

ATTACHMENTS UNDER SEPARATE
COVER

ORDINARY COUNCIL MEETING
22 SEPTEMBER 2020



PORT STEPHENS
C O U N C I L

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**PARKER SCANLON
PTY LTD**

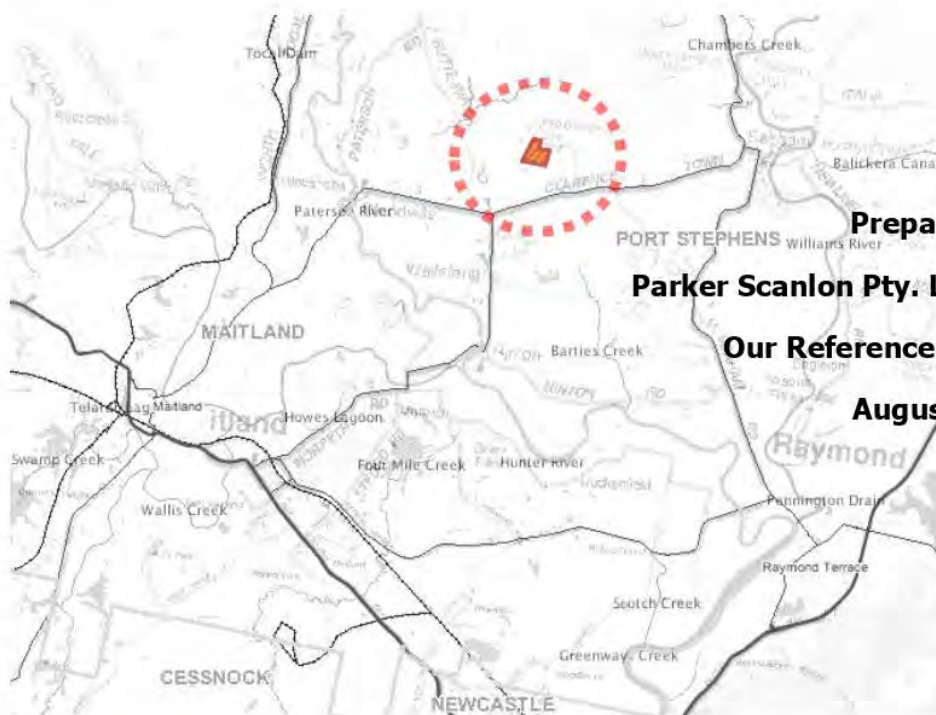
Surveying, Engineering, Town Planning and Project Management

DRAFT PLANNING PROPOSAL

Large Lot (Rural) Residential Land

Lot 14 in DP 846633

No. 4 Giles Road, Seaham



Prepared by:
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Our Reference: B909

August 2018

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Lot 14 in DP 846633
No 4 Giles Rd, Seaham



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EXECUTIVE SUMMARY

The planning proposal seeks to amend *Port Stephens Local Environmental Plan 2013* to allow Lot 14 in DP 846633 (Lot 14/846633) at No. 4 Giles Road, Seaham to be subdivided into allotments with a minimum area of 1 hectare.

The site comprises 32.2 hectares within one allotment. If the proposal is approved, the potential number of allotments will increase from one (1) to twenty six (26). In order to achieve this outcome, the zoning of the site needs to be amended from RU2 Rural Landscape to R5 Large Lot Residential, with the minimum lot size development standard amended from 40 hectares to 1 hectare.

The site adjoins the northern perimeter of the Wallalong "future growth area" identified in the *Port Stephens Planning Strategy 2011-2036* (PSPS). It is partly within the northern fringe of the westernmost location identified as "Investigation Area" in the *Port Stephens Rural Residential Strategy 2017* (PSRRS), and is mapped as being entirely outside the rural residential "exclusion area".

More significantly, the site is already part of a neighbourhood containing 28 rural residential lots ranging in size between 1.5 hectares and 3.6ha, being the consequence of the "concessional lot" provision in Clause 13 of the *Port Stephens Local Environmental Plan 1987*. Whilst not originally an intended outcome, this provision has, nevertheless, already transformed the locality from broad-scale rural land to a rural residential neighbourhood. Development of the subject site **is in-fill development**, and could not be considered to be facilitating the further fragmentation of rural land.

The proposal: -

- respects the settlement pattern of the locality;
- promotes limited new housing opportunities to maximise the use of infrastructure already provided for rural residential living;
- is consistent with the guiding principles of the *Hunter Regional Plan 2016-2036*;
- is consistent with Council's adopted strategies for the delivery of community resources, rural lands, planning, and rezoning to residential land use;
- is generally consistent with the applicable State Environmental Planning Policies, and any inconsistency is justified by its minor significance, or by its potential to realise a substantial and strategic environmental benefit;
- is generally consistent with the applicable Ministerial Directions, and any inconsistency is justified by its minor significance, or by its locational context;
- will result in the loss of some native vegetation, including 13 Koala feed trees, but will not result in the loss of habitat trees, and can implement measures to generate positive strategic outcomes for the site by significantly increasing tree population, by restoring vegetation canopy to areas denuded by past grazing activities, and by enhancing habitat for threatened species;
- is unlikely to generate, or be impacted by, lasting adverse environmental effects relating to items of heritage and cultural significance, contamination, the local

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road network, the water quality of Heydons Creek and Barties Creek watercourses, on-site sewage management, bushfire hazard mitigation, water supply, and odour.

The site has direct access to Giles Road, and electricity and telecommunications services are available. The proposal's allotments are each sufficiently-sized to sustain domestic on-site sewage management, whilst the locality receives sufficient rainfall to sustain the water supply needs of future residents using appropriate rainfall capture devices (e.g. tanks/reservoirs).

Most significantly, the proposed lot size variation is consistent with the prevailing subdivision pattern in the neighbourhood, so that the risk of setting an undesirable precedent for other "RU2 Rural Living" land is low.

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1. PROPOSAL

The planning proposal seeks to amend *Port Stephens Local Environmental Plan 2013* to allow Lot 14 in DP 846633 (Lot 14/846633) at No. 4 Giles Road, Seaham to be subdivided into allotments with a minimum area of 1 hectare. It is prepared on behalf of Kord Properties Pty Ltd.

The site comprises 32.2 hectares within one allotment. If the proposal is approved, the potential number of allotments will increase from one (1) to twenty six (26). In order to achieve this outcome, the zoning of the site needs to be amended from RU2 Rural Landscape to R5 Large Lot Residential, with the minimum lot size development standard amended from 40 hectares to 1 hectare.

The site adjoins the northern perimeter of the Wallalong "future growth area" identified in the *Port Stephens Planning Strategy 2011-2036* (PSPS). It is partly within the northern fringe of the westernmost location identified as "Investigation Area" in the *Port Stephens Rural Residential Strategy 2017* (PSRRS), and is mapped as being entirely outside the rural residential "exclusion area".

The site is further shown on **Figures 1 to 8**. It is surrounded by 28 rural residential lots, each containing dwellings, ranging in size between 1.5 hectares and 3.6ha (see **Attachment I**), so that the proposal would not significantly alter the character of the neighbourhood. Rather, the proposal would assist in providing an increase in housing and improve sustainability of the social fabric of the neighbourhood.

The proposal will improve the Port Stephens Local Government Area (LGA) because: -

- 26 allotments for "higher-end" housing can be provided within 20km of, and centrally between, the "major regional centres" of Maitland (16km) and Raymond Terrace (15.5km), the "town" of East Maitland (19km) and the "stand alone shopping centre" of Green Hills (18km) identified by the forerunner to the current *Hunter Regional Plan 2016-2036*, the *Lower Hunter Regional Strategy 2006-31* (LHRS), and immediately adjoining the "Wallalong rezoning proposal" under consideration by the Gateway. This will assist in supplying the demand for 12,500 new dwellings by 2031 predicted for the Port Stephens LGA by the LHRS;
- the development of the land will directly support the building and construction industries in the short to medium term as significant employers and contributors to the Lower Hunter and NSW economies;
- the site is serviced by established transport routes that link it to the various employment hubs around Maitland (via Paterson Road), Black Hill / Beresfield (via Morpeth Road) and Raymond Terrace (via Hinton Road) recognised by the LHRS;
- housing can be provided within 10km of the established "smaller village" services at Wallalong (5.8km), Woodville (8.4km), Seaham Village (7km) and

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Hinton (7.7km), within 15km of the established "local centre" of Morpeth (12.2km), and within 20km of the commercial hubs of Maitland (16km) and Raymond Terrace (15.5km) which collectively offer an abundant choice in social infrastructure; and

- housing can be provided on a flood-free grassland and open woodland site that is outside any priority conservation areas identified by the *Lower Hunter Regional Conservation Plan 2009* (LHRCP). Furthermore, the site is nearby an authorised supply of gravel material identified by the LHRCP that will readily facilitate development works.

It is considered that the site can be sensitively and sustainably developed to contribute housing for 26 households on 1 hectare allotments each about a road structure similar to that suggested in **Figure 9**.

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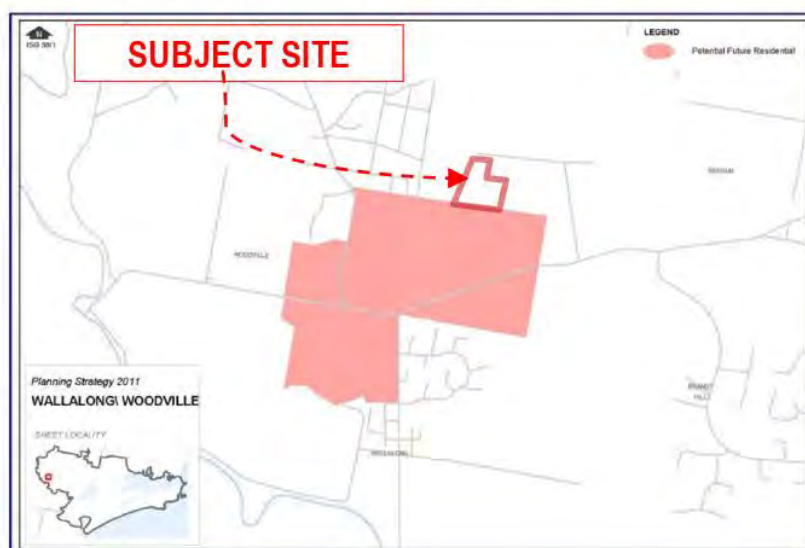


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Figure 1: Context of Site in Port Stephens Planning Strategy 2011-2036



Figure 2: Context of Site with Wallalong "Future Growth Area"



Map Source: Appendix 3, Map 11, Port Stephens Planning Strategy 2011-2036

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Figure 3: Context of Port Stephens Rural Residential Strategy – Investigation Areas

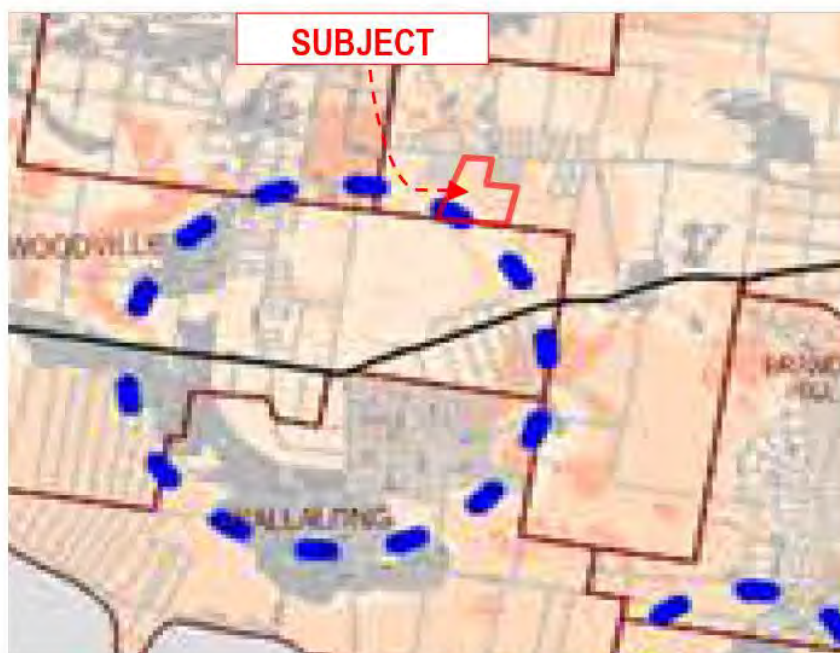
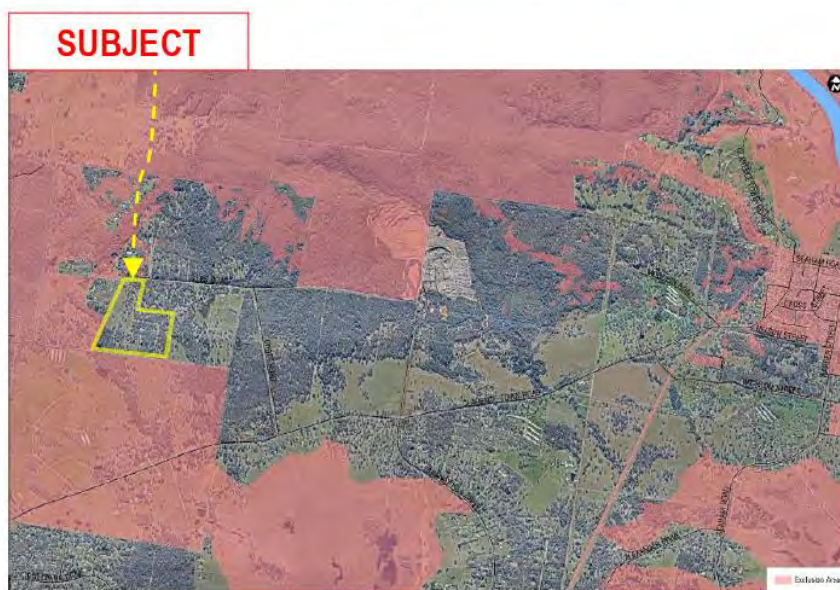


Figure 4: Context of Draft PSRRS – Investigation Area 5 - Seaham



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Figure 5: Context of Site in Port Stephens LEP 2013 – Land Zoning Map

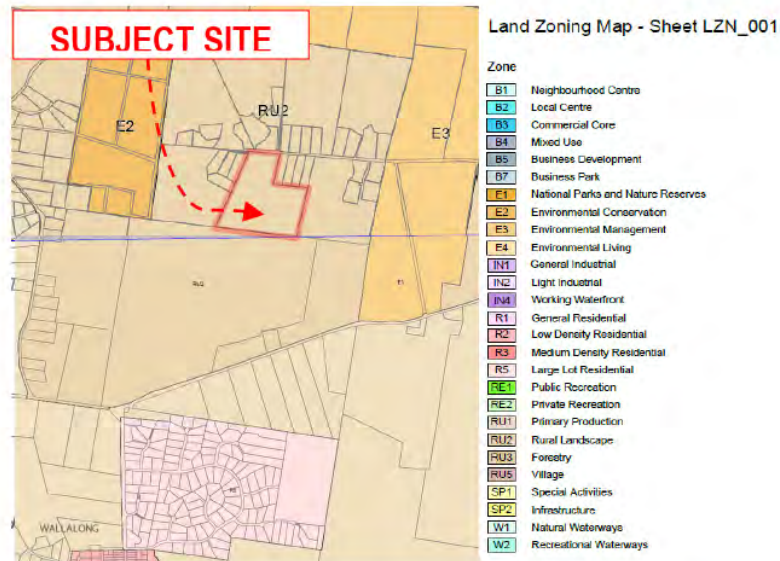
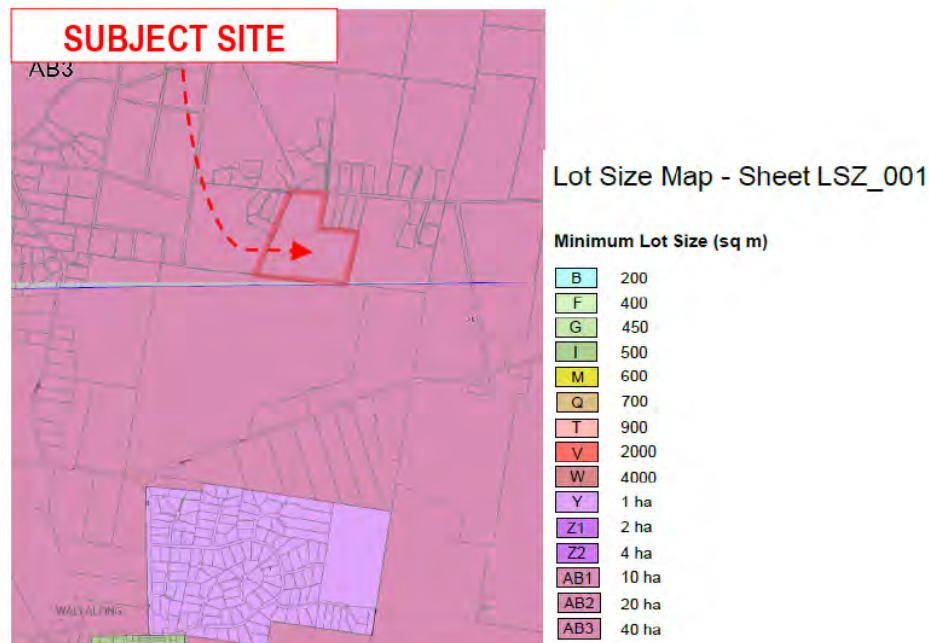


Figure 6: Context of Site in Port Stephens LEP 2013 – Lot Size Map



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Figure 7: Subject Site - Topography

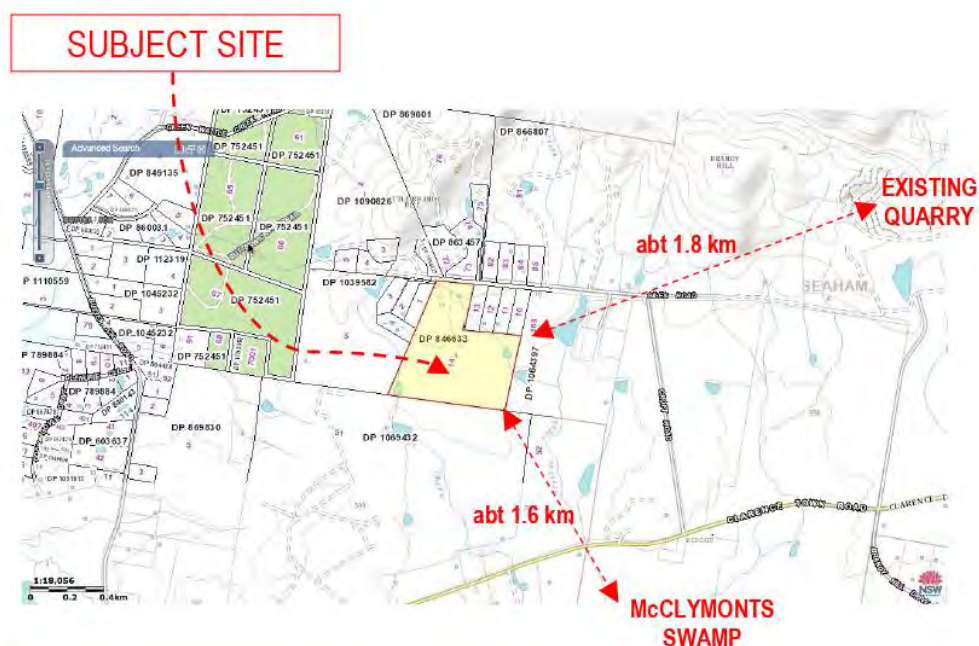
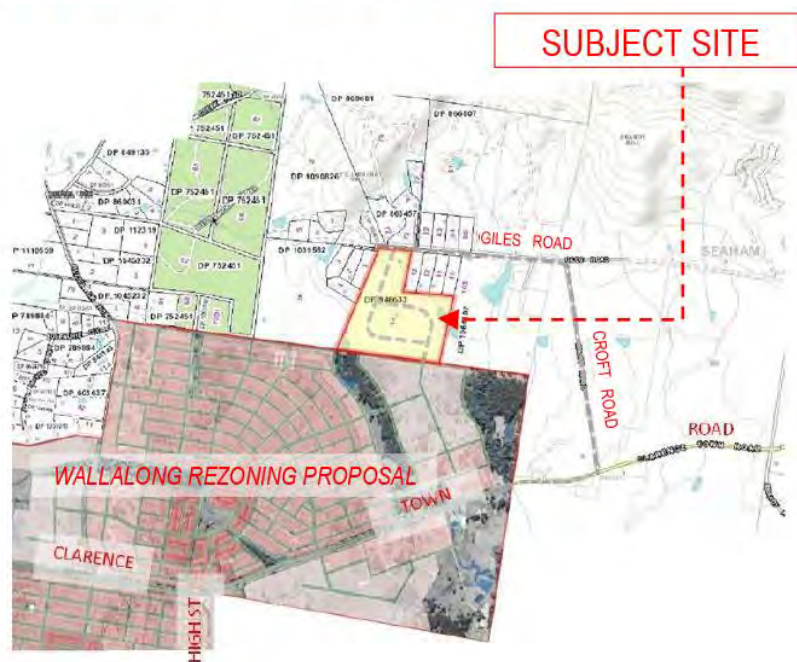


Figure 8: Context with Wallalong Rezoning Proposal



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Figure 9: Concept Lot & Road Layout



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2. BACKGROUND

2.1 Site Description

2.1.1 Context

Lot 14/846633 comprises 32 hectares and has a frontage of 200m to Giles Road at Seaham, north of Wallalong. Giles Road is an established local road that accesses (via Croft Road) Clarence Town Road between the High Street link to Wallalong, Hinton and Morpeth (3km to the west) and the Brandy Hill Drive / Seaham Road link to Raymond Terrace (1km to the east). The site: -

- is within 20km of the "major regional centres" of Maitland (16km) and Raymond Terrace (15.5km), the "town" of East Maitland (19km) and the "stand alone shopping centre" of Green Hills (18km) as identified by the LHRs;
- is within 15km of the established "local centre" of Morpeth (12.2km) as identified by the *Maitland Urban Settlement Strategy 2010* (MUSS);
- is within 10km of established "smaller village" services at Wallalong (5.8km), Woodville (8.4km), Seaham Village (7km) and Hinton (7.7km); and
- immediately adjoins, to the north, the area of the "Wallalong rezoning proposal" (WRP) that proposed to create a new town for 3,700 dwellings. The WRP included a "rural small holdings" precinct adjacent to the site, where minimum lot sizes are 0.4ha. The WRP was refused at the gateway determination stage in 2014; nevertheless, this adjoining site is the northern perimeter of the Wallalong "future growth area" identified in the PSPS.

The existing centres collectively offer an abundant choice in social infrastructure, whilst the WRP will expand this choice in the immediate locality.

Clarence Town Road is also an established regional road that facilitates transport linkage to the various employment hubs recognised by the LHRs. In this regard, the site is almost equidistant from Maitland (via Clarence Town Road and Paterson Road), Black Hill / Beresfield (via Clarence Town Road, High Street, Hinton Road, Morpeth Road and New England Highway), and Raymond Terrace (via Clarence Town Road, Brandy Hill Road and Seaham Road).

In addition, alternative access during most major flood events is already established between the site and Raymond Terrace by means of Clarence Town Road, Dixon Street (Seaham), Warren Street (Seaham), East Seaham Road, Italia Road and the Pacific Highway.

More significantly, the site is already part of a neighbourhood containing 28 rural residential lots ranging in size between 1.5 hectares and 3.6ha (see **Attachment I**), being the consequence of the "concessional lot" provision in Clause 13 of the *Port Stephens Local Environmental Plan 1987*. Whilst not originally an intended outcome, this provision has, nevertheless, already transformed the locality from broad-scale rural land to a rural residential neighbourhood. Like the subject site, all

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the existing 28 rural residential lots are accessed from Giles Road, so that development of the subject site **is in-fill development**, and could not be considered to be facilitating the further fragmentation of rural land. Furthermore, the existing dwellings do not place any demand on reticulated water and sewerage services, with each household utilising sustainable on-site systems for capturing domestic water supply and managing domestic wastewater.

2.2.2 Current zoning and context with strategic land release framework

The site is zoned entirely "RU2 Rural Landscape" by the *Port Stephens LEP 2013* (PSLEP - see **Figure 5**).

The site also adjoins the northern perimeter of the Wallalong "future growth area" flagged by the PSPS (see **Figure 2**). As discussed above, the site adjoins the WRP land to the south. The WRP, which was refused at the gateway determination stage in 2014, proposed a township for 3,700 dwellings, and, along the common boundary with the subject site, proposed a "rural small holdings" precinct, where minimum lot sizes are 0.4ha.

Prior to the *Hunter Regional Plan 2016-2036*, its forerunner, the *Lower Hunter Regional Strategy 2006-2031* (LHRS), recognised the need for the Port Stephens LGA to supply 12,500 dwellings by 2031 beyond that already available under existing planning controls. Towards this LHRS target, a supply of 4,500 dwellings was recognised for Kings Hill (north of Raymond Terrace), but (with the refusal of the WRP) **a deficit of 8,800 dwellings exists for the Port Stephens LGA**.

2.2.3 Topography

The site is entirely free of inundation by flooding from the Paterson and Hunter Rivers. It extends in height to about RL 50m AHD at its north-western corner, and falls to about RL 20m AHD at the south-western and north-eastern corners.

A low ridge traverses the site from north-west to south-east, and is bordered either side by Barties Creek to the south-west (2nd order watercourse – 20m vegetated riparian corridor required either side of the watercourse) and Heydons Creek to the north-east (1st order watercourse – 10m vegetated riparian corridor required either side of the watercourse). Heydons Creek and Barties Creek are partially tree-lined, and pass through existing dams at and beyond the site's extremities.

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2.2.4 Ecology

The site is nearby, but beyond, the Uffington State Forest system (13km away). It is not recognised by the LHRCP as containing any priority conservation areas (see **Figure 10**).

The site presently contains (at January 2018) 5,105 mature trees, comprised predominantly of Iron Bark (62%), Spotted Gum (30%), Forest Red Gum/Grey Gum (7%) species (see p.4 of **Attachment P**).

Ecological investigation discloses the site contains open woodland vegetation with a few older remnant trees surrounded by younger tree regrowth and no native understorey (see **Attachment G**), consisting of five (5) vegetation communities: -

- Seaham Spotted Gum Ironbark forest;
- Hunter Lowland Redgum Forest;
- Seaham Spotted Gum Ironbark/Hunter Lowland Redgum Forest Intergrade;
- Grassland/Pasture; and
- Freshwater Aquatic Vegetation (constructed dams).

The Hunter Lowlands Redgum Forest is considered to be consistent with the "Hunter Lowlands Redgum Forest in the Sydney Basin Bioregion" EEC. It is considered to be present within 1.14ha towards the SW corner of the site, and is intergraded with another vegetation community for a further 4.8ha (see **Attachment G** Section 4.1.1).

Away from Barties Creek at the SW corner, the underlying geology is near or at the surface and the soils are particularly fragile and poorly developed (see **Attachment D** Sections 4.0 to 7.0). Consequently, the components of this EEC are isolated, vulnerable to wind and storm events, and vulnerable to competition for light and the site's few nutrients from other emerging and more resilient vegetation communities.

Significantly, the site is entirely vulnerable to infestation by noxious weeds of significance (see **Attachment G** Section 4.1.3); namely: -

- *Olea europaea* susp. *cuspidat* (African Olive - TSC Act "threatening process");
- *Senecio madagascariensis* (Fireweed – Port Stephens LGA Weed Class 4); and
- *Lantana camara* (Lantana - weed of national significance, TSC Act "threatening process").

It is presently and effectively managed to remove the occurrence of noxious species and prevent reinfestation (see **Attachment E**).

Whilst not present, the site is considered to contain potential habitat for two (2) threatened flora species: -

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- *Eucalyptus glaucina* (Slaty Red Gum); and
- *Persicaria elatior* (Tall Knotweed).

Trees with hollows (HBT's) for roosting or nesting by avifauna, aboreal mammal, reptile and microchiropteran bat species are distributed unevenly across the site (83 in total), with the majority located towards the SW corner. All HBT's have been located, tagged and uniquely numbered (see Appendix E of **Attachment G**).

The site is otherwise considered to contain suitable habitat for twenty (20) threatened fauna species: -

Avifauna

- *Ardea alba* (Great Egret – moderate to high likelihood);
- *Ardea ibis* (Cattle Egret – high likelihood);
- *Glossopsitta pusilla* (Little Lorikeet – high likelihood);
- *Lathamus discolor* (Little Lorikeet – low to moderate likelihood);
- *Neophema pulchella* (Turquoise Parrot – low to moderate likelihood);
- *Merops ornatus* (Rainbow Bee-eater – low to moderate likelihood);
- *Chthonicola sagittata* (Speckled Warbler – low to moderate likelihood);
- *Pomatostomus temporalis* (Grey-crowned Babbler – high likelihood);
- *Rhipidura rufifrons* (Rufous Fantail – moderate likelihood);
- *Hirundapus caudacutus* (White-throated Needletail – moderate likelihood);
- *Ninox strenua* (Powerful Owl – low to moderate likelihood);

Mammals

- *Phascogale tapoatafa* (Brush-tailed Phascogale – high likelihood);
- *Phascolarctos cinerus* (Koala – high likelihood);
- *Petaurus norfolkensis* (Squirrel Glider – moderate likelihood);
- *Pteropus poliocephalus* (Grey-headed Flying Fox – high likelihood);
- *Saccolaimus flaviventris* (Yellow-bellied Sheath-tail-bat – moderate likelihood);
- *Mormopterus norfolkensis* (East Coast Freetail-bat – moderate likelihood);
- *Miniopterus australis* (Little Bentwing-bat – high likelihood);
- *Miniopterus schreibersii oceanensis* (Large Bentwing-bat – high likelihood);
- *Myotis macropus* (Southern Myotis – moderate likelihood);
- *Scoteanax rueppellii* (Great Broad-nosed Bat – moderate likelihood).

In particular, the site presently contains: -

- 385 Koala feed trees comprising Forest Red Gum and Forest Grey Gum species (see p. 9 of **Attachment P** and pp.5-6 of **Attachment Q**); and
- only 12 nesting trees comprising the local Babbler community's preferred Prickly Leafed Paper Bark species (see p. 2 of **Attachment J** and p.4 of **Attachment P**). These are all located nearby Heydons Creek.

The site is also presently and effectively managed to protect and enhance habitat supporting the Phascogale (see **Attachment J**). In particular, 28 forage areas are being established about suitable habitat trees (see pp.5, 6-11 of **Attachment J**),

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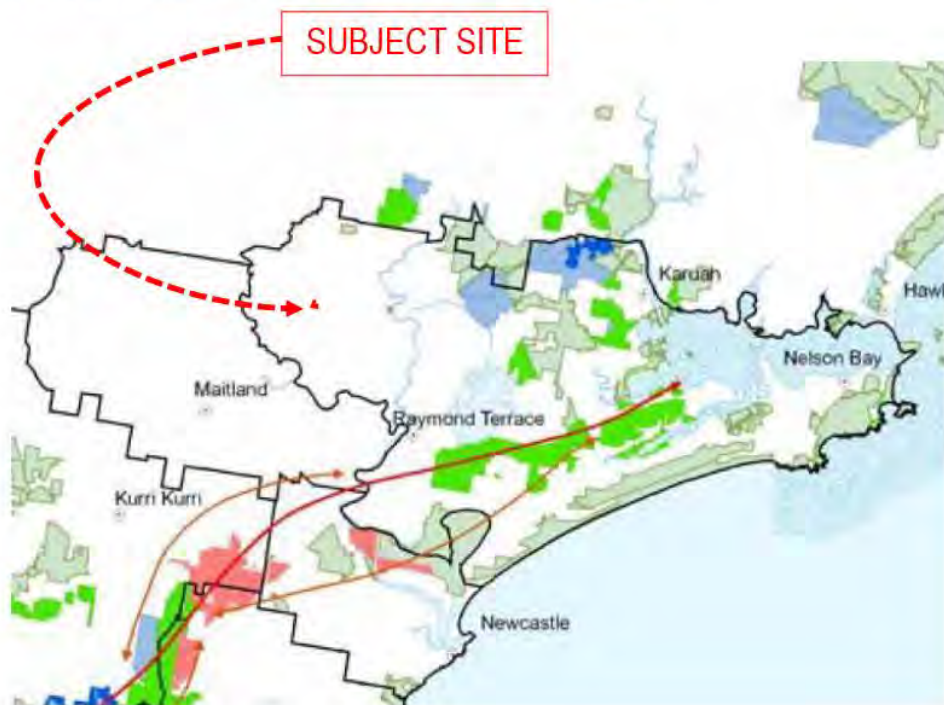


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whilst 20 nesting/breeding boxes suitable for use by the phascogale are being installed (see pp.5, 12-16 of **Attachment J**).

Active ongoing management of the whole of Lot 14/846633 is necessary to prevent weed reinfestation, reduce fire hazard and retain its key habitat values.

Figure 10: Lower Hunter Regional Conservation Plan – extract



2.2.5 Site and context with Natural Resources

The site is 1.8km from the activity area of Brandy Hill Quarry (see **Figure 7**), which is recognised as a “non coal extractive resource” by the LHRS (see **Figure 11**), and is accessed from Giles Road, as well as Clarence Town Road.

In this context, the site is ideally located in that it: -

- is on the opposite side of the ridge from, and well clear of, the direct impacts of quarry activity;
- is nearby a facility authorised to supply a resource required for development works, thereby minimising transportation costs and environmental footprint.

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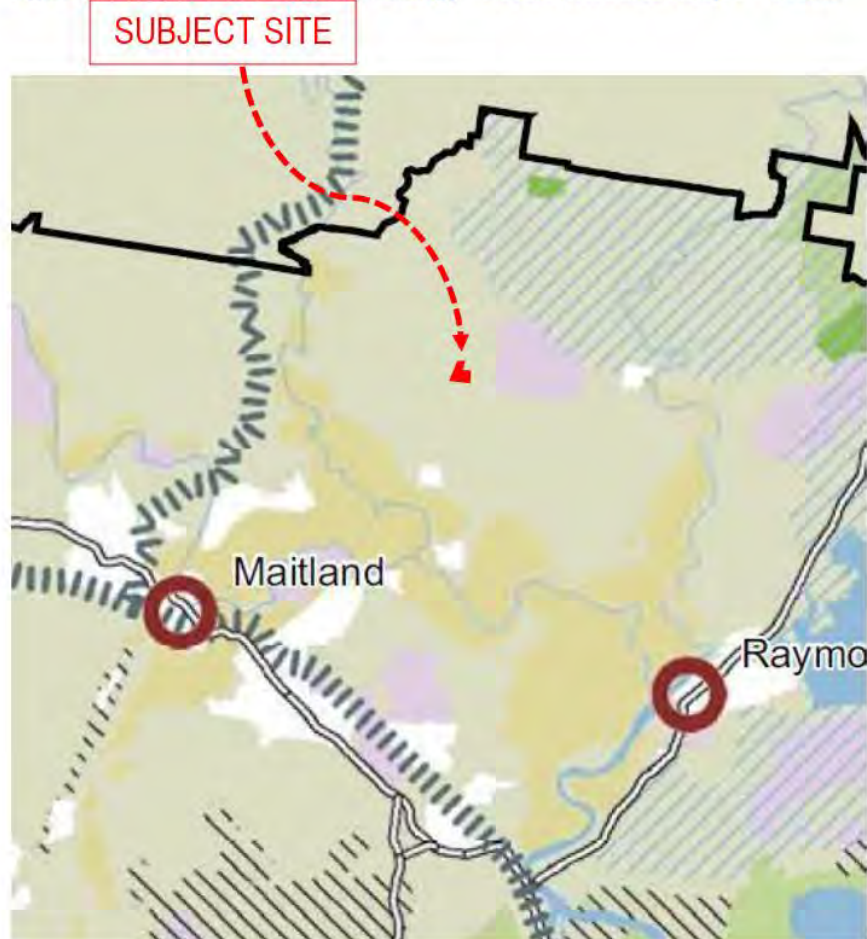
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Geologically, the site contains several areas of rock outcrop and otherwise consists of a thin soil cover overlaying medium to coarse grained lithic sandstone and some conglomerate. This material is unsuitable as a resource for commercial extraction (see **Attachment D** Sections 4.0 & 10.0(g)).

Figure 11: Lower Hunter Regional Strategy – Natural Resources Map 2 – extract



2.2.5 Site and context with Agriculture

The site has been utilised for grazing (up to 12 animals), and before 1983 was specifically a flood refuge for stock (see **Attachment D** Section 1.0) as part of an extensive pastoral holding extending to south towards the Hunter River into McClymonts Swamp.

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With the emergence of "small lot holdings" in the locality, and particularly because of poor feed availability, there has been no recent attempt to establish a commercially-viable agricultural enterprise on the site. This is understandable since its soils are poor and vulnerable, allowing only shallow-rooted native hardwood vegetation to flourish (see **Attachment D** Sections 5.0 & 6.0); consequently, the site has no potential for contemporary agribusiness options (i.e. beef production, feed lotting, cropping, plantation, horticulture, commercial nursery, horse stud – see **Attachment D** Sections 9.0 & 10.0).

Nearby "Free Range" Poultry Activity

The site adjoins Lot 51/1069432 at 599 Clarence Town Road, Woodville, which comprises 170.9 hectares. Lot 51/1069432 is presently zoned "RU2 Rural Landscape", and contains a poultry facility. The facility is leased for "free range" egg production to "Manning Valley Free Range Eggs" (<http://www.manningvalleyeggs.com.au/>) to generate interim income that meets holding expenses (pers. Comm. McCloy Group 20/9/17). The owner is not intending to expand the facility.

The poultry facility includes (see **Attachment K**): -

- four (4) large naturally-ventilated sheds (1,400m² each) for laying hens to roost, lay, drink and eat with protection from the elements and predators; and
- three (3) paddocks (12.6ha total) for free range access to open space and managed grassland.

The sheds are located 230m, 260m, 300m and 330m respectively from the SW corner of the site. Using the *Environmental Guidelines for the Australian Egg Industry* (Australian Egg Corporation Limited Publication 08/01 June 2008, the facility is assessed to have a "Shed Area" capacity for 89,840 hens (even though the "Outdoor Range" capacity is only 18,900 hens).

Using the *Technical notes – Assessment and management of odour from stationary sources in NSW* (NSW Department of Environment and Conservation, November 2006), a separation distance of 413m applies to the farthest shed when the facility is operating at capacity. The resulting arc (i.e. scribed from the farthest shed) generally follows Barties Creek, so that ongoing operation of the facility at full capacity is unlikely to generate adverse odour impact on future rural residential development established on Lot 14/846633.

Presence of Other Agricultural Activity

The site is also located 0.8km north from the nearest land zoned "RU1 Primary Production", and, apart from the "free range" egg production facility discussed above, there is no intensive agricultural activity conducted in its vicinity.

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2.2.6 Site and Context with PSC On-Site Sewage Management Policy

The site is within a locality where a reticulated sewer system is not available for connection, so that On Site Sewage Management applies. Council's policy for issuing approvals to operate new OSSM systems is set out in Document *PSC2011-03249 On-site Sewage Management Policy 2012* (originally adopted 19/10/2004). It is underpinned by a development assessment framework integrated with the *Port Stephens Council On-site Sewage Management Technical Manual 2011* (OSSM Technical Manual). Using the policy's risk classification criteria (Table 7 of PSC2011-03249) and published broad-scale data for the Wallalong locality (Table 5-4 of OSSM Technical Manual), the site (and proposal) can be classified (**in RED**) as follows: -

OSMS Risk Classification for Site (using criteria Table 7 of PSC2011-03249)

Indicative Criteria	High Risk	Medium Risk	Low Risk	SITE CLASSIFICATION
Land Area	<2000m ²	2000 – 4000m ²	>4000m ²	LOW Risk
Soil type	Clay or Sand	Loam	Loam	MEDIUM – HIGH Risk
Soil Structure	Weak/massive	Moderate structure	Good structure	MEDIUM – HIGH Risk
Flooding	Flood prone	Not flood prone	Not flood prone	LOW Risk
System Type	Primary	Primary Secondary	Secondary or better	LOW Risk
Depth to Groundwater or Hardpan	<0.6 metre	0.6 – 1.0 metres	>1 metres	LOW – MEDIUM Risk
Slope	>20%	10 – 20%	<10%	LOW Risk
Water Catchment	Yes	No	No	LOW Risk
Buffer distances	Not comply	Partial compliance	Comply	LOW Risk

This confirms the site's classification as "medium hazard" by the OSSM Technical Manual (see **Figure 12**). In deriving the "medium hazard" class, the OSSM Technical Manual assumes the site is developed to a density of 1 dwelling (i.e. 4-bedroom dwelling occupied by 6 persons) per 0.4 hectares of usable land.

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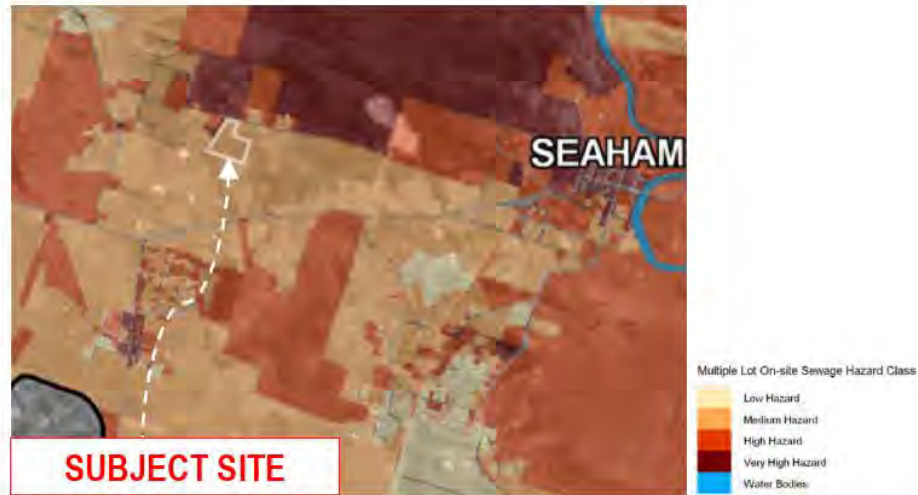
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Figure 12: Port Stephens Council OSSM Technical Manual - On-site Sewage Management Hazard Map (Multiple Lots) - extract



It is estimated that 27.2 hectares of usable land is available, so that 85% of the site is exclusive of constrained land and future roads. Therefore, 68 dwellings represent the yield that generates a "medium hazard" classification for the site in terms of OSSM capability.

Conversion of the site to provide 26 allotments for "higher-end" housing represents only 38% of this 68-dwellings capacity, and thereby significantly reduces the "medium hazard" risk. In terms of the *Port Stephens Development Control Plan (DCP) 2007* (PSDCP – i.e. Controls B2.C50, B2.C52 & B2.C53), each of the 26 "higher-end" housing allotments can be appropriately configured within the site to satisfy the 0.4 hectare "usable land" standard for un-sewered land.

2.2.7 Site and Context with Aboriginal Heritage

The AHIMS and Australian Heritage databases list the site as containing no known aboriginal items of heritage significance (see **Attachments B & C**).

The site is within the Worimi Local Aboriginal Land Council (LALC) area (see **Figure 13**). Informal enquiries by the owner's agent with the LALC have confirmed the site has no heritage or cultural significance.

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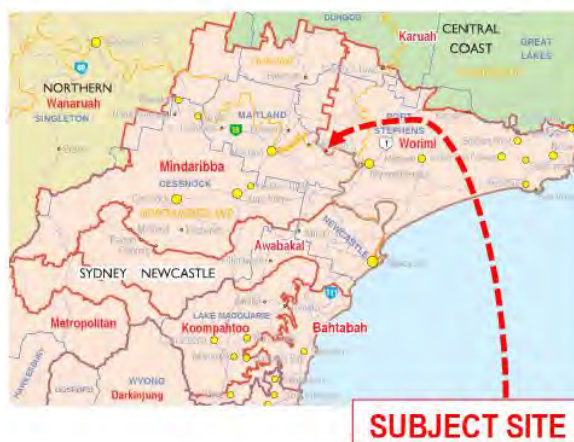
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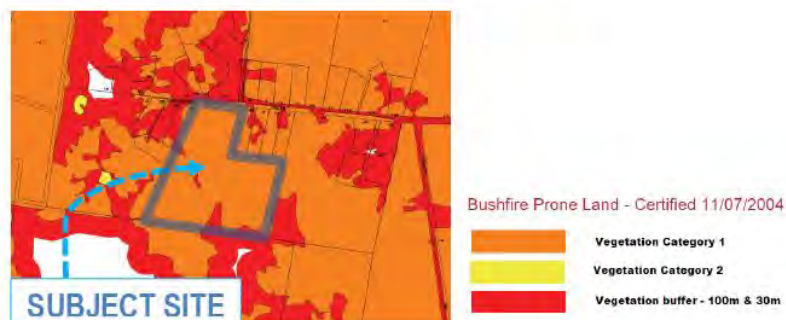
Figure 13: Aboriginal Land Rights Act 1983 – Aboriginal Land Councils 2007 - extract



2.2.8 Site and context with Bushfire Hazard

The site is identified entirely as bushfire prone (see **Figure 14**), containing vegetation "Category 1" (orange) and vegetation "Buffer" (red). Adjoining land to the south contains no substantial hazard.

Figure 14: Port Stephens Bush Fire Prone Land Map - extract



The site is presently managed to reduce fire risk in the manner shown in **Attachment H**. The site's fire management plan has been developed in consultation with local RFS personnel. A system of mown debris-free fire breaks is established and maintained internally and around the site's perimeter. A mobile 1,000 litre capacity fire tank and pump unit is permanently stored within the site, whilst separate fixed pump and hose units are located adjacent to the site's dams. A water access point is being established to the dam in the southwest, and will be dedicated for RFS use.

As regards the proposal, Bushfire Threat Assessment, which nominates building envelopes with BAL's applied (see **Attachment L**), concludes that the application

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of APZ's and the relevant construction standards within the site can provide adequate protection to life and property in the event of a bushfire.

2.2.8 Site and context with Water Supply

The site is within a locality where a reticulated water supply system is not available for connection, so that on the site capture of rainwater applies.

Based on average rainfall data for the locality (1,000mm per year), each allotment in the locality can be sustained for non-reticulated sources of water supply provided 350m² minimum of impervious surface is available to capture and direct rainfall runoff into sufficiently-sized tanks/reservoirs.

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3. CURRENT PLANNING CONTROLS

3.1 Port Stephens Local Environmental Plan 2013

Under the *Port Stephens LEP 2013* (PSLEP), the land is zoned: -

- "RU2 Rural Landscape" (see **Figure 5**).

The site adjoins land zoned RU2 to the north, east, south and west.

The site is located 1.6km north and 2km north-west respectively of land zoned R5 at High Street, Wallalong and Brandy Hill Drive, Brandy Hill.

The site has been utilised for grazing, and before 1983 was specifically a flood refuge (see **Attachment D** Section 1.0) as part of an extensive pastoral holding extending to south towards the Hunter River into McClymonts Swamp.

The PSLEP permits "subdivision" with consent, but limits lot sizes to those indicated on the Lot Size Map (see **Figure 6** – i.e. 40 hectares for land marked "AB3" and vide Clauses 2.6 & 4.1).

PART 2 PERMITTED OR PROHIBITED DEVELOPMENT

Objectives – Zone RU2 Rural Landscape

- *To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.*
- *To maintain the rural landscape character of the land.*
- *To provide for a range of compatible land uses, including extensive agriculture.*

The site comprises 32ha, is located within a neighbourhood containing 28 rural residential lots varying between 1.5 hectares and 3.6ha (see **Attachment I**). It is unsuitable for sustainable primary industry production and as a natural resource base, and is otherwise well clear of the direct negative impacts of existing primary industry production and quarry activities.

Furthermore, the site is not suitably located to sustain any of the range of "compatible land uses" that are permissible (i.e. it is not located nearby facilities that attract viable interest for tourism, recreation, intensive/extensive agriculture, environmental management or civic administration purposes). Therefore, maintaining its rural landscape character, with the attendant responsibilities of managing environmental interactions, including for bushfire hazard and weed infestation, cannot be sustained indefinitely for the site's current size and circumstances.

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PART 4. PRINCIPAL DEVELOPMENT STANDARDS

Clause 4.1 – Minimum subdivision lot size

The site is marked "AB3" on the Lot Size Map (see **Figure 6**), so that the PSLEP limits lot sizes to 40ha.

Clause 4.2 – Rural subdivision

The PSLEP prohibits the creation of lots comprising less than 40ha on "RU2" zoned land for dwellings.

Clause 4.6 – Exceptions to development standards

The proposal facilitates the creation of 26 lots of less than 40ha on RU2 zoned land (see Clause 4.6 (6)), so that it is specifically excluded as a circumstance for which the creation of undersized allotments could be approved.

However, the site is clustered with 28 rural residential lots containing dwellings and ranging in size between 1.5 hectares and 3.6ha (see **Attachment I**), where the objectives of Zone "RU2" have long been abandoned.

Alternatively, the site should be marked "Y" on the Lot Size Map as there is clearly no public benefit in maintaining the 40ha minimum lot size standard.

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4. PART 1 - OBJECTIVES OR INTENDED OUTCOMES

The objective of this planning proposal is to amend the *Port Stephens Local Environmental Plan 2013* (PSLEP) to enable redevelopment of Lot 14 in DP 846633 at 4 Giles Road, Seaham to create one (1) hectare allotments to meet future demand for "rural living areas" in the "Seaham" Investigation Area (i.e. Area 5).

The proposal is expected to create up to twenty (26) allotments, and will consolidate the pattern of "rural living areas" allotments already established in the Giles Road neighbourhood.

An indicative subdivision layout is shown in **Figure 9**.

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5. PART 2 - EXPLANATION OF PROVISIONS

The proposed outcome will be achieved by: -

1. amending the PSLEP Land Zoning Map sheet LZN_001 by applying "R5 - Large Lot Residential" to Lot 14/846633 (see **Figure 15**); and
2. amending the PSLEP Lot Size Map sheet LSZ_001 by applying "Y - 1 ha" to Lot 14/846633 (see **Figure 16**);.

Figure 15: Existing & Intended PSLEP Land Zoning Map sht LZN_001

Existing

Intended

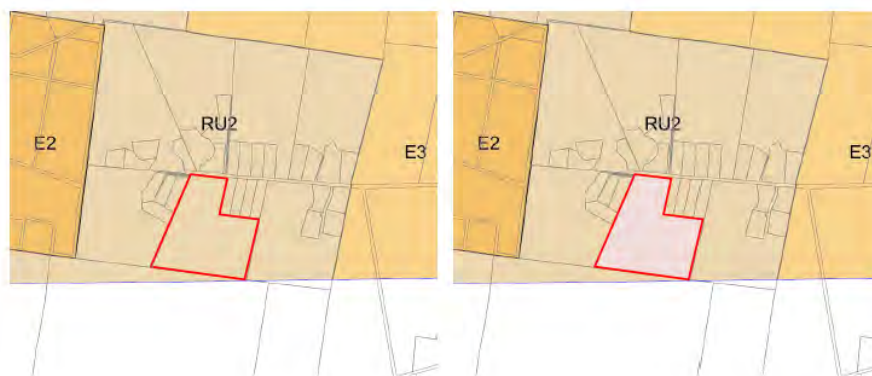


Figure 16: Existing & Intended PSLEP Lot Size Zoning Map sht LSZ_001

Existing

Intended



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6. PART 3 - JUSTIFICATION

SECTION A – Need for the Planning Proposal

6.1 Is the Proposal a result of any strategic study or report?

No – there is, at present, no strategic planning framework for rural residential development in the Port Stephens LGA that is endorsed under the *Hunter Regional Plan 2016 – 2036* (HRP) by NSW Planning & Environment.

However, the *Port Stephens Rural Residential Strategy 2017* (PSRRS) provides a guidance framework for assessment of planning proposals for rural residential development in the short term. The PSRRS includes a map showing four (4) key locations to be the focus of Council's future strategic investigations – the site is partly within the northern fringe of the westernmost location (see **Figure 3**). It has been previously mapped in the *DRAFT Port Stephens Rural Residential Strategy 2015* (DPSRRS) as being part of the "Seaham" Investigation Area (i.e. Area 5) and entirely outside the rural residential "exclusion area" (see **Figure 4**) - it is not affected by any "exclusionary" criteria listed in Appendix 1 to the PSRRS.

The site is located between and nearby two rural residential settlements at Wallalong (1.6km to the S) and Brandy Hill (2km to the SE), so that a residential settlement pattern has emerged in the area.

More significantly, the site is already part of a neighbourhood containing 28 rural residential lots ranging in size between 1.5 hectares and 3.6ha (see **Attachment I**), being the consequence of the "concessional lot" provision in Clause 13 of the *Port Stephens Local Environmental Plan 1987*. Whilst not originally an intended outcome, this provision has, nevertheless, already transformed the locality from broad-scale rural land to a rural residential neighbourhood.

The site is serviced by Giles Road, and is not isolated in flood events since alternative access can be gained to Raymond Terrace by means of Clarence Town Road, Dixon Street (Seaham), Warren Street (Seaham), East Seaham Road, Italia Road and the Pacific Highway. The site is otherwise 16km from Maitland, 15.5km from Raymond Terrace, and 5.8km from "smaller village services" at Wallalong.

The site is not located nearby any local wetlands or major waterways, and is setback 1.8km from the nearest existing quarry and 0.8km from the nearest land zoned "RU1 Primary Production".

The site is not recognised by the LHRCP as containing any priority conservation areas (see **Figure 10**). However, ecological investigation indicates it does support threatened fauna species. It recommends measures be implemented to (see Section 9 of **Attachment G**): -

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- avoid removing large older trees and hollow-bearing trees, and compensate for native vegetation removed;
- manage weeds in the long-term;
- protect habitat supporting the Brush-tailed Phascogale species;
- protect habitat supporting the Koala species;
- protect habitat supporting the Grey-crowned Babbler species; and
- control predation by domestic cats and dogs.

Measures to ensure the proposal achieves these outcomes are discussed in detail in Section 6.3 below, and account for: -

- erecting dwellings on all lots;
- constructing driveways on all lots;
- maintaining APZ's on all lots;
- constructing the road through the site;
- installing two (2) detention basins; and
- establishing a water access point to the existing SW dam for dedicated RFS use.

In summary, the measures will generate positive strategic outcomes for the site by increasing tree population, restoring vegetation canopy to areas denuded by past grazing activities, enhancing habitat for the Phascogale, Koala and Babbler species, ensuring weed management is maintained, and formally establishing controls for domestic cats and dogs. Therefore, development of the site as per **Figure 9** is unlikely to have significant detrimental impact on the local populations of EEC's and threatened species.

The site is identified as bushfire prone, but is already managed with fire breaks, fixed pump and hose units and water access points established to mitigate fire risk. Bushfire Threat Assessment of the proposal, which nominates building envelopes with BAL's applied (see **Attachment L**), concludes that the application of APZ's and the relevant construction standards within the site can provide adequate protection to life and property in the event of a bushfire.

The site is serviced by reticulated power supply, but is not serviced by reticulated sewer and water systems. Alternatively, On Site Sewage Management applies to the locality as per Council's OSSM Technical Manual. The site has capability to yield 68 dwellings (i.e. 1 x 4-bedroom dwelling per 0.4ha of usable area). The proposal will utilise only 38% of this capability, thus resulting in 62% reserve capacity for the site.

As regards water supply, the locality is reliant on capturing rainwater. Based on average rainfall data for the locality (1,000mm per year), each allotment in the locality can be sustained for non-reticulated sources of water supply provided 350m² minimum of impervious surface is available to capture and direct rainfall runoff into sufficiently-sized tanks/reservoirs.

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The only nearby supply of existing, vacant, serviceable, rural residential-zoned land is located about 1.6km south of the site. It contains about 21ha of land not affected by any "exclusionary" criteria. This suggests a maximum yield of 20 allotments, and, using the projected demand for Maitland LGA, has only 1 year's available supply.

Rural Residential Land Supply & Demand (using criteria Table 1 of DPSRR Vol 1 Sec 4.2)

LGA	Projected Supply	Avg dwlgs/year	Projected Demand	Supply Available (years)
Maitland	1,094	41	1,066	27.2*
Port Stephens Area 3-Existing	20			1.0*
TOTAL	1,114			

* assumes distribution of "Avg dwlgs/year" is spread evenly between the 2 x LGA's

6.2 Is the Proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

Yes – amending the zoning and minimum lot size maps of the PSLEP is the only means of achieving redevelopment of Lot 14/846633 to create rural residential allotments.

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SECTION B – Relationship to Strategic Planning Framework

6.3 Is the planning proposal consistent with the objectives and actions of the applicable regional, sub-regional or district plan or strategy (including any exhibited draft plans or strategies)?

Applicable Regional Strategy - Hunter Regional Plan 2016-2036

The *Hunter Regional Plan 2016 – 2036* (HRP) is the applicable strategy. The Introduction to HRP (p.4) states it “*is not intended to be a step-by-step approach to all land use planning. Rather, it provides an overarching framework to guide ... development proposals ...*.” New planning proposals are therefore required to be consistent with the guiding principles of the HRP.

The vision of the HRP is to: -

- meet a population increase of 130,000 persons by 2036;
- create 61,500 new jobs between 2016 and 2036;
- protect and enhance the Hunter Region’s 28% share of the NSW gross regional product;
- protect the reputation of the Hunter as Australia’s oldest wine making region and as one-of-three world’s best centres for developing thoroughbreds;
- sustain the viability of the Hunter’s existing 45,000 small-to-medium enterprises;
- sustain the Hunter’s current annual attraction for 7.6 million domestic and 113,000 international tourists.

The HRP sets out four (4) goals to establish the Hunter Region (with Greater Newcastle as its centrepiece and as the next Australian metropolitan city): -

- as the leading regional economy in Australia, including specific directions to grow tourism, protect and enhance agricultural productivity, manage the ongoing use of natural resources, and plan for greater land use compatibility;
- as a biodiversity-rich natural environment, including a specific direction to protect and connect natural areas;
- with thriving communities, including directions to enhance access to recreational facilities and connect open spaces; and
- with greater housing choice and jobs, including directions to create compact settlement, and promote housing diversity.

To realise its vision and achieve its goals, the HRP proposes to: -

- develop, diversify and connect the Hunter’s strategic centres of the: -
 - Global Gateways (Port of Newcastle, Newcastle Airport);

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- Lower Hunter (Newcastle City Centre, Broadmeadow Sport & Recreation Precinct, Kotara, Charlestown, Cardiff-Glendale, John Hunter Hospital, University of Newcastle, Raymond Terrace, Nelson Bay, Central Maitland, East Maitland, Kurri Kurri, Cessnock & Morisset);
- Upper Hunter (Singleton, Muswellbrook & Scone); and
- Mid-Coast (Forster-Tuncurry & Taree);
- develop the presence of the University of Newcastle and John Hunter Hospital as research and health facilities of world-class standard;
- improve the connectivity to, and expand the capacity of, the Port of Newcastle and Newcastle Airport as the gateways for goods and tourists; and
- establish the Hunter Development Corporation to coordinate and integrate economic development and infrastructure planning.

For each Council, "Local Government Narratives" are included to provide detailed guidance.

The HRP sets out the following guidance for the Port Stephens LGA: -

- Housing & employment projections to 2036: -
 - population increase of 18,550 persons;
 - housing stock increase of 11,050 dwellings;
 - increase of 5,665 jobs;
- Regional priorities: -
 - protect the functioning of Newcastle Airport;
 - leverage proximity to the global gateways (i.e. Airport);
- Regionally significant centres & employment land clusters: -
 - Strategic centres - Raymond Terrace & Nelson Bay;
 - Centres of local significance - Salamander Bay, Anna Bay, Medowie, Karuah, Tanilba Bay, Lemon Tree Passage, Fern Bay, Hinton, Woodville and Seaham;
 - Significant employment land clusters - Tomago & Heatherbrae;
- Locations for growth of dwellings (opportunities for future housing & urban renewal): -
 - Urban Release Areas at Fern Bay, Medowie & Kings Hill;
 - infill potential within Raymond Terrace & Nelson Bay.

Response to Port Stephens "Local Government Narrative": - Lot 14/846633 is located between the villages of Seaham and Wallalong, and nearby rural residential precincts at Wallalong (1.6km S) and Brandy Hill (2km SE). It is also clustered with 28 rural residential lots containing dwellings, varying between 1.5 hectares and 3.6ha (see **Attachment I**), being the consequence of the "concessional lot" provision in Clause 13 of the *Port Stephens Local Environmental Plan 1987*. Whilst not originally an intended outcome, this provision has, nevertheless, already transformed the locality from broad-scale rural land to a rural residential neighbourhood, which thereby acts as a barrier to expanding the region's tourism and agricultural industries.

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Development of the site in the manner shown in **Figure 9** is in-fill development. It respects the settlement pattern of the locality, promotes limited new housing opportunities to maximise the use of infrastructure already provided for rural residential living, and does not compromise the Port Stephens "Local Government Narrative".

Otherwise, the HRP strategy is underpinned by a framework of directions and actions to focus new housing and jobs in strategic centres and in renewal corridors close to transport.

Under directions to grow the economy of Port Stephens (Direction 6), to protect and enhance agricultural productivity (Direction 10), and to plan for greater land use compatibility (Direction 13), relevant actions within the HRP are to: -

Action 6.3

Enable economic diversity and new tourism opportunities that focus on reducing the impacts of the seasonal nature of tourism and its effect on local economies.

Action 10.1

Protect locations that can accommodate agricultural enterprises from incompatible development, and facilitate the supply chain, including infrastructure, distribution areas, processing facilities and research and development in local plans.

Action 10.3

Protect the region's wellbeing and prosperity through increased biosecurity measures.

Action 13.1

Identify and protect important agricultural land, including intensive agricultural clusters, in local plans to avoid land use conflicts, particularly associated with residential expansion.

Action 13.2

Limit urban and rural housing encroachment into identified agricultural and extractive resource areas, industrial areas and transport infrastructure when preparing local strategies.

Response to Actions 6.3, 10.1, 10.3, 13.1 & 13.2: - Lot 14/846633 has no natural attributes to attract tourism, has no potential for agricultural productivity, and contains no material suitable for commercial extraction (see **Attachment D**).

The site is clustered with 28 rural residential lots containing dwellings, varying between 1.5 hectares and 3.6ha (see **Attachment I**), being the consequence

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of the "concessional lot" provision in Clause 13 of the *Port Stephens Local Environmental Plan 1987*. Whilst not originally an intended outcome, this provision has, nevertheless, already transformed the locality from broad-scale rural land to a rural residential neighbourhood, which thereby act as a further barrier to expanding the region's tourism and agricultural industries.

Under directions to protect and connect natural areas (Direction 14), to sustain water quality and security (Direction 15), and to increase resilience to hazards and climate change (Direction 16), relevant actions within the HRP are to: -

Action 14.1

Identify terrestrial and aquatic biodiversity values and protect areas of high environmental value to sustain the lifestyle, economic success and environmental health of the region.

Action 15.1

Protect water catchments to sustain high quality and dependable water supplies across the region.

Action 16.1

Manage the risks of climate change and improve the region's resilience to flooding, sea level rise, bushfire, mine subsidence, and land contamination.

Response to Actions 14.1, 15.1 & 16.1: - Lot 14/846633 is nearby, but beyond, the Uffington State Forest system (13km away), is located clear of the region's drinking water catchments (see **Figure 17**), is outside any mine subsidence district, and is not flagged as containing land contamination issues.

The site is not recognised by the LHRCP as containing any priority conservation areas (see **Figure 10**).

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Figure 17: HRP – Proposed Biodiversity Corridors - extract



However, ecological investigation indicates the site does support threatened fauna species. It recommends measures be implemented to (see Section 9 of **Attachment G**): -

- avoid removing large older trees and hollow-bearing trees, and compensate for native vegetation removed;

Comment: - the site presently (at January 2018) contains 5,105 mature trees, comprised predominantly of Iron Bark (62%), Spotted Gum (30%), Forest Red Gum/Grey Gum (7%) species (see p.4 of **Attachment P**).

Some (83) of these mature trees are habitat trees (HBT's) - all HBT's have been located, tagged and uniquely numbered (see Appendix E of **Attachment G**). Building envelopes can be positioned to avoid removal or disturbance to any of these HBT's (see **Attachment R**). Furthermore, one (1) HBT (no. 28) is positioned within the Outer Protection Area of the APZ for Lot 14 only, whilst HBT's extend into the BAL-29 area for Lot 2 (2 – HBT nos. 81 & 82), Lot 5 (1 – HBT no. 78), Lot 8 (1 – HBT no. 30), and Lot 11 (1 – HBT no. 10). Significantly, all HBT's can be retained without compromising the management of APZ's across the entire site.

In addition, the suggested building envelopes and accesses for all lots have been identified on the ground (see photographs on pp.5-14 & 15-20 of **Attachment O**). The tree removal data presented in **Attachment O** (pp.1-3) indicates tree loss can be limited to a total of 239 trees, towards: -

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- erecting dwellings on all lots;
- constructing driveways on all lots;
- maintaining APZ's on all lots;
- constructing the road through the site;
- installing two (2) detention basins; and
- establishing a water access point to the existing SW dam for dedicated RFS use.

To compensate for this loss, planting of like-tree species can be established within areas of the site previously cleared for pasture and presently devoid of tree cover; namely Sectors 1, 2, 3 & 4 (see p.27 of **Attachment O** and p. 13 of **Attachment N**). A total of 749 plantings can be achieved within the targeted areas, realising a gain of 510 trees (or 3.13 trees planted for each tree removed) and a 9.9% increase in the site's tree population (p.9 of **Attachment P**).

- manage weeds in the long-term;

Comment: - the site is presently and effectively managed to minimise the occurrence of noxious species (see **Attachment E**). The proposal involves maintaining this weed management program.

- protect habitat supporting the Brush-tailed Phascogale species;

Comment: - the site is presently and effectively managed to protect and enhance habitat supporting the Phascogale (see **Attachment J**).

In particular, 28 forage areas are being established about suitable habitat trees on Lots 2, 7, 13, 14, 15, 16, 20, 21, 22, 23 & 24 (see pp.5, 6-11 of **Attachment J**), whilst 20 nesting/breeding boxes suitable for use by the phascogale are being installed in trees on Lots 2, 3, 8, 12, 13, 14, 15, 16, 17, 18, 19, 20, 22, 23, 24, 25 & 26 (see pp.5, 12-16 of **Attachment J**). Significantly, all forage areas and nesting/breeding spots can be retained without compromising the management of APZ's across the entire site.

- protect habitat supporting the Koala species;

Comment: - the site presently contains 385 Koala feed trees comprising Forest Red Gum and Forest Grey Gum species (see p. 9 of **Attachment P** and pp.5-6 of **Attachment Q**).

The suggested building envelopes and accesses for all lots have been identified on the ground (see photographs on pp.5-14 & 15-20 of **Attachment O**). The tree removal data presented in **Attachment O** (pp.1-3) indicates Koala feed tree loss can be limited to a total of 13 trees, towards: -

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- erecting dwellings on all lots;
- constructing driveways on all lots;
- maintaining APZ's on all lots;
- constructing the road through the site;
- installing two (2) detention basins; and
- establishing a water access point to the existing SW dam for dedicated RFS use.

To compensate for this loss, planting of like-tree species can be established within areas of the site previously cleared for pasture and presently devoid of tree cover; namely Sectors 1, 2, 3 & 4 (see p.27 of **Attachment O** and p. 13 of **Attachment N**). A total of 454 plantings can be achieved within the targeted areas, realising a gain of 441 trees (or 34.92 trees planted for each tree removed) and a 114.5% increase in the site's Koala feed tree population (p.12 of **Attachment N** and p.9 of **Attachment P**).

- protect habitat supporting the Grey-crowned Babbler species; and

Comment: - the site presently contains only 12 nesting trees comprising the local Babbler community's preferred Prickly Leafed Paper Bark species (see p. 2 of **Attachment J** and p.4 of **Attachment P**). These are all located nearby Heydons Creek, so that no Babbler nesting tree loss will occur from the proposal.

Regardless, planting of the Babbler's preferred nesting species can be established within areas of the site previously cleared for pasture and presently devoid of tree cover; namely Sectors 1 & 2 (see pp.4 & 27 of **Attachment O** and pp.11 & 13 of **Attachment N**). A total of 140 plantings can be achieved within the targeted areas, realising a gain of 152 trees without loss that represents a massive boost to the site's Babbler preferred nesting tree population (p.12 of **Attachment N** and p.9 of **Attachment P**).

- control predation by domestic cats and dogs.

Comment: - the proposal involves placing restrictions to prohibit domestic cats, and to limit domestic dogs to one (1) per lot contained within a koala-proof compound (see p.2 of **Attachment P** and p.3 of **Attachment Q**).

The measures described above ensure the proposal does not negatively impact the threatened species using the site. More significantly, it generates positive strategic outcomes for the site by increasing tree population, restoring vegetation canopy to areas denuded by past grazing activities, enhancing habitat for the Phascogale, Koala and Babbler species, ensuring weed management is maintained, and formally establishing controls for domestic cats and dogs.

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The site is entirely free of inundation by flooding from the Paterson and Hunter Rivers. In addition, alternative access during most major flood events is already established between the site and Raymond Terrace by means of Clarence Town Road, Dixon Street (Seaham), Warren Street (Seaham), East Seaham Road, Italia Road and the Pacific Highway.

However, the site is mapped entirely as bushfire prone (see **Figure 14**), containing vegetation "Category 1" (orange) and vegetation "Buffer" (red). Adjoining land to the south contains no substantial hazard.

The site is presently managed to reduce fire risk in the manner shown in **Attachment H**. The site's fire management plan has been developed in consultation with local RFS personnel. A system of mown debris-free fire breaks is established and maintained internally and around the site's perimeter. A mobile 1,000 litre capacity fire tank and pump unit is permanently stored within the site, whilst separate fixed pump and hose units are located adjacent to the site's dams. A water access point is being established to the dam in the southwest, and will be dedicated for RFS use.

Bushfire Threat Assessment of the proposal, which nominates building envelopes with BAL's applied (see **Attachment L**), concludes that the application of APZ's and the relevant construction standards within the site can provide adequate protection to life and property in the event of a bushfire.

Under directions to promote housing diversity (Direction 22), and to deliver infrastructure to support growth and communities (Direction 26), relevant actions within the HRP are to: -

Action 22.5

Include guidance in local land use strategies for expanding rural villages and rural-residential development so that such developments will:

- *not impact on strategic or important agricultural land, energy, mineral or extractive resource viability or biodiversity values;*

Response re: Agriculture: - With the emergence of rural residential lots in the locality, and particularly because of poor feed availability, there is no potential for agricultural enterprise on Lot 14/846633. Its soils are poor and vulnerable, allowing only shallow-rooted native hardwood vegetation to flourish (see **Attachment D** Sections 5.0 & 6.0).

However, the site adjoins Lot 51/1069432 at 599 Clarence Town Road, Woodville, which contains a poultry facility with four (4) large sheds. The facility is leased for "free range" egg production to "Manning Valley Free Range Eggs" (<http://www.manningvalleyeggs.com.au/>) to generate interim

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income that meets holding expenses (pers. Comm. McCloy Group 20/9/17).
The owner is not intending to expand the facility.

The sheds are located 230m, 260m, 300m and 330m respectively from the SW corner of the site. Using the *Environmental Guidelines for the Australian Egg Industry* (Australian Egg Corporation Limited Publication 08/01 June 2008, the facility has been determined to have a "Shed Area" capacity for 89,840 hens (even though the "Outdoor Range" capacity is only 18,900 hens – see **Attachment K** Sections 2.2 & 2.3).

Using the *Technical notes – Assessment and management of odour from stationary sources in NSW* (NSW Department of Environment and Conservation, November 2006), a separation distance of 413m applies to the farthest shed when the facility is operating at capacity. The resulting arc (i.e. scribed from the farthest shed) generally follows Barties Creek, so that ongoing operation of the facility on Lot 51/1069432 at full capacity is unlikely to generate adverse odour impact on future rural residential development established on Lot 14/846633 (see **Attachment K** Sections 2.4 & 3.1).

The site is otherwise located 0.8km north from the nearest land zoned "RU1 Primary Production", and, apart from the "free range" egg production facility discussed above, there is no intensive agricultural activity conducted in its vicinity.

Response re: Mineral and Extractive Resource Viability: - Geologically, the site contains several areas of rock outcrop and otherwise consists of a thin soil cover overlaying medium to coarse grained lithic sandstone and some conglomerate. This material is unsuitable as a resource for commercial extraction (see **Attachment D** Sections 4.0 & 10.0(g)).

The site is, otherwise, located 1.8km from the nearest activity area of Brandy Hill Quarry (see **Figure 7**), which is recognised as a "non coal extractive resource" by the LHRS (see **Figure 11**). In this context, the site is well clear of the direct impacts of quarry activity.

Response re: Biodiversity Values: - The site is nearby, but beyond, the Uffington State Forest system (13km away). It is not recognised by the LHRC as containing any priority conservation areas (see **Figure 10**).

The site contains open woodland vegetation with a few older remnant trees surrounded by younger tree regrowth, but contains no native understorey (see **Attachment G**). Trees with hollows for roosting or nesting by avifauna, aboreal mammal, reptile and microchiropteran bat species are distributed unevenly across the site, with the majority located towards the SW corner.

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Active ongoing management of the whole of Lot 14/846633 is necessary to prevent weed reinfestation (see **Attachment G** Section 4.1.3 and **Attachment E**), reduce fire hazard (see **Attachment L** Section 4) and retain its key habitat values.

In this context, the location of 10m x 20m building envelopes has been considered towards maximising tree retention and minimising the vegetation clearing associated with driveways, infrastructure, fencing and achieving Asset Protection Zone (APZ) and Bushfire Attack Level 29 (BAL-29) requirements beyond riparian areas (see **Attachment L** Figure 5 and Appendix B). This can be achieved for each of the proposal's 26 allotments without negatively impacting the site's current biodiversity values.

Furthermore, the site is clear of "proposed biodiversity corridors", waterways, National Parks and Reserves, and State Forests, so that its development for the proposal's 26 allotments can be achieved without negatively impacting the region's current biodiversity values.

- *not impact on drinking water catchments;*

Response: - The planning proposal satisfies this requirement.

- *not result in greater natural hazard risk;*

Response re: Bushfire Hazard: - The proposal's post-development scenario can be effectively managed to achieve the APZ and BAL-29 requirements of the *Planning for Bushfire Protection* publication (see **Attachment L**).

- *occur on land that is unlikely to be needed for urban development;*

Response: - The planning proposal satisfies this requirement.

- *contribute to the conservation of important biodiversity values or the establishment of important corridor linkages; and*

Response re: Biodiversity Values: - The site is nearby, but beyond, the Uffington State Forest system (13km away), and is otherwise clear of "proposed biodiversity corridors", waterways, and National Parks and Reserves. It is not recognised by the LHRCP as containing any priority conservation areas (see **Figure 10**).

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The site contains open woodland vegetation with a few older remnant trees surrounded by younger tree regrowth, but contains no native understorey (see **Attachment G**). Trees with hollows for roosting or nesting by avifauna, aboreal mammal, reptile and microchiropteran bat species are distributed unevenly across the site, with the majority located towards the SW corner.

Away from Barties Creek at the SW corner, the underlying geology is near or at the surface and the soils are particularly fragile and poorly developed (see **Attachment D** Sections 4.0 to 7.0), so that the woodland is vulnerable to wind and storm events, and to competition for the site's few nutrients. Furthermore, active ongoing management of the whole of Lot 14/846633 is necessary to prevent weed reinfestation (see **Attachment G** Section 4.1.3 and **Attachment E**), and to reduce fire risk to existing infrastructure and the surrounding settlement (see **Attachment H**).

On this basis, the site, generally, could not be considered significant towards conserving important biodiversity values.

Regardless, ecological investigation recommends measures be implemented to (see Section 9 of **Attachment G**): -

- avoid removing large older trees and hollow-bearing trees, and compensate for native vegetation removed;

Comment: - the site presently (at January 2018) contains 5,105 mature trees, comprised predominantly of Iron Bark (62%), Spotted Gum (30%), Forest Red Gum/Grey Gum (7%) species (see p.4 of **Attachment P**).

Some (83) of these mature trees are habitat trees (HBT's) - all HBT's have been located, tagged and uniquely numbered (see Appendix E of **Attachment G**). Building envelopes can be positioned to avoid removal or disturbance to any of these HBT's (see **Attachment R**). Furthermore, one (1) HBT (no. 28) is positioned within the Outer Protection Area of the APZ for Lot 14 only, whilst HBT's extend into the BAL-29 area for Lot 2 (2 - HBT nos. 81 & 82), Lot 5 (1 - HBT no. 78), Lot 8 (1 - HBT no. 30), and Lot 11 (1 - HBT no. 10). Significantly, all HBT's can be retained without compromising the management of APZ's across the entire site.

In addition, the suggested building envelopes and accesses for all lots have been identified on the ground (see photographs on pp.5-14 & 15-20 of **Attachment O**). The tree removal data presented in **Attachment O** (pp.1-3) indicates tree loss can be limited to a total of 239 trees, towards: -

- erecting dwellings on all lots;
- constructing driveways on all lots;

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- maintaining APZ's on all lots;
- constructing the road through the site;
- installing two (2) detention basins; and
- establishing a water access point to the existing SW dam for dedicated RFS use.

To compensate for this loss, planting of like-tree species can be established within areas of the site previously cleared for pasture and presently devoid of tree cover; namely Sectors 1, 2, 3 & 4 (see p.27 of **Attachment O** and p. 13 of **Attachment N**). A total of 749 plantings can be achieved within the targeted areas, realising a gain of 510 trees (or 3.13 trees planted for each tree removed) and a 9.9% increase in the site's tree population (p.9 of **Attachment P**).

- manage weeds in the long-term;

Comment: - the site is presently and effectively managed to minimise the occurrence of noxious species (see **Attachment E**). The proposal involves maintaining this weed management program.

- protect habitat supporting the Brush-tailed Phascogale species;

Comment: - the site is presently and effectively managed to protect and enhance habitat supporting the Phascogale (see **Attachment J**).

In particular, 28 forage areas are being established about suitable habitat trees on Lots 2, 7, 13, 14, 15, 16, 20, 21, 22, 23 & 24 (see pp.5, 6-11 of **Attachment J**), whilst 20 nesting/breeding boxes suitable for use by the phascogale are being installed in trees on Lots 2, 3, 8, 12, 13, 14, 15, 16, 17, 18, 19, 20, 22, 23, 24, 25 & 26 (see pp.5, 12-16 of **Attachment J**). Significantly, all forage areas and nesting/breeding spots can be retained without compromising the management of APZ's across the entire site.

- protect habitat supporting the Koala species;

Comment: - the site presently contains 385 Koala feed trees comprising Forest Red Gum and Forest Grey Gum species (see p. 9 of **Attachment P** and pp.5-6 of **Attachment Q**).

The suggested building envelopes and accesses for all lots have been identified on the ground (see photographs on pp.5-14 & 15-20 of **Attachment O**). The tree removal data presented in **Attachment O** (pp.1-3) indicates Koala feed tree loss can be limited to a total of 13 trees, towards: -

- erecting dwellings on all lots;
- constructing driveways on all lots;

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- maintaining APZ's on all lots;
- constructing the road through the site;
- installing two (2) detention basins; and
- establishing a water access point to the existing SW dam for dedicated RFS use.

To compensate for this loss, planting of like-tree species can be established within areas of the site previously cleared for pasture and presently devoid of tree cover; namely Sectors 1, 2, 3 & 4 (see p.27 of **Attachment O** and p. 13 of **Attachment N**). A total of 454 plantings can be achieved within the targeted areas, realising a gain of 441 trees (or 34.92 trees planted for each tree removed) and a 114.5% increase in the site's Koala feed tree population (p.12 of **Attachment N** and p.9 of **Attachment P**).

Accordingly, the proposal will not result in development that would sever koala movement across the site, but will, with a gain of 114.5% in the site's current Koala feed tree population, enhance the site's capability for Koala movement.

- protect habitat supporting the Grey-crowned Babbler species; and

Comment: - the site presently contains only 12 nesting trees comprising the local Babbler community's preferred Prickly Leafed Paper Bark species (see p. 2 of **Attachment J** and p.4 of **Attachment P**). These are all located nearby Heydons Creek, so that no Babbler nesting tree loss will occur from the proposal.

Regardless, planting of the Babbler's preferred nesting species can be established within areas of the site previously cleared for pasture and presently devoid of tree cover; namely Sectors 1 & 2 (see pp.4 & 27 of **Attachment O** and pp.11 & 13 of **Attachment N**). A total of 140 plantings can be achieved within the targeted areas, realising a gain of 152 trees without loss that represents a massive boost to the site's Babbler preferred nesting tree population (p.12 of **Attachment N** and p.9 of **Attachment P**).

- control predation by domestic cats and dogs.

Comment: - the proposal involves placing restrictions to prohibit domestic cats, and to limit domestic dogs to one (1) per lot contained within a koala-proof compound (see p.2 of **Attachment P** and p.3 of **Attachment Q**).

The measures described above ensure the proposal does not negatively impact the site's existing biodiversity values. More significantly, it generates positive strategic outcomes for the site by increasing tree population, restoring vegetation canopy to areas denuded by past grazing activities, enhancing habitat for the Phascogale, Koala and Babbler species, ensuring

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weed management is maintained, and formally establishing controls for domestic cats and dogs.

Furthermore, the proposal's 26 allotments and suggested building envelopes are located to protect the potential for Barties Creek as the site's principal corridor linkage.

- *facilitate expansion of existing and new tourism development activities in agricultural or resource lands and related industries across the region.*

Response: - The planning proposal satisfies this requirement.

Action 26.1

Align land use and infrastructure planning to maximise the use and capacity of existing infrastructure and the efficiency of new infrastructure.

Response to Action 26.1: - The *Port Stephens Rural Residential Strategy 2017 (PSRRS)* provides a guidance framework for assessment of planning proposals for rural residential development in the short term, and has been used to prepare this proposal. The PSRRS includes a map showing four (4) key locations to be the focus of Council's future strategic investigations – the site is partly within the northern fringe of the westernmost location.

Lot 14/846633 is located outside, and to the north of, the "Indicative Greater Newcastle Metropolitan Area". However, it is located 18 minutes' drive, 23 minutes' drive and 22 minutes' drive respectively from the "strategic centres" of Raymond Terrace, East Maitland and Maitland.

The site is clustered with 28 rural residential lots, each containing dwellings, varying between 1.5 hectares and 3.6ha (see **Attachment I**).

Development of the site in the manner shown in **Figure 9** respects the settlement pattern of the locality, and promotes new housing opportunities to maximise the use of infrastructure already provided for rural residential living - it will not compromise the HRP.

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6.4 Is the planning proposal consistent with a council's local strategy or other local strategic plan?

Applicable Local Strategy – Port Stephens Community Strategic Plan 2013-2023

The *Port Stephens Community Strategic Plan 2013 - 2023* (PSCSP) contains Council's adopted long term goals for the delivery of community resources, and is the outcome of extensive community consultation across the LGA. The relevant actions of the PSCSP are: -

3.1.1.6 *Review, develop and implement environmental strategies, plans and policies.*

3.1.1.7 *Regulate noxious weed control on private land in accordance with the State funding agreement.*

Comment: - The site is vulnerable to infestation by noxious weeds of significance, viz: -

- *Olea europaea* susp. *cuspidat* (African Olive - TSC Act "threatening process");
- *Senecio madagascariensis* (Fireweed – Port Stephens LGA Weed Class 4); and
- *Lantana camara* (Lantana - weed of national significance, TSC Act "threatening process").

It is presently and effectively managed to minimise the occurrence of noxious species (see **Attachment E**) – this needs to be ongoing.

3.3.1.7 *Prepare and review strategic land use strategies, policies and plans.*

3.3.1.9 *Review and prepare statutory plans (Local Environment Plan, Development Control Plan and Planning Proposals).*

The planning proposal is consistent with these actions, and therefore with the PSCSP.

Applicable Local Strategy – Port Stephens Rural Lands Strategy 2011

This strategy applies to rural land within the Port Stephens LGA, and, amongst other things, aims to (PSRLS Sections 4.2 & 4.3): -

- limit expansion to the towns that have the capacity for growth;

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- develop a land use framework that provides certainty for residents;
- encourage a broad range of agricultural and complementary rural uses;
- ensure current and future agriculture is not compromised by the fragmentation of rural land;
- ensure communities are adequately and appropriately serviced;
- protect and conserve native habitat and the biodiversity of the region; and
- recognise the impact of natural hazards on the future settlement pattern.

More specifically, the strategy suggests policy actions (PSRS Section 4.5), including:

-

- providing for rural residential development only in areas that have adequate access to roads and services;
- ensuring that any rural residential development is not located on land that is subject to flood inundation in the 1% AEP flood;
- minimising conflict between land uses;
- identifying minimum lot sizes that enable the continuation of land use for agriculture;
- considering the cumulative impact of development on the catchment;
- providing the most appropriate system of disposing domestic effluent, and limiting lot sizes to 1ha for created lots to connected to a reticulated sewerage system; and
- considering the impact of natural hazards on land use and settlement (e.g. bush fire, land degradation, acid sulphate soils, flooding)

The site is part of a neighbourhood accessed from Giles Road containing 28 serviced rural residential lots which range in area between 1.5ha and 3.6ha, being the consequence of the "concessional lot" provision in Clause 13 of the *Port Stephens Local Environmental Plan 1987*. Whilst not originally an intended outcome, this provision has, nevertheless, already transformed the locality from broad-scale rural land to a rural residential neighbourhood, so the proposal does not create a conflicting land use. Furthermore, the site's soils are poor and vulnerable, allowing only shallow-rooted native hardwood vegetation to flourish, so no potential exists for sustainable agriculture (see **Attachment D**).

The site is identified as bushfire prone, but is already managed with fire breaks, fixed pump and hose units and water access points established to mitigate fire risk. Bushfire Threat Assessment of the proposal, which nominates building envelopes with BAL's applied (see **Attachment L**), concludes that the application of APZ's and the relevant construction standards within the site can provide adequate protection to life and property in the event of a bushfire.

The site is entirely free of inundation by flooding from the Paterson and Hunter Rivers. It extends in height to about RL 50m AHD at its north-western corner, and falls to about RL 20m AHD at the south-western and north-eastern corners. The proposal will not lead to land degradation or exposing ASS conditions.

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The site is serviced by reticulated power supply, but is not serviced by reticulated sewer and water systems. Alternatively, On Site Sewage Management applies to the locality as per Council's OSSM Technical Manual. The site has capability to yield 68 dwellings (i.e. 1 x 4-bedroom dwelling per 0.4ha of usable area). The proposal will utilise only 38% of this capability, thus resulting in 62% reserve capacity for the site.

As regards water supply, the capture of rainwater applies to the locality. Based on average rainfall data for the locality (1,000mm per year), each allotment in the locality can be sustained for non-reticulated sources of water supply provided 350m² minimum of impervious surface is available to capture and direct rainfall runoff into sufficiently-sized tanks/reservoirs.

Applicable Local Strategy – Port Stephens Planning Strategy 2011

The *Port Stephens Planning Strategy 2011* (PSPS) is Council's adopted comprehensive planning strategy that guides the operations of the Council and the future growth and sustainability of the LGA. It was a response to the *Lower Hunter Regional Strategy 2006 – 2031* (LHRS), and Council's *Community Settlement and Infrastructure Strategy 2007* and Rural Lands Strategy, and focuses growth and expansion around existing centres and services. Amongst other things, it provides strategic direction for: -

- "rural residential" development as an accommodation option;

Comment: - the PSPS (Section 6.4.4) reinforces the importance of limiting rural residential development to appropriate locations expressed in the LHRS, but also indicates ...

"... there may be merit for limited, relatively minor extension of existing rural residential development where there is no adverse impact on either future land use capabilities or infrastructure ...".

The proposal is considered to have such merit, in that the site: -

- is already part of a neighbourhood containing 28 rural residential lots ranging in size between 1.5 hectares and 3.6ha (see **Attachment I**), being the consequence of the "concessional lot" provision in Clause 13 of the *Port Stephens Local Environmental Plan 1987*. Whilst not originally an intended outcome, this provision has, nevertheless, already transformed the locality from broad-scale rural land to a rural residential neighbourhood;
- is part of a neighbourhood containing 28 rural residential lots ranging in size between 1.5 hectares and 3.6ha (see **Attachment I**), so that the proposal **is in-fill development**, and presents no land use conflicts;

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- is already accessed from Giles Road, and nearby electricity and telecommunication services;
- has no capability for sustainable agriculture and contains no viable mineral resource; and
- is elevated well above the floodplain and can be managed for bushfire hazard.

Furthermore, the residue areas of the locality have limited capability for further expansion due to the proximity and context of: -

- the activity area of the Brandy Hill Quarry;
- steep terrain exceeding 20% grades;
- bushfire hazards; and
- areas suiting conservation for biodiversity and corridor linkages.

Therefore, apart from Lot 14/846633, there is limited opportunity to expand the number of dwellings in the Giles Road locality, so that the planning proposal does not create a precedent and does not reasonably increase the expectations of the owners of adjoining land.

In summary, the proposal is consistent with this strategic direction, and therefore with Council's Planning Strategy.

Applicable Local Strategy – Port Stephens Rural Residential Strategy 2017

Council adopted the *Port Stephens Rural Residential Strategy 2017* (PSRRS) on 13/6/17. It is an interim strategy that applies to non-agricultural rural land within the Port Stephens LGA, and specifically aims to: -

- provide criteria for which Council can assess the appropriateness of rural residential development planning proposals in the short term;
- provide Council and the community with clarity on the future use and development of rural lands;
- identify preferred areas physically suitable for rural settlement which are compatible with surrounding land uses;
- ensure future development protects the environmental and cultural values of the area;
- 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;
- ensure that rural residential development does not hinder the strategic development of urban settlements in the future; and
- ensure new developments can have access to an appropriate level of community services in a cost effective manner.

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More specifically, the strategy suggests a set of spatially-based locational criteria for assessing rural residential development proposals, divided into two levels; namely "Exclusionary Criteria" and "Management Criteria", as follows: -

1.0 Exclusionary Criteria	Response
1.1 future urban growth areas	satisfied
1.2 within 2km of existing or planned major employment areas	satisfied
1.3 slopes exceeding 18% grade	satisfied
1.4 Class 1 and Class 2 Acid Sulfate Conditions	satisfied
1.5 below flood planning levels identified on Council's Flooding Hazard Map	satisfied
1.6 high environmental value land inc. SEPP 14 coastal wetlands plus 100m buffer, SEPP 71 coastal lakes	satisfied
1.7 noise exposure areas of ANEF 25 or greater	satisfied
1.8 important agricultural land as defined by BSAL mapping	satisfied
1.9 within 500m of known extractive industry or mining sites	satisfied
1.10 mineral resource potential sites identified by State Government	satisfied

The site is not affected by any "exclusionary" criteria.

2.0 Management Criteria	Response
Flooding	
2.1 potential development isolated in flood events must demonstrate to have access to evacuation facilities, via a public road that is given 24 hours warning of flood isolation	Satisfied - the site is serviced by Giles Road, and is not isolated in flood events. Alternative access during most major flood events is already established between the site and Raymond Terrace by means of Clarence Town Road, Dixon Street (Seaham), Warren Street (Seaham), East Seaham Road, Italia Road and the Pacific Highway. The site is otherwise 16km from Maitland, 15.5km from Raymond Terrace, and 5.8km from "smaller village services" at Wallalong.
2.2 development in floodprone areas to identify minimum lot size areas that provide appropriate stock refuge in	not applicable

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flood events	
Bushfire	
2.3 development in bushfire prone areas must be consistent with the planning principles for rezoning including the provision of contour map with BAL applied	Satisfied – see Attachment L (including contour map with BAL's applied), which concludes that application of APZ's and the relevant construction standards within the site should provide adequate protection to life and property in the event of a bushfire
Environmentally Sensitive Land	
2.4 development in SEPP 71 Coastal Zone needs to provide for the protection of the coastal environment for the benefit of both present and future generations through promoting ecological sustainable development principles	not applicable
2.5 koala habitat areas and corridors to be protected as per the Port Stephens CKPoM	<p>The proposal will cause an initial small loss of Koala feed trees, but can generate a significant gain in habitat to satisfy this criteria.</p> <p>The site presently contains 385 Koala feed trees comprising Forest Red Gum and Forest Grey Gum species (see p. 9 of Attachment P and pp.5-6 of Attachment Q).</p> <p>The suggested building envelopes and accesses for all lots have been identified on the ground (see photographs on pp.5-14 & 15-20 of Attachment O). The tree removal data presented in Attachment O (pp.1-3) indicates Koala feed tree loss can be limited to a total of 13 trees, towards: -</p> <ul style="list-style-type: none"> • erecting dwellings on all lots; • constructing driveways on all lots; • maintaining APZ's on all lots; • constructing the road through the site; • installing two (2) detention basins; and • establishing a water access point to the existing SW dam for dedicated RFS use. <p>To compensate for this loss, planting of like-tree</p>

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	<p>species can be established within areas of the site previously cleared for pasture and presently devoid of tree cover; namely Sectors 1, 2, 3 & 4 (see p.27 of Attachment O and p. 13 of Attachment N). A total of 454 plantings can be achieved within the targeted areas, realising a gain of 441 trees (or 34.92 trees planted for each tree removed) and a 114.5% increase in the site's Koala feed tree population (p.12 of Attachment N and p.9 of Attachment P).</p>
2.6 development must not impact on endangered ecological communities, threatened species or habitats	<p>Ecological investigation indicates the site does support threatened fauna species. In particular, it recommends measures be implemented to protect habitat supporting the threatened Brush-tailed Phascogale and Grey-crowned Babbler species (see Section 9 of Attachment G).</p> <p><u>As regards the Phascogale</u>, the site is presently and effectively managed to protect and enhance habitat supporting the Phascogale (see Attachment J).</p> <p>In particular, 28 forage areas are being established about suitable habitat trees clear of the suggested dwelling footprints within Proposed Lots 2, 7, 13, 14, 15, 16, 20, 21, 22, 23 & 24 (see pp.5, 6-11 of Attachment J), whilst 20 nesting/breeding boxes suitable for use by the phascogale are being installed in trees clear of the suggested dwelling footprints within Proposed Lots 2, 3, 8, 12, 13, 14, 15, 16, 17, 18, 19, 20, 22, 23, 24, 25 & 26 (see pp.5, 12-16 of Attachment J). Significantly, all forage areas and nesting/breeding spots can be retained without compromising the management of the suggested APZ's or access areas across the entire site.</p> <p><u>As regards the Babbler</u>, the site presently contains only 12 nesting trees comprising the local Babbler community's preferred Prickly Leafed Paper Bark species (see p. 2 of Attachment J and p.4 of Attachment P). These are all located nearby Heydons Creek, so that no Babbler nesting tree loss will occur from the proposal.</p>

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	<p>Regardless, planting of the Babbler's preferred nesting species can be established within areas of the site previously cleared for pasture and presently devoid of tree cover; namely Sectors 1 & 2 (see pp.4 & 27 of Attachment O and pp.11 & 13 of Attachment N). A total of 140 plantings can be achieved within the targeted areas, realising a gain of 152 trees <u>without loss</u> that represents a massive boost to the site's Babbler preferred nesting tree population (p.12 of Attachment N and p.9 of Attachment P).</p> <p>The proposal is not expected to impact other threatened species or habitats.</p>
2.7 Development must contribute to the conservation of important biodiversity values or the establishment of important biodiversity corridor linkages	<p>The site is nearby, but beyond, the Uffington State Forest system (13km away), and is otherwise clear of "proposed biodiversity corridors", waterways, and National Parks and Reserves. It is not recognised by the LHRCP as containing any priority conservation areas (see Figure 10).</p> <p>The site contains open woodland vegetation with a few older remnant trees surrounded by younger tree regrowth, but contains no native understorey (see Attachment G). Trees with hollows for roosting or nesting by avifauna, arboreal mammal, reptile and microchiropteran bat species are distributed unevenly across the site, with the majority located <u>towards the SW corner</u>.</p> <p>Away from Barties Creek at the SW corner, the underlying geology is near or at the surface and the soils are particularly fragile and poorly developed (see Attachment D Sections 4.0 to 7.0), so that the woodland is vulnerable to wind and storm events, and to competition for the site's few nutrients. Furthermore, active ongoing management of the whole of Lot 14/846633 is necessary to prevent weed reinfestation (see Attachment G Section 4.1.3 and Attachment E), and to reduce fire risk to existing infrastructure and the surrounding settlement (see Attachment H).</p>

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On this basis, the site, generally, could not be considered significant towards conserving important biodiversity values.

Regardless, ecological investigation recommends measures be implemented to (see Section 9 of **Attachment G**): -

- avoid removing large older trees and hollow-bearing trees, and compensate for native vegetation removed;

Comment: - the site presently (at January 2018) contains 5,105 mature trees, comprised predominantly of Iron Bark (62%), Spotted Gum (30%), Forest Red Gum/Grey Gum (7%) species (see p.4 of **Attachment P**).

Some (83) of these mature trees are habitat trees (HBT's) - all HBT's have been located, tagged and uniquely numbered (see Appendix E of **Attachment G**). Building envelopes can be positioned to avoid removal or disturbance to any of these HBT's (see **Attachment R**). Furthermore, one (1) HBT (no. 28) is positioned within the Outer Protection Area of the APZ for Lot 14 only, whilst HBT's extend into the BAL-29 area for Lot 2 (2 - HBT nos. 81 & 82), Lot 5 (1 - HBT no. 78), Lot 8 (1 - HBT no. 30), and Lot 11 (1 - HBT no. 10). Significantly, all HBT's can be retained without compromising the management of APZ's across the entire site.

In addition, the suggested building envelopes and accesses for all lots have been identified on the ground (see photographs on pp.5-14 & 15-20 of **Attachment O**). The tree removal data presented in **Attachment O** (pp.1-3) indicates tree loss can be limited to a total of 239 trees, towards: -

- erecting dwellings on all lots;

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& 26 (see pp.5, 12-16 of **Attachment J**). Significantly, all forage areas and nesting/breeding spots can be retained without compromising the management of APZ's across the entire site.

- protect habitat supporting the Koala species;

Comment: - the site presently contains 385 Koala feed trees comprising Forest Red Gum and Forest Grey Gum species (see p. 9 of **Attachment P** and pp.5-6 of **Attachment Q**).

The suggested building envelopes and accesses for all lots have been identified on the ground (see photographs on pp.5-14 & 15-20 of **Attachment O**). The tree removal data presented in **Attachment O** (pp.1-3) indicates Koala feed tree loss can be limited to a total of 13 trees, towards: -

- erecting dwellings on all lots;
- constructing driveways on all lots;
- maintaining APZ's on all lots;
- constructing the road through the site;
- installing two (2) detention basins; and
- establishing a water access point to the existing SW dam for dedicated RFS use.

To compensate for this loss, planting of like-tree species can be established within areas of the site previously cleared for pasture and presently devoid of tree cover; namely Sectors 1, 2, 3 & 4 (see p.27 of **Attachment O** and p. 13 of **Attachment N**). A total of 454 plantings can be achieved within the targeted areas, realising a gain of 441 trees (or 34.92 trees planted for each tree removed) and a 114.5% increase in the site's Koala feed tree population (p.12 of **Attachment N** and p.9 of **Attachment P**).

Accordingly, the proposal will not result in development that would sever koala

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- constructing driveways on all lots;
- maintaining APZ's on all lots;
- constructing the road through the site;
- installing two (2) detention basins; and
- establishing a water access point to the existing SW dam for dedicated RFS use.

To compensate for this loss, planting of like-tree species can be established within areas of the site previously cleared for pasture and presently devoid of tree cover; namely Sectors 1, 2, 3 & 4 (see p.27 of **Attachment O** and p. 13 of **Attachment N**). A total of 749 plantings can be achieved within the targeted areas, realising a gain of 510 trees (or 3.13 trees planted for each tree removed) and a 9.9% increase in the site's tree population (p.9 of **Attachment P**).

- manage weeds in the long-term;

Comment: - the site is presently and effectively managed to minimise the occurrence of noxious species (see **Attachment E**). The proposal involves maintaining this weed management program.

- protect habitat supporting the Brush-tailed Phascogale species;

Comment: - the site is presently and effectively managed to protect and enhance habitat supporting the Phascogale (see **Attachment J**).

In particular, 28 forage areas are being established about suitable habitat trees on Lots 2, 7, 13, 14, 15, 16, 20, 21, 22, 23 & 24 (see pp.5, 6-11 of **Attachment J**), whilst 20 nesting/breeding boxes suitable for use by the phascogale are being installed in trees on Lots 2, 3, 8, 12, 13, 14, 15, 16, 17, 18, 19, 20, 22, 23, 24, 25

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movement across the site, but will, with a gain of 114.5% in the site's current Koala feed tree population, enhance the site's capability for Koala movement.

- protect habitat supporting the Grey-crowned Babbler species; and

Comment: - the site presently contains only 12 nesting trees comprising the local Babbler community's preferred Prickly Leafed Paper Bark species (see p. 2 of **Attachment J** and p.4 of **Attachment P**). These are all located nearby Heydons Creek, so that no Babbler nesting tree loss will occur from the proposal.

Regardless, planting of the Babbler's preferred nesting species can be established within areas of the site previously cleared for pasture and presently devoid of tree cover; namely Sectors 1 & 2 (see pp.4 & 27 of **Attachment O** and pp.11 & 13 of **Attachment N**). A total of 140 plantings can be achieved within the targeted areas, realising a gain of 152 trees without loss that represents a massive boost to the site's Babbler preferred nesting tree population (p.12 of **Attachment N** and p.9 of **Attachment P**).

- control predation by domestic cats and dogs.

Comment: - the proposal involves placing restrictions to prohibit domestic cats, and to limit domestic dogs to one (1) per lot contained within a koala-proof compound (see p.2 of **Attachment P** and p.3 of **Attachment Q**).

The measures described above ensure the proposal does not negatively impact the site's existing biodiversity values. More significantly, it generates positive strategic outcomes for the site by increasing tree population, restoring vegetation canopy to areas denuded by past

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	<p>grazing activities, enhancing habitat for the Phascogale, Koala and Babbler species, ensuring weed management is maintained, and formally establishing controls for domestic cats and dogs.</p> <p>Furthermore, the proposal's 26 allotments and suggested building envelopes are located to protect the potential for Barties Creek as the site's principal corridor linkage.</p>
Aircraft Noise	
2.8 noise exposure areas of ANEF 25 or greater	not applicable
Non-Aboriginal Cultural heritage	
2.9 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	not applicable
Aboriginal Cultural heritage	
<p>2.10 development should undertake an initial assessment of the likelihood of Aboriginal cultural heritage values including:</p> <ul style="list-style-type: none"> - 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. 	<p>The AHIMS and Australian Heritage databases list the site as containing no known aboriginal items of heritage significance (see Attachments B & C).</p> <p>The site is within the Worimi Local Aboriginal Land Council (LALC) area (see Figure 13). Informal enquiries by the owner's agent with the LALC have confirmed the site has no heritage or cultural significance.</p> <p>The site can be investigated formally for heritage and cultural significance at Development Application stage.</p>
Drinking Water Catchments	
2.11 Development within a drinking water catchment must be able to be connected to reticulated	Satisfied - the site is not within a drinking water catchment.

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sewer and able to demonstrate NorBE 'neutral and beneficial effect' in accordance with Hunter Water requirements	
Rural Land Resources	
<p>2.12 Development is a minimum 1km buffer from existing agricultural industries (e.g. Poultry farms, aquaculture) measures 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</p>	<p>The site adjoins Lot 51/1069432 at 599 Clarence Town Road, Woodville, which contains a poultry facility with four (4) large sheds. The facility is leased for "free range" egg production to "Manning Valley Free Range Eggs" (http://www.manningvalleyeggs.com.au/) to generate interim income that meets holding expenses (pers. Comm. McCloy Group 20/9/17). The owner is not intending to expand the facility.</p> <p>The sheds are located 230m, 260m, 300m and 330m respectively from the SW corner of the site, and has a capacity for 89,840 hens (see Attachment K Sections 2.2 & 2.3).</p> <p><u>Visual Amenity</u> The facility is concealed from the site by the vegetation along Barties Creek, and thereby is not readily visible.</p> <p><u>Odour</u> A separation distance of 413m applies to the farthest shed when the facility is operating at capacity. The resulting arc (i.e. scribed from the farthest shed) generally follows Barties Creek, so that ongoing operation of the facility on Lot 51/1069432 at full capacity is unlikely to generate adverse odour impact on future rural residential development established on Lot 14/846633 (see Attachment K Sections 2.4 & 3.1).</p> <p><u>Noise</u> Residents in the Giles Road have observed the dominant prevailing winds to be directed towards the SW across the locality (perscomm. Rod Joyce 13/11/17). On this basis, the dominant prevailing winds encounter the existing poultry facility after exiting the site, so that ongoing operation of the facility on Lot</p>

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	<p>51/1069432 is unlikely to generate adverse noise impact on future rural residential development established on Lot 14/846633.</p> <p><u>Biosecurity Risks</u> Precautions to minimise biosecurity risk form essential elements of the facility's existing operation, and the proposal does influence the effectiveness of these precautions (see Attachment S Section 3). Regardless, the effectiveness of the precautions could be enhanced by: -</p> <ul style="list-style-type: none"> erecting high chain-wire fencing along the common boundary between Lot 14/846633 and Lot 51/1069432 to impede unauthorised visitor entry and entry by other animals to the facility from Lot 14/846633; and placing restrictions on the keeping of domestic dogs and cats within the allotments created upon Lot 14/846633 to further control the incidence of unauthorised entry by domestic animals to the facility from Lot 14/846633.
2.13 Development must not impact on strategic or important energy, mineral or extractive resource viability	Satisfied – the site is not identified as containing any viable resource, and is located more than 0.5km from the nearest identified extractive resource.
Scenic Amenity	
2.14 A visual impact assessment is required for land within a high or very high landscape area as defined in the Rural Land Study	Not applicable – the site is located within the "River Estuary – hills, lowlands & wetland" Rural Landscape Character Type by the Rural Land Study
2.15 Development fronting road corridors to identify appropriate buffer zone to prevent clearing and protect scenic qualities	<p>Satisfied – Attachment L indicates the following road setbacks to the proposed building envelopes – these are sited to minimise clearing and offer scenic quality: -</p> <ul style="list-style-type: none"> Lot 1 – 55m to Giles Road Lot 2 – 45m/40m to Giles Rd/internal road Lot 3 – 30m to internal road Lot 4 – 40m to internal road Lot 5 – 35m to internal road Lot 6 – 30m to internal road

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	<ul style="list-style-type: none"> • Lot 7 – 20m to internal road • Lot 8 – 60m to internal road • Lot 9 – 45m to internal road • Lot 10 – 35m to internal road • Lot 11 – 75m to internal road • Lot 12 – 85m to internal road • Lot 13 – 25m to internal road • Lot 14 – 40m to internal road • Lot 15 – 100m to internal road • Lot 16 – 30m to internal road • Lot 17 – 50m to internal road • Lot 18 – 30m/30m to internal road • Lot 19 – 25m to internal road • Lot 20 – 25/35m to internal road • Lot 21 – 45m to internal road • Lot 22 – 40m to internal road • Lot 23 – 25m to internal road • Lot 24 – 50m/30m to internal road • Lot 25 – 35m/35m to internal road • Lot 26 – 55m to internal road
Infrastructure and Services	
2.16 Development must be accessed via sealed roads	Satisfied – Giles Road and Croft Road are sealed roads that link the site to Clarence Town Road
2.17 Development must not result in the creation of direct access to a state road	Satisfied – Giles Road is a local road.
2.18 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	Satisfied – the site is already part of a neighbourhood containing 28 rural residential lots where sufficient local infrastructure has been established, so that no significant change to the current level of contributions is required.
2.19 Development must not create additional demand for unplanned state infrastructure upgrades	Satisfied – the proposal does not generate any demand for state infrastructure upgrades.
2.20 Development must be able to be connected to reticulated power supply	Satisfied - is already part of a neighbourhood containing 28 rural residential lots connected to reticulated power supply.
2.21 Development requiring on-site sewage disposal must be carried out in accordance with Councils Development Assessment Framework (DAF) for the	On Site Sewage Management applies to the locality as per Council's OSSM Technical Manual. The site has capability to yield 68 dwellings (i.e. 1 x 4-bedroom dwelling per 0.4ha of usable area – see Section 2.2.6 above). The proposal will utilise only 38% of this capability, thus

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management of on-site sewage management, which includes a performance standards and recommendations about appropriate areas	resulting in 62% reserve capacity for the site.
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The proposal readily satisfies the PSRRS "management" criteria as regards flooding, aircraft noise, non-Aboriginal and Aboriginal cultural heritage, and drinking water catchments, and, by implementing design that minimises risk to and by the environment, can satisfy the "management" criteria as regards bushfire, environmentally sensitive land, rural land resources, scenic amenity, and infrastructure and services.

3.0 Land to where the assessment criteria applies	Response
3.1 Zoned RU1 – Primary Production, RU2 Rural Landscape, E3 Environmental Management, E4 Environmental Living	Satisfied – the site is within Zone RU2
3.2 Located a minimum of 800 metres from existing RU5 - Rural Village or R2 Low Density Residential zoned land	Satisfied – the site is located 2.7km N from land currently zoned R2 in Wallalong
3.3 Any part of the lot is located within 800 metres of existing R5 Large Lot Residential zoned land at the time this Policy was adopted	Not satisfied – the site is located 1.6km N and 2km NW respectively of land zoned R5 at High Street, Wallalong and Brandy Hill Drive, Brandy Hill.
3.4 Land outside that identified above may be considered if it can be justified that its inconsistency is of minor significance	Satisfied - the site is located between and nearby two rural residential settlements at Wallalong and Brandy Hill, so that a residential settlement pattern has emerged in the area. More significantly, the site is already part of a neighbourhood containing 28 rural residential lots ranging in size between 1.5 hectares and 3.6ha (see Attachment I), being the consequence of the "concessional lot" provision in Clause 13 of the <i>Port Stephens Local Environmental Plan 1987</i> . Whilst not originally an intended outcome, this provision has, nevertheless, already transformed the locality from broad-scale rural land to a rural residential

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	neighbourhood - the inconsistency with 3.3 above is therefore of minor significance
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The site is not consistent with the "assessment criteria", only in that it is not located within 800m of existing Zone R5 land. However, this inconsistency is considered to be of only minor significance because the site is already part of a neighbourhood containing 28 rural residential lots, being the consequence of the "concessional lot" provision in Clause 13 of the *Port Stephens Local Environmental Plan 1987*. Whilst not originally an intended outcome, this provision has, nevertheless, already transformed the locality from broad-scale rural land to a rural residential neighbourhood.

Furthermore, the only nearby supply of existing, vacant, serviceable Zone R5 land is located about 1.6km S of the site at Wallalong (see **Figures 5 & 6**). It contains about 21ha of land not affected by any "exclusionary" criteria. This suggests a maximum yield of 20 allotments, and, using the projected demand for Maitland LGA (see DPSRRS Vol 1 Section 4.2), has only 1 year's available supply.

Rural Residential Land Supply & Demand (using criteria Table 1 of DPSRR Vol 1 Sec 4.2)

LGA	Projected Supply	Avg dwlgs/year	Projected Demand	Supply Available (years)
Maitland	1,094	41	1,066	27.2*
Wallalong – Existing Zone R5 land	20			1.0*
TOTAL	1,114			

* assumes distribution of "Avg dwlgs/year" is spread evenly between the 2 x LGA's

Summary of Applicable Strategies

The site generally matches the characteristics for "rural residential development" identified by the PSRRS, and otherwise is consistent with both the applicable regional and local strategies for rezoning to rural residential land use. It: -

- is located within 20km of the major regional centres of Maitland and Raymond Terrace;
- is located within a neighbourhood already established with 28 rural residential lots ranging in size between 1.5 hectares and 3.6ha, that is serviced by Giles Road and reticulated electricity;
- contains no significant biodiversity or conservation values, but otherwise contains values for threatened Koala, Phascogale and Babbler species which can be formally established and sustained with rural residential development;

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- contains no agricultural or mineral resource attributes, but otherwise is located nearby a "free range" egg production facility which is presently leased to generate interim income for only holding expenses, and which poses no visual, noise or odour issues;
- is elevated above the floodplain; and
- is otherwise not exposed to significant natural hazard impacts.

Significantly, the proposed lot size variation is consistent with the prevailing subdivision pattern in the neighbourhood, so that the risk of setting an undesirable precedent for other "RU2 Rural Living" land is low.

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6.5 Is the planning proposal consistent with State Environmental Planning Policies?

Applicable SEPP – SEPP 30 – Intensive Agriculture

State Environmental Planning Policy No. 30 – Intensive Agriculture (SEPP30) primarily aims to encourage cattle feedlots” and “piggeries”, and provides a state-wide approach to the approval of those activities. However, the policy does not apply where those activities are prohibited by another environmental planning instrument.

Under the PSLEP, “intensive plant agriculture” is permitted on land zoned RU2 without consent, but “intensive livestock agriculture” is prohibited development. The PSLEP states: -

intensive livestock agriculture means the keeping or breeding, for commercial purposes, of cattle, poultry, pigs, goats, horses or other livestock that are fed wholly or substantially on externally-sourced feed, and includes any of the following:

(a) dairies (restricted),

(b) feedlots,

(c) piggeries,

(d) poultry farms,

but does not include extensive agriculture, aquaculture or the operation of facilities for drought or similar emergency relief.

“Cattle feedlots” and “piggeries” as per SEPP30 are “intensive livestock agriculture”, and are therefore already prohibited development on Lot 14/846633, so that SEPP30 does not apply.

Relevant / Consistent / Inconsistent /Comments:

Planning Proposal is not inconsistent with SEPP 30.

Applicable SEPP – SEPP 44 – Koala Habitat Protection

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

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population decline. The policy provides the state-wide approach needed to enable appropriate development to continue, while ensuring there is ongoing protection of koalas and their habitat.

The *Port Stephens Comprehensive Koala Plan of Management* (PSCKPOM) applies to the Port Stephens LGA for the purposes of SEPP 44. Its principal objectives are to-

- *evaluate and rank koala habitat throughout the Port Stephens LGA;*
- *identify priority conservation areas and strategies to protect significant koala habitat and populations;*
- *identify threats that impact on koalas and koala habitat;*
- *provide for the long-term survival of koala populations by devising conservation strategies to effectively address each of the threats impacting on koalas and koala habitat;*
- *provide for the restoration of degraded koala habitat areas;*
- *ensure that adequate detail is provided with Development Applications in order to assess, minimise and ameliorate likely impacts on koala habitat;*
- *provide guidelines and development standards to protect koalas and koala habitat;*
- *provide for effective public awareness and education programs concerning koala conservation issues;*
- *encourage appropriate eco-tourism programs;*
- *provide a formal approach for the assessment, retrieval, rehabilitation and release of sick, injured, orphaned or distressed koalas;*
- *identify potential funding sources for implementation of the PSCKPoM;*
- *facilitate targeted koala conservation and management-oriented research projects within the Port Stephens LGA; and*
- *provide for the effective implementation and monitoring of the PSCKPoM.*

Consistency & Implications: - The PSCKPOM's Koala Habitat Planning Map (see **Figure 18**) suggests: -

- "preferred" habitat and associated 50m buffer traverse the NE corner of Lot 14/846633, coinciding with Heydons Creek; and
- "marginal" habitat extends mainly across the NE and SW corners of the site.

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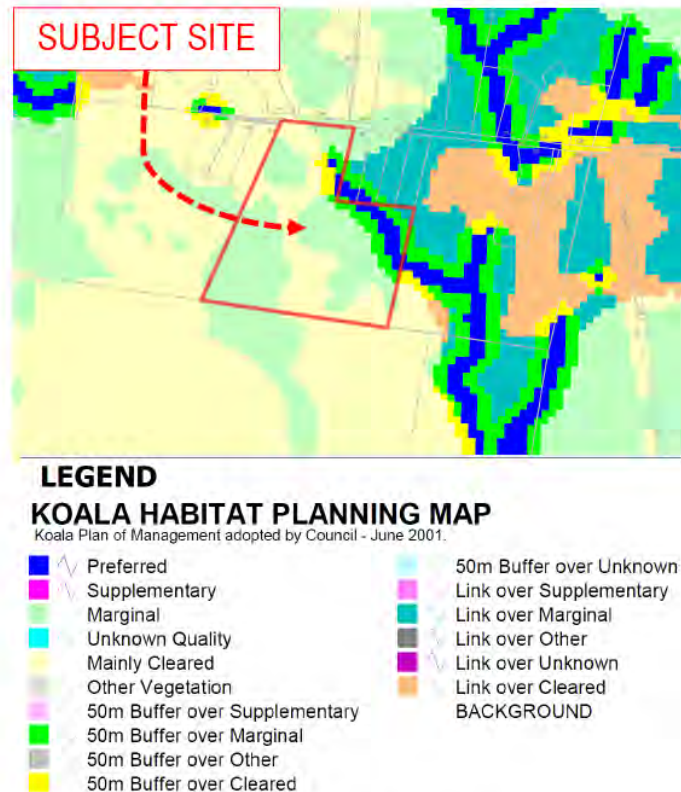
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Figure 18: PSCKPOM – Koala Habitat Planning Map - extract



However, field surveys (see **Attachment G** Section 7 and **Attachment Q** pp.5-6) indicate the "preferred" habitat mapping is erroneous, with a moderate to high density of habitat specimens occurring at the SW corner, along Barties Creek. The site presently contains 385 Koala feed trees comprising Forest Red Gum and Forest Grey Gum species (see p. 9 of **Attachment P** and pp.5-6 of **Attachment Q**).

The suggested building envelopes and accesses for all lots have been identified on the ground (see photographs on pp.5-14 & 15-20 of **Attachment O**). The tree removal data presented in **Attachment O** (pp.1-3) indicates Koala feed tree loss can be limited to a total of 13 trees, towards: -

- erecting dwellings on all lots (3 trees lost on Lot 7, 2 trees lost on Lot 8, 1 tree each lost on Lots 9 & 22);
- constructing driveways on all lots (NIL trees lost);
- maintaining APZ's on all lots (3 trees lost on Lot 7);
- constructing the road through the site (1 tree lost);
- installing two (2) detention basins (2 trees lost); and
- establishing a water access point to the existing SW dam for dedicated RFS use.

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To compensate for this loss, planting of like-tree species can be established within areas of the site previously cleared for pasture and presently devoid of tree cover; namely Sectors 1, 2, 3 & 4 (see p.27 of **Attachment O** and p. 13 of **Attachment N**). A total of 454 plantings can be achieved within the targeted areas, realising a gain of 441 trees (or 34.92 trees planted for each tree removed) and a 114.5% increase in the site's Koala feed tree population (p.12 of **Attachment N** and p.9 of **Attachment P**). More significantly, the plantings can create linkage between the "preferred" habitat areas along Barties Creek and the lower reach of Heydons Creek near the SE corner of the site.

Accordingly, the proposal will not result in development that would sever koala movement across the site, but will, with a gain of 114.5% in the site's current Koala feed tree population, enhance the site's capability for Koala movement.

For rezoning requests, performance criteria are applied by the PSCKPOM (Appendix 2), as follows: -

- a) *Not result in development within areas of Preferred Koala Habitat or defined Habitat Buffers.*

Comment: - the proposal will result in development to create allotments within areas of Preferred Koala Habitat (namely Lots 6, 7, 8, 9, 21 & 22) and defined "mainly cleared" Habitat Buffers (namely Lots 5, 10, 20 & 23), but Koala feed tree loss can be limited to only 13 trees.

To compensate for this loss, the planting of like-tree species can be established within areas of the site previously cleared for pasture and presently devoid of tree cover. A total of 454 plantings can be achieved within the targeted areas (including 40 trees along Barties Creek), realising a gain of 441 trees (or 34.92 trees planted for each tree removed) and a 114.5% increase in the site's Koala food tree population (p.12 of **Attachment N** and p.9 of **Attachment P**). This would result in a substantial and strategic expansion of the Preferred Koala Habitat area within the site. More significantly, the plantings can create linkage between the "preferred" habitat areas along Barties Creek and the lower reach of Heydons Creek near the SE corner of the site.

Accordingly, the proposal is justified in not complying with this performance criterion because of its potential to realise a substantial increase to the area of Preferred Koala Habitat and provide linkage between areas of Preferred Koala Habitat.

- b) *Allow for only low impact development within areas of Supplementary Koala Habitat and Habitat Linking Areas.*

Comment: - the site is assessed as containing no areas of Supplementary Koala Habitat or Habitat Linking Areas (see **Attachment G** Section 7.4 (b)).

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- c) *Minimise the removal of any individuals of preferred koala food trees, where ever they occur on the site.*

Comment: - the suggested building envelopes and accesses for all lots in the proposal have been identified on the ground (see photographs on pp.5-14 & 15-20 of **Attachment O**). The tree removal data presented in **Attachment O** (pp.1-3) indicates Koala feed tree loss can be limited to a total of 13 trees, towards: -

- erecting dwellings on all lots (3 trees lost on Lot 7, 2 trees lost on Lot 8, 1 tree each lost on Lots 9 & 22);
- constructing driveways on all lots (NIL trees lost);
- maintaining APZ's on all lots (3 trees lost on Lot 7);
- constructing the road through the site (1 tree lost);
- installing two (2) detention basins (2 trees lost); and
- establishing a water access point to the existing SW dam for dedicated RFS use.

To compensate for this loss, the planting of like-tree species can be established within areas of the site previously cleared for pasture and presently devoid of tree cover. A total of 454 plantings can be achieved within the targeted areas (including 40 trees along Barties Creek), realising a gain of 441 trees (or 34.92 trees planted for each tree removed) and a 114.5% increase in the site's Koala feed tree population (p.12 of **Attachment N** and p.9 of **Attachment P**). This would result in a substantial and strategic expansion of the Preferred Koala Habitat area within the site. More significantly, the plantings can create linkage between the "preferred" habitat areas along Barties Creek and the lower reach of Heydons Creek near the SE corner of the site.

Accordingly, the proposal can result in minimal tree loss, but can also realise a substantial gain of 114.5% in the site's current Koala food tree population that is strategically positioned to enhance Koala movement.

- d) *Not result in development which would sever koala movement across the site. This should include consideration of the need for maximising tree retention on the site generally and for minimising the likelihood of impediments to safe/unrestricted koala movement.*

Comment: - the site presently (at January 2018) contains 5,105 mature trees, comprised predominantly of Iron Bark (62%), Spotted Gum (30%), Forest Red Gum/Grey Gum (7%) species (see p.4 of **Attachment P**).

Some (83) of these mature trees are habitat trees (HBT's) - all HBT's have been located, tagged and uniquely numbered (see Appendix E of **Attachment G**). Building envelopes can be positioned to avoid removal or disturbance to any of these HBT's (see **Attachment R**).

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In addition, the suggested building envelopes and accesses for all lots have been identified on the ground (see photographs on pp.5-14 & 15-20 of **Attachment O**). The tree removal data presented in **Attachment O** (pp.1-3) indicates tree loss can be limited to a total of 239 trees.

To compensate for this loss, planting of like-tree species can be established within areas of the site previously cleared for pasture and presently devoid of tree cover; namely Sectors 1, 2, 3 & 4 (see p.27 of **Attachment O** and p. 13 of **Attachment N**). A total of 749 plantings can be achieved within the targeted areas, realising a gain of 510 trees (or 3.13 trees planted for each tree removed) and a 9.9% increase in the site's tree population (p.9 of **Attachment P**).

Impediments to safe and unrestricted Koala movement can be minimised by placing restrictions to (see p.2 of **Attachment P** and p.3 of **Attachment Q**): -

- prohibit domestic cats;
- limit domestic dogs to one (1) per lot contained within a koala-proof compound;
- limit roadway and boundary perimeter fencing to post, rail and/or plain wire fencing, with 0.25m clearance from the ground surface;
- enclose pools and basins with panelled fencing;
- limit the speed of vehicles to 50kph; and
- obligate residents to maintain the tree planting and other current established conservation initiatives.

Relevant / Consistent / Inconsistent /Comments:

Planning Proposal's inconsistency with the Port Stephens CKPoM, and therefore SEPP 44, can be justified by its potential to significantly expand Preferred Koala Habitat and provide linkage between Preferred Koala Habitat areas – this can be confirmed at Development Application stage.

Applicable SEPP – SEPP 55 – Remediation of Land

State Environmental Planning Policy No. 55 – Remediation of Land (SEPP55) primarily aims to promote the remediation of contaminated land to reduce harm to human health and the environment, and provides a state-wide approach to development consent, rezoning land, remediation standards and notification requirements.

Lot 14/846633 has been utilised for grazing (up to 12 animals), and before 1983 was specifically a flood refuge for stock (see **Attachment D** Section 1.0) as part of

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an extensive pastoral holding extending to south towards the Hunter River into McClymonts Swamp. Such activity has been unlikely to generate significant contamination of the land.

Relevant / Consistent / Inconsistent /Comments:

The consistency of the Planning Proposal with SEPP 55 can be confirmed at Development Application stage (if required).

Applicable SEPP – SEPP 62 – Sustainable Agriculture

State Environmental Planning Policy No. 62 – Sustainable Agriculture (SEPP62) primarily aims to encourage sustainable land-based and natural water-based aquaculture, and provides a state-wide approach to the approval of those activities. The policy enables both “pond-based aquaculture” and “tank-based aquaculture” to occur on land zoned RU2.

Lot 14/846633 is part of a locality neither established, nor identified suitable, for sustainable aquaculture.

Relevant / Consistent / Inconsistent /Comments:

Planning Proposal is not inconsistent with SEPP 62.

Applicable SEPP – SEPP (Rural Lands) 2008

State Environmental Planning Policy (Rural Lands) 2008 (SEPP RL) primarily aims to facilitate the orderly and economic use and development of rural lands, to identify rural planning and rural subdivision principles, to implement measures to reduce land use conflicts, and to protect the ongoing viability of State significant agricultural land for agricultural use.

The Rural Planning Principles of SEPP RL are: -

- (a) *the promotion and protection of opportunities for current and potential productive and sustainable economic activities in rural areas,*

Comment: Lot 14/846633 has been utilised for grazing (up to 12 animals), and before 1983 was specifically a flood refuge for stock (see **Attachment D** Section 1.0) as part of an extensive pastoral holding extending to south towards the Hunter River into McClymonts Swamp. It is not identified as “Biophysical Strategic Agricultural Land” by the DPSRRS (see **Figure 19**).

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With the emergence of rural residential lots in the locality, and particularly because of poor feed availability, there has been no recent attempt to establish a commercially-viable agricultural enterprise on the site. This is understandable since its soils are poor and vulnerable, allowing only shallow-rooted native hardwood vegetation to flourish (see **Attachment D** Sections 5.0 & 6.0); consequently, the site has no potential for contemporary agribusiness options (i.e. beef production, feed lotting, cropping, plantation, horticulture, commercial nursery, horse stud – see **Attachment D** Sections 9.0 & 10.0).

Nearby "Free Range" Poultry Activity

The site adjoins land zoned "RU2 Rural Landscape" that contains a poultry facility. The facility is leased for "free range" egg production to generate interim income that meets holding expenses (pers. Comm. McCloy Group 20/9/17). The owner is not intending to expand the facility, which is located on land that forms part of the Wallalong "future growth area" flagged by the PSPS (see **Figure 2**). As discussed in Section 2.2.2, the adjoining land has already been the subject of a planning proposal to create a township for 3,700 dwellings.

The poultry facility includes (see **Attachment K**) four (4) large naturally-ventilated sheds and three (3) paddocks for free range access to open space and managed grassland. The facility is assessed to have a "Shed Area" capacity for 89,840 hens (even though the "Outdoor Range" capacity is only 18,900 hens). Using the *Technical notes – Assessment and management of odour from stationary sources in NSW* (NSW Department of Environment and Conservation, November 2006), a separation distance of 413m applies to the farthest shed when the facility is operating at capacity. The resulting arc (i.e. scribed from the farthest shed) generally follows Barties Creek, so that ongoing operation of the facility at full capacity is protected since it is unlikely to generate adverse odour impact on future rural residential development established on Lot 14/846633.

Presence of Other Agricultural Activity

The site is also located 0.8km north from the nearest land zoned "RU1 Primary Production", and, apart from the "free range" egg production facility discussed above, there is no intensive agricultural activity conducted in its vicinity – Lot 14/846633, therefore, will not impact on current, or potential opportunities for, primary production.

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Figure 19: Context of DPSRRS – Important Agricultural Lands - extract



- (b) *recognition of the importance of rural lands and agriculture and the changing nature of agriculture and of trends, demands and issues in agriculture in the area, region or State,*

Comment: Lot 14/846633 would be utilised for in-fill rural residential development that is unlikely to impact on the region's agriculture-related trends, demands and issues.

- (c) *recognition of the significance of rural land uses to the State and rural communities, including the social and economic benefits of rural land use and development,*

Comment: Lot 14/846633 is not identified as "Biophysical Strategic Agricultural Land" by the DPSRRS (see **Figure 19**), and does not contribute significantly to the State and rural communities' primary production.

- (d) *in planning for rural lands, to balance the social, economic and environmental interests of the community,*

Comment: Lot 14/846633 is part of a neighbourhood containing 28 rural residential lots ranging in size between 1.5 hectares and 3.6ha (see **Attachment I**), being the consequence of the "concessional lot" provision in Clause 13 of the *Port Stephens Local Environmental Plan 1987*. Whilst not originally an intended outcome, this provision has, nevertheless, already transformed the locality from broad-scale rural land to a rural residential

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neighbourhood, so that the planning proposal **is in-fill development** and presents no land use conflicts, and thereby balances the social, economic and environmental interests of the community.

- (e) *the identification and protection of natural resources, having regard to maintaining biodiversity, the protection of native vegetation, the importance of water resources and avoiding constrained land,*

Comment: Lot 14/846633 is 1.8km from the activity areas of Brandy Hill Quarry (see **Figure 7**) which is recognised as a "non coal extractive resource" by the LHRS (see **Figure 11**), and is accessed from Giles Road, as well as Clarence Town Road.

In this context, the site is ideally located in that it: -

- is on the opposite side of the ridge from, and well clear of, the direct impacts of quarry activity;
- is nearby a facility authorised to supply a resource required for development works, thereby minimising transportation costs and environmental footprint.

Geologically, the site contains several areas of rock outcrop and otherwise consists of a thin soil cover overlaying medium to coarse grained lithic sandstone and some conglomerate. This material is unsuitable as a resource for commercial extraction (see **Attachment D** Sections 4.0 & 10.0(g)).

The site is flood-free, and presents as managed open woodland with no native understorey. It is currently managed to maintain the site's significant biodiversity values (see **Attachment J**).

The planning proposal provides a viable structure for continuing the management of its biodiversity values and native vegetation; the effectiveness of this structure can be confirmed at the Development Application stage.

- (f) *the provision of opportunities for rural lifestyle, settlement and housing that contribute to the social and economic welfare of rural communities,*

Comment: the planning proposal will create 26 additional allotments as in-fill development (see **Figure 9**).

- (g) *the consideration of impacts on services and infrastructure and appropriate location when providing for rural housing,*

Comment: Lot 14/846633 is accessed from Giles Road, and is nearby electricity and telecommunication services.

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The site is not isolated in flood events. Alternative access during most major flood events is already established between the site and Raymond Terrace by means of Clarence Town Road, Dixon Street (Seaham), Warren Street (Seaham), East Seaham Road, Italia Road and the Pacific Highway. Regardless, the impact of flooding would be limited because of the in-fill characteristics of the planning proposal.

(h) ensuring consistency with any applicable regional strategy of the Department of Planning or any applicable local strategy endorsed by the Director-General.

Comment: an inconsistency exists because the PSRRS is not a local strategy endorsed by NSW Planning & Environment.

However, this inconsistency is considered to be of only minor significance because the site is already part of a neighbourhood containing 28 rural residential lots, being the consequence of the "concessional lot" provision in Clause 13 of the *Port Stephens Local Environmental Plan 1987*. Whilst not originally an intended outcome, this provision has, nevertheless, already transformed the locality from broad-scale rural land to a rural residential neighbourhood.

Furthermore, the proposal is not inconsistent with the HRP, the PSCSP, the PSRLS, the PSPS, and the PSRRS.

The Rural Subdivision Principles of SEPP RL are: -

(a) the minimisation of rural land fragmentation,

Comment: Lot 14/846633 is fragmented, and the planning proposal is in-fill development that avoids any potential to expand primary production allotments.

(b) the minimisation of rural land use conflicts, particularly between residential land uses and other rural land uses,

Comment: Lot 14 in DP 846633 is part of a neighbourhood containing 28 rural residential lots, being the consequence of the "concessional lot" provision in Clause 13 of the *Port Stephens Local Environmental Plan 1987*. Whilst not originally an intended outcome, this provision has, nevertheless, already transformed the locality from broad-scale rural land to a rural residential neighbourhood, and immediately adjoins land earmarked for settlement expansion to the south. Any potential for conflict is minimised by confining the planning proposal to Lot 14 in DP 846633.

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- (c) *the consideration of the nature of existing agricultural holdings and the existing and planned future supply of rural residential land when considering lot sizes for rural lands,*

Comment: Lot 14 in DP 846633 is part of a neighbourhood accessed from Giles Road containing 28 rural residential lots ranging in size between 1.5 hectares and 3.6ha (see **Attachment I**), being the consequence of the "concessional lot" provision in Clause 13 of the *Port Stephens Local Environmental Plan 1987*. Whilst not originally an intended outcome, this provision has, nevertheless, already transformed the locality from broad-scale rural land to a rural residential neighbourhood, so that the proposal **is in-fill development**. It is fragmented from existing agricultural holdings.

- (d) *the consideration of the natural and physical constraints and opportunities of land,*

- (e) *ensuring that planning for dwelling opportunities takes account of those constraints.*

Comment: Lot 14/846633 is flood-free, and not isolated in flood events. Alternative access during most major flood events is already established between the site and Raymond Terrace by means of Clarence Town Road, Dixon Street (Seaham), Warren Street (Seaham), East Seaham Road, Italia Road and the Pacific Highway. Regardless, the impact of flooding would be limited because of the in-fill characteristics of the planning proposal.

The site is accessed from Giles Road, and is nearby electricity and telecommunication services. It presents as managed open woodland with no native understorey, and is currently managed to maintain the site's significant biodiversity values (see **Attachment J**).

The planning proposal provides a structure for continuing the management of its biodiversity values and native vegetation; the effectiveness of this structure can be confirmed at the Development Application stage.

Relevant / Consistent / Inconsistent /Comments:

Planning Proposal's inconsistency with SEPP RL can be justified by its context with an existing rural residential neighbourhood.

In summary, the proposal is generally consistent with the applicable SEPP's, and any inconsistency is justified by its minor significance, or by its potential to realise a substantial and strategic environmental benefit. This can be confirmed, as required, at the Development Application stage.

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6.6 Is the planning proposal consistent with applicable Ministerial Directions (s.117 directions)?

Applicable Direction – Direction 1.2 – Rural Zones

- (1) *The objective of this direction is to protect the agricultural production value of rural land.*
- (3) *This direction applies when a relevant planning authority prepares a planning proposal that will affect land within an existing or proposed rural zone (including the alteration of any existing rural zone boundary).*
- (4) *A planning proposal must:*
 - (a) *not rezone land from a rural zone to a residential, business, industrial, village or tourist zone.*
 - (b) *not contain provisions that will increase the permissible density of land within a rural zone (other than land within an existing town or village).*
- (5) *A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the provisions of the planning proposal that are inconsistent are:*
 - (a) *justified by a strategy which:*
 - (i) *gives consideration to the objectives of this direction,*
 - (ii) *identifies the land which is the subject of the planning proposal (if the planning proposal relates to a particular site or sites), and*
 - (iii) *is approved by the Director-General of the Department of Planning, or*
 - (b) *justified by a study prepared in support of the planning proposal which gives consideration to the objectives of this direction, or*
 - (c) *in accordance with the relevant Regional Strategy, Regional Plan or Sub-Regional Strategy prepared by the Department of Planning which gives consideration to the objective of this direction, or*
 - (d) *is of minor significance.*

Comment: Lot 14/846633 is zoned "RU2 Rural Landscape" by the PSLEP, and the Planning Proposal seeks to rezone the site to "R5 Large Lot Residential".

The site is part of a neighbourhood accessed from Giles Road containing 28 serviced rural residential lots which range in area between 1.5ha and 3.6ha, so agricultural production would create a conflicting land use (see **Attachment I**). Furthermore, the site's soils are poor and vulnerable, allowing only shallow-rooted native hardwood vegetation to flourish, so no potential exists for sustainable agriculture (see **Attachment D**).

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The inconsistency of the planning proposal with Direction 1.2 is therefore justified because: -

- the "agricultural production" objective of this direction cannot be achieved on the site.

Relevant / Consistent / Inconsistent /Comments:

Planning Proposal's inconsistency with Direction 1.2 is justified by its locational context and poor soil type.

Applicable Direction – Direction 1.3 – Mining, Petroleum Production and Extractive Industries

- (1) *The objective of this direction is to ensure that the future extraction of State or regionally significant reserves of coal, other minerals, petroleum and extractive materials are not compromised by inappropriate development.*
- (3) *This direction applies when a relevant planning authority prepares a planning proposal that would have the effect of:*
- prohibiting the mining of coal or other minerals, production of petroleum, or winning or obtaining of extractive materials, or*
 - restricting the potential development of resources of coal, other minerals, petroleum or extractive materials which are of State or regional significance by permitting a land use that is likely to be incompatible with such development.*

Comment: Lot 14/846633 is 1.8km from the activity areas of Brandy Hill Quarry (see **Figure 7**) which is recognised as a "non coal extractive resource" by the LHRS (see **Figure 11**), and is accessed from Giles Road, as well as Clarence Town Road.

Geologically, the site contains several areas of rock outcrop and otherwise consists of a thin soil cover overlaying medium to coarse grained lithic sandstone and some conglomerate. This material is unsuitable as a resource for commercial extraction (see **Attachment D** Sections 4.0 & 10.0(g)).

Direction 1.3, therefore, has minimal application to the site.

Relevant / Consistent / Inconsistent /Comments:

Planning Proposal is of minor relevance to Direction 1.3.

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Applicable Direction – Direction 1.5 – Rural Lands

(1) The objectives of this direction are to:

- (a) protect the agricultural production value of rural land,
- (b) facilitate the orderly and economic development of rural lands for rural and related purposes.

(3) This direction applies when:

- (a) a relevant planning authority prepares a planning proposal that will affect land within an existing or proposed rural or environment protection zone (including the alteration of any existing rural or environment protection zone boundary) or
- (b) a relevant planning authority prepares a planning proposal that changes the existing minimum lot size on land within a rural or environment protection zone.

(4) A planning proposal to which clauses 3(a) or 3(b) apply must be consistent with the Rural Planning Principles listed in State Environmental Planning Policy (Rural Lands) 2008.

(5) A planning proposal to which clause 3(b) applies must be consistent with the Rural Subdivision Principles listed in State Environmental Planning Policy (Rural Lands) 2008.

(6) A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the provisions of the planning proposal that are inconsistent are:

- (a) justified by a strategy which:
 - i. gives consideration to the objectives of this direction,
 - ii. identifies the land which is the subject of the planning proposal (if the planning proposal relates to a particular site or sites, and
 - iii. is approved by the Director-General of the Department of Planning and is in force, or
- (b) is of minor significance.

Comment: Lot 14/846633 is zoned "RU2 Rural Landscape" by the PSLEP, and the Planning Proposal seeks to rezone the site to "R5 Large Lot Residential" and alter the minimum lot size standard from 40ha to 1ha.

The site has no potential for agricultural productivity (see **Attachment D**). It is clustered with 28 rural residential lots containing dwellings, varying between 1.5 hectares and 3.6ha (see **Attachment I**), which thereby act as a further barrier to expanding the region's agricultural industries.

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The site is flood-free, is accessed direct from Giles Road, and is serviced by electricity and telecommunication services - the planning proposal would be orderly and economic rural residential development.

An assessment of the planning proposal against the Rural Planning Principles and Rural Subdivision Principles of SEPP RL is presented in Section 6.5. In summary, the proposal: -

- will not impact on current, or potential opportunities for, primary production;
- applies to a site already fragmented and sterilised from agriculture and its emerging trends, demands and issues;
- applies to a site that does not contribute to the social and economic benefits derived from primary production by the State and rural communities;
- responds to the current locational circumstances of the site to balance the social, economic and environmental interests of the community;
- recognises the site's environmental advantages, and provides a structure for continuing the management of its biodiversity values and native vegetation;
- applies to a flood-free site directly accessed from Giles Road and nearby electricity and telecommunication services;
- is not inconsistent with the HRP, PSCSP, PSRLS, PSPS and DPSRRS;
- is in-fill development that avoids any potential to expand primary production allotments;
- applies to a site already fragmented and sterilised from agriculture, and where adjoining land is earmarked for settlement expansion, which thereby minimises the likelihood of rural land use conflict;
- applies to a site already clustered with 28 rural "small holdings" containing dwellings, varying between 1.5 hectares and 3.6ha; and
- provides a viable structure: -
 - for continuing management of the site's biodiversity values and native vegetation,
 - that accounts for flood-free conditions which are directly accessed from Giles Road,
 - that have access-to-Raymond Terrace alternatives in major flood events, and
 - that is nearby electricity and telecommunication services.

The planning proposal appears consistent with the principles of SEPP RL and, therefore, the objectives of Direction 1.5.

Relevant / Consistent / Inconsistent / Comments:

Planning Proposal appears consistent with Direction 1.5.

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Applicable Direction – Direction 2.1 – Environmental Protection Zones

- (1) *The objectives of this direction is to protect and conserve environmentally sensitive areas.*
- (3) *This direction applies when a relevant planning authority prepares a planning proposal.*
- (4) *A planning proposal must include provisions that facilitate the protection and conservation of environmentally sensitive areas.*
- (6) *A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the provisions of the planning proposal that are inconsistent are:*
- (a) justified by a strategy which:*
 - (i) gives consideration to the objectives of this direction,*
 - (ii) identifies the land which is the subject of the planning proposal (if the planning proposal relates to a particular site or sites), and*
 - (iii) is approved by the Director-General of the Department of Planning, or*
 - (b) justified by a study prepared in support of the planning proposal which gives consideration to the objectives of this direction, or*
 - (c) in accordance with the relevant Regional Strategy, Regional Plan or Sub-Regional Strategy prepared by the Department of Planning which gives consideration to the objective of this direction, or*
 - (d) is of minor significance.*

Comment: Lot 14/846633 is entirely zoned "RU2 Rural Landscape" by the PSLEP, and no environment protection zone currently applies. It is nearby, but beyond, the Uffington State Forest system (13km away). It is not recognised by the LHRCP as containing any priority conservation areas (see **Figure 10**).

The site contains open forest/woodland vegetation with a few older remnant trees surrounded by younger tree regrowth and no native understorey (see **Attachment G** Section 4.1).

One (1) Endangered Ecological Community (EEC) is considered to be present within 1.14ha towards the SW corner of the site, and is intergraded with another vegetation community for a further 4.8ha (see **Attachment G** Section 4.1.1); namely: -

- Hunter Lowland Redgum Forest in the Sydney Basin Bioregion.

Away from Barties Creek at the SW corner, the underlying geology is near or at the surface and the soils are particularly fragile and poorly developed (see **Attachment D** Sections 4.0 to 7.0). Consequently, the components of this EEC

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are isolated, vulnerable to wind and storm events, and vulnerable to competition for light and the site's few nutrients from other emerging and more resilient vegetation communities.

Significantly, the site is entirely vulnerable to infestation by noxious weeds of significance (see **Attachment G** Section 4.1.3). It is presently and effectively managed to remove the occurrence of noxious species and prevent reinfestation (see **Attachment E**).

Trees with hollows for roosting or nesting by avifauna, aboreal mammal, reptile and microchiropteran bat species are distributed unevenly across the site, with the majority located towards the SW corner. It is noted a water access point is being established to the dam in the SW corner as part of site's current fire management plan, and will be dedicated for RFS use.

Ecological investigation recommends measures be implemented to (see Section 9 of **Attachment G**): -

- avoid removing large older trees and hollow-bearing trees, and compensate for native vegetation removed;
- manage weeds in the long-term;
- protect habitat supporting the Brush-tailed Phascogale species;
- protect habitat supporting the Koala species;
- protect habitat supporting the Grey-crowned Babbler species; and
- control predation by domestic cats and dogs.

Initiatives have been designed and are being implemented to preserve the site's key habitat values during approval works for construction and operation phases of the development. These include: -

- protecting all habitat vegetation outside of the disturbance areas;
- confining native vegetation clearing and disturbance to nominated building envelopes and bushfire management zones (see **Attachment L**);
- maintaining habitat trees identified and marked by the ecologist (see **Attachment R**);
- maintaining the noxious weed management program (see **Attachment E**);
- installing nest boxes (particularly for the Brush-tailed Phascogale - see **Attachment J**);
- installing fencing that permits the safe passage of koalas (see **Attachment Q**);
- enforcing residential-area vehicle speed limits to minimise fauna injuries and fatalities (see **Attachment Q**); and
- excluding the keeping of domestic cats in the site (see **Attachment Q**).

Active ongoing management of the whole of Lot 14/846633 is necessary to prevent weed reinfestation, reduce fire hazard and retain its key habitat values,

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which cannot be achieved by conserving any part of it within an environmental protection zone.

The planning proposal will result in the loss of only 239 trees (pp.1-3 of **Attachment O**) towards: -

- erecting dwellings on all lots;
- constructing driveways on all lots;
- maintaining APZ's on all lots;
- constructing the road through the site;
- installing two (2) detention basins; and
- establishing a water access point to the existing SW dam for dedicated RFS use.

To compensate for this loss, planting of like-tree species can be established within areas of the site previously cleared for pasture and presently devoid of tree cover; namely Sectors 1, 2, 3 & 4 (see p.27 of **Attachment O** and p. 13 of **Attachment N**). A total of 749 plantings can be achieved within the targeted areas, realising a gain of 510 trees (or 3.13 trees planted for each tree removed) and a 9.9% increase in the site's tree population (p.9 of **Attachment P**).

Whilst the planning proposal is strictly inconsistent with Direction 2.1, its inconsistency is considered to be of minor significance and to be balanced by competing measures to manage noxious weed infestation, to retain and improve the drainage line environments where subsurface conditions can better sustain vulnerable populations and communities, to preserve use of the site by vulnerable species, and to significantly expand the site's tree population with strategic plantings. The measures to minimise the proposal's impact on the site's significant environmental interactions can be confirmed at the Development Application stage.

Relevant / Consistent / Inconsistent /Comments:

Planning Proposal's inconsistency with Direction 2.1 is of minor significance and can be offset by other measures to minimise the site's current decline – this can be confirmed at Development Application stage.

Applicable Direction – Direction 2.3 – Heritage Conservation

(1) The objective of this direction is to conserve items, areas, objects and places of environmental heritage significance and indigenous significance.

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(3) This direction applies when a relevant planning authority prepares a planning proposal.

- (4) A planning proposal must contain provisions that facilitate the conservation of:*
- (a) items, places, buildings, works, relics, moveable objects or precincts of environmental heritage significance to an area, in relation to the historical, scientific, cultural, social, archaeological, architectural, natural or aesthetic value of the item, area, object or place, identified in a study of the environmental heritage of the area,*
 - (b) Aboriginal objects or Aboriginal places that are protected under the National Parks and Wildlife Act 1974, and*
 - (c) Aboriginal areas, Aboriginal objects, Aboriginal places or landscapes identified by an Aboriginal heritage survey prepared by or on behalf of an Aboriginal Land Council, Aboriginal body or public authority and provided to the relevant planning authority, which identifies the area, object, place or landscape as being of heritage significance to Aboriginal culture and people.*
- (5) A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that:*
- (a) the environmental or indigenous heritage significance of the item, area, object or place is conserved by existing or draft environmental planning instruments, legislation, or regulations that apply to the land, or*
 - (b) the provisions of the planning proposal that are inconsistent are of minor significance.*

Comment: Lot 14/846633 is not identified by either the PSLEP, or the AHIMS and Australian Heritage databases (see **Attachments B & C**), as containing known items of heritage significance.

The site is within the Worimi Local Aboriginal Land Council (LALC) area (see **Figure 13**). Informal enquiries by the owner's agent with the LALC have confirmed the site has no heritage or cultural significance.

The site can be investigated formally for heritage and cultural significance at Development Application stage.

Relevant / Consistent / Inconsistent /Comments:

Any inconsistency by Planning Proposal with Direction 2.3 is likely to be of minor significance – this can be confirmed at Development Application stage.

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Applicable Direction – Direction 3.1 – Residential Zones

- (1) The objectives of this direction area: -
 - (a) to encourage a variety and choice of housing types to provide for existing and future housing needs;
 - (b) to make efficient use of existing infrastructure and services and ensure that new housing has appropriate access to infrastructure and services;
 - (c) to minimise the impact of residential development on the environment and resource lands.
- (3) This direction applies when a relevant planning authority prepares a planning proposal that will affect land within:
 - (a) an existing or proposed residential zone (including the alteration of any existing residential zone boundary),
 - (b) any other zone in which significant residential development is permitted or proposed to be permitted.
- (4) A planning proposal must include provisions that encourage the provision of housing that will:
 - (a) broaden the choice of building types and locations available in the housing market, and
 - (b) make more efficient use of existing infrastructure and services, and
 - (c) reduce the consumption of land for housing and associated urban development on the urban fringe, and
 - (d) be of good design.
- (5) A planning proposal must, in relation to land to which this direction applies:
 - (a) contain a requirement that residential development is not permitted until land is adequately serviced (or arrangements satisfactory to the council, or other appropriate authority, have been made to service it), and
 - (b) not contain provisions which will reduce the permissible residential density of land.
- (6) A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the provisions of the planning proposal that are inconsistent are:
 - (a) justified by a strategy which:
 - (i) gives consideration to the objective of this direction, and
 - (ii) identifies the land which is the subject of the planning proposal (if the planning proposal relates to a particular site or sites), and
 - (iii) is approved by the Director-General of the Department of Planning, or
 - (b) justified by a study prepared in support of the planning proposal which gives consideration to the objective of this direction, or

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(c) in accordance with the relevant Regional Strategy, Regional Plan or Sub-Regional Strategy prepared by the Department of Planning which gives consideration to the objective of this direction, or
(d) of minor significance.

Comment: Lot 14/846633 is zoned "RU2 Rural Landscape" by the PSLEP, and the Planning Proposal seeks to rezone the site to "R5 Large Lot Residential" and alter the minimum lot size standard from 40ha to 1ha.

The site is clustered with 28 rural residential lots containing dwellings, varying between 1.5 hectares and 3.6ha, being the consequence of the "concessional lot" provision in Clause 13 of the *Port Stephens Local Environmental Plan 1987*. Whilst not originally an intended outcome, this provision has, nevertheless, already transformed the locality from broad-scale rural land to a rural residential neighbourhood. All lots in the neighbourhood are accessed direct from Giles Road (see **Attachment I**). The site is serviced by reticulated power supply and telecommunication services, but is not serviced by reticulated sewer and water systems.

Alternatively, On Site Sewage Management applies to the locality as per Council's OSSM Technical Manual. The site has capability to yield 68 dwellings (i.e. 1 x 4-bedroom dwelling per 0.4ha of usable area). The proposal will utilise only 38% of this capability, thus resulting in 62% reserve capacity for the site.

As regards water supply, the capture of rainwater applies to the locality. Based on average rainfall data for the locality (1,000mm per year), each allotment in the locality can be sustained for non-reticulated sources of water supply provided 350m² minimum of impervious surface is available to capture and direct rainfall runoff into sufficiently-sized tanks/reservoirs.

The planning proposal: -

- broadens the supply of housing in Seaham by creating 26 allotments within 20km of, and centrally between, the "major regional centres" of Maitland (16km) and Raymond Terrace (15.5km), the "town" of East Maitland (19km) and the "stand alone shopping centre" of Green Hills (18km);
- is in-fill, low-impact development clustered with 28 existing rural residential allotments that utilises existing road, electricity and telecommunications infrastructure;

The planning proposal's yield for On Site Sewage Management can be confirmed by specialist assessment at Development Application stage; otherwise the planning proposal is consistent with the objectives and requirements of Direction 3.1.

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Relevant / Consistent / Inconsistent /Comments:

Planning Proposal is consistent with Direction 3.1, except that the capacity of the site for On Site Sewage Management needs to be confirmed at Development Application stage.

Applicable Direction – [Direction 3.4 – Integrating Land Use and Transport](#)

- (1) *The objectives of this direction is to ensure that development achieves the objectives: -*
- (a) *improving access to housing, jobs and services by walking, cycling and public transport;*
 - (b) *increasing the choice of available transport and reduce dependence on cars;*
 - (c) *reducing travel demand including the number of trips generated by the development and the distances travelled, especially by car;*
 - (d) *supporting the efficient and viable operation of public transport services;*
 - (e) *providing for the efficient movement of freight.*
- (3) *This direction applies when a relevant planning authority prepares a planning proposal that will create, alter or remove a zone or a provision relating to urban land, including land zoned for residential, business, industrial, village or tourist purposes.*
- (4) *A planning proposal must locate zones for urban purposes and include provisions that give effect to and are consistent with the aims, objectives and principles of:*
- (a) *Improving Transport Choice – Guidelines for planning and development (DUAP 2001), and*
 - (b) *The Right Place for Business and Services – Planning Policy (DUAP 2001).*
- (5) *A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the provisions of the planning proposal that are inconsistent are:*
- (a) *justified by a strategy which:*
 - (i) *gives consideration to the objective of this direction, and*
 - (ii) *identifies the land which is the subject of the planning proposal (if the planning proposal relates to a particular site or sites), and*
 - (iii) *is approved by the Director-General of the Department of Planning, or*
 - (b) *justified by a study prepared in support of the planning proposal which gives consideration to the objective of this direction, or*
 - (c) *in accordance with the relevant Regional Strategy, Regional Plan or Sub-Regional Strategy prepared by the Department of Planning which gives consideration to the objective of this direction, or*

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(d) of minor significance.

Comment: Lot 14/846633 is zoned "RU2 Rural Landscape" by the PSLEP, and the Planning Proposal seeks to rezone the site to "R5 Large Lot Residential".

The site is within 10km of the established "smaller village" services at Wallalong (5.8km), Woodville (8.4km), Seaham Village (7km) and Hinton (7.7km), within 15km of the established "local centre" of Morpeth (12.2km), and within 20km of the commercial hubs of Maitland (16km) and Raymond Terrace (15.5km). There is minimal provision of public transport in the rural west of the Port Stephens LGA, and future residents would rely on private vehicle use.

The planning proposal facilitates the supply of "higher-end" housing, whereby there is low reliance on alternative transport options; this is considered to justify the inconsistency with Direction 3.2.

Relevant / Consistent / Inconsistent /Comments:

Planning Proposal's inconsistency with Direction 3.4 is of minor significance.

Applicable Direction – Direction 4.1 – Acid Sulphate Soils

- (1) The objective of this direction is to avoid significant adverse environmental impacts from the use of land that has a probability of containing acid sulfate soils.*
- (3) This direction applies when a relevant planning authority prepares a planning proposal that will apply to land having a probability of containing acid sulfate soils as shown on the Acid Sulfate Soils Planning Maps.*

Comment: Lot 14/846633 is identified by the PSLEP ASS Map as "Class 5" land, and is more than 1km clear of any other "class" of land (see **Figure 20**).

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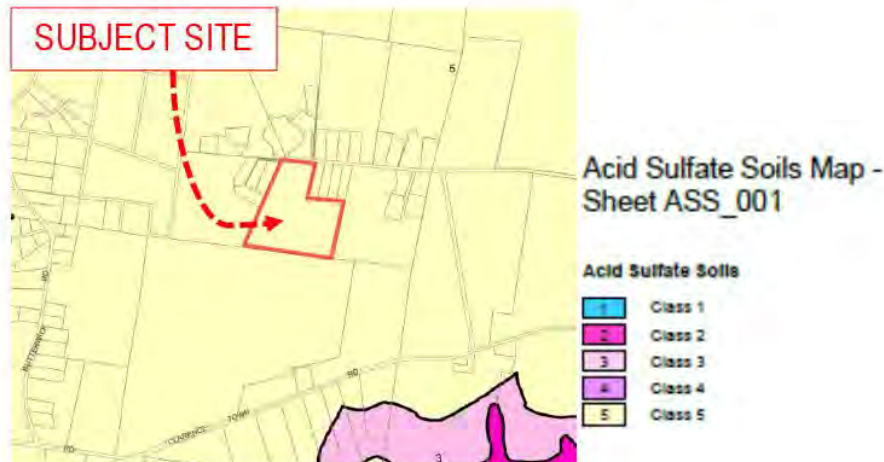
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Figure 20: Context of Site in Port Stephens LEP 2013 – ASS Map - extract



Direction 4.1, therefore, has no application to the site.

Relevant / Consistent / Inconsistent /Comments:

Direction 4.1 is not relevant to the Planning Proposal .

Applicable Direction – Direction 4.3 – Flood Prone Land

(1) *The objectives of this direction are:*

- (a) *to ensure that development of flood prone land is consistent with the NSW Government's Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005, and*
- (b) *to ensure that the provisions of an LEP on flood prone land is commensurate with flood hazard and includes consideration of the potential flood impacts both on and off the subject land.*

(3) *This direction applies when a relevant planning authority prepares a planning proposal that creates, removes or alters a zone or a provision that affects flood prone land.*

Comment: Lot 14/846633 is not identified by the PSLEP Flood Planning Map as a "Flood Planning Area" (see **Figure 21**).

The site is entirely free of inundation by flooding from the Paterson and Hunter Rivers. It extends in height to about RL 50m AHD at its north-western corner, and falls to about RL 20m AHD at the south-western and north-eastern corners.

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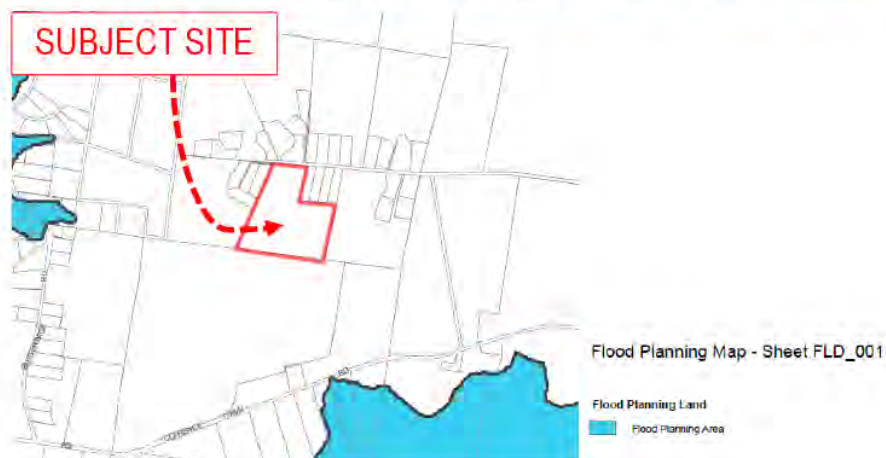
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Figure 21: Context of Site in Port Stephens LEP 2013 – Flood Planning Map - extract



Direction 4.3, therefore, has no application to the site.

Relevant / Consistent / Inconsistent /Comments:

Direction 4.3 is not relevant to the Planning Proposal

Applicable Direction – Direction 4.4 – Planning for Bushfire Protection

(1) The objectives of this direction are:

- (a) to protect life, property and the environment from bush fire hazards, by discouraging the establishment of incompatible land uses in bush fire prone areas, and*
- (b) to encourage sound management of bush fire prone areas.*

(3) This direction applies when a relevant planning authority prepares a planning proposal that will affect, or is in proximity to land mapped as bushfire prone land.

(4) In the preparation of a planning proposal the relevant planning authority must consult with the Commissioner of the NSW Rural Fire Service following receipt of a gateway determination under section 56 of the Act, and prior to undertaking community consultation in satisfaction of section 57 of the Act, and take into account any comments so made,

(5) A planning proposal must:

- (a) have regard to Planning for Bushfire Protection 2006,*

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- (b) *introduce controls that avoid placing inappropriate developments in hazardous areas, and*
 - (c) *ensure that bushfire hazard reduction is not prohibited within the APZ.*
- (6) *A planning proposal must, where development is proposed, comply with the following provisions, as appropriate:*
- (a) *provide an Asset Protection Zone (APZ) incorporating at a minimum:*
 - (i) *an Inner Protection Area bounded by a perimeter road or reserve which circumscribes the hazard side of the land intended for development and has a building line consistent with the incorporation of an APZ, within the property, and*
 - (ii) *an Outer Protection Area managed for hazard reduction and located on the bushland side of the perimeter road,*
 - (b) *for infill development (that is development within an already subdivided area), where an appropriate APZ cannot be achieved, provide for an appropriate performance standard, in consultation with the NSW Rural Fire Service. If the provisions of the planning proposal permit Special Fire Protection Purposes (as defined under section 100B of the Rural Fires Act 1997), the APZ provisions must be complied with,*
 - (c) *contain provisions for two-way access roads which links to perimeter roads and/or to fire trail networks,*
 - (d) *contain provisions for adequate water supply for firefighting purposes,*
 - (e) *minimise the perimeter of the area of land interfacing the hazard which may be developed,*
 - (f) *introduce controls on the placement of combustible materials in the Inner Protection Area.*
- (7) *A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the council has obtained written advice from the Commissioner of the NSW Rural Fire Service, to the effect that, notwithstanding the noncompliance, the NSW Rural Fire Service does not object to the progression of the planning proposal.*

Comment: Lot 14/846633 is identified entirely as bushfire prone (see **Figure 14**), containing vegetation "Category 1" (orange) and vegetation "Buffer" (red). Adjoining land to the south contains no substantial hazard.

The site is presently managed to reduce fire risk in the manner shown in **Attachment H**. The site's fire management plan has been developed in consultation with local RFS personnel. A system of mown debris-free fire breaks is established and maintained internally and around the site's perimeter. A mobile 1,000 litre capacity fire tank and pump unit is permanently stored within the site, whilst separate fixed pump and hose units are located adjacent to the site's dams. A water access point is being established to the dam in the southwest, and will be dedicated for RFS use.

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The planning proposal is structured to match the current fire management plan, with the provision of a 2-way loop road to facilitate emergency access/egress from/to Giles Road, and ongoing RFS use of the SW dam for water supply.

Bushfire Threat Assessment of the proposal, which nominates building envelopes with BAL's applied (see **Attachment L**), concludes that the application of APZ's and the relevant construction standards within the site can provide adequate protection to life and property in the event of a bushfire.

Relevant / Consistent / Inconsistent /Comments:

Planning Proposal is not inconsistent with Direction 4.4.

Applicable Direction – [Direction 5.1 – Implementation of Regional Strategies](#)

- (1) *The objective of this direction is to give legal effect to the vision, land use strategy, policies, outcomes and actions contained in regional strategies.*
- (2) *This direction applies to land to which the following regional strategies apply:*
 - (a) *Far North Coast Regional Strategy*
 - (b) *South Coast Regional Strategy (excluding land in the Shoalhaven LGA)*
 - (c) *Sydney–Canberra Corridor Regional Strategy*
 - (d) *Mid North Coast Regional Strategy (excluding land in the Mid-Coast LGA).*

Comment: Lot 14/846633 is not located within any of the listed strategy areas.

Relevant / Consistent / Inconsistent /Comments:

Planning Proposal does not undermine Direction 5.1

Applicable Direction – [Direction 5.10 – Implementation of Regional Plans](#)

- (1) *The objective of this direction is to give legal effect to the vision, land use strategy, goals, directions and actions contained in Regional Plans.*
- (2) *This direction applies to land to which a Regional Plan has been released by the Minister for Planning.*

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(3) This direction applies when a relevant planning authority prepares a planning proposal.

(4) Planning proposals must be consistent with a Regional Plan released by the Minister for Planning.

(5) A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Secretary of the Department of Planning and Environment (or an officer of the Department nominated by the Secretary), that the extent of inconsistency with the Regional Plan:

- (a) is of minor significance, and*
- (b) the planning proposal achieves the overall intent of the Regional Plan and does not undermine the achievement of its vision, land use strategy, goals, directions or actions.*

Comment: Lot 14/846633 is located within the HRP area. An assessment of the planning proposal against relevant actions within the HRP is presented in Section 6.3. In summary, the proposal: -

- in relation to directions to grow the economy of Port Stephens, to protect and enhance agricultural productivity, and to plan for greater land use compatibility, it will not impact on: -
 - natural attributes to attract tourism;
 - potential for agricultural activity;
 - material suitable for commercial extraction;
- in relation to directions to protect and connect natural areas, to sustain water quality and security, and to increase resilience to hazards and climate change, it will not impact on: -
 - priority conservation areas;
 - drinking water catchments;
 - areas affected by flooding, mine subsidence and land contamination;
- in relation to directions to promote housing diversity, and to deliver infrastructure to support growth and communities, it will: -
 - respect the settlement pattern of the locality, and not encroach on sensitive land uses or high hazard areas;
 - promote new housing opportunities to maximise the use of infrastructure already provided for rural residential living.

However, the site is mapped entirely as bushfire prone (see **Figure 14**). Bushfire Threat Assessment of the proposal, which nominates building envelopes with BAL's applied (see **Attachment L**), concludes that the application of APZ's and the relevant construction standards within the site can provide adequate protection to life and property in the event of a bushfire.

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Furthermore, the suggested building envelopes and accesses for all lots have been identified on the ground (see photographs on pp.5-14 & 15-20 of **Attachment O**). The tree removal data presented in **Attachment O** (pp.1-3) indicates tree loss can be limited to a total of 239 trees, towards: -

- o erecting dwellings on all lots;
- o constructing driveways on all lots;
- o maintaining APZ's on all lots;
- o constructing the road through the site;
- o installing two (2) detention basins;
- o establishing a water access point to the existing SW dam for dedicated RFS use; and
- o protecting and enhancing habitat supporting the threatened Phascogale, Koala and Babbler species.

To compensate for the tree loss, planting of like-tree species can be established within areas of the site previously cleared for pasture and presently devoid of tree cover; namely Sectors 1, 2, 3 & 4 (see p.27 of **Attachment O** and p. 13 of **Attachment N**).

The plantings can be achieved within the targeted areas to realise a gain of 3.13 trees for each one removed, and a 9.9% increase in the site's tree population (p.9 of **Attachment P**). In addition, the proposal can substantially enhance the habitat of the Phascogale, Koala and Babbler species (see pp.5, 6- 16 of **Attachment J**, pp. 11-13 of **Attachment N**, pp.4 & 27 of **Attachment O**, and p.9 of **Attachment P**).

Otherwise, the planning proposal appears consistent with the vision, land use strategy, goals, directions and actions contained in the HRP and, therefore, the objectives of Direction 5.10.

Relevant / Consistent / Inconsistent /Comments:

The Planning Proposal is consistent with Direction 5.10.

In summary, the proposal is: -

- inconsistent with Section 117 Direction 1.2, but the inconsistency is justified;
- inconsistent with Section 117 Directions 1.3 and 3.4, but the inconsistencies are of minor significance; and
- appears consistent with Section 117 Directions 2.1, 2.3 and 3.1, but this needs to be confirmed at the Development Application stage.

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*Parker Scanlon
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The proposal otherwise: -

- is consistent with Section 117 Directions 1.5, 4.4 and 5.10;
- is not relevant to Section 117 Directions 4.1 and 4.3; and
- does not undermine Section 117 Direction 5.1.

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SECTION C – Environmental, social and economic impact

6.7 Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

Ecological investigation indicates the site does support threatened fauna species. It recommends measures be implemented to (see Section 9 of **Attachment G**): -

- avoid removing large older trees and hollow-bearing trees, and compensate for native vegetation removed;

Impact Assessment: - the site presently (at January 2018) contains 5,105 mature trees, comprised predominantly of Iron Bark (62%), Spotted Gum (30%), Forest Red Gum/Grey Gum (7%) species (see p.4 of **Attachment P**).

Some (83) of these mature trees are habitat trees (HBT's) - all HBT's have been located, tagged and uniquely numbered (see Appendix E of **Attachment G**). Building envelopes can be positioned to avoid removal or disturbance to any of these HBT's (see **Attachment R**). Furthermore, one (1) HBT (no. 28) is positioned within the Outer Protection Area of the APZ for Lot 14 only, whilst HBT's extend into the BAL-29 area for Lot 2 (2 – HBT nos. 81 & 82), Lot 5 (1 – HBT no. 78), Lot 8 (1 – HBT no. 30), and Lot 11 (1 – HBT no. 10). Significantly, all HBT's can be retained without compromising the management of APZ's across the entire site.

In addition, the suggested building envelopes and accesses for all lots have been identified on the ground (see photographs on pp.5-14 & 15-20 of **Attachment O**). The tree removal data presented in **Attachment O** (pp.1-3) indicates tree loss can be limited to a total of 239 trees, towards: -

- erecting dwellings on all lots;
- constructing driveways on all lots;
- maintaining APZ's on all lots;
- constructing the road through the site;
- installing two (2) detention basins; and
- establishing a water access point to the existing SW dam for dedicated RFS use.

To compensate for this loss, planting of like-tree species can be established within areas of the site previously cleared for pasture and presently devoid of tree cover; namely Sectors 1, 2, 3 & 4 (see p.27 of **Attachment O** and p. 13 of **Attachment N**). A total of 749 plantings can be achieved within the targeted areas, realising a gain of 510 trees (or 3.13 trees planted for each tree removed) and a 9.9% increase in the site's tree population (p.9 of **Attachment P**).

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- manage weeds in the long-term;

Comment: - the site is presently and effectively managed to minimise the occurrence of noxious species (see **Attachment E**). The proposal involves maintaining this weed management program.

- protect habitat supporting the Brush-tailed Phascogale species;

Comment: - the site is presently and effectively managed to protect and enhance habitat supporting the Phascogale (see **Attachment J**).

In particular, 28 forage areas are being established about suitable habitat trees on Lots 2, 7, 13, 14, 15, 16, 20, 21, 22, 23 & 24 (see pp.5, 6-11 of **Attachment J**), whilst 20 nesting/breeding boxes suitable for use by the phascogale are being installed in trees on Lots 2, 3, 8, 12, 13, 14, 15, 16, 17, 18, 19, 20, 22, 23, 24, 25 & 26 (see pp.5, 12-16 of **Attachment J**). Significantly, all forage areas and nesting/breeding spots can be retained without compromising the management of APZ's across the entire site.

- protect habitat supporting the Koala species;

Comment: - the site presently contains 385 Koala feed trees comprising Forest Red Gum and Forest Grey Gum species (see p. 9 of **Attachment P** and pp.5-6 of **Attachment Q**).

The suggested building envelopes and accesses for all lots have been identified on the ground (see photographs on pp.5-14 & 15-20 of **Attachment O**). The tree removal data presented in **Attachment O** (pp.1-3) indicates Koala feed tree loss can be limited to a total of 13 trees, towards: -

- erecting dwellings on all lots;
- constructing driveways on all lots;
- maintaining APZ's on all lots;
- constructing the road through the site;
- installing two (2) detention basins; and
- establishing a water access point to the existing SW dam for dedicated RFS use.

To compensate for this loss, planting of like-tree species can be established within areas of the site previously cleared for pasture and presently devoid of tree cover; namely Sectors 1, 2, 3 & 4 (see p.27 of **Attachment O** and p. 13 of **Attachment N**). A total of 454 plantings can be achieved within the targeted areas, realising a gain of 441 trees (or 34.92 trees planted for each tree removed) and a 114.5% increase in the site's Koala feed tree population (p.12 of **Attachment N** and p.9 of **Attachment P**).

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- protect habitat supporting the Grey-crowned Babbler species; and

Comment: - the site presently contains only 12 nesting trees comprising the local Babbler community's preferred Prickly Leafed Paper Bark species (see p. 2 of **Attachment J** and p.4 of **Attachment P**). These are all located nearby Heydons Creek, so that no Babbler nesting tree loss will occur from the proposal.

Regardless, planting of the Babbler's preferred nesting species can be established within areas of the site previously cleared for pasture and presently devoid of tree cover; namely Sectors 1 & 2 (see pp.4 & 27 of **Attachment O** and pp.11 & 13 of **Attachment N**). A total of 140 plantings can be achieved within the targeted areas, realising a gain of 152 trees without loss that represents a massive boost to the site's Babbler preferred nesting tree population (p.12 of **Attachment N** and p.9 of **Attachment P**).

- control predation by domestic cats and dogs.

Comment: - the proposal involves placing restrictions to prohibit domestic cats, and to limit domestic dogs to one (1) per lot contained within a koala-proof compound (see p.2 of **Attachment P** and p.3 of **Attachment Q**).

In summary, the planning proposal will result in the loss of some native vegetation, including 13 Koala feed trees, but in no loss of HBT's. Measures can be implemented to generate positive strategic outcomes for the site by increasing tree population, restoring vegetation canopy to areas denuded by past grazing activities, enhancing habitat for the Phascogale, Koala and Babbler species, ensuring weed management is maintained, and formally establishing controls for domestic cats and dogs.

Therefore, the planning proposal is considered unlikely to adversely affect the site's significant habitats, species, populations or communities.

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6.8 Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

Environmental Effects – Heritage

Lot 14/846633 is not identified by the PSLEP as containing or affecting any items of heritage significance.

The AHIMS and Australian Heritage databases list the site as containing no known aboriginal items of heritage significance (see **Attachments B & C**).

The site is within the Worimi Local Aboriginal Land Council (LALC) area (see **Figure 13**). Informal enquiries by the owner's agent with the LALC have confirmed the site has no heritage or cultural significance.

Therefore, the planning proposal is considered unlikely to adversely affect items of heritage and cultural significance – this can be formally confirmed at Development Application stage.

Environmental Effects – Contamination

Lot 14/846633 is not listed in the NSW Environmental Protection Authority's Contaminated Land Public Record.

The site has been utilised for grazing (up to 12 animals), and before 1983 was specifically a flood refuge for stock (see **Attachment D** Section 1.0) as part of an extensive pastoral holding extending to south towards the Hunter River into McClymonts Swamp.

With the emergence of "small lot holdings" in the locality, and particularly because of poor feed availability, there has been no recent attempt to establish a commercially-viable agricultural enterprise on the site.

Therefore, the planning proposal is considered unlikely to be impacted by significant contamination issues – this can be formally confirmed at Development Application stage.

Environmental Effects – Traffic Impacts and Vehicular & Pedestrian Access

Lot 14/846633 is clustered with 28 rural residential lots containing dwellings that are accessed direct from Giles Road (see **Attachment I**) and are calculated to generate 252 vehicle movements per day (vpd – derived from **Attachment F**

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Section 4.1.2). Giles Road is a local rural road that contains a 4m wide sealed pavement with 0.5m – 1m shoulders, and forms a cul-de-sac from Crofts Road (see Section 2.2 of **Attachment F** and **Attachment M**). The present condition of Giles Road has been compromised by the installation of various inadequate driveway junctions and drainage devices since its original construction (see **Attachment M**).

For the existing traffic movements, Giles Road warrants upgrade to a standard of 6m wide sealed pavement with 0.5m shoulder (see **Attachment F** Section 4.1.2). This can be achieved as a minor adjustment exercise, although the current effectiveness of the drainage structures along the northern side of Giles Road requires investigation and rectification (see **Attachment M**).

The planning proposal is expected to increase traffic volume for Giles Road from 252vpd to 486vpd (derived from **Attachment F** Sections 3.2.1, 3.2.2 & 4.1.1). Nevertheless, the forecast volume is still well within the capacity of the upgraded road standard, and the Austroads Level of Service would remain at "A".

Croft Road is similarly a local road that contains a 6m wide sealed pavement with 0.5m shoulders, and forms the only connection of Giles Road to Clarence Town Road and the wider road network Road (see **Attachment F** Section 2.2). It is considered adequate for both the existing and proposed traffic movements (see **Attachment F** Section 4.1.2).

Existing traffic flow is extremely light in the locality, with PM measurements of 30 vehicles per hour (vph) through the Crofts Road/Clarence Town Road intersection encountering 320vph along Clarence Town Road (see **Attachment F** Section 2.3). For the existing traffic flows and posted speed limits, the intersection warrants upgrade to provide auxiliary lanes in Clarence Town Road for westbound "Channelised Right Turn" and eastbound "Basic Left Turn" (see **Attachment F** Section 4.2).

The planning proposal is expected to increase peak flows from 30vph to 58vph through the Croft Road/Clarence Town Road intersection (see **Attachment F** Sections 3.2.1, 3.2.2 & 4.1.1). Nevertheless, the forecast flow is still well within the capacity of the upgraded road intersection standard.

There are no pedestrian or cyclist facilities in the locality, and no observable pedestrian or cycling activity (see **Attachment F** Section 2.4). Council has no plans for developing or upgrading Giles Road (see **Attachment F** Section 2.5).

The planning proposal is expected to increase traffic volumes from 230 vehicle movements per day (vpd) to 450 vpd, and peak flows from 30vph to 58vph through the Croft Road/Clarence Town Road intersection (see **Attachment F** Sections 3.2.1, 3.2.2 & 4.1.1). Nevertheless, the Level of Service would remain at "A".

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Within the site, the proposal provides a satisfactorily graded and visible intersection with Giles Road, and low speed and safe environment with free flow conditions (see **Attachment F** Sections 3.3.1 & 3.3.2).

Therefore, subject to the Giles Road and intersection upgrades, the planning proposal is considered unlikely to adversely affect the local road network and can be accommodated within the recommended upgrades to achieve satisfactory operation for the observed existing conditions.

Environmental Effects – Stormwater Runoff

Lot 14/846633 extends in height to about RL 50m AHD at its north-western corner, and falls to about RL 20m AHD at the south-western and north-eastern corners. A low ridge traverses the site from north-west to south-east, and is bordered either side by Barties Creek to the south-west (2nd order watercourse – 20m vegetated riparian corridor required either side of the watercourse) and Heydons Creek to the north-east (1st order watercourse – 10m vegetated riparian corridor required either side of the watercourse). Heydons Creek and Barties Creek are partially tree-lined, and pass through existing dams at and beyond the site's extremities.

At present, the stormwater runoff intercepted by Giles Road is conveyed randomly towards the upstream terminal of Heydons Creek, and is creating significant erosion and sedimentation impacts towards and along Heydons Creek. The planning proposal will provide a managed pathway for this runoff.

The planning proposal, otherwise, involves a low density of development (i.e. 1 dwelling/hectare) across a low ridge, where runoff generated from the road pavement and roof surfaces can be easily intercepted and managed by standard and suitably-sized detention and water quality treatment devices (e.g. rainwater tanks) before discharge into the drainage lines.

The proposal is therefore considered unlikely to adversely affect the water quality conditions of Heydons Creek and Barties Creek – this can be formally confirmed at Development Application stage.

Environmental Effects – On Site Sewage Management

Lot 14/846633 is within a locality where a reticulated sewer system is not available for connection, so that On Site Sewage Management applies as per Council's OSSM Technical Manual. The site has capability to yield 68 dwellings (i.e. 1 x 4-bedroom dwelling per 0.4ha of usable area - see Section 2.2.6 above).

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The planning proposal creates allotments for 26 dwellings at a low density of 1 dwelling/hectare, so that only 38% of its capability will be utilised, thus resulting in 62% reserve capacity for the site.

The proposal is therefore considered unlikely to generate significant adverse risk to the site's environment – this can be formally confirmed at Development Application stage.

Environmental Effects – Bushfire Hazard

Lot 14/846633 is identified entirely as bushfire prone (see **Figure 14**), containing vegetation "Category 1" (orange) and vegetation "Buffer" (red). Adjoining land to the south contains no substantial hazard.

The site is presently managed to reduce fire risk in the manner shown in **Attachment H**. The site's fire management plan has been developed in consultation with local RFS personnel. A system of mown debris-free fire breaks is established and maintained internally and around the site's perimeter. A mobile 1,000 litre capacity fire tank and pump unit is permanently stored within the site, whilst separate fixed pump and hose units are located adjacent to the site's dams. A water access point is being established to the dam in the southwest, and will be dedicated for RFS use.

The planning proposal is structured to match the current fire management plan, with the provision of a loop road to facilitate emergency access/egress from/to Giles Road, and ongoing RFS use of the SW dam for water supply. Bushfire Threat Assessment of the proposal, which nominates building envelopes with BAL's applied (see **Attachment L**), concludes that the application of APZ's and the relevant construction standards within the site can provide adequate protection to life and property in the event of a bushfire.

Furthermore, the suggested building envelopes and accesses for all lots have been identified on the ground (see photographs on pp.5-14 & 15-20 of **Attachment O**). The tree removal data presented in **Attachment O** (pp.1-3) indicates tree loss can be limited to a total of 239 trees, towards: -

- erecting dwellings on all lots;
- constructing driveways on all lots;
- maintaining APZ's on all lots;
- constructing the road through the site;
- installing two (2) detention basins;
- establishing a water access point to the existing SW dam for dedicated RFS use; and
- protecting and enhancing habitat supporting the threatened Phascogale, Koala and Babbler species.

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To compensate for the tree loss, planting of like-tree species can be established within areas of the site previously cleared for pasture and presently devoid of tree cover; namely Sectors 1, 2, 3 & 4 (see p.27 of **Attachment O** and p. 13 of **Attachment N**).

The plantings can be achieved within the targeted areas to realise a gain of 3.13 trees for each one removed, and a 9.9% increase in the site's tree population (p.9 of **Attachment P**). In addition, the proposal can substantially enhance the habitat of the Phascogale, Koala and Babbler species (see pp.5, 6- 16 of **Attachment J**, pp. 11-13 of **Attachment N**, pp.4 & 27 of **Attachment O**, and p.9 of **Attachment P**).

The proposal's measures to mitigate bushfire hazard may generate short-to-medium term tree-loss impacts, but will generate significant gain in the site's tree population and positive outcomes for threatened fauna species currently using the site.

Environmental Effects – Water Supply

Lot 14/846633 is within a locality where a reticulated water supply system is not available for connection, so that on the site capture of rainwater applies.

Based on average rainfall data for the locality (1,000mm per year), each allotment in the locality can be sustained for non-reticulated sources of water supply provided 350m² minimum of impervious surface is available to capture and direct rainfall runoff into sufficiently-sized tanks/reservoirs. This will balance measures to manage the erosive forces of stormwater runoff.

The proposal is therefore considered unlikely to generate significant adverse effects by or on the site's environment – this can be formally confirmed at Development Application stage.

Environmental Effects – Odour

The SW corner of Lot 14/846633 is located 230m, 260m, 300m and 330m respectively from sheds on Lot 51/1069432 currently leased for "free range" egg production to generate interim income that meets holding expenses. The owner of Lot 51/1069432 is not intending to expand the facility.

A separation distance of 413m applies to the farthest shed when the facility is operating at capacity. The resulting arc (i.e. scribed from the farthest shed) generally follows Barties Creek, so that ongoing operation of the facility on Lot

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51/1069432 at full capacity is unlikely to generate adverse odour impact on future rural residential development established on Lot 14/846633 (see **Attachment K** Sections 2.4 & 3.1).

It is noted Lot 51/1069432 is part of the Wallalong “future growth area” flagged by the PSPS (see Section 2.2.2 above and **Figure 2**).

6.9 Has the planning proposal adequately addressed any social and economic effects?

Lot 14/846633 is part of a neighbourhood containing 28 serviced rural residential lots.

The planning proposal is infill development creating 26 allotments for “higher-end” housing that matches the prevailing neighbourhood.

The proposal is therefore unlikely to generate adverse social and economic effects.

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SECTION D – State and Commonwealth interests

6.10 Is there adequate public infrastructure for the planning proposal?

Lot 14 in DP 8466 is directly accessed from Giles Road, whilst electricity and telecommunications services are available to the site.

Developer contributions for local infrastructure will apply to the future development of Lot 14/846633 as per the *Port Stephens Section 94 Contributions Plan 2007*.

Reticulated sewer is not provided to the neighbourhood, and sewage management for future dwellings will be by means of site disposal as per Council's OSSM Technical Manual.

Reticulated water supply is not provided to the neighbourhood. However, average rainfall data for the locality (1,000mm per year) suggests each proposed allotment can be sustained using sufficiently-sized rainfall capture devices (e.g. tanks/reservoirs).

6.11 What are the views of the State and Commonwealth public authorities consulted in accordance with the Gateway determination?

No authorities have been consulted at this stage. The planning proposal will be referred by Council to public authorities for comment; namely: -

- Hunter Local Land Services;
- Hunter Water Corporation;
- Land and Natural Resources;
- NSW Office of Water;
- NSW Rural Fire Service;
- Office of Agricultural Sustainability and Food Security;
- Office of Environment and Heritage;
- Parks and Reserves NSW;
- Resources and Energy;
- Roads and Maritime Services;
- State Emergency Service NSW; and
- Worimi Local Aboriginal Land Council.

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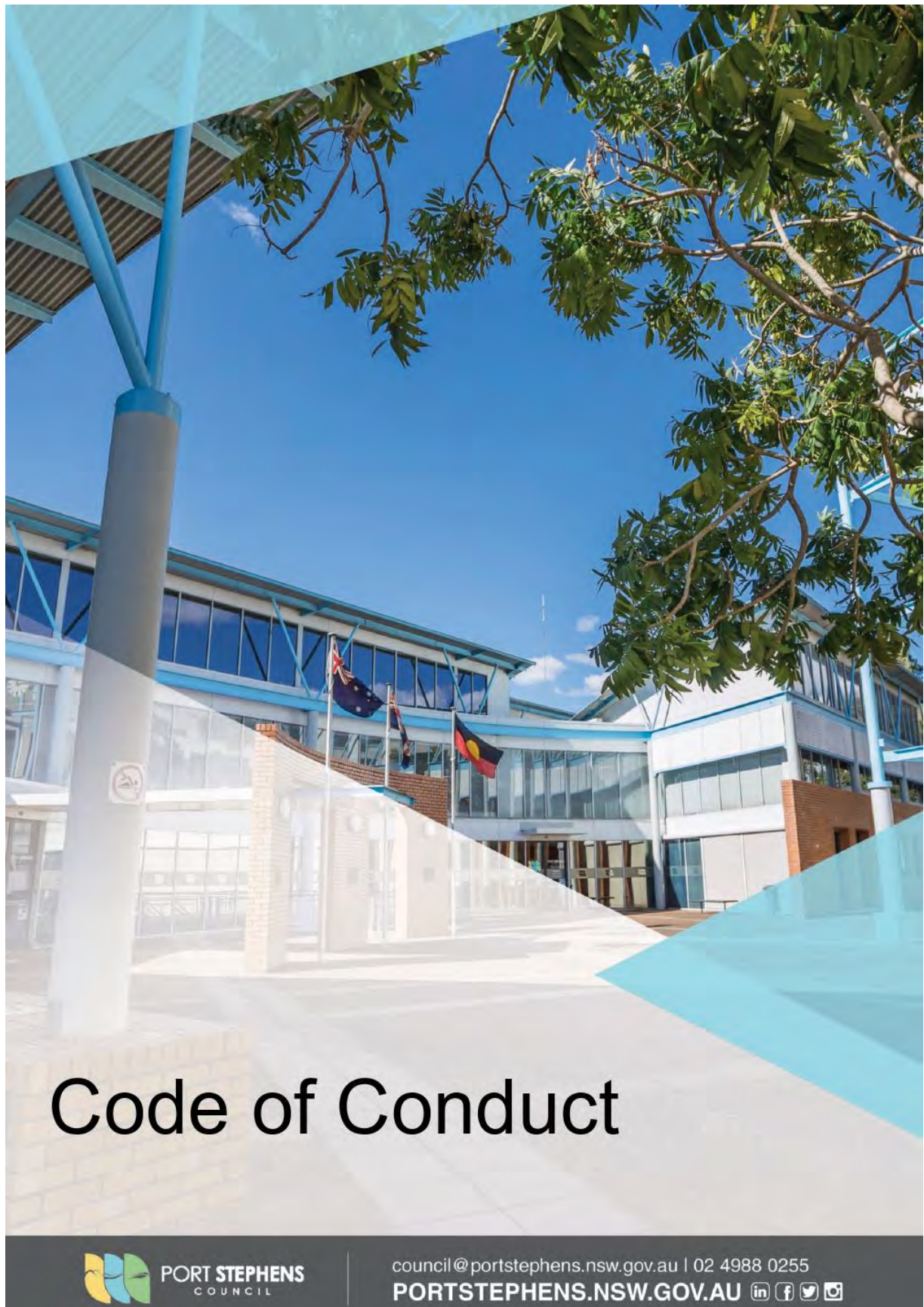
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ITEM 11 - ATTACHMENT 1 AMENDED CODE OF CONDUCT.

The Port Stephens Council has adopted the Model Code of Conduct developed by the Department of Local Government. This Code enhances the Model Code providing Councillors, staff and other council officials with the requirements of Council to ensure Council's commitment to transparency and accountability is maintained in the Port Stephens local government area.

PART 1 INTRODUCTION

This *Model Code of Conduct for Local Councils in NSW* ("the Model Code of Conduct") is made under section 440 of the *Local Government Act 1993* ("LGA") and the *Local Government (General) Regulation 2005* ("the Regulation").

The Model Code of Conduct sets the minimum standards of conduct for council officials. It is prescribed by regulation to assist council officials to:

- understand and comply with the standards of conduct that are expected of them
- enable them to fulfil their statutory duty to act honestly and exercise a reasonable degree of care and diligence (section 439)
- act in a way that enhances public confidence in local government.

Section 440 of the LGA requires every council (including county councils) and joint organisation to adopt a code of conduct that incorporates the provisions of the Model Code of Conduct. A council's or joint organisation's adopted code of conduct may also include provisions that supplement the Model Code of Conduct and that extend its application to persons that are not "council officials" for the purposes of the Model Code of Conduct (eg volunteers, contractors and members of wholly advisory committees).

A council's or joint organisation's adopted code of conduct has no effect to the extent that it is inconsistent with the Model Code of Conduct. However, a council's or joint organisation's adopted code of conduct may prescribe requirements that are more onerous than those prescribed in the Model Code of Conduct.

Councillors, administrators, members of staff of councils, delegates of councils, (including members of council committees that are delegates of a council) and any other person a council's adopted code of conduct applies to, must comply with the applicable provisions of their council's code of conduct. It is the personal responsibility of council officials to comply with the standards in the code and to regularly review their personal circumstances and conduct with this in mind.

Failure by a councillor to comply with the standards of conduct prescribed under this code constitutes misconduct for the purposes of the LGA. The LGA provides for a range of penalties that may be imposed on councillors for misconduct, including suspension or disqualification from civic office. A councillor who has been suspended on three or more occasions for misconduct is automatically disqualified from holding civic office for five years.

Failure by a member of staff to comply with a council's code of conduct may give rise to disciplinary action.

ITEM 11 - ATTACHMENT 1 AMENDED CODE OF CONDUCT.**PRINCIPLES FOR LOCAL GOVERNMENT**

Port Stephens Council is a local authority constituted under the *Local Government Act 1993*. The Act includes the Principles for Local Government for all NSW Councils.

The object of the principles for councils is to provide guidance to enable councils to carry out their functions in a way that facilitates local communities that are strong, healthy and prosperous.

Guiding principles for Council**1) Exercise of functions generally**

The following general principles apply to the exercise of functions by Council.
Council should:

- (a) provide strong and effective representation, leadership, planning and decision-making.
- (b) carry out functions in a way that provides the best possible value for residents and ratepayers.
- (c) plan strategically, using the integrated planning and reporting framework, for the provision of effective and efficient services and regulation to meet the diverse needs of the local community.
- (d) apply the integrated planning and reporting framework in carrying out their functions so as to achieve desired outcomes and continuous improvements.
- (e) work co-operatively with other councils and the State government to achieve desired outcomes for the local community.
- (f) manage lands and other assets so that current and future local community needs can be met in an affordable way.
- (g) work with others to secure appropriate services for local community needs.
- (h) act fairly, ethically and without bias in the interests of the local community.
- (i) be responsible employers and provide a consultative and supportive working environment for staff.

2) Decision-making

The following principles apply to decision-making by Council (subject to any other applicable law). Council should:

- (a) recognise diverse local community needs and interests.
- (b) consider social justice principles.
- (c) consider the long term and cumulative effects of actions on future generations.
- (d) consider the principles of ecologically sustainable development.
- (e) Council decision-making should be transparent and decision-makers are to be accountable for decisions and omissions.

3) Community participation

Council should actively engage with their local communities, through the use of the integrated planning and reporting framework and other measures.

Principles of sound financial management

The following principles of sound financial management apply to Council. Council should:

- (a) spend responsible and sustainable, aligning general revenue and expenses.
- (b) invest in responsible and sustainable infrastructure for the benefit of the local community.
- (c) have effective financial and asset management, including sound policies and processes for the following:
 - (i) performance management and reporting,
 - (ii) asset maintenance and enhancement,
 - (iii) funding decisions,
 - (iv) risk management practices.
- (d) have regard to achieving intergenerational equity, including ensuring the following:
 - (i) policy decisions are made after considering their financial effects on future generations,
 - (ii) the current generation funds the cost of its services.

Integrated planning and reporting principles that apply to Council

The following principles for strategic planning apply to the development of the integrated planning and reporting framework by Council. Council should:

- (a) identify and prioritise key local community needs and aspirations and consider regional priorities.
- (b) identify strategic goals to meet those needs and aspirations.
- (c) develop activities, and prioritise actions, to work towards the strategic goals.
- (d) ensure that the strategic goals and activities to work towards them may be achieved within council resources.
- (e) regularly review and evaluate progress towards achieving strategic goals.
- (f) maintain an integrated approach to planning, delivering, monitoring and reporting on strategic goals.
- (g) collaborate with others to maximise achievement of strategic goals.
- (h) manage risks to the local community or area or to the council effectively and proactively.
- (i) make appropriate evidence-based adaptations to meet changing needs and circumstances.

COUNCIL VALUES



ITEM 11 - ATTACHMENT 1 AMENDED CODE OF CONDUCT.

PART 2 DEFINITIONS

In this code the following terms have the following meanings:

administrator	an administrator of a council appointed under the LGA other than an administrator appointed under section 66
committee	see the definition of "council committee"
complaint	a code of conduct complaint made for the purposes of clauses 4.1 and 4.2 of the Procedures.
conduct	includes acts and omissions
council	includes county councils and joint organisations
council committee	a committee established by a council comprising of councillors, staff or other persons that the council has delegated functions to and the council's audit, risk and improvement committee
council committee member	a person other than a councillor or member of staff of a council who is a member of a council committee other than a wholly advisory committee, and a person other than a councillor who is a member of the council's audit, risk and improvement committee
council official	includes councillors, members of staff of a council, administrators, council committee members, delegates of council and, for the purposes of clause 4.16, council advisers
councillor	any person elected or appointed to civic office, including the mayor and includes members and chairpersons of county councils and voting representatives of the boards of joint organisations and chairpersons of joint organisations
delegate of council	a person (other than a councillor or member of staff of a council) or body, and the individual members of that body, to whom a function of the council is delegated
designated person	a person referred to in clause 4.8
election campaign	includes council, state and federal election campaigns

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environmental planning instrument	has the same meaning as it has in the <i>Environmental Planning and Assessment Act 1979</i>
general manager	includes the executive officer of a joint organisation
joint organisation	a joint organisation established under section 400O of the LGA
LGA	<i>Local Government Act 1993</i>
local planning panel	a local planning panel constituted under the <i>Environmental Planning and Assessment Act 1979</i>
mayor	includes the chairperson of a county council or a joint organisation
members of staff of a council	includes members of staff of county councils and joint organisations
the Office	Office of Local Government
personal information	information or an opinion (including information or an opinion forming part of a database and whether or not recorded in a material form) about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion
the Procedures	the <i>Procedures for the Administration of the Model Code of Conduct for Local Councils in NSW</i> prescribed under the Regulation
the Regulation	the <i>Local Government (General) Regulation 2005</i>
voting representative	a voting representative of the board of a joint organisation
wholly advisory committee	a council committee that the council has not delegated any functions to

PART 3 GENERAL CONDUCT OBLIGATIONSGeneral conduct

- 3.1 You must not conduct yourself in a manner that:
- a) is likely to bring the council or other council officials into disrepute
 - b) is contrary to statutory requirements or the council's administrative requirements or policies
 - c) is improper or unethical
 - d) is an abuse of power
 - e) causes, comprises or involves intimidation or verbal abuse
 - f) involves the misuse of your position to obtain a private benefit
 - g) constitutes harassment or bullying behaviour under this code, or is unlawfully discriminatory.
- 3.2 You must act lawfully and honestly, and exercise a reasonable degree of care and diligence in carrying out your functions under the LGA or any other Act. (section 439).
- 3.3 A Code of Conduct declaration must be signed by all Council officials stating that they have received, read and understand their obligations under the Code of Conduct at the completion the Code of Conduct training.

Fairness and equity

- 3.4 You must consider issues consistently, promptly and fairly. You must deal with matters in accordance with established procedures, in a non-discriminatory manner.
- 3.5 You must take all relevant facts known to you, or that you should be reasonably aware of, into consideration and have regard to the particular merits of each case. You must not take irrelevant matters or circumstances into consideration when making decisions.
- 3.6 An act or omission in good faith, whether or not it involves error, will not constitute a breach of clauses 3.4 or 3.5.

Harassment and discrimination

- 3.7 You must not harass or unlawfully discriminate against others, or support others who harass or unlawfully discriminate against others, on the grounds of age, disability, race (including colour, national or ethnic origin or immigrant status), sex, pregnancy, breastfeeding, race, age, marital or domestic status, homosexuality, disability, transgender relationship status, infectious disease, carer's family responsibilities or breastfeeding, sexual orientation, gender identity or intersex status or political, religious or other affiliation.

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3.8 For the purposes of this code, "harassment" is any form of behaviour towards a person that:

- a) is not wanted by the person
- b) offends, humiliates or intimidates the person, and
- c) creates a hostile environment.

Bullying

3.9 You must not engage in bullying behaviour towards others.

3.10 For the purposes of this code, "bullying behaviour" is any behaviour in which:

- a) a person or a group of people repeatedly behaves unreasonably towards another person or a group of persons, and
- b) the behaviour creates a risk to health and safety.

3.11 Bullying behaviour may involve, but is not limited to, any of the following types of behaviour:

- a) aggressive, threatening or intimidating conduct
- b) belittling or humiliating comments
- c) spreading malicious rumours
- d) teasing, practical jokes or 'initiation ceremonies'
- e) exclusion from work-related events
- f) unreasonable work expectations, including too much or too little work, or work below or beyond a worker's skill level
- g) displaying offensive material
- h) pressure to behave in an inappropriate manner.

3.12 Reasonable management action carried out in a reasonable manner does not constitute bullying behaviour for the purposes of this code. Examples of reasonable management action may include, but are not limited to:

- a) performance management processes
- b) disciplinary action for misconduct
- c) informing a worker about unsatisfactory work performance or inappropriate work behaviour
- d) directing a worker to perform duties in keeping with their job
- e) maintaining reasonable workplace goals and standards
- f) legitimately exercising a regulatory function
- g) legitimately implementing a council policy or administrative processes.

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- 3.13 All council officials, including councillors, owe statutory duties under the Work Health and Safety Act 2011 (WH&S Act). You must comply with your duties under the WH&S Act and your responsibilities under any policies or procedures adopted by the council to ensure workplace health and safety. Specifically, you must:
- a) take reasonable care for your own health and safety
 - b) take reasonable care that your acts or omissions do not adversely affect the health and safety of other persons
 - c) comply, so far as you are reasonably able, with any reasonable instruction that is given to ensure compliance with the WH&S Act and any policies or procedures adopted by the council to ensure workplace health and safety
 - d) cooperate with any reasonable policy or procedure of the council relating to workplace health or safety that has been notified to council staff
 - e) report accidents, incidents, near misses, to the general manager or such other staff member nominated by the general manager, and take part in any incident investigations
 - f) so far as is reasonably practicable, consult, co-operate and coordinate with all others who have a duty under the WH&S Act in relation to the same matter.

Land use planning, development assessment and other regulatory functions

- 3.14 You must ensure that land use planning, development assessment and other regulatory decisions are properly made, and that all parties are dealt with fairly. You must avoid any occasion for suspicion of improper conduct in the exercise of land use planning, development assessment and other regulatory functions.
- 3.15 In exercising land use planning, development assessment and other regulatory functions, you must ensure that no action, statement or communication between yourself and others conveys any suggestion of willingness to improperly provide concessions or preferential or unduly unfavourable treatment.

Binding caucus votes

- 3.16 You must not participate in binding caucus votes in relation to matters to be considered at a council or committee meeting.
- 3.17 For the purposes of clause 3.16, a binding caucus vote is a process whereby a group of councillors are compelled by a threat of disciplinary or other adverse action to comply with a predetermined position on a matter before the council or committee, irrespective of the personal views of individual members of the group on the merits of the matter before the council or committee.
- 3.18 Clause 3.16 does not prohibit councillors from discussing a matter before the council or committee prior to considering the matter in question at a council or

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committee meeting, or from voluntarily holding a shared view with other councillors on the merits of a matter.

- 3.19 Clause 3.16 does not apply to a decision to elect the mayor or deputy mayor, or to nominate a person to be a member of a council committee or a representative of the council on an external body.

Obligations in relation to meetings

- 3.20 You must comply with rulings by the chair at council and committee meetings or other proceedings of the council unless a motion dissenting from the ruling is passed.
- 3.21 You must not engage in bullying behaviour (as defined under this Part) towards the chair, other council officials or any members of the public present during council or committee meetings or other proceedings of the council (such as, but not limited to, workshops and briefing sessions).
- 3.22 You must not engage in conduct that disrupts council or committee meetings or other proceedings of the council (such as, but not limited to, workshops and briefing sessions), or that would otherwise be inconsistent with the orderly conduct of meetings.
- 3.23 If you are a councillor, you must not engage in any acts of disorder or other conduct that is intended to prevent the proper or effective functioning of the council, or of a committee of the council. Without limiting this clause, you must not:
- a) leave a meeting of the council or a committee for the purposes of depriving the meeting of a quorum, or
 - b) submit a rescission motion with respect to a decision for the purposes of voting against it to prevent another councillor from submitting a rescission motion with respect to the same decision, or
 - c) deliberately seek to impede the consideration of business at a meeting.

ITEM 11 - ATTACHMENT 1 AMENDED CODE OF CONDUCT.**PART 4 PECUNIARY INTERESTS**What is a pecuniary interest?

- 4.1 A pecuniary interest is an interest that you have in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to you or a person referred to in clause 4.3.
- 4.2 You will not have a pecuniary interest in a matter if the interest is so remote or insignificant that it could not reasonably be regarded as likely to influence any decision you might make in relation to the matter, or if the interest is of a kind specified in clause 4.6.
- 4.3 For the purposes of this Part, you will have a pecuniary interest in a matter if the pecuniary interest is:
- (a) your interest, or
 - (b) the interest of your spouse or de facto partner, your relative, or your partner or employer, or
 - (c) a company or other body of which you, or your nominee, partner or employer, is a shareholder or member.
- 4.4 For the purposes of clause 4.3:
- (a) Your "relative" is any of the following:
 - i) your parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child
 - ii) your spouse's or de facto partner's parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child
 - iii) the spouse or de facto partner of a person referred to in paragraphs (i) and (ii).
 - (b) "de facto partner" has the same meaning as defined in section 21C of the *Interpretation Act 1987*.
- 4.5 You will not have a pecuniary interest in relation to a person referred to in subclauses 4.3(b) or (c):
- (a) if you are unaware of the relevant pecuniary interest of your spouse, de facto partner, relative, partner, employer or company or other body, or
 - (b) just because the person is a member of, or is employed by, a council or a statutory body, or is employed by the Crown, or
 - (c) just because the person is a member of, or a delegate of a council to, a company or other body that has a pecuniary interest in the matter, so long as the person has no beneficial interest in any shares of the company or body.

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4.6 You do not have to disclose the following interests for the purposes of this Part:

- (a) your interest as an elector
- (b) your interest as a ratepayer or person liable to pay a charge
- (c) an interest you have in any matter relating to the terms on which the provision of a service or the supply of goods or commodities is offered to the public generally, or to a section of the public that includes persons who are not subject to this code
- (d) an interest you have in any matter relating to the terms on which the provision of a service or the supply of goods or commodities is offered to your relative by the council in the same manner and subject to the same conditions as apply to persons who are not subject to this code
- (e) an interest you have as a member of a club or other organisation or association, unless the interest is as the holder of an office in the club or organisation (whether remunerated or not)
- (f) if you are a council committee member, an interest you have as a person chosen to represent the community, or as a member of a non-profit organisation or other community or special interest group, if you have been appointed to represent the organisation or group on the council committee
- (g) an interest you have relating to a contract, proposed contract or other matter, if the interest arises only because of a beneficial interest in shares in a company that does not exceed 10 per cent of the voting rights in the company
- (h) an interest you have arising from the proposed making by the council of an agreement between the council and a corporation, association or partnership, being a corporation, association or partnership that has more than 25 members, if the interest arises because your relative is a shareholder (but not a director) of the corporation, or is a member (but not a member of the committee) of the association, or is a partner of the partnership
- (i) an interest you have arising from the making by the council of a contract or agreement with your relative for, or in relation to, any of the following, but only if the proposed contract or agreement is similar in terms and conditions to such contracts and agreements as have been made, or as are proposed to be made, by the council in respect of similar matters with other residents of the area:
 - i) the performance by the council at the expense of your relative of any work or service in connection with roads or sanitation
 - ii) security for damage to footpaths or roads
 - iii) any other service to be rendered, or act to be done, by the council by or under any Act conferring functions on the council, or by or under any contract
- (j) an interest relating to the payment of fees to councillors (including the mayor and deputy mayor)
- (k) an interest relating to the payment of expenses and the provision of facilities to councillors (including the mayor and deputy mayor) in accordance with a policy under section 252 of the LGA,
- (l) an interest relating to an election to the office of mayor arising from the fact that a fee for the following 12 months has been determined for the office of mayor
- (m) an interest of a person arising from the passing for payment of a regular account for the wages or salary of an employee who is a relative of the person

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- (n) an interest arising from being covered by, or a proposal to be covered by, indemnity insurance as a councillor or a council committee member
 - (o) an interest arising from the appointment of a councillor to a body as a representative or delegate of the council, whether or not a fee or other recompense is payable to the representative or delegate.
- 4.7 For the purposes of clause 4.6, "relative" has the same meaning as in clause 4.4, but includes your spouse or de facto partner.

What disclosures must be made by a designated person?

4.8 Designated persons include:

- (a) the general manager
- (b) other senior staff of the council for the purposes of section 332 of the LGA
- (c) a person (other than a member of the senior staff of the council) who is a member of staff of the council or a delegate of the council and who holds a position identified by the council as the position of a designated person because it involves the exercise of functions (such as regulatory functions or contractual functions) that, in their exercise, could give rise to a conflict between the person's duty as a member of staff or delegate and the person's private interest
- (d) a person (other than a member of the senior staff of the council) who is a member of a committee of the council identified by the council as a committee whose members are designated persons because the functions of the committee involve the exercise of the council's functions (such as regulatory functions or contractual functions) that, in their exercise, could give rise to a conflict between the member's duty as a member of the committee and the member's private interest.

4.9 A designated person:

- (a) must prepare and submit written returns of interests in accordance with clauses 4.21, and
- (b) must disclose pecuniary interests in accordance with clause 4.10.

4.10 A designated person must disclose in writing to the general manager (or if the person is the general manager, to the council) the nature of any pecuniary interest the person has in any council matter with which the person is dealing as soon as practicable after becoming aware of the interest.

4.11 Clause 4.10 does not require a designated person who is a member of staff of the council to disclose a pecuniary interest if the interest relates only to the person's salary as a member of staff, or to their other conditions of employment.

4.12 The general manager must, on receiving a disclosure from a designated person, deal with the matter to which the disclosure relates or refer it to another person to deal with.

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- 4.13 A disclosure by the general manager must, as soon as practicable after the disclosure is made, be laid on the table at a meeting of the council and the council must deal with the matter to which the disclosure relates or refer it to another person to deal with.

What disclosures must be made by council staff other than designated persons?

- 4.14 A member of staff of council, other than a designated person, must disclose in writing to their manager or the general manager the nature of any pecuniary interest they have in a matter they are dealing with as soon as practicable after becoming aware of the interest.
- 4.15 The staff member's manager or the general manager must, on receiving a disclosure under clause 4.14, deal with the matter to which the disclosure relates or refer it to another person to deal with.

What disclosures must be made by council advisers?

- 4.16 A person who, at the request or with the consent of the council or a council committee, gives advice on any matter at any meeting of the council or committee, must disclose the nature of any pecuniary interest the person has in the matter to the meeting at the time the advice is given. The person is not required to disclose the person's interest as an adviser.
- 4.17 A person does not breach clause 4.16 if the person did not know, and could not reasonably be expected to have known, that the matter under consideration at the meeting was a matter in which they had a pecuniary interest.

What disclosures must be made by a council committee member?

- 4.18 A council committee member must disclose pecuniary interests in accordance with clause 4.28 and comply with clause 4.29.
- 4.19 For the purposes of clause 4.18, a "council committee member" includes a member of staff of council who is a member of the committee.

What disclosures must be made by a councillor?

- 4.20 A councillor:
- (a) must prepare and submit written returns of interests in accordance with clause 4.21, and
 - (b) must disclose pecuniary interests in accordance with clause 4.28 and comply with clause 4.29 where it is applicable.

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- 4.21 A councillor or designated person must make and lodge with the general manager a return in the form set out in schedule 2 to this code, disclosing the councillor's or designated person's interests as specified in schedule 1 to this code within 3 months after:
- (a) becoming a councillor or designated person, and
 - (b) 30 June of each year, and
 - (c) the councillor or designated person becoming aware of an interest they are required to disclose under schedule 1 that has not been previously disclosed in a return lodged under paragraphs (a) or (b).
- 4.22 A person need not make and lodge a return under clause 4.21, paragraphs (a) and (b) if:
- (a) they made and lodged a return under that clause in the preceding 3 months, or
 - (b) they have ceased to be a councillor or designated person in the preceding 3 months.
- 4.23 A person must not make and lodge a return that the person knows or ought reasonably to know is false or misleading in a material particular.
- 4.24 The general manager must keep a register of returns required to be made and lodged with the general manager.
- 4.25 Returns required to be lodged with the general manager under clause 4.21(a) and (b) must be tabled at the first meeting of the council after the last day the return is required to be lodged.
- 4.26 Returns required to be lodged with the general manager under clause 4.21(c) must be tabled at the next council meeting after the return is lodged.
- 4.27 Information contained in returns made and lodged under clause 4.21 is to be made publicly available in accordance with the requirements of the Government Information (Public Access) Act 2009, the Government Information (Public Access) Regulation 2009 and any guidelines issued by the Information Commissioner.

Disclosure of pecuniary interests at meetings

- 4.28 A councillor or a council committee member who has a pecuniary interest in any matter with which the council is concerned, and who is present at a meeting of the council or committee at which the matter is being considered, must disclose the nature of the interest to the meeting as soon as practicable.
- 4.29 The councillor or council committee member must not be present at, or in sight of, the meeting of the council or committee:

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- (a) at any time during which the matter is being considered or discussed by the council or committee, or
- (b) at any time during which the council or committee is voting on any question in relation to the matter.

4.30 In the case of a meeting of a board of a joint organisation, a voting representative is taken to be present at the meeting for the purposes of clauses 4.28 and 4.29 where they participate in the meeting by telephone or other electronic means.

4.31 A disclosure made at a meeting of a council or council committee must be recorded in the minutes of the meeting.

4.32 A general notice may be given to the general manager in writing by a councillor or a council committee member to the effect that the councillor or council committee member, or the councillor's or council committee member's spouse, de facto partner or relative, is:

- (a) a member of, or in the employment of, a specified company or other body, or
- (b) a partner of, or in the employment of, a specified person.

Such a notice is, unless and until the notice is withdrawn or until the end of the term of the council in which it is given (whichever is the sooner), sufficient disclosure of the councillor's or council committee member's interest in a matter relating to the specified company, body or person that may be the subject of consideration by the council or council committee after the date of the notice.

4.33 A councillor or a council committee member is not prevented from being present at and taking part in a meeting at which a matter is being considered, or from voting on the matter, merely because the councillor or council committee member has an interest in the matter of a kind referred to in clause 4.6.

4.34 A person does not breach clauses 4.28 or 4.29 if the person did not know, and could not reasonably be expected to have known, that the matter under consideration at the meeting was a matter in which they had a pecuniary interest.

4.35 Despite clause 4.29, a councillor who has a pecuniary interest in a matter may participate in a decision to delegate consideration of the matter in question to another body or person.

4.36 Clause 4.29 does not apply to a councillor who has a pecuniary interest in a matter that is being considered at a meeting if:

- (a) the matter is a proposal relating to:
- (i) the making of a principal environmental planning instrument applying to the whole or a significant portion of the council's area, or

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- (ii) the amendment, alteration or repeal of an environmental planning instrument where the amendment, alteration or repeal applies to the whole or a significant portion of the council's area, and
- (b) the pecuniary interest arises only because of an interest of the councillor in the councillor's principal place of residence or an interest of another person (whose interests are relevant under clause 4.3) in that person's principal place of residence, and
- (c) the councillor made a special disclosure under clause 4.37 in relation to the interest before the commencement of the meeting.

4.37 A special disclosure of a pecuniary interest made for the purposes of clause 4.36(c) must:

- (a) be in the form set out in schedule 3 of this code and contain the information required by that form, and
- (b) be laid on the table at a meeting of the council as soon as practicable after the disclosure is made, and the information contained in the special disclosure is to be recorded in the minutes of the meeting.

4.38 The Minister for Local Government may, conditionally or unconditionally, allow a councillor or a council committee member who has a pecuniary interest in a matter with which the council is concerned to be present at a meeting of the council or committee, to take part in the consideration or discussion of the matter and to vote on the matter if the Minister is of the opinion:

- (a) that the number of councillors prevented from voting would be so great a proportion of the whole as to impede the transaction of business, or
- (b) that it is in the interests of the electors for the area to do so.

4.39 A councillor or a council committee member with a pecuniary interest in a matter who is permitted to be present at a meeting of the council or committee, to take part in the consideration or discussion of the matter and to vote on the matter under clause 4.38, must still disclose the interest they have in the matter in accordance with clause 4.28.

PART 5 NON-PECUNIARY CONFLICTS OF INTERESTWhat is a non-pecuniary conflict of interest?

- 5.1 Non-pecuniary interests are private or personal interests a council official has that do not amount to a pecuniary interest as defined in clause 4.1 of this code. These commonly arise out of family or personal relationships, or out of involvement in sporting, social, religious or other cultural groups and associations, and may include an interest of a financial nature.
- 5.2 A non-pecuniary conflict of interest exists where a reasonable and informed person would perceive that you could be influenced by a private interest when carrying out your official functions in relation to a matter.
- 5.3 The personal or political views of a council official do not constitute a private interest for the purposes of clause 5.2.
- 5.4 Non-pecuniary conflicts of interest must be identified and appropriately managed to uphold community confidence in the probity of council decision-making. The onus is on you to identify any non-pecuniary conflict of interest you may have in matters that you deal with, to disclose the interest fully and in writing, and to take appropriate action to manage the conflict in accordance with this code.
- 5.5 When considering whether or not you have a non-pecuniary conflict of interest in a matter you are dealing with, it is always important to think about how others would view your situation.

Managing non-pecuniary conflicts of interest

- 5.6 Where you have a non-pecuniary conflict of interest in a matter for the purposes of clause 5.2, you must disclose the relevant private interest you have in relation to the matter fully and in writing as soon as practicable after becoming aware of the non-pecuniary conflict of interest and on each occasion on which the non-pecuniary conflict of interest arises in relation to the matter. In the case of members of council staff other than the general manager, such a disclosure is to be made to the staff member's manager. In the case of the general manager, such a disclosure is to be made to the mayor.
- 5.7 If a disclosure is made at a council or committee meeting, both the disclosure and the nature of the interest must be recorded in the minutes on each occasion on which the non-pecuniary conflict of interest arises. This disclosure constitutes disclosure in writing for the purposes of clause 5.6.
- 5.8 How you manage a non-pecuniary conflict of interest will depend on whether or not it is significant.

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- 5.9 As a general rule, a non-pecuniary conflict of interest will be significant where it does not involve a pecuniary interest for the purposes of clause 4.1, but it involves:
- a) a relationship between a council official and another person who is affected by a decision or a matter under consideration that is particularly close, such as a current or former spouse or de facto partner, a relative for the purposes of clause 4.4 or another person from the council official's extended family that the council official has a close personal relationship with, or another person living in the same household
 - b) other relationships with persons who are affected by a decision or a matter under consideration that are particularly close, such as friendships and business relationships. Closeness is defined by the nature of the friendship or business relationship, the frequency of contact and the duration of the friendship or relationship.
 - c) an affiliation between the council official and an organisation (such as a sporting body, club, religious, cultural or charitable organisation, corporation or association) that is affected by a decision or a matter under consideration that is particularly strong. The strength of a council official's affiliation with an organisation is to be determined by the extent to which they actively participate in the management, administration or other activities of the organisation.
 - d) membership, as the council's representative, of the board or management committee of an organisation that is affected by a decision or a matter under consideration, in circumstances where the interests of the council and the organisation are potentially in conflict in relation to the particular matter
 - e) a financial interest (other than an interest of a type referred to in clause 4.6) that is not a pecuniary interest for the purposes of clause 4.1
 - f) the conferral or loss of a personal benefit other than one conferred or lost as a member of the community or a broader class of people affected by a decision.
- 5.10 Significant non-pecuniary conflicts of interest must be managed in one of two ways:
- a) by not participating in consideration of, or decision making in relation to, the matter in which you have the significant non-pecuniary conflict of interest and the matter being allocated to another person for consideration or determination, or
 - b) if the significant non-pecuniary conflict of interest arises in relation to a matter under consideration at a council or committee meeting, by managing the conflict of interest as if you had a pecuniary interest in the matter by complying with clauses 4.28 and 4.29.
- 5.11 If you determine that you have a non-pecuniary conflict of interest in a matter that is not significant and does not require further action, when disclosing the interest you must also explain in writing why you consider that the non-pecuniary conflict of interest is not significant and does not require further action in the circumstances.
- 5.12 If you are a member of staff of council other than the general manager, the decision on which option should be taken to manage a non-pecuniary conflict of

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interest must be made in consultation with and at the direction of your manager. In the case of the general manager, the decision on which option should be taken to manage a non-pecuniary conflict of interest must be made in consultation with and at the direction of the mayor.

- 5.13 Despite clause 5.10(b), a councillor who has a significant non-pecuniary conflict of interest in a matter, may participate in a decision to delegate consideration of the matter in question to another body or person.
- 5.14 Council committee members are not required to declare and manage a non-pecuniary conflict of interest in accordance with the requirements of this Part where it arises from an interest they have as a person chosen to represent the community, or as a member of a non-profit organisation or other community or special interest group, if they have been appointed to represent the organisation or group on the council committee.

Political donations

- 5.15 Councillors should be aware that matters before council or committee meetings involving their political donors may also give rise to a non-pecuniary conflict of interest.
- 5.16 Where you are a councillor and have received or knowingly benefitted from a reportable political donation:
- a) made by a major political donor in the previous four years, and
 - b) the major political donor has a matter before council,

you must declare a non-pecuniary conflict of interest in the matter, disclose the nature of the interest, and manage the conflict of interest as if you had a pecuniary interest in the matter by complying with clauses 4.28 and 4.29. A disclosure made under this clause must be recorded in the minutes of the meeting.

- 5.17 For the purposes of this Part:
- a) a "reportable political donation" has the same meaning as it has in section 6 of the Electoral Funding Act 2018
 - b) "major political donor" has the same meaning as it has in the Electoral Funding Act 2018.
- 5.18 Councillors should note that political donations that are not a "reportable political donation", or political donations to a registered political party or group by which a councillor is endorsed, may still give rise to a non-pecuniary conflict of interest. Councillors should determine whether or not such conflicts are significant for the purposes of clause 5.9 and take the appropriate action to manage them.

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- 5.19 Despite clause 5.16, a councillor who has received or knowingly benefitted from a reportable political donation of the kind referred to in that clause, may participate in a decision to delegate consideration of the matter in question to another body or person.

Loss of quorum as a result of compliance with this Part

- 5.20 A councillor who would otherwise be precluded from participating in the consideration of a matter under this Part because they have a non-pecuniary conflict of interest in the matter is permitted to participate in consideration of the matter if:
- a) the matter is a proposal relating to:
 - i) the making of a principal environmental planning instrument applying to the whole or a significant portion of the council's area, or
 - ii) the amendment, alteration or repeal of an environmental planning instrument where the amendment, alteration or repeal applies to the whole or a significant portion of the council's area, and
 - b) the non-pecuniary conflict of interest arises only because of an interest that a person has in that person's principal place of residence, and
 - c) the councillor discloses the interest they have in the matter that would otherwise have precluded their participation in consideration of the matter under this Part in accordance with clause 5.6.
- 5.21 The Minister for Local Government may, conditionally or unconditionally, allow a councillor or a council committee member who is precluded under this Part from participating in the consideration of a matter to be present at a meeting of the council or committee, to take part in the consideration or discussion of the matter and to vote on the matter if the Minister is of the opinion:
- a) that the number of councillors prevented from voting would be so great a proportion of the whole as to impede the transaction of business, or
 - b) that it is in the interests of the electors for the area to do so.
- 5.22 Where the Minister exempts a councillor or committee member from complying with a requirement under this Part under clause 5.21, the councillor or committee member must still disclose any interests they have in the matter the exemption applies to, in accordance with clause 5.6.

Other business or employment

- 5.23 The general manager must not engage, for remuneration, in private employment, contract work or other business outside the service of the council without the approval of the council.
- 5.24 A member of staff must not engage, for remuneration, in private employment, contract work or other business outside the service of the council that relates to the business of the council or that might conflict with the staff member's council duties unless they have notified the general manager in writing of the

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employment, work or business and the general manager has given their written approval for the staff member to engage in the employment, work or business.

- 5.25 The general manager may at any time prohibit a member of staff from engaging, for remuneration, in private employment, contract work or other business outside the service of the council that relates to the business of the council, or that might conflict with the staff member's council duties.
- 5.26 A member of staff must not engage, for remuneration, in private employment, contract work or other business outside the service of the council if prohibited from doing so.
- 5.27 Members of staff must ensure that any outside employment, work or business they engage in will not:
- a) conflict with their official duties
 - b) involve using confidential information or council resources obtained through their work with the council including where private use is permitted
 - c) require them to work while on council duty
 - d) discredit or disadvantage the council
 - e) pose, due to fatigue, a risk to their health or safety, or to the health and safety of their co-workers.

Personal dealings with council

- 5.28 You may have reason to deal with your council in your personal capacity (for example, as a ratepayer, recipient of a council service or applicant for a development consent granted by council). You must not expect or request preferential treatment in relation to any matter in which you have a private interest because of your position. You must avoid any action that could lead members of the public to believe that you are seeking preferential treatment.
- 5.29 You must undertake any personal dealings you have with the council in a manner that is consistent with the way other members of the community deal with the council. You must also ensure that you disclose and appropriately manage any conflict of interest you may have in any matter in accordance with the requirements of this code.

ITEM 11 - ATTACHMENT 1 AMENDED CODE OF CONDUCT.**PART 6 PERSONAL BENEFIT**

6.1 For the purposes of this Part, a gift or a benefit is something offered to or received by a council official or someone personally associated with them for their personal use and enjoyment.

6.2 A reference to a gift or benefit in this Part does not include:

- a) items with a value of \$10 or less
- b) a political donation for the purposes of the *Electoral Funding Act 2018*
- c) a gift provided to the council as part of a cultural exchange or sister-city relationship that is not converted for the personal use or enjoyment of any individual council official or someone personally associated with them
- d) a benefit or facility provided by the council to an employee or councillor
- e) attendance by a council official at a work-related event or function for the purposes of performing their official duties, or
- f) free or subsidised meals, beverages or refreshments of token value provided to council officials in conjunction with the performance of their official duties such as, but not limited to:
 - i) the discussion of official business
 - ii) work-related events such as council-sponsored or community events, training, education sessions or workshops
 - iii) conferences
 - iv) council functions or events
 - v) social functions organised by groups, such as council committees and community organisations.

Gifts and benefits

6.3 You must avoid situations that would give rise to the appearance that a person or body is attempting to secure favourable treatment from you or from the council, through the provision of gifts, benefits or hospitality of any kind to you or someone personally associated with you.

6.4 A gift or benefit is deemed to have been accepted by you for the purposes of this Part, where it is received by you or someone personally associated with you.

How are offers of gifts and benefits to be dealt with?

- 6.5 You must not:
- a) seek or accept a bribe or other improper inducement
 - b) seek gifts or benefits of any kind
 - c) accept any gift or benefit that may create a sense of obligation on your part, or may be perceived to be intended or likely to influence you in carrying out your public duty
 - d) subject to clause 6.7, accept any gift or benefit of more than token value as defined by clause 6.9

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- e) accept an offer of cash or a cash-like gift as defined by clause 6.13, regardless of the amount
 - f) participate in competitions for prizes where eligibility is based on the council being in or entering into a customer-supplier relationship with the competition organiser
 - g) personally benefit from reward points programs when purchasing on behalf of the council.
- 6.6 Where you receive a gift or benefit of any value other than one referred to in clause 6.2, you must disclose this promptly to your manager or the general manager in writing. The recipient, manager, or general manager must ensure that, at a minimum, the following details are recorded in the council's gift register:
- a) the nature of the gift or benefit
 - b) the estimated monetary value of the gift or benefit
 - c) the name of the person who provided the gift or benefit, and
 - d) the date on which the gift or benefit was received.
- 6.7 Where you receive a gift or benefit of more than token value that cannot reasonably be refused or returned, the gift or benefit must be surrendered to the council, unless the nature of the gift or benefit makes this impractical.

Gifts and benefits of token value

- 6.8 You may accept gifts and benefits of token value. Gifts and benefits of token value are one or more gifts or benefits received from a person or organisation over a 12-month period that, when aggregated, do not exceed a value of \$50 **\$100**. They include, but are not limited to:
- a) invitations to and attendance at local social, cultural or sporting events with a ticket value that does not exceed \$50 **\$100**
 - b) **gifts of alcohol that do not exceed a value of \$50 \$100**
 - c) ties, scarves, coasters, tie pins, diaries, chocolates or flowers or the like
 - d) prizes or awards that do not exceed \$50 **\$100** in value.

Gifts and benefits of more than token value

- 6.9 Gifts or benefits that exceed \$50 **\$100** in value are gifts or benefits of more than token value for the purposes of clause 6.5(d) and, subject to clause 6.7, must not be accepted.
- 6.10 Gifts and benefits of more than token value include, but are not limited to, tickets to major sporting events (such as international matches or matches in national sporting codes) with a ticket value that exceeds \$50 **\$100**, corporate hospitality at a corporate facility at major sporting events, free or discounted products or services for personal use provided on terms that are not available to the general public or a broad class of persons, the use of holiday homes, artworks, free or discounted travel.

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6.11 Where you have accepted a gift or benefit of token value from a person or organisation, you must not accept a further gift or benefit from the same person or organisation or another person associated with that person or organisation within a single 12-month period where the value of the gift, added to the value of earlier gifts received from the same person or organisation, or a person associated with that person or organisation, during the same 12-month period would exceed \$50 **\$100** in value.

6.12 For the purposes of this Part, the value of a gift or benefit is the monetary value of the gift or benefit inclusive of GST.

"Cash-like gifts"

6.13 For the purposes of clause 6.5(e), "cash-like gifts" include, but are not limited to, gift vouchers, credit cards, debit cards with credit on them, prepayments such as phone or internet credit, lottery tickets, memberships or entitlements to discounts that are not available to the general public or a broad class of persons.

Improper and undue influence

6.14 You must not use your position to influence other council officials in the performance of their official functions to obtain a private benefit for yourself or for somebody else. A councillor will not be in breach of this clause where they seek to influence other council officials through the proper exercise of their role as prescribed under the LGA.

6.15 You must not take advantage (or seek to take advantage) of your status or position with council, or of functions you perform for council, in order to obtain a private benefit for yourself or for any other person or body.

PART 7 RELATIONSHIPS BETWEEN COUNCIL OFFICIALSObligations of councillors and administrators

- 7.1 Each council is a body politic. The councillors or administrator/s are the governing body of the council. Under section 223 of the LGA, the role of the governing body of the council includes the development and endorsement of the strategic plans, programs, strategies and policies of the council, including those relating to workforce policy, and to keep the performance of the council under review.
- 7.2 Councillors or administrators must not:
- a) direct council staff other than by giving appropriate direction to the general manager by way of council or committee resolution, or by the mayor or administrator exercising their functions under section 226 of the LGA
 - b) in any public or private forum, direct or influence, or attempt to direct or influence, any other member of the staff of the council or a delegate of the council in the exercise of the functions of the staff member or delegate
 - c) contact a member of the staff of the council on council-related business unless in accordance with the policy and procedures governing the interaction of councillors and council staff that have been authorised by the council and the general manager
 - d) contact or issue instructions to any of the council's contractors, including the council's legal advisers, unless by the mayor or administrator exercising their functions under section 226 of the LGA.
- 7.3 Despite clause 7.2, councillors may contact the council's external auditor or the chair of the council's audit risk and improvement committee to provide information reasonably necessary for the external auditor or the audit, risk and improvement committee to effectively perform their functions.

Obligations of staff

- 7.4 Under section 335 of the LGA, the role of the general manager includes conducting the day-to-day management of the council in accordance with the strategic plans, programs, strategies and policies of the council, implementing without undue delay, lawful decisions of the council and ensuring that the mayor and other councillors are given timely information and advice and the administrative and professional support necessary to effectively discharge their official functions.
- 7.5 Members of staff of council must:
- a) give their attention to the business of the council while on duty
 - b) ensure that their work is carried out ethically, efficiently, economically and effectively
 - c) carry out reasonable and lawful directions given by any person having authority to give such directions

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- d) give effect to the lawful decisions, policies and procedures of the council, whether or not the staff member agrees with or approves of them
- e) ensure that any participation in political activities outside the service of the council does not interfere with the performance of their official duties.

Inappropriate interactions

7.6 You must not engage in any of the following inappropriate interactions:

- a) councillors and administrators approaching staff and staff organisations to discuss individual or operational staff matters (other than matters relating to broader workforce policy), grievances, workplace investigations and disciplinary matters
- b) council staff approaching councillors and administrators to discuss individual or operational staff matters (other than matters relating to broader workforce policy), grievances, workplace investigations and disciplinary matters
- c) subject to clause 8.6, council staff refusing to give information that is available to other councillors to a particular councillor
- d) councillors and administrators who have lodged an application with the council, discussing the matter with council staff in staff-only areas of the council
- e) councillors and administrators approaching members of local planning panels or discussing any application that is either before the panel or that will come before the panel at some future time, except during a panel meeting where the application forms part of the agenda and the councillor or administrator has a right to be heard by the panel at the meeting
- f) councillors and administrators being overbearing or threatening to council staff
- g) council staff being overbearing or threatening to councillors or administrators
- h) councillors and administrators making personal attacks on council staff or engaging in conduct towards staff that would be contrary to the general conduct provisions in Part 3 of this code in public forums including social media
- i) councillors and administrators directing or pressuring council staff in the performance of their work, or recommendations they should make
- j) council staff providing ad hoc advice to councillors and administrators without recording or documenting the interaction as they would if the advice was provided to a member of the community
- k) council staff meeting with applicants or objectors alone AND outside office hours to discuss planning applications or proposals
- l) councillors attending on-site inspection meetings with lawyers and/or consultants engaged by the council associated with current or proposed legal proceedings unless permitted to do so by the council's general manager or, in the case of the mayor or administrator, unless they are exercising their functions under section 226 of the LGA.

PART 8 ACCESS TO INFORMATION AND COUNCIL RESOURCESCouncillor and administrator access to information

- 8.1 The general manager is responsible for ensuring that councillors and administrators can access information necessary for the performance of their official functions. The general manager and public officer are also responsible for ensuring that members of the public can access publicly available council information under the *Government Information (Public Access) Act 2009* (the GIPA Act).
- 8.2 The general manager must provide councillors and administrators with the information necessary to effectively discharge their official functions.
- 8.3 Members of staff of council must provide full and timely information to councillors and administrators sufficient to enable them to exercise their official functions and in accordance with council procedures.
- 8.4 Members of staff of council who provide any information to a particular councillor in the performance of their official functions must also make it available to any other councillor who requests it and in accordance with council procedures.
- 8.5 Councillors and administrators who have a private interest only in council information have the same rights of access as any member of the public.
- 8.6 Despite clause 8.4, councillors and administrators who are precluded from participating in the consideration of a matter under this code because they have a conflict of interest in the matter, are not entitled to request access to council information in relation to the matter unless the information is otherwise available to members of the public, or the council has determined to make the information available under the GIPA Act.

Councillors and administrators to properly examine and consider information

- 8.7 Councillors and administrators must ensure that they comply with their duty under section 439 of the LGA to act honestly and exercise a reasonable degree of care and diligence by properly examining and considering all the information provided to them relating to matters that they are required to make a decision on.

Refusal of access to information

- 8.8 Where the general manager or public officer determine to refuse access to information requested by a councillor or administrator, they must act reasonably. In reaching this decision they must take into account whether or not the information requested is necessary for the councillor or administrator to perform their official functions (see clause 8.2) and whether they have disclosed a conflict of interest in the matter the information relates to that would preclude their participation in consideration of the matter (see clause 8.6). The

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general manager or public officer must state the reasons for the decision if access is refused.

Use of certain council information

- 8.9 In regard to information obtained in your capacity as a council official, you must:
- a) subject to clause 8.14, only access council information needed for council business
 - b) not use that council information for private purposes
 - c) not seek or obtain, either directly or indirectly, any financial benefit or other improper advantage for yourself, or any other person or body, from any information to which you have access by virtue of your office or position with council
 - d) only release council information in accordance with established council policies and procedures and in compliance with relevant legislation.

Use and security of confidential information

- 8.10 You must maintain the integrity and security of confidential information in your possession, or for which you are responsible.
- 8.11 In addition to your general obligations relating to the use of council information, you must:
- a) only access confidential information that you have been authorised to access and only do so for the purposes of exercising your official functions
 - b) protect confidential information
 - c) only release confidential information if you have authority to do so
 - d) only use confidential information for the purpose for which it is intended to be used
 - e) not use confidential information gained through your official position for the purpose of securing a private benefit for yourself or for any other person
 - f) not use confidential information with the intention to cause harm or detriment to the council or any other person or body
 - g) not disclose any confidential information discussed during a confidential session of a council or committee meeting or any other confidential forum (such as, but not limited to, workshops or briefing sessions).

Personal information

- 8.12 When dealing with personal information you must comply with:
- a) the Privacy and Personal Information Protection Act 1998
 - b) the Health Records and Information Privacy Act 2002
 - c) the Information Protection Principles and Health Privacy Principles
 - d) the Council's privacy management plan
 - e) the Privacy Code of Practice for Local Government

ITEM 11 - ATTACHMENT 1 AMENDED CODE OF CONDUCT.Use of council resources

- 8.13 You must use council resources ethically, effectively, efficiently and carefully in exercising your official functions, and must not use them for private purposes, except when supplied as part of a contract of employment (but not for private business purposes), unless this use is lawfully authorised and proper payment is made where appropriate.
- 8.14 Union delegates and consultative committee members may have reasonable access to council resources and information for the purposes of carrying out their industrial responsibilities, including but not limited to:
- a) the representation of members with respect to disciplinary matters
 - b) the representation of employees with respect to grievances and disputes
 - c) functions associated with the role of the local consultative committee.
- 8.15 You must be scrupulous in your use of council property, including intellectual property, official services, facilities, technology and electronic devices and must not permit their misuse by any other person or body.
- 8.16 You must avoid any action or situation that could create the appearance that council property, official services or public facilities are being improperly used for your benefit or the benefit of any other person or body.
- 8.17 You must not use council resources (including council staff), property or facilities for the purpose of assisting your election campaign or the election campaigns of others unless the resources, property or facilities are otherwise available for use or hire by the public and any publicly advertised fee is paid for use of the resources, property or facility.
- 8.18 You must not use the council letterhead, council crests, council email or social media or other information that could give the appearance it is official council material:
- a) for the purpose of assisting your election campaign or the election campaign of others, or
 - b) for other non-official purposes.
- 8.19 You must not convert any property of the council to your own use unless properly authorised.

Internet access

- 8.20 You must not use council's computer resources or mobile or other devices to search for, access, download or communicate any material of an offensive, obscene, pornographic, threatening, abusive or defamatory nature, or that could otherwise lead to criminal penalty or civil liability and/or damage the council's reputation.

ITEM 11 - ATTACHMENT 1 AMENDED CODE OF CONDUCT.Social media

- 8.21 You must not use social media to post comments, photos, sound recordings or other information that:
- a) compromises your capacity to perform your official duties in an unbiased manner
 - b) has the potential to have a negative impact on your working relationships within the Council or with external parties
 - c) is offensive, humiliating, threatening or intimidating to other Council officials or those that deal with the Council
 - d) has the capacity to damage the Council's reputation or contains content about the Council that may be misleading or deceptive
 - e) divulges confidential Council information
 - f) breaches the privacy of other Council officials or those that deal with Council
 - g) contains allegations of suspected breaches of this code or information about the consideration of a matter under this code, or
 - h) could be perceived to be an official comment on behalf of the Council where you have not been authorised to make such comment.

Council record keeping

- 8.22 You must comply with the requirements of the State Records Act 1998 and the council's records management policy.
- 8.23 All information created, sent and received in your official capacity is a council record and must be managed in accordance with the requirements of the State Records Act 1998 and the council's approved records management policies and practices.
- 8.24 All information stored in either soft or hard copy on council supplied resources (including technology devices and email accounts) is deemed to be related to the business of the council and will be treated as council records, regardless of whether the original intention was to create the information for personal purposes.
- 8.25 You must not destroy, alter, or dispose of council information or records, unless authorised to do so. If you need to alter or dispose of council information or records, you must do so in consultation with the council's records manager and comply with the requirements of the State Records Act 1998.

Councillor access to council buildings

- 8.26 Councillors and administrators are entitled to have access to the council chamber, committee room, mayor's office (subject to availability), councillors' rooms, and public areas of council's buildings during normal business hours and for meetings. Councillors and administrators needing access to these facilities at other times must obtain authority from the general manager.

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- 8.27 Councillors and administrators must not enter staff-only areas of council buildings without the approval of the general manager (or their delegate) or as provided for in the procedures governing the interaction of councillors and council staff.
- 8.28 Councillors and administrators must ensure that when they are within a staff only area they refrain from conduct that could be perceived to improperly influence council staff decisions.

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ITEM 11 - ATTACHMENT 1 AMENDED CODE OF CONDUCT.**PART 9 MAINTAINING THE INTEGRITY OF THIS CODE**Complaints made for an improper purpose

- 9.1 You must not make or threaten to make a complaint or cause a complaint to be made alleging a breach of this code for an improper purpose.
- 9.2 For the purposes of clause 9.1, a complaint is made for an improper purpose where it is trivial, frivolous, vexatious or not made in good faith, or where it otherwise lacks merit and has been made substantially for one or more of the following purposes:
- a) to bully, intimidate or harass another council official
 - b) to damage another council official's reputation
 - c) to obtain a political advantage
 - d) to influence a council official in the exercise of their official functions or to prevent or disrupt the exercise of those functions
 - e) to influence the council in the exercise of its functions or to prevent or disrupt the exercise of those functions
 - f) to avoid disciplinary action under the Procedures
 - g) to take reprisal action against a person for making a complaint alleging a breach of this code
 - h) to take reprisal action against a person for exercising a function prescribed under the Procedures
 - i) to prevent or disrupt the effective administration of this code under the Procedures.

Detrimental action

- 9.3 You must not take detrimental action or cause detrimental action to be taken against a person substantially in reprisal for a complaint they have made alleging a breach of this code.
- 9.4 You must not take detrimental action or cause detrimental action to be taken against a person substantially in reprisal for any function they have exercised under the Procedures.
- 9.5 For the purposes of clauses 9.3 and 9.4, a detrimental action is an action causing, comprising or involving any of the following:
- a) injury, damage or loss
 - b) intimidation or harassment
 - c) discrimination, disadvantage or adverse treatment in relation to employment
 - d) dismissal from, or prejudice in, employment
 - e) disciplinary proceedings.

ITEM 11 - ATTACHMENT 1 AMENDED CODE OF CONDUCT.Compliance with requirements under the Procedures

- 9.6 You must not engage in conduct that is calculated to impede or disrupt the consideration of a matter under the Procedures.
- 9.7 You must comply with a reasonable and lawful request made by a person exercising a function under the Procedures. A failure to make a written or oral submission invited under the Procedures will not constitute a breach of this clause.
- 9.8 You must comply with a practice ruling made by the Office under the Procedures.
- 9.9 ~~Where you are a Councillor or the General Manager, you must comply with any Council resolution requiring you to take action as a result of a breach of this code.~~

Disclosure of information about the consideration of a matter under the Procedures

- 9.9 All allegations of breaches of this code must be dealt with under and in accordance with the Procedures.
- 9.10 You must not allege breaches of this code other than by way of a complaint made or initiated under the Procedures.
- 9.11 You must not make allegations about, or disclose information about, suspected breaches of this code at council, committee or other meetings, whether open to the public or not, or in any other forum, whether public or not.
- 9.12 You must not disclose information about a complaint you have made alleging a breach of this code or a **any other** matter being considered under the Procedures except for the purposes of seeking legal advice, unless the disclosure is otherwise permitted under the Procedures.
- 9.13 Nothing under this Part prevents a person from making a public interest disclosure to an appropriate public authority or investigative authority under the Public Interest Disclosures Act 1994.

Complaints alleging a breach of this Part

- 9.14 Complaints alleging a breach of this Part by a councillor, the general manager or an administrator are to be managed by the Office. This clause does not prevent the Office from referring an alleged breach of this Part back to the council for consideration in accordance with the Procedures.
- 9.15 Complaints alleging a breach of this Part by other council officials are to be managed by the general manager in accordance with the Procedures.

SCHEDULE 1: DISCLOSURES OF INTERESTS AND OTHER MATTERS IN WRITTEN RETURNS SUBMITTED UNDER CLAUSE 4.21Part 1: PreliminaryDefinitions

1. For the purposes of the schedules to this code, the following definitions apply:

address means:

- a) in relation to a person other than a corporation, the last residential or business address of the person known to the councillor or designated person disclosing the address, or
- b) in relation to a corporation, the address of the registered office of the corporation in New South Wales or, if there is no such office, the address of the principal office of the corporation in the place where it is registered, or
- c) in relation to any real property, the street address of the property.

de facto partner has the same meaning as defined in section 21C of the Interpretation Act 1987.

disposition of property means a conveyance, transfer, assignment, settlement, delivery, payment or other alienation of property, including the following:

- a) the allotment of shares in a company
- b) the creation of a trust in respect of property
- c) the grant or creation of a lease, mortgage, charge, easement, licence, power, partnership or interest in respect of property
- d) the release, discharge, surrender, forfeiture or abandonment, at law or in equity, of a debt, contract or chose in action, or of an interest in respect of property
- e) the exercise by a person of a general power of appointment over property in favour of another person
- f) a transaction entered into by a person who intends by the transaction to diminish, directly or indirectly, the value of the person's own property and to increase the value of the property of another person.

gift means a disposition of property made otherwise than by will (whether or not by instrument in writing) without consideration, or with inadequate consideration, in money or money's worth passing from the person to whom the disposition was made to the person who made the disposition, but does not include a financial or other contribution to travel.

interest means:

- a) in relation to property, an estate, interest, right or power, at law or in equity, in or over the property, or

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- b) in relation to a corporation, a relevant interest (within the meaning of section 9 of the Corporations Act 2001 of the Commonwealth) in securities issued or made available by the corporation.

listed company means a company that is listed within the meaning of section 9 of the Corporations Act 2001 of the Commonwealth.

occupation includes trade, profession and vocation.

professional or business association means an incorporated or unincorporated body or organisation having as one of its objects or activities the promotion of the economic interests of its members in any occupation.

property includes money.

return date means:

- a) in the case of a return made under clause 4.21(a), the date on which a person became a councillor or designated person
- b) in the case of a return made under clause 4.21(b), 30 June of the year in which the return is made
- c) in the case of a return made under clause 4.21(c), the date on which the councillor or designated person became aware of the interest to be disclosed.

relative includes any of the following:

- a) a person's spouse or de facto partner
- b) a person's parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child
- c) a person's spouse's or de facto partner's parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child
- d) the spouse or de facto partner of a person referred to in paragraphs (b) and (c).

travel includes accommodation incidental to a journey.

Matters relating to the interests that must be included in returns

2. *Interests etc. outside New South Wales:* A reference in this schedule or in schedule 2 to a disclosure concerning a corporation or other thing includes any reference to a disclosure concerning a corporation registered, or other thing arising or received, outside New South Wales.
3. *References to interests in real property:* A reference in this schedule or in schedule 2 to real property in which a councillor or designated person has an interest includes a reference to any real property situated in Australia in which the councillor or designated person has an interest.

4. *Gifts, loans etc. from related corporations:* For the purposes of this schedule and schedule 2, gifts or contributions to travel given, loans made, or goods or services supplied, to a councillor or designated person by two or more corporations that are related to each other for the purposes of section 50 of the *Corporations Act 2001* of the Commonwealth are all given, made or supplied by a single corporation.

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ITEM 11 - ATTACHMENT 1 AMENDED CODE OF CONDUCT.Part 2: Pecuniary interests to be disclosed in returnsReal property

5. A person making a return under clause 4.21 of this code must disclose:
- a) the street address of each parcel of real property in which they had an interest on the return date, and
 - b) the street address of each parcel of real property in which they had an interest in the period since 30 June of the previous financial year, and
 - c) the nature of the interest.
6. An interest in a parcel of real property need not be disclosed in a return if the person making the return had the interest only:
- a) as executor of the will, or administrator of the estate, of a deceased person and not as a beneficiary under the will or intestacy, or
 - b) as a trustee, if the interest was acquired in the ordinary course of an occupation not related to their duties as the holder of a position required to make a return.
7. An interest in a parcel of real property need not be disclosed in a return if the person ceased to hold the interest prior to becoming a councillor or designated person.
8. For the purposes of clause 5 of this schedule, "interest" includes an option to purchase.

Gifts

9. A person making a return under clause 4.21 of this code must disclose:
- a) a description of each gift received in the period since 30 June of the previous financial year, and
 - b) the name and address of the donor of each of the gifts.
10. A gift need not be included in a return if:
- a) it did not exceed \$500, unless it was among gifts totalling more than \$500 made by the same person during a period of 12 months or less, or
 - b) it was a political donation disclosed, or required to be disclosed, under Part 3 of the *Electoral Funding Act 2018*, or
 - c) the donor was a relative of the donee, or
 - d) subject to paragraph (a), it was received prior to the person becoming a councillor or designated person.
11. For the purposes of clause 10 of this schedule, the amount of a gift other than money is an amount equal to the value of the property given.

ITEM 11 - ATTACHMENT 1 AMENDED CODE OF CONDUCT.Contributions to travel

12. A person making a return under clause 4.21 of this code must disclose:
- a) the name and address of each person who made any financial or other contribution to the expenses of any travel undertaken by the person in the period since 30 June of the previous financial year, and
 - b) the dates on which the travel was undertaken, and
 - c) the names of the states and territories, and of the overseas countries, in which the travel was undertaken.
13. A financial or other contribution to any travel need not be disclosed under this clause if it:
- a) was made from public funds (including a contribution arising from travel on free passes issued under an Act or from travel in government or council vehicles), or
 - b) was made by a relative of the traveller, or
 - c) was made in the ordinary course of an occupation of the traveller that is not related to their functions as the holder of a position requiring the making of a return, or
 - d) did not exceed \$250, unless it was among gifts totalling more than \$250 made by the same person during a 12-month period or less, or
 - e) was a political donation disclosed, or required to be disclosed, under Part 3 of the Electoral Funding Act 2018, or
 - f) was made by a political party of which the traveller was a member and the travel was undertaken for the purpose of political activity of the party in New South Wales, or to enable the traveller to represent the party within Australia, or
 - g) subject to paragraph (d) it was received prior to the person becoming a councillor or designated person.
14. For the purposes of clause 13 of this schedule, the amount of a contribution (other than a financial contribution) is an amount equal to the value of the contribution.

Interests and positions in corporations

15. A person making a return under clause 4.21 of this code must disclose:
- a) the name and address of each corporation in which they had an interest or held a position (whether remunerated or not) on the return date, and
 - b) the name and address of each corporation in which they had an interest or held a position in the period since 30 June of the previous financial year, and
 - c) the nature of the interest, or the position held, in each of the corporations, and
 - d) a description of the principal objects (if any) of each of the corporations, except in the case of a listed company.

ITEM 11 - ATTACHMENT 1 AMENDED CODE OF CONDUCT.

16. An interest in, or a position held in, a corporation need not be disclosed if the corporation is:
 - a) formed for the purpose of providing recreation or amusement, or for promoting commerce, industry, art, science, religion or charity, or for any other community purpose, and
 - b) required to apply its profits or other income in promoting its objects, and
 - c) prohibited from paying any dividend to its members.
17. An interest in a corporation need not be disclosed if the interest is a beneficial interest in shares in a company that does not exceed 10 per cent of the voting rights in the company.
18. An interest or a position in a corporation need not be disclosed if the person ceased to hold the interest or position prior to becoming a councillor or designated person.

Interests as a property developer or a close associate of a property developer

19. A person making a return under clause 4.21 of this code must disclose whether they were a property developer, or a close associate of a corporation that, or an individual who, is a property developer, on the return date.
20. For the purposes of clause 19 of this schedule:

close associate, in relation to a corporation or an individual, has the same meaning as it has in section 53 of the Electoral Funding Act 2018.

property developer has the same meaning as it has in Division 7 of Part 3 of the Electoral Funding Act 2018.

Positions in trade unions and professional or business associations

21. A person making a return under clause 4.21 of the code must disclose:
 - a) the name of each trade union, and of each professional or business association, in which they held any position (whether remunerated or not) on the return date, and
 - b) the name of each trade union, and of each professional or business association, in which they have held any position (whether remunerated or not) in the period since 30 June of the previous financial year, and
 - c) a description of the position held in each of the unions and associations.
22. A position held in a trade union or a professional or business association need not be disclosed if the person ceased to hold the position prior to becoming a councillor or designated person.

ITEM 11 - ATTACHMENT 1 AMENDED CODE OF CONDUCT.Dispositions of real property

23. A person making a return under clause 4.21 of this code must disclose particulars of each disposition of real property by the person (including the street address of the affected property) in the period since 30 June of the previous financial year, under which they wholly or partly retained the use and benefit of the property or the right to re-acquire the property.
24. A person making a return under clause 4.21 of this code must disclose particulars of each disposition of real property to another person (including the street address of the affected property) in the period since 30 June of the previous financial year, that is made under arrangements with, but is not made by, the person making the return, being a disposition under which the person making the return obtained wholly or partly the use of the property.
25. A disposition of real property need not be disclosed if it was made prior to a person becoming a councillor or designated person.

Sources of income

26. A person making a return under clause 4.21 of this code must disclose:
- a) each source of income that the person reasonably expects to receive in the period commencing on the first day after the return date and ending on the following 30 June, and
 - b) each source of income received by the person in the period since 30 June of the previous financial year.
27. A reference in clause 26 of this schedule to each source of income received, or reasonably expected to be received, by a person is a reference to:
- a) in relation to income from an occupation of the person:
 - (i) a description of the occupation, and
 - (ii) if the person is employed or the holder of an office, the name and address of their employer, or a description of the office, and
 - (iii) if the person has entered into a partnership with other persons, the name (if any) under which the partnership is conducted, or
 - b) in relation to income from a trust, the name and address of the settlor and the trustee, or
 - c) in relation to any other income, a description sufficient to identify the person from whom, or the circumstances in which, the income was, or is reasonably expected to be, received.
28. The source of any income need not be disclosed by a person in a return if the amount of the income received, or reasonably expected to be received, by the person from that source did not exceed \$500, or is not reasonably expected to exceed \$500, as the case may be.

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29. The source of any income received by the person that they ceased to receive prior to becoming a councillor or designated person need not be disclosed.
30. A fee paid to a councillor or to the mayor or deputy mayor under sections 248 or 249 of the LGA need not be disclosed.

Debts

31. A person making a return under clause 4.21 of this code must disclose the name and address of each person to whom the person was liable to pay any debt:
- a) on the return date, and
 - b) at any time in the period since 30 June of the previous financial year.
32. A liability to pay a debt must be disclosed by a person in a return made under clause 4.21 whether or not the amount, or any part of the amount, to be paid was due and payable on the return date or at any time in the period since 30 June of the previous financial year, as the case may be.
33. A liability to pay a debt need not be disclosed by a person in a return if:
- a) the amount to be paid did not exceed \$500 on the return date or in the period since 30 June of the previous financial year, as the case may be, unless:
 - (i) the debt was one of two or more debts that the person was liable to pay to one person on the return date, or at any time in the period since 30 June of the previous financial year, as the case may be, and
 - (ii) the amounts to be paid exceeded, in the aggregate, \$500, or
 - b) the person was liable to pay the debt to a relative, or
 - c) in the case of a debt arising from a loan of money the person was liable to pay the debt to an authorised deposit-taking institution or other person whose ordinary business includes the lending of money, and the loan was made in the ordinary course of business of the lender, or
 - d) in the case of a debt arising from the supply of goods or services:
 - (i) the goods or services were supplied in the period of 12 months immediately preceding the return date, or were supplied in the period since 30 June of the previous financial year, as the case may be, or
 - (ii) the goods or services were supplied in the ordinary course of any occupation of the person that is not related to their duties as the holder of a position required to make a return, or
 - e) subject to paragraph (a), the debt was discharged prior to the person becoming a councillor or designated person.

Discretionary disclosures

34. A person may voluntarily disclose in a return any interest, benefit, advantage or liability, whether pecuniary or not, that is not required to be disclosed under another provision of this Schedule.

ITEM 11 - ATTACHMENT 1 AMENDED CODE OF CONDUCT.

SCHEDULE 2: FORM OF WRITTEN RETURN OF INTERESTS SUBMITTED UNDER CLAUSE 4.21**Code of Conduct**

Office Use only:
Date Received: _____
Received by: _____

Schedule 2 Form of return—disclosure of interest**'Disclosures by councillors and designated persons' return**

1. The pecuniary interests and other matters to be disclosed in this return are prescribed by Schedule 1 of the Model Code of Conduct for Local Councils in NSW (the Model Code of Conduct).
2. If this is the first return you have been required to lodge with the general manager after becoming a councillor or designated person, do not complete Parts C, D and I of the return. All other parts of the return should be completed with appropriate information based on your circumstances at the return date, that is, the date on which you became a councillor or designated person.
3. If you have previously lodged a return with the general manager and you are completing this return for the purposes of disclosing a new interest that was not disclosed in the last return you lodged with the general manager, you must complete all parts of the return with appropriate information for the period from 30 June of the previous financial year or the date on which you became a councillor or designated person, (whichever is the later date), to the return date which is the date you became aware of the new interest to be disclosed in your updated return.
4. If you have previously lodged a return with the general manager and are submitting a new return for the new financial year, you must complete all parts of the return with appropriate information for the 12-month period commencing on 30 June of the previous year to 30 June this year.
5. This form must be completed using block letters or typed.
6. If there is insufficient space for all the information you are required to disclose, you must attach an appendix which is to be properly identified and signed by you.
7. If there are no pecuniary interests or other matters of the kind required to be disclosed under a heading in this form, the word "NIL" is to be placed in an appropriate space under that heading.

Important information

This information is being collected for the purpose of complying with clause 4.21 of the Model Code of Conduct.

You must not lodge a return that you know or ought reasonably to know is false or misleading in a material particular (see clause 4.23 of the Model Code of Conduct). Complaints about breaches of these requirements are to be referred to the Office of Local Government and may result in disciplinary

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ITEM 11 - ATTACHMENT 1 AMENDED CODE OF CONDUCT.

action by the council, the Chief Executive of the Office of Local Government or the NSW Civil and Administrative Tribunal.

The information collected on this form will be kept by the general manager in a register of returns. The general manager is required to table all returns at a council meeting.

Information contained in returns made and lodged under clause 4.21 is to be made publicly available in accordance with the requirements of the Government Information (Public Access) Act 2009, the Government Information (Public Access) Regulation 2009 and any guidelines issued by the Information Commissioner.

You have an obligation to keep the information contained in this return up to date. If you become aware of a new interest that must be disclosed in this return, or an interest that you have previously failed to disclose, you must submit an updated return within three months of becoming aware of the previously undisclosed interest.

Disclosure of pecuniary interests and other matters by [full name of councillor or designated person]

as at [return date]

in respect of the period from [date] to [date]

[councillor's or designated person's signature]
[date]

A. Real Property

Street address of each parcel of real property in which I had an interest at the return date/at any time since 30 June	Nature of interest

B. Sources of income

1 Sources of income I reasonably expect to receive from an occupation in the period commencing on the first day after the return date and ending on the following 30 June

Sources of income I received from an occupation at any time since 30 June

Description of occupation	Name and address of employer or description of office held (if applicable)	Name under which partnership conducted (if applicable)

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2 Sources of income I reasonably expect to receive from a trust in the period commencing on the first day after the return date and ending on the following 30 June

Sources of income I received from a trust since 30 June

Name and address of settlor	Name and address of trustee

3 Sources of other income I reasonably expect to receive in the period commencing on the first day after the return date and ending on the following 30 June

Sources of other income I received at any time since 30 June

[Include description sufficient to identify the person from whom, or the circumstances in which, that income was received]

C. Gifts

Description of each gift I received at any time since 30 June	Name and address of donor

D. Contributions to travel

Name and address of each person who made any financial or other contribution to any travel undertaken by me at any time since 30 June	Dates on which travel was undertaken	Name of States, Territories of the Commonwealth and overseas countries in which travel was undertaken

E. Interests and positions in corporations

Name and address of each corporation in which I had an interest (if interest or held a position at the return date/at any time since 30 June)	Nature of any	Description of position (if any)	Description of principal objects (if any) of corporation (except in case of listed company)

F. Were you a property developer or a close associate of a property developer on the return date? (Y/N)

G. Positions in trade unions and professional or business associations

Name of each trade union and each professional or business association in which I held any position (whether remunerated or not) at the return date/at any time since 30 June	Description of position

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ITEM 11 - ATTACHMENT 1 AMENDED CODE OF CONDUCT.**H. Debts**

Name and address of each person to whom I was liable to pay any debt at the return date/at any time since 30 June

I. Dispositions of property

1 Particulars of each disposition of real property by me (including the street address of the affected property) at any time since 30 June as a result of which I retained, either wholly or in part, the use and benefit of the property or the right to re-acquire the property at a later time

2 Particulars of each disposition of property to a person by any other person under arrangements made by me (including the street address of the affected property), being dispositions made at any time since 30 June, as a result of which I obtained, either wholly or in part, the use and benefit of the property

J. Discretionary disclosures

SCHEDULE 3: FORM OF SPECIAL DISCLOSURE OF PECUNIARY INTEREST SUBMITTED UNDER CLAUSE 4.37

1. This form must be completed using block letters or typed.
2. If there is insufficient space for all the information you are required to disclose, you must attach an appendix which is to be properly identified and signed by you.

Important information

This information is being collected for the purpose of making a special disclosure of pecuniary interests under clause 4.36(c) of the Model Code of Conduct for Local Councils in NSW (the Model Code of Conduct).

The special disclosure must relate only to a pecuniary interest that a councillor has in the councillor's principal place of residence, or an interest another person (whose interests are relevant under clause 4.3 of the Model Code of Conduct) has in that person's principal place of residence.

Clause 4.3 of the Model Code of Conduct states that you will have a pecuniary interest in a matter because of the pecuniary interest of your spouse or your de facto partner or your relative or because your business partner or employer has a pecuniary interest. You will also have a pecuniary interest in a matter because you, your nominee, your business partner or your employer is a member of a company or other body that has a pecuniary interest in the matter.

"Relative" is defined by clause 4.4 of the Model Code of Conduct as meaning your, your spouse's or your de facto partner's parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child and the spouse or de facto partner of any of those persons.

You must not make a special disclosure that you know or ought reasonably to know is false or misleading in a material particular. Complaints about breaches of these requirements are to be referred to the Office of Local Government and may result in disciplinary action by the Chief Executive of the Office of Local Government or the NSW Civil and Administrative Tribunal.

This form must be completed by you before the commencement of the council or council committee meeting at which the special disclosure is being made. The completed form must be tabled at the meeting. Everyone is entitled to inspect it. The special disclosure must be recorded in the minutes of the meeting.

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Special disclosure of pecuniary interests by *[full name of councillor]*

in the matter of *[insert name of environmental planning instrument]*

which is to be considered at a meeting of the *[name of council or council committee (as the case requires)]*

to be held on the day of 20 .

Pecuniary interest	
Address of the affected principal place of residence of the councillor or an associated person, company or body (the identified land)	
Relationship of identified land to the councillor <i>[Tick or cross one box.]</i>	<input type="checkbox"/> The councillor has an interest in the land (e.g. is the owner or has another interest arising out of a mortgage, lease, trust, option or contract, or otherwise). <input type="checkbox"/> An associated person of the councillor has an interest in the land. <input type="checkbox"/> An associated company or body of the councillor has an interest in the land.
Matter giving rise to pecuniary interest ¹	
Nature of the land that is subject to a change in zone/planning control by the proposed LEP (the subject land) ² <i>[Tick or cross one box]</i>	<input type="checkbox"/> The identified land. <input type="checkbox"/> Land that adjoins or is adjacent to or is in proximity to the identified land.
Current zone/planning control <i>[Insert name of current planning instrument and identify relevant zone/planning control applying to the subject land]</i>	

¹ Clause 4.1 of the Model Code of Conduct provides that a pecuniary interest is an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person. A person does not have a pecuniary interest in a matter if the interest is so remote or insignificant that it could not reasonably be regarded as likely to influence any decision the person might make in relation to the matter, or if the interest is of a kind specified in clause 4.6 of the Model Code of Conduct.

² A pecuniary interest may arise by way of a change of permissible use of land adjoining, adjacent to or in proximity to land in which a councillor or a person, company or body referred to in clause 4.3 of the Model Code of Conduct has a proprietary interest.

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Proposed change of zone/planning control <i>[Insert name of proposed LEP and identify proposed change of zone/planning control applying to the subject land]</i>	
Effect of proposed change of zone/planning control on councillor or associated person <i>[Insert one of the following: "Appreciable financial gain" or "Appreciable financial loss"]</i>	

[If more than one pecuniary interest is to be declared, reprint the above box and fill in for each additional interest.]

Councillor's signature

Date

[This form is to be retained by the council's general manager and included in full in the minutes of the meeting]

ITEM 11 - ATTACHMENT 1 AMENDED CODE OF CONDUCT.

CONTROLLED DOCUMENT INFORMATION:

This is a controlled document. Hardcopies of this document may not be the latest version. Before using this document, check it is the latest version; refer to Council's website www.portstephens.nsw.gov.au			
EDRMS container No	A2004-0284 A2004-0984	EDRMS record No	19/102220 #####
Audience	Elected Council, administrators, council employees, volunteers and contractors		
Process owner	Governance Section Manager		
Author	Governance Section Manager		
Review timeframe	Four years	Next review date	March 2023 September 2022
Adoption date	26 March 2019		

VERSION HISTORY:

Version	Date	Author	Details	Minute No.
1.0	26 March 2019	Governance Section Manager	New model code of conduct release by the Office of Local Government.	058

ITEM 11 - ATTACHMENT 1 AMENDED CODE OF CONDUCT.

2.1		Governance Section Manager	<p>A revised Model Code of Conduct has been released by the Office of Local Government.</p> <p>Definitions updated in include Council's audit, risk and improvement committee.</p> <p>3.7 – updated to reflect more contemporary standards.</p> <p>3.10 – insert a comma.</p> <p>3.13 – delete WH&S and insert WHS.</p> <p>6.2a) – insert items with a value of \$10 or less</p> <p>6.2d) – insert benefit or facility provided by the council to an employee or councillor.</p> <p>6.8, 6.9, 6.10, 6.11 – replace \$50 with \$100.</p> <p>6.13 – insert a comma after the word include.</p> <p>7.6e) – insert the word 'or administrator after the word councillor.</p> <p>9.9 – delete "Where you are a Councillor or the General Manager, you must comply with</p>	
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ITEM 11 - ATTACHMENT 1 AMENDED CODE OF CONDUCT.

Version	Date	Author	Details	Minute No.
			any Council resolution requiring you to take action as a result of a breach of this code.” 9.12 – delete “a” after the word or and insert “any other”.	

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PORT STEPHENS
COUNCIL

Code of Conduct

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PORTSTEPHENS.NSW.GOV.AU    

**Procedures for the
Administration of the Model
Code of Conduct
for Local Councils in NSW**

2020

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ITEM 11 - ATTACHMENT 2 PROCEDURES FOR THE ADMINISTRATION OF THE MODEL CODE OF CONDUCT.

PART 1 INTRODUCTION

These procedures ("the Model Code Procedures") are prescribed for the administration of the *Model Code of Conduct for Local Councils in NSW* ("the Model Code of Conduct").

The Model Code of Conduct is made under section 440 of the *Local Government Act 1993* ("the LGA") and the *Local Government (General) Regulation 2005* ("the Regulation"). Section 440 of the LGA requires every council (including county councils) and joint organisation to adopt a code of conduct that incorporates the provisions of the Model Code of Conduct.

The Model Code Procedures are made under section 440AA of the LGA and the Regulation. Section 440AA of the LGA requires every council (including county councils) and joint organisation to adopt procedures for the administration of their code of conduct that incorporate the provisions of the Model Code Procedures.

In adopting procedures for the administration of their adopted codes of conduct, councils and joint organisations may supplement the Model Code Procedures. However, provisions that are not consistent with those prescribed under the Model Code Procedures will have no effect.

Note: References in these procedures to councils are also to be taken as references to county councils and joint organisations.

Note: In adopting the Model Code Procedures, joint organisations should adapt them to substitute the terms "board" for "council", "chairperson" for "mayor", "voting representative" for "councillor" and "executive officer" for "general manager".

Note: In adopting the Model Code Procedures, county councils should adapt them to substitute the term "chairperson" for "mayor" and "member" for "councillor".

Note: Parts 6, 7, 8 and 11 of these procedures apply only to the management of code of conduct complaints about councillors (including the mayor) or the general manager.

ITEM 11 - ATTACHMENT 2 PROCEDURES FOR THE ADMINISTRATION OF THE MODEL CODE OF CONDUCT.

PART 2 DEFINITIONS

In these procedures the following terms have the following meanings:

administrator	an administrator of a council appointed under the LGA other than an administrator appointed under section 66
code of conduct	a code of conduct adopted under section 440 of the LGA
code of conduct complaint	a complaint that is a code of conduct complaint for the purposes of clauses 4.1 and 4.2 of these procedures
complainant	a person who makes a code of conduct complaint
complainant councillor	a councillor who makes a code of conduct complaint
complaints coordinator	a person appointed by the general manager under these procedures as a complaints coordinator
conduct reviewer	a person appointed under these procedures to review allegations of breaches of the code of conduct by councillors or the general manager
council	includes county councils and joint organisations
council committee	a committee established by a council comprising of councillors, staff or other persons that the council has delegated functions to and the council's audit, risk and improvement committee
council committee member	a person other than a councillor or member of staff of a council who is a member of a council committee other than a wholly advisory committee, and a person other than a councillor who is a member of the council's audit, risk and improvement committee
councillor	any person elected or appointed to civic office, including the mayor, and includes members and chairpersons of county councils and voting representatives of the boards of joint

ITEM 11 - ATTACHMENT 2 PROCEDURES FOR THE ADMINISTRATION OF THE MODEL CODE OF CONDUCT.

	organisations and chairpersons of joint organisations
council official	any councillor, member of staff of council, administrator, council committee member, delegate of council and, for the purposes of clause 4.16 of the Model Code of Conduct, council adviser
delegate of council	a person (other than a councillor or member of staff of a council) or body, and the individual members of that body, to whom a function of the council is delegated
external agency	a state government agency such as, but not limited to, the Office, the ICAC, the NSW Ombudsman or the police
general manager	includes the executive officer of a joint organisation
ICAC	the Independent Commission Against Corruption
joint organisation	a joint organisation established under section 400O of the LGA
LGA	the <i>Local Government Act 1993</i>
mayor	includes the chairperson of a county council or a joint organisation
members of staff of a council	includes members of staff of county councils and joint organisations
the Office	the Office of Local Government
investigator	a conduct reviewer
the Regulation	the <i>Local Government (General) Regulation 2005</i>
respondent	a person whose conduct is the subject of investigation by a conduct reviewer under these procedures
wholly advisory committee	a council committee that the council has not delegated any functions to

ITEM 11 - ATTACHMENT 2 PROCEDURES FOR THE ADMINISTRATION OF THE MODEL CODE OF CONDUCT.**PART 3 ADMINISTRATIVE FRAMEWORK**The establishment of a panel of conduct reviewers

- 3.1 The council must ~~by resolution~~ establish a panel of conduct reviewers.
- 3.2 The council may ~~by resolution~~ enter into an arrangement with one or more other councils to share a panel of conduct reviewers including through a joint organisation or another regional body associated with the councils.
- 3.3 The panel of conduct reviewers is to be established following a public expression of interest process.
- 3.4 An expression of interest for members of the council's panel of conduct reviewers must, at a minimum, be advertised locally and in the Sydney metropolitan area.
- 3.5 To be eligible to be a conduct reviewer, a person must, at a minimum, meet the following requirements:
- a) an understanding of local government, and
 - b) knowledge of investigative processes including but not limited to procedural fairness requirements and the requirements of the *Public Interest Disclosures Act 1994*, and
 - c) knowledge and experience of one or more of the following:
 - i) investigations
 - ii) law
 - iii) public administration
 - iv) public sector ethics
 - v) alternative dispute resolution, and
 - d) meet the eligibility requirements for membership of a panel of conduct reviewers under clause 3.6.
- 3.6 A person is not eligible to be a conduct reviewer if they are:
- a) a councillor, or
 - b) a nominee for election as a councillor, or
 - c) an administrator, or
 - d) an employee of a council, or
 - e) a member of the Commonwealth Parliament or any State Parliament or Territory Assembly, or
 - f) a nominee for election as a member of the Commonwealth Parliament or any State Parliament or Territory Assembly, or
 - g) a person who has a conviction for an indictable offence that is not an expired conviction.
- 3.7 A person is not precluded from being a member of the council's panel of conduct reviewers if they are a member of another council's panel of conduct reviewers.
- 3.8 An incorporated or other entity may be appointed to a council's panel of conduct reviewers where the council is satisfied that all the persons who

ITEM 11 - ATTACHMENT 2 PROCEDURES FOR THE ADMINISTRATION OF THE MODEL CODE OF CONDUCT.

will be undertaking the functions of a conduct reviewer on behalf of the entity meet the selection and eligibility criteria prescribed under this Part.

- 3.9 A panel of conduct reviewers established under this Part is to have a term of up to four years.
- 3.10 The council may terminate the panel of conduct reviewers at any time by ~~resolution~~. Where a panel of conduct reviewers has been terminated, conduct reviewers who were members of the panel may continue to deal with any matter referred to them under these procedures prior to the termination of the panel until they have finalised their consideration of the matter.
- 3.11 When the term of the panel of conduct reviewers concludes or is terminated, the council must establish a new panel of conduct reviewers in accordance with the requirements of this Part.
- 3.12 A person who was a member of a previous panel of conduct reviewers established by the council may be a member of subsequent panels of conduct reviewers established by the council if they continue to meet the selection and eligibility criteria for membership of the panel.

The appointment of an internal ombudsman to a panel of conduct reviewers

- 3.13 Despite clause 3.6(d), an employee of a council who is the nominated internal ombudsman of one or more councils may be appointed to a council's panel of conduct reviewers with the Office's consent.
- 3.14 To be appointed to a council's panel of conduct reviewers, an internal ombudsman must meet the qualification requirements for conduct reviewers prescribed under clause 3.5 as modified by the operation of clause 3.13.
- 3.15 An internal ombudsman appointed to a council's panel of conduct reviewers may also exercise the functions of the council's complaints coordinator. For the purposes of clause 6.1, an internal ombudsman who is a council's complaints coordinator and has been appointed to the council's panel of conduct reviewers, may either undertake a preliminary assessment and investigation of a matter referred to them under clauses 5.26 or 5.33 or refer the matter to another conduct reviewer in accordance with clause 6.2.
- 3.16 Clause 6.4(c) does not apply to an internal ombudsman appointed to a council's panel of conduct reviewers.

The appointment of complaints coordinators

- 3.17 The general manager must appoint a member of staff of the council or another person (such as, but not limited to, a member of staff of another council or a member of staff of a joint organisation or other regional body

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associated with the council), to act as a complaints coordinator. Where the complaints coordinator is a member of staff of the council, the complaints coordinator should be a senior and suitably qualified member of staff.

- 3.18 The general manager may appoint other members of staff of the council or other persons (such as, but not limited to, members of staff of another council or members of staff of a joint organisation or other regional body associated with the council), to act as alternates to the complaints coordinator.
- 3.19 The general manager must not undertake the role of complaints coordinator.
- 3.20 The person appointed as complaints coordinator or alternate complaints coordinator must also be a nominated disclosures coordinator appointed for the purpose of receiving and managing reports of wrongdoing under the *Public Interest Disclosures Act 1994*.
- 3.21 The role of the complaints coordinator is to:
- a) coordinate the management of complaints made under the council's code of conduct
 - b) liaise with and provide administrative support to a conduct reviewer
 - c) liaise with the Office, and
 - d) arrange the annual reporting of code of conduct complaints statistics.

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PART 4 HOW MAY CODE OF CONDUCT COMPLAINTS BE MADE?

What is a code of conduct complaint?

- 4.1 For the purpose of these procedures, a code of conduct complaint is a complaint that shows or tends to show conduct on the part of a council official in connection with their role as a council official or the exercise of their functions as a council official that would constitute a breach of the standards of conduct prescribed under the council's code of conduct if proven.
- 4.2 The following are not "code of conduct complaints" for the purposes of these procedures:
- a) complaints about the standard or level of service provided by the council or a council official
 - b) complaints that relate solely to the merits of a decision made by the council or a council official or the exercise of a discretion by the council or a council official
 - c) complaints about the policies or procedures of the council
 - d) complaints about the conduct of a council official arising from the exercise of their functions in good faith, whether or not involving error, that would not otherwise constitute a breach of the standards of conduct prescribed under the council's code of conduct.
- 4.3 Only code of conduct complaints are to be dealt with under these procedures. Complaints that do not satisfy the definition of a code of conduct complaint are to be dealt with under the council's routine complaints management processes.

When must a code of conduct complaint be made?

- 4.4 A code of conduct complaint must be made within ~~three~~ 3 months of the alleged conduct occurring or within ~~three~~ 3 months of the complainant becoming aware of the alleged conduct.
- 4.5 A complaint made after ~~three~~ 3 months may only be accepted if the general manager or their delegate, or, in the case of a complaint about the general manager, the mayor or their delegate, is satisfied that the allegations are serious and compelling grounds exist for the matter to be dealt with under the code of conduct.

How may a code of conduct complaint about a council official other than the general manager be made?

- 4.6 All code of conduct complaints other than those relating to the general manager are to be made to the general manager in writing. This clause does not operate to prevent a person from making a complaint to an external agency.

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- 4.7 Where a code of conduct complaint about a council official other than the general manager cannot be made in writing, the complaint must be confirmed with the complainant in writing as soon as possible after the receipt of the complaint.
- 4.8 In making a code of conduct complaint about a council official other than the general manager, the complainant may nominate whether they want the complaint to be resolved by mediation or by other alternative means.
- 4.9 The general manager or their delegate, or, where the complaint is referred to a conduct reviewer, the conduct reviewer, must consider the complainant's preferences in deciding how to deal with the complaint.
- 4.10 Notwithstanding clauses 4.6 and 4.7, where the general manager becomes aware of a possible breach of the council's code of conduct, they may initiate the process for the consideration of the matter under these procedures without a written complaint.

How may a code of conduct complaint about the general manager be made?

- 4.11 Code of conduct complaints about the general manager are to be made to the mayor in writing. This clause does not operate to prevent a person from making a complaint about the general manager to an external agency.
- 4.12 Where a code of conduct complaint about the general manager cannot be made in writing, the complaint must be confirmed with the complainant in writing as soon as possible after the receipt of the complaint.
- 4.13 In making a code of conduct complaint about the general manager, the complainant may nominate whether they want the complaint to be resolved by mediation or by other alternative means.
- 4.14 The mayor or their delegate, or, where the complaint is referred to a conduct reviewer, the conduct reviewer, must consider the complainant's preferences in deciding how to deal with the complaint.
- 4.15 Notwithstanding clauses 4.11 and 4.12, where the mayor becomes aware of a possible breach of the council's code of conduct by the general manager, they may initiate the process for the consideration of the matter under these procedures without a written complaint.

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PART 5 HOW ARE CODE OF CONDUCT COMPLAINTS TO BE MANAGED?

Delegation by general managers and mayors of their functions under this Part

- 5.1 A general manager or mayor may delegate their functions under this Part to a member of staff of the council or to a person or persons external to the council other than an external agency. References in this Part to the general manager or mayor are also to be taken to be references to their delegates.

Consideration of complaints by general managers and mayors

- 5.2 In exercising their functions under this Part, general managers and mayors may consider the complaint assessment criteria prescribed under clause 6.31.

What complaints may be declined at the outset?

- 5.3 Without limiting any other provision in these procedures, the general manager or, in the case of a complaint about the general manager, the mayor, may decline to deal with a complaint under these procedures where they are satisfied that the complaint:
- a) is not a code of conduct complaint, or
 - b) subject to clause 4.5, is not made within 3 months of the alleged conduct occurring or the complainant becoming aware of the alleged conduct, or
 - c) is trivial, frivolous, vexatious or not made in good faith, or
 - d) relates to a matter the substance of which has previously been considered and addressed by the council and does not warrant further action, or
 - e) is not made in a way that would allow the alleged conduct and any alleged breaches of the council's code of conduct to be readily identified.

How are code of conduct complaints about staff (other than the general manager) to be dealt with?

- 5.4 The general manager is responsible for the management of code of conduct complaints about members of staff of council (other than complaints alleging a breach of the pecuniary interest provisions contained in Part 4 of the code of conduct) and for determining the outcome of such complaints.
- 5.5 The general manager must refer code of conduct complaints about members of staff of council alleging a breach of the pecuniary interest provisions contained in Part 4 of the code of conduct to the Office.

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- 5.6 The general manager may decide to take no action in relation to a code of conduct complaint about a member of staff of council other than one requiring referral to the Office under clause 5.5 where they consider that no action is warranted in relation to the complaint.
- 5.7 Where the general manager decides to take no action in relation to a code of conduct complaint about a member of staff of council, the general manager must give the complainant reasons in writing for their decision and this shall finalise the consideration of the matter under these procedures.
- 5.8 Code of conduct complaints about members of staff of council must be managed in accordance with the relevant industrial instrument or employment contract and make provision for procedural fairness including the right of an employee to be represented by their union.
- 5.9 Sanctions for breaches of the code of conduct by staff depend on the severity, scale and importance of the breach and must be determined in accordance with any relevant industrial instruments or contracts.

How are code of conduct complaints about delegates of council, council advisers and council committee members to be dealt with?

- 5.10 The general manager is responsible for the management of code of conduct complaints about delegates of council and council committee members (other than complaints alleging a breach of the pecuniary interest provisions contained in Part 4 of the code of conduct) and for determining the outcome of such complaints.
- 5.11 The general manager must refer code of conduct complaints about council advisers, delegates of council and council committee members alleging a breach of the pecuniary interest provisions contained in Part 4 of the code of conduct to the Office.
- 5.12 The general manager may decide to take no action in relation to a code of conduct complaint about a delegate of council or a council committee member other than one requiring referral to the Office under clause 5.11 where they consider that no action is warranted in relation to the complaint.
- 5.13 Where the general manager decides to take no action in relation to a code of conduct complaint about a delegate of council or a council committee member, the general manager must give the complainant reasons in writing for their decision and this shall finalise the consideration of the matter under these procedures.
- 5.14 Where the general manager considers it to be practicable and appropriate to do so, the general manager may seek to resolve code of conduct complaints about delegates of council or council committee members, by alternative means such as, but not limited to, explanation, counselling,

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training, mediation, informal discussion, negotiation, a voluntary apology or an undertaking not to repeat the offending behaviour. The resolution of a code of conduct complaint under this clause is not to be taken as a determination that there has been a breach of the council's code of conduct.

- 5.15 Where the general manager resolves a code of conduct complaint under clause 5.14 to the general manager's satisfaction, the general manager must notify the complainant in writing of the steps taken to resolve the complaint and this shall finalise the consideration of the matter under these procedures.
- 5.16 Sanctions for breaches of the code of conduct by delegates of council and/or council committee members depend on the severity, scale and importance of the breach and may include one or more of the following:
- a) censure
 - b) requiring the person to apologise to any person or organisation adversely affected by the breach in such a time and form specified by the general manager
 - c) prosecution for any breach of the law
 - d) removing or restricting the person's delegation
 - e) removing the person from membership of the relevant council committee.
- 5.17 Prior to imposing a sanction against a delegate of council or a council committee member under clause 5.16, the general manager or any person making enquiries on behalf of the general manager must comply with the requirements of procedural fairness. In particular:
- a) the substance of the allegation (including the relevant provision/s of the council's code of conduct that the alleged conduct is in breach of) must be put to the person who is the subject of the allegation, and
 - b) the person must be given an opportunity to respond to the allegation, and
 - c) the general manager must consider the person's response in deciding whether to impose a sanction under clause 5.16.

How are code of conduct complaints about administrators to be dealt with?

- 5.18 The general manager must refer all code of conduct complaints about administrators to the Office for its consideration.
- 5.19 The general manager must notify the complainant of the referral of their complaint in writing.

How are code of conduct complaints about councillors to be dealt with?

- 5.20 The general manager must refer the following code of conduct complaints about councillors to the Office:

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- a) complaints alleging a breach of the pecuniary interest provisions contained in Part 4 of the code of conduct
 - b) complaints alleging a failure to comply with a requirement under the code of conduct to disclose and appropriately manage conflicts of interest arising from political donations (see section 328B of the LGA)
 - c) complaints alleging a breach of the provisions relating to the maintenance of the integrity of the code of conduct contained in Part 9 of the code of conduct
 - d) complaints that are the subject of a special complaints management arrangement with the Office under clause 5.49.
- 5.21 Where the general manager refers a complaint to the Office under clause 5.20, the general manager must notify the complainant of the referral in writing.
- 5.22 The general manager may decide to take no action in relation to a code of conduct complaint about a councillor, other than one requiring referral to the Office under clause 5.20, where they consider that no action is warranted in relation to the complaint.
- 5.23 Where the general manager decides to take no action in relation to a code of conduct complaint about a councillor, the general manager must give the complainant reasons in writing for their decision within 21 days of receipt of the complaint and this shall finalise the consideration of the matter under these procedures.
- 5.24 Where the general manager considers it to be practicable and appropriate to do so, the general manager may seek to resolve code of conduct complaints about councillors, other than those requiring referral to the Office under clause 5.20, by alternative means such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation, a voluntary apology or an undertaking not to repeat the offending behaviour. The resolution of a code of conduct complaint under this clause is not to be taken as a determination that there has been a breach of the council's code of conduct.
- 5.25 Where the general manager resolves a code of conduct complaint under clause 5.24 to the general manager's satisfaction, the general manager must notify the complainant in writing of the steps taken to resolve the complaint within 21 days of receipt of the complaint and this shall finalise the consideration of the matter under these procedures.
- 5.26 The general manager must refer all code of conduct complaints about councillors, other than those referred to the Office under clause 5.20 or finalised under clause 5.23 or resolved under clause 5.24, to the complaints coordinator.

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How are code of conduct complaints about the general manager to be dealt with?

- 5.27 The mayor must refer the following code of conduct complaints about the general manager to the Office:
- a) complaints alleging a breach of the pecuniary interest provisions contained in Part 4 of the code of conduct
 - b) complaints alleging a breach of the provisions relating to the maintenance of the integrity of the code of conduct contained in Part 9 of the code of conduct
 - c) complaints that are the subject of a special complaints management arrangement with the Office under clause 5.49.
- 5.28 Where the mayor refers a complaint to the Office under clause 5.27, the mayor must notify the complainant of the referral in writing.
- 5.29 The mayor may decide to take no action in relation to a code of conduct complaint about the general manager, other than one requiring referral to the Office under clause 5.27, where they consider that no action is warranted in relation to the complaint.
- 5.30 Where the mayor decides to take no action in relation to a code of conduct complaint about the general manager, the mayor must give the complainant reasons in writing for their decision within 21 days of receipt of the complaint and this shall finalise the consideration of the matter under these procedures.
- 5.31 Where the mayor considers it to be practicable and appropriate to do so, the mayor may seek to resolve code of conduct complaints about the general manager, other than those requiring referral to the Office under clause 5.27, by alternative means such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation, a voluntary apology or an undertaking not to repeat the offending behaviour. The resolution of a code of conduct complaint under this clause is not to be taken as a determination that there has been a breach of the council's code of conduct.
- 5.32 Where the mayor resolves a code of conduct complaint under clause 5.31 to the mayor's satisfaction, the mayor must notify the complainant in writing of the steps taken to resolve the complaint within 21 days of receipt of the complaint and this shall finalise the consideration of the matter under these procedures.
- 5.33 The mayor must refer all code of conduct complaints about the general manager, other than those referred to the Office under clause 5.27 or finalised under clause 5.30 or resolved under clause 5.31, to the complaints coordinator.

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How are complaints about both the general manager and the mayor to be dealt with?

- 5.34 Where the general manager or mayor receives a code of conduct complaint that alleges a breach of the code of conduct by both the general manager and the mayor, the general manager or mayor must either:
- a) delegate their functions under this part with respect to the complaint to a member of staff of the council other than the general manager where the allegation is not serious, or to a person external to the council, or
 - b) refer the matter to the complaints coordinator under clause 5.26 and clause 5.33.

Referral of code of conduct complaints to external agencies

- 5.35 The general manager, mayor or a conduct reviewer may, at any time, refer a code of conduct complaint to an external agency for its consideration, where they consider such a referral is warranted.
- 5.36 The general manager, mayor or a conduct reviewer must report to the ICAC any matter that they suspect on reasonable grounds concerns or may concern corrupt conduct.
- 5.37 Where the general manager, mayor or conduct reviewer refers a complaint to an external agency under clause 5.35, they must notify the complainant of the referral in writing unless they form the view, on the advice of the relevant agency, that it would not be appropriate for them to do so.
- 5.38 Referral of a matter to an external agency shall finalise consideration of the matter under these procedures unless the council is subsequently advised otherwise by the referral agency.

Disclosure of the identity of complainants

- 5.39 In dealing with matters under these procedures, information that identifies or tends to identify complainants is not to be disclosed unless:
- a) the complainant consents in writing to the disclosure, or
 - b) it is generally known that the complainant has made the complaint as a result of the complainant having voluntarily identified themselves as the person who made the complaint, or
 - c) it is essential, having regard to procedural fairness requirements, that the identifying information be disclosed, or
 - d) a conduct reviewer is of the opinion that disclosure of the information is necessary to investigate the matter effectively, or
 - e) it is otherwise in the public interest to do so.
- 5.40 Clause 5.39 does not apply to code of conduct complaints made by councillors about other councillors or the general manager.

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- 5.41 Where a councillor makes a code of conduct complaint about another councillor or the general manager, and the complainant councillor considers that compelling grounds exist that would warrant information that identifies or tends to identify them as the complainant not to be disclosed, they may request in writing that such information not be disclosed.
- 5.42 A request made by a complainant councillor under clause 5.41 must be made at the time they make a code of conduct complaint and must state the grounds upon which the request is made.
- 5.43 The general manager or mayor, and where the matter is referred to a conduct reviewer, the conduct reviewer, must consider a request made under clause 5.41 before disclosing information that identifies or tends to identify the complainant councillor, but they are not obliged to comply with the request.
- 5.44 Where a complainant councillor makes a request under clause 5.41, the general manager or mayor or, where the matter is referred to a conduct reviewer, the conduct reviewer, shall notify the councillor in writing of their intention to disclose information that identifies or tends to identify them prior to disclosing the information.

Code of conduct complaints made as public interest disclosures

- 5.45 These procedures do not override the provisions of the *Public Interest Disclosures Act 1994*. Code of conduct complaints that are made as public interest disclosures under that Act are to be managed in accordance with the requirements of that Act, the council's internal reporting policy, and any guidelines issued by the NSW Ombudsman that relate to the management of public interest disclosures.
- 5.46 Where a councillor makes a code of conduct complaint about another councillor or the general manager as a public interest disclosure, before the matter may be dealt with under these procedures, the complainant councillor must consent in writing to the disclosure of their identity as the complainant.
- 5.47 Where a complainant councillor declines to consent to the disclosure of their identity as the complainant under clause 5.46, the general manager or the mayor must refer the complaint to the Office for consideration. Such a referral must be made under section 26 of the *Public Interest Disclosures Act 1994*.

Special complaints management arrangements

- 5.48 The general manager may request in writing that the Office enter into a special complaints management arrangement with the council in relation to code of conduct complaints made by or about a person or persons.

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- 5.49 Where the Office receives a request under clause 5.48, it may agree to enter into a special complaints management arrangement if it is satisfied that the number or nature of code of conduct complaints made by or about a person or persons has:
- a) imposed an undue and disproportionate cost burden on the council's administration of its code of conduct, or
 - b) impeded or disrupted the effective administration by the council of its code of conduct, or
 - c) impeded or disrupted the effective functioning of the council.
- 5.50 A special complaints management arrangement must be in writing and must specify the following:
- a) the code of conduct complaints the arrangement relates to, and
 - b) the period that the arrangement will be in force.
- 5.51 The Office may, by notice in writing, amend or terminate a special complaints management arrangement at any time.
- 5.52 While a special complaints management arrangement is in force, an officer of the Office (the assessing OLG officer) must undertake the preliminary assessment of the code of conduct complaints specified in the arrangement in accordance with the requirements of Part 6 of these procedures.
- 5.53 Where, following a preliminary assessment, the assessing OLG officer determines that a code of conduct complaint warrants investigation by a conduct reviewer, the assessing OLG officer shall notify the complaints coordinator in writing of their determination and the reasons for their determination. The complaints coordinator must comply with the recommendation of the assessing OLG officer.
- 5.54 Prior to the expiry of a special complaints management arrangement, the Office may, at the request of the general manager, review the arrangement to determine whether it should be renewed or amended.
- 5.55 A special complaints management arrangement shall expire on the date specified in the arrangement unless renewed under clause 5.54.

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Referral of code of conduct complaints about councillors or the general manager to conduct reviewers

- 6.1 The complaints coordinator must refer all code of conduct complaints about councillors or the general manager that have not been referred to an external agency or declined or resolved by the general manager, mayor or their delegate and that have been referred to them under clauses 5.26 or 5.33, to a conduct reviewer within 21 days of receipt of the complaint by the general manager or the mayor.
- 6.2 For the purposes of clause 6.1, the complaints coordinator will refer a complaint to a conduct reviewer selected from:
- a) a panel of conduct reviewers established by the council, or
 - b) a panel of conduct reviewers established by an organisation approved by the Chief Executive of the Office.
- 6.3 In selecting a suitable conduct reviewer, the complaints coordinator may have regard to the qualifications and experience of members of the panel of conduct reviewers. Where the conduct reviewer is an incorporated or other entity, the complaints coordinator must also ensure that the person assigned to receive the referral on behalf of the entity meets the selection and eligibility criteria for conduct reviewers prescribed under Part 3 of these procedures.
- 6.4 A conduct reviewer must not accept the referral of a code of conduct complaint where:
- a) they have a conflict of interest in relation to the matter referred to them, or
 - b) a reasonable apprehension of bias arises in relation to their consideration of the matter, or
 - c) they or their employer has entered into one or more contracts with the council (other than contracts relating to the exercise of their functions as a conduct reviewer) in the 2 years preceding the referral, and they or their employer have received or expect to receive payments under the contract or contracts of a value that, when aggregated, exceeds \$100,000, or
 - d) at the time of the referral, they or their employer are the council's legal service provider or are a member of a panel of legal service providers appointed by the council.
- 6.5 For the purposes of clause 6.4(a), a conduct reviewer will have a conflict of interest in a matter where a reasonable and informed person would perceive that they could be influenced by a private interest when carrying out their public duty (see clause 5.2 of the Model Code of Conduct).

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- 6.6 For the purposes of clause 6.4(b), a reasonable apprehension of bias arises where a fair-minded observer might reasonably apprehend that the conduct reviewer might not bring an impartial and unprejudiced mind to the matter referred to the conduct reviewer.
- 6.7 Where the complaints coordinator refers a matter to a conduct reviewer, they will provide the conduct reviewer with a copy of the code of conduct complaint and any other information relevant to the matter held by the council, including any information about previous proven breaches and any information that would indicate that the alleged conduct forms part of an ongoing pattern of behaviour.
- 6.8 The complaints coordinator must notify the complainant in writing that the matter has been referred to a conduct reviewer, and advise which conduct reviewer the matter has been referred to.
- 6.9 Conduct reviewers must comply with these procedures in their consideration of matters that have been referred to them and exercise their functions in a diligent and timely manner.
- 6.10 The complaints coordinator may at any time terminate the referral of a matter to a conduct reviewer and refer the matter to another conduct reviewer where the complaints coordinator is satisfied that the conduct reviewer has failed to:
- a) comply with these procedures in their consideration of the matter, or
 - b) comply with a lawful and reasonable request by the complaints coordinator, or
 - c) exercise their functions in a timely or satisfactory manner.
- 6.11 Where the complaints coordinator terminates a referral to a conduct reviewer under clause 6.10, they must notify the complainant and any other affected person in writing of their decision and the reasons for it and advise them which conduct reviewer the matter has been referred to instead.

Preliminary assessment of code of conduct complaints about councillors or the general manager by a conduct reviewer

- 6.12 The conduct reviewer is to undertake a preliminary assessment of a complaint referred to them by the complaints coordinator for the purposes of determining how the complaint is to be managed.
- 6.13 The conduct reviewer may determine to do one or more of the following in relation to a complaint referred to them by the complaints coordinator:
- a) to take no action
 - b) to resolve the complaint by alternative and appropriate strategies such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation, a voluntary apology or an undertaking not to repeat the offending behaviour

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- c) to refer the matter back to the general manager or, in the case of a complaint about the general manager, the mayor, for resolution by alternative and appropriate strategies such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation, a voluntary apology or an undertaking not to repeat the offending behaviour
 - d) to refer the matter to an external agency
 - e) to investigate the matter.
- 6.14 In determining how to deal with a matter under clause 6.13, the conduct reviewer must have regard to the complaint assessment criteria prescribed under clause 6.31.
- 6.15 The conduct reviewer may make such enquiries the conduct reviewer considers to be reasonably necessary to determine what options to exercise under clause 6.13.
- 6.16 The conduct reviewer may request the complaints coordinator to provide such additional information the conduct reviewer considers to be reasonably necessary to determine what options to exercise in relation to the matter under clause 6.13. The complaints coordinator will, as far as is reasonably practicable, supply any information requested by the conduct reviewer.
- 6.17 The conduct reviewer must refer to the Office any complaints referred to them that should have been referred to the Office under clauses 5.20 and 5.27.
- 6.18 The conduct reviewer must determine to take no action on a complaint that is not a code of conduct complaint for the purposes of these procedures.
- 6.19 The resolution of a code of conduct complaint under clause 6.13, paragraphs (b) or (c) is not to be taken as a determination that there has been a breach of the council's code of conduct.
- 6.20 Where the conduct reviewer completes their preliminary assessment of a complaint by determining to exercise an option under clause 6.13, paragraphs (a), (b) or (c), they must provide the complainant with written notice of their determination and provide reasons for it, and this will finalise consideration of the matter under these procedures.
- 6.21 Where the conduct reviewer refers a complaint to an external agency, they must notify the complainant of the referral in writing unless they form the view, on the advice of the relevant agency, that it would not be appropriate for them to do so.
- 6.22 The conduct reviewer may only determine to investigate a matter where they are satisfied as to the following:

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- a) that the complaint is a code of conduct complaint for the purposes of these procedures, and
- b) that the alleged conduct is sufficiently serious to warrant investigation the formal censure of a councillor under section 440G of the LGA or disciplinary action against the general manager under their contract of employment if it were to be proven, and
- c) that the matter is one that could not or should not be resolved by alternative means.

6.23 In determining whether a matter is sufficiently serious to warrant investigation formal censure of a councillor under section 440G of the LGA or disciplinary action against the general manager under their contract of employment, the conduct reviewer is to consider the following:

- a) the harm or cost that the alleged conduct has caused to any affected individuals and/or the council
- b) the likely impact of the alleged conduct on the reputation of the council and public confidence in it
- c) whether the alleged conduct was deliberate or undertaken with reckless intent or negligence
- d) any previous proven breaches by the person whose alleged conduct is the subject of the complaint and/or whether the alleged conduct forms part of an ongoing pattern of behaviour.

6.24 The conduct reviewer must complete their preliminary assessment of the complaint within 28 days of referral of the matter to them by the complaints coordinator and notify the complaints coordinator in writing of the outcome of their assessment.

6.25 The conduct reviewer is not obliged to give prior notice to or to consult with any person before making a determination in relation to their preliminary assessment of a complaint, except as may be specifically required under these procedures.

Referral back to the general manager or mayor for resolution

6.26 Where the conduct reviewer determines to refer a matter back to the general manager or to the mayor to be resolved by alternative and appropriate means, they must write to the general manager or, in the case of a complaint about the general manager, to the mayor, recommending the means by which the complaint may be resolved.

6.27 The conduct reviewer must consult with the general manager or mayor prior to referring a matter back to them under clause 6.13(c).

6.28 The general manager or mayor may decline to accept the conduct reviewer's recommendation. In such cases, the conduct reviewer may determine to deal with the complaint by other means under clause 6.13.

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- 6.29 Where the conduct reviewer refers a matter back to the general manager or mayor under clause 6.13(c), the general manager or, in the case of a complaint about the general manager, the mayor, is responsible for implementing or overseeing the implementation of the conduct reviewer's recommendation.
- 6.30 Where the conduct reviewer refers a matter back to the general manager or mayor under clause 6.13(c), the general manager, or, in the case of a complaint about the general manager, the mayor, must advise the complainant in writing of the steps taken to implement the conduct reviewer's recommendation once these steps have been completed.

Complaints assessment criteria

- 6.31 In undertaking the preliminary assessment of a complaint, the conduct reviewer must have regard to the following considerations:
- a) whether the complaint is a code of conduct complaint for the purpose of these procedures
 - b) whether the complaint has been made in a timely manner in accordance with clause 4.4, and if not, whether the allegations are sufficiently serious for compelling grounds to exist for the matter to be dealt with under the council's code of conduct
 - c) whether the complaint is trivial, frivolous, vexatious or not made in good faith
 - d) whether the complaint discloses prima facie evidence of conduct that, if proven, would constitute a breach of the code of conduct
 - e) whether the complaint raises issues that would be more appropriately dealt with by an external agency
 - f) whether there is or was an alternative and satisfactory means of redress available in relation to the conduct complained of
 - g) whether the complaint is one that can be resolved by alternative and appropriate strategies such as, but not limited to, explanation, counselling, training, informal discussion, negotiation, a voluntary apology or an undertaking not to repeat the offending behaviour
 - h) whether the issue/s giving rise to the complaint have previously been addressed or resolved
 - i) any previous proven breaches of the council's code of conduct
 - j) whether the conduct complained of forms part of an ongoing pattern of behaviour
 - k) whether there were mitigating circumstances giving rise to the conduct complained of
 - l) the seriousness of the alleged conduct (having regard to the criteria specified in clause 6.23)
 - m) the significance of the conduct or the impact of the conduct for the council
 - n) how much time has passed since the alleged conduct occurred
 - o) such other considerations that the conduct reviewer considers may be relevant to the assessment of the complaint.

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PART 7 INVESTIGATIONS OF CODE OF CONDUCT COMPLAINTS ABOUT COUNCILLORS OR THE GENERAL MANAGER

What matters may a conduct reviewer investigate?

- 7.1 A conduct reviewer (hereafter referred to as an "investigator") may investigate a code of conduct complaint that has been referred to them by the complaints coordinator and any matters related to or arising from that complaint.
- 7.2 Where an investigator identifies further separate possible breaches of the code of conduct that are not related to or **do not** arise from the code of conduct complaint that has been referred to them, they are to report the matters separately in writing to the general manager, or, in the case of alleged conduct on the part of the general manager, to the mayor.
- 7.3 The general manager or the mayor or their delegate is to deal with a matter reported to them by an investigator under clause 7.2 as if it were a new code of conduct complaint in accordance with these procedures.

How are investigations to be commenced?

- 7.4 The investigator must at the outset of their investigation provide a written notice of investigation to the respondent. The notice of investigation must:
- a) disclose the substance of the allegations against the respondent, and
 - b) advise of the relevant provisions of the code of conduct that apply to the alleged conduct, and
 - c) advise of the process to be followed in investigating the matter, and
 - d) advise the respondent of the requirement to maintain confidentiality, and
 - e) invite the respondent to **make a written submission in relation to the matter within at least a period of not less than 14 days or such other period** specified by the investigator in the notice, and
 - f) provide the respondent the opportunity to address the investigator on the matter within such reasonable time specified in the notice.
- 7.5 The respondent may, within 7 days of receipt of the notice of investigation, request in writing that the investigator provide them with such further information they consider necessary to assist them to identify the substance of the allegation against them. An investigator will only be obliged to provide such information that the investigator considers reasonably necessary for the respondent to identify the substance of the allegation against them.
- 7.6 An investigator may at any time prior to issuing a draft report, issue an amended notice of investigation to the respondent in relation to the matter referred to them.

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- 7.7 Where an investigator issues an amended notice of investigation, they must provide the respondent with a further opportunity to make a written submission in response to the amended notice of investigation within ~~at least a period of not less than~~ 14 days ~~or such other period~~ specified by the investigator in the amended notice.
- 7.8 The investigator must also, at the outset of their investigation, provide written notice of the investigation to the complainant, the complaints coordinator and the general manager, or in the case of a complaint about the general manager, to the complainant, the complaints coordinator and the mayor. The notice must:
- a) advise them of the matter the investigator is investigating, and
 - b) in the case of the notice to the complainant, advise them of the requirement to maintain confidentiality, and
 - c) invite the complainant to make a written submission in relation to the matter ~~at least a period of not less than~~ 14 days ~~or such other period~~ specified by the investigator in the notice.

Written and oral submissions

- 7.9 Where the respondent or the complainant fails to make a written submission in relation to the matter within the period specified by the investigator in their notice of investigation or amended notice of investigation, the investigator may proceed to prepare their draft report without receiving such submissions.
- 7.10 The investigator may accept written submissions received outside the period specified in the notice of investigation or amended notice of investigation.
- 7.11 Prior to preparing a draft report, the investigator must give the respondent an opportunity to address the investigator on the matter being investigated. The respondent may do so in person or by telephone or other electronic means.
- 7.12 Where the respondent fails to accept the opportunity to address the investigator within the period specified by the investigator in the notice of investigation, the investigator may proceed to prepare a draft report without hearing from the respondent.
- 7.13 Where the respondent accepts the opportunity to address the investigator in person, they may have a support person or legal adviser in attendance. The support person or legal adviser will act in an advisory or support role to the respondent only. They must not speak on behalf of the respondent or otherwise interfere with or disrupt proceedings.
- 7.14 The investigator must consider all written and oral submissions made to them in relation to the matter.

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How are investigations to be conducted?

- 7.15 Investigations are to be undertaken without undue delay.
- 7.16 Investigations are to be undertaken in the absence of the public and in confidence.
- 7.17 Investigators must make any such enquiries that may be reasonably necessary to establish the facts of the matter.
- 7.18 Investigators may seek such advice or expert guidance that may be reasonably necessary to assist them with their investigation or the conduct of their investigation.
- 7.19 An investigator may request that the complaints coordinator provide such further information that the investigator considers may be reasonably necessary for them to establish the facts of the matter. The complaints coordinator will, as far as is reasonably practicable, provide the information requested by the investigator.

Referral or resolution of a matter after the commencement of an investigation

- 7.20 At any time after an investigator has issued a notice of investigation and before they have issued their draft **their** final report, an investigator may determine to:
- a) resolve the matter by alternative and appropriate strategies such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation, a voluntary apology or an undertaking not to repeat the offending behaviour, or
 - b) refer the matter to the general manager, or, in the case of a complaint about the general manager, to the mayor, for resolution by alternative and appropriate strategies such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation, a voluntary apology or an undertaking not to repeat the offending behaviour, or
 - c) refer the matter to an external agency.
- 7.21 Where an investigator determines to exercise any of the options under clause 7.20 after the commencement of an investigation, they must do so in accordance with the requirements of Part 6 of these procedures relating to the exercise of these options at the preliminary assessment stage.
- 7.22 The resolution of a code of conduct complaint under clause 7.20, paragraphs (a) or (b) is not to be taken as a determination that there has been a breach of the council's code of conduct.
- 7.23 Where an investigator determines to exercise any of the options under clause 7.20 after the commencement of an investigation, they may by written notice to the respondent, the complainant, the complaints coordinator and the general manager, or in the case of a complaint about

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the general manager, to the respondent, the complainant, the complaints coordinator and the mayor, discontinue their investigation of the matter.

- 7.24 Where the investigator discontinues their investigation of a matter under clause 7.23, this shall finalise the consideration of the matter under these procedures.
- 7.25 An investigator is not obliged to give prior notice to or to consult with any person before making a determination to exercise any of the options under clause 7.20 or to discontinue their investigation except as may be specifically required under these procedures.

Draft investigation reports

- 7.26 When an investigator has completed their enquiries and considered any written or oral submissions made to them in relation to a matter, they must prepare a draft of their proposed report.
- 7.27 The investigator must provide their draft report to the respondent and invite them to make a written submission in relation to it within **at least a period of not less than 14 days** ~~or such other period specified by the investigator.~~
- 7.28 Where the investigator proposes to make adverse comment about any other person (an affected person) in their report, they must also provide the affected person with relevant extracts of their draft report containing such comment and invite the affected person to make a written submission in relation to it within **at least a period of not less than 14 days** ~~or such other period specified by the investigator.~~
- 7.29 The investigator must consider written submissions received in relation to the draft report prior to finalising their report in relation to the matter.
- 7.30 The investigator may, after consideration of all written submissions received in relation to their draft report, make further enquiries into the matter. If, as a result of making further enquiries, the investigator makes any material change to their proposed report that makes new adverse comment about the respondent or an affected person, they must provide the respondent or affected person as the case may be with a further opportunity to make a written submission in relation to the new adverse comment.
- 7.31 Where the respondent or an affected person fails to make a written submission in relation to the draft report within the period specified by the investigator, the investigator may proceed to prepare and issue their final report without receiving such submissions.
- 7.32 The investigator may accept written submissions in relation to the draft report received outside the period specified by the investigator at any time prior to issuing their final report.

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Final investigation reports

7.33 Where an investigator issues a notice of investigation, they must prepare a final report in relation to the matter unless the investigation is discontinued under clause 7.23.

7.34 An investigator must not prepare a final report in relation to the matter at any time before they have finalised their consideration of the matter in accordance with the requirements of these procedures.

7.35 The investigator's final report must:

- a) make findings of fact in relation to the matter investigated, and,
- b) make a determination that the conduct investigated either,
 - i. constitutes a breach of the code of conduct, or
 - ii. does not constitute a breach of the code of conduct, and
- c) provide reasons for the determination.

~~(7.36) Where the investigator determines that the conduct investigated constitutes a breach of the code of conduct, the investigator may make one or more of the following recommendations:~~

- ~~a) that the council revise any of its policies, practices or procedures~~
- ~~b) that the respondent undertake any training or other education relevant to the conduct giving rise to the breach~~
- ~~c) that the respondent be counselled for their conduct~~
- ~~d) that the respondent be removed from membership of a committee of the council or any other body or organisation that the respondent serves on as the council's representative~~
- ~~e) that the respondent gives an undertaking not to repeat the offending behaviour in such time and form specified by the recommendation~~
- ~~f) that the respondent apologise to any person or organisation affected by the breach in such a time and form specified by the recommendation~~
- ~~g) that findings of inappropriate conduct be made public by publishing the investigator's findings and determination in the minutes of the council meeting at which the matter is considered~~
- ~~h) in the case of a breach by the general manager, that action be taken under the general manager's contract~~
- ~~i) in the case of a breach by a councillor, that the councillor be formally censured for the breach under section 440G of the LGA~~
- ~~j) in the case of a breach by a councillor, that the council resolves as follows:~~
 - ~~i. that the councillor be formally censured for the breach under section 440G of the LGA; and~~
 - ~~ii. that the matter be referred to the Office for further action under the misconduct provisions of the LGA.~~

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~~(7.37) Where the investigator determines that the conduct investigated does not constitute a breach of the code of conduct, the investigator may make one or more of the following recommendations:~~

- ~~a) that the council revise any of its policies, practices or procedures~~
- ~~b) that a person or persons undertake any training or other education.~~

~~(7.38) In making a recommendation under clause 7.36, the investigator may have regard to the following:~~

- ~~a) the seriousness of the breach~~
- ~~b) whether the breach can be easily remedied or rectified~~
- ~~c) whether the respondent has remedied or rectified their conduct~~
- ~~d) whether the respondent has expressed contrition~~
- ~~e) whether there were any mitigating circumstances~~
- ~~f) the age, physical or mental health or special infirmity of the respondent~~
- ~~g) whether the breach is technical or trivial only~~
- ~~h) any previous proven breaches~~
- ~~i) whether the breach forms part of an ongoing pattern of behaviour~~
- ~~j) the degree of reckless intention or negligence of the respondent~~
- ~~k) the extent to which the breach has affected other parties or the council as a whole~~
- ~~l) the harm or potential harm to the reputation of the council or local government in general arising from the conduct~~
- ~~m) whether the findings and recommendations can be justified in terms of the public interest and would withstand public scrutiny~~
- ~~n) whether an educative approach would be more appropriate than a punitive one~~
- ~~o) the relative costs and benefits of taking formal disciplinary action as opposed to taking no action or taking informal action~~
- ~~p) what action or remedy would be in the public interest.~~

~~(7.39) Where the investigator proposes to make a recommendation under clause 7.36(j), the investigator must first consult with the Office on their proposed findings, determination and recommendation prior to finalising their report, and must take any comments by the Office into consideration when finalising their report.~~

7.36 At a minimum, the investigator's final report must contain the following information:

- a) a description of the allegations against the respondent
- b) the relevant provisions of the code of conduct that apply to the alleged conduct investigated
- c) a statement of reasons as to why the matter warranted investigation (having regard to the criteria specified in clause 6.23)
- d) a statement of reasons as to why the matter was one that could not or should not be resolved by alternative means
- e) a description of any attempts made to resolve the matter by use of alternative means
- f) the steps taken to investigate the matter

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- g) the facts of the matter
- h) the investigator's findings in relation to the facts of the matter and the reasons for those findings
- i) the investigator's determination and the reasons for that determination
- j) any recommendations.

7.37 Where the investigator determines that the conduct investigated constitutes a breach of the code of conduct, the investigator may recommend:

- a) in the case of a breach by the general manager, that disciplinary action be taken under the general manager's contract of employment for the breach, or
- b) in the case of a breach by a councillor, that the councillor be formally censured for the breach under section 440G of the LGA, or
- c) in the case of a breach by a councillor, that the council resolves as follows:
 - i. that the councillor be formally censured for the breach under section 440G of the LGA, and
 - ii. that the matter be referred to the Office for further action under the misconduct provisions of the LGA.

7.38 Where the investigator proposes to make a recommendation under clause 7.37(c), the investigator must first consult with the Office on their proposed findings, determination and recommendation prior to finalising their report, and must take any comments by the Office into consideration when finalising their report.

7.39 Where the investigator has determined that there has been a breach of the code of conduct, the investigator may, in addition to making a recommendation under clause 7.37, recommend that the council revise any of its policies, practices or procedures.

7.40 Where the investigator determines that the conduct investigated does not constitute a breach of the code of conduct, the investigator may recommend:

- a) that the council revise any of its policies, practices or procedures
- b) that a person or persons undertake any training or other education.

7.41 The investigator must provide a copy of their report to the complaints coordinator and the respondent.

7.42 At the time the investigator provides a copy of their report to the complaints coordinator and the respondent, the investigator must provide the complainant with a written statement containing the following information:

- a) the investigator's findings in relation to the facts of the matter and the reasons for those findings
- b) the investigator's determination and the reasons for that determination
- c) any recommendations, and
- d) such other additional information that the investigator considers may be relevant.

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7.43 Where the investigator has determined that there has not been a breach of the code of conduct, the complaints coordinator must provide a copy of the investigator's report to the general manager or, where the report relates to the general manager's conduct, to the mayor, and this will finalise consideration of the matter under these procedures.

~~(7.44) Where the investigator has determined that there has been a breach of the code of conduct and makes a recommendation or recommendations under clause 7.36, paragraph (a) only, the complaints coordinator must provide a copy of the investigator's report to the general manager. Where the general manager agrees with the recommendation/s, the general manager is responsible for implementing the recommendation/s.~~

~~(7.45) Where the investigator has determined that there has been a breach of the code of conduct and makes a recommendation or recommendations under clause 7.36, paragraphs (b) or (c) only, the complaints coordinator must provide a copy of the investigator's report to the general manager or, where the report relates to the general manager's conduct, to the mayor. The general manager is responsible for arranging the implementation of the recommendation/s where the report relates to a councillor's conduct. The mayor is responsible for arranging the implementation of the recommendation/s where the report relates to the general manager's conduct.~~

~~(7.46) Where the investigator has determined that there has been a breach of the code of conduct and makes a recommendation or recommendations under clause 7.36, paragraphs (d) to (j) (whether or not in conjunction with recommendations made under clause 7.36, paragraphs (a) to (c)), the complaints coordinator must, where practicable, arrange for the investigator's report to be reported to the next ordinary council meeting for the council's consideration, unless the meeting is to be held within the 4 weeks prior to an ordinary local government election, in which case the report must be reported to the first ordinary council meeting following the election.~~

7.44 Where the investigator has determined that there has been a breach of the code of conduct and makes a recommendation under clause 7.37, the complaints coordinator must, where practicable, arrange for the investigator's report to be reported to the next ordinary council meeting for the council's consideration, unless the meeting is to be held within the 4 weeks prior to an ordinary local government election, in which case the report must be reported to the first ordinary council meeting following the election.

7.45 Where it is apparent to the complaints coordinator that the council will not be able to form a quorum to consider the investigator's report, the complaints coordinator must refer the investigator's report to the Office for its consideration instead of reporting it to the council under clause 7.44.

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Consideration of the final investigation report by council

7.46 The role of the council in relation to a final investigation report is to impose a sanction if the investigator has determined that there has been a breach of the code of conduct and has made a recommendation in their final report under clause 7.37.

7.47 The council is to close its meeting to the public to consider the final investigation report in cases where it is permitted to do so under section 10A of the LGA.

7.48 Where the complainant is a councillor, they must absent themselves from the meeting and take no part in any discussion or voting on the matter. The complainant councillor may absent themselves without making any disclosure of interest in relation to the matter unless otherwise required to do so under the code of conduct.

7.49 Prior to imposing a sanction, the council must provide the respondent with an opportunity to make a submission to the council. A submission may be made orally or in writing. The respondent is to confine their submission to addressing the investigator's recommendation.

~~(7.50) Prior to imposing a sanction, the council must provide the respondent with an opportunity to make a submission to the council. A submission may be made orally or in writing. The respondent is to confine their submission to addressing the investigator's recommendation/s.~~

7.50 Once the respondent has made their submission they must absent themselves from the meeting and, where they are a councillor, take no part in any discussion or voting on the matter.

7.51 The council must not invite submissions from other persons for the purpose of seeking to rehear evidence previously considered by the investigator.

7.52 Prior to imposing a sanction, the council may by resolution:
a) request that the investigator make additional enquiries and/or provide additional information to it in a supplementary report, or
b) seek an opinion from the Office in relation to the report.

7.53 The council may, by resolution, defer further consideration of the matter pending the receipt of a supplementary report from the investigator or an opinion from the Office.

7.54 The investigator may make additional enquiries for the purpose of preparing a supplementary report.

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7.55 Where the investigator prepares a supplementary report, they must provide copies to the complaints coordinator who shall provide a copy each to the council and the respondent.

7.56 The investigator is not obliged to notify or consult with any person prior to submitting the supplementary report to the complaints coordinator.

7.57 The council is only required to provide the respondent a further opportunity to make an oral or written submission on a supplementary report if the supplementary report contains new information that is adverse to them.

7.58 A council may by resolution impose one of the following sanctions on a respondent:

- a) in the case of a breach by the general manager, that disciplinary action be taken under the general manager's contract of employment for the breach, or
- b) in the case of a breach by a councillor, that the councillor be formally censured for the breach under section 440G of the LGA, or
- c) in the case of a breach by a councillor:
 - i. that the councillor be formally censured for the breach under section 440G of the LGA, and
 - ii. that the matter be referred to the Office for further action under the misconduct provisions of the LGA.

~~(7.59) A council may by resolution impose one or more of the following sanctions on a respondent:~~

- ~~d) that the respondent undertake any training or other education relevant to the conduct giving rise to the breach~~
- ~~e) that the respondent be counselled for their conduct~~
- ~~f) that the respondent be removed from membership of a committee of the council or any other body or organisation that the respondent serves on as the council's representative~~
- ~~g) that the respondent gives an undertaking not to repeat the offending behaviour in such time and form specified by the resolution~~
- ~~h) that the respondent apologise to any person or organisation affected by the breach in such a time and form specified by the resolution~~
- ~~i) that findings of inappropriate conduct be made public by publishing the investigator's findings and determination in the minutes of the meeting~~
- ~~j) in the case of a breach by the general manager, that action be taken under the general manager's contract for the breach~~
- ~~k) in the case of a breach by a councillor, that the councillor be formally censured for the breach under section 440G of the LGA~~
- ~~l) in the case of a breach by a councillor:

 - ~~iii. that the councillor be formally censured for the breach under section 440G of the LGA, and~~~~

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- iv. ~~that the matter be referred to the Office for further action under the misconduct provisions of the LGA.~~

7.59 Where the council censures a councillor under section 440G of the LGA, the council must specify in the censure resolution the grounds on which it is satisfied that the councillor should be censured by disclosing in the resolution, the investigator's findings and determination and/or such other grounds that the council considers may be relevant or appropriate.

~~(7.60) The council is not obliged to adopt the investigator's recommendation/s. Where the council proposes not to adopt one or more of the investigator's recommendation/s, the council must resolve not to adopt the recommendation/s and state in its resolution the reasons for its decision.~~

~~(7.61) Where the council proposes to impose a sanction on the respondent under clause 7.59 that is different to the sanction recommended by the investigator in their final report, the council must state in its resolution the reasons for its decision.~~

~~(7.62) Where the council resolves not to adopt the investigator's recommendation/s or imposes a sanction on the respondent under clause 7.59 that is different to the sanction recommended by the investigator, the complaints coordinator must notify the Office of the council's decision and the reasons for it.~~

7.60 The council is not obliged to adopt the investigator's recommendation. Where the council proposes not to adopt the investigator's recommendation, the council must resolve not to adopt the recommendation and state in its resolution the reasons for its decision.

7.61 Where the council resolves not to adopt the investigator's recommendation, the complaints coordinator must notify the Office of the council's decision and the reasons for it.

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- 8.1 The Office may, at any time, whether or not in response to a request, review the consideration of a matter under a council's code of conduct where it is concerned that a person has failed to comply with a requirement prescribed under these procedures or has misinterpreted or misapplied the standards of conduct prescribed under the code of conduct in their consideration of a matter.
- 8.2 The Office may direct any person, including the council, to defer taking further action in relation to a matter under consideration under the council's code of conduct pending the completion of its review. Any person the subject of a direction must comply with the direction.
- 8.3 Where the Office undertakes a review of a matter under clause 8.1, it will notify the complaints coordinator and any other affected persons, of the outcome of the review.

Complaints about conduct reviewers

- 8.4 The general manager or their delegate must refer code of conduct complaints about conduct reviewers to the Office for its consideration.
- 8.5 The general manager must notify the complainant of the referral of their complaint about the conduct reviewer in writing.
- 8.6 The general manager must implement any recommendation made by the Office as a result of its consideration of a complaint about a conduct reviewer.

Practice rulings

- 8.7 Where a respondent and an investigator are in dispute over a requirement under these procedures, either person may make a request in writing to the Office to make a ruling on a question of procedure (a practice ruling).
- 8.8 Where the Office receives a request in writing for a practice ruling, the Office may provide notice in writing of its ruling and the reasons for it to the person who requested it and to the investigator, where that person is different.
- 8.9 Where the Office makes a practice ruling, all parties must comply with it.
- 8.10 The Office may decline to make a practice ruling. Where the Office declines to make a practice ruling, it will provide notice in writing of its decision and the reasons for it to the person who requested it and to the investigator, where that person is different.

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- 8.11 A person who is the subject of a sanction imposed under Part 7 of these procedures other than one imposed under clause 7.59 7.58, paragraph (i) (c), may, within 28 days of the sanction being imposed, seek a review of the investigator's determination and recommendation by the Office.
- 8.12 A review under clause 8.11 may be sought on the following grounds:
- a) that the investigator has failed to comply with a requirement under these procedures, or
 - b) that the investigator has misinterpreted or misapplied the standards of conduct prescribed under the code of conduct, or
 - c) that in imposing its sanction, the council has failed to comply with a requirement under these procedures.
- 8.13 A request for a review made under clause 8.11 must be made in writing and must specify the grounds upon which the person believes the investigator or the council has erred.
- 8.14 The Office may decline to conduct a review, in cases where the grounds upon which the review is sought are not sufficiently specified.
- 8.15 The Office may undertake a review of a matter without receiving a request under clause 8.11.
- 8.16 The Office will undertake a review of the matter on the papers. However, the Office may request that the complaints coordinator provide such further information that the Office considers reasonably necessary for it to review the matter. The complaints coordinator must, as far as is reasonably practicable, provide the information requested by the Office.
- 8.17 Where a person requests a review under clause 8.11, the Office may direct the council to defer any action to implement a sanction. The council must comply with a direction to defer action by the Office.
- 8.18 The Office must notify the person who requested the review and the complaints coordinator of the outcome of the Office's review in writing and the reasons for its decision. In doing so, the Office may comment on any other matters the Office considers to be relevant.
- 8.19 Where the Office considers that the investigator or the council has erred, the Office may recommend that a decision to impose a sanction under these procedures be reviewed. Where the Office recommends that the decision to impose a sanction be reviewed:
- a) the complaints coordinator must, where practicable, arrange for the Office's determination to be tabled at the next ordinary council meeting unless the meeting is to be held within the 4 weeks prior to an ordinary local government election, in which case it must be tabled at the first ordinary council meeting following the election, and

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- b) the council must:
 - i. review its decision to impose the sanction, and
 - ii. consider the Office's recommendation in doing so, and
 - iii. resolve to either rescind or reaffirm its previous resolution in relation to the matter.

~~(8.20) In the case of a sanction implemented by the general manager or mayor under clause 7.45, where the Office recommends that the decision to impose a sanction be reviewed:~~

- ~~a) the complaints coordinator must provide a copy of the Office's determination in relation to the matter to the general manager or the mayor, and~~
- ~~b) the general manager or mayor must review any action taken by them to implement the sanction, and~~
- ~~c) the general manager or mayor must consider the Office's recommendation in doing so.~~

~~(8.21) In the case of a sanction imposed by the council by resolution under clause 7.59, where the Office recommends that the decision to impose a sanction be reviewed:~~

- ~~c) the complaints coordinator must, where practicable, arrange for the Office's determination to be tabled at the next ordinary council meeting unless the meeting is to be held within the 4 weeks prior to an ordinary local government election, in which case it must be tabled at the first ordinary council meeting following the election, and~~
- ~~d) the council must:
 - i. review its decision to impose the sanction, and
 - ii. consider the Office's recommendation in doing so, and
 - iii. resolve to either rescind or reaffirm its previous resolution in relation to the matter.~~

~~(8.22) Where, having reviewed its previous decision in relation to a matter under clause 8.21, the council resolves to reaffirm its previous decision, the council must state in its resolution its reasons for doing so.~~

- 8.20 Where, having reviewed its previous decision in relation to a matter under clause 8.24 **8.19(b)**, the council resolves to reaffirm its previous decision, the council must state in its resolution its reasons for doing so.

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PART 9 PROCEDURAL IRREGULARITIES

- 9.1 A failure to comply with these procedures does not, on its own, constitute a breach of the code of conduct, except as may be otherwise specifically provided under the code of conduct.
- 9.2 A failure to comply with these procedures will not render a decision made in relation to a matter invalid where:
- a) the non-compliance is isolated and/or minor in nature, or
 - b) reasonable steps are taken to correct the non-compliance, or
 - c) reasonable steps are taken to address the consequences of the non-compliance.

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PART 10 PRACTICE DIRECTIONS

- 10.1 The Office may at any time issue a practice direction in relation to the application of these procedures.
- 10.2 The Office will issue practice directions in writing, by circular to all councils.
- 10.3 All persons performing a function prescribed under these procedures must consider the Office's practice directions when performing the function.

ITEM 11 - ATTACHMENT 2 PROCEDURES FOR THE ADMINISTRATION OF THE MODEL CODE OF CONDUCT.**PART 11 REPORTING STATISTICS ON CODE OF CONDUCT COMPLAINTS ABOUT COUNCILLORS AND THE GENERAL MANAGER**

- 11.1 The complaints coordinator must arrange for the following statistics to be reported to the council within 3 months of the end of September of each year:
- a) the total number of code of conduct complaints made about councillors and the general manager under the code of conduct in the year to September (the reporting period)
 - b) the number of code of conduct complaints referred to a conduct reviewer during the reporting period
 - c) the number of code of conduct complaints finalised by a conduct reviewer at the preliminary assessment stage during the reporting period and the outcome of those complaints
 - d) the number of code of conduct complaints investigated by a conduct reviewer during the reporting period
 - e) without identifying particular matters, the outcome of investigations completed under these procedures during the reporting period
 - f) the number of matters reviewed by the Office during the reporting period and, without identifying particular matters, the outcome of the reviews, and
 - g) the total cost of dealing with code of conduct complaints made about councillors and the general manager during the reporting period, including staff costs.
- 11.2 The council is to provide the Office with a report containing the statistics referred to in clause 11.1 within 3 months of the end of September of each year.

ITEM 11 - ATTACHMENT 2 PROCEDURES FOR THE ADMINISTRATION OF THE MODEL CODE OF CONDUCT.**PART 12 CONFIDENTIALITY**

- 12.1 Information about code of conduct complaints and the management and investigation of code of conduct complaints is to be treated as confidential and is not to be publicly disclosed except as may be otherwise specifically required or permitted under these procedures.
- 12.2 Where a complainant publicly discloses information on one or more occasions about a code of conduct complaint they have made or purported to make, the general manager or their delegate may, with the consent of the Office, determine that the complainant is to receive no further information about their complaint and any future code of conduct complaint they make or purport to make.
- 12.3 Prior to seeking the Office's consent under clause 12.2, the general manager or their delegate must give the complainant written notice of their intention to seek the Office's consent, invite them to make a written submission within at least a period of not less than 14 days or other such period specified by the general manager or their delegate, and consider any submission made by them.
- 12.4 In giving its consent under clause 12.2, the Office must consider any submission made by the complainant to the general manager or their delegate.
- 12.5 The general manager or their delegate must give written notice of a determination made under clause 12.2 to:
- a) the complainant
 - b) the complaints coordinator
 - c) the Office, and
 - d) any other person the general manager or their delegate considers should be notified of the determination.
- 12.6 Any requirement under these procedures that a complainant is to be provided with information about a code of conduct complaint that they have made or purported to make, will not apply to a complainant the subject of a determination made by the general manager or their delegate under clause 12.2.
- 12.7 Clause 12.6 does not override any entitlement a person may have to access to council information under the *Government Information (Public Access) Act 2009* or to receive information under the *Public Interest Disclosures Act 1994* in relation to a complaint they have made.