## ATTACHMENTS UNDER SEPARATE COVER

# ORDINARY COUNCIL MEETING 12 OCTOBER 2021



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ITEM 1 - ATTACHMENT 2

PLANNERS ASSESSMENT REPORT.

## PORT STEPHENS DEVELOPMENT ASSESSMENT REPORT

Application Number	16-2021-509-1	
Development Description	Multi-dwelling housing – Demolition of existing dwelling and construction of two storey multi-dwelling housing development comprising 6 units and associated landscaping.	
Applicant	CERRETTI HOLDINGS PTY LTD	
Land owner	245 SOLDIERS INVESTMENTS PTY LTD	
Date of Lodgement	01/07/2021	
Value of Works	\$3,686,180.00	
Submissions	9	
ROPERTY DETAILS		
Property Address	245 Soldiers Point Road SALAMANDER BAY	
Lot and DP	LOT: 406 DP: 28192	
88B Restrictions on Title	N/A	
Current Use	Residential	
Zoning	R2 LOW DENSITY RESIDENTIAL	
Site Constraints	Acid Sulfate Soils – Class 4;	
	Koala Habitat Planning Map – Mainly Cleared;	
	High Environmental Value;	
	Coastal Zone Combined Footprint;	
	Stormwater Drainage Problem Area;	
	Combined Corridor Map;	
	Flood Prone Land (PMF) 2020;	
	LEP 2013 – Height of Buildings (9m);	
	LEP 2013 – Wetlands	
State Environmental Planning Policies	State Environmental Planning Policy No. 55 – Remediation of Land;	

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### PLANNERS ASSESSMENT REPORT.

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004;

State Environmental Planning Policy (Coastal Management) 2018;

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

State Environmental Planning Policy (Koala Habitat Protection) 2021

### PLANNERS PRE-ASSESSMENT CHECKLIST

OWNERS CONSENT	YES / N/A	
Land owners consent	Yes	
If the land owned by a corporation/company, relevant signatures have been provided (sole director, or director/director / director/company secretary).	Yes	
For works occurring outside property, neighbouring consent provided.	N/A	
For works occurring on common property within Strata, owner's consent from Strata body provided (common seal).	N/A	
DA FORM AND AUTHORITY		
Applicant's description of proposal consistent with DA plans.	Yes	
DA description correct in Authority (i.e. LEP definition).	Yes	
DA lodged over all affected properties and Authority correct.	Yes	
Satisfactory cost of works.	Yes	
NOTIFICATION		
Application notified correctly (i.e. check properties notified).	Yes	
REFERRALS		
Check referrals are correct and identify if additional required: i.e. Integrated Development (send within 14 days cl.66(2) EPA Regs 2000	Yes	
Call applicant and send email acknowledgement.	Yes	

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#### PROPOSAL

The development application (DA) proposes Multi Dwelling Housing (MDH) (six dwellings), six lot strata title subdivision, underground car parking, retaining walls and ancillary landscaping (**Figure 1**).

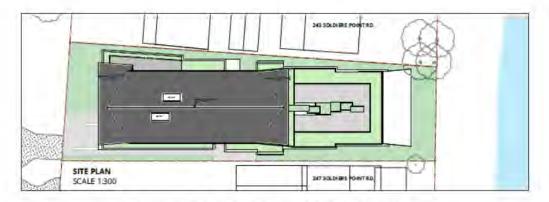


Figure 1: Site plan of the proposed MDH development

The building comprises two stories above ground level, presenting as two stories to Soldiers Point Road and stepping down with the slope of the site to the rear (north-east).

The MDH consists of a layout including:

- Ground Floor Contains Unit One and Unit Two. These units are a matching floor plan that includes two bedrooms, bathrooms, a study, kitchen, living, dining area and a private balcony. Pedestrian beach access is located along the southern boundary of the site.
- First Floor Contains Units Three, Four, Five and Six. Units Three and Four are located to
  the rear of this level, with a matching floor plan that includes three bedrooms, bathrooms,
  kitchen, living, dining area and a private balcony. Units Five and Six are located to the front
  of this level, and includes bedrooms, bathrooms, living area and a stairwell leading to the
  upper storey of these units.
- Second Floor Contains the upper level of Units Five and Six. The upper level of these units includes a master bedroom, bathroom, kitchen, second living area and a private balcony.

The strata subdivision allocates the front and rear yard surrounding the units; the pedestrian beach access, the driveway and visitor parking space as common property.

Landscaping has been incorporated into the development on the ground plane and also into the upper levels of the building. At the ground level, deep soil planting surrounding the building is provided to allow for tree planting that will provide visual interest and aid in softening the bulk and scale of the development.

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Figure 2: Street perspective of proposed development



Figure 3: Rear perspective of proposed development

#### SITE DESCRIPTION

The site is located at 245 Soldiers Point Road, Salamander Bay, which is legally identified as Lot 406 DP 28192. The site is located within an established residential area, which includes a mixture of dwellings, dual occupancies, multi dwelling housing and residential flat buildings.

The site is orientated to the north-east to benefit from water views of the nearby bay. The site has a rectangular shape and is 1050m<sup>2</sup> in area. The site has been substantially developed with a two storey dwelling, granny flat, garage, swimming pool, deck, brick fence, gate and concrete driveway identified over the site. Vehicular access to the site is provided via a secondary access road which runs parallel to Soldiers Point Road. The site has been largely cleared of vegetation, with three

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mature gumtrees located in the road reserve adjoining the sites front boundary. The site features a relatively flat topography, sloping to its rear boundary (north). The slope at the rear of the site is considerable, falling from 4.75m AHD to approximately 2m AHD along the public reserve.

The Soldiers Point town centre is located to the east of the site and is a short walking distance away. The site is located in close proximity to shops, schools, sports and park facilities.



Figure 4: GIS aerial image of subject site

#### SITE HISTORY

The site has historically been used for residential purposes, reflected by the existing structures identified over the site (dwelling, pool and garage).

No incidents of pollution or contamination have been recorded over the site.

A Pre-Lodgement Meeting for a Multi Dwelling Housing Development Application was held on the 10 May 2021 (18-2021-14-1).

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A site inspection was carried out on 17 August 2021 The subject site can be seen in the photographs below:



Photograph 1: Access road servicing the site



Photograph 2: Existing driveway crossover



Photograph 3: Granny flat located on site



Photograph 4: Brick garage located on site

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Photograph 5: Southern elevation of existing dwelling

#### PLANNING ASSESSMENT

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

#### Internal

**Development Engineer** – RFI issued on 12/08/2021. Additional information sought for items including: access road upgrades, driveway width and access, driveway long section plans, DCP parking non-compliance, stormwater plans and flood planning.

Additional information provided to Council on 20/08/2021. Additional Information was reviewed by Council's Consultant Development Engineer, Senior Development Engineer and Traffic Engineer.

Referral comments provided on 1/09/2021 conclude all RFI items raised in Development Engineering Services Referral 1.0 have been satisfied, with the exception of item 1 and 5.

Council's Consultant Development Engineer raised concern regarding sight distances from the adjacent roundabout, however Council's Traffic Engineer could support the application if the provision of a shared path to connect to Randall Drive (across to the shops), in order to provide safe access for pedestrians was provided, along with upgrade of the service road and installation of parking restrictions on this road. The road upgrade will ensure that two-way traffic is maintained to the site (and for existing residents).

Conditions of development consent that reflect Council's Traffic and Development Engineer have been provided should the Development Application be approved by the elected Council.

Development Contributions - Supported with conditions

Building Surveyor - Supported with conditions.

Spatial Services - Street numbering allocated.

External

Ausgrid / Transgrid – Decision not required. Connection requirements to be assigned at subdivision stage.

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#### Environmental Planning and Assessment Act 1979

#### Section 4.46 - Integrated development

Section 4.46 EP&A Act provides that development is integrated development if in order to be carried out, the development requires development consent and one or more other approvals.

The works will occur within 40m of a waterbody, which generally triggers the requirement for a controlled activity approval from the Natural Resource Access Regulator (NRAR) under the Water Management Act 2000 (WM Act). However, under Clause 36, Schedule 4 of the Water Management (General) Regulation 2018 and associated mapping, the site is exempt from a controlled activity approval and hence does not require approval under the WM Act.

#### 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 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 multi dwelling housing 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 (Building Sustainability Index: BASIX) 2004

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 (SEPP BASIX) was enacted to ensure that dwellings are designed to utilise less potable water and to minimise greenhouse gas emissions by setting energy and water reduction targets for residential houses and units.

A valid BASIX certificate has been submitted with the development application which demonstrates that the water, thermal comfort and energy requirements for the proposal have been achieved. The proposal is considered to satisfy the relevant provisions of SEPP BASIX.

#### 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.

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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.

Landscaping Plans have been prepared for the development application, indicating landscaping will be incorporated into the ground plane and upper levels of the building. The removal of one tree and site landscaping is supported as replacement landscaping as proposed by the applicant is consistent with Council's landscape technical specifications.

#### State Environmental Planning Policy Coastal Management 2018

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

#### Clause 13 - Development on land within the coastal environment area

As per Clause 13 of the SEPP, development consent must not be granted for development within the coastal environment area unless the consent authority has considered whether the development will cause impact to the integrity of the biophysical and ecological environment, the values and natural coastal processes, marine vegetation, native vegetation and fauna and existing public open space and access to and along the foreshore.

The proposed development is not considered to impact the biophysical or ecological integrity of the adjacent waterbody nor is it considered to impact natural coastal processes or marine vegetation. The proposed development is sufficiently setback from the Port Stephens waterbody that it will not result in any adverse impacts.

#### Clause 14 - Development on land within the coastal use area

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.

The proposed development is an appropriate type and design for the coastal location. The proposed use of the site for multi dwelling housing purposes in conjunction with a sustainable built form will ensure that the visual amenity of the coast is protected. The building envelope and size of the development is also compatible with the natural setting and will not adversely impact views. The palette of materials and finishes are sympathetic to the coastal environment. Existing access to the beach and foreshore will not be adversely affected by the development.

#### Clause 15 - Development in coastal zone

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.

#### 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 site is mapped as cleared koala habitat and is less than 1ha of site area. Accordingly, the provisions of State Environmental Planning Policy (Koala Habitat Protection) 2021 are not applicable to the development.

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Port Stephens Local Environmental Plan 2013 (LEP)

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

The proposed development is defined as multi-dwelling housing which is permissible with consent in the R2 zone. As defined in the LEP, multi dwelling housing means 3 or more dwellings (whether attached or detached) on one lot of land, each with access at ground level, but does not include a residential flat building.

Given each dwelling receives ground floor access via a lift and stairway, the characterisation of the use is therefore consistent with the multi dwelling housing definition, and not that of a residential flat building.

The development satisfies the objectives of the zone by providing additional residential accommodation that caters for the housing needs of the community in a low density residential environment. The development protects and enhances the existing residential amenity and character of the area through the selection of appropriate building materials, colours and establishment of landscaping that is consistent with existing vegetation in the locality.

#### Clause 2.7 - Demolition requiring development consent

Clause 2.7 identifies that the demolition of a building or work may be carried out only with development consent, unless identified as exempt development under an applicable environmental planning instrument.

The proposed development requires the demolition of structures including the dwelling, granny flat, garage, swimming pool and deck. Accordingly, conditions of consent have been included in order to mitigate potential impacts to adjoining properties and the locality during demolition works.

#### Clause 4.1 – Minimum Subdivision Lot Size

Clause 4.1 outlines the minimum lot size applicable to the subject sites, as identified on the minimum lot size map, to ensure that lot sizes are able to accommodate development that is suitable for its purpose and consistent with relevant development controls.

The proposal includes strata subdivision which this clause does expressly not relate to.

## Clause 4.1B – Minimum lot sizes for dual occupancies, multi-dwelling housing and residential flat buildings

Clause 4.1B specifies the minimum lot size required to facilitate development for the purposes of dual occupancies, multi dwelling housing and residential flat buildings in order to achieve planned residential density in certain zones.

In accordance with this clause, multi dwelling housing on R2 zoned land requires a minimum site area of 750m<sup>2</sup>. The subject site has a total area of approximately 1050m<sup>2</sup>, which provides sufficient area to facilitate the proposed development, in accordance with the requirements of this clause.

#### Clause 4.3 – Height of Buildings

In accordance with Clause 4.3, the Height of Buildings Map (PSLEP2013) indicates a maximum building height of 9.0m for the subject site. The proposed development measures 9m in height from the natural ground level to the apex height of the building. The proposed development therefore complies with the 9m maximum height requirement, as illustrated below:

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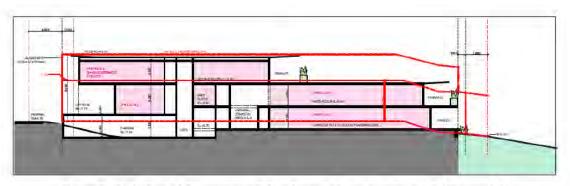


Figure 5: Illustration of the proposed development's compliance with Clause 4.3

The building height is considered to be appropriate for the context and character of the area. The development is of similar height, bulk and scale to existing development located along Soldiers Point Road. It is noted that the stepped building design, responds to the gradient of the site, which slopes from the street towards the waterfront. The proposed stepped design will further reduce the perceived height of the development from the street frontage. It is noted that larger scale developments which encompass taller building heights, such as Salamander Haven Retirement Village and Sandy Shores Retirement Village are located in close proximity to the subject site.

The development is consistent with the aims and objectives of Clause 4.3.

#### Clause 5.21 - Flood Planning

The proposed development is located on land mapped as being Flood Planning Area. The flood planning level relevant to the land is RL 3.7m AHD. The development plans submitted with the proposal show the finished floor level of the development at RL 3.7m AHD, which is above the flood planning level. The development therefore accords with the requirements of this clause in that flood risks to life and property are minimised by building to the appropriate flood planning level. In addition, conditions have been included on the recommended conditions to certify the development is capable of withstanding the effects of flood waters, and to ensure the development does not impact or divert flood waters to surrounding properties.

#### Clause 7.1 – Acid Sulfate Soils

The subject land is mapped as containing potential Class 4 acid sulfate soils. As the proposed development includes works more than 2 meters below the natural ground surface, a geotechnical assessment of the site was undertaken. Results from the geotechnical assessment concluded soils contained on the site are not considered to be acid sulfate soils. Recommendations to be complied with during works from the geotechnical assessment are included in the conditions.

#### Clause 7.2 - Earthworks

The application proposes substantial earthworks over the site to provide an underground parking level and associated infrastructure. Civil engineering plans have been prepared for the proposed development including a bulk earthworks plan and sediment and erosion control plan. These civil engineering plans have been reviewed by Council's Development Engineer, with conditions of consent recommended to mitigate any negative impacts relating to site earthworks.

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#### Clause 7.6 - Essential Services

The subject site is serviced by reticulated water, electricity and sewer. Additionally, the application has demonstrated that stormwater drainage resulting from roof and hard stand areas can be catered for in accordance with Councils requirements. The subject land also maintains direct access to Soldiers Point Road (via a secondary access lane), meeting the requirements of this clause. A condition of consent is proposed requiring the provision of evidence that all essential services are available to the resulting lots, prior to the issue of an occupation certificate.

#### Clause 7.9 – Wetlands

A corner of the site is partially mapped as being within a local wetland under LEP mapping. The mapping predominantly covers the adjoining Salamander Bay waterbody. The development is for the purpose of infill housing with no works proposed in the physical wetland area. The development will not have a negative impact on the flora and fauna of the wetland, including either native and migratory species, or the characteristics of the ground or surface water and accords with 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 road reserve adjoining the front boundary of the site, is vegetated with four large trees. Landscaping Plans prepared for the development application indicates one of these four trees shall be removed. Furthermore, these landscaping plans outline additional landscaping shall be incorporated into the ground plane and upper levels of the building. Conditions of consent relating to the maintenance of this landscaping has been proposed.

#### Chapter B2 - Natural Resources

The development application proposes the removal of trees and vegetation from the site. The site is identified as clear of koala habitat and located within an established residential area. The application does not unreasonably reduce viable koala habitat in the area or result in adverse impacts to the koala habitat in the area.

The site does not contain any other items of environmental significance or threatened species.

#### Chapter B3 - Environmental Management

#### 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, no ASS were identified on the site. The proposed development could be undertaken, subject to conditions of consent, without resulting in adverse impact to ASS. In this regard the development is consistent with the objective and requirements of the DCP.

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#### Noise

The placement and separation distances between outdoor living areas and habitable rooms incorporated into the design will limit any significant impacts on the adjoining properties. Noting the development is for residential purposes, ongoing significant adverse noise impacts are not likely to occur. The impacts of noise during construction can be limited through conditions of consent, which limit construction work hours and mitigate noise derived from ventilation and air conditioning systems. Subject to conditions, the application is satisfactory in regards to noise management.

#### Earthworks

As discussed at clause 7.2 above, the proposed development involves significant earthworks. The impacts of the proposed earthworks can be mitigated through conditions of consent, including works being undertaken in accordance with the recommendations of the submitted geotechnical report. The proposal is therefore consistent, subject to conditions, with requirements outlined in Councils DCP relating to earthworks.

#### <u>Waste</u>

To ensure ongoing waste is managed responsibly, the development includes a waste storage area catering for residential waste of each dwelling. The development can be serviced by Council for waste collection. Conditions of consent have been recommended that require waste from building works to be separated into recyclable and non-recyclable materials, the reuse of materials on-site where possible, and the disposal of all other materials at an approved facility.

#### 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 proposed development area is more than 60% site coverage, therefore OSD system is required. An OSD has been provided and supported by Council Development Engineers; subject to conditions of consent. The concept stormwater drainage plan has been assessed as being consistent with Councils Infrastructure Specification. A condition of consent has been imposed requiring the provision of detailed engineering plans that comply with Council specifications, prior to the issue of a construction certificate.

#### Chapter B5 – Flooding

The subject land is mapped as being within the Flood Planning Area. Following from the discussion against clause 5.21 of the LEP above, the proposed development is acceptable in this regard.

#### Chapter B8 – Road Network and Parking

#### Parking

For multi dwelling developments, PSDCP2014 specifies the following on-site car parking requirements:

- 1 car space for one and two bedroom dwellings
- 2 car spaces for three or more bedroom dwellings
- 1 visitor space for every three dwellings

Each dwelling includes three bedrooms and each dwelling is provided with double lock up garage, satisfying the requirements of the PSDCP2014.

The application proposes six dwellings and therefore two visitor car parking spaces are required. The development only provides 1 visitor car parking space. The single visitor parking shortfall is considered acceptable given the site's proximity to the nearby Soldiers Point commercial area which is supported by on-street parking. The site is also well-serviced by alternate vehicle travel options,

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with bus stops located along Soldiers Point Road and pedestrian pathways to nearby amenities. The application is considered to be consistent with the objectives of this chapter in that the noncompliance will not have an adverse impact on off-site parking supply or impact the local traffic network.

#### Traffic and Access

Council's Consultant Development Engineer initially raised concern regarding sight distances from the adjacent roundabout. However, Council's Traffic Engineer could support the application on the provision of a shared path to connect to Randall Drive (across to the shops), in order to provide safe access for pedestrians being provided. In addition to an upgrade of the service road and installation of parking restrictions along this road. The road upgrade will ensure that two-way traffic is maintained to the site (and for existing residents). Specific design and traffic measures will be required as part of a S138 Roads Act approval. The recommended conditions from Councils Traffic Engineer have been included in the consent.

#### Chapter C – Development Types

The application proposes multi dwelling housing and strata subdivision, therefore the provisions of Chapter C1 and C5 are applicable.

Reference	Control	Assessment
Objective C1.A Requirement C1.1 - C1.4	<ul> <li>Lot Size and Dimensions</li> <li>To ensure all new lots have a size and shape appropriate to their proposed use, and to allow for the provisions of necessary services and other requirements.</li> </ul>	Each of the new allotments proposed under the application are of a size that is suitable for the erection of a dwelling. The lots are able to be connected to the necessary services and requirements for residential purposes.
Objective C1.B Requirement C1.5 - C1.6	<ul> <li>Street Trees</li> <li>To ensure street tree planting is of an appropriate species and undertaken in accordance with Council's guidelines.</li> </ul>	One tree shall be removed for the proposed development. Suitable replacement planting has been provided as per the Landscaping Plans.
Objective C1.C Requirement C1.7	Solar Access <ul> <li>To maximise solar access for residential dwellings.</li> </ul>	Suitable solar access opportunities have been provided through the layout of the subdivision.
Objective C1.D Requirement C1.8-C1.10	<ul> <li>Public Scale Drainage</li> <li>To ensure further guidance is provided for subdivision that is consistent with B4 Drainage and Water Quality and the infrastructure specification – design (where relevant).</li> </ul>	Inter-allotment drainage has been provided for the subdivision, as the lot's topography does not allow for stormwater to drain directly to the road reserve. Suitably sized infiltration trenches have been provided at the front and rear of the lot to manage all drainage.
Objective C1.E Requirement C1.12 – C1.19	<ul> <li>Block and Street Layout</li> <li>To ensure local streets are well connected to the street network with obvious pedestrian and cycle links to higher order streets.</li> <li>To ensure priority is provided to residents' needs when designing local streets to encourage usability</li> </ul>	All lots created under the proposed strata title subdivision, will be serviced by a 3 meter wide driveway to be located along the southern boundary of the lot. This driveway will provide controlled access/egress vehicular movements from the site, onto the local road network.

#### Chapter C1 - Subdivision

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	<ul> <li>To ensure pathways follow desire lines</li> </ul>	
Objectives C1.G Requirement C1.20 – C1.22	<ul> <li>Infrastructure</li> <li>To ensure detailed consideration is provided to the provision of integrated and quality public infrastructure</li> </ul>	The proposed strata title subdivision includes common areas to support the proposed stormwater drainage infrastructure for the site.

### Chapter C5 - Multi-dwelling housing or Seniors Housing

Reference	Control	Assessment
Objective C5.A Requirement C5.1-C5.3	<ul> <li>Landscaping</li> <li>To enhance the appearance and amenity of developments through the retention and/or planting of large and medium sized trees.</li> <li>To encourage landscaping between buildings for screening.</li> <li>To ensure landscaped areas are consolidated and maintainable spaces that contribute to the open space structure of the area.</li> <li>To add value and quality of life for residents and occupants within a development in terms of privacy, outlook, views and recreational opportunities.</li> <li>To reduce energy consumption through microclimate regulation</li> <li>To reduce air borne pollution by reducing the heat island effect</li> <li>To intercept stormwater to reduce stormwater runoff</li> </ul>	The proposed landscaping includes native trees along the eastern side boundary and front boundary, with garden bed vegetation to be planted throughout the site. The Landscaping Plan identifies 210m <sup>2</sup> of deep soil planting is provided for the site, satisfying the 20% deep soil planting requirement prescribed in C5.1. Sufficient screening from the street and adjacent neighbours, has also been included within the landscaping designs, satisfying the objectives of this clause.
Objective C5.B Requirement C5.4-C5.5	<ul> <li>Height <ul> <li>To ensure building height is appropriate for the context and character of the area.</li> <li>To ensure building heights reflect the hierarchy of centres and land use structure.</li> <li>To ensure ceiling heights achieve sufficient ventilation and daylight access.</li> <li>To ensure ceiling heights increase the sense of space and provides for well-proportioned rooms.</li> <li>To ensure ceiling heights contribute to the flexibility of building use over the life of the building.</li> </ul></li></ul>	The proposed development includes a height of 9m from the natural ground level to the roofline of the dwellings. The proposed development therefore complies with the maximum 9 meter height limitation of the LEP. The development proposes six multi dwelling housing units, and is consistent with the built form context and character of the area. The proposed units are reflective of the hierarchy of centre and land use structures for the area. The ceiling heights proposed are 2.4m which allows for adequate ventilation and lighting per the BCA. The development layout and footprints of the dwellings allow for an appropriate level of daylight access for each dwelling.

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		The front setback of the all proposed dwellings exceed 4.5m, satisfying the requirements of this clause.
		Furthermore, the location of the lot (positioned on an access road) and the stepped back building design promotes consistency in the streetscape and built form satisfying the objective of the front building setback.
		The building setbacks for the proposed development are:
		Unit 1 <ul> <li>North (side boundary) – 900mm</li> <li>East (rear boundary) – 4.015m</li> </ul>
		Unit 2 <ul> <li>South (side boundary) – 900mm</li> <li>East (rear boundary) – 3.8m</li> </ul>
Objective C5.C Requirement C5.6-C5.18	<ul> <li>Setbacks</li> <li>To ensure development provides continuity and consistency to the public domain.</li> <li>To ensure adequate space between buildings to enable effective landscaping.</li> <li>To alleviate impacts on amenity including privacy, solar access, acoustic control and natural ventilation.</li> <li>To reduce the visual bulk of buildings from the street.</li> <li>To maintain the rhythm and built form on the street.</li> </ul>	<ul> <li>Unit 3 <ul> <li>North (side boundary) – 900mm</li> <li>East (rear boundary) – 4.195m</li> </ul> </li> <li>Unit 4 <ul> <li>South (side boundary) – 1.15m</li> <li>East (rear boundary) – 3.99m</li> </ul> </li> <li>Unit 5 <ul> <li>North (side boundary) – lower level 900mm, upper level 3m.</li> <li>East (rear boundary) – 8.99m</li> </ul> </li> <li>Unit 6 <ul> <li>South (side boundary) – lower level 1.85m, upper level 3m.</li> </ul> </li> </ul>
		<ul> <li>East (rear boundary) – 8.79m</li> <li>All dwellings of the proposed development comply with the prescribed setback controls.</li> </ul>
		A retaining wall located on the lot's southern boundary is proposed. The retaining wall shall extend the length of the lot's southern boundary and will be 1.8m above ground level at its highest point. The retaining wall has been designed to provide pedestrian
		access for residents of the development, to the public beach. Whilst the retaining wall encroaches the 0.9m prescribed control, the retaining wall design will not be visually prominent for adjoining neighbours.

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		Conditions have been recommended to ensure the retaining wall is designed and certified by a structural engineer. The built form provides continuity and
		consistency in the public domain and alleviates impacts on amenity, including privacy, solar access, acoustic control and natural ventilation. Therefore, the development is considered to be consistent with the objectives for setbacks prescribed in PSDCP2014.
Objective C5.D Requirement C5.19-5.21	<ul> <li>Natural Ventilation</li> <li>To ensure all habitable rooms are naturally ventilated.</li> <li>To ensure a comfortable indoor environment is created for residents.</li> </ul>	The layout of the proposed dwellings allows for natural ventilation to occur throughout the habitable rooms.
		All dwellings have been designed with an appropriate orientation, which allows for the dwellings to have a presence along the existing streetscape.
Objective C5.E Requirement C5.22-C5.32	<ul> <li>Streetscape and Privacy</li> <li>To ensure development activates streetscape to provide passive surveillance and privacy</li> </ul>	Habitable rooms have windows looking out to the street providing passive street surveillance. Conditions of consent have been recommended to ensure overlooking onto adjoining properties does not occur from the proposed development. The fenestration of the proposed development and adjoining properties has been considered, with screening devices required on all windows overlooking adjoining properties.
	Noise	
Objective C5.F Requirement C5.33-C5.36	<ul> <li>To minimise noise transfer through the siting of buildings and building layout</li> <li>To ensure noise impacts are mitigated within units through layout and acoustic treatments</li> </ul>	The proposal has incorporated setbacks, screening treatments, landscaping and design measures to ensure unreasonable levels of acoustic impact will not result from the units.
Objective C5.G	<ul> <li>Car Parking and Garages</li> <li>To ensure car parking caters for anticipated vehicle movements to and from the development and does not adversely impact on building articulation.</li> </ul>	Car parking and vehicular movements associated with the proposed development, have been outlined in civil engineering plans prepared for the development. These plans have been assessed and supported by Council's Development Engineer.
Requirement C5.37-5.41	<ul> <li>To ensure vehicular access has minimal impacts on neighbouring dwellings.</li> <li>To ensure that vehicular access points and parking is safe and convenient for residents, visitors and service providers.</li> </ul>	The proposal includes a 3 meter wide common driveway that leads to an underground car parking level. The proposed width of this driveway is 0.6m less than the prescribed 3.6m requirement outlined in the DCP. The proposal has addressed this variation by incorporating an electronically

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## ITEM 1 - ATTACHMENT 2 PLANNERS ASSESSMENT REPORT.

		controlled gate to control traffic movements from the site.
		Each dwelling has been provided with designated car parking space(s) in accordance with the DCP ratios outlined in section B8. One visitor car parking space has been provided on this underground level, and the variation to DCP requirement has been addressed in Chapter B8 of this assessment report.
		A minimum of 16m <sup>2</sup> of ground floor private open space is required for each dwelling containing one or two bedrooms. Units 1 and 2 are provided with 23.55m <sup>2</sup> and 24.07m <sup>2</sup> of POS.
Objective C5.H Requirement C5.42-C5.47	Private Open Space • To ensure private open space with solar access is provided to allow the opportunity for passive and active outdoor recreation	A minimum of $25m^2$ private open space is required for dwellings containing three of more bedrooms. Where development cannot provide POS on the ground floor, provisions shall be made for a balcony of not less than 16m <sup>2</sup> . Units 3 and 4 provide POS via balconies exceeding the 16m <sup>2</sup> requirement. Units 5 and 6 provide POS via balconies on the second level, both exceeding the $25m^2$ requirement.
		All POS provided for the dwellings have been located in a northerly direction, are located to the rear of the dwellings, have a minimum dimension of 4m x 4m and have direct access to internal living areas.
Objective C5.1 Requirement C5.48-C5.54	Site Facilities and services <ul> <li>To ensure development provides appropriate facilities and services in the most appropriate site location</li> </ul>	The development on the site allows for adequate areas for bin storage behind the building line or setback of the dwellings.
		A condition has been imposed requiring mail boxes be installed to clearly demonstrate the street and unit numbers from the street. A suitable open-air area for clothes drying has been provided for each dwelling behind
		the building line or setback with a northerly aspect, where possible, in accordance with this clause.

## Section 4.15(1)(a)(iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph)

There are no further requirements under regulations to be considered with the assessment.

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

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## ITEM 1 - ATTACHMENT 2 PLANNERS ASSESSMENT REPORT.

#### Social and Economic Impacts

The proposal will result in a multi-dwelling development that will provide housing diversity in the local area. The development of the site and construction of the dwellings will have a monetary input into the local area and provide employment during the construction phase of the dwellings. The development will allow for housing needs to be met in the local area through the construction of six additional dwellings.

#### Impacts on the Built Environment

The proposed development will reinforce the residential nature of the locality and is characteristic of other developments in both the local and wider community. The application includes relevant construction methods and services to avoid adverse impacts on the surrounding environment. The proposal addresses the street and provides logical and convenient connections to the road network and pedestrian facilities in the locality. Any potential built impacts, by way of overshadowing or privacy, either meet DCP requirements or have been reasonably mitigated. There are no anticipated adverse impacts on the built environment as a result of the proposed development.

#### Impacts on the Natural Environment

The proposal is able to be supported with adequate stormwater drainage and services, which will not cause harm to the existing natural environment. In addition, a condition of consent is proposed that requires the installation and maintenance of erosion and sedimentation controls. It is noted that no significant vegetation is proposed to be removed and that the proposal includes suitable landscaping that utilises native species.

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

With the exception of a visitor car parking shortfall, the proposed development has been designed in accordance with the applicable planning controls including the Port Stephens LEP and Development Control Plan. The subject site is located within an established residential area, within close proximity to the town centre of Soldiers Point and does not contain significant natural habitat or native vegetation. The site has access to all relevant services and the proposed development makes good use of the available land. The proposed development will not result in any unreasonable impacts on the amenity of surrounding development and will contribute to the amenity of Soldiers Point. It is therefore considered that the site is suitable for the proposed development.

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

#### Public Submissions

The application was exhibited from 9 July 2021 - 23 July 2021, in accordance with the provisions of the Port Stephens Council Community Participation Plan. The submission period for the application was extended until the 6 August 2021 at the request of the community. A total of 9 individual submissions and 2 community submissions on behalf of 16 people were received during this time. The matters raised during the exhibition period have been detailed in the table below.

Comment

Council response

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## ITEM 1 - ATTACHMENT 2 PLANNERS

## PLANNERS ASSESSMENT REPORT.

Insufficient assessment against Part 4.15 of the Environmental Planning and Assessment Act 1979 (EP&A Act) - The Development Application has provided a limited assessment of the proposed development against Section 4.15 of the Environmental Planning and Assessment Act 1979 (EP&A Act).	<ul> <li>The development application included a Statement of Environmental Effects, which has assessed the proposed development against 4.15 of the EP&amp;A Act.</li> <li>Council has undertaken an independent assessment of the proposed development against Section 4.15 of the EP&amp;A Act.</li> </ul>
<ul> <li>Incorrect characterisation of development and variation from zone objectives.</li> <li>The proposal has been incorrectly defined as mult- dwelling housing and more appropriately represents a residential flat building.</li> <li>The proposal does not satisfy the objectives of 'Zone R2 Low Density Residential' and more accurately represents medium density residential development</li> </ul>	<ul> <li>The proposed development is defined as multi- dwelling housing which is permissible with consent in the R2 zone. As defined in the LEP, multi dwelling housing means 3 or more dwellings (whether attached or detached) on one lot of land, each with access at ground level, but does not include a residential flat building. Each dwelling receives ground floor access via a lift and stairway, accordingly, the development is consistent with the multi dwelling housing definition.</li> <li>The proposal provides housing for the community in a low density residential environment. Multi dwelling housing is a permitted use within the zone. The development addresses the objectives of the zone by providing additional residential accommodation that caters for the housing needs of the community in a low density residential environment. The development as proposed protects and enhances the existing residential amenity and character of the area through the selection of appropriate building materials, colours and establishment of landscaping that is consistent with existing vegetation in the locality.</li> </ul>
Height of Building - The proposed development exceeds the maximum building height control.	<ul> <li>The proposed development measures 9m in height from the natural ground level to the apex height of the building. A clause 4.6 variation to building height limitation is not required.</li> <li>The building is considered to be appropriate for the context and character of the area. The development is of similar height, bulk and scale to existing development located along Soldiers Point Road. It is noted that the stepped building design, responds to the gradient of the site, which slopes from the street to the waterfront, and will further reduce the perceived height of the development from the street frontage. It is noted that larger</li> </ul>

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## ITEM 1 - ATTACHMENT 2

## PLANNERS ASSESSMENT REPORT.

	<ul> <li>developments, such as Salamander Haven</li> <li>Retirement Village and Sandy Shores Retirement</li> <li>Village are located in close proximity to the subject site.</li> <li>The development is consistent with the aims and objectives of Clause 4.3.</li> </ul>
State Environmental Planning Policies         -       The proposed development has not assessed State Environmental Planning Policy (Coastal Management) 2018 or State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development.	<ul> <li>A comprehensive assessment of the proposal against State Environmental Planning Policy (Coastal Management) 2018 has been undertaken by Port Stephens Council.</li> <li>The proposed development is defined as 'multi-dwelling housing' and does not require assessment against State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development.</li> </ul>
<ul> <li>Traffic and parking</li> <li>The shortfall of one visitor parking space.</li> <li>If the proposal is used for holiday letting, car parking demand will increase.</li> </ul>	<ul> <li>The proposal has requested a concession to the visitor parking requirements in order to better utilise the site for habitable spaces and landscaping, rather than increasing car park area hardstand on site. The proposal has identified overspill parking opportunities along Soldiers Point Road, as having adequate capacity to accommodate the visitor parking shortfall. Given the shortfall can be accommodated through on-street parking without adverse impact, the proposed car parking is supported.</li> <li>Short term rental accommodation (holiday letting) is governed by Clause 7.18 of the PSLEP and does not require consent. Clause 7.18 does not have any specific car parking requirements.</li> </ul>

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## ITEM 1 - ATTACHMENT 2 PLANNERS ASSESSMENT REPORT.

<ul> <li>View Loss</li> <li>Water view from 247 Soldiers Point Road would be reduced.</li> <li>The development has not prepared an assessment of view sharing pursuant to the principals set out within the case law.</li> </ul>	<ul> <li>No important views from 247 Soldiers Point Road, would be lost or obstructed as a result of the proposal.</li> <li>Water views of Wanda Beach from residential properties surrounding the site, would be impacted to some extent as a result of the proposal. However, the view impact has been deemed acceptable in accordance with the Tenacity view sharing planning principles. Tenacity Consulting v Warringah Council (2004) NSWLEC 140 ('Tenacity'), establishes the general principles for assessing view loss. Assessment against the four step process concluded:</li> <li>The extent of the views from the site to the north, east and west toward the waters of Wanda Beach are largely obstructed by existing buildings, which limits the value of the view.</li> <li>Views are generally obtained from balcony areas or living rooms. Views are captured as a result of the existing development on the subject site being single storey in nature.</li> <li>The views currently held by the site to the east will be partially obstructed as a result of the proposal, however due to the views already being largely obstructed, the magnitude of change from these locations is moderate.</li> <li>The proposal complies with the applicable environmental planning instruments. Views are currently only available due to the existing development on the site being single storey.</li> </ul>
	- The proposed setbacks comply with Council's DCP
Privacy	requirements, as outlined elsewhere in this report.
<ul> <li>Privacy impacts adjoining dwellings.</li> </ul>	Notwithstanding, the privacy objectives are achieved through the use of highlight windows, landscaping and privacy screening where appropriate.
Bulk, scale and aesthetics	- Overall, the proposal is considered to achieve a
	scale, bulk and height appropriate for the area. The
<ul> <li>The bulk and scale of the development is excessive</li> </ul>	proposal complies with the 9m height limitation
•	prescribed in the LEP, and is considerably smaller than the Aged Care Living development on the
and not in keeping with the character of the area.	
	opposite side of Soldiers Point Road. The
- The building is not	perceived bulk and scale of the building is
aesthetically pleasing.	adequately addressed through the use of
	articulation to the façade and side walls. The bulk

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## PLANNERS ASSESSMENT REPORT.

	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 upper most storey is visually recessed through the changes in material finish.
<ul> <li>Site Suitability</li> <li>The size and dimensions of the lot are not adequate for the scale of the proposal.</li> </ul>	<ul> <li>In accordance with Clause 4.1B of the PSLEP, the minimum lot size required for the erection of a multi-dwelling housing development is 750m<sup>2</sup>. The subject site measures 1050m<sup>2</sup> in area, and complies with this clause.</li> </ul>
Overshadowing - Overshadowing impacts to adjoining sites.	<ul> <li>Loss of natural light in the adjoining dwellings to the east and west of the site would be minimal given solar access is primarily derived from the north.</li> <li>At least 50% of the POS to adjoining dwellings at No. 243 and 247 Soldiers Point Road, receive solar access for 3 hours in mid-winter.</li> </ul>
<ul> <li>Landscaping</li> <li>The removal of four native trees within the road reserve will have adverse ecological outcomes.</li> <li>The landscaping plan does not sufficiently offset the ecological impact associated with the removal of 4 native trees within the road reserve.</li> </ul>	<ul> <li>A revised landscape plan has been received by Council indicating only one of the four trees originally identified for removal shall be removed.</li> </ul>
Precedent - The proposed development and excessive control breaches will set a precedent for future residential development within the area.	<ul> <li>Each development application is assessed on planning merit. Should any future development seek similar variations to development controls or standards, such matters and others as relevant would have to be satisfactorily addressed in order for the variation to be supported.</li> </ul>
<ul> <li>Construction</li> <li>Damage to foundations of adjoining buildings</li> <li>There is no construction space for delivering of concrete trucks or materials causing traffic impacts.</li> <li>Construction of the building will decrease parking supply.</li> </ul>	<ul> <li>A condition of consent is recommended requiring the undertaking of a dilapidation report of neighbouring properties and access road prior to construction commencing.</li> <li>Temporary traffic impacts during construction will be managed through the implementation of a construction traffic management plan.</li> </ul>
Excavation and retaining walls	<ul> <li>A Bulk Earthworks Plan, Sediment and Erosion Control Plan and a Geotechnical Assessment Report has been prepared for the excavation proposed in the development. All plans have been</li> </ul>

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## ITEM 1 - ATTACHMENT 2

### PLANNERS ASSESSMENT REPORT.

<ul> <li>Environmental Outcomes</li> <li>Degradation of the coastal environment area attributed to increased surface runoff and the construction process.</li> <li>Removal of native vegetation from site and read recence</li> </ul>	<ul> <li>reviewed and supported by Council's Development Engineer, with conditions of consent recommended.</li> <li>A condition of consent is recommended requiring all retaining walls to be designed by a structural engineer. Furthermore, all retaining walls shall be located within the property boundary of the subject site.</li> <li>The proposed development satisfies the objectives and standards prescribed within State Environmental Planning Policy (Coastal Management) 2018.</li> <li>A stormwater management plan has been prepared for the proposed development, and supported by Council's Development Engineer.</li> <li>Conditions of consent have been recommended, to regulate the construction process ensuring the coastal environment area is not adversely impacted upon.</li> <li>The proposal seeks only to remove one tree within</li> </ul>
road reserve. - Increase in impervious surface area.	<ul> <li>the road reserve. Landscaping over the site holds minimal environmental value, with native landscaping to be implemented throughout the site.</li> <li>The proposal represents an appropriate increase in impervious surface increase.</li> </ul>
Social and Economic Impacts - The proposed building does not benefit the local community.	- The proposal will result in a multi-dwelling development that will provide housing diversity in the local area. The development of the site and construction of the dwellings will have a monetary input into the local area and provide employment during the construction phase of the dwellings. The development will allow for housing needs to be met in the local area through the construction of six dwellings.
<ul> <li>Flooding</li> <li>The proposed car park is located below the Flood Planning Level of the site and represents a risk to property.</li> </ul>	- All habitable rooms of the proposed development have been constructed to the nominated Flood Planning Level. The proposed car park is identified as a non-habitable structure and satisfies the objectives of Clause 5.21 of the LEP and B5 of the DCP.

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

The proposed development does not raise any significant public interest considerations beyond the matters already discussed in this report. The development is generally compliant with the applicable planning controls.

The proposal represents additional residential accommodation in the Soldiers Point area, to service the needs of the community, whilst is not anticipated to have any significant adverse impacts on surrounding properties or the amenity of the locality. The proposed development reinforces the residential nature of the land and is in keeping with the character of surrounding developments.

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## ITEM 1 - ATTACHMENT 2 PLANNERS ASSESSMENT REPORT.

The proposed development is considered to be in the public interest.

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

The application proposes the demolition of a single dwelling and the construction of multi-dwelling housing incorporating six dwellings. It is noted that subdivision is also proposed. There will be an increase in five dwellings as a result of the development and therefore contributions are applicable in accordance with s7.11.

A condition of consent is recommended in accordance with the Local Infrastructure Contribution Plan.

#### DETERMINATION

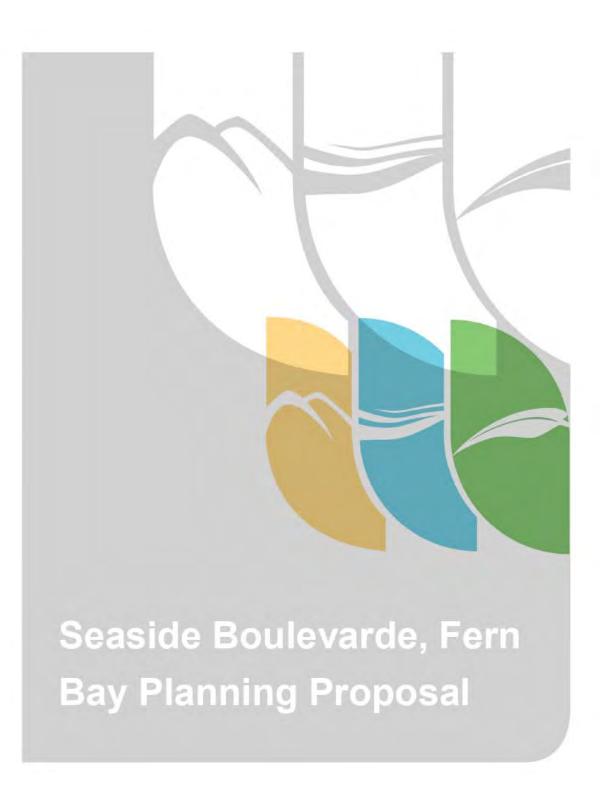
The application is recommended for approval by the elected Council, subject to the recommended conditions of consent provided as contained in the notice of determination.

ISAAC LANCASTER

Development Planner

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ITEM 2 - ATTACHMENT 2 PLANNING PROPOSAL FOR 4 SEASIDE BOULEVARD, FERN BAY.





Proposed amendment to Port Stephens Local Environmental Plan 2013

ITEM 2 - ATTACHMENT 2 PLANNING PROPOSAL FOR 4 SEASIDE BOULEVARD, FERN BAY.

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#### ITEM 2 - ATTACHMENT 2 **PLANNING PROPOSAL FOR 4 SEASIDE BOULEVARD, FERN BAY.**

#### ATTACHMENTS

ATTACHMENT 1 – Current Zoning Plan ATTACHMENT 2 – Proposed Land Zoning Map ATTACHMENT 3 – Current Lot Size Map ATTACHMENT 4 – Proposed Lot Size Map ATTACHMENT 5 – Current Height of Building Map ATTACHMENT 6 – Proposed Height of Building Map ATTACHMENT 7 – Fern Bay & North Stockton Commercial Lands Study ATTACHMENT 8 – Aboriginal Heritage Information Management System Search Result		
ATTACHMENT 8 – Aboriginal Heritage Information Management System Search Result		
ATTACHMENT 6 – Proposed Height of Building Map ATTACHMENT 7 – Fern Bay & North Stockton Commercial Lands Study		

#### F

FILE NUMBERS	
Council:	58-2021-2-1
Department:	PP-2021-3299
SUMMARY	
Purpose:	The purpose of this planning proposal is to amend the <i>Port Stephens Local</i> <i>Environmental Plan 2013</i> (LEP) to enable the development of additional housing within the Seaside Estate, Fern Bay.
Subject land:	Part of Lot 27, DP 270466 Lots 2, 3, 4, 20, 21, 22, DP 280072 Part of Lots 5, 19, 23 & 24, DP 280072
	2, 4, 4A, 4B, and 6 Seaside Boulevarde, Fern Bay 20, 22, 23, 24, 25 and 26 Sovereign Street, Fern Bay
Proponent:	ADW Johnson on behalf of Ano Nuevo Island Unit Trust
Proposed changes:	<ul> <li>Rezone from B1 Neighbourhood Centre to R2 Low Density Residential;</li> <li>Introduce a minimum lot size of 500 square metres; and</li> <li>Amend the height of buildings from 8 metres to 9 metres</li> </ul>

# ITEM 2 - ATTACHMENT 2 PLANNING PROPOSAL FOR 4 SEASIDE BOULEVARD, FERN BAY.

Area of land:	1 hectare
Lot yield:	~ 6 lots

#### BACKGROUND

The planning proposal seeks to amend the *Port Stephens Local Environmental Plan 2013* (LEP) to enable low density residential development on land at 2, 4, 4A, 4B, and 6 Seaside Boulevarde, Fern Bay and 20, 22, 23, 24, 25 and 26 Sovereign Street, Fern Bay (Seaside Estate).

The site is zoned B1 Neighbourhood Centre and the planning proposal seeks to rezone the land to R2 Low Density Residential.

The area of Fern Bay and North Stockton is in need of a new retail area to service the existing and future residents. In 2017 a Commercial Lands Study was done by HillPDA (HillPDA Study) to determine the most suitable location for a new retail centre. The recommendations of the HillPDA Study support increased commercial land in suitable locations, including the redevelopment of the Stockton Residential Centre for a new town centre.

The HillPDA Study also considered the need for a smaller scale neighbourhood shopping precinct and considered sites in the area including at Seaside Estate (the subject of this planning proposal) and 42 Fullerton Cove Road, Fern Bay (the subject of a separate planning proposal currently under assessment, PP-2021-1011). The Seaside Estate site was determined to be the least suitable site for a local neighbourhood centre.

#### SITE

The proposed rezoning area is approximately 1 hectare and forms part of a major project, the Seaside Estate Residential Subdivision (MP 06\_0250). Subdivision of the site has already been undertaken and is not intended to be altered in the event of a rezoning. Approximately 6 residential lots can be gained from the rezoning. **Figure 1** identifies the subject site.

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# ITEM 2 - ATTACHMENT 2 PLANNING PROPOSAL FOR 4 SEASIDE BOULEVARD, FERN BAY.



Figure 1 – Lot layout for Seaside Estate, Fern Bay

The surrounding land is zoned R2 Low Density Residential and E2 Environmental Conservation. The estate consists of low density residential dwellings, a childcare centre and two parks.

# ITEM 2 - ATTACHMENT 2 PLANNING PROPOSAL FOR 4 SEASIDE BOULEVARD, FERN BAY.

#### PART 1 – Intended Outcome

The intended outcome of the planning proposal is to enable low density residential development within the Seaside Estate.

The proposal will allow the site to provide additional residential housing within the Seaside Estate. The HillPDA Study does not identify 4 Seaside Estate as a preferred location for a commercial centre or necessary for the needs of the community, if the Stockton Centre is redeveloped and in particular if a neighbourhood centre is established in a more suitable location in accordance with the Fern Bay and the Stockton Strategy.

#### PART 2 - Explanation of provisions

The intended outcome of the planning proposal will be achieved by the following amendments to the *Port Stephens Local Environmental Plan 2013*:

- Amend Land Zoning Map Sheet LZN\_004A (ATTACHMENT 1) from B1 Neighbourhood Centre to R2 Low Density Residential (ATTACHMENT 2)
- Amend Lot Size Map Sheet LSZ\_004A from no specified minimum lot size (ATTACHMENT 3) to 500 square metres (ATTACHMENT 4)
- Amend Height of Building Map Sheet HOB\_004A from I 8 metres (ATTACHMENT 5) to J 9 metres (ATTACHMENT 6)

Figures 3, 4 and 5 indicate the proposed changes to the Land Zoning Map, Lot Size Map and Height of Building Map.

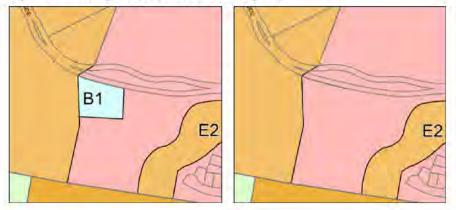


Figure 2 – Existing and proposed land zoning map

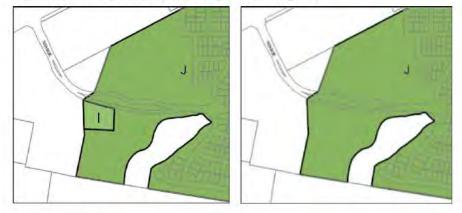
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# ITEM 2 - ATTACHMENT 2 PLANNING PROPOSAL FOR 4 SEASIDE BOULEVARD, FERN BAY.

Figure 3 – Existing and proposed lot size map



Figure 4 – Existing and proposed height of building map





Section A - Need for the planning proposal

Q1. Is the planning proposal a result of any strategic study or report?

The planning proposal is the result of the Hill PDA Fern Bay and North Stockton Commercial Lands Study 2017 (Hill PDA Study) (**ATTACHMENT 7**) prepared for City of Newcastle and Port Stephens councils to guide the development of a land use strategy for Fern Bay and North Stockton.

The Hill PDA Study assessed the suitability of the subject site, as well as five alternative sites, to accommodate a new town centre in the Fern Bay and North Stockton area. Of the sites assessed, the subject site was found to be the least favourable due to issues regarding its location, exposure,

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# ITEM 2 - ATTACHMENT 2 PLANNING PROPOSAL FOR 4 SEASIDE BOULEVARD, FERN BAY.

accessibility, and walkable catchment. The unsuitability of the subject site for commercial use is discussed in greater detail in Section B.

The Stockton Residential Centre (SRC) was found to be the most suitable location for a new town centre. The SRC site however, requires further strategic planning, including rezoning, before the vision of a future mixed use town centre can be realised. Property and Development NSW has advised Council that they are currently reviewing options for SRC, and Council will continue to be in consultation with City of Newcastle and Property and Development NSW as master planning progresses.

## **Q2.** Is the planning proposal the best means of achieving the objective or is there a better way?

The intended outcome of the planning proposal is to enable additional low density residential development at Seaside Estate.

Under the existing B1 Neighbourhood Centre zone, residential development is limited to:

- Attached dwellings;
- Boarding houses; and
- Shop top housing.

These categories of residential development are not compatible with the existing neighbourhood which consists of dwelling houses and dual occupancies. Rezoning the site to R2 Low Density Residential will enable residential development compatible with the existing local character of the Seaside Estate.

As provided in the Hill PDA Study, the site is not considered suitable for a new town centre to service the surrounding areas of Fern Bay, Fullerton Cove and Stockton. While some commercial uses, such as a neighbourhood shop, may be appropriate, the scale of these uses (i.e. no greater than 100sqm) would require an area significantly less than the existing B1 zone. Furthermore, the proposed R2 zone will still allow neighbourhood shops to be developed.

The planning proposal is therefore considered the best means of achieving residential development on the subject site.

#### Section B – Relationship to strategic planning framework

Q3. Will the planning proposal give effect to the objectives and actions of the Hunter Regional Plan or Greater Newcastle Metropolitan Plan (or any exhibited draft plans that have been prepared to replace these)?

a) Does the proposal have strategic merit?

Hunter Regional Plan 2036

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The *Hunter Regional Plan 2036* (HRP) applies to the Port Stephens local government area (LGA) and is an applicable consideration for this planning proposal.

Fern Bay is identified as a centre of local significance and earmarked as an area to deliver future housing and urban renewal opportunities in the HRP.

The HRP identifies a regional priority for Port Stephens to "leverage proximity to major global gateways – and its attractive and valuable natural environment and coastal and rural communities – to generate economic growth and diversity".

The planning proposal seeks to support this priority by enabling the development of a neighbourhood centre in a more suitable location. The Hill PDA study found the subject site to be unsuitable for the development of a town centre. Enabling an alternative location to be developed will provide more economic growth and diversity than developing the existing B1 Neighbourhood Centre zoned land.

The most relevant direction and action from the HRP include:

- Direction 23 Grow centres and renewal corridors; and
- Action 23.1 Concentrate growth in strategic centres, local centres and urban renewal corridors to support economic and population growth and a mix of uses.

The planning proposal will facilitate the above by providing additional housing within a local centre and within 20 minutes of the strategic centres of Newcastle City and Raymond Terrace.

The planning proposal is also consistent with:

- Direction 8 Promote innovative small business and growth in the service sectors as the proposed R2 zoning permits small businesses, including neighborhood shops, with consent;
- Direction 13 Plan for greater land use compatibility as it will not remove important agricultural land or create any potential conflict between land uses;
- Direction 14 Protect and connect natural areas as it will avoid the clearing of any further native vegetation;
- Direction 15 Sustain water quality and security as future development will be required to manage storm water in accordance with the Port Stephens Development Control Plan 2014 (DCP);
- Direction 16 Increase resilience to hazards and climate change as the land is mapped as Low Hazard Flood Fringe and is suitable for residential development;
- Direction 17 Create healthy built environments through good design as it will provide additional housing in an area that has planned infrastructure (e.g. footpaths and shared paths) to connect to parks, shops and services.

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- Direction 21 Create a compact settlement as the Seaside Estate is an
  existing approved subdivision and the provision of additional housing will
  not have any adverse environmental, social or economic impacts; and
- Direction 24 Protect the economic functions of employment land as the existing B1 zone will be relocated a more appropriate site (subject to a separate planning proposal). Additionally, the Hill PDA Study shows this will not impact on the viability of a future town centre.

The planning proposal is consistent with the HRP as it will provide additional housing within an existing residential neighbourhood, in close proximity to employment opportunities, without increasing demand for infrastructure and services.

#### Greater Newcastle Metropolitan Plan 2036

The *Greater Newcastle Metropolitan Plan 2036* (GNMP) applies to part of the Port Stephens LGA, including Fern Bay, and is an applicable consideration for this planning proposal.

The GNMP identifies Fern Bay as an area "where housing and infrastructure opportunities should be maximised while protecting the transport connection between the Newcastle Airport and Newcastle Port". The subject site is identified within a housing release area in the GNMP (**Figure 6**).

The planning proposal seeks to support this vision by providing housing within an existing residential neighbourhood where all infrastructure requirements have been achieved.

The planning proposal is consistent with:

- Strategy 2 Grow the airport and aerospace and defence precinct at Williamtown as it will provide additional housing (and workers) within 15min drive of Williamtown;
- Outcome 3 Deliver housing close to jobs and services as it will provide homes close to jobs and services including employment clusters at Williamtown, Tomago, Raymond Terrace and Newcastle;
- Strategy 8 Address changing retail consumer demand as a more suitable site will be rezoned (subject to separate planning proposal) for retail purposes to service local residents and benefit from passing trade on Nelson Bay Road;
- Strategy 9 Plan for jobs closer to homes in the Metro frame as above;
- Strategy 12 Enhance the Blue and Green Grid and the urban tree canopy as the site will be landscaped and street trees planted during future development;
- Strategy 14 Improve resilience to natural hazards as the land is mapped as Low Hazard Flood Fringe and is suitable for residential development;
- Strategy 16 Prioritise the delivery of infill housing opportunities within existing urban areas as the proposal seeks to provide additional housing within the Seaside Estate, an existing urban area;

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- Strategy 17 Unlock housing supply through infrastructure coordination and delivery as the land is serviced by existing infrastructure and will provide additional housing in an appropriate location; and
- Strategy 20 Integrate land use and transport planning as the proposal will access an existing bus route (136) to Stockton (south) and Newcastle Airport (north).

The planning proposal is consistent with the GNMP as it will provide additional housing within a housing release area, in close proximity to employment opportunities, without increasing demand for infrastructure and services.

AITLAND	RAYMOND TE	RRACE
Thorpton	2	
Beresfield		NEWCASTLE
• To	mago	7
		port bject Site
	-	STLE CITY CENTRE
Metro Frame	Strategic Centre	Waterway
Housing Release Area	Centre	Regional Road
Existing Urban Area with Infill Housing Opportunities	Environmental and Open Sj	pace State Road
the second s		

Figure 5 - Identification of the subject site in the Housing Opportunities map from the Greater Newcastle Metropolitan Plan 2036 (page 42)

### b) Does the proposal have site specific merit, having regard to the following?

#### Natural Environment

The proposed change in land use is unlikely to incur any additional impacts on the natural environment.

The subject site has already been assessed for development under the existing approval (MP 06\_0250) for Seaside Estate, Fern Bay. Rezoning the land from B1 Neighbourhood Centre to R2 Low Density Residential will not

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alter the lot layout or require any additional land clearing. **Figure 1** (page 5) displays the lot layout where Lots 2, 3, 4, 20, 21 and 22 are wholly within the B1 zoned land and have already been cleared.

#### Land Uses

The Hill PDA Study (**ATTACHMENT 7**) assessed the suitability of the subject site to accommodate a new town centre of 4,000 - 6,500 sqm area. The Hill PDA Study found the site to be unsuitable for the following reasons:

- Location The site would only be conveniently located for residents of Seaside Estate.
- Exposure The site does not have exposure to a major arterial road with limited opportunities to attract passing trade. The site also has no exposure to inward traffic due to an existing vegetated lane separation.
- Accessibility The subject site does not have direct access to a major road with the area accessed via a single entry/exit via Seaside Blvd, with only left in/left out access.
- Walkable catchment The site has a relatively small walking catchment. Approximately some 300 to 400 of the existing and future dwellings within Seaside Estate, Fern Bay are estimated to be within walking distance.

Out of 6 possible sites in the area, the Hill PDA Study found the subject site to be the least suitable for a town centre or neighbourhood centre. Out of a possible maximum score of 40, the site at Stockton Residential Centre scored 39 being the most suitable for a town centre, while the subject site at Seaside Estate scored 17.

#### Services and Infrastructure

The proposed change in land use is unlikely to incur any additional infrastructure needs.

The site benefits from the existing infrastructure provided as part of the Seaside Estate Major Project (MP 06\_0250) including sewer, water supply, power and communications. As evident in **Figure 1** (page 5), the clearing and subdivision of the site and construction of roads have been completed.

### Q4. Will the planning proposal give effect to a council's endorsed local strategic planning statement, or another local strategy or strategic plan?

#### Port Stephens Community Strategic Plan 2018 - 2028

The Port Stephens Community Strategic Plan 2018 – 2028 seeks to identify community aspirations and priorities over a 10-year time period and outline role of Council in delivering these priorities. The Plan identifies four key focus areas (comprising 'Our Community', 'Our Place', 'Our Environment' and 'Our Council') of the community's vision for the local area and provides directions and objectives on how to achieve these priorities

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The planning proposal is consistent with the following components of the plan:

- P3 Thriving and safe place to live The proposed rezoning will unlock the development potential of the site to support well-maintained and lived in low density residential development that can be delivered via fast tracked planning process (i.e. complying development). Currently, the site presents as under-utilized vacant land which can encourage anti-social behaviors. Additional residential land in the locality will also promote housing affordability by unlocking additional land supply.
- E3 Ecosystem function The proposed rezoning will assist in the ongoing protection and enhancement of the local natural environment by locating additional housing within already disturbed lands, thereby reducing the strain on greenfield sites to meet housing targets.
- E3 Environmental Sustainability The proposal will help reduce the community's environmental footprint through enabling additional low density residential development within the footprint of existing disturbed lands, thereby reducing the strain on greenfield sites to meet housing targets.

#### Port Stephens Local Strategic Planning Statement

The Port Stephens Local Strategic Planning Statement (LSPS) identifies the 20-year land use vision for planning in the Port Stephen LGA and sets out social, economic and environmental planning priorities for the future. The LSPS provides the local level strategic actions to give effect to State Government regional plans such as the Hunter Regional Plan 2036 and the greater Newcastle Metropolitan Plan 2036.

The proposed rezoning aligns with the following Planning Priorities described by the LSPS:

- *Planning Priority 4 Ensure suitable land supply* as it will provide additional housing on land that is serviced and unconstrained.
- Planning Priority 5 Increase diversity of housing stock as the R2 Low Density Residential zone enables a greater diversity of low to medium density housing formats than the B1 Neighbourhood Centre zone.
- Planning Priority 7 Conserve biodiversity values and corridors by enabling residential development within an area that has already been cleared, thereby minimising additional impacts to biodiversity values.

#### Live Port Stephens Local Housing Strategy

The Live Port Stephens Local Housing Strategy (LHS) provides the road map to accommodate people who want to live in our LGA over the next 20 years. The LHS seeks to:

• Ensure suitable land supply;

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- Improve on housing affordability;
- Increase diversity of housing choice; and
- Facilitate livable communities.

Live Port Stephens identifies Fern Bay as a centre with convenient links to major employment areas.

The planning proposal is consistent with the following planning priorities from Live Port Stephens:

- Priority 1.1 Ensure adequate supply of new housing as it will contribute additional housing within an identified centre;
- Priority 2.1 Respond to housing stress as the release of additional residential land will promote downward pressure on housing affordability, and thereby assist in the easing of housing stress;
- Priority 2.2 Provide more affordable housing near jobs as it will provide housing in proximity to major employment areas including Newcastle, Williamtown and Tomago;
- Priority 2.2 Reduce the cost of new housing by enabling more economic, alternative planning approval pathways for future development within the site through existing legislation provisions (such as the Housing Code under the State Environmental Planning Policy (Exempt & Complying Development Codes) 2008);
- Priority 3.1 Facilitate new housing within existing urban areas as it will provide additional housing within the existing residential neighbourhood Seaside Estate; and
- Priority 3.2 Encourage a range of housing types and services as the proposed R2 Low Density Residential zone permits a broader range of residential accommodation types (such as dwelling houses, attached dwellings; dual occupancies, group homes, multi-dwelling housing, secondary dwellings, semi-detached dwellings and seniors housing) within the site when compared to the B1 Neighbourhood Centre zone.

The planning proposal is consistent with Live Port Stephens as it will provide additional housing supply in a suitable location with access to major employment areas.

#### Fern Bay and North Stockton Strategy

The Fern Bay and North Stockton Strategy (FBNSS) (**ATTACHMENT 7**) has been developed by Port Stephens Council and the City of Newcastle to guide future development and ensure sufficient infrastructure for the growing community. The subject site is located within Precinct 5 of the FBNSS and identified in **Figure 8**.

The most relevant principles from the FBNSS are:

 Housing – 1. Focus housing growth in locations that maximise infrastructure and services as the subject site is located in Seaside Estate

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which is an established urban area that is connected to all relevant urban services and infrastructure.

- Housing 2. Deliver greater housing supply and choice as the proposed zoning will enable greater diversity of residential land use forms than that permissible under the current B1 Neighbourhood Centre zone.
- Housing 3. Limit urban sprawl and impacts on the natural environment as the subject site is located within the footprint of an existing urban area of Fern Bay, and will thereby limit encroachment into greenfield sites.

The planning proposal will facilitate housing in a location within the existing urban footprint of the Seaside Estate that maximises existing infrastructure, limits urban sprawl and limits impacts on the natural environment.

The most relevant outcome from the FBNSS is:

 Precinct 5 – Undertake a detailed assessment of the 'Request to Amend the Port Stephens Local Environmental Plan' submitted for 2 Seaside Boulevard, Fern Bay

The above outcome relates to this planning proposal. This outcome has been achieved during the progression of this planning proposal.

The planning proposal is also consistent with:

- Environment Principle 2 Protect the coast and increase resilience to natural hazards as it is not within the coastal zone and is on Low Hazard Flood Fringe land that is considered suitable for residential development;
- Environment Principle 3 Protect important environmental assets and enhance biodiversity connections as it will not result in any further native vegetation removal;
- Open Space and Community Facilities Principle 1. Optimise access as the site is within a walkable distance and directly opposite a local park;
- Transport Principle 1. Prioritise pedestrians and cyclists as the site will have access to existing and planned foot paths and shared paths;
- Transport Principle 2. Support public transport ridership as the site will access an existing bus route (136) to Stockton (south) and Newcastle Airport (north); and
- Transport Principle 3. Maintain the integrity of Nelson Bay Road as a regional transport corridor as future development will not create any new access onto Nelson Bay Road.

The planning proposal is consistent with the FBNSS as it seeks to provide additional housing utilising existing infrastructure and will support any proposals to establish centres in other locations, including a town centre at the Stockton Residential Centre.

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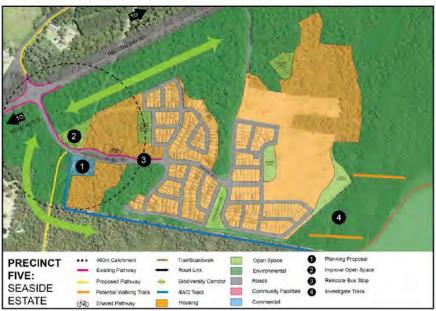


Figure 6 - Identification of the subject site within the Fern Bay and North Stockton Strategy (page 35).

### Q5. Is the planning proposal consistent with applicable State Environmental Planning Policies (SEPPs)?

An assessment of relevant State Environmental Planning Policies (SEPPs) against the planning proposal is provided in the table below.

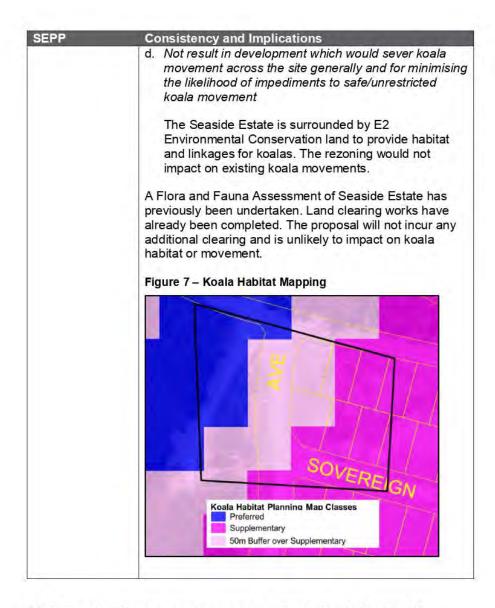
SEPP	Consistency and Implications
SEPP 55 – Remediation of Land	Clause 6 of the State Environmental Planning Policy 55 - Remediation of Land (SEPP 55) requires Councils to consider the likely contamination of land before it can be rezoned.
	In considering the potential for contamination of the land in June 2010, the Director General of the NSW Department of Planning determined that there was no evidence that the site proposed for the Seaside Estate was contaminated.
	Given the assessments previously carried out, the existing urban zone and nature of the land, it is considered that the site is not contaminated and no further assessment is required.

Table 1 – Relevant State Environmental Planning Policies

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SEPP	Consistency and Implications
SEPP Infrastructure 2007	The Infrastructure SEPP may apply to development on the subject site; however, it is considered that there is sufficient infrastructure capacity in the existing networks to support the proposal.
	All relevant infrastructure and services are available within the area and will be connected as part of the future development of the land. It is considered that there is sufficient infrastructure capacity in the existing road networks to support the proposal.
	The proposal is unlikely to have any adverse impacts on existing infrastructure.
SEPP (Koala Habitat Protection) 2021	This policy applies to the subject site as Port Stephens is a Local Government Area listed in Schedule 1 of the SEPP and is not located within RU1, RU2 or RU3 zoned land.
	The Port Stephens Comprehensive Koala Plan of Management (CKPoM) was prepared in accordance with Part 3 of the (now repealed) SEPP 44 – Koala Habitat Protection. Appendix 2 of the CKPoM sets out the performance criteria for planning proposals, which have been addressed below.
	a. Not result in development within areas of preferred koala habitat;
	The portion of the subject site identified for development does not contain preferred koala habitat ( <b>Figure 9</b> ).
	<ul> <li>Allow only for low impact development within areas o Supplementary Koala Habitat and Habitat Linking Areas;</li> </ul>
	The planning proposal will enable low impact residential development within the subject site as permitted with consent in the R2 Low Density Residential zone.
	<ul> <li>Minimise the removal of any individual preferred koal food trees, where ever they occur on the site;</li> </ul>
	The rezoning will not result in any additional clearing of koala food trees or other native vegetation.

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Q6. Is the planning proposal consistent with applicable Ministerial Directions?

An assessment of relevant Ministerial Directions against the planning proposal is provided in the table below.

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#### Table 2 - Relevant Ministerial Directions

Direction	Consistency and Implications	
1. Employment and Resources		
1.1 Business and Industrial Zones	This Direction applies because the proposal relates to land currently zoned B1 Neighbourhood Centre.	
Industrial Zones The objectives of this direction are to: • encourage employment growth in suitable locations; • protect employment land in business and industrial zones; and • support the viability of identified centres.		

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Ministerial Direction	Consistency and Implications
	As identified in <b>Section B</b> , the planning proposal is consistent with the HRP and the GNMP.
	The proposal is inconsistent with this direction but it is of minor significance as the subject site is unsuitable for commercial development. The recommendations of the Hill PDA Fern Bay and North Stockton Commercial Lands Strategy and FBNSS support increased commercial land in more suitable locations, including the redevelopment of the Stockton Residential Centre for a new town centre. The inconsistency of the planning proposal with this direction is considered to be of minor significance.
2. Environment and	l Heritage
2.1 Environmental Protection Zones	The subject site does not include any environmentally significant areas but is adjacent to E2 Environmental Conservation zoned land.
The objective of	A planning proposal must:
this direction is to protect and conserve environmentally sensitive areas.	Include provisions that facilitate the protection and conservation of environmentally sensitive areas.
	Flora and Fauna Assessment was undertaken as part of the project approval (MP 06_0250) for Seaside Estate. The proposal does not change or alter the findings or outcomes of the assessment or impact any existing conservation area or habitat.
	The planning proposal is consistent with this direction.
2.2 Coastal Management	The subject site is not mapped within the NSW Coastal Management Zone ( <b>Figure 10</b> ).

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Direction	Consistency and Implications
2.3 Heritage Conservation The objective of this direction is to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance.	<ul> <li>The site does not contain any listed items of heritage significance listed in the LEP.</li> <li>The site is not identified as an area of potential archaeological value. Nonetheless, condition D18 of the existing approval requires sub-surface monitoring of all future works for non-Aboriginal objects.</li> <li>A search of the AHIMS database (ATTACHMENT 8) of the subject site has been undertaken and several items of Aboriginal heritage were identified as being recorded near the subject site. As part of the project approval relating to MP 06_0250, an Aboriginal Heritage Assessment was undertaken. The subdivision layout for Seaside Estate was amended to incorporate the findings of this assessment.</li> <li>A Cultural Heritage Management Plan was prepared in consultation with the Worimi Aboriginal Land Council and applies to the site.</li> <li>Rezoning the site from B1 to R2 is unlikely to impact on heritage items as the approved lot layout will not change. Future development of the site will adhere to the provisions within the Cultural Heritage Management Plan.</li> <li>The planning proposal is consistent with this direction.</li> </ul>

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Ministerial Direction	Consistency and Implications
2.6 Remediation of Contaminated Land	The subject site is not located within an investigation area nor is the site considered a 'significantly contaminated area as defined by the Contaminated Lands Management Act 1997.
The objective of this direction is to reduce the risk of harm to human health and the environment by	In considering the potential for contamination of the land in June 2010, the Director General of the NSW Department of Planning determined that there was no evidence that the site proposed for the Seaside Estate was contaminated.
ensuring that contamination and remediation are considered by planning proposal authorities.	Given the assessments previously carried out, the existing urban zone and nature of the land, it is considered that the site is not contaminated and no further assessment is required.
additionaes.	The planning proposal is consistent with this direction.
3. Housing, Infrastr	ucture and Urban Development
3.1 Residential Zones	This Direction applies because the planning proposal seeks to create an R2 Low Density Residential zone.
The objectives of this direction are to:	A planning proposal must include provisions that encourage the provision of housing that will:
<ul> <li>encourage a variety and choice of</li> </ul>	(a) broaden the choice of building types and locations available in the housing market
housing types to provide for existing and	The planning proposal will increase the number of houses available in the housing market.
future housing needs, • make efficient	(b) make more efficient use of existing infrastructure and services
use of existing infrastructure and services	The planning proposal will provide housing where existing infrastructure is provided.
and ensure that new housing has appropriate	(c) reduce the consumption of land for housing and associated urban development on the urban fringe
access to infrastructure and services,	The subject site is located within an existing residential neighbourhood on land zoned for urban development.
<ul> <li>minimise the</li> </ul>	(d) be of good design.
impact of residential	Future development of the site will be subject to the DCP.

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Ministerial Direction	Consistency and Implications
development on the environment and resource lands.	<ul> <li>A planning proposal must, in relation to land to which this direction applies:</li> <li>(a) contain a requirement that residential development is no permitted until land is adequately serviced (or arrangements satisfactory to the council, or other appropriate authority, have been made to service it)</li> <li>The land is already adequately serviced as a result of the existing approval for Seaside Estate (MP 06_0250).</li> <li>(b) not contain provisions which will reduce the permissible residential density of land.</li> <li>The planning proposal is seeking to introduce a residential zone, the permissible residential density of land will increase as a result of this proposal.</li> <li>It is considered that the proposal is consistent with the objectives of this direction as the subject site is located within an existing residential neighbourhood on land that can make more efficient use of existing infrastructure and services.</li> <li>The planning proposal is consistent with this direction.</li> </ul>
3.4 Integrating Land Use and Transport The objective of this direction is to ensure that urban structures, building forms, land use locations, development designs, subdivision and street layouts achieve the sustainable transport objectives	This direction applies because the planning proposal will create a residential zone. The planning proposal is consistent with the aims, objectives and principles of <i>Improving Transport choice – Guidelines for planning and development (DUAP 2001)</i> and <i>The Right Place for Business and Services – Planning Policy (DUAP 2001)</i> as detailed below. A planning proposal must locate zones for urban purposes and include provisions that give effect to and are consistent with the aims, objectives and principles of: Improving Transport Choice The planning proposal is consistent with the following development principles of <i>Improving Transport Choice</i> : <i>1. Concentrate in centres –</i> The subject site is located withir an existing centre. The site is approximately 300m from the nearest bus stop.

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Ministerial Direction	Consistency and Implications
	<ol> <li>Mix uses in centres – The site has limited accessibility with only left in/left out available to the site. This limitation is more appropriate for residential development than commercial development as provided in the Hill PDA Study.</li> </ol>
	3. Align centres within corridors – The site is located 300m from Nelson Bay Road, a major transport corridor.
	4. Link public transport with land use strategies – The planning proposal is consistent with the FBNSS which has considered and established goals for public transport in Fern Bay.
	5. Connect streets – There is 1 bus stop on Seaside Boulevard and 2 on Nelson Bay Road within walking distance of the site.
	6. Improve pedestrian access – The subdivision allows for walking connectivity and footpaths have already been constructed.
	7. <i>Improve cycle access</i> – The subject site is located within cycling distance of several existing residential neighbourhoods.
	8. Manage parking supply – Parking will be addressed at the development application stage and dwellings will require consistency with the DCP.
	9. Improve road management – The roads have already been constructed and provide sufficient capacity to cater for the proposal.
	10. Implement good design – The existing subdivision of the site considered the needs of pedestrians, cyclists and public transport users.
	The Right Place for Businesses and Services
	The planning proposal is consistent with the following strategies from <i>The Right Place for Businesses and Services</i>
	1. The right location – The site is currently isolated commercial land. As it is unsuitable for commercial development the planning proposal seeks to rezone the land for residential purposes.

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Ministerial Direction	Consistency and Implications
	<ol> <li>The right centre – The subject site is inconsistent with the right centre, making it better suited to residential development rather than commercial.</li> </ol>
	The planning proposal is consistent with this direction.
3.5 Development Near Regulated Airports and Defence Airfields	This direction applies because the site is mapped within the RAAF Base Obstacle Limitations or Operations Surface Map and Height Trigger Map ( <b>Figure 11</b> ).
The objectives of this direction are to: ensure the	The site is mapped within the range requiring structures higher than 45m to be referred to the Commonwealth Department of Defence.
effective and safe operation of regulated airports and defence	In the preparation of a planning proposal that sets controls for the development of land near a defence airfield, the relevant planning authority must:
airfields; ensure that their operation is not compromised by development that constitutes an obstruction, hazard or potential hazard to aircraft flying in	<ul> <li>(a) consult with the Department of Defence if:</li> <li>(i) the planning proposal seeks to exceed the height provisions contained in the Defence Regulations 2016 – Defence Aviation Areas for that airfield; of</li> <li>(ii) no height provisions exist in the Defence Regulations 2016 – Defence Aviation Areas for the airfield and the proposal is within 15km of the airfield.</li> </ul>
the vicinity; and ensure development, if	The planning proposal seeks to amend the building height limit from 8m to 9m and will not exceed height provisions.
sensitive land, ncorporates appropriate	(b) for land affected by the operational airspace, prepare appropriate development standards, such as height controls.
mitigation measures so that the development is not adversely affected by aircraft noise.	The subject land is affected by the RAAF Base Weapons Range Height Trigger restricting structures over 45m ( <b>Figure 11</b> ). The planning proposal seeks to amend the building height limit from 8m to 9m.
	(c) not allow development types that are incompatible with the current and future operation of that airfield.
	The subject site is located 7km from Newcastle Airport and RAAF Base Williamtown. Residential housing at this
	location would support the current and future use of the airfields by providing additional housing opportunity for employees and service people of the base

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Ministerial Direction	Consistency and Implications
Direction	Consultation was undertaken with the Department of Defence with no objections raised.
	Figure 9 – RAAF Base Williamtown and Salt Ash Air Weapons Range Height Trigger Map
	Legend         Cadastral boundaries         Runway centre-line         Refer all structures         Refer structures higher than 7.5m         Refer structures higher than 15m         Refer structures higher than 45m         Defence boundaries
4. Hazard and Risk	The planning proposal is consistent with this direction.
4. Hazaro and Risk 4.1 Acid Sulfate	This direction applies because the site is mapped as
Soils	containing Class 4 acid sulfate soils (Figure 12).
The objective of this direction is to avoid significant adverse environmental impacts from the use of land that has a probability of containing acid sulfate soils.	As the rezoning will not increase the permissible density for development, this direction can be addressed during the development application stage. The provisions of Clause 7.1 <i>Acid sulfate soils</i> of the LEP will apply to any future development and suitable to manage this issue.

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Ministerial Direction	Consistency and Implications
	Figure 10 - Acid sulfate soil mapping
	Acid Sulfate Soils Planning Categories (1) Any Works (2) Works Below the Ground Surface (3) Works Beyond 1m Below the Natural Ground Surface (4) Works Beyond 2m Below the Natural Ground Surface (5) Works Within 500m of Adjacent Class
4.3 Flood Prone Land	The planning proposal is consistent with this direction. This direction applies because parts of the subject site are identified as low hazard flood fringe within the flood
	planning area (Figure 13).
The objectives of this direction are to ensure that development of flood prone land is consistent with the NSW Government's Flood Policy and	The planning proposal is seeking to rezone commercial land to residential. The proposal will not impact on potential flood behaviour on or off site as the subdivision, clearing, road and drainage works have already been completed at the subject site. As the lot layout is not proposed to be amended following a rezoning, there will be no increase in development.
the principles of the Floodplain Development	The flood risk for the subject site is the same or lower than the surrounding existing residential zoned land.
Manual 2005 and to ensure that the provisions of an LEP on flood prone land is commensurate with	The LEP contains existing provisions that give effect to and are consistent with the NSW Flood Prone Land Policy.
flood hazard and includes consideration of the	

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Ministerial Direction	Consistency and Implications
potential flood	Figure 11 - Port Stephens flood hazard mapping
impacts both on and off the subject land.	Port Stephens Flood Hazard Mapping         Flood Prone Land         High Hazard Flood Fringe area         Low Hazard Flood Fringe area         Low Hazard Flood Storage area         High Hazar
4.4 Planning for Bushfire Protection The objectives of	This direction applies because the subject site is identified as bushfire prone land ( <b>Figure 14</b> ). A planning proposal must:
this direction are to: protect life, property and the environment from bush fire hazards, by discouraging the	(a) have regard to Planning for Bushfire Protection 2019 (b) introduce controls that avoid placing inappropriate developments in hazardous areas (c) ensure that bushfire hazard reduction is not prohibited within the APZ
establishment of incompatible land uses in bush fire prone areas; and to encourage sound management of	The planning proposal is consistent with this direction as the adjoining land has the equivalent risk and is zoned for residential purposes. Additionally, the objectives of this direction can be achieved at the development application stage through a Bushfire Assessment Report.
bush fire prone areas.	Formal consultation with NSW Rural Fire Service was undertaken with no objections raised.

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Figure 12 - Bushfire prone land mapping
and the second se
Bushfire Prone Land Categories         (1) Vegetation Category One         (2) Vegetation Category Two         (3) Buffer
This direction applies as the subject site is located within the boundaries of the Hunter regional Plan (HRP) As identified in <b>Section B</b> , the planning proposal is consistent with the HRP as it will provide additional housing within an existing residential neighbourhood, in close proximity to employment opportunities, without increasing demand for infrastructure and services.

Section C - Environmental, social and economic impact

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Q7. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

A Flora and Fauna Assessment was undertaken for the Seaside Estate development. The existing approval for clearing, earthworks, roadwork, stormwater, and servicing provisions for sewer, water supply, power and communications were based on this assessment.

As clearing required for future development has been completed (**Figure 13**), there are no critical habitats or threatened species, populations or ecological communities, or their habitats that will be adversely affected as a result of the proposal.



Figure 13 – Extent of clearing and construction works

Q8. Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

As clearing required for future development has been completed, there are no further impacts anticipated as a result of this planning proposal. The subject land is identified in the flood planning area, but the planning proposal is unlikely to have adverse flood impacts on or off the subject land.

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### **Q9.** Has the planning proposal adequately addressed any social and economic effects?

The proposal will result in the following positive social and economic effects:

- Employment opportunities in the Port Stephens LGA and Hunter Region through construction jobs to carry out building works;
- Increased provision of housing within an existing residential neighbourhood; and
- An increased population to support a future neighbourhood centre in Fullerton Cove (subject to a separate planning proposal).

Removing business zoned land in Fern Bay may have a negative social and economic impact on the local community where an undersupply of retail floor area has been identified. The subject site was not identified as a viable option for this retail space in the Hill PDA Study (**ATTACHMENT 7**). Stockton Residential Centre was identified as the most viable spot for a town centre, and is currently at master planning stage. In addition, there were 4 other sites identified in the Hill PDA Study as more suitable for retail purposes, including for a local neighbourhood supermarket.

#### Section D - State and Commonwealth interests

#### Q10. Is there adequate public infrastructure for the planning proposal?

The subject site has been cleared with roads and drainage constructed (**Figure 13**). The site can be connected to all infrastructure services due to its location within Seaside Estate, Fern Bay.

### Q11. What are the views of State and Commonwealth public authorities consulted in accordance with the Gateway determination?

During the assessment and determination of the Seaside Estate Subdivision (MP 06\_0250) consultation with the Department of Defence, the Rural Fire Service, Department of Water and Energy, Primary Industries and NSW National Parks and Wildlife Services was undertaken.

Consultation has been undertaken with the following public authorities:

- NSW Rural Fire Service
- Department of Defence

The NSW Rural Fire Service and the Department of Defence made no objections to the planning proposal. The submission from Department of Defence requests that a condition for the management of organic waste be included in any development approval. Chapter B6 of the Port Stephens Development Control Plan 2014 was developed in accordance with Department

### ITEM 2 - ATTACHMENT 2 PLANNING PROPOSAL FOR 4 SEASIDE BOULEVARD, FERN BAY.

of Defence to appropriately manage the storage of organic waste which addresses this request. NSW Rural Fire Service set out that future development should comply with the specifications and requirements of Planning for Bush Fire Protection Guidelines. Planning for Bush Fire Protection guidelines are a consideration at development application stage and will satisfy this request.

#### PART 4 – Mapping

ATTACHMENT 1 - Current Zoning Plan LZN\_004A

**ATTACHMENT 2** – Proposed Zoning Map – Map Amendment to Land Zoning Map – Sheet LZN\_004A from B1 Neighbourhood Centre to R2 Low Density Residential Zone

ATTACHMENT 3 – Current Lot Size Map LSZ\_004A

ATTACHMENT 4 – Proposed Lot Size Plan – Map amendment to Lot Size Map – Sheet LSZ\_004A from no specified minimum to 500 square metres

ATTACHMENT 5 – Current Height of Building Map Sheet HOB\_004A

**ATTACHMENT 6** – Proposed Height of Buildings Map – Map amendment to Height of Buildings Map – Sheet HOB\_004A from I 8 metres to J 9 metres

#### PART 5 – Community consultation

External consultation has been undertaken during the preparation of the draft Fern Bay and North Stockton Strategy. Submissions received during the exhibition period indicate a desire for a neighbourhood centre and supermarket to be located within the area, including a petition in support of the Fullerton Cove Proposal.

In accordance with the Gateway determination, the planning proposal was placed on public exhibition for 14 days from 19 August 2021 to 2 September 2021.

Adjoining landowners were notified of the planning proposal and public notice was placed in the Port Stephens Examiner. A copy of the planning proposal was made available on Council's website.

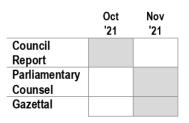
During the exhibition period, no submissions were received from the community. No changes were made to the planning proposal as a result of community consultation.

PART 6 – Project timeline

## ITEM 2 - ATTACHMENT 2 PLANNING PROPOSAL FOR 4 SEASIDE BOULEVARD, FERN BAY.

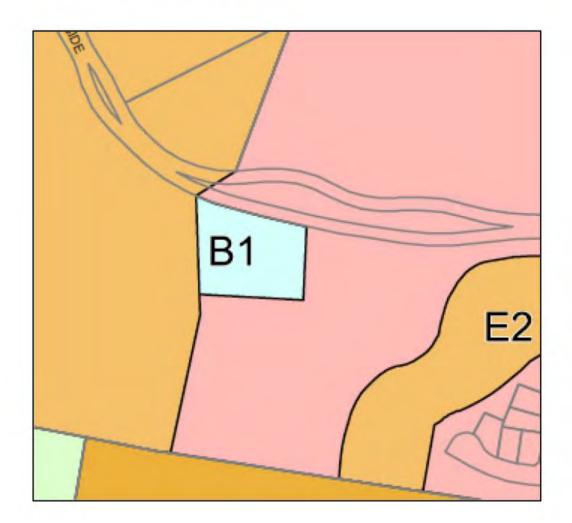
All consultation has been completed, the planning proposal will now be reported to Council.

The following timetable is proposed to make the plan:



ITEM 2 - ATTACHMENT 2 PLANNING PROPOSAL FOR 4 SEASIDE BOULEVARD, FERN BAY.

ATTACHMENT 1 – Current Zoning Plan



ITEM 2 - ATTACHMENT 2 PLANNING PROPOSAL FOR 4 SEASIDE BOULEVARD, FERN BAY.





ITEM 2 - ATTACHMENT 2 PLANNING PROPOSAL FOR 4 SEASIDE BOULEVARD, FERN BAY.



ATTACHMENT 3 - Current Lot Size Map

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ATTACHMENT 4 – Proposed Lot Size Map

ITEM 2 - ATTACHMENT 2 PLANNING PROPOSAL FOR 4 SEASIDE BOULEVARD, FERN BAY.



ATTACHMENT 5 – Current Height of Building Map

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ATTACHMENT 6 – Proposed Height of Building Map

ITEM 2 - ATTACHMENT 2 PLANNING PROPOSAL FOR 4 SEASIDE BOULEVARD, FERN BAY.

ATTACHMENT 7 – Fern Bay and North Stockton Commercial Lands Study

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ITEM 2 - ATTACHMENT 2 **BOULEVARD, FERN BAY.** 





PLANNING PROPOSAL FOR 4 SEASIDE

# Commercial lands study:

Fern Bay and North Stockton

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### FERN BAY & NORTH STOCKTON Commercial Lands Study



Prepared for Newcastle City & Port Stephens Councils

December 2017

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### Hillpda

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Quality Control

This document is for discussion purposes only unless signed and dated by a Principal of HillPDA.

Reviewer	
	22 December 2017
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## ITEM 2 - ATTACHMENT 2 PLANNING PROPOSAL FOR 4 SEASIDE BOULEVARD, FERN BAY.



## EXECUTIVE SUMMARY

The Fern Bay and Stockton Commercial Lands Study (the Study) was prepared by HillPDA for Port Stephens and Newcastle Councils (Councils). This study summarises the findings from the retail demand analysis and the impacts of a new centre on the surrounding retail hierarchy. An assessment of preferred locations to accommodate a new centre is also undertaken as part of this Study. The findings will help to inform the development of a land use strategy for Fern Bay and North Stockton.

#### Study Area

The Study Area comprises the three suburbs of Fern Bay, Stockton and Fullerton Cove which are generally situated to the north and east of the Hunter River. Fern Bay and Fullerton Cove form part of Port Stephens Local Government Area (LGA), while Stockton is situated in the Newcastle LGA.

#### **Contextual Review**

Regional plans and strategies suggest that strong population growth is expected to occur, particularly within the Port Stephens LGA. Moreover, the strategies promote increasing dwelling and employment opportunities. This growth will stimulate the economy and generate further demand for retail services within the area.

A new retail centre within the Study Area will increase employment and contribute to meeting these employment targets, whilst providing a convenient destination retail centre for the regular shopping needs of local residents. This is aligned with Council's vision for the area and is largely consistent with both the Port Stephens and Hunter Regional Strategy's directions.

#### **Existing Retail Supply**

Stockton Town Centre which extends some 350m along Mitchell Street provides the largest retail offer within the locality. Stockton provides around 6,500sqm of shopfront floorspace (Net Leaseable Area) (NLA) of which 3,500sqm is occupied by retailers.

The IGA provides a mini-major anchoring role at the northern end of the centre, with the Hardware store anchoring the southern end. The centre provides a further 2,250sqm of retail specialty floorspace which is largely convenience based (i.e. chemist, butcher, personal services, etc). Non-retail commercial floorspace represents 34% (2,200sqm) of the total shopfront floorspace, which is high relative to other similar sized centres. An above-representation of non-retail occupiers in town centres reflects lower rents and hence lower retail trading levels.

Of this shop front space around 668sqm is currently vacant, which equates to 10% of total shopfront space. Although a small provision of vacant floorspace of up to 5% is considered healthy for a town centre as it allows new retailers to locate to the area or existing stores to relocate or up/down size within the same locality, Stockton Town Centre's vacancy rate of 10% is considered high and suggests the centre is underperforming.

In addition to Stockton Town Centre a small provision of retail is provided along the Stockton beachfront and Fern Bay along Nelson Bay Road.

#### **Retail Demand Assessment**

As of 2017 the Study Area contained a population of around 7,450 residents. HillPDA has considered three population growth scenarios for the retail demand assessment as follows:

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Low Growth Scenario: This scenario assumes a more conservative growth rate of 1.3% per annum which is generally in line the broader LGA growth rate as sourced from the Department of Planning. This scenario assumes many of the Planning Proposals within the locality that have been lodged with Council do not proceed. On this basis the population is projected to increase by 1,470 persons to 8,920 persons by 2031.

**Medium Growth Scenario:** This scenario adopts a higher growth rate of 2.5% per annum which is generally in line with Port Stephens Planning Strategy. This scenario assumes all of the Planning Proposals<sup>1</sup> within the locality that are currently lodged with Council are realised. The population is projected to increase by 3,070 persons to 10,520 persons by 2031.

**High Growth Scenario:** This scenario adopts a substantial higher growth rate of 3.6% per annum. This scenario assumes all of the Planning Proposals within the locality are realised and allows for a further 1,000 dwellings on the Stockton Residential Centre site. The population is projected to increase by 4,770 persons to 12,220 persons by 2031.

Based on existing population and expenditure levels, the Study Area could support around 6,285sqm of retail floorspace as of 2017, increasing to almost 7,850sqm in 2031 under the low growth scenario, 9,250sqm under the medium growth scenario and 10,750sqm under the high growth scenario due to population and expenditure growth. With approximately 4,000sqm of retail floorspace provided in the Study Area there is currently an undersupply of retail floorspace of almost 2,300sqm, with this expected to increase to 3,845qm by 2031 under low growth scenario, 5,253sqm under the medium growth scenario and 6,748sqm under the high growth scenario.

Based on the above assertion there are several opportunities to meet the retail needs of the local residents. These are:

- Development of a new Local Centre of 4,000 6,500sqm within the Study Area. Potential trading levels, retail mix and sites for a new centre are explored in more detail in Chapters 5 and 6;
- The attraction of a large format full-line supermarket of around 2,800-3,200sqm would retain a large proportion of expenditure that is currently escaping the study area;
- Tourism the centre could leverage its natural surroundings to increase tourism. This would likely
  increase retail expenditure captured within the centre; and
- Increase the resident population within the Study Area. Strong population growth would generate more expenditure and would in turn increase the demand for, and viability of, retail services. There may be potential for mixed use development, however the market's preference for medium to high density living may not be strong enough and the feasibility of such development would need to be assessed.

#### **Review of Sites**

Based on discussions with Council five sites were identified for investigation as potential sites for a new retail centre. These being:

- 42 Fullerton Cove Road, Fullerton Cove
- 69 Fullerton Cove Road, Fullerton Cove
- 2 Seaside Boulevard, Fern Bay

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<sup>&</sup>lt;sup>1</sup> Planning proposal include the Fort Wallace Masterplan (~100 dwellings); The Cove (a further 140 dwellings); The Former Rifle Range Site. (200 dwellings), Newcastle Golf Course Masterplan (~120 dwellings); Seaside Estate (~310 dwellings); and 50 dwellings from smaller scale developments. In the medium growth scenario we have also allowed for an additional 300 dwellings in the locality. Source: Cordell, consultation with estate managers, Google Earth.

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- Former Rifle Range, Popplewell Rd, Fern Bay
- Newcastle Golf Club, Vardon Rd, Fern Bay
- Stockton Residential Centre, Stockton.

Based on a preliminary assessment of the sites, the existing Stockton Residential Centre was found to be the preferred location for a new local retail centre due to its central and high profile location with minimal environmental constraints. The main issue associated with this site relates to heritage considerations and any redevelopment would need to work with this.

#### **Impact Analysis**

An assessment of the impacts of a new retail centre at the Stockton Residential Centre site on existing retail network found that the only centre likely to experience a moderately strong or significant impact is Stockton with around 14% to 15% loss in trade. All other centres will experience impacts that are considered insignificant or low – that is less than 5% loss in trade.

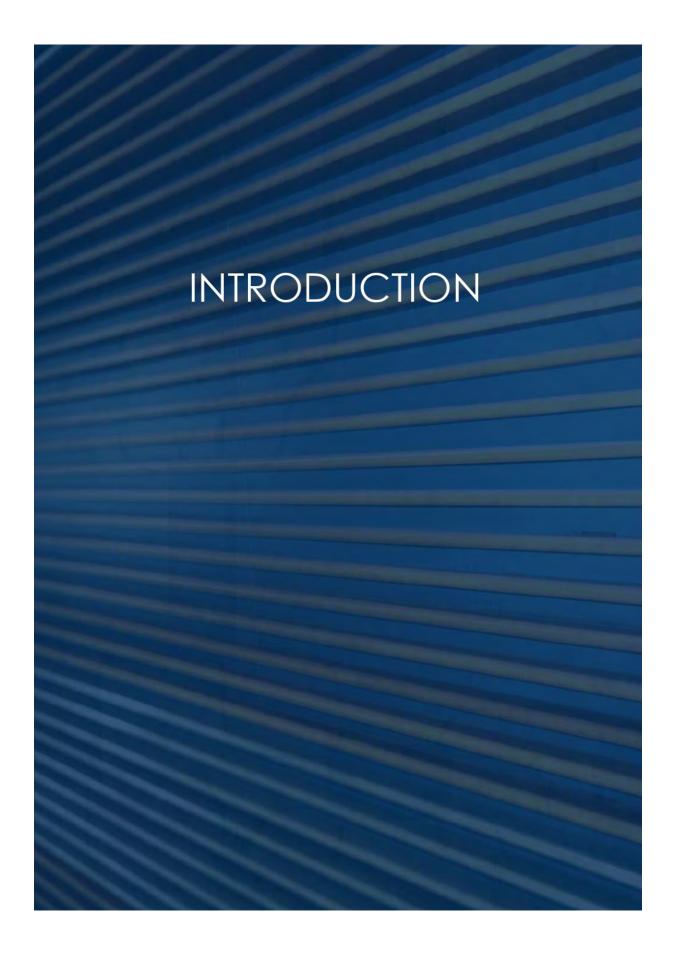
Over time these impacts will lessen as a result of population and expenditure growth in the locality with all the surrounding centres including Stockton expected to enjoy some growth over the period to 2026. This would suggest the Study Area could support a new centre of some 5,000sqm with minimal impact on the surrounding retail network.

A new retail centre will meet the needs of the local (and future) residents in the area which are currently underserviced and having to travel outside of Stockton and Fern Bay for higher order retail services.

Furthermore, an improved range of shops and services should help to reduce the number of journeys made by local residents to surrounding centres. This supports a reduction in vehicle emissions and improves transport safety. Fewer and/or shorter journeys via cars also contributes to reducing the cost of living (through reduced petrol and car maintenance costs), allowing resident's disposable income to be directed to other goods and services.

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## ITEM 2 - ATTACHMENT 2 PLANNING PROPOSAL FOR 4 SEASIDE BOULEVARD, FERN BAY.



## 1.0 INTRODUCTION

The Fern Bay and Stockton Commercial Lands Study (the Study) was prepared by HillPDA for Port Stephens and Newcastle Councils (Councils). The findings of this Study will help to inform the development of a land use strategy for Fern Bay and North Stockton.

The purpose of this study is to address some key developments and trends that have occurred in the locality in recent times:

- Significant population growth: Fern Bay has experienced significant growth over the last 10 years, with most of this growth being approved under Part 3A (repealed) of the Environmental Planning and Assessment Act 1997 and State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004. The resulting rapid residential growth has outpaced development or planning of services required to cater for the growing resident population.
- Community feedback: Residents within the locality have expressed a desire for the development of a commercial centre within Fern Bay. This centre would provide local services and daily shopping/grocery needs for the local community. Fern Bay currently contains appropriately land zoned, for the development of a neighbourhood centre, however it is understood that Port Stephens Council has received a planning proposal seeking its rezoning. This rezoning would allow the development of residential uses with no supportive retail space. As such, a new appropriate location is required to be identified that will cater for the daily needs of residents within Fern Bay and North Stockton.
- Influx of planning proposals: Port Stephens Council has recently received a number of planning proposals seeking to rezone land within the Fern Bay locality. These proposals would further increase the resident population, placing greater importance on identifying an appropriate location for a new retail centre to serve these future residents as well as determining an appropriate size and retail mix for this centre. Given the close proximity of Stockton Town Centre any recommendations would need to complement this existing centre and not detract away from it economic viability or status within the local hierarchy.

Specifically, the objectives of the Study are to:

- Forecast the scale and type of retail needed to support the current and future population of Fern Bay and Stockton.
- Identify an appropriate location for this retail centre and any appropriate controls that would support/encourage the desired development outcome.
- 3 Assess the impacts on the retail hierarchy.

#### 1.1 The Study Area and Stockton Town Centre

The Study Area comprises the suburbs of Fern Bay, Stockton and Fullerton Cove (Figure 1). The Study Area is north of Hunter River and to the east of the north arm of the Hunter River at the entrance to Fullerton Cove. The Study Area falls within two local government areas, with both Fern Bay and Fullerton Cove forming part of Port Stephens Local Government Area (LGA) and Stockton within the Newcastle LGA.

Part of the Study focuses on Stockton Town Centre (located within the southern end of the Study Area) which extends approximately 350m along Mitchell Street and includes a 900sqm IGA supermarket coupled with strip retailing. The retail offer is discussed in more detail in chapter 3.

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#### 1.2 Study Structure and Approach

To address the requirements of the brief, the Study has been set out as follows:

Chapter 2 | Contextual review: provides an assessment of previous studies and existing government strategies that are of relevance to the Study.

**Chapter 3 | Retail supply analysis:** reviews Stockton and Fern Bay's existing retail provision. As part of this review, the community's feedback on the local retail offer is also considered. A SWAT analysis of the main retail offer in the locality (i.e. Stockton Town Centre) is also undertaken to better understand the constraints, opportunities and threats relating to the current retail offer.

**Chapter 4 | Retail demand analysis**: reviews the current and future demand for retail floorspace within the Study Area making allowances for the existing supply of retail floorspace within the Study Area.

**Chapter 5 | Preferred site location:** provides a preliminary assessment of the suitability of potential sites within the Study Area to accommodate a new retail development.

Chapter 6 | Impact Analysis: This section assesses the impacts of a new retail centre within the Study Area on the existing retail network.

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# CONTEXTUAL REVIEW

**PLANNING PROPOSAL FOR 4 SEASIDE** 

## ITEM 2 - ATTACHMENT 2 PLANNING PROPOSAL FOR 4 SEASIDE BOULEVARD, FERN BAY.



## 2.0 CONTEXTUAL REVIEW

This Chapter reviews key regional planning polices and strategies with a specific focus on commercial and retail objectives relevant to the study area.

#### 2.1 Hunter Regional Plan 2036 (2016)

The Hunter Regional Plan 2036 is a 20-year blueprint for the future of the Hunter which includes the closely connected urban areas of Cessnock, Lake Macquarie, Maitland, Newcastle and Port Stephens LGAs.

The Plan seeks to achieve the following overarching outcomes for the Hunter region:

- A leading regional economy in Australia;
- A biodiversity-rich natural environment;
- Thriving communities; and
- Greater housing choice and jobs.

By 2036, the population of the Hunter is forecast to grow to 862,250 residents, an increase of almost 130,000 residents from 2016, with 14% (18,550 persons) of this growth anticipated to occur in Port Stephens.

Although both Fern Bay and Stockton have not been identified as strategic centres within the Plan, the following directions are of relevance to this Study:

Direction 23: Grow centres and renewal corridors: Although the Plan identifies regionally significant centres known as strategic centres it also acknowledges these centres and other smaller local centres operate as part of a network with each centre providing a different service, role and/ or function in the region. Fern Bay was identified as a centre of local significance and earmarked as an area to deliver future housing and urban renewal opportunities.

Direction 6: Grow the economy of MidCoast and Port Stephens: The plan promotes the provision of regionally significant retail, and supports growth and diversification of other employment and economic activities within the area.

**Direction 1:** Connect strategic centres in Greater Newcastle: The Regional Plan sets a target of 95 per cent of people to be living within 30 minutes of a strategic centre by 2036, thus Fern Bay and Stockton will be prime locations for further housing development which will in turn generate demand for further shops, dining, entertainment and services in the immediate area.

#### 2.2 Newcastle Employment Lands Strategy (2013)

The Newcastle Employment Lands Strategy was prepared by HillPDA in 2013 to inform the draft Local Planning Strategy. The Strategy draws together existing research and data with revised population forecasts and trend analysis to better understand the demand for a range of employment generating uses across the city comparative to supply. The strategy also seeks to promote economic growth to meet the needs of a growing population.

The Strategy promotes reinforcing the Commercial Centres Hierarchy (with Stockton identified as a Local Centre Minor), discouraging out-of-centre development as it has significant impacts on the structure and dynamics of centres. The Strategy recommends that any out-of-centre development or expansion of a commercial zone must be supported by an Economic Impact Assessment and Sequential Impact Assessment with the analysis clearly demonstrating that there are no suitable sites within existing centres or at the edge of

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existing centres and it will need to be demonstrated that there is a net community benefit in establishing a new commercial/retail site.

Notwithstanding the strategic direction above, the Strategy acknowledges new neighbourhood centres should be considered where located within 400m of underserviced residential areas including within new urban release area of North Stockton.

#### 2.3 Newcastle Planning Strategy (2015)

The Local Planning Strategy is a comprehensive land use strategy which helps to inform future growth and development of Newcastle. The Strategy implements the land use directions from the Newcastle 2030 Community Strategic Plan. The Strategy also reflects the outcomes of the Council's other strategies as they relate to land use.

The Planning Strategy acknowledges the need for a new neighbourhood centre for the new urban release area North Stockton which is currently underserviced. The Strategy describes Stockton as having a small commercial strip along Mitchell Street which supplies smaller scale retail, business, entertainment and community uses for people who live, work and visit the area, however residents are having to travel outside the suburb for higher order services.

Further a key objective for Stockton as defined in the Strategy is to encourage development that is sympathetic to the existing character of Stockton and facilitate redevelopment of the commercial centre that both improves local services and attracts visitors.

Direction 3.2.5 of the Strategy provides the recommended development controls across the centre hierarchy. These recommendations help to reinforce the retail hierarchy and are summarised in the extract below:

Table 1: Relationship between Local Planning Strategy centres hierarchy and LEP land use zones.

LPS Hierarchy	LEP Zone	Floor Space Ratios (FSR)	Heights of Building
Neighbourhood Centre	B1 Neighbourhood Centre	Low (Typically 1.5:1)	Low (Typically 11m)
Local Centre (Minor)	B2 Local Centre	Low- Moderate (Typically 1.5:1)	Low- Moderate (Typically 11m)
Local Centre (Major)	B2 Local Centre	Moderate- High (Typically 2:1 unless place based controls established)	Moderate- High (Typically 14m unless place based controls established)
Commercial Core	B3 Commercial Core	High (Place based controls)	High (Place based controls)

Source: Newcastle Planning Strategy 2015

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#### 2.4 Port Stephens Planning Strategy (2011)

The Port Stephens Planning Strategy was adopted by Council on 20 December 2011. It incorporates the findings of the Port Stephens Commercial and Industrial Land Study (CILS), the Port Stephens Rural Lands Study and Port Stephens Rural Strategy.

The Strategy promotes Raymond Terrace as a regional centre, with Fern Bay remaining as a Smaller Village Centre (i.e. a strip or cluster of shops in a mostly residential area with a smaller range of products or services and a smaller catchment than a village centre).

The Strategy assumes significant new residential development will occur at Seaside Fern Bay with population projections indicating population will increase from 1,906 people in 2009 to 5,211 people in 2031. The Strategy recognises this will increase demand for more retail in the area. At the time of the Strategy a small area of commercially zoned land was proposed within the new Seaside estate via a clause in LEP 2000 with the final location of site has not yet determined by the developer. The Strategy acknowledged the amount of commercial land may need to be increased to accommodate increased demand and identifies the site with the existing general store and the adjacent site on the corner of Vardon Road (which contains a house) as site for investigation for commercial zoning.

In terms of opportunities and demand arising for additional commercial/retail activity the Strategy maintains the location will need to support the existing identified commercial areas as per the established Commercial Hierarchy.

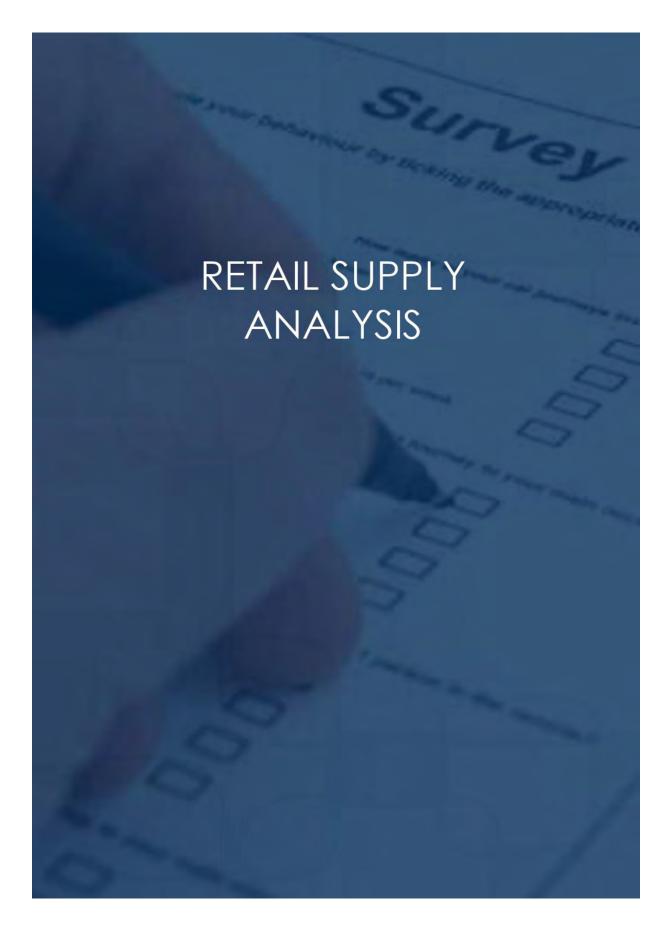
#### 2.5 Summary

The aforementioned regional plans and strategies suggest that Port Stephens in particular is expected to experience strong population growth. The strategies promote increasing dwelling and employment opportunities. This growth will generate demand for retail services. A new retail centre within the Study Area will increase employment and provide convenience retail for the day to day needs of surrounding residents, which is aligned with Council's vision for the area and largely consistent with the directions outlined in the Port Stephens and Hunter Regional Strategies.

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## 3.0 RETAIL SUPPLY ANALYSIS

This chapter reviews Stockton and Fern Bay's existing retail provision. As part of this review, the community's feedback on the local retail offer is also considered. A SWAT analysis of the main retail offer in the locality (i.e. Stockton Town Centre) is also undertaken to better understand the constraints, opportunities and threats with the existing retail offer. A more detailed assessment of the land zoned for a neighbourhood centre at 2 Seaside Boulevard in Fern Bay is provided in Chapter 5.

#### 3.1 Existing Retail Supply

#### 3.1.1 Stockton Town Centre

Stockton Town Centre which extends some 350m along Mitchell Street provides the largest retail offer within the locality. A recent land use survey of Stockton Town Centre<sup>2</sup> revealed that the centre provides 13,250sqm of Net Leasable Area (NLA). Of this total, approximately 6,400sqm was attributed to ground floor shopfront floorspace space<sup>3</sup>.

The IGA supermarket provides a mini major anchoring role at the northern end of the centre, with the Hardware store anchoring the centre to the south. The centre provides a further 2,261sqm of retail specialty floorspace which is largely convenience based (i.e. chemist, butcher, and personal services). Non-retail commercial floorspace represents 34% (2,200sqm) of the total shopfront floorspace, which is high relative to other similar sized centres. An above-representation of non-retail occupiers in town centres reflects lower rents and hence lower retail trading levels.

Almost 670sqm of the total shop front floorspace was vacant at the time of the survey, which equates to 10%. Although a small provision of vacant floorspace of up to 5% is considered healthy for a town centre as it allows new retailers to locate to the area or existing stores to relocate or up/down size within the same locality, Stockton Town Centre's vacancy rate of 10% is considered high and suggests the centre is underperforming.

The Stockton Town Centre also contains a number of detached residential dwellings and as such may reduce redevelopment opportunities.

The table below outlines the provision of floorspace within Stockton Town Centre by commercial category.

Commercial Category	Total Number (#)	Ground floor NLA (sqm)	Above Ground NLA (sqm)	Total
Supermarket	1	900		900
Specialty Food	5	543		543
Specialty Non-food	2	260		260
Restaurants	1	93		93
Take away/ Café	2	156		156
Chemist/pharmacy	1	240		240
Apparel	2	581		581
Personal Services	6	388		388

#### Table 2: Stockton Town Centre by commercial category (NLA)

<sup>2</sup> Land use survey of all buildings and lots located within the area zoned B2- Local Centre in Stockton was undertaken by HillPDA on the 8<sup>th</sup> of September 2017

<sup>a</sup> This includes retail uses, non-retail commercial uses and vacant floorspace

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Hardware/homeware	1	365		365
Commercial – Financial services	2	136		136
Commercial – Real estate	2	136		136
Commercial – Services	4	1,446		1,446
Commercial – Medical	5	482		482
Vacant Shop front	7	668		668
Total Shopfront	41	6,392		6,392
Hotel/pubs	2	1,050	1,050	2,101
Residential	18	2,158	2,606	4,764
Total	61	9,601	3,656	13,257

Source: Land use survey undertaken by HillPDA (2017)

The following figure provides a visual representation of where the vacant shop fronts are located within the town centre.



Source: HillPDA

#### 3.1.2 Other retail in Stockton and Fern Bay

There is a small provision of retail (approximately 400sqm) within Stockton located beyond the town centre, including the beachfront café Lexie's on the Beach and Gavo and Tashes Takeaway and Tackle on Fullerton Street.

The retail offer within the suburb of Fern Bay is underwhelming, with very limited provision of floorspace including a food outlet on Nelson Bay Road.

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#### 3.2 Fern Bay and North Stockton Shopper Survey

The Fern Bay and North Stockton Shopper Survey was conducted by Port Stephens Council and asked respondents a series of questions relating to their primary shopping destination as well as strengths and opportunities they identify for Fern Bay. 204 respondents were surveyed over the period of August to September in 2017. The vast majority of survey respondents were residents of Fern Bay. It should also be noted that Stockton was not included in the strategy area or targeted for consultation within this survey. Despite this a number of the responses received through the survey were from Stockton residents.

The key findings of the survey which relate to the retail offer and are of relevance to the Study are as follows:

- A large proportion of residents are travelling outside of Stockton and Fern Bay for retail services including food and grocery shopping;
- Only 12% (or 25 respondents) indicated Stockton Town Centre was their main shopping centre destination, with a further 25% using the centre for 'top-up' shopping (i.e. serving as a secondary centre);
- Newcastle was the most popular shopping destination amongst respondents (34%), followed by Mayfield (33%) and Medowie (32%);
- A small proportion of retail expenditure is also escaping the locality and being directed to Raymond Terrace, Waratah and to a lesser extent Salamander Bay and Warabrook;
- Of those respondents who do not shop at Stockton Town Centre, the main reasons given were overpricing due to limited price competition and limited retail offer. Anti-social behaviour (or perceived) was also a major deterrence;
- A large proportion of respondents were undertaking their major shop at higher order/ larger centres near their place of work, with a small proportion indicated they shop online (4 respondents); and
- Three quarters of the respondents indicated a new retail centre or expanded retail offer was a priority for Fern Bay and Stockton in the next 10 years.

#### 3.3 Stockton Town Centre SWOT analysis

This next section analyses the strengths, weaknesses, opportunities and threats to the future performance of Stockton Town centre which as discussed above is the main retail destination within the Study area. The results of this assessment are presented in the table below.

Strengths	Weaknesses
<ul> <li>Compact and walkable retail core, with flat topography and minimal fall</li> <li>Anchor tenant located at the northern end of centre (i.e. entry point)</li> <li>Well served by public carparks and street parking</li> <li>Proximity to strong amenities including schools and medical services which encourage dual purpose visits</li> <li>Well served by buses services</li> <li>Close proximity to natural assets, open space, beaches, leisure centre (swimming pool)</li> <li>Proximity to touristic accommodation i.e. Stockton Beach Holiday Park</li> </ul>	<ul> <li>Umited retail offer and scale, with significant leakage to higher order centres</li> <li>High vacancy rate</li> <li>Lacks provision for a vibrant evening/night time economy</li> <li>Presence of detached dwellings within town centre</li> <li>Poor appearance and condition of larger peripheral buildings</li> <li>Lack of pedestrian footfall</li> <li>The town centre is located at the southern end of the peninsul (some distance from the peninsula entry point), making it an inconvenient location for residents to the north</li> </ul>

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<ul> <li>Existence of adaptive reuse opportunities</li> <li>Strong projected population growth in the locality</li> </ul>	
Opportunities	Threats
<ul> <li>Improve and expand retail offer</li> <li>Include a stronger anchor tenant</li> <li>Increase residential densities</li> <li>Raise the tourism profile of the area</li> <li>Implement competitive pricing strategies</li> <li>Address reputation and safety/anti-social behaviour concerns surrounding the centre. Potentially through increased surveillance</li> </ul>	<ul> <li>Anti-social stigma</li> <li>Stockton is characterised by a less affluent demographic</li> <li>Increased competition from a new retail centre within the Fern Bay/Stockton locality</li> <li>Lack of retailer demand</li> <li>Further stagnation, reducing viability of planned urban-edge extensions</li> </ul>

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## 4.0 RETAIL DEMAND ANALYSIS

This Chapter considers the competitive landscape for a retail facility located within the Study Area (i.e. the suburbs of Stockton, Fern Bay and Fullerton Cove). The demand for retail floor space within the Study Area is subsequently assessed using a combination of population forecasts within the Study Area and estimated total household retail expenditure expected to be retained within the Study Area as well as applying industry target turnover rates.

#### 4.1 Surrounding Competing Centres<sup>4</sup>

The following provides an assessment of surrounding retail centres that would compete with the proposed development in terms of retail expenditure capture. Pipeline retail developments within the immediate area are also considered.

#### 4.1.1 Charleston Square

Charlestown Square provides 76,700sqm of retail floorspace and is located along Pearson Street in Charleston, some 23km south of the Study Area. The regional shopping centre is anchored by a Myer department store (11,500sqm), Target (7,750sqm) and Big W (5,590sqm) discount department stores, and Coles (4,320sqm) and Woolworths (4,800sqm) supermarkets. The centre contains several mini-major tenants of the likes of H&M (recent addition), Dan Murphy's, Rebel Sport, JB Hi-Fi and City Beach, as well as around 245 specialty retailers. The centre reported an MAT of \$545.2m in 2016/17, or \$7,043/sqm ranking it 39<sup>nd</sup> out of 89 similar sized centres (slightly above the benchmark average of \$6,925/sqm for similar sized centres).

#### 4.1.2 Kotara

A strong retail offer is provided in Kotara which includes the Westfield Kotara regional shopping centre, some 17km south of the Study Area. Westfield Kotara includes 65,057sqm of retail floorspace and is anchored by a David Jones (15,445sqm), Kmart (6,979sqm), Target (6,350sqm) as well as Coles (3,106sqm) and Woolworths (4,116sqm) supermarkets. The centre contains mini-majors such as Toys 'R' Us, First Choice Liquor and Lincraft as well as around 215 specialty retail stores and a new cinema complex/dining precinct. The centre reported an MAT of \$504.2m in 2016/17, or \$7,924/sqm ranking it 17<sup>th</sup> out of 89 similar sized centres (14% above the benchmark average of \$6,925/sqm for similar sized centres).

The Kotara Homemaker Centre immediately to the north of Westfield is one of the largest bulky goods precincts in NSW, containing around 58,000 sq.m of retail floorspace, including major tenants such as Bunnings Warehouse, Domayne, Freedom Furniture, Trade Secret and The Good Guys, as well as around 35 – 40 other retailers including an Aldi supermarket.

#### 4.1.3 Stockland Jesmond

This Sub-regional centre contains 20,129sqm of retail floorspace and is anchored by a Big W (7,944sqm) and Woolworths (3,053sqm) and Aldi (1,500sqm) supermarkets. The centre reported an MAT of \$154.9m which equates to \$8,713/sqm ranking it 19<sup>th</sup> from 95 centres or 21% above the benchmark average for similar sized centres. The centre is 14km south west of the Study Area.

<sup>a</sup> Sources: various sources including Shopping Centre Directory, Big Guns 2017, Little Guns 2016 and Mini Guns 2016, desktop analysis

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#### 4.1.4 Salamander Bay Shopping Centre

Salamander Bay is a strong performing regional shopping centre some 42.4km north of the Study Area. The centre contains 23,091sqm of retail floospace and is anchored by Kmart (4,998sqm), Target (1,243sqm) as well as Coles (3,962sqm), Woolworths (3,899sqm) and Aldi (1,351sqm) supermarkets. Around 73 speciality stores are also provided over one level. The centre reported an MAT of \$217.7m in 2016/17, or \$9,861/sqm ranking it 11th out of 96 similar sized centres (36% above the benchmark average of \$7,223/sqm for similar sized centres).

#### 4.1.5 Inner City Newcastle

Newcastle West provides higher order retail, commercial, health and business services and serves the greater Newcastle metropolitan area and the southern end of the Port Stephens LGA. Retail is largely focused within Marketown Shopping Centre located on the corner of National Park and Parry Streets, some 15km south of Stockton/Fern Bay (20minute drivetime). This enclosed shopping centre provides almost 26,000sqm of retail floorspace, including a Big W (6,567sqm) and Woolworths (3,872sqm) and Coles (3,050sqm) supermarket as well as 61 specialty stores over one level. There is estimated 30,000sqm of strip retailing generally oriented around Hunter Street/King Street also provided with Newcastle CBD, which generally consists of a mix of cafes, restaurants, take-away shops, some convenience retailers and lower quality/discount retailers.

#### 4.1.6 Raymond Terrace

A strong provision of retail is provided within the strategic centre Raymond Terrace, some 25km north-west of the Study Area. Raymond Terrace comprises of two major shopping centres described as follows:

- MarketPlace: Located along William Street, this 14,800sqm sub-regional centre is anchored by a Big W (6,775sqm) and Woolworths (4,117sqm) as well as 37 specialty stores. The centre has an estimated turnover of \$92.3m<sup>5</sup> as of 2016.
- Raymond Terrace Shopping Centre: this 7,000sqm supermarket-based centre is anchored by a Woolworths (4,090sqm). The centre is situated on the corner of Sturgeon and Glenelg Streets.
- A small provision of retail (some 2,000sqm) is provided along William and Port Stephens Streets.

#### 4.1.7 Local and Neighbourhood centres

There are number of local and neighbourhood centres within the vicinity of the Study Area including:

- Medowie: located some 20km north of the Study Area and is oriented around Ferodale and Peppertree Roads. The precinct provides approximately 10,000sqm of retail floorspace and includes free standing Woolworths (4,000 sqm) and Coles (2,500sqm) supermarkets and 15 specialty stores. There was only one vacancy at the time of survey indicating the centre is performing well.
  - Warabrook: is located some 10km south of the Study Area along Angophone Drive. This convenience based centre provides approximately 5,000sqm of retail floorspace and includes full-line Woolworths supermarket and nine speciality stores.
  - Mayfield: is predominately a street/strip precinct generally oriented around Maitland Drive/Pacific Highway, some 10.7km from the Study Area. The precinct provides approximately 15,000 sqm of retail floorspace, as well as a range of business/commercial floorspace and medical centres. This precinct includes a large Woolworths supermarket of around 4,900 sq.m and an Aldi supermarket (1,500sqm).
- Waratah Village: some 12.4km south of the Study Area, the centre provides 12,000sqm of retail floorspace and contains a full-line Coles supermarket (of around 3,500 sq.m), a larger Kmart store

<sup>5</sup> Shopping Centre Directory 2016

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(which trades 24 hours a day), as well as around 20 specialty stores including pad-sites such as Kmart Tyre and Auto and Red Rooster.

#### 4.1.8 Proposed retail developments

There are two major pipeline developments proposed in the vicinity of the Study Area of relevance including:

- The Hunter Street Mall: A redevelopment of the area around the Hunter Street could potentially yield around 4,900sqm of retail floorspace and include a metro-style supermarket, convenience related retail, (e.g. newsagent, pharmacy, hairdressers) as well as non-food discretionary retailers. A further 2,700 sq.m of commercial space is planned.
- A new Coles supermarket of 4,380sqm plus 200sqm Liquorland outlet is soon to be developed at the intersection of Maitland Road and Havelock Street in Mayfield. There is preliminary approval for a further 1,500 sq.m of specialty floorspace on the ground/lower level, with tenancies subject to specific development applications.

#### 4.1.9 Competition from Online Shopping

Online shopping has been well received by many Australians – particularly those living remotely or in areas with limited access to conventional bricks-and-mortar stores. E-commerce research<sup>6</sup> reveals that the online shopping industry continues to grow domestically, with buyers in remote regional locations and tourist towns shopping online the most.

In 2016, Australian's spent \$22b shopping online (this includes both physical goods and digital services) an increase of 10.4% compared to 2015. Physical goods represented 82% (or \$18b) of the total online spend, with department and variety store items the most popular online purchases (30% of all online purchases), followed by fashion (22%)<sup>7</sup>.

It should be noted that although growth in online spending significantly outperformed bricks-and-mortar retail by 6.9% over the last year, traditional retail is still a substantially larger industry in Australia, bringing in \$261b in 2016 compared to online retail's \$18b in physical goods. Although online shopping has made some impact, there is still strong demand for traditional retail<sup>8</sup>.

In terms of the online grocery market, recent research<sup>9</sup> has consistently found that although almost 30% indicated they would consider grocery shopping online in the next 12 months, only around 3% actually do so in any given four-week period. In the recent Fern Bay and North Stockton Shopper Survey discussed in Chapter 3, only 2% of the survey respondents indicated (unprompted) that they shop online. Woolworths customers, are marginally more likely to do their grocery shopping online (4.2% doing so in an average four weeks) than those Coles (4.0%), ALDI (1.4%) and IGA (1.2%) customers<sup>10</sup>. So despite positive sentiment surrounding online grocery shopping, it still remains quite a niche market in Australia.

Online grocery sales in Australia are expected to increase to \$5.8b in 2020 from their current value of \$2.6b, however this only represents 4% of total grocery sales again reinforcing the importance of traditional grocery retail<sup>11</sup>. Thus online shopping will not significantly compete with the new retail centre in Stockton/Fern Bay in the foreseeable short to medium term.

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<sup>&</sup>lt;sup>6</sup> Inside Australian Online Shopping, eCommerce Industry Paper, Australia Post and Startrack, 2017

<sup>&</sup>lt;sup>7</sup> Inside Australian Online Shopping, eCommerce Industry Paper, Australia Post and Startrack, 2017

<sup>&</sup>lt;sup>a</sup> Inside Australian Online Shopping, eCommerce Industry Paper, Australia Post and Startrack, 2017 <sup>a</sup> Roy Morgan Research, Can Australia's supermarkets stand up to AmazonFresh?, 2017

<sup>&</sup>lt;sup>10</sup> Roy Morgan Research, Can Australia's supermarkets stand up to AmazonFresh?, 2017

<sup>&</sup>lt;sup>11</sup> Australia's online grocery market set to double, Retail World, 2016

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#### 4.2 Study Area's Population Forecasts

As of 2017 the Study Area contained a population of around 7,450 residents as per the ABS census data. HillPDA have considered two population growth scenarios as follows:

- Low Growth Scenario: This scenario assumes a more conservative growth rate of 1.3% per annum which is generally in line the broader LGA growth rate as sourced from the Department of Planning. This scenario assumes many of the Planning Proposals within the locality that have been lodged with Council do not proceed. On this basis the population is projected to increase by 1,470 persons to 8,920 persons by 2031.
- Medium Growth Scenario: This scenario adopts a higher growth rate of 2.5% per annum which is generally in line with Port Stephens Planning Strategy. This scenario assumes all of the Planning Proposals<sup>12</sup> within the locality that currently lodged with Council are realised. The population is projected to increase by 3,070 persons to 10,520 persons by 2031.
- High Growth Scenario: This scenario adopts a substantial higher growth rate of 3.6% per annum. This scenario assumes all of the Planning Proposals within the locality are realised and allows for a further 1,000 dwellings on the Stockton Residential Centre site. The population is projected to increase by 4,770 persons to 12,220 persons by 2031.

#### Table 3: Study Area Forecast Population

	2017	2021	2026	2031	Growth	Annual compound growth
Low Growth	7,450	7,930	8,450	8,920	1,470	1.3%
Medium Growth	7,450	8,350	9,460	10,520	3,070	2.5%
High Growth	7,450	8,840	10,550	12,220	4,770	3.6%

Source: 2017 Census ABS, Forecasts population is based on a combination of Department of Planning Population Projections for the Port Stephens and City of Newcastle LGAs (2016), Anysite 2017 population projection data (2017), Port Stephen Planning Strategy, as well as review of pipeline residential developments - sourced from Cordell and Port Stephen Council,

#### 4.3 Forecast Household Expenditure

This section examines the projected growth in household retail expenditure within the Study Area between 2017 and 2031. Household expenditure was sourced from:

- ABS Household Expenditure Survey 2003-04 which provides household expenditure by broad commodity type by household income quintile
- AnySite 2017 data which is generated by combining and updating data from the Population Census and the ABS Household Expenditure Survey (HES) using microsimulation modelling techniques.

AnySite combines the data from the Census, HES and other sources to derive total household expenditure by commodity type.

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<sup>&</sup>lt;sup>12</sup> Planning proposal include the Fort Wallace Masterplan (~100 dwellings); The Cove (a further 140 dwellings); The Former Rifle Range Site (200 dwellings), Newcastle Golf Course Masterplan (~120 dwellings); Seaside Estate (~310 dwellings); and 50 dwellings from smaller scale developments. In the medium growth scenario we have also allowed for an additional 300 dwellings in the locality. Source: Cordell, consultation with estate managers, Google Earth.

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As of 2017 residents within the Study Area spent \$92.8m on retail expenditure. Of the total retail expenditure approximately in 2017, \$29.3 million, or about 32%, was spent in supermarkets and grocery stores. Over the period to 2031 total retail expenditure is forecast to increase to \$124.2 million as a result of population and expenditure growth under low growth scenario, \$146.5m under the medium growth scenario and \$170.2m under the high growth scenario. Household expenditure data is shown in the table below.

#### Table 4: Study Area retail expenditure to 2031 (\$m2017)

Store Type	2017	2021	2026	2031
Low Growth Scenario				
Supermarkets & Grocery Stores	29.3	32.2	35.7	39.2
Take-away Liquor Stores	5.5	6,1	6.7	7.4
Specialty Food Stores	3.3	3.6	4.0	4.4
Fast-Food Stores	4.3	4.7	5.3	5.8
Restaurants, Hotels and Clubs*	8.4	9.2	10.2	11.2
Department Stores	6.1	6.7	7.4	8.2
Apparel Stores	6.4	7.0	7.8	8.6
Bulky Goods Stores	13.4	14.7	16.4	18.0
Other Personal & Household Goods Retailing	12.9	14.2	15.8	17.3
Selected Personal Services**	3.1	3.4	3.8	4.2
Total Retailing	92.8	102.0	113.1	124.2
Medium Growth Scenario				
Supermarkets & Grocery Stores	29.3	33.9	40.0	46.2
Take-away Liquor Stores	5.5	6.4	7.6	8.7
Specialty Food Stores	3.3	3.8	4.5	5.2
Fast-Food Stores	4.3	5.0	5.9	6.8
Restaurants, Hotels and Clubs*	8.4	9.7	11.4	13.2
Department Stores	6.1	7.1	8.3	9.6
Apparel Stores	6.4	7.4	8.7	10.1
Bulky Goods Stores	13.4	15.5	18.3	21.2
Other Personal & Household Goods Retailing	12.9	15.0	17.6	20.4
Selected Personal Services**	3.1	3.6	4.3	4.9
Total Retailing	92.8	107.4	126.6	146.5
High Growth Scenario	10.0		-	
Supermarkets & Grocery Stores	29.3	35.9	44.6	53.7
Take-away Liquor Stores	5.5	6.8	8.4	10.2
Specialty Food Stores	3.3	4.1	5.0	6.1
Fast-Food Stores	4.3	5.3	6.6	7.9
Restaurants, Hotels and Clubs*	8.4	10.2	12.7	15.3
Department Stores	6.1	7.5	9.3	11.2
Apparel Stores	6.4	7.9	9.8	11.8
Bulky Goods Stores	13.4	16.4	20.4	24.6
Other Personal & Household Goods Retailing	12.9	15.8	19.7	23.7
Selected Personal Services**	3.1	3.8	4.7	5.7
Total Retailing	92.8	113.7	141.2	170.2

Source: Pitney Bowes (AnySite 2016) and HillPDA Note: Forecasts allow for growth in real spend per capita of 0.8% per annum from 2017 onwards in line with the historic trend since 1986 (HillPDA estimate based on ABS Retail Sales, CPI and population data).

\* Turnover relating only to consumption of food and liquor (excludes all other types of revenue such as accommodation, gaming and gambling).
\*\* Selected Personal Services includes hair and beauty, laundry, clothing hire and alterations, shoe repair, optical dispensing and photo

processing.

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#### 4.4 Retail capture rates by broad store type

The above analysis identified the total volume of retail expenditure in the Study Area, however not all of this expenditure will be captured by retail facilities within the Study Area. Reasons for this include:

- The proximity of competing facilities at Newcastle and Medowie which provides a greater range and quantum of retail floorspace;
- More limited retail offer within the Study Area;
- Residents leaving the locality to, predominantly, undertake discretionary shopping (in department stores, apparel stores and bulky goods stores elsewhere);
- Working residents spending a portion of annual retail expenditure close to their place of work (approximately 15-25%); and
- Expenditure from residents who are on holidays / business trips or are away for other reasons for any
  extended period. This is counterbalanced to some extent by residents from outside the Study Area
  visiting the new retail centre as they visit the area.

Capture rates (i.e., the proportion of expenditure captured by the new retail centre) have been adopted, considering the above factors and have been assumed to remain consistent across both the low and high growth scenario. These market share assumptions from residents within the Study Area are outlined in the following table.

Table 5: Target capture rates

	Study Area
Supermarkets & Grocery Stores	80%
Take-away Liquor Stores	80%
Specialty Food Stores	70%
Fast-Food Stores	70%
Restaurants, Hotels and Clubs*	50%
Department Stores	0%
Apparel Stores	5%
Bulky Goods Stores	0%
Other Personal & Household Goods Retailing	25%
Selected Personal Services	60%
Total Retail	53%

Source HillPDA,\*we have assumed an additional 5% of expenditure would be captured from beyond the Trade Area (which includes tourists).

However at the same token, a new centre within the Study Area is also likely to capture expenditure from passing traffic and residents from motorists travelling to and from outlying areas such as Williamtown Airport, Medowie, Anna Bay and Fisherman's Bay. Some 1,640 to 1,690 vehicles travel along Nelson Bay Road per hour (two-way) in the weekday afternoon peak period and 1,130 to 1,210 per hour (two-way) on Saturday. On this basis it is assumed some 15% of expenditure would be generated from beyond the trade area.

On balance however, the net effect of this is that there is likely to be substantial net loss of retail spending escaping the Study Area.

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#### 4.5 Retail expenditure captured within the Study Area

Applying the above capture rates, a new centre within the Study Area has the potential to capture a total of \$49.2m in 2017, increasing to \$65.9m in 2031 under the low growth scenario, \$77.7m under the medium growth scenario and \$90.3m under the high growth scenario.

The retail expenditure that is potentially captured by the new retail centre, over the years between 2017 and 2031, is shown in Table 6 below.

YEAR	2017	2021	2026	2031
Low Growth Scenario				
Supermarkets & Grocery Stores	26.9	29.6	32.8	36.1
Take-away Liquor Stores	5.1	5.6	6.2	6.8
Specialty Food Stores	2.7	2.9	3.3	3.(
Fast-Food Stores	3,5	3,8	4.2	4.3
Restaurants, Hotels and Clubs*	4.8	5.3	5.9	6.4
Department Stores			+	
Apparel Stores	0.4	0.4	0.4	0.5
Bulky Goods Stores		-	1	
Other Personal & Household Goods Stores	3.7	4.1	4.5	5.0
Selected Personal Services**	2.1	2.4	2.6	2.9
Total Retailing	49.2	54.1	60.0	65.5
Medium Growth Scenario	-			
Supermarkets & Grocery Stores	26.9	31.2	36.8	42.5
Take-away Liquor Stores	5.1	5.9	6.9	8.0
Specialty Food Stores	2.7	3.1	3.6	4.3
Fast-Food Stores	3.5	4.0	4.7	5.5
Restaurants, Hotels and Clubs*	4.8	5.6	6.6	7.0
Department Stores		14		
Apparel Stores	0.4	0.4	0.5	0.0
Bulky Goods Stores	8	-		
Other Personal & Household Goods Stores	3.7	4.3	5.1	5.9
Selected Personal Services**	2.1	2.5	2.9	3.4
Total Retailing	49.2	57.0	67.2	77.3
High Growth Scenario				
Supermarkets & Grocery Stores	26.9	33.0	41.0	49.4
Take-away Liquor Stores	5.1	6.2	7.7	9.3
Specialty Food Stores	2.7	3.3	4.1	4.9
Fast-Food Stores	3.5	4.3	5.3	6.4
Restaurants, Hotels and Clubs*	4.8	5.9	7.3	8.
Department Stores		1÷1		
Apparel Stores	0.4	0.5	0.6	0.7
Bulky Goods Stores				
Other Personal & Household Goods Stores	3.7	4.6	5.7	6.8
Selected Personal Services**	2.1	2.6	3.3	3.9
Total Retailing	49.2	60.3	74.9	90.3

Source: Pitney Bowes (AnySite) and HillPDA

Note: Forecasts allow for growth in real spend per capita of 1% per annum from 2016 onwards in line with the historic trend since 1986 (HillPDA estimate based on ABS Retail Sales, CPI and population data).

\* Turnover relating only to consumption of food and liquor (excludes all other types of revenue such as accommodation, gaming and gambling). \*\* Selected Personal Services includes hair and beauty, laundry, clothing hire and alterations, shoe repair, optical dispensing and photo-

processing.

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#### 4.6 Demand for Retail Floorspace

In order to determine the demand for retail floorspace within the Study Area, target turnover rates (\$/sqm of retail floorspace, and otherwise known as Retail Turnover Densities (RTDs) have been applied to projected retail expenditure within the Study Area. These RTD rates broadly represent industry averages.

Table 7: Study Area shop front floorspace demand (GLA	Table 7: Study	Area	shop	front	floorspace	demand	(GLA
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YEAR	Target Rate*	RTD growth**	2017	2021	2026	2031
Low Growth Scenario						
Supermarkets & Grocery Stores	10,000	0.50%	2,694.8	2,902.8	3,139.6	3,364.0
Take-away Liquor Stores	12,000	0.50%	424.4	457.2	494.5	529.8
Specialty Food Stores	8,000	0.50%	333.5	359.2	388.5	416.3
Fast-Food Stores	8,000	0.50%	434.9	468.5	506.7	542.9
Restaurants, Hotels and Clubs	5,000	0.50%	962.2	1,036.5	1,121.1	1,201.2
Department Stores	3,600	0.50%			-	
Clothing Stores	6,000	0.50%	61.4	66.2	71.6	76.
Bulky Goods Stores	3,700	0.50%	-	-		
Other Personal & Household Goods	4,900	0.50%	759.1	817.7	884.4	947.
Selected Personal Services	3,500	0.50%	614.3	661.7	715.7	766.
Total Retailing	7,835	0.50%	6,284.7	6,769.8	7,322.0	7,845.
Medium Growth Scenario						
Supermarkets & Grocery Stores	10,000	0.50%	2,694.8	3,056.6	3,514.9	3,967.
Take-away Liquor Stores	12,000	0.50%	424.4	481.4	553.6	624.
Specialty Food Stores	8,000	0.50%	333.5	378.3	435.0	491.
Fast-Food Stores	8,000	0.50%	434.9	493.3	567.3	640,
Restaurants, Hotels and Clubs	5,000	0.50%	962.2	1,091.4	1,255.0	1,416.
Department Stores	3,600	0.50%	1.1.1		1.10	
Clothing Stores	6,000	0.50%	61.4	69.7	80.1	90.
Bulky Goods Stores	3,700	0.50%	-	× .	1.1	
Other Personal & Household Goods	4,900	0.50%	759.1	861.0	990.1	1,117.
Selected Personal Services	3,500	0.50%	614.3	696.7	801.2	904.
Total Retailing	7,835	0.50%	6,284.7	7,128.4	8,197.2	9,252.
High Growth Scenario			_			
Supermarkets & Grocery Stores	10,000	0.50%	2,694.8	3,235.9	3,919.9	4,608.
Take-away Liquor Stores	12,000	0.50%	424.4	509.6	617.4	725.
Specialty Food Stores	8,000	0.50%	333.5	400.5	485.1	570.
Fast-Food Stores	8,000	0,50%	434.9	522.3	632.6	743.
Restaurants, Hotels and Clubs	5,000	0.50%	962.2	1,155.4	1,399.7	1,645.
Department Stores	3,600	0.50%	-	-		
Clothing Stores	6,000	0.50%	61.4	73.8	89.4	105.
Bulky Goods Stores	3,700	0.50%	-	×	-	
Other Personal & Household Goods	4,900	0.50%	759.1	911.5	1,104.2	1,298.
Selected Personal Services	3,500	0.50%	614.3	737.6	893.5	1,050.
Total Retailing	7,835	0.50%	6,284.7	7,546.7	9,141.7	10,747.

\* Sources: ABS Retail Survey 1998-99 (escalated to 2007 dollars), JHD Retail Averages, Shopping Centre News, HillPDA and various consultancy studies \*\* An Allowance for Real Growth in Retail Store Turnover per annum

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By applying the above RTDs the Study Area could support around 6,285sqm of retail floorspace as of 2017, increasing to almost 7,850sqm in 2031 under the low growth scenario, 9,250sqm under medium growth scenario and 10,750sqm under high growth scenario. Some further shop front floorspace would be occupied by commercial uses, such as, real estate agents, doctors and financial services. Assuming a further 20% of commercial uses, demand would increase the demand to around 9,400sqm in 2031 under the low growth scenario and 11,100sqm under high growth scenario.

#### 4.7 Retail Demand

The below table compares the demand for retail floorspace in the Study Area against the existing supply. As demonstrated below, there is currently an undersupply of retail floorspace within the Study Area of almost 2,300sqm based on the aspirational capture rates outlined above. This is expected to increase to 3,845qm by 2031 under low growth scenario and 5,253sqm under the high growth scenario.

#### Table 8: Demand and Supply Analysis

	2016	2021	2026	2031
Demand for retail floorspace (low growth scenario)	6,284.7	6,769.8	7,322.0	7,845.4
Demand for retail space (medium growth scenario)	6,284.7	7,128.4	8,197.2	9,252.6
Demand for retail floorspace (high growth scenario)	6,284.7	7,546.7	9,141.7	10,747.8
Supply of retail floorspace	4,000.0	4,000.0	4,000.0	4,000.0
Net demand of retail floorspace (low growth scenario)	2,284.7	2,769.8	3,322.0	3,845.4
Net demand of retail space (medium growth scenario)	2,284.7	3,128.4	4,197.2	5,252.6
Net demand of retail floorspace (high growth scenario)	2,284.7	3,546.7	5,141.7	6,747.8

#### 4.8 The Way Forward

Based on the above assessment there are several opportunities and initiatives that can be implemented to meet the retail needs of the local residents. These are:

- Development of a new Local Centre of 4,000 6,500sqm in the Study Area. Potential turnover, retail mix and sites for a new centre are explored in more detail in the Chapter 6.
- The attraction of a large format supermarket of around 2,800-3,200sqm with complementary specialty floorspace and personal services would be beneficial to the area and has the potential to reduce current levels of escape expenditure. Increased customers attracted to the supermarket would also be beneficial to the surrounding retailers as they would develop a nexus relationship with the supermarket (anchor tenant).
- Tourism the centre could leverage from its natural surroundings to increase tourism. This would likely
  increase retail expenditure captured within the centre.
- Increase the resident population within the Study Area. Strong population growth would generate more expenditure and would in turn increase the demand and viability of retail services. There may be potential for mixed use given recent housing trends, however the market's preference for medium/high density living within this location couple with the feasibility of such development would need to be tested.

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**PLANNING PROPOSAL FOR 4 SEASIDE** 

ITEM 2 - ATTACHMENT 2 BOULEVARD, FERN BAY.



## ITEM 2 - ATTACHMENT 2 PLANNING PROPOSAL FOR 4 SEASIDE BOULEVARD, FERN BAY.



## 5.0 PREFERRED SITE LOCATION

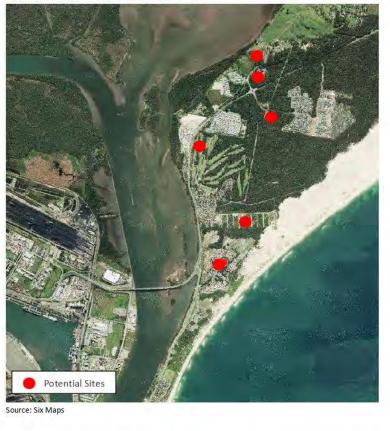
This Chapter provides a preliminary assessment of the suitability of potential sites to accommodate a new retail development within the Study Area.

#### 5.1 Potential Sites

Based on discussions with Council six sites were identified for investigation as potential sites for a new retail centre (as shown in the below figure), including:

- 42 Fullerton Cove Road, Fullerton Cove;
- 69 Fullerton Cove Road, Fullerton Cove;
- 2 Seaside Boulevard, Fern Bay;
- Former Rifle Range, Popplewell Road, Fern Bay;
- Newcastle Golf Club, Vardon Road, Fern Bay; and
- Stockton Residential Centre, Oval Drive Stockton.

#### Figure 3: 42 Fullerton Cove Road, Fullerton Cove



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This next section considers the suitability of these sites for a new retail centre in more detail. More specifically, each of the identified sites is assessed against a set of criteria and assigned a score ranging from 1 being very poor to 5 being very strong (as shown in table below).

Table 9; Scoring Weights

Score	
1	
2	
3	
4	
5	

The criteria the sites have been assessed against relating to economic considerations, include:

- Development Area: An adequate provision of developable land is required to accommodate the centre. The centre could be provided over multiple levels with basement car parking to reduce the centre's building footprint however this will increase costs and may have implications on the feasibility of the development. On that basis a centre 5,000sqm-6,000sqm provided over one level with at grade parking to reduce costs) would require approximately 2Ha of developable land.
- Location: A supermarket based centre is largely a local population serving centre, meeting the day to
  day shopping needs of local residents. Thus the location of a centre, in terms of its convenience for the
  vast majority of residents of which it serves is key to the success of a retail facility and meeting the local
  communities need.
- Exposure: The success of a retail centre is largely influenced by its visibility and ability to attract business from passing traffic. Thus retail greatly benefits from being located on a high profile location (i.e. a main arterial road or precinct with strong pedestrian traffic).
- Accessibility: With people becoming increasing 'time poor' convenience and accessibility increases the attractiveness and visitation of a centre.
- Walkable Catchment: There has been a government led movement towards creating walkable communities as this brings significant economic and social benefits (reduced vehicle emissions, reduced petrol costs, improved traffic safety, health benefits etc). Walkable communities are also increasingly becoming more accepted by the community. This coupled with changing shopping behaviours (i.e. increase of top up shopping) has resulted in an increase of people travelling to retail facilities by foot. A retail centre with a substantial walkable catchment would be favourable outcome for the community.

In addition to the above criteria we have also considered a series of environmental factors such as whether the land is bushfire or flood prone as development of retail centre on such land possesses potential risks to the community. Whether development on the site will endanger any ecological communities is also considered.

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#### 5.2 42 Fullerton Cove Road, Fullerton Cove

Figure 4: 42 Fullerton Cove Road, Fullerton Cove



Source: Planning Proposal 42 Fullerton Cove Rd, Fullerton Cove, Monteath & Powys, 2017

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#### Table 10: 42 Fullerton Cove Road, Fullerton Cove Site Assessment

Criteria	Commentary	Score
Developable Area	2Ha of land is available for development. This can accommodate a centre of 5,000sqm on a single level with at grade car parking.	5
Location	A retail centre on this site is more conveniently located for residents and tourists of Fern Bay rather than Stockton which is located some 7km from the site. This may result in continued expenditure leakage to centres closer to work particularly for Stockton residents.	3
Exposure	The retail development should receive adequate building exposure to Fullerton Cove Road traffic. With suitably located directional signage from Nelson Bay Road the site is likely to benefit from passing trade from motorists along Nelson Bay Road.	4
Accessibility	Access to the site will be provided via a constructed road (Fullerton Cove Road) which connects to Nelson Bay Road. Nelson Bay Road is a major arterial road, thus providing excellent local and regional accessibility into the site, particularly in the adjacent residential, tourist and seniors developments of Fern Bay.	ţt.
Walkable Catchment*	The site is generally within walking distance of the Cove Village. This residential estate plans to accommodate 250 dwellings upon completion with approximately 80 dwellings built to date. Assuming an occupancy rate of 2 suggest only 500 to 600 residents will be within walking distance of the site. As such the site as a relatively small walking catchment.	
Bushfire Prone	The site is identified as being bushfire affected. A Bush Fire Management Plan will need to be implemented.	
Flood Prone	The site is located in a flood prone area however is deemed to not be susceptible to inundation from a flood event. Stormwater infrastructure will need to be built to mitigate risks.	8
Vegetation and Ecology	Implementing the proposed development will require some removal of an area of Swamp Oak Floodplain Forest.	
Total Score	The site enjoys excellent accessibility and visibility, however there are a number of environmental constraints associated with the site and it is less convenient for Stockton residents.	25
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\*The walkable catchment generally includes the area within 800m of the Site

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#### 5.3 69 Fullerton Cove Road, Fullerton Cove

Figure 5: 69 Fullerton Cove Road, Fullerton Cove



Source: Six Maps

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Table 11: 69 Fullerton Cove Road, Fullerton Cove Site Assessment

Criteria	Commentary	Score
Developable Area	2Ha of land is available for development. This can accommodate a centre of 5,000sqm on a single level with at grade car parking.	5
Location	The centre is more conveniently located for residents and tourists of Fern Bay rather than Stockton which is located some 7.5km from the site. This may result in continued leakage to centres closer to work particularly for Stockton residents.	3
Exposure	The site is not located on a major arterial road and thus will not benefit from direct building exposure. However the site is located some 500m from the intersection with Nelson Bay Road, with suitably located directional signage, a new centre on this site has the potential to attract some passing trade from Nelson Bay Road.	Å
Accessibility	Access to the site will be provided via Fullerton Cove Road which connects to Nelson Bay Road some 500m from the site. Nelson Bay Road is a major arterial road, thus providing reasonably good local and regional accessibility into the site.	3
Walkable Catchment	The Site is generally within walking distance of the northern end of Cove Village. Approximately only 100 and 150 of the existing and future dwellings are estimated to be within walking distance of the site. Thus the site has a confined walking catchment of some 200-300 residents.	8
Bushfire Prone	The site is identified as being bushfire affected. A Bush Fire Management Plan will need to be implemented.	ę
Flood Prone	The site is located in a flood prone area. Stormwater infrastructure will need to be built to mitigate risks.	÷
Vegetation and Ecology	The site and the area to the north has largely been cleared, with minimal vegetation. The site has not been identified to contain endangered ecological communities.	9
Total Score	The site enjoys good accessibility, however there are a number of environmental constraints associated with the Site and it is less convenient for Stockton residents. Further the site is does not benefit from direct exposure to passing traffic along Nelson Bays Road.	24

\*The walkable catchment generally includes the area within 800m of the Site

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#### 5.4 2 Seaside Boulevard, Fern Bay

Figure 6: 2 Seaside Boulevard, Fern Bay



Source: Planning Proposal 2 Seaside Boulevard, Fern Bay 2017

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#### Table 12: 2 Seaside Boulevard, Fern Bay Site Assessment

	Commentary	Score
Developable Area	9,740sqm of appropriately zoned land is available. A centre of 5,000sqm with at-grade parking would typically require 1.5Ha, thus the size of the lot may restrict the scale and design of the centre.	4
Location	The centre is more conveniently located for residents of Seaside Fern Bay estate with Stockton residents located over 6km from the centre. Again this may result in continued leakage to centres closer to work particularly for Stockton residents affecting the viability of the centre.	
Exposure	The site does not have exposure to a major arterial road with limited opportunities to attract passing trade. The site also has no exposure to inward traffic due to existing vegetated lane separation.	1
Accessibility	The site does not have direct access to a major road with the area accessed via a single entry/exit via Seaside Boulevard, with restricted right turn access into the site.	
Walkable Catchment	The Site is generally within walking distance of the west end of Fern Bay Seaside Village. Approximately some 300 to 400 of the existing and future dwellings are estimated to be within walking distance of the site. Thus the site has a relatively small walking catchment of some 600-800 residents.	¥
Bushfire Prone	The site is identified as being bushfire affected. A Bush Fire Management Assessment has been undertaken previously allowing urban development.	3
Flood Prone	Flood studies have been undertaken with the Project Approval. Stormwater infrastructure will need to be built to mitigate risks.	đ
Vegetation and Ecology	The site is heavily vegetated. As the site is already zoned B1 previous assessments have considered the impacts and how to address the vegetation and ecology of the site as such the impact on existing conservation or habitat area has been approved.	а
Total Score	Reduced accessibility and visibility may impact the viability of a retail centre on this Site. The Site is also affected by various environmental constraints making this an unattractive site for a retail facility.	17

\*The walkable catchment generally includes the area within 800m of the Site

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#### 5.5 Former Rifle Range, Popplewell Road, Fern Bay

Figure 7: 42 Former Rifle Range, Popplewell Road, Fern Bay



Source: Planning Proposal Former Rifle Range, Popplewell Rd, Fern Bay, Architectus Group, 2017

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### Table 13: Former Rifle Range, Popplewell Rd, Fern Bay Site Assessment

	Commentary	Score
Developable Area	19Ha of land is available and can certainly accommodate a centre of 5,000sqm on a single level with at grade car parking.	5
Location	The centre is centrally located to both Fern Bay and Stockton residents and tourist.	5
Exposure	The site does not have exposure to a major arterial road with limited opportunities to attract passing trade.	1
Accessibility	The site does not have direct access to a major road. Significant upgrades to the road network will be required to improve access into the site.	ġ.
Walkable Catchment	The site is generally within walking distance of the west end of Fern Bay Seaside Village. Approximately some 300 to 400 of the existing and future dwellings are estimated to be within walking distance of the Site. Thus the Site has a relatively small walking catchment of some 600-800 residents.	đ
Bushfire Prone	Parts of the site are identified as being bushfire affected. A Bush Fire Management Plan will need to be implemented.	4
Flood Prone	The site is not identified as flood prone land under the Port Stephens LEP 2013.	5
Vegetation and Ecology	The site has minimal vegetation and has not been identified to contain endangered ecological communities.	5
Total Score	Accessibility and lack of exposure to passing motorist may affect the performance of a retail centre on this site and makes this a less desirable for such uses. Heritage items will need to be investigated further.	26

\*The walkable catchment generally includes the area within 800m of the Site. This estimate includes the 200 dwelling planned on site as provided in the masterplan as sourced from Planning Proposal Former Rifle Range, Popplewell Rd, Fern Bay, Architectus Group, 2017

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### 5.6 Newcastle Golf Club, Vardon Road, Fern Bay

Figure 8: Newcastle Golf Club



Source: Newcastle Golf Course Masterplan, E/E Architects 2017

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### Table 14: 2 Newcastle Golf Club Site Assessment

	Commentary	Score
Developable Area	8.6Ha of land is available and can accommodate a centre of 5,000sqm on a single level with at grade car parking.	5
Location	The site is more conveniently located for residents and tourists of Fern Bay rather than Stockton - located 5km to the south. This may result in continued leakage to centres closer to work particularly for Stockton residents.	2
Exposure	As per the masterplan lodged with Council, the retail development will be provided on the northern end of site fronting Nelson bay Road. Thus the centre is within a high profile location with excellent exposure to Nelson Bay Road Traffic. This site is likely to benefit from passing trade from motorist.	5
Accessibility	As per masterplan the retail development will have direct access to Nelson Bay Road (subject to RMS approval), providing excellent regional and local accessibility. Right turns may be problematic.	Ā
Walkable Catchment	The site is generally within walking distance of various residential estates including Palm Lake Resort Fern Bay and Bayway Village estates. There is currently some 1,300 residents living within walking distance of the Site. A further 150 dwellings or 300 to 400 people are forecasted within this area. Thus 1,600 to 1,700 residents are estimated to be within walking distance of the site which is considered reasonable. A greater walking catchment has the potential to reduce the amount of trips to the centre via car and in turn reduce CO2 emissions and reduce cost of living.	4
Bushfire Prone	The site is identified as being bushfire prone. A Bush Fire Management Plan will need to be implemented.	2
Flood Prone	The vast majority of the site is flood prone. Stormwater infrastructure will need to be built to mitigate risks.	ŝ
Vegetation and Ecology	The site has minimal vegetation. The vast majority of the site has not been identified to contain endangered ecological communities.	5
Total Score	The site has excellent accessibility and exposure to passing motorist along Nelson Bay Road. However the site is several kilometres to the north of the main route to and from Newcastle for Stockton residents. It is also affected by environmental constraints including flooding and bushfire risk.	29

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### 5.7 Stockton Residential Centre, Oval Dr Stockton

Figure 9: Stockton Residential Centre, Oval Drive Stockton



Source: Six Maps

As identified in the map above an appropriate location for a new retail centre would be near the Nelson Bay Road Fullerton Road intersection/roundabout. The identified site provides the centre with excellent exposure to passing motorists along Nelson Bay Road provides ample land for development. Further the building to the south is currently vacant minimising any disruptions to current operations and opposition from residents currently at the centre. For the purpose of this below assessment we have assumed the new retail centre would locate in the identified site.

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Table 15: Stockton Residential Centre, Oval Drive Stockton Site Assessment

Criteria	Commentary	Score			
Developable Area	With over 3Ha of land available in the identified site a large scale shopping centre can be easily accommodated.	5			
Location The centre is centrally located to both Fern Bay and Stockton residents, with many residents likely to pass the Site on their way to and from work, making this an extremely convenient location for the vast majority of residents within the locality.					
Exposure	The identified site benefits from exposure to motorists travelling along Nelson Bay Road/ Fullerton Road.	5			
Access to Site is likely to be provided from Fullerton Road and Nelson Bay Road via Fullerton Road. Direct access to Nelson Bay Road would improve accessibility further and potentially attract more passing trade from motorists.					
Walkable Catchment	There are currently some 200 residents living within walking distance of the Site. We would anticipate that residential uses will also be incorporated as part of the redevelopment of the Site. Assuming 25 dwelling per hectare and 40 hectares of developable land there is potential for some 1,000 dwellings to be provided at the existing Stockton Residential Centre site. Thus a substantial 2,500 to 3,000 residents are estimated to be within walking distance of the site. If medium to high density development were also to be included as part of the masterplan there is potential for the site to serve an even greater walking population.	5			
Bushfire Prone	The vast majority of developable area on the site is not prone to bushfires.	5			
Flood Prone	The site is not identified as flood prone land under the Newcastle LEP 2012.	5			
Vegetation and Ecology	The site has minimal vegetation. The site has not been identified to contain endangered ecological communities.	ŝ			
Total Score Total score constraints makes this suitable site for a retail centre. Redevelopment will need to work with the heritage items / further investigation required.					

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### 5.8 Summary of Findings

Based on the above assessment, the existing Stockton Residential Centre is the preferred location for a new local retail centre. Given the significant competitive advantages the site offers over the other potential sites. Further investigation of the site and master planning is recommended, with the retail centre to form part of one of the initial stages. The retail centre will increase the desirability and liveability of the locality and help to service residents within the wider Study Area which are currently under provided for. The development can be staged to minimise any conflict with surrounding uses.

In the event, development is prohibited on the Stockton Residential Centre site we recommend that retail centre is provided on one of the alternate sites since residents of the Study Area are currently under-serviced (as established in the demand analysis) with the strong population growth anticipated in the area likely to exacerbate this further. The Newcastle Golf Club site, would be next most preferred location for a retail development given the site's accessibility and exposure to passing motorists along Nelson Bay Road. The site also has the largest walking catchment (after Stockton Residential Centre) which meets many of the objectives of state and local government policies.

### 5.9 Planning Considerations for Stockton Residential Centre

As established in the preceding chapter a centre of up to 5,000sqm could be supported on the Stockton Residential Centre site based on market demand and future population growth. A centre of this scale would require some 2-3ha of developable land if designed with ground level car parking.

A new retail centre on the Stockton Residential Centre site will also require the site to be rezoned from SP2 Infrastructure to an appropriate zone which accommodates a village centre.

Whilst a B2 Local Centre would accommodate a village centre, a more appropriate zone may be B4 to allow shop top housing.

The Newcastle Local Planning Strategy provides suitable development controls to help reinforce the retail hierarchy. It is recommended that the development controls for a Local Centre (minor) are adopted for the new retail centre on the Stockton Residential Centre site, described as follows:

- Floorspace ratios: low to moderate (1.5:1); and
- Heights of building: low to moderate (11m).

In addition to the above, to improve the viability of the centre and capitalise on the vast land available on the Stockton Residential Centre site, it would be beneficial to rezone the remaining parcels of land to allow for medium density residential pending on market demand for this type of residential housing stock. The retail centre should not be considered in isolation and a masterplan should be developed for the Stockton Residential Centre site to reflect the different land uses which can be supported on the site factoring in any constraints of the land and market appraisal.

In this respect it is more appropriate to develop a masterplan based on place making, new urbanism principles, etc and use this to form the planning controls rather than visa versa.

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**PLANNING PROPOSAL FOR 4 SEASIDE** 

ITEM 2 - ATTACHMENT 2 BOULEVARD, FERN BAY.



# ITEM 2 - ATTACHMENT 2 PLANNING PROPOSAL FOR 4 SEASIDE BOULEVARD, FERN BAY.



## 6.0 IMPACT ANALYSIS

This section assesses the impacts of a new retail centre at the Stockton Residential Centre site on existing retail network.

### 6.1 Estimated Turnover of Proposal

For the purpose of the impact assessment we have assumed that the new retail centre will have 5,000sqm of occupied retail space trading at close to industry benchmark levels by 2026. We have assessed the impacts under the low population growth and medium population growth scenarios only. It's not necessary to measure the impact under the high growth scenario as growth in wider area results in a positive shift in trading levels over time in all centres even under the low growth scenario (shown in the tables below).

For the purpose of the assessment we have assumed the following retail mix;

- 65% allocated towards food, groceries and take-away liquor
- 15% to restaurants and fast foods
- a 20% to other.

Based on assumed target turnover rates, HillPDA has estimated that retailers in the new centre would achieve retail sales of around \$43m in 2026 (\$8,500/sqm).

### 6.2 Redirection of Turnover from Existing Centres

In order to quantify the redirection of trade from competing centres HillPDA prepared a bespoke gravity impact model. For the purpose of the assessment it has been assumed that the first year of trading will be in 2026.

The gravity model was designed on the premise that the level of redirected expenditure from a competing centre is directly proportional to the turnover of that centre and indirectly proportional to the distance from new centre. The results are presented in the following table.

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### **ITEM 2 - ATTACHMENT 2** PLANNING PROPOSAL FOR 4 SEASIDE **BOULEVARD, FERN BAY.**



Table 16: Impact on Surrounding Cen	tres Low Growth Scenario (\$m)
-------------------------------------	--------------------------------

	2	- 3	4	5	6	7	8	9	10
Retail Centre	Travel Time from Subject Site (min)	Approx. Retail Floor Space	Tumover in 2017	Turnover in 2026 without Proposal	Turnover in 2026 with Proposal	Immediate Shift in Tumover	% Shift in Turnover in 2026	Shift in turnover from 2017 to 2026	% Shift in turnover from 2017 to 2026
Charlestown Square	33.0	76,700	545.2	617.9	614.1	-3.8	-0.6%	68.9	12.6%
Kotara Westfield	29.0	65,050	504.2	597.3	593.3	-4.0	-0.7%	89.1	17.7%
Stockland Jesmond	22.0	20,150	154.9	183.5	181.8	-1.7	-0.9%	26.9	17.3%
Salamander S.C.	37.0	23,100	217.7	262.5	260.7	-1.8	-0.7%	42.9	19.7%
Inner City Newcastle	22.0	50,000	340.4	403.2	397.0	-6.2	-1.5%	56.6	16.6%
Raymond Terrace	25.0	23,800	166.5	200.7	198.6	-2.2	-1.1%	32.1	19.3%
Medowie	20.0	10,000	88.7	106.9	104.0	-2.9	-2.7%	15.3	17.3%
Warabrook	14.0	5,000	45.1	53.4	51.4	-2.0	-3.8%	6.3	14.0%
Mayfield	15.0	15,000	124.4	147.4	141.6	-5.8	-3.9%	17.2	13.8%
Waratah	20.0	12,000	84.0	99.5	98.0	-1.5	-1.5%	14.0	16.7%
Stockton	6.0	4,500	26.0	31.3	27.1	-4.3	-13.6%	1.1	4.2%
Other Localities						-6.4			
TOTAL		305,300	2307.1	2703.6	2710.0	0.0	0.2%	403.0	17.5%

Source: Column 1: The main competing retail centres in the main trade area or just beyond.

Column 2: Shortest Distance from Stockland Centre (minutes both directions)

Column 3: Various sources including Shopping Centre News (SCN), PCA Shopping Centres Directory and HillPDA surveys Column 4: Estimated turnover (\$) in 2016. Various sources including SCN, PCA and HillPDA estimate

Column 5: HillPDA estimate having allowed for population growth Column 6: Turnover in 2026 after new centre is trading

Column 7: The difference between Column 6 and 5

Column 8: Calculated as Column 7 divided by Column 5

Column 9: Calculated as Column 6 minus Column 4

Column 10: Calculated as Column 9 divided by column 4 (allows for growth over time)

#### Table 17: Impact on Surrounding Centres Medium Growth Scenario (\$m)

1	2	3	4	5	6	7	8	9	10
Retail Centre	Travel Time from Subject Site (min)	Approx. Retail Floor Space	Turnover in 2017	Turnover in 2026 without Proposal	Turnover in 2026 with Proposal	Immediate Shift in Turnover	% Shift in Turnover in 2026	Shift in turnover from 2017 to 2026	% Shift in turnover from 2017 to 2026
Charlestown Square	33.0	76,700	545.2	617.9	615.7	-2.2	-0.4%	70.5	12.9%
Kotara Westfield	29.0	65,050	504.2	597.3	594.9	-2.3	-0.4%	90.7	18.0%
Stockland Jesmond	22.0	20,150	154.9	183.5	182.2	-1.3	-0.7%	27.3	17.6%
Salamander S.C.	37.0	23,100	217.7	291.6	290.1	-1.5	-0.5%	72.4	33.3%
Inner City Newcastle	22.0	50,000	340.4	403.2	396.0	-7.2	-1.8%	55.6	16.3%
Raymond Terrace	25.0	23,800	166.5	223.0	220.2	-2.8	-1.2%	53.7	32.3%
Medowie	20.0	10,000	88.7	118.8	115.1	-3.8	-3.2%	26.4	29.7%
Warabrook	14.0	5,000	45.1	53.4	51.9	-1.4	-2.7%	6.9	15.3%
Mayfield	15.0	15,000	124.4	147.4	140.7	-6.6	-4.5%	16.3	13.1%
Waratah	20.0	12,000	84.0	99.5	98.0	-1.5	-1.5%	14.0	16.6%
Stockton	6.0	4,500	26.0	34.8	29.3	-5.5	-15.7%	3.3	12.8%
Other Localities	-					-6.4			
TOTAL		305,300	2307.1	2770.3	2776.7	0.0	0.2%	469.7	20.4%

Source: Column 1: The main competing retail centres in the main trade area or just beyond.

Column 3: Various sources including Shopping Centre News (SCN), PCA Shopping Centres Directory and HillPDA surveys

Column 4: Estimated turnover (\$) in 2016. Various sources including SCN, PCA and HillPDA estimate Column 5: HillPDA estimate having allowed for population growth

Column 6: Turnover following expansion of retail space in SOP. HillPDA estimate using gravity theorem

Column 7: The difference between Column 6 and 5

Column 8: Calculated as Column 7 divided by Column 5 Column 9: Calculated as Column 6 minus Column 4

Column 10: Calculated as Column 9 divided by column 4 (allows for growth over time)

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Column 2: Shortest Distance from SOP (Central) by road

# ITEM 2 - ATTACHMENT 2 PLANNING PROPOSAL FOR 4 SEASIDE BOULEVARD, FERN BAY.



The above tables show that in absolute dollar terms the largest impacts will be on Newcastle CBD and Mayfield (between \$6m and \$7m loss in turnover for each centre). However in percentage terms it represents less than 2% of Newcastle's trade and less than 5% of Mayfield's trade.

There are no universal measures of significance of economic impact. There are references in various consultancy reports and statements in the Land and Environment Court which suggest that a loss of trade below 5% is considered insignificant, 5% to 10% is low to moderate, 10% to 15% is moderate to high and above 15% is a strong or significant impact.

On this basis the only centre likely to experience a moderately strong or significant impact is Stockton with around 14% to 15% loss in trade. All other centres will experience impacts that are considered insignificant to low, that is less than 5%.

Furthermore, these are immediate impacts in 2026. Over time these impacts will lessen as a result of population and expenditure growth in the locality. As shown in the final column in the above table all of the centres are expected to enjoy some growth over this period. This would suggest the Study Area could support a new centre of some 5,000sqm with minimal impact on the surrounding retail network. As discussed above, the high population growth scenario would result in even lower impacts on the surrounding retail network.

There is a risk that IGA at Stockton Town Centre would close if its trading levels were to fall to unsustainable levels. If this were to happen it would have stronger impacts that suggested in the above table. The IGA is the anchor tenant and the other specialities are likely to experience a stronger impact due to the nexus relationship they have with the anchor tenant. This is a near worst case scenario which is possible but it's very difficult to put a probability on the event occurring. In Section 6.4 below we include a number of recommendations to mitigate these risks.

A new retail centre will meet the needs of the local (and future) residents in the area which are currently underserviced and having to travel outside of Stockton and Fern Bay for higher order retail services. Furthermore, an improved range of shops and services on the Stockton Residential Centre site should help to reduce the number of journeys made by local residents to surrounding centres. This supports a reduction in vehicle emissions and improves transport safety. Fewer and/or shorter journeys via cars also contributes to reducing the cost of living (through reduced petrol and car maintenance costs), allowing people's disposable income to be directed other goods and services.

Other benefits that may result from a new centre include:

- Where a significant property investment decision has been made it is generally viewed as a strong positive commitment for the local area. Such an investment can in turn stimulate and attract further investment to the immediate area;
- Creation of new jobs and employment opportunities; and
- Greater competition between retailers to drive lower grocery prices for consumers currently estimated to be paying more than 18%-28% more for basic food items than other industrialised nations.

### 6.3 Planning Context Considerations

The following analyses the proposed development in term of its economic impact upon surrounding centres, its locational attributes and whether a new centre on the Stockton Residential Centre site would 'make good' for any in the locality.

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### 6.3.1 What are the relevant Matters for Consideration in terms of Economic Impacts?

The Land and Environment Court (LEC) judgements have provided guidance on relevant matters in relation to economic and social impacts of proposed retail developments upon existing facilities.

The LEC has stated that Councils should not be concerned about competition between individual stores as this is a matter of fair trading. But it should concern itself with impact on established retail centres. The impact on competing stores and businesses is only relevant if it affects the viability of the centre as a whole.

In this case the only centre that is likely to experience a strong impact is Stockton. However this centre currently has a very limited retail offer which is being used by the vast majority of local residents only for "top-up" shopping.

### 6.3.2 Is the Stockton Residential Centre an Appropriate Location for the Proposal?

Apart from economic impacts, location is a further relevant matter for consideration under Section 79C of the EPA Act. This principle was considered by Justice Cowdroy in Terrace Tower Holdings Pty Ltd v Sutherland Shire Council [2002] NSWLEC 150 where the LEC refused a bulky goods centre partly because its location was inappropriate in relation to public transport services and existing retail facilities notwithstanding that the zoning of the land permitted the proposed use.

Stockton Residential Centre is centrally located at the intersection of Nelson Bay Road and Fullerton Street. It is centrally located on the peninsula but is also at the main entry point when driving from Newcastle across the North Channel Hunter River.

### 6.3.3 Does the Proposal make good for the loss?

The proposed development would benefit the local community by providing a much stronger retail offer potentially with a full-line supermarket in the trade area providing more choice and price competition for consumers.

If the existing shopping centre in Stockton is trading strongly due to undersupply then it can sustain the impacts, and more price competition should be welcomed. If the centre is trading mundanely (which from observation and the shopper survey results suggests that that is the case) then this is evidence in itself that this centre is failing to meet the needs of the local community. This is why residents are driving to Newcastle, Maitland, Medowie and other centres to undertake the bulk of their FGL shopping.

The proposed development would allow residents the opportunity to acquire a wider range of items closer to home. There are also economic and environmental benefits with travel time and cost savings that would be made by locating a full line supermarket on the subject site.

We therefore conclude that there are economic losses but the benefits of the proposal outweigh those losses.

### 6.4 Recommendations for Stockton Town Centre

There are a number of initiatives that can be explored to improve the performance of Stockton Town Centre and allow it to coexist with a new and nearby retail centre. These are:

Local eat street to serve the local area and tourists. There is currently an under provision of restaurants and cafes within the Study Area. Thus there is an opportunity for Stockton Town Centre to diversify its retail offer and become renowned for its restaurant and café culture, thereby not competing directly with the new convenience based retail centre through providing a different range of retail. Encouraging and increasing the capacity for outdoor dining would be crucial for this initiative.

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# ITEM 2 - ATTACHMENT 2 PLANNING PROPOSAL FOR 4 SEASIDE BOULEVARD, FERN BAY.



- Tourism In addition to leverage from its natural surroundings, events (such as Sunday Markets, Cultural events, Exhibitions) near Stockton Town Centre (open space to south, St Peter's Primary School, Library) can be held to increase visitation and tourism into the centre. This in turn would likely increase retail expenditure captured within the centre.
- Increase the resident population surrounding the town centre. Strong population growth would generate more expenditure and would in turn increase the demand and viability of retail services. There may be potential for mixed use given recent housing trends, however the market's preference for medium/high density living within this location couple with the feasibility of such development would need to be tested.

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# ITEM 2 - ATTACHMENT 2 PLANNING PROPOSAL FOR 4 SEASIDE BOULEVARD, FERN BAY.



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ITEM 2 - ATTACHMENT 2 PLANNING PROPOSAL FOR 4 SEASIDE BOULEVARD, FERN BAY.





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# ITEM 2 - ATTACHMENT 2 PLANNING PROPOSAL FOR 4 SEASIDE BOULEVARD, FERN BAY.

### Attachment 8 – AHIMS Search Result

If your search shows Aboriginal sites or places what should you do?

- You must do an extensive search if AHIMS has shown that there are Aboriginal sites or places recorded in the search area.
- If you are checking AHIMS as a part of your due diligence, refer to the next steps of the Due Diligence Code of practice.
- You can get further information about Aboriginal places by looking at the gazettal notice that declared it. Aboriginal places gazetted after 2001 are available on the NSW Government Gazette (http://www.nsw.gov.au/gazette) website. Gazettal notices published prior to 2001 can be obtained from Office of Environment and Heritage's Aboriginal Heritage Information Unit upon request

### Important information about your AHIMS search

- The information derived from the AHIMS search is only to be used for the purpose for which it was requested. It is not be made available to the public.
- AHIMS records information about Aboriginal sites that have been provided to Office of Environment and Heritage and Aboriginal places that have been declared by the Minister;
- Information recorded on AHIMS may vary in its accuracy and may not be up to date. Location details are
  recorded as grid references and it is important to note that there may be errors or omissions in these
  recordings,
- Some parts of New South Wales have not been investigated in detail and there may be fewer records of Aboriginal sites in those areas. These areas may contain Aboriginal sites which are not recorded on AHIMS.
- Aboriginal objects are protected under the National Parks and Wildlife Act 1974 even if they are not recorded as a site on AHIMS.
- This search can form part of your due diligence and remains valid for 12 months.

3 Marist Place, Parramatta NSW 2150 Locked Bag 5020 Parramatta NSW 2220 Tel. (02) 9585 6380 Fax. (02) 9873 8599

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# ITEM 2 - ATTACHMENT 2 PLANNING PROPOSAL FOR 4 SEASIDE BOULEVARD, FERN BAY.



AHIMS Web Services (AWS) Search Result

Purchase Order/Reference : 0 Client Service ID : 605073

Date: 08 July 2021

Mia Gallaway 116 Adelaide Street Raymond Terrace New South Wales 2261 Attention: Mia Gallaway

Email:

Dear Sir or Madam:

AHIMS Web Service search for the following area at Lat, Long From : -32.8635, 151.8023 - Lat, Long To : -32.8579, 151.8111 with a Buffer of 50 meters, conducted by Mia Gallaway on 08 July 2021.

The context area of your search is shown in the map below. Please note that the map does not accurately display the exact boundaries of the search as defined in the paragraph above. The map is to be used for general reference purposes only.



A search of the Office of the Environment and Heritage AHIMS Web Services (Aboriginal Heritage Information Management System) has shown that:

11 Aboriginal sites are recorded in or near the above location.	
0 Aboriginal places have been declared in or near the above location.*	

ITEM 3 - ATTACHMENT 2 VOLUNTARY PLANNING AGREEMENT.



Dated

2021

**Planning Agreement** 

**Environmental Planning and Assessment Act 1979** 

**Port Stephens Council** 

Kingshill Development No 1 Pty Ltd

Kingshill Development No 2 Pty Ltd

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## ITEM 3 - ATTACHMENT 2 VOLUNTARY PLANNING AGREEMENT.

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## ITEM 3 - ATTACHMENT 2 VOLUNTARY PLANNING AGREEMENT.

### This Planning Agreement is dated

2021

Parties:

Council

**Port Stephens Council** (ABN 16 744 377 876) of 116 Adelaide Street, Raymond Terrace NSW 2324

### Landowner and Developer

Kingshill Development No 1 Pty Ltd (ABN 99 158 129 652) of Suite 1, 3B Macquarie Street, Sydney NSW 2000

Kingshill Development No 2 Pty Ltd (ABN 73 158 127 041) of Suite 1, 3B Macquarie Street, Sydney NSW 2000

### Introduction:

- A The Developer owns the Land.
- **B** The Developer lodged the Development Application with Council for Development Consent to carry out the Development on the Land.
- **C** The Developer has offered to enter into this Agreement with the Council to provide the Development Contribution if the Development is undertaken.
- **D** The Parties agree that the Developer offers the Development Contributions to enhance, maintain and sustain the ecological values of the Land to ensure that the Development is not likely to significantly affect a threatened species, population, or ecological community, or its habitat.

### It is agreed:

### 1. Definitions and interpretation

### 1.1 Definitions

In this deed, unless the context clearly indicates otherwise:

Act means the Environmental Planning and Assessment Act 1979 (NSW).

Address for Service means the address of each party appearing in Schedule 2 or any new address notified by any party to all other parties as its new Address for Service.

Administrative Fees means the reasonable costs incurred by the Council relating to and arising directly from the administration and implementation of this deed.

Annual Works Program means the program set out in section 5.2 of the BMP.

Authority means any Federal, State or local government or semi-governmental, statutory, judicial or public person, instrumentality or department.

### ITEM 3 - ATTACHMENT 2

VOLUNTARY PLANNING AGREEMENT.

Page 4

Bank Guarantee means an irrevocable and unconditional undertaking:

- (a) by an Australian bank which is an eligible financial institution for the purposes of Treasury Circular NSW TC14/01 dated 24 January 2014 as amended, supplemented or substituted from time to time; and
- (b) on terms acceptable to the Council, in the Council's absolute discretion,

to pay the face value of that undertaking (being such amount as is required under this deed) on demand.

Base CPI means the CPI number for the quarter ending after the date of execution of this Deed.

**BCAMP** means the Biodiversity Conservation Area Management Plan prepared by RPS Group dated 27 June 2020 (version D02), as attached as **Annexure A** to this deed.

**BMP** means the Biodiversity Management Plan prepared by RPS Group dated 24 July 2020 (version 06) submitted with the Development Application.

BMZ 1 means the zone described in section 3.3.2 of the BMP.

BMZ 2 means the zone described in section 3.3.3 of the BMP.

BMZ 3 means the zone described in section 3.3.4 of the BMP.

BMZ 4 means the zone described in section 3.3.5 of the BMP.

BMZ 5 means the zone described in section 3.3.6 of the BMP.

**Business Day** means any day that is not a Saturday, Sunday, public holiday or bank holiday in Sydney, and concludes at 5pm on that day.

CLM Act means the Contaminated Land Management Act 1997 (NSW).

**Commencement Date** means the date this deed commences in accordance with clause 2.1 of this deed.

**Commercial Premises** has the same meaning as commercial premises under the Standard Instrument.

Consent Authority has the same meaning as in the Act.

**Conservation Area** means the area generally as shown on the plan attached as Annexure B to this deed, subject to clause 3 of Schedule 4.

Conservation Area Contribution means the:

- (a) provision of the Conservation Works; and
- (b) transfer of the Conservation Area to the Council,

in accordance with clause 2 of Schedule 4.

**Conservation Works** means the works to be undertaken on the Conservation Area prior to transfer of the Conservation Area to Council, comprising the works contemplated in the BMP.

Construction Certificate has the same meaning as in the Act.

Contamination has the same meaning as in the CLM Act and includes asbestos and lead.

### ITEM 3 - ATTACHMENT 2 VOLUNTARY PLANNING AGREEMENT.

Page 5

Contamination Consultant means a suitably qualified consultant as agreed by the Council.

**Contribution Amount** means the amount of the Monetary Contribution to be paid by the Developer in accordance with Schedule 4.

**Costs** means any loss, cost, fee, charge, expense, Tax, rate, fine, penalty or debts including those in connection with advisors and any compensation payable to any person in accordance with the law.

**CPI** means the Sydney Consumer Price Index (All Groups) published by the Commonwealth Statistician, or if that index no longer exists, any similar index that the Council specifies, in his or her sole discretion, for the purposes of this deed.

CPI Adjustment Date means 1 July 2020 and each anniversary of 1 July 2020 thereafter.

**Current CPI** means the CPI number for the quarter ending immediately before 31 March in the relevant adjustment year.

**Dealing** means in relation to the Land means, without limitation, selling, transferring, assigning, mortgaging, charging, disposing, encumbering or otherwise dealing with the Land.

**Development** means the development the subject of concept development application reference 16-2018-772-1, being a concept development for the future residential subdivision on the Land located within the Kings Hill Urban Release Area and Stage 1 subdivision works for initial site preparation and vegetation clearing.

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

**Development Contribution** means the contributions to be provided by the Developer in accordance with Schedule 4.

Developer means the Developer and the Landowner, unless otherwise specified in this deed.

**Explanatory Note** means the note exhibited with a copy of this deed when this deed is made available for inspection by the public pursuant to the Act, as required by the Regulation.

General Register of Deeds means the land register maintained under the *Conveyancing Act 1919* (NSW) and so titled.

GST means any form of goods and services tax payable under the GST Legislation.

GST Legislation means the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

Land means the land described in Schedule 3.

**Mediation Program** means the Mediation Program of the Law Society of New South Wales as published on its website and as varied from time to time.

**Milestone** means the works or other activities specified in Column 1 of Table 1 in Schedule 6 relating to the carrying out of the Conservation Works.

**Milestone Notice** means a written notice from the Developer to the Council notifying the Council that the Developer has achieved the Milestone specified in the notice, in accordance with clause 1.2 of Schedule 6.

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**Monetary Contribution** means the Contribution Amount to be provided by the Developer to Council, to fund in-perpetuity maintenance of the Conservation Area prior to the transfer of the Conservation Area to Council, in accordance with clause 6 of Schedule 4.

**Nominated Officer** means an officer of the Council for the time being holding a position nominated by the Council for the purposes of this deed.

**Plan of Subdivision** means a registered plan of subdivision within the meaning of section 195 of the *Conveyancing Act 1919* (NSW).

### Planning Application means:

- (a) a Development Application; or
- (b) any other application required under the Act,

which seeks approval for the subdivision of the Land.

Real Property Act means the Real Property Act 1900 (NSW).

Register means the Torrens title register maintained under the Real Property Act.

Regulation means the Environmental Planning and Assessment Regulation 2000 (NSW).

Related Entity has the same meaning as in section 9 of the Corporations Act 2001 (Cth).

**Remediation** has the meaning given to it in *State Environmental Planning Policy No.* 55 – *Remediation of Land* and **remediate** has a corresponding meaning.

**Residential Accommodation** has the same meaning as residential accommodation under the Standard Instrument.

Security means a Bank Guarantee for the amount and on the terms specified in Schedule 5.

Service Lot means a lot that is created for one or more of the following purposes:

- (c) to be dedicated or otherwise transferred to an Authority;
- (d) for any public utility undertaking within the meaning of the Standard Instrument as at the date of this deed;
- (e) to be association property within the meaning of the *Community Land Development Act* 1989 (NSW); or
- (f) for open space, recreation, environmental conservation, drainage or riparian land management,

but does not include a Super Lot.

Site Audit Report has the same meaning as in the CLM Act.

Site Audit Statement has the same meaning as in the CLM Act.

Site Auditor has the same meaning as in the CLM Act.

Standard Instrument means the Standard Instrument—Principal Local Environmental Plan.

Strata Plan means a strata plan or strata plan of subdivision within the meaning of the Strata Schemes Act.

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Strata Schemes Act means the Strata Schemes Development Act 2015 (NSW).

**Subdivision Works Certificate** means a certificate authorising works on the Land pursuant to Division 6.4 of Part 6 of the Act.

**Super Lot** means a lot that forms part of the Land which, following the registration of a Plan of Subdivision, is intended for further subdivision (including strata and community title subdivision):

- (a) for Residential Accommodation; or
- (b) to be used for Commercial Premises,

but does not include a Service Lot.

**Tax** means a tax, duty (including stamp duty and any other transaction duty), levy, impost, charge, fee (including a registration fee) together with all interest, penalties, fines and costs concerning them.

Transfer Date is defined in clause 3.2 of Schedule 4 to this Deed.

Urban Lot means a lot that forms part of the Land to be created by the registration of a:

- (a) Plan of Subdivision and is intended to be developed for Residential Accommodation; or
- (b) Strata Plan and has been or is being developed for Residential Accommodation,

but excluding any Service Lots and Super Lots.

### 1.2 Interpretation

In this deed unless the context clearly indicates otherwise:

- a reference to this deed or another document means this deed or that other document and any document which varies, supplements, replaces, assigns or novates this deed or that other document;
- (b) a reference to legislation or a legislative provision includes any statutory modification, or substitution of that legislation or legislative provision and any subordinate legislation issued under that legislation or legislative provision;
- (c) a reference to a **body** or **authority** which ceases to exist is a reference to either a body or authority that the parties agree to substitute for the named body or authority or, failing agreement, to a body or authority having substantially the same objects as the named body or authority;
- (d) a reference to the **introduction**, a **clause**, a **schedule** or an **annexure** is a reference to the introduction, a clause, a schedule or an annexure to or of this deed;
- (e) clause headings, the introduction and the table of contents are inserted for convenience only and do not form part of this deed;
- (f) the schedules and annexures form part of this deed;
- a reference to a **person** includes a natural person, corporation, statutory corporation, partnership, the Crown or any other organisation or legal entity;
- a reference to a **natural person** includes their personal representatives, successors and permitted assigns;

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- (i) a reference to a corporation includes its successors and permitted assigns;
- a reference to a right or obligation of a party is a reference to a right or obligation of that party under this deed;
- (k) an obligation or warranty on the part of 2 or more persons binds them jointly and severally and an obligation or warranty in favour of 2 or more persons benefits them jointly and severally;
- a requirement to do any thing includes a requirement to cause that thing to be done and a requirement not to do any thing includes a requirement to prevent that thing being done;
- (m) including and includes are not words of limitation;
- (n) a word that is derived from a defined word has a corresponding meaning;
- (o) monetary amounts are expressed in Australian dollars;
- (p) the singular includes the plural and vice-versa;
- (q) words importing one gender include all other genders;
- (r) a reference to a thing includes each part of that thing; and
- (s) neither this deed nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting.

### 2. Operation and application of this deed

### 2.1 Operation

- (a) This deed commences on the date that this deed is signed by all the parties.
- (b) For the avoidance of doubt, the obligation under this deed to deliver the Development Contribution does not take effect until:
  - (i) any Development Consent for Subdivision Works within the Development has been granted; and
  - the Developer issues a notice to Council required under section 6.12(2)(c) of the Act for the commencement of works on the Land the subject of the first Subdivision Works Certificate.

### 2.2 Planning agreement under the Act

This deed constitutes a planning agreement within the meaning of section 7.17 of the Act and the parties agree on the matters set out in Schedule 1 .

#### 2.3 Application

This deed applies to:

- (a) the Land; and
- (b) the Development.

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### 3. Application of sections 7.11, 7.12 and 7.24 of the Act

The application of sections 7.11, 7.12 and 7.24 of the Act are excluded to the extent stated in Schedule 1 .

### 4. Development Contribution

### 4.1 Developer to provide Development Contribution

The Developer undertakes to provide, or procure the provision of the Development Contribution to the Council in accordance with the provisions of Schedule 4 to this deed.

### 4.2 Acknowledgement

The Council acknowledges and agrees that the Council must use or expend the Monetary Contribution for the purpose of ongoing maintenance and management of the Conservation Area in accordance with the BCAMP.

### 5. Enforcement

### 5.1 Developer to provide Security

The Developer has agreed to provide security to the Council for the performance of the Developer's obligations under this deed by providing the Security to the Council in accordance with the terms and procedures set out in Schedule 5.

### 6. Registration

### 6.1 Registration of deed

- (a) Within 20 Business Days of receiving a copy of this deed executed by the Council, the Developer, at their own expense is to take all practical steps and otherwise do anything to procure:
  - (i) the consent of each person, as required by the Registrar-General, who:
    - (A) has an estate or interest in the Land registered under the Real Property Act; or
    - (B) is seized or possessed of an estate or interest in the Land,

to the registration of this deed on the title to the Land and to the terms of this deed; and

- (ii) the execution of any documents;
- (iii) the production of the relevant certificates of title; and
- (iv) the lodgement of this deed in a registrable form at the NSW Land Registry Services for registration by the Registrar-General in the relevant folio of the Register for the Land, or in the General Register of Deeds if this deed relates to land not under the Real Property Act.
- (b) The Developer will take all practical steps and otherwise do anything reasonably required to procure the registration of this deed within three months of the date of this deed in the relevant folio of the Register for the Land, or in the General Register of Deeds if this deed relates to land not under the Real Property Act, including promptly responding to any

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requisitions made by the Registrar-General in respect of this deed and/or any ancillary documents.

### 6.2 Evidence of registration

- (a) The Developer must provide the Council with evidence of the lodgement of this deed pursuant to clause 6.1(a)(iv) within 10 Business Days of such lodgement at the NSW Land Registry Services.
- (b) The Developer and the Landowner will provide the Council with a copy of the relevant folio of the Register for the Land and a copy of the registered dealing containing this deed within 10 Business Days of receipt of notice of registration of this deed.

### 6.3 Release and discharge of deed

- (a) The Council agrees to do all things reasonably required by the Developer, including executing any form or providing any consent required by the NSW Land Registry Services to extinguish and discharge this deed:
  - over any Urban Lot, Super Lot or Service Lot that does not include any part of the Conservation Area, upon receipt of a Subdivision Certificate application that will create the Urban Lot, Super Lot or Service Lot; and
  - (ii) in relation to any other part of the Land or any Service Lot that includes part of the Conservation Area, once the Developer has completed its obligations under this deed to the reasonable satisfaction of the Council or this deed is terminated or otherwise comes to an end for any other reason.

### 6.4 Landowner's interest in Land

The Landowner represents and warrants that at the date of this deed it is the owner of that part of the Land identified in Schedule 3 .

### 7. Dispute Resolution

### 7.1 Not commence

A party must not commence any court proceedings relating to a dispute unless it complies with this clause 7.

### 7.2 Written notice of dispute

A party claiming that a dispute has arisen under or in relation to this deed must give written notice to the other party specifying the nature of the dispute.

### 7.3 Attempt to resolve

On receipt of notice under clause 7.2, the parties must endeavour in good faith to resolve the dispute expeditiously using informal dispute resolution processes such as mediation, expert evaluation or other methods agreed by them.

### 7.4 Mediation

If the parties do not agree within 21 Business Days of receipt of notice under clause 7.2 (or any further period agreed in writing by them) as to:

(a) the dispute resolution technique and procedures to be adopted;

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- (b) the timetable for all steps in those procedures; or
- (c) the selection and compensation of the independent person required for such technique,

the parties must mediate the dispute in accordance with the Mediation Program. The parties must request the president of the Law Society of NSW or the president's nominee to select the mediator and determine the mediator's remuneration.

### 7.5 Court proceedings

If the dispute is not resolved within 60 Business Days after notice is given under clause 7.2 then any party which has complied with the provisions of this clause 7 may in writing terminate any dispute resolution process undertaken under this clause and may then commence court proceedings in relation to the dispute.

### 7.6 Not use information

- (a) The parties acknowledge the purpose of any exchange of information or documents or the making of any offer of settlement under this clause 7 is to attempt to settle the dispute. No party may use any information or documents obtained through any dispute resolution process undertaken under this clause 7 for any purpose other than in an attempt to settle the dispute.
- (b) Unless agreed between the parties, no party may use any information or documents obtained through any dispute resolution process undertaken under clause 7.4 in court proceedings commenced pursuant to clause 7.5.

### 7.7 No prejudice

This clause 7 does not prejudice the right of a party to institute court proceedings for urgent injunctive or declaratory relief in relation to any matter arising out of or relating to this deed.

### 8. GST

### 8.1 Definitions

Words and expressions used in this clause that are defined in the GST Legislation have the meaning given in that legislation.

### 8.2 Intention of the parties

The parties intend that no additional amounts will be payable on account of GST and no tax invoices will be exchanged between the parties, except for expenses incurred under clause 12.15.

#### 8.3 Reimbursement

If the Council is obliged to pay any GST on any supply made in accordance with this deed, the Landowner indemnifies the Council for the amount of any such payment required to be made.

### 8.4 Consideration GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this deed are exclusive of GST.

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### 8.5 Additional Amounts for GST

If GST is imposed on any supply made in accordance with this deed, the Landowner must pay the GST or pay to the Council an amount equal to the GST payable on or for the taxable supply, whichever is appropriate in the circumstances.

### 8.6 Non monetary consideration

Clause 8.5 applies to non-monetary consideration.

### 8.7 Assumptions

The Developer acknowledges and agrees that in calculating any amounts payable under clause 8.5 the Developer must assume the Council is not entitled to any input tax credit.

### 8.8 No merger

This clause does not merge on completion or termination of this deed.

### 9. Assignment and transfer

### 9.1 Right to assign or novate

- (a) Prior to a proposed assignment or novation of its rights or obligations under this deed, the party seeking to assign its rights or novate its obligations (Assigning Party) must seek the consent of the Council and:
  - (i) satisfy the Council (acting reasonably) that the person to whom the Assigning Party's rights or obligations are to be assigned or novated (**Incoming Party**) has sufficient assets, resources and expertise required to perform the Assigning Party's obligations under this deed insofar as those obligations are to be novated to the Incoming Party;
  - procure the execution of an agreement by the Incoming Party with the Council on terms satisfactory to the Council (acting reasonably) under which the Incoming Party agrees to comply with the terms and conditions of this deed as though the Incoming Party were the Assigning Party; and
  - (iii) satisfy the Council, acting reasonably, that it is not in material breach of its obligations under this deed.
- (b) The Assigning Party must pay the Council's reasonable legal costs and expenses incurred under this clause 9.1.

### 9.2 Right to transfer Land

- (a) The Developer must not sell or transfer to another person (**Transferee**) the whole or part of any part of the Land on which this deed remains registered under section 7.6 of the Act.
- (b) Despite clause 9.2(a), the Developer may sell or transfer the whole or any part of the Land on which this deed remains registered under section 7.6 of the Act to a Transferee if prior to the proposed sale or transfer the Developer:
  - satisfies the Council, acting reasonably, that the proposed Transferee has sufficient assets, resources and expertise required to perform any of the remaining obligations of the Developer under this deed or satisfies the Council, acting reasonably, that the Developer will continue to be bound by the terms of this deed after the transfer has been effected;

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- procures the execution of an agreement by the Transferee with the Council on terms satisfactory to the Council, acting reasonably, under which the Transferee agrees to comply with the terms and conditions of this deed as though the Transferee were the Developer; and
- satisfies the Council, acting reasonably, that it is not in material breach of its obligations under this deed.
- (c) The Developer must pay the Council's reasonable legal costs and expenses incurred under this clause 9.2.

### 9.3 Replacement Security

Provided that:

- (a) the Developer has complied with clauses 9.1 and 9.2; and
- (b) the Transferee or Incoming Party (as the case may be) has provided the Council with a replacement Security in accordance with the requirements of Schedule 5 and on terms acceptable to the Council,

the Council will promptly return the Security to the Developer.

### 9.4 Transfer of Land between the Landowner and the Developer

- (a) The provisions of clauses 9.1 to 9.3 do not apply where the Landowner transfers any part of the Land it owns to the Developer.
- (b) Despite clauses 9.1 to 9.2, the Landowner may, without consent, Deal with or assign its rights under this deed or its interests in the Land on which this deed remains registered under section 7.6 of the Act to a Related Entity, provided that the Landowner:
  - (i) notifies Council of the name of the assignee as soon as practicable prior to the assignment occurring; and
  - provides the Council with an executed deed of novation, on terms acceptable to Council (acting reasonably) requiring the assignee to comply with the terms of this deed.

### 10. Capacity

### 10.1 General warranties

Each party warrants to each other party that:

- this deed creates legal, valid and binding obligations, enforceable against the relevant party in accordance with its terms; and
- (b) unless otherwise stated, it has not entered into this deed in the capacity of trustee of any trust.

### 10.2 Power of attorney

If an attorney executes this deed on behalf of any party, the attorney declares that it has no notice of the revocation of that power of attorney.

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### 11. Reporting requirement

- (a) On each anniversary of the date of this deed or as otherwise agreed with the Council until such time as the Developer has provided the Development Contributions in accordance with this deed, the Developer must deliver to the Council a report (in a format acceptable to the Council) which must include those matters set out in clause 11(b).
- (b) The report must include a compliance schedule showing the details of all Development Contributions provided under this deed as at the date of the report and indicating any noncompliance with this deed and the reason for the non-compliance; and
- (c) Upon the Council's request, the Developer must deliver to the Council all documents and other information which, in the reasonable opinion of the Council are necessary for the Council to assess the Developer's compliance with this deed.

### 12. General Provisions

### 12.1 Entire deed

This deed constitutes the entire agreement between the parties regarding the matters set out in it and supersedes any prior representations, understandings or arrangements made between the parties, whether orally or in writing.

### 12.2 Variation and Review

- This deed must not be varied except by a later written document executed by all parties. (a)
- This deed may be reviewed or modified and any review or modification of this deed will be (b) conducted in the circumstances and in the manner determined by the parties.
- (c) The parties acknowledge that the Developer will refer the Developer to the Commonwealth under the Environment Protection Biodiversity Conservation Act 1999 (EPBC Act) as a controlled action, which may give rise to the potential for future variation or modification of this deed.
- (d) In the event that either party considers that a variation or modification of this deed is required, including because of a determination made pursuant to a referral under the EPBC Act, then the Developer and the Council agree to meet and review this deed.
- During a review of the deed under cl 12.2(d), the parties agree to negotiate any variation or (e) modification to the deed in good faith and use their best endeavours to reach agreement.
- (f) Any agreement reached during a review under clause 12.2(d) will not constitute an amendment to this deed until the amendment has been:
  - (i) confirmed in writing as a proposed amendment to this deed;
  - (ii) publicly notified in accordance with the Regulation;
  - (iii) approved by Council after consideration of any public submissions; and
  - signed by the parties. (iv)
- A failure by a party to agree to participate in a review under this clause 12.2 is taken to be a (g) dispute for the purposes of clause 7.

(h) If the parties cannot agree to the terms of any amendment to this deed following a review under clause 12.2(d), either party may refer the matter to dispute resolution under clause 7.

### 12.3 Waiver

A right created by this deed cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right does not constitute a waiver of that right, nor will a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.

### 12.4 Further assurances

Each party must promptly execute all documents and do everything necessary or desirable to give full effect to the arrangements contained in this deed.

### 12.5 Time for doing acts

- (a) If:
  - (i) the time for doing any act or thing required to be done; or
  - (ii) a notice period specified in this deed,

expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.

(b) If any act or thing required to be done is done after 5 pm on the specified day, it is taken to have been done on the following Business Day.

### 12.6 Governing law and jurisdiction

- (a) The laws applicable in New South Wales govern this deed.
- (b) The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts competent to hear appeals from those courts.

### 12.7 Severance

If any clause or part of any clause is in any way unenforceable, invalid or illegal, it is to be read down so as to be enforceable, valid and legal. If this is not possible, the clause (or where possible, the offending part) is to be severed from this deed without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses) which will continue in full force and effect.

### 12.8 Preservation of existing rights

The expiration or termination of this deed does not affect any right that has accrued to a party before the expiration or termination date.

### 12.9 No merger

Any right or obligation of any party that is expressed to operate or have effect on or after the completion, expiration or termination of this deed for any reason, does not merge on the occurrence of that event but remains in full force and effect.

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### 12.10 Counterparts

This deed may be executed in any number of counterparts. All counterparts taken together constitute one instrument.

### 12.11 Relationship of parties

Unless otherwise stated:

- (a) nothing in this deed creates a joint venture, partnership, or the relationship of principal and agent, or employee and employer between the parties; and
- (b) no party has the authority to bind any other party by any representation, declaration or admission, or to make any contract or commitment on behalf of any other party or to pledge any other party's credit.

### 12.12 Good faith

Each party must act in good faith towards all other parties and use its best endeavours to comply with the spirit and intention of this deed.

### 12.13 No fetter

Nothing in this deed is to be construed as requiring the Council to do anything that would cause the Council to breach any of the Council's obligations at law and without limitation, nothing in this deed shall be construed as limiting or fettering in any way the discretion of the Council in exercising any of the Council's statutory functions, powers, authorities or duties.

### 12.14 Explanatory note

The Explanatory Note must not be used to assist in construing this deed.

### 12.15 Expenses and stamp duty

- (a) The Developer must pay its own and the Council's reasonable legal costs and disbursements in connection with the negotiation, preparation, execution and carrying into effect of this deed within 20 days of Council providing a valid tax invoice.
- (b) The Developer agrees to pay to Council the Administrative Fees.
- (c) Prior to the issue of any notice to Council required under section 6.12(2)(c) of the Act for the commencement of any works the subject of a Subdivision Works Certificate, the Developer will pay to Council the amount of \$50,000.00 (Administrative Fee Payment) to be held and applied towards payment or reimbursement of Administrative Fees reasonably incurred by the Council on and from the date Council grants the Subdivision Works Certificate for the Development.
- (d) On each anniversary of the date upon which the first Administrative Fee Payment is paid by the Developer to Council, the Developer will pay to the Council an amount of \$50,000. Within 14 days of receipt of the Administrative Fee Payment, Council will provide the Developer with a valid Tax Invoice for the Administrative Fee Payment.
- (e) The Administrative Fees payable by the Developer will not exceed \$250,000 in total and \$50,000 in Administrative Fees in any calendar year and nothing within this deed or this

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clause 12.15 requires the Developer to pay more than \$250,000 in total in Administrative Fees and more than \$50,000 in Administrative Fees in any calendar year.

- (f) Upon the Council notifying the Developer that all Administrative Fees have been paid, the Council is to return the balance (if any) of the Administrative Fee Payment that has not been applied under this clause and provide the Developer with any outstanding Tax Invoices supporting any expenditure of the Administrative Fees requested by the Developer.
- The Developer must pay for all reasonable costs and expenses associated with the giving of (g) public notice of this deed and the Explanatory Note in accordance with the Regulation.
- The Developer must pay all Taxes assessed on or in respect of this deed and any instrument (h) or transaction required or contemplated by or necessary to give effect to this deed (including stamp duty and registration fees, if applicable).
- The Developer must provide the Council with bank cheques, or an alternative method of (i) payment if agreed with the Council, in respect of the Council's costs pursuant to clauses 12.15(a) and (g):
  - (i) where the Council has provided the Developer with written notice of the sum of such costs prior to execution, on the date of execution of this deed; or
  - where the Council has not provided the Developer with prior written notice of the (ii) sum of such costs prior to execution, within 30 Business Days of demand by the Council for payment.

### 12.16 Notices

- (a) Any notice, demand, consent, approval, request or other communication (Notice) to be given under this deed must be in writing and must be given to the recipient at its Address for Service by being:
  - hand delivered; or (i)
  - (ii) sent by facsimile transmission (if a facsimile number is provided in the Address for Service); or
  - sent by prepaid ordinary mail within Australia; or (iii)
  - sent by email (if an email address is provided in the Address for Service). (iv)
- (b) A Notice is given if:
  - hand delivered, on the date of delivery but if delivery occurs after 5pm New South (i) Wales time or a day that is not a Business Day, is taken to be given on the next Business Dav:
  - (ii) sent by facsimile and the sending party's facsimile machine reports that the facsimile has been successfully transmitted;
    - before 5pm on a Business Day, on that day; (A)
    - (B) after 5pm on a Business Day, on the next Business Day after it is sent; or
    - (C) on a day that is not a Business Day, on the next Business Day after it is sent; or

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- (iii) sent by prepaid ordinary mail within Australia, on the date that is 2 Business Days after the date of posting; or
- (iv) sent by email:
  - (A) before 5pm on a Business Day, on that Day;
  - (B) after 5pm on a Business Day, on the next Business Day after it is sent; or
  - (C) on a day that it is not a Business Day, on the next Business Day after it is sent,

and the sender does not receive a delivery failure notice.

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### Schedule 1 - Summary of Requirements

## Table 1 - Requirements under section 7.4 of the Act (clause 2.2)

The parties acknowledge and agree that the table set out below provides for certain terms, conditions and procedures for the purpose of the deed complying with the Act.

Requ	irement under the Act	This deed
1	ning instrument and/or development ication – (section 7.4(2))	
The I	Developer has:	
(a)	sought a change to an environmental planning instrument.	(a) No
(b)	made, or proposes to make, a Development Application.	(b) Yes
(c)	entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.	(c) No
	ription of land to which this deed applies — ion 7.4(3)(a))	See Schedule 3
	ription of development to which this deed ies – (section 7.4(3)(b))	See definition of Development in clause 1.1
plan	ription of change to the environmental ning instrument to which this deed applies – ion 7.4(3)(b))	Not applicable
	<pre>scope, timing and manner of delivery of ribution required by this deed – (section b)(c))</pre>	See Schedule 4
	icability of sections 7.11 and 7.12 of the Act ction 7.4(3)(d))	The application of sections 7.11 and 7.12 of the Act <b>is not excluded</b> in respect of the Development.
	<pre>icability of section 7.24 of the Act - (section )(d))</pre>	The application of section 7.24 of the Act <b>is not</b> <b>excluded</b> in respect of the Development.
	ideration of benefits under this deed if on 7.11 applies – (section 93F(3)(e))	No
<b>Mec</b> 7.4(3	hanism for Dispute Resolution – (section i)(f))	See clause 7
Enfo	rcement of this deed – (section 7.4(3)(g))	See clause 5 and clause 6
	bligation to grant consent or exercise tions – (section 7.4(10))	See clause 12.13

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## Table 2 – Other matters

Requirement under the Act	This deed
Registration of the Planning Agreement – (section 7.6 of the Act)	Yes (see clause 6)
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a construction certificate is issued – (clause 25E(2)(g) of the Regulation)	No (see Schedule 6 )
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before an occupation certificate is issued – (clause 25E(2)(g) of the Regulation)	No
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a subdivision certificate is issued – (clause 25E(2)(g) of the Regulation)	No

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## Schedule 2 Address for Service

(clause 1.1)	
Council	
Contact:	Port Stephens Council
Address:	116 Adelaide Street RAYMOND TERRACE NSW 2324
Facsimile No:	(02) 4988 0130
Email:	Council@portstephens.nsw.gov.au

## Developer and Landowner

	Kingshill Development No 1 Pty Ltd
Contact:	Wesley Chong
Address:	Suite 1/ 3B Macquarie Street, Sydney NSW 2000
Facsimile No:	(02) 9251 5089
Email:	Wesley.chong@pmno1.com
	Kingshill Development No 2 Pty Ltd
Contact:	Wesley Chong
Address:	Suite 1/ 3B Macquarie Street, Sydney NSW 2000
Facsimile No:	(02) 9251 5089
Email:	Wesley.chong@pmno1.com

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## Schedule 3 Land

(clause 1.1)

Lot	Deposited Plan	Folio Identifier	Landowner
41	1037411	41/1037411	Kingshill Development No 1 Pty Ltd
4821	852073	4821/852073	Kingshill Development No 2 Pty Ltd

## ITEM 3 - ATTACHMENT 2 VOLUNTARY PLANNING AGREEMENT.

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#### Schedule 4 Development Contributions

(clause 4)

## 1. Development Contributions

(a) The Developer undertakes to provide the Development Contribution to the Council in the manner set out in the table below:

Development Contribution	Timing	Value
Conservation Area Contribution	In accordance with clause 2 of this Schedule 4	Conservation Works estimated at \$3,500,000, in accordance with Table 1 of Schedule 6 .
Monetary Contribution	In accordance with clause 6 of this Schedule 4	In accordance with clause 6 of this Schedule 4

#### 2. Conservation Area Contribution

- (a) The Developer must:
  - carry out the Conservation Works in accordance with Schedule 6 to the Council's satisfaction (acting reasonably) prior to the transfer of the Conservation Area to the Council; and
  - (ii) transfer the Conservation Area to the Council in accordance with clause 3.4 of this Schedule 4 .

### 3. Selection of Conservation Area

#### 3.1 Site selection process

- (a) The parties acknowledge that while the approximate location of the Conservation Area is shown on the plan at Annexure B, the final location of the Conservation Area is yet to be determined.
- (b) The parties agree that the final location of the Conservation Area will be determined by the following process:
  - the Developer must, at its own cost and within at least 6 months of fulfilling all Milestones, prepare and provide the Council with a plan (Conservation Area Plan) identifying the boundaries of the Conservation Area (Proposed Site);
  - the Council may inspect the Proposed Site for the purpose of determining whether it is suitable to constitute the Conservation Area. The Developer agrees to grant access to the Land to the Council and its nominees, agents and contractors for this purpose;
  - (iii) the Council will provide written notice to the Developer of whether the Proposed Site is suitable to constitute the Conservation Area. The Council agrees to use reasonable

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endeavours to provide such notice within 28 Business Days of receipt of the Conservation Area Plan. If a notice under this clause:

- (A) states that the Proposed Site is to constitute the Conservation Area, the relevant Proposed Site will form the Conservation Area;
- (B) states that the Proposed Site is not suitable as a Conservation Area, the Developer must, within 30 Business Days of the Council's notification under this clause, provide a Conservation Area Plan for an alternative location for the Conservation Area, in which case the provisions of clauses 3.1(b)(i) to (iii) of this Schedule 4 will continue to apply until the location for the Conservation Area is determined in accordance with clause 3.1(b)(iii)(A) of this Schedule 4;
- (C) if no final location for the Conservation Area is determined after the Developer has provided 3 different Conservation Area Plans for the Proposed Site, the parties shall be in dispute and the provisions of clause 7 of this deed will apply in relation to the Conservation Area; and
- (D) if the Developer does not provide any Conservation Area Plan by the time required under clause 3.1(b)(i) or clause 3.1(b)(iii)(B) of this Schedule 4, the Council may decide in its sole discretion the location of the Conservation Area.

#### 3.2 Contamination

- (a) Not more than one month prior to the date on which the Developer proposes to transfer the Conservation Area to the Council (Transfer Date), the Developer must, at its cost, obtain and provide to the Council:
  - (i) a contamination report prepared by a Contamination Consultant which:
    - (A) confirms the nature and extent of any Contamination on the Conservation Area; and
    - (B) outlines any contamination remediation works which have been undertaken on the Conservation Area for the purposes of making it suitable for the purposes of conservation.
  - (ii) only if contamination remediation works have been undertaken, as identified in the contamination report required by this clause, a Site Audit Report and Site Audit Statement from a Site Auditor in respect of the Conservation Area which:
    - states that the Conservation Area is suitable or will be suitable for the purposes of conservation as at the Transfer Date;
    - (B) are addressed to the Council; and
    - (C) are otherwise on terms satisfactory to the Council (acting reasonably).
- (b) If the Developer does not comply with clause 3.2(a), the Council may:
  - refuse to accept the transfer of the Conservation Area until such time as clause 3.2(a) has been complied with; and
  - (ii) without limiting the Developer's obligations under clause 3.2(a), require that the Developer undertake works, at the Developer's cost and within a timeframe determined by the Council (acting reasonably), so as to enable the Developer to comply with clause 3.2(a),

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- (iii) in which case the Developer must comply with the Council's requirements.
- (c) The Council must notify the Developer in writing within 15 Business Days of receipt of the contamination report in accordance with clause 3.2(a) whether the Council is satisfied that the Developer has complied with its obligations under clauses 3.2(a) and 3.2(b). For the avoidance of doubt, any failure by the Council to provide a notice in accordance with this clause 3.2(c) does not affect the Developer's obligation to transfer the Conservation Area to the Council in accordance with clause 3.4 of this Schedule 4.

#### 3.3 Registration of positive covenant

- (a) Upon registration of the transfer of the Conservation Area to the Council, the Council must register a positive covenant to the Conservation Area.
- (b) The covenant must provide that the owner of the Conservation Area must maintain and manage the Conservation Area in accordance with the BCAMP.
- (c) The covenant must provide that if the Council transfers the Conservation Area that the transferee is to register a positive covenant on title of the Conversation Area in substantially the same terms as the positive covenant that is required by this clause 3.3.

#### 3.4 Transfer of the Conservation Area

- (a) Following receipt of:
  - (i) a notice from the Council stating that the Proposed Site is suitable to constitute the Conservation Area pursuant to clause 3.1(b); and
  - (ii) a notice from the Council in accordance with clause 3.2(c) of this Schedule 4 ; and
  - (iii) a notice from the Council stating that all Milestones have been achieved pursuant to clause 1.2 of Schedule 6 ,

the Developer agrees to:

- (iv) register a Plan of Subdivision to create a lot comprising the Conservation Area; and
- (v) deliver to the Council:
  - (A) a form of transfer in respect of the land comprising the Conservation Area executed by the Landowner and in registrable form; and
  - (B) the certificates of title for the Conservation Area,

and must take any other necessary action (other than paying stamp duty associated with the transfer) to give effect to the transfer of the title of the Conservation Area to the Council free of all encumbrances and affectations (including any charge or liability for rates, taxes and charges), other than any encumbrances set out in clause 3.4(b) of this Schedule 4

- (b) Upon transfer, the Conservation Area will be free from any encumbrances other than service easements, the positive covenant required by clause 3.3, or such other encumbrances as agreed with the Council and such agreement by the Council must not be unreasonably withheld or delayed.
- (c) The Developer must promptly comply, or procure compliance with, any requisitions raised by the Registrar-General in relation to the transfer of the Conservation Area.

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- (d) The Developer will pay all rates and taxes owing in respect of the Conservation Area up to and including the date that the Developer delivers the form of transfer and certificates of title for the Conservation Area pursuant to clause 3.4(a)(v) of this Schedule 4, after which time the Council will be responsible for all rates and taxes in relation to the Conservation Area.
- (e) The Developer must, from the Commencement Date not undertake any action or activity, prior to the transfer being registered that will have a detrimental effect on the conservation values of the Conservation Area except where the Developer is:
  - directed to undertake such action or activity by another government agency or instrumentality (such as the NSW Rural Fire Service);
  - (ii) maintaining existing access and existing tracks; or
  - (iii) otherwise required by law to undertake such an action or activity including in order to comply with any conditions of a Development Consent or any order made under the Act in respect of the Land.
- (f) For clarity, the Developer and the Council agree that transfer of the Conservation Area is made subject to any rights of the Crown in respect of Aboriginal objects that may be located within the Conservation Area.

#### 4. Compulsory Acquisition

- (a) The Developer expressly agrees that clause 4(b) and clause 4(c) of this Schedule 4 operate, to the extent necessary, as a deed poll in favour of the Council.
- (b) If the Developer does not transfer any part of the Conservation Area to the Council as required by this deed, the Developer consents to the Council compulsorily acquiring that part of the Conservation Area in accordance with the Land Acquisition (Just Terms Compensation) Act 1991 (NSW), for the amount of \$1.00.
- (c) The Developer and the Council agree that:
  - (i) this clause 4 is an agreement between them for the purposes of section 30 of the Land Acquisition (Just Terms Compensation) Act 1991 (NSW); and
  - (ii) in this clause 4, they have agreed on all relevant matters concerning the compulsory acquisition and the compensation to be paid for the acquisition.
- (d) If the Council must pay compensation under Part 3 of the *Land Acquisition (Just Terms Compensation) Act 1991* to any person, other than the Developer, in accordance with the compulsory acquisition arrangements under clause 4 of this Schedule 4, the Developer:
  - (i) must reimburse the amount of that compensation to the Council on request; and
  - (ii) indemnifies and agrees to keep indemnified the Council against all claims made against the Council pursuant to the Land Acquisition (Just Terms Compensation) Act 1991 as a result of any acquisition by the Council of the whole or any part of the Conservation Area under this clause 4 of this Schedule 4.
- (e) The Developer must pay the Council, promptly on demand, an amount equal to all costs, charges or expenses incurred by the Council acquiring the whole or any part of the Conservation Area as contemplated by this clause 4 of this Schedule 4.

# **ORDINARY COUNCIL - 12 OCTOBER 2021 - ATTACHMENTS** VOLUNTARY PLANNING AGREEMENT.

## **ITEM 3 - ATTACHMENT 2**

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#### Indemnity 5.

- The Developer indemnifies and agrees to keep indemnified the Council against all claims (a) made against the Council as a result of:
  - (i) any harm, injury or death suffered by any person or animal as a result of Contamination at the Conservation Area; and
  - (ii) any Contamination that is required to be cleaned up by an Authority to allow the use of the Conservation Area for conservation purposes,

but, in each case, limited to any Contamination that existed on or before the date that the Conservation Area is transferred to or acquired by the Council.

#### 6. **Monetary Contribution**

- The Developer must pay the Monetary Contribution to the Council prior to the transfer of (a) the Conservation Area in accordance with this Schedule 4.
- (b) The Contribution Amount will be an amount equal to the sum represented by "X" in the following formula:

X = \$3,000,000 x (Current CPI/Base CPI)

- (c) To avoid doubt on each CPI Adjustment Date, the value of X in clause 6(b) will be adjusted by multiplying X by an amount equal to the Current CPI divided by the Base CPI.
- (d) For the avoidance of doubt, if the Developer does not undertake the Development, the Developer is not required to pay the Monetary Contribution.

## ITEM 3 - ATTACHMENT 2 VOLUNTARY PLANNING AGREEMENT.

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### Schedule 5 Security terms

(clause 5.1)

### 1. Developer to provide Security

- (a) In order to secure the payment or performance of the obligations of the Developer under this deed, the Developer has agreed to provide the Security in the form of a Bank Guarantee and at the time set out in the table below. The Security is limited to one Bank Guarantee only and will not exceed the amount set out in the table below.
- (b) The Bank Guarantee must:
  - (i) name the "Port Stephens Council ABN 16 744 377 876" as the relevant beneficiary;
  - (ii) be in the amount as set out in the table below;
  - (iii) be as security for the Secured Obligation as set out in the table below; and
  - (iv) not have an expiry date.

Bank Guarantee Amount	Secured Obligation	Timeframe
\$600,000	All obligations imposed on the Developer under this deed	Prior to the issue of a notice to Council required under section 6.12(2)(c) of the Act for the commencement of works the subject of a Subdivision Works Certificate but after any Development Consent for Subdivision Works within the Development has been granted

### 2. Claims under Bank Guarantees

- (a) The Council may:
  - call upon any Security provided in accordance with this deed where the Developer has failed to provide a fulfil the Secured Obligation in accordance with this deed; and
  - (ii) retain and apply such monies and any costs and expenses incurred by the Council in rectifying any default by the Developer under this deed.
- (b) Prior to calling upon the Security, the Council must give the Developer not less than 10 Business Days written notice of his or her intention to call upon the Security.
- (c) If:
  - (i) the Council calls upon a Security; and
  - (ii) applies all or part of such monies and any costs and expenses incurred by the Council in rectifying any default by the Developer under this deed; and

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(iii) has notified the Developer of the call upon the Security in accordance with clause 2(i) of this Schedule 5,

then the Developer must provide the Council with a replacement Security to ensure that, at all times, until the date the Security is released in accordance with clause 3 of this Schedule 5, the Council is in possession of Security for a face value equivalent to the relevant Security required to be provided in accordance with clause 1 of this Schedule 5.

## 3. Release of Security

If:

- (a) the Developer has paid or satisfied all of its obligations under this deed with regards to that Secured Obligation; and
- (b) the whole of the Security relevant to the Secured Obligation has not been expended,

then the Council will promptly return the Security as it relates to that Secured Obligation (less any costs, charges, duties and taxes payable) to the Developer.

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## Schedule 6 Conservation Works

### 1. Conservation Works

#### 1.1 Timing of Conservation Works

(a) The Developer must complete the Conservation Works in accordance with any Development Consent and in accordance with the timeframe specified in the BMP.

#### 1.2 Attainment of Milestones relating to the Conservation Works

- (a) If the Developer considers that it has achieved a Milestone in accordance with Table 1 of this Schedule 6, the Developer will forward a milestone notice (Milestone Notice) to the Council together with such other supporting documentation as is necessary for the Council to determine whether that Milestone has been achieved. The Developer must promptly provide any additional information reasonably requested by the Council.
- (b) The Council will, within 28 days of receiving the Milestone Notice and all the information required under clause 1.2(a) of this Schedule 6, determine whether the Milestone specified in the Milestone Notice has been achieved and notify the Developer of its determination.
- (c) If the Council, acting reasonably, is not satisfied that the Milestone has been achieved, the Council will in its determination notify the Developer and provide an explanation as to why it is considered that the Milestone had not been achieved and, if applicable, provide details of:
  - (i) any additional work or tasks which must be undertaken; and/or
  - (ii) any information or documents which must be provided,

by the Developer, in order to achieve the Milestone. The Developer may, after taking into account the Council's explanation and undertaking the work or providing the information or documents required, re-submit a Milestone Notice together with any necessary documentation.

## ITEM 3 - ATTACHMENT 2

## VOLUNTARY PLANNING AGREEMENT.

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## 2. Conservation Works – Table 1

Column 1	Column 2
Description of the Milestone works	Standard of the works
BMZ 1 – refer to BMP Section <u>3.3.2.3</u> Phase 0 (yr -2) BMZ 2 – refer to BMP Section <u>3.3.3.2</u> Phase 0 (yr -2) BMZ 3 – refer to BMP Section <u>3.3.4.3</u> Phase 0 (yr -2) BMZ 4 – refer to BMP Section <u>3.3.5.3</u> Phase 0 (yr -2) BMZ 5 – refer to BMP Section <u>3.3.6.3</u> Phase 0 (yr -2)	As described in the BMP and in accordance with applicable Annual Works Program in accordance with the BMP.
BMZ 1 – refer to BMP Section <u>3.3.2.3</u> Phase 0 (yr -1) BMZ 2 – refer to BMP Section <u>3.3.3.2</u> Phase 0 (yr -1) BMZ 3 – refer to BMP Section <u>3.3.4.3</u> Phase 0 (yr -1) BMZ 4 – refer to BMP Section <u>3.3.5.3</u> Phase 0 (yr -1) BMZ 5 – refer to BMP Section <u>3.3.6.3</u> Phase 0 (yr -1)	As described in the BMP and in accordance with applicable Annual Works Program in accordance with the BMP. To achieve Performance Targets as per end of <u>Phase 0</u> (refer to BMP Tables 18, 22, 25, 27 and 29 respectively for each BMZ)
BMZ 1 - refer to BMP Section <u>3.3.2.3</u> Phase 1 (yr +1) BMZ 2 - refer to BMP Section <u>3.3.3.2</u> Phase 1 (yr +1) BMZ 3 - refer to BMP Section <u>3.3.4.3</u> Phase 1 (yr +1) BMZ 4 - refer to BMP Section <u>3.3.5.3</u> Phase 1 (yr +1) BMZ 5 - refer to BMP Section <u>3.3.6.3</u> Phase 1 (yr +1)	As described in the BMP and in accordance with applicable Annual Works Program in accordance with the BMP.
BMZ 1 - refer to BMP Section <u>3.3.2.3</u> Phase 1 (yr +2) BMZ 2 - refer to BMP Section <u>3.3.3.2</u> Phase 1 (yr +2) BMZ 3 - refer to BMP Section <u>3.3.4.3</u> Phase 1 (yr +2) BMZ 4 - refer to BMP Section <u>3.3.5.3</u> Phase 1 (yr +2) BMZ 5 - refer to BMP Section <u>3.3.6.3</u> Phase 1 (yr +2)	As described in the BMP and in accordance with applicable Annual Works Program in accordance with the BMP.
BMZ 1 - refer to BMP Section <u>3.3.2.3</u> Phase 1 (yr +3) BMZ 2 - refer to BMP Section <u>3.3.3.2</u> Phase 1 (yr +3) BMZ 3 - refer to BMP Section <u>3.3.4.3</u> Phase 1 (yr +3) BMZ 4 - refer to BMP Section <u>3.3.5.3</u> Phase 1 (yr +3) BMZ 5 - refer to BMP Section <u>3.3.6.3</u> Phase 1 (yr +3)	As described in the BMP and in accordance with applicable Annual Works Program in accordance with the BMP. To achieve Performance Targets as per end of <u>Phase 1</u> (refer to BMP Tables 18, 22, 25, 27 and 29 respectively for each BMZ)
Perimeter Fencing (including Koala fence) - refer to BMP Section 3.2.1.3 Phase 0-1 (up to yr +1)	As described in the BMP and in accordance with applicable Annual Works Program in accordance with the BMP.

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Execution page Executed as a deed Signed, sealed and delivered for and on behalf of the Port Stephens Council (ABN 16 744 377 876) by its Authorised Officer, in the presence of: ..... ..... Signature of witness Signature of the Authorised Officer ..... ..... Name of Authorised Officer Name of witness in full ..... ..... Office held Address of witness Executed by Kingshill Development No 1 Pty Ltd (ABN 99158129652) in accordance with section 127 of the Corporations Act: ..... ..... Signature of Director Signature of Director/Secretary ..... .....

Name of Director/Secretary

S:11143815\_1 PEH

Name of Director

## ITEM 3 - ATTACHMENT 2 VOLUNTARY PLANNING AGREEMENT.

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**Executed** by **Kingshill Development No 2 Pty Ltd** (ABN 73 158 127 041) in accordance with section 127 of the Corporations Act:

.....

.....

Signature of Director

Signature of Director/Secretary

.....

.....

Name of Director

Name of Director/Secretary

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Annexure A BCAMP



# BIODIVERSITY CONSERVATION AREA MANAGEMENT PLAN

Kings Hill Conservation Area



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Version	Purpose of document	Authored by	Reviewed by	Approved by	Review date
D01	Interim Draft for discussion	Janene Devereux	Mark Aitkens	Mark Aitkens	10/06/2020
D02	Draft for Council Review	Mark Aitkens		Mark Aitkens	27/06/2020

This report was prepared by RPS within the terms of RPS' engagement with its client and in direct response to a scope of services. This report is supplied for the sole and specific purpose for use by RPS' client. The report does not account for any changes relating the subject matter of the report, or any legislative or regulatory changes that have occurred since the report was produced and that may affect the report. RPS does not accept any responsibility or liability for loss whatsoever to any third party caused by, related to or arising out of any use or reliance on the report.

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### REPORT

## GLOSSARY OF TERMS

Term	Definition
BC Act	Biodiversily Conservation Act 2016
BCAMP	Biodiversity Conservation Area Management Plan
BMP	Biodiversity Management Plan
EEC	Endangered ecological community
EP&A Act	Environmental Planning and Assessment Act 1979
EPBC Act	Environmental Protection and Biodiversity Conservation Act 1999
LALC	Local Aboriginal Land Council
LEP	Local Environment Plan
LGA	Local Government Area
Locality	The area within a 5km radius of the Conservation Area
OEH	NSW Office of Environment and Heritage
PCT	Plant community type
SEE	Statement of Environmental Effects
SIS	Species Impact Statement
Conservation Area	The area as shown in Figure 1 for biodiversity conservation
TEC	Threatened ecological community
TSC Act	Threatened Species Conservation Act 1995
VMP	Vegetation Management Plan

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			SW Water Management Act 2000		
			SW Rural Fires Act		
			SW Coastal Management SEPP 2018		
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#### REPORT

## 1 INTRODUCTION

This Biodiversity Conservation Area Management Plan (BCAMP) has the purpose of providing a management framework necessary for maintaining biodiversity conservation outcomes within the proposed Conservation Area shown in **Figure 1**. The Conservation Area is located within land situated at 3221 Pacific Highway, Kings Hill [Lot 41 DP1037411 and Lot 4821 DP852073 ('the land')] in the Port Stephens Council Local Government Area (LGA).

The BCAMP is to be implemented once the proposed Conservation Area is established on the land by KHD over a period of up to 5 years in accordance with a program of works set out in a site specific Biodiversity Management Plan (BMP). Once the Conservation Area is established to a "maintenance standard" (after intensively managing weeds and feral fauna, and the installation of various infrastructure such as tracks and fencing/ access points as specified in the BMP), the Conservation Area will transfer to Port Stephens Council for care, control and management in accordance with this BCAMP.

### 1.1 Need for a BCAMP

The BCAMP provides guidance on the in-perpetuity maintenance and monitoring program that is particularly focused on the protection of sensitive species such as the Koala (*Phascolarctos cinereus*), Brush-tailed Phascogale (*Phascogale tapoatafa*), forest and woodland birds, large forest owls, wetland birds and threatened orbid species. This BCAMP is to be implemented on an ongoing basis that runs with the inperpetuity conservation agreement for this area, unless otherwise revised.

#### 1.2 Objectives

The long-term objectives for the Conservation Area are to:

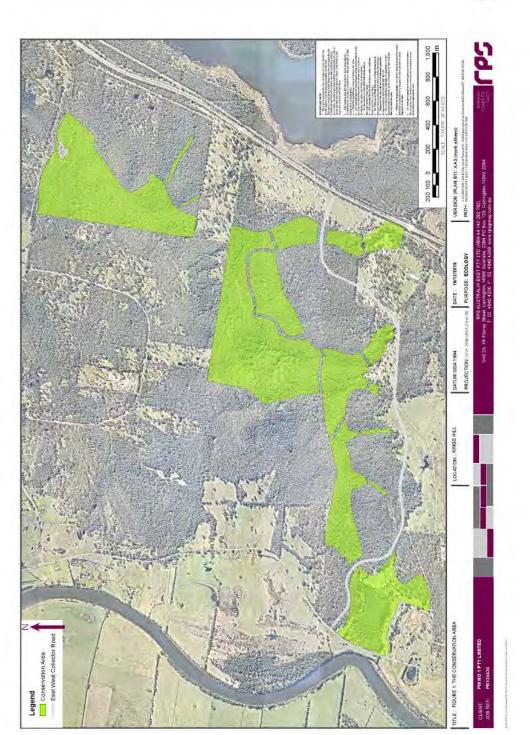
- Restore, reinstate, protect and maintain areas of high ecological, scientific, cultural or aesthetic values identified within the Conservation Area over the long term
- Maintain viable local populations of threatened species and ecological communities
- Locally suppress the activity of key threatening process (KTPs) that may otherwise substantially
  diminish the biodiversity integrity of the Conservation Area.

In this respect, the BCAMP is to:

- Provide a clear description of management objectives, prescriptions and targets necessary to maintain the biodiversity of the Conservation Area;
- Provide guidance on acceptable compatible recreation or other land use activities within the Conservation Area over time;
- Identify and assign responsibilities for ongoing management actions for the implementation period;
- Define the monitoring program;
- Define an adaptive management framework for managing unforeseen circumstances; and
- Define the review process for the BCAMP

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## 1.3 Roles and Responsibilities

Three key roles responsible for the implementation of this BCAMP are outlined in Table 1. Table 1: BCAMP Roles and Responsibilities

Role	Qualification	Responsibility		
Land Holder	• NA	<ul> <li>Implementation of this plan in consultation with suitably experienced and qualified service providers</li> </ul>		
Bushfire Specialist	<ul> <li>FPAA - Building Planning &amp; Design Level 2 Accredited</li> </ul>	<ul> <li>Oversee delivery of fuel load maintenance</li> </ul>		
Ecologist	<ul> <li>Tertiary qualifications in ecology, and</li> <li>10 or more years' experience</li> </ul>	Monitoring     BCAMP compliance (audit)     Development of works programs     Plan revision		

## 1.4 Implementation

The primary objective of the BCAMP is to maintain the biodiversity values contained within the Conservation Area, once it is established to a condition and standard specified in the BMP. Management is evidencebased following evaluation of performance targets against monitoring results that demonstrates completion. The evaluation of performance targets (see Sections 3.2 and 3.3) is to be performed annually using data obtained from the monitoring program and associated analysis of results (see Section 4). The decision framework used to evaluate the efficacy of the BCAMP is described in Section 5 (Adaptive Management), which also allows for the introduction of adjustments, where necessary, to maintain a timely delivery on the BCAMPs objectives.

This BCAMP is a guiding management document for annualised implementation following review and consideration of monitoring results and performance criteria. An Annual Works Program is to be prepared and implemented by the Project Conservation Manager. This outcome focused process is expected to provide an orderly implementation of management actions that aim to achieve the objectives of the BCAMP.

#### 1.4.1 Aboriginal Matters of Significance

The Implementation of this BCAMP will acknowledge and be sensitive to area of Aboriginal outrural significance such as the elevated ridgelines and rock outcrops. Activities in line with the BCAMP are to be done sensitively and with regard to the significance and, where necessary, in consultation with Local Aboriginal Land Council (LALC). Recommended BCAMP works are to consider involving this input to define areas with sensitivity during the planning stages of the works to be carried out through engagement of LALC and the indigenous community in those areas and within the BCAMP area generally.

#### 1.4.2 Plan Revision

Revisions to the BCAMP are not expected as any variations to the prescriptions and methods specified in this plan are expected to be handled through the 'Annual Works Program' process (See Section 5.2). However, the operation of the BCAMP may continue in accordance with an in-perpetuity conservation agreement arranged in under the relevant Voluntary Planning Agreement (VPA) prepared for the Proposal

The BCAMP will seek to consolidate and maintain the establishment works achieved through the BCAMP by focusing on the maintenance of weeds, feral fauna and infrastructure within an in-perpetuity management arrangement. The management framework, specifications and costs of the BCAMP would be developed in collaboration with PSC to ensure the lasting protection of biodiversity values contained within the Conservation Area. The BCAMP would be finalised and executed under the VPA, which will 'run with the land' to ensure in-perpetuity conservation outcomes.

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### 1.5 Relationship with other Management Plans

This BCAMP provides for an in-perpetuity management and maintenance framework for the Conservation Area. This plan replaces the BMP once its recommendations are implemented and, through a ngorous initial management program, aims to establish a benchmark to be upheld through future maintenance in order to result in long lasting biodiversity improvements to the Conservation Area (and the greater area as a whole).

## 1.6 Legislation

Environmental regulation relevant to the preparation of this BCAMP are listed below:

- NSW Biodiversity Conservation Act 2016 (BC Act);
- Commonwealth Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)
- NSW Biosecurity Act 2015;
- NSW Water Management Act 2000 (WM Act),
- State Environmental Planning Policy Coastal Management 2018, and
- Port Stephens Council Comprehensive Koala Plan of Management (PSC CKPoM) (PSC 2002).

The relevance of these statutes is outlined in the following sections

#### 1.6.1 NSW Biodiversity Conservation Act 2016

The BC Act and supporting regulations establish a modern and integrated legislative framework for land management and conservation in NSW. The purpose of the BC Act, with reference to the assessment of development (Part 4 of the EP&A Act) or activities (Part 5 of the EP&A Act), is:

(k) to establish a framework to avoid, minimise and offset the impacts of proposed development and land use change on biodiversity

(I) to establish a scientific method for assessing the likely impacts on biodiversity values of proposed development and land use change, for calculating measures to offset those impacts and for assessing improvements in biodiversity values

(m) to establish market-based conservation mechanisms through which the biodiversity impacts of development and land use change can be offset at landscape and site scales

#### 1.6.2 NSW Biosecurity Act 2015

The NSW *Biosecurity Act* 2015 divides NSW into regions based on combined LGAs and priority weeds for a region. Some weeds are managed at a state level as they form part of a broader containment strategy. The legislation complements listed Weeds of National Significance (WoNS). The Act provides for the identification and classification of listed weeds to identify the duty required for management. The duty assigned to the weed informs land managers and owners of their role and responsibility in managing the weed within the site. Weeds identified as occurring within the site listed as a priority weed within the region, need to be managed according to the duty assigned to the species in NSW WeedWise (NSW DPI 2019).

#### 1.6.3 Commonwealth Environmental Protection and Biodiversity Conservation Act 1999

The purpose of the EPBC Act is to ensure that actions likely to cause a significant impact on Matters of National Environmental Significance (MNES) undergo a process of assessment. Under the EPBC Act, an action includes a Proposal, undertaking, development or activity that may impact MNES. An action that 'has, will have or is likely to have a significant impact on a MNES' is deemed to be a 'controlled action' and may not be undertaken without prior approval from the Commonwealth Minister for the Department of the Agriculture, Water and Environment (DAWE). MNES categories listed under the EPBC Act are

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- World heritage properties;
- National heritage places;
- Wetlands of international importance (Ramsar wetlands);
- Threatened species and ecological communities (Section 18 and 18A);
- Migratory species;
- Commonwealth marine areas;
- Nuclear actions (including uranium mining), and
- A water resource, in relation to coal seam gas development and large coal mining development.

The first step in considering MNES protected under the EPBC Act (e.g. Section 18 and 18A) is a selfassessment performed in accordance with the Significant Impact Guidelines 1.1 - Matters of National Environmental Significance (DoE 2013). This is performed to determine if there is likelihood for an action to have a significant impact on MNES. Regulatory approval from the Commonwealth Minister for the Environment is required for actions that have, or are likely to have, a significant impact on MNES

### 1.6.4 NSW Water Management Act 2000

The objects of the Water Management Act 2000 are to provide for the sustainable and integrated management of the water sources for the benefit of both present and future generations and, in particular:

- Ecologically sustainable development,
- Protect, enhance and restore water recourses,
- Recognise and foster social and economic benefits;
- Recognise the role of the community,
- · Provide efficient and equitable sharing of water;
- Management of water sources with other aspects of the environment including native vegetation and native fauna;
- · Encourage the sharing of responsibility and efficient use of water; and
- Encourage best practice management and use of water.

In NSW, the regulator and policy maker for water resource management is the NSW Department of Industry – Water (Dol Water). The department develops natural resource management policy frameworks, strategies and plans related to water management.

#### 1.6.5 NSW Rural Fires Act

Section 63 of the Rural Fires Act 1997 identifies the duty of the owner or occupier of land to take the notified steps and any other practical steps to prevent the occurrence of bush fires on, and to minimise the danger of the spread of bush fire on or from that land. Notified steps include any directions that the Bush Fire Coordinating Committee (BFCC) advise to take under Section 4 of the Rural Fire Act 1997, and include any steps identified in the Bush fire risk management plan for that land.

#### 1.6.6 NSW Coastal Management SEPP 2018

The aim of the Coastal Management SEPP 2018 is to promote an integrated and co-ordinated approach to land use planning in the coastal zone in a manner consistent with the objects of the *Coastal Management Act* 2016, including the management objectives for each coastal management area, by:

(a) managing development in the coastal zone and protecting the environmental assets of the coast, and (b) establishing a framework for land use planning to quide decision-making in the coastal zone, and

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(c) mapping the 4 coastal management areas that comprise the NSW coastal zone for the purpose of the definitions in the Coastal Management Act 2016.

The Coastal Management SEPP 2016 regulates development in the coastal zone for the purpose of protecting values such as Littoral Rainforest and Coastal Wetlands, inclusive of 'proximal areas' as defined by relevant buffers to these features. In this respect, the Conservation Area comprises lands within the coastal zone to which this policy applies

This BCAMP has the purpose of maintaining the ecological integrity of lands occurring within the coastal zone notably vegetation and habitat within 50 m of wetland 803.

#### 1.6.7 Port Stephens CKPoM

Section 5.3 of the Port Stephens CKPoM provides performance criteria for development applications. These are listed below:

- Minimise the removal or degradation of native vegetation within Preferred Koala Habitat or Habitat Buffers,
- Maximise retention and minimise degradation of native vegetation within Supplementary Koala Habitat and Habitat Linking Areas,
- c Minimise the removal of any individuals of preferred koala food trees (PKFTs), wherever they occur on a development site. In the Port Stephens LGA these tree species are Swamp Mahogany (*Eucalyptus robusta*), Parramatta Red Gum (*Eucalyptus parramattensis*) and Forest Red Gum (*Eucalyptus tereticornis*). An additional list of tree species that may be important to koalas based on anecdotal evidence is included in Appendix 8 of the Port Stephens Council CKPoM (as recommended by the CKPoM Consultative Committee).
- d. Make provision, where appropriate, for restoration or rehabilitation of areas identified as Koala Habitat including Habitat Buffers and Habitat Linking Areas over Mainly Cleared Land. In instances where Council approves the removal of koala habitat (in accordance with dot points 1-4 of the above waive clause), and where circumstances permit, this is to include measures which result in a "net gain" of koala habitat on the site and/or adjacent land;
- Make provision for long term management and protection of koala habitat including both existing and restored habitat,
- Not compromise the potential for safe movement of koalas across the site. This should include maximising tree retention generally and minimising the likelihood that the proposal would result in the creation of barriers to koala movement, such as would be imposed by certain types of fencing,
- Be restricted to identified envelopes which contain all buildings and infrastructure and fire fuel reduction zone; and
- Include measures to effectively minimise the threat posed to koalas by dogs, motor vehicles and swimming pools by adopting minimum standards for these threats.

This BCAMP has the purpose of maintaining outcomes that align with the majority of these performance criteria through restoration works (e.g. weed control), revegetation using PKFTs, provision of infrastructure to prevent koala movement into the urban area or domesticated dog entry into the Conservation Area and provide functional movement pathways for Koalas to move freely throughout the locality to and from available habitat.

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## 2 EXISTING ENVIRONMENT

#### 2.1 Overview

A summary of the existing environment, as detailed in the prior BMP (RPS 2020), is provided in the following sections and has been used as the basis for the preparation of management precincts, actions and prescriptions for the Conservation Area. Project documentation was reviewed in conjunction with a detailed site investigation.

### 2.2 Land uses and events

Historical disturbances evident within the Conservation Area and more broadly operating in the local area include:

- Land clearing and logging;
- Track constructions within native vegetation.
- Construction of turkey nest and inline dams,
- Past and current livestock grazing; and
- Firewood collection.

These land uses and events have ceased following implementation of the BMP (RPS 2020) or allowed to continue under a strict management framework (e.g. track construction). Notwithstanding, the extent and influence of these disturbances across the Conservation Area has been largely determined by access (i.e. effects of terrain). Steeper, rockier lands have no discernible evidence of past/current livestock grazing as the suitability and access to these areas is poor. Similarly, there is limited evidence of feral deer grazing in these areas owing to the ground conditions (i.e. lands generally less suitabile for this species). These areas do exhibit signs of past selective logging (i.e. tree stumps) and associated high weed cover. The extent of weed cover in these areas is likely attributed to the combined influence of past selective logging and absence of livestock/ feral deer grazing that would otherwise inhibit weed growth/ spread.

The more arable forested parts of the Conservation Area typically coincide with the subject site footprint and is comparatively grassier with lower weed densities. Past logging is also evident in these areas as is firewood collection. The presence of turkey nest and inline dams is likely associated with more extensive historical livestock grazing practices, with the majority of livestock grazing now restricted to the predominantly treeless and lightly wooded parts of the eastern and western parts of the Conservation Area. Feral deer activity is commonly observed in these parts of the Conservation Area, with the associated herbivory of this species likely to be influencing understorey structure (i e simplified shrub and grassier groundcover stratum).

### 2.3 Future Land Uses and Improvements

Notwithstanding the in-perpetuity conservation agreement for the Conservation Area, there are areas of the Conservation Area that may afford other land use opportunities of a kind that are compatible with, or separated from, recognised biodiversity values. To this end, these areas will be specified within the conservation agreement and, if needed, subject to further assessment (under a separate development application) to demonstrate that the proposed activities (e.g. eco-tourism, mountain bike trails, horse riding, orienteering, tree climbing, ceremonial areas, cultural heritage, environmental approciation and education activities) are permissible, appropriate and compatible with the approved conservation agreement.

#### 2.4 Fire History

The fire history of the study area is unknown prior to 2012 (RFS 2019). A small isolated fire event was recorded in the north-western part of the study area in July 2016 (RFS 2019). No wildlines have been

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recorded within the subject site since 2012, which is supported by field observations that indicate no evidence of any recent fire events to 2020. However, isolated ecological burns have been performed as per guidance provided in RPS (2020).

## 2.5 Flora

#### 2.5.1 Plant Community Types

Seven native plant community types (PCTs) are mapped as occurring within the Conservation Area (RPS 2020a) and are listed in **Table 2** Threatened ecological communities (TEC) are also detailed within **Table 2** The spatial extent of each PCT is shown in **Figure 2**.

Table 2: PCTs occurring within the Conservation Area

PCT	PCT Name	Area (ha)
783	Coastal freshwater swamps of the Sydney Basin Bioregion <sup>1</sup>	9.21
1230	Swamp Mahogany swamp forest on coastal lowlands of the NSW North Coast Bioregion and northern Sydney Basin Bioregion	0.15
1525	Sandpaper Fig - Whalebone Tree warm temperate rainforest <sup>a</sup>	2.42
1584	White Mahogany - Spotted Gum - Grey Myrtle semi-mesic shrubby open forest of the central and lower Hunter Valley	
1590	Spotted Gum - Broad-leaved Mahogany - Red Ironbark shrubby open forest	111.36
1600	Spotted Gum - Narrow-leaved Ironbark shrub - grass open forest of the central and lower Hunter	1.05
1728	Swamp Oak - Prickly Paperbark - Tall Sedge swamp forest on coastal lowlands of the Central Coast and Lower North Coast	5.49
Total		231.19

#### 2.5.2 Threatened Flora

Three threatened flora species are known to occur within the Conservation Area as outlined in **Table 3**, which also provides estimates of the number of individuals from direct counts and habitat area mapping using a 30 m buffer from recorded individuals.

Table 3: Threatened Flora within the Conservation Area

Species	BC Act	Abundance and Habitat		
species	DU AU	Count	Habitat Area (ha)	
Maundia triglochinoides	Vulnerable	42	0.48	
Pterostylis chaetophora	Vulnerable	468	3.72	
Corybas dowlingii	Endangered	1,467	8.62	
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The location of threatened flora species within the Conservation Area is shown in Figure 3. A general description of each species habital and ecology is provided in the following sections.

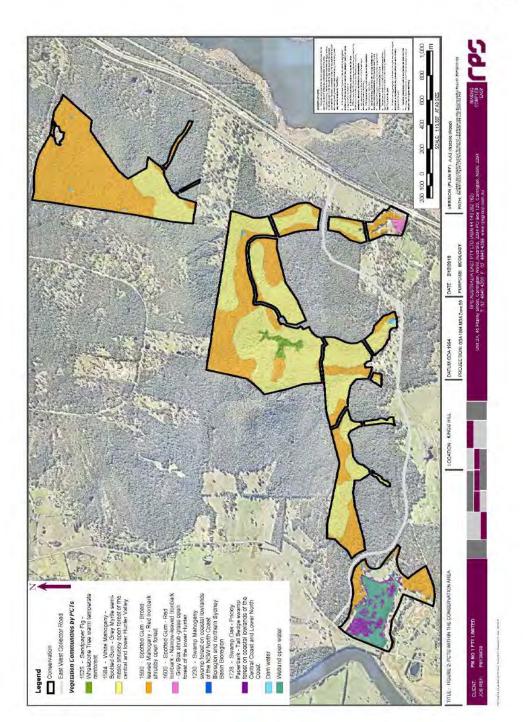
<sup>7</sup> Freshwater Wetlands on Coastal Floodplains of the New Sputh Wales North Coast, Sydney Basin and South East Corner Bioregions EEC

- Lower Hunter Valley Dry Rainforest in the Sydney Basin and NSW North Coast Bloregions VEC

\* Lower Hunter Spotted Gum - Ironbark Forest In the Sydney Basin and North Coast Bioregions EEC

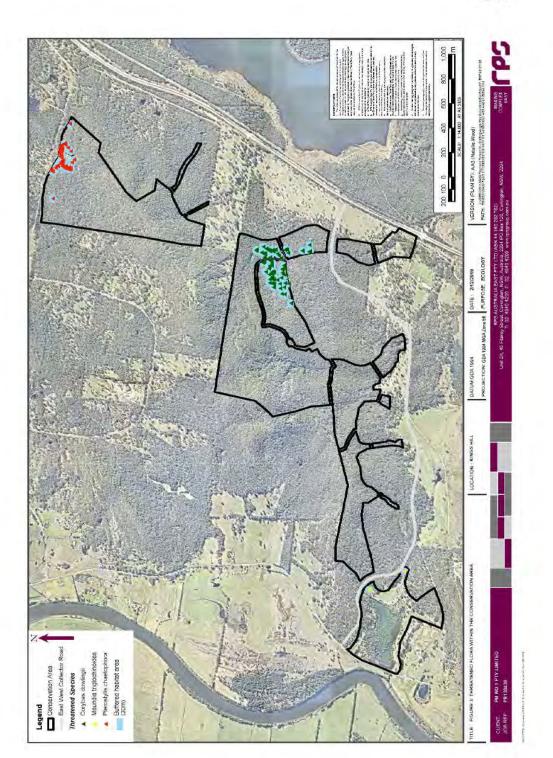
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#### 2.5.2.1 Maundia triglochinoides

Harden (1993) describes *Maundia triglochinoides* as a wetland species that "grows in swamps or shallow freshwater in heavy clay; north from southern Sydney" According to the Threatened Species Profile Database (BCD 2019), the ecology and habitat of *Maundia triglochinoides* is as follows:

- Grows in swamps, lagoons, dams, channels, creeks or shallow freshwater 30 60 cm deep on heavy clay, low nutrients,
- Flowering occurs during warmer months.
- Associated with wetland species (e.g. Triglochin procerum),
- Probably wind pollinated
- Diaspore is the seed and root tubers, which are probably dispersed by water
- Spreads vegetatively, with tufts of leaves ansing along rhizome. Populations expand following flood
  events and contract to more permanent wetlands in times of low rainfall; and
- Flowers November-January.

According to the NSW Scientific Committee (2001), the habitats in which Maundia triglochinoides grows is vulnerable to filling, changes in hydrology, water quality and weed invasion. Locally, it appears that the growth of Alligator Weed (*Alternanthera philoxeroides*) in combination with livestock grazing (i.e. highly palatable species) has substantially impacted the numbers of individuals observed within the Conservation Area. Recent observations indicate the species is now restricted to the southern location shown in **Figure 3** with it now being absent (temporarily) from the northern recorded occurrence.

#### 2.5.2.1.1 Management Implications

The following lifecycle/ habitat related factors represent management matters for this species:

- Maintaining habitat integrity through prevention of weed invasion and dominance;
- Prevention of herbivory by livestock and feral deer; and

Managing micro habitat requirements through the maintenance of water occurrence and depth.

#### 2.5.2.2 Pterostylis chaetophora

Pterostylis chaetophora belongs to a clade of greenhoods commonly referred to as Rustyhoods or Oligochaetochilus, According to the Threatened Species Profile Database (BCD 2019), the ecology and habitat of Pterostylis chaetophora is as follows.

- Prefers seasonally moist, dry sclerophyll forest with a grass and shrub understorey.
- Flowers from September to November. Vegetative reproduction is not common in this group of Greenhoods, but some species may form more than one dropper annually. Fails to flower in dry seasons
- Plants are deciduous and die back to the large, underground tubers after seed release. New rosettes are produced following soaking autumn and winter rains.

The species occurs in two conservation reserves being Columbey National Park and Wingen Maid Nature Reserve. Observations from local occurrences at Columbey National Park, Wallaroo State Forest, Grahamstown West and the Conservation Area provide additional context for defining the habitat preferences for this species, these being:

 A species rich mix of tree species with open forest structure and canopy gaps. Species include Grey Box (Eucalyptus moluccana), Ironbarks [mostly Broad-leaved Ironbark (Eucalyptus fibrosa)], Forest Redgum (Eucalyptus tereticornis) and Spotted Gum (Corymbia maculata) with the latter species never being dominant.

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The proximal incidence of Melaleuca nodosa. The presence of this species, which is likely linked to
imperfectly drained soils, could represent favourable soil conditions reflective of locally retaining
elevated soil moisture levels after sufficient autumn – winter rainfall events. This habitat preference may
be important in the perennial survival of orchid tubers and also serve to activate flowering events.

This greenhood group comprises members adapted to semi-arid to and conditions, with continental distributions reflective of these characteristics (i.e. largely inland distribution). Key adaptations of this group include:

- Multiple flowers per raceme for increased seed production (i.e. ~ 3,500 seeds per fertilised flower)
- Flower height (i.e. elevated position to maximise dispersal potential);
- Flowering time (i.e. typically in spring where the production of dehisced seed coincides with increased windiness to aid dispersal potential); and
- Longer lived seed to survive the drier hotter summer months (~ 1 year versus ~ 0.5 years for non rustyhoods).

The germination and later survival of *Pterostylis chaetophora* is solely dependent on its relationship with the symbiotic fungus *Ceratobasidium cornigerum* (Dr Mark Clements pers. coms. 2019), this being consistent with findings from earlier mycorrhizal – *Pterostylis* studies (Warcup 1981). Without this fungus, *Pterostylis chaetophora* is unable to germinate then reproduce.

#### 2.5.2.2.1 Management Implications

The following lifecycle/ habitat related factors represent management matters for this species:

- Maintaining patch integrity through management of edge effects (e.g. weed invasion and dominance), and
- Managing micro habitat requirements through the maintenance of bare earth patches

#### 2.5.2.3 Corybas x dowlingii

The habitat of Corybas x dowingli, a stable hybrid between C. barbarae and C. acontiflorus (Wagner et al 2020), is described in the NSW Scientific Committee (2007) final determination as "typically grows in guilless in tail open forest on well-drained gravelly soil at elevations of 10-200m". It forms clonal colonies, an aspect of its ecology that has allowed for the successful translocation of this species at Bulahdelah in response to an impact from the construction of the Pacific Highway bypass at that location.

The final determination (NSW Scientific Committee 2007) identifies three populations of *C* x dowlingii The Bulahdelah population of *C* x dowlingii includes approximately 3,400 plants, while the Port Stephens populations include approximately 15,000 plants. The size of the Freemans Waterhole population is unknown. In relation to the latter, a recent study for 1,000 ha of native vegetation near Freemans Waterhole in the Awaba – Eraring locality resulted in the detection of an estimated 325,000 individuals of *C* x *dowlingii* at 2,132 locations (i.e. mean ~152 plants/ location) (RPS 2019 in prep.). This is in addition to numerous finds of this species in the Mandalong valley (RPS 2014).

While not noted to occur in the conservation reserve network (NSW Scientific Committee 2007), C. x dowlingii Bell (2009) has recorded it within Columbey National Park with a portion of the above-mentioned Awaba – Eraring population occurring within the Lake Macquarle City Council administered BioBank site.

#### 2.5.2.3.1 Management Implications

The following lifecycle/ habitat related factors represent management matters for this species:

- Maintaining patch integrity through management of edge effects (e.g. weed invasion and dominance), and
- Managing fire intervals.

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#### 2.5.3 Exotic Flora Species

#### 2.5.3.1 Species with Regulatory Management Specifications

Exotic flora requiring management occur within the Conservation Area are listed in **Table 4** along with their Biosecurity Duty as specified in the Hunter Regional Strategic Weed Management Plan 2017-2022 (Hunter Local Land Services 2017). The extent and percent cover of important weed species requiring management is provided in the final annual monitoring report prepared under the former BMP, which is to be used as a baseline for ongoing reference

#### Table 4: Exotic flora requiring management within the Conservation Area

Exotic Species	Classification	Biosecurity Duty (Hunter Local Land Services 2017)		
Lantana (Laniana camara)	Weed of National Significance (WoNS) Biosecurity Act 2015	Weed of community concern for agricultural and environmental outcomes All plants are regulated with a general biosecurity duty to prevent, eliminate or minimise any biosecurity risk they may pose. Any person with deals with any plant, who knows (or ought to know) of any biosecurity risk, has a duty to ensure the risk is prevented, eliminated or minimised, so far as is reasonably practicable.		
Alligator Weed (Alternanthera philoxeroides)	WoNS Biosecurity Act 2015	State Priority Weed Objective - CONTAINMENT An owner or occupier of land in the Alligator weed biosecurity zone on which there is the weed Alternanthera philoxeroldes (Alligator Weed) must. a) if the weed is part of a new intestation of the weed on the land, notify the local control authority for the land as soon as practicable in accordance with Part 6, and b) eradicate the weed or if that is not practicable destroy as much of the		
		weed as is practicable and suppress the spread of any remaining weed.		
Water Hyacinth ( <i>Eichhornia</i> cr <i>assipes</i> )	Wotvs Biosecurity Act 2015	State Priority Weed Objective - CONTAINMENT An owner or occupier of land in the Water Hyacinth biosecurity zone on which there is the weed <i>Eichhornia crassipes</i> (Water Hyacinth) must a) if the weed is part of a new infestation of the weed on the land, notify the local control authority for the land as soon as practicable in accordance with Part 6, and		
		<li>b) eradicate the weed or if that is not practicable destroy as much of the weed as is practicable and suppress the spread of any remaining weed.</li>		
Blackberry (Rubus fruticosus species aggregate)	WoNS Biosecurity Act 2015	State Priority Weed Objective - ASSET PROTECTION		
Asparagus (Asparagus spp.)	WoNS Biosecurity Act 2015	State Priority Weed Objective - ASSET PROTECTION		
Fireweed (Senecio madagascariensis)	WoNS Biosecurity Act 2015	State Priority Weed Objective - ASSET PROTECTION		
African Olive (O <i>lea europae</i> a subsp. <i>cuspidata</i> )	Biosecurily Act 2015	Regional Priority Weed Objective - ASSET PROTECTION		

The Regional Strategic Response for Alligator Weed and Water Hyacinth is

- · Detailed surveillance and mapping to locate all infestations.
- High level pathways analysis to identify potential introduction areas and preventative options.
- Implement quarantine and/or hygiene protocols.
- Monitor progress towards eradication.

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The Regional Strategic Response for Lantana, Blackberry and Asparagus spp. is

- Develop region-wide coordinated campaigns for collaborative management
- Identification of regional containment zones where required
- Identification of key sites/assets in the geographic area
- Species managed in accordance with published weed management plan

The Regional Strategic Response for African Olive is

- Establish agreed quarantine and/or hygiene protocols.
- Surveillance and mapping to locate all infested properties.
- Monitor change in current distribution to ensure containment of spread.
- High level analysis of pathways to identify potential introduction areas and preventative options.
- Identification of key sites/assets in the geographic area
- Develop region-wide coordinated campaigns for collaborative management.
- Species managed in accordance with published weed management plans

#### 2.5.3.2 Species for Management Consideration

Other notable exotic species recorded within the Conservation Area that are deserving of management focus are listed below:

- Carpet Grass (Axonopus fissifolia),
- Spear Thistle (Cirsium vulgare);
- Whiskey Grass (Andropogon virginicus).
- Wild Tobacco (Solanum mauritianum);
- Large-leaved Privet (Ligustrum lucidum);
- Small-leaved Privet (Ligustrum sinense);
- Crofton Weed (Ageratina adenophora);
- Cotton Bush (Gamphacarpus fruticasus),
- Camphor Laurel (Cinnamomum camphora); and
- Mickey Mouse Plant (Ochna serrulata).

Where identified, these species should be supressed and/or eradicated to prevent further invasion or erosion of the biodiversity values within the Conservation Area.

#### 2.6 Fauna

#### 2.6.1 Habitat

Fauna of the Conservation Area can be broadly characterised by those occupying habitats described as dry sclerophyll and mesic forests on various geomorphic surfaces (e.g. soils, aspect, slope) dissected by 1<sup>at</sup> to 3<sup>rd</sup> order streams and some floadplain environs. The catchment mostly comprises ephemeral 1<sup>at</sup> and 2<sup>rd</sup> order streams on moderately steep grades that exhibit short duration flows following effective rainfall events. These flows ultimately drain into wetlands located on the coastal floodplain in the south and west. Few instances of naturally prolonged water accumulations occur within these drainages outside the floodplain environment.

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In some drainages, these flows are intercepted by constructed online water detention structures built for the purposes of watering livestock. Also, there are scattered turkey nest dams throughout the Conservation Area acting as additional offline watering points.

The hydrogeomorphology of a 3rd order stream in the east of the Conservation Area is characterised by small semipermanent pools interconnected by dry elongated clayey riffle zones with no gravel substrate. Flows in this stream are rainfall dependant and are generally stagnant outside rainfall events.

Rocky ground is commonly seen on elevated lands, which on mid to lower slopes breaks to clayey soils. A heterogenous distribution of fallen logs and hollow-bearing trees was observed, these representing habitat features with positive influence on bird, mammal and reptile species diversity.

#### 2.6.1.1 Hollow-bearing Trees

The distribution of hollow-bearing trees across the Conservation Area is not even and vanes in accordance with historical land use. Relatively inaccessible lands generally comprise higher densities of hollow-bearing trees, as these forests were more difficult to clear or log.

The predicted hollow-bearing tree deficit for the Conservation Area was estimated in the former BMP and mapped. Enhancement works performed under the former BMP resulted in the installation of natural and artificial hollows to lift the amount of this habitat type across the Conservation Area. The extent of hollow installation is provided in the final annual monitoring report prepared under the former BMP, which is to be used as a baseline for ongoing reference.

#### 2.6.1.2 Fallen Logs

The predicted fallen log length deficit for the Conservation Area was constructed from a comparison of the modelled distribution (RPS 2020a) and a benchmark state of 45 m/ ha or greater for PCT 1590 and 70 m/ ha for PCT 1584. Enhancement works performed under the former BMP have uplifted the amount of this habitat. type within the Conservation Area. The extent of fallen log installation is provided in the final annual monitoring report prepared under the former BMP, which is to be used as a baseline for ongoing reference.

#### 2.6.2 Connectivity

Habitat connectivity throughout the Conservation Area provides continuous links through the landscape to the north, south and tentatively to the east beyond the immediately adjacent Pacific Highway. The Hunter River to the west creates discontinuity to habitats on the western side of the niver. High canopy connectivity habitats are prevalent throughout the site, providing strong habitat resources for a range of arboreal fauna species. Important movement pathways identified in the Conservation Area are shown in **Figure 4**.

### 2.6.3 Threatened Fauna Species

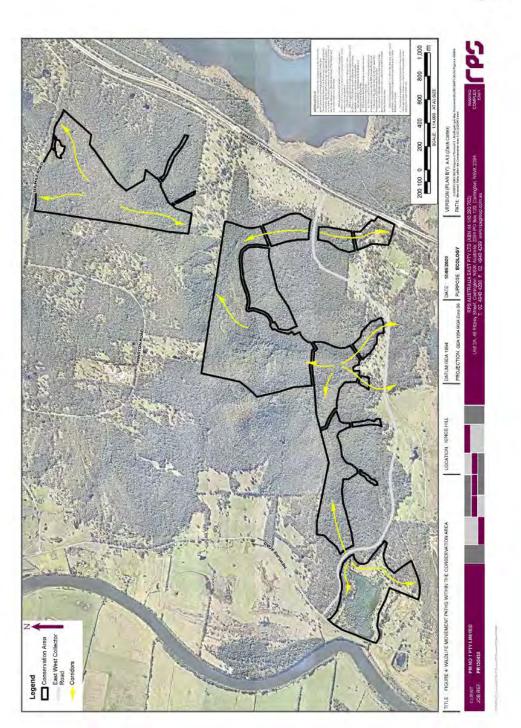
Eighteen threatened fauna species have been recorded within the Conservation Area with recorded locations shown in Figure 5. By habitat type, species observations are as follows:

Wetland area (PCTs 783, 1230, 1728)

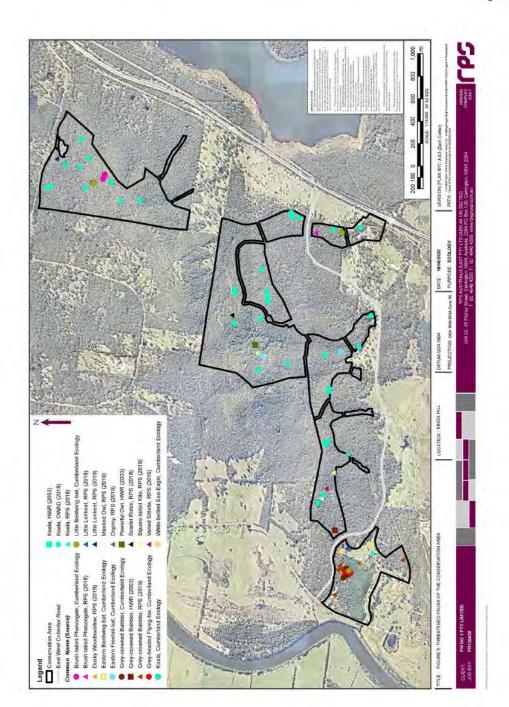
- White-belled Sea Eagle (Haliaeetus leucogaster) (vulnerable under the BC Act);
- Grey-crowned Babbler (Pomatostomus temporalis) (vulnerable under the BC Act);
- Dusky Woodswallow (Artamus cyanopterus) (vulnerable under the BC Act); and
- Black-necked Stork (Ephippiorhynchus asiaticus) (endangered under the BC Act)

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Sclerophyll Forest (PCTs 1584 and/ or 1590)

- Grey-crowned Babbler (vulnerable under the BC Act);
- Glossy-black Cockatoo (Calyptorhynchus lathami) (vulnerable under the BC Act);
- Scarlet Robin (Petroica boodang) (vulnerable under the BC Act);
- Brown Treecreeper subspecies (Climacteris picumnus victoriae) (vulnerable under the BC Act);
- Varied Sittella (Daphoenositta chrysoptera) (vulnerable under the BC Act);
- Little Lorikeet (Glossopsilta pusilia) (vulnerable under the BC Act).
- Powerful Owl (Ninox strenua) (vulnerable under the BC Act)
- Masked Owl (Tyto novaehollandiae) (vulnerable under the BC Act);
- Souirrel Glider (Petaurus norfolcensis) (vulnerable under the BC Act).
- Brush-tailed Phascogale (Phascogale tapoatafa) (vulnerable under the BC Act),
- Koala (Phascolarctos cinereus) (vulnerable under the BC Act and EPBC Act).
- Eastern Freetail Bat (Mormopterus norfolkensis) (vulnerable under the BC Act).
- Grey-headed Flying-fox (Pleropus poliocephalus) (vulnerable under the BC Act and EPBC Act);
- Little Bentwing Bat (Minioplerus australis) (vulnerable under the BC Act); and
- Eastern Bentwing Bat (Miniopterus schreibersii oceanensis) (vulnerable under the BC Act).

A more detailed analysis for the White-beliled Sea Eagle, Grey-crowned Babbler, Black-necked Stork, large forest owls (Powerful and Masked Owl), Squirrel Glider, Brush-tailed Phascogale, Koala and Grey-theaded Flying Fox is provided in the following sections to assist with the scoping of management actions and specifications provided in this BCAMP.

### 2.6.3.1 White-bellied Sea Eagle

#### 2.6.3.1.1 Lifecycle

The White-bellied Sea-eagle reaches sexual maturity at approximately 6 years old (Marchant and Higgins 993; DoE 2015). The juvenile birds have a high mortality rate; however, they can live up to 30 years (Parks and Wildlife Service Tasmania 2006, as cited by, DoE 2015). White-bellied Sea-eagles breed in single monogamous pairs and only raise one clutch of 1-2 rarely 3 per year. Although a second clutch may be laid in the same nest or in a nearby nest if a nest fails early in incubation (Marchant and Higgins 1993; NSW Scientific Committee 2016). The breeding period is typically from June to January (NSW Scientific Committee 2016), however, it varies by a month or two between Northern and Southern Australia with commencement earlier in the north and cessation later in the south (DoE 2015). Eggs are mostly laid in June to September and young birds are fed by the parents for up to three months after fieldging the nest before being driven out of the breeding territory at approximately four months later (DoE 2015).

## 2.6.3.1.2 Habitat

The White-bellied Sea Eagle is found in coastal habitats (especially those close to the sea shore) and around terrestrial wetlands in tropical and temperate regions of mainland Australia and its offshore islands. (DoE, 2017a). It occupies habitat characterised by the presence of large areas of open water (larger rivers, swamps, lakes, the sea) and have been recorded in (or flying over) a variety of terrestrial habitats (DoE, 2017a). This species has been recorded at or in the vicinity of freshwater swamps, lakes, reservoirs, billabongs, saltmarsh and sewage ponds. Within the locality, there are 71 recorded locations of the Whitebellied Sea Eagle, scattered throughout and predominantly in association with Grahamstown Dam in the east and along larger riparian areas and wetlands.

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The White-belled Sea-eagle nests are primarily built in tall emergent eucalypt trees and they may be built in a variety of sites including; bushes, mangroves, cliffs, rocky outcrops, caves, crevices, on the ground or even on artificial structures (Marchant & Higgins 1993, DoE 2015). Nest trees often have emergent dead branches which are used as 'guard rootst' (Dennis et al. 2011b) Debus et al. 2014, as cited by, NSW Scientific Committee 2016). In subtropical eastern NSW White-bellied Sea-eagles nest at least 220 m from human settlements (mean 460 m, O'Donnell and Debus 2012. NSW Scientific Committee 2016). Spencer and Lynch (2005, as cited by, NSW Scientific Committee 2016) report the White-bellied Sea-eagle avoids nesting near urban areas. Nests may be abandoned if disturbed (Debus et al. 2014, as cited by, NSW Scientific Committee 2016).

#### 2.6.3.1.3 Local Occurrence

A pair of White-bellied Sea Eagle's has been repeatedly recorded in the Conservation Area using a large Forest Redgum for breeding purposes. The White-bellied Sea Eagle nest is located in close proximity to Wetland 803. Habitat is largely restricted to the estuarine environment with limited foraging opportunities evident in the Conservation Area. Habitat and recorded locations for this species are shown in **Figure 6**.

#### 2.6.3.2 Grey-crowned Babbler

#### 2.6.3.2.1 Lifecycle

The Grey-crowned Babbler is primarily an insectivore that occasionally eats seed. It is terrestrial and arboreal species favouring the latter behaviour when compared to other babbler species. Foraging forays are commonly seen on the ground where it turns leaf litter, bark and small stones to uncover prey and also low shrubs and trees in feeding flocks of 2-15 birds. Feeding flocks maintain a tight association and rarely separated by more than 30 m at any one time for social and predator evasion reasons (Higgins and Peter 2002).

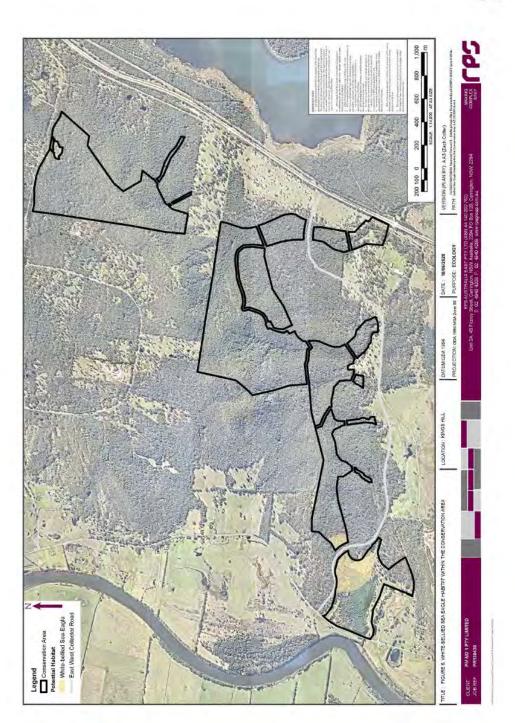
Co-operatively breeding groups comprise a breeding pair and several non-breeding birds who are helpers of auxiliaries. Helpers or auxiliaries aid in the building/maintenance of dome shaped brood and roost nests in addition to feeding young. Nests often build in tall shrubs and small trees (saplings), with *Casuarina glauca* and *Melaleuca styphelioidas* favoured on site. Groups often roost in one nest for warmth and predator evasion reasons (Higgins and Peter 2002).

Groups typically comprise 4-12 birds with declining populations often identified by small groups of 1-3 birds and linked to fragmentation (i.e. >300m separation between habitat patches), predation and habitat simplification (i.e. burning for fuel reduction, tree dieback, removal of fallen timber/ logs, cattle grazing and invasion of pasture grasses/ exotic plants). Habitat simplification is often denoted by the loss of important resources for feeding and nest building through depletion of an accumulated leaf litter layer, increase in groundcover plant species and loss of shrub layer (Higgins and Peter 2002).

Groups live in permanent territories, often adjoining others, which are aggressively defended throughout the year. Home ranges or territories vary in area (e.g. 1.5 to 50 ha) with territory size dependant on resource availability and quality and not necessarily the number of birds. Offspring often stay with the breeding pair for up to two years, with dispersal occurring into neighbouring unoccupied habitat thereafter and form new breeding groups once sexually mature (i.e. 2-4 years) (Higgins and Peter 2002)

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## 2.6.3.2.2 Habitat

The Grey-crowned Babbler can be found in open Box-Gum Woodlands on the slopes, Box-Cypress pine and open Box Woodlands on alluvial plains and in woodlands on fertile soils in coastal regions (OEH, 2019) Woodlands typically have regenerating trees, tall shrubs and an intact ground cover of grass and forbs (NSW Scientific Committee, 2011c). Nests for this species are dome-shaped and built from sticks and are usually located in shrubs or saplings and may also be built on the outermost leaves of low branches of larger eucalypls (OEH, 2019)

#### 2.6.3.2.3 Local Occurrence

There are 13 recorded locations of the Grey-crowned Babbler within the locality. Recent surveys of the study area recorded two Grey-crowned Babblers and one nest. Habitat for this species is not widespread throughout the Conservation Area and is restricted and generally concentrated to the vegetated margins of wetland 803 where a complex of young trees and understory structure is apparent, a localised circumstance consistent with habitat occupancy by a second flock of this species in the periphery of wetland 804 to the south west (Mark Aitkens pers cbs 2019). Habitat and the recorded locations for this species are shown in **Figure 7** 

## 2.6.3.3 Black-necked Stork

### 2.6.3.3.1 Lifecycle

Black-necked Storks build large nests high in tail trees close to water that usually provide clear observation of the surroundings and are at low elevation (reflecting the floodplain habitat) (OEH 2019b). In NSW, breeding activity occurs May – January: Recorded nesting in Tomago NSW in 2017 involved a nest built in a Narrow-leaved Paperbark (*Melaleuca Ilnariifolia*) approximately three metres tall, growing in wetland dominated by Common Reed (*Phragmites australis*). The tree had multiple trunks and the crown was broad and flattened at the top (Lindsey 2019).

### 2.6.3.3.2 Habitat

This species inhabits tropical and warm-temperate terrestral wetlands, estuarine and littoral habitats and occasionally grassland and wooded areas (Marchant and Higgins 1990). Foraging occurs in fresh or saline waters up to 0.5m deep, preferring extensive sheets of shallow freshwater over grassland or sedgeland; shallow swamps with short emergent vegetation and abundant aquatic flora and permanent billabongs and pools on floodplains (Marchant and Higgins 1990). Less common in intertidal waters, littoral and estuarine mudflats or areas of tringing mangroves (Marchant and Higgins 1990).

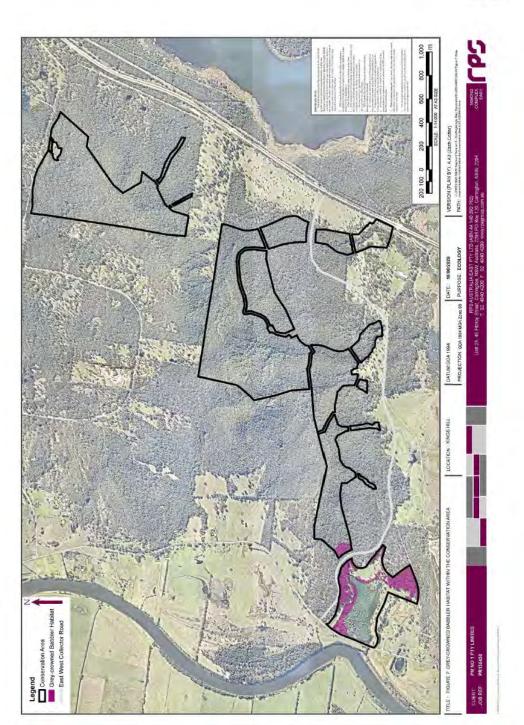
## 2.6.3.3.3 Local Occurrence

The Black-necked Stork has been rarely observed in the Conservation Area despite frequent surveys by local ornithologists/ bird enthusiasts since 2016 and less frequent observations since 2000. The infrequent occurrences of this species are restricted to Wetland 803 where it is likely to have been moving through the locality or potentially foraging. Habitat for this species is restricted to the western part of the Conservation Area and is restricted to Wetland 803.

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#### 2.6.3.4 Large forest owls (Powerful and Masked Owls)

#### 2.6.3.4.1 Lifecycle

The Powerful Owl (*Ninox strenua*) reaches sexual maturity at 2 years of age in captivity and it is thought to reach sexual maturity at 3 to 4 years in the wild. The Powerful Owl is monogamous and lives in large permanent home ranges from 300 ha to 1500 ha depending on the habitat quality (DEC 2006). Breeding is strictly seasonal, occurring from mid-May to mid-July. A single clutch of 1-2 eggs is laid per year, although, a replacement clutch may be laid if the first attempt fails early on (DEC 2006). Juveniles are dependent for 6-7 months post-fledging and lifespan is up to 25+ years in captivity and thought to be approximately 15 years in the wild (Data from Fleay 1979, Schodde and Mason 1980, Hollands 1991, Debus and Chafer 1994, McNabb 1996, Kavanagh 1997, Higgins 1999, as cited by DEC 2006).

#### 2.6.3.4.2 Habitat

The Powerful Owl inhabits a range of vegetation types from woodland and open sclerophyll forest to tall open wet forest and rainforest (OEH 2019b). It typically utilises large areas of connected woodland or forest habitat, however, it can also occur in fragmented habitats.

The Powerful Owl forages in open or closed sclerophyll forest or woodlands and may also hunt in open habitats (OEH 2019b). As a hunter of arboreal prey, the Powerful Owl feeds predominantly on Common Ringtall Possums, Common Brush-tailed Possums, Greater Gliders and Sugar Gliders (Bain et al., 2014). Large eucalypts that are at least 150 years old, with hollows at least 0.5m deep are the primary nesting habitat for this species (OEH 2019b). Smaller trees with hollows and a shrub layer within which prey species reside are also habitat components for the Powerful Owl (OEH 2019b). Moist forest in unlogged corridors in gully systems is used for nesting and roosting (DEC 2006). Optimal breeding habitat contains, mature forest stands with large hollow bearing trees, dense understorey shrubs for fledglings and high densities of arboreal marsupials (Schodde and Mason 1980, McNabb 1996, Kavanagh 1997, Higgins 1999, as cited by, DEC 2006).

The Masked Owl (Tyto novaehollandiae) is a large forest owl that occupies dry eucalypt forests and woodlands from sea level to 1100 m. Pairs have a large home-range of 500 to 1000 hectares and is not a species exhibiting seasonal variation in its distribution. It roosts and breeds in moist eucalypt forested gullies, using large tree hollows or sometimes caves for nesting with a preference for vertical hollows in large trees.

Masked Owls feed mainly on small mammals, such as rodents, rabbits and bandicoots. Other prey animals include possums, reptiles, birds and insects, with hunting taking place in the early hours of night. The birds sit on low perches listening for prey which, once detected, is taken from the ground or from the tree branches.

The LMCC (2014) identify specific conservation priorities for Large Forest Owls with reference to nest and/or breeding roost tree habitat. Habitats for conservation priority include:

- Confirmed nest sites (including a 100m buffer), breeding roost trees (including a 50m buffer) and sustainable home range extant habital around such sites;
- Riparian habitat;
- Corridor connectivity along riparian corridors and between major habitat fragments, and
- Old growth forest.

#### 2.6.3.4.3 Local Occurrence

Knowledge on the known area of occurrence of Large Forest Owls within the Conservation Area is derived from recent stag watch surveys (RPS 2020a), owl calling surveys (RPS 2020a) and historical data obtained from HWR (2004) No roost hollows have been observed within the Conservation Area. However, stag watching of suitable trees within the Conservation Area is incomplete

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HWR (2004) report a Powerful Owl roost site in Conservation Area. This observation was in dense vegetation (John-Paul King pers com 2019). A Masked Owl was heard calling in the western part of the Conservation Area during stag watching in that location. Current observations indicate that Large Forest Owls are foraging throughout the Conservation Area, with no current known breeding nest trees identified at this stage

Habitat and the recorded locations for large forest owls are shown in Figure 8

### 2.6.3.5 Squirrel Glider

#### 2.6.3.5.1 Lifecycle

Squirrel Gliders nest in tree hollows and live in family groups of 2 to 9 individuals, typically comprising a mature male, one or more adult females and their offspring. They live for approximately 3 - 4 yrs (Murray 2007 pers comm, Sharpe & Goldingay 2010, as cited in, LMCC 2015) and have an average adult weight of about 200g Reproduction peaks in late autumn and winter with food availability influencing timing of reproduction (Millis & Bradley 2001, Goldingay, Sharpe, Beyer & Dobson 2006, Sharpe & Goldingay 2010 as cited in, LMCC 2015).

High population density is only achievable in habitats with abundant hollow bearing trees (>4 habitat trees/ha) and abundant food trees (Smith and Murray 2003; van der Ree 2000; Sharpe & Goldingay 2010); Dead trees (stags) are an important habitat component and are used when available (Rowston 1998; Ball, Goldingay & Wake 2011; Beyer, Goldingay & Sharpe 2008)

#### 2.6.3.5.2 Habitat

Squirrel Gliders are sparsely distributed in eastern Australia. from northern Queensland to western Victoria (OEH 2019b). Populations of this species are highly localised and dependent on availability of suitable foraging habitat with tree hollows. Colonies require multiple den trees within their home ranges (LMCC 2015).

This species prefers a range of dry and moist sclerophyll forest, swamp forest, and woodland vegetation communities dominated by winter flowering eucalypts or flowering banksias, (Quin et al. 2004; Sharpe 2004; Sharpe & Goldingay 2010, HWR Ecological 2003), or summer flowering eucalypts with an understorey of acadia species that provide edible guin exudates in winter (e.g. A. invaria, A. parramattensis, and A longitolia) (Smith and Murray, 2003).

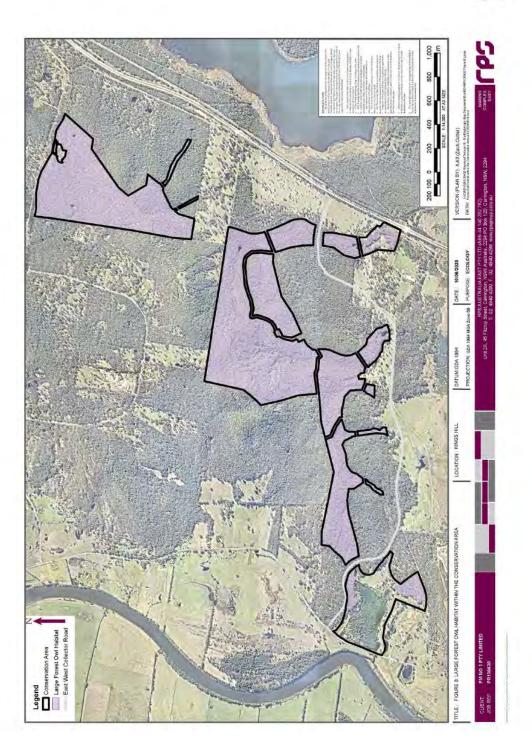
Squirrel gliders eat nectar from flowers, pollen and sugary plant and insect exudates (LMCC 2015). In addition to pollen and nectar, arthropods are an important food source (Sharpe & Goldingay 1998; Dobson, Goldingay & Sharpe 2005; Ball et al. 2009).

#### 2.6.3.5.3 Local Occurrence

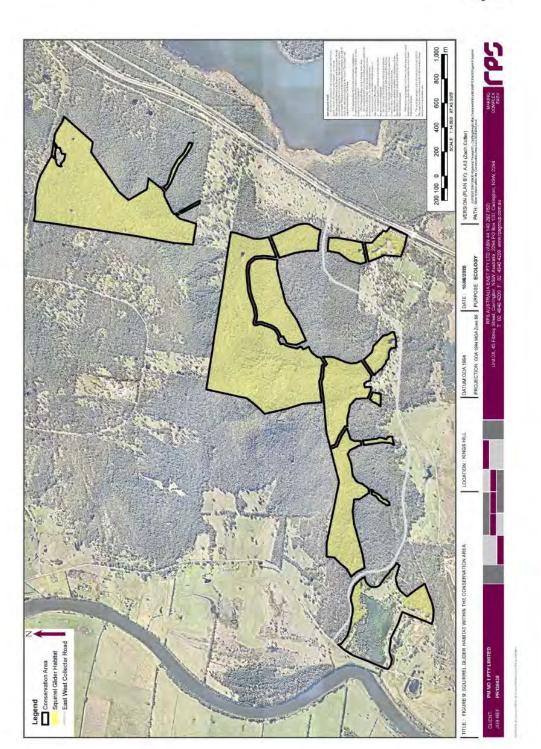
Recent surveys indicate the Squirrel Glider is likely absent from the location (RPS 2020a). However, marginal habitat is considered to present with nectar resources restricted to the eucatypt canopy. Potential habitat within the Conservation Area is largely limited to patches of Forest Redgum, Grey Ironbark, Grey Gum and *Melaleuca styphelioides* occurrences with a preference for lower elevations (HWR 2004). The potential habitat area is mapped in **Figure 9**.

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#### 2.6.3.6 Brush-tailed Phascogale

#### 2.6.3.6.1 Lifecycle

The Brush-tailed Phascogale (*Phascogale tapoatafa*) is a bark toraging insectivore (Scarff et al 1998; Scarff and Bradley 2006) nocturnally active species occupying hollows as diurnal refugia and breeding. Mating occurs May - July; males die soon after the mating season whereas females can live for up to three years, but generally only reproduce once (OEH 2019b).

Female Brush-tailed Phascogale have exclusive territories of approximately 20 - 40 ha, whilst males have overlapping territories often greater than 100 ha (OEH 2019b); although home ranges of 2.3 - 8 ha have been reported in high quality spatially limited habitat (van der Ree et al 2001). Brushed-tailed Phascogales reside in tree hollows with entrances 2.5 - 4 cm wide and use many different hollows over a short time span (OEH 2019b), van der Ree et al (2001) indicates a preference for hollows occurring within trees with 80 cm diameter at breast height (DBH) or greater, although Rhind (2003) and Beyer and Goldingay (2006) note the frequent usage of nest boxes by this species.

#### 2.6.3.6.2 Habitat

The Brush-tailed Phascogale broadly prefers dry sclerophyll open forest with sparse groundcover of herbs, grasses, shrubs or leaf litter, although is also known in rainforest and wet sclerophyll forest (OEH 2019b). This species preferentially uses a habitat complex comprising groundcover layer features (e.g. fallen logs) and arboreal features such as hollow-bearing trees for denning and *"rough barked trees of 25 cm DBH or greater"* (OEH 2019b) for foraging.

The Brush-tailed Phascogale is a scansonal species (i.e. adapted to climbing) and forages on trees for invertebrates. High value habitat comprises vegetation with high invertebrate biomass and is linked to 'arboreal surface roughness' (i.e. tree trunks with high habitat values for invertebrates), and is thus an indicator of forage resource availability (e.g. increased abundance of prey species such as invertebrates). This habitat factor is consistent with findings presented in local studies on this species (Firebird 2013), where the species was observed in several Ironbark trees, including *Eucalyplus crebra* (Narrow-leaved Ironbark), *E. siderophilo* (Grey Ironbark) and *E. fibrosa* (Red Ironbark). A den site located to the northwest of the Conservation Area was located in a dead hollow-bearing 'stag' tree

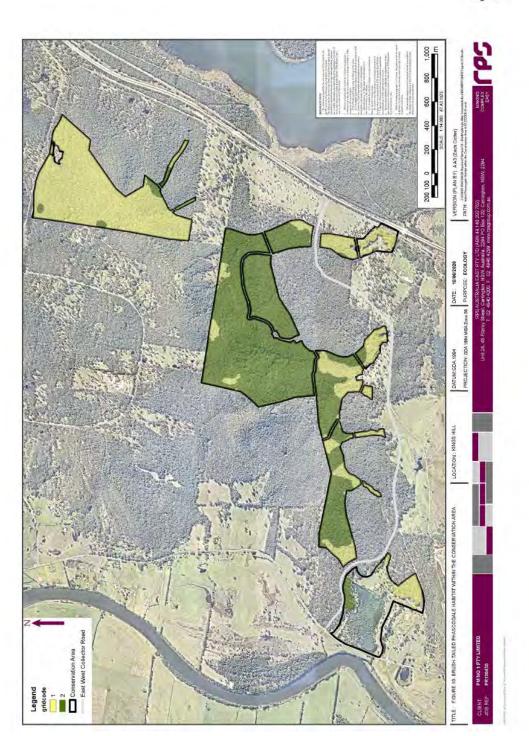
Data representing the distribution of 'rough-barked trees' species with a DBH of 30 cm or more was used identify habitat that is likely to represent high value foraging habitat for this species. Tree species used to model 'arboreal surface roughness' are listed below.

- Grey Gum and Small-fruited Grey Gum;
- White Manogany
- White Stringybark
- Blackbutt,
- Red Bloodwood; and
- All ironbark species.

The combined consideration of key habitat features (i.e. fallen logs, hollow-bearing trees and arboreal surface roughness) represents the likely extent of habitat of importance to the Brush-tailed Phascogale within the Conservation Area (i.e. breeding and high value foraging habitat), as shown in **Figure 10**.

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### 2.6.3.6.3 Local Occurrence

The distribution pattern of the Brush-tailed Phascogale is likely controlled by the seasonal reliability of rainfail and diversity of food resources (Scarff et al 1998), with abundance in its habitat being highly variable over time and most likely in response to the distribution of key habitat features (e.g. hollows and rough-barked trees) at a range of scales (Mansfield et al 2017).

Brush-tailed Phascogale within the Conservation Area will preferentially occupy vegetation in hollow rich areas, particularly where trees are >80cm DBH, and where coincident with a high occurrence of roughbarked trees suitable for foraging **Figure 10**.

Local ecological studies and threatened species assessments performed within and adjacent the Conservation Area have recorded the occurrence of the Brush-tailed Phascogale (e.g. HWR Ecological 2004; 2005; EcoBiological 2010). Firebird (2013) identified the presence of actively breeding individuals in Spotted Gum Ironbark vegetation located immediately to the north of the Conservation Area and noted a likely broad and connected occurrence in the locality north through to Wallaroo State Forest and National Park.

Given the propensity of this species to disperse, the abundance of habitat connections north from the Conservation Area to large areas of habitat known comprising this species (Firebird 2013), it is considered that this species is widely distributed locally throughout numerous habitat patches. The maintenance of habitat suitability and connections there between represent the main conservation focus for the local population of this species.

### 2.6.3.7 Koala

### 2.6.3.7.1 Lifecycle

Koalas reach sexual maturity at 2 years of age and produce one Koala a year or rarely twins. Koalas live for between 10 and 20 years, and generally breed between September and February (DPIE 2019) comprising male bellowing, fighting and scent marking in in the period between August to October. Gestation is approximately 2 months and a newborn Koala resides in the pouch until around 7 months, with emergence starting from September. When the young koala is about one year old, its mother is able to mate again (DPIE 2019).

Koalas are typically solitary and dominant males are territorial, often driving off young males (DPIE 2019). Koalas rest for most of the day and at hight they move between feed trees and along the ground in open woodland or cleared areas (DPIE 2019).

#### 2.6.3.7.2 Habitat

Koalas inhabit open eucalypt forest and woodland and feed on approximately 70 species of eucalypt and 30 species of non-eucalypt trees within NSW; however, local occurrences are more likely limited a small number of preferred feed tree species. Measures for total and digestible nitrogen and plant secondary metabolites (PSMs) obtained from the Conservation Area (Marsh and Youngentob 2019) confirmed local Koala feed tree preferences to include *Eucalyptus tereticornis* (Forest Red Gum), *Eucalyptus punctata* (Grey Gum), *Eucalyptus microcorys* (Tallowwood), *Eucalyptus moluccana* (Grey Box) and *Eucalyptus propingua* (Small-finited Grey Gum) and supplementary feed tree *Eucalyptus globoidea* (White Mahogany) as listed in PSC (2002) and OEH (2018)

BioLink (2017) note the following in relation to the mapping PKH within the PSC LGA and the dominant vegetation type of the Conservation Area

"Seaham Spotted Gum - Ironbark Forest contain one or more PKFTs and so warrants recognition as PKH. However, field data indicates that constituent PKFTs are a sub-dominant feature of the tailest-stratum, hence implying the need to downgrade both PCTs from Secondary (Class B) – which requires dominance by one or more Secondary PKFTs, to the lower and more marginally aligned Secondary (Class C/B)" (BioLink (2017)

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However, the distribution of preferred koala feed trees within the Conservation Area does not correlate with vegetation mapping. Therefore, the extent of higher value koala foraging habitat varies with the distribution of these PKFTs.

Koala habitat selection is not exclusively restricted to browse preferences as Koalas are a species limited by low energy budgets from a low nutrient Eucalypt det (Krockenberger 2003). For this reason, and where possible, Koalas preferentially occupy a home range that simultaneously satisfies all key habitat factors within the smallest possible area (e.g. minimise energy cost) provided the threat of predation risk is acceptable. Therefore, a more accurate habitat model that accounts for key factors additional to browse preference would include dietary need and the consideration of

- Seasonal thermoregulation and water budget requirements (Briscoe et al 2014, Ellis et al 2011 Ellis et al 2018); and
- Threat avoidance to minimise the propensity for predation

Habitat accommodating key habitat needs is likely to be characterised by forests comprising a variety of PKFTs with high canopy connectedness, which provides cooler microclimates for thermotegulation and sponsors inter-tree canopy movements (Goldingay and Taylor 2016) to minimise the threat of predation. These areas of habitat are also likely to comprise larger frees, which also provide additional shelter from predators and shade from the summer heat (Moore and Foley 2005; Matthews et al. 2007).

A map showing the extent of habitat within the Conservation Area is provided in Figure 11.

#### 2.6.3.7.3 Local Occurrence

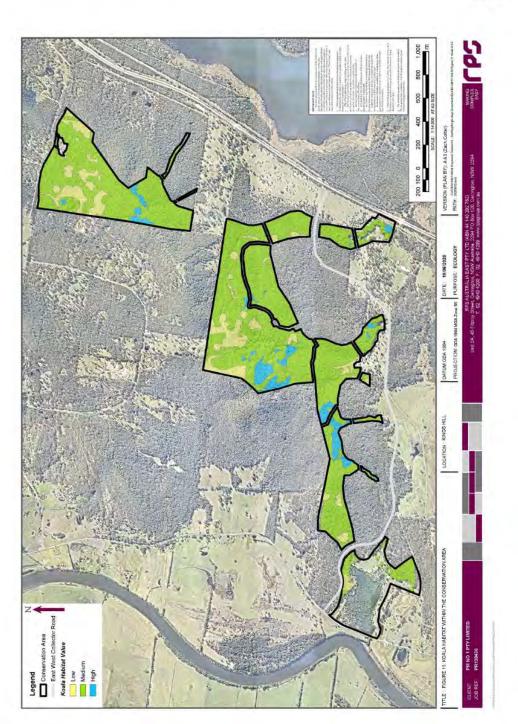
The Koala has been consistently recorded throughout Port Stephens LGA. It occurs in the east at Tomaree in high densities amid small areas of primary habitat through to low density occurrence in the west within the Conservation Area, with intervening noteworthy occurrences at Grahamstown Dam. Medowie and Salt Ash to Bobs Farm According to BioLink (2019), historical occurrences at Tomago and Williamstown appear to have been negatively impacted by frequent intense fires in this area; a known threat to the survival of the Koala.

Recent genetic studies of Koalas at multiple sites in the Port Stephens including Tomaree, Karuah. Grahamstown West and the Conservation Area (Hogan et al 2019 in prep) identified two distinct genetic clusters, this being the basis for the identification of two separate Koala populations. The population in the east is likely bounded by movement barriers located in the Salt Ash area, where anthropogenic influences are likely to have negatively influenced east - west geneflow thereby geographically isolating this population from proximal occurrences.

BioLink (2019) indicate a geographic limit to the Kings Hill hub, which includes the Conservation Area, by reference to movement barriers such as the Pacific Highway, Williams River and Italia Road/ Balickera Channel. However, the genetic study indicates otherwise, showing geneflow between Koalas within the Conservation Area and that west of the Pacific Highway and north of Balickera Channel. The abundance of Koala habitat north and east of the Conservation Area, and limited amount to the south, indicate the Conservation Area is likely located at the southern extremity of an unbounded population that extends north/ north west from Wallaroo National Park and east of Karuah.

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### 2.6.3.8 Grey-headed Flying Fox

### 2.6.3.8.1 Lifecycle

Australian flying-foxes are seasonal, synchronous and polygamous breeders (DECCW 2009a, Eby 2008 as cited by GeoLINK 2013). Mating behaviour in Grey-headed Flying-foxes commences in January with conception occurring in April / May (Nelson 1965, Martin et al. 1996). They have a low reproductive rate, with a single pup generally born from October to December (Martin and McIlwee 2002; Divijan 2008 as cited by, DoEE 2017). Individuals reach sexual maturity in the second year of life, but typically do not successfully raise young until the third year (McIlwee and Martin 2002; as cited by DoEE 2017).

Newborn flying-foxes are incapable of thermoregulation (Bartholomew et al. 1964; as cited by, GeoLINK 2013) and the young cling to their mothers for approximately four to five weeks. Flying-foxes can live for over 16 years in the wild, however, average life expectancy is more likely to be under seven years (Divljan et al 2006; as cited by, GeoLINK 2013).

#### 2.6.3.8.2 Habitat

According to DoEE (2017), Grey-headed Flying-fox has historically occupied forests and woodlands in the coastal lowlands, tablelands and slopes of south-eastern Australia, from Bundaberg in Queensland to Geelong in Victoria, with rare sightings outside its range. More recently, camps have established in Adelaide, the Australian Capital Territory and inland areas of central and southern New South Wales and Victoria.

GeoLINK (2013) identified that the Lower Hunter supports 20 known camps of the GHFF, seven of which are identified as critical to the survival (CTS) of the GHFF in the Lower Hunter Millfield, Martinsville, Monsset, Blackbutt Reserve, Anna Bay, Medowie and Tocal. Six camps were clearly not CTS of the GHFF. Black Hill, Belmont, Glenrock, Hannan Street, Italia Road and Raymond Terrace. However, in a review of the Raymond Terrace camp, PSC (2017) identified this camp to qualify as CTS.

The flowering phenology described by Eby and Law (2008), as adjusted for the Lower Hunter region (GeoLINK 2013) for important feed tree species present on site are listed in **Table 5** according to their bimonthly flowering phenology. Scores for duration represent the length in months of individual flowering events. The winter and spring food bottleneck, which is shaded in **Table 5**, is a sensitive period for the Greyneaded Flying Fox as this period coincides with gestation and immediately precedes birth and lactation.

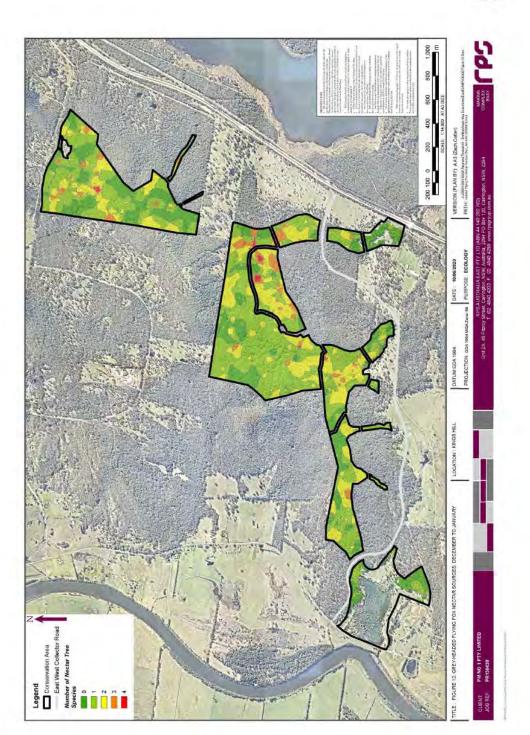
#### Table 5: Flowering Phenology for Grey-headed Flying Fox Important Nectar Species

Species	D-J	F-M	A-M	1-1	A-S	O-N	Flowering duration (months)
Corymbia gummilera			x				1
Corymbia maculata			×	x	×		≤3
Eucalyptus acmenoides	x					×	1
Eucalyptus fibrosa	×					x	2
Eucelyptus molucanna		x					2
Eucalyptus pilularis	×	х	_				2
Eucalyptus propingua	×	x					2
Eucalyptus punctata	×	x					3
Eucalyptus robusta	-		x	x			≥3
Eucalyptus siderophloia	×	_				×	2
Eucalyptus tereticornis					×	×	2

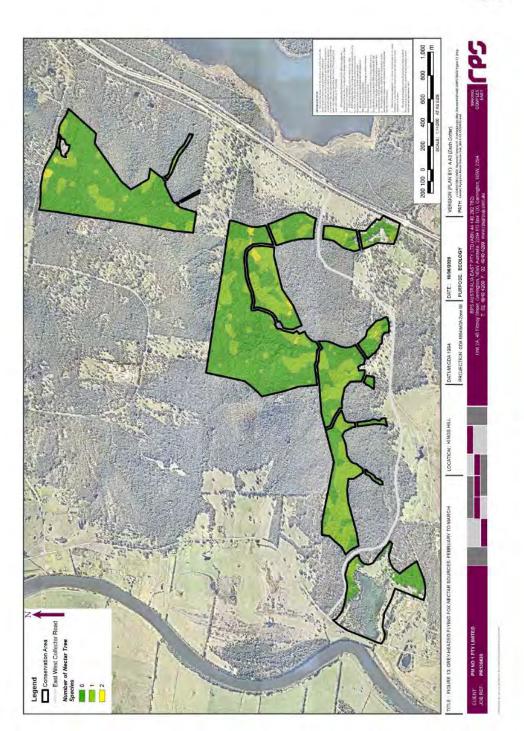
The distribution of nectar feed tree species according to the bimonthly phenology outlined in Table 6 has been modelled for each bimonthly period is shown in Figures 12 to 17

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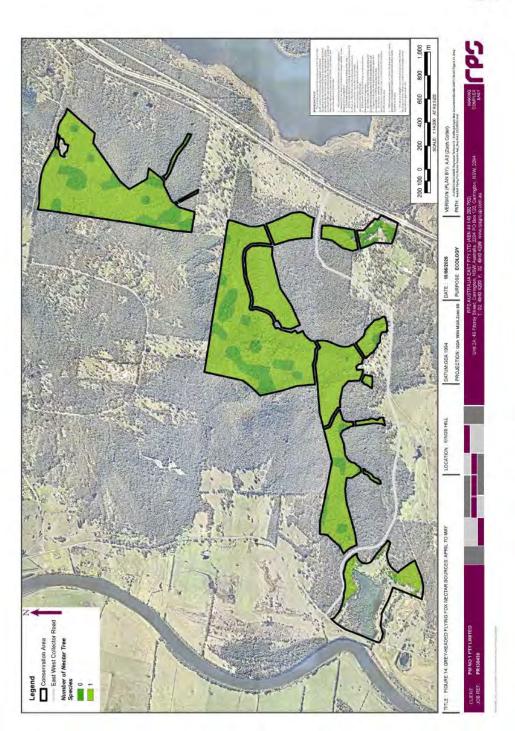
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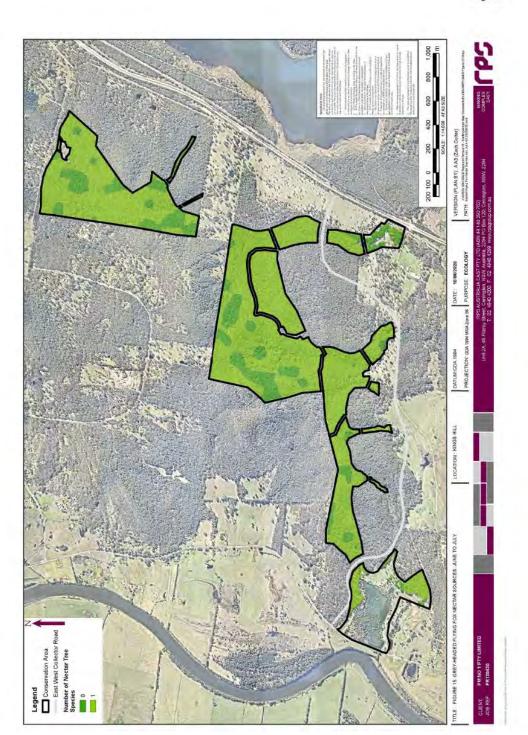
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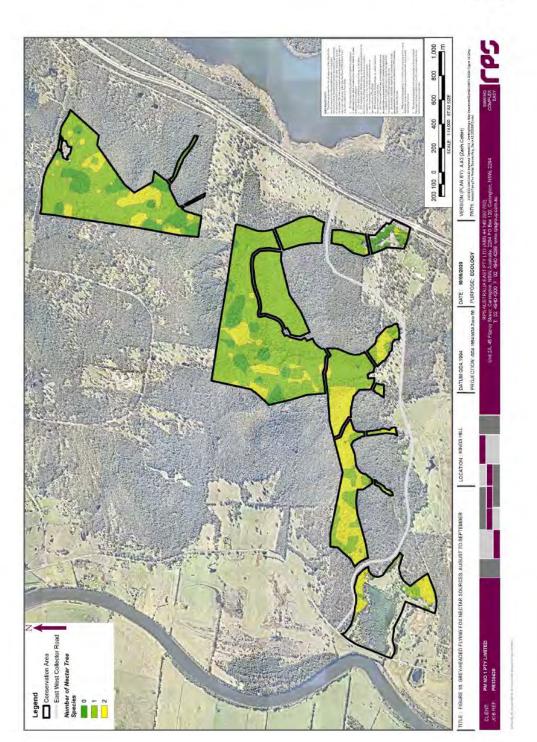
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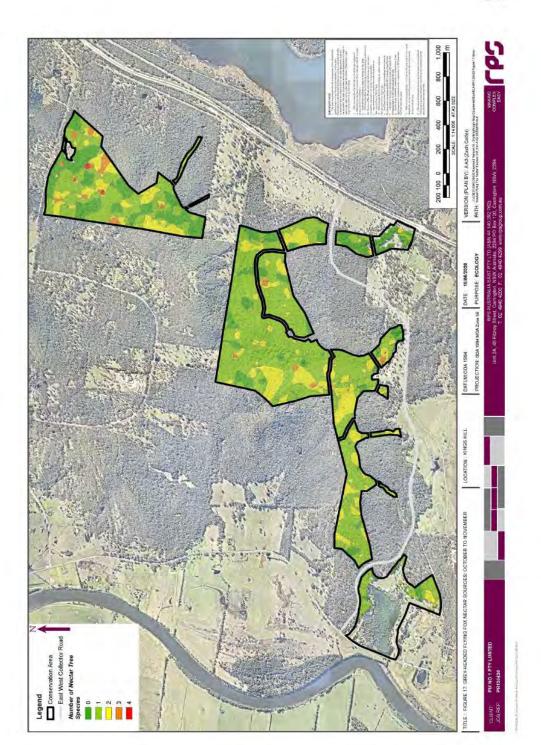
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## 2.6.3.8.3 Local Occurrence

Port Stephens Local Government Area currently supports nine known flying-fox camps. The nearest camp to the Conservation Area is located at Raymond Terrace, hereafter referred to as the Ross Walbridge Reserve Camp, and is the only constantly utilised flying-fox camp in the LGA. According to Port Stephens Council (2017), the Ross Walbridge Reserve Camp contains at least 8,000 individuals (of three different species) with a maximum record of 21,000 in April 2016. Other flying-fox camps in the local government area include:

- Anna Bay, Tomago (Fullerton Cove), Wallaroo NP (Italia Rd) and North of Italia Road and are currently classed as historical.
- Bob's Farm (two Camps 3km apart) where a large number of animals were recorded in 2015, but no other evidence of sustained camp usage has been recorded.
- Medowie where animals were recorded in 2013 and 2014, but in no other year.
- Schnapper Island, where a small number of animals were observed roosting in 2014.

The Ross Walbridge Reserve Camp has been permanently occupied since 2013 and due to the number of animals consistently utilising the site, it was designated a Nationally Significant Flying-fox Camp. The proportion of Grey-headed Flying Fox within this camp has varied from 1.1-30.1% relative to the total number of individuals within the Hunter Region, within the camp occupancy routinely spiking during the cooler months (i.e. bottle food period). More recently (i.e. post 2015 winter period), camp numbers in the food bottleneck period of the year are considerably less than historical levels, presumably due to wildfire related disruptions to nectar resources throughout the Port Stephens area (Port Stephens Council 2017).

Approximately 51% of land within 20 km of the Raymond Terrace site supports native forests and woodlands in patches ranging in size from small remnants to extensive tracts in conservation reserves and state forests. Rainforest is rare and rainforest fruit provides insignificant food resources for flying-foxes during late summer and autumn. By contrast, approximately 85% of the forested land within 20km of Raymond Terrace contains flowering trees visited by the animals (Port Stephens Council 2017).

### 2.6.4 Exotic Fauna

Pests such as the fallow deer (Dama dama), European fox (Vulpes vulpes) and Wild dog (excluding Dingo) occur within the locality, with fallow deer and wild dog commonly found in the Conservation area. These pest species represent a threat to native vegetation and structure and for fauna such as the Koala.

## 2.7 Infrastructure

### 2.7.1 Access

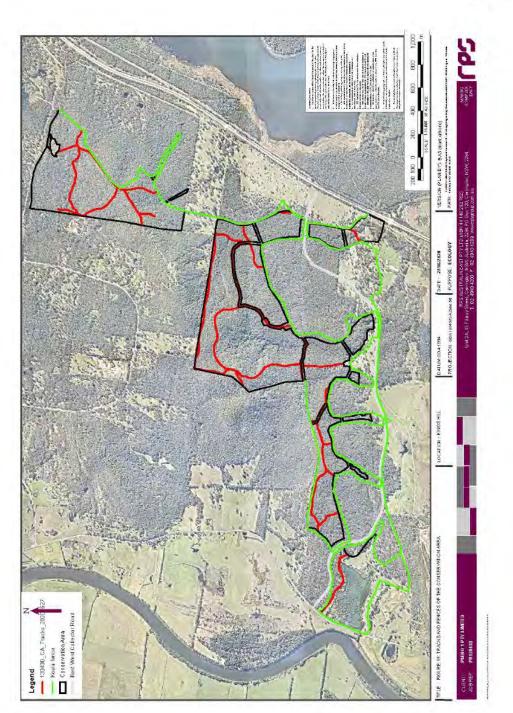
The Conservation Area comprises a network of managed tracks and specific provisions for access control (i.e. gates), which are shown in Figure 18

2.7.2 Fencing

A Koala fence is situated between the Conservation Area and proximal urban lands as shown in Figure 18 Fencing on boundaries with E2 and rural lands is variable and maintained in consultation with adjoining land holders for the purposes of restricting the entry of livestock and vehicles.

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# 3 MANAGEMENT ZONES

## 3.1 Units, Timing and Frequency

Management prescriptions specified in this BCAMP are to be implemented in-perpetuity using two different management units, as described in **Table 6**, these reflective of the differing scales in management activity. **Table 6: BCAMP Management Units** 

Management Unit	Scale	Focus of Management Actions		
Conservation Area Management Zone	Landscape	Access, fencing, feral fauna control, high threat weed control and fire management		
Biodiversity Management Zone	Targeted	Protection of threatened species and wetland habitat		

A guide for the timing and frequency of management actions within these management units is outlined in Table 7

Table 7: Timing and Frequency Guidance for Management Actions

Management Actions	Timing	Frequency
Access and fencing	Autumn - winter	As required
Feral fauna management	Autumn - winter	Annually
Fire	Consultation with RFS	Integrated with weed control and habitat enhancement works
Weed control	Spring and summer	Annually
Threatened flora protection	As required	Annually

The objectives, performance targets, actions and specification guidance for each management unit are described in the following sections,

## 3.2 Conservation Area Management Zone

The entirety of the Conservation Area defines this management zone. Management actions performed at this scale are focused on minimising the effects of anthropogenic impacts through controlling access; managing unwanted impacts from herbivore grazing or protecting sensitive species such as the koala (i.e. fencing), controlling highly mobile exotic herbivore with large home ranges and protecting fauna and their habitats from wild fire. The following sections provide details on these management matters.

3.2.1 Access and Fencing

## 3.2.1.1 Overview

The rural and urban zoned land adjoining the Conservation Area represents a potential source for impacts that may negatively influence the protection of biodiversity values. Access management is a preventative approach that seeks to avoid the occurrence of these impacts. It also provides opportunity for the establishment of managed trafficable pathways for passive recreation purposes or implementation of management actions.

Access management aims to protect the biodiversity values of the Conservation Area by preventing impacts from unauthorised access, livestock grazing and exposure of threatened species to threats commonly found in adjoining urban and rural environments. Access management includes the installation of fences, gates/ signage and tracks. Fencing serves two main outcomes:

 Protect vegetation and habitat contained within the Conservation Area from damage caused by livestock and anthropogenic activity associated with unauthorised entry (unauthorised logging, dumping of waste, bushfire threats etc); and

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· Separate native fauna such as the koala from threats present in the adjoining urban/ rural environment.

### 3.2.1.2 Objectives and Performance Targets

The objectives and performance targets for access management works is provided in Table 9. Table 8: CMA Access and Fencing Objectives and Performance Targets

Management Objective	Performance Target
<ul> <li>Prevent movement of livestock into Conservation Area</li> <li>Prevent unauthorised access into Conservation Area</li> </ul>	<ul> <li>Livestock are excluded from the Conservation Area</li> <li>Koalas are excluded from the adjoining urban area</li> <li>Unauthorised human activities are prevented</li> </ul>

The annual works program is to have an ongoing regard for the maintenance of fences and gates to a standard that meets the specified performance target.

#### 3.2.1.3 Specification Guidance

### 3.2.1.3.1 Fencing

Fencing is required to create a barrier between the wildlife habitat within the lands to be refained and managed for conservation purposes and that of the adjoining development precincts. The intert of fencing should be to contain koala movement within the designated environmental lands while at the same time restricting access to the corridor by people and domestic animals. This barrier effect can be achieved by way of a standard floppy-top design typically deployed on road upgrades.

However, a recent review of the efficacy of fencing (in terms of impeding koala movement) that was completed for NSW Roads & Maritime Services (Phillips and Fitzgerald 2014), provided strong defacto support for acceptance of a broader range of fence types being recognised as capable of influencing/ impeding koala movement. This knowledge has allowed us to promote less expensive designs that are capable of achieving the same end result. By example, the fencing standard we have recommended for purposes of the Ocean Drive Road Corridor Koala Management Framework (Biolink 2014) comprises 1500 - 1800 mm x 50 mm x 50 mm galvanised mesh supported above ground by 60mm galvanised pipe uprights at

## 3.2.1.3.2 Tracks

All access gates and trails shall be assessed in terms of their operational requirements and delegated a classification and category in accordance with-NSW RFS Fire Trails standards (2019). Furthermore, these trails will be submitted to the NSW RFS to be included on the district fire trail register to ensure ongoing maintenance to the identified standard.

## 3.2.2 Feral Fauna Control

#### 3.2.2.1 Overview

Introduced species pose direct and indirect threats to hative fauna either through predation or competition. Pests such as the fallow deer (*Dama dama*), European fox (*Vulpes vulpes*) and Wild dog (excluding Dingo) can pose threats to native fauna through excessive predation and competition for grazing and habitat removal. Their management is important for maintaining native fauna populations and encouraging recolonisation of native species into rehabilitated areas.

## 3.2.2.2 Objectives and Performance Targets

The objectives and performance targets for access management works is provided in Table 9.

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Table 9: CMA Feral Fauna Management Objectives and Performance Targets

Management Objective		Performance Target		
•	Eradicate Wild Dog (excl. Dingo)		No evidence of Wild Dogs	
	Maintain low abundance of European Fox		No evidence of European Fox	
۰.	Eradicate Feral Deer	. •	No evidence of Feral Deer	

The annual works program is to have an ongoing regard for the control of feral fauna to a standard that meets the specified performance target.

### 3.2.2.3 Specification Guidance

Typical management actions that will be implemented for pest species include, but are not limited to:

Coordinated culling of feral deer in associated with other landowners and Local Land Services

- Baiting using canid pest injectors to control European fox and wild dog.
- Destruction of rabbit warrens;
- Trapping and removal program for wild dogs and feral cats; and
- Fence maintenance.

## 3.2.3 Weed Control

### 3.2.3.1 Overview

A realistic approach consistent with the objectives for weed species established under the Biosecurity Act involves controlling and suppressing weed species, thus providing a better opportunity for native flora to germinate, grow and establish dominance. Areas of dense weeds, specifically Lantana. African Olive and other noxious weeds will be targeted during VMP actions with the removal of approximately 95% of weeds from the Conservation Area within 5 years is the desired outcome. However, these efforts will need ongoing inspections and maintenance as prolific and noxious weeds are difficult to control.

A list of high threat weed species (as determined by the Biodiversity Conservation Division {BCD}) detected within the Conservation Area include;

- Crofton Weed (Ageratina adenophora);
- Alligator Weed (Alternanthera philoxeroides)
- Whiskey Grass (Andropogon virginicus)
- Asparagus (Asparagus spp.)
- Carpet Grass (Axonopus fissifolia);
- Camphor Laurel (Cinnamomum camphora)
- Water Hyacinth (Eichhornia crassipes)
- Lantana (Lantana camara)
- Large-leaved Privet (Ligustrum lucidum);
- Small-leaved Privet (Ligustrum sinense);
- Mickey Mouse Plant (Ochna semulata)
- African Olive (Olea europaea subsp. cuspidata)
- Blackberry (Rubus fruticosus species aggregate)

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Fireweed (Senecio madagascariensis)

### 3.2.3.2 Objectives and Performance Targets

The objectives and performance targets for the management of high threat weeds is provided in Table 10. Table 10: Weed Control Management Objectives and Performance Targets

Management Objectives	Performance Target		
<ul> <li>Keep weed levels at &lt;5%</li> </ul>	<ul> <li>High threat weed cover is &lt; 5%</li> </ul>		
Utilise fire to aid in weed management	<ul> <li>Weed propagules stored in the seed bank are exhausted through the use of fire</li> </ul>		

The annual works program is to have an ongoing regard for the control of weeds to a standard that meets the specified performance target outlined in Table 10

## 3.2.3.3 Specification Guidance

Environmental restoration specialists, Toolijooa provides a guideline for weed management both within the initial five years of works and into the future, specifying that a staged approach across zones has a number of advantages, such as

- It allows treated areas to be effectively managed post primary weed treatment before moving to the next target area.
- Provides the opportunity to manage any more complex weed suite outbreaks due to increased light and space from primary weed control efforts.
- Provides the opportunity for local fauna utilising the weeds to adapt and safety relocate over a longer periods of time.
- Aims to spread the costs for weed management over the longer term, whilst reaching the specified reductions in weed density throughout each zone.

The recommended weed treatments and associated timing is provided below in Table 11.

#### Table 11: Recommended Weed Treatment Methodologies (Toolijooa, 2020)

Weed Species	Treatment Method	Seasonal Timing	Yearly Treatment Events
Lantana (Laniana camara)	Splatter-gun herbicide treatment, cut and paint and hand removal where appropriate.	Almost all year	3 sessions in first 12 months and no more than 2 visits required each year.
Alligator Weed (Alternanthera philoxeroides)	Hand removal or selective foliar herbicide treatment. Biomass removed from site.	Spring – Summer	At least 3 treatments each year.
Blackberry (Rubus fruticosus species aggregate)	Foliar herbicide treatment, scrape and paint or manual grubbing where appropriate. Biomass removed from site.	Spring – Summer	Two visits in the growing season each year.
Ground Asparagus (Asparagus spp.)	Foliar herbicide treatment or manual grubbing where appropriate. Corms and berries removed from site.	Almost all year	Two visits in the first year and no more than one visit required each year.
Fireweed (Senecio madagascariensis)	Foliar herbicide treatment and/or slashing prior to seed set.	Spring – Summer	At least 3 treatments each year
African Olive ( <i>Olea europaea</i> subsp. <i>cuspidata</i> )	Cut and paint/foliar spray juveniles, basal bark or frill and fill mature individuals.	Spring - Summer	3 sessions in first 12 months and no more than 2 visits required each year.

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#### Table Note

Toolijooa (2020) also outline that the utilising of fire in weed management may also bring forth a desired outcome, where targeted controlled burns may reduce the required weed management efforts. This may be particularly effective for areas of dense African Olive. Fire is considered one of the most effective ways in which to achieve large-scale treatment of the existing weeds and seed sources scattered through these areas of African Olive. The proposed use of fire for management purposes is detailed in the following section.

3.2.4 Fire

### 3.2.4.1 Overview

Fire intensity and frequency shapes the natural environment. Frequent fire doesn't allow plants enough time to develop their fire recovery adaptations and may lead to localised species extinctions or a contraction of a plant community extent. Conversely, prolonged inter fire intervals can lead to a dominance of a small suite of longer-lived taxa to the detriment of other plant community species. Fire may also be used to aid in the management of other matters such as high threat weeds and feral fauna.

The use of traditional Aborginal cool burning techniques is recommended for the Conservation area, as these techniques can encourage native grasses to regenerate and produce new feed, reduce scrub and fuel to prevent intense bushfires, and also promote biodiversity (Landcare 2019). The adoption of traditional Aborginal burning requires a sound understanding of local conditions to ensure it is effective and safe and therefore should only be conducted by qualified personnel, in addition to consultation with the RFS, that understand the area and the specific management objectives assigned to the Conservation Area.

### 3.2.4.2 Objectives and Performance Targets

The objectives and performance targets for fire management works is provided in Table 12

Table 12: Conservation Area Fire Management Objectives and Performance Targets

Management Objective	Performance Target	
Record and analyse all fire suppression assets on site to inform future bush fire management planning.	Maintain fire suppression assets to facilitate proposed fire management activities	
Determine Bush fire Mitigation Measures (BMMs) in accordance with Planning for Bushfire Protection (2018) that impact on the forested landscape and natural heritage values	Complete any work required to support the continuation of Bushfire Mitigation Measures	
Development of Bush fire Management Plan for the landscape	Provide a document that mitigates the risk of bush fire to life, property and the environment	
Protection of revegetation works	Revegetation works are mature into self-sustaining populations	
Protection of Koala feed tree enrichment plantings	Evidence of Koala activity in areas with low or no recorded activity	
Protection of Koala fence	Fences maintained in functional order	
Use of appropriate fire intervals to maximise biodiversity values	Reduction in fuel load accumulation and incidence of high threat weeds	

The annual works program is to have regard for the management objectives outlined in Table 12

### 3.2.4.3 Specification Guidance

In making decisions on fire management it is important for land managers to be aware of the appropriate fire intervals for the specific vegetation types when considering either hazard reduction burns or ecological burns (for biodiversity enhancement). Recommended fire intervals are listed below in **Table 13** for the native vegetation types recorded within the EPAs on the NPWS (2004).

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Table 13: Recommended Fire Intervals for PCTs within the Conservation Area

PCT Name	Vegetation Formation (NPWS 2004)	Minimum Interval (Years)	Maximum Interval (Years)
783 Coastal freshwater swamps of the Sydney Basin Bioregion	Estuarine and saline wetland	Fire should	be avoided
1525 Sandpaper Fig - Whalebone Tree warm temperate rainforest	Rainforest	Fire should	be avoided
1584 White Mahogany - Spotted Gum - Grey Myrtie semi-masic shrubby open forest of the central and lower Hunter Valley	Dry sclerophyll shrub /grass forest	5	50
1590 Spotted Gum - Broad-leaved Manogany - Red Ironbark shrubby open forest	Dry sclerophyll shrub forest	7	30
1600 Spotted Gum - Narrow-leaved Ironbark shrub - grass open forest of the central and lower Hunter	Dry sclerophyll shrub /grass forest	5	50
1230 Swamp Mahogany swamp forest on coastal lowlands of the NSW North Coast Bioregion and northern Sydney Basin Bioregion	Swamp sclerophyll forest	7	35
1728 Swamp Oak - Prickly Paperbark - Tall Sedge swamp forest on coastal lowlands of the Central Coast and Lower North Coast	Swamp sclerophyli forest	7	35

Appropriate fire intervals allow time for sustainable vegetation community recovery for both floristics diversity and structure. A plant's post fire recovery adaptations require time to develop and include reaching a maturity and size that will allow for reproduction to produce adequate seed for 'storage' in soil and/or canopy to survive subsequent fire events, and to have developed sufficient vegetative mass or parts to protect against fire and enable it to resprout after a fire.

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## 3.3 Biodiversity Management Zones

## 3.3.1 Overview

Six Biodiversity Management Zones (BMZs) are to be used to provide a targeted, spatially representative and coordinated application of management actions across the Conservation Area. BMZs have been delineated through an examination of current biodiversity values known to occur within this Conservation Area as outlined in **Section 2**. BMZ descriptions and management focus are described in **Table 14**.

Table 14: BMZ Descriptions and Management Focus

BMZ	Descriptor	Management Area Size	Management Focus
1	Koala Protection Zone 1	55 ha	The protection, maintenance, or improvement of koala habitat
2	Koala Protection Zone 2	47 ha	The protection, maintenance, or improvement of koala habitat
3	Koala Protection Zone 3	45 ha	The protection, maintenance, or improvement of koala habitat
4	Ripanan Protection Zone	10 ha	Targeting this riparian area to maintain or improve outcomes in week management and koala habitat protection
5	Wetland Protection Zone	32 ha	Targeting the wetland and proximal lands to deliver maintain or improve outcomes for wetland vegetation and associated threatened species
6	Threatened Flora Protection	53 ha	Protecting habitat known to comprise a threatened flora species

3.3.2 BMZ 1: Koala Protection Zone 1

### 3.3.2.1 Overview

A considerable amount of Tree Nutrient Enrichment works was conducted across the majority of this zone as shown in **Figure 20** (RPS 2020), to substantially improve the foraging values and carrying capacity for the Koala within the Conservation Area and improve habitat connections with vegetation to the north. These enrichment works require protection through appropriate fire management practices.

## 3.3.2.1 Objectives and Performance Targets

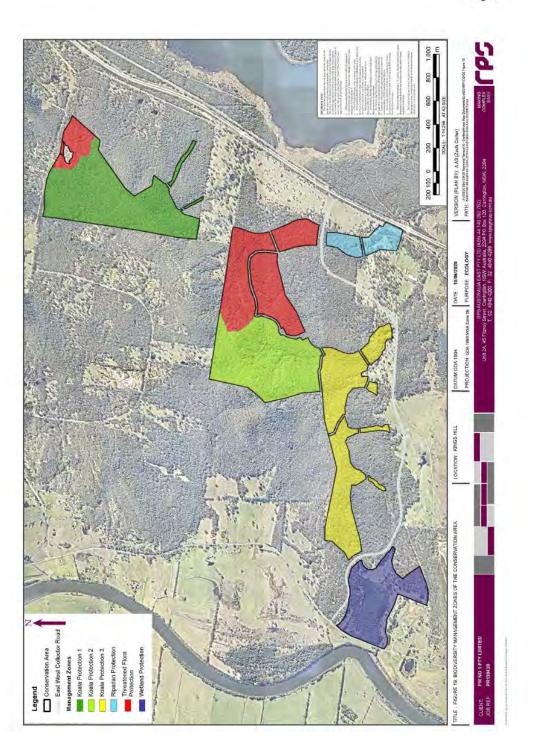
The objectives and performance targets for this zone is provided in Table 15

Table 15: BMZ 1 Management Objectives and Performance Targets

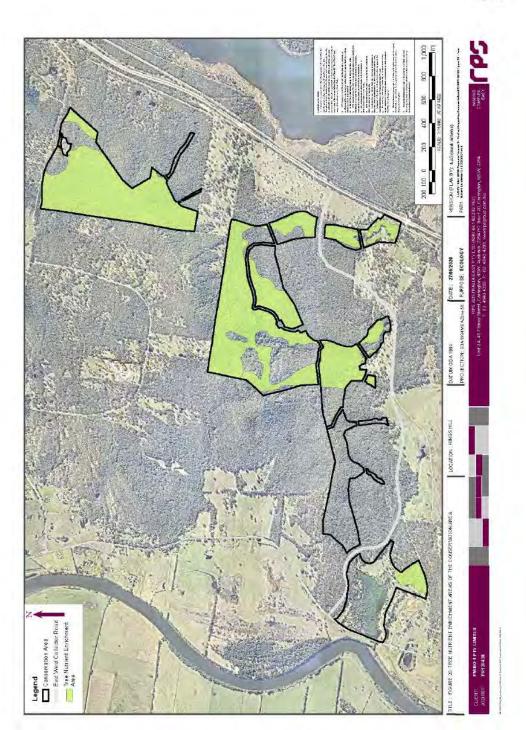
Management Objective	Performance Target		
Protection of Tree Nutrient Enrichment area	<ul> <li>Seedlings reach maturity</li> <li>No burning until 2035</li> </ul>		
Maintain or increase habitat carrying capacity for	<ul> <li>Evidence of Koala activity in areas with low or no recorded activity</li> </ul>		
the Koala	<ul> <li>Weed management successfully maintained to prevent loss of natural eucalypt recruitment</li> </ul>		
	<ul> <li>Maintain appropriate fire frequency and intensity</li> </ul>		
Minimise the imapct of key threatening processes	<ul> <li>Regulated fire mosaics patterns afford protection against uncontrolled widlfire events</li> </ul>		
on the Koala	<ul> <li>Mortality from wild dog attack is minimised</li> </ul>		
and a second process	<ul> <li>Mortality from interactions with urban environments (e.g. domestic dog attack, vehicle strike and swimming pool drownings) are prevented through effective boundary fencing.</li> </ul>		

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## 3.3.2.2 Management Actions

The management actions for this BMZ include:

- Protection of tree nutrient enrichment works from fire until the year 2035. Cool burn techniques may be used along the edges of this zone to reduce fuel loads and protect enrichment works, but only if this is deemed necessary to protect the zone, and in line with the prescribed inter-fire intervals for each PCT as specified in Table 14, and
- Areas not under tree nutrient enrichment, require fire as per the recommended fire intervals specified in Table 14

3.3.3 BMZ 2: Koala Protection Zone 2

#### 3.3.3.1 Overview

Tree Nutrient Enrichment works conducted in the more elevated regions of this zone as shown in **Figure 20** (RPS 2020) to broadly improve the foraging values and carrying capacity for the Koala within the Conservation Area. These enrichment works require protection through appropriate fire management practices.

## 3.3.3.2 Objectives and Performance Targets

The objectives and performance targets for this zone is provided in Table 16.

Table 16: BMZ 2 Management Objectives and Performance Targets

Management Objective	Performance Target		
Protection of Tree Nutrient Enrichment area	<ul><li>Seedlings reach maturity</li><li>No burning until 2035</li></ul>		
Maintain or increase habitat carrying capacity for the Koala	Evidence of Koala activity in areas with low or no recorded activity     Weed management successfully maintained to prevent loss of natural eucalypt recruitment		
Minimise the imapct of key threatening processes on the Koala	<ul> <li>Maintain appropriate fire frequency and intensity</li> <li>Regulated fire mosaics patterns afford protection against uncontrolled widtfire events</li> <li>Mortality from wild dog attack is minimised</li> <li>Mortality from interactions with urban environments (e.g. domestic dog attack, vehicle strike and swimming pool drowning) are prevented through effective boundary fencing</li> </ul>		

## 3.3.3.3 Management Actions

The management actions for this BMZ include.

- Areas of tree nutrient enrichment are protected from fire for until the year 2035 with cool burn fire methods employed following this date as per the vegetation types specified in **Table 14**.
- Areas not under tree nutrient enrichment, require fire as per the recommended fire intervals specified in
   Table 14.

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3.3.4 BMZ 3: Koala Protection Zone 3

## 3.3.4.1 Overview

This BMZ has received no tree nutrient enrichment plantings due to pre-existing high foraging habitat for the Koala. Conversely, an intense weed management program involving a variety of removal methods including the use of fire was completed for this area to remove large patches of African Olive.

## 3.3.4.2 Objectives and Performance Targets

The objectives and performance targets for this zone is provided in Table 17

Table 17: BMZ 3 Management Objectives and Performance Targets

Management Objective	Performance Target
Protection of Tree Nutrient Enrichment area	<ul><li>Seedlings reach maturity</li><li>No burning until 2035</li></ul>
Maintain or increase habitat carrying capacity for the Koala	Evidence of Koala activity in areas with low or no recorded activity     Weed management successfully maintained to prevent loss of natural eucalypt recruitment
Minimise the imapct of key threatening processes on the Koala	<ul> <li>Maintain appropriate fire frequency and intensity</li> <li>Regulated fire mosaics patterns afford protection against uncontrolled widlifire events</li> <li>Mortality from wild dog attack is minimised</li> <li>Mortality from interactions with urban environments (e.g., domestic dog attack, vehicle strike and swimming pool drowning) are prevented through effective boundary fencing</li> </ul>

#### 3.3.4.3 Management Actions

The management actions for this BMZ include:

- Use of cool burn fire methods as per the vegetation types specifications in Table 14.
- Ongoing monitoring to ensure lasting suppression of African Olive, and
- 3.3.5 BMZ 4: Riparian Protection Zone

## 3.3.5.1 Overview

The Riparian Protection Zone comprises localised elevated soil moisture and fertility making a productive area for vegetation growth. The mesic vegetation types that often prevail are often at risk from high threat weeds and frequent fire regimes. Management and maintenance specified for this zone aim to preserve this area as habitat for threatened species. In relation to the Koala, this habitat is vital for movement and thermoregulation (i.e. a sheltered habitat comprising refugia from extreme heat).

#### 3.3.5.2 Objectives and Performance Targets

The objectives and performance targets for this zone is provided in Table 18.

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Table 18: BMZ 4 Management Objectives and Performance Targets

Management Objective	Performance Target		
Maintence and monitoring of Tree Nutrient Enrichment	Seedlings reach maturity		
Maintain or increase habitat carrying capacity for the Koala	<ul> <li>Evidence of Koala activity in areas with low or no recorded activity</li> </ul>		
	· Weed management successfully maintained to prevent loss		

#### 3.3.5.3 Management Actions

The management actions for this BMZ include:

- Use of small cool burns (e.g. 1 2 ha burns) within recommended fire intervals specified in **Table 14** to create a temporally rich fire mosaic pattern across the management zone; and
- Continued weed maintenance to ensure high threat weeds remain <5% and to allow for the natural
  expansion and recruitment of preferred tree species within this zone.</li>
- 3.3.6 BMZ 5: Threatened Flora Protection Zone

#### 3.3.6.1 Overview

Three threatened flora species occur within the Conservation Area, including Maundia triglochinoides, Corybas dowlingii and Pterostylis chaetophora. The main threats to these occurrences include the potential for displacement through rubbish dumping/ weed invasion, alteration of hydrological regimes and impacts from fire.

### 3.3.6.2 Objectives and Performance Targets

The objectives and performance targets for the management of threatened flora is provided in Table 19. Table 19: BMZ 5 Management Objectives and Performance Targets

[]	Management Objective		Performance Target
•	Prevent habitat loss from livestock grazing, feral deer herbivory, rubbish dumping, weed invasion and altered hydrology		Fending and gates successfully maintained to prevent rubbish dumping and grazing by feral species Weed management successfully maintained to prevent loss
1	Improve habitat for population increase	•	Evidence of Maundia triglochinoides in constructed habitat and recruitment observed in areas planted during BMP works. No prescribed burning to protect threatened species

### 3.3.6.3 Management Actions

The management actions for this BMZ include:

- Use of sensitive weed management practices (i.e. hand weeding and careful use of chemical methods) to ensure these areas of known threatened species are protected;
- Maintenance of fencing to protect from pest species, and
- Burning regime limited to each species (i.e. areas of Maundia triglochinoides and Corybas dowlingii avoided, and areas of Pterostylis chaetophora burned within the prescribed inter-fire intervals specified for each PCT in Table 14).

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### 3.3.7 BMZ 6: Wetland Protection Zone

### 3.3.7.1 Overview

The Wetland Protection Zone comprises habitat for wader bird species including migratory species, with the currently treeless periphery utilised for livestock grazing, which is likely to have had an adverse impact on threatened species.

### 3.3.7.2 Objectives and Performance Targets

The objectives and performance targets for the management of high threat weeds is provided in Table 20. Table 20: BMZ 6 Management Objectives and Performance Targets

	Management Objective	Performance Target
•	Prevent habitat loss from livestock grazing, feral deer herbivory, rubbish dumping, weed invasion and altered hydrology Improve habitat for population increase of threatened species, including <i>Maundia</i> <i>triglochinoides</i> and Koala	 Fencing and gates successfully maintained to prevent rubbish dumping and grazing by feral species Monitoring of revegetated areas as per BMP Continued evidence of <i>Maundia triglochinoides</i> in constructed habitat and recruitment observed in areas planted during BMP works
		No prescribed burning to protect threatened species Continued evidence of Koala activity in revegetated area

#### 3.3.7.3 Management Actions

The management actions for the Wetland Protection Zone include:

- No prescribed burning due to the sensitive nature of this area;
- Maintenance of fencing to prevent grazing from feral species and segregation of Koalas from urban areas;
- Maintenance of Maundia triglochinoides constructed habitat where required;
- Maintenance of constructed White-bellied Sea Eagle habitat where required, and
- Sensitive weed management (i.e. hand weeding and careful use of chemical methods) to ensure these
  areas of known threatened species are protected.

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### 4 MONITORING AND ANALYSIS

### 4.1 Overview

The Project Ecologist is to perform routine monitoring and inspection work to measure the performance of the BCAMP. The Project Ecologist will be responsible for:

- Auditing the annual management prescriptions as approved by Council in the corresponding annual works program;
- Obtain monitoring data for comparison against baseline conditions to evaluate the efficacy of management actions;
- Prepare an annual works program following review of monitoring data and the estimated management
  prescriptions outlined in this BCAMP; and
- Prepare an annual report outlining the audit/ monitoring results and proposed annual works program for review and approval by Port Stephens Council.

The first monitoring report is to provide baseline dataset (Section 4.3) using the monitoring framework (Section 4.2) for future reference/ comparison against objectives and performance targets specified in Sections 3.2 and 3.3. This report is also to provide a clear Annual Works Program for Council approval (Section 5.2), as varied by any adaptive management prescriptions (Section 5.1), thereby provide clear definition of the management actions to be reviewed in the next monitoring cycle.

### 4.2 Monitoring

#### 4.2.1 Methods

### 4.2.1.1 Point Intercept Transect

The per cent cover of weed species is to be measured using the point intercept method for a 50 m long transect. The presence of a weed species is to be measured at every metre along the 50 m transect with the result multiplied by two to produce a score out of 100 (i.e. per cent). Data generated from annual monitoring events will be compared with baseline data (to be collected during Phase 0). Compliance with performance targets and completion criteria is to be determined from this comparison.

#### 4.2.1.2 Photograph Points

The progressive visual monitoring of the Conservation Area using fixed photograph points will provide a visual appreciation for the success or failure of management actions performed under this BCAMP. They will enable contractors to adjust review and adjust works accordingly to enhance the quality of retained vegetation further and provide required information for ongoing monitoring reports.

Photographs are to be taken from a standardised point (i.e. recorded GPS point) at an approximate height of 1.5 m. At least a 5 megapixel was used for each photograph. A horizontal field of view of approximate 40 degrees is achieved, which is within the central angle of view for human vision (i.e. 40-60 degrees).

#### 4.2.1.3 Plant Counts

The monitoring of ihreatened flora populations will involve a count of individuals every three years at the locations specified in **Figure 9**. The location of each individual plant is to be recorded using suitable GPS equipment with high accuracy (e.g. differential global positioning system for post processing). Additional surveys elsewhere in the Conservation Area may be performed to determine if new previously undetected sub-populations are emerging.

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### 4.2.1.4 Acoustic Recordings

Monitoring of Koala presence is to be performed using passive acoustic and sound recognition techniques to detect beliowing males during the breeding season (Law et al 2018). This method can also be used to detect and Large-forest Owls.

### 4.2.2 Design and Frequency

The monitoring locations for the methods outlined in Section 4.2.1 are shown in Figure 21. Monitoring, frequency and timing is outlined in Table 21.

Table 21: Monitoring Frequency Guidance

Monitoring Method	Focus	Frequency	Recommended Timing
Point Intercept	Weed cover	Annual	April - May
Photograph Points	Weed cover	Annual	April - May
Plant Counts	Threatened Flora	Once every three years	Corybas dowlingii in peak flower ~July Pterostylis chaetophora in peak flower ~October Maundia triglochinoides in peak flower ~December
Acoustic Recordings	Koala	Once every three years	Breeding season (August - October)

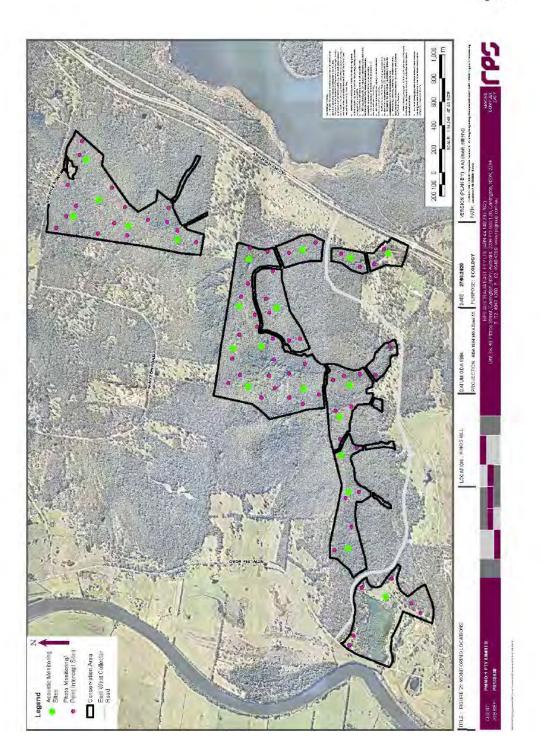
### 4.3 Baseline

The baseline state of the Conservation Area is defined by the annual monitoring results reported through the implementation period of the BMP (RPS 2020). This is defined in the final monitoring report prepared under the BMP, which is to be used as the baseline in this management plan.

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### 4.4 Data Analysis

### 4.4.1 Point Intercept

Point intercept transect results are to be reviewed empirically against baseline/ prior monitoring events and performance targets. Results are to be used to reline management prescriptions.

#### 4.4.2 Threatened Flora

Threatened flora monitoring results are to be analysed using total counts and spatial distributions to evaluate annual variation. Comparison with baseline conditions is to be used to determine if decline or growth is occurring. A threat analysis is to be performed to determine if variation observed is related to a matter that can be managed or is simply a reflection of natural variation.

#### 4.4.3 Koala

The analysis of monitoring data is to be used to determine if Koala breeding activity remains within the Conservation Area. This would be determined by one or more of the following observations:

- Evidence of male bellowing in the breeding period (August to October); and/ or
- Presence of female koalas

Activity monitoring using scat searches (Phillips and Callaghan 2011) and/ or dog detection would be used to gain an appreciation of habitat occupancy. The latter method would be used to collect faecal matter for DNA analysis, with the results from this method offering superior insight on Koala status within the Conservation Area.

### 4.5 Reporting

A monitoring report is to be prepared annually and submitted to Port Stephens Council at least one month prior to financial year end to detail the status of the BCAMP. The annual monitoring reports will

- Report on the management actions performed including details including extent and fiming for evaluation against the annual works program (see Section 5.2 for details on the annual works program) and performance targets for each BMZ;
- Compare annual monitoring results against baseline; and
- Discuss any problems encountered in implementing the BCAMP.

The adaptive management framework is to be considered as outlined in **Section 5.1**. Recommendations regarding timing and responsibility for corrective measures are to be discussed together with a detailed prescription for the forthcoming annual work program for review and approval by Port Stephens Council.

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### 5 ADAPTIVE MANAGEMENT

### 5.1 Framework

To account for uncertainties and to improve management response, all impacts to biodiversity will be adaptively managed using an Adaptive Management Framework. The adaptive management framework actions are detailed below noting this BCAMP represents steps 1 to 4, with any specifications for adaptive management to be determined through steps 5 to 7.

- 1 Describe Undertake and complete comprehensive baseline biodiversity data collection
- 2. Model Model the biological environment and its response to certain management actions/decisions.
- 3. Identify Set clear biodiversity management objectives.
- 4. Do Implement the modelled biological management action.
- Learn Use the monitoring program to evaluate the biological response to management actions against objectives and performance targets. Where required, prepare draft adaptive management response and include in annual monitoring report.
- Consult Share draft adaptive management response with relevant stakeholders (i.e. Port Stephens Council). Seek approval to implement revised management actions.
- 7. Adapt Implement revised and approved adaptive management actions.

Draft adaptive management responses are to be defined through Step 5 and approved and reported through the Annual Monitoring Report as specifications in the 'Annual Works Program'.

### 5.2 Annual Works Program

The Annual Works Program represents a set of detailed Council approved management prescriptions for the forthcoming management year as determined through the combined review of proposed management actions outlined in **Section 3** and preceding monitoring results. This process of adapted management has the purpose of management actions on delivering the BCAMP objectives over the life of the plan. The Annual Works Program is to be drafted for review and approval by Council prior to its implementation, as outlined in Steps 5 to 7 in the above framework section. The Annual Works Program is to be implemented on a financial year cycle. Council is to receive a draft Annual Works Program at least 1 month before the end of the financial year to enable evaluation and approval of the final Annual Works Program in time for implementation.

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1.2.4 Conservation Area Legend

Annexure B Conservation Area

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Annexure C Explanatory Note

### **Explanatory Note**

### **Exhibition of draft Voluntary Planning Agreement**

### Kings Hill Urban Release Area

Lot Number		Deposited Plan Number		
	Lot 41	DP 1037411		
Γ	Lot 4821	DP 852073		

Environmental Planning & Assessment Regulation 2000 (clause 25E)

#### **Planning Agreement**

The purpose of this Explanatory Note is to provide a plain English summary to support the notification of a draft voluntary Planning Agreement (the Planning Agreement) under Section 7.4 of the *Environmental Planning and Assessment Act 1979* (the Act).

The Planning Agreement will require the provision of conservation works (estimated at \$3,500,000), embellishment and public dedication of a Conservation Area, a Monetary Contribution of \$3,000,000 for ongoing management of the Conservation Area and a \$250,000 Monetary Contribution towards administrative costs of Council in administering the Planning Agreement and the Conservation Area.

This Explanatory Note has been prepared jointly between the parties as required by clause 25E of the *Environmental Planning and Assessment Regulation 2000* (the Regulations).

This Explanatory Note is not to be used to assist in construing the Planning Agreement.

#### Parties

Kingshill Development No 1 Pty Ltd and Kingshill Development No 2 Pty Ltd (together **the Developer**), made an offer to Port Stephens Council (**the Council**) to enter into a voluntary Planning Agreement, in connection with a Development Application.

#### Description of subject land

The land to which the Planning Agreement applies is legally described above and known as Kings Hill in New South Wales (the Land).

### **Description of Proposed Development**

This Planning Agreement applies to the development described in Development Application 16-2018-772-1 being a concept development for the future residential subdivision on the Land located within the Kings Hill Urban Release Area and Stage 1 subdivision works for initial site preparation and vegetation clearing.

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### Summary of Objectives, Nature and Effect of the Planning Agreement

### **Objectives of the Planning Agreement**

To secure the embellishment, creation and dedication of the Conservation Area and its ongoing management and maintenance.

#### Nature of the Planning Agreement

The Planning Agreement is a planning agreement under section 7.4 of the Act.

It is an agreement between Council and the Developer under which the Development Contribution (as set out in Schedule 4 of the Planning Agreement) are to be made by the Developer for public purposes (as defined in section 7.4(2) of the Act).

### Effect of the Planning Agreement

The Planning Agreement:

- relates to the Developer's development at Kings Hill;
- does not exclude the effect of sections 7.11, 7.12 and 7.24 of the Act;
- requires the establishment, embellishment and dedication of a Conservation Area on the Developer's land in connection with the Development, and for the Monetary Contribution to be paid and the Conservation Area dedicated to Council before works commence under a Subdivision Works Certificate for the Developer's development;
- is to be registered on the title to the Developer's land;
- requires the Developer to provide security in the form of a bank guarantee for the Conservation Works before works commence under a Subdivision Works Certificate for the Developer's development;
- imposes restrictions on the transfer of the Developer's land, or the assignment or novation of the Developer's obligations under the Planning Agreement;
- provides for dispute resolution by expert determination and mediation;
- provides that the Planning Agreement is subject to the law of New South Wales; and
- provides that the A New Tax System (Goods and Services Tax) Act 1999 (Cth) applies to the Agreement.

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### Assessment of the Merits of the Planning Agreement How the Planning Agreement Promotes the Objects of the Act and the public interest

The Planning Agreement promotes the following objectives of the Act:

- to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources;
- to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats; and
- to promote the orderly and economic use and development of land.

The Planning Agreement promotes the public interest through the provision of public amenities and public services and the enhancement of the natural environment.

### The Planning Purposes served by the Planning Agreement

The conservation works will be carried out for the purposes of enhancing the quality of the natural environment and promoting the conservation of threatened and other species of native animals and plans, preserving and conserving sites of Aboriginal cultural heritage and providing a public conservation area.

The monetary contribution will be used to maintain and manage the Conservation Area following dedication of the Conservation Area to Council.

# How the Planning Agreement promotes the objectives of the *Local Government Act 1993* and the elements of the Council's Charter (now section 8A)

The Planning Agreement is consistent with the following purposes of the Local Government Act 1993:

- provide goods, services and facilities, and to carry out activities, appropriate to the current and future needs of local communities and the wider public; and
- to give councils a role in the management, improvement and development of the resources of their areas.

By enabling Council to provide public infrastructure and facilities, the Planning Agreement is consistent with the following guiding principles of councils, set out in section 8A of the *Local Government Act 1993* (replacing the Council's Charter):

- Councils should provide strong and effective representation, leadership, planning and decisionmaking.
- Councils should carry out functions in a way that provides the best possible value for residents and ratepayers.
- Councils should 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.
- Councils should manage lands and other assets so that current and future local community needs can be met in an affordable way.

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- Councils should consider the long term and cumulative effects of actions on future generations.
- Councils should consider the principles of ecologically sustainable development.
- Councils should actively engage with their local communities, through the use of the integrated planning and reporting framework and other measures.

#### Whether the Planning Agreement conforms with the Council's Capital Works Program

The Planning Agreement will provide for additional reserve space and public Conservation Area within the locality through the dedication of the Conservation Area and a monetary contribution for ongoing management. The Planning Agreement is not inconsistent with Council's Capital Works Program and will provide a unique area for Council to open walking trails, nature appreciation centres, eco-tourism facilities and, in conjunction with Aboriginal cultural representatives, provide opportunities for tourism and appreciation of Aboriginal cultural heritage sites.

# Whether the Planning Agreement specifies that certain requirements must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued

No. The Planning Agreement relates to the establishment of a Conservation Area and Monetary Contribution and is unrelated to a construction certificate, occupation certificate or subdivision certificate.