

**MINUTES OF A SPECIAL MEETING OF THE SOUTHERN MIDLANDS
COUNCIL HELD ON WEDNESDAY 10TH SEPTEMBER 2014 AT THE
MUNICIPAL OFFICES, 85 MAIN STREET, KEMPTON COMMENCING
AT 10:10 A.M.**

INDEX

1. PRAYERS.....	3
2. ATTENDANCE	3
3. APOLOGIES.....	3
4. APPLICATION FOR LEAVE OF ABSENCE.....	4
5. MINUTES.....	4
6. NOTIFICATION OF COUNCIL WORKSHOPS.....	4
7. QUESTIONS WITHOUT NOTICE.....	4
8. CONSIDERATION OF SUPPLEMENTARY ITEMS TO THE AGENDA.....	4
9. DECLARATIONS OF PECUNIARY INTEREST.....	4
10. PUBLIC QUESTION TIME.....	5
10.1 PERMISSION TO ADDRESS COUNCIL	5
11. MOTIONS OF WHICH NOTICE HAS BEEN GIVEN UNDER REGULATION 16 (5) OF THE LOCAL GOVERNMENT (MEETING PROCEDURES) REGULATIONS 2005	5
NIL.....	5
12. COUNCIL ACTING AS A PLANNING AUTHORITY PURSUANT TO THE LAND USE PLANNING AND APPROVALS ACT 1993 AND COUNCIL’S STATUTORY LAND USE PLANNING SCHEME	6
12.1 DEVELOPMENT APPLICATIONS.....	6
12.1.1 <i>Development Application DA 2014/84 – Retaining Wall, Fencing and Earthworks on a Heritage Listed Property (Historic Cultural Heritage Act 1995) at St Anne’s Church, Church Lane Dysart</i>	<i>6</i>
12.3 MUNICIPAL SEAL (PLANNING AUTHORITY).....	27
12.4 PLANNING (OTHER).....	27
13. OPERATIONAL MATTERS ARISING (STRATEGIC THEME – INFRASTRUCTURE).....	27
13.1 ROADS.....	27
13.2 BRIDGES.....	27
13.3 WALKWAYS, CYCLE WAYS AND TRAILS	27
13.4 LIGHTING	27
13.5 BUILDINGS	27
13.6 SEWERS.....	27
13.7 WATER.....	27
13.8 IRRIGATION	27

13.9	DRAINAGE.....	27
13.10	WASTE	27
13.11	INFORMATION, COMMUNICATION TECHNOLOGY	27
13.12	OFFICER REPORTS – WORKS & TECHNICAL SERVICES (ENGINEERING)	28
14.	OPERATIONAL MATTERS ARISING (STRATEGIC THEME – GROWTH)	28
14.1	RESIDENTIAL.....	28
14.2	TOURISM	28
14.3	BUSINESS	28
14.4	INDUSTRY	28
14.5	INTEGRATION	28
15	OPERATIONAL MATTERS ARISING (STRATEGIC THEME –LANDSCAPES).....	28
15.1	HERITAGE	28
15.2	NATURAL	28
15.3	CULTURAL	28
15.4	REGULATORY (OTHER THAN PLANNING AUTHORITY AGENDA ITEMS).....	28
15.5	CLIMATE CHANGE	28
16	OPERATIONAL MATTERS ARISING LIFESTYLE.....	28
16.1	COMMUNITY HEALTH AND WELLBEING.....	28
16.2	YOUTH	28
16.3	SENIORS	29
16.4	CHILDREN AND FAMILIES.....	29
16.5	VOLUNTEERS	29
16.6	ACCESS	29
16.7	PUBLIC HEALTH	29
16.8	RECREATION	29
16.9	ANIMALS.....	29
16.10	EDUCATION.....	29
17	OPERATIONAL MATTERS ARISING (STRATEGIC THEME – COMMUNITY).....	29
17.1	RETENTION	29
17.2	CAPACITY AND SUSTAINABILITY	29
17.3	SAFETY	29
17.4	CONSULTATION AND COMMUNICATION	29
18.	OPERATIONAL MATTERS ARISING (STRATEGIC THEME – ORGANISATION)	30
18.1	IMPROVEMENT	30
18.2	SUSTAINABILITY	30
18.2.1	<i>Maher’ Point Property (PID 5842047 – Volume 115861 – Folio 1) – Sale of Maher’s Point Cottage</i>	<i>30</i>
18.3	FINANCES.....	41
19.	INFORMATION BULLETINS.....	41
20.	MUNICIPAL SEAL	41
21.	CONSIDERATION OF SUPPLEMENTARY ITEMS TO THE AGENDA.....	41
22.	BUSINESS IN “CLOSED SESSION “	41
23.	CLOSURE 11.07 A.M.	41

MINUTES OF A SPECIAL MEETING OF THE SOUTHERN MIDLANDS COUNCIL HELD ON WEDNESDAY 10TH SEPTEMBER 2014 AT THE MUNICIPAL OFFICES, 85 MAIN STREET, KEMPTON COMMENCING AT 10:10 A.M.

OPEN COUNCIL MINUTES

1. PRAYERS

Councillors recited the Lord’s Prayer.

2. ATTENDANCE

Mayor A E Bisdee OAM, Clr A R Bantick, Clr M Connors, Clr D F Fish, Clr J L Jones OAM and Clr A O Green.

In Attendance: Mr T Kirkwood (General Manager), Mr D Mackey (Manager Development and Environmental Services), Mr D Cundall (Planning Officer) and Mrs K Brazendale (Executive Assistant).

3. APOLOGIES

Deputy Mayor M Jones OAM and Clr B Campbell

Note: Clr B Campbell has previously been granted leave of absence for the period 12th August 2014 – 23rd September 2014.

C/14/09/003/19815 DECISION

Moved by Clr A O Green, seconded by Clr J L Jones OAM

THAT the apologies from Deputy Mayor M Jones OAM and Clr B Campbell be received.

CARRIED

Vote For	Councillor	Vote Against
√	Mayor A E Bisdee OAM	
√	Clr A R Bantick	
√	Clr M Connors	
√	Clr D F Fish	
√	Clr A O Green	
√	Clr J L Jones OAM	

4. APPLICATION FOR LEAVE OF ABSENCE

Nil.

5. MINUTES

Nil.

6. NOTIFICATION OF COUNCIL WORKSHOPS

Not applicable.

7. QUESTIONS WITHOUT NOTICE

Not applicable.

8. CONSIDERATION OF SUPPLEMENTARY ITEMS TO THE AGENDA

Not applicable.

9. DECLARATIONS OF PECUNIARY INTEREST

In accordance with the requirements of Part 2 Regulation 8 of the *Local Government (Meeting Procedures) Regulations 2005*, the chairman of a meeting is to request Councillors to indicate whether they have, or are likely to have, a pecuniary interest in any item on the Agenda.

Accordingly, Councillors are requested to advise of a pecuniary interest they may have in respect to any matter on the agenda, or any supplementary item to the agenda, which Council has resolved to deal with, in accordance with Part 2 Regulation 8 (6) of the *Local Government (Meeting Procedures) Regulations 2005*.

Nil.

10. PUBLIC QUESTION TIME

Not applicable.

10.1 PERMISSION TO ADDRESS COUNCIL

Not applicable.

**11. MOTIONS OF WHICH NOTICE HAS BEEN GIVEN UNDER
REGULATION 16 (5) OF THE LOCAL GOVERNMENT (MEETING
PROCEDURES) REGULATIONS 2005**

Nil.

12. COUNCIL ACTING AS A PLANNING AUTHORITY PURSUANT TO THE LAND USE PLANNING AND APPROVALS ACT 1993 AND COUNCIL'S STATUTORY LAND USE PLANNING SCHEME

Session of Council sitting as a Planning Authority pursuant to the Land Use Planning and Approvals Act 1993 and Council's statutory land use planning schemes.

12.1 DEVELOPMENT APPLICATIONS

12.1.1 Development Application DA 2014/84 – Retaining Wall, Fencing and Earthworks on a Heritage Listed Property (Historic Cultural Heritage Act 1995) at St Anne's Church, Church Lane Dysart

File Reference: T5462693

APPLICANT: Lisa and Paul Rudd
LAND OWNER: Lisa and Paul Rudd
REPORT AUTHOR: David Cundall (Planning Officer)
DATE: 5th September 2014

ATTACHMENTS:

- 1. Development Application.**
- 2. Representations (Enclosure).**
- 3. Notice of Heritage (to be provided at the Council Meeting)**

THE PROPOSAL:

The Applicants Mr and Mrs Rudd, have applied to the Southern Midlands Council for a Planning Permit to construct a retaining wall, fencing and 'retrospective approval' of earthworks at St Anne's Church, Dysart.

The earthworks were undertaken, earlier this year, without Council Approval. The Applicant is therefore seeking approval for these earthworks and the modifications to these works.

The land was recently subject to an Application for a change of use and other development (caretakers residence, community art space and shed) in the Development Application DA 2014/46. Council refused to grant a Planning Permit for that Application at the June 2014 Council Meeting.

The land is zoned 'Community Use' under the *Southern Midlands Planning Scheme 1998* ("the Scheme") and the site is listed in Schedule 4 of the Scheme as a local building and works of historic significance. The site is also listed on the Tasmanian Heritage Register. The development requires approval by the Tasmania Heritage Council pursuant to the *Historic Cultural Heritage Act 1995* ("Heritage Act").

The Application is assessed at Council's discretion in accordance with Section 57 of the *Land Use Planning and Approvals Act 1993*.

As of the date of this report, the Tasmanian Heritage Council has not yet notified the Southern Midlands Council of the Heritage Council's decision. It is anticipated a decision by the Heritage Council will be received prior to the Southern Midlands Council Meeting (10th September 2014).

The Application is recommended for Approval by Council Officers subject to conditions.

Works without Council Approval

The owner has undertaken earthworks and site works without approval from the Tasmanian Heritage Council or Southern Midlands Council. The earthworks are clearly depicted in the photographs provided in this report and were previously subject to assessment in the Development Application DA 2014/46. This Application was tabled and refused (refusal to grant a permit) at the June 2014 Council Meeting.

The earthworks are a cut and fill as shown between 'Photos 1 - 4' of this report and as partly depicted in the provided plans. These earthworks have caused distress in the community as they are located close to graves on the land. The intent of the works was to allow room for a proposed extension to the church for a 'caretakers dwelling' (DA 2014/46).

Engineering advice was provided to Council by a suitably qualified person stating that the cut is currently stable, however monitoring will be necessary and that the cut should be retained within 6 months (letter was dated June 2014).

There is no proposed development of the church building or a change of use of the church building as part of this Application.



Photo 1_Photo looking south from Church Lane at the rear of St Anne's.



Photo 2_Demonstrating the distance between a grave and the cut behind St Anne's.



Photo 3_Photo looking east showing the graves along the southern boundary of St Anne's



Photo 4_Photo demonstrates the fill and a possible car parking space on the 'Church Lane' side of St Anne's.

Proposed Use of Site

The proposal is not to change the use of the land nor intensify the existing use of the land. The Applicant is seeking a permit for the recent earthworks and the retaining wall and fencing.

SITE DESCRIPTION

The land is a moderately sloped 4444m² lot. On site is a cemetery, landscaping and the 1870s sandstone church. There is also two very large pine trees located behind the church. The land is bounded by Church Lane, Dysart Drive, Ely Street and a rural residential lot.

The land also currently contains a shipping container.

THE APPLICATION

The Applicant submitted a completed application form, site plan and elevation drawings. The plans were prepared by the Applicant as concept drawings for the purposes of assessment under the Act. The plans were not prepared by an accredited person. This is a normal and acceptable practice for planning purposes.

There is sufficient information for the Planning Authority, Heritage Tasmania and any member of the public to form a view on the Development Application and for the Authority to assess under the relevant legislation.

Should the Application be granted a permit by Council then final design drawings will need to be completed by an accredited person and re-submitted to Council for a Building Permit. The Applicant shall also demonstrate the discharge of any concentrated stormwater from the proposed retaining wall.

THE PLANNING SCHEME ASSESSMENT

Statutory Status in Scheme

The use/development invokes Clause 11.5 of the Planning Scheme and Section 57 of the Act for:

- a) Works to a place listed in Schedule 4 of the Scheme in accordance with Part 10.1; and
- b) The proposed works are not exempt from requiring Heritage Approval under the Heritage Act 1995 and is therefore lodged in accordance with

Section 34 of the Heritage Act and assessed under Section 57 of the *Land Use Planning and Approvals act 1993*.

Public Notification and Representation

The application was advertised, and all adjoining owners notified on Saturday 9th August 2014 for the standard 14 day notification period.

Seven (7) representations were received. The representations are enclosed in their entirety for the Elected Members review separately to this report. The contents of these representations are included verbatim in the table below with personal details omitted.

The representations raise a concern that the distance between the proposed fence (and hedge) and existing graves is too narrow and would restrict access to the land and future use of the land.

Representation 1
<p>I am writing in regard to the APPLICATION of the RETAINING WALL, FENCING and EARTHWORKS APPLICATION AT ST ANNES CHURCH, CHURCH LANE DYSART.</p> <p>I would like to OPPOSE this APPLICATION for the following REASONS FIRSTLY the DISTANCE of just ONE METRE from the GRAVES to a WIRE FENCE is not ADEQUATE, this small distance would RESTRICT visits to the graves by the ELDERLY AND HANDICAPPED. If people were using WALKING FRAMES, WHEELCHAIRS, OR MOTORISED SCOOTERS this DISTANCE would not suffice. A DISTANCE of at least TWO METERS should be allowed.</p> <p>A visit to a cemetery is to show respect for your loved ones buried there, not to have to shuffle against the graves and a wire fence.</p> <p>SECONDLY the HEIGHT of the RETAINING WALL at just 2.5 METRES HIGH is not high enough in the deepest part of the cut. THE APPLICATION states that this would be enough to retain the natural slope of the graveyard maybe so if its going to be STEPPED DOWN but I think the retaining wall should be at least another TWO METRES high to allow the ground to be level for easier access.</p> <p>THIRDLY the planting of the HEDGING PLANTS at only ONE METRE from the graves is VASTLEY INADEQUATE as an avid gardener I know for a fact that hedging plants depending on what variety can grow at least ONE METRE wide and also need regular trimming something I don't think THE RUDDS would do going by the DISGRACE of the graveyard since there purchase, I.E tree limbs and other debris just piled in a heap at the front of the church.</p> <p>FINALLY after viewing the PLANS at KEMPTON COUNCIL last week I also noted that there were no plans for DRAINAGE, after questioning the COUNCIL OFFICER where was the drainage going to be placed his remark was I guess it would be AG PIPE AND IT WOULD HAVE TO GO SOMEWHERE!!! I thought a PLANNING APPLICATION had to show such things obviously not at SOUTHERN MIDLANDS COUNCIL. IF AG PIPE was to be used the root system of the hedging plants would interfere with this drainage system in a matter of 18-24 MONTHS something that the APPLICANT hasn't thought of.</p>

I think its about time the council fixed this debacle and in a matter of URGENCY because myself and many other people feel the same way.

Representation 2

In reference to plans regarding retaining wall at Dysart Cemetery. I feel 1m from head stones is not enough room to fence and hedge. I have very little room to get around my husband's grave as it is. What kind of hedging plants are going to be put there?

Large ones will cause a problem when wet roots will and cold cause a problem under graves. As for drainage where will that be going. I fee it will not solve the problem only cause more.

In regard to maintenance none is done at the moment, so how do we know the hedge will be clipped and looked after. I am not at all happy with the things already done and feel it will be no better.

Representation 3

In reference to the plans regarding retaining wall at Dysart cemetery.

I feel distance from headstones is not enough room for hedge and fence.

There isn't much room to move around grave of my father now. What kind of hedge is going to be put there? It will need to be trimmed and looked after, also roots could be a big problem under graves.

Drainage where will that go?

Problem not solved.

Representation 4

We believe the proposed retaining wall distance of 1 metre from the graves is insufficient and should be at least 2 metres for the comfort and safety of visitors to the graveyard especially anyone needing wheel chair access. We also believe also believe people concerned about the graveyard should be given more information on the proposed carpark. We still believe there shouldn't be any structures built on the graveyard itself, this includes a carpark. We hope the families of those buried in the graveyard and those fighting for the safe keeping of it are kept up to date about what is happening before anything drastic is done again by the Rudds.

Representation 5

The Council Meeting held at the Bagdad Hall it was agreed there should be a 2 metre leave way from the actual graves.

Council and all attended agreed, and now I have viewed the plans it's only 1 metre to a wire fence.

My mother is 78 and will one day need to either use a wheelchair or a walking frame.

I had a risk assessment done, it was found a wheelchair could not be turned in a 1metre space, so to

visit the bottom side you would have to walk backwards. Which would be a risk of the person falling out causing injuries.

So Council keep to your words, for once, 2 bloody metres please.

Also in the plans there is no drainage, so what happens to the water runoff, if corrugated agpipe, is used it will only block up with the roots of the so called hedge.

It was agreement I though, for the Rudds had to do caretaking of the cemetery.

There doesn't seem to be, anything done only making a terrible mess and a lot of heart break.

Also at the meeting, Lisa was told to clean the rubbish ip outside the church to date nothing has been done, so what will be done with the caretaking of the cemetery in the future I ask you.

Representation 6

I inspected the plans for the proposed retaining wall at St Annes church Dysart. My understanding of the proposed work was to be carried out in the following manner. That the retaining wall was to be 2 metres from the graves, not 1. There is no wheel chair access to the graves nobody with a handicap could access their loved ones at all. There is to be an opening in the middle of the cemetery? Where would this be as there are graves in the cemetery that are unmarked .They are only mounds but they are still there .I personally cannot see any way that there could be any gate way or entry in to the graves . The opening at the top of Eli Street is the only other way in . At the moment this is still obstructed with the caravan and container that we were told at the meeting that they were to be removed .There is still rubbish at the bottom of Dysart Drive where the Rudds put it from around the church .They were also told to remove this ! It is still there . They are presumed to be owner and care taker of the said Church and Cemetery .They have done nothing .So how can we believe that if the retaining wall is to be passed how will we know that they will maintain it ? They have not given any reassurance at all in keeping there word .We would like to see the church grounds returned to its original state .Also there is to be a car park for two vehicles between two trees where is the room for safety in this .? If the heritage pass this work we hope that they (the Rudds) will comply with there decision and that the work will be carried out to everyone's satisfaction

Representation 7

In reference to retaining wall, fencing and earthworks at St Annes church cemetery, I believe 1 metre between my father's grave and wire fence would not be adequate distance for family to gather around grave. As to the hedging behind fence what sort of shrubs are to be used. If these are to grow quite high and overhang the fence, not kept pruned and maintained, this could cause problems in winter with family getting wet whilst gathering also I am concerned about rootage problems growing into the grave area and potential damage being done. Could wire fence perhaps be placed further back and hedge not be planted at all this would overcome my concerns. Also on a recent visit to the grave I found it extremely difficult to place flowers with the temporary fencing that is in place at the moment I am to soon undergo a knee replacement and there is not enough room to get around grave, could this

be please looked at in the interim.

PLANNING SCHEME ASSESSMENT

Zone - Community Use Zone

St Anne's church and graveyard is in the Community Use Zone.

Purpose of Zone

The Community Use Zone recognises land used for facilities and services that are primarily used for, and accessed by, the public such as schools, churches, child care centres, community halls, sporting fields, playgrounds and Council offices.

The zone allows for the continued use and future development of these sites for the benefit of the community.

Intent of Zone

The Scheme lists a set of four (4) zone intent statements. These statements shall be considered by Council in making a decision. Each intent statement below is provided with a comment from the Planning Officer.

- 1. give priority to land being used for community purposes such as schools, community centres, crèches, churches, sports fields, playgrounds and the like;***

The proposed retaining wall and works, with appropriate conditioning by the Heritage Council and Southern Midlands Council, would ensure the proposal meets this intent.

The existing 'community use' of the cemetery will continue.

- 2. ensure that such areas are protected from inappropriate development that would impact on the use and development of the facilities;***

The representations have raised an issue that the proposed fencing, at 1m from the graves is too close to allow convenient and considerate access for visitors to the site.

The representations have claimed that 1m between the graves and the fence would prevent convenient access for persons requiring assistance in wheel chairs or walking frames.

Council Officers agree that 1m is too close and recommend a condition on the Permit that the distance between the graves and the fence is a minimum 2m. The implication of the fencing in proximity to the proposed retaining wall and cut and fill is such that future use of the cemetery would be restricted. The fence would also become the logical dividing boundary between any future use of the church building or even any future subdivision of the land. The planning scheme actively encourages a reasonable separation distance between land usage to reduce potential land use conflicts.

This rationale behind the condition is considered reasonable given that the land has been subject in recent years to both a permit to subdivide the land (2010) and an application to change the use of the church (2014). It is also not unusual for persons to use former churches for dwelling or other purposes.

The proposed hedging should either be on the fence side opposite to the graves or allow sufficient space between the graves and the expected width of the plant species. Planting should not cause any inconvenience to persons visiting the cemetery. The ongoing maintenance of the plants and access of persons to the site is a responsibility of the cemetery manager.

The current cut and fill works have been fenced for safety reasons. This has restricted access for persons seeking to visit the cemetery. The safety fencing works are a necessary safety precaution due to the hazards presented by the cut and fill on a publicly accessed site (and construction site). They have caused concern in the community as expressed in the representations (and in recent dealings with members of the community). It is therefore recommended that the proposed works are undertaken in a reasonable timeframe to better conform with the Objectives of the Planning Scheme and to ensure stabilisation of the bank.

Council Officers recommend that the works are to commence within the following timeframes:

- Works shall commence on site within 2 weeks (14 days) of receipt of a Building Permit issued under the *Building Act 2000*.
3. *ensure that the facilities have minimal impact of the amenity and use of neighbouring properties;*

The proposed works do not impact on the adjoining properties.

4. *identify areas that may be required for community use in the future.*

The Application has included details to separately fence a part of the land. The proposed fence is a post and wire fence similar to the existing fence on the Dysart Drive side of the property.

A post and wire fence would restrict access to certain parts of the site at the discretion of the cemetery manager. Should however more land be required to serve the cemetery then this is also at the discretion and responsibility of the cemetery manager.

A condition on any permit issued to ensure a 2m separation distance between the graves and the fence would ensure better compliance with this intent.

Part 10 – Historic Buildings and Works

‘St Anne’s Church, 5 Church Lane’ is listed in Schedule 4 of the Scheme. Part 10 of the Scheme provides the standards for assessment of properties listed in Schedule 4 of the Scheme.

Accordingly no person shall carry out any use or development with respect to a place listed in Schedule 4 without first applying to Council for a Planning Permit.

Part 10.1 (e) of the Scheme states that ‘Council must refuse an application that, will significantly detract from the heritage character or importance of any place listed in Schedule 4’.

Under the Scheme, Council has the ability to form a Heritage Advisory Committee for advice on matters of heritage significance. Council currently does not have a Committee and instead relies on in-house expertise in accordance with contemporary guidelines and experience or seek advice from external parties such as Heritage Tasmania or other suitably experienced or qualified persons.

In this case, as the property is listed on the Tasmanian Heritage Register, Council has sought the advice from Heritage Tasmania and, in fulfilling duties prescribed under the Heritage Act, has referred the Development Application to the Tasmania Heritage Council for assessment and a formal decision.

Tasmanian Heritage Council:

The Tasmanian Heritage Council, as of the date of this report, has not made a final decision on the Application.

The Planning Officer has held discussions with Officers at Heritage Tasmania and was advised that a decision on the matter will be provided prior to the Council Meeting of the 10th September 2014. Officers at the Heritage Tasmania will be recommending approval subject to conditions.

Heritage Officers are likely to recommend the following:

- A 6 month timeframe for the completion of the retaining wall and the fencing to ensure stabilisation of the bank prior to autumn/winter 2015.
- Partly batter the cut behind the church in the vicinity of the pine trees and Church Lane to provide a better integration between the church and the cemetery.
- The fill area located in front of the church is to be removed and re-used to batter the specified area behind the church and where required, re-instated behind the retaining wall.

Any conditions of the Heritage Council must be included in any permit issued by the Council.

Schedule 5 - Parking

The Application has included details of a car parking area in the vicinity of the pine trees. The Applicant has not provided any details of the proposed surface, purpose, car parking spaces, vegetation removal, levels or assessment of any impact on graves or the cultural sensitivities of the site.

The Planning Scheme does not require a parking area as part of this Application. The Application is for works to the site and does not constitute a change of use of the land or an intensification of the use. The proposed fence and retaining wall would not generate additional traffic to the site.

Persons visiting the cemetery have always parked on the road verge. Council does not have any records of complaints regarding this existing arrangement.

It is recommended that the car parking area is not approved by Council.

OTHER MATTERS

Shipping Container (currently located on site)

The Planning Scheme provides the following in accordance with Schedule 1 'Exemptions from Planning Approval':

Temporary Buildings or Structures:

The erection of buildings or structures needed temporarily in connection with and during the construction of any development approved under this Scheme provided:

- construction work does not exceed a period of 12 months;*
- the building or structure is removed following the completion of the construction work; and*
- the building or structure is not used for accommodation purposes.*

Accordingly a shipping container can be stored on site whilst construction works, including repairs and maintenance of the church, are in place. Council will however require a timeframe for the removal of the container to be specified by the Applicant in writing.

Should the landowner seek further works (approvals) for the further development of the church then the period in which to store and use the container for construction purposes can be extended.

Stability of the excavation works

Engineering advice was provided to Council as part of the previous Development Application (DA 2014/46) and included the following:

“The cut has been excavated to a steep angle (approx. 80-90o), and steeper than would normally be prescribed (perhaps 45-60o) for weathered sandstone/clays. In two areas the cut is also within close proximity of grave sites (<2m). As a result as part of the building works I recommended that the cut be retained as soon as practical. I understand that this is detailed in the plans.

The site cut appears to be stable in its present state however it must be monitored if left uncovered for an extended period (i.e weeks to months). If the cut starts to show any signs of erosion from rainfall or other causes then the cut should be covered with jute/hessian or other suitable geofabric until the retaining wall is in place. I would suggest a time frame is put on the retaining wall works to ensure the cut doesn't remain exposed indefinitely (perhaps 6 months?).”

It is recommended by Council Officers that works to retain the wall commence as soon as possible. It is recommended by Council Officers that construction works for the wall commence within 14 days of the issue of a Building Permit in accordance with the *Building Act 2000*.

CONCLUSION

This report has assessed a proposal seeking ‘retrospective approval’ of cut and fill works, a retaining wall and fencing at a property listed in Schedule 4 of the Scheme at St Anne’s Church, Church Lane Dysart in accordance with the *Southern Midlands Planning Scheme 1998* and the *Land Use Planning and Approvals Act 1993*.

7 Representations were received during the public notification of the development. The recommended conditions of approval should address these concerns and provide a practical solution to allowing convenient and considerate access to the site and reduce potential ongoing or future land use conflict on the land.

Council Officers also recommend that construction works to retain the cut behind the church are to commence within 14 days of the issue of a Building Permit by the Permit

Authority (Council) to ensure works are underway in a reasonable timeframe to both stabilise the wall and fast track public access to the site.

The Tasmania Heritage Council has not yet notified the Southern Midlands Council of a decision on the application however Heritage Officers have informed Council Officers that a decision shall be finalised prior to the Southern Midlands Council meeting 10th September 2014. Council must include any conditions of approval in the notification to the Applicant along with any advice or recommendations by the Heritage Council.

The Application is recommended for approval by Council subject to conditions.

RECOMMENDATION

THAT, in accordance with the provisions of the *Southern Midlands Planning Scheme 1998* and Section 57 of the *Land Use Planning & Approvals Act 1993*, Council Approve the Development Application (DA 2014/84) for a retaining wall, fencing and earthworks on a Schedule 4 list property (and per the *Historic Cultural Heritage Act 1995*) at St Anne’s Church, Church Lane Dysart and that a Planning Permit be issued with the following conditions:

General

- 1) The use or development must be carried out substantially in accordance with the application for planning approval, the endorsed drawings and with the conditions of this permit and must not be altered or extended without the further written approval of Council.
- 2) This permit shall not take effect and must not be acted on until 15 days after the date of receipt of this letter or the date of the last letter to any representor, which ever is later, in accordance with section 53 of the *land Use Planning and Approvals Act 1993*.
- 3) Construction works shall commence within 14 days of the issue of a Building Permit issued by the Council Permit Authority in accordance with the *Building Act 2000*.
- 4) The retaining wall and fencing shall be completed and accompanied by a Certificate of Final Inspection by the 31st of March 2015.

Heritage Tasmania

- 5) Compliance with any conditions or requirements of the Tasmanian Heritage Council in the attached ‘Notice of Heritage Decision’ No. #####.

Services

- 6) The developer must pay the cost of any alterations and/or reinstatement to existing services, Council infrastructure or private property incurred as a result of the development. Any work required is to be specified or undertaken by the authority concerned.

Parking Area

- 7) The parking area as depicted on the site plan(s) provided as part of the Application is not approved by Council.

Explanation of Condition

The proposed parking area is not a requirement of the Planning Scheme.

Stormwater

- 8) Drainage from the proposed development must drain to a legal discharge point to the satisfaction of Council's Plumbing Inspector (Shane Mitchell 6259 3003) and in accordance with a permit issued by the Permit Authority in accordance with the *Building Act 2000*.

Construction Amenity

- 9) The development must only be carried out between the following hours unless otherwise approved by the Council's Manager of Development and Environmental Services:
- | | |
|---------------------------------------|-------------------------|
| Monday to Friday | 7:00 a.m. to 6:00 p.m. |
| Saturday | 8:00 a.m. to 6:00 p.m. |
| Sunday and State-wide public holidays | 10:00 a.m. to 6:00 p.m. |
- 10) All works associated with the development of the land shall be carried out in such a manner so as not to unreasonably cause injury to, or prejudice or affect the amenity, function and safety of any adjoining or adjacent land, and of any person therein or in the vicinity thereof, by reason of:
- Emission of noise, artificial light, vibration, odour, fumes, smoke, vapour, steam, ash, dust, waste water, waste products, grit or otherwise.
 - The transportation of materials, goods and commodities to and from the land.
 - Obstruction of any public footway or highway.
 - Appearance of any building, works or materials.
 - Any accumulation of vegetation, building debris or other unwanted material must be disposed of by removal from the site in an approved manner. No burning of such materials on site will be permitted unless approved in writing by the Council's Manager of Development and Environmental Services.
- 11) Public roadways must not be used for the storage of any construction materials or wastes, for the loading/unloading of any vehicle or equipment; or for the carrying out of any work, process or tasks associated with the project during the construction period.
- 12) The developer must make good and/or clean any road surface or other element damaged or soiled by the development to the satisfaction of the Council's Manger of Works and Technical Services.

The following advice applies to this permit:

- This Planning Permit does not imply that any other approval required under any other legislation has been granted.
- This Planning Permit is in addition to a Building Permit. Construction and site works must not commence until a Building Permit has been issued in accordance with the *Building Act 2000*.

- C. Any shipping containers located on site are to be removed at the completion of the construction works, including restoration works of the church, unless the necessary planning and building permit for the container has been obtained by the developer/owner.
- D. The proposed hedging should use species unlikely to encroach or interfere in the normal use of the cemetery.
- E. If you notify Council that you intend to commence the use or development before the date specified above you forfeit your right of appeal in relation to this permit.

C/14/09/021/19816 DECISION

Moved by Clr A O Green, seconded by Clr A R Bantick

THAT:

- 1. Development application DA 2014/84 for a retaining wall, earthworks and fencing at 5 Church Lane, Dysart, received on 7 August 2014, be refused on the following grounds:
 - A. The proposal is not in accordance with the intent of the Community Use Zone, as expressed in Clause 7.1(a) of the Southern Midlands Planning Scheme 1998, as it will restrict the use of, and access to, the cemetery by the public.

Note: Clause 7.1(a) of the planning scheme is:

The Community Use Zone recognises land used for facilities and services that are primarily used for, and accessed by, the public such as schools, churches, child care centres, community halls, sporting fields, playgrounds and Council offices. The zone allows for the continued use and future development of these sites for the benefit of the community.

- B. The proposal does not accord with the community's expectation of the use of the land as a public cemetery.
- C. The proposal does not meet the intent of the Community Use Zone, as expressed in Clause 7.2.1(a), in that it does not give priority to the cemetery land being used for cemetery use.

Note: Clause 7.2.1(a) of the planning scheme is:

The intent of the Community Use Zone is to:

- (a) *give priority to land being used for community purposes such as schools, community centres, creches, churches, sports fields, playgrounds and the like;*

- D. The proposal does not meet the intent of the Community Use Zone, as expressed in Clause 7.2.1(b), in that it is considered to be inappropriate development that would impact on the use of the cemetery, as the proposed fence and retaining wall separating the land around the church building from the land used as a cemetery is too close to the existing graves.

Note: Clause 7.2.1(b) of the planning scheme is:

The intent of the Community Use Zone is to:

- (a) ...
- (b) *ensure that such areas are protected from inappropriate development that would impact on the use and development of the facilities;*

E. The proposal has failed to demonstrate that it meets the requirements of the planning scheme in respect of Clause 7.1(a) and Clause 7.2.1(a) and (b).

2. The owners be directed that the fill material excavated from the cut behind and to the southern side of the church building, and currently forming a bank in front of the church building, be returned to the cut to reinstate the natural ground surface level. This work must:

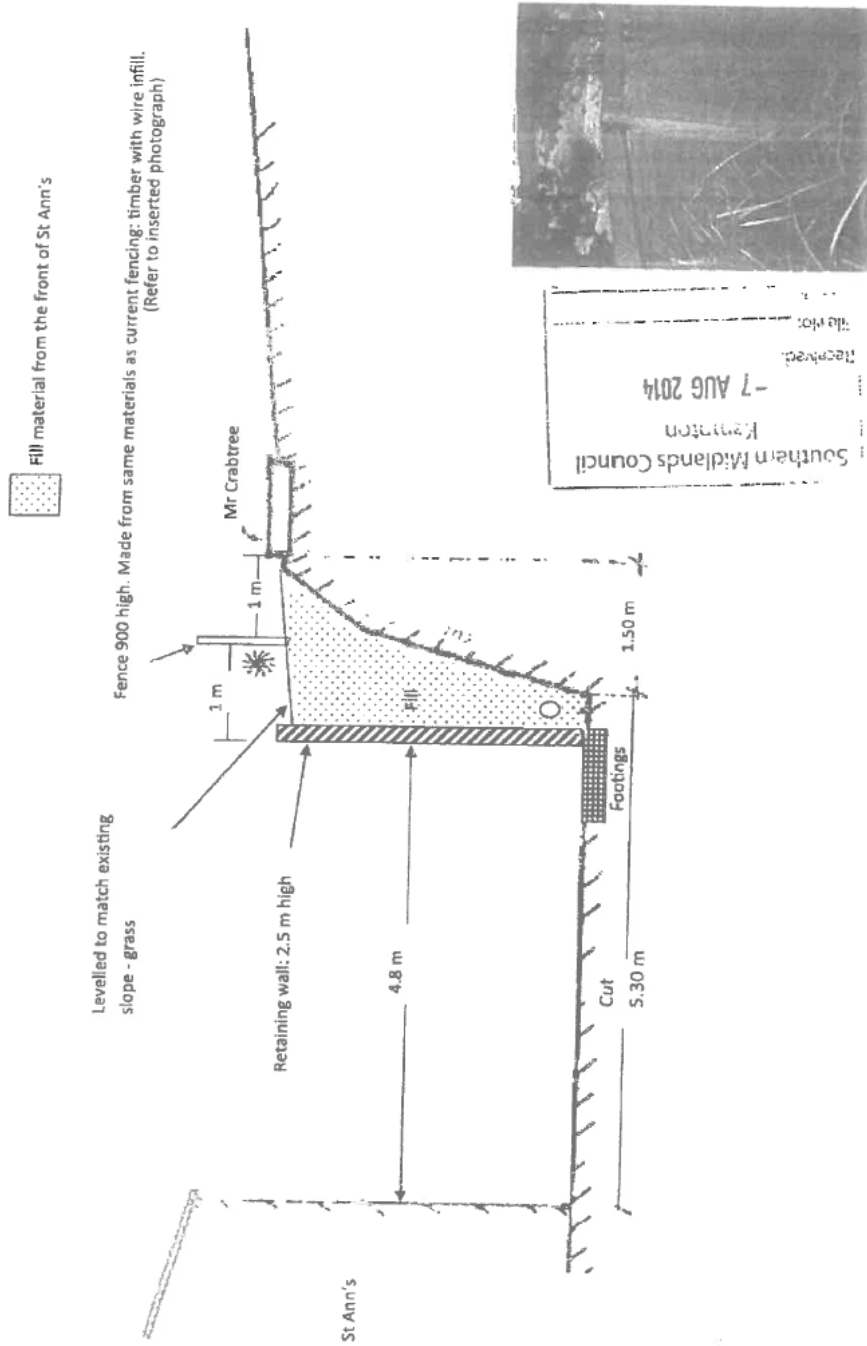
- be completed within 60 days of Council’s decision (or within 60 days of Council’s decision being confirmed in any subsequent planning appeal);
- be undertaken in accordance with an appropriate geotechnical design provided by a suitably qualified person to ensure long-term stability; and
- include the revegetation of the surface with appropriate plant species, to the satisfaction of the Manager Development & Environmental Services.

3. If necessary, Council commence civil enforcement proceedings under Section 64 of the Land Use Planning and Approvals Act 1993 to enforce compliance with point 2, above.

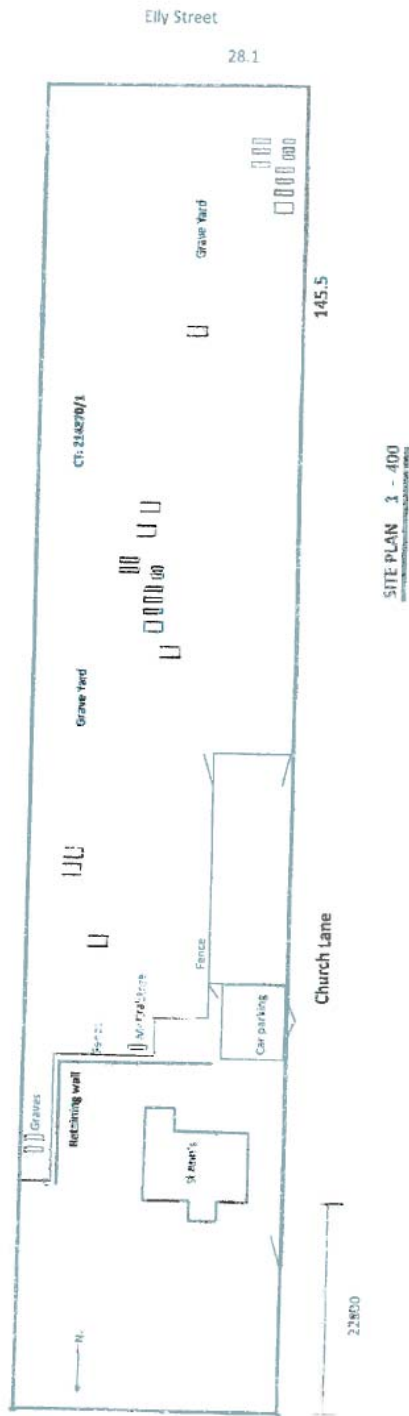
CARRIED

Vote For	Councillor	Vote Against
√	Mayor A E Bisdee OAM	
√	Clr A R Bantick	
√	Clr M Connors	
√	Clr D F Fish	
√	Clr A O Green	
√	Clr J L Jones OAM	

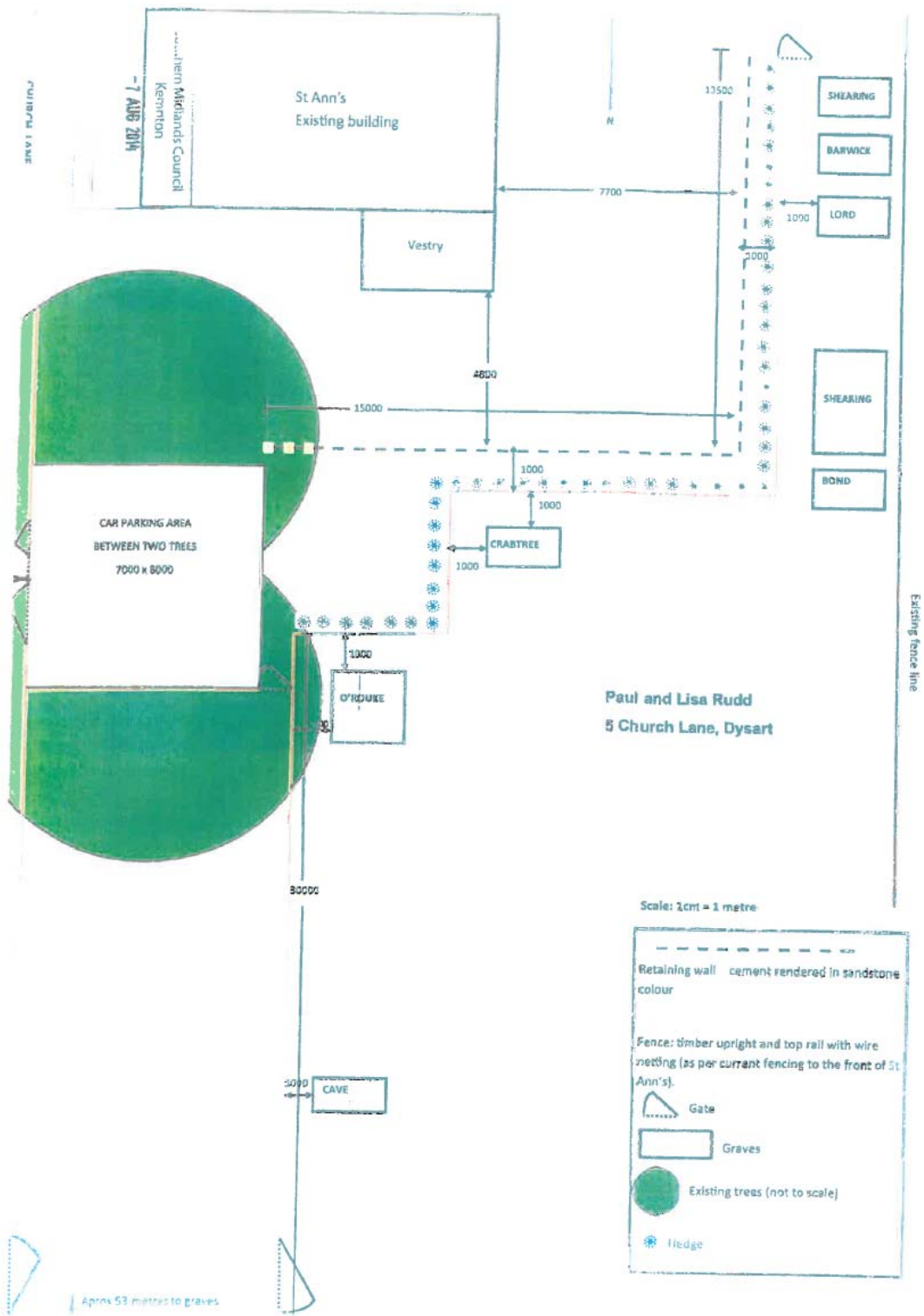
P & L Rudd
5 Church Lane Dysart

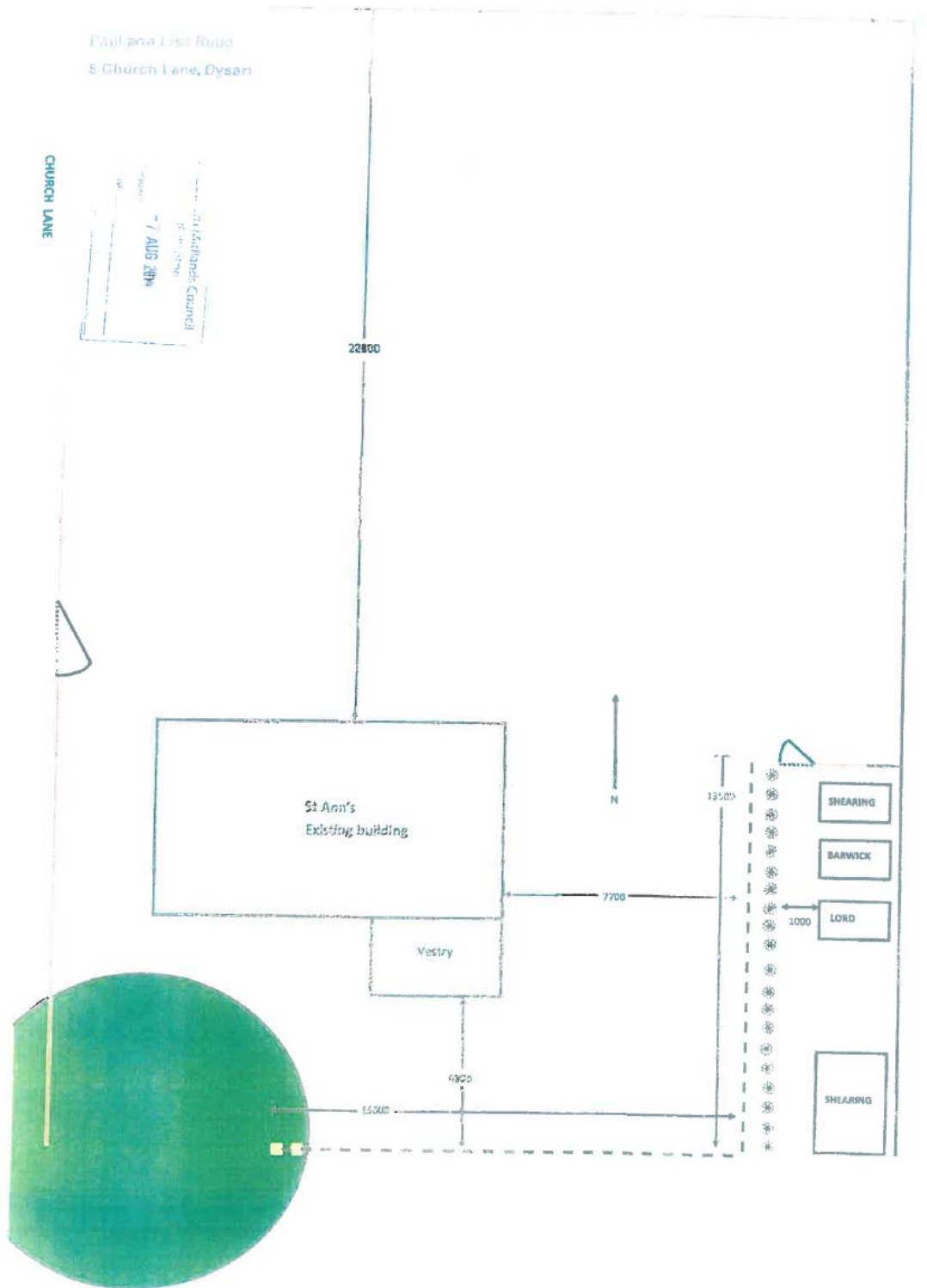


P. S. L. Rudd
Church Lane Dysart



Southern Midlands Council
Kernston
- 7 AUG 2014
Towns
File No





12.2 SUBDIVISIONS

Nil.

12.3 MUNICIPAL SEAL (PLANNING AUTHORITY)

Nil.

12.4 PLANNING (OTHER)

Nil.

**13. OPERATIONAL MATTERS ARISING (STRATEGIC THEME –
INFRASTRUCTURE)**

13.1 ROADS

Nil

13.2 BRIDGES

Nil.

13.3 WALKWAYS, CYCLE WAYS AND TRAILS

Nil.

13.4 LIGHTING

Nil.

13.5 BUILDINGS

Nil.

13.6 SEWERS

Nil.

13.7 WATER

Nil.

13.8 IRRIGATION

Nil.

13.9 DRAINAGE

Nil.

13.10 WASTE

Nil.

13.11 INFORMATION, COMMUNICATION TECHNOLOGY

Nil.

13.12 OFFICER REPORTS – WORKS & TECHNICAL SERVICES (ENGINEERING)

Nil.

14. OPERATIONAL MATTERS ARISING (STRATEGIC THEME – GROWTH)

14.1 RESIDENTIAL

Nil.

14.2 TOURISM

Nil.

14.3 BUSINESS

Nil.

14.4 INDUSTRY

Nil.

14.5 INTEGRATION

Nil.

15 OPERATIONAL MATTERS ARISING (STRATEGIC THEME – LANDSCAPES)

15.1 HERITAGE

Nil.

15.2 NATURAL

Nil.

15.3 CULTURAL

Nil.

15.4 REGULATORY (OTHER THAN PLANNING AUTHORITY AGENDA ITEMS)

Nil.

15.5 CLIMATE CHANGE

Nil.

16 OPERATIONAL MATTERS ARISING LIFESTYLE

16.1 COMMUNITY HEALTH AND WELLBEING

Nil.

16.2 YOUTH

Nil.

16.3 SENIORS

Nil.

16.4 CHILDREN AND FAMILIES

Nil.

16.5 VOLUNTEERS

Nil.

16.6 ACCESS

Nil.

16.7 PUBLIC HEALTH

Nil.

16.8 RECREATION

Nil.

16.9 ANIMALS

Nil.

16.10 EDUCATION

Nil.

17 OPERATIONAL MATTERS ARISING (STRATEGIC THEME – COMMUNITY)

17.1 RETENTION

Nil.

17.2 CAPACITY AND SUSTAINABILITY

Nil.

17.3 SAFETY

Nil.

17.4 CONSULTATION AND COMMUNICATION

Nil.

18. OPERATIONAL MATTERS ARISING (STRATEGIC THEME – ORGANISATION)**18.1 IMPROVEMENT**

Nil.

18.2 SUSTAINABILITY**Strategic Plan Reference – Page 33 & 34**

6.2.1	Retain corporate and operational knowledge within Council.
6.2.2	Provide a safe and healthy working environment.
6.2.3	Ensure that staff and elected members have the training and skills they need to undertake their roles.
6.2.4	Increase the cost effectiveness of Council operations through resource sharing with other organisations.
6.2.5	Continue to manage and improve the level of statutory compliance of Council operations.
6.2.6	Ensure that suitably qualified and sufficient staff are available to meet the Communities needs.
6.2.7	Work co-operatively with State and Regional organisations.
6.2.8	Minimise Councils exposure to risk.

18.2.1 *Maheer's Point Property (PID 5842047 – Volume 115861 – Folio 1) – Sale of Maheer's Point Cottage**File Ref:*

AUTHOR GENERAL MANAGER AND MANAGER DEVELOPMENT & ENVIRONMENTAL SERVICES

DATE 4 SEPTEMBER 2014

ATTACHMENT: 1. Copy of Title - PID 5842047 (Title Reference 115861/1).
 2. Map (to define the proposed boundary of the area to be sold).
 3. Zone Map - Southern Midlands Planning Scheme 1998**ISSUE**

Council to formally resolve in accordance with Section 177 of the *Local Government Act 1993* to sell the Maheer's Point Cottage property (including the identified area indicated on the attached Map).

This matter was considered at the last Council meeting. A decision was deferred pending consideration of planning issues.

BACKGROUND

Maheer's Point Cottage (c 1830) is a classic example of a vernacular building because it typifies the architecture, building methods and locally available materials used by poorer, free settlers. Such buildings are now rare because, until recently, they have not been

considered worth saving. The land was originally ‘a location’ (grant) to Daniel Dillon, but Denis Maher was one of the first residents of the cottage. A number of families have resided in the cottage. The last time it was used as a residence was in the late 1970s. From the 1970s to 1995 the building decayed to reach the point that it was best described as ‘a ruin’. By 1995 there were varying opinions as to whether the building could be ever be restored back to being inhabitable, with some suggesting the remains should be pulled down for safety reasons.

The following is a brief synopsis of the decisions and activity that has occurred since 1995:

1995 - The building was purchased by the Southern Midlands Council from the Estate of R T Fish.

September 1995 – August 2013 - Volunteer members of the Oatlands District Historical Society and the Lake Dulverton & Callington Park Management Committee (LD&CPMC) spent time restoring the cottage, largely under the direction of Graeme Raphael, a passionate champion for the cottage. T. G. Raphael passed away suddenly in August 2013.

October 2013 - The LD&CPMC applied for funding from the Tasmanian Community Fund to finalise the restoration of the cottage. The application was not successful.

February 2014 – The LD&CPMC requested that an Options Paper for the future direction and use of the building be developed.

March 2014 - An Options Paper for the Future Use of Maher’s Point Cottage was considered by the LD&CPMC. It was decided that the recommendation of seeking Expressions of Interest to Purchase the cottage be sought from the public, with the view to selling the cottage if, and only if, the right buyer is found. This committee recommendation was forwarded to Council.

March 2014 – Council endorse the recommendation of the LD&CPMC to seek expressions of interest for the purchase of the property, subject to the terms and conditions identified by the committee.

Following from the above, it is important to acknowledge that the area of land is classified as ‘Public Land’ under the *Local Government Act 1993*, being an area that has been used for recreation and public use purposes.

Prior to disposal of public land, Council must comply with section 178 of the *Local Government Act 1993*. The following is an extract from the Act:

“178. Sale, exchange and disposal of public land

(1) A council may sell, lease, donate, exchange or otherwise dispose of public land owned by it in accordance with this section.

(2) Public land that is leased for any period by a council remains public land during that period.

(3) A resolution of the council to sell, lease, donate, exchange or otherwise dispose of public land is to be passed by an absolute majority.

(4) If a council intends to sell, lease, donate, exchange or otherwise dispose of public land, the general manager is to–

(a) publish that intention on at least 2 separate occasions in a daily newspaper circulating in the municipal area; and

(ab) display a copy of the notice on any boundary of the public land that abuts a highway; and

(b) notify the public that objection to the proposed sale, lease, donation, exchange or disposal may be made to the general manager within 21 days of the date of the first publication.

(5) If the general manager does not receive any objection under subsection (4) and an appeal is not made under section 178A, the council may sell, lease, donate, exchange or otherwise dispose of public land in accordance with its intention as published under subsection (4).

(6) The council must –

(a) consider any objection lodged; and

(b) by notice in writing within 7 days after making a decision to take or not to take any action under this section, advise any person who lodged an objection of –

(i) that decision; and

(ii) the right to appeal against that decision under section 178A.

(7) The council must not decide to take any action under this section if –

(a) any objection lodged under this section is being considered; or

(b) an appeal made under section 178A has not yet been determined; or

(c) the Appeal Tribunal has made a determination under section 178B(b) or (c).

(8)

DETAIL

The existing property known as Maher's Point includes the cottage and an area of land that extends out to the Lake foreshore – refer attached Copy of Title. Note, however, that the land is divided by a strip of Crown land (shown hatched on the title plan), being the former railway and now part of the Lake Dulverton walking track.

The cottage and its surrounding fenced curtilage, which includes a small paddock, forms the western section of the title. It is approximately 3,080 m².

The eastern section is unfenced and, in practical use terms, forms part of the Lake Dulverton foreshore area. It is approximately 7,580 m².

A subdivision will be required to excise the cottage and its curtilage, which is proposed to be sold, from the eastern section which is to be retained in public ownership.

In light of the above, the following is a summary of the proposed process that Council will need to progress through:

- a) Define the exact area that is to be sold;
- b) Council resolution to sell that area under section 178 of the *Local Government Act 1993*;
- c) Advertise Council's intent to sell (in accordance with the Act);
- d) Post advertising and consideration of any objections (if any) to proposed sale, prepare and submit development application for subdivision;
- e) Assuming approval, then proceed with final survey and re-fence property to suit;
and
- f) Determine sale method and dispose.

A coloured map which defines the proposed boundary is included as an Attachment.

PLANNING CONSIDERATIONS

The land is zoned Environmental Management, as indicated on the attached zone plan.

Under Clause 7.1(c) of the Southern Midlands Planning Scheme 1998, the purpose of the zone is as follows:

The Environmental Management Zone recognises both public and private land that is primarily used for specific conservation purposes such as environmental protection, cultural heritage, nature conservation, scenic protection, maintenance of natural processes and protection of fragile landforms and allows for compatible forms of use and development. The zone allows for the continued management, use, development and conservation of these sites for the benefit of the local and regional community.

Under Clause 7.2.3, the intent of the zone is as follows:

The intent of the Environmental Management Zone is to:

- (a) give priority to the use of private and public lands for specific conservation purposes such as environmental protection, cultural heritage, nature conservation, scenic protection, maintenance of natural processes, protection of fragile landforms and catchment protection and maintenance of public recreation areas outside urban areas characterised by their natural qualities;
- (b) provide for appropriate forms of use and development compatible with the primary conservation intent of the particular area; and
- (c) allow for safe and convenient access to, and within, open space areas.

It is noted that Maher's Point Cottage is not listed on the state of local heritage registers at present. However, 'cultural heritage' conservation is one of the intents of the zone.

In terms of subdivision, the scheme does not provide specific standards. Instead, the following is provided (Clause 7.5):

No minimum lot size, access width or minimum internal rectangle is prescribed within the Community Use Zones, however each lot shall have sufficient area, suitable proportions, adequate services and reasonable vehicular access to satisfy its intended use.

It is considered that an application to subdivide to separate the two parts of the land could be accepted and considered by Council. This would be on the basis that the eastern part is to be retained as, in practice, part of the Lake Dulverton foreshore. This land protrudes

into the sanctuary area and ought to always be retained as public (i.e. Council) owned land and continued to be used for public park / nature conservation purposes.

The separation of the western part of the lot, containing the historic cottage, could be considered if the ultimate aim is to ensure the cultural heritage values are conserved. If it is indeed the case, as the LD&CPMC appears to have concluded, that the best (and possibly only) way to ensure the heritage values are preserved and conserved into the future is to enable the cottage to pass into provide hands under strict conditions, then the subdivision of the land could be considered to be in accordance with the zone intent. However this would have to be put and proven as part of a subdivision application process. Such an application would be discretionary and subject to public notification.

Any proposal for further subdivision of the subject land would likely not be considered to be in accordance with the zone intent. Furthermore, access and servicing would be problematic.

The eastern part (the cottage part) would have sufficient area within its attached small paddock for an onsite waste water treatment system.

Human Resources & Financial Implications – All costs associated with preparing the property for sale will be recouped through the sale proceeds. In reference to the process, formal survey, and re-fencing, has been deferred pending the advertisement for objections (and subdivision approval) in case the process is terminated as result of these statutory procedures.

Community Consultation & Public Relations Implications – The broader community will be provided with an opportunity to comment through the two-stage advertising process (i.e. sale of public land and subdivision application).

Council Web Site Implications: *Nil.*

Policy Implications – Policy position

Priority - Implementation Time Frame – The initial advertising process will be undertaken following Council decision.

RECOMMENDATION

THAT Council:

- a) **Note the information and endorse the proposed process;**
- b) **Define the area of land that will be included with the Cottage for disposal;**
- c) **Formally resolve in accordance with section 178 of the *Local Government Act 1993*, that it intends to dispose of that area of land defined above; and**

- d) Publish its intention to sell on at least 2 separate occasions in the Mercury newspaper, and display a copy of the notice on the boundary of the public land.**

DECISION (BY ABSOLUTE MAJORITY)

C/14/09/036/19817 DECISION (BY ABSOLUTE MAJORITY)

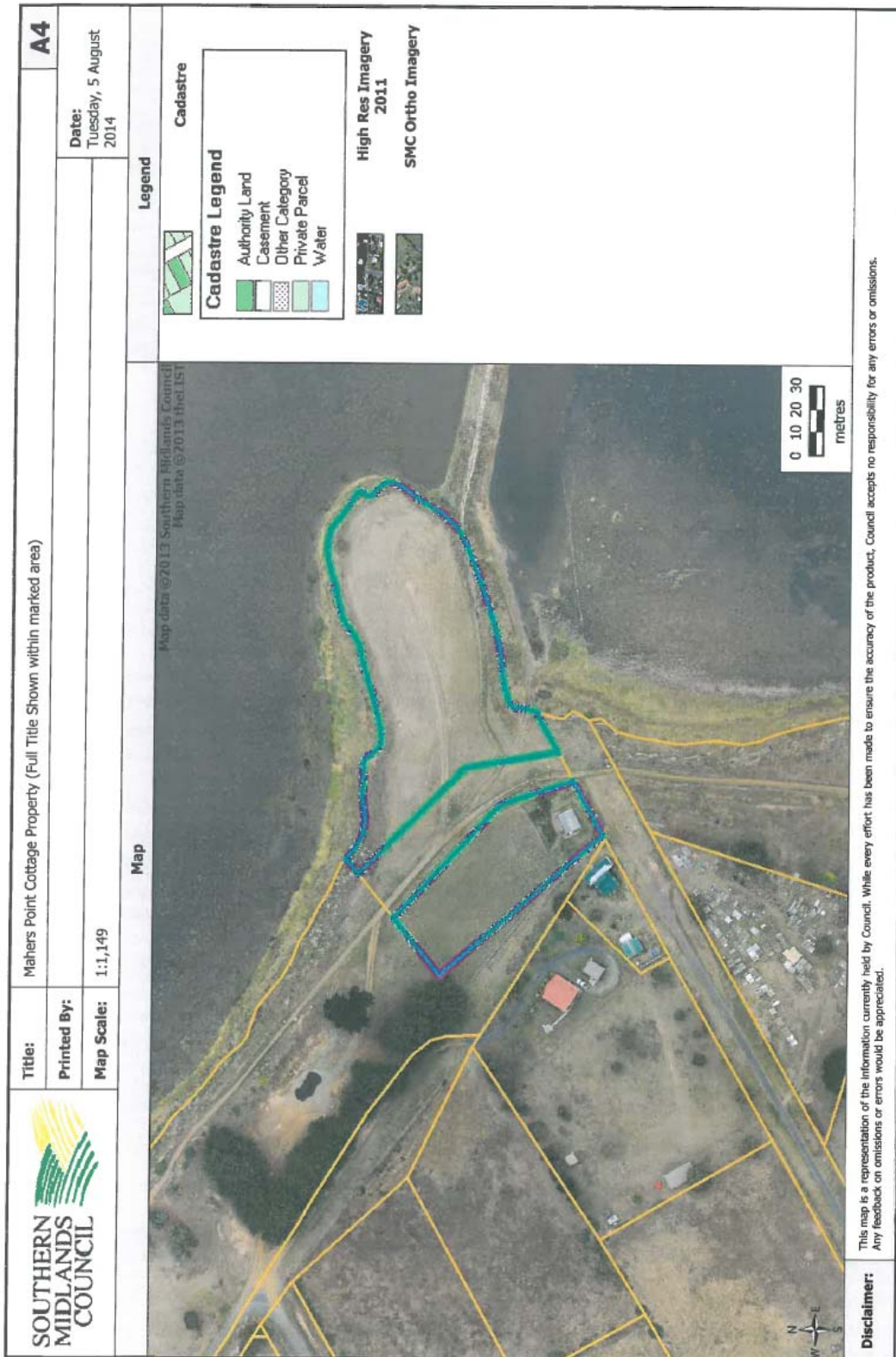
Moved by Clr J L Jones OAM, seconded by Clr A O Green

THAT:

- a) Council initiate a subdivision application based on creating a separate allotment which would incorporate that area of land as identified on the attached Plan (incorporating the cottage); and
- b) This process be undertaken prior to proceeding with the sale of public land process.

CARRIED

Vote For	Councillor	Vote Against
√	Mayor A E Bisdee OAM	
√	Clr A R Bantick	
√	Clr M Connors	
√	Clr D F Fish	
√	Clr A O Green	
√	Clr J L Jones OAM	



**RESULT OF SEARCH**

RECORDER OF TITLES

Issued Pursuant to the Land Titles Act 1980

SEARCH OF TORRENS TITLE

VOLUME 115861	FOLIO 1
EDITION 2	DATE OF ISSUE 08-Sep-1995

SEARCH DATE : 05-Aug-2014
SEARCH TIME : 09.32 AM

DESCRIPTION OF LAND

Town of OATLANDS
Lot 1 on Plan 115861
Being the land described in Conveyance No. 16/0227
Derivation : Part of 3-0-20 Granted to D. Dillon
Derived from W2232

SCHEDULE 1

B858921 TRANSFER to SOUTHERN MIDLANDS COUNCIL Registered
08-Sep-1995 at noon (MF:2343/153)

SCHEDULE 2

Reservations and conditions in the Crown Grant if any

UNREGISTERED DEALINGS AND NOTATIONS

No unregistered dealings or other notations

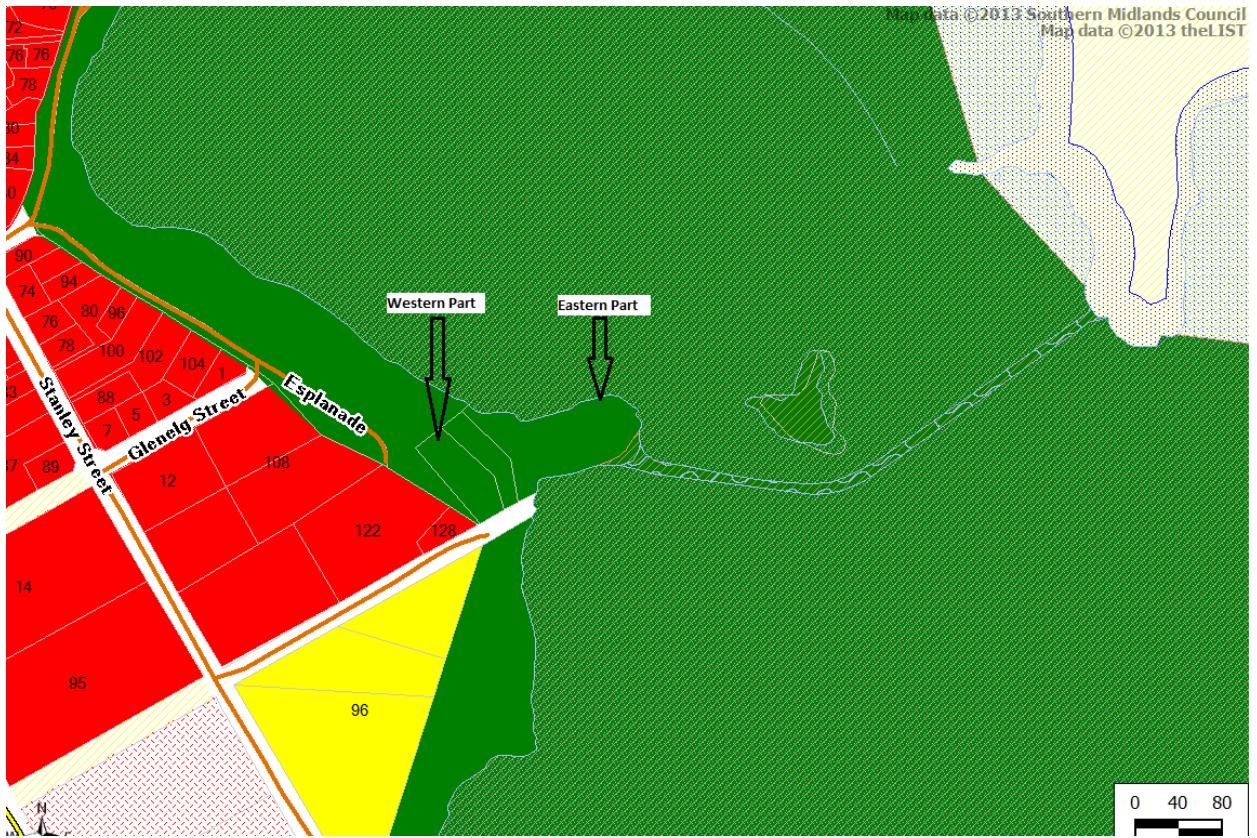


FOLIO PLAN
 RECORDER OF TITLES
 Issued Pursuant to the Land Titles Act 1980



FILE NUMBER W.2232		CONVERSION PLAN		REGISTERED NUMBER P 115861
GRANTEE PART OF 3A OR 20P GTO TO DANIEL DILLON.		LOCATION TOWN OF CATLANDS (SEC 8a)	APPROVED 13 JAN 1995 <i>Michael Dillon</i> Recorder of Titles	
		CONVERTED FROM 16/227	NOT TO SCALE LENGTHS IN METRES	
MAPSHEET MUNICIPAL CODE No. 25	LAST UPI No. 0919	ALL EXISTING SURVEY NUMBERS TO BE CROSS REFERENCED ON THIS PLAN		DRAWN DJB
SKETCH BY WAY OF ILLUSTRATION ONLY <small>*EXCEPTED LANDS*</small>				

Zone Map



18.3 FINANCES

Nil.

19. INFORMATION BULLETINS

Nil.

20. MUNICIPAL SEAL

Nil.

21. CONSIDERATION OF SUPPLEMENTARY ITEMS TO THE AGENDA

Not applicable.

22. BUSINESS IN “CLOSED SESSION “

Nil.

23. CLOSURE 11.07 A.M.