

# NOTICE OF ORDINARY MEETING

## 22 JUNE 2021



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)	Council Chambers
Followed by:	Ordinary Meeting	Council Chambers

### 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.

For the safety and wellbeing of the public, no signs, placards or other props made from material other than paper will be permitted in the Council Chamber. No material should be larger than A3 in size.

Food and beverages are not permitted in the Council Chamber.

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## **BUSINESS**

- 1) Opening meeting.
- 2) 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.
- 3) Acknowledgement of Country - Today, we are meeting on Worimi Country, we acknowledge the past, we are working towards a better tomorrow.
- 4) Apologies and applications for a leave of absence by Councillors.
- 5) Confirmation of minutes Ordinary Meeting of 8 June 2021.
- 6) Disclosure of interests.
- 7) Mayoral minute(s) – if submitted
- 8) Motions to close meeting to the public – if submitted.
- 9) Reports to Council.
- 10) General Manager's reports – if submitted.
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- 12) Questions on Notice.
- 13) Notices of motions – if submitted.
- 14) Rescission motions – if submitted.
- 15) Confidential matters – if submitted.
- 16) Conclusion of the meeting.



## **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.

**ORDINARY COUNCIL - 22 JUNE 2021**

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 <sup>1</sup>	
Nature of the land that is subject to a change in zone/planning control by the proposed LEP (the subject land) <sup>2</sup> [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]	

<sup>1</sup> 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.

<sup>2</sup> 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"/>	<b>pecuniary</b> conflict of interest
<input type="checkbox"/>	<b>significant</b> non pecuniary conflict of interest
<input type="checkbox"/>	<b>less than significant</b> non- pecuniary conflict of interest

in this item. The nature of the interest is \_\_\_\_\_

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**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.)**

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**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.

# MOTIONS TO CLOSE

ITEM NO. 1

FILE NO: 21/162848  
EDRMS NO: PSC2018-02069

**MOTION TO CLOSE**

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

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**RECOMMENDATION:**

- 1) That pursuant to section 10A(2) (c) 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 **Proposed sale of Council owned land - Salamander Bay**.
  - 2) That the reasons for closing the meeting to the public to consider this item is that the discussion will include information containing:
    - information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business.
  - 3) That the report remain confidential and the minute be released in accordance with Council's resolution.
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# COUNCIL REPORTS

**ITEM NO. 1****FILE NO: 21/133400  
EDRMS NO: 16-2020-811-1**

**DEVELOPMENT APPLICATION 16-2020-811-1 FOR CONSTRUCTION AND USE OF 4 STOREY RESIDENTIAL FLAT BUILDING (3 APARTMENTS), DEMOLITION OF EXISTING SINGLE STOREY DWELING, ASSOCIATED LANDSCAPING, CIVIL WORKS AND CAR PARKING AT 10 TOMAREE ROAD, SHOAL BAY (LOT: 31 DP: 17513)**

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

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Support the Clause 4.6 variation request to the building height for the reasons outlined within this report.
- 2) Approve Development Application DA No. 16-2020-811-1 for the construction of a 4 storey residential flat building (3 apartments), demolition of existing single storey dwelling, associated landscaping, civil works and car parking at 10 Tomaree Road Shoal Bay (Lot: 31 DP: 17513) subject to the conditions contained in **(ATTACHMENT 3)**.

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**BACKGROUND**

The purpose of this report is to present Development Application (DA) 16-2020-811-1 for the construction of a 4 storey residential flat building (3 apartments), demolition of existing single storey dwelling, associated landscaping, civil works and car parking to Council for determination.

A summary of the DA and property details is provided below:

Subject Land:	10 Tomaree Road, Shoal Bay (Lot 31 DP 17513)
Total Area:	533m <sup>2</sup>
Zoning:	R3 Medium Density Residential Zone
Submissions:	21 submissions were received
Key Issues:	The key issues identified throughout the assessment of the DA relate to building height, privacy, overshadowing and building design
Development Plans	Provided to Councillors separately due to privacy and copyright legislation

The DA has been reported to Council in accordance with Council's Planning Matters to be Reported to Council Policy as the DA includes a request to vary a development

standard by greater than 10%. The development standard is Clause 4.3 – Height of Buildings and the extent of the variation is 19.4%.

State Environmental Planning Policy 65 – Design of Residential Apartment Development does not apply to the development, as the policy only applies to residential flat buildings with 4 or more apartments. However, a merit assessment has been undertaken against the Apartment Design Guide (ADG) given there are no specific controls applicable to residential flat building (RFB) developments within the Port Stephens Development Control Plan 2014 (DCP 2014).

A locality plan is provided at **(ATTACHMENT 1)**.

#### Proposal

The DA proposes the construction and use of a 4 storey residential flat building (3 apartments), demolition of existing single storey dwelling, associated landscaping, civil works and car parking.

Each of the apartments includes 4 bedrooms, 1 bathroom and 2 ensuites, open plan living, dining and kitchen and deck oriented to Tomaree Road. A basement car park is provided with 6 car spaces.

No subdivision of the building is proposed.

#### Site Description and History

The site currently contains a single storey dwelling and several non-native trees. The lot is relatively narrow, measuring 15m in width.

The topography of the site is sloped, rising from 13.5m Australian Height Datum (AHD) at the front of the site to 15.8m AHD at the rear.

Adjoining the site to the north is a split level 4 storey residential flat building, known as the 'The Crest'. To the west, on the opposite side of Tomaree Road is a 7 storey tourist and visitor accommodation building. Adjoining lots to the south consist of low density detached housing. To the east of the site upslope from the site is a split level 3 storey multi-dwelling housing development known as 'Bahia'.

Sites to both the north and west of the site are subject to a 15m maximum building height which is greater than the 9m maximum building height allocated to the site.

The Shoal Bay Local Centre (Zoned B2) is located immediately to the west of the site.

Key Issues

The key issues identified throughout the assessment of the DA relate to the proposed exceedance of the building height development standard, privacy, overshadowing, building design and car parking.

A detailed assessment of the DA is contained within the Planners Assessment Report (**ATTACHMENT 2**).

Building Height

The DA exceeds the maximum allowable building height for the site prescribed under Clause 4.3 of the Port Stephens LEP 2013 (LEP 2013). The DA proposes a maximum building height of 10.75m, which exceeds the 9m height limit; representing a 19.4% variation to the development standard.

A request to vary the building height development standard has been submitted by the applicant in accordance with Clause 4.6 of the LEP 2013. That request has been reviewed and the following is noted:

- There are a number of comparatively tall buildings in the nearby area, including the neighbouring 4 storey residential flat building to the north and a 7 storey tourist and visitor accommodation building, directly opposite the site on Tomaree Road. Other comparatively tall buildings are prevalent in the broader Shoal Bay area
- The neighbouring Crest apartments to the north is a comparatively tall development, however, does not fully utilise the available 15m height limit. The proposal has a maximum height of 10.75m, which despite the variation, is considerably less than the adjoining height limit of 15m
- When viewed from the street, the highest point corresponds with the ridge of the skillion roof at 10.758m, which decreases to a height of 10.2m (13% variation) across the frontage
- The site slopes upward toward the rear of the site. Due to the proposed cut into this slope, at the rear of the development, the highest point is 9.3m, representing only a minor variation
- The design includes articulation and changes in colours and material finishes in order to adequately address the developments perceived bulk and scale. As a result, the development would not be inconsistent with the character of the area
- The proposed development maintains acceptable privacy and solar access to neighbouring properties, consistent with the requirements of the ADG, despite the height variation.

It is considered that the applicant's Clause 4.6 variation request adequately demonstrates that there are sufficient environmental planning grounds to justify varying the height of buildings standard. On this basis, the building height variation is supported. A detailed assessment against Clause 4.6 is contained within the Planners Assessment Report (**ATTACHMENT 2**).



### Privacy

Privacy impacts to neighbouring properties may occur due to the narrow dimensions of the site and reduced side setbacks of the development, which are predominately 3.1m. To ensure adequate privacy is maintained, privacy screens, highlight windows, and opaque windows have been provided along the side elevations.

### Overshadowing

Due to the orientation of the lot, overshadowing will occur to the neighbouring lot to the south. Despite the overshadowing, at least 50% of the private open space of the neighbouring dwelling to the south achieves solar access for 3 hours in mid-winter, in accordance with the requirements of the ADG. However, the north facing windows of the dwelling would not receive any direct sunlight during mid-winter. Despite this, the overshadowing is considered acceptable given the orientation of the lot is such that overshadowing of this extent is inevitable even from a development that is compliant with the 9m height limit.

### Building Design

Despite the proposed height variation, the DA is considered compatible with the character of the area. In addition, the DA includes design strategies that reduce the perceived bulk and scale of the building including the following:

- An articulated facade facing Tomaree Street which is well proportioned and includes an appropriate mix of material finishes and colour choice
- The bulk of the side walls of the building are effectively broken up through changes in material, colour and through the inclusion of recessed and protruding wall features
- The roof form includes a skillion design comprising 2 sections of varying pitches, which provide improved visual interest.

The adopted design strategies ensure that the DA is compatible with the surrounding area, despite the proposed height variation.

### Car Parking

The DA includes a basement car park with 6 car spaces.

The DCP 2014 requires the provision of:

- 2 car parking spaces for each dwelling; and
- 1 visitor car parking space for every 3 dwellings within a RFB

The development does therefore not have sufficient parking to provide the required visitor parking space.

The applicant included a car parking assessment, reviewing the availability of on street car parking to accommodate the shortfall. The car parking assessment identifies that sufficient car parking would be available in the surrounding streets (including Messines Street 90m south of the site), even during busy times when parking is heavily utilised. On this basis, the car parking shortfall is supported.

### Conclusion

As detailed in the Planners Assessment Report (**ATTACHMENT 2**), the application is considered to be consistent with the aims and objectives of the relevant environmental planning instruments applicable to the subject site.

It is considered that the DA has been suitably designed to address the site constraints and will not result in significant privacy or amenity issues.

### **COMMUNITY STRATEGIC PLAN**

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

### **FINANCIAL/RESOURCE IMPLICATIONS**

<b>Source of Funds</b>	<b>Yes/No</b>	<b>Funding (\$)</b>	<b>Comment</b>
Existing budget	No		
Reserve Funds	No		
Developer Contributions (\$7.11)	Yes		Should Council determine to approve the DA, 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 DA is consistent with the relevant planning instruments including the Environmental Planning and Assessment Act 1979 (EP&A Act), PSLEP 2013 and associated State Environmental Planning Policies as listed above.

The non-compliances with the Port Stephens Development Control Plan 2014 (DCP 2014) are considered minor in nature. A detailed assessment against these

environmental planning instruments is contained within the assessment report contained at **(ATTACHMENT 2)**.

<b>Risk</b>	<b><a href="#">Risk Ranking</a></b>	<b>Proposed Treatments</b>	<b>Within Existing Resources?</b>
If the DA is approved, there is a risk that the determination of the DA may be challenged by a third party in the Land and Environment Court.	Low	Accept the recommendation.	Yes
If the DA is refused, there is a risk that the determination of the DA may be challenged by the applicant in the Land and Environment Court.	Low	Accept the recommendation.	Yes

## **SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

### Social and Economic Impacts

The proposed development would provide additional housing opportunities that can rely upon existing social and recreational infrastructure existing within the Shoal Bay Centre. The development adds to the local housing mix to serve the needs of the local community.

The construction of the proposed development will provide employment opportunities in the locality and support the local building and development industries. This will have direct monetary input to the local economy and the increased number of residents in the locality will provide ongoing economic input through daily living activities.

There are no anticipated adverse social or economic impacts as a result of the DA.

### Impacts on the Built Environment

The proposed development will reinforce the medium density residential nature of the locality and is characteristic of other developments in both the local and wider community.

The overall aesthetics of the development are of good quality incorporating a range of materials and colours in conjunction with the articulation of building facades. The design effectively reduces the perceived bulk and scale of the development, ensuring consistency with surrounding development. The development aligns with the

intended future character of Shoal Bay, and will encourage infill development of underutilised lots in and surrounding the town centre.

Although the building exceeds the maximum building height as prescribed under LEP2013, it is considered that the bulk and scale of the building is comparable with surrounding development and reflects the desired medium density character of the Shoal Bay centre.

It is considered there are no unreasonable impacts on the built environment as a result of the DA.

#### Impacts on the Natural Environment

The site does not contain any natural habitat or native vegetation and there are no anticipated adverse impacts expected to occur to the natural environment.

### **CONSULTATION**

Consultation with key stakeholders has been undertaken for the purposes of the assessment of the application, including consultation with the public through the notification and advertising process.

#### Internal

Consultation was undertaken with Council's Building Surveying, Development Engineering, Development Contributions and Spatial Services teams. The referral comments provided by these officers were considered as part of the Planners Assessment Report (**ATTACHMENT 2**). All internal referral officers supported the DA subject to conditions of consent (**ATTACHMENT 3**).

#### External

Consultation was undertaken with external agencies including the NSW Rural Fire Service, Ausgrid and Hunter Water Corporation. No objection to the DA was made by any external agencies. The comments provided by the external agencies were considered during the detailed assessment and are discussed within the Planners Assessment Report (**ATTACHMENT 2**).

#### Public exhibition

The DA was advertised and notified in accordance with the requirements of the Port Stephens Council Community Participation Plan. The application was exhibited for a period of 14 days (including the Christmas exclusion period) from 22 December 2020 to 25 January 2021. During that time, 21 public submissions were received, from 26 individuals.

**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 (provided to Councillors separately due to privacy and copyright legislation).
- 2) Unredacted submissions.

**TABLED DOCUMENTS**

Nil.



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### RECOMMENDED CONDITIONS OF CONSENT – DA 16-2020-811-1

#### 1.0 - General Conditions of Consent

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

- (1) **External agency requirements** – The requirements from the following agencies must be complied with prior to, during, and at the completion of the development.

The Requirements are:

1. NSW Rural Fire Service, Reference no. DA20210119000192-Original-1, dated 25 March 2021.
2. Ausgrid, Reference no. 1900103835, dated 14 December 2020.

A copy of the Requirements is attached to this determination notice.

- (2) **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
2002920 Revision E, Sheet 2	Survey Site / Analysis	Sorensen Design & Planning	26/05/2021
2002920 Revision E, Sheet 3	Proposed Site Plan	Sorensen Design & Planning	26/05/2021
2002920 Revision E, Sheet 4-7	Level 1-4 Floor Plan	Sorensen Design & Planning	26/05/2021
2002920 Revision E, Sheet 8	Section and Driveway Profile	Sorensen Design & Planning	26/05/2021
2002920 Revision E, Sheets 9-12	Elevations	Sorensen Design & Planning	26/05/2021
GSP200186 Issue A02	Landscape Plan	Green Space Planning Co.	October 2020
GSP200186 Issue A03	Plan Schedule	Green Space Planning Co.	October 2020
200446, CIV01, Revision A	Stormwater Management Plan	DRB Consulting Engineers	24/11/2020

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

- (3) **Plan amendments** – The approved landscape plan prepared by Green Space Planning Co., reference no. GSP200186 Issue A02 and A03 and dated October 2020 is to be amended as follows:

#### PORT STEPHENS COUNCIL

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a) To reflect the building footprint within the approved Site Plan prepared by Sorensen Design & Planning, reference no. 2002920 Revision C, Sheet 3 and dated 9/03/2021.

b) Replace *Brachychiton populneus* tree with *Tristaniopsis luscious*®.

Amended plans, demonstrating compliance with this condition are to be provided to the certifying authority.

(4) **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.

(5) **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.

(6) **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 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.

(7) **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.

(8) **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



## ITEM 1 - ATTACHMENT 3 RECOMMENDED CONDITIONS OF CONSENT.



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.

- (9) **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.

- (10) **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.

- (11) **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'.

- (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.

## 2.0 – Prior to Issue of a Construction Certificate

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



- (1) **Dilapidation report – Adjoining property** - A dilapidation report including a photographic survey of the following adjoining properties 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.

- a) 6 Tomaree Road, Shoal Bay – Strata Plan 14477
- b) 12 Tomaree Road, Shoal Bay – Lot 32 DP 17513
- c) 47 Ronald Avenue, Shoal Bay – Strata Plan 18079

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.

- (2) **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.

- (3) **Stormwater/drainage plans** – Detailed stormwater drainage plans for a system discharging stormwater towards the north end of Tomaree Road at all times, 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).

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.

- (4) **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.

- (5) **Retaining walls** – All retaining walls within 1m of a boundary and exceeding 600mm in height must be designed and certified by a suitably qualified Structural Engineer.

Details demonstrating compliance must be provided to the Certifying Authority.

- (6) **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.



## ITEM 1 - ATTACHMENT 3 RECOMMENDED CONDITIONS OF CONSENT.



- (7) **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 Roadworks Permit under Section 138B of the *Roads Act 1993*.
- (8) **Construction Environmental Management Plan** - A Construction Environmental 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
- (9) **Section 7.11 Development contributions** – A monetary contribution is to be paid to Council for the provision of two dwellings, pursuant to Section 7.11 of the *Environmental Planning & Assessment Act 1979* and the Port Stephens Local Infrastructure Contributions Plan 2020 towards the provision of the following public facilities:

Facility	Per Lot/Dwelling	Total \$
Civic Administration – Plan Management	\$452	\$904
Civic Administration – Works Depot	\$1,178	\$2,356
Town Centre Upgrades	\$3,174	\$6,348
Public Open Space, Parks & Reserves	\$1,925	\$3,850
Sports & Leisure Facilities	\$1,832	\$3,664
Cultural & Community Facilities	\$1,240	\$2,480
Road Works	\$3,340	\$6,680
Shared Paths	\$3,059	\$6,118
Bus Facilities	\$11	\$22
Fire & Emergency Services	\$229	\$458
Flood & Drainage	\$1,767	\$3,534
Kings Hill Urban Release Area	\$281	\$562
<b>Total</b>		<b>\$36,976</b>

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

- a) 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.

- (10) **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.



- (11) **Hunter Water Corporation approval** – A Section 50 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.

### 3.0 - Prior to Commencement of Works

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

- (1) **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.
- (2) **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.
- (3) **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.





- (4) **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;
  - 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.
- (5) **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.
- (6) **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.

An awning is to be erected that would sufficiently prevent any substance from the construction work falling onto public property. The work site must be kept lit between sunset and sunrise if it is likely to be hazardous to persons on public property.

- (7) **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.
- (8) **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).

- (9) **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.

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

- (10) **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.

- (11) **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.

#### 4.0 - During Works

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

- (1) **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.

- (2) **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.



- (3) **Compliance with BCA** – All building work must be carried out in accordance with the requirements of the Building Code of Australia.

- (4) **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.

- (5) **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.

- (6) **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.

- (7) **Construction Environmental Management Plan implementation** - All construction management procedures and systems identified in the Construction Environmental Management Plan referenced in condition 2.15 must be introduced during construction of the development.

- (8) **Stormwater disposal** – Following the installation of any roof, collected stormwater runoff from the structure must be:

- a) The approved stormwater management system.

- (9) **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.



- (10) **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.

- (11) **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.

- (12) **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.

- (13) **Fill material** – The only fill material that may be received at the development site is:

- a) Virgin excavated natural material (VENM) within the meaning of the *Protection of the Environment Operations Act (POEO Act 1997)*;  
or
- b) Excavated natural material (ENM) within the meaning of the *POEO Act 1997*;  
or
- c) Any other waste-derived material the subject of a resource recovery exemption under s.91 of the *Protection of the Environment Operations (Waste) Regulation 2014* that is permitted to be used as fill material.

Any waste-derived fill material the subject of a resource recovery exemption received at the development site must be accompanied by documentation as to the material's compliance with the exemption conditions and must be provided to the Principal Certifying Authority.

Any fill, soil, mulch and plant brought onto the site must be certified as free of weeds and weed seeds.

## 5.0 - Prior to Issue of an Occupation Certificate

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



## ITEM 1 - ATTACHMENT 3 RECOMMENDED CONDITIONS OF CONSENT.



- (1) **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.
- (2) **Survey Certificate** – A Registered Surveyor must prepare a Survey Certificate to certify that the location of the building in relation to the allotment boundaries complies with the approved plans or as specified by this consent. The Survey Certificate must be provided to the satisfaction of the Principal Certifying Authority.
- (3) **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.
- (4) **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.
- (5) **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.
- (6) **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.
- (7) **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.
- (8) **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.

- (9) **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.

- (10) **Street tree planting** – All street trees must be planted in accordance with the approved Street Tree Planting plan (as required under condition 2.9).

- (11) **Completion of landscape works** – All landscape works are to be undertaken in accordance with the approved landscape plan and conditions of this Development Consent.

- (12) **Car parking requirements** – A minimum of 6 car parking spaces are to be provided in accordance with AS2890 and the approved plans. Parking must be permanently marked on the pavement surface.

- (13) **Fire Safety Schedule** – A Fire Safety Certificate must be provided to the PCA in accordance with the requirements of the Environmental Planning & Assessment Regulation 2000.

- (14) **Garbage room** – Rooms used for the storage of garbage, and rooms used for the washing and storage of garbage receptacles, must be constructed in accordance with the approved plans and the following:

- a) The room must be constructed of solid material, cement rendered and trowelled to a smooth even surface;
- b) The floor must be impervious material coved at the intersection with the walls, graded and drained to an approved floor waste within the room; and
- c) Garbage rooms must be vented to the external air by natural or mechanical ventilation.

Details demonstrating compliance must be provided to the Certifying Authority.

- (15) **Parking areas and loading bays** – Parking areas and Loading bays are to be provided in accordance with AS2890 Part 2 'Parking Facilities'.

Details demonstrating compliance must be provided to the Certifying Authority.

- (16) **Privacy – Deck Screening** – Permanently fixed 1.8m high privacy screen(s) must be provided to the northern elevation of each deck as follows:





- a) The screens are to be applied to at least 50% of the length of the decks elevation.
- b) the screens must not have openings more than 30mm wide; and
- c) the total area of all openings must be less than 30% of the surface area of the screen when viewed in elevation.

Details demonstrating compliance must be provided to the Certifying Authority.

- (17) **Privacy – Windows** – To ensure reasonable privacy for the adjoining properties, all privacy screens on windows indicated on the approved plans are to be as follows:

- a) the screens must not have openings more than 30mm wide; and
- b) the total area of all openings must be less than 30% of the surface area of the screen when viewed in elevation.

Obscure glazing must be installed on windows as indicated on the approved plans.

Details demonstrating compliance must be provided to the Certifying Authority.

## 6.0 – Ongoing Use

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

- (1) **Maneuvering of vehicles** – All vehicles must enter and exit the site in a forward direction.
- (2) **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.
- (3) **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.
- (4) **Privacy screen** – All privacy screens must be permanently maintained in accordance with the approved plans for the life of the development.
- (5) **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*.
- (6) **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 Fire and Rescue NSW in accordance with the *Environmental Planning & Assessment Regulations 2000*.
- (7) **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.
- (8) **Waste management and collection** – At all times, the strata management body must make arrangements for the placement of the garbage bins at the kerbside for weekly collection and must ensure the return of the bins to the garbage room as soon as practicable after collection.
- (9) **Security** – Access to common areas and the communal open space area to the rear is to be restricted by a key/swipe card access system.

#### Advice Note(s):

- (1) **'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.
- (2) **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.
- (3) **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

## ITEM 1 - ATTACHMENT 3 RECOMMENDED CONDITIONS OF CONSENT.



owner/applicants responsibility to ensure compliance with the requirements of this Act.

- (4) **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 Heritage NSW 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.
- (5) **Works near/adjoining electricity network assets** – There are underground electricity network assets adjacent to the proposed development in Tomaree Street. Any works undertaken adjacent to Ausgrid underground assets / Ausgrid assets must be undertaken with care in accordance with Ausgrid Network Standard Document NS 156 – Work Near or Around Underground Cables
- (6) **House Numbering** – House numbers are to be allocated to each unit as follows:

HOUSE NUMBERING	
Proposed Unit Number	House Number/Street Address
1	1/10 Tomaree Road SHOAL BAY
2	2/10 Tomaree Road SHOAL BAY
3	3/10 Tomaree Road SHOAL BAY



**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 No 55 - Remediation of Land, State Environmental Planning Policy Coastal Management 2018, State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 and State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004.
- Council has considered and accepted the proposed development standard variation request to Clause 4.3 of the PSLEP. The proposed 1.8m variation is considered acceptable in the particular circumstances of this case as the variation will not significantly overshadow the neighbouring properties, obstruct significant view corridors, result in negative privacy issues and is in keeping with the character of the area.
- The proposed development is, subject to the recommended conditions, consistent with the objectives of the Port Stephens Council Development Control Plan 2014 (PSDCP).
- Subject to the recommended conditions the proposed development will be provided with adequate essential services required under the PSLEP.
- 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.
- Any submission issues raised have been taken into account in the assessment report and where appropriate conditions of consent have been included in the determination. Council has given due consideration to community views when making the decision to determine the application.

**REASONS WHY THE CONDITIONS HAVE BEEN IMPOSED**

The following conditions are applied to:

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

**ITEM NO. 2**

**FILE NO: 20/269389  
EDRMS NO: 16-2019-679-1**

**DEVELOPMENT APPLICATION 16-2019-679-1 FOR DEMOLITION OF EXISTING STRUCTURE AND CONSTRUCTION OF COMMERCIAL DEVELOPMENT AND MULTI-DWELLING HOUSING AT 26 KING STREET, RAYMOND TERRACE**

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

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Refuse Development Application 16-2019-679-1 for the demolition of the existing single storey commercial structure and the construction of multi-dwelling housing (4 residential units) and 2 commercial units at 26 King Street, Raymond Terrace (Lot: 1 DP:862816) subject to the Reasons for Refusal contained in **(ATTACHMENT 3)**.

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**BACKGROUND**

The purpose of this report is to present the Development Application (DA) 16-2019-679-1, to Council for determination. The DA is being reported to Council as it was originally called to Council by Councillor Arnott, Councillor Le Mottee and Councillor Jordan **(ATTACHMENT 4)**.

The DA was reported to Council at its meeting on 25 August 2020. At that meeting it was resolved **(ATTACHMENT 5)** that the application be deferred as follows:

Meeting Minute 151: It was resolved that Council defer Development Application 16-2019-679-1 for the demolition of the existing single storey commercial structure and the construction of shop top housing (2 commercial units on the ground floor and 2 residential units above) at 26 King Street, Raymond Terrace (Lot: 1 DP: 862816) until the Ordinary Council meeting to be held on 22 September 2020.

The reason for the deferral of the DA was to provide Council staff the opportunity to consult with the applicant on the removal of the single dwelling and fence in the rear of the site.

Subsequent to that meeting, Council staff undertook further consultation with the applicant on the 'without prejudice' draft conditions considered at the Council meeting on 25 August 2020 **(ATTACHMENT 6)**. The following response was received from the applicant:

## ORDINARY COUNCIL - 22 JUNE 2021

- Acceptance of the inclusion of a condition of consent to remove the fence located to the rear of the site.
- Rejection of the inclusion of a condition to remove the single storey dwelling.
- Rejection of the inclusion of a condition requiring the registration of an easement for public access along the rear of the site.

The application was not reported to the Council meeting held on 22 September 2020 as the applicant submitted an amendment application under Clause 55 of the Environmental Planning and Assessment Regulations 2000. The proposed DA was amended to replace the single dwelling at the rear of the site with 2 dwellings.

The acquisition of the required easement was gazetted on 28 May 2021 and is therefore no longer required as part of this DA.

A summary of the DA and property details is provided below:

Subject land:	26 King Street, Raymond Terrace
Total area:	690m <sup>2</sup>
Zoning:	B3 – Commercial Core
Submissions:	1 submission was received
Key issues:	The DA seeks to construct multi-dwelling housing on land identified as High Hazard Floodway.
Development Plans	Provided to Councillors separately due to privacy and copyright legislation.

A locality plan is provided at **(ATTACHMENT 1)**.

### Proposal

The amended DA proposes demolition of the existing single storey structure on the site to facilitate the construction of two buildings that include:

- Building 1 – double storey building containing 2 commercial units on the ground floor and 2 dwellings above with a frontage to King Street.
- Building 2 – 3 storey building located to the rear of the site with a frontage to the Hunter River comprising two residential dwellings.

The applicant has defined the DA as mixed-use development, including multi-dwelling housing (4 dwellings) with a commercial component (2 commercial units).

The commercial units contained in Building 1 are located on the ground floor and will have a frontage to King Street.

The proposed dwellings above the commercial unit comprise of 2 bedrooms, an open plan living, kitchen and dining area, bathroom and laundry area. Access to the



rooftop of each dwelling has been provided via the stairs located to the rear of the dwellings.

The dwellings proposed at the rear of the site include 3 storeys, with car parking on ground level, living areas on the first level and 3 bedrooms in the upper level.

#### Site Description and History

The site has a frontage to King Street in the south and has access to the Hunter River in the north. A flood levee is located toward the rear of the site from where the site falls to the river bank.

The existing structure on the site is to be demolished as part of a separate development consent. There is no vegetation removal proposed with the application. The site to the west includes a 3 storey commercial premises tenanted by the Department of Defence and to the east is the Scout Hall.

#### Key Issues

The key issues raised during the assessment of the application are outlined below. A detailed assessment of the DA is contained within the Planners Assessment Report **(ATTACHMENT 2)**.

#### Flooding impacts

The DA is inconsistent with both the Port Stephens Local Environmental Plan (LEP 2013) and the Development Control Plan 2014 (DCP 2014) noting the High Hazard Floodway categorisation applying to the site.

Clause 7.3(3) of LEP 2013 states that development must be compatible with the flood hazard of the land and that it must not have a significant, adverse effect on flood behaviour. The development is not considered to be compatible with the flood hazard category applying to the site resulting in an unnecessary risk to life.

Council flood data and the flood advice (prepared by BMT dated 16 July 2019) provided by the applicant identified the site within an area classified as a High Hazard Floodway.

The current flood levels applicable to the site are:

LEP/DCP Requirement	Flood Level
1% AEP (Current day)	4.8m
Flood Planning Level (FPL)	5.8m
Probable Maximum Flood (PMF)	8.7m

Chapter B5 of the DCP 2014 provides more detailed provisions to inform the assessment against the LEP 2013 provisions. The DCP chapter was amended in December 2020 which included performance based solutions for certain development

in flood prone areas. Figure BI indicates that residential accommodation (other than a dwelling) is unsuitable on land categorised as High Hazard. Further, commercial development can only be supported where it complies with the performance based solutions contained in Chapter B5.18 to B5.20.

As stated above, Figure BI states that development for residential accommodation in High Hazard Floodways are not supported and no further assessment against the DCP provisions are required.

The commercial component must be assessed against the performance based solutions contained in Chapter B5.18 to B5.20 to ascertain whether it can be supported.

The applicant provided flood advice for the proposal that included flood modelling for a range of flood events on the existing site prior to the amendments to the DCP and no further comment on the amended provisions were received. However, Council staff undertook a review against these provisions below.

The current flood levels applicable to the site and the proposed commercial development include finished floor level (FFL) as follows:

<b>LEP/DCP Requirement</b>	<b>Height</b>	<b>DA Proposed</b>	<b>Commercial Development</b>
1% AEP (Current day)	4.8m	Ground floor FFL	2.8m

Chapter B5.18, in considering the risk to life, requires that evacuation access to an area free of risk from flooding must be provided in a PMF flood. Although the site and its surrounds are significantly flood affected, it is considered that the commercial development is a suitable land use from a risk to life perspective. No residents are expected to use the tenancies for habitable purposes and relatively safe egress is possible during emergency event during business hours. As a result, the commercial component of DA meets the performance-based solution contained in Chapter B5.18 of DCP 2014.

Chapter B5.19 requires development to address the risk to property during various flood events. The proposal will be located approximately 2m below the 1% AEP level (4.8m AHD). The design of the DA will therefore result in significant property damage during large flood events. As a result, the DA does not meet the performance-based solution contained in Chapter B5.19 of DCP 2014.

Chapter B5.20 requires the development to be compatible with the flood hazard category of the site. The site is located within a High Hazard Floodway with high velocity rates. As the site is located well below the 1% AEP level, the proposed commercial development will be inundated during large flood events and will be contrary to the flood plan management study for the area.

The DA is deemed to be inconsistent with the provisions of both LEP 2013 and DCP 2014. With consideration to the above, the DA cannot be supported.

Suitability of the Site

It is considered that the site is not suitable for the proposed development given it is categorised as High Hazard Floodway. The development does not comply with the requirements under the NSW Floodplain Manual and Council's adopted LEP 2013 and DCP 2014.

The subject site is not suitable for the proposed residential development due to the high hazard floodway constraints and the associated risks.

Conclusion

Due to the sites location in a High Hazard Floodway, the design of the development and the associated egress, the proposal is inconsistent with the relevant legislation and policies, including:

- Environmental Planning and Assessment Act 1979 (EP&A Act)
- Port Stephens LEP 2013 – clause 7.3 Flood Planning
- Port Stephens DCP 2014 – Chapter B5 Flooding.

Based on a detailed assessment of the DA, and with consideration to the inconsistencies identified with LEP 2013 and DCP 2014, the DA is recommended for refusal for the reasons contained in **(ATTACHMENT 3)**.

**COMMUNITY STRATEGIC PLAN**

<b>Strategic Direction</b>	<b>Delivery Program 2018-2021</b>
Thriving and Safe Place to Live	Enhance public safety, health and liveability through use of Council's regulatory controls and services.

**FINANCIAL/RESOURCE IMPLICATIONS**

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

<b>Source of Funds</b>	<b>Yes/No</b>	<b>Funding (\$)</b>	<b>Comment</b>
Existing budget	Yes		
Reserve Funds	No		
Developer Contributions (S7.11)	Yes		In the event of approval S7.11 contributions apply to the residential component of the application.
External Grants	No		

**ORDINARY COUNCIL - 22 JUNE 2021**

Source of Funds	Yes/No	Funding (\$)	Comment
Other	No		

**LEGAL, POLICY AND RISK IMPLICATIONS**

The DA is inconsistent with the relevant planning instruments including the EP&A Act 1979, LEP 2013 and DCP 2014.

Detailed assessments against these requirements are contained within the Planners Assessment Report provided at **(ATTACHMENT 2)**.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
If the DA is refused, the applicant may appeal the decision.	Medium	Refuse the DA with reasonable grounds for refusal in accordance with the EP&A Act 1979.	Yes
If the DA is approved, a third party may appeal the determination.	Low	Determine the DA in line with the recommendations.	Yes
If the DA is approved, there is a risk that Council will be held liable for damage or consequences.	Medium	Determine the DA in line with the recommendations.	Yes
If the DA is approved, people and property may be exposed to an unacceptable level of risk.	Medium – High	Determine the DA in line with the recommendations.	Yes

**SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

Outside of the flood related issues associated with the proposal, it is considered that the development will have an ongoing positive economic impact on the local area and the broader community through the creation of viable employment and economic activity during both the construction and ongoing operations of the development. The development will allow for the use of existing services and facilities in the locality without requiring significant infrastructure upgrades that burden the public.

However, the flood classification of the site results in the proposed development not being suitable and the proposed development is therefore recommended for refusal for the reasons outlined in **(ATTACHMENT 3)**.

## **CONSULTATION**

### Internal

Consultation was undertaken with internal technical staff to facilitate the assessment of the application including:

- Building and Developer Relations
- Development Engineering
- Strategic Planning (Development Contributions and Heritage Advisor)
- Natural Resources (Vegetation Management)
- Spatial Services
- Flood Advisory Review Panel.

The referral comments provided by these officers were considered as part of the detailed assessment and are discussed within the Planners Assessment Report **(ATTACHMENT 2)**. The application is supported by all internal referrals, other than Development Engineering and the Flood Advisor Panel.

### External

Consultation was undertaken with the following external agencies and groups as part of the assessment process:

- Department of Defence
- Department of Planning, Industry and Environment - Biodiversity Conservation Division (BCD)
- Natural Resources Access Regulator (NRAR).

The referral comments provided by these external agencies and groups were considered during the detailed assessment and are detailed within the Planners Assessment Report **(ATTACHMENT 2)**. It is noted that BCD has not provided final comment or concurrence on the application, which can occur as a requirement of a consent, if granted.

### Notification

In accordance with local government legislation, the application was notified as per Chapter A.12 of the DCP 2014 for 14 days from 12 November 2019 to 26 November 2019. During notification, 1 submission was received objecting to the proposal. An additional submission was received following the deferral of the application at the Council meeting on 25 August 2020.

The DA was again notified for 14 days in accordance with the Community Participation Plan (12 May 2021 to 26 May 2021) following receipt of the amended DA. No submissions were received during this period.

A detailed assessment of the submission is outlined within the Planners Assessment Report (**ATTACHMENT 2**).

## **OPTIONS**

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

## **ATTACHMENTS**

- 1) Locality Plan. [↓](#)
- 2) Planners Assessment Report. (Provided under separate cover). [⇨](#)
- 3) Reasons For Refusal. [↓](#)
- 4) Call to Council form. [↓](#)
- 5) 25 August 2020 - Minute Number 151. [↓](#)
- 6) Conditions Without Prejudice. [↓](#)

## **COUNCILLORS ROOM**

- 1) Development Plans (provided to Councillors separately due to privacy and copyright).
- 2) Unredacted submission.

## **TABLED DOCUMENTS**

Nil.







**SCHEDULE 1 – REASONS FOR REFUSAL**

The application is recommended for refusal on the following grounds:

1. The proposed development fails to satisfy Clause 7.3 - Flood Planning of the Port Stephens Local Environmental Plan 2013 as the development does not demonstrate that it is compatible with the high hazard floodway category of the site, including minimising the risk to life associated with the flood hazard (s4.15(1)(a)(i) EP&A Act);
2. The development does not comply with the controls contained within Chapter B5 Flooding and Chapter C5 Multi Dwelling Housing or Seniors Housing of the Port Stephens Development Control Plan (s4.15(1)(a)(iii) EP&A Act);
3. The proposed development is not suitable on the site given the flood category of the land s4.15(1)(c) of the EP&A Act); and
4. The proposed development is not considered to be in the public interest as the development is inconsistent with the adopted planning controls and strategies, which seek to promote the appropriate development of the land (s4.15(1)(e) EP&A Act).

**PORT STEPHENS COUNCIL**

116 Adelaide Street  
Raymond Terrace NSW 2324

PO Box 42  
Raymond Terrace NSW 2324

Phone: 02 4980 0255  
Email: [council@portstephens.nsw.gov.au](mailto:council@portstephens.nsw.gov.au)

[www.portstephens.nsw.gov.au](http://www.portstephens.nsw.gov.au)





## Call to Council form

Development Application

116 Adelaide Street,  
Raymond Terrace NSW 2324

PO Box 42  
Raymond Terrace NSW 2324

p (02) 4988 0255 | f (02) 4987 3612  
e council@portstephens.nsw.gov.au

DX 21406 | ABN 16 744 377 876

### DEVELOPMENT APPLICATION (DA) CALL TO COUNCIL REQUEST

We (Mayor/Councillor/s)

Name:	Giacomo Arnott
Name:	Paul LeMottee
Name:	Ken Jordan
request that DA number:	16-2019-679-1
for DA description:	Demolition, construction of existing dwelling into shop top / detached
located at:	26 King St Raymond Terrace NSW 2324

be reported to Council for determination.

### REASON

Heritage concerns

### SIGNATURE OF APPLICANT/S

**Consequence of non provision:** Council may not take action on the matter raised. **Storage and security:** This document will be placed on the relevant file and/or saved in Council's records management system in accordance with Council policy and relevant legislation. **Access:** Please contact Council on 02 4988 0255 to enquire how you can access information.

**MINUTES ORDINARY COUNCIL - 25 AUGUST 2020****ITEM NO. 1****FILE NO: 20/76043  
EDRMS NO: 16-2019-679-1****DEVELOPMENT APPLICATION 16-2019-679-1 FOR DEMOLITION OF EXISTING  
STRUCTURE AND CONSTRUCTION OF SHOPTOP HOUSING AND DETACHED  
DWELLING AT 26 KING STREET, RAYMOND TERRACE****REPORT OF: KATE DRINAN - DEVELOPMENT ASSESSMENT AND  
COMPLIANCE SECTION MANAGER  
GROUP: DEVELOPMENT SERVICES****RECOMMENDATION IS THAT COUNCIL:**

- 1) Refuse Development Application 16-2019-679-1 for the demolition of the existing single storey commercial structure and the construction of shop top housing (2 commercial units on the ground floor and 2 residential units above) at 26 King Street, Raymond Terrace (Lot: 1 DP:862816) subject to the Reasons for Refusal contained in **(ATTACHMENT 3)**.

**ORDINARY COUNCIL MEETING - 25 AUGUST 2020  
MOTION**

	<b>Councillor John Nell Councillor Giacomo Arnott</b>  That Council approve Development Application 16-2019-679-1 for the demolition of the existing single storey commercial structure and the construction of shop top housing (2 commercial units on the ground floor and 2 residential units above) at 26 King Street, Raymond Terrace (Lot: 1 DP:862816) subject to the Condition of Consent contained in <b>(CONDITIONS OF CONSENT 1 TABLED AT THE MEETING)</b> .
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**ORDINARY COUNCIL MEETING - 25 AUGUST 2020  
AMENDMENT**

	<b>Mayor Ryan Palmer Councillor Jaimie Abbott</b>  That Council approve Development Application 16-2019-679-1 for the demolition of the existing single storey commercial structure and the construction of shop top housing (2 commercial units on the ground floor and 2 residential units above) at 26 King Street, Raymond Terrace (Lot: 1 DP:862816) subject to the Condition of Consent contained in <b>(CONDITIONS OF CONSENT 2 TABLED AT THE MEETING)</b> .
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**MINUTES ORDINARY COUNCIL - 25 AUGUST 2020**

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

Those for the Motion: Mayor Ryan Palmer and Crs Jaimie Abbott.

Those against the Motion: Crs Giacomo Arnott, Glen Dunkley, Ken Jordan, John Nell and Sarah Smith.

The amendment was lost.

The original motion moved by Cr John Nell was subsequently amended to defer item 1 as follows.

**ORDINARY COUNCIL MEETING - 25 AUGUST 2020  
MOTION**

<b>151</b>	<b>Councillor John Nell Councillor Giacomo Arnott</b>  It was resolved that Council defer Development Application 16-2019-679-1 for the demolition of the existing single storey commercial structure and the construction of shop top housing (2 commercial units on the ground floor and 2 residential units above) at 26 King Street, Raymond Terrace (Lot: 1 DP:862816) until the Ordinary Council meeting to be held on 22 September 2020.
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In accordance with Section 375 (A) of the Local Government Act 1993, a division is required for this item.

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

Those against the Motion: Nil.

The motion was carried.

**BACKGROUND**

The purpose of this report is to present Development Application (DA) 16-2019-679-1, to Council for determination. The subject DA relates to land located at 26 King Street, Raymond Terrace, legally identified as Lot: 1 DP: 862816 (the subject site). A locality plan is provided at **(ATTACHMENT 1)**.

The development application was called to Council by Councillor Arnott, Councillor Le Mottee and Councillor Jordan **(ATTACHMENT 4)**.

**MINUTES ORDINARY COUNCIL - 25 AUGUST 2020**

Residential development in a high hazard floodway is not encouraged under section B5.11 of the Port Stephens Development Control Plan 2014 (DCP 2014). An application may only be considered where it is demonstrated to have a specific community need/benefit, which does not relate to the provision of housing.

The development application cannot be supported noting it provides for residential development in a high hazard floodway, which is inconsistent with the DCP 2014. Further, the development was not able to demonstrate appropriate flood refuge or egress in a major flooding event. Given a probable maximum flood (PMF) of 8.7 metres AHD, the PMF would inundate the proposed shop top housing to a depth of 2.6 metres and the detached dwelling to a depth of 2.8 metres AHD.

In addition to the controls within Council's DCP 2014, clause 7.3 of Council's Local Environmental Plan (LEP 2013) also applies. Clause 7.3(3) states that the development must be compatible with the flood hazard of the land and that it must not have a significant, adverse effect on flood behaviour. Residential development in a high hazard floodway is not considered to be compatible noting the risk to life and property. Further, as the development was not able to demonstrate appropriate flood refuge or egress in a major flooding event, it is likely to place unreasonable and unnecessary strain upon emergency services in a major flooding event.

**Suitability of the Site**

Based on the information provided the assessment has determined that the site is not suitable for the proposed development as:

- The development does not comply with the requirements under the NSW Floodplain Manual and Council's adopted LEP 2013 and DCP 2014.
- The subject site is not suitable for the proposed residential development due to the high hazard floodway constraints and the associated risks.

**Heritage**

The site is located within the Raymond Terrace Heritage Conservation Area. The building located on the site is not listed as a local or State heritage item.

The existing building at 26 King Street has a small amount of historical interest as one of the early structures within the street circa the 1890s. It is considered to have little significance to the conservation area and as such, the demolition of the structure will not adversely impact on the heritage character of the area.

The replacement of the existing building with a new, sympathetically designed shop top building will enhance the Raymond Terrace Conservation Area. The design is considered to reinforce the history character of the street.

**MINUTES ORDINARY COUNCIL - 25 AUGUST 2020**

Noting the above, any potential impact to the heritage significance of the site is considered reasonably avoided and/or mitigated. Subsequently, the development is acceptable having regards to the relevant heritage provisions applying to the site.

Access to Hunter River Foreshore

The Hunter River is located to the rear of the site. The proposal includes the erection of a 1 metre fence along the rear boundary, including across the boundary of the levy bank. The proposed fence will restrict existing access to the river bank and foreshore. The foreshore which runs along the Hunter River to the rear of the property is identified as a key public pathway in Councils adopted Pathways Plans in 2016 for the Raymond Terrace Centre. The inclusion of the rear fence will compromise accessibility along this public pathway.

Further, the inclusion of the rear fence is considered inconsistent with clause 14 of the State Environmental Planning Policy Coastal Management, as it will result in a loss of existing access along the foreshore. On this basis, in the event of an approval, a condition is recommended which requires the rear fence to be removed from the proposed development.

Conclusion

Due to the sites location in a High Hazard Floodway, the development is inconsistent with the relevant legislation and policies, including:

- Environmental Planning and Assessment Act 1979, including section 4.15(1)(c) the suitability of the site
- Port Stephens LEP 2013 – clause 7.3 Flood Planning
- Port Stephens DCP 2014 – section B5 Flooding
- Council Floodplain Risk Management Policy
- NSW Government Floodplain Development Manual 2005.

The key issues arising through the assessment of the application are that the proposed development is not suitable outcome for the site, and for these reasons the proposed development is recommended for refusal for the reasons contained in **(ATTACHMENT 3)**.

**COMMUNITY STRATEGIC PLAN**

<b>Strategic Direction</b>	<b>Delivery Program 2018-2021</b>
Thriving and Safe Place to Live	Enhance public safety, health and liveability through use of Council's regulatory controls and services.

## MINUTES ORDINARY COUNCIL - 25 AUGUST 2020

## FINANCIAL/RESOURCE IMPLICATIONS

The application could be potentially 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 (\$7.11)	No		
External Grants	No		
Other	No		

## LEGAL, POLICY AND RISK IMPLICATIONS

The development application is inconsistent with the relevant planning instruments, flood development guidelines and studies including the EP&A Act, LEP 2013, DCP 2014, Council's Floodplain Risk Management Policy and the NSW Government Floodplain Development Manual 2005.

Detailed assessments against these requirements are contained within the Planners Assessment Report provided at (ATTACHMENT 2).

In addition, section 733 of the Local Government Act 1993 (LG Act) provides Council with a general exemption from liability with respect to flood liable land only if the necessary studies and works are carried out in accordance with the principles contained in the NSW Floodplain Development Manual 2005.

The approval of the proposed development is considered to be inconsistent with the principles contained within the NSW Floodplain Development Manual and may negate the good faith immunity provisions in the LG Act.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that if the application is approved Councils decisions will contradict the requirement set out under clause 7.3 of the LEP 2013.	Medium	Determine the application in line with the recommendations.	Yes

## MINUTES ORDINARY COUNCIL - 25 AUGUST 2020

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that if the application is approved, Council may be liable for damage or consequences to approving a development located on a site with a known high flood risk.	Medium	Determine the application in line with the recommendations.	Yes
There is a risk that the proposal will expose the property and people to risk of damage and death as a consequence of approving dwellings within a known flood risk area.	Medium	Determine the application in line with the recommendations.	Yes

**SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

Outside of the flood related issues associated with the proposal, it is considered that the development will have an ongoing positive economic impact on the local area and the broader community through the creation of viable employment and economic activity during both the construction and ongoing operations of the development. The development will allow for the use of existing services and facilities in the locality without requiring significant infrastructure upgrades that burden the public.

However, the flood classification of the site results in the proposed development not being suitable for the site and the proposed development is therefore recommended for refusal for the reasons outlined in **(ATTACHMENT 3)**.

**CONSULTATION**Internal

Consultation was undertaken with internal technical staff to facilitate the assessment of the application including:

- Building and Developer Relations
- Development Engineering
- Strategic Planning (Development Contributions and Heritage Advisor)
- Natural Resources (Vegetation Management)
- Spatial Services
- Flood Advisory Review Panel.

**MINUTES ORDINARY COUNCIL - 25 AUGUST 2020**

The referral comments provided by these officers were considered as part of the detailed assessment and are discussed within the Planners Assessment Report (**ATTACHMENT 2**). The application is supported by all internal referrals, other than Development Engineering as per the assessment of the flooding impact subject to the site.

External

Consultation was undertaken with the following external agencies and groups as part of the assessment process:

- Department of Defence
- Department of Planning, Industry and Environment - Biodiversity Conservation Division (BCD)
- Natural Resources Access Regulator (NRAR).

The referral comments provided by these external agencies and groups were considered during the detailed assessment and are detailed within the Planners Assessment Report (**ATTACHMENT 2**). It is noted that BCD has not provided final comment or concurrence on the application, which can occur as a requirement of a consent, if granted.

Notification

In accordance with local government legislation the application was notified as per Chapter A.12 of the DCP 2014 for 14 days from 12 November 2019 to 26 November 2019.

During notification, 1 submission was received. A detailed assessment of the submission is outlined within the Planners Assessment Report (**ATTACHMENT 2**).

**OPTIONS**

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

**ATTACHMENTS**

- 1) Locality plan. [↓](#)
- 2) Planners Assessment Report. [↓](#)
- 3) Reasons for Refusal. [↓](#)
- 4) Call to Council form. [↓](#)



**MINUTES ORDINARY COUNCIL - 25 AUGUST 2020**

**COUNCILLORS ROOM**

1) Development plans.

**TABLED DOCUMENTS**

Nil.



## CONDITIONS WITHOUT PREJUDICE

### 1.0 - 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
21686-4 2 of 12	Site Plan	Portside Building Design	23/5/2021
21686-4 3 of 12	Ground Floor Plan	Portside Building Design	23/5/2021
21686-4 4 of 12	First Floor Plan	Portside Building Design	23/5/2021
21686-4 5 and 6 of 12	Elevations	Portside Building Design	23/5/2021
21686-4 7 of 12	Ground Floor Plan – Detached Dwellings	Portside Building Design	23/5/2021
21686-4 8 of 12	First Floor Plan – Detached Dwellings	Portside Building Design	23/5/2021
21686-4 9 of 12	Second Floor Plan – Detached Dwellings	Portside Building Design	23/5/2021
21686-4 10 and 11 of 12	Elevations – Detached Dwellings	Portside Building Design	23/5/2021

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

- (2) **Amendments to documents and plans** – The development must be amended as follows:
- a) Remove fencing along the side and rear boundaries of the site.
- Amended plans or documentation demonstrating compliance must be provided to the Certifying Authority and Council prior to the issue of a Construction Certificate.
- (3) **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.
- (4) **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.

#### PORT STEPHENS COUNCIL

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## ITEM 2 - ATTACHMENT 6 CONDITIONS WITHOUT PREJUDICE.



- (5) **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 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.
- (6) **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.
- (7) **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.
- (8) **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.



## ITEM 2 - ATTACHMENT 6 CONDITIONS WITHOUT PREJUDICE.



The sign must be maintained while the work is being carried out and is to be removed when the work is completed.

- (9) **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.
- (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) **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.
- (12) **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.
- (13) **Agency Approval** - Prior to the issue of any Construction Certificate, approval under Section 256 of the *Water Management Act 2000* for works to be undertaken within the vicinity of the levee bank is to be obtained and provided to Council and the Certifying Authority.

## 2.0 – Prior to Issue of a Construction Certificate

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

- (1) **Dilapidation report – Adjoining property** - A dilapidation report including a photographic survey of the following adjoining properties 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.
- (2) **Structural Engineers Certificate** - A certificate must be prepared by a qualified Structural Engineer certifying that the building design is capable of withstanding the effects of flood waters, including immersion, structural stability, buoyancy, impact and loading from debris up to and including the future 1% Annual Exceedance Probability (AEP) event.



Details demonstrating compliance must be provided to the Certifying Authority.

- (3) **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.

- (4) **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).

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.

- (5) **Flood Risk Management Plan** – A Flood Risk Management Plan prepared by a qualified Flood Engineer must be provided to the Certifying Authority demonstrating compliance with the following:

- a) The design must show that the proposed development is capable of withstanding the effects of flood waters, including immersion, structural stability, buoyancy and impact and loading from debris up to and including the 1% Annual Exceedance Probability (AEP) event.
- b) Certification that the proposed development/ building flood refuge is capable of withstanding the force of any flood waters experienced up to the Probable Maximum Flood Event (PMF).
- c) Certification demonstrating that any damage to the proposed development sustained in a flood will not generate debris capable of causing damage to downstream buildings or property
- d) Certification demonstrating that the rainwater tank, finishes, plant fittings and equipment and any other buoyant fixtures will be of materials and functional capacity to withstand the forces of floodwater in events up to and including the 1% AEP event including hydrostatic pressure, hydrodynamic pressure and buoyancy forces.

- (6) **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.

- (7) **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 Roadworks Permit under Section 138B of the *Roads Act 1993*.



## ITEM 2 - ATTACHMENT 6 CONDITIONS WITHOUT PREJUDICE.



- (8) **Construction Environment Management Plan** - A Construction Environment Management Plan (CEMP) 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.
- (9) **Privacy – Screening** – Permanently fixed 1.8m high privacy screen(s) must be provided on the second floor, northern balcony, of the detached dwellings to separate balcony into two private spaces for the two dwellings as follows:
- the screens must not have openings more than 30mm wide; and
  - the total area of all openings must be less than 30% of the surface area of the screen when viewed in elevation.
- Details demonstrating compliance must be provided to the Certifying Authority.
- (10) **Privacy – Window sill height** – To ensure reasonable privacy for the adjoining property, south elevation of the detached dwellings, (reference 21686-4 sheet 10 of 12 prepared by Portside Building Design) windows must have a minimum sill height of 1.5m above finished floor level.
- Alternatively, the window(s) may be permanently fixed to this height (i.e. windows are not to swing or lift open) with obscure glazing provided that the ventilation requirements of the BCA are met.
- Details demonstrating compliance must be provided to the Certifying Authority.
- (11) **Construction Environmental Management Plan** - A Construction Environmental 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
- (14) **Section 7.11 Development contributions** – A monetary contribution is to be paid to Council for the provision of three additional dwellings, pursuant to Section 7.11 of the *Environmental Planning & Assessment Act 1979* and the Port Stephens Local Infrastructure Contributions Plan 2020 towards the provision of the following public facilities:

Facility	Per Lot/Dwelling	Total \$
Civic Administration – Plan Management	\$452	\$1,356
Civic Administration – Works Depot	\$1,178	\$3,534
Town Centre Upgrades	\$3,174	\$9,522
Public Open Space, Parks & Reserves	\$782	\$2,346
Sports & Leisure Facilities	\$1,724	\$5,172
Cultural & Community Facilities	\$411	\$1,233



## ITEM 2 - ATTACHMENT 6 CONDITIONS WITHOUT PREJUDICE.



Road Works	\$5,031	\$15,093
Shared Paths	\$3,628	\$10,884
Bus Facilities	\$17	\$51
Fire & Emergency Services	\$34	\$102
Flood & Drainage	\$676	\$2,028
Kings Hill Urban Release Area	\$735	\$2,205
<b>Total</b>		<b>\$53,526</b>

Payment of the above amount must 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.

- (15) **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.
- (16) **Hunter Water Corporation approval** - A Section 50 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.

### 3.0 - Prior to Commencement of Works

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

- (1) **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.
- (2) **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 description of the work to be carried out;
  - the address of the land on which the work is to be carried out;
  - the Registered number and date of issue of the relevant development consent;
  - the name and address of the Principal Certifying Authority (PCA), and of the person by whom the PCA was appointed;

## ITEM 2 - ATTACHMENT 6 CONDITIONS WITHOUT PREJUDICE.



- 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.
- (3) **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.
- (4) **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;
  - 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.
- (5) **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.
- (6) **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.



## ITEM 2 - ATTACHMENT 6 CONDITIONS WITHOUT PREJUDICE.



An awning is to be erected that would sufficiently prevent any substance from the construction work falling onto public property. The work site must be kept lit between sunset and sunrise if it is likely to be hazardous to persons on public property.

- (7) **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.

- (8) **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).

- (9) **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.

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

- (10) **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.

- (11) **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.

## ITEM 2 - ATTACHMENT 6 CONDITIONS WITHOUT PREJUDICE.



- (12) **Flood Design Measures** - Evidence of certification demonstrating that the following flood related design precautions have been adhered to in the design must be submitted to the Principal Certifying Authority:
- In sewerred areas some plumbing fixtures may be located below the Flood Planning Level (FPL). Where this occurs sanitary drainage is to be fitted with a reflux valve to protect against internal sewage surcharge;
  - All materials stored at the site and capable of causing harm to the environment must be stored at a level not less than the FPL or suitable bunding must be placed around such materials to a minimum of the FPL;
  - All building materials, equipment, ducting, etc., below the FPL must be flood compatible and ducting must be provided with openings for drainage and cleaning;
  - All main power supply, heating and air conditioning service installations, including meters must be located above the FPL. All electrical equipment installed below the FPL must be capable of disconnection by a single plug from the power supply;
  - All electrical wiring below the FPL must be suitable for continuous submergence in water. All conduits below the FPL must be self-draining. Earth core leakage systems or safety switches are to be installed;
  - Wherever possible, the premises must be designed to ensure that plant, equipment, storage tanks or other fixtures or fittings liable to damage by floods are located above the FPL or be moveable to levels above the FPL. Should this not have the ability to occur, they shall be suitable for submergence in water and securely anchored to overcome buoyancy and movement. All storage tanks must be vented to an elevation above the FPL.

#### 4.0 - During Works

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

- (1) **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.
- (2) **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.
- (3) **Compliance with BCA** – All building work must be carried out in accordance with the requirements of the Building Code of Australia.
- (4) **Excavations and backfilling** – All excavations and backfilling associated with this development consent must be executed safely, and be properly guarded and



## ITEM 2 - ATTACHMENT 6 CONDITIONS WITHOUT PREJUDICE.



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.

- (5) **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.
- (6) **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.
- (7) **Construction Management Plan implementation** - All construction management procedures and systems identified in the approved Construction Environmental Management Plan (CEMP) must be introduced and maintained during construction to ensure works are undertaken safely and with minimal environmental impact.
- (8) **Stormwater disposal** – Following the installation of any roof, collected stormwater runoff from the structure must be:
  - a) Diverted through a first flush system before being connected to an existing stormwater easement/system/street.
- (9) **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.

## ITEM 2 - ATTACHMENT 6 CONDITIONS WITHOUT PREJUDICE.



Where remediation work is required, the applicant will be required to obtain consent for the remediation works.

- (10) **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.
- (11) **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.

### 5.0 - Prior to Issue of an Occupation Certificate

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

- (1) **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.
- (2) **Survey Certificate** – A Registered Surveyor must prepare a Survey Certificate to certify that the location of the building in relation to the allotment boundaries complies with the approved plans or as specified by this consent. The Survey Certificate must be provided to the satisfaction of the Principal Certifying Authority.
- (3) **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.
- (4) **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.



## ITEM 2 - ATTACHMENT 6 CONDITIONS WITHOUT PREJUDICE.



- (5) **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.
- (6) **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.
- (7) **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.
- (8) **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.
- (9) **Protection and Certification of Electrical Services** - All power points, fittings, electrical connections and the incoming meter box are to be located above the Flood Planning Level (FPL).  
Switches, light fittings and power points may be located below the FPL provided they are capable of being isolated by a single Residual Current Device (RCD) protected switch that is located above the FPL. Certification of these works are to be provided to the Principal Certifying Authority.
- (10) **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.
- (11) **Flood Risk Management Plan** - A Certificate of Compliance prepared by a suitably qualified Flood engineer must be provided to the Principal Certifying Authority stating that all aspects of the Flood Risk Management Plan have been completed and/or implemented in accordance with the approved Plan.
- (12) **Flood Emergency Response Plan** - A Flood Emergency Response Plan (FERP) for the proposed development must be provided to the Principal Certifying Authority. The FERP must include the following as a minimum:
  - a) A map of the proposed evacuation route to a suitable location above the Probable Maximum Flood (PMF) that provides adequate shelter from the storm, including the route direction and description and identification of the depth of



floodwater along the evacuation route in the 1% Annual Exceedance Probability flood and *PMF* events;

- b) Specific trigger heights linked to the nearest river and tidal gauges used for flood warnings and the specific evacuation route cut-off times linked to the gauge height;
- c) Description of the specific flood inundation at the site and the relevant surrounding area, including flood depths, direction of flow, velocities, hazard and specific relevant vulnerabilities;
- d) Consideration of and strategies for, the needs of the elderly, disabled and vulnerable who may be on site;
- e) A realistic time period for evacuation preparations linked to the trigger heights and evacuation route cut-off times, which includes:
  - Locating important papers, valuables etc., that will be evacuated
  - Locating and stacking possessions that are to be left behind, well above the predicted flood level
  - Dealing with all utilities such as electricity, gas, water, fuel, toilets, showers, wastewater system (including removal fuses) and moving pumps and machinery above the predicted flood level
  - Time to gather, identify and load animals (pets, livestock and other animals), including the possible need for additional assistance in handling your animals in an emergency.
- f) Determining the vehicular needs of the site to appropriately respond to the flood risk;
- g) A strategy for a night time flood emergency; and
- h) A strategy for effective flood risk management when the electricity, internet, telecommunications etc., are unavailable

**Note:** Digital elevation data is available from Geosciences Australia, current flood studies are available on Council's website and river gauge/ tidal gauge data is available from the Bureau of Meteorology website.

- (13) **Car parking requirements** – A minimum of 4 car parking spaces are to be provided in accordance with AS2890 and the approved plans. Parking must be permanently marked on the pavement surface.
- (14) **Bicycle requirements** – Bicycle parking racks to accommodate 4 bicycles must be installed in accordance with the approved plans.
- (15) **Section 88B Instrument** – The applicant must prepare a Section 88B Instrument which incorporates the following easements, positive covenants and restrictions to user where necessary:
  - a) Right of carriageway for footpath access (the owners of the subject properties burdened by the right of carriageway must be responsible for ongoing maintenance and the Public Liability of the right of carriageway).





The drainage easement/s must be in accordance with Council's Infrastructure Specifications. This documentary evidence must include confirmation that the easement has been registered on the title of the relevant lot(s).

### 6.0 – Ongoing Use

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

- (1) **Maneuvering of vehicles** – All vehicles must enter and exit the site in a forward direction.
- (2) **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.
- (3) **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.
- (4) **Privacy screen** – Any privacy screen/s must be permanently maintained in accordance with the approved plans for the life of the development.
- (5) **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*.
- (6) **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 Fire and Rescue NSW in accordance with the *Environmental Planning & Assessment Regulations 2000*.
- (7) **Waste management and collection** – At all times, the strata management body must make arrangements for the placement of the garbage bins at the 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):

## ITEM 2 - ATTACHMENT 6 CONDITIONS WITHOUT PREJUDICE.



- (1) **'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.
- (2) **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.
- (3) **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 Heritage NSW 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.
- (4) **Flood information is subject to change** – You are advised that flood information is subject to change if more accurate data becomes available to Council. It is the responsibility of the applicant to use the most up-to-date flood information. Prior to applying for a construction certificate, Council should be contacted to verify the currency of the flood information.
- (5) **Flood Evacuation Plan** – A flood evacuation plan indicating that permanent, fail-safe, maintenance free measures are incorporated in the development to ensure that timely, orderly and safe evacuation of people and potential pollutant material from the buildings on-site should a flood occur. Details demonstrating compliance must be provided to the Certifying Authority with the Construction Certificate application.
- (6) **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.
- (7) **Bird strike advice** – As the subject site is located in an area mapped by the Department of Defence as "Birdstrike Group B", organic waste and/or the storage of bins associated with any future development must be covered and/or enclosed and limited on-site.
- (8) **Addressing** – Prior to occupying the development the approved units are to be identified as follows:
  - a) Commercial Space (Eastern Side) – Shop 1, 26 King Street, RAYMOND TERRACE;
  - b) Commercial Space (Western Side) – Shop 2, 26 King Street, RAYMOND TERRACE;
  - c) Shop Top (Eastern Side) – 3/26 King Street, RAYMOND TERRACE;

ITEM 2 - ATTACHMENT 6      CONDITIONS WITHOUT PREJUDICE.



- d) Shop Top (Western Side) – 4/26 King Street, RAYMOND TERRACE;
- e) Detached dwelling (Eastern side) – 5/26 King Street, RAYMOND TERRACE; and
- f) Detached dwelling (western side) – 6/26 King Street, RAYMOND TERRACE.

Council's Spatial Services Team should be contacted via email at: [addressing@portstephens.nsw.gov.au](mailto:addressing@portstephens.nsw.gov.au) to obtain correct property addressing details. Please state your Development Approval number and property address in order to obtain the correct house numbering.

**Note:** Any referencing on Development Application plans to house



**ITEM NO. 3****FILE NO: 21/135699  
EDRMS NO: 16-2021-92-1****DEVELOPMENT APPLICATION 16-2021-92-1 FOR HORTICULTURE AND  
ANCILLARY SHED AT 509 GAN GAN ROAD, ONE MILE**

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

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Approve Development Application 16-2021-92-1 for horticulture and ancillary shed at 509 Gan Gan Road, One Mile (Lot 2 DP 810866) subject to the conditions contained in **(ATTACHMENT 3)**.

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**BACKGROUND**

The purpose of this report is to present Development Application (DA) 16-2021-92-1 for horticulture and ancillary shed at 509 Gan Gan Road, One Mile (Lot 2 DP 810866) to Council for determination.

A summary of the DA and property details is provided below:

Subject Land:	509 Gan Gan Road, One Mile (Lot 2 DP 810866)
Total Area:	8.2ha
Zoning:	E4 Environmental Living
Submissions:	3 submissions were received
Proposal:	Change of use of the land for horticulture including the construction of an ancillary shed and other associated structures.
Key Issues:	The key issues identified throughout the assessment of the DA relate to the potential impacts on the ecological values of the site, safe site access and amenity impacts on the surrounding development.
Development plans:	Provided to Councillors separately due to privacy and copyright legislation

The DA has been reported in accordance with Council's Planning Matters to be Reported to Council Policy, as the DA has been called up by Cr John Nell, Cr Sarah Smith and Cr Giacomo Arnott **(ATTACHMENT 4)**.

A locality plan is provided at **(ATTACHMENT 1)**.

### Proposal

The DA proposes a change of use of the land for horticulture purposes and includes the following key elements to facilitate the horticultural use of the site:

- Construction of 1 ancillary shed (500m<sup>2</sup>)
- Cultivation of olive and avocado trees across an area of approximately 600m<sup>2</sup> in area in total
- Construction of 2 greenhouses (24m<sup>2</sup> each)
- Removal of approximately 650m<sup>2</sup> of existing vegetation consisting of ground cover and scattered weeds
- Replacement landscaping to screen the proposed shed
- Earthworks to achieve a level building platform through the use of balanced cut and fill.

The development is located in an area of the site with sparse vegetation. The site is proposed to be accessed via an existing right of carriageway over Lot 1125 DP 788377 from Gan Gan Road, One Mile.

### Site Description and History

The site is heavily vegetated and currently vacant. The site has 3 road frontages to Gan Gan Road, Eucalyptus Drive and Reflections Drive. There does not appear to be any formal access to the site from any of these road frontages, however, the site benefits from a right of carriageway measuring 15m wide over Lot 1125 DP 788377, adjoining the sites northern boundary. A plan identifying the right of carriageway has been provided at **(ATTACHMENT 5)**.

The site is surrounded predominately by large lot rural residential uses. A largely cleared vacant lot is located directly to the south of the site and One Mile beach is located further to the east.

There are no recent development approvals recorded on the site that are relevant to the current DA.

### Key Issues

The key issues identified throughout the assessment of the DA relate to the potential impacts on the ecological values of the site, safe site access and impacts to surrounding residential amenity. A detailed assessment of the DA is contained within the Planners Assessment Report provided at **(ATTACHMENT 2)**.

### Ecological Values

The site is mapped as containing ecological values, including Port Stephens Local Environmental Plan 2013 (LEP 2013) mapped wetlands, wildlife corridors, preferred

and supplementary koala habitat and threatened species. Ecological concerns were raised within the public submissions received during notification of the DA.

In response to the ecological concerns identified, a Flora and Fauna Impact Assessment was prepared by the applicant, which concluded the following:

- All endangered ecological communities will be retained and protected
- The vegetation requiring clearing includes scattered weeds and native groundcovers that are not suitable habitat for threatened species.
- It was found that the clearing of habitat is unlikely to have a significant impact on the threatened species as they are highly mobile and much of the existing vegetation on the site is of better quality and will be retained
- Targeted surveys did not identify any threatened fauna species or endangered population's listed under the Biodiversity Conservation Act or the Environmental Protection and Biodiversity Conservation Act within the site
- No koalas were observed and there was no evidence (scats or scratches) of previous koala habitation recorded in the study area.

It is concluded that the DA is unlikely to have a significant impact on the ecological features of the local area.

#### Amenity Impacts

During notification of the DA public submissions were received raising concerns regarding potential adverse impacts on the amenity of the area as a result of the scale of the ancillary shed and proposed use of the right of carriage way for access.

In response to the issues raised, amended plans were prepared by the applicant. The amended plans included:

- Increased setback of the ancillary shed to the eastern boundary from 3m to 5m
- Inclusion of deep soil landscaping along the both eastern boundary with Lot 1 DP 810866 and northern boundary with Lot 1125 DP 788377 to provide screening and improve visual amenity.

The amended design is considered on merit to be acceptable despite some setback non-compliances. The proposed ancillary shed is non-compliant with Control C8.5 of the DCP in that it does not reach the minimum 10m side setback on the eastern boundary but rather proposes a 5m setback.

The reduced setback to the eastern boundary is considered appropriate for the following reasons:

- Strict compliance with the side setback provisions would result in additional vegetation clearing, including koala habitat
- Landscaping is proposed to be located within the setback consisting of trees that will have a mature height of 10m. The inclusion of the proposed landscaping will

improve potential visual amenity impacts with the neighbouring property through providing appropriate screening

- The dwelling of the neighbouring property is setback approximately 47m from the common boundary. Therefore, overshadowing of this dwelling and its associated outdoor open space is not considered likely
- The shed is setback 15m from the northern boundary and therefore will not dominate the frontage to the right of carriageway.

### Right of Carriageway

In relation to concerns over the use of the right of carriageway, the following has been assessed:

- The DA has been sited to front the right of carriageway in an area of sparse vegetation to limit clearing required to facilitate the development. For the development to gain access from the alternative street frontages significant vegetation clearing would be required that would include koala habitat. This clearing would be inconsistent with the E4 Environmental Living zoning objectives that seeks to ensure that development does not have an adverse effect on ecological, scientific or aesthetic values. It is further considered that given the clearing required for an alternative access, the ecological values of the site would be adversely impacted. This would not result in an acceptable ecological outcome nor would it be consistent with the zoning objectives.
- The applicant stated that 2 staff would be employed and a maximum of 3 deliveries per week is expected during the operational phase. The traffic movements described above are not considered likely to cause amenity impacts nor adverse impacts to the existing road network. A condition of consent has been recommended restricting both employee and delivery numbers.
- A condition of consent has been recommended requiring that a Construction Environmental Management Plan be prepared prior to the issue of a Construction Certificate, which must outline the sequence and construction methodology and specify mitigating measures to ensure all works are carried out with minimal environmental impact including traffic and dust. A condition requiring a dilapidation report be prepared for the shared driveway and Lot 1 DP 810866 has also been recommended.

### Use of Land

Concern relating to the proposed use of the site for horticulture purposes were raised during the notification period. Any use outside this would require separate development consent. It should be noted that industrial and commercial uses are prohibited in the zone. A condition has also been recommended limiting the use to be only for horticulture and related purposes.

### Site Distances

The current vehicular access has been identified to be non-compliant with the safe intersection side distance (SISD) controls within Chapter B8.C of the DCP that

requires a minimum SISD of 140m. Concerns were also raised during the notification period in relation to the potential safety issues.

The DA achieves the required SISD to the north, however a very minor non-compliance to the south (139.85m) has been identified. Given the access is existing, the non-compliance is minimal and no additional lots are proposed to be serviced, Council's Development Engineering section found that no additional works would be required.

Taking the above into consideration, the site access is suitable for the DA.

### Conclusion

As detailed in the Planners Assessment Report (**ATTACHMENT 2**) the application is considered to be consistent with the aims and objectives of the relevant environmental planning instruments applicable to the DA.

## **COMMUNITY STRATEGIC PLAN**

<b>Strategic Direction</b>	<b>Delivery Program 2018-2021</b>
Thriving and Safe Place to Live	Enhance public safety, health and liveability through use of Council's regulatory controls and services.

## **FINANCIAL/RESOURCE IMPLICATIONS**

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

<b>Source of Funds</b>	<b>Yes/No</b>	<b>Funding (\$)</b>	<b>Comment</b>
Existing budget	Yes		
Reserve Funds	No		
Developer Contributions (\$7.11)	No		Development contributions are not applicable.
External Grants	No		
Other	No		

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

The development application is consistent with the relevant planning instruments including the Environmental Planning and Assessment Act 1979 (EP&A Act), LEP 2013 and associated State Environmental Planning Policies. The non-compliances with the Port Stephens Development Control Plan 2014 (DCP 2014) are considered minor in nature and have been addressed through either conditions of consent or design measures. A detailed assessment against these environmental planning



instruments is contained within the assessment report contained at **(ATTACHMENT 2)**.

<b>Risk</b>	<b><a href="#">Risk Ranking</a></b>	<b>Proposed Treatments</b>	<b>Within Existing Resources?</b>
If the DA is approved, there is a risk that the determination of the DA may be challenged by a third party in the Land and Environment Court.	Low	Accept the recommendations.	Yes
If the DA is refused, there is a risk that the determination of the DA may be challenged by the applicant in the Land and Environment Court.	Low	Accept the recommendations.	Yes

## **SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications.

### Social and Economic Impacts

The proposed development is expected to provide an additional source of income for the residents of the site whilst also providing a source of local produce. The construction of the development would support employment within the local building industry, providing positive social and economic benefit.

The proposed development will provide a low impact land use which is compatible within the established residential setting. There are no adverse social impacts expected to occur as a result of the development.

### Impacts on the Built Environment

The proposed development is considered to be sympathetic to the surrounding development and its residential nature. The proposed ancillary shed is compliant with the height limit and includes appropriate landscape screening along the sites northern boundary and eastern boundary. The proposed landscape screening will soften the proposed development to ensure there is limited impact on the existing character of the area.

### Impacts on the Natural Environment

The site contains a number of environmental constraints that have been considered in the ecology impact assessment provided and throughout the assessment of this

DA. It is considered that the proposed development is appropriate for the site and will not have a significant impact on the natural environment.

## **CONSULTATION**

Consultation was undertaken with Council's Development Engineers, Natural Resource Officers, Environmental Health Officers and Building Surveyors. These referral comments were considered as part of the Planners Assessment Report Contained at **(ATTACHMENT 2)** and accordingly the DA is recommended for approval subject to the conditions of consent contained within **(ATTACHMENT 3)**.

### Public Exhibition

The DA was advertised and notified in accordance with the requirements of the Port Stephens Council Community Engagement Strategy. The application was notified for a period of 14 days from 19 February 2021 to 5 March 2021. During this period, 3 public submissions were received.

A detailed assessment of the submissions and matters raised were considered as part of the Planners Assessment Report Contained at **(ATTACHMENT 2)**.

## **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. [↓](#)
- 4) Call to Council form. [↓](#)
- 5) Site Plan. [↓](#)

## **COUNCILLORS ROOM**

- 1) Development Plans (provided to Councillors separately due to privacy and copyright.
- 2) Unredacted submissions.

## **TABLED DOCUMENTS**

Nil.



116 Adelaide Street, Raymond Terrace NSW 2324. Phone: (02) 49800255 Fax: (02) 49873612 Email: council@portstephens.nsw.gov.au





## APPLICATION REFERENCES

<b>Application Number</b>	16-2021-92-1
<b>Development Description</b>	Horticulture and ancillary shed
<b>Applicant</b>	PERCEPTION PLANNING PTY LTD
<b>Land owner</b>	MR G D WELLS & MS H M WALKER
<b>Date of Lodgement</b>	11/02/2021
<b>Value of Works</b>	\$95,000.00
<b>Submissions</b>	3

## PROPERTY DETAILS

<b>Property Address</b>	509 Gan Gan Road ONE MILE
<b>Lot and DP</b>	LOT: 2 DP: 810866
<b>88B Restrictions on Title</b>	<p>The site contains a right of carriageway measuring 20m wide fronting Gan Gan Rd. The proposed development will not impact this right of carriageway.</p> <p>The subject site benefits from a right of carriageway measuring 15m wide which is located on Lot 1125 DP 788377 (created under DP 646893). The proposal seeks to utilise this right of carriageway for access to the site.</p>
<b>Current Use</b>	Vacant/Vegetated Land
<b>Zoning</b>	E4 ENVIRONMENTAL LIVING
<b>Site Constraints</b>	<p>Bushfire prone land – Category 1, 2 and 3.</p> <p>Koala Habitat – Cleared, buffer over cleared, preferred, Biodiversity Values</p> <p>Acid Sulfate Soils – Category 1, 3 and buffer</p> <p>LEP wetlands</p> <p>Flood Prone Land (PMF)</p>
<b>State Environmental Planning Policies</b>	State Environmental Planning Policy No. 55 – Remediation of Land

State Environmental Planning Policy (Koala Habitat Protection) 2020

## ITEM 3 - ATTACHMENT 2 PLANNERS ASSESSMENT REPORT.

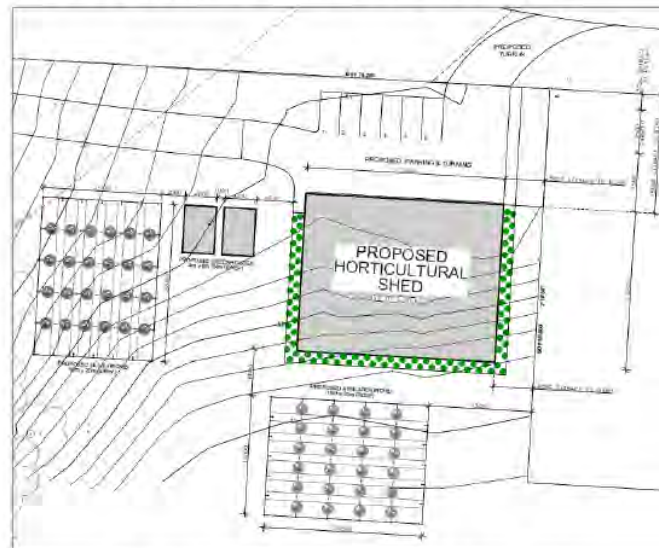
**PROPOSAL**

The proposed development seeks consent for the construction of an ancillary shed and a change of use of the land for horticulture purposes.

The horticulture operation will comprise of the planting of avocado and olive trees and it is proposed to be located in the north eastern portion of the site directly adjacent to Lot 1 DP 810866 and Lot 1125 DP 788377. To support the proposed use of the site for horticulture activities, the proposal also seeks consent for the installation and construction of associated infrastructure and structures. The development specially involves the following:

- Construction of 2 x greenhouses both with floor areas of 24m<sup>2</sup>.
- Plantation of olive and avocados trees which will cover approximately 600m<sup>2</sup> in area in total.
- Construction of an ancillary shed utilised to store fertiliser, pesticides, equipment and machinery. The shed will also house an office space, staff amenities and lunch area. The shed has a total area of 500m<sup>2</sup> and height of 7.55m.
- Construction of a new access driveway from Lot 1125 and a 6 space car park. The development proposed to utilise the existing right of carriageway.
- Removal of approximately 650m<sup>2</sup> of existing vegetation consisting of ground cover and scattered weeds to facilitate the proposed development.
- Planting of landscaping along the sites eastern boundary with Lot 1 DP 810866 and along the sited frontage to Lot 1125 DP 788377.

Refer to **Figure 1** below of the proposed development and site layout.



**Figure 1: Proposed Site Partial Site Plan**

Details in relation to the operation of the horticulture use are as follows:

- The current owners of the site will be employed by the business with no external employees currently anticipated to be required.
- The operational hours will be on a seasonal basis.
- There is no anticipated commercial sale of produce on the site and will therefore be sold externally.



## ITEM 3 - ATTACHMENT 2 PLANNERS ASSESSMENT REPORT.

- No bulk deliveries are anticipated with all deliveries being transported to the site by the employees in a small van. It is anticipated that there will be a maximum of 3 x deliveries per week during peak periods.
- Waste will be serviced via kerb side collection. Once the facility is operational and if further waste servicing is required, consultation will be undertaken with Council and surrounding neighbours.
- No business identification signage is proposed.

**SITE DESCRIPTION**

The subject site is located at 509 Gan Gan Road, One Mile and legally described as Lot 2 DP 810866. The site is approximately 8.2 hectares in area and is heavily vegetated with no visible structures on site. The site has three road frontages, to Gan Gan Road, Eucalyptus Drive and Reflections Drive. There does not appear to be any formal access to the site from these road frontages. The site benefits from a right of carriageway measuring 15m wide over Lot 1125 DP 788377.

An Aboriginal site (ceremonial ring) is located within the north western portion of the site. The proposed development will not impact this site. No other AHIMS listed sites are located nearby.

The site is surrounded largely by residential uses. A largely cleared vacant lot is located directly to the south of the site and One Mile beach is located further to the east.



**Figure 2: Site Aerial**

**SITE HISTORY**

There are a number of applications relating to the subject site on Council's system:

- BA/DA 7-1985-2986-1 – Subdivision – 2 Lots – Approved
- BA/DA 7-1985-3012-1 – Strata Subdivision – 2 Lots- Approved
- BA/DA 7-1991-5070-1 – Subdivision 2 Lots – Approved
- BA/DA 7-1991-60429-1 – Dwelling – Approved
- BA/DA 7-1991-5189-1 – Dwelling – Approved
- DA 16-2000-1048-1 – 19 Lot Subdivision – Approved
- DA 16-2014-628-1 – Drainage works – Approved

**ITEM 3 - ATTACHMENT 2 PLANNERS ASSESSMENT REPORT.**

The proposed development will not impact the previously approved applications.

There is a compliance matter related to the site for an unauthorised fence in an environmental protection zone and illegal dumping. The fence was investigated and the applicant provided an assessment prepared by Kleinfelder Australia Pty Ltd (Kleinfelder) which found that the fence in its original form did not comply with the current guidelines as per the CKPoM. Therefore, it was recommended that the sharp ends of mesh be crimped to reduce the risk of injury to koalas when climbing over the fence. These works have been conducted to remove sharp edges off the fence. Following these amendments it was found by Kleinfelder that the fence met the requirements of the CKPoM.

**SITE INSPECTION**

A site inspection was carried out on 4 March 2021.

The subject site can be seen in figures 1 and 2 below:



**Figure 3.** Approximate location of car park and shed and olive orchard further to the rear



**Figure 4.** Approximate location of car parking, shed and avocado orchard to the rear



**Figure 5:** Approximate location of proposed access



**Figure 6:** Existing access road through Lot 1125.





Figure 7: Approximate location of olive orchard.

### PLANNING ASSESSMENT

The application was assessed, and comments provided, by the following external agencies and internal specialist staff:

#### Internal

Development Engineer – The application was reviewed by Council's development engineer. The site distances were reviewed and whilst there is a minor non-compliance, given the access is existing no upgrades can be imposed in this regard. It was recommended that the access dimensions be upgraded to be 6.5m wide for the first 6m given the sites frontage to Gan Gan Road, as per Council's DCP. Taking into consideration that the access is existing, no additional lots are proposed to be serviced and traffic numbers are minimal, it has been determined that the access is suitable and the upgrades is not required.

The site was also identified as being flood prone (PMF), however the area subject to development is not flood affected.

The proposals stormwater management plan was reviewed and found to meet the requirements of the DCP. Overall, the application was supported subject to conditions. These conditions have been included in the draft consent.

Natural Resources – Council's Natural Resources officer reviewed the proposed development including the Flora and Fauna Impact Assessment prepared by Enviro Ecology and found that the reports conclusions were satisfactory in that the proposed development is not likely to have a significant impact upon threatened species, endangered populations or endangered ecological communities. The proposed development was therefore supported subject to conditions of consent. These conditions have been included in the recommended conditions.

Environmental Health – The proposal was referred to Council's Environmental Health Officer. It was found that the site was not connected to reticulated sewer and is rated as 'very high' hazard according to Council's OSMS hazard class map. As such, a s68 approval is required to be obtained from Council for the installation of an OSMS. Given the sites location in a very high hazard area, the S.68 application is required to be submitted with a waste water report. A condition of consent requiring this has been recommended.

**ITEM 3 - ATTACHMENT 2 PLANNERS ASSESSMENT REPORT.**

Building Surveyor – The proposal was referred to Council's Building Surveyor for review. It was found that the plans demonstrate that compliance with the BCA can be achieved. The application was therefore supported subject to conditions. These conditions have been recommended.

**Environmental Planning and Assessment Act 1979**

***Section 4.46 - Integrated development***

The proposed development does not trigger the requirements for integrated development in accordance with Section 4.46 of the EP&A Act.

***Section 4.14 – Consultation and development consent (certain bushfire prone land)***

The proposed development is mapped as bushfire prone land, category 1, 3 and buffer and as such triggers assessment under the NSW RFS Planning for Bushfire Protection 2019. Given the proposal is for a horticulture development, chapter 8 of the PBP 2019 it's required to be considered. The proposed development has been identified as likely being a class 7 or 8 building under the NCC and therefore has been assessed under Section 8.3.1 of the PBP 2019. It is considered that the proposed development is compliant with the PBP 2019 in that:

- Safe access to and from the public road system will continue to be provided from the site;
- The proposal is capable of providing suitable emergency and evacuation arrangements;
- The proposal will be required to be constructed in accordance with the NCC and therefore hydrants and hose reels to cover all floor areas within the building will be provided and therefore adequate water services will be provided to assist in firefighting;
- It is considered that gas and electricity connections will be suitably locatable within the proposed development;
- The proposal does not involve the storage of hazardous material.

As per the above, the proposal is considered to be consistent with the PBP 2019 and therefore Clause 4.14 (1)(a).

***Section 4.15 - Matters for consideration***

The proposal has been assessed under the relevant matters for consideration detailed in Section 4.15 of the Environmental Planning and Assessment Act 1979 (EP&A Act).

***Section 4.15(a)(i) - any environmental planning instrument***

An assessment has been undertaken against each of the applicable environmental planning instruments (EPI's), as follows:

**State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017**

State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 ('Vegetation SEPP'), aims to protect the biodiversity values and preserve the amenity and other vegetation in non-rural areas of the State. The Vegetation SEPP works in conjunction with the Biodiversity Conservation Act 2016 and the Local Land Services Amendment Act 2016 to create a framework for the regulation of clearing of native vegetation in NSW.

Part 3 of the Vegetation SEPP contains provisions similar to those contained in the former (now repealed) clause 5.9 of Port Stephens Local Environmental Plan 2013 and provides that Council's Development Control Plan can make declarations with regards to certain matters. The Vegetation SEPP further provides that Council may issue a permit for tree removal.

**ITEM 3 - ATTACHMENT 2 PLANNERS ASSESSMENT REPORT.**

The development application seeks consent for the removal of existing vegetation to facilitate the proposed development. The removal is supported as replacement plantings are proposed by the applicant consistent with Council's landscape technical specifications.

State Environmental Planning Policy No. 55 – Remediation of Land

Clause 7 of SEPP 55 requires the consent authority to consider whether land is contaminated, is in a suitable state despite contamination, or requires remediation to be made suitable for the proposed development.

It is noted that the NSW list of contaminated sites and list of notified sites published by the EPA does not identify the site as being contaminated, nor has previous record of contamination in Council's system. The land is not within an investigation area, there are no records of potentially contaminating activities occurring on the site, and the horticulture proposed use is not listed as a possible contaminating use, per Table 1 of the Guidelines. Noting this, the proposed development satisfies the requirements of SEPP No. 55.

State Environmental Planning Policy (Koala Habitat Protection) 2021

This policy aims to encourage the conservation and management of areas of natural vegetation that provide habitat for koalas to support a permanent free-living population over their present range and reverse the current trend of koala population decline.

The development site has been identified as 'clear' on the mapping and is not considered to be 'Core Koala Habitat' as defined by this SEPP. In addition, no koalas were observed during the fauna survey and there was no evidence (scats or scratches) of previous koala habitation were recorded from the study area. It is therefore considered that the proposed development is consistent with this policy.

State Environmental Planning Policy Coastal Management 2018

The subject land is located with the Coastal Use Area as such the following general matters are required to be considered when determining an application.

As per Clause 14 of the SEPP, development consent must not be granted for development unless the consent authority has considered existing and safe access to and along the foreshore, overshadowing and loss of views, visual amenity and scenic qualities and heritage values. The consent authority must also be satisfied that the development is designed and sited to avoid adverse impacts and to ensure the development has taken into account the surrounding built environment in its design.

Whilst portions of the site have been identified as being within a coastal use area, the proposed development is not. It is considered that the proposal will not impact the safe access to the coastal area nor will it impact views, visual amenity and scenic qualities and heritage values.

Clause 15 of the SEPP requires consideration to whether the development would increase the risk of coastal hazards. The proposed development is suitably designed and located to not increase risk to coastal hazards.

Therefore the application would generally comply with the aims of the SEPP and the other matters for consideration stipulated under Clause 14 and 15, and can therefore be supported.

Port Stephens Local Environmental Plan 2013 (LEP)

**Clause 2.3 – Zone Objectives and Land Use Table**



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The proposed development is defined as a 'horticulture' which is permissible with consent in the E4 Environmental Living zone. The proposed shed is ancillary to the horticulture use, and proposes to house an office, staff amenities, machinery, pesticides and fertilisers required to ensure the functionality of horticulture development. The proposed shed is therefore considered to be ancillary as it will serve the horticulture use rather than serve its own purpose.

Whilst the proposed development is not residential development, it addresses the objectives of the zone by providing a compatible low impact development without having adverse impacts on the surrounding ecological, scientific or aesthetic values as assessed.

#### Clause 4.3 – Height of Buildings

The proposed development has a maximum height of 7.7 metres, which is below the maximum permissible building height of 9 metres specified on the Height of Buildings Map.

#### Clause 5.10 – Heritage conservation

The subject site does not have any state or locally listed heritage items nor is it within a heritage conservation area in accordance with the PSLEP. However, it was identified that the site contains one listed Aboriginal heritage item, being a 'ceremonial ring'. The item is located within the north western portion of the site on top of the existing ridge, refer to **Figure 8** below. The proposed development has been sited so as to not impact the Aboriginal heritage item and is considered to be consistent with this clause.

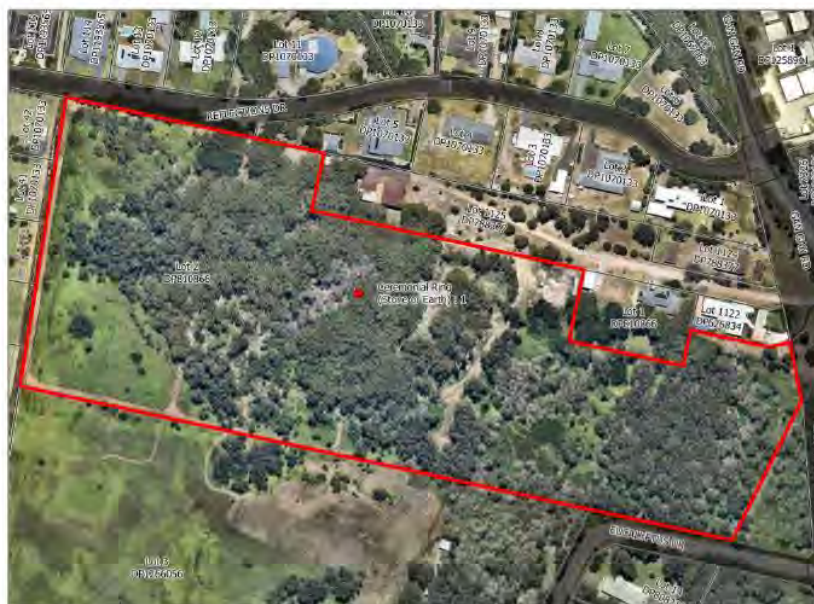


Figure 8. Location of existing Aboriginal Heritage item on the site

#### Clause 7.1 – Acid Sulfate Soils

The subject site is mapped as containing potential Class 3 and 5 acid sulfate soils. The proposed development is located wholly within the Class 5 ASS. The development is not anticipated to entail excavations below 5 metres Australian Height Datum and by which the watertable is likely to be lowered below 1 metre Australian Height Datum on adjacent land. Therefore it is not expected that acid sulfate soils would be encountered during works.

#### Clause 7.2 – Earthworks

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The application proposes earthworks on the site to achieve a level building platform through the use of balanced cut and fill. Earthworks are minor in nature and are not anticipated to result in any negative impacts on the subject or adjoining land, or any public place. The applicant has advised that fill material will be Virgin Excavated Natural Material (VENM), Excavated Natural Material (ENM) or any other waste derived material. A condition has been recommended ensuring only fill of this form is put on the site.

**Clause 7.3 – Flood Planning**

The site has been identified as containing flood prone land (PMF). However, the portion of the site to be developed for the horticulture facility is not impact by flood prone land. Therefore, it is considered that the proposal will not result in any unacceptable impacts on local flood characteristics.

**Clause 7.6 – Essential Services**

The subject site is capable of being connected to essential services such as a reticulated water and electricity. However, the site is not connected reticulated sewer and is rated as 'very high' hazard according to Council's OSMS hazard class map. As such, an s68 approval is required to be obtained from Council for the installation of an OSMS. A condition of consent requiring this has been recommended.

The subject site will be accessed via the existing right of carriageway provided from Gan Gan Road.

The proposal can therefore meet the requirements of this clause.

**Clause 7.9 – Wetlands**

Portions of the site have been mapped as wetland. A small portion of the development encroaches the mapped wetland. Notwithstanding, the application has been assessed by Council's Natural Resources Officer who has determined that the development will not have a negative impact on the flora and fauna of the wetland, therefore the development satisfies the requirements of this clause.

***Section 4.15(a)(ii) - any draft environmental planning instrument that is or has been placed on public exhibition***

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

***Section 4.15(a)(iii) – any development control plan*****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 B1 – Tree Management**

The proposal seeks consent to remove existing vegetation on the site to facilitate the proposed development, specifically 650m<sup>2</sup> of cleared land with scattered weeds and native groundcovers. Therefore, this Chapter of the DCP applies.

The vegetation requiring removal was identified as providing sub-optimal (habitat) for threatened species. The targeted surveys undertaken as a part of the Flora and Fauna Assessment did not identify any threatened fauna species or endangered population's listed under the BC Act or the EPBC Acts within the subject site. It was concluded that the proposal was unlikely to have a significant impact on the ecological features of the local area.

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A condition of consent has been recommended noting that tree removal is to be undertaken by a qualified arborist with minimum Australian Qualification Framework Level 3 qualifications or higher. In addition, it is noted that the proposal will not result in clearing of native vegetation beyond the designated threshold of 0.05ha and therefore does not require a BDAR.

The proposal is considered to be consistent with Chapter B1.

**Chapter B2 – Natural Resources**

Chapter B2 of the DCP applies as the site is located within 500m of land that contains items of environmental significance and is located in proximity to land containing koala habitat.

**B2.A Environmental Significance**

Given the site is located within 500m of LEP mapped wetlands, wildlife corridors and threatened species a flora and fauna assessment was provided for the proposal. The flora and fauna assessment was prepared in accordance with DCP requirements and found that the proposal is unlikely to have significant impact on the ecological features of the local area. This finding was supported by Council's Natural Resources officer.

**B2.B Biodiversity offsets**

Biodiversity offsets are not required as the proposal will not result in clearing of native vegetation beyond the designated threshold of 0.05ha.

**B2.D Koalas**

The overall site contains preferred koala habitat, supplementary habitat, and buffer over cleared habitat, link over cleared habitat and mainly cleared habitat. The development site is largely located within the 'cleared' koala habitat map with a small portion in supplementary habitat and buffer over cleared. This was required to be taken into consideration in the Flora and Fauna assessment for the site.

Whilst a small portion of vegetation is required to be removed in the supplementary habitat, during the site assessment no koalas were observed and there was no evidence (scats or scratches) of previous koala habitation were recorded from the study area.

It is therefore considered that the proposed development is consistent with this Chapter of the DCP and the CKPoM.

**Chapter B3 – Environmental Management****B3.A Acid Sulfate Soils**

The objective of this DCP Chapter is to ensure that developments do not disturb, expose or drain Acid Sulfate Soils (ASS) and cause environmental damage.

As detailed within clause 7.1 discussion above, the subject land is mapped as containing potential Class 3 and 5 acid sulfate soils. The proposed development is located wholly within the Class 5 ASS. The development is not anticipated to entail excavations below 5 metres Australian Height Datum and by which the watertable is likely to be lowered below 1 metre Australian Height Datum on adjacent land. Therefore it is not expected that acid sulfate soils would be encountered during works.

**B3.B Air Quality**

Air quality is not expected to be significantly impacted by the proposed development. Impacts on air quality during construction can be mitigated through condition of consent. Relevant conditions have been recommended.

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The separation distances incorporated into the development will limit any significant impacts on the adjoining development during the operation of the horticulture facility.

The impacts of the development during construction could be limited through conditions of consent which limit construction work hours and mitigate noise derived from ventilation and air conditioning systems. Subject to the recommended conditions, the application is satisfactory in regards to noise management.

**B3.D Earthworks**

As discussed at clause 7.2 above the proposed development involves minor earthworks to establish a level building platform and site access through the use of balanced cut and fill. The impacts of the proposed earthworks can be mitigated through conditions of consent. The proposal is therefore consistent with requirements outlined in Councils DCP relating to earthworks.

**Chapter B4 – Drainage and Water Quality**

A stormwater management plan was submitted with the application and includes adequate quality and quantity controls as required by Councils policy. The stormwater drainage plan has been assessed as being consistent with the Infrastructure Specification and a condition of consent has been included in the consent requiring the provision of detailed engineering plans, prior to the issue of a construction certificate.

**Chapter B7 – Heritage**

The subject site does not have any heritage listed items nor is it within a heritage conservation area in accordance with the PSLEP. However, it was identified that the site contains one listed Aboriginal heritage item being a 'ceremonial ring'. Therefore, Section B7.D is relevant.

**B7.D Aboriginal heritage**

An extensive Aboriginal Heritage Information Management System AHIMS search and its associated site card was provided to Council for review. The site card confirms the location of the Aboriginal heritage listed item is located within the north western portion of the site, atop a ridgeline, refer to **Figure 8** (in Clause 5.10 assessment). The proposed development has been sited approximately 124m from the site so as to not impact heritage values. No impacts to heritage would occur and the proposal is considered to be consistent with this clause.

**Chapter B8 – Road Network and Parking****B8.A Traffic impacts**

The proposal provides sufficient detail in relation to parking location, number and dimensions, access arrangements and potential traffic implications.

The proposal is not expected to generate significant amounts of traffic to the site, with a maximum of three deliveries per week expected when the orchards are at full growth. Deliveries are proposed to be transported to the site by the employees of the orchard in a small van. In addition, there is no anticipated commercial sale of produce on the site and will therefore be sold externally.

Access to the site is proposed to be provided via the existing right of carriage way over Lot 1125 DP 788377. A new driveway access, car parking and manoeuvring area is proposed to be constructed.



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As per the above, it is considered that the proposed development will not result in adverse impacts to existing road networks and therefore a traffic impact assessment is not deemed necessary for the proposal.

#### B8.B On-site parking provisions

The DCP does not include any car parking rates for horticulture developments and therefore a merit based assessment is required to be undertaken.

A total of 6 car parking spaces are proposed to be provided to the site and a manoeuvring area. The owners of the site are proposed to operate the horticulture facility with no additional employees required. Further, there is no anticipated commercial sale of produce on the site and deliveries will be collected by the operators rather than delivered by external companies. Therefore, the number of car parking spaces provided is considered suitable for the proposed use. A condition requiring the car parking spaces to comply with AS2890 has been recommended.

The car parking is proposed to be provided in front of the building line rather than behind as stipulated by Control B8.11. The landscaping proposed along the frontage to the adjacent lot will screen the car parking which is considered to be appropriate.

#### B8.C On-site parking access

The development is proposed to utilise an existing right of carriageway providing access from an existing crossover off Gan Gan Road. In accordance with this Chapter of the DCP the required safe intersection side distance (SISD) is 140m. The SISD for the existing access achieves 140m to the north however, has a minor non-compliance to the south (139.85m). The DCP also notes that ingress/egress dimension may need to be increased to 6.5m for the first 6m inside the property boundary when development provides access to an arterial road. This applies to the proposal as the site gains access from Gan Gan Road which is considered to be an arterial road. Council's Development Engineer recommended that a condition be placed on the consent requiring this to be upgraded. However, given the access is existing, no additional lots are proposed to be serviced, appropriate passing bays are achieved and there is minimal traffic movements proposed, the access is considered to be suitable.

The proposed development also seeks to construct a new crossover and driveway from Lot 1125 DP 788377. This access is considered to be appropriate to cater for the proposed development.

#### B8.D Visitor parking and loading facilities

Visitor parking is not considered necessary for the proposed development given no commercial sale of goods or deliveries from external companies are proposed. Notwithstanding, a sufficient number of car parking spaces are provided should people visit the site.

The site provides sufficient area for loading.

### **Chapter C – Development Types**

The proposed development is for a horticulture use. There is no specific controls for horticulture uses under the DCP. However, given two greenhouses and an ancillary shed is proposed Chapter C8 is therefore applicable and has been assessed below.

#### **Chapter C8 – ancillary structures**

The proposed development is zoned E4 Environmental Living under the PSLEP and therefore is not strictly a residential or rural zone. However, taking into consideration the proposed use and size of the subject lot, the controls regarding rural sheds have been utilised for assessment.

Reference	Control	Assessment
C8.5	Rural Shed in a rural zone adheres to:	<u>Greenhouses</u>

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	<ul style="list-style-type: none"> <li>- minimum 10m side and rear boundary setback;</li> <li>- minimum 5m setback from another building; and</li> <li>- Colour scheme consistent with the existing character of the area.</li> </ul>	<p>The green houses have a minimum side setback of 47m and therefore exceed the 10m required rear setback.</p> <p>The greenhouses themselves are setback 1m from each other. Given their small scale this is considered to be appropriate.</p> <p>The minimum setback of the greenhouses from the proposed ancillary shed is approximately 8m and therefore compliant.</p> <p>The greenhouses materials will consist of a steel frame and green shade cloth lining.</p> <p><u>Ancillary Shed</u></p> <p>The ancillary shed has a minimum setback of 5m to the eastern side setback, which does not comply with the 10m numerical control. The reduced setback to the eastern boundary is considered appropriate as it is located in close proximity to the access to the site and reduces the amount of clearing required to facilitate the proposed development.</p> <p>Landscaping is also proposed to be located within this setback consisting of trees that have a mature height of 10m. The inclusion of the proposed landscaping provides sufficient visual screening to avoid adverse amenity impacts to the neighbouring property. It is also noted that the dwelling of the neighbouring is setback 42m from the common boundary, with a shed located between, which further mitigates any potential visual impacts.</p> <p>All other boundary setback requirements are complied with.</p> <p>The shed is proposed to be constructed of metal sheet wall cladding of colorbond monument finish which is considered appropriate for the area.</p>
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*Section 4.15(1)(a)(iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph)*

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

***Section 4.15 (1)(b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality***

Social and Economic Impacts

The proposed development is expected to provide an additional source of income for the residents of the site, whilst also providing a source of local produce. The construction of the development would support employment within the local building industry, providing positive social and economic benefit.

The proposed development will provide a low impact land use, compatible within the established residential setting. There are no adverse social impacts expected to occur as a result of the development.

Impacts on the Built Environment

The proposed development is considered to be sympathetic to the surrounding development and its residential nature. The proposed ancillary shed is compliant with the height limit and includes appropriate landscape screening along the sites northern boundary and eastern boundary. The proposed landscape screening will soften the proposed development to ensure there is limited impact on the existing character of the area.

Impacts on the Natural Environment

The site contains a number of environmental constraints which have been considered in the ecology impact assessment provided and throughout the assessment of this DA. It is considered that the proposed development is appropriate for the site and will not have a significant impact on the natural environment.

***Section 4.15(1)(c) the suitability of the site for the development***

The subject site is considered to be suitable for the proposed development as it is currently vacant, the location of the proposed development is in a largely cleared area of the site and therefore does not require significant clearing of native vegetation and has been design to limit impacts on surrounding properties.

***Section 4.15(1)(d) any submissions made in accordance with this act or the regulations***

Public Submissions

The application was exhibited from 19 February 2021 to 5 March 2021 in accordance with the provisions of the Port Stephens Council Community Participation Plan. Three (3) submissions were received during this time. The matters raised during the exhibition period have been detailed in the table below.

Issue	Response
<p><b>Access</b></p> <p>A number of submissions raised concerns regarding access, particularly regarding the development utilising the existing right of carriageway when there are alternative road frontages available and the suitability of this given the nature of the development and potential future uses such as a depot.</p> <p>Concerns were raised in relation to the potential safety concerns as a result of the use</p>	<p>The proposed horticulture use has been sited to front the right of carriageway in an area of sparse vegetation to limit clearing required to facilitate the development. Requiring the development to gain access from the alternative street frontages would require significant clearing of vegetation including preferred and supplementary koala habitat, high environmental value mapped vegetation and endangered ecological community (swamp sclerophyll forest). This clearing would be</p>



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<p>of the right of carriage way, particularly given site distances on Gan Gan Road have not been met.</p> <p>Suitability of heavy vehicles utilising the right of carriage way given it has not been designed to do so.</p>	<p>inconsistent with the E4 Environmental Living zone objectives which seeks to ensure that development does not have an adverse effect on ecological, scientific or aesthetic values. It is considered that given the clearing required for an alternative access, the ecological values of the site would be adversely impacted. It is therefore considered that this would not result in an acceptable outcome for the development nor would it be consistent with the zoning objectives.</p> <p>In terms of use of the site as a depot, the proposal seeks consent for the use of the site for horticulture purposes. Any use outside of this would require separate development consent, noting that depots are not permissible within the E4 Environmental Living zone.</p> <p>It is acknowledged that there is a minor non-compliance in relation to site distances for vehicle access (139.85m along the northern direction). This was reviewed by Council's Development Engineer, who found that given the access is existing, the non-compliance is minimal and no additional proposed lots are seeking to be serviced, upgrades cannot be imposed. It is noted that the applicant has advised there will be a maximum of 3 deliveries per week when the orchard is at full growth which will be undertaken by a small van. Other traffic movements will be from the employees of the horticulture development which consists of 2 people.</p> <p>Heavy vehicles may be utilised during the construction of the development however this will occur over a small period of time and can be managed by conditions of consent. A condition of consent has been recommended requiring that a Construction Environmental Management Plan be prepared prior to the issue of a Construction Certificate which must outline the sequence and construction methodology and specify mitigating measures to ensure all works are carried out with minimal environmental impact including traffic and dust.</p>
<p><b>Traffic</b></p> <p>Concern was raised in relation to the increase in traffic movements in the last 7 months and the potential for this to increase if development consent is issued for the development,</p>	<p>The proposal seeks consent for the use of the site for horticulture purposes. Anything outside of this would require development consent. Industrial and commercial uses are prohibited in the zone.</p>



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<p>particularly given its likely to be utilised as an industrial/commercial use.</p> <p>The submission requested Council impose conditions of consent to ensure commercial purposes are not to occur on the land.</p> <p>Concern is also raised in relation to the damage to the surface of the driveway as a result of the increased vehicular movements.</p>	<p>During operation of the horticulture facility, traffic movements are expected to be minimal with a maximum of 3 deliveries expected per week, only 2 employees and no commercial sale of produce on the site. It is therefore considered that operational traffic will not have a significant impact on the safety of the driveway or surrounding road network. A condition of consent has been recommended restricting both employee and delivery numbers.</p> <p>It is expected that additional vehicle movements will be required during construction including potential for heavy vehicles. A condition of consent has been recommended requiring that a dilapidation report of the shared driveway be prepared detailing the physical condition of the driveway and access. Noting that all costs incurred in achieving compliance with this condition must be borne by the applicant.</p>
<p><b>Environmental Significance</b></p> <p>A submission noted that the environmental significance of the land has been understated and ignored in the development proposal. The submission noted that environmental issues should be carefully examined.</p>	<p>Following a preliminary assessment of the proposal, it was identified that the applicant was required to provide an Ecology Assessment to address environmental concerns. The Ecology Assessment found that that the proposed development is not likely to have a significant impact upon threatened species, endangered populations or endangered ecological communities. This report and its conclusions were reviewed by Council's Natural Resources Officer and found to be satisfactory.</p> <p>It is considered that the proposal has addressed environmental concerns adequately and the siting of the development reduces potential significant impacts.</p>
<p><b>Flooding</b></p> <p>Concern has been raised in relation to flooding on the lot and that the development may exacerbate this flooding particularly given the fill proposed.</p> <p>The location of the southern orchard was specifically raised as a concern given it will be in the lower portion of the site more susceptible to flood.</p>	<p>The site has been identified as containing flood prone land. This mapped land is considered to be minimal risk land in accordance with Chapter B.8 of the Port Stephens DCP 2013. Notwithstanding, the proposal includes earthworks which has been reviewed by Council's Development Engineer from a flooding perspective who found that the development is compliant with relevant controls and not likely to have an unacceptable impact on local flood characteristics.</p>

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<p><b>Viability Avocado and Olive Orchards</b></p> <p>A submission raised concerns in relation to the viability of the avocado and olive orchards and noted that the subject site is not suitable for these orchards. The submission noted that it is unreasonable to approve a development if it is likely going to fail.</p>	<p>Horticulture is permissible with consent in the E4 Environmental Living zone. Council cannot refuse a development on the basis that a development may not succeed.</p>
<p><b>Fill</b></p> <p>Concern was raised in relation to filling of the site and its proximity to a mapped wetland.</p> <p>A submission raised concern in relation to the amount of fill required for the proposed development.</p>	<p>Minimal fill is required to facilitate the proposed development. The proposed ancillary shed will be supported by concrete columns at the rear rather than filling the site for a slab. This has reduced the amount of fill required for the development.</p> <p>A condition has also been recommended requiring that fill must be Virgin Excavated Natural Material (VENM), Excavated Natural Material (ENM) or any other waste derived material the subject of a resource recovery exemption under s.91 of the <i>Protection of the Environment Operations (Waste) Regulation 2014</i> that is permitted to be used as fill material.</p> <p>A delivery register must be kept to ensure this condition is complied with. This will mitigate potential impacts on mapped wetlands from a contamination perspective.</p>
<p><b>Dumping and clearing</b></p> <p>A submission noted that there has been illegal dumping and clearing on the site. The submission noted that the dumping and clearing has impacted resident's amenity and safety.</p> <p>Concern was raised given no ASSMP was required for these works nor in the proposed application.</p> <p>Concern was also raised around the dumping of potentially contaminated waste on site may have impacted these wetlands and the ecologically important nature of the site.</p>	<p>It is noted that the illegal dumping and clearing of vegetation on the site is subject to a compliance matter which is dealt with separately to the DA.</p>
<p><b>Loss of Amenity</b></p> <p>Concern was raised in relation to the potential loss of amenity as a result of the noise, vibration and dust arising from increased vehicle movement.</p>	<p>Operationally, the proposed horticulture use is not expected to cause unacceptable noise, vibration and dust given the minimal vehicular movements expected.</p> <p>Additional vehicular movements are expected during construction. Conditions of consent have been recommended to mitigate potential</p>

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	<p>impacts such as the requirement for a Construction Environmental Management Plan (CEMP) to be prepared. In addition, a condition of consent noting that all must not give rise to offensive noise, dust, odour or vibration as defined in the <i>Protection of the Environment Operations Act 1997</i> has been recommended.</p>
<p><b>Bulk and Scale of Shed</b></p> <p>Concern was raised in relation to the size of the ancillary shed and its consistency with surrounding development and the current zoning. Noting that the shed will be much larger than surrounding sheds.</p> <p>The submission raised concern over the need for the reduced setback when the site is so large. The submission noted that the reduce setback will have a negative impact on the character of the area.</p> <p>A number of submission raised concern over the size of the shed in comparison to the orchards.</p>	<p>Since lodgement of the DA, the shed has been reduced in size from 600m<sup>2</sup> to 500m<sup>2</sup> with the maximum height being 7.7 metres.</p> <p>The reduction in the size of the shed and proposed height is considered to be more in keeping with surrounding developments scale and suitable for the proposed use. It is acknowledged that surrounding sheds are supporting residential developments rather than a horticulture use.</p> <p>The shed has been setback 15m from the northern boundary to reduce potential visual impacts from the shared driveway and neighbouring properties. Landscape planting is proposed to be provided along the northern and eastern boundary of the site. The landscaping consists of trees having a full growth height of 8m along the northern boundary and 10m along the eastern boundary. The addition of this landscaping is considered to soften the scale of the proposed development and is more in keeping with the surrounding land.</p> <p>When the DA was lodged, the shed proposed a side setback to the eastern boundary of 3m with no detailed landscaping plan provided. Since lodgement the setback has been increased to 5m and a landscaping buffer provided. The increased side setback, proposed front setback and provision of landscaping as noted above, is considered to soften the scale of the proposed development. The shed does not propose to have windows along its eastern boundary and therefore the dwelling on Lot 1 DP 810866 is not likely to be impacted by overlooking nor overshadowing given the distance between the shed and existing dwelling.</p> <p>Whilst the shed is a similar scale to the orchards, it is proposed to house an office, staff amenities, machinery, and storage of pesticides/fertilisers to support the horticulture</p>

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	use. The scale is considered appropriate for the site.
<b>Permissibility of shed</b> A submission raised concern in relation to the permissibility of the proposed shed noting that it was more in line with an industrial development and is contrary to the E4 zoning.	The proposed shed is considered to be ancillary as it will serve the horticulture use.
<b>Intended Use</b> A number of submissions raised concern regarding whether the site will be utilised for its proposed use following approval. The submissions received raise concern that the development will likely be utilised to support a construction business as observed.	The proposal seeks consent for the use of the site for horticulture purposes. Any land use would require separate development consent. It is noted that industrial and commercial uses are prohibited in the zone.
<b>Accuracy of DA documentation</b> A submission noted that the SEE and DCP responses did not accurately address the proposal. The inaccuracy specifically noted were: <ul style="list-style-type: none"> <li>Noted in the SEE that no vegetation is being removed when vegetation does require removal.</li> <li>Noted that no bushfire assessment report is required.</li> <li>Note that the proposed earthworks will not impact adjoining land. The submission raised concern over ASS and impacts to the wetland.</li> <li>SEE notes no noxious weeds. Submission states there is noxious weeds on site that may spread during construction.</li> <li>DCP response doesn't provide sufficient response to koala habitat section.</li> <li>Submission states a bulk earthworks plan should be provided to Council.</li> <li>Submission states the site is not connected to reticulated sewerage.</li> </ul>	The following response is made in relation to each point: <ul style="list-style-type: none"> <li>An Ecology Report has since been provided addressing vegetation removal which has been assessed appropriately.</li> <li>A bushfire assessment report was not deemed to be required for the proposed development. The proposal has been appropriately assessed against the RFS Planning for Bushfire Protection 2009. It is also noted that BAL levels do not apply to development that is not for residential purposes.</li> <li>Earthworks have been assessed and found to be suitable with no anticipated impact to nearby wetland. The proposed shed has also been designed to ensure minimal earthworks and fill is required through the use of concrete piers for support. ASS have also been assessed and it has been determined that they are unlikely to be encountered during construction given excavations below 5 metres AHD are not proposed.</li> <li>The Ecology Assessment Report addressed noxious weeds on the site and provided a recommendation that works and vehicular movements shall cease if wet and muddy conditions develop/persist during construction to limit the movement of soil and organic matter onto, through and from the site, minimising the potential for the spread</li> </ul>



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	<p>of weeds. This recommendation has been included as a condition of consent.</p> <ul style="list-style-type: none"> <li>• Presence of koala habitat was also assessed in the Ecology Assessment report provided. It was found that during the site assessment no koalas were observed and there was no evidence (scats or scratches) of previous koala habitation were recorded from the study area.</li> <li>• Given the scale of earthworks required a bulk earthworks plan is not considered to be required.</li> <li>• It has been noted that the site is not connected to reticulated sewerage. A condition of consent has been recommended requiring that the applicant submit a s68 application prior to the issue of a Construction Certificate. A condition is also recommended that the onsite sewerage management system be installed and obtain an approval to operate from Council prior to the issue of an Occupation Certificate.</li> </ul>
<p><b>Contamination</b></p> <p>A submission raised concern that the site may be contaminated due to the fill previously utilised on the site.</p>	<p>The NSW list of contaminated sites and list of notified sites published by the EPA does not identify the site as being contaminated, nor has previous record of contamination in Council's system.</p> <p>It is understood that the dumping on the site has since been removed and future fill will be required to consist of Virgin Excavated Natural Material (VENM), Excavated Natural Material (ENM) or any other waste derived material the subject of a resource recovery exemption under s.91 of the <i>Protection of the Environment Operations (Waste) Regulation 2014</i> that is permitted to be used as fill material.</p>
<p><b>Impacts of earthworks on adjoining property</b></p> <p>A submission raised concern the proposed development and associated earthworks will result in water being pushed on to their property instead (515 Gan Gan Road).</p> <p>Concern was also raised that the fill may encroach on the neighbouring sites boundary</p>	<p>A stormwater management plan has been provided with the proposed development and found to be compliant with Council's DCP.</p> <p>In addition, conditions have been recommended to protect adjoining land from fill noting that 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.</p>

## ITEM 3 - ATTACHMENT 2 PLANNERS ASSESSMENT REPORT.

particularly given the sheds proximity to the shared boundary.	
<b>Location of shed</b> <p>The neighbouring property (515 Gan Gan Road) noted they are not supportive of the proposed shed being located 3m away from their shared boundary. The noted the non-compliance with the DCP control and are concerned that the development will overshadow their property.</p>	<p>The setback of the shed from the shared boundary has been increased from 3m to 5m. Landscaping is also proposed along this boundary to provide further screening and reduce potential visual impacts.</p> <p>In terms of amenity and overshadowing, the shed does not propose to install windows on this elevation and therefore overlooking is not anticipated. Overshadowing to the dwelling and associated outdoor open space is not considered likely to occur given the sheds height and location approximately 47m from the dwellings western elevation.</p>
<b>Inconsistency with the zoning objectives</b> <p>A submission received notes that the proposed development is inconsistent with the objectives of the E4 environmental living zone as it is prohibited being an industrial development.</p> <p>The submission also noted the proposal is inconsistent with the character of the area, particularly the proposed shed.</p>	<p>Whilst the proposed development is not residential development, it addresses the objectives of the zone by providing a compatible low impact development without having adverse impacts on the surrounding ecological, scientific or aesthetic values as assessed.</p>

**Section 4.15(1)(e) the public interest**

The proposal is in the public interest as it is permissible with consent and meets relevant zoning objectives, has beneficial social and economic impacts, and has minimal environmental impacts. The proposal will create more jobs within the area during both construction and throughout the developments operation. Whilst also providing a source of local produce.

**Section 7.11 – Contribution towards provision or improvement of amenities or services (developer contributions)**

S 7.11 contributions do not apply to the proposed development. Given the cost of work is below \$100,000 nor do 7.12 contributions.

**DETERMINATION**

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



## DRAFT CONDITIONS F CONSENT – DA 16-2021-92-1

**1.0 - 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
2410-A02, Revision H	Proposed site and flood layouts	Draw Design Group	15/12/2020
2410-A03, Revision F	Elevations & Section A-A	Draw Design Group	15/12/2020
L02, Issue B	Landscape Masterplan	Green Space Planning Co.	19/04/2021

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

- (2) **Separate approval for signs** – A separate development application for proposed signage, must be provide to, and approved by, the Consent Authority or under the provision of the *State Environmental Planning Policy (Exempt and Complying Codes) 2008* if applicable prior to the erection or display of any such signs.
- (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) **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.
- (5) **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'.
- (6) **Protect existing vegetation and natural landscape features** - Approval to remove existing vegetation for removal is not to occur until the issue of the Construction Certificate.

**PORT STEPHENS COUNCIL**

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No vegetation or natural landscape features other than that authorised for removal, pruning by this Consent must be disturbed, damaged or removed. No additional works or access/parking routes transecting the protected vegetation must be undertaken without Council Approval.

- (7) **Approval of OSMS under LG Act** - An approval under Section 68 of the *Local Government Act 1993* is to be obtained from Council for the installation of an on-site sewage management system (OSMS) prior to the issue of a Construction Certificate.
- (8) **Approved report recommendations** – Construction of the development must comply with the recommendations of the 'Flora and Fauna Assessment for No 509 Gan Gan Road, One Mile' (Reference Number: 16042021; Revision A), prepared by Enviro Ecology, dated 16 April 2021, detailed as follows:

- A suitably qualified ecologist or wildlife handler should be on site during clearing of vegetation. The qualified Ecologist is to hold a scientific licence issued by the NSW Office of Environment & Heritage and a current Animal Ethics licence issued by the Department of Industries and Investment.
- Where possible, dead wood should be salvaged from felled trees and placed into retained vegetation within the study area.
- During construction, vehicles and general construction equipment (such as excavators etc.) are to be received completely free of soil, seeds and plant material before entering the site to prevent the introduction of exotic plant species and pathogens, equipment failing inspection should be sent away for cleaning. Appropriate records of inspections shall be maintained.

Built up of mud, soil and organic matter present on vehicles shall be manually removed prior to vehicles entering/leaving the construction site.

Works and vehicular movements shall cease if wet and muddy conditions develop/persist during construction to limit the movement of soil and organic matter onto, through and from the site, minimising the potential for the spread of weeds.

## 2.0 – Prior to Issue of a Construction Certificate

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

- (1) **Dilapidation report – Adjoining property** - A dilapidation report including a photographic survey of the following adjoining properties 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.
- a) Shared Driveway on 517 Gan Gan Road, One Mile from the crossover with Gan Gan Road to the subject site entrance.
  - b) 515 Gan Gan Road, One Mile.





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.

- (2) **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.

- (3) **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).

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.

- (4) **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.

- (5) **Parking areas and loading bays** – Parking areas and Loading bays are to be provided in accordance with AS2890 Part 2 'Parking Facilities'.

Details demonstrating compliance must be provided to the Certifying Authority.

- (6) **Construction Environmental Management Plan** - A Construction Environmental 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

- (7) **Hunter Water Corporation approval** - A Section 50 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.

- (8) **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.



### 3.0 - Prior to Commencement of Works

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

- (1) **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.
  
- (2) **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.
  
- (3) **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;
  - 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.





- (4) **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 Construction Certificate has been issued by a Consent Authority;
  - 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
  - the PCA is notified in writing of the name and contractor licence number of the owner/builder intending to carry out the approved works.
- (5) **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.
- (6) **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).
- (7) **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.
- No materials, waste or the like are to be stored on the all-weather access at any time.
- (8) **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.
- (9) **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:
- 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.



#### 4.0 - During Works

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

- (1) **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.

- (2) **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.

- (3) **Compliance with BCA** – All building work must be carried out in accordance with the requirements of the Building Code of Australia.

- (4) **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.

- (5) **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.

- (6) **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.

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- (7) **Stormwater disposal** – Following the installation of any roof, collected stormwater runoff from the structure must be:

[select one of the following]

- a) Diverted through a first flush system before being connected to an existing stormwater easement/system/street.
- b) Connected to an approved stormwater quality improvement device such as an infiltrating raingarden in accordance with Council's Standard Drawing S161 (or latest revision of this drawing). Where an infiltration garden is installed, it is to be located in the landscaped area(s) with an overflow pipe connected to the existing drainage easement/system.
- c) Dispersed at ground level, so as not to be concentrated or create nuisance flows onto any buildings, or neighbouring properties. The discharge location must be at least 3m down slope of the building and 6m minimum clearance from receiving down slope property boundaries.

- (8) **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.

- (9) **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.

- (10) **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.

- (11) **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.

- (12) **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.

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- (13) **Delivery register** - The applicant must maintain a register of deliveries which includes date, time, truck registration number, quantity of fill, origin of fill and type of fill delivered.

This register must be made available to Council officers on request and be provided to the Council at the completion of the development.

- (14) **Fill material** – The only fill material that may be received at the development site is:

- a) Virgin excavated natural material (VENM) within the meaning of the *Protection of the Environment Operations Act (POEO Act 1997)*;  
or
- b) Excavated natural material (ENM) within the meaning of the *POEO Act 1997*;  
or
- c) Any other waste-derived material the subject of a resource recovery exemption under s.91 of the *Protection of the Environment Operations (Waste) Regulation 2014* that is permitted to be used as fill material.

Any waste-derived fill material the subject of a resource recovery exemption received at the development site must be accompanied by documentation as to the material's compliance with the exemption conditions and must be provided to the Principal Certifying Authority.

Any fill, soil, mulch and plant brought onto the site must be certified as free of weeds and weed seeds.

- (15) **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'.

### 5.0 - Prior to Issue of an Occupation Certificate

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

- (1) **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.
- (2) **Fire Safety Certificates** - A Fire Safety Certificate must be provided to the PCA in accordance with the requirements of the *Environmental Planning & Assessment Regulation 2000*.
- (3) **Survey Certificate** – A Registered Surveyor must prepare a Survey Certificate to certify that the location of the building in relation to the allotment boundaries complies





with the approved plans or as specified by this consent. The Survey Certificate must be provided to the satisfaction of the Principal Certifying Authority.

- (4) **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.

- (5) **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.

- (6) **Completion of landscape works** – All landscape works are to be undertaken in accordance with the approved landscape plan and conditions of this Development Consent.

- (7) **Car parking requirements** – A minimum of 6 car parking spaces are to be provided in accordance with AS2890 and the approved plans. Parking must be permanently marked on the pavement surface.

- (8) **Loading/unloading facilities** – Loading /unloading facilities must be constructed in accordance with the approved plans. The extent of the loading bay must be permanently marked on the pavement surface.

- (9) **Waste disposal** – The building owner must ensure that there is a contract with a licensed contractor for the removal of all waste. No garbage is to be placed on public land (e.g. footpaths, roadways, plazas, reserves) at any time.

- (10) **On-Site sewerage management inspection** – An onsite sewage management system/waste treatment device is to be installed and obtain approval to operate from Council in accordance with Local Government Act 1993 (Section 68A) prior to the issue of any Occupation Certificate

## 6.0 – Ongoing Use

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

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- (1) **Maneuvering of vehicles** – All vehicles must enter and exit the site in a forward direction.
- (2) **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.
- (3) **Loading to occur on site** – All loading and unloading operations are to be carried out wholly within the building/site and in accordance with the approved plans.  
The loading dock (if provided) must be used for loading and unloading operations in connection with the approved use.
- (4) **Parking – Signage (loading docks)** – Proposed parking areas, service bays, truck docks, driveways and turning areas must be maintained clear of obstructions and be used exclusively for purposes of car parking, loading/ unloading, and vehicle access respectively for the life of the development. Under no circumstances are such areas to be used for the storage of goods or waste materials.
- (5) **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.
- (6) **No retailing** – The premises must be used strictly for the cultivation of vegetables (horticulture) pending distribution to persons engaged in the retail trade and under no circumstances must be used as a shop for the display or sale of goods on a retail basis.
- (7) **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 Fire and Rescue NSW in accordance with the *Environmental Planning & Assessment Regulations 2000*.
- (8) **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.
- (9) **Amenity** – The business must be conducted so that no interference occurs to the amenity of the area, adjoining occupations and residential or business premises.
- (10) **Waste water treatment devices** – All wastewater treatment devices (including drainage systems, sumps, traps and pumps) must be regularly maintained in good working order to ensure that they remain effective.  
A maintenance schedule must be developed and incorporated into a Plan of Management (PoM) and kept on-site at all times for staff to comply with. All liquid and

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## ITEM 3 - ATTACHMENT 3 RECOMMENDED CONDITIONS OF CONSENT.



solid wastes collected from the treatment device must be disposed of in accordance with relevant environmental protection and waste control Legislation.

- (11) **Use limitations** – The site must be used for horticulture and associated purposes only. Approved structures must not be adapted, converted or used for commercial, industrial or residential purposes without the prior approval of Council.
- (12) **Offensive noise** – The use and occupation of the premises including all plant and equipment must not give rise to any offensive noise within the meaning of the *Protection of the Environment Operation Act 1997* and must comply with the *NSW Noise Policy for Industry 2017* (as amended).
- (13) **Delivery and Employee Number Restrictions** – The following restrictions apply to deliveries and employee numbers:
  - a) No more than three (3) deliveries per week are to be received; and
  - b) No more than two (2) people are to be employed on site.

#### Advice Note(s):

- (1) **'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.
- (2) **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.
- (3) **Premise standard** – It is the Applicants responsibility to ensure compliance with the requirements of the *Disability Discrimination Act 1992* (DDA).  
  
**Note:** Compliance with the Building Code of Australia does not necessarily meet the requirements of the DDA.
- (4) **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.
- (5) **Aboriginal archaeological deposit** – In the event of any aboriginal artefact, object or structure being unearthed, all work must cease immediately in the affected area,

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ITEM 3 - ATTACHMENT 3      RECOMMENDED CONDITIONS OF CONSENT.



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.

- (6) **Signage** – You are advised that any proposed advertising signs that are not shown on the approved plans, or classified as exempt development, are subject to a separate Development Application to Council.
- (7) **Council as PCA, PCA sign** – It is the responsibility of the applicant to erect a PCA sign. Where Council is the PCA, the sign is available free of charge, from Council's Administration Building at Raymond Terrace or the Tomaree Library at Salamander Bay. The applicant is to ensure the PCA sign remains in position for the duration of works.

**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 No 55 - Remediation of Land, State Environmental Planning Policy (Koala Habitat Protection) 2020, State Environmental Planning Policy (Coastal Management) 2018
- 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 setback variation to the PSDCP is considered to be acceptable in the particular circumstances of this case as the variation will not result in adverse amenity impacts to adjoining properties.
- Subject to the recommended conditions the proposed development will be provided with adequate essential services required under the PSLEP.
- 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.
- Any submission issues raised have been taken into account in the assessment report and where appropriate conditions of consent have been included in the determination. Council has given due consideration to community views when making the decision to determine the application.

**REASONS WHY THE CONDITIONS HAVE BEEN IMPOSED**

The following conditions are applied to:

1. Confirm and clarify the terms of Council's Approval;
2. Identify modifications and additional requirements that will result in improved compliance, development and environmental outcomes;
3. Prevent, minimise, and/or offset adverse environmental impacts including economic and social impacts;
4. Set standards and performance measures for acceptable environmental performance; and
5. 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

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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.



PORT STEPHENS  
COUNCILCALL TO COUNCIL FORM  
DEVELOPMENT APPLICATION

## Development application (DA) call to Council request:

I/We (Mayor/Councillor/s) Smith, Nell Arnott request  
 that DA number 16-2021-92-1 - 509 for DA  
 description 600 m2 Horticultural Shed located at  
Gan Gan Rd One Mile  
 be reported to Council for determination.

## Reason:

Public Interest

## Declaration of Interest:

I/We have considered any pecuniary or non-pecuniary conflict of interest (including political donations) associated with this DA on my part or an associated person.

I/We (Mayor/Councillor/s) Smith, Nell and Arnott have a  
 conflict of interest:

☒ No

☐ Yes

If **yes**, please provide the nature of the interest and reasons why further action should be taken to bring this DA to Council:

## Signed:

Please sign or  
 type name &  
 attach to  
 an email.

Date: Click here to enter a date.

## Signed:

Please sign or  
 forward  
 supporting  
 email.

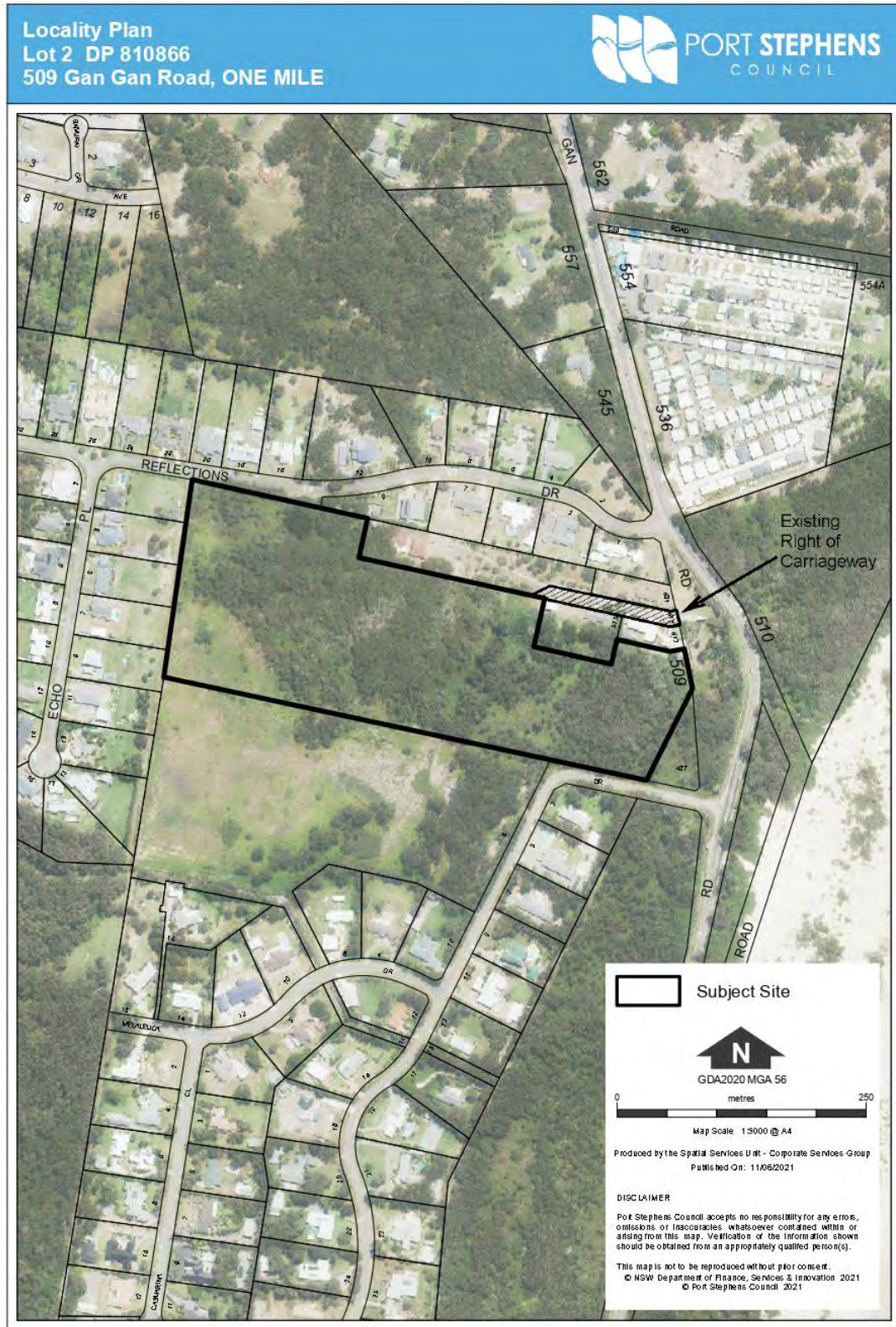
Date: Click here to enter a date.

6/03/2021

## Signed:

Please sign or  
 forward  
 supporting  
 email.

Date: Click here to enter a date.



116 Adelaide Street, Raymond Terrace NSW 2324. Phone: (02) 49800255 Fax: (02) 49873612 Email: council@portstephens.nsw.gov.au

**ITEM NO. 4**

**FILE NO: 21/142391  
EDRMS NO: PSC2021-00625**

**INTEGRATED PLANNING AND REPORTING DOCUMENTS 2021 - 2022**

REPORT OF: TIMOTHY CROSDALE - GROUP MANAGER CORPORATE  
SERVICES  
GROUP: CORPORATE SERVICES

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Receive and note the community submissions received and responses in relation to the draft Integrated Planning and Reporting document and draft Fees and Charges 2021 to 2022 (**ATTACHMENT 1**).
- 2) Note the recommendations relating to changes to the Integrated Planning and Report documents, being the Delivery Program 2018 to 2022 including the Operational Plan 2021 to 2022, Long Term Financial Plan 2021 to 2031, Strategic Asset Management Plan 2021 to 2031, Workforce Plan 2018 to 2022 and the Fees and Charges 2021 to 2022 (**ATTACHMENT 2 and 3**).
- 3) Adopt the Integrated Planning and Report documents, being the Delivery Program 2018 to 2022 including the Operational Plan 2021 to 2022, Long Term Financial Plan 2021 to 2031, Strategic Asset Management Plan 2021 to 2031, Workforce Plan 2018 to 2022 and the Fees and Charges 2021 to 2022 with amendments as provided in (**ATTACHMENT 2 and 3**).
- 4) Make the rates and charges for 2021 to 2022 in accordance with (**ATTACHMENT 4**).
- 5) Authorise the General Manager to secure loan funding of \$5 million to fund the beginning of the Nelson Bay Public Domain Plan as detailed in the Long Term Financial Plan and resolved on 9 February 2021, Minute Number 013 (**ATTACHMENT 5**).
- 6) Authorise the Mayor and General Manager to affix the Council Seal and sign all documents necessary to secure the loan.

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**BACKGROUND**

The purpose of this report is to provide Council with a report and information on community submissions received, changes proposed to the integrated planning and reporting documents and fees and charges for 2021 to 2022, along with making the rates and charges for 2021 to 2022.

The proposed rates and charges reflect those included in the Statement of Revenue Policy contained in the Operational Plan 2021 to 2022. Legislation requires the rates to be calculated using 1 July 2019 base date land values.



The Integrated Planning and Report documents consist of the Delivery Program 2018 to 2022 including the Operational Plan 2021 to 2022, Long Term Financial Plan 2021 to 2031, Strategic Asset Management Plan 2021 to 2031, and Workforce Plan 2018 to 2022. The Fees and Charges 2021 to 2022 are also a key resource. This is the fourth year of the Delivery Program, which has been extended by an additional year to include our 2021 to 2022 program of works, due to the Local Government elections being deferred to September 2021.

The Statement of Revenue Policy and Statement of Waste Management are also included within the Operational Plan.

### COVID-19 and other Natural Disasters

As was the case last year, we developed and prepared our Integrated Planning and Reporting documents at a point in time. Like all organisations, communities and individuals we have and continue to adjust our thinking and planning to respond to COVID-19 and other natural disasters.

As it is difficult to precisely forecast exactly how far reaching the effects of COVID-19 are, we prepared, planned and reviewed our budget, works and service delivery with our community's best interest at heart. We have committed to delivering our services in the best way, whilst remaining flexible and agile to respond as required during these challenging times.

### Public Exhibition and Submissions

The Integrated Planning and Reporting documents and Fees and Charges were on public exhibition from Friday 16 April 2021 until 5pm on Friday 14 May 2021.

Exhibition of the documents and opportunities to make a submission were promoted on Council's website. Hard copies of the documents were also made available at the Administration Building and Council's Libraries. Submissions were able to be made via mail or email to [council@portstephens.nsw.gov.au](mailto:council@portstephens.nsw.gov.au).

Council received 6 community submissions and 2 staff submissions. We value the time taken by community members in reviewing the documents and providing submissions. As some of the submissions were lengthy, not every point raised has been listed, with key issues summarised as shown in **(ATTACHMENT 1)**. Contact has been made with applicants to close the loop on queries raised in their submission.

Councillors have been provided with a full set of un-redacted submissions available in the Councillors Room for their consideration. For privacy and consistency reasons, full submissions have not publicly been made available.



## ORDINARY COUNCIL - 22 JUNE 2021

Submissions have been reviewed by the Executive Team, relevant Section Managers and staff for key issues. A number of recurring topics were covered in the submissions relating to:

- Liveability Index - identifying community priorities (2 submissions)
- Fees and Charges - high childcare fees (2 submissions)
- Historic Museum (2 submissions)
- Prioritisation of capital works program (2 submissions)

Recommended changes to the documents, where deemed appropriate from community submissions or administrative corrections are detailed within **(ATTACHMENTS 2 and 3)**.

### COMMUNITY STRATEGIC PLAN

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

### FINANCIAL/RESOURCE IMPLICATIONS

The Independent Pricing and Regulatory Tribunal (IPART) has set the rate peg for 2021 to 2022 at 2.0%. The outstanding rates and charges interest rate is 6.0%.

Rates and charges income must be collected in a timely manner to ensure cash flow to fund Council operations.

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.

## ORDINARY COUNCIL - 22 JUNE 2021

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.

Sections 532-543 of the Local Government Act specify the requirements to make rates and charges in any given year. The legislation requires rates and charges to be made annually by Council resolution and serviced by 1 August. Where required, Council must obtain Independent Pricing and Regulatory tribunal (IPART) approval to exceed the rate pegging limit.

<b>Risk</b>	<b><a href="#">Risk Ranking</a></b>	<b>Proposed Treatments</b>	<b>Within Existing Resources?</b>
There is a risk that the Operational Plan and Long Term Financial Plan which include the Budget for 2021 to 2022 is not adopted in the timeframe required to implement the budget and raise rates and charges from 1 July 2021.	High	Adopt the recommendations.	Yes
There is a risk that failure to make and serve the rate notices by 1 August 2021 will defer the due date of the first instalment payment to 30 November 2021 adversely affecting cash flow.	High	Council will make rates and serve notices before 1 August 2021.	Yes

### SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Rates and charges income is necessary for Council to deliver the services outlined in the Delivery Program and Operational Plan. As required by the Local Government Act, the Integrated Planning and Reporting documents and the Fees and Charges 2021 to 2022 were developed and reviewed in accordance with the principles of equity and social justice. They contain key directions/themes which expand the social, economic and environmental sections of the Community Strategic Plan 2018-2028.

## **CONSULTATION**

Public exhibition of the Integrated Planning and Reporting documents including the Fees and Charges is required in terms of the Local Government Act, with submissions to be considered by Council prior to adoption of the documents.

Consultation with key internal stakeholders has been undertaken by the Office of the Group Manager Corporate Services in reviewing community submissions and revising the documents.

### Internal

- Council Briefings – Two Way Briefings have been held with Council pre and post exhibition process to discuss the content and changes to the documents.
- Executive Team, relevant Section Managers and staff – have been consulted about changes proposed to the documents post exhibition. This has included detailed input from the sections responsible for Finance, Human Resources and Assets.

### External

The documents were placed on public exhibition for 28 days as outlined in the background of this report.

A total of 8 submissions have been received as outlined in **(ATTACHMENT 1)**. Contact has been made with applicants to close the loop on queries raised in their submission.

## **OPTIONS**

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

## **ATTACHMENTS**

- 1) Summary of Submissions. [↓](#)
- 2) Changes to IPR documents. [↓](#)
- 3) PSC2020 Project Changes. [↓](#)
- 4) Making of Rates 2021 to 2022. [↓](#)
- 5) Notice of Motion - 9 February 2021. [↓](#)

## **COUNCILLORS ROOM**

- 1) Copy of submissions.

**TABLED DOCUMENTS**

Nil.



## ITEM 4 - ATTACHMENT 1 SUMMARY OF SUBMISSIONS.

Integrated Planning and Reporting Documents 2018 to 2022 including Fees and Charges 2021 to 2022 –  
Public exhibition submissions

No.	Author of submission	Comment	Council response
			Council values the community's detailed responses to the draft Integrated Planning and Reporting (IPR) documents and Fees and Charges 2021-2022. Whilst Council has attempted to capture the key issues raised, not every comment has been addressed directly in the summary.
1	Tomaree Museum Association EDRMS 21/118047, 21/121254	<p>Proposes a business case for a Port Stephens Cultural Centre (PSCC) which includes a new multi-use Council run community facility with elements such as a Regional Museum, viable cultural elements, community and commercial development and responsibilities to protect heritage sites of Tomaree Lodge and Fingal Outer Lighthouse.</p> <p>Business case states opportunities for Port Stephens, employment and linkages with Government priorities, Council key priorities and Delivery Program objectives.</p> <p><u>Delivery Program and Operational Plan</u> Suggest including reference for a PSCC; \$50K contribution from Council for a PSCC concept study; and Council to provide accommodation for an interim cultural centre/museum in the Visitor Centre.</p>	<p>Comments and benefits noted. Concept and feasibility requires quantifying prior to any further consideration by Council. Council is willing to support Tomaree Museum Association with advocacy to other levels of government to fund opportunities to further develop the business case and feasibility for the PSCC.</p> <p>Action – Include as part of Council's Advocacy Program to assist with funding opportunities to further develop a business case and feasibility. No change to Operational Plan document.</p>

ITEM 4 - ATTACHMENT 1 SUMMARY OF SUBMISSIONS.

		<p><u>Long Term Financial Plan</u> Suggest include estimate of any costs for: interim cultural centre arrangements (\$0.5million per annum) from 2022-23; and final PSCC (\$2million per annum) for 2025-2026.</p> <p><u>Strategic Asset Management Plan</u> Suggested including: - reference to Heritage assets under the heading 'Lifecycle Management Community and Recreation assets'. - text referring to PSCC's fundamental contribution to the community as a regional museum/attraction; telling PS story; spaces to meet social needs of the community; consolidation of decentralised community cultural services under the heading 'Community Buildings, Future Demand' - text exploring options for synergies with Visitor Information facility. - reference to \$50K Council contribution to PSCC concept study 2021-2022.</p> <p><u>Fees and Charges</u> - Suggest include PSCC charges once identified in concept studies.</p>	<p>Feasibility and costs not established or quantified. Refer comment above regarding support with advocacy to other levels of government. No amendments to IPR documents required.</p> <p>Feasibility and costs not established or quantified. Refer to the comment above regarding support with advocacy to other levels of government. No amendments to IPR documents required.</p> <p>Feasibility and costs not established or quantified. Refer to the comment above regarding support with advocacy to other levels of government. No document amendments required.</p>
2	Customer (EDRMS 21/118908)	<p><u>Fees and Charges</u> The Vacation Care fees of \$81 per day are very pricey compared with another vacation care which is lower in price but includes excursions to external activities.</p>	<p>All businesses have different operating costs in relation to such items as salaries and rents. Council conducts annual benchmark exercises to gain knowledge on what other services provide for their fee. Council is aware that our price for Vacation Care is higher and as a result has not increased the Vacation Care or Pupil Free Day Care for the current 2020-2021 financial year and also 2021-2022 financial years. No further action.</p>

ITEM 4 - ATTACHMENT 1 SUMMARY OF SUBMISSIONS.

3	Staff (EDRMS 21/126997)	<u>Fees and Charges</u> Suggest car parking charges remain unchanged at \$4.20 due to the slow implementation of paid parking in Nelson Bay and delayed implementation of all facets of the paid parking system.	Implementation has been delayed. Comments noted and supported. Action – Amendment to document, refer to Attachment 2.
4	Staff (EDRMS 21/127123)	<u>Delivery Program and Operational Plan</u> Administration error in Waste Service Charges. \$475 should have been recorded for non-domestic waste service the same as domestic waste service charge.	Error noted.  Action – Minor amendment to document, refer to Attachment 2.
5	Customer (EDRMS 21/127517)	<u>Fees and Charges</u> Don't see justification to raise levies for childcare, given they were raised fairly recently as everyone is still feeling the impacts of the pandemic, in terms of job security and financially.	Fees were increased on 28 September 2020 due to the transition period from fee-free childcare and the inability of services to increase fees as regulated by the Federal Government at the commencement of the 2020 financial year. The increase in levies is required to cover the costs of the continued operation of the Family Day Care Coordination Unit. Under the Education and Care Services Law and Regulations, Family Day Care Educators are required to be registered with an Approved Provider. By Law the Approved Provider is required to staff the service with one Coordinator per 25 Educators. No further action.
6	Resident (EDRMS 21/127713)	Rain event of March 2021 revealed how lacking basic services are within the shire – drains couldn't take the pressure and roads cracked up everywhere. There is no revision of priorities to cater for these priority jobs.  Questioning how listing and prioritisation of Capital Works list and Capital Works Plus list occurs.  <u>Strategic Asset Management Plan</u>  Drainage/Bridges (page 43): Nothing mentioned about a bridge required for Foreshore Drive to replace the washed	Work is prioritised based on risk, condition and functionality of the asset. It should be noted that the largest driver for a high priority capital works project is the availability of external funding from other levels of government. No amendments to IPR documents required.  Foreshore Drive is to be funded under the Natural Disaster claim. This project will be reported to

## ITEM 4 - ATTACHMENT 1 SUMMARY OF SUBMISSIONS.

	<p>out culvert – for safety reasons this should be given early priority.</p> <p>Drainage priorities(page 43-45):</p> <ul style="list-style-type: none"> <li>- An extensive list of drainage issues which should be receiving funding.</li> <li>- Important addition Nelson Bay Road near Frost Road</li> <li>- Where does Nelson Bay Lagoons Estate receive a mention? Question works being completed.</li> </ul>	<p>Council as part of the overall natural disaster works.</p> <p>No amendments to IPR documents required.</p> <p>Council does have an infrastructure backlog which includes drainage works that are definitely needed. It should be noted that the recent storm event exceeded the capacity of the system to function as designed in accordance with the Australian standards. So while upgrades are required, the proposed drainage works would not have coped with the severity of the March rain event.</p> <p>No amendments to IPR documents required.</p> <p>There is an allocation for Lagoons Estate in the Capital Works Program. Council is continuing to work with the Lagoons Community Association for future works to resolve Council and Lagoons drainage concerns.</p> <p>No amendments to IPR documents required.</p>
	<p>Population growth and new subdivisions (page 47): Section 7.11 developer contributions and planning agreements should be contributing to Medowie drainage projects listed as “currently unfunded”.</p>	<p>The 7.11 developer contributions are to be used on infrastructure to cater for the additional population. 7.11 also only part funds infrastructure expansion. Existing infrastructure requirements cannot be funded from 7.11.</p> <p>No amendments to IPR documents required.</p>
	<p>Pathways: Prioritise dangerous missing links in East Ward because of more tourists and ageing population. Corlette requires a major review – road cycle ways such as Sandy Point Road are dangerous and narrow.</p>	<p>In accordance with Council’s Pathways Plan, there is some \$80 million of works that Council is seeking funding for. While there is a Council and community desire to complete the missing links and build more new pathways, funding is currently not available.</p> <p>No amendments to IPR documents required.</p>



## ITEM 4 - ATTACHMENT 1 SUMMARY OF SUBMISSIONS.

	<p>Roads (page 67-77): Rain event requires reality check of priorities as roads are a mess. Graph on page 69 needs fixing as it shows most as 'Near Perfect'.</p> <p>Transport (page 87): Fingal Bypass – Not a cent should be spent and instead spent on installing more roundabouts along Nelson Bay Road. Money should be going towards essential need.</p> <p>Park and Ride: Minimal priority is given to this during holiday periods for Tomaree Peninsula and Anna Bay. Park and Ride is essential for the future of tourism. Suggest turning Tomaree Sporting Complex carpark into Park and Ride.</p> <p>Bus Shelters: Look better if all shelters on each major road were painted the same colour.</p>	<p>The recent rain event exacerbated the condition of our roads. Roads do deteriorate quickly in the rain. Like most governments, Council does have an infrastructure backlog that requires additional funding to sustainably maintain the road network. The "near perfect" road condition rating is based on a set of condition ratings that were measured in 2020 prior to the March 2021 event.</p> <p>No amendments to IPR documents required.</p> <p>Transport NSW are leading this project. More information on this project is outlined in the Delivery Program/Operational Plan 2021-2022, Key Priorities 2018 to 2022, Key road projects.</p> <p>No amendments to IPR documents required.</p> <p>Formalising park and ride areas would be desirable, though are works that do not attract funding and are a lower priority compared to other projects that attract funding.</p> <p>No amendments to IPR documents required.</p> <p>Council has two consistent bus shelter designs. One for coastal and one for rural areas. Council has a number of older shelters that are not consistent with the new design. Shelters are upgraded when funding is available.</p> <p>No amendments to IPR documents required.</p>
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## ITEM 4 - ATTACHMENT 1 SUMMARY OF SUBMISSIONS.

	<p>Trees (page 88-92): Council doesn't have a Street Tree Policy. Council concerned about sole complaint of "perceived danger" and removing instead of planting. Removing trees in Bagnall Beach Road unforgivable – footpaths can be fixed by other means.</p> <p>Waste Management: Educate people we don't need a green bin when we have a composting system.</p> <p>More should be done by Council to utilise waste products for other purposes including road construction.</p> <p>Aquatic centres and structures (page 100-114): Enclose Tomaree Aquatic Centre or at least fully enclose shelter from the pool to change rooms for ageing population. How does "Sandy Point seawall fit into this category"?</p>	<p>Council manages trees under a number of pieces of NSW State Legislation. Council maintains a Tree Technical Specification as part of its DCP. Council has also adopted two Public Domain Plans that commit to the planting of Street Trees. In addition, Council also uses Statewide Best Practice Guidelines for the proactive and reactive risk management of trees. No amendments to IPR documents required.</p> <p>Issues around waste education and investigations into green bins will be addressed in the upcoming Waste Strategy document. Education is one of the main focuses of this document. There has been no decision made on the introduction or not of green bins. However, the issue will be addressed as part of the strategy process. No amendments to IPR documents required.</p> <p>Prioritising resource recovery is the main investigation point for the Waste Strategy document that Council is currently developing. Council staff are also involved with regional initiatives in Circular Economy principles which look at the best use of waste resources at their highest value. These initiatives are looking at regional-based resource recovery opportunities, including uses of waste products in road construction. Action – no amendments to IPR documents required, however issues to be considered as part of the Waste Strategy process.</p> <p>The Tomaree aquatic enclosure proposal has previously been examined, with estimates too large to be funded by Council. The project would require an injection of funds through grants. No amendments to IPR documents required.</p>
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## ITEM 4 - ATTACHMENT 1 SUMMARY OF SUBMISSIONS.

	<p>Boat ramps (page 111): commentary needs correction, "The majority of tourists come from regional NSW and Sydney" – day trippers should now be included in the statistics.</p> <p>Community Buildings (page 122-128): need a central booking system and Officer to oversee bookings as well as reducing fees and charges. Council should focus on growing 355c bank balances. Opportunities exist for improvement to larger halls – by improving equipment and availability for conferences.</p> <p>Ngioka should be returned to Council usage and as a stepping stone for the Historic Museum.</p> <p>Depots (page 128-133): support relocation to Salamander Transfer station.</p> <p>Parks and Reserves (page 299): Questions: - "majority of facilities in good condition" and what the benchmark is; - where is One Mile in planning – amenities have no disability access;</p>	<p>Council acknowledges that regional and intercity visitors use Council's facilities. Council considers the impacts of these users when planning for these facilities. No amendments to IPR documents required.</p> <p>Council is currently reviewing its booking system and agrees this is an improvement that would benefit everybody. It is subject to further investigation and identification of funding. No amendments to IPR documents required.</p> <p>A licence is currently in place for the Ngioka facility. Council is currently liaising with members of the proposed Historic Museum, on a separate basis, however, there is no Council funding for a proposed Historic Museum. Council is willing to support the Tomaree Museum Association with advocacy to other levels of government to fund opportunities to further develop the business case and feasibility for the PSCC. No amendments to IPR documents required.</p> <p>At present Council currently does not have the funds to relocate the Nelson Bay Depot to the Transfer Station. Once funding is available, this is the most ideal space for the depot. No amendments to IPR documents required.</p> <p>Facilities are rated in accordance with accounting standards. One Mile Beach amenities block is scheduled for replacement in FY2025-2026. No amendments to IPR documents required.</p>
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## ITEM 4 - ATTACHMENT 1 SUMMARY OF SUBMISSIONS.

	<p>- FlyPoint needs prioritising, disability access and amenities;</p> <p>- where is the All Abilities plan for Anna Bay;</p> <p>- parks and playground being sold – should be preserved;</p> <p>- future facilities for Tomaree need to take into account impact of Medowie developments and large proportion of visitors.</p> <p>Playgrounds: Planning needs to take into account socio-economic factors and parks within walking distance.</p> <p>Public Amenities (163-169):</p> <p>- Priority should be given to replacing old amenities – destinations judged by visitors on public amenities.</p> <p>- New grey buildings good to some extent but need change facilities for families.</p> <p>- Flypoint and One Mile should be higher on the replacement/renovation list and take into account change facilities.</p>	<p>Fly Point amenities block is not within the 10 year planning horizon as it meets recognised satisfactory standards.</p> <p>No amendments to IPR documents required.</p> <p>As playgrounds are replaced they introduce all abilities into the facility. Anna Bay is part of the Recreation Plan.</p> <p>No amendments to IPR documents required.</p> <p>Council reviews through demand management the desires and needs for community land for current and future generations. This process includes community consultation.</p> <p>No amendments to IPR documents required.</p> <p>The requirement for future facilities takes into account current and future demand management</p> <p>No amendments to IPR documents required.</p> <p>Planning of playgrounds is developed in accordance with industry standards. Social benefits and access are considered.</p> <p>No amendments to IPR documents required.</p> <p>Amenity replacement is outlined in the Capital Works program.</p> <p>New amenities have been modernised and have a room large enough for changing.</p> <p>Capital works are prioritised based on risk, condition and functionality of the asset. It should be noted that the largest driver for a high priority capital works project is the availability of external funding from other levels of government.</p>
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## ITEM 4 - ATTACHMENT 1 SUMMARY OF SUBMISSIONS.

		<p>Skateparks: Needed at Salamander together with carparking</p> <p>Roy Wood Reserve BBQ due for replacement before Conroy Park (replaced in 2016).</p> <p>Council Officers need to respond to questions asked.</p>	<p>No amendments to IPR documents required.</p> <p>Council infrastructure delivered in accordance with planning strategies and resources. No amendments to IPR documents required.</p> <p>Capital works are prioritised based on risk, condition and functionality of the asset. It should be noted that the largest driver for a high priority capital works project is the availability of external funding from other levels of government. No amendments to IPR documents required.</p> <p>Council has provided responses to the matters raised in submissions.</p> <p>Action – Council's Asset Manager has contacted the author to discuss the various issues outlined above.</p>
7	Resident (EDRMS 21/128485)	<p><u>Strategic Asset Management Plan</u></p> <ul style="list-style-type: none"> <li>- Apparent some projects are being put off for years when comparing PSC Capital Works lists from 2009 to 2021. Some funded are now unfunded.</li> <li>- Example of "Construction of a secondary drainage outlet from Cooks Parade reserve to the boat ramp" has moved from \$30K in 2009 to \$100K in 2021 – if completed when originally listed Council would have saved \$70K – why is the project important?</li> <li>- Request improvement/more readable format of Capital Works list to compare progress over time. Wagga Council has a good layout. Need separation of recurrent works from one-off projects so it is transparent what is additional.</li> </ul>	<p>Capital works are prioritised based on risk, condition and functionality of the asset. It should be noted that the largest driver for a high priority capital works project is the availability of external funding from other levels of government.</p> <p>Council's Capital Works program continually changes as additional grants are gained. This reprioritises the whole program.</p> <p>Future projects are only desktop estimates based on net present figures (current costs). As the project develops the estimates are refined with current costs.</p> <p>No amendments to IPR documents required.</p>

## ITEM 4 - ATTACHMENT 1 SUMMARY OF SUBMISSIONS.

		<p>- At the moment justifications seem to rely heavily on Council's Customer Satisfaction Survey. The Liveability Index focuses on identifying community's priorities.</p>	<p>Data collected from the Port Stephens Liveability Index survey is a key input for reviewing the community's priorities as part of the Community Strategic Plan. A review of the Community Strategic Plan is scheduled to occur over the next 12 months.</p> <p>No amendments to IPR documents required.</p>
		<p>- Capital Works program needs to reflect the true state of the backlog.</p>	<p>Capital works are prioritised based on risk, condition and functionality of the asset. It should be noted that the largest driver for a high priority capital works project is the availability of external funding from other levels of government.</p> <p>No amendments to IPR documents required.</p> <p>Action – Council's Asset Manager has contacted the applicant to discuss the various issues raised above. No amendments to IPR documents required.</p>
8	Lemon Tree Passage Parks(LTP), Reserves and Landcare Group (EDRMS 21/128508)	<p><u>Strategic Asset Management Plan</u></p> <p>- "Mungarra Reserve Boardwalk Upgrades" needs to be appropriately funded and given higher priority in the SAMP.</p> <p>- An integral part of a scenic walk through the Reserve from the caravan park through 8kms of Council park and bushland. Council has a legal obligation to protect the vegetation and habitat. The swamp forest that the board walk protects is a sensitive and significant natural asset.</p> <p>- Need for the boardwalk was recognised in the 1980s. Built by LTP Parks and Reserves volunteers.</p> <p>- Movement of the boardwalk foundations, large sections of spongy boards that are broken, and rotting timber have been reported. Noticeably deteriorated in last 12 months.</p> <p>- LTP boardwalk upgrade appeared in 2018 in the SAMP. In the 2021 SAMP it</p>	<p>Noted. Mungarra Reserve Boardwalk Upgrades are in the 10 year plan for delivery in the financial year 2027 to 2028.</p> <p>No amendments to IPR documents required.</p> <p>In accordance with Council's Pathways Plan, there is some \$80 million of works that Council is seeking funding for. While there is a Council and community desire to complete the missing links and build more new pathways, funding is currently not available. Council sees these boardwalks as a valuable asset for all to use. Unfortunately, the funds are not present for the maintenance and upgrade as required.</p> <p>No amendments to IPR documents required.</p>

## ITEM 4 - ATTACHMENT 1 SUMMARY OF SUBMISSIONS.

		<p>has been pushed back a year to 2027-2028.</p> <p>- Ideal opportunity to use recycled materials. Costing provided to Council staff in 2019. Grant application ready from LTP group, but don't qualify as Council unable to provide matching funding.</p> <p>- The Liveability index identified walking/jogging/bike paths that connect communal amenity as a top priority – the boardwalk is an opportunity to contribute to community wellbeing, with the LTP Parks and Reserves Landcare group requesting an urgent upgrade.</p>	<p>Capital Works are prioritised based on, risk, condition and functionality of the asset. It should be noted that the largest driver for a high priority capital works project is the availability of external funding from other levels of government.</p> <p>No changes required to IPR documents.</p> <p>Data collected from the Port Stephens Liveability Index survey is a key input for reviewing the community's priorities as part of the Community Strategic Plan. A review of the Community Strategic Plan is scheduled to occur over the next 12 months.</p> <p>No changes required to IPR documents.</p> <p>Action – Council's Asset Manager has contacted the applicant to discuss the various issues raised above.</p>
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## ITEM 4 - ATTACHMENT 2 CHANGES TO IPR DOCUMENTS.

**ATTACHMENT 2 - CHANGES TO THE INTEGRATED PLANNING AND REPORTING DOCUMENTS INCLUDING FEES AND CHARGES FOR 2021 TO 2022**

No. of change	Document Title and Page Number (Public Exhibition Copy)	Summarised key issues incorporated in the Integrated Plans including Fees and Charges document	Recommended changes to the Integrated Plans including Fees and Charges document
All Integrated Plans including Fees and Charges			
1.		Administrative correction - formatting	Delete 'DRAFT' from front page and footer of all Integrated Plan documents including the Fees and Charges.
Delivery Program and Operational Plans (DP/OP)			
2.	3	Administrative correction – clarification of Capital Works program.	Add the following footnote after '\$19 million' which includes 'as outlined in the Capital Works program of the Strategic Asset Management Plan for 2021 to 2022. Carry over works from 2021 to 2022 will be in addition to this'.
3.	6	Administrative correction - formatting	Delete duplication of 'www.portstephens.nsw.gov.au'
4.	17	Administration correction – PSC 2020 projects updated to reflect current status	Refer Attachment 3. Words to be deleted shown as struck out text and words to be added shown in yellow.
5.	18	Administration correction – updated to reflect current status	Delete words '(outlined further in the Workforce Plan)'
6.	23	Administrative correction – updated to reflect area of responsibility	For Operational Plan action C1.5.1, delete 'Organisation Support' and 'Human Resources' and replace with 'Community Services Section' and 'Office of the Section Manager Community Services'



## ITEM 4 - ATTACHMENT 2 CHANGES TO IPR DOCUMENTS.

7.	23	Administrative correction – updated to reflect Community Strategic Plan key direction	Add 'and culture' to 'Key Directions C2 RECOGNISED TRADITIONS AND LIFESTYLE Our community supports the richness of its heritage'.
8.	31	Administrative correction – updated to reflect integration of OP action	Delete Operational Plan action 'Optimise land use to maximise social, economic and environmental needs of the area'
9.	33	Administrative correction – updated to reflect integration of OP action	Delete Operational Plan action 'Maintain facilities for rural Fire service and State Emergency Service'
10.	36	Administrative correction – add missing words	Add "E3 Environmental Resilience – Our community is resilient to environmental risks, natural hazards and climate change"
11.	42	Administrative correction – Operational Plan action deleted as work undertaken as part of action P2.1.7	Delete Operational Plan action 'L2.2.2 Deliver the Strategic Property capital works program'
12.	57	Administrative correction – Effectiveness Measure deleted as work undertaken as part of action P2.1.7	Delete Effectiveness Measure for 'L2.2.2 Deliver the Strategic Property capital works program'
13.	58	Administrative correction – updated to reflect correct year	Delete 'Target for 2020-2021' and replace with 'Target 2021-2022'
14.	62	Administrative correction – updated to reflect correct amount	Delete '\$1.002 million' and replace with '\$1.002 billion'
15.	73	Staff Submission – administration error, typo regarding non-domestic waste service charge. Should be the same as	Delete 'A non-domestic waste service charge of \$452'. Add 'A non-domestic waste service charge of \$475'

## ITEM 4 - ATTACHMENT 2 CHANGES TO IPR DOCUMENTS.

		exhibited domestic waste service charge of \$475.	
	Fees and Charges		
16.	24	Staff Submission – request to keep car parking fees at 2020-2021 level due to delays in implementation of paid parking system	For the Year 21/22 delete '\$4.50' from Off Peak – B row and also from Peak row and replace with '\$4.20'. GST and Fee (excl. GST) to be adjusted accordingly.
17.	Throughout document	Administration correction – spelling errors, formatting and correct GST updated where appropriate. Total fee amounts have not changed.	Text updated where required.
18.	66	Administration correction – Request to lower commission for accommodation and tour bookings to reflect current market requirements.	<p>Under the heading Visitor Information Centre, Commission - Accommodation bookings, delete: 'On Request -15%, Instantly Bookable – 12.5%'</p> <p>Add 'On Request -12.5%, Instantly Bookable – 10%'. '</p> <p>Under the heading Visitor Information Centre, Commission - Tour bookings, delete: 'On Request -17%, Instantly Bookable – 15%'. '</p> <p>Add 'On Request -15%, Instantly Bookable – 12.5%'. '</p>
19.	34	Administration correction - ATO issued on 8 June 2021 a draft GST	Following ATO final determination, adjust GST on these fees accordingly.

**ITEM 4 - ATTACHMENT 2      CHANGES TO IPR DOCUMENTS.**

		<p>Determination, GSTD 2021/D2 – ATO yet to make a final determination on GST for the following fees under the heading 'Cemetery – Burial Plots':</p> <ul style="list-style-type: none"><li>• Burial Plot – Anna Bay - Concrete Beams</li><li>• Burial Plot – Karuah, Nelson Bay, Seaham, Raymond Terrace</li></ul>	
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### Port Stephens 2020 Projects

The PSC2020 works were adopted by Council on 27 August 2019, refined on 24 September 2019 and further adjusted on 14 April 2020.

Before COVID-19 these projects were scheduled to be completed across Port Stephens during 2020. Projects not finalised in the year 2020 to 2021 will be carried out in 2021 to 2022 financial year, however, we remain flexible and agile to respond as required during these challenging times.

The status of these projects is provided in Council's Six-month progress reports and Annual reports along with monthly updates on Council's website.

The status of the projects is as of the end of **June 2021** ~~December 2020~~, with the original budget shown below.

Note – Funding for the below projects has been supplemented from other sources to maximise value for money.

#### East Ward (Subtotal: \$4.658 million)

- Completed - foreshore improvements - Conroy Park, Corlette
- Completed - road upgrade - Foreshore Drive, Corlette
- Completed - stage 1 East Donald Street Carpark demolition and at grade car parking including amenities replacement — Nelson Bay
- In progress - amenities replacement - George Reserve, Salamander Bay
- **Deferred for further community consultation** In-progress- amenities replacement - Little Beach, Nelson Bay
- **Complete** In-progress - revetment work - Soldiers Point
- In progress - ancillary works (paths/drainage) - Shoal Bay Foreshore, Shoal Bay
- In progress - Tomaree Sports Complex amenities replacement - Salamander Bay

#### Central Ward (Subtotal: \$4.53 million)

- Completed - town centre improvements **Anna Bay**
- Completed - shared pathway - Waropara Road, Medowie
- Completed - shared pathway - Gan Gan Road (missing links) Anna Bay
- **In progress** Completed - Soccer and Athletics Club Amenities Upgrades - Mallabula Sports Complex
- In progress - town centre improvements (including amenities) **Medowie**
- In progress - Shared pathway - Avenue of the Allies, Tanilba Bay
- In progress - shared pathway - Lemon Tree Passage Road, Mallabula to Lemon Tree Passage (missing link)
- **Complete** In-progress - shared pathway - Medowie Road (Ferodale Road to South Street) Medowie
- In progress - Skate park relocation and upgrade - Tilligerry Peninsula
- In progress - **Tennis expansion** Multisport Court facility - Mallabula Sports Complex
- **Complete** In-progress - Peace Park, Tanilba Bay - BBQ installation



## ITEM 4 - ATTACHMENT 3 PSC2020 PROJECT CHANGES.

## West-Ward (Subtotal: \$4.95 million)

- **Complete** In-progress - amenities replacement - Longworth Park, Karuah
- **Complete** In-progress - bus interchange - Seaham
- In progress - shared pathway - levee bank, Raymond Terrace
- In progress - road upgrade - Mustons Road, Karuah
- In progress - shared paths - Fern Bay
- In progress - town Centre improvements (road upgrade and streetscape) – William Street, Raymond Terrace
- In progress - road upgrades - Duns Creek Road, Forest Road, Swan Bay Road **(complete)**
- In progress - amenities/clubhouse upgrade - Stuart Park, Hinton
- A number of smaller maintenance requirements have also been identified.

Total: \$14.618 million

## Ancillary Minor Works (Subtotal: \$480,000)

- Completed - tree works Karuah & Raymond Terrace
- Completed - Bill Strong irrigation
- Completed - Nelson Bay Tennis Club Lighting
- Completed - Supporting park infrastructure for Medowie Skate Park
- Completed - Raymond Terrace dog park
- Completed - Nelson Bay Road/Port Stephens Drive roundabout entrance beautification
- **Deleted, no longer required** In progress – Medowie playground fencing
- In progress - Lemon Tree Passage Road roundabout beautification (Avenue of Allies)
- Completed - Salt Ash Hall outside toilet
- **Complete** In-progress - King Park irrigation **(design only)**

These projects will be funded from Reserve Funds, Developer Contributions (\$7.11) and loan funding as outlined in the Council report of 27 August 2019.

**ITEM 4 - ATTACHMENT 4 MAKING OF RATES 2021 TO 2022.**

**SCHEDULE OF RATES AND CHARGES 2021-2022**

- 1) Make ordinary rates in accordance with the following schedule for 2021-2022 using 1 July 2019 base date land values.

<b>Ordinary Rates</b>				
<b>Category</b>	<b>Sub-category</b>	<b>Ad Valorem Rate c in \$</b>	<b>Base Amount \$</b>	<b>% of yield from base amount</b>
Residential	Williamstown Primary Zone	0.1398	\$197.00	39%
Residential	Williamstown Secondary Zone	0.2097	\$295.50	41%
Residential	Williamstown Broader Zone	0.2516	\$354.60	40%
Residential	Residential	0.2796	\$394.00	35%
Farmland	Williamstown Primary Zone	0.1398	\$197.00	30%
Farmland	Williamstown Secondary Zone	0.2097	\$295.50	27%
Farmland	Williamstown Broader Zone	0.2516	\$354.60	26%
Farmland	Farmland	0.2796	\$394.00	21%
Business	n/a	0.7727	\$1,684.00	35%
Mining	n/a	0.7727	n/a	n/a

- 2) Levy on behalf of Hunter Local Land Services a catchment contribution at the rate determined by the Service for 2021-2022 on all rateable land with a land value of \$300 or more in the defined catchment area. The defined catchment area is shown on the Hunter Local Land Services Contribution Area map.
- 3) Fix the interest rate to apply to overdue rates and charges in 2021-2022 at the maximum rate as determined by the Minister for Local Government.
- 4) Make the following annual Domestic Waste Management Charges and Waste Management Charges for 2021-2022. All rateable assessments that are undeveloped (ie. have no buildings erected upon them) will be levied either a Domestic Waste Management Charge or a Waste Management Charge. All developed rateable assessments (ie. have a building/s erected upon them) will be levied either a Domestic Waste Management Service Charge or a Waste Management Service Charge in addition to the Domestic Waste Management Charge/Waste Management Charge.

<b>Charge type</b>	<b>Charge code</b>	<b>Charge name</b>	<b>Land category charge applies to</b>	<b>Amount of charge</b>
Domestic Waste Management (s496 Local Government Act, 1993)	6-63	Domestic Waste Management Charge	All rateable land categorised as Residential except land that is levied a s496 Domestic Waste Management Service Charge (7-73).	\$105.00 per assessment

## ITEM 4 - ATTACHMENT 4 MAKING OF RATES 2021 TO 2022.

Waste Management Charge (s501 Local Government Act, 1993)	6-64	Waste Management Charge	All rateable land categorised as Mining or Business. All rateable land categorised as Farmland except land that is levied a s501 Additional Farm Waste Management Charge (6-65). All rateable land categorised as Residential except land that is levied a s496 Domestic Waste Management Charge (6-63). All non-rateable land that uses the Domestic Waste Management Service.	\$105.00 per assessment
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## ITEM 4 - ATTACHMENT 4 MAKING OF RATES 2021 TO 2022.

Charge type	Charge code	Charge name	Land category charge applies to	Amount of charge
Waste Management Charge (s501 Local Government Act, 1993)	6-65	Additional Farm Waste Management Charge	All rateable land categorised as Farmland where more than one assessment is held in the same ownership and those assessments are operated as a single farming entity, then the Waste Management Charge (6-64) is to be levied on the first assessment and this Additional Farm Waste Management Charge (6-65) is to be levied on the second and subsequent assessments.	\$1.00 per assessment
Domestic Waste Management (s496 Local Government Act, 1993)	7-73 or 10-73	Domestic Waste Management Service Charge	All developed rateable land categorised as Residential or Farmland, whether occupied or unoccupied. All non-rateable land that uses the Domestic Waste Management Service.	\$475.00 per dual 240 litre or 360 litre (recycling only) bin service
Waste Management Charge (s501 Local Government Act, 1993)	7-74 or 19-74	Waste Management Service Charge	All developed rateable land categorised as Mining or Business, whether occupied or unoccupied.	\$475.00 per dual 240 litre or 360 litre (recycling only) bin service
Waste Management Charge (s501 Local Government Act, 1993)	3-74	Waste Service Charge – Additional Red Bin	All rateable land categorised as Farmland, Residential, Mining or Business where the ratepayer requests provision of the additional service. All non-rateable land where provision of the additional service is requested.	\$260.00 per additional waste (red lid) bin
Waste Management Charge (s501 Local Government Act, 1993)	4-74 or 18-74	Waste Service Charge – Additional Yellow Bin	All rateable land categorised as Farmland, Residential, Mining or Business where the ratepayer requests provision of the additional service. All non-rateable land where provision of the additional service is requested.	\$160.00 per additional recycling (yellow lid) bin



**MINUTES ORDINARY COUNCIL - 9 FEBRUARY 2021****NOTICE OF MOTION****ITEM NO. 3****FILE NO: 21/17503****EDRMS NO: PSC2017-00019****NELSON BAY PUBLIC DOMAIN AND CAR PARKING****COUNCILLOR: RYAN PALMER****THAT COUNCIL:**

- 1) Borrows \$5 million over a maximum of 10 years to fund the beginning of the Nelson Bay Public Domain Plan and fund the construction of a new car park in Nelson Bay.
- 2) Repays the loan from the SMART Parking revenue collected in Nelson Bay.
- 3) Continues additional capital works, maintenance and marketing in Nelson Bay with the remaining SMART Parking revenue.

**ORDINARY COUNCIL MEETING - 9 FEBRUARY 2021  
MOTION**

<b>013</b>	<b>Mayor Ryan Palmer Councillor Glen Dunkley</b>  It was resolved that Council:  <ol style="list-style-type: none"><li>1) Borrows \$5 million over a maximum of 10 years to fund the beginning of the Nelson Bay Public Domain Plan and fund the construction of a new car park in Nelson Bay.</li><li>2) Repays the loan from the SMART Parking revenue collected in Nelson Bay.</li><li>3) Continues additional capital works, maintenance and marketing in Nelson Bay with the remaining SMART Parking revenue.</li><li>4) Continues Community Consultation regarding the allocating of the \$5 million loan in relation to:<ol style="list-style-type: none"><li>i) Stages of the Public Domain Plan</li><li>ii) Additional car parking</li></ol></li></ol>
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Councillor Paul Le Mottee left the meeting at 6:40pm prior to voting on Item 3.  
Councillor Paul Le Mottee returned to the meeting at 6:45pm prior to voting on Item 3.

The motion was carried.

**MINUTES ORDINARY COUNCIL - 9 FEBRUARY 2021****ORDINARY COUNCIL MEETING - 9 FEBRUARY 2021  
AMENDMENT**

	<p><b>Councillor Giacomo Arnott</b></p> <p>That Council receives a full Council report outlining:</p> <ol style="list-style-type: none"><li>1) The financial feasibility of borrowing \$5million over a maximum of 10 years.</li><li>2) Precisely where a \$5million bucket of money would be spent on the Nelson Bay Public Domain Plan and car parking in the Nelson Bay CBD.</li><li>3) A full breakdown of smart parking receipts to date, including trends and predictions going forward.</li><li>4) What might need to be sacrificed in the ordinary budget if the SMART Parking program is unable to 100% cover the costs of this loan.</li></ol>
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The amendment lapsed without a seconder.

**ORDINARY COUNCIL MEETING - 9 FEBRUARY 2021  
AMENDMENT**

	<p><b>Councillor Giacomo Arnott</b></p> <p>That Council:</p> <ol style="list-style-type: none"><li>1) Acknowledges the precarious financial situation it is in since the COVID-19 pandemic began.</li><li>2) Agrees that Council being financially stable is exceedingly important while Council and the community works through its recovery from COVID-19.</li><li>3) Supports the Nelson Bay Public Domain Plan and a carpark being constructed in the Nelson Bay CBD.</li><li>4) Investigates grant funding and developer contributions that might be able to assist with these projects.</li></ol>
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The amendment lapsed without a seconder.

**MINUTES ORDINARY COUNCIL - 9 FEBRUARY 2021****BACKGROUND REPORT OF: TIM HAZELL – FINANCIAL SERVICES SECTION MANAGER****BACKGROUND**

The issue of paid car parking in the Nelson Bay town centre has been ongoing for some time. This resulted in a comprehensive program of works being set forward to implement SMART Parking within the Nelson Bay town centre, utilising the funding generated from this parking to further fund significant improvements to the precinct. This program will deliver on a range of projects over the short, medium and long term that includes road upgrades and traffic redirection, increased parking spaces, public domain upgrades and marketing of the town centre.

SMART Parking was installed in late 2020 in conjunction with the first tranche of public domain works centred on traffic flows. While the SMART Parking infrastructure has only been installed for a little over a month, it is difficult to predict with any certainty the additional revenue that may be generated from this initiative. Modelling over a number of years has been necessarily conservative and will be updated when further actual data is collected.

That said, it has been estimated that sufficient cash could be generated to service additional loan funds to accelerate the works program previously identified. While these works were scheduled to be completed over an approximate 10 year period, they could be considered for earlier completion pending resource allocation stemming from the current Strategic Asset Management Plan.

The timing of this accelerated program would need to be carefully considered, pending actual data on revenue collections. It is noted that the revenue from the current financial year has already been allocated to the current installation of SMART Parking and traffic flow works. To ensure adequate cash flow, it will be necessary to ensure collection of parking revenue for a longer period of time, meaning that any consideration of loan funding would have to be made in the 2021/2022 financial year.

While the anticipated cash flow is predicted to be sufficient to fund loan repayments, the resultant interest repayments will have a negative impact on the underlying result for each year. For a loan of \$5 million over 10 years at current indicative rates, this is anticipated to add around \$100k to Council's interest repayments and subsequently reduce the underlying result.

This additional interest repayment cost needs to be factored into the Long Term Financial Plan (LTFP) which is currently being formulated for Council's consideration. While it is reasonable to suggest that the interest repayments could be accommodated within existing parameters, the LTFP will be considered by Council in the coming months and further details would be available at that time.

**MINUTES ORDINARY COUNCIL - 9 FEBRUARY 2021****FINANCIAL/RESOURCE IMPLICATIONS**

<b>Source of Funds</b>	<b>Yes/No</b>	<b>Funding (\$)</b>	<b>Comment</b>
Existing budget	Yes	550,000 per annum	Loan funding requirements to come from Nelson Bay parking reserve.
Reserve Funds	No		
Developer Contributions (\$7.11)	No		
External Grants	No		
Other	No		

**ATTACHMENTS**

Nil.

**ITEM NO. 5**

**FILE NO: 21/89537  
EDRMS NO: PSC2005-3695**

**REVIEW OF DOG OFF LEAD AREAS - ANNA BAY/BIRUBI POINT,  
FISHERMAN'S BAY AND BOAT HARBOUR**

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

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Receive and note the Engagement Report shown at **(ATTACHMENT 1)**.
- 2) Endorse the proposals shown at **(ATTACHMENT 2)**.

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**BACKGROUND**

The purpose of this report is to seek Council's endorsement of the proposed changes to the dog off lead areas at Birubi Beach Reserve, Boat Harbour South Headland, Boat Harbour Beach and Fisherman's Bay Park. This report is in response to a Notice of Motion raised at the Council meeting on 14 July 2020 and shown at **(ATTACHMENT 3)**.

Council staff undertook an analysis in response to the Notice of Motion to determine if the current provision of dog off lead areas within the study area would meet the needs of the community. The analysis implemented the following methodology and is shown at **(ATTACHMENT 4)**.

- 1) Community Engagement including an online survey, online mapping tool and 2 face to face community information and feedback sessions - **(ATTACHMENT 1)**.
- 2) Literature, data and background review.
- 3) Review of existing sites - a site assessment to review the functionality, current use, provision of facilities, accessibility and suitability of existing off lead areas.
- 4) Benchmarking - population based, proximity based and comparative based benchmarking was used to compare how current provision compares to other Council areas.

The proposals based on the analysis and the outcome of consultation undertaken between 21 May and 6 June, 2021 for the off lead areas of Anna Bay/Birubi Point, Fisherman's Bay and Boat Harbour are shown in **(ATTACHMENT 2)**



Amended maps based on the recommendations of the analysis are included in **(ATTACHMENT 2)**. The following amendments were made to the maps:

- Increase the time dogs are permitted to be off lead on Birubi Beach.
- Prohibit dogs on the culturally sensitive site located north of Robinson Reserve on the corner of Fitzroy and Robinson Street, Anna Bay.
- Prohibit dogs from culturally sensitive sites within Birubi Point Aboriginal Place.
- Prohibit dogs from the frontal dune adjacent to Birubi Headland.
- Adjust the designated off lead area to the cleared and maintained portion of Fisherman's Bay Park.
- Adjust the designated off lead area to the cleared and maintained portion of Iluka Reserve, Boat Harbour.
- Permit dogs on lead throughout the natural area on Boat Harbour South Headland.
- Permit on lead access during specified times on Boat Harbour Beach.

## **COMMUNITY STRATEGIC PLAN**

<b>Strategic Direction</b>	<b>Delivery Program 2018-2021</b>
Infrastructure and Facilities	Maintain the Council's civil and community infrastructure to support the community.

## **FINANCIAL/RESOURCE IMPLICATIONS**

The recommendations will have a financial implication on Council as a result of the installation of new signage, relocation of dog faeces dispenser at Birubi Beach Reserve and provision of drinking water and dog bag dispenser at Fisherman's Bay Park. These costs will be accommodated within the existing operational budgets.

<b>Source of Funds</b>	<b>Yes/No</b>	<b>Funding (\$)</b>	<b>Comment</b>
Existing budget	Yes	5,000	Estimated cost associated with upgrading of signage, supply of new and relocation of existing dog bag dispensers and installation of a tap.
Reserve Funds	No		
Developer Contributions (\$7.11)	No		
External Grants	No		
Other	No		

**LEGAL, POLICY AND RISK IMPLICATIONS**

The NSW Companion Animal Act is the overall guide and statutory basis which must be abided by when providing dog off lead exercise areas. This Act sets down a guide for the provision of exercise areas, where Companion Animals' exercise areas are permitted and also prohibits companion animals from certain areas eg children's play areas or public food preparation/consumption areas.

The risks associated with endorsing the recommendations are detailed in the table below:

<b>Risk</b>	<b><a href="#">Risk Ranking</a></b>	<b>Proposed Treatments</b>	<b>Within Existing Resources?</b>
There is a risk that increased usage of Birubi Beach Reserve as a dog off lead exercise area may have adverse impacts on other users' experience and the environment.	Low	Time restrictions during peak periods will reduce the adverse impact of dogs on the environment.	Yes
There is a risk that if further access to Birubi Beach is not provided, dog owners will contravene regulations and exercise their dogs in prohibited/on-lead areas.	Low	Adopt the recommendation and amend the current time restrictions for the designated off lead exercise area.	Yes
There is a risk that permitting dogs on lead to walk on Boat Harbour Beach may result in dog owners exercising their dogs off lead or use the area for a period of time.	Low	Adopt the recommendation and amend the signage to be clear and concise. Rangers to undertake regular patrols and issue infringements if required.	Yes

**SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

There are clear social, economic and environmental benefits for providing off lead areas that have access to water.

Dog off lead areas provide a public, recreational space for pets and their owners to safely interact with other animals and members of the community. They provide people with the opportunity for social contact, improving social cohesion within a

community. It is the intention that allowing further provision to an off lead beach will reduce the likelihood of dog owners letting their dogs off lead in regulated areas which impedes on the recreational enjoyment of residents and park users. The extension to provision times for the existing dog off lead area will be cost-free, enabling it as an affordable recreational activity.

## **CONSULTATION**

Consultation with key stakeholders has been undertaken by the Assets Section. To date this consultation has included:

### Internal

- Environmental Health and Compliance – Rangers reviewed the recommendations for the proposed locations and agreed upon the suitability and the appropriateness of controls for all sites.
- Public Domain and Services – Parks and Building Trades reviewed the budget allocation and agreed upon the expenditure required for the new infrastructure.
- Natural Resources – Environmental Planners reviewed the recommendations for the proposed locations and agreed upon the consideration to the characteristics of each site to ensure Council continues to enhance the value of vegetation communities and protect vulnerable species.

### External

An online survey including an online mapping tool was opened on Council's Have Your Say platform and drop in sessions were conducted at Boat Harbour and Birubi Beach. The consultation period was open from Friday 18 November 2020 through to Wednesday 16 December 2020.

The proposed changes for the dog off lead areas were also publicised on Council's Have Your Say platform with an online survey open for the community to provide comment. The consultation period was open from Friday 21 May 2021 through to Sunday 6 June 2021. Additional community correspondence received separate to the community engagement platform has been provided as a tabled document.

The proposals were also presented to and supported by the Birubi Point Cultural Heritage Advisory Panel on 21 May 2021.

## **OPTIONS**

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

## **ATTACHMENTS**

- 1) Engagement Report - June 2021. (Provided under separate cover). [➡](#)

<b>ORDINARY COUNCIL - 22 JUNE 2021</b>
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- 2) Proposal for off lead areas at Anna Bay/Birubi Point, Fisherman's Bay and Boat Harbour. [↓](#)
- 3) Notice of Motion - Off Leash Dog Review - 14 July 2020. [↓](#)
- 4) Review of off lead areas at Anna Bay, Fisherman's Bay and Boat Harbour Analysis Report. [↓](#)

### **COUNCILLORS ROOM**

- 1) Written correspondence in full received in association with business paper item.

### **TABLED DOCUMENTS**

Nil.

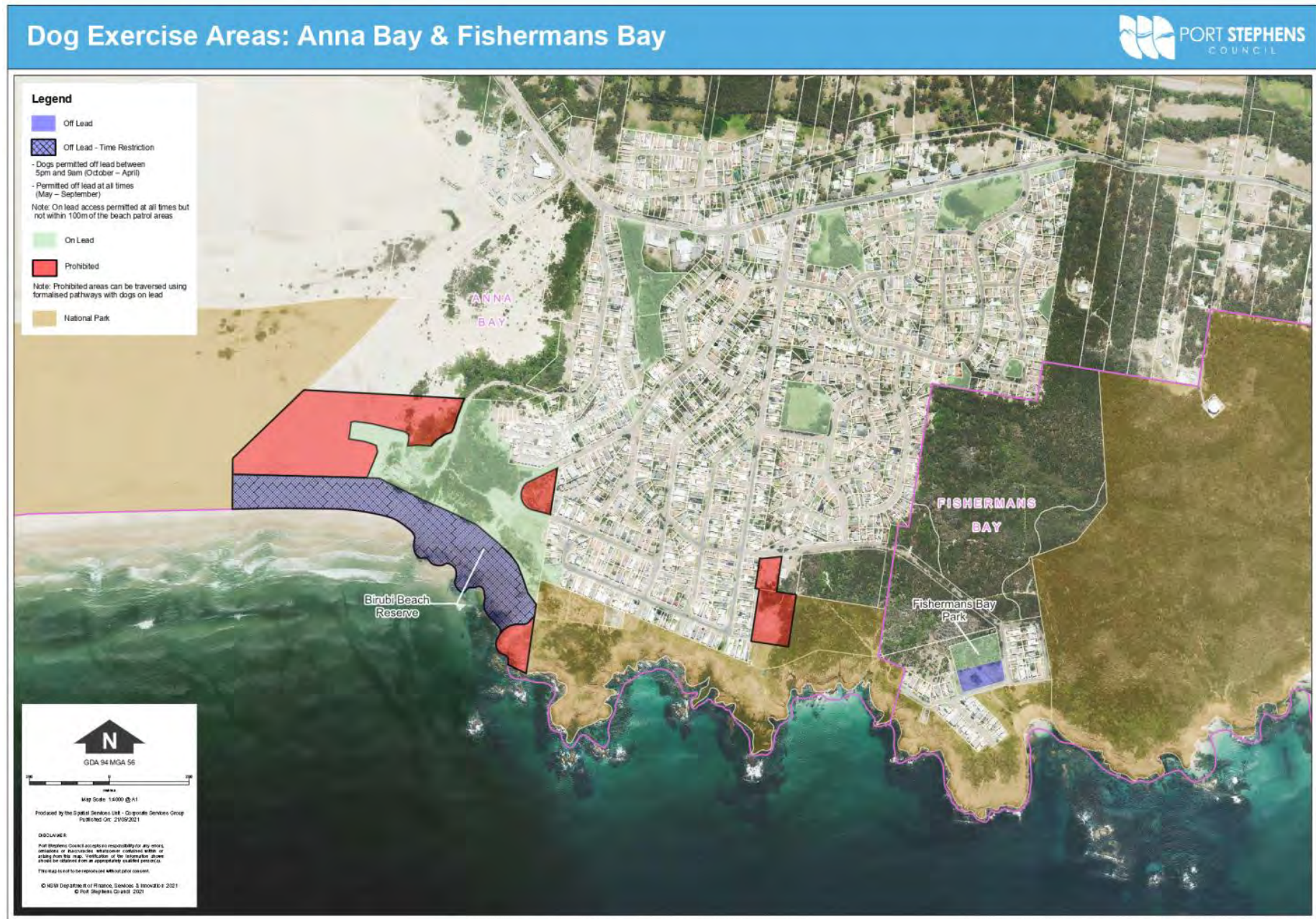
**ITEM 5 - ATTACHMENT 2 PROPOSAL FOR OFF LEAD AREAS AT ANNA BAY/BIRUBI POINT, FISHERMANS BAY AND BOAT HARBOUR.**

**ATTACHMENT 2 - PROPOSAL**

Location	Proposal
Birubi Beach	<ol style="list-style-type: none"> <li>1. Permit dogs off lead between May and September at all times.</li> <li>2. Permit dogs off lead between 5pm and 9am during October and April.</li> <li>3. On lead access permitted at all times but not within 100m of the beach patrol areas.</li> <li>4. Improve signage to make it easier to interpret rules and regulations.</li> <li>5. Relocate the dog bag dispenser in Robinson Reserve adjacent to the main beach access.</li> </ol>
Boat Harbour South Headland	<ol style="list-style-type: none"> <li>1. Adjust the designated off lead area to the clear and maintained portion of Iluka Reserve.</li> <li>2. Permit dogs on lead for the remainder of the headland.</li> <li>3. Improve signage to make it easier to interpret rules and regulations.</li> </ol>
Boat Harbour Beach	<ol style="list-style-type: none"> <li>1. Permit on lead access between 4pm and 9am.</li> <li>2. Prohibit dogs on beach during all other times.</li> </ol>
Fishermans Bay Park	<ol style="list-style-type: none"> <li>1. Amend mapping to better reflect usable area for off lead exercise.</li> <li>2. Provide a tap for drinking water and a dog bag dispenser.</li> </ol>

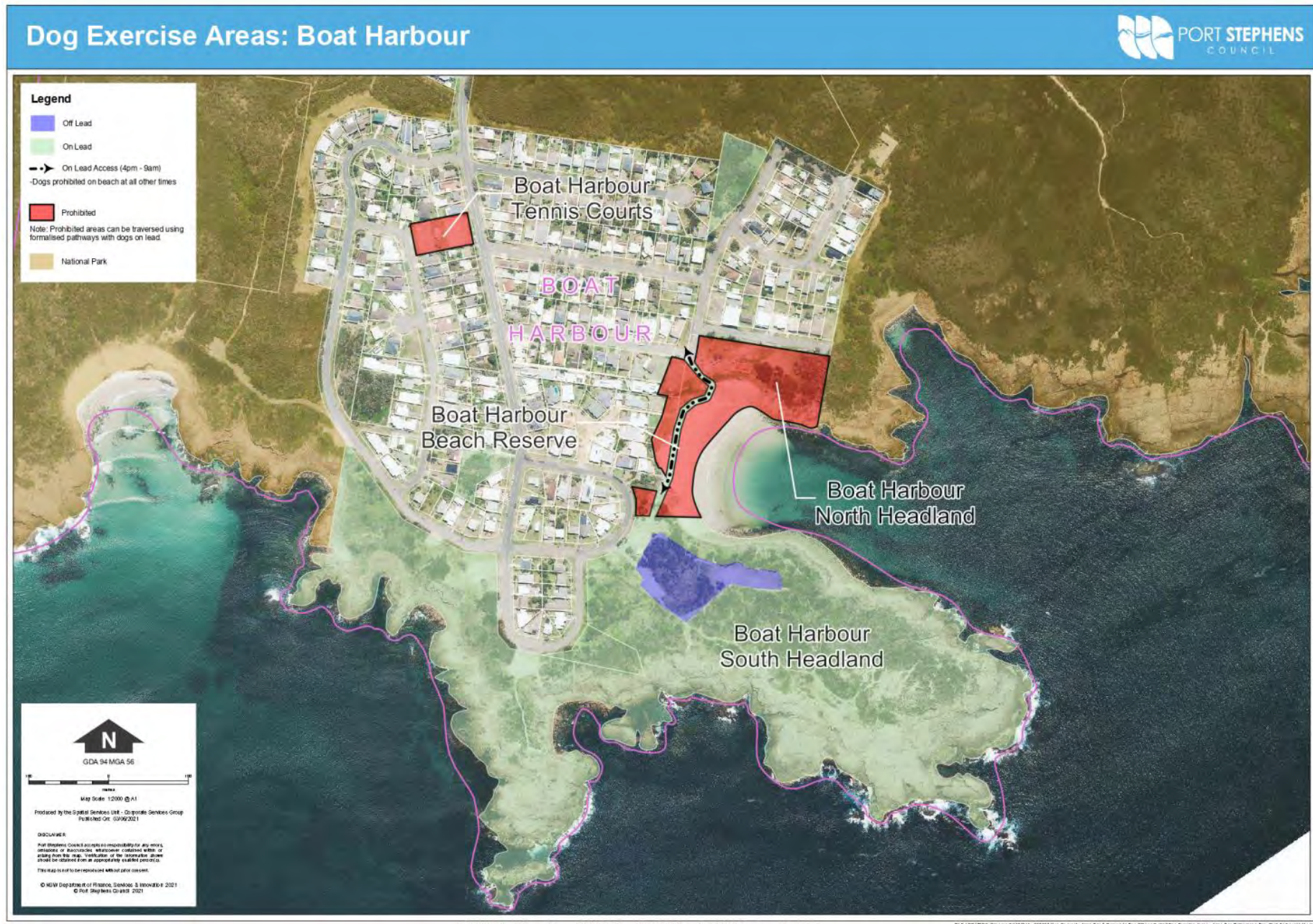


ITEM 5 - ATTACHMENT 2 PROPOSAL FOR OFF LEAD AREAS AT ANNA BAY/BIRUBI POINT, FISHERMANS BAY AND BOAT HARBOUR.





ITEM 5 - ATTACHMENT 2 PROPOSAL FOR OFF LEAD AREAS AT ANNA BAY/BIRUBI POINT, FISHERMANS BAY AND BOAT HARBOUR.



**ITEM 5 - ATTACHMENT 3 NOTICE OF MOTION - OFF LEASH DOG REVIEW - 14 JULY 2020.****MINUTES ORDINARY COUNCIL - 14 JULY 2020**

Councillor Giacomo Arnott returned to the meeting at 8:05pm.

**NOTICE OF MOTION****ITEM NO. 1****FILE NO: 20/173409  
EDRMS NO: PSC2017-00019****REVIEW OF THE OFF LEASH DOG AREAS AND TIMES AT ANNA BAY / BIRUBI POINT, FISHERMANS BAY AND BOAT HARBOUR****COUNCILLOR:** SARAH SMITH**THAT COUNCIL:**

- 1) Conduct a review and report back to Council on the off leash dog areas and times at Anna Bay/Birubi Point, Fisherman's Bay and Boat Harbour.

**ORDINARY COUNCIL MEETING - 14 JULY 2020  
MOTION**

<b>138</b>	<b>Councillor Sarah Smith Councillor Chris Doohan</b>  It was resolved that Council conduct a review and report back to Council on the off leash dog areas and times at Anna Bay/Birubi Point, Fisherman's Bay and Boat Harbour.
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The motion was carried.

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

As dog ownership increases, it is important that Council provides suitable areas that owners can exercise their dog in a socially and environmentally sustainable way.

Following extensive community consultation in 2014, Council undertook a review of dog exercise areas across the Port Stephens Local Government Area and established a network of permitted and prohibited areas.

In recent times Council has also undertaken locality-based assessments in Soldiers Point (relating to an outstanding action from the original resolution) and Raymond Terrace (relating to a PS2020 project) to identify suitable sites for fenced off lead areas. The process for this review would follow a similar methodology.

**ITEM 5 - ATTACHMENT 3 NOTICE OF MOTION - OFF LEASH DOG REVIEW - 14 JULY 2020.****MINUTES ORDINARY COUNCIL - 14 JULY 2020**

The proven benefits of owning a pet and regular exercise is creating unprecedented demand for off lead areas and a response is needed by Council to ensure the needs of local dog owners are addressed.

In addition to this demand, the recent upgrade of Robinson Reserve, Anna Bay and the planned Tomaree Coastal Walk are expected to bring additional visitors to the area. These works will result in increased pedestrian and dog traffic along coastal routes, changing the way that people use Council's coastal reserves.

A review of dog exercise areas in Anna Bay, Boat Harbour and Fisherman's Bay will ensure Council responds to shifting demand appropriately. Subject to the existing work program, this review could commence from September 2020.

**FINANCIAL/RESOURCE IMPLICATIONS**

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

**ATTACHMENTS**

Nil.



ITEM 5 - ATTACHMENT 4      REVIEW OF OFF LEAD AREAS AT ANNA BAY,  
FISHERMANS BAY AND BOAT HARBOUR ANALYSIS REPORT.



# Review of off lead areas at Anna Bay, Fishermans Bay and Boat Harbour

Prepared by the Community and Recreation Assets Team

Port Stephens Council

April 2021

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**ITEM 5 - ATTACHMENT 4      REVIEW OF OFF LEAD AREAS AT ANNA BAY,  
FISHERMANS BAY AND BOAT HARBOUR ANALYSIS REPORT.**

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**ITEM 5 - ATTACHMENT 4      REVIEW OF OFF LEAD AREAS AT ANNA BAY, FISHERMANS BAY AND BOAT HARBOUR ANALYSIS REPORT.**

## 2 Introduction

The scope of this analysis is to review existing off lead areas at Anna Bay/Birubi Point, Fishermans Bay and Boat Harbour and how effective they are in meeting the needs of the community. In undertaking this analysis, Council implemented the following methodology:

- *Step 1 – Community Engagement:* The approach of this engagement included an online survey, online mapping tool and two face to face community information and feedback sessions.
- *Step 2 – Literature, Data and Background Review:* The approach of the review was to identify, evaluate and synthesise the relevant literature related to off lead areas.
- *Step 3 – Review of existing sites:* A site assessment was undertaken to review the functionality, current use, provision of facilities, accessibility and suitability of existing sites.
- *Step 4 – Benchmarking:* Population based, proximity based and comparative based benchmarking was used to compare how current provision compares to other Council areas.
- *Step 5 – Recommendations:* To be presented to Council for endorsement and adoption.



**ITEM 5 - ATTACHMENT 4      REVIEW OF OFF LEAD AREAS AT ANNA BAY,  
FISHERMANS BAY AND BOAT HARBOUR ANALYSIS REPORT.**

### **3 Background**

Around 40% of Australian households include at least one dog, making them the most popular type of pets. National surveys have found that an increasing number of people consider their dogs to be part of the family, a reason to socialise and walking the dog is a key recreation activity. The proven physical and mental health benefits of owning a pet and regular exercise is creating unprecedented demand for off lead areas and a response is needed by Council to ensure the needs of local dog owners are addressed. With 47% of households within Port Stephens owning a dog (Pound and Dog Attack Statistics - Dog Attack Incidents reported by Councils, 2020) it is important that Council provides suitable areas that owners can exercise their dog in a socially and environmentally sustainable way.

In 2014, Council undertook a review of dog off lead areas across the Port Stephens Local Government Area and established a network of permitted and prohibited areas. Since completing this review, population growth, increasing tourism and infrastructure improvements such as the upgrades at Robinson Reserve have impacted the way people recreate with dogs in public spaces. This has resulted in the need for a review to ensure Council responds to shifting demand appropriately.

This report is in response to a Notice of Motion raised at the Council meeting on 14 July 2020 that has involved Council staff to undertake an analysis to determine if the current provision of dog off lead areas within the study area were adequate to meet the needs of the community.

## ITEM 5 - ATTACHMENT 4 REVIEW OF OFF LEAD AREAS AT ANNA BAY, FISHERMANS BAY AND BOAT HARBOUR ANALYSIS REPORT.

### 4 Context

#### Anna Bay, Boat Harbour and Fishermans Bay

The focus area of this analysis includes the suburbs of Anna Bay, Fishermans Bay and Boat Harbour. Anna Bay is the gateway to the Worimi Conservation Lands that is one of Australia's great natural wonders, making Birubi Beach one of the most popular tourist destinations within NSW. Fishermans Bay is known as a small fishing village with a beach including a beach launch and a local park surrounded by the Tomaree National Park. Boat Harbour is located within a 5 min drive of Anna Bay and Fishermans Bay, being a popular area for families to enjoy the natural beauty, recreational facilities and secluded beaches.

Port Stephens is promoted as a pet friendly holiday destination providing a number of accommodation options, including holiday parks, holiday houses and hotels. Port Stephens boasts a robust tourist economy with an estimated 787,000 visitors spending almost 2.4million nights in the 12 month period from March 2019 to March 2020. Overall growth of overnight domestic visitors has been positive over the past 10 years with an average growth rate of 2%. Birubi Beach is arguably the most popular tourist destination within Port Stephens and will need to continue responding to the increasing demand from domestic and international tourists.

As of the 2016 Census, the population of Anna Bay was 3,844 persons, followed by Boat Harbour with 958 persons and Fishermans Bay with 63 persons. The age distribution of residents is outlined in Table 1 below.

**Table 1.** Anna Bay, Fishermans Bay and Boat Harbour age breakdown by suburb by percentage compared to Port Stephens LGA.

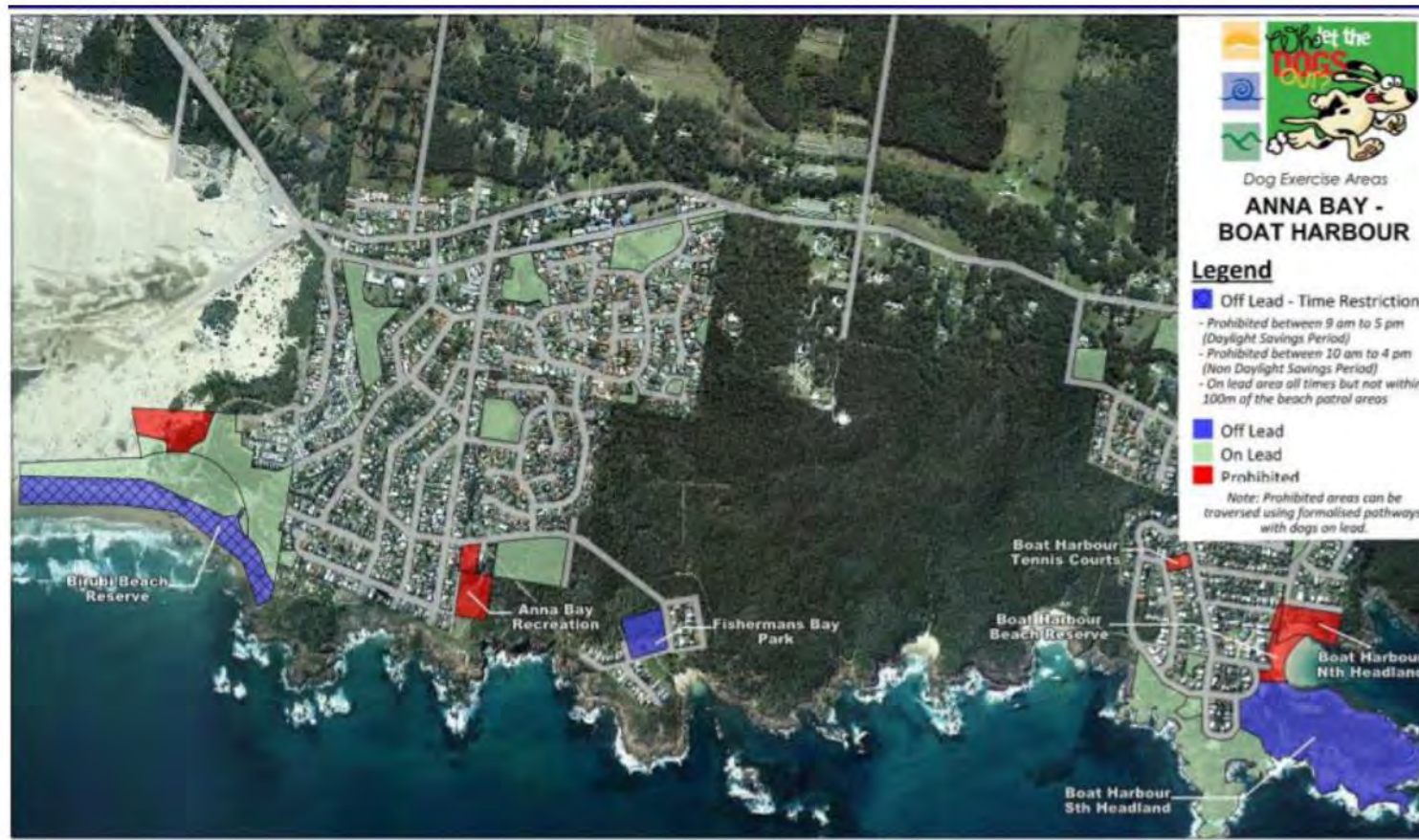
Age range % (2016)	Anna Bay	Boat Harbour	Fishermans Bay	LGA
0-4	4.70	6.37	0	5.55
5-9	4.50	7.41	0	6.33
10-19	13.97	12.32	0	12.04
20-29	9.50	7.41	12.70	9.80
30-39	7.75	8.35	0	9.98
40-49	13.16	15.03	22.22	12.46
50-59	14.52	17.64	25.40	13.91
60-69	14.18	13.99	6.35	14.45
70-79	12.88	8.35	33.33	10.42
80-89	4.68	3.13	0	4.20
90-99	0.16	0	0	0.85
100 or over	0	0	0	0.01
<b>Total</b>	<b>3844</b>	<b>958</b>	<b>63</b>	<b>69,556</b>



# ITEM 5 - ATTACHMENT 4      REVIEW OF OFF LEAD AREAS AT ANNA BAY, FISHERMANS BAY AND BOAT HARBOUR ANALYSIS REPORT.

A site analysis was completed for each of the existing off lead areas within the study area as identified in Figure 1 below.

**Figure 1.** Existing Off Lead Area Map for Anna Bay, Fishermans Bay and Boat Harbour





## ITEM 5 - ATTACHMENT 4 REVIEW OF OFF LEAD AREAS AT ANNA BAY, FISHERMANS BAY AND BOAT HARBOUR ANALYSIS REPORT.

The site analysis findings were identified through physical site visits of each location and is summarised in Table 2 below.

**Table 2.** Site Analysis of off lead areas within Anna Bay, Fishermans Bay and Boat Harbour.

Off-lead Area	Location	Comments
<b>Birubi Beach Reserve</b>	Anna Bay	<ul style="list-style-type: none"> <li>Dogs are prohibited on beach between 9am – 5pm (daylight savings) and 10am – 4pm (non-daylight savings)</li> <li>Dogs are permitted on lead all other times but not within 100m of patrolled swimming areas</li> <li>Formalised car parking</li> <li>Highly used as an off lead area and general recreation area</li> <li>Two beach access points; Ocean Avenue and Robinson Reserve</li> <li>Poor signage with information difficult to interpret and understand</li> <li>Dog bag dispenser at both access points, however the one in Robinson Reserve needs to be relocated</li> <li>Amenities provided within Robinson Reserve (park furniture, BBQs, toilets, drinking fountain, playground and Skate Park).</li> <li>Plastic containers used for dog water bowls</li> </ul>
<b>Fishermans Bay Park</b>	Fishermans Bay	<ul style="list-style-type: none"> <li>Close proximity to residents</li> <li>Clear dog off lead signage</li> <li>Toilets provided within park</li> <li>Adjacent to local roads</li> <li>Established vegetation on large portion of site. Creates 'blind spots'.</li> <li>Off street parking only</li> <li>Lack of amenities (dog water bowl, seating, shade and dog bag dispenser)</li> <li>No pathway connectivity</li> </ul>
<b>Iluka Reserve (South Headland)</b>	Boat Harbour	<ul style="list-style-type: none"> <li>Highly used as an off lead area and passive recreation area</li> <li>Large informal area allocated for off lead</li> <li>Incorporates natural areas and walking trails</li> <li>Adjacent to rocky escarpment</li> <li>Prohibited beach adjacent to existing off lead area</li> <li>Poor signage with information difficult to interpret and understand</li> <li>No pathway connectivity to nearby residences</li> <li>Gravel car park</li> <li>Amenities provided (park furniture, BBQ, shelter, toilets, taps, dog bag dispenser)</li> </ul>

## ITEM 5 - ATTACHMENT 4 REVIEW OF OFF LEAD AREAS AT ANNA BAY, FISHERMANS BAY AND BOAT HARBOUR ANALYSIS REPORT.

### 5 Consultation

A range of stakeholders were consulted to assist in determining key considerations when reviewing the off lead areas. The engagement approach aimed to:

- **Increase awareness** — helps to explain how feedback into council services can help refine current arrangements.
- **Inform and educate** — the community about the review of the off lead areas.
- **Enable community feedback** — to help direct the recommendations in the future council report.

Community consultation targeting residents and visitors was undertaken in accordance with the engagement methods outlined in Table 3 below. The following key stakeholders were invited to provide comment, however no feedback has yet been received:

- Port Stephens-Great Lakes Marine Parks
- South Tomaree Community Association
- Anna Bay/Birubi Landcare
- Port Stephens Council's Registered Commercial Operators

**Table 3.** *Engagement methods used to communicate the review and seek community feedback*

ENGAGEMENT METHODS		
Date	Method	Reach
<b>Online Survey – Community Engagement</b> <i>Open 18 Nov – 16 Dec 2020</i>	Gathers priorities, usage patterns and develops early ideas	210 surveys complete
<b>Online Map</b> <i>Open 18 Nov – 16 Dec 2020</i>	Individual comments with ability to like or dislike by others. Online mapping tool adds layer of transparency to community discussions and provides place based discussions	242 comments
<b>Drop in sessions</b> <i>3 Dec 2020</i>	Discussion of background of project, timing and call to action for feedback	40 attended at Boat Harbour 60 attended at Birubi Beach SLSC
<b>Birubi Point Cultural Heritage Advisory Panel meeting</b> <i>20 May 2021</i>	To present and seek feedback from the panel on the proposed changes	8 representatives attended

## ITEM 5 - ATTACHMENT 4 REVIEW OF OFF LEAD AREAS AT ANNA BAY, FISHERMANS BAY AND BOAT HARBOUR ANALYSIS REPORT.

### Consultation outcomes

In total, 65% of the respondents resided in Anna Bay, Fishermans Bay, Boat Harbour and One Mile Beach, 25% elsewhere within the Tomaree Peninsula and the remaining 10% resided elsewhere within Port Stephens or outside of the LGA. 75% of these respondents completed the survey as a "Resident generally interested", 73% a "Resident living near existing off lead area" and 70% "Exercise their dog in an existing off lead area" within the LGA. Over half of the respondents were between 45 and 64 years of age.

82% respondents owned a dog and 86% were supportive of dogs in public spaces. Using the data from both Question 3 - "*Do you own a dog?*" and Question 5 - "*Are you supportive of dogs (on or off lead) in public spaces generally?*", identifies that just over half of the non-dog owners (55%) were still supportive of dogs either on or off lead in public spaces.

The survey data found that 75% of respondents exercise their dog at Birubi Beach, 31% at Boat Harbour and 30% generally on lead. Responses identified Fishermans Bay Park as one of the least used off lead areas within the LGA (4%) - *Note: Respondents were able to identify multiple locations.* The three most common reasons that would prevent a person from using a dog off lead area were 'Not safe for dog to be around other dogs' (27%), 'Requires motor vehicle to visit' (26%) and 'Perception of other users in public spaces' (25%).

Responses also indicated that the usage patterns are relatively evenly spread across various times of the day and week for owners exercising their dog in public spaces. The most popular combination of usage was that 71% exercised their dog on 'weekday mornings/evenings' and 'weekends', but not 'weekdays during the day'. However, 50% of respondents exercise their dog on weekday mornings/evenings, weekdays during the day and weekends'. In addition to the usage patterns, the top three main features important to users at an off lead area are bag dispensers (73%), drinking water available (61%) and pathway connections (43%).

The feedback received from the two open-ended questions regarding improvements required for existing off lead areas and any general comments, provided a total of 555 individual comments. The nature of most comments meant that many (86%) of the individual comments discussed multiple topics, providing a grand total of 642 comments. The top themes by subject identified were:

1. **No change: Includes general support/satisfied with existing off lead areas and timing including existing prohibited areas (16%)**
2. **Compliance: Better education and regulation of existing rules includes calls for extra policing (11%)**
3. **More off lead areas: General call for more off lead areas (fenced or unfenced) especially those with access to water (11%)**

The top themes by location identified were:

**ITEM 5 - ATTACHMENT 4      REVIEW OF OFF LEAD AREAS AT ANNA BAY,  
FISHERMANS BAY AND BOAT HARBOUR ANALYSIS REPORT.**

**Birubi Beach:**

1. Extend/change existing timing restrictions (8%)
2. Access to beach for dog to swim at all times/remove timing restrictions (6%)

**Boat Harbour:**

3. Allow dogs on Boat Harbour beach with timing restrictions (7%).
4. Allow dog on lead access on beach (4%).

**Fishermans Bay:**

No notable themes relevant were identified.

**ITEM 5 - ATTACHMENT 4      REVIEW OF OFF LEAD AREAS AT ANNA BAY, FISHERMANS BAY AND BOAT HARBOUR ANALYSIS REPORT.**

## **6 Literature Review**

A literature review has been conducted to gain an understanding of the existing legislation and research relevant to the area of study.

### **NSW Companion Animals Act (1998)**

The NSW Companion Animals Act (1998) legislates requirements for both dog owners and local councils in managing the presence of dogs in public spaces. A requirement of this legislation is Councils are to provide at least one off-lead area. Dogs are prohibited in some public spaces such as within 10 metres of a playground and food preparation/consumption areas. Exemptions to this rule exist where a person is required to enter a prohibited area when traversing a public pathway or thoroughfare.

### **NSW National Parks Wildlife Act (1974)**

The NSW National Parks Wildlife Act (1974) prohibits dogs from NSW managed National Parks (section 70) such as Fishermans Bay Beach and Tomaree National Park. Dogs are however allowed on a 3km section of the beach south of Birubi Headland within Worimi National Park.

### **Tomaree Coastal Walk Masterplan**

Commissioned by the NSW National Parks and Wildlife, the Tomaree Coastal Walk Master Plan involves a 20-kilometre Tomaree Coastal Walk connecting Tomaree Headland/Shoal Bay to Birubi Point/Anna Bay. The walking track route accesses Council owned and managed land within the study, including:

- Iluka Reserve/Boat Harbour South Headland – Dogs permitted off lead
- Boat Harbour Beach - Dogs are currently prohibited
- Robinson Reserve – Dogs are currently permitted on-lead
- Birubi Headland – Dogs are currently permitted on-lead

The prohibition of dogs from National Parks is a considerable barrier for the residents of Anna Bay, Fishermans Bay and Boat Harbour to exercise their dogs and an opportunity may exist with the impending construction of the Coastal Walk to permit dogs to be walked on lead along the trail.



**ITEM 5 - ATTACHMENT 4      REVIEW OF OFF LEAD AREAS AT ANNA BAY, FISHERMANS BAY AND BOAT HARBOUR ANALYSIS REPORT.****Port Stephens Delivery Program and Operational Plans 2018 – 2021**

The Delivery Program and Operational Plan are Council's response to the Community Strategic Plan, which is a summary of the community's aspirations and priorities over the next 10 years. These integrated plans are founded on a basis of social, economic, environmental and governance factors through four Focus Areas: 'Our Community, Our Place, Our Environment and Our Council'. These Focus Areas provide a structure for all of the Plans and highlight the key priorities, enabling Council to meet the community's vision of 'A great lifestyle in a treasured environment'. Under each Focus Area are the Community Strategic Plan Key Directions, Delivery Program objectives and Operational Plan Actions.

*Focus Area 2 – 'Our Place'* and the following related key directions are applicable to this study:

- *P2 - Our community's infrastructure and facilities are safe, convenient, reliable and environmentally sustainable.*
- *P2.1 - Plan civil and community infrastructure to support the community.*
- *P2.1.7 – Provide, manage and maintain community and recreation assets.*

The *Key Delivery Program Objective: P2.1* identifies dog off lead areas as a key priority to ensure there is a mix of dog on and off lead areas that provide the right level of facilities to meet the needs of the community.

**Port Stephens Recreation Strategy 2018**

The Recreation Strategy Volume 1 provides an overarching framework and strategic direction for the planning and improvement for recreation facilities and services in Port Stephens. The vision for recreation in the LGA is underpinned by seven objectives to guide Council's planning and operations to achieve the vision. The objectives that are relevant to this study are:

- *Objective 1 – Provide recreational facilities that are appropriately scaled and responsive to community need.*
- *Objective 2 – Improve the quality and diversity of existing recreation facilities to provide a range of leisure and recreation opportunities for residents and visitors.*
- *Objective 6 – Provide recreation facilities that are safe, attractive and well utilised.*
- *Objective 7 – Achieve well managed and maintained recreation facilities through a coordinated and planned approach.*

**ITEM 5 - ATTACHMENT 4      REVIEW OF OFF LEAD AREAS AT ANNA BAY, FISHERMANS BAY AND BOAT HARBOUR ANALYSIS REPORT.**

These objectives explore the current provision and identified gaps for recreation facilities within the LGA, with strategic directions provided for each objective. The implications on the existing on and off lead areas could be improved by increasing access, amending signage content, identifying opportunities to increase pathway connections and car parking and designing a site to be functional for all users. Key considerations in the planning and design process will be demographic changes and recreation trends that need to be considered within the analysis.

The Recreation Strategy Volume 2 is a background and information document containing the supporting information that was used to prepare the strategy. Based on the participation trend data, walking is the top sport and physical activity for adults (42.5%) and also the preferred form of activity for people aged over 65 years (61.7%). An implication for recreation facility provision is that as there is a rise in individual physical activity in adults, Council should support this through the provision of pathway networks and recreational infrastructure including water bubblers.

**Birubi Point Aboriginal Place Management Plan, 2018**

This document sets out the 10 year plan to protect and respect its value and significance to the Worimi people. Under the *Local Government Act 1993* and *Crown Land Management Act 2016*, Birubi Beach will be categorised as an Area of Cultural Significance. As this location is a popular destination for tourists and a meeting place for locals, the recreational, environmental and economic values have been considered. Dog walking and exercising has been recognised as a recreational value at Birubi Beach. Dog walking has also been identified to have low potential for harm to cultural values of the site.

**Port Stephens Council's Draft Generic Plan of Management**

This document identifies the future management of dogs exercising in public spaces owned or managed by Council as an important issue. Fishermans Bay Park vegetated area is identified as natural bushland and the cleared area is a park. Boat Harbour South Headland has a mix of natural bushland and escarpment and Boat Harbour Beach is identified as natural area foreshore. The natural areas within these sites will need to be maintained and protected as part of the site review in conjunction with the Companion Animals Act.

**ITEM 5 - ATTACHMENT 4      REVIEW OF OFF LEAD AREAS AT ANNA BAY, FISHERMANS BAY AND BOAT HARBOUR ANALYSIS REPORT.**

## **7 Benchmarking**

The methodology used to benchmark against other Councils utilised population based, comparative and proximity based benchmarking. Population based benchmarks are used to give an indication of the number of off lead areas and size of the study area. Comparative benchmarking looks at similar local government areas to Port Stephens and compares the types and number of off lead areas provided within them. Proximity based benchmarks are used to understand the spatial distribution of off lead areas and their proximity to residents.

### **Comparative based benchmarking**

Byron Bay, Mid-Coast Council and Port Macquarie were chosen as comparative Councils as they are coastal-regional areas, of similar population profile to port Stephens and major tourist destinations.

#### ***Byron Bay***

The population as of the 2016 census was 31, 556. Byron Bay is smaller in land area (567km<sup>2</sup>) and population than Port Stephens but is a well-known tourist destination, attracting over 1 million visitors annually.

In total, 8 off lead areas are provided, with 5 of these areas being beaches. Whilst dogs are prohibited on Main Beach, off lead areas are provided within close proximity nearby and can be accessed at all times.

#### ***Port Macquarie-Hastings Council***

The population as of the 2016 census was 78, 539. Port Macquarie-Hastings land area (3,686km<sup>2</sup>) and population is comparable to Port Stephens and is a popular tourist destination.

In total, 12 off lead areas are provided, with 9 of these areas being beaches. The 3 parks provided are designated fenced off lead areas with supporting facilities such as agility equipment and a drinking fountain with dog water bowl.

#### ***MidCoast Council***

The population as of the 2016 census was 90,303. MidCoast Council is larger in land area (10,060km<sup>2</sup>) and population than Port Stephens, however as one of its neighbouring Councils on the Mid-North Coast it is a key benchmark.

In total, 19 off lead areas are provided with 7 of these areas being beaches with time restricted access between 6am – 8pm. In addition to this, some of their popular

## ITEM 5 - ATTACHMENT 4 REVIEW OF OFF LEAD AREAS AT ANNA BAY, FISHERMANS BAY AND BOAT HARBOUR ANALYSIS REPORT.

beaches allow dogs to be off lead in designated areas during non-peak times such as 5am to 9am and 5pm to 8pm.

### Population benchmarking

The following table compares the provision of off lead areas in Port Stephens Council against the three selected Councils by calculating the rate of off lead areas provided per 1000 persons.

**Table 3.** Comparison of total number of off-lead areas per 1000 persons to other Local Government Areas.

Council LGA	Total Population	LGA Dog Off-lead area per 1000 person	Unfenced dog off-lead parks per 1000 person	Fenced Dog Off-lead parks per 1000 person	Dog Off-lead beaches per 1000 person
Port Stephens	69,556	0.23	0.11	0.06	0.06
Byron Bay	31,556	0.25	0.09	0	0.12
Mid Coast Council	90,303	0.21	0.12	0.01	0.08
Port Macquarie-Hastings Council	78,359	0.15	0	0.03	0.11

Table 3 indicates that Port Stephens Council's provision rate of dog off-lead areas within the LGA is comparative to Byron and MidCoast but higher than Port Macquarie-Hastings Council. Port Stephens Council does however have a lower provision rate of dog off-lead beaches compared to the other Councils.

**Table 4.** Comparison of total number of off-lead areas per 1000 persons to Port Stephens LGA

Council LGA	Total Population	Number of off-lead areas	Dog Off-lead area per 1000 person
Port Stephens	69,556	16	0.23
Anna Bay	3,844	1	0.26
Boat Harbour	958	1	1.04
Fishermans Bay	63	1	15.9

Table 4 indicates that Anna Bay's provision rate of dog off lead areas is comparative to the LGA. Provision at Boat Harbour and Fishermans Bay is comparatively higher compared to the rest of the LGA.

**ITEM 5 - ATTACHMENT 4      REVIEW OF OFF LEAD AREAS AT ANNA BAY,  
FISHERMANS BAY AND BOAT HARBOUR ANALYSIS REPORT.****Proximity based benchmarking**

A catchment of 500m was used to analyse the proximity of residences to existing dog off lead areas within each suburb as shown in Figure 2. The map identifies that all three dog off lead areas are in a non-residential location on the coastline. This results in more than 50% of each catchment being uninhabitable. All residents within Fishermans Bay are within the walkable catchment of Fishermans Bay Park. The catchment area for Iluka Reserve, Boat Harbour also covers majority of its urban footprint. However, Birubi Beach Reserve is in an isolated location suggesting people require vehicle access or walk further than 500m to reach this location.

**Figure 2.** *A 500m radius situated on existing off lead areas*





## ITEM 5 - ATTACHMENT 4      REVIEW OF OFF LEAD AREAS AT ANNA BAY, FISHERMANS BAY AND BOAT HARBOUR ANALYSIS REPORT.

### 8 Key Findings and Recommendations

This analysis aimed to review the existing off lead areas and identify opportunities for improvement within Anna Bay, Fishermans Bay and Boat Harbour. The following recommendations are provided for Council's consideration:

#### **Birubi Beach Reserve, Anna Bay**

1. *Permit dogs off lead on Birubi Beach between May and September at all times.*
2. *Permit dogs off lead between 5pm and 9am on Birubi Beach during October and April*
3. *On lead area at all times during October and April but not within 100m of the beach patrol areas*
4. *Improve signage to make it easier to interpret rules and regulations.*
5. *Relocate the dog bag dispenser in Robinson Reserve adjacent to the main beach access.*

Birubi Beach is the most popular off lead area for residents within the study area and on the Tomaree Peninsula, as well as being the leading tourist destination within Port Stephens. As this site is highly used by both residents and visitors, allowing dogs off lead in public spaces needs to be balanced and amenities provided need to be suitable. The majority of respondents requested for no change to the existing regulations, however the two key themes for this location was to extend/change existing timing restrictions and provide more off lead areas, especially access to water. As the respondents were largely supportive of dogs in public spaces and there is a demand for more off lead areas, it is recommended that Council increases the access by amending the times dogs are permitted off lead. To increase the access, dogs will be permitted off lead at all times during non-peak periods (May – September) and between 5pm and 9am during peak periods (October – April). The amended provisions have taken in consideration the high use of the beach during the lifeguard season and increased tourist visitation period. Increasing the access will provide more access to an off lead area, especially with water for dogs to enjoy off lead whilst having minimal impact on other users of the beach.

Overall, there was no demand for change to existing regulations, however clearer signage was identified as an opportunity to improve existing off lead areas. Supporting infrastructure is important to people in public spaces, with the provision of 'dog bag dispensers' and 'drinking water' being a common request. Relocation of the dog bag dispenser to the main beach access at Robinson Reserve will also increase awareness and better service users. As the provision for drinking fountains is adequate, there is no need for additional fountains to be provided. Furthermore, adequate pathway connections are important for people to access off lead areas and for those who generally like to walk their dog on the lead for exercise. The continued

**ITEM 5 - ATTACHMENT 4      REVIEW OF OFF LEAD AREAS AT ANNA BAY, FISHERMANS BAY AND BOAT HARBOUR ANALYSIS REPORT.**

implementation of Council's pathway plan will ensure safe and convenient pedestrian access is provided to key recreational areas.

An introduction of new off lead areas is not required given the provision within Anna Bay is higher than the LGA average. Whilst it is acknowledged that Port Stephens Council has a comparatively lower provision of off lead beaches, there are no suitable additional beach sites within the study area. It is recommended that Council consider opportunities for additional off lead beaches as part of a broader LGA wide study.

**Iluka Reserve (South Headland), Boat Harbour**

- 1. Adjust the designated off lead area to the clear and maintained portion of Iluka Reserve (South Headland).*
- 2. Permit dogs on lead on the remainder of the South headland.*
- 3. Improve signage to make it easier to interpret rules and regulations.*

The natural pathways and bushland surrounding Iluka Reserve within the Boat Harbour South Headland is identified as natural bushland and escarpment in the Draft Generic Plan of Management. In response to this, Council must maintain and protect this area by amending the mapping to limit the off lead area on the headland to the designated green open space. It is recommended that the cleared and maintained area of Iluka Reserve is to remain a dog off lead area. The designated area is a large space that is suitable and is highly used as an off lead area based on community feedback and the site assessment.

Exercising a dog off lead in Boat Harbour was the second most popular location, however poor signage was identified as an opportunity to improve the existing off lead area. It is recommended Council upgrades the signage to include maps and content that can be clearly interpreted and understood.

**Boat Harbour Beach**

- 1. Permit on lead access between 5pm and 9am.*
- 2. Dogs are prohibited during all other times*

Boat Harbour Beach being small in size and a popular beach used by families would not be a suitable off lead area. Based on the proximity of the existing off lead area on and observations during the site assessment, residents located on the North Headland side are required to walk a longer route to access the area on the South Headland. The route includes steep terrain and poor pathway connections, requiring pedestrians to use the road. As identified, a barrier preventing people from using an off lead area is the requirement of a 'motor vehicle to visit'. This suggests that Boat Harbour residents may use the beach illegally to access the off lead area or do not use the area at all. It is recommended that access be provided for dogs to be walked

**ITEM 5 - ATTACHMENT 4      REVIEW OF OFF LEAD AREAS AT ANNA BAY, FISHERMANS BAY AND BOAT HARBOUR ANALYSIS REPORT.**

on lead across Boat Harbour beach. Dogs will be permitted on lead with time restrictions to provide a new route to access the off lead area or for those who prefer to walk their dog on lead. This provision will have minimal impact on general users of the beach, whilst allowing people to exercise their dog during preferred times being mornings and evenings.

**Fishermans Bay Park**

- 1. No changes to be made to existing regulations.*
- 2. Amend mapping to better reflect usable area for off lead exercise.*
- 3. Provide a tap for drinking water and a dog bag dispenser.*

Fishermans Bay Park is an unfenced park adjacent to local roads and has established vegetation on the site, creating 'blind spots'. The established vegetation that covers roughly half of the site contains valuable vegetation communities rendering this area as being unsuitable for dogs to exercise off lead. In response to the unsuitable nature of the vegetated area, the mapping is to be amended to limit the designated off lead area to the clear and maintained portion of the site. The site also does not provide any drinking water, which was identified as the second most important feature at an off lead area. It is recommended that a tap be installed on the existing amenity building to provide access to water and supply of a dog bag dispenser within the exercise area.

The provision of off lead areas within this suburb is significantly higher compared to the LGA. However, Fishermans Bay Park is one of the least used off lead areas within the LGA. The reason for minimal use may be due to a small population and the locality being isolated. Pathway connections between Anna Bay and Fishermans Bay may need to be investigated to improve connectivity for residents. Overall support was for 'no change' to existing on and off lead areas, therefore based on the analysis the current provision is considered adequate.

ITEM 5 - ATTACHMENT 4      REVIEW OF OFF LEAD AREAS AT ANNA BAY,  
FISHERMANS BAY AND BOAT HARBOUR ANALYSIS REPORT.



116 Adelaide Street | PO Box 42  
Raymond Terrace NSW 2324  
council@portstephens.nsw.gov.au  
02 4988 0255

PORTSTEPHENS.NSW.GOV.AU  
A row of four small social media icons: LinkedIn, Facebook, Twitter, and Instagram.

**ITEM NO. 6**

**FILE NO: 21/62358  
EDRMS NO: PSC2017-00178**

**REQUEST FOR FINANCIAL ASSISTANCE**

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

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Approves provision of financial assistance under Section 356 of the Local Government Act 1993 from Ward funds to the following:-
  - a. East Ward funds – \$1500 donation to Nelson Bay Junior Rugby League Club towards new shade shelters and coaching education.
  - b. Central Ward funds – \$1863.99 donation to the Tilligerry Peninsula Probus Club Inc. towards replacement of the public address system.
  - c. West Ward funds – Cr Giacomo Arnott – Rapid Response - \$220 donation to Hunter River High School Djiyagan 'Young Sisters' Group program.
  - d. West Ward funds – Cr Giacomo Arnott – Rapid Response - \$220 donation to Hunter River High School Worimi PCYC Nations of Origin Rugby League Teams for presentation night barbeque.
  - e. West Ward funds – Cr Giacomo Arnott – Rapid Response - \$500 donation to Irrawang High School - Raymond Terrace Community Positive Behaviour for Learning (PBL) towards the 2021 program.
  - f. West Ward funds – Cr Giacomo Arnott – Rapid Response - \$500 donation to Raymond Terrace Rotary Club towards running costs for the Community Furniture Bank.
  - g. West Ward funds – Cr Giacomo Arnott – Rapid Response - \$300 donation to Fern Bay Fullerton Cove Progress Association towards newsletter publication costs.
  - h. West Ward funds - \$1000 donation to Raymond Terrace Soccer Club towards running costs of the MiniRoo's Gala Day.

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**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:



**ORDINARY COUNCIL - 22 JUNE 2021**

- 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:

**WARD FUNDS**

Nelson Bay Junior Rugby League Club	The Nelson Bay Junior Rugby League Club provides rugby league coaching and match fixtures for children.	\$1500	Donation towards new shade shelters and coaching education.
The Tilligerry Peninsula Probus Club Inc.	Probus is an association of active retirees who join together for the basic purpose of providing regular opportunities to keep their minds active, expanding their interests and enjoying the fellowship of new friends.	\$1863.99	Donation towards replacement of public address system.
Hunter River High School – Djiyagan 'Young Sisters' Group	The Djiyagan 'Young Sisters' Group is a program to improve the education, discipline, life skills and self-esteem of young Aboriginal and Torres Strait Islander women.	\$220	Donation towards running excursions and local site visits with Worimi Elders.
Hunter River High School – Worimi PCYC Nations of Origin Rugby League Teams	There are 2 girls and 2 boys teams nominated to compete in the Nations of Origin rugby league event in July 2021 at Salamander Bay Sporting Complex.	\$220	Donation towards presentation night barbeque.
Irrawang High School - Raymond Terrace Community	There are 9 public schools involved in this initiative that provide a strong framework that	\$500	Donation towards running costs of PBL program for 2021.

**ORDINARY COUNCIL - 22 JUNE 2021**

Positive Behaviour for Learning (PBL)	supports positive behaviours both inside and outside of school.		
Rotary Club of Raymond Terrace	Rotary is a group of women and men who share a common purpose of wanting to help others and their community.	\$500	Donation towards running costs of the Community Furniture Bank.
Fern Bay Fullerton Cove Progress Association	The Fern Bay Fullerton Cove Progress Association is a community group committed to achieving greater things in its area.	\$300	Donation towards newsletter publication costs.
Raymond Terrace Soccer Club	Raymond Terrace Soccer Club MiniRoos (Under 6's-Under 11's) will bring 350 children participating in a gala day.	\$1000	Donation towards costs of holding a soccer gala day.

**COMMUNITY STRATEGIC PLAN**

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

**FINANCIAL/RESOURCE IMPLICATIONS**

<b>Source of Funds</b>	<b>Yes/No</b>	<b>Funding (\$)</b>	<b>Comment</b>
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.

<b>Risk</b>	<b><u>Risk Ranking</u></b>	<b>Proposed Treatments</b>	<b>Within Existing Resources?</b>
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	Accept 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. 7****FILE NO: 21/155252  
EDRMS NO: PSC2017-00015****INFORMATION PAPERS****REPORT OF: WAYNE WALLIS - GENERAL MANAGER  
GROUP: GENERAL MANAGER'S OFFICE**

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**RECOMMENDATION IS THAT COUNCIL:**

Receives and notes the Information Papers listed below being presented to Council on 22 June 2021.

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<b>No:</b>	<b>Report Title</b>	<b>Page:</b>
1	Petition: Urgent improvement to intersection - Duns Creek Road and Butterwick Road, Duns Creek	190
2	Petition to keep parklets in Shoal Bay	197
3	May 2021 Cash and Investments Report	200
4	Council Resolutions	203
5	Questions on Notice/Questions with Notice	213

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# INFORMATION PAPERS



**ITEM NO. 1**

**FILE NO: 21/150368  
EDRMS NO: PSC2015-03017**

**PETITION: URGENT IMPROVEMENT TO INTERSECTION - DUNS CREEK ROAD AND BUTTERWICK ROAD, DUNS CREEK**

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 126 signatures requesting urgent improvement to intersection – Duns Creek Road and Butterwick Road, Duns Creek.

The petition raises concerns about drivers travelling straight through the intersection on Butterwick Road without observing the give way sign. The requested improvements are noted on the petition and include speed reduction and painted 'speed bumps' on approaches, or speed reduction with give way signs on all approaches to the intersection.

The Local Traffic Committee (LTC) have received and investigated an identical concern in 2018. The June 2018 LTC meeting minutes are included as **(ATTACHMENT 2)**. To address the concern, the LTC warranted the following works.

- Upgrade to size 'B' and double-post the Give Way signs on Butterwick Road at Duns Creek Road.
- Install Give Way advance warning signage on Butterwick Road for northbound traffic.
- Relocate the existing intersection advance warning sign on Butterwick Road.

A recent site inspection confirms that these measures were installed and remain in good condition. Photos of the inspection are included as **(ATTACHMENT 3)**.

Further to the signage works, Council's line marking program has refreshed the line marked holding lines for Butterwick Road in April 2021

Speed limits across all roads in NSW are administered by Transport for NSW (TfNSW), not Council, and are determined by TfNSW in accordance with the document entitled NSW Speed Zoning Guidelines.

This matter will be referred to the Local Traffic Committee for further review.

**ATTACHMENTS**

- 1) Petition - Urgent improvement to intersection - Duns Creek Road and Butterwick Road, Duns Creek. [↓](#)

<b>ORDINARY COUNCIL - 22 JUNE 2021</b>
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- 2) Local Traffic Committee Minutes - June 2018. [↓](#)
- 3) Photographs of Butterwick Road / Duns Creek Road Intersection. [↓](#)

### **COUNCILLORS ROOM**

- 1) Petition.

### **TABLED DOCUMENTS**

Nil.

**ITEM 1 - ATTACHMENT 1      PETITION - URGENT IMPROVEMENT TO  
INTERSECTION - DUNS CREEK ROAD AND BUTTERWICK ROAD, DUNS  
CREEK.**

To West Ward Councillors – Mr Giacomo Arnott, Mr Ken Jordan, Mr Paul Le Mottee,

**Re: URGENT improvement to intersection – Duns  
Creek Rd and Butterwick Rd, Duns Creek.**

Sirs,

The following people, strongly urge you to support and action our call for the immediate improvement to this extremely hazardous intersection.

Since the council approved the tarring of Woodville St, to allow for access to the recent subdivision on Wiveliscombe St, this intersection has caused five serious car accidents over the past four years. Countless motorists driving through it oblivious to the give way sign on Butterwick Rd. Three of these accidents have resulted in cars rolling and trapping occupants. Emergency vehicles have attend all incidents.

Suggested improvements are:

- Reduce the speed limit on both roads to 60 kilometres / hour and paint “speed bumps” on each approach to the intersection.
- Reduce the speed limit on both roads to 60 kilometres / hour and place give way signs on all adjoining roads – Woodville St, Duns Creek Rd and Butterwick Rd

We look forward to your response.

**ITEM 1 - ATTACHMENT 2 LOCAL TRAFFIC COMMITTEE MINUTES - JUNE 2018.**

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**Item:** 28\_06/18

**Butterwick Road & Duns Creek Road, Duns Creek - Additional signage requested for intersection**

**Requested by:** A resident  
**File:** 237426-2018  
**Background:**

A resident reports: "On Sunday I was following a vehicle that missed signs at this intersection and unintentionally drove at high speed into Woodville Street. This was a near miss and could have led to a fatal car crash. There is signage and Give Way signs at the intersection but they aren't obvious to people who don't regularly use the intersection. I believe extra signage or better still flashing lights warning of this intersection would help prevent a future incidents."

**Comment:**

Woodville Street has recently been sealed, however a large amount of loose gravel is covering the road surface. From a drivers perspective, when travelling north on Butterwick Road it appears as if the road continues on.

Local Traffic Inspection Committee members suggest the Give Way signs on Butterwick Road at Duns Creek Road should be double-posted and increased to size B, and a Give Way advance warning should be installed on Butterwick Road. The current intersection advance warning sign should be relocated further from the intersection.

The sight distance on Butterwick Road at Duns Creek Road does not meet the criteria for a stop control. A bush on the Duns Creek boundary fence line of property 547 Butterwick Road should be trimmed to improve sight distance at the intersection.

**Legislation, Standards, Guidelines and Delegation:**

NSW Road Rules – Rule 69 - Giving way at a give way sign or give way line at an intersection (except a roundabout)

RMS signs database – R1-2

Traffic control devices installed under Part 5.3 Div. 2 Road Transport Act 2013

**Committee recommendation:**

1. Upgrade to size 'B' and double-post the Give Way signs on Butterwick Road at Duns Creek Road
2. Install Give Way advance warning signage on Butterwick Road for northbound traffic
3. Relocate the existing intersection advance warning sign, as shown on the attached sketch, Annexure A.

**ITEM 1 - ATTACHMENT 2      LOCAL TRAFFIC COMMITTEE MINUTES - JUNE 2018.****Support for the recommendation:**

1	Unanimous	✓
2	Majority	
3	Split Vote	
4	Minority Support	
5	Unanimous decline	

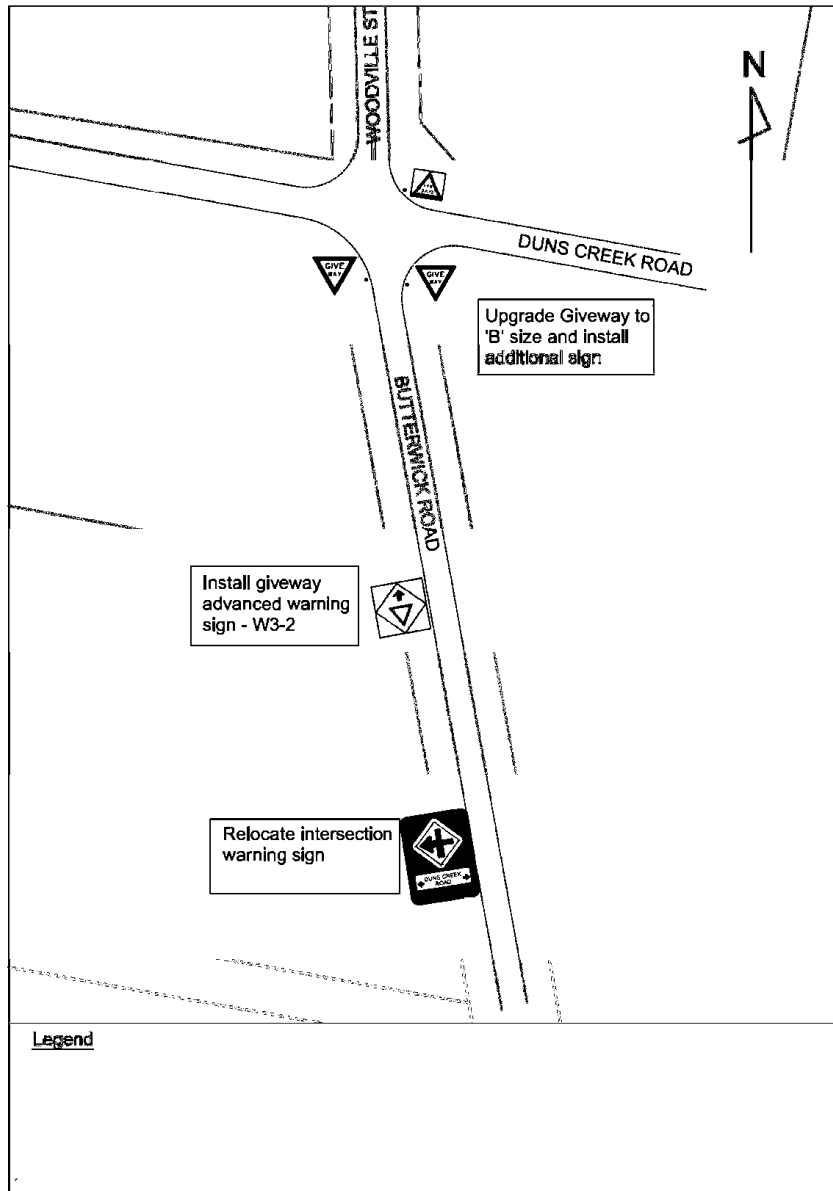


ITEM 1 - ATTACHMENT 2 LOCAL TRAFFIC COMMITTEE MINUTES - JUNE 2018.

PORT STEPHENS TRAFFIC COMMITTEE  
Tuesday 5 June 2018

ITEM NO. 28\_06/18  
Street: Butterwick Road

ANNEXURE A  
Page 1 of 1



ITEM 1 - ATTACHMENT 3      PHOTOGRAPHS OF BUTTERWICK ROAD / DUNS CREEK ROAD INTERSECTION.



Figure 1 - Butterwick Road approach



Figure 2 - Butterwick Road / Duns Creek Road intersection

**ITEM NO. 2**

**FILE NO: 21/157012  
EDRMS NO: PSC2015-03017**

**PETITION TO KEEP PARKLETS IN SHOAL BAY**

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 104 signatures requesting that the parklets be kept in Shoal Bay.

The Shoal Bay parklets were installed as part of the NSW Government's Streets as Shared Spaces initiative, where grant funding was made available to pilot projects that improve or activate streets.

The trial was designed to test and experiment with streetscape changes in a low cost and temporary way. As part of the trial, an evaluation program has been designed to gather feedback and guide future decision making for streetscape changes.

Parklets are a placemaking initiative used globally to temporarily convert carparking spaces into new community spaces. They encourage people to slow down and spend more money with local business. They create more space for business activity and create a more inviting public spaces to site and relax.

The evaluation and community engagement process with the Shoal Bay community has included:

- Face to face Local Business conversations
- Regular engagement with Business Port Stephens
- Community drop-in sessions
- Community newsletters
- Direct email and telephone communication
- Surveys, and
- Signage

Throughout implementation of the trial and the community engagement process, some members of the community and local businesses have provided feedback regarding aspects of the trial. In accordance with the trial evaluation process, the feedback has led to Council replacing lost car parking spaces.

At the 8 June 2021 Council meeting, it was resolved that Council remove the parklets by the end of June 2021 in line with the Funding Agreement with the NSW State Government. Council staff have been in contact with the funding agency to determine if there is an impact of removing the parklets before the trial period is officially

complete. At the time of writing this information paper Council had not received a commitment from the funding agency.

### **ATTACHMENTS**

- 1) Petition to keep Parklets in Shoal Bay. [↓](#)

### **COUNCILLORS ROOM**

- 1) Petition.

### **TABLED DOCUMENTS**

Nil.

## Petition to keep Parklets in Shoal Bay

\*These Parklets provide extra sitting for our local residents and tourists whilst they enjoy their dining experience in our Shoal Bay Cafes and Restaurants.

Action petitioned for the parklets to remain.



**ITEM NO. 3**

**FILE NO: 21/149869  
EDRMS NO: PSC2006-6531**

**MAY 2021 CASH AND INVESTMENTS REPORT**

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 31 May 2021.

**ATTACHMENTS**

- 1) May 2021 Cash and Investments. [↓](#)
- 2) May 2021 Cash Flow. [↓](#)

## ITEM 3 - ATTACHMENT 1 MAY 2021 CASH AND INVESTMENTS.

CASH AND INVESTMENTS HELD AS AT 31 MAY 2021												
ISSUER	BROKER	RATING*	DESC.	YIELD %	TERM DAYS	MATURITY	AMOUNT INVESTED	MARKET VALUE				
TERM DEPOSITS												
JUDO BANK	FIIG	NR	TD	0.70%	97	8-Jun-21	1,000,000	1,000,000				
AMP BANK	LAMINAR	BBB+	TD	0.80%	295	23-Jun-21	300,000	300,000				
AUSTRALIAN MILITARY BANK	FARQUHARSON	BBB+	TD	1.65%	635	30-Jun-21	1,000,000	1,000,000				
JUDO BANK	CURVE	NR	TD	1.05%	343	4-Aug-21	900,000	900,000				
JUDO BANK	CURVE	NR	TD	1.05%	337	4-Aug-21	300,000	300,000				
MUTUAL BANK	MUTUAL	NR	TD	0.95%	351	18-Aug-21	300,000	300,000				
JUDO BANK	FIIG	NR	TD	0.90%	181	31-Aug-21	700,000	700,000				
AMP BANK	LAMINAR	BBB+	TD	0.80%	383	15-Sep-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	15-Oct-21	500,000	500,000				
MACQUARIE BANK	LAMINAR	A	TD	0.70%	286	25-Oct-21	1,000,000	1,000,000				
MUTUAL BANK	MUTUAL BANK	NR	TD	0.90%	159	27-Oct-21	700,000	700,000				
AMP BANK	LAMINAR	BBB+	TD	0.75%	365	25-Nov-21	1,250,000	1,250,000				
DEFENCE BANK	CURVE	BBB	TD	0.60%	367	6-Dec-21	600,000	600,000				
AMP BANK	LAMINAR	BBB	TD	0.75%	371	8-Dec-21	550,000	550,000				
AMP BANK	LAMINAR	BBB	TD	0.75%	376	15-Dec-21	350,000	350,000				
JUDO BANK	LAMINAR	NR	TD	0.84%	385	22-Dec-21	350,000	350,000				
JUDO BANK	LAMINAR	NR	TD	0.85%	383	22-Dec-21	550,000	550,000				
NAB	LAMINAR	AA	TD	0.50%	386	23-Dec-21	1,000,000	1,000,000				
DEFENCE BANK	CURVE	BBB	TD	0.60%	399	5-Jan-22	1,000,000	1,000,000				
NAB	LAMINAR	AA	TD	0.50%	399	5-Jan-22	1,000,000	1,000,000				
NAB	LAMINAR	AA	TD	0.50%	413	19-Jan-22	1,000,000	1,000,000				
JUDO BANK	LAMINAR	NR	TD	0.70%	391	19-Jan-22	750,000	750,000				
MACQUARIE BANK	LAMINAR	A	TD	0.70%	385	1-Feb-22	1,000,000	1,000,000				
AUSWIDE BANK	RIM	BBB	TD	1.73%	701	2-Feb-22	1,250,000	1,250,000				
DEFENCE BANK	CURVE	BBB	TD	0.65%	539	22-May-22	1,000,000	1,000,000				
DEFENCE BANK	CURVE	BBB	TD	0.65%	550	7-Jun-22	600,000	600,000				
SUB TOTAL (\$)							21,950,000	21,950,000				
MACQUARIE BANK (AT CALL)							LAMINAR	A+	AT CALL	0.35%	3,500,000	3,500,000
TCORP SHORT TERM INCOME FUND							TCORP	AAA			4,500,000	4,512,793
TCORP MEDIUM TERM GROWTH FUND							TCORP	AAA			5,000,000	5,186,217
TCORP LONG TERM GROWTH FUND							TCORP	AAA			2,500,000	2,661,594
INVESTMENTS TOTAL (\$)											37,450,000	37,810,605
CASH AT BANK (\$)											5,609,187	5,609,187
TOTAL CASH AND INVESTMENTS (\$)											43,059,187	43,419,792
CASH AT BANK INTEREST RATE										0.20%		
BBSW FOR PREVIOUS 3 MONTHS										0.38%		
AVG. INVESTMENT RATE OF RETURN ON TDs										0.93%		
TD = TERM DEPOSIT												
AC = AT CALL CASH ACCOUNT												
FRTD = FLOATING RATE TERM DEPOSIT												
*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 31/05/2021

#### CASHFLOW STATEMENT

Opening Cash and Investment 1 July 2020  
Closing Cash and Investment 31 May 2021  
**Movement in cash**

YTD	Notes
31,502,431	
44,080,710	
<b>12,578,279</b>	

#### Movement in cash represented by:

##### Operating Activities

Receipts from ratepayers, customers and government authorities	126,265,255
Payments to suppliers & employees	(93,099,594)
Interest received	337,883
Interest paid	(452,055)
<b>Total</b>	<b>33,051,489</b>

##### Investing Activities

Receipts from sale of Infrastructure, Property, Plant & Equipment	6,809,098
Payments for Property, Plant & Equipment	(24,091,536)
<b>Total</b>	<b>(17,282,438)</b>

##### Financing Activities

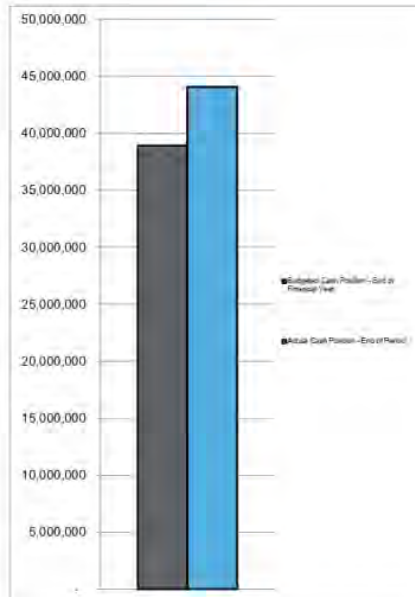
Payment of loans	(3,190,771)
Receipt of new loans	-
<b>Total</b>	<b>(3,190,771)</b>

#### Total Cash Movement

Plus: Opening Cash and Investment 1 July 2020	31,502,431
<b>Closing Cash and Investment 31 May 2021</b>	<b>44,080,711</b>

Budgeted Cash Movement for the Financial Year	7,420,913
Plus Opening Cash and Investment 1 July 2020	31,502,431
<b>Budgeted Cash and Investment Position 30 June 2021</b>	<b>38,923,344</b>

In front / (behind) on budget 5,157,366 1

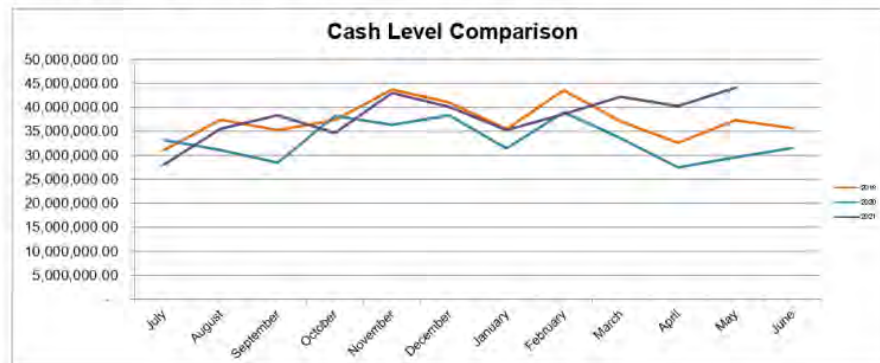


#### Notes

- 1 Council's cash position is up on the budgeted year end position predominately due to the following reasons:
- Sale of commercial land is complete
  - Receipt of various grants for \$3m this month

Significant future cash inflows expected in next few months include various 2021 grants and 4th quarter rates.

Significant future cash outflows expected in next few months include: Fingal Bay new amenities block, Depot rebuild, Birubi Point aboriginal place tourism interchange, Soldiers Point revetment work, Riverflat road realignment, Tomaree sports complex amenities replacement, smart parking signage, Lakeside leisure centre heat pump replacement, Seabreeze estate drainage, Nelson Bay tennis - fencing and retaining wall replacement, George Reserve amenities replacement and sundry plant.



**ITEM NO. 4**

**FILE NO: 21/62306  
EDRMS NO: PSC2017-00106**

**COUNCIL RESOLUTIONS**

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

**BACKGROUND**

The purpose of this report is to inform the Mayor and Councillors 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.

The General Manager's Office and the Development Services Group have no outstanding actions.

**ATTACHMENTS**

- 1) Corporate Services Group report. [↓](#)
- 2) Facilities & Services Group report. [↓](#)

**COUNCILLORS ROOM**

Nil.

**TABLED DOCUMENTS**

Nil.

## ITEM 4 - ATTACHMENT 1 CORPORATE SERVICES GROUP REPORT.



Outstanding	Division: Corporate Services	Date From: 26/09/2017
	Committee:	Date To: 8/06/2021
	Officer:	
Action Sheets Report		Printed: Tuesday, 15 June 2021

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 27/03/2018	Crosdale, Timothy	COMPULSORY ACQUISITION OF AN EASEMENT FOR ACCESS OVER PART OF 6 GOVERNMENT ROAD, SHOAL BAY	30/12/2021	28/03/2018	
13 066		Crosdale, Timothy				18/66656
11 Jun 2021						
Awaiting Minister's approval to proceed with the compulsory acquisition.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 28/05/2019	Crosdale, Timothy	COMPULSORY ACQUISITION OF PART OF VICTORIA PARADE RESERVE NELSON BAY FOR ROAD PURPOSES	30/12/2021	29/05/2019	
6 110		Crosdale, Timothy				19/148388
11 Jun 2021						
Waiting on Aboriginal Land Claim determination by Crown Lands.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 23/07/2019	Crosdale, Timothy	GRANT OF EASEMENTS IN FAVOUR OF AGL - PUNT ROAD, TOMAGO	30/12/2021		
7 169		Crosdale, Timothy				19/200498
11 Jun 2021						
Still in negotiations between AGL and LGL.						



## ITEM 4 - ATTACHMENT 1 CORPORATE SERVICES GROUP REPORT.



Outstanding	Division: Corporate Services	Date From: 26/09/2017
	Committee:	Date To: 8/06/2021
	Officer:	
Action Sheets Report		Printed: Tuesday, 15 June 2021

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 11/02/2020	Crosdale, Timothy	COMPULSORY ACQUISITION OF PART 879 SWAN BAY ROAD, SWAN BAY FOR ROAD WIDENING PURPOSE	30/12/2021	12/02/2020	
2		Crosdale, Timothy				20/39141
028						
11 Jun 2021						
Awaiting Minister's approval to proceed with the compulsory acquisition.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 22/09/2020	Crosdale, Timothy	Newline Road, Raymond Terrace	28/02/2022		
2		Crosdale, Timothy				20/288489
199						
11 Jun 2021						
Approved. Contracts prepared. Finalising survey levels in contract.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 9/03/2021	Crosdale, Timothy	Proposed sale of land - 77 Dawson Road, Raymond Terrace (Part)	30/06/2021	11/03/2021	
1		Crosdale, Timothy				21/60805
051						
11 Jun 2021						
Settlement will occur upon registration of lots.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 13/04/2021	Crosdale, Timothy	Proposed sale of Land in Raymond Terrace	31/12/2021	14/04/2021	
1		Crosdale, Timothy				21/96728
089						
11 Jun 2021						
Documentation being prepared by legal representatives.						

## ITEM 4 - ATTACHMENT 1 CORPORATE SERVICES GROUP REPORT.



Outstanding	Division: Corporate Services	Date From: 26/09/2017
	Committee:	Date To: 8/06/2021
	Officer:	
Action Sheets Report		Printed: Tuesday, 15 June 2021

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 13/04/2021	Crosdale, Timothy	PROPOSED CLOSURE AND SALE OF PATHWAY IN BOAT HARBOUR	30/04/2022	14/04/2021	
2		Crosdale, Timothy				21/96728
090						
11 Jun 2021						
Staff progressing the matter.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 11/05/2021	Crosdale, Timothy	Car parking in Shoal Bay	30/12/2021	12/05/2021	
1		Crosdale, Timothy				21/123694
11 Jun 2021						
Consultation continues with Crown Lands to enable this proposed use.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 25/05/2021	Crosdale, Timothy	PROPOSED SALE OF LAND - MEDOWIE	30/07/2021	26/05/2021	
1		Crosdale, Timothy				21/138820
130						
11 Jun 2021						
Contracts exchanged on 27 May 2021. Settlement to take place in July 2021.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 25/05/2021	Crosdale, Timothy	PROPOSED SALE OF LAND - WILLIAMTOWN	30/06/2022	26/05/2021	
2		Crosdale, Timothy				21/138820
133						
11 Jun 2021						
Documentation being prepared by legal representatives.						



## ITEM 4 - ATTACHMENT 2 FACILITIES &amp; SERVICES GROUP REPORT.



Outstanding	Division: Facilities & Services	Date From: 26/09/2017
	Committee:	Date To: 8/06/2021
	Officer:	
Action Sheets Report		Printed: Tuesday, 15 June 2021

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 10/12/2019	Maretich, John	Solar Infrastructure	31/08/2021	11/12/2019	
6		Kable, Gregory				19/388450
264						
11 Jun 2021						
Once the Capital Works Plan is adopted by Council, funds will be allocated to this project which will then commence.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 10/12/2019	Gutsche, Tammy	GREEN WASTE DROP OFF - SALAMANDER BAY	31/07/2021	11/12/2019	
7		Kable, Gregory				19/388450
265						
11 Jun 2021						
Will be considered as part of the Waste Management Strategy.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 25/02/2020	Lamont, Brock	Indoor Sports Facility	1/12/2021	26/02/2020	
4		Kable, Gregory				20/50488
042						
11 Jun 2021						
Indoor Sports Facility has been included within Development Contributions Plan. Feasibility of project has been commenced, however, resources are being prioritised to scoping and delivery of Capital works Program. Recruiting in Community and Recreation Assets to achieve full complement and report will be finalised by December 2021.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 9/06/2020	Stewart, Adam	Naming of Pathway, Gan Gan Road, Anna Bay	30/06/2021	10/06/2020	
1		Kable, Gregory				20/164033
101						
11 Jun 2021						
Councillors have agreed to the design and locations of the three plaques. Plaques have been ordered ready for the opening ceremony yet to be determined.						

## ITEM 4 - ATTACHMENT 2 FACILITIES &amp; SERVICES GROUP REPORT.



Outstanding	Division: Facilities & Services	Date From: 26/09/2017
	Committee:	Date To: 8/06/2021
	Officer:	
Action Sheets Report		Printed: Tuesday, 15 June 2021

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 14/07/2020	Lamont, Brock	REVIEW OF THE OFF LEASH DOG AREAS AND TIMES AT ANNA BAY / BIRUBI POINT, FISHERMANS BAY AND BOAT HARBOUR	30/06/2021		
1		Kable, Gregory				20/192934
138						
11 Jun 2021						
The findings of the investigation will be presented to Council in June 2021.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 14/07/2020	Stewart, Adam	Tomaree Headland	31/07/2022		
2		Kable, Gregory				20/192934
139						
11 Jun 2021						
Council has undertaken a site review with National Parks as part of their footpath design assessment. It should be noted that National Parks are still in design phase of this project and at present Council has not allocated funds. Though options are being assessed for a funding source for this project.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 24/11/2020	Miles, Philip	Disposal of Surplus Excavated Materials at Newcastle Airport Development Project Site.	1/12/2021		
11		Kable, Gregory				20/358525
261						
11 Jun 2021						
Development modification required and legal contracts to be drawn up.						

## ITEM 4 - ATTACHMENT 2 FACILITIES &amp; SERVICES GROUP REPORT.



Outstanding	Division: Facilities & Services	Date From: 26/09/2017
	Committee:	Date To: 8/06/2021
	Officer:	
Action Sheets Report		Printed: Tuesday, 15 June 2021

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 8/12/2020	Stewart, Adam	Fly Point and Little Beach Parking/SMART Parking	31/12/2021		
3		Kable, Gregory				20/391301
11 Jun 2021 Awaiting completion of the associated Place Plans. Report to prepared and reported back to Council by the end of 2021.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 9/02/2021	Stewart, Adam	5G Small Cell Technology Rollout in Port Stephens	31/12/2021		
3		Kable, Gregory				21/33235
006						
11 Jun 2021 Discussions have commenced with Telstra.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 9/02/2021	Lamont, Brock	MEDOWIE REGIONAL PLAYGROUND AND TOWN CENTRE	1/12/2021		
2		Kable, Gregory				21/33235
012						
11 Jun 2021 Report due diligence being undertaken. Resources are being prioritised to scoping and delivery of Capital Works Program. Recruiting in Community and Recreation Assets to achieve full complement and report will be finalised by December 2021.						



## ITEM 4 - ATTACHMENT 2 FACILITIES &amp; SERVICES GROUP REPORT.



Outstanding	Division: Facilities & Services	Date From: 26/09/2017
	Committee:	Date To: 8/06/2021
	Officer:	
Action Sheets Report		Printed: Tuesday, 15 June 2021

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 9/02/2021	Stewart, Adam	FERN BAY SHARED PATHWAY	31/01/2022		
7 017		Kable, Gregory				21/33235
11 Jun 2021 Currently Capital Works have stage 1 of the Fern Bay path scheduled for a July construction commencement. Stage 2 will proceed following the completion of the detailed design.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 13/04/2021	Lamont, Brock	Drainage at Vi Barnett Field in Raymond Terrace	1/07/2021		
12 083		Kable, Gregory				21/96728
11 Jun 2021 Staff have been working with Athletics Club to establish most appropriate window to undertake works. As carnivals are still planned for late July/early August, the sewer upgrade works have been delayed. The planned works will trench through the running surface requiring closure of the entire facility for a period of time.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 13/04/2021	Stewart, Adam	Drainage investigation - Lemon Tree Passage	1/12/2021	14/04/2021	
1 088		Kable, Gregory				21/96728
11 Jun 2021 Drainage investigation and property evaluation has commenced. Discussion with property owners in on going. Any future actions will be determined by Council.						

## ITEM 4 - ATTACHMENT 2 FACILITIES &amp; SERVICES GROUP REPORT.



<b>Outstanding</b>	<b>Division:</b> Facilities & Services	<b>Date From:</b> 26/09/2017
	<b>Committee:</b>	<b>Date To:</b> 8/06/2021
	<b>Officer:</b>	
<b>Action Sheets Report</b>		<b>Printed: Tuesday, 15 June 2021</b>

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 25/05/2021	Maretich, John	Nelson Bay Road Upgrade	30/06/2021	26/05/2021	
1		Kable, Gregory				21/138820
125						
11 Jun 2021						
Letter has been completed and sent.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 25/05/2021	Maretich, John	Anna Bay Drainage Union	1/12/2021	26/05/2021	
2		Kable, Gregory				21/138820
126						
11 Jun 2021						
The State Government agency responsible for Anna Bay Drainage Union shall be consulted with.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 25/05/2021	Maretich, John	Intersection at Vardon Road, Fern Bay	30/06/2021	26/05/2021	
4		Kable, Gregory				21/138820
127						
11 Jun 2021						
Letter has been completed and sent.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 25/05/2021	Maretich, John	Bus Stop in Seaside Estate, Fern Bay	31/12/2021	26/05/2021	
5		Kable, Gregory				21/138820
128						
11 Jun 2021						
This review shall be undertaken through Local Traffic Committee and consultation with members of the Seaside Community Association.						

## ITEM 4 - ATTACHMENT 2 FACILITIES &amp; SERVICES GROUP REPORT.



Outstanding	Division: Facilities & Services	Date From: 26/09/2017
	Committee:	Date To: 8/06/2021
	Officer:	
Action Sheets Report		Printed: Tuesday, 15 June 2021

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 25/05/2021	Gutsche, Tammy	Lease Renewal - 2B Ridgeway Avenue, Soldiers Point	30/06/2021	26/05/2021	
3		Kable, Gregory				21/138820
132						
11 Jun 2021						
Endorsed. Documentation being prepared.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 8/06/2021	Stewart, Adam	Shoal Bay Parklets	31/07/2021		
1		Kable, Gregory				21/156213
142						
11 Jun 2021						
At the 8 June Council Meeting, it was resolved that Council remove the parklets by the end of June 2021, in line with the Funding Agreement with the NSW State Government. Council staff have been in contact with the funding agency to determine if there is an impact of removing the parklets before the trial period is officially complete. Council has not yet received a commitment from the funding agency.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 8/06/2021	Lamont, Brock	Sand Movement from Shoal Bay to Fly Point	31/12/2022	9/06/2021	
2		Kable, Gregory				21/156213
143						
11 Jun 2021						
Council shall apply for grants in accordance with associated criteria.						



**ITEM NO. 5****FILE NO: 21/157500  
EDRMS NO: PSC2020-00993****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 or with Notice in accordance with the Code of Meeting Practice.

<b>Item:</b>	1
<b>Councillor:</b>	Cr Giacomo Arnott
<b>Date Received:</b>	8 June 2021
<b>Question with Notice:</b>	Has every Councillor who enrolled in the Australian Institute of Company Directors course fully completed the course?
<b>Response:</b>	6 Councillors have undertaken the AICD Course over this term of Council and 5 have been completed to date.

<b>Item:</b>	2
<b>Councillor:</b>	Cr Giacomo Arnott
<b>Date Received:</b>	8 June 2021
<b>Question with Notice:</b>	If any Councillor outlined above has not yet completed the course, why?
<b>Response:</b>	1 Councillor is yet to complete the course. This is currently in progress.

<b>Item:</b>	3
<b>Councillor:</b>	Cr Giacomo Arnott
<b>Date Received:</b>	8 June 2021
<b>Question with Notice:</b>	How many Councillors have attended the course outside of NSW?
<b>Response:</b>	1

**ORDINARY COUNCIL - 22 JUNE 2021**

Item:	4
Councillor:	Cr Giacomo Arnott
Date Received:	8 June 2021
Question with Notice:	Which Councillors have attended the course outside of NSW?
Response:	Mayor Ryan Palmer attended the AICD course in Victoria in 2019 due to unavailability in NSW at the convenient time.

Item:	5
Councillor:	Cr Giacomo Arnott
Date Received:	8 June 2021
Question with Notice:	What were the January and February 2019 dates and locations for the AICD course?
Response:	<p>Courses were held in NSW:</p> <ul style="list-style-type: none"><li>• 7-11 January 2019</li><li>• 14-18 January 2019</li><li>• 9-15 January 2019</li><li>• 16-22 January 2019</li><li>• 30 January – 5 February 2019</li><li>• 4-8 February 2019</li><li>• 25 February – 1 March 2019</li><li>• 6-12 February 2019</li><li>• 13-19 February 2019</li></ul> <p>Past dates and locations are not available on the AICD website. We have requested information on other course dates and locations and this will be advised when available.</p>



**ORDINARY COUNCIL - 22 JUNE 2021**

Item:	6
Councillor:	Cr Giacomo Arnott
Date Received:	8 June 2021
Question with Notice:	Which FTE positions are currently vacant within Port Stephens Council? When will recruitment commence for these positions? How critical are these positions?
Response:	<p>Council currently employs 534 equivalent full time employees. Our vacancy rate at 15 June 2021 is 8% which is below the Local Government benchmark of 15% and lower than our neighbouring councils which carry an approximate vacancy rate of 14%.</p> <p>Of the vacant positions, the vast majority are currently backfilled by internal resources and/or are subject to active recruitment processes (either advertised or at candidate selection phase) to maintain service provision. Outside of this, there are 10 positions (or approximately 2% as at 15 June 2021) that are unfilled due to finalisation of service review programs, operational needs or to maintain current focus on operational spend.</p> <p>There is currently 1 vacant position that is considered critical in accordance with Council's process, being the Strategy and Environment Section Manager. This position has been backfilled by internal resources with recruitment currently being finalised for a permanent replacement.</p>

Item:	7
Councillor:	Cr Giacomo Arnott
Date Received:	8 June 2021
Question with Notice:	Have any Councillors been referred to the Independent Commission Against Corruption in this term of Council?
Response:	No referrals have been made by Council to ICAC in this term of Council.

Item:	8
Councillor:	Cr Giacomo Arnott
Date Received:	8 June 2021
Question with Notice:	What is the budget allocation for Lagoons Estate works in the 2021-22 capital works program?
Response:	The Capital Works Program has an allocation of \$500,000 for the Nelson Bay Catchment.

**ORDINARY COUNCIL - 22 JUNE 2021**

Item:	9
Councillor:	Cr Giacomo Arnott
Date Received:	8 June 2021
Question with Notice:	What is the impact of the March 2021 rain event on Lagoons Estate?
Response:	<p>The recent March 2021 storm event in the east coast of NSW was unprecedented. The Tomaree catchment sustained rainfall that was in excess of what is typical of a 0.5% Annual Exceedance Probability, more commonly known as a 1 in 500 year event.</p> <p>It was acknowledged that stormwater systems are not designed or can cater for this level of rainfall. But it did show how the Council and Lagoons Estate functions in extreme weather events.</p> <p>This information is being used in collaboration between Council and the members of the Community Association to work on holistic drainage solution that meets the needs for both Council and the Lagoons Estate.</p>

Item:	10
Councillor:	Cr Giacomo Arnott
Date Received:	8 June 2021
Question with Notice:	What is Council's potential liability for flooding that occurred in Lagoons Estate in March 2021?
Response:	<p>At present, this is unknown.</p> <p>While we are aware that damage has been sustained in the Lagoons Estate, a full claim has not been submitted to Council or our insurers.</p>

Item:	11
Councillor:	Cr Giacomo Arnott
Date Received:	8 June 2021
Question with Notice:	Why did the immediately previous Corporate Services Manager leave Council?
Response:	<p>The former Corporate Services Manager resigned to pursue other private interests.</p> <p>Any further questions or comments on the resignation of the former Corporate Services Manager would be considered a personnel matter concerning an individual</p>

**ORDINARY COUNCIL - 22 JUNE 2021**

	and should be dealt with in confidential session under section 10A(2)(a) of the Local Government Act.
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Item:	12
Councillor:	Cr Giacomo Arnott
Date Received:	8 June 2021
Question with Notice:	Were there any professional or personal disagreements that preceded the immediately previous Corporate Services Manager leaving Council?
Response:	Any questions or comments about the former Corporate Services Manager would be considered a personnel matter concerning an individual and should be dealt with in confidential session under section 10A(2)(a) of the Local Government Act.

Item:	13
Councillor:	Cr Giacomo Arnott
Date Received:	8 June 2021
Question with Notice:	Was a business plan prepared for the Nelson Bay Smart Parking program at any point?  If so, can it please be provided?
Response:	At the 12 May 2020 ordinary meeting of Council a report represents the 'business case' to proceed with the Smart Parking package of works.  Although the Council Report may not contain all financial information and analysis in line with a typical commercial business case, this is because many of the drivers for smart parking are not commercial in nature but rather for reasons of service, safety and convenience. Return on investment and financial forecasting were completed to inform the Council Report.

Item:	14
Councillor:	Cr Giacomo Arnott
Date Received:	8 June 2021
Question with Notice:	Were there any other providers who could have installed the smart parking technology cheaper and/or faster than the provider chosen by Council?
Response:	Council staff recommended and Council resolved at the 12 May 2020 Council meeting to extend the arrangement with the incumbent supplier of parking

meters from the Nelson Bay Foreshore, referring to Section 55 of the Local Government Act.

By expanding the existing foreshore parking meter scheme, Council was able to take advantage of the existing hardware (meters, civil works and communications infrastructure), software licenses, system configurations and avoiding the cost of their replacement, duplication or integration into a competitor's system.

Unfortunately, the pandemic did add unforeseen delays in product/hardware provision.

#### **ATTACHMENTS**

Nil.

#### **COUNCILLORS ROOM**

Nil.

#### **TABLED DOCUMENTS**

Nil.

# NOTICES OF MOTION



**NOTICE OF MOTION**

**ITEM NO. 1**

**FILE NO: 21/148591**

**EDRMS NO: PSC2017-00019**

**RECLASSIFICATION OF 109 FORESHORE DRIVE, SALAMANDER BAY**

**COUNCILLOR: JOHN NELL**

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**THAT COUNCIL:**

- 1) Requests the General Manager to reclassify Lot 95 in Deposited Plan 26610 at 109 Foreshore Drive, Salamander Bay, directly opposite the Mambo Wetland, from Operational to Community land.
- 

**BACKGROUND REPORT OF: TIM CROSDALE – GROUP MANAGER  
CORPORATE SERVICES**

**BACKGROUND**

Lot 95 in Deposited Plan 26610 described as 109 Foreshore Drive, Salamander Bay is a standalone parcel of operational land with an area of 557m<sup>2</sup> and zoned Residential R2 as shown in white in **(ATTACHMENT 1)**.

The parcel of land was created along with 55 other lots in DP26610 along Foreshore Drive. The allotment has been in Council ownership for 42 years and adjoins open space to the west and to the north and residential development to the east. Under the provisions of the Local Government Act 1993, the land is classified “operational” which allows the use of the land for Council’s operations and also for the sale of the land.

A valuation undertaken in January 2020 placed an estimated value on the land of circa \$1.5 million under its current zoning (that value will need to be updated as it was provided pre COVID-19 and there have been some impacts on land sales across the State).

Council has previously discussed the sale of the land to fund part of the Tomaree Sports Complex infrastructure.

The Sports Complex Master Plan was adopted by Council late in 2018. The plan proposes a number of stages of infrastructure works and has been costed in the order of \$65 million. Early stages are funded with projects commencing.

The future stages of the implementation of the master plan is listed in Council's Capital Works Plan Plus. This plan is listed in the Council adopted Strategic Asset Management Plan that documents future projects that do not have a source of funding.

**FINANCIAL/RESOURCE IMPLICATIONS**

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

**ATTACHMENTS**

- 1) Locality Plan. [↓](#)



**NOTICE OF MOTION**

**ITEM NO. 2**

**FILE NO: 21/148594**

**EDRMS NO: PSC2017-00019**

**FUNDING FOR ROCK REVETMENT AT KANGAROO POINT, SOLDIERS POINT**

**COUNCILLOR: JOHN NELL**

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**THAT COUNCIL:**

- 1) Urgently seeks grant funding for a rock revetment at Kangaroo Point, Soldiers Point.
- 

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

**BACKGROUND**

The purpose of this report is to provide background information on previous assessments and works at Kangaroo Point, Soldiers Point.

Council engaged a suitably qualified consultant in 2015 to prepare a Foreshore Study to present options to address the ongoing erosion and the dilapidated nature of foreshore protection to the north of Kangaroo Point, on the eastern shoreline of Soldiers Point, Port Stephens.

The report presented three options:

- Option 1 - Remove existing structures: a minimalist approach which would result in a likely short term increase in shoreline erosion/recession and continuing recession into the future in the absence of any protection or mitigation works. The foreshore would return to its pre-developed, natural state.
- Option 2 - Construction of Hard Points: including pocket beaches and some back beach protection. This would stabilise the beach around the current location while retaining sections of sandy foreshore for access.
- Option 3 - Construction of a Revetment: including a rock revetment along the foreshore of the study area. This option would fix the shoreline at the present location but with reduced access to the foreshore and possible loss of the sandy beach over time.

In consultation with the community and relative to funding constraints, Council proceeded with Option 1. As expected, the foreshore has reverted to its natural state of peaty soil and a minor escarpment from the reserve level.

Previous on-site meetings with the community since these works were completed has indicated general dissatisfaction and a desire to pursue Option 3. This option was costed in excess of \$180,000. Council does not have an identified funding source in order to carry out these works. These works are not currently listed within Council's 10 year capital works program.

As per the 9 July 2019 Notice of Motion, staff have acknowledged this project as part of the Coastal Management Program to seek grant funding as it becomes available. To date, no suitable grants have been identified to fund these works.

**FINANCIAL/RESOURCE IMPLICATIONS**

<b>Source of Funds</b>	<b>Yes/No</b>	<b>Funding (\$)</b>	<b>Comment</b>
Existing budget	Yes		Staff resources for grant application.
Reserve Funds	No		
Developer Contributions (S7.11)	No		
External Grants	No		
Other	No		

**ATTACHMENTS**

Nil.



**NOTICE OF MOTION**

**ITEM NO. 3**

**FILE NO: 21/157168**

**EDRMS NO: PSC2017-00019**

**PATHWAYS PLAN - KIRRANG DRIVE, MEDOWIE**

**MAYOR:** RYAN PALMER  
**COUNCILLOR:** CHRIS DOOHAN

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**THAT COUNCIL:**

- 1) Update the projects in the Pathways Plan seeking a priority for Kirrang Drive, Medowie into the Capital Works Program.
- 

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

The purpose of this report is provide information to this Notice of Motion.

The Port Stephens Council's Pathway Plan was adopted in 2016. The Pathway Plan shows existing and proposed pathways that, when completed, would allow the community and visitors to move between areas of interest such as town centres, schools, sporting areas, local shops and facilities to name a few. Increasing the pathway network not only helps remove vehicles off the road, but improves the health and wellbeing of the community.

Council's recent Place Census highlighted that residents highly valued pathways and would prefer an expansion of the existing network.

Kirrang Drive in Medowie is on the Council's Pathways Plan. Like many of the proposed missing links and new pathways, Kirrang Drive is currently unfunded. At the time of writing this Notice of Motion, the proposal has not been scoped or designed. As such, Council does not yet have a preliminary estimate or a source of funds to place this project in the Capital Works Program.

It is acknowledged that this connection is important to the residents of Medowie.

**FINANCIAL/RESOURCE IMPLICATIONS**

Preliminary concepts will be required to determine indicative estimates and the financial requirements.

**ORDINARY COUNCIL - 22 JUNE 2021**

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

**ATTACHMENTS**

Nil.

**NOTICE OF MOTION**

**ITEM NO. 4**

**FILE NO: 21/157202**

**EDRMS NO: PSC2017-00019**

**PATHWAYS PLAN - KIRRANG DRIVE, MEDOWIE**

**COUNCILLOR: GIACOMO ARNOTT**

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**THAT COUNCIL:**

- 1) Updates the projects in the Pathways Plan, alongside a review of the Capital Works Plan with a view to placing high priority on Kirrang Drive, Medowie.
- 

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

**BACKGROUND**

The purpose of this report is provide information to this Notice of Motion.

The Port Stephens Council's Pathway Plan was adopted in 2016. The Pathway Plan shows existing and proposed pathways that, when completed, would allow the community and visitors to move between areas of interest such as town centres, schools, sporting areas, local shops and facilities to name a few. Increasing the pathway network not only helps remove vehicles off the road, but improves the health and wellbeing of the community.

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**FINANCIAL/RESOURCE IMPLICATIONS**

Preliminary concepts will be required to determine indicative estimates and the financial requirements.

**ORDINARY COUNCIL - 22 JUNE 2021**

<b>Source of Funds</b>	<b>Yes/No</b>	<b>Funding (\$)</b>	<b>Comment</b>
Existing budget	No		
Reserve Funds	No		
Developer Contributions (S7.11)	No		
External Grants	No		
Other	No		

**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.