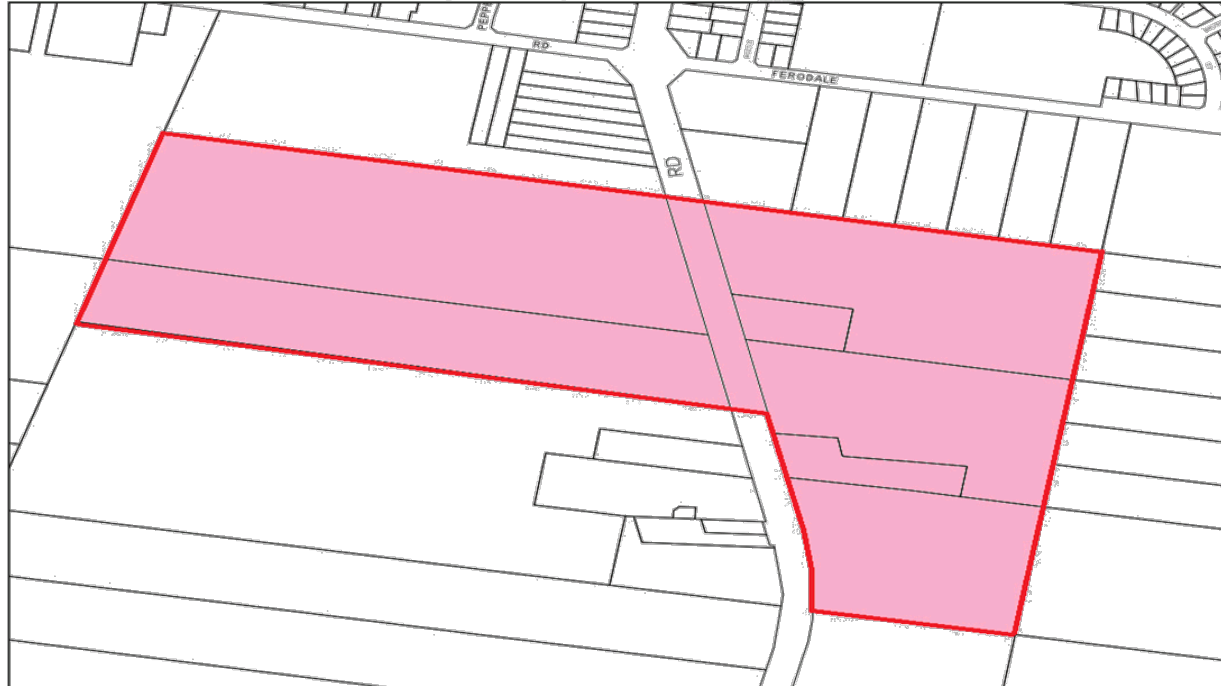
ITEM 3 - ATTACHMENT 1 DRAFT DCP CHAPTER D16 MEDOWIE PLANNING STRATEGY (PRECINCT E).

D16  
MEDOWIE PLANNING STRATEGY (PRECINCT E)

Objectives		
D16.D	<b>Managing Risk from Agricultural Land Uses</b>	<ul style="list-style-type: none"> <li>To ensure the land is suitable for residential occupation in relation to previous agricultural land uses.</li> <li>To ensure the potential for negative effects from the operation of poultry sheds on residential amenity are adequately managed.</li> </ul>
Requirements		
D16.21	Managing the potential requirement for land remediation	A <b>development application</b> for large-scale <b>residential accommodation</b> or major subdivision must be accompanied by the contamination and remediation reports identified by NSW State Environmental Planning Policy No. 55 – Remediation of Land with particular regard to the previous agricultural activities on the subject land.
D16.22	Managing Potential Risk from Odour and Noise from Poultry Farming	New residential allotments and dwellings must not be constructed until the poultry sheds at 733 Medowie Road (Lot 199 DP 17437) are decommissioned.
Objectives		
D16.E	<b>Road Noise</b>	<ul style="list-style-type: none"> <li>To ensure that <b>development</b> is not adversely affected by noise and vibration from traffic on Medowie Road.</li> </ul>
Requirements		
D16.23	Considering Road Noise from Medowie Road	A <b>development application</b> for large-scale <b>residential accommodation</b> or <b>major subdivision</b> must demonstrate by provision of an <b>acoustic report</b> that future residential development will meet appropriate noise and vibration standards for development along Medowie Road.
Objectives		
D16.F	<b>Stormwater</b>	<ul style="list-style-type: none"> <li>To provide for common and adequate stormwater management within the precinct.</li> </ul>
Requirements		
D16.24	Stormwater Basins	Stormwater basins are located in general accordance with Figure DAH.
D16.25	Stormwater Culverts under Medowie Road	<b>Development</b> must address the potential effect on the two main culverts under Medowie Road (the desirable design standard for these culverts is 1% AEP+0.3m obvert freeboard for 2100 climate change conditions).
Objectives		
D16.G	<b>Williamtown RAAF Base – Aircraft Safety</b>	<ul style="list-style-type: none"> <li>To ensure that development adequately considers aircraft safety.</li> </ul>
Requirements		
D16.26		Any requirements for dwellings are placed on the title of the land (for example for extraneous lighting and building height).

D16  
MEDOWIE PLANNING STRATEGY (PRECINCT E)

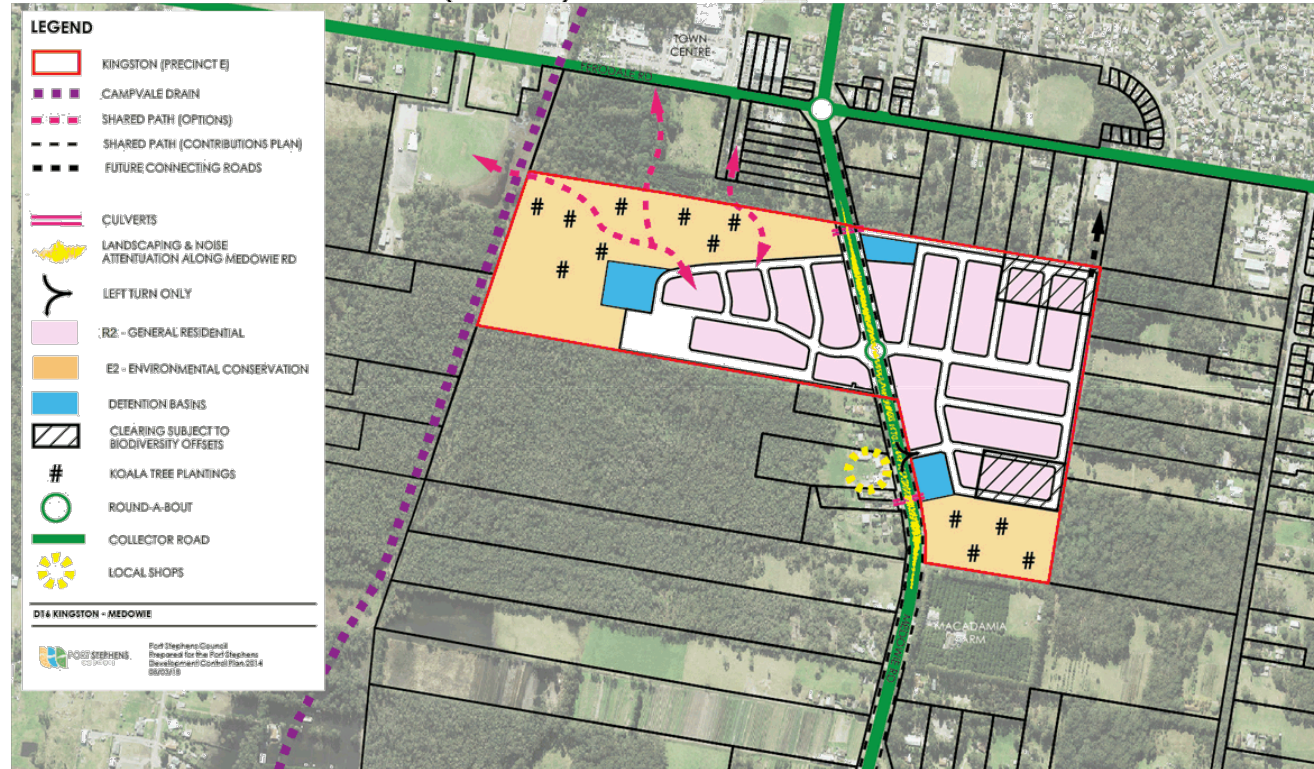
FIGURE DAG: MEDOWIE PLANNING STRATEGY (PRECINCT E) LAND APPLICATION MAP



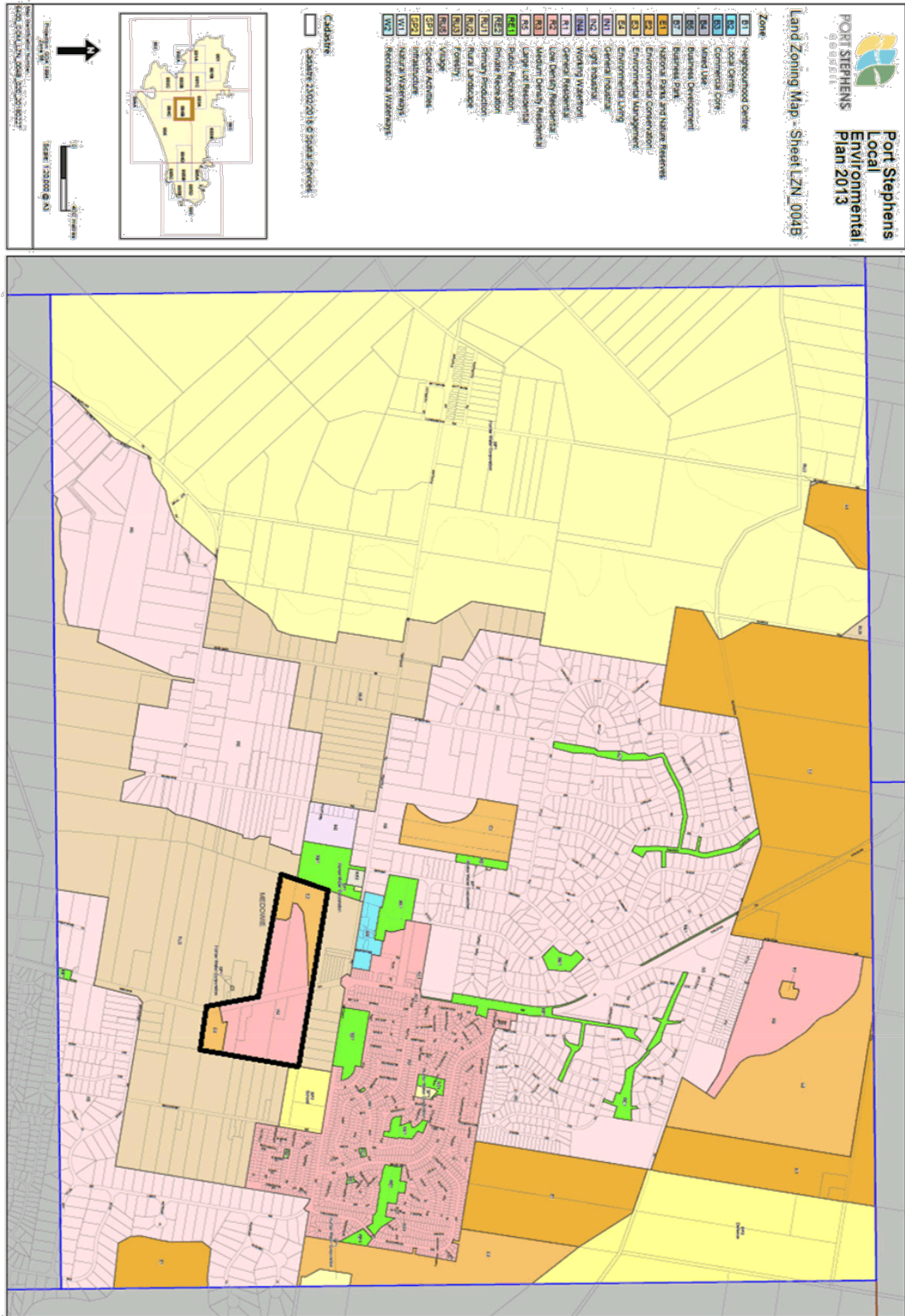


D16  
MEDOWIE PLANNING STRATEGY (PRECINCT E)

FIGURE DAH: MEDOWIE PLANNING STRATEGY (PRECINCT E) LOCALITY CONTROLS MAP



ITEM 3 - ATTACHMENT 2 SUBJECT LAND AND DRAFT ZONING.





**ITEM NO. 4**

**FILE NO: 18/49579  
EDRMS NO: PSC2015-03964**

**POLICY REVIEW - ENVIRONMENT POLICY**

REPORT OF: STEVEN PEART - STRATEGY & ENVIRONMENT SECTION  
MANAGER  
GROUP: DEVELOPMENT SERVICES

---

**RECOMMENDATION IS THAT COUNCIL:**

- 1) Endorse the Environment Policy shown at **(ATTACHMENT 1)**.
- 2) Place the Environment Policy, as amended on public exhibition for a period of 28 days and should no submissions be received, the Policy be adopted as amended, without a further report to Council.
- 3) Revoke the Environment Policy dated 8 March 2016 (Resolution 051) should no submissions be received.

---

**ORDINARY COUNCIL MEETING - 10 APRIL 2018  
COMMITTEE OF THE WHOLE RECOMMENDATION**

	<b>Councillor John Nell Councillor Glen Dunkley</b>  That the recommendation be adopted.
--	--

**ORDINARY COUNCIL MEETING - 10 APRIL 2018  
MOTION**

<b>078</b>	<b>Councillor Jaimie Abbott Councillor Paul Le Mottee</b>  It was resolved that Council:  <ol style="list-style-type: none"><li>1) Endorse the Environment Policy shown at <b>(ATTACHMENT 1)</b>.</li><li>2) Place the Environment Policy, as amended on public exhibition for a period of 28 days and should no submissions be received, the Policy be adopted as amended, without a further report to Council.</li><li>3) Revoke the Environment Policy dated 8 March 2016 (Resolution 051) should no submissions be received.</li></ol>
------------	--

**BACKGROUND**

The purpose of this report is to review Council's existing Environment Policy (the 'Policy').

The Environment Policy was adopted on 8 March 2016 and outlines Council's commitment to the environment as encapsulated in Council's vision statement of - A great lifestyle in a treasured environment.

The Policy provides direction for Council's approach to environmental performance. Environmental performance is improved when beneficial environmental impacts are increased and adverse environmental impacts and risks are reduced.

The Environment Policy is a foundation document for Council's Environmental Management System (EMS), consistent with ISO 14001:2015, an internationally accepted standard adopted by all levels of Australian government, and widespread throughout the private sector. Council's EMS forms part of the Integrated Risk Management System.

The Policy has been reviewed and no amendments are recommended.

**COMMUNITY STRATEGIC PLAN**

<b>Strategic Direction</b>	<b>Delivery Program 2013-2017</b>
Environmental Sustainability.	Develop and implement catchment and biodiversity programs. Continue to implement initiatives that reduce Council's greenhouse gas emissions.

This Policy also has strong linkages to Delivery Program item 5.1.3 Manage risks across Council, specifically Operational Plan item 5.1.3.1 Manage an Environmental Management System for Council operations.

**FINANCIAL/RESOURCE IMPLICATIONS**

There is no direct financial implication for Council in relation to the adoption of the Environment Policy.

<b>Source of Funds</b>	<b>Yes/No</b>	<b>Funding (\$)</b>	<b>Comment</b>
Existing budget	Yes		The preparation of the Policy was managed within existing budget resources.
Reserve Funds	No		

**MINUTES ORDINARY COUNCIL - 10 APRIL 2018**

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

**LEGAL, POLICY AND RISK IMPLICATIONS**

The Policy outlines Council's commitment to meet its statutory responsibilities under environmental legislation. Whilst Council's approach to environmental risk is influenced by this Policy, the Integrated Risk Management Policy provides the overall direction on systematic management of risk.

Therefore, these two policies should be considered together.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that Council will have no due diligence defence for legislative breaches due to an inconsistent approach to and documentation of statutory responsibilities under environmental legislation.	High	Adopt the Policy and continue to manage an EMS to ensure consistent approach to statutory responsibilities.	Yes
There is a risk that without the adoption of an Environment Policy, Council's proposed EMS will not be accredited and thus be inconsistent with the EPA risk-based licencing system guidelines resulting in higher licence fees. Council may also receive a higher environmental risk rating resulting in reputational implications.	High	Adopt the Policy and continue to manage an EMS.	Yes

**SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

A healthy natural environment is critical to the people of Port Stephens as it provides essential environmental services such as clean air, clean water and healthy soils.

In turn this supports ecological, cultural, recreational, economic and aesthetic values.

The Policy outlines Council's commitment to maintaining a healthy natural environment for the Port Stephens community. The Policy also states a commitment to the principles of ecologically sustainable development and the requirement to integrate social, environmental and economic factors through the Integrated Planning and Reporting Framework to enable holistic and sustainable planning for the future.

## **CONSULTATION**

Consultation with key stakeholders has been undertaken by the Strategy & Environment Section.

### Internal

Council's Environmental Management System (EMS) Manager, Organisational Development Section, was consulted to ensure that the Environment Policy remains relevant to the needs of the EMS.

### External

If the Policy is endorsed by Council, it will be placed on public exhibition in accordance with local government legislation for 28 days.

No community engagement activities are scheduled.

## **OPTIONS**

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

## **ATTACHMENTS**

- 1) Environment Policy.

## **COUNCILLORS ROOM**

Nil.

## **TABLED DOCUMENTS**

Nil.

## Policy



**FILE NO:** PSC2015-03964

**TITLE:** ENVIRONMENT POLICY

**POLICY OWNER:** STRATEGY AND ENVIRONMENT SECTION MANAGER

### **PURPOSE:**

Port Stephens Council is committed to achieving its vision statement of "a great lifestyle in a treasured environment" so that current and future generations can enjoy, and benefit from, a healthy natural environment. This Policy outlines Council's commitment to the environment by providing leadership and direction for improved environmental performance.

### **CONTEXT/BACKGROUND:**

Port Stephens is a diverse region, comprised of natural features including bushland, rivers, wetlands and coastal areas. A healthy natural environment is critical to the people of Port Stephens as it provides essential environmental services such as clean air, clean water and healthy soils. In turn this supports ecological, cultural, recreational, economic and aesthetic values.

Local government plays an important role in protecting and enhancing the natural environment in order to achieve Ecologically Sustainable Development (ESD). Specifically, the charter for NSW Councils reinforces Council's role "to properly manage, develop, protect, restore, enhance and conserve the environment of the area for which it is responsible, in a manner that is consistent with and promotes the principles of ecologically sustainable development".

The natural environment is a complex and interdependent system making it challenging to accurately quantify and assess impacts. The principles of ESD are therefore embedded in the *Local Government Act 1993* which states that "ecologically sustainable development requires the effective integration of economic and environmental considerations in decision-making processes". The principles are incorporated within local government decision-making processes including planning, regulation, administration and operations.

The four principles underpinning ESD are:

1. Precautionary principle
2. Intergenerational equity
3. Conservation of biological diversity and ecological integrity
4. Improved valuation, pricing and incentive mechanisms

## Policy

**WARNING:** This is a controlled document. Hardcopies of this document may not be the latest version. Before using this document, check it is the latest version; refer to Council's website [www.portstephens.nsw.gov.au](http://www.portstephens.nsw.gov.au)



Issue Date: March 2018

Printed:

Review Date: March 2020

Page: 1 of 4

## Policy



The integration of social, environmental and economic factors are also required through the Integrated Planning and Reporting Framework to enable holistic and sustainable planning for the future (LGNSW Interim Policy Statements: Planning and Environment).

### SCOPE:

This Policy provides direction for Council's overall approach to its environmental performance.

Environmental performance refers to the environmental results that are achieved through Council's management and control of the environmental aspects of its systems, policies, processes, procedures, services and activities (ISO14001:2015). Environmental performance can be improved when beneficial environmental impacts are increased and adverse environmental impacts and risks are reduced.

Whilst Council's approach to environmental risk is influenced by this Policy, Council's Integrated Risk Management Policy provides the overall direction on Council's systematic management of risk. Therefore, these two policies should be considered together.

### DEFINITIONS:

Biological Diversity and Ecological Integrity	The variety of life forms, the different plants, animals and microorganisms, the genes they contain and the ecosystems they form.
Ecologically Sustainable Development (ESD)	Effective integration of economic and environmental considerations in decision-making processes.
Improved Valuation, Pricing and Incentive Mechanisms	Environmental factors should be included in the valuation of assets and services.
Intergenerational Equity	That the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations.
Precautionary Principle	If there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

**Policy**

WARNING: This is a controlled document. Hardcopies of this document may not be the latest version. Before using this document, check it is the latest version; refer to Council's website [www.portstephens.nsw.gov.au](http://www.portstephens.nsw.gov.au)

Issue Date: March 2018      Printed:      Review Date: March 2020      Page: 2 of 4

**Policy**



**POLICY STATEMENT:**

- 1) Council ensures a healthy natural environment is maintained for the wellbeing of the Port Stephens community.
- 2) Council is committed to empowering its employees to assume accountability and responsibility for the continuous improvement of its environmental performance by creating and promoting a culture of participation and by providing a robust process for monitor and review.
- 3) Council is committed to the four principles of Ecologically Sustainable Development.
- 4) Council meets all its statutory responsibilities under environmental legislation.

**POLICY RESPONSIBILITIES:**

- 1) Strategy and Environment Section is responsible for monitoring, reviewing and providing advice on the Policy.
- 2) Implementation of and compliance with the Environment Policy is the responsibility of all staff, with the Senior Leadership Team responsible for ensuring the Policy is implemented throughout the organisation.

**RELATED DOCUMENTS:**

- 1) Local Government Act 1993
- 2) Port Stephens Council Community Strategic Plan
- 3) Asset Management Policy
- 4) Commercial Operators Policy
- 5) Compliance Policy
- 6) Economic Development Policy
- 7) Heritage Policy
- 8) Integrated Risk Management Policy
- 9) On-Site Sewage Management Policy
- 10) Pricing Policy
- 11) Procurement Policy
- 12) Property Investment Policy
- 13) Social Impact Policy

**CONTROLLED DOCUMENT INFORMATION:**

This is a controlled document. Hardcopies of this document may not be the latest version. Before using this document, check it is the latest version; refer to Council's website [www.portstephens.nsw.gov.au](http://www.portstephens.nsw.gov.au)

<b>RM8 container No</b>	PSC2015-03964	<b>RM8 record No</b>	
<b>Audience</b>	Councillors, staff and community		
<b>Process owner</b>	Strategy and Environment Section Manager		

**Policy**

WARNING: This is a controlled document. Hardcopies of this document may not be the latest version. Before using this document, check it is the latest version; refer to Council's website [www.portstephens.nsw.gov.au](http://www.portstephens.nsw.gov.au)

Issue Date: March 2018
Printed:
Review Date: March 2020
Page: 3 of 4

Policy



<b>Author</b>	Environmental Strategist		
<b>Review timeframe</b>	Two years	<b>Next review date</b>	March 2020
<b>Adoption date</b>	8 March 2016		

**VERSION HISTORY:**

Version	Date	Author	Details	Minute No.
1.0	8 March 2016	Environmental Strategist / Environmental Management System Officer	Original Policy	051
2.0	March 2018	Environmental Strategist	Reviewed Policy - No Amendments.	

**Policy**

WARNING: This is a controlled document. Hardcopies of this document may not be the latest version. Before using this document, check it is the latest version; refer to Council's website [www.portstephens.nsw.gov.au](http://www.portstephens.nsw.gov.au)

Issue Date: March 2018      Printed:      Review Date: March 2020      Page: 4 of 4



**ITEM NO. 5**

**FILE NO: 18/7655  
EDRMS NO: A2004-0853**

**POLICY REVIEW - ACQUISITION AND DIVESTMENT OF LAND POLICY**

REPORT OF: MARK STACE - PROPERTY SERVICES SECTION MANAGER  
GROUP: CORPORATE SERVICES

**RECOMMENDATION IS THAT COUNCIL:**

- 1) Endorse the revised Acquisition and Divestment of Land Policy shown at **(ATTACHMENT 1)**.
- 2) Place the Acquisition and Divestment of Land Policy, as amended, on public exhibition for a period of 28 days and should no submissions be received, the policy be adopted as amended, without a further report to Council.
- 3) Revoke the Acquisition and Divestment of Land Policy dated 23 February 2016 (Minute No. 034), should no submissions be received.

**ORDINARY COUNCIL MEETING - 10 APRIL 2018  
COMMITTEE OF THE WHOLE RECOMMENDATION**

	<b>Councillor Giacomo Arnott Councillor John Nell</b>  That the recommendation be adopted.
--	--

**ORDINARY COUNCIL MEETING - 10 APRIL 2018  
MOTION**

<b>079</b>	<b>Councillor Jaimie Abbott Councillor Paul Le Mottee</b>  It was resolved that Council: <ol style="list-style-type: none"><li>1) Endorse the revised Acquisition and Divestment of Land Policy shown at <b>(ATTACHMENT 1)</b>.</li><li>2) Place the Acquisition and Divestment of Land Policy, as amended, on public exhibition for a period of 28 days and should no submissions be received, the policy be adopted as amended, without a further report to Council.</li><li>3) Revoke the Acquisition and Divestment of Land Policy dated 23 February 2016 (Minute No. 034), should no submissions be received.</li></ol>
------------	--

**BACKGROUND**

The purpose of this report is to seek Council's endorsement of the revised Acquisition and Divestment of Land Policy. Minor changes have been made to address the ways in which Council documents the divestment of land prior to a formal resolution being sought. A more rigorous process for the marketing of land for divestment has also been incorporated.

The policy is required to ensure Council's dealings with land acquisition and divestment is ethical, transparent, meets statutory requirements and achieves specific strategic outcomes. It provides criteria to be considered before acquisition or divestment of land and defines the process and procedures to be followed for acquisitions and divestments of land by Council.

**COMMUNITY STRATEGIC PLAN**

<b>Strategic Direction</b>	<b>Delivery Program 2013-2017</b>
Sustainable Development.	Provide Strategic Land Use Planning Services. Provide Development Assessment and Building Certification Services.

**FINANCIAL/RESOURCE IMPLICATIONS**

Funding for land acquisitions is obtained from the Property Reserve and cash flows are closely monitored across the program of works to ensure that sufficient funds are available at all times to meet commitments.

<b>Source of Funds</b>	<b>Yes/No</b>	<b>Funding (\$)</b>	<b>Comment</b>
Existing budget	Yes		The policy has been reviewed as part of the ELT major projects program of work.
Reserve Funds	No		
Developer Contributions (Section 7.11)	No		
External Grants	No		
Other	No		

**LEGAL, POLICY AND RISK IMPLICATIONS**

The Acquisition and Divestment of Land Policy is written in accordance with the *Local Government Act 1993*, the *Local Government (General) Regulation 2005* and the *Land Acquisition (Just Terms Compensation) Act 1991*.

Council's Acquisition and Divestment of Land principles aim to secure land for Council projects at a fair market value along with incidental costs that landowners may incur when dealing with Council. The principles aim to sell surplus or developed land at fair market value whilst returning a profit to Council. The policy promotes fairness, transparency and competition in all of Council's land dealings.

<b>Risk</b>	<b><u>Risk Ranking</u></b>	<b>Proposed Treatments</b>	<b>Within Existing Resources?</b>
There is a risk that acquisitions for Council projects will occur without reference to relevant legislation.	Low	Accept the recommendations.	Yes
There is a risk that divestment of Council land will occur at below market value.	Medium	Accept the recommendations.	Yes

### **SUSTAINABILITY IMPLICATIONS**

There are no known social or environmental implications.

An economic implication will be the limitation on acquisition costs and certainty on timeframes to acquire land for public works, both set out in the *Land Acquisition (Just Terms Compensation) Act 1991*.

### **CONSULTATION**

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

#### Internal

- Council staff, Councillors and the Executive Leadership Team to ensure that the policy remains consistent with Council expectations and internal Governance principles.

#### External

- External legal service providers.

In accordance with local government legislation the draft Acquisition and Divestment of Land policy will go on public exhibition for 28 days from 19 April to 16 May 2018.

**OPTIONS**

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

**ATTACHMENTS**

- 1) Acquisition and Divestment of Land Policy.

**COUNCILLORS ROOM**

Nil.

**TABLED DOCUMENTS**

Nil.

ITEM 5 - ATTACHMENT 1 ACQUISITION AND DIVESTMENT OF LAND POLICY.

Policy



**FILE NO:** A2004-0853  
**TITLE:** ACQUISITION AND DIVESTMENT OF LAND POLICY  
**POLICY OWNER:** PROPERTY SERVICES SECTION MANAGER  
**PURPOSE:**

To define the criteria which must be considered prior to the acquisition of land or the divestment of Council owned land and to define the process and procedures, including public consultation and notification, required to be undertaken prior to the divestment of any Council owned land.

**CONTEXT/BACKGROUND:**

The acquisition and divestment of land by Council requires a formal process that is underpinned by probity, due diligence, analysis of risk and other key objectives. The number of land acquisitions and/or divestments undertaken by Council in any given year, although relatively low, is crucial to the strategic provision of open space, operational and community benefits, achieving planning outcomes and commercial gains from land development.

This policy applies to the acquisition of all land as defined in this policy. It acknowledges the principles set out in *Chapter 3 of the Local Government Act 1993* providing guidance to enable Councils to carry out their functions in a way that facilitates local communities that are strong, healthy and prosperous. It also acknowledges Circular 15-09 from the Office of Local Government dated 25 February 2015 relating to compulsory acquisitions.

This policy applies only to the divestment of Operational Land as defined under the *Local Government Act 1993* but applies to the acquisition of all land either for Community or Operational purposes.

**SCOPE:**

To define the criteria which must be considered prior to the acquisition of land or the divestment of Council owned land and to define the process and procedures, including public consultation and notification, required to be undertaken prior to the divestment of any Council owned land. The objectives of this policy aim to provide Council with a framework which adopts the following principles:

**Policy**

WARNING: This is a controlled document. Hardcopies of this document may not be the latest version. Before using this document, check it is the latest version; refer to Council's website [www.portstephens.nsw.gov.au](http://www.portstephens.nsw.gov.au)



Issue Date: 29/05/2012

Review Date: xx/xx/2020

Page: 1 of 17

ITEM 5 - ATTACHMENT 1 ACQUISITION AND DIVESTMENT OF LAND POLICY.

Policy



- Probity
- Statutory compliance
- Commercial optimisation, flexibility and confidentiality
- Transparency of process; and
- Achievement of specific strategic outcomes of Council and the community.

All decisions and actions in relation to the acquisition or divestment of land will have due regard to the following fundamental principles:

- Best value for money - achieving 'best value' may include financial, social and environmental benefits;
- Transparency - processes must be open to scrutiny, provide full information and record the reasons behind decisions;
- Accountability - demonstrate the best use of public resources and the highest level of performance through appropriate record keeping and audit trails;
- Impartiality - address perceived or actual conflicts of interests.

**DEFINITIONS:**

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

Act	means the <i>Local Government Act 1993</i> .
Contract	means any form of contract which legally binds the Council [or potentially binds Council] to acquire or dispose of land or any interest therein and includes formal contracts for sale and purchase and other forms of contractual arrangements including heads of agreement, in principle agreement, options to purchase etc.
Land	is as defined in Section 21 of the <i>Interpretation Act 1987</i> . As a more specific reference for the purpose of this policy, 'land' is defined as:  Land as a physical entity including: <ul style="list-style-type: none"><li>• any building or structure on or improvement to land; or</li><li>• any stratum of land whether below or above ground; or</li><li>• a strata lot pursuant to relevant strata subdivision legislation</li></ul>

Policy

WARNING: This is a controlled document. Hardcopies of this document may not be the latest version. Before using this document, check it is the latest version; refer to Council's website [www.portstephens.nsw.gov.au](http://www.portstephens.nsw.gov.au)



ITEM 5 - ATTACHMENT 1 ACQUISITION AND DIVESTMENT OF LAND POLICY.

Policy



Programmed acquisition means when Council requires the affected land and initiates the acquisition process.

Regulation means the *Local Government (General) Regulation 2005* and any replacement Regulation.

**POLICY STATEMENT:**

The purpose of this policy is to describe the manner in which Port Stephens Council will undertake the acquisition and divestment of land assets and to provide Council with:

- A documented reference to guide its decision making process;
- A reference that will survive successive Councils;
- An endorsed framework to enable and pursue land acquisition and divestment opportunities of merit and proactively present such opportunities to Council;
- To establish delegations necessary to allow implementation functions to be addressed to meet market drivers;
- To set out the principles, framework, responsibilities and processes for Council and officers to account for and manage the acquisition and divestment of Council land assets;
- To identify, manage and mitigate the risks associated with the acquisition and divestment of land; and
- To ensure impartiality, transparency, accountability and the delivery of best value in the divestment of land ('fundamental principles').

**POLICY RESPONSIBILITIES:**

**LAND ACQUISITION PROCEDURE**

1) Fundamental Principles

Council will acquire land for the purpose of carrying out its functions under the Act. Any land to be acquired by Council is subject to a formal resolution of Council.

Independent Valuation Benchmark and Purchaser's Premium

Any land acquisition is to be benchmarked to an independent valuation of land unless the size of the land or the agreed value is negligible.

**Policy**

WARNING: This is a controlled document. Hardcopies of this document may not be the latest version. Before using this document, check it is the latest version; refer to Council's website [www.portstephens.nsw.gov.au](http://www.portstephens.nsw.gov.au)



Issue Date: 29/05/2012

Review Date: xx/xx/2020

Page: 3 of 17

ITEM 5 - ATTACHMENT 1 ACQUISITION AND DIVESTMENT OF LAND POLICY.

Policy



In some cases there will be a justified basis for Council acquiring land at a price above the valuation benchmark (ie Purchaser's Premium) in order to guarantee the successful securing of the land to achieve defined goals and objectives of Council or to acquire the land with a view to adding value (or reducing risk) to a larger scheme or development (future or current).

Any Purchaser's Premium should be determined and quantified within the initial decision of Council and referenced to the achievement of specific goals and objectives of Council. In essence, Council can make a commercial decision to pay in excess of the valuation due to the importance of the acquisition for the public purpose.

2) Acquisition Process

Section 377(1)(h) of the *Local Government Act 1993* requires a specific resolution of Council to acquire land. This decision cannot be delegated. While the General Manager and/or their delegate may make preliminary enquiries and negotiations regarding a possible purchase and purchase price, any offer to acquire land must state that the proposed acquisition is conditional upon a resolution of Council authorising the acquisition. The General Manager and/or their delegate shall:

- Be responsible for the conduct of all negotiations;
  - Have regard to an independent valuation obtained from a registered valuer;
  - Seek such other professional advice as is considered necessary in the circumstances;
  - Have regard to the Independent Commission Against Corruption publication Direct Negotiations so far as is appropriate in the circumstances; and
  - Report the outcome of all negotiations to the Council for determination.
- 3) Prior to finalisation of an acquisition, Council shall determine the classification of the land as either Operational or Community.
- 4) Council's process of land acquisition must include the following steps:
- Identification of the land acquisition opportunity by Council and/or the responsible officer;
  - In principle decision by the General Manager to commence the pre-acquisition process;
  - Preparation of a comprehensive assessment of the land acquisition including:

Policy

WARNING: This is a controlled document. Hardcopies of this document may not be the latest version. Before using this document, check it is the latest version; refer to Council's website [www.portstephens.nsw.gov.au](http://www.portstephens.nsw.gov.au)



Issue Date: 29/05/2012

Review Date: xx/xx/2020

Page: 4 of 17



ITEM 5 - ATTACHMENT 1 ACQUISITION AND DIVESTMENT OF LAND POLICY.

Policy



- required due diligence;
- independent rental or purchase valuation;
- assessment against the principles and objectives of Council's Integrated Planning framework;
- identification of funding source and assessment against Council's Long Term Financial Plan; and
- a statement of goals and objectives for the proposed land to be acquired including a statement of any 'Purchaser's Premium' deemed appropriate by Council;
- Formal consideration by Council of dealing with the matter and, if required, in accordance with Section 10A of the Act be dealt with in a closed meeting;
- Formal report to Council including the land acquisition assessment and documented reasons for Council's acquisition of the land and, if supported, delegation to the General Manager to negotiate an outcome subject to the financial and risk parameters as determined by Council;
- Negotiation and, if successful, implementation of all matters necessary for the preparation, signing and sealing of contract documentation required;
- Once completed the General Manager to advise Council of the outcome (successful or otherwise).

The process is designed to ensure fairness and equity.

**METHODS OF ACQUISITION**

Wherever possible Council's preferred method of acquisition is to acquire land through mutual agreement with the owner of the land. The key principles in the acquisition of land are:

- Opportunistically by responding when the desired land is offered to the market; and
- Pro-actively by initiating negotiations for the desired land.

Council's preferred position is not to acquire land through compulsory acquisition, however, Council has an obligation to provide services to the community and, if required, Council may consider utilising its powers under the *Local Government Act 1993* in respect of 'compulsory acquisition'.

Policy

WARNING: This is a controlled document. Hardcopies of this document may not be the latest version. Before using this document, check it is the latest version; refer to Council's website [www.portstephens.nsw.gov.au](http://www.portstephens.nsw.gov.au)



Issue Date: 29/05/2012      Review Date: xx/xx/2020      Page: 5 of 17

ITEM 5 - ATTACHMENT 1 ACQUISITION AND DIVESTMENT OF LAND POLICY.

Policy



Circular 15-09 from the Office of Local Government dated 25 February 2015 outlines changes to the process for acquiring privately owned land by compulsory process, to improve fairness and transparency. The new requirements apply to all acquiring authorities in NSW, including local Councils. Compliance with the requirements is mandatory. NSW Office of Finance and Services (OFS) has issued Circular No 2015-01 (of 1 January 2015) setting out the new requirements. Before making an application for approval to compulsorily acquire private land, Councils must provide the land owner with information about the compulsory acquisition process. OFS has prepared a "Land Acquisition Information Guide", which Councils can use for that purpose. In addition, Councils must make additional efforts to negotiate with the land owner, including making every reasonable effort to have at least one face to face meeting with the land owner and/or their representative. Councils seeking to acquire privately owned land by compulsory process, either under the *Local Government Act 1993* or the *Roads Act 1993*, must comply with the new requirements. Councils will need to provide evidence of having complied with these requirements with their Compulsory Acquisition application form.

Compliance with the new requirements is mandatory. They should be applied to all proposals to acquire private land currently under consideration by Councils and to all future proposals for the acquisition of private land where it is deemed appropriate for additional negotiation to occur.

If the land is to be acquired for future development or strategic investment purposes, the acquisition of the land will be through negotiation between Council and the vendor on the basis of a valuation to determine a fair market value plus or minus 10% for the purposes of negotiation. The key principles of the acquisition are to be:

- Location
- Topography
- Area
- Zoning

A business case and feasibility study will be prepared to determine the viability and development potential for the land to be included in the report to Council.

**COMPENSATION**

Compensation will apply to land owners affected by acquisition under the following provisions:

Policy

WARNING: This is a controlled document. Hardcopies of this document may not be the latest version. Before using this document, check it is the latest version; refer to Council's website [www.portstephens.nsw.gov.au](http://www.portstephens.nsw.gov.au)



Issue Date: 29/05/2012

Review Date: xx/xx/2020

Page: 6 of 17

ITEM 5 - ATTACHMENT 1 ACQUISITION AND DIVESTMENT OF LAND POLICY.

Policy



- Owner initiated acquisitions
- Programmed acquisitions

In determining the amount of compensation to which a person is entitled, *Part 3 Division 4 of the Land Acquisition (Just Terms Compensation) Act, 1991* requires that regard must be given to the following matters only:

- a) The market value of the land on the date of its acquisition;
- b) Any special value of the land to the person on the date of its acquisition;
- c) Any loss attributable to severance;
- d) Any loss attributable to disturbance;
- e) Solatium (ie compensation for non-financial disadvantage arising the need to relocate as a result of the acquisition); and
- f) Any increase or decrease in the value of any other land of the person at the date of acquisition which adjoins or is severed from the acquired land by reason of the carrying out of, or the proposal to carry out, the public purpose for which the land was acquired.

Land owners claiming hardship in accordance with Section 24 of *the Land Acquisition (Just Terms Compensation) Act, 1991* provisions should note that Council is not required to acquire land unless it is of the opinion that the owner will suffer hardship (within the meaning of Section 24 of this Act. An owner of land suffers hardship if:

- a) The owner is unable to sell the land, or is unable to sell the land at its market value, because of the designation of the land for acquisition for a public purpose; and
- b) It has become necessary for the owner to sell all or any part of the land without delay:
  - i. For pressing personal, domestic or social reasons, or
  - ii. In order to avoid the loss of (or a substantial reduction in) the owner's income.

However, if the owner of the land is a corporation, the corporation does not suffer hardship unless it has become necessary for the corporation to sell all or any part of the land without delay for pressing personal, domestic or social reasons of an individual who holds at least 20 per cent of the shares in the corporation, or in order to avoid the loss of (or a substantial reduction in) the income of such an individual.

Policy

WARNING: This is a controlled document. Hardcopies of this document may not be the latest version. Before using this document, check it is the latest version; refer to Council's website [www.portstephens.nsw.gov.au](http://www.portstephens.nsw.gov.au)



Issue Date: 29/05/2012

Review Date: xx/xx/2020

Page: 7 of 17

ITEM 5 - ATTACHMENT 1 ACQUISITION AND DIVESTMENT OF LAND POLICY.

Policy



**LAND DIVESTMENT PROCEDURES**

1) Fundamental Principles

All decisions and actions in relation to the divestment of land will have due regard to the following fundamental principles:

- Best Value for Money - Achieving 'best value' may include financial, social and environmental benefits;
- Transparency - processes must be open to scrutiny, provide full information, and record the reasons behind decisions;
- Accountability - demonstrate the best use of public resources and the highest level of performance through appropriate record keeping and audit trails;
- Impartiality - address perceived or actual conflicts of interests, ensuring fairness and equity.

2) Land Deemed to be Surplus

'Land' includes all real property whether vacant or improved. Land may not be sold by Council unless it is classified as 'Operational Land' under *Section 25 of the Local Government Act, 1993*.

In order to establish whether or not land is deemed to be surplus, a process of consultation is required to be completed across relevant divisions of Council prior to reclassification in accordance with the *Local Government Act, 1993*.

3) Delegated Authority

*Section 377 (1) (h) of the Local Government Act 1993* requires a specific resolution of Council to dispose of land. The decision cannot be delegated.

The report to Council is to include reference to the manner of divestment (often contained within a confidential report) in regards to the terms of the sale and the agreed price, or range for negotiations. The sale cannot proceed outside of such parameters (without a further resolution).

The resolution should also provide for the General Manager to have delegated authority to negotiate any outstanding, usually minor, conditions and to be authorised to execute any

Policy

WARNING: This is a controlled document. Handcopies of this document may not be the latest version. Before using this document, check it is the latest version; refer to Council's website [www.portstephens.nsw.gov.au](http://www.portstephens.nsw.gov.au)



ITEM 5 - ATTACHMENT 1 ACQUISITION AND DIVESTMENT OF LAND POLICY.

Policy



documents in relation to the matter deemed appropriate by Council's legal advisors.

A copy of the report and resolution is to be provided to Council's legal advisors upon instruction, as authority to act and to ensure compliance with the resolution.

While the General Manager and/or their delegate may enter into preliminary discussions or negotiations regarding a possible sale of Council land, all pre-sale discussions/negotiations with potential purchasers must always be qualified by the statement "subject to a resolution of Council authorising the sale" if there is no current resolution of Council to dispose of the land.

The General Manager and/or their delegate may enter into non-binding indicative offers in the form of a:

- a) Letter; or
- b) Heads of Agreement; or
- c) Memorandum of Understanding

provided that the document clearly states the offer is:

- i. Not legally binding; and
- ii. Subject to:
  - a) Adoption of a final Council resolution authorizing the sale; and
  - b) Legally binding Contracts for Sale and Purchase of Land on terms acceptable to both parties being entered into.

4) Marketing Process

Except in exceptional circumstances such as the sale to an adjoining owner of "landlocked" land that does not have legal access to a public road, any divestment of Council land must be preceded by a commercial marketing campaign which may include one or more of the following:

- a) Appointment of a licensed real estate agent;
- b) Online advertising;
- c) Advertising in print media; and
- d) Sign boards on the land.

Policy

WARNING: This is a controlled document. Hardcopies of this document may not be the latest version. Before using this document, check it is the latest version; refer to Council's website [www.portstephens.nsw.gov.au](http://www.portstephens.nsw.gov.au)



Issue Date: 29/05/2012

Review Date: xx/xx/2020

Page: 9 of 17

ITEM 5 - ATTACHMENT 1 ACQUISITION AND DIVESTMENT OF LAND POLICY.

Policy



5) Valuation Processes

At least one formal market valuation undertaken by a valuer registered to value such land is required to be commissioned prior to all land divestments.

Two valuations may be required when the value of the land is likely to exceed \$2,000,000 and/or the process of divestment is not competitive (as defined below).

An internal review of the valuation(s) is to be carried out and reported, with specific attention to the valuation rationale, method of valuation, calculations and sales evidence used. After such review, the valuation is to be considered in the setting of an asking price for sale, reserve price for auction or benchmark for negotiations, tender or expression of interest.

When two valuations have been provided, averaging is the preferred method for considering the price, when any difference in the valuation is 10% or less. Differences in valuations of more than 10% require an assessment of the reasons why they are different and more detailed justification of the price.

An updated valuation or valuation advice is required after 12 months of the date of the original valuation if the land is not sold, or at any time, there is considered to be a material movement in the value.

The valuation instructions must clearly state the following:

- The purpose of the valuation being 'divestment'.
- The basis of valuation being 'market value highest and best use', unless an alternative basis is considered more appropriate in the circumstances.
- That the valuation is to be marked confidential; and
- That the valuation includes market commentary, including supply and demand details of sales evidence and adjustments, valuation rationale and methodology, a valuation range (for negotiations) and comments on marketability, most appropriate method of divestment and opportunities to add value.

In addition, the valuer must make a statement that there is no actual or perceived conflict of interest in undertaking the valuation.

Policy

WARNING: This is a controlled document. Hardcopies of this document may not be the latest version. Before using this document, check it is the latest version; refer to Council's website [www.portstephens.nsw.gov.au](http://www.portstephens.nsw.gov.au)



ITEM 5 - ATTACHMENT 1 ACQUISITION AND DIVESTMENT OF LAND POLICY.

Policy



**METHODS OF DIVESTMENT**

An open competitive process of divestment is required using one of the following methods:

- Expression of interest - used for unusual properties capable of a variety of development, difficult to determine a market value.
- Tender - least common and used predominantly in high value, limited market situations;
- Auction - the most open and public method, favoured by government but reliant on high levels of competition. Often achieves a quick sale. Can fail in poor market.
- Private Treaty - most common, where an asking price is set and negotiated with individuals, usually through a real estate agent (who can be an independent third party to the negotiation process) and can arise after an unsuccessful auction.

Council may approve a non-competitive process of divestment such as direct negotiations, subject to clearly documented reasons and the employment of risk mitigation measures.

Risk mitigation measures for direct negotiations may include:

- Obtaining two valuations where the land may be valued at more than \$2,000,000; and consequently establishing a range for negotiation, having regard to the two valuations;
- Managing conflicts of interest with declarations of no personal or financial associations;
- Establishing a Negotiation Protocol, describing the manner in which meetings, negotiations, decisions and progress reporting is to be managed and documented; and
- Limitation on marketing budget and exclusive agency periods.

In rare circumstances, land may be disposed of to achieve strategic outcomes. In such situations, 'best value' may comprise financial, environmental or social elements, with the price falling below the 'market value' range.

The report seeking resolution of Council should clearly state the reasons for such sale and quantify the amount below market value attributable to each element. The obligation to obtain a market valuation exists in accordance with the above, in order to provide a measure of the non-financial elements of the sale.

1) Sale to Adjoining Owners

In circumstances where land is not able to be sold in isolation on the open market (such as small parcels, undersized lots, former road widening, closed laneways, boundary

Policy

WARNING: This is a controlled document. Hardcopies of this document may not be the latest version. Before using this document, check it is the latest version; refer to Council's website [www.portstephens.nsw.gov.au](http://www.portstephens.nsw.gov.au)



Issue Date: 29/05/2012

Review Date: xx/xx/2020

Page: 11 of 17

ITEM 5 - ATTACHMENT 1 ACQUISITION AND DIVESTMENT OF LAND POLICY.

Policy



adjustments etc) and the only potential purchasers are adjoining owners, the land must be offered in equal proportions to each adjoining owner on identical sale terms and conditions.

Where an adjoining owner does not wish to purchase their proportion of the land, the rejected land will be equally offered to the remaining adjoining owner.

The recommended method of determining the sale price is the 'Before and After' valuation method for the purchaser's land. For small portions of land, the 'piecemeal' (\$ rate per square metre) method may be more appropriate.

An essential condition of sale is that the purchaser is required to consolidate the subject land with their existing holding at no cost to Council.

The costs associated with the sale process will be borne by the prospective purchaser.

2) Sale of Roads - *Roads Act, 1993*

No road can be sold until it is formally closed in accordance with the provisions of the *Roads Act, 1993*.

For purchaser initiated closures and sales, the costs associated with the road closure will be borne up front by the prospective purchaser.

When Council initiates the road closure (in order to realise the value of surplus land), the costs will be borne by Council as development costs.

The agreed purchase price and estimated costs will be reported to Council seeking resolution agreeing to make application to close the road and dispose of the land upon closure in accordance with the terms of sale.

In accordance with *Section 43 of the Roads Act, 1993*, funds from the sale of roads are required to be set aside for acquiring Land for public roads or for carrying out work on public roads.

**CONFIDENTIALITY**

In the majority of divestments of land, the information contained in reports to Council to sell land may confer an advantage upon a person with whom Council is, or proposes, to be conducting business. On balance, it would be contrary to the public interest for Council to deal with such matter in an open session because release of the information could

Policy

WARNING: This is a controlled document. Hardcopies of this document may not be the latest version. Before using this document, check it is the latest version; refer to Council's website [www.portstephens.nsw.gov.au](http://www.portstephens.nsw.gov.au)





ITEM 5 - ATTACHMENT 1 ACQUISITION AND DIVESTMENT OF LAND POLICY.

Policy



prejudice Council's ability to obtain the maximum return on the land.

It is acknowledged therefore that reports to Council on the divestment of land will be generally deemed confidential under *Section 10A (2) (c) of the Local Government Act, 1993*. This confidentiality may be lifted by Council resolution upon settlement, if considered to be in the public interest.

The need for confidentiality also arises for acquisitions of land by Council, as business papers for resolutions will contain an indicative budget amount for the acquisition thus providing an advantage to the potential vendor. Hence, *Section 10A (2) (c)* should also apply to all acquisitions by Council.

**DISTRIBUTION OF FUNDS**

Net profit received from sales of surplus Community Land that has been rezoned and reclassified will be entirely allocated to the Asset Rehabilitation reserve.

Net profit received from the sale of land from road closures, boundary adjustments, small parcels and surplus operational land will be assigned to general revenue.

Where land development activities on land in the operational development land bank produce a net profit, 70% will be allocated to the Property Investment restricted fund and 30% will be allocated to Ward funds. The 30% Ward funds will be spent in accordance with the integrated strategic plans.

Should an allocation of funds be sought contrary to the ratio stated within this policy, a Council resolution will be required to amend the ratio.

Policy

WARNING: This is a controlled document. Hardcopies of this document may not be the latest version. Before using this document, check it is the latest version; refer to Council's website [www.portstephens.nsw.gov.au](http://www.portstephens.nsw.gov.au)



Issue Date: 29/05/2012

Review Date: xx/xx/2020

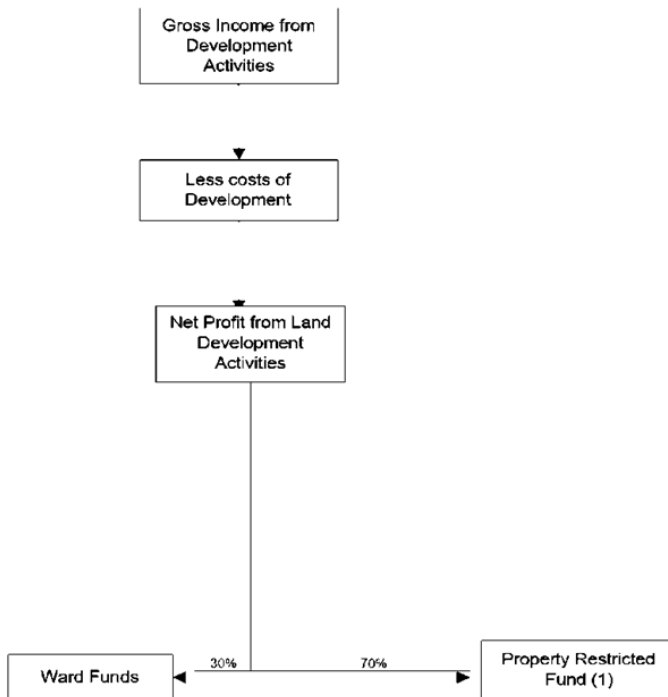
Page: 13 of 17

ITEM 5 - ATTACHMENT 1 ACQUISITION AND DIVESTMENT OF LAND POLICY.

Policy



Land Development Activities



ENVIRONMENTAL IMPLICATIONS

Environmental considerations for land that is to be reclassified or rezoned will be addressed at the time of the preparation of the Planning Proposal. The development of land will require a Development Application at which time it will be necessary to prepare a Statement of Environmental Effects, which will assess any environmental impacts.

Policy

WARNING: This is a controlled document. Hardcopies of this document may not be the latest version. Before using this document, check it is the latest version; refer to Council's website [www.portstephens.nsw.gov.au](http://www.portstephens.nsw.gov.au)

Issue Date: 29/05/2012

Review Date: xx/xx/2020

Page: 14 of 17

ITEM 5 - ATTACHMENT 1 ACQUISITION AND DIVESTMENT OF LAND POLICY.

Policy



RELEVANT LEGISLATIVE PROVISIONS

- 1) The *Local Government Act, 1993* vests authority in Council to sell or exchange Real Property. In respect of this policy, 'exchange' includes land acquisition and other related activities including land swaps etc.
- 2) In accordance with Section 377 of the Act, any decision to dispose of land must be made by resolution of Council as the power to sell, exchange or surrender land cannot be delegated.
- 3) Section 45 of the Act prevents Council from selling, exchanging or otherwise disposing of community land other than to become or be added to a Crown Reserve or National Park.
- 4) Section 55 of the Act requires tenders to be called in certain circumstances. However, it is not necessary to call tenders for the sale of land.
- 5) In accordance with Council's Purchasing policy and Disposal policy, land acquisition and divestment activities are excluded from the provisions of the Purchasing policy.

Council's real estate activities will be managed within the legislative parameters of the:

- *Local Government Act, 1993*;
- *Valuation of Land Act, 1916*;
- *Conveyancing Act, 1919*;
- *Environmental Planning and Assessment Act, 1979*;
- *Residential Tenancies Act, 1987*;
- *Land Acquisition (Just Terms Compensation) Act, 1991*;
- *Roads Act, 1993*;
- *Retail Leases Act, 1994*;
- *Crown Lands Act, 1989*;
- *Environment Protection and Biodiversity Conservation Act, 2000*;
- *National Parks and Wildlife Conservation Act, 1975*;
- *Real Property Act, 1919*;
- *Regulations under each of the above Acts*;
- Relevant Codes, Plans and Policies referred to in Section 13 of this policy; and
- Any other legislation applicable to the policy.

Contract for the Sale of Land

Contracts for the sale of land will usually contain standard conditions of sale. Any unusual or special conditions of sale require the approval of Council or the General Manager under delegation.

Policy

WARNING: This is a controlled document. Hardcopies of this document may not be the latest version. Before using this document, check it is the latest version; refer to Council's website [www.portstephens.nsw.gov.au](http://www.portstephens.nsw.gov.au)



Issue Date: 29/05/2012

Review Date: xx/xx/2020

Page: 15 of 17

**ITEM 5 - ATTACHMENT 1 ACQUISITION AND DIVESTMENT OF LAND POLICY.**

Policy



Council's legal representative is responsible to ensure contracts for the sale of land satisfy statutory disclosure and warranty obligations (*Conveyancing (Sale of Land) Regulation 2017*).

Departure from this Procedure

Any provision of this procedure may be varied to meet the needs of a particular matter, by resolution of the Council. The reasons for change will be clearly articulated within the report submitted for consideration by Council in adopting such resolution and will only apply to such matter.

**RELATED DOCUMENTS:**

- 1) Property Investment Policy
- 2) Cash Investment Policy
- 3) Long Term Financial Plan
- 4) Financial Business Rules Management Directive
- 5) Local Government Act, 1993
- 6) Land Acquisition (Just Terms Compensation) Act, 1991
- 7) Land Acquisition Information Guide

**CONTROLLED DOCUMENT INFORMATION:**

This is a controlled document. Hardcopies of this document may not be the latest version. Before using this document, check it is the latest version; refer to Council's website <a href="http://www.portstephens.nsw.gov.au">www.portstephens.nsw.gov.au</a>			
<b>RM8 container No</b>	A2004-0853	<b>RM8 container No</b>	18/67025
<b>Audience</b>	Council Staff		
<b>Process Owner</b>	Property Services Section Manager		
<b>Author</b>	Land Acquisition & Development Manager		
<b>Review timeframe</b>	Two Years	<b>Next review date</b>	##/##/2020
<b>Adoption date</b>	29 May 2012		

**Policy**

WARNING: This is a controlled document. Hardcopies of this document may not be the latest version. Before using this document, check it is the latest version; refer to Council's website [www.portstephens.nsw.gov.au](http://www.portstephens.nsw.gov.au)

Issue Date: 29/05/2012

Review Date: xx/xx/2020

Page: 16 of 17

**ITEM 5 - ATTACHMENT 1 ACQUISITION AND DIVESTMENT OF LAND POLICY.**

Policy



**VERSION HISTORY:**

Version	Date	Author	Details	Minute No.
1	29 May 2012	Property Services Section Manager	Original policy.	110
2	14 April 2015	Land Acquisition & Development Manager	Changes to position titles and dates.	079
3	4 January 2016	Land Acquisition & Development Manager	Policy has been formatted into new template. No changes required to policy - only review date.	
4	23 February 2016	Land Acquisition & Development Manager	Adopted by Council.	034
5	###/### 2018	Land Acquisition & Development Manager	Background updated to reflect current legislation by removing the reference to the Council Charter.  Policy amended to set out process for non-binding offers to sell being documented prior to a formal resolution being secured.  Policy amended to specify marketing of divestment lands in certain circumstances.	

**Policy**

WARNING: This is a controlled document. Hardcopies of this document may not be the latest version. Before using this document, check it is the latest version; refer to Council's website [www.portstephens.nsw.gov.au](http://www.portstephens.nsw.gov.au)

Issue Date: 29/05/2012

Review Date: xx/xx/2020

Page: 17 of 17

**ITEM NO. 6**

**FILE NO: 18/50535  
EDRMS NO: PSC2015-01399**

**POLICY - FLOODPLAIN RISK MANAGEMENT**

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

---

**RECOMMENDATION IS THAT COUNCIL:**

- 1) Endorse the revised Floodplain Risk Management Policy (**ATTACHMENT 1**).
- 2) Receive and note submissions (**ATTACHMENT 2**).
- 3) Revoke the current Floodplain Risk Management Policy adopted by Council on 8 March 2016 Min. No. 054.

---

**ORDINARY COUNCIL MEETING - 10 APRIL 2018  
COMMITTEE OF THE WHOLE RECOMMENDATION**

	<p><b>Councillor Glen Dunkley Councillor Sarah Smith</b></p> <p>That the recommendation be adopted.</p>
--	---

**ORDINARY COUNCIL MEETING - 10 APRIL 2018  
MOTION**

<b>080</b>	<p><b>Councillor Jaimie Abbott Councillor Paul Le Mottee</b></p> <p>It was resolved that Council:</p> <ol style="list-style-type: none"><li>1) Endorse the revised Floodplain Risk Management Policy (<b>ATTACHMENT 1</b>).</li><li>2) Receive and note submissions (<b>ATTACHMENT 2</b>).</li><li>3) Revoke the current Floodplain Risk Management Policy adopted by Council on 8 March 2016 Min. No. 054.</li></ol>
------------	---

**BACKGROUND**

The purpose of this report is to recommend that the revised Floodplain Risk Management Policy (the 'Policy') (**ATTACHMENT 1**) that has been on public exhibition be adopted by Council.

At its meeting of 12 December 2017 (Min No. 322) it was resolved that Council:

1. Place the revised Floodplain Risk Management Policy on public exhibition for a period of 28 days and, should no submissions be received, the policy be adopted as revised without a further report to Council.
2. Revoke the current Floodplain Risk Management Policy adopted by Council on 8 March 2016 Min. No. 054.

The revised Floodplain Risk Management Policy updates the old policy. In summary, the revised Policy:

- Aligns with the Anna Bay & Tilligerry Creek Flood Study recommendation to apply a 300mm freeboard to overland flow areas instead of the 500mm freeboard which is applied in accordance with the current policy.
- Provides improved clarity regarding definitions and policy responsibility.

### **COMMUNITY STRATEGIC PLAN**

<b>Strategic Direction</b>	<b>Delivery Program 2013-2017</b>
Sustainable Development.	Provide Strategic Land Use Planning Services. Provide Development Assessment and Building Certification Services.

### **FINANCIAL/RESOURCE IMPLICATIONS**

The cost of implementing the Floodplain Risk Management Policy will be carried out within existing budgets.

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

### **LEGAL, POLICY AND RISK IMPLICATIONS**

The *Local Government Act 1993* (Section 733) provides Council with a general exemption from liability with respect to flood liable land if decisions are made or advice given in accordance with the State Government's Floodplain Development Manual 2005.

The State Government has issued a direction regarding the advice to be provided on Section 149 Certificates where land is subject to flood related development controls. The direction promotes the appropriate use of flood prone land and designates the land into areas dependent upon:

- Frequency of inundation.
- Their hydraulic function (floodways in which floodwaters are conveyed, flood storage areas where flood waters are temporarily stored during flood events, and flood fringe areas).
- Flood hazard (a minimum of two categories, high and low).

The Insurance Council of Australia has indicated that while insurance companies use a variety of flood data sources to make their own assessment of risk, it is likely that they will take a conservative view of risk. A conservative view without up to date data will result in an increase in insurance premiums for residents. Hence having up-to-date flood studies in accordance with the latest State Government guidelines and the Floodplain Development Manual will benefit residents and potentially reduce insurance premiums.

<b>Risk</b>	<b><u>Risk Ranking</u></b>	<b>Proposed Treatments</b>	<b>Within Existing Resources?</b>
There is a risk that not following the State Government's Floodplain Development Manual 2005 will lead to Council not meeting legislative obligations exposing Council to financial and legal risk.	High	Adopt recommendations and endorse the revised Floodplain Risk Management Policy.	Yes
There is a risk that not following the State Government's Floodplain Development Manual 2005 will allow the insurance companies to continue to take a conservative view of flood risk which results in increased insurance premiums for residents.	High	Adopt recommendations and endorse the revised Floodplain Risk Management Policy.	Yes

**SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications



The Floodplain Risk Management Policy aims to systematically reduce the impact of flooding and flood liability on individual owners and reduce the private and public losses resulting from floods. It also recognises that flood prone land is a valued resource to the community, land holders and the economy and these lands should not be sterilised by unnecessarily restricting appropriate development.

The Floodplain Risk Management Policy takes an integrated risk management approach using the best available information that classifies land in terms of flood risk so that decisions take into account flood risk while recognising the social, economic and environmental values of flood prone land.

The Floodplain Risk Management Policy ensures that the State Emergency Service and the Port Stephens Local Emergency Management Committee are provided with the most up-to-date flood information so they can include it in their emergency response and recovery planning.

### **CONSULTATION**

Comments received during the exhibition period have been reviewed and assessed by Council's Facilities and Services staff.

Two submissions were received as part of the exhibition period (**ATTACHMENT 2**). These submissions were used to inform and amend the policy.

### **OPTIONS**

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

### **ATTACHMENTS**

- 1) Floodplain Risk Management Policy.
- 2) Submissions Received During Public Exhibition.

### **COUNCILLORS ROOM**

Nil.

### **TABLED DOCUMENTS**

Nil.

## Policy



**FILE NO:** PSC2015-01399  
**TITLE:** FLOODPLAIN RISK MANAGEMENT  
**POLICY OWNER:** ASSET SECTION MANAGER

### PURPOSE:

Port Stephens Council is committed to managing flooding across the Local Government Area using an integrated risk management approach, in order to:

1. Systematically reduce the impact of flooding and flood liability on individual owners and occupiers of flood prone property, hence reduce the losses resulting from floods;
2. Recognise that appropriately developed flood prone land is a valuable resource to the community, land holders and the economy and these lands should not be sterilised by unnecessarily restricting its development;
3. Consider floodplain risk as early as possible in the planning and development process using the best available flood information;
4. Classify land in terms of floodplain risk so that decisions take into account the risk while recognising the social, economic and environmental values of flood prone land;
5. Provide the framework to manage floodplain risk through cost-effective measures that address existing, future and continuing risks in a hierarchy of avoidance, minimisation and mitigation as identified in local floodplain risk management studies and plans;
6. Remain consistent with the floodplain risk management principles outlined in the State Government's Flood Prone Land Policy and Floodplain Development Manual 2005.
7. Facilitate the systematic collection of flood information and floodplain risk data, and the provision of such information in a timely way so that residents can understand the severity of floodplain risk and plan their affairs accordingly; and,
8. Promote the integration between Council's floodplain risk management activities and flood-related emergency management undertaken by the State Emergency Service and the Port Stephens Local Emergency Management Committee.

The measurement of success for this policy is the implementation of the integrated risk management approach.

## Policy

**WARNING:** This is a controlled document. Hardcopies of this document may not be the latest version. Before using this document, check it is the latest version; refer to Council's website [www.portstephens.nsw.gov.au](http://www.portstephens.nsw.gov.au)



Issue Date: 12/12/2017

Review Date: 12/12/2019

Page: 1 of 7

## Policy



### CONTEXT/BACKGROUND:

Port Stephens covers a diverse number of catchments, generally flowing to the Hunter Estuary or the Port Stephens Estuary. The area has a number of creeks, rivers, estuaries, foreshore areas, stormwater channels and drains which are impacted by flooding or coastal inundation, sometimes with little or no warning.

Flooding is a significant issue affecting existing and future development throughout Port Stephens and may involve significant risk, including risks to life and property. While it is not usually cost-effective to entirely eliminate all floodplain risks, the risks can be managed.

Council has been undertaking the necessary flood studies in accordance with the State Government's Floodplain Development Manual 2005. Where the catchments cross local government boundaries, Council has been working in collaboration with neighbouring councils.

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

### SCOPE:

While local government in NSW has the primary responsibility for controlling the development within flood-prone land, both the State Government (for example, Crown developments and state significant developments) and the Federal Government (for example, development on Commonwealth land) consider development on the floodplain.

Both local government and the State Government (principally through the State Emergency Service) are responsible for managing floodplain risk.

### DEFINITIONS:

Flood prone land (flood liable land)	Land that is likely to be inundated by the probable maximum flood (PMF is the largest flood that could conceivably occur in a particular catchment) and defines the "floodplain" for that catchment.
Flood Planning Level	The level of the 1% AEP (annual exceedance probability) flood event in the year 2100 plus 0.5 metre freeboard, except for overland flooding areas where a freeboard of 0.3 metre is applied. The area of land below the Flood Planning Level (i.e. the Flood Planning Area) is subject to flood-related development controls.

**Policy**

WARNING: This is a controlled document. Hardcopies of this document may not be the latest version. Before using this document, check it is the latest version; refer to Council's website [www.portstephens.nsw.gov.au](http://www.portstephens.nsw.gov.au)

Issue Date: 12/12/2017 Review Date: 12/12/2019 Page: 2 of 7

## Policy



Floodway area	Land that is a pathway taken by major discharges of floodwaters, the partial obstruction of which would cause a significant redistribution of floodwaters, or a significant increase in flood levels. Floodways are often aligned with natural channels, are usually characterised by deep and relatively fast flowing water, and have major damage potential.
Flood Storage area	Those parts of the floodplain that are important for the temporary storage of flood waters. The loss of storage areas may increase the severity of flood impacts by reducing natural flood attenuation.
Flood Fringe area	The remaining land in the Flood Planning Area after the Floodway area and Flood Storage area have been defined.
Overland flow path	Areas of inundation by local runoff rather than inundation created by overbank flows discharging from a watercourse.
High Hazard flood area	The area of flood which poses a possible danger to personal safety, where the evacuation of trucks would be difficult, where able-bodied adults would have difficulty wading to safety or where there is a potential for significant damage to buildings.
Low Hazard flood area	The area of flood where, should it be necessary, a truck could evacuate people and their possessions or an able-bodied adult would have little difficulty in wading to safety.

### POLICY STATEMENT:

Council will manage the risk of flooding on lands in accordance with State Government's Flood Prone Land Policy and Floodplain Development Manual 2005. This can be summarised as:

1. Following the State Government directed process for each catchment, including:
  - Formation of a Floodplain Risk Management Committee, including members from council, community and state government agencies.
  - Collection of social, economic, flooding, ecological, land use, cultural and emergency management data.
  - Undertaking a flood study, in accordance with "Australian Rainfall & Runoff" published by Engineers, Australia, to define floodplain risk throughout the catchment, including hydrologic and hydraulic aspects of floods of varying severity.

Policy

WARNING: This is a controlled document. Hardcopies of this document may not be the latest version. Before using this document, check it is the latest version; refer to Council's website [www.portstephens.nsw.gov.au](http://www.portstephens.nsw.gov.au)

Issue Date: 12/12/2017 Review Date: 12/12/2019 Page: 3 of 7

## Policy



- Identifying, assessing and comparing various risk management options through a Floodplain Risk Management Study.
  - Developing a Floodplain Risk Management Plan outlining the implementation of acceptable flood response and property modification measures, and is formally approved by Council after public exhibition.
2. Categorising floodplain risk in terms of the hazard (low hazard and high hazard), the location (floodway area, flood storage area and flood fringe area) and the chance of the flood occurring in any one year (the annual exceedance probability (AEP)), namely:
    - Minimal risk flood prone land (above the Flood Planning Level and below the Flood prone land extent).
    - Low hazard – flood fringe area.
    - Low hazard – flood storage area.
    - Low hazard – floodway area.
    - Low hazard – overland flow path.
    - High hazard – flood fringe area.
    - High hazard – flood storage area.
    - High hazard – floodway area.
    - High hazard – overland flow path.
  3. Keeping the Flood Hazard Maps up-to-date by incorporating relevant information from Council adopted Flood Studies, Floodplain Risk Management Plans, flood modification measures and approved filling within the floodplain which may change the categorisation of floodplain risk.
  4. Undertaking a comprehensive benefit-cost analysis of proposed flood modification measures (for example, levees, retarding basins, flood gates) in each catchment using a standard approach and include those measures with a benefit: cost ratio greater than 1 into Council's Strategic Asset Management Plan (where possible Council will seek State and Federal government funding for such measures).
  5. Considering property modification measures including voluntary purchase or house-raising and Development Control Plan changes based on the floodplain risk categories.
  6. Utilising a site-specific risk management approach for the finished floor level for non-residential developments, focussed on reducing risk-to-life and risk-to-property, based on the floodplain risk categories and specified in Council's DCP.
  7. Ensuring that the State Emergency Service and the Port Stephens Local Emergency Management Committee are provided with the most up-to-date flood information so they can include it in their emergency response and recovery planning.
  8. Ensuring that decisions relating to flood prone land do not have adverse consequences for emergency management or cause adverse impacts on flooding in other locations.

## Policy

**WARNING:** This is a controlled document. Hardcopies of this document may not be the latest version. Before using this document, check it is the latest version; refer to Council's website [www.portstephens.nsw.gov.au](http://www.portstephens.nsw.gov.au)



## Policy



9. Ensuring that new Council assets have an appropriate floodplain risk category, so that future generations of residents and ratepayers are not inordinately burdened.
10. Developing a system for the timely provision of up-to-date flood information, to facilitate the assessment of development applications, to achieve a merit-based outcome for each floodplain risk category for an individual site.

### POLICY RESPONSIBILITIES:

Assets Section Manager has overall responsibility for this Policy.

Engineering Services Manager and Principal Flooding & Drainage Engineer is responsible for the implementation of the engineering aspects of this Policy, including management of the Floodplain Risk Management process.

Strategy and Environment Section Manager is responsible for the implementation of the strategic planning aspects of this Policy, including consideration of floodplain risk as early as possible in the planning process and the provision of the most up-to-date flood information through the issuing of Section 149 certificates.

Development Assessment and Compliance Section Manager is responsible for the implementation of the development assessment aspects of this Policy, including a merit-based consideration of the floodplain risk categories for an individual site, focussed on reducing risk-to-life and risk-to-property, based on advice provided by Assets Section Manager, Engineering Services Manager and Principal Flooding & Drainage Engineer whose expert knowledge would need to be provided in making such decisions.

Communications Section Manager is responsible for the implementation of the communications aspects of this Policy, including assisting in the coordination of community engagement through the Floodplain Risk Management process.

Facilities and Services Group Manager is responsible for the integration between Council's floodplain risk management activities and flood-related emergency management undertaken by the State Emergency Service and the Port Stephens Local Emergency Management Committee.

### RELATED DOCUMENTS:

- *Local Government Act 1993*
- *Environmental Planning and Assessment Act 1979*
- *Water Management Act 2000*
- *Hunter Water Act 1991*

## Policy

**WARNING:** This is a controlled document. Hardcopies of this document may not be the latest version. Before using this document, check it is the latest version; refer to Council's website [www.portstephens.nsw.gov.au](http://www.portstephens.nsw.gov.au)



Policy



- *State Emergency and Rescue Management Act 1989*
- The State Government's Flood Prone Land Policy 2005
- The State Government's Floodplain Development Manual 2005
- Port Stephens Local Environment Plan 2013
- Port Stephens Development Control Plan 2014

**CONTROLLED DOCUMENT INFORMATION:**

This is a controlled document. Hardcopies of this document may not be the latest version. Before using this document, check it is the latest version; refer to Council's website <a href="http://www.portstephens.nsw.gov.au">www.portstephens.nsw.gov.au</a>			
<b>EDRMS container No</b>	PSC2015-01399	<b>EDRMS record No</b>	
<b>Audience</b>	Councillors, staff and community		
<b>Process owner</b>	Manager, Assets Section		
<b>Author</b>	Manager, Assets Section		
<b>Review timeframe</b>	2 years	<b>Next review date</b>	12 December 2019
<b>Adoption date</b>	12 December 2017		

**VERSION HISTORY:**

Version	Date	Author	Details	Minute No.
1	16 Dec 2008	Integrated Planning Manager	Areas affected by flooding and/or inundation.	384
2	27 Oct 2015	Asset Section Manager	Draft Floodplain Risk Management Policy for Public Exhibition	323
2.1	8 Mar 2016	Asset Section Manager	Floodplain Risk Management Policy	054

<p><b>Policy</b></p> <p><small>WARNING: This is a controlled document. Hardcopies of this document may not be the latest version. Before using this document, check it is the latest version; refer to Council's website <a href="http://www.portstephens.nsw.gov.au">www.portstephens.nsw.gov.au</a></small></p>		
<p>Issue Date: 12/12/2017</p>	<p>Review Date: 12/12/2019</p>	<p>Page: 6 of 7</p>

## Policy



3	12 Dec 2017	Asset Section Manager	Updated to new template, overland flooding areas, definitions, and policy responsibility.	322
3.1	10 April 2018	Asset Section Manager	Reconciled definitions against other Council documentations and modified as required. Modified Council officer titles to reflect current role title. Modified Policy responsibilities as required.	

## Policy

**WARNING:** This is a controlled document. Hardcopies of this document may not be the latest version.  
Before using this document, check it is the latest version; refer to Council's website [www.portstephens.nsw.gov.au](http://www.portstephens.nsw.gov.au)



Issue Date: 12/12/2017

Review Date: 12/12/2019

Page: 7 of 7



**ATTACHMENT 3****SCHEDULE OF SUBMISSIONS WITH ASSOCIATED RECOMMENDATIONS**

The following table provides details of the submissions received as a result of the Floodplain Risk Management Policy being on public exhibition.

<b>ISSUE</b>	<b>RAISED BY</b>	<b>RESPONSE</b>
Definitions need to align with those found in other Council documents to ensure consistency	Submission 1	Council has reviewed and reconciled the definitions against other Council documentation. Definitions were appropriately modified, as necessary, to ensure consistency.
Review and modify Council officers titles in accordance with current role titles	Submission 1	Council has reviewed and appropriately modified Council officer's titles in line with current role titles.
Policy responsibilities to be modified to include Engineering Services Manager role as well as reliance on Assets Section Manager, Engineering Services Manager and Principal Flooding and Drainage Engineer for expert knowledge and advice to assist with decision making.	Submission 2	Council has reviewed and appropriately modified the policy responsibilities.

**ITEM NO. 7**

**FILE NO: 18/66044  
EDRMS NO: PSC2017-00015**

**INFORMATION PAPERS**

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

**RECOMMENDATION IS THAT THAT COUNCIL:**

Receives and notes the Information Papers listed below being presented to Council on 10 April 2018.

<b>No:</b>	<b>Report Title</b>	<b>Page:</b>
1	Port Stephens Council 2017 Local Government Election Report	96

**ORDINARY COUNCIL MEETING - 10 APRIL 2018  
COMMITTEE OF THE WHOLE RECOMMENDATION**

	<b>Councillor Sarah Smith Councillor John Nell</b>  That the recommendation be adopted.
--	---

<b>081</b>	<b>Councillor Giacomo Arnott Councillor Jaimie Abbott</b>  It was resolved that Council move out of Committee of the Whole.
------------	---

**ORDINARY COUNCIL MEETING - 10 APRIL 2018  
MOTION**

<b>082</b>	<b>Councillor Jaimie Abbott Councillor Paul Le Mottee</b>  It was resolved that Council receive and note the Information Papers listed below being presented to Council on 10 April 2018.
	<b>No:      Report Title</b>
	1      Port Stephens Council 2017 Local Government Election Report

# INFORMATION PAPERS

**ITEM NO. 1**

**FILE NO: 18/63476  
EDRMS NO: PSC2014-02039**

**PORT STEPHEN COUNCIL 2017 LOCAL GOVERNMENT ELECTION REPORT**

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

**BACKGROUND**

The purpose of this report is to provide Council with the NSW Electoral Commission's (NSWEC) Report on the conduct of the 2017 Local Government elections, in particular in relation to Port Stephens Council.

The 2017 local government election was conducted by the NSWEC on Council's behalf. In accordance with clause 393AA of the *Local Government (General) Regulation 2005*, the NSWEC Commissioner is required to provide a report on the conduct of the election to the Minister for Local Government within six (6) months of the Election Day.

Extract - Clause 393AA, Local Government (General) Regulation 2005.

(1) After each ordinary election of councillors and each first election for an area after its constitution, the Electoral Commissioner must provide the Minister with a written report on the conduct of the election, including (but not limited to) a report on the following:

- (a) the names of the areas whose elections were conducted by the Electoral Commissioner,
- (b) details of the declared results in those elections,
- (c) details of any requests for recounts of ballot-papers in those elections,
- (d) details of any proceedings commenced in a court or tribunal relating to those elections,
- (e) any recommendations by the Electoral Commissioner to the Minister regarding changes to the Act or this Regulation relating to the conduct of elections.

(2) The report must be provided to the Minister and displayed on the Electoral Commission's website within 6 months after the election day concerned, unless the Minister is satisfied that special circumstances exist.

The NSWEC have produced two reports which are available from the NSWECs website:

- 1) The Report on the Local Government Elections 2017.
- 2) The Report on the Local Government Elections 2017 – Supplementary Report – Individual councils.

NSWEC website

[http://www.elections.nsw.gov.au/about\\_us/plans\\_and\\_reports/our\\_reports/local\\_government\\_elections\\_2017\\_reports](http://www.elections.nsw.gov.au/about_us/plans_and_reports/our_reports/local_government_elections_2017_reports)

## **ATTACHMENTS**

- 1) Extract from the NSWECs Report on the Local Government Election 2017 - Supplementary Report for Port Stephens Council.

## **COUNCILLORS ROOM**

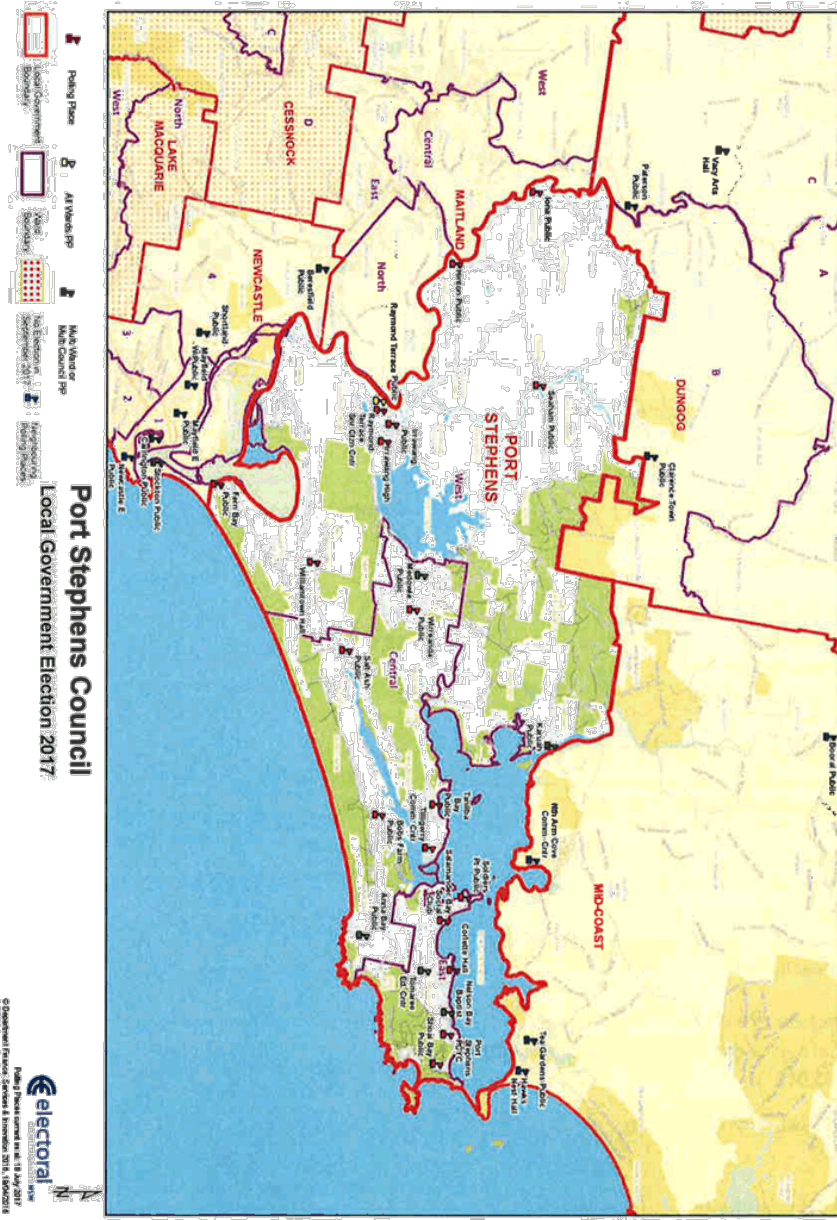
Nil.

## **TABLED DOCUMENTS**

- 1) The Report on the Local Government Elections 2017.
- 2) The Report on the Local Government Elections 2017 – Supplementary Report – Individual councils.

ITEM 1 - ATTACHMENT 1 EXTRACT FROM THE NSW ECS REPORT ON THE LOCAL GOVERNMENT ELECTION 2017 - SUPPLEMENTARY REPORT FOR PORT STEPHENS COUNCIL.

Port Stephens Council Report



**ITEM 1 - ATTACHMENT 1 EXTRACT FROM THE NSWEC'S REPORT ON THE LOCAL GOVERNMENT ELECTION 2017 - SUPPLEMENTARY REPORT FOR PORT STEPHENS COUNCIL.**

**Election Summary**

Poll declared by Sunday, 17 September 2017

**Mayoral election, successful candidate**

<b>Mayor Name</b>	<b>Party</b>
PALMER Ryan	Independent

**Councillor elections, successful candidates**

<b>Councillor Name</b>	<b>Party</b>
<i>Central Ward</i>	
DOOHAN Chris	Independent
SMITH Sarah	Independent
TUCKER Steve	Independent

*East Ward*

ABBOTT Jaimie	Independent
DUNKLEY Glen	Independent
NELL John	Independent

*West Ward*

ARNOTT Giacomo	Country Labor
JORDAN Ken	Independent
LE MOTTEE Paul	Independent

**Enrolment**

<b>Total Electors</b>	<b>53,535</b>
Residential Roll	53,532
Non-residential Roll	3

**Participation and Informality**

Formal Votes	41,572
Participation Rate	76.55%
Informal Votes	244
Total Votes	6,021
Informality Rate	4.05%

**Apparent Failure to Vote Notices**

Notices Issued	5,963
----------------	-------

**Election Costs**

Total cost of the Port Stephens Council 2017 Election  
\$401,041

Cost per elector  
\$7.51

**NSWEC Website**

There were 5,328 unique visitors to the Port Stephens Council election web page.

ITEM 1 - ATTACHMENT 1 EXTRACT FROM THE NSW ECS REPORT ON THE LOCAL GOVERNMENT ELECTION 2017 - SUPPLEMENTARY REPORT FOR PORT STEPHENS COUNCIL.

**Returning Officer**

Robyn Kerslake

**Returning Officer's Office**

Port Stephens Returning Officer's Office  
72 Port Stephens Street  
Raymond Terrace NSW 2324

**Staffing**

Office Assistants	37
Senior Office Assistants	5
Polling Place Managers	25
Deputy Polling Place Managers	7
Declaration Vote Issuing Officers	15
Election Officials	84
<b>Total Staff</b>	<b>173</b>

**Polling Places**

Pre-poll centres	3
Declared Institutions	6
Election Day Polling Places	26

**Pre-poll centre locations**

All Saints Anglican Church Nelson Bay  
Port Stephens Returning Officer's Office  
Sydney Town Hall

**Advertising**

**Statutory Campaign**

The Council requested that the statutory advertisements be placed in the following press:

Port Stephens Examiner

**Candidates**

**Nominations Withdrawn**

No councillor nominations were withdrawn.

**Names of all candidates**

<b>Mayoral Candidates</b>	<b>Party</b>
DINGLE Geoff	Independent
DOVER Sally	Independent
KAFER Peter	Independent
MASLEN Des	
PALMER Ryan	Independent
TUCKER Steve	Independent



**ITEM 1 - ATTACHMENT 1 EXTRACT FROM THE NSW ECS REPORT ON THE LOCAL GOVERNMENT ELECTION 2017 - SUPPLEMENTARY REPORT FOR PORT STEPHENS COUNCIL.**

<b>Councillor Candidates</b>	<b>Party</b>
ABBOTT Jaimie	Independent
ANTONIC Bobbie	Country Labor
ARMSTRONG Roz	Country Labor
ARNOTT Giacomo	Country Labor
BAILEY Matthew	Independent
BATTRICK Jenny	Independent
BRILL Bill	Independent
BYRON Patrick	Independent
DIEMAR Nick	Independent
DOOHAN Chris	Independent
DOVER Sally	Independent
DUNKLEY Glen	Independent
GOMEZ-FORT Luis	Independent
JACKSON Jo	Independent
JOHNSON Belinda	Independent
JORDAN Ken	Independent
KAFER Peter	Independent
KEARINS Coral	Independent
LE MOTTEE Paul	Independent
LOVE James	Independent
LYE Jillian	Independent
MALONE Anthony	Independent
MASLEN Des	Country Labor
McGEE Pre	Independent
McKENNA Peter	Country Labor
McLAUGHLIN Vicki	Country Labor
MILNE Rory	Independent
MORRISON Jim	Country Labor
NELL Adriana	Independent
NELL John	Independent
NEWCOMBE Natalie	Independent
NEWELL Alannah	Independent
NILAND Ben	Independent
O'BRIEN Shirley	Independent
PALMER Ryan	Country Labor
POND Melissa	Country Labor
ROACH Brooke	Independent
ROBINSON John	Independent
SIMM David	Country Labor
SMITH Lea	Independent
SMITH Peter	Independent
SMITH Sarah	Independent
SOUTER Diana	Independent
TOWNSEND Diana	Independent
TUCKER Steve	Independent
VIRT Anica	Independent
WYNN Rhianna	Independent
YUDAEFF Lorraine	Independent

# NOTICES OF MOTION

**NOTICE OF MOTION**

**ITEM NO. 1**

**FILE NO: 18/64352  
EDRMS NO: PSC2017-00019**

**LOCAL ELECTION POSTAL VOTING**

**COUNCILLOR: RYAN PALMER**

---

**THAT COUNCIL:**

- 1) Write to the Minister for Local Government, The Hon. Gabrielle Upton MP, seeking the Minister to consider drafting a regulation to allow NSW councils to conduct their local government elections exclusively by postal voting.
- 2) Submit a motion to the annual Local Government NSW (LGNSW) conference calling on LGNSW to make representations on behalf of all NSW councils for the Minister for Local Government to consider drafting a regulation to allow NSW councils to conduct their local government elections exclusively by postal voting.

---

**ORDINARY COUNCIL MEETING - 10 APRIL 2018  
MOTION**

	<p><b>Mayor Ryan Palmer Councillor Sarah Smith</b></p> <p>That Council:</p> <ol style="list-style-type: none"><li>1) Write to the Minister for Local Government, The Hon. Gabrielle Upton MP, seeking the Minister to consider drafting a regulation to allow NSW councils to conduct their local government elections exclusively by postal voting.</li><li>2) Submit a motion to the annual Local Government NSW (LGNSW) conference calling on LGNSW to make representations on behalf of all NSW councils for the Minister for Local Government to consider drafting a regulation to allow NSW councils to conduct their local government elections exclusively by postal voting.</li></ol>
--	--

**ORDINARY COUNCIL MEETING - 10 APRIL 2018  
AMENDMENT**

	<p><b>Councillor John Nell</b> <b>Councillor Giacomo Arnott</b></p> <p>That Council defer Notice of Motion Item 1 to allow for the provision of information on postal voting conducted in Queensland and Victoria.</p>
--	--

The amendment on being put was lost.

**ORDINARY COUNCIL MEETING - 10 APRIL 2018  
AMENDMENT**

<b>083</b>	<p><b>Councillor Jaimie Abbott</b> <b>Mayor Ryan Palmer</b></p> <p>It was resolved that Council:</p> <ol style="list-style-type: none"><li>1) Write to the Minister for Local Government, The Hon. Gabrielle Upton MP, seeking the Minister to consider drafting a regulation to allow NSW councils to conduct their local government elections exclusively by postal voting and iVote, if available.</li><li>2) Submit a motion to the annual Local Government NSW (LGNSW) conference calling on LGNSW to make representations on behalf of all NSW councils for the Minister for Local Government to consider drafting a regulation to allow NSW councils to conduct their local government elections exclusively by postal voting and iVote, if available.</li></ol>
------------	---

The amendment on being put became the motion, which was put and carried.

**BACKGROUND REPORT OF: TONY WICKHAM – GOVERNANCE MANAGER**

**BACKGROUND**

Section 310B of the *Local Government Act 1993*, allows the City of Sydney Council and other local government bodies to conduct their elections exclusively by postal voting if the local government authority is prescribed under the *Local Government (General) Regulation 2005* (the regulation). At this time only the City of Sydney Council is authorised to conduct their election in this manner.

To enable other local government areas to conduct their elections exclusively by postal voting the regulation would need to be drafted and passed by the NSW Parliament, in consultation with the NSW Electoral Commission.

It should be noted that the NSW Electoral Commissioner has made recommendations regarding postal voting in the 'NSW Electoral Commission – Report on 2017 Local Government Elections'. Further, it is noted that an independent panel has been established to conduct a full inquiry into the iVote internet and telephone voting system being used at elections in NSW. The panel will consider matters such as: security, auditing and scrutineering issues. The inquiry is due to be completed by May 2018. The terms of reference of the panel are:

- 1) Whether the security of the iVote system is appropriate and sufficient.
- 2) Whether the transparency and provisions for auditing the iVote system area appropriate.
- 3) Whether adequate opportunity for scrutineering of the iVote systems is provided to candidates and political parties.
- 4) What improvements to the iVote system would be appropriate before its use at the 2019 State General Election.

Further details on the 'NSW Electoral Commission – Report on 2017 Local Government Elections' can be found from the Information Paper listed in this business paper, within pages 8 to 10 of the Commission's report.

Extract - Local Government Act 1993

Section 310B - Elections may be conducted exclusively by postal voting

(1) This section applies to:

- (a) the City of Sydney local government area, and
- (b) any other local government area prescribed by the regulations for the purposes of this section.

(2) A council may by a resolution made at least 18 months before the next ordinary election of councillors determine that voting at that election is to be conducted:

- (a) by means of attendance and postal voting, or
- (b) exclusively by means of postal voting.

(3) Voting at an ordinary election of councillors must be conducted by the same means, whether by means of attendance and postal voting or exclusively by means of postal voting, as the previous ordinary election of councillors was conducted unless the council has determined by a resolution that complies with subsection (2) to change the means of conducting the voting.

(4) Voting at a by-election must be conducted by the same means, whether by means of attendance and postal voting or exclusively by means of postal voting, as the previous ordinary election of councillors was conducted unless the council determines by a resolution made not later than 14 days after the casual vacancy occurred to change the means of conducting the voting.

(5) Voting at a constitutional referendum or council poll must be conducted by the same means, whether by means of attendance and postal voting or exclusively by means of postal voting, as the previous ordinary election of councillors was conducted unless the council determines by a resolution made at the same meeting that the council determined to hold the referendum or take the poll to change the means of conducting the voting.

(6) An election, constitutional referendum or council poll to be conducted exclusively by means of postal voting is to be conducted in accordance with the regulations.

**ATTACHMENTS**

Nil.

**NOTICE OF MOTION**

**ITEM NO. 2**

**FILE NO: 18/63681  
EDRMS NO: PSC2017-00019**

**BOBS FARM DRAINAGE**

**COUNCILLOR: SARAH SMITH  
GLEN DUNKLEY**

---

**THAT COUNCIL:**

- 1) Request the General Manager to present a report to Council on flood issues affecting residents of Marsh Road, Bobs Farm, in particular how Council could:
  - a. Assist the residents of Marsh Road to obtain approvals so that the Marsh Road levee banks can be maintained at a level that would reduce the flooding effects from king tides onto their properties.
  - b. Establish a program of ownership, management and maintenance of the existing privately owned flood gates directly adjacent Marsh Road.

---

**ORDINARY COUNCIL MEETING - 10 APRIL 2018  
MOTION**

<b>084</b>	<p><b>Councillor Sarah Smith Councillor Glen Dunkley</b></p> <p>It was resolved that Council:</p> <ol style="list-style-type: none"><li>1) Request the General Manager to present a report to Council on flood issues affecting residents of Marsh Road, Bobs Farm, in particular how Council could:<ol style="list-style-type: none"><li>a. Assist the residents of Marsh Road to obtain approvals so that the Marsh Road levee banks can be maintained at a level that would reduce the flooding effects from king tides onto their properties.</li><li>b. Establish a program of ownership, management and maintenance of the existing privately owned flood gates directly adjacent Marsh Road.</li></ol></li></ol>
------------	---

**BACKGROUND REPORT OF: JOHN MARETICH – ASSET SECTION MANAGER**

**BACKGROUND**

The earthen levee that separates Tilligerry Creek and the properties on the northern side of Marsh Road pre-dates the 1940s. The levee passes through many properties

and reduces the effects of tidal flows on Marsh Road properties. It should be noted however, that king tides have overtopped the levee bank, resulting in salt water going onto private properties and Marsh Road.

As the levee is made from earthen material, it does need continual maintenance to preserve its height. Without maintenance an earthen levee bank height reduces with settlement and overtopping king tides. The effectiveness of the levee relies on the whole structure being maintained.

The levee is situated in an environmentally sensitive area hence there are complexities with gaining the required State Government approvals to undertake basic maintenance. Some Marsh Road residents have expressed concern that they do not have the expertise to gain the appropriate approvals for levee maintenance.

The cost of works required to gain approvals is not scoped and hence not known.

At present Council owns and maintains the pipelines under Marsh Rd, though the actual flood gates along this stretch of road were installed, owned and maintained by private property owners. Since the flood gates were installed, quite a few of the original property owners have moved away resulting in the floodgates not being maintained. The current residents have expressed that some of these flood gates are not working.

On Marsh Road there are some 14 flood gates typically made from plywood, hessian, and conveyor belts on a timber frame. These flood gates are not operating to modern standards and if they were upgraded would cost in the order of \$190,000 which includes environmental approvals and traffic control being one of the larger expenses.

It should be noted that Council has undertaken minor repairs to some of the floodgates in the past while repairing Council's pipeline.

## **ATTACHMENTS**

Nil.



**NOTICE OF MOTION**

**ITEM NO. 3**

**FILE NO: 18/69766  
EDRMS NO: PSC2017-00019**

**COUNCIL MEETING WEBCASTING**

**COUNCILLOR: GIACOMO ARNOTT**

---

**THAT COUNCIL:**

- 1) Council meeting webcast recordings remain publicly available online on the Council website for one year after they are broadcast.

---

**ORDINARY COUNCIL MEETING - 10 APRIL 2018  
MOTION**

<b>085</b>	<b>Councillor Giacomo Arnott Councillor Jaimie Abbott</b>  It was resolved that Council meeting webcast recordings remain publicly available online on the Council website for one year after they are broadcast.
------------	---

**BACKGROUND REPORT OF: TONY WICKHAM – GOVERNANCE MANAGER**

**BACKGROUND**

Council commenced webcasting its Ordinary meetings in February 2018. The webcasting is broadcast 'live' and recordings are made available from Council's website following the meetings for the community to access.

Council's current webcasting service costs \$10,200 per annum and includes up to 100GB per month.

Based on the meetings held to date in 2018, the current average monthly usage would indicate that the monthly limit should not be exceeded, should Council adopt this Notice of Motion.

**ATTACHMENTS**

Nil.

There being no further business the meeting closed at 6.35pm.