

DRAFT

MINUTES – 12 OCTOBER 2021



PORT STEPHENS COUNCIL

Minutes of Ordinary meeting of the Port Stephens Council held in the Council Chambers, Raymond Terrace on – 12 October 2021, commencing at 5:51pm.

PRESENT:

Mayor R Palmer, Councillors J Abbott (via audio link), G Arnott, C Doohan, G Dunkley, K Jordan, P Le Mottee, J Nell, S Smith, S Tucker, General Manager (via audio link), Corporate Services Group Manager, Facilities and Services Group Manager, Development Services Group Manager and Governance Section Manager.

	There were no apologies received.
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260	Councillor Jaimie Abbott Councillor Ken Jordan It was resolved that the Minutes of the Ordinary Meeting of Port Stephens Council held on 28 September 2021 be confirmed.
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The motion was carried.

Cr Giacomo Arnott requested that his name be recorded as opposing the motion.

**ORDINARY COUNCIL MEETING - 12 OCTOBER 2021
AMENDMENT**

	<p>Councillor Giacomo Arnott</p> <p>That under Item 1, Deputy Mayor Election, the following is added:</p> <ul style="list-style-type: none">• Cr Giacomo Arnott, attending via zoom, attempted to nominate for Deputy Mayor, however was prevented from doing so by Mayor Ryan Palmer and the General Manager's Representative, on the basis that a "specified form had not been completed" and that a nomination could not be made via zoom.• At Schedule 7, clause 2 of the Local Government Regulations 2021, it is stated that, "A Councillor may be nominated without notice for election as mayor or deputy mayor" and that "the nomination is to be made in writing by 2 or more Councillors (one of whom may be the nominee). The nomination is not valid unless the nominee has indicated consent to the nomination in writing".• The wording in the Regulation is clear: a Councillor may nominate without notice, and in writing. There is no requirement for a nomination to be done on a particular form, nor that it must be written in pen and ink or handed in person. A nomination may be done via email or zoom chat or in any other form without notice, and is valid.• This serves as an apology to Cr Giacomo Arnott for ruling that he was unable to nominate in error. Future Deputy Mayor nominations will be conducted in line with the Regulations, and while there is a preference for a particular form being provided, it is not necessary and not disqualifying if it is not done on the form.
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The motion lapsed without a seconder.

	<p>Cr Paul Le Mottee declared a pecuniary conflict of interest in item 3. The nature of the interest is the Le Mottee Group occasionally does work for one of the directors of one of the companies that owns land at Kings Hill. Cr Le Mottee subsequently advised the meeting that there was no longer a conflict of interest as the land had been sold.</p> <p>Cr Sarah Smith declared a significant non-pecuniary conflict of interest in item 8. The nature of the interest is a long standing friendship with the owners of Saltwater restaurant.</p> <p>Cr Glen Dunkley declared a significant non-pecuniary conflict of interest in item 8. The nature of the interest is a Life Member of Fingal Beach Surf Life Saving Club, past President of Fingal Beach Surf Life Saving Club and is a close friend with both restaurant owners.</p>
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MINUTES ORDINARY COUNCIL - 12 OCTOBER 2021

MOTION TO CONSIDER BUSINESS WHICH NOTICE HAS NOT BEEN GIVEN

ORDINARY COUNCIL MEETING - 12 OCTOBER 2021 MOTION

	<p>Councillor Giacomo Arnott</p> <p>That Council:</p> <ol style="list-style-type: none">1) Notes that Cr Giacomo Arnott was prevented from nominating for Deputy Mayor at the 28 September 2021 Council Meeting, on grounds that are now obviously deficient per the Local Government Regulations 2021, and that he was in fact eligible to nominate despite attending via zoom.2) Refers this matter to the Office of Local Government and Minister for Local Government to review and provide feedback.
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The motion lapsed without a seconder.

MOTION TO CONSIDER BUSINESS WHICH NOTICE HAS NOT BEEN GIVEN

ORDINARY COUNCIL MEETING - 12 OCTOBER 2021 MOTION

261	<p>Councillor Giacomo Arnott Mayor Ryan Palmer</p> <p>It was resolved that Council consider as a matter of urgency the motion without notice from Cr Arnott.</p>
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The Chairperson ruled that the business was a matter of urgency and the motion was put and carried.

ORDINARY COUNCIL MEETING - 12 OCTOBER 2021 MOTION

262	<p>Councillor Giacomo Arnott Mayor Ryan Palmer</p> <p>It was resolved that Council:</p> <ol style="list-style-type: none">1) Acknowledges that 94.9% of eligible residents have had their first COVID-19 vaccine, with 70% of eligible residents receiving their second dose as at 10 October 2021.
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MINUTES ORDINARY COUNCIL - 12 OCTOBER 2021

	<ol style="list-style-type: none">2) Notes that as of Monday 11 October 2021, travel into Port Stephens from regional areas has resumed and, as of the Monday after, the State reaches 80% double vaccination, travel into Port Stephens from the Greater Sydney area will resume.3) Notes that all COVID-19 vaccines are safe and effective, and encourages all locals who have yet to get their first dose to speak with their doctor to confirm which vaccine is the most appropriate for them.4) Congratulates all residents who have pulled up their sleeve and got their vaccination so far, for protecting them, their families and their local community.5) Encourages all residents who have yet to receive their first dose of the COVID-19 vaccine to go out and make an appointment as soon as possible, to protect our local community when the influx of visitors arrives in the near future.
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The motion was carried.

MOTION TO CONSIDER BUSINESS WHICH NOTICE HAS NOT BEEN GIVEN

ORDINARY COUNCIL MEETING - 12 OCTOBER 2021 MOTION

	<p>Councillor Ken Jordan</p> <p>That Council calls on the Chief Executive Officer and President of Port Stephens Koalas to stand down immediately until the investigation is undertaken.</p>
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Mayor Palmer declared a conflict of interest in the item and left the meeting at 6:04pm.

The Mayor vacated the chair and the Deputy Mayor, Cr Paul Le Mottee, chaired the meeting.

The Corporate Services Group Manager declared a conflict of interest in the item and left the meeting at 6.04pm.

Cr Arnott declared a less significant non-pecuniary conflict of interest in the item. The nature of the interest is Cr Arnott is a member of the same political party as the CEO of Port Stephens Koalas, noting a political affiliation is not a conflict of interest, however declaring in the interest of transparency.

The chair ruled the motion was not of great urgency.

The Deputy Mayor vacated the Chair.

MINUTES ORDINARY COUNCIL - 12 OCTOBER 2021

Mayor Ryan Palmer returned to the meeting at 6:12pm and resumed the chair.

The Corporate Services Group Manager returned to the meeting at 6.12pm.

MOTION TO CONSIDER BUSINESS WHICH NOTICE HAS NOT BEEN GIVEN

ORDINARY COUNCIL MEETING - 12 OCTOBER 2021

MOTION

	<p>Councillor Giacomo Arnott</p> <p>That Council:</p> <ol style="list-style-type: none">1) Acknowledges that at the 14 May 2019 Council meeting, Councillor Ken Jordan moved a "matter arising" at the conclusion of Mayoral Minute 1, which recommended that Mayor Ryan Palmer be appointed to the vacant positions on the Newcastle Airport Pty Ltd (NAPL) and the Greater Newcastle Aerotropolis Pty Ltd (GNAPL) Boards as the Port Stephens Council shareholder representatives.2) Notes that this motion was moved without notice, and without any capacity for other Councillors to nominate for the position through a merit selection process.3) Notes that Cr Giacomo Arnott moved an amendment calling for the matter to be deferred by two weeks to allow Councillors to receive a report on the proposal, as there had been no consultation or merit selection process for the position. This amendment lapsed without a seconder.4) Notes that Mayor Ryan Palmer has to date failed to explain the precise arrangement for the \$50,000 a year remuneration that he is provided through this role.5) Demands an explanation from Mayor Ryan Palmer prior to the 26 October 2021 Council Meeting, on the following:<ol style="list-style-type: none">a. Did Mayor Ryan Palmer have advance notice of the motion arising that was to be proposed?b. Did Mayor Ryan Palmer have a conflict of interest when he voted on a motion which would provide him personally with \$50,000 per year?c. Does Mayor Ryan Palmer receive the \$50,000 personally, and then donate it to Council, thereby providing a tax benefit to him personally?d. Does Port Stephens Council account for the \$50,000 in its annual financial statements as a payment or donation directly from Newcastle Airport, and if so, does that provide a tax benefit to the Airport?6) Expresses its disappointment and exasperation at Councillor Ken Jordan for moving this motion without notice on 14 May 2019, then proceeding to move a notice of motion condemning a similar arrangement at Port Stephens Koalas just over two years later.
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The chair ruled the motion was not of great urgency.

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COUNCIL REPORTS

ITEM NO. 1

**FILE NO: 21/232186
EDRMS NO: 16-2021-509-1**

**DEVELOPMENT APPLICATION 16-2021-509-1 FOR MULTI DWELLING HOUSING
AT 245 SOLDIERS POINT ROAD, SALAMANDER BAY**

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

RECOMMENDATION IS THAT COUNCIL:

- 1) Approve Development Application 16-2021-509-1 for the construction of a 2 storey multi dwelling housing development (6 dwellings), demolition of an existing 2 storey dwelling, associated landscaping, civil works, car parking and strata subdivision at 245 Soldiers Point Road, Salamander Bay (Lot 406 DP 28192) subject to the conditions contained in **(ATTACHMENT 3)**.
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**ORDINARY COUNCIL MEETING - 12 OCTOBER 2021
MOTION**

	<p>Councillor Giacomo Arnott</p> <p>That DA 16-2021-509-1 be deferred to enable a secondary round of public consultation to occur, with notification being sent to all adjoining neighbours, those adjoining the access road, and those within two homes of these identified lots.</p>
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The motion lapsed without a seconder.

**ORDINARY COUNCIL MEETING - 12 OCTOBER 2021
MOTION**

263	<p>Councillor Chris Doohan Councillor Paul Le Mottee</p> <p>It was resolved that Council approve Development Application 16-2021-509-1 for the construction of a 2 storey multi dwelling housing development (6 dwellings), demolition of an existing 2 storey dwelling, associated landscaping, civil works, car parking and strata subdivision at 245 Soldiers Point Road, Salamander Bay (Lot 406 DP 28192) subject to the conditions contained in (ATTACHMENT 3).</p>
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MINUTES ORDINARY COUNCIL - 12 OCTOBER 2021

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

Those for the Motion: Mayor Ryan Palmer, Crs Jaimie Abbott, Chris Doohan, Glen Dunkley, Ken Jordan, Paul Le Mottee, John Nell and Steve Tucker.

Those against the Motion: Crs Giacomo Arnott and Sarah Smith.

The motion was carried.

Cr Giacomo Arnott gave notice of a foreshadowed motion.

ORDINARY COUNCIL MEETING - 12 OCTOBER 2021 FORESHADOWED MOTION

	Councillor Giacomo Arnott That Council refuse Development Application 16-2021-509-1 for multi dwelling housing at 245 Soldiers Point Road, Salamander Bay, for the following reasons: 1) Confirmation from members of the public that they do not believe they have been afforded a fair opportunity to provide submissions on the proposal (S4.15(e) of the Environmental Planning & Assessment Act). 2) Any deficiency in the submission process means S4.15(d) of the Environmental Planning & Assessment Act cannot be properly considered by the consent authority and therefore the application is deficient.
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BACKGROUND

The purpose of this report is to present Development Application (DA) 16-2021-509-1 for the construction of a 2 storey multi dwelling housing development (6 dwellings), demolition of an existing 2 storey dwelling, associated landscaping, civil works, car parking and strata subdivision to Council for determination.

A summary of the DA and property is provided below:

Subject Land:	245 Soldiers Point Road, Salamander Bay (Lot 406 DP 28192)
Total Area:	1050m ²
Zoning:	R2 Low Density Residential
Submissions:	9
Key Issues:	The key issues identified throughout the assessment of the DA relate to characterisation of the development,

	zone objectives, building height, traffic and parking and overshadowing.
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The DA has been reported in accordance with Council's Planning Matters to be Reported to Council Policy as it has been called up by Mayor Ryan Palmer, Councillor (Cr) Jamie Abbott, Cr Giacomo Arnott, Cr Glen Dunkley and Cr John Nell **(ATTACHMENT 4)**.

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

Proposal

The DA proposes the construction of a 2 storey multi dwelling housing development (6 dwellings), demolition of an existing 2 storey dwelling, associated landscaping, civil works, car parking and strata subdivision.

Each of the dwellings include a floor plan comprising 2 to 3 bedrooms, 1 bathroom and ensuite, open plan living dining and kitchen and balcony. A basement car park is provided containing 11 car spaces.

Site Description and History

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 1050m² in area. The site has been substantially developed with a 2 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.

One mature tree and low scale shrubs exist within the front portion of the site, along with 3 mature gumtrees that are located in the road reserve adjoining the sites front boundary. The front portion of the site features a relatively even topography, with the rear section sloping significantly to the rear boundary (north). The slope at the rear of the site is considerable, falling from 4.75m AHD to approximately 2m AHD along the coastal public reserve.

The Soldiers Point town centre (Zoned B1) 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.

Key issues

The key issues identified throughout the assessment of the DA relate to characterisation of the development, zone objectives, building height, traffic, parking and overshadowing.

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

Characterisation of Development

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 1 lot of land, each with access at ground level, but does not include a residential flat building’.

The design and fall of the site provides each dwelling with ground floor access via a lift and stairway, accordingly, the development is appropriately characterised as multi dwelling housing. Importantly, the stair that leads from the first floor and then to the second floor forms part of the respective dwellings. Although uncommon, this form nonetheless satisfies the definition by ensuring that each dwelling is accessed from ground level; with direct access to the ground level dwellings or via stairs to the upper level dwellings. This characterisation is consistent with findings of recent case law for a similar built form.

Zone Objectives

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 protects and enhances the existing residential amenity and character of the area through appropriate building design, the selection of appropriate finishes and materials, along with the establishment of landscaping.

Building Height

The development measures 9m in height from the natural ground level to the apex height of the building, complying with the LEP height control.

The built form 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 developments of a greater scale are located in close proximity to the site, including the Salamander Haven Retirement Village and Sandy Shores Retirement Village.

Parking

The DA seeks support for a 1 space concession to the visitor parking requirements in order to better utilise the site for landscaping, rather than increasing car park hardstand on site. The applicant has justified the shortfall by identifying overspill parking opportunities along Soldiers Point Road, as having adequate capacity to accommodate the visitor parking shortfall. Given the presence of nearby parking opportunities, the minor nature of the shortfall and access to alternate transport means, the concession is recommended for support by Council staff.

Traffic

Council's Traffic Engineer supported the DA 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, along with upgrade of the secondary access road and installation of parking restrictions. The road upgrades will ensure that two-way traffic is maintained to the site (and for existing residents). The detailed design of road upgrades will be managed through the Roads Act approval process.

Conditions of development consent that reflect Council's Traffic and Development Engineer comments have been provided at **(ATTACHMENT 3)** should the Development Application be approved by the elected Council.

Overshadowing

Loss of natural light to the adjoining dwellings would be acceptable given solar access is primarily derived from the north. The adjoining properties at No 243 and 247 Soldiers Point Road receive solar access for 3 hours in mid-winter for at least 50% of the private open space areas, as required by the DCP.

Conclusion

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

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

COMMUNITY STRATEGIC PLAN

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

FINANCIAL/RESOURCE IMPLICATIONS

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	No		
Reserve Funds	No		
Developer Contributions (S7.11)	Yes		Should Council determine to approve the DA, s.7.11 development contributions would be applicable and would be levied in accordance with conditions of consent.
External Grants	No		
Other	No		

LEGAL, POLICY AND RISK IMPLICATIONS

The DA is consistent with the relevant planning instruments including the Environmental Planning and Assessment Act 1979 (EP&A Act), PSLEP 2013 and associated State Environmental Planning Policies as listed above.

The non-compliances with the Port Stephens Development Control Plan 2014 (DCP 2014) are considered minor in nature and acceptable. A detailed assessment against these environmental planning instruments is contained within the assessment report contained at **(ATTACHMENT 2)**.

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
If the DA is approved, there is a risk that the determination of the DA may be challenged by a third party in the Land and Environment Court through a judicial review.	Low	Accept the recommendation.	Yes
If the DA is refused, there is a risk that the determination of the DA may be challenged by the applicant in the Land and Environment Court.	Medium	Accept the recommendation.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Social and Economic Impacts

Approval of the DA will result in a multi-dwelling development that will provide housing diversity and opportunities in the local area, consistent with the infill housing objectives of the Local Housing Strategy. 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 contribute to housing targets in the LGA through the construction of 6 additional dwellings. The recommended conditions include management requirements for noise, traffic and construction methods to avoid adverse impacts to nearby properties.

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 proposal addresses the street and provides logical and convenient connections to the road network and pedestrian facilities in the locality.

Any potential built form impacts, by way of overshadowing or privacy, either meet DCP requirements or have been reasonably mitigated through design solutions. Impact to views is considered acceptable through the 'Tenacity' planning principle test as outlined in the Planners Assessment Report (**ATTACHMENT 2**). Overall, there are no unacceptable adverse impacts on the built environment as a result of the proposed development.

Impacts on the Natural Environment

The development 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 has been recommended that requires the installation and maintenance of erosion and sedimentation controls during construction. No significant vegetation is proposed to be removed and that the proposal includes suitable landscaping that incorporates native species. The siting and design of the building is compatible to the coastal values of the area.

CONSULTATION

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

Internal

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

External

Consultation was undertaken with Ausgrid. No objection to the DA was made by the external agency and the comments provided are considered as part of the Planners Assessment Report (**ATTACHMENT 2**).

Public exhibition

The application was exhibited from 9 July 2021 to 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 7 individual submissions and 2 community submissions on behalf of 16 people were received during this time.

OPTIONS

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

ATTACHMENTS

- 1) Locality Plan.
- 2) Planners Assessment Report. (Provided under separate cover)
- 3) Recommended Conditions of Consent.
- 4) Call to Council form.

COUNCILLORS ROOM

- 1) Development Plans.
- 2) Unredacted submissions.

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

TABLED DOCUMENTS

Nil.



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

ITEM 1 - ATTACHMENT 3 RECOMMENDED CONDITIONS OF CONSENT.



RECOMMENDED CONDITIONS OF CONSENT – 16-2021-509-1

1.0 - General Conditions of Consent

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

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

Plan reference/ drawing No.	Name of plan	Prepared by	Date
Sheet 1-3	Draft Strata Subdivision Plan	-	-
2021-008 Issue B Sheet 10	Demolition Plan	SDA	-
2021-008 Issue G Sheet 11-12	Lower Ground & Parking Floor Plan, Upper Ground & First Floor Plan	SDA	-
2021-008 Issue H Sheet 13	Second Floor Plan	SDA	-
2021-008 Issue E Sheet 16	Elevations – Sheet 1	SDA	-
2021-008 Issue D Sheet 17	Elevations – Sheet 2	SDA	-
NL211351 DA-3.01	Concept Erosion and Sediment Control Plan	Northrop	23.06.2021
NL211351 DA-3.02	Concept Erosion and Sediment Control Details	Northrop	23.06.2021
NL211351 Rev 3 DA-4.01	Concept Stormwater and Levels Plan	Northrop	20.08.2021
NL211351 Rev 1 DA-4.20	Concept Swept Path Plan Typical Entry Movements	Northrop	23.06.2021
NL211351 Rev 1 DA-4.21	Concept Swept Path Plan Typical Exit Movements	Northrop	23.06.2021
NL211351 Rev 1 DA-5.01	Concept Bulk Earthworks	Northrop	23.06.2021

ITEM 1 - ATTACHMENT 3 RECOMMENDED CONDITIONS OF CONSENT.



GSP200246 Issue C L01 – L06	Site Analysis, Landscape Plan – Ground Floor, Ground Floor - Plant Schedule, Landscape Plan – First Floor, Landscape Plan – Second Floor, Upper Levels – Plant Schedules	GSP	June 2021
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Document Title	Prepared by	Date
Report on Geotechnical Investigation, 245 Soldiers Point Road.	Cardno	10 June 2021

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

- (2) **BASIX Certificate** – The applicant must undertake the development strictly in accordance with the commitments listed in the BASIX certificate(s) for the development to which this consent applies.
- (3) **Building Code of Australia** – All building work must be carried out in accordance with the BCA. In this clause, a reference to the BCA is a reference to that Code as in force on the date the application for the relevant Construction Certificate is made.
- (4) **Home Building Act** – Pursuant to Section 4.17(11) of the *Environmental Planning & Assessment Act 1979*, residential building work within the meaning of the *Home Building Act 1989* shall not be carried out unless the PCA for the development to which the work relates:
 - a) In the case of work for which a principal contractor has been appointed:
 - i. Has been informed in writing of the name and licence number of the principal contractor; and
 - ii. Where required has provided an insurance certificate with the name of the insurer by which work is insured under Part 6 of that Act.
 - b) In the case of work to be carried out by an owner-builder;
 - i. Has been informed in writing of the name of the owner-builder; and
 - ii. If the owner-builder is required to hold an owner-builder permit under that Act; has provided a copy of the owner-builder permit.
- (5) **Home Building Act – Insurance** – Building work that involves residential building work within the meaning of the *Home Building Act 1989*, must not commence until such time as a contract of insurance is in force in accordance with Part 6 of that Act.

This clause does not apply:

ITEM 1 - ATTACHMENT 3 RECOMMENDED CONDITIONS OF CONSENT.



- a) to the extent to which an exemption is in force under Clause 187 or 188 of the *Environmental Planning & Assessment Regulation 2000 (EP&A Regulation 2000)*, subject to the terms of any condition or requirement referred to in Clause 198(6) or 188(4) of the *EP&A Regulation 2000*; or
 - b) to the erection of a temporary building, other than a temporary structure to which subclause (1A) of Clause 98 of the *EP&A Regulation 2000 applies*.
- (6) **Excavation for residential building works** – If the approved development involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the consent must, at the person's own expense:
- a) protect and support the adjoining premises from possible damage from the excavation; and
 - b) where necessary, underpin the adjoining premises to prevent any such damage.
- This condition does not apply if the person having the benefit of the consent owns the adjoining land or the owner of the adjoining land has given consent in writing that condition not applying, and a copy of that written consent is provided to the PCA prior to the excavation commencing.
- (7) **Sign on building** – Except in the case of work only carried out to the interior of a building or Crown building work, a sign must be erected in a prominent position on the site showing the name, address and telephone number of the Principal Certifying Authority for the work, the name of any principal contractor and their after-hours contact number, and must contain a statement that unauthorised entry to the site is prohibited.
- The sign must be maintained while the work is being carried out and is to be removed when the work is completed.
- (8) **Shoring of adjoining buildings** - Where any excavation required for the development extends below the level of the base of a footing of a building, structure or work on adjoining land (including within a road or rail corridor), the person having the benefit of the consent must protect and support that building, structure or work from possible damage from the excavation, and where necessary underpin the building, structure or work to prevent any such damage.

2.0 – Prior to Issue of a Construction Certificate

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

- (1) **Dilapidation report – Adjoining property** - A dilapidation report including a photographic survey of the following adjoining properties must be provided to the Certifying Authority. The dilapidation report must detail the physical condition of those properties, both internally and externally, including walls, ceilings, roof, structural members and other similar items.
 - a) 243 Soldiers Point Road, Salamander Bay – Lot 405 DP 28192



- b) 247 Soldiers Point Road, Salamander Bay – Lot 407 DP 28192

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

- (2) **Driveway gradients and design** - For all driveways that relate to development for the purposes of a dwelling house, the driveway gradient and design must comply with AS 2890.1 'Off street Car Parking' and:

- a) the driveway must be at least 1m from any street tree, stormwater pit or service infrastructure; and
- b) a Works on Public Infrastructure (Driveway) approval must be obtained prior to the commencement of any works.

Details demonstrating compliance must be provided to the Certifying Authority.

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

Details demonstrating compliance must be provided to the Certifying Authority.

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

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

Details demonstrating compliance must be provided to the Certifying Authority.

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

Details demonstrating compliance must be provided to the Certifying Authority.

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

- (7) **Roads Act Application** – The following information must be provided to Council as Roads Authority with the Roads Act application and constructed, as approved, prior to issue of any Occupation Certificate:

- a) Upgrade the site access road and installation of parking restrictions on this road, to ensure that two-way traffic is maintained to the site (and for existing residents).
- b) Provision of a shared path to connect to Randall Drive (across to the shops), in order to provide safe access for pedestrians.

ITEM 1 - ATTACHMENT 3 RECOMMENDED CONDITIONS OF CONSENT.



- (8) **Construction Environmental Management Plan** - A Construction Environmental Management Plan must be submitted to and approved by to the Certifying Authority and Council. The required CEMP must outline the sequence and construction methodology and specify mitigating measures to ensure all works are carried out with minimal environmental impact in relation to project staging, waste management, noise and dust management, traffic management and environmental management
- (9) **Section 7.11 Development contributions** – A monetary contribution is to be paid to Council for the provision of three dwellings, pursuant to Section 7.11 of the *Environmental Planning & Assessment Act 1979* and the Port Stephens Council Local Infrastructure Contributions Plan 2020 towards the provision of the following public facilities:

Facility	Per Lot/Dwelling	Total \$
Civic Administration – Plan Management	\$455	\$2,275
Civic Administration – Works Depot	\$1,187	\$5,935
Town Centre Upgrades	\$3,199	\$15,995
Public Open Space, Parks & Reserves	\$1,941	\$9,705
Sports & Leisure Facilities	\$1,847	\$9,235
Cultural & Community Facilities	\$1,250	\$6,250
Road Works	\$3,367	\$16,835
Shared Paths	\$3,084	\$15,420
Bus Facilities	\$11	\$55
Fire & Emergency Services	\$231	\$1,155
Flood & Drainage	\$1,781	\$8,905
Kings Hill Urban Release Area	\$283	\$1,415
Total		\$93,180

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

- a) Subdivision and building work - prior to the issue of the Construction Certificate.

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

- (10) **Long service levy** – In accordance with Section 34 of the *Building and Construction Industry Long Service Payments Act 1986*, the applicant must pay a long service levy at the prescribed rate to either the Long Service Payments Corporation or Council for any works that cost \$25,000 or more.
- (11) **Hunter Water Corporation approval** - A Section 49 Application under the *Hunter Water Act 1991* must be lodged with Hunter Water Corporation (HWC) and details of the Notice of Compliance from HWC must be provided to the Certifying Authority.

3.0 - Prior to Commencement of Works

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

ITEM 1 - ATTACHMENT 3 RECOMMENDED CONDITIONS OF CONSENT.

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

ITEM 1 - ATTACHMENT 3 RECOMMENDED CONDITIONS OF CONSENT.



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

- (5) **Construction Certificate Required** – In accordance with the provisions of Section 6.7 of the *Environmental Planning & Assessment Act 1979 (EP&A Act 1979)*, construction or subdivision works approved by this consent must not commence until the following has been satisfied:
 - a) a Construction Certificate has been issued by a Consent Authority;
 - b) a Principal Certifying Authority (PCA) has been appointed by the person having benefit of the development consent in accordance with Section 6.5 of the *EP&A Act 1979*; and
 - c) the PCA is notified in writing of the name and contractor licence number of the owner/builder intending to carry out the approved works.

- (6) **Site is to be secured** – The site must be secured and fenced to the satisfaction of the Principal Certifying Authority. All hoarding, fencing or awnings (associated with securing the site during construction) is to be removed upon the completion of works.

- (7) **Demolition work** – All demolition works are to be carried out in accordance with Australian Standard AS 2601 'The demolition of Structures'. All waste materials are to be either recycled or disposed of to a licensed waste facility.
 Any asbestos containing material encountered during demolition or works, is to be removed in accordance with the requirements of Safe Work NSW and disposed of to an appropriately licenced waste facility.
 Evidence is to be provided to the Certifying Authority demonstrating that asbestos waste has been disposed of in accordance with this condition.

- (8) **Soil erosion and sediment control** – Soil erosion and sediment controls must be implemented prior to works commencing on the site in accordance with 'Managing Urban Stormwater – Soils and Construction ('the blue book') and any Sediment and Erosion plans approved with this Development Consent.
 Soil erosion and sediment control measures must be maintained during construction works and must only be removed upon completion of the project when all landscaping and disturbed surfaces have been stabilised (for example, with site turfing, paving or re-vegetation).

- (9) **All weather access** – A 3m wide all-weather vehicle access is to be provided from the kerb and gutter to the building under construction for the delivery of materials and use by trades people.
 No materials, waste or the like are to be stored on the all-weather access at any time.

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

ITEM 1 - ATTACHMENT 3 RECOMMENDED CONDITIONS OF CONSENT.



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

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

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

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

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

4.0 - During Works

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

- (1) **Construction hours** – All work (including delivery of materials) must be restricted to the hours of 7.00am to 5.00pm Monday to Saturday inclusive. Work is not to be carried out on Sundays or Public Holidays.
- (2) **Toilet facilities** – Temporary toilet(s) must be provided and maintained on site from the time of commencement of building work to completion. The number of toilets provided must be one toilet per 20 persons or part thereof employed on the site at any one time.

The temporary toilet is to be either connected to the sewerage system or an approved septic tank or otherwise may be a chemical toilet supplied by a licensed contractor.
- (3) **Compliance with BCA** – All building work must be carried out in accordance with the requirements of the Building Code of Australia.
- (4) **Excavations and backfilling** – All excavations and backfilling associated with this development consent must be executed safely, and be properly guarded and protected to prevent them from being dangerous to life or property, and in accordance with the design of a suitably qualified Structural Engineer.

ITEM 1 - ATTACHMENT 3 RECOMMENDED CONDITIONS OF CONSENT.



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

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

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

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

- (5) **Building height** – A survey report prepared by a Registered Surveyor confirming that the building height complies with the approved plans or as specified by the development consent, must be provided to the Principal Certifying Authority prior to the development proceeding beyond frame stage.
- (6) **Survey report** – The building must be set out by a Registered land surveyor. A peg out survey detailing the siting of the building in accordance with the approved plans must be provided to the Principal Certifying Authority prior to the pouring of concrete.
- (7) **Construction Environmental Management Plan implementation** - All construction management procedures and systems identified in the Construction Environmental Management Plan referenced in this consent must be introduced during construction of the development.
- (8) **Stormwater disposal** – Following the installation of any roof, collected stormwater runoff from the structure must be diverted to:
 - a) The approved stormwater management system.
- (9) **Placement of fill** - Filling must not be placed in such a manner that natural drainage from adjoining land will be obstructed or in such a manner that surface water will be diverted.
Further, any alterations to the natural surface contours must not impede or divert natural surface water runoff so as to cause a nuisance to adjoining property owners.
- (10) **Unexpected finds contingency (general)** – Should any suspect materials (identified by unusual staining, odour, discolouration or inclusions such as building rubble, asbestos, ash material, etc.) be encountered during any stage of works (including earthworks, site preparation or construction works, etc.), such works must cease immediately until a qualified environmental specialist has been contacted and conducted a thorough assessment.

ITEM 1 - ATTACHMENT 3 RECOMMENDED CONDITIONS OF CONSENT.



In the event that contamination is identified as a result of this assessment and if remediation is required, all works must cease in the vicinity of the contamination and Council must be notified immediately.

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

- (11) **Soil, erosion, sediment and water management** – All requirements of the Erosion and Sediment Control Plan or Soil and Water Management Plan must be maintained at all times during the works and any measures required by the plan must not be removed until the site has been stabilised.
- (12) **Offensive noise, dust, odour and vibration** – All work must not give rise to offensive noise, dust, odour or vibration as defined in the *Protection of the Environment Operations Act 1997* when measured at the nearest property boundary.
- (13) **Fill material** – The only fill material that may be received at the development site is:
 - a) Virgin excavated natural material (VENM) within the meaning of the *Protection of the Environment Operations Act (POEO Act 1997)*;
 - or
 - b) Excavated natural material (ENM) within the meaning of the *POEO Act 1997*;
 - or
 - c) Any other waste-derived material the subject of a resource recovery exemption under s.91 of the *Protection of the Environment Operations (Waste) Regulation 2014* that is permitted to be used as fill material.

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

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

- (14) **Finished Floor Level** – The finished floor level of the site must be a minimum level of Reduced Level 3.7m Australian Height Datum in accordance with the approved plans.

A survey report prepared by a Registered Surveyor confirming that the finished floor level complies with the approved plans or floor levels specified by the development consent, must be provided to Principal Certifying Authority prior to the development proceeding beyond floor level stage.

5.0 - Prior to Issue of a Subdivision Certificate

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

- (1) **Strata Plan of Subdivision** – Sections 37 and 37A of the *Strata Schemes (Freehold Development) Act 1973* require an application to be provided to Council for approval prior to the issue of the certified Strata Plan of subdivision.

ITEM 1 - ATTACHMENT 3 RECOMMENDED CONDITIONS OF CONSENT.



The applicant will be required to submit documentary evidence that the property has been developed in accordance with the plans approved by this development consent 16-2021-509-1, and of compliance with the relevant conditions of consent, prior to the issuing of a Strata Plan of Subdivision.

Note: The final Strata Plan of Subdivision must be prepared to a quality suitable for lodgement with the NSW Land Registry Services.

- (2) **Restriction on issue of Strata Plan of Subdivision** – An Occupation Certificate for the building must be issued by the PCA prior to the issue of any Strata Plan of subdivision associated with this development consent 16-2021-509-1.

Documentary evidence of the issue of the Occupation Certificate must be provided to Council in conjunction with the application for the Strata Plan of Subdivision.

- (3) **Show easements / restrictions on the Plan of Subdivision** - The developer must acknowledge all existing easements and/or restrictions on the use of the land on the final plan of subdivision.

- (4) **Subdivision Certificate** – The issue of a Subdivision Certificate is not to occur until all conditions of this development consent have been satisfactorily addressed and all engineering works are complete.

Works As Executed Plans must be prepared and provided to the Principal Certifying Authority in accordance with Council's Infrastructure Specifications and approved plans.

- (5) **Surveyor's Report** – A certificate from a Registered Surveyor must be provided to the Principal Certifying Authority, certifying that all drainage lines have been laid within their proposed easements.

Certification is also to be provided stating that no services or accessways encroach over the proposed boundary other than as provided for by easements as created by the final plan of subdivision.

- (6) **Services** – Evidence is to be provided to Council demonstrating that the following reticulated services are available to each lot:

- a) Electricity.
- b) Water.
- c) Sewer.
- d) Gas (where available).

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

- (8) **Burdened lots to be identified** - Any lots subsequently identified during construction of the subdivision as requiring restrictions must also be suitably burdened.



- (9) **Outstanding works** – The applicant is to lodge a bond with Council for the construction of outstanding works, including concrete footpath and/or pedestrian/cycle shared way and a bond can only be lodged once the agreement has been made with Council to accept this.

6.0 - Prior to Issue of an Occupation Certificate

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

- (1) **Occupation Certificate required** - An Occupation Certificate must be obtained prior to any use or occupation of the development.

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

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

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

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

- (4) **Services** – Evidence is to be provided to Council demonstrating that the following reticulated services are available to each lot:

- a) Electricity;
- b) Water;
- c) Sewer; and
- d) Gas (where available).

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

- (5) **Stormwater/drainage works** – All stormwater and drainage works required to be undertaken in accordance with this consent must be completed.

The certification/verification must be provided to the satisfaction of the Principal Certifying Authority.

- (6) **Rectification damage to public infrastructure** – The applicant must rectify any new damage to public infrastructure to the satisfaction of the Council as the Roads Authority.

ITEM 1 - ATTACHMENT 3 RECOMMENDED CONDITIONS OF CONSENT.

- (7) **Completion of Roads Act Approval works** - All approved road, footpath and/or drainage works, including vehicle crossings, have been completed in the road reserve in accordance with the Roads Act Approval to the satisfaction of the Council as the Roads Authority.
- (8) **Works as Executed Plans and Report** - Works As Executed Plans must be prepared and provided to the Principal Certifying Authority in accordance with Council's Infrastructure Specifications confirming all stormwater drainage systems are constructed in accordance with the approved plans/documentation.
- (9) **Geotechnical Compliance Certificate** – A Certificate of Compliance prepared by a qualified Geotechnical Engineer must be provided to the Principal Certifying Authority stating that the works detailed in the Geotechnical Report have been undertaken under the Engineer's supervision and to the Engineer's satisfaction, and that the assumptions relating to site conditions made in preparation of the report were validated during construction.
- This certificate must accompany the Works as Executed plans.
- (10) **Completion of landscape works** – All landscape works are to be undertaken in accordance with the approved landscape plan and conditions of this Development Consent.
- (12) **Car parking requirements** – A minimum of 11 car parking spaces are to be provided in accordance with AS2890 and the approved plans. Parking and loading areas must be permanently marked on the pavement surface.
- (13) **Fire Safety Schedule** - A Fire Safety Certificate must be provided to the PCA in accordance with the requirements of the Environmental Planning & Assessment Regulation 2000.
- (14) **Garbage room** – Rooms used for the storage of garbage, and rooms used for the washing and storage of garbage receptacles, must be constructed in accordance with the approved plans and the following:
- a) The room must be constructed of solid material, cement rendered and trowelled to a smooth even surface;
 - b) The floor must be impervious material coved at the intersection with the walls, graded and drained to an approved floor waste within the room; and
 - c) Garbage rooms must be vented to the external air by natural or mechanical ventilation.
- Details demonstrating compliance must be provided to the Certifying Authority.
- (15) **Mail boxes** - A group type mailbox is to be provided at the street frontage in accordance with the requirements of Australia Post, clearly displaying individual required house number. Full details of the construction and completion are to be provided prior to any Occupation Certificate.



7.0 – Ongoing Use

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

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

If any of the vegetation dies or is removed, it is to be replaced with vegetation of the same species and similar maturity as the vegetation which has died or was removed.
- (7) **Waste management and collection** – At all times, the strata management body must make arrangements for the placement of the garbage bins at the kerbside for weekly collection and must ensure the return of the bins to the garbage room as soon as practicable after collection.



Advice Note(s):

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

Council has no regulatory authority in this area and does not adjudicate civil disputes relating to the provision of, or payment for, the erection of dividing fences. If there is a neighbour dispute about the boundary fence and you are seeking mediation, you may contact the Community Justice Centre, or if legal advice or action is required, you may contact the Chamber Magistrate.
- (3) **Aboriginal archaeological deposit** – In the event of any Aboriginal artefact, object or structure being unearthed, all work must cease immediately in the affected area, and the Heritage NSW shall be informed of the discovery. Work must not recommence until the material has been inspected and permission has been given by HNSW to proceed.
- (4) **Disability Discrimination Act** – The Commonwealth Disability Discrimination Act makes it an offence to discriminate against people on the grounds of disability, in the provision of access to premises, accommodation, or services. It is the owner/applicants responsibility to ensure compliance with the requirements of this Act.
- (5) **Works near/adjoining electricity network assets** – There are underground electricity network assets adjacent to the proposed development in Tomaree Street. Any works undertaken adjacent to Ausgrid underground assets / Ausgrid assets must be undertaken with care in accordance with Ausgrid Network Standard Document NS 156 – Work Near or Around Underground Cables
- (6) **Flood information is subject to change** – You are advised that flood information is subject to change if more accurate data becomes available to Council. It is the responsibility of the applicant to use the most up-to-date flood information. Prior to applying for a construction certificate, Council should be contacted to verify the currency of the flood information.
- (7) **Responsibility for damage for tree removal/pruning** – The applicant is responsible for any damage caused to existing public utilities, footpaths or public roads during the cutting down, grinding, removal and disposal of the timber and roots. Care must also be taken by the applicant and the applicant's agents to prevent any damage to adjoining properties. The applicant or the applicants' agent may be liable to pay compensation to any adjoining owner if, due to tree works, damage is caused to such adjoining property.

ITEM 1 - ATTACHMENT 3 RECOMMENDED CONDITIONS OF CONSENT.



- (8) **Council must be nominated as PCA for subdivision works** – Under Section 6.5 of the *Environmental Planning & Assessment Act 1979*, Council shall be nominated as the Principal Certifying Authority for subdivision work and has the option of undertaking inspection of physical construction works.
- (9) **Street Addressing** - Prior to occupying the development or release of subdivision certificate (whichever occurs first) the approved dwellings are to be identified as follows:
- a) CP – 245 Soldiers Point Road, Salamander Bay
 - b) Unit 1 – 1/245 Soldiers Point Road, Salamander Bay
 - c) Unit 2 – 2/245 Soldiers Point Road, Salamander Bay
 - d) Unit 3 – 3/245 Soldiers Point Road, Salamander Bay
 - e) Unit 4 – 4/245 Soldiers Point Road, Salamander Bay
 - f) Unit 5 – 5/245 Soldiers Point Road, Salamander Bay
 - g) Unit 6 – 6/245 Soldiers Point Road, Salamander Bay

Council's Spatial Services Team should be contacted via email at:
addressing@portstephens.nsw.gov.au to obtain correct property addressing details.

Please state your Development Approval number and property address in order to obtain the correct house numbering.

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

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

The determination decision was reached for the following reasons:

- The proposed development, subject to the recommended conditions, is consistent with the objectives of the applicable environmental planning instruments, being; Port Stephens Local Environmental Plan 2013 (PSLEP), State Environmental Planning Policy No 55 - Remediation of Land, State Environmental Planning Policy Coastal Management 2018, State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017, State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 and State Environmental Planning Policy (Koala Habitat Protection) 2021.
- The proposed development is, subject to the recommended conditions, consistent with the objectives of the Port Stephens Council Development Control Plan 2014 (PSDCP).
- The proposed car parking variation to the PSDCP is considered to be acceptable in the particular circumstances of this case as the variation will not adversely impact the local traffic network.
- Subject to the recommended conditions the proposed development will be provided with adequate essential services required under the PSLEP.
- The proposed development is considered to be of an appropriate scale and form for the site and the character of the locality.
- The proposed development, subject to the recommended conditions, will not result in unacceptable adverse impacts upon the natural or built environments.
- The proposed development is a suitable and planned use of the site and its approval is within the public interest.
- Any submission issues raised have been taken into account in the assessment report and where appropriate conditions of consent have been included in the determination. Council has given due consideration to community views when making the decision to determine the application.

REASONS WHY THE CONDITIONS HAVE BEEN IMPOSED

The following conditions are applied to:

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

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

ITEM 1 - ATTACHMENT 3 RECOMMENDED CONDITIONS OF CONSENT.

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

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

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

RIGHT OF REVIEW

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

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

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



Call to Council form

Development Application

116 Adelaide Street,
Raymond Terrace NSW 2324

PO Box 42
Raymond Terrace NSW 2324

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

DX 21406 | ABN 16 744 377 876

DEVELOPMENT APPLICATION (DA) CALL TO COUNCIL REQUEST

We (Mayor/Councillor/s)

Name:	CR John Nell
Name:	Mayor Palmer
Name:	Councillors Dunkley and Arnott
request that DA number:	16-2021-509-1
for DA description:	Multi Dwelling Housing
located at:	245 Soldiers Point Road Salamander Bay

be reported to Council for determination.

REASON

Public interest.

SIGNATURE OF APPLICANT/S

[Redacted Signature Area]

PRIVACY

Port Stephens Council is committed to protecting your privacy. We take reasonable steps to comply with relevant legislation and Council policy. **Purpose:** The purpose of this form is to enable Council to record the matter raised and taken appropriate action. **Intended recipients:** Council employees, contractors and other third parties where appropriate. **Supply:** Voluntary. **Consequence of Non Provision:** Council may not take action on the matter raised. **Storage and security:** This document will be placed on the relevant file and/or saved in Council's records management system in accordance with Council policy and relevant legislation. **Access:** Please contact Council on 02 4988 0255 to enquire how you can access information.

ITEM NO. 2

**FILE NO: 21/225839
EDRMS NO: 58-2021-2-1**

PLANNING PROPOSAL FOR 4 SEASIDE BOULEVARD, FERN BAY

REPORT OF: JANELLE GARDNER - STRATEGY & ENVIRONMENT SECTION
MANAGER
GROUP: DEVELOPMENT SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Note the amendments to the planning proposal (**ATTACHMENT 2**) for 2, 4, 4A, 4B, and 6 Seaside Boulevard, Fern Bay (Part of Lot 27, DP 270466, Lots 2, 3, 4, 20, 21, 22, DP 280072), and 20, 22, 23, 24, 25 and 26 Sovereign Street, Fern Bay (Part of Lots 5, 19, 23 & 24, DP 280072) to rezone the subject land from B1 Neighbourhood Centre to R2 Low Density Residential, apply a minimum lot size of 500 square metres, and amend the maximum building height limit from 8 metres to 9 metres.
- 2) Receive and note the submissions received during agency consultation and public exhibition of the planning proposal.
- 3) Authorise the exercise of delegations to make the amendment to the Port Stephens Local Environmental Plan 2013 under section 3.36 of the Environmental Planning and Assessment Act 1979 (NSW).

**ORDINARY COUNCIL MEETING - 12 OCTOBER 2021
MOTION**

264	<p>Councillor Giacomo Arnott Councillor Glen Dunkley</p> <p>It was resolved that Council:</p> <ol style="list-style-type: none">1) Note the amendments to the planning proposal (ATTACHMENT 2) for 2, 4, 4A, 4B, and 6 Seaside Boulevard, Fern Bay (Part of Lot 27, DP 270466, Lots 2, 3, 4, 20, 21, 22, DP 280072), and 20, 22, 23, 24, 25 and 26 Sovereign Street, Fern Bay (Part of Lots 5, 19, 23 & 24, DP 280072) to rezone the subject land from B1 Neighbourhood Centre to R2 Low Density Residential, apply a minimum lot size of 500 square metres, and amend the maximum building height limit from 8 metres to 9 metres.2) Receive and note the submissions received during agency consultation and public exhibition of the planning proposal.
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MINUTES ORDINARY COUNCIL - 12 OCTOBER 2021

	3) Authorise the exercise of delegations to make the amendment to the Port Stephens Local Environmental Plan 2013 under section 3.36 of the Environmental Planning and Assessment Act 1979 (NSW).
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In accordance with Section 375 (A) of the Local Government Act 1993, a division is required for this item.

Those for the Motion: Mayor Ryan Palmer, Crs Jaimie Abbott, Giacomo Arnott, Chris Doohan, Glen Dunkley, Ken Jordan, Paul Le Mottee, John Nell, Sarah Smith and Steve Tucker.

Those against the Motion: Nil.

The motion was carried.

BACKGROUND

The purpose of this report is to advise Council of the outcome of the exhibition of the planning proposal (**ATTACHMENT 2**) for 4 Seaside Boulevard Fern Bay, and note the submissions received. The report seeks authorisation to exercise delegations to make the amendment to the Port Stephens Local Environmental Plan 2013 (LEP). A locality plan is provided at (**ATTACHMENT 1**).

The planning proposal seeks to amend the LEP to rezone the subject land from B1 Neighbourhood Centre to R2 Low Density Residential, to add a minimum lot size of 500 square metres, and to amend the height of building limit from 8 metres to 9 metres. These amendments will align the planning controls for this site with the neighbouring residential land and enable development of 5 additional homes in Seaside Estate, Fern Bay.

The planning proposal is consistent with the Fern Bay and North Stockton Strategy, which identifies more suitable locations for a retail centre as well as a smaller neighbourhood centre to service Fern Bay and neighbouring suburbs. A planning proposal for one of these sites is currently under assessment.

A summary of the planning proposal is set out below:

Date lodged:	9 June 2021
Proponent:	ADW Johnson on behalf of Ano Nuevo Island Unit Trust
Subject properties:	2, 4, 4A, 4B, and 6 Seaside Boulevard, Fern Bay (Part of Lot 27, DP 270466, Lots 2, 3, 4, 20, 21, 22, DP 280072), 20, 22, 23, 24, 25 and 26 Sovereign Street, Fern Bay (Part of Lots 5, 19, 23 & 24, DP 280072)
Site area:	1 hectare
Current Zoning:	B1 Neighbourhood Centre

MINUTES ORDINARY COUNCIL - 12 OCTOBER 2021

Proposed Zoning:	R2 Low Density Residential
Current Minimum Lot Size:	No minimum lot size.
Proposed Minimum Lot Size:	500 square metres
Current Maximum Building Height:	8 metres
Proposed Maximum Building Height:	9 metres

In accordance with Council's Rezoning Request Policy, the proposal was forwarded to the State Government on 9 July 2021 for a Gateway determination under staff delegation, as it is consistent with adopted local strategies. On 6 August 2021, the Department of Planning Industry and Environment (DPIE) issued a Gateway determination.

The planning proposal was publicly exhibited from 19 August 2021 to 2 September 2021 in accordance with the Gateway determination. During the public exhibition, no public submissions were received. The planning proposal was referred to the NSW Rural Fire Service and Department of Defence and their comments are summarised in this report.

Existing and current use

The proposed rezoning area is approximately 1 hectare and includes 11 lots that were originally rezoned and subdivided as part of the Seaside Estate concept plan and major project.

6 of the 11 lots already have dwelling approvals and are being used for residential purposes. 4 of these approvals were granted on sites that are partly zoned R2 Low Density Residential already. 2 dwelling approvals have been granted on existing lots wholly in the B1 Neighbourhood Centre zone under clause 5.3 of the Port Stephens LEP, which enables development near zone boundaries to rely on the neighbouring zone for permissibility.

The rezoning will facilitate residential development on the remaining 5 lots.

Purpose of the amendment

The purpose of the amendment is to enable additional low density residential development within the Seaside Estate given the site is no longer considered suitable for a neighbourhood centre.

In 2017, a Commercial Lands Study was done by HillPDA (HillPDA Study) to inform the Fern Bay and North Stockton Strategy and determine the most suitable location for a new retail centre in the area. The recommendations of the HillPDA Study support increased commercial land, including the redevelopment of the Stockton

MINUTES ORDINARY COUNCIL - 12 OCTOBER 2021

Residential Centre for a new town centre. The HillPDA Study identifies that the subject site is the least suitable site for a future commercial centre.

Suitability of the subject land

The subject land is part of the Seaside Estate, an established residential subdivision. The subdivision, servicing and clearing of the land has already been approved and undertaken and is not intended to be altered if this rezoning is finalised.

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

- Attached dwellings
- Boarding houses
- 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 small scale commercial uses, such as a neighbourhood shop, could be appropriate, the scale of these uses (ie 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.

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2018-2022
Thriving and Safe Place to Live	Provide land use plans, tools and advice that sustainably support the community.

FINANCIAL/RESOURCE IMPLICATIONS

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

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

MINUTES ORDINARY COUNCIL - 12 OCTOBER 2021

Source of Funds	Yes/No	Funding (\$)	Comment
External Grants	No		
Other	Yes		\$18,312 Category A Stage 1 and Stage 2 rezoning fees.

LEGAL, POLICY AND RISK IMPLICATIONS

There are no significant legal, policy or risk implications as a consequence of the recommendations of this report.

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
There is a risk that insufficient residential land is available in Fern Bay for population growth in the area.	Medium	Adopt the recommendations	Yes
There is a risk that there will be no local commercial precincts to service the residents of Fern Bay.	Low	Adopt the recommendations	Yes

Port Stephens Local Environmental Plan 2013 (LEP)

The planning proposal will rezone approximately 1 hectare of land from B1 Neighbourhood Centre to R2 Low Density Residential. The objectives of the R2 Low Density Residential zone are listed in the LEP as:

- To provide for the housing needs of the community within a low-density residential environment.
- To enable other land uses that provide facilities or services to meet the day-to-day needs of residents.
- To protect and enhance the existing residential amenity and character of the area.
- To ensure that development is carried out in a way that is compatible with the flood risk of the area.

Amending the LEP will permit (with development consent) the development of dwellings on the site, which is considered consistent with the objectives of this zone.

Environmental Planning and Assessment Act 1979 (NSW) (EP&A Act)

Part 3 of the EP&A Act provides the framework for amending a local environmental plan. DPIE issued a Gateway determination under section 3.34 of the EP&A Act

specifying that the planning proposal should proceed to exhibition, subject to conditions and consultation requirements.

Council is authorised to act as the local plan making authority to make the plan by the Gateway determination. Should Council adopt the recommendations, arrangements will be made for the drafting of the amendment to the LEP to give effect to the planning proposal.

Hunter Regional Plan 2036 (HRP)

The planning proposal is consistent with the HRP and aligns with Direction 23 and Action 23.1 to '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 provide additional housing within a local centre and within 20 minutes of the strategic centres of Newcastle City and Raymond Terrace.

Greater Newcastle Metropolitan Plan 2036 (GNMP)

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

Port Stephens Local Strategic Planning Statement (LSPS)

The planning proposal is consistent with the planning priorities in the LSPS. In particular, it will ensure suitable land supply as it will provide additional housing on land that is already serviced and unconstrained. It will also increase diversity of housing stock and conserve biodiversity values and corridors by enabling residential development within an area that has already been cleared, thereby minimising additional impacts to biodiversity values.

Port Stephens Local Housing Strategy (Live Port Stephens)

Live Port Stephens is the overarching strategy to guide land use planning decisions for new housing in Port Stephens. The planning proposal is consistent with Live Port Stephens as it will increase housing supply, housing diversity, affordable housing choices close to employment opportunities, and facilitate new housing within existing urban areas.

Fern Bay and North Stockton Strategy (FBNSS)

The planning proposal is consistent with the FBNSS, as it focuses housing growth in locations that maximise infrastructure and services, delivers greater housing supply and choice, and limits urban sprawl and impacts on the natural environment. The proposal achieves outcome 5 to 'Undertake a detailed assessment of the 'Request to

Amend the Port Stephens Local Environmental Plan' submitted for 2 Seaside Boulevard, Fern Bay'. It is noted that '2 Seaside Boulevard, Fern Bay' is the same site that is the subject of this rezoning.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The planning proposal will deliver social and economic benefits to the existing and future community, including:

- Employment opportunities in the Port Stephens LGA and Hunter Region through construction jobs
- Increased provision of housing within an existing residential neighbourhood
- Increased population to support the future of retail services in accordance with the Fern Bay and North Stockton Strategy
- Support any proposals to establish a B1 Neighbourhood Centre zone in a more appropriate and viable location
- Provide additional housing utilizing existing infrastructure.

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. Stockton Residential Centre was identified as the most viable location 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 than the subject site, including for a smaller local neighbourhood centre or supermarket.

The planning proposal will not have any adverse environmental implications, the land has already been cleared and serviced as part of the original subdivision.

CONSULTATION

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

Internal

Consultation with internal stakeholders has been undertaken to inform the planning proposal, including with the Natural Resources, and Development Engineering Units. No objections were raised.

External

The following public authorities were consulted on the planning proposal in accordance with the Gateway determination and Council's Memorandum of Understanding with the Commonwealth Department of Defence:

- NSW Rural Fire Service
- Commonwealth Department of Defence

No public authorities objected 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 consultation with the Department of Defence to appropriately manage the storage of organic waste. Subsequent applications for development on the site will be subject to these requirements.

NSW Rural Fire Service set out that future development should comply with the specifications and requirements of Planning for Bush Fire Protection Guidelines. The Planning for Bush Fire Protection Guidelines are a consideration at development application stage and will satisfy this request.

Community

In accordance with the Gateway determination, the planning proposal was exhibited for 14 days, from 19 August to 2 September 2021. No community submissions were received.

OPTIONS

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

ATTACHMENTS

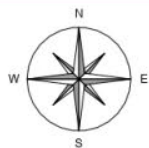
- 1) Locality Plan.
- 2) Planning proposal for 4 Seaside Boulevard, Fern Bay. (Provided under separate cover)

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

[illegible]

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COUNCIL

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SHEET LOCALITY



ITEM NO. 3

**FILE NO: 21/236153
EDRMS NO: PSC2020-00819-002**

**VOLUNTARY PLANNING AGREEMENT - KINGS HILL DEVELOPMENT
APPLICATION 16-2018-722-1**

REPORT OF: JANELLE GARDNER - STRATEGY & ENVIRONMENT SECTION
MANAGER
GROUP: DEVELOPMENT SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Receive and note the submissions (**ATTACHMENT 1**) received during the public exhibition of the draft Voluntary Planning Agreement related to Development Application 16-2018-722-1 for land at Kings Hill.
 - 2) Authorise the execution of the Voluntary Planning Agreement (as exhibited) (**ATTACHMENT 2**).
-

**ORDINARY COUNCIL MEETING - 12 OCTOBER 2021
MOTION**

265	<p>Councillor Ken Jordan Councillor Chris Doohan</p> <p>It was resolved that Council:</p> <ol style="list-style-type: none">1) Receive and note the submissions (ATTACHMENT 1) received during the public exhibition of the draft Voluntary Planning Agreement related to Development Application 16-2018-722-1 for land at Kings Hill.2) Authorise the execution of the Voluntary Planning Agreement (as exhibited) (ATTACHMENT 2).
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In accordance with Section 375 (A) of the Local Government Act 1993, a division is required for this item.

Those for the Motion: Mayor Ryan Palmer, Crs Jaimie Abbott, Chris Doohan, Glen Dunkley, Ken Jordan, Paul Le Mottee, John Nell, Sarah Smith and Steve Tucker.

Those against the Motion: Cr Giacomo Arnott.

The motion was carried.

Councillor Glen Dunkley left the meeting at 6:56pm.

**ORDINARY COUNCIL MEETING - 12 OCTOBER 2021
AMENDMENT**

	<p>Councillor Giacomo Arnott Councillor John Nell</p> <p>That Council:</p> <ol style="list-style-type: none">1) Receive and note the submissions (ATTACHMENT 1) received during the public exhibition of the draft Voluntary Planning Agreement related to Development Application 16-2018-722-1 for land at Kings Hill.2) Authorise the execution of the Voluntary Planning Agreement (as exhibited) (ATTACHMENT 2) subject to amending the monetary value of the monetary contribution to the management fund to read "\$4,000,000" instead of "\$3,000,000".
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In accordance with Section 375 (A) of the Local Government Act 1993, a division is required for this item.

Those for the Motion: Cr Giacomo Arnott.

Those against the Motion: Mayor Ryan Palmer, Crs Jaimie Abbott, Chris Doohan, Glen Dunkley, Ken Jordan, Paul Le Mottee, John Nell, Sarah Smith and Steve Tucker.

The amendment was lost.

BACKGROUND

The purpose of this report is to advise Council of the outcome of the exhibition of a draft Voluntary Planning Agreement (VPA) between Council and Kings Hill Development No 1 Pty Ltd and Kings Hill Development No 2 Pty Ltd (the Developer) **(ATTACHMENT 2)**. The report recommends that Council authorise the execution of the VPA (as exhibited).

The VPA relates to a concept development application submitted by the Developer for future residential subdivision within the Kings Hill Urban Release Area (URA) (Development Application 16-2018-772-1). The concept development is for 1,900 residential lots and the application seeks consent to carry out stage 1 subdivision works for initial site preparation and vegetation clearing.

The application is currently under assessment and will be determined by the Hunter and Central Coast Regional Planning Panel.

On 8 December 2020, Council resolved to agree in principle to the preparation of a VPA for the purposes of securing conservation outcomes related to Development Application 16-2018-722-1 (Minute No. 274) **(ATTACHMENT 3)**. The VPA has been prepared in accordance with Council's resolution.

The terms of the VPA include:

- Approximately 231 hectares of conservation land at Kings Hill will be rehabilitated and enhanced by the Developer prior to being transferred to Council ownership.
- The Developer will undertake works over 5 years to enhance the conservation land in accordance with a Biodiversity Management Plan, including fencing and weeding. These works have been costed at \$3,500,000 and will be entirely funded by the Developer.

On 27 July 2021, Council resolved to exhibit the draft agreement and explanatory note in accordance with the planning legislation, (Minute No. 193) **(ATTACHMENT 4)**. During exhibition 3 submissions were received, including 1 in support, and are summarised in **(ATTACHMENT 1)**. Submissions have been reviewed in detail. As a result of the review, it is not proposed to amend the draft VPA.

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2018-2022
Thriving and Safe Place to Live	Provide land use plans, tools and advice that sustainably support the community.

FINANCIAL/RESOURCE IMPLICATIONS

Upon dedication of the conservation land, the VPA will include an obligation for the Developer to make a monetary contribution of \$3,000,000 to fund ongoing management of the land for 40 years. After this time, the management of the land will be funded by Council.

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

MINUTES ORDINARY COUNCIL - 12 OCTOBER 2021

Source of Funds	Yes/No	Funding (\$)	Comment
Other	Yes	\$3,000,000 (plus accrued interest)	Monetary contribution proposed on dedication under the terms of the VPA.

LEGAL, POLICY AND RISK IMPLICATIONS

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
There is a risk that the monetary contributions will be insufficient to fund the maintenance of the conservation land.	Low	The cost estimates have been verified using Council data from the management of other biodiversity sites. Adopt the recommendations.	Yes
There is a risk that Council will not be able to fund the ongoing management of the conservation land after 40 years.	Low	Council regularly prepares funding strategies to manage similar public assets dedicated to Council to support growth, such as the roads and drains in the Strategic Asset Management Plan. Adopt the recommendations.	Yes

Environmental Planning and Assessment Act 1979 (EP&A Act)

The VPA has been prepared in accordance with section 7.4 of the EP&A Act. The VPA was publicly exhibited in accordance with section 7.5 of that Act.

Environmental Planning and Assessment Regulations 2000 (EP&A Regulations)

Public notice was given in accordance with clause 25D of the EP&A Regulations. An explanatory note has been prepared in accordance with clause 25E of the EP&A Regulations and was exhibited with the VPA.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The VPA will provide for the rehabilitation, maintenance and management of conservation land, which will result in the improved environmental value of that land.

The VPA will secure funding for Council to maintain the conservation land for 40 years and, after that time, there will be an economic cost to Council for the ongoing

management of the conservation land. The VPA will support the future development of the Kings Hill URA, which will provide approximately 3,500 new homes, jobs and direct economic benefits to the local economy (estimate at \$140 million into the local economy annually). Therefore there would be an overall positive social and economic impact to the Local Government Area.

CONSULTATION

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

Internal

Consultation has been undertaken with the Development and Compliance and Financial Services Section, together with the Natural Resources Unit of Council. There are no objections to the recommendations of this report.

External

On 27 July 2021, Council resolved to exhibit the draft agreement and explanatory note for 28 days in accordance with the Environmental Planning and Assessment Act 1979 and Environmental Planning and Assessment Regulation 2000, (Minute No. 193) **(ATTACHMENT 4)**.

The documents were exhibited from 28 July 2021 to 25 August 2021 and 3 submissions were received, including 1 in support from the Worimi Local Aboriginal Land Council. Responses to the issues raised in the submissions are provided in **(ATTACHMENT 1)**. It is not proposed to amend the VPA in response to submissions.

OPTIONS

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

ATTACHMENTS

- 1) Summary of submissions.
- 2) Voluntary Planning Agreement. (Provided under separate cover)
- 3) 8 December 2020 - Ordinary Council Minutes.
- 4) 27 July 2021 - Ordinary Council Minutes.

COUNCILLORS ROOM

- 1) Submissions.

TABLED DOCUMENTS

Nil.

ITEM 3 - ATTACHMENT 1 SUMMARY OF SUBMISSIONS.**Voluntary Planning Agreement - Kings Hill Development Application 16-2018-722-1 submissions**

No.	Author of submission	Comment	Council response
1	Worimi Local Aboriginal Land Council (LALC)	<p>The submission expresses support for the proposed Voluntary Planning Agreement.</p> <p>The submission notes that the Worimi LALC are pleased that the VPA represents endeavours by Port Stephens Council to recognise and respect Aboriginal (Worimi) cultural and heritage values.</p> <p>The submission adds that Worimi LALC appreciates the time taken by KHD to work together with the Worimi LALC and its natural resource management team, to explore practical and meaningful ways to preserve and protect the ecological, educational and cultural values of Kings Hill.</p> <p>The submission noted that the Worimi LALC are particularly supportive of the commitment by Council and KHD to engage and work together with the Worimi community, during the implementation and management of the conservation land.</p> <p>The submission states that Council and KHD should be proud of setting a standard that government and developers should follow to both foster knowledge and education of future generations, and to encourage traditional land management practices that sustainably protect and preserve cultural heritage and biodiversity.</p>	Council notes the positive submission, and looks forward to engaging and working with the Worimi LALC during the ongoing management of the conservation land.
2	Port Stephens Greens	The submission states that it supports, and endorses, the detailed submission from the Koala Koalition EcoNetwork Port Stephens.	Noted. A response to the submission by the Koala Koalition EcoNetwork Port Stephens is included below.

ITEM 3 - ATTACHMENT 1

SUMMARY OF SUBMISSIONS.

	<p>The submission states that Council should not sign the VPA until the proposed concept development application has been approved by the Joint Regional Planning Panel (JRPP).</p>	<p>The JRPP has requested that Council proceed to finalise and execute the VPA prior to the Panel making their decision on the concept development application. The JRPP made this request to provide certainty around the outcomes proposed for the conservation land connected with the proposed development. The VPA has been drafted so that if the Panel determines to refuse the application, the VPA is no longer a binding agreement on the parties.</p>
	<p>The submission states that a key consideration for Council must be that further large scale destruction of koala habitat is inconsistent with saving koalas in the wild and increases the risk of koalas being extinct in New South Wales by 2050.</p>	<p>The conservation outcomes secured by the VPA will have a positive impact on koala habitat at Kings Hill.</p> <p>The JRPP is assessing the impact of the concept development application on koala habitat across the development site. This is not an assessment relevant to Council's consideration of the draft VPA.</p>
	<p>The submission states that the JRPP has given an assurance to holding at least one more public meeting before the application is determined, and that submitters will be notified when the date of the next public meeting is confirmed.</p>	<p>As above, Council was requested to proceed to exhibit, consider and finalise the VPA by the JRPP in order to provide certainty around the conservation outcomes proposed over this part of the development site. The JRPP is not a party to the VPA and has no role in the decision to execute the agreement.</p> <p>The JRPP is responsible for scheduling public meetings to support their assessment of the concept development application.</p>
	<p>The submission states that the methodology, studies and assessments accompanying the concept development applications are inadequate. The scale of the conservation land proposed is submitted as inadequate to mitigate the impacts of the proposed development. The submission states that the fencing proposed around the conservation land will</p>	<p>These considerations are relevant to the assessment of the concept development application and will be matters for the JRPP assessment.</p>

ITEM 3 - ATTACHMENT 1 SUMMARY OF SUBMISSIONS.

		have an adverse impact on connectivity.	
		The submission states that the VPA does not guarantee that the funds to be provided by the Developer will necessarily be spent on habitat, and does not provide sufficient overall funding to allow for the adequate maintenance of the Conservation Areas in perpetuity.	<p>Upon dedication of the conservation land, the VPA will include an obligation for the Developer to make a monetary contribution of \$3,000,000 to fund ongoing management of the land for 40 years. After this time, the management of the land will be funded by Council. Council regularly prepares funding strategies to manage similar public assets dedicated to Council to support growth, such as the roads and drains in the Strategic Asset Management Plan.</p> <p>The VPA provides that on transfer to Council, a positive covenant will be registered over the land requiring the landowner (Council) to undertake maintenance of the conservation land in accordance with the Biodiversity Conservation Management Plan.</p>
3	Koala Koalition EcoNetwork Port Stephens (KKEPS)	The submission states that Port Stephens Council and the NSW State Government must realise that destruction of koala habitat is inconsistent with saving koalas in the wild and increases the risk of koalas being extinct in New South Wales by 2050.	See response provided above.
		<p>The submission states that there is a concern that the Developer and Port Stephens Council are considering signing the agreement before the relevant JRPP gives their final determination on the Development Concept.</p> <p>The submission stated that the JRPP determining this development application have given an assurance to holding at least one more public meeting before the application is determined, and that submitters will be notified when the date of</p>	See responses provided above.

ITEM 3 - ATTACHMENT 1

SUMMARY OF SUBMISSIONS.

		the next public meeting is confirmed.	
		The submission states that the methodology, studies and assessments accompanying the concept development applications are inadequate. The scale of the conservation land proposed is submitted as inadequate to mitigate the impacts of the proposed development.	See response provided above.
		The submission states that if the VPA is executed, the JRPP should require independent, scientific monitoring of the conservation land before any work can start on Kings Hill housing or infrastructure	The conditions of consent that may be applied to the concept development application are a matter for the JRPP.
		<p>The submission states that if the VPA is executed, the JRPP should consider the adequacy of funding to ensure that the conservation obligations of the SIS are met by PSC in-perpetuity.</p> <p>The submission added that the JRPP should also ensure that the VPA contains provisions that govern spending of money allocated for management of the conservation area to ensure it is spent for that purpose.</p>	<p>The terms of the VPA have been negotiated between Council and the Developer and the JRPP is not a party to the agreement.</p> <p>The adequacy of the conservation measures proposed to mitigate the likely impacts of the proposed development in the concept development application is a matter for the JRPP to consider in their assessment. The VPA has been drafted so that if the Panel determines to refuse the application, the VPA is no longer a binding agreement on the parties.</p> <p>See response above in relation to requirements in the VPA for the ongoing management of the conservation land that will bind Council.</p>
		The submission states that a variety of fencing should be used across the site to as not to restrict koala movement.	See response above.
		The submission stated that consideration should be given to the road constructed East/West that cuts through the conservation area and recommends the use of a bridge	The location of the East/West Road is proposed in the concept development application. This consideration is relevant to the assessment of the concept development

ITEM 3 - ATTACHMENT 1 SUMMARY OF SUBMISSIONS.

		for vehicles for animals to pass/cross safely.	application and will be a matter for the JRPP assessment.
		The submission states that consideration should be given to the need for koalas to be able to get to the Eastern side of the highway from the proposed development. The submission added that a wide vegetated overpass would be excellent progress towards facilitating this connectivity.	This consideration is relevant to the assessment of the concept development application and will be a matter for the JRPP assessment.

ITEM 3 - ATTACHMENT 3 8 DECEMBER 2020 - ORDINARY COUNCIL MINUTES.**MINUTES ORDINARY COUNCIL - 8 DECEMBER 2020****ITEM NO. 2****FILE NO: 20/316454
EDRMS NO: PSC2006-0191V2****DRAFT VOLUNTARY PLANNING AGREEMENT - KINGS HILL DEVELOPMENT**

REPORT OF: JANELLE GARDNER - ACTING STRATEGY & ENVIRONMENT
SECTION MANAGER
GROUP: DEVELOPMENT SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Agree in principle to the preparation of a draft Voluntary Planning Agreement for the purposes of securing biodiversity offsets related to Development Application 16-2018-722-1 for land at Kings Hill, generally in accordance with the proposed terms set out in this report.

**ORDINARY COUNCIL MEETING - 8 DECEMBER 2020
MOTION**

274	Councillor Chris Doohan Councillor John Nell It was resolved that Council agree in principle to the preparation of a draft Voluntary Planning Agreement for the purposes of securing biodiversity offsets related to Development Application 16-2018-722-1 for land at Kings Hill, generally in accordance with the proposed terms set out in this report.
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In accordance with Section 375 (A) of the Local Government Act 1993, a division is required for this item.

Those for the Motion: Mayor Ryan Palmer, Crs Jaimie Abbott, Giacomo Arnott, Chris Doohan, Glen Dunkley, John Nell and Steve Tucker.

Those against the Motion: Nil.

The motion was carried.

BACKGROUND

The purpose of this report is to seek in principle agreement to prepare a draft Voluntary Planning Agreement (VPA) between Council and Kings Hill Development No 1 Pty Ltd and Kings Hill Development No 2 Pty Ltd (the Developer), generally in accordance with the proposed terms set out in this report.

ITEM 3 - ATTACHMENT 3 8 DECEMBER 2020 - ORDINARY COUNCIL MINUTES.**MINUTES ORDINARY COUNCIL - 8 DECEMBER 2020**

The draft VPA will relate to a concept development application submitted by the Developer for future residential subdivision within the Kings Hill Urban Release Area (URA) (Development Application 16-2018-772-1). The concept development is for 1,900 residential lots and the application seeks consent to carry out stage 1 subdivision works for initial site preparation and vegetation clearing. The application is currently under assessment and will be determined by the Hunter and Central Coast Regional Planning Panel.

The draft VPA is proposed by the Developer to secure the biodiversity offsets that are necessary to offset the likely impacts of the proposed development. The proposed terms of the draft VPA include:

- Approx. 231 hectares of conservation land at Kings Hill (**ATTACHMENT 1**) will be rehabilitated and enhanced by the Developer, prior to being transferred to Council ownership.
- The Developer will undertake works over 5 years to enhance the conservation land in accordance with a Biodiversity Management Plan, including fencing and weeding. These works have been costed at \$3,500,000 and will be entirely funded by the Developer.
- The Developer will provide a bank guarantee of \$600,000 as rolling security that these works will be completed.
- If Council is satisfied with the enhancement works completed by the Developer, the Developer will dedicate the conservation land at no cost to Council.
- On dedication of the land to Council, the Developer will make a monetary contribution to Council of \$3,000,000 to fund the ongoing management of the conservation land for 40 years, including weed and pest management, bushfire management, fencing and trail maintenance.
- After 40 years, the indicative ongoing costs to Council have been calculated at approx. \$80,000 per annum.
- The draft VPA will not impact the obligations of the Developer to pay local infrastructure contributions under the Port Stephens Local Infrastructure Contributions Plan 2020.

COMMUNITY STRATEGIC PLAN

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

FINANCIAL/RESOURCE IMPLICATIONS

Upon dedication, the draft VPA will include an obligation for the Developer to make a monetary contribution of \$3,000,000 to fund the ongoing management of the conservation land for 40 years. After this time, the management of the land will be funded by Council.

ITEM 3 - ATTACHMENT 3 8 DECEMBER 2020 - ORDINARY COUNCIL MINUTES.**MINUTES ORDINARY COUNCIL - 8 DECEMBER 2020**

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	No		
Reserve Funds	No		
Developer Contributions (\$7.11)	No		
External Grants	No		
Other	Yes	\$3,000,000 (plus accrued interest)	Monetary contribution proposed on dedication under the terms of a draft VPA.

LEGAL, POLICY AND RISK IMPLICATIONS

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
There is a risk that the biodiversity offsets proposed in the draft VPA are not adequate to offset the likely impacts of the proposed development.	Low	The biodiversity offsets proposed have been independently assessed as adequate as part of the assessment of Development Application 16-2018-772-1. Adopt the recommendations.	Yes
There is a risk that the monetary contributions will be insufficient to fund the maintenance of the conservation land.	Low	The cost estimates have been verified using Council data from the management of other biodiversity sites. Adopt the recommendations.	Yes
There is a risk that Council will not be able to fund the ongoing management of the land after 40 years.	Low	Council regularly prepares funding strategies to manage similar public assets dedicated to Council to support growth, such as the roads and drains in the Strategic Asset Management Plan. Adopt the recommendations.	Yes

Environmental Planning and Assessment Act 1979 (EP&A Act)

The draft VPA will be prepared in accordance with section 7.4 of the EP&A Act. The draft VPA will be reported to Council for endorsement prior to public exhibition in accordance with section 7.5.

ITEM 3 - ATTACHMENT 3 8 DECEMBER 2020 - ORDINARY COUNCIL MINUTES.**MINUTES ORDINARY COUNCIL - 8 DECEMBER 2020**Environmental Planning and Assessment Regulations 2000 (EP&A Regulation)

Should Council endorse public exhibition of a draft VPA, public notice will be undertaken in accordance with clause 25D of the EP&A Regulation and an explanatory note will be prepared to be exhibited with the draft VPA in accordance with clause 25E of the EP&A Regulations.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The draft VPA will secure conservation land to offset the likely impacts of proposed development under Development Application 16-2018-772-1. The draft VPA will provide for the rehabilitation, maintenance and management of the conservation land and will result in overall neutral or beneficial environmental impacts, given the development of the urban release area at Kings Hill.

The draft VPA will secure funding for Council to maintain the conservation land for 40 years and after that time there will be an economic cost to Council for the ongoing management of the conservation land. The draft VPA will support the future development of the urban release area at Kings Hill, which will provide housing (approx. 3500 new homes), jobs, and direct economic benefits to the local economy (estimated at \$140 million into the local economy annually) and will therefore have overall positive social and economic impacts in Port Stephens.

CONSULTATION

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

Internal

Consultation has been undertaken with the Development Assessment and Compliance, Financial Services sections, and the Natural Resources unit of Council. There are no objections to the recommendations of this report.

External

A draft VPA and explanatory note will be reported to Council prior to any public exhibition in accordance with the EP&A Act and EP&A Regulations.

OPTIONS

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

ATTACHMENTS

- 1) Map of conservation land.

**ITEM 3 - ATTACHMENT 3 8 DECEMBER 2020 - ORDINARY COUNCIL
MINUTES.**

MINUTES ORDINARY COUNCIL - 8 DECEMBER 2020

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil..



MINUTES ORDINARY COUNCIL - 27 JULY 2021**ITEM NO. 3****FILE NO: 21/167364
EDRMS NO: PSC2019-00822****DRAFT VOLUNTARY PLANNING AGREEMENT - KINGS HILL DEVELOPMENT**

REPORT OF: JANELLE GARDNER - STRATEGY & ENVIRONMENT SECTION
MANAGER
GROUP: DEVELOPMENT SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Endorse the draft voluntary planning agreement to secure conservation land and works related to Development Application 16-2018-722-1 for land at Kings Hill (**ATTACHMENT 1**).
- 2) Exhibit the draft agreement and explanatory note for 28 days in accordance with the Environmental Planning and Assessment Act 1979 and Environmental Planning and Assessment Regulation 2000.

**ORDINARY COUNCIL MEETING - 27 JULY 2021
MOTION**

193	Councillor Sarah Smith Councillor John Nell It was resolved that Council: <ol style="list-style-type: none">1) Endorse the draft voluntary planning agreement to secure conservation land and works related to Development Application 16-2018-722-1 for land at Kings Hill (ATTACHMENT 1).2) Exhibit the draft agreement and explanatory note for 28 days in accordance with the Environmental Planning and Assessment Act 1979 and Environmental Planning and Assessment Regulation 2000.3) If no submissions are received, approve the voluntary planning agreement as exhibited for execution.
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In accordance with Section 375 (A) of the Local Government Act 1993, a division is required for this item.

Those for the Motion: Mayor Ryan Palmer, Crs Jaimie Abbott, Giacomo Amott, Chris Doohan, Glen Dunkley, Ken Jordan, John Nell, Sarah Smith and Steve Tucker.

Those against the Motion: Nil.

MINUTES ORDINARY COUNCIL - 27 JULY 2021

The motion was carried.

BACKGROUND

The purpose of this report is to seek endorsement to exhibit a draft voluntary planning agreement (VPA) between Council and Kings Hill Development No 1 Pty Ltd and Kings Hill Development No 2 Pty Ltd (the Developer) (**ATTACHMENT 1**).

The VPA relates to a concept development application submitted by the Developer for future residential subdivision within the Kings Hill Urban Release Area (URA) (Development Application 16-2018-772-1). The concept development is for 1,900 residential lots and the application seeks consent to carry out stage 1 subdivision works for initial site preparation and vegetation clearing. The application is currently under assessment and will be determined by the Hunter and Central Coast Regional Planning Panel.

On 8 December 2020 (Minute No. 274) (**ATTACHMENT 2**), Council resolved to agree in principle to the preparation of a VPA for the purposes of securing conservation outcomes related to Development Application 16-2018-722-1. The VPA has been prepared in accordance with Council's resolution.

The terms of the VPA include:

- Approx. 231 hectares of conservation land at Kings Hill will be rehabilitated and enhanced by the Developer prior to being transferred to Council ownership.
- The Developer will undertake works over 5 years to enhance the conservation land in accordance with a Biodiversity Management Plan, including fencing and weeding. These works have been costed at \$3,500,000 and will be entirely funded by the Developer.
- The Developer will provide a bank guarantee of \$600,000 as rolling security that these works will be completed.
- If Council is satisfied with the enhancement works completed by the Developer, the Developer will dedicate the conservation land at no cost to Council.
- On dedication of the land to Council, the Developer will make a monetary contribution to Council of \$3,000,000 to fund the ongoing management of the conservation land for 40 years, including weed and pest management, bushfire management, fencing and trail maintenance.
- After 40 years, the indicative ongoing costs to Council have been calculated at approx. \$80,000 per annum.
- The VPA will not impact the obligations of the Developer to pay local infrastructure contributions under the Port Stephens Local Infrastructure Contributions Plan 2020.

MINUTES ORDINARY COUNCIL - 27 JULY 2021

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2018-2022
Thriving and Safe Place to Live	Provide land use plans, tools and advice that sustainably support the community.

FINANCIAL/RESOURCE IMPLICATIONS

Upon dedication of the conservation land, the VPA will include an obligation for the Developer to make a monetary contribution of \$3,000,000 to fund ongoing management of the land for 40 years. After this time, the management of the land will be funded by Council.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	No		
Reserve Funds	No		
Developer Contributions (\$7.11)	No		
External Grants	No		
Other	Yes	\$3,000,000 (plus accrued interest)	Monetary contribution proposed on dedication under the terms of the VPA.

LEGAL, POLICY AND RISK IMPLICATIONS

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
There is a risk that the monetary contributions will be insufficient to fund the maintenance of the conservation land.	Low	The cost estimates have been verified using Council data from the management of other biodiversity sites. Adopt the recommendations.	Yes
There is a risk that Council will not be able to fund the ongoing management of the conservation land after 40 years	Low	Council regularly prepares funding strategies to manage similar public assets dedicated to Council to support growth, such as the roads and drains in the Strategic Asset Management Plan. Adopt the recommendations.	Yes

MINUTES ORDINARY COUNCIL - 27 JULY 2021Environmental Planning and Assessment Act 1979 (EP&A Act)

The VPA has been prepared in accordance with section 7.4 of the EP&A Act. The VPA will be publicly exhibited in accordance with section 7.5 of that Act.

Environmental Planning and Assessment Regulations 2000 (EP&A Regulations)

Public notice will be undertaken in accordance with clause 25D of the EP&A Regulations. An explanatory note has been prepared in accordance with clause 25E of the EP&A Regulations and will be exhibited with the VPA.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The VPA will provide for the rehabilitation, maintenance and management of conservation land, which will result in the improved environmental value of that land.

The VPA will secure funding for Council to maintain the conservation land for 40 years and, after that time, there will be an economic cost to Council for the ongoing management of the conservation land. The VPA will support the future development of the Kings Hill URA, which will provide approximately 3,500 new homes, jobs and direct economic benefits to the local economy (estimate at \$140 million into the local economy annually). Therefore there would be an overall positive social and economic impact to the Local Government Area.

CONSULTATION

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

Internal

Consultation has been undertaken with the Development Assessment and Compliance and Financial Services Section, together with the Natural Resources Unit of Council. There are no objections to the recommendations of this report.

External

The VPA and explanatory note will be notified and exhibited in accordance with the EP&A Act and EP&A Regulations for 28 days. In accordance with the planning legislation, the documents will be made available online.

Following public exhibition, any submissions will be considered in a report back to Council, with details of any post-exhibition changes.

MINUTES ORDINARY COUNCIL - 27 JULY 2021

OPTIONS

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

ATTACHMENTS

- 1) Draft Voluntary Planning Agreement and Explanatory Note. (Provided under separate cover)
- 2) 8 December 2020 - Ordinary Council Minutes.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ITEM NO. 4

**FILE NO: 21/236147
EDRMS NO: PSC2018-01095**

DWELLINGS IN A HIGH HAZARD FLOODWAY

REPORT OF: JANELLE GARDNER - STRATEGY & ENVIRONMENT SECTION
MANAGER
GROUP: DEVELOPMENT SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Note the attached report on dwellings in a high hazard floodway **(ATTACHMENT 1)**.
- 2) Adopt the recommendations of the attached report to:
 - a. Note the number of lots and landowners likely to be impacted by a change to prohibit dwellings in a high hazard floodway.
 - b. Note the Standard Instrument local environmental plan limits the amendments that can be made to the Port Stephens Local Environmental Plan 2014, including amendments to prohibit dwellings proposed in a high hazard floodway.
 - c. Note that the current Port Stephens Development Control Plan 2014 has been prepared in accordance with the NSW Floodplain Development Manual 2005 and the recommendations of Council's Floodplain Risk Management Policy Committee.
 - d. Retain the existing local framework that applies a merit assessment for dwellings proposed in a high hazard floodway.

**ORDINARY COUNCIL MEETING - 12 OCTOBER 2021
MOTION**

266	<p>Councillor Giacomo Arnott Councillor John Nell</p> <p>It was resolved that Council:</p> <ol style="list-style-type: none">1) Note the attached report on dwellings in a high hazard floodway (ATTACHMENT 1).2) Adopt the recommendations of the attached report to:<ol style="list-style-type: none">a. Note the number of lots and landowners likely to be impacted by a change to prohibit dwellings in a high hazard floodway.b. Note the Standard Instrument local environmental plan limits the amendments that can be made to the Port Stephens Local
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MINUTES ORDINARY COUNCIL - 12 OCTOBER 2021

	<p>Environmental Plan 2014, including amendments to prohibit dwellings proposed in a high hazard floodway.</p> <p>c. Note that the current Port Stephens Development Control Plan 2014 has been prepared in accordance with the NSW Floodplain Development Manual 2005 and the recommendations of Council's Floodplain Risk Management Policy Committee.</p> <p>d. Retain the existing local framework that applies a merit assessment for dwellings proposed in a high hazard floodway.</p>
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Councillor Glen Dunkley returned to the meeting at 7:00pm.

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

Those for the Motion: Mayor Ryan Palmer, Crs Jaimie Abbott, Giacomo Arnott, Chris Doohan, Glen Dunkley, Ken Jordan, Paul Le Mottee, John Nell, Sarah Smith and Steve Tucker.

Those against the Motion: Nil.

The motion was carried.

BACKGROUND

On 10 August 2021, Council resolved to request the General Manager to prepare a report for development control plan (DCP) or local environmental plan (LEP) changes that would make residential developments in a high hazard floodway not permissible (Minute No. 225) (**ATTACHMENT 2**).

A report has been prepared, including a review of previous applications for dwellings in a high hazard floodway, the current statutory framework that applies, and benchmarking against other councils (report) (**ATTACHMENT 1**).

The report recommends retaining the existing local planning framework which applies a merit assessment to applications for dwellings proposed in a high hazard floodway. The recommendation is consistent with the NSW Floodplain Development Manual 2005 and the recommendations of Council's Floodplain Risk Management Policy Committee (Minute No.275) (**ATTACHMENT 3**).

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2018-2022
Thriving and Safe Place to Live	Provide land use plans, tools and advice that sustainably support the community.

FINANCIAL/RESOURCE IMPLICATIONS

There are no financial or resource implications associated with the recommendations of this report.

LEGAL, POLICY AND RISK IMPLICATIONS

There are no anticipated legal, policy, or risk implications as a consequence of the recommendations of this report.

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
As set out in the Report, there is a risk an LEP amendment could not be made to restrict dwellings in the high hazard floodway.	High	Adopt the recommendations.	Yes.
As set out in the Report, there is a risk that a DCP amendment to prohibit dwellings in a high hazard floodway will be inconsistent with the NSW Floodplain Development Manual 2005 and the recommendations of Council's Floodplain Risk Management Policy Committee.	High	Adopt the recommendations.	Yes
There is a risk that a DCP amendment to prohibit dwellings in a high hazard floodway would unnecessarily sterilise some flood prone land where performance based objectives can be met.	High	Adopt the recommendations.	Yes

Environmental Planning and Assessment Act 1979 (EP&A Act)

Division 3.6 of the EP&A Act sets out the matters that a development control plan can contain. The Report sets out the statutory provisions that would apply to any LEP amendment (**ATTACHMENT 1**).

Local Government Act 1993

Under the Local Government Act 1993, Council is immune from flood risk liability if policies and plans are prepared in accordance with the NSW Floodplain Development Manual 2005 (section 733). The current DCP provides controls for flood prone land in accordance with the NSW Floodplain Development Manual 2005 and adopts the principles of the manual.

Hunter Regional Plan 2036 (HRP 2036)

The HRP 2036 includes direction 16 to increase resilience to hazards and climate change. The current local planning framework responds to direction 16 by ensuring Council has controls that apply to development on flood prone land that are consistent with the NSW Floodplain Development Manual 2005.

Port Stephens Local Strategic Planning Statement (LSPS)

The LSPS was adopted on 14 July 2020. The current local planning framework gives effect to planning priority 8, to improve resilience to hazards and climate change and to implement the recommendations of Council's Floodplain Risk Management Policy Committee.

Floodplain Risk Management Policy and Flood Hazard Maps

The current local planning framework aligns with Council's Floodplain Risk Management Policy and associated maps. It provides a framework for the merit assessment of flooding impacts during the planning and assessment of development on flood prone land. All of these documents have been prepared in accordance with the NSW Floodplain Development Manual 2005 in order to satisfy the Local Government Act 1993.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications.

As set out in the Report, the current local planning framework implements Council's Floodplain Risk Management Policy (the policy) and seeks to reduce the impact of flooding and flood liability on individual owners and occupiers of flood prone property.

The current local planning framework is consistent with the policy and recognises that flood prone land is a valuable resource that should not be sterilised by unnecessarily precluding appropriate development. It seeks to ensure that the economic costs which may arise from damage to property or risk to life from flooding is not greater than that which can reasonably be managed by a property owner and the community.

Development on flood prone land can have detrimental environmental implications and the current DCP is consistent with the policy, which aims to ensure that

development on flood prone land does not have unreasonable environmental impacts by significantly altering flood behaviour.

CONSULTATION

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

Internal

Consultation with the Development and Compliance Section, as well as the Assets Section was undertaken in preparation of the report.

External

To implement any potential changes to the DCP, external consultation will be undertaken in accordance with the planning legislation, including public exhibition for 28 days.

OPTIONS

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

ATTACHMENTS

- 1) Dwellings on High Hazard Floodway Report Attachment.
- 2) Minute No. 225 - 10 August 2021.
- 3) Minute No. 275 - 8 December 2020.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

**ITEM 4 - ATTACHMENT 1 DWELLINGS ON HIGH HAZARD FLOODWAY
REPORT ATTACHMENT.**

Author: Elizabeth Lamb, Strategic Planning Co-ordinator
Date: 3 September 2021
File No: PSC2018-01095
Subject: Dwellings in high hazard floodways

Background:

On 10 August 2021, Council resolved to request the General Manager to prepare a report for development control plan (DCP) or local environmental plan (LEP) changes that would make residential developments in a high hazard floodway not permissible.

Previous applications for dwellings in the high hazard floodway

In the last 14 years, Council has considered 28 applications for dwellings in a high hazard floodway in total. All but one of these applications have been determined in the last seven years.

16 of the applications have been approved and 12 have been refused. The elected Council has approved 13 applications. The remainder were refused or approved by Council staff under delegation.

Since 2020, there have been 8 applications determined for dwellings in a high hazard floodway. One of these applications was supported by Council staff and determined under delegation as it could demonstrate an acceptable mitigation of risks. The elected Council has determined to approve the remaining 7 applications.

Port Stephens Development Control Plan 2014 Amendment to Part B5 Flooding

On 29 January 2019, Council resolved to establish the Floodplain Risk Management Policy Committee to rewrite the Floodplain Policy. The Committee prepared an amendment to the Port Stephens Development Control Plan 2014 (DCP amendment), which was adopted on 8 December 2020 (**Attachment 1**).

The DCP amendment included provisions to set controls and objectives for development in flood prone areas, including dwellings in a high hazard floodway. The provisions of the DCP amendment relate to flood compatible design, evacuation access, flood free refuge, risks to life and property and flood hazard compatibility.

Where development cannot meet the specific controls, an applicant may prepare performance based solutions to demonstrate it can meet the objectives of the controls and demonstrate that risks have been mitigated. If the solution cannot demonstrate an acceptable mitigation of risk, the development may be an unsuitable use of the land.

The DCP amendment enables a merit based assessment for dwellings in a high hazard floodway and recognises that in some instances there can be engineering or other solutions that can mitigate risks appropriately.

1

ITEM 4 - ATTACHMENT 1 DWELLINGS ON HIGH HAZARD FLOODWAY REPORT ATTACHMENT.

The DCP amendment gives effect to planning priority 8 of the Port Stephens Local Strategic Planning Statement and is consistent with Council's Floodplain Risk Management Policy which has been prepared in accordance with the NSW Floodplain Development Manual 2005. It is noted that the NSW Floodplain Development Manual 2005 does not require councils to prohibit dwellings in a high hazard floodway.

Issues:*Lots located in a high hazard floodway with potential dwelling entitlements*

A review of lots in identified a high hazard floodway has been undertaken:

- 100 lots are located wholly within a high hazard floodway, where Council's aerial image does not show a dwelling, and the lot meets the minimum lot size in the Port Stephens Local Environmental Plan 2014.
- Of those 100 lots, 71 lots are in common ownership, with an adjacent lot that either contains an existing dwelling or has land not mapped as high hazard floodway where a dwelling could be located in the future.
- Of the remaining 29 lots, 6 lots already have an active consent that would permit a dwelling.
- This leaves a total of 23 lots in the high hazard floodway which do not have an existing dwelling or active consent, and where the owners of that land do not have an alternative dwelling location on adjacent land.
- A number of the 23 lots are in common ownership, resulting in a total of 17 landowners likely to be unable to realise a dwelling on their land if Council restricts dwellings in the high hazard floodway.

It is very unlikely that any new residential areas will be located in the high hazard floodway in the future as Ministerial Direction 4.3 restricts Council from zoning the high hazard floodway for residential purposes.

Benchmarking against other councils

21 councils in the Hunter and other parts of NSW with similar flood characteristics were surveyed. All 21 councils have implemented a development control plan with restrictions on development in a high hazard floodway.

Three councils included provisions that enabled variations to the development controls if engineering certification was obtained to certify that the development would be structurally adequate and would not adversely impact flood characteristics.

In Maitland, dwellings are currently restricted in an identified high hazard floodway. There are however instances where:

- Dwellings have been approved relying on savings and transitional provisions and a sunset clause which expired in 2020 (the previous development control plan did not restrict dwellings in a high hazard floodway); and
- Some floodways have not been mapped, and applications are assessed on their merits (Millers Forest is one location where this has occurred).

It is noted that no councils in NSW have adopted local environmental plan provisions to restrict development in a high hazard floodway. This is because the Standard Instrument local environmental plan includes mandatory clauses related to flooding which councils cannot amend. The Standard Instrument clauses are detailed below.

**ITEM 4 - ATTACHMENT 1 DWELLINGS ON HIGH HAZARD FLOODWAY
REPORT ATTACHMENT.***Standard Instrument (Local Environmental Plans) Amendment (Flood Planning) Order 2021*

All local environmental plans (including the Port Stephens Local Environmental Plan 2013) were amended by the State government on 14 July 2021 to include a mandatory flood clause as part of the NSW Government's the flood prone land reforms.

The clause requires Council to be satisfied that a development (including a dwelling) is compatible with the flood hazard of the land and that it will not have a significant, adverse effect on flood behaviour before granting consent. The clause also requires consideration of cumulative impacts and safe evacuation of the land. The DCP amendment adopted in 2020 was prepared to align with this Standard Instrument clause and provides detailed objectives and controls in relation to these assessment matters.

Mandatory provisions such as the flood planning clause of the Standard Instrument are consistent across all councils in NSW and the State government does not enable councils to amend them. It would not be open to Council to resolve to amend this clause to restrict dwellings in the high hazard floodway or to insert a local provision that was inconsistent with the mandatory clause of the Standard Instrument.

Potential DCP amendment to restrict dwellings in high hazard floodway

If Council resolves to make dwellings in a high hazard floodway not permissible, a potential amendment to the Port Stephens Development Control Plan could be prepared to specify that dwelling houses are considered an unsuitable use in a high hazard floodway. It is noted this amendment would be contrary to the recommendations of Council's Floodplain Risk Management Policy Committee.

Recommendations:

- 1) Note the number of lots and landowners likely to be impacted by a change to prohibit dwellings in a high hazard floodway.
- 2) Note the Standard Instrument local environmental plan limits the amendments that can be made to the Port Stephens Local Environmental Plan 2014, including amendments to prohibit dwellings proposed in a high hazard floodway.
- 3) Note that the current DCP has been prepared in accordance with the NSW Floodplain Development Manual 2005 and the recommendations of Council's Floodplain Risk Management Policy Committee.
- 4) Retain the existing local framework that applies a merit assessment for dwellings proposed in a high hazard floodway.

Liz Lamb
Strategic Planning Co-ordinator

Communication method

- ☐ Post on myPort
- ☐ Post on PSC website
- ☐ Memo to section managers
- ☐ Presentation to SLT
- ☐ Snapshot article

3

**ITEM 4 - ATTACHMENT 1 DWELLINGS ON HIGH HAZARD FLOODWAY
REPORT ATTACHMENT.**

- ☐ All staff memo from General Manager
 - ☐ 2 way conversation with Councillors
 - ☐ Councillors weekly PS newsletter
 - ☒ Report to Council
 - ☐ Media release
 - ☐ Other
-

ITEM 4 - ATTACHMENT 1 DWELLINGS ON HIGH HAZARD FLOODWAY REPORT ATTACHMENT.

Attachment 1 – Chapter B5 Flooding

B5

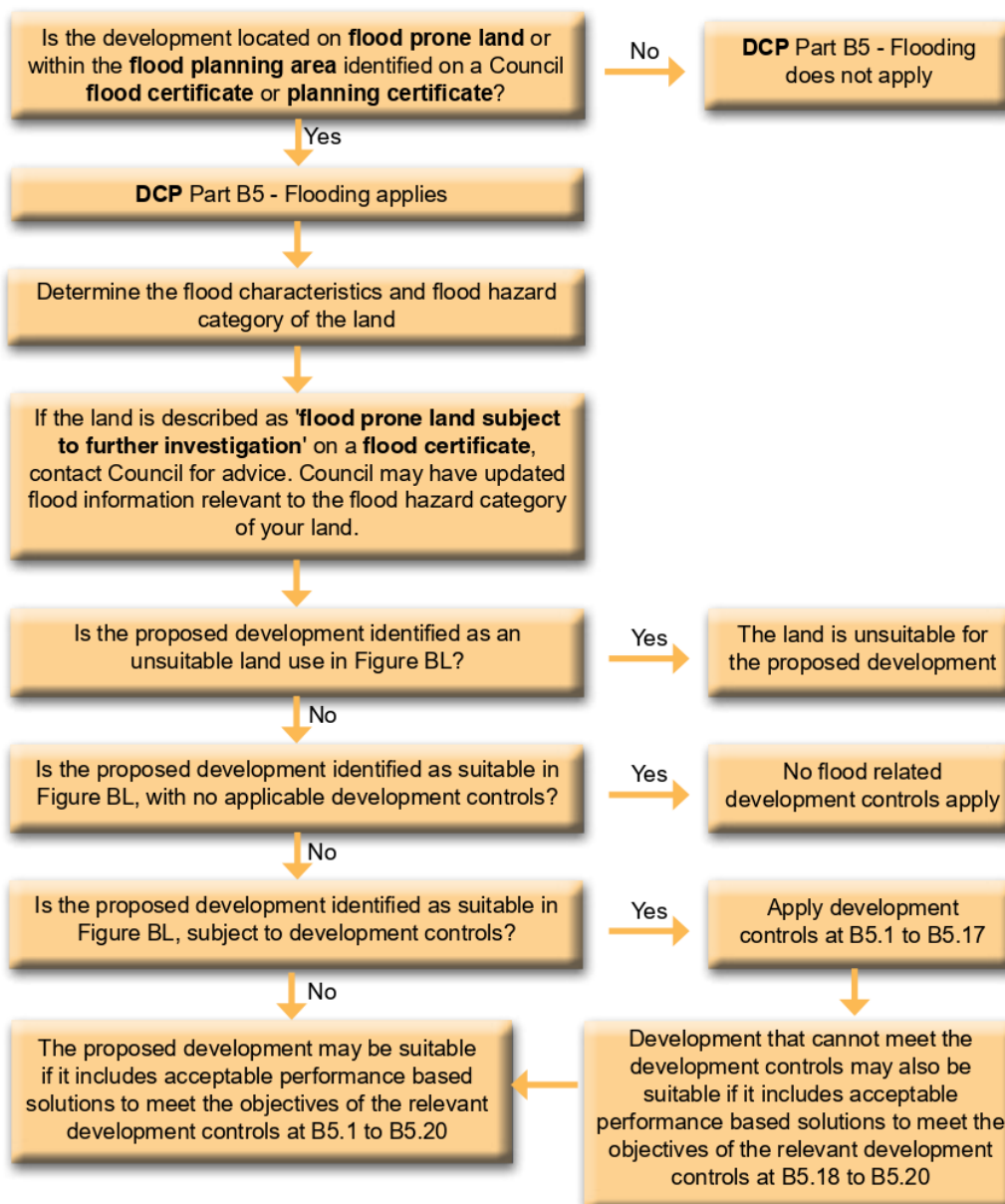
B5 Flooding

Application

This Part applies to all development on **flood prone land**.

Refer to the flow chart at Figure B1 to determine the assessment pathway for new development.

Figure B1: Determine the assessment pathway



ITEM 4 - ATTACHMENT 1 DWELLINGS ON HIGH HAZARD FLOODWAY REPORT ATTACHMENT.

B5

How flood impacts are assessed

A **flood certificate** identifies the flood category and flooding characteristics of the land to inform the assessment of proposed development.

The **flood certificate** will describe the highest flood category applicable to the land (a combination of the **flood hazard** and the **hydraulic category**), as well as various flood levels (such as the **flood planning level** and the **probable maximum flood level**). Figure BJ shows the possible flood categories and Figure BK shows how flood categories reflect the landscape and the relationship between water depth and water velocity in a flood.

Land in the hydraulic categories **flood fringe**, **flood storage** and **floodway** will generally make up the visible **floodplain**, whilst **overland flow paths** feed into the **floodplain**. Consequently, the characteristics of **overland flow paths** are considered separately from other flood categories and are not detailed in Figure BK below.

A **flood certificate** may also identify land as '**minimal risk flood prone land**' where only minimal impacts are anticipated, or as '**flood prone land subject to further investigation**' when Council does not hold detailed flood information. The requirements that apply to these categories are detailed in this Part.

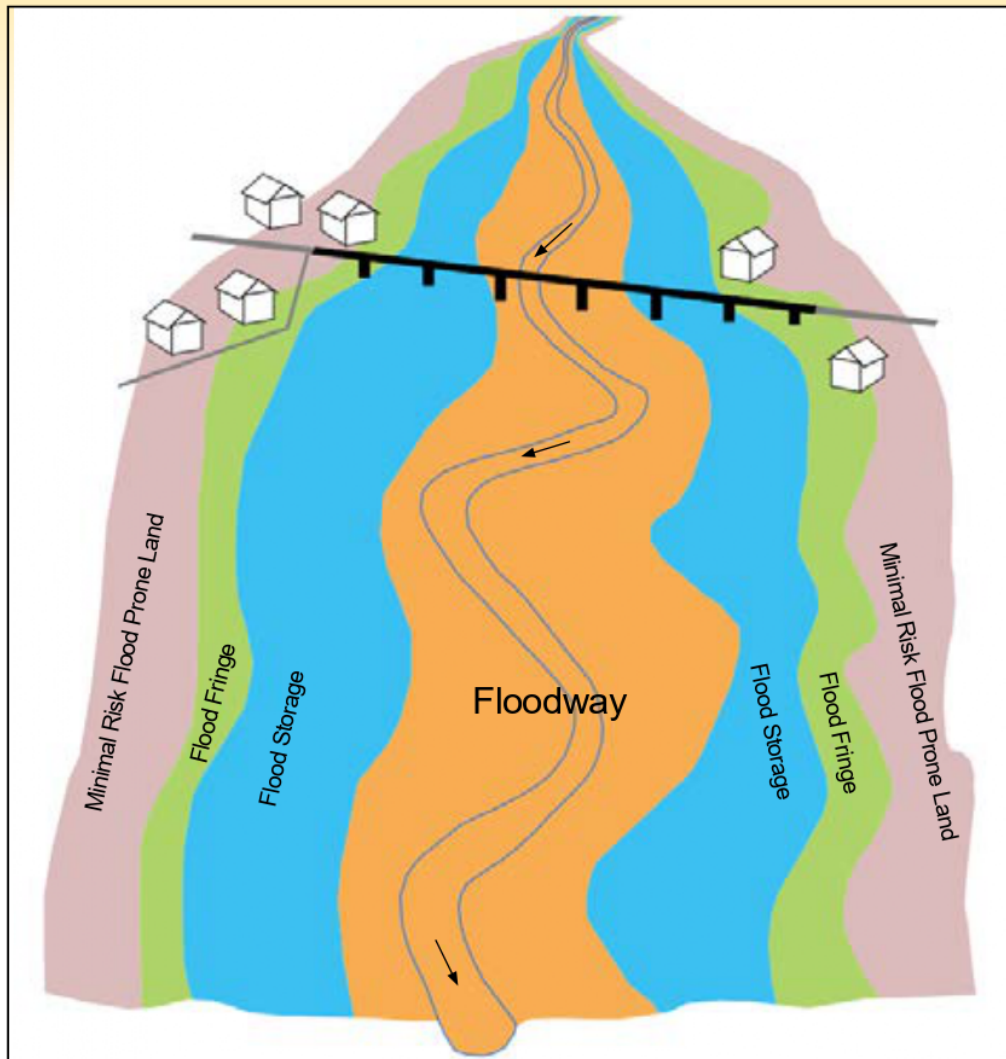
Figure BJ: Flood categories

Hydraulic category	Flood hazard	
	Low hazard	High hazard
Flood Prone	Minimal Risk Flood Prone Land	
Flood Fringe	Low Hazard Flood Fringe	High Hazard Flood Fringe
Flood Storage	Low Hazard Flood Storage	High Hazard Flood Storage
Overland Flow Path	Low Hazard Overland Flow Path	High Hazard Overland Flow Path
Floodway	Low Hazard Floodway	High Hazard Floodway

ITEM 4 - ATTACHMENT 1 DWELLINGS ON HIGH HAZARD FLOODWAY
REPORT ATTACHMENT.

B5

Figure BK: Flood hazard categories: landscape



Determining development suitability

Figure BL below sets out whether or not different types of new development are considered suitable on land designated a particular flood hazard category (as identified on a **flood certificate**).

Most new development proposed on **flood prone land** will need to address the development controls in this Part to mitigate risks and be considered suitable (Refer to Figure BL below).

Where risks are assessed as low, such as where land is identified as '**minimal risk flood prone land**' on a **flood certificate**, the requirements for new development will be minimal and most new development on that land is considered suitable (Refer to Figure BL below).

ITEM 4 - ATTACHMENT 1 DWELLINGS ON HIGH HAZARD FLOODWAY REPORT ATTACHMENT.

B5

In some instances the risks of new development are substantially higher and the ability to develop the land is less certain. In these instances, an applicant may prepare performance based solutions to meet the objectives of the relevant development controls and demonstrate that the risks have been mitigated. If the solution cannot demonstrate acceptable mitigation of risk, the new development may be an unsuitable use of the land (Refer to Figure BL below).

Figure BL: Suitable land uses by flood hazard category (as identified on a flood certificate)

Development suitability										
	Flood Hazard Categories (as identified on a flood certificate)	Minimal Risk Flood Prone Land	Low Hazard Flood Fringe	High Hazard Flood Fringe	Low Hazard Flood Storage	High Hazard Flood Storage	Low Hazard Overland Flow Path	High Hazard Overland Flow Path	Low Hazard Floodway	High hazard Floodway
Development vulnerable to emergency response and critical infrastructure		S	U	U	U	U	U	U	U	U
Residential accommodation (other than a dwelling house)		NA	S	S	S	S	S	S	U	U
Residential subdivision		NA	S	S	S	S	S	S	U	U
Dwelling house		NA	S	S	S	S	S	S	PB	PB
Farm buildings		NA	S	S	S	S	S	S	S	S
Fill		NA	S	S	S	S	S	S	S	S
Non-residential subdivision		NA	S	S	S	S	S	S	PB	PB
All other development		NA	S	S	S	S	S	S	PB	PB
Key										
U		Unsuitable land use on flood prone land								
NA		Suitable, no applicable development controls								
S		Suitable, subject to development controls								
PB		A performance based solution may be provided to demonstrate that the proposed land use is suitable								

B5.A Development on all flood prone land

Objectives

- To ensure development satisfies the provisions of the **LEP**.
- To provide detailed controls for the assessment of development proposed on **flood prone land** in accordance with the *Environmental Planning and Assessment Act 1979*.
- To ensure flood risk is considered as early as possible in the planning and development process, based on the best available flood information.
- To reduce the impact of flooding and flood liability on individual owners and occupiers of **flood prone land**.
- To recognise **flood prone land** as a valuable social, economic and environmental resource that should not be sterilised by inappropriate development.

ITEM 4 - ATTACHMENT 1 DWELLINGS ON HIGH HAZARD FLOODWAY REPORT ATTACHMENT.

B5

- To ensure that the use and development of **flood prone land** includes risk consequences that are manageable.
- To implement the principles of the **NSW Government 'Floodplain Development Manual'** (as updated from time to time), **Construction of Buildings in Flood Hazard Areas (Australian Building Codes Board)** and Council's **Floodplain Risk Management Policy** and **Flood hazard maps** as identified within Figure B1.

Development controls

Site selection

- B5.1 If multiple flood hazard categories are specified for a site on a **flood certificate**, the proposed development must be located on the land with the lowest flood risk.

Finished floor level (FFL)

- B5.2 Development must meet the minimum **FFL** as specified in Figure BM.
- Note: The National Construction Code may provide minimum **FFLs** for some categories of development which prevail to the extent of any inconsistency with these controls.
- The finished surface of open space car parking, carports and driveways should be designed having regard to vehicle stability, including consideration of depths and velocity during inundation by flood waters.

Figure BM: Finished floor level

Development type	Required FFL
Development vulnerable to emergency response, and critical infrastructure	Probable maximum flood (PMF) level
Residential accommodation (including dwelling houses)	<ul style="list-style-type: none"> Habitable rooms – flood planning level Non-habitable rooms – adaptable minimum floor level Flood Refuge – probable maximum flood Level (see B5.14 to determine if a flood refuge is required)
Subdivision	Flood planning level
Farm buildings	Onsite waster water level
Commercial premises	<ul style="list-style-type: none"> Habitable rooms - flood planning level Non-habitable rooms - onsite waster water level
Industrial premises	<ul style="list-style-type: none"> Habitable rooms - flood planning level Non-habitable rooms - onsite waster water level
Garages, open car parking spaces and carports	Current day 1% AEP flood level
Driveways and access	Current day 1% AEP flood level, or the flood immunity of the connecting public road

Development controls

Flood compatible design

- B5.3 Development for a building (and/or an associated driveway or access) must be of a **flood compatible design** and construction and shall meet the relevant requirements in the **Construction of Buildings in Flood Hazard Areas (Australian Building Codes Board)**. Council may also require **structural certification** for development proposed on land which becomes a floodway in the **PMF**.

ITEM 4 - ATTACHMENT 1 DWELLINGS ON HIGH HAZARD FLOODWAY
REPORT ATTACHMENT.

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Development controls

Fencing

- B5.4 Fencing on **flood prone land** should be stable in events up to the current day **1% AEP flood event** and not obstruct the flow of floodwater.

Electrical features

- B5.5 All incoming main power service equipment, including all metering equipment, and all electrical fixtures, such as power points, light fittings, switches, heating, ventilation and other service facilities must be located above the **FPL**, or where possible above the **PMF**.
- Where the above cannot be achieved, the following features shall be used:
- Electrical cabling is not to be installed within walls, or chased into walls; and
 - Any circuit containing switches, power points or any other electrical fitting that are located below the **FPL**, shall connect to the power supply through an individual Residual Current Device (**RCD**), located in the meter box.

Potentially hazardous and/or polluting material

- B5.6 The storage of hazardous or potentially hazardous materials, potentially polluting material or material that could be washed from site and cause harm downstream must be stored above the **FPL** with appropriate bunding.
- B5.7 Items that may wash away during flood events (e.g. rainwater tanks, hot water tanks, gas cylinders, shipping containers) must be elevated above the **1% AEP flood event** level in the year 2100 (without **freeboard**) or anchored to resist buoyancy and impact forces.

B5.B Development on all flood prone land other than minimal risk flood prone land

Objectives

In addition to the objectives listed in B5.A, the following objectives apply to development on all **flood prone land** other than **minimal risk flood prone land**:

- To ensure that appropriate controls are applied to development on land where more than a minimal risk is present.

Development controls

Flood impact and risk assessment

- B5.8 A **flood impact and risk assessment** is required for:
- Any **fill** on land identified as **floodway**.
 - Any **fill** located in a **flood storage area**, unless:
 - The net volume of **fill** does not exceed the lesser of 20% or 2000m³ of the **flood volume** of the lot in the **1% AEP flood event** in the year 2100 (this includes consideration of previous **fill** volumes); and
 - It is demonstrated that the **fill** does not adversely affect local drainage patterns of all events up to the **1% AEP flood event** in the year 2100.

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Development controls

- B5.8 Note: Fill in **flood storage areas** greater than the abovementioned volume can be offset by **flood storage**. Offsetting can be achieved through consolidation of lots and/or assigning an 'easement to flood land' on the compensatory lot/s. Compensatory lots must be located within the zone of influence of the proposed **fill** (as demonstrated by the **flood impact and risk assessment**) or adjacent to the proposed **fill** and be of the same hazard category of the subject site.
- Any **fill** for the purposes of a **livestock flood refuge mound**, unless the **livestock flood refuge mound** is located in an identified **flood fringe area**:
 - The volume/size and location of the **livestock flood refuge mound** meets the criteria in Figure BN; and
 - The size of the mound must have regard to the agricultural capacity of the land. The design and size of the mound shall be determined by reference to the *NSW Department of Primary Industries –Agriculture. 2009, 'Primefacts: Livestock flood refuge mounds'*; and
 - Where the proposed development could change flood behaviour, affect existing flood risk, or expose people to flood risks that require management or;
 - If Council determines a **flood impact and risk assessment** is necessary for any other reason.

Figure BN: Livestock flood refuge mound

Size of mound	Distance from nearest property
20m x 20m (at current day 1% AEP flood level and 0.5m below the current day 1% AEP flood level)	> 180m
20m x 20m (1.0m below the current day 1% AEP flood level)	> 40m
20m x 20m (1.5m below the current day 1% AEP flood level)	> 25m
40m x 40m (at current day 1% AEP flood level, 0.5m below the current day 1% AEP flood level and 1.0m below the current day 1% AEP flood level)	> 830m
40m x 40m (1.5m below current day 1% AEP flood level)	> 170m

Note: Interpolation between the values listed above should be based on the length of the mound perpendicular to the direction of flow, followed by the depth below the current day 1% **AEP flood event** level.

Development controls

Ongoing flood adaptation

- B5.9 For residential accommodation, subdivision, commercial premises, industrial premises, garages, open car parking spaces and carports, a reduced **planning horizon** of 50 years from the date of determination will be accepted where the design facilitates ongoing flood adaptation (ie the future raising of the building).

Minor alterations and additions to existing residential accommodation

- B5.10 Where proposed alterations and additions to existing **residential accommodation** is less than 40% of the **gross floor area** of the existing **residential accommodation**, and does not involve a net increase in the number of bedrooms,

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B5

Development controls

Council will consider a **FFL** lower than the **flood planning level (FPL)**, but not lower than the existing floor level. Any additional flood risk must include mitigation measures to reduce the overall flood risk of the development.

Driveways and access

B5.11 Access from the building envelope to the public road is to have a minimum **finished access level** of:

- The **flood immunity** of the connecting public road; or
- The current day **1% AEP flood event** level for the site.

B5.12 Earthworks for driveways and access must satisfy the objectives of B3.D of the **DCP** and **LEP**.

Note: Impacts on local drainage and localised flooding should be considered and addressed. Driveways should be designed and constructed in accordance with Councils standard design drawings.

Subdivision

B5.13 Subdivision that creates the ability to erect additional dwellings is to indicate building envelopes above the **FPL** and comply with the requirements of B5.11, B5.12 and B5.14 of this Part.

Emergency onsite flood refuge

B5.14 If evacuation egress from residential accommodation, a commercial premises, an industrial premises, fill or development vulnerable to emergency response and critical infrastructure to flood free areas cannot be achieved via a route that is flood free in the current day **1% AEP flood event** or is a **low hazard flood area**, an onsite **flood refuge** must be provided meeting the following criteria:

- Is located above the **PMF** level;
- Is intrinsically accessible to all people on the site, plainly evident and self-directing;
- Is accessible in sufficient time for all occupants with fail safe access and no reliance on elevators;
- Has unobstructed external access for emergency boats during flooding;
- Caters for the number of persons that could reasonably be expected on-site at any one time (approx. 2m² per person);
- Provides adequate shelter from the storm and has natural lighting and ventilation; and
- Contains sufficient clean water, a first aid kit, portable radio with spare batteries and a torch with spare batteries.

Note: If a **flood refuge** is required, the DA must be accompanied by **structural certification**.

Development on land identified as **overland flow path**

B5.15 A **site based overland flow report** must be submitted for development located within a designated **overland flow path**. The purpose of this report is to demonstrate that the development:

- Will not result in material increase in flood level or flood hazard upstream, downstream or surrounding properties; and

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B5

Development controls

- Will provide acceptable management of flood risk with appropriate development levels to ensure the safety of people.

B5.C Development on land identified as floodway

Objectives

In addition to the objectives listed in B5.A and B5.B, the following objectives apply to development on land defined as **floodway**:

- To ensure development on land identified as **floodway** is restricted to low risk development.
- To ensure the capacity of the **floodway** to convey and contain floodwaters is not diminished.

Development controls

Appropriate development

- B5.16 Development other than farm buildings and/or **fill** is not supported on land identified as either low hazard floodway or high hazard floodway.

Fencing

- B5.17 Fencing in a **floodway** should not include non-permeable materials or fencing types that could restrict or redirect flood waters.

B5.D Application of performance based solutions

Objectives

Performance based solutions that meet the objectives listed below apply to:

- Proposed development identified as suitable on flood prone land in Figure BL that cannot meet the relevant development controls in this Part; or
- Proposed development that is identified as possibly suitable on flood prone land in Figure BL, subject to performance based solutions.

Performance based solutions

Risk to life

- B5.18 The proposed land use is consistent with Figure BL, which shows suitable land uses by flood hazard category (as identified on a **flood certificate**) and the proposed development incorporates adequate measures to manage risk to human life from flooding, including:
- Evacuation access from an area affected by flooding to an **area free of risk from flooding**, taking into account any potential access restrictions;
 - Warning times and procedures to make people aware of the need to evacuate;
 - Consideration of the current and potential future occupants; and
 - Consistency with the most recent Council adopted flood study or **floodplain risk management study** that has been undertaken for the site.

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Performance based solutions

Risk to property

- B5.19 The proposed development will not increase the potential individual or cumulative flood impacts on other development or properties that are likely to occur in the same **floodplain**. In determining any potential increase in flood impacts, Council will consider:
- Future (in the year 2100) flood levels and/or velocities including, but not limited to the **5% AEP flood event**, **1% AEP flood event** and **probable maximum flood (PMF)** events;
 - Loss of **flood storage** in the immediate **floodplain**; and
 - Consistency with the most recent, Council adopted flood study or **floodplain risk management study** that has been undertaken for the site.

Flood hazard compatibility

- B5.20 The proposed development must be compatible with the flood hazard category of the land (as identified on a **flood certificate**) or include mitigation measures or offsets to reduce the **flood risk**. In determining compatibility, Council will consider:
- Whether there is other land on the site with lower flood risks where the development could be located;
 - Depth of flood inundation on the site and the adjacent land;
 - Flow velocity on the site as well as upstream and downstream from the site;
 - Suitability of design so that the development does not become isolated by high hazard floodwaters; and
 - Consistency with the most recent, Council adopted flood study or **floodplain risk management study** that has been undertaken for the site.

ITEM 4 - ATTACHMENT 1 DWELLINGS ON HIGH HAZARD FLOODWAY REPORT ATTACHMENT.

E1

E1 Glossary

Amendments to Part E1 - Glossary

1. Amended definitions

Replace the listed existing definitions with the listed amendments in Part E1:

Existing	Amended
<p>flood study is a comprehensive technical investigation of flood behaviour that defines the variation over time of flood levels, extent and velocity for flood events of various severities up to and including the PMF event. It covers the entire floodplain catchment, with particular emphasis on the area under consideration. The flood study will:</p> <ul style="list-style-type: none"> i. Be certified by a chartered Professional Engineer who is recognised under the Engineers Australia's National Engineering Register (NER), who has experience in hydraulics and floodplain management; ii. Be a comprehensive document that includes numerical flood modelling of the proposed development area; iii. Ensure that the extent of the study adequately assesses all flooding characteristics and impacts of the development in the area; iv. Be consistent with any existing flood study or floodplain risk management plan undertaken for Council for the subject site. Where there is deviation from the Council adopted studies, the flood study must detail and justify the deviations; v. Be consistent with the NSW Floodplain Development Manual 2005 and the current version of Australian Rainfall and Runoff and determine the existing flooding characteristics and assess the impacts of the proposal, including assessment of design flood events including 10% AEP, 5% AEP, 1% AEP and PMF for existing conditions, 2050 and 2100; and vi. Assess cumulative flood storage impacts, flood levels, velocity (including direction), hazard and hydraulic categories. <p>Structural Report is a report certifying the structural stability of the structure. The Structural Report is to be prepared by a Chartered Professional Engineer recognised under the Engineers Australia's National Engineering Register (NER) in the area of practice of Structural Engineering. The Report must certify that the proposed structural components can withstand the forces of floodwater up to the PMF, including hydrostatic pressure, the hydrodynamic pressure, the impact of debris and buoyancy forces.</p>	<p>flood impact and risk assessment is a comprehensive technical investigation of flood behaviour that defines the variation over time of flood levels, extent and velocity for flood events of various severities up to and including the PMF event. It covers the entire floodplain catchment, with particular emphasis on the area under consideration. The flood impact and risk assessment will:</p> <ul style="list-style-type: none"> i. Be certified by a chartered Professional Engineer who is recognised under the Engineers Australia's National Engineering Register (NER), who has experience in hydraulics and floodplain management; ii. Be a comprehensive document that includes numerical flood modelling of the proposed development area; iii. Ensure that the extent of the study adequately assesses all flooding characteristics and impacts of the development in the area; iv. Be consistent with any existing flood impact and risk assessment or floodplain risk management plan undertaken for Council for the subject site. Where there is deviation from the Council adopted studies, the flood study must detail and justify the deviations; v. Be consistent with the NSW Floodplain Development Manual 2005 and the current version of Australian Rainfall and Runoff and determine the existing flooding characteristics and assess the impacts of the proposal, including assessment of design flood events including 10% AEP, 5% AEP, 1% AEP and PMF for existing conditions, 2050 and 2100; and vi. Assess cumulative flood storage impacts, flood levels, velocity (including direction), hazard and hydraulic categories. <p>structural certification is a report certifying the stability of a structure. The report is to be prepared by a Chartered Professional Engineer recognised under the Engineers Australia's National Engineering Register (NER) in the area of practice of Structural Engineering. The report must certify that the proposed structural components can withstand the forces of floodwater up to the PMF, including hydrostatic pressure, the hydrodynamic pressure, the impact of debris and buoyancy forces.</p>

MINUTES ORDINARY COUNCIL - 10 AUGUST 2021**NOTICE OF MOTION****ITEM NO. 10****FILE NO: 21/206372****EDRMS NO: PSC2017-00019****DWELLINGS IN HIGH HAZARD FLOODWAYS****COUNCILLOR: GIACOMO ARNOTT****THAT COUNCIL:**

- 1) Notes the recent increase in requests to construct homes in high hazard floodways.
- 2) Notes the danger associated with these Development Applications for the proponents, emergency services, Councillors and staff.
- 3) Requests a report be prepared by Council staff for DCP or LEP changes that would make residential developments in high hazard floodways not permissible.

**ORDINARY COUNCIL MEETING - 10 AUGUST 2021
MOTION**

225	Councillor Giacomo Arnott Councillor Ken Jordan It was resolved that Council: <ol style="list-style-type: none">1) Notes the recent increase in requests to construct homes in high hazard floodways.2) Notes the danger associated with these Development Applications for the proponents, emergency services, Councillors and staff.3) Requests the General Manager prepare a report for DCP or LEP changes that would make residential developments in high hazard floodways not permissible.
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In accordance with Section 375 (A) of the Local Government Act 1993, a division is required for this item.

Those for the Motion: Crs Jaimie Abbott, Giacomo Arnott, Chris Doohan, Glen Dunkley, Ken Jordan, John Nell and Steve Tucker.

Those against the Motion: Mayor Ryan Palmer, Crs Paul Le Mottee and Sarah Smith.

The motion was carried.

MINUTES ORDINARY COUNCIL - 10 AUGUST 2021**BACKGROUND REPORT OF: KATE DRINAN – DEVELOPMENT ASSESSMENT AND COMPLIANCE SECTION MANAGER****BACKGROUND**

Since 1 July 2019, Council has received 9 Development Applications to construct dwellings in high hazard floodways including:

DA Number	Location	Determination
16-2019-135-1	1 Swanreach Road, HINTON	Refused by Council.
16-2019-679-1	26 King Street, RAYMOND TERRACE	Approved by Council.
16-2020-302-1	814 Hinton Road, OSTERLEY	Refused by Council.
16-2020-357-1	918 Newline Road, EAGLETON	Deferred Commencement Issued by Council.
16-2020-589-1	828 Paterson Road, WOODVILLE	Refused by Council.
16-2020-757-1	186 Seaham Road, NELSON PLAINS	Approved with conditions.
16-2020-445-1	232 Seaham Road, NELSON PLAINS	Approved by Council.
16-2021-82-1	7 High Street, HINTON	Reported to 27 July 2021 Council meeting.
16-2021-451-1	2372 Nelson Bay Road, WILLIAMTOWN	Under assessment.

'High hazard floodway' is the highest category of flood risk and is determined on the basis of flood depth and/or velocity of flood waters in a particular location.

The Port Stephens Local Environmental Plan (LEP) adopts the NSW Government's mandatory Standard Instrument flood controls. The LEP flood controls require Council to be satisfied that the development is compatible with the flood hazard of the land and that it will not have a significant, adverse effect on flood behaviour. It should be noted these mandatory provisions are consistent across all councils and the State government does not enable councils to amend them.

The Port Stephens Development Control Plan 2014 (DCP) states that dwelling houses on land categorised as High Hazard Floodway may be considered where the proposal can address set performance based solutions. The solutions include an assessment of the development against the risk to life, risk to property and the compatibility of development with the site specific flood hazard. The DCP does not support development that will result in an unnecessary risk to life or property. The DCP is consistent with Council's Floodplain Risk Management Policy which has been prepared in accordance with the State government's Floodplain Risk Management Manual.

MINUTES ORDINARY COUNCIL - 10 AUGUST 2021**FINANCIAL/RESOURCE IMPLICATIONS**

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

ATTACHMENTS

Nil.

MINUTES ORDINARY COUNCIL - 8 DECEMBER 2020

Councillor Paul Le Mottee returned to the meeting at 6:18pm.

ITEM NO. 3

**FILE NO: 20/326341
EDRMS NO: PSC2018-01095**

**AMENDMENT TO THE PORT STEPHENS DEVELOPMENT CONTROL PLAN 2014
- PART B5 FLOODING**

REPORT OF: JANELLE GARDNER - ACTING STRATEGY & ENVIRONMENT
SECTION MANAGER
GROUP: DEVELOPMENT SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Receive and note the submission received during the exhibition period.
 - 2) Endorse the Port Stephens Development Control Plan 2014 – Part B5 Flooding and Part E1 Glossary (DCP Amendment) (**ATTACHMENT 1**).
 - 3) Provide public notice that the amendment to the Port Stephens Development Control Plan 2014 has been approved in accordance with the Environmental Planning and Assessment Regulation 2000.
-

**ORDINARY COUNCIL MEETING - 8 DECEMBER 2020
MOTION**

275	<p>Councillor Chris Doohan Councillor John Nell</p> <p>It was resolved that Council:</p> <ol style="list-style-type: none">1) Receive and note the submission received during the exhibition period.2) Endorse the Port Stephens Development Control Plan 2014 – Part B5 Flooding and Part E1 Glossary (DCP Amendment) (ATTACHMENT 1).3) Provide public notice that the amendment to the Port Stephens Development Control Plan 2014 has been approved in accordance with the Environmental Planning and Assessment Regulation 2000.
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In accordance with Section 375 (A) of the Local Government Act 1993, a division is required for this item.

Those for the Motion: Mayor Ryan Palmer, Crs Jaimie Abbott, Giacomo Arnott, Chris Doohan, Glen Dunkley, Paul Le Mottee, John Nell and Steve Tucker.

MINUTES ORDINARY COUNCIL - 8 DECEMBER 2020

Those against the Motion: Nil.

The motion was carried.

BACKGROUND

The purpose of this report is to outline the outcomes of the exhibition of the draft Port Stephens Development Control Plan 2014 - Part B5 Flooding and Part E1 Glossary (DCP Amendment) (**ATTACHMENT 1**) and to seek Council approval to make the DCP Amendment.

The DCP Amendment will give effect to planning priority 8 of the Port Stephens Local Strategic Planning Statement (LSPS) to improve resilience to hazards and climate change and implements the recommendations of Council's Floodplain Risk Management Policy Committee. The DCP Amendment sets out prescriptive and performance based controls for new development on flood prone land, in accordance with the NSW Floodplain Development Manual 2005.

At its meeting on 27 March 2018, Council endorsed the DCP Amendment for exhibition. A draft of the DCP Amendment was publically exhibited for 28 days from 12 April 2018 to 10 May 2018 and 1 submission was received. A summary and response to the submission is provided at (**ATTACHMENT 2**).

Since the exhibition of the DCP Amendment, Council resolved to form the Floodplain Risk Management Policy Committee (the Committee) comprising of Councillors and Council staff to rewrite Council's Floodplain Policy. As part of this, the Committee considered the draft DCP Amendment and proposed amendments to:

- Clarify the application of the controls for single dwellings proposed in a floodway, with reference to the NSW Floodplain Development Manual 2005.
- Confirm the intent of the DCP Amendment is not to facilitate residential subdivision or the intensification of existing residential uses in a floodway.

In addition to the above clarification, the DCP Amendment has been substantially reformatted following exhibition to make it more user friendly, including changes to:

- More clearly describe the application of the DCP chapter and the different assessment pathways.
- Include explanatory materials such as flowcharts, diagrams and charts.

The DCP Amendment will provide greater certainty for proponents and the community about the assessment process and the controls that apply to new development on flood prone land.

MINUTES ORDINARY COUNCIL - 8 DECEMBER 2020**COMMUNITY STRATEGIC PLAN**

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

FINANCIAL/RESOURCE IMPLICATIONS

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

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

LEGAL, POLICY AND RISK IMPLICATIONS

There are no significant anticipated legal, policy, or risk implications as a consequence of the recommendation of this report.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that if the DCP Amendment is not made clear and consistent guidance about development on flood prone land will not be available to proponents and the community.	Medium	Adopt the recommendations.	Yes

MINUTES ORDINARY COUNCIL - 8 DECEMBER 2020

There is a risk that if the DCP Amendment is not made the DCP 2014 will contain outdated requirements and provisions that do not align with Council policies and State guidelines.	Medium	Adopt the recommendations.	Yes
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Environmental Planning and Assessment Act 1979 (EP&A Act)

Division 3.6 of the EP&A Act relates to development control plans. Should Council resolve to approve the DCP Amendment, all necessary matters in making the amendment to the plan will be carried out in accordance with the EP&A Act.

Local Government Act 1993

Under the Local Government Act 1993, Council is immune from flood risk liability if policies and plans are prepared in accordance with the NSW Floodplain Development Manual 2005 (section 733). The DCP Amendment provides controls for flood prone land in accordance with the NSW Floodplain Development Manual 2005 and adopts the principles of the manual.

Environmental Planning & Assessment Regulations 2000 (EP&A Regulations)

Division 2 of Part 3 of the EP&A Regulations specifies the requirements for public participation when a DCP is amended. The public exhibition of the DCP Amendment has satisfied these requirements.

Hunter Regional Plan 2036 (HRP 2036)

The HRP 2036 includes direction 16 to increase resilience to hazards and climate change. The DCP Amendment responds to direction 16 by ensuring Council has controls that apply to development on flood prone land that are consistent with the NSW Floodplain Development Manual 2005.

Port Stephens Local Strategic Planning Statement (LSPS)

The LSPS was adopted on 14 July 2020. The DCP Amendment will give effect to planning priority 8, to improve resilience to hazards and climate change and to implement the recommendations of Council's Floodplain Risk Management Policy Committee.

Floodplain Risk Management Policy and Flood Hazard Maps

The DCP Amendment has been prepared to align with Council's Floodplain Risk Management Policy and associated maps. The DCP, Floodplain Risk Management

MINUTES ORDINARY COUNCIL - 8 DECEMBER 2020

Policy and Council's Flood Hazard Maps operate to provide a framework for the assessment of flooding impacts during the planning and assessment of development on flood prone land. All of these documents have been prepared in accordance with the NSW Floodplain Development Manual 2005 in order to satisfy the Local Government Act 1993.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The DCP Amendment is a key part of implementing Council's Floodplain Risk Management Policy (the policy) and reducing the impact of flooding and flood liability on individual owners and occupiers of flood prone property.

The DCP Amendment is consistent with the policy and recognises that flood prone land is a valuable resource that should not be sterilised by unnecessarily precluding appropriate development. It seeks to ensure that the economic costs which may arise from damage to property or risk to life from flooding is not greater than that which can reasonably be managed by a property owner and the community.

Development on flood prone land can have detrimental environmental implications and the DCP Amendment is consistent with the policy, which aims to ensure that development on flood prone land does not have unreasonable environmental impacts by significantly altering flood behaviour.

CONSULTATION

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

Internal

Consultation with internal stakeholders has been undertaken to inform the preparation of the DCP Amendment, including the Development Engineering unit and the Development Assessment and Compliance section.

The DCP Amendment has also been reviewed by Council's Floodplain Risk Management Policy Committee (the Committee), comprising of Councillors and Council staff. Changes were made to the DCP Amendment on the recommendation of the Committee to clarify the application of the controls for single dwellings proposed in a floodway and to confirm the intent is not to facilitate residential subdivision or the intensification of existing residential uses in a floodway.

External

The DCP Amendment was placed on public exhibition for 28 days from 12 April 2018 to 10 May 2018. A notice was placed in the Port Stephens Examiner and copies of the exhibition material were made available on the Council website, at the Council administration building, and Council libraries.

MINUTES ORDINARY COUNCIL - 8 DECEMBER 2020

One community submission was received which raised operational concerns about specific stormwater drainage infrastructure. The submission did not raise any matters in relation to flooding or the DCP Amendment. The submission was referred to the Assets Section for review and response. The submission is summarised in **(ATTACHMENT 2)**.

OPTIONS

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

ATTACHMENTS

- 1) Chapter B5 Flooding.
- 2) Summary of Submission.

COUNCILLORS ROOM

- 1) Copy of submission.

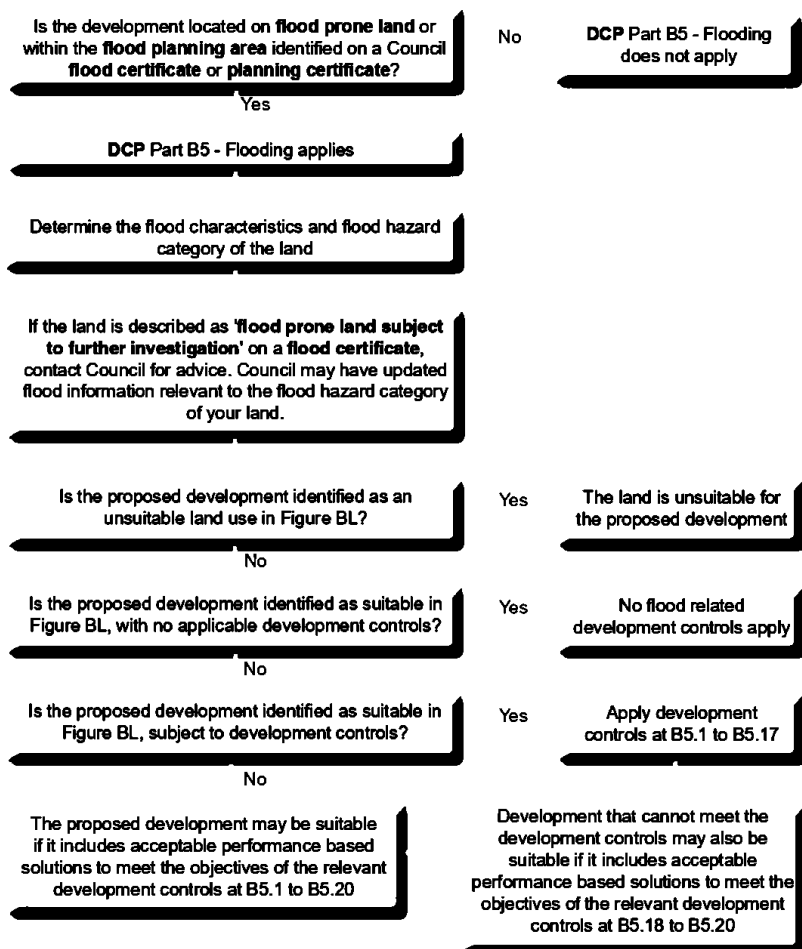
TABLED DOCUMENTS

Nil.

B5**B5 Flooding****Application**

This Part applies to all development on **flood prone land**.

Refer to the flow chart at Figure B1 to determine the assessment pathway for new development.

Figure B1: Determine the assessment pathway

B5**How flood impacts are assessed**

A **flood certificate** identifies the flood category and flooding characteristics of the land to inform the assessment of proposed development.

The **flood certificate** will describe the highest flood category applicable to the land (a combination of the **flood hazard** and the **hydraulic category**), as well as various flood levels (such as the **flood planning level** and the **probable maximum flood level**). Figure BJ shows the possible flood categories and Figure BK shows how flood categories reflect the landscape and the relationship between water depth and water velocity in a flood.

Land in the hydraulic categories **flood fringe**, **flood storage** and **floodway** will generally make up the visible **floodplain**, whilst **overland flow paths** feed into the **floodplain**. Consequently, the characteristics of **overland flow paths** are considered separately from other flood categories and are not detailed in Figure BK below.

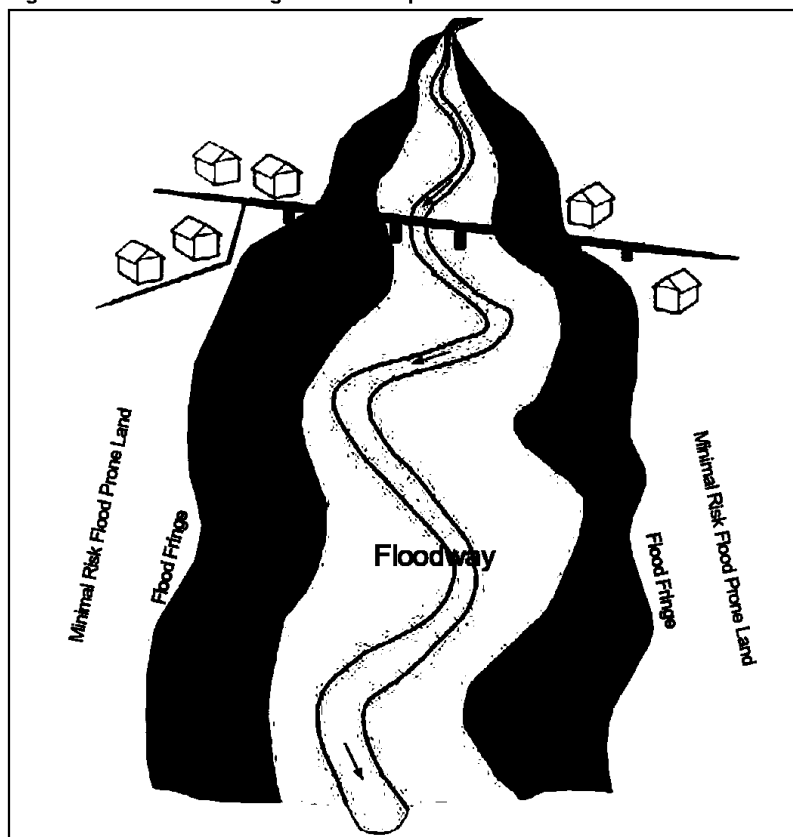
A **flood certificate** may also identify land as '**minimal risk flood prone land**' where only minimal impacts are anticipated, or as '**flood prone land subject to further investigation**' when Council does not hold detailed flood information. The requirements that apply to these categories are detailed in this Part.

Figure BJ: Flood categories

Hydraulic category	Flood hazard	
	Low hazard	High hazard
Flood Prone	Minimal Risk Flood Prone Land	
Flood Fringe	Low Hazard Flood Fringe	
Flood Storage	Low Hazard Flood Storage	
Overland Flow Path	Low Hazard Overland Flow Path	
Floodway	Low Hazard Floodway	High Hazard Floodway

B5

Figure BK: Flood hazard categories: landscape



Determining development suitability

Figure BL below sets out whether or not different types of new development are considered suitable on land designated a particular flood hazard category (as identified on a **flood certificate**).

Most new development proposed on **flood prone land** will need to address the development controls in this Part to mitigate risks and be considered suitable (Refer to Figure BL below).

Where risks are assessed as low, such as where land is identified as '**minimal risk flood prone land**' on a **flood certificate**, the requirements for new development will be minimal and most new development on that land is considered suitable (Refer to Figure BL below).

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In some instances the risks of new development are substantially higher and the ability to develop the land is less certain. In these instances, an applicant may prepare performance based solutions to meet the objectives of the relevant development controls and demonstrate that the risks have been mitigated. If the solution cannot demonstrate acceptable mitigation of risk, the new development may be an unsuitable use of the land (Refer to Figure BL below).

Figure BL: Suitable land uses by flood hazard category (as identified on a flood certificate)

Development suitability									
	Flood Hazard Categories (as identified on a flood certificate)	Minimal Risk Flood Prone Land	Low Hazard Flood Fringe	Low Hazard Flood Storage	Low Hazard Overland Flow Path	Low Hazard Floodway	High hazard Floodway		
Development vulnerable to emergency response and critical infrastructure	S								
Residential accommodation (other than a dwelling house)	NA	S	S	S	S	S			
Residential subdivision	NA	S	S	S	S	S			
Dwelling house	NA	S	S	S	S	S			
Farm buildings	NA	S	S	S	S	S	S	S	
Fill	NA	S	S	S	S	S	S	S	
Non-residential subdivision	NA	S	S	S	S	S			
All other development	NA	S	S	S	S	S			
Key									
Unsuitable land use on flood prone land									
NA Suitable, no applicable development controls									
S Suitable, subject to development controls									
A performance based solution may be provided to demonstrate that the proposed land use is suitable									

B5.A Development on all flood prone land**Objectives**

- To ensure development satisfies the provisions of the **LEP**.
- To provide detailed controls for the assessment of development proposed on **flood prone land** in accordance with the *Environmental Planning and Assessment Act 1979*.
- To ensure flood risk is considered as early as possible in the planning and development process, based on the best available flood information.
- To reduce the impact of flooding and flood liability on individual owners and occupiers of **flood prone land**.
- To recognise **flood prone land** as a valuable social, economic and environmental resource that should not be sterilised by inappropriate development.

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- To ensure that the use and development of **flood prone land** includes risk consequences that are manageable.
- To implement the principles of the **NSW Government 'Floodplain Development Manual'** (as updated from time to time), **Construction of Buildings in Flood Hazard Areas (Australian Building Codes Board)** and Council's **Floodplain Risk Management Policy** and **Flood hazard maps** as identified within Figure B1.

Development controls

Site selection

- B5.1 If multiple flood hazard categories are specified for a site on a **flood certificate**, the proposed development must be located on the land with the lowest flood risk.

Finished floor level (FFL)

- B5.2 Development must meet the minimum **FFL** as specified in Figure BM.

Note: The National Construction Code may provide minimum **FFLs** for some categories of development which prevail to the extent of any inconsistency with these controls.

The finished surface of open space car parking, carports and driveways should be designed having regard to vehicle stability, including consideration of depths and velocity during inundation by flood waters.

Figure BM: Finished floor level

Development type	Required FFL
Development vulnerable to emergency response, and critical infrastructure	Probable maximum flood (PMF) level
Residential accommodation (including dwelling houses)	<ul style="list-style-type: none"> Habitable rooms – flood planning level Non-habitable rooms – adaptable minimum floor level Flood Refuge – probable maximum flood Level (see B5.14 to determine if a flood refuge is required)
Subdivision	Flood planning level
Farm buildings	Onsite waster water level
Commercial premises	<ul style="list-style-type: none"> Habitable rooms - flood planning level Non-habitable rooms - onsite waster water level
Industrial premises	<ul style="list-style-type: none"> Habitable rooms - flood planning level Non-habitable rooms - onsite waster water level
Garages, open car parking spaces and carports	Current day 1% AEP flood level
Driveways and access	Current day 1% AEP flood level, or the flood immunity of the connecting public road

Development controls**Flood compatible design**

- B5.3 Development for a building (and/or an associated driveway or access) must be of a **flood compatible design** and construction and shall meet the relevant requirements in the **Construction of Buildings in Flood Hazard Areas (Australian Building Codes Board)**. Council may also require **structural certification** for development proposed on land which becomes a floodway in the **PMF**.

B5

Development controls

Fencing

- B5.4 Fencing on **flood prone land** should be stable in events up to the current day **1% AEP flood event** and not obstruct the flow of floodwater.

Electrical features

- B5.5 All incoming main power service equipment, including all metering equipment, and all electrical fixtures, such as power points, light fittings, switches, heating, ventilation and other service facilities must be located above the **FPL**, or where possible above the **PMF**.

Where the above cannot be achieved, the following features shall be used:

- Electrical cabling is not to be installed within walls, or chased into walls; and
- Any circuit containing switches, power points or any other electrical fitting that are located below the **FPL**, shall connect to the power supply through an individual Residual Current Device (**RCD**), located in the meter box.

Potentially hazardous and/or polluting material

- B5.6 The storage of hazardous or potentially hazardous materials, potentially polluting material or material that could be washed from site and cause harm downstream must be stored above the **FPL** with appropriate bunding.
- B5.7 Items that may wash away during flood events (e.g. rainwater tanks, hot water tanks, gas cylinders, shipping containers) must be elevated above the **1% AEP flood event** level in the year 2100 (without **freeboard**) or anchored to resist buoyancy and impact forces.

B5.B Development on all flood prone land other than minimal risk flood prone land

Objectives

In addition to the objectives listed in B5.A, the following objectives apply to development on all **flood prone land** other than **minimal risk flood prone land**:

- To ensure that appropriate controls are applied to development on land where more than a minimal risk is present.

Development controls

Flood impact and risk assessment

- B5.8 A **flood impact and risk assessment** is required for:
- Any **fill** on land identified as **floodway**.
 - Any **fill** located in a **flood storage area**, unless:
 - The net volume of **fill** does not exceed the lesser of 20% or 2000m³ of the **flood volume** of the lot in the **1% AEP flood event** in the year 2100 (this includes consideration of previous **fill** volumes); and
 - It is demonstrated that the **fill** does not adversely affect local drainage patterns of all events up to the **1% AEP flood event** in the year 2100.

B5**Development controls**

- B5.8 Note: Fill in **flood storage areas** greater than the abovementioned volume can be offset by **flood storage**. Offsetting can be achieved through consolidation of lots and/or assigning an 'easement to flood land' on the compensatory lot/s. Compensatory lots must be located within the zone of influence of the proposed **fill** (as demonstrated by the **flood impact and risk assessment**) or adjacent to the proposed **fill** and be of the same hazard category of the subject site.
- Any **fill** for the purposes of a **livestock flood refuge mound**, unless the **livestock flood refuge mound** is located in an identified **flood fringe area**:
 - The volume/size and location of the **livestock flood refuge mound** meets the criteria in Figure BN; and
 - The size of the mound must have regard to the agricultural capacity of the land. The design and size of the mound shall be determined by reference to the *NSW Department of Primary Industries –Agriculture. 2009, 'Primefacts: Livestock flood refuge mounds'*; and
 - Where the proposed development could change flood behaviour, affect existing flood risk, or expose people to flood risks that require management or;
 - If Council determines a **flood impact and risk assessment** is necessary for any other reason.

Figure BN: Livestock flood refuge mound

Size of mound	Distance from nearest property
20m x 20m (at current day 1% AEP flood level and 0.5m below the current day 1% AEP flood level)	> 180m
20m x 20m (1.0m below the current day 1% AEP flood level)	> 40m
20m x 20m (1.5m below the current day 1% AEP flood level)	> 25m
40m x 40m (at current day 1% AEP flood level, 0.5m below the current day 1% AEP flood level and 1.0m below the current day 1% AEP flood level)	> 830m
40m x 40m (1.5m below current day 1% AEP flood level)	> 170m

Note: Interpolation between the values listed above should be based on the length of the mound perpendicular to the direction of flow, followed by the depth below the current day 1% **AEP flood event** level.

Development controls**Ongoing flood adaptation**

- B5.9 For residential accommodation, subdivision, commercial premises, industrial premises, garages, open car parking spaces and carports, a reduced **planning horizon** of 50 years from the date of determination will be accepted where the design facilitates ongoing flood adaptation (ie the future raising of the building).

Minor alterations and additions to existing residential accommodation

- B5.10 Where proposed alterations and additions to existing **residential accommodation** is less than 40% of the **gross floor area** of the existing **residential accommodation**, and does not involve a net increase in the number of bedrooms,

B5**Development controls**

Council will consider a **FFL** lower than the **flood planning level (FPL)**, but not lower than the existing floor level. Any additional flood risk must include mitigation measures to reduce the overall flood risk of the development.

Driveways and access

B5.11 Access from the building envelope to the public road is to have a minimum **finished access level** of:

- The **flood immunity** of the connecting public road; or
- The current day **1% AEP flood event** level for the site.

B5.12 Earthworks for driveways and access must satisfy the objectives of B3.D of the **DCP** and **LEP**.

Note: Impacts on local drainage and localised flooding should be considered and addressed. Driveways should be designed and constructed in accordance with Councils standard design drawings.

Subdivision

B5.13 Subdivision that creates the ability to erect additional dwellings is to indicate building envelopes above the **FPL** and comply with the requirements of B5.11, B5.12 and B5.14 of this Part.

Emergency onsite flood refuge

B5.14 If evacuation egress from residential accommodation, a commercial premises, an industrial premises, fill or development vulnerable to emergency response and critical infrastructure to flood free areas cannot be achieved via a route that is flood free in the current day **1% AEP flood event** or is a **low hazard flood area**, an onsite **flood refuge** must be provided meeting the following criteria:

- Is located above the **PMF** level;
- Is intrinsically accessible to all people on the site, plainly evident and self-directing;
- Is accessible in sufficient time for all occupants with fail safe access and no reliance on elevators;
- Has unobstructed external access for emergency boats during flooding;
- Caters for the number of persons that could reasonably be expected on-site at any one time (approx. 2m² per person);
- Provides adequate shelter from the storm and has natural lighting and ventilation; and
- Contains sufficient clean water, a first aid kit, portable radio with spare batteries and a torch with spare batteries.

Note: If a **flood refuge** is required, the DA must be accompanied by **structural certification**.

Development on land identified as overland flow path

B5.15 A **site based overland flow report** must be submitted for development located within a designated **overland flow path**. The purpose of this report is to demonstrate that the development:

- Will not result in material increase in flood level or flood hazard upstream, downstream or surrounding properties; and

MINUTES ORDINARY COUNCIL - 8 DECEMBER 2020**ITEM 3 - ATTACHMENT 1****CHAPTER B5 FLOODING.****B5****Development controls**

- Will provide acceptable management of flood risk with appropriate development levels to ensure the safety of people.

B5.C Development on land identified as floodway**Objectives**

In addition to the objectives listed in B5.A and B5.B, the following objectives apply to development on land defined as **floodway**:

- To ensure development on land identified as **floodway** is restricted to low risk development.
- To ensure the capacity of the **floodway** to convey and contain floodwaters is not diminished.

Development controls**Appropriate development**

B5.16 Development other than farm buildings and/or **fill** is not supported on land identified as either low hazard floodway or high hazard floodway.

Fencing

B5.17 Fencing in a **floodway** should not include non-permeable materials or fencing types that could restrict or redirect flood waters.

B5.D Application of performance based solutions**Objectives**

Performance based solutions that meet the objectives listed below apply to:

- Proposed development identified as suitable on flood prone land in Figure BL that cannot meet the relevant development controls in this Part; or
- Proposed development that is identified as possibly suitable on flood prone land in Figure BL, subject to performance based solutions.

Performance based solutions**Risk to life**

B5.18 The proposed land use is consistent with Figure BL, which shows suitable land uses by flood hazard category (as identified on a **flood certificate**) and the proposed development incorporates adequate measures to manage risk to human life from flooding, including:

- Evacuation access from an area affected by flooding to an **area free of risk from flooding**, taking into account any potential access restrictions;
- Warning times and procedures to make people aware of the need to evacuate;
- Consideration of the current and potential future occupants; and
- Consistency with the most recent Council adopted flood study or **floodplain risk management study** that has been undertaken for the site.

B5

Performance based solutions

Risk to property

B5.19 The proposed development will not increase the potential individual or cumulative flood impacts on other development or properties that are likely to occur in the same **floodplain**. In determining any potential increase in flood impacts, Council will consider:

- Future (in the year 2100) flood levels and/or velocities including, but not limited to the **5% AEP flood event**, **1% AEP flood event** and **probable maximum flood (PMF)** events;
- Loss of **flood storage** in the immediate **floodplain**; and
- Consistency with the most recent, Council adopted flood study or **floodplain risk management study** that has been undertaken for the site.

Flood hazard compatibility

B5.20 The proposed development must be compatible with the flood hazard category of the land (as identified on a **flood certificate**) or include mitigation measures or offsets to reduce the **flood risk**. In determining compatibility, Council will consider:

- Whether there is other land on the site with lower flood risks where the development could be located;
- Depth of flood inundation on the site and the adjacent land;
- Flow velocity on the site as well as upstream and downstream from the site;
- Suitability of design so that the development does not become isolated by high hazard floodwaters; and
- Consistency with the most recent, Council adopted flood study or **floodplain risk management study** that has been undertaken for the site.

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ITEM 3 - ATTACHMENT 1 CHAPTER B5 FLOODING.

Amendments to Part E1 - Glossary

1. Amended definitions

Replace the listed existing definitions with the listed amendments in Part E1:

Existing	Amended
<p>flood study is a comprehensive technical investigation of flood behaviour that defines the variation over time of flood levels, extent and velocity for flood events of various severities up to and including the PMF event. It covers the entire floodplain catchment, with particular emphasis on the area under consideration. The flood study will:</p> <ul style="list-style-type: none"> i. Be certified by a chartered Professional Engineer who is recognised under the Engineers Australia's National Engineering Register (NER), who has experience in hydraulics and floodplain management; ii. Be a comprehensive document that includes numerical flood modelling of the proposed development area; iii. Ensure that the extent of the study adequately assesses all flooding characteristics and impacts of the development in the area; iv. Be consistent with any existing flood study or floodplain risk management plan undertaken for Council for the subject site. Where there is deviation from the Council adopted studies, the flood study must detail and justify the deviations; v. Be consistent with the NSW Floodplain Development Manual 2005 and the current version of Australian Rainfall and Runoff and determine the existing flooding characteristics and assess the impacts of the proposal, including assessment of design flood events including 10% AEP, 5% AEP, 1% AEP and PMF for existing conditions, 2050 and 2100; and vi. Assess cumulative flood storage impacts, flood levels, velocity (including direction), hazard and hydraulic categories. <p>Structural Report is a report certifying the structural stability of the structure. The Structural Report is to be prepared by a Chartered Professional Engineer recognised under the Engineers Australia's National Engineering Register (NER) in the area of practice of Structural Engineering. The Report must certify that the proposed structural components can withstand the forces of floodwater up to the PMF, including hydrostatic pressure, the hydrodynamic pressure, the impact of debris and buoyancy forces.</p>	<p>flood impact and risk assessment is a comprehensive technical investigation of flood behaviour that defines the variation over time of flood levels, extent and velocity for flood events of various severities up to and including the PMF event. It covers the entire floodplain catchment, with particular emphasis on the area under consideration. The flood impact and risk assessment will:</p> <ul style="list-style-type: none"> i. Be certified by a chartered Professional Engineer who is recognised under the Engineers Australia's National Engineering Register (NER), who has experience in hydraulics and floodplain management; ii. Be a comprehensive document that includes numerical flood modelling of the proposed development area; iii. Ensure that the extent of the study adequately assesses all flooding characteristics and impacts of the development in the area; iv. Be consistent with any existing flood impact and risk assessment or floodplain risk management plan undertaken for Council for the subject site. Where there is deviation from the Council adopted studies, the flood study must detail and justify the deviations; v. Be consistent with the NSW Floodplain Development Manual 2005 and the current version of Australian Rainfall and Runoff and determine the existing flooding characteristics and assess the impacts of the proposal, including assessment of design flood events including 10% AEP, 5% AEP, 1% AEP and PMF for existing conditions, 2050 and 2100; and vi. Assess cumulative flood storage impacts, flood levels, velocity (including direction), hazard and hydraulic categories. <p>structural certification is a report certifying the stability of a structure. The report is to be prepared by a Chartered Professional Engineer recognised under the Engineers Australia's National Engineering Register (NER) in the area of practice of Structural Engineering. The report must certify that the proposed structural components can withstand the forces of floodwater up to the PMF, including hydrostatic pressure, the hydrodynamic pressure, the impact of debris and buoyancy forces.</p>

Draft Port Stephens Development Control Plan 2014 – Response to submissions

No.	Author of submission	Comment	Council response
1	Resident	The submission identified stormwater drainage infrastructure issues in the Tomago area and requested a drainage plan to be implemented prior to the consideration of the DCP Amendment.	The DCP Amendment does not relate to stormwater drainage infrastructure. The DCP Amendment sets out prescriptive and performance based controls for new development on flood prone land, in accordance with the NSW Floodplain Development Manual 2005. The submission was referred to the Assets Section for review and response in 2018.

ITEM NO. 5

**FILE NO: 21/256751
EDRMS NO: PSC2010-05281**

SALE OF BIOBANKING CREDITS FROM THE KARUAH BIOBANKING SITE

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

RECOMMENDATION IS THAT COUNCIL:

- 1) Authorise the sale of 12 biodiversity credits (HU833) from the Karuah Biobanking site at the rate of \$5,200 per credit.
 - 2) Authorise the General Manager to sign all documentation required to effect the sale, including the application to transfer biodiversity credits in accordance with section 377 of the Local Government Act 1993.
-

**ORDINARY COUNCIL MEETING - 12 OCTOBER 2021
MOTION**

267	Councillor Paul Le Mottee Councillor Glen Dunkley It was resolved that Council: <ol style="list-style-type: none">1) Authorise the sale of 12 biodiversity credits (HU833) from the Karuah Biobanking site at the rate of \$5,200 per credit.2) Authorise the General Manager to sign all documentation required to effect the sale, including the application to transfer biodiversity credits in accordance with section 377 of the Local Government Act 1993.
------------	--

The motion was carried.

BACKGROUND

The purpose of this report is to request Council to approve the sale of 12 biodiversity credits of HU833 (Smooth-barked Apple – Red Bloodwood – Brown Stringybark – Hairpin Banksia heathy open forest of coastal lowlands) to Mavid Development Pty Ltd from Council's Biobanking site at 210-262 Tarean Road, Karuah (**ATTACHMENT 1**). The proposed sale per HU833 Biodiversity credit is \$5,200, equating to \$62,400.

On 20 March 2013, the land was registered with the Biodiversity Conservation Trust (BCT) as Biobanking Agreement No 97 (the Agreement) under the Threatened

MINUTES ORDINARY COUNCIL - 12 OCTOBER 2021

Species Conservation Act 1995. The Agreement sets out annual maintenance and management requirements for the land, and requires the first \$555,819 from credit sales to be paid into BCT's trust fund (known as the Part A Payment). Council receives annual payments from the trust fund, to assist with meeting the annual maintenance and management requirements.

The sale of credits in June 2019 finalised the Part A payment and the proceeds of all future sales will be retained by Council.

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2018-2022
Financial Management	Maximise non-rate revenue and investment to support Council services.

FINANCIAL/RESOURCE IMPLICATIONS

The BioBanking credit market is similar to an exchange whereby buyers and sellers negotiate a price and make trades. The biodiversity credit market is a public marketplace and as such previous sales can be examined. The last previous sale is known as the spot price. Should a purchaser not want to purchase credits from the open market, the Biodiversity Offset Payment Calculator (BOPC) credit price from the Biodiversity Conservation Trust can be utilised, this is known as the upper most limit credit price.

The spot price of credit type HU833 is \$3504 and the BOPC calculator price (upper most limit) is \$5562. As such, the negotiated credit price at \$5200 for HU833 is at the upper end of the price range and significantly higher than the last recorded sale of credit type HU833 in the State.

The sale of the remaining credits will be ongoing under the processes established under the scheme. There are currently 1509 remaining to be sold after the proposed sale of the 12 x HU833 credit types should the proposed recommendation be endorsed.

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

LEGAL, POLICY AND RISK IMPLICATIONS

Biobanking was established by the NSW Government, supported by legislation and is managed by the BCT. The proposal is consistent with the legislation and the Agreement.

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
There is a risk that the purchaser could source credits from another Biobanking site.	High	Adopt the recommendations.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Council receives annual payments from the BCT to undertake management actions and maintenance of the site. It provides a mechanism and method to address the loss of biodiversity and threatened species.

The credit value of \$62,400 provides a financial benefit to Council.

CONSULTATION

Consultation with key stakeholders has been undertaken by the Strategic Property unit as follows:

Internal

- Strategic Property Coordinator
- Principal Property Planner
- Property Planner

External

- Biodiversity Conservation Trust
- Mavid Development Pty Ltd

OPTIONS

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

ATTACHMENTS

- 1) Locality Plan: 210-262 Tarean Road, Karuah.

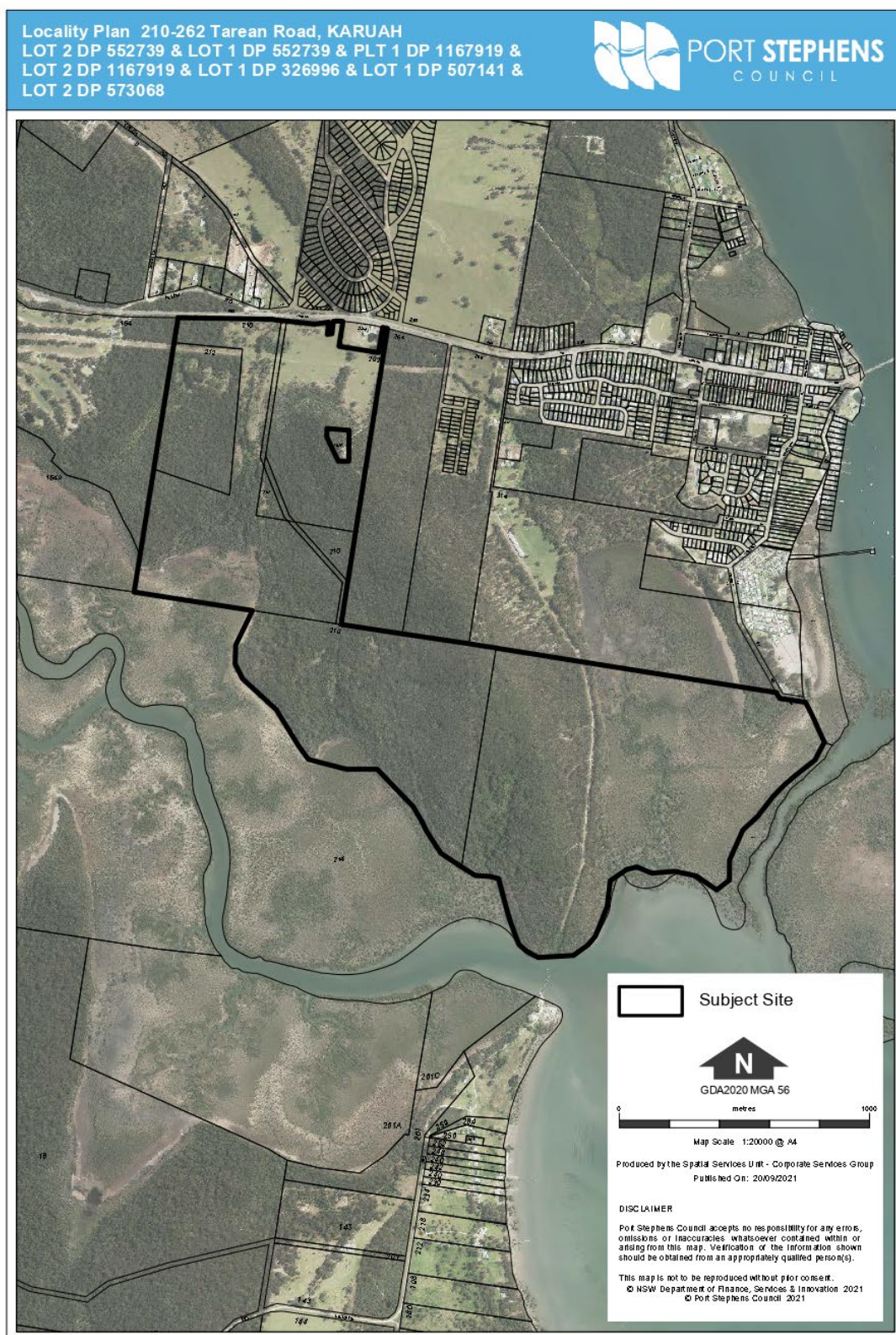
COUNCILLORS ROOM

Nil.

TABLED DOCUMENT

Nil.

ITEM 5 - ATTACHMENT 1 LOCALITY PLAN: 210-262 TAREAN ROAD, KARUAH.



116 Adelaide Street, Raymond Terrace NSW 2324. Phone: (02) 49800255 Fax: (02) 49573612 Email: council@portstephens.nsw.gov.au

ITEM NO. 6

**FILE NO: 21/237470
EDRMS NO: PSC2021-03246**

SERVICE NSW BUSINESS AGREEMENT WITH PORT STEPHENS COUNCIL

REPORT OF: JANELLE GARDNER - STRATEGY & ENVIRONMENT SECTION
MANAGER
GROUP: DEVELOPMENT SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Delegate authority to the General Manager to enter into a Partnership Agreement with Service NSW to deliver business support services in Port Stephens.
 - 2) Revoke previous Easy to Do Business Memorandum of Understanding dated 27 March 2018, (Minute no. 059).
 - 3) That Council authorise any necessary documents for execution under the Common Seal of Council.
-

**ORDINARY COUNCIL MEETING - 12 OCTOBER 2021
MOTION**

268	<p>Councillor John Nell Councillor Paul Le Mottee</p> <p>It was resolved that Council:</p> <ol style="list-style-type: none">1) Delegate authority to the General Manager to enter into a Partnership Agreement with Service NSW to deliver business support services in Port Stephens.2) Revoke previous Easy to Do Business Memorandum of Understanding dated 27 March 2018, (Minute no. 059).3) Authorise any necessary documents for execution under the Common Seal of Council.
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The motion was carried.

BACKGROUND

The purpose of this report is to provide background information and seek support to enter into a Partnership Agreement with Service NSW (**ATTACHMENT 1**). The Partnership Agreement supersedes the Memorandum of Understanding (MoU) which

MINUTES ORDINARY COUNCIL - 12 OCTOBER 2021

has been in place with Service NSW (SNSW) since 1 May 2018, formerly known as the Easy to do Business program (**ATTACHMENT 2**).

The 2018 MoU was primarily focused on delivery of the Easy to do Business program which aimed to reduce red tape for businesses. Specifically, the program helped cafes, small bars and restaurants in Port Stephens to open and grow by streamlining the processes and providing a single point of contact and tailored assistance.

SNSW has developed the new Partnership Agreement to provide consistency across all councils and reflect the broader focus of SNSW for Business. The new agreement includes further detail about the services and clarifies responsibilities of all agencies in relation to the collection, storage and security of personal information.

The broader focus of SNSW includes a dedicated Business Concierge who helps businesses navigate Government requirements, including COVID-19 support and advice.

The partnership with SNSW is an integral part of keeping businesses connected with Government services and assistance, and making business growth easier in Port Stephens and further supports Council in delivering sustainable business development initiatives in Port Stephens.

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2018-2022
Strong Economy, Vibrant Businesses, Active Investment	Support sustainable business development in Port Stephens.

FINANCIAL/RESOURCE IMPLICATIONS

There are no financial or resource implications from entering into the SNSW Partnership Agreement. Services, support materials, training and advice are offered at no cost to Council.

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

LEGAL, POLICY AND RISK IMPLICATIONS

There are no legal or policy impediments to entering into the SNSW Partnership Agreement.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that Council will have external agencies providing information on Council policy and approval processes	Low	Relevant information will be provided to SNSW to ensure a full understanding of Council requirements. Process will be developed to ensure information is updated regularly	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications.

Partnership with SNSW supports the economy of Port Stephens by providing free, personalised support to small business owners and operators, including:

- Local Business Concierge offering phone, email and face-to-face support and case management.
- Guidance and support for businesses impacted by natural disasters or emerging issues to access a range of Government stimulus, support and information.
- An online Business Profile to make it faster and easier for business owners to transact with NSW Government.
- Online business information hubs, including how-to guides to help business owners understand key tasks, regulations and the support available when starting and running a business in NSW.

It is expected that the continuation of this agreement will result in a greater number of applications and increase the number of active businesses within Port Stephens.

CONSULTATION

Consultation with key stakeholders has been undertaken by the Economic Development Specialist.

Internal

- Legal Services
- ICT Maintenance and Support Coordinator
- Strategy & Environment Section Manager

External

- Service NSW – Council Relationship Manager

OPTIONS

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

ATTACHMENTS

- 1) 2021 Port Stephens Council and Service NSW Partnership Agreement (MoU).
- 2) 2018 Port Stephens Council and Service NSW Partnership Agreement (MoU).

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

**ITEM 6 - ATTACHMENT 1 2021 PORT STEPHENS COUNCIL AND SERVICE
NSW PARTNERSHIP AGREEMENT (MOU).**



PARTNERSHIP AGREEMENT

Between **Service NSW** (ABN 37 552 837 401) and **Port Stephens Council** (the '**Council**)
(the '**Parties**')

Last Updated: 27 July 2021

1. Purpose

1.1. The purpose of this Agreement is to:

- A. Provide the services of Service NSW for Business, which is a division of Service NSW with a mandate of being the one front door for businesses in NSW to access government information and services.
- B. Provide the framework within which Services will be delivered.
- C. Document the responsibilities of Service NSW and the Council on the provision of Services.
- D. Provide mechanisms to manage the relationship between the Parties.
- E. Promote a collaborative approach to working together in a timely and effective manner and to act in good faith.

This Agreement is not legally binding.

2. Background

- 1) Service NSW is a Division of the Government Service established under the Service Act. The functions of Service NSW include the exercise of customer service functions, within the meaning of the Service Act; other functions conferred by statute; and other functions relating to the delivery of Government services, as directed by the Minister responsible for Service NSW.
- 2) Section 7 of the Service Act makes provision for customer service functions to be delegated by other NSW Government agencies to the Chief Executive Officer ('**CEO**').
- 3) The functions of the CEO are exercised by the staff of Service NSW.
- 4) Section 8 of the Service Act enables the CEO to enter into Agreements with local government agencies for the exercise of a non-statutory customer service function of the agency; or with respect to the exercise of a customer service function delegated to the CEO.
- 5) Subsection 8(4) of the Service Act provides that an Agreement with a council, a county council or a joint organisation within the meaning of the *Local Government Act 1993* must be approved by a resolution of the council, county council or joint organisation, must be approved before it is entered into.
- 6) Service NSW partners with the Council to promote and deliver the services of Service NSW for Business to businesses across NSW.

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7) the purpose of this collaboration is to ensure awareness and access to Government services to all businesses in NSW.

8) the Services of Service NSW for Business are free for the Council and for customers.

9) The PPIP Act and the HRIP Act set out information handling principles that apply to public sector agencies (as defined in section 3 of the PPIP Act). As public sector agencies, the parties must not do anything, or engage in any practice, that contravenes a privacy principle that applies to them.

10) Section 14 of the Service Act makes provision for the disclosure and use of information, including personal information, for the purposes of the exercise of customer service functions by the CEO. Section 14 has effect despite the provisions of any other Act, including the PPIP Act and the HRIP Act.

11) Section 15 of the Service Act makes provision for the collection of personal information for the purposes of the PPIP Act and the HRIP Act, by Service NSW.

12) Section 16 of the Service Act enables an Agreement made under the Service Act, or a delegation of a customer service function by an agency to the CEO, to provide for the exercise by Service NSW of functions relating to access to information under the Government Information (Public Access) Act 2009 and functions relating to the State Records Act 1998, in connection with the functions of the council concerned. The responsibilities of Agencies under the *State Records Act 1998* include making and keeping full and accurate records of their office.

13) The Parties have agreed to enter into an Agreement under section 8 of the Service Act, incorporating the terms on this Agreement..

3. Guiding Principles

3.1. The Parties will:

- A. Work collaboratively and in good faith in a timely and effective manner, with open communication to achieve shared objectives;
- B. Facilitate a partnership relationship that promotes and achieves continuous improvement and accountability;
- C. Ensure that each of its Personnel complies with this Agreement and all applicable laws and policies relating to the Services, including the *Work Health and Safety Act 2011*;
- D. Comply with the agreed timelines for meeting obligations to ensure efficient and effective delivery of Services;
- E. Work together to identify and manage shared risks;
- F. Work together to prioritise initiatives and enhancements, particularly where there are limitations on time and resources; and
- G. Work together to respond to the media, advise Ministers, and consult each other when developing communications that impact on Services.

4. Roles and Responsibilities

4.1. Service NSW will:

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- A. Provide the Services in accordance with the terms of this Agreement, subject to any Change Request;
- B. Exercise the required standard of skill, care and diligence in its performance of the Services and ensure that its Personnel have appropriate qualifications and skills to provide the Services;
- C. Take responsibility for the management of records it creates or holds as a result of the exercise of a customer service function, where required; and
- D. Take responsibility for performing necessary maintenance of its systems and data managing the impact on customers from Service NSW system outages and working in conjunction with the Council.

4.2. The Council will:

- A. Provide Service NSW with all information, inputs, resources and subject matter expertise in a timely manner as required to enable Service NSW to provide the Services as set out in the Agreement;
- B. Take responsibility for the management of records it receives or holds following the exercise of a customer service function by Service NSW.

4.3. The Parties undertake to maintain open channels of communication by:

- A. Making available Personnel, data, reports and computer systems for the purposes of resolving customer issues;
- B. Appointing a Relationship Manager with responsibility for managing the contractual and operational aspects of the Services. The Relationship Manager may be varied.

5. Services**A. Service NSW will:**

- (i) provide the relevant information and contacts to Council to ensure its local businesses are aware and can access the Service NSW for Business services
- (ii) provide a single point of contact for Council to ensure it can access Service NSW for Business services.

B. the Council will:

- (i) refer eligible customers to the Program;
- (ii) provide guidance to Service NSW staff to assist in responding to inquiries;
- (iii) inform customers and Service NSW of the outcome of relevant applications in line with privacy requirements
- (iv) provide updates on changes to local government policies, guidelines or other matters which may affect the Program;
- (v) identify local opportunities to inform customers of the program;
- (vi) provide Service NSW with feedback on the effectiveness and performance of the Program.

6. Liability

- 6.1. To the full extent permitted by law, neither Council or Service NSW will be liable to the customer for the customer's actions or responsible for any liability, loss or cost suffered directly or indirectly by the business in connection with the Service NSW for Business service.

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7. Data and Data Security

- 7.1. Each party retains ownership of its Data.
- 7.2. Except as required by law, neither party must, and must ensure that its Personnel will not:
- A. use the Data belonging to the other party for any purpose other than the performance of its obligations under this Agreement; or
 - B. sell, commercially exploit, let for hire, assign rights in or otherwise dispose of any Data. or
 - C. **Make the other party's Data available to a third party including another government agency or body, other than an approved Subcontractor, and only to the extent required under this Agreement.**
- 7.3 Each party must establish and maintain safeguards against the destruction, loss or alteration of either party's Data in the possession or control of that party which are is consistent with and no less rigorous than those maintained by either party to secure its own data; and comply with all applicable laws and policies.
- 7.4 In particular, the Parties will ensure the secure transmission and storage of data, at standards no less than those recommended by Cyber Security NSW.

8. Confidential Information

- 8.1. The Parties must, in respect of any Confidential Information:
- A. Keep the Confidential Information confidential and not disclose that information to any person without the prior written consent of the disclosing party, other than to its Personnel, professional advisors or contractors requiring access to the Confidential Information in connection with providing the Services;
 - B. Use the Confidential Information solely for the purpose of carrying out its obligations;
 - C. Not permit the Confidential Information to be reproduced except to the extent reasonably required to carry out its obligations;
 - D. Not do anything that would cause the disclosing party or its Personnel to breach their obligations under Privacy Law; and
 - E. Notify the other party as soon as possible upon becoming aware of any breach of this clause.

9. Privacy

- 9.1 Each party and its Personnel must:
- A. Comply with Privacy Laws; and
 - B. Do all that is reasonably necessary to enable the other party to comply with Privacy Laws, including the development of documentation to demonstrate compliance with Privacy Laws, as agreed between the parties;
- 9.2. In particular, Service NSW acknowledges that:
- A. The collection of personal or health information will take place in compliance with the Privacy Laws, as modified by section 15 of the Service Act; and

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- B. the use, disclosure, storage and retention of such information will be in accordance with the Privacy Laws, and in accordance with applicable policies.

Schedule 3 documents the respective responsibilities of Service NSW and the Council in relation to the collection, storage, use, retention and disclosure of personal information.

- 9.4 Personal and health Information collected, used, disclosed or retained between the parties will be managed and retained by the parties in accordance with the *State Records Act 1998* (NSW) and all other applicable laws, including Privacy Laws.
- 9.5 Once either of the Parties has reasonable grounds to believe there has been unauthorised access to, unauthorised disclosure of, or a loss of Personal or Health Information, dealt with in connection with this Agreement (**'Data Incident'**):
- A. The party must immediately (but in any event, no later than 72 hours of becoming aware of the Data Incident) notify the other party of that contravention together with all relevant information relating to the contravention;
 - B. Consult with the other party as to which party should have primary responsibility for investigating and dealing with the breach or possible breach;
 - C. Consider, having regard to the scope of the Data Incident and the nature of the personal or health information involved, together with any other relevant factors, whether the Data Incident is serious.
 - D. The party with primary responsibility for the breach must notify the Privacy Commissioner as soon as practicable that a serious Data Incident has occurred; and
 - E. The parties must co-operate and collaborate in relation to assessment and investigation of the Data Incident, and action required to prevent future Data Incidents.
- 9.6 If either of the Parties receives a complaint or request for an internal review of conduct in relation to a breach or alleged breach of a Privacy Law, including under section 53 of the PPIP Act, (a **'Complaint'**), the following will apply:
- A. It is the responsibility of the party that receives the Complaint to perform a preliminary investigation to determine the party responsible for the conduct;
 - B. If responsibility lies wholly with the party that received the Complaint, then that party is responsible for responding to the complaint or conducting the internal review of conduct;
 - C. If, after performing the investigation, the relevant party reasonably considers that the Complaint should be transferred to the other party, it will (after obtaining the consent of the customer) promptly transfer the Complaint and any further information obtained by the party from its preliminary investigation, to the other party, no later than 20 days after receipt of the original Complaint;
 - D. If the Complaint relates jointly to the conduct of both parties, then the party that received the Complaint will (after obtaining the consent of the Customer) notify the other party no later than 20 days after its receipt of the original Complaint and provide any further information obtained by that party from its preliminary investigation. The parties will then work together to coordinate a joint response from the parties within 60 days of receipt of the Complaint. This response may include an internal review of conduct.

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10. Intellectual Property

- 10.1 Each party will retain the Intellectual Property Rights in its Existing Material.
- 10.2 Each party agrees to grant to the other party a non-exclusive and royalty free licence to use, sublicense, adapt, or reproduce:
 - A. Their Existing Material; and
 - B. All methodologies, processes, techniques, ideas, concepts and know-how embodied in their Existing Material,
 - C. To the extent their Existing Material is required for use by the other party, solely in connection with provision of the Services.
- 10.3 Each party represents and warrants to the other party that it has all required rights and consents for its Existing Material to be used for the Services.
- 10.4 Intellectual Property Rights in all New Contract Material will vest in the Council.
- 10.5 The Council grants a perpetual, worldwide, irrevocable and royalty free licence to the Intellectual Property Rights in all New Contract Material to Service NSW for the purpose of performing the Services.
- 10.6 Subject to clauses 10.1 and 10.4, Service NSW will own all Intellectual Property Rights in the provision of the Services, including any solution and service design.

11. Performance Management and Continuous Improvement

- 11.1 Service NSW for Business does not require any provisions in relation to performance management
- 11.2 Service NSW for Business will work collaboratively with Council to ensure continuous improvement of its services to Council.
- 11.3 Any future extension of this Agreement by Service NSW with Council will specify the relevant performance management and continuous improvement provisions required.

12. Reporting

- 12.1 Service NSW for Business does not require any reporting arrangements
- 12.2 Any future arrangements that require reporting will be outlined in a Schedule to this Agreement.

13. Change Management

- 13.1 Each party will comply with the Change Management Process set out in Schedule 4.
- 13.2 The parties agree to complete a Change Request in the form set out in Schedule 4 to add to or vary the Services.

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- 14.1 The parties agree to comply with the Governance Framework.

15. Business Continuity and Disaster Recovery

- 15.1 Each party will maintain Business Continuity and Disaster Recovery Plan arrangements to ensure that each party is able to continue to perform its obligations under this Agreement, or where performance is not possible, resume performance as soon as reasonably practicable in the event of a Disaster.

16. Dispute Resolution

- 16.1 In the event of a dispute between the parties, a party will:
- Raise the dispute with the other party's Relationship Manager and use best efforts to resolve the dispute;
 - If the dispute is not resolved within a reasonable period, the Chief Executive of the Council or their delegate will meet with the Chief Executive Officer of Service NSW (or their delegate) with a view to resolving the dispute.
 - If the dispute is not resolved under clauses 16.1(b) within a reasonable period, attempt to resolve any dispute in accordance with the Premier's Memorandum M1997-26.
- 16.2 Despite the existence of a dispute, each party must continue to perform its obligations.

17. Termination

- 17.1 Either party may terminate this Agreement in whole or in part by giving the other party 90 days written notice or as otherwise agreed.
- 17.2 On notice of termination or where Service NSW is otherwise required to cease to perform some or all of the Program, the parties will work together in good faith to finalise and agree a transition out plan to facilitate smooth and orderly transition of the relevant Program to the Council or the Council's nominated third party. Where the parties cannot agree, the dispute resolution provisions in clause 16 will apply.
- 17.3 Upon termination, each party agrees to return all Data and property belonging to the other party within 30 days of the termination date and comply with the transition out plan agreed under clause 17.2.

18. Miscellaneous

- 18.1 Entire Agreement

This Agreement supersedes all previous Agreements, understandings, negotiations, representations and warranties and embodies the entire Agreement between the Parties about its subject matter.

- 18.2 Survival

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The following clauses survive termination or expiry of the Agreement: Clauses 4, 6, 7, 8, 9, 10, 14, 15, 16, 17, 18, 19 and any other clause which by its nature is intended to survive termination or expiry of the Agreement.

18.3 Notices

A notice under this Agreement must be in writing and delivered to the address or email address of the recipient party.

18.4 Variation

All variations to this Agreement and all consents, approvals and waivers made under this Agreement must be evidenced in writing and variations signed by both parties.

18.5 Waiver

If a party does not exercise (or delays in exercising) any of its rights, that failure or delay does not operate as a waiver of those rights.

10.6. Applicable law

The Agreement is governed by, and is to be construed in accordance with, the laws in force in NSW.

18.7 Counterparts

The Agreement may consist of a number of counterparts and if so, the counterparts taken together constitute one and the same instrument.

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19. Execution

Port Stephens Council has reviewed and accepts this Agreement

Signed for and on behalf of Port Stephens Council by its authorised signatory	Signed for and on behalf of Service NSW by its authorised signatory
Name:	Name:
Title:	Title:
Date:	Date:
Signature:	Signature:
Witness:	Witness:
Signature:	Signature:

ITEM 6 - ATTACHMENT 1 2021 PORT STEPHENS COUNCIL AND SERVICE NSW PARTNERSHIP AGREEMENT (MOU).**Schedules****Schedule 1 - Definitions**

In these Partnership Agreement, except where a contrary intention appears:

Business Continuity and Disaster Recovery Plan means a business continuity and disaster recovery plan which documents the back-up and response actions each of the parties will take to continue its obligations if a Disaster occurs;

Change Request means the request for a change to the scope of Services in the form set out in Schedule 4;

Commencement Date means the date of start of this Agreement.

Confidential Information of a party means any written or oral information of a technical, business or financial nature disclosed to the other party, including its employees or agents, by the disclosing Party (whether orally or in writing) whether before or after the Commencement Date, that:

- A. is by its nature confidential; or
- B. is designated as confidential; or
- C. the other party knows or ought to know is confidential,
- D. but does not include information which:
 - a. is or becomes public knowledge other than by breach of this Agreement; or
 - b. is in the lawful possession of the Party without restriction in relation to disclosure before the date of receipt of the information; or
 - c. is required to be disclosed by Law, government policy or legal process.

Contact Centre has the meaning set out in Schedule 2;

Continuous Improvement Principles have the meaning set out in Schedule 2;

Continuous Improvement Process has the meaning set out in Schedule 2;

Data means the data of each party and all data and information relating to their operations, Personnel, assets, customers and systems in whatever form that may exist, including Confidential Information;

Disaster means an event that causes, or is likely to cause, a material adverse effect on the provision of the Services that cannot be managed within the context of normal operating procedures including interruption, destruction or other loss of operational capacity;

Existing Material means any material that is developed prior to entering into a Partnership Agreement, or developed independently of a Partnership Agreement, and includes any enhancements and modifications to its Existing Material created as part of a Partnership Agreement;

HRIP Act means the *Health Records and Information Privacy Act 2002* (NSW);

Instrument of Delegation means the instruments of delegation (including its terms and conditions) made by the Council in relation to the Delegated Functions.

Intellectual Property Rights includes patent, knowhow, copyright, moral right, design, semi-conductor, or circuit layout rights, trademark, trade, business or company names or other proprietary rights and any rights to registration of such rights, whether created before or after the Commencement Date, in Australia or elsewhere;

Middle Office has the meaning set out in Schedule 2;

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Moral Rights means the right of integrity of authorship and the right not to have authorship falsely attributed, as confined by the *Copyright Act 1968* (Cth) and the rights of similar nature anywhere in the world, whether in existence before or after the Commencement Date;

New Contract Material means new data created, other than the solution or service design;

Partnership Agreement means these terms and conditions and includes Schedules 1, 2, 3 and 4.

Personal Information has the meaning given to it in the Privacy Laws, as amended from time to time;

Personnel means the person or persons employed or otherwise contracted by either party under this Agreement, as the context requires;

PPIP Act means the *Privacy and Personal Information Protection Act 1998* (NSW);

Privacy Law means any law that applies to either or both of the parties which affect privacy or any personal information or any health information (including its collection, storage, use or processing) including:

- A. the PPIP Act; and
- B. the HRIP Act.

Program means the Easy to do Business program;

Quarterly Forecast has the meaning set out in Schedule 2;

Relationship Manager means the nominated relationship managers of either party, as set out in the Service Agreement, or as otherwise nominated by a party from time to time;

Service Act means the *Service NSW (One-stop Access to Government Services) Act 2013* (NSW);

Service Centre has the meaning set out in Schedule 2;

Service NSW Standard Operating Conditions means the standard operating conditions met by Service NSW in the usual course of its performance of the Services set out in Schedule 2;

Subcontractor means a third party to which Service NSW has subcontracted the performance or supply of any Services;

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Schedule 2

1. Service NSW Standard Operating Conditions

In addition to the Partnership Agreement this section covers the standard omnichannel service inclusions.

1.1. Service Centre

Similar services as those available at Service Centres may be offered through Mobile Service Centres. The Mobile Service Centre timetable is published regularly on the Service NSW website.

Inclusion	Description
Concierge and digital assisted services	A Service NSW Concierge will greet and direct customers to the appropriate channel and dispense a ticket where applicable. If the transaction can be completed online, a Digital Service Representative will assist the customer to complete the transaction
Customer sentiment surveys	Before leaving the centre, customers will be offered the option of leaving feedback via a digital terminal

1.2. Contact Centre

Similar services (to that of phone-based) may be offered through a web chat feature accessible via the Service NSW website.

Inclusion	Description
Virtual hold call back system	During high volume periods, customers will be offered the option of leaving their details with an Interactive Voice Response (IVR) auto attendant. Customers can hang up while holding their place in the queue. Their call will be returned by the next available operator
Inbound number	Service NSW will answer all inbound enquiries on 13 77 88 as 'Service NSW'
Call coding	A Customer Service Representative will record the customer's reason for calls and the outcome
Customer sentiment surveys	Once the call is complete, customers will be offered the option of leaving feedback via an automated IVR system

1.3. Middle Office

Inclusion	Description
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Enquiry triage	Service NSW will triage enquiries received to info@service.nsw.gov.au or via Service NSW website 'Contact Us' page and <ul style="list-style-type: none"> - Resolve these enquiries or; - Refer it to the appropriate business area at the Council
Enquiry coding	A Customer Service Representative will record the customer's reason for enquiring and the outcome

1.4. Service NSW Website and Mobile App

Inclusion	Description
Scheduled maintenance and planned outages	Service NSW will conduct regularly scheduled maintenance of the website and mobile app. 10 business days of notice will be provided regarding outages from planned and scheduled maintenance Maintenance activities with negligible impact or outage, such as enhancements to optimise for cybersecurity or performance, may occur without notification to the Council

1.5. Service NSW for Business

Service NSW for Business provides a multi-channel service including digital, phone and face-to-face services for metro and regional businesses in NSW and develops relationships with councils and business associations to promote the offering to local businesses.

Inclusion	Description
Relationship management	Business Customer Service staff initiate and maintain relationships with councils and business associations to promote awareness and use of the service offering by such stakeholders and their local business community. It may include, but is not limited to, information sharing, regular liaison at events and stakeholder premises and issue of surveys.
Scheduled Maintenance and Planned Outages	Digital products controlled by Service NSW for Business will be regularly updated, upgraded and maintained without any outages.

1.6. Training

Service NSW will provide appropriately trained Personnel to deliver the Services.

1.7. Language

Service NSW will provide services in English and may arrange translation and interpreter services for customers from non-English speaking backgrounds if required.

ITEM 6 - ATTACHMENT 1 2021 PORT STEPHENS COUNCIL AND SERVICE NSW PARTNERSHIP AGREEMENT (MOU).**1.8. Branding**

Unless otherwise set out in the Partnership Agreement, Service NSW channels are singularly branded. Marketing communication is limited to Service NSW led or co-led campaigns and programs.

1.9. Contractors and Agents

Service NSW may use contractors and agents in connection with the delivery of Services. Such agents and contractors are approved persons under Part 2 Section 12 of the Service Act.

1.10. Out of Scope Services

Any item, service or deliverable that is not specified in a Partnership Agreement is deemed to be out of scope for Service NSW.

2. Operational Framework

Service NSW operational framework outlines how operations are managed on a day-to-day basis.

Operational Support	Description
Knowledge Management	Service NSW creates and maintains support material (knowledge articles) for serving customers. These will be sent to the Council for endorsement of content accuracy bi-annually
Complaints Management	Service NSW will record complaints and its supporting information unless resolved at the outset. Service NSW will contact the Council where assistance is required
Issues Management	Issues relating to existing products and services should be raised via partnerships@service.nsw.gov.au or directly with the Relationship Manager The Relationship Manager will assess the issue and facilitate a resolution within Service NSW, providing regular updates
Quality control framework/ compliance	Service NSW has a quality control framework that governs transactional activities in line with risk assessment at the time of onboarding The framework includes: <ul style="list-style-type: none"> - Regular review of contact centre calls, including being assessed against procedure and process used by the agent during the call - Daily quality checks of transactions undertaken by the service centre - Quarterly compliance reviews and certifications provided by all service delivery channels

2.1. IT Operations & Support

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Service NSW runs a 24/7, 365 days a year service desk. Unplanned interruptions or degradations in quality of service should be raised to the Service NSW Service Desk on 1300 697 679 (option 2) or servicedesk@service.nsw.gov.au

Incident response times in our production environment are prioritised based upon urgency and impact, with associated response and resolution times.

Priority Code	Service Level Target Response/Resolution Time
P1 - Critical	Response: Immediate response, action/update within 15 minutes Resolution: 2 hours
P2 - High	Response: Immediate response, action/update within 30 minutes Resolution: 4 hours
P3 - Medium	Response: 8 hours Target Resolution: 10 working days
P4 - Low	Response: Email notification of call being logged within 2 days. Response by email or phone within 2 working days Target Resolution: 20 working days

Where vendors or other government platforms are involved, Service NSW utilises a best practice vendor governance framework for service level Agreements and for priority 1 and 2 incidents.

2.2. System and Security Maintenance

Service NSW complies with the NSW Government Cyber Security Policy and operates an information security management system that is certified against ISO 27001. These engagement Terms do not extend the certification scope to the Council's specific activities.

3. Customer Payments

Service NSW will collect payments from customers for transactions set out in the Service Agreement. Cash, cheque, money order, credit or debit card may be accepted and merchant fees plus GST will be recovered.

Service NSW will provide remittances and reconciliation files to the Council which include:

- A. Credit T+2 value for cash, cheques* and bank card payments
- B. Credit T+2 value for AMEX payments
- C. Debit any cheques dishonoured
- D. Debit any card payment chargebacks
- E. Debit any refunds processed on behalf of the Council

Cheque payments received over \$50,000 will be remitted back to the Council once the funds clear the Service NSW remitting bank account.

4. Business Continuity and Disaster Recovery

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Service NSW will maintain an Enterprise Risk Management Framework focused on managing risks to Service NSW, including mitigation of the likelihood and impact of an adverse event occurring. As a function of risk management, business continuity management will enable Service NSW to minimise disruptive risks and restore and recover its business-critical services within acceptable predefined timeframes should an adverse event or other major business disruption occur.

Recovery and timeframes may be impacted when events or disruptions are related to dependencies on partner Agencies. The Parties will agree on Recovery Point Objectives and Recovery Time Objectives and associated charges prior to designing the system and will periodically review these objectives.

All systems and technology provided by Service NSW internally and through third-party vendors, operate through multiple data centres to achieve high availability. Service NSW systems are architected, where practicable and possible, to ensure continuity of service in the event of a data centre disruption or outage.

Definitions

Recovery Point Objectives means the age of files that must be recovered from backup storage for normal operations to resume if a computer, system, or network goes down as a result of a hardware, program, or communications failure.

Recovery Time Objectives means the targeted duration of time and a service level within which a business process must be restored after a disaster (or disruption) in order to avoid unacceptable consequences associated with a break in business continuity.

5. Continuous Improvement

Service NSW regularly reviews improvement ideas from employees and customers. We will provide you with any ideas relevant to your agency for consideration.

'Continuous Improvement' refers to identifying a process, system or policy opportunities that will deliver a benefit for our people, our customers or the NSW government. These improvements may be delivered in house where possible or by engaging our partnering agencies where further input or decisions are required under policy or legislation. A Continuous Improvement:

- A. Puts the customer first
- B. Makes the customer service job easier
- C. Improves a step in a process
- D. Changes the way a task is completed so that it doesn't take as long
- E. Reduces handling time and is cost effective
- F. Allows others to benefit from best practices
- G. Allows us to do things better locally, regionally or organisation-wide
- H. Is a low-investment process change and not a policy change
- I. Improves accountability within the various stages of the process
- J. Removes steps that don't add any value to a process

Service NSW will consider several factors such as cost to implement, cost savings, customer experience, team member experience and operational efficiency in prioritising continuous improvements.

5.1. Continuous Improvement Process

The parties will identify new continuous improvement initiatives on an annual basis, with a 6-monthly check-in on ongoing continuous improvement initiatives.

When establishing a new continuous improvement initiative, the parties will classify the initiative based on

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whether it can be implemented as:

- A. part of the ongoing 'business as usual' services (cost and resourcing to be absorbed by Service NSW;
or
- B. a new project initiative (cost and resourcing to be agreed by the parties).

A prioritisation process will be agreed upon between the parties to prioritise initiatives (for Service NSW, this will be performed by the Partnerships team).

The Council may be required to effect policy, system or regulatory changes to assist in delivering the service process improvement, as agreed with Service NSW. Where a review of Council policy, system or regulatory changes is requested by Service NSW from the Council, these should be conducted within timeframes agreed between the respective Relationship Managers.

ITEM 6 - ATTACHMENT 1 2021 PORT STEPHENS COUNCIL AND SERVICE NSW PARTNERSHIP AGREEMENT (MOU).**Schedule 3 – Privacy and Data Security****(a) General**

- (i) Service NSW may collect, use, disclose, store and retain personal information when exercising functions for the Council:
- (ii) Where Service NSW exercises functions for the Council, Service NSW can share information it obtains with the Council without separately requesting the customer's consent. Service NSW can also share the information it obtains with any person that the Council is authorised or required to disclose the information to in accordance with the Service Act.

(b) Access to Agency Systems

- (i) The Parties agree that Service NSW will not have access to the Council's information system.

(c) Collection of information

- (i) Service NSW may incidentally collect Personal Information via call recordings in the course of answering queries on behalf of Council or referring customers to Council. Personal Information collected may include: full name, address, contact number or email address.
- (ii) Service NSW will take reasonable steps to ensure that the Personal or Health Information it collects on behalf of the Council is, relevant, accurate, up-to-date and complete.
- (iii) Service NSW will provide a privacy collection notice to customers whenever it collects their information.
- (iv) If Service NSW collects personal information for its own internal purposes, when exercising functions for the Council, it will ensure that the privacy collection notice meets the requirements of section 10 of the *PIIP Act* in light of section 15(3) of the *Service Act*.
- (v) The notice will address each of the matters that a privacy collection notice is, by law, required to address. Service NSW will develop the content of the notice in consultation with Council.

(d) Internal records maintained by Service NSW

- (i) Under the *Service Act*, Service NSW is permitted to collect, maintain and use the following records for its internal administrative purposes, including for the purposes of its interactions with customers for whom functions are exercised:
 - Details of transactions between customers and Service NSW
 - The preferences of customers for transacting matters with Service NSW and Port Stephens Council, and
 - Other information about customers.
- (ii) Service NSW collects, maintains and uses the following information for its internal administrative purposes:
 - Details of transactions between customers and Service NSW
 - The preferences of customers for transacting matters with Service NSW and Port Stephens Council and
 - Other information about customers.

ITEM 6 - ATTACHMENT 1 2021 PORT STEPHENS COUNCIL AND SERVICE NSW PARTNERSHIP AGREEMENT (MOU).**(e) Use of information**

- (i) Service NSW can use information in accordance with the *Service Act*, PPIP Act and HRIP Act.
- (ii) Service NSW uses Personal Information for the purposes of assisting customers in directing queries to Council, training and quality purposes.

(f) Disclosure

- (i) Service NSW can disclose information in accordance with the *Service Act*, PPIP Act and HRIP Act.
- (ii) Where Service NSW performs a transaction for a customer, when exercising functions for the Council, it will ask the customer for consent before sharing that information with a different agency,

(g) Retention

- (i). Personal Information collected via call recordings is stored in Genesys. The length of data retention will be directly related to the purpose for which it was collected and retained. Data is maintained for the minimum period required. Call recordings are available for 3 months and subsequently archived. (h)

(h) Data Security

- (i). Personal Information stored in Genesys follows a comprehensive User Access Matrix controlled by Government Technology Platforms Virtual Contact Centre Team. Role based access to the system is granted to users at the minimum level required to perform their duties and to protect against unauthorised access, use, modification or disclosure. Access vi SSO with dfsi.okta.com. The Genesys PureCloud environment is whitelisted and only users on the corporate network or VPN can access the platform. The User Access Matrix is reviewed monthly and a detailed review is conducted every 6 months. The User Access Matrix is a comprehensive document that shows details such as the time of last login, date the account was disabled, date of termination, date of extension, date of role review, name of the reviewer.

(i) Privacy Management plans

The parties agree to update and periodically review their privacy management plans or other relevant policy documents so that any person can ascertain whether Service NSW or the Council holds personal information relating to that person and if so, the nature of the information, the main purposes for which it is used and the person's entitlement to access the information, in relation to the services covered by this Agreement.

(j) Access to and amendment of Personal Information

- (i) Service NSW agrees that it will provide any individual who requests it with access to their own personal information without excessive delay and without any expense, in relation to information it holds as a result of exercising functions for the Council.

(k) Privacy Officer

The parties have nominated a Privacy Officer who is the point of contact for dealing with complaints, applications for internal reviews, data breaches, employee education and other privacy matters.

**ITEM 6 - ATTACHMENT 1 2021 PORT STEPHENS COUNCIL AND SERVICE
NSW PARTNERSHIP AGREEMENT (MOU).**

Privacy Officers can be contacted as follows:

Service NSW:

Privacy Officer

Service NSW

2-24 Rawson Place, Sydney NSW 2000

Phone: 13 77 88

Email: privacy@service.nsw.gov.au

Port Stephens Council:

Privacy Officer

Port Stephens Council

PO Box 42

Raymond Terrace NSW 2324

Ph: 02 4988 0255

Email: council@portstephens.nsw.gov.au

ITEM 6 - ATTACHMENT 1 2021 PORT STEPHENS COUNCIL AND SERVICE NSW PARTNERSHIP AGREEMENT (MOU).**Schedule 4- Change Management****1. Change Management Process**

Change is defined as any alteration to services, process, technology or product. Changes may be initiated by Service NSW or the Council. Where a change to the Services is requested by a party, set out below is the following process:

- 1.1. The party requesting the change will notify the other party's Relationship Manager as soon as possible;
- 1.2. The Relationship Managers will meet within 5 days to discuss the requested change;
- 1.3. The Relationship Managers will work collaboratively to conduct a high-level change assessment of the change, and agree and draft a Change Request, considering the following factors:
 - A. Current state and desired future state outcomes;
 - B. Impacts on customers and both parties informed by end-to-end customer journey;
 - C. Additional resource effort; potential cost and timing of implementation;
 - D. Implementation and testing requirements;
 - E. Legislation/policy that may be required;
 - F. Whether variation to the Partnership Agreement will be required; and
 - G. Continuous Improvement Principles

- 1.4. The parties will sign the Change Request, which will be incorporated into this Agreement.

Where a change relates to Service NSW's IT systems, the Council will notify Service NSW within a reasonable period to outline the proposed change and requested timeframes. Service NSW will consider the change and advise whether an increased cost to implement the change is required.

Service NSW will assess the results and implement corrective action to ensure sustainability of the change to the Services. Changes to the Services will be reported on in the monthly management meeting between Relationship Managers.

2. Change Request Template

This Change Request is created in accordance with the Partnership Agreement	
Date of Change Request	
Originator of Change Request	
Proposed Implementation Date	
Cost	<Cost>
Summary and scope:	
Service NSW responsibilities:	

29/3/21

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**ITEM 6 - ATTACHMENT 1 2021 PORT STEPHENS COUNCIL AND SERVICE
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Council responsibilities:
Change plan:
Change impact (Including the effect on service levels):
Assumptions and exclusions:
List of documents forming part of this change request:
Clauses affected by this change request:



Easy to do
Business

Memorandum of
Understanding



ITEM 6 - ATTACHMENT 2 2018 PORT STEPHENS COUNCIL AND SERVICE NSW PARTNERSHIP AGREEMENT (MOU).



Memorandum of Understanding

1. MOU Details

Duration of MOU	
Commencement Date	1 MAY 2018
Service NSW Details	
Address	Level 20, 2-24 Rawson Place Sydney NSW 2000
ABN	37 552 837 401
Service NSW Representative	
Phone	
Email	
Port Stephens Council Details	
Address	116 Adelaide Street, Raymond Terrace NSW 2324
ABN	16744377876
Council Representative	Stephen Crowe, Manager Communications
Phone	02 4988 0284
Email	Stephen.crowe@portstephens.nsw.gov.au

2. Parties

This MOU is made between:

The State of New South Wales represented by Service NSW, ABN 37 552 837 401, whose address is Level 20, 2-24 Rawson Place, Sydney NSW 2000 (SNSW);

and

Port Stephens Council, ABN 16744377876, of 116 Adelaide Street, Raymond Terrace NSW 2324 (The Council).

3. Background

1. This MOU sets out the agreed understanding of the parties and basis upon which the arrangement is entered into. The MOU is not legally binding.
2. Easy to do Business is a joint initiative of the Department of Premier and Cabinet, the Customer

ITEM 6 - ATTACHMENT 2 2018 PORT STEPHENS COUNCIL AND SERVICE NSW PARTNERSHIP AGREEMENT (MOU).

Service Commissioner, the Office of the NSW Small Business Commissioner and SNSW to make NSW the easiest state to do business.

3. SNSW has partnered with Port Stephens Council to promote and deliver the Easy to do Business program to small business across New South Wales.
4. The purpose of this collaboration is to:
 - 4.1 help business owners open and grow a café, small bar or restaurant by providing a single online digital solution and personalised support, and
 - 4.2 make it easier to set up a business in New South Wales.
5. The Easy to do Business program is a free service for Port Stephens Council and customers.
6. The Easy to do Business program will expand to include other industries and the entire small business lifecycle, in the future.

4. **Term**

- 4.1 This MOU commences on the Commencement Date specified in MOU Details and will continue unless terminated by either party.

5. **Termination**

Either Party may terminate this MOU by giving the other Party ninety (90) days' written notice.

6. **SNSW's obligations**

SNSW will:

- (a) ensure the Business Concierge will be the customer's single point of contact for queries relating to opening or growing their business
- (b) within two working days, call the customer to establish and understand the customer's ambition with respect to their business and outline how the program may be able to help
- (c) provide tailored information specific to each customer's needs
- (d) address customer queries relevant to any stage of the end-to-end journey
- (e) provide to the customer a detailed case management plan outlining all licences and approvals required to open or grow their business and the suggested pathway to completion
- (f) where a customer query cannot be immediately addressed, make contact with Council or the relevant federal or state government agency to source the additional information required and respond back to the customer as promptly as possible
- (g) escalate customer queries to the Council specialist team wherever questions become advice-based or highly complex
- (h) guide and support the customer through the online licence application processes
- (i) review, verify and validate customer applications against agreed criteria so as to improve the quality of applications submitted to Council.

**ITEM 6 - ATTACHMENT 2 2018 PORT STEPHENS COUNCIL AND SERVICE
NSW PARTNERSHIP AGREEMENT (MOU).**



7. Council's obligations

The Council will:

- (a) refer eligible customers to EtdB
- (b) provide guidance and information to the EtdB team to assist it to respond to customer queries, as required
- (c) communicate application outcomes to the customer and the EtdB team
- (d) provide updates on changes in the local area that may impact EtdB
- (e) identify local events and organisations that are opportunities to inform customers about EtdB
- (f) provide feedback on the effectiveness and performance of EtdB in the local area.

8. Review of MOU

The Parties agree to meet to discuss the terms and conditions of this MOU and to consider whether any variations or amendments need to be made.

9. Variations

This MOU may be varied by agreement of the Parties in writing.

10. Relationship

10.1 Cooperation

In carrying out its respective obligations under this MOU, the Parties agree to co-operate in a timely and effective manner with each other and to act in good faith.

10.2 Meetings

The SNSW Representative and the Council Representative agree to meet and discuss any matters relating to this MOU.

10.3 Issues

Each Party will keep the other informed in writing as to any issues arising and keep an ongoing written record of the status of each issue and when and how it was resolved.

11. Representatives of the Parties

11.1 Change of Representatives

- (a) The Parties should inform the other party about any change of Representative from that specified in MOU Details.

11.2 Power and authority of Representatives

The SNSW Representative and the Council's Representative:

ITEM 6 - ATTACHMENT 2 2018 PORT STEPHENS COUNCIL AND SERVICE NSW PARTNERSHIP AGREEMENT (MOU).



- (a) are the agent of the respective Party for the purposes of doing anything to be under this MOU; and
- (b) have the authority to make and give, or accept, on the Party's behalf, any approvals, acceptances, directions, notice and other decisions that the Party may make and give, or accept, under this MOU.

12. Resolution of Disputes

- (a) Both Parties agree to attempt to act in good faith in carrying out their obligations under this MOU and to attempt to resolve any Dispute in good faith.
- (b) In the event of any dispute between the Parties under or in connection with this MOU, the Parties will:
 - (i) within seven days (or such other period agreed between the parties) of a Party providing notice of a dispute to the other Party, ensure that the SNSW Representative and Council Representative meet with a view to resolving the dispute; then
 - (ii) if the dispute is not resolved, within 14 days (or such other period agreed between the Parties) of that meeting, the Chief Executive of the Council (or delegate) will meet with the Chief Executive Officer of Service NSW (or delegate) with a view to resolving the dispute.
- (c) Any Disputes arising out of or in connection with the MOU which cannot be settled by negotiation between the Parties under clause 12 (b) shall be referred to mediation via the Resolution Institute - <https://www.iama.org.au>.
- (d) If a dispute arises from, out of, or in connection with this MOU, the Parties must attempt to resolve it in accordance with the Premier's Memorandum M1997 – 26 Litigation Involving Government Authorities.

13. Notices

13.1 General

Any notices under this MOU must be given by an Authorised Representative of the Parties.

13.2 Change of address

Each Party must notify the other Party in writing of any changes to notice details specified in MOU Details.

14. Non-binding Memorandum of Understanding

- (a) This MOU is not intended to create legally enforceable rights or obligations for either Party.
- (b) This MOU merely constitutes a statement of the mutual intentions of the Parties with respect to its contents and each Party represents to the other that:
 - (i) no reliance will be placed on it;
 - (ii) it does not constitute an obligation binding either side;

ITEM 6 - ATTACHMENT 2 2018 PORT STEPHENS COUNCIL AND SERVICE
NSW PARTNERSHIP AGREEMENT (MOU).



- (iii) it does not contain all matter upon which agreement must be reached in order for an agreement to be consummated;
- (iv) it creates no rights in favour of either party; and
- (v) for the avoidance of doubt and without limiting the above in any way, this MOU imposes no commitment on any person to proceed with an agreement.

15. Miscellaneous

15.1 Legal costs

Subject to any express provision in this MOU to the contrary, each Party must bear its own legal and other costs and expenses relating directly or indirectly to the preparation of, and performance of its obligations under this MOU.

15.2 Amendment

All amendments to this MOU and all consents, approvals, waivers and agreements made under this MOU must be evidenced in writing.

Signed for and on behalf of SNSW

Name: [Signature]
Position: [Signature]

Signature: [Signature]
Date: 17/4/18

Signed for and on behalf of the Council

Name: Wayne Wallis
Position: General Manager

Signature: [Signature]
Date: 13/4/18

ITEM NO. 7**FILE NO: 21/249342
EDRMS NO: PSC2019-4757****SHADE SAIL AT ROBINSON RESERVE, ANNA BAY****REPORT OF: JOHN MARETICH - ASSET SECTION MANAGER
GROUP: FACILITIES & SERVICES**

RECOMMENDATION IS THAT COUNCIL:

- 1) Notes the information provided within this report relevant to the construction of a shade sail over the playground at Robinson Reserve.
 - 2) If a source of funds cannot be identified, resolves an action for Council to identify future funding opportunities.
-

**ORDINARY COUNCIL MEETING - 12 OCTOBER 2021
MOTION**

269	Councillor Chris Doohan Councillor Giacomo Arnott It was resolved that Council: <ol style="list-style-type: none">1) Notes the information provided within this report relevant to the construction of a shade sail over the playground at Robinson Reserve.2) If a source of funds cannot be identified, resolves an action for Council to identify future funding opportunities.3) The shade sail over the playground be included in the Works Plus Program.
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The motion was carried.

BACKGROUND

The purpose of this report is to investigate the feasibility of a shade sail to be constructed over the playground in Robinson Reserve, Anna Bay in response to the Council resolution (Minute No. 223) at the Council meeting of 10 August 2021 **(ATTACHMENT 1)**.

Robinson Reserve is located within the Birubi Point Aboriginal Place and adjacent to Birubi Beach, Anna Bay. As part of the Robinson Reserve upgrade project, a shade sail over the playground was investigated. However given the funding limitations, a shade sail was not pursued.

To provide background on the decision to not proceed with the shade sail as part of the Robinson Reserve upgrade, the following information is provided.

- Robinson Reserve is an exposed coastal location and is subject to high wind loads of up to 150km/h.
- The site is located in a high water table area – receiving regular inundation from the sea and impacted by its function as a stormwater detention area.
- Robinson Reserve has a Class P soil profile (sandy soil).
- The site is located within the Birubi Point Aboriginal Place. Concerns were raised that the height of infrastructure improvements may have an impact on cultural and visual values.

Taking these matters into account, staff sought advice from suitably qualified suppliers to understand the potential costs and design considerations involved in constructing a shade sail in such dynamic coastal conditions. The shade sail can be engineered, but to ensure the structure is secure and withstands these coastal conditions, the following information was provided.

- Construction of a pad footing for strength and weight to withstand sandy soil conditions and periodic inundation due to the high water table.
- Total depth of excavation of pad footing of 800mm, with 200-300mm of cover.
- Hot dip galvanized posts for corrosion protection.
- Engineered footings and fittings for shade sail structure.
- Clamp plates and chain for holding the sail to the post.
- High grade commercial shade sail (Monotec 370 or Commercial Heavy 430).

Based on advice from the supplier and the experience of staff from other shade sail construction projects, an estimated cost for a shade sail in this location is \$174,000 including approvals and project management. Actual costs would be subject to further detailed investigations and market conditions at the time of construction.

The addition of a shade sail to Robinson Reserve is not currently identified within Council's adopted 10 year capital works program. If this was to be placed on the Capital Works Program, a funding source will need to be identified.

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2018-2022
Infrastructure and Facilities	Plan civil and community infrastructure to support the community

FINANCIAL/RESOURCE IMPLICATIONS

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	No	\$174,000	There is currently no budget allocation for this project, a funding source to be identified.
Reserve Funds	No		
Developer Contributions (\$7.11)	No		
External Grants	No		
Other	No		

LEGAL, POLICY AND RISK IMPLICATIONS

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
There is a risk that installing a shade sail in such an exposed location would incur a financial and maintenance liability for Council due to potential asset damage	Medium	Design and construct the asset using suitably qualified contractors, best practice construction techniques and suitable materials for the environment should the project be supported.	No
There is a risk that the height of the shade structure may have cultural and visual impacts upon the Aboriginal Place	High	Further consultation with the Registered Aboriginal Parties associated with the Birubi Point Aboriginal Place would be required should the project be supported.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The recent upgrades to Robinson Reserve have significantly increased the community value of the space. Further infrastructure improvements for the benefit of users would only further enhance the spaces community value. However, given the cultural sensitivities of the site and the exposed location, further project investigation and consultation would be required to balance the competing values attributed to Robinson Reserve and the surrounding area.

CONSULTATION

Consultation with key stakeholders has been undertaken by the Assets Section to investigate the feasibility for the installation of a shade sail over the playground at Robinson Reserve.

Internal

Capital Works – to provide details of designs and costs based on their experience with previous projects.

External

Suitably qualified supplier – to provide indicative costs and advice on design considerations specific to the location.

OPTIONS

- 1) Accept the recommendations and identify a funding source to deliver the project.
- 2) Amend the recommendations to note the information provided and resolve an action for staff to identify suitable grant opportunities to deliver the project.

ATTACHMENTS

- 1) 10 August 2021 - Ordinary Council Minutes - Minute No 223 - Shade Sail at Robinson Reserve, Anna Bay.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

**ITEM 7 - ATTACHMENT 1 10 AUGUST 2021 - ORDINARY COUNCIL MINUTES
- MINUTE NO 223 - SHADE SAIL AT ROBINSON RESERVE, ANNA BAY.****MINUTES ORDINARY COUNCIL - 10 AUGUST 2021****NOTICE OF MOTION****ITEM NO. 5****FILE NO: 21/206356****EDRMS NO: PSC2017-00019****SHADE SAIL AT ROBINSON RESERVE, ANNA BAY****COUNCILLOR: GIACOMO ARNOTT****THAT COUNCIL:**

- 1) Notes the new skate park and playground at Robinson Reserve and the benefits it's bringing to the local community.
- 2) Notes that there is no shade sail over the playground to protect users of the playground from the elements.
- 3) Requests Council staff to prepare a report outlining the costs and specifications of a shade sail, to be installed as soon as possible heading into the warmer months.

**ORDINARY COUNCIL MEETING - 10 AUGUST 2021
MOTION**

223	Councillor Giacomo Arnott Councillor Sarah Smith It was resolved that Council: <ol style="list-style-type: none">1) Notes the new skate park and playground at Robinson Reserve and the benefits it's bringing to the local community.2) Notes that there is no shade sail over the playground to protect users of the playground from the elements.3) Requests General Manager prepare a report outlining the costs and specifications of a shade sail, to be installed as soon as possible heading into the warmer months.
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The motion was carried.

**ITEM 7 - ATTACHMENT 1 10 AUGUST 2021 - ORDINARY COUNCIL MINUTES
- MINUTE NO 223 - SHADE SAIL AT ROBINSON RESERVE, ANNA BAY.****MINUTES ORDINARY COUNCIL - 10 AUGUST 2021****BACKGROUND REPORT OF: ANDREW BEHRENS – ACTING ASSETS SECTION
MANAGER****BACKGROUND**

Port Stephens Council with funding support from the NSW State Government completed the upgrade of Robinson Reserve, Anna Bay in December 2020.

The upgrades have proved to be a great success with the provision of:

- a new play space with climbing equipment, swings and nature play.
- outdoor fitness equipment.
- a new skate park.
- a new public toilet block.
- a new picnic shelter with BBQ facilities.
- an open lawn area for picnics, informal sports and events.
- beach showers.
- wayfinding and information signage, and
- a viewing area on the headland.

These improvements have not only increased public interest in this location, but have also attracted commercial and event interest in the site. This further confirms that the project has delivered a high level of recreational value to the Port Stephens community.

The prospect of a shade sail was investigated as part of the early design process. Due to its exposed location, Birubi Point is subject to high winds and a typical shade sail would not be suitable to deal with these conditions. More heavily engineered shade options were investigated however these were considered to significantly impact the available project budget.

Robinson Reserve is also located within the Birubi Point Aboriginal Place. As part of the project planning, due diligence was completed with registered Aboriginal parties to seek input and guidance on how Council could develop and improve this sensitive location. Issues were raised with excavation requirements for shade footings as well as the height of a shade structure as these were considered to have cultural and visual impacts upon the Aboriginal Place.

This led to the decision to provide shade through the planting of trees in strategic locations throughout the design. Successfully growing large trees in Robinson Reserve is a challenge for a variety of reasons including the coastal location, potential for high winds, high salinity and sandy soil. The option of procuring and transplanting mature trees into this location was considered but not pursued due to low likelihood of a mature tree surviving the transplantation process. The species of trees that were selected, when at their most mature, are expected to provide shade to the playground.

**ITEM 7 - ATTACHMENT 1 10 AUGUST 2021 - ORDINARY COUNCIL MINUTES
- MINUTE NO 223 - SHADE SAIL AT ROBINSON RESERVE, ANNA BAY.****MINUTES ORDINARY COUNCIL - 10 AUGUST 2021**

Should Council resolve to support this Notice of Motion, staff would be able to further investigate the feasibility of installing a shade sail at Robinson Reserve along with associated costs. Further consultation would be required with the registered Aboriginal parties associated with the Birubi Point Aboriginal Place. It is also noted that there is no funding currently allocated for these works as part of Council's 10 year forward works program.

FINANCIAL/RESOURCE IMPLICATIONS

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

ATTACHMENTS

Nil.

MINUTES ORDINARY COUNCIL - 12 OCTOBER 2021

Councillor Sarah Smith left the meeting at 7:09pm.
Councillor Glen Dunkley left the meeting at 7:09pm.

ITEM NO. 8

FILE NO: 21/258302
EDRMS NO: PSC2005-3699

CHANGE TO LEASE ARRANGEMENTS FOR FINGAL BAY SURF LIFE SAVING CLUB AND COMMERCIAL TENANCIES

REPORT OF: TAMMY GUTSCHE - COMMUNITY SERVICES SECTION
MANAGER
GROUP: FACILITIES & SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Approve the issue of sub leases of Fingal Bay Surf Club to Fingal Beach Surf Life Saving Club, Saltwater Restaurant and Longboat Café.
 - 2) Endorse public exhibition of the proposed changes for 28 days in accordance with the Local Government Act 1993.
 - 3) Authorise the Mayor and General Manager to sign and affix the Seal of the Council to the sub lease documentation.
-

ORDINARY COUNCIL MEETING - 12 OCTOBER 2021 MOTION

270	<p>Councillor Paul Le Mottee Councillor Chris Doohan</p> <p>It was resolved that Council:</p> <ol style="list-style-type: none">1) Approve the issue of sub leases of Fingal Bay Surf Club to Fingal Beach Surf Life Saving Club, Saltwater Restaurant and Longboat Café.2) Endorse public exhibition of the proposed changes for 28 days in accordance with the Local Government Act 1993.3) Authorise the Mayor and General Manager to sign and affix the Seal of the Council to the sub lease documentation.
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The motion was carried.

BACKGROUND

The purpose of this report is to seek Council approval for proposed changes to the management and operation of the Fingal Bay Surf Club and Commercial tenancies.

Port Stephens Council (PSC) is the perpetual lessee of the special lease over Crown land at 3 Marine Drive, Fingal Bay (Lot 371 DP 753204) known as Fingal Beach Surf Life Saving Club.

The land includes the Fingal Beach Surf Club, a caretaker cottage/lifeguard building, restaurant and café. Presently, Port Stephens Council sub leases the land to the Fingal Beach Surf Life Saving Club (FBSLSC) which in turn sub-sub lease to Saltwater Restaurant and Longboat Café.

The full details and history of the current lease arrangement are documented in the 24 July 2012 Ordinary Council Minutes, Minute No 216 (**ATTACHMENT 1**).

Since 2018, Council has been in negotiations with Fingal Beach Surf Life Saving Club to amend the lease arrangements for the surf club and to reassign the management of the 2 commercial sub-sub leases away from the Surf Club and back to PSC. Negotiation and agreement for the proposed change was originally supported by an internal review and formal correspondence between both parties in 2018. The surf club and council both agreed that, council having specialist property skills were best placed to manage the commercial sub leases into the future, leaving the surf club to directly focus on running the surf clubs core operations.

Under this arrangement PSC will sub lease directly to FBSLSC, Salt Water Restaurant and the Long Boat Café. This approach will provide certainty for all parties moving forward and is fully supported by FBSLSC and the commercial tenants.

Under the current lease arrangements both commercial leases for Salt Water Restaurant and Longboat Café have a 5 year sub-sub lease with the Surf Club expiring on the 30 December 2022. Saltwater Restaurant has a 5 year option period with Longboat Café having no option period. The Fingal Beach Surf Club has a 10 year sub lease with PSC expiring on the 31 December 2022 with an additional 10 year option. Both the Surf Club and Salt Water Restaurants options have not been exercised at this stage.

Under the proposed arrangement PSC are asking for all 3 current sub leases to be surrendered to create 3 new stand-alone sub leases. This will create consistency and in an act of good faith, it is proposed to offer both Saltwater Restaurant and Longboat Café a 5 year sub lease plus 5 year option term, with the Surf Club to be offered a new 10 year sub lease with a 10 year option as per the current lease arrangements.

In addition, to create equity of trade between both Salt Water Restaurant and Long Boat Café, Council is proposing that trading hours be amended to offer breakfast lunch and dinner trade to both parties. Under current arrangements Saltwater Restaurant offer lunch and dinner trade with Longboat Café offering breakfast trade only.

MINUTES ORDINARY COUNCIL - 12 OCTOBER 2021

Whilst Council holds the Special Lease in perpetuity from Crown Lands, the Crown have provided formal advice to PSC, confirming Ministers consent is no longer required, in accordance with the Crown Lands Management Act 2016. PSC can now directly negotiate with tenants on the provision, the holder of the head lease (PSC) notifies the Minister of the granting of the sub-lease within 28 days after it is granted.

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2018-2022
Community Partnerships	Provide recreational and leisure services.

FINANCIAL/RESOURCE IMPLICATIONS

There are no direct financial/resource implications with the creation of three stand-alone sub lease agreements.

The main change is rent from Commercial tenants will be paid directly to Council instead of via the Surf Club as per the current lease arrangements. Fingal Surf Club by agreeing to relinquish management responsibilities to council will be paid an agreed financial contribution to cover agreed lease outgoings and expenses. The contribution will be paid to FBSLSC from the Saltwater Restaurant and Longboat Cafes total rental income.

Council's Community Services Section will collect and manage the Commercial rental income relating to the maintenance and repair of the Surf Club facilities.

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

LEGAL, POLICY AND RISK IMPLICATIONS

Council's Community Services Section is preparing the sub lease documentation in consultation with Council's legal providers. There are no known legal impediments for proceeding with the creation of sub leases for this site.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
That volunteer surf club members collectively do not have the level of business and marketing resourcing required to manage the commercial leases. This combined with the high rate of committee turn over in recent years could further impact the surf clubs ability to manage business decisions and relationships by failing to understand the tenants business needs going forward.	High	Adopt the recommendations.	Yes
That by not extending the lease and option period beyond current lease terms. Tenants will not see the potential for financial growth and longer term security and could exit the business. This would then add costs for council by again going out to an expression of Interest in the short term.	High	Adopt the recommendations.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The health, safety and traditions that surf lifesaving brings to the community will be preserved under the new sub lease arrangements.

Adopting the recommendation will provide Fingal Beach Surf Life Saving Club and commercial tenants with greater security to focus on their operations and to grow their business by extending their lease terms.

CONSULTATION

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

Internal

- Property Services Section.
- Community Services Manager.
- Facilities and Services Group Manager.
- Council's Legal Services.
- Community & Recreation Coordinator.

External

- Fingal Surf Club Executive.
- Director Salt Water Restaurant.
- Director Long Boat Café.

In accordance with local government legislation, the changes to Fingal Bay Life Saving Club lease arrangements will go on public exhibition for 28 days.

OPTIONS

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

ATTACHMENTS

- 1) 24 July 2012 - Ordinary Council Minutes - Minute No 216 - FBSLC Sub Lease.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

**ITEM 8 - ATTACHMENT 1 24 JULY 2012 - ORDINARY COUNCIL MINUTES -
MINUTE NO 216 - FBSLC SUB LEASE.****MINUTES FOR ORDINARY MEETING - 24 JULY 2012**

ITEM NO. 4

FILE NO: PSC2005-3699

SUB LEASE OF FINGAL BAY SURF LIFE SAVING CLUBREPORT OF: STEVEN BERNASCONI – COMMUNITY AND RECREATION SERVICES
MANAGER

GROUP: FACILITIES AND SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Subject to the approval of the Minister for Crown Lands, issue a sub lease for the management and operation of Fingal Bay Surf Life Saving Club buildings to Fingal Bay Surf Club Inc.
- 2) Authorise the Mayor and General Manager to sign and affix the Seal of the Council to the sub lease documentation.
- 3) Authorise the Mayor and General Manager to sign and affix the Seal of the Council to the sub-sub lease for the commercial operations of the functions and restaurant areas of the new Fingal Bay Surf Life Saving Club building.

ORDINARY COUNCIL MEETING – 24 JULY 2012

216	Councillor Bruce MacKenzie Councillor John Nell
	It was resolved that the recommendation be adopted.

BACKGROUND

The purpose of this report is to confirm procedures for the signing and affixing of the Seal of the Council to a lease document for the management and operation of the Fingal Bay Surf Club buildings.

Council has a Special Lease in perpetuity with the Crown Lands for Lot 371 DP 753204 being 3 Marine Drive Fingal Bay, known as Fingal Bay Surf Life Saving Club. The site includes two premises (1) the café/caretaker/life guard building and (2) the construction site for the new surf club building that will hold spaces for volunteer life saving services and equipment, training areas, meeting rooms, club gymnasium and restaurant and function centre spaces. This new building is scheduled for completion at the end of September 2012.

Council and the Fingal Bay Surf Club Inc agreed to the terms and conditions of a Memorandum of Understanding (see Tabled Document 1) which has as its first objective to adopt a partnership approach to the management and operation of the site. An important partnership principle of the MOU is to invest all proceeds from the buildings to cover the operational and asset management costs for the site. The

ITEM 8 - ATTACHMENT 1 24 JULY 2012 - ORDINARY COUNCIL MINUTES - MINUTE NO 216 - FBSLC SUB LEASE.**MINUTES FOR ORDINARY MEETING - 24 JULY 2012**

net effect of this will be the reduction in ratepayer costs to provide paid life guard services to the beach, equipment support for the volunteer Surf Life Saving Club and building repairs and maintenance costs.

Council has historically and successfully operated this site through a licence with the Fingal Bay Surf Club Inc. The design of the new club house will include a viable commercial space for functions and a restaurant, which will be sub leased by the Club to commercial operators on completion. Council needs to renew this operational agreement in the form of a sub lease arrangement.

Whilst Council holds the Special Lease in perpetuity from the Crown Lands, the length of the sub lease (i.e. ten years) will require consent from the Minister for Crown Lands for the execution of the sub lease.

Prior to completion of the building the Club will seek a sub-sub lease for the commercial operations of the building which will include functions and restaurant areas. This sub-sub lease will also require affixing of the Seal of the Council and execution by the General Manager and the Mayor. Whilst not confirmed the term of the sub-sub lease is likely to be five (5) years.

FINANCIAL/RESOURCE IMPLICATIONS

The provisions of the sub lease ensure that there are no changes to the terms and obligations of the two parties and thus no financial impacts on Council from variations mid term.

In having a valid and enforceable lease the Crown and Council are protected and Council is able to reinvest proceeds from the agreement to the provision of community services that are otherwise funded from general revenue.

LEGAL, POLICY AND RISK IMPLICATIONS

Council's Property Services Section is preparing the sub lease documentation in consultation with Harris Wheeler Lawyers. There are no legal impediments for proceeding with a sub lease on this site.

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
With no formal lease in place the Fingal Bay Surf Club Inc will not be able to attract suitable commercial interests which may result in the new building not functioning optimally.	High	Adopt the recommendation	Yes
Delaying the issuing of a lease until the next term	Medium	Adopt the recommendation	Yes

**ITEM 8 - ATTACHMENT 1 24 JULY 2012 - ORDINARY COUNCIL MINUTES -
MINUTE NO 216 - FBSLC SUB LEASE.****MINUTES FOR ORDINARY MEETING - 24 JULY 2012**

of Council will delay the start of commercial aspects to the new building and thus potentially miss the high season of summer holidays.			
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SUSTAINABILITY IMPLICATIONS

The health, safety and traditions that surf life saving brings to the community will be preserved under this sub lease arrangement.

Adopting the recommendation will enable Council and the Fingal Bay Surf Club Inc to commence and complete marketing of the commercial aspects to the new building to maximise on the summer holiday customers.

CONSULTATION

Consultation has been held with the following people and organisations:
Fingal Bay Surf Club Inc
Environmental Property Services Pty Ltd (acting for Fingal Bay Surf Club Inc)
Crown Lands Department
Harris Wheeler Lawyers
Port Stephens Council Property Services Section
Port Stephens Council Group Manager Facilities and Services

OPTIONS

Nil.

ATTACHMENTS

Nil.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

- 1) Memorandum of Understanding – Fingal Bay Surf Club Inc AND Port Stephens Council.

MINUTES ORDINARY COUNCIL - 12 OCTOBER 2021

Councillor Sarah Smith returned to the meeting at 7:11pm.
Councillor Glen Dunkley returned to the meeting at 7:11pm.

ITEM NO. 9

FILE NO: 21/260828
EDRMS NO: PSC2019-04759

RAYMOND TERRACE INDOOR SPORTS FACILITY

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

RECOMMENDATION IS THAT COUNCIL:

- (1) Notes the information provided within this report and identifies a source of funds to prepare an Options Analysis for a new indoor sports facility in Raymond Terrace.
 - (2) If a source of funds cannot be identified, resolves an action for Council to identify future funding opportunities to prepare an Options Analysis for a new indoor sports facility in Raymond Terrace.
-

ORDINARY COUNCIL MEETING - 12 OCTOBER 2021 MOTION

271	<p>Councillor Giacomo Arnott Councillor Ken Jordan</p> <p>It was resolved that Council:</p> <ol style="list-style-type: none">1) Notes the information provided within this report and identifies a source of funds to prepare an Options Analysis for a new indoor sports facility in Raymond Terrace.2) If a source of funds cannot be identified, resolves an action for Council to identify future funding opportunities to prepare an Options Analysis for a new indoor sports facility in Raymond Terrace.3) Include the indoor sports facility in the Works Plus program.4) Include the indoor sports facility in the election advocacy documents for the upcoming State and Federal elections.
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Councillor Chris Doohan left the meeting at 7:13pm.
Councillor Chris Doohan returned to the meeting at 7:15pm.

The motion was carried.

BACKGROUND

The purpose of this report is to respond to the Council resolution (Minute No. 227) of the Council meeting of 10 August 2021 (**ATTACHMENT 1**). It was resolved at this meeting that Council provide a report regarding the status of investigations into an indoor sports facility for Raymond Terrace.

Since the initial Notice of Motion raised in February 2020, Council staff have worked to develop the strategic framework necessary to plan and construct an indoor sports facility in Raymond Terrace. The most notable deliverables from this framework include the Kings Hill Urban Release Area Infrastructure Study (April 2020), the King Park Sports Complex Masterplan (October 2020) and the updated Local Infrastructure Contributions Plan (February 2021).

The Kings Hill Urban Release Area Infrastructure Study was developed to identify infrastructure requirements to meet the needs of future populations within the Kings Hill Urban Release Area and Raymond Terrace. The study identified a multipurpose indoor sports facility within Raymond Terrace being required. The recommended facility was included in the updated Local Infrastructure Contributions Plan. The Plan sets a construction value of \$22,754,000 for an indoor sports facility with \$2,730,480 to be funded through development contributions.

During the development of the King Park Sports Complex Masterplan, consultation with user groups indicated that there was a desire for Council to construct an indoor sports facility to compliment outdoor programs already provided by sporting clubs. In considering the suitability of King Park as a location for an indoor facility, it was deemed unsuitable due to the environmental constraints imposed by the site such as its former landfill use, land subsidence issues and hazardous flood waters. Further to this, the isolated location of King Park away from other complimentary commercial uses was also considered to be detrimental to the viability of the asset.

Investigation was made into the former Raymond Terrace Leisure Centre which is currently used by the Raymond Terrace Library, providing administration space for Council services and staff. This site is not considered feasible for the proposed purpose as it no longer meets contemporary standards for an indoor sports facility. The Needs Analysis prepared to inform the King Park Sports Complex Masterplan details that contemporary indoor sports facilities should provide:

- A minimum of 3 courts to sustain higher use and improve operational viability.
- Incorporate indoor court facilities as part of a broader leisure facility mix.
- Incorporate ecologically sustainable development principles and minimise reliance on artificial air flow and lighting.
- Designed to be multi-use to increase utilisation through all seasons.

As the former leisure centre site cannot accommodate this scope, it is considered unsuitable for the proposed indoor sports facility project.

In considering the above desirable characteristics of a contemporary indoor facility, 2 options warrant further investigation:

- Construction of a new indoor facility at Lakeside Sports Complex. An opportunity exists to collocate the indoor sports facility with the Lakeside Leisure Centre and district level sporting facilities. This would offer collective operation and management options for Council.
- Integration of the indoor sports facility within the identified arts and cultural facility to be located in Raymond Terrace (identified through the Kings Hill Urban Release Area Infrastructure Study 2020). It should be noted that there is no provision for funding of an arts and cultural facility in Council's adopted Local Infrastructure Contributions Plan.

An Options Analysis is required to identify a preferred site, facility design and operational model to understand how Council would deliver a facility that is sustainable and meets the future needs of the community. In addition to developing a design for the facility, the Options Analysis would consider the following:

- Facility location and access.
 - Existing facilities and Council owned land in Raymond Terrace.
 - Other suitable properties within Raymond Terrace.
- Facility design and capacity.
 - Key sports users.
 - Key community users.
 - Ancillary services (food and drink premises, gym and indoor fitness facilities, meeting spaces etc).
- Economic analysis.
 - Capital cost assessment and supporting funding strategy.
 - Operational cost modelling and funding strategy.
- Facilities management strategy.
 - Operating arrangements.
 - Maintenance and improvement arrangements.

The estimated cost to complete an Options Analysis of this scope is estimated to be between \$80,000 and \$100,000.

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2018-2022
Infrastructure and Facilities	Plan civil and community infrastructure to support the community.

FINANCIAL/RESOURCE IMPLICATIONS

The recommendations will have a financial implication on Council as a result of the Options Analysis. A suitable funding source to allow for these works to be completed needs to be identified.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	No	\$100,000	There is currently no budget allocation for this project, a funding source to be identified.
Reserve Funds	No		
Developer Contributions (\$7.11)	No		
External Grants	No		
Other	No		

LEGAL, POLICY AND RISK IMPLICATIONS

There are no relevant legal or policy matters relating to the recommendations of this report. The risks identified in relation to the recommendations of this report are tabulated below.

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
There is a risk that Council proceeds with an indoor sports facility that is no commercially viable and/or is unable to meet the needs of users.	Medium	Adopt the recommendation to engage a suitably qualified consultant to prepare an Options Analysis.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Adopting the recommendations of this report will have positive social and economic implications for the Port Stephens community by providing a considered vision and scope for a multipurpose indoor sports facility in Raymond Terrace. The Options Analysis will ensure comprehensive consideration of opportunities is afforded to the project prior to further expenditure. The Options Analysis will also contribute to building a platform on which Council can promote the project to attract funding from external bodies.

CONSULTATION

Consultation with key stakeholders has been undertaken by the Asset Section to identify a scope, cost and potential funding sources to complete an Options Analysis.

External

Otium Planning Group – provided advice on estimated costs and scope to complete an Options Analysis.

OPTIONS

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

ATTACHMENTS

- 1) 10 August 2021 - Ordinary Council Minutes - Minute No 227 - Raymond Terrace Indoor Sports Facility.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

**ITEM 9 - ATTACHMENT 1 10 AUGUST 2021 - ORDINARY COUNCIL MINUTES
- MINUTE NO 227 - RAYMOND TERRACE INDOOR SPORTS FACILITY.****MINUTES ORDINARY COUNCIL - 10 AUGUST 2021****NOTICE OF MOTION****ITEM NO. 16****FILE NO: 21/206407****EDRMS NO: PSC2017-00019****RAYMOND TERRACE INDOOR SPORTS FACILITY****COUNCILLOR: GIACOMO ARNOTT****THAT COUNCIL:**

- 1) Notes that on 25 February 2020, Council adopted a motion asking for a feasibility study for an indoor sports facility in Raymond Terrace.
- 2) Notes that years ago, the current indoor sports facility was taken over by Police on the agreement that once they were finished with it, it would return to community usage.
- 3) Acknowledges that this failed to occur.
- 4) Requests a staff report as soon as possible outlining where this project is up to, and why Raymond Terrace still doesn't have its indoor sports facility back.

**ORDINARY COUNCIL MEETING - 10 AUGUST 2021
MOTION**

227	Councillor Giacomo Arnott Councillor Jaimie Abbott It was resolved that Council: <ol style="list-style-type: none">1) Notes that on 25 February 2020, Council adopted a motion asking for a feasibility study for an indoor sports facility in Raymond Terrace.2) Requests the General Manager report as soon as possible outlining where this project is up to, and why Raymond Terrace still doesn't have its indoor sports facility back.
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Councillor Sarah Smith returned to the meeting at 8:20pm.

The motion was carried.

**ITEM 9 - ATTACHMENT 1 10 AUGUST 2021 - ORDINARY COUNCIL MINUTES
- MINUTE NO 227 - RAYMOND TERRACE INDOOR SPORTS FACILITY.****MINUTES ORDINARY COUNCIL - 10 AUGUST 2021****BACKGROUND REPORT OF: ANDREW BEHRENS – ACTING ASSETS SECTION
MANAGER****BACKGROUND**

As noted in the original report to the 25 February 2020 Council meeting, the Greater Newcastle Metropolitan Plan identifies Raymond Terrace as a strategic centre and the northern gateway to the metropolitan plan area.

In regard to sport and recreation facilities, the plan identifies a 'metropolitan sport facility' located in Raymond Terrace. Action 12.4 of the plan states that 'the NSW Office of Sport will develop a Greater Newcastle sport and recreation facilities plan'. Council has been working with the NSW Office of Sport intermittently as they progress this action. Progress in this space has been limited due to the shifting priorities of the NSW Office of Sport. Indoor facilities formed part of this discussion however a draft plan is yet to be received by Council some 18 months later.

In terms of progress that has been made since the original Notice of Motion, staff have worked with the West Ward Sports Council to determine the size and scale of an indoor sports facility required to service the future population growth of Raymond Terrace and surrounds. This scope would see the delivery of a 4500m² two storey indoor sports and recreation centre with four basketball courts at a capital cost of \$22,754,000.

As a result of this, the Local Infrastructure Contributions Plan adopted by Council at the 23 February 2021 Council meeting includes the provision for KH18 – Raymond Terrace – Indoor Sports and Recreation Centre at 12% apportionment (\$2,730,480). This would require Council to secure \$20,023,520 from sources other than Development Contributions.

As noted in the original report to the 25 February 2020 Council meeting, staff recommend that a business case would need to be developed for this project. Council staff do not have the expertise to prepare such a business case and the funding required to engage a suitably qualified consultant has not been identified in forward budgets.

Council staff will continue to work with the NSW Office of Sport to understand the overarching strategic direction for Raymond Terrace relative to indoor sport and seek funding assistance for the development of a business case once parameters are confirmed.

In relation to the points 2 and 3 of the Notice of Motion, Port Stephens Council was approached by NSW Police in 2009 seeking office space for the housing of police staff whilst the Raymond Terrace Local Area Command at 55 William Street was being constructed. To support the delivery of the new command, Council reviewed facilities available to identify opportunities for leasing. Concurrent with this request, the former Raymond Terrace Leisure Centre (now the Raymond Terrace Library) was

**ITEM 9 - ATTACHMENT 1 10 AUGUST 2021 - ORDINARY COUNCIL MINUTES
- MINUTE NO 227 - RAYMOND TERRACE INDOOR SPORTS FACILITY.****MINUTES ORDINARY COUNCIL - 10 AUGUST 2021**

made available through the tenant (YMCA) relocating to Shops 15 and 16 of the Terrace Shopping Centre (now the Raymond Terrace PCYC).

With the facility made vacant, Council executed a lease for the former Raymond Terrace Leisure Centre to NSW Police from the 1 September 2009 to the 30 April 2011. This agreement was then extended to cater for the extended construction period with the official opening of the Raymond Terrace Local Area Command on 25 October 2011. Within the lease documentation, no commitment was made by either party to return the leisure facility to its former use. Council was returned the facility from NSW Police with the office improvements retained and subsequently converted the majority of the facility into the Raymond Terrace Library as currently exists.

FINANCIAL/RESOURCE IMPLICATIONS

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	No		Business case not funded.
Reserve Funds	No		
Developer Contributions (\$7.11)	No		
External Grants	No		
Other	No		

ATTACHMENTS

Nil.

ITEM NO. 10**FILE NO: 21/249662
EDRMS NO: PSC2017-00178****REQUEST FOR FINANCIAL ASSISTANCE****REPORT OF: WAYNE WALLIS - GENERAL MANAGER
GROUP: GENERAL MANAGER'S OFFICE**

RECOMMENDATION IS THAT COUNCIL:

- 1) Approves provision of financial assistance under Section 356 of the Local Government Act 1993 from Mayoral and Ward funds to the following:-
 - a. Clontarf Foundation – Mayoral funds - \$2000 donation towards a Clontarf Port Stephens Further Education Scholarship.
 - b. Rotary Club of Nelson Bay – Mayoral funds - \$1675 donation towards a bench seat and plaque at Tom O'Dwyer Oval.
 - c. Birubi Point Surf Life Saving Club – Cr Sarah Smith – Rapid response - \$497.45 donation towards restocking of first aid supplies for the coming season.
-

**ORDINARY COUNCIL MEETING - 12 OCTOBER 2021
MOTION**

272	Councillor Glen Dunkley Councillor John Nell It was resolved that Council approves provision of financial assistance under Section 356 of the Local Government Act 1993 from Mayoral and Ward funds to the following:- <ol style="list-style-type: none">a. Clontarf Foundation – Mayoral funds - \$2000 donation towards a Clontarf Port Stephens Further Education Scholarship.b. Rotary Club of Nelson Bay – Mayoral funds - \$1675 donation towards a bench seat and plaque at Tom O'Dwyer Oval.c. Birubi Point Surf Life Saving Club – Cr Sarah Smith – Rapid response - \$497.45 donation towards restocking of first aid supplies for the coming season.
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Councillor Jaimie Abbott left the meeting at 7:45pm.

The motion was carried.

BACKGROUND

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

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

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

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

The requests for financial assistance are shown below:

MAYORAL FUNDS – Mayor Palmer

Clontarf Foundation	The Clontarf Foundation uses a unique, innovative and highly successful approach to assist young Aboriginal and Torres Strait Islander men to transition into meaningful employment.	\$2000	Donation towards a Clontarf Port Stephens Further Education Scholarship.
Rotary Club of Nelson Bay	Rotary is a group of women and men who share a common purpose of wanting to help others and their community.	\$1675	Donation towards a bench seat and plaque at Tom O'Dwyer Oval.

WARD FUNDS

Birubi Point Surf Life Saving Club	The Birubi Point Surf Life Saving Club is a small club with a proud history of keeping people safe while they relax and	\$497.45	Donation towards first aid supplies for the coming season.
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MINUTES ORDINARY COUNCIL - 12 OCTOBER 2021

	enjoy our spectacular environment.		
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COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2018-2022
Community Partnerships	Support financially creative and active communities.

FINANCIAL/RESOURCE IMPLICATIONS

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

LEGAL AND POLICY IMPLICATIONS

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

The policy interpretation required is whether the Council believes that:

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

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

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Nil.

CONSULTATION

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

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

OPTIONS

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

ATTACHMENTS

Nil.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ITEM NO. 11**FILE NO: 21/262707
EDRMS NO: PSC2017-00015****INFORMATION PAPERS****REPORT OF: WAYNE WALLIS - GENERAL MANAGER
GROUP: GENERAL MANAGER'S OFFICE**

RECOMMENDATION IS THAT COUNCIL:

Receives and notes the Information Papers listed below being presented to Council on 12 October 2021.

No:	Report Title	Page:
1	Council Resolutions	174
2	Annual Designated Persons Returns – Pecuniary Interest 1 July 2020 to 30 June 2021	187

**ORDINARY COUNCIL MEETING - 12 OCTOBER 2021
MOTION**

273	Councillor Glen Dunkley Councillor John Nell It was resolved that Council receives and notes the Information Papers listed below being presented to Council on 12 October 2021. <hr/> <table><tr><th>No:</th><th>Report Title</th></tr><tr><td>1</td><td>Council Resolutions</td></tr><tr><td>2</td><td>Annual Designated Persons Returns – Pecuniary Interest 1 July 2020 to 30 June 2021</td></tr></table>	No:	Report Title	1	Council Resolutions	2	Annual Designated Persons Returns – Pecuniary Interest 1 July 2020 to 30 June 2021
No:	Report Title						
1	Council Resolutions						
2	Annual Designated Persons Returns – Pecuniary Interest 1 July 2020 to 30 June 2021						

The motion was carried.

INFORMATION PAPERS

ITEM NO. 1

**FILE NO: 21/249669
EDRMS NO: PSC2017-00106**

COUNCIL RESOLUTIONS

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

BACKGROUND

The purpose of this report is to inform the Mayor and Councillors of the status of all matters to be dealt with arising out of the proceedings of previous meetings of the Council in accordance with the Code of Meeting Practice.

ATTACHMENTS

- 1) Corporate Services Group report.
- 2) Development Services Group report.
- 3) Facilities & Services Group report.
- 4) General Manager's Office report.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ITEM 1 - ATTACHMENT 1 CORPORATE SERVICES GROUP REPORT.



Outstanding	Division: Corporate Services	Date From: 26/09/2017
	Committee:	Date To: 28/09/2021
	Officer:	
Action Sheets Report	Printed: Tuesday, 5 October 2021	

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 27/03/2018	Crosdale, Timothy	COMPULSORY ACQUISITION OF AN EASEMENT FOR ACCESS OVER PART OF 6 GOVERNMENT ROAD, SHOAL BAY	30/12/2021	28/03/2018	
13		Crosdale, Timothy				18/66656
066						
1 Oct 2021						
Minister's consent obtained 23 June 2021. Acquisition to be gazetted in October 2021.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 22/09/2020	Crosdale, Timothy	Newline Road, Raymond Terrace	28/02/2022		
2		Crosdale, Timothy				20/288489
199						
1 Oct 2021						
Approved. Contracts prepared. Finalising survey levels in contract.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 13/04/2021	Crosdale, Timothy	PROPOSED CLOSURE AND SALE OF PATHWAY IN BOAT HARBOUR	30/04/2022	14/04/2021	
2		Crosdale, Timothy				21/96728
090						
1 Oct 2021						
Matter progressing.						

ITEM 1 - ATTACHMENT 1 CORPORATE SERVICES GROUP REPORT.



Outstanding	Division: Corporate Services	Date From: 26/09/2017
	Committee:	Date To: 28/09/2021
	Officer:	
Action Sheets Report	Printed: Tuesday, 5 October 2021	

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 11/05/2021	Crosdale, Timothy	Car parking in Shoal Bay	30/12/2021	12/05/2021	
1		Crosdale, Timothy				21/123694
1 Oct 2021 Consultation continues with Crown Lands to enable this proposed use.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 28/09/2021	Crosdale, Timothy	Port Stephens Koalas	30/11/2021	29/09/2021	
2		Crosdale, Timothy				21/263230
1 Oct 2021 Revised Target Date changed From: 12 Oct 2021 To: 30 Nov 2021						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 28/09/2021	Crosdale, Timothy	Proposed purchase of land in Medowie	30/12/2021	29/09/2021	
1		Crosdale, Timothy				21/263230
258 1 Oct 2021 Revised Target Date changed From: 30 Nov 2021 To: 30 Dec 2021						

ITEM 1 - ATTACHMENT 2 DEVELOPMENT SERVICES GROUP REPORT.



Outstanding	Division: Development Services	Date From: 27/09/2017
	Committee:	Date To: 28/09/2021
	Officer:	
Action Sheets Report	Printed: Tuesday, 5 October 2021	

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 13/07/2021	Drinan, Kate	Publication of Development Application Information	28/02/2022		
3		Peart, Steven				21/190429
178						
27 Sep 2021						
Revised Target Date changed From: 29 Oct 2021 To: 28 Feb 2022						
Reason: Awaiting legal advice.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 13/07/2021	Drinan, Kate	Publication of Development Application Submissions	28/02/2022		
4		Peart, Steven				21/190429
27 Sep 2021						
Revised Target Date changed From: 30 Oct 2021 To: 28 Feb 2022						
Reason: Awaiting legal advice.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 27/07/2021	Gardner, Janelle	Draft Voluntary Planning Agreement - Kings Hill Development	30/10/2021	28/07/2021	
3		Peart, Steven				21/204573
193						
1 Oct 2021						
3 submissions received on Public Exhibition. Report with submissions will be going to 12 October 2021 Ordinary Council meeting.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 10/08/2021	Gardner, Janelle	Assistance for Local Businesses	30/09/2021	13/08/2021	28/09/2021
1		Peart, Steven				21/218740
198						
28 Sep 2021						
The Economic Development team continues to assist local business and has:						

ITEM 1 - ATTACHMENT 2 DEVELOPMENT SERVICES GROUP REPORT.



Outstanding	Division: Development Services	Date From: 27/09/2017
	Committee:	Date To: 28/09/2021
	Officer:	
Action Sheets Report	Printed: Tuesday, 5 October 2021	

- * commenced 'Business Leaders Lunch & Learn' zoom sessions with the Mayor and various guests
- * continued the monthly e-newsletter BizLink to share current information, news and events
- * support links for business start-ups (and expansions) with referrals to the Service NSW Concierge Service
- * continued partnership with DPS to encourage locals to explore their own backyard; along with marketing strategies to maximise recovery once restrictions are lifted, including the Port Stephens 'Shop Local' program.

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 10/08/2021	Gardner, Janelle	Dwellings in High Hazard Floodways	31/10/2021		
10		Peart, Steven				21/218740
225						
1 Oct 2021						
A report has been prepared by the Strategic Planning team to go to Ordinary Council on 12 October 2021. This report will include a review of previous applications for dwellings in a high hazard floodway, the current statutory framework that applies, and benchmarking against other councils.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 14/09/2021	Gardner, Janelle	Port Stephens Waterway Strategy	31/12/2021	15/09/2021	
1		Peart, Steven				21/252518
240						
1 Oct 2021						
Natural Resources team are reviewing strategy to see if there is any crossover with the Coastal Management Program (CMP). Meetings with key stakeholders will be scheduled to discuss the Waterway Strategy key objectives.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 28/09/2021	Bernasconi, Steven	Australia Day 2022	12/10/2021	29/09/2021	28/09/2021
8		Peart, Steven				21/263230
250						
28 Sept 2021						
It was resolved that Council approve the continuation of Australia Day funding arrangements for the Nelson Bay, Raymond Terrace, Lemon Tree Passage and Karuah 2022 events.						

ITEM 1 - ATTACHMENT 2 DEVELOPMENT SERVICES GROUP REPORT.



Outstanding	Division: Development Services	Date From: 27/09/2017
	Committee:	Date To: 28/09/2021
	Officer:	
Action Sheets Report		Printed: Tuesday, 5 October 2021

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 28/09/2021	Drinan, Kate	Animal Shelter	12/10/2021	29/09/2021	
1		Peart, Steven				21/263230
253						
29 Sept 2021						
Prepare a report to investigate options for Port Stephens Animal Shelter to temporarily hold onto family pets for up to 1 week where the pet's owner is fleeing a domestic violence situation.						

ITEM 1 - ATTACHMENT 3 FACILITIES & SERVICES GROUP REPORT.



Outstanding	Division: Facilities & Services	Date From: 27/09/2017
	Committee:	Date To: 28/09/2021
	Officer:	
Action Sheets Report	Printed: Tuesday, 5 October 2021	

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 10/12/2019	Gutsche, Tammy	GREEN WASTE DROP OFF - SALAMANDER BAY	31/10/2021	11/12/2019	
7 265		Kable, Gregory				19/388450
30 Sep 2021 Included as part of the Waste Management Strategy 2021-2031. The Strategy went to public exhibition until Wednesday 22 September, responses to the submissions will be presented to Council 26 October 2021.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 24/11/2020	Miles, Philip	Disposal of Surplus Excavated Materials at Newcastle Airport Development Project Site.	1/12/2021		
11 261		Kable, Gregory				20/358525
1 Oct 2021 Newcastle Airport to submit DA modification. Legal Contracts have been drafted in preparation for DA modification approval.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 8/12/2020	Stewart, Adam	Fly Point and Little Beach Parking/SMART Parking	31/12/2021		
3		Kable, Gregory				20/391301
1 Oct 2021 Awaiting completion of the associated Place Plans. Report to be prepared and reported back to Council during March 2022.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 9/02/2021	Stewart, Adam	5G Small Cell Technology Rollout in Port Stephens	31/12/2021		
3 006		Kable, Gregory				21/33235
1 Oct 2021 Discussions have commenced with Telstra.						

ITEM 1 - ATTACHMENT 3 FACILITIES & SERVICES GROUP REPORT.



Outstanding	Division: Facilities & Services	Date From: 27/09/2017
	Committee:	Date To: 28/09/2021
	Officer:	
Action Sheets Report	Printed: Tuesday, 5 October 2021	

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 9/02/2021	Lamont, Brock	MEDOWIE REGIONAL PLAYGROUND AND TOWN CENTRE	1/12/2021		
2012		Kable, Gregory				21/33235
1 Oct 2021 Report due diligence being undertaken. Resources are being prioritised to scoping and delivery of Capital Works Program. Recruiting in Community and Recreation Assets to achieve full complement and report will be finalised by December 2021.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 25/05/2021	Maretich, John	Anna Bay Drainage Union	1/12/2021	26/05/2021	
2126		Kable, Gregory				21/138820
1 Oct 2021 The State Government agency responsible for Anna Bay Drainage Union shall be consulted with.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 25/05/2021	Maretich, John	Bus Stop in Seaside Estate, Fern Bay	31/12/2021	26/05/2021	
5128		Kable, Gregory				21/138820
1 Oct 2021 This review shall be undertaken through Local Traffic Committee and consultation with members of the Seaside Community Association.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 8/06/2021	Lamont, Brock	Sand Movement from Shoal Bay to Fly Point	31/12/2022	9/06/2021	
2143		Kable, Gregory				21/156213
1 Oct 2021 Council shall apply for grants in accordance with associated criteria.						

ITEM 1 - ATTACHMENT 3 FACILITIES & SERVICES GROUP REPORT.



Outstanding	Division: Facilities & Services	Date From: 27/09/2017
	Committee:	Date To: 28/09/2021
	Officer:	
Action Sheets Report	Printed: Tuesday, 5 October 2021	

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 13/07/2021	Stewart, Adam	Hydrogen and Electric Vehicles in Council's Fleet	31/12/2021		
2		Kable, Gregory				21/190429
177						
1 Oct 2021						
Staff are currently in consultation with suppliers on how to introduce new fuel sources for our vehicle.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 10/08/2021	Maretich, John	DEDICATION AS PUBLIC ROAD OF PART LOT 491 DP 27846 - 18C CROMARTY ROAD, SOLDIERS POINT	31/12/2022	13/08/2021	
1		Kable, Gregory				21/218740
210						
1 Oct 2021						
Council staff will commence transfer of land parcel to the road reserve.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 10/08/2021	Maretich, John	Agreement with Community Association DP270468 - Lagoons Estate, Nelson Bay	30/04/2022		
4		Kable, Gregory				21/218740
208						
1 Oct 2021						
Council to enter agreement with the Community Association DP 270468 in accordance with the confidential terms as per Council report.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 10/08/2021	Stewart, Adam	NEW POLICY - CLOSED CIRCUIT TELEVISION (CCTV) IN PUBLIC PLACES	31/10/2021	13/08/2021	
4		Kable, Gregory				21/218740
213						
1 Oct 2021						
The Public Exhibition of the CCTV In Public Places Policy ended on the 21 September 2021.						
A report will be provided to Council at the Ordinary Meeting on 26 October 2021.						

ITEM 1 - ATTACHMENT 3 FACILITIES & SERVICES GROUP REPORT.



Outstanding	Division: Facilities & Services	Date From: 27/09/2017
	Committee:	Date To: 28/09/2021
	Officer:	
Action Sheets Report	Printed: Tuesday, 5 October 2021	

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 10/08/2021	Stewart, Adam	Kirrang Drive, Medowie Shared Pathway	31/01/2022	13/08/2021	
8		Kable, Gregory				21/218740
217						
1 Oct 2021 Council staff will undertake further investigations into the financial requirements and options to accelerate the Kirrang Drive, Medowie pathway. Staff will report the outcomes back to Council.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 10/08/2021	Lamont, Brock	Shade Sail at Robinson Reserve, Anna Bay	30/11/2021	13/08/2021	
5		Kable, Gregory				21/218740
223						
1 Oct 2021 Council staff will investigate the costs and specifications of a shade sail to be installed at Robinson Reserve. This will be reported to Council at the 12 October 2021 Council meeting.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 10/08/2021	Lamont, Brock	Raymond Terrace Indoor Sports Facility	1/12/2021	13/08/2021	
16		Kable, Gregory				21/218740
227						
1 Oct 2021 Staff are preparing a report and documentation. This will be reported to Council at the 12 October 2021 Council meeting.						

ITEM 1 - ATTACHMENT 3 FACILITIES & SERVICES GROUP REPORT.



Outstanding	Division: Facilities & Services	Date From: 27/09/2017
	Committee:	Date To: 28/09/2021
	Officer:	
Action Sheets Report	Printed: Tuesday, 5 October 2021	

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 10/08/2021	Stewart, Adam	Australia Post Mail Box, 14A William Street, Raymond Terrace	31/10/2021	13/08/2021	
20 229		Kable, Gregory				21/218740
<p>1 Oct 2021</p> <p>There are a variety of site specific constraints and factors which need to be taken into account including compliance with the Disability Discrimination Act, NSW Road Rules in regard to stopping near a postbox, and Councils Stage 2 works for William Street which will seek to relocate and optimise the location of street furniture including mail boxes.</p>						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 24/08/2021	Gutsche, Tammy	Waste Management Strategy 2021-2031	31/10/2021	26/08/2021	
1 235		Kable, Gregory				21/230755
<p>1 Oct 2021</p> <p>A response is being prepared for Council meeting held 26 October 2021 following the 15 submissions received by Council.</p>						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 10/08/2021	Lamont, Brock	Raymond Terrace Seven Day Makeover	31/12/2022		
17 228		Kable, Gregory				21/218740
<p>1 Oct 2021</p> <p>A 2 way has been booked with the Councillors on the 26th October 2021.</p>						

ITEM 1 - ATTACHMENT 3 FACILITIES & SERVICES GROUP REPORT.



Outstanding	Division: Facilities & Services	Date From: 27/09/2017
	Committee:	Date To: 28/09/2021
	Officer:	
Action Sheets Report	Printed: Tuesday, 5 October 2021	

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 28/09/2021	Maretich, John	Policy Review - Contribution to Works for Kerb and Gutter Construction Policy	15/01/2022	29/09/2021	
5		Kable, Gregory				21/263230
1 Oct 2021 The Contribution to Works for Kerb and Gutter Construction Policy has been placed on public exhibition from Wednesday 29 September 2021 to Tuesday 26 October 2021.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 28/09/2021	Gutsche, Tammy	Policy Review - Volunteer Recognition Policy	15/01/2022	29/09/2021	
6		Kable, Gregory				21/263230
1 Oct 2021 The Volunteer Recognition Policy has been placed on public exhibition for 28 days from the 29 September to 26 October 2021.						

ITEM 1 - ATTACHMENT 4 GENERAL MANAGER'S OFFICE REPORT.



Outstanding	Division: General Manager's Office	Date From: 26/09/2017
	Committee:	Date To: 28/09/2021
	Officer:	
Action Sheets Report		Printed: Tuesday, 5 October 2021

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 10/08/2021	Wickham, Tony	Public Access	29/10/2021	13/08/2021	
23		Wallis, Wayne				21/218740
230						
29 Sep 2021						
Revised Target Date changed From: 30 Sep 2021 To: 29 Oct 2021						
Reason: Two way conversation scheduled for 19 October 2021						

ITEM NO. 2

**FILE NO: 21/259977
EDRMS NO: PSC2020-02093**

**ANNUAL DESIGNATED PERSONS RETURNS - PECUNIARY INTEREST 1 JULY
2020 TO 30 JUNE 2021**

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

BACKGROUND

The purpose of this report is to advise Council of designated persons who have submitted returns for the 2020 to 2021 period.

Mayor Ryan Palmer
Councillor Jaimie Abbott
Councillor Giacomo Arnott
Councillor Christopher Doohan
Councillor Glen Dunkley
Councillor Ken Jordan
Councillor Paul Le Mottee
Councillor John Nell
Councillor Sarah Smith
Councillor Steve Tucker

GENERAL MANAGER'S OFFICE

General Manager
Governance Section Manager
Legal Services Manager
Lawyer (1)

CORPORATE SERVICES GROUP

Commercial Investments Manager
Corporate Analyst
Financial Services Section Manager
Group Manager Corporate Services
Holiday Parks Section Manager
Marketing and Promotions Manager
Organisation Support Section Manager

DEVELOPMENT SERVICES GROUP

Building and Developer Relations Coordinator
Communication Section Manager
Development Assessment and Compliance Section Manager

Development Compliance Officer
Development Planner (3)
Economic Development and Tourism Coordinator
Environmental Health and Compliance Coordinator
Environmental Health Officer (3)
Environmental Health Team Leader
Environmental Planner
Group Manager Development Services
Health and Building Surveyor (4)
Natural Resources Coordinator
Planning and Developer Relations Coordinator
Principal Building Surveyor
Principal Planner
Ranger (3)
Ranger Team Leader and Compliance
Senior Building Surveyor (3)
Senior Development Planner (2)
Senior Environmental Health Officer
Senior Environmental Planner (2)
Senior Ranger
Senior Strategic Planner (2)
Strategic Planner (4)
Strategic Planning Coordinator
Strategy and Environment Section Manager
Vegetation Management Officer

FACILITIES & SERVICES GROUP MANAGER

Assets Section Manager
Capital Works Section Manager
Community Services Section Manager
Group Manager Facilities & Services
Public Domain and Services Manager

ATTACHMENTS

Nil.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

NOTICES OF MOTION

NOTICE OF MOTION

ITEM NO. 1

FILE NO: 21/262328

EDRMS NO: PSC2017-00019

NAMING OF FIELDS AT YULONG OVAL

COUNCILLOR: CHRIS DOOHAN

THAT COUNCIL:

1) Names the 3 fields of Medowie's Yulong Oval as follows:

- Field 1 - Grahame Beasley Field
 - Field 2 - Alan and Gail Morris Field
 - Field 3 - Bev Turnbull Field
-

**ORDINARY COUNCIL MEETING - 12 OCTOBER 2021
MOTION**

274	<p>Councillor Chris Doohan Councillor Sarah Smith</p> <p>It was resolved that Council names the 3 fields of Medowie's Yulong Oval as follows:</p> <ul style="list-style-type: none">• Field 1 - Grahame Beasley Field• Field 2 - Alan and Gail Morris Field• Field 3 - Bev Turnbull Field
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Councillor Jaimie Abbott returned to the meeting at 7:50pm.

The motion was carried.

BACKGROUND REPORT OF: JOHN MARETICH – ASSETS SECTION MANAGER

BACKGROUND

The purpose of this report is to provide background information for the Notice of Motion.

The NSW Geographical Names Act 1966 empowers the Geographic Naming Board (GNB) as the body responsible for overseeing the formal naming of places. The GNB Place Naming Policy sets out the rules and regulations that apply to such applications.

Relative to this Notice of Motion, the policy states that ‘personal names, including those of persons still living, may be used for built features e.g. pavilions and grandstands etc., however these features are not formally assigned by the GNB and are not covered by the Act.’

As such, the formal naming of an open space asset such as a sporting field would not be generally supported by GNB. As an alternative to the above process, Council may name assets or projects by dedication in an informal manner (such as sporting fields, community buildings, footpaths, boardwalks etc.).

Although the GNB Policy does not strictly apply in this instance, it does provide guidance as to what information should be considered when assessing commemorative naming requests. The GNB Policy offers the following guidelines regarding association or contribution for naming:

- Two or more terms of office on the governing local government council.
- Twenty or more years association with a local community group or service club.
- Twenty or more years of association or service with a local or state government or organisation.
- Action by an individual to protect, restore, enhance or maintain an area that produces substantial long term improvements for the community.
- The death of a person within a place is not solely to be considered sufficient justification for commemoration.
- Local residents of note.

FINANCIAL/RESOURCE IMPLICATIONS

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes		Existing resources.
Reserve Funds	No		
Developer Contributions (S7.11)	No		
External Grants	No		
Other	No		

ATTACHMENTS

Nil.

NOTICE OF MOTION

ITEM NO. 2

FILE NO: 21/268337

EDRMS NO: PSC2017-00019

CARBON NEUTRALITY

COUNCILLOR: RYAN PALMER

THAT COUNCIL:

- 1) Commit to the goal of achieving carbon neutrality for Council operations by 2025.
 - 2) Determine a suitable funding source to support Council in achieving this goal
 - 3) Provide a report to Council on a roadmap to achieving carbon neutrality.
-

**ORDINARY COUNCIL MEETING - 12 OCTOBER 2021
MOTION**

275	<p>Mayor Ryan Palmer Councillor Giacomo Arnott</p> <p>It was resolved that Council:</p> <ol style="list-style-type: none">1) Commit to the goal of achieving carbon neutrality for Council operations by 2025.2) Determine a suitable funding source to support Council in achieving this goal3) Provide a report to Council on a roadmap to achieving carbon neutrality.
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The motion was carried.

**BACKGROUND REPORT OF: JANELLE GARDNER – STRATEGY &
ENVIRONMENT SECTION MANAGER**

BACKGROUND

Climate change is a significant global challenge that directly impacts the Port Stephens community. Impacts such as increased sea level rise, intensity and frequency of storms, bushfire and rainfall patterns are challenging the way we manage our environment.

Over the past few years, Council has implemented a number of initiatives to reduce our carbon footprint. These include:

- Installation of solar photovoltaic systems at Council's Administration Building, Salamander Waste Transfer Station, libraries, community centres and Rural Fire Service buildings.
- Installation of solar pool pre-heating at Lakeside Leisure Centre, Tomaree Aquatic Centre and Tilligerry Aquatic Centre.
- Use of recycled glass 'greencrete' in the upgrade of Tanilba Bay roundabout.
- Installation of Building Management System and Programmable Logic Controller at our Administration Building, Lakeside Leisure Centre and many sports and community buildings to deliver energy efficiencies and lower operating costs.
- Installation of water-saving irrigation and stormwater harvesting at Medowie Park and Kindlebark Oval.
- Installation of variable-speed drives at Lakeside Leisure Centre plus Kangaroo Street and Stockton Street flood pumps to save energy consumption.
- Installation of energy-saving LED field lighting at Ferodale Netball Courts, Tomaree Netball Courts and Tomaree Sports Complex, Administration Building, Tomaree Library and Community Centre, Council works depots, Birubi Surf Club and a number of community centres and halls.

The New South Wales State Government has adopted emission reduction and renewable energy policies that aim to achieve zero carbon emissions by 2050. Port Stephens Council will support these actions by committing to ensuring Council operations are carbon neutral by 2025.

To achieve this, Council will ensure any emissions released into the atmosphere from the organisation's activity will be balanced by the equivalent amount of emissions being removed. Council will work closely with the community, business and all levels of government to influence behaviour change, reduce energy demand and protect and enhance the natural environment. Council will:

- Undertake a review of current emissions to determine the baseline
- Commit to monitoring emissions on an annual basis
- Work with our community to develop a Sustainability Strategy
- Implement actions via the Integrated Planning and Reporting framework that deliver carbon neutrality
- Advocate to the NSW Environment Minister, the Hon Matt Kean and Premier, the Hon Dominic Perrottet, to request assistance in achieving carbon neutrality.

FINANCIAL/RESOURCE IMPLICATIONS

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

MINUTES ORDINARY COUNCIL - 12 OCTOBER 2021

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

ATTACHMENTS

Nil.

There being no further business the meeting closed at 8.05pm.