

ITEM NO. 5

FILE NO: 16/450998
RM8 REF NO: PSC2013-05184

**DRAFT AMENDMENT TO PORT STEPHENS DEVELOPMENT CONTROL PLAN
CHAPTER B1 - TREE MANAGEMENT**

REPORT OF: DAVID ROWLAND - STRATEGY AND ENVIRONMENT SECTION
MANAGER
GROUP: DEVELOPMENT SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Consider the submissions received during the exhibition period.
 - 2) Adopt the *Port Stephens Development Control Plan 2014 (ATTACHMENT 1)*, which removes the exhibited amendment on the basis that:
 - a) The existing *Port Stephens Development Control Plan* allows for the urgent removal of trees or other vegetation if it is a risk to human life or property (i.e. dangerous trees) if post-notification is provided;
 - b) The existing *Port Stephens Development Control Plan 2014* and associated *Port Stephens Council Tree Technical Specification 2014* allows for the removal of other trees or other vegetation (i.e. non-dangerous) for a variety of reasons, such as property damage, amenity or other relevant circumstances.
 - 3) Amend section 4.4 of the *Port Stephens Council Tree Technical Specification 2014 (ATTACHMENT 2)*, to include the statement; *Impact on Human Health: Where a tree proposes an unacceptable risk to human health. The health concern must be supported by a statutory declaration* to provide further guidance on the consideration of human health matters in the determination of a tree removal application.
 - 4) Recognise the need for an education and communication campaign to inform the community of the standards applicable and the services available for tree removal in Port Stephens.
 - 5) Report the outcomes of tree removal applications to Council every six months to monitor the impact of these changes for the community and environment.
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**ORDINARY COUNCIL MEETING - 13 DECEMBER 2016
COMMITTEE OF THE WHOLE RECOMMENDATION**

	Councillor Paul Le Mottee Councillor John Nell That the recommendation be adopted.
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In accordance with Section 375 (A) of the Local Government Act 1993, a division is required for this item.

MINUTES ORDINARY COUNCIL - 13 DECEMBER 2016

Those for the Motion: Mayor Bruce MacKenzie, Crs Chris Doohan, Sally Dover, Ken Jordan, Peter Kafer, Paul Le Mottee, John Morello, John Nell and Steve Tucker.

Those against the Motion: Cr Geoff Dingle.

ORDINARY COUNCIL MEETING - 13 DECEMBER 2016 MOTION

355	<p>Councillor Paul Le Mottee Councillor Ken Jordan</p> <p>It was resolved that Council:</p> <ol style="list-style-type: none">1) Consider the submissions received during the exhibition period.2) Adopt the <i>Port Stephens Development Control Plan 2014 (ATTACHMENT 1)</i>, which removes the exhibited amendment on the basis that:<ol style="list-style-type: none">a) The existing <i>Port Stephens Development Control Plan</i> allows for the urgent removal of trees or other vegetation if it is a risk to human life or property (i.e. dangerous trees) if post-notification is provided;b) The existing <i>Port Stephens Development Control Plan 2014</i> and associated <i>Port Stephens Council Tree Technical Specification 2014</i> allows for the removal of other trees or other vegetation (i.e. non-dangerous) for a variety of reasons, such as property damage, amenity or other relevant circumstances.3) Amend section 4.4 of the <i>Port Stephens Council Tree Technical Specification 2014 (ATTACHMENT 2)</i>, to include the statement; <i>Impact on Human Health: Where a tree proposes an unacceptable risk to human health. The health concern must be supported by a statutory declaration</i> to provide further guidance on the consideration of human health matters in the determination of a tree removal application.4) Recognise the need for an education and communication campaign to inform the community of the standards applicable and the services available for tree removal in Port Stephens.5) Report the outcomes of tree removal applications to Council every six months to monitor the impact of these changes for the community and environment.
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In accordance with Section 375 (A) of the Local Government Act 1993, a division is required for this item.

Those for the Motion: Mayor Bruce MacKenzie, Crs Chris Doohan, Sally Dover, Ken Jordan, Peter Kafer, Paul Le Mottee, John Morello, John Nell and Steve Tucker.

Those against the Motion: Cr Geoff Dingle.

BACKGROUND

The purpose of this report is to consider 24 submissions received during the public exhibition period of the draft amendment to the Port Stephens Development Control Plan (DCP) 2014 – B1 Tree Management (the draft amendment), legal advice and technical investigations.

On 11 October 2016, Council resolved to exhibit the draft amendment, which aimed to give effect to Council's Notice of Motion (NoM) dated 13 September 2016, being:

"Provide a moratorium on the need to obtain a pre-approval for the removal of trees or vegetation covered by Council's tree preservation requirements where there is risk to human life or property for an extended period of 12 months".

The moratorium allowed land holders to remove certain trees without speaking to, or seeking prior approval from Council. It only required the land holder to notify Council, and justify risk to human life or property, through a post notification process after trees had been removed.

The moratorium extension was requested to alleviate concerns that adequate consideration of risk to human life and property may be constrained by the return to the current tree removal assessment requirements, as outlined in the LEP, DCP and endorsed technical specifications, the intent of which is to preserve environmental and amenity values.

It is understood that what is sought by Council is a tree removal process whereby there is sufficient scope to consider, and weighting given, to risk to human life and property in the tree removal assessment process.

The recommendation presented in this report seeks to both achieve this broadened scope for the consideration of tree removal whilst ensuring these changes are made on a permanent basis rather than for a further temporary twelve month period.

Existing process

The existing tree removal process relies on three documents that outline what is to be taken into account and the measures to be undertaken when considering and undertaking tree removal in urban areas. These documents are the LEP, DCP and endorsed Tree Technical Specifications. The LEP triggers and sets the direction for tree removal. The DCP and Tree Technical Specifications then provide further information and guidance on how and when they will apply.

The current DCP requires Council "to ensure adequate consideration is provided to the relevant matters for the removal of trees or vegetation", which include:

- damage to an existing structure or utility service substantiated by a qualified person;
- interfering with a solar photovoltaic/hot water system;
- interfering with the amenity of a habitable room;
- threatened by a development consent;
- consistency with a flora, fauna or conservation strategy;
- the tree is interfering, or likely to interfere, with the provision of a public utility or road/driveway construction, provided the impact on the trees has been considered in the design phase;
- impact on threatened species, populations or ecological communities and their habitats;
- retention value under the tree technical specification; and
- other relevant circumstances, which, under the tree technical specification, includes the consideration of medical complaints.

Section 4.4 of the Tree Technical Specifications (**ATTACHMENT 2**) provides further guidance on each of the assessment criteria listed within the DCP. This includes how other relevant circumstances such as potential risk to property shall be taken into account.

When utilised together, it is considered that the LEP, DCP and Tree Technical Specifications provide significant latitude for considering relevant factors other than direct danger. However, further amendments to Section 4.4 of the Tree Technical Specifications are proposed to provide further clarification on how these apply to human life and property includes the insertion of a new sub heading 'Human Health'. This and the following guidance notes:

“Impact on Human Health: Where a tree proposes an unacceptable risk to human health. The health concern must be supported by a statutory declaration.”

This additional amendment to the Tree Technical Specifications broadens the scope of consideration for tree removal and is considered a more appropriate means to address the stated safety concerns of the community.

With three documents relevant to tree removal it is considered that additional education and communication on how and when these apply would be beneficial and may reduce concern generated within the community by a lack of clarity on what Council has in place to guide tree removal across the Port Stephens.

For clarity, an arborists report or assessment is only required where the grounds for tree removal relate to:

- tree health;
- tree safety (eg potential for a 'healthy' tree to fall in certain conditions such as high winds); or
- where insufficient evidence is provided.

Tree removal data

A review of applications received over the 12 months when the 'storm provisions' were in place (3rd September 2015 to 5th September 2016) found 13 of 114 applications were refused over this period representing (11%) of assessments made. Only one of the 13 refused requested reassessment by Council officers which was approved, based on additional information provided.

If an application is refused and a request for reassessment is made and unsuccessful, it is to be noted that the applicant does have the capacity to escalate the proposal for Councillor consideration (refer section 4.3 of the Technical Specification). Of 377 applications made since 1 January 2014, no requests have been made for escalation for Councillor consideration.

Exhibition and Submissions

The draft amendment was exhibited for a total of 35 days, with 24 submissions being received, including only eight unique submissions. All submissions oppose the draft amendment. A summary and planning response in relation to each of the submissions is provided at **(ATTACHMENT 3)**. The key issues raised include:

- 1) The justification based on April 2015 storm event is not warranted as all trees posing a 'direct threat' would have been removed in the time since the event;
- 2) Concerns with trees being removed for amenity reasons under the false context that they are dangerous;
- 3) The draft amendment is not consistent with other local and state legislation such as the *Port Stephens Local Environmental Plan 2013*;
- 4) Inconsistency with Comprehensive Koala Plan of Management;
- 5) Impact on native vegetation and urban habitat for native fauna;
- 6) Existing legislation sufficiently allows for the removal of dangerous trees while ensuring sufficient assessment is undertaken;
- 7) Community is at risk of failing to comply with other legislation; and
- 8) Concern that the draft amendment will cause an increase in arborist costs.

As noted above, taking into account the direction and guidance provided currently within the DCP and Tree Technical Specifications it is considered that whilst there is some latitude to deal with the concerns raised by Councillors, this can be further improved by the amendments recommended to the Technical Specifications. Further community awareness around the process and rights to remove trees on private land is also recommended.

COMMUNITY STRATEGIC PLAN

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

FINANCIAL/RESOURCE IMPLICATIONS

The development of the proposed amendments has been managed within the existing budget.

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

LEGAL, POLICY AND RISK IMPLICATIONSPort Stephens Local Environmental Plan 2013 (LEP)

The preservation of trees and vegetation on urban land within the LGA is provided for by the provisions of the LEP (c5.9). As outlined in this clause, Council may specify the species or kinds of trees or other vegetation to which the preservation requirements apply. The draft amendment proposes an additional approach to allowing for the removal of dangerous trees to what is already largely provided by the DCP.

It is considered that the recommendation maintains the ability to achieve the intent of the LEP clause while also responding to concerns relating to personal safety and property risk.

Environment Policy

This Policy identifies Council's commitment to the principles of ecologically sustainable development, including the conservation of biological diversity and ecological integrity. The draft amendment proposed is inconsistent with Council's Environment Policy.

It is considered that the recommendation maintains the ability to achieve intended environmental objectives while also responding to concerns relating to personal safety and property risk.

Comprehensive Koala Plan of Management

The Port Stephens Comprehensive Koala Plan of Management (PSCKPoM) contains 14 objectives, one of which is to "ensure that adequate detail is provided with Development Applications in order to assess, minimise and ameliorate likely impacts on koala habitat" (clause 1.1).

The draft amendment potentially compromises the ability to "assess, minimise and ameliorate likely impacts on koala habitat" arising from the removal of koala feed trees in particular, and other tree species known to be used by koalas.

The recommendation proposed reduces any potential risk to Koala management whilst also responding to concerns relating to personal safety and property risk.

Legal advice

Legal advice was sought on the draft amendment. The legal advice is generally unsupportive of the proposed amendment and considers that:

- 1) Existing legislation adequately provides for dangerous trees to be removed in certain circumstances;
- 2) The terminology "immediate" and "direct" threat are unclear;
- 3) The moratorium is not a criterion that can be prescribed in a DCP under Clause 5.9 of the *Port Stephens Local Environmental Plan 2013*; and
- 4) While there may have been justification for the 'moratorium' in the clean up after the April 2015 storm event, over 18 months after the storms it seems unlikely that the 'immediate' or 'urgent' removal of vegetation is still necessary as a result of the storms.

Risk

Community

The draft amendment continues to support the need for any Council pre-notification requirement to remove trees. This restricts opportunity for Council to provide advice on potential non-compliance with other environmental legislation for which Council is not the regulatory authority (such as the *Native Vegetation Act 2003*, *The Environmental Protection and Biodiversity Act 1999* and the *Threatened Species Conservation Act 1995*) and therefore leaves the community potentially exposed should they inadvertently undertake works that are non-compliant with this legislation.

The recommendation reinstates the need for pre-approval prior to tree removal, thus reducing the community's risk of breaching other environmental legislation for which Council is not the regulatory authority.

Environmental

The draft amendment increases environmental risk as it limits Councils' ability to undertake an assessment to determine if the tree removal would have an impact on the conservation of biological diversity and ecological integrity.

The recommendations improve alignment with Councils' Environmental Policy and Integrated Risk Management Policy in comparison to what was proposed, with environmental risk remaining a central element to the assessment criteria.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that Council and the community will be uncertain around legal applicability of amendments and of enforcement as a result of the proposed DCP amendment.	High	Support the recommendation and improvements to the tree technical specifications.	Yes
There is a risk that land owners will not comply with other legislation when removing trees.	Medium	Support the recommendation and improvements to the tree technical specifications.	Yes
There is a risk that trees will be inappropriately removed due to advice / guidance and assessment from Council not being sought.	Medium	Support the recommendation and improvements to the tree technical specifications.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

These triple-bottom line implications have been discussed throughout this report.

MERGER PROPOSAL IMPLICATIONS

There are no identified merger implications.

CONSULTATION

Internal

Internal advice was sought from a range of staff within the Strategy and Environment Section in the development of the proposed recommendation.

External

The draft amendment was originally exhibited for a period of 28 days, from Wednesday, 19 October to Wednesday, 16 November 2016, with this period being extended by an additional week until 23 November 2016 in order to provide an additional opportunity for the community to lodge submissions.

Notification was placed in 'The Port Stephens Examiner' and Port Stephens Council's website. The exhibition material was available for viewing at Port Stephens Council Administration Building, Tomaree Library and on Council's website under 'What's on Exhibition'.

Twenty-four submissions were received during the exhibition period; however, this includes only eight unique submissions. A full summary and planning response in relation to each unique submission is provided in the table at **(ATTACHMENT 2)**.

OPTIONS

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

ATTACHMENTS

- 1) Draft amendment to the Port Stephens Development Control Plan 2014 Chapter B1 - Tree Management.
- 2) Port Stephens Council Tree Technical Specification (Sept 2014). (Provided under separate cover)
- 3) Submissions Table.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ITEM 5 - ATTACHMENT 1 DRAFT AMENDMENT TO THE PORT STEPHENS DEVELOPMENT CONTROL PLAN 2014 CHAPTER B1 - TREE MANAGEMENT.

B1

TREE MANAGEMENT

B1 Tree Management

Application		
<ul style="list-style-type: none">This Part applies to development to remove or prune trees or other vegetation within urban areas. Development to remove or prune trees or other vegetation within non-urban areas is provided under the Native Vegetation Act 2003		
Objective		
B1.A	Urban Areas	<ul style="list-style-type: none">To give effect to PSLEP 2013 clauses 5.9 and 5.9AA by listing those trees or other vegetation that require approval
Requirement		
B1.1	<ul style="list-style-type: none">Council approval is required to remove or prune trees or other vegetation listed under Column 1, except where those circumstances listed under Column 2 are satisfied	
Column 1 – Approval Required		Column 2 – When approval is not required
<ul style="list-style-type: none">NSW Christmas Bush - <i>Ceratopetalum gummiferum</i>		<ul style="list-style-type: none">Dead, if native fauna habitat does not existUrgent removal on account of immediate failure when Council is provided with a tree removal notification post-event, onus of proof is on the landholder, photos should be taken before and after removal
<ul style="list-style-type: none">Cabbage Tree Palm – <i>Livistona australis</i>		
<ul style="list-style-type: none">species listed under the TSC Act 1995		
<ul style="list-style-type: none">trees or vegetation listed under the register of significant trees³		
<ul style="list-style-type: none">trees or vegetation positioned on land containing a heritage item or within a heritage conservation area		<ul style="list-style-type: none">within 5m of the wall of an approved structure measured from the wall to the trunk of the treein accordance with a construction/subdivision certificatea tree grown for fruit or nut productionvegetation clearing work authorised under the Rural Fires Act 1997 – e.g. covered by the 10/50 Vegetation Clearing Code of Practicemaintenance of less than 12 months growth or 10% of foliage in accordance with AS4373-2007declared as an exotic specieswithin parks, easements or reserves when work is undertaken by a responsible authorityDead, if native fauna habitat does not exist
<ul style="list-style-type: none">trees or other vegetation where height exceeds 3m or circumference breast height exceeds 300mm		

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ITEM 5 - ATTACHMENT 1 DRAFT AMENDMENT TO THE PORT STEPHENS DEVELOPMENT CONTROL PLAN 2014 CHAPTER B1 - TREE MANAGEMENT.

B1

TREE MANAGEMENT

<p>Note: The yellow highlighted words identify the draft amendment that the report recommends does not proceed.</p>	<ul style="list-style-type: none"> ▪ Urgent removal on account of immediate failure. This is only when Council is provided with a tree removal notification post-event, onus of proof is on the landholder, photos should be taken before and after removal ▪ In response to the Natural Disaster Declaration for storms and flooding occurring from 20 April 2015 For a period of 12 months from xx to xx following the date of commencement of this amendment the following circumstance applies: <ul style="list-style-type: none"> o removal on the grounds that it is not an immediate threat, but poses a direct threat to human life or property. This is only when Council is provided with a tree removal notification post-event within 10 working days of removal – onus of proof is on the landholder, photos should be taken before and after removal <p>Note: Refer to A.3 (p. A-8) for the date this amendment commenced.</p> <p>Landowners are encouraged to seek the advice of a qualified arborist in determining the direct threat of the tree.</p>
<p>Note: Applicants for tree clearing and removals will also need to consider the provisions of other legislation including but not limited to the following:</p> <ul style="list-style-type: none"> ▪ Environment Protection and Biodiversity Conservation Act 1999 (Cth) – protect and manage nationally and internationally important flora, fauna, ecological communities and heritage places. Contact the Commonwealth Department of the Environment. ▪ National Parks and Wildlife Act 1974 (NSW) – fauna habitat, protected plants. Contact the National Parks and Wildlife Service at the NSW Office of Environment and Heritage (OEH). ▪ Threatened Species Conservation Act 1995 (NSW) – ecological communities, critical habitat, endangered and vulnerable species, key threatening processes, recovery plans. Contact NSW OEH. ▪ Native Vegetation Act 2003 (NSW) – clearing of native vegetation, regional vegetation management plans, property agreements. Contact NSW OEH. ▪ Fisheries Management Act 1994 (NSW) – prohibits cutting of mangroves. Contact the NSW Department of Industry and Investment. ▪ Water Management Act 2000 (NSW) – A controlled activity approval under the WMA is required for certain types of development and activities that are carried out in or near a river, lake or estuary (e.g. for the removal of material or vegetation). Contact NSW Department of Primary Industries (DPI). ▪ Rural Fires Act 1997 (NSW) - '10/50 Vegetation Clearing Code of Practice for NSW', and authorised removal of fire hazards. Contact the NSW Rural Fire Service. ▪ Heritage Act 1977 (NSW) – sites under conservation orders, relics, etc. Contact NSW OEH. ▪ Noxious Weeds Act 1993 (NSW) – clearing of noxious weeds. Contact DPI. 	
<p>Objective</p>	

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ITEM 5 - ATTACHMENT 1 DRAFT AMENDMENT TO THE PORT STEPHENS DEVELOPMENT CONTROL PLAN 2014 CHAPTER B1 - TREE MANAGEMENT.

B1

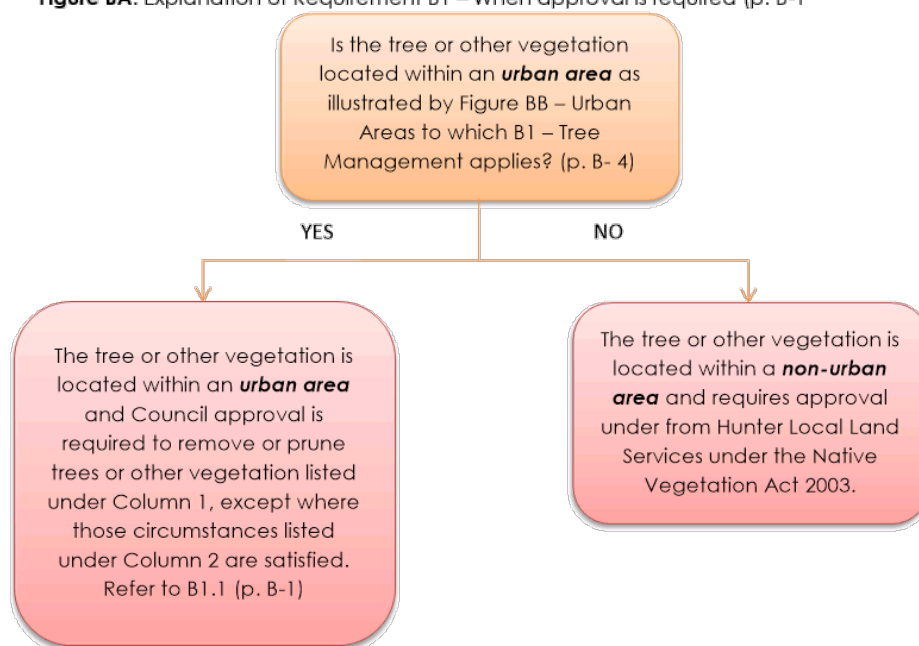
TREE MANAGEMENT

B1.B	Heads of Consideration	<ul style="list-style-type: none"> To ensure adequate consideration is provided to the relevant matters for the removal of trees or vegetation
Requirement		
B1.2		<ul style="list-style-type: none"> Council approval to remove or prune trees or other vegetation has regard for: <ul style="list-style-type: none"> damage to an existing structure or utility service substantiated by a qualified person interfering with a solar photovoltaic/hot water system interfering with the amenity of a habitable room threatened by a development consent consistency with a flora, fauna or conservation strategy the tree is interfering, or likely to interfere, with the provision of a public utility or road/driveway construction, provided the impact on the trees has been considered in the design phase impact on threatened species, populations or ecological communities and their habitats retention value under the tree technical specification¹ other relevant circumstances
Objective		
B1.C	Supporting Information	<ul style="list-style-type: none"> To ensure adequate information is provided to determine the application for the removal of trees or vegetation
Requirements		
B1.3		<ul style="list-style-type: none"> An arborist report consistent with tree technical specification¹ is required: <ul style="list-style-type: none"> for a tree or other vegetation listed under register of significant trees³ to assess the impact on existing trees as part of a Development Application as per AS 4970-2009 to support reassessment of applications for tree removal on a technical basis to support the release of a tree bond
B1.4		<ul style="list-style-type: none"> A tree bond consistent with the tree technical specification¹ is imposed where Council deems a public tree is at risk
B1.5		<ul style="list-style-type: none"> A request to remove 20 or more trees requires a vegetation management plan consistent with vegetation technical specification² <p>Note: B4.4 (p. B-30) requires an application to remove 20 or more trees to be provided to Hunter Water by the assessing officer for a period of 14 days</p>
B1.6		<ul style="list-style-type: none"> Compensatory planting consistent with the tree technical specification¹ may be required when council approval to remove trees is provided
B1.7		<ul style="list-style-type: none"> A hollow tree assessment is required to remove hollow bearing trees <ul style="list-style-type: none"> Two replacement hollows are provided for each hollow tree identified by the hollow tree assessment Salvaged hollows are preferred over nest boxes, which are consistent with the nest box technical specification⁵ <p>Note: B2.1 (p. B-30) requires a hollow tree assessment and replacement or salvaged hollows if a Flora and Fauna Survey Report proposes their removal</p>

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ITEM 5 - ATTACHMENT 1 DRAFT AMENDMENT TO THE PORT STEPHENS
DEVELOPMENT CONTROL PLAN 2014 CHAPTER B1 - TREE MANAGEMENT.

Figure BA: Explanation of Requirement B1 – When approval is required (p. B-1)



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**ITEM 5 - ATTACHMENT 1 DRAFT AMENDMENT TO THE PORT STEPHENS
DEVELOPMENT CONTROL PLAN 2014 CHAPTER B1 - TREE MANAGEMENT.**

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ITEM 5 - ATTACHMENT 3 SUBMISSIONS TABLE.

ATTACHMENT 2 – SUBMISSIONS TABLE

No	Stakeholder	Submission summary	Planning comment
1	Individual	<ol style="list-style-type: none"> 1. Opposes the extension as they believe that 12 months is sufficient time for the removal of genuinely threatening trees resulting from the April 2015 storm event 2. Concern with a lack of genuine independent assessment by qualified person 3. Concern that the moratorium is being used to remove trees for amenity reasons 4. Current system considered adequate 5. The amendment does not assist households who can't afford to remove genuinely un-safe trees. 6. Remaining trees become more vulnerable to future storms 	<ol style="list-style-type: none"> 1. Agree. Legal advice obtained by Council agrees that "while there may have been justification for the 'moratorium' in the clean up after the April 2015 storms, over 18 months after the storms it seems unlikely that the "immediate" or "urgent" removal of vegetation still necessary as a result of those storms" 2. Noted. While Council encourages the use of qualified arborists to undertake the removal of all trees, it is acknowledged that there is a risk that assessments and tree removal are being undertaken by unqualified personnel. 3. Noted. Council has the ability to safeguard against misuse by monitoring post-notification applications to determine if any non-compliance action is required. Council received 6 post-notification applications during the first 12 month period, with all trees being dangerous. Notwithstanding, it cannot be determined if any trees were removed without a post-notification application being submitted. There is a risk that trees are wrongly removed under the proposed amendment. 4. Agree. Clause 5.9(6) of the PSLEP provides an exemption where a tree/vegetation is a "risk to human life or property". A post-notification system is in place for such

ITEM 5 - ATTACHMENT 3 SUBMISSIONS TABLE.

			<p>circumstances.</p> <p>5. Noted. Financial assistance for the removal of trees is outside the scope of the DCP.</p> <p>6. Noted. The draft amendment seeks to allow the removal of dangerous trees that pose a threat to life or property.</p>
2 & 4	Environmental Sub Committee, Soldiers Point Community Group and individual	<p>1. Objects to the draft amendment due to the potential impact on native wildlife habitat</p> <p>2. The draft amendment undermines the objectives of Clause 5.9(1) of PSLEP 2013 <i>'(1) The objective of this clause is to preserve the amenity of the area, including biodiversity values, through the preservation of trees and other vegetation'.</i></p> <p>3. The draft plan does not satisfy the requirements under the EP&A Act 1979 No 203 Section 5A Significant effect on threatened species, populations or ecological communities, or their habitats <i>'(2)(d)(i) the extent to which habitat is likely to be removed or modified as a result of the action proposed'</i></p> <p>4. The Draft Plan fails to consider other State and Commonwealth legislation, including the CKPoM / SEPP No.44 Koala Habitat Protection.</p> <p>5. The draft Plan will have adverse effect on the Koala population in Port Stephens.</p>	<p>1. Noted. The tree management provisions do not apply to land to which the <i>Native Vegetation Act 2003</i> applies as only urban areas are covered by the B1 Tree Management Chapter of the DCP. As such no impact on wildlife corridors is envisaged.</p> <p>2. Noted. Clause 5.9 of the PSLEP 2013 provides that a DCP may prescribe the trees or other vegetation to which this clause applies by reference to species, size, location or other manner. The amendment does not and cannot exclude or override existing legislative requirements for the protection of threatened species, or ecological communities or their habitats. The proposed exemptions are limited to trees and vegetation that are not species listed under the <i>Threatened Species Conservation Act 1995</i>, listed as a significant tree, a heritage item or conservation area, Cabbage Tree Palm or NSW Christmas Bush.</p> <p>3. Noted. All legislative requirements still apply. The DCP cannot override this legislative requirement.</p> <p>4. Noted. See planning comments 2 and 3</p>

ITEM 5 - ATTACHMENT 3 SUBMISSIONS TABLE.

		6. Removing the requirement for written consent puts the community at risk by either incorrect assessment or the use of unskilled labour. 7. The extension of the moratorium period will lead to further irreversible land degradation and endangerment of native wildlife habitat in urban areas 8. The current PSDCP and PSLEP adequately allows for the removal of dangerous trees whilst ensuring protection for many vulnerable and endangered species. The proposed amendments are considered unwise and unnecessary.	5. Noted. See planning comments 2 and 3 6. Agreed. The proposed amendments represent unnecessary risk to land owners of non-compliance with other legislation when managing trees that can be avoided by seeking guidance and/or approvals from Council 7. Noted. See comment 1 8. Noted. See comment 2 9. Agree. See Submission 1, planning comment 4
3	Individual	1. Opposes the Draft DCP as it is no longer required as a result of the April 2015 storm event 2. Allows people to remove trees for views 3. Potentially damaging to the environment and trees should be protected.	1. Agree. See Submission 1, planning comment 1 2. Noted. See Submission 1, planning comment 3 3. Noted. See Submission 2, planning comment 2
5 & 16	Individuals	1. Draft amendment cannot be justified based on the time lapse since April 2015 storm event. 2. The Council report dated 11 Oct 2016 fails to justify the need for the extension based on demand 3. The Council report also states that the risk to life or property is categorised as 'low', whereas the risk of biodiversity	1. Agree. See submission No 1, planning comment 1 2. Agree. The current process of tree removal is working effectively and provides applicants with an efficient service while balancing the community's expectations of protecting private property and preserving amenity in urban areas. Natural Resources are not aware of any circumstances where an application was

ITEM 5 - ATTACHMENT 3 SUBMISSIONS TABLE.

		<p>impacts and the potential non-compliance with other legislation is categorised as 'medium'</p> <p>4. Suggests that Council resources be better spent on an education program regarding the importance of trees, replacing poorly chosen species of trees in urban areas, ensuring correct species are chosen in the future and replacing any trees removed.</p> <p>5. Suggests that the application fee for removing all dangerous trees prior to removal be waived, with normal fees for non-dangerous trees remaining.</p>	<p>made on the basis of a tree being a risk to life or property and the tree failing prior to determination. Further, during the previous period of the moratorium, only six post notification notices were submitted to Council. This low utilisation rate reflects the position that the draft amendment is not required.</p> <p>3. Agree. The risk to life or property is considered low due as it is unlikely that there are any dangerous trees remaining as a result of the April 2015 storm event. The draft amendment does pose a liability risks to the community and potential impact of biodiversity by trees and vegetation wrongly being removed.</p> <p>4. Noted. While Council continually aims to educate the community on environmental issues, the report recommends that Council resolve to undertake a further educational program regarding tree removal.</p> <p>5. Noted. This is outside of the scope of the draft amendment. Council's fees & charges are reviewed annually.</p>
6, 8, 10,11,12 & 21	Individuals	<p>1. Objects to the draft amendment as the current DCP and LEP controls provide for the removal of dangerous trees.</p> <p>2. The draft amendment cannot be justified based on the April 2015 storm due to the time since the storm.</p> <p>3. Potential impact on Koala population and endangered wildlife.</p>	<p>1. Agree. See Submission 1, planning comment 4</p> <p>2. Agree. See Submission 1, planning comment 1</p> <p>3. Noted. See Submission 2, planning comment 2</p> <p>4. Noted. One objective of the CKPoM is to "ensure that adequate detail is provided with</p>

ITEM 5 - ATTACHMENT 3 SUBMISSIONS TABLE.

		4. Inconsistent with the CKPoM	Development Applications in order to assess, minimise and ameliorate likely impacts on koala habitat" (clause 1.1). The draft amendment does not allow Council the opportunity to "assess, minimise and ameliorate likely impacts on koala habitat" arising from the removal of koala feed trees in particular, and other tree species known to be used by koalas.
17	Soldiers Point Community Group Inc	<ol style="list-style-type: none"> 1. Objects to the draft amendment. 2. Advises that the advertised 'extension' of the draft amendment is misleading as the original moratorium has already expired, putting the public at risk of prosecution. 3. There is no evidence that there are dangerous trees remaining in urban areas as a result of the April 2015 storm event. 4. No justification for the draft amendment based on Council's report dated 11 October that states that there was not a significant increase in notifications. 5. Draft amendment is inconsistent with Council's Environment Policy 6. Risk and impact on conservation of biological diversity and ecological integrity cannot be assessed. 	<ol style="list-style-type: none"> 1. Noted. The recommendation that Council resolve not to support the draft amendment will address this objection. 2. Noted. 3. Noted. See Submission 1, planning comment 1 4. Agree. During the previous temporarily amended DCP period (3rd September 2015 to 5th September 2016), there were a total of just twelve post notifications submitted to Council. If these statistics accurately reflect true vegetation management as a result of high risk trees, this low utilisation indicates further temporary amendments are unwarranted. 5. Agree. Council's Environment Policy (adopted 8th March 2016) states Council's commitment to the principles of ecologically sustainable development which includes the conservation of biological diversity and ecological integrity. Implementing the proposed temporary DCP amendments would not be consistent with

ITEM 5 - ATTACHMENT 3 SUBMISSIONS TABLE.

			<p>Council's Environment Policy on the basis that it would not allow Council to satisfy itself that tree removal would not have an impact on the conservation of biological diversity and ecological integrity.</p> <p>6. Agree. See planning comment 5</p>
18	Individual	<ol style="list-style-type: none"> 1. The term 'extension' used in the advertising of the draft amendment was misleading as the previous moratorium had already expired. If trees were removed during this time, people should be prosecuted. 2. The April 2015 storm event is not sufficient justification for the draft amendment. 3. Increased pressure on landholders and Council over last 15 months to remove large trees under the moratorium. The determination of whether the trees were dangerous was an individual perception. 4. The post-notification requirement has not worked. 5. The draft amendment is inconsistent with Council's Environment Policy. 6. The natural environment in Port Stephens is being destroyed, and it is a reason tourists visit 7. Misconception in the community about dangerous trees 8. Continuing to allow increased destruction of the natural environment is inconsistent 	<ol style="list-style-type: none"> 1. Noted. 2. Agree. See Submission 1, planning comment 1 3. Noted. This is anecdotal evidence. Notwithstanding, the recommendation that the draft amendment not be supported addresses this concern. 4. Noted. See Submission 17, planning comment 4 5. Agree. See Submission 17, planning comment 5 6. Noted. Notwithstanding, the recommendation that the draft amendment not be supported will ensure adequate assessment of tree removal in urban areas. 7. Noted. See Submission 5, planning comment 4 8. Agree. Reducing the ability to retain koala habitat is inconsistent with Council values. Koala habitat is important in urban areas of Port Stephens as evidenced by mortality data from vehicle and domestic dog threats. Koala carer resources are already stretched and Council is supportive of the proposed koala hospital. The proposed amendments are

ITEM 5 - ATTACHMENT 3 SUBMISSIONS TABLE.

		with Council's funding of the proposed Koala hospital	likely to result in the inadvertent removal of more urban koala habitat and therefore increasing the risk of harm to koalas. This is inconsistent with Council's intention to increase support for the care of sick or injured koalas.
7,9,13, 14,15, 19,20, 22,23 & 24		<ol style="list-style-type: none"> 1. Objects as the existing DCP and LEP controls already provide for the removal of dangerous trees 2. Sufficient time has passed to allow dangerous trees resulting from the April 2015 to be removed. 3. The draft amendment does not adequately consider the effect of haphazard removal of trees on the Koala population or endangered wildlife. 4. Inconsistent with the CKPoM 	<ol style="list-style-type: none"> 1. Noted and agree. See Submission 1, planning comment 4 2. Agree. See Submission 1, planning comment 1 3. Agree. See Submission 18, planning comment 8 4. Agree. See Submission 6, planning comment 4

ITEM NO. 6**FILE NO: 16/445768
RM8 REF NO: PSC2005-4386****HUNTER ESTUARY COASTAL ZONE MANAGEMENT PLAN**

REPORT OF: DAVID ROWLAND - STRATEGY AND ENVIRONMENT SECTION
MANAGER
GROUP: DEVELOPMENT SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Endorse the Hunter Estuary Coastal Zone Management Plan for submission to the Minister for Planning for certification under the *Coastal Protection Act 1979*.
 - 2) Note the agency submissions received during the public exhibition period.
-

**ORDINARY COUNCIL MEETING - 13 DECEMBER 2016
COMMITTEE OF THE WHOLE RECOMMENDATION**

	Councillor John Nell Councillor Chris Doohan That the recommendation be adopted.
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**ORDINARY COUNCIL MEETING - 13 DECEMBER 2016
MOTION**

356	Councillor Paul Le Mottee Councillor Ken Jordan It was resolved that Council: <ol style="list-style-type: none">1) Endorse the Hunter Estuary Coastal Zone Management Plan for submission to the Minister for Planning for certification under the <i>Coastal Protection Act 1979</i>.2) Note the agency submissions received during the public exhibition period.
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BACKGROUND

The purpose of this report is to provide an overview of the agency comments received as part of the public exhibition period for the Draft Hunter Estuary Coastal Zone Management Plan. No community submissions were received.

Comments were received from Roads & Maritime Authority, Department of Primary Industries (incorporating Fisheries, Agriculture and Water), Department of Planning and Environment and the Environmental Protection Authority. Letters of support were received from Office of Environment and Heritage, Hunter Water and Local Land Services with no specific comments. Department of Industry – Lands could not provide comment within the specified timeframe. Their comments will be considered along with those of the Minister for Planning through the certification process.

In response to agency comments a series of minor amendments were made. A summary of the responses and the associated amendments are enclosed in **(ATTACHMENT 1)**.

The 2016 DRAFT Hunter Estuary Coastal Zone Management Plan is a revision of the 2009 version to improve its alignment with the provisions of Part 4A of the *Coastal Protection Act 1979*. It is proposed that the current *Coastal Protection Act 1979* be replaced by a new Coastal Management Act 2016. If submitted for certification prior to the end of 2016 the Hunter Estuary Coastal Zone Management Plan will be assessed under the original guidelines of the *Coastal Protection Act 1979* and if approved will enable councils to be eligible for implementation funding.

The revision was undertaken by the Hunter Estuary Technical Working Party consisting of representatives from Local Land Services, National Parks & Wildlife Services, Hunter Water, Port of Newcastle, Office of Environment & Heritage, Newcastle City Council, Maitland City Council and Port Stephens Council.

On 25 October 2016 Council resolved to endorse the revised plan and place it on exhibition for a period of 28 days.

COMMUNITY STRATEGIC PLAN

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

FINANCIAL/RESOURCE IMPLICATIONS

The implementation of the management strategies contained within the plan relies heavily on an integrated approach by all the relevant key stakeholders. This will be facilitated through the ongoing work of the Hunter Estuary Technical Working Party. Council is represented at these meetings by the Natural Resource Coordinator.

Some strategies/actions have identified Council as the lead agency and represent the direct responsibility of local government. The implementation of these projects will

MINUTES ORDINARY COUNCIL - 13 DECEMBER 2016

follow the normal process of prioritisation within Council's work plans as per available funding and resources.

Many actions will require additional funding from external sources prior to commencement. Certification of the plan will make council eligible to apply for state government coastal management funding. There is potential to contract agencies such as Local Land Services to manage implementation.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	No		
Reserve Funds	No		
Section 94	No		
External Grants	Yes		Enables application for NSW Government funding.
Other	No		

LEGAL, POLICY AND RISK IMPLICATIONS

Once certified as developed in accordance with the current *Coastal Protection Act 1979* it is taken to be a Coastal Management Program prepared and adopted under the new *Coastal Management Act 2016*. Once the new Act commences implementation of the plan by Council is undertaken via the Integrated Planning and Reporting framework.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that if not certified coastal management implementation funding from the NSW Government for actions contained within the plan will not be accessible by Port Stephens or partner Councils'.	Medium	Progress with endorsement pathway for the plan to be submitted for certification.	

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The Hunter Estuary is one of the largest estuaries in NSW and arguably one of the most complex from a land use and administrative perspective covering three local government areas. The plan is a strategic and long term plan developed through a

specifically designed and legislated framework. It aims to provide guidance for achieving a sustainable estuary in the future while giving balanced consideration to the environmental, social and economic demands on the river system and its extensive catchment area. Without such documents leverage for external funding is not possible and councils are left with the bill.

The extensive consultation undertaken during its development ensures it is reflective of the values and desires of the community.

MERGER PROPOSAL IMPLICATIONS

There are no identified merger implications.

CONSULTATION

The Draft plan was placed on public exhibition for a period of 28 days from 26 October to 22 of November 2016. Notifications were placed in the Port Stephens Examiner and Newcastle Herald and copies of the draft plan made available on Councils website, Administration building and Tomaree Library. No community comments were received.

Agency and council staff within Port Stephens, Newcastle and Maitland councils reviewed and provided comment on the 2009 plan to reflect the status of the management strategies, current planning context and the meet the provisions of 4 A of the *Coastal Protection Act 1979*.

Extensive community consultation was undertaken through the development of the 2009 version of the plan.

Internal

Relevant internal Council staff have reviewed and provided comment on the strategies and actions of the plan.

External

Representatives from the Hunter Estuary Working Party and each council met on the 27 September 2016 to collectively review the plan from a regional context.

Notification of the plans exhibition with an invitation to comment was provided to the following agencies; Department of Primary Industries – Water, Department of Primary Industries – Fisheries, Department of Primary Industries – Agriculture, Department of Industry – Lands, Roads & Maritime Services, Department of Planning & Environment, NSW Environment Protection Authority, National Parks & Wildlife Service, Hunter Local Land Services, Office of Environment & Heritage and Hunter Water. Responses were received from all agencies apart from National Parks & Wildlife Service and Department of Industry – Lands.

OPTIONS

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

ATTACHMENTS

- 1) Agency Responses.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

- 1) Draft Hunter Estuary Coastal Zone Management Plan 2016.

ITEM 6 - ATTACHMENT 1 AGENCY RESPONSES.
ATTACHMENT 1 Summary of Public Authority Responses

The following is an overview of the agency comments that were received as part of the 2016 review of the Hunter Estuary Coastal Zone Management Plan.

Summary of Advice Received	Response
Roads & Maritime Authority	
Strategy 8 <ul style="list-style-type: none"> An erosion management plan for the Lower & Upper Williams River is currently underway. An erosion management plan for the Hunter River is not being developed at this time however "management" through advisory & regulatory signage has been installed at strategic locations to manage boating activity & its impact. 	Amendments to Strategy 8 and Appendix C (Status Report)
Strategy 14 <ul style="list-style-type: none"> RMS routinely support this strategy via education/signage/enforcement 	Amendments to Strategy 14 undertaken.
Strategy 18 <ul style="list-style-type: none"> There is opportunity for RMS to provide financial assistance through "Boating Now" funding. 	Amendments to Strategy 18 undertaken.
Strategy 22 <ul style="list-style-type: none"> RMS owns the seabed in Newcastle Harbour and issues a Port Safety Operating Licence to the Port of Newcastle (PoN). The PoN routinely undertake maintenance dredging operations to ensure safe navigation. PoN is responsible for sampling etc within port boundaries. RMS is not responsible for assessing for contaminated sediment in the Hunter estuary. 	Amendments to Strategy 22 undertaken.
Strategy 23 <ul style="list-style-type: none"> The Port Safety Operating Licence issued to PoN details conditions for the disposal of dredge spoil. 	Amendments to Strategy 23 undertaken.
Department of Industry	
DPI- Suggests rationalising objectives into a manageable number that can be easily understood and considered concurrently in a balanced but comprehensive manner	Objectives were created through a comprehensive community consultation process it is not appropriate to make these changes at this time
DPI suggests that the strategies and actions	The plan is funding dependent and

ITEM 6 - ATTACHMENT 1 AGENCY RESPONSES.

Summary of Advice Received	Response
should have more quantifiable key performance indicators and due dates attached to each action in the table	it is inappropriate to place restrictive timeframes for agencies to commit to at this time. Prioritisation is provided in section 3.
DPI recommends that monitoring of water quality impacts in poor water quality hotspots be investigated	This is captured in strategy 4, action 4.7.
DPI recommends that there is some mention (addressing aspects such as costs, impacts, monitoring and mitigation) of the Wiliamtown RAAF issue in the plan	This issue is being investigated and addressed separately to the estuary plan.
DPI requests to be added as a lead agency in Strategy 3 and noting instream mapping	Amendments to strategy 3 undertaken
DPI requests that Strategy 5 comments be updated to note that Bringing back the Fish has been completed and requests Appendix C to reflect this work	Amendments to strategy 5 undertaken.
DPI requests that they be added as support agency to Strategy 8 as they have a significant role in conservation planning. They also requests noting that all works consider instream habitat and environmentally friendly design	Amendments to Strategy 8 undertaken.
DPI requests that they be placed as a lead agency in Strategy 12 if this includes working in/with the Marine Estate Management Act/reforms	This strategy is not specifically aimed at the Marine Estate Management Act/reforms and as a support agency DPI will be invited to any workshops undertaken
DPI requests to be a lead agency in Strategy 14 as they have an important role assessing land use/catchment impacts from existing land management	Amendments to Strategy 14 undertaken
DPI requests to be a lead agency in Strategy 17 as they have a key role in estuarine habitat rehabilitation	Amendments to Strategy 17 undertaken
DPI requests to be a lead agency in Strategy 20 as they have a key role in assessing estuarine vegetation habitat impacts	Amendments to Strategy 20 undertaken
DPI requests consultation in regards to projects noted through the Hunter Estuary Working Group as funding for related actions becomes available	Noted
Department of Planning & Environment	
DoPE requests that the plan make reference to the new Hunter Regional Plan and that they be removed from Strategy 11	Amendments to Strategy 11 undertaken

ITEM 6 - ATTACHMENT 1 AGENCY RESPONSES.

Summary of Advice Received	Response
as a lead agency and be noted as a support agency	
Environment Protection Authority	
EPA provided up date to the Lower Hunter River Health Monitoring Program which was carried out by OEH in 2014-15	This has been added as a project in Appendix C
EPA provides an update on the Hunter Salinity Trading Scheme for Strategy 21	This is noted for future projects with estuary plan
EPA requests that Strategy 22 and 4 be combined	Strategy 22 updated to note that the model should be used to determine contamination dispersal and to include data collected be included into the model (strategy 4)
EPA notes that extraction under Strategy 23 would trigger a licence under the Protection of Environmental Operations Act if it exceeds 30,000 cubic metres	Placed as a comment in strategy 23.

MINUTES ORDINARY COUNCIL - 13 DECEMBER 2016

Councillor Paul Le Mottee left the meeting at 06:20pm prior to Item 7 in Committee of the Whole.

Councillor Paul Le Mottee left the meeting at 07:11pm prior to Item 7 in Open Council.

ITEM NO. 7

FILE NO: 16/456314
RM8 REF NO: PSC2013-03818

MEDOWIE PLANNING STRATEGY & TOWN CENTRE MASTER PLAN

REPORT OF: DAVID ROWLAND - STRATEGY AND ENVIRONMENT SECTION
MANAGER
GROUP: DEVELOPMENT SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Receive and note the submissions and comments received during public exhibition of the draft revised Medowie Planning Strategy and draft Medowie Town Centre Master Plan (**ATTACHMENT 1**).
- 2) Adopt the final Medowie Planning Strategy (**ATTACHMENT 2**), which includes the Town Centre Master Plan (**ATTACHMENT 3**).
- 3) Seek endorsement of the final Medowie Strategy, which includes the Town Centre Master Plan from the NSW Department of Planning and Environment.

ORDINARY COUNCIL MEETING - 13 DECEMBER 2016 COMMITTEE OF THE WHOLE RECOMMENDATION

	Mayor Bruce MacKenzie Councillor Chris Doohan That the recommendation be adopted.
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In accordance with Section 375 (A) of the Local Government Act 1993, a division is required for this item.

Those for the Motion: Mayor Bruce MacKenzie, Crs Geoff Dingle, Chris Doohan, Sally Dover, Ken Jordan, Peter Kafer, John Morello and John Nell.

Those against the Motion: Cr Steve Tucker.

**ORDINARY COUNCIL MEETING - 13 DECEMBER 2016
MOTION**

357	Mayor Bruce MacKenzie Councillor John Morello It was resolved that Council: <ol style="list-style-type: none">1) Receive and note the submissions and comments received during public exhibition of the draft revised Medowie Planning Strategy and draft Medowie Town Centre Master Plan (ATTACHMENT 1).2) Adopt the final Medowie Planning Strategy (ATTACHMENT 2), which includes the Town Centre Master Plan (ATTACHMENT 3).3) Seek endorsement of the final Medowie Strategy, which includes the Town Centre Master Plan from the NSW Department of Planning and Environment.
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In accordance with Section 375 (A) of the Local Government Act 1993, a division is required for this item.

Those for the Motion: Mayor Bruce MacKenzie, Crs Geoff Dingle, Chris Doohan, Sally Dover, Ken Jordan, Peter Kafer, John Morello and John Nell.

Those against the Motion: Cr Steve Tucker.

BACKGROUND

The purpose of this report is to consider submissions received during the public exhibition of the draft Medowie Planning Strategy and draft Medowie Town Centre Master Plan and to recommend their adoption.

Public Exhibition

The draft revised strategy and town centre master plan were exhibited from 18 February to 21 April 2016. Seventeen submissions (non-government authority) were received in writing or email. Seventy-seven Comments were received using interactive online mapping. A submission summary including response to issues and comments is provided at (**ATTACHMENT 1**).

The main community issues and objections are summarised below:

- Objection to high density residential in the town centre (attached townhouses and laneways). In response this concept has been removed and replaced with 'small lot residential (min. 300m²) detached single dwellings, villas and dual occupancies'.

- Infrastructure (need for a high school; provision of quality open space; support for a community club; support for new public toilets; concern about proximity of the town square near the pub). In response locations for schools have been retained for future provision by the relevant service providers. A town square (including new public toilets) is proposed and the Ferodale Park Sports Complex is included. The location of the town square near the hotel is retained because of its central location and opportunity to take advantage of redevelopment under the town centre master plan. The future detailed design of the town square will be carefully considered and subject to further community consultation.

Some submissions relate directly to proposed land uses for a specific property. These are addressed in the attached submission summary.

The main government agency objections related to impact on biodiversity (NSW Office of Environment and Heritage) and objection to additional development directly adjacent to the Grahamstown Dam (Hunter Water Corporation). In response the area of affected vegetation is reduced and development directly adjacent to Grahamstown Dam has been removed.

Medowie Planning Strategy

The final strategy is at **(ATTACHMENT 2)**. Its purpose is to guide future land use and infrastructure planning. Main features include:

- A simplified land use structure and planning precinct approach;
- 2,400 new dwellings in priority and long-term residential release areas;
- Inclusion of the Ferodale Park Sports Complex as a key community and recreation facility;
- Consolidation of commercial zoning limited to the town centre to ensure it remains the focus for commercial and community activity;
- Site-specific commercial uses at other existing locations to cater for existing uses and attractions along main transport routes;
- Additional emphasis on rural residential development at Abundance Road, Fairlands Road and Lisadell Road;
- Additional emphasis on the need to improve or maintain drinking water quality within the Grahamstown Dam Drinking Water Catchment including exclusion of development on land that drains directly to Grahamstown Dam;
- Relocation of the proposed town lake to the western side of Campvale Drain;
- Facilitating a library facility within the town centre;
- Identification of key traffic and transport infrastructure upgrades including road and intersection upgrades and shared paths;
- Additional avoidance of impacts on vegetation.

The final strategy will replace the existing strategy adopted by Council in 2009.

Medowie Town Centre Master Plan

The final town centre master plan is at **(ATTACHMENT 3)**. Its purpose is to guide future land use and infrastructure planning in higher detail within the town centre. Main features include:

- Commercial uses with frontage to and generally bound by Medowie Road, Ferodale Road, Peppertree Road and Muir Street;
- Provision for small lot residential development (min. 300m²) - detached single dwellings, villas and dual occupancies;
- A town square (including new public toilets);
- Ferodale Park Sports Complex;
- A town lake on the western side of Campvale Drain;
- Extension to the road network;
- A shared-path network connecting to main community facilities.

The town centre master plan is incorporated within the strategy.

COMMUNITY STRATEGIC PLAN

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

FINANCIAL/RESOURCE IMPLICATIONS

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes	To be determined	Funding will be required for future detailed planning for provision of local infrastructure (community and recreation facilities; drainage; traffic and transport).
Reserve Funds	No		
Section 94	Yes		Future development will be subject to local infrastructure contributions in accordance with the Port Stephens Development Contributions Plan 2007.
External Grants	No		
Other	No		

LEGAL, POLICY AND RISK IMPLICATIONSHunter Regional Plan

The Hunter Regional Plan was released in October 2016 and is a 20 year blueprint for the future of the Hunter. Medowie is identified as a centre of local significance. Implementing the strategy aligns with the applicable goals, direction and actions as outlined in the policy context section of the Hunter Regional Plan.

It is a recommendation of this report to seek endorsement of the strategy and town centre master plan from the NSW Department of Planning and Environment.

Port Stephens Planning Strategy

The Port Stephens Planning Strategy provides the current framework for future growth in the Local Government Area. It identifies Medowie as a priority potential future residential area with an estimated 2,400 potential residential dwellings. The strategy aligns with this estimate.

Port Stephens Development Control Plan 2014

Site-specific development control plan chapters are to be required for planning precincts and are required to address detailed subdivision development matters.

Port Stephens Local Environmental Plan 2013

Land use changes envisioned by the recommended strategy will be facilitated by amendments to the Port Stephens Local Environmental Plan 2013 through the planning proposal (rezoning) process. A key aspect of the strategy is for planning proposals to be prepared on a precinct basis for efficient administration of amendments and to facilitate the coordination of development.

It encourages groups of landowners to share resources by lodging a combined planning proposal to rezone land. It also seeks to achieve improved design outcomes and increases the likelihood that a planning proposal will be supported by the Department of Planning and Environment.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that the strategy does not resolve the concerns of government agencies.	Medium	Adopt the strategy and seek endorsement from the NSW Department of Planning and Environment.	Yes

MINUTES ORDINARY COUNCIL - 13 DECEMBER 2016

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that future development is not supported by adequate infrastructure.	Medium	Prepare new and update existing infrastructure plans to align with the strategy and master plan.	Yes
There is a risk that water quality can be affected by development within the drinking water catchment.	Medium	Exclude land draining directly to Grahamstown Dam. Undertake drainage strategy in liaison with Hunter Water Corporation. Require planning proposals to demonstrate neutral or beneficial effect on water quality.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Adopting the recommended strategy has broad positive social, economic and environmental implications. It ensures that strategic land use planning for Medowie continues to facilitate the delivery of land for housing and identifies and facilitates community infrastructure planning to accommodate growth. The strategy has additional avoidance of impacts on vegetation to better align with environmental policy and legislation to assist the rezoning and development phases.

MERGER PROPOSAL IMPLICATIONS

There are no merger implications.

CONSULTATION

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

The objective of the consultation was to obtain community feedback on the draft Medowie Planning Strategy and draft Medowie Town Centre Master Plan.

Internal

Internal consultation was undertaken during the preparation of the draft Strategy prior to exhibition and included a Technical Group.

Internal consultation will be ongoing as part of the 'implementation phase' and in accordance with the Implementation Plan within the Strategy. This includes establishment of an Implementation Panel involving the various sections of Council

on an 'as needed' basis. Accompanying review or preparation of detailed technical reports will be undertaken in consultation with the relevant Council sections.

External

Public exhibition of the revised draft strategy and draft town centre master plan was undertaken from 18 February to 21 April 2016. Three drop-in sessions were held at the Medowie Community Centre. Staff additionally attended a forum organised by the Medowie Progress Association.

Exhibition material was made available on Council's website, at the Medowie Community Centre and the Raymond Terrace Administration Building. Exhibition also included interactive online mapping. Landowners within the town centre were directly notified.

The key issues raised are discussed previously in this report and a submission summary including response to issues is at **(ATTACHMENT 1)**.

The review of the 2009 strategy was completed in consultation with the Medowie Strategy Review Consultative Panel established by Council under its resolution of 27 August 2013. The Panel met on five occasions prior to public exhibition.

OPTIONS

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

ATTACHMENTS

- 1) Submission Summary. (Provided under separate cover)
- 2) Medowie Planning Strategy. (Provided under separate cover)
- 3) Medowie Town Centre Master Plan.

COUNCILLORS ROOM

- 1) Submission Folder.

TABLED DOCUMENTS

Nil.



ITEM NO. 8

**FILE NO: 16/460654
RM8 REF NO: PSC2015-00487**

DRAFT PORT STEPHENS RURAL RESIDENTIAL POLICY

REPORT OF: DAVID ROWLAND - STRATEGY AND ENVIRONMENT SECTION
MANAGER
GROUP: DEVELOPMENT SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Receive and note the submissions received during the public exhibition of the draft Port Stephens Rural Residential Strategy **(ATTACHMENT 1)**;
 - 2) Endorse the draft Port Stephens Rural Residential Policy **(ATTACHMENT 2)** to provide a guidance framework for the assessment of planning proposals seeking rural residential development in the short to medium term;
 - 3) Place the, draft Port Stephens Rural Residential Policy on public exhibition for a period of 28 days and should no submissions be received, the policy be adopted, without a further report to Council.
 - 4) Endorse the need to provide a more integrated approach by identifying the key locations for rural residential development in the upcoming review of the Port Stephens Planning Strategy.
-

**ORDINARY COUNCIL MEETING - 13 DECEMBER 2016
COMMITTEE OF THE WHOLE RECOMMENDATION**

	<p>Councillor Ken Jordan Mayor Bruce MacKenzie</p> <p>That Council:</p> <ol style="list-style-type: none">1) Receive and note the submissions received during the public exhibition of the draft Port Stephens Rural Residential Strategy (ATTACHMENT 1);2) Endorse the draft Port Stephens Rural Residential Policy (ATTACHMENT 2) to provide a guidance framework for the assessment of planning proposals seeking rural residential development in the short to medium term;3) Place the, draft Port Stephens Rural Residential Policy on public exhibition for a period of 42 days and should no submissions be received, the policy be adopted, without a further report to Council.4) Endorse the need to provide a more integrated approach by identifying the key locations for rural residential development in the upcoming review of the Port Stephens Planning Strategy.
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The motion was put and carried.

**ORDINARY COUNCIL MEETING - 13 DECEMBER 2016
AMENDMENT**

	<p>Councillor Geoff Dingle Councillor John Nell</p> <p>That item 8 be deferred to allow for Council and the community to be provided with a copy of the draft Port Stephens Rural Residential Strategy.</p>
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The amendment was put and lost.

**ORDINARY COUNCIL MEETING - 13 DECEMBER 2016
MOTION**

358	<p>Mayor Bruce MacKenzie Councillor John Morello</p> <p>It was resolved that Council:</p> <ol style="list-style-type: none">1) Receive and note the submissions received during the public exhibition of the draft Port Stephens Rural Residential Strategy (ATTACHMENT 1);2) Endorse the draft Port Stephens Rural Residential Policy (ATTACHMENT 2) to provide a guidance framework for the assessment of planning proposals seeking rural residential development in the short to medium term;3) Place the, draft Port Stephens Rural Residential Policy on public exhibition for a period of 42 days and should no submissions be received, the policy be adopted, without a further report to Council.4) Endorse the need to provide a more integrated approach by identifying the key locations for rural residential development in the upcoming review of the Port Stephens Planning Strategy.
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BACKGROUND

The purpose of this report is to outline submissions received during public exhibition of the draft Port Stephens Rural Residential Strategy (the draft strategy) and to endorse the draft Port Stephens Rural Residential Policy to guide the consideration

and assessment of planning proposals for rural residential development in the Port Stephens local government area (LGA).

In June 2014, Council resolved to prepare a draft Rural Residential Strategy which aimed to provide a framework for which Council can assess the appropriateness of future rural residential planning proposals.

The draft strategy was subsequently placed on public exhibition and a total of 29 submissions were received. A summary and planning response to these submissions is provided as **(ATTACHMENT 1)**. Key issues are now discussed.

Key Issues

Locational Criteria

Due to the draft Strategy considering the whole of the LGA, detailed investigations of constraints for each lot was not possible. As a result the 'Exclusionary Criteria' was developed and was limited to key exclusions that could be easily mapped, while other constraints that required more detailed site investigations and impacts could be potentially mitigated were defined as 'Management Criteria'.

As a result, a number of submissions from residents as well as State Agencies considered the draft Strategy as too high level and lacking in detail.

It was also recommended that the criteria be refined to give greater upfront consideration to the importance of conserving prime agricultural and the need for improved buffers to avoid land-use conflict issues associated with residential development being located in close proximity to agriculture and conserving areas of high environmental value.

Small Lot Subdivisions

To facilitate coordinated development the draft strategy was intended to apply to proposals or locations creating ten or more lots. Despite this, a number of submissions were received from owners requesting subdivision of less than 10 lots.

Due to the highly fragmented subdivision pattern of the Local Government Area (LGA), the submissions argue that their site and surrounding lands are no longer used for rural purposes and is below the existing minimum subdivision lot size.

Prior to the introduction of the Port Stephens Local Environmental Plan 2013 (LEP), subdivision of rural lots for dwelling houses was permitted under a concessional lot provision. In many instances, the provision resulted in the unplanned creation of rural residential lots and resulted in a range of unintended impacts (e.g. fragmentation of rural land, land use conflicts and increased demand for infrastructure and services in remote areas). As a result this provision was removed from LEPs.

Consistent with this approach, the purpose of the Rural Residential Strategy was not to allow for additional subdivision and minor amendments to lots sizes but rather to provide for a more coordinated approach to the consideration of rezoning additional R5 – Large Lot Residential in the LGA.

Recommendations

It is acknowledged that the strategy was high level due to the need for it to consider the entire LGA. This was necessary for the initial assessment of issues. It is considered that the long term planning around rural villages including appropriate zonings and lot sizes should be undertaken as part of the review of the Port Stephens Planning Strategy, which is scheduled to be undertaken in 2017.

In response, for clarity the Draft Rural Residential Strategy has been revised into a draft Rural Residential Policy and Assessment Criteria (**ATTACHMENT 2**).

The policy and assessment criteria provides a framework for which Council can assess the appropriateness of rural residential development proposals in the interim whilst undertaking further work as part of the Port Stephens Planning Strategy review.

The policy outlines Council's appetite for rural residential land use generally, whilst the assessment criteria endeavours to provide greater clarity around areas that may be appropriate for this type of land use.

The assessment criteria takes into consideration submissions received during public exhibition. In response, key changes to the assessment criteria from the Draft Rural Residential Strategy Locational Criteria include:

- Removing the requirement for a proposal to create a minimum of 10 lots;
- Development is required to be within 800m of existing R5 – Large Lot Residential zone;
- Development is required to be a minimum of 800m from existing R2 – Low Density Residential and RU5 – Rural Village;
- Development is required to be a minimum 1km buffer from existing agricultural industry (eg poultry farms) measured from the property boundary to the neighbouring property boundary. Development proposed within the 1km buffer is required to provide expert reports to obtain appropriate setbacks.

Mapping has not been included as part of the Policy as all constraints requiring consideration cannot not be mapped and require more detailed site investigations.

COMMUNITY STRATEGIC PLAN

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

FINANCIAL/RESOURCE IMPLICATIONS

There are no foreseen financial or resource implications as a result of the recommendation proposed in this report.

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

LEGAL, POLICY AND RISK IMPLICATIONS

There are no foreseen legal, policy or significant risk implications as a result of the recommendations outlined within this report.

Hunter Regional Plan 2036

The Hunter Regional Plan (HRP) was released on 14 October 2016 and is a 20-year blueprint for the future of the Hunter.

The HRP states that the State Government will provide guidance in local land use strategies for expanding rural villages and rural residential development so that such development will:

- not impact on strategic or important agricultural land, energy, mineral or extractive resource viability or biodiversity values;
- not impact on drinking water catchments;
- not result in greater natural hazard risk;
- occur on land that is unlikely to be needed for urban development;
- contribute to the conservation of important biodiversity values or the establishment of important corridor linkages;
- facilitate expansion of existing and new tourism development activities in agricultural or resource lands and related industries across the region.

The draft Rural Residential Policy has been prepared in accordance with the Hunter Regional Plan. Correspondence from the Department of Planning and Environment received by Council on 30 November 2016 encourages Council to progress strategic planning work including the interim Locational Criteria proposed (**ATTACHMENT 3**). They consider the Criteria as an early step in the process towards endorsement for a future rural Residential Strategy. Taking into account this advice from the Department, it is considered the same outcome could be achieved during the review of the Port Stephens Strategy proposed to occur in 2017-18.

State Environmental Planning Policy (Rural Lands) 2008

The State Environmental Planning Policy (Rural Lands) 2008 acknowledges the importance of rural land and provides rural subdivision principles to minimise rural land fragmentation and rural land use conflicts. Council is required to consider changes in minimum lot sizes under local environmental plans in accordance with the Rural Planning Principles and the Rural Subdivision Principles.

Any future planning proposal will be required to be consistent with these principles.

Port Stephens Planning Strategy 2011

The Port Stephens Planning Strategy 2011 (PSPS) provides the current framework for future growth in the LGA. It also identifies the 'need to ensure that prime agricultural land and important rural landscapes are protected from undesirable development.'

The PSPS highlights that the LGA is highly constrained for residential development due to environmental factors, flooding and aircraft noise. It is important that any areas with urban potential such as Wallalong, be protected from premature development which may affect that land's urban development in the medium to long term.

As a result, areas identified as future urban growth areas identified in the PSPS and key rural land have been excluded from potential rural residential development locations in accordance with the locational criteria.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that the policy will not be adopted by Council resulting in Council having no policy framework to consider future rural residential planning proposals.	Low	The policy has been developed following feedback received during public consultation and state agency advice.	Yes

MINUTES ORDINARY COUNCIL - 13 DECEMBER 2016

There is a risk that future rural residential planning proposals will not be supported by the State Government.	Medium	The policy is prepared in accordance with the Hunter Regional Plan.	Yes
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SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Rural residential development is a valuable form of development and contributes to the diversity and choice of housing in the Port Stephens LGA. It does however require special considerations as it can have environmental, social and economic costs that are significantly higher than those of standard residential development.

This revised Rural Residential Policy and Assessment Criteria aims to address social, economic and environmental issues raised during exhibition and acknowledges that rural land is a finite resource and aims to ensure all social, environmental and economic factors are considered for any future rezoning proposals.

MERGER PROPOSAL IMPLICATIONS

Any future planning proposal for rural residential development will be required to undertake an assessment under gateway which is independent of any potential merger.

CONSULTATION

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

Internal

Internal consultation was undertaken during the preparation of the draft Strategy prior to exhibition as part of the preparation of the draft Rural Residential Policy post exhibition.

External

The draft strategy was on public exhibition from Thursday 27 August to Thursday 8 October 2015. Exhibition material was available for viewing at the:

- Port Stephens Council Administration Building;
- Tomaree Library;
- Councils Website.

Council also held drop in information sessions open to the public at the following locations throughout the exhibition period. Opportunity was also available to the

public to participate in a round table discussion with Council staff to discuss the draft Strategy in detail.

During exhibition a number of submissions from the community, key stakeholder groups and government agencies were received as summarised in **(ATTACHMENT 1)**.

In accordance with local government legislation the draft Rural Residential Policy will go on public exhibition for 28 days.

OPTIONS

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

ATTACHMENTS

- 1) Summary of Submissions.
- 2) Draft Rural Residential Policy.
- 3) Correspondence from Department of Planning and Environment.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ITEM 8 - ATTACHMENT 1 SUMMARY OF SUBMISSIONS.

ATTACHMENT 1 – SUMMARY OF SUBMISSIONS		
Name	Submission	Recommendations
State Agencies		
Hunter Water	Identify the five 'special areas' regulated for the purpose of protecting drinking water supplies at: - Williams River - Grahamstown - Nelson Bay - North Stockton - Tomago Sandbeds	<ul style="list-style-type: none"> Noted – to be considered as part of Port Stephens Planning Strategy Review.
	Prevent effluent from reaching drinking water sources and ensuring that water quality does not decline as a result of development should be a management criteria especially in drinking water catchments. Reticulated sewer servicing considerations provided for each investigation area, identifying whether services are available, remote or not available.	<ul style="list-style-type: none"> Development within a drinking water catchment must be able to be connected to reticulated sewer and able to demonstrate NorBE 'neutral and beneficial effect' in accordance with Hunter Water requirements.
	Water servicing considerations provided for each investigation area, identifying whether services are remote (trunk main > 2km) or available (trunk main < 2km) and, if available, would need to address security of supply.	<ul style="list-style-type: none"> Noted – to be considered as part of Port Stephens Planning Strategy Review.
Department of Defence	Some investigation areas border ANEF 20 contour lines, which are below the exclusionary criteria. DoD will not accept liability for exposure to aircraft noise in these locations.	<ul style="list-style-type: none"> Exclusionary Criteria currently excludes land within ANEF 25 or greater. New Management Criteria requiring appropriate mitigation measures for any proposals within the ANEF 20.
Department of Planning and Environment	Ensure strategy is consistent with state agency recommendations and state planning documents and guidelines.	<ul style="list-style-type: none"> Assessment Criteria amended in line with state agency submissions and Hunter Regional Plan.

ITEM 8 - ATTACHMENT 1 SUMMARY OF SUBMISSIONS.

Department of Office and Environment	Reference Section 117 direction 2.1 with respect to protecting and conserving environmentally sensitive areas.	<ul style="list-style-type: none"> Assessment criteria currently includes the requirement that: <ul style="list-style-type: none"> Koala habitat areas and corridors are to be protected in accordance with the Port Stephens Comprehensive Koala Plan of Management. Development must not impact on native vegetation, endangered ecological communities, threatened species or habitats. All Environmental Sensitive Land has been excluded such as State and Local wetlands. New Management Criteria requiring development identified in SEPP 71 Coastal Zone needs to provide for the protection of the coastal environment of the State for the benefit of both present and future generations through promoting the principles of ecologically sustainable development.
	Strategy does not identify how rural residential development would be monitored and reported, or how the strategy would be reviewed.	<ul style="list-style-type: none"> Policy is considered only an interim measure. Monitoring and reporting to be carried out as part of Port Stephens Planning Strategy review process.
	The broad scale flood constraints used to prepare the strategy may not accurately reflect risks associated with smaller creeks and tributaries, which can be significant in assessing both flood risk and evacuation alternatives.	<ul style="list-style-type: none"> The draft criteria applied the PSLEP 2013 flood map. An updated flooding hazard map has since been adopted by Council and applied.
	The strategy recommends Maitland as an evacuation destination for many of the investigation areas. This is not considered an appropriate evacuation point for additional residents because it is frequently cut off by flooding and does not have a high level evacuation route.	<ul style="list-style-type: none"> Existing criteria requires for areas that have potential to be isolated in flood events, to have access to an urban centre with emergency services and evacuation facilities, via a public road that is given at least 24 hours warning of flood isolation.
	Minimum lot size considerations should be reviewed in locations identified as floodprone to ensure appropriate stock refuge areas can be provided within the lot.	<ul style="list-style-type: none"> New management criteria requiring development in floodprone areas are to identify minimum lot sizes that provide appropriate stock refuge in the event of flooding.

ITEM 8 - ATTACHMENT 1 SUMMARY OF SUBMISSIONS.

	Provide preliminary considerations or guidelines for identifying and assessing impacts to Aboriginal cultural heritage.	<ul style="list-style-type: none"> New Management Criteria for ensuring Aboriginal and non Aboriginal cultural heritage is considered at Planning Proposal stage.
Roads and Maritime Services	Unlikely to support direct vehicular access to classified (State) roads for any new rural residential lots created.	<ul style="list-style-type: none"> Include new management criteria requiring development to not result in the creation of direct access to as state road.
Department of Primary Industry	More detailed information relating to agricultural lands within the LGA should be applied.	<ul style="list-style-type: none"> BSAL Mapping included as an exclusion. Rural land limited to those within 800 metres of an existing R5 zone.
NSW Farmers Association	Strategy should include a management criteria that reflects or refers to best practice guidelines for buffers to intensive agricultural industries and livestock operations.	<ul style="list-style-type: none"> Amend Management Criteria to require development to be a minimum 1km from agricultural industries measured from property boundary to property.
	Strategy should raise potential rural residential developers/occupiers' awareness of the realities of living close to ongoing agricultural operations (Buyer Beware).	<ul style="list-style-type: none"> Noted – to be considered as part of Port Stephens Planning Strategy Review.
	More clearly define and, where possible, map, what is considered to be 'significant agricultural land'.	<ul style="list-style-type: none"> BSAL Mapping included as an exclusion.
	Recognise / provide commentary on the environmental impacts of rural residential development, including owner/occupiers' responsibilities for controlling weeds and invasive species.	<ul style="list-style-type: none"> Noted – to be considered as part of Port Stephens Planning Strategy Review. Amend Management Criteria to require development to be a minimum 1km from agricultural industries measured from property boundary to property.
Individual	Supports 81 Lemon Tree Passage Road, Salt Ash for rural residential subdivision.	<ul style="list-style-type: none"> Applicant would be required to consider the revised Policy and Assessment criteria and lodge a planning proposal for further consideration.
Individual	Development should apply a minimum lot size of 1.2ha (3 acres).	<ul style="list-style-type: none"> Applicant would be required to consider the revised Policy and Assessment criteria and lodge a planning proposal for further consideration.

ITEM 8 - ATTACHMENT 1 SUMMARY OF SUBMISSIONS.

	Apply a minimum buffer of 750m between rural enterprises and rural residential block, to minimise effects of run-off.	<ul style="list-style-type: none"> Amend Management Criteria to require development to be a minimum 1km from agricultural industries measured from property boundary to property.
	Apply a standard for rural residential subdivisions to provide secure (pet-proof) fencing.	<ul style="list-style-type: none"> To be considered at development application stage.
	Allow flexibility and process for area-specific conditions to be negotiated and agreed with surrounding rural owners and enterprise operators.	<ul style="list-style-type: none"> New management criteria requiring consultation required as part of any planning proposal to consider site specific issues.
Individual	Objects to proposed rural residential subdivision at 600 Seaham Road, Nelsons Plains.	<ul style="list-style-type: none"> Specific planning proposals not considered as part of this process. Any future planning proposal will be required to consider the Policy and Assessment Criteria.
	Lot yield calculations and estimated development rates are misleading. The Strategy should refrain from forecasting yields and allow more detailed investigations / market forces to determine these.	<ul style="list-style-type: none"> Lot yields are not included as part of revised Policy. Investigation areas have been deleted from Policy. Further detailed investigation of areas with be undertaken as part of the Port Stephens Planning Strategy Review.
	A standard setback to rural industries (currently identified as 1km for rural fringe and 500m for rural living) is not an appropriate response. Suggests re-wording: <i>"If land proposed to be developed for some form of residential habitation is within 500m of a rural industry, then it will be necessary to provide expert reports and peer reviews of those reports to establish appropriate setbacks. These reports may relate to noise, odour, visual amenity or any other thing that may require consideration. Such reports shall not be required if the rural industry is more than 500m from the proposed development."</i>	<ul style="list-style-type: none"> Amend Management Criteria to require development to be a minimum 1km from agricultural industries measured from property boundary to property.
Individual	The Strategy needs to better integrate with existing local plans - e.g. Medowie Flood Plan, Medowie Strategy, etc.	<ul style="list-style-type: none"> Assessment Criteria updated in line with Medowie Strategy.

ITEM 8 - ATTACHMENT 1 SUMMARY OF SUBMISSIONS.

	Delay this document until the State Plans have come out listing restrictive State Guidelines.	<ul style="list-style-type: none"> Strategy has been reviewed in line with Hunter Regional Plan. The Policy is proposed to be applied in the interim of undertaking a review of the Port Stephens Planning Strategy in line with Hunter Regional Plan.
Individual	Strategy should recognise past mistakes in local rural residential developments (e.g. Brandy Hill), and reflect local rural residents' expectations with respect to local infrastructure, specifically, footpath/cycleway to nearest village/town centre and school bus.	<ul style="list-style-type: none"> Assessment Criteria updated to limit areas considered appropriate for future rural residential development in line with infrastructure requirements.
Individual	Strategy should identify mineral resource potential, and the impact this may have on the suitability of land for rural residential development.	<ul style="list-style-type: none"> Include new exclusionary criteria for locations of known mineral resource potential and appropriate buffers in line with DRE mineral resources audit.
	Objects to proposed rural residential subdivision at 600 Seaham Road, Nelsons Plains.	<ul style="list-style-type: none"> Specific planning proposals not considered as part of this process. Any future planning proposal will be required to consider the Policy and Assessment Criteria.
Community Group	Would not support additional rural residential development in the Frost Road, Anna Bay area due to flooding.	<ul style="list-style-type: none"> Flood mapping updated in line with Council flood hazard mapping.
	Amend the Exclusionary Criteria to include a new criterion requiring a reasonably wide buffer zone of native vegetation between the clearing for rural residential development and any main roads, to protect scenic qualities.	<ul style="list-style-type: none"> Include new management criteria - for development fronting road corridors to identify buffer zone to prevent clearing and protect scenic qualities.
	The Strategy does not investigate lands around Anna Bay, despite there being 'residual land'.	<ul style="list-style-type: none"> Investigation areas have been deleted from Policy. Further detailed investigation of areas will be undertaken as part of the Port Stephens Planning Strategy Review.
	Amend the Exclusionary Criteria to include all land zoned RE1 (Public Recreation) - thereby eliminating facilities such as the Nelson Bay Golf Course and Tomaree Sports Grounds.	<ul style="list-style-type: none"> New Exclusionary criteria excluding RE1 Zone land.
	Exclude land zoned E3 (Environmental Conservation).	<ul style="list-style-type: none"> E3 zoned land only considered in areas in close proximity to existing rural residential development and does not impact on the environmental values of the site.

ITEM 8 - ATTACHMENT 1 SUMMARY OF SUBMISSIONS.

	Amend the Exclusionary Criteria to include koala habitat.	<ul style="list-style-type: none"> Koala studies continually updated and improved so considered more appropriate to be considered in detail at Planning proposal stage.
	Clarify the management criteria position relating to bushfire mitigation and the potential conflict with biodiversity considerations - in some cases clearing may be required beyond the lot zoned for development. The use of offsets is not considered to be an acceptable alternative to meeting any of the flora/tree/vegetation protection criteria.	<ul style="list-style-type: none"> All development is required to be consistent with the Native Vegetation Act and Bushfire Regulations.
	The strategy should recognise where land currently zoned R5 or E4 may be considered to accommodate higher density residential uses.	<ul style="list-style-type: none"> Lot size review to be carried out as part of local area strategies as part of Port Stephens Planning Strategy Review.
	The potential yield for Bobs Farm / Salt Ash investigation area is overly optimistic given the stated locational considerations, combined with exclusionary and management criteria	<ul style="list-style-type: none"> Investigation areas have been deleted from Policy. Further detailed investigation of areas will be undertaken as part of the Port Stephens Planning Strategy Review.
Individual	New bridge (Hinton-Morpeth) and residential subdivision at Wallalong will impact on historic village of Morpeth as a result of increased traffic.	<ul style="list-style-type: none"> New management criteria requiring any development must not create additional demand for unplanned state infrastructure upgrades
	Proposals / considerations should involve consultation with Maitland City Council.	<ul style="list-style-type: none"> Consultation to be undertaken as appropriate with any specific planning proposal.
Individual	Supports the identification of 17 Nine Mile Creek Ferodale for rural residential subdivision.	<ul style="list-style-type: none"> Specific planning proposals not considered as part of this process. Any future planning proposal will be required to consider the Policy and Assessment Criteria.
Individual	Locational criteria should note location of poultry farms in the area, with intentions to grow business.	<ul style="list-style-type: none"> Buffer areas have been amended to be from the property boundary to property boundary rather than from the source to allow expansion.
	Objects to proposed rural residential subdivision at 600 Seaham Road, Nelsons Plains.	<ul style="list-style-type: none"> Specific planning proposals not considered as part of this process. Any future planning proposal will be required to consider the Policy and Assessment Criteria.

ITEM 8 - ATTACHMENT 1 SUMMARY OF SUBMISSIONS.

Individual	Exclude Medowie as an investigation area, and instead refer to the Medowie Strategy to avoid over-complicating / contradictory policy.	<ul style="list-style-type: none"> Policy updated in line with Medowie Strategy.
	Make the 'Existing and Future Urban Areas Map' (Volume 1: Figure 1) bigger and easier to read and clarify why a 2km buffer around existing urban settlements has been included.	<ul style="list-style-type: none"> A 2km buffer around existing urban settlements was included to ensure adequate expansion of residential areas in the future.
	Identify Raymond Terrace as a Major Regional Centre in the figure on p 11 (Volume 1)	<ul style="list-style-type: none"> Noted
Consultant	Recognise land in Wallalong as suitable for rural residential outcome, subject to resolution of urban development potential.	<ul style="list-style-type: none"> Some areas of Wallalong have rural residential potential subject to the Assessment Criteria.
Individual	Confirm support for strategy.	<ul style="list-style-type: none"> Noted
Individual	Supports the identification of 5 Frost Road, Anna Bay for rural residential subdivision.	<ul style="list-style-type: none"> Specific planning proposals not considered as part of this process. Any future planning proposal will be required to consider the criteria set out in this Policy.
Community Group	Strategy erroneously identifies Wallalong as earmarked for future urban development as this position has not yet been supported by the State Government.	<ul style="list-style-type: none"> Wallalong no longer identified as Future urban growth area.
	Rezoning rural land for urban development removes the availability of land for stock refuges in times of flood	<ul style="list-style-type: none"> Include new management criteria requiring development in flood prone areas to identify minimum lot size that appropriate stock refuge in the event of a flood.
	Include more detailed consideration of flood risk and access issues.	<ul style="list-style-type: none"> Flooding data updated in line with Flood hazard mapping.
	Identify Dunmore Bridge capacity issues as a locational consideration at Wallalong.	<ul style="list-style-type: none"> Some areas of Wallalong have rural residential potential subject to the Assessment Criteria including development must not create additional demand for unplanned state infrastructure upgrades.

ITEM 8 - ATTACHMENT 1 SUMMARY OF SUBMISSIONS.

	Strategy should identify mineral resource potential, and the impact this may have on the suitability of land for rural residential development (specific reference to Brandy Hill and Martins Creek quarries)	<ul style="list-style-type: none"> • Include new exclusionary criteria for locations of known mineral resource potential in line with DRE mineral resources audit.
Individual	Supports the identification of 600 Seaham Rd, Nelsons Plains for rural residential subdivision.	<ul style="list-style-type: none"> • Specific planning proposals not considered as part of this process. Any future planning proposal will be required to consider the criteria set out in this Policy.
Individual	<p>Strategy does not include any visionary specific goals.</p> <p>The Strategy should provide a more detailed overview of actions being taken by Council to implement its Rural Lands Study and Strategy and incorporate information/outcomes of these actions.</p> <p>The strategy does not address a conclusion of the 2011 Rural Study, that future rural residential development must be based on the redevelopment of land on larger holdings currently used for rural residential living.</p> <p>The Strategy does not fully consider what motivates people to seek rural residency.</p> <p>The Strategy does not fully consider local infrastructure demands arising from rural residential development, as opposed to major 'external' infrastructure.</p> <p>The Strategy should provide high-level design principles for rural residential developments, seeking to avoid past mistakes (specific reference to Brandy Hill)</p> <p>Limiting the application of this strategy to proposals for a cluster of 10 or more rural residential lots ignores the broader (precinct-level) impacts of piecemeal (e.g. one or two lot) rural residential subdivisions.</p>	<p>It is acknowledged that the Strategy is too high level due to the need for it to consider the entire LGA. It is considered that the long term planning around rural villages including appropriate zonings and lot sizes should be undertaken as part of the Port Stephens Planning Strategy review to be undertaken in 2017.</p> <p>As a result the Draft Rural Residential Strategy has been revised into a Rural Residential Policy and Assessment Criteria. The Policy and Assessment Criteria provides a framework for which council can assess the appropriateness of rural residential development proposals in the interim of undertaking further work as part of the Port Stephens Planning Strategy review.</p>

ITEM 8 - ATTACHMENT 1 SUMMARY OF SUBMISSIONS.

	Potential yields identified are confusing and unreliable (example of total lot yield for Osterly/Nelsons Plains at 25, compared with recent application for 80)	
	Require coordinated subdivision concept plans for all (not most) investigation areas, that will (not could) be addressed through a DCP amendment.	
Individual	Opposes rural residential subdivision at 600 Seaham Rd, Nelsons Plains.	<ul style="list-style-type: none"> Specific planning proposals not considered as part of this process. Any future planning proposal will be required to consider the criteria set out in this Policy.
	The management criteria for setbacks to agricultural/rural industries should not differentiate between rural fringe/rural living - a standard 1km setback should apply.	<ul style="list-style-type: none"> Rural fringe and rural living definitions removed and requirements consistent for all proposals.
	Management criteria for setbacks should be presented as minimum distances, rather than blanket applications, to recognise additional considerations may influence these.	<ul style="list-style-type: none"> Management criteria for setbacks presented as minimum distances.
	Management criteria for setbacks should indicate how these would be measured (i.e. from source or from property boundary).	<ul style="list-style-type: none"> Setbacks from rural industries from property boundary not source.
	The strategy should recognise biosecurity risks as a potential impact of rural residential development.	<ul style="list-style-type: none"> Management Criteria updated to include consideration of biosecurity risks.
Individual	1. Site-specific request of various properties at High St and Seaham Road, Wallalong.	<ul style="list-style-type: none"> Specific planning proposals not considered as part of this process. Any future planning proposal will be required to consider the Assessment Criteria set out in this Policy.
Individual	Site-specific request for lots within Medowie.	<ul style="list-style-type: none"> Specific planning proposals not considered as part of this process. Any future planning proposal will be required to consider the criteria set out in this Policy.
Individual	Site-specific request 9A Giles Road, Seaham seeking advice.	<ul style="list-style-type: none"> Specific planning proposals not considered as part of this process. Any future planning proposal will be required to consider the criteria set out in this Policy.

Policy



FILE NO: PSC2015-00487

TITLE: PORT STEPHENS RURAL RESIDENTIAL POLICY

POLICY OWNER: SECTION MANAGER, STRATEGY AND ENVIRONMENT

PURPOSE:

The purpose of this policy is to provide a framework for which Council can use to assess the appropriateness of rural residential development planning proposals in the short term.

This policy should be read in conjunction with the Port Stephens Rural Residential Assessment Criteria (**APPENDIX 1**) (consistency with the Assessment Criteria constitutes consistency with the Policy).

CONTEXT/BACKGROUND:

Port Stephens Council is facing increasing pressure in relation to development and rezoning of rural lands for residential purposes. While existing studies and strategies have been carried out on existing rural lands, Council does not have a specific policy that deals with the social, economic and environmental challenges faced by rural residential land planning.

Rural residential development is one of the many housing types that contribute to the diversity and choice of housing in Port Stephens Local Government Area and the Hunter Region. It does however require special consideration because rural residential development can have environmental, social and economic costs that are significantly higher than those of standard residential development.

The Hunter Regional Plan states it will provide guidance in local land use strategies for expanding rural villages and rural residential development so that such development will:

- not impact on strategic or important agricultural land, energy, mineral or extractive resource viability or biodiversity values;
- not impact on drinking water catchments;
- not result in greater natural hazard risk;
- occur on land that is unlikely to be needed for urban development;
- contribute to the conservation of important biodiversity values or the establishment of important corridor linkages; and
- facilitate expansion of existing and new tourism development activities in agricultural or resource lands and related industries across the region.

Policy

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Policy



It is considered that the long term planning around rural villages including appropriate zonings and lot sizes should be undertaken as part of the Port Stephens Planning Strategy review.

The Policy and Assessment Criteria provide a framework against which council can assess the appropriateness of rural residential development proposals in the interim whilst undertaking further work as part of the Port Stephens Planning Strategy review.

SCOPE:

This policy relates specifically to the following Council functions:

- Consideration of planning proposals (rezoning requests) in the short term;
- Inform appropriate land uses in the medium to long term as part of the Port Stephens Planning Strategy review; and
- Provide a policy position to further consult with the State Government to endorse rural residential development.

This Policy does not provide for additional subdivision and minor amendments to lot sizes, but rather provides a coordinated approach to the consideration of rezoning additional land in the Local Government Area for Rural Residential Development.

DEFINITIONS:

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

Rural Residential Development	Land in a rural setting, used and developed for dwellings that are not primarily associated with agriculture.
	Rural residential development is defined by a combination of land use zone including R5 Large Lot Residential and E4 Environmental Living and lot sizes between 4000m ² up to two hectares.
Planning Proposal	A request to amend the Port Stephens Local Environmental Plan 2013 is known as a planning proposal or rezoning application. This process involves a number of steps that include Council assessment, public and government agency consultation and approval from the NSW Department of Planning and Environment.

Policy

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POLICY STATEMENT:

The Port Stephens Rural Residential Policy aims are:

- To provide criteria for which Council can assess the appropriateness of rural residential development planning proposals in the short term.
- To provide Council and the community with further clarity around the future use and development of rural lands.
- To identify preferred areas physically suitable for rural settlement which are compatible with surrounding landuses.
- To ensure future development protects the environmental and cultural values of the area.
- To ensure that existing prime agricultural land is preserved and agricultural industries are able to prosper and expand without being unduly limited by neighbouring residential uses.
- To ensure that rural residential development does not hinder the strategic development of urban settlements in the future.
- To ensure new developments can have access to an appropriate level of community services in a cost effective manner.

POLICY RESPONSIBILITIES:

- 1) Strategic Planning Team (policy review and planning proposal assessment).

RELATED DOCUMENTS:

- 1) Environmental Planning and Assessment Act 1979
- 2) State Environmental Planning Policy (Rural Lands) 2008
- 3) Hunter Regional Plan 2036
- 4) Port Stephens Planning Strategy 2011
- 5) Port Stephens Local Environmental Plan 2013

CONTROLLED DOCUMENT INFORMATION:

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RM8 container No	PSC2015-00487	RM8 record No	
Audience	General		

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Policy



Process owner	Strategy and Environment Section		
Author	Strategy and Environment Section Manager		
Review timeframe	Two years	Next review date	xx/xx/xxxx
Adoption date	xx/xx/xxxx		

VERSION HISTORY:

Version	Date	Author	Details	Minute No.
1.0	xx/xx/xxxx	Section Manager, Strategy and Environment	Original policy document.	XXX

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APPENDIX 1 - RURAL RESIDENTIAL ASSESSMENT CRITERIA

The following assessment criteria outline the key constraints that require consideration in the assessment of a planning proposal for rural residential development.

The assessment criteria include two (2) types:

- 1) Exclusionary Criteria – where development is not appropriate due to land suitability, and proposals that are inconsistent with these criteria will require extensive justification at Planning Proposal stage;
- 2) Management Criteria - apply to constraints where further site specific assessment is required at planning proposal stage to determine whether rural residential development is appropriate such as, infrastructure requirements, environmental impacts and buffers to adjacent land uses. Such constraints are likely to require accompanying studies to justify the suitability of the planning proposal.

1.0 LAND WHERE THE ASSESSMENT CRITERIA APPLIES

- Zoned RU1 – Primary Industry, RU2 Rural Landscape, E3 Environmental Management, E4 Environmental Living.
- Located a minimum of 800 metres from existing RU5 - Rural Village or R2 Low Density Residential zoned land.
- Located within 800 metres of existing R5 Large Lot Residential zoned land.

2.0 EXCLUSIONARY CRITERIA

- Located within a Future Urban Growth Areas identified in Local or Regional Strategic Plans, as they are proposed to be developed for urban purposes including land within Karuah, Raymond Terrace, Medowie, Mallabula, Anna Bay, Nelson Bay and Fern Bay.
- Within a 2km distance from existing or planned major employment areas.
- Slopes greater than 18 degrees because slope instability and clearing of vegetation are restricted under State legislation including the *Native Vegetation Act 2003*.
- Class 1 and 2 acid sulphate soils because of the high risk of exposing acid soils during dwelling and infrastructure construction.
- Below the flood planning level as identified on Council's Flooding Hazard map.
- High environmental value land including SEPP 14 Coastal Wetlands or local wetlands plus a 100 m buffer or any SEPP 71 Coastal Lakes.
- Noise exposure areas within an ANEF 25 or greater, in keeping with Australian Standards and Port Stephens Aircraft Noise Policy.

Policy

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Policy



- Identified as Important Agricultural Land as defined by the Biophysical Strategic Agricultural land (BSAL) mapping prepared by the State Government for the purposes of Strategic Regional Land Use Planning.
- Located on known extractive industries, quarrying or mining sites or within a 500m buffer.
- Identified by the State Government as having known mineral resource potential in accordance with S117 Directions.

3.0 MANAGEMENT CRITERIA

Flooding

- Development that has the potential to be isolated in flood events must demonstrate access to evacuation facilities via a public road that is given 24 hours warning of flood isolation.
- Development in floodprone areas are to identify minimum lot sizes that provide appropriate stock refuge in the event of flooding.

Bushfire

- Development on areas identified as bush fire prone on Council's Bush Fire Prone Land Map must demonstrate consistency with the planning principles for rezoning including the provision of a contour map with Bushfire Attack Level (BAL) applied.

Environmentally Sensitive Land

- Development identified in SEPP 71 Coastal Zone needs to provide for the protection of the coastal environment of the State for the benefit of both present and future generations through promoting the principles of ecologically sustainable development.
- Koala habitat areas and corridors are to be protected in accordance with the Port Stephens Comprehensive Koala Plan of Management.
- Development must not impact on native vegetation, endangered ecological communities, threatened species or habitats.
- Development must contribute to the conservation of important biodiversity values or the establishment of important biodiversity corridor linkages.

Aircraft Noise

- Proposal must include a provision to ensure that development meets AS 2021-2015 regarding interior noise levels in areas where the ANEF is between 20 and 25.

Non-Aboriginal cultural heritage

- Development near items identified within the PSLEP 2013 need to consider the impact on heritage values, including the setting of the items and any archaeological remains.

Policy

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Policy



Aboriginal cultural heritage

- Any development should undertake an initial assessment of the likelihood of Aboriginal cultural heritage values including:
 - A search of the Aboriginal Heritage Information Management System (AHIMS);
 - Determination of whether the sites include landscape features that indicate the likely presence of aboriginal objects;
 - Site inspections; and
 - Consultation with the Aboriginal community.

Drinking Water Catchments

- Development within a drinking water catchment must be able to be connected to reticulated sewer and able to demonstrate NorBE 'neutral and beneficial effect' in accordance with Hunter Water requirements.

Rural Land Resources

- Development is a minimum 1km buffer from existing agricultural industries (e.g. poultry farms, aquaculture) measured from property boundary to property boundary. Development proposed within the 1km buffer is required to provide expert reports to establish appropriate setbacks. These reports may relate to but not be limited to noise, odour, visual amenity and biosecurity risks.
- Development must not impact on strategic or important energy, mineral or extractive resource viability.

Scenic Amenity

- A visual impact assessment is required for land within a high or very high landscape area as defined in the Rural Land Study.
- Development fronting road corridors is to identify appropriate buffer zone to prevent clearing and protect scenic qualities.

Infrastructure and Services

- Development must be accessed via sealed roads.
- Development must not result in the creation of direct access to a state road.
- Local infrastructure contributions must not require a level of infrastructure greater than the nexus of apportionment and/or are equivalent to \$20,000 per lot, or less.
- Development must not create additional demand for unplanned state infrastructure upgrades.
- Development must be able to be connected to reticulated power supply.
- Development requiring on-site sewage disposal must be carried out in accordance with Council's Development Assessment Framework (DAF) for on-site sewage management, which includes performance standards and recommendations about appropriate areas.

Policy

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ITEM 8 - ATTACHMENT 3 CORRESPONDENCE FROM DEPARTMENT OF PLANNING AND ENVIRONMENT.



Planning &
Environment

Mr Wayne Wallis
General Manager
Port Stephens Council
PO Box 42
Raymond Terrace NSW 2324

Our ref: 15/ 16669

Attention: Ms Renee Read

Dear Mr Wallis

Draft Rural Residential Strategy – Process for Endorsement

I refer to Council's letter dated 28 October 2016 regarding Port Stephens Council's draft Rural Residential Strategy and the process for obtaining the Department's endorsement of this document.

As you are aware the Hunter Regional Plan has now been released and the Department is moving quickly on several priority projects, as a first step in implementing the Plan. One of these projects, the preparation of a local planning toolkit and settlement planning principles, is relevant to your inquiry and will facilitate the endorsement of Council's land use planning strategies in the future. Work on this project has commenced and this project will be finalised in 2017.

I encourage Council to continue with its strategic work. Council's proposed review of the Port Stephens Planning Strategy will provide the comprehensive land use planning and infrastructure co-ordination that the Department is encouraging to give the local detail to regional planning directions. When considering the endorsement of such a strategy, the Department will review the studies that were used to inform the strategy, details of any consultation undertaken, the issues raised and how Council has considered those matters. Where endorsement relates to a specific section 117 direction, then the studies which underpin the strategy need to have considered the objectives of that direction.

With regards to the draft Rural Residential Strategy, guidance in the Hunter Regional Plan in relation to rural residential development should be used to inform Council's planning. I consider the Interim Locational Criteria to be an early step in the process towards endorsement and with further supporting strategic work could be the basis for a Rural Residential Strategy. I encourage Council to use the criteria to refine its strategic planning in this area so that key rural residential development sites may be identified, if appropriate, but that the locational criteria would not be sufficient strategic justification for planning proposals.

Your correspondence refers to concessional lots and small lot subdivisions of rural land. The Department's position remains unchanged in that it does not support the

Department of Planning & Environment
Level 2, 26 Honeysuckle Drive, Newcastle NSW 2300 | PO Box 1226 Newcastle NSW 2300 | T 02 4904 2700 | F 02 4904 2701 |
www.planning.nsw.gov.au

**ITEM 8 - ATTACHMENT 3 CORRESPONDENCE FROM DEPARTMENT OF
PLANNING AND ENVIRONMENT.**

fragmentation of rural land. Any changes to the minimum lot sizes in these areas should be informed by a holistic strategic planning strategy.

Should you have any questions regarding this matter, I have arranged for Ben Holmes from the Department's Newcastle office to assist you. Mr Holmes can be contacted on (02) 4904 2709.

Yours sincerely

30/11/2016
Monica Gibson
Director Regions, Hunter and Central Coast Region
Planning Services

ITEM NO. 9

**FILE NO: 16/460364
RM8 REF NO: PSC2012-00629**

**PORT STEPHENS COUNCIL SUBMISSION TO THE DISCUSSION PAPER -
SPECIAL INFRASTRUCTURE CONTRIBUTION PLAN**

REPORT OF: DAVID ROWLAND - STRATEGY AND ENVIRONMENT SECTION
MANAGER

GROUP: DEVELOPMENT SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Endorse the submission to the State Governments Discussion Paper – Special Infrastructure Contribution Plan (**ATTACHMENT 1**) and forward to the Department of Planning and Environment.
-

**ORDINARY COUNCIL MEETING - 13 DECEMBER 2016
COMMITTEE OF THE WHOLE RECOMMENDATION**

	Mayor Bruce MacKenzie Councillor John Nell That the recommendation be adopted.
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**ORDINARY COUNCIL MEETING - 13 DECEMBER 2016
MOTION**

359	Mayor Bruce MacKenzie Councillor John Morello It was resolved that Council endorse the submission to the State Governments Discussion Paper – Special Infrastructure Contribution Plan (ATTACHMENT 1) and forward to the Department of Planning and Environment.
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BACKGROUND

The purpose of this report is to provide Council with an overview of the NSW Governments Discussion Paper – Special Infrastructure Contribution Plan and seek Council endorsement of the Port Stephens Council's submission.

The NSW Department of Planning and Environment (DP&E) is proposing a new Hunter Special Infrastructure Contribution Plan (SIC) to help deliver the Hunter

MINUTES ORDINARY COUNCIL - 13 DECEMBER 2016

Regional Plan 2036. It will replace the draft 2011 Lower Hunter Special Infrastructure Contribution Plan.

The proposed SIC aims to define a fair and appropriate financial contribution that new development would make towards the cost of infrastructure.

Initial feedback on the cost-sharing approach, the scope of infrastructure that could be included, and the implementation of the SIC is currently being sought.

It is anticipated that a draft Hunter Special Infrastructure Contribution Plan will be released for public consultation in early 2017.

Key issues raised in this submission include:

- lack of clarity around the delivery of the plan including a governance framework;
- concern over the short consultation timeframes proposed;
- the need to consider a wider range of infrastructure categories, such as open space and environmental conservation;
- limited detail on key components of the Plan including how infrastructure costs are apportioned, the types of development suitable for contributions, or the proposed contribution rates;
- key infrastructure requirements for the Port Stephens Local Government Area (LGA) considered appropriate for inclusion in the Plan.

COMMUNITY STRATEGIC PLAN

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

FINANCIAL/RESOURCE IMPLICATIONS

There are no foreseen financial or resource implications as a result of the recommendation proposed in this report.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes		Review of the draft plans has been carried out through Council's existing resources.
Reserve Funds	No		
Section 94	No		
External Grants	No		

Other	No		
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LEGAL, POLICY AND RISK IMPLICATIONS

There are no foreseen legal, policy or significant risk implications as a result of the recommendations outlined within this report.

Hunter Regional Plan 2036

The Hunter Regional Plan (HRP) is a 20 year blueprint for the future of the Hunter.

The Government has committed to preparing a Hunter Region Special Infrastructure Contributions Plan that outlines a schedule of infrastructure projects to provide funding to growth areas for regional infrastructure for the transport, health, education and justice sectors, as well as for open spaces.

Port Stephens Section 94 Plan

Council is able to collect contributions for the provision of local infrastructure and facilities under *Environmental Planning and Assessment Act 1979 (s94) (NSW)*. This generally occurs through the development assessment process whereby Council can place conditions on certain types of development.

Section 94 contributions enable Councils to seek funds from developers towards the provision, extension or augmentation of public amenities and services. It is an essential service to ensure adequate provision of infrastructure to serve the needs of our growing population.

The Hunter Special Infrastructure Contributions Plan will be an additional levy to contribute to the provision of state infrastructure and will apply in addition to local contributions.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that Council will not endorse the submission resulting in Council missing the deadline to submit feedback on the draft plans.	Low	Councillors are encouraged to provide comment on the draft submission prior to it being finalised.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The HRP acknowledges that infrastructure investment across the Hunter will be essential to underpin this prosperity, and to deliver new jobs, housing, and services such as new schools, roads, health and emergency services.

Some new infrastructure will be required as a result of development activity associated with new land releases, subdivisions and new industrial and commercial facilities. The Government believes that development of this type should make a contribution towards the cost of this infrastructure.

Local infrastructure such as local roads, parks and recreational facilities will continue to be funded through Councils Local Contributions Plan.

MERGER PROPOSAL IMPLICATIONS

There are no identified merger implications.

CONSULTATION

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

Internal

Key staff were invited to provide feedback on the proposed submission. Further consultation will be carried out as part of the formal exhibition of the proposed draft Hunter Special Infrastructure Contribution Plan.

External

Due to the short consultation period provided, consultation with Councillors was not possible, however Councillors are encouraged to review the draft submission and make comment prior to the submission being finalised.

Further consultation will be undertaken as required as part of the formal exhibition of the proposed draft Hunter Special Infrastructure Contribution Plan once released.

OPTIONS

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

ATTACHMENTS

- 1) Port Stephens Council Submission.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

16 December 2016

Director, Transport and Strategic Infrastructure Planning
NSW Department of Planning and Environment
GPO Box 39
Sydney, NSW 2001

Dear Director,

Submission to Discussion Paper – Special Infrastructure Contribution Plan

Thank you for the opportunity to provide input into the development of the Special Infrastructure Contribution Plan (SIC) for the Hunter region.

A Contributions Plan which defines a fair and appropriate financial contribution towards infrastructure from new development is strongly supported. This submission has been prepared in line with the Port Stephens Planning Strategy 2011 (PSPS) which guides future growth of the Local Government Area (LGA) as well as other Council endorsed strategic plans and has been endorsed by Council.

Summary

Key issues raised in this submission include:

- Lack of clarity around the delivery of the plan including a governance framework;
- Concern over the short consultation timeframes proposed;
- The need to consider a wider range of infrastructure categories to be including services, open space and environmental conservation;
- Limited detail on key components of the Plan including how infrastructure costs are apportioned, the types of development suitable for contributions, or the proposed contribution rates; and
- Key infrastructure requirements for the Port Stephens LGA considered appropriate for inclusion in the Plan.

1. Governance

The lack of transparency and certainty around infrastructure contribution arrangements to date has added to the cost of development and discourages investment.

The successful delivery of the SIC requires a coordinated approach involving all levels of government including all relevant State Agencies. Therefore, a commitment to a governance model that clearly establishes arrangements for the delivery, monitoring and review of the Plan in conjunction with the Hunter Regional Plan (HRP) should be undertaken.

2. Consultation

Given the significance of the Plan, concern is raised over the short consultation timeframes proposed. Providing an adequate public exhibition period, review of submissions and amendments and adoption of the Plan is unlikely within the proposed two month period.

3. Potential Infrastructure

Council strongly supports the Discussion Papers aim for the SIC to provide for infrastructure to support growth identified in the Hunter Regional Plan (HRP). A clear strategy for infrastructure, planning prioritisation and funding is vital to support economic growth within the region. Key regional infrastructure includes roads, public transport, water, sewerage, electricity, telecommunications and state services, such as education and health facilities.

It is unclear how state infrastructure in the Discussion Paper has been identified or how this links with the priorities within the HRP. Despite this, the Discussion Paper only identifies four categories for State Infrastructure including:

- Emergency services;
- Education facilities;
- Health Facilities; and
- Transport.

The cost of services including energy production and supply, water and waste water, has been identified by the HRP as key infrastructure components of providing new housing. It is recommended that these services be included in the SIC.

The HRP acknowledges that, due to the rarity of the Hunter's biological and ecological diversity, securing like-for-like offsets can prove challenging. Furthermore, a key action of the HRP is 'to identify and strengthen biodiversity corridors as places for biodiversity offsets'. Conserving these biodiversity corridors and areas of 'High Environmental Value' requires a regional approach and should therefore be considered as part of the SIC. It is also noted that the HRP identifies open space as regional infrastructure to be considered by the SIC, however is not identified in the Discussion Paper.

The Discussion Paper notes that the list is not exhaustive however suggests that if it is not included then it will not fall under the SIC and will be required to be paid for under other delivery processes. Further detail is required on what other delivery processes are proposed for works not included and how further work can be identified and included within the Plan.

4. Sharing the Cost of Infrastructure

The Discussion Paper provides limited detail on apportioning infrastructure costs, identifying the types of development suitable for contributions, land use exemptions or the proposed contribution rate.

It is noted that development on land outside an urban release area does not currently pay for infrastructure. The Discussion Paper suggests the potential for infrastructure costs to be shared across all development that generates demand for infrastructure. While ensuring a more equitable distribution of costs is encouraged, concern is

raised over the financial impact an additional state contribution will have on smaller 'mum and dad' developments'.

A streamlined process is required between local and state infrastructure that ensures an acceptable levy is paid to facilitate both local and state infrastructure.

Once a simple, transparent and affordable levy has been introduced, the government should make a commitment that it will remain unchanged throughout the life of the development area.

5. Key Infrastructure Requirements for Port Stephens LGA

An outline of key infrastructure requirements for the Port Stephens LGA considered appropriate for inclusion in the Plan is outlined below.

Fingal Bay Road (Estimated cost \$90M)

Fingal Bay Road will provide alternative access for community and emergency services during natural disaster events and improve access to Tomaree National Park for fire control/ fire break maintenance. This will help to reduce travel times for residents of Fingal Bay and Shoal Bay to services and provide a cycle link.

The 2013 bushfire reinforces the isolation experienced by Fingal Bay during extreme weather events.

Birubi Point Tourism Interchange (Estimated cost \$2.5M)

As the gateway to the Worimi Conservation lands, the Birubi Point Aboriginal Place is Australia's largest mobile coastal sand dune system.

Each year tens of thousands of international and interstate visitors descend on the area to take part in the nature based and adventure tourism and recreation activities. The demand for access to sand dunes and beach has grown so much that tourism coaches and sand dune based businesses are in conflict with day visitors.

A simple solution to the issue is to create a purpose built tourism interchange off Gan Gan Road, Anna Bay. The interchange will centralise high volume tourism at the vehicular entrance to the sand dunes thereby freeing up parking and use on Birubi Point headland and surf club.

The project is identified in Councils Community Strategic Plan, Strategic Asset Management Plan and Destination Port Stephens Destination Management Plan 2014. The project also has the support of Crown Lands (the Land Owner), National Parks and Wildlife Services NSW, Worimi Conservation Lands Board of Management and the Worimi Land Aboriginal Council.

Williamstown Drainage Mitigation Works (Estimated cost \$5M)

Newcastle Airport is a key economic driver for the Port Stephens LGA and the Lower Hunter Region. The importance of this driver is recognised in various regional strategies and plans, including the Hunter Regional Plan which identifies this area as a specialised centre capable of generating 3000 jobs.

Recent developments within this precinct have included the 2,600m² extension of the airport terminal to prepare it for international flights and the recently commenced

upgrade works at RAAF Base Williamtown to cater for the introduction of the Joint Strike Fighter.

Locating close to airports is becoming increasingly attractive to a wider range of economic activities due to the:

- rapid growth in air transit;
- current and future level of investment in airport infrastructure;
- accessibility to major cities and regional centres;
- accessibility of location for visiting customers and employees coming by air; and
- high passing trade from passengers.

As a result, Council is receiving increasing pressure from investors and developers wanting to take advantage of these benefits and develop near and around Newcastle airport.

Council has received funding under the Planning Reform Fund to undertake a Williamtown Land Use Strategy to examine the further release of commercial land to the south of the Newcastle airport. Flood studies and drainage studies have been completed to inform the Land Use Strategy in the area and identified flooding and drainage as a key inhibitor to future development.

The identified solution that is required to provide drainage capacity for new development is to re-establish the Dawson's Drain Discharge Outlet into Fullerton Cove. Fullerton Cove is identified as a RAMSAR wetland and in turn an application to re-establish this drainage point would trigger State and Federal legislation. The certainty of gaining an approval is made even more difficult by the drain being identified within the Williamtown Contamination Investigation Area.

Given the regional importance of the future development of the Newcastle Airport and surrounds and the nature and costs of works involved, Council has identified that collaboration with regional and state bodies is critical for the provision of this infrastructure. We are seeking to fund the environmental approval process, formalise existing drains into legal easements and construct an essential collector road, which would connect the Airport to Cabbage Tree Road.

Raymond Terrace - William Street Upgrade - Sub-Base Re-construction; Incorporate a Centre Median and Increase Pavement Width - \$15M

William Street is the 'Main Street' of Raymond Terrace. Raymond Terrace is identified as a strategic centre of regional importance under the Hunter Regional Plan.

William Street has a diverse variety of retail/commercial premises. It is currently in need of sub-base reconstruction. This provides the opportunity to upgrade the existing paving, lighting, furniture, trees and pavement width to expand on the potential opportunities for alfresco dining. This is intended to involve improving the overall condition of the road and its sub-base and to also reduce the steep slope from the centre of the road to the footpath.

The need for this main street upgrade was identified within the Raymond Terrace and Heatherbrae Strategy adopted by Council in November 2015. The Strategy was developed in response to the identification of Raymond Terrace as a centre of regional strategic significance under the previous Regional Plan.

Medowie Infrastructure Works*Medowie Road - Northern Access to M1 Motorway*

Medowie Road is a major sub arterial road and provides connections on to: Newcastle; Raymond Terrace; Nelson Bay; RAAF Base Williamtown and Newcastle Airport; and the Pacific Highway.

Medowie Road is the RMS preferred route for northern traffic heading to the Newcastle Airport. As the numbers of people using the airport grow in conjunction with the growth of Medowie itself greater conflict with local and through traffic will occur. It is recommended that Medowie Road, as the northern access route from the Airport to the M1 be improved.

Campvale Drainage Inundation Area – Drainage Strategy

The Campvale Catchment rises in forest north of the township, drains south via the Campvale Drain into the Campvale Drain Inundation Area, then south-west to the Campvale Water Pumping Station which transfers water into Grahamstown Dam.

The drainage system within the catchment consists of relatively ill-defined natural watercourses, open drains, pipes and pits, culverts and the downstream pumping station. Most of these elements are in Council's care and control and lie within road and drainage reserves, public reserves and drainage easements. However some of these elements are controlled by other bodies such as Hunter Water Corporation.

Campvale Drain terminates at Campvale Drain Water Pumping Station which is owned by Hunter Water Corporation. The pumps are responsible for conveying the majority of all stormwater runoff from the catchment into Grahamstown Dam. The frequency, extent and period of flooding are the main concerns for land owners in the Campvale Drain Inundation Area.

The draft Medowie Strategy identifies the need for Council and the Hunter Water Corporation to work collaboratively to identify a catchment-wide solution to drainage and water quality through completion of a drainage strategy. This includes the investigation of a potential town lake/water quality control structure within the vicinity of the town centre.

Educational Facilities

The Port Stephens Planning Strategy identifies 59% of the population had no trade qualification or tertiary education and 62% left school by year 10. This is a relatively low level of educational attainment with two implications. Firstly, people with low skill levels are more likely to be unemployed and for longer periods and to receive a lower income throughout life. Secondly, low skilled jobs generally pay less and transport costs and employment location are very important in allowing people to access these jobs.

It is recommended that the Special Infrastructure Contribution Plan support the creation of a new TAFE Campus and Alesco Learning Centre in Port Stephens. These have the potential to encourage students to have greater involvement in sport, recreation and cultural activities and improving social inclusion.

ITEM 9 - ATTACHMENT 1 PORT STEPHENS COUNCIL SUBMISSION.

Council supports the development of a Special Infrastructure Contribution Plan and looks forward to working with the Department in further developing the Plan before its finalisation.

Please contact Renee Read, Principal Strategic Planner on 4980 0163 if you would like to discuss any of the above points further.

Yours Sincerely

Mike McIntosh
Group Manager Development Services

ITEM NO. 10

FILE NO: 16/461872
RM8 REF NO: PSC2007-1204

DISCUSSION PAPER - PROGRESS OF THE NELSON BAY TOWN CENTRE AND FORESHORE STRATEGY

REPORT OF: DAVID ROWLAND - STRATEGY AND ENVIRONMENT SECTION
MANAGER
GROUP: DEVELOPMENT SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Endorse the Discussion Paper – Progress of the Nelson Bay Town Centre & Foreshore Strategy (**ATTACHMENT 1**).
- 2) Place the Paper on public exhibition for a minimum period of 28 days.
- 3) Following exhibition, report the matter back to Council for their consideration of submissions. This may include draft amendments to:
 - a) Nelson Bay Town Centre & Foreshore Strategy 2012.
 - b) Port Stephens Local Environmental Plan 2013 (LEP).
 - c) Port Stephens Development Control Plan 2014 (DCP).
 - d) Port Stephens Development Contributions Plan.

Councillor Paul Le Mottee returned to the meeting at 06:48pm during debate, in Committee of the Whole.

ORDINARY COUNCIL MEETING - 13 DECEMBER 2016
COMMITTEE OF THE WHOLE RECOMMENDATION

	Councillor John Nell Councillor John Morello That the recommendation be adopted.
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In accordance with Section 375 (A) of the Local Government Act 1993, a division is required for this item.

Those for the Motion: Mayor Bruce MacKenzie, Crs Geoff Dingle, Chris Doohan, Sally Dover, Ken Jordan, Peter Kafer, Paul Le Mottee, John Morello, John Nell and Steve Tucker.

Those against the Motion: Nil.

**ORDINARY COUNCIL MEETING - 13 DECEMBER 2016
MOTION**

360	Mayor Bruce MacKenzie Councillor John Morello It was resolved that Council: <ol style="list-style-type: none">1) Endorse the Discussion Paper – Progress of the Nelson Bay Town Centre & Foreshore Strategy (ATTACHMENT 1).2) Place the Paper on public exhibition for a minimum period of 28 days.3) Following exhibition, report the matter back to Council for their consideration of submissions. This may include draft amendments to:<ol style="list-style-type: none">a) Nelson Bay Town Centre & Foreshore Strategy 2012.b) Port Stephens Local Environmental Plan 2013 (LEP).c) Port Stephens Development Control Plan 2014 (DCP).d) Port Stephens Development Contributions Plan.
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In accordance with Section 375 (A) of the Local Government Act 1993, a division is required for this item.

Those for the Motion: Mayor Bruce MacKenzie, Crs Geoff Dingle, Chris Doohan, Sally Dover, Ken Jordan, Peter Kafer, Paul Le Mottee, John Morello, John Nell and Steve Tucker.

Those against the Motion: Nil.

BACKGROUND

The purpose of this report is to recommend that Council place the Discussion Paper – Progress of the Nelson Bay Town Centre & Foreshore Strategy (the Paper) (**ATTACHMENT 1**) on public exhibition for 28 days (February to March 2017).

This public exhibition period will seek to facilitate discussion about the ways in which the existing Nelson Bay Town Centre & Foreshore Strategy (the Strategy) can be improved in order to progress the Strategy objective, being, 'to guide Nelson Bay towards becoming more attractive to tourists, the business community and residents'.

This paper is the product of a review of the existing Strategy, which has come about from the recognition that limited private investment has occurred within the Nelson Bay Town Centre and Foreshore over the past ten years. This is despite this period being one of significant growth for the housing industry.

MINUTES ORDINARY COUNCIL - 13 DECEMBER 2016

The paper groups discussion into six key themes and subsequently proposes 20 ideas for an approved Strategy, being:

No	Theme	Idea
1	Design Excellence	An Independent External Urban Design Panel.
2		LEP Clause for Activated Street Frontages.
3		LEP Clause for Appropriate Vertical to Horizontal Proportions.
4		Education Program on Urban Design.
5		Support for Awards that recognise Design Excellence.
6	Building Heights	Building Heights are Informed by All Variables.
7		Development of Council Guidelines for the use of Clause 4.6
8		Expansion of the Strategy Boundary to include ridgelines.
9	Development Incentives	Implementing the intent of previous incentive clauses.
10		Public goods are provided by those who use it.
11		LEP and DCP Requirements encourage design excellence.
12	Public Domain	Development of a Streetscape Design Guide.
13		Detail provided to public domain works, costing and priorities.
14		Revise s94 Development Contributions Plan for Catchment.
15		Preparation of a Signage Strategy and Implementation of Actions.
16	Transport and Parking	Identification of future satellite parking locations.
17		Explore user-pays approaches to the provision of parking.
18		Encourage private enterprise to provide parking on Council land.
19	Implementation	Re-wording existing actions to be Specific, Measurable, Accurate, Realistic and Time-Based (SMART).
20		Implementation Panel that reports quarterly on progress.

The key issues for discussion relate to whether current planning controls impact on the capacity/feasibility of construction within the Nelson Bay Town Centre and Foreshore. In particular, what controls would be appropriate to facilitate growth and the broader objectives of the Strategy. The three main planning tools that have been identified to assist in achieving these broader objectives include building height, car parking and development incentives.

Building Height

An independent feasibility appraisal was undertaken to inform this Paper and concluded that the existing height limits are not currently allowing for feasible development to take place. This is believed to be an attributing factor as to why there has been no substantial redevelopment in the town centre since 2006.

The Appraisal was subsequently subject to a third party review to confirm these conclusions. This review confirmed that the height limit would need to be increased to a minimum of 28 metres (8 storeys) to allow a developer to achieve a notional 20% profit margin in the current property market. This represents a 3.5 metre (1 storey) increase of the heights adopted in the current Strategy, but a 13 metre (3-4 storeys) increase over the current LEP limits.

Currently building height limits for the town centre is 15 metres (4.5 storeys) under the LEP.

The paper discusses implementing the maximum building heights adopted in the 2012 Nelson Bay Strategy by amending the LEP. The 2012 Strategy proposes heights between 17.5 metres (5 storeys) and 24.5 metres (7 storeys) for the town centre and Landmark/Bowling Club area respectively. The 2012 Strategy supports an additional 7 metres (2 storeys) on top of those heights proposed for buildings which display design excellence.

Based on the feasibility work undertaken, heights to 28 metres (8 storeys) could greatly improve the feasibility of development to occur in the current market.

However, by keeping in line with the 2012 Strategy it is considered the additional height can be accommodated while also achieving other strategy objectives relating to maintaining desired community character, human scale, limiting over-shadowing and protecting prevailing winds.

It is proposed that the 2012 Strategy height limits be legally included as development standards via amendment to the LEP. Within the town centre, this could mean a height of building limit of 24.5 metres (7 storeys) and through the use of (Clause 4.6) this height limit could be slightly varied in order to allow feasible development to occur. The variation would be subject to further rigour through the development of Clause 4.6 Guidelines for Port Stephens Council.

It is anticipated that development applications which meet Clause 4.6 Guidelines could result in heights in the order of 35m (10 storeys) within some precincts of the Nelson Bay town centre.

Car Parking

The paper references the GHD 'Transport and Parking Study' undertaken in 2012 which indicates existing public car parking stations are underutilised. This includes

the Donald Street car park which according to the study was operating at 76% utilisation during peak periods prior to its closure.*

It also identifies that in accordance with the feasibility work undertaken, any potential to replace the car parking spaces above ground would dramatically impact on the feasibility of any development. According to the feasibility work undertaken, the cost of an above ground car parking space is estimated to be \$25,000. Therefore the cost of replacing the 203 car parking spaces provided by the Donald Street carpark is estimated to be \$5.08M.

The paper suggests that short-term capacity can be provided through a range of means, including increased use of time-limited parking controls and long-term capacity being funded through the introduction of time limited parking. The paper discusses how any suggestion to provide public parking through general Council revenue is considered unequitable as the vast majority of the Local Government Area would be funding infrastructure that they would likely never use.

A multi-storey car park within a town centre could be a poor urban design outcome as it has the potential to present a poor relationship to the street, with blank walls fronting the town centre. In addition the 2-4 levels of car parking that will be required will mean that adjoining residential buildings will potentially experience the noise and visual impacts of car parking at the same level as their living areas. The preferred options are for parking to be provided through future locations adjacent to the Town Centre, which could be more feasible and result in an improved urban design outcome for the desired pedestrian nature of the town centre.

*: This utilisation figure was calculated during the 'Tastes at the Bay' Festival, which occurs in November and would typically attract a high volume of day visitors and tourists. It was considered to be reasonable of the peak summer tourism periods.

Development Contributions (\$94)

A high quality, attractive, easy to navigate and pedestrian friendly environment is sought for the Town Centre. However, achieving and sustaining this to a standard suitable for a regionally significant tourist centre is costly and requires a high level of commitment.

The paper identifies gaps in the public domain (streetscape and other public access with the Town Centre), such as missing/inconsistent pathways. The paper seeks to improve public domain by amending and expanding the existing locality based contribution for the Nelson Bay Catchment.

The paper proposes an additional contribution of \$4,000 on top of the existing LGA contribution of \$13,788 per dwelling. It is proposed that this combined contribution of \$17,788 will no longer just apply to the Nelson Bay Town Centre, but the wider Tomaree Peninsula (**ATTACHMENT 1 - FIGURE 13**) in recognition of the Town Centre being a centre for economic and cultural activity for the community. Based on historical development this will raise an estimated \$124,000 per annum.

This locality based contribution would be used to fund the public domain works identified within the existing strategy, such as the Apex Park Upgrade, Vehicular Way-Finding Signage and implementation of the Council Pathways Strategy. This is considered to be a significant improvement on the existing contribution that seeks only to derive funds from new commercial development, despite the majority of new commercial development being at Salamander Bay.

COMMUNITY STRATEGIC PLAN

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

FINANCIAL/RESOURCE IMPLICATIONS

There are no foreseen financial or resource implications which result from this recommendation.

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

LEGAL, POLICY AND RISK IMPLICATIONS

The production of a Discussion Paper sits outside of any legislated planning process. Rather, it is a Paper about a range of possible ideas to inform future draft amendments. It serves as a pre-cursor for any future subsequent process under the *Environmental Planning & Assessment Act 1979*. Potential risks are now discussed.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that the development of a discussion paper is a pro-longed approach to achieving change within Nelson Bay. The issues	Low.	The discussion paper approach seeks to demonstrate that Council has taken a well-considered approach to any possible changes that may result (eg	Yes.

MINUTES ORDINARY COUNCIL - 13 DECEMBER 2016

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
faced on-the-ground, such as development applications and parking problems are taking place now. The paper is the first step in a significant but required change process.		development contributions). It has been tailored to increase the likelihood that it receives NSW Government endorsement and in turn provide certainty to any future planning proposal.	
There is a risk that the revised building height limit does not allow feasible development to occur.	Low.	The building height limit has been informed by an independent feasibility appraisal, which has been the subject of a third-party review. When combined with the increased guidance for the use of LEP (c4.6), it allows feasible development to occur within a current property market.	Yes.
Increasing development contributions for the town centre increases the cost of development.	Low.	The development contributions framework seeks to ensure that public domain works identified as important by the community is funded. The framework provides a means by which to collect funds from those who will directly benefit from those works.	Yes.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The Paper seeks to progress the achievement of the 2012 Strategy objective, being: 'To guide Nelson Bay towards becoming more attractive to tourists, the business community and residents'. This objective has been developed based on the consideration of improved social, economic and environmental outcomes for Nelson Bay.

MERGER PROPOSAL IMPLICATIONS

There are no merger proposal implications.

CONSULTATION

Consultation with key stakeholders has been undertaken by the Strategy and Environment Section in coordination with the Communications Section.

The objective of the public exhibition period will be to gain feedback on the Paper in order to inform a future draft amendment to the existing Strategy.

Internal

Internal consultation has occurred with the relevant internal sections of Council in the development of this Paper, such as Development Assessment & Compliance.

External

External consultation will take place over 28 days (4 weeks). This will include:

- 1) Notification placed in the Port Stephens Examiner and on Council's Website;
- 2) Formal Letters provided to Special Interest Groups;
- 3) Presentations to Special Interest Groups;
- 4) Relevant Information uploaded to Engagement HQ – Online Consultation Tool;
- 5) Community Drop-In Sessions;
- 6) Council Officers available over the phone and at the Front Counter;
- 7) Submissions invited till the closure of the exhibition period.

The paper will go on public exhibition for 28 days from February to March 2017. There are no legislative requirements in relation to this exhibition period.

OPTIONS

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

ATTACHMENTS

- 1) Discussion Paper - Progress of the Nelson Bay Town Centre & Foreshore Strategy. (Provided under separate cover)

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ITEM NO. 11

**FILE NO: 16/454968
RM8 REF NO: PSC2013-00406**

POLICY REVIEW - COMPLIANCE POLICY

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

RECOMMENDATION IS THAT COUNCIL:

- 1) Endorse the revised Compliance Policy shown at **(ATTACHMENT 1)**.
 - 2) Place the Compliance 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 Compliance Policy dated 26 November 2013 minute no. 344 **(ATTACHMENT 2)**, should no submissions be received.
-

**ORDINARY COUNCIL MEETING - 13 DECEMBER 2016
COMMITTEE OF THE WHOLE RECOMMENDATION**

	Councillor Ken Jordan Councillor John Nell That the recommendation be adopted.
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**ORDINARY COUNCIL MEETING - 13 DECEMBER 2016
MOTION**

	Mayor Bruce MacKenzie Councillor John Morello It was resolved that Council: <ol style="list-style-type: none">1) Endorse the revised Compliance Policy shown at (ATTACHMENT 1).2) Place the Compliance 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 Compliance Policy dated 26 November 2013 minute no. 344 (ATTACHMENT 2), should no submissions be received.
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BACKGROUND

The purpose of this report is to advise Council of the findings of the review of the Compliance Policy and recommend the updated Compliance Policy be placed on public exhibition.

As compliance is a challenging area, with typically high levels of community interest, a policy is required to set the framework to assist staff and provide clarity for the community. The policy was first developed in 2007 and has been amended a number of times since. The policy provides the context around council officers using their discretion and factors to consider when handling compliance matters.

There are no changes proposed to the policy apart from minor administrative and wording changes and amending the structure of the policy to align with the current policy template.

Issues:

The Development Assessment and Compliance (DAC) section receive over 3,000 customer requests (CRMs) annually of which have compliance related components.

A compliance policy is important to provide the tools, framework and support to assist the staff. Equally, the policy ensures the public are made aware of the range of considerations applicable in compliance matters.

Appendix 1 has been annexed to the policy which includes the considerations/principles to assist staff and the public in compliance matters.

Implications:

An updated policy is required to ensure consistency across the organisation with the new policy template and to review the policy for its accuracy.

There are no direct implications as a result of updating the policy as the substance of the policy remains the same.

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2013-2017
Community Safety.	Use Council's regulatory powers and Government legislation to enhance public safety.

FINANCIAL/RESOURCE IMPLICATIONS

There are no financial or resource implications which result from recommendation before Council. Compliance is undertaken via existing operational budget allocations.

MINUTES ORDINARY COUNCIL - 13 DECEMBER 2016

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

LEGAL, POLICY AND RISK IMPLICATIONS

It is important that Council has a policy to guide its decision making in relation to compliance. It is equally important that the policy is reviewed and up to date.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that not having a Compliance Policy or outdated policy will lead to poor decisions or legal risk.	Medium	Accept the recommendation and endorse the updated Compliance Policy.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

There are no direct sustainability implications.

MERGER PROPOSAL IMPLICATIONS

There are no direct merger implications. If Port Stephens Council was to merge with another Council, the respective policies would be reviewed as part of that process.

CONSULTATION

Consultation with key stakeholders has been undertaken by the Development Assessment and Compliance Section who implement the policy.

The objective of the consultation was to ensure the policy provides the relevant clarity for staff and context for the public.

Internal

- The substance of the policy remains the same, however the updated style of the policy was discussed with Environmental Health and Compliance (EHC) staff and no issues were identified.

External

- Given the policy is just being updated, external consultation has not occurred. However, the updated Compliance Policy will be placed on public exhibition.

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

OPTIONS

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

ATTACHMENTS

- 1) Revised Compliance Policy.
- 2) Current Compliance Policy.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ITEM 11 - ATTACHMENT 1 REVISED COMPLIANCE POLICY.**Policy**

FILE NO: PSC2013-00406
TITLE: COMPLIANCE POLICY
POLICY OWNER: DEVELOPMENT ASSESSMENT AND COMPLIANCE SECTION MANAGER

PURPOSE:

The purpose of this policy is to outline Port Stephens Council's general approach to compliance and enforcement. The policy relates to the regulation of development activity, pollution control, regulation of parking, natural resource management, environmental health, the control over the keeping of animals and other regulatory issues within Council's area of responsibility as listed in the community strategic plan.

CONTEXT/BACKGROUND:

As compliance is a challenging area with typically high levels of community interest, a policy is required to set the framework to assist staff and provide clarity for the community. The policy was first developed in 2007 and has been updated/amended a number of times since. The policy provides the context around council officers using their discretion and factors to consider when handling compliance matters.

SCOPE:

This policy provides guidance for all compliance related matters in the Port Stephens local government area. The policy particularly applies to, or is useful for persons the subject of a compliance investigation, the complainant/submission maker, the general public and Council staff.

The NSW Ombudsman's Enforcement Guidelines for Council's have been used as the basis of framing this policy and for developing operational procedures to address compliance issues.

DEFINITIONS:

Discretion	Discretion relates to a Council officers consideration in deciding whether to take enforcement action or not, or what extent of action to take.
Principles	The considerations and value to which Council staff consider any compliance matter against as mentioned in this policy.

Policy

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ITEM 11 - ATTACHMENT 1 REVISED COMPLIANCE POLICY.

Policy



Risk based approach

In a public and environmental context, risk is measured in terms of the likelihood of an event occurring and the risk of harm to human health and the environment.

POLICY STATEMENT:

Council will carry out its compliance responsibilities in a fair and equitable manner. Council will ensure the relevant principles are considered in compliance investigations and decisions are made in an environmentally and socially responsible manner.

- 1) The initiation of a process of education and creation of awareness within the community in relation to the reasons for and importance of compliance.
- 2) The investigation and enforcement of complaints about unlawful activity or failure to comply with the terms or conditions of approval, notices, licences or breaches of legislation which Council is responsible for enforcing.
- 3) Cooperation with other Government Agencies responsible for enforcing legislation that relates to unlawful activities within Port Stephens.
- 4) To establish clear guidelines for the exercise of discretion in dealing with action requests or complaints about unlawful activity and to assist Council staff.
- 5) Council will consider the guiding principles/considerations in **Appendices 1** to assist Council staff in meeting the above policy statements to act promptly, consistently and effectively to allegations of unlawful activity.

POLICY RESPONSIBILITIES:

- 1) The policy is implemented primarily via the Manager Development Assessment and Compliance.
- 2) All Council staff that deal with written or verbal requests or complaints alleging unlawful activity are responsible for following the policy framework.
- 3) All formal notifications of alleged unlawful activity will be lodged in Council's customer request system and directed to the responsible officer.

RELATED DOCUMENTS:

- 1) *Local Government Act, 1993.*
- 2) *Environmental Planning and Assessment Act, 1979.*
- 3) *Protection of the Environment Operations Act, 1997.*
- 4) *Roads Act, 1993.*
- 5) *Companion Animals Act, 1998.*
- 6) *Public Health Act, 2010.*
- 7) *Swimming Pools Act, 1992.*
- 8) *Rural Fires Act, 1997.*
- 9) *Road Transport Act, 2013.*

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- 10) *Food Act, 2003.*
- 11) *Impounding Act, 1993.*
- 12) *Noxious Weeds Act, 1993.*

CONTROLLED DOCUMENT INFORMATION:

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RM8 container No	PSC2013-00406	RM8 record No	16/440919
Audience	Council staff, the general public.		
Process owner	Manager Development Assessment and Compliance		
Author	Manager Development Assessment and Compliance		
Review timeframe	Three years	Next review date	1/12/2019
Adoption date			

VERSION HISTORY:

Version	Date	Author	Details	Minute No.
V1	28/08/2007	Manager Development and Building	Policy adopted by Council	235
V2	26/11/2013	Manager Development Assessment and Compliance	Amended	344
V2.1	xx/10/2016	Development Assessment and Compliance Section Manager	Updated to new template	

Policy

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Policy



APPENDICES 1 - COMPLIANCE PRINCIPLES / CONSIDERATIONS

Education Awareness and Cooperation

Council will educate the community in relation to regulatory issues and their responsibilities in this regard, taking a proactive role in obtaining cooperation with the community to minimise the occurrence of non-compliances.

Council will encourage the public to try to resolve problems as they arise or come to notice before they escalate into significant issues.

Whilst prior warning is encouraged prior to pursuing a development or environment compliance matter, this is assessed on a case by case basis e.g. on the impacts and severity of alleged offence.

Council's response

Council's regulatory role requires that it identifies and responds appropriately to unlawful activities that it has responsibility for regulating. In some instances, using a risk based framework, no further investigation or action may be an appropriate response. If a decision is made not to investigate a complaint beyond a certain stage, the decision and the reasons for it must be recorded and appropriately documented.

Based on the circumstances of the alleged offence, Council respond in a way that reflects public interest, resource implications and whether the compliance issue poses a significant risk to public safety, health or to the environment.

All action requests or complaints about alleged unlawful activities should be acknowledged at the earliest opportunity and in any event no later than 7 business days. The response should indicate that Council is investigating the complaint and that a report will be forwarded as soon as possible and no later than a further 28 business days. As soon as possible and within a further 28 business days, a further report should be forwarded to the complainant indicating progress in the matter and where applicable council's decision. It is noted that some compliance matters, by their nature require an exhaustive and lengthy process of information gathering and reporting, hence there is an expectation some compliance matters will be ongoing.

Councils Approach

Council will ensure confidentiality and respect privacy requirements when dealing with matters of compliance.

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Policy



The Council will ensure procedural fairness in matters dealing with non-compliance.

Council will act in a manner that is impartial and objective when investigating matters of alleged non-compliance.

Anonymous Complaints

These are complaints made by persons that do not wish to identify themselves but they are required to identify the issue. The complainants need to provide sufficient information to enable Council to identify the activity, its location and nature. In some cases anonymous complaints are not able to be investigated as the follow up action is not able to be reported back to the complainant.

Using Discretion

In regulatory matters, discretion relates to Council's discretion in deciding whether to take enforcement action or not. Council must exercise this discretion in the context of its broad regulatory responsibilities and experience and the merits of the particular case.

Prioritising unlawful activity

Council uses a risk based approach in assessing compliance matters and priorities.

Applying a risk based approach enables Port Stephens Council to make informed regulatory decisions that ensure its compliance focus is on the biggest risks to the public.

As a means to assist in screening and prioritising complaints, council utilises the following methodology. The methodology is not intended to be exhaustive but is guide to ensure the efficient use of Council resources when considering a response to a compliance issue, given the urgency or seriousness of the complaint. Not all complaints will warrant immediate or extensive investigation.

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ITEM 11 - ATTACHMENT 1 REVISED COMPLIANCE POLICY.

Policy



Compliance Methodology/Considerations

CRITICAL Response time within one (1) business day	MODERATE Response time within seven (7) business days	MINOR Response time within twenty eight (28) business days
Nature <ul style="list-style-type: none"> Requires immediate action The issue is so urgent it needs to be attended to now. 	Nature <ul style="list-style-type: none"> Important but not urgent. The non-compliance does not involve any life threatening issue. It is not critical that the issue be resolved immediately. 	Nature <ul style="list-style-type: none"> Needs attention but is not urgent May escalate to moderate if left unaddressed. In some cases (but not always) it may be resolved without any regulatory intervention.
Public safety/health issue <ul style="list-style-type: none"> Can involve significant public safety issues, likelihood or serious injury or death. 	Public safety/health issue <ul style="list-style-type: none"> Can include moderate, actual or potential public safety issues. 	Public safety/health issues <ul style="list-style-type: none"> Public safety aspects are minimal or unlikely.
Environmental harm <ul style="list-style-type: none"> May involve significant pollution or environmental harm. 	Environmental harm <ul style="list-style-type: none"> Can include moderate or potentially serious impacts on the environment. 	Environmental harm <ul style="list-style-type: none"> Environmental harm is minimal or unlikely.
Examples <ul style="list-style-type: none"> Actions that have or are likely to result in some human harm Can include criminal acts and significant civil breaches. Can include environmental issues that result in long term significant impacts. 	Examples <ul style="list-style-type: none"> Situations that if left could adversely affect human health, safety or the environment over time. 	Examples <ul style="list-style-type: none"> Aesthetic issues Breach of regulation but no immediate or likely adverse impacts Can include neighbour disputes Minor localised issues Technical breaches of legislation.
Possible responses <ul style="list-style-type: none"> Immediate investigation and action. Some remedy or restoration may be necessary. Intervention may include some legal instruments (may include stop work, prohibition, injunction, clean up order, etc.). <p>The last resort is typically court action.</p>	Possible responses <ul style="list-style-type: none"> Depending on the particular issue, it may be necessary to gather evidence immediately. Investigations, actions and intervention may be required. Some remedy or restoration may be necessary. Education and awareness may be an option. Warnings may be issued. Stop work orders, clean up notices, infringement notices and other legal instruments may be required. 	Possible responses <ul style="list-style-type: none"> Investigations/enquiries. Written warning/advice. Follow up actions. Education and awareness may be an option. Remediation/compensation may be required. Legal measures would rarely be used for minor compliance issues, however infringement notices may be used in some cases. <p>No action may be acceptable.</p>

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Policy



Considerations when considering compliance action

Council will consider a range of factors when deciding the extent to which a matter will be investigated and enforced. The considerations below guide the decision making of Council staff.

Technical breach

Is a minor breach of a regulatory instrument that does not result in any material damage or impact on human health or the environment? It relates primarily to administrative matters, which are in themselves illegal however due to the nature no regulatory action is required.

Jurisdiction

Is the matter in question within the jurisdiction of Council? Is there another body that is a more appropriate regulatory agency to investigate and deal with the matter?

Permissibility

Is the activity or work permissible with or without consent? If the activity is permissible with consent, is there a consent in place? Would consent have been obtained regardless if it was sought? Is the proposal of the scale similar to exempt or complying development?

Is it possible to determine from the information available to Council whether the activity or work is permissible without consent or whether all conditions of consent are being complied with?

Timing issues

Is the complaint premature eg does it relate to some unfinished aspect of work that is still in progress? Has too much time elapsed since the events, the subject of the complaint, took place?

Magnitude of offence

Is the complaint trivial, frivolous or vexatious? Is the activity having a significant detrimental effect on the environment or does it constitute a risk to public health or safety? Are there enforcement measures necessary to ensure compliance and bring about the best environmental outcome? The potential or actual risk of environmental harm caused by the incident. When was the unlawful activity carried out and for how long? Why is it so urgent now when/if it has been ongoing before with no action?

Tangible impact

How has the unlawful activity affected the natural or built environment and the health, safety and amenity of the area? Would consent have been given to the party if it had been sought for this particular issue? Can the breach be easily remedied?

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Policy



Pattern of behaviour

Does the complaint indicate the existence of a systemic problem, eg if the complaint is one of a series, could there be a pattern to the conduct or a more wide spread problem? Has the person, the subject of the complaint, received a previous warnings? Is contrition or remorse shown? Cooperation with the Council by the offender and their willingness to commit to appropriate remedial actions.

Voluntary actions by the offender to mitigate any impacts.

Are there any particular circumstances of hardship affecting the complainant, or the person the subject of the complaint?

Resource constraints

Does the complaint have special significance in terms of Council's existing priorities? Are there significant resource implications in relation to an investigation and any subsequent enforcement action? Is there any precedent which may be set by not taking action?

Public interest

Is there a potential for a conflict of interest in the investigation or reaction to a complaint? What action would be reasonable and proportionate in this case given the circumstances? What would be in the public interest?

Alternative approaches

Would an educative approach be more appropriate than a coercive approach? What are the costs and the benefits of taking a formal enforcement action, as opposed to taking informal or no action?

Likelihood of success

What are the chances of success if the proposed enforcement action was challenged in Court? Is there a Draft Planning Instrument or policy on exhibition that would make the unauthorised use legal?

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ITEM 11 - ATTACHMENT 2 CURRENT COMPLIANCE POLICY.

Port Stephens
C.O.U.N.C.I.L

POLICY

Adopted: 28/8/07
Minute No: 235
Amended: 26/11/13
Minute No: 344

FILE NO: PSC2013-00406

TITLE: COMPLIANCE POLICY

RESPONSIBLE OFFICER: MANAGER DEVELOPMENT ASSESSMENT AND COMPLIANCE

BACKGROUND

The purpose of this policy is to summarise Port Stephens Councils general approach to compliance and enforcement. The policy explains how Port Stephens Council undertakes activities that achieve compliance. The Policy relates to the Regulation of development activity, pollution control, regulation of parking, natural resource management, environmental health, the control over the keeping of animals and other regulatory issues within Council's area of responsibility.

OBJECTIVE

The purpose of this Policy is to assist Council staff to act promptly, consistently and effectively to allegations of unlawful activity.

The Policy aims to encourage:

- 1) The initiation of a process of education and creation of awareness within the Community in relation to the reasons for and importance of compliance.
- 2) The investigation and enforcement of complaints about unlawful activity or failure to comply with the terms or conditions of approval, notices, licences or breaches of legislation which Council is responsible for enforcing.
- 3) Cooperation with other Government Agencies responsible for enforcing legislation that relates to unlawful activities within Port Stephens.
 - a. To initiate a process of education and creation of awareness within the Community in relation to the reasons for and the importance of compliance;
 - b. To establish clear guidelines for the exercise of discretion in dealing with action requests or complaints about unlawful activity and to assist Council staff.

ITEM 11 - ATTACHMENT 2 CURRENT COMPLIANCE POLICY.

The NSW Ombudsman's Enforcement Guidelines for Council's have been used as the basis of framing this Policy and for developing operational procedures to address compliance issues.

Council has an internal reference document known as the compliance matrix which assists in assigning various compliance matters to respective disciplines.

PRINCIPLES**Anonymous Complaints**

These are complaints made by persons that do not wish to identify themselves but they are required to identify the issue. The complainants need to provide sufficient information to enable Council to identify the activity, its location and nature. In some cases anonymous complaints are not able to be investigated.

Prima Facie Evidence

Is evidence that is sufficient to raise a presumption of fact or to establish the fact in question?

Technical Breach

Is a minor breach of a regulatory instrument that does not result in any material damage or impact on human health or the environment? It relates primarily to administrative matters, which are in themselves illegal however due to the nature no regulatory action is required.

Unlawful Activity

Is any land-use or other activity that has been or is being carried out:

- Contrary to the terms or conditions of, or in the absence of development consent, approval, notice, permission or license.
- Contrary to an Environmental Planning Instrument that regulates the activities or work that can be carried out on particular land.

Using Discretion

In regulatory matters, relates to Council's discretion in deciding whether to take enforcement action or not. Council must exercise this discretion in the context of its broad regulatory responsibilities and experience.

POLICY STATEMENT**Education Awareness and Cooperation**

ITEM 11 - ATTACHMENT 2 CURRENT COMPLIANCE POLICY.

Council will educate the community and commercial operators in relation to regulatory issues and their responsibilities in this regard.

Council will encourage the public to try to resolve problems as they arise or come to notice before they escalate into significant issues.

Council will take a proactive role in cooperation with the community to minimise the occurrence of non-compliance.

Whilst prior warning is encouraging prior to pursuing a development or environment compliance, this is assessed on a case by case basis e.g. on the impacts and severity of alleged offence.

Response

Council's regulatory role requires that it identifies and responds appropriately to unlawful activities that it has responsibility for regulating.

Council must respond appropriately to a complaint relating to an alleged unlawful activity. In some instances, using a risk based framework, no further investigation may be a valid response.

Based on the circumstances of the alleged offence, Council respond in a way that reflects public interest, resource implications and whether the compliance issue poses a significant risk to public safety, health or to the environment.

All action requests or complaints about alleged unlawful activities should be acknowledged at the earliest opportunity and in any event no later than 7 business days. The response should indicate that Council is investigating the complaint and that a report will be forwarded as soon as possible and no later than a further 28 business days. As soon as possible and within a further 28 business days, a further report should be forwarded to the complainant indicating progress in the matter and where applicable council's decision.

Approach

Council will ensure confidentiality and respect privacy requirements when dealing with matters of compliance.

The Council will ensure procedural fairness in matters dealing with non compliance.

Council will act in a manner that is impartial and objective when investigating matters of alleged non- compliance.

RESPONSIBILITY

All Council staff that deal with written or verbal requests or complains alleging unlawful activity are responsible for following these Policy guidelines.

ITEM 11 - ATTACHMENT 2 CURRENT COMPLIANCE POLICY.

All notifications of alleged unlawful activity (verbal or written) will be lodged in Council's complaints request system and directed to the responsible officer.

INVESTIGATING AND PRIORITISING UNLAWFUL ACTIVITY

Council uses a risk based approach in assessing compliance matters and priorities.

In a public and environmental context, risk is measured in terms of the likelihood of an event occurring and the risk of harm to human health and the environment.

Applying a risk based approach enables Port Stephens Council to make informed regulatory decisions that ensure its compliance focus is on the biggest risks to the public.

As a means of helping to screen and prioritise complaints, Council has developed a "Compliance Methodology" in the following terms:

Compliance Methodology/Considerations

CRITICAL Response time within one business day	MODERATE Response time within 7 business days	MINOR Response time within 28 business days
Features Requires immediate action <ul style="list-style-type: none"> The issue is so urgent it needs to be attended to now. Short term localised impacts with minimal harm would not be included. Public Safety Issue <ul style="list-style-type: none"> Can involve significant public safety issues. Human health issue <ul style="list-style-type: none"> Can involve significant human health issues. Environmental harm	Features Important but not urgent <ul style="list-style-type: none"> The non-compliance does not involve any life threatening issue It is not critical that the issue be resolved immediately Public safety issues <ul style="list-style-type: none"> Can include moderate, actual or potential public safety issues. Human health issue <ul style="list-style-type: none"> Can include moderate, actual or potential health issues. Environmental harm	Features Needs attention but is not urgent <ul style="list-style-type: none"> May escalate to moderate if left unaddressed In some cases (but not always) it may be resolved without any regulatory intervention Public safety issues <ul style="list-style-type: none"> Public safety aspects are minimal or unlikely Human health issues <ul style="list-style-type: none"> Human health impacts are minimal or unlikely Environmental harm <ul style="list-style-type: none"> Environmental harm

ITEM 11 - ATTACHMENT 2 CURRENT COMPLIANCE POLICY.

<ul style="list-style-type: none"> May involve significant pollution or environmental harm <p>Examples</p> <ul style="list-style-type: none"> Actions that have or are likely to result in some human harm or disease. Can include life threatening issues. Can include criminal acts and significant civil breaches. Can include environmental issues that result in long term significant impacts. <p>Responses</p> <ul style="list-style-type: none"> Immediate investigation Immediate action Education and awareness may be used Warnings may be issued Mediation may be used Some remedy or restoration may be necessary Intervention may include some legal instruments (may include stop work, prohibition, injunction, clean up order, etc) Arbitration may be an option The last resort would be court action 	<ul style="list-style-type: none"> Can include moderate or potentially serious impacts on the environment <p>Examples</p> <ul style="list-style-type: none"> Situations that if left could adversely affect human health, safety or the environment over time Breaches of legislation that carry civil sanctions. <p>Responses</p> <ul style="list-style-type: none"> Depending on the particular issue, it may be necessary to gather evidence immediately Investigations, actions and intervention may be required Some remedy or restoration may be necessary Mediation may be necessary Education and awareness may be an option Warnings may be issued Stop work orders, clean up notices, infringement notices and other legal instruments may be required Arbitration may be an option in some cases The last resort would be court action 	<p>is minimal or unlikely</p> <p>Examples</p> <ul style="list-style-type: none"> Aesthetic issues Breach of Regulation but no immediate or likely adverse impacts Can include neighbour disputes Minor civil breaches Minor localised issues Technical breaches of legislation <p>Responses</p> <ul style="list-style-type: none"> Investigations/enquiries Written warning/advice Follow up actions Education and awareness may be an option Mediation Remediation/compensation may be required Legal measures would rarely be used for minor compliance issues, however infringement notices may be used in some cases
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ITEM 11 - ATTACHMENT 2 CURRENT COMPLIANCE POLICY.

The methodology is not intended to be exhaustive but is meant to be a 'guide to ensure the efficient use of Council resources when considering a response to a compliance issue, given the urgency or seriousness of the complaint. Not all complaints will warrant immediate or extensive investigation.

Council will consider a range of factors including those in the methodology when deciding the extent to which a matter will be investigated.

Further matters would include:

Jurisdiction

Is the matter in question within the jurisdiction of Council?

Is there another body that is a more appropriate regulatory agency to investigate and deal with the matter?

Permissibility

Is the activity or work permissible with or without consent?

If the activity is permissible with consent, is there a consent in place? Would consent have been obtained regardless if it was sought? Is the proposal of the scale similar to exempt or complying development?

Is it possible to determine from the information available to Council whether the activity or work is permissible without consent or whether all conditions of consent are being complied with?

Timing Issues

Is the complaint premature eg. does it relate to some unfinished aspect of work that is still in progress?

Has too much time elapsed since the events, the subject of the complaint, took place?

Magnitude of Offence / Constraints

Is the complaint trivial, frivolous or vexatious?

Is the activity having a significant detrimental effect on the environment or does it constitute a risk to public health or safety?

Are there enforcement measures necessary to ensure compliance and bring about the best environmental outcome?

The potential or actual risk of environmental harm caused by the incident.

ITEM 11 - ATTACHMENT 2 CURRENT COMPLIANCE POLICY.

Is the breach a technical breach only?

When was the unlawful activity carried out and for how long? Why is it so urgent now when/if it has been ongoing before with no action?

Tangible Impact

How has the unlawful activity affected the natural or built environment and the health, safety and amenity of the area?

Would consent have been given to the party if it had been sought for this particular issue? Can the breach be easily remedied?

Pattern of Behaviour

Does the complaint indicate the existence of a systemic problem, eg if the complaint is one of a series, could there be a pattern to the conduct or a more wide spread problem? Has the person, the subject of the complaint, received a previous warnings?

Is contrition shown? Cooperation with the Council by the offender and their willingness to commit to appropriate remedial actions.

Voluntary actions by the offender to mitigate any impacts.

Are there any particular circumstances of hardship affecting the complainant, or the person the subject of the complaint?

Policy and Resource Considerations

Does the complaint have special significance in terms of Council's existing priorities?

Are there significant resource implications in relation to an investigation and any subsequent enforcement action?

Is there any precedent which may be set by not taking action?

Public Interest Considerations

Is there a potential for a conflict of interest in the investigation or reaction to a complaint.

Public interest and community expectation about the action taken to provide specific or general deterrence.

What action would be reasonable and proportionate in this case given the circumstances?

What would be in the public interest?

ITEM 11 - ATTACHMENT 2 CURRENT COMPLIANCE POLICY.

Alternative Approaches

Would an educative approach be more appropriate than a coercive approach?

What are the costs and the benefits of taking a formal enforcement action, as opposed to taking informal or no action?

Likelihood of Success

What are the chances of success if the proposed enforcement action was challenged in Court? Is there a Draft Planning Instrument on exhibition that would make the unauthorised use legal?

If a decision is made not to investigate a complaint beyond a certain stage, the decision and the reasons for it must be recorded and appropriately documented.

COMPLIANCE OPTIONS

Referral

Referring the complaint to an external agency for further investigation or prosecution. Referring the issue to an external mediator.

No Action

Taking no regulatory action on the basis of lack of evidence or for some other risk based appropriate reason.

Counselling and Negotiation

Counselling the subject of the investigation to educate them on the relevant Council requirements. Negotiating with the subject of the investigation and obtaining some undertaking to address the issues of concern.

Warnings and Notices

Issuing a letter requiring work to be done or the activity to cease.

Issuing a Notice of Intention to Serve an Order or Notice under the relevant legislation. Issuing a Notice requiring the work to be done under the relevant legislation.

Infringement Notices and Orders

Issuing a Penalty Infringement Notice.

ITEM 11 - ATTACHMENT 2 CURRENT COMPLIANCE POLICY.

Carrying out the work specified in an Order under the Local Government Act at the cost of the person served with the Order.

Court Action

Starting proceedings in the Land and Environment Court for an Order to remedy or restrain a breach of the relevant legislation.

Seeking injunctions from the Land and Environment Court or the Supreme Court.

Issuing a Summons in the Local Court

Taking proceedings for an offence under the relevant legislation.

RELATED POLICIES

1) N/A

SUSTAINABILITY IMPLICATIONS

The Compliance Policy can improve sustainability outcomes for the local government area.

SOCIAL IMPLICATIONS

The Compliance Policy can improve social outcomes for the local government area.

ECONOMIC IMPLICATIONS

The Compliance Policy can improve economic outcomes for the local government area.

ENVIRONMENTAL IMPLICATIONS

The Compliance Policy can improve environmental outcomes for the local government area.

RELEVANT LEGISLATIVE PROVISIONS

The Local Government Act, 1993 (NSW)

Environmental Planning and Assessment Act, 1979 (NSW)

Protection of the Environment Operations Act, 1998 (NSW)

Roads Act, 1993 (NSW)

ITEM 11 - ATTACHMENT 2 CURRENT COMPLIANCE POLICY.

Companion Animals Act, 1998 (NSW)
Noxious Weeds Act, 1993 (NSW)
Public Health Act, 1991 (NSW)
Swimming Pools Act, 1992 (NSW)
Rural Fires Act, 1997 (NSW)
Traffic Act, 1999 (NSW)
Food Act, 1989 (NSW)
Impounding Act, 1993 (NSW)

IMPLEMENTATION RESPONSIBILITY

- 1) Manager Development Assessment and Compliance

PROCESS OWNER

- 1) Manager Development Assessment and Compliance

REVIEW DATE

- 1) The Policy will be reviewed 3 years after the date on which Council has adopted it.

ITEM NO. 12

**FILE NO: 16/444220
RM8 REF NO: PSC2009-01614**

CLASSIFY DRAINAGE RESERVE AS OPERATIONAL LAND - 19A HARVEST ROAD, MEDOWIE

REPORT OF: GLENN BUNNY - PROPERTY SERVICES SECTION MANAGER
GROUP: CORPORATE SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Classify Lot 236 DP1224890 at 19A Harvest Road, Medowie as Operational Land.

**ORDINARY COUNCIL MEETING - 13 DECEMBER 2016
COMMITTEE OF THE WHOLE RECOMMENDATION**

	Mayor Bruce MacKenzie Councillor Chris Doohan That the recommendation be adopted.
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**ORDINARY COUNCIL MEETING - 13 DECEMBER 2016
MOTION**

361	Mayor Bruce MacKenzie Councillor John Morello It was resolved that Council classify Lot 236 DP1224890 at 19A Harvest Road, Medowie as Operational Land.
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BACKGROUND

The purpose of this report is to recommend that Council classify Lot 236 DP1224890, known as 19A Harvest Road, Medowie as Operational Land in accordance with Section 31 of the *Local Government Act 1993* (LGA).

A plan of subdivision to create 15 rural residential lots was registered at Land & Property Information on 17 October 2016 (**ATTACHMENT 1**), which vested Lot 236 to the public as Drainage Reserve. The Development Application consent to create the 15 rural residential lots required the dedication of part of the land for drainage. This Drainage Reserve (**orange colour on ATTACHMENT 2**) forms part of the Campvale Drain which has been an ongoing acquisition project of Council over many

MINUTES ORDINARY COUNCIL - 13 DECEMBER 2016

years. Lot 236 should be classified as Operational Land to be consistent with the earlier freehold acquisition of Lot 1 DP1151609 (**blue strip on ATTACHMENT 2**) which was classified as Operational Land. All other acquisitions by Council for the Campvale Drain have been of easements over privately owned land which does not require classification.

Section 49 (3) of the LGA states in part that on the registration of a plan on which land is marked with the words "Drainage Reserve", the land vests in the Council for an estate in fee simple and is held by the Council for drainage purposes. Under Section 31 of the LGA, Council can resolve that Lot 236 be classified as Operational Land and, if so, is required to do so within three months after its vesting. If Council does not classify Lot 236 as Operational Land within the three months, Lot 236 is then classified by default as Community Land.

Council now has access to Lot 236 via a 12 metre wide drainage and access easement over 19 Harvest Road. Excluding Hunter Water Corporation which owns land at the western end of the Campvale Drain, outstanding easement acquisitions now number three private landowners and the National Parks & Wildlife Service.

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2013-2017
Infrastructure.	Reduce the infrastructure backlog on all Council assets.

FINANCIAL/RESOURCE IMPLICATIONS

Nil.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	No		Dedication was completed as part of the DA process at no cost to Council.
Reserve Funds	No		
Section 94	No		
External Grants	No		
Other	No		

LEGAL, POLICY AND RISK IMPLICATIONS

There are no apparent legal or policy implications from the recommendation.

There is a risk that if the recommendation is not adopted the land will automatically be classified as Community Land which makes any future dealings with the land difficult.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that if the land is not classified within 30 days of dedication it will become Community Land.	Medium	Adopt the recommendation.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

There are no apparent immediate Social or Economic implications. Environmental implications are that Council is enabled to manage and maintain the drainage reserve in accordance with legislation.

MERGER PROPOSAL IMPLICATIONS

There are no apparent implications from this recommendation on the merger proposal.

CONSULTATION

Consultation with key stakeholders has been undertaken by the Property Services section to determine that classification to Operational Land is the most appropriate outcome.

Internal

- Senior Survey & Land Information Manager.
- Land Acquisition & Development Manager.
- Property Services Manager.

External

No external consultation was deemed necessary.

OPTIONS

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

ATTACHMENTS

- 1) Plan of subdivision DP1224890.
- 2) Drainage Reserves coloured locality map.

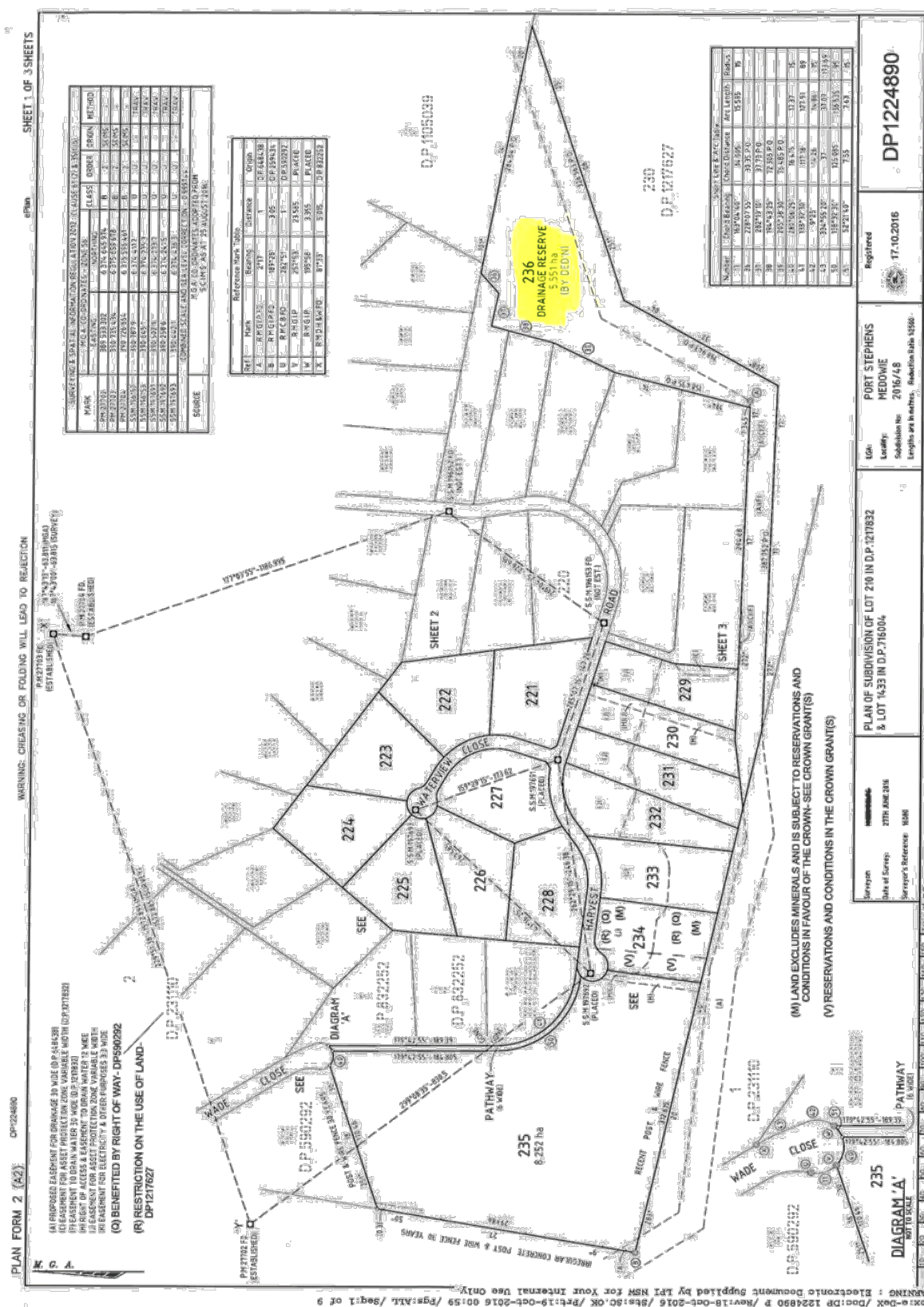
COUNCILLORS ROOM

Nil.

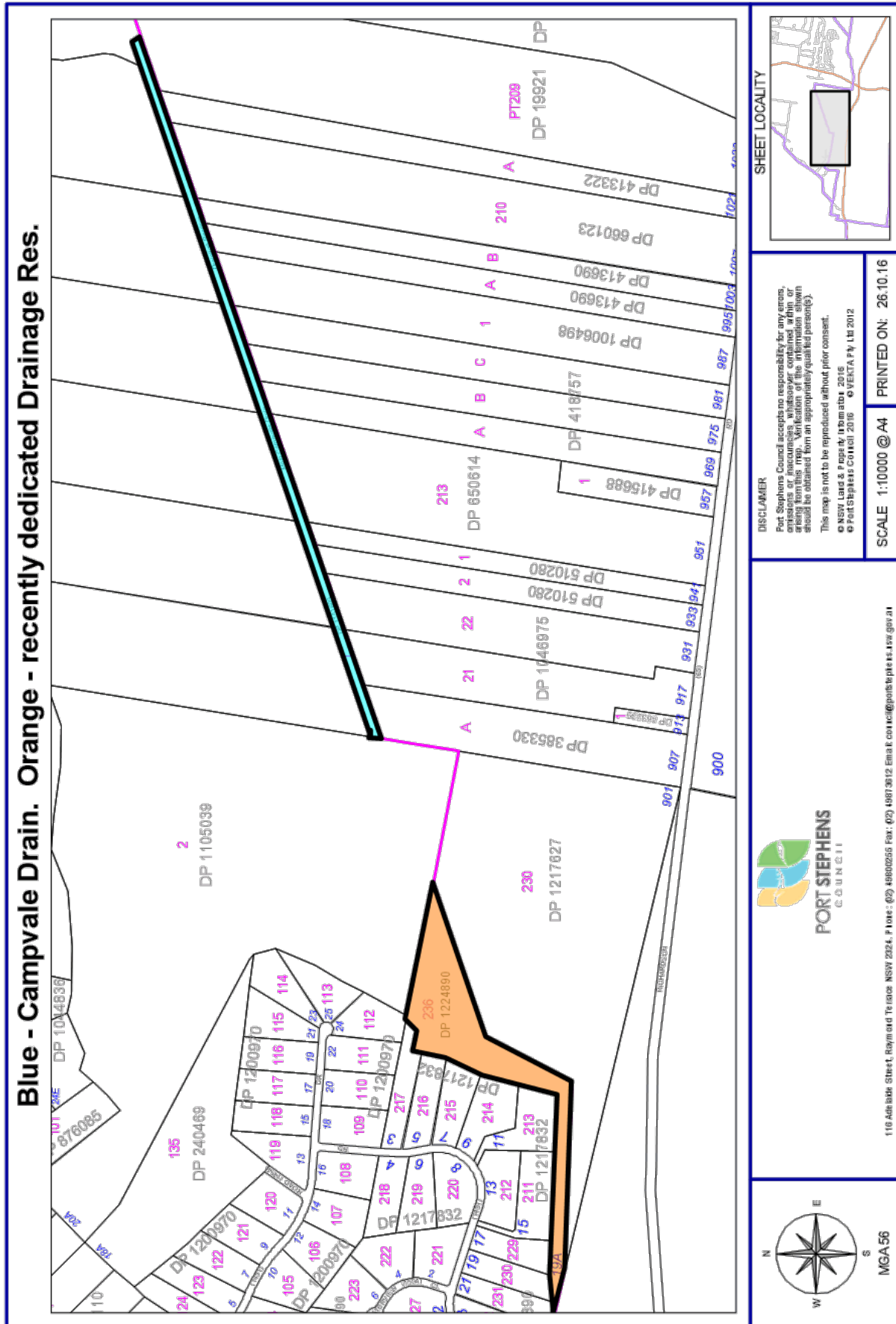
TABLED DOCUMENTS

Nil.

ITEM 12 - ATTACHMENT 1 PLAN OF SUBDIVISION DP1224890.



ITEM 12 - ATTACHMENT 2 DRAINAGE RESERVES COLOURED LOCALITY MAP.



MINUTES ORDINARY COUNCIL - 13 DECEMBER 2016

Councillor Ken Jordan left the meeting at 07:03pm prior to debate in Committee of the Whole.

Councillor Ken Jordan left the meeting at 07:12pm prior to debate in Open Council.

ITEM NO. 13

FILE NO: 16/450192
RM8 REF NO: PSC2008-3848

PROPOSED ENVIRONMENTAL OFFSET FOR 282, 282A, 282B AND 398 CABBAGE TREE ROAD, WILLIAMTOWN

REPORT OF: GLENN BUNNY - PROPERTY SERVICES SECTION MANAGER
GROUP: CORPORATE SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Agree to the preparation and registration of a Biobanking Agreement over 282, 282A, 282B and 398 Cabbage Tree Road, Williamtown.
 - 2) Agree to the sale of Ecosystem and Species Biobank credits required for the sand extraction project to secure necessary approvals.
 - 3) Authorise the Mayor and the General Manager to affix the Council seal and sign all documentation relating to the preparation/registration of a Biobanking Agreement over the land and the sale of the Ecosystem and Species credits required for the sand extraction project.
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ORDINARY COUNCIL MEETING - 13 DECEMBER 2016 COMMITTEE OF THE WHOLE RECOMMENDATION

	Councillor Paul Le Mottee Councillor Chris Doohan That the recommendation be adopted.
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ORDINARY COUNCIL MEETING - 13 DECEMBER 2016 MOTION

362	Councillor Steve Tucker Councillor Chris Doohan It was resolved that Council: <ol style="list-style-type: none">1) Agree to the preparation and registration of a Biobanking Agreement over 282, 282A, 282B and 398 Cabbage Tree Road, Williamtown.2) Agree to the sale of Ecosystem and Species Biobank credits required for the sand extraction project to secure necessary
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	approvals.
3)	Authorise the Mayor and the General Manager to affix the Council seal and sign all documentation relating to the preparation/registration of a Biobanking Agreement over the land and the sale of the Ecosystem and Species credits required for the sand extraction project.

BACKGROUND

The purpose of this report is to recommend that Council agree to a request from Williamtown Sand Syndicate (WSS) to biobank areas of the subject land (**white edge on ATTACHMENT 1**) and sell specified credits to WSS to satisfy environmental offset requirements.

282, 282A, 282B and 398 Cabbage Tree Road, Williamtown (the Land) is legally described as Lot 1012 DP 814078, Lot 11 DP 629053, Lot 121 DP556043 and Lot 1 DP 224587 having a total area of 176 hectares. The Land is subject to an Agreement for Lease (AFL) between Council and WSS for 15 years. WSS proposes sand extraction of an estimated 3,250,000 tonnes and Council will receive annual rental payment of \$100,000 and a royalty rate per tonne equating to approximately \$17,250,000 over the life of the lease.

In 2014 the existing biobanking legislation was reviewed and standardised and currently biobanking offsets is the only means available to allow development to progress where clearing of vegetation is required. The Office of Environment & Heritage (OEH) requires WSS to provide Biobank credits to offset the clearing of the sand extraction footprint and have indicated that onsite biobanking is the most favourable method of satisfying the offset requirement.

By entering into this agreement, Council can ensure the ecological value of the land is protected in perpetuity on behalf of the community.

In total WSS requires 3,257 credits. These location-specific credits are not currently available for purchase in the open market and to do so offsite could make the overall sand extraction proposal unviable. A mix of onsite and offsite location-specific Biobank credits is therefore considered to be the most logical and cost effective solution.

The Land will generate 8,595 credits. WSS proposes to purchase from Council a total of 1,944 credits for \$250,000. WSS will have a shortfall of credits and will purchase additional land to provide for the shortfall. WSS will also be responsible for all costs associated with setting up and registering the biobanking and the Part A Payment required by OEH estimated to be approximately \$550,000.

Acceptance by Council of this offer will permit WSS to finalise and submit the extraction consents. The credits proposed to be sold to WSS would be held by Council in escrow until such time as the sand extraction consents are confirmed.

MINUTES ORDINARY COUNCIL - 13 DECEMBER 2016

The balance of onsite Species credits not required by WSS for its proposal (c.6,651) will be owned by Council and can be sold once the Biobanking Agreement is registered and the Part A Payment is made. These credits could generate an additional \$1.1Million.

Council will also receive an annual payment from OEH to carry out the maintenance actions specified in the Biobank Agreement. Upon completion of sand extraction and rehabilitation, further saleable credits may be available from the rehabilitated extraction footprint.

Without the availability of the onsite Biobank credits, the proposal may be uneconomical for WSS and the AFL could be terminated. Council officers have made enquiries with two specialist extraction industry valuers as to the likely current royalty rates for extracted sand which has provided guidance on the royalty rate if the Land was re-tendered. Re-tendering is likely to result in a lower royalty rate to Council, reducing the overall cash flow to Council from this proposal. An assessment of other possible uses for the land was also undertaken and the current proposed use under the existing agreement is considered to offer the highest financial return and provide the most favourable ecological outcome for the community.

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2013-2017
A Sustainable Council.	<p>Council will maintain its underlying financial performance to budget at break even or better.</p> <p>Council will increase its revenue from non-rates sources.</p> <p>Manage risks across Council.</p> <p>Attract, retain and develop staff to meet current and future workforce needs.</p> <p>Provide enabling business support services for Council's operations.</p>

FINANCIAL/RESOURCE IMPLICATIONS

The AFL and Lease agreement will generate \$17,250,000 over the life of the proposed lease. The biobanking of the Land including the Part A Payment will be at no cost to Council. Council will receive \$250,000 for the sale of the required onsite credits and annual biobank maintenance payments in perpetuity for the Land and can sell the additional credits for an estimated \$1,100,000.

The market evidence provided by the extraction industry valuers suggests that if the Land was re-tendered a royalty rate of \$2 to \$3/tonne may apply, reflecting a potential reduction in income to Council of \$6,500,000 to \$9,750,000 over the life of the sand extraction proposal.

MINUTES ORDINARY COUNCIL - 13 DECEMBER 2016

There are no resource implications for Council from adopting the recommendations.

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

LEGAL, POLICY AND RISK IMPLICATIONS

Biobanking requirements were enacted in 2008 via amendments to the *Threatened Species Conservation Act 1995* and then reviewed and standardised in 2014 with a 12 – 18 month transitional implantation period commencing on 1 October 2014. The Act and its Regulations set out how biodiversity is to be protected in perpetuity by way of a Biobanking Agreement. OEH will provide a draft Biobanking Agreement for Council's review and comment before the final Agreement is executed. The draft Agreement will be reviewed by Council staff and its biobanking advisors.

There is a risk that the project will not be viable if the required credits cannot be obtained by WSS.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that WSS will not proceed with the AFL as the proposal will be uneconomical.	High	Adopt the recommendations.	Yes
There is a risk that Council will not receive the royalty and rental payments.	High	Adopt the recommendations.	Yes
There is a risk that Council will receive a lower royalty rate if the AFL is terminated and the Land re-tendered.	High	Adopt the recommendations.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Social implications were raised via the Director General's Requirements issued October 2013, the consequent Environmental Impact Statement and resulting

submissions and the further community consultation process. The identified social implications will require treatment by WSS to the satisfaction of the Department of Planning before consent will be issued, or will be addressed via conditions of the consent.

By adopting the recommendation, Council increases the likelihood of receiving the rent and royalties agreed under the AFL which can be utilised for annual works and improvements programs. Council will also receive a payment for the credits transferred to WSS and annual income from OEH to manage the biodiversity values of the Land.

By adopting the recommendation, Council will be protecting in perpetuity the ecological values of the Land in accordance with the *Threatened Species Conservation Act 1995*.

MERGER PROPOSAL IMPLICATIONS

There are no obvious implications to the merger proposal that arise from adopting the recommendations.

CONSULTATION

Consultation with key stakeholders has been undertaken by the Property Services Section to determine the extent of the onsite Biobank credits, the market for these credits and the market for sand and royalty rates.

Internal

- Property Development Coordinator.
- Land Acquisition & Development Manager.
- Property Services Manager.
- Property Strategic Committee.

External

- WSS.
- Kleinfelder, environmental consultant to WSS.
- Specialist Valuers for extractive industries.
- OEH Biobank Credits Register.

OPTIONS

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

ATTACHMENTS

- 1) Locality Plan.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ITEM 13 - ATTACHMENT 1 LOCALITY PLAN.



ITEM NO. 14**FILE NO: 16/462732
RM8 REF NO: PSC2005-2675****EXTENSION OF WASTE DISPOSAL AGREEMENT**

REPORT OF: AARON MALLOY - ACTING COMMUNITY SERVICES SECTION
MANAGER
GROUP: FACILITIES & SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Enter into contract negotiations, pursuant to Section 55 3 (i) of the *Local Government Act 1993*, to extend the existing Waste Disposal Agreement with the current provider for a period up to 2027 because a satisfactory result would not be achieved by inviting tenders due to:
 - a. the unavailability of competitive tenderers in the region to provide an advanced waste technology solution that is compatible with Council's current two bin municipal solid waste stream by 2019;
 - b. the extenuating circumstances relating to Council's policy position on sustainable waste management using advanced waste technology rather than landfilling municipal solid waste using a two bin waste collection system and the financial and environmental benefits that can be gained by continuing to provide a two bin system with the current proven waste technology.
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**ORDINARY COUNCIL MEETING - 13 DECEMBER 2016
COMMITTEE OF THE WHOLE RECOMMENDATION**

	Councillor Paul Le Mottee Councillor Sally Dover That the recommendation be adopted.
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**ORDINARY COUNCIL MEETING - 13 DECEMBER 2016
MOTION**

363	Councillor Steve Tucker Councillor Chris Doohan It was resolved that Council: <ol style="list-style-type: none">1) Enter into contract negotiations, pursuant to Section 55 3 (i) of the <i>Local Government Act 1993</i>, to extend the existing Waste Disposal Agreement with the current provider for a period up to 2027 because a satisfactory result would not be achieved by inviting tenders due to:
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	<p>a. the unavailability of competitive tenderers in the region to provide an advanced waste technology solution that is compatible with Council's current two bin municipal solid waste stream by 2019;</p> <p>b. the extenuating circumstances relating to Council's policy position on sustainable waste management using advanced waste technology rather than landfilling municipal solid waste using a two bin waste collection system and the financial and environmental benefits that can be gained by continuing to provide a two bin system with the current proven waste technology.</p>
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BACKGROUND

The purpose of this report is to seek endorsement to enter into contract negotiations pursuant to Section 55 3 (i) of the *Local Government Act 1993* to extend the Waste Disposal Agreement with the current provider for a period up to 2027.

The current Waste Disposal Agreement is due to expire in September 2019 after a twenty year term. The Agreement includes the receipt and processing of the contents of the red lidded bin (ie municipal solid waste) and the creation of a marketable compost product with a waste diversion rate of greater than 50%. The technology used in the process is the only proven technology of its type outside of the Sydney region and the only alternative waste technology for municipal solid waste compared to landfilling in the Hunter, Central Coast Region and Mid Coast regions.

Council commenced a new waste collection contract in July 2015. The two bin system was designed to align with the current advanced waste processing system provided by the current provider at Newline Road Raymond Terrace. The current collection service is contracted until 2025 (or 2027 with option).

The process of tendering for a new waste disposal service and contract through open tendering is not recommended due to there being:

- A misalignment of contract terms for the current waste disposal agreement (2019) and the current two bin waste collection contract (2027);
- Limited competitive and proven providers of advanced waste technologies in the waste sector in this region. It is noted that there are currently six advanced waste technology facilities in New South Wales. Three of them are able to process municipal solid waste. Of these three, two are owned by Council's current provider with one facility in Raymond Terrace and the other in Kemps Creek Sydney Region, whilst the third is owned by another company and is located some 180 kilometres away in Eastern Creek Sydney Region.
- Likely significant increased costs (circa \$1,000,000 per year) for haulage of municipal solid waste from Port Stephens to the Sydney region should a new contract be awarded to a new provider that was able to accept municipal solid waste by 2019.

- Limited proven waste technologies in the market at present. However there are a number of emerging technologies in the development phase that could be operational in a five to 10 year window. Should this eventuate, Council would be in a better position to take advantage of new technologies in the future, for example waste to energy, other organics recovery options and pyrolysis.

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2013-2017
Waste Management.	Provide waste and recycling services.

FINANCIAL/RESOURCE IMPLICATIONS

Adoption of the recommendation will result in contract negotiations that aim to deliver fair and reasonable commercial terms for Council to continue to deliver a safe, convenient, reliable and affordable domestic waste service. Waste disposal costs are factored into the reasonable cost calculation for the Domestic Waste Management Service Charge (sections 496 and 501 of the *Local Government Act 1993*). The impact of any changes to the commercial arrangements of the waste disposal agreement will be modelled against the Domestic Waste Service Charge to determine price sensitivities to the ratepayer.

Council's current Domestic Waste Service Charge is \$401 for 2016-2017. This is the second lowest Domestic Waste Service Charge in the Hunter area. It is expected that when transitioning contracts in 2019 there would be a rise in the waste disposal contract as it is currently below the market rate. However, as Council is currently at the lower end of the charging scale the new charge is likely to still be comparable with other Hunter Councils.

There are no foreseeable resource implications in adopting the recommendation of this report. Undertaking contract negotiations will be done within existing resources. The procurement of a Probity Officer will be through Local Government Legal and will be paid for within existing funds in the Waste Budget.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes	70,000,000	Estimated total contract value over eight years commencing 2019 and ending 2027. Source of funds is the Domestic Waste Management Charge (sections 496 and 501).
Reserve Funds	No		
Section 94	No		
External Grants	No		
Other	No		

LEGAL, POLICY AND RISK IMPLICATIONS

Section 55 3 (i) of the *Local Government Act 1993* permits entering into a contract without undertaking open tendering where, "because of extenuating circumstances, remoteness of locality or the unavailability of competitive or reliable tenderers, a council decides by resolution (which states the reasons for the decision) that a satisfactory result would not be achieved by inviting tenders."

Adopting the recommendation aligns with Councils Waste Management and Resource Recovery Policy, specifically policy statement 1.1.4 "Council is committed to processing residual waste via Advanced Resource Recovery Technology (ARRT) Facility until at least 2019".

The risk implications of adopting the recommendation are outlined in the table below.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that if Council does secure a waste disposal option beyond September 2019 there will be no options for disposal of Councils kerbside waste other than landfill.	High	Accept the recommendation.	Yes

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Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that costs to residents would increase if Council was to use landfill as its disposal option for kerbside waste beyond September 2019.	Medium	Accept the recommendation.	Yes
There is a risk that Council's reputation would be damaged if Council was to use landfill as a waste disposal option instead of a resource recovery option.	Medium	Accept the recommendation.	Yes
There is a risk that the waste management sector may view Council as by-passing the open tendering process and favouring one provider resulting in legal and reputation damage.	Medium	Accept the recommendation and undertake the contract negotiations within the parameters of a Probity Plan that is overseen by Local Government Legal.	Yes.
There is a risk that contract negotiations may fail leaving Council exposed to having no contracted waste disposal option post 2019.	Medium	Accept the recommendation with a view to procuring an agreement with a landfill provider for Council's municipal solid waste until a new long term waste disposal agreement is completed.	Yes. Any cost implications would be included in the Domestic Waste Management Services Charge.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

There are no foreseeable social or economic implications from adopting the recommendation of the report.

By adopting the recommendation of the report Council will continue to process municipal solid waste through an advanced waste technology that diverts more than 50% of waste from landfill and produces a marketable compost product.

MERGER PROPOSAL IMPLICATIONS

Adopting the recommendation secures the sustainable waste disposal service for Port Stephens Council residents until up to 2027. Should Council merge with any other Council, this will simply mean that the residents of the former Port Stephens Council local government area will continue to receive their two bin waste service and a sustainable waste diversion result of greater than 50% until 2027. Any decisions relating to a change in waste services for any new Council entity will be a matter for that future entity.

CONSULTATION

Consultation with key stakeholders has been undertaken by the Community Services Section to ascertain if extenuating circumstances under *Section 55 3 (i) of the Local Government Act 1993* could be utilised in this situation.

Internal

To determine whether extenuating circumstances under section 55 3 (i) of the Local Government Act could be utilised in this situation consultation was held with the following officers:

- Executive Leadership team;
- Governance Manager;
- Legal Services Manager;
- Waste Management Coordinator;
- Community Services Section Manager;
- Procurement and Contract Management Specialist.

External

If the recommendation of this report is endorsed, consultation with the current provider will be undertaken to negotiate a new waste disposal contract for up to eight years to begin at the end of the current contract when it expires on 30 September 2019.

Upon completion of successful contract negotiations Council will be required to follow Section 23A Guidelines – Council Decision Making during a Merger Proposal Period and place the recommended waste disposal agreement contract on public exhibition for 28 days. After the required public exhibition period, Council shall decide whether to proceed to award the contract or commence another process to procure waste disposal services.

OPTIONS

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

3) Reject the recommendation.

ATTACHMENTS

Nil.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.