

NOTICE OF ORDINARY MEETING

14 APRIL 2020



The Mayor and Councillors attendance is respectfully requested:

Mayor: R Palmer (Chair).

Councillors: J Abbott, G Arnott, C Doohan, G Dunkley, K Jordan, P Le Mottee, J Nell, S Smith, S Tucker.

SCHEDULE OF MEETINGS

TIME	ITEM	VENUE
5:30pm:	Public Access (if applied for)	
Followed by:	Ordinary Meeting	Click here to view the live webcast

Please Note:

In accordance with the NSW Privacy and Personal Information Protection Act 1998, you are advised that all discussion held during the Open Council meeting is public information. This will include any discussion involving the Mayor, a Councillor, staff member or a member of the public. All persons present should withhold from making public comments about another individual without seeking the consent of that individual in the first instance. Should you have any questions concerning the privacy of individuals at the meeting, please speak with the Governance Section Manager or the General Manager prior to the meeting.

Please be aware that Council webcasts its Open Council meetings via its website. All persons should refrain from making any defamatory remarks. Council accepts no liability for any defamatory remarks made during the course of the Council meeting.

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CONFIDENTIAL

1.	ACQUISITION OF PART 863 SWAN BAY ROAD, SWAN BAY	
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BUSINESS

- 1) Prayer - We ask Almighty God to give us wisdom and courage so we can serve our community, and uphold justice and equality in Port Stephens. Amen.
- 2) Acknowledgement of Country - Today, we are meeting on Worimi Country, we acknowledge the past, we are working towards a better tomorrow.
- 3) Apologies.
- 4) Confirmation of Minutes. Ordinary Meeting of 10 March 2020.
- 5) Disclosure of Pecuniary Interest or Non-Pecuniary Interest.
- 6) Mayoral Minute (if submitted).
- 7) Motions to Close.
- 8) Council Reports.
- 9) Information Papers.
- 10) Notices of Motion.
- 11) Confidential.
- 12) Motion to open meeting to the public.

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.

PORT STEPHENS COMMUNITY STRATEGIC PLAN

The Local Government Act requires Council to adopt a Community Strategic Plan (10+ years). The Plan includes a Delivery Program (3 years), Annual Operational Plan and a Resource Strategy, it also includes the Council's budget.

The Community Strategic Plan is organised into four focus areas:

OUR COMMUNITY – Port Stephens is a thriving and strong community respecting diversity and heritage.

OUR PLACE – Port Stephens is a liveable place supporting local economic growth.

OUR ENVIRONMENT – Port Stephens' environment is clean and green, protected and enhanced.

OUR COUNCIL – Port Stephens Council leads, manages and delivers valued community services in a responsible way.

BUSINESS EXCELLENCE

Port Stephens Council is a quality and a customer service focused organisation. We use the Business Excellence Framework as a basis for driving organisational excellence. The Framework is an integrated leadership and management system that describes elements essential to organisational excellence. It is based on nine (9) principles.

These outcomes align with the following Business Excellence principles:

- 1) Clear direction and mutually agreed plans enable organisational alignment and focus on achievement of goals.
- 2) Understanding what customers and other stakeholders value, now and in the future, enables organisational direction, strategy and action.
- 3) All people work in a system. Outcomes are improved when people work on the system and its associated processes.
- 4) Engaging people's enthusiasm, resourcefulness and participation improves organisational performance.
- 5) Innovation and learning influence the agility and responsiveness of the organisation.
- 6) Effective use of facts, data and knowledge leads to improved decisions.
- 7) Variation impacts predictability, profitability and performance.
- 8) Sustainable performance is determined by an organisation's ability to deliver value for all stakeholders in an ethically, socially and environmentally responsible manner.
- 9) Leaders determine the culture and value system of the organisation through their decisions and behaviour.

MEETING PROCEDURES SUMMARY

Starting time – All meetings must commence within 30 minutes of the advertised time.

Quorum – A quorum at Port Stephens Council is six (6).

Declarations of Interest

Pecuniary – Councillors who have a pecuniary interest must declare the interest, not participate in the debate and leave the meeting.

Non-Pecuniary – Councillors are required to indicate if they have a non-pecuniary interest, should a Councillor declare a significant non-pecuniary they must not participate in the debate and leave the meeting. If a Councillor declares a less than significant non-pecuniary they must state why no further action should be taken. Councillors may remain in the meeting for a less than significant non-pecuniary.

Confirm the Minutes – Councillors are able to raise any matter concerning the Minutes prior to confirmation of the Minutes.

Public Access – Each speaker has five (5) minutes to address Council with no more than two (2) for and two (2) against the subject.

Motions and Amendments

Moving Recommendations – If a Committee recommendation is being moved, ie been to a Committee first, then the motion must be moved and seconded at Council prior to debate proceeding. A Councillor may move an alternate motion to the recommendation.

Amendments – A Councillor may move an amendment to any motion however only one amendment or motion can be before Council at any one time, if carried it becomes the motion.

Seconding Amendments – When moving an amendment, it must be seconded or it lapses.

Incorporating Amendments – If a motion has been moved and the mover and seconder agree with something which is being moved as an amendment by others, they may elect to incorporate it into their motion or amendment as the case may be.

Voting Order – When voting on a matter the order is as follows:

1. Amendment (If any)
2. Foreshadowed Amendments – (If any, and in the order they were moved)
3. Motion

NB – Where an amendment is carried, there must be another vote on the amendment becoming the motion.

Voting – an item is passed where a majority vote for the subject. If the voting is tied the Chairperson has a second (casting) vote which is used to break the deadlock.

Closed Session – There must be a motion to close a meeting. Prior to voting on the motion the chairperson will invite the gallery to make representations if they believe the meeting shouldn't be closed. Then Councillors vote on the matter. If adopted the gallery should then be cleared and the matter considered in closed session. Any decision taken in session closed is a resolution. There must be a motion to reopen the Council meeting to the public. If decision occurred in 'closed session', the meeting is advised of the resolution in 'open session'.

Procedural Motion – Is a motion necessary for the conduct of the meeting, it is voted on without debate, eg defer an item to the end of the meeting (however, to defer an item to another meeting is not a procedural motion), extend the time for a Councillor to speak etc.

Points of Order – when any of the following are occurring or have occurred a Councillor can rise on a 'Point of Order', the breach is explained to the Chairperson who rules on the matter.

A Point of Order can be raised where:

1. There has been any non-compliance with procedure, eg motion not seconded etc.
2. A Councillor commits an act of disorder:
 - a) Contravenes the Act, any Regulation in force under the Act, the Code of Conduct or this Code.
 - b) Assaults or threatens to assault another Councillor or person present at the meeting.
 - c) Moves or attempts to move a motion or an amendment that has an unlawful purpose or that deals with a matter that is outside the jurisdiction of the Council or Committee, or address or attempts to address the Council or Committee on such a motion, amendment or matter.
 - d) Insults or makes personal reflections on or imputes improper motives to any other Councillor, any staff member or alleges a breach of Council's Code of Conduct.
 - e) Says or does anything that is inconsistent with maintaining order at the meeting or is likely to bring the Council or Committee into disrepute.

Declarations of Conflict of Interest – Definitions

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 or another person with whom the person is associated as provided in Clause 7 of the Code of Conduct.

Non Pecuniary interests are private or personal interests the council official has that do not amount to a pecuniary interest as defined in the Code of Conduct. These commonly arise out of family or personal relationships or involvement in sporting, social or other cultural groups and associations and may include an interest of financial nature.

The matter of a report to council from the conduct review committee/reviewer relates to the public duty of a councillor or the general manager. Therefore, there is no requirement for Councillors or the General Manager to disclose a conflict of interest in such a matter.

The political views of a Councillor do not constitute a private interest.



Form of Special Disclosure of Pecuniary Interest

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.

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 PORT STEPHENS COUNCIL

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 [Tick or cross one box.]	<input type="checkbox"/> The councillor has an interest in the land (eg 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 [Tick or cross one box]	<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 [Insert name of current planning instrument and identify relevant zone/planning control applying to the subject land]	

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.

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

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

Mayor/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]



Declaration of Interest form

Agenda item No. _____

Report title _____

Mayor/Councillor _____ declared a

Tick the relevant response:

<input type="checkbox"/>	pecuniary conflict of interest
<input type="checkbox"/>	significant non pecuniary conflict of interest
<input type="checkbox"/>	less than significant non- pecuniary conflict of interest

in this item. The nature of the interest is _____

If a Councillor declares a less than significant conflict of interest and intends to remain in the meeting, the councillor needs to provide an explanation as to why the conflict requires no further action to manage the conflict. (Attach a separate sheet if required.)

OFFICE USE ONLY: (Committee of the Whole may not be applicable at all meetings.)

Mayor/Councillor left the Council meeting in Committee of the Whole at _____pm.

Mayor/Councillor returned to the Council meeting in Committee of the Whole at _____ pm.

Mayor/Councillor left the Council meeting at _____ pm.

Mayor/Councillor returned to the Council meeting at _____ pm.

MAYORAL MINUTES

MAYORAL MINUTE

ITEM NO. 1

**FILE NO: 20/84124
EDRMS NO: PSC2015-01024**

COVID-19 PORT STEPHENS RECOVERY RESPONSE

THAT COUNCIL:

- 1) Support and endorse the following:
 - a. Acknowledge the profound affect the COVID-19 is having and will continue to have on the Port Stephens Community.
 - b. Commit to unwavering support of the Port Stephens Community through the response, recovering and restart of the Port Stephens community and economy.
 - c. Local procurement:
 - i. An extra 10% weighting towards local businesses through Council's procurement process until 30 June 2021.
 - ii. A commitment to pay local Port Stephens supplier invoices within 7 days.
 - d. Financial hardship:
 - i. Provide an easy to use online platform for individuals and businesses to register their intent to claim financial hardship on rates, licences, fees and leases.
 - ii. Provide a 12 month interest free period for outstanding rates in Q4 2020 and Q1 2021 where hardship arrangements have been claimed with no debt recovery during this period.
 - e. Kerbside pickup:
 - i. Investigate the provision of 1 additional free kerbside pickup for green waste, between 14 April 2020 to 30 June 2021.
 - f. Grants program:
 - i. Realign Port Stephens Council grants program to fund programs that support individuals and organisations through the COVID-19 crisis. This would be to support those suffering and support initiatives to restart Port Stephens.
 - ii. Note that Council's grants program, including Ward and Mayoral funds, is \$300,000 per annum.
 - g. Business and tourism support package:
 - i. Reaffirm Council's commitment of up to \$500,000 for business support, marketing and events package.
 - h. Library services:
 - i. Investigate the expansion of E-Library services through our partners at Newcastle Library.
 - ii. Not charge library late fees until 30 June 2021.

- i. Community services:
 - i. The annual rent for the Tomaree Neighbourhood Centre Inc. of \$11,300 be waived for 12 months, to be funded by Library Services operations.
- j. Community commitments:
 - i. Reaffirm support for the 24/7 deliveries for supermarkets & essential suppliers across Port Stephens.
 - ii. Support the introduction of dedicated public car parking spaces at Port Stephens pharmacies and medical facilities.
 - iii. Support the easing of restrictions to allow cafes and restaurants to trade now through take away and delivery only.
 - iv. Reaffirm support for the closures of public spaces across Port Stephens to slow the spread of COVID-19.
- k. Holiday Parks:
 - i. Investigate the use of our holiday parks (ensuite cabins) as a facility to temporarily house the most vulnerable in our community during the COVID-19 crisis. This would be whilst the State Government has directed them to be closed for non-essential purposes.
 - ii. Acknowledge the NSW Health Department advice that holiday travel is not essential travel and must not be undertaken.
- l. Boat Ramps:
 - i. Investigate, with Emergency Services, the opening of public boat ramps to Port Stephens residents only from 27 April 2020.
- m. Community Response Plan:
 - i. Request the General Manager to prepare a Community Recovery plan for future Council consideration.
- n. PS 2020 Projects:
 - i. That the following PS 2020 projects be identified for deferral or reduction to assist Council's financial position during the COVID-19 crisis:

Nelson Bay Event Signage	\$20,000 project deferred
Shoal Bay Drainage, Amenities and Pathway	\$150,000 from budget
Tomaree Sports Complex	\$250,000 from budget
Anna Bay Town Centre	\$170,000 from budget
Medowie Town Centre	\$150,000 from budget
Avenue of the Allies	\$100,000 from budget
Raymond Terrace Town Centre Improvements	\$250,000 from budget
Fern Bay Shared Pathway	\$170,000 from budget
Total	\$1,260,000

BACKGROUND

To date, Council has continued its operations to ensure as little disruption to community services as possible, while ensuring the health and wellbeing of employees and members of the public.

The community and our employees are being provided with regular updates on the emerging COVID-19 situation, as well as key messaging surrounding personal hygiene, social distancing and leave arrangements available to staff should they or Council be directly impacted by the pandemic.

Council staff are maintaining regular contact with NSW Health representatives to ensure a consistent approach and that the requests of NSW Health and Emergency Services are being met. In an emergency management context, Council has provided copies of our emergency management plan and provided details of Council facilities that could be used if required by the Department of Health. The Local Emergency Management Committee has been holding regular meetings and is prepared to respond as directed.

Council's internal Business Continuity Pandemic Response Team has been convened and is meeting regularly to ensure business continuity across the organisation. This team has revised its emergency pandemic response plan for each section of Council to ensure a consistent approach across all of Council's services. Section managers and coordinators have implemented arrangements to enable those staff with the capacity to undertake meaningful work from home, to do so.

Council will continue to implement reasonable and pragmatic approaches to compliance for selected matters as they arise throughout this time. This includes adherence to NSW Government directives and changing legislation to enable truck deliveries to supply shops and retailers with essential goods at all times to support communities.

The following specific information is provided to assist Council deliberation on the Mayoral minute:

c. Local procurement

- i. Council's current policy provides for a local preference price differential of the annual rate peg factor, currently 2.6%, in favour of Port Stephens based suppliers. This can be extended to 12.6% for the duration of the crisis with a sunset clause of 30 June 2021.
- ii. All local suppliers are currently paid on a 7 term payment term and this will continue to be Council's practice.

d. Financial hardship

- i. Access to financial hardship forms and assistance is now available on-line and will be communicated widely through the on-line platform.

- ii. Council's current Debt Recovery and Hardship Policy provides for interest to be written off where financial hardship has been granted – the policy will continue to be applied as required.
- e. Kerbside pickup
 - i. The provision of 1 additional free green waste collection will be further investigated.
 - ii. That the cost of the subsidy would be funded from the Waste Management Fund.
- f. Grants program
 - i. Council's current normal grant program will be reviewed to ensure that it aligns to providing support to individuals and organisations coming out of the current COVID-19 crisis. This will commence in the new 2020/2021 financial year.
- g. Business and tourism support package
 - i. The extent and timing of the provision of a business support package is continuing to be fine-tuned as the COVID-19 crisis unfolds and will be considered within available cash flow forecasts.
- h. Library services
 - i. E-library expansion will be further investigated and costed.
 - ii. Council has currently extended the book return time and it is considered appropriate to provide a moratorium on imposing late fees until June 2021.
- i. Community services
 - i. The annual rental for the Tomaree Neighbourhood and Community Centre is approximately \$11,300.
 - ii. Rental from tenants helps to fund the operations of the library service.
- k. Holiday Parks
 - i. Further investigation into the alternate use of the Holiday Park accommodation or a version of social housing will be made and a further report presented to Council.
- l. Boat Ramps
 - i. There has been significant feedback from fisherman on the continued use of Council's boat ramps for recreational purposes. This has been balanced with the need to deter visitors to the region for non-essential purposes. A review following the school holiday period can be undertaken.
- m. Community Response Plan
 - i. A community response plan is being prepared that undertakes a COVID-19 pandemic social impact assessment which informs Council's immediate response and long term rebuilding approach to community wellbeing. This plan will be reported to Council in due course for endorsement.

n. PS 2020 Projects

- i. Re-scoping the identified reduced PS 2020 projects will be undertaken.

ATTACHMENTS

Nil.

MOTIONS TO CLOSE

ITEM NO. 1

FILE NO: 20/62488
EDRMS NO: PSC2018-00154

MOTION TO CLOSE

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

RECOMMENDATION:

- 1) That pursuant to section 10A(2) (d)ii of the Local Government Act 1993, the Committee and Council resolve to close to the public that part of its meetings to discuss Confidential Item 1 on the Ordinary agenda namely **Acquisition of part 863 Swan Bay Road, Swan Bay.**
 - 2) That the reasons for closing the meeting to the public to consider this item is that the discussion will
 - information that would, if disclosed, confer a commercial advantage on a competitor of the council.
 - 3) That the report remain confidential and the minute be released in accordance with Council's resolution.
-

COUNCIL REPORTS

ITEM NO. 1

FILE NO: 20/58198
EDRMS NO: 16-2019-661-1

DEVELOPMENT APPLICATION 16-2019-661-1 FOR PROPOSED DEMOLITION AND ERECTION OF A RESIDENTIAL FLAT BUILDING AT 54, 54A, 54B SHOAL BAY ROAD AND 20 GOWRIE AVENUE, NELSON BAY

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

RECOMMENDATION IS THAT COUNCIL:

- 1) Support the Clause 4.6 exception as it is considered unreasonable and unnecessary to strictly comply with the development standard of Clause 4.3 of Port Stephens Local Environmental Plan 2013 – Height of Building standard for the proposed development for the following reasons:
 - a) Compliance with the development standard would be unreasonable and unnecessary in the circumstances.
 - b) There are sufficient environmental planning grounds to justify the contravention.
 - c) The development achieves and is consistent with the objectives of the R3 zone, notwithstanding the variation.
 - d) The proposed development is an appropriate response to the context of the site.
 - e) The proposed development will not have a significant environmental impact, is in the public interest and better achieves the development standard's objectives.
 - f) The contravention does not raise any matter of State or regional significance.
- 2) Approve Development Application DA No. 16-2019-661-1 for demolition of existing structures and erection of a residential flat building subject to the recommended Conditions of Consent contained in **(ATTACHMENT 3)**.

BACKGROUND

The purpose of this report is to present to Council for determination development application (DA) 16-2019-661-1 for demolition of existing structures and erection of a residential flat building. The DA has been reported to Council in accordance with Council's 'Development Applications to be Reported to Council Policy' as the application has been submitted with a Clause 4.6 variation request which seeks to vary a development standard (building height) by more than 10%.

The subject DA relates to land located at 54, 54A, 54B Shoal Bay Road and 20 Gowrie Avenue, Nelson Bay, legally identified as Lots: 39, 40 and 41 of DP: 213730, and Lot: 47 DP: 224365 (the subject site). The subject site is zoned R3 – Medium Density Residential. A Locality Plan is provided at **(ATTACHMENT 1)**.

Proposal

The applicant seeks approval for a 4 storey 'residential flat building' comprising of 26 residential units, with a mix of 2 bedroom and 3 bedroom apartment designs. Associated site works are also proposed which includes demolition of existing structures, associated excavations and construction of a basement car park and associated site works (including upgrades to existing stormwater drainage infrastructure and ancillary landscaping).

The proposed development is 3 storeys above ground, with a single storey basement carpark level, resulting in a maximum building height of 10.3 metres. The proposal encompasses the following works:

Demolition of all existing structures, including:

- Single dwelling and ancillary double garage
- Motel facility and ancillary structures.

Earthworks and site preparation:

- Excavation for foundations and basement level carpark
- Removal of remnant vegetation.

Construction of a residential flat building:

- 26 apartments, consisting of 9 x 3 bedroom apartments and 17 x 2 bedroom apartments
- Basement car park to accommodate 51 vehicles
- Landscaping - 5% of site area being communal open space and 15.9% of site area suitable as deep soil zone.

Entry and exit to the carpark is provided via the existing slip road, adjoining Shoal Bay Road, along the south-western property boundary. The basement carpark provides a total of 51 parking spaces, inclusive of 9 visitor parking spaces.

Lot consolidation is proposed as part of this application.

Site description

The site is located on the corner of Shoal Bay Road and Gowrie Avenue and has a total area of approximately 2,265m². The development site consists of 4 allotments, which creates a regular sized development site. The development site currently contains a derelict hotel development, A-frame dwelling, associated garage structures and remnant vegetation which is to be removed in order to prepare the development site for the new residential flat building proposal.

Key issues

The key issues that arose during the assessment related to consideration of the proposed design, including compliance with the Apartment Design Guide, and the height of the development, as outlined below. A detailed assessment of the development is considered within the Planners Assessment Report provided at **(ATTACHMENT 2)**.

Design – Apartment Design Guide

State Environmental Planning Policy State Environmental Planning Policy No. 65 – Quality Design of Residential Apartment Development (SEPP No. 65) applies to assessment of the proposed development. SEPP No. 65 aims to improve the quality of residential apartment development and provides an assessment framework ('the Apartment Design Guide') to facilitate the assessment of 'good design'.

The application was originally referred to the Newcastle City Council Urban Design Consultative Group (UDCG) for pre-lodgement advice and the Port Stephens Urban Design Panel (UDP) subsequent to lodgement. Matters raised following their reviews included; architectural roof features and façade design, landscape design non-compliances and communal open space provisions.

The development plans were subsequently amended, in accordance with the recommendations of the UDP, which resulted in a slight increase in the overall height of the building, provision of communal open space, and reduction of 1 x 1 bedroom unit, reducing the total number of units proposed from 27 to 26.

The proposal has been assessed against both the design principles and controls contained within the ADG and is considered satisfactory **(ATTACHMENT 2)**. The overall aesthetics of the development are good quality with the inclusion of a range of materials, textures and colours. Further, the range of materials and colours in conjunction with the articulation and modulation of building façades visually reduce the perception of the bulk and scale of the development.

Building Height

In accordance with Clause 4.3, the Height of Buildings Map within the Port Stephens Local Environmental Plan (LEP 2013) indicates a maximum building height of 9 metres for the subject site. The proposed development exceeds the nominated maximum height limit, and therefore requires a variation to the development standard under Clause 4.6 of the LEP 2013.

The proposed development has a maximum height of 10.3 metres and exceeds the prescribed maximum building height limit by 1.3 metres or 14.4%.

Clause 4.6 of LEP 2013 provides a mechanism to vary the development standards, such as building height, prescribed within the LEP 2013, in order to facilitate an appropriate degree of flexibility in applying certain development standards to particular development. A written request from the applicant that was provided that justified the contravention of the development standard by demonstrating:

- a) 'that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.
- b) that there are sufficient environmental planning grounds to justify contravening the development standard.'

A detailed assessment against Clause 4.6 is contained within the Planners Assessment Report (**ATTACHMENT 2**). The assessment has identified that the applicant's justification for the Clause 4.6 variation to the 9 metre building height control demonstrates that compliance with the development standard is unreasonable or unnecessary, and sufficient environmental planning grounds exist to justify contravening the development standard.

Conclusion

The proposed development has been assessed, and deemed generally compliant with the objectives and provisions of the relevant environmental planning instruments applicable to the site, including:

- 1. Environmental Planning and Assessment Act 1979
- 2. State Environmental Planning Policy No. 65 – Quality Design of Residential Apartment Development (SEPP No. 65)
- 3. The Apartment Design Guide
- 4. Port Stephens Local Environmental Plan 2013.

Subsequently, the application has been recommended for approval, subject to the conditions contained in (**ATTACHMENT 3**).

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2018-2021
Thriving and Safe Place to Live	Support the amenity and identity of Port Stephens.

FINANCIAL/RESOURCE IMPLICATIONS

The determination of the application could potentially be challenged in the Land and Environment Court. Defending Council's determination could have financial implications. Further, should Council determine to approve the application, development contributions would be required to be levied in accordance with Council's Local Infrastructure Contributions Plan.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes		
Reserve Funds	No		
Developer Contributions (\$7.11)	Yes		Should Council determine to approve the application s.7.11 development contributions would be applicable and would be levied in accordance with conditions of consent.
External Grants	No		
Other	No		

LEGAL, POLICY AND RISK IMPLICATIONS

The development application is consistent with the following planning instruments: Environmental Planning and Assessment Act 1979, State Environmental Planning Policy No. 65 – Quality Design of Residential Apartment Development, Apartment Design Guide, and Port Stephens Local Environmental Plan 2013.

A detailed assessment against these instruments and other applicable planning policies, is contained within the Planners Assessment Report (**ATTACHMENT 2**).

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that the determination of the application may be challenged in the Land and Environment Court.	Low	Accept the recommendation.	Yes.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Social and Economic Implications

If approved the proposal will result in additional residential development in the LGA through the provision of a wide range of accommodation units. It would result in a large capital investment in the local economy and will create a number of short term and indirect long term employment opportunities. Furthermore, if approved the development would attract development contributions which will be used to create and improve community facilities, public open space, sport facilities, and infrastructure and the like, further adding to the positive economic impact of this development.

The proposed development would also provide additional housing opportunities that can rely upon existing social and recreational infrastructure existing within the Nelson Bay town centre. The development provides a range of apartment mix, including apartments of universal design, to cater for a range of housing needs.

Built Environment Implications

The overall aesthetics of the development are of good quality with the inclusion of a range of materials, textures and colours. The range of materials and colours in conjunction with the articulation and modulation of building facades visually reduce the perception of the bulk and scale of the development to ensure consistency with surrounding development. The development will also result in the activation of both Shoal Bay Road and Gowrie Avenue.

Natural Environment Implications

The development includes water quantity and quality control devices to reduce the impact of the development on the natural environment. The existing site is devoid of any natural habitat or native vegetation and there are no anticipated adverse impacts on significant or endangered habitats. The proposal incorporates appropriate measures to ensure no adverse impact on the natural environment. Air quality, noise, drainage and spill hazards have been appropriately addressed in the application, with mitigation measures included as recommended conditions.

CONSULTATION

Consultation with key stakeholders has been undertaken, as outlined below.

Internal

Consultation was undertaken with internal officers, including; building surveying, development engineering, vegetation management, environmental health and development contributions and spatial services. The referral comments from these officers were considered as a part of the Planners Assessment Report contained in **(ATTACHMENT 2)** and accordingly in the recommended Conditions of Consent contained in **(ATTACHMENT 3)**.

External

Consultation was undertaken with Ausgrid, as works are proposed within proximity to existing electrical infrastructure. A response was received from Ausgrid, of which made no objection to the proposal subject to recommended conditions and advices, which have been included in the recommended Conditions of Consent contained in **(ATTACHMENT 3)**.

Public Consultation

In accordance with the requirements of the Port Stephens Development Control Plan (DCP 2014) and Council's Community Participation Plan, the development application was notified, for a period of 14 days, from 24 October 2019 to 7 November 2019. Following the submission of amended plans the application was renotified for a period of 14 days from 17 February 2020 to 2 March 2020, to provide further opportunity for community comments.

A total of 2 submissions were received throughout both notification periods – with 1 submission received during the first notification period, and 1 submission being received in the second notification period. The matters raised in the submissions have been addressed in detail within the Planners Assessment Report **(ATTACHMENT 2)**.

OPTIONS

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

ATTACHMENTS

- 1) Locality Plan. [↓](#)
- 2) Planners Assessment Report. (Provided under separate cover) [⇒](#)
- 3) Recommended Conditions of Consent. [↓](#)

COUNCILLORS ROOM

- 1) Development Plans.
- 2) Submissions.

Note: Any third party reports referenced in this report can be inspected upon request.

TABLED DOCUMENTS

Nil.





SCHEDULE 1 – CONDITIONS OF CONSENT

General Conditions of Consent

The following conditions of consent are general conditions applying to the development.

1. **Approved plans and documentation** – Development must be carried out in accordance with the following plans and documentation, and all recommendations made therein, except where amended by the conditions of this development consent:

Plan reference/ drawing no.	Name of plan	Prepared by	Date
1655-0-06 Rev: A	Site analysis	Mark Lawler Architects	24/09/2019
1655-1-02 Rev: A	Site Plan / Demolition Plan	Mark Lawler Architects	24/09/2019
1655-1-03 Rev: D	Basement Carpark Plan	Mark Lawler Architects	05/03/2020
1655-1-04 Rev: C	Ground Floor Plan	Mark Lawler Architects	10/01/2020
1655-1-05 Rev: A	Level 02 Floor Plan	Mark Lawler Architects	24/09/2019
1655-1-06 Rev: A	Level 3 Floor Plan	Mark Lawler Architects	24/09/2019
1655-2-01 & 1655-2-02 Rev: C	Elevations	Mark Lawler Architects	24/09/2019
1655-3-01 Rev: D	Section A and B	Mark Lawler Architects	05/03/2020
1655-3-02 Rev: C	Section C	Mark Lawler Architects	10/01/2020
902055-CIV 1E, 2D, 3E, 4D, and 5D.	Civil works plan	Forum Consulting Engineers	04/03/2020
902055-SWD 1C, 2D, 3D	Stormwater Drainage Plan	Forum Consulting Engineers	04/03/2020
902055-DWP 1D and 2D	Driveway Plan and Longitudinal Section	Forum Consulting Engineers	04/03/2020
12742.5 L00G, L01G, L02E	Landscape Plans	Terras Landscape Architects	13/01/2020

Document Title	Prepared by	Date
Crime Risk Assessment Report	deWitt Consulting	August 2019

ITEM 1 - ATTACHMENT 3 RECOMMENDED CONDITIONS OF CONSENT.



In the event of any inconsistency between the approved plans and the conditions, the conditions will prevail.

2. **BASIX Certificate** – The applicant must undertake the development strictly in accordance with the commitments listed in the BASIX certificate(s) for the development to which this consent applies.
3. **Building Code of Australia** – All building work must be carried out in accordance with the BCA. In this clause, a reference to the BCA is a reference to that Code as in force on the date the application for the relevant Construction Certificate is made.
4. **Home Building Act** – Pursuant to Section 4.17(11) of the *Environmental Planning & Assessment Act 1979*, residential building work within the meaning of the *Home Building Act 1989* shall not be carried out unless the PCA for the development to which the work relates:
 - a) in the case of work for which a principal contractor has been appointed:
 - i. has been informed in writing of the name and licence number of the principal contractor; and
 - ii. where required has provided an insurance certificate with the name of the insurer by which the work is insured under Part 6 of that Act.
 - b) in the case of work to be carried out by an owner-builder;
 - i. has been informed in writing of the name of the owner-builder; and
 - ii. if the owner-builder is required to hold an owner-builder permit under that Act; has provided a copy of the owner builder permit.
5. **Home Building Act – insurance** – Building work that involves residential building work within the meaning of the *Home Building Act 1989*, must not commence until such time as a contract of insurance is in force in accordance with Part 6 of that Act.
This clause does not apply:
 - a) to the extent to which an exemption is in force under Clause 187 or 188 of the *Environmental Planning & Assessment Regulation 2000 (EP&A Regulation 2000)*, subject to the terms of any condition or requirement referred to in Clause 198(6) or 188(4) of the *EP&A Regulation 2000*; or
 - b) to the erection of a temporary building, other than a temporary structure to which subclause (1A) of Clause 98 of the *EP&A Regulation 2000* applies.
6. **Excavation for residential building works** – If the approved development involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the consent must, at the person's own expense:
 - a) protect and support the adjoining premises from possible damage from the excavation; and
 - b) where necessary, underpin the adjoining premises to prevent any such damage.



This condition does not apply if the person having the benefit of the consent owns the adjoining land or the owner of the adjoining land has given consent in writing that condition not applying, and a copy of that written consent is provided to the PCA prior to the excavation commencing.

7. **Sign on Building** – Except in the case of work only carried out to the interior of a building or Crown building work, a sign must be erected in a prominent position on the site showing the name, address and telephone number of the Principal Certifying Authority for the work, the name of any principal contractor and their after-hours contact number, and must contain a statement that unauthorised entry to the site is prohibited.
The sign must be maintained while the work is being carried out and is to be removed when the work is completed.
8. **Shoring of adjoining buildings** - Where any excavation required for the development extends below the level of the base of a footing of a building, structure or work on adjoining land (including within a road or rail corridor), the person having the benefit of the consent must protect and support that building, structure or work from possible damage from the excavation, and where necessary underpin the building, structure or work to prevent any such damage.
9. **Tree Removal/Pruning** - The trees identified below are approved for removal/pruning:
 - a) All trees identified in red on the Landscape Plan (Reference: 12742.5, dated: 13 January 2020; and
 - b) Trees located along the western property boundary (neighbouring Lot: 38 DP: 213730) as outlined in the Deed of Consent (prepared by: LCI Legal, Reference: PC:442018).
10. **Outdoor lighting** - All lighting must comply with AS 1158 'Lighting for Roads and Public Spaces' and AS 4282 'Control of Obtrusive Effects of Outdoor Lighting'.
11. **Reflectivity** – The reflectivity of glass externally must not exceed 20%. Details demonstrating compliance must be provided to the Certifying Authority.
12. **Roof mounted equipment** – All roof mounted equipment such as air conditioning units, service pipes and vents etc., required to be installed must be concealed within the external walls of the development or adequately screened so as not to be visible from a public place.
13. **Design quality of development** - The approved design (including an element or detail of that design) or materials finish or colours of the building must not be changed so as to affect the internal layout or external appearance of the building without the approval of Council.
14. **Installation of graphics and artwork on temporary site structures (graphic displays)** - A graphic display must be installed on temporary site structures in accordance with the approved plans and the following requirements:
 - a. At least 75% of the surface area (including end panels, large access gates / doors, and fascia) of the temporary site structures must be covered by the



- graphic display. The remaining surface must be finished and painted flat black or a colour complementary to the graphic display,
- b. Required site signage (including developer or corporate identification) must be sympathetic to the graphic display and must not exceed more than 5% (combined) of the surface area of the temporary site structure,
 - c. No third party advertising is permitted to be displayed at any time,
 - d. Graphic displays must be printed from UV-stabilised or latex-based inks. The material on which graphic displays are printed must comply with the relevant Australian Standards for temporary site structures and applicable works safety standards,
 - e. Graphic displays must be installed to ensure long-term durability with a clean finish to the face of the temporary site structure,
 - f. Where damage to graphic display occurs the replacement of damage section is required to occur within 2 business days, and
 - g. Graphic displays must be maintained in good repair for the duration of the project or until such time that the construction works no longer results in an adverse visual impact to the surrounding locality.

Details demonstrating compliance must be provided to the Certifying Authority prior to the issue of a Construction Certificate.

Prior to Issue of a Construction Certificate

The following conditions of consent shall be complied with prior to the issue of a Construction Certificate.

15. **Dilapidation report – Adjoining property** - A dilapidation report including a photographic survey of adjoining properties, within the zone of influence, must be provided to the Certifying Authority. The dilapidation report must detail the physical condition of those properties, both internally and externally, including walls, ceilings, roof, structural members and other similar items.

The dilapidation report is to be prepared by a qualified Structural Engineer and the owner of the adjoining property. All costs incurred in achieving compliance with this condition must be borne by the applicant.

Where excavation on the development site is determined to not be within the zone of influence of surrounding structures, this condition is redundant.

16. **Potential acid sulfate soils** - A geotechnical assessment of the site is to be undertaken to determine whether the development works will disturb Potential Acid Sulfate Soils (ASS). Should ASS be encountered within the zone of works, an ASS Management Plan is to be prepared by a suitably qualified Geotechnical Engineer and submitted to the Certifying Authority.

The recommendations and/or mitigation measures contained within the ASS Management Plan must be complied with during works.



17. **Civil engineering plans** – Civil engineering plans prepared by a qualified Engineer, indicating drainage, roads, access ways, earthworks, pavement design, street lighting, details of line-marking, traffic management, water quality and quantity facilities including stormwater detention and disposal, must be prepared in accordance with the approved plans and Council's Infrastructure Specifications.
Details demonstrating compliance must be provided to the Certifying Authority.

Note. Under the *Roads Act 1993*, only the Roads Authority can approve commencement of works within an existing road reserve.

18. **Stormwater/drainage plans** – Detailed stormwater drainage plans must be prepared by a qualified Engineer in accordance with the approved plans, Council's Infrastructure Specifications and the current Australian Rainfall and Runoff guidelines using the Hydrologic Soil Mapping data for Port Stephens (available from Council).

Groundwater levels are to be verified on site prior to the issue of a construction certificate to ensure the infiltration system will function adequately.

Details demonstrating compliance must be provided to the Certifying Authority.

Note. Under the *Roads Act 1993*, only the Roads Authority can approve commencement of works within an existing road reserve.

19. **Footings and Excavation near Council Property** - All works proposed within the zone of influence of Council's asset/s are to be designed and certified by a qualified Geotechnical or Structural Engineer.

Plans and specifications demonstrating compliance with this requirement must be submitted to the Certifying Authority.

20. **Dilapidation Report – Council Property** - A Dilapidation Report prepared by a qualified Structural/Civil Engineer must be submitted to the Certifying Authority.

The report must include a photographic survey of existing public roads, kerbs, footpaths, drainage structures, street trees and any other existing public infrastructure within the immediate area of the subject site.

All costs incurred in achieving compliance with this condition must be borne by the applicant.

Details demonstrating compliance must be provided to the Certifying Authority.

21. **Stormwater system Operation and Maintenance Procedure Plan** – An Operation and Maintenance Plan for the stormwater system must be prepared by a qualified engineer detailing a regular maintenance programme for pollution control devices, covering inspection, cleaning and waste disposal.

Details demonstrating compliance must be provided to the Certifying Authority.

ITEM 1 - ATTACHMENT 3 RECOMMENDED CONDITIONS OF CONSENT.



22. **Retaining walls** – All retaining walls must be designed and certified by a suitably qualified Structural Engineer in accordance with Council's Infrastructure Specifications.

Details demonstrating compliance must be provided to the Certifying Authority.

23. **Soil, erosion, sediment and water management** – An Erosion and Sediment Control Plan (ESCP) must be prepared in accordance with Council's Infrastructure Specifications. Details demonstrating compliance must be provided to the Certifying Authority.

24. **Roads Act Approval** – For construction/reconstruction of Council infrastructure, including vehicular crossings, footpath, kerb and gutter, stormwater drainage, an application must be made for a Roads Act Approval Certificate under Section 138B of the *Roads Act 1993*.

25. **Design verification – SEPP 65** – A design verification statement from a qualified NSW Registered Architect must be submitted to the Certifying Authority confirming the Construction Certificate plans and specifications are consistent with the Development Application approval.

26. **Bushfire Safety** - The site is located within a bushfire prone area and must comply with NSW Rural Fire Service document "Planning for Bushfire Protection." In this regard the following is required:

- a) Proposed dwelling must comply with the construction requirements of Planning for Bushfire Protection on each elevation for a Bushfire Attack Level (BAL) of:
 - i. Northern elevation – BAL12.5;
 - ii. Western elevation – BAL12.5;
 - iii. Southern elevation – BAL19; and
 - iv. Eastern elevation – BAL19.
- b) The entire property must be managed as an 'Inner Protection Area' as outlined within Planning for Bushfire Protection.
- c) Compliance with Appendix 3 of Planning for Bushfire Protection.

Details demonstrating compliance must be prepared by a suitably qualified professional and provided to the Certifying Authority.

27. **Construction Noise Management Plan** - A Construction Noise Management Plan must be submitted to and approved by to the Certifying Authority and Council. The required CEMP must outline the sequence and construction methodology and specify mitigating measures to ensure all works are carried out with minimal environmental impact in relation to project staging, waste management, noise and dust management, traffic management and environmental management.

28. **Construction Traffic Management Plan** - Prior to commencement of site works a Construction Traffic Management Plan must be submitted to and approved by the Certifying Authority and Council. The CTMP is to address traffic control

ITEM 1 - ATTACHMENT 3 RECOMMENDED CONDITIONS OF CONSENT.



measures to be utilised in the public road and road reserve during the construction phase.

29. **Hunter Water Corporation Approval** - A Section 49 Application under the Hunter Water Act 1991 must be lodged with Hunter Water Corporation (HWC) and details of the Notice of Compliance from HWC must be provided to the Certifying Authority.
30. **Group mailbox** - A group type mailbox is to be provided at the street frontage in accordance with the requirements of Australia Post, clearly displaying individual unit numbers and the required house number. Full details are to be included in the documentation for a Construction Certificate application.
31. **Consolidation of lots** – Lots: 39, 40, 41 of DP: 213730, and Lot: 47 of DA 224365, are to be consolidated. A copy of the Registered Plan of consolidation must be provided to the Principle Certifying Authority.
32. **Section 7.11 Development contributions** – monetary contribution is to be paid to Council for the provision of twenty-two (22) additional dwellings, pursuant to section 4.17(1) of the *Environmental Planning and Assessment Act 1979*, section 7.11 of the *Environmental Planning and Assessment Act 1979*, and the Port Stephens Local Infrastructure Contributions Plan towards the provision of the following public facilities:

Facility	Per Lot/Dwelling	Total \$
Civic Administration – Plan Management	\$591.00	\$13,002.00
Civic Administration – Works Depot	\$1,542.00	\$33,924.00
Town Centre Upgrades	\$4,153.00	\$91,366.00
Public Open Space, Parks & Reserves	\$1,527.00	\$33,594.00
Sports & Leisure Facilities	\$2,308.00	\$50,776.00
Cultural & Community Facilities	\$830.00	\$18,260.00
Road Works	\$2,299.00	\$50,578.00
Shared Paths	\$3,335.00	\$73,370.00
Bus Facilities	\$11.00	\$242.00
Fire & Emergency Services	\$227.00	\$4,994.00
Flood & Drainage	\$1,750.00	\$38,500.00
Total		\$408,606.00

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

- a) Building work only - **prior to issue of the Construction Certificate.**

Note: The amount of contribution payable under this condition has been calculated at the date of consent. In accordance with the provisions of the Contributions Plan, this amount must be indexed at the time of actual payment in accordance with the applicable Index.

33. **Long service levy** – In accordance with Section 34 of the *Building and Construction Industry Long Service Payments Act 1986*, the applicant must pay a long service levy at the prescribed rate to either the Long Service Payments



Corporation or Council for any works that cost \$25,000 or more.

Prior to Commencement of Works

The following conditions of consent shall be complied with prior to any works commencing on the development site.

34. **Public liability insurance** – The owner or contractor must take out a Public Liability Insurance Policy with a minimum cover of \$20 million in relation to the occupation of, and works within, public property (i.e. kerbs, gutters, footpaths, walkways, reserves, etc.) for the full duration of the proposed works. Evidence of this Policy must be provided to Council and the Certifying Authority.
35. **Notice of Principal Certifying Authority appointment** – Notice must be given to Council at least two days prior to subdivision and/or building works commencing in accordance with Clause 103 of the *Environmental Planning & Assessment Regulation 2000*. The notice must include:
 - a) a description of the work to be carried out;
 - b) the address of the land on which the work is to be carried out;
 - c) the Registered number and date of issue of the relevant development consent;
 - d) the name and address of the Principal Certifying Authority (PCA), and of the person by whom the PCA was appointed;
 - e) if the PCA is an accredited certifier, their accreditation number, and a statement signed by the accredited certifier consenting to being appointed as PCA; and
 - f) a telephone number on which the PCA may be contacted for business purposes.
36. **Notice commencement of work** – Notice must be given to Council at least two days prior to subdivision and/or building works commencing in accordance with Clause 104 of the *Environmental Planning & Assessment Regulation 2000*. The notice must include:
 - a) the name and address of the person by whom the notice is being given;
 - b) a description of the work to be carried out;
 - c) the address of the land on which the work is to be carried out;
 - d) the Registered number and date of issue of the relevant development consent and construction certificate;
 - e) a statement signed by or on behalf of the Principal Certifying Authority to the effect that all conditions of the consent that are required to be satisfied prior to the work commencing have been satisfied; and
 - f) the date on which the work is intended to commence.
37. **Sign of PCA and contact details** – A sign must be erected in a prominent position on the site stating the following:
 - a) that unauthorised entry to the work site is prohibited;

ITEM 1 - ATTACHMENT 3 RECOMMENDED CONDITIONS OF CONSENT.



- b) the name of the principal contractor (or person in charge of the site) and a telephone number on which that person can be contacted at any time for business purposes and outside working hours;
- c) the name, address and telephone number of the Principal Certifying Authority.

The sign must be maintained while the work is being carried out and must be removed upon the completion of works.

38. **Construction Certificate Required** – In accordance with the provisions of Section 6.7 of the *Environmental Planning & Assessment Act 1979 (EP&A Act 1979)*, construction or subdivision works approved by this consent must not commence until the following has been satisfied:
 - a) a Construction Certificate has been issued by a Consent Authority;
 - b) a Principal Certifying Authority (PCA) has been appointed by the person having benefit of the development consent in accordance with Section 6.5 of the *EP&A Act 1979*; and
 - c) the PCA is notified in writing of the name and contractor licence number of the owner/builder intending to carry out the approved works.
39. **Site is to be secured** – The site must be secured and fenced to the satisfaction of the Principal Certifying Authority. All hoarding, fencing or awnings (associated with securing the site during construction) is to be removed upon the completion of works.
40. **Demolition work** – All demolition works are to be carried out in accordance with Australian Standard AS 2601 'The demolition of Structures'. All waste materials are to be either recycled or disposed of to a licensed waste facility.

Any asbestos containing material encountered during demolition or works, is to be removed in accordance with the requirements of Safe Work NSW and disposed of to an appropriately licenced waste facility.

Evidence is to be provided to the Certifying Authority demonstrating that asbestos waste has been disposed of in accordance with this condition.
41. **Soil erosion and sediment control** – Soil erosion and sediment controls must be implemented prior to works commencing on the site in accordance with 'Managing Urban Stormwater – Soils and Construction ('the blue book') and any Sediment and Erosion plans approved with this Development Consent.

Soil erosion and sediment control measures must be maintained during construction works and must only be removed upon completion of the project when all landscaping and disturbed surfaces have been stabilised (for example, with site turfing, paving or re-vegetation).
42. **All weather access** – A 3m wide all-weather vehicle access is to be provided from the kerb and gutter to the building under construction for the delivery of materials and use by trades people.

ITEM 1 - ATTACHMENT 3 RECOMMENDED CONDITIONS OF CONSENT.



No materials, waste or the like are to be stored on the all-weather access at any time.

43. **Rubbish generated from the development** – Where not already available, a waste containment facility is to be established on site. The facility is to be regularly emptied and maintained for the duration of works.

No rubbish must be stockpiled in a manner which facilitates the rubbish to be blown or washed off site. The site must be cleared of all building refuse and spoil immediately upon completion of the development.

44. **Protection of trees /existing street trees** – Protection of trees to be retained must be in accordance with AS490 'Protection of Trees on Development Sites' and the following:

a) No existing nature strip(s), street tree(s), tree guard(s), protective bollard(s), garden bed surrounds or root barrier installation(s) must be disturbed, relocated, removed or damaged during earthworks, demolition, excavation (including any driveway installation), construction, maintenance and/or establishment works applicable to this consent, without Council agreement and/or consent.

45. **Hazardous Building Materials Assessment** – A Hazardous Building Material Assessment (HBMA) must be undertaken on all buildings and structures to be demolished that identifies all hazardous components on site. A HBMA report must be provided to the PCA and Council.

Once hazardous components are identified, all demolition works that involve the demolition and removal of the hazardous materials must ensure that all site personnel are protected from risk of exposure in accordance with relevant SafeWork NSW and NSW Demolition Guidelines. Premises and occupants on adjoining land must also be protected from exposure to any hazardous materials.

During Works

The following conditions of consent shall be complied with during the construction phase of the development.

46. **Construction hours** – All work (including delivery of materials) must be restricted to the hours of 7.00am to 5.00pm Monday to Saturday inclusive. Work is not to be carried out on Sundays or Public Holidays.

47. **Toilet facilities** – Temporary toilet(s) must be provided and maintained on site from the time of commencement of building work to completion. The number of toilets provided must be one toilet per 20 persons or part thereof employed on the site at any one time.

The temporary toilet is to be either connected to the sewerage system or an approved septic tank or otherwise may be a chemical toilet supplied by a licensed contractor.

ITEM 1 - ATTACHMENT 3 RECOMMENDED CONDITIONS OF CONSENT.



48. **Compliance with BCA** – All building work must be carried out in accordance with the requirements of the Building Code of Australia.
49. **Excavations and backfilling** – All excavations and backfilling associated with this development consent must be executed safely, and be properly guarded and protected to prevent them from being dangerous to life or property, and in accordance with the design of a suitably qualified Structural Engineer.

If an excavation extends below the level of the base of the footings of a building on an adjoining allotment, the person causing the excavation must:

- a) preserve and protect the building from damage; and
- b) if necessary, underpin and support the building in an approved manner; and
- c) give at least seven days notice to the adjoining owner before excavating, of the intention to excavate.

The principal contractor, owner builder or any person who needs to excavate and undertake building work, must contact "Dial Before You Dig" prior to works commencing, and allow a reasonable period of time for the utilities to provide locations of their underground assets.

This condition does not apply if the person having the benefit of the development consent owns the adjoining land or the owner of the adjoining land has given consent in writing to that condition not applying.

50. **Tree Protection Measures** - All trees to be retained must be protected in accordance with AS4970 'Protection of Trees on Development Sites' for the duration of construction.
51. **Tree Removal/Pruning** - All approved tree removal/Pruning is subject to all pruning works being undertaken by a qualified arborist with minimum Australian Qualification Framework Level 3 qualifications or higher. All works are to be undertaken in accordance with the relevant provisions of AS 4373 'Pruning of Amenity trees'.
52. **Building height** – A survey report prepared by a Registered Surveyor confirming that the building height complies with the approved plans or as specified by the development consent, must be provided to the Principal Certifying Authority prior to the development proceeding beyond frame stage.
53. **Survey report** – The building must be set out by a Registered land surveyor. A peg out survey detailing the siting of the building in accordance with the approved plans must be provided to the Principal Certifying Authority prior to the pouring of concrete.
54. **Traffic Management Plan implementation** - All construction traffic management procedures and systems identified in the Construction Traffic Management Plan, prepared in accordance with condition 28, must be introduced during construction of the development to ensure safety and to minimise the effect on adjoining pedestrian and traffic systems.



55. **Stormwater disposal** – Following the installation of any roof, collected stormwater runoff from the structure must be:
 - a) Immediately following the installation of any roof, collected stormwater runoff shall be diverted through a first flush system before being piped to the existing stormwater easement/system.

56. **Placement of fill** - Filling must not be placed in such a manner that natural drainage from adjoining land will be obstructed or in such a manner that surface water will be diverted.
Further, any alterations to the natural surface contours must not impede or divert natural surface water runoff so as to cause a nuisance to adjoining property owners.

57. **Unexpected finds contingency (general)** – Should any suspect materials (identified by unusual staining, odour, discolouration or inclusions such as building rubble, asbestos, ash material, etc.) be encountered during any stage of works (including earthworks, site preparation or construction works, etc.), such works must cease immediately until a qualified environmental specialist has been contacted and conducted a thorough assessment.

In the event that contamination is identified as a result of this assessment and if remediation is required, all works must cease in the vicinity of the contamination and Council must be notified immediately.
Where remediation work is required, the applicant will be required to obtain consent for the remediation works.

58. **Removal of waste materials** - Where there is a need to remove any identified materials from the site that contain fill/rubbish/asbestos, the waste material must be assessed and classified in accordance with the NSW Environmental Protection Agency Waste Classification Guidelines (2008).

Once assessed, the materials must be disposed to a licensed waste facility suitable for that particular classification of waste. Copies of tipping dockets must be retained and supplied to Council upon request.

59. **Soil, erosion, sediment and water management** – All requirements of the Erosion and Sediment Control Plan or Soil and Water Management Plan must be maintained at all times during the works and any measures required by the plan must not be removed until the site has been stabilised.

60. **Offensive noise, dust, odour and vibration** – All work must not give rise to offensive noise, dust, odour or vibration as defined in the *Protection of the Environment Operations Act 1997* when measured at the nearest property boundary.

61. **Construction Noise Management Plan** - All operations must be carried out in accordance with the recommendations contained in the Construction Noise Management Plan prepared in accordance with condition No. 27 of this consent, including:



- a) Noise mitigation measures.
- b) Noise and/or vibration monitoring.
- c) Use of respite periods.
- d) Complaints handling.
- e) Community liaison and consultation.

Prior to Issue of an Occupation Certificate

The following conditions of consent shall be complied with prior to the issue of an Occupation Certificate.

62. **Occupation Certificate Required** - An Occupation Certificate must be obtained prior to any use or occupation of the development.

The Principal Certifying Authority must be satisfied that the development has been constructed in accordance with approved plans, specifications and conditions of this consent.

63. **Footpath crossing construction** – A footpath crossing and driveway must be constructed in accordance with this consent and the approved Construction Certificate prior to use or occupation of the development.

Note: A Works on Public Infrastructure (Driveway) approval must be obtained prior to the commencement of such works.

64. **Services** – Evidence is to be provided to Council demonstrating that the following reticulated services are available to each lot:
- a) Electricity;
 - b) Water;
 - c) Sewer; and
 - d) Gas (where available).

Should any of the above reticulated services not be available to the development site, a detailed statement is to be provided explaining why connection of the relevant service is not possible or practical.

65. **Stormwater/drainage works** – All stormwater and drainage works required to be undertaken in accordance with this consent must be completed.
The certification/verification must be provided to the satisfaction of the Principal Certifying Authority.
66. **Rectification damage to public infrastructure** – The applicant must rectify any new damage to public infrastructure to the satisfaction of the Council as the Roads Authority.
67. **Completion of Roads Act Approval works** - All approved road, footpath and/or drainage works, including vehicle crossings, have been completed in the road reserve in accordance with the Roads Act Approval to the satisfaction of the Council as the Roads Authority.



68. **Works as Executed Plans and Report** - Works As Executed Plans must be prepared and provided to the Principal Certifying Authority in accordance with Council's Infrastructure Specifications confirming all stormwater drainage systems are constructed in accordance with the approved plans/documentation.
69. **Geotechnical Compliance Certificate** – A Certificate of Compliance prepared by a qualified Geotechnical Engineer must be provided to the Principal Certifying Authority stating that the works detailed in the Geotechnical Report have been undertaken under the Engineer's supervision and to the Engineer's satisfaction, and that the assumptions relating to site conditions made in preparation of the report were validated during construction. This certificate must accompany the Works as Executed plans.
70. **Street tree planting** – All street trees must be planted in accordance with the approved Landscape Plans (Reference: 12742.5, dated: 13/01/2020).

Written documentation from Council that the street trees and vaulted system (if relevant) have been installed to Council's satisfaction is to be provided to the satisfaction of the Principal Certifying Authority.
71. **Completion of landscape works** – All landscape works are to be undertaken in accordance with the approved landscape plan and conditions of this Development Consent.
72. **Car parking requirements** – A minimum of 51 car parking spaces are to be provided in accordance with AS2890 and the approved plans. Parking must be permanently marked on the pavement surface. The parking spaces marked for visitors, must be signposted as "visitor parking".
73. **Clothes drying areas** – Outdoor clothes drying areas are to be provided to each unit. Clothes drying areas are to be installed so as not to be visible from the street or public spaces, this may include the use of screening structures.
74. **SEPP 65 – Design verification** – A design verification statement from a Registered and qualified architect must be submitted to the Principal Certifying Authority demonstrating the development has been constructed in accordance with the approved plans and the requirements of *State Environmental Planning Policy No.65 – Design Quality of Residential Flat Development* (unless superseded by this DA Consent).
75. **Construction to be in accordance with Acoustic Report** - Certification is to be submitted to the Principal Certifying Authority to certify that the construction of the development complies with the recommendations of the Acoustic Assessment Report (Reference No.: 191830/8523, Prepared by: Spectrum Acoustics, and dated: 13 July 2019.)
76. **Lockable gate** – A lockable gate is to be installed at the eastern end of the maintenance pathway, accessible via Gowrie Avenue.

ITEM 1 - ATTACHMENT 3 RECOMMENDED CONDITIONS OF CONSENT.



Evidence of compliance with this condition is to be provided to the Certifying Authority.

Ongoing Use

The following conditions of consent are operational conditions applying to the development.

77. **Manoeuvring of vehicles** – All vehicles must enter and exit the site in a forward direction.
78. **Removal of graffiti** – The owner/manager of the site is responsible for the removal of all graffiti from the building and fences within 48 hours of its application.
79. **Parking areas to be kept clear** – At all times, the loading, car parking spaces, driveways and footpaths must be kept clear of goods and must not be used for storage purposes.
80. **Residential air conditioning units** – The operation of air conditioning units must operate as follows:
 - a) be inaudible in a habitable room during the hours of 10pm – 7am on weekdays and 10pm to 8am on weekends and public holidays;
 - b) emit a sound pressure level when measured at the boundary of any neighbouring residential property, at a time other than those specified in (a) above, which exceeds the background (LA90, 15 minutes) by more than 5dB(A). The source noise level must be measured as a LAeq 15 minute; and
 - c) not discharge any condensate or moisture onto the ground surface of the premises or into stormwater drainage system in contravention of the requirements of the *Protection of the Environment Operations Act 1997*.
81. **Fire Safety Schedule** – At all times, a copy of the Fire Safety Schedule and Fire Safety Certificate must be prominently displayed in the building and a copy forwarded to the Commissioner of New South Wales Fire Brigades in accordance with the *Environmental Planning & Assessment Regulations 2000*.
82. **Maintenance of landscaping** – Landscaping must be maintained in accordance with the approved landscape plan and conditions of this development consent. All landscape areas must be kept free of parked vehicles, stored goods, garbage or waste material at all times.

If any of the vegetation dies or is removed, it is to be replaced with vegetation of the same species and similar maturity as the vegetation which has died or was removed.
83. **Waste management and collection** – At all times, the building management body must make arrangements for the placement of the garbage bins at the

ITEM 1 - ATTACHMENT 3 RECOMMENDED CONDITIONS OF CONSENT.



kerbside for weekly collection and must ensure the return of the bins to the garbage room as soon as practicable after collection.

Advice Note(s):

- A. **'Dial Before you Dig'** – Before any excavation work starts, contractors and others should phone the "Dial Before You Dig" service to access plans/information for underground pipes and cables.
- B. **Dividing fences** – The erection of dividing fences under this consent does not affect the provisions of the *Dividing Fences Act 1991*. Under this Act, all relevant parties must be in agreement prior to the erection of any approved dividing fence/s under this consent.

Council has no regulatory authority in this area and does not adjudicate civil disputes relating to the provision of, or payment for, the erection of dividing fences. If there is a neighbour dispute about the boundary fence and you are seeking mediation, you may contact the Community Justice Centre, or if legal advice or action is required, you may contact the Chamber Magistrate.
- C. **Disability Discrimination Act** – The Commonwealth Disability Discrimination Act makes it an offence to discriminate against people on the grounds of disability, in the provision of access to premises, accommodation, or services. It is the owner/applicants responsibility to ensure compliance with the requirements of this Act.
- D. **Aboriginal archaeological deposit** – In the event of any aboriginal artefact, object or structure being unearthed, all work must cease immediately in the affected area, and the Biodiversity Conservation Division (BCD) shall be informed of the discovery. Work must not recommence until the material has been inspected and permission has been given by BCD to proceed.
- E. **Works near/adjoining electricity network assets** – There are overhead powerlines and electricity network assets adjacent to the proposed development on Shoal Bay Road and Gowrie Avenue. Any works undertaken adjacent to Ausgrid assets must be undertaken with care in accordance with Workcover Code of Practice 2006 – Work Near Overhead Powerlines.
- F. **Responsibility for damage for tree removal/pruning** – The applicant is responsible for any damage caused to existing public utilities, footpaths or public roads during the cutting down, grinding, removal and disposal of the timber and roots. Care must also be taken by the applicant and the applicant's agents to prevent any damage to adjoining properties. The applicant or the applicants' agent may be liable to pay compensation to any adjoining owner if, due to tree works, damage is caused to such adjoining property.
- G. **Addressing** - Prior to occupying the development Council's Spatial Services Team should be contacted via email at: addressing@portstephens.nsw.gov.au to obtain correct property addressing details. Please state your Development

ITEM 1 - ATTACHMENT 3 RECOMMENDED CONDITIONS OF CONSENT.



Approval number and property address in order to obtain the correct house numbering.

Note: any referencing on Development Application plans to house or lot numbering operates to provide identification for assessment purposes only.

ITEM NO. 2

FILE NO: 20/70052
EDRMS NO: 16-2020-105-1

DEVELOPMENT APPLICATION 16-2020-105-1 FOR PROPOSED ONE INTO TWO LOT TORRENS TITLE SUBDIVISION AT 9B DIEMARS ROAD, SALAMANDER BAY

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

RECOMMENDATION IS THAT COUNCIL:

- 1) Approve Development Application 16-2020-105-1 for a 1 into 2 lot Torrens title subdivision at 9B Diemars Road, Salamander Bay (Lot: 644 DP: 658258) subject to the recommended Conditions of Consent contained in **(ATTACHMENT 3)**.

BACKGROUND

The purpose of this report is to present a Development Application (DA) 16-2020-105-1 to Council for determination. The DA has been reported to Council in accordance with Council's 'Development Applications to be Reported to Council Policy' as the application proposes development on Council owned operational land.

The subject DA relates to land identified as Lot: 644 DP: 658258, located at 9B Diemars Road, Salamander Bay (the subject site). The subject site is zoned IN4 Working Waterfront. A Locality Plan is provided at **(ATTACHMENT 1)**.

Proposal

The application proposes 1 into 2 lot Torrens title subdivision to create two allotments. The proposed lots include:

- Lot 1 with an area of 927m²
- Lot 2 with an area of 2,471m².

No physical works are proposed as part of this development.

Site Description

The subject site is located on the waterfront of Cromarty Bay with an area of 3,398 square metres.

The subject site had historically been used as a public reserve until it was reclassified to Council controlled operational land on 25 January 2018 by Local Environmental Plan Amendment No 21 to enable subdivision and sale of the land.

The subject site is approximately 103.84 metres in length and an average of 30.58 metres in depth. The subject site is bound by waterfront and privately owned land, with no direct access to Diemars Road or services.

Adjoining land uses include residential dwellings, a restaurant and commercial/ industrial uses associated with oyster farming.

Key Issues

The existing site is landlocked and does not have access to services. As a result, the proposal does not include the provision of services, however, future development on the lots will require the provision of services or amalgamation with adjoining lots, subject to approvals.

No other issues arose during assessment of the application. A detailed assessment of the development is considered within the Planners Assessment Report provided at **(ATTACHMENT 2)**.

Conclusion

The proposed development has been assessed, and deemed generally compliant with the objectives and provisions of the relevant environmental planning instruments applicable to the site, including:

- Environmental Planning and Assessment Act 1979
- Port Stephens Local Environmental Plan 2013
- Port Stephens Development Control Plan 2014 (DCP)
- State Environmental Planning Policy No 55 - Remediation of Land
- State Environmental Planning Policy (Coastal Management) 2018.

Subsequently, the application has been recommended for approval, subject to the conditions contained in **(ATTACHMENT 3)**.

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2018-2021
Thriving and Safe Place to Live	Support the amenity and identity of Port Stephens. Provide land use plans, tools and advice that sustainably support the community. Enhance public safety, health and liveability through use of Council's regulatory controls and services.

FINANCIAL/RESOURCE IMPLICATIONS

The determination of the application could potentially be challenged in the Land and Environment Court. Defending Council's determination could have financial implications.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes		
Reserve Funds	No		
Developer Contributions (S7.12)	No		There is no cost of works therefore no contributions can be collected under s7.12.
External Grants	No		
Other	No		

LEGAL, POLICY AND RISK IMPLICATIONS

The development application is consistent with the following planning instruments: Environmental Planning and Assessment Act 1979, Port Stephens Local Environmental Plan 2013, State Environmental Planning Policy No 55 - Remediation of Land and State Environmental Planning Policy (Coastal Management) 2018.

A detailed assessment against these instruments and other applicable planning policies, is contained within the Planners Assessment Report (**ATTACHMENT 2**).

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that the determination of the application may be challenged in the Land and Environment Court.	Low	Accept the recommendation	Yes

SUSTAINABILITY IMPLICATIONS

Including Social, Economic and Environmental Implications.

Social and Economic Implications

The development regularises the existing informal arrangements of the land whereby the lot is not currently utilised by the general community as there is no physical access to the land available to the public.

Built Environment Implications

As the development does not propose or permit additional works or changes to land uses, the proposal does not present any negative impacts on the built environment.

Natural Environment Implications

As the development does not propose or permit additional works or changes to land uses, the proposal does not present any negative impacts on the natural environment.

CONSULTATION

Internal

Consultation was undertaken with internal officers, including; development engineering, development contributions and spatial services. The referral comments from these officers were considered as a part of the Planners Assessment Report contained in **(ATTACHMENT 2)**.

External

Consultation was undertaken with the Department of Primary Industries (DPI), as works are proposed within proximity to the Great Lakes Marine Park. A response was received from DPI, which made no objection to the proposal due to the development not being located within the waterway.

Public Consultation

The application does not require notification in accordance with Council's Community Participation Plan.

OPTIONS

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

ATTACHMENTS

- 1) Locality Plan. [↓](#)
- 2) Planners Assessment Report. [↓](#)
- 3) Recommended Conditions of Consent. [↓](#)

COUNCILLORS ROOM

1) Development Plans.

Note: Any third party reports referenced in this report can be inspected upon request.

TABLED DOCUMENTS

Nil.





DEVELOPMENT ASSESSMENT REPORT

APPLICATION DETAILS

Application Number	16-2020-105-1
Development Description	One into Two lot Torrens title subdivision
Applicant	PORT STEPHENS COUNCIL
Date of Lodgement	10/03/2020
Value of Works	\$0.00

Development Proposal

The application proposes a two lot Torrens title subdivision to create the following allotments for the purpose of sale to the adjoining lots (see **Figure 1** below):

- Lot 1 with an area of 927m²; and
- Lot 2 with an area of 2,471m².

No physical works are proposed as part of this development.

This proposal is a resubmission of a previous application, DA 16-2019-668-1, withdrawn on 23 December 2019 for Council operational reasons.

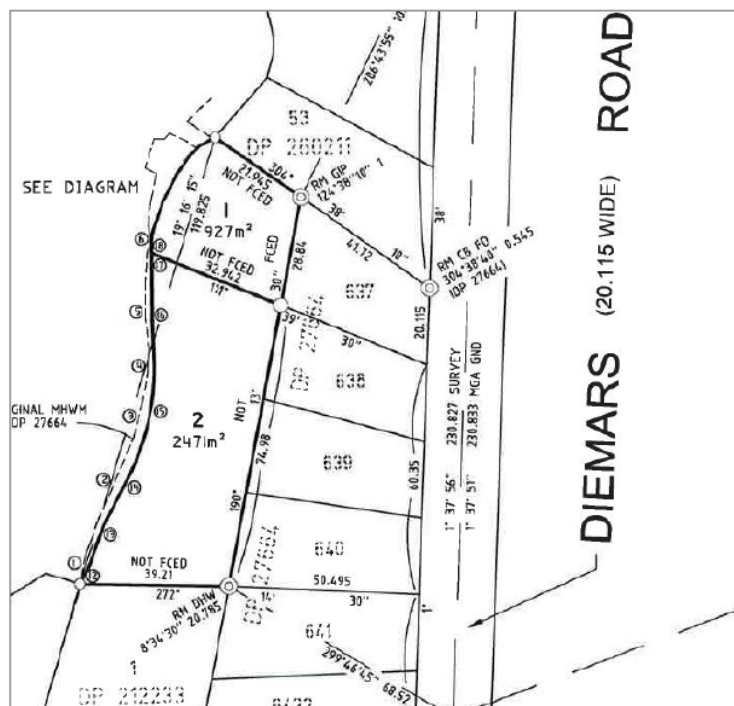


Figure 1: Proposed Subdivision Plan

PROPERTY DETAILS

Property Address	9B Diemars Road SALAMANDER BAY
Lot and DP	LOT: 644 DP: 658258
Current Use	Vacant
Zoning	IN4 WORKING WATERFRONT
Site Constraints	LEP Wetlands Bushfire Prone Land – Vegetation Buffer Acid Sulfate Soils – Class 1 and Class 5 SEPP (Coastal Management) 2018 - Coastal Management Area – Coastal Environment Area & Coastal Use Area Koala Habitat – Clear Port Stephens – Great Lakes Marine Park Flood Planning Area

Site Description

The subject site, legally identified as Lot 644 DP 658258 is located on the waterfront of Cromarty Bay with an area of 3,398sqm at the time of last survey (see **Figure 2** below). The subject site was created and dedicated to Council as part of the Crown Estate (Grant) in 1845. The land has been utilised as a public reserve since that date. The site is located in an IN4 zone, with adjoining land uses including residential dwellings, a restaurant and oyster farming.



Figure 2: Aerial View

Site Inspection

A site inspection was previously carried out on 24 October 2019. The subject site can be seen in **Figures 3-4** below. No changes have been made to the site since this date.



Figure 3: Subject Site (Behind Vegetation)



Figure 4: Subject Site (Right)

ASSESSMENT SUMMARY

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

Internal Referrals

The application was previously referred to the following internal specialist staff. The comments of the listed staff have been used to carry out the assessment against the S4.15 Matters for Consideration below. As the proposal has not changed since the previous referral associated with DA 16-2019-668-1, it was determined that the application was not required to be referred again.

Development Engineer

The development was referred to Councils Development Engineer, in response, it was noted that *part* of the site is affected by flooding with the category being High Hazard Flood Storage. Noting that the proposal is for subdivision only with no additional development proposed, no specific flood mitigation measures are required. Future development will need to be in accordance with Council's DCP and the NSW Floodplain Development Manual.

Spatial Services

Response from Councils Spatial Services team provided house numbering from the resultant lots, being:

Proposed Lot Number	Street Address
1	9A Diemars Road SALAMANDER BAY
2	9B Diemars Road SALAMANDER BAY

Development Contributions Officer

The development was referred to Councils Development Contributions Officer, in response it was noted that the proposal is for a one into two lot subdivision, however relates to industrial land and therefore is not for residential purposes. As such, s7.11 contributions are not applicable pursuant to Council's Development Contribution Plan 2007. The proposal would be captured under Council's Fixed Development Contribution Plan 2006, however as there is no cost of works no contributions could be collected under s7.12.

Accordingly, there is no requirement for contributions to be levied through conditions of consent.

Since the date of this referral, Council has updated its Local Infrastructure Contributions plans, however the comments from the above remain valid.

External Referrals

The proposed application was previously referred to the following external agencies for comment. As the proposal has not changed since the previous referral, it was determined that the application was not required to be referred again.

Department of Primary Industries (DPI) Fisheries Marine Parks Division

The application was referred to DPI Fisheries as being land adjacent to the Port Stephens Marine Park area. In response, DPI Fisheries made no objection to the development.

MATTERS FOR CONSIDERATION – SECTION 4.15**S4.14 Consultation and development consent—certain bush fire prone land**

The land is identified as bushfire prone – vegetation buffer. While the proposal facilitates the subdivision of land, dwelling houses are not permitted on the land under the PSLEP in the IN4 Working Waterfront zone and therefore the development is not required to be referred to the RFS as integrated development.

There are no provisions in Planning for Bushfire Protection relevant to this proposal.

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

Port Stephens Local Environmental Plan 2013 (LEP)

Clause 2.6 – Subdivision

The application includes a one into two lot Torrens title subdivision which is permissible under this clause.

Clause 4.1 – Minimum Lot Size

There is no minimum lot size mapped for the subject land. Notwithstanding, the proposed lot sizes are suitable for future development permitted within the IN4 zone.

Clause 7.1 – Acid Sulfate Soils

The subject land is mapped as containing potential Class 5 and 1 Acid Sulfate Soils. The proposed development is not anticipated to entail excavations and therefore there are no expected impacts as a result of acid sulfate soils.

Clause 7.3 – Flood Planning

The proposed development is located on land mapped as being Flood Planning Area. As there are no physical works proposed with this development, the development will not be adversely impacted in a 1% ARI flood event, or create significant negative impacts on the local flooding characteristics.

Clause 7.6 – Essential Services

The subject site is able to be serviced by reticulated water, electricity and sewer, however as there is no further development proposed as part of this application, these services are not essential for this development. The subject lot is land-locked, however as the intention of this subdivision is for the land to be sold to the adjoining lots, the land will gain direct access to services and Diemars Road, meeting the requirements of this clause.

Clause 7.9 – Wetlands

The proposal is located on land identified as wetland. As there are no physical works proposed with this development, the development will not have a negative impact on the flora and fauna of the wetland, or the characteristics of the ground or surface water.

State Environmental Planning Policy (Coastal Management) 2018

The subject site is located within the Coastal Environment Area Map and Coastal Use Area Map.

The development is consistent with the objectives and requirements of the Coastal Management SEPP in that:

ITEM 2 - ATTACHMENT 2 PLANNERS ASSESSMENT REPORT.

16-2020-105-1

- The proposed development is not anticipated to have an adverse impact on the ecology, culture or amenity of the foreshore and coastal waters as the development is residential in nature and sufficiently separated from the waterway;
- There are no anticipated impacts on access to, or views to or from the waterway and foreshore area;
- Access to the foreshore area is being granted through this subdivision;
- There are no anticipated conflicts between the proposal and the use of the waterway; and
- The development does not increase the risk of coastal hazards.

The proposed development has been considered against the matters for consideration for a development site within the Coastal Use and Coastal Environment areas and is acceptable in this regard.

State Environmental Planning Policy (Koala Habitat Protection) 2019

The proposed development has been considered against Council's Comprehensive Koala Plan of Management (CKPoM) which has been prepared under the SEPP. The land is identified as being clear of potential koala habitat and therefore meets the requirements of this SEPP.

State Environmental Planning Policy 55 - Remediation of Land

The development does not propose any physical works or change of use. There are no historical records of potentially contaminating activities on the land. Accordingly, the objectives of SEPP 55 are met.

s4.15(1)(a)(ii) – Any draft EPI

There are no draft EPI's relevant to the proposed development.

s4.15(1)(a)(iii) – Any DCP

Port Stephens Development Control Plan 2014

The Port Stephens Development Control Plan 2014 (DCP) is applicable to the proposed development and has been assessed below.

Chapter B2 – Natural Resources

The subject site is identified as wetland area, however as there are no physical works proposed as part of this application, there is unlikely to be any potential impacts to the biodiversity values of the land and therefore, a Flora and Fauna survey is not required.

Chapter B3 – Environment Management

The subject site is on land identified as containing both Class 5 and Class 1 Acid Sulfate Soils, however as there are no physical works proposed with this development, the exposure of acid water is unlikely.

Chapter B5 – Flooding

The subject land is mapped as being within the Flood Planning Area. Following from the discussion against clause 7.3 of the PSLEP above, the proposed development will not be adversely impacted in a 1% ARI flood event therefore, the proposal satisfies the requirements of Chapter B5.

Chapter B6 – Essential Services

The subject site is able to be serviced by reticulated water, electricity and sewer, however as there is no further development proposed as part of this application, these services are not essential for this development. The subject lot is land-locked, however as the intention of this subdivision is for the land to be sold to the adjoining lots, the land will then gain direct access to services and Diemars Road, meeting the requirements of this clause.

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Chapter C1 – Subdivision

The relevant provisions of Chapter C1 are addressed in the table below.

Clause	Requirement	Assessment
C1.6	Lot size adheres with PSLEP2013 Part 4	<p>The proposed Lot sizes include:</p> <ul style="list-style-type: none"> - Lot 1 is 927m²; - Lot 2 is 2,471m²; <p>The proposed development complies with this clause.</p>

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

There are no planning agreements that have been entered into under section 7.4 relevant to the proposed development.

s4.15(1)(a)(iv) – The regulations

There are no clauses of the regulations that require consideration for the proposed development.

s4.15(1)(b) – The likely impacts of the development**Social and Economic Impacts**

There are no anticipated adverse social or economic impacts as a result of the proposed development. The development will enable future use of the subject land for industrial waterfront activities.

Impacts on the Built Environment

There are no anticipated adverse impacts on the built environment as a result of the proposed development.

Impacts on the Natural Environment

It is noted that no significant vegetation is proposed to be removed.

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

The subject site is located within an existing working waterfront area. The site is able to gain access to all relevant services and the proposed development makes good use of the available land. The application design includes all elements required under the relevant planning instruments and policies and there are no anticipated negative impacts on the locality as a result of the development.

s4.15(1)(d) – Any submissions

The application does not require notification in accordance with Council's Community Participation Plan.

The previous development application (DA 2019-699-1) was notified for a period of 14 days from 25 October to 8 November 2019, during this time no submissions were received in relation to the development.

s4.15(1)(e) – The public interest

The proposal is not anticipated to have any significant adverse impacts on surrounding properties or the amenity of the locality. The proposed development supports the waterfront nature of the land and is in keeping with the character of surrounding developments. The proposed development is in the public interest.

DETERMINATION

The application is recommended to be approved by Council, subject to conditions as contained in the notice of determination.

KYLIE DORSETT
Development Planner



SCHEDULE 1 – CONDITIONS OF CONSENT

General Conditions of Consent

The following conditions of consent are general conditions applying to the development.

1. **Approved plans and documentation** – Development must be carried out in accordance with the following plans and documentation, and all recommendations made therein, except where amended by the conditions of this development consent:

Plan reference	Name of plan	Prepared by	Date
P1257 Report	Plan of Subdivision of Lot 644 DP 658258	John Leslie Evans	04/10/2018

In the event of any inconsistency between the approved plans and the conditions, the conditions will prevail.

Prior to Issue of a Subdivision Certificate

The following conditions of consent shall be complied with prior to the issue of a Subdivision Certificate.

2. **Requirement for a Subdivision Certificate** - The application for Subdivision Certificate(s) must be made in accordance with the requirements of Clause 157 of the *Environmental Planning & Assessment Regulations 2000*.

The applicant will be required to submit documentary evidence that the property has been developed in accordance with the plans approved by this development consent, and of compliance with the relevant conditions of consent, prior to the issuing of a Torrens Plan of Subdivision.

In addition, one signed original copy of the original plans and/or documents, and final plan of survey/title, must be submitted to Council. A USB containing an electronic copy of all relevant documents must also be provided.

Advice Note(s):

- 1) **Dividing fences** – The erection of dividing fences under this consent does not affect the provisions of the *Dividing Fences Act 1991*. Under this Act, all relevant parties must be in agreement prior to the erection of any approved dividing fence/s under this consent.

Council has no regulatory authority in this area and does not adjudicate civil disputes relating to the provision of, or payment for, the erection of dividing fences. If there is a neighbour dispute about the boundary fence and you are seeking mediation, you may contact the Community Justice Centre, or if legal advice or action is required, you may contact the Chamber Magistrate.

**SCHEDULE 2 - REASONS FOR DETERMINATION AND REASONS FOR CONDITIONS****REASONS FOR THE DETERMINATION & CONSIDERATION OF COMMUNITY VIEWS**

The determination decision was reached for the following reasons:

- The proposed development, subject to the recommended conditions, is consistent with the objectives of the applicable environmental planning instruments, being; Port Stephens Local Environmental Plan 2013 (PSLEP), State Environmental Planning Policy (Coastal Management) 2018, State Environmental Planning Policy (Koala Habitat Protection) 2019, and State Environmental Planning Policy 55 - Remediation of Land.
- The proposed development is, subject to the recommended conditions, consistent with the objectives of the Port Stephens Council Development Control Plan 2014 (PSDCP).
- The proposed development is considered to be of an appropriate scale and form for the site and the character of the locality.
- The proposed development, subject to the recommended conditions, will not result in unacceptable adverse impacts upon the natural or built environments.
- The proposed development is a suitable and planned use of the site and its approval is within the public interest.

REASONS WHY THE CONDITIONS HAVE BEEN IMPOSED

The following conditions are applied to:

- Confirm and clarify the terms of Council's Approval;
- Identify modifications and additional requirements that will result in improved compliance, development and environmental outcomes;
- Prevent, minimise, and/or offset adverse environmental impacts including economic and social impacts;
- Set standards and performance measures for acceptable environmental performance; and
- Provide for the ongoing management of the development.

**SCHEDULE 3 – RIGHT OF APPEAL AND REVIEW****RIGHT OF APPEAL**

If you are dissatisfied with this decision (including a determination on a review under Section 8.2), Section 8.7 and 8.10 of the Environmental Planning and Assessment Act 1979 gives you the right to appeal to the Land and Environment Court within six months after:

- a) the date on which you receive this notice, or
- b) the date on which that application is taken to have been determined under Section 8.11.

Section 8.8 of the Environmental Planning and Assessment Act 1979, does not give a right of appeal to an objector who is dissatisfied with the determination of the Council to grant consent to a development application, unless the application is for designated development (including designated development that is integrated development). The objector may, within 28 days after the date on which the notice of the determination was given in accordance with the regulations, and in accordance with rules of the Court, appeal to the Court.

RIGHT OF REVIEW

Section 8.2 of the Environmental Planning and Assessment Act 1979 provides that the applicant may request the Council to review the determination. The request must be made in writing (or on the review application form) within six months after the date as specified in this notice of determination, together with payment of the appropriate fee. (**See exclusions note below**).

Exclusions: A request to review the determination of a development application pursuant to Section 8.2 of the Environmental Planning and Assessment Act 1979 can only be undertaken where the consent authority is Council, other than:

- a) A determination to issue or refuse to issue a complying development certificate, or
- b) A determination in respect of designated development, or
- c) A determination made by the Council under Division 4 in respect of an application by the Crown.

ITEM NO. 3

**FILE NO: 20/31171
EDRMS NO: PSC2017-01665**

FERN BAY AND NORTH STOCKTON STRATEGY

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

RECOMMENDATION IS THAT COUNCIL:

- 1) Receive and note the submissions received during the exhibition of the draft Fern Bay and North Stockton Strategy and the response to the public submissions **(ATTACHMENT 1)**.
 - 2) Adopt the Fern Bay and North Stockton Strategy, as amended **(ATTACHMENT 2)**.
-

BACKGROUND

The purpose of this report is to advise Council of the outcome of the exhibition of the Fern Bay and North Stockton Strategy (the 'strategy') and note the response to submissions **(ATTACHMENT 1)**. The report recommends that Council adopt the strategy, as amended **(ATTACHMENT 2)**.

The strategy has been adopted by the City of Newcastle at its meeting of 24 March 2020.

At its meeting on 22 October 2019, Council resolved to exhibit a draft of the strategy and accompanying documents for 28 days. The strategy was exhibited from 31 October 2019 to 29 November 2019 and 14 submissions were received. A petition containing 634 signatures supporting a proposed supermarket at 42 Fullerton Cove Road, Fullerton Cove was received during public access at Council's meeting on 26 November 2019.

In response to submissions, the strategy has been amended to allow for a neighbourhood centre, with a neighbourhood supermarket to support residents in Fern Bay. A planning proposal to establish the neighbourhood centre, consistent with the amended strategy, will be provided to Council for consideration. Other post exhibition amendments to the strategy are outlined in a submissions table **(ATTACHMENT 1)**, and included in the amended strategy for adoption **(ATTACHMENT 2)**.

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2018-2021
Thriving and Safe Place to Live	Provide land use plans, tools and advice that sustainably support the community.

FINANCIAL/RESOURCE IMPLICATIONS

The development of the strategy has been managed within the existing budgets and in accordance with a Memorandum of Understanding entered into with the City of Newcastle.

It is noted that funding will be required from a variety of sources to implement actions in the implementation plan, including footpaths, bus stops and traffic signals. This will be investigated and is expected to be a combination of capital works funding, developer contributions, grants, and private investment to support proposed development.

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

LEGAL, POLICY AND RISK IMPLICATIONSHunter Regional Plan 2036

The strategy is consistent with the Hunter Regional Plan 2036 (HRP 2036) which identifies Fern Bay as a centre of local significance. The strategy is consistent with the actions in the HRP 2036 to create healthy built environments through good urban design, enhance access to recreational facilities and connect open spaces, and to create compact settlements with housing diversity.

Greater Newcastle Metropolitan Plan 2036

The strategy is consistent with the Greater Newcastle Metropolitan Plan 2036 (GNMP 2036) and its outcomes to enhance the environment, amenity and quality of life, deliver housing close to jobs and services, and to improve connections to services and recreation spaces.

Port Stephens Planning Strategy 2011-2036

The strategy is consistent with the Port Stephens Planning Strategy 2011-2036 (PSPS). The PSPS provides a comprehensive planning strategy for Port Stephens, identifying Fern Bay as part of an 'Eastern Growth Corridor' and recognising the importance of the coastal area that includes Stockton Bight.

The PSPS identifies opportunities and potential demand for additional commercial/retail activity in the Fern Bay area, which is addressed in the strategy's implementation plan.

Draft Port Stephens Local Strategic Planning Statement

The draft Port Stephens Local Strategic Planning Statement (LSPS) was considered by Council on 11 February 2020, where it was endorsed for public exhibition. The strategy is consistent with the planning priorities in the draft LSPS, in particular priorities regarding the supply of suitable land and diverse housing choices, supporting tourism, preserving the natural environment and providing greater access to the natural assets of the locality.

Draft Port Stephens Local Housing Strategy (Live Port Stephens)

The draft Port Stephens Local Housing Strategy (Live Port Stephens) was considered by Council on 11 February 2020, where it was endorsed for public exhibition.

Live Port Stephens lists priorities and actions to:

1. ensure suitable land supply
2. improve housing affordability
3. increase diversity of housing choice
4. facilitate liveable communities.

The strategy aligns with Live Port Stephens as it aims to create a liveable community with diverse housing options.

Port Stephens Local Environmental Plan 2013

Council has received 3 planning proposals in Fern Bay seeking to amend the Port Stephens Local Environmental Plan 2013.

The current planning proposals, and any future planning proposals, must demonstrate consistency with the planning principles contained in the strategy. The current planning proposals are summarised as follows:

- 14 Popplewell Road, Fern Bay – the planning proposal seeks to rezone the site, a former rifle range, from E2 Environmental Conservation to part R3 Medium Density Residential. A Gateway determination to proceed was received from the NSW Department of Planning, Industry and Environment (DPIE) on 25 November 2019.
- 42 Fullerton Cove Road, Fullerton Cove – the planning proposal seeks to rezone the site, located on the corner of Fullerton Cove Road and Nelson Bay Road, from RU2 Rural Landscape to B1 Neighbourhood Centre and E2 Environmental Conservation. The planning proposal is being progressed in accordance with the amended Strategy and a report recommending that the planning proposal be submitted to DPIE for Gateway determination will be provided to Council for consideration.
- 2, 4, 4A, 4B, 6, Seaside Boulevarde, Fern Bay and 20, 22, 23, 24, 25 and 26 Sovereign Street, Fern Bay – the planning proposal seeks to rezone the site, located within the Seaside Estate, from B1 Neighbourhood Centre to R2 Low Density Residential. The planning proposal is being progressed in accordance with the amended Strategy and is considered appropriate should the site at 42 Fullerton Cove Road, Fullerton Cove be rezoned to B1 Neighbourhood Centre. A report recommending that the planning proposal be submitted to DPIE for Gateway determination will be provided to Council for consideration.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that the Strategy will not be endorsed by DPIE resulting in unclear strategic planning framework for this area.	Low	Council staff met with DPIE staff during the preparation of the Strategy. DPIE have advised that the Strategy has alignment with the HRP 2036 and GNMP 2036. Matters raised by DPIE in their submission have been addressed in (ATTACHMENT 1) .	Yes

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that Council will not have adequate funding to implement actions in the Strategy resulting in the expectations of the community not be met.	Moderate	The Port Stephens Local Infrastructure Contributions (LICs) Plans include items identified in the Strategy, including funding for infrastructure to support a town centre. The LICs will be regularly reviewed and amended to include additional infrastructure as necessary. \$1.5 million of repealed funds were allocated to Fern Bay on the repeal of the Port Stephens Development Contributions Plan 2007.	Yes
There is a risk that additional housing will be developed without adequate infrastructure provision, resulting in community impacts.	Low	Council will give consideration to the availability of infrastructure during the assessment of planning proposals and development applications.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The strategy proposes a number of outcomes that will have positive social, economic and environmental implications. This includes the identification of a site for establishing a future town centre. The new town centre will provide a destination for local residents to shop, hold community events and interact with other members of their community.

In response to submissions received, the strategy has been amended to allow for a neighbourhood centre to service the retail needs of the community within the immediate term. The neighbourhood centre, with a neighbourhood supermarket will have significant social and economic benefits for the community, providing access to retail services with Fern Bay.

The strategy proposes to limit further development, outside what is currently under consideration, north of the strategy area to maximise the efficient use of existing facilities and lessen impacts on the surrounding environmental areas including endangered ecological communities and koala habitat.

CONSULTATION

Internal

The strategy has been developed in consultation with the Natural Resources Unit, and Communications and Assets Sections of Council.

The implementation plan (**ATTACHMENT 2**) identifies key roles and responsibilities for various stakeholders within Council to achieve the goals of the strategy.

External

The strategy was exhibited for a period of 28 days, from 31 October 2019 to 29 November 2019. During this time, 14 submissions, and 1 petition, were received during the exhibition period and responses to each are provided in a submissions table (**ATTACHMENT 1**).

On 15 November 2019, Council hosted the 'Fern Bay Fiesta' event to support community development and provide an opportunity for residents to engage with the Strategy.

Thirty responses were received to an online survey with participants mostly indicating support for the aims of the strategy, in particular the identification of a location for a supermarket.

Council staff met with members of the Fern Bay and Fullerton Cove Progress Association during exhibition to provide clarification on matters contained in the strategy.

Consultation has been undertaken with the NSW Department of Planning, Industry and Environment (including Environment, Energy and Science Group) and Hunter Water Corporation in preparing the strategy.

Post exhibition changes made in response to submissions are outlined in the submissions table (**ATTACHMENT 1**) and included in the amended strategy (**ATTACHMENT 2**).

OPTIONS

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

ATTACHMENTS

- 1) Submission Table. (Provided under separate cover) [⇒](#)
- 2) Fern Bay and North Stockton Strategy. (Provided under separate cover) [⇒](#)

COUNCILLORS ROOM

- 1) Copy of submissions.
- 2) Hill PDA – Commercial lands study: Fern Bay and North Stockton.
- 3) SECA Solutions – Traffic and transport study: Fern Bay and North Stockton.

TABLED DOCUMENTS

Nil.

ITEM NO. 4

FILE NO: 20/30675
EDRMS NO: 58-2017- 4-1
58-2017- 1-1

PLANNING PROPOSALS FOR SEASIDE BOULEVARDE, FERN BAY AND 42 FULLERTON COVE ROAD, FULLERTON COVE

REPORT OF: STEVEN PEART - STRATEGY & ENVIRONMENT SECTION
MANAGER

GROUP: DEVELOPMENT SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Adopt the planning proposal (**ATTACHMENT 4**) to amend the Port Stephens Local Environmental Plan 2013 for land at 42 Fullerton Cove Road, Fullerton Cove (Lot 14 DP 258848) to:
 - a. rezone the land from RU2 Rural Landscape to part B1 Neighbourhood Centre and part E2 Environmental Conservation.
 - b. remove the minimum lot size restrictions for the proposed B1 zoned land.
 - c. apply a building height restriction of 9 metres on the proposed B1 zoned land.
 - d. insert a local provision to restrict the retail gross floor area of development on the site to 1500sqm.
- 2) Adopt the planning proposal (**ATTACHMENT 5**) to amend the Land Zoning Map, Lot Size Map and Height of Building Map under the Port Stephens Local Environmental Plan 2013 at 2, 4, 4A, 4B, and 6 Seaside Boulevarde, Fern Bay and 20, 22, 23, 24, 25 and 26 Sovereign Street, Fern Bay (Part of Lot 27, DP 270466, Lots 2, 3, 4, 20, 21 and 22, and Part of Lots 5, 19, 23 and 24, DP 280072) to rezone the land from B1 Neighbourhood Centre to R2 Low Density Residential.
- 3) Forward the planning proposals to the NSW Department of Planning, Industry and Environment for Gateway determination and request authorisation to make the plans.

BACKGROUND

The purpose of the report is to recommend that Council adopt 2 planning proposals (**ATTACHMENT 4** and **ATTACHMENT 5**) to amend the Port Stephens Local Environmental Plan 2013 (LEP 2013) to provide an alternate location for a neighbourhood centre and local supermarket in Fern Bay.

Currently land at 2, 4, 4A, 4B, and 6 Seaside Boulevarde, Fern Bay and 20, 22, 23, 24, 25 and 26 Sovereign Street, Fern Bay (Seaside Estate) is zoned for a neighbourhood centre.

The purpose of the planning proposals is to identify an alternate location at 42 Fullerton Cove Road, Fullerton Cove for the neighbourhood centre and enable residential development at Seaside Estate. A locality plan is provided at **(ATTACHMENT 1)**.

The planning proposal for 42 Fullerton Cove Road, Fullerton Cove (Fullerton Cove Proposal) seeks to rezone land from RU2 Rural Landscape to B1 Neighbourhood Centre and E2 Environmental Conservation.

The planning proposal for Seaside Estate (Seaside Proposal) seeks to rezone land from B1 Neighbourhood Centre to R2 Low Density Residential.

The planning proposals respond to the outcomes in the draft Fern Bay and North Stockton Strategy (draft FBNSS) to support the development of a neighbourhood centre in Fern Bay.

During the exhibition of the draft FBNSS, submissions were received supporting the establishment of a neighbourhood centre to service Fern Bay and a petition with 634 signatures was presented to Council in support of the Fullerton Cove Proposal.

The Fern Bay and North Stockton Commercial Lands Study (Hill PDA Study) prepared in 2017 identified the land at 42 Fullerton Cove Road, Fullerton Cove to be more suitable to meet future demand for commercial development than the land at Seaside Estate.

A summary of each planning proposal and their respective property details is provided below:

42 Fullerton Cove Road Proposal	
Date Lodged:	4 April 2017.
Proponent:	Monteath & Powys Surveyors on behalf of landowners.
Subject Property:	42 Fullerton Cove Road, Fullerton Cove (Lot 14 DP 258848).
Site Area:	~ 6.7 hectares.
Current Zoning:	RU2 Rural Landscape.
Proposed Zoning:	Part B1 Neighbourhood Centre. Part E2 Environmental Conservation.
Current Minimum Lot Size (MLS):	20 hectares.
Proposed MLS:	B1 zoned land - no specified minimum lot size. E2 zoned land - 20 hectares.

42 Fullerton Cove Road Proposal

Key Issues:	<p>A Biodiversity Development Assessment Report (BDAR) will be prepared should the planning proposal receive a Gateway determination to proceed. The BDAR will inform the final zone boundaries.</p> <p>A revised Flood and Drainage Study will be prepared should the planning proposal receive a Gateway determination to proceed.</p> <p>Future retail development will be limited to a gross floor area of 1,500 square metres.</p>
Supporting Studies:	Fern Bay and North Stockton Commercial Lands Study 2017 (Hill PDA (on behalf of Newcastle City Council and Port Stephens Council), 2017)

Seaside Estate Proposal

Date Lodged:	2 February 2017.
Proponent:	Monteath & Powys Surveyors on behalf of landowners.
Subject Property:	2, 4, 4A, 4B, 5, 20, 21, 22, 23, 24 ,25 and 26 Seaside Boulevarde, Fern Bay (Part of Lot 27, DP 270466, Lots 2, 3, 4, 20, 21 and 22, and Part of Lots 5, 19, 23 and 24, DP 280072).
Site Area:	~ 1 hectare.
Current Zoning:	B1 Neighbourhood Centre.
Proposed Zoning:	R2 Low Density Residential.
Current MLS:	No specified minimum lot size.
Proposed MLS:	500sqm.
Key Issue:	Without the 42 Fullerton Cove Road Proposal proceeding, rezoning the only B1 zoned land in Fern Bay would mean a neighbourhood supermarket in Fern Bay could not be achieved.

An assessment of the planning proposals is provided in the attached strategic planning assessment reports (**ATTACHMENT 2** and **ATTACHMENT 3**).

Existing and surrounding land uses

The land subject to the Fullerton Cove Proposal (Fullerton Cove Site) is located at the intersection of Fullerton Cove Road and Nelson Bay Road (**ATTACHMENT 1**). The Fullerton Cove Site is currently used for residential purposes and has been cleared of vegetation around the existing dwellings. The remainder of the site is vegetated.

The surrounding land use zones are a mixture of rural, residential and environmental conservation. The neighbouring properties consist of residential and rural dwellings, rural activities including livestock grazing and a wedding venue with guesthouse at Stanley Park. The nearest commercial development that offers day to day grocery items is the Stockton IGA located 8 kilometres to the south. The land opposite the Fullerton Cove site has approval for a caravan park on the site.

The land subject to the Seaside Proposal (Seaside site) is located within Seaside Estate, Fern Bay (**ATTACHMENT 1**). The Seaside site has existing approval under State Significant Development (MP 06-0250) for the subdivision of land into 6 commercial lots. The associated construction of roads, drainage and vegetation clearing has been completed.

The surrounding land use zones to the Seaside site are R2 Low Density Residential and E2 Environmental Conservation as part of the Seaside Estate residential release area. The Seaside Estate is nearing completion and consists of 1 and 2-storey residential dwellings, a child care facility, parkland and surrounding native bushland with high environmental values.

Suitability of the sites

In 2017, the City of Newcastle and Port Stephens Council commissioned Hill PDA to prepare the Fern Bay and North Stockton Commercial Lands Study 2017 (Hill PDA Study) to assess the suitability of potential supermarket sites across Fern Bay, Fullerton Cove and North Stockton.

Although the Seaside site was already zoned for commercial uses, the Hill PDA Study found it to be the least suitable of 6 sites in the area due to its disconnected location, limited exposure, small walking catchment and poor accessibility (only left in/left out access is available to the site).

The Fullerton Cove site was assessed as more suitable than the Seaside site due to its central location, exposure to Nelson Bay Road, site accessibility and the site area available for development.

While the Hill PDA Study identified the Stockton Residential Centre as the preferred location for a new town centre, the Fullerton Cove Proposal is seeking to enable a smaller scale neighbourhood centre with a maximum retail gross floor area of 1,500sqm. A maximum gross floor area of 1,500sqm will allow for the development of a neighbourhood supermarket and speciality retail without undermining a future town centre in Stockton. The Hill PDA Study determined there is likely sufficient projected demand for a neighbourhood centre and a higher order town centre in the Fern Bay and North Stockton locality.

The remainder of the Fullerton Cove site is proposed to be zoned E2 Environmental Conservation in order to protect the ecological values of the site.

The Seaside site is considered suitable for residential development as it is located within an existing residential area, is in close proximity of employment opportunities and will not increase demand for infrastructure or services.

The Fullerton Cove site was previously the subject of a planning proposal for a commercial rezoning that was refused by the State government in 2013. A key reason for refusal was a lack of strategic justification for commercial development in that location. The draft FBNSS and the Hill PDA Study now provide the strategic justification for the Fullerton Cove Proposal to proceed.

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2018-2021
Thriving and Safe Place to Live	Provide land use plans, tools and advice that sustainably support the community.

FINANCIAL/RESOURCE IMPLICATIONS

There are no foreseen financial or resource implications for Council as a consequence of the recommendations of this report.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes		Stage 1 planning proposal fees for: Seaside Proposal paid on 02/02/17. Fullerton Cove Proposal paid on 04/04/17.
Reserve Funds	No		
Developer Contributions (\$7.11)	No		
External Grants	No		
Other	No		

LEGAL, POLICY AND RISK IMPLICATIONS

There are no foreseen legal, policy or risk implications for Council as a result of the recommendation of this report.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that there is insufficient land available in the surrounding area resulting in a lack of commercial facilities and services for the community.	Low	Adopt the recommendations of this report.	Yes
There is a risk that future development at 42 Fullerton Cove Road will be at risk during flood events and may impact biodiversity values, resulting in significant impacts.	Low	Adopt the recommendations of this report that will include the preparation of a Biodiversity Development Assessment Report and revised Flooding and Drainage Study should the planning proposal receive Gateway determination to proceed.	Yes
There is a risk that without the Fullerton Cove Proposal proceeding, rezoning the Seaside Estate B1 zoned land would mean a neighbourhood supermarket in Fern Bay could not be achieved.	Low	Adopt the recommendation of this report to proceed with the Fullerton Cove Proposal.	Yes
There is a risk that commercial development outside of the future town centre will impact the viability of the new centre, resulting in a lack of commercial land uses to support the community.	Low	Adopt the recommendations of this report to limit the maximum retail gross floor area at 42 Fullerton Cove Road to 1,500sqm.	Yes

Environmental Planning and Assessment Act 1979

The planning proposals are being processed in accordance with Part 3 of the Environmental Planning and Assessment Act 1979. Should Council resolve to adopt the planning proposals, they will be forwarded to the NSW Department of Planning, Industry and Environment (DPIE) for a Gateway determination, including a request for authorisation to make the plan.

Port Stephens Local Environmental Plan 2013

The Fullerton Cove Proposal seeks to amend the LEP 2013 by rezoning the land from RU2 Rural Landscape to B1 Neighbourhood Centre and E2 Environmental Conservation. The area proposed to be zoned B1 Neighbourhood Centre is approximately 2.5 hectares and will be accompanied by no specific minimum lot size and a maximum building height of 9 metres.

The area proposed to be zoned E2 Environmental Conservation is approximately 4.2 hectares and will retain the existing 20 hectare minimum lot size and no maximum height of building control. The final area of the proposed E2 zone will be informed by a Biodiversity Development Assessment Report should the planning proposal receive a Gateway determination to proceed.

A new local provision will be introduced limiting the maximum retail gross floor area to 1,500sqm, ensuring the neighbourhood centre will not undermine the viability of a future town centre at the Stockton Residential Centre.

The Seaside Proposal seeks to amend the LEP 2013 by rezoning the subject land from B1 Neighbourhood Centre to R2 Low Density Residential. The rezoning will be accompanied by a minimum lot size of 500sqm and a maximum height of buildings of 9 metres.

Regional Plans

The planning proposals are consistent with the vision and goals outlined in the Hunter Regional Plan 2036 and the Greater Newcastle Metropolitan Plan 2036.

The Fullerton Cove Proposal will grow the economy in Port Stephens, support business growth, provide jobs closer to homes, protect natural areas and create great public spaces where people can come together.

The Seaside Proposal will provide additional housing within an existing urban area that is close to jobs and services at Williamstown, Tomago and Newcastle City.

Draft Port Stephens Local Strategic Planning Statement

The draft Port Stephens Local Strategic Planning Statement (LSPS) is recently off public exhibition.

The Fullerton Cove Proposal is consistent with the LSPS as it will make local business growth easier, provide infrastructure to support communities, conserve biodiversity values and create people friendly spaces.

The Seaside Proposal is consistent with the LSPS as it will ensure suitable land supply for housing and could increase diversity of housing choice.

Draft Port Stephens Local Housing Strategy (Live Port Stephens)

The draft Port Stephens Local Housing Strategy (Live Port Stephens) is recently off public exhibition.

The Fullerton Cove Proposal is consistent with Live Port Stephens as it will facilitate liveable communities by providing a convenient location for the community to access groceries, come together and grow connections.

The Seaside Proposal is consistent with Live Port Stephens as it will facilitate new housing within an existing urban area and support land uses that are consistent with local character.

Port Stephens Planning Strategy 2011

The Port Stephens Planning Strategy 2011 (PSPS) identifies Fern Bay within the Eastern Growth Corridor.

The Fullerton Cove Proposal is consistent with the PSPS as it will increase employment and provide convenience retail for the day to day needs of the surrounding residents.

The Seaside Proposal is consistent with the PSPS as it will provide additional housing supply and diversity within Fern Bay.

Draft Fern Bay and North Stockton Strategy

The draft FBNSS will guide future development and community infrastructure in Fern Bay and North Stockton.

The Fullerton Cove site is located within Precinct 6 'Fullerton Cove' of the draft FBNSS. The draft FBNSS supports a secondary neighbourhood centre, with a neighbourhood supermarket to complement the future town centre in Precinct 1. The Fullerton Cove Proposal is consistent with the draft FBNSS as it will protect environmentally significant land as well as facilitate a neighbourhood centre in Fern Bay that will not undermine the future town centre identified in the draft FBNSS.

The Seaside site is located within Precinct 5 'Seaside Estate' of the draft FBNSS. The Seaside Proposal is consistent with the draft FBNSS as it will provide additional housing supply that will not contribute to urban sprawl and will utilise existing infrastructure and services.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Social and Economic

The planning proposals are expected to deliver a range of social and economic outcomes for the existing and future community, including:

- Increased employment opportunities in the Port Stephens local government area (LGA) and Hunter Region through construction jobs to carry out building works, as well as ongoing employment through retail and transport jobs to service the future commercial development.
- Increased provision of housing within an existing residential neighborhood.
- Increased population to grow the Fern Bay area and support the future Stockton town centre as well as a future neighbourhood centre in Fullerton Cove.
- Increased commercial opportunities for businesses in the Port Stephens LGA.
- Increased expenditure within the Port Stephens LGA.
- Increased liveability for residents in the Fern Bay and Fullerton Cove through the provision of day to day retail services.
- Reduced travel time for Fern Bay and Fullerton Cove residents to access everyday essentials such as groceries.

Given the number of community submissions received during the exhibition of the draft FBNSS in support of the outcomes the planning proposals achieve, they are considered to respond to community needs and have a positive impact on the community.

Environmental

Flooding and ecological matters (as detailed below) have been assessed and are considered able to be resolved following any Gateway determinations to proceed.

CONSULTATION

Internal

Internal consultation was undertaken with the Natural Resources and Development Engineering units. Further detailed investigations, detailed below, will be required should the planning proposals receive Gateway determinations to proceed.

Natural Resources

The Natural Resources unit have reviewed the planning proposals and accompanying studies.

The Natural Resources unit have identified ecological matters that require further consideration in relation to the Fullerton Cove Proposal. The land contains high biodiversity values including endangered ecological communities, wetlands, koala habitat and threatened fauna that require further consideration through a Biodiversity Development Assessment Report (BDAR). A BDAR will be prepared should the planning proposal receive a Gateway determination to proceed. Additionally, the future boundaries of the proposed B1 Neighbourhood Centre and E2 Environmental Conservation zones will be informed by the BDAR.

The Seaside Proposal is supported by the Natural Resources unit with no outstanding matters to be resolved.

Development Engineering

The Development Engineering unit have reviewed the planning proposals and accompanying studies on flooding, drainage and traffic.

The Development Engineering unit have identified matters that require further consideration in relation to the Fullerton Cove Proposal. The land is located in a high hazard flood storage area as well as in the major flow path for local catchment runoff. The majority of the proposed development area is low-lying and currently acts as a storage area. To address these matters, a revised flood and drainage study will need to be prepared should the planning proposal receive a Gateway determination to proceed.

The Seaside Proposal is supported by the Development Engineering unit and all matters identified are of minor significance and may be resolved should the planning proposal receive a Gateway determination to proceed.

External

External consultation has been undertaken during the preparation of the draft FBNSS which was exhibited from 31 October 2019 to 29 November 2019. The draft FBNSS proposed that a neighbourhood centre should be established to service Fern Bay. During exhibition, Council undertook a targeted social media campaign and held the 'Fern Bay Fiesta', where Council staff were available to discuss the draft FBNSS.

In response to the exhibition of the draft FBNSS, submissions were received that supported the outcomes of the Fullerton Cove Proposal and provision for a local supermarket in the area. Additionally, a petition of 634 signatures in support of the Fullerton Cove Proposal was provided to Council during public access on the 26 November 2019.

Consultation with the community and State government agencies will be undertaken in accordance with any Gateway determination. It is anticipated that the planning proposals will be exhibited for a minimum 28 days should they receive Gateway determinations to proceed.

OPTIONS

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

ATTACHMENTS

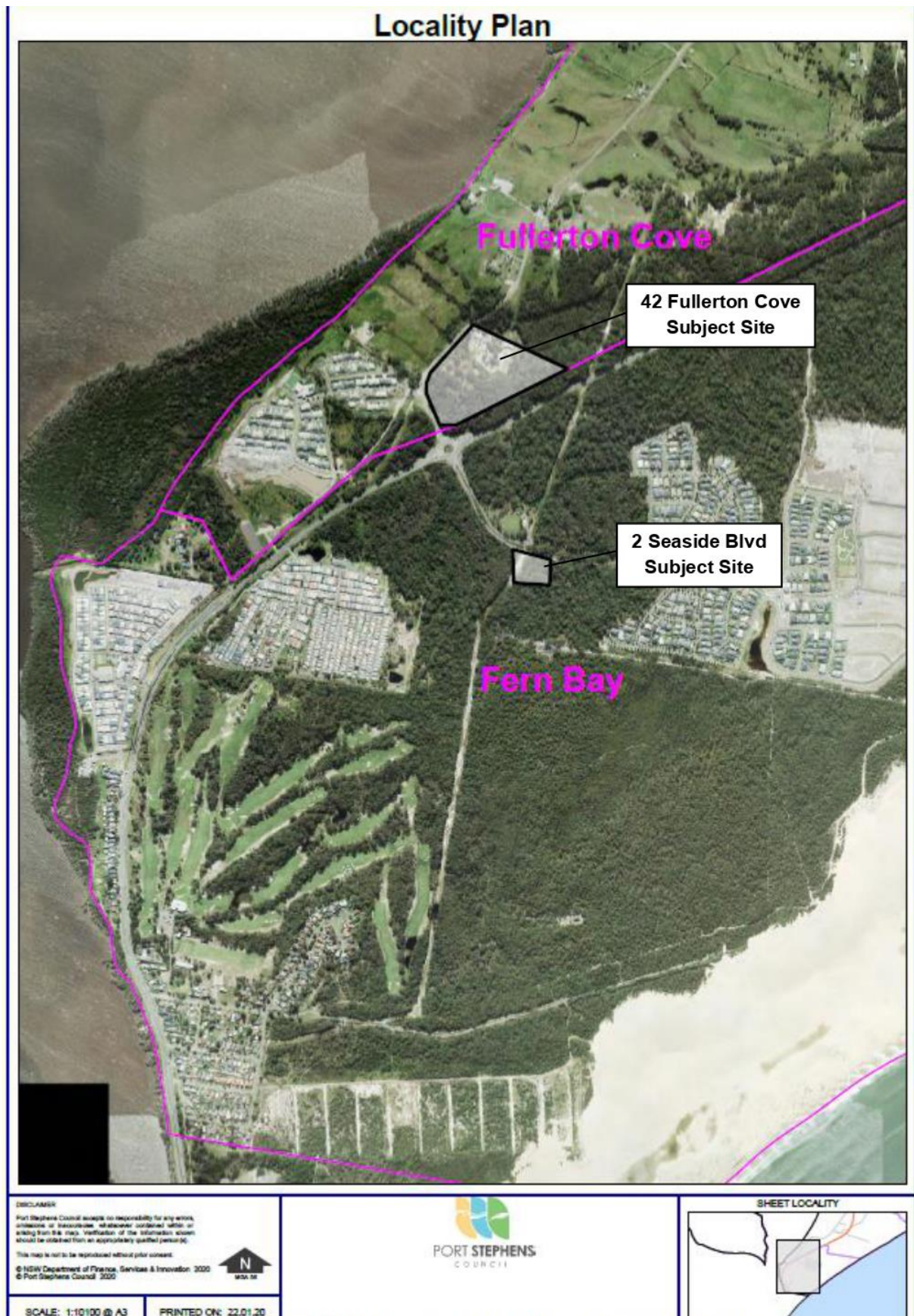
- 1) Locality Plan. [↓](#)
- 2) Fullerton Cove Assessment Report. [↓](#)
- 3) Seaside Estate Assessment Report. [↓](#)
- 4) Fullerton Cove Proposal. (Provided under separate cover) [⇒](#)
- 5) Seaside Proposal. (Provided under separate cover) [⇒](#)

COUNCILLORS ROOM

Note: All relevant technical studies referenced in this report can be inspected upon request.

TABLED DOCUMENTS

Nil.





Our Ref: 58-2017-4-1

11 February 2020

STRATEGIC PLANNING ASSESSMENT REPORT

Assessment of written request made to the Council by a person for the preparation of a planning proposal under Part 3 of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

Application No.	58-2017-4-1
Applicant Name	Monteath & Powys on behalf of Christine Jordan
Applicant Address	C/- Monteath & Powys Pty Ltd PO Box 2270 DANGAR NSW 2309
Site Location Details	Lot 14 DP 258848 - 42 Fullerton Cove Road, Fullerton Cove
Proposal Summary	The planning proposal (PP) seeks to rezone RU2 Rural Landscape to part B1 Neighbourhood Centre and part E2 Environmental Conservation and introduce a local provision limiting the GFA of retail floorspace to 1,500sqm. The B1 zoning is intended to facilitate the development of a supermarket.
Eligible for Planning Proposal Preparation?	Yes
Adequate Information?	Yes
Planning proposal to be prepared?	Yes

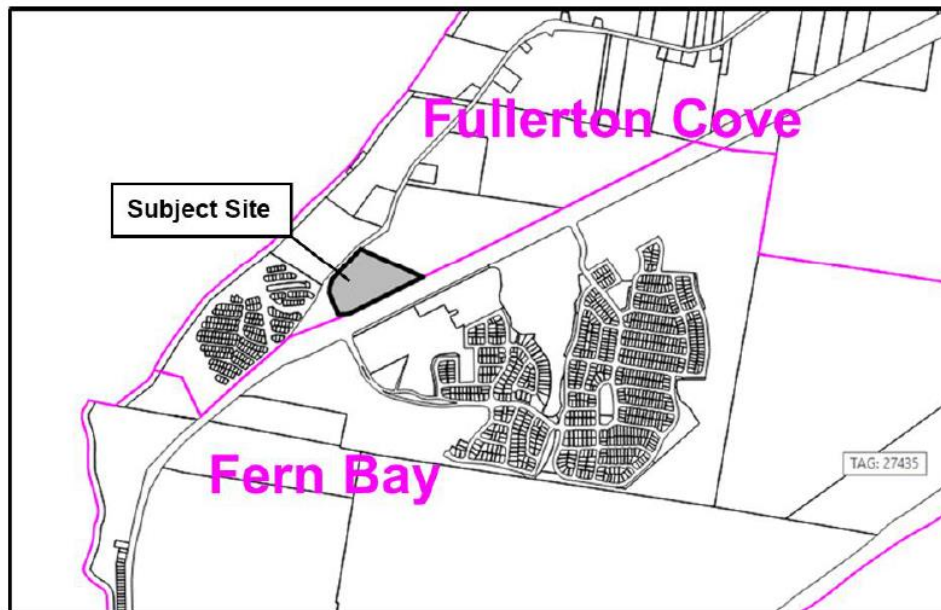
The application has been reviewed to determine whether it sufficiently addresses the requirements for preparation of a planning proposal under the EP&A Act and guidelines issued under s3.33(3) of the EP&A Act.

RECOMMENDATION

Based on the information lodged for the application the rezoning request is considered to have sufficient merit to warrant preparation of a planning proposal by Council.

It is recommended that a planning proposal be prepared for the rezoning request and lodged with the NSW Department of Planning, Industry and Environment for Gateway determination.

SITE IDENTIFICATION PLAN



INTERNAL REFERRALS

Internal Body	Referral Response
Development Engineers	<p>Application not supported.</p> <p>Flooding concerns have not yet been adequately addressed and given the sites location within High Hazard flood storage it is not recommended that the application can be supported with the information currently submitted.</p> <p>The PP is inconsistent with Ministerial Direction 3.4, the Improving Transport Choice Guidelines and the Right Place for Business and Services Planning Policy. The proposed development site is located within a high hazard flood storage area as well as the major flowpath for the local catchment runoff. The majority of the proposed development area is low-lying and acts as a storage area.</p> <p>The flooding and Stormwater Management Study report has made assumptions in the modelling and lacks details on catchment parameters, assumed storage levels for individual sub-catchments, actual flowpath from upstream to downstream, required flow width for water to pass through, required culvert size/s etc.</p> <p>RFI</p> <ul style="list-style-type: none"> - proposed development will need to provide replacement storage as well the culvert upgrading works - water quality target could be achieved, but detailed assessment will be necessary once the development footprint is known

Internal Body	Referral Response
Natural Resources	<p>The PP has been updated to indicate the need for a more detailed flood study post-Gateway. It is considered appropriate to provide this information post-Gateway.</p> <hr/> <p>Application not supported.</p> <p>Further information is required to determine the impact of rezoning and subsequent development of the subject site. The proposal is inconsistent with Ministerial Directions 2.1, 2.2, 4.3, 4.4, the Coastal management Act and NSW Guidelines for Coastal Management. The site contains wetlands, high biodiversity values including two Endangered Ecological Communities and supplementary koala habitat and the site drains to a RAMSAR listed wetland.</p> <p>RFI</p> <ul style="list-style-type: none"> - a Stage 1 Biodiversity Assessment needs to be prepared to determine whether there is likely to be serious and irreversible impacts that may prohibit future development - the PP to be updated to consider Coastal Management SEPP and Directive 2.2 - the PP should consider rezoning to E2 Environmental Conservation instead of E3 Environmental Management - the PP requires improved consideration of the Watagan to Stockton Green Corridor - the ecological assessments are dated and no longer satisfy current environmental requirements <p>The PP has been updated to rezone land to E2 Environmental Conservation instead of E3 Environmental Management and has indicated the need for a Biodiversity Development Assessment Report post-Gateway. The boundaries of the proposed B1 zone will be informed by the BDAR. Additionally, the PP has been updated to better address SEPPs and MDs.</p>

INFORMATION ASSESSMENT

TABLE 1 – STRATEGIC MERIT ASSESSMENT

Assessment of technical information

Information	Applicable	Lodged	Adequacy
Considerations under s3.33(2) of the EP&A Act			
Statement of objectives or intended outcomes of the proposed instrument	Yes	Yes	Adequate
Explanation of the provisions that are to be included in the proposed instrument	Yes	Yes	Adequate
Justification for the objectives, outcomes and provisions of the proposed instrument.	Yes	Yes	Adequate
Maps containing sufficient detail to indicate the substantive effect of the proposed instrument	Yes	Yes	Adequate
Details of the community consultation that is to be undertaken before consideration is given to the making of the proposed instrument	Yes	Yes	Adequate
Projected timeline of the plan making process	Yes	Yes	Adequate
Strategic Planning Context and Strategic Merit			
Assessment of consistency with relevant regional plan(s)	Yes	Yes	Adequate

Assessment of Consistency with the Hunter Regional Plan

The PP has demonstrated consistency with the following directions:

- Direction 6 Grow the economy of Midcoast and Port Stephens
- Direction 8 Promote innovative small business and growth in the service sectors
- Direction 14 Protect and connect natural areas
- Direction 17 Create healthy built environments through good design
- Direction 21 Create a compact settlement
- Direction 26 Deliver infrastructure to support growth and communities

The PP is inconsistent with Direction 16 Increase resilience to hazards and climate change however, it is appropriate for consistency with this direction to be addressed through further investigations post-Gateway.

Information	Applicable	Lodged	Adequacy
Assessment of consistency with relevant district plan(s)	Yes	Yes	Adequate

Assessment of Consistency with the Greater Newcastle Metropolitan Plan

The PP has demonstrated consistency with the following strategies:

- Strategy 8 Address changing retail consumer demand
- Strategy 9 Plan for jobs closer to the metro frame
- Strategy 10 Create better buildings and great places
- Strategy 11 Create more great public spaces where people come together
- Strategy 13 Protect rural amenity outside urban areas

The PP is inconsistent with Strategy 14 Improve resilience to natural hazards however, it is appropriate for consistency with this direction to be addressed through further investigations post-Gateway.

Assessment of consistency with relevant Council strategy (or strategies) endorsed by the NSW Department of Planning, Industry and Environment.	Yes	Yes	Adequate
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Assessment of Consistency with Local Strategies and Policies

Draft Local Strategic Planning Statement (endorsed by Council for exhibition)

The PP has demonstrated consistency with the following planning priorities:

- Planning Priority 2 Make business growth easier
- Planning Priority 6 Plan infrastructure to support communities
- Planning Priority 7 Conserve biodiversity values and corridors
- Planning Priority 9 Protect and preserve productive agricultural land
- Planning Priority 10 Create people friendly spaces

The PP is inconsistent with Planning Priority 8 Improve resilience to hazards and climate change however, it is appropriate for consistency with this priority to be addressed through further investigations post-Gateway.

Port Stephens Planning Strategy (PSPS) 2011 (not endorsed by DPIE)

The PSPS identifies Fullerton Cove as part of the Eastern Growth Corridor. The PP is considered to be consistent with the objectives of the PSPS as it will increase employment and provide convenience retail for the day to day needs of the surrounding residents.

Draft Fern Bay and North Stockton Strategy (FBNSS)

The FBNSS identifies the subject site within Precinct 6 Fullerton Cove. The PP has demonstrated consistency with the following planning principles:

Information	Applicable	Lodged	Adequacy
<ul style="list-style-type: none"> Environment Planning principle – Protect important environmental assets and enhance biodiversity connections Overall Structure Plan Outcome – Support the development of a neighbourhood centre in Fern Bay Precinct 6 Outcome – Consider rezoning land mapped as containing an endangered ecological community to an environmental zone Precinct 6 Outcome – Undertake a detailed assessment of the 'Request to Amend the Port Stephens Local Environmental Plan' submitted for 42 Fullerton Cove Road, Fullerton Cove 			
Site-Specific Merit			
Does the proposal have site-specific merit, having regard to the natural environment (including known significant environmental values, resources or hazards)?	Yes	Yes	Adequate Majority of the site is to be rezoned to E2 Environmental Conservation with the remaining footprint to be informed by a BDAR.
Does the proposal have site-specific merit, having regard to the existing uses, approved uses, and likely future uses of land in the vicinity of the proposal?	Yes	Yes	Adequate The PP could facilitate improved liveability for residents as well as provide jobs and services for the area.
Does the proposal have site-specific merit, having regard to the services and infrastructure that are or will be available to meet the demands arising from the proposal and any proposed financial arrangements for infrastructure provision?	Yes	Yes	Adequate The existing infrastructure is able to accommodate the PP. Applicant proposes to undertake future drainage works.
Site Description/Context			
Aerial photographs	Yes	Yes	Adequate
Site photos	N/A	No	Site photos are not required for the LEP amendment request.

TABLE 2 – SEPP ASSESSMENT

Assessment against State Environmental Planning Policies (SEPPs)

SEPP	Overview	Applicable	Consistency
SEPP No. 44 - Koala Habitat Protection	Encourages the conservation and management of natural vegetation areas that provide habitat for koalas to ensure permanent free-living populations will be maintained over their present range.	Yes	Adequate The ecological assessment found the proposal was unlikely to have a significant impact upon koala habitat. It is appropriate for a BDAR to be conducted post Gateway to further address koala habitat.
SEPP No. 55 - Remediation of Land	Contains state-wide planning controls for the remediation of contaminated land. The policy requires councils to be notified of all remediation proposals and requires lodgement of information for rezoning proposals where the history of use of land is unknown or knowledge incomplete.	Yes	Adequate Given the subject sites position within the greater PFAS management zone, it is considered appropriate to provide a Stage 1 Contamination Report post-Gateway.
SEPP (Coastal Management) 2018	Promotes an integrated and co-ordinated approach to land use planning in the coastal zone consistent with the objects of the <i>Coastal Management Act 2016</i> .	Yes	Adequate It is appropriate for a revised Flood Study to be prepared following a Gateway determination.
SEPP (Infrastructure) 2007	Provides greater flexibility in the location of infrastructure and service facilities along with improved regulatory certainty and efficiency.	Yes	Adequate It is considered appropriate for a Traffic Impact Study to be provided post Gateway.
SEPP (Primary Production and Rural Development)	Aims to protect the biodiversity values of trees and other vegetation in non-rural areas of NSW and preserve the amenity of such areas through the preservation of trees and other vegetation.	Yes	Adequate
Conclusion			
The PP has adequately demonstrated consistency with the relevant State Environmental Planning Policies.			

TABLE 3 – MINISTERIAL DIRECTION ASSESSMENT

Assessment against Ministerial Directions

Ministerial Direction	Overview	Applicable	Consistency
1. Employment and Resources			
1.1 Business and Industrial Zones	Applies to planning proposals affecting existing or proposed business or industrial zone land. By requiring consistency with the objectives of the direction, retention of areas of business and industrial zoned land, protection of floor space potential, and/or justification under a relevant strategy/study; the direction seeks to protect employment land in business and industrial zones, encourage employment growth in suitable locations and support the viability of identified centres.	Yes	Adequate The PP will encourage employment growth in a suitable location, and will support the residential community and will impact on the existing employment cluster at Stockton town centre.
1.2 Rural Zones	Provides for protection of the agricultural production value of rural land by requiring planning proposals to be justified by a relevant strategy or study if they seek to rezone rural zoned land to a residential, business, industrial, village or tourist zone or increase the permissible density of rural (except RU5) zoned land.	Yes	Adequate The PP is inconsistent with this direction as it seeks to rezone rural land without strategic merit however, it is considered to be of minor significance due to the site specific merit and the social and economic benefits Additionally, the site is not used for agricultural purposes, and a small neighbourhood centre would be in keeping with the character of the surrounding rural and residential lands.
1.4 Oyster Aquaculture	Provides for the protection of priority oyster aquaculture areas and surrounds from land uses that may adversely impact upon water quality and consequently, on the health of oysters and oyster consumers.	Yes	Adequate
1.5 Rural Lands	Applies to planning proposals relating to land where the SEPP (Rural Lands) 2008 applies.	Yes	Adequate The PP is inconsistent with this direction as it seeks to

Ministerial Direction	Overview	Applicable	Consistency
	By requiring consistency with the rural planning principles and rural subdivision principles of SEPP (Rural Lands) 2008, or justification under a relevant strategy, the direction seeks to protect the agricultural production value of rural land and facilitate the orderly and economic development of rural lands for rural and related purposes.		rezone rural land without strategic merit, however it is considered of minor significance due to the site specific merit and the social and economic benefits.
2. Environment and Heritage			
2.1	Environment Protection Zones	Yes	<p>Adequate</p> <p>The PP seeks to rezone ~4.2ha of RU2 land to E2 Environmental Conservation, increasing the protection of the high biodiversity values on site.</p> <p>It is considered appropriate for the B1 zoned land is to be guided by the BDAR post-Gateway.</p>
2.2	Coastal Management	Yes	<p>Adequate.</p> <p>The PP is likely to have a positive impact on amenity within the area.</p> <p>The PP is unlikely to exacerbate potential impact of coastal processes and coastal hazards.</p> <p>It is considered appropriate for a more detailed flood study to be undertaken post-Gateway.</p>
2.3	Heritage Conservation	Yes	<p>Adequate</p> <p>No known heritage items are located on site. Consultation will be undertaken post-Gateway.</p>

Ministerial Direction	Overview	Applicable	Consistency
3. Housing, Infrastructure and Urban Development			
3.4	Integrating Land Use and Transport	Requires planning proposals, which seek to create, alter or remove a zone or provision relating to urban land (including land zoned for residential, business, industrial, village or tourist purposes), to be consistent with the aims, objectives and principles of 'Improving Transport Choice – Guidelines for planning and development' and 'The Right Place for Business and Services – Planning Policy' or that they be suitably justified under a relevant strategy or study or be of minor significance in the opinion of the Secretary of the NSW Department of Planning and Environment (or nominated delegate).	Yes Adequate
3.5	Development Near Regulated Airports and Defence Airfields	Applies development criteria and consultation requirements to planning proposals that seek to create, alter or remove a zone or a provision relating to land in the vicinity of a licensed aerodrome. Inconsistency with the development criteria and/or consultation requirements can be considered if the inconsistency is suitably justified under a relevant strategy or study or is of minor significance in the opinion of the Secretary of the NSW Department of Planning and Environment (or nominated delegate).	Yes Adequate The PP will not facilitate development above the height trigger map for the RAAF.
4. Hazard and Risk			
4.1	Acid Sulfate Soils	Requires the provisions of planning proposals must be consistent with the Acid Sulfate Soils Planning Guidelines and other such relevant provisions provided by the Director-General of the Department of Planning, except where the proposal is suitably justified under a	Yes Adequate It is appropriate for this to be addressed during the development application stage.

Ministerial Direction	Overview	Applicable	Consistency
	relevant strategy or study or where non-compliance is of minor significance in the opinion of the Secretary of the NSW Department of Planning and Environment (or nominated delegate).		
4.3 Flood Prone Land	Applies requirements for planning proposals that seek to create, remove or alter a zone or a provision that affects flood prone land except where non-compliance is of minor significance in the opinion of the Secretary of the NSW Department of Planning and Environment (or nominated delegate).	Yes	Adequate The PP is inconsistent with this direction but it is considered to be of minor significance. It is appropriate for a more detailed flood study to be prepared following a Gateway determination.
4.4 Planning for Bushfire Protection	Applies requirements for planning proposals affecting land mapped as being bushfire prone land (or land in proximity to such land); except where the Commissioner of the NSW Rural Fire Service has issued written advice to Council that, notwithstanding the noncompliance with the requirements; the NSW Rural Fire Service does not object to progression of the planning proposal.	Yes	Adequate It is appropriate for a Bushfire Risk Assessment to be provided post-Gateway.
5. Regional Planning			
5.10 Implementation of Regional Plans	Requires that planning proposals be consistent with relevant regional strategies released by the Minister for Planning, except where, in the opinion of the Secretary of the NSW Department of Planning and Environment (or nominated delegate); the inconsistency is considered to be of minor significance and the intent of the strategy is not undermined.	Yes	Adequate The PP has demonstrated consistency with the Hunter Regional Plan and the Greater Newcastle Metropolitan Plan.
Conclusion			
The PP has demonstrated consistency with the relevant Ministerial Directions. Any inconsistencies			

TABLE 4 –TECHNICAL CONTENT ASSESSMENT

Assessment of technical information

Information	Applicable	Lodged	Adequacy
Traffic and Transport Considerations			
Traffic impact assessment	Yes	No	A Traffic Impact Study will be provided following a Gateway determination.
Environmental Considerations			
Bushfire risk assessment	Yes	No	A bushfire risk assessment is appropriate to provide following a Gateway determination.
Acid sulphate soil assessment	Yes	No	An acid sulphate soil assessment is not required to enable preparation of an initial planning proposal seeking Gateway determination.
Preliminary ecological assessment	Yes	Yes	Adequate
Biodiversity Development Assessment Report (BDAR)	Yes	No	A Biodiversity Development Assessment Report will be provided following a Gateway determination.
Flooding and Stormwater Management Study	Yes	Yes	A preliminary flood study has been provided. A more detailed flood study will be provided following a Gateway determination.
Contamination assessment	Yes	No	A Stage 1 Contamination Report is not required to enable preparation of an initial planning proposal seeking gateway determination.
Economic considerations			
Commercial Lands Study	Yes	Yes	Adequate

Note:

This report has been prepared on the basis of information submitted at the time of lodgement of the LEP amendment request and in consideration of the planning requirements applying at the time of assessment.

Report prepared by:

Report reviewed by:

Gemma Wallace
Strategic Planner

William Oxley
Principal Strategic Planner



Our Ref: 58-2017-1-1

23 January 2020

STRATEGIC PLANNING ASSESSMENT REPORT

Assessment of written request made to the Council by a person for the preparation of a planning proposal under Part 3 of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

Application No.	58-2017-1-1
Applicant Name	Monteath & Powys on behalf of Rawson Communities
Applicant Address	PO Box 2270 DANGAR NSW 2309
Site Location Details	Part of Lot 27, DP 270466 Lots 2, 3, 4, 20, 21, 22, DP 280072 Part of Lots 5, 19, 23 & 24, DP 280072
Proposal Summary	2, 4, 4A, 4B, and 6 Seaside Boulevarde, Fern Bay 20, 22, 23, 24, 25 and 26 Sovereign Street, Fern Bay The planning proposal (PP) seeks to rezone B1 Neighbourhood Centre to R2 Low Density Residential.
Eligible for Planning Proposal Preparation?	Yes
Adequate Information?	Yes
Planning proposal to be prepared?	Yes

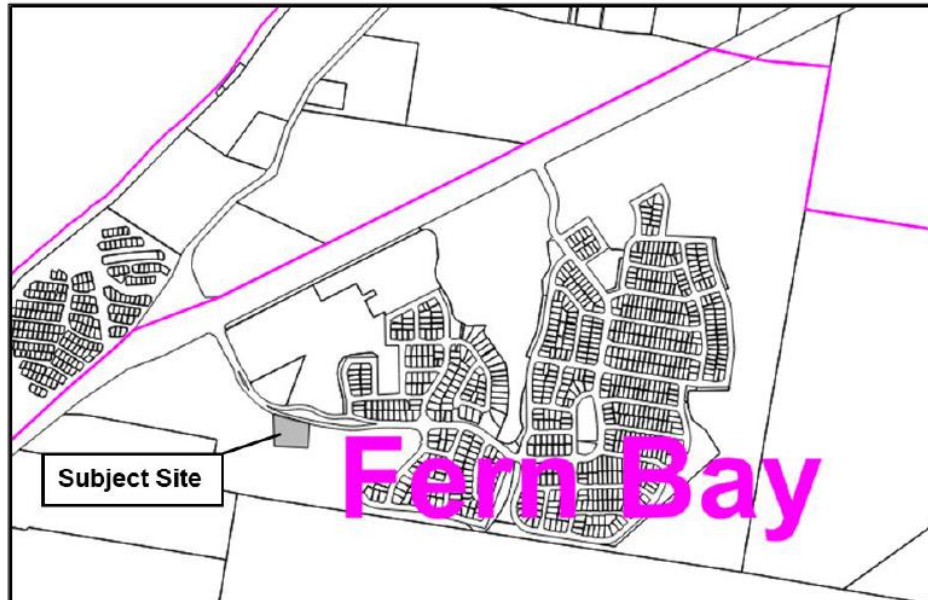
The application has been reviewed to determine whether it sufficiently addresses the requirements for preparation of a planning proposal under the EP&A Act and guidelines issued under s3.33(3) of the EP&A Act.

RECOMMENDATION

Based on the information lodged for the application, the rezoning request is considered to have sufficient merit to warrant preparation of a planning proposal by Council.

It is recommended that a planning proposal be prepared for the rezoning request and lodged with the NSW Department of Planning, Industry and Environment for Gateway determination.

SITE IDENTIFICATION PLAN



PRE-LODGEMENT MATTERS

Matter	Comment
1. Strategic Planning	<p>The planning proposal (PP) should address the role of the site and its suitability as a commercial area in Fern Bay. There is significant demand for a supermarket in Fern Bay. A proposal for its removal may require broader consideration of a suitable location for potential commercial development in the local area.</p> <p>Strategy should address the Port Stephens Planning Strategy, all relevant SEPPs and Ministerial Directions and utilise the Departments PP guide.</p> <p>The PP has been updated to address the above matters including the identification of suitable land at 42 Fullerton Cove Road to provide a neighbourhood supermarket.</p>
2. Drainage	<p>The central part of the site is not identified as flood prone however the outer parts are. This matter should be acknowledged within the planning proposal.</p> <p>The PP has been updated to address flooding.</p>
3. Flora & Fauna	<p>Comprehensive Koala Plan of Management indicative mapping shows part of the site may comprise Preferred Koala Habitat. The planning proposal should outline how this issue is considered. The Performance Criteria for Rezoning Requests within the CKPOM should be considered and may require further consideration following initial assessment.</p> <p>The subject site has since been cleared of vegetation through the existing approval. The above matters are no longer relevant to the PP.</p>

POST-LODGE MENT MATTERS

Matter	Comment
1. Alternative B1 Land	The PP would need to wait until alternative suitable land for B1 Neighbourhood Centre to be identified through the Hill PDA Study 2017. This study has now been conducted and is addressed in the PP.
2. Fern Bay and North Stockton strategy	It would be appropriate for the proposal to be considered in conjunction with the future Fern Bay and North Stockton Strategy. The draft Fern Bay and North Stockton Strategy (FBNSS) has been publicly exhibited and is nearing completion. The PP has been updated to address the FBNSS.

INTERNAL REFERRALS

Internal Body	Referral Response
Development Engineers – Flooding	Supported <ul style="list-style-type: none"> Nearly half of the subject land (B1 zone area) is flood affected with low hazard flood fringe category. All the floor levels of the habitable buildings should be above the FPL. The low lying area is affected by the perched water table. Require consideration when designing a stormwater management system for future development. Seaside Boulevard does not have a proper drainage system and there is no legal discharge point to discharge the stormwater. This planning proposal lot and surrounding R2 zone area require a thorough study on ground water, surface water management and the impacts on the adjacent properties, Nelson Bay Rd), and further downstream properties (north-west of Nelson Bay Rd). This could be done at a later stage, but it is an important part for the future development of this area.
Development Engineers - Traffic	No objections <ul style="list-style-type: none"> Only concern relates to site access. Only accessible via left in/left out.
Natural Resources	Supported <p>As the PP areas do not occur outside of the previously approved project areas, and no further clearing is required there are no further ecological requirements.</p>

INFORMATION ASSESSMENT

TABLE 1 – STRATEGIC MERIT ASSESSMENT

Assessment of technical information

Information	Applicable	Lodged	Adequacy
Considerations under s3.33(2) of the EP&A Act			
Statement of objectives or intended outcomes of the proposed instrument	Yes	Yes	Adequate
Explanation of the provisions that are to be included in the proposed instrument	Yes	Yes	Adequate
Justification for the objectives, outcomes and provisions of the proposed instrument, and whether it will give effect to, or is a product of, a local planning priority or action in an endorsed local strategic planning statement.	Yes	Yes	Adequate
Maps containing sufficient detail to indicate the substantive effect of the proposed instrument	Yes	Yes	Adequate
Details of the community consultation that is to be undertaken before consideration is given to the making of the proposed instrument	Yes	Yes	Adequate
Projected timeline of the plan making process	Yes	Yes	Adequate
Strategic Planning Context and Strategic Merit			
Assessment of consistency with relevant regional plan(s) (including any exhibited draft plan(s)).	Yes	Yes	Adequate
Assessment of Consistency with the Hunter Regional Plan			
The PP has demonstrated consistency with the following directions and actions:			
<ul style="list-style-type: none"> • Direction 8 Promote innovative small business and growth in the service sectors; • Direction 13 Plan for greater land use compatibility; • Direction 14 Protect and connect natural areas; • Direction 15 Sustain water quality and security; • Direction 16 Increase resilience to hazards and climate change; • Direction 17 Create healthy built environments through good design; 			

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Information	Applicable	Lodged	Adequacy
<ul style="list-style-type: none"> Direction 21 Create a compact settlement Direction 23 Grow centres and renewal corridors; <ul style="list-style-type: none"> Action 23.1 Concentrate growth in strategic centres, local centres and urban renewal corridors to support economic and population growth and a mix of uses; and Direction 24 Protect the economic functions of employment 			
Assessment of consistency with relevant district plan(s) (including any exhibited draft plan(s)).	Yes	Yes	Adequate
Assessment of Consistency with the Greater Newcastle Metropolitan Plan			
The PP has demonstrated consistency with the following strategies and outcomes:			
<ul style="list-style-type: none"> Strategy 2 Grow the airport and aerospace and defence precinct at Williamstown Outcome 3 Deliver housing close to jobs and services; Strategy 8 Address changing retail consumer demand; Strategy 9 Plan for jobs closer to homes in the Metro frame; Strategy 12 Enhance the Blue and Green Grid and the urban tree canopy; Strategy 14 Improve resilience to natural hazards; Strategy 16 prioritise the delivery of infill housing opportunities within existing urban areas; Strategy 17 Unlock housing supply through infrastructure coordination; and Strategy 20 Integrate land use and transport planning. 			
The PP has demonstrated justifiable inconsistency with:			
Assessment of consistency with relevant Council strategy (or strategies) endorsed by the NSW Department of Planning, Industry and Environment.	N/A	N/A	No endorsed Council strategies apply to the proposed instrument.
Assessment of Consistency with Local Strategies and Policies			
Draft Port Stephens Local Strategic Planning Statement (endorsed by Council for exhibition)			
The PP has demonstrated consistency with Planning Priority 4 Ensure suitable land supply.			
Draft Port Stephens Local Housing Strategy (Live Port Stephens) (endorsed by Council for exhibition)			
The PP has demonstrated consistency with the following planning priorities:			
<ul style="list-style-type: none"> Planning Priority 1.1 Ensure adequate supply of new housing; Planning Priority 2.2 Provide more affordable housing near jobs; and Planning priority 3.1 Facilitate new housing within existing urban areas. 			
Port Stephens Planning Strategy (PSPS) 2011 (not endorsed by DPIE)			
The PSPS identifies Fern Bay as part of the Eastern Growth Corridor. The PP is considered to be consistent with the objectives of the PSPS as it will result in additional housing supply and diversity.			
Draft Fern Bay and North Stockton Strategy (FBNSS)			

Information	Applicable	Lodged	Adequacy
The PP has demonstrated consistency with the following principles and outcomes			
<ul style="list-style-type: none"> Housing Principle 1 Focus housing growth in locations that maximise infrastructure and services Housing Principle 2 Deliver greater housing supply and choice Housing Principle 3 Limit urban sprawl and impacts on the natural environment Environment Principle 2 Protect the coast and increase resilience to natural hazards Environment Principle 3 Protect important environmental assets and enhance biodiversity connections Open Space and Community Facilities Principle 1. Optimise access Transport Principle 1. Prioritise pedestrians and cyclists Transport Principle 2. Support public transport ridership Transport Principle 3. Maintain the integrity of Nelson Bay Road as a regional transport corridor Precinct 5 Outcome Undertake a detailed assessment of the 'Request to Amend the Port Stephens Local Environmental Plan' submitted for 2 Seaside Boulevard, Fern Bay 			
Site-Specific Merit			
Does the proposal have site-specific merit, having regard to the natural environment (including known significant environmental values, resources or hazards)?	Yes	Yes	Adequate The PP will not impact on environmental values.
Does the proposal have site-specific merit, having regard to the existing uses, approved uses, and likely future uses of land in the vicinity of the proposal?	Yes	Yes	Adequate The PP is compatible with the surrounding residential neighbourhood.
Does the proposal have site-specific merit, having regard to the services and infrastructure that are or will be available to meet the demands arising from the proposal and any proposed financial arrangements for infrastructure provision?	Yes	Yes	Adequate The site benefits from existing and planned infrastructure and services.
Site Description/Context			
Aerial photographs	Yes	Yes	Adequate
Site photos	N/A	No	Site photos are not required for the LEP amendment request.

TABLE 2 – SEPP ASSESSMENT

Assessment against State Environmental Planning Policies (SEPP's)

SEPP	Overview	Applicable	Consistency
SEPP No. 44 - Koala Habitat Protection	Encourages the conservation and management of natural vegetation areas that provide habitat for koalas to ensure permanent free-living populations will be maintained over their present range.	Yes	Adequate The site has been previously assessed during the major projects approval process. The PP will not incur any additional clearing or impact.
SEPP No. 55 - Remediation of Land	Contains state-wide planning controls for the remediation of contaminated land. The policy requires councils to be notified of all remediation proposals and requires lodgement of information for rezoning proposals where the history of use of land is unknown or knowledge incomplete.	Yes	Adequate. A stage 1 Contamination Report is not considered necessary.
SEPP (Infrastructure) 2007	Provides greater flexibility in the location of infrastructure and service facilities along with improved regulatory certainty and efficiency.	Yes	Adequate The PP is unlikely to have negative impacts on the existing infrastructure.

Conclusion

The PP has adequately demonstrated consistency with the relevant State Environmental Planning Policies.

TABLE 3 – MINISTERIAL DIRECTION ASSESSMENT

Assessment against Ministerial Directions

Ministerial Direction	Overview	Applicable	Consistency
1. Employment and Resources			
1.1 Business and Industrial Zones	Applies to planning proposals affecting existing or proposed business or industrial zone land. By requiring consistency with the objectives of the direction, retention of areas of business and industrial zoned land, protection of floor space potential, and/or justification under a relevant strategy/study; the direction seeks to protect employment land in business and industrial zones, encourage employment growth in suitable locations and support the viability of identified centres.	Yes	Adequate The site should not be rezoned until the PP for 42 Fullerton Cove Road, Fullerton Cove is certain and imminent.
2. Environment and Heritage			
2.1 Environment Protection Zones	Applies to all planning proposals. Provides for the protection and conservation of environmentally sensitive areas, by ensuring that planning proposals do not reduce the environmental protection standards applying to such land unless it is suitably justified by a relevant strategy or study or is of minor significance in the opinion of the Secretary of the NSW Department of Planning and Environment (or nominated delegate)..	Yes	Adequate
2.3 Heritage Conservation	Requires relevant planning proposals to contain provisions to facilitate the conservation of items, areas, objects and places of environmental heritage significance and indigenous heritage significance.	Yes	Adequate There have been 27 items of Aboriginal heritage recorded on or near the subject site. The site has had an Aboriginal Heritage Assessment and a Cultural Heritage Management Plan prepared in accordance

Ministerial Direction	Overview	Applicable	Consistency
			with the existing approval. It is appropriate for heritage items to be addressed during the development application stage.
3. Housing, Infrastructure and Urban Development			
3.1	Residential Zones	Applies to planning proposals affecting existing or proposed residential zoned land or other zoned land upon, which significant residential development is or will be permitted. Requires relevant planning proposals to include provisions that encourage housing development, ensures satisfactory arrangements for servicing infrastructure and will not reduce the permissible residential density of land; unless it is suitably justified under a relevant strategy or study or is of minor significance in the opinion of the Secretary of the NSW Department of Planning and Environment (or nominated delegate).	Yes Adequate The PP seeks to provide additional housing within an appropriate location.
3.4	Integrating Land Use and Transport	Requires planning proposals, which seek to create, alter or remove a zone or provision relating to urban land (including land zoned for residential, business, industrial, village or tourist purposes), to be consistent with the aims, objectives and principles of 'Improving Transport Choice – Guidelines for planning and development' and 'The Right Place for Business and Services – Planning Policy' or that they be suitably justified under a relevant strategy or study or be of minor significance in the opinion of the Secretary of the NSW	Yes Adequate The PP will provide housing within a residential neighbourhood in proximity to existing infrastructure.

Ministerial Direction	Overview	Applicable	Consistency
	Department of Planning and Environment (or nominated delegate).		
4. Hazard and Risk			
4.1	Acid Sulfate Soils	Requires the provisions of planning proposals must be consistent with the Acid Sulfate Soils Planning Guidelines and other such relevant provisions provided by the Director-General of the Department of Planning, except where the proposal is suitably justified under a relevant strategy or study or where non-compliance is of minor significance in the opinion of the Secretary of the NSW Department of Planning and Environment (or nominated delegate).	Yes Adequate It is appropriate for this to be addressed during the development application stage.
4.3	Flood Prone Land	Applies requirements for planning proposals that seek to create, remove or alter a zone or a provision that affects flood prone land except where non-compliance is of minor significance in the opinion of the Secretary of the NSW Department of Planning and Environment (or nominated delegate).	Yes Adequate A rezoning from commercial to residential should not impact on the potential flood impacts on or off site.
4.4	Planning for Bushfire Protection	Applies requirements for planning proposals affecting land mapped as being bushfire prone land (or land in proximity to such land); except where the Commissioner of the NSW Rural Fire Service has issued written advice to Council that, notwithstanding the noncompliance with the requirements; the NSW Rural Fire Service does not object to progression of the planning proposal.	Yes Adequate It is appropriate for the Bushfire Assessment Report to be provided during the development application stage.
5. Regional Planning			
5.10	Implementation of Regional Plans	Requires that planning proposals be consistent with relevant regional strategies released by the Minister for	Yes Adequate The PP has demonstrated

Ministerial Direction	Overview	Applicable	Consistency
	Planning, except where, in the opinion of the Secretary of the NSW Department of Planning and Environment (or nominated delegate); the inconsistency is considered to be of minor significance and the intent of the strategy is not undermined.		consistency with the Hunter Regional Plan and the greater Newcastle Metropolitan Plan.
Conclusion			
The PP has demonstrated consistency with the relevant Ministerial Directions.			

TABLE 4 –TECHNICAL CONTENT ASSESSMENT

Assessment of technical information

Information	Applicable	Lodged	Adequacy
Traffic and Transport Considerations			
Traffic Impact Assessment	Yes	No	A Traffic Impact Assessment was prepared for the Seaside Fern Bay development. Additional studies are not required.
Environmental Considerations			
Bushfire Assessment Report	Yes	No	A Bushfire Assessment Report was prepared for the Seaside development. Further studies will not be required until the development application stage.
Acid Sulphate Soil Assessment	Yes	No	An acid sulphate soil contamination report was prepared for the Seaside development.
Ecological Assessment	Yes	No	An Ecological Assessment was prepared for the Seaside development. Additional studies are not required.
Water Cycle Management Report	Yes	No	A trunk drainage concept plan and water sensitive urban design report was prepared for the Seaside development.
Sewer and Water strategy	Yes	No	A sewer and water strategy was prepared for the seaside development.
Coastal Hazard Report	Yes	No	A Coastal hazard report was prepared for the Seaside development.
Social and cultural considerations			
Aboriginal Heritage report	Yes	No	An Aboriginal heritage report was prepared for the Seaside development.
Cultural Heritage Management Plan	Yes	No	A cultural heritage management plan was prepared for the Seaside development.

Note:

This report has been prepared on the basis of information submitted at the time of lodgement of the LEP amendment request and in consideration of the planning requirements applying at the time of assessment.

Report prepared by:

Report reviewed by:

Gemma Wallace

Strategic Planner

William Oxley

Principal Strategic Planner

ITEM NO. 5

**FILE NO: 19/394762
EDRMS NO: PSC2020-00816**

**DRAFT INTEGRATED PLANNING AND REPORTING DOCUMENTS AND FEES
AND CHARGES**

REPORT OF: CARMEL FOSTER - GROUP MANAGER CORPORATE SERVICES
GROUP: CORPORATE SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Endorses the draft Integrated Planning and Reporting Framework documents, being the Delivery Program 2018 to 2021 including the Operational Plan 2020 to 2021 (**ATTACHMENT 1**), Long Term Financial Plan 2020 to 2030 (**ATTACHMENT 2**), Strategic Asset Management Plan 2020 to 2030 (**ATTACHMENT 3**), Workforce Plan 2018 to 2021 (**ATTACHMENT 4**) and the Fees and Charges 2020 to 2021 (**ATTACHMENT 5**).
- 2) Places the draft documents on public exhibition for a period of 28 days, invite submissions and report back to Council.

BACKGROUND

The purpose of this report is to seek Council's endorsement to place the following draft documents on public exhibition for a period of 28 days and invite submissions, in accordance with the Local Government Act 1993 (Local Government Act):

- Delivery Program 2018 to 2021 including the Operational Plan 2020 to 2021
- Long Term Financial Plan 2020 to 2030
- Strategic Asset Management Plan 2020 to 2030
- Workforce Plan 2018 to 2021
- Fees and Charges 2020 to 2021.

As there are no changes to the Community Strategic Plan 2018-2028, this document does not require public exhibition. The Delivery Program and Operational Plan are Council's response to the Community Strategic Plan detailing objectives and actions which contribute toward achieving the goals of the Community Strategic Plan.

To implement these plans they need to be appropriately resourced with human, capital and asset resources. The resourcing strategies consist of 3 plans, the Long Term Financial Plan, Strategic Asset Management Plan and the Workforce Plan which provide more detail on the financial, asset and workforce matters that Council is responsible for.

Council, also in accordance with the Local Government Act and other applicable legislation, charges and recovers approved fees and charges for any service it provides as contained within its schedule of fees and charges. All of Council's fees and charges are reviewed on an annual basis, however, Council cannot implement these fees until they have been placed on public exhibition and submissions considered.

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2018-2021
Governance	Provide a strong ethical governance structure.

FINANCIAL/RESOURCE IMPLICATIONS

Council is required to adopt the Operational Plan, Long Term Financial Plan and Fees and Charges before 30 June each year and cannot expend funds or charge fees unless the process, including public exhibition and consideration of submissions is undertaken.

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

LEGAL, POLICY AND RISK IMPLICATIONS

The Integrated Planning and Reporting Guidelines for NSW Local Government require that Councils review their Delivery Program and update the Long Term Financial Plan each year when preparing the Operational Plan.

Section 405 of the Local Government Act requires that before the beginning of each financial year Council must have adopted a detailed plan for the year ahead and place the plan on public exhibition considering submissions prior to adoption.

Section 610 of the Local Government Act requires Council to place the fees and charges on public exhibition, considering submissions prior to adoption.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that failure to follow the public exhibition process will result in Council being unable to fund its operations and suffer loss of reputation.	Low	Adopt the recommendations.	Yes
There is a risk that Council will not endorse the draft documents to go on public exhibition placing Council in breach of legislation leading to reputational loss.	Low	Adopt the recommendations.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The Community Strategic Plan, Delivery Program and Operational Plans are founded on a quadruple bottom line basis of social, economic, environmental and governance implications through the four focus areas Our Community, Our Place, Our Environment and Our Council. The 4 focus areas provide a structure for all of the plans, enabling Council to address key actions while aiming to holistically meet the community's vision of 'A great lifestyle in a treasured environment'.

CONSULTATION

The draft documents have been developed in consultation with staff across Council.

Community input will be considered at a Council meeting in June 2020 following the public exhibition process and prior to adoption of the documents.

In accordance with local government legislation the draft Delivery Program and Operational Plan, draft Long Term Financial Plan, draft Strategic Asset Management Plan, draft Workforce Plan and draft Fees and Charges will go on public exhibition for 28 days.

The documents will be available for download from Council's website under the public exhibition section.

Advertisements will be placed in the Port Stephens Examiner inviting submissions as well as on Council's website.

OPTIONS

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

ATTACHMENTS

- 1) Draft Delivery Program and Operational Plan 2018 to 2021. (Provided under separate cover) [⇒](#)
- 2) Draft Long Term Financial Plan 2020 to 2030. (Provided under separate cover) [⇒](#)
- 3) Draft Strategic Asset Management Plan 2020 to 2030. (Provided under separate cover) [⇒](#)
- 4) Draft Workforce Plan 2018 to 2021. (Provided under separate cover) [⇒](#)
- 5) Draft Fees and Charges 2020 to 2021. (Provided under separate cover) [⇒](#)

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ITEM NO. 6

**FILE NO: 19/387788
EDRMS NO: PSC2019-05538**

POLICY DEVELOPMENT: PUBLIC PROPERTY ENCROACHMENT POLICY

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

RECOMMENDATION IS THAT COUNCIL:

- 1) Endorse the draft Public Property Encroachment Policy shown at **(ATTACHMENT 1)**.
- 2) Place the draft Public Property Encroachment Policy on public exhibition for a period of 28 days, and should no submissions be received, the policy be adopted without a further report to Council.

BACKGROUND

The purpose of this report is to gain Council's endorsement to place the draft Public Property Encroachment Policy shown as **(ATTACHMENT 1)** on public exhibition.

The policy relates to encroachment of private assets on Council's land, such as road reserves and community/operational land. The policy amongst other things defines what is meant by encroachment and also notes the application process.

Private assets include assets such as water features, steps, retaining walls, garden beds, and landscaping to name a few. The draft Public Property Encroachment Policy does not relate to buildings/structures as these are covered through the Development Application process.

Council acknowledges that the private assets on Council land can beautify an area and can be mutually beneficial to the community and Council. However, in some cases this beautification and encroachment on Council land may have a negative impact to the community, public safety, environment and amenity of the land, hence a Council position and process should be adopted by Council.

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2018-2021
Infrastructure and Facilities	Plan civil and community infrastructure to support the community.

FINANCIAL/RESOURCE IMPLICATIONS

There are no financial or resource implications with the adoption of this proposed policy.

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

LEGAL, POLICY AND RISK IMPLICATIONS

While there may be a risk with private assets being built and maintained on Council land, it could be considered to have no more risk than the community mowing the nature strip adjacent to their property. This assumes that the private assets have been through the encroachment application process and have been approved by Council staff.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that not adopting the policy will lead to an inconsistent management of private assets on public land.	Low	Adopt the policy.	Yes
There is a risk that assets will be built leading to unsafe community areas or access being prevented.	Low	Adopt the policy hence the community and Council staff gain clarity on what is allowed and acceptable.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Allowing private assets on Council land through the encroachment policy provides beautification on public areas, gives residents ownership and a sense of pride of their surrounding community.

CONSULTATION

Consultation with key stakeholders has been undertaken by the Assets Section.

Internal

Consultation has been undertaken with Council's operations, enforcement and environment sections.

The policy has been endorsed by Council's Executive Team.

External

In accordance with local government legislation the draft Public Property Encroachment Policy will go on public exhibition for 28 days.

OPTIONS

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

ATTACHMENTS

- 1) Draft Public Property Encroachment Policy. [↓](#)

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ITEM 6 - ATTACHMENT 1 DRAFT PUBLIC PROPERTY ENCROACHMENT POLICY.

Policy

**FILE NO: PSC2019-05583****TITLE: PUBLIC PROPERTY ENCROACHMENT POLICY****POLICY OWNER: ASSET SECTION MANAGER****1. PURPOSE:**

- 1.1 The purpose of this policy is to provide Council's position on encroachment of private assets on Council's land such as road reserves and public community or operational land.
- 1.2 This policy is linked to Key Direction P2 Infrastructure and Facilities – Our community's infrastructure and facilities are safe, convenient, reliable and environmentally sustainable.

2. CONTEXT/BACKGROUND:

- 2.1 Council owns and manages a large portfolio of land for the community and public to use. Council recognises that some adjoining private property owners undertake work to beautify and maintain Council's land to the mutual benefit of each party. In some cases these beautifications extend beyond maintenance and result in private assets being placed on Council land.
- 2.2 In some cases this results in a sense of ownership and pride that benefits Council and the public.
- 2.3 In other cases this beautification and encroachment on Council land may have a negative impact to the community, public safety, environment and amenity of the land.
- 2.4 The extent of the encroachment and the organisation's risk appetite will determine Council's ability to accept or deny each encroachment and any further action required.

3. SCOPE:

- 3.1 This policy relates to encroachment on Council's road reserves and public community or operational land.
- 3.2 This policy does not relate to:
 - a. parks and roadside memorials
 - b. the encroachment on Council's commercial property portfolio
 - c. items covered under Council's Outdoor Trading Policy
 - d. bus shelter advertising
 - e. the dinghy policy
 - f. private utilities that are covered under Section 611 of the Local Government Act 1993
 - g. any other activity or use that is approved or exempt from requiring prior approval. These are covered under other adopted Council policies, fees and charges or legislation.

Policy

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ITEM 6 - ATTACHMENT 1 DRAFT PUBLIC PROPERTY ENCROACHMENT POLICY.

Policy



- 3.3 Where an existing or proposed encroachment results in:
- a compromise to the integrity of natural and/or cultural values
 - prevention of public use or access
 - impediment of fire management
 - the detracting from aesthetic appearances and/or character of the area
 - the diversion and/or encumbrances of Council resources or assets
 - the jeopardy of public safety
 - the social inequity
 - Council's legal liability
 - traffic and pedestrian.
- 3.4 Council may either not approve the proposed encroachment or order the person who undertook the existing encroachment to remove/make good the area to Council's satisfaction. These works and any associated approvals will be at the cost of the person who has undertaken the encroachment.
- 3.5 If works are not undertaken by the order date Council may take action and invoice the owner of the encroachment to recoup costs.
- 3.6 Should approval be granted, these works and any associated approvals will be at the cost of the applicant is requesting the encroachment works.

4 DEFINITIONS:

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

Private assets	Include but not limited to - water features, steps, retaining walls, fencing or physical barrier, gazebos, garden beds, and landscaping, vegetable patches, seating and furniture, BBQs, fire pits, boat ramps, storage equipment, structures (i.e. decking, patios, concrete/paving works).
Public community and operational land	Relates to lands defined as community or operational land held/managed by Council. Does not include Council owned commercial and investment lands.
Community Land	Land owned and managed by Council.
Council managed Community Land	Land managed by Council (ie Crown Trust).
Operational Land for Community Purposes	Operational land owned and managed by Council for community purposes.
Road Reserve	Land owned and managed by Council.
Council managed Road Reserve	Land managed by Council (i.e. RMS roads).

Policy

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ITEM 6 - ATTACHMENT 1 DRAFT PUBLIC PROPERTY ENCROACHMENT POLICY.

Policy



5 POLICY STATEMENT:

- 5.1 Council acknowledges that suitable encroachments may have benefits to residents, the community, public and Council by providing a sense of place, ownership, pride and increased maintenance.
- 5.2 Proposed works are to be applied through Council's 'Works on Community Land Application' or Roads Act 1993 approval process.
- 5.3 Encroachment may take many forms and each one will be assessed on its merits, benefits to the public and the organisations risk appetite.
- 5.4 Council may revoke previous approvals as new information become available or if the change of use prevents the space from being used for which it was intended.
- 5.5 Any approval for private assets transfers to the new owners upon sale of the adjoining property.
- 5.6 The applicant of the encroachment asset/adjoining property owner is responsible to remove and restore the private asset should Council or any other public authority require access through the subject area.

6 POLICY RESPONSIBILITIES:

- 6.1 Community and Recreation Coordinator for community land.
- 6.2 Civil Assets Planning Manager for road reserves.

7 RELATED DOCUMENTS:

- 7.1 Roads Act 1993.
- 7.2 Local Government Act 1993.

Policy

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ITEM 6 - ATTACHMENT 1 DRAFT PUBLIC PROPERTY ENCROACHMENT POLICY.

Policy

**CONTROLLED DOCUMENT INFORMATION:**

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EDRMS container No	PSC2019-05583	EDRMS record No	19/371591
Audience	Mayor and Councillors, Council Staff and Community.		
Process owner	Community and Recreation Co-ordinator for community land. Civil Assets Planning Manager for road reserves. Property Services Section Manager for Operational land.		
Author	Asset Section Manager		
Review timeframe	2 years	Next review date	
Adoption date			

VERSION HISTORY:

Version	Date	Author	Details	Minute No.
1.0		Asset Section Manager	New policy.	

Policy

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ITEM NO. 7

**FILE NO: 20/60355
EDRMS NO: PSC2009-02488**

POLICY REVIEW: FRAUD AND CORRUPTION CONTROL POLICY

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

RECOMMENDATION IS THAT COUNCIL:

- 1) Endorse the revised Fraud and Corruption Control policy shown at **(ATTACHMENT 1)**.
- 2) Place the Fraud and Corruption Control policy, as amended on public exhibition for a period of 28 days and should no submissions be received, the policy be adopted as amended, without a further report to Council.
- 3) Revoke the Fraud and Corruption Control policy dated 11 July 2017, Min No. 175, should no submissions be received.

BACKGROUND

The purpose of this report is to recommend the adoption of the revised Fraud and Corruption Control Policy (the 'policy'), **(ATTACHMENT 1)** which represents Council's commitment to effective fraud and corruption risk management and prevention.

The policy has been reviewed as part of Council's ongoing policy review program. It has also been reviewed and endorsed by the Audit Committee at its meeting of 27 February 2020.

Port Stephens Council is committed to protecting its revenue, expenditure and property from any attempt, either by members of the public, contractors, elected Councillors or its own employees, to gain by deceit, financial or other benefits. The policy (and a supporting management directive) has been developed to protect public funds and other assets, protect the integrity, security and reputation of Council and its employees, and assist in maintaining high levels of service to the community.

This policy draws together Council's fraud and corruption prevention and detection initiatives into 1 document. It forms part of Council's Risk Management Framework and has 3 major components:

- Prevention – initiatives to deter and minimise the opportunities of fraud and corruption
- Detection – initiatives to detect fraud and corruption as soon as possible after it occurs
- Response – initiatives to deal with detected or suspected fraud and corruption.

The desired outcome of this policy is the elimination of fraud and corruption against Council.

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2018-2021
Governance.	Provide a strong ethical governance structure.

FINANCIAL/RESOURCE IMPLICATIONS

All costs associated with the policy are within the existing budget.

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

LEGAL, POLICY AND RISK IMPLICATIONS

All information received by Council in relation to suspected fraudulent or corrupt conduct will be collected, classified and handled appropriately having regard to privacy, confidentiality, legal professional privilege and the requirements of natural justice.

The policy has been developed in accordance with Australian Standard AS8001:2008 Fraud and Corruption Control.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that fraudulent activity could occur within Council which is a risk of any business. The key to managing the exposure to fraudulent activity is to ensure appropriate controls are in place.	Low	Adopt the recommendations.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The Fraud and Corruption Control Policy provides the community with assurance of the integrity in the Local Government system and of Port Stephens Council. Related policies provide confidence to those who identify potential fraud or corruption to come forward.

Fraud and corruption cost the organisation because they detract from its financial performance and its ability to provide and enhance facilities and services to its community. This policy addresses this risk.

By putting in place mechanisms to detect corruption it allows for a 'level playing field' for promoters of economic development opportunities and the enhanced reputation of Council will underpin other strategies for economic growth in the LGA.

By preventing fraud and corruption, this Policy allows for those other controls and conditions that are in place to protect the environment from being subverted.

CONSULTATION

Consultation with key stakeholders has been undertaken by the Governance Section.

Internal

The policy has been reviewed with consultation and endorsement of the Audit Committee.

Council's Executive Team has also endorsed the policy review.

External

Council is required to publicly exhibit the policy for a period of 28 days, seeking public comment.

OPTIONS

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

ATTACHMENTS

1) Revised Fraud and Corruption Control Policy. [↓](#)

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ITEM 7 - ATTACHMENT 1 REVISED FRAUD AND CORRUPTION CONTROL POLICY.

Policy



FILE NO: PSC2009-02488

TITLE: FRAUD AND CORRUPTION CONTROL POLICY

POLICY OWNER: GOVERNANCE SECTION MANAGER

1. PURPOSE:

1.1 The purpose of the Fraud and Corruption control policy (the policy) is to establish a framework for fraud and corruption control and prevention.

1.2 Port Stephens Council (Council) recognises that it has a responsibility to develop, encourage and implement sound financial, legal and ethical decision-making and organisational practices.

1.3 Port Stephens Council is committed to protecting its revenue, expenditure and property from any attempt, either by members of the public, contractors, elected Councillors or its own employees, to gain by deceit, financial or other benefits. This policy is designed to protect public funds and other assets, protect the integrity, security and reputation of Council and its employees and assist in maintaining high levels of service to the community.

1.4 This Fraud and corruption control policy represents Council's commitment to effective fraud and corruption risk management and prevention. The desired outcome of this commitment is to minimise the potential for fraud and corruption against Council.

1.5 This policy draws together Council's fraud and corruption prevention and detection initiatives into one document. It forms part of Council's risk management framework and has three major components:

- Prevention – initiatives to deter and minimise the opportunities of fraud and corruption;
- Detection – initiatives to detect fraud and corruption as soon as possible if it occurs; and
- Response – initiatives to deal with detected or suspected fraud and corruption.

a) Prevention – initiatives to deter and minimise the opportunities of fraud and corruption;

b) Detection – initiatives to detect fraud and corruption as soon as possible if it occurs; and

c) Response – initiatives to deal with detected or suspected fraud and corruption.

1.6 The desired outcome of this policy is the elimination of fraud and corruption against Council involving employees and other persons external to Council. While the elimination of all instances of fraud and corruption may not realistically be achievable, it remains Council's ultimate fraud and corruption prevention objective.

2. CONTEXT/BACKGROUND:

Policy

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ITEM 7 - ATTACHMENT 1 REVISED FRAUD AND CORRUPTION CONTROL POLICY.

Policy



2.1 The policy was developed in 2011 as part of Council's review of fraud and corruption control. The policy framework provides Council's position with respect to the overall management of fraud and corruption.

2.2 This Fraud and corruption control policy represents the commitment of the Council to effective fraud and corruption risk management. It also requires the commitment, co-operation and involvement of all Councillors, staff, contractors and the public in preventing, detecting and responding to all instances of fraud and corruption.

3. SCOPE:

1—Attitude to fraud and corruption

3.1 Attitude to fraud and corruption

- a) The Council has a zero tolerance to fraud and corruption.
- b) Council is committed to minimising the incidence of fraud and corruption through the development, implementation and regular review of fraud and corruption prevention, detection and response strategies.

2—Council's approach to fraud and corruption control

3.2 Council's approach to fraud and corruption control

- a) Council will ensure that Council officials are aware of the fraud and corruption reporting procedures and are actively encouraged to report suspected fraud and corruption through the appropriate channels.
- b) Council has adopted a clear framework and approach to fraud and corruption detection and prevention. This approach is based on the Australian standard for fraud and corruption control AS 8001:2008. In particular, the following fraud and corruption control strategies are pursued by Council:

Prevention Strategies	Detection Strategies
<ul style="list-style-type: none"> ▪ Integrity framework – Code of conduct 	<ul style="list-style-type: none"> ▪ Council and external agency reviews
<ul style="list-style-type: none"> ▪ Fraud and corruption control management directive (including allocation of fraud and corruption prevention responsibilities) 	<ul style="list-style-type: none"> ▪ Management reports and internal audit reviews
<ul style="list-style-type: none"> ▪ Fraud and corruption awareness training 	<ul style="list-style-type: none"> ▪ Staff induction and fraud and corruption awareness training sessions

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ITEM 7 - ATTACHMENT 1 REVISED FRAUD AND CORRUPTION CONTROL POLICY.

Policy



▪ Fraud and corruption risk assessments	▪ Clear reporting channels and internal audit reviews
▪ Robust internal controls	▪ Public Interest disclosures and internal reporting
▪ Pre-employment screening	▪ Police checks and references

- c) All information received by Council in relation to suspected fraudulent or corrupt conduct will be collected, classified and handled appropriately having regard to privacy, confidentiality, legal professional privilege and the requirements of natural justice.
- d) If fraud or corruption against Council is detected, the General Manager will make all decisions on the appropriate communications protocol by nominating one person to be the authorised spokesperson. Any communications relating to a fraud or corrupt incident by a person other than the General Manager or authorised spokesperson will be considered a breach of this policy. Any breach of any policy is dealt with under the provisions of the Enterprise Agreement and/or the terms of contract; and/or the Code of conduct.

3—Reporting**3.3 Reporting**

- 3.3.1 Under the Code of Conduct there is an obligation for each Council official to report any improper conduct, which includes suspected fraudulent or corrupt behaviour. An individual may report the matter either internally or externally as outlined below.
- 3.3.2 Council officials should report any suspicions to only those people who absolutely need to know. This protects people from allegations that may not be proven and prevents the possible destruction of evidence.

3.1 Internally**Internally**

- 3.3.3 Councillors, Council officials and delegates of Council must report as soon as possible any suspected fraudulent or corrupt behaviour to:

- ~~Governance Manager;~~
- ~~General Manager; or~~
- ~~Mayor.~~
- a) Governance Section Manager;
- b) General Manager; or
- c) Mayor.

Policy

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ITEM 7 - ATTACHMENT 1 REVISED FRAUD AND CORRUPTION CONTROL POLICY.

Policy



3.3.4 Supervisors and managers or the internal auditors have an obligation to immediately pass on the reports of suspected fraudulent or corrupt behaviour or breaches of the policy to the General Manager.

3.3.5 The only exception to this is where the General Manager is suspected of conduct relating to fraud or corruption, in which case the matter should be reported to the:

- ~~Mayor;~~
- ~~Governance Manager; or~~
- ~~The relevant external agency. (See 3.2 below)~~
- a) Mayor;
- b) Governance Section Manager; or
- c) The relevant external agency. (See 3.2 below)

3.3.6 Council's Public Interest Disclosure Internal Reporting Policy provides protection to council officials who report fraudulent or corrupt behaviour.

3.2 External Agencies

External Agencies

3.3.7 Matters relating to suspected fraudulent or corrupt activities can also be reported to the following external agencies:

- ~~Independent Commission Against Corruption (ICAC) — telephone 1800 463 909 (in the case of allegations of fraud or corruption);~~
- ~~Office of Local Government — telephone 4428 4100 (in the case of allegations relating to pecuniary interests);~~
- ~~NSW Police — telephone 4983 7599 (in the case of allegations relating to fraud); and~~
- ~~NSW Electoral Commission — telephone 1300 135 736 (in the case of allegations relating to election fraud).~~
- a) Independent Commission Against Corruption (ICAC) – telephone 1800 463 909 (in the case of allegations of fraud or corruption);
- b) Office of Local Government – telephone 4428 4100 (in the case of allegations relating to pecuniary interests);
- c) NSW Police – telephone 4983 7599 (in the case of allegations relating to fraud); and
- d) NSW Electoral Commission – telephone 1300 135 736 (in the case of allegations relating to election fraud).

4 Responsibilities

3.4 Responsibilities

3.4.1 Council will ensure that:

Policy

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ITEM 7 - ATTACHMENT 1 REVISED FRAUD AND CORRUPTION CONTROL POLICY.

Policy



- ~~Relevant exposure of significant risks to the Council are identified. The evaluation of risk is a critical determinant in Council's approach to fraud and corruption prevention and detection;~~
- ~~Relevant legal obligations are monitored to ensure that operating procedures and conditions meet these obligations;~~
- ~~The Code of Conduct and associated policies and procedures are developed and publicised;~~
- ~~Appropriate fraud and corruption prevention and detection controls are incorporated when developing and maintaining computer and/or other systems;~~
- ~~Employees are properly trained and understand relevant Council policies and the legislative requirements of protection for informants under the *Public Interest Disclosures Act 1994*;~~
- ~~An environment exists in which fraud and corruption related activity is discouraged; and~~
- ~~Effective investigations of allegations are undertaken, and notified to the NSW Police, the ICAC, the NSW Electoral Commission and/or the Office of Local Government, for investigation and/or prosecution as required.~~

- a) Relevant exposure of significant risks to the Council are identified. The evaluation of risk is a critical determinant in Council's approach to fraud and corruption prevention and detection;
- b) Relevant legal obligations are monitored to ensure that operating procedures and conditions meet these obligations;
- c) The Code of Conduct and associated policies and procedures are developed and publicised;
- d) Appropriate fraud and corruption prevention and detection controls are incorporated when developing and maintaining computer and/or other systems;
- e) Employees are properly trained and understand relevant Council policies and the legislative requirements of protection for informants under the Public Interest Disclosures Act 1994;
- f) An environment exists in which fraud and corruption related activity is discouraged; and
- g) Effective investigations of allegations are undertaken, and notified to the NSW Police, the ICAC, the NSW Electoral Commission and/or the Office of Local Government, for investigation and/or prosecution as required.

3.4.2 There are a number of specific responsibilities associated with the prevention of fraud and corruption related activity. These specific responsibilities are to be included in the Fraud and Corruption Control management directive.

~~5 Record keeping, confidentiality and privacy~~

3.5 Record keeping, confidentiality and privacy

3.5.1 Council will maintain effective record keeping systems to demonstrate due process has been followed for all actions and decisions arising out of the implementation of this policy.

Policy

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ITEM 7 - ATTACHMENT 1 REVISED FRAUD AND CORRUPTION CONTROL POLICY.

Policy



All investigative documentation will comply with relevant legislative provisions, will remain strictly confidential and will be retained in accordance with the State Records Act 1998 and Council's Access to Information policy.

4. DEFINITIONS:

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

Council officials Means Port Stephens Council employees, consultants and contractors

Corruption For the purpose of this management directive, corruption and corrupt conduct will have the same meanings as defined in the Independent Commission Against Corruption (ICAC) Act 1988, which is set out in Appendix B.

In summary, corrupt conduct means any conduct, which could affect the honest or impartial exercise of official functions, may be a breach of trust, or may involve the misuse of any Council information by any Council official.

Council Means Port Stephens Council

Fraud Fraud is defined in Australian Standard AS 8001: 2008 as:

"Dishonest activity causing actual or potential financial loss to any person or entity including theft of moneys or other property by employees or persons external to the entity and whether or not deception is used at the time, immediately before or immediately following the activity. This also includes the deliberate falsification, concealment, destruction or use of falsified documentation used or intended for use for a normal business purpose or the improper use of information or position."

For the purpose of this management directive, fraud is not restricted to tangible benefits only and includes intangibles such as information, which may not be in documentary form.

ICAC Independent Commission Against Corruption.

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ITEM 7 - ATTACHMENT 1 REVISED FRAUD AND CORRUPTION CONTROL POLICY.

Policy

**5. POLICY STATEMENT:**

5.1 Council is committed to:

- ~~1) Adopting measures to minimise risk;~~
- ~~2) Serving, representing and promoting community needs, interests and aspirations;~~
- ~~3) Protecting community assets and resources; and~~
- ~~4) Exercising its powers and engage in initiatives that add value to and capitalise on the community's assets and resources.~~
- a) Adopting measures to minimise risk;
- b) Serving, representing and promoting community needs, interests and aspirations;
- c) Protecting community assets and resources; and
- d) Exercising its powers and engage in initiatives that add value to and capitalise on the community's assets and resources.

5.2 To achieve its fraud and corruption prevention objectives Council will:

- ~~1) Identify fraud and corruption risks and regularly review and update the Fraud and corruption control policy;~~
- ~~2) Provide fraud and corruption awareness training to those staff who are identified as being in positions that require fraud and corruption awareness training;~~
- ~~3) Ensure all Councillors, staff, contractors and the public are aware of Council's fraud and corruption control policy;~~
- ~~4) Encourage and promote professional and ethical business practice;~~
- ~~5) Identify any weaknesses in Council's control processes through regular review of Council's operations;~~
- ~~6) Clearly communicate how suspected instances of fraud and corruption can be reported;~~
- ~~7) Investigate alleged or suspected instances of fraud or corruption using professionals with experience in investigation techniques;~~
- ~~8) Take appropriate action to deal with instances of actual, suspected or alleged fraud or corruption, including by recommending prosecution of persons and/or organisations for fraud or corruption offences where and when appropriate; and~~
- ~~9) Use all practicable avenues to recover money or property lost through fraudulent or corrupt activity.~~
- a) Identify fraud and corruption risks and regularly review and update this the Fraud and corruption control policy;

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ITEM 7 - ATTACHMENT 1 REVISED FRAUD AND CORRUPTION CONTROL POLICY.

Policy



- b) Provide fraud and corruption awareness training to those staff who are identified as being in positions that require fraud and corruption awareness training;
- c) Ensure all Councillors, staff, contractors and the public are aware of this Council's fraud and corruption control policy;
- d) Encourage and promote professional and ethical business practice;
- e) Identify any weaknesses in Council's control processes through regular review of Council's operations;
- f) Clearly communicate how suspected instances of fraud and corruption can be reported;
- g) Investigate alleged or suspected instances of fraud or corruption using professionals with experience in investigation techniques;
- h) Take appropriate action to deal with instances of actual, suspected or alleged fraud or corruption, including by recommending prosecution of persons and/or organisations for fraud or corruption offences where and when appropriate; and
- i) Use all practicable avenues to recover money or property lost through fraudulent or corrupt activity.

6. POLICY RESPONSIBILITIES:

- 1) ~~The General Manager, Group Managers and Governance Manager is responsible for implementing, complying with the policy.~~
- 2) ~~The Governance Manager is responsible for monitoring, evaluating, reviewing and providing advice on the policy.~~
- 3) ~~Council officials are required to comply with the policy.~~

- 6.1 The General Manager, Group Managers and Governance **Section** Manager is responsible for implementing, complying with the policy.
- 6.2 The Governance **Section** Manager is responsible for monitoring, evaluating, reviewing and providing advice on the policy.
- 6.3 Council officials are required to comply with the policy.

7. RELATED DOCUMENTS:

- ~~▪ Local Government Act 1993 and Local Government (General) Regulations 2005;~~
- ~~▪ Environmental Planning and Assessment Act 1979~~
- ~~▪ Independent Commission Against Corruption Act 1988~~
- ~~▪ Public Interest Disclosures Act 1994~~
- ~~▪ Crimes Act 1990~~
- ~~▪ State Records Act 1998~~
- ~~▪ Australian Standard AS8001:2008~~
- ~~▪ Code of conduct;~~
- ~~▪ Public Interest disclosures internal reporting policy;~~

Policy

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ITEM 7 - ATTACHMENT 1 REVISED FRAUD AND CORRUPTION CONTROL POLICY.

Policy



- ~~Grievance and dispute resolution process; and~~
- ~~Access to information policy.~~

- 7.1 Local Government Act 1993 and Local Government (General) Regulations 2005;
- 7.2 Environmental Planning and Assessment Act 1979
- 7.3 Independent Commission Against Corruption Act 1988
- 7.4 Public Interest Disclosures Act 1994
- 7.5 Crimes Act 1990
- 7.6 State Records Act 1998
- 7.7 Australian Standard AS8001:2008
- 7.8 **Port Stephens Council** Code of conduct;
- 7.9 Public Interest disclosures internal reporting policy;
- 7.10 Grievance and dispute resolution process; and
- 7.11 Access to information policy.

CONTROLLED DOCUMENT INFORMATION:

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RM8 container No	PSC2009-02488	RM8 record No	17/164405
Audience	Council officials		
Process owner	Governance Section Manager		
Author	Governance Section Manager		
Review timeframe	Two years	Next review date	31 July 2019 31 July 2021
Adoption date	12 April 2011		

VERSION HISTORY:

Version	Date	Author	Details	Minute No.
1.0	12 April 2011	Corporate Services Group Manager	Original version adopted by Council.	111

Policy

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ITEM 7 - ATTACHMENT 1 REVISED FRAUD AND CORRUPTION CONTROL POLICY.

Policy



2.0	26 November 2013	Executive Officer	Review completed and adopted by Council.	346
3.0	14 April 2015	Governance Manager	Review completed and adopted by Council.	088
4.0	11 July 2017	Governance Manager	Transferred the policy into the new template. Reviewed the policy. Updated contact telephone numbers.	175
4.1		Governance Section Manager	Reviewed the policy, included numbering to each paragraph and updated the version control. Updated title of policy owner. 1.1 – inserted purpose of policy. 1.3 – delete “Port Stephens”. 1.4 - delete “Fraud and corruption control”. 1.5, 3.3.3, 3.3.5, 3.3.7, 3.4.1, 5.1, 5.2 - update itemising of paragraphs. 3.1, 3.2, 3.3, 3.4, 3.5, 6 – updated item numbering. 7.8 – inserted “Port Stephens Council”.	

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ITEM NO. 8**FILE NO: 20/60283
EDRMS NO: PSC2009-02488****POLICY REVIEW - RATE DONATIONS FOR COMMUNITY GROUPS**

REPORT OF: TIM HAZELL - FINANCIAL SERVICES SECTION MANAGER
GROUP: CORPORATE SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Endorse the revised Rate Donations for Community Groups Policy shown at **(ATTACHMENT 1)**.
- 2) Place the revised Rate Donations for Community Groups Policy, as amended on public exhibition for a period of 28 days and should no submissions be received, the policy be adopted as amended, without a further report to Council.
- 3) Revoke the Rate Donations for Community Groups Policy dated 12 June 2018 Minute No. 159, should no submissions be received.

BACKGROUND

The purpose of this report is to seek Council approval to place the revised Rate Donations for Community Groups Policy on public exhibition.

The current policy has been effective in providing a modest amount of financial assistance to the Nelson Bay Masonic Lodge. The annual cost is approximately \$4500 per annum. No other community groups have approached Council seeking a rate exemption, possibly because most community groups that own real estate have the benefit of a rate exemption due to a charitable or Public Benevolent Institution legal status. For this reason there is no proposal to specify any additional organisations in the policy to receive a rate donation.

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2018-2021
Financial Management	Maintain strong financial sustainability.

FINANCIAL/RESOURCE IMPLICATIONS

There are no negative implications resulting from the revised Rate Donations for Community Groups Policy. Adoption of the policy is within existing budget implications.

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

LEGAL, POLICY AND RISK IMPLICATIONS

The policy provides for consistency in applying rate donations to community organisations that are not exempt from rates.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that discontinuing financial assistance to Nelson Bay Masonic Lodge may reduce the organisation's ability to carry out works in the community.	High	Adopt the recommendations.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The policy empowers Council to financially support community organisations faced with paying annual rates that are ineligible for a rate exemption.

CONSULTATION

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

Internal

The revised policy was submitted to Council's Executive Team (ET) in March 2020. The ET accepted the recommendation to submit the revised policy to Council for formal adoption.

External

In accordance with local government legislation the draft Rate Donations for Community Groups Policy will go on public exhibition for 28 days. Should no submissions be received the policy will be adopted effectively immediately following the close of the exhibition period.

OPTIONS

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

ATTACHMENTS

- 1) Revised Rate Donations for Community Groups Policy. [↓](#)

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ITEM 8 - ATTACHMENT 1 REVISED RATE DONATIONS FOR COMMUNITY GROUPS POLICY.

Policy



FILE NO: PSC2007-3076
TITLE: RATE DONATIONS FOR COMMUNITY GROUPS
POLICY OWNER: FINANCIAL SERVICES SECTION MANAGER

1. PURPOSE:

- 1.1 To provide clear guidelines for donation of rates and charges to rateable community groups and to provide financial assistance for community groups that are unable to meet the cost of rates and charges.

2. CONTEXT/BACKGROUND:

- 2.1 This policy identifies those community groups in Port Stephens that are subject to rates and charges to which Council will annually make a donation. Council may donate funds in accordance with section 356 of the *Local Government Act 1993* for the purpose of exercising its functions.
- 2.2 The provision of financial assistance for rates and charges assists community groups to survive financially and direct their financial resources towards their aims and objectives. Community groups act as a social binder for communities providing social opportunities, leadership, positive role models and structure within a community.
- 2.3 There are very few community groups that are both liable for rates and are not a public charity or public benevolent institution. The cost of providing this annual assistance is not significant and has no economic implications for Council or Port Stephens.

3. SCOPE:

- 3.1 Council's policy towards making donations to rateable community groups for rates and charges will be documented and transparent.
- 3.2 Council will recognise potential financial hardship in considering which community groups are to receive rates and charges donations.
- 3.3 Groups seeking to access assistance under this policy must have a community service objective similar to Council's as their predominant aim or objective under their charter.

4. DEFINITIONS:

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

Policy

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ITEM 8 - ATTACHMENT 1 REVISED RATE DONATIONS FOR COMMUNITY GROUPS POLICY.

Policy



Public charity	A public charity in accordance with sections 556 and 559 of the <i>Local Government Act 1993</i> .
Public benevolent institution	A public benevolent institution in accordance with sections 556 and 559 of the <i>Local Government Act 1993</i> .

5. POLICY STATEMENT:

- 5.1 Organisations that are public charities or public benevolent institutions receive a rate exemption while other organisations that do good works to benefit the community do not enjoy an exemption.
- 5.2 Council will annually donate the rates and Hunter Local Land Services Catchment Contribution for the organisations and properties specified in this policy. The organisations are still required to pay waste management charges, waste service charges and on-site sewerage management fees if applicable.
- 5.3 The organisations are not required to make an annual application and this donation will be ongoing, subject to normal policy reviews. Donations made under this policy will apply from the commencement of the rating year in which Council resolves to include the organisation in this list of specified organisations.
- 5.4 Should an organisation wish to be included on the list, contact is to be made with Council's Finance Revenue Coordinator who will request the necessary information and make arrangements for a report to be submitted to Council for consideration.
- 5.5 Specified organisations:
 - 5.5.1 Masonic Holdings Limited (Nelson Bay Masonic Centre).

6. POLICY RESPONSIBILITIES:

- 6.1 ~~Finance Officer – Revenue Team Leader~~ Finance Officer – Revenue Specialist.
- 6.1 Finance Revenue Coordinator
- 6.2 Financial Services Section Manager.

7. RELATED DOCUMENTS

- 7.1 Debt Recovery and Hardship Policy.
- 7.2 Ss. 356,556 *Local Government Act 1993*.

Policy

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ITEM 8 - ATTACHMENT 1 REVISED RATE DONATIONS FOR COMMUNITY GROUPS POLICY.

Policy

**CONTROLLED DOCUMENT INFORMATION:**

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EDRMS container No	PSC2007-3076	EDRMS record No	48/111914
Audience	Council Staff and Community		
Process owner	Financial Services Section Manager		
Author	Financial Services Section Manager		
Review timeframe	Two years	Next review date	12/06/2020
Adoption date	27/11/2007		

VERSION HISTORY:

Version	Date	Author	Details	Minute No.
1.0	27/11/2007	Financial Services Section Manager	Policy adopted.	330
2.0	26/06/2012	Financial Services Section Manager	Revised policy adopted.	154
3.0	12/08/2014	Financial Services Section Manager	Revised policy adopted.	210
4.0	15/02/2016	Financial Services Section Manager	Policy reviewed and formatted into the new template. Table of definitions added. Position titles updated to reflect current organisational chart. Adopted 24/5/2016.	138
5.0	12/06/2018	Financial Services Section Manager	Policy reviewed. No changes required. New corporate numbering system has been included. Adopted by Council.	159

Policy

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ITEM NO. 9

**FILE NO: 20/60357
EDRMS NO: A2004-0162**

DISCUSSION PAPER: COUNCILLOR SUPERANNUATION

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

RECOMMENDATION IS THAT COUNCIL:

- 1) Determine which option (as detailed in the report) it may wish to proceed with in making a submission to the Office of Local Government.
- 2) Authorise the Mayor and General Manager to draft the submission on behalf of Council.

BACKGROUND

The purpose of this report is to inform Council of the Councillor Superannuation Discussion Paper released by the Office of Local Government (OLG).

The OLG has issued a discussion paper seeking the views of councils and their communities on whether elected officials should receive superannuation payments.

The Commonwealth Superannuation Guarantee (Administration) Act 1993, does not require councils across Australia to make superannuation contributions in relation to fees payable to mayors and councillors. This is based on the fact that mayors and councillors are elected to civic office in a council and are not employees of the council.

The OLG have released the discussion paper following concerns raised by mayors and councillors that the ineligibility of councillors to receive superannuation payments is inequitable and is a deterrent to more women and younger people standing for council.

The discussion paper seeks the views of councils on the following four options:

- 1) Maintaining the status quo – mayors and councillors can continue to voluntarily contribute a portion of their fees to a complying superannuation fund of their choice.
- 2) Mandate the current voluntary situation – amend the Local Government Act 1993 (the Act) to make it compulsory for councils to pay a portion of the mayors' and councillors' fees equivalent to the superannuation guarantee amount into a complying superannuation fund nominated by the mayor and councilors.

- 3) Amend the Act to make it compulsory for councils to pay an amount equivalent to the superannuation guarantee into a complying superannuation fund nominated by the mayor and councillors in addition to the mayor's and councillors' fees.
- 4) Amend the Act to allow councils to voluntarily pay an amount equivalent to the superannuation guarantee into a complying superannuation fund nominated by the mayor and councillors in addition to the mayor's and councillors' fees – this means that the payment of councillor superannuation in addition to their fee would be at each council's discretion, allowing the council to take into account the council's resources and the local community's views.

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2018-2021
Governance	Provide strong civic leadership and government regulations.

FINANCIAL/RESOURCE IMPLICATIONS

There are no financial implications from this recommendation.

The financial implications for each option (based on the 2019/2020 allowance to elected members) would be as follows:

- 1) Financial contribution determined by individual elected member.
- 2) Option 2 would reduce the current allowance paid to elected members by \$8056.95 (\$1926.60 per councillor and \$6130.35 for the mayor), with the reduction redirected into a complying superannuation fund.
- 3) The financial contribution under option 3 would be an annual increase of \$8056.95 (\$1926.60 per councillor and \$6130.35 for the mayor).
- 4) The financial contribution under option 4 would be an annual increase of \$8056.95 (\$1926.60 per councillor and \$6130.35 for the mayor), however it would a voluntarily payment determined by Council.

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

LEGAL, POLICY AND RISK IMPLICATIONS

There are legal, policy or risk implications from this recommendation.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that should Council not make a submission it would limit the opportunity for the sitting Council to express their view on this topic.	Low	Adopt the recommendation.	Yes.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

There are no sustainability implications from this recommendation.

CONSULTATION

Consultation is being conducted with the elected Council to determine whether a submission should be lodged.

The Port Stephens community are also invited to make submission with the Office of Local Government by close of business on Friday 8 May 2020 to Locked Bag 3015, Nowra, NSW 2541 or by email to olg@olg.nsw.gov.au

Submissions should be labelled 'Councillor Superannuation Consultation' and marked to the attention of the OLGs Council Governance Team.

OPTIONS

- 1) That Council make a submission to the Office of Local Government maintaining the status quo in relation to superannuation for elected members where mayors and councillors can continue to voluntarily contribute a portion of their fees to a complying superannuation fund of their choice.
- 2) That Council make a submission to the Office of Local Government that mandates the current voluntary situation, amending the Local Government Act 1993 to make it compulsory for councils to pay a portion of the mayors' and councillors' fees equivalent to the superannuation guarantee amount into a complying superannuation fund nominated by the mayor and councillors.
- 3) That Council make a submission to the Office of Local Government to amend the Act to make it compulsory for councils to pay an amount equivalent to the superannuation guarantee into a complying superannuation fund nominated by the mayor and councillors in addition to the mayor's and councillors' fees.

- 4) That Council make a submission to the Office of Local Government to amend the Act to allow councils to voluntarily pay an amount equivalent to the superannuation guarantee into a complying superannuation fund nominated by the mayor and councillors in addition to the mayor's and councillors' fees meaning that the payment of councillor superannuation in addition to their fee would be at each council's discretion, allowing the council to take into account the council's resources and the local community's views.

ATTACHMENTS

- 1) Councillor Superannuation Discussion Paper. [↓](#)

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.



Office of
Local Government

Strengthening local government

COUNCILLOR SUPERANNUATION

Discussion paper

March 2020

ACCESS TO SERVICES

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Minister's foreword



Since becoming the Minister for Local Government, I have actively engaged with local councils across New South Wales. I am constantly impressed by the passion held by our mayors and councillors, and frequently find myself commenting on the incredible work ethic of many who continually deliver for their communities.

I am proud to be a part of a Government that is committed to supporting councils to deliver for their local communities. Since 2011 this Government has provided more than \$9 billion to local councils to deliver and improve local infrastructure, services and facilities for their communities. About half of this funding has gone to regional and rural communities which are struggling through one of the worst droughts on record and are recovering and rebuilding after the recent natural disasters. This funding boost has helped local councils provide the very things that make our communities tick – from local infrastructure to essential services and programs that unite local residents.

Under Commonwealth legislation, councils are not required to make superannuation contributions in relation to the fees they pay to mayors and councillors because they are not employees of councils. Recently I was pleased to host a workshop where the obstacles that deter women from nominating to be a councillor or mayor were identified, and the lack of superannuation payments was one of the barriers raised. It can also be said that this goes some way in deterring people under 35 from representing their community on their local council.

As you know, mayors and councillors currently receive a level of remuneration that is independently set by the Local Government Remuneration Tribunal based on the application of a range of criteria. It is currently possible for councils to make superannuation contributions on behalf of mayors and councillors on a pre-tax basis out of the fees they receive from the council as determined by the Tribunal.

However, the Government recognises that not everyone agrees with the current arrangements and acknowledges the calls for councils to be required to make superannuation contributions on behalf of mayors and councillors in addition to the payment of their fees. The purpose of this discussion paper is to encourage further discussion about this issue and assist the Government in better understanding the views of the local government sector and the broader community.

The discussion paper:

- provides information on the current system for setting councillor remuneration and the legislation governing superannuation contributions for elected officials
- sets out the arguments for and against the payment of superannuation contributions for mayors and councillors, and
- provides different options and legislative models.

I welcome your input into this conversation and look forward to hearing your views.

**The Hon Shelley Hancock MP
Minister for Local Government**

1. Should mayors and councillors in NSW receive superannuation payments in addition to their fees?

Reasons that mayors and councillors should receive superannuation payments in addition to their fees can be summarised as follows:

- it will ensure that mayors and councillors are adequately remunerated for the performance of their duties
- it will address a historic anomaly that has seen mayors and councillors denied the benefit of superannuation guarantee payments enjoyed by the broader workforce, and
- it is hoped it will encourage more women to stand as candidates for election to councils.

Each of these arguments are examined below.

Are NSW mayors and councillors adequately remunerated?

In NSW, the remuneration received by mayors and councillors is independently set by an expert tribunal, the Local Government Remuneration Tribunal.

Under section 239 of the NSW *Local Government Act 1993* (the Act), the Tribunal is required to determine the categories of councils and mayoral offices and to place each council and mayoral office into one of those categories. The categories are to be determined at least once every 3 years.

To ensure that mayors and councillors receive remuneration that is commensurate with, and reflects their workload and responsibilities, the Tribunal is required to consider a range of criteria under section 240 of the Act in determining remuneration categories. These include:

- the size, physical terrain, population and the distribution of the population of each local government area
- the nature and volume of business dealt with by each council
- the nature and extent of the development of each local government area
- the diversity of the communities each council serves
- the regional, national and international significance of the council, and
- any other matters the Tribunal considers relevant to the provision of efficient and effective local government.

The Tribunal last undertook a significant review of the categories and the allocation of councils into each of the categories in 2017. The Tribunal has indicated that it will next consider the model, the criteria applicable to each group and the allocation of councils in detail in 2020.

Under section 241 of the Act, the Tribunal is required to determine, no later than 1 May in each year, for each of the categories determined under section 239, the maximum and minimum amount of fees to be paid to mayors and councillors of councils, as well as chairpersons and members of county councils.

As noted above, in determining the maximum and minimum fees payable in each of the categories, the Tribunal is required under section 242A(1) of the Act, to give effect to the same policies on increases in remuneration as the Industrial Relations Commission.

The current policy on wages is that public sector wages cannot increase by more than 2.5 per cent, and this includes the maximum and minimum fees payable to councillors and mayors and chairpersons and members of county councils.

ITEM 9 - ATTACHMENT 1
PAPER.

COUNCILLOR SUPERANNUATION DISCUSSION

However, the Tribunal is able to determine that a council can be placed into another existing or a new category with a higher range of fees without breaching the Government's wage policy pursuant to section 242A(3) of the Act. This means that where, for whatever reason, the workload or responsibilities of the mayor and councillors increase, they may receive an increase in remuneration that reflects their increased workload even if that increase exceeds the 2.5% public sector wages cap.

The current remuneration levels for mayors and councillors in each category are set out below:

Table 1: Minimum and maximum fees for NSW mayors and councillors

Category	Councils in Category	Councillor/Member Annual Fee	Mayor/Chairperson Additional Fee*	
			Minimum	Maximum
General Purpose Councils – Metropolitan	Principal CBD	1	27,640	40,530
	Major CBD	1	18,430	34,140
	Metropolitan Large	8	18,430	30,410
	Metropolitan Medium	9	13,820	25,790
	Metropolitan Small	11	9,190	20,280
General Purpose Councils – Non - metropolitan	Regional City	2	18,430	32,040
	Regional Strategic Area	2	18,430	30,410
	Regional Rural	37	9,190	20,280
	Rural	57	9,190	12,160
County Councils	Water	4	1,820	10,140
	Other	6	1,820	6,060

- Mayors and county council chairpersons receive their fee **in addition to** the fee they receive as a councillor/member.

ITEM 9 - ATTACHMENT 1
PAPER.

COUNCILLOR SUPERANNUATION DISCUSSION

A comparison of average remuneration received by mayors and councillors in NSW with the remuneration received by their counterparts in other jurisdictions indicates that NSW councillors receive similar or higher levels of remuneration than their counterparts in other jurisdictions other than Queensland.

Table 2: Interjurisdictional comparison of councillor remuneration (as paid at March 2020)

Jurisdiction	Average	Lowest Fee	% NSW fee	Highest fee	% NSW fee
NSW	24,860	9,190		40,530	
QLD	141,066	53,049	577%	160,938	397%
VIC	27,999	8,833	96%	47,165	116%
TAS	23,372	9,546	104%	37,198	92%
WA	17,634	3,589	39%	31,678	78%
NT¹	13,283	4,428	48%	22,137	55%
SA	16,215	6,500	71%	25,930	64%

Table 3: Interjurisdictional comparison of mayors' remuneration (as paid at March 2020)

Jurisdiction	Average	Lowest Fee	% NSW fee	Highest fee	% NSW fee
NSW	141,005	18,970		263,040	
QLD	185,824	106,100	1,030%	265,549	101%
VIC	131,877	62,884	331%	200,870	76%
TAS	58,430	23,863	125%	92,997	35%
WA	94,443	4,102	22%	184,784	70%
NT	73,856	24,619	130%	123,093	47%
SA	101,500	26,000	137%	177,000	67%

¹ NT's councillor and mayoral fees are based on the Councillor Member Allowances for July 2018-2019

Have NSW mayors and councillors been denied a financial benefit received by other members of the workforce through the payment of the superannuation guarantee?

The superannuation guarantee was introduced in 1992-93, with compulsory contributions rising at regular intervals from 3 per cent of wages in that year to 9 per cent in 2002-03 and 9.5 per cent in 2013-14. The superannuation guarantee is scheduled to rise incrementally from 9.5 per cent of wages today to 12 per cent by July 2025.

While superannuation guarantee payments are made in addition to an employee's wages, as the Grattan Institute has demonstrated², higher compulsory superannuation contributions are ultimately funded by lower wages. When the superannuation guarantee increases, this is wholly or mostly borne by workers who receive smaller pay rises and lower take-home pay. For example, when the superannuation guarantee increased by from 9 per cent to 9.25 per cent in 2013, the Fair Work Commission stated in its minimum wage decision that the proposed minimum wage increase was "*lower than it otherwise would have been in the absence of the Super Guarantee increase*".

Given the evidence that superannuation guarantee payments are in effect paid for by workers through lower wages, it would be over simplifying the situation to assume that workers are receiving a 9.5% supplementary payment that is being denied to NSW mayors and councillors.

The last increase in the superannuation guarantee came into effect in 2013/14 when the contribution rate increased from 9.25% to 9.5%. A comparison of increases in average weekly earnings with increases in NSW mayors' and councillors' remuneration as determined by the Tribunal since then indicates that NSW mayors and councillors have, on average, enjoyed slightly higher increases in remuneration than the rest of the community.

Table 4: Comparison of increases in average weekly earnings with increases in mayors' and councillors' remuneration

Financial year	Average weekly ordinary time earnings Aust - annual average increase June to June each year	Councillor remuneration increase 1 July
1 July 2014 – 30 June 2015	2.3%	2.5%
1 July 2015 – 30 June 2016	2.0%	2.5%
1 July 2016 – 30 June 2017	2.2%	2.5%
1 July 2017 – 30 June 2018	1.8%	2.5%
1 July 2018 – 30 June 2019	2.7%	2.5%
1 July 2019 – 30 June 2020	3.1%	2.5%

² See John Daley and Brendan Coates (2018) *Money in retirement: More than enough*. Grattan Institute. November 2018

Were councils to be required to make an additional payment on behalf of mayors and councillors equivalent to the superannuation guarantee amount (currently 9.5% of their fees) this would, in effect confer on mayors and councillors a 9.5% increase in their remuneration outside of the normal process for setting mayors' and councillors' remuneration by the Local Government Remuneration Tribunal.

This will not be a one-off increase. With the superannuation guarantee set to increase to 12% in the years up to 2025, this would see further increases to mayors' and councillors' remuneration over and above any increases approved by the Tribunal.

While the receipt of a 9.5% increase in their remuneration through the payment of the superannuation guarantee is likely to be widely supported by mayors and councillors, it is important that the community is consulted and support shown by them before changes are made.

At present it is not clear whether ratepayers would support seeing the revenue they contribute to their local councils being diverted from providing services and infrastructure to fund a 9.5% increase in remuneration for their elected representatives.

Will payment of the superannuation guarantee encourage more women to stand as candidates at council elections?

Payment of the superannuation guarantee for mayors and councillors has been promoted as an equity measure to address disparities in men's and women's superannuation balances.

Research has demonstrated that the principal impediments to more women standing as candidates at local government elections are:

- lack of awareness of local government and the role of councils and councillors
- feeling unqualified
- balancing carer and work commitments
- the investment of time required to be an effective councillor, and
- perceptions of the culture of councils and councillor conduct.³

The payment of the superannuation guarantee would benefit male and female councillors alike. In the short term, male mayors and councillors will be the principal beneficiaries of any increase in remuneration through the receipt of an additional superannuation payment given that they currently comprise 69% of councillors in NSW⁴.

Major stakeholders promoting an increase in the number of females represented on councils including Local Government NSW, Women for Election Australia, Australian Local Government Women's Association and the Country Women's Association of NSW recently noted that *"a key barrier for women standing for election to local government can be the lack of access to superannuation, with women unwilling to take on more work with insufficient remuneration"*. The stakeholders also noted *"women tend to have far lower superannuation balances than men, often due to time out of the workforce caring for family members"*.

³ See Manion, Jo and Sumich, Mark (2013), *Influencing Change – Views of elected representatives on leadership, decision making and challenges for Local Government in NSW*

⁴ See Office of Local Government (2019), *NSW Candidate and Councillor Diversity Report 2017*

ITEM 9 - ATTACHMENT 1 COUNCILLOR SUPERANNUATION DISCUSSION PAPER.

Will payment of the superannuation guarantee encourage younger people to stand as candidates at council elections?

Two separate studies undertaken by the University of Melbourne in 2014⁵ and 2015⁶ found that younger people tend not to be engaged by and are uninterested in superannuation or retirement planning. HECS repayments and saving to purchase a first home tend to be higher financial priorities for younger people than saving for retirement.

The average tenure of councillors is between one to two terms. More than three quarters (77%) of councillors elected at the 2012, 2016 and 2017 elections had served two terms or less. Assuming that councillors were to receive the superannuation guarantee of 9.5% with respect to their fees over one or two terms, as demonstrated by table 5, the value of the capital contributions made to their superannuation funds would, at retirement, represent a small proportion of their accumulated lifetime superannuation capital.

Table 5: Comparison of superannuation contribution amounts that would be made on the maximum annual fee in each category of council at a rate of 9.5% over 1 term (4 years) and 2 terms (8 years).

Category		Number of Councils in Category	Councillor/Member Maximum Annual Fee	4 years at 9.5%	8 years at 9.5%
General Purpose Councils – Metropolitan	Principal CBD	1	40,530	15,401	30,802
	Major CBD	1	34,140	12,973	25,946
	Metropolitan Large	8	30,410	11,556	23,112
	Metropolitan Medium	9	25,790	9,800	19,600
	Metropolitan Small	11	20,280	7,706	15,412
General Purpose Councils – Non-metropolitan	Regional City	2	32,040	12,175	24,350
	Regional Strategic Area	2	30,410	11,556	23,112
	Regional Rural	37	20,280	7,706	15,412
	Rural	57	12,160	4,621	9,242
County Councils	Water	4	10,140	3,853	7,706

⁵ See Ali, Paul and Anderson, Malcolm and Clark, Martin and Ramsey, Ian and Shekhar, Chander (2014), *Superannuation Knowledge, Behaviour and Attitudes in Young Adults in Australia*. CIPR Paper No. RP002/2014

⁶ See Ali, Paul and Anderson, Malcolm and Clark, Martin and Ramsey, Ian and Shekhar, Chander (2015), *No Thought for Tomorrow: Young Australian Adults' Knowledge, Behaviour and Attitudes About Superannuation*. Law and Financial Markets Review Vol. 9, No. 2, pages 90-105

ITEM 9 - ATTACHMENT 1 COUNCILLOR SUPERANNUATION DISCUSSION PAPER.

	Other	6	6,060	2,303	4,606
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How much will it cost and who will pay?

The cost of paying the superannuation guarantee for mayors and councillors will need to be met by each council out of its existing budget.

This cost will vary from council to council depending on what fees the mayor and councillors receive and how many councillors there are on the council. The table below sets out the average annual cost to councils in each remuneration category of paying the 9.5% superannuation guarantee for the mayor and each councillor based on the maximum annual fee payable in each category.

The total estimated annual cost of paying the 9.5% superannuation guarantee for mayors and councillors for the local government sector as whole is close to \$3 million (\$2,758,739).

Table 6: Average annual cost to councils of making a 9.5% superannuation contribution for mayors and councillors

Category		Councils in Category	Average annual cost of paying 9.5% superannuation contribution for mayors and councillors
General Purpose Councils – Metropolitan	Principal CBD	1	55,792
	Major CBD	1	55,886
	Metropolitan Large	8	45,973
	Metropolitan Medium	9	35,911
	Metropolitan Small	11	21,541
General Purpose Councils – Non-metropolitan	Regional City	2	46,007
	Regional Strategic Area	2	45,973
	Regional Rural	37	21,543
	Rural	57	11,762
County Councils	Water	4	9,289
	Other	6	5,081

2. Why are councils not required to make superannuation guarantee payments to mayors and councillors?

The Commonwealth *Superannuation Guarantee (Administration) Act 1993* (SG Act) imposes an obligation on an employer to pay the superannuation guarantee of 9.5% of an employee's earnings to a complying superannuation fund nominated by the employee.

The obligations under the SG Act do not extend to councils with respect to the fees they pay to mayors and councillors because they are not employees of the council for the purposes of that Act. Mayors and councillors are elected to a civic office in the council and the council is not their employer.

Section 12(9A) of the SG Act expressly excludes mayors and councillors across Australia from the definition of "employee" meaning that councils are not obliged to make superannuation guarantee payments to mayors and councillors under that Act. Section 12(9A) of the SG Act provides that, "*a person who holds office as a member of a local government council is not an employee of the council*".

Section 251 of the NSW Local Government Act also makes it clear that the payment of a fee to a mayor or councillor does not constitute the payment of a salary and mayors and councillors are not to be taken to be employees of councils because of the payment of the fee.

3. Can NSW councils make superannuation contributions on behalf of mayors and councillors as a component of their fees?

There is nothing currently preventing councils from making superannuation contributions on a voluntary basis on behalf of the mayor and councillors.

The Australian Tax Office has made a definitive ruling, (ATO ID 2007/205) that allows for mayors and councillors to redirect their annual fees into superannuation on a pre-tax basis.

In practical terms, there is nothing currently preventing mayors and councillors, who wish to make concessional contributions to their superannuation funds, from entering into an arrangement with their council under which they agree to forego part of their remuneration in exchange for the council making contributions to a complying superannuation fund on their behalf on a pre-tax basis.

Councils are also able to determine for themselves, by council resolution and/or within an appropriate council policy, if and how councillors may do this.

4. Can NSW councils make superannuation contributions on behalf of mayors and councillors *in addition to the payment of their fee?*

It is open to councils under sections 446-5(1)(a) and 12-45(1)(e) of Schedule 1 of the Commonwealth *Taxation Administration Act 1953* (TAA) to resolve that mayors and councillors are subject to Pay As You Go withholding. The resolution must be unanimous to be effective.

A resolution under sections 446-5(1)(a) and 12-45(1)(e) of Schedule 1 of the TAA operates to take the mayor and councillors out of section 12(9A) of the SG Act, which recognises that they are not employees of the council, and brings them within section 12(10) of the SG Act which states that:

A person covered by paragraph 12-45(1)(e) in Schedule 1 to the Taxation Administration Act 1953 (about members of local governing bodies subject to PAYG withholding) is an employee of the body mentioned in that paragraph.

Section 12(1) effectively deems the mayor and councillors to be employees and the council to be their employer for the purposes of the SG Act. This will mean the council will be obliged to make superannuation guarantee contributions (currently 9.5% of the mayor's and councillors' fees) to complying superannuation funds in respect of fees paid to the mayor and councillors. These contributions would be paid in addition to the fees received by the mayor and councillors.

It should be noted however that a resolution under sections 446-5(1)(a) and 12-45(1)(e) of Schedule 1 of the TAA will also result in mayors and councillors being treated as employees for a wide range of other taxation purposes. Among other things:

- the council will have to withhold amounts from the payment of fees to the mayor and councillors in accordance with section 12-45(1)(e) of Schedule 1 of the TAA
- the council will be subject to fringe benefits tax under the Commonwealth *Fringe Benefits Tax Assessment Act 1986* on the taxable value of expenses paid to and facilities provided to the mayor and councillors under the council's councillor expenses and facilities policy adopted under section 252 of the LGA, and
- the council will be obliged under Commonwealth *Child Support (Registration and Collection) Act 1988* to withhold payments from fees paid to the mayor and councillors for the purposes of making child support/maintenance/carer payments.

It is unclear however whether a resolution under sections 446-5(1)(a) and 12-45(1)(e) of Schedule 1 of the TAA is permissible under sections 248(2) and 249(3) of the Act where it would have the consequence of requiring a council to make a superannuation guarantee contribution in respect of the fees paid to councillors and the mayor that, taken together with their fees, exceeds the maximum amount determined by the Local Government Remuneration Tribunal.

It is also unclear what impact section 242A of the Act would have in relation to a council's resolution under sections 446-5(1)(a) and 12-45(1)(e) of Schedule 1 of the TAA. Section 242A of the Act places an obligation on the Local Government Remuneration Tribunal when determining the remuneration of mayors and councillors, to apply the same policies on increases in remuneration as those that the Industrial Relations Commission is required to apply under section 146C of the NSW *Industrial Relations Act 1996* when making or varying awards or orders relating to the conditions of employment of public sector employees.

It is possible that where a council is obliged to make superannuation guarantee contributions on behalf of the mayor and councillors in addition to their fee, the Tribunal may, in turn, be obliged under section 242A to make a determination reducing the mayor's and councillors' fees to ensure that the fee and superannuation contribution do not result in an increase that exceeds the 2.5% public sector wages cap.

5. What is the position in Queensland?

Section 226 of the Queensland *Local Government Act 2009* gives councils the option to pay an amount into a complying superannuation fund on behalf of the mayor and councillors up to an amount payable with respect to employees of the council. The amount paid is in addition to the amount the mayor and councillor receive as a fee. Alternatively, councils may contribute a portion of the mayor's or councillors' fees to complying superannuation fund as is the case in NSW.

6. Options

Option 1: Maintaining the status quo

Under this option, councils will continue not to be obliged to make superannuation guarantee payments on behalf of the mayor and councillors. Mayors and councillors who wish to make concessional contributions to their superannuation funds can continue to enter into an arrangement with the council under which they agree to forego part of their fee in exchange for the council making contributions to a complying superannuation fund on their behalf on a pre-tax basis.

Option 2: Amending the NSW *Local Government Act 1993* to require councils to pay a portion of the mayor's and councillors' fees equivalent to the superannuation guarantee amount into a complying superannuation fund nominated by the mayor and councillors.

Under this option, the Act would be amended to require councils to pay a proportion of the mayor's and councillors' fees equivalent to the superannuation guarantee amount into a complying superannuation fund nominated by the mayor and councillors.

Option 3: Amending the NSW *Local Government Act 1993* to require councils to pay an amount equivalent to the superannuation guarantee into a complying superannuation fund nominated by the mayor and councillors in addition to the payment of the mayor's and councillors' fees.

Under this option, all councils will be required to pay an amount equivalent to the superannuation guarantee contribution payable with respect to the mayor's and councillors' fees, into a complying superannuation fund nominated by the mayor and councillors. The payment would be made in addition to the payment of the mayor's and councillors' fees.

A supporting amendment would be required to exempt the additional payment from section 242A of the Act.

Option 4: Amend the NSW *Local Government Act 1993* to give councils the option to pay an amount equivalent to the superannuation guarantee into a

**complying superannuation fund nominated by the mayor and councillors
in addition to the mayor's and councillors' fees.**

This option is based on the Queensland model. Under this option, the payment of an additional superannuation contribution in addition to the mayor's and councillors' fees would be optional for councils. Councils would also have the option to make a superannuation contribution on behalf of the mayor and councillors as a portion of the mayor's or councillors' fees.

As with option 3, a supporting amendment would be required to exempt the additional payment from section 242A of the Act.

7. Have Your Say

We now want to hear from you.

Key questions to consider

- Should councils be required to make superannuation contributions for the mayor and councillors?
- Should contributions be made as a portion of mayors' and councillors' fees or in addition to them?
- Which is your preferred option?
- Do you have an alternative suggested option?

Submissions may be made in writing by COB Friday 8 May 2020 to the following addresses.

Post

Locked Bag 3015
NOWRA NSW 2541

Email:

olg@olg.nsw.gov.au

Submissions should be labelled 'Councillor Superannuation Consultation' and marked to the attention of OLG's Council Governance Team.

Further information

For more information, please contact OLG's Council Governance Team on (02) 4428 4100 or via email at olg@olg.nsw.gov.au.

ITEM NO. 10

**FILE NO: 20/61595
EDRMS NO: PSC2017-00178**

REQUEST FOR FINANCIAL ASSISTANCE

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

RECOMMENDATION IS THAT COUNCIL:

- 1) Approves provision of financial assistance under Section 356 of the Local Government Act 1993 from the respective Mayor and Ward funds to the following:
 - a. Nelson Bay Golf Club – Mayoral funds - \$1500 donation towards fundraiser dinner to raise funds for the ongoing care and medical expenses for Port Stephens Koalas.
 - b. Hume Community Housing – Mayoral funds - \$846 donation towards 2020 youth week project.
 - c. Boat Harbour Recreation Club – Mayoral funds - \$515 donation towards licence fee for 5 years.
 - d. Fern Bay Public School – Mayoral funds - \$1000 donation towards purchase of new playground equipment.
 - e. Raymond Terrace Men's Shed – Cr Giacomo Arnott - \$500 rapid response donation towards cost of refurbishing 100 Vinnies clothing bins.
 - f. Children's University – Mayoral funds - \$75 donation towards the support for 5 Hunter River High School students to receive a passport to learning.

BACKGROUND

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

Council's Grants and Donations Policy provides the community, the Mayor and Councillors with a number of options when seeking financial assistance from Council. Those options being:

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

Council is unable to grant approval of financial assistance to individuals unless it is performed in accordance with the Local Government Act 1993. This would mean that the financial assistance would need to be included in the Operational Plan or Council would need to advertise for 28 days of its intent to grant approval. Council can make donations to community groups.

The requests for financial assistance are shown below:

MAYORAL FUNDS – Mayor Palmer

Nelson Bay Golf Club.	A members club with a special charter to ensure the course is open every day to the thousands of visitors to Port Stephens each year.	\$1500	Donation towards fundraiser dinner to raise funds for the ongoing care and medical expenses for Port Stephens Koalas.
Hume Community Housing.	An organisation creating opportunities for people to prosper by building vibrant and connected communities.	\$846	Donation towards 2020 Youth Week project.
Boat Harbour Recreation Club.	A volunteer organisation operating within the Port Stephens local government area.	\$515	Donation towards licence fee for 5 years.
Fern Bay Public School.	A government funded primary school.	\$1000	Donation towards purchase of new playground equipment.
Children's University – University of Newcastle	A higher education participation funded program based at the University of Newcastle.	\$75	Donation towards the support for 5 Hunter River High School students to receive a passport to learning.

WEST WARD – Councillors Arnott, Jordan and Le Mottee

Raymond Terrace Men's Shed.	A non-profit organisation that aims to improve health, promote social interaction and aim to increase quality of life.	\$500	Donation towards cost of refurbishing 100 Vinnies clothing bins.
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COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2018-2021
Community Partnerships	Support financially creative and active communities.

FINANCIAL/RESOURCE IMPLICATIONS

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

LEGAL AND POLICY IMPLICATIONS

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

The Policy interpretation required is whether the Council believes that:

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

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

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Nil.

CONSULTATION

Consultation with key stakeholders has been undertaken by the General Manager's Office.

Consultation has been taken with the key stakeholders to ensure budget requirements are met and approved.

OPTIONS

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

ATTACHMENTS

Nil.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ITEM NO. 11

**FILE NO: 20/62475
EDRMS NO: PSC2017-00015**

INFORMATION PAPERS

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

RECOMMENDATION IS THAT THAT COUNCIL:

Receives and notes the Information Papers listed below being presented to Council on 14 April 2020.

No:	Report Title	Page:
1	February 2020 Cash and Investments	166
2	Petition: Ocean Avenue, Anna Bay Toilet Block	169
3	Petition: BMX (social) Track in Seaham Park, Seaham	171
4	Questions on Notice/Questions with Notice	173
5	Designated Persons' Return	175
6	Council Resolutions	176

INFORMATION PAPERS

ITEM NO. 1

FILE NO: 20/57182
EDRMS NO: PSC2006-6531

FEBRUARY 2020 CASH AND INVESTMENTS

REPORT OF: TIM HAZELL - FINANCIAL SERVICES SECTION MANAGER
GROUP: CORPORATE SERVICES

BACKGROUND

The purpose of this report is to present Council's schedule of cash and investments held at 29 February 2020.

ATTACHMENTS

- 1) February 2020 Cash and Investments. [↓](#)
- 2) February 2020 Cashflow Report. [↓](#)

ITEM 1 - ATTACHMENT 1 FEBRUARY 2020 CASH AND INVESTMENTS.

CASH AND INVESTMENTS HELD AS AT 29 FEBRUARY 2020								
ISSUER	BROKER	RATING*	DESC.	YIELD %	TERM DAYS	MATURITY	AMOUNT INVESTED	MARKET VALUE
TERM DEPOSITS								
AMP BANK ***	IMPERIUM	A+	TD	2.95%	373	13-Mar-20	1,000,000	1,000,000
WESTPAC	WESTPAC	AA-	TD	1.72%	154	25-Mar-20	1,000,000	1,000,000
ICBC	RIM	A	TD	2.93%	509	1-Apr-20	1,000,000	1,000,000
NATIONAL AUSTRALIA BANK	CURVE	AA-	TD	1.60%	183	14-Apr-20	1,000,000	1,000,000
ARAB BANK	RIM	BB+	TD	2.97%	502	15-Apr-20	1,500,000	1,500,000
BOC	CURVE	A	TD	2.88%	512	28-Apr-20	1,000,000	1,000,000
JUDO BANK	LAMINAR	NR	TD	2.70%	369	13-May-20	1,000,000	1,000,000
AMP BANK	IMPERIUM	BBB+	TD	2.10%	189	26-May-20	1,000,000	1,000,000
AMP BANK	IMPERIUM	BBB+	TD	2.10%	190	5-Jun-20	1,000,000	1,000,000
JUDO BANK	CURVE	NR	TD	2.65%	375	9-Jun-20	1,000,000	1,000,000
NATIONAL AUSTRALIA BANK	CURVE	AA-	TD	1.60%	167	23-Jun-20	1,000,000	1,000,000
NATIONAL AUSTRALIA BANK	CURVE	AA-	TD	1.60%	181	7-Jul-20	1,000,000	1,000,000
ME BANK	CURVE	NR	TD	1.60%	139	9-Jul-20	1,000,000	1,000,000
AUSTRALIAN UNITY BANK	CURVE	NR	TD	1.70%	170	24-Jul-20	1,000,000	1,000,000
DNISTER UKRAINIAN CREDIT UNION CO-OP	FIIG	NR	TD	3.00%	525	5-Aug-20	1,000,000	1,000,000
AMP BANK	CURVE	BBB+	TD	1.90%	173	10-Aug-20	600,000	600,000
JUDO BANK	CURVE	NR	TD	2.05%	362	26-Aug-20	800,000	800,000
WESTPAC	WESTPAC	AA-	FRTD	1.98%	368	15-Sep-20	1,000,000	1,000,000
NATIONAL AUSTRALIA BANK	FIIG	AA-	TD	1.50%	365	13-Oct-20	1,000,000	1,000,000
JUDO BANK	CURVE	NR	TD	2.10%	371	9-Dec-20	600,000	600,000
BNK BANK LTD	CURVE	NR	TD	1.80%	371	9-Dec-20	1,000,000	1,000,000
BNK BANK LTD	CURVE	NR	TD	1.80%	384	22-Dec-20	1,000,000	1,000,000
AUSTRALIAN UNITY BANK	CURVE	NR	TD	1.70%	337	7-Jan-21	1,000,000	1,000,000
BANK OF SYDNEY	CURVE	NR	TD	1.99%	365	18-Feb-21	750,000	750,000
JUDO BANK	CURVE	NR	TD	2.00%	363	18-Feb-21	200,000	200,000
AUSTRALIAN MILITARY BANK **	FARQUHARSON	NR	TD	1.65%	635	30-Jun-21	1,000,000	1,000,000
AUSWIDE BANK	CURVE	BBB	TD	1.75%	727	28-Sep-21	1,000,000	1,000,000
ICBC	IMPERIUM	A	TD	1.62%	729	13-Oct-21	1,000,000	1,000,000
AUSWIDE BANK	IMPERIUM	BBB	TD	1.65%	731	13-Oct-21	500,000	500,000
** Please note - Australian Military Bank Moody's rating has been upgraded to BBB (equivalent Standard and Poor's rating) since placement of Term Deposits								
*** Please note - AMP Bank's Standard and Poor's long term rating has been downgraded to BBB+ since placement of Term Deposits								
SUB TOTAL (\$)							26,950,000	26,950,000
TCORP MEDIUM TERM GROWTH FUND	TCORP	AAA					3,000,000	3,026,841
TCORP LONG TERM GROWTH FUND	TCORP	AAA					1,000,000	1,006,233
INVESTMENTS TOTAL (\$)							30,950,000	30,983,074
CASH AT BANK (\$)							7,858,516	7,858,516
TOTAL CASH AND INVESTMENTS (\$)							38,808,516	38,841,591
CASH AT BANK INTEREST RATE				1.30%				
BBSW FOR PREVIOUS 3 MONTHS				0.94%				
AVG. INVESTMENT RATE OF RETURN ON TDs				2.08%				
TD = TERM DEPOSIT								
AC = AT CALL CASH ACCOUNT								
FRTD = FLOATING RATE TERM DEPOSIT (0.98% ABOVE RBA CASH RATE)								
*STANDARD AND POORS LONG TERM RATING								
CERTIFICATE OF RESPONSIBLE ACCOUNTING OFFICER								
I HEREBY CERTIFY THAT THE INVESTMENTS LISTED ABOVE HAVE BEEN MADE IN ACCORDANCE WITH SECTION 625 OF THE LOCAL GOVERNMENT ACT 1993, CLAUSE 212 OF THE LOCAL GOVERNMENT (GENERAL) REGULATION 2005 AND COUNCIL'S CASH INVESTMENT POLICY								
T HAZELL								



Cash flow analysis 29/02/2020

CASHFLOW STATEMENT

Opening Cash and Investment 1 July 2019
Closing Cash and Investment 29 February 2020
Movement in cash

YTD	Notes
35,484,953	
38,971,933	
3,486,980	

Movement in cash represented by:

Operating Activities

Receipts from ratepayers, customers and government authorities
Payments to suppliers & employees
Interest received
Interest paid
Total

86,041,300
(63,415,353)
625,100
(276,994)
22,974,053

Investing Activities

Receipts from sale of Infrastructure, Property, Plant & Equipment
Payments for Property, Plant & Equipment
Total

1,880,608
(29,977,737)
(28,097,130)

Financing Activities

Payment of loans
Receipt of new loans
Total

(3,889,944)
12,500,000
8,610,056

Total Cash Movement

Plus: Opening Cash and Investment 1 July 2019
Closing Cash and Investment 29 February 2020

3,486,980
35,484,953
38,971,933

Budgeted Cash Movement for the Financial Year

(20,565,000)

Plus Opening Cash and Investment 1 July 2019

35,484,953

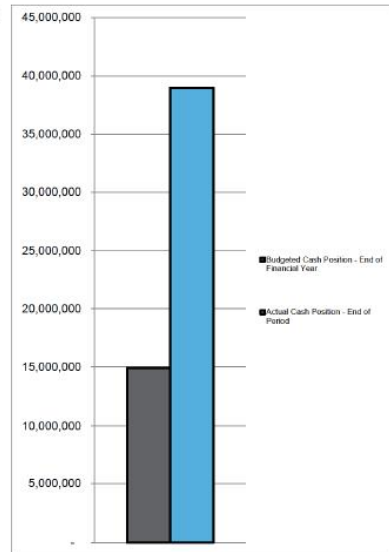
Budgeted Cash and Investment Position 30 June 2020

14,919,953

In front / (behind) on budget

24,051,980

1



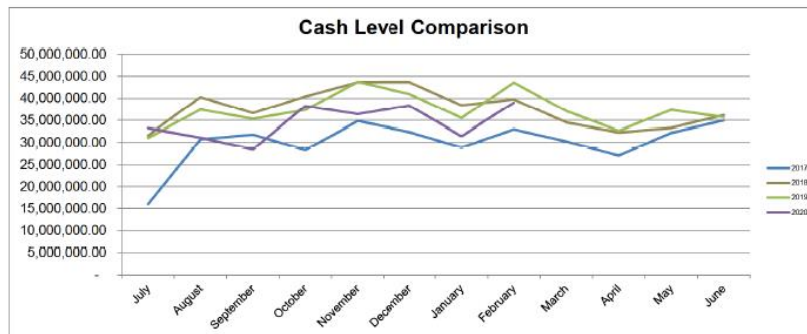
Notes

1 Council's cash position is up on the budgeted year end position predominately due to the following reasons:

- Projects that are to be funded by the repeal of the s7.11 fund are yet to be completed
- The receipt of 3rd quarter rates which will fund various projects and services over the coming months
- Receipt of FAG grant this month

Significant future cash inflows expected in next few months include various 2020 grants and Easter holiday trade.

Significant future cash outflows expected in next few months include: upgrade to Koala Sanctuary, Lionel Morton Amenities construction, Foreshore Drive - Sal Bay upgrade, Fern Bay Res park furniture & basketball halfcourt, Tomaree Rd reconstruction Marine Dr to Garden Pt PSC admin & library building refurb, RT Pigeon Club, Halifax upgrade amenities and other 2020 Community Projects.



ITEM NO. 2

**FILE NO: 20/73585
EDRMS NO: PSC2015-03017**

PETITION: OCEAN AVENUE, ANNA BAY TOILET BLOCK

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

BACKGROUND

The purpose of this report is to advise Council of a petition received with 465 signatures from residents and visitors of Anna Bay wanting to retain the Ocean Avenue, Anna Bay toilet block.

The removal of this building is part of the overall capital works upgrade at Robinson Reserve to be undertaken this financial year.

ATTACHMENTS

- 1) Petition Ocean Avenue, Anna Bay toilet block. [↓](#)

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ITEM 2 - ATTACHMENT 1 PETITION OCEAN AVENUE, ANNA BAY TOILET BLOCK.

PAGE 2 OF 36

SAVE OCEAN AVENUE TOILET BLOCK

We the residents & visitors of Anna Bay want to save these toilets.
We understand that a new toilet facility at Robinson Reserve is
being constructed in February within 200 meters

We would like the ocean avenue toilets retained.

like Boat Harbour who has toilets in two areas we need more toilets not less.

Portable toilets are brought in during peak season this proves we need more not less toilets!!

ITEM NO. 3

**FILE NO: 20/76346
EDRMS NO: PSC2015-03017**

PETITION: BMX (SOCIAL) TRACK IN SEAHAM PARK, SEAHAM

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

BACKGROUND

The purpose of this report is to advise Council of a petition received with 181 signatures wanting to put a BMX bike track for social riding in Seaham Park, Seaham.

Pursuant to the Port Stephens Recreation Strategy, Seaham Park is nominated as a district park facility. Skate parks, BMX, bike and scooter paths are all listed as suitable embellishments for a district park facility. Limited detail has been provided relating to the size, scale or proposed location for the project within Seaham Park.

Council does not currently have funding allocated for this project within the Capital Works program and the project is not listed within the Capital Works Plus Program. Whilst monetary support cannot currently be provided by Council, staff can provide assistance to the group in terms of suitably scoping, designing and costing this type of a project to make it suitable for future grant applications.

ATTACHMENTS

- 1) Petition BMX track in Seaham Park. [↓](#)

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

BMX (social) Bike Track in Seaham Park

To: Seaham Park Committee, Mayor Palmer, Councillor Le Mottee and Councillor Jordan

We would like to have a BMX Bike Track for social bike riding in the back section of Seaham Park. Many families can participate including Mums, Dads and kids. Girls too! We would like a BMX Bike Track like the one at Salt Ash.

ITEM NO. 4**FILE NO: 20/79493
EDRMS NO: PSC2017-00019****QUESTIONS ON NOTICE/QUESTIONS WITH NOTICE****REPORT OF: WAYNE WALLIS - GENERAL MANAGER
GROUP: GENERAL MANAGER'S OFFICE****BACKGROUND**

The purpose of this report is to provide a response to Questions taken on Notice in accordance with the Code of Meeting Practice.

Item:	1																						
Councillors:	Cr Giacomo Arnott																						
Date of Ordinary Council meeting:	11 February 2020																						
Question on Notice:	Request for details on the quarterly spend on consultancies and legal expenses.																						
Response:	<p>Consultancies:</p> <table><tr><td>Plans of management</td><td>\$40,000</td></tr><tr><td>Planning issues/Kings Hill</td><td>\$40,000</td></tr><tr><td>Service review consultants</td><td>\$60,000</td></tr><tr><td>Training/coaching</td><td>\$35,000</td></tr><tr><td>IT assistance</td><td>\$10,000</td></tr><tr><td>Other – small irregular</td><td>\$105,000</td></tr><tr><td>TOTAL:</td><td>\$290,000</td></tr><p>Legal Costs:</p><table><tr><td>Litigation</td><td>\$126,000</td></tr><tr><td>Agreements & Advices</td><td>\$21,000</td></tr><tr><td>Other – non specific</td><td>\$62,000</td></tr><tr><td>TOTAL:</td><td>\$209,500</td></tr></table></table>	Plans of management	\$40,000	Planning issues/Kings Hill	\$40,000	Service review consultants	\$60,000	Training/coaching	\$35,000	IT assistance	\$10,000	Other – small irregular	\$105,000	TOTAL:	\$290,000	Litigation	\$126,000	Agreements & Advices	\$21,000	Other – non specific	\$62,000	TOTAL:	\$209,500
Plans of management	\$40,000																						
Planning issues/Kings Hill	\$40,000																						
Service review consultants	\$60,000																						
Training/coaching	\$35,000																						
IT assistance	\$10,000																						
Other – small irregular	\$105,000																						
TOTAL:	\$290,000																						
Litigation	\$126,000																						
Agreements & Advices	\$21,000																						
Other – non specific	\$62,000																						
TOTAL:	\$209,500																						

ATTACHMENTS

Nil.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ITEM NO. 5

**FILE NO: 20/62863
EDRMS NO: PSC2019-02300**

DESIGNATED PERSONS' RETURN

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

BACKGROUND

The purpose of this report is to table Designated Persons' Return/s (return) submitted by new Council employees.

In accordance with the Part 4 – Pecuniary Interest of the Code of Conduct, all new employees are required to submit a return within 3 months of commencement. Returns are to be tabled at the first Council meeting after the lodgement date.

The following is a list of position/s who have submitted return/s:

- Community Services Section Manager (PSC401).
- Vegetation Management Officer (PSC025).

ATTACHMENTS

Nil.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

- 1) Designated Persons' Returns.

ITEM NO. 6

**FILE NO: 20/34968
EDRMS NO: PSC2017-00105**

COUNCIL RESOLUTIONS

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

BACKGROUND

The purpose of this report is to inform Elected Members of the status of all matters to be dealt with arising out of the proceedings of previous meetings of the Council in accordance with the Code of Meeting Practice.

ATTACHMENTS

- 1) Corporate Services Group report. [↓](#)
- 2) Development Services Group report. [↓](#)
- 3) Facilities & Services Group report. [↓](#)
- 4) General Manager's Office report. [↓](#)

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ITEM 6 - ATTACHMENT 1 CORPORATE SERVICES GROUP REPORT.



Outstanding	Division:	Corporate Services	Date From:	26/09/2017
Action Sheets			Date To:	10/03/2020
Report			Printed:	Monday, 6 April 2020

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 27/03/2018	Meyn, Janet	COMPULSORY ACQUISITION OF AN EASEMENT FOR ACCESS OVER PART OF 6 GOVERNMENT ROAD, SHOAL BAY	30/06/2020	28/03/2018	
13 066		Foster, Carmel				18/66656
2 Apr 2020 - Property Services are awaiting update from Office of Local Government.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 26/06/2018	Foster, Carmel	RECLASSIFICATION OF 109 FORESHORE DRIVE, SALAMANDER BAY	1/08/2020	27/06/2018	
2		Foster, Carmel				18/138953
3 April 2020 - Awaiting further information on grants for the funding of the Tomaree Sports Complex.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 12/02/2019	Meyn, Janet	King Street, Raymond Terrace Easements	31/05/2020	14/02/2019	
3		Foster, Carmel				19/39843
2 Apr 2020 - Property Services awaiting Office of Local Government to advise.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 28/05/2019	Meyn, Janet	PROPOSED ACQUISITION OF FORMER FIRE STATION SITE - 51 WILLIAM STREET, RAYMOND TERRACE	30/06/2020	29/05/2019	
5 109		Foster, Carmel				19/148388
2 Apr 2020 - Property Services have approved the draft Gazette and are awaiting receipt of the formal approval to acquire.						

ITEM 6 - ATTACHMENT 1 CORPORATE SERVICES GROUP REPORT.



Outstanding	Division:	Corporate Services	Date From:	26/09/2017
Action Sheets			Date To:	10/03/2020
Report			Printed:	Monday, 6 April 2020

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 28/05/2019	Meyn, Janet	COMPULSORY ACQUISITION OF PART OF VICTORIA PARADE RESERVE NELSON BAY FOR ROAD PURPOSES	30/06/2020	29/05/2019	
6		Foster, Carmel				19/148388
110						
2 Apr 2020 - Property Services are awaiting status from Office of Local Government.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 23/07/2019	Meyn, Janet	GRANT OF EASEMENTS IN FAVOUR OF AGL - PUNT ROAD, TOMAGO	30/06/2020		
7		Foster, Carmel				19/200498
169						
2 Apr 2020 - Legal Negotiations are ongoing with AGL. PSC Legal are reviewing.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 8/10/2019	Meyn, Janet	EASEMENT TO DRAIN WATER - KINGSLEY DRIVE AND CORYULE STREET, BOAT HARBOUR	30/06/2020	9/10/2019	
1		Foster, Carmel				19/331292
191						
2 Apr 2020 - Property Services have agreement from all land owners. Execution and registration of documents is progressing pending receipt of production details from one land owner.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 12/11/2019	Meyn, Janet	SALE OF PART 13 SCHOOL DRIVE, TOMAGO	31/03/2020	13/11/2019	
1		Foster, Carmel				19/364714
217						
2 Apr 2020 - All properties due to settle in April.						

ITEM 6 - ATTACHMENT 1 CORPORATE SERVICES GROUP REPORT.



Outstanding	Division:	Corporate Services	Date From:	26/09/2017
Action Sheets			Date To:	10/03/2020
Report			Printed:	Monday, 6 April 2020

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 10/12/2019	Meyn, Janet	1 CENTRAL AVENUE, SALAMANDER BAY (LOT 8)	31/03/2020	11/12/2019	
1		Foster, Carmel				19/388450
267						
2 Apr 2020 - Council and TAFE have finalised the Lease. Supplementary business paper going up on 28/04/2020.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 11/02/2020	Meyn, Janet	MEDOWIE SPORTS & COMMUNITY FACILITY - LIQUOR LICENCE	30/04/2020	12/02/2020	
8		Foster, Carmel				20/39141
013						
2 Apr 2020 - Negotiations delayed due to COVID-19.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 11/02/2020	Meyn, Janet	RENEWAL OF OPTUS LEASE - 9 TARRANT ROAD, SALAMANDER BAY	30/04/2020	12/02/2020	
1		Foster, Carmel				20/39141
027						
2 Apr 2020 - PSC are waiting for Optus to issue the Lease for signing. The site has now been surveyed and the survey approved by PSC.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 11/02/2020	Meyn, Janet	COMPULSORY ACQUISITION OF PART 879 SWAN BAY ROAD, SWAN BAY FOR ROAD WIDENING PURPOSE	25/02/2021	12/02/2020	
2		Foster, Carmel				20/39141
028						
2 Apr 2020 - Property Services have submitted an application to the Office of Local Government. Awaiting Local Government response.						

ITEM 6 - ATTACHMENT 1 CORPORATE SERVICES GROUP REPORT.



Outstanding	Division:	Corporate Services	Date From:	26/09/2017
			Date To:	10/03/2020
Action Sheets Report			Printed:	Monday, 6 April 2020

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 11/02/2020	Meyn, Janet	PROPOSED SALE OF LOT 7, CENTRAL AVENUE, SALAMANDER BAY	25/02/2021	12/02/2020	
3 029		Foster, Carmel				20/39141
2 Apr 2020 - Draft contract to be prepared and issued to the purchaser.						

ITEM 6 - ATTACHMENT 2 DEVELOPMENT SERVICES GROUP REPORT.



Outstanding	Division:	Development Services	Date From:	26/09/2017
Action Sheets			Date To:	10/03/2020
Report			Printed:	Monday, 6 April 2020

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 11/02/2020	Drinan, Kate	Development Application 16-2019-270-1 for the demolition of existing structures and construction of a new single storey dwelling and garage at 862 Paterson Road, WOODVILLE Lot:510 DP:1150491	28/04/2020	12/02/2020	
1		Crosdale, Timothy				20/39141
006						
3 Apr 2020 - Council resolved to defer this item. A further report is scheduled for Council in May 2020.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 11/02/2020	Bernasconi, Steven	PORT STEPHENS ANNUAL AWARDS POLICY	30/06/2020	12/02/2020	
4		Crosdale, Timothy				20/39141
3 April 2020 - Further information has been requested from Councillors via PS newsletter. This feedback will inform the revised Guidelines which is scheduled for final completion in June 2020.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 25/02/2020	Peart, Steven	Climate Change	31/07/2020	26/02/2020	
2		Crosdale, Timothy				20/50488
3 April 2020 - The Climate Action Policy is identified on the Natural Resources program of work for 2020-2021.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 10/03/2020	Peart, Steven	Tree Moratorium	31/07/2020	11/03/2020	
2		Crosdale, Timothy				20/64059
055						
3 April 2020 - Scheduled for completion in July 2020.						

ITEM 6 - ATTACHMENT 2 DEVELOPMENT SERVICES GROUP REPORT.

Outstanding	Division:	Development Services	Date From:	26/09/2017
			Date To:	10/03/2020
Action Sheets Report			Printed:	Monday, 6 April 2020

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 10/03/2020	Pearl, Steven	Pomfrett Cottage, Woodville	24/03/2020	11/03/2020	
5 058		Crosdale, Timothy				20/64059
3 Apr 2020 - Council meeting on 24 March 2020 cancelled. Item deferred to 14 April 2020.						

ITEM 6 - ATTACHMENT 3 FACILITIES & SERVICES GROUP REPORT.



Outstanding	Division:	Facilities & Services	Date From:	26/09/2017
Action Sheets			Date To:	10/03/2020
Report			Printed:	Monday, 6 April 2020

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 27/03/2018	Kable, Gregory	Lease of grounds of 43, 45, 47 and 47A Tanilba Avenue Tanilba Bay (Lot 238, Lot 270 and Lot 271 DP753194, Lot 342 DP704442) to Calvary Retirement Communities Hunter-Manning Limited ACN 102625212.	29/05/2020	28/03/2018	
14 067		Kable, Gregory				18/66656
25 Mar 2020 - Once approval from Crown Lands comes through it then has to go to both the Worimi Land Council and the NSW Local Aboriginal Council as both have land claims on this parcel of land.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 10/04/2018	Maretich, John	BOBS FARM DRAINAGE	31/12/2020	11/04/2018	
2 084		Kable, Gregory				18/75830
3 Apr 2020 - Proposing to adopt these as Council Assets. Will report to Council in 2020.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 9/07/2019	Maretich, John	ROCK REVETMENT AT KANGAROO POINT, SOLDIERS POINT	31/07/2020		
2 155		Kable, Gregory				19/186501
3 Apr 2020 - Council staff will seek to identify grant funding opportunities for this project which is currently unfunded.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 10/12/2019	Maretich, John	Exemption for environmental approvals for non-maintenance road improvement works	30/04/2020	11/12/2019	
2 259		Kable, Gregory				19/388450
3 Apr 2020 - Currently compiling information to form part of letter to the NSW State Government requesting an exemption for environmental approvals for non-maintenance road improvement works that occur in coastal management (or buffer) areas.						

ITEM 6 - ATTACHMENT 3 FACILITIES & SERVICES GROUP REPORT.



Outstanding	Division:	Facilities & Services	Date From:	26/09/2017
Action Sheets			Date To:	10/03/2020
Report			Printed:	Monday, 6 April 2020

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 10/12/2019	Maretich, John	SMART Parking	31/03/2020	11/12/2019	
3		Kable, Gregory				19/388450
261						
3 Apr 2020 - Following Community Consultation, proposed projects are being reprioritised with a funding source strategy being reformulated. To be reported to Council in April. Pending Covid-19 allocation of Council meetings.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 10/12/2019	Maretich, John	Solar Infrastructure	8/12/2020	11/12/2019	
6		Kable, Gregory				19/388450
264						
3 Apr 2020 - In the process of engaging a consultant to undertake building an energy efficient study.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 10/12/2019	Gutsche, Tammy	GREEN WASTE DROP OFF - SALAMANDER BAY	18/12/2020	11/12/2019	
7		Kable, Gregory				19/388450
265						
25 Mar 2020 - Will be prepared with the Waste Management Strategy.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 11/02/2020	Maretich, John	Anderson Oval, Lakeside, Raymond Terrace	30/06/2020	12/02/2020	
3		Kable, Gregory				20/39141
024						
3 Apr 2020 - Investigate options for potential sporting uses and/or leisure uses for the large oval situated on the southern side of Lakeside, known as Anderson Oval.						

ITEM 6 - ATTACHMENT 3 FACILITIES & SERVICES GROUP REPORT.



Outstanding	Division:	Facilities & Services	Date From:	26/09/2017
Action Sheets			Date To:	10/03/2020
Report			Printed:	Monday, 6 April 2020

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 25/02/2020	Gutsche, Tammy	Chemical Clean Out	30/04/2020	26/02/2020	
1		Kable, Gregory				20/50488
039						
25 Mar 2020 - 1. Letter has been sent to the EPA and we are currently waiting on their response. 2. Letter was sent to Suez with the response that they are unable to have this or staff this on site.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 25/02/2020	Maretich, John	Indoor Sports Facility	30/06/2021	26/02/2020	
4		Kable, Gregory				20/50488
042						
3 Apr 2020 - Undertake community consultation and needs analysis as per the background of the NOM.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 10/03/2020	Maretich, John	Anti-bacterial Hand Sanitisers to be installed in Public Amenities	30/06/2020	11/03/2020	
1		Kable, Gregory				20/64059
054						
3 Apr 2020 - Ongoing investigations and cost gathering for installation.						

ITEM 6 - ATTACHMENT 4 GENERAL MANAGER'S OFFICE REPORT.



Outstanding	Division:	General Manager's Office	Date From:	26/09/2017
			Date To:	10/03/2020
Action Sheets Report			Printed:	Monday, 6 April 2020

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 10/03/2020	Wickham, Tony	POLICY REVIEW: RECEIPT OF PETITIONS POLICY	30/04/2020	11/03/2020	
3		Wallis, Wayne				20/64059
050						
3 Apr 2020 - This policy is on public exhibition from 19 March to 16 April 2020.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 10/03/2020	Wickham, Tony	POLICY REVIEW: Statement of Business Ethics policy	30/04/2020	11/03/2020	
4		Wallis, Wayne				20/64059
051						
3 Apr 2020 - This policy is on public exhibition from 19 March to 16 April 2020.						

NOTICES OF MOTION

NOTICE OF MOTION

ITEM NO. 1

**FILE NO: 20/65316
EDRMS NO: PSC2017-00019**

NAMING OF SKATE PARK, ROBINSON RESERVE, ANNA BAY

COUNCILLOR: CHRIS DOOHAN

THAT COUNCIL:

- 1) Name and celebrate the skate park (once completed) in Robinson Reserve, Anna Bay as the 'Shirley O'Brien Skate Park'.

BACKGROUND REPORT OF: JOHN MARETICH – ASSET SECTION MANAGER

BACKGROUND

The late Shirley O'Brien served as a Councillor on Port Stephens Council between 2008 and 2012.

The NSW Geographical Names Act 1966 empowers the Geographic Naming Board (GNB) as the body responsible for overseeing the formal naming of places. The GNB Place Naming Policy sets out the rules and regulations that apply to such applications.

Relative to this notice of motion, the policy states that 'personal names, including those of persons still living, may be used for built features e.g. pavilions and grandstands etc., however these features are not formally assigned by the GNB and are not covered by the Act.' As such, the formal naming of a recreation asset such as a skate park would not be generally supported by GNB.

As an alternative to the above process, Council may name assets or projects by dedication in an informal manner (such as sporting fields, community buildings etc.). Although the GNB Policy does not strictly apply in this instance, it does provide guidance as to what information should be considered when assessing commemorative naming requests. The GNB Policy offers the following guidelines regarding association or contribution for naming:

- Two or more terms of office on the governing local government council.
- Twenty or more years association with a local community group or service club.
- Twenty or more years of association or service with a local or state government or organisation.
- Action by an individual to protect, restore, enhance or maintain an area that produces substantial long term improvements for the community.

- The death of a person within a place is not solely to be considered sufficient justification for commemoration.
- Local residents of note.

ATTACHMENTS

Nil.

NOTICE OF MOTION

ITEM NO. 2

**FILE NO: 20/65312
EDRMS NO: PSC2017-00019**

POMFRETT COTTAGE, WOODVILLE

COUNCILLOR: GIACOMO ARNOTT

THAT COUNCIL:

- 1) Prepare and submit a nomination for Pomfrett's Cottage (slab cottage) at 862 Paterson Road, Woodville to be listed on the State Heritage Register.
- 2) Write to the Minister responsible for heritage requesting:
 - a. The Minister make an interim heritage order for Pomfrett's Cottage to protect it for 12 months, pending the assessment of the nomination for listing on the NSW Heritage Register.
 - b. The Minister enters into a heritage agreement with the owner with respect to the conservation of Pomfrett's Cottage, if it is listed.

BACKGROUND REPORT OF: STEVEN PEART – STRATEGY AND ENVIRONMENT SECTION MANAGER

BACKGROUND

Pomfrett's Cottage at 862 Paterson Road, Woodville is listed in the Port Stephens Local Environmental Plan 2013 as an archaeological site of local heritage significance.

Any person or organisation can nominate a place or object believed to be of State significance for listing on the State Heritage Register. A nomination form and the Guidelines for Nomination to the State Heritage Register outline the requirements for making a nomination. An application for State listing must demonstrate that the place or object is particularly important in the context of the whole of NSW, beyond the local area or region.

Interim heritage orders protect potential items of State heritage significance for a maximum 12 months. Interim heritage orders prevent demolition, damage, building works and other development without the approval of the Heritage Council.

A request for an interim heritage order must demonstrate that the place or object is particularly important in the context of the whole of NSW, beyond the local area or region.

The Minister may enter into a heritage agreement with the owner of an item that is listed on the State Heritage Register with respect to the conservation of the item. The Minister is to obtain and consider the advice of the Heritage Council before entering into a heritage agreement. A heritage agreement can include requirements for conservation work and loans to fund restoration work.

ATTACHMENTS

Nil.

NOTICE OF MOTION

ITEM NO. 3

**FILE NO: 20/81018
EDRMS NO: PSC2017-00019**

COVID-19 DEBT AND HARDSHIP ARRANGEMENTS

COUNCILLOR: GIACOMO ARNOTT

THAT COUNCIL:

- 1) As a result of the Coronavirus situation, in relation to debt recovery, direct the General Manager to:
 - a. suspend all internal debt recovery action arising from unpaid rate notices.
 - b. not engage any external debt collection agencies for unpaid rate notices.
 - c. not commence any legal action for debts arising out of unpaid rate notices.
- 2) As a result of the Coronavirus situation, in relation to arrangements to pay rates and charges:
 - a. allow ratepayers to defer rate payment in case of hardship, by up to 12 months, without interest accruing during the deferral period.
 - b. make the overdue amount payable within 12 months of the deferral ending.
- 3) As a result of the Coronavirus situation, in relation to the hardship provisions:
 - a. provide a report to each Council meeting outlining how much money is left in the bucket of money for each participating local welfare/counselling service, so that Council can determine whether it is necessary to increase their annual limits.
- 4) These arrangements are to last until either 31 December 2020, or 2 months after all restrictions currently in place by the Federal Government are lifted.

BACKGROUND REPORT OF: TIM HAZELL – FINANCE SECTION MANAGER

BACKGROUND

Council has an extensive Debt Recovery and Hardship Policy that provides financial assistance to ratepayers and residents who may be experiencing financial hardship.

The policy provides for a formal approach to be made to Council on an individual basis for anyone experiencing financial hardship and an assessment will be made on that application.

The policy is aimed at providing assistance to the particular individual in assessing their own circumstances. There is a number of assistance packages that can be provided in the policy, with agreements reached on an arrangement to pay process, to the formal waiving of interest in certain circumstances.

The availability of financial assistance measures under this policy are available on Council's website.

Council has already taken the approach not to proceed with legal action through external agents. It may still be prudent to issue reminder notices following the next instalment, due end of May, but an assessment on this situation will be made at that point. Legal action will be held in abeyance for the foreseeable future.

During the Special Rate Variation application process it was proposed that the Debt Recovery and Hardship Policy would be expanded and an annual sum would be made available to a number of local charities to assist with any financial hardship. As the SRV application was not successful the proposed amendments to the policy were not taken up.

There have been no identified funding sources provided with this Notice of Motion.

ATTACHMENTS

Nil.

NOTICE OF MOTION

ITEM NO. 4

**FILE NO: 20/84094
EDRMS NO: PSC2017-00019**

HOLIDAY VAN OWNERS

COUNCILLOR: GIACOMO ARNOTT

THAT COUNCIL:

- 1) In light of the Coronavirus situation, and the fact that Holiday Parks have been closed to Holiday Van Owners:
 - a. Either:
 - i. Calculate the remaining entitlement for all Holiday Van Owners for the 2019 to 2020 contract year.
 1. Separate those with less than 30 days of their entitlement remaining.
 2. Amend the fees and charges for those with more than 30 days of their entitlement remaining, to make the amount payable for occupancy fees Nil for the remainder of the financial year/contract.
 - ii. Or, for all holiday van owners:
 1. Amend the fees and charges to make the amount payable for occupancy fees Nil for the remainder of the financial year/contract.
 - b. For all those who have had their occupancy fees set to Nil for the remainder of the financial year/contract, refund April occupancy fees.
- 2) That the cost of the fee waiver be funded from the Holiday Park operating budget.

**BACKGROUND REPORT OF: KIM LATHAM – HOLIDAY PARK SECTION
MANAGER**

BACKGROUND

Council presently has 288 holiday van owners who pay on average \$500 per calendar month to locate a holiday van at one of Council's holiday parks. This agreement provides that the van owner has access to the van for a total of 150 days for the agreed annual fee with additional nights' payable at the daily tariff rate applicable at the time of stay up to a maximum of 180 days.

The 180 day length of stay is referenced by the Holiday Parks (Long-term Casual Occupation) Act 2002 and has been a term and condition on these van owners for a considerable time.

Each year the agreement is renegotiated and renewed as appropriate. While the length of stay is mandated at no more than 180 days per year, this is not strictly policed due to the difficulties in assessing the daily movements of the owners. It has been the operational practice to ask van owners to self-police this rule and the arrangement has generally been accepted as appropriate.

It is therefore difficult to assess with any great accuracy which van owners may have used their full entitlement for the year and those that may not have. It is conceded that with the Government closure of all holiday parks to assist with the social isolation aspect of the fight on COVID-19 virus and the further decision to severely limit domestic travel, then some van owners may not have used their full annual entitlement.

Holiday Park staff are currently working with our booking provider to devise a solution to capture this data for the new occupancy agreement period 2020 to 2021.

A number of similarly operated holiday parks within the region have been canvassed and the majority are not providing financial relief.

Holiday van owners who are experiencing financial hardship have been advised of Council's Debt Recovery and Hardship Policy and have been encouraged to make application under that policy.

All applications will be assessed on their individual merits.

There have been no identified funding sources provided with this Notice of Motion.

ATTACHMENTS

Nil.

CONFIDENTIAL ITEMS

In accordance with Section 10A, of the Local Government Act 1993, Council can close part of a meeting to the public to consider matters involving personnel, personal ratepayer hardship, commercial information, nature and location of a place or item of Aboriginal significance on community land, matters affecting the security of Council, Councillors, staff or Council property and matters that could be prejudice to the maintenance of law.

Further information on any item that is listed for consideration as a confidential item can be sought by contacting Council.